

ESTTA Tracking number: **ESTTA95648**

Filing date: **08/22/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	DerekHopkins
Granted to Date of previous extension	08/26/2006
Address	65 Raymond Road Deerfield, NH 03037 UNITED STATES

Attorney information	David Benoit 24 Cliffmore Road West Hartford, CT 06107 UNITED STATES dcbenoit@comcast.net Phone:860 206-9826
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Applicant Information

Application No	78725665	Publication date	06/27/2006
Opposition Filing Date	08/22/2006	Opposition Period Ends	08/26/2006
Applicant	Samba, Inc. Suite J 927 Calle Negocio San Clemente, CA 92673 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2005/02/00 First Use In Commerce: 2005/02/00
All goods and sevicees in the class are opposed, namely: Dietary supplements; Nutritional supplements

Attachments	Notice of Opposition.pdf (4 pages)(26148 bytes)
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Signature	/David Benoit/
Name	David Benoit
Date	08/22/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Hopkins, Derek D)
)
 Opposer,)
)
 v.)
)
 Samba, Inc.)
 DBA Sambazon Corporation.)
)
 Applicant.)
)

Opposition No. _____

Serial No.: 78/725665
Mark: ACAI POWERCAPS
Goods: Dietary supplements; Nutritional supplements
Class: 005
Filed: October 3, 2005
Published: Official Gazette of June 27, 2006

NOTICE OF OPPOSITION

Opposer, Hopkins, Derek D, (“Opposer”), an individual and president of Liquid Health Labs, Inc., a Delaware corporation, having a place of business at 65 Raymond Rd. Deerfield, New Hampshire 03037, believes that he would be damaged by the registration of the mark ACAI POWERCAPS, U.S. Trademark Application 78/725665, and hereby opposes that application.

As grounds of opposition, Opposer alleges:

History of Opposer and his POWERCAP mark

1. Opposer founded Liquid Health Lbs, Inc. in 2002 (“Liquid Inc.”) as a provider of consumer goods product development, specializing in the nutraceutical market;
2. Opposer, in his capacity as President of Liquid Inc., markets and sells a line of nutrient-dispensing bottle cap closures under the brand name POWERCAP to individual consumers, ingredient manufacturers and manufacturers of vitamin-and flavor-enhanced beverages.
3. The POWERCAP closures incorporate a two-tiered cap design that includes a cavity and base. The top portion of the closure serves as the cavity and stores nutritional, flavor and/or dietary ingredients. The bottom portion of the closure serves as the base and secures the POWERCAP to a bottled beverage. Upon twisting the top portion of the POWERCAP, the user releases the ingredients into a bottled beverage of their choice;
4. Opposer continuously has used the POWERCAP mark in the United States since 2004 and has never abandoned the mark in the United States;
5. The POWERCAP mark has been widely advertised and promoted in the United States; and
6. The POWERCAP mark is an asset of substantial value to Opposer as a symbol of the POWERCAP line of closures, his business enterprise and goodwill.

Opposer’s United States Trademark Applications

7. On May 27, 2004, Opposer filed Application Serial No. 78/426054 for the mark POWERCAP in International Class 020;

8. On June 28, 2006, Opposer's mark POWERCAP for a "delivery system, namely, specialized non-metal bottle caps, sold empty, for use in dispensing nutritional additives in beverages" was allowed for registration on the Principal Register.
9. On August 22, 2006, Opposer's mark POWERCAP was registered on the Principal Register, Registration No. 3133915.

Likelihood of Confusion

10. On information and belief, Applicant is a Colorado corporation having an address at Suite J 927 Calle Negocio, San Clemente, CA 92673;
11. On information and belief, on October 3, 2005, Applicant filed Application Serial No. 78/725665 for the mark ACAI POWERCAPS in connection with "Dietary supplements; Nutritional supplements";
12. On information and belief, Applicant markets and sells its line of nutritional ingredients for consumption with a beverage under the brand name ACAI POWERCAPS through its website located at <http://www.sambazon.com> and through various retailers across the country;
13. Applicant's date of first use of the mark ACAI POWERCAPS was February, 2005;
14. On information and belief, Opposer has priority of its POWERCAP mark over Applicant's filing date and first-use date for the closely-related goods;
15. Applicant's ACAI POWERCAPS mark wrongfully appropriates a substantial portion of the POWERCAP mark and prominently displays the POWERCAP portion of the mark in a manner that is nearly identical in appearance, pronunciation, and overall commercial impression to Opposer's mark for closely-related goods.

16. It is likely that Applicant's ACAI POWERCAPS mark, when applied to Applicant's goods, will cause confusion, or cause mistake, or deceive because Applicant's ACAI POWERCAPS mark appropriates a substantial portion of the POWERCAP mark for closely-related goods.

For the above reasons, Opposer would be damaged by the registration of the ACAI POWERCAPS mark, Application Serial No. 78/725665.

WHEREFORE, Opposer prays that this opposition is sustained and that registration of Application Serial No. 78/725665 is denied.

The Notice of Opposition and Exhibits are filed in duplicate. Opposer notes that the required opposition fee of \$300 accompanies this Notice. If the Filing Fee is found to be insufficient for any reason, please charge such deficiency to Opposer's credit card.

Respectfully submitted,

Date: August 23, 2006

By: /David B. Benoit/

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Attorney for Opposer Derek D. Hopkins