

ESTTA Tracking number: **ESTTA140854**

Filing date: **05/16/2007**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Platypus Wear, Inc.
Granted to Date of previous extension	05/16/2007
Address	701 North Green Valley Parkway Suite 200 Henderson, NV 89074 UNITED STATES

Name	Bad Boy LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	701 North Green Valley Parkway Suite 200 Henderson, NV 89074 UNITED STATES		

Attorney information	Lisa A. Osman Dorsey & Whitney LLP 370 Seventeenth Street Suite 4700 Denver, CO 80202-5647 UNITED STATES osman.lisa@dorsey.com Phone:(303) 629-3400
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Applicant Information

Application No	78905314	Publication date	01/16/2007
Opposition Filing Date	05/16/2007	Opposition Period Ends	05/16/2007
Applicant	NEW IMAGE GLOBAL, INC. 1672 RAILROAD CORONA, CA 92882 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Chewing tobacco; Cigarette papers; Cigarette rolling papers; Cigarettes; Cigarillos; Cigars; Filter-tipped cigarettes; Hand-rolling tobacco; Pipe tobacco; Roll your own tobacco; Rolling tobacco; Smoking pipes; Smoking tobacco; Tobacco

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1469124	Application Date	04/04/1986
Registration Date	12/15/1987	Foreign Priority Date	NONE
Word Mark	BAD BOY CLUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1985/08/00 First Use In Commerce: 1985/09/00 MEN'S AND WOMEN'S CLOTHING, NAMELY, SHIRTS, PANTS, JACKETS, SHORTS, T-SHIRTS, HATS [AND VISORS]		

U.S. Registration No.	2045529	Application Date	09/18/1995
Registration Date	03/18/1997	Foreign Priority Date	NONE
Word Mark	BAD BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1982/01/00 First Use In Commerce: 1983/01/00 men's, women's and children's clothing, namely shirts, knit tops, woven tops, pants, shorts, volleyball shorts, hats, visors, swim trunks, T-shirts, tank tops, jackets, sweatshirts, sweatpants, belts, headbands, wristbands, vests, and shoes		

U.S. Registration No.	2060484	Application Date	09/18/1995
Registration Date	05/13/1997	Foreign Priority Date	NONE
Word Mark	BAD BOY		
Design Mark			
Description of Mark	The mark consists, in part, of a face between the words "BAD" and "BOY" with the "D" in the "BAD" and "B" in "BOY" forming the eyes and the eyebrows of the left and right eyes, respectively, and the nose and mouth directly below the eyes.		
Goods/Services	Class 025. First use: First Use: 1991/12/18 First Use In Commerce: 1991/12/18 [men's, women's and children's clothing, namely, shirts, knit tops, woven tops, pants, shorts, volleyball shorts,] hats [, visors, swim trunks, T-shirts, tank tops, jackets, sweatshirts, sweatpants, belts, headbands, wristbands, vests, and shoes]		

U.S. Registration No.	2967303	Application Date	01/04/1994
Registration Date	07/12/2005	Foreign Priority Date	NONE
Word Mark	BAD BOY ENTERTAINMENT		
Design Mark			
Description of Mark	The mark comprises the words "BAD BOY ENTERTAINMENT" and the depiction of a baby.		
Goods/Services	Class 009. First use: First Use: 1992/09/01 First Use In Commerce: 1992/09/01		

	musical sound recordings and pre-recorded videos featuring music and entertainment		
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U.S. Registration No.	2971097	Application Date	03/30/2001
Registration Date	07/19/2005	Foreign Priority Date	NONE
Word Mark	BAD BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/11/30 First Use In Commerce: 2004/11/30 Nutritionally fortified beverages for use as meal replacements and dietary supplements; vitamin and mineral supplements		

U.S. Application No.	78853697	Application Date	04/04/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BAD BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: After-shave balms; After-shave gel; After-shave lotions; Body lotion; Deodorants and antiperspirants; Facial lotion		

U.S. Application No.	78323357	Application Date	11/05/2003
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BAD BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: Non-alcoholic beverages, namely, carbonated beverages, smoothies, energy drinks, sports drinks, fruit drinks, fruit flavored soft drinks, soft drinks and isotonic drinks		

U.S. Application No.	76037086	Application Date	04/28/2000
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BAD BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: Athletic and sporting helmets, namely, baseball helmets, skate boarding		

	<p>helmets, football helmets, catcher's helmets, hockey helmets, bicycle helmets and motorcross helmets</p> <p>Class 018. First use: Athletic and sporting bags</p> <p>Class 028. First use: Sporting goods and athletic equipment, namely-- surfboards; surfboard leashes; sail boards; sail board leashes; snow boards; wake boards; skate boards; incline skates; roller skates; ice skates; bicycles; snow skis; ski boots; snow boarding boots; poles; bindings; skiing and snow boarding goggles; water skis; soccer balls; soccer nets; field hockey balls; hockey pucks; hockey sticks; hockey gloves; baseballs; softballs; bats; gloves and mitts; batting gloves; handballs; handball gloves; tennis balls; tennis rackets; golf balls; golf clubs; golf bags; golf gloves; golf tees; basketballs; footballs; table tennis balls and paddles; bowling balls; volley balls and volleyball game playing equipment; tether balls; beach balls; swim goggles; elbow pads; knee pads; shin guards; wrist guards; arm guards; leg guards; mouth guards; scuba diving and snorkeling equipment, namely, diving masks, fins, and gloves; mountaineering equipment, namely, straps, hooks, rings and carabineers</p>
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Attachments	<p>73591571#TMSN.gif (1 page)(bytes)</p> <p>74730491#TMSN.gif (1 page)(bytes)</p> <p>74476166#TMSN.gif (1 page)(bytes)</p> <p>76233946#TMSN.gif (1 page)(bytes)</p> <p>78853697#TMSN.jpeg (1 page)(bytes)</p> <p>78323357#TMSN.jpeg (1 page)(bytes)</p> <p>76037086#TMSN.gif (1 page)(bytes)</p> <p>notice of opposition.pdf (12 pages)(434524 bytes)</p>
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Signature	/LAO 3463/
Name	Lisa A. Osman
Date	05/16/2007

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

In the matter of Trademark Serial No. 78/905,314 for the trademark BAD BOY filed June 9, 2006, by New Image Global, Inc.

Platypus Wear, Inc. and)	
Bad Boy LLC)	
Opposers,)	
)	
v.)	Opposition No. _____
)	
New Image Global, Inc.,)	
Applicant.)	

NOTICE OF OPPOSITION

Platypus Wear, Inc. dba Bad Boy Brands (“PWI”), a corporation duly organized and existing under the laws of the state of California and having a principal place of business at 701 North Green Valley Parkway, Suite 200, Henderson, NV 89074, and Bad Boy LLC, a limited liability company duly organized and existing under the laws of Delaware and having a principal place of business at 701 North Green Valley Parkway, Suite 200, Henderson, NV 89074 (collectively, “Opposers”), believe they will be damaged by the registration of the mark BAD BOY shown in Application Serial No. 78/905,314, filed by New Image Global, Inc. on June 9, 2006 (“Applicant’s Mark”), and hereby oppose the same. Bad Boy LLC is a related company and privy of PWI.

The grounds for this opposition are as follows:




1. By the application herein opposed, Applicant New Image Global, Inc. (“Applicant”), with an address at 1672 Railroad, Corona, CA 92882, seeks to register the mark BAD BOY on the Principal Register based on an intent to use the mark in connection with the following goods in International Class 34: *“Chewing tobacco; Cigarette papers; Cigarette rolling papers; Cigarettes; Cigarillos; Cigars; Filter-tipped cigarettes; Hand-rolling tobacco; Pipe tobacco; Roll your own tobacco; Rolling tobacco; Smoking pipes; Smoking tobacco; Tobacco.”*

2. Applicant’s application was published for opposition on page TM 728 of the *Official Gazette* (Trademarks) dated January 16, 2007. On February 14, 2007, Opposer PWI requested, and was

In the matter of Trademark Serial No. 78/905,314 for the trademark BAD BOY filed June 9, 2006, by New Image Global, Inc.

granted, an extension of time to oppose Applicant's Mark until May 16, 2007. Accordingly, this Notice of Opposition is timely filed.

3. Opposer PWI, or its related company Bad Boy LLC, is the owner of the trademark BAD BOY® and is the owner of the following United States Trademark Registrations:

Trademark	Reg. No.	Goods	Reg. Date
	1,469,124	Men's and women's clothing, namely, shirts, pants, jackets, shorts, T-shirts, hats	Dec. 15, 1987
BAD BOY	2,045,529	Men's, children's clothing, namely shirts, knit tops, woven tops, pants, shorts, hats, visors, swim trunks, T-shirts, tank tops, jackets, sweatshirts, sweatpants, belts, headbands, wristbands, and shoes	Mar. 18, 1997
	2,060,484	Hats	May 13, 1997
	2,967,303	Musical sound recordings and pre-recorded videos featuring music and entertainment	July 12, 2005
BAD BOY	2,971,097	Nutritionally fortified beverages for use as meal replacements and dietary supplements; vitamin and mineral supplements	July 19, 2005

True and correct copies of the registration certificates for the foregoing registrations are attached hereto as Exhibit A.

4. Opposers' registrations are valid and subsisting and in full force and effect. Registration Nos. 1,469,124, 2,045,529 and 2,060,484 have become incontestable pursuant to 15 U.S.C. § 1065.

5. In addition, Opposer PWI owns U.S. Trademark Applications to register the following marks:

Trademark	Ser. No.	Goods	Appl. Date
BAD BOY	78/853697	After-shave balms; after-shave gel; after-shave lotions; body lotion; deodorants and antiperspirants; facial lotion, in International Class 3	Apr. 4, 2006
BAD BOY	78/323357	Non-alcoholic beverages, namely, carbonated beverages, smoothies, energy drinks, sports drinks, fruit drinks, fruit flavored soft drinks, soft drinks and isotonic drinks, in International Class 32	Nov. 5, 2003

In the matter of Trademark Serial No. 78/905,314 for the trademark BAD BOY filed June 9, 2006, by New Image Global, Inc.

BAD BOY	76/037086	Athletic and sporting helmets, namely, baseball helmets, skate boarding helmets, football helmets, catcher's helmets, hockey helmets, bicycle helmets and motorcross helmets, in International Class 9	Apr. 28, 2000
		Athletic and sporting bags, in International Class 18	
		Sporting goods and athletic equipment, namely-- surfboards; surfboard leashes; sail boards; sail board leashes; snow boards; wake boards; skate boards; incline skates; roller skates; ice skates; bicycles; snow skis; ski boots; snow boarding boots; poles; bindings; skiing and snow boarding goggles; water skis; soccer balls; soccer nets; field hockey balls; hockey pucks; hockey sticks; hockey gloves; baseballs; softballs; bats; gloves and mitts; batting gloves; handballs; handball gloves; tennis balls; tennis rackets; golf balls; golf clubs; golf bags; golf gloves; golf tees; basketballs; footballs; table tennis balls and paddles; bowling balls; volley balls and volleyball game playing equipment; tether balls; beach balls; swim goggles; elbow pads; knee pads; shin guards; wrist guards; arm guards; leg guards; mouth guards; scuba diving and snorkeling equipment, namely, diving masks, fins, and gloves; mountaineering equipment, namely, straps, hooks, rings and carabineers, in International Class 28	

Opposers' registrations and rights in and to the family of marks containing the words "bad boy" are collectively referred to as the "BAD BOY Marks."

6. Applicant filed the application opposed herein on June 9, 2006, based on Applicant's intention to use the mark BAD BOY in commerce on or in connection with the goods specified in the application.

7. Opposers' mark BAD BOY has been used continually since at least 1982 on a variety of clothing, swimsuits, hats, belts, accessories, footwear, sporting goods accessories, and other products, and in other manners customary in the trade.

8. Moreover, since at least as early as 1994, Opposers, their related companies, predecessors, and/or their licensees have produced and sold goods in the field of music and entertainment, and have provided and sold entertainment services under marks containing the term "BAD BOY."

In the matter of Trademark Serial No. 78/905,314 for the trademark BAD BOY filed June 9, 2006, by New Image Global, Inc.

9. There is no question as to priority. Since 1982, long before the Applicant's alleged intention to use as stated in the opposed application, Opposers, their related companies, predecessors, and/or their licensees have engaged and now are engaged in the business of developing, manufacturing, marketing, and selling a variety of products under the BAD BOY Marks throughout the United States and in other countries.

10. For many years preceding Applicant's alleged intention to use, Opposers, their related companies, predecessors, and/or their licensees have extensively advertised and promoted its products and services making clear and prominent use of the BAD BOY Marks to identify and distinguish Opposers' products and services from those of others. As a result of such advertising and promotion, Opposers have enjoyed widespread sales of the products and services offered and sold under Opposers' BAD BOY Marks, such that the mark BAD BOY is widely recognized as an indicator of source for Opposers' products and services, and represents assets of enormous goodwill and inestimable value to Opposers.

11. Opposers, their related companies, predecessors, and/or their licensees have expended substantial amounts of money, time and effort in advertising, promoting and popularizing the BAD BOY Marks, so that the trade in general, and the purchasing public in particular, have come to know and recognize Opposers' BAD BOY Marks and products and services, and to know that the same originate with and belong to Opposers. By virtue of their efforts, Opposers' BAD BOY Marks have become famous throughout the United States and the world.

12. Applicant's Mark so resembles Opposers' BAD BOY Marks and the goods identified in Applicant's application are so related to the goods and services that Opposers provide under the BAD BOY Marks as to be likely, when used in connection with Applicant's goods, to confuse, to deceive, or to cause consumers to mistake Applicant's goods for goods authorized, sponsored by or otherwise associated with Opposers.

13. Opposers' BAD BOY Marks and Applicant's Mark are identical or substantially similar and are so close to one another as to be likely to confuse or mislead persons familiar with Opposers (and their related companies, predecessors, and/or their licensees) and their goods and services. Thus, Applicant's Mark is a confusingly and deceptively similar mark to Opposers' BAD BOY Marks.

In the matter of Trademark Serial No. 78/905,314 for the trademark BAD BOY filed June 9, 2006, by New Image Global, Inc.

14. The goods with which Applicant intends to use Applicant's Mark fall within the natural zone of expansion of the goods and services for which Opposers already have obtained senior rights.

15. The products involved are highly-related, and appeal to the same class of purchasers. Also, these products are likely to be advertised and sold in the same markets through the same channels of trade.

16. Opposers have built up exclusive goodwill and an excellent reputation in connection with the BAD BOY Marks. Opposers' goodwill and reputation will be damaged and jeopardized by Applicant's use and registration of the BAD BOY mark.

17. The registration and use by Applicant of the mark BAD BOY will dilute or impair Opposers' trademark rights and will eventually result in a lack of designation or indication of origin and loss of distinctiveness or exclusivity of Opposers' BAD BOY Marks.

18. Opposers clearly have superior and paramount rights as compared to Applicant, and Opposers have used the trademark BAD BOY in commerce continuously and for a time long prior to any date claimed by Applicant, and, consequently, Opposers aver that confusion, mistake and deception in the trade and in the minds of purchasers both as between Opposers' BAD BOY Marks and Applicant's Mark and as to the source, origin, affiliation, sponsorship or connection of the respective products and services will be likely and bound to occur, with resulting damage to Opposers. Accordingly, Applicant's mark is not entitled to registration under 15 U.S.C. § 1052(d).

19. Further, Applicant's Mark will lessen the capacity of Opposers' famous and distinctive mark BAD BOY to distinguish and identify Opposers' products and services from those of others, thereby diluting the distinctive quality of Opposers' mark BAD BOY in violation of 15 U.S.C. § 1125(c).

20. Opposers will be damaged by the registration sought by Applicant within the meaning of 15 U.S.C. § 1063, because such registration would support and assist Applicant in the confusing, misleading and dilutive use of Applicant's BAD BOY mark, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposers.

WHEREFORE, Opposers, Platypus Wear, Inc. and Bad Boy LLC, pray that trademark Serial No. 78/905,314 be rejected and that the mark therein sought be refused and denied registration.

In the matter of Trademark Serial No. 78/905,314 for the trademark BAD BOY filed June 9, 2006, by New Image Global, Inc.

The United States Patent and Trademark Office is authorized to charge the fee required by 37 C.F.R. § 2.6(a)(17) to Deposit Account No. 04-1415.

ATTORNEYS FOR OPPOSER

Please recognize as attorneys for Opposers in this proceeding Lisa A. Osman, Gregory S. Tamkin, Katina C. Banks and Jason L. Johnson, members of the Bar of the State of Colorado, whose address is Dorsey & Whitney LLP, Republic Plaza Building, Suite 4700, 370 Seventeenth Street, Denver, Colorado 80202-5647, telephone number (303) 629-3400.

Dated: May 16, 2007

Respectfully submitted,

DORSEY & WHITNEY LLP

By: 

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ATTORNEYS FOR OPPOSERS
PLATYPUS WEAR, INC.
BAD BOY LLC

In the matter of Trademark Serial No. 78/905,314 for the trademark BAD BOY filed June 9, 2006, by New Image Global, Inc.

EXHIBIT A

Int. Cl.: 25

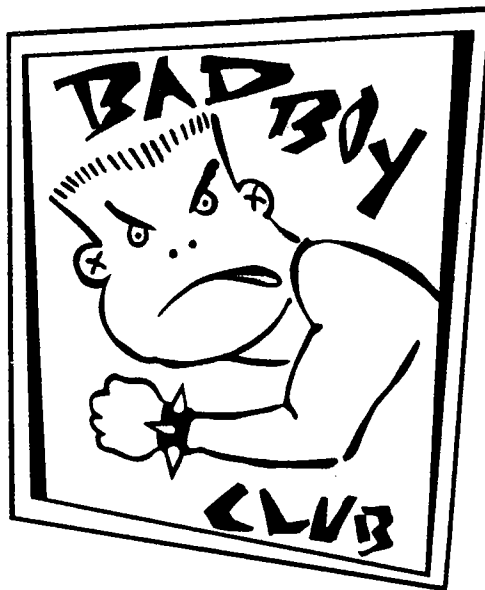
Prior U.S. Cl.: 39

United States Patent and Trademark Office

Reg. No. 1,469,124

Registered Dec. 15, 1987

**TRADEMARK
PRINCIPAL REGISTER**



LIFE'S A BEACH, INC. (ILLINOIS CORPORATION)
P.O. BOX 3094
CARLSBAD, CA 92008

FOR: MEN'S AND WOMEN'S CLOTHING,
NAMELY, SHIRTS, PANTS, JACKETS,
SHORTS, T-SHIRTS, HATS AND VISORS, IN
CLASS 25 (U.S. CL. 39).

FIRST USE 8-0-1985; IN COMMERCE
9-0-1985.

SEC. 2(F).

SER. NO. 591,571, FILED 4-4-1986.

ROBERT C. CLARK JR., EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,045,529

Registered Mar. 18, 1997

**TRADEMARK
PRINCIPAL REGISTER**

BAD BOY

PLATYPUS WEAR, INC. (CALIFORNIA CORPORATION)
6100 AVENIDA ENCINAS, SUITE A
CARLSBAD, CA 92009

FOR: MEN'S, WOMEN'S AND CHILDREN'S CLOTHING, NAMELY SHIRTS, KNIT TOPS, WOVEN TOPS, PANTS, SHORTS, VOLLEYBALL SHORTS, HATS, VISORS, SWIM TRUNKS, T-SHIRTS, TANK TOPS, JACKETS, SWEATSHIRTS, SWEATPANTS, BELTS,

HEADBANDS, WRISTBANDS, VESTS, AND SHOES, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 1-0-1982; IN COMMERCE 1-0-1983.

OWNER OF U.S. REG. NOS. 1,469,124, 1,564,707, AND 1,594,433.

SER. NO. 74-730,490, FILED 9-18-1995.

GEORGE LORENZO, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,060,484

United States Patent and Trademark Office

Registered May 13, 1997

**TRADEMARK
PRINCIPAL REGISTER**



PLATYPUS WEAR, INC. (CALIFORNIA CORPORATION)
6100 AVENIDA ENCINAS, SUITE A
CARLSBAD, CA 92009

FOR: MEN'S, WOMEN'S AND CHILDREN'S CLOTHING, NAMELY, SHIRTS, KNIT TOPS, WOVEN TOPS, PANTS, SHORTS, VOLLEYBALL SHORTS, HATS, VISORS, SWIM TRUNKS, T-SHIRTS, TANK TOPS, JACKETS, SWEATSHIRTS, SWEATPANTS, BELTS, HEADBANDS, WRISTBANDS, VESTS, AND SHOES, IN CLASS 25 (U.S. CLS. 22 AND 39).
FIRST USE 12-18-1991; IN COMMERCE 12-18-1991.

OWNER OF U.S. REG. NOS. 1,469,124, 1,564,707, AND 1,594,433.

THE MARK CONSISTS, IN PART, OF A FACE BETWEEN THE WORDS "BAD" AND "BOY" WITH THE "D" IN THE "BAD" AND "B" IN "BOY" FORMING THE EYES AND THE EYEBROWS OF THE LEFT AND RIGHT EYES, RESPECTIVELY, AND THE NOSE AND MOUTH DIRECTLY BELOW THE EYES.

SER. NO. 74-730,491, FILED 9-18-1995.

GEORGE LORENZO, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 2,967,303

Registered July 12, 2005

TRADEMARK
PRINCIPAL REGISTER



BAD BOY ENTERTAINMENT, INC. (NEW YORK CORPORATION)
C/O GRUBMAN INDURSKY, P.C.
152 W. 57TH ST.
NEW YORK, NY 10019

FOR: MUSICAL SOUND RECORDINGS AND PRE-RECORDED VIDEOS FEATURING MUSIC AND ENTERTAINMENT, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 9-1-1992; IN COMMERCE 9-1-1992.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ENTERTAINMENT", APART FROM THE MARK AS SHOWN.

THE MARK COMPRISES THE WORDS "BAD BOY ENTERTAINMENT" AND THE DEPICTION OF A BABY.

SN 74-476,166, FILED 1-4-1994.

JOAN LESLIE BISHOP, EXAMINING ATTORNEY

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 2,971,097

Registered July 19, 2005

**TRADEMARK
PRINCIPAL REGISTER**

BAD BOY

HORIZONTE LTDA. (BRAZIL LTD LIAB CO)
AV. IBIRAPUERA, 810
SAO PAULO/SP, BRAZIL 04028000

FIRST USE 11-30-2000; IN COMMERCE 11-30-2004.

OWNER OF U.S. REG. NOS. 1,469,124, 2,152,763,
AND OTHERS.

FOR: NUTRITIONALLY FORTIFIED BEVERAGES FOR USE AS MEAL REPLACEMENTS AND DIETARY SUPPLEMENTS; VITAMIN AND MINERAL SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SN 76-233,946, FILED 3-30-2001.

LESLEY LAMOTHE, EXAMINING ATTORNEY