

ESTTA Tracking number: **ESTTA141584**

Filing date: **05/21/2007**

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 party opposes registration of the indicated application.

**Opposer Information**

Name	Valrhona
Granted to Date of previous extension	05/23/2007
Address	14-18 avenue due President Roosevelt Tain L'Hermitage, 26600 FRANCE
Attorney information	Kristin H. Altoff Morgan, Lewis & Bockius, LLP 1111 Pennsylvania Avenue, N.W. Attention: TMSU Washington, DC 20004 UNITED STATES trademarks@morganlewis.com, kaltoff@morganlewis.com, eweber@morganlewis.com Phone:202-739-3000

**Applicant Information**

Application No	78768875	Publication date	01/23/2007
Opposition Filing Date	05/21/2007	Opposition Period Ends	05/23/2007
Applicant	Fuze Beverage LLC 140 Sylvan Ave. 3rd Floor Englewood Cliffs, NJ 07632 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: beverages made from tea and tea based beverages with fruit flavoring
Class 032. All goods and services in the class are opposed, namely: nonalcoholic beverages, namely, beverages containing fruit juice

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1550376	Application Date	06/17/1988
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Registration Date	08/01/1989	Foreign Priority Date	NONE
Word Mark	EQUINOXE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: CHOCOLATE, CHOCOLATE SUBSTITUTES, CHOCOLATE BARS, POWDERED CHOCOLATE, CHOCOLATE IN STICKS, CUBES AND BALLS, ALCOHOL-FLAVORED CHOCOLATE, SOLID CHOCOLATES, CHOCOLATE CREAMS, CHOCOLATE PASTRIES, CHOCOLATE TOPPING, CANDY, FRUIT CANDIES, ALCOHOL-FLAVORED CANDIES, SYRUP-BASED CANDIES, CHOCOLATE CANDIES, COFFEE CANDIES, SUGAR CANDIES, NOUGAT CANDIES, CALISSON CANDIES, SUGARED ALMONDS, CANDIED ALMONS, CANDIED CHESTNUTS, PRALINES, MINT CANDIES, CARAMELS, CHEW CANDIES, AND CHEWING GUM		

U.S. Registration No.	1606586	Application Date	10/02/1989
Registration Date	07/17/1990	Foreign Priority Date	NONE
Word Mark	EQUINOXE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1987/06/26 First Use In Commerce: 1987/06/26 CHOCOLATE, CHOCOLATE CANDY AND CHOCOLATED ALMONDS		

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Signature	/Kristin H. Altoff/
Name	Kristin H. Altoff
Date	05/21/2007

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

VALRHONA,

Opposer,

v.

FUZE BEVERAGE LLC,

Applicant.

In re Application Serial No. 78/768,875

Published: January 23, 2007

Opposition No. \_\_\_\_\_

NOTICE OF OPPOSITION

Opposer, Valrhona, a corporation organized and existing under the laws of France, having a principal place of business at 14-18 avenue due President Roosevelt, Tain L'Hermitage 26600, France ("Opposer"), believes that it will be damaged by registration of the mark EQUINOX used to identify "beverages made from tea and tea based beverages with fruit flavoring" in Class 30 and "nonalcoholic beverages, namely, beverages containing fruit juice" in Class 32, shown in Application Serial No. 78/768,875 and owned by Fuze Beverage LLC ("Applicant"). Opposer hereby opposes the same under the provisions of Sections 2(d), 13 and 43(c) of the Trademark Act of July 5, 1946 (the "Lanham Act"), 15 U.S.C. §§ 1052(d), 1063 and 1125(c).

As grounds for opposition, Opposer alleges that:

1. Opposer is the owner of all right, title and interest in and to common law rights and registrations for the trademark EQUINOXE used in connection with food products (the "EQUINOXE Mark").

2. Opposer's common law rights are based on Opposer's continuous use of the EQUINOXE Mark in interstate commerce since at least as early as June 1987.

3. Opposer owns the following federal registrations containing the EQUINOXE Mark:

EQUINOXE, Registration Number 1,550,376, filed on June 17, 1988 and registered on August 1, 1989 for "chocolate, chocolate substitutes, chocolate bars, powdered chocolate, chocolate in sticks, cubes and balls, alcohol-flavored chocolate, solid chocolates, chocolate creams, chocolate pastries, chocolate toppings, candy, fruit candies, alcohol-flavored candies, syrup-based candies, chocolate candies, coffee candies, sugar candies, nougat candies, calisson candies, sugared almonds, candied almonds, candied chestnuts, pralines, mint candies, caramels, chew candies, and chewing gum" in Class 30; and

EQUINOXE and Design, Registration Number 1,606,586, filed on October 2, 1989 and registered on July 17, 1990 for "chocolate, chocolate candy and chocolated almonds" in Class 30 (collectively, "Opposer's EQUINOXE Registrations").

4. Opposer's EQUINOXE Registrations are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of Opposer's exclusive right to use the marks in commerce in connection with the goods specified in the registrations.

5. By virtue of its longstanding use of and registrations for the EQUINOXE Mark, Opposer has established extensive goodwill in the EQUINOXE Mark in the United States.

6. As a result of Opposer's extensive use, the EQUINOXE Mark is famous in the United States and is associated exclusively with Opposer and its products.

7. Upon information and belief, on December 7, 2005, Applicant filed an intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051 (b), for federal registration of the mark EQUINOX, Application Serial No. 78/768,875, for "nonalcoholic beverages" in Class 32. On September 7, 2006, Applicant amended the description of goods covered by

Application Serial No. 78/768,875 to “beverages made from tea and tea based beverages with fruit flavoring” in Class 30 and “nonalcoholic beverages, namely, beverages containing fruit juice” in Class 32.

8. Applicant’s mark under Application Serial No. 78/768,875 was published for opposition in the *Official Gazette* on January 23, 2007.

9. The Trademark Trial and Appeal Board extended the time within which to file a Notice of Opposition against Applicant’s EQUINOX application by granting Opposer’s timely request for an extension. The opposition period is currently set to expire on May 23, 2007.

Opposer, therefore, timely files this Notice of Opposition.

10. Upon information and belief, Applicant has not filed an Amendment to Allege Use under Section 1(c) of the Lanham Act, 15 U.S.C. § 1051 (c).

11. Through its longstanding and continuous use of and registrations for the EQUINOXE Mark, Opposer has acquired exclusive rights in the EQUINOXE Mark that predate any rights upon which Applicant may rely.

12. Opposer’s rights to the EQUINOXE Mark are superior to those of Applicant.

13. Opposer’s EQUINOXE Mark is famous and became famous before the filing date or any use of the EQUINOX mark by Applicant.

14. Opposer believes it will be damaged by registration of Applicant’s EQUINOX mark under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because Applicant’s EQUINOX mark, when used on or in connection with the goods covered by Application Serial No. 78/768,875, would be likely to cause confusion, mistake or to deceive consumers as to Opposer’s EQUINOXE Mark, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

15. Opposer believes it will be damaged by registration of Applicant's EQUINOX mark under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the Applicant's EQUINOX mark on or in connection with the goods covered by Application Serial No. 78/768,875 is likely to cause dilution of the distinctive quality of Opposer's famous registered marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes it will be damaged by registration of the mark EQUINOX shown in Application Serial No. 78/768,875 and respectfully requests that the registration sought by Applicant be refused.

Dated: May 21, 2007

Respectfully submitted,

By: /s/ Kristin H. Altoff  
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