

ESTTA Tracking number: **ESTTA311961**

Filing date: **10/16/2009**

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    | WhiteWave Services, Inc.   |             |          |
| Entity  | Corporation  | Citizenship | Delaware |
| Address | 2515 McKinney Avenue Suite 1200<br>Dallas, TX 75201<br>UNITED STATES |             |          |

|                      |   |  |  |
|----------------------|---|--|--|
| Attorney information | Bridget Griffin Johnson<br>Dean Foods Company<br>2515 McKinney Avenue Suite 1200<br>Dallas, TX 75201<br>UNITED STATES<br>tms@deanfoods.com Phone:214-303-3411 |  |  |
|----------------------|---|--|--|

### Applicant Information

|                                |   |                                 |            |
|--------------------------------|---|---------------------------------|------------|
| Application No                 | 79036931  | Publication date                | 09/29/2009 |
| Opposition Filing Date         | 10/16/2009  | Opposition Period Ends          | 10/29/2009 |
| International Registration No. | 0920067   | International Registration Date | 01/31/2007 |
| Applicant                      | SOYUZ-VICTAN GROUP LTD.<br>Victoria Road, Millenium House 1st floor IM2 4RW; Douglas, Isle of Man<br>UNITED KINGDOM |                                 |            |

### Goods/Services Affected by Opposition

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| Class 033.<br>All goods and services in the class are opposed, namely: Vodka |
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### Grounds for Opposition

|                                      |                            |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

### Marks Cited by Opposer as Basis for Opposition

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 2302273    | Application Date      | 02/12/1999 |
| Registration Date     | 12/21/1999 | Foreign Priority Date | NONE       |
| Word Mark             | SILK       |                       |            |

|                     |  |
|---------------------|--|
| Design Mark         | <b>SILK</b>  |
| Description of Mark | NONE   |
| Goods/Services      | Class 029. First use: First Use: 1996/01/15 First Use In Commerce: 1996/01/15<br>NON-DAIRY REFRIGERATED SOY PROTEIN FOODS, namely, SOY-BASED BEVERAGES, [ TOFU, ] *AND * SOY-BASED YOGURT [, SOY-BASED AND WHEAT-GLUTEN-BASED MEAT SUBSTITUTES ] |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3254327   | Application Date      | 02/24/2005 |
| Registration Date     | 06/19/2007  | Foreign Priority Date | NONE       |
| Word Mark             | SILK  |                       |            |
| Design Mark           | <b>SILK</b>   |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 029. First use: First Use: 2000/00/00 First Use In Commerce: 2000/00/00<br>Soy based products, namely, butter, margarine, cheese, non-dairy creamer, whipping cream, eggnog, half and half, sour cream, cream cheese, and non-dairy dip<br>Class 032. First use: First Use: 2004/07/19 First Use In Commerce: 2004/07/19<br>Smoothies |                       |            |

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 3287098    | Application Date      | 03/09/2006 |
| Registration Date     | 08/28/2007 | Foreign Priority Date | NONE       |
| Word Mark             | SILK LIVE! |                       |            |

|                     |  |
|---------------------|--|
| Design Mark         | <b>SILK LIVE!</b>  |
| Description of Mark | NONE   |
| Goods/Services      | Class 029. First use: First Use: 2006/12/00 First Use In Commerce: 2006/12/00 Soy-based yogurt |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3341564  | Application Date      | 01/12/2006 |
| Registration Date     | 11/20/2007   | Foreign Priority Date | NONE       |
| Word Mark             | SILK. BEYOND NUTRITION   |                       |            |
| Design Mark           | <b>SILK. BEYOND NUTRITION</b>  |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 029. First use: First Use: 2007/04/00 First Use In Commerce: 2007/04/00 Soy-based food beverages used as a milk substitute, and soy-based yogurt |                       |            |

|             |  |
|-------------|--|
| Attachments | 75641604#TMSN.gif ( 1 page )( bytes )<br>78978192#TMSN.jpeg ( 1 page )( bytes )<br>78833688#TMSN.jpeg ( 1 page )( bytes )<br>78790398#TMSN.jpeg ( 1 page )( bytes )<br>Silk SN 79-036931 Opp stmt.PDF ( 1 page )(53556 bytes ) |
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

|           |                           |
|-----------|---------------------------|
| Signature | /Bridget Griffin Johnson/ |
| Name      | Bridget Griffin Johnson   |

|      |            |
|------|------------|
| Date | 10/16/2009 |
|------|------------|

As grounds of opposition, Opposer alleges that:

1. Soyuz-Victan Group Ltd. ("Soyuz-Victan") seeks to register the word mark SILK as a trademark covering "vodka" in International Class 33, as evidenced by its application filed January 31, 2007. The application was assigned Serial No. 79/036931 and published in the *Official Gazette* dated September 29, 2009 on Page TM 717.

2. WhiteWave Services, Inc. ("WhiteWave") is a Delaware corporation and has been engaged, *inter alia*, in the producing, advertising, promotion and selling of a wide variety of food and beverage products.

3. WhiteWave is the owner of U.S. Trademark Registration No. 2,302,273 for the mark SILK for use on "non-dairy refrigerated soy protein foods, namely soy-based beverages, and soy-based yogurt"; Registration No. 3,254,327 for the mark SILK for use on "soy-based products; namely, non-dairy creamer and eggnog"; Registration No. 3,287,098 for the mark SILK LIVE! for use on "soy-based yogurt"; and Registration No. 3,341,564 for the mark SILK. BEYOND NUTRITION for use on "soy-based beverages used as a milk substitute, and soy-based yogurt".

4. WhiteWave enjoys extremely valuable goodwill in its "family" of SILK marks in connection with a wide variety of food and beverage products due to its use in interstate commerce since as early as January 15, 1996, which date far precedes Soyuz-Victan's intent-to-use application filing date of January 31, 2007, and its claimed priority date of October 11, 2006 under International Registration No. 0920067.

5. Soyuz-Victan's mark, SILK, is identical in sight and sound to WhiteWave's marks. In view of the fact that WhiteWave has a "family" of SILK marks, WhiteWave uses SILK in connection with food and beverage products, the goods travel in similar channels of trade and are offered to similar customers, WhiteWave believes that there is likelihood of confusion or mistake as to the origin of Soyuz-Victan's goods bearing the SILK mark.

6. The registration and continued use of Soyuz-Victan's mark SILK interferes with WhiteWave's use of the SILK marks and will seriously damage WhiteWave.

WHEREFORE, WhiteWave prays that said Application Serial No. 79/036931 be rejected; that no registration be issued thereon to Soyuz-Victan, and that this opposition be sustained in favor of WhiteWave.