

ESTTA Tracking number: **ESTTA320507**

Filing date: **12/07/2009**

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 | Cornucopia Beverages, Inc. |
| Granted to Date of previous extension | 12/06/2009 |
| Address | One Executive Park Drive Suite 330 Bedford, NH 03110 UNITED STATES |

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|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Attorney information | David L. May NIXON PEABODY LLP 401 9th Street NW, Suite 900 Washington, DC 20004 UNITED STATES dmay@nixonpeabody.com, was.managing.clerk@nixonpeabody.com, nptm@nixonpeabody.com, lgolden@nixonpeabody.com, bhickman@nixonpeabody.com Phone:202-585-8000 |
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Applicant Information

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|------------------------|--------------------------------------------------------------------------------------------------------------------|------------------------|------------|
| Application No | 77579891 | Publication date | 06/09/2009 |
| Opposition Filing Date | 12/07/2009 | Opposition Period Ends | 12/06/2009 |
| Applicant | Grupo Andrea, S.A. de C.V. Blvd. Juan Alonso de Torres No. 106 Fracc. San Jeronimo Leon GTO, 37204 MEXICO | | |


Goods/Services Affected by Opposition

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| Class 016. All goods and services in the class are opposed, namely: printed catalogs in the field of footwear; printed stationery; cardboard boxes; printed advertising signs of paper or cardboard; printed posters; and paper bags |
| Class 025. All goods and services in the class are opposed, namely: footwear |

Grounds for Opposition

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|--------------------------------------|-------------------------------------------------------------------------------------------------------------|
| Deceptiveness | Trademark Act section 2(a) |
| False suggestion of a connection | Trademark Act section 2(a) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| Other | Likelihood of confusion, mistake and deception among consumers within the meaning of Trademark Act Â§ 43(a) |

Marks Cited by Opposer as Basis for Opposition

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|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------------|
| U.S. Registration No. | 1460942 | Application Date | 12/17/1986 |
| Registration Date | 10/13/1987 | Foreign Priority Date | NONE |
| Word Mark | MOXIE | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 021. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 MUGS Class 025. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 T-SHIRTS Class 028. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 [HAND TOYS-NAMELY, YO-YOS] Class 030. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 [BREAKFAST CEREAL] | | |

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|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------------|
| U.S. Registration No. | 1460943 | Application Date | 12/17/1986 |
| Registration Date | 10/13/1987 | Foreign Priority Date | NONE |
| Word Mark | MOXIE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 021. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 MUGS Class 025. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 T-SHIRTS Class 028. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 [HAND TOYS-NAMELY, YO-YOS] Class 030. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 [BREAKFAST CEREAL] | | |

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|-----------------------|--------------------------------------------|-----------------------|------------|
| U.S. Registration No. | 1465569 | Application Date | 12/17/1986 |
| Registration Date | 11/17/1987 | Foreign Priority Date | NONE |
| Word Mark | WHAT THIS COUNTRY NEEDS IS PLENTY OF MOXIE | | |

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|---------------------|-------------------------------------------------------------------------------------------|
| Design Mark | |
| Description of Mark | NONE |
| Goods/Services | Class 025. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 T-SHIRTS |

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| Attachments | 73635852#TMSN.gif (1 page)(bytes) Notice_of_Opposition.pdf (4 pages)(21125 bytes) |
|-------------|---------------------------------------------------------------------------------------------|

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 | /laura d. golden/ |
| Name | Laura D. Golden |
| Date | 12/07/2009 |

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

CORNUCOPIA BEVERAGES, INC.

Opposer,

Opposition No. _____

- vs -

Serial No. 77/579,891

GRUPO ANDREA, S.A. DE C.V.

Applicant.

NOTICE OF OPPOSITION

Opposer, Cornucopia Beverages, Inc., a corporation organized under the laws of New Hampshire having a business address at One Executive Park Drive, Suite 330, Bedford, New Hampshire, 03110, hereby opposes registration of the mark MOXIE & Design that is the subject of U.S. Trademark Application Serial No. 77/579,891, published on June 9, 2009 (“the ‘891 application”), and requests that registration to Applicant be refused.

This Notice of Opposition is timely filed pursuant to a 90-Day Request for Extension of Time to Oppose for Good Cause, which was filed by Opposer on June 25, 2009, and granted by the Board on the same, as well as an addition 60-Day Request filed and granted on October 7, 2009. As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer is the owner of the entire right, title and interest in and to, inter alia, U.S. Trademark Registration Nos. 1,460,942, 1,460,943, 1,465,569 all of which registrations are valid, subsisting, unrevoked, and uncancelled, and incontestable under Trademark Act Section 15, 35 U.S.C. § 1065 (the “MOXIE Marks”).

2. Opposer, and Monarch Beverages, its predecessor in interest, have actively, continuously, and consistently promoted its goods and related services under the MOXIE Marks on both a nationwide and international basis, and have used the MOXIE Marks in U.S commerce since long prior to the filing date of the '891 application, or any date of first use upon which Applicant can rely.

3. As a result of extensive use and advertising, and the high quality of Opposer's goods, the MOXIE Marks have become well known and are associated with valuable and substantial goodwill.

4. On September 26, 2008, Applicant filed the On December 8, 2008, Applicant filed U.S. Application Serial No. 77/579,891 for registration of the mark MOXIE & Design (as shown below) (the "Opposed Mark") for use in connection with *Printed catalogs in the field of footwear; printed stationery; cardboard boxes; printed advertising signs of paper or cardboard; printed posters; and paper bags* in Class 16 and *Footwear* in Class 25.



5. Applicant's registration of the Opposed Mark, as shown in the herein opposed U.S. Application Serial No. 77/579,891, will create a likelihood of confusion, mistake and/or deception among consumers within the meaning of Trademark Act § 2(d), 15 U.S.C. § 1052(d), to the detriment of Opposer.

6. Applicant's registration of the Opposed Mark, as shown in the herein opposed U.S. Application Serial No. 77/579,891, will create a likelihood of confusion, mistake and/or deception among consumers within the meaning of Trademark Act § 43(a), 15 U.S.C. § 1125(a), to the detriment of Opposer.

7. Applicant's registration of the Opposed Mark, as shown in the herein opposed U.S. Application Serial No. 77/579,891, will falsely suggest a connection with Opposer within the meaning of Trademark Act § 2(a).

In view of the foregoing, Opposer believes that it has been damaged and will continue to be damaged by virtue of Applicant's registration of the Opposed Mark, as shown in the herein opposed U.S. Trademark Application Serial No. 77/579,891.

WHEREFORE, Opposer prays that this Opposition be sustained and U.S. Application Serial No. 77/628,891 be denied and refused.

Respectfully submitted,

NIXON PEABODY LLP

Dated: December 7, 2009

By: /david l. may/

James C. Hood, Esq.
David L. May, Esq.
Laura D. Golden, Esq.

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Telephone: (202) 585-8000
Fax: (202) 585-8080

Attorneys for Opposer
Cornucopia Beverages, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition was served on December 7, 2009 via first-class mail, postage prepaid, on the following:

MICHAEL A GROW
ARENT FOX LLP
1050 CONNECTICUT AVE NW
WASHINGTON, DC 20036-5303

/Laura D. Golden/

Laura D. Golden