

ESTTA Tracking number: **ESTTA349031**

Filing date: **05/21/2010**

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	Houston McLane Company, Inc.
Granted to Date of previous extension	05/23/2010
Address	Union Station at Minute Maid Park 501 Crawford, Suite 400 Houston, TX 77002 UNITED STATES
Attorney information	Maryann E. Licciardi Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES mel@cll.com, trademark@cll.com Phone:212-790-9200

Applicant Information

Application No	78857374	Publication date	11/24/2009
Opposition Filing Date	05/21/2010	Opposition Period Ends	05/23/2010
Applicant	Noble Grace LLC 840 COLUMBUS AVENUE SUITE 19-E New York, NY 10025 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 032. All goods and services in the class are opposed, namely: Aerated water; Coffee-flavored soft drink; Colas; Concentrates, syrups or powders used in the preparation of soft drinks; Distilled drinking water; Drinking water; Energy drinks; Essences for the preparation of mineral waters; Essences for use in making soft drinks; Flavored waters; Fruit drinks; Fruit flavored soft drinks; Fruit-based soft drinks flavored with tea; Fruit-flavored drinks; Glacial water; Guarana drinks; Isotonic drinks; Lithia water; Mineral water; Pop; Scented water for making beverages; Seltzer water; Soda pops; Soda water; Soft drinks; Soft drinks flavored with tea; Sparkling water; Sports drinks; Spring water; Still water; Syrups for making soft drinks; Table water</p>
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Grounds for Opposition

Other	See attached pleading.
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Attachments	ASTROWATER -Letter to Commissioner.pdf (1 page)(80962 bytes) ASTROWATER - Notice of Opposition.pdf (6 pages)(18527 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	/Maryann E. Licciardi/
Name	Maryann E. Licciardi
Date	05/21/2010

Cowan, Liebowitz & Latman, P.C.

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Maryann E. Licciardi
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May 21, 2010

By Electronic Filing

Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Houston McLane Company, Inc.'s
Notice of Opposition Against
Noble Grace LLC's
Application to Register ASTROWATER
Attorney Ref. No. 21307.015

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 78/857,374 published in the Official Gazette on November 24, 2009. Contemporaneously with the electronic filing of this Notice of Opposition, we are arranging for an electronic payment in the amount of \$300 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Please address all future correspondence to the attention of Mary L. Kevlin, Esq. of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Maryann E. Licciardi/

Maryann E. Licciardi

Enclosures

cc: Diane Kovach (w/encs.)
Mary L. Kevlin, Esq. (w/encs.)
Richard S. Mandel, Esq. (w/encs.)

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

In re Application Serial No. 78/857,374
Filed: April 9, 2006
For Mark: ASTROWATER
Published in the Official Gazette: November 24, 2009

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HOUSTON MCLANE COMPANY, INC.,
Opposer,
v.
NOBLE GRACE LLC,
Applicant.
-----X

NOTICE OF OPPOSITION

Opposition No.

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer, Houston McLane Company, Inc. (“Opposer”), a Texas corporation with offices at Union Station at Minute Maid Park, 501 Crawford, Suite 400, Houston, Texas 77002, believes that it will be damaged by registration of the standard character word mark ASTROWATER for “Aerated water; Coffee-flavored soft drink; Colas; Concentrates, syrups or powders used in the preparation of soft drinks; Distilled drinking water; Drinking water; Energy drinks; Essences for the preparation of mineral waters; Essences for use in making soft drinks; Flavored waters; Fruit drinks; Fruit flavored soft drinks; Fruit-based soft drinks flavored with tea; Fruit-flavored drinks; Glacial water; Guarana drinks; Isotonic drinks; Lithia water; Mineral water; Pop; Scented water for making beverages; Seltzer water; Soda pops; Soda water; Soft drinks; Soft drinks flavored with tea; Sparkling water; Sports drinks; Spring water; Still water; Syrups for making soft drinks; Table water” in International Class 32, as shown in Application Serial No. 78/857,374 (the

“Application”), and having been granted extensions of time to oppose up to and including May 23, 2010, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer is the owner of the renowned HOUSTON ASTROS MAJOR LEAGUE BASEBALL club (the “Club”).

2. Since long prior to April 9, 2006, Applicant’s constructive first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors, including, without limitation, Opposer’s naming rights sponsor, The Minute Maid Company (an operating unit of The Coca-Cola Company), for which the Club’s MINUTE MAID PARK home ballpark is named, have used marks, names and domain names comprising or containing the word ASTROS, alone or with other word, letter and/or design elements, in connection with baseball games and exhibition services, and a wide variety of goods and services, including, but not limited to, food and beverage products and services, including, but not limited to, soft drinks, fruit drinks and beer, beverage and food containers, apparel, paper goods and printed matter, toys, sporting goods and novelty items, and the word ASTRO has been used by the press, media, fans and the public to refer to the Club’s individual baseball players, coaches and managers (collectively, “Opposer’s ASTROS Marks”).

3. Opposer owns U.S. federal registrations and applications for Opposer’s ASTROS Marks in International Classes 6, 9, 14, 16, 18, 21, 24, 25, 26, 28, and 41; namely, Registration Nos. 805,802, 1,085,711, 1,114,369, 1,476,271, 1,485,610, 1,530,535, 1,642,768, 1,748,631, 2,655,871, 2,703,751, 2,803,116, 3,231,199, 3,363,257, 3,363,259, 3,366,722, 3,370,322, 3,652,902 and 3,652,903, and Application Serial Nos. 77/818,609, 77/818,629, 77/818,634,

77/818,645 and 77/818,649. Registration Nos. 805,802, 1,085,711, 1,114,369, 1,476,271, 1,485,610, 1,530,535, 1,642,768 and 1,748,631 are incontestable.

4. Since long prior to April 9, 2006, Applicant's constructive first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors, including, without limitation, Opposer's naming rights sponsor, The Minute Maid Company, for which the Club's MINUTE MAID PARK home ballpark is named, have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer's ASTROS Marks, including, but not limited to, baseball games and exhibition services, and a wide variety of goods and services, including, but not limited to, beverage and food products and services, including, but not limited to, soft drinks, fruit drinks and beer, beverage and food containers, apparel, paper goods and printed matter, toys, sporting goods and novelty items, and have sold or distributed such goods and rendered such services in commerce.

5. As a result of the extensive sales, distribution and promotion of its goods and services bearing or offered in connection with Opposer's ASTROS Marks, Opposer has built up highly valuable goodwill in Opposer's ASTROS Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

6. On April 9, 2006, Applicant filed the Application, based on an intent to use, for the standard character word mark ASTROWATER for "Aerated water; Coffee-flavored soft drink; Colas; Concentrates, syrups or powders used in the preparation of soft drinks; Distilled drinking water; Drinking water; Energy drinks; Essences for the preparation of mineral waters; Essences for use in making soft drinks; Flavored waters; Fruit drinks; Fruit flavored soft drinks; Fruit-based soft drinks flavored with tea; Fruit-flavored drinks; Glacial water; Guarana drinks; Isotonic drinks; Lithia water; Mineral water; Pop; Scented water for making beverages; Seltzer

water; Soda pops; Soda water; Soft drinks; Soft drinks flavored with tea; Sparkling water; Sports drinks; Spring water; Still water; Syrups for making soft drinks; Table water” in International Class 32.

7. Upon information and belief, Applicant did not use the mark ASTROWATER in United States commerce for the goods covered in the Application prior to its constructive first use date of April 9, 2006.

8. The goods covered by the Application are identical and/or closely related to the goods offered and services rendered in connection with Opposer’s ASTROS Marks.

9. Applicant’s ASTROWATER mark so resembles Opposer’s ASTROS Marks as to be likely, when used in connection with Applicant’s goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant’s goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant’s ASTROWATER mark.

10. Opposer would be further injured by the granting of a certificate of registration to Applicant because Applicant’s ASTROWATER mark would falsely suggest a connection between Applicant and Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant’s ASTROWATER mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel and Maryann E. Licciardi (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
May 21, 2010

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Maryann E. Licciardi/

Mary L. Kevlin
Richard S. Mandel
Maryann E. Licciardi

1133 Avenue of the Americas
New York, New York 10036
(212)790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 21, 2010, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant's Correspondent of Record, Walter J. Kin, Double Sign, LLC, 19-E, 840 Columbus Avenue, New York, New York 10025.

Dated: New York, New York
May 21, 2010

/Maryann E. Licciardi/

Maryann E. Licciardi