

ESTTA Tracking number: **ESTTA411850**

Filing date: **05/31/2011**

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	Orange Bang, Inc.		
Entity	Corporation	Citizenship	California
Address	13115 Telfair Avenue Sylmar, CA 91340 UNITED STATES		

Attorney information	Aaron T. Borrowman KELLY LOWRY & KELLEY, LLP 6320 Canoga Avenue Suite 1650 WOODLAND HILLS, CA 91367 UNITED STATES Aaron@CLKPatentLaw.com Phone:818-347-7900		
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**Applicant Information**

Application No	85022627	Publication date	05/17/2011
Opposition Filing Date	05/31/2011	Opposition Period Ends	06/16/2011
Applicant	Osmanski, John M P.O. Box 511485 Milwaukee, WI 53203 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 030. All goods and services in the class are opposed, namely: Ice and ice creams
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**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.	1220228	Application Date	02/06/1981
Registration Date	12/14/1982	Foreign Priority Date	NONE
Word Mark	BANG!		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1971/08/03 First Use In Commerce: 1973/09/08 Whipped Fruit Juice Drinks and Concentrates Therefor

U.S. Registration No.	1224457	Application Date	02/06/1981
Registration Date	01/18/1983	Foreign Priority Date	NONE
Word Mark	ORANGE BANG!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1971/08/03 First Use In Commerce: 1973/09/08 Whipped Orange Juice Drinks and Concentrates Therefor		

U.S. Registration No.	1223619	Application Date	02/06/1981
Registration Date	01/11/1983	Foreign Priority Date	NONE
Word Mark	BANG!		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1971/08/03 First Use In Commerce: 1973/09/08 Whipped Fruit Juice Drinks and Concentrates Therefor

U.S. Registration No.	3960381	Application Date	09/08/2009
Registration Date	05/17/2011	Foreign Priority Date	NONE
Word Mark	BANG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1971/08/03 First Use In Commerce: 1971/08/03 BEVERAGES, NAMELY, FRUIT FLAVORED AND FRUIT JUICE BEVERAGES AND CONCENTRATES THEREFOR		

Attachments	73296041#TMSN.gif ( 1 page )( bytes ) 73296042#TMSN.gif ( 1 page )( bytes ) 73296012#TMSN.gif ( 1 page )( bytes ) 77822181#TMSN.jpeg ( 1 page )( bytes ) 53859_OppositionNotice.pdf ( 5 pages )(41515 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/Aaron T. Borrowman/
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Name	Aaron T. Borrowman
Date	05/31/2011

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

In the matter of:

ORANGE BANG, INC.,

Opposer,

v.

JOHN M. OSMANSKI,

Applicant.

**NOTICE OF OPPOSITION**

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

Application Serial No. 85/022,627

For the mark: **BANG!**

Date Published: May 17, 2011

Trademark Trial and Appeal Board  
Commissioner for Trademarks  
Via E-File

ORANGE BANG, INC., a California corporation, having its principal place of business at 13115 Telfair Avenue, Sylmar, California 91340 (hereinafter "Opposer" or "Orange Bang"), believes that it will be damaged by the registration of United States Application Serial No. 85/022,627, believed to be owned by JOHN M. OSMANSKI, having an address of P.O. Box 511485, Milwaukee, Wisconsin 53203-0251 (hereinafter "Applicant" or "Mr. Osmanski"), and hereby requests that the application be refused registration.

The grounds for opposition are as follows:

**Cause of Action for Opposition**

1. On April 25, 2010, Applicant filed an application for the mark BANG! under Section 1(a) for "ices and ice creams" and asserting a date of first use in interstate commerce at least as early as March 9, 2010.

2. Applicant subsequently amended the application filing basis as an intent-to-use under Section 1(b), and amended the description of goods to "ice and ice creams".

3. Since the early 1970s, Orange Bang has been using its BANG trademark in connection with food and beverage products.

4. Orange Bang is the owner of U.S. Registration No. 1,220,228, registered December 14, 1982 for the mark BANG! within a circle, and used in connection with whipped fruit juice drinks and concentrates therefor.

5. Orange Bang is also the owner of U.S. Registration No. 1,224,457, registered January 18, 1983 for the mark ORANGE BANG! in a stylized logo used in connection with whipped orange juice drinks and concentrates therefor.

6. Moreover, Orange Bang is the owner of U.S. Registration No. 1,223,619, registered January 11, 1983 for the mark BANG! used in connection with whipped fruit juice drinks and concentrates therefor.

7. Furthermore, Orange Bang owns U.S. Registration No. 3,960,381, registered May 17, 2011 for the mark BANG for use in connection with beverages, namely, fruit flavored and fruit juice beverages and concentrates therefor.

8. Applicant's mark and Opposer's marks are similar in appearance and sound. In fact, Applicant's mark is identical to that of several of Orange Bang's United States registrations, and thus a potential consumer would be confused or mistaken or deceived as to the source of the goods of the Applicant and Opposer.

9. Orange Bang sells its products directly to customers as well as distributors across the United States.

10. Opposer's beverage goods are typically served with ice, resulting in likelihood of confusion between Opposer's marks and goods and that of the Applicant.

11. Orange Bang's beverage products are sold to customers as a frozen beverage, which is referred to as a slush, and thus potential consumers are likely to be confused as to the source of Applicant's goods.

12. Orange Bang has sold ice cream under its BANG trademarks, and thus potential consumers are likely to be confused as to the source of Applicant's goods.

13. Applicant's and Opposer's goods are related to one another and are typically marketed and offered through the same trade channels, and as such they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods come from a common source.

14. Opposer believes it will be damaged by the registration of Applicant's mark in U.S. Application Serial No. 85/022,627, and hereby requests that the application be refused registration.

WHEREFORE, Opposer prays that this Notice of Opposition be sustained and that the registration of United States Application Serial No. 85/022,627 be refused.

Please recognize as attorneys of record for Opposer, ORANGE BANG, INC., in this proceeding: all attorneys associated with the law firm of KELLY LOWRY & KELLEY, LLP, all members of the Bar of the State of California, at the following address:

KELLY LOWRY & KELLEY, LLP  
6320 Canoga Avenue, Suite 1650  
Woodland Hills, California 91367

Please address communications to Aaron T. Borrowman, telephone number  
818-347-7900.

A payment in the amount of \$300.00 covering the requisite fee, accompanies  
this Notice of Opposition.

Respectfully submitted,

KELLY LOWRY & KELLEY, LLP

*/Aaron T. Borrowman/*

Aaron T. Borrowman  
Attorneys for Opposer

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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that the above Notice of Opposition is being electronically filed with the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (“ESTTA”) on May 31, 2011.

*/Aaron T. Borrowman/*

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Aaron T. Borrowman  
for KELLY LOWRY & KELLEY, LLP

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the attached Notice of Opposition to be served on this date via **Express Mail** for overnight delivery, postage prepaid, upon counsel for Applicant, as follows:

John M. Osmanski  
P.O. Box 511485  
Milwaukee, WI 53203-0251

Dated: May 31, 2011

*/Nancy Hoover/*

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Nancy Hoover  
for KELLY LOWRY & KELLEY, LLP