

ESTTA Tracking number: **ESTTA518040**

Filing date: **01/25/2013**

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	The Concentrate Manufacturing Company of Ireland
Granted to Date of previous extension	02/13/2013
Address	CORNER HOUSE 20 PARLIAMENT STREET HAMILTON, HMHX BERMUDA

Correspondence information	Elizabeth N. Bilus The Concentrate Manufacturing Company of Ireland, trading as Seven-Up International c/o PepsiCo, Inc. 700 Anderson Hill Road Purchase, NY 10577 UNITED STATES elizabeth.bilus@pepsico.com, donna.j.sanders@pepsico.com, trademarks@pepsico.com Phone:914.253.3443
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Applicant Information

Application No	85451857	Publication date	10/16/2012
Opposition Filing Date	01/25/2013	Opposition Period Ends	02/13/2013
Applicant	Alvarez Laso Francisco Jose Km. 117, Autopista MÃ©xico-Puebla Puebla, MEXICO		

Goods/Services Affected by Opposition


Class 032. All goods and services in the class are opposed, namely: Soda pops; Soft drinks, namely, sodas
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Grounds for Opposition

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)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3156112	Application Date	05/12/2004
Registration Date	10/17/2006	Foreign Priority Date	NONE

Word Mark	MANZANITA SOL
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2005/08/00 First Use In Commerce: 2005/08/00 SOFT DRINKS, AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME

U.S. Registration No.	3167654	Application Date	04/22/2005
Registration Date	11/07/2006	Foreign Priority Date	NONE

Word Mark	MANZANITA SOL
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2005/08/00 First Use In Commerce: 2005/08/00 SOFT DRINKS [, AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME]

Attachments	78417173#TMSN.jpeg (1 page)(bytes) 78614584#TMSN.jpeg (1 page)(bytes) Notice Of Opposition to MANZANITA ZACATLAN.pdf (6 pages)(1055607 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 Overnight Courier on this date.

Signature	/Donna J. Sanders/
Name	Donna J. Sanders
Date	01/25/2013

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 85/451857: MANZANITA ZACATLÁN and Design

Published in the *Official Gazette* of October 16, 2012, in International Class 32

THE CONCENTRATE MANUFACTURING)
COMPANY OF IRELAND, TRADING AS)
SEVEN-UP INTERNATIONAL)

Opposer,)

Opp. No. _____)

v.)

ÁLVAREZ LASO, FRANCISCO JOSÉ,)

Applicant.)

NOTICE OF OPPOSITION

Opposer, The Concentrate Manufacturing Company of Ireland, trading as Seven-Up International (“Opposer”), an Irish corporation and subsidiary of PepsiCo, Inc., having a place of business at Corner House, 20 Parliament Street, Hamilton, Bermuda HMHX (hereinafter “Opposer”), believes that it will be damaged by the registration of application Serial No. 85/451857, filed on October 20, 2011, by Francisco José Álvarez Laso, a Mexican individual, with a place of business at KM. 117, Autopista México-Puebla, Mexico (hereinafter “Applicant”) for the alleged mark MANZANITA ZACATLÁN and Design based on purported use of the mark on or in connection with “soda pops, soft drinks, namely, sodas” in International Class 32, and having been previously granted an extension of time to oppose, hereby opposes the foregoing application.

The specific grounds for this opposition are as follows:

1. Opposer, a wholly-owned subsidiary of PepsiCo, Inc., has been engaged in the beverage business for decades.

2. Since long prior to the filing date of the application-at-issue, MANZANITA SOL and the MANZANITA SOL Design, (hereinafter “[the] MANZANITA SOL Marks”) have been identified with Opposer and have appeared on a substantial amount of product packaging, advertising, in-store display racks, signage, point-of purchase material, etc.

3. Opposer’s MANZANITA SOL product is marketed and sold in large quantities in major markets in the United States. Opposer’s products are sold in grocery and convenience stores, vending machines, and other outlets.

4. Opposer has, by virtue of extensive usage, advertising and promotion, built up a high level of consumer and trade recognition symbolized by its MANZANITA SOL Marks. Sales of Opposer’s beverage products marketed under the MANZANITA SOL Marks have also been substantial.

5. Due to such extensive and continuous advertising, sale, use and promotion of soft drinks under or in connection with Opposer’s MANZANITA SOL Marks, said marks have acquired substantial public and consumer recognition and have enjoyed valuable goodwill.

6. Opposer owns and operates a website at MANZANITASOL.COM, which is operational 24 hours a day, seven days a week, through which the MANZANITA SOL brand is advertised, marketed and promoted.

7. In addition to its prior common-law rights in the MANZANITA SOL Marks, Opposer is also the owner of United States trademark registrations, each of which incorporates the designation MANZANITA SOL or variants thereof, including, but not limited to, the following:

MARK	REG. NO.	REG. DATE	FIRST USE DATE	IDENTIFICATION OF GOODS
MANZANITA SOL	3156112	10/17/06	8/05	Soft drinks, and syrups and concentrates for making the same, in Class 32
MANZANITA SOL and Design	3167654	11/7/06	8/05	Soft drinks in Class 32

8. Opposer's registrations for these marks are valid, subsisting, in full force and effect, uncancelled and unrevoked, and serve as evidence of Opposer's exclusive right to use such marks in commerce on or in connection with the goods or services identified in the registrations, as provided by Section 33(a) of the United States Trademark (Lanham) Act, 15 U.S.C. § 1115(a). Further, Opposer's MANZANITA SOL and MANZANITA SOL and Design registrations have become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065.

9. Use of the MANZANITA SOL Marks has been continuous and they have not been abandoned. As a result of the long, extensive and widespread use, advertising, promotion and registration of the MANZANITA SOL Marks in connection with beverages, consumers have become accustomed to associating marks consisting of or containing the term "MANZANITA SOL" or variants with a single source, that is, the Opposer.

10. On information and belief, on October 20, 2011, Applicant, Francisco José Álvarez Laso ("Applicant"), a Mexican individual, having an address at Km. 117, Autopista México-Puebla, Puebla, Mexico, filed Application Serial No. 85/451857 to register MANZANITA ZACATLÁN and Design, based on an intent to use the alleged mark in connection with "soda pops; soft drinks, namely, sodas" in International Class 32.

11. Registration of Applicant's alleged mark, which is the subject of the application-in-opposition, is barred by the provisions of Section 2(d) of the Trademark Act of 1946 because the said mark consists of or comprises a mark which so resembles Opposer's MANZANITA SOL Marks, including, but not limited to MANZANITA SOL or variants, which have been in use and are also the subject of prior registrations in the United States Patent and Trademark Office, as to be likely, when used in connection with the alleged goods of the Applicant, to cause confusion, mistake or deception.

12. Opposer has priority over Applicant because Opposer's use, application filing dates and/or registration dates precede the Applicant's filing date for its application at issue and/or any alleged date of first use in commerce of Applicant's purported mark MANZANITA ZACATLÁN and Design.

13. Applicant's alleged mark which is the subject of the application-in-opposition and Opposer's MANZANITA SOL Marks, including, but not limited to, MANZANITA SOL and variants, are similar. On information and belief, the goods in connection with which Applicant's alleged mark is intended to be used or applied for and the goods in connection with which Opposer's MANZANITA SOL Marks are registered and/or used are similar and/or related, if not identical. As a result, on information and belief, Applicant is trading off the inherent goodwill established in Opposer's marks.

14. Accordingly, Applicant's alleged mark MANZANITA ZACATLÁN and Design shown in the application-in-opposition so resembles Opposer's foregoing and previously used and/or registered MANZANITA SOL Marks as to be likely to cause confusion, to cause mistake or to deceive with consequent injury to Opposer. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the applied for mark with


Opposer's use and registration of its MANZANITA SOL Marks, including but not limited to MANZANITA SOL and variants, is that Applicant's mark is a version of Opposer's marks or that Applicant and its products are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not.

15. Opposer will be damaged by the issuance of a registration sought by Applicant within the meaning of 15 U.S.C. §1063 because such registration would support and assist Applicant in the confusing, misleading or deceptive use of Applicant's alleged MANZANITA ZACATLÁN and Design mark, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

WHEREFORE, Opposer prays that this opposition be sustained in its favor, that registration be denied to Applicant on its Application Serial No. 85/451857 and that the Board grant all further relief to Opposer that is necessary and just in these circumstances.

Respectfully submitted,

Dated: January 23, 2013

By: 
Elizabeth N. Bilus
Attorney for Opposer
The Concentrate Manufacturing Company of
Ireland, trading as Seven-Up International
c/o PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577
(914) 253-3443

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, NOTICE OF OPPOSITION, was served on the attorney for Applicant via overnight courier, in an envelope with sufficient postage addressed to:

MR. FRANCISCO JOSÉ ÁLVAREZ LASO
KM. 117, AUTOPISTA MÉXICO-PUEBLA
PUEBLA, MEXICO

on January 25 2013

By: Donna J. Sanders
Donna J. Sanders