

ESTTA Tracking number: **ESTTA537506**

Filing date: **05/13/2013**

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	Elizabeth Beverage Company, LLC
Granted to Date of previous extension	05/15/2013
Address	8275 U.S. Route 130 Pennsauken, NJ 08110 UNITED STATES
Attorney information	Amy F. Divino Cozen O'Connor 277 Park Avenue New York, NY 10172 UNITED STATES adivino@cozen.com Phone:212-883-4909

Applicant Information

Application No	85540515	Publication date	01/15/2013
Opposition Filing Date	05/13/2013	Opposition Period Ends	05/15/2013
Applicant	Twomey, Brian James 6607 Vanderbilt Ave Dallas, TX 75214 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Vitamin fortified beverages
Class 032. All goods and services in the class are opposed, namely: Beauty beverages, namely, fruit juices and energy drinks containing nutritional supplements; Concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages; Concentrates, syrups or powders for making soft drinks or tea-flavored beverages; Concentrates, syrups or powders used in the preparation of sports and energy drinks; Energy drinks; Non-alcoholic beverages containing fruit juices; Non-alcoholic beverages, namely, carbonated beverages; Non-alcoholic drinks, namely, energy shots; Non-alcoholic fruit juice beverages; Sports drinks, namely, energy drinks; Syrups for beverages; Syrups for making beverages; Syrups for making non-alcoholic beverages
Class 033. All goods and services in the class are opposed, namely: Alcoholic energy drinks

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2552171	Application Date	10/10/2000
Registration Date	03/26/2002	Foreign Priority Date	NONE
Word Mark	VINTAGE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1985/05/01 First Use In Commerce: 1985/05/01 drinking water		

Attachments	Notice of Opposition - Vantage.pdf(1312197 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	/AFD/
Name	Amy F. Divino
Date	05/13/2013

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

In the Matter of Trademark Application Serial No.: 85/540,515

For the Mark: VANTAGE

Published in the *Official Gazette* on January 15, 2013

ELIZABETH BEVERAGE COMPANY, LLC

Opposer

v.

TWOMEY, BRIAN JAMES

Applicant

Opposition No.: _____

NOTICE OF OPPOSITION

Elizabeth Beverage Company, LLC (hereinafter "Opposer"), a Pennsylvania limited liability company, having its principal place of business at c/o Beverage Distribution Center Inc., 8275 U.S. Route 130, Pennsauken, New Jersey, 08110, believes it will be damaged by registration of the mark VANTAGE shown in Application Serial No. 85/540,515 in the name of Brian James Twomey (hereinafter "Applicant"), having an address of 6607 Vanderbilt Avenue, Dallas, Texas, 75214, and hereby opposes the same.

The grounds for opposition are as follows:

Applicant and the VANTAGE Mark

1. Upon information and belief, Applicant is the owner of the following application:

Mark	Application No.	Filing Date	Goods
VANTAGE	85/540,515	Feb.12, 2012	<p><u>Class 5</u>: Vitamin fortified beverages</p> <p><u>Class 32</u>: Beauty beverages, namely, fruit juices and energy drinks containing nutritional supplements; Concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages; Concentrates, syrups or powders for making soft drinks or tea-flavored beverages; Concentrates, syrups or powders used in the preparation of sports and energy drinks; Energy drinks; Non-alcoholic beverages containing fruit juices; Non-alcoholic beverages, namely, carbonated beverages; Non-alcoholic drinks, namely, energy shots; Non-alcoholic fruit juice beverages; Sports drinks, namely, energy drinks; Syrups for beverages; Syrups for making beverages; Syrups for making non-alcoholic beverages</p> <p><u>Class 33</u>: Alcoholic energy drinks</p>

Application Serial No. 85/540,515 is hereinafter referred to as the “ ‘515 Application.”

2. Upon information and belief, Applicant filed the ‘515 Application in the U.S. Patent and Trademark Office (“PTO”) on February 12, 2012, relying on a claim of a bona fide intention to use the VANTAGE mark in commerce under Section 1(b) of the Trademark Act.

3. Upon information and belief, the ‘515 Application was published for opposition in the *Official Gazette* of the U.S. Patent and Trademark Office dated January 15, 2013.

4. Opposer has been granted an extension of time by the Trademark Trial and Appeal Board to file a Notice of Opposition against the '515 Application, to and including May 15, 2013.

Opposer and its Trademark

5. Since long prior to the filing date of the '515 Application and prior to the first use, if any, of the VANTAGE mark, Opposer has continuously used in commerce the trademark VINTAGE for beverages, including waters. Consequently, priority of use belongs to Opposer.

6. Opposer is the owner of the following valid and subsisting trademark registration in the PTO:

Mark	Reg. No.	Reg. Date	Date of First Use	Goods
VINTAGE	2,552,171	March 26, 2002	May 1, 1985	<u>Class 32</u> : drinking water

A true and correct copy of a printout from the PTO online Trademark Electronic Search System (TESS) database showing the foregoing registration is annexed hereto as Exhibit

1. Opposer's U.S. Trademark Registration No. 2,552,171 is valid, subsisting and in full force and effect, and serves as evidence of Opposer's exclusive right to use the mark in commerce on or in connection with the goods identified in the registration, as provided by Section 33(b) of the Lanham Act, 15 U.S.C. §1115(b). Additionally, Opposer's U.S. Trademark Registration No. 2,552,171 is incontestable pursuant to 15 U.S.C. §1064 and §1115(b).

7. As a result of its widespread exposure in retail stores and in other channels, Opposer's VINTAGE mark has become well recognized in the United States. Opposer has invested a great deal of money and effort in promoting Opposer's goods sold under the VINTAGE mark. By the aforesaid extensive use of the VINTAGE mark, and by the promotional efforts in connection therewith, Opposer has built up a valuable goodwill in its

VINTAGE mark, and because of such use and promotion, Opposer's VINTAGE mark has acquired a secondary meaning in the minds of the public in connection with Opposer and the goods of Opposer.

8. By virtue of the long, continuous, exclusive and widespread use by Opposer, Opposer's VINTAGE mark has become well known and is entitled to a broad scope of protection.

COUNT I: Likelihood of Confusion

9. Opposer repeats and realleges each and every allegation set forth in Paragraphs 1 through 8.

10. Opposer has used its VINTAGE mark in commerce since long prior to the February 12, 2012 filing date of the '515 Application, and any date of first use that may be alleged by Applicant.

11. Opposer's pleaded registration issued prior to the February 12, 2012 filing date of the '515 Application, and any date of first use that may be claimed by Applicant.

12. Opposer's rights in and to the VINTAGE mark are prior and superior to any rights Applicant may claim in the VANTAGE mark.

13. Applicant's VANTAGE mark is strikingly similar in appearance, sound and connotation to Opposer's VINTAGE mark.

14. The goods identified in the '515 Application are the same, similar and/or are related to Opposer's goods, and may be offered to the same, substantially the same, or related classes of purchasers.

15. Applicant is not connected to or affiliated with Opposer in any way, and has not been authorized to use and/or register the VANTAGE mark.

16. Applicant's VANTAGE mark, as applied to the goods identified in the '515 Application, is confusingly similar to Opposer's VINTAGE mark, as applied to the goods of Opposer, and is likely to cause confusion, mistake, or deception amongst the general and consuming public as to whether Applicant's goods originate with Opposer, or are licensed, authorized or sponsored by Opposer or are promoted with Opposer's approval in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

17. By reason of the foregoing, Opposer will be damaged by Applicant's registration of the VANTAGE mark.

18. Opposer hereby gives notice that at any hearing and on any appeal of this opposition proceeding it will rely on the registration annexed hereto as Exhibit 1.

WHEREFORE, Opposer respectfully requests that the '515 Application be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer herein appoints Amy F. Divino, David B. Sunshine and Martin G. Raskin, members of the Bar of the State of New York, its attorneys to prosecute the above opposition with full powers of substitution and revocation and to transact all business in the U.S. Patent and Trademark Office connected therewith; correspondence address: Cozen O'Connor, 277 Park Avenue, New York, New York 10172, Tel. 212.883.4909, Fax 866.850.7498, Email: adivino@cozen.com.

Respectfully submitted,

Elizabeth Beverage Company, LLC

Date: May 13, 2013

By:




Amy F. Divino, Esq.
David B. Sunshine, Esq.
Martin G. Raskin, Esq.
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Email: adivino@cozen.com
Counsel for Opposer

AFD/ms
Encl. (Exhibit 1)

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2013, I caused one true and correct copy of the foregoing document to be served by first class mail upon Applicant, by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to Applicant as follows:

Brian James Twomey
6607 Vanderbilt Avenue
Dallas, Texas 75214



Amy F. Divino

EXHIBIT 1

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Typed Drawing

Word Mark	VINTAGE
Goods and Services	IC 032. US 045 046 048. G & S: drinking water. FIRST USE: 19850501. FIRST USE IN COMMERCE: 19850501
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76143553
Filing Date	October 10, 2000
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	January 1, 2002
Registration Number	2552171
Registration Date	March 26, 2002
Owner	(REGISTRANT) ELIZABETH BEVERAGE COMPANY CORPORATION PENNSYLVANIA 8275 U.S. Route 130 Pennsauken NEW JERSEY 08110
	(LAST LISTED OWNER) ELIZABETH BEVERAGE COMPANY, LLC LIMITED LIABILITY COMPANY PENNSYLVANIA 8275 U.S. ROUTE 130 PENNSAUKEN NEW JERSEY 08110
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Amy F. Divino
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20110702.
Renewal	1ST RENEWAL 20110702
Live/Dead Indicator	LIVE

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