

ESTTA Tracking number: **ESTTA629857**

Filing date: **09/29/2014**

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	Dole Food Company, Inc.
Granted to Date of previous extension	09/28/2014
Address	One Dole Drive Westlake Village, CA 91362 UNITED STATES
Attorney information	Joan Kupersmith Larkin Seyfarth Shaw LLP 2029 Century Park East, Suite 3500 Los Angeles, CA 90067-3021 UNITED STATES jlarkin@seyfarth.com, clarkin@seyfarth.com, jjacobs@seyfarth.com, kelko@seyfarth.com Phone:(310) 201-5289

Applicant Information

Application No	86078037	Publication date	04/01/2014
Opposition Filing Date	09/29/2014	Opposition Period Ends	09/28/2014
Applicant	New Jersey Beverage Distributors, LLC 184 Whitman Avenue Edison, NJ 08817 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 2013/09/12 First Use In Commerce: 2013/09/12 All goods and services in the class are opposed, namely: Non-alcoholic drinks containing vitamins, namely, energy drinks
--

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	508689	Application Date	08/10/1946
Registration Date	04/19/1949	Foreign Priority Date	NONE
Word Mark	DOLE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U046 (International Class 029, 032). First use: First Use: 1927/00/00 First Use In Commerce: 1927/00/00 CANNED FRUITS, CANNED FRUIT JUICES FOR FOOD PURPOSES AND FROZEN FRESH FRUIT

U.S. Registration No.	641848	Application Date	05/29/1956
Registration Date	02/19/1957	Foreign Priority Date	NONE

Word Mark	DOLE
Design Mark	

Description of Mark	NONE
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1927/00/00 First Use In Commerce: 1927/00/00 CANNED FRUITS, CANNED FRUIT JUICES, [CANNED FRUIT NECTARS, CANNED FRUIT COCKTAIL, CANNED VEGETABLES, CANNED VEGETABLE JUICES, CANNED PIE FILLING,] FROZEN FRESH FRUIT, AND CANNED FROZEN CONCENTRATEDFRUIT JUICES

U.S. Registration No.	1335817	Application Date	10/11/1984
Registration Date	05/14/1985	Foreign Priority Date	NONE

Word Mark	DOLE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1934/06/00 First Use In Commerce: 1934/06/00 Fruit Juices, Fruit Juice Drinks Containing Water, Frozen Fruit Juice Concentrates

Attachments	72009266#TMSN.png(bytes) Notice of Opposition.pdf(367268 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	/Joan Kupersmith Larkin/
Name	Joan Kupersmith Larkin
Date	09/29/2014

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

In the Matter of Application Serial No. 86/078,037
Published in the Official Gazette of April 1, 2014

DOLE FOOD COMPANY, INC.,

Opposer,

v.

NEW JERSEY BEVERAGE
DISTRIBUTORS, LLC,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Dole Food Company, Inc. (“Opposer”) believes that it will be damaged by registration of the mark shown in Application Serial No. 86/078,037, and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a corporation organized and existing under the laws of the State of Delaware, with offices in Westlake Village, California.
2. Upon information and belief, applicant New Jersey Beverage Distributors, LLC (“Applicant”) is a New Jersey limited liability company with offices in Edison, New Jersey.
3. On September 30, 2013, Applicant filed Application Serial 86/078,037 (the “Opposed Application”) to register the mark “DOSE” in stylized form for non-alcoholic drinks containing vitamins, namely, energy drinks on the basis of claimed first use in commerce at least as early as September 12, 2013. The mark shown in the Opposed Application is depicted below:



4. From a time long prior to the filing date of the Opposed Application, or any earlier date of actual use of the mark shown in the Opposed Application upon which Applicant can rely, and continuously to the present, Opposer has used the trademark, service mark, and trade name “DOLE” in the United States in connection with a wide variety of food products, including beverages. Opposer owns the following federal trademark and service mark registrations, among others: (1) Reg. No. 508,689 for the mark “DOLE” for canned fruits and frozen fresh fruit, canned fruit juice for food purposes; (2) Reg. No. 641,848 for the mark “DOLE” for canned fruits, frozen fresh fruit, canned frozen concentrated fruit juices, and canned fruit juices; and (3) Reg. No. 1,335,817 for the mark “DOLE” for fruit juices, fruit juice drinks containing water, and fruit juice concentrates. These registrations are valid and subsisting, and have become incontestable. Copies of the records of these registrations taken from the TSDR electronic database of the Patent and Trademark Office and showing the current status and title of the registrations are attached hereto as Exhibit 1.

5. Opposer’s “DOLE” marks for food products, including beverages, are commonly depicted in the stylized manner shown below:



6. Opposer’s “DOLE” mark, included its stylized mark, is famous in the United States for food products, beverages, and related goods and services, and it became famous long

prior to the filing date of the Opposed Application, or any earlier date of actual use of the mark shown in the Opposed Application upon which Applicant can rely.

FIRST CLAIM FOR RELIEF

(Likelihood of Confusion With Registered Trademarks)

7. Opposer repeats and realleges the allegations contained in preceding paragraphs 1-6, inclusive, as if fully set forth herein.

8. The mark shown in the Opposed Application so resembles Opposer's registered "DOLE" marks as to be likely, when applied to the goods identified in the Opposed Application, to cause confusion, or to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

9. Opposer will be damaged by registration of the mark shown in the Opposed Application because such registration would give Applicant *prima facie* evidence of its exclusive right to use its claimed mark in commerce in connection with the goods identified in the Opposed Application, in derogation of Opposer's rights in its registered "DOLE" marks.

SECOND CLAIM FOR RELIEF

**(Likelihood of Confusion With Previously-Used Trademarks,
Service Mark and Trade Name)**

10. Opposer repeats and realleges the allegations set forth in preceding paragraphs 1-7, inclusive, as if fully set forth herein.

11. The mark shown in the Opposed Application so resembles the "DOLE" trademark, service mark, and trade name previously used by Opposer in the United States and not abandoned as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. § 2(d).

Opposer will be damaged by the registration of the mark shown in the Opposed Application because such registration will give Applicant *prima facie* evidence of its exclusive nationwide right to use its claimed mark in commerce in connection with the goods identified in the Opposed Application, in derogation of Opposer's rights in its "DOLE" marks.

WHEREFORE, Opposer prays for judgment sustaining this opposition and refusing registration to Applicant of the mark shown in the Opposed Application.


Please charge the filing fees for this opposition to Deposit Account No. 50-2291 and direct all correspondence and communications in this opposition to the undersigned.

Respectfully submitted,

SEYFARTH SHAW LLP

Dated: September 29, 2014

By


Christopher C. Larkin
Joan Kupersmith Larkin
Jill A. Jacobs
Attorneys for Opposer
DOLE FOOD COMPANY, INC.

2029 Century Park East, Suite 3500
Los Angeles, CA 90067-3063
Telephone: (310) 201-5289
Facsimile: (310) 201-5219

EXHIBIT 1

ADVISORY: If you experience any trouble when clicking on the direct links to published records in Notices of Publication received via email and/or that appear in TSDR (Trademark Status and Document Retrieval), you can access the individual record by either 1) copying the link from the email or Notice of Publication in TSDR and pasting it into the url address of a supported browser (IE 10.0 or later and the latest versions of FireFox, Chrome or Safari); or 2) visiting the TMOG main page at <https://tmog.uspto.gov/>, selecting the Official Gazette issue date from the list of Issues in the upper left corner and then entering the 8 digit serial number in the box labeled "Search By" and clicking on the magnifying glass icon to execute the search.

STATUS	DOCUMENTS	Back to Search	Print
---------------	------------------	--------------------------------	-------

Generated on: This page was generated by TSDR on 2014-09-29 17:36:26 EDT

Mark: DOLE No Image exists for this case.

US Serial Number: 71507186 **Application Filing Date:** Aug. 10, 1946

US Registration Number: 508689 **Registration Date:** Apr. 19, 1949

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Jun. 17, 2009

▲ **Mark Information**

▼ Expand All

▲ **Related Properties Information**

≡ **Goods and Services**

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: CANNED FRUITS, CANNED FRUIT JUICES FOR FOOD PURPOSES AND FROZEN FRESH FRUIT

International Class(es): 029, 032 **U.S Class(es):** 046 - Primary Class

Class Status: ACTIVE

Basis: 1(a)

First Use: 1927 **Use in Commerce:** 1927

▲ **Basis Information (Case Level)**

▼ **Current Owner(s) Information**

Owner Name:	Dole Food Company, Inc.		
Owner Address:	One Dole Drive Westlake Village, CALIFORNIA 91362 UNITED STATES		
Legal Entity Type:	CORPORATION	State or Country Where Organized:	CALIFORNIA

▲ **Attorney/Correspondence Information**

▲ **Prosecution History**

▼ **Maintenance Filings or Post Registration Information**

Affidavit of Continued Use:	Section 8 - Accepted
Affidavit of Incontestability:	Section 15 - Accepted
Renewal Date:	Apr. 19, 2009

▲ **TM Staff and Location Information**

▲ **Assignment Abstract Of Title Information - Click to Load**

▲ **Proceedings - Click to Load**

ADVISORY: If you experience any trouble when clicking on the direct links to published records in Notices of Publication received via email and/or that appear in TSDR (Trademark Status and Document Retrieval), you can access the individual record by either 1) copying the link from the email or Notice of Publication in TSDR and pasting it into the url address of a supported browser (IE 10.0 or later and the latest versions of FireFox, Chrome or Safari); or 2) visiting the TMOG main page at <https://tmo.uspto.gov/>, selecting the Official Gazette issue date from the list of Issues in the upper left corner and then entering the 8 digit serial number in the box labeled "Search By" and clicking on the magnifying glass icon to execute the search.

STATUS		DOCUMENTS		Back to Search	Print
Generated on: This page was generated by TSDR on 2014-09-29 17:35:20 EDT					
Mark: DOLE					
<h1>DOLE</h1>					
US Serial Number:	72009266	Application Filing Date:	May 29, 1956		
US Registration Number:	641848	Registration Date:	Feb. 19, 1957		
Register:	Principal				
Mark Type:	Trademark				
Status:	The registration has been renewed.				
Status Date:	Feb. 06, 2007				
▲ Mark Information ▼ Expand All					
▲ Related Properties Information					
▣ Goods and Services					
Note: The following symbols indicate that the registrant/owner has amended the goods/services:					
<ul style="list-style-type: none"> • Brackets [...] indicate deleted goods/services; • Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and • Asterisks *.* identify additional (new) wording in the goods/services. 					
For:	CANNED FRUITS, CANNED FRUIT JUICES, [CANNED FRUIT NECTARS, CANNED FRUIT COCKTAIL, CANNED VEGETABLES, CANNED VEGETABLE JUICES, CANNED PIE FILLING,] FROZEN FRESH FRUIT, AND CANNED FROZEN CONCENTRATED FRUIT JUICES				
International Class(es):	001, 005, 029, 030, 031, 032	U.S Class(es):	046 - Primary Class		
Class Status:	ACTIVE				
Basis:	1(a)				
First Use:	1927	Use in Commerce:	1927		
▲ Basis Information (Case Level)					
▣ Current Owner(s) Information					
Owner Name:	DOLE FOOD COMPANY, INC.				
Owner Address:	One Dole Drive Westlake Village, CALIFORNIA 91362 UNITED STATES				
Legal Entity Type:	CORPORATION	State or Country Where Organized:	HAWAII		
▲ Attorney/Correspondence Information					
▲ Prosecution History					

▾ Maintenance Filings or Post Registration Information**Affidavit of Continued Use:** Section 8 - Accepted**Affidavit of Incontestability:** Section 15 - Accepted**Renewal Date:** Feb. 19, 2007**Change in Registration:** Yes**Amendment to a
Registration/Renewal
Certificate:** In the statement, Column 1, before Line 1, "Dole Food Company, Inc. (Hawaii corporation) 31365 Oak Crest Drive, Westlake Village, CA 91361, by change of name from" is inserted.**▴ TM Staff and Location Information****▴ Assignment Abstract Of Title Information - Click to Load****▴ Proceedings - Click to Load**

ADVISORY: If you experience any trouble when clicking on the direct links to published records in Notices of Publication received via email and/or that appear in TSDR (Trademark Status and Document Retrieval), you can access the individual record by either 1) copying the link from the email or Notice of Publication in TSDR and pasting it into the url address of a supported browser (IE 10.0 or later and the latest versions of FireFox, Chrome or Safari); or 2) visiting the TMOG main page at <https://tmog.uspto.gov/>, selecting the Official Gazette issue date from the list of Issues in the upper left corner and then entering the 8 digit serial number in the box labeled "Search By" and clicking on the magnifying glass icon to execute the search.

STATUS	DOCUMENTS	Back to Search	Print
---------------	------------------	--------------------------------	-------

Generated on: This page was generated by TSDR on 2014-09-29 17:39:57 EDT

Mark: DOLE No Image exists for this case.

US Serial Number: 73503368 **Application Filing Date:** Oct. 11, 1984

US Registration Number: 1335817 **Registration Date:** May 14, 1985

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Aug. 17, 2005

Publication Date: Mar. 05, 1985

▲ **Mark Information**

▼ [Expand All](#)

▲ **Related Properties Information**

▼ **Goods and Services**

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Fruit Juices, Fruit Juice Drinks Containing Water, Frozen Fruit Juice Concentrates

International Class(es): 032 - Primary Class **U.S Class(es):** 045, 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 1934 **Use in Commerce:** Jun. 1934

▲ **Basis Information (Case Level)**

Current Owner(s) Information

Owner Name: Castle & Cooke, Inc.

Owner Address: One Dole Drive
Westlake Village, CALIFORNIA 91362
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: HAWAII

Attorney/Correspondence Information

Prosecution History

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: May 14, 2005

TM Staff and Location Information

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2014, I served the foregoing Notice of Opposition on the applicant by mailing a copy thereof by First Class Mail, postage prepaid, addressed to applicant's counsel of record at applicant's counsel's correspondence address of record in the records of the Patent and Trademark Office as follows:

Daniel S. Kirshner, Esq.
Daniel S. Kirshner Attorney at Law LLC
199 18 South
East Brunswick, NJ 08816-1413



Eleanor Elko