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

Proceeding	91225150
Party	Defendant Enovation Brands, Inc.
Correspondence Address	ANDREW C. AITKEN Aitken Law Offices PO Box 1810 Silver Spring, MD 20915-1810  acaitken@aitkenlawoffices.com;acaitken@
Submission	Answer
Filer's Name	Andrew C. Aitken
Filer's e-mail	acaitken@aitkenlawoffices.com, acaitken@yahoo.com
Signature	/Andrew C. Aitken/
Date	01/11/2016
Attachments	Enovation brands Zamaka Opp. Answer.pdf(643826 bytes )

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

Opposition Proceeding No. 91225150

In the Matter of Application Serial No. 86/557,570

For the Trademark ZAMAKA

Published in the Official Gazette on August 4, 2015

Diageo, Inc.	)	
	)	
Opposer,	)	
v.	)	Opposition No.
	)	
ENOVATION BRANDS, INC.	)	
	)	
Applicant.	)	

**ANSWER TO NOTICE OF OPPOSITION**

In response to Opposer's Notice of Opposition ("Opposition") in the proceeding captioned above, Applicant, Enovation Brands, Inc. ("Applicant") states and responds to the Opposition as follows:

1. Opposer Rum Creation & Products, Inc. is a British Virgin Islands company with its principal place of business located at Wickhams Cay 1, Commerce House, Road Town Tortola VG 1110, British Virgin Islands.

**RESPONSE:** Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 1 of the Notice of Opposition and therefore the allegations are denied.

2. Opposer and its predecessors-in-interest have owned and used marks consisting of or including ZACAPA in commerce in the United States in connection with alcoholic beverages for almost 25 years, at least as early as December 31, 1990, and long prior to the March 9, 2015 filing date of the application herein opposed.

**RESPONSE:** Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 2 of the Notice of Opposition and therefore the allegations are denied.

3. During its continuous use of its ZACAPA marks (collectively, "Opposer's Marks"), Opposer and its authorized wholesalers, distributors, and retail accounts have expended considerable time, effort and money in advertising and publicizing the sale of alcoholic beverages bearing those marks in the United States.

**RESPONSE:** Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 3 of the Notice of Opposition and therefore the allegations are denied.

4. During its continuous use of Opposer's Marks, Opposer has directly and indirectly sold, and offered for sale, alcoholic beverages bearing those marks throughout the United States.

**RESPONSE:** Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 4 of the Notice of Opposition and therefore the allegations are denied.

5. In addition to Opposer's common law rights in Opposer's Marks, Opposer owns 9 valid and subsisting trademark registrations on the Principal Register with the USPTO for ZACAP A Marks, some of which are incontestable. A chart listing Opposer's registered Marks is attached hereto as Exhibit A.

**RESPONSE:** Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 5 of the Notice of Opposition and therefore the allegations are denied

6. Copies of the certificates and electronic status records for these registrations, which are valid, subsisting, and in full force and effect, are attached hereto as Exhibit B.

**RESPONSE:** Admits that Applicant attached copies of certain registrations to the Opposition. Applicant lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegations set forth in paragraph 6 of the Notice of Opposition and therefore the allegations are denied.

7. Upon information and belief, Applicant Enovation Brands, Inc. ("Applicant") is a Florida Corporation with an address at Suite 400A, 287 5 NE 191 st Street, Aventura, Florida 33180.

**RESPONSE** Admitted.

8. By the application herein opposed, Serial No. 86/557,570 for ZAMAKA ("Applicant's Mark"), Applicant seeks to register Applicant's Mark for "Distilled Spirits; Wines and liqueurs" in International Class 33.

**RESPONSE** Admitted.

9. Applicant filed its intent-to-use application for Applicant's Mark on March 9, 2015, long after Opposer commenced use of Opposer's Marks and registered those marks.

**RESPONSE:** Applicant admits it filed the application that is the subject of this Opposition Proceeding on March 9, 2015. Applicant lacks knowledge or information sufficient to form a belief about the truth of the remainder of allegations set forth in paragraph 9 of the Notice of Opposition and therefore the allegations are denied.

10. Applicant's Mark is confusingly similar to Opposer's Marks.

**RESPONSE:** Denied.

11 . The goods for which Applicant seeks registration are closely related or identical to, and likely to be perceived as closely related or identical to, the goods in connection with which Opposer uses and has used Opposer's Marks in the United States.

**RESPONSE** Applicant admits that the goods listed in the application would include rum products and therefore there is overlap of those goods that Opposer intends to sell in association with its mark and the marks cited in the Opposition. The remaining allegations in Paragraph 11 are denied.

12. Upon information and belief, the goods sold in connection with Opposer's Marks and the products set forth in Applicant's Application Serial No. 86/557,570 are intended to be directed to similar or identical classes of purchasers and to be distributed through overlapping or identical channels of trade in the United States.

**RESPONSE:** Applicant admits that its products are generally intended to be sold to consumers of alcoholic beverage in the United States. In particular, its intended market is a subclass of such consumers that purchase alcoholic beverages at the retail level as single serving shots and wines. Applicant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations set forth in paragraph 9 of the Notice of Opposition and therefore the allegations are denied

13. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

**RESPONSE:** Denied.

14. Registration should be refused pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the ground that Applicant's Mark so closely resembles Opposer's Marks as to be likely, when used on or in connection with the goods identified in the Application, to cause confusion, or to cause mistake, or to deceive, with the consequent injury to Opposer and to the public.


**RESPONSE:** Denied.

**Wherefore** the Opposition should be dismissed.

Respectfully submitted

Enovation Brands, Inc.

January 9, 2016



Andrew C. Aitken  
Aitken Law Offices  
P.O. Box 1810  
Wheaton, MD 20915  
Phone (301) 537-3299  
Facsimile (240) 491-9892  
Email [acaitken@aitkenlawoffices.com](mailto:acaitken@aitkenlawoffices.com)  
*Attorney for Applicant*

**Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served THIS 11<sup>TH</sup> Day of January 2016 upon all parties, at their address record set forth below by First Class Mail on this date.

Ms. Paola Tornabene  
DIAGEO North America, Inc.  
801 Main Avenue  
Norwalk, CT 06851  
UNITED STATES



Andrew C. Aitken