

ESTTA Tracking number: **ESTTA736103**

Filing date: **03/28/2016**

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	AdvoCare International, L.P.
Granted to Date of previous extension	05/04/2016
Address	2801 Summit Ave. Plano, TX 75074 UNITED STATES
Attorney information	Joel R. Feldman, Esq. Greenberg Traurig, LLP 3333 Piedmont Rd., NE, Suite 2500 Atlanta, GA 30305 UNITED STATES atltrademark@gtlaw.com, feldmanjoel@gtlaw.com Phone:678-553-4778

### Applicant Information

Application No	86519987	Publication date	01/05/2016
Opposition Filing Date	03/28/2016	Opposition Period Ends	05/04/2016
Applicant	Confluence Beverages, LLC 2627 Tysons Pkwy. Dardenne Prairie, MO 63368 UNITED STATES		

### Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Energy drinks; Flavored waters; Fruit flavoured carbonated drinks; Powders for making soft drinks; Sports drinks

### 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.	3303370	Application Date	09/05/2003
Registration Date	10/02/2007	Foreign Priority Date	NONE
Word Mark	ADVOCARE SPARK		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 2004/04/00 First Use In Commerce: 2004/04/00 Nutritional dietary supplement in the form of a powdered drink mix

U.S. Registration No.	4883888	Application Date	07/11/2014
Registration Date	01/12/2016	Foreign Priority Date	NONE

Word Mark	SPARK
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 005. First use: First Use: 2004/04/00 First Use In Commerce: 2004/04/00 Powdered nutritional supplement drink mix
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Attachments	86334361#TMSN.png( bytes ) CHISPA Notice of Opposition.pdf(376632 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	/jrf/
Name	Joel R. Feldman, Esq.
Date	03/28/2016

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

In the Matter of Application Serial No. 86/519,987: CHISPA  
Published in the *Official Gazette* on January 5, 2016

<hr/>	)	
<b>ADVOCARE INTERNATIONAL, LP,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	
<b>v.</b>	)	<b>Opposition No.</b> _____
	)	
<b>CONFLUENCE BEVERAGES, LLC,</b>	)	
	)	
<b>Applicant.</b>	)	
<hr/>	)	

**NOTICE OF OPPOSITION**

AdvoCare International, LP (“AdvoCare”) opposes Confluence Beverages, LLC’s Application Serial No. 86/519,987 in International Class 32 (the “Application”) because AdvoCare will be damaged by the registration of the Application.

The grounds for opposition are:

**BACKGROUND**

1. Applicant seeks to register the word mark CHISPA in International Class 32 for energy drinks; flavored waters; fruit flavoured carbonated drinks; powders for making soft drinks; sports drinks (the “Class 32 Goods”).
2. As stated in the Application, “chispa” is a word that translates into English as “spark.”
3. Applicant filed the Application on January 30, 2015, based on Applicant’s alleged *bona fide* intent to use the CHISPA word mark.

**ADVOCARE'S USE AND REGISTRATION OF THE SPARK BRAND**

4. Opposer AdvoCare is a Delaware limited partnership with a business address of 2801 Summit Avenue, Plano, Texas 75074.

5. AdvoCare is the successor in interest to trademarks used and owned by AdvoCare International, LLC, a Delaware limited liability company.

6. Since February 1997, AdvoCare and its predecessor in interest have continuously used the mark SPARK in interstate commerce in the United States for nutritional dietary supplements in the form of powdered drink mix.

7. AdvoCare owns U.S. Reg. No. 3,303,370 for ADVOCARE SPARK in International Class 5 for nutritional dietary supplement in the form of a powdered drink mix (TSDR record attached at Exhibit 1).

8. AdvoCare owns U.S. Reg. No. 4,883,888 for SPARK in International Class 5 for powdered nutritional supplement drink mix (TSDR record attached at Exhibit 2).

9. U.S. Reg. Nos. 3,303,370 and 4,883,888 are valid and subsisting U.S. trademark registrations.

**COUNT I**  
**PRIORITY AND LIKELIHOOD OF CONFUSION**

10. AdvoCare's rights in the SPARK mark predates Applicant's filing date for the Application.

11. Applicant's applied-for CHISPA mark closely resembles AdvoCare's SPARK mark because CHISPA translates into English as "SPARK."

12. Energy drinks and sports drinks, which are identified in the Application, are closely related to AdvoCare's SPARK-branded International Class 5 goods, nutritional dietary supplement in the form of a powdered drink mix.

13. Applicant's use and registration of the applied-for CHISPA mark is likely to cause confusion, mistake, and deception as to the source of Applicant's goods within the meaning of 15 U.S.C. §§ 1114 and 1125(a).

14. Applicant's use and registration of the applied-for CHISPA mark will injure and damage AdvoCare and the goodwill and reputation symbolized by AdvoCare's SPARK mark within the meaning of 15 U.S.C. § 1063(a).

15. Based on the confusing similarity of the Applicant's and AdvoCare's marks and the high similarity of Applicant's applied-for goods with AdvoCare's SPARK-branded goods, the public is likely to incorrectly believe that Applicant's CHISPA-branded energy drinks and sports drinks are connected to AdvoCare. This confusion will cause irreparable damage to AdvoCare.

16. The Application should not be allowed under 15 U.S.C. § 1052(d), because the applied-for mark, CHISPA, resembles a mark previously used in the United States by AdvoCare and is likely to cause confusion, mistake, or to deceive.

### **CONCLUSION**

17. AdvoCare respectfully requests that this opposition be sustained and Application Serial No. 86/578,119 be refused registration.

Date: March 28, 2016

Respectfully submitted,  
**GREENBERG TRAURIG, LLP**



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Joel R. Feldman, Esq.  
Jacquelynne J. Regan, Esq.

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Fax: (678) 553-4779

***Attorneys for Opposer AdvoCare  
International, LP***

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

Date: March 28, 2016


I certify that this Notice of Opposition is being transmitted electronically to the Trademark Trial and Appeal Board of the United States Patent & Trademark Office, on the date indicated above, through the ESTTA electronic filing system at the web site <http://estta.uspto.gov/>.

By:   
Joel R. Feldman, Esq.

**CERTIFICATE OF SERVICE**

I certify that on March 28, 2016 I served this Notice of Opposition by first-class mail to:

Christopher M. DeBacker  
Law Office of Mark Brown, LLC  
7225 Renner Road  
Shawnee, KS 66217

By:   
Joel R. Feldman, Esq.

# Exhibit 1

With respect to a very small number of TSDR documents, the PDF download feature has been temporary suspended. We expect this feature to be fully available again in mid-late March. Documents may still be downloaded from the Trademark Documents list in TSDR by selecting (checking) the document(s) you would like to download, clicking the "Download" button, and selecting "Original" as the file type. The selected documents will be delivered to your computer in their original format in a zip file.

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**Mark:** ADVOCARE SPARK

No Image exists for this case.

**US Serial Number:** 78296802

**Application Filing Date:** Sep. 05, 2003

**US Registration Number:** 3303370

**Registration Date:** Oct. 02, 2007

**Register:** Principal

**Mark Type:** Trademark

**Status:** A Sections 8 and 15 combined declaration has been accepted and acknowledged.

**Status Date:** Feb. 11, 2013

**Publication Date:** Apr. 13, 2004

**Notice of Allowance Date:** Jul. 06, 2004

### Mark Information

**Mark Literal Elements:** ADVOCARE SPARK

**Standard Character Claim:** No

**Mark Drawing Type:** 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

### Related Properties Information

**Claimed Ownership of US** [1959765](#), [2215866](#)

**Registrations:**

### 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:** Nutritional dietary supplement in the form of a powdered drink mix

**International Class(es):** 005 - Primary Class

**U.S Class(es):** 006, 018, 044, 046, 051, 052

**Class Status:** ACTIVE

**Basis:** 1(a)

**First Use:** Apr. 2004

**Use in Commerce:** Apr. 2004

### Basis Information (Case Level)

**Filed Use:** No

**Currently Use:** Yes

**Amended Use:** No

**Filed ITU:** Yes

**Currently ITU:** No

**Amended ITU:** No

**Filed 44D:** No

**Currently 44D:** No

**Amended 44D:** No

**Filed 44E:** No

**Currently 44E:** No

**Amended 44E:** No

**Filed 66A:** No

**Currently 66A:** No

**Filed No Basis:** No

**Currently No Basis:** No

### Current Owner(s) Information

**Owner Name:** AdvoCare International, L.P.

**Composed of:** AdvoCare GP, LLC, a Delaware limited liability company

**Owner Address:** 2801 Summit Avenue  
Plano, TEXAS UNITED STATES 75074

**Legal Entity Type:** LIMITED PARTNERSHIP

**State or Country Where:** DELAWARE

Organized:

**Attorney/Correspondence Information****Attorney of Record****Attorney Name:** Joel R. Feldman, Esq., Kristen L. Fancher, Esq.**Attorney Primary Email** [atltrademark@gtlaw.com](mailto:atltrademark@gtlaw.com)**Attorney Email Authorized:** Yes**Address:****Correspondent****Correspondent Name/Address:** Joel R. Feldman, Esq., Kristen L. Fancher, Esq.  
Greenberg Traurig, LLP  
3333 Piedmont Rd. NE, Suite 2500  
Atlanta, GEORGIA UNITED STATES 30305**Phone:** 678-553-2100**Fax:** 678-553-2212**Correspondent e-mail:** [atltrademark@gtlaw.com](mailto:atltrademark@gtlaw.com)**Correspondent e-mail** Yes  
**Authorized:****Domestic Representative - Not Found****Prosecution History**

<b>Date</b>	<b>Description</b>	<b>Proceeding Number</b>
Aug. 08, 2014	NOTICE OF SUIT	
Jul. 11, 2014	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Jul. 11, 2014	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jul. 07, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
Jul. 07, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Feb. 21, 2013	NOTICE OF SUIT	
Feb. 11, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Feb. 11, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	77315
Feb. 11, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	77315
Jan. 30, 2013	TEAS SECTION 8 & 15 RECEIVED	
May 07, 2012	ATTORNEY REVOKED AND/OR APPOINTED	
May 07, 2012	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jan. 15, 2009	ATTORNEY REVOKED AND/OR APPOINTED	
Jan. 15, 2009	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Oct. 02, 2007	REGISTERED-PRINCIPAL REGISTER	
Aug. 25, 2007	LAW OFFICE REGISTRATION REVIEW COMPLETED	68552
Aug. 25, 2007	ASSIGNED TO LIE	68552
Jul. 16, 2007	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jul. 07, 2007	STATEMENT OF USE PROCESSING COMPLETE	76873
Mar. 24, 2007	USE AMENDMENT FILED	76873
Mar. 24, 2007	TEAS STATEMENT OF USE RECEIVED	
Mar. 16, 2007	EXTENSION 5 GRANTED	65362
Jan. 06, 2007	EXTENSION 5 FILED	65362
Jan. 08, 2007	TEAS EXTENSION RECEIVED	
Jul. 01, 2006	EXTENSION 4 GRANTED	98765
Jul. 01, 2006	EXTENSION 4 FILED	98765
Jul. 01, 2006	TEAS EXTENSION RECEIVED	
Jan. 06, 2006	EXTENSION 3 GRANTED	98765
Jan. 06, 2006	EXTENSION 3 FILED	98765
Jan. 06, 2006	TEAS EXTENSION RECEIVED	
Jul. 06, 2005	EXTENSION 2 GRANTED	98765
Jul. 06, 2005	EXTENSION 2 FILED	98765
Jul. 06, 2005	TEAS EXTENSION RECEIVED	
Jan. 25, 2005	EXTENSION 1 GRANTED	73859
Jan. 06, 2005	EXTENSION 1 FILED	73859
Jan. 06, 2005	TEAS EXTENSION RECEIVED	
Jul. 06, 2004	NOA MAILED - SOU REQUIRED FROM APPLICANT	

Apr. 13, 2004	PUBLISHED FOR OPPOSITION	
Mar. 24, 2004	NOTICE OF PUBLICATION	
Feb. 19, 2004	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 18, 2004	EXAMINERS AMENDMENT E-MAILED	
Feb. 17, 2004	ASSIGNED TO EXAMINER	77769

### Maintenance Filings or Post Registration Information

**Affidavit of Continued Use:** Section 8 - Accepted

**Affidavit of Incontestability:** Section 15 - Accepted

### TM Staff and Location Information

TM Staff Information - None

#### File Location

**Current Location:** TMEG LAW OFFICE 102

**Date in Location:** Feb. 11, 2013

[Assignment Abstract Of Title Information - Click to Load](#)

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# Exhibit 2

With respect to a very small number of TSDR documents, the PDF download feature has been temporary suspended. We expect this feature to be fully available again in mid-late March. Documents may still be downloaded from the Trademark Documents list in TSDR by selecting (checking) the document(s) you would like to download, clicking the "Download" button, and selecting "Original" as the file type. The selected documents will be delivered to your computer in their original format in a zip file.

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**Mark:** SPARK

# SPARK

**US Serial Number:** 86334361

**Application Filing Date:** Jul. 11, 2014

**US Registration Number:** 4883888

**Registration Date:** Jan. 12, 2016

**Filed as TEAS Plus:** Yes

**Currently TEAS Plus:** Yes

**Register:** Principal

**Mark Type:** Trademark

**Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.

**Status Date:** Jan. 12, 2016

**Publication Date:** Dec. 23, 2014

## Mark Information

**Mark Literal Elements:** SPARK

**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

## Related Properties Information

**Claimed Ownership of US** [3303370](#)

**Registrations:**

## Goods and Services

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**U.S Class(es):** 006, 018, 044, 046, 051, 052

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**Amended Use:** No

**Filed ITU:** No

**Currently ITU:** No

**Amended ITU:** No

**Filed 44D:** No

**Currently 44D:** No

**Amended 44D:** No

**Filed 44E:** No

**Currently 44E:** No

**Amended 44E:** No

**Filed 66A:** No

**Currently 66A:** No

**Filed No Basis:** No

**Currently No Basis:** No

## Current Owner(s) Information

**Owner Name:** AdvoCare International, LP

**Composed of:** AdvoCare GP, LLC a Delaware limited liability company

**Owner Address:** 2801 Summit Avenue  
Plano, TEXAS UNITED STATES 75074

**Legal Entity Type:** LIMITED PARTNERSHIP

**State or Country Where:** DELAWARE

Organized:

**Attorney/Correspondence Information****Attorney of Record****Attorney Name:** Joel R. Feldman, Esq., Kristen L. Fancher, Esq.**Docket Number:** 153290.01000**Attorney Primary Email:** [atltrademark@gtlaw.com](mailto:atltrademark@gtlaw.com)**Attorney Email Authorized:** Yes**Address:****Correspondent****Correspondent Name/Address:** JOEL R FELDMAN  
GREENBERG TRAURIG LLP  
3333 PIEDMONT RD NE  
ATLANTA, GEORGIA UNITED STATES 30305**Phone:** 678-553-2100**Fax:** 678-553-2212**Correspondent e-mail:** [atltrademark@gtlaw.com](mailto:atltrademark@gtlaw.com)**Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

**Prosecution History**

Date	Description	Proceeding Number
Jan. 12, 2016	REGISTERED-PRINCIPAL REGISTER	
Dec. 09, 2015	TTAB RELEASE CASE TO TRADEMARKS	221606
Dec. 09, 2015	OPPOSITION TERMINATED NO. 999999	221606
Dec. 09, 2015	OPPOSITION DISMISSED NO. 999999	221606
Apr. 22, 2015	OPPOSITION INSTITUTED NO. 999999	221606
Jan. 22, 2015	EXTENSION OF TIME TO OPPOSE RECEIVED	
Dec. 23, 2014	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Dec. 23, 2014	PUBLISHED FOR OPPOSITION	
Dec. 03, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Nov. 19, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	66121
Nov. 13, 2014	ASSIGNED TO LIE	66121
Oct. 27, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 27, 2014	EXAMINER'S AMENDMENT ENTERED	88888
Oct. 27, 2014	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Oct. 27, 2014	EXAMINERS AMENDMENT E-MAILED	6328
Oct. 27, 2014	EXAMINERS AMENDMENT -WRITTEN	82423
Oct. 23, 2014	ASSIGNED TO EXAMINER	82423
Jul. 16, 2014	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 16, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jul. 15, 2014	NEW APPLICATION ENTERED IN TRAM	

**TM Staff and Location Information**

TM Staff Information - None

**File Location****Current Location:** PUBLICATION AND ISSUE SECTION**Date in Location:** Jan. 12, 2016**Assignment Abstract Of Title Information - [Click to Load](#)****Proceedings - [Click to Load](#)**