

ESTTA Tracking number: **ESTTA745560**

Filing date: **05/10/2016**

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	Mantra, LLC		
Entity	LLC	Citizenship	Tennessee
Address	c/o Farmer Purcell White & Lassiter, PLLC 150 Fourth Avenue North, Suite 1820 Nashville, TN 37219 UNITED STATES		

Attorney information	Timothy Kappel Farmer Purcell White & Lassiter, PLLC 150 Fourth Avenue North Suite 1820 Nashville, TN 37219 UNITED STATES tkappel@fpwlegal.com Phone:615-810-8777		
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Applicant Information

Application No	86611056	Publication date	04/12/2016
Opposition Filing Date	05/10/2016	Opposition Period Ends	05/12/2016
Applicant	Audi Gozlan 6456 MacDonald Hampstead, H3X2X2 CANADA		

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: De-alcoholised beer; De-alcoholized wines; Fruit beverages; Glacial water; Non-alcoholic beer; Non-alcoholic fruit juice beverages; Non-alcoholized wines; Softdrinks, namely, carbonated fruit juices, fruit based soft drinks, fruit juices and fruit juice containing water sweetening agents and natural fruit juice; Waterbeverages

Grounds for Opposition

No bona fide intent to use mark in commerce for identified goods or services	Trademark Act Section 1(b)
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Attachments	2016-05-09 Notice of Opposition_Mantra Water.pdf(210404 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	/timothy kappel/
Name	Timothy Kappel
Date	05/10/2016

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

MANTRA, LLC)	In the Matter of:
)	Trademark Application
Opposer)	Serial No. 86611056
)	
vs.)	Mark: MANTRA WATER
)	
AUDI GOZLAN)	Published: April 12, 2016
)	
Applicant)	Opposition No.: _____

NOTICE OF OPPOSITION

NOW COMES Mantra, LLC ("Opposer"), by and through the undersigned counsel, and pursuant to 15 U.S.C. § 1063, to oppose Application Serial No. 86611056 filed by Audi Gozlan ("Applicant") seeking registration of the mark "MANTRA WATER" in standard character form in connection with "de-alcoholised beer, de-alcoholized wines, fruit beverages; glacial water; non-alcoholic beer; non-alcoholic fruit juice beverages; non-alcoholized wines; soft drinks, namely, carbonated fruit juices, fruit based soft drinks, fruit juices and fruit juice containing water sweetening (sic) agents and natural fruit juice; water beverages" in International Class 32.

Background

1. Based on information and belief, Applicant is an individual of Canadian citizenship and resides in Canada.

2. On May 22, 2007, Applicant filed Application Serial No. 77187303 pursuant to Section 1(b) of the Lanham Act based on a

bona fide intent to use the mark "KY20 - MANTRA WATER" in connection with "non-alcoholic and de-alcoholized beers, wines, liqueurs and malt based beverages, fruit based beverages, namely, soft drinks, carbonated fruit juices, fruit juices and fruit juice drinks containing water, sweetening agents and natural fruit juice, and non-alcoholic beverages, namely, carbonated and non-carbonated beverages containing spring water, mineral water or glacial water" in International Class 32.

3. Once published for opposition, Application Serial No. 77187303 was successfully opposed by Kellogg North America Company in Opposition No. 91188168 through a default judgment against Applicant.

4. On April 27, 2015, Applicant filed Application Serial No. 86611056 pursuant to Section 1(a) of the Lanham Act based on current use of the mark "MANTRA WATER" in standard character form in connection with "de-alcoholised beer, de-alcoholized wines, fruit beverages; glacial water; non-alcoholic beer; non-alcoholic fruit juice beverages; non-alcoholized wines; soft drinks, namely, carbonated fruit juices, fruit based soft drinks, fruit juices and fruit juice containing water sweetning (sic) agents and natural fruit juice; water beverages" in International Class 32.

5. Notably, Applicant submitted a specimen in the form of a piece of paper (or sticker) affixed to a store-bought plastic jug or water bottle.

6. On February 29, 2016, the Examining Attorney assigned to Application Serial No. 86611056 issued an Office Action which rightly refused registration, noting that "the specimen does not show the applied-for mark in the drawing in use in commerce."

7. In response to the Office Action, Applicant amended the basis of its application from Section 1(a) to Section 1(b) and alleged a bona fide intent to use the MANTRA WATER mark at least as early as April 27, 2015.

8. On April 12, 2016, Application Serial No. 86611056 was published for opposition in the Official Gazette.

9. Opposer is the owner of common law trademark rights in the marks "MANTRA" (standard character) and "MANTRA ARTISAN ALES" (logo) in connection with Opposer's goods, namely, beer and ale.

10. On September 18, 2015, Opposer filed Application Serial No. 86761322 for its MANTRA standard character mark and Application Serial No. 86761845 for the MANTRA ARTISAN ALES logo mark. Both applications were filed pursuant to Section 1(b) of the Lanham Act based on Opposer's bona fide intent to use the marks as of the application date.

11. Since filing Application Serial Nos. 86761322 and 86761845, Opposer has commenced trademark use of the marks in commerce.

12. On January 6, 2016, the Examining Attorney assigned to Application Serial Nos. 86761322 and 86761845 issued an office

action to Opposer suspending action on the applications in view of Application Serial No. 86611056.

Grounds for Opposition

13. Believing that it will be damaged by registration of Applicant's MANTRA WATER mark, Opposer now files this Notice of Opposition based on Applicant's lack of bona fide intent to use the MANTRA WATER mark in connection with some or all of the goods identified in Application Serial No. 86611056 as of the date of the application.

14. Application Serial No. 86611056 merely seeks to reserve some rights in the MANTRA WATER mark in connection with some or all of the goods identified in the application.

15. Applicant's intent as of the date of the application is best evidenced by the specimen referenced in such application, which specimen falls well short of demonstrating a bona fide intention, and circumstances showing the good faith of Applicant, to use the MANTRA WATER mark in commerce in connection with some or all of the goods identified in the application.

16. Because Applicant lacked a bona fide intent to use the MANTRA WATER mark in connection with some or all of the goods identified in the application as of the date thereof, Application Serial No. 86611056 is void *ab initio* and should be refused pursuant to Section 1(b) of the Lanham Act.

Conclusion

17. Based on the foregoing, Opposer requests that Application Serial No. 86611056 be refused based on Section 1(b) of the Lanham Act.

18. Finally, recognizing that a lack of a bona fide intent to use, standing alone, does not equate to a bad faith intent to deceive, Opposer does not currently allege fraud as a ground for opposition herein. Nevertheless, given the nature of Applicant's obviously deficient specimen, Opposer reserves the right to seek amendment of this Notice of Opposition to include a claim of fraud should discovery reveal that Applicant lacked a good faith belief that use of "MANTRA WATER" on such specimen was sufficient for registration of the MANTRA WATER mark in connection with some or all of the goods identified in Application Serial No. 86611056.

Respectfully submitted,

FARMER PURCELL WHITE & LASSITER, PLLC

/s/ Timothy Kappel

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by transmitting the same via first class mail, postage pre-paid on May 10, 2016 to the Attorney of Record for the Applicant at the following address:

Audi Gozlan, Attorney
5549 Chemin Queen Mary, Suite 8
Montreal, Canada H3X1V8

/s/ Timothy Kappel

Timothy Kappel