

ESTTA Tracking number: **ESTTA947863**

Filing date: **01/16/2019**

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	Societe Anonyme des Eaux Minerales d'Evian
Granted to Date of previous extension	01/16/2019
Address	11 avenue du G�n�ral Dupas Evian-les-Bains, F-74500 FRANCE

Attorney information	LUNA M SAMMAN ARENT FOX LLP 1717 K STREET NW WASHINGTON, DC 20006 UNITED STATES tmdocket@arentfox.com, luna.samman@arentfox.com, Ricardo.Fischer@arentfox.com 202-857-6000
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Applicant Information

Application No	87879510	Publication date	09/18/2018
Opposition Filing Date	01/16/2019	Opposition Period Ends	01/16/2019
Applicant	HONG KONG IVPS INTERNATIONAL LIMITED 18TH FLOOR.128 WELLINGTON STREET CENTRAL.HONG KONG Hongkong, 999077 HONG KONG		

Goods/Services Affected by Opposition

Class 034. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cigar cases; Cigar holders; Cigarette cases; Cigarette filters; Cigarettes containing tobacco substitutes, not for medical purposes; Cigarillos; Electronic cigarettes; Pipe racks for tobacco pipes; Smokers' mouthpieces for cigars and cigarettes; Tobacco pouches
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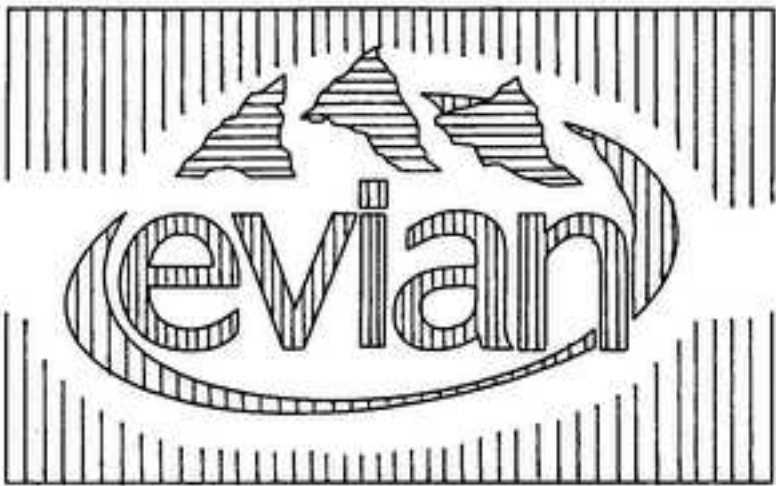
Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	1155024	Application Date	04/03/1979
Registration Date	05/19/1981	Foreign Priority Date	NONE
Word Mark	EVIAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1932/00/00 First Use In Commerce: 1932/00/00 Natural Mineral Waters		


U.S. Registration No.	1778995	Application Date	09/24/1985
Registration Date	06/29/1993	Foreign Priority Date	05/15/1985
Word Mark	EVIAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 0 First Use In Commerce: 0 SPORTSWEAR, NAMELY, [SWIMWEAR,] BEACHWEAR, TENNIS WEAR,[SKI WEAR, GYM SUITS, WARM-UP SUITS, SHORTS, SLACKS, PANTS, TROUSERS,] SHIRTS, TOPS, T-SHIRTS, PULLOVERS, [COATS,]JACKETS, SWEATERS, BLAZERS,[SPORTS COATS,] DRESSES, HATS, HEADBANDS, HEADWEAR, WRISTBANDS, [GLOVES,] BELTS,SHOES, BOOTS[AND SLIP-PERS]		

U.S. Registration No.	2822102	Application Date	11/20/2001
Registration Date	03/16/2004	Foreign Priority Date	NONE
Word Mark	EVIAN		
Design Mark			

Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0 Preparations and other substances for perfumery products, namely, [perfume oils, skin soap, toilet soap, hand soap, face soap, body soap, saddle soap, essential oils for personal use,] cosmetics, [hair lotions, beauty products, namely, cold cream and hair removing cream, tooth paste]</p> <p>Class 016. First use: First Use: 0 First Use In Commerce: 0 [paper bags for packaging, sheets of packing paper, plastic bags for packing, plastic bags for packaging, plastic bubble packs for wrapping or packaging, paper boxes and cardboard boxes, school stationery articles, namely, writing paper, envelopes, office stationery, exercise books, notebooks, desk pads, writing paper, envelopes for stationery, bookmarks, drawing pads, coin albums, photograph albums, stamp albums, folders for documents, document files, erasers and correcting fluid for type, writing chalk, pencils, pencil sharpeners, drawing rulers, drafting rulers, ungraduated rulers, drawing kits comprised of drawing pencils and drawing pads, desk blotters, rubber stamps, inking pads, artists' materials, namely, paint brushes, artists' painting palettes, drawing boards; drawing instruments, namely, set squares, drawing compasses, drafting compasses, photographs, printing blocks, namely, block of capital letters, stickers, iron-on transfers, plastic transfers, glues for stationery or household purposes, travel magazines and sports magazines, comic strips, calendars, almanacs, diaries, playingcards, geographical maps, postcards, greetings cards, serviettes made of paper, bathroom tissues, facial tissues, paper drop cloths, paper cloths for cleaning and polishing, blackboards, theater sets made of cardboard, posters, embroidery design patterns, typewriters, paper shopping bags]</p> <p>Class 018. First use: First Use: 0 First Use In Commerce: 0 [Trunks, traveling bags, rucksacks, backpacks, beach bags, school bags, satchel bags, leather shopping bags, mesh shopping bags, textile shopping bags, umbrellas, parasols, purses, credit card wallets, card wallets, purses]</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0 [Clothing, namely, knickers, Bermuda shorts, trousers, jackets, shirts, short-sleeved shirts, T-shirts, socks, stockings, sweat shirts, pajamas, underpants, underwear, dresses, skirts, overcoats, coats, caps, hats, belts, ties, scarves, gloves, shoes, boots, sandals, slippers, sportswear, namely, athletic shoes, sweat shirts and shorts, swimwear]</p> <p>Class 032. First use: First Use: 0 First Use In Commerce: 0 Still [and sparkling] mineral waters,[still and sparkling non-mineral drinking waters, non-alcoholic drinks, namely, fruit juices and vegetable juices, fruit and vegetable-based drinks, lemonades, tonic water; concentrates, syrups and powders used in the preparations for making drinks, namely, carbonated, low calorie and non-carbonated soft drinks, fruit drinks, fruit flavored soft drinks, fruit juice concentrates, fruit juices, aerated fruit juices, fruit nectars, fruitpunch, fruit-based soft drinks flavoredwith tea, vegetable juice and non-alcoholic malt beverage]</p>

U.S. Registration No.	3594001	Application Date	02/20/2008
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	EVIAN BRUMISATEUR FACIAL SPRAY		

Design Mark	
Description of Mark	<p>The mark consists of a grey mountain range over a pink background; there are pink and grey bubbles coming out of the mountain range; beneath the mountain range is the word "EVIAN" in red plain block letters; the color white appears surrounding the mountain range and the word "EVIAN"; beneath the word "EVIAN" is a grey circle; on the lower part of this design there appears the word "BRUMISATEUR" in grey block letters. The wording "FACIAL SPRAY" appears in the color pink within the grey circle.</p>
Goods/Services	<p>Class 003. First use: First Use: 2007/09/11 First Use In Commerce: 2007/09/11 Cosmetic preparations for skin care</p>

U.S. Application No.	79248477	Application Date	11/13/2018
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EVIAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0 Perfumery and beauty articles, soap products, make-up, essential oils, cosmetics, hair products, dentifrices</p>		

Attachments	<p>76341100#TMSN.png(bytes) 77401834#TMSN.png(bytes)</p>
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Signature	/luna m. samman/
Name	LUNA M SAMMAN
Date	01/16/2019

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

In re Application No. 87879510 for the mark EVIAN, filed April 17, 2018, and published September 18, 2018.

SOCIÉTÉ ANONYME DES	,)	
EAUX MINÉRALES D'EVIAN,)	
)	
Opposer,)	
)	
v.)	Opp. No. _____
)	
HONG KONG IVPS INTERNATIONAL)	
LIMITED)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Société Anonyme des Eaux Minérales d’Evian (“Opposer”), a société anonyme duly organized and existing under the laws of France, having a place of business at 11 Avenue du Général Dupas, 74500 Evian-les-Bains, France, believes that it will be damaged by the registration of the mark shown in Application Serial No. 87879510 and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for opposition, Opposer alleges the following:

History of Opposer and Danone

1. Opposer is a subsidiary of the French company, Danone SA (“Danone”). Danone is a leader in the global food and beverage industry and the world’s largest producer of fresh dairy and plant-based products.
2. Danone was founded in the year 1919 and employs at least 100,000 people over the world. Danone has various subsidiaries throughout the world, selling and distributing its famous

products in more than 120 countries. In the French financial year ending 2017, Danone recorded sales/turnover of \$24,700 million.

3. Danone, then known as BSN Group, acquired Opposer, which was known as Evian Mineral Water Company, in 1970.

History of the EVIAN® Brand

4. Since at least as early as 1890, Opposer's predecessor-in-interest engaged in the widespread commercial sale of natural mineral water from Evian-les-Bains, a commune in the Alps in France under the brand EVIAN®.

5. Due to the popularity of the product, sales of EVIAN® natural mineral water grew to more than 12 million bottles by 1911.

6. The "Baby Boom" of the 1950s saw sales explode from 14 million bottles in 1948 to 100 million in 1954. By 1958, production to reached 270 million bottles.

7. The popularity of Opposer's EVIAN® natural mineral water continued to grow, and today, goods under the EVIAN® brand are distributed to and sold extensively in more than 120 countries.

8. Sales of EVIAN® natural mineral water began in the United States at least as early as 1978 and have continued through various trade channels including supermarkets, general merchants, provision stores, and pharmacies, as well as the Internet.

9. In 2015, global sales revenues of EVIAN® products amounted to approximately \$455 million.

10. In the United States, Opposer sold more than 140,000 million bottles of EVIAN® natural mineral water for sales revenues of more than \$100,000 million in 2018.



11. Apart from the bottling and selling of EVIAN® natural mineral water, Opposer also sells soft drinks such as EVIAN® Fruits & Plants and developed a tea-based water in partnership with the famous tea brand Kusmi Tea.
12. Opposer also manufactures natural mineral water conditioned in spray cans sold under the brands Brumisateur® EVIAN® for cosmetic use and operates spas under the name “EVIAN® Spa” in various countries such as Vietnam, Republic of Korea, and Japan.
13. All products bearing the EVIAN® brand are manufactured under strict quality control to maintain the highest standards of production. As a result, products that bear the EVIAN® brand, command a high reputation and expectancy of the very best quality of products by customers.
14. Opposer has spent a considerable amount of time, money, and resources towards the promotion and advertisement of its EVIAN® brand, including the operation of international website, a Facebook page with nearly 1,600,000 followers, and an Instagram account with more than 86,000 followers. Opposer also has a very famous Snapchat account @evianwater.
15. Opposer has also been a long-time partner for the world of sport, including acting as the official water supplier to two of the major tennis grand slams: Wimbledon and the US Open.
16. As a result of Opposer’s long, extensive, and continuous use, the EVIAN® brand is solely associated with Opposer throughout the world and in the United States.
17. Opposer’s EVIAN® brand is so widely known that it has been recognized as famous by various courts/tribunals around the world.

Opposer’s Rights in the EVIAN® Marks

18. Opposer is the owner of all right, title, and interest in and to famous marks containing or comprising the word EVIAN (collectively, the “EVIAN® Marks”), which Opposer uses in

connection with natural mineral waters, and a variety of goods, including cosmetic preparations for skin care, clothing, and other products and services for and relating to natural mineral waters.

19. Opposer's rights in the EVIAN® Marks have been recognized by the United States Patent and Trademark Office. Opposer owns several federal registrations and applications for the EVIAN® Marks, including the following:

<u>Trademark</u>	<u>App./Reg. No.</u>	<u>Filing/Registration Date</u>	<u>Goods/Services</u>
EVIAN	1155024	May 19, 1981	Natural mineral waters
EVIAN	1778995	June 29, 1993	Sportswear, namely, beachwear, tennis wear, shirts, tops, t-shirts, pullovers, jackets, sweaters, blazers, dresses, hats, headbands, headwear, wristbands, belts, shoes, boots
EVIAN & Design 	2822102	March 16, 2004	Preparations and other substances for perfumery products, namely, cosmetics Still mineral waters
EVIAN BRUMISATEUR FACIAL SPRAY 	3594001	March 24, 2009	Cosmetic preparations for skin care
EVIAN	79248477	November 13, 2018	Perfumery and beauty articles, soap products, make-up, essential oils, cosmetics, hair products, dentifrices

20. Opposer's registrations are valid and subsisting, and Registration Nos. 1155024, 1778995, 2822102 and 3594001 are incontestable. These registrations provide conclusive evidence of Opposer's ownership of the EVIAN® Marks, of the validity of the marks, and of Opposer's exclusive right to use the marks in commerce.

21. Opposer adopted and first used the EVIAN® Marks at least as early as 1890, which is long prior to the filing date of Applicant's application and prior to any use by Applicant of the mark it seeks to register. The EVIAN® Marks have been used in interstate commerce continuously in the United States since 1978.

22. Opposer has extensively used, advertised, and promoted in interstate commerce the EVIAN® Marks in connection with natural mineral waters, and a variety of goods, including clothing, cosmetic preparations for skin care, and other products and services for and relating to natural mineral waters.

23. As a result of such extensive use, advertising, and promotion, the EVIAN® Marks have become well-known and famous as distinctive indicators of the origin of Opposer's goods and services, and the marks have become extremely valuable symbols of Opposer's goodwill.

24. Notwithstanding Opposer's prior established rights in the EVIAN® Marks, Applicant filed an intent-to-use application with the United States Patent and Trademark Office on April 17, 2018 for the mark EVIAN (Ser. No. 87879510) for "Cigar cases; Cigar holders; Cigarette cases; Cigarette filters; Cigarettes containing tobacco substitutes, not for medical purposes; Cigarillos; Electronic cigarettes; Pipe racks for tobacco pipes; Smokers' mouthpieces for cigars and cigarettes; Tobacco pouches."

25. Upon information and belief, Applicant knew or had reason to know of Opposer's prior rights in the EVIAN® Marks when Applicant filed its application.

Likelihood of Confusion - §2(d)

26. The foregoing paragraphs of this Notice of Opposition are incorporated by reference as part of this Count.

27. The mark that Applicant seeks to register so closely resembles the EVIAN® Marks that the use and registration thereof is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's goods and will injure and damage Opposer and the goodwill and reputation symbolized by the EVIAN® Marks.

28. The Applicant's alleged mark is substantially similar visually, aurally, and in overall commercial impression to one or more of Opposer's EVIAN® Marks, or the dominant portions thereof.

29. Applicant's goods are so closely related to Opposer's goods and services that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Opposer, or that Applicant is in some way connected or affiliated with, or approved or sponsored by, Opposer, all to Opposer's irreparable damage.

30. Likelihood of confusion is enhanced by the fame of Opposer's EVIAN® Marks and by the fact that consumers associate these marks with goods and services sold, approved, or endorsed by Opposer.

31. Likelihood of confusion is enhanced by the fact that purchasers of Applicant's goods are prospective purchasers of Opposer's goods and services, and vice-versa.

Dilution - §43(c)

32. The foregoing paragraphs of this Notice of Opposition are incorporated by reference as part of this Count.

33. Opposer's EVIAN® Marks are widely recognized by the general consuming public of the United States as designations of the source of Opposer's goods and services.
34. Opposer's EVIAN® Marks are highly distinctive.
35. Opposer's EVIAN® Marks have been extensively used and promoted throughout the United States and internationally for many years.
36. A substantial amount of goods and services have been sold under Opposer's EVIAN® Marks throughout the United States and internationally.
37. The extent of consumers recognition of Opposer's EVIAN® Marks is substantial in both the United States and internationally.
38. Opposer's EVIAN® Marks are registered on the Principal Register.
39. Because of the extensive use and advertising of Opposer's EVIAN® Marks, the substantial sales under the EVIAN® Marks, and the actual recognition of the EVIAN® Marks by the consuming public, Opposer's EVIAN® Marks have become famous as distinctive symbols of Opposer's goodwill.
40. Applicant has filed for, and is making or intends to make unauthorized use in commerce of, a mark that is identical or highly similar and nearly identical to one or more of the famous EVIAN® Marks.
41. Applicant's alleged use began or will begin long after Opposer's EVIAN® Marks became famous.
42. Applicant's alleged mark is likely to cause, and will cause, dilution of the distinctive qualities of Opposer's EVIAN® Marks by blurring and tarnishment.
43. Use or registration of Applicant's mark will lessen the capacity of Opposer's famous EVIAN® Marks to identify and distinguish Opposer's goods and services.

44. Likelihood of dilution is enhanced by the fact that the Applicant's mark wholly encompasses Opposer's EVIAN® Marks and is substantially similar in appearance, sound, and overall commercial impression to Opposer's EVIAN® Marks or the dominant portions thereof.
45. Applicant's use or registration of Applicant's mark will deprive Opposer of the ability to protect its reputation, persona, and goodwill.
46. Applicant's use or registration of Applicant's mark will blur and tarnish the goodwill symbolized by Opposer's EVIAN® Marks.
47. Likelihood of tarnishment and damage to Opposer's goodwill are enhanced by the fact that Applicant's proposed goods do not comport with the organic and clean nature of Opposer's mineral waters and commitment to a clean environment.
48. Likelihood of tarnishment and damage to Opposer's goodwill are enhanced by the fact that prospective customers who encounter defects in the quality of Applicant's goods will attribute those defects to Opposer, and this will tarnish Opposer's reputation and goodwill.
49. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's mark, and registration should be refused.

WHEREFORE, Opposer prays that the Board sustain this opposition and deny registration of the mark identified in Applicant's application.

SOCIÉTÉ ANONYME DES
EAUX MINÉRALES D'EVIAN

Dated: January 16, 2019

By:



Luna M. Samman
Ricardo Fischer
Arent Fox LLP
1717 K Street, N.W.
Washington, D.C. 20006
(202) 857-6000

Attorneys for Opposer
Société Anonyme des Eaux Minérales d'Evian