

ESTTA Tracking number: **ESTTA1053067**

Filing date: **05/04/2020**

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	Defiance Brands, Inc.
Granted to Date of previous extension	05/03/2020
Address	530 CHURCH STREET SUITE 305 NASHVILLE, TN 37219 UNITED STATES

Attorney information	R. GREGORY PARKER AND MARTHA B. ALLARD BASS, BERRY & SIMS PLC 150 3RD AVENUE SOUTH SUITE 2800 NASHVILLE, TN 37201 UNITED STATES trademarks@bassberry.com 615-742-6200
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**Applicant Information**

Application No	87256839	Publication date	11/05/2019
Opposition Filing Date	05/04/2020	Opposition Period Ends	05/03/2020
Applicant	Creative Bioscience, L.L.C. 381 West Ironwood Drive South Salt Lake, UT 84115 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary and nutritional supplements
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**Applicant Information**

Application No	87256847	Publication date	11/05/2019
Opposition Filing Date	05/04/2020	Opposition Period Ends	
Applicant	Creative Bioscience, L.L.C. 381 West Ironwood Drive South Salt Lake, UT 84115 UNITED STATES		


## Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary and nutritional supplements
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## 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. Application No.	88641124	Application Date	10/03/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DEFIANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Medical adhesive tape in the nature of kinesiology tape; nutritional supplements Class 032. First use: First Use: 0 First Use In Commerce: 0 Water beverages; sports drinks; isotonic sports drinks; powders used in the preparation of athletic performance beverages		

U.S. Application No.	88811771	Application Date	02/26/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DEFIANCE SPORT		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Isotonic sports drinks; powders used in the preparation of isotonic sports drinks and sports beverages; sports beverages		
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U.S. Application No.	88205133	Application Date	11/26/2018
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DEFIANCE FUEL		
Design Mark	<h1>DEFIANCE FUEL</h1>		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Sports drinks		

U.S. Application No.	88205123	Application Date	11/26/2018
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DEFIANCE FUEL		
Design Mark	<h1>DEFIANCE FUEL</h1>		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Energy drinks		

U.S. Application No.	87001498	Application Date	04/14/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DEFIANCE LABS		

Design Mark	<b>DEFIANCE LABS</b>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2015/08/20 First Use In Commerce: 2015/08/20 Dietary and nutritional supplements

Related Proceedings	Opposition Nos. 91242713 (parent) and 91242810
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Attachments	88641124#TMSN.png( bytes ) 88811771#TMSN.png( bytes ) 88205133#TMSN.png( bytes ) 88205123#TMSN.png( bytes ) 87001498#TMSN.png( bytes ) Notice of Opposition Re DEFIANT A BOLD RESISTANCE TO AGING.pdf(629398 bytes )
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Signature	/Martha B. Allard/
Name	R. GREGORY PARKER AND MARTHA B. ALLARD
Date	05/04/2020

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

In the matter of Application Serial Nos.: 87256839 and 87256847

By Creative Bioscience, LLC

For the Marks:           DEFIANT A BOLD RESISTANCE TO AGING AND GRAVITY  
                                  DEFIANT A BOLD RESISTANCE

Filing Date: December 5, 2016

Published in the Official Gazette  
on November 5, 2019

Defiance Brands, Inc.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
	)	
Creative Bioscience, LLC,	)	
	)	
Applicant.	)	
	)	

Box TTAB FEE  
Assistant Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

Defiance Brands, Inc. (“Opposer”), by and through its undersigned attorneys, believes that it will be damaged by the registration of the marks shown in Application Serial Nos.

87256839 and 87256847, both in International Class 005 (the “Applications”), and hereby opposes the same.

In support of its opposition, Opposer asserts the following:

1. Opposer Defiance Brands, Inc. (“Defiance”) is a Tennessee corporation, having its principal place of business at 530 Church Street, Nashville, Tennessee 37219.

2. Opposer is a privately held company that specializes in products that enhance athletic performance. Its flagship product is its DEFIANCE FUEL beverage, which is an ultra-purified water that, when ingested, hydrates cells more effectively. This is a popular beverage for athletes, sports enthusiasts and members of sports teams.

3. Opposer’s DEFIANCE FUEL mark is registered for use with “powders used in the preparation of isotonic sports drinks and sports beverages; water beverages” (Reg. No. 4852857) (“DEFIANCE FUEL Mark”). The DEFIANCE FUEL Mark was first used anywhere at least as early as January 7, 2014 and first used in interstate commerce at least as early as January 15, 2015, and the mark is currently in use. The registration is valid and subsisting. Attached as Exhibit A is a copy of the Certificate of Registration and a printout from the USPTO TESS database showing its status as “live”.

4. Opposer advertises and promotes the goods offered under its DEFIANCE FUEL mark on its website, on Facebook <https://www.facebook.com/DefianceFuel/>, on other social media platforms and in radio ads.

5. Opposer also offers products under DEFIANCE FUEL for sale through its website at [www.defiancefuelstore.com](http://www.defiancefuelstore.com) and online at [www.amazon.com](http://www.amazon.com).

6. Opposer also offers its products under the DEFIANCE FUEL for sale through partner gym, yoga studios, therapy centers, specialty sporting goods stores, and wellness centers serving professional and amateur athletes and the everyday athlete.

7. Opposer has continuously used its DEFIANCE FUEL Mark since its date of first use.

8. Opposer has not abandoned its DEFIANCE FUEL Mark.

9. Opposer has common law rights in and to its DEFIANCE FUEL Mark.

10. Opposer is also the owner of a number of applications and registrations for marks that consist in whole or in part of the term “DEFIANCE,” including the following marks (collectively, “the DEFIANCE Marks”):

Mark	Goods and Services	Serial Number	Filing Date	Filing Basis
DEFIANCE	Water beverages; sports drinks; isotonic sports drinks; powders used in the preparation of athletic performance beverages; nutritional supplements	88641124	October 3, 2019	Intent to Use
DEFIANCE SPORT	Isotonic sports drinks; powders used in the preparation of isotonic sports drinks and sports beverages; sports beverages	88811771	February 26, 2020	Intent to Use
DEFIANCE FUEL	Sports drinks	88205133	November 26, 2018	Intent to Use
DEFIANCE FUEL	Energy drinks	88205123	November 26, 2018	Intent to Use

DEFIANCE LABS	Dietary and nutritional supplements	87001498	April 14, 2016	First Use 08/20/2015; Use in Interstate Commerce: 08202015
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11. Opposer’s DEFIANCE FUEL Mark and its DEFIANCE Marks are collectively referred to herein as “Opposer’s Marks”. TESS printouts showing the status of the applications are attached hereto as Exhibit B.

12. Opposer’s Marks seek registration for a variety of sports and energy drinks and also nutritional supplements.

13. Opposer’s application to register its DEFIANCE LABS mark seeks registration for use with “dietary and nutritional supplements” (Ser. No. 87001498). Opposer’s application to register its DEFIANCE LABS mark was filed on April 14, 2016. The mark was first used anywhere and in interstate commerce on August 20, 2015.

14. Opposer also owns an application to register the mark DEFIANCE, which seeks registration for use with, among other things, “nutritional supplements” (Ser. No. 88641124). The application was filed on October 3, 2019 and is based on intent to use.

15. The applications for registration of the Opposer’s Marks are valid and subsisting.

16. Upon information and belief, Applicant Creative Bioscience LLC is a Utah limited liability company having a principal place of business at 381 West Ironwood Drive South, Salt Lake, Utah 84115 (“Creative Bioscience” or “Applicant”).

17. Upon information and belief, Applicant filed an application to register its DEFIANT A BOLD RESISTANCE TO AGING AND GRAVITY mark on December 5, 2016



(Ser. No. 87256839) and its DEFIANT A BOLD RESISTANCE mark on December 5, 2016 (Ser. No. 87256847), both for use with “dietary and nutritional supplements” in International Class 05 (collectively, “Applicant’s Marks”). Both applications were filed based on intent to use.

18. Applicant’s Marks have both been published for opposition in the Official Gazette – each on June 5, 2019.

19. Opposer has timely filed extensions of time to oppose the Applicant’s Marks.

20. Opposer’s filing date (Mark 21, 2014) for its application to register its DEFIANCE FUEL Mark predates the filing date (December 5, 2016) of the applications to register Applicant’s Marks.

21. Opposer’s date of first use anywhere (January 7, 2014) and in interstate commerce (January 15, 2015) of its DEFIANCE FUEL Mark predates the filing dates (December 5, 2016) of the applications to register Applicant’s Marks.

22. Consequently, Opposer has superior rights in and to its DEFIANCE FUEL Mark.

23. Similarly, Opposer has superior rights in and to its DEFIANCE LABS mark.

24. Applicant’s Marks incorporating the predominant term DEFIANT are similar in sight, sound and meaning to the predominant term DEFIANCE in Opposer’s Marks.

25. The supplements described in the applications to register the Applicant’s Marks are related to the sports beverages and energy drinks offered under Opposer’s DEFIANCE FUEL Mark and are of the type of goods that commonly emanate from a single source.

26. The supplements described in the applications to register the Applicant’s Marks are identical to the supplements offered under Opposer’s DEFIANCE LABS mark.

27. The supplements described in the applications to register the Applicant's Marks are identical to the supplements intended to be offered under Opposer's DEFIANCE mark (as shown in Ser. No. 88641124).

28. The supplements described in the applications to register Applicant's Marks will be marketed and sold through the same channels of trade as the goods offered or intended to be under Opposer's Marks.

29. Applicant's Marks are confusingly similar to Opposer's Marks, such that when Applicant's Marks are used in connection with the goods recited in Applicant's applications, they so nearly resemble Opposer's Marks as to be likely to cause confusion, to cause mistake, or to deceive.

30. Further, consumers are likely to falsely believe that the goods offered under Applicant's Marks are sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected, or associated with Opposer.

31. Any defect, objection, or fault found with any of Applicant's goods offered under Applicant's Marks would injure the valuable reputation and goodwill that Opposer has built up and established under Opposer's Marks.

32. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to use Applicant's Marks, which would be a source of damage and injury to Opposer due to the similarity between Applicant's Marks and Opposer's Marks.

WHEREFORE, Opposer believes that it will be damaged by the registration of the marks shown in the applications, and requests that this Opposition be sustained, and that registrations to Applicant be refused.

Please direct all communications regarding the referenced opposition proceeding to R. Gregory Parker, Bass, Berry, & Sims PLC, 150 Third Avenue South, Nashville, TN at (615) 742-7788.

Please charge any fees due in connection with this proceeding to Deposit Account No. 502483-1211 and charge our internal client-matter number 121819.0101.

Respectfully submitted,

/Martha B. Allard/  
R. Gregory Parker, Esq.  
Martha Allard, Esq.  
Caitlin Wilkinson, Esq.  
BASS, BERRY & SIMS PLC  
150 3rd Avenue South, Suite 2800  
Nashville, Tennessee 37201  
Telephone: (615) 742-6200

*Attorneys for Defiance Brands, Inc.*

28187183.1

# **Exhibit A**

# United States of America

United States Patent and Trademark Office

## Defiance Fuel

**Reg. No. 4,852,857**

**Registered Nov. 10, 2015**

**Corrected Apr. 25, 2017**

**Int. Cl.: 32**

**Trademark**

**Principal Register**

DEFIANCE BRANDS, INC. (TENNESSEE CORPORATION)  
530 CHURCH STREET  
SUITE 305  
NASHVILLE, TN 37219

CLASS 32: Powders used in the preparation of isotonic sports drinks and sports beverages;  
Water beverages

FIRST USE 1-7-2014; IN COMMERCE 1-15-2015

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY  
PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 86-977,518, FILED 03-21-2014



*Michelle K. Lee*

Director of the United States  
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.\* See 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

**NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.**

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# Defiance Fuel

**Word Mark** DEFIANCE FUEL

**Goods and Services** IC 032. US 045 046 048. G & S: Powders used in the preparation of isotonic sports drinks and sports beverages; Water beverages. FIRST USE: 20140107. FIRST USE IN COMMERCE: 20150115

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 86977518

**Filing Date** March 21, 2014

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** August 5, 2014

**Change In Registration** CHANGE IN REGISTRATION HAS OCCURRED

**Registration Number** **4852857**

**Registration Date** November 10, 2015

**Owner** (REGISTRANT) BWTC Holding, LLC LIMITED LIABILITY COMPANY TENNESSEE Suite 530 530 Church St. Nashville TENNESSEE 37219

(LAST LISTED OWNER) DEFIANCE BRANDS, INC. CORPORATION TENNESSEE 530 CHURCH STREET SUITE 305 NASHVILLE TENNESSEE 37219

**Assignment Recorded** ASSIGNMENT RECORDED

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# **Exhibit B**

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# DEFIANCE

**Word Mark** DEFIANCE

**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: Medical adhesive tape in the nature of kinesiology tape; nutritional supplements

IC 032. US 045 046 048. G & S: Water beverages; sports drinks; isotonic sports drinks; powders used in the preparation of athletic performance beverages

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** **88641124**

**Filing Date** October 3, 2019

**Current Basis** 1B

**Original Filing Basis** 1B

**Owner** (APPLICANT) Defiance Brands, Inc. CORPORATION TENNESSEE Suite 305 530 Church Street Nashville TENNESSEE 37219

**Attorney of Record** Martha B. Allard

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# DEFIANCE SPORT

<b>Word Mark</b>	DEFIANCE SPORT
<b>Goods and Services</b>	IC 032. US 045 046 048. G & S: Isotonic sports drinks; powders used in the preparation of isotonic sports drinks and sports beverages; sports beverages
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	88811771
<b>Filing Date</b>	February 26, 2020
<b>Current Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Owner</b>	(APPLICANT) Defiance Brands, Inc. CORPORATION TENNESSEE Suite 711 530 Church Street Nashville TENNESSEE 37219
<b>Attorney of Record</b>	Martha B. Allard
<b>Prior Registrations</b>	4852857
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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<b>Word Mark</b>	DEFIANCE FUEL
<b>Goods and Services</b>	IC 032. US 045 046 048. G & S: Sports drinks
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	<b>88205133</b>
<b>Filing Date</b>	November 26, 2018
<b>Current Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Owner</b>	(APPLICANT) Defiance Brands, Inc. CORPORATION TENNESSEE Suite 305 530 Church Street Nashville TENNESSEE 37219
<b>Attorney of Record</b>	Martha B. Allard, Juhi K. Patel, Johnathan D. Holbrook, Paige W. Mills and Robert L. Brewer
<b>Prior Registrations</b>	4852857
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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<b>Word Mark</b>	DEFIANCE FUEL
<b>Goods and Services</b>	IC 032. US 045 046 048. G & S: Energy drinks
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	<b>88205123</b>
<b>Filing Date</b>	November 26, 2018
<b>Current Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Owner</b>	(APPLICANT) Defiance Brands, Inc. CORPORATION TENNESSEE Suite 305 530 Church Street Nashville TENNESSEE 37219
<b>Attorney of Record</b>	Martha B. Allard, Juhi K. Patel, Johnathan D. Holbrook, Paige W. Mills and Robert L. Brewer
<b>Prior Registrations</b>	4852857
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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**Word Mark** DEFIANCE LABS

**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements. FIRST USE: 20150820. FIRST USE IN COMMERCE: 20150820

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** **87001498**

**Filing Date** April 14, 2016

**Current Basis** 1A

**Original Filing Basis** 1A

**Owner** (APPLICANT) DEFIANCE BRANDS, INC. CORPORATION TENNESSEE 530 CHURCH STREET SUITE 305 NASHVILLE TENNESSEE 37219

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Martha B. Allard, Juhi K. Patel, Johnathan D. Holbrook, Paige W. Mills and Robert L. Brewer

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LABS" APART FROM THE MARK AS SHOWN

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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