

ESTTA Tracking number: **ESTTA194904**

Filing date: **02/26/2008**

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

Proceeding	91161557
Party	Defendant Osborne Distribuidora, S.A.
Correspondence Address	Deborah Tellerman Berkowitz, Esq. RUDEN MCCLOSKEY SMITH SCHUSTER & RUSSELL 200 E. BROWARD BOULEVARD SUITE 1500 FORT LAUDERDALE, FL 33301 UNITED STATES Deborah.Berkowitz@ruden.com, Barbara.Bubser@ruden.com
Submission	Answer and Counterclaim
Filer's Name	Deborah Tellerman Berkowitz
Filer's e-mail	trademarks@ruden.com
Signature	/Deborah Tellerman Berkowitz/
Date	02/26/2008
Attachments	Osborne Answer to Opposition.pdf ( 6 pages )(515341 bytes ) Exhibit A Osborne Answer.pdf ( 6 pages )(995912 bytes )

Registrations Subject to Cancellation

Registration No	2579008	Registration date	06/11/2002
Registrant	Red Bull GmbH Am Brunnen 1 Fuschl am See, A-5330 AUSTRIA		
Goods/Services Subject to Cancellation	Class 032. First Use: 1987/01/00 , First Use In Commerce: 1996/05/31 Goods/Services:		
Registration No	2524019	Registration date	01/01/2002
International Registration No.	NONE	International Registration Date	NONE
Registrant	Red Bull GmbH Am Brunnen 1 Fuschl am See, A-5330 AUSTRIA		
Goods/Services Subject to Cancellation	Class 032 Goods/Services:		
Registration No	2616240	Registration date	09/10/2002
International Registration No.	NONE	International Registration Date	NONE
Registrant	Red Bull GmbH Am Brunnen 1 Fuschl am See, A-5330 AUSTRIA		
Goods/Services Subject to Cancellation	Class 032 Goods/Services:		



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

In the Matter of:

Trademark Application No. 76/320,629 for the trademark TORO Osborne & Black Bull Design (Classes 32, 33 and 42), filed October 3, 2001, and published in the Official Gazette of February 3, 2004

RED BULL GMBH )  
 )  
 Opposer )  
 )  
 vs. ) Opposition No. 91161557  
 )  
 OSBORNE DISTRIBUIDORA, S.A.)  
 )  
 Applicant. )  
 )  
 \_\_\_\_\_ )

APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO THE NOTICE OF  
OPPOSITION; COUNTERCLAIM FOR CANCELLATION OF OPPOSER'S PLEADED  
REGISTRATIONS AND MOTION FOR SUSPENSION OF OPPOSITION PROCEEDING

To The Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Sir:

Osborne Distribuidora, S.A. ("Applicant") answers the Notice of Opposition of Red Bull GmbH ("Opposer") as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice of Opposition and, therefore, denies same.

2. Paragraph 2 of Notice of Opposition is missing from Opposer's Notice of Opposition.

3. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice of Opposition and, therefore, denies same.

4. Applicant denies the allegations contained in Paragraph 4 of the Notice of Opposition.

5. Applicant admits the allegations contained in Paragraph 5 of the Notice of Opposition.

6. Applicant admits the allegations contained in Paragraph 6 of the Notice of Opposition.

7. Applicant admits the allegations contained in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations contained in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations contained in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations contained in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations contained in Paragraph 12 of the Notice of Opposition.

#### AFFIRMATIVE DEFENSES

1. There is no likelihood of confusion between Applicant's mark and Opposer's Registration Numbers 2579008 for BULL, 2524019 for VODKA BULL, and 2616240 for BLACK BULL which are cited in the Notice of Opposition (hereinafter Opposer's Marks). Based upon the current description of goods, Opposer's Marks are for goods which are dissimilar and unrelated to the goods of Applicant. A current printout of information from the electronic database records of the USPTO showing the current description of goods of Opposer's Marks is attached hereto as Applicant's composite Exhibit A.

2. There is no likelihood of confusion between Applicant's mark and the Opposer's Marks.

3. Opposer's failure to use the BULL, VODKA BULL and BLACK BULL Marks, which are the subject of Opposer's Registration Nos. 2579008, 2524019 and 2616240, respectively, in the United States since their respective dates of registration, and for at least three consecutive years preceding the filing date of these Affirmative Defenses, with no intent on the part of Opposer to resume use, invalidates said Registration Nos. 2579008, 2524019 and 2616240.

4. Opposer's failure to use the BULL mark, which is the subject of Opposer's Registration No. 2579008, in the United States, thereby invalidates said

Registration No. 2579008, in view of Opposer's invalid specimen and Statement of Use filed during the prosecution of said Registration No. 2579008.

COUNTERCLAIM FOR CANCELLATION OF OPPOSER'S PLEADED  
REGISTRATIONS

Applicant hereby counterclaims to cancel Opposer's pleaded Registration Numbers 2579008 for BULL; 2524019 for VODKA BULL and 2616240 for BLACK BULL ("Opposer's Marks") pursuant to Trademark Rule 2.106(b)(2)(i). As grounds in support of the counterclaim, Applicant alleges as follows:

1. On information and belief, Opposer has made no use of Opposer's Marks in commerce in or with the United States and has made no use of Opposer's Marks in commerce in or with the United States for at least three consecutive years preceding the filing of this counterclaim for cancellation and Opposer has no intent to resume such use.

2. As a result of Opposer's failure to use the Opposer's Marks for at least three consecutive years with no intent to resume such use, the BULL, VODKA BULL and BLACK BULL marks that are the subject of U.S. Registration Numbers 2579008, 2524019 and 2616240 respectively, have become abandoned pursuant to Section 45 of the Trademark Act.

3. On information and belief, Opposer's specimen in the prosecution of the BULL mark, Reg. No. 2579008, does not show use of the BULL mark by Opposer in view of Opposer having submitted a "staged" photograph of a composite "RED BULL" mark which intentionally obscured the "RED" element of the RED BULL mark and having submitted a false declaration of use of the BULL mark in its Statement of Use, when in fact no use of the BULL mark has ever been made by Opposer in the United States.

4. As a result of Opposer's fraudulent specimen and Statement of Use for the BULL mark, Registration No. 2579008 is invalid and should be cancelled.

WHEREFORE, Applicant prays that the Opposition be dismissed and that the Counterclaim for Cancellation be granted with Registration Numbers 2579008, 2524019 and 2616240 being ordered cancelled.

The Commissioner is hereby authorized to charge the \$900.00 for petition fees under 37 C.F.R. §2.111(c)(1) to our Deposit Account No. 18-2262. If for any reason this amount is insufficient, it is requested that said Deposit Account be charged with any deficiency.

MOTION FOR SUSPENSION OF OPPOSITION PROCEEDING

In view of Applicant's Counterclaim for Cancellation of Opposer's pleaded registrations, Applicant requests that the pending Opposition Proceeding be suspended pending the outcome of the Cancellation Proceeding.

Respectfully submitted,



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Deborah Tellerman Berkowitz, Esq.  
Matthew S. Nelles, Esq.  
James David Johnson, Esq.  
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RUSSELL, P.A.  
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Fort Lauderdale, FL 33301  
Telephone: (954) 761-2918  
E-mail: trademarks@ruden.com

Date: 2/26/08

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this paper has been served upon counsel for Opposer, Martin R. Greenstein, Esq., TechMark a Law Corporation, 4820 Harwood Road, Suite 200, San Jose, California, 95124, via U.S. Mail and email, MRG@TechMark.com on February 26, 2008.

BARBARA BUBSER

(Print or type name of person signing the certificate)

Barbara B. Bubser

(Signature of person signing the certificate)

February 26, 2008

(Date of Signature)



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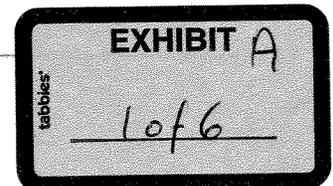
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TARR Status ASSIGN Status TDR TTAB Status ( Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

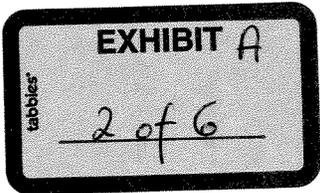
Word Mark BULL  
 Goods and Services IC 032. US 045 046 048. G & S: [ mineral waters and aerated waters and other ] non-alcoholic beverages, namely, [ flavored waters; ] soft drinks; [ fruit drinks and fruit juices; powders and syrups for making soft drinks, fruit drinks, fruit juices; ] and energy and sports drinks [ included ]. FIRST USE: 19870100. FIRST USE IN COMMERCE: 19960531  
 Mark Drawing Code (1) TYPED DRAWING  
 Serial Number 75405825  
 Filing Date December 15, 1997  
 Current Filing Basis 1A  
 Original Filing Basis 1B  
 Published for Opposition September 4, 2001  
 Change In Registration CHANGE IN REGISTRATION HAS OCCURRED  
 Registration Number 2579008  
 Registration Date June 11, 2002  
 Owner (REGISTRANT) Red Bull GmbH LTD LIAB CO AUSTRIA Am Brunnen 1 Fuschl am See AUSTRIA A-5330  
 Attorney of Record MARTIN R GREENSTEIN  
 Type of Mark TRADEMARK  
 Register PRINCIPAL  
 Live/Dead Indicator LIVE

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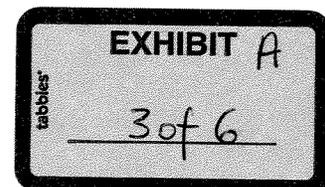
**Typed Drawing**

**Word Mark** VODKA BULL  
**Goods and Services** IC 032. US 045 046 048. G & S: [ Beer; ] mineral waters, aerated waters, carbonated waters, flavored waters and other non-alcoholic beverages, namely, punches, soft drinks, smoothies [ and lemonades ] ; sports drinks; energy drinks; [ isotonic drinks, hypertonic drinks and hypotonic drinks, for use and/or as required by athletes and those engaged in active or stressful sports and activities; fruit juices and fruit drinks, vegetable juices and vegetable drinks; syrups, powders, concentrates and effervescent tablets for making drinks and beverages; ] non-alcoholic cocktails and drinks, in Int; Class 32

IC 033. US 047 049. G & S: [ Alcoholic beverages (excluding beers), namely rum, vodka, gin, tequila, whiskey, brandy spirits, distilled spirits and wine; alcoholic hot and mixed beverages, namely, alcoholic punches and energy drinks, mulled wine and alcoholic ciders; wines, potable spirits and liqueur; alcoholic beverage mixes, namely pre-mixed cocktail bases, powders, syrups, concentrates and effervescent tablets for making alcoholic cocktails; cocktails and aperitifs containing potable spirits or wine; wine cooler beverages, alcoholic lemonades, fruit drinks and smoothies, wine punches and wine cocktails, ] in Int; Class 33

IC 042. US 100 101. G & S: [ Catering; accommodation of guests, namely hotel and lodging services; restaurant and bar services, namely operation of bars, pubs, cafe's, taverns and other permanent, temporary, portable or mobile establishments serving beer, wine and/or alcoholic or non-alcoholic beverages; restaurant and bar services, namely operation of snack bars, restaurants, diners, cafe's and other permanent, temporary, portable or mobile establishments serving food, beverages and/or snacks of all types; medical services, namely, medical care; health care; beauty salon services, namely beauty care and personal grooming services; veterinary services; scientific research services; licensing of intellectual property and consultation in the field of intellectual property rights; technical consultation and research services in the field of food and beverages, health and fitness, sports, sports training and physical performance; computer programming, namely development, maintenance and support of computer programs ]

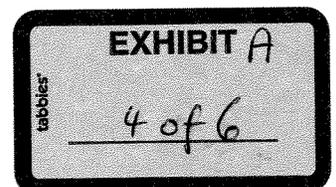
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 75788817  
**Filing Date** August 30, 1999



**Current Filing Basis** 44E  
**Original Filing Basis** 1B  
**Published for Opposition** October 9, 2001  
**Change In Registration** CHANGE IN REGISTRATION HAS OCCURRED  
**Registration Number** 2524019  
**Registration Date** January 1, 2002  
**Owner** (REGISTRANT) Red Bull GmbH LTD LIAB CO AUSTRIA Am Brunnen 1 Fuschl am See AUSTRIA A-5330  
**Attorney of Record** Martin R. Greenstein  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VODKA" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK. SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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#### Typed Drawing

**Word Mark** BLACK BULL  
**Goods and Services** IC 032. US 045 046 048. G & S: [ BEER; ] MINERAL WATERS, AERATED WATERS, CARBONATED WATERS, FLAVORED WATERS AND OTHER NON-ALCOHOLIC BEVERAGES, NAMELY, PUNCHES, SOFT DRINKS, SMOOTHIES [ AND LEMONADES ] ; SPORTS DRINKS; ENERGY DRINKS; [ ISOTONIC DRINKS, HYPERTONIC DRINKS AND HYPOTONIC DRINKS, FOR USE AND/OR AS REQUIRED BY ATHLETES AND THOSE ENGAGED IN ACTIVE OR STRESSFUL SPORTS AND ACTIVITIES; FRUIT JUICES AND FRUIT DRINKS, VEGETABLE JUICES AND VEGETABLE DRINKS; SYRUPS, POWDERS, CONCENTRATES AND EFFERVESCENT TABLETS FOR MAKING DRINKS AND BEVERAGES; ] NON-ALCOHOLIC COCKTAILS AND DRINKS

IC 033. US 047 049. G & S: [ ALCOHOLIC BEVERAGES, EXCLUDING BEERS, NAMELY RUM, VODKA, GIN, TEQUILA, WHISKEY, BRANDY SPIRITS, DISTILLED SPIRITS AND WINE; ALCOHOLIC HOT AND MIXED BEVERAGES, NAMELY, ALCOHOLIC PUNCHES AND ENERGY DRINKS, MULLED WINE AND ALCOHOLIC CIDERS; WINES, POTABLE SPIRITS AND LIQUEUR; ALCOHOLIC BEVERAGE MIXES, NAMELY PRE-MIXED COCKTAIL BASES, POWDERS, SYRUPS, CONCENTRATES AND EFFERVESCENT TABLETS FOR MAKING ALCOHOLIC COCKTAILS; COCKTAILS AND APERITIFS CONTAINING POTABLE SPIRITS OR WINE; WINE COOLER BEVERAGES, ALCOHOLIC LEMONADES, FRUIT DRINKS AND SMOOTHIES, WINE PUNCHES AND WINE COCKTAILS ]

IC 042. US 100 101. G & S: [ CATERING; ACCOMMODATION OF GUESTS, NAMELY HOTEL AND LODGING SERVICES; RESTAURANT AND BAR SERVICES, NAMELY OPERATION OF BARS, PUBS, CAFE'S, TAVERNS AND OTHER PERMANENT, TEMPORARY, PORTABLE OR MOBILE ESTABLISHMENT SERVING BEER, WINE AND/OR ALCOHOLIC OR NON-ALCOHOL BEVERAGES; RESTAURANT AND BAR SERVICES, NAMELY OPERATION OF SNACK BARS, RESTAURANTS, DINERS, CAFE'S AND OTHER PERMANENT, TEMPORARY, PORTABLE OR MOBILE ESTABLISHMENTS SERVING FOOD, BEVERAGES AND /OR SNACKS OF ALL TYPES; MEDICAL SERVICES, NAMELY, MEDICAL CARE; HEALTH CARE; BEAUTY SALON SERVICES, NAMELY BEAUTY CARE AND PERSONAL GROOMING SERVICES; VETERINARY SERVICES; SCIENTIFIC RESEARCH SERVICES; LICENSING OF INTELLECTUAL PROPERTY AND CONSULTATION IN THE FIELD OF INTELLECTUAL PROPERTY RIGHTS; TECHNICAL CONSULTATION AND RESEARCH SERVICES IN THE FIELD OF FOOD AND BEVERAGES, HEALTH AND FITNESS, SPORTS, SPORTS TRAINING AND PHYSICAL PERFORMANCE; COMPUTER PROGRAMMING, NAMELY DEVELOPMENT, MAINTENANCE AND SUPPORT OF COMPUTER PROGRAMS ]

**EXHIBIT A**  
 5 of 6

**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 75788829  
**Filing Date** August 30, 1999  
**Current Filing Basis** 44E  
**Original Filing Basis** 1B;44E  
**Published for Opposition** June 18, 2002  
**Change In Registration** CHANGE IN REGISTRATION HAS OCCURRED  
**Registration Number** 2616240  
**Registration Date** September 10, 2002  
**Owner** (REGISTRANT) Red Bull GmbH LTD LIAB CO AUSTRIA Am Brunnen 1 Fuschl am See AUSTRIA A-5330  
**Attorney of Record** Martin R. Greenstein  
**Type of Mark** TRADEMARK. SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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