

ESTTA Tracking number: **ESTTA167908**

Filing date: **10/10/2007**

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	Russell G Weiner		
Entity	Individual	Citizenship	UNITED STATES
Address	P.O. Box 27740 Las Vegas, NV 89126 UNITED STATES		

Attorney information	Ian K. Boyd Four Embarcadero Center 39th Floor San Francisco, CA 94111 UNITED STATES iboyd@harveysiskind.com, mstratton@harveysiskind.com, dfreitag@harveysiskind.com Phone:415-354-0100		
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Applicant Information

Application No	78942645	Publication date	09/11/2007
Opposition Filing Date	10/10/2007	Opposition Period Ends	10/11/2007
Applicant	zarnekee, jerry 11274 evergreen loop corona, CA 92883 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2004/10/15 First Use In Commerce: 2004/12/10
All goods and services in the class are opposed, namely: Salsa

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.	2613067	Application Date	08/19/1999
Registration Date	08/27/2002	Foreign Priority Date	NONE
Word Mark	ROCKSTAR ENERGY DRINK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1999/08/19 First Use In Commerce: 2001/01/16		

	SPORTS DRINKS, NAMELY, ENERGY DRINKS		
U.S. Registration No.	2784403	Application Date	12/13/2002
Registration Date	11/18/2003	Foreign Priority Date	NONE
Word Mark	ROCKSTAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1999/01/08 First Use In Commerce: 2000/01/08 Sports drinks, namely, energy drinks		
U.S. Registration No.	3107439	Application Date	03/07/2002
Registration Date	06/20/2006	Foreign Priority Date	NONE
Word Mark	ROCKSTAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2002/09/15 First Use In Commerce: 2006/02/01 DISTILLED SPIRITS AND ALCOHOLIC BEVERAGE PRODUCED FROM A BREWED MALT BASE WITH NATURAL FLAVORS		
U.S. Registration No.	2545247	Application Date	02/29/2000
Registration Date	03/05/2002	Foreign Priority Date	NONE
Word Mark	PARTY LIKE A ROCKSTAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1999/08/19 First Use In Commerce: 2001/01/08 sports drinks, namely, energy drinks		
U.S. Registration No.	3181547	Application Date	03/10/2004
Registration Date	12/05/2006	Foreign Priority Date	NONE
Word Mark	ROCKSTAR ENERGY COLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2004/07/01 First Use In Commerce: 2004/07/01 Soft drinks, namely colas		
U.S. Registration No.	3190229	Application Date	12/14/2005
Registration Date	12/26/2006	Foreign Priority	NONE

		Date	
Word Mark	ROCKSTAR JUICED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2006/02/01 First Use In Commerce: 2006/02/01 Sports drinks, namely, energy drinks		

U.S. Registration No.	3213823	Application Date	03/07/2002
Registration Date	02/27/2007	Foreign Priority Date	NONE
Word Mark	PARTY LIKE A ROCKSTAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2005/09/15 First Use In Commerce: 2006/02/01 DISTILLED SPIRITS AND ALCOHOLIC BEVERAGE PRODUCED FROM A BREWED MALT BASE WITH NATURAL FLAVORS		

U.S. Registration No.	3230400	Application Date	12/09/2002
Registration Date	04/17/2007	Foreign Priority Date	NONE
Word Mark	ROCKSTAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2006/03/01 First Use In Commerce: 2006/03/01 Distilled spirits and alcoholic beverage produced from a brewed malt base with natural flavors		

U.S. Registration No.	3262855	Application Date	09/22/2005
Registration Date	07/10/2007	Foreign Priority Date	NONE
Word Mark	ROCKSTAR 21		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2006/02/01 First Use In Commerce: 2006/02/01 Distilled spirits and alcoholic beverage produced from a brewed malt base with natural flavors		

U.S. Application No.	78862808	Application Date	04/17/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ROCKSTAR		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1999/08/19 First Use In Commerce: 1999/08/19 Sports drinks, namely, energy drinks

Attachments	75760313#TMSN.gif (1 page)(bytes) 78194527#TMSN.gif (1 page)(bytes) 75950418#TMSN.gif (1 page)(bytes) 78381769#TMSN.jpeg (1 page)(bytes) 78773699#TMSN.jpeg (1 page)(bytes) 78192472#TMSN.gif (1 page)(bytes) 78718845#TMSN.jpeg (1 page)(bytes) 78862808#TMSN.jpeg (1 page)(bytes) Notice of Opposition.071010.pdf (3 pages)(27068 bytes)
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Signature	/Ian K. Boyd/
Name	Ian K. Boyd
Date	10/10/2007

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5 Attorneys for Opposer,
Russell G. Weiner

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

9
10 RUSSELL G. WEINER, an individual
11 Opposer,
12 v.
13 JERRY ZARNEKEE, an individual
14 Applicant.

NOTICE OF OPPOSITION

Opposition No.

Application Serial No. 78942645

Published in the Official Gazette
on September 11, 2007

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16 Opposer RUSSELL G. WEINER believes that he will be damaged by registration of the mark
17 shown in Serial No. 78942645 and hereby opposes the same.

18 Description of Applicant's Application: Filed on August 1, 2006. Published for Opposition
19 in the Official Gazette on September 11, 2007. Mark: ROCKSTAR SALSA in Class 30 for "Salsa."
20 Alleged first use: October 15, 2004. Alleged first use in commerce: December 10, 2004.

21 As grounds of opposition, Opposer alleges that:

22 1. Ownership of Registered Marks. Opposer is the owner of numerous U.S. Trademark
23 Registrations for ROCKSTAR and similar marks used in conjunction with beverages, including the
24 following:

25 •ROCKSTAR ENERGY DRINK, Reg. No. 2613067, for "sports drinks, namely, energy
26 drinks" in Class 32; Opposer filed his application to register this mark on August 19, 1999, and the
27 mark was registered on the Principal Register on August 27, 2002.

1 •ROCKSTAR (Stylized), Reg. No. 2784403, for “sports drinks, namely, energy drinks” in
2 Class 32; Opposer filed his application to register this mark on December 13, 2002, and the mark was
3 registered on the Principal Register on November 18, 2003.

4 •ROCKSTAR, U.S. Trademark Registration No. 3107439, registered on June 20, 2006, in
5 Class 33 for “distilled spirits and alcoholic beverage produced from a brewed malt base with natural
6 flavors.”

7 •PARTY LIKE A ROCKSTAR, U.S. Trademark Registration No. 2545247, registered on
8 March 5, 2002, in Class 32 for “sports drinks, namely, energy drinks.”

9 •ROCKSTAR ENERGY COLA, U.S. Trademark Registration No. 3181547, registered on
10 December 5, 2006, in Class 32, for “sports drinks; namely colas.”

11 •ROCKSTAR JUICED, U.S. Trademark Registration No. 3190229, registered on December
12 26, 2006, in Class 32 for “sports drinks, namely, energy drinks.”

13 •PARTY LIKE A ROCKSTAR, U.S. Trademark Registration No. 3213823, registered on
14 February 27, 2007, in Class 33 for “distilled spirits and alcoholic beverage produced from a brewed
15 malt base with natural flavors.”

16 •ROCKSTAR (stylized), U.S. Trademark Registration No. 3230400, registered on April 17,
17 2007, in Class 33, for “distilled spirits and alcoholic beverage produced from a brewed malt base
18 with natural flavors.”

19 •ROCKSTAR 21, U.S. Trademark Registration No. 3262855, registered on July 10, 2007, in
20 Class 33 for “distilled spirits and alcoholic beverage produced from a brewed malt base with natural
21 flavors.”

22 The foregoing registrations were based upon applications filed in the United States Patent and
23 Trademark Office on dates prior to the date of filing of Applicant’s application. Said registered
24 marks of Opposer are valid and subsisting and constitute prima facie evidence of Opposer’s exclusive
25 right to use said marks in commerce on the goods specified in said registrations. In view of the
26 similarity of the parties’ respective marks and the related nature of the parties’ respective goods,
27 Opposer alleges that Applicant’s claimed mark so resembles Opposer’s registered marks as to be
28 likely to cause confusion, or to cause mistake, or to deceive, as to source, sponsorship, or affiliation.

1 2. Ownership of Pending Applications. In addition to the Registered Marks noted
2 above, Opposer is the owner of numerous pending U.S. Trademark Applications for ROCKSTAR
3 and similar marks, whose filing date precedes that of Applicant's application, including the
4 following:

5 •ROCKSTAR, U.S. Serial No. 78862808, filed on April 17, 2006 in Class 32 for "sports
6 drinks, namely, energy drinks."

7 The foregoing Application has priority over Applicant's application. Again, in view of the
8 similarity of the parties' respective marks and the related nature of the parties' respective goods,
9 Opposer alleges that Applicant's claimed mark so resembles Opposer's applied-for marks as to be
10 likely to cause confusion, or to cause mistake, or to deceive, as to source, sponsorship, or affiliation.

11 WHEREFORE, Opposer prays that said application Serial No. 78942645 be rejected, that no
12 registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

13 Opposer hereby appoints Harvey Siskind LLP, a law firm composed of members of the bar of the
14 State of California, to act as attorneys for Opposer herein, with full power to prosecute said opposition,
15 to transact all relevant business with the Patent and Trademark Office and in the United States Courts
16 and to receive all official communication in connection with this opposition.

17
18 Dated: October 10, 2007

Respectfully submitted,

HARVEY SISKIND LLP
IAN K. BOYD

By /s/ Ian K. Boyd
 Ian K. Boyd

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