

ESTTA Tracking number: **ESTTA259877**

Filing date: **01/09/2009**

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	RussellG.Weiner
Granted to Date of previous extension	01/10/2009
Address	101 Convention Center Drive Suite 777 Las Vegas, NV 89126 UNITED STATES

Attorney information	Seth I. Appel HARVEY SISKIND LLP Four Embarcadero Center 39th Floor San Francisco, CA 94111 UNITED STATES sappel@harveysiskind.com, iboyd@harveysiskind.com, dfreitag@harveysiskind.com, clee@harveysiskind.com
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**Applicant Information**

Application No	77501585	Publication date	11/11/2008
Opposition Filing Date	01/09/2009	Opposition Period Ends	01/10/2009
Applicants	Pisano, John 2388 La Mirada Dr. Vista, CA 92081 UNITED STATES  Hofrichter, Edward 2388 La Mirada Dr. Vista, CA 92081 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 016. All goods and services in the class are opposed, namely: Calendars; prints; posters; stickers; note pads; note books; coasters of paper
Class 021. All goods and services in the class are opposed, namely: Beverage glassware; mugs; beer mugs; ceramic figurines; stone coasters
Class 025. All goods and services in the class are opposed, namely: T-shirts, sweat shirts, hats, shirts, pants, shoes, socks, wrist bands

**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.	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.	3398516	Application Date	04/17/2006
Registration Date	03/18/2008	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		

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	PARTY LIKE A ROCKSTAR		
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.	2613067	Application Date	08/19/1999
Registration Date	08/27/2002	Foreign Priority Date	NONE
Word Mark	ROCKSTAR ENERGY DRINK		
Design Mark	<b>ROCKSTAR ENERGY DRINK</b>		
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.	3190229	Application Date	12/14/2005
Registration Date	12/26/2006	Foreign Priority Date	NONE
Word Mark	ROCKSTAR JUICED		
Design Mark	<b>ROCKSTAR JUICED</b>		
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	3423897	Application Date	05/22/2007
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No.			
Registration Date	05/06/2008	Foreign Priority Date	NONE
Word Mark	ROCKSTAR ROASTED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2007/12/15 First Use In Commerce: 2007/12/15 Energy drinks		

Attachments	78194527#TMSN.gif ( 1 page )( bytes ) 78862808#TMSN.jpeg ( 1 page )( bytes ) 75950418#TMSN.gif ( 1 page )( bytes ) 75760313#TMSN.gif ( 1 page )( bytes ) 78773699#TMSN.jpeg ( 1 page )( bytes ) 77187005#TMSN.jpeg ( 1 page )( bytes ) Notice.090109.pdf ( 5 pages )(37153 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	/Seth I. Appel/
Name	Seth I. Appel
Date	01/09/2009



- 1 •ROCKSTAR (+ Design) (Reg. No. 2784403) issued November 18, 2003
- 2 •ROCKSTAR (Reg. No. 3398516) issued March 18, 2008
- 3 •PARTY LIKE A ROCKSTAR (Reg. No. 2545247) issued March 5, 2002
- 4 •ROCKSTAR ENERGY DRINK (Reg. No. 2613067) issued August 27, 2002
- 5 •ROCKSTAR JUICED (Reg. No. 3190229) issued December 26, 2006
- 6 •ROCKSTAR ROASTED (Reg. No. 3423897) issued May 6, 2008

7 Opposer has also established common law rights in the marks shown in these  
8 registrations. These common law rights also predate the filing of Serial No. 77501585.

9 In addition to the registrations noted above, Opposer is also the owner of numerous  
10 pending U.S. trademark applications for marks that include or consist of the term ROCKSTAR  
11 that were filed prior to the filing of Serial No. 77501585.

12 2. **Likelihood of Confusion**

13 The mark shown in Serial No. 77501585 so resembles Opposer's marks as to be likely,  
14 when used on or in connection with the goods identified in Serial No. 77501585, to cause  
15 confusion, or to cause mistake, or to deceive. Accordingly, the Board should refuse registration  
16 under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

17  
18 WHEREFORE, Opposer prays that this opposition be sustained; that Serial No. 77501585  
19 be rejected; and that no registration be issued to Applicants.

20 Opposer hereby appoints Harvey Siskind LLP, a law firm composed of members of the bar  
21 of the State of California, to act as attorneys for Opposer herein, with full power to prosecute this  
22 opposition proceeding, to transact all relevant business with the Patent and Trademark Office and in  
23 the United States Courts, and to receive all official communications in connection with this  
24 opposition proceeding.

1 Dated: January 9, 2009

Respectfully submitted,

2 HARVEY SISKIND LLP

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4 \_\_\_\_\_ /s/

5 By: Seth I. Appel

6 Four Embarcadero Center, 39<sup>th</sup> Floor

7 San Francisco, CA 94111

8 Telephone: (415) 354-0100

9 Facsimile: (415) 391-7124

10 Attorneys for Opposer

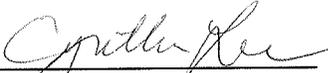
11 Russell G. Weiner

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**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the attached NOTICE OF OPPOSITION was served on Applicants via first-class mail, postage prepaid, addressed to Edward Hofrichter and John Pisano, 2388 La Mirada Drive, Vista, California, 92081, on January 9, 2009.

  
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Cynthia Lee

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