

ESTTA Tracking number: **ESTTA417656**

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

Proceeding	91199928
Party	Defendant Acava Limited
Correspondence Address	LAUREL V. DINEFF DINEFF TRADEMARK LAW LIMITED 160 N WACKER DR CHICAGO, IL 60606-1633  tmlaw@dineff.com
Submission	Answer
Filer's Name	Justin R. Young
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Date	07/01/2011
Attachments	Answer to Opposition 91199928 - 7-1-11.pdf ( 5 pages )(17344 bytes )



3. Answering Paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies all the allegations, leaving Opposer to its strict proof at trial.

4. Answering Paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies all the allegations, leaving Opposer to its strict proof at trial.

5. Answering Paragraph 5 of the Notice of Opposition, Applicant partially admits that on April 28, 2010 it filed Application No. 85/025385 for “energy drinks” in International Class 32, but clarifies that said application is for the mark “VOLT 440 MAS ENERGIA & DESIGN (in colors)” and was filed on the basis of Section 44(d).

6. Answering Paragraph 6 of the Notice of Opposition, Applicant admits that its Application No. 85/025385 disclaims “energia” apart from the mark as filed. Applicant also admits that said application was filed claiming a priority date of February 17, 2010.

7. Answering Paragraph 7 of the Notice of Opposition, Applicant partially admits that it did not use in commerce its mark “VOLT 440 MAS ENERGIA & DESIGN (in colors)” prior to February 17, 2010, but denies the remaining allegation contained therein leaving Opposer to its strict proof at trial.

8. Answering Paragraph 8 of the Notice of Opposition, Applicant denies each and every allegation contained therein and demands Opposer provides specific proof thereof.

9. Answering Paragraph 9 of the Notice of Opposition, Applicant denies each and every allegation contained therein and demands Opposer provides specific proof thereof.

### **AFFIRMATIVE DEFENSES**

1. Opposer's Notice of Opposition fails to state legally sufficient grounds for sustaining the opposition.

2. There is no likelihood of confusion between Applicant's mark and Opposer's marks because, among other things, the marks are different in appearance, meaning, and overall commercial impression.

3. There is no likelihood of confusion between Applicant's mark and Opposer's marks because, among other things, the goods provided in connection with the marks are different, provided in different channels of trade and would not be encountered by the same consumer in the marketplace.

4. No damage or injury has resulted, will result, or is likely to result to Opposer from the registration of Applicant's mark due to, among other factors, the difference between the marks and the distinct and different nature of each party's goods/services provided with their marks.

5. The marks are distinctive of each other and no likelihood of confusion exists.

6. Opposer has failed to show how it reasonably believes that it will be damaged by the registration of Applicant's mark.

In view of the foregoing, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's mark; that Applicant's mark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer; that Applicant's mark and the services covered thereby are different from Opposer's mark. Consequently, Applicant prays that this Opposition be dismissed, and that Opposer's proposed restriction of Applicant's services be dismissed, and that Applicant be granted registration of its trademark.

Acava Limited  
By and through they attorney

A handwritten signature in blue ink, appearing to read 'Justin R. Young', is written over a faint yellow rectangular background.

Dated: July 1, 2011

Justin R. Young  
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**Certificate of Service**

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was served this date July 1, 2011 upon Opposer's Attorney address of record by First-Class mail, postage prepaid, as follows:

Meichelle R. MacGregor  
Cowan, Liebowitz & Latman, P.C.  
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Justin R. Young