

ESTTA Tracking number: **ESTTA505505**

Filing date: **11/14/2012**

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	Red Bull GmbH
Granted to Date of previous extension	11/14/2012
Address	Am Brunnen 1 Fuschl am See, A-5330 AUSTRIA

Attorney information	Martin R. Greenstein TechMark a Law Corporation 4820 Harwood Road, 2nd Floor San Jose, CA 95124 UNITED STATES MRG@TechMark.com, LZH@TechMark.com, MPV@TechMark.com, AMR@TechMark.com Phone:408-266-4700
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**Applicant Information**

Application No	85400933	Publication date	07/17/2012
Opposition Filing Date	11/14/2012	Opposition Period Ends	11/14/2012
Applicant	Michael F. Ball 145 Channel Pointe Mall Marina Del Rey, CA 90292 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. All goods and services in the class are opposed, namely: Non-alcoholic beverages, namely, carbonated beverages
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**Applicant Information**

Application No	85400941	Publication date	07/17/2012
Opposition Filing Date	11/14/2012	Opposition Period Ends	
Applicant	Michael F. Ball 145 Channel Pointe Mall Marina Del Rey, CA 90292 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032.
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All goods and services in the class are opposed, namely: Non-alcoholic beverages, namely, carbonated beverages

### Applicant Information

Application No	85400955	Publication date	07/17/2012
Opposition Filing Date	11/14/2012	Opposition Period Ends	
Applicant	Michael F. Ball 145 Channel Pointe Mall Marina Del Rey, CA 90292 UNITED STATES		

### Goods/Services Affected by Opposition

Class 032.  
All goods and services in the class are opposed, namely: Non-alcoholic beverages, namely, carbonated beverages

### Applicant Information

Application No	85406652	Publication date	07/17/2012
Opposition Filing Date	11/14/2012	Opposition Period Ends	
Applicant	Michael F. Ball 145 Channel Pointe Mall Marina Del Rey, CA 90292 UNITED STATES		

### Goods/Services Affected by Opposition

Class 032.  
All goods and services in the class are opposed, namely: Non-alcoholic beverages, namely, carbonated beverages

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	RED, RED BULL, and other marks for or incorporating the words RED and RED BULL		
Goods/Services	Beverages, energy drinks, sports drinks, soft drinks, carbonated beverages, and various other products and services related or complementary thereto		

Attachments	Michael Ball RED Appls- Consolidated Notice of Opp_Final_2012-11-14.pdf ( 6 pages )(22031 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	/Leah Z Halpert/
Name	Leah Z Halpert
Date	11/14/2012

**CERTIFICATE OF ELECTRONIC FILING AND  
STANDBY AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

I hereby certify that this opposition is being filed with the TTAB via ESTTA on the date set forth below, and the \$300 per class statutory filing fee paid. Please charge any deficiency or any additional fees in connection with this Opposition to TechMark's PTO Deposit Account No. 20-0330.

Date: November 14, 2012

/Leah Z. Halpert/  
Leah Z. Halpert

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

IN THE CONSOLIDATED MATTER OF (1) Application Serial No. **85/400,933** for the trademark **+RED DETOX ELIXIR** (Class 32), filed August 18, 2011, and published in the Official Gazette on July 17, 2012; (2) Application Serial No. **85/400,941** for the trademark **+RED DREAM ELIXIR** (Class 32), filed August 18, 2011, and published in the Official Gazette on July 17, 2012; (3) Application Serial No. **85/400,955** for the trademark **+RED SUN REPAIR ELIXIR** (Class 32), filed August 18, 2011, and published in the Official Gazette on July 17, 2012; and (4) **85/406,652** for the trademark **+RED RESCUE ELIXIR** (Class 32), filed August 24, 2011, and published in the Official Gazette on July 17, 2012

<b>RED BULL GMBH,</b>	)	
	)	<b>Serial Nos.: 85/400,933</b>
<b>Opposer</b>	)	<b>85/400,941</b>
<b>v.</b>	)	<b>85/400,955</b>
	)	<b>85/406,652</b>
	)	<b>Trademarks:</b>
<b>MICHAEL F. BALL,</b>	)	<b>+RED DETOX ELIXIR (#85/400,933)</b>
	)	<b>+RED DREAM ELIXIR (#85/400,941)</b>
<b>Applicant.</b>	)	<b>+RED SUN REPAIR ELIXIR (#85/400,955)</b>
	)	<b>+RED RESCUE ELIXIR (#85/406,652)</b>

**CONSOLIDATED NOTICE OF OPPOSITION**

RED BULL GMBH, a limited liability company organized and existing under the laws of Austria, with its principal place of business at Am Brunnen 1, 5330 Fuschl am See, AUSTRIA, (hereafter "Red Bull" or "Opposer") believes it is or will be damaged by registration on the Principal Register of the marks +RED DETOX ELIXIR, +RED DREAM ELIXIR, +RED SUN REPAIR ELIXIR, and +RED RESCUE ELIXIR, shown in Appln. Ser. Nos. 85/400,933, 85/400,941, 85/400,955 and 85/406,652, respectively (hereinafter "**Applicant's Opposed Marks**"), and hereby opposes the same.

As grounds of opposition it is alleged that:

1. Opposer Red Bull is now and has for many years been engaged in the development, marketing, advertising, distribution and sale of various products and services including, among others, beverages, energy drinks, sports drinks, soft drinks, carbonated beverages and various other products and services related or complementary thereto.

2. Opposer, Red Bull, is the owner of the corporate name, trade name and trademark RED BULL, having used said name, mark and logo continuously in interstate commerce on and in connection with its beverages, energy drinks, sports drinks, soft drinks, carbonated beverages, and various other products and services related or complementary thereto, since long prior to the August 18, 2011 and August 24, 2011 filing dates of **Applicant's Opposed Marks**.

3. Opposer Red Bull is also the owner of various Federal registrations and common law rights for the trademarks RED, RED BULL, and other marks for or incorporating the words RED and RED BULL for various goods and services, all of which are collectively referred to herein as Red Bull's **RED and RED BULL Marks**.

4. Red Bull's various **RED and RED BULL Marks** have been used continuously in interstate commerce on and in connection with its various products and services since long prior to the August 18, 2011 and August 24, 2011 filing dates of **Applicant's Opposed Marks**.

5. Red Bull's various **RED and RED BULL Marks**, all of which include the word RED, have become valuable assets of Opposer Red Bull, identifying its beverages, energy drinks, sports drinks, soft drinks, carbonated beverages, and various other products and services related or complementary thereto, and distinguishing Red Bull's products and services from the products and services of others.

6. Red Bull's **RED and RED BULL Marks** are extensively advertised in the United States and throughout the world, and have appeared on or in relation to products, product packaging, point-of-sale displays and other promotional materials for products sold, offered and advertised, and/or have been used in connection with beverages, energy drinks, sports drinks, soft drinks, carbonated beverages, and various other products and services related or

complementary thereto, advertised, offered, conducted and/or promoted in the United States and throughout the world.

7. In 2011 alone, sales of Opposer Red Bull's beverages worldwide exceeded 4.6 billion units, with over 1.65 billion units sold in the United States. As a result of the enormous success and sales of Red Bull's beverages and of the extensive advertising and promotion of the **RED and RED BULL Marks** and products in the United States and throughout the world, Red Bull's **RED and RED BULL Marks** have become famous marks, and are recognized in the United States and elsewhere as such.

8. Applicant Michael F. Ball ("Applicant") filed Appln. No. 85/400,933 on August 18, 2011, for the trademark +RED DETOX ELIXIR based on an intent to use the mark in commerce on the Int. Class 32 goods set forth in said application, namely "Non-alcoholic beverages, namely, carbonated beverages". Appln. No. 85/400,933 was published for opposition on July 17, 2012.

9. Applicant filed Appln. No. 85/400,941 on August 18, 2011, for the trademark +RED DREAM ELIXIR based on an intent to use the mark in commerce on the Int. Class 32 goods set forth in said application, namely "Non-alcoholic beverages, namely, carbonated beverages". Appln. No. 85/400,941 was published for opposition on July 17, 2012.

10. Applicant filed Appln. No. 85/400,955 on August 18, 2011, for the trademark +RED SUN REPAIR ELIXIR based on an intent to use the mark in commerce on the Int. Class 32 goods set forth in said application, namely "Non-alcoholic beverages, namely, carbonated beverages". Appln. No. 85/400,955 was published for opposition on July 17, 2012.

11. Applicant filed Appln. No. 85/406,652 on August 24, 2011, for the trademark +RED RESCUE ELIXIR based on an intent to use the mark in commerce on the Int. Class 32 goods set forth in said application, namely "Non-alcoholic beverages, namely, carbonated beverages". Appln. No. 85/406,652 was published for opposition on July 17, 2012.

12. According to the USPTO records, Applicant is an individual whose

address is listed as 145 Channel Pointe Mall, Marina Del Rey, CA 90292.

Claim 1: Likelihood of Confusion under Sec. 2(d) of the Trademark Act

13. Opposer repeats and realleges each and every allegation contained in paragraphs 1-12, inclusive, as if fully recited in this paragraph.

14. **Applicant's Opposed Marks** so resemble Opposer Red Bull's **RED and RED BULL Marks** as to be likely, when applied to the goods of Applicant's Appln. Nos. 85/400,933, 85/400,941, 85/400,955, and 85/406,652, to cause confusion, mistake or deception among purchasers, users, and the public, thereby damaging Red Bull.

15. The goods on which Applicant asserts a bona fide intent to use **Applicant's Opposed Marks** are identical or very similar to, used for the same or similar purposes, and/or are or will be advertised and promoted to and directed at the same trade channels, the same purchasers, and are or will be used in the same environment as Opposer Red Bull's products and related goods and services.

16. Simultaneous use of **Applicant's Opposed Marks** on the goods set forth in Appln. Nos. 85/400,933, 85/400,941, 85/400,955, and 85/406,652, and Opposer Red Bull's **RED and RED BULL Marks** on its goods and related services as set forth above is likely to cause confusion, mistake or deception among purchasers, users, and the public, thereby damaging Red Bull.

17. Use by Applicant of **Applicant's Opposed Marks** on the goods set forth in Appln. Nos. 85/400,933, 85/400,941, 85/400,955, and 85/406,652 is likely to lead to the mistaken belief that Applicant's products are sponsored by, affiliated with, approved by or otherwise emanate from Opposer Red Bull, thereby damaging Red Bull.

18. Upon information and belief, Applicant knew or should have known of Red Bull's prior adoption and use of its **RED and RED BULL Marks**, and therefore could not have formed the requisite good faith belief that Applicant is the owner of **Applicant's Opposed Marks**, and that no other person, firm, corporation or association has the right to use said marks in

commerce, and consequently knew that such use is and would be in derogation and violation of Red Bull's rights.

Wherefore, Red Bull requests that registration of the marks sought to be registered herein, +RED DETOX ELIXIR of Appln. No. 85/400,933, +RED DREAM ELIXIR of Appln. No. 85/400,941, +RED SUN REPAIR ELIXIR of Appln No. 85/400,955, and +RED RESCUE ELIXIR of Appln. No. 85/406,652, be denied and that this opposition be sustained.

The sum of \$1200 for the statutory fee for this Consolidated Notice of Opposition has been paid at the time of filing. Any deficiency or shortfall, or any additional fees in connection with this opposition at any time should be charged to TechMark's PTO Deposit Account No. 20-0330.

Please recognize Martin R. Greenstein, Neil D. Greenstein, Leah Z. Halpert, and Mariela P. Vidolova, members in good standing of the Bar of the State of California, c/o TechMark, 4820 Harwood Road, 2<sup>nd</sup> Floor, San Jose, California 95124-5273, Tel: 408-266-4700, as Opposer Red Bull's attorneys in connection with this opposition proceeding. All correspondence should be directed to Martin R. Greenstein.

RED BULL GMBH  
By: /Martin R. Greenstein/  
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Attorneys for Opposer Red Bull GmbH

Dated: November 14, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **CONSOLIDATED NOTICE OF OPPOSITION** is being served on November 14, 2012, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to Applicant's Counsel at their Correspondent address given on the TARR website, with a courtesy copy via email to [cwcdocketing@roylance.com](mailto:cwcdocketing@roylance.com).

Casimir W. Cook II  
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Washington, D.C. 20036

/Leah Z. Halpert/  
Leah Z. Halpert