

ESTTA Tracking number: **ESTTA550800**

Filing date: **07/26/2013**

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

Proceeding	91208003
Party	Plaintiff Red Bull GmbH
Correspondence Address	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
Submission	Other Motions/Papers
Filer's Name	Leah Z Halpert
Filer's e-mail	MRG@TechMark.com, LZH@TechMark.com, AMR@TechMark.com
Signature	/Leah Z Halpert/
Date	07/26/2013
Attachments	Michael Ball RED Applns-91208003-Renewed Mtn to Suspend.pdf(18106 bytes)

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

I hereby certify that Opposer's Renewed Motion to Suspend Opposition No. 91-208,003 is being filed with the TTAB via ESTTA on the date set forth below.

Date: July 26, 2013

/Leah Z. Halpert/

Leah Z. Halpert

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

RED BULL GMBH,	)	Opposition No.:	91-208,003
)		
Opposer	)	Serial Nos.:	85/400,933
v.	)		85/400,941
	)		85/400,955
	)		85/406,652
	)	Trademarks:	
MICHAEL F. BALL,	)	+RED DETOX ELIXIR	(#85/400,933)
	)	+RED DREAM ELIXIR	(#85/400,941)
Applicant.	)	+RED SUN REPAIR ELIXIR	
	)		(#85/400,955)
	)	+RED RESCUE ELIXIR	(#85/406,652)

OPPOSER'S RENEWED MOTION TO SUSPEND OPPOSITION NO. 91-208,003

Pursuant to 37 C.F.R. § 2.117, Opposer, RED BULL GMBH, ("Red Bull" or "Opposer") hereby moves to suspend the above-captioned opposition pending the disposition of Applicant MICHAEL F. BALL's ("Applicant") *ex parte* appeals of Appln. Nos. 85/351,186 and 85/346,334 (hereinafter the "Appealed Applications"), which will be dispositive of the issues in this matter.

As background, Applicant filed six +RED formative marks (+RED and various descriptive terms) with the USPTO – the four that are subject to this opposition (hereinafter the "Opposed Applications"), published on July 17, 2012, and two that were pulled from a subsequent publication approval and refused due to a likelihood of confusion with one of Opposer's prior registrations¹ (the "Appealed Applications"). In regard to the Appealed

¹ The Appealed Applications were refused registration under Sec. 2(d) due to a likelihood of confusion with Opposer's Registration No. 3,939,863 for the wordmark RED in Class 32 covering "energy drinks and soft drinks".

Applications, Applicant (therein and in the opposed applications here) submitted arguments against the refusal, which were found unpersuasive by the USPTO, and Applicant subsequently filed Notices of Appeal for the Appealed Applications on February 15, 2013. Since that date, Applicant has extended the deadline to submit the Appeal Brief once, and has submitted Motions to Suspend the Appeals pending the disposition of the instant Opposition. The Appeals were subsequently suspended on June 20, 2013, while this instant consolidated opposition remained suspended pending disposition of a Motion to Strike. For reasons of judicial economy, however, Opposer urges the Board to lift the suspension of the appeals, and instead grant this motion to suspend the instant opposition pending the disposition of the appeals

The question of likelihood of confusion between Applicant's +RED-formative marks and Opposer's prior-registered marks in Class 32 (namely, among others, Reg. No. 3,939,863 for the word mark RED) is central to both the Appealed Applications and this opposition. If likelihood of confusion is found in one situation, as Applicant's marks are nearly identical in both cases and cover the same products, likelihood of confusion will necessarily be found in the other. As such, both matters before the Board are dispositive of the central issue of likelihood of confusion. However, for reasons of judicial economy, the opposition should be suspended pending disposition of the Appealed Applications, rather than the other way around. The appeal process is an *ex parte* process that is less costly to and uses less resources of the Board (as well as both parties), does not include extensive discovery and trial periods, and essentially will be decided on briefs in a matter of months. The consolidated opposition, on the other hand, does not yet even have answer, and the gamut of discovery, discovery disputes, trial and briefing will inevitably likely take years. The much simpler appeal process will ultimately result in a decision on the

Per the First Amended Consolidated Notice of Opposition, filed with the Board and served on July 15, 2013, this registration has been listed as one of the registrations upon which the opposition is based. As such, the same questions and facts will be involved in both the subject opposition as well as the appeals.

merits much more quickly than an *inter partes* opposition proceeding. As an example, the subject opposition has been suspended for many months, and has yet to even reach the discovery phase.

As a decision on the Appealed Applications will be dispositive of the issues in the subject opposition as well, the Board (as well as the parties) can avoid the extensive commitment of time and resources (and, in the case of the parties, money) by simply suspending the instant *inter partes* action pending the disposition of the Appealed Applications, and resuming the appeals.

Accordingly, for the foregoing reasons, Opposer respectfully urges that the *ex parte* appeals of Appln. No. 85/351,186 and 85/346,334 be resumed and the subject opposition be suspended pending the disposition of the Appealed Applications.

RED BULL GMBH
By: /Martin R. Greenstein/
Martin R. Greenstein
Leah Z. Halpert
Angelique M. Riordan
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5273
Tel: 408- 266-4700 Fax: 408-850-1955
E-Mail: MRG@TechMark.com
Attorneys for Opposer Red Bull GmbH

Dated: July 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S RENEWED MOTION TO SUSPEND OPPOSITION NO. 91-200,803** is being served on July 26, 2013, 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.

Casimir W. Cook II
Roylance, Abrams, Berdo & Goodman LLP
1300 19th Street NW, Suite 600
Washington, D.C. 20036

/Leah Z. Halpert/
Leah Z. Halpert