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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, AMR@TechMark.com, LZH@TechMark.com, DMP@TechMark.com
Submission	Motion to Consolidate
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Date	01/15/2014
Attachments	Michael Ball Matters-91208003 & 91214448-Mtn to Consolidate.pdf(18595 bytes )

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that Opposer’s Motion to Consolidate Proceedings is being filed with the TTAB via ESTTA on the date set forth below.

Date: January 15, 2014

/Leah Z. Halpert/  
Leah Z. Halpert

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

	)	<b>Opposition No.: 91-208,003</b>
<b>RED BULL GMBH,</b>	)	<b>Marks: +RED DETOX ELIXIR (#85/400,933)</b>
	)	<b>+RED DREAM ELIXIR (#85/400,941)</b>
<b>Opposer,</b>	)	<b>+RED SUN REPAIR ELIXIR (#85/400,955)</b>
	)	<b>+RED RESCUE ELIXIR (#85/406,652)</b>
<b>v.</b>	)	
	)	<b>Opposition No.: 91-214,448</b>
<b>MICHAEL F. BALL,</b>	)	<b>Mark: +RED POWER ELIXIR (#85/400,948)</b>
	)	
<b>Applicant.</b>	)	
	)	

**OPPOSER’S MOTION TO CONSOLIDATE PROCEEDINGS**

Opposer, RED BULL GMBH (“Red Bull”), hereby moves the Trademark Trial and Appeal Board (“Board”) for an order consolidating the following related proceedings – Opposition Nos. 91-208,003 and 91-214,448<sup>1</sup>. Please note that this motion is being filed concurrently in Opposition Nos. 91-208,003 and 91-214,448. Red Bull respectfully requests that both proceedings be suspended pending the disposition of this Motion, and that an order of suspension be issued to that effect.

The Board may order consolidation of pending cases involving common questions of law or fact. Fed. R. Civ. P. 42(a); TBMP § 511. Here, the above-captioned oppositions share: (1) identical parties<sup>2</sup>; (2) substantially similar and identical witnesses; (3) substantially similar marks at issue; and (4) substantially similar and identical allegations regarding priority and likelihood

<sup>1</sup> As seen in the cover sheet of Opposition No. 91-214,448, these two proceedings are related.

<sup>2</sup> Both oppositions are Red Bull GmbH v. Michael F. Ball.

of confusion between Red Bull's marks and Applicant's marks. Thus, as identical and common questions of fact and law will need to be addressed in each opposition, consolidation is appropriate. *See M.C.I. Foods Inc. v. Bunte*, 86 USPQ2d 1044, 1046 (TTAB 2008) (proceeding involved identical parties, identical registration and related issues); *World Hockey Ass'n v. Tudor Metal Products Corp.*, 185 USPQ 246, 248 (TTAB 1975) (consolidation ordered where issues were substantially the same and consolidation would be advantageous to both parties).

Further, consolidation is appropriate if it will benefit both parties by resulting in saving time, effort and expense. TBMP § 511. Here, no prejudice or inconvenience will be caused by consolidation of the proceedings as both oppositions are only two weeks apart in their schedules<sup>3</sup>, and neither has entered the discovery phase as of yet.<sup>4</sup> As both proceedings will require substantially identical discovery and witnesses, both parties will be benefitted by consolidation of the proceedings at this point, prior to the start of the discovery period.

Based on the above, Opposer respectfully requests that the Board issue an order granting this Motion to Consolidate Proceedings.

Respectfully submitted,

RED BULL GMBH  
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Dated: January 15, 2014

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<sup>3</sup> The answer to the counterclaim is due in Opposition No. 91-208,003 on March 11, 2014, and the answer is due in Opposition No. 91-214,448 on February 22, 2014. Further, discovery is set to open for Opposition No. 91-208,003 on April 10, 2014, and for Opposition No. 91-214,448 on March 24, 2014.

<sup>4</sup> Additionally, the parties have yet to hold their discovery conference. By consolidating the oppositions, the parties can effectively hold one discovery conference to cover the nearly identical issues in both proceedings.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S MOTION TO CONSOLIDATE** is being served on January 15, 2014, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to Applicant's Counsel in each matter, with courtesy copy being served via email to sstraub@roylance.com:

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