

ESTTA Tracking number: **ESTTA590906**

Filing date: **03/05/2014**

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	Opposition/Response to Motion
Filer's Name	Leah Z. Halpert
Filer's e-mail	MRG@TechMark.com, LZH@TechMark.com, AMR@TechMark.com, DMP@TechMark.com
Signature	/Leah Z. Halpert/
Date	03/05/2014
Attachments	Michael Ball RED Applns-91208003-Oppo to Mtn to Dismiss.pdf(223859 bytes )

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

I hereby certify that Opposer's Opposition to Applicant's Motion to Dismiss Opposition No. 91-214,448 is being filed with the TTAB via ESTTA on the date set forth below.

Date: March 5, 2014

/Leah Z. Halpert/  
Leah Z. Halpert

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

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

**OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS  
OPPOSITION NO. 91-214,448**

Opposer, RED BULL GMBH, ("Red Bull" or "Opposer") hereby opposes Applicant's Motion to Dismiss Opposition No. 91-214,448 Per Fed. R. Civ. P. 12 ("Motion"). Applicant's Motion should be denied and given no consideration as it is entirely frivolous, demonstrably false on the face of the very TTABVue record Applicant submitted with its Motion, fraught with careless and inaccurate accusations, and, ultimately, a waste of the Board's (and parties') time and resources.

Opposer also requests that the entire consolidated matter be suspended pending the disposition of this Motion, and that the deadline for its answer to Applicant's Counterclaim in Opposition No. 91-208,003 be reset until a date after the Motion is decided.

**A. Opposer's Filing of the Notice of Opposition with the Board was Timely and the Opposition was Properly Instituted.**

Applicant's Motion moves to dismiss Opposition No. 91-214,448 ("Child Opposition") for failure to state a claim upon which relief can be granted and for lack of subject matter

jurisdiction, based entirely on an internal technical glitch within the PTO's ESTTA/TTABVue system<sup>1</sup>. It is undisputed that Applicant's U.S. Application No. 85/400,948 was published for opposition on December 24, 2013, and that Opposer submitted an opposition through ESTTA on January 13, 2014 (within the given 30-day time period to oppose). Further, Opposer served a courtesy copy of the complaint on Applicant's new attorney, as seen in Exhibit A. However, through an apparent technical system error on TTABVue, only the cover sheet for the opposition was uploaded, and the actual complaint was somehow inadvertently omitted. Applicant is entirely incorrect, however, in its specious conclusion that Opposer did not timely file a complaint with the Board<sup>2</sup>. The error was quickly remedied by the TTAB Help Desk and Interlocutory Attorney, *See* Exhibit B, attached hereto – something that could not have been done by the Board it was not already in possession of the complaint. More importantly, even Applicant's own evidence supports that there was merely an internal error in the uploading process, and that the Board timely received the complaint in full. *See* Exhibit 1 to Applicant's Motion. Applicant attempted to support its position by submitting a copy of the cover sheet it admits that was available on TTABVue. The last page of Applicant's own exhibit, reproduced below, clearly shows the successful submission of the attached complaint (including the size of the file at 124499 bytes) in addition to the timely date of filing – January 13, 2014, completely undermining Applicant's argument.

---

<sup>1</sup> Applicant does not contest timely service of the complaint upon it, so Opposer assumes that Applicant is in possession of the complaint for the Child Opposition, despite the technical problem encountered by TTABVue in uploading.

<sup>2</sup> Applicant's reliance on various cases in its Motion is also misplaced. In *Vibe Records, Inc. v. Vibe Media Group, LLC*, 88 USPQ2d 1280 (TTAB 2008), the entirety filing of the opposition was not completed prior to the deadline expiring. Here, as seen in Applicant's Exhibit 1, Opposer's complaint was timely filed well within the 30-day opposition period. The only issue is that the TTABVue apparently inadvertently omitted the complaint from view in uploading it to the system. Additionally, *Melwani v. Allegiance Corp.*, 97 USPQ2d 1537 (TTAB 2010) deals with properly making registrations of record – an entirely unrelated and irrelevant matter from the matter at hand, which was an internal system error in uploading the complaint on the part of TTABVue.

Related Proceedings	91208003
Attachments	78347152#TMSN.jpeg( bytes ) Michael Ball-+RED POWER ELIXIR-85400948-Notice of Opp.pdf(124499 bytes )

### 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	01/13/2014

The size of the attachment (bytes) is not something that is input by Opposer, but rather calculated by ESTTA upon the successful upload of a document. If Opposer’s complaint was not attached, the byte count could not have been calculated – something that did not occur here.

As the complaint was timely filed with the Board in accordance with the relevant rules, Applicant’s Motion to Dismiss is frivolous, demonstrably false on its face, and filled with careless and inaccurate accusations. Applicant’s Motion should be given no consideration and denied.

**B. Opposer has Repeatedly Contacted Applicant in an Effort to Avoid this Frivolous Motion.**

Upon receiving Applicant’s Motion, and noting that it was based solely on an internal technical error on the part of the ESTTA/TTABVue system, Opposer immediately contacted Applicant to explain the issue (and to indicate that the system error had already been resolved). *See Exhibit C*, attached hereto. When Applicant did not respond to the initial email or withdraw the instant Motion, Opposer attempted again to contact Applicant regarding this matter. Opposer’s intention in resolving this matter with the Applicant (outside of Board participation) was to have the Motion simply withdrawn in order to save both the parties’ and the Board’s time and resources. Oddly, Applicant did not respond or acknowledge either of Opposer’s efforts,

leaving Opposer to be forced to file this response. In fact, a simple five-minute phone call on the part of Applicant to the TTAB Help Desk, the Interlocutory Attorney, or the Paralegal assigned to the case prior to filing this Motion would have immediately resolved this non-existent problem, and avoided wasting the Board's time and resources with this frivolous Motion<sup>3</sup>.

**C. Opposer Requests an Extension of Time to File its Answer in the Parent Opposition.**

Although the Parent Opposition (#91-208,003) and Child Opposition (#91-214,448) have been consolidated, the Board noted that the answers had yet to be filed in both matters (Opposer's Answer to the Counterclaim in #91-208,003, and Applicant's Answer to the Notice of Opposition in #91-214,448), and maintained the previously set forth answer deadlines. In light of the instant Motion, Opposer respectfully requests that the overall matter be suspended, and the deadlines for Opposer's Answer to the Counterclaim, as well as Applicant's Answer to the Child Opposition be reset to a date after this Motion is decided.

**CONCLUSION**

Applicant's Motion is frivolous and demonstrably false on the face of the TTABVue record. Although Opposer has attempted to resolve this matter with Applicant quickly outside of Board participation, it was to no avail. Therefore, due to Applicant's careless and inaccurate accusations, its wasteful motion should be dismissed.

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: March 5, 2014

---

<sup>3</sup> Applicant could have also contacted Opposer via email or telephone and requested that Opposer quickly resolve this issue, rather than spend time on this Motion.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS OPPOSITION NO. 91-214,448** is being served on August 30, 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 [sgjdocketing@roylance.com](mailto:sgjdocketing@roylance.com), [sstraub@roylance.com](mailto:sstraub@roylance.com):

Stephen G. Janoski  
Roylance, Abrams, Berdo & Goodman LLP  
1300 19<sup>th</sup> Street NW, Suite 600  
Washington, D.C. 20036-1649

/Leah Z. Halpert/  
Leah Z. Halpert

# Exhibit A

**Subject:** Red Bull GmbH v. Michael Ball - Opposition #91-214,448 ag. TM: + RED POWER ELIXIR - Notice of Opposition  
**From:** Leah Halpert <LZH@techmark.com>  
**Date:** 1/13/2014 5:03 PM  
**To:** sstraub@roylance.com  
**CC:** "Martin R. Greenstein" <MRG@TechMark.com>, Angel Riordan <amr@techmark.com>

Dear Mr. Straub,

Kindly see attached a copy of the Notice of Opposition filed today by our client, Red Bull GmbH, against Michael Ball's Appln. No. 85/400,948 (TM: + RED POWER ELIXIR). As the TSDR site still lists Casimir Cook as the attorney of record for this mark, the original Notice of Opposition was necessarily sent to his attention today via first class mail.

The Board's instituting order can be found on the TTAB website:  
<http://ttabvue.uspto.gov/ttabvue/v?pno=91214448>

Best regards,  
Leah Halpert

--

**Leah Z. Halpert** | Associate  
TechMark a Law Corporation  
Trademark & Intellectual Property Law  
4820 Harwood Road | 2nd Floor | San Jose, CA 95124  
Tel: 408-266-4700 Fax: 408-850-1955  
Email: [LZH@TechMark.com](mailto:LZH@TechMark.com)

---

This e-mail message is the property of, (c)2013 TechMark. It is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact sender by reply e-mail and destroy all copies of the original message.

— Attachments: —

Michael Ball-+RED POWER ELIXIR-85400948-Notice of Opp.pdf

122 KB

# Exhibit B

ESTTA Tracking number: **ESTTA581603**

Filing date: **01/13/2014**

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		
Entity	Limited Liability Company	Citizenship	Austria
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, AMR@TechMark.com Phone:4082664700
----------------------	---

**Applicant Information**

Application No	85400948	Publication date	12/24/2013
Opposition Filing Date	01/13/2014	Opposition Period Ends	01/23/2014
Applicant	Michael F. Ball 145 Channel Pointe Mall Marina Del Rey, CA 90292 USX		

**Goods/Services Affected by Opposition**

Class 032. First Use: 0 First Use In Commerce: 0 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)
--------------------------------------	----------------------------

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3939863	Application Date	12/05/2002
Registration Date	04/05/2011	Foreign Priority Date	11/04/2002
Word Mark	RED		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 energy drinks and soft drinks		
U.S. Registration No.	2494093	Application Date	02/28/1995
Registration Date	10/02/2001	Foreign Priority Date	09/01/1994
Word Mark	RED BULL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0 [ body soaps; perfumes; cosmetics, namely, lipstick, lip gloss, and eyeliner ]</p> <p>Class 005. First use: First Use: 0 First Use In Commerce: 0 [ pharmaceutical products for the purposes of strengthening and body restoration, specifically, vitamin and mineral supplements; nutritional supplement tonics; nutritionally fortified beverages for use as supplements ]</p> <p>Class 012. First use: First Use: 0 First Use In Commerce: 0 [land] [and air ] ((vehicles, namely, bicycles;))[ parts and accessories for bicycles, namely, luggage carriers, bells and air pumps]</p> <p>Class 014. First use: First Use: 0 First Use In Commerce: 0 ((goods of precious metals their alloys and goods coated therewith, namely, pendants [and medals], ornamental pins and giftware, namely, jewelry charms;)) [chains,] [tie clips, cuff links, flasks] [jewelry, including costume jewelry;] [cuff links] [and tie pins;] horological instruments, namely, clocks, watches [, stopwatches, timing devices and chronometers]</p> <p>Class 016. First use: First Use: 0 First Use In Commerce: 0 [paper goods, namely, table napkins;] printed matter, namely, magazines, newsletters and publications featuring information and articles on sports, health, [ nutrition and diet] and general topic information; [mounted photographs;] instructional and teaching material in the fields of sports, health, [nutrition, diet] and general lifestyle activities</p> <p>Class 018. First use: First Use: 0 First Use In Commerce: 0 ((goods and small articles made of leather and of imitation leather, namely, [knapsacks,] purses, pocket wallets;)) [ key cases] [ trunks and] traveling bags; [garment bags for travel;] umbrellas</p> <p>Class 020. First use: First Use: 0 First Use In Commerce: 0 [furniture mirrors,] picture frames; [ goods made of plastic, namely, money clips;] goods made of plastics, namely, key chain tags</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0 footwear, clothing, namely, shirts, pants, T-shirts, sweat shirts and sweat pants, shorts, blouses, [skirts,] jumpers, [socks,] hats, caps; outerwear, namely, jackets; [and coats] activewear, namely, shorts, shirts, hats, caps and visors; [bandannas, neckerchiefs, coats,] jackets, sweaters, [sleepwear; resort wear, namely, shorts, shirts, T-shirts and pants; suspenders]</p> <p>Class 026. First use: First Use: 0 First Use In Commerce: 0 ((belt clasps))</p> <p>Class 028. First use: First Use: 0 First Use In Commerce: 0 [ games and playthings, namely, toy action figures; basketball equipment, namely, basketballs and backboards; skis, skipoles, bags for skis, ski parts, and snowboards; non-motorized golf carts, ] balls and bags; balls for soccer [, football, volleyball] [and baseball; hockey sticks and pucks; roller-skates;</p>		

	<p>ornamentsfor Christmas trees ]</p> <p>Class 030. First use: First Use: 0 First Use In Commerce: 0 [ flavored ices; milkshakes, frozen yoghurt and ice cream ]</p> <p>Class 032. First use: First Use: 0 First Use In Commerce: 0 [mineral waters and aerated waters and other non-alcoholic beverages, namely, flavored waters; ] soft drinks; and sports drinks</p> <p>Class 034. First use: First Use: 0 First Use In Commerce: 0 [ tobacco;] ((smokers' articles, namely,))[ tobacco tins, cigar and cigarette holders,] ((matches,)) [cigar and cigarette cases,] ((ashtrays,)) [all not of precious metal; pipe stands; smoking pipe cleaners; cigar cutters; smoking pipes;] ((cigarette lighters)) [ not of preciousmetal; pocket machines for rolling cigarettes; cigarette paper and filters; andmatches ]</p> <p>Class 035. First use: First Use: 0 First Use In Commerce: 0 promoting goods and services in the beverage, sports, auto racing, motorcycle racing, bicycle racing, boat racing[ food,][ fragrance, toiletries, tobacco,] [and ] [automobile] industries through the distribution of printed, audio and visual promotional materials(; and promotingsports events and competitions for others))</p> <p>Class 039. First use: First Use: 0 First Use In Commerce: 0 [ travel agency services, namely, making reservations and bookings for transportation; tour guide services; airplane rental ]</p> <p>Class 041. First use: First Use: 0 First Use In Commerce: 0 teaching and education services, namely, conducting seminars in the fields of sports and general lifestyle activities; entertainment in the nature of live music performances, ongoing and special event television shows featuring sports competitions, racing competition for autos, motorcycles, bicycles, boats, musical and/or dance performances; sports competitions, namely, [ baseball and ] football games; and organizing exhibits for cultural purposes</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0 [ hotel services and boarding house services ]</p>
--	---

U.S. Registration No.	3092197	Application Date	12/31/2003
Registration Date	05/16/2006	Foreign Priority Date	NONE
Word Mark	RED BULL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 032. First use: First Use: 1987/01/31 First Use In Commerce: 1996/05/31 Non-alcoholic beverages, namely energy drinks and hypertonic drinks</p> <p>Class 033. First use: First Use: 2002/07/23 First Use In Commerce: 2002/08/15</p>		

	[ Alcoholic beverages, namely, vodka ]
--	--

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		

Related Proceedings	91208003
---------------------	----------

Attachments	78347152#TMSN.jpeg( bytes ) Michael Ball-+RED POWER ELIXIR-85400948-Notice of Opp.pdf(124499 bytes )
-------------	---

### 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	01/13/2014

**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: January 13, 2014

/Leah Z. Halpert/  
Leah Z. Halpert

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

IN THE MATTER OF Application Serial No. **85/400,948** for the trademark **+RED POWER ELIXIR & Design** (Class 32), filed August 18, 2011, and published in the Official Gazette on December 24, 2013

RED BULL GMBH,	)	
	)	
v. <b>Opposer</b>	)	<b>Opposition No.:</b>
	)	
	)	<b>Serial No.:</b> <b>85/400,948</b>
	)	
MICHAEL F. BALL,	)	<b>Trademark:</b>
	)	
<b>Applicant.</b>	)	

**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 mark +RED POWER ELIXIR & Design, shown in Appln. Ser. Nos. 85/400,948 (hereinafter "**Applicant's Opposed Mark**"), 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 filing date of **Applicant's Opposed Mark**.

3. Opposer Red Bull is the owner of the valid and subsisting U.S. Trademark Reg. No. 3,939,863 for the wordmark RED, which was registered on the Principal Register on April 5, 2011, and currently covers "*energy drinks and soft drinks*" in Int'l Class 32. A copy of the TSDR record for this registration showing current status and title is attached hereto in Exhibit 1.

4. Opposer Red Bull is the owner of the valid and subsisting U.S. Trademark Reg. No. 2,494,093 for the wordmark RED BULL, which was registered on the Principal Register on October 2, 2001, and currently covers, in relevant part, "*soft drinks; and sports drinks*" in Int'l Class 32. Reg. No. 2,494,093 was duly renewed under Sec 8 & 9 of the Trademark Act on November 23, 2011, and a Sec. 15 Declaration of Incontestability was acknowledged in relation to, *inter alia*, the relevant goods above on December 29, 2012. A copy of the TSDR record for this registration showing current status and title is attached hereto in Exhibit 1.

5. Opposer Red Bull is the owner of the valid and subsisting U.S. Trademark Reg. No. 3,092,197 for the wordmark RED BULL, which was registered on the Principal Register on May 16, 2006, and currently covers "*Non-alcoholic beverages, namely energy drinks and hypertonic drinks*" in Int'l Class 32. A combined Sec 8 & 15 declaration of use and incontestability was accepted and acknowledged for Reg. No. 3,092,197 on March 10, 2012. A copy of the TSDR record for this registration showing current status and title is attached hereto in Exhibit 1.

6. Opposer Red Bull is also the owner of various 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, in addition to the above three U.S. Trademark Registrations are hereinafter collectively referred to herein as Red Bull's **RED and RED BULL Marks**.

7. 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 filing date of **Applicant's Opposed Mark**.

8. 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.

9. 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.

10. In 2012 alone, sales of Opposer Red Bull's beverages, energy drinks, sports drinks, soft drinks, and carbonated beverages worldwide exceeded 5.2 billion units, with over 1.9 billion units sold in the United States. As a result of the enormous success and sales of Red Bull's beverages, energy drinks, sports drinks, soft drinks, and carbonated 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.

11. Applicant Michael F. Ball (“Applicant”) filed Appln. No. 85/400,948 on August 18, 2011, for the trademark +RED POWER ELIXIR & Design 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. 85/400,948 was published for opposition on December 24, 2013.

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 Mark** so resembles Opposer Red Bull’s **RED and RED BULL Marks** as to be likely, when applied to the goods of Applicant’s Appln. Nos. 85/400,948, 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 Mark** 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 Mark** on the goods set forth in Appln. Nos. 85/400,948, 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 Mark** on the goods set forth in Appln. Nos. 85/400,948 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 Mark**, 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 mark sought to be registered herein, +RED POWER ELIXIR & Design of Appln. No. 85/400,948, be denied and that this opposition be sustained.

The sum of \$300 for the statutory fee for this 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 Angelique M. Riordan, 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/  
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: January 13, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** is being served on January 13, 2014, 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.

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

/Leah Z. Halpert/  
Leah Z. Halpert

# **Exhibit 1**

STATUS DOCUMENTS

[Back to Search](#)

Print

Generated on: This page was generated by TSDR on 2014-01-13 18:14:02 EST

Mark: RED

No Image exists for this case.

US Serial Number: 78191805

Application Filing Date: Dec. 05, 2002

US Registration Number: 3939863

Registration Date: Apr. 05, 2011

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Apr. 05, 2011

Publication Date: Sep. 04, 2007

### Mark Information

Mark Literal Elements: RED

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

### Related Properties Information

Claimed Ownership of US [2494093](#)

Registrations:

### Foreign Information

Priority Claimed: Yes

Foreign Application Number: 7011/2002

Foreign Application Filing Date: Nov. 04, 2002

Foreign Registration Number: 208089

Foreign Registration Date: Jan. 28, 2003

Foreign Application/Registration Country: AUSTRIA

Foreign Expiration Date: Jan. 31, 2013

### Goods and Services

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks \*.\* identify additional (new) wording in the goods/services.

For: energy drinks and soft drinks

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 44(e)

### Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: Yes

Currently ITU: No

Amended ITU: No

Filed 44D: Yes

Currently 44D: No

Amended 44D: No

Filed 44E: Yes

Currently 44E: Yes

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

### Current Owner(s) Information

Owner Name: RED BULL GMBH

**Owner Address:** Am Brunnen 1  
5330 Fuschl am See  
AUSTRIA

**Legal Entity Type:** CORPORATION

**State or Country Where  
Organized:** AUSTRIA

### Attorney/Correspondence Information

#### Attorney of Record

**Attorney Name:** Martin R Greenstein

**Attorney Primary Email  
Address:** [MRG@TechMark.com](mailto:MRG@TechMark.com)

**Attorney Email Authorized:** No

#### Correspondent

**Correspondent Name/Address:** Martin R. Greenstein  
TechMark a Law Corporation  
4820 Harwood Road  
2nd Floor  
San Jose, CALIFORNIA 95124-5273  
UNITED STATES

**Phone:** 408-266-4700

**Fax:** 408-864-2044

**Correspondent e-mail:** [MRG@TechMark.com](mailto:MRG@TechMark.com)

**Correspondent e-mail  
Authorized:** No

#### Domestic Representative

**Domestic Representative  
Name:** Martin R Greenstein

**Phone:** 1-408-280-2233

**Fax:** 1-408-280-2235

**Domestic Representative  
e-mail:** [MRG@TechMark.com](mailto:MRG@TechMark.com)

**Domestic Representative  
e-mail Authorized:** No

### Prosecution History

Date	Description	Proceeding Number
Apr. 11, 2011	SEC 7 REQUEST FILED	75184
Apr. 23, 2011	CERTIFICATE OF CORRECTION ISSUED	75184
Apr. 12, 2011	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	75184
Apr. 11, 2011	TEAS SECTION 7 REQUEST RECEIVED	
Apr. 05, 2011	REGISTERED-PRINCIPAL REGISTER	
Mar. 22, 2011	CHANGES/CORRECTIONS AFTER PUB APPROVAL ENTERED	67832
Mar. 16, 2011	ASSIGNED TO PETITION STAFF	67832
Mar. 15, 2011	TEAS POST PUBLICATION AMENDMENT RECEIVED	1111
Mar. 02, 2011	TTAB RELEASE CASE TO TRADEMARKS	182755
Mar. 02, 2011	OPPOSITION TERMINATED NO. 999999	182755
Mar. 02, 2011	OPPOSITION DISMISSED NO. 999999	182755
Mar. 03, 2008	OPPOSITION INSTITUTED NO. 999999	182755
Sep. 28, 2007	EXTENSION OF TIME TO OPPOSE RECEIVED	
Sep. 04, 2007	PUBLISHED FOR OPPOSITION	
Aug. 15, 2007	NOTICE OF PUBLICATION	
May 25, 2007	LAW OFFICE PUBLICATION REVIEW COMPLETED	70824
May 15, 2007	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 20, 2007	TEAS/EMAIL CORRESPONDENCE ENTERED	70824
Apr. 20, 2007	CORRESPONDENCE RECEIVED IN LAW OFFICE	70824
Apr. 20, 2007	ASSIGNED TO LIE	70824
Mar. 19, 2007	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jan. 14, 2007	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Sep. 21, 2006	INQUIRY AS TO SUSPENSION MAILED	
Sep. 20, 2006	SUSPENSION INQUIRY WRITTEN	67516
Aug. 22, 2006	LIE CHECKED SUSP - TO ATTY FOR ACTION	76243
Feb. 21, 2006	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	76243
Aug. 09, 2005	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	78413

Feb. 03, 2005	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	78413
Jul. 26, 2004	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
Jan. 14, 2004	LETTER OF SUSPENSION MAILED	
Nov. 14, 2003	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Nov. 18, 2003	EMAIL RECEIVED	
May 14, 2003	NON-FINAL ACTION MAILED	
May 05, 2003	ASSIGNED TO EXAMINER	67516

### Maintenance Filings or Post Registration Information

**Change in Registration:** Yes

**Correction made to Registration:** In the statement, lines 4 and 5 are deleted; line 6 "drinks, smoothies, sports drinks; hypertonic drinks; non-" are deleted; line 7, alcoholic cocktails and drinks in the nature of" are deleted.

### TM Staff and Location Information

TM Staff Information - None

File Location

**Current Location:** POST REGISTRATION

**Date in Location:** Jun. 06, 2011

[Assignment Abstract Of Title Information - Click to Load](#)

[Proceedings - Click to Load](#)

STATUS DOCUMENTS

[Back to Search](#)

Print

Generated on: This page was generated by TSDR on 2014-01-13 18:14:44 EST

Mark: RED BULL

No Image exists for this case.

US Serial Number: 75979618

Application Filing Date: Feb. 28, 1995

US Registration Number: 2494093

Registration Date: Oct. 02, 2001

Register: Principal

Mark Type: Trademark, Service Mark

Status: A Section 15 declaration has been acknowledged.

Status Date: Dec. 29, 2012

Publication Date: Dec. 30, 1997

### Mark Information

Mark Literal Elements: RED BULL

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Color(s) Claimed: Color is not claimed as a feature of the mark.

### Related Properties Information

Claimed Ownership of US [74641395](#)

Registrations:

Child Of: [74641395](#)

### Foreign Information

Priority Claimed: Yes

Foreign Application Number: R56349/32Wz

Foreign Application Filing Date: Sep. 01, 1994

Foreign Registration Number: 2081750

Foreign Registration Date: Oct. 20, 1994

Foreign Application/Registration  
Country: GERMANY

Foreign Expiration Date: Sep. 30, 2004

Priority Claimed: Yes

Foreign Application Number: R56361/34Wz

Foreign Application Filing Date: Sep. 02, 1994

Foreign Registration Number: 2901093

Foreign Registration Date: Feb. 01, 1995

Foreign Application/Registration  
Country: GERMANY

Foreign Expiration Date: Sep. 30, 2004

### Goods and Services

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks \*..\* identify additional (new) wording in the goods/services.

For: [ body soaps; perfumes; cosmetics, namely, lipstick, lip gloss, and eyeliner ]

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: SECTION 8 - CANCELLED

Basis: 44(e)

For: [ pharmaceutical products for the purposes of strengthening and body restoration, specifically, vitamin and mineral supplements; nutritional supplement tonics; nutritionally fortified beverages for use as supplements ]

International Class(es): 005 - Primary Class

U.S Class(es): 006, 018, 044, 046, 051, 052

Class Status: SECTION 8 - CANCELLED

<b>Basis:</b> 44(e)	
<b>For:</b> [land] [and air ] ((vehicles, namely, bicycles;))[ parts and accessories for bicycles, namely, luggage carriers, bells and air pumps]	
<b>International Class(es):</b> 012 - Primary Class	<b>U.S Class(es):</b> 019, 021, 023, 031, 035, 044
<b>Class Status:</b> SECTION 8 - CANCELLED	
<b>Basis:</b> 44(e)	
<b>For:</b> ((goods of precious metals their alloys and goods coated therewith, namely, pendants [and medals], ornamental pins and giftware, namely, jewelry charms;)[chains,] [tie clips, cuff links, flasks] [jewelry, including costume jewelry;] [cuff links] [and tie pins;] horological instruments, namely, clocks, watches [, stopwatches, timing devices and chronometers]	
<b>International Class(es):</b> 014 - Primary Class	<b>U.S Class(es):</b> 002, 027, 028, 050
<b>Class Status:</b> ACTIVE	
<b>Basis:</b> 44(e)	
<b>For:</b> [paper goods, namely, table napkins;] printed matter, namely, magazines, newsletters and publications featuring information and articles on sports, health, [ nutrition and diet] and general topic information; [mounted photographs;] instructional and teaching material in the fields of sports, health, [nutrition, diet] and general lifestyle activities	
<b>International Class(es):</b> 016 - Primary Class	<b>U.S Class(es):</b> 002, 005, 022, 023, 029, 037, 038, 050
<b>Class Status:</b> ACTIVE	
<b>Basis:</b> 44(e)	
<b>For:</b> ((goods and small articles made of leather and of imitation leather, namely, [knapsacks,] purses, pocket wallets;)) [ key cases] [ trunks and] traveling bags; [garment bags for travel;] umbrellas	
<b>International Class(es):</b> 018 - Primary Class	<b>U.S Class(es):</b> 001, 002, 003, 022, 041
<b>Class Status:</b> ACTIVE	
<b>Basis:</b> 44(e)	
<b>For:</b> [furniture mirrors,] picture frames;[ goods made of plastic, namely, money clips;] goods made of plastics, namely, key chain tags	
<b>International Class(es):</b> 020 - Primary Class	<b>U.S Class(es):</b> 002, 013, 022, 025, 032, 050
<b>Class Status:</b> ACTIVE	
<b>Basis:</b> 44(e)	
<b>For:</b> footwear, clothing, namely, shirts, pants, T-shirts, sweat shirts and sweat pants, shorts, blouses, [skirts,] jumpers, [socks,] hats, caps; outerwear, namely, jackets; [and coats] activewear, namely, shorts, shirts, hats, caps and visors;[ bandannas, neckerchiefs, coats.] jackets, sweaters, [sleepwear; resort wear, namely, shorts, shirts, T-shirts and pants; suspenders]	
<b>International Class(es):</b> 025 - Primary Class	<b>U.S Class(es):</b> 022, 039
<b>Class Status:</b> ACTIVE	
<b>Basis:</b> 44(e)	
<b>For:</b> ((belt clasps))	
<b>International Class(es):</b> 026 - Primary Class	<b>U.S Class(es):</b> 037, 039, 040, 042, 050
<b>Class Status:</b> ACTIVE	
<b>Basis:</b> 44(e)	
<b>For:</b> [ games and playthings, namely, toy action figures; basketball equipment, namely, basketballs and backboards; skis, ski poles, bags for skis, ski parts, and snowboards; non-motorized golf carts, ] balls and bags; balls for soccer [, football, volleyball] [and baseball; hockey sticks and pucks; roller-skates; ornaments for Christmas trees ]	
<b>International Class(es):</b> 028 - Primary Class	<b>U.S Class(es):</b> 022, 023, 038, 050
<b>Class Status:</b> ACTIVE	
<b>Basis:</b> 44(e)	
<b>For:</b> [ flavored ices; milkshakes, frozen yoghurt and ice cream ]	
<b>International Class(es):</b> 030 - Primary Class	<b>U.S Class(es):</b> 046
<b>Class Status:</b> SECTION 8 - CANCELLED	
<b>Basis:</b> 44(e)	
<b>For:</b> [mineral waters and aerated waters and other non-alcoholic beverages, namely, flavored waters; ] soft drinks; and sports drinks	
<b>International Class(es):</b> 032 - Primary Class	<b>U.S Class(es):</b> 045, 046, 048
<b>Class Status:</b> ACTIVE	
<b>Basis:</b> 44(e)	
<b>For:</b> [ tobacco;] ((smokers' articles, namely;))[ tobacco tins, cigar and cigarette holders,] ((matches,)) [cigar and cigarette cases,] ((ashtrays,)) [all not of precious	

metal; pipe stands; smoking pipe cleaners; cigar cutters; smoking pipes; ((cigarette lighters)) [ not of precious metal; pocket machines for rolling cigarettes; cigarette paper and filters; and matches ]

**International Class(es):** 034 - Primary Class

**U.S Class(es):** 002, 008, 009, 017

**Class Status:** SECTION 8 - CANCELLED

**Basis:** 44(e)

**For:** promoting goods and services in the beverage, sports, auto racing, motorcycle racing, bicycle racing, boat racing[ food,][ fragrance, toiletries, tobacco.][ and ] [automobile] industries through the distribution of printed, audio and visual promotional materials(, and promoting sports events and competitions for others))

**International Class(es):** 035 - Primary Class

**U.S Class(es):** 100, 101, 102

**Class Status:** ACTIVE

**Basis:** 44(e)

**For:** [ travel agency services, namely, making reservations and bookings for transportation; tour guide services; airplane rental ]

**International Class(es):** 039 - Primary Class

**U.S Class(es):** 100, 105

**Class Status:** SECTION 8 - CANCELLED

**Basis:** 44(e)

**For:** teaching and education services, namely, conducting seminars in the fields of sports and general lifestyle activities; entertainment in the nature of live music performances, ongoing and special event television shows featuring sports competitions, racing competition for autos, motorcycles, bicycles, boats, musical and/or dance performances; sports competitions, namely, [ baseball and ] football games; and organizing exhibits for cultural purposes

**International Class(es):** 041 - Primary Class

**U.S Class(es):** 100, 101, 107

**Class Status:** ACTIVE

**Basis:** 44(e)

**For:** [ hotel services and boarding house services ]

**International Class(es):** 042 - Primary Class

**U.S Class(es):** 100, 101

**Class Status:** SECTION 8 - CANCELLED

**Basis:** 44(e)

### Basis Information (Case Level)

**Filed Use:** No

**Currently Use:** No

**Amended Use:** No

**Filed ITU:** Yes

**Currently ITU:** No

**Amended ITU:** No

**Filed 44D:** Yes

**Currently 44D:** No

**Amended 44D:** No

**Filed 44E:** Yes

**Currently 44E:** Yes

**Amended 44E:** Yes

**Filed 66A:** No

**Currently 66A:** No

**Filed No Basis:** No

**Currently No Basis:** No

### Current Owner(s) Information

**Owner Name:** RED BULL GMBH

**Owner Address:** Am Brunnen 1  
Fuschl am See A-5330  
AUSTRIA

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where Organized:** AUSTRIA

### Attorney/Correspondence Information

#### Attorney of Record

**Attorney Name:** Martin R. Greenstein

**Docket Number:** REDBULL-US-2

**Attorney Primary Email:** [MRG@TechMark.com](mailto:MRG@TechMark.com)

**Attorney Email Authorized:** Yes

**Address:**

#### Correspondent

**Correspondent Name/Address:** Martin R. Greenstein  
TECHMARK A LAW CORPORATION  
4820 HARWOOD ROAD, 2ND FLOOR  
SAN JOSE, CALIFORNIA 95124-5273  
UNITED STATES

**Phone:** 408-266-4700

**Fax:** 408-850-1955

Correspondent e-mail: [MRG@TechMark.com](mailto:MRG@TechMark.com)Correspondent e-mail Yes  
Authorized:**Domestic Representative****Domestic Representative** Martin R. Greenstein  
**Name:****Phone:** 408-266-4700**Fax:** 408-864-2044**Domestic Representative** [MRG@TechMark.com](mailto:MRG@TechMark.com)  
**e-mail:****Domestic Representative** Yes  
**e-mail Authorized:****Prosecution History**

Date	Description	Proceeding Number
Dec. 29, 2012	SEC. 15 ACKNOWLEDGEMENT - E-MAILED	
Dec. 29, 2012	REGISTERED - SEC. 15 ACKNOWLEDGED	68973
Dec. 29, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	68973
Dec. 26, 2012	TEAS SECTION 15 RECEIVED	
Aug. 22, 2012	CERTIFICATE OF CORRECTION ISSUED	66607
Aug. 02, 2012	ASSIGNED TO PARALEGAL	66607
Jul. 27, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	73376
Jul. 26, 2012	TEAS SECTION 7 REQUEST RECEIVED	
May 31, 2012	AMENDMENT UNDER SECTION 7 - ISSUED	66607
May 31, 2012	ASSIGNED TO PARALEGAL	66607
Jan. 13, 2012	AMENDMENT UNDER SECTION 7 - ISSUED	66607
Jan. 11, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	66607
Jan. 10, 2012	TEAS SECTION 7 REQUEST RECEIVED	
Nov. 23, 2011	NOTICE OF ACCEPTANCE OF SEC. 8 - E-MAILED	
Nov. 23, 2011	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	68335
Nov. 23, 2011	REGISTERED - SEC. 9 GRANTED/CHECK RECORD FOR SEC. 8	68335
Nov. 23, 2011	REGISTERED - PARTIAL SEC. 8 (10-YR) ACCEPTED	68335
Sep. 07, 2011	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	68335
Sep. 07, 2011	TEAS SECTION 8 & 9 RECEIVED	
Mar. 17, 2009	NOTICE OF SUIT	
Sep. 23, 2008	REGISTERED - PARTIAL SEC. 8 (6-YR) ACCEPTED	68335
Apr. 01, 2008	REGISTERED - SEC. 8 (6-YR) FILED	
Aug. 08, 2008	POST REGISTRATION ACTION CORRECTION	68335
Jun. 02, 2008	NOTICE OF SUIT	
Apr. 10, 2008	ASSIGNED TO PARALEGAL	68335
Apr. 01, 2008	REGISTERED - SEC. 8 (6-YR) FILED	
Apr. 01, 2008	TEAS SECTION 8 RECEIVED	
Feb. 03, 2008	NOTICE OF SUIT	
Apr. 09, 2007	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Apr. 09, 2007	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jan. 26, 2007	CASE FILE IN TICRS	
Jan. 14, 2007	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 27, 2005	COUNTERCLAIM OPP. NO. 999999	160944
Aug. 03, 2005	ASSIGNED TO PARALEGAL	73376
Aug. 03, 2005	REPRINTING REGISTRATION CERTIFICATE	
Jul. 13, 2005	ASSIGNED TO PARALEGAL	67657
Oct. 06, 2004	SEC 7 REQUEST FILED	
Oct. 06, 2004	PAPER RECEIVED	
Oct. 02, 2001	REGISTERED-PRINCIPAL REGISTER	
Apr. 27, 2001	ASSIGNED TO EXAMINER	76143
Sep. 25, 2000	ASSIGNED TO EXAMINER	68309
May 13, 2000	DIVISIONAL PROCESSING COMPLETE	
Sep. 29, 1998	OPPOSITION INSTITUTED NO. 999999	111750
Jan. 29, 1998	EXTENSION OF TIME TO OPPOSE RECEIVED	
Dec. 30, 1997	PUBLISHED FOR OPPOSITION	

Nov. 28, 1997	NOTICE OF PUBLICATION	
Sep. 30, 1997	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 23, 1997	EXAMINER'S AMENDMENT MAILED	
Jul. 15, 1997	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Mar. 06, 1997	NON-FINAL ACTION MAILED	
Dec. 20, 1996	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Jun. 20, 1996	FINAL REFUSAL MAILED	
Feb. 14, 1996	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Aug. 10, 1995	NON-FINAL ACTION MAILED	
Jul. 12, 1995	ASSIGNED TO EXAMINER	70734

### Maintenance Filings or Post Registration Information

**Affidavit of Continued Use:** Section 8 - Accepted in Part

**Affidavit of Incontestability:** Section 15 - Accepted

**Renewal Date:** Oct. 02, 2011

**Change in Registration:** Yes

**Amendment to a Registration/Renewal Certificate:** In the statement, page 2, column 2, line 34 -40, should be deleted, and, " soft drinks; and sports drinks" should be inserted. In the statement line 1, "corporation" should be deleted, and "limited liability company" should be inserted. In the statement, page 2, column 2, line 34 -40, should be deleted, and, " soft drinks; and sports drinks" should be inserted.

**Correction made to Registration:** In the statement, page 3, column 2, line 10 " APPLICATION NO. 2901093 " should be deleted, and, " APPLICATION NO. R56361/34Wz " should be inserted.

### TM Staff and Location Information

TM Staff Information - None

File Location

**Current Location:** TMO LAW OFFICE 112

**Date in Location:** Dec. 29, 2012

[Assignment Abstract Of Title Information - Click to Load](#)

[Proceedings - Click to Load](#)

STATUS DOCUMENTS

[Back to Search](#)

Print

Generated on: This page was generated by TSDR on 2014-01-13 18:15:07 EST

Mark: RED BULL

RED BULL

US Serial Number: 78347152

Application Filing Date: Dec. 31, 2003

US Registration Number: 3092197

Registration Date: May 16, 2006

Register: Principal

Mark Type: Trademark

Status: A partial Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Mar. 10, 2012

Publication Date: Nov. 01, 2005

### Mark Information

Mark Literal Elements: RED BULL

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

### Related Properties Information

Claimed Ownership of US [1541794](#), [1935272](#), [2852235](#) and others  
Registrations:

### Goods and Services

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks \*..\* identify additional (new) wording in the goods/services.

For: Non-alcoholic beverages, namely energy drinks and hypertonic drinks

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 31, 1987

Use in Commerce: May 31, 1996

For: [ Alcoholic beverages, namely, vodka ]

International Class(es): 033 - Primary Class

U.S Class(es): 047, 049

Class Status: SECTION 8 - CANCELLED

Basis: 1(a)

First Use: Jul. 23, 2002

Use in Commerce: Aug. 15, 2002

### Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

### Current Owner(s) Information

**Owner Name:** RED BULL GMBH**Owner Address:** Am Brunnen 1  
Fuschl am See A5330  
AUSTRIA**Legal Entity Type:** LIMITED LIABILITY COMPANY**State or Country Where  
Organized:** AUSTRIA

### Attorney/Correspondence Information

#### Attorney of Record

**Attorney Name:** Martin R. Greenstein**Attorney Primary Email  
Address:** [MRG@TechMark.com](mailto:MRG@TechMark.com)**Attorney Email Authorized:** Yes

#### Correspondent

**Correspondent Name/Address:** Martin R. Greenstein  
TECHMARK A LAW CORPORATION  
4820 HARWOOD ROAD, 2ND FLOOR  
SAN JOSE, CALIFORNIA 95124-5273  
UNITED STATES**Phone:** 408-266-4700**Fax:** 408-850-1955**Correspondent e-mail:** [MRG@TechMark.com](mailto:MRG@TechMark.com)**Correspondent e-mail  
Authorized:** Yes

#### Domestic Representative

**Domestic Representative  
Name:** Martin R Greenstein**Phone:** 408-280-2233**Fax:** 408-280-2235**Domestic Representative  
e-mail:** [MRG@TechMark.com](mailto:MRG@TechMark.com)**Domestic Representative  
e-mail Authorized:** No

### Prosecution History

Date	Description	Proceeding Number
Oct. 24, 2012	NOTICE OF SUIT	
Mar. 10, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Mar. 10, 2012	REGISTERED - PARTIAL SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	67603
Jan. 24, 2012	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	67603
Mar. 10, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	67603
Jan. 24, 2012	TEAS SECTION 8 & 15 RECEIVED	
Jul. 11, 2011	NOTICE OF SUIT	
Mar. 30, 2010	NOTICE OF SUIT	
Dec. 30, 2009	NOTICE OF SUIT	
Jul. 07, 2009	NOTICE OF SUIT	
Jul. 07, 2009	NOTICE OF SUIT	
Aug. 05, 2008	NOTICE OF SUIT	
Jun. 10, 2008	NOTICE OF SUIT	
Jun. 10, 2008	NOTICE OF SUIT	
Jan. 14, 2007	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
May 16, 2006	REGISTERED-PRINCIPAL REGISTER	
Apr. 01, 2006	EXTENSION OF TIME TO OPPOSE PROCESS - TERMINATED	
Nov. 23, 2005	EXTENSION OF TIME TO OPPOSE RECEIVED	
Nov. 01, 2005	PUBLISHED FOR OPPOSITION	
Oct. 12, 2005	NOTICE OF PUBLICATION	
Sep. 08, 2005	LAW OFFICE PUBLICATION REVIEW COMPLETED	76985
Sep. 02, 2005	ASSIGNED TO LIE	76985
Aug. 26, 2005	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 26, 2005	AMENDMENT FROM APPLICANT ENTERED	88888
Aug. 23, 2005	CORRESPONDENCE RECEIVED IN LAW OFFICE	88888
Aug. 23, 2005	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 07, 2005	FINAL REFUSAL MAILED	

Mar. 04, 2005	FINAL REFUSAL WRITTEN	74309
Jan. 28, 2005	TEAS/EMAIL CORRESPONDENCE ENTERED	76869
Jan. 25, 2005	CORRESPONDENCE RECEIVED IN LAW OFFICE	76869
Jan. 25, 2005	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Aug. 04, 2004	AMENDMENT FROM APPLICANT ENTERED	76532
Jul. 28, 2004	UNRESPONSIVE/DUPLICATE PAPER RECEIVED	76532
Jul. 29, 2004	UNRESPONSIVE/DUPLICATE PAPER RECEIVED	
Jul. 26, 2004	NON-FINAL ACTION MAILED	
Jul. 21, 2004	NON-FINAL ACTION MAILED	
Jul. 19, 2004	ASSIGNED TO EXAMINER	74309
Jan. 08, 2004	NEW APPLICATION ENTERED IN TRAM	

### Maintenance Filings or Post Registration Information

**Affidavit of Continued Use:** Section 8 - Accepted in Part

**Affidavit of Incontestability:** Section 15 - Accepted

**Change in Registration:** Yes

### TM Staff and Location Information

**TM Staff Information - None**

**File Location**

**Current Location:** Not Found

**Date in Location:** Mar. 10, 2012

[Assignment Abstract Of Title Information - Click to Load](#)

[Proceedings - Click to Load](#)

# Exhibit C

**Subject:** Fwd: Our ref: WS 6.015.519 - Red Bull GmbH v Michael Ball - Parent Oppo #91-208,003 - Motion to Dismiss Child Opposition  
**From:** Martin R Greenstein <MRG@TechMark.com>  
**Date:** 3/4/2014 3:49 PM  
**To:** Stephen Janoski <sjanoski@roylance.com>, Leah Halpert <LZH@TechMark.com>  
**CC:** sstraub@roylance.com, Angel Riordan <amr@techmark.com>, "Derek M. Palmer" <DMP@techmark.com>

Dear Stephen:

I have not seen any response from you to Leah Halpert's e-mail below, and TTABVue shows no withdrawal of your ill-advised motion. As an experienced partner at Roylance Abrams you certainly know better, but whoever drafted the motion and signed your name apparently does not.

The cover sheet, which you admit was timely filed, which you attached to your motion and which shows on TTABVUE as having been filed on Jan 13, 2014, includes a specific reference to the then attached Notice of Opposition, and even gives its size (124499 bytes):

Related Proceedings	91208003
Attachments	78347152#TMSN.jpeg( bytes ) Michael Ball+RED POWER ELIXIR-85400948-Notice of Opp.pdf(124499 bytes )

The fact that you couldn't find the Notice of Opposition is clearly a technical glitch within the ESTTA/TTABVue system. The statement on which your entire motion is based, namely:  
*The record does not show, however, that a complaint or Notice of Opposition was successfully delivered to the Board through ESTTA. The ESTTA created electronic cover sheets were not attached to and do not form part of any complaint*  
 is demonstrably false on the face of the TTABVue record. In fact, 123,499 bytes of Notice of Opposition were timely filed and uploaded to ESTTA and because of some internal PTO malfunction, those pages were apparently not visible to you on the day you looked at the site.

Unless you file an immediate and express withdrawal of this Motion to Dismiss by 5:00pm EST tomorrow, March 5th, we will respond to the motion and point out the careless and inaccurate accusations on which it is based. I don't expect the Interlocutory Attorney or the Board will appreciate their time being wasted dealing with a motion about which now has been twice explained to you.

Regards,  
 Marty Greenstein

----- Original Message -----

**Subject:**Our ref: WS 6.015.519 - Red Bull GmbH v Michael Ball - Parent Oppo #91-208,003 - Motion to Dismiss Child Opposition  
**Date:**Thu, 27 Feb 2014 15:40:40 -0800  
**From:**Leah Halpert <[LZH@techmark.com](mailto:LZH@techmark.com)>  
**Organization:**TechMark a Law Corporation  
**To:**[sjanoski@roylance.com](mailto:sjanoski@roylance.com)  
**CC:**[sstraub@roylance.com](mailto:sstraub@roylance.com), "Martin R. Greenstein" <[MRG@TechMark.com](mailto:MRG@TechMark.com)>, Angel Riordan <[amr@techmark.com](mailto:amr@techmark.com)>, "Derek M. Palmer" <[DMP@techmark.com](mailto:DMP@techmark.com)>

Dear Mr. Janoski,

We recently received your Motion to Dismiss the child opposition (#91-214,448) in the subject matter. Your argument is that, although the cover sheet appeared on the TTABVue site, the actual Notice of Opposition did not. This was purely an internal error on the part of ESTTA, and has now been remedied:

<http://ttabvue.uspto.gov/ttabvue/v?pno=91214448&pty=OPP&eno=1>

Since this was simply an internal error of ESTTA, the Notice of Opposition was timely filed and received by the Board on January 13, 2014 and properly served upon the correspondent of record at the time - Casimir Cook (with a courtesy copy being sent to Stephen Straub via email as well, since he is who took over the parent case and we wanted to ensure that the Notice was received). As such, please withdraw your motion to dismiss, since there is no basis for it.

Thank you and best regards,

Leah

--

**Leah Z. Halpert** | Associate

TechMark a Law Corporation

Trademark & Intellectual Property Law

4820 Harwood Road | 2nd Floor | San Jose, CA 95124

Tel: 408-266-4700 Fax: 408-850-1955

Email: [LZH@TechMark.com](mailto:LZH@TechMark.com)

---

This e-mail message is the property of, (c)2013 TechMark. It is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact sender by reply e-mail and destroy all copies of the original message.

--

Martin R. Greenstein

TechMark a Law Corporation

Trademark & Intellectual Property Law

4820 Harwood Road, 2nd Floor, San Jose, CA 95124-5273

Tel: 1-408-266-4700 Fax: 1-408-850-1955

E-Mail: [MRG@TechMark.com](mailto:MRG@TechMark.com)

*No trees were killed in the sending of this message.*

*However, a large number of electrons were terribly inconvenienced.*

---

This e-mail message is the property of, and ©2014 TechMark. It is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact sender by reply e-mail and destroy all copies of the original message.