

ESTTA Tracking number: **ESTTA532905**

Filing date: **04/17/2013**

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	05/01/2013
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, MPV@TechMark.com Phone:408-266-4700
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Applicant Information

Application No	85680816	Publication date	01/01/2013
Opposition Filing Date	04/17/2013	Opposition Period Ends	05/01/2013
Applicant	Stockmarket Burger, Inc. 13603 Marina Pointe Drive, C520 Marina Del Rey, CA 90292 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 011. All goods and services in the class are opposed, namely: Baking ovens; Commercial and industrial cookware, namely, gas and electric boilers, gas and electric roasters, gas and electric braising pans; Commercial cooking ovens; Commercial refrigerators and freezers and parts and fittings therefor; Deep fryer, electric; Deep frying machines; Electric coffee machines; Electric coffee brewers; Electric deep fryers; Electric espresso machines; Electric lighting fixtures; Electric refrigerators, Electric yogurt makers, Filters for drinking water, Freezers, Frozen dessert dispenser, Heated merchandise display cases; Ice machines; Industrial boilers; Industrial deep fryers; Refrigerated beverage dispensing units; Refrigerators; Freezers; Water purification machines; Water purification units; Water sterilizers; Water softening units; Electric food warmers; Powered coffee, seed and cocoa bean roasters</p>
<p>Class 025. All goods and services in the class are opposed, namely: Clothing, namely, aprons, belts, gloves, hats, hooded sweatshirts, jackets, jeans, pants, sandals, scarves, shirts, shoes, shorts, sleepwear, sneakers, socks, sweatshirts, swimwear, ties, underwear, uniforms, caps, caps with visors, chef's hats, chefs coats, coats, collared shirts, footwear for men and women, jump suits, men's suits, women's suits, skirts, shorts, suspenders, and vests</p>

Class 030.

All goods and services in the class are opposed, namely: Allspice; Coffee; Espresso; Espresso drinks; Iced coffee; Coffee beverages with milk; Artificial coffee and tea; Ground coffee beans; Bakery desserts; Bakery goods, barbecue sauce, beverages made of coffee, beverages made of tea; Beverages with a coffee base; Beverages with a chocolate base; Bread; Bread and buns; Breadsticks; Buns; Burgers contained in bread rolls; Biscuits; Caffeine-free coffee; Candy; Cappuccino; Cheeseburger sandwiches; Chicken wing sauce; Chili powders; Chili sauce; Chili seasoning; Cocktail sauces; Coffee extracts; Crepes; Croissants; Flavoring syrup; Frozen juice bars; Frozen yogurt; Frozen yogurt mixes; Garlic powder; Ice; Ice cream; Ice cubes; Noodles; Oat flakes; Processed oats; Rice; Salad dressings; Salsa; Sandwiches; Hamburger sandwiches; Toast; Sauces; Sauce mixes; Condiment, namely, pepper sauce; Teriyaki sauce; Tomato sauce; Tortillas; Oatmeal

Class 032.

All goods and services in the class are opposed, namely: Aerated fruit juices; Aerated mineral waters; Aerated water; Apple juice beverages; Beers, ale, lager, stout, porter, shandy; Bottled artesian water; Bottled water; Carbonated waters; Coconut-based beverages; Coffee-flavored beer; Coffee-flavored soft drink; Cola drinks; Drinking water with vitamins; Flavored beers; Flavored enhanced water; Frozen fruit beverages; Fruit juices; Fruit juice bases; Lemonade; Malt beer; Non-alcoholic beverages, namely, carbonated beverages; Non-alcoholic cocktails; Orange juice; Smoothies; Sparkling water; Still waters; Vegetable drinks

Class 033.

All goods and services in the class are opposed, namely: Alcohol, namely, alcoholic beverages of fruit, alcoholic cocktail mixes, blended spirits, brandy, champagne, coffee-based liqueurs, gin, grape wine, irish whiskey, malt whisky, sparkling wines, red wines, rum, sake, scotch, vodka, whiskey, whisky, white wine, wines, and wine-based drinks

Class 043.

All goods and services in the class are opposed, namely: Restaurant services; Bar services; Caf  services; Cocktail lounge services; Coffee bars; Coffee shops; Coffee supply services for offices; Contract food services; Fast-food restaurant services; Frozen yogurt shop services in nature of a restaurant; Mobile restaurant services; Rental of drink dispensing machines; Rental of drinking water dispensers; Restaurant and caf  services; Wine bars; Take-out restaurant services

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 BULL, RED BULL & Two Bulls Logo, Two Bulls Logo, (Single) Bull Logo, and other marks incorporating the word BULL, and/or the design of a bull or bovine animal		
Goods/Services	Beverages, energy drinks, sports drinks, soft drinks, various items of clothing, including but not limited to shirts, pants, jackets, hats and other clothing items, as well as restaurant and cafe services, and various other products and services related or complementary thereto		

Attachments	Bull Device Stockmarket Burger-85680816-Notice of Oppo.pdf (6 pages) (38640 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	04/17/2013

as restaurant and café services, 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, various items of clothing, including but not limited to shirts, pants, jackets, hats and other clothing items, as well as restaurant and café services, and various other products and services related or complementary thereto since long prior to the July 18, 2012 filing date of **Applicant's Opposed Mark**, opposed herein.

3. Opposer Red Bull is also the owner of various Federal registrations and common law rights for the trademarks RED BULL, RED BULL & Two Bulls Logo, Two Bulls Logo and (Single) Bull Logo, and other marks incorporating the word BULL, and/or the design of a bull or bovine animal for various goods and services, all of which are collectively referred to herein as Red Bull's "**Red Bull and Bull Logo Marks**".

4. Since long prior to the July 18, 2012 filing date of **Applicant's Opposed Mark**, opposed herein, Opposer Red Bull has continuously used the **Red Bull and Bull Logo Marks** in interstate commerce on or in connection with beverages, energy drinks, sports drinks, soft drinks, various items of clothing, including but not limited to shirts, pants, jackets, hats and other clothing items, as well as restaurant and café services, and various other products and services related or complementary thereto.

5. Red Bull's various **Red Bull and Bull Logo Marks**, all of which include the word BULL and/or the design of a bull, are and have become valuable assets of Opposer Red Bull, identifying its beverages, energy drinks, sports drinks, soft drinks, various items of clothing, including but not limited to shirts, pants, jackets, hats and other clothing items, as well

as restaurant and café services, and various other products and services of Red Bull, and distinguishing Red Bull's products and services from the products and services of others.

6. Opposer Red Bull's **Red Bull and Bull Logo Marks** as described herein 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 various services, sporting events, contests, exhibitions and cultural events advertised, offered, conducted and/or promoted in the United States and throughout the world.

7. In 2011 alone, sales of RED BULL beverages 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 Opposer Red Bull's beverages and of the extensive advertising and promotion of the **Red Bull and Bull Logo Marks** on products such as beverages, energy drinks, sports drinks, soft drinks, various items of clothing, including but not limited to shirts, pants, jackets, hats and other clothing items, and services such as restaurant and café services, and various other products and services related or complementary thereto in the United States and throughout the world, the **Red Bull and Bull Logo Marks** have become and are famous marks, and are recognized in the United States and elsewhere as such.

8. The depictions of a bull, as used and registered by Opposer typically show a bull in a charging, angry, aggressive, fighting, and/or "mad" pose, posture, and expression.

9. Opposer Red Bull's well-known energy drink and beverage products are often purchased and served at bars, clubs, restaurants and elsewhere.

10. Opposer Red Bull's well-known energy drink and beverage products are often referred to as "the Bull" or "a Bull", with consumers asking for "a Bull".

11. Applicant, Stockmarket Burger, Inc. ("Applicant"), whose address is listed in the USPTO records as 13603 Marina Pointe Drive, C520, Marina Del Rey, CA 90292, filed Appln.

No. 85/680,816 on July 18, 2012, for the trademark Bull Device based on an intent to use the mark on or in connection with the Int'l. Class 11, 25, 30, 32, 33, and 43 goods and services set forth in the application. Appln. No. 85/680,816 does not claim color as a feature of the mark.

12. Applicant has used **Applicant's Opposed Mark** in the color red, the primary color used by Opposer (and the image equivalent of Opposer's corporate name and house mark) on or in connection with the well-known and famous **Red Bull and Bull Logo Marks**. This highlights Applicant's direct reference to Opposer and Opposer's well-known and famous **Red Bull and Bull Logo Marks**.

Claim 1: Priority and Likelihood of Confusion Under § 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 BULL and Bull Logo Marks** as to be likely, when applied to the goods of Appln. No. 85/680,816, 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 and services set forth in Appln. No. 85/680,816 and Opposer Red Bull's **RED BULL and Bull Logo 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 and services set forth in Appln. No. 85/680,816 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 BULL and Bull Logo Marks**, and therefore could not have formed the requisite good faith belief that Applicant is the owner of the mark, and that no other person, firm, corporation or association has the right to use said mark in commerce, and consequently knew that such use is and would be in derogation and violation of Red Bull's rights.

19. As laid out in Paragraphs 13-18 above, **Applicant's Opposed Mark** is likely to cause confusion with Red Bull's prior **RED BULL and Bull Logo Marks**, in violation of § 2(d) of the Trademark Act.

Wherefore, Red Bull requests that registration of the mark sought to be registered herein, Bull Device of Appln. No. 85/680,816, be denied and that this opposition be sustained.

Please recognize Martin R. Greenstein, Neil D. Greenstein, Leah Z. Halpert, Mariela P. Vidolova and Lee D. Green, members in good standing of the Bar of the State of California, c/o TechMark, 4820 Harwood Road, 2nd 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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Dated: April 17, 2013

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** is being served on April 17, 2013, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to Applicant's Correspondent of Record at the address shown on the USPTO website:

Stockmarket Burger, Inc.
13603 Marina Pointe Drive, Apt C520
Marina Del Rey, CA 90292-5598

/Leah Z. Halpert/
Leah Z. Halpert