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

Proceeding	91210282
Party	Defendant Stockmarket Burger, Inc.
Correspondence Address	TIANJIAO GU STOCKMARKET BURGER INC 13603 MARINA POINTE DRIVE APT C520 MARINA DEL REY, CA 90292-5598 UNITED STATES temygu207@gmail.com, temy@novelaffairs.com
Submission	Answer
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Date	08/25/2013
Attachments	Answer_082413.pdf(124462 bytes)

Dated August 24, 2013

Applicant:
Stockmarket Burger, Inc.
13603 Marina Pointe Drive C520
Marina Del Rey, CA 90292

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

Red Bull GmbH)	
)	
Opposer)	
vs.)	Opposition No.: 91210282
)	Serial No.: 85680816
Stockmarket Burger, Inc.)	
)	
Applicant)	

Dated this 24th day of August, 2013

Opposer:
Red Bull GmbH
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124

Martin R. Greenstein
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Dated August 24, 2013

APPLICANT'S ANSWER
TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES

Applicant, Stockmarket Burger, Inc., for its answer to the Notice of Opposition filed by Red Bull GmbH against application for registration of Stockmarket Burger's trademark, Serial No. 85680816 filed on July 18, 2012, and published in the Official Gazette on January 1, 2013, pleads and avers as follows:

1. Answering paragraph 1, Applicant denies knowledge and information sufficient to admit or deny the allegations
2. Answering paragraph 2, Applicant denies knowledge and information sufficient to admit or deny the allegations
3. Answering paragraph 3, Applicant denies knowledge and information sufficient to admit or deny the allegations
4. Answering paragraph 4, Applicant denies knowledge and information sufficient to admit or deny the allegations
5. Answering paragraph 5, Applicant denies knowledge and information sufficient to admit or deny the allegations
6. Answering paragraph 6, Applicant denies knowledge and information sufficient to admit or deny the allegations
7. Answering paragraph 7, Applicant denies knowledge and information sufficient to admit or deny the allegations

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8. Answering paragraph 8, Applicant denies knowledge and information sufficient to admit or deny the allegations
9. Answering paragraph 9, Applicant denies knowledge and information sufficient to admit or deny the allegations
10. Answering paragraph 10, Applicant denies knowledge and information sufficient to admit or deny the allegations
11. Answering paragraph 11, Applicant admits to information stated regarding Applicant
12. Answering paragraph 12, Applicant denies each and every allegation contained
13. Answering paragraph 13, Applicant denies knowledge and information sufficient to admit or deny the allegations stated in paragraphs 1-10, inclusive, and denies each and every allegation contained in paragraph 12
14. Answering paragraph 14, Applicant denies each and every allegation contained
15. Answering paragraph 15, Applicant denies each and every allegation contained
16. Answering paragraph 16, Applicant denies each and every allegation contained
17. Answering paragraph 17, Applicant denies each and every allegation contained

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18. Answering paragraph 18, Applicant denies each and every allegation contained
19. Answering paragraph 19, Applicant denies each and every allegation contained in paragraphs 13-18

AFFIRMATIVE DEFENSES

1. Applicant's mark is not confusingly similar to any trademark of Opposer. Applicant's trademark application was approved for trademark registration on the Principal Register on July 18, 2012, and was published for opposition. According to the "Examiner's Amendment" mailed on November 7, 2012 "The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). " Consequently, the Examining Attorney after his or her own due diligence determined that Applicant's mark is not confusingly similar with any of the Opposer's marks or any third party mark for that matter.
2. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception, because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar.
3. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception, because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar. Any similarity, if at all, between Applicant's mark and the pleaded marks of Opposer is in the use of "Bull" symbol which, upon information and belief, has been used and registered by numerous third parties in beverages, various items

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of clothing, as well as restaurant and café services, and other products and services. As a result, Opposer cannot base any similarity between its pleaded marks and the mark of Applicant of the “Bull” symbol, which is not distinctive. Under the antidissection rule any secondary meaning Opposer may have in its alleged “Red Bull” trademark is narrowly circumscribed to the exact trademark alleged and does not extend to any other feature of the trademark beyond the “Bull” symbol.

4. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception, because, *inter alia*, Applicant’s “Bull” mark uses a swirl/wind motion to lift and empower the bull, emphasizing the liveliness and energy of the stock market’s trading environment whereas, the Opposer’s marks uses a “charging, angry, aggressive, fighting, and/or “mad” pose, posture, and expression” as stated in paragraph 8. Therefore, this clearly manifests a fundamental difference between Applicant’s and Opposer’s mark designs.
5. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception, because, *inter alia*, Applicant’s mark uses a “force of wind” motion to lift the bull. The bull’s expression is kind, harmonious, strong, and dashing. On the other hand, the Opposer’s bull marks embody “charging, angry, aggressive, fighting, and/or “mad” pose, posture, and expression” as stated in paragraph 8. Therefore, this clearly manifests difference between Applicant’s and Opposer’s mark expressions.
6. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception, because, *inter alia*, Applicant’s mark layout consists of two elements, a combination of a cattle/bull and a swirl. The Opposer’s mark consists of two head-to-head bulls that form its design – layout of the graphic is distinctively different from Applicant’s

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mark layout. Furthermore, Applicant's mark captures a forward facing bull at a 45-degree angle, whereas Opposer's mark design depicts the bull only from its side with horns of the bull digging into the ground. Therefore, this clearly manifests difference between the Applicant's and Opposer's design layouts of the mark.

7. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception, because, Applicant's mark is given a gradient effect to the mark – demonstrating an obvious, gradual change from bold to soft coloring whereas, Opposer's mark uses a single solid red color. Therefore, this clearly manifests difference between the Applicant's and Opposer's color treatments of the mark.
8. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception, because, Applicant's design was created in 2011, which designed with a modernistic approach whereas, Opposer's mark was first introduced in 1987.
9. Applicant further affirmatively alleges that there is no likelihood of mistaken belief that Applicant's products are sponsored by, affiliated with, approved by or otherwise emanate from Opposer because Opposer's and Applicant's marks are not sufficiently similar; there are, upon information and belief, numerous uses and registrations of third party marks with a "Bull" design; neither Applicant's predecessors in interest intended any association with Opposer's marks or any of them; and upon information and belief, ordinary prospective purchaser's of Applicant's will not associate Applicant's and Opposer's marks.

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WHEREFORE, Applicant requests that the Notice of Opposition be dismissed on the merits and with prejudiced, Opposer taking nothing. Applicant further requests that its trademark application be advanced and receive a Notice of Allowance.

Respectfully Submitted,

Stockmarket Burger, Inc.
13603 Marina Pointe Drive C520
Marina Del Rey, CA 90292
Tel: 714-262-3549
Email: temy@novelaffairs.com

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of August, 2013, a true copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES is being filed electronically on the Trademark Trials and Appeals website via ESTTA, and a copy of such filing is being mailed to the opposing party at the address shown on the USPTO website:

Red Bull GmbH | Martin R. Greenstein
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 9124

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