

ESTTA Tracking number: **ESTTA535595**

Filing date: **05/01/2013**

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	Innovation Ventures, LLC
Granted to Date of previous extension	05/01/2013
Address	38955 Hills Tech Drive Farmington Hills, MI 48331 UNITED STATES

Attorney information	Paul R. Hoffer Oakland Law Group, PLLC 38955 Hills Tech Drive Farmington Hills, MI 48331 UNITED STATES phoffer@oaklandlawgroup.com, rbondra@oaklandlawgroup.com
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**Applicant Information**

Application No	85686903	Publication date	01/01/2013
Opposition Filing Date	05/01/2013	Opposition Period Ends	05/01/2013
Applicant	Wellness Revolution International LLC 705 S. Mustang Road #315 Yukon, OK 73099 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 2012/07/20 First Use In Commerce: 2012/07/20 All goods and services in the class are opposed, namely: Dietary and nutritional supplements; Dietary supplements; Dietary supplements for optimizing one's health and for allowing for proper vitamin absorption and for muscle recovery/growth when exercising; Multivitamin preparations; Vitamin and mineral supplements
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**Grounds for Opposition**

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

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

U.S. Registration No.	3698044	Application Date	01/06/2009
Registration Date	10/20/2009	Foreign Priority	NONE

		Date	
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a running man design.		
Goods/Services	Class 005. First use: First Use: 2004/09/00 First Use In Commerce: 2004/09/00 DIETARY SUPPLEMENTS Class 032. First use: First Use: 2004/09/00 First Use In Commerce: 2004/09/00 ENERGY SHOTS, NAMELY, ENERGY DRINKS		

U.S. Registration No.	3876771	Application Date	04/06/2010
Registration Date	11/16/2010	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of silhouette of a person running.		
Goods/Services	Class 025. First use: First Use: 2009/10/02 First Use In Commerce: 2009/10/02 Clothing, namely, headwear, jackets, and shirts; Athletic apparel, namely, shirts, pants, jackets, and hats and caps		

U.S. Registration No.	3940928	Application Date	09/08/2010
Registration Date	04/05/2011	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a silhouetted person depicted in an athletic pose in the foreground of a mountainous landscape and a sky transitioning from darker to lighter as the sky meets the landscape.		
Goods/Services	Class 005. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00 dietary supplements Class 032. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00 Non-alcoholic drinks, namely, energy shots		

U.S. Registration No.	3940929	Application Date	09/08/2010
Registration Date	04/05/2011	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a sky over a black and blue mountainous landscape and a person depicted in black silhouette in a running pose adjacent to the foreground mountain wherein the background mountains are blue, the foreground mountain is in black silhouette and the sky is depicted in sunset colors that transition from red to orange to yellow as the sky meets the mountains.		
Goods/Services	Class 005. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00 Dietary Supplements Class 032. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00		

	Non-alcoholic drinks, namely, energy shots		
U.S. Registration No.	3940946	Application Date	09/17/2010
Registration Date	04/05/2011	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a person in black silhouette depicted in an athletic pose in the foreground of a green, gray, black and white mountainous landscape; a yellow sun is located in a sky that transitions from blue to white as the sky meets the landscape.		
Goods/Services	Class 005. First use: First Use: 2008/01/27 First Use In Commerce: 2008/01/27 dietary supplement Class 032. First use: First Use: 2008/01/27 First Use In Commerce: 2008/01/27 Non-alcoholic drinks, namely, energy shots		
U.S. Registration No.	3876785	Application Date	04/06/2010
Registration Date	11/16/2010	Foreign Priority Date	NONE
Word Mark	5-HOUR ENERGY		
Design Mark			
Description of Mark	The mark consists of a picture of a mountainous landscape with a silhouette of a person running on the foreground mountain and the literal element of "5-hour ENERGY" disposed adjacent thereto.		
Goods/Services	Class 025. First use: First Use: 2009/10/02 First Use In Commerce: 2009/10/02 Clothing, namely, headwear, jackets, and shirts; Athletic apparel, namely, shirts, pants, jackets, and hats and caps		
U.S. Registration No.	4134079	Application Date	03/02/2011
Registration Date	05/01/2012	Foreign Priority Date	NONE
Word Mark	ENERGY HOUR 5		
Design Mark			
Description of Mark	The mark consists of a rugged landscape with a silhouette of a person in an athletic pose in proximate relation to the foreground terrain and the literal elements of "5", "hour" and "ENERGY" disposed adjacent to the silhouette and terrain, all inside and oval.		
Goods/Services	Class 005. First use: First Use: 2007/05/00 First Use In Commerce: 2007/05/00 Dietary supplements Class 032. First use: First Use: 2007/05/00 First Use In Commerce: 2007/05/00 Non-alcoholic drinks, namely, energy shots		
Attachments	KREBS_Opp_Filed_3.pdf ( 8 pages )(104092 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	/Paul R. Hoffer/
Name	Paul R. Hoffer
Date	05/01/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration of:

Applicant: Wellness Revolution International LLC  
Application Serial No.: 85/686,903  
Mark:



**KREBS Bio Kit**

Application Filing Date: July 25, 2012  
Current Filing Basis: 1(a)

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INNOVATION VENTURES, LLC,  
Opposer,

Opposition No.: \_\_\_\_\_

v.

Interlocutory Attorney: \_\_\_\_\_

WELLNESS REVOLUTION INTERNATIONAL LLC  
Applicant

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**NOTICE OF OPPOSITION**

Filed Electronically  
BOX TTAB – FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Opposer, Innovation Ventures, LLC, (“Innovation Ventures”) a Michigan limited liability company having an address at 38955 Hills Tech Drive in Farmington Hills, Michigan 48331, believes that it would be damaged by the registration of the mark shown in U.S. Trademark Application Serial No. 85/686,903 and therefore asks the Commissioner to refuse the application.

As grounds of opposition, it is alleged that:

1. Innovation Ventures is the exclusive licensee to a family of trademarks including the well-known and famous design mark “Energy Guy.” Innovation Ventures has standing to assert and defend causes of action pertaining to the family of trademarks identified below and hereinafter referred to as the “Energy Guy family of marks.”

- a. U.S. Trademark Registration Number 3,698,044 for the design mark  (“Energy Guy”) in connection with “dietary supplements” in International Class 005 and “energy shots, namely, energy drinks” in International Class 032.

- b. U.S. Trademark Registration Number 3,876,771 for the design mark  in connection with “clothing, namely, headwear, jackets, and shirts; athletic apparel, namely shirts, pants, jackets, and hats and caps” in International Class IC 025.

- c. U.S. Trademark Registration Number 3,940,928 for the design mark



in connection with “dietary supplements” in International Class 005 and “non-alcoholic drinks, namely, energy shots” in International Class 032.

- d. U.S. Trademark Registration Number 3,940,929 for the design mark



in connection with “dietary supplements” in International Class 005 and “non-alcoholic drinks, namely, energy shots” in International Class 032.

- e. U.S. Trademark Registration Number 3,940,946 for the design mark



in connection with “dietary supplements” in International Class 005 and “non-alcoholic drinks, namely, energy shots” in International Class 032.

- f. U.S. Trademark Registration Number 3,876,785 for the design mark



in connection with “clothing, namely, headwear, jackets, and shirts; Athletic apparel, namely, shirts, pants, jackets, and hats and caps” in International Class 025.

g. U.S. Trademark Registration Number 4,134,079 for the design mark



in connection with “dietary supplements” in International Class 005 and “non-alcoholic drinks, namely, energy shots” in International Class 032.

2. Innovation Ventures is a well-known and leading provider of dietary supplements under the Energy Guy family of marks.
3. Innovation Ventures has used the Energy Guy trademark for dietary supplements extensively and continuously since as early as 2004 to the present. The product is sold through over 100,000 retail locations nationwide and is widely available on the internet. Sales and promotions of products bearing the Energy Guy mark since 2004 have amounted to well over 1.5 billion units sold.
4. Innovation Ventures has spent over \$500 million dollars in advertising and promoting the products bearing the Energy Guy family of marks. As a result of this extensive use and promotion, the Energy Guy mark is extremely well-known and strong as a brand. Innovation Ventures has exceedingly valuable goodwill established in its Energy Guy family of marks, are inherently distinctive and/or have acquired distinctiveness in the marketplace as a trademark.
5. Upon information and belief, Applicant Wellness Revolution International LLC filed



a trademark application for the mark **KREBS BIO KIT** (“KREBS BIO KIT”) on July 25,

2012 and the U.S. Patent and Trademark Office assigned the subject application serial number 85/686,903.

6. As published, the applicant declares that KREBS BIO KIT mark is used in connection with “dietary and nutritional supplements; dietary supplements; dietary supplements for optimizing one’s health and for allowing for proper vitamin absorption and for muscle recovery/growth when exercising; multivitamin preparations; vitamin and mineral supplements” in International Class 005.
7. Innovation Ventures has made extensive prior use of its Energy Guy family of marks for dietary supplements. Upon information and belief, there is no issue as to priority. Applicant filed its application for KREBS BIO KIT mark long after Innovation Ventures obtained trademark rights to its Energy Guy family of marks.
8. By virtue of Innovation Ventures long use and extensive sales throughout the United States and the success of Innovation Ventures’ advertising and promotional efforts, Innovation Ventures’ Energy Guy family of marks are distinctive and famous and were famous prior to any use by Applicant of Applicant’s KREBS BIO KIT mark.
9. Applicant’s similar mark KREBS BIO KIT is likely to cause and/or will cause an association with and/or impair or otherwise harm the distinctiveness of the famous Energy Guy mark.
10. Applicant’s similar mark KREBS BIO KIT is likely to cause and/or will cause an association with and/or harm the reputation of the famous Energy Guy mark.
11. Applicant’s KREBS BIO KIT is likely to cause, and will cause dilution by blurring and/or dilution by tarnishment, of Innovation Ventures’ famous Energy Guy mark under the Trademark Act, Section 43(c).

12. The fact that Applicant's mark features a silhouetted person depicted in an athletic pose creates a similar commercial impression and a likelihood of confusion with Innovation Ventures' Energy Guy family of marks.
13. The goods identified by Applicant's KREBS BIO KIT mark are legally identical with and confusingly similar to the dietary supplements offered under Innovation Ventures' Energy Guy family of marks. The customers for the respective products are likely to be similar and overlapping, as are the channels of trade.
14. Upon information and belief, at the time Applicant filed its trademark application to register the KREBS BIO KIT mark, Applicant had full knowledge that Innovation Ventures used the mark Energy Guy to identify its dietary supplements.
15. Applicant's KREBS BIO KIT mark so resembles Innovation Ventures' previously-used and registered Energy Guy family of mark as to be likely, when used in connection with Applicant's goods, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 USC §1052(d).
16. Applicant's KREBS BIO KIT mark consists of a false designation of origin that is likely to cause confusion, cause mistake and to deceive as to the affiliation, connection or association of the Applicant with Innovation Ventures and as to the origin, sponsorship, or approval of Applicant's goods by Innovation Ventures under Section 2(a) of the Lanham Act, as amended, 15 USC §1052(a). Applicant is in no way connected with Innovation Ventures.
17. For the foregoing reasons, Innovation Ventures will be damaged by the registration of the mark KREBS BIO KIT. Applicant's KREBS BIO KIT mark should not be

permitted to receive notice of allowance or otherwise proceed toward federal trademark registration.

WHEREFORE, Innovation Ventures respectfully requests that the Commissioner of Trademarks refuse registration of KREBS BIO KIT trademark application (Serial No. 85/686,903) and sustain Innovation Ventures' opposition.

Respectfully submitted,

OAKLAND LAW GROUP, PLLC

Date: May 1, 2013

/Paul R. Hoffer/

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Attorneys for Opposer, Innovation Ventures, LLC

**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing document entitled, "Notice of Opposition," was served on the 1<sup>st</sup> day of May, 2013, on the following Counsel of Record via First Class Mail:

Xavier Morales  
Law Office of Xavier Morales  
PO Box 48617  
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XM@SECUREYOURTRADEMARK.COM

OAKLAND LAW GROUP, PLLC

Date: May 1, 2013

/Paul R. Hoffer/

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Attorneys for Opposer, Innovation Ventures, LLC