

ESTTA Tracking number: **ESTTA551408**

Filing date: **07/31/2013**

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	Lazier Industries, Inc
Granted to Date of previous extension	08/07/2013
Address	1740 Chase Drive Fenton, MO 63026 UNITED STATES
Attorney information	GLENN K ROBBINS II SPENCER FANE BRITT & BROWNE LLP 1 NORTH BRENTWOOD BLVD, SUITE 1000 ST LOUIS, MO 63105 UNITED STATES sfbbacktion@spencerfane.com Phone:314-863-7733

### Applicant Information

Application No	85578685	Publication date	04/09/2013
Opposition Filing Date	07/31/2013	Opposition Period Ends	08/07/2013
Applicant	D&E Solutions LLC #B 6306 Wedgewood St Myrtle Beach, SC 29577 UNITED STATES		

### Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Energy drinks; Soft drinks
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### 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. Registration No.	3232858	Application Date	03/07/2006
Registration Date	04/24/2007	Foreign Priority Date	NONE
Word Mark	ROCKET PRODUCTS, INC.		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 040. First use: First Use: 1969/08/18 First Use In Commerce: 1969/08/18 Processing of fruit punch, fruit juice concentrates, fruit juice bases, orange juice beverages, lemonade, and juice base concentrates
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Attachments	RED ROCKET AND DESIGN OPPOSITION.pdf(64676 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	/Glenn K. Robbins II/
Name	GLENN K ROBBINS II
Date	07/31/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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LAZIER INDUSTRIES, INC.	)		
	)	Opposition No.	
Opposer,	)		
	)	Mark	RED ROCKET and Design
	)		
vs.	)		
	)		
D&E SOLUTIONS LLC	)		
	)	Serial No.	85/578,685
Applicant.	)		

**NOTICE OF OPPOSITION**

Lazier Industries, Inc. (“Opposer”), a Delaware corporation having a place of business at 1740 Chase Drive, Fenton, Missouri 63026, believes that it would be damaged by the registration of the mark RED ROCKET and Design, shown in U.S. Trademark Application Serial No. 85/578,685 (“Applicant’s Mark”) to D&E Solutions LLC (“Applicant”) and hereby opposes same.

Opposer alleges upon personal knowledge for its own acts and upon information and belief with respect to all other matters, as follows:

1. Application Serial No. 85/578,685 (hereinafter the "Opposed Application") seeks registration of the mark RED ROCKET and Design for energy drinks and soft drinks.
2. The Opposed Application was filed on March 23, 2012 by Applicant based on an intent to use.
3. Long prior to the March 23, 2012 filing date of the Opposed Application, Opposer adopted, used, and is still using the trademark ROCKET PRODUCTS for processing of fruit punch, fruit juice concentrates, fruit juice bases, orange juice beverages, lemonade, and juice base concentrates.

4. Opposer is the owner of the trademark ROCKET PRODUCTS as alleged more fully below. Opposer has continuously used the trademark ROCKET PRODUCTS for processing of fruit punch, fruit juice concentrates, fruit juice bases, orange juice beverages, lemonade, and juice base concentrates, in interstate commerce since well prior to the filing date of the Opposed Application.

5. By virtue of the prior and continuous advertising and sales of Opposer's goods and services under the ROCKET PRODUCTS mark, and the maintenance of high quality standards thereto, purchasers of such goods have come to recognize the mark ROCKET PRODUCTS as a singular indication of origin, as a consequence of which Opposer has established goodwill and exclusive rights in the ROCKET PRODUCTS mark.

6. Opposer duly registered ROCKET PRODUCTS, INC. as a trademark for processing of fruit punch, fruit juice concentrates, fruit juice bases, orange juice beverages, lemonade, and juice base concentrates in the United States Patent and Trademark Office under Registration No. 3,232,858 which issued April 24, 2007.

7. Registration No. 3,232,858 is prima facie evidence of the validity thereof and Opposer's ownership and exclusive right to use the mark ROCKET PRODUCTS in commerce, and is constructive notice of Opposer's ownership thereof, all as provided by §§ 7(b) and 22 of the Federal Trademark Act of 1946, as amended.

8. The services described in Opposer's Registration Nos. 3,232,858 and goods and services otherwise sold by Opposer under the ROCKET PRODUCTS mark; and the goods described in the Opposed Application are commercially related, and are likely sold to the same or overlapping classes of purchasers.

9. Therefore, purchasers, prospective purchasers and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's described goods emanate from and/or are in some way sponsored, or approved by Opposer and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

10. Applicant is not lawfully entitled to the registration which it seeks for the reason, inter alia, that Applicant's mark RED ROCKET and Design, as used in connection with the goods described in the Opposed Application, so resembles Opposer's mark ROCKET PRODUCTS as to be likely to cause confusion, to cause mistake or to deceive within the meaning of §2(d) of the Federal Trademark Act, thereby damaging Opposer.

WHEREFORE, Opposer believes that the present opposition should be sustained and the registration of Applicant's mark refused.

Respectfully submitted,

SPENCER FANE BRITT & BROWNE LLP

By 

Glenn K. Robbins II  
One North Brentwood Blvd., Suite 1000  
St. Louis, Missouri 63105  
Telephone: (314) 863-7733  
Facsimile: (314) 862-4656

Attorneys for Opposer  
Lazier Industries, Inc.

**CERTIFICATE OF SERVICE**

A copy of the foregoing was mailed, via first-class mail, postage prepaid, this 31<sup>ST</sup> day of July, 2013, to the following:

Matthew H. Swyers  
The Trademark Company  
344 Maple Avenue West  
PMB 151  
Vienna, Virginia 22180

Attorney for Applicant

Glenn K. Robbins II