

ESTTA Tracking number: **ESTTA570764**

Filing date: **11/13/2013**

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	Starbuzz Tobacco, Inc.
Granted to Date of previous extension	11/13/2013
Address	10871 Forbes Ave Garden Grove, CA 92843 UNITED STATES
Correspondence information	Starbuzz Tobacco, Inc. Starbuzz Tobacco, Inc. 10871 Forbes Ave Garden Grove, CA 92843 UNITED STATES martin@starbuzztobacco.com Phone:7149954119

Applicant Information

Application No	85856184	Publication date	07/16/2013
Opposition Filing Date	11/13/2013	Opposition Period Ends	11/13/2013
Applicant	Buzz Aldrin Enterprises Suite 496 Los Angeles, CA 90025 CANADA		

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: Energy 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.	4422168	Application Date	10/04/2009
Registration Date	10/22/2013	Foreign Priority Date	NONE
Word Mark	STARBUZZ AFTERBURNER		

Design Mark	STARBUZZ AFTERBURNER
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2013/08/29 First Use In Commerce: 2013/08/29 Energy drinks

Attachments	77840980#TMSN.jpeg(bytes) Notice of Opposition .pdf(77227 bytes) Exhibit A.pdf(47949 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	/Martin Jerisat/
Name	Starbuzz Tobacco, Inc.
Date	11/13/2013

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

STARBUZZ TOBACCO, INC.
Plaintiff,

vs.

BUZZ ALDRIN ENTERPRISES,
Defendant.

Opposition No. 85856184

NOTICE OF OPPOSITION

Starbuzz Tobacco, Inc. (“Starbuzz”), a corporation organized and existing under the laws of the State of California, believes that it will be damaged by registration of the mark THEREALBUZZ filed in U.S. Application Serial No. 85856184 in International Class 32 (the “Application”).

1. Starbuzz is a manufacturer and distributor of tobacco, electronic cigarettes, hookahs, and various other products, including energy drinks. Starbuzz’ address has been changed to 10871 Forbes Avenue, Garden Grove, California 92843.

2. Starbuzz is the owner of the registered trademark STARBUZZ AFTERBURNER®, Registration Number 4422168, for Energy drinks in International Class 032. Starbuzz has sold and distributed products bearing the STARBUZZ AFTERBURNER® since at least as early as August 29, 2013. A true and correct copy of the registration certificate is attached as Exhibit A.

3. On information and belief, Buzz Aldrin Enterprises (“Defendant”) is a limited liability corporation established under the laws of California, whose address is 11901 Santa Monica Blvd., Suite 496, Los Angeles, CA 90025.

4. On February 21, 2013, Defendant filed U.S. Application Serial No. 85856184 for the mark “THEREALBUZZ” (“Applicant’s Mark”) for energy drinks in International Class 32 (“Applicant’s Goods”), on the basis of intent to use.

5. The USPTO published Applicant’s Mark for opposition in the Official Gazette on July 16, 2013.

6. On August 1, 2013, Starbuzz obtained an extension of time to oppose the Application until November 13, 2013 to file the Opposition. Therefore this Notice of Opposition is timely.

GROUND FOR OPPOSITION

7. Starbuzz is informed and believes, and on that basis alleges that, the filing date of the application for STARBUZZ AFTERBURNER predates the filing date of the application for Applicant’s Mark THEREALBUZZ. Additionally, Starbuzz is the senior user here because Starbuzz began using the trademark STARBUZZ AFTERBURNER prior to the Defendant Buzz Aldrin’s date of use of its mark THEREALBUZZ. Therefore Starbuzz’ rights to its trademark have priority over any rights claimed by Applicant in Applicant’s Mark.

8. Based on the identical term “BUZZ”, Starbuzz is informed and believes, and on that basis alleges that, Applicant’s Mark, when used in conjunction with Applicant’s Goods, so resembles Starbuzz Trademark, as to be likely to cause confusion, to cause mistake, and to deceive within the meaning of 15 U.S.C. §1052(d).

9. In fact, Applicant’s Mark is similar to the Starbuzz Trademark in appearance, sound and overall commercial impression.

10. Starbuzz is informed and believes, and on that basis alleges that, the type of goods offered in conjunction with Applicant's Mark is similar or related to the type of goods offered in conjunction with the Starbuzz Trademark.

11. Starbuzz is informed and believes, and on that basis alleges that, Applicant's Goods, and Starbuzz' goods, are marketed to identical or similar groups of consumers.

12. Starbuzz is informed and believes, and on that basis alleges that, Applicant's Goods and Starbuzz' goods, are advertised, promoted, and/or sold through the same or similar channels of trade.

13. Starbuzz is informed and believes, and on that basis alleges that, Applicant's Goods and Starbuzz' goods, target the same general class of purchasers.

14. Registration of Applicant's Mark will damage Starbuzz because the trademark sought to be registered, "THEREALBUZZ", is so similar to Starbuzz' Trademark, that use of Applicant's Mark will cause confusion or mistake, and is likely to deceive purchasers, as well as the general public, into the erroneous belief that Applicant's Goods and Starbuzz' goods originate from the same source, or are authorized or sponsored by Starbuzz. Based upon such likelihood of confusion, Applicant's Mark should be denied registration pursuant to 15 U.S.C. §1052(d). WHEREFORE, Starbuzz prays that Application Serial No. 85856184 be denied registration.

Respectfully submitted,

/Martin Jerisat/
Martin Jerisat

CERTIFICATE OF SERVICE

I certify that a copy of this NOTICE OF OPPOSITION is being served via United States Mail on this the 13th day of November 2013, to the following:

Ms. Diane M. Lambillotte, Esq.
Arent Fox LLP
1717 K Street, NW
Washington, District of Columbia 20036

/Martin Jerisat/

EXHIBIT A

United States of America

United States Patent and Trademark Office

STARBUZZ AFTERBURNER

Reg. No. 4,422,168

STARBUZZ TOBACCO, INC. (CALIFORNIA CORPORATION), DBA STARBUZZ TOBACCO,
10871 FORBES AVENUE

Registered Oct. 22, 2013

GARDEN GROVE, CA 92843

Int. Cl.: 32

FOR: ENERGY DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

TRADEMARK

FIRST USE 8-29-2013; IN COMMERCE 8-29-2013.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,113,110 AND 3,653,296.

SN 77-840,980, FILED 10-4-2009.

SETH A. RAPPAPORT, EXAMINING ATTORNEY



Susan Street Lee

Deputy Director of the United States Patent and Trademark Office