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

Proceeding	91217273
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Date	03/09/2016
Attachments	2016-03-09 OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT-HANBEV.2514M.pdf(374908 bytes) 2016-03-09 MSB DECL ISO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT-HANBEV.2514M.pdf(87330 bytes) MSB Exhibit 1 - FILED UNDER SEAL.pdf(6315 bytes) MSB Exhibit 2 - FILED UNDER SEAL.pdf(6307 bytes) MSB Exhibit 3 - FILED UNDER SEAL.pdf(6267 bytes)

confusingly similar. The dominant portion of Applicant's Mark, the  design, is strikingly similar to Opposer's  mark. Both consist of three jagged lines that form a claw or scratch design. While Applicant argues its own scratch design consists of three horizontal lines, there is no restriction on the orientation of Applicant's Mark in its application, and Applicant in fact uses its mark in a vertical orientation,  on both its beverages and marketing materials. Moreover, given the strength and fame of Opposer's  mark, even a small degree of similarity is sufficient to cause a likelihood confusion.

Applicant's Motion ignores many of the *DuPont* factors that weigh in Opposer's favor. For example, both Applicant and Opposer sell and market beverages falling under International Class 32 that are sold in the same locations by the same type of retailers such as convenience stores. The parties' beverages also target the same classes of consumers. And the beverages are relatively inexpensive, which means consumers are more susceptible to confusion because they are less likely to exercise a high degree of care in making a purchasing decision. There is also evidence indicating that Applicant intended to trade off of Opposer's goodwill in adopting its mark. Applicant's Motion ignores these facts and effectively concedes that, with the exception of the similarity of the marks, all the *DuPont* factors weigh in favor of Opposer.

With respect to dilution, Applicant ignores voluminous evidence in the record demonstrating: (1) the acquired fame and distinctiveness of Opposer's  mark; (2) Opposer's exclusive use of the  mark; (3) the degree of recognition in Opposer's  mark; and (4) the likelihood that Applicant's Mark will impair the distinctiveness of Opposer's  mark. All of this evidence must be considered because the alleged dissimilarity between the marks is not sufficient for a dispositive finding of no dilution.

In sum, consideration of the *DuPont* factors overwhelmingly supports a likelihood of confusion. Summary judgment on the issue of likelihood of confusion should be granted in favor of Opposer, and not

Applicant, for the reasons set forth in Opposer's co-pending motion for summary judgment. The Board should also deny Applicant's motion for summary judgment on the issue of dilution.

II. STATEMENT OF FACTS

A. Opposer and Opposer's Mark

Opposer began using its  mark in 2002 when it launched its MONSTER ENERGY® line of drinks.² Declaration of Rodney Sacks ("Sacks Decl.") ¶ 3.³ Opposer has continuously used the  mark in connection with beverages since that time. *Id.* Opposer is an international brand with its products sold in 116 countries and territories worldwide. *Id.* ¶ 6. Opposer's  mark appears on the front of every container of its MONSTER ENERGY® line of drinks, which now include over 30 different beverage products. *Id.* ¶ 7, Ex. 1.

Since 2002, Opposer has sold more than 11 billion cans bearing the  mark in the U.S., which has generated over \$22 billion in total retail sales. *Id.* ¶ 10. As of January 2016, Opposer maintains an approximate [REDACTED] of the U.S. energy drink market and sells roughly 2 billion cans per year. *Id.* Opposer also spends millions of dollars a year marketing and promoting the MONSTER ENERGY® brand and its  mark, with more than \$3.5 billion spent on marketing to date. *Id.* ¶ 9. As a result of Opposer's extensive marketing and promotion, Opposer's energy drinks are the most popular energy drink in the U.S. by unit volume. *Id.* ¶ 10. The consumer recognition of Opposer's brand cannot be understated. In 2010, over two years before Applicant filed the subject application; Opposer was ranked by Socialbakers as the 14th most popular global brand. *Id.* ¶ 33. Applicant is, and was, at the time it filed

² Opposer refers to pages 3-6 of its Motion for Summary Judgment, which contain a more detailed description of Opposer's use and promotion of Opposer's Mark. *See* Docket No. 16; *see also* Sacks Decl. (Docket No. 20) at ¶¶ 3-10, 12-33.

³ All citations to the Sacks Decl. are to the Declaration of Rodney Sacks (with attached Exhibits 1-21) filed in support of Opposer's Motion for Summary Judgment. *See* Docket No. 20.

its trademark application, aware of Opposer and Opposer's  mark. Declaration of Jason Champion ("Champion Decl.") ¶ 7, Ex. 6 (Resp. to Req. for Admis. Nos. 3-5).⁴

Opposer markets, advertises and sells its products through a variety of trade channels. Opposer sells its MONSTER ENERGY® drinks in well over 300,000 retail outlets in the U.S. Sacks Decl. ¶ 12. These retail stores include convenience stores, gas stations, grocery stores, and major retailers such as Costco, Target, and Wal-Mart. *Id.* Most of these stores also sell beer, often side by side or in adjacent coolers to Opposer's MONSTER ENERGY® drinks. *Id.* ¶ 12, Ex.3. Opposer's energy drinks bearing the  mark are also sold by on-premise retailers such as nightclubs, bars, and restaurants where beer is frequently sold. *Id.* ¶ 14, Ex. 6.

To protect its rights in the  mark, Opposer has sought and obtained numerous federal trademark registrations with the United States Patent and Trademark Office. Opposer owns several U.S. Trademark Registrations for or incorporating its  mark, including U.S. Registration Nos. 3,134,841 () , 2,903,214 () , 3,434,821 () and 3,434,822 () which are incontestable and have been asserted in this Opposition. Champion Decl. ¶¶ 2-5, Exs. 1-4. Three of these registrations are for goods in International Class 32.

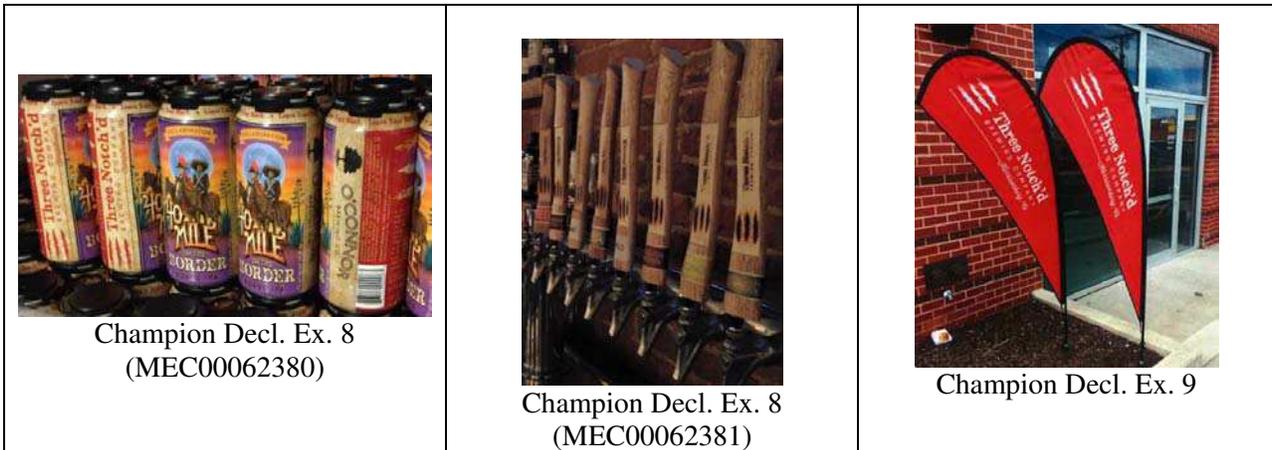
B. Applicant and Applicant's  Mark

Applicant is a brewery headquartered in Charlottesville Virginia. On May 1, 2013, Applicant filed U.S. Trademark Application Serial No. 85/920112 for the  mark to cover "beer" in Class 32. Applicant began using the  mark on August 29, 2013 -- more than 10 years after Opposer began using its  mark. *Id.* ¶ 6, Ex. 5 (Resp. to Interrog. No. 6).

⁴ All citations to the Champion Decl. are to the Declaration of Jason Champion (with attached Exhibits 1-27) filed in support of Opposer's Motion for Summary Judgment. *See* Docket No. 18.

Applicant sells its products through the same or similar channels as Opposer, including retail stores, gas stations, convenience stores, grocery stores, and on-premise retailers such as bars and restaurants. *Id.* ¶¶ 7-8; Ex. 6 (Resp. to Req. for Admis. Nos. 11, 17, 20) and Ex. 7 (TNB_000050-60). Applicant’s  design dominates its promotional materials and Applicant’s beverages themselves. For example, Applicant’s growlers, packaging, t-shirts, tents and stickers all emphasize the  design by displaying it separately from and/or in a larger font than Applicant’s full composite mark. *See* Opposer’s Motion for Summary Judgment pages 8-10.

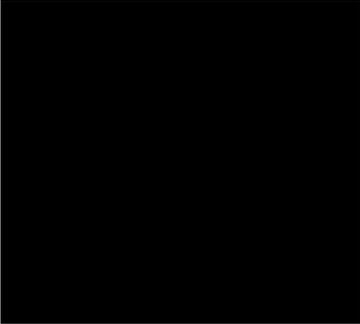
Additionally, although Applicant’s witnesses testify  ⁵ this testimony is contradicted by the evidence which shows many of Applicant’s products and promotional materials displaying the  mark and/or the  design in vertical  or other orientations. For example, Applicant’s beer cans, tap handles, and flag banners all display Applicant’s Mark vertically.⁶



⁵ *See* Declaration of Matthew S. Bellinger filed in response to Applicant’s Motion for Summary Judgment (“Bellinger Decl.”) ¶¶ 2-3, Ex. 1 (Roth Tr. 109:3-110-18, 121:14-124:14, 135:18-136:7) and Ex. 2 (Kastendike Tr. 234:12-235:3, 236:18-238:16).

⁶ Applicant’s Mark is not restricted to any size or orientation within the Application and indeed Applicant uses its mark in various orientations and sizes, including on smaller goods such as beer cans and tap handles where the literal elements of the mark are significantly less visible to consumers.

Applicant also uses Applicant's Mark and its  design on products and promotional materials in many of the same or similar ways as Opposer's uses its [®] mark.⁷

 <p>Champion Decl. Ex. 8 (MEC00062393)</p>	 <p>Sacks Decl. Ex. 1</p>
 <p>Champion Decl. Ex. 10 (MEC00062400)</p>	 <p>Sacks Decl. Ex. 1</p>
 <p>Champion Decl. Ex. 10 (MEC00060283)</p>	 <p>Sacks Decl. Ex. 1</p>
 <p>Champion Decl. Ex. 13 (TNB_000026)</p>	 <p>Sacks Decl. Ex. 1</p>

⁷ Additional images are displayed on pages 7-10 of Opposer's Motion for Summary Judgment.

B. There Is a Likelihood of Confusion Between Applicant's Mark and Opposer's Mark

Applicant's motion hinges upon the assertion that the parties' marks are not similar in appearance. However, contrary to Applicant's assertions, there is a high degree of similarity between

Applicant's  mark and Opposer's  mark.

1. Applicant's  is Similar in Appearance to Opposer's  Mark

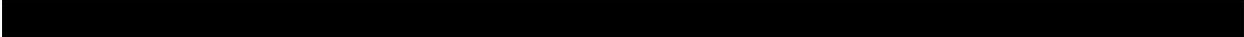
Opposer's  mark and Applicant's  mark are very similar in appearance.

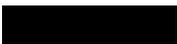
Visually, the dominant portion of Applicant's Mark, the  design, is strikingly similar to Opposer's  mark. Both include three jagged lines spaced equal distance apart that together form a claw or scratch design. The lines in both marks carry the same stylized effect—they are jagged and distressed, appearing as if they were clawed or scratched into the page. As more fully set out below, the  design in Applicant's Mark is also the dominant portion of the mark, and therefore should be given more weight in assessing likelihood of confusion. *See Jansen Enters. v. Rind*, 85 U.S.P.Q.2d 1104, 1009 (T.T.A.B. 2007); *Fossil Inc. v. Fossil Grp.*, 49 U.S.P.Q.2d 1451, 1456 (T.T.A.B. 1998).

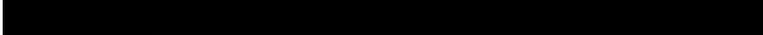
Applicant's argument that greater weight should be given to the literal elements of its mark is misplaced. The Board has repeatedly found design elements to be the dominant portion of a mark when the design is large, prominently displayed, or appears first. *See In re Covalinski*, 113 U.S.P.Q.2d 1166, 1168-69, 2014 WL 7496055, at *3-4 (T.T.A.B. 2014) (prominently displayed design considered to be dominant over word portion of mark); *Parfums de Coeur Ltd. v. Lazarus*, 83 U.S.P.Q.2d 1012, 1016, 2007 WL 683784, at *4 (T.T.A.B. 2007) (design portion appearing first considered dominant portion in composite mark). Applicant's own Motion also cites to a case suggesting that designs should be the dominant portion of the mark when they are separate and independent from the literal features of the mark. *See Applicant's Motion at p. 5, citing In re Viterra Inc.*, 101 U.S.P.Q.2d 1905, 1911 (Fed. Cir. 2012).

Here, the dominant portion of Applicant's Mark is decisively the  design. The  design is large, prominently displayed, and independent from the literal features of the mark. The  design also appears first in the mark, further evidencing that it is the dominant portion. See *Eveready Battery Co., Inc. v. Green Planet, Inc.*, 91 U.S.P.Q.2d 1511, 1518 (T.T.A.B. 2009); *In re Paper Doll Promotions, Inc.*, 84 U.S.P.Q.2d 1660, 1668 (T.T.A.B. 2007).

The testimony of Applicant's witnesses confirms the distinctive qualities and importance of the  design to Applicant's Mark. 







Moreover, descriptive components of marks, such as the terms "BREWING COMPANY" and "CHARLOTTESVILLE, VA" in Applicant's Mark, are typically given less weight in analyzing likelihood of confusion.⁸ Furthermore, the Board and other courts have repeatedly found the presence of additional words or modified stylings insufficient to distinguish a dominant design in a composite mark. See, e.g., *Time Warner Entm't Co. L.P. v. Jones*, 65 U.S.P.Q.2d 1650, 1663 (T.T.A.B. July 17, 2002)

⁸ See, e.g., *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1343, 71 U.S.P.Q.2d 1944, 1946 (Fed. Cir. 2004) ("Viewed in their entireties with non-dominant features appropriately discounted, the marks [GASPAR'S ALE for beer and ale and JOSE GASPAR GOLD for tequila] become nearly identical."); *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1266, 62 U.S.P.Q.2d 1001, 1004 (Fed. Cir. 2002) (finding that, even though applicant's mark PACKARD TECHNOLOGIES (with "TECHNOLOGIES" disclaimed) does not incorporate every feature of opposer's HEWLETT PACKARD marks, a similar overall commercial impression is created).



(finding Applicant's mark to be confusingly similar to Opposer's  mark, notwithstanding the presence of additional words and differences in depiction); *Copy Cop, Inc. v. Task*

Printing, Inc., 908 F. Supp. 37, 44-45 (D. Mass. 1995) (finding defendant's



confusingly similar to plaintiff's  mark, notwithstanding the presence of defendant's trade name and traffic signal design in defendant's mark); *Vogue Co. v. Thompson-Hudson Co.*, 300 F. 509, 511 (6th

Cir. 1924) (finding defendant's



mark confusingly similar to plaintiff's



mark,

notwithstanding the presence of additional words and dissimilar drawing within the dominant V-mark).

Similarly, in view of the dominance of the  element of Applicant's Mark, the presence of additional

descriptive words and modified stylings fail to distinguish it from Opposer's famous ® mark.

Moreover, Oppose has long displayed its ® mark in the same composite format

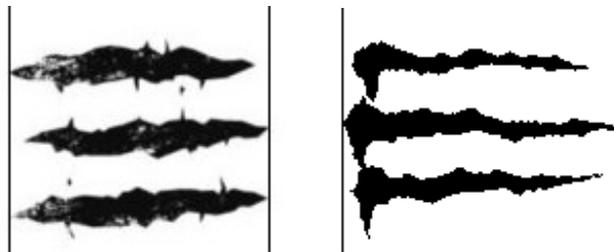


as

Applicant's Mark including on Opposer's packaging, website, and marketing materials. Sacks Decl. ¶¶ 7,

12, 13, 31, Exs. 1, 3-5, 11.

Applicant contends that the marks are dissimilar because Applicant's design consists of "thick horizontal lines." Applicant's Motion at p. 6. However, a cursory observation reveals that Applicant's lines are in fact relatively the same thickness as those in Opposer's Mark with narrowing, thinner points at the ends. Applicant also argues that the marks are dissimilar because the lines in Applicant's Mark are equal in length. However, as shown below, the lines in Applicant's design are offset, creating the impression that the middle line may be longer than the top line, much like that of Opposer's Mark.



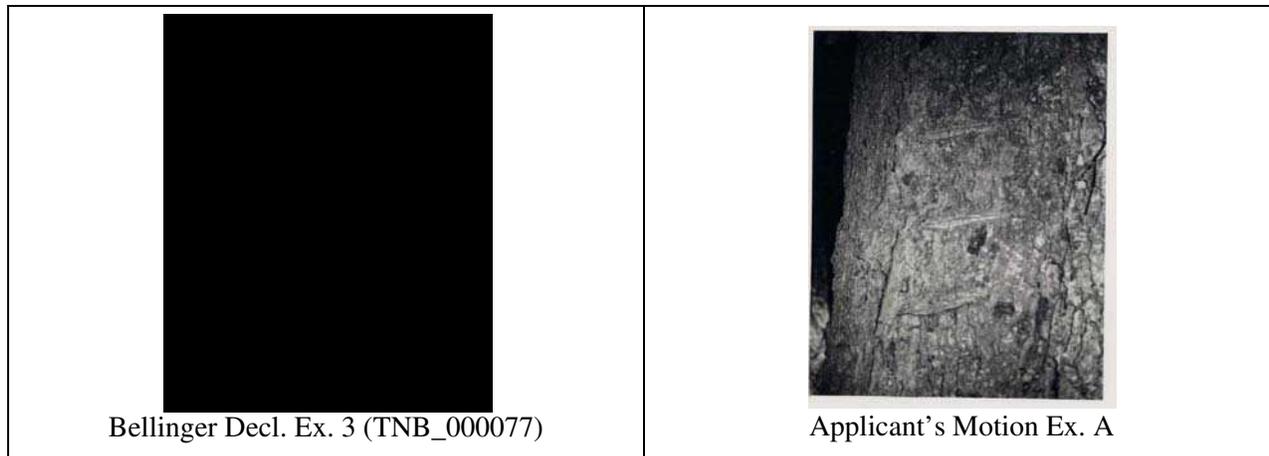
In sum, while only a small degree of similarity is necessary for a likelihood of confusion to be found, Applicant's Mark is highly similar in appearance to Opposer's ® mark.⁹

2. **Applicant's Mark and Opposer's Mark Convey a Similar Commercial Impression**

Opposer's ® mark and Applicant's  **Three Notch'd** BREWING COMPANY mark also convey highly similar commercial impressions. Applicant's  design includes jagged lines that, like Opposer's ® mark, evoke notions of scratches or clawing.

Applicant alleges that its mark serves as a tribute to a colonial-era road and contends that its  design represents the axe notches cut into trees to designate the route. Applicant's Motion at p. 6-7. But Applicant's design bears no resemblance to actual axe notches. Axes do not deliver cuts with jagged or distressed edges. Indeed, images produced by Applicant and attached to Applicant's Motion show axe marks as delivering clean, uniform, and symmetrical cuts:

⁹ See *Kenner Parker Toys, Inc. v. Rose Art Indus. Inc.*, 963 F.2d 350, 22 U.S.P.Q.2d 1453, 1456 (Fed. Cir. 1992) (“As a mark’s fame increases, the [Lanham] Act’s tolerance for similarities in competing marks falls”); see also *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 U.S.P.Q.2d 1698, 1701 (Fed. Cir. 1992) (the fame of opposer’s mark “increases the likelihood of confusion with applicant’s mark”).



Further, the notches in Applicant's  design are closer together and do not appear proportional in length or spacing to the axe marks depicted in Applicant's photos. Thus, if Exhibit A is a representation of axe marks on Three Notch'd road as Applicant's Motion implies, a consumer is unlikely to recognize Applicant's jagged and distressed lines as a depiction of the thin flat-bladed axe marks of Three Notch'd Road.

Moreover, nothing in Applicant's Mark communicates to consumers its alleged historical context. In its Motion, Applicant chronicles Captain Jack Jouett's midnight ride to Charlottesville to warn then Governor Thomas Jefferson of an impending British attack. Applicant's Motion at p. 6-7. Despite the detail found in Applicant's Motion, Applicant's Mark includes no references to Jack Jouett, Thomas Jefferson, the Revolutionary War, or any of its other alleged historical underpinnings. Significantly, Applicant's Mark also does not include trees, bark, or any other signifier which would convey to consumers that Applicant intended its design to represent axe marks left on trees.

Ordinary consumers are left to interpret Applicant's Mark as it appears, drawing conclusions based on the mark's stylings. Applicant's Mark shares more in common with claw marks than axe marks. As if scratched into the paper, the jagged lines begin fully darkened on the right.



The lines seemingly cut deeper and grow in thickness towards the center of the design but begin to fade and narrow on the left. Moreover, the lines are evenly spaced and asymmetrical. Due to these details, and also when seen in conjunction with Applicant's "LEAVE YOUR MARK" campaign,¹⁰ consumers are likely to believe that the design represents claw or scratch marks rather than axe marks.

In its Motion, Applicant points to a prior board decision and asserts that "Opposer has self-described its mark as conveying the commercial impression of 'monster-like creatures/supernatural beasts.'"¹¹ However, in that prior proceeding, Opposer stated in its trial brief that it did not identify its mark "with any particular creature, animal or tangible thing or being" and "leaves it entirely up to a consumer's imagination."¹² Thus, Applicant's argument is misplaced.

In sum, Applicant's Mark creates the same commercial impression as Opposer's Mark. Thus, this factor also weighs in favor of a likelihood of confusion.

3. The Remaining *DuPont* Factors Show Confusion is Likely

Applicant does not address any of the remaining *DuPont* factors in its motion. Accordingly, for purposes of its motion, Applicant has effectively conceded that all of the other *DuPont* factors favor a finding of likelihood of confusion. *Cytosport, Inc. v. Comercializadora de Lacteos y Derivados, S.A. de C.V.*, Opp. No. 91194995, 2011 WL 5014030 (T.T.A.B. Sept. 26, 2011) (non-precedential).

This is not a situation where the single *DuPont* factor concerning similarity of the marks is dispositive in Applicant's favor, especially given that many of the remaining *DuPont* factors favor Opposer.¹³ Here, evidence regarding other *DuPont* factors also needs to be considered. *See Olde Tyme*

¹⁰ Champion Decl. ¶ 13, Ex. 13.

¹¹ Applicant's Motion at p. 6 (quoting *Monster Energy Company v. Li-Wei Chih*, Consolidated Oppositions Nos. 91205893 (parent) and 91205924 (T.T.A.B. February 1, 2016) (non-precedential).

¹² Opp's Trial Brief at p. 36, Docket No. 58, *Monster Energy Company v. Li-Wei Chih*, Consolidated Oppositions Nos. 91205893 (parent) and 91205924 (T.T.A.B. July 7, 2015).

¹³ *See The Hebrew Univ. of Jerusalem v. Quebec Inc.*, Opp. No. 123,587, 2003 WL 1018100, at *2 (T.T.A.B. Mar. 5, 2003) (non-precedential) (denying applicant's motion for summary judgment of no likelihood of confusion that was based solely on alleged dissimilarity of marks, noting that the Board must consider each of the *DuPont* factors that are pertinent, and that granting summary judgment would

Foods, 22 U.S.P.Q.2d 1542 at 1544 (*DuPont* delineated the mandatory factors to be considered when relevant evidence is of record). Consideration of the other relevant *DuPont* factors overwhelmingly shows that confusion is likely.

For example, Opposer's [®] mark is strong, famous, and entitled to a broad scope of protection. *See* Opp's Mot. Summ. J. at 12. Moreover, both Applicant and Opposer's goods are highly related and travel through the same channels of trade. Both parties also market beverages falling under International Class 32 and that are sold in the same locations, such as convenience stores, gas stations, grocery stores, and on-premise retailers, such as bars and restaurants. Moreover, Applicant and Opposer's beverages are both relatively inexpensive and targeted toward similar demographics.

Finally, there is evidence indicating that Applicant intended to trade off the goodwill of Opposer's famous [®] mark. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Applicant is Not Entitled to Summary Judgment On Opposer's Dilution Claim

In determining whether a mark or trade name is likely to cause dilution by blurring, the following factors are generally considered: (1) the degree of similarity between the mark or trade name and the famous mark; (2) the degree of inherent or acquired distinctiveness of the famous mark; (3) the extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark; (4) the degree of recognition of the famous mark; (5) whether the user of the mark or trade name intended to create an

require the Board to improperly assume that the single *DuPont* factor regarding alleged dissimilarity of the marks outweighed all other *DuPont* factors.)

association with the famous mark; and (6) any actual association between the mark or trade name and the famous mark. 15 U.S.C. § 1125(c)(2)(B). Applicant's motion addresses only one of these factors.

Applicant contends that the alleged dissimilarity between the marks is sufficiently dispositive for a finding of no dilution by blurring. Applicant relies on *Kellogg Co. v. Pack'em Enterprises*, 921 F.2d 330, 21 U.S.P.Q.2d 1142 (Fed. Cir. 1991). See Applicant's Motion at p. 9. But the court in *Kellogg* only considered whether a single *DuPont* factor may be dispositive in finding a likelihood of confusion—not a likelihood of dilution. See *Kellogg Co.*, 21 U.S.P.Q.2d 1142 at 1145. Moreover, Opposer has shown that Applicant's  mark is highly similar to Opposer's  mark for the reasons set forth in Section III.B.1 and III.B.2, *supra*.

Additionally, Opposer's  mark is famous and has been since before Applicant adopted its  mark in 2013. Since 2002, Opposer has sold more than 11 billion cans bearing the  mark in the U.S. Sacks Decl. ¶ 10. Opposer has also spent approximately \$3.5 billion in marketing and promoting the MONSTER ENERGY® brand and its  mark. *Id.* ¶ 9. As a result of Opposer's extensive marketing and promotion, Opposer's energy drinks are the most popular energy drink in the U.S. by unit volume. *Id.* ¶ 10. Due to the unmatched success and promotion of Opposer's MONSTER ENERGY® brand, Opposer's  mark is famous and has been since before Applicant's adoption of their mark in 2013. Sacks Decl. ¶¶ 3-10, 12-33.

Opposer's  mark is also inherently distinctive because the design has no meaning in connection with beverages. Moreover, Opposer's asserted U.S. Trademark Registrations Nos. 3,134,841, 2,903,214, 3,434,821, and 3,434,822 have achieved incontestable status. 15 U.S.C. § 1065. Opposer also enjoys exclusive use of the  mark and has diligently enforced its trademark rights in the  mark. Sacks Decl. ¶ 37.

Finally, the evidence in the record that Applicant intended to trade off on the goodwill of Opposer's Mark also weighs in favor of denying Applicant's motion. [REDACTED]

[REDACTED]

Applicant then proceeded to use Applicant's Mark in commerce, often in slanted and vertical orientations.

For the aforementioned reasons, Applicant's Mark is likely to dilute the distinctive qualities of Opposer's famous  mark and lessen the ability of the mark to distinguish Opposer's goods. Accordingly, summary judgment in the Applicant's favor is not appropriate.

IV. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board deny Applicant's motion for summary judgment and instead enter summary judgment in favor of Opposer that there is a likelihood of confusion between Opposer's Mark and Applicant's Mark.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 9, 2016

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MEMORANDUM
IN SUPPORT OF OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT**
has been served on Robert C. Van Arnam by mailing said copy on March 9, 2016 via First Class Mail,
postage prepaid to:

Robert C. Van Arnam
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301 Fayetteville Street, Suite 1700
Raleigh, NC 27601
rvanarnam@williamsmullen.com
tbergert@williamsmullen.com
mhayes@williamsmullen.com

Signature: 

Name: Doreen P. Buluran

Date: March 9, 2016

22640052/dpb/020516

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **DECLARATION OF MATTHEW S. BELLINGER IN SUPPORT OF OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT** has been served on Robert C. Van Arnam by mailing said copy on March 9, 2016 via First Class Mail, postage prepaid to:

Robert C. Van Arnam
WILLIAMS MULLEN
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Signature: 

Name: Doreen P. Buluran

Date: March 9, 2016

22640140/dpb/020516

EXHIBIT 1

**TRADE SECRET/
COMMERCIALY SENSITIVE**

FILED UNDER SEAL

EXHIBIT 2

**TRADE SECRET/
COMMERCIALY SENSITIVE**

FILED UNDER SEAL

EXHIBIT 3

HIGHLY CONFIDENTIAL

FILED UNDER SEAL