

ESTTA Tracking number: **ESTTA709831**

Filing date: **11/20/2015**

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

Proceeding	91221325
Party	Defendant JORDI NOGUES, S.L.
Correspondence Address	NICHOLAS D. WELLS KIRTON MCCONKIE 60 E SOUTH TEMPLE STE 1800 SALT LAKE CITY, UT 84111-1032 UNITED STATES nwells@kmclaw.com, abrimhall@kmclaw.com
Submission	Motion to Compel Discovery
Filer's Name	Nicholas D. Wells
Filer's e-mail	nwells@kmclaw.com, jrupp@kmclaw.com, sglendening@kmclaw.com
Signature	/Nicholas D. Wells/
Date	11/20/2015
Attachments	Exhibit A.pdf(414568 bytes ) Exhibit B.pdf(204625 bytes ) Exhibit C.pdf(202548 bytes ) Exhibit D.pdf(160519 bytes ) Exhibit E.pdf(186458 bytes )

Consolidated Proceeding No.: 92/061,202  
*Red Bull GMBH v. Jordi Nogues, S.L.*

# Exhibit A

Exhibit A to Registrant/Applicant Jordi Nogues, S.L.'s  
Motion to Compel

## Joshua S. Rupp

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**From:** Joshua S. Rupp  
**Sent:** Thursday, November 19, 2015 9:47 PM  
**To:** Angel Riordan  
**Cc:** Nicholas Wells; Sherry Glendening; ndg@techmark.com; mrg@techmark.com; lzh@techmark.com; dmp@techmark.com  
**Subject:** Re: Red Bull GmbH v. Jordi Nogues/Jordi Nogues, S.L. - Consolidated Proceeding No. 92-061,202 - Courtesy Copy

Angel,

Respectfully, there are at least four attorneys in your office besides yourself working on these matters. Moreover, this is a straightforward issue requiring a simple meet and confer that is not complex or nuanced. In addition, we originally made ourselves available all day Monday, Tuesday and Wednesday of this week for a meet and confer, which your office simply ignored. Your office has continued to ignore our several repeated meet and confer requests. This appears to be nothing more than an ongoing delay tactic designed to prejudice our client's position on these issues. I understand you were not well earlier this week, but one of the five attorneys from your team could have certainly responded. If you are willing to meet and confer tomorrow, then let me know. Otherwise, we will proceed with our motion to compel and inform the Board of your refusal to timely respond to our serial efforts to meet and confer. I look forward to speaking to you tomorrow.

Regards,

Josh

Sent from my iPhone

On Nov 19, 2015, at 9:32 PM, Angel Riordan <[amr@techmark.com](mailto:amr@techmark.com)> wrote:

Dear Josh,

Neil Greenstein and I will both need to be on the meet and confer call once we schedule a mutually agreeable time. He will be traveling and out of the office tomorrow (Friday, November 19). As such, please give me a few dates/times you will be available next week and I will work on coordinating with all our schedules.

Best,

Angel

----- Forwarded Message -----

**Subject:**RE: RE: RE: Red Bull GmbH v. Jordi Nogues/Jordi Nogues, S.L. - Consolidated Proceeding No. 92-061,202 -  
Courtesy Copy

**Date:**Thu, 19 Nov 2015 22:56:11 +0000

**From:**Joshua S. Rupp <[jrupp@kmclaw.com](mailto:jrupp@kmclaw.com)>

**To:**'Angel Riordan' <[amr@techmark.com](mailto:amr@techmark.com)>

**CC:**Nicholas Wells <[nwells@kmclaw.com](mailto:nwells@kmclaw.com)>, Sherry Glendening <[sglendening@kmclaw.com](mailto:sglendening@kmclaw.com)>, [ndg@techmark.com](mailto:ndg@techmark.com)  
<[ndg@techmark.com](mailto:ndg@techmark.com)>, [mrg@techmark.com](mailto:mrg@techmark.com) <[mrg@techmark.com](mailto:mrg@techmark.com)>, [lzh@techmark.com](mailto:lzh@techmark.com) <[lzh@techmark.com](mailto:lzh@techmark.com)>  
[dmp@techmark.com](mailto:dmp@techmark.com) <[dmp@techmark.com](mailto:dmp@techmark.com)>

Thank you, Angel.

I am available now. What number should I call to reach you?

Thanks,  
Josh

**From:** Angel Riordan [<mailto:amr@techmark.com>]

**Sent:** Thursday, November 19, 2015 3:56 PM

**To:** Joshua S. Rupp

**Cc:** Nicholas Wells; Sherry Glendening; [ndg@techmark.com](mailto:ndg@techmark.com); [mrg@techmark.com](mailto:mrg@techmark.com); [lzh@techmark.com](mailto:lzh@techmark.com);  
[dmp@techmark.com](mailto:dmp@techmark.com)

**Subject:** Fwd: RE: RE: Red Bull GmbH v. Jordi Nogues/Jordi Nogues, S.L. - Consolidated Proceeding No.  
92-061,202 - Courtesy Copy

Josh,

We will certainly meet and confer with you, but I am not sure of the issues to be discussed. Since the Board should formally suspend Consolidated Proceeding No. 92-061,202 soon, obviously any discussion on the merits would be premature. Should you feel a meet and confer is appropriate to discuss procedural items, we would be happy to participate and cooperate to alleviate any concerns you may have.

Should you wish to pursue a meet and confer, let me have your suggested dates/times and I will coordinate a mutually convenient time.

Best,

Angel

----- Forwarded Message -----

**Subject:**RE: RE: Red Bull GmbH v. Jordi Nogues/Jordi Nogues, S.L. - Consolidated Proceeding No. 92-061,202 - Courtesy Copy

**Date:**Thu, 19 Nov 2015 21:26:20 +0000

**From:**Joshua S. Rupp <[jrupp@kmclaw.com](mailto:jrupp@kmclaw.com)>

**To:**'Angel Riordan' <[amr@techmark.com](mailto:amr@techmark.com)>

**CC:**Nicholas Wells <[nwells@kmclaw.com](mailto:nwells@kmclaw.com)>, Sherry Glendening <[sglendening@kmclaw.com](mailto:sglendening@kmclaw.com)>, [ndg@techmark.com](mailto:ndg@techmark.com) <[ndg@techmark.com](mailto:ndg@techmark.com)>, [mrg@techmark.com](mailto:mrg@techmark.com) <[mrg@techmark.com](mailto:mrg@techmark.com)>, [lzh@techmark.com](mailto:lzh@techmark.com) <[lzh@techmark.com](mailto:lzh@techmark.com)> [dmp@techmark.com](mailto:dmp@techmark.com) <[dmp@techmark.com](mailto:dmp@techmark.com)>

Angel,

Thank you for your email. I trust that you are feeling better.

Am I correct in understanding that (1) Red Bull's discovery responses are not in the mail and (2) that this correspondence satisfies the meet and confer requirement? If not, please let me know when you are available for a telephone call.

Thanks,

Josh

---

**From:** Angel Riordan [<mailto:amr@techmark.com>]

**Sent:** Thursday, November 19, 2015 2:04 PM

**To:** Joshua S. Rupp

**Cc:** Nicholas Wells; Sherry Glendening; [ndg@techmark.com](mailto:ndg@techmark.com); [mrg@techmark.com](mailto:mrg@techmark.com); [lzh@techmark.com](mailto:lzh@techmark.com); [dmp@techmark.com](mailto:dmp@techmark.com)

**Subject:** Fwd: RE: Red Bull GmbH v. Jordi Nogues/Jordi Nogues, S.L. - Consolidated Proceeding No. 92-061,202 - Courtesy Copy

Dear Josh,

Sorry for the slight delay - I was home sick at the beginning of this week. As an initial matter, your below email fails to note that all of the extensions of time thus far in this proceedings have been for the benefit of your client and at the request of your client. The "extensions" to Red Bull were simply to coordinate and maintain timing based upon the extensions requested by your client. Red Bull has not requested nor

obtained any independent extensions of time in this proceeding other than as a contingency in the pending motions.

As noted in Red Bull's Motion for Judgment on the Pleadings, served by first class mail on November 12, 2015 with a courtesy copy by email, Red Bull has requested that Consolidated Proceeding No. 92-061,202 be suspended, including any and all discovery deadlines, pending this motion for judgment on the pleadings (or, in the alternative, Red Bull has requested a 60-day extension of the discovery deadline). The TTAB has regularly stated that the Board's delay in formally ordering a suspension of a proceeding shall not prejudice a party. As such, we submit that the suspension will be retroactive to the date requested.

Moreover, to the extent that the TTAB does not enter the suspension, in that unusual event, we specifically asked for an appropriate extension of time to respond to your discovery. Finally, I am sure you are aware of Trademark Rule 2.137 and, TTAB practice (as set forth in TBMP Section 510.03(a)) which state that when a motion for judgment on the pleadings is filed, proceedings will be suspended as to all matters not germane to that motion.

Please let us know if you have any further questions.

Best,

Angel

----- Forwarded Message -----

**Subject:**RE: Red Bull GmbH v. Jordi Nogues/Jordi Nogues, S.L. - Consolidated Proceeding No. 92-061,202 .  
Courtesy Copy

**Date:**Wed, 18 Nov 2015 23:43:40 +0000

**From:**Joshua S. Rupp <jrupp@kmclaw.com>

**To:**Angel Riordan <amr@techmark.com>

**CC:**Nicholas Wells <nwells@kmclaw.com>, Sherry Glendening <sglendening@kmclaw.com>, ndg@techmark.com <ndg@techmark.com>, mrg@techmark.com <mrg@techmark.com>, lzh@techmark.com <lzh@techmark.com>, dmp@techmark.com <dmp@techmark.com>

Angel,

I write in follow up to the email below. We still have yet to receive any written discovery responses or documents from Red Bull responsive to

Registrant/Applicant's various discovery requests. Can you please either confirm that the responses and documents are in the mail or let me know when you are available to meet and confer preparatory to a motion to compel?

For purposes of facilitating a meaningful meet and confer, we write to further outline Registrant/Applicant's position generally as follows:

First, accounting for the three-weeks of extensions granted to Red Bull, Red Bull's discovery responses were due on November 12, 2015. Having not received any written discovery responses or documents from Red Bull, and having received no response to the email below, we can only conclude that Red Bull is refusing to respond or to otherwise comply with its discovery obligations. In light of such refusal, Registrant/Applicant's various requests for admissions have been deemed admitted by operation of law and will be treated as such going forward. Moreover, in light of Red Bull's refusal, Registrant/Applicant intends to move the board to compel complete discovery responses to Registrant/Applicant's interrogatories and requests for production.

Second, Red Bull's refusal to provide discovery responses or to otherwise comply with its discovery obligations is not excused by the mere filing of Red Bull's Motion for Judgment on the Pleadings. At the outset, Red Bull's November 12, 2015 deadline came and went without any order from the Board suspending proceedings, let alone specifically suspending Red Bull's discovery obligations or otherwise extending the time for Red Bull's responses. And, even if the Motion for Judgment on the Pleadings ultimately results in a general suspension order, this is insufficient to justify or excuse Red Bull's failure to comply with its outstanding discovery obligations at the time the Motion for Judgment on the Pleadings was filed.

Along these same lines, at a minimum, Red Bull's Motion for Judgment on the Pleadings does not excuse Red Bull's refusal to provide discovery responses or to otherwise comply with its discovery obligations in the cancellation proceeding. While Registrant/Applicant consented to the consolidation of the opposition and cancellation proceedings, Registrant/Applicant did so on the express understanding that the legal standards and issues applicable in both matters are not identical. Red Bull's Motion for Judgment on the Pleadings highlights the specific concern at issue. Specifically, the grounds for Red Bull's Motion for Judgment on the Pleadings are facially premised solely on facts and issues exclusively limited to the opposition proceeding. Nevertheless, Red Bull's Motion for Judgment on the Pleadings indiscriminately seeks the identical relief in both matters. We believe Red Bull had a Rule 11 obligation to properly inform the TTAB as to the limited scope of the Motion

for Judgment on the Pleadings from the outset and now has a Rule 11 obligation to correct the intellectually dishonest suggestion to the contrary in the Motion for Judgment on the Pleadings. Regardless, however, the Motion for Judgment on the Pleadings -- even if meritorious and granted -- will have no effect on the cancellation proceeding. To this end, Red Bull's Motion for Judgment on the Pleadings does not excuse Red Bull's refusal to meaningfully participate in discovery at least with respect to the cancellation proceeding.

We look forward to discussing these matters with you by telephone. Please let me know when you are available to meet and confer.

Regards,  
Josh

---

Joshua S. Rupp  
Kirton | McConkie

1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Direct: (801) 323-5989  
Office: (801) 328-3600  
Fax: (801) 212-2041  
email: [jrupp@kmclaw.com](mailto:jrupp@kmclaw.com)

This email communication (and any attachments) are confidential and are intended only for the individual(s) or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, please do not read, copy, use or disclose the contents of this communication to others. Please notify the sender that you have received this email in error by replying to the email or by telephoning (801) 328-3600. Please then delete the email and any copies of it. This information may be subject to legal, professional or other privilege or may otherwise be protected by work product immunity or other legal rules. To ensure compliance with requirements imposed by the IRS, we inform you that (a) any U.S. tax advice in this communication (including attachments) is limited to the one or more U.S. tax issues addressed herein; (b) additional issues may exist that could affect the U.S. tax treatment of the matter addressed below; (c) this advice does not consider or provide a conclusion with respect to any such additional issues; (d) any U.S. tax advice contained in this communication (including attachments) is not intended or written to be used, and cannot be used, for the purpose of promoting, marketing or recommending to another party any transaction or matter addressed herein, and (e) with respect to any U.S. tax issues outside the limited scope of this advice, and U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties under the Internal Revenue Code.

-----Original Message-----

From: Joshua S. Rupp  
Sent: Monday, November 16, 2015 8:32 AM  
To: Angel Riordan  
Cc: Nicholas Wells; Sherry Glendening; [ndg@techmark.com](mailto:ndg@techmark.com); [mrg@techmark.com](mailto:mrg@techmark.com); [lzh@techmark.com](mailto:lzh@techmark.com); [dmp@techmark.com](mailto:dmp@techmark.com)  
Subject: Re: Red Bull GmbH v. Jordi Nogues/Jordi Nogues, S.L. - Consolidated Proceeding No. 92-061,202 - Courtesy Copy

Angel,

Can you confirm whether Red Bull's discovery responses and document production are in the mail? If not, please let me know when you are available to meet and confer either today, tomorrow or Wednesday preparatory to a motion to compel.

Thanks,  
Josh

Sent from my iPhone

> On Nov 12, 2015, at 11:13 PM, Angel Riordan [amr@techmark.com](mailto:amr@techmark.com) wrote:  
>  
> Dear Josh,  
>

> Please see a courtesy copy of our Motion for Judgment on the Pleadings  
attached. The service copy is being sent to you by first class mail.  
>  
> Best,  
>  
> Angel  
>  
> --  
>  
> Angel M Riordan | Associate  
> TechMark a Law Corporation  
> Trademark & Intellectual Property Law  
> 4820 Harwood Road | 2nd Floor | San Jose, CA 95124  
> Tel: 408-266-4700 Fax: 408-850-1955  
> Email: [AMR@TechMark.com](mailto:AMR@TechMark.com)  
> =====  
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>  
> <RB v Jordi Nogues Jordi Nogues S.L. - Consolidated Proceeding No.  
> 92061202 - Motion for Judgment on the Pleadings.pdf>

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=====

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Consolidated Proceeding No.: 92/061,202  
*Red Bull GMBH v. Jordi Nogues, S.L.*

# Exhibit B

Exhibit B to Registrant/Applicant Jordi Nogues, S.L.'s  
Motion to Compel

Nicholas D. Wells  
[nwells@kmclaw.com](mailto:nwells@kmclaw.com)  
Joshua S. Rupp  
[jrupp@kmclaw.com](mailto:jrupp@kmclaw.com)  
KIRTON | McCONKIE, P.C.  
1800 World Trade Center  
60 East South Temple  
Salt Lake City, Utah 84111  
Phone: (801) 328-3600  
Fax: (801) 321-4893

*Attorneys for Respondent*  
*JORDI NOGUES, S.L.*

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

<p>RED BULL GMBH, Petitioner,  vs.  JORDI NOGUES, S.L., Respondent.</p>	<p>Cancellation No. 92061202</p> <p><b>RESPONDENT JORDI NOGUES, S.L.’S FIRST SET OF WRITTEN DISCOVERY TO PETITIONER RED BULL GMBH</b></p> <p>Mark: BADTORO (and Design) Reg. No.: 4,471,520 Registration Date: January 21, 2014</p>
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Pursuant to Trademark Rule 2.120 and Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, Respondent JORDI NOGUES, S.L. (“Respondent”), by and through undersigned counsel, hereby propounds this First Set of Written Discovery on Petitioner RED BULL GMBH (“Petitioner”).

This First Set of Written discovery includes (1) Requests for the Production of Documents and Things (“RFPs”) pursuant to, *inter alia*, Federal Rule of Civil Procedure 34, (2) Interrogatories pursuant to, *inter alia*, Federal Rule of Civil Procedure 33, and (3) Requests for Admissions (“RFAs”) pursuant to, *inter alia*, Federal Rule of Civil Procedure 36 (collectively, “Discovery Requests” unless otherwise specified).

Pursuant to the aforementioned Rules, Respondent requests that, within thirty (30) days of service hereof, Petitioner produce for inspection and copying at the offices of Kirton McConkie, 1800 World Trade Center, 60 E. South Temple, Salt Lake City, UT 84111, the documents and things identified in and/or responsive to the RFPs below. Respondent further requests that Petitioner separately and completely answer each Interrogatory, in writing and under oath, within thirty (30) days of service hereof, at the offices of Kirton McConkie, 1800 World Trade Center, 60 E. South Temple, Salt Lake City, UT 84111. Finally, Respondent requests that Petitioner admit the RFAs listed below, in writing, within thirty (30) days of service hereof, at the offices of Kirton McConkie, 1800 World Trade Center, 60 E. South Temple, Salt Lake City, UT 84111.

These Discovery Requests shall be answered in accordance with the Instructions set forth below and all applicable Rules. The full text of the Instructions and Definitions provided below shall be deemed incorporated into each and every Discovery Request.

#### **DEFINITIONS AND INSTRUCTIONS**

**As used herein, the following terms are defined as indicated:**

1. “Petitioner” means not only the named Petitioner, RED BULL GMBH in the above-captioned cancellation proceeding, but also, its predecessor(s), successor(s), division(s), subsidiary entities, both controlled and wholly owned, and all other related entities (as defined by 15 U.S.C. § 1127), and the past and present officer(s), director(s), employee(s), agent(s), representative(s), attorney(s), and other personnel thereof, to the fullest extent the context permits.

2. “Respondent” shall mean Respondent, JORDI NOGUES, S.L.

3. “Cancellation” shall mean the above captioned matter styled *RED BULL GMBH V. JORDI NOGUES, S.L.*, Cancellation No. 92061202, pending before the United States Patent and Trademark Office, before the Trademark Trial and Appeal Board.

4. The term “person” shall mean natural person(s), individual(s), officer(s) or employee(s) of Petitioner, firm(s), partnership(s), joint venture(s), government entity(ies), social or political organization(s), association(s), corporation(s), company(ies), division(s), business(es) or any other entity in any other department or other unit thereof, whether *de facto* or *de jure*, incorporated or unincorporated.

5. As used herein, the term “document” is used in its customary broad sense and includes, without being limited to, the following items, whether printed, or recorded, or filmed, or reproduced by any other mechanical process, or written or produced by hand and whether or not claimed to be privileged against discovery on any ground, and including, but not limited to, all originals, masters and copies, namely, agreements; contracts and/or memoranda of understanding; assignments; licenses; correspondence and/or communications, including intracompany correspondence and/or communications; facsimiles, emails, instant messages, text messages, cablegrams, telex messages, radiograms and telegrams; reports, notes and memoranda; summaries, minutes and conferences, including lists of persons attending meetings or conferences; summaries and recordings of personal conversations and interviews; computer files or electronic files, CDs, DVDs, presentations, books, manuals, publications and diaries; data sheets and notebooks; charts; plans; sketches and drawings; photographs, motion pictures; audio and video tapes and disks; models and mock-ups; reports and/or summaries of investigations; opinions and reports of experts and consultants; patents, registrations of marks, copyrights and applications for any of them; domain name registrations; opinions of counsel; sales records, including purchase orders, order acknowledgments and invoices; books of account; statements, bills, checks and vouchers; reports and summaries of negotiations; brochures; pamphlets; catalogs and catalog sheets; sales literature and sales promotion materials; advertisements; displays, circulars; trade letters, notices and announcements; press, publicity, trade and product releases; drafts of originals of or preliminary notes on, and marginal comments appearing on, any

document; other reports and records; and any other information comprising paper, writing, computer records or files, or physical things.

6. Words of gender shall be construed as including all genders, without limitation.

7. The connectives “and/or,” “and,” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Discovery Request all responses that might otherwise be construed to be outside of its scope.

8. The terms “all” and “each” shall be construed as all and each.

9. The use of the singular form of any word includes the plural and vice versa.

10. “United States” shall include the United States of America, its possessions and territories.

11. The term “produce” means to provide a copy or make available for inspection and copying at the time and place specified above.

12. As used herein, the term “Respondent’s Mark” shall mean and refer to Respondent’s trademark BADTORO (and Design) as shown in United States Federal Registration No. 4,471,520 in International Class 035, filed March 27, 2012, published in the Official Gazette on March 5, 2013, and registered on January 21, 2014.

13. As used herein, the term “Petitioner’s Mark(s)” shall mean and refer to the “RED BULL, RED BULL & Two Bulls Logo, Two Bulls Logo and (Single) Bull Logo, and other marks incorporating the word BULL, and/or the design of a bull or bovine animal,” collectively and individually, as alleged in Paragraphs 2 – 3 of Petitioner’s Petition for Cancellation inaugurating the above-captioned Cancellation.

14. The terms “use,” “used,” or “used in commerce,” as used herein, shall have the same meaning as “use in commerce” set out in 15 U.S.C. § 1127.

15. The terms “third parties” and/or “third party” refer to individuals or entities that are not a party to this Cancellation.

16. As used herein, “identify,” or give “identity” of, means:

- (a) In the case of a person, to state:
  - (i) full name;
  - (ii) present residence address and telephone number;
  - (iii) present business address and telephone number;
  - (iv) present position, business affiliation, and job description; and
  - (v) if any of the information set forth in (i)-(iv) is unknown, so state and set forth the corresponding last known such information;

- (b) In the case of a corporation, to state:
  - (i) full name;
  - (ii) place and date of incorporation or foundation;
  - (iii) address and principal place of business; and
  - (iv) identity of officers or other persons having knowledge of the matters with respect to which such corporation is named;

- (c) In the case of any other person other than a natural person or corporation, to state:

- (i) full name;
- (ii) address and principal place of business; and
- (iii) identity of officers or other persons having knowledge of the matters with respect to which such person is named; and

- (d) In the case of an event or occurrence, state the date(s) and geographic location(s), describe the transactions and events, and identify the person(s), corporation(s) or other entities involved in accordance with the instructions set forth in this paragraph.

17. With respect to each document or communication which is withheld, whether under claim of privilege or otherwise, please provide the following information:

- (a) the date, identity and general subject matter of each such document;

- (b) the grounds asserted in support of the failure to produce the document;
- (c) the “identity” of each person (other than stenographic or clerical assistants) participating in the preparation of the “document”;
- (d) the “identity” of each person to whom the contents of the “document” were communicated by copy, distribution, reading or substantial summarization;
- (e) a description of any document or other material transmitted with or attached to the “document”;
- (f) the number of pages in the “document”; and
- (g) whether any business or non-legal matter is contained or discusses in the “document.”

18. The terms “promotion,” “promotional,” or “promote” shall mean any press release, trade show exhibits, trade show booths, direct mail, brochures, pamphlets, flyers, interviews, letters, solicitations, presentations, websites or web pages, industry conferences or any other means of making the media, trade, investors, customers or public more aware of Petitioner or its respective goods or use of Petitioner’s Marks, as defined herein.

19. “Board” shall mean the United States Trade Mark Trial and Appeal Board.

**The following Instructions apply to these Discovery Requests:**

- A. These Discovery Requests shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing in nature so that any additional information relating in any way to these Discovery Requests which Petitioner acquires or which becomes known to Petitioner, up to and including the time of trial, shall be furnished to Respondent promptly after such information is acquired or becomes known, pursuant to Rule 26 of the Federal Rules of Civil Procedure.
- B. In each instance where a Discovery Request is answered on information and belief, it is requested that Petitioner set forth the basis for such information and belief.
- C. Should a Discovery Request not specifically request a particular fact or facts, but

where such fact or facts are necessary to make the response to the Discovery Request comprehensible or not misleading, Petitioner is requested to include such fact or facts as part of its response.

D. In each instance where Petitioner denies knowledge or information sufficient to answer a Discovery Request, it is requested that Petitioner set forth the name and address of each person, if any, known to have such knowledge or information.

E. In each instance where the existence of a document is disclosed, Petitioner is requested to attach a copy of such document to its answer. If such document is not in Petitioner's possession, custody or control, it is requested that Petitioner state the name and address of each person known to Petitioner to have such possession, custody or control, and identify which documents are in such person's possession, custody or control.

F. Petitioner shall not refer to documents generally in lieu of answering; if the burden upon Petitioner of deriving an answer from documents is the same as it is upon Respondent, Petitioner may elect to refer to documents which are specifically identified from which the response may be readily obtained. Such a response constitutes a representation under oath by Petitioner and Petitioner's counsel that, after reasonable investigation, those conditions have been met.

G. Any document withheld in responding to these Discovery Requests on the ground of privilege is to be identified by author or authors, recipient or recipients, person or persons to whom copies were furnished, together with the job titles of each such person or persons, date, subject matter, and nature of privilege claimed.

H. If Petitioner contends that any item of information requested by these Discovery Requests is privileged, in whole or in part, as a ground for its non-production or nondisclosure, for each alleged privileged item or document, Petitioner shall provide all information required by Rule 26 of the Federal Rules of Civil Procedure.

I. Petitioner is reminded that each RFA will be deemed admitted unless Petitioner

serves upon Respondent a written answer or objection addressed to each matter. If objection is made, the reasons therefore must be stated. The answer must specifically admit or deny the matter or set forth in detail the reasons why Petitioner cannot truthfully admit or deny the matter. A denial must fairly meet the substance of the RFA, and when good faith requires that Petitioner qualify its answer or deny only a part of the matter of which admission is requested, Petitioner must specify how much of the answer is true and qualify or deny the remainder. Petitioner may not give lack of information or knowledge as the reason for failure to admit or deny unless Petitioner states that it has made a reasonable inquiry and that the information known or readily obtainable by it is insufficient to enable it to admit or deny. If Petitioner considers that a matter for which admission has been requested presents a genuine issue for trial, it may not, on that ground alone, object to the RFA.

**RESPONDENT'S FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS AND THINGS TO PETITIONER**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Respondent hereby requests that Petitioner respond, separately and fully in writing, to the following First Set of Requests for Production of Documents and Things or RFPs, and serve a copy of such responses on the undersigned within thirty (30) days after service hereof. In connection with Petitioner's responses, identify each document Petitioner has withheld or intends to withhold from production and, with respect to each such document, state the privilege claimed or other ground for withholding the document from production.

**Request No. 1.** All documents used, considered or relied upon by Petitioner in preparing responses and/or objections to Respondent's First Set of Interrogatories in the above-captioned Cancellation proceeding.

**Request No. 2.** To the extent they are in Petitioner's possession, custody, or control, all documents identified, listed, categorized, referred to, referenced, relied upon, or

otherwise discussed in Petitioner's Initial Disclosures served on August 10, 2015, including categories 1 – 8 thereof.

**Request No. 3.** All documents identified, referred to, referenced, relied upon, or otherwise discussed in Petitioner's Petition for Cancellation, including but not limited to documents which support, refute or otherwise relate to any of the allegations or pleadings contained in the Petition for Cancellation.

**Request No. 4.** All documents which support, refute, or otherwise relate to any of the responses or affirmative defenses contained in Respondent's Answer to the Petition for Cancellation.

**Request No. 5.** All documents upon which Petitioner intends to rely, or upon which Petitioner may rely, during trial of the above-captioned Cancellation proceeding, including but not limited to documents Petitioner intends to submit to the Board through a Notice of Reliance or otherwise.

**Request No. 6.** All documents concerning or evidencing any likelihood of confusion between Petitioner's Marks and Respondent's Mark, including, but not limited to, documents evidencing (a) actual confusion, (b) Respondent's intent in adopting Respondent's Mark, (c) the strength of Petitioner's Marks, (d) the similarity or dissimilarity of Petitioner's Marks relative to Respondent's Mark, (e) the relevant channels of trade and/or marketing, (f) the degree of care exercised by relevant consumers, (g) the similarity or dissimilarity of the relevant goods or services, (h) the number and nature of marks similar to Petitioner's Marks that are in use in connection with similar goods or services offered by Petitioner, and so forth.

**Request No. 7.** All documents concerning or evidencing the "various Federal registrations and common law rights to trademark for or including the words RED BULL, RED BULL & Two Bulls Logo, Two Bulls Logo and (Single) Bull Logo, and/or the design of a bull or bovine animal" alleged in Paragraphs 2 – 3 of Petitioner's Petition for Cancellation.

**Request No. 8.** All documents concerning or evidencing each and every one of Petitioner's Marks which Petitioner intends to rely upon, or may rely upon, at trial of this Cancellation proceeding.

**Request No. 9.** All documents concerning or evidencing the "advertis[ing,]" including but not limited to any promotional or marketing materials, of Petitioner's Marks within the United States as alleged in Paragraph 5 of Petitioner's Petition for Cancellation.

**Request No. 10.** All documents concerning or evidencing the "sales" alleged in Paragraph 6 of Petitioner's Petition for Cancellation.

**Request No. 11.** All documents concerning or evidencing the "fam[e]" of Petitioner's Marks alleged in Paragraph 6 of Petitioner's Petition for Cancellation.

**Request No. 12.** All documents in Petitioner's possession, custody, or control concerning Respondent's Mark, including the use thereof, alleged in Paragraphs 9 and 11 of Petitioner's Petition for Cancellation.

**Request No. 13.** All documents concerning or evidencing any false suggestion of a connection between Petitioner / Petitioner's Marks and Respondent's Mark.

**Request No. 14.** All documents concerning or evidencing dilution of Petitioner's Marks based on Respondent's Mark.

**Request No. 15.** All documents in Petitioner's possession, custody, or control concerning or evidencing the allegations of Paragraphs 35 and 36 of Petitioner's Petition for Cancellation.

**Request No. 16.** Representative samples of all documents referring or relating to the use and/or intended use(s) of Petitioner's Marks in the United States since first use.

**Request No. 17.** Representative samples of all documents concerning, referring, relating to, explaining, or describing each of the goods, products, and/or services offered or intended to be offered by Petitioner in connection with Petitioner's Marks in the United States, including without limitation, all labels, packages, containers, advertisements, brochures, product

literature, price lists, annual reports, signs, handbills, stationery, business cards, decals, badges, catalogs, Internet web sites, computer screens, any sales tools, catalogs, training materials, memoranda, and bulletins or other materials.

**Request No. 18.** All documents which show the corporate status and organizational structure of Petitioner, including without limitation articles of incorporation, by-laws, and any lists of Petitioner's current or former officers, directors and managerial employees and/or descriptions of their duties and responsibilities.

**Request No. 19.** All documents concerning, referring, or relating to Petitioner's conception, creation, development, selection, adoption, United States trademark applications for, and/or first use of Petitioner's Marks.

**Request No. 20.** All documents concerning the derivation, commercial impression, connotation, meaning and/or message of the words/phrase "red bull."

**Request No. 21.** Documents sufficient to identify Petitioner's ten largest customers / distributors (in Petitioner's discretionary determination) to whom products, goods and/or services bearing Petitioner's Marks are distributed or sold in the United States.

**Request No. 22.** Documents sufficient to identify persons knowledgeable about Respondent, Respondent's Mark, Petitioner's Marks, and/or this Cancellation proceeding, including but not limited to any grounds for the Cancellation.

**Request No. 23.** All documents that concern, refer, or relate to an opinion of a lawyer concerning Petitioner's Marks.

**Request No. 24.** All documents that concern, refer, or relate to an opinion of a lawyer concerning Respondent's Mark.

**Request No. 25.** All documents concerning abandonment or cessation of use in the United States of one or more of Petitioner's Marks for any period of time from the date of first use to the present.

**Request No. 26.** All communications or correspondence which relate to the above-captioned Cancellation, the Respondent, the Respondent's Mark, and/or the Petitioner's Marks in relation to this Cancellation.

**Request No. 27.** All documents referring or relating to any trademark search or investigation performed by Petitioner or on Petitioner's behalf concerning Respondent's Mark.

**Request No. 28.** All documents concerning, referring or relating to any agreement(s), license(s), assignment(s), settlement agreement(s), contract(s), draft(s) of any of the foregoing, and/or amendment(s) or modification(s) thereof, between Petitioner (or any person or party in privity with Petitioner) and any third party or person that concerns, refers to, or relates to Petitioner's Marks.

**Request No. 29.** All documents that concern or evidence the geographic use of Petitioner's Marks within the United States.

**Request No. 30.** All documents that refer or relate to the class or type of consumer of Petitioner's products or services bearing Petitioner's Marks.

**Request No. 31.** All documents that refer or relate to the target market of Petitioner's products or services bearing Petitioner's Marks.

**Request No. 32.** All documents that refer or relate to the trade channels through which products and services bearing Petitioner's Marks are offered, sold, moved or distributed.

**Request No. 33.** All unsolicited articles or third party publications wherein products or services bearing Petitioner's Marks have been referenced or identified.

**Request No. 34.** All documents or communications shown to, considered or prepared by an expert, whether specially retained or not, by Petitioner in connection with this Cancellation.

**Request No. 35.** All documents concerning Petitioner's policy(ies) with respect to the retention or disposition of documents.

**Request No. 36.** All documents that reflect or describe Petitioner’s policies or practices as to the policing of Petitioner’s Marks so as to protect proprietary rights Petitioner may have or claim in Petitioner’s Marks.

**Request No. 37.** All documents concerning or relating to genericide of the words/phrase “red bull.”

**Request No. 38.** All documents concerning Petitioner’s awareness or knowledge of the use, prosecution, and/or registration of Respondent’s Mark.

**Request No. 39.** All documents concerning Petitioner’s awareness or knowledge of Respondent, Respondent’s Mark, Application Serial No. 85/580670, and Respondent’s products, goods, or services offered in connection with Respondent’s Mark.

**Request No. 40.** All documents referring or relating to the extent to which Respondent’s Mark has become associated with Petitioner in the minds of prospective purchasers.

**Request No. 41.** All documents referring or relating to the level of sophistication of Petitioner’s target consumer of products, goods or service offered in connection with Petitioner’s Marks.

**Request No. 42.** All documents referring or relating to the quality of Petitioner’s products, goods or service offered in connection with Petitioner’s Marks.

**Request No. 43.** All documents concerning or related to circumstances where Petitioner has accused a third party of infringing Petitioner’s Marks or otherwise infringing Petitioner’s rights in Petitioner’s Marks, including in formal proceeding before the Board, litigation proceedings, and informal correspondence sent to any such alleged infringer.

**Request No. 44.** All documents wherein Petitioner has opposed the trademark application of a third party on the basis of Petitioner’s Marks.

**Request No. 45.** All documents wherein Petitioner has asserted a likelihood of confusion relative to Petitioner’s Marks.

**Request No. 46.** All documents wherein Petitioner has asserted a false suggestion of a connection relative to Petitioner's Marks.

**Request No. 47.** All documents wherein Petitioner has asserted dilution relative to Petitioner's Marks.

**Request No. 48.** All documents concerning United States Federal Trademark Registration No. 4,085,768.

**Request No. 49.** All documents concerning the allegations set forth in Paragraph 8 of Petitioner's Petition for Cancellation.

Pursuant to the Standard Protective Order applicable to this action, if any of the foregoing documents are deemed to contain confidential information, Petitioner should so designate said documents and access thereto will be confined to Respondent's counsel unless further dissemination thereof is authorized by mutual agreement of the parties or by order of the Board.

### **RESPONDENT'S FIRST SET OF INTERROGATORIES TO PETITIONER**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Respondent hereby requests that Petitioner answer, separately and fully in writing, under oath, the following First Set of Interrogatories, and serve a copy of such answers on the undersigned within thirty (30) days after service hereof. The following are deemed to be continuing Interrogatories to the fullest extent contemplated by Rule 26(e), Federal Rules of Civil Procedure. In the event that Petitioner acquires knowledge or information responsive to any Interrogatory or any portion thereof between the date that Petitioner answers these Interrogatories and the date that this case is tried, Petitioner is requested to file supplemental answers including such additional knowledge or information.

**Interrogatory No. 1.** Identify all current corporate officers of Petitioner by name, address, title and provide a brief description of their respective responsibilities.

**Interrogatory No. 2.** Identify any company, corporation, or entity affiliated with or related to Petitioner, including without limitation any parent or subsidiaries.

**Interrogatory No. 3.** Identify all products and services currently sold, offered or rendered under each of Petitioner's Marks in the United States.

**Interrogatory No. 4.** Identify all products and services intended to be sold, offered or rendered by Petitioner in connection with Petitioner's Marks in the United States.

**Interrogatory No. 5.** For every product and type of service identified in response to Interrogatory No. 4 above, state the date on which Petitioner intends to offer the product or service in the United States.

**Interrogatory No. 6.** Describe all materials on which each of Petitioner's Marks has ever been used or displayed in the United States.

**Interrogatory No. 7.** Identify the date and describe the manner in which each of Petitioner's Marks were first used in the United States in connection with energy drinks, sports drinks, soft drinks, and/or beverages.

**Interrogatory No. 8.** Identify each and every trademark, registered or otherwise, Petitioner's Petition for Cancellation is based on (including, but not limited to, Petitioner's Marks referenced in Paragraph 3 of the Petition for Cancellation) or upon which Petitioner intends to rely, for any reason, in this Cancellation proceeding.

**Interrogatory No. 9.** Identify on an annual basis the total amount of revenue received by Petitioner from the sale of products, goods and/or services under Petitioner's Marks in the United States since Petitioner's first use of Petitioner's Marks to the present.

**Interrogatory No. 10.** Identify the total amount of volume of sales, in units, of products, goods and/or services sold under Petitioner's Marks on an annual basis since first use of Petitioner's Marks in the United States.

**Interrogatory No. 11.** Identify on an annual basis the total dollar amount Petitioner has spent in advertising and/or promoting products, goods, and/or services bearing,

containing, displaying or incorporating Petitioner's Marks in the United States since its first use of Petitioner's Mark to the present.

**Interrogatory No. 12.** Identify all persons or individuals who provided information or were otherwise involved in the preparation of Petitioner's Petition for Cancellation, Initial Disclosures, and/or responses to these Discovery Requests, specifying the information that he or she provided.

**Interrogatory No. 13.** Identify and describe all documents reviewed or referenced in the preparation of Petitioner's Petition for Cancellation, Initial Disclosures, and/or responses to these Discovery Requests, including an identification of all persons whose files were searched or who provided any such documents.

**Interrogatory No. 14.** Describe or define the meaning of the words/phrase "red bull."

**Interrogatory No. 15.** Identify and describe all of the factual bases for Petitioner's allegations of likelihood of confusion set forth in Paragraphs 13 through 18 of Petitioner's Petition for Cancellation.

**Interrogatory No. 16.** Identify and describe all of the factual bases for Petitioner's allegations of false suggestion of a connection set forth in Paragraphs 19 through 25 of Petitioner's Petition for Cancellation.

**Interrogatory No. 17.** Identify and describe all of the factual bases for Petitioner's allegations of dilution set forth in Paragraphs 26 through 33 of Petitioner's Petition for Cancellation.

**Interrogatory No. 18.** Identify and describe all of the factual bases for Petitioner's allegations of non-use and false declaration set forth in Paragraphs 34 through 36 of Petitioner's Petition for Cancellation.

**Interrogatory No. 19.** Identify all persons or individuals knowledgeable about Petitioner's Petition for Cancellation, the allegations or grounds for cancellation set forth in

Petitioner's Petition for Cancellation, Petitioner's Marks, the alleged fame of Petitioner's Marks, advertising, marketing and/or sales related to Petitioner's Marks, the goods and services sold in connection with Petitioner's Marks, Petitioner's customers or consumers, Respondent, and/or Respondent's Mark.

**Interrogatory No. 20.** Identify and describe any use of the words/phrase "red bull" to generically describe a class of beverages, such as energy drinks, of which Petitioner is aware.

**Interrogatory No. 21.** Identify and describe the target consumers or customers to whom Petitioner has marketed or intends to market products, goods and/or services bearing, containing, displaying or incorporating Petitioner's Marks in the United States.

**Interrogatory No. 22.** Identify all advertising and promotional methods and types of media used or intended to be used in advertising or promoting the sale of any products or services under Petitioner's Marks, specifying each, periodical, newspaper, radio station, television station, Internet website, or other advertising medium used in connection with such advertising or promotion.

**Interrogatory No. 23.** Identify ten (10) representative customers or distributors to whom Petitioner has sold or intends to sell products and/or services bearing, containing, displaying or incorporating Petitioner's Marks in the United States.

**Interrogatory No. 24.** Identify and describe all trade channels through which any goods have been sold or services have been offered under Petitioner's Marks in the United States.

**Interrogatory No. 25.** Identify all licenses, assignments or other agreements concerning, referring or relating to Petitioner's Marks.

**Interrogatory No. 26.** Identify the range of prices at which Petitioner sells or offers to sell goods or services bearing Petitioner's Marks in the United States.

**Interrogatory No. 27.** Identify all facts and circumstances relating to any search or evaluation of any records conducted by or for Petitioner to determine whether other persons or entities have used, registered, or attempted to register any names or marks similar to Petitioner's Marks.

**Interrogatory No. 28.** Identify all facts and circumstances relating to Petitioner's awareness or knowledge of Respondent's Mark, including when Respondent first became aware of the same.

**Interrogatory No. 29.** Identify all facts and circumstances relating to Petitioner's awareness or knowledge of Respondent and/or Respondent's goods or services offered in connection with Respondent's Mark, including when Petitioner first became aware of the foregoing.

**Interrogatory No. 30.** Identify and describe all known instances in which persons mistakenly believed that Respondent or its business, products or services were associated or affiliated with Petitioner.

**Interrogatory No. 31.** Describe with particularity the level of sophistication of Petitioner's target consumer or customer of products, goods or service offered in connection with Petitioner's Marks.

**Interrogatory No. 32.** Describe with particularity the quality of Petitioner's products, goods or services offered in connection with Petitioner's Marks.

**Interrogatory No. 33.** Describe with particularity the subject matter for which a corporate representative of Petitioner may provide testimony, if any, as it relates to the above-captioned Cancellation proceeding.

**Interrogatory No. 34.** If Petitioner denies all or any portion of Respondent's First Set of Requests for Admission to Petitioner set forth herein, for any reason, state the factual bases for Petitioner's denial with particularity.

**Interrogatory No. 35.** Identify all expert opinions that Petitioner may introduce at trial of this matter, whether from specially retained experts or otherwise.

**Interrogatory No. 36.** Identify each document or thing Respondent will and may offer or introduce as an exhibit during the trial of this matter, whether via a Notice of Reliance or otherwise.

**Interrogatory No. 37.** Identify all individuals or entities that Petitioner has ever alleged or asserted (whether formally or informally) has infringed upon Petitioner's Marks or otherwise caused a likelihood of confusion, a false suggestion of connection, or dilution with respect to Petitioner's Marks.

**Interrogatory No. 38.** Identify each person Petitioner will and may call as a witness at trial in this matter.

**Interrogatory No. 39.** Identify each publication wherein products or services bearing Petitioner's Marks have been referenced or identified.

**Interrogatory No. 40.** Describe with particularity all factual bases underlying Petitioner's allegation that Petitioner's Marks are famous as set forth in Paragraph 6 of Petitioner's Petition for Cancellation.

**Interrogatory No. 41.** Describe with particularity the strength of Petitioner's Marks and the factual predicate for any such strength.

**Interrogatory No. 42.** Describe with particularity the degree of care typically exercised by consumers of Petitioner's products, goods, or services sold in connection with Petitioner's Marks.

If the response to any Interrogatory is believed by Petitioner to contain confidential information or trade secrets, it should be so designated pursuant to the Standard Protective Order applicable to this action and access thereto will be confined to Respondent's counsel unless

further dissemination thereof is authorized by mutual agreement of the parties or by order of the Board.

**RESPONDENT'S FIRST SET OF REQUESTS**  
**FOR ADMISSIONS TO PETITIONER**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Respondent hereby requests that Petitioner respond, separately and fully in writing, to the following First Set of Requests for Admission or RFAs, and serve a copy of such responses on the undersigned within thirty (30) days after service hereof. Pursuant to Rule 36, matters addressed by the RFAs shall be deemed admitted unless the RFAs are responded to within thirty (30) days after service hereof.

**Request No. 1.** Admit that Respondent is the owner of United States Federal Trademark Registration No. 4,471,520.

**Request No. 2.** Admit that Petitioner never opposed the application underlying United States Federal Trademark Registration No. 4,471,520 during the allotted period during which it was published for opposition.

**Request No. 3.** Admit that Petitioner was aware of the application underlying United States Federal Trademark Registration No. 4,471,520 during the allotted period during which it was published for opposition.

**Request No. 4.** Admit that Respondent has used or intends to use the mark identified in United States Federal Trademark Registration No. 4,471,520 in commerce in the United States in connection with the goods and/or services identified therein.

**Request No. 5.** Admit that the words/phrase "red bull" are/is often used by the general consuming public within the United States to refer to a class of beverages.

**Request No. 6.** Admit that the words/phrase "red bull" are/is often used by the general consuming public within the United States to refer to energy drinks.

**Request No. 7.** Admit that Petitioner currently has no evidence of any actual instances in which a person or persons mistakenly believed that Respondent or its business, products, or services were associated or affiliated with Petitioner.

**Request No. 8.** Admit that Petitioner currently has no evidence of any actual instances in which persons falsely believed that Respondent was connected or associated with Petitioner.

**Request No. 9.** Admit that Petitioner currently has no evidence of any actual instances in which persons falsely believed that Respondent was connected or associated with Petitioner because of Respondent's Mark.

**Request No. 10.** Admit that Petitioner currently has no evidence of any actual dilution of Petitioner's Marks based on Respondent's Mark.

**Request No. 11.** Admit that Petitioner currently has no evidence that Respondent lacks bona fide use of Respondent's Mark in commerce.

**Request No. 12.** Admit that Petitioner currently has no evidence that Respondent's declaration filed in connection with Respondent's Mark was or is false.

**Request No. 13.** Admit that Respondent's Mark consists of a word mark having a stylized representation of a bull with two large horns curving above its head with the literal element BADTORO appearing in stylizing font beneath the bull but does not claim color as a feature of Respondent's Mark.

**Request No. 14.** Admit that Petitioner has no independent rights in the word "bull" standing alone, apart from any unitary mark consisting of the entire phrase "red bull" and/or "red bull" in connection with various designs.

**Request No. 15.** Admit that the term "red bull" is understood by the relevant consuming public primarily to refer to energy drinks.

**Request No. 16.** Admit that the bull is an iconic animal that is known to represent the culture of Spain.

**Request No. 17.** Admit that the cultural significance of the bull and of bullfighting is widely recognized in most Spanish-speaking countries and in the United States.

**Request No. 18.** Admit that the traditional cape used in bullfighting is red.

DATED: September 17, 2015

**KIRTON | McCONKIE, P.C.**

By: *Nicholas D. Wells*

Nicholas D. Wells

Joshua S. Rupp

KIRTON | McCONKIE, P.C.

60 East South Temple, Suite 1800

Salt Lake City, Utah 84111

Phone: (801) 328-3600

Fax: (801) 321-4893

*Attorneys for Respondent*

*JORDINOGUES, S.L.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of September, 2015, the foregoing **RESPONDENT JORDI NOGUES, S.L.'S FIRST SET OF WRITTEN DISCOVERY TO PETITIONER RED BULL GMBH** was served on counsel for Petitioner as designated below, by placing a copy in the United States Mail, first class, postage prepaid, addressed as follows (advanced courtesy copy via email):

Martin R. Greenstein  
TechMark a Law Corporation  
4820 Harwood Road, 2nd Floor  
San Jose, CA 95124  
[mrg@techmark.com](mailto:mrg@techmark.com)  
[amr@techmark.com](mailto:amr@techmark.com)  
[lzh@techmark.com](mailto:lzh@techmark.com)  
[dmp@techmark.com](mailto:dmp@techmark.com)

*/Nicholas D. Wells/*

Consolidated Proceeding No.: 92/061,202  
*Red Bull GMBH v. Jordi Nogues, S.L.*

# Exhibit C

Exhibit C to Registrant/Applicant Jordi Nogues, S.L.'s  
Motion to Compel

Nicholas D. Wells  
[nwells@kmclaw.com](mailto:nwells@kmclaw.com)  
Joshua S. Rupp  
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*Attorneys for Applicant*  
*JORDI NOGUES, S.L.*

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

<p>RED BULL GMBH, Opposer,  vs.  JORDI NOGUES, S.L., Applicant.</p>	<p>Opposition No. 91221325</p> <p><b>APPLICANT JORDI NOGUES, S.L.’S FIRST SET OF WRITTEN DISCOVERY TO OPPOSER RED BULL GMBH</b></p> <p>Mark: Bull Design Serial No.: 86/324,277 Published: December 2, 2014</p>
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Pursuant to Trademark Rule 2.120 and Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, Applicant JORDI NOGUES, S.L. (“Applicant”), by and through undersigned counsel, hereby propounds this First Set of Written Discovery on Opposer RED BULL GMBH (“Opposer”).

This First Set of Written discovery includes (1) Requests for the Production of Documents and Things (“RFPs”) pursuant to, *inter alia*, Federal Rule of Civil Procedure 34, (2) Interrogatories pursuant to, *inter alia*, Federal Rule of Civil Procedure 33, and (3) Requests for Admissions (“RFAs”) pursuant to, *inter alia*, Federal Rule of Civil Procedure 36 (collectively, “Discovery Requests” unless otherwise specified).

Pursuant to the aforementioned Rules, Applicant requests that, within thirty (30) days of service hereof, Opposer produce for inspection and copying at the offices of Kirton McConkie, 1800 World Trade Center, 60 E. South Temple, Salt Lake City, UT 84111, the documents and things identified in and/or responsive to the RFPs below. Applicant further requests that Opposer separately and completely answer each Interrogatory, in writing and under oath, within thirty (30) days of service hereof, at the offices of Kirton McConkie, 1800 World Trade Center, 60 E. South Temple, Salt Lake City, UT 84111. Finally, Applicant requests that Opposer admit the RFAs listed below, in writing, within thirty (30) days of service hereof, at the offices of Kirton McConkie, 1800 World Trade Center, 60 E. South Temple, Salt Lake City, UT 84111.

These Discovery Requests shall be answered in accordance with the Instructions set forth below and all applicable Rules. The full text of the Instructions and Definitions provided below shall be deemed incorporated into each and every Discovery Request.

#### **DEFINITIONS AND INSTRUCTIONS**

**As used herein, the following terms are defined as indicated:**

1. “Opposer” means not only the named Opposer, RED BULL GMBH in the above-captioned opposition proceeding, but also, its predecessor(s), successor(s), division(s), subsidiary entities, both controlled and wholly owned, and all other related entities (as defined by 15 U.S.C. § 1127), and the past and present officer(s), director(s), employee(s), agent(s), representative(s), attorney(s), and other personnel thereof, to the fullest extent the context permits.

2. “Applicant” shall mean Applicant, JORDI NOGUES, S.L.

3. “Opposition” shall mean the above captioned matter styled *RED BULL GMBH V. JORDI NOGUES, S.L.*, Opposition No. 91221325, pending before the United States Patent and Trademark Office, before the Trademark Trial and Appeal Board.

4. The term “person” shall mean natural person(s), individual(s), officer(s) or employee(s) of Opposer, firm(s), partnership(s), joint venture(s), government entity(ies), social or political organization(s), association(s), corporation(s), company(ies), division(s), business(es)

or any other entity in any other department or other unit thereof, whether *de facto* or *de jure*, incorporated or unincorporated.

5. As used herein, the term “document” is used in its customary broad sense and includes, without being limited to, the following items, whether printed, or recorded, or filmed, or reproduced by any other mechanical process, or written or produced by hand and whether or not claimed to be privileged against discovery on any ground, and including, but not limited to, all originals, masters and copies, namely, agreements; contracts and/or memoranda of understanding; assignments; licenses; correspondence and/or communications, including intracompany correspondence and/or communications; facsimiles, emails, instant messages, text messages, cablegrams, telex messages, radiograms and telegrams; reports, notes and memoranda; summaries, minutes and conferences, including lists of persons attending meetings or conferences; summaries and recordings of personal conversations and interviews; computer files or electronic files, CDs, DVDs, presentations, books, manuals, publications and diaries; data sheets and notebooks; charts; plans; sketches and drawings; photographs, motion pictures; audio and video tapes and disks; models and mock-ups; reports and/or summaries of investigations; opinions and reports of experts and consultants; patents, registrations of marks, copyrights and applications for any of them; domain name registrations; opinions of counsel; sales records, including purchase orders, order acknowledgments and invoices; books of account; statements, bills, checks and vouchers; reports and summaries of negotiations; brochures; pamphlets; catalogs and catalog sheets; sales literature and sales promotion materials; advertisements; displays, circulars; trade letters, notices and announcements; press, publicity, trade and product releases; drafts of originals of or preliminary notes on, and marginal comments appearing on, any document; other reports and records; and any other information comprising paper, writing, computer records or files, or physical things.

6. Words of gender shall be construed as including all genders, without limitation.

7. The connectives “and/or,” “and,” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Discovery Request all responses that might otherwise be construed to be outside of its scope.

8. The terms “all” and “each” shall be construed as all and each.

9. The use of the singular form of any word includes the plural and vice versa.

10. “United States” shall include the United States of America, its possessions and territories.

11. The term “produce” means to provide a copy or make available for inspection and copying at the time and place specified above.

12. As used herein, the terms “Applicant’s Mark” and/or “Bull Design Mark” shall collectively mean and refer to Applicant’s trademark design as shown in Application Serial No. 86/324,277 for the Bull Design mark in International Class 032, filed June 30, 2014, and published in the Official Gazette on December 2, 2014.

13. As used herein, the term “Opposer’s Mark(s)” shall mean and refer to the “RED BULL, RED BULL & Two Bulls Logo, Two Bulls Logo and (Single) Bull Logo, and other marks incorporating the word BULL, and/or the design of a bull or bovine animal,” collectively and individually, as alleged in Paragraphs 2 – 3 of Opposer’s Notice of Opposition inaugurating the above-captioned Opposition.

14. The terms “use,” “used,” or “used in commerce,” as used herein, shall have the same meaning as “use in commerce” set out in 15 U.S.C. § 1127.

15. The terms “third parties” and/or “third party” refer to individuals or entities that are not a party to this Opposition.

16. As used herein, “identify,” or give “identity” of, means:

(a) In the case of a person, to state:

(i) full name;

(ii) present residence address and telephone number;

- (iii) present business address and telephone number;
- (iv) present position, business affiliation, and job description; and
- (v) if any of the information set forth in (i)-(iv) is unknown, so state and set forth the corresponding last known such information;

(b) In the case of a corporation, to state:

- (i) full name;
- (ii) place and date of incorporation or foundation;
- (iii) address and principal place of business; and
- (iv) identity of officers or other persons having knowledge of the matters with respect to which such corporation is named;

(c) In the case of any other person other than a natural person or corporation, to state:

- (i) full name;
- (ii) address and principal place of business; and
- (iii) identity of officers or other persons having knowledge of the matters with respect to which such person is named; and

(d) In the case of an event or occurrence, state the date(s) and geographic location(s), describe the transactions and events, and identify the person(s), corporation(s) or other entities involved in accordance with the instructions set forth in this paragraph.

17. With respect to each document or communication which is withheld, whether under claim of privilege or otherwise, please provide the following information:

- (a) the date, identity and general subject matter of each such document;
- (b) the grounds asserted in support of the failure to produce the document;
- (c) the “identity” of each person (other than stenographic or clerical assistants) participating in the preparation of the “document”;

(d) the “identity” of each person to whom the contents of the “document” were communicated by copy, distribution, reading or substantial summarization;

(e) a description of any document or other material transmitted with or attached to the “document”;

(f) the number of pages in the “document”; and

(g) whether any business or non-legal matter is contained or discusses in the “document.”

18. The terms “promotion,” “promotional,” or “promote” shall mean any press release, trade show exhibits, trade show booths, direct mail, brochures, pamphlets, flyers, interviews, letters, solicitations, presentations, websites or web pages, industry conferences or any other means of making the media, trade, investors, customers or public more aware of Opposer or its respective goods or use of Opposer’s Marks, as defined herein.

19. “Board” shall mean the United States Trade Mark Trial and Appeal Board.

**The following Instructions apply to these Discovery Requests:**

A. These Discovery Requests shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing in nature so that any additional information relating in any way to these Discovery Requests which Opposer acquires or which becomes known to Opposer, up to and including the time of trial, shall be furnished to Applicant promptly after such information is acquired or becomes known, pursuant to Rule 26 of the Federal Rules of Civil Procedure.

B. In each instance where a Discovery Request is answered on information and belief, it is requested that Opposer set forth the basis for such information and belief.

C. Should a Discovery Request not specifically request a particular fact or facts, but where such fact or facts are necessary to make the response to the Discovery Request comprehensible or not misleading, Opposer is requested to include such fact or facts as part of its response.

D. In each instance where Opposer denies knowledge or information sufficient to answer a Discovery Request, it is requested that Opposer set forth the name and address of each person, if any, known to have such knowledge or information.

E. In each instance where the existence of a document is disclosed, Opposer is requested to attach a copy of such document to its answer. If such document is not in Opposer's possession, custody or control, it is requested that Opposer state the name and address of each person known to Opposer to have such possession, custody or control, and identify which documents are in such person's possession, custody or control.

F. Opposer shall not refer to documents generally in lieu of answering; if the burden upon Opposer of deriving an answer from documents is the same as it is upon Applicant, Opposer may elect to refer to documents which are specifically identified from which the response may be readily obtained. Such a response constitutes a representation under oath by Opposer and Opposer's counsel that, after reasonable investigation, those conditions have been met.

G. Any document withheld in responding to these Discovery Requests on the ground of privilege is to be identified by author or authors, recipient or recipients, person or persons to whom copies were furnished, together with the job titles of each such person or persons, date, subject matter, and nature of privilege claimed.

H. If Opposer contends that any item of information requested by these Discovery Requests is privileged, in whole or in part, as a ground for its non-production or non-disclosure, for each alleged privileged item or document, Opposer shall provide all information required by Rule 26 of the Federal Rules of Civil Procedure.

I. Opposer is reminded that each RFA will be deemed admitted unless Opposer serves upon Applicant a written answer or objection addressed to each matter. If objection is made, the reasons therefore must be stated. The answer must specifically admit or deny the matter or set forth in detail the reasons why Opposer cannot truthfully admit or deny the matter.

A denial must fairly meet the substance of the RFA, and when good faith requires that Opposer qualify its answer or deny only a part of the matter of which admission is requested, Opposer must specify how much of the answer is true and qualify or deny the remainder. Opposer may not give lack of information or knowledge as the reason for failure to admit or deny unless Opposer states that it has made a reasonable inquiry and that the information known or readily obtainable by it is insufficient to enable it to admit or deny. If Opposer considers that a matter for which admission has been requested presents a genuine issue for trial, it may not, on that ground alone, object to the RFA.

**APPLICANT'S FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Applicant hereby requests that Opposer respond, separately and fully in writing, to the following First Set of Requests for Production of Documents and Things or RFPs, and serve a copy of such responses on the undersigned within thirty (30) days after service hereof. In connection with Opposer's responses, identify each document Opposer has withheld or intends to withhold from production and, with respect to each such document, state the privilege claimed or other ground for withholding the document from production.

**Request No. 1.** All documents used, considered or relied upon by Opposer in preparing responses and/or objections to Applicant's First Set of Interrogatories in the above-captioned Opposition proceeding.

**Request No. 2.** To the extent they are in Opposer's possession, custody, or control, all documents identified, listed, categorized, referred to, referenced, relied upon, or otherwise discussed in Opposer's Initial Disclosures served on August 10, 2015, including categories 1 – 8 thereof.

**Request No. 3.** All documents identified, referred to, referenced, relied upon, or otherwise discussed in Opposer's Notice of Opposition, including but not limited to documents

which support, refute or otherwise relate to any of the allegations or pleadings contained in the Notice of Opposition.

**Request No. 4.** All documents which support, refute, or otherwise relate to any of the responses or affirmative defenses contained in Applicant's Answer to the Notice of Opposition.

**Request No. 5.** All documents upon which Opposer intends to rely, or upon which Opposer may rely, during trial of the above-captioned Opposition proceeding, including but not limited to documents Opposer intends to submit to the Board through a Notice of Reliance or otherwise.

**Request No. 6.** All documents concerning or evidencing any likelihood of confusion between Opposer's Marks and Applicant's Mark, including, but not limited to, documents evidencing (a) actual confusion, (b) Applicant's intent in adopting Applicant's Mark, (c) the strength of Opposer's Marks, (d) the similarity or dissimilarity of Opposer's Marks relative to Applicant's Mark, (e) the relevant channels of trade and/or marketing, (f) the degree of care exercised by relevant consumers, (g) the similarity or dissimilarity of the relevant goods or services, (h) the number and nature of marks similar to Opposer's Marks that are in use in connection with similar goods or services offered by Opposer, and so forth.

**Request No. 7.** All documents concerning or evidencing the "various Federal registrations and common law rights to trademark for or including the words RED BULL, RED BULL & Two Bulls Logo, Two Bulls Logo and (Single) Bull Logo, and/or the design of a bull or bovine animal" alleged in Paragraphs 2 – 3 of Opposer's Notice of Opposition.

**Request No. 8.** All documents concerning or evidencing each and every one of Opposer's Marks which Opposer intends to rely upon, or may rely upon, at trial of this Opposition proceeding.

**Request No. 9.** All documents concerning or evidencing the “advertis[ing,]” including but not limited to any promotional or marketing materials, of Opposer’s Marks within the United States as alleged in Paragraph 5 of Opposer’s Notice of Opposition.

**Request No. 10.** All documents concerning or evidencing the “sales” alleged in Paragraph 6 of Opposer’s Notice of Opposition.

**Request No. 11.** All documents concerning or evidencing the “fam[e]” of Opposer’s Marks alleged in Paragraph 6 of Opposer’s Notice of Opposition.

**Request No. 12.** All documents in Opposer’s possession, custody, or control concerning Applicant’s Mark, including the use thereof, alleged in Paragraphs 11 and 13 of Opposer’s Notice of Opposition.

**Request No. 13.** All documents concerning or evidencing any false suggestion of a connection between Opposer / Opposer’s Marks and Applicant’s Mark.

**Request No. 14.** All documents concerning or evidencing dilution of Opposer’s Marks based on Applicant’s Mark.

**Request No. 15.** All documents in Opposer’s possession, custody, or control concerning or evidencing the allegations of Paragraphs 37 and 38 of Opposer’s Notice of Opposition.

**Request No. 16.** Representative samples of all documents referring or relating to the use and/or intended use(s) of Opposer’s Marks in the United States since first use.

**Request No. 17.** Representative samples of all documents concerning, referring, relating to, explaining, or describing each of the goods, products, and/or services offered or intended to be offered by Opposer in connection with Opposer’s Marks in the United States, including without limitation, all labels, packages, containers, advertisements, brochures, product literature, price lists, annual reports, signs, handbills, stationery, business cards, decals, badges, catalogs, Internet web sites, computer screens, any sales tools, catalogs, training materials, memoranda, and bulletins or other materials.

**Request No. 18.** All documents which show the corporate status and organizational structure of Opposer, including without limitation articles of incorporation, by-laws, and any lists of Opposer's current or former officers, directors and managerial employees and/or descriptions of their duties and responsibilities.

**Request No. 19.** All documents concerning, referring, or relating to Opposer's conception, creation, development, selection, adoption, United States trademark applications for, and/or first use of Opposer's Marks.

**Request No. 20.** All documents concerning the derivation, commercial impression, connotation, meaning and/or message of the words/phrase "red bull."

**Request No. 21.** Documents sufficient to identify Opposer's ten largest customers / distributors (in Opposer's discretionary determination) to whom products, goods and/or services bearing Opposer's Marks are distributed or sold in the United States.

**Request No. 22.** Documents sufficient to identify persons knowledgeable about Applicant, Applicant's Mark, Opposer's Marks, and/or this Opposition proceeding, including but not limited to any grounds for the Opposition.

**Request No. 23.** All documents that concern, refer, or relate to an opinion of a lawyer concerning Opposer's Marks.

**Request No. 24.** All documents that concern, refer, or relate to an opinion of a lawyer concerning Applicant's Mark.

**Request No. 25.** All documents concerning abandonment or cessation of use in the United States of one or more of Opposer's Marks for any period of time from the date of first use to the present.

**Request No. 26.** All communications or correspondence which relate to the above-captioned Opposition, the Applicant, the Applicant's Mark, and/or the Opposer's Marks in relation to this Opposition.

**Request No. 27.** All documents referring or relating to any trademark search or investigation performed by Opposer or on Opposer's behalf concerning Applicant's Mark.

**Request No. 28.** All documents concerning, referring or relating to any agreement(s), license(s), assignment(s), settlement agreement(s), contract(s), draft(s) of any of the foregoing, and/or amendment(s) or modification(s) thereof, between Opposer (or any person or party in privity with Opposer) and any third party or person that concerns, refers to, or relates to Opposer's Marks.

**Request No. 29.** All documents that concern or evidence the geographic use of Opposer's Marks within the United States.

**Request No. 30.** All documents that refer or relate to the class or type of consumer of Opposer's products or services bearing Opposer's Marks.

**Request No. 31.** All documents that refer or relate to the target market of Opposer's products or services bearing Opposer's Marks.

**Request No. 32.** All documents that refer or relate to the trade channels through which products and services bearing Opposer's Marks are offered, sold, moved or distributed.

**Request No. 33.** All unsolicited articles or third party publications wherein products or services bearing Opposer's Marks have been referenced or identified.

**Request No. 34.** All documents or communications shown to, considered or prepared by an expert, whether specially retained or not, by Opposer in connection with this Opposition.

**Request No. 35.** All documents concerning Opposer's policy(ies) with respect to the retention or disposition of documents.

**Request No. 36.** All documents that reflect or describe Opposer's policies or practices as to the policing of Opposer's Marks so as to protect proprietary rights Opposer may have or claim in Opposer's Marks.

**Request No. 37.** All documents concerning or relating to genericide of the words/phrase “red bull.”

**Request No. 38.** All documents concerning Opposer’s awareness or knowledge of the use or registration of United States Federal Trademark Registration No. 4,471,520.

**Request No. 39.** All documents concerning Opposer’s awareness or knowledge of Applicant, Applicant’s Mark, Application Serial No. 86/324,277, and Applicant’s products, goods, or services offered in connection with Applicant’s Mark.

**Request No. 40.** All documents referring or relating to the extent to which Applicant’s Mark has become associated with Opposer in the minds of prospective purchasers.

**Request No. 41.** All documents referring or relating to the level of sophistication of Opposer’s target consumer of products, goods or service offered in connection with Opposer’s Marks.

**Request No. 42.** All documents referring or relating to the quality of Opposer’s products, goods or service offered in connection with Opposer’s Marks.

**Request No. 43.** All documents concerning or related to circumstances where Opposer has accused a third party of infringing Opposer’s Marks or otherwise infringing Opposer’s rights in Opposer’s Marks, including in formal proceeding before the Board, litigation proceedings, and informal correspondence sent to any such alleged infringer.

**Request No. 44.** All documents wherein Opposer has opposed the trademark application of a third party on the basis of Opposer’s Marks.

**Request No. 45.** All documents wherein Opposer has asserted a likelihood of confusion relative to Opposer’s Marks.

**Request No. 46.** All documents wherein Opposer has asserted a false suggestion of a connection relative to Opposer’s Marks.

**Request No. 47.** All documents wherein Opposer has asserted dilution relative to Opposer’s Marks.

Pursuant to the Standard Protective Order applicable to this action, if any of the foregoing documents are deemed to contain confidential information, Opposer should so designate said documents and access thereto will be confined to Applicant's counsel unless further dissemination thereof is authorized by mutual agreement of the parties or by order of the Board.

**APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Applicant hereby requests that Opposer answer, separately and fully in writing, under oath, the following First Set of Interrogatories, and serve a copy of such answers on the undersigned within thirty (30) days after service hereof. The following are deemed to be continuing Interrogatories to the fullest extent contemplated by Rule 26(e), Federal Rules of Civil Procedure. In the event that Opposer acquires knowledge or information responsive to any Interrogatory or any portion thereof between the date that Opposer answers these Interrogatories and the date that this case is tried, Opposer is requested to file supplemental answers including such additional knowledge or information.

**Interrogatory No. 1.** Identify all current corporate officers of Opposer by name, address, title and provide a brief description of their respective responsibilities.

**Interrogatory No. 2.** Identify any company, corporation, or entity affiliated with or related to Opposer, including without limitation any parent or subsidiaries.

**Interrogatory No. 3.** Identify all products and services currently sold, offered or rendered under each of Opposer's Marks in the United States.

**Interrogatory No. 4.** Identify all products and services intended to be sold, offered or rendered by Opposer in connection with Opposer's Marks in the United States.

**Interrogatory No. 5.** For every product and type of service identified in response to Interrogatory No. 4 above, state the date on which Opposer intends to offer the product or service in the United States.

**Interrogatory No. 6.** Describe all materials on which each of Opposer's Marks has ever been used or displayed in the United States.

**Interrogatory No. 7.** Identify the date and describe the manner in which each of Opposer's Marks were first used in the United States in connection with energy drinks, sports drinks, soft drinks, and/or beverages.

**Interrogatory No. 8.** Identify each and every trademark, registered or otherwise, Opposer's Notice of Opposition is based on (including, but not limited to, Opposer's Marks referenced in Paragraph 3 of the Notice of Opposition) or upon which Opposer intends to rely, for any reason, in this Opposition proceeding.

**Interrogatory No. 9.** Identify on an annual basis the total amount of revenue received by Opposer from the sale of products, goods and/or services under Opposer's Marks in the United States since Opposer's first use of Opposer's Marks to the present.

**Interrogatory No. 10.** Identify the total amount of volume of sales, in units, of products, goods and/or services sold under Opposer's Marks on an annual basis since first use of Opposer's Marks in the United States.

**Interrogatory No. 11.** Identify on an annual basis the total dollar amount Opposer has spent in advertising and/or promoting products, goods, and/or services bearing, containing, displaying or incorporating Opposer's Marks in the United States since its first use of Opposer's Mark to the present.

**Interrogatory No. 12.** Identify all persons or individuals who provided information or were otherwise involved in the preparation of Opposer's Notice of Opposition, Initial Disclosures, and/or responses to these Discovery Requests, specifying the information that he or she provided.

**Interrogatory No. 13.** Identify and describe all documents reviewed or referenced in the preparation of Opposer's Notice of Opposition, Initial Disclosures, and/or responses to

these Discovery Requests, including an identification of all persons whose files were searched or who provided any such documents.

**Interrogatory No. 14.** Describe or define the meaning of the words/phrase “red bull.”

**Interrogatory No. 15.** Identify and describe all of the factual bases for Opposer’s allegations of likelihood of confusion set forth in Paragraphs 15 through 20 of Opposer’s Notice of Opposition.

**Interrogatory No. 16.** Identify and describe all of the factual bases for Opposer’s allegations of false suggestion of a connection set forth in Paragraphs 21 through 27 of Opposer’s Notice of Opposition.

**Interrogatory No. 17.** Identify and describe all of the factual bases for Opposer’s allegations of dilution set forth in Paragraphs 28 through 35 of Opposer’s Notice of Opposition.

**Interrogatory No. 18.** Identify and describe all of the factual bases for Opposer’s allegations of lack of bona fide intent-to-use and false declaration set forth in Paragraphs 36 through 38 of Opposer’s Notice of Opposition.

**Interrogatory No. 19.** Identify all persons or individuals knowledgeable about Opposer’s Notice of Opposition, the allegations or grounds for opposition set forth in Opposer’s Notice of Opposition, Opposer’s Marks, the alleged fame of Opposer’s Marks, advertising, marketing and/or sales related to Opposer’s Marks, the goods and services sold in connection with Opposer’s Marks, Opposer’s customers or consumers, Applicant, and/or Applicant’s Mark.

**Interrogatory No. 20.** Identify and describe any use of the words/phrase “red bull” to generically describe a class of beverages, such as energy drinks, of which Opposer is aware.

**Interrogatory No. 21.** Identify and describe the target consumers or customers to whom Opposer has marketed or intends to market products, goods and/or services bearing, containing, displaying or incorporating Opposer’s Marks in the United States.

**Interrogatory No. 22.** Identify all advertising and promotional methods and types of media used or intended to be used in advertising or promoting the sale of any products or services under Opposer's Marks, specifying each, periodical, newspaper, radio station, television station, Internet website, or other advertising medium used in connection with such advertising or promotion.

**Interrogatory No. 23.** Identify ten (10) representative customers or distributors to whom Opposer has sold or intends to sell products and/or services bearing, containing, displaying or incorporating Opposer's Marks in the United States.

**Interrogatory No. 24.** Identify and describe all trade channels through which any goods have been sold or services have been offered under Opposer's Marks in the United States.

**Interrogatory No. 25.** Identify all licenses, assignments or other agreements concerning, referring or relating to Opposer's Marks.

**Interrogatory No. 26.** Identify the range of prices at which Opposer sells or offers to sell goods or services bearing Opposer's Marks in the United States.

**Interrogatory No. 27.** Identify all facts and circumstances relating to any search or evaluation of any records conducted by or for Opposer to determine whether other persons or entities have used, registered, or attempted to register any names or marks similar to Opposer's Marks.

**Interrogatory No. 28.** Identify all facts and circumstances relating to Opposer's awareness or knowledge of United States Federal Trademark Registration No. 4,471,520, including when Applicant first became aware of the same.

**Interrogatory No. 29.** Identify all facts and circumstances relating to Opposer's awareness or knowledge of Applicant, Applicant's Mark, and/or Applicant's goods or services offered in connection with Applicant's Mark, including when Opposer first became aware of the foregoing.

**Interrogatory No. 30.** Identify and describe all known instances in which persons mistakenly believed that Applicant or its business, products or services were associated or affiliated with Opposer.

**Interrogatory No. 31.** Describe with particularity the level of sophistication of Opposer's target consumer or customer of products, goods or service offered in connection with Opposer's Marks.

**Interrogatory No. 32.** Describe with particularity the quality of Opposer's products, goods or services offered in connection with Opposer's Marks.

**Interrogatory No. 33.** Describe with particularity the subject matter for which a corporate representative of Opposer may provide testimony, if any, as it relates to the above-captioned Opposition proceeding.

**Interrogatory No. 34.** If Opposer denies all or any portion of Applicant's First Set of Requests for Admission to Opposer set forth herein, for any reason, state the factual bases for Opposer's denial with particularity.

**Interrogatory No. 35.** Identify all expert opinions that Opposer may introduce at trial of this matter, whether from specially retained experts or otherwise.

**Interrogatory No. 36.** Identify each document or thing Applicant will and may offer or introduce as an exhibit during the trial of this matter, whether via a Notice of Reliance or otherwise.

**Interrogatory No. 37.** Identify all individuals or entities that Opposer has ever alleged or asserted (whether formally or informally) has infringed upon Opposer's Marks or otherwise caused a likelihood of confusion, a false suggestion of connection, or dilution with respect to Opposer's Marks.

**Interrogatory No. 38.** Identify each person Opposer will and may call as a witness at trial in this matter.

**Interrogatory No. 39.** Identify each publication wherein products or services bearing Opposer's Marks have been referenced or identified.

**Interrogatory No. 40.** Describe with particularity all factual bases underlying Opposer's allegation that Opposer's Marks are famous as set forth in Paragraph 6 of Opposer's Notice of Opposition.

**Interrogatory No. 41.** Describe with particularity the strength of Opposer's Marks and the factual predicate for any such strength.

**Interrogatory No. 42.** Describe with particularity the degree of care typically exercised by consumers of Opposer's products, goods, or services sold in connection with Opposer's Marks.

If the response to any Interrogatory is believed by Opposer to contain confidential information or trade secrets, it should be so designated pursuant to the Standard Protective Order applicable to this action and access thereto will be confined to Applicant's counsel unless further dissemination thereof is authorized by mutual agreement of the parties or by order of the Board.

**APPLICANTS'S FIRST SET OF REQUESTS  
FOR ADMISSIONS TO OPPOSER**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Applicant hereby requests that Opposer respond, separately and fully in writing, to the following First Set of Requests for Admission or RFAs, and serve a copy of such responses on the undersigned within thirty (30) days after service hereof. Pursuant to Rule 36, matters addressed by the RFAs shall be deemed admitted unless the RFAs are responded to within thirty (30) days after service hereof.

**Request No. 1.** Admit that Applicant is the owner of United States Federal Trademark Registration No. 4,471,520.

**Request No. 2.** Admit that Opposer never opposed the application underlying United States Federal Trademark Registration No. 4,471,520 during the allotted period during which it was published for opposition.

**Request No. 3.** Admit that Opposer was aware of the application underlying United States Federal Trademark Registration No. 4,471,520 during the allotted period during which it was published for opposition.

**Request No. 4.** Admit that Applicant has used or intends to use the mark identified in United States Federal Trademark Registration No. 4,471,520 in commerce in the United States in connection with the goods and/or services identified therein.

**Request No. 5.** Admit that the words/phrase “red bull” are/is often used by the general consuming public within the United States to refer to a class of beverages.

**Request No. 6.** Admit that the words/phrase “red bull” are/is often used by the general consuming public within the United States to refer to energy drinks.

**Request No. 7.** Admit that Opposer currently has no evidence of any actual instances in which a person or persons mistakenly believed that Applicant or its business, products, or services were associated or affiliated with Opposer.

**Request No. 8.** Admit that Opposer currently has no evidence of any actual instances in which persons falsely believed that Applicant was connected or associated with Opposer.

**Request No. 9.** Admit that Opposer currently has no evidence of any actual instances in which persons falsely believed that Applicant was connected or associated with Opposer because of Applicant’s Mark.

**Request No. 10.** Admit that Opposer currently has no evidence of any actual dilution of Opposer’s Marks based on Applicant’s Mark.

**Request No. 11.** Admit that Opposer currently has no evidence that Applicant lacks bona fide intent-to-use Applicant’s Mark in connection with beer.

**Request No. 12.** Admit that Opposer currently has no evidence that Applicant's declaration filed in connection with Applicant's Mark was or is false.

**Request No. 13.** Admit that Applicant's Mark consists of a stylized, shaded design of a bull but does not claim color as a feature of Applicant's Mark.

**Request No. 14.** Admit that Opposer has no independent rights in the word "bull" standing alone, apart from any unitary mark consisting of the entire phrase "red bull."

**Request No. 15.** Admit that the term "red bull" is understood by the relevant consuming public primarily to refer to energy drinks.

**Request No. 16.** Admit that the bull is an iconic animal that is known to represent the culture of Spain.

**Request No. 17.** Admit that the cultural significance of the bull and of bullfighting is widely recognized in most Spanish-speaking countries and in the United States.

**Request No. 18.** Admit that the traditional cape used in bullfighting is red.

DATED: September 17, 2015

**KIRTON | McCONKIE, P.C.**

By: *Nicholas D. Wells*

Nicholas D. Wells

Joshua S. Rupp

KIRTON | McCONKIE, P.C.

60 East South Temple, Suite 1800

Salt Lake City, Utah 84111

Phone: (801) 328-3600

Fax: (801) 321-4893

*Attorneys for Applicant*

*JORDINOGUES, S.L.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of September, 2015, the foregoing **APPLICANT JORDI NOGUES, S.L.'S FIRST SET OF WRITTEN DISCOVERY TO OPPOSER RED BULL GMBH** was served on counsel for Opposer as designated below, by placing a copy in the United States Mail, first class, postage prepaid, addressed as follows (advanced courtesy copy via email):

Martin R. Greenstein  
TechMark a Law Corporation  
4820 Harwood Road, 2nd Floor  
San Jose, CA 95124  
[mrg@techmark.com](mailto:mrg@techmark.com)  
[amr@techmark.com](mailto:amr@techmark.com)  
[lzh@techmark.com](mailto:lzh@techmark.com)  
[dmp@techmark.com](mailto:dmp@techmark.com)

*/Nicholas D. Wells/*

Consolidated Proceeding No.: 92/061,202  
*Red Bull GMBH v. Jordi Nogues, S.L.*

# Exhibit D

Exhibit D to Registrant/Applicant Jordi Nogues, S.L.'s  
Motion to Compel

## Joshua S. Rupp

---

**From:** Joshua S. Rupp  
**Sent:** Wednesday, October 14, 2015 4:12 PM  
**To:** 'Angel Riordan'  
**Cc:** Nicholas Wells; Sherry Glendening; ndg@techmark.com; mrg@techmark.com; lzh@techmark.com; dmp@techmark.com  
**Subject:** RE: Red Bull GMBH v. Jordi Nogues, S.L., Opposition No. 91/221,325; Cancellation No. 92/061,202 re: Extension of Discovery Response Deadline

Thank you, Angel.

**From:** Angel Riordan [mailto:amr@techmark.com]  
**Sent:** Wednesday, October 14, 2015 3:53 PM  
**To:** Joshua S. Rupp  
**Cc:** Nicholas Wells; Sherry Glendening; ndg@techmark.com; mrg@techmark.com; lzh@techmark.com; dmp@techmark.com  
**Subject:** Fwd: Red Bull GMBH v. Jordi Nogues, S.L., Opposition No. 91/221,325; Cancellation No. 92/061,202 re: Extension of Discovery Response Deadline

Dear Josh,

It was nice speaking with you earlier. To recap, we have agreed to a two-week extension of your client's deadline to respond to Opposer/Petitioner's discovery requests in both the subject opposition and cancellation. Similarly, you have agreed to a reciprocal two-week extension of Red Bull's deadline to respond to Applicant/Registrant's discovery requests in both proceedings.

Good luck with your other case.

Best,

Angel

----- Forwarded Message -----

**Subject:** Red Bull GMBH v. Jordi Nogues, S.L., Opposition No. 91/221,325; Cancellation No. 92/061,202 re: Extension of Discovery Response Deadline  
**Date:** Tue, 13 Oct 2015 22:34:30 +0000  
**From:** Joshua S. Rupp <jrupp@kmclaw.com>  
**To:** 'MRG@TechMark.com' <MRG@TechMark.com>, 'AMR@TechMark.com' <AMR@TechMark.com>, 'LZH@TechMark.com' <LZH@TechMark.com>, 'DMP@TechMark.com' <DMP@TechMark.com>, 'NDG@TechMark.com' <NDG@TechMark.com>  
**CC:** Nicholas Wells <nwells@kmclaw.com>, Sherry Glendening <sglendening@kmclaw.com>

Counsel,

By way of introduction, my name is Joshua Rupp and I am an attorney at the Salt Lake City law firm of Kirton McConkie. I am assisting Nicholas Wells with the above-referenced opposition and cancellation proceedings.

By our calculation, Registrant/Applicant Jordi Nogues, S.L.'s ("Registrant") responses to Petitioner/Opposer Red Bull GMBH's ("Petitioner") First Set of Requests for Admission to Registrant ("Cancellation RFAs"), First Set of Interrogatories to Applicant ("Opposition Rogs"), and First Set of Requests for Admission to Applicant ("Cancellation RFAs") (collectively, "First Set of Discovery Requests") are due on Thursday, October 15, 2015.

The purpose of this email is to request a brief extension of the October 15<sup>th</sup> response deadline. I am integrally involved in a 4-day jury trial that began today and goes through Friday, October 16, 2015. (See *Global Fitness Holding, LLC v. Federal Recovery Acceptance, Inc.*, Case No. 2:13-cv-204-EN-EJF.) As a result, I would appreciate the courtesy of a one-week extension of the discovery response deadline, until Thursday, October 22, 2015. Please let me know if the one-week extension is acceptable.

Thanks in advance.

Regards,

Josh

---

Joshua S. Rupp  
Kirton | McConkie  
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60 East South Temple  
Salt Lake City, Utah 84111  
Direct: (801) 323-5989  
Office: (801) 328-3600  
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--

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Consolidated Proceeding No.: 92/061,202  
*Red Bull GMBH v. Jordi Nogues, S.L.*

# Exhibit E

Exhibit E to Registrant/Applicant Jordi Nogues, S.L.'s  
Motion to Compel

## Joshua S. Rupp

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**From:** Joshua S. Rupp  
**Sent:** Thursday, October 29, 2015 11:40 AM  
**To:** 'Angel Riordan'  
**Cc:** Nicholas Wells; Sherry Glendening  
**Subject:** RE: Re: Red Bull GMBH v. Jordi Nogues, S.L., Opposition No. 91/221,325; Cancellation No. 92/061,202 re: Extension of Discovery Response Deadline

Angel,

Thank you. We will plan on serving our responses on November 5<sup>th</sup> with a reciprocal one-week extension on Red Bull's discovery responses.

Thanks,  
Josh

**From:** Angel Riordan [mailto:amr@techmark.com]  
**Sent:** Thursday, October 29, 2015 10:38 AM  
**To:** Joshua S. Rupp  
**Subject:** Fwd: Re: Red Bull GMBH v. Jordi Nogues, S.L., Opposition No. 91/221,325; Cancellation No. 92/061,202 re: Extension of Discovery Response Deadline

Dear Josh,

Thank you for your below email. I completely understand the feeling of work piling up, especially when trying to finalize discovery responses with foreign clients. To avoid rushing and additional unnecessary stress, let's extend your discovery response deadline by one week (with a reciprocal extension for Red Bull's discovery responses).

Best,

Angel

----- Forwarded Message -----

**Subject:** Re: Red Bull GMBH v. Jordi Nogues, S.L., Opposition No. 91/221,325; Cancellation No. 92/061,202 re: Extension of Discovery Response Deadline  
**Date:** Thu, 29 Oct 2015 12:51:46 +0000  
**From:** Joshua S. Rupp <jrupp@kmclaw.com>  
**To:** Angel Riordan <amr@techmark.com>

Angel,

My apologies, but would it be possible to get an additional 1-day extension on the discovery responses making them due tomorrow? We would of course be happy to reciprocate.

Let me know.

Regards,

Josh

Sent from my iPhone

On Oct 14, 2015, at 3:53 PM, Angel Riordan <[amr@techmark.com](mailto:amr@techmark.com)> wrote:

Dear Josh,

It was nice speaking with you earlier. To recap, we have agreed to a two-week extension of your client's deadline to respond to Opposer/Petitioner's discovery requests in both the subject opposition and cancellation. Similarly, you have agreed to a reciprocal two-week extension of Red Bull's deadline to respond to Applicant/Registrant's discovery requests in both proceedings.

Good luck with your other case.

Best,

Angel

----- Forwarded Message -----

**Subject:**Red Bull GMBH v. Jordi Nogues, S.L., Opposition No. 91/221,325; Cancellation No. 92/061,202 re: Extension of Discovery Response Deadline

**Date:**Tue, 13 Oct 2015 22:34:30 +0000

**From:**Joshua S. Rupp <[jrupp@kmclaw.com](mailto:jrupp@kmclaw.com)>

**To:**'[MRG@TechMark.com](mailto:MRG@TechMark.com)' <[MRG@TechMark.com](mailto:MRG@TechMark.com)>, '[AMR@TechMark.com](mailto:AMR@TechMark.com)' <[AMR@TechMark.com](mailto:AMR@TechMark.com)>, '[LZH@TechMark.com](mailto:LZH@TechMark.com)' <[LZH@TechMark.com](mailto:LZH@TechMark.com)>, '[DMP@TechMark.com](mailto:DMP@TechMark.com)' <[DMP@TechMark.com](mailto:DMP@TechMark.com)>, '[NDG@TechMark.com](mailto:NDG@TechMark.com)' <[NDG@TechMark.com](mailto:NDG@TechMark.com)>

**CC:**Nicholas Wells <[nwells@kmclaw.com](mailto:nwells@kmclaw.com)>, Sherry Glendening <[sglending@kmclaw.com](mailto:sglending@kmclaw.com)>

Counsel,

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Thanks in advance.

Regards,

Josh

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