

ESTTA Tracking number: **ESTTA712195**

Filing date: **12/02/2015**

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 Dismiss - Rule 12(b)
Filer's Name	Nicholas D. Wells
Filer's e-mail	nwells@kmclaw.com, jrupp@kmclaw.com, sglendening@kmclaw.com
Signature	/Nicholas D. Wells/
Date	12/02/2015
Attachments	002 - Registrant's _Applicant's Motion to Dismiss or for Summary Judgment.pdf(350210 bytes) Exhibit A.pdf(108978 bytes) Exhibit B.pdf(122250 bytes) Exhibit C.pdf(564325 bytes) Exhibit D.pdf(543281 bytes) Exhibit E.pdf(190001 bytes) Exhibit F.pdf(225943 bytes)

Nicholas D. Wells
nwells@kmclaw.com
Joshua S. Rupp
jrupp@kmclaw.com
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 Registrant/Applicant
Jordi Nogues, S.L.

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

<p>RED BULL GMBH, Petitioner/Opposer, v. JORDI NOGUES, S.L. Registrant/Applicant.</p>	<p>Opposition No.: 91/221,325 (Parent)¹ Serial No.: 86/324,277 Trademark: Bull Design Cancellation No: 92/061,202 Registration No.: 4,471,520 Trademark: BADTORO (and Design)</p>
---	--

**REGISTRANT / APPLICANT JORDI NOGUES, S.L.’S MOTION TO DISMISS
OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rules of Civil Procedure 7(b), 12(b)(1), 12(h)(3), and/or 56(a), and Trademark Rules 2.116, 2.126 and 2.127, Registrant / Applicant Jordi Nogues, S.L. (hereinafter, collectively, “Registrant”), by and through undersigned counsel, hereby respectfully moves the Trademark Trial and Appeal Board (the “Board”) to dismiss Petitioner / Opposer Red Bull GmbH’s (hereinafter, collectively, “Petitioner”) Notice of Opposition and Petition for Cancellation (collectively, the “Complaints”)² for want of subject-matter jurisdiction owing to Petitioner’s lack of standing (the

¹ (See 13 TTABVUE at 2. Unless otherwise specified, all subsequent references or citations to TTABVUE docket entries refer to docket entries within the parent Opposition proceeding.)

² (See, e.g., 1 TTABVUE.)

“Motion”). In the alternative, Registrant respectfully moves the Board for summary judgment as there is no dispute that the Petitioner’s asserted marks are generic and Registrant is entitled to judgment as a matter of law.

Petitioner lacks standing, thus depriving the Board of subject-matter jurisdiction and necessitating dismissal, as Petitioner has admitted that all of the marks upon which its Complaints are based are generic. As Petitioner’s asserted marks are admittedly generic, Petitioner is wholly unable to show a direct and personal stake in the outcome of these proceedings or a good faith belief, premised on fact, that it will suffer some kind of damage flowing from Registrant’s marks. Thus deprived of standing, Petitioner’s Complaints should both be dismissed for lack of subject-matter jurisdiction. In the alternative, but on the same grounds, Registrant is entitled to judgment as a matter of law based on the undisputed facts of record.

The foregoing Motion is accompanied by, or otherwise embodies, the following brief of Registrant in support thereof.

**THIS MOTION IS RELEVANT TO PETITIONER’S
PENDING MOTION FOR JUDGMENT ON THE PLEADINGS**

As an initial matter, Registrant notes that the above-captioned consolidated proceedings have been suspended pending the disposition of Petitioner’s Motion for Judgment on the Pleadings. (*See* 13 TTABVUE at 3.) Accordingly, the Board has ordered that “[a]ny paper filed during the pendency of [the Motion for Judgment on the Pleadings] which is not relevant thereto will be given no consideration.” (*Id.*) As discussed in greater detail below, questions of standing present a threshold jurisdictional issue that must be resolved *before* determining the merits of the case. *E.g., Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95 (1998). To this end, Registrant respectfully asserts that the instant Motion is relevant, and even a necessary prerequisite, to the Board’s resolution of Petitioner’s Motion for Judgment on the Pleadings. Accordingly, both motions should be resolved together; the instant Motion should be granted thus dismissing the above-captioned consolidated proceedings in their entirety and obviating the need to address Petitioner’s Motion for Judgment on the

Pleadings.³

STATEMENT OF RELEVANT FACTS

1. The application underlying Registrant's BADTORO (and design) mark (Reg. No. 4,471,520) was filed on March 27, 2012 and published for opposition on March 5, 2013. (*See* TSDR record, attached hereto as **Exhibit "A"**.) The BADTORO mark was subsequently registered on January 21, 2014. (*See id.*)

2. The application underlying Registrant's Bull Design mark (App. Serial No. 86/324,277) was filed on June 30, 2014 and published for opposition on December 2, 2014. (*See* TSDR record, attached hereto as **Exhibit "B"**.) Registrant's BADTORO (and design) mark and Bull Design mark are collectively referred to hereinafter as the "Marks" unless otherwise specified.

3. Petitioner filed its Complaints seeking to cancel Registrant's BADTORO (and design) mark and opposing Registrant's Bull Design mark, respectively, on April 1, 2015. (*See, e.g.*, 1 TTABVUE.)

4. In its respective Complaints, Petitioner alleges that it is the owner of the so-called "RED BULL" trademark, including "various Federal registrations and common law rights to trademarks for or including the words 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...." (*See id.* at ¶¶ 2-3.)

5. Further to this point, Petitioner's sole allegation of any injury, harm, or damage is premised exclusively on Petitioner's so-called "RED BULL" mark. (*See, e.g., id.* at ¶¶ 16, 18, 19.)

6. Following the filing of Petitioner's respective Complaints, fact discovery opened in June, 2015. (*See, e.g.*, 2 TTABVUE at 3.)

7. On September 17, 2015, Registrant served its First Set of Written Discovery on

³ While the grounds for the instant Motion are also relied upon in opposition to Petitioner's Motion for Judgment on the Pleadings, this Motion has been filed separately pursuant to Section 502.02(b) of the TBMP. *See* TBMP § 502.02(b) ("all motions should be filed separately, or at least be captioned separately, to ensure they receive attention" and "[a] party should not embed a motion in another filing that is not routinely reviewed by the Board upon submission.")

Petitioner, including Registrant's First Set of Requests for Admission ("RFAs"), in both the Cancellation and Opposition proceedings, respectively. (*See* Applicant Jordi Nogues, S.L.'s First Set of Written Discovery to Opposer Red Bull GmbH, relevant portions attached hereto as **Exhibit "C"**; Respondent Jordi Nogues, S.L.'s First Set of Written Discovery to Petitioner Red Bull GmbH, relevant portions attached hereto as **Exhibit "D"**.)

8. Within Registrant's RFAs, Petitioner's marks are defined as the words "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" consistent with Paragraphs 2-3 of Petitioner's Complaints. (*See, e.g.*, Ex. C at 4 (¶ 13); 1 TTABVU at ¶¶ 2-3.)

9. Among other requests, Registrant's RFAs including the following requests for admission:

- a. **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. (*See, e.g.*, Ex. C at 20.)
- b. **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. (*See id.*)
- c. **Request No. 15.** Admit that the term "red bull" is understood by the relevant consuming public primarily to refer to energy drinks. (*See id.* at 21.)

10. Having been served with Registrant's RFAs on September 17, 2015, Petitioner's responses were due on or before October 22, 2015. *See* FED. R. CIV. P. 36(a)(3); 37 CFR § 2.120(a)(3); TBMP §§ 403.02 and 407.03(a).

11. On October 14, 2015, Petitioner requested and was granted a two-week extension of time to respond to Registrant's RFAs. (*See* email correspondence between J. Rupp and A. Riordan, dated October 13-14, 2015, attached hereto as **Exhibit "E"**.)

12. On October 29, 2015, Petitioner requested and was granted an additional one-week extension of time to respond to Registrant's RFAs. (*See* email correspondence between J. Rupp and A. Riordan, dated October 29, 2015, attached hereto as **Exhibit "F"**.)

13. Accounting for the extensions referenced above, Petitioner's responses to Registrant's RFAs were due on or before November 12, 2015. *See* FED. R. CIV. P. 36(a)(3); 37 CFR § 2.120(a)(3); TBMP §§ 403.02 and 407.03(a). (*See also* Exs. E and F.)

14. Petitioner's November 12, 2015 deadline has come and gone yet Petitioner has failed to provide any written responses as requested in Registrant's RFAs. Moreover, Petitioner has neither sought nor received an extension of the November 12, 2015 deadline. *See* TBMP §§ 502.02(b), 504, 509, 510, 510.03(a). (*See also* 12 TTABVUE at 9-11, incorporated herein by this reference in its entirety as if fully set forth herein.) And, even if Petitioner's Motion for Judgment on the Pleadings (10 TTABVUE) is somehow considered as a request for an extension of time (which it is not), any such relief has been specifically rejected: "This suspension order does not toll the time for [Petitioner] to respond to any outstanding discovery...." (13 TTABVUE at 3.)

15. Thus, by operation of law, Registrant's RFAs have been admitted *in toto*. *See* FED. R. CIV. P. 36(a)(3) ("A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney."); TBMP §§ 411.03 ("If a party on which requests for admission have been served fails to file a timely response thereto, the requests will stand admitted...."), 523.01, and 524.01.

16. Simply put, by operation of law, Petitioner has admitted, *inter alia*, that the term "red bull" is understood by the relevant consuming public primarily to refer to energy drinks, i.e., Petitioner has admitted that its so-called "RED BULL" mark conveys the genus of the goods at issue (energy drinks), and that the relevant public understands the so-called "RED BULL" mark primarily to refer to that genus of goods. (*See, e.g.*, Ex. C at 21.) In other words, Petitioner has admitted that its so-called "RED BULL" mark – the *sole* basis for Petitioner's alleged injury, harm, or damage, if any – is generic or has become generic. (*See id.* at 20-21.)

ARGUMENT

I. PETITIONER LACKS STANDING TO BRING OR MAINTAIN THESE PROCEEDINGS AND, THEREFORE, THE SAME MUST BE DISMISSED FOR WANT OF SUBJECT-MATTER JURISDICTION

Federal Rule of Civil Procedure 12(b)(1) provides that a party may assert various defenses by motion, including a “lack of subject-matter jurisdiction.” FED. R. CIV. P. 12(b)(1). Moreover, a lack of subject-matter jurisdiction can be raised at any time and mandates dismissal of the action. FED. R. CIV. P. 12(h)(3); *see also 2 Moore’s Federal Practice*, § 12.30[1] (Matthew Bender 3d Ed.) (“Lack of subject matter jurisdiction may be raised at any time”; “lack of subject matter jurisdiction challenges the court’s statutory or constitutional power to adjudicate the case, and it may not be waived.”).

The concept of standing is an integral part of the limited jurisdiction of federal tribunals to hear only actual cases or controversies. *See, e.g., Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 37-38 (1976). Put otherwise, “[a] challenge to the standing of a party ... implicates the subject matter jurisdiction of a federal [tribunal]” and thus may be properly brought in a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). *E.g., Miller v. Hygrade Food Products Corp.*, 89 F. Supp. 2d 643, 646 (E.D. Pa. 2000). Simply put, absent standing, a federal tribunal does not have subject matter jurisdiction to address a plaintiff’s claims and they must be dismissed. *See, e.g., Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 476 (1982); *see also Warth v. Seldin*, 422 U.S. 490, 498 (1975) (“The rules of standing ... are threshold determinants of the propriety of judicial intervention.”). To this end, “standing focuses on the party seeking to get his complaint before a federal [tribunal] and not on the issues he wishes to have adjudicated.” *Simon*, 426 U.S. at 38 (internal quotation marks omitted).

While premised on the statutory requirements of the Lanham Act rather than Article III of the United States Constitution, a plaintiff’s standing is still fundamentally necessary to TTAB proceedings akin to proceedings in federal court. *See TBMP §§ 303.03 and 309.03(b)*; *see also Ritchie v. Simpson*,

170 F.3d 1092, 1094-99 (Fed. Cir. 1999). To begin with, the statute itself requires a plaintiff to “have a good faith belief that he would suffer some kind of damage if the mark is registered.” *See, e.g., Ritchie*, 170 F.3d at 1095; *see also id.* at 1095 n.2; Trademark Act §§ 13 and 14. More specifically, the plaintiff “must meet two judicially-created requirements in order to have standing—the [plaintiff] must have a ‘real interest’ in the proceedings and must have a ‘reasonable’ basis for his belief of damage.” *See, e.g., Ritchie*, 170 F.3d at 1095. “In other words, the [plaintiff] must have a direct and personal stake in the outcome of the [proceeding].” *Id.* And the plaintiff’s belief of damage “must have a reasonable basis in fact.” *Id.* at 1098 (internal quotation marks omitted); *see also* TBMP §§ 303.03 and 309.03(b).

Notably, once challenged, the party asserting subject matter jurisdiction has the burden of proving its existence. *E.g. Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992); *see also 2 Moore’s Federal Practice*, § 12.30[5]. Simply put, a plaintiff’s “allegations alone do not conclusively establish standing” and, “[i]f challenged, the facts alleged which establish standing are part of the [plaintiff’s] case, and ... must be affirmatively proved.” *See, e.g., Ritchie*, 170 F.3d at 1099; *see also Boswell v. Mavety Media Group Ltd.*, 52 USPQ2d 1600, 1605 (TTAB 1999) (at final decision, inquiry is not whether pleading of standing is sufficient but whether allegations have been proven); *Demon Int’l LC v. Lynch*, 86 USPQ2d 1058, 1060 (TTAB 2008) (“opposer’s priority and likelihood of confusion claim is dismissed because of the absence of proof of standing”). Further to this point, in the context of a motion under Federal Rule of Civil Procedure 12(b)(1), the Board need not confine its evaluation to the face of the pleadings; instead, the Board may consider all evidence of record. *See, e.g., 2 Moore’s Federal Practice*, § 12.30[3]. Indeed, Rule 12(b)(1) attacks can either be facial—based on the face of the pleadings—or factual—based on all evidence of record. *See id.* at § 12.30[4]. “[W]hen a court reviews a complaint under a factual attack, the allegations have no presumptive truthfulness, and the court must weigh the evidence....” *See id.*

Finally, as mentioned above, questions of standing present a threshold jurisdictional issue that must be resolved *before* determining the merits of the case. *E.g., Steel Co. v. Citizens for a Better*

Env't, 523 U.S. 83, 94-95 (1998); *see also* 2 *Moore's Federal Practice*, § 12.30[1] (Matthew Bender 3d Ed.). Simply stated, “[t]he rules of standing ... are threshold determinants of the propriety of judicial intervention.” *Warth*, 422 U.S. at 517-18; *see also* *Lewis v. Casey*, 518 U.S. 343, 349 n.1 (1996) (standing is jurisdictional). “In sum, when a plaintiff’s standing is brought into issue the relevant inquiry is whether ... the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision.” *Simon*, 426 U.S. at 38. “Absent such a showing, exercise of its power by a federal [tribunal] would be gratuitous” and in consistent with the jurisdictional limits of the Lanham Act. *See id.*

A. The Instant Motion is Relevant to the Pending Motion for Judgment on the Pleadings and Should be Resolved First

As discussed at the outset, these proceedings have been suspended pending the outcome of Petitioner’s Motion for Judgment on the Pleadings. (*See* 13 TTABVUE at 3.) However, given that questions of standing present a threshold jurisdictional issue that must be resolved *before* determining the merits of the case, *Steel Co.*, 523 U.S. at 94-95, Registrant respectfully asserts that the instant Motion is relevant, and even a necessary prerequisite, to the Board’s resolution of Petitioner’s Motion for Judgment on the Pleadings. Indeed, the Board *must* resolve the instant Motion before considering the merits of Petitioner’s Motion for Judgment on the Pleadings. To do otherwise would constitute a gratuitous abuse of the Board’s jurisdictional limits. *See Simon*, 426 U.S. at 38.

B. As the Instant Motion Constitutes a *Factual Attack on Subject-Matter Jurisdiction*, Petitioner Must Affirmatively Prove its Standing and Cannot Rely on Mere Allegations

In this case, Petitioner has pleaded ownership of the so-called “RED BULL” mark and damage premised exclusively thereon. (*See* Statement of Relevant Facts (“SRF”), *supra*, at ¶¶ 4-5.) Irrespective of Petitioner’s pleadings, however, Registrant propounded the following RFAs (among others) on Petitioner on September 17, 2015:

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. (*See, e.g.*, Ex. C at 20.)

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. (*See id.*)

Request No. 15. Admit that the term “red bull” is understood by the relevant consuming public primarily to refer to energy drinks. (*See id.* at 21.)

(*See SRF, supra*, at ¶ 9.) Having been served with Registrant’s RFAs on September 17, 2015, Petitioner’s responses thereto were due on or before October 22, 2015. *See* FED. R. CIV. P. 36(a)(3); 37 CFR § 2.120(a)(3); TBMP §§ 403.02 and 407.03(a). Nevertheless, Petitioner was granted three additional weeks in which to respond to the RFAs, making the undisputed deadline November 12, 2015. (*See SRF, supra*, at ¶¶ 11-13.)

Critically, Petitioner’s November 12, 2015 deadline has come and gone yet Petitioner has failed to provide any written responses as requested in Registrant’s RFAs. (*See id.* at ¶ 14.) Moreover, Petitioner has neither sought nor received an extension of the November 12, 2015 deadline. (*See id.*) And, even if Petitioner’s Motion for Judgment on the Pleadings (10 TTABVUE) is somehow considered as a request for an extension of time (which it is not), any such relief has been specifically rejected: “This suspension order does not toll the time for [Petitioner] to respond to any outstanding discovery....” (13 TTABVUE at 3.)

Thus, by operation of law, Registrant’s RFAs have been admitted *in toto*. *See* FED. R. CIV. P. 36(a)(3) (“A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.”); TBMP §§ 411.03 (“If a party on which requests for admission have been served fails to file a timely response thereto, the requests will stand admitted....”), 523.01, and 524.01. Put otherwise, Petitioner has admitted by operation of law, *inter alia*, that the term “red bull” is understood by the relevant consuming public primarily to refer to energy drinks, i.e., Petitioner has admitted that its so-called “RED BULL” mark conveys the genus of the goods at issue (energy drinks), and that the relevant public understands the so-called “RED BULL” mark primarily to refer to that genus of goods. (*See, e.g.*, Ex. C at 21.) In other words, Petitioner has admitted that its so-called “RED BULL” mark – the *sole* basis for Petitioner’s alleged injury, harm, or damage, if any – is generic or has become

generic. (*See id.* at 20-21.)

As discussed in greater detail below, it is Petitioner's admissions – not its pleadings – that strip Petitioner of standing and thus deprive the Board of subject-matter jurisdiction in this consolidated action. Simply put, by the instant Motion, Registrant raises a *factual* challenge to Petitioner's standing (as opposed to a facial challenge). Under such circumstances, Petitioner is precluded from relying on its pleadings and must affirmatively prove standing. *See, e.g., Ritchie*, 170 F.3d at 1099.

C. As Petitioner's Complaints are Premised Solely on an Admittedly Generic Mark, Petitioner has No Direct or Personal Stake in the Outcome of These Proceedings

In view of Registrant's factual challenge to Petitioner's standing, Petitioner has the burden of proving a direct and personal stake in the outcome of these proceedings based on the evidence of record. *See, e.g., Ritchie*, 170 F.3d at 1095 and 1099. The evidence of record, however, demonstrates that the mark upon which Petitioner relies to allege a personal stake or direct interest in the outcome of these proceedings is admittedly generic. (*See* SRF, *supra*, at ¶¶ 15-16.) Specifically, Petitioner has admitted that its so-called "RED BULL" mark conveys the genus of the goods at issue (energy drinks), and that the relevant public understands the so-called "RED BULL" mark primarily to refer to that genus of goods. (*See id.*) A generic mark is not entitled to any protection. *See, e.g.,* TMEP § 1209.01. As such, Petitioner has no real, legally protectable interest in the outcome of these proceedings. *See, e.g., Ritchie*, 170 F.3d at 1095. And, as Petitioner therefore lacks standing to bring or maintain these consolidated proceedings, the Board has no subject-matter jurisdiction and must dismiss these proceedings. *See, e.g.,* FED. R. CIV. P. 12(b)(1); *Simon*, 426 U.S. at 37-38.

D. As Petitioner's Mark is Generic, Petitioner's Belief of Damage has No Reasonable Basis in Fact thus Depriving Petitioner of Standing

Even assuming Petitioner has a real, legally protectable interest in the outcome of these proceedings (which it does not), Petitioner must still prove that it has a belief of damage reasonably based in fact. *See, e.g., Ritchie*, 170 F.3d at 1095. This, Petitioner cannot do. Petitioner's sole allegation of any "damage" flowing from Registrant's Marks is premised exclusively on some vague injury which

will or is being caused to the Petitioner's so-called "RED BULL" mark. (*See* SRF, *supra*, at ¶¶ 4-5.) However, as discussed at length above, Petitioner's alleged mark is admittedly generic. As generic marks are not entitled to any protection, Petitioner's unilateral belief that it will be damaged by Registrant's Marks is not factually (or legally) supported. *See, e.g.*, TMEP § 1209.01. As such, Petitioner lacks standing to bring or maintain these proceedings as it has no reasonable factual basis upon which to support its allegations of damage. *See, e.g., Ritchie*, 170 F.3d at 1095. In fact, the evidence or record – Petitioner's admissions – eviscerate any allegation of damage associated with Registrant's Marks. As Petitioner lacks standing to bring or maintain these consolidated proceedings, the Board has no subject-matter jurisdiction and must dismiss these proceedings. *See, e.g.*, FED. R. CIV. P. 12(b)(1); *Simon*, 426 U.S. at 37-38.

II. IN THE ALTERNATIVE, REGISTRANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW BASED ON THE UNDISPUTED FACTS OF RECORD

Federal Rule of Civil Procedure 56 permits either party to move for summary judgment, which "shall" be granted if the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); *see also* TBMP § 528 *et seq.* As outlined above, there can be no genuine dispute of fact that Petitioner has admitted that the term "red bull" is understood by the relevant consuming public primarily to refer to energy drinks, i.e., Petitioner has admitted that its so-called "RED BULL" mark conveys the genus of the goods at issue (energy drinks), and that the relevant public understands the so-called "RED BULL" mark primarily to refer to that genus of goods. (*See, e.g.*, Ex. C at 21.) As the generic term "red bull" forms the sole premise on which all of Petitioner's claim are based, Registrant is entitled to judgment as a matter of law. *See, e.g.*, TMEP § 1209.01; *see also Sinclair Oil Corp. v. Kendrick*, 85 USPQ2d 1032, 1037 (TTAB 2007). Accordingly, if Petitioner's Complaints are not dismissed for lack of standing, summary judgment should be granted in Registrant's favor.

CONCLUSION

In view of the foregoing, these consolidated proceedings must either be dismissed or summarily adjudicated. Specifically, the Board should dismiss Petitioner's Complaints where Petitioner lacks standing, thus depriving the Board of subject-matter jurisdiction and necessitating dismissal, as Petitioner has admitted that all of the marks upon which its Complaints are based are generic. As Petitioner's asserted marks are admittedly generic, Petitioner is wholly unable to show a direct and personal stake in the outcome of these proceedings or a good faith belief, premised on fact, that it will suffer some kind of damage flowing from Registrant's marks. Thus deprived of standing, Petitioner's Complaints should both be dismissed for lack of subject-matter jurisdiction. In the alternative, but on the same grounds, Registrant is entitled to judgment as a matter of law based on the undisputed facts of record.

Respectfully submitted on December 2, 2015.

By: /Nicholas D. Wells/

KIRTON MCCONKIE, PC
1800 World Trade Center
60 E. South Temple
Salt Lake City, Utah 84111
Tel: (801) 328-3600
Email: nwells@kmclaw.com

Attorney for Registrant / Applicant
JORDI NOGUES, S.L.

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of December, 2015, I served a copy of the foregoing **REGISTRANT / APPLICANT JORDI NOGUES, S.L.'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** on the attorney for Opposer, as designated below, by placing said copy in the United States Mail, first class, postage prepaid, with an advance copy via email, addressed as follows:

Neil D. Greenstein
NDG@TechMark.com
Martin R. Greenstein
MRG@TechMark.com
Angelique M. Riordan
AMR@TechMark.com
Leah Z. Halpert
LZH@TechMark.com
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5237

By: /Nicholas D. Wells/

Consolidated Proceeding No.: 91221325
Red Bull GMBH v. Jordi Nogues, S.L.

Exhibit A

Exhibit A to Registrant / Applicant Jordi Nogues, S.L.'S Motion
to Dismiss or, In the Alternative, Motion For Summary
Judgment

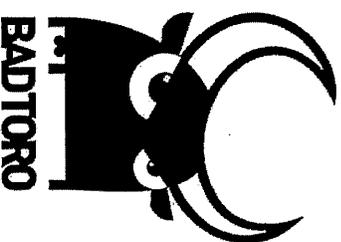
STATUS DOCUMENTS MAINTENANCE

[Back to Search](#)

[Print](#)

Generated on: This page was generated by TSDR on 2015-12-02 03:10:26 EST

Mark: BADTORO



US Serial Number: 85580670

Application Filing Date: Mar. 27, 2012

US Registration Number: 4471520

Registration Date: Jan. 21, 2014

Register: Principal

Mark Type: Service Mark

Status: A cancellation proceeding is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Apr. 02, 2015

Publication Date: Mar. 05, 2013

Notice of Allowance Date: Apr. 30, 2013

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

TM Staff and Location Information

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

Consolidated Proceeding No.: 91221325
Red Bull GMBH v. Jordi Nogues, S.L.

Exhibit B

Exhibit B to Registrant / Applicant Jordi Nogues, S.L.'S Motion
to Dismiss or, In the Alternative, Motion For Summary
Judgment

STATUS DOCUMENTS

[Back to Search](#)

[Print](#)

Generated on: This page was generated by TSDR on 2015-12-02 03:19:44 EST

Mark:



US Serial Number: 86324277

Application Filing Date: Jun. 30, 2014

Register: Principal

Mark Type: Trademark

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Apr. 01, 2015

Publication Date: Dec. 02, 2014

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

TM Staff and Location Information

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

Consolidated Proceeding No.: 91221325
Red Bull GMBH v. Jordi Nogues, S.L.

Exhibit C

Exhibit C to Registrant / Applicant Jordi Nogues, S.L.'S Motion
to Dismiss or, In the Alternative, Motion For Summary
Judgment

Nicholas D. Wells
nwells@kmclaw.com
Joshua S. Rupp
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 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>APPLICANT JORDI NOGUES, S.L.’S FIRST SET OF WRITTEN DISCOVERY TO OPPOSER RED BULL GMBH</p> <p>Mark: Bull Design Serial No.: 86/324,277 Published: December 2, 2014</p>
---	---

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 *REB 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

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 17th 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
amr@techmark.com
lzh@techmark.com
dmp@techmark.com

Nicholas D. Wells/

Consolidated Proceeding No.: 91221325
Red Bull GMBH v. Jordi Nogues, S.L.

Exhibit D

Exhibit D to Registrant / Applicant Jordi Nogues, S.L.'S Motion
to Dismiss or, In the Alternative, Motion For Summary
Judgment

Nicholas D. Wells
nwells@kmclaw.com
Joshua S. Rupp
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>RESPONDENT JORDI NOGUES, S.L.'S FIRST SET OF WRITTEN DISCOVERY TO PETITIONER RED BULL GMBH</p> <p>Mark: BADTORO (and Design) Reg. No.: 4,471,520 Registration Date: January 21, 2014</p>
---	---

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 *REB 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

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
amr@techmark.com
lzh@techmark.com
dmp@techmark.com

*/Nicholas D. Wells/*_____

Consolidated Proceeding No.: 91221325
Red Bull GMBH v. Jordi Nogues, S.L.

Exhibit E

Exhibit E to Registrant / Applicant Jordi Nogues, S.L.'S Motion
to Dismiss or, In the Alternative, Motion For Summary
Judgment

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 15th 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
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

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.

--

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

=====
This e-mail message is the property of, (c)2015 TechMark. It is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact sender by reply e-mail and destroy all copies of the original message.

Consolidated Proceeding No.: 91221325
Red Bull GMBH v. Jordi Nogues, S.L.

Exhibit F

Exhibit F to Registrant / Applicant Jordi Nogues, S.L.'S Motion
to Dismiss or, In the Alternative, Motion For Summary
Judgment

Joshua S. Rupp

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 5th 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> 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>

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 <sglending@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 15th 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
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

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.

--

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

=====
This e-mail message is the property of, (c)2015 TechMark. It is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact sender by reply e-mail and destroy all copies of the original message.

--

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

=====
This e-mail message is the property of, (c)2015 TechMark. It is for the sole use of the intended recipient(s) and may contain confidential and/or privileged

information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact sender by reply e-mail and destroy all copies of the original message.