

ESTTA Tracking number: **ESTTA712203**

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	Opposition/Response to Motion
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	Registrant's Applicant's Memo in Opp re Pleadings Motion.pdf(267393 bytes) Exhibit 1 Motion to Dismiss.pdf(2012230 bytes) Exhibit 2 Motion to Compel.pdf(1247797 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 MEMORANDUM IN
OPPOSITION TO RED BULL'S MOTION FOR JUDGMENT ON THE PLEADINGS**

Pursuant to Trademark Rule 2.127(a) and Sections 502.02 and 504 of the TBMP, Registrant/Applicant Jordi Nogues, S.L. (hereinafter, collectively, "Registrant"), by and through undersigned counsel, hereby respectfully files this memorandum in opposition to Petitioner/Opposer Red Bull GmbH's (hereinafter, collectively, "Petitioner") Motion for Judgment on the Pleadings and Request for Board-Issued Suspension Order (the "Pleadings Motion")

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.)

ARGUMENT

I. PETITIONER LACKS STANDING THUS DEPRIVING THE BOARD OF SUBJECT-MATTER JURISDICTION; ACCORDINGLY, THESE CONSOLIDATED PROCEEDINGS SHOULD BE DISMISSED WITHOUT REACHING THE MERITS OF PETITIONER'S PLEADINGS MOTION

Petitioner's Pleadings Motion seeks a judgment on the merits premised on Registrant's pleadings. (*See, e.g.*, 10 TTABVUE at 1-3 (Petitioner "hereby moves for judgment on the pleadings in its favor" as "Applicant's Answer provides all admissions necessary to support a finding that Appln. No. 86/324,277 was void *ab initio*" such that "the instant opposition should be sustained").) *See* TBMP § 504.02 ("A judgment on the pleadings" is based on "the substantive merits of the controversy"). However, as set forth at length in Registrant's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (the "Motion to Dismiss") filed concurrently herewith, Petitioner lacks standing to bring or maintain either of these consolidated proceedings thus depriving the Trademark Trial and Appeal Board (the "Board") of subject-matter jurisdiction and necessitating dismissal irrespective of the merits of these proceedings. (*See* Motion to Dismiss, inclusive of exhibits, collectively attached hereto as **Exhibit "1"** and expressly incorporated by this reference in its entirety as if fully set forth independently herein.) This dispositively resolves these proceedings obviating the need to even address the Pleadings Motion. Simply put, as discussed at length in Registrant's fully incorporated Motion to Dismiss, Petitioner's operative complaints² are premised solely on allegations of rights in a mark that Petitioner now admits is generic. (*See id.*) As Petitioner's asserted mark is 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 must both be dismissed for lack of subject-matter jurisdiction without reaching or considering the Pleadings Motion.

² (*See, e.g.*, 1 TTABVUE.)

II. EVEN IF THE BOARD EXERCISES SUBJECT-MATTER JURISDICTION, PETITIONER'S PLEADINGS MOTION SHOULD STILL BE DENIED EITHER IN WHOLE OR IN PART

Assuming the Board finds that Petitioner has the prerequisite standing to maintain these cases and thus reaches the merits of the Pleadings Motion, the Pleadings Motion should be denied, either in whole or in part.

A. Petitioner's Pleadings Motion Only Applies to the Opposition Proceeding and Should be Summarily Denied in the Cancellation Proceeding Irrespective of Merit

As indicated above, these Cancellation and Opposition proceedings have been consolidated for efficiency and economy. (13 TTABVUE at 1-2.) Nevertheless, “[c]onsolidated cases do not lose their separate identity because of consolidation.” TBMP § 511. Indeed, the Board’s consolidation Order specifically reiterates this maxim: “Consolidated cases do not lose their separate identity because of consolidation.” (13 TTABVUE at 2.) Instead, “[e]ach proceeding retains its separate character and requires entry of a separate judgment” and any “decision on the consolidated cases *shall take into account any differences in the issues raised by the respective pleadings...*” (*Id.* citing *Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010) (emphasis added)).

Notwithstanding these binding legal standards, Petitioner’s Pleadings Motion improperly conflates the Cancellation and Opposition proceedings, indiscriminately seeking the identical relief in both. (*See, e.g.*, 10 TTABVUE at 1 (Petitioner “hereby moves for judgment on the pleadings in its favor” and asks that the “consolidated proceeding ... be suspended”). Regardless of Petitioner’s imprecise Pleadings Motion which suggests that the identical relief is somehow warranted in both proceedings, there can be no dispute that the Pleadings Motion is limited to substantive relief allegedly available solely in the Opposition proceeding. (*See, e.g., id.* at 1 (moving for “judgment on the pleadings ... based on a detrimental non-correctable error on the initial application *for Application No. 86/324,277*”), 2 (“the instant *opposition* should be sustained”), 3 (“registration of Appln. No. 86/324,277 should be denied”), 7 (Petitioner requests that the Board “sustain[] the instant opposition and deny[] registration on Appln. No. 86/324,277) (all emphases added).) Indeed, the “pleadings” Petitioner’s Pleadings Motion relies on are

limited exclusively to Registrant's Answer in the Opposition proceeding. (*See id.* at 2 n.6.) Accordingly, as Petitioner has provided no reasoned analysis or basis for granting the Pleadings Motion in the Cancellation proceeding, the Board should enter and order explicitly denying the Pleadings Motion in the Cancellation proceeding irrespective of its merit.

Further to this point, as more fully set forth within Registrant's previously filed Motion to Compel (11 & 12 TTABVUE, collectively attached hereto as **Exhibit "2"** and expressly incorporated by this reference in its entirety as if fully set forth independently herein), Petitioner has refused and continues to refuse to provide documents or information responsive to Registrant's interrogatories and requests for production on the basis of the pending Pleadings Motion. (*See id.*) Even if the Pleadings Motion somehow excuses Petitioner's refusal to participate in discovery and otherwise comply with its discovery obligations in the Opposition proceeding (which it does not, discussed *infra*), Petitioner has no excuse for its refusal to cooperate in discovery in the Cancellation proceeding. To this end, the Board should summarily enter an order explicitly denying the Pleadings Motion in the Cancellation proceeding irrespective of its merit thereby definitively eliminating Petitioner's feigned excuse for refusing to provide information and documents responsive to Registrant's interrogatories and requests for production in that matter. (*See id.*)

Regardless, the Board's suspension Order expressly states that it "does not toll the time for either party to respond to any outstanding discovery...." (13 TTABVUE at 3.) Petitioner's information and documents responsive to Registrant's interrogatories and requests for production were due on November 12, 2015. (*See Ex. 2.*) That deadline having neither been tolled nor otherwise extended, Petitioner cannot be allowed to continue to avoid its discovery obligations with impunity based solely on the pendency of the Pleadings Motion. (*See id.*)

B. Petitioner's Hidden Extension Request Should be Flatly Denied

While styled only as a motion for judgment on the pleadings and for entry of a general suspension order, Petitioner's Pleadings Motion, without any legal or factual support whatsoever, clandestinely requests a blanket "60-day" extension of "any and all deadlines relating to discovery" in the Cancellation

proceeding solely in the contingent event that consolidation of the Cancellation and Opposition proceedings is denied. (10 TTABVUE at 2 n.10.) At the outset, Petitioner’s surreptitious “extension request” should be denied as untoward, ineffectual, and in violation of Board procedure. *See* TBMP § 502.02(b) (“all motions should be filed separately, or at least be captioned separately, to ensure they receive attention”; “[a] party should not embed a motion in another filing that is not routinely reviewed by the Board upon submission.”). Regardless, Petitioner’s so-called “extension request” is premised solely on a contingency which no longer exists—consolidation has been Ordered. (13 TTABVUE at 1-2.) As such, as facially limited by the scope of Petitioner’s very request, the relief sought must be denied. Notably, the Board has actually already denied Petitioner’s request: “This suspension order does not toll the time for [Petitioner] to respond to any outstanding discovery....” (13 TTABVUE at 3.) Nevertheless, Petitioner continues to refuse to comply with its outstanding discovery obligations. Thus, as it relates to these proceedings, Respondent hereby respectfully renews its previously filed Motion to Compel. (*See* Ex. 2.)

C. To the Extent the Pleadings Motion Relies on Extra-Pleading Evidence, it Should be Treated as a Motion for Summary Judgment and Continued Such that Discovery Can be Concluded and Registrant Can Present All of the Pertinent Evidence; Otherwise, the Pleadings Motion Should be Denied

The parties agree that the Pleadings Motion “is a test solely of the undisputed facts appearing in all pleadings, supplemented by any facts of which the Board will take judicial notice.” *See, e.g.*, TBMP § 504.02. To this end, “all well pleaded factual allegations of the nonmoving party must be accepted as true” and “[a]ll reasonable inferences from the pleadings are drawn in favor of the nonmoving party.” *Id.* And, “[i]f, on a motion under Rule ... 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56” and the defendant “must be given a reasonable opportunity to present all the material that is pertinent to the motion.” FED. R. CIV. P. 12(d); *see also* TBMP § 504.03 (same). Finally, “judgment on the pleadings may be granted only where, on facts as deemed admitted, there is no genuine issue of material fact to be

resolved, and the moving party is entitled to judgment, on the substantive merits of the controversy, as a matter of law.” *See, e.g.*, TBMP § 504.02.

Petitioner’s Pleadings Motion is premised entirely on a single allegation—that Registrant committed a non-correctable error when filing Application No. 86/324,277. (*See* 10 TTABVUE, *passim*.) To support this conclusion, Petitioner relies on numerous materials outside the four corners of the parties’ pleadings. (*See id.*) To begin with, Petitioner relies on the TSDR records affiliated with Application No. 86/324,277. (*See id.* at 3-4 and n.19.) As stated in Registrant’s Answer, those documents speak for themselves. And, even if the Board can take judicial notice of such documents (which Petitioner neglects to suggest or provide authority to support), Petitioner continues to reference extra-pleading information, some of which is not even supported with any evidence at all or is otherwise merely premised on conjecture and speculation, such as the alleged identity of the founder of Registrant. (*See id.* at 5 (“the application was filed in error in the name of an individual,” etc.)). Petitioner goes on to reference Registrant’s alleged “website” and substantive information allegedly found thereon. (*See id.* at 5-6 (referring, among other things, to the “About Us” section of the so-called website)). And, Petitioner concludes by drawing unsupported inferences about the alleged intent of the individual Jordi Nogues without any evidentiary support whatsoever. (*See id.* at 6-7.) In short, Petitioner’s Pleading Motion repeatedly references and relies on evidence not contained within the four corners of the pleadings and not otherwise subject to judicial notice. Worse, in violation of acknowledge and binding legal maxims, Petitioner’s Pleadings Motion attempts to leverage unsupported inferences in its favor rather than in favor of Registrant, particularly about disputed facts, such as the alleged intentions of the individual Jordi Nogues.

In view of the foregoing, the Board should deny the Pleadings Motion in its entirety—Petitioner has not met its burden, under the applicable standard of review, to show an absence of disputed material facts to be resolved and that Petitioner is entitled to judgment as a matter of law. *See, e.g.*, TBMP § 504.02. In the alternative, and particularly if the Board considers the extra-pleading evidence relied on in Petitioner’s Pleadings Motion, the Pleadings Motion “must be treated as one for summary judgment under

Rule 56” and Registrant “must be given a reasonable opportunity to present all the material that is pertinent to the motion.” FED. R. CIV. P. 12(d); *see also* TBMP § 504.03 (same).

D. The Minor Clerical Error at Issue is a Correctable Error; the Pleadings Motion Should be Denied on its Merits

As stated above, Petitioner’s Pleadings Motion is premised entirely on a single allegation—that Registrant committed a non-correctable error when filing Application No. 86/324,277. (*See* 10 TTABVUE, *passim*.) Specifically, Petitioner takes issue with a preliminary amendment allegedly filed in connection with Application No. 86/324,277 correcting the identification of the Applicant from “Jordi Nogues” to “Jordi Nogues, S.L.” (*See, e.g., id.* at 3-4 (it is notable that Petitioner has not included either the original application or the so-called preliminary amendment thereto as exhibits to its Pleadings Motion and no such documents are included within the pleadings)). This, however, is an express correctable minor clerical error.

Specifically, Section 1201.02(c) of the TMEP sets forth a list of specifically enumerated “correctable errors,” including minor clerical errors. *See* TMEP § 1201.02(c)(3); *see also* 37 CFR § 2.17(d). “Minor clerical errors such as the mistaken addition or omission of “The” or “Inc.” in the applicant’s name may be corrected by amendment, so long as this does not result in a change of entity.” *See* TMEP § 1201.02(c)(3). For example, an application for “ABC Inc.” initially filed under the name “ABC” may permissibly be corrected by amendment to reflect to complete entity identification “ABC Inc.” *See id.* Such is precisely what has occurred here—the entity “Jordi Nogues, S.L.” was mistakenly identified as “Jordi Nogues,” after which an amendment was filed to reflect the complete entity identification “Jordi Nogues, S.L.” Simply put, so long as “another entity” is not substituted for the “wrong party,” a party applying to register a mark where “a mistake has been made in the manner in which the name of the applicant is set out in the application” may correct the mistake by amendment. *See* TMEP §§ 803.06 and 1201.02(c)(3); *see also* 37 CFR § 2.17(d); *U.S. Pioneer Elec. Corp. v. Evans Mktg., Inc.*, 183 USPQ 613 (Comm’r Pats. 1974); *see also* TMEP § 1201.02(c)(4) (allowing correction for inconsistency between owner name and entity type identified in the original application). Tellingly,

before Application No. 86/324,277 was published for opposition, the examiner entered the preliminary amendment without objection. Clearly, the examiner – tasked with evaluating prosecution on the front end before an application is ever published for opposition – didn’t consider Registrant’s preliminary amendment to comprise a “non-correctable error” as Petitioner now suggests. The examiner should not be second guessed now; the Pleadings Motion should be denied as Registrant’s preliminary amendment fixed a correctable error.

At a minimum, there is a dispute of fact over the scope of the alleged “error” at issue and Petitioner’s Pleadings Motion must therefore be denied. *See, e.g.*, TBMP § 504.02.

CONCLUSION

For all of the foregoing reasons, Registrant respectfully requests that the Board deny the Pleadings Motion in its entirety, either because Petitioner lacks standing thus eliminating subject-matter jurisdiction or because the Pleadings Motion is simply unmerited.

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 MEMORANDUM IN OPPOSITION TO RED BULL’S MOTION FOR JUDGMENT ON THE PLEADINGS** 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 1

Exhibit 1 to Registrant / Applicant Jordi Nogues, S.L.'S
Memorandum in Opposition to Red Bull's Motion for Judgment
on the Pleadings

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,</p> <p>Petitioner/Opposer,</p> <p>v.</p> <p>JORDI NOGUES, S.L.</p> <p>Registrant/Applicant.</p>	<p>Opposition No.: 91/221,325 (Parent)¹ Serial No.: 86/324,277 Trademark: Bull Design</p> <p>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

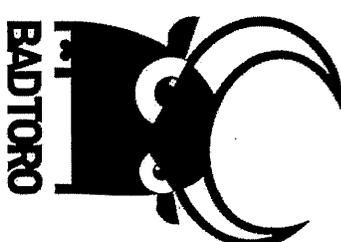
STATUS DOCUMENTS MAINTENANCE

[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

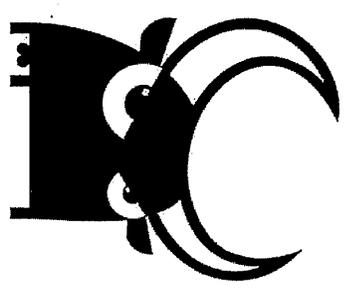
STATUS DOCUMENTS

[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.

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

Exhibit 2

Exhibit 2 to Registrant / Applicant Jordi Nogues, S.L.'S
Memorandum in Opposition to Red Bull's Motion for
Judgment on the Pleadings

ESTTA Tracking number: **ESTTA709845**

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	PLD003 - RF Registrant's _ Applicant's Motion to Compel.pdf(389296 bytes)

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

Exhibits filed under
Tracking No.
ESSTA709831

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**

RED BULL GMBH, Petitioner/Opposer, v. JORDI NOGUES, S.L. Registrant/Applicant.	Consolidated Proceeding No.: 92/061,202¹ Cancellation No: 92/061,202 Registration No.: 4,471,520 Trademark: BADTORO (and Design) Opposition No.: 91/221,325 Serial No.: 86/324,277 Trademark: Bull Design
--	---

REGISTRANT / APPLICANT JORDI NOGUES, S.L.’S MOTION TO COMPEL

Pursuant to Federal Rules of Civil Procedure 7 and 37 and Trademark Rule 2.120, Registrant/Applicant Jordi Nogues, S.L. (collectively, “Registrant”), by and through undersigned counsel, hereby respectfully moves the Trademark Trial and Appeal Board (“Board”) for an order compelling the Petitioner/Opposer Red Bull GmbH (collectively, “Petitioner”) to provide (1) written responses to (a) Registrant’s First Set of Requests for the Production of Documents and Things (“RFPs”) and (b) First Set of Interrogatories (“Interrogatories”) and (2) documents responsive to Registrant’s RFPs (hereinafter the “Motion to Compel”).

¹ (See Cancellation No. 92/061,202, at Docket Entry (“D.E.”) Nos. 8 & 9; Opposition No. 91/221,325 at D.E. Nos. 8 & 9.)

PRECISE RELIEF REQUESTED AND GROUNDS THEREFORE

By the instant Motion to Compel, Registrant respectfully requests the following: that the Board enter an order compelling Petitioner to (1) make a full production of all documents responsive to Registrant's RFPs; (2) answer fully Registrant's Interrogatories; and (3) as the Motion to Compel was necessitated by Petitioner's failure to comply with its discovery obligations, an order requiring Petitioner to pay Registrant's reasonable fees and expenses incurred in bringing the instant Motion to Compel, including Registrant's attorneys' fees. The foregoing relief is authorized under, *inter alia*, Federal Rule of Civil Procedure 37.

**TRADEMARK RULE 2.120(e)(1) STATEMENT OF GOOD FAITH
CORRESPONDENCE**

Pursuant to Trademark Rule 2.120, counsel for Registrant hereby states that Registrant has made a good faith effort, by conference or correspondence, to resolve with Petitioner the issues presented in this Motion to Compel but the parties have been unable to resolve their differences. Specifically, counsel for Registrant sent counsel for Petitioner an email requesting a conference on November 16, 2015. (*See* email correspondence between J. Rupp and A. Riordan, dated November 16-19, 2015, attached hereto as **Exhibit "A"**.) In Registrant's original conference request, Registrant sought a meet and confer at a mutually agreeable time on either the 16th, 17th, or 18th of November. (*See id.*) Petitioner ignored this first email entirely. (*See id.*) Receiving no response, counsel for Registrant again sent counsel for Petitioner a more detailed follow up email requesting a conference for a second time on November 18, 2015. (*See id.*) Counsel for Petitioner finally responded by email on November 19, 2015, but provided a largely non-sequitur response without addressing Registrant's conference request. (*See id.*) Specifically, in addition to ignoring Registrant's request for a meet and confer, Petitioner's response fails to address the substantive issues in Registrant's November 18, 2015 email. (*See id.*) Nevertheless, Counsel for Registrant responded requesting clarification and a conference for a third time. (*See id.*) Thereafter, while Petitioner's counsel has feigned an alleged willingness to meet and confer at some unidentified point in the future, Petitioner's counsel refuses to commit to a timely meet

and confer, instead ostensibly seeking to delay the Motion to Compel indefinitely through ongoing delay of a meaningful conference. (*See id.*) To this end, Registrant submits that it has made multiple good faith attempts to resolve the issues presented herein via correspondence and/or a conference but to no avail; Registrant now seeks the Board's assistance.

STATEMENT OF RELEVANT FACTS

1. The Cancellation proceeding was inaugurated by Petitioner on April 1, 2015. (*See* Cancellation No. 92/061,202, at D.E. No. 1.)

2. Shortly thereafter, Registrant answered, discovery commenced on June 11, 2015, and discovery is currently set to close on January 7, 2016. (*See id.* at D.E. Nos. 2 & 5; *see also id.* at D.E. Nos. 6-7 (extending time at Petitioner's request).)

3. The Opposition proceeding was also inaugurated by Petitioner on April 1, 2015. (*See* Opposition No. 91/221,325, at D.E. No. 1.)

4. Shortly thereafter, Registrant answered, discovery commenced on June 10, 2015, and discovery is currently set to close on January 6, 2016. (*See id.* at D.E. Nos. 2 & 5; *see also id.* at D.E. Nos. 6-7 (extending time at Petitioner's request).)

5. Since that time, the parties have agreed to consolidate the Cancellation and Opposition proceedings for efficiency and economy of administration on the understanding (and binding legal maxim) that each proceeding retains its distinct identity and is governed by separate and distinct legal standards. (*See* Cancellation No. 92/061,202, at D.E. Nos. 8 & 9; Opposition No. 91/221,325 at D.E. Nos. 8 & 9.)

6. Prior to consolidation, Registrant served its "First Set of Written Discovery" on Petitioner, including Registrant's RFPs and Interrogatories, on September 17, 2015 in both the Cancellation and Opposition proceedings, respectively. (*See* Respondent Jordi Nogues, S.L.'s First Set of Written Discovery to Petitioner Red Bull GmbH, attached hereto as **Exhibit "B"**; Applicant Jordi Nogues, S.L.'s First Set of Written Discovery to Opposer Red Bull GmbH, attached hereto as **Exhibit "C"**.)

7. While not at issue in the instant Motion to Compel, Registrant's First Set of Written Discovery to Petitioner also includes various requests for admission. (*See id.*) Such requests have now been admitted *in toto* by operation of law. *See* FED. R. CIV. P. 36(a)(3); *see also* TBMP §§ 411.03, 523.01, and 524.01.

8. Having been served with Registrant's First Set of Written Discovery on September 17, 2015, Petitioner's responses and documents were due on or before October 22, 2015. *See* FED. RS. CIV. P. 33-36; 37 CFR § 2.120(a)(3).

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

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

11. Accounting for the extensions referenced above, Petitioner's responses and documents were due on or before November 12, 2015. *See* FED. RS. CIV. P. 33-36; 37 CFR § 2.120(a)(3). (*See also* Exs. D and E.)

12. Petitioner's November 12, 2015 deadline has come and gone yet Petitioner has failed to provide any written responses or documents as requested in Registrant's First Set of Written Discovery.

13. In view of Petitioner's failure to participate in discovery, and pursuant to Trademark Rule 2.120 as discussed above, counsel for Registrant made a good faith effort, by conference or correspondence, to resolve with Petitioner the issues presented in this Motion to Compel but the parties have been unable to resolve their differences. (*See* Ex. A.) Petitioner has refused to provide any of the responses or documents requested in Registrant's First Set of Written Discovery. (*See* Exs. B & C.)

14. On November 12, 2015, Petitioner filed a Motion for Judgment on the Pleadings and Request for Board-Issued Suspension Order (the “Pleadings Motion”). (*See* Cancellation No. 92/061,202, at D.E. No. 10; Opposition No. 91/221,325 at D.E. No. 10.) The Pleadings Motion is limited to substantive relief allegedly available solely in the Opposition proceeding. (*See, e.g., id.* at 1 (moving for “judgment on the pleadings ... based on a detrimental non-correctable error on the initial application *for Application No. 86/324,277*” (emphasis added)).) As such, the Pleadings Motion, even if meritorious and granted, will not substantively impact the Cancellation proceeding. (*See id.*) Buried in a footnote, and without any showing of good cause or other legally cognizable explanation, Petitioner’s Pleadings Motion requests a blanket “60-day” extension of “any and all deadlines relating to discovery” in the Cancellation proceeding solely in the contingent event that consolidation of the Cancellation and Opposition proceedings is denied. (*See id.* at n.10.) Registrant’s response to the Pleadings Motion is not yet due.

ARGUMENT

I. LEGAL STANDARDS GOVERNING THE MOTION TO COMPEL

As a general matter, it is well-understood that the Federal Rules of Civil Procedure “should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.” FED. R. CIV. P. 1; *see also* 37 CFR § 2.116(a) (“[e]xcept as otherwise provided, and wherever applicable and appropriate, procedure and practice in inter partes proceedings shall be governed by the Federal Rules of Civil Procedure.”). It is equally axiomatic that, pursuant to Federal Rules of Civil Procedure 26 and 33, 34 and 36, “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things.” FED. R. CIV. P. 26(b)(1). Moreover, “[f]or good cause, the [Board] may order discovery of any matter relevant to the subject matter involved in the action.” *Id.* And “[r]elevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* Indeed, reciprocal and

full discovery is “essential to proper litigation” so that both parties have “[m]utual knowledge of all the relevant facts.” *Hickman v. Taylor*, 329 U.S. 495, 507 (1947); *see also Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir. 1985) (“The law’s basic presumption is that the public is entitled to every person’s evidence” and “[t]he Federal Rules of Civil Procedure strongly favor full discovery whenever possible.”). “To that end, either party may compel the other to disgorge whatever facts he has in his possession.” *Hickman*, 329 U.S. at 507.

In order to further these general discovery considerations, Federal Rule of Civil Procedure 37 explicitly provides that “[o]n notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery.” FED. R. CIV. P. 37(a)(1); 37 CFR § 2.120(e)(1) (“If a party fails to ... answer any question propounded in ... any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party entitled to ... or seeking discovery may file a motion to compel ... an answer, or production and an opportunity to inspect and copy...”); *see also* TBMP § 523 *et seq.* In particular, “[a] party seeking discovery may move for an order compelling an answer, designation, production or inspection.” FED. R. CIV. P. 37(a)(3)(B); 37 CFR § 2.120(e)(1); TBMP § 523 *et seq.* In determining the necessity of compelling discovery, Federal Rule of Civil Procedure 37 clarifies that “an evasive or incomplete disclosure, answer or response *must* be treated as a failure to disclose, answer or respond.” FED. R. CIV. P. 37(a)(4) (emphasis added). In addition, “[i]f the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the [Board] *must*, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees.” FED. R. CIV. P. 37(a)(5) (emphasis added); *see also* TBMP § 411.02. Motions to compel are routinely granted by the Board under the foregoing standards. *See, e.g., Johnson & Johnson & Roc Int’l S.A.R.L. v. Obschestvo s Oranitchennoy*, 95 USPQ 2d 1567, 1570 (TTAB 2010); *Jain v. Ramparts Inc.*, 49 USPQ 2d 1429, 1436 (TTAB 1998).

A. Despite a Three-Week Extension of Time, Petitioner Has Categorically Failed to Provide Any Written Responses or Documents as Requested in Registrant's First Set of Written Discovery; Petitioner's Responses and Documents Must be Compelled

Petitioner's conduct presents an exceptionally straightforward and simple violation of the Federal Rules of Civil Procedure and Petitioner's discovery obligations. Specifically, following *Petitioner's* inauguration of these proceedings, Registrant unequivocally served its First Set of Written Discovery on Petitioner, including Registrant's RFPs and Interrogatories, on September 17, 2015. (*See* Statement of Relevant Facts ("SRF"), *supra*, at ¶¶ 1-6; *see also* Exs. B & C.) Having been served with Registrant's First Set of Written Discovery on September 17, 2015, Petitioner's responses and documents were due on or before October 22, 2015. *See* FED. RS. CIV. P. 33-36; 37 CFR § 2.120(a)(3). Nevertheless, on October 14, 2015, Petitioner requested and was granted a two-week extension of time to respond to Registrant's First Set of Written Discovery. (*See* SRF, *supra*, ¶ 9; *see also* Ex. D.) Moreover, on October 29, 2015, Petitioner requested and was granted an additional one-week extension of time to respond to Registrant's First Set of Written Discovery. (*See* SRF, *supra*, ¶ 10; *see also* Ex. E.) Accounting for these two extensions, Petitioner's responses and documents were due on or before November 12, 2015. *See* FED. RS. CIV. P. 33-36; 37 CFR § 2.120(a)(3). Nevertheless, to date, the November 12, 2015 deadline having long-since passed, Petitioner still has yet to provide *any* written responses or documents as requested in Registrant's First Set of Written Discovery. (*See* SRF, *supra*, ¶ 12.) Indeed, Registrant has thrice requested Petitioner to confirm whether any discovery responses or documents will be forthcoming. (*See* Ex. A.) Petitioner has flatly ignored these repeated requests and Registrant still has yet to receive any responses or documents. (*See id.*)

Under such circumstances, while not at issue in the instant Motion to Compel, Registrant's several requests for admission have been deemed admitted *in toto* by operation of law. *See* FED. R. CIV. P. 36(a)(3); *see also* TBMP §§ 411.03, 523.01, and 524.01. Incidentally, Petitioner has thus admitted, *inter alia*, that the RED BULL marks, in their various forms, are generic inasmuch as they are used by the general consuming public to refer to energy drinks.

(See Exs. B & C at Registrant's First Set of Requests for Admission.) Such an admission eviscerates Petitioner's standing in these matters.

For purposes of the instant Motion to Compel, however, Petitioner's willful and total failure to provide even a single response to Registrant's First Set of Written Discovery comprises a violation of Petitioner's discovery obligations. Petitioner should not be allowed to bring these proceedings and then fail to participate in their meaningful prosecution. Registrant is entitled to discovery. See FED. RS. CIV. P. 26, 33, and 34; *Hickman*, 329 U.S. at 507. Registrant is also entitled to the just, speedy, and inexpensive determination of these proceedings. FED. R. CIV. P. 1. To this end, and in view of Petitioner's failure to comply with its discovery obligations or otherwise meaningfully engage in the discovery process, Registrant brings the instant Motion to Compel pursuant to Federal Rule of Civil Procedure 37. See FED. R. CIV. P. 37(a)(1), (a)(3)(B), (a)(4); 37 CFR § 2.120(e)(1); TBMP § 523 *et seq.* More specifically, Registrant respectfully requests that the Board enter an order compelling Petitioner to make a full production of all documents responsive to Registrant's RFPs and to fully answer Registrant's Interrogatories.

B. Petitioner Should Pay Registrant's Reasonable Expenses Incurred in Bringing the Instant Motion to Compel as the Same Has Been Necessitated by Petitioner's Conduct

In addition, as Petitioner's failure to provide documents or discovery responses has necessitated the instant Motion to Compel, Petitioner must be ordered to "pay [Registrant's] reasonable expenses incurred in making the motion, including attorney's fees." FED. R. CIV. P. 37(a)(5); *see also* TBMP § 411.02. This is particularly true where Petitioner's refusal to provide documents or discovery responses has been further aggravated by Petitioner's failure to meaningfully meet and confer regarding the forgoing issues. (See Ex. A.) At bottom, as Petitioner has refused to make any discovery responses, sanctions at this juncture are appropriate. See FED. R. CIV. P. 37(a)(5); TBMP § 411.02.

II. PETITIONER'S PLEADINGS MOTION DOES NOT EXCUSE PETITIONER'S FAILURE TO PARTICIPATE IN DISCOVERY

Petitioner has suggested that its Pleadings Motion somehow excuses Petitioner's failure to participate in discovery. (*See* Ex. A.) It does not. To begin with, pursuant to Section 504 of the Trademark Trial and Appeal Board Manual of Procedure, a motion for judgment on the pleadings does not automatically result in a suspension of proceedings and, even if it did, this does not equate to a blanket extension or suspension of existing formal discovery obligations. *See* TBMP § 504. And, inasmuch as the Pleadings Motion seeks a suspension pursuant to Section 510 of the Trademark Trial and Appeal Board Manual of Procedure, this is also unavailing. *See* TBMP § 510. Specifically, Section 510 explicitly states that “[t]he filing of ... a potentially dispositive motion does not, in and of itself, operate to suspend a case; until the Board issues its suspension order, *all times continue to run.*” *See* TBMP § 510.03(a) (emphasis added). Moreover, even if the case is suspended, Section 510 merely states that such a suspension prohibits the “fil[ing] ... of any paper which is not germane to the motion,” it does not automatically curtail existing discovery obligations. *See* TBMP § 510; 37 CFR § 2.127(d). Indeed, Section 510 continues: while a party may not serve additional discovery during a suspension, “[t]he filing of a motion ... shall not toll the time for a party to comply with any disclosure requirement or to respond to any outstanding discovery requests....” *See* TBMP § 510; 37 CFR § 2.120(e)(2). In short, there is no authority for Petitioner's unilateral refusal to provide discovery responses and documents merely because the Pleadings Motion has been filed. To the contrary, Petitioner is in blatant violation of its discovery obligations which were pending at the time the Pleadings Motion was filed.

It is also notable that Petitioner waited until the evening of its discovery deadline to file the Pleadings Motion. (*See* Cancellation No. 92/061,202, at D.E. No. 10; Opposition No. 91/221,325 at D.E. No. 10.) Specifically, the Pleadings Motion should, of necessity, be premised solely on the *pleadings*. *See* TBMP § 504. Petitioner's operative complaints were filed on April 1, 2015 and Registrant's answers were filed on April 22, 2015. (*See* Cancellation No. 92/061,202,

at D.E. Nos. 1 & 5; Opposition No. 91/221,325 at D.E. Nos. 1 & 5.) Accordingly, Petitioner's Pleadings Motion could have been filed shortly after Registrant's answers were on file. Nearly seven (7) months have elapsed since that time without any motion from Petitioner. Instead, Petitioner feigned participation in the discovery process long enough to receive Registrant's discovery responses and then, on the eve of Petitioner's discovery deadline, Petitioner finally brought the Pleadings Motion at the eleventh hour. Such gamesmanship should not be countenanced.

In addition, there can be no dispute that the Pleadings Motion is limited to substantive relief allegedly available solely in the Opposition proceeding. (*See, e.g.*, Cancellation No. 92/061,202, at D.E. No. 10 at 1 (moving for "judgment on the pleadings ... based on a detrimental non-correctable error on the initial application *for Application No. 86/324,277*" (emphasis added)).) Importantly, "[c]onsolidated cases do not lose their separate identity because of consolidation." TBMP § 511. Indeed, when the parties agreed to consolidate these matters, it was on the express understanding that each proceeding would retain its distinct identity and be governed by separate and distinct legal standards. (*See SRF, supra*, ¶ 5.) Nevertheless, without any basis for delaying or suspending the Cancellation proceeding, and without any substantive motion on file impacting the Cancellation proceeding, Petitioner now seeks to entirely avoid its discovery obligations in both the Opposition *and Cancellation* proceedings. At a minimum, Petitioner is obligated to provide discovery responses in the Cancellation proceeding. Again, Petitioner's eleventh-hour gamesmanship should not be countenanced by this Board or condoned by relieving Petitioner of its discovery obligations after-the-fact.

Along these same lines, Petitioner has now suggested that the Pleadings Motion is somehow also a motion for an extension of time. (*See Ex. A.*) It is nothing of the sort. First, "all motions should be filed separately, or at least be captioned separately, to ensure they receive attention." TBMP § 502.02(b). Indeed, "[a] party should not embed a motion in another filing that is not routinely reviewed by the Board upon submission." *Id.* In violation of these maxims,

Petitioner's Pleadings Motion is facially a motion for judgment on the pleadings, not a motion for an extension of time, which should have been filed separately. (*See, e.g.*, Cancellation No. 92/061,202, at D.E. No. 10 at 1.) Indeed, Petitioner's Pleadings Motion is not even captioned as a motion for an extension of time. (*See, e.g., id.*) Instead, buried in a footnote, and without any showing of good cause or other legally cognizable explanation, Petitioner's Pleadings Motion requests a blanket "60-day" extension of "any and all deadlines relating to discovery" in the Cancellation proceeding solely in the contingent event that consolidation of the Cancellation and Opposition proceedings is denied. (*See, e.g., id.* at n.10.) Embedding an extension request clandestinely in a footnote, premised solely on an unlikely contingency, is untoward, ineffectual, and in violation of Board procedure. TBMP § 502.02(b). Moreover, the Pleadings Motion never invokes Federal Rule of Civil Procedure 6 or Section 509 of the Trademark Trial and Appeal Board Manual of Procedure. Worse, Petitioner's Pleadings Motion makes no effort whatsoever to support the "good cause" showing required under Rule 6 and Section 509. *See* FED. R. CIV. P. 6; TBMP § 509. Instead, Petitioner baldly requests a "60-day" extension of time (apparently starting from some ambiguous and unidentified future point), more than doubling or even possibly tripling Petitioner's original allotment of time in view of the extensions already granted. Even if Petitioner had attempted to show good cause for an extension, which it has not, a 60-day extension of time from an unidentified future point cannot possibly be supported by good cause.

In sum, Petitioner's Pleadings Motion has nothing to do with Petitioner's discovery obligations and is no obstacle to granting the instant Motion to Compel.

CONCLUSION

For all of the foregoing reasons, Registrant respectfully requests that the Board enter an order compelling Petitioner to (1) make a full production of all documents responsive to Registrant's RFPs, (2) answer fully Registrant's Interrogatories, and (3) as the Motion to Compel was necessitated by Petitioner's failure to comply with its discovery obligations, an order

requiring Petitioner to pay Registrant's reasonable fees and expenses incurred in bringing the instant Motion to Compel, including Registrant's attorneys' fees.

Respectfully submitted on November 20, 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 20th day of November, 2015, I served a copy of the foregoing **REGISTRANT / APPLICANT JORDI NOGUES, S.L.'S MOTION TO COMPEL** 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/

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

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> 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>

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>

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; mrg@techmark.com; lzh@techmark.com;
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>

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

CC:Nicholas Wells <nwells@kmclaw.com>, Sherry Glendening <sglending@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,

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; mrg@techmark.com; lzh@techmark.com; 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

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; 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,

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 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
> =====
> 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.
>
> <RB v Jordi Nogues Jordi Nogues S.L. - Consolidated Proceeding No.
> 92061202 - Motion for Judgment on the Pleadings.pdf>

--

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.

--

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.: 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
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 *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
amr@techmark.com
lzh@techmark.com
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
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 *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 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.: 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 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.: 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

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.