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

Proceeding	91221325
Party	Plaintiff Red Bull GmbH
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Attachments	RB v. Jordi Nogues - Cons. Proc. No. 91-221,325 - Amended Notice.pdf(169229 bytes)

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Notice of Opposition is being filed with the TTAB via ESTTA on the date set forth below.

Date: August 9, 2016

/Angelique M. Riordan/
Angelique M. Riordan

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

IN THE MATTER OF Application Serial No. **86/324,277** for the trademark **Bull Device** (Class 32),
filed June 30, 2014, and published in the Official Gazette on December 2, 2014.

RED BULL GMBH,

Opposer,

v.

JORDI NOGUES (Original Applicant),
improperly amended to
JORDI NOGUES, S.L.,

Applicant.

Opposition No.: 91-221,325
Serial No.: 86/324,277
Trademark:



FIRST AMENDED NOTICE OF OPPOSITION

RED BULL GMBH, a limited liability company organized and existing under the laws of Austria, with its principal place of business at Am Brunnen 1, 5330 Fuschl am See, AUSTRIA, (hereafter “Red Bull” or “Opposer”) believes it is or will be damaged by registration on the Principal Register of the Bull Device mark shown in Appln. No. 86/324,277 (hereinafter referred to as Applicant’s “**Bull Device Mark**”) and hereby opposes the same.

As grounds of opposition it is alleged that:

1. Opposer is now and has for many years been engaged in the development, marketing, advertising, distribution and sale of various products and services including, among others, energy drinks, sports drinks, soft drinks, beverages, and various other products and services related or

complementary thereto.

2. Opposer Red Bull is the owner of the corporate name, trade name and trademark RED BULL, having used said name and mark continuously in interstate commerce on and in connection with its beverages, energy drinks, sports drinks, soft drinks, and various other products and services related or complementary thereto since long prior to the June 30, 2014 filing date of Applicant's Appln. No. 86/324,277, opposed herein.

3. Opposer Red Bull is the owner of various Federal registrations and common law right 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, all of which are collectively referred to herein as Red Bull's "**RED BULL and Bull Logo Marks.**"

4. Red Bull's **RED BULL and Bull Logo Marks** are and have become valuable assets of Opposer Red Bull, identifying its beverages, energy drinks, sports drinks, soft drinks, as well as its various other complementary and related products and services, and distinguishing Red Bull's products and services from the products and services of others.

5. Red Bull's various **RED BULL and Bull Logo Marks** as described herein have been extensively advertised in the United States and throughout the world, and have appeared on or in relation to products, product packaging, point-of-sale displays and other promotional materials for its beverages, energy drinks, sports drinks, soft drinks and various other complementary and related products sold, offered and advertised, and/or have been used in connection with various services, sporting events, contests, exhibits and cultural events advertised, offered, conducted and/or promoted in the United States and throughout the world.

6. In 2013 alone, sales of RED BULL beverages exceeded 5.4 billion units worldwide, with over 2 billion units sold in the United States. As a result of the enormous success and sales of Red Bull's beverages and of the extensive advertising and promotion of the **RED BULL and Bull**

Logo Marks on products and services in the United States and throughout the world, the **RED BULL and Bull Logo Marks** have become and are famous marks, and are recognized as such in the United States and elsewhere.

7. The original Applicant, Jordi Nogues (“Applicant”), an individual whose address is listed as Bruc 114, pral 2^a, Barcelona, Spain 08009, filed Application No. 86/324,277 on June 30, 2014, claiming a bona fide intent-to-use the **Bull Device Mark** in U.S. commerce on or in connection with “beer,” in Int’l Class 32. Application No. 86/324,277 was published on December 2, 2014.

8. On July 8, 2014, Nicholas Wells, attorney of record listed on Application No. 86/324,277 (“Applicant’s Counsel”), signed and filed a preliminary amendment, without explanation, declaration, assignment or support, purporting to change the listed owner of Application No. 86/324,277 from Jordi Nogues, the individual, to Jordi Nogues, S.L., a corporation organized under the laws of Spain.

9. According to the Trademark Manual of Examining Procedure (“TMEP”) Sections 803.06 and 1201.02(c), when an application filed in the name of the wrong party – specifically in the name of the president of a corporation as an individual when the corporation owns the mark - this is a non-correctable error and the application is void *ab initio*. As such, Application No. 86/324,277 is void *ab initio*.

10. Applicant’s **Bull Device Mark** does not claim color as a feature of the mark.

11. Applicant’s **Bull Device Mark** is used on Applicant’s websites, badtoro.es and badtorostore.com, in connection with the wording “BadToro” in the colors red and black:



12. “Toro” means “Bull” in Spanish, a very commonly used and recognized language in the U.S. “BadToro” means, and would immediately be recognized by a substantial portion of the U.S. public as, “BadBull,” or “Bad Bull.”

13. Applicant’s website, badtorostore.com/rojo-clasico-classic-red-collection, uses its **Bull Device Mark** in connection with a “Classic Red” collection – this red collection is a collection of all red colored products.

14. Applicant’s use of its **Bull Device Mark** in connection with the color red, the primary color used by Opposer on or in connection with the well-known and famous **RED BULL and Bull Logo Marks**, highlights Applicant’s direct reference to Opposer and Opposer’s well-known and famous **RED BULL and Bull Logo Marks**.

Claim 1: Priority and Likelihood of Confusion under § 2(d) of the Trademark Act

15. Opposer repeats and realleges each and every allegation contained in paragraphs 1-14, inclusive, as if fully recited in this paragraph.

16. Applicant’s **Bull Device Mark** so resembles Opposer’s **RED BULL and Bull Logo Marks** as to be likely, when applied to the goods of Appln. No. 86/324,277, to cause confusion, mistake or deception among purchasers, users, and the public, thereby damaging Red Bull.

17. The goods on which Applicant asserts a bona fide intent-to-use its **Bull Device Mark** in U.S. commerce are identical or very similar to, used for the same or similar purposes, and/or are or will be advertised and promoted to and directed at the same trade channels, the same purchasers, and are or will be used in the same environment as Opposer Red Bull’s products and related goods and services.

18. Simultaneous use of Applicant’s **Bull Device Mark** on the goods set forth in Appln. No. 86/324,277, and Opposer’s **RED BULL and Bull Logo Marks** on their goods and related services as set forth above is likely to cause confusion, mistake or deception among purchasers, users, and the public, thereby damaging Red Bull.

19. Use by Applicant of Applicant's **Bull Device Mark** on the goods set forth in Appln. No. 86/324,277 is likely to lead to the mistaken belief that Applicant's products are sponsored by, affiliated with, approved by or otherwise emanate from Opposer Red Bull, thereby damaging Red Bull.

20. As set forth in Paragraphs 15-19 above, Applicant's **Bull Device Mark** is likely to cause confusion with Opposer's **RED BULL and Bull Logo Marks**, in violation of § 2(d) of the Trademark Act.

Claim 2: False Suggestion of a Connection under § 2(a) of the Trademark Act

21. Opposer repeats and realleges each and every allegation contained in Paragraphs 1-20, inclusive, as if fully recited in this paragraph.

22. Applicant's **Bull Device Mark** is identical to or a close approximation of the **RED BULL and Bull Logo Marks** owned by Opposer.

23. Opposer has used its **RED BULL and Bull Logo Marks** for long prior to the June 30, 2014 filing date of Application No. 86/324,277.

24. Due to Opposer's extensive advertising, marketing and sales in the United States, consumers are likely to recognize that Red Bull's **RED BULL and Bull Logo Marks** point uniquely and unmistakably to Opposer, given the fame and renown of Opposer.

25. Opposer is not connected or affiliated with Applicant, Applicant's activities, or Applicant's **Bull Device Mark**.

26. As set forth above, Red Bull's **RED BULL and Bull Logo Marks**, name and identity are so famous and renowned such that consumers would presume a connection between Applicant and Opposer when they encounter Applicant's **Bull Device Mark** as used on the goods set forth in Appln. No. 86/324,277.

27. Thus, Applicant's **Bull Device Mark** falsely suggest a connection with Opposer, Red Bull, and Red Bull's **RED BULL and Bull Logo Marks**, in violation of Lanham Act § 2(a), and are

not entitled to registration.

Claim 3: Dilution under Trademark Act § 43(c)

28. Opposer repeats and realleges each and every allegation contained in paragraphs 1-27 above, inclusive, as if fully recited in this paragraph.

29. As set forth above, Applicant's **Bull Device Mark** is – and is intended to be – very similar to or a close approximation of Red Bull's **RED BULL and Bull Logo Marks**.

30. As set forth above, due to extensive marketing, advertising, and sales in the United States, Opposer's **RED BULL and Bull Logo Marks** have become famous throughout the entire United States.

31. Opposer's **RED BULL and Bull Logo Marks** became famous throughout the United States long prior to the June 30, 2014 filing date of Application No. 86/324,277.

32. Opposer's **RED BULL and Bull Logo Marks** are so distinctive in the United States that the public would associated them with Opposer even devoid of a trademark context or apart from the extensive goods and services offered by Opposer under Red Bull's **RED BULL and Bull Logo Marks**.

33. The use of Applicant's **Bull Device Mark** is likely to cause dilution by blurring as consumers, upon seeing Applicant's use of Applicant's **Bull Device Mark** on the goods in Appln. No. 86/324,277, would be immediately reminded of Opposer's famous marks and associate Applicant's use with Opposer – exactly in the way Applicant intends.

34. The use of Applicant's **Bull Device Mark** is likely to cause dilution by tarnishment as the association arising from the substantially similar nature of Applicant's mark and Opposer's famous **RED BULL and Bull Logo Marks** will harm the reputation of Opposer's famous **RED BULL and Bull Logo Marks**.

35. Thus, Applicant's **Bull Device Mark** dilutes Opposer's famous **RED BULL and Bull Logo Marks** in violation of Lanham Act § 43(c), and is not entitled to registration.

Claim 4: Lack of Bona Fide Intent-to-Use and False Declaration

36. Opposer repeats and realleges each and every allegation contained in Paragraphs 1-35, inclusive, as if fully recited in this paragraph.

37. On information and belief, Applicant did not, at the time of filing, have a bona fide intent to use its **Bull Device Mark** on “beer,” in Class 32, as recited in Application No. 86/324,277.

38. Based on the above, Applicant filed a false declaration on June 30, 2014, and Applicant’s **Bull Device Mark** should be refused on the grounds of lack of bona fide intent to use and false declaration.

Wherefore, Red Bull requests that registration of the mark sought to be registered herein, Applicant’s Bull Device Mark of Application No. 86/324,277, be denied and that this opposition be sustained.

RED BULL GMBH
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Dated: August 9, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S FIRST AMENDED NOTICE OF OPPOSITION** is being served on August 9, 2016, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to counsel for Applicant/Registrant Jordi Nogues/Jordi Nogues, S.L. at:

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