

ESTTA Tracking number: **ESTTA696643**

Filing date: **09/17/2015**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

|         |   |             |        |
|---------|---|-------------|--------|
| Name    | ATMOS Nation LLC                                      |             |        |
| Entity  | Limited Liability Company                             | Citizenship | Nevada |
| Address | 4800 SW 51 Street<br>Davie, FL 33314<br>UNITED STATES |             |        |

|                            |  |
|----------------------------|--|
| Correspondence information | Glen H. Shroyer, Esq.<br>Legal Counsel<br>101 Northeast Third Avenue Ste 1500<br>Ft. Lauderdale, FL 33301<br>UNITED STATES<br>ghs@shroyerlaw.com |
|----------------------------|--|

**Applicant Information**

|                        |   |                        |            |
|------------------------|---|------------------------|------------|
| Application No         | 86513346  | Publication date       | 08/18/2015 |
| Opposition Filing Date | 09/17/2015  | Opposition Period Ends | 09/17/2015 |
| Applicant              | Jasper Technology, LLC<br>20509 Earlgate St.<br>Walnut, CA 91789<br>UNITED STATES |                        |            |

**Goods/Services Affected by Opposition**

|   |
|---|
| Class 034. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are opposed, namely: Electronic cigarettes; Oral vaporizers for smokers; Oral vaporizers for smoking purposes |
|---|

**Grounds for Opposition**

|                                      |                            |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

**Mark Cited by Opposer as Basis for Opposition**

|                                    |                  |                  |      |
|------------------------------------|------------------|------------------|------|
| U.S. Application/ Registration No. | NONE             | Application Date | NONE |
| Registration Date                  | NONE             |                  |      |
| Word Mark                          | Vape Like A Boss |                  |      |
| Goods/Services                     | Class 34         |                  |      |

|             |   |
|-------------|---|
| Attachments | Exhibit A - Boss - Google Search.pdf(202710 bytes ) |
|-------------|---|

|  |  |
|--|--|
|  | Exhibit B - Every One Does It.pdf(1035395 bytes )<br>Exhibit C.PDF(260703 bytes )<br>Exhibit D.PDF(202450 bytes )<br>Exhibit E - Signed.pdf(941448 bytes )<br>Notice of Opposition - VB Vape Like a Boss.pdf(47599 bytes ) |
|--|--|

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

|           |                       |
|-----------|-----------------------|
| Signature | /s/Glen H. Shrayer    |
| Name      | Glen H. Shrayer, Esq. |
| Date      | 09/17/2015            |

# EXHIBIT A



atmos boss



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Atmos Boss Review - YouTube



www.youtube.com/watch?v=oHR9krVxFbM Jul 22, 2014 - Uploaded by Vaporizer Reviews You can get the Atmos Boss for the lowest price using the coupon "10off" from here: http://vaporizerchief.com ...

Atmos Boss Vaporizer Pen Unboxing and Demo - YouTube



www.youtube.com/watch?v=9qWkhQKjHNQ Aug 10, 2014 - Uploaded by EZVapes.com The Atmos Boss Vape pen features a stainless steel herb chamber, 40 second heat up time and super slim ...

Atmos Boss Herb Vaporizer For Sale - Vaporizer Chief

www.vaporizerchief.com/atmos-boss Jul 17, 2014 - The Atmos Boss vaporizer is one of the latest innovations of vape pens to be released to the market. This is a true vaporizer that performs at the level you would ...

Images for atmos boss

Report images



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Atmos Boss Review - Vaporizer Pens

www.vaporpen.net/atmos-boss-review-1/ Aug 20, 2014 - The Atmos Boss is the newest herbal vaporizer released by Atmos technology, a company that has a somewhat jaded reputation. They are advertising this new ...

Atmos Boss Vaporizer Review - Cannabis Tourism Seattle

cannabistourismseattle.com/1/post/.../atmos-boss-vaporizer-review.html Aug 29, 2014 - I'll start by saying that the Atmos Boss is the first vaporizer I have purchased. I had used other people's vaporizers

in the past but they were always the larger ...

[Boss Vaporizer Pen by Atmos - Everyonedoesit.com](#)

[www.everyonedoesit.com/online.../atmos-boss-vaporizer-pen.cfm](http://www.everyonedoesit.com/online.../atmos-boss-vaporizer-pen.cfm) ▾

Sep 9, 2014 - The **Atmos Boss** is a premium quality stainless steel vaporizer pen which features an embedded heating coil for true vaporization.

[Atmos Boss Vape Pen Review - Paint the Moon](#)

[www.paintthemoon.org/atmos-boss-vape-pen-review/](http://www.paintthemoon.org/atmos-boss-vape-pen-review/) ▾

Sep 17, 2014 - The latest vaporizer pen by **Atmos**, the **Atmos Boss** is no exception. For people unfamiliar with **Atmos**, they have already been producing many different types of ...

[Atmos Boss Vaporizer Review – Vape-Smart](#)

[vape-smart.com/blogs/best.../16833699-atmos-boss-vaporizer-review](http://vape-smart.com/blogs/best.../16833699-atmos-boss-vaporizer-review) ▾

Sep 24, 2014 - The **Atmos Boss** is the all new jewel in **Atmos'** crown. It is the best Dry Herb vape pens we have seen from **Atmos** and a strong contender for best portable vaporizer outright. The **Boss** even comes pre-charged and ready to use straight from the box.

[Atmos Boss | FC Vaporizer Review Forum](#)

[fuckcombustion.com](http://fuckcombustion.com) > ... > Portable Vaporizers > E-cig Based Portables ▾

Jul 25, 2014 - 25 posts - 10 authors

Found a vid on the **boss**, not a great video but its something, it looks like it might work ... That **Atmos Boss** looks like an imag plus with a Flowermate mouthpiece, ...



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# EXHIBIT B



|                     |            |                 |                     |           |                       |        |                |
|---------------------|------------|-----------------|---------------------|-----------|-----------------------|--------|----------------|
| Bongs & Water Pipes | Vaporizers | Papers & Blunts | Smoking Accessories | Lifestyle | Smoking Paraphernalia | Brands | Deals & Offers |
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## 12<sup>Sep</sup> Vape Like A Boss With The New Atmos Vaporizer Pen

Atmos boss EDIT Everyonedoesit pen Vap Vape Vaporizer

2014

US Vaporizer manufacturers, Atmos have released a lot of new products recently. Regular blog readers may recall how impressed we were by the liquor flask-shaped Atmos Transporter when that landed on our shelves recently - we loved the discreet styling and we definitely appreciate the embedded heating coil that, at last, offers true vaporization. Perhaps the only (very minor) grumble we could have with the Transporter is the fact that whilst it does not look like a vaporizer, it does indeed look like a hip flask, so instead of thinking you're vaping, people will think you're drinking hard liquor, and I'm sure we don't need to spell out how that could become a problem.



Atmos have addressed that issue with their latest offering, the pen-style Atmos Boss.



Made from anodized stainless steel with laser-engraved detailing, the Atmos Boss certainly looks the part. The polished finish and sleek styling are no accident. This means that the Atmos Boss is virtually indistinguishable from a regular e-cigarette to the untrained eye. You can enjoy your favourite herbal aromatherapy blends subtly and discreetly with full portability with the Atmos Boss.

The Boss is designed for use with dry herbal blends and is the first pen vaporizer from Atmos to

feature their embedded heating coil system, as seen in the [Atmos Transporter](#). This means that the [Atmos Boss](#) is capable of 'true' vaporization. The embedded coil sits inside the anodized steel heating chamber which is equipped with a ceramic mesh filter. This system prevents your herbs from ever coming into direct contact with the heat source. The coil heats the chamber to a precise temperature just below combustion, so your herbs cannot burn. And as the old saying goes - there's no smoke without fire, so what the [Atmos Boss](#) delivers is pure vapour, free from toxins, particulates and carcinogens, yet full of flavours, terpenes and other active ingredients.



The [Atmos Boss](#) comes as a complete kit which includes the Boss itself plus plug, USB charger, cleaning brush, packing tool, manual and the gift box. The Atmos Boss even comes completely charged, and is ready to use straight from the box.

Make no mistake here, EDIT-Heads; this is the best dry herb vaporizer pen [Atmos](#) have made by a country mile. When one considers that fact, along with the Boss's £84.99 price tag the conclusion has to be that as well as being a discreet, well designed, true portable pen vap, it is also superb value.

Order yours today from EDIT with same day dispatch and our famous price match guarantee.

This entry was posted in [Featured Products](#), [Post](#), [Vaporisers](#) and tagged [Atmos](#), [boss](#), [EDIT](#), [Everyonedoesit](#), [pen](#), [Vap](#), [Vape](#), [Vaporizer](#). Bookmark the [permalink](#).

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- [Volcano Vaporizer](#)
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**TOP 10 PRODUCTS**

- [Steve Geld - Bubbler](#)
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- [Mini Incredibowl](#)
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- [Volcano Vaporizer - Classic](#)

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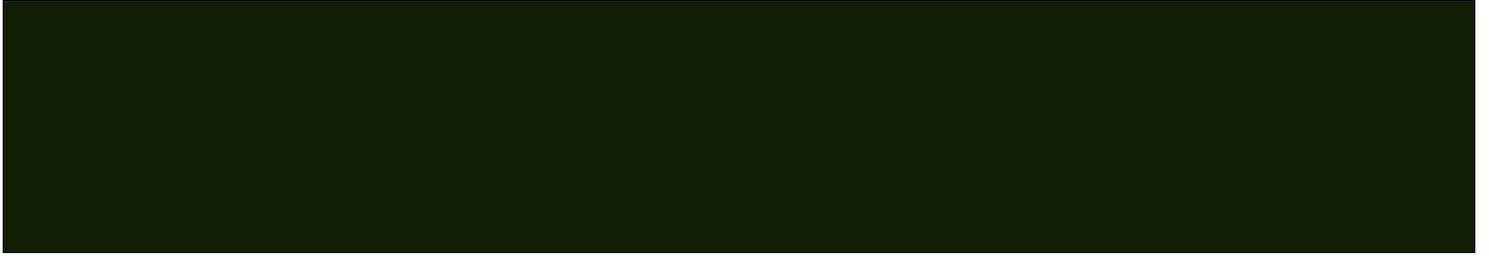
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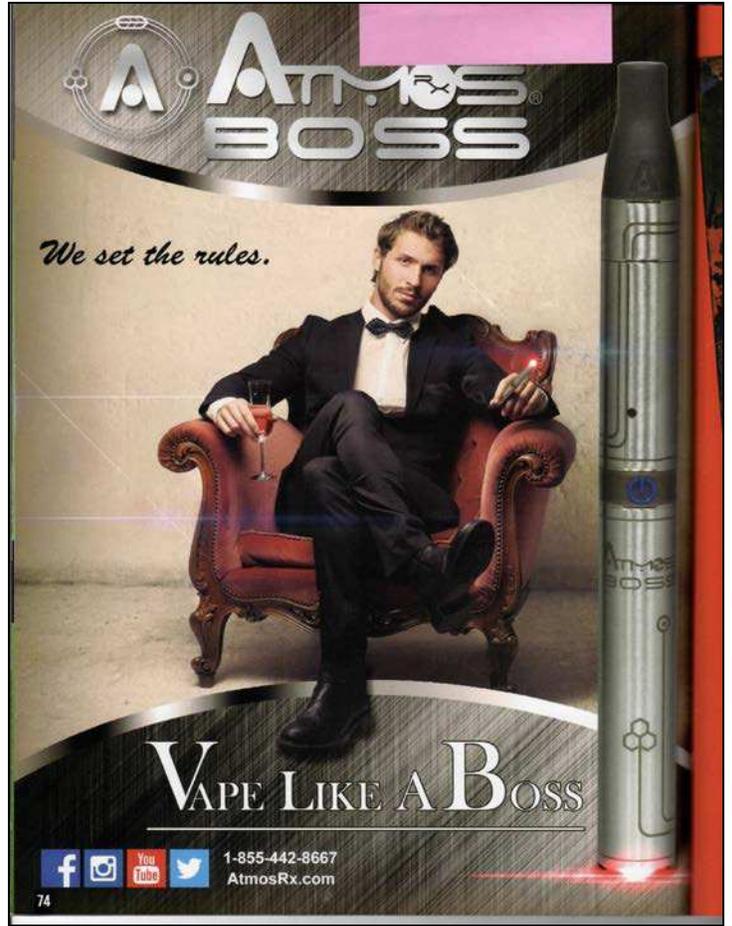
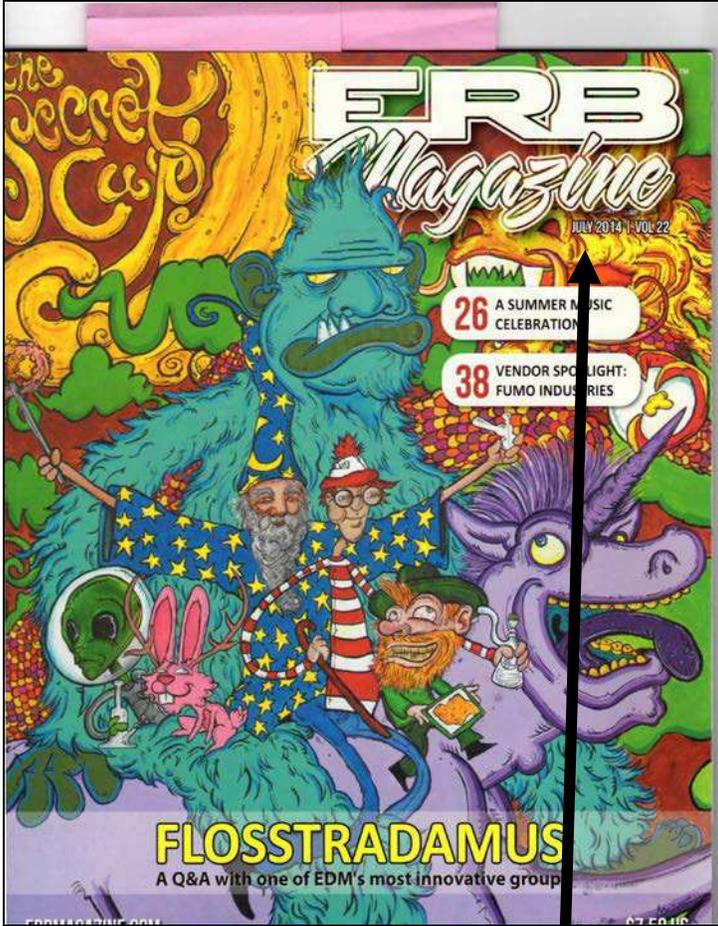


# EXHIBIT C

ERB Magazine Cover

July 2014

Page 74



# EXHIBIT D

Wholesaler Magazine Cover

November 2014

Page 7

THE INDO EXPO TRADE SHOW • DENVER, CO • NOV. 15-16

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**Atmos BOSS**

*We set the rules.*

VAPE LIKE A BOSS

1-855-442-8667  
AtmosRx.com

SCH 5-DIGIT 33314 FSS MIX COMA

NA  
OR  
ATL

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DAVIE FL 33314-5511 P0465

389.B2B1  
002375248

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

ATMOS NATION LLC,  
a Nevada Limited Liability  
Company

Trademark Application  
Mark: VB Vape Like a Boss  
Serial No: 86-513,346

Plaintiff,

vs.

Jasper Technology, LLC,  
a Delaware Limited Liability  
Company

Defendant

\_\_\_\_\_/

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

**AFFIDAVIT OF ATMOS NATION**  
**MANAGING PARTNER YARIV ALIMA**

I, Yariv Alima, declare that the following facts are true and correct to the best of my information and belief.

1. I am a managing partner for ATMOS Nation LLC (hereinafter "ATMOS"). ATMOS is the owner of the ATMOS RX® Vaporizer line and has registered the following four Atmos RX® trademarks with the United States Patent and Trademark Office ("USPTO"): 4052873, 4052867, 4410411 & 4410410 – all for electric vaporizers and Smoker's articles, namely, handheld electronic vaporizers for personal inhalation of dry herbs and oils.
2. We have had a strong market presence since 2011 in what is a relatively new and emerging industry.
3. Our customers have come to associate ATMOS with top quality smoking products and accessories. We have spent millions of dollars developing our product line.
4. One of our most successful product launches to date has been for the ATMOS Boss Vaporizer. We have spent a substantial amount of time and money in advertising over the past eighteen months in order to bring consumer attention to this particular product.

5. Almost every advertisement that we published for the ATMOS Boss was accompanied by the phrase "Vape Like a Boss."
6. Accordingly, the phrase "VB Vape Like a Boss" is almost identical to "Vape Like a Boss." Furthermore, Jasper Tech proposes to sell the exact same type of products as ATMOS in class 34.
7. The vaporizer industry already associates the phrase "Vape Like a Boss" with the ATMOS Boss. Jasper Tech's trademark application would cause consumer confusion in the industry and would irrevocably damage our reputation.

This statement is true and is signed under the penalty of perjury.

YARIV ALIMA

  
 MANAGING PARTNER  
 ATMOS NATION LLC

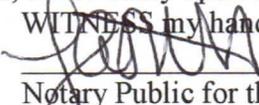
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State of Florida )

)  
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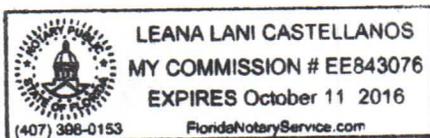
On 9/17/2015, before me, Leana Lani Castellanos a notary public in and for said state, personally appeared Yariv Alima, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he or she executed the same in his or her authorized capacity and that by his or her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
 Notary Public for the State of Florida

My commission expires 10/11/2016

[NOTARY SEAL]



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

ATMOS NATION LLC,  
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Trademark Application  
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Company

Defendant

---

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

**NOTICE OF OPPOSITION**

Dear Trademark Trial and Appeal Board:

ATMOS Nation LLC., a Nevada Limited Liability Company, with its offices at 4800 SW 51<sup>st</sup> Street, unit 106, Davie, FL (hereinafter "ATMOS" or "Opposer"), believes that it will be damaged by the registration by Jasper Tech Inc. ("Jasper" or "Applicant") of the mark "VB Vape Like a Boss" shown in Application Serial No. 86-513,346 and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. On January 24, 2015, Jasper Technologies filed an intent to use trademark application ("the Application") for "VB VAPE LIKE A BOSS" ("the Applicant's Mark") in class 34 for Serial No. 86513346 in the United States Patent and Trademark Office ("USPTO").
2. The Application is in connection with "Electronic cigarettes; Oral vaporizers for smokers; Oral vaporizers for smoking purposes" in Class 34 ("the Applicant's Services").
3. The Application filed by Jasper on January 24, 2015 ("the Applicant's Filing Date") is based on Jasper's intent to use the Applicant's Mark with the Applicant's Services.

4. The Applicant, via counsel, stated the following in their declaration:

“The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.”

5. The Application for the Applicant's Mark was published for opposition in the *Official Gazette* on August 18, 2015 giving the Opposer thirty days in order to file a response.
6. On September 3, 2015, the Opposer wrote a demand letter to the Applicant informing Jasper that the Application violated ATMOS' common law trademark rights in the phrase “Vape Like a Boss.”
7. The Opposer is a well-known provider of vaporizers and related accessories (herein after "Vaporizer Products").
8. ATMOS was widely advertising this slogan in commerce in 2014. The Applicant cannot file an intent to exclusively use a slogan in commerce that has already been used by a more successful and established vaporizer company a year beforehand.
9. For instance, ATMOS was advertising the phrase “Vape Like a Boss” in 2014 as evidenced by date specific Google search from January 1, 2014 to October 1, 2014, which demonstrates that the Boss was being used in commerce in 2014 (See attached Exhibit “A”).
10. On September 12, 2014, on the website “Every One Does it” the ATMOS Boss is reviewed. The review states that the product is “ATMOS’ best vaporizer pen to date” (See attached Exhibit “B”). Furthermore, the review title states “Vape Like a Boss With the New Atmos Vaporizer Pen.”
11. In the July 2014, issue of ERB Magazine, which is a respected industry trade magazine, ATMOS’ advertisement for “Vape Like a Boss” ran in the magazine (See attached Exhibit “C”).
12. In the November 2014, issue of Wholesaler Magazine, which is a respected industry trade magazine, the advertisement ATMOS’ advertisement for “Vape Like a Boss” ran in the magazine (See attached Exhibit “D”).

13. The Boss Vaporizer Pen is one of ATMOS' best selling products and the advertising campaign for Vape Like a Boss is associated with ATMOS' Products (See attached Exhibit "E," *Affidavit of ATMOS' Managing Partner Yariv Alima*).
14. The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). See TMEP §1207.01. However, not all the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1355, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont*, 476 F.2d at 1361- 62, 177 USPQ at 567.
15. In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. See *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); TMEP §§1207.01 et seq.
16. The term "VB Vape Like a Boss" is nearly indistinguishable from the phrase "Vape Like a Boss" and the Applicant is manufacturing nearly identical products to the Opposer.
17. The mere addition of a term to a registered mark generally does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Trademark Act Section 2(d). See *In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (GASPAR'S ALE and JOSE GASPAR GOLD); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975) (BENGAL and BENGAL LANCER); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (C.C.P.A. 1967) (THE LILLY and LILLI ANN); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266 (TTAB 2009) (TITAN and VANTAGE TITAN); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002 (TTAB 1988) (MACHO and MACHO COMBOS); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (CAREER IMAGE and CREST CAREER IMAGES); *In re Riddle*, 225 USPQ 630 (TTAB 1985) (ACCUTUNE and RICHARD PETTY'S ACCU TUNE); TMEP §1207.01(b)(iii).
18. As such, the applicant's addition of the word "VB" with a minimal design feature consisting of stars and diamonds does not obviate the similarity between the marks nor does it overcome a likelihood of confusion.
19. Priority is not an issue in this case because the Opposer's first use precedes the Applicant's Filing Date and the Applicant's Intent to Use filing date.
20. Applicant's Mark "VB Vape Like a Boss" is identical or nearly identical to the

Opposer's Mark "Vape Like a Boss." The fact that the word "VB" is included in Opposer's Mark is of little note to consumers. The Applicant's Mark is confusingly similar in sound, meaning, and appearance to the Opposer's Mark. The Applicant's registration and use of the "VB Vape Like a Boss" Mark would likely create confusion, mistake, or deception in the minds of prospective purchasers as to the origin or source of the Opposer's Goods associated with "Vape Like a Boss."

21. The Applicant's Services are closely related to and/or are in the natural zone of expansion of the Opposer's Goods. The Opposer's Goods are advertised and sold on-line on Opposer's Websites and Third Party Websites. The Applicant's prospective products are the same or substantially similar to those vaporizer related products provided by the Opposer on the Opposer's Websites.
22. The Opposer's Goods and the Applicant's Services travel in the same channels of trade and are viewed by the same customers including those who buy vaporizers. Applicant's Services are therefore substantially similar to the Opposer's Goods with which the Opposer's Mark is used.
23. Purchasers familiar with the Opposer's Product lines are likely to mistakenly believe that the Applicant's Services are sponsored by, authorized, endorsed, affiliated with or otherwise approved by the Opposer because the Applicant's sought to be registered and used by the Applicant is identical to or confusingly similar to the Opposer's mark "Vape Like a Boss."
24. On information and belief, Applicant failed to satisfy the requirements of Trademark Act Section 1(a) and related Trademark Rules and Regulations.
25. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer believes that it would be damaged thereby.

WHEREFORE, Opposer respectfully requests that registration of the mark shown in Application Serial No. 86-513,346 be refused and that this Opposition be sustained in favor of Opposer.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 17th day of September 2015, this Notice of Opposition was mailed via UPS Return Receipt to John P. Yung, Locke Lord LLP, 500 Capitol Mall, Suite 1800, Sacramento, California 95758.

Respectfully submitted,

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**/s/Glen H. Shrayer**

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Fl Bar No. 57253