

ESTTA Tracking number: **ESTTA727720**

Filing date: **02/17/2016**

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	Red Bull GmbH
Granted to Date of previous extension	03/23/2016
Address	Am Brunnen 1 Fuschl am See, 5330 AUSTRIA

Attorney information	Martin R. Greenstein TechMark a Law Corporation 4820 Harwood Road, 2nd Floor San Jose, CA 95124 UNITED STATES MRG@TechMark.com, LZH@TechMark.com, AMR@TechMark.com, DMP@TechMark.com Phone:408-266-4700
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**Applicant Information**

Application No	86465486	Publication date	11/24/2015
Opposition Filing Date	02/17/2016	Opposition Period Ends	03/23/2016
Applicant	ESTABLECIMIENTOS ANCALMO, S.A. DE C.V. Boulevard Walter Deininger La Libertad, EL SALVADOR		

**Goods/Services Affected by Opposition**

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary and nutritional supplements; Nutritional supplements for boosting energy in the nature of nutritional supplement energy bars; Vitamin and mineral supplements
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution by blurring	Trademark Act section 43(c)
Dilution by tarnishment	Trademark Act section 43(c)

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

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	RED BULL, TORO ROJO, RED BULL & Two Bulls Logo, Two Bulls Logo, (Single) Bull Logo, BULL, TORO, and other marks for or incorporating the words BULL, TORO, the equivalent of BULL in other foreign languages, and/or the design of a bull or bovine animal
Goods/Services	Beverages, supplements, energy drinks, sports drinks, soft drinks, energy-giving supplements, and various other products and services related or complementary thereto

Attachments	TRES TOROS & Design-86465486-Notice of Oppo.pdf(558262 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Leah Z. Halpert/
Name	Leah Z. Halpert
Date	02/17/2016

**CERTIFICATE OF ELECTRONIC FILING AND  
STANDBY AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

I hereby certify that this Notice of Opposition is being filed with the TTAB via ESTTA on the date set forth below, and the \$300 per class statutory filing fee paid. Please charge any deficiency or any additional fees in connection with this Notice of Opposition to TechMark's PTO Deposit Account No. 20-0330.

Date: February 17, 2016

/Leah Z. Halpert/  
Leah Z. Halpert

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

IN THE MATTER OF Application Serial No. 86/465,486 for the trademark TRES TOROS & Design (Class 5), filed November 26, 2014, and published in the Official Gazette of November 24, 2015.

**RED BULL GMBH,**

**Opposer,**

v.

**ESTABLECIMIENTOS ANCALMO,  
S.A. DE C.V.**

**Applicant.**

**Opposition No.:**

**Mark:**



**Application No.: 86/465,486**

**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 mark TRES TOROS & Design shown in Appln. Ser. No. 86/465,486 (hereinafter the "TRES TOROS 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, beverages, supplements, energy drinks, sports drinks, soft drinks, energy-giving supplements, and various other products and services related or complementary thereto.

2. Opposer 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, supplements, energy drinks, sports drinks, soft drinks, energy-giving supplements and various other products and services related or complementary thereto since long prior to the November 26, 2014 filing date of Applicant's TRES TOROS Mark, opposed herein.

3. Opposer is the owner of various Federal registrations and common law rights for trademarks RED BULL, TORO ROJO, RED BULL & Two Bulls Logo, Two Bulls Logo, (Single) Bull Logo, BULL, TORO, and other marks for or incorporating the words BULL, TORO, the equivalent of BULL in other foreign languages, and/or the design of a bull or bovine animal for various goods and services, all of which are collectively referred to herein as Opposer's "**BULL, TORO, and Bull Logo Marks**". Opposer's BULL, TORO, and Bull Logo Marks have been used in U.S. commerce on and in connection with beverages, supplements, energy drinks, sports drinks, soft drinks, energy-giving supplements and various other products and services related or complementary thereto since long prior to the November 26, 2014 filing date of Applicant's TRES TOROS Mark, opposed herein.

4. Opposer's BULL, TORO, and Bull Logo Marks are arbitrary marks, and have achieved a high degree of notoriety, fame and reputation as identifiers of Opposer's beverages, supplements, energy drinks, sports drinks, soft drinks, energy-giving supplements, and various other products and services.

5. Opposer's various BULL, TORO, and Bull Logo Marks are and have become valuable assets of Opposer, identifying its beverages, supplements, energy drinks, sports drinks, soft drinks, energy-giving supplements, and various other products and services related or complementary thereto, and distinguishing Opposer's products and services from the products and services of others.

6. Opposer's various BULL, TORO, 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 products sold, offered and advertised, and/or have been used in connection with various services, sporting events, contests, exhibitions and cultural events advertised, offered, conducted and/or promoted in the United States and throughout the world.

7. In 2014 alone, sales of RED BULL beverages exceeded 5.6 billion units worldwide, with over 2.1 billion units sold in the United States. As a result of the enormous success and sales of Opposer's beverages and of the extensive advertising and promotion of the BULL, TORO, and Bull Logo Marks on said beverages, supplements, and various other products and services in the United States and throughout the world, the BULL, TORO, and Bull Logo Marks have become and are famous marks, and are recognized in the United States and elsewhere as such.

8. Applicant, Establecimientos Ancalmo, S.A. de C.V. ("Applicant"), a corporation organized under the laws of El Salvador, whose address is given as Boulevard Walter Deininger, La Sultana Antiguo Cuscatlán, La Libertad, El Salvador, filed Appln. No. 86/465,486 on November 26, 2014, claiming a bona fide intent to use the TRES TOROS Mark in commerce on the International Class 5 goods set forth therein, namely "*Dietary and nutritional supplements; Nutritional supplements for boosting energy in the nature of nutritional supplement energy bars; Vitamin and mineral supplements*" Applicant's declaration of bona fide intent was signed by Arturo Perez-Guerrero, Applicant's attorney of record. The TRES TOROS Mark was published for opposition on November 24, 2015.

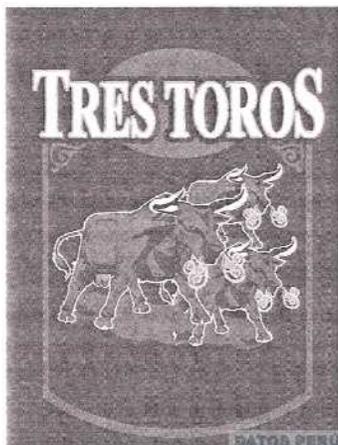
9. Applicant's TRES TOROS Mark specifically claims the colors white, black, gold and red as features of the mark.

10. Applicant's TRES TOROS Mark, combining the term "TOROS" with the color red

for energy-giving goods is a direct reference to Opposer, and is intended to play off of Opposer's well-known and famous BULL, TORO, and Bull Logo Marks, and in particular, Opposer's Two Bulls (or "dos toros") logo.

11. Applicant's use of TRES, Spanish for "three" is a direct reference to Opposer's famous Two Bulls Logo and is intended to connote that TRES TOROS is "one better" than Opposer's Two Bulls.

12. Based on information and belief as the result of due investigation, Applicant intends to use its TRES TOROS Mark in connection with an image of three charging red colored bulls in a manner as shown in the below depictions.



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

13. Opposer repeats and realleges each and every allegation contained in paragraphs 1-12, inclusive, as if fully recited in this paragraph.

14. Applicant's TRES TOROS Mark is a close approximation of the famous BULL, TOROS, and Bull Logo Marks owned by Opposer.

15. The goods on which Applicant asserts bona fide intent to use its TRES TOROS Mark in commerce are identical 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's products and services described herein, sold and/or offered under Opposer's BULL, TORO, and Bull Logo Marks.

16. Simultaneous use of Applicant's TRES TOROS Mark on the goods set forth in Appln. No. 86/465,486, and Opposer's BULL, TORO, and Bull Logo Marks on its goods and services as set forth above is likely to cause confusion, mistake or deception among purchasers, users and the public, thereby damaging Opposer.

17. Use by Applicant of its TRES TOROS Mark on the goods set forth in Appln. No. 86/465,486, is likely to lead to the mistaken belief that Applicant's products are sponsored by, affiliated with, approved by or otherwise emanate from Opposer, thereby damaging Opposer.

18. Based on ¶¶ 13-17 above, Applicant's TRES TOROS Mark is likely to cause confusion with Opposer and its BULL, TORO, and Bull Logo Marks, in violation of Lanham Act § 2(d), and is, therefore, not entitled to registration.

Claim 2: Dilution by Blurring and Tarnishment under Trademark Act § 43(c)

19. Opposer repeats and realleges each and every allegation contained in paragraphs 1-18, inclusive, as if fully recited in this paragraph.

20. As set forth above, Applicant's TRES TOROS Mark is substantially similar to and intended to reference Opposer's famous BULL, TORO, and Bull Logo Marks.

21. As set forth above, due to extensive marketing, advertising, and sales in the United States, Opposer's BULL, TORO, and Bull Logo Marks are famous throughout the entire United States, and became famous long prior to the November 26, 2014 filing date of Applicant's TRES TOROS Mark

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

23. The use of Applicant's TRES TOROS Mark is likely to cause dilution by blurring as consumers, upon seeing Applicant's use of its TRES TOROS Mark on the goods of Appln. No. 86/465,486, would be immediately reminded of Opposer's famous BULL, TORO, and Bull Logo Marks, and associate Applicant's use with Opposer.

24. The use of Applicant's TRES TOROS Mark is likely to cause dilution by tarnishment as the association arising from the substantially similar nature of Applicant's TRES TOROS Mark and Opposer's famous BULL, TORO, and Bull Logo Marks will harm the reputation of Opposer's famous BULL, TORO, and Bull Logo Marks.

25. Therefore, based on ¶¶ 19-24 above, Applicant's TRES TOROS Mark is likely to cause dilution by blurring and dilution by tarnishment of Opposer's famous BULL, TORO, and Bull Logo Marks in violation of Lanham Act § 43(c), and is not entitled to registration.

Wherefore, Opposer requests that registration of the mark sought to be registered herein, TRES TOROS & Design of Appln. No. 86/465,486, be denied and that this opposition be sustained.

RED BULL GMBH  
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Attorneys for Opposer Red Bull GmbH

Dated: February 17, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** is being served on February 17, 2016, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to Applicant's Correspondent of Record at the address given on the TSDR website, with a courtesy copy via email to [arturo@perezguerrero.com](mailto:arturo@perezguerrero.com) and [serviciosmarcaros@yahoo.com](mailto:serviciosmarcaros@yahoo.com):

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/Leah Z. Halpert/  
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