

ESTTA Tracking number: **ESTTA748695**

Filing date: **05/26/2016**

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

Proceeding	91226394
Party	Defendant Energy Beverages LLC
Correspondence Address	STEVEN J NATAUPSKY KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 UNITED STATES efiling@knobbe.com
Submission	Answer
Filer's Name	Diane M. Reed
Filer's e-mail	efiling@knobbe.com
Signature	/Diane M. Reed/
Date	05/26/2016
Attachments	2016-05-26 ANSWER - EBLLC.360M.pdf(800180 bytes)

2. Applicant admits that Sazerac owns United States Registration No. 4,564,436 for FUEL YOUR FIRE, which was filed October 26, 2010, and issued July 8, 2014, for “distilled spirits and liqueurs; prepared alcoholic cocktails” (Sazerac’s “FUEL YOUR FIRE Mark”).

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice of Opposition and therefore, on that basis, denies these allegations.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice of Opposition and therefore, on that basis, denies these allegations.

5. Applicant notes that Energy Beverages Company is the owner of the application to register the mark BURN FUEL YOUR FIRE and Design upon an intent-to-use basis in connection with “non-alcoholic beverages, namely, carbonated beverages and energy drinks” in International Class 32. Application No. 85/919314 was filed by The Coca Cola Company, which assigned the Application to Monster Beverage Corporation. Monster Beverage Corporation subsequently assigned the Application to Energy Beverages LLC prior to the commencement of this case.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice of Opposition and therefore, on that basis, denies these allegations. To the extent the allegations found in Paragraph 6 of the Notice of Opposition assert legal conclusions, such allegations do not require an answer from Applicant, and, as such, Applicant denies all such allegations.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Notice of Opposition and therefore, on that basis, denies these allegations.

8. Applicant denies the allegations contained in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations contained in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations contained in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations contained in Paragraph 12 of the Notice of Opposition. Further, to the extent the allegations found in Paragraph 12 of the Notice of Opposition assert legal conclusions, such allegations do not require an answer from Applicant, and, as such, Applicant denies all such allegations.

13. Applicant denies the allegations contained in Paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations contained in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations contained in Paragraph 15 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant alleges the following affirmative defenses. There may be additional affirmative defenses that are currently unknown to Applicant. Therefore, Applicant reserves the right to amend its Answer to the Notice of Opposition to allege affirmative defenses in the event that discovery of additional information indicates they are appropriate.

FIRST AFFIRMATIVE DEFENSE

The Notice of Opposition fails to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake or deception between Applicant's



mark and Registrant's FUEL YOUR FIRE mark as Applicant's mark is a composite mark including the distinctive word "BURN."

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed in its entirety, and that a registration issue to Applicant for its mark.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 5/20/10

By: 

Steven J. Nataupsky
Diane M. Reed
Paul J. Famiglietti
Diana E. Wade
2040 Main Street, Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
efiling@knobbe.com
Attorneys for Applicant,
ENERGY BEVERAGES LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION has been served on Opposer's Attorney of record by mailing said copy on May 25, 2016, via First Class Mail to:

Thomas M. Hadid
Cooley LLP
1299 Pennsylvania Ave NW, Suite 700
Washington, DC 20004



Jennifer Brown
Trademark Paralegal

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