

ESTTA Tracking number: **ESTTA604920**

Filing date: **05/19/2014**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Red Bull GmbH		
Entity	Limited Liability Company	Citizenship	Austria
Address	Am Brunnen 1 Fuschl am See, A-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 Phone:408-266-4700
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Registration Subject to Cancellation

Registration No	4481899	Registration date	02/11/2014
Registrant	Stockmarket Burger Inc. 13603 MARINA POINTE DR C520 Marina Del Rey, CA 90292 UNITED STATES		

Goods/Services Subject to Cancellation

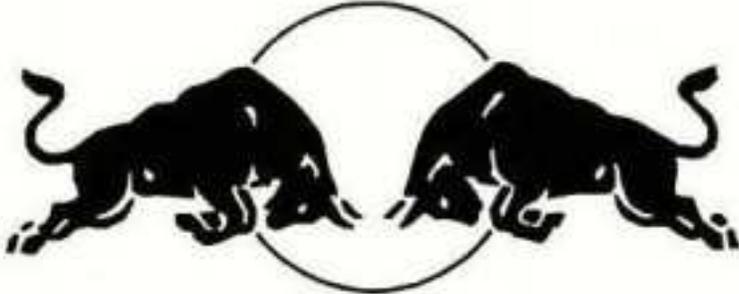
Class 043. First Use: 2012/10/08 First Use In Commerce: 2012/10/08 All goods and services in the class are cancelled, namely: Bar services; Cafe services; Cocktail lounge services; Coffee bars; Coffee shops; Coffee supply services for offices; Contract food services; Fast-food restaurant services; Frozen yogurt shop services in the nature of a restaurant; Mobile restaurant services; Rental of drink dispensing machines; Rental of drinking water dispensers; Restaurant and cafe services; Restaurant services; Take-out restaurant services; Wine bars

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Nonuse and False Declaration. Grand Canyon West Ranch LLC v. Hualapai Tribe, 88 USPQ2d 1501 (TTAB 2008); Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha, 77 USPQ2d 1917 (TTAB 2006).

Related Proceedings	91210282, 91214537
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2946045	Application Date	12/31/2003
Registration Date	05/03/2005	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of Two Opposing or Charging Bulls, with a circular, globe or sun background.		
Goods/Services	Class 032. First use: First Use: 1987/01/31 First Use In Commerce: 1996/05/31 Non-alcoholic beverages, namely energy drinks and hypertonic drinks		

U.S. Registration No.	3051994	Application Date	12/13/2001
Registration Date	01/31/2006	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 002. First use: First Use: 0 First Use In Commerce: 0 [Paints for artistic use] Class 003. First use: First Use: 0 First Use In Commerce: 0 [Soaps for personal use; cosmetics] Class 004. First use: First Use: 0 First Use In Commerce: 0 [Candles] Class 005. First use: First Use: 0 First Use In Commerce: 0 [Pharmaceutical preparations, namely, fortifying and strengthening preparations in the nature of tonics, nutritional supplement preparations containing minerals and/or vitamins and/or trace elements for health purposes; Dietetic substances		

	<p>adapted for medical use, namely, foods, beverages, food supplements and nutritional supplements]</p> <p>Class 006. First use: First Use: 0 First Use In Commerce: 0 Decorative objects and works of art of common metal; metal signboards [and holders for signboards]</p> <p>Class 008. First use: First Use: 0 First Use In Commerce: 0 [Cutlery]</p> <p>Class 009. First use: First Use: 0 First Use In Commerce: 0 [Electronic timers for sports events and competitions; electronic race timers;electronic lap timers; prerecorded video tapes and] recorded video and audio discs featuring musical performances, concerts, sports events, sports competitions, [and exhibitions, health and nutrition,] fitness, athletic training and conditioning, [travelogues, humor and comedy performances and exhibitions] and competitions of skill; ((automatic vending machines;)) [entertainment machines,namely, electronic video game machines;electronic pinball machines;] pre-recorded magnetic and optical disks, CD-Roms[and tapes] featuring musical performances, concerts, sports events, sports competitions, [and exhibitions, health and nutrition,] fitness, athletic training and conditioning, [travelogues, humor and comedy performances and exhibitions] and competitions of skill; computer game software; [computer software screensavers;] protective clothing, namely, [protective spectacles, protective masks,] protective helmets; [shoes; protective shields, namely, ear, body and faceprotective shields; spectacles,] ((sunglasses;)) [spectacle frames, spectacle cases;] luminous signs, luminous signs for advertising; [electronic scoreboards]</p> <p>Class 010. First use: First Use: 0 First Use In Commerce: 0 [Condoms]</p> <p>Class 011. First use: First Use: 0 First Use In Commerce: 0 Apparatus for refrigerating, namely, refrigerators, refrigerated drinks cabinets; ((and bar lamps))</p> <p>Class 012. First use: First Use: 0 First Use In Commerce: 0 [Vehicles, namely, cars, trucks, motorcycles, dirt bikes, scooters, bicycles, motor-driven cycles, airplanes, gliders,ultra-light aircraft, stunt planes, boats, speedboats, sailboats, dune buggies and all-terrain vehicles; bicycle accessories, namely, saddle covers for bicycles; saddle covers for motorcycles; automobile accessories, namely, seats and seatcovers, steering wheels]</p> <p>Class 013. First use: First Use: 0 First Use In Commerce: 0 [Fireworks]</p> <p>Class 014. First use: First Use: 0 First Use In Commerce: 0 [Goods in precious metals and their alloys or coated therewith, namely, ice buckets, ashtrays, cigar and cigarette cases, cigar and cigarette holders, key rings;] jewelry; [including costume jewelry, cufflinks and tie pins;] horological and chronometric instruments, namely, ((watches,)) clocks, [timers,] wall clocks; [alarm clocks and desk clocks;] ((wrist watches)) [and watch straps; clock cases]</p> <p>Class 015. First use: First Use: 0 First Use In Commerce: 0 [Musical instruments; musical boxes; electric and electronic musical instruments]</p> <p>Class 016. First use: First Use: 0 First Use In Commerce: 0 [Paper goods, namely, table napkins; ((printed matter, namely, books and magazines featuring musical performances, concerts, sports events, sports competitions and exhibitions, health and nutrition, fitness, athletic training and conditioning, athletic equipment and clothing, travelogues, humor and comedy performances and exhibitions and competitions of skill;))] ((printed matter, namely, calendars;)) [diaries, agendas, notebooks and note cards;] photo-</p>
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graphs; posters; [paper flags;] signboards of paper or cardboard; ((iron-on and plastic transfers,)) stickers; ((printed labels not of textile, including iron-on labels not of textile;)) printed instructional and teaching material in the fields of [music,] sports, sports events, sports competitions, [and exhibitions, health and nutrition,] fitness, athletic training and conditioning, [travelogues, humor and comedy performances and exhibitions] and competitions of skill; slate boards for writing and blackboards

Class 018. First use: First Use: 0 First Use In Commerce: 0

Leather and imitations of leather and goods made from these materials, namely, bags [and other containers not adapted to other objects to be carried] ((and small goods of leather, namely, [purses,] pocket wallets;)) [key wallets; garment bags for travel, school satchels;] backpacks, rucksacks; [trunks and] ((traveling bags;)) [traveling sets in the nature of luggage;] umbrellas

Class 019. First use: First Use: 0 First Use In Commerce: 0

[Decorative objects and works of art of stone, concrete or marble]

Class 020. First use: First Use: 0 First Use In Commerce: 0

[Mirrors,] ((picture frames;)) display boards and signboards of ((wood or)) plastic

Class 021. First use: First Use: 0 First Use In Commerce: 0

Drinking vessels ((and drinking glasses;)) drinking flasks sold empty; ((beverage glassware))

Class 022. First use: First Use: 0 First Use In Commerce: 0

Tents, awnings not of metal, ((sails))

Class 024. First use: First Use: 0 First Use In Commerce: 0

Textile banners, cloth flags; labels, including [iron-on labels, of textile, textile stickers,] sew-on labels; wall hangings of textile

Class 025. First use: First Use: 0 First Use In Commerce: 0

((Footwear, footwear for sports;)) clothing, namely, shirts, ((pants,)) T-shirts, sweat shirts ((and sweat pants, shorts,)) blouses, [skirts,] ((jumpers,)) [socks,] hats, caps; ((outerwear, namely, jackets;)) [and coats;] activewear, namely, ((shorts,)) shirts, hats, caps and visors; bandannas, neckerchiefs, ((coats, jackets,)) sweaters; [sleepwear;] resort wear, namely, [shorts, shirts,] t-shirts [and pants; suspenders]

Class 026. First use: First Use: 0 First Use In Commerce: 0

((Belt clasps))

Class 027. First use: First Use: 0 First Use In Commerce: 0

Non-textile wall hanging; [carpets for automobiles]

Class 028. First use: First Use: 0 First Use In Commerce: 0

Toys, games and playthings, namely, [board games, action figures,] ((toy vehicles;)) [electronic educational game machines for children; sporting articles and equipment, namely, skis, snowboards, scoreboards; special purpose bags for sports equipment, namely, ski bags; ski poles, edges for skis, coverings for skis; baseballs, softballs, basketballs,] soccer balls, [footballs, cricket balls, rugby balls, racquet balls, bowling balls, golf balls, field hockey balls, volley balls,] sport balls; [table tennis balls; hockey sticks;] ((ornaments for Christmas trees except confectionary or illumination articles;)) [in-line skates; paragliders, hang-gliders; skateboards; surfboards; windsurfing boards; elbow and knee pads for athletic use]

Class 030. First use: First Use: 0 First Use In Commerce: 0

[Flavored ices; chewing gums]

Class 032. First use: First Use: 0 First Use In Commerce: 0

[Mineral waters, aerated waters, carbonated waters, flavored waters and other] non-alcoholic beverages, namely, [punches,] soft drinks; [smoothies and

	<p>lemonades;] sports drinks; energy drinks; [non-alcoholic cocktail mixes]</p> <p>Class 033. First use: First Use: 0 First Use In Commerce: 0</p> <p>[Alcoholic beverages excluding beers, namely, rum, vodka, gin, tequila, whiskey, brandy spirits, distilled spirits; alcoholic hot beverages and alcoholic mixed beverages, namely, alcoholic punches and energy drinks; alcoholic beverage mixes, namely, pre-mixed cocktail bases; wine cooler beverages, alcoholic lemonades, fruit drinks and smoothies]</p> <p>Class 034. First use: First Use: 0 First Use In Commerce: 0</p> <p>[Tobacco; smokers' articles, namely, cigarette lighters, cigar cutters and clipper, cigar and cigarette cases not made of precious metal, cigar, cigarette and cigarillo tips and holders not of precious metal, smoking pipes, smoking pipe stands and racks, smoking pipe cleaners, tobacco pouches and other containers for tobacco, ashtrays not made of precious metal; machines for individual rolling of cigarettes; cigarette stuffing machines for personal use; cigar and cigarette-boxes not of precious metals; tobacco and snuff bottles, brushes and containers not made of precious metals; matches; cigarette lighters not made of precious metal]</p> <p>Class 035. First use: First Use: 0 First Use In Commerce: 0</p> <p>Advertising agency services, in particular promotion of goods and services and of competitive events, including competitive events of a sporting nature; dissemination of advertising matter; [organization of trade fairs and exhibitions for commercial or advertising purposes, namely, to advertise and promote specific products, services and events of others in the fields of musical performances, concerts, sports events, sports competitions and exhibitions, health and nutrition, fitness, athletic training and conditioning, athletic equipment and clothing, travelogues, humor and comedy performances and exhibitions and competitions of skill]</p> <p>Class 036. First use: First Use: 0 First Use In Commerce: 0</p> <p>[Financial analysis and consultation]</p> <p>Class 037. First use: First Use: 0 First Use In Commerce: 0</p> <p>[Repair or maintenance of aircraft and automobiles]</p> <p>Class 038. First use: First Use: 0 First Use In Commerce: 0</p> <p>Telecommunication services, namely, [acting as an Internet service provider,] providing multiple-user Internet and computer network access services; transmission of radio [and television] programs</p> <p>Class 039. First use: First Use: 0 First Use In Commerce: 0</p> <p>[Organizing and arranging custom and packaged vacation trips, travel tours and sightseeing tours, and on-location golf, sports and entertainment activities and activities packages sold as a part thereof; transport of persons and goods by air and road; rental of aircraft]</p> <p>Class 041. First use: First Use: 0 First Use In Commerce: 0</p> <p>((Educational services, namely, providing training and arranging and conducting seminars, classes, courses, [conferences] and workshops in the field of sports, athletic competitions, physical fitness and musical entertainment;)) organizing and conducting athletic competitions, sports exhibitions, entertainment events and contests in the nature of athletic competitions, jumping, races, exhibitions and skills-based events for skiers, snowboarders, skateboarders and other winter and board or platform-based sports; organizing and conducting indoor and outdoor musical competitions, band concerts; [and music festivals;] entertainment services, namely, ((providing television programs, cable television programs,)) video and still photo exhibitions and webcast television or video programs via a global computer network, all in the field of the foregoing sports and music entertainment events; [technical consultation and research services in the fields of health and fitness, sports, sports training and physical performance]</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0</p>
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	Restaurant and bar services, namely, operation of permanent, temporary, portable or mobile establishments serving food, beverages and/or snacks of all types; [technical consultation and research services in the field of food and beverages]		
U.S. Registration No.	3561283	Application Date	08/16/2007
Registration Date	01/13/2009	Foreign Priority Date	07/25/2007
Word Mark	RED BULL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 006. First use: First Use: 0 First Use In Commerce: 0 Non-luminous and non-mechanical signboards and panels</p> <p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Magnetic data carriers, namely, blank video tapes and recording discs, and prerecorded video tapes and video discs in the field of aviation, sports, aerobatics, flying competitions, entertainment, athletic competitions, and exhibitions; automatic vending machines; entertainment machines, namely, electronic video game machines for use with televisions; videogame software; machine readable data carriers of all types with programs installed; downloadable electronic publications in the fields of aviation, sports, aerobatics, flying competitions, entertainment, culture, energy drinks, athletic competitions and exhibitions, sports and athletic equipment, clothing and fashion, computers, audio and video equipment, cars and motorcycles, boats and exercise, food and beverages, music, dancing, watercraft, concerts, collegiate activities, and health and nutrition; computer programs for creating and running background images and graphics on computer monitors and computer systems; computer programs for planning, managing and conducting contests, exhibitions and sporting and cultural events; computer programs for e-mail, text messaging, social networking, web browsing and exchanging data, images and files across a computer network and among users of the Internet; computer programs for creating, storing, editing, downloading and playing videos, audio files, music, podcasts and entertainment content on computers, cell phones, PDA's and electronic hand-held terminals and devices; computer game programs; downloadable cell phone ring tones and screen savers; computer programs for handling e-commerce transactions; computer games programs; protective clothing for sports purposes, namely, protective spectacles, protective masks and protective helmets; protective shields, namely, ear, body and face protective shields; marker buoys; wind socks for indicating wind direction and intensity; luminous signs, luminous advertising signs</p> <p>Class 011. First use: First Use: 0 First Use In Commerce: 0 Apparatus for refrigerating, namely, refrigerating display cabinets, refrigerating or freezing showcases; refrigerators, refrigerated drinks cabinets</p> <p>Class 012. First use: First Use: 0 First Use In Commerce: 0</p>		

	<p>Land vehicles; water vehicles, namely, boats; motor racing vehicles, namely, racing cars and racing boats; aircraft, bicycles; refrigerated trucks; parachutes</p> <p>Class 016. First use: First Use: 0 First Use In Commerce: 0</p> <p>Paper, cardboard, and goods made from these materials included in this class, namely, paper or cardboard packaging; packaging containers of paper; paper and plastic bags for packaging; printed matter, namely, leaflets, brochures and folders in the field of sport, culture and energy drinks; photographs; posters; paper and plastic transparencies; flags of paper; signboards of paper or cardboard; stationery; stickers; printed instructional, educational, and teaching materials in the field of sport, culture and energydrinks; black boards</p> <p>Class 018. First use: First Use: 0 First Use In Commerce: 0</p> <p>Leather and imitations of leather and goods made from these materials included in this class, namely, bags, purses, pocket wallets; backpacks, rucksacks; trunks and traveling bags, sports bags, gym bags and overnight bags; umbrellas, parasols</p> <p>Class 019. First use: First Use: 0 First Use In Commerce: 0</p> <p>Transportable buildings not of metal</p> <p>Class 020. First use: First Use: 0 First Use In Commerce: 0</p> <p>Mirrors; furniture and tables made of plastic or metal; display boards and signboards of plastic; containers of plastic</p> <p>Class 021. First use: First Use: 0 First Use In Commerce: 0</p> <p>Kitchen utensils, namely, wire baskets, graters, pot and pan scrapers, rolling pins, sieves, strainers, spatulas, turners, whisks, skimmer, heat-resistant ceramic or glass pans, teapots not of precious metal, non-electric frying pans, cooking pots, bowls not of precious metal, fruit cups not of precious metal, basins or bowls, glass bowls, cups of plastic, non-electric fruit presses for household purposes, garlic presses, bottle openers, napkin rings not of precious metal, shakers, manual cocktail shakers, hand-operated coffee grinders, buckets; drinking vessels and drinking glasses; bottles and drinking flasks; carboys or demijohns, decanters, ice buckets, portable non-electric cold boxes, portable ice chests, ice cube molds</p> <p>Class 022. First use: First Use: 0 First Use In Commerce: 0</p> <p>Tarpaulins</p> <p>Class 024. First use: First Use: 0 First Use In Commerce: 0</p> <p>Textile banners, flags not of paper</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0</p> <p>Clothing and headgear, namely, T-shirts, blouses, sweaters, tops, jackets, vests, anoraks, wind-resistant jackets, aprons, caps, hats, headbands, braces, belts, money-belts, sun visors; sportswear, namely, shirts, pants, polo shirts, sweat-shirts and sweat pants, hooded shirts and sweat shirts, shorts, blouses, skirts, jumpers, jackets and coats; footwear for sports</p> <p>Class 027. First use: First Use: 0 First Use In Commerce: 0</p> <p>Mats, bar mats and matting</p> <p>Class 028. First use: First Use: 0 First Use In Commerce: 0</p> <p>Games and playthings, namely, board games, action figures, toy vehicles, electronic educational game machines for children, playing cards, card games; sporting articles, namely, skis, snowboards, manual scoreboards, ice skates and snowshoes; winter sports equipment, namely, skis, snowboards; special purpose bags for sports equipment, namely, bags for volleyball sets, skis and surfboards; balls; scale model vehicles, toy vehicles, radio-controlled scale model vehicles, radio-controlled toy vehicles; nets for ball games; paragliders, hanggliders; skateboards; surfboards, body boards, windsurfing boards; elbow and knee pads</p> <p>Class 032. First use: First Use: 0 First Use In Commerce: 0</p>
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	<p>Non-alcoholic beverages, namely, sportsdrinks, energy drinks, and soft drinks Class 033. First use: First Use: 0 First Use In Commerce: 0</p> <p>Alcoholic beverages, namely, vodka Class 035. First use: First Use: 0 First Use In Commerce: 0</p> <p>Advertising, namely, promotion of goodsand services and of competitive events,namely, competitive events of a sporting nature; arranging of advertising; distribution of goods for advertising purposes; online advertising on a computer network; bringing together for the benefit of others a variety of goods, enabling customers to conveniently view and purchase those goods</p> <p>Class 041. First use: First Use: 0 First Use In Commerce: 0</p> <p>Entertainment, namely, musical performances and radio and television enter-tainment programs in the field of sports, culture, lifestyle, news and music, theatreperformances, sport and music competitions and festivals, video and still photoexhibitions; sporting and cultural activities, namely, the staging of sports competitions; night clubs and discotheque services; organization of fairs and ex-hibitions for cultural, sporting and educational purposes; publication of electronic journals on-line; electronic desktop publishing; multimedia publishing of books, magazines, journals, and electronic publications; publication of electronic publica-tions; publication of electronic magazines; publication of electronic newspapers accessible online; game servicesprovided on-line</p> <p>Class 043. First use: First Use: 0 First Use In Commerce: 0</p> <p>Services for providing food and drinks,namely, bar services, cafes, cafeterias, canteens, snack bars, restaurants, self-service restaurants; food and drink cater-ing</p>
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U.S. Registration No.	4031959	Application Date	09/12/2008
Registration Date	09/27/2011	Foreign Priority Date	NONE
Word Mark	RED BULL ARENA		
Design Mark			
Description of Mark	<p>The mark consists of a red bull with white accents against a yellow soccer ballin-side a stadium. The outline of the stadium is blue. The inside of the stadiumis blue and grey. The stylized wording "RED BULL ARENA" appears beneath the design. The wording "RED BULL" appears in the color red. The wording "ARENA" appears in the color blue.</p>		
Goods/Services	<p>Class 035. First use: First Use: 2010/03/20 First Use In Commerce: 2010/03/20 Providing food, beverage and souvenir stands and concession stands featuring food, beverages, clothing, sporting equipment and souvenirs in connection with, atthe location of and during the sports competitions, concerts and other events at a sports and entertainment events stadium</p> <p>Class 041. First use: First Use: 2010/03/20 First Use In Commerce: 2010/03/20 Entertainment, namely, live musical performances; sporting and cultural activit-ies, namely, the staging of competitions; organization of exhibitions for cultural,</p>		

	sporting and educational purposes, namely, sports events, exhibitions and competitions Class 043. First use: First Use: 2010/03/20 First Use In Commerce: 2010/03/20 Arena services, namely, providing stadium facilities for sports events, cultural exhibitions and musical concerts Class 045. First use: First Use: 2010/03/20 First Use In Commerce: 2010/03/20 Licensing of food, beverage and souvenir stands and concession stands at a sports and entertainment events stadium
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	RED BULL, RED BULL & Two Bulls Logo, Two Bulls Logo, (Single) Bull Logo, and other marks incorporating the word BULL, and/or the design of a bull or bovine animal		
Goods/Services	Beverages, energy drinks, sports drinks, soft drinks, various items of clothing, restaurant services, cafe services, bar services, and cocktail lounge services, and various other products and services related or complementary thereto		

Attachments	78347148#TMSN.jpeg(bytes) 76355425#TMSN.gif(bytes) 79047033#TMSN.jpeg(bytes) 77569283#TMSN.jpeg(bytes) STOCKMARKET & Bull Device-4481899-Petition to Cancel.pdf(49102 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	05/19/2014

clothing, restaurant services, café services, bar services, and cocktail lounge services, and various other products and services related or complementary thereto.

2. Petitioner Red Bull is the owner of the corporate name, trade name and trademark RED BULL, having used said name, mark and logo continuously in interstate commerce on and in connection with its beverages, energy drinks, sports drinks, soft drinks, various items of clothing, restaurant services, café services, bar services, and cocktail lounge services, and various other products and services related or complementary thereto since long prior to the October 8, 2012 claimed first use date of **Registrant's STOCKMARKET & Bull Logo Mark**, petitioned to be cancelled herein.

3. Opposer Red Bull is the owner of the valid and subsisting U.S. Trademark Reg. No. 2,946,045 for the Bull Logo Mark, which was registered on the principal register on May 3, 2005, and currently covers, in relevant part, "*non-alcoholic beverages, namely energy drinks and hypertonic drinks,*" in Int'l Class 32. A combined Declaration of Use and Incontestability under Sec 8 & 15 of the Trademark Act was acknowledged and accepted in relation to, *inter alia*, the relevant goods above on January 13, 2011. A copy of the TSDR record for this registration showing the current status and title is attached hereto in Exhibit 1.

4. Opposer Red Bull is the owner of the valid and subsisting U.S. Trademark Reg. No. 3,051,994 for the Bull Logo Mark, which was registered on the principal register on January 31, 2006, and currently covers, in relevant part, "*non-alcoholic beverages, namely, soft drinks; sports drinks; energy drinks,*" in Int'l Class 32. A Declaration of Use under Sec 8 of the Trademark Act was accepted in relation to, *inter alia*, the relevant goods above on March 23, 2012. A Declaration of Incontestability under Sec 15 of the Trademark Act was accepted in relation to, *inter alia*, the relevant goods above on December 2, 2012. A copy of the TSDR record for this registration showing the current status and title is attached hereto in Exhibit 1.

5. Opposer Red Bull is the owner of the valid and subsisting U.S. Trademark Reg. No. 3,561,283 for the RED BULL & Bull Logo Mark, which was registered on the principal register on January 13, 2009, and currently covers, in relevant part, “*non-alcoholic beverages, namely, sports drinks, energy drinks, and soft drinks,*” in Int'l Class 32, “*Alcoholic beverages, namely, vodka,*” in Int'l Class 33, and “*Services for providing food and drinks, namely, bar services, cafes, cafeterias, snack bars, restaurants, self-service restaurants, food and drink catering,*” in Int'l Class 43. A copy of the TSDR record for this registration showing the current status and title is attached hereto in Exhibit 1.

6. Petitioner Red Bull is the owner of the valid and subsisting U.S. Trademark Reg. No. 4,031,959 for the RED BULL ARENA & Bull Logo Mark, which was registered on the principal register on September 27, 2011, and currently covers, in relevant part, “*Providing food, beverage and souvenir stands and concessions stands featuring food, beverages, clothing, sporting equipment and souvenirs in connection with, at the location of and during the sports competitions, concerts and other events at a sports and entertainment events stadium,*” in Int'l Class 35. A copy of the TSDR record for this registration showing the current status and title is attached hereto in Exhibit 1.

7. Petitioner Red Bull is also the owner of various common law rights for the trademarks 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 for various goods and services, all of which (plus the above mentioned registrations in Paragraphs 4 and 5) are collectively referred to herein as Red Bull’s “**RED BULL and Bull Logo Marks**”.

8. Since long prior to the October 8, 2012 claimed first use date in U.S. commerce of **Registrant’s STOCKMARKET & Bull Logo Mark**, petitioned to be cancelled herein, Petitioner Red Bull has continuously used the **RED BULL and Bull Logo Marks** in interstate

commerce on or in connection with beverages, energy drinks, sports drinks, soft drinks, various items of clothing, restaurant services, café services, bar services, and cocktail lounge services, and various other products and services related or complementary thereto.

9. Red Bull's various **RED BULL and Bull Logo Marks**, all of which include the word BULL and/or the design of a bull, are and have become valuable assets of Petitioner Red Bull, identifying its beverages, energy drinks, sports drinks, soft drinks, various items of clothing, restaurant services, café services, bar services, and cocktail lounge services, and various other products and services of Red Bull, and distinguishing Red Bull's products and services from the products and services of others.

10. Petitioner Red Bull's **RED BULL and Bull Logo Marks** as described herein are 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.

11. 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 such as beverages, energy drinks, sports drinks, soft drinks, and various items of clothing, and services such as restaurant services, café services, bar services, and cocktail lounge services, and various other products and services related or complementary thereto in the United States and throughout the world, the **RED BULL and Bull Logo Marks** have become and are famous marks, and are recognized in the United States and elsewhere as such.

12. The depictions of a bull, as used and registered by Petitioner typically show a bull in a charging, angry, aggressive, fighting, and/or “mad” pose, posture, and expression.

13. Petitioner Red Bull’s well-known energy drink and beverage products are often purchased and served at bars, clubs, cafes, restaurants and similar on-premise eating and drinking establishments.

14. Petitioner Red Bull’s well-known energy drink and beverage products are often referred to as “the Bull” or “a Bull”, with consumers asking for “a Bull”.

15. Registrant, Stockmarket Burger, Inc. (“Registrant”), whose address is listed in the USPTO records as 13603 Marina Pointe Drive, C520, Marina Del Rey, CA 90292, obtained Reg. No. 4,481,899 on February 11, 2014, claiming use in commerce of the trademark STOCKMARKET & Bull Device on or in connection with the Int’l. Class 43 services set forth in the registration. **Registrant’s STOCKMARKET & Bull Logo Mark** does not claim color as a feature of the mark.

16. Registrant has used **Registrant’s STOCKMARKET & Bull Logo Mark** in the color red, the primary color used by Petitioner (and the image equivalent of Petitioner’s corporate name and house mark) on or in connection with the well-known and famous **RED BULL and Bull Logo Marks**. This highlights Registrant’s direct reference to Petitioner and Petitioner’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

17. Petitioner repeats and realleges each and every allegation contained in paragraphs 1-16, inclusive, as if fully recited in this paragraph.

18. **Registrant’s STOCKMARKET & Bull Logo Mark** so resembles Petitioner Red Bull’s **RED BULL and Bull Logo Marks** as to be likely, when applied to the services of Reg. No. 4,481,899, to cause confusion, mistake or deception among purchasers, users, and the public, thereby damaging Red Bull.

19. The services on which Registrant asserts a bona fide use in commerce of **Registrant's STOCKMARKET & Bull Logo Mark** 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 Petitioner Red Bull's products and related goods and services.

20. Simultaneous use of **Registrant's STOCKMARKET & Bull Logo Mark** on the services set forth in Reg. No. 4,481,899 and Petitioner Red Bull's **RED BULL 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 Red Bull.

21. Use by Registrant of **Registrant's STOCKMARKET & Bull Logo Mark** on the services set forth in Reg. No. 4,481,899 is likely to lead to the mistaken belief that Registrant's products are sponsored by, affiliated with, approved by or otherwise emanate from Petitioner Red Bull, thereby damaging Red Bull.

22. Upon information and belief, Registrant knew or should have known of Red Bull's prior adoption and use of its **RED BULL and Bull Logo Marks**, and therefore could not have formed the requisite good faith belief that Registrant is the owner of the mark, and that no other person, firm, corporation or association has the right to use said mark in commerce, and consequently knew that such use is and would be in derogation and violation of Red Bull's rights.

23. As laid out in Paragraphs 17-22 above, **Registrant's STOCKMARKET & Bull Logo Mark** is likely to cause confusion with Red Bull's prior **RED BULL and Bull Logo Marks**, in violation of § 2(d) of the Trademark Act.

Claim 2: Nonuse and False Declaration

24. Petitioner repeats and realleges each and every allegation contained in Paragraphs 1-23, inclusively, as if fully recited in this paragraph.

25. On October 15, 2013, Registrant filed a Statement of Use for **Registrant's STOCKMARKET & Bull Logo Mark**, alleging use in commerce of the mark on or in connection with all of the services of Reg. No. 4,481,899, namely, "*Bar services; Café services; Cocktail lounge services; Coffee bars; Coffee shops; Coffee supply services for offices; Contract food services; Fast-food restaurant services; Frozen yogurt shop services in the nature of a restaurant; Mobile restaurant services; Rental of drink dispensing machines; Rental of drinking water dispensers; Restaurant and cafe services; Restaurant services; Take-out restaurant services; Wine bars*", and claiming a date of first use at least as early as October 8, 2012.

26. On October 15, 2013, along with its Statement of Use, Registrant filed a specimen allegedly showing use in commerce of **Registrant's STOCKMARKET & Bull Logo Mark** on or in connection with the services of Reg. No. 4,481,899. Registrant described the specimen as a "promotional ad design for web and print" in the Statement of Use.

27. On information and belief based on the results of a due investigation of public records, Registrant had not made any actual commercial or bona fide trademark use of **Registrant's STOCKMARKET & Bull Logo Mark** in commerce or otherwise prior to, as of, or since the October 8, 2012 first use date alleged in the Statement of Use filed for Reg. No. 4,481,899, on the services set forth therein, or on or in connection with related goods or services.

28. On information and belief based on the results of a due investigation of public records, Registrant knowingly did not have use in commerce of **Registrant's STOCKMARKET & Bull Logo Mark** on or in connection with any of the services in Reg. No. 4,481,899 as of the October 8, 2012 first use date alleged in the Statement of Use.

29. Based on the above, as Registrant had not rendered any of the services of Reg. No. 4,481,899 in commerce as of the date alleged in the application or as of the date of the filing of the Statement of Use, Registrant filed a false declaration, and **Registrant's**

STOCKMARKET & Bull Logo Mark should be refused on the grounds of nonuse and false declaration.

Wherefore, Red Bull requests that registration of the mark sought to be registered herein, **STOCKMARKET & Bull Device** of Reg. No. 4,481,899, be denied and that this Petition for Cancellation be sustained.

Please recognize Martin R. Greenstein, Neil D. Greenstein, Leah Z. Halpert, Angelique M. Riordan and Lee D. Green, members in good standing of the Bar of the State of California, c/o TechMark, 4820 Harwood Road, 2nd Floor, San Jose, California 95124-5273, Tel: 408-266-4700, as Petitioner Red Bull's attorneys in connection with this opposition proceeding. All correspondence should be directed to Martin R. Greenstein.

RED BULL GMBH
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Dated: May 19, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITION FOR CANCELLATION** is being served on May 19, 2014, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to the owner of record (Registrant) at the address given on the TSDR website:

Stockmarket Burger, Inc.
13603 Marina Pointe Dr. C520
Marina Del Rey, CA 90292

/Leah Z. Halpert/
Leah Z. Halpert