

TTAB

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

In the Matter of Application Serial No. 76/139,362
Published in the *Official Gazette* on October 2, 2001

VITALITY FOODSERVICE, INC.

Opposer,

RED BULL GMBH

Applicant.

Opposition No.



Hon. Assistant Commissioner for Trademarks
Box TTAB FEE
2900 Crystal Drive
Arlington, VA 22202-3513

12-28-2001

U.S. Patent & TMO/TM Mail Rcpt Dt. #61

NOTICE OF OPPOSITION

Sir:

Opposer, Vitality Foodservice, Inc. believes it would be damaged by the registration of the service mark VITALIZES, as shown in the above-identified application, and hereby opposes the same. As grounds for this opposition it is alleged that:

1. Opposer Vitality Foodservice, Inc. is a corporation of the state of Florida having an address of 400 N. Tampa Street, Tampa, Florida.

2. Since at least as early as March 5, 1935, a date long prior to the filing date of the present application, Opposer and its predecessors, Lykes Pasco, Inc., and Lykes Pasco Packing Co. have provided throughout the United States frozen concentrated lemonade, orange juice, grapefruit juice, grape juice, apple juice and iced tea under the trademark VITALITY. Opposer

01/03/2002 KBEACH 00000056 76139362

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TPA#1734058.01

has sold in commerce frozen concentrated lemonade, orange juice, grapefruit juice, grape juice, apple juice and iced tea under the trademark VITALITY. As a result of its extensive sale of frozen concentrated lemonade, orange juice, grapefruit juice, grape juice, apple juice and iced tea, Opposer has become well known for frozen concentrated lemonade, orange juice, grapefruit juice, grape juice, apple juice and iced tea under the VITALITY trademark.

3. Since at least as early as July 31, 1957, a date long prior to the filing date of the present application, Opposer and its predecessors, Lykes Pasco, Inc., and Lykes Pasco Packing Co. have provided throughout the United States concentrated juice dispensing units under the trademark VITALITY. Opposer has sold in commerce concentrated juice dispensing units under the trademark VITALITY. As a result of its extensive sale of concentrated juice dispensing units, Opposer has become well known for concentrated juice dispensing units under the VITALITY trademark.

4. Since at least as early as January 31, 1962, a date long prior to the filing date of the present application, Opposer and its predecessors, Lykes Pasco, Inc., and Lykes Pasco Packing Co. have provided throughout the United States installation and maintenance services of juice dispensing equipment under the trademark VITALITY. Opposer has provided installation and maintenance services of juice dispensing equipment in commerce under the trademark VITALITY. As a result of its extensive installation and maintenance services of juice dispensing

equipment, Opposer has become well known for installation and maintenance services of juice dispensing equipment under the VITALITY trademark.

5. Since at least as early as June 28, 1971, a date long prior to the filing date of the present application, Opposer and its predecessors, Lykes Pasco, Inc., and Lykes Pasco Packing Co. have provided throughout the United States tomato and cranberry juice concentrates under the trademark VITALITY. Opposer has sold in commerce tomato and cranberry juice concentrates under the trademark VITALITY. As a result of its extensive sale of tomato and cranberry juice concentrates, Opposer has become well known for tomato and cranberry juice concentrates under the VITALITY trademark.

6. Since at least as early as December 5, 1991, a date long prior to the filing date of the present application, Opposer and its predecessor, Lykes Pasco, Inc. have provided throughout the United States refrigerated dispensing units under the trademark VITALITY EXPRESS. Opposer has sold in commerce refrigerated dispensing units under the trademark VITALITY EXPRESS. As a result of its extensive sale of refrigerated dispensing units, Opposer has become well known for refrigerated dispensing units under the VITALITY EXPRESS trademark.

7. Since at least as early as December 17, 1991, a date long prior to the filing date of the present application, Opposer and its predecessor, Lykes Pasco, Inc. have provided throughout the United States fruit juices, fruit juice concentrate and fruit drinks containing water under the trademark VITALITY EXPRESS PAK. Opposer has sold in commerce fruit juices, fruit juice

concentrate and fruit drinks containing water under the trademark VITALITY EXPRESS PAK. As a result of its extensive sale of fruit juices, fruit juice concentrate and fruit drinks containing water, Opposer has become well known for fruit juices, fruit juice concentrate and fruit drinks containing water under the VITALITY EXPRESS PAK trademark.

8. Opposer is the owner of United States Trademark Registration No. 907,932 for the mark VITALITY for concentrated juice dispensing units, frozen concentrated lemonade, frozen concentrated orange juice, grapefruit juice, grape juice, apple juice and iced tea, which was registered on February 16, 1971.

9. Opposer is the owner of United States Trademark Registration No. 919,962 for the mark VITALITY for installation and maintenance of juice dispensing equipment, which was registered on September 7, 1971.

10. Opposer is the owner of United States Trademark Registration No. 966,673 for the mark VITALITY for tomato and cranberry juice, which was registered on August 21, 1973.

11. Opposer is the owner of United States Trademark Registration No. 1,729,171 for the mark VITALITY EXPRESS for refrigerated dispensing units for beverages, which was registered on November 3, 1992.

12. Opposer is the owner of United States Trademark Registration No. 1,792,848 for the mark VITALITY EXPRESS PAK for fruit juices, fruit juice concentrate and fruit drinks containing water, which was registered on September 14, 1993.

13. By the application hereby opposed, Applicant Red Bull GmbH seeks to register, based on an intent to use, the designation VITALIZES as a trademark for, inter alia non-alcoholic beverages, namely, soft drinks; fruit drinks and fruits juices; powders and syrups for making soft drinks; sports drinks and non-alcoholic cocktails in International Class 32, goods intimately related in purchasers' minds with Opposer's fruit drinks, fruit juices, frozen concentrated fruit juices, and fruit juice concentrates.

14. From the information set forth in Applicant's trademark application file, Applicant has never provided the goods for which the registration is being sought, claiming only an intent to use the mark in the future, while Opposer has made extensive use of the trademark VITALITY for more than 65 years in interstate commerce from a period long prior to the filing date of Applicant's intent-to-use application.

15. The trademark VITALIZES is likely, when applied to the goods sought to be registered by the Applicant, to cause confusion or mistake or to deceive, with consequent injury to Opposer and to the public.

16. Opposer will be damaged by the registration sought by Applicant, because said registration will support and assist Applicant in confusing and misleading use of Applicant's mark sought to be registered and will give color of exclusive statutory rights to Applicant in violation and derogation of the rights of Opposer, as set forth above.

Wherefore, Opposer believes it will be damaged by the registration sought by Applicant and pray that the opposition be sustained and registration of said mark be denied.

Please recognize as attorneys for Opposer in this proceeding and address all communications relating to this matter to C. Douglas McDonald and Andrew C. Greenberg, and the firm of Carlton Fields, P.A., P. O. Box 3239, Tampa, Florida 33601. Enclosed is our check in the amount of \$300.00 to cover the filing fee. Please charge any additional amounts required or credit any overpayment to our Deposit Account No. 03-0683; a duplicate of this letter is enclosed for this purpose.

Dated: Tampa, Florida
December 28, 2001

VITALITY FOODSERVICE, INC.

By:



C. Douglas McDonald
Andrew C. Greenberg
Carlton Fields, P.A.
P. O. Box 3239
Tampa, Florida 33601
Tel.: (813) 223-7000
Fax: (813) 229-4133

In the Matter of Application Serial No. 76/139,362
Vitality Foodservice, Inc. v. Red Bull GmbH

NOTICE OF OPPOSITION

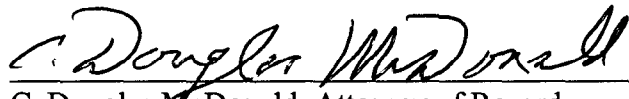
Page 7

CERTIFICATE OF EXPRESS MAILING

EXPRESS MAIL Mailing Label No. EJ803684589

Date of Deposit: December 28, 2001

I hereby certify that an original and two copies of this Notice of Opposition are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and addressed to BOX TTAB FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.


C. Douglas McDonald, Attorney of Record


Date



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ATTORNEYS AT LAW

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December 28, 2001

BOX TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

VIA EXPRESS MAIL #EJ803684589



12-28-2001

U.S. Patent & TMO/TM Mail Rcpt Dt. #61

Re: Notice of Opposition
Mark: VITALIZES
Registration No.: 76/139,362
Vitality Foodservices, Inc. v. Red Bull GmbH
Our File No.: 42960/01728-320

Dear Sir:

On behalf of our client, we are enclosing the following documents for filing with the Trademark Trial and Appeal Board:

1. Original and two (2) copies of a Notice of Opposition; and
2. Our check in the amount of \$300.00/class to cover the filing fee. Please charge any additional amounts required or credit any overpayment to our Deposit Account No. 03-0683; a duplicate of this letter is enclosed for this purpose.

Also enclosed is a self-addressed postal card which we request that you return to this office indicating your receipt and the filing date of this Petition.

Very truly yours,

C. Douglas McDonald

CDM/dn
Enclosures

cc: Laura Cope-LeClair (w/encl.)
Nathaniel L. Doliner, Esq. (w/o encl.)

Assistant Commissioner for Trademarks
December 28, 2001
Page 2

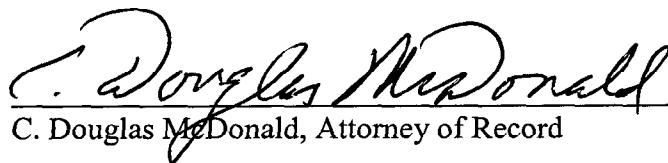
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Application No.: 76/139,362

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C. Douglas McDonald, Attorney of Record

12/28/01
Date