



STAR

TRADEMARKS  
Atty. Docket No. 50200-01

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

Never Summer Industries, Inc.,	)	Opposition No.: _____
Opposer,	)	
	)	Serial No.: 78/201,327
	)	
v.	)	Mark: NEVER SUMMER ALE
	)	
Rockies Trademarks, Inc.,	)	
Applicant.	)	

BOX TTAB  
Commissioner for Trademarks  
U.S. Patent and Trademark Office  
2900 Crystal Drive  
Arlington, Virginia 22201-3513



01-23-2004  
U.S. Patent & TMO/TM Mail Rcpt Dt. #57

**NOTICE OF OPPOSITION**

Never Summer Industries, Inc., a corporation organized under the laws of Colorado, having a place of business at 5077 Colorado Boulevard, Denver, Colorado 80216, believes it will be damaged and injured by the registration of the mark NEVER SUMMER ALE for "beer" in International Class 32, as shown in Application Serial No. 78/201,327, filed on January 8, 2003 by Rockies Trademarks, Inc. (hereinafter "Applicant"), and published on August 26, 2003 at page TM 304 of the *Official Gazette for Trademarks*.

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Opposer alleges, solely for the purpose of this proceeding, as grounds for opposition, the following:

1. Applicant filed Application Serial No. 78/201,327 for NEVER SUMMER ALE for "beer" in International Class 32, on January 8, 2003, based on use of the mark under Section

1(a) of the Lanham Act, as evidenced by publication of said mark on August 26, 2003 at page TM 304 of the *Official Gazette for Trademarks*.

2. Opposer is the owner of the following United States registrations and applications, among others:

Reg./App. No.	Mark	Goods/Services
1,941,131	<b>NEVER SUMMER NS &amp; Design</b>	Snowboards, snowboard bindings and parts therefor, snowboard skid pads, and snowboard boots in International Class 28
2,728,730	<b>NEVSUM</b>	Clothing, namely, outerwear, namely, coats, vests, sweaters pants, sweatpants, gloves, mittens and scarves; shirts, t-shirts, sweatshirts, beanies, hats, caps, headwear, jackets and snowboard boots in International Class 25; and  Sporting articles, namely, snowboards, snowboard bindings and parts therefor and snowboard skid pads in International Class 28
2,752,003	<b>NEVER SUMMER</b>	Clothing, namely, outerwear, namely, coats, vests, sweater, pants, sweatpants, gloves, mittens and scarves; shirts, t-shirts, sweatshirts, beanies, hats, caps, head wear, jackets and snowboard boots in International Class 25; and  Sporting articles, namely, snowboards, snowboard bindings and parts therefor and snowboard skid pads in International Class 28
76/438,796	<b>NEVER SUMMER &amp; Design</b>	Clothing, namely, socks, outerwear, namely, coats, vests, sweaters, pants, sweatpants, gloves, mittens and scarves; shirts, t-shirts, sweatshirts, beanies, hats, caps, headwear, jackets and snowboard boots in International Class 25; and  Sporting articles, namely, snowboards, snowboard bindings and parts therefor and snowboard skid pads boots in International Class 28

Reg./App. No.	Mark	Goods/Services
76/438,797	<b>NEVER SUMMER &amp; Design</b>	Clothing, namely, socks, outerwear, namely, coats, vests, sweaters, pants, sweatpants, gloves, mittens and scarves; shirts, t-shirts, sweatshirts, beanies, hats, caps, headwear, jackets and snowboard boots in International Class 25; and  Sporting articles, namely, snowboards, snowboard bindings and parts therefor and snowboard skid pads in International Class 28
76/438,652	<b>NEVER SUMMER NS &amp; Design</b>	Clothing, namely, socks, outerwear, namely, coats, vests, sweaters, pants, sweatpants, gloves, mittens and scarves; shirts, t-shirts, sweatshirts, beanies, hats, caps, headwear, jackets and snowboard boots in International Class 25; and  Sporting articles, namely, snowboards, snowboard bindings and parts therefor and snowboard skid pads in International Class 28

3. Opposer is also the owner of common law rights in the marks listed above. The marks listed above and the corresponding common law marks are referred to hereinafter collectively as the “**NEVER SUMMER Family of Marks**”. Opposer has used marks in the **NEVER SUMMER Family of Marks** in interstate commerce for more than 12 years. Additionally, Opposer owns numerous applications for the **NEVER SUMMER Family of Marks** in Canada and the European Community.

4. Opposer is in the business of offering a wide range of goods relating to outdoor sports including without limitation clothing and sporting goods under the **NEVER SUMMER Family of Marks**.

5. Based on information and belief, Applicant is using its alleged **NEVER SUMMER ALE** mark on labels which also depict individuals taking part in outdoor sports including snowboarding.

6. Opposer has prominently and extensively used, promoted and advertised its **NEVER SUMMER** Family of Marks for many years throughout the United States. By virtue of Opposer's efforts, the expenditure of considerable sums for promotional activities, and by virtue of the excellence of Opposer's goods, Opposer has gained a most valuable reputation in its **NEVER SUMMER** Family of Marks.

7. Opposer's **NEVER SUMMER** Family of Marks are famous, and became famous prior to the filing date of Applicant's application and prior to Applicant's use of Applicant's mark captioned above. Opposer's **NEVER SUMMER** Family of Marks is therefore entitled to a high degree and wide zone of protection. If Applicant's alleged trademark captioned above is allowed to register, such registration will dilute the distinctive quality of Opposer's famous **NEVER SUMMER** Family of Marks.

8. Applicant's alleged mark "so resembles a mark registered in the Patent and Trademark Office, or a mark . . . previously used in the United States and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d).

9. If Applicant is permitted to use and register its alleged mark captioned above, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the confusingly similar nature of Applicant's alleged mark captioned above and Opposer's **NEVER SUMMER** Family of Marks. Furthermore, any defect, misrepresentation, objection or fault found with Applicant's goods promoted under his alleged mark captioned above would necessarily reflect on and seriously injure the reputation that Opposer has established through use of its **NEVER SUMMER** Family of Marks.

10. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

11. For the reasons set forth in the foregoing paragraphs, Applicant is not entitled to register its alleged mark and the application should be denied in accordance with Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that Application Serial No. 78/201,327 be rejected, and that registration of Applicant's alleged mark shown and specified therein be refused and denied, and that this Opposition be sustained in favor of Opposer.

Opposer hereby gives notice under Rule 2.122(d) of the Trademark Rules of Practice that at hearing and in any appeal on this opposition proceeding, it will rely on Opposer's United States registrations and applications as referenced above as evidence in support of this Notice of Opposition.

A duplicate copy of this Notice of Opposition and a check for \$300 for the requisite government filing fee are enclosed herewith. Please deduct any additional fees due from Deposit Account 03-3370.

Respectfully submitted,

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Date: January 23, 2004