

Client Matter No. 522727-001

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

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RUDOLF WILD GMBH & CO. KG	:
and WILD FLAVORS, INC.	:
	:
Opposers,	:
	:
	:
v.	:
	:
BIG BRANDS INTERNATIONAL, INC.	:
	:
Applicant.	:
-----X	

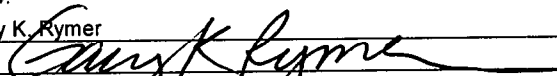
Opposition No.
Serial No. 78/251,935

Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

NOTICE OF OPPOSITION

In the matter of the pending Application Serial No. 78/251,935 filed on May 20, 2003 by Big Brands International, Inc. (hereinafter "Applicant") for the mark WILD BUZZ for sports drinks; energy drinks; isotonic drinks, hypertonic drinks and hypotonic drinks, for use and/or as required by athletes and those engaged in active or stressful sports and activities in

07/16/2004 TSMITH 00000014 194709 78251935
01 FC:6402 300.00 DA

Certificate of Mailing by "Express Mail" (37 C.F.R. 1.10)
Number: EL594386553US
Date of Deposit: June 24, 2004
I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service on the date indicated above and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.
Name: Gary K. Rymer
Signature: 

Class 32, published in the Official Gazette of December 30, 2003 at TM 304 (hereinafter "Application"), Rudolf Wild GmbH & Co. KG and its sister company and licensee, Wild Flavors, Inc., (hereinafter collectively "Opposers") believe that they will be damaged by the registration of the Application and hereby give notice of their intention to oppose the Application for registration. The grounds are as follows:

1. Opposer, Rudolf Wild GmbH & Co. KG is a limited liability partnership existing under the laws of Germany located at Rudolf Wild Straße 4-6, D-69214 Eppelheim-Heidelberg, Germany (hereinafter "Rudolf Wild").

2. Opposer, Wild Flavors, Inc. is a Delaware corporation located at 1261 Pacific Avenue, Erlanger, Kentucky 41018 (hereinafter "Wild Flavors") and is a sister company and licensee of Rudolf Wild.

3. For many years prior to the date of filing by Applicant, Opposers have been using the trademarks WILD, WILD & Design and composite marks containing the term "WILD" therein in foreign commerce with the United States and interstate commerce within the United States in connection with flavors, aromas, essences and distillates used in the preparation of foods and soft drinks and beverages of various kinds and for fruit based liquid ingredients for use in the preparation of other foods and beverages.

4. Wild Flavors uses the WILD and WILD & Design marks for, inter alia, flavors and ingredients for non-alcoholic and alcoholic beverages and foods, including flavoring and coloring for energy and sports drinks.

5. Rudolf Wild is the owner of U.S. Registration No. 1,296,602 issued on September 18, 1984 for the mark WILD for fruit based liquid ingredient for use in the preparation of other foods. This registration is valid and subsisting, in full force and effect and incontestable. A copy of Registration No. 1,296,602 is annexed hereto as Exhibit 1.

6. Rudolf Wild is the owner of U.S. Registration No. 1,586,995 issued on March 13, 1990 for the mark WILD & Design for food flavoring, namely, flavors aromas, essences, and distillates not in the nature of essential oils and for flavors, aromas, essences and distillates not in the nature of essential oils for the preparation of soft drinks. This registration is valid and subsisting, in full force and effect and incontestable. A copy of Registration No. 1,586,995 is annexed hereto as Exhibit 2.

7. By reason of extensive distribution, sale and promotion of Opposers' goods in and throughout the United States, Opposers' marks WILD and WILD & Design have acquired substantial goodwill, distinctiveness, secondary meaning and fame as indicating a line of flavors, aromas, essences, and distillates used in the preparation of soft drinks and foods, energy and sports drinks, and fruit-based liquid ingredients for use in foods having their origin exclusively with Opposers.

8. On May 20, 2003, Big Brands International, Inc. filed Application Serial No. 78/251,935 for the mark WILD BUZZ for sports drinks; energy drinks; isotonic drinks, hypertonic drinks and hypotonic drinks, for use and/or as required by athletes and those engaged in active or stressful sports and activities in Class 32.

9. Applicant's mark is likely to cause confusion with Opposers' marks. The mark sought to be registered, namely, WILD BUZZ, contains the word "WILD." Thus, Opposers' entire mark is subsumed in Applicant's mark. Further, as the word "BUZZ" in Applicant's mark has been disclaimed and the word "WILD" is the first word in the mark, the word "WILD" is the dominant portion of Applicant's mark.

10. The goods in the Application are closely related to Opposers' goods. Applicant's mark is for sports and energy drinks. Opposers' goods consist of ingredients and flavors used to flavor foods and non-alcoholic and alcoholic beverages, including flavorings and colorings for sports and energy drinks. Thus, Applicant's goods are closely related to Opposers' goods, as Opposers' goods are the type that could be used to create Applicant's goods. Therefore, consumers are likely to be confused because the goods are sold under confusingly similar marks.

COUNT I

LIKELIHOOD OF CONFUSION

11. Opposers repeat and re-allege the allegations in Paragraphs 1 through 10 as fully set forth herein.

12. In view of the confusing similarity of Applicant's trademark and goods, Applicant's use and registration of the WILD BUZZ is likely to create confusion, mistake and deceive the trade and public into believing that Applicant's goods originate with or are otherwise licensed, sponsored or authorized by Opposers.

13. The use and registration of the mark WILD BUZZ by Applicant is likely to damage and destroy the distinctiveness, goodwill, reputation, secondary meaning and fame created and established by Opposers in their WILD and WILD & Design marks by virtue of the confusion, mistake and deception likely to occur between the respective marks in derogation of Opposers' exclusive right to continue to use the registered marks for its present goods and to expand the use of its marks to related goods and services.

14. By reason of all the foregoing, Opposers will be gravely damaged by the registration of the mark WILD BUZZ for the goods identified in the Application.

COUNT II

DILUTION

15. Opposers repeat and re-allege the allegations contained in Paragraphs 1-10 and 12-14 as fully set forth herein.

16. Opposers' WILD and WILD & Design marks are famous and the use and registration of Applicant's mark WILD BUZZ is likely to dilute the distinctive quality of Opposer's famous marks pursuant to 15 U.S.C. §1125(c), which is applicable in an opposition proceeding.

17. By reason of all the foregoing, Opposers will be gravely damaged by the registration of the mark WILD BUZZ for the goods identified in the Application.

WHEREFORE, by reason of the confusing similarity of Applicant's and Opposers' marks and the likelihood that Applicant's mark will dilute Opposers' mark, Opposers respectfully request that the opposition be sustained and that registration of the mark WILD BUZZ be refused.

Dated: New York, New York
June 24, 2004

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP
Attorneys for Opposers
180 Maiden Lane
New York, New York 10038-4982
(212) 806-5400

By

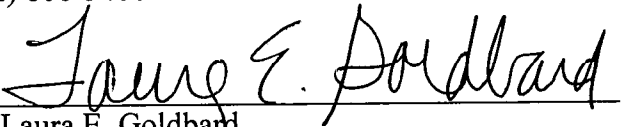

Laura E. Goldbard

EXHIBIT 1

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,296,602

Registered Sep. 18, 1984

TRADEMARK
Principal Register

WILD

Zick-Zack-Werke Rudolf Wild (Fed. Rep. of
Germany sole proprietorship)
Rudolf-Wild Strasse 6
Eppelheim, Fed. Rep. of Germany D-6901

For: FRUIT BASED LIQUID INGREDIENT
FOR USE IN THE PREPARATION OF OTHER
FOODS, in CLASS 29 (U.S. Cl. 46).
First use Oct. 8, 1982; in commerce Jan. 13, 1983.

Ser. No. 422,717, filed Apr. 22, 1983.

JILL E. JOHNSON, Examining Attorney

EXHIBIT 2

Int. Cls.: 30 and 32

Prior U.S. Cl.: 46

Reg. No. 1,586,995

United States Patent and Trademark Office Registered Mar. 13, 1990

TRADEMARK
PRINCIPAL REGISTER



RUDOLF WILD GMBH & CO. KG (FED REP
GERMANY CORPORATION)
RUDOLF WILD STRASSE 4-6
HEIDELBERG-EPPELHEIM, FED REP GER-
MANY

FOR: FOOD FLAVORING, NAMELY, FLA-
VORS, AROMAS, ESSENCES AND DISTIL-
LATES, NOT IN THE NATURE OF ESSENTIAL
OILS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-29-1984; IN COMMERCE
5-29-1984.

FOR: FLAVORS, AROMAS, ESSENCES AND
DISTILLATES, NOT IN THE NATURE OF ES-
SENTIAL OILS FOR THE PREPARATION OF
SOFT DRINKS, IN CLASS 32 (U.S. CL. 46).

FIRST USE 5-29-1984; IN COMMERCE
5-29-1984.

OWNER OF U.S. REG. NOS. 1,372,837,
1,390,182, AND 1,396,602.

SER. NO. 73-785,403, FILED 3-8-1989.

HARRIET M. SINTON, EXAMINING ATTOR-
NEY

JAN.	FEB.	MAR.	APR.	MAY	JUN.	JUL.	AUG.	SEP.	OCT.	NOV.	DEC.		
FLAG FOR EXPECTED MONTH OF RESPONSE BY PAT. O.													

MONTH DAY

pt by pat. o.
HIS DATE

DKT I

SERIAL **522727/0001**

Big Brands International, Inc.

ATTORNEY **LEG/SAF/gkr**

APPLI

FILED **In re Notice of Opposition**

Serial No. 78/251,935

FOR **Filed: May 20, 2003**

PAPER **Mark: WILD BUZZ**

Via Express Mail, Label No. EL594386553US

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AWAITING PAT. O. ACTION TICKLE

CLERK _____

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STROOCK

June 24, 2004

Laura E. Goldbard
Direct Dial 212-806-6675
Direct Fax 212-806-7675
LGoldbard@stroock.com

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

Re: Client/Matter No. : 522727-0001
Applicant : Big Brands International, Inc.
Serial No. : 78/251,935
Filed : May 20, 2003
MARK : WILD BUZZ

Sir:

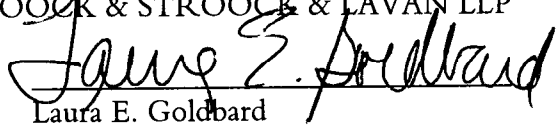
Kindly file the annexed papers indicated below, charging the fee (including any deficiency in the fee as estimated below) to the undersigned attorney's Deposit Account No. 19-4709:

- (X) Notice of Opposition (in duplicate)
on behalf of Rudolf Wild GmbH & Co. KG
and Wild Flavors, Inc.

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP

By:


Laura E. Goldbard
Attorneys for Opposers

Estimated Fee \$300.00
Dated : June 24, 2004

Certificate of Mailing by "Express Mail" (37 C.F.R. 1.10)

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Name: Gary K. Rymer

Signature: 



06-28-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #72