

ESTTA Tracking number: **ESTTA33296**

Filing date: **05/17/2005**

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

### Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

#### Opposers Information

<b>Name</b>	Miller Products Company		
<b>Entity</b>	Corporation	<b>Citizenship</b>	Wisconsin
<b>Address</b>	3939 West Highland Boulevard Milwaukee, WI 53208 UNITED STATES		

<b>Name</b>	Miller Brewing Company		
<b>Entity</b>	Corporation	<b>Citizenship</b>	Wisconsin
<b>Address</b>	3939 West Highland Boulevard Milwaukee, WI 53208 UNITED STATES		

<b>Attorney information</b>	Marta S. Levine Quarles & Brady LLP 411 East Wisconsin Avenue Milwaukee, WI 53202 UNITED STATES tm-dept@quarles.com Phone:414 277 5000		
-----------------------------	---	--	--

#### Applicant Information

<b>Application No</b>	75437843	<b>Publication date</b>	05/17/2005
<b>Opposition</b>	05/17/2005	<b>Opposition</b>	06/16/2005

<b>Filing Date</b>		<b>Period Ends</b>	
<b>Applicant</b>	BOMBA ENERGIA GETRANKEVERTRIEBES GMBH Bockgasse 2b 4021 Linz, AUSTRIA		

**Goods/Services Affected by Opposition**

Class 032.

All goods and services in the class are opposed, namely: Nonalcoholic beverages, namely, mineral water, carbonated water; and other alcohol-free beverages, namely, fruit juice beverages, fruit flavored soft drinks, sport drinks, sport drinks with electrolytes; fruit juice beverages, fruit flavored soft drinks, sport drinks, sport drinks with electrolytes; concentrates, syrups and powders for the preparation of soft drinks, and all the aforesaid with the addition of mineral aggregates and vitamins

<b>Related Proceedings</b>	Opposition No. 91159224
----------------------------	-------------------------

<b>Attachments</b>	NoticeOppositionMillerBombaEnergia2.pdf ( 5 pages )
--------------------	---

<b>Signature</b>	/MartaLevine/
<b>Name</b>	Marta S. Levine
<b>Date</b>	05/17/2005

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

---

In the Matter of Application Serial No. 75/437,843  
Mark: BOMBA and Bottle Configuration Design (in Int. Class 032)  
Published in the *Official Gazette* on May 17, 2005

---

MILLER BREWING COMPANY and  
MILLER PRODUCTS COMPANY,

Opposers,

v.

Opposition No. \_\_\_\_\_

BOMBA ENERGIA  
GETRANKEVERTRIEBE GMBH,

Applicant.

---

**NOTICE OF OPPOSITION AND REQUEST FOR CONSOLIDATION**

---

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514.

Opposers Miller Brewing Company and Miller Products Company (collectively, "Miller") believe that they would be damaged by registration of the mark shown in Application Serial No. 75/437,843, and hereby oppose same.

As grounds of opposition, Miller alleges that:

1. Opposer Miller Brewing Company is a Wisconsin corporation with its principal place of business at 3939 West Highland Boulevard, Milwaukee, Wisconsin 53208. Miller Brewing Company is in the business of distributing and selling beer.

2. Opposer Miller Products Company is a Wisconsin corporation with its principal place of business at 3939 West Highland Boulevard, Milwaukee, Wisconsin

53208. Miller Products Company is the owner of trademarks used in connection with the distribution and sale of beer and licenses these trademarks to Miller Brewing Company for use in connection with the distribution and sale of beer.

3. Upon information and belief and according to the records of the U.S. Patent and Trademark Office, Applicant Bomba Energia Getrankevertriebe GmbH ("Bomba") is an Austrian corporation with its principal place of business at Bockgasse 2B, 4021 Linz, Austria.

4. Miller and Bomba are competitors in the business of brewing and marketing beverages.

5. Application Serial No. 75/437,843 is a trademark application filed by Bomba on February 20, 1998 under Section 1(b) of the Trademark Act of 1946, as amended (15 U.S.C. 1051(b)), for registration of a three-dimensional configuration of a beverage bottle in the form of a barrel-shaped hand grenade, with a center band that contains the stylized wording "BOMBA", for:

Nonalcoholic beverages, namely mineral water, carbonated water; and other alcohol-free beverages, namely fruit juice beverages, fruit flavored soft drinks, sport drinks, sport drinks with electrolytes; fruit juice beverages, fruit flavored soft drinks, sport drinks, sport drinks with electrolytes; concentrates, syrups and powders for the preparation of soft drinks, and all the aforesaid with the addition of mineral aggregates and vitamins (in International Class 032).

6. Since long prior to the priority date of the above application and, upon information and belief, since long before any use by Bomba of its mark, Miller has used and continues to use a configuration of a barrel-shaped bottle in interstate commerce in connection with the marketing of its MICKEY'S brand beer. Miller's barrel-shaped bottle

configuration is registered with the U.S. Patent and Trademark Office, Registration No. 947,679, which registration is valid, subsisting, and incontestable.

7. Miller's barrel-shaped bottle configuration has been extensively used and advertised in interstate commerce to identify both Miller and Miller's beer, and thus Miller has developed and owns valuable property rights and goodwill in said mark.

8. Bomba's proposed bottle design so resembles Miller's barrel-shaped bottle configuration as to be likely, when used in connection with Bomba's goods, to cause confusion and to cause mistake and to deceive. Specifically, and without limitation, members of the public seeing Bomba's bottle design are likely to believe or assume that the same identifies goods that are provided by or otherwise associated with or sponsored by Miller.

9. By reason of the foregoing, registration of Bomba's mark will result in irreparable injury to Miller and to its rights in its barrel-shaped bottle configuration mark.

10. On January 28, 2004, Miller filed Opposition No. 91159224 against an application by Bomba (Application Serial No. 75/932,797) for a slightly different view of the same three-dimensional configuration of a beverage bottle in the form of a barrel-shaped hand grenade. This Opposition is currently pending before the Board.

11. As grounds for Opposition No. 91159224, Miller alleged that Bomba's proposed bottle design so resembles Miller's barrel-shaped bottle configuration as to be likely, when used in connection with Bomba's goods, to cause confusion and to cause mistake and to deceive.

12. As a defense to Opposition No. 91159224, Bomba alleged that the two marks are not confusingly similar.

13. Miller believes that a finding that the marks in Opposition No. 91159224 are similar should result in the refusal of registration not only to Application Serial No. 75/932,797, but also to the application that is the subject of this proceeding (Application Serial No. 75/437,843).

14. Because the subject matter of this proceeding is related to the subject matter of Opposition No. 91159224, and to avoid inconsistent results, Miller asks that this Opposition be consolidated with Opposition No. 91159224.

WHEREFORE, Miller prays that this opposition be sustained and that registration of Bomba's mark be refused.

Dated: May 17, 2005

Respectfully submitted,

MILLER BREWING COMPANY and MILLER  
PRODUCTS COMPANY

By: *Marta S. Levine*  
Marta S. Levine  
David R. Cross  
Quarles & Brady LLP  
411 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
Telephone: 414 277 5000  
Facsimile: 414 271 3552  
E-Mail: tm-dept@quarles.com

Direct Inquires to:  
David R. Cross  
Telephone: 414 277.5669  
E-Mail: drc@quarles.com

Certificate of Transmittal: I hereby certify that this correspondence is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated below:

Date: May 17, 2005

*Marta Levine*

\_\_\_\_\_  
Marta S. Levine