

ESTTA Tracking number: **ESTTA104878**

Filing date: **10/18/2006**

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 party opposes registration of the indicated application.

Opposer Information

Name	Red Bull GmbH
Granted to Date of previous extension	10/18/2006
Address	Am Brunnen 1 Fuschl am See, A-5330 AUSTRIA

Domestic Representative	Raymond A. Kurz and Kimberley A. Isbell Attorneys for Opposer HOGAN & HARTSON LLP Columbia Square, 555 13th Street, N.W. Washington, DC 20004 UNITED STATES DCPTOTrademarkMail@HHLaw.com Phone:202 637 5900
-------------------------	---

Applicant Information

Application No	78623839	Publication date	06/20/2006
Opposition Filing Date	10/18/2006	Opposition Period Ends	10/18/2006
Applicant	North American Beverages, Ltd. 720 Jewell Drive Waco, TX 76703 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: NON-ALCOHOLIC, MINERAL AND VITAMIN-FORTIFIED BEVERAGES, NAMELY ENERGY DRINKS

Attachments	RED JACK NOT OF OPP.pdf (4 pages)(29994 bytes)
-------------	---

Signature	/Kimberley A. Isbell/
Name	Kimberley A. Isbell
Date	10/18/2006

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

In the matter of:

Mark: **RED JAK**
Ser. No.: **78/623,839**
Filed: **May 5, 2005**
Published: **June 20, 2006**

Red Bull GmbH,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. _____
	:	
North American Beverages, Ltd.,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Opposer, Red Bull GmbH, a limited liability company organized and existing under the laws of Austria with a place of business located at Am Brunnen 1, 5330 Fuschl am See, Austria, believes that it will be damaged by registration of the mark RED JAK, which is the subject of U.S. Application Serial Number 78/623,839, filed on May 5, 2005 by North American Beverages, Ltd. (“Applicant”), a limited partnership organized and existing under the laws of the State of Texas with a place of business located at 720 Jewell Drive, Waco, Texas 76703. Opposer, Red Bull GmbH, hereby opposes registration of U.S. Application Serial Number 78/623,839.

As grounds for its opposition, Opposer alleges the following:

1. Opposer adopted and has used continuously in interstate commerce since at least as early as 1996 the marks RED BULL and RED BULL ENERGY DRINK (collectively, “Red Bull Marks”) in connection with, *inter alia*, the RED BULL energy drink.

2. Opposer’s RED BULL energy drink is the market leader in the U.S. energy drink category, with over a billion cans sold in the United States in 2005 alone. Such sales of the RED BULL energy drink have been achieved through, among other things, Opposer’s extensive marketing and promotional efforts for the RED BULL energy drink featuring the Red Bull Marks, creation of a unique brand image for the RED BULL energy drink, unsolicited media attention touting Opposer and the RED BULL energy drink, and the overwhelming popularity of the RED BULL energy drink among a vast array of consumers. In view of the success of the RED BULL energy drink, Opposer’s Red Bull Marks have acquired great value as an identifier of Opposer’s energy drink and as a way of distinguishing Opposer’s energy drink from those of others.

3. As a result of Opposer’s extensive and continuous use of the Red Bull Marks in interstate commerce, the marks have become well-known among energy drink consumers and the public generally, as persons recognize the distinctive Red Bull Marks and associate such marks with the goods and services that Opposer offers, particularly its RED BULL energy drink. The Red Bull Marks, therefore, are symbolic of extensive goodwill and consumer recognition built up by Opposer through its sales, advertising and promotional efforts. In fact, Opposer asserts that the Red Bull Marks are famous.

4. Opposer is the owner of the common law rights in the Red Bull Marks in connection with, among other things, the RED BULL energy drink, and is also the owner of U.S.

Registration Number 3,092,197, which issued on May 16, 2006, for the mark RED BULL covering, among other things, energy drinks.

5. Opposer's use of its Red Bull Marks in the United States predates any alleged use of Applicant's mark RED JAK in the United States, and predates Applicant's filing of U.S. Application Serial Number 78/623,839.

6. Specifically, on May 5, 2005, Applicant filed an intent-to-use application, U.S. Application Serial Number 78/623,839, to register the mark REDJAK in connection with "non-alcohol0olic [sic], mineral and vitamin-fortified beverages" (the "Application"). Applicant subsequently amended the Application to register the mark RED JAK, covering "non-alcohol0olic [sic], mineral and vitamin-fortified beverages, namely energy drinks."

7. The Application was published for opposition on June 20, 2006. Opposer sought and was granted timely extensions of time to file a Notice of Opposition.

8. Applicant's RED JAK mark is confusingly similar in sight, sound and meaning to Opposer's Red Bull Marks when used on or in connection with the goods applied for in the Application.

9. Given Opposer's prior and substantial use of the Red Bull Marks in connection with the RED BULL energy drink, combined with the fact that the RED BULL energy drink is targeted to similar consumers and sold in overlapping channels of trade as Applicant's energy drink, Applicant's use of the RED JAK mark as set forth in the Application is likely to cause confusion, mistake or deception with Opposer's Red Bull Marks, or to cause the mistaken belief by consumers or others that Applicant or its energy drink are in some way legitimately connected with, sponsored by or approved by Opposer.

10. Applicant's RED JAK mark as applied for in the Application also dilutes the distinctive quality of Opposer's famous Red Bull Marks.

11. Opposer believes, and therefore states, that it would be damaged by the registration of the RED JAK mark that is the subject of U.S. Application Serial Number 78/623,839.

WHEREFORE, Opposer Red Bull GmbH requests that this opposition be sustained and that U.S. Application Serial Number 78/623,839 be refused registration.

Please charge the required \$300 filing fee and any additional fees that may be required for filing this Notice of Opposition to the Deposit Account of Hogan & Hartson L.L.P., Account No. 50-1349, referencing our client number 87021-0199.

Respectfully Submitted,

HOGAN & HARTSON L.L.P.

Dated: October 18, 2006

By: Kimberley A. Isbell
Raymond A. Kurz
Shelly L. McGee
Kimberley A. Isbell
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Telephone: (202) 637-5900
Fax: (202) 637-5910

Attorneys for Opposer,
Red Bull GmbH