

ESTTA Tracking number: **ESTTA112007**

Filing date: **11/29/2006**

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	11/29/2006
Address	Am Brunnen 1 FUSCHL AM SEE, A-5330 AUSTRIA

Domestic Representative	Raymond A. Kurz and Shelly L. McGee Attorneys for Opposer HOGAN & HARTSON LLP Columbia Square 555 13th Street, N.W. Washington, DC 20004 UNITED STATES DCPTOTrademarkMail@HHLaw.com Phone:202 637 5600
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Applicant Information

Application No	78684754	Publication date	08/01/2006
Opposition Filing Date	11/29/2006	Opposition Period Ends	11/29/2006
Applicant	Goertz, James L. 4209 Soundview Drive West University Place, WA 98466 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Non-Alcoholic Beverage, Namely, Carbonated Beverage
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Attachments	DOC079.PDF (4 pages)(132757 bytes)
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Signature	/Shelly L. McGee/
Name	Shelly L. McGee
Date	11/29/2006

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

In the matter of:

Mark: **BULL RIDER**
Ser. No.: **78/684,754**
Filed: **August 3, 2005**
Published: **August 1, 2006**

Red Bull GmbH,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. _____
	:	
James L. Goertz,	:	
	:	
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 BULL RIDER, which is the subject of U.S. Application Serial Number 78/684,754, filed on August 3, 2005, by James L. Goertz, (“Applicant”), an individual with an address of 4209 Soundview Drive West, University Place, Washington 98466. Opposer, Red Bull GmbH, hereby opposes registration of U.S. Application Serial Number 78/684,754.

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, RED BULL ENERGY DRINK, the design of two charging bulls (the “Double Bull Design”), and the design of a single charging bull (the “Single

Bull Design”) (collectively, “Red Bull Marks”) in connection with, *inter alia*, the RED BULL energy drink.

2. Opposer’s RED BULL energy drink is the 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, including the Double and Single Bull Designs, 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, as well as U.S. Registration Number 2,946,045,

which issued on May 3, 2005, for the Double Bull Design mark 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 BULL RIDER in the United States, and predates Applicant's filing of U.S. Application Serial Number 78/684,754.

6. Specifically, on August 3, 2005, Applicant filed an intent-to-use application, U.S. Application Serial Number 78/684,754, to register the mark BULL RIDER in connection with "Non-Alcoholic Beverage, Namely, Carbonated Beverage" (the "Application").

7. The Application was published for opposition on August 1, 2006. Opposer sought and was granted a timely extension of time to file a Notice of Opposition.

8. Applicant's BULL RIDER 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 Applicant's energy drink offered under the BULL RIDER mark will likely be offered to some of the same consumers of the RED BULL energy drink and sold in overlapping channels of trade as the RED BULL energy drink, Applicant's use of the BULL RIDER 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 is in some way legitimately connected with, sponsored by or approved by Opposer.

10. Such likelihood of confusion is further demonstrated and exacerbated by Applicant's pattern of applying to register and/or using marks confusingly similar to Opposer's

Red Bull Marks. On November 9, 2005, after the filing of the subject Application, Applicant filed an intent-to-use application, U.S. Application Serial Number 78/750,583, to register the mark NOBULL in connection with “Hats, Caps, Shirts, T-shirts, Pants, Sweat Shirts, Gloves, Jackets.” In addition, Applicant is the president of Dead Red Corporation, a corporation organized and existing under the laws of the State of Washington, which promotes and sells an energy drink product under the name DEAD RED XCELERATOR. As president of the Dead Red Corporation, on April 12, 2005, Applicant filed an intent-to-use application, U.S. Application Serial Number 78/607,342, to register the mark DEAD RED in connection with “Non-Alcoholic Beverage, Namely, Carbonated Beverage,” which is the subject of U.S. Registration No. 3,178,383.

11. Applicant’s BULL RIDER mark as applied for in the Application is also likely to dilute the distinctive quality of Opposer’s famous Red Bull Marks.

12. Opposer believes, and therefore states, that it would be damaged by the registration of the BULL RIDER mark that is the subject of U.S. Application Serial Number 78/684,754.

WHEREFORE, Opposer Red Bull GmbH requests that this opposition be sustained and that U.S. Application Serial Number 78/684,754 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 87021-0210.