

1000 Country Club Road, St. Charles, MO 63303. Opposer, Red Bull GmbH, hereby opposes registration of U.S. Application Serial Numbers 78/736,412 and 78/736,421.

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 mark RED BULL, the design of two bulls ("Double Bull Design"), and the design of a single bull ("Single Bull Design") (collectively, "Red Bull Marks") in connection with, *inter alia*, the RED BULL energy drink and other goods and services, including clothing and athletic gear as well as numerous sporting and athletic events.

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 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.

3. As part of its branding strategy, Opposer has sponsored a wide-variety of athletic and sporting events, all of which have been promoted in connection with the RED BULL trademark as well as the Double Bull Design and the Single Bull Design. These events have included, among many others, an urban freeride mountain bike competition promoted under the mark RED BULL BIKE BATTLE; a skiing competition promoted under the mark RED BULL SNOW THRILL; a paragliding and hang gliding competition promoted under the mark RED BULL WINGS OVER ASPEN; and a kiteboarding competition promoted under the mark RED BULL KING OF THE AIR. Likewise, the Red Bull Marks are used in the United States on and

in connection with, among other things, sports gear and accessories, including helmets, course flags, finish lines, and participant bibs, which are used in connection with the various athletic competitions sponsored by Opposer.

4. In addition, Opposer has sponsored numerous athletes, has sponsored and co-owned Formula One racing cars and a Formula One team that competed worldwide, and has sponsored the motorcycle race team Red Bull Yamaha WCM and Indy race car drivers that competed in the United States. Opposer currently has two Formula One teams competing in the 2006 FIA Formula One World Championship under the names Red Bull Racing and Scuderia Toro Rosso.

5. In view of the success of the RED BULL energy drink and Opposer's extensive advertising and promotional activities, Opposer's Red Bull Marks have acquired great value as an identifier of Opposer's energy drink and other goods and services, and also as a way of distinguishing Opposer's goods and services from those of others.

6. 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. 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.

7. 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 other goods and services it offers, and is also the owner of federal trademark registrations and applications for the Red Bull Marks, including U.S. Registration Number 3,092,197 for the mark RED BULL; U.S.

Registration Number 2,946,045 for the Double Bull Design; and U.S. Application Serial Number 78/702,090 for the Single Bull Design.

8. Opposer's use of its Red Bull Marks in the United States predates any alleged use of Applicant's Marks in the United States, and predates Applicant's filing of U.S. Application Serial Numbers 78/736,412 and 78/736,421.

9. Specifically, on October 19, 2005, Applicant filed a use-based application, U.S. Application Serial Number 78/736,412, to register the Bull Design mark in connection with "entertainment services, namely, football games and exhibitions," claiming a first use date of December 30, 2004 ("412 Application"). While the '412 Application does not contain a claim for color, upon information and belief the mark as actually used by Applicant in interstate commerce features the image of a red-colored bull.

10. Also on October 19, 2005, Applicant filed a use-based application, U.S. Application Serial Number 78/736,421, to register the mark RIVERCITY RAGE and Design in connection with "entertainment services, namely, football games and exhibitions," claiming a first use date of December 30, 2004 ("421 Application"). While the '421 Application does not contain a claim for color, upon information and belief the mark as actually used by Applicant in interstate commerce features the image of a red-colored bull.

11. The '412 Application was published for opposition on October 31, 2006. Opposer sought and was granted a timely extension of time to file a Notice of Opposition.

12. The '421 Application was published for opposition on July 4, 2006. Opposer sought and was granted timely extensions of time to file a Notice of Opposition.

13. Applicant's Marks are confusingly similar in appearance and meaning to Opposer's Red Bull Marks.

14. Given Opposer's prior and substantial use of the Red Bull Marks in connection with the RED BULL energy drink and other goods and services, particularly athletic and sporting events, sponsorships and products, Applicant's Marks as set forth in the '412 Application and the '421 Application are 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 services are in some way legitimately connected with, sponsored by or approved by Opposer.

15. Applicant's Marks as applied for in the '412 Application and the '421 Application also dilute the distinctive quality of Opposer's famous Red Bull Marks.

16. Opposer believes, and therefore states, that it would be damaged by the registration of Applicant's Marks that are the subject of U.S. Application Serial Numbers 78/736,412 and 78/736,421.

WHEREFORE, Opposer Red Bull GmbH requests that this opposition be sustained and that U.S. Application Serial Numbers 78/736,412 and 78/736,421 be refused registration.

Please charge the required \$600 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 87021-0208.

Respectfully Submitted,

HOGAN & HARTSON L.L.P.

Dated: January 3, 2007

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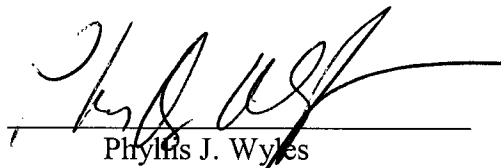
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Attorneys for Opposer,

Red Bull GmbH

CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of January, 2007, a copy of the foregoing **COMBINED NOTICE OF OPPOSITION** is being deposited with the United States Postal Service as first-class mail, postage prepaid in an envelope addressed to: UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451.


Phyllis J. Wyles