

ESTTA Tracking number: **ESTTA185073**

Filing date: **01/07/2008**

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	01/06/2008
Address	Am Brunnen 1 Fuschl am See, A-5330 AUSTRIA

Attorney information	Martin R. Greenstein TechMark a Law Corporation 4820 Harwood Road, 2nd Floor SAN JOSE, CA 95124-5273 UNITED STATES MRG@TechMark.com, MPV@TechMark.com Phone:408-266-4700
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**Applicant Information**

Application No	78978413	Publication date	07/10/2007
Opposition Filing Date	01/07/2008	Opposition Period Ends	01/06/2008
Applicant	Bodyonics, Ltd. 200 Adams Boulevard Farmingdale, NY 11735 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. All goods and services in the class are opposed, namely: Energy drinks; Sports drinks
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**Grounds for Opposition**

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	RED BULL		
Goods/Services	Energy drinks, sports drinks, related and complementary goods and services		

Attachments	Red Buzz-78978413_Oppo_2008-01-07.pdf ( 6 pages )(72171 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Martin R Greenstein/
Name	Martin R. Greenstein
Date	01/07/2008

CERTIFICATE OF ELECTRONIC FILING AND  
STANDBY AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

I hereby certify that this opposition is being filed with the TTAB via ESTTA on the date set forth below, and the \$300 per class statutory filing fee paid. Please charge any deficiency or any additional fees in connection with this Opposition to TechMark's PTO Deposit Account No. 20-0330.

Date: January 7, 2008

/Martin R Greenstein/  
Martin R. Greenstein

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

IN THE MATTER OF Appln. Ser. No. 78/978,413 for the trademark RED BUZZ (Class 32),  
filed June 5, 2006, and published in the Official Gazette of July 10, 2007

RED BULL GMBH,

Opposer

v.

BODYONICS, LTD.,

Applicant.

Opposition No.

Trademark: RED BUZZ

Serial No.: 78/978,413

NOTICE OF OPPOSITION

RED BULL GMBH, a limited liability company organized and existing under the laws of Austria, with its principal place of business at Am Brunnen 1, 5330 Fuschl am See, AUSTRIA, (hereafter "Red Bull" or "Opposer") believes it is being and/or will be damaged by registration on the Principal Register of the mark RED BUZZ shown in Appln. Ser. No. 78/978,413 and hereby opposes the same.

As grounds of opposition it is alleged that:

1. Opposer Red Bull is now and has for many years been engaged in the development, marketing, advertising, distribution and sale of beverages, including energy drinks,

sports drinks and other beverages, as well as various other products and services relating to or complementary to its Class 32 products and related products and services.

2. Opposer Red Bull is the owner of the corporate name, trade name and trademark RED BULL, having used said name and mark continuously in interstate commerce on and in connection with its beverages, energy drinks and sports drinks and its related products and services as described above since long prior to the June 5, 2006 filing date of Applicant's U.S. Appln. No. 78/978,413 opposed herein.

3. Opposer Red Bull is also the owner of various Federal registrations and common law rights for trademarks for or which include the words RED BULL.

4. Red Bull's various trademarks which include the words RED BULL are and have become valuable assets of Opposer Red Bull, identifying energy drinks, sports drinks and other beverages, as well as various other related or complementary products and services of Red Bull, and distinguishing Red Bull's products and services from the products and services of others.

5. Red Bull's corporate name, trade name and its various trademarks as described herein have been extensively advertised and promoted in the United States and throughout the world, and have appeared on the packaging, point-of-sale displays, advertising and other promotional materials for energy drinks and related products, as well as in connection with sporting events, contests and exhibitions conducted and/or promoted in the United States and throughout the world. The RED BULL Energy Drink packaging specifically states:

- Improves performance, especially during times of increased stress or strain
- Increases concentration and improves reaction speed
- Stimulates the metabolism

As such, Red Bull Energy Drink is extensively, frequently and commonly used in athletic, educational, social and other situations, including but not limited to exercising and other

activities requiring energy, alertness, stimulation and for which the user wants a “buzz” or a burst of energy.

6. Annual sales of RED BULL beverages worldwide exceed 3 billion units, with over 1 billion units sold annually in the United States. The Red Bull marks and names described herein have been extensively used and advertised in the United States and throughout the world, and have appeared on the packaging, point-of-sale displays and other promotional materials, as well as in restaurants, on-premises beverage service locations and other beverage outlets, health clubs and athletic facilities of all types in the United States and throughout the world. As a result, the Red Bull marks described herein are and have become famous marks, and are valuable assets of Opposer Red Bull, identifying its energy drinks and beverages as well as various and sundry other products and services of Red Bull, and distinguishing Red Bull's products and services from the products and services of others.

7. Applicant, Bodyonics, Ltd., a Delaware corporation of Farmingdale, NY, filed Appln. No. 78/978,413 on June 5, 2006, claiming a bona fide intent to use the trademark RED BUZZ as shown therein in commerce on the goods set forth in said original application in Int. Classes 5 and 32. The Class 5 portion of the application encountered a citation of certain prior registrations, and was thereafter divided out into a “child” Appln No. 78/900,490, which is now on appeal and has not yet been approved or published, and is not a subject of this opposition.

8. On information and belief, Applicant did not make any actual commercial or bona fide trademark use of the alleged mark RED BUZZ in commerce or otherwise prior to the June 5, 2006 filing date of Appln. No. 78/978,413 on the goods set forth therein.

9. The Class 32 energy drinks and sports drinks on which Applicant asserts a bona fide intent to use the mark RED BUZZ of Appln. No. 78/978,413 are identical or very similar to, and/or are advertised and promoted to and directed at the same trade channels, the same purchasers, and are used in the same or very similar environment as Opposer Red Bull's

beverages and related or complementary goods and services sold, advertised, promoted and/or offered under the Red Bull marks.

10. Applicant's RED BUZZ mark of Appln. No. 78/978,413 shares an identical first word, and the leading two letters of the second word RED BU..., followed by a double consonant, differing from Opposer's RED BULL name and mark by only that double consonant, ZZ vs LL.

11. Applicant's RED BUZZ Appln. No. 78/978,413 depicts the mark in plain block letters, and as such Applicant would be entitled to use the mark RED BUZZ in any font or style. Many fonts depict the letters ZZ and LL as visually very similar and in some cases almost indistinguishable, such as:

RED BULL RED BUZZ  
*RED BULL RED BUZZ*  
**RED BULL RED BUZZ**  
**RED BULL RED BUZZ**

12. The word "buzz" when used in connection with energy drinks and sports drinks, and/or in connection with any product that creates a "high", a feeling of exhilaration, or a burst of energy or stimulation is a descriptive term, and is used descriptively by Applicant in the advertising for its closely related Class 5 energy pill supplement product, e.g. in its taglines "*We Know You're Gonna Love The Buzz*", and "*Get Buzzed*", and its text explanation that "*a 3 capsule dose of Red Buzz™ provides 375 mg caffeine for an "energenic buzz" when you need it.*" . As a descriptive term in relation to energy drinks, "buzz" is not a dominant portion of Applicant's mark and does not distinguish RED BUZZ from RED BULL.

13. The word “buzz” is commonly used in its ordinary descriptive sense in articles and discussions about Opposer’s famous RED BULL Energy Drink beverages, as in the following representative examples:

Red Bull’s Good Buzz, *Newsweek*, May 14, 2001

[http://www.redbullusa.com/images/historysection/pdf/1/Red\\_Bulls\\_Good\\_Buzz.pdf](http://www.redbullusa.com/images/historysection/pdf/1/Red_Bulls_Good_Buzz.pdf)

The Soda With Buzz, *Forbes Magazine*, March 28, 2005:

<http://www.forbes.com/forbes/2005/0328/126.html>

The Buzz Over Energy Drinks, *NPR Morning Edition*, January 4, 2007

<http://www.npr.org/templates/story/story.php?storyId=6720000>

Energy Drinks Build Their Buzz, *Business Week*, January , 2005

[http://www.businessweek.com/smallbiz/content/jan2005/sb2005015\\_8196\\_sb017.htm](http://www.businessweek.com/smallbiz/content/jan2005/sb2005015_8196_sb017.htm)

The phrase “Red Bull Buzz” is often used to describe the “buzz” about and/or given by Opposer’s famous RED BULL Energy Drink, and “buzz” describes energy drinks generally.

14. Simultaneous use of Applicant’s alleged mark RED BUZZ as shown in and on the Class 32 energy drinks and sports drinks as set forth in Appln. No. 78/978,413 and the Red Bull marks of Opposer on its goods and related services as set forth above is likely to cause confusion, mistake or deception among purchasers, users and the public, thereby damaging Red Bull.

15. Use by Applicant of the alleged mark RED BUZZ as shown in and on the Class 32 energy drinks and sports drinks as set forth in Appln. No. 78/978,413 is likely to lead to the mistaken belief that Applicant’s beverages and related goods are sponsored by, affiliated with, approved by or otherwise emanate from Opposer Red Bull, thereby damaging Red Bull.

16. Upon information and belief, Applicant knew or should have known of Red Bull’s prior adoption and use of the Red Bull marks and Red Bull’s ownership of various Federal registrations for the Red Bull marks, and therefore could not have formed the requisite good faith belief that Applicant is the owner of the mark sought to be registered, and that no other person,

firm, corporation or association has the right to use said mark in commerce, and consequently knew that such use is and would be in derogation and violation of Red Bull's rights.

Wherefore, Red Bull requests that registration of the mark sought to be registered herein, RED BUZZ No. 78/978,413, be denied and that this opposition be sustained.

The sum of \$300 per class for the statutory fee for this Notice of Opposition has been paid at the time of filing. Any deficiency or shortfall, or any additional fees in connection with this opposition at any time should be charged to TechMark's PTO Deposit Acct. No. 20-0330.

Please recognize Martin R. Greenstein, Neil D. Greenstein, Mariela P. Vidolova and Lee D. Green, members in good standing of the Bar of the State of California, c/o TechMark, 4820 Harwood Road, 2<sup>nd</sup> Floor, San Jose, California 95124-5273, Tel: 408-266-4700, as Opposer Red Bull's attorneys in connection with this opposition proceeding. All correspondence should be directed to Martin R. Greenstein.

RED BULL GMBH  
By /Martin R Greenstein/  
Martin R. Greenstein  
TechMark a Law Corporation  
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San Jose, CA 95124-5273  
Tel: 408- 266-4700 Fax: 408-864-2044  
E-Mail: MRG@TechMark.com  
Attorneys for Opposer Red Bull GmbH

Dated: January 7, 2008

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION is being served on January 7, 2008, by first class mail, postage prepaid, upon Applicant by service on Applicant's attorney of record:

Jay H. Geller, Esq.  
W. Tower, Suite 4000  
2425 W. Olympic Blvd.  
Santa Monica, CA 90404

/Martin R Greenstein/  
Martin R. Greenstein