

ESTTA Tracking number: **ESTTA334464**

Filing date: **02/26/2010**

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	Russell G. Weiner
Granted to Date of previous extension	03/03/2010
Address	101 Convention Center Drive, Suite 777 Las Vegas, NV 89126 UNITED STATES
Party who filed Extension of time to oppose	RussellG.Weiner
Relationship to party who filed Extension of time to oppose	I simply added spaces between Mr. Weiner's first name, his middle initial, and his last name.

Correspondence information	Ian K. Boyd Harvey Siskind LLP 4 Embarcadero Center, 39th Floor San Francisco, CA 94111 UNITED STATES rzerounian@harveysiskind.com, iboyd@harveysiskind.com, clee@harveysiskind.com Phone:415-354-0100
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Applicant Information

Application No	77760205	Publication date	11/03/2009
Opposition Filing Date	02/26/2010	Opposition Period Ends	03/03/2010
Applicant	Rockstar Nutraceuticals 410 Evernia St # 112 West Palm Beach, FL 33401 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Nutraceuticals for use as a dietary supplement; Nutritional additives for medical purposes for use in foods and dietary supplements for human consumption; Nutritional supplements

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2613067	Application Date	08/19/1999
Registration Date	08/27/2002	Foreign Priority Date	NONE
Word Mark	ROCKSTAR ENERGY DRINK		
Design Mark	ROCKSTAR ENERGY DRINK		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1999/08/19 First Use In Commerce: 2001/01/16 SPORTS DRINKS, NAMELY, ENERGY DRINKS		

U.S. Registration No.	2784403	Application Date	12/13/2002
Registration Date	11/18/2003	Foreign Priority Date	NONE
Word Mark	ROCKSTAR		
Design Mark	ROCKSTAR		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1999/01/08 First Use In Commerce: 2000/01/08 Sports drinks, namely, energy drinks		

U.S. Registration No.	2545247	Application Date	02/29/2000
Registration Date	03/05/2002	Foreign Priority Date	NONE
Word Mark	PARTY LIKE A ROCKSTAR		
Design Mark	PARTY LIKE A ROCKSTAR		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1999/08/19 First Use In Commerce: 2001/01/08 sports drinks, namely, energy drinks		

U.S. Registration No.	3190229	Application Date	12/14/2005
Registration Date	12/26/2006	Foreign Priority Date	NONE
Word Mark	ROCKSTAR JUICED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2006/02/01 First Use In Commerce: 2006/02/01 Sports drinks, namely, energy drinks		

U.S. Registration No.	3398516	Application Date	04/17/2006
Registration Date	03/18/2008	Foreign Priority Date	NONE
Word Mark	ROCKSTAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1999/08/19 First Use In Commerce: 1999/08/19 Sports drinks, namely, energy drinks		

U.S. Registration No.	3423897	Application Date	05/22/2007
Registration Date	05/06/2008	Foreign Priority Date	NONE
Word Mark	ROCKSTAR ROASTED		

Design Mark	ROCKSTAR ROASTED		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2007/12/15 First Use In Commerce: 2007/12/15 Energy drinks		

U.S. Registration No.	3508269	Application Date	02/27/2008
Registration Date	09/30/2008	Foreign Priority Date	NONE

Word Mark	ROCKSTAR PUNCHED		
Design Mark	ROCKSTAR PUNCHED		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2007/09/15 First Use In Commerce: 2007/09/15 Energy drinks		


U.S. Registration No.	3674171	Application Date	06/20/2008
Registration Date	08/25/2009	Foreign Priority Date	NONE

Word Mark	ROCKST R ENERGY SH T		
Design Mark			

Description of Mark	The mark consists of the word "ROCKSTAR" with the letter "A" stylized as a star above the words "ENERGY SHOT" with the letter "O" stylized as a bullseye target.
Goods/Services	Class 032. First use: First Use: 2008/09/08 First Use In Commerce: 2008/09/08 Energy drinks

U.S. Application No.	78725675	Application Date	10/03/2005
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	ROCKSTAR
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 030. First use: Ready to eat grain derived food bars; chewing gum
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U.S. Application No.	77140611	Application Date	03/26/2007
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	ROCKSTAR ENERGY WATER
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 032. First use: Sports drinks, namely, energy drinks
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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	/Raffi V. Zerounian/
Name	Raffi V. Zerounian
Date	02/26/2010

1 HARVEY SISKIND LLP
2 IAN K. BOYD (SBN 191434)
3 RAFFI V. ZEROUNIAN (SBN 236388)
4 Four Embarcadero Center, 39th Floor
5 San Francisco, CA 94111
6 Telephone: (415) 354-0100
7 Facsimile: (415) 391-7124

8 Attorneys for Opposer
9 Russell G. Weiner

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

12 RUSSELL G. WEINER, an individual

13 Opposer,

14 v.

15 ROCKSTAR NUTRACEUTICALS, a
16 corporation.

17 Applicant.

NOTICE OF OPPOSITION

Opposition No.

Application Serial No. 77/760205

Mark: RX STAR

Published in the Official Gazette
on November 3, 2009

18 Opposer RUSSELL G. WEINER believes that he will be damaged by registration of the mark
19 shown in Serial No. 77/760205 and hereby opposes the same.

20 **Description of Applicant's Application:** Filed on June 15, 2009. Published for Opposition
21 in the Official Gazette on November 3, 2009. Mark: RX STAR in Class 05 for "Nutraceuticals for
22 use as a dietary supplement; Nutritional additives for medical purposes for use in foods and dietary
23 supplements for human consumption; Nutritional supplements." It is an intent-to-use application
24 with no claimed date of first use. Opposer filed for one ninety-day extension of time to oppose the
25 application.

26 As grounds of opposition, Opposer alleges that:

27 1. **Ownership of Registered Marks.** Opposer is the owner of numerous U.S.
28 Trademark Registrations for ROCKSTAR and similar marks, including the following:

1 • ROCKSTAR ENERGY DRINK, Reg. No. 2613067, registered on August 27, 2002, in
2 Class 32 for “sports drinks, namely, energy drinks.”

3 • ROCKSTAR (Stylized), Reg. No. 2784403, registered on November 18, 2003, in Class 32
4 for “sports drinks, namely, energy drinks.”

5 • PARTY LIKE A ROCKSTAR, U.S. Trademark Registration No. 2545247, registered on
6 March 5, 2002, in Class 32 for “sports drinks, namely, energy drinks.”

7 • ROCKSTAR JUICED, U.S. Trademark Registration No. 3190229, registered on December
8 26, 2006, in Class 32 for “sports drinks, namely, energy drinks.”

9 • ROCKSTAR, U.S. Trademark Registration No. 3398516, registered on March 18, 2008, in
10 Class 32 for “sports drinks, namely, energy drinks.”

11 • ROCKSTAR ROASTED, U.S. Trademark Registration No. 3423897, registered on May 6,
12 2008, in Class 32 for “energy drinks.”

13 • ROCKSTAR PUNCHED, U.S. Trademark Registration No. 3508269, registered on
14 September 30, 2008, in Class 32 for “energy drinks.”

15 • ROCKSTAR ENERGY SHOT (Stylized), U.S. Trademark Registration No. 3674171,
16 registered on August 25, 2009, in Class 32 for “energy drinks.”

17 The foregoing registrations were based upon applications filed in the United States Patent and
18 Trademark Office on dates prior to the date of filing of Applicant’s application (“Registered Marks”).
19 Opposer’s registered marks are valid and constitute prima facie evidence of Opposer’s exclusive right
20 to use such marks in commerce on the goods specified when registered. Because the parties’
21 respective marks are nearly identical and the parties’ respective goods are related, Opposer alleges
22 that Applicant’s claimed mark so resembles Opposer’s registered marks as to be likely to cause
23 confusion, or to cause mistake, or to deceive, as to source, sponsorship, or affiliation. Moreover,
24 Applicant’s trade name—ROCKSTAR NUTRACEUTICALS—will further exacerbate likely
25 confusion with Opposer’s ROCKSTAR-formative Registered Marks.

26 **2. Ownership of Pending Applications.** In addition to the Registered Marks noted
27 above, Opposer is the owner of numerous pending U.S. trademark applications for ROCKSTAR and
28 similar marks, whose filing dates precede that of Applicant’s application, including the following:

1 • ROCKSTAR, U.S. Serial No. 78725675, filed on October 3, 2005, in Class 30 for “ready to
2 eat grain derived food bars; chewing gum.”

3 • ROCKSTAR ENERGY WATER, U.S. Serial No. 77140611, filed on March 26, 2007, in
4 Class 32 for “sports drinks, namely, energy drinks.”

5 The foregoing applications have priority over Applicant’s application. Again, in view of the
6 similarity of the parties’ respective marks and the related nature of the parties’ respective goods,
7 Opposer alleges that Applicant’s claimed mark so resembles the marks contained in Opposer’s
8 applications as to be likely to cause confusion, or to cause mistake, or to deceive, as to source,
9 sponsorship, or affiliation.

10 WHEREFORE, Opposer prays that said application Serial No. 77/760205 be rejected, that no
11 registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

12 Opposer hereby appoints Harvey Siskind LLP, a law firm composed of members of the bar of the
13 State of California, to act as attorneys for Opposer herein, with full power to prosecute said opposition,
14 to transact all relevant business with the Patent and Trademark Office and in the United States Courts
15 and to receive all official communication in connection with this opposition.

16
17 Dated: February 26, 2010

Respectfully submitted,

HARVEY SISKIND LLP
IAN K. BOYD
RAFFI V. ZEROUNIAN

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20 By /Raffi V. Zerounian/
21 Raffi V. Zerounian
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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **NOTICE OF OPPOSITION**, dated February 26, 2010 (Serial No. 77/760205), was served on Applicant by mailing a copy thereof via first-class mail, postage prepaid, addressed to Eric Riendau, Rockstar Nutraceuticals, 410 Evernia Street, #112, West Palm Beach, FL 33401-5431, on February 26, 2010.

/Raffi V. Zerounian/
Raffi Zerounian

CERTIFICATE OF TRANSMISSION

I hereby certify that a true and correct copy of the attached **NOTICE OF OPPOSITION**, dated February 26, 2010 (Serial No. 77/760205), is being electronically transmitted to the Trademark Trial and Appeal Board on February 26, 2010.

/Raffi V. Zerounian/
Raffi V. Zerounian

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