

ESTTA Tracking number: **ESTTA446272**

Filing date: **12/14/2011**

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		
Entity	Individual	Citizenship	UNITED STATES
Address	P.O. Box 27740 Las Vegas, NV 89126 UNITED STATES		

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

Application No	85221778	Publication date	11/15/2011
Opposition Filing Date	12/14/2011	Opposition Period Ends	12/15/2011
Applicant	ENERGY DRINKS INC. 4719 QUAIL LAKES DR., STE. G-157 STOCKTON, CA 95207 UNITED STATES		

### Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Energy drinks
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### 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	<b>ROCKSTAR ENERGY DRINK</b>		
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.	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.	2784403	Application Date	12/13/2002
Registration Date	11/18/2003	Foreign Priority Date	NONE
Word Mark	ROCKSTAR		
Design Mark	<b>ROCKSTAR</b> 		
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.	3181547	Application Date	03/10/2004
Registration Date	12/05/2006	Foreign Priority Date	NONE
Word Mark	ROCKSTAR ENERGY COLA		

Design Mark	<b>ROCKSTAR ENERGY COLA</b>
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2004/07/01 First Use In Commerce: 2004/07/01 Soft drinks, namely colas

U.S. Registration No.	3999221	Application Date	10/03/2005
Registration Date	07/19/2011	Foreign Priority Date	NONE
Word Mark	ROCKSTAR		
Design Mark	<b>ROCKSTAR</b>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2009/12/16 First Use In Commerce: 2009/12/16 Chewing gum		

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	<b>ROCKSTAR JUICED</b>		
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			
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	<b>ROCKSTAR PUNCHED</b>
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		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: Ready to eat grain derived food bars

Attachments	75760313#TMSN.gif ( 1 page )( bytes ) 75950418#TMSN.gif ( 1 page )( bytes ) 78194527#TMSN.gif ( 1 page )( bytes ) 78381769#TMSN.jpeg ( 1 page )( bytes ) 78981462#TMSN.jpeg ( 1 page )( bytes ) 78773699#TMSN.jpeg ( 1 page )( bytes ) 78862808#TMSN.jpeg ( 1 page )( bytes ) 77187005#TMSN.jpeg ( 1 page )( bytes ) 77407780#TMSN.jpeg ( 1 page )( bytes ) 77504646#TMSN.jpeg ( 1 page )( bytes ) 78725675#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.111214.FINAL.pdf ( 6 pages )(26023 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	/Matthew A. Stratton/
Name	Matthew A. Stratton
Date	12/14/2011

1 HARVEY SISKIND LLP  
2 IAN K. BOYD (Calif. SBN 191434)  
3 MATTHEW A. STRATTON (Calif. SBN 254080)  
4 Four Embarcadero Center, 39<sup>th</sup> 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 ENERGY DRINKS INC., a California  
16 corporation,

17 Applicant.

**NOTICE OF OPPOSITION**

Opposition No.

Application Serial No. 85/221778

Published for Opposition: Nov. 15, 2011

18 Russell G. Weiner (“Opposer”) believes he will be damaged by registration of the mark shown  
19 in Serial No. 85/221778 (“Applied-For Mark”) by Energy Drinks Inc. (“Applicant”) and hereby  
20 opposes the same. As grounds for opposition, Opposer alleges:

21 **DESCRIPTION OF THE APPLIED-FOR MARK**

22 1. Applicant filed the Applied-For Mark with the United States Patent and Trademark  
23 Office (“USPTO”) on January 20, 2011 and it was published for opposition in the Official Gazette on  
24 November 15, 2011.

25 2. The Applied-For Mark consists of the word mark ENERGY DRINK ROCK N ROLL  
26 ONE MORE TIME, TWICE! 16 FL OZ (473ML) in Class 32 for “Energy drinks,” and was applied  
27 for on an intent-to-use basis.  
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1  **GROUNDS FOR OPPOSITION**

2 **Opposer’s Registered Marks**

3 3. Opposer owns numerous U.S. Trademark Registrations for ROCKSTAR and  
4 ROCKSTAR-formative marks (“Registered Marks”), including the following:

- 5 • ROCKSTAR ENERGY DRINK, U.S. Trademark Registration No. 2,613,067 in Class  
6 32 for “sports drinks, namely, energy drinks,” filed on August 19, 1999 and registered  
7 on August 27, 2002.
- 8 • PARTY LIKE A ROCKSTAR, U.S. Trademark Registration No. 2,545,247 in Class  
9 32 for “sports drinks, namely, energy drinks,” filed on February 29, 2000 and  
10 registered on March 5, 2002.
- 11 • ROCKSTAR, U.S. Trademark Registration No. 2,784,403 in Class 32 for “sports  
12 drinks, namely, energy drinks,” filed on December 13, 2002 and registered on  
13 November 18, 2003.
- 14 • ROCKSTAR ENERGY COLA, U.S. Trademark Registration No. 3,181,547 in Class  
15 32 for “soft drinks, namely colas,” filed on March 10, 2004 and registered on  
16 December 5, 2006.
- 17 • ROCKSTAR, U.S. Trademark Registration No. 3,999,221 in Class 30 for “chewing  
18 gum,” filed on October 3, 2005 and registered on July 19, 2011.
- 19 • ROCKSTAR JUICED, U.S. Trademark Registration No. 3,190,229 in Class 32 for  
20 “sports drinks, namely, energy drinks,” filed on December 14, 2005 and registered on  
21 December 26, 2006.
- 22 • ROCKSTAR, U.S. Trademark Registration No. 3,398,516 in Class 32 for “sports  
23 drinks, namely, energy drinks,” filed on April 17, 2006 and registered on March 18,  
24 2008.
- 25 • ROCKSTAR ROASTED, U.S. Trademark Registration No. 3,423,897 in Class 32 for  
26 “energy drinks,” filed on May 22, 2007 and registered on May 6, 2008.
- 27 • ROCKSTAR PUNCHED, U.S. Trademark Registration No. 3,508,269 in Class 32 for  
28 “energy drinks,” filed on February 27, 2008 and registered on September 30, 2008.



- 1           • ROCKSTAR ENERGY SHOT (and Design), U.S. Trademark Registration No.  
2           3,674,171 in Class 32 for “energy drinks,” filed on June 20, 2008 and registered on  
3           August 25, 2009.

4           4.       Opposer’s Registered Marks were based upon applications filed with the USPTO on  
5           dates prior to Applicant’s filing of the Applied-For Mark.

6           5.       Opposer’s Registered Marks are valid and constitute *prima facie* evidence of  
7           Opposer’s exclusive right to use such marks in commerce on the goods specified when registered.

8           6.       The Applied-For Mark is likely to cause confusion, mistake, or to deceive, as to  
9           source, sponsorship, or affiliation because its dominant word element is similar to those of Opposer’s  
10          Registered Marks and its goods are nearly identical to those referenced by Opposer’s Registered  
11          Marks.

12           **Opposer’s Pending Application**

13          7.       Opposer owns the pending U.S. Trademark Application for ROCKSTAR (“Pending  
14          Application”):

- 15           • ROCKSTAR, U.S. Trademark Application Serial No. 78/725675 in Class 30 for  
16           “ready to eat grain derived food bars,” filed on October 3, 2005.

17          8.       Opposer’s Pending Application has priority over the Applied-for Mark because  
18          Opposer filed it with the USPTO before Applicant filed the Applied-for Mark.

19          9.       The Applied-For Mark is likely to cause confusion, mistake, or to deceive, as to  
20          source, sponsorship, or affiliation because its dominant word element is similar to Opposer’s Pending  
21          Application and its goods are related to those referenced by Opposer’s Pending Application.

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1 **PRAYER**

2 WHEREFORE, Opposer prays that Application Serial No. 85/221778 be rejected, no  
3 registration thereon be issued to Applicant, and this Opposition be sustained in favor of Opposer.

4 Opposer hereby appoints as his attorneys Harvey Siskind LLP, a law firm composed of members  
5 of the Bar of the State of California, with full power to prosecute this Opposition, transact all relevant  
6 business with the USPTO and the U.S. Courts, and receive all official communication in connection with  
7 this Opposition.

8  
9 Dated: December 14, 2011

Respectfully submitted,  
HARVEY SISKIND LLP

10  
11 By           /Matthew A. Stratton/            
12 Matthew A. Stratton

13 Attorneys for Opposer,  
14 Russell G. Weiner

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**CERTIFICATE OF TRANSMISSION**

I hereby certify that a true and correct copy of the attached Notice of Opposition (Serial No. 85/221778) is being electronically transmitted to the Trademark Trial and Appeal Board on December 14, 2011.

Matthew A. Stratton  
Matthew A. Stratton

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1 **CERTIFICATE OF MAILING**

2 I hereby certify that a true and correct copy of the attached Notice of Opposition (Serial No.  
3 85/221778) was served on Applicant via first-class mail on December 14, 2011, postage prepaid,  
4 addressed to:

5 Energy Drinks Inc.  
6 4719 Quail Lakes Dr., Ste. G-157  
7 Stockton, CA 95207

8           /Cynthia Lee/            
9 Cynthia Lee

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