

ESTTA Tracking number: **ESTTA652822**

Filing date: **01/28/2015**

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	01/28/2015
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 UNITED STATES mrg@techmark.com, amr@techmark.com, lzh@techmark.com, dmp@techmark.com Phone:408-266-4700
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Applicant Information

Application No	86269626	Publication date	09/30/2014
Opposition Filing Date	01/28/2015	Opposition Period Ends	01/28/2015
Applicant	Old Ox Brewery, LLC www.oxbrewery.com Ashburn, VA 20147 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Beer, ale, lager, stout, porter, shandy

Applicant Information

Application No	86269577	Publication date	09/30/2014
Opposition Filing Date	01/28/2015	Opposition Period Ends	
Applicant	Old Ox Brewery, LLC 44652 Guilford Dr., #114 Ashburn, VA 20147 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Beer, ale, lager, stout and porter

Grounds for Opposition

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

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	RED BULL, RED BULL & Two Bulls Logo, Two Bulls Logo and (Single) Bull Logo, and other marks incorporating the word BULL, and/or the design of a bull or bovine animal		
Goods/Services	beverages, energy drinks, sports drinks, soft drinks, clothing, supplements, and various other products and services related or complementary thereto		

Related Proceedings	91218555
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Attachments	Red Bull v Old Ox Brewery - Consolidated Opposition - 86269626 and 86269577 - FINAL.pdf(48500 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	/Angelique M. Riordan/
Name	Angelique M. Riordan
Date	01/28/2015

including, among others, beverages, energy drinks, sports drinks, soft drinks, clothing, and supplements as well as various other products and services related or complementary thereto.

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, sports drinks, soft drinks, clothing, supplements, and various other products and services related or complementary thereto since long prior to the May 2, 2014 application date of Applicant's U.S. Appln. Nos. 86/269,626 and 86/269,577, both opposed herein.

3. Opposer Red Bull is also the owner of various Federal registrations and common law rights for trademarks for or including the words RED BULL, RED BULL & Two Bulls Logo, Two Bulls Logo and (Single) Bull Logo, and other marks incorporating the word BULL, and/or the design of a bull or bovine animal for various goods and services, all of which are collectively referred to herein as Red Bull's "**RED BULL and Bull Logo Marks**".

4. Red Bull's various **RED BULL and Bull Logo Marks**, all of which include the term BULL and/or the design of a bull, are and have become valuable assets of Opposer Red Bull, identifying its beverages, energy drinks, sports drinks, soft drinks, clothing, supplements, and various other products and services related or complementary thereto, and distinguishing Red Bull's products and services from the products and services of others.

5. Red Bull's various **RED BULL and Bull Logo Marks** as described herein have been extensively advertised in the United States and throughout the world, and have appeared on or in relation to products, product packaging, point-of-sale displays and other promotional materials for its beverages, energy drinks, sports drinks, soft drinks, supplements, clothing, and various other products sold, offered and advertised, and/or have been used in connection with various services, sporting events, contests, exhibitions and cultural events advertised, offered, conducted and/or promoted in the United States and throughout the world.

6. In 2013 alone, sales of RED BULL beverages exceeded 5.4 billion units worldwide, with over 2 billion units sold in the United States. As a result of the enormous success and sales of Red Bull's beverages and of the extensive advertising and promotion of the **RED BULL and Bull Logo Marks** and products in the United States and throughout the world, the **RED BULL and Bull Logo Marks** have become and are famous marks, and are recognized in the United States and elsewhere as such.

7. Applicant Old Ox Brewery, LLC ("Applicant"), a limited liability company organized under the laws of Virginia, whose address is 44652 Guilford Dr., # 114, Ashburn, Virginia 20147, filed Appln. No. 86/269,626 for the trademark OX Logo & OLD OX BREWERY for "beer, ale, lager, stout, porter, shandy," in Int'l Class 32 ("**OX Logo & OLD OX BREWERY**") and Appln. No. 86/269,577 for the trademark OLD OX BREWERY for "beer, ale, lager, stout and porter," in Int'l Class 32 ("**OLD OX BREWERY**") on May 2, 2014 (collectively "**OLD OX Marks**"). Both applications were filed based on an intent-to-use the **OLD OX Marks** on the respective Class 32 goods and were published for opposition on September 30, 2014.

8. Neither Appln. No. 86/269,626 nor Appln. No. 86/269,577 for the **OLD OX Marks** contain a color claim and can be used in any color, including red, in connection with Applicant's beverages.

9. An "ox" and a "bull" both fall within the same class of "bovine" animals and are virtually indistinguishable to most consumers. In addition, an ox is a castrated bull.

10. The "BREWERY" portion of the **OLD OX Marks**, shown in Appln. Nos. 86/269,626 and 86/269,577, has been disclaimed.

11. Based upon conversations with Mr. Graham Burns, Chief Financial Officer for Old Ox Brewery, LLC, Applicant intends to use its name and logos on other Class 32 beverages,

namely soft drinks for non-beer drinkers, thereby acknowledging the link and similarity between all beverages in Class 32.

Claim 1: Likelihood of Confusion under Trademark Act § 2(d)

12. Opposer repeats and realleges each and every allegation contained in paragraphs 1-11, inclusive, as if fully recited in this paragraph.

13. Applicant's **OLD OX Marks** so resemble Opposer Red Bull's **RED BULL and Bull Logo Marks** as to be likely, when applied to the goods of Appln. Nos. 86/269,626 and 86/269,577, to cause confusion, mistake or deception among purchasers, users and the public, thereby damaging Red Bull.

14. The Class 32 goods on which Applicant claims it has an intent to use in conjunction with Applicant's **OLD OX Marks** include and are closely related to, used for the same or similar purposes, and/or are or will be advertised and promoted to and directed at the same trade channels, the same purchasers, and are or will be used in the same environment as Opposer Red Bull's products and related goods and services.

15. Simultaneous use of Applicant's **OLD OX Marks** on the Class 32 goods set forth in Appln. Nos. 86/269,626 and 86/269,577 and Opposer Red Bull's **RED BULL and Bull Logo Marks** 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.

16. Use by Applicant of Applicant's **OLD OX Marks** on the Class 32 goods set forth in Appln. Nos. 86/269,626 and 86/269,577, is likely to lead to the mistaken belief that Applicant's products are sponsored by, affiliated with, approved by or otherwise emanate from Opposer Red Bull, thereby damaging Red Bull.

17. As set forth in Paragraphs 12-16 above, Applicant's **OLD OX Marks** are likely to cause confusion with Red Bull's prior **RED BULL and Bull Logo Marks**, in violation of §2(d) of the Trademark Act.

Wherefore, Red Bull requests that registration of the marks sought to be registered herein, OX Logo & OLD OX BREWERY of Appln. No. 86/269,626 and OLD OX BREWERY of Appln. No. 86/269,577, be denied and that this opposition be sustained.

RED BULL GMBH
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Dated: January 28, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **CONSOLIDATED NOTICE OF OPPOSITION** is being served on January 28, 2015, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to Applicant's Attorney of Record at the address given on the TSDR website¹:

MELISE BLAKESLEE
SEQUEL TECHNOLOGY & IP LAW PLLC
1000 POTOMAC STREET, NW, SUITE 150A
WASHINGTON, DC 20007
UNITED STATES

/Angelique M. Riordan/
Angelique M. Riordan

¹ Please note that, while Melise Blakeslee has been listed as Attorney of Record for both applications, the TSDR record for Appln. No. 86/269,626 has not been updated to provide her correspondence address. Opposer has used Ms. Blakeslee's listed address from the TSDR record for Appln. No. 86/269,577 for service of this Consolidated Notice of Opposition where Ms. Blakeslee is clearly listed as Attorney of Record for both applications opposed herein.