

ESTTA Tracking number: **ESTTA780598**

Filing date: **11/02/2016**

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	ENERGY BEVERAGES, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	2390 Anselmo Drive Corona, CA 92879 UNITED STATES		

Attorney information	Diane M. Reed Knobbe Martens Olson & Bear LLP 2040 Main Street 14th Floor Irvine, CA 92614 UNITED STATES efiling@knobbe.com Phone:949-760-0404		
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Applicant Information

Application No	86787263	Publication date	10/04/2016
Opposition Filing Date	11/02/2016	Opposition Period Ends	11/03/2016
Applicant	Red Oxygen LLC 135 Raintree Lane Mahwah, NJ 07430 UNITED STATES		


Goods/Services Affected by Opposition


Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary and nutritional supplements
Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, shorts, jackets, footwear, hats and caps, athletic uniforms; swimwear
Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Non-alcoholic beverages, namely, energy-drinks, sports drinks and soft drinks
Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Online retail store featuring non-alcoholic beverages, namely, energy drinks, sports drinks and soft drinks, dietary and nutritional supplements, athletic apparel, namely, shirts, pants, shorts, jackets, footwear, hats and caps, athletic uniforms, and swimwear

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. Application No.	85749167	Application Date	10/09/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BURN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Carbonated soft drinks containing caffeine, natural flavors and vitamins		

U.S. Application No.	86155956	Application Date	01/02/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BURN ENERGY DRINK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Non-alcoholic beverages, namely, carbonated beverages		

U.S. Application No.	85949314	Application Date	06/03/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BURN FUEL YOUR FIRE		

Design Mark	
Description of Mark	The mark consists of a double-forked flame with the word "burn" alongside and "fuel your fire" underneath.
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 non-alcoholic beverages, namely, carbonated beverages and energy drinks

Attachments	85749167#TMSN.png(bytes) 86155956#TMSN.png(bytes) 85949314#TMSN.png(bytes) 2016-11-02 Notice of Opposition - EBLLC.531M.pdf(769932 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	/Diane M. Reed/
Name	Diane M. Reed
Date	11/02/2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ENERGY BEVERAGES LLC,

Opposer,

v.

Red Oxygen LLC,

Applicant.

)
) Opposition No.: _____
)
) Serial No.: 86/787,263
) Mark: TASTE THE BURN
)
)
)
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)
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)
)
)
)
)

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Energy Beverages LLC, a Delaware limited liability company, located and doing business at 2390 Anselmo Drive, Corona, California 92879, (“Opposer”) believes that it will be damaged by registration of U.S. Trademark Application Serial No. 86/787,263 for the mark TASTE THE BURN (the “Application”) filed by Red Oxygen LLC (“Applicant”) and therefore opposes the same.

As grounds for opposition, it is alleged:

1. By the Application filed on Oct. 14, 2015 and published on Oct. 4, 2016, Applicant seeks to obtain registration on the Principal Register of the trademark TASTE THE BURN for “dietary and nutritional supplements” in International Class 5, “athletic apparel,

namely, shirts, pants, shorts, jackets, footwear, hats and caps, athletic uniforms; swimwear: in International Class 25, “non-alcoholic beverages, namely, energy drinks, sports drinks and soft drinks” in International Class 32 and “Online retail store featuring non-alcoholic beverages, namely, energy drinks, sports drinks and soft drinks, dietary and nutritional supplements, athletic apparel, namely, shirts, pants, shorts, jackets, footwear, hats and caps, athletic uniforms, and swimwear” in International Class 35.

2. Opposer owns and relies on the earlier pending U.S. Trademark Application 85/749,167 for the mark BURN for “Carbonated soft drinks containing caffeine, natural flavors and vitamins” in International Class 32 filed in the United States Patent and Trademark Office (“PTO”) on October 9, 2012 (the “’167 Application”). The filing date of Opposer’s ’167 application is prior to the filing date of the Application. True and correct copies of the specifics of the ’167 Application obtained from the PTO’s TESS and Assignment databases are attached hereto as Exhibit 1 and made of record.

3. Opposer owns and relies on the earlier pending U.S. Trademark Application 86/155,956 for the mark BURN ENERGY DRINK for “Non-alcoholic beverages, namely, carbonated beverages” in International Class 32 filed in the United States Patent and Trademark Office (“PTO”) on January 2, 2014 (the “’956 Application”). The filing date of Opposer’s ’956 Application is prior to the filing date of the Application. True and correct copies of the specifics of the ’956 Application obtained from the PTO’s TESS and Assignment databases are attached hereto as Exhibit 2 and made of record.

4. Opposer owns and relies on the earlier pending U.S. Trademark Application 85/949,314 for the mark BURN FUEL YOUR FIRE and Design for “Non-alcoholic beverages, namely, carbonated beverages and energy beverages” in International Class 32 filed in the United

States Patent and Trademark Office (“PTO”) on June 3, 2013 (the “’314 Application”). The filing date of Opposer’s ’314 Application is prior to the filing date of the Application. True and correct copies of the specifics of the ’314 Application obtained from the PTO’s TESS and Assignment databases are attached hereto as Exhibit 3 and made of record.

5. The Application was filed on Oct. 14, 2015, and is based on Applicant’s alleged intent-to-use the mark in interstate commerce. Opposer’s ’167 Application, ’956 Application and ’314 Application (collectively, “Opposer’s BURN Applications”) were filed prior to the filing date of the Application.

6. Applicant seeks an unrestricted federal registration for TASTE THE BURN covering the goods in International Classes 5, 25 and 32 and services in International Class 35 set forth in the Application. If a registration issues for the Application, such registration will constitute prima facie evidence of the Applicant’s exclusive right to use the registered mark in commerce on or in connection with the listed goods and services throughout the United States with no limitation thereon.

7. Opposer will be damaged by registration of the Application in Classes 5, 25, 32 and 35 in that the TASTE THE BURN mark so resembles the marks set forth in Opposer’s BURN Applications which were filed earlier in the United States Patent and Trademark Office, as to be likely, when used on or in connection with the goods and services identified in the Application, to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

8. In view of Opposer’s prior rights pursuant to Opposer’s BURN Applications, Applicant is not entitled to federal registration of the TASTE THE BURN mark in Classes 5, 25, 32 and 35 pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).


WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 86/787,263 be rejected and stricken as to Classes 5, 25, 32 and 35, that no registration as to Classes 5, 25, 32 and 35 be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer submits herewith the required fees for the opposition. Please charge Deposit Account No. 11-1410 for any additional fees that may be required, or credit any overpayment to this account.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 11/2/14

By: 

Steven J. Nataupsky

Diane M. Reed

Diana E. Wade

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Irvine, CA 92614

(949) 760-0404

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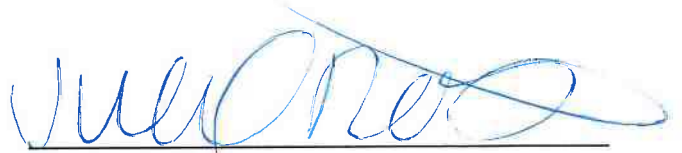
Attorneys for Opposer,

ENERGY BEVERAGES LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on Applicant's Attorney of record by mailing said copy on November 2, 2016, via First Class Mail to:

VINCENT P. RAO II
Kelley Drye & Warren LLP
1 Jefferson Rd
Parsippany, New Jersey 07054-2833



Julia Roberts
Trademark Paralegal

24506040

EXHIBIT 1

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BURN

Word Mark	BURN
Goods and Services	IC 032. US 045 046 048. G & S: Carbonated soft drinks containing caffeine, natural flavors and vitamins
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85749167
Filing Date	October 9, 2012
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) ENERGY BEVERAGES LLC LIMITED LIABILITY COMPANY DELAWARE 2390 Anselmo Drive CORONA CALIFORNIA 92879
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Diane M. Reed
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Trademark Assignment Abstract of Title

Total Assignments: 2

Serial #: [85749167](#)

Filing Dt: 10/09/2012

Reg #: NONE

Reg. Dt:

Applicant: Coca-Cola Company, The

Mark: BURN

Assignment: 1

Reel/Frame: [5697/0877](#)

Recorded: 12/29/2015

Pages: 8

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: [THE COCA-COLA COMPANY](#)

Exec Dt: 06/12/2015

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: [MONSTER BEVERAGE CORPORATION](#)

1 MONSTER WAY
CORONA, CALIFORNIA 92879

Entity Type: CORPORATION

Citizenship: DELAWARE

Correspondent: KNOBBE MARTENS OLSON & BEAR LLP

2040 MAIN STREET, 14TH FLOOR
ATTN: DIANE REED
IRVINE, CA 92614

Assignment: 2

Reel/Frame: [5697/0893](#)

Recorded: 12/29/2015

Pages: 8

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: [MONSTER BEVERAGE CORPORATION](#)

Formerly: FORMERLY NEW LASER CORPORATION

Exec Dt: 06/12/2015

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: [ENERGY BEVERAGES LLC](#)

1 MONSTER WAY
CORONA, CALIFORNIA 92879

Entity Type: LIMITED LIABILITY
COMPANY

Citizenship: DELAWARE

Correspondent: KNOBBE MARTENS OLSON & BEAR LLP

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ATTN: DIANE REED
IRVINE, CA 92614

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BURN ENERGY DRINK

Word Mark	BURN ENERGY DRINK
Goods and Services	IC 032. US 045 046 048. G & S: Non-alcoholic beverages, namely, carbonated beverages
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86155956
Filing Date	January 2, 2014
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	December 29, 2015
Owner	(APPLICANT) ENERGY BEVERAGES LLC LIMITED LIABILITY COMPANY DELAWARE 2390 Anselmo Drive CORONA CALIFORNIA 92879
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Diane M. Reed
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ENERGY DRINK" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Trademark Assignment Abstract of Title

Total Assignments: 2

Serial #: [86155956](#)

Filing Dt: 01/02/2014

Reg #: NONE

Reg. Dt:

Applicant: The Coca-Cola Company

Mark: BURN ENERGY DRINK

Assignment: 1

Reel/Frame: [5697/0877](#)

Recorded: 12/29/2015

Pages: 8

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: [THE COCA-COLA COMPANY](#)

Exec Dt: 06/12/2015

Entity Type: CORPORATION

Citizenship: DELAWARE

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: [MONSTER BEVERAGE CORPORATION](#)

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Assignment: 2

Reel/Frame: [5697/0893](#)

Recorded: 12/29/2015

Pages: 8

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: [MONSTER BEVERAGE CORPORATION](#)

Formerly: FORMERLY NEW LASER CORPORATION

Exec Dt: 06/12/2015

Entity Type: CORPORATION

Citizenship: DELAWARE

Entity Type: LIMITED LIABILITY
COMPANY

Citizenship: DELAWARE

Assignee: [ENERGY BEVERAGES LLC](#)

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Correspondent: KNOBBE MARTENS OLSON & BEAR LLP

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Word Mark	BURN FUEL YOUR FIRE
Goods and Services	IC 032. US 045 046 048. G & S: non-alcoholic beverages, namely, carbonated beverages and energy drinks
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.15.03 - Fire (flames), other than emanating from objects, words, numbers, fireplaces or candles; Flames, other than flames emanating from objects, words, numbers, fireplaces or candles
Serial Number	85949314
Filing Date	June 3, 2013
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	October 20, 2015
Owner	(APPLICANT) The Coca-Cola Company CORPORATION DELAWARE One Coca-Cola Plaza Atlanta GEORGIA 30313
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Diane M. Reed
Prior Registrations	3251654
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of a double-forked flame with the word "burn" alongside and "fuel your fire" underneath.
Type of Mark	TRADEMARK

Register PRINCIPAL
Live/Dead Indicator LIVE

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Trademark Assignment Abstract of Title

Total Assignments: 2

Serial #: [85949314](#)

Filing Dt: 06/03/2013

Reg #: NONE

Reg. Dt:

Applicant: The Coca-Cola Company

Mark: BURN FUEL YOUR FIRE

Assignment: 1

Reel/Frame: [5697/0877](#)

Recorded: 12/29/2015

Pages: 8

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: [THE COCA-COLA COMPANY](#)

Exec Dt: 06/12/2015

Entity Type: CORPORATION

Citizenship: DELAWARE

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: [MONSTER BEVERAGE CORPORATION](#)

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Assignment: 2

Reel/Frame: [5697/0893](#)

Recorded: 12/29/2015

Pages: 8

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COMPANY

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Assignee: [ENERGY BEVERAGES LLC](#)

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