

ESTTA Tracking number: **ESTTA931173**

Filing date: **10/26/2018**

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
Granted to Date of previous extension	10/27/2018
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, eb.ttab@knobbe.com (949) 760-0404
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Applicant Information

Application No	87722840	Publication date	08/28/2018
Opposition Filing Date	10/26/2018	Opposition Period Ends	10/27/2018
Applicant	BRANDING MACHINE LLC 6401 CONGRESS AVENUE, SUITE #100 BOCA RATON, FL 33487 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 supplements; Food supplements; Herbal supplements; Mineral supplements; Nutritional supplements; Protein supplements; Vitamin supplements; Meal replacement shakes for weight loss purposes; Dietary and nutritional supplements for weight loss purposes; chocolate-based mealreplacement shakes for weight loss purposes
Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Sports drinks; Energy drinks


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	85949314	Application Date	06/03/2013
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No.			
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		

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		

Attachments	85949314#TMSN.png(bytes) 86155956#TMSN.png(bytes) 2018-10-26 NOTICE OF OPPOSITION - SER NOS 87722840 -
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	EBLLC.852M.pdf(108803 bytes) Ex 1 App No 85949314 - EBLLC.852M.pdf(838169 bytes) Ex 2 App No 86155956 - EBLLC.852M.pdf(836020 bytes)
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Signature	/Diane M. Reed/
Name	Diane M. Reed
Date	10/26/2018

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ENERGY BEVERAGES LLC,

Opposer,

v.

BRANDING MACHINE LLC,

Applicant.

)
) Opposition No.: _____

) Serial No.: 87/722840

) Mark:

) **BURNING DANCE**

)

)

)

)

)

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. 87/722840 for the mark BURNING DANCE (the “Application”) filed by Branding Machine (“Applicant”) and therefore opposes the same.


As grounds for opposition, it is alleged:

1. By Application Serial No. 87/722840 filed on December 15, 2017, Applicant seeks to obtain registration on the Principal Register of the trademark BURNING DANCE for “Dietary supplements; Food supplements; Herbal supplements; Mineral supplements; Nutritional supplements; Protein supplements; Vitamin supplements; Meal replacement shakes for weight loss

purposes; Dietary and nutritional supplements for weight loss purposes; chocolate-based meal replacement shakes for weight loss purposes” in International Class 5 and “Non-alcoholic carbonated energy drinks” in International Class 32.

2. Opposer owns and relies on the earlier pending U.S. Trademark Application



85/949314 for the mark  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 and published on October 20, 2015. 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 1 and made of record.

3. Opposer owns and relies on the earlier pending U.S. Trademark Application 86/155956 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 and published on December 29, 2015. 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. The marks shown in Opposer’s Application Nos. 85/949314, and 86/155956 are hereafter referred to as the “BURN Applications.”

5. Applicant seeks unrestricted federal registration for BURNING DANCE covering the goods in International Classes 5 and 32 set forth in the Application. If registration issues for

the mark and the goods set out in 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 throughout the United States with no limitation thereon.

6. Opposer will be damaged by registration of the Application in that the mark BURNING DANCE so resemble Opposer's BURN Applications which were filed earlier in the United Patent and Trademark Office as to be likely, when used on or in connection with the goods as they are identified in the Applications, as 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).

7. In view of Opposer's prior rights in its BURN Applications, Applicant is not entitled to federal registration of the BURNING DANCE mark in Classes 5 and 32 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. 87/722840 be rejected and stricken, that no registration 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: October 26, 2018

By: /Diane M. Reed/
Steven J. Nataupsky
Diane M. Reed
Diana E. Wade
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Irvine, CA 92614
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Attorneys for Opposer,
ENERGY BEVERAGES LLC

TTAB Opposition No.: _____
Energy Beverages LLC v. Branding Machine LLC

EXHIBIT 1



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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) Energy Beverages LLC LIMITED LIABILITY COMPANY DELAWARE 2390 Anselmo Drive Corona CALIFORNIA 92879
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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Assignments on the Web > [Trademark Query](#)

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

Assignee: [MONSTER BEVERAGE CORPORATION](#)

Entity Type: CORPORATION

Citizenship: DELAWARE

1 MONSTER WAY

CORONA, CALIFORNIA 92879

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](#)

Exec Dt: 06/12/2015

Entity Type: CORPORATION

Citizenship: DELAWARE

Formerly: FORMERLY NEW LASER CORPORATION

Assignee: [ENERGY BEVERAGES LLC](#)

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: DELAWARE

1 MONSTER WAY

CORONA, CALIFORNIA 92879

Correspondent: KNOBBE MARTENS OLSON & BEAR LLP

2040 MAIN STREET, 14TH FLOOR

ATTN: DIANE REED

IRVINE, CA 92614

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Web interface last modified: August 25, 2017 v.2.6

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TTAB Opposition No.: _____
Energy Beverages LLC v. Branding Machine LLC

EXHIBIT 2



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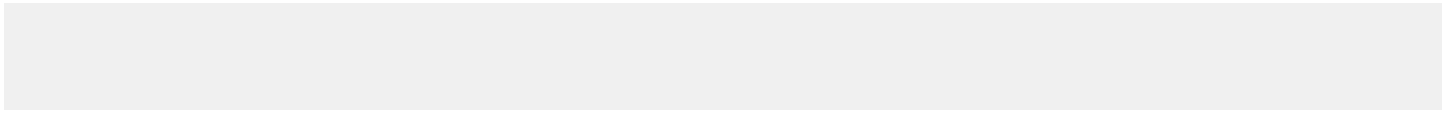
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BURN ENERGY DRINK

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

Assignee: [MONSTER BEVERAGE CORPORATION](#)

Entity Type: CORPORATION

Citizenship: DELAWARE

1 MONSTER WAY

CORONA, CALIFORNIA 92879

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IRVINE, CA 92614

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Exec Dt: 06/12/2015

Entity Type: CORPORATION

Citizenship: DELAWARE

Formerly: FORMERLY NEW LASER CORPORATION

Assignee: [ENERGY BEVERAGES LLC](#)

Entity Type: LIMITED LIABILITY COMPANY

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