

ESTTA Tracking number: **ESTTA1012297**

Filing date: **10/30/2019**

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	HELL ENERGY Magyarországi Kft.
Granted to Date of previous extension	11/09/2019
Address	KÁ#ROLY KRT. 1. 1. EM. 2. BUDAPEST, H-1075 HUNGARY

Attorney information	John S. Egbert Egbert, McDaniel & Swartz, PLLC 1001 Texas Ave., Suite 1250 Houston, TX 77002 UNITED STATES mail@emsip.com, kwilson@emsip.com, mswartz@emsip.com 713-224-8080
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**Applicant Information**

Application No	88440057	Publication date	09/10/2019
Opposition Filing Date	10/30/2019	Opposition Period Ends	11/09/2019
Applicant	Ghioldi, Gina M. Apt #302 32 Second Avenue Burlington, MA 01803 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: non-alcoholic cocktail mixes
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**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. Registration No.	5526817	Application Date	06/14/2017
Registration Date	07/31/2018	Foreign Priority Date	03/06/2017
Word Mark	HELL		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Energy drinks

Attachments	79215417#TMSN.png( bytes ) 2954-46 noticeofopposition.COCKTAILS IN HELL.pdf(212593 bytes )
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Signature	/2954-46/
Name	John S. Egbert
Date	10/30/2019

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

In the Matter of Application Serial No. 88/440,057  
Published in the Official Gazette on September 10, 2019

HELL ENERGY Magyarország Kft.,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. _____
	§	
Ghioldi, Gina M.,	§	
	§	
Applicant.	§	

**NOTICE OF OPPOSITION**

The Opposer, HELL ENERGY Magyarország Kft. ("Opposer"), a Korlátolt Felelősségű Társaság (the equivalent of a limited liability company) of Hungary located at Károly krt. 1. 1. em. 2., H-1075 Budapest, Hungary, believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. The Applicant, Gina M. Ghioldi ("Applicant"), an individual and citizen of the United States located at Apt #302, 32 Second Avenue, Burlington, Massachusetts 01803, is the owner of an application to register the "COCKTAILS IN HELL" mark (hereinafter also referred to as "Applicant's Mark") for use in connection with "non-alcoholic cocktail mixes" in International Class 32.

2. Said application was filed on May 21, 2019 under Section 1(b) of the Trademark Act, was assigned U.S. Application Serial No. 88/440,057, and was published for Opposition in the Official Gazette on September 10, 2019.

3. Opposer is a leading beverage manufacturer and exporter of various products, including "energy drinks" in International Class 32.

4. Energy drinks are a type of non-alcoholic beverage that are often offered for sale to consumers for use as a cocktail mixer. As such, the wording "non-alcoholic cocktail mixes" contained in the identification of goods for Applicant's Mark is broad enough to encompass the "energy drinks" identified by Opposer.

5. Opposer filed an application under Section 66(a) of the Trademark Act on June 14, 2017 for registration of its "HELL" mark in the United States as it is used in relation to "energy drinks" in International Class 32. Opposer's application has a priority filing date of March 6, 2017. Opposer's priority filing date and filing date is prior to the filing date of Applicant's Mark and prior to any alleged first use in United States commerce for Applicant's Mark.

6. Opposer has engaged, and is now engaged in the manufacture, distribution, sale, advertising and promotion in commerce of "energy drinks" in International Class 32.

7. In connection therewith, Opposer's "HELL" Mark, (hereinafter also referred to as "Opposer's Mark"), U.S. Reg. No. 5,526,817, was registered by the USPTO on July 31, 2018 for "energy drinks" in International Class 32. A true copy of the records from the USPTO electronic database showing the status and title for said registration is attached hereto as Exhibit A.

8. Opposer's Mark has a constructive first use date of March 6, 2017.

9. Opposer's March 6, 2017 constructive first use date for Opposer's Mark is long prior to the May 21, 2019 filing date and constructive first use date of Applicant's "COCKTAILS IN HELL" Mark in Class 32.

10. The prior constructive first use date for Opposer's Mark gives Opposer's Mark priority of use over Applicant's "COCKTAILS IN HELL" Mark in Class 32.

11. Applicant's "COCKTAILS IN HELL" Mark in Class 32 would be confusingly similar

because:

- a. Applicant's Mark is confusingly similar in appearance to Opposer's Mark;
- b. Applicant's Mark is confusingly similar in sound to Opposer's Mark;
- c. Applicant's Mark is similar in connotation and commercial impression to Opposer's Mark;
- d. the goods of Opposer and the goods of Applicant are closely related and/or marketed through the same or overlapping channels of trade and/or to the same classes of consumers;
- e. Opposer's Mark enjoys a high level of distinctiveness;
- f. the term "COCKTAILS" in Applicant's Mark is generic or, at the very least, descriptive when used in relation to "non-alcoholic cocktail mixes" in Class 32;
- g. the term "COCKTAILS" found in Applicant's Mark is, at the very least, descriptive and has not acquired distinctiveness in relation to "non-alcoholic cocktail mixes" in Class 32;
- h. the term "COCKTAILS" found in Applicant's Mark is a generic term that is unable to acquire distinctiveness when used in relation to "non-alcoholic cocktail mixes" in Class 32; and
- i. even if the term "COCKTAILS" in Applicant's Mark is determined to be part of a unitary phrase or unitary mark, the term "HELL" that is found in Opposer's Mark and Applicant's Mark is the dominant portion of each mark.

12. Since the filing of Opposer's Mark, Opposer has made a substantial investment in advertising and promoting its goods under its trademark throughout the world. Opposer has extensively used, advertised, promoted and offered Opposer's goods bearing Opposer's "HELL" mark to the public throughout the world through various channels of trade in commerce, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's Mark and associate the same with Opposer and/or goods sold by Opposer. As a result of such extensive use and advertisement, Opposer's customers and the public in general will in the future know and recognize Opposer's Mark and associate the same with Opposer and/or the goods sold by Opposer.

13. Opposer's Mark constitutes the lawful, valued, subsisting, and exclusive property of the Opposer. As a result of the high quality of Opposer's goods that are sold under Opposer's Mark, and the extensive sales and advertising made under Opposer's Mark throughout the world, the aforementioned mark has become an intrinsic and essential part of the valuable goodwill and property of Opposer, and is recognizable and associated by the public as a symbol identifying and distinguishing Opposer's goods as those of exceptional quality.

14. Applicant's "COCKTAILS IN HELL" Mark in Class 32, U.S. Application Serial No. 88/440,057, so resembles Opposer's Mark as to be likely to cause confusion or mistake, to suggest a connection, or to deceive purchasers into believing that Applicant's goods originate with the Opposer and/or are endorsed or sponsored by the Opposer, and/or that Applicant and/or its goods are otherwise affiliated with the Opposer and its goods.

15. Use of Applicant's "COCKTAILS IN HELL" Mark in Class 32 will inexorably have an adverse effect upon the value of Opposer's Mark. If this Opposition is not sustained, any defect, objection to, or fault found with Applicant's goods provided under the "COCKTAILS IN HELL" mark would necessarily reflect on and seriously injure the valuable goodwill and reputation that Opposer has established, and will establish, for its goods.

16. In the prosecution of the application for Applicant's "COCKTAILS IN HELL" Mark, the generic term "COCKTAILS" was not disclaimed apart from the mark as a whole even though it is intended to be used in relation to "non-alcoholic cocktail mixes" in Class 32.

17. The examiner of Applicant's "COCKTAILS IN HELL" Mark erroneously allowed Applicant's Mark to be published for opposition without requiring disclaimer of the term "COCKTAILS" in the application.

18. Even if it is determined that the term "COCKTAILS" is not generic as used in relation to the goods listed in Applicant's Mark, the term "COCKTAILS" is at the very least descriptive as used in relation to the goods. Applicant has not alleged use of her mark in U.S. commerce and has not provided proof of acquired distinctiveness, in part, of the descriptive "COCKTAILS" term that is included in her mark.

19. Even if it is determined that the term "COCKTAILS" is descriptive, the term "COCKTAILS" is so highly descriptive as to be incapable of acquiring distinctiveness, in part.

20. As such, a disclaimer of the term "COCKTAILS" apart from the mark as a whole should have been required during the prosecution of Applicant's Mark as it is intended to be used in relation to "non-alcoholic cocktail mixes" in Class 32 and any likelihood of confusion analysis in this proceeding should be made in a manner that considers the term "COCKTAILS" disclaimed apart from Applicant's Mark as a whole.

21. In the alternative, even if the phrase "COCKTAILS IN HELL" is determined to be a unitary phrase, the term "COCKTAILS" used in Applicant's Mark is a highly descriptive or generic term as it is intended to be used in relation to the goods listed in Applicant's Mark. As such, the arbitrary term "HELL" should be considered the dominant portion of Applicant's Mark in any likelihood of confusion analysis.

22. Based on the foregoing arguments, registration of the mark "COCKTAILS IN HELL" for use in connection with "non-alcoholic cocktail mixes" in International Class 32, as found in U.S. Application No. 88/440,057, filed on May 21, 2019, and published for Opposition in the Official Gazette on September 10, 2019, will cause injury and damage to Opposer.

WHEREFORE, Opposer respectfully requests that the Trademark Trial and Appeal Board find and order that registration by Applicant of the mark "COCKTAILS IN HELL" in International Class 32 be denied as damaging to the Opposer and that this opposition is sustained.

Opposer hereby submits the requisite filing fee of \$400.00 for opposing the registration of Applicant's trademark application in International Class 32.

Respectfully submitted,

October 30, 2019  
Date

/2954-46/  
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Reg. No. 30,627  
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ATTORNEYS FOR OPPOSER  
HELL ENERGY Magyarország Kft.



# Exhibit "A"



## Trademarks > Trademark Electronic Search System (TESS)

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# HELL

Word Mark	HELL
Goods and Services	IC 032. US 045 046 048. G & S: Energy drinks
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	79215417
Filing Date	June 14, 2017
Current Basis	66A
Original Filing Basis	66A
Published for Opposition	May 15, 2018
Registration Number	5526817
International Registration Number	1362891
Registration Date	July 31, 2018
Owner	(REGISTRANT) <b>HELL ENERGY</b> Magyarország Kft. LIMITED LIABILITY COMPANY HUNGARY Károlyi krt. 1. 1. em. 2. H-1075 Budapest HUNGARY
Attorney of Record	John S. Egbert
Priority Date	March 6, 2017
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Mark: HELL

# HELL

US Serial Number: 79215417

Application Filing Date: Jun. 14, 2017

US Registration Number: 5526817

Registration Date: Jul. 31, 2018

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jul. 31, 2018

Publication Date: May 15, 2018

## Mark Information

Mark Literal Elements: HELL

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

## Related Properties Information

International Registration Number: 1362891

International Registration Date: Jun. 14, 2017

## Goods and Services

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

For: Energy drinks

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 66(a)

## Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: Yes

Filed 66A: Yes

Currently No Basis: No

Filed No Basis: No

## Current Owner(s) Information

**Owner Name:** HELL ENERGY Magyarország Kft.

**Owner Address:** Károlyi krt. 1. 1. em. 2.  
H-1075 Budapest  
HUNGARY

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where Organized:** HUNGARY

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** John S. Egbert

**Docket Number:** 2954-28

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**Attorney Email Authorized:** Yes

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**Phone:** 713-224-8080

**Fax:** 713-223-4873

**Correspondent e-mail:** [mail@egbertlawoffices.com](mailto:mail@egbertlawoffices.com)

**Correspondent e-mail Authorized:** Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Dec. 07, 2018	FINAL DECISION TRANSACTION PROCESSED BY IB	
Nov. 16, 2018	FINAL DISPOSITION NOTICE SENT TO IB	
Nov. 16, 2018	FINAL DISPOSITION PROCESSED	68359
Oct. 31, 2018	FINAL DISPOSITION NOTICE CREATED, TO BE SENT TO IB	
Jul. 31, 2018	REGISTERED-PRINCIPAL REGISTER	
May 15, 2018	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 15, 2018	PUBLISHED FOR OPPOSITION	
Apr. 25, 2018	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Apr. 09, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 06, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	66213
Apr. 06, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	66213
Apr. 03, 2018	ASSIGNED TO LIE	66213
Mar. 19, 2018	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 06, 2017	REFUSAL PROCESSED BY IB	
Oct. 20, 2017	CHANGE OF OWNER RECEIVED FROM IB	
Sep. 19, 2017	NON-FINAL ACTION MAILED - REFUSAL SENT TO IB	
Sep. 19, 2017	REFUSAL PROCESSED BY MPU	68359
Sep. 15, 2017	NON-FINAL ACTION (IB REFUSAL) PREPARED FOR REVIEW	
Sep. 14, 2017	NON-FINAL ACTION WRITTEN	83706
Sep. 13, 2017	ASSIGNED TO EXAMINER	83706
Sep. 12, 2017	APPLICATION FILING RECEIPT MAILED	
Sep. 06, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 31, 2017	SN ASSIGNED FOR SECT 66A APPL FROM IB	

## International Registration Information (Section 66a)

**International Registration** 1362891

**International Registration Date:** Jun. 14, 2017

**Number:**

**Priority Claimed Flag:** Yes

**Intl. Registration Status:** REQUEST FOR EXTENSION OF PROTECTION PROCESSED

**Notification of Designation Date:** Aug. 31, 2017

**International Registration Renewal Date:** Jun. 14, 2027

**First Refusal Flag:** Yes

**Date of Section 67 Priority Claim:** Mar. 06, 2017

**Date of International Registration Status:** Aug. 31, 2017

**Date of Automatic Protection:** Feb. 28, 2019

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## TM Staff and Location Information

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### TM Staff Information - None

#### File Location

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Jul. 31, 2018



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**No assignment has been recorded at the USPTO**

**For Serial Number: 79215417**

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.6  
Web interface last modified: August 25, 2017 v.2.6

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