

ESTTA Tracking number: **ESTTA1063693**

Filing date: **06/23/2020**

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	07/08/2020
Address	AM BRUNNEN 1 FUSCHL AM SEE, 5330 AUSTRIA

Attorney information	Tywanda Harris Lord Kilpatrick Townsend & Stockton LLP 1100 Peachtree Street NE, Suite 2800 Atlanta, GA 30309 UNITED STATES tlord@ktslaw.com, totay@ktslaw.com, cminervino@ktslaw.com, kteilhaber@ktslaw.com, tmadmin@ktslaw.com 4048156500
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Applicant Information

Application No	88645138	Publication date	03/10/2020
Opposition Filing Date	06/23/2020	Opposition Period Ends	07/08/2020
Applicant	The Trustees of the VezÃ©r Family Trust 2526 Mankas Corner Road Fairfield, CA 94534 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Wine

Applicant Information

Application No	88645200	Publication date	05/26/2020
Opposition Filing Date	06/23/2020	Opposition Period Ends	06/25/2020
Applicant	The Trustees of the VezÃ©r Family Trust 2526 Mankas Corner Road Fairfield, CA 94534 UNITED STATES		

Goods/Services Affected by Opposition


Class 033. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Wine

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)

Marks Cited by Opposer as Basis for Opposition

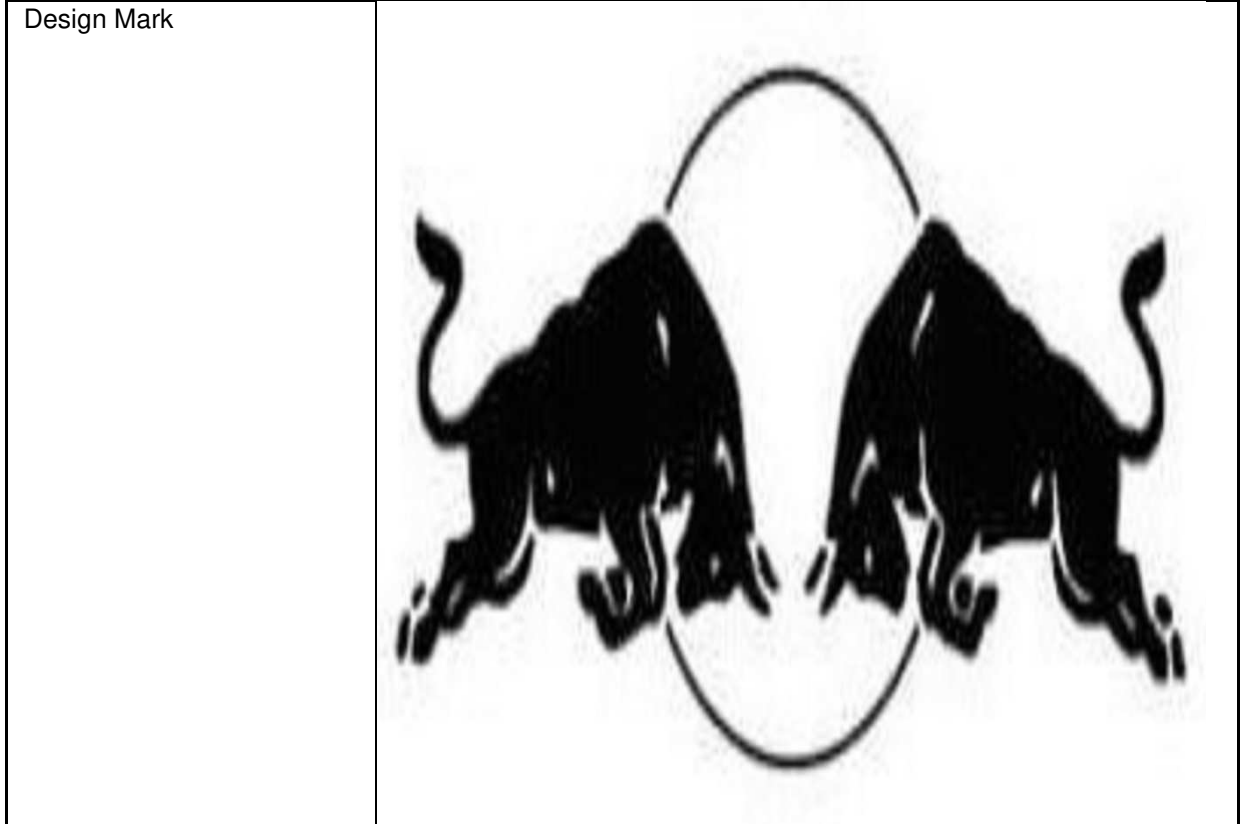
U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	RED BULL		
Goods/Services	energy drinks, beverages, sports drinks, soft drinks, carbonated beverages, and various other products and services related or complementary thereto		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark			

Goods/Services	energy drinks, beverages, sports drinks, soft drinks, carbonated beverages, and various other products and services related or complementary thereto
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U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
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Goods/Services	energy drinks, beverages, sports drinks, soft drinks, carbonated beverages, and various other products and services related or complementary thereto
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U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
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Design Mark			
Goods/Services	energy drinks, beverages, sports drinks, soft drinks, carbonated beverages, and various other products and services related or complementary thereto		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	energy drinks, beverages, sports drinks, soft drinks, carbonated beverages, and various other products and services related or complementary thereto

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	energy drinks, beverages, sports drinks, soft drinks, carbonated beverages, and various other products and services related or complementary thereto

Attachments	RED BULL & TWO BULLS LOGO.jpg TWO BULLS LOGO.jpg Red Bull Can (Color).jpg Two-Tone Trade Dress.jpg Blue_Silver.JPG 2020.06.23 Notice of Opposition (Vezer Family).pdf(615974 bytes)
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Signature	/Tiffani D. Otey/
Name	Tiffani D. Otey
Date	06/23/2020

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

In re Applications Serial Nos. 88/645138 and 88/645,200

Filed: October 7, 2019

Published: March 10, 2020 and May 26, 2020 in the *Official Gazette*



For: _____ and _____

RED BULL, GMBH

Opposer,

vs.

TRUSTEES OF THE VEZÉR FAMILY TRUST,
FRANK R. VEZÉR AND GLORIA ELIZABETH
VEZÉR,

Applicants.

Opposition No. _____

**CONSOLIDATED NOTICE OF
OPPOSITION**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

P.O. Box 1451

Alexandria, Virginia 22313-1451

Dear Sir or Madam:

Red Bull GmbH (“**Opposer**”) believes that it will be damaged by the registration of the marks shown in Applications Serial Nos. 88/645138 and 88/645,200 (together, the “**Applications**”), and hereby opposes same. Pursuant to TBMP § 305, Opposer is filing this consolidated pleading because the Applications are owned by the same party and were filed on the same day, and Opposer’s claims against each application involve common questions of law and fact. Having timely filed a request for extensions of time to oppose App. Ser. No. 88/645138, Opposer now timely files this Consolidated Notice of Opposition.

As grounds for its opposition, Opposer alleges as follows:

The Parties and the Applications

1. Opposer Red Bull GmbH is a limited liability company organized and existing under the laws of Austria, with its principal place of business at Am Brunnen 1, 5330 Fuschl am See, Austria.

2. According to the information included in the Applications, the applicants are The Trustees of the Vezer Family Trust, composed of Frank R. Vezer and Gloria Elizabeth Vezer, (collectively, “**Applicants**”), a trust organized and existing under the laws of the state of California. The Applicants have an address at 2526 Mankas Corner Road, Fairfield, California 94534.

3. On October 7, 2019, Applicants filed the Applications – namely, Application



Serial No. 88/645138 to register the word and design mark



, and Application



Serial No. 88/645200 to register the word and design mark



for “wine” in

Class 33, on the basis of Applicants’ alleged bona fide intent to use the marks in commerce in the United States pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b).

Opposer and Its Famous Marks



4. Opposer is now and has for many years been engaged in the development, marketing, advertising, distribution and sale of various products and services including, among

others, energy drinks, beverages, sports drinks, soft drinks, carbonated beverages, and various other products and services related or complementary thereto (collectively “**Opposer’s Goods and Services**”).

5. Opposer is the owner of the corporate name, trade name and trademark RED BULL, in use continuously in interstate commerce on and in connection with Opposer’s Goods and Services since long before the filing date of the Applications or any earlier priority date that Applicant can rely on in the United States.

6. Opposer is also the owner of various United States trademark registrations and

common law rights in and to the trademarks RED BULL,  (RED BULL &

Two Bulls Logo),  (Two Bulls Logo),  (RED BULL

ENERGY DRINK & Two-Tone Trade Dress),  and  (collectively

“Two-Tone Trade Dress”) and other marks for or incorporating the word mark RED BULL, the design of two bulls facing each other with a circle design representing the sun in the background and/or the distinctive Two-Tone Trade Dress for various goods and services, all of which are collectively referred to herein as “**RED BULL Logo Marks**”.

7. Opposer's various RED BULL Logo Marks have been used continuously in interstate commerce on and in connection with Opposer's Goods and Services, including, but not limited to, energy drinks, beverages, sports drinks, soft drinks, and carbonated beverages, since long before the filing date of the Applications, or any earlier priority date on which Applicants can rely.

8. Opposer's RED BULL Logo Marks have become valuable assets of Opposer, such that consumers have come to recognize a family of RED BULL Logo Marks identifying Opposer's Goods and Services, and distinguishing Opposer's Goods and Services, including, but not limited to, energy drinks, beverages, sports drinks, soft drinks, and carbonated beverages, from the goods and services of others.

9. Opposer's RED BULL Logo Marks 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 products sold, offered, and advertised, and have been used in connection with Opposer's Goods and Services, advertised, offered, conducted, and promoted in the United States and throughout the world.

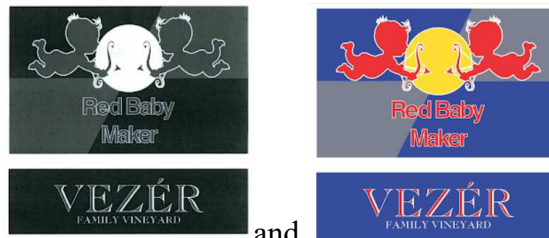
10. In 2019, Opposer's worldwide sales of its energy drinks, beverages, sports drinks, soft drinks, and carbonated beverages exceeded 7.5 billion units, with significant sales in the United States. As a result of the enormous success and sales of Opposer's Goods and Services, and of the extensive advertising and promotion of Opposer's family of RED BULL Logo Marks and products in the United States and throughout the world, Opposer's RED BULL Logo Marks are famous marks, and are recognized in the United States and elsewhere as such. For example, Forbes Magazine ranks RED BULL #71 on its 2019 list of


the world's most valuable brands. Moreover, the Trademark Trial and Appeal Board has previously found Opposer's trademarks to be famous for energy drinks for purposes of its likelihood of confusion analysis. See *Red Bull GmbH v. Morganti Flavio Innovaciones Gastronomicas, S.L.*, Opp. No. 91223317 (T.T.A.B. Jan. 18, 2019) and *Red Bull GmbH v. Bullred Clothing, Inc.*, Opp. No. 91216739 (T.T.A.B. Jan. 12, 2016).

Applicant and Its Confusingly Similar Marks

11. The Applicants seek registration of the marks shown in the Applications for use in connection with "wine," which is closely related to the goods for which Opposer both uses its RED BULL Logo Marks and owns registrations.

12. On information and belief, Applicants were aware of Opposer and one or more of the RED BULL Logo Marks before filing the Applications.



13. The  and  marks that are the subject of the Applications are highly similar in appearance and overall commercial impression to the RED BULL Logo Marks.

14. The Applicants' marks when used in connection with the beverages listed in the Applications, are intended to call to the mind of the consumer the Opposer and its RED BULL Logo Marks.

FIRST CLAIM FOR RELIEF
(Likelihood of Confusion With Registered Trademark)

15. Opposer repeats and re-alleges the allegations of Paragraphs 1 through 14 above, as though fully set forth herein.

16. The marks shown in the Applications so resemble Opposer's RED BULL Logo Marks as to be likely, when used on or in connection with the goods identified in the Applications, to cause confusion, to cause mistake, or to deceive, and Applicants' marks are thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. §1052(d).

17. Opposer will be damaged by registration of the marks shown in the Opposed Applications because the registrations will give Applicant *prima facie* evidence of the validity of its confusingly-similar marks and the exclusive nationwide right to use its confusingly-similar marks in commerce in connection with the goods identified in the Applications, in derogation of Opposer's rights in the RED BULL Logo Marks.

SECOND CLAIM FOR RELIEF

(Likelihood of Confusion With Opposer's Previously-Used and Famous Marks)

18. Opposer repeats and re-alleges the allegations of Paragraphs 1 through 17 above, as though fully set forth herein.

19. The marks shown in the Applications so resemble Opposer's famous RED BULL Logo Marks previously used in the United States and not abandoned as to be likely, when used on or in connection with the goods and services identified in the Applications, to cause confusion, to cause mistake, and to deceive, and Applicants' marks are thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. §1052(d), as amended.

20. Opposer will be damaged by registration of the marks shown in the Applications because registration of the marks would give Applicant *prima facie* evidence of its ownership of, and exclusive right to use in commerce, marks that are confusingly similar to Opposer's famous previously-used and not-abandoned marks.

THIRD CLAIM FOR RELIEF
(Dilution of Famous Marks)

21. Opposer repeats and re-alleges the allegations of Paragraphs 1 through 20 above, as though fully set forth herein.

22. Opposer's marks are famous in the United States and became famous in the United States long before the filing date of the Applications, or any earlier priority date upon which Applicant can rely, and use of Applicants' marks is likely to cause dilution by blurring in that Applicants' target customers are likely to associate Applicants' goods with Opposer and Opposer's famous RED BULL Logo Marks even if they are not confused as to the different origins of these goods. Moreover, Applicants' marks are likely to cause dilution by tarnishment in that Applicants' use of their marks will harm the reputation of Opposer's famous marks.

23. Accordingly, the Applications must be refused registration under Section 43(c) of the United States Trademark Act, 15 U.S.C. §1125(c), as amended.

FOURTH CLAIM FOR RELIEF
(False Suggestion of a Connection)

24. Opposer repeats and re-alleges the allegations of Paragraphs 1 through 23 above, as though fully set forth herein.

25. The marks shown in the Applications falsely suggest a connection between Opposer and Applicants, and Applicants' marks are thus unregistrable under § 2(a) of the United States Trademark Act, 15 U.S.C. §1052(a).

PRAYER FOR RELIEF

WHEREFORE, Opposer Red Bull GmbH prays that this Opposition be sustained, and that registration of the marks in the Applications be refused.

Please direct all notices, pleadings and process regarding this matter to the below.

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

Dated: June 23, 2020

By: */Tiffani D. Otey/*

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Tiffani D. Otey

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