

ESTTA Tracking number: **ESTTA1081867**

Filing date: **09/14/2020**

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	HELL ENERGY Magyarország Kft
Granted to Date of previous extension	09/12/2020
Address	ANDRÁSSY Á#T 126. H-1062 BUDAPEST, 0 HUNGARY
Attorney information	JOHN S. EGBERT EGBERT, MCDANIEL & SWARTZ, PLLC 1001 TEXAS AVE., SUITE 1250 HOUSTON, TX 77002 UNITED STATES Primary Email: mail@emsip.com Secondary Email(s): kwilson@emsip.com, mswartz@emsip.com 713-224-8080
Docket Number	2954-50

Applicant Information

Application No.	88356974	Publication date	07/14/2020
Opposition Filing Date	09/14/2020	Opposition Period Ends	09/12/2020
Applicant	PICK SIX HOLDINGS INC. 7955 JONESTOWN ROAD HARRISBURG, PA 17112 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: Purified bottled drinking water; Flavored vitamin and mineral drinking water; Drinking water with vitamins and minerals; Bottled drinking water; Drinking water with dietary and nutritional supplements not used for medical purposes

Grounds for Opposition

Priority and likelihood of confusion

Trademark Act Section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	5526817	Application Date	06/14/2017
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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	2954-50 noticeofopposition.HEL WTR.pdf(205175 bytes)
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Signature	/2954-50/
Name	John S. Egbert
Date	09/14/2020

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

In the Matter of Application Serial No. 88/356,974
Published in the Official Gazette on July 14, 2020

HELL ENERGY Magyarország Kft.,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. _____
	§	
PICK SIX HOLDINGS INC.,	§	
	§	
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 Andrássy út 126, H-1062 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, PICK SIX HOLDINGS INC. ("Applicant"), a corporation of Pennsylvania, located at 7955 Jonestown Road, Harrisburg, Pennsylvania 17112, is the owner of an application to register the "HĚL WTR" mark (hereinafter also referred to as "Applicant's Mark") for use in connection with "purified bottled drinking water; flavored vitamin and mineral drinking water; drinking water with vitamins and minerals; bottled drinking water; drinking water with dietary and nutritional supplements not used for medical purposes" in International Class 32.

2. Said application was filed on March 26, 2019 under Section 1(b) of the Trademark Act, was assigned U.S. Application Serial No. 88/356,974, and was published for Opposition in the Official Gazette on July 14, 2020.

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

4. The "energy drinks" of Opposer are of the type that are offered for sale to consumers in the same channels of trade as the "water" and "flavored water" products of Applicant.

5. Opposer owns the "HELL" mark, U.S. Reg. No. 5,526,817, that was registered on July 31, 2018 for "energy drinks" in International Class 32 under Section 66(a) of the Trademark Act (hereinafter referred to as "Opposer's Mark"). 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.

6. Opposer's Mark has a filing date and constructive first use date of June 14, 2017.

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

8. Opposer's constructive first use date of June 14, 2017 for Opposer's Mark is prior to the March 26, 2019 filing date and constructive first use date of Applicant's "HĒL WTR" Mark in Class 32, and prior to any alleged first use in United States commerce for Applicant's Mark.

9. The prior constructive first use date for Opposer's Mark gives Opposer's Mark priority of use over Applicant's "HĒL WTR" Mark in Class 32.

10. Applicant's "HĒL WTR" 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; and
 - f. the term "WTR" in Applicant's Mark is generic or, at the very least, descriptive when used in relation to Applicant's goods.

11. 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.

12. 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.

13. Applicant's "HĒL WTR" Mark in Class 32, U.S. Application Serial No. 88/356,974, 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.

14. Use of Applicant's "HĒL WTR" 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 "HĒL WTR" mark would necessarily

reflect on and seriously injure the valuable goodwill and reputation that Opposer has established, and will establish, for its goods.

15. Based on the foregoing arguments, registration of the mark "HĚL WTR" for use in connection with "purified bottled drinking water; flavored vitamin and mineral drinking water; drinking water with vitamins and minerals; bottled drinking water; drinking water with dietary and nutritional supplements not used for medical purposes" in International Class 32, as found in U.S. Application No. 88/356,974, filed on March 26, 2019, and published for Opposition in the Official Gazette on July 14, 2020, 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 "HĚL WTR" 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,

September 14, 2020
Date

/2954-50/
John S. Egbert
Reg. No. 30,627
Kevin S. Wilson
Michael F. Swartz

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ATTORNEYS FOR OPPOSER
HELL ENERGY Magyarország Kft.

Exhibit "A"



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Sep 14 03:48:25 EDT 2020

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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) HELL ENERGY Magyarország Kft LIMITED LIABILITY COMPANY HUNGARY Andrassy út 126. H-1062 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: Andrásy út 126.
H-1062 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

Attorney Primary Email Address: mail@egbertlawoffices.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: JOHN S. EGBERT
EGBERT LAW OFFICES, PLLC
1001 TEXAS AVE.
STE. 1250
HOUSTON, TEXAS UNITED STATES 77002

Phone: 713-224-8080

Fax: 713-223-4873

Correspondent e-mail: mail@egbertlawoffices.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 28, 2020	CHANGE OF NAME/ADDRESS REC'D FROM IB	
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 Number: 1362891
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

International Registration Date: Jun. 14, 2017
Date of Section 67 Priority Claim: Mar. 06, 2017
Date of International Registration Status: Aug. 31, 2017
Date of Automatic Protection: Feb. 28, 2019

TM Staff and Location Information

TM Staff Information - None File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jul. 31, 2018

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant: HELL ENERGY Magyarország Kft

Assignment 1 of 1

Conveyance: CHANGE OF ADDRESS

Reel/Frame: [6967/0836](#)

Pages: 2

Date Recorded: May 28, 2020

Supporting Documents: [assignment-tm-6967-0836.pdf](#)

Assignor

Name: [HELL ENERGY MAGYARORSZÁG KFT](#)

Execution Date: Apr. 28, 2020

Legal Entity Type: UNKNOWN

State or Country Where Organized: NOT PROVIDED

Assignee

Name: [HELL ENERGY MAGYARORSZÁG KFT](#)

Legal Entity Type: UNKNOWN

State or Country Where Organized: NOT PROVIDED

Address: ANDRÁSSY ÚT 126.
H-1062 BUDAPEST, HUNGARY

Correspondent

Correspondent Name: HELL ENERGY MAGYARORSZÁG KFT

Correspondent Address: ANDRÁSSY ÚT 126.
H-1062 BUDAPEST
HUNGARY

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Opposition

Proceeding Number: [91251943](#)

Filing Date: Oct 30, 2019

Status: Terminated

Status Date: Jan 28, 2020

Interlocutory Attorney: GEOFFREY MCNUTT

Defendant

Name: Gina M. Ghioldi

Correspondent Address: ANTHONY LAURENTANO
NELSON MULLINS RILEY & SCARBOROUGH
ONE POST OFFICE SQUARE 30TH FLOOR
BOSTON MA UNITED STATES , 02109

Correspondent e-mail: anthony.laurentano@nelsonmullins.com , ipboston.docketing@nelsonmullins.com , anita.costa@nelsonmullins.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
COCKTAILS IN HELL	Abandoned - After Inter-Partes Decision	88440057	

Plaintiff(s)

Name: HELL ENERGY Magyarország Kft.

Correspondent Address: JOHN S EGBERT
EGBERT MCDANIEL & SWARTZ PLLC
1001 TEXAS AVE, SUITE 1250
HOUSTON TX UNITED STATES , 77002

Correspondent e-mail: mail@emsip.com , kwilson@emsip.com , mswartz@emsip.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
HELL	Registered	79215417	5526817

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Oct 30, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Oct 30, 2019	Dec 09, 2019
3	INSTITUTED	Oct 30, 2019	
4	NOTICE OF DEFAULT	Dec 19, 2019	
5	BD DECISION: OPP SUSTAINED	Jan 28, 2020	
6	TERMINATED	Jan 28, 2020	