

ESTTA Tracking number: **ESTTA9820**

Filing date: **06/08/2004**

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	The Kroger Co. of Michigan
Granted to Date of previous extension	06/09/2004
Address	The Kroger Co. of Michigan 18334 Laurel Park Drive North Livonia, MI 48152 UNITED STATES

Attorney information	Laura C. Gustafson Pillsbury Winthrop LLP 50 Fremont Street San Francisco, CA 94105 UNITED STATES sftrademarks@pillsburywinthrop.com Phone:415 983 6318
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Applicant Information

Application No	78085011	Publication date	02/10/2004
Opposition Filing Date	06/08/2004	Opposition Period Ends	06/09/2004
Applicant	ROBERT MONDAVI WINERY		

Goods/Services Affected by Opposition

Class 033. First Use: 20010904 First Use In Commerce: 20010904
All goods and services in the class are opposed, namely: WINE, NOT INCLUDING COOKING WINE

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Attachments	Opposition 011.pdf (4 pages)
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Signature	/Laura C. Gustafson/
Name	Laura C. Gustafson
Date	06/08/2004

- RN 2685492: PRIVATE SELECTION for cooking wine, in Class 33, as well as a variety of foods and beverages in Classes 29, 30, 31 and 32.
- RN 2740565: PRIVATE SELECTION for retail grocery store services.
- RN 1966330: PS PRIVATE SELECTION (stylized) for foods and beverages in Classes 29, 30, 31 and 32.
- RN 1966331: PRIVATE SELECTION (stylized) for foods in Class 29.
- RN 2821350: PRIVATE SELECTION for foods in Classes 29, 30, 31.
- RN 2025371: PRIVATE SELECTION (stylized) for foods and beverages in Classes 29 and 30.

2. Opposer has been using its PRIVATE SELECTION mark for cooking wine since at least as early as June 2000, and has been using PRIVATE SELECTION as a mark for other goods and services since at least as early as November 1990.

3. Applicant has applied to register the mark ROBERT MONDAVI COASTAL PRIVATE SELECTION and Design for “wine, not including cooking wine” in Class 33 (hereafter, “Applicant’s Mark”).

4. On information and belief, no actual or constructive use of Applicant’s Mark was made in the U.S. prior to September 28, 1994, the filing date of the earliest application for Opposer’s Marks.

5. On information and belief, no actual or constructive use of Applicant’s Mark was made in the U.S. prior to March 26, 2001, the filing date of Opposer’s application for PRIVATE SELECTION for cooking wine.

6. On information and belief, no actual or constructive use was made of Applicant's Mark in the U.S. prior to November 1990, the date of Opposer's first use of Opposer's Marks.

7. On information and belief, no actual or constructive use was made of Applicant's Mark in the U.S. prior to June 2000, the date of Opposer's first use of Opposer's Marks for cooking wine.

8. Applicant's Mark consists of or comprises a mark which so resembles Opposer's Marks, previously used in the United States and registered in the U.S. Patent and Trademark Office, as to be likely, when used in connection with the goods of Applicant, to cause confusion or to cause mistake, or to deceive, in violation of Section 2(d) of the Act.

8. Opposer registered and first used Opposer's Mark, and same became famous and was distinctive of Opposer, long prior to the filing date of Applicant's application and/or the first actual or constructive use of Applicant's Mark.

9. Applicant's Mark dilutes or will dilute the distinctive quality of Opposer's Marks, in violation of Section 43 (c) of the Act.

WHEREFORE, Opposer prays that this Opposition be sustained and Applicant's
Mark refused registration.

Date: June 9, 2004

THE KROGER CO. OF MICHIGAN

By its attorneys,

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