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

Proceeding	91184275
Party	Defendant Eugene Wine Cellars, LLC
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Date	06/27/2008
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Response to Notice of Opposition filed: 05-22-2008

Proceeding No.: 91184275

ESTTA Tracking No.: ESTTA213213

Answers to the Claim of Opposition:

1. Eugene Wine Cellars denies the allegation from 26 Brix LLC dba B Cellars mark for wines will result in confusion between the Application No.77315915 B mark and B Cellars Serial No.78588300 and/or B Cellar's Serial No. 78796947. The marks are distinguishable and not likely to cause confusion. Although both are same goods, namely "wines," they are vastly different in appearance, shape, size and most importantly pronounced differently. In addition, Eugene Wine Cellars denies that there will be a dilution of the Opposer's above referenced marks in Classes 33 and 41 as well as in Class 41 for wine tasting services.
2. Eugene Wine Cellars denies the statement from B Cellars alleging that one or more of its registrations and/or applications has priority over Eugene Wine Cellars mark based on there being a distinguishable difference between Eugene Wine Cellars mark and B cellar's. Eugene Wine Cellars denies the B cellars mark is likely to cause confusion as to the source of the Opposer's goods and/or to associate the opposer's goods with applicant's to the detriment of the Opposer. The Applicant denies the Opposer's allegation that the Applicants use of the mark as applied for will dilute one or more of the Opposer's registered and applied for marks.

3. Eugene Wine Cellars argues that although the Applicant and the Opposer both have the single letter "b" the marks are very distinguishable in their use on the source of goods and services. Eugene Wine Cellars argues that using a single letter and a second symbol/letter/number is defensible as completely distinguishable.
4. Eugene Wine Cellars argues that there is no actual evidence of any existing confusion between the Applicant's mark and the Opposer's B Cellars marks. Eugene Wine Cellars has received no physical evidence from B Cellars or any other independent entity that would provide support for the Opposer's allegation of confusion.
5. Eugene Wine Cellars argues that the Applicant has not experienced any confusion from its customers, suppliers, or trade journals in reference to the Opposer's B Cellars marks. Additionally, Eugene Wine Cellars has distribution in over 15 states and has yet to find the B Cellars product in any retail location.
6. Eugene Wine Cellars argues that the intent of the use of its mark was how one of the owner's signed his name, dating to 1976. The intent of the mark had nothing to do with the Opposer's mark. In the Applicants's intent, we cite *Polroid Corp v. Polarad Elect. Corp.*, 287 F.2d 492 (2d Cir.) cert. denied, 368 U.S. 820 (1961)

/ Bruce Biehl/

