

ESTTA Tracking number: **ESTTA308809**

Filing date: **09/29/2009**

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	Pine Ridge Winery, LLC
Granted to Date of previous extension	09/30/2009
Address	5901 Silverado Trail Napa, CA 94558 UNITED STATES

Attorney information	Heather A. Dunn, Esq. DLA Piper LLP (US) 555 Mission Street, Suite 2400 San Francisco, CA 94105-2933 UNITED STATES tmddocket@dlapiper.com, heather.dunn@dlapiper.com, dash.mclean@dlapiper.com Phone:415.836.2557
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**Applicant Information**

Application No	77617766	Publication date	06/02/2009
Opposition Filing Date	09/29/2009	Opposition Period Ends	09/30/2009
Applicant	Lagina, Martin G. 121 East Front Street, Suite 200 Traverse City, MI 49684 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 033. All goods and services in the class are opposed, namely: Wine
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**Grounds for Opposition**

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	As set forth in the attached Notice of Opposition

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application No.	77659782	Application Date	01/29/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ARCUS ESTATE		

Design Mark	<b>ARCUS ESTATE</b>
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1996/05/31 First Use In Commerce: 1996/05/31 Wine

Attachments	77659782#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 3 pages )(98694 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Heather A. Dunn/
Name	Heather A. Dunn, Esq.
Date	09/29/2009

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

Pine Ridge Winery, LLC.

Opposer,

v.

Martin G. Lagina,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Opposer, Pine Ridge Winery, LLC, a limited liability company organized and existing under the laws of the State of Delaware having its principal place of business at 5901 Silverado Trail, Napa, California 94558 ("Opposer") believes that it has been and/or will be damaged by the registration of Application Serial No. 77617766 for ARCUS VINETUM and hereby opposes the same.

As grounds for opposition, Opposer alleges that:

1. According to the Trademark Office records, on or about November 19, 2008, Applicant Martin G. Lagina, an individual ("Applicant"), applied to register the trademark ARCUS VINETUM which was subsequently assigned Application Serial No. 77617766 ("Applicant's Mark") for "wine" in class 33 based on Applicant's intent to use Applicant's Mark in commerce on the aforementioned goods. This application was published in the June 2, 2009 edition of the Official Gazette.
2. On or about July 1, 2009, Opposer filed a First 90 Day Request for Extension of Time to Oppose Applicant's Mark for Good Cause, and the time period within which to file an opposition was extended to September 30, 2009.
3. Opposer is the owner of the trademark ARCUS ESTATE and filed an application to register the trademark on January 29, 2009, which was subsequently assigned Application Serial No. 77659782, for "wine" in class 33 based on Opposer's use of ARCUS ESTATE anywhere and in commerce on the aforementioned goods since at least as early as May 31, 1996 ("Opposer's Application").
4. The Examining Attorney at the United States Patent and Trademark Office cited Applicant's Mark as a potential bar to registration of Opposer's Application on the basis that there may be a likelihood of confusion between the two marks because, although Applicant filed to register ARCUS VINETUM over thirteen (13) years after Opposer began using ARCUS ESTATE, Opposer's Application was filed subsequent to the filing date of the application for Applicant's Mark.
5. In addition to rights arising from the Opposer's pending federal application listed in Paragraph 3, above, Opposer has valid common law rights in ARCUS ESTATE both as an inherently distinctive trademark for its wine and as the name of Opposer's signature vineyard in the Red Hills of Dundee, Oregon, which has been used to grow distinctive grapes for producing wine for many years - both the wine and vineyard are also know simply as, "ARCUS" (collectively, "Opposer's Mark").

6. Opposer's Mark has become a valuable asset of Opposer and a symbol of its goodwill. By reason of its significant advertising for and distribution of Opposer's wine bearing Opposer's Mark, the trade and purchasing public have come to recognize Opposer's Mark as signifying Opposer and as identifying Opposer as the source of Opposer's wine goods and related services ("Opposer's Goods and Services") bearing Opposer's Mark.
7. Opposer has continuously used Opposer's Mark since at least as early as May 31, 1996 to identify Opposer's Goods and Services, which use predates Applicant's filing date for its intent-to-use Application Serial No. 77617766 (specifically, November 19, 2008), by over thirteen years.
8. The goods identified in Application Serial No. 77617766 and Opposer's Goods and Services are identical and are of the type which could be and are offered in the same channels of trade and to the same prospective customers.
9. If Application Serial No. 77617766 is registered, the public will reasonably believe that Applicant's goods are provided, sponsored, or endorsed by Opposer, all to the detriment of consumers and Opposer.
10. Applicant's Mark is highly similar to Opposer's Mark, and is confusingly similar to Opposer's Mark and is likely to be confused therewith. Such confusion, mistake, and deception regarding the origin of Applicant's goods is likely to cause irreparable harm to Opposer.
11. Due to Opposer's longstanding and continuous use of Opposer's Mark in connection with Opposer's Goods and Services, Opposer's Mark has become well known as designating Opposer's Goods and Services throughout the United States.
12. The granting of a trademark registration for Applicant's Mark would violate and diminish the prior and superior rights of Opposer in Opposer's Mark and would be in violation of 15 U.S.C. § 1052(d).
13. The granting of a trademark registration for Applicant's Mark may also block the registration of Opposer's Mark, which would be a source of damage and injury to Opposer.
14. As stated in Paragraph 5, above, Opposer has valid common law rights in Opposer's Mark.
15. Applicant's Mark is in violation and derogation of those common law rights and is likely to cause confusion, mistake and deception among purchasers and users as to the source or origin of Applicant's goods, or their affiliation with or sponsorship by Opposer, thereby causing loss, damage, and injury to Opposer and the public.
16. If Applicant is granted the registration herein opposed, it would thereby obtain a prima facie exclusive right to its mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that Application Serial No. 77617766 be rejected, that no registration be issued thereon, and that this Opposition be sustained in favor of Opposer.

Please charge the filing fees of this Notice of Opposition to Deposit Acct. No. 07-1907. Please charge any additional fees, or credit any overpayment, to Deposit Acct. No. 07-1907.

Dated: September 29, 2009

DLA PIPER LLP (US)



By: \_\_\_\_\_  
Heather A. Dunn, Esq.

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555 Mission Street  
Suite 2400  
San Francisco, CA 94105-2933  
Telephone: (415) 836-2557

Attorneys for Opposer  
Pine Ridge Winery, LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the following document:

**NOTICE OF OPPOSITION**

was served on Applicant Martin G. Lagina by depositing the same in the United States mail, postage prepaid, addressed to Applicant as follows:

Martin G. Lagina  
121 East Front Street  
Suite 200  
Traverse City, MI 49684

this 29th day of September 2009.

  
Allison V. Burn