

ESTTA Tracking number: **ESTTA433755**

Filing date: **10/04/2011**

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	Robert Dabrowski, DBA Candia Vineyards
Granted to Date of previous extension	11/30/2011
Address	702 High St. Candia, NH 03034-2040 UNITED STATES
Party who filed Extension of time to oppose	Candia Vinyards Candia Vinyards
Relationship to party who filed Extension of time to oppose	Robert Dabrowski is an individual doing business as Candia Vineyards.

Attorney information	Scott A. Daniels Daniels Patent Law, PLLC 43 Centre St. Concord, NH 03301 UNITED STATES inbox@danielspatentlaw.com Phone:603 226 8610
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Applicant Information

Application No	85290020	Publication date	08/02/2011
Opposition Filing Date	10/04/2011	Opposition Period Ends	11/30/2011
Applicant	THE WINE GROUP LLC 4596 S. TRACY BLVD. TRACY, CA 95377 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Liqueurs; Prepared alcoholic cocktail; Prepared wine cocktails; Spirits; Wine; Wine-based drinks

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Trademark Act section 43(a)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85401769	Application Date	08/18/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FORTUNE COOKIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2010/12/04 First Use In Commerce: 2010/12/04 Grape wine; Red wine; Still wines; Sweet wines; Table wines; White wine; Wine		

Attachments	85401769#TMSN.jpeg (1 page)(bytes) CANVIN-TMO-Notice Of Opposition.pdf (21 pages)(950439 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 Overnight Courier on this date.

Signature	/sdaniels68/
Name	Scott A. Daniels
Date	10/04/2011

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

Notice of Opposition

In re Application Serial No. : 85/290,020
For the Mark : FORTUNE COOKIE
Filed : 04/08/2011
Published in the Trademark Official Gazette : 08/02/2011

Robert Dabrowski, DBA)	
Candia Vineyards)	
)	
Opposer,)	
v.)	Opposition No.
)	
The Wine Group, LLC)	
)	
Applicant)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA. 22313-1451

ASSISTANT COMMISSIONER FOR TRADEMARKS
BOX TTAB –FEE
2900 Crystal Drive
Arlington, VA 22202-3513

NOTICE OF OPPOSITION

Robert Dabrowski, an individual doing business as Candia Vineyards, a winery with a mailing address of 702 High Street Opposer, NH 03034-2040, believes that it will be damaged by registration of the mark FORTUNE COOKIE, which is the subject of U.S. Application Serial No. 85/290,020 filed 04/08/2011, by The Wine Group LLC, a Delaware company with a mailing address of 4596 S. Tracy Blvd, Tracy, CA 95377-8106, identifying the goods: Liqueurs; Prepared alcoholic cocktail; Prepared wine cocktails; Spirits; Wine; Wine-based drinks, in international class 33 (“Application”) published in the Official Gazette August 2, 2011 and hereby opposes the same.

The grounds for opposition are as follows;

1. By the Application herein opposed, Applicant seeks to register the mark FORTUNE COOKIE for “liqueurs; prepared alcoholic cocktail; prepared wine cocktails; spirits, wine; wine-based drinks” in International Class 33. The Application was filed on April 8, 2011 on an intent-to-use basis pursuant to 15 U.S.C. §1051(b).

2. Opposer owns the entire right, title and interest in and to the trademark as evidenced by Opposer’s prior use of the mark, and concurrent trademark application Serial No. 85/401,769 for the same mark. The mark FORTUNE COOKIE was in use by Opposer at least as early as December 4, 2010. Opposer’s `769 application is attached as Appendix A.

3. The trademark FORTUNE COOKIE was adopted by Opposer as a trademark for wine as early as March 30, 2010. Opposer submitted an application for certification of the wine label FORTUNE COOKIE with the Department of the Treasury Alcohol and Tobacco Tax Bureau (TTB) on March 30, 2010. The application was accepted on June 16, 2010 and authorization for the label was received on June 25, 2010. The TTB granted certification is attached as Appendix B. This certificate was published on the TTB website, which is the official site of record in the US for all wine labels and interested.

4. Opposer’s FORTUNE COOKIE trademarks have been in continuous use in commerce by Opposer since as early as December 4, 2010 including sales of FORTUNE COOKIE wine with labels bearing the trademark applied to the goods, on packaging which the goods are shipped and sold, on display and advertising and in other manners which are customary in the trade. As such, Opposer claims the benefit of all statutory and common law rights which inured to the benefit of Opposer from the use of the FORTUNE COOKIE trademark.

5. Opposer's FORTUNE COOKIE wines are also purchased and sold by the New Hampshire State Liquor Commission and sold in NH state liquor stores located on Interstate I-93. A NH State Liquor Commission purchase order from March 12, 2011 is attached hereto as Appendix C and made of record in this proceeding.

6. Opposer's development, manufacture, advertising, distribution and sale in interstate commerce of products under the FORTUNE COOKIE mark significantly predates the filing date of the Application and any potential alleged use of the Opposed Mark by the Applicant.

7. Opposer has made and continues to make significant investment in the FORTUNE COOKIE brand including manufacturing, advertising and promoting goods bearing the FORTUNE COOKIE mark. As a result of such investment, Opposer enjoys substantial sales and valuable goodwill associated with the FORTUNE COOKIE brand.

8. Applicant's FORTUNE COOKIE mark is identical in every way, including sight, sound, appearance and meaning to Opposer's FORTUNE COOKIE mark. Further, the mark when applied to Applicant's goods, which specifically include wine and closely related alcoholic products, or used in association with Applicant's goods are likely to cause confusion and mistake, and to deceive and mislead consumers into believing that Applicant's wines originated, are sponsored by, are licensed from, or are jointly owned by or otherwise associated with Opposer and/or Opposer's goods marked with its FORTUNE COOKIE trademark.

9. Opposer will be irreparably damaged by the registration sought by the Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark sought to be registered in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), and in violation of the common law rights of Opposer in its FORTUNE COOKIE mark.

10. The granting of a trademark registration of FORTUNE COOKIE to Applicant would be contrary to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and would violate the prior and superior rights of Opposer in its mark.

Wherefore, Opposer believes that it will be damaged by the registration of Applicant's mark and asks that its opposition be sustained and that registration of Application Serial No. 85/290.020 be refused.

Respectfully submitted,
By its attorneys.

Scott A. Daniels



Registration No. 42.462
Daniels Patent Law PLLC
43 Centre Street
Concord, NH 03301
Telephone: (603)226-8610
Facsimile: (603)226-8611

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on The Wine Group LLC, 4596 S. Tracy Blvd., Tracy, CA 95377-8106 by first class mail, postage prepaid on this 4th day of Oct., 2011.

Date: Oct. 4, 20


Scott A. Daniels

APPENDIX A

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85401769

Filing Date: 08/18/2011

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	FORTUNE COOKIE
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	FORTUNE COOKIE
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Robert Dabrowski
DBA/AKA/TA/FORMERLY	DBA Candia Vineyards
*STREET	702 High Street
*CITY	Candia
*STATE (Required for U.S. applicants)	New Hampshire
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S.)	03034

applicants only)	
PHONE	(603) 483-4899
EMAIL ADDRESS	Bob@CandiaVineyards.com
WEBSITE ADDRESS	www.CandiaVineyards.com
LEGAL ENTITY INFORMATION	
*TYPE	SOLE PROPRIETORSHIP
* STATE/COUNTRY WHERE LEGALLY ORGANIZED	New Hampshire
NAME OF INDIVIDUAL & CITIZENSHIP	Robert Dabrowski
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	033
IDENTIFICATION	Grape wine; Red wine; Still wines; Sweet wines; Table wines; White wine; Wine
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/04/2010
FIRST USE IN COMMERCE DATE	At least as early as 12/04/2010
SPECIMEN FILE NAME(S)	
JPG FILE(S)	\\TICRS\EXPORT11\IMAGEOUT 11\854\017\85401769\xml1\FTK0003.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\854\017\85401769\xml1\FTK0004.JPG
ORIGINAL PDF FILE	spec-7611984136-184120408 . CANVIN_T01AUS-declaration_of_use.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT11\IMAGEOUT11\854\017\85401769\xml1\FTK0005.JPG
SPECIMEN DESCRIPTION	bottle of wine with label showing mark and declaration of use from Applicant
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	

*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	Scott A. Daniels
ATTORNEY DOCKET NUMBER	CANVIN T01AUS
FIRM NAME	Daniels Patent Law PLLC
STREET	43 Centre Street
CITY	Concord
STATE	New Hampshire
COUNTRY	United States
ZIP/POSTAL CODE	03301
PHONE	603 226 8610
FAX	603 226 8611
EMAIL ADDRESS	inbox@danielspatentlaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Claire Zopf
CORRESPONDENCE INFORMATION	
*NAME	Scott A. Daniels
FIRM NAME	Daniels Patent Law PLLC
*STREET	43 Centre Street
*CITY	Concord
*STATE (Required for U.S. applicants)	New Hampshire
*COUNTRY	United States
*ZIP/POSTAL CODE	03301
PHONE	603 226 8610
FAX	603 226 8611

*EMAIL ADDRESS	inbox@danielpatentlaw.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/sdaniels68/
* SIGNATORY'S NAME	Scott A. Daniels
* SIGNATORY'S POSITION	Attorney of Record
* DATE SIGNED	08/18/2011

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85401769

Filing Date: 08/18/2011

To the Commissioner for Trademarks:

MARK: FORTUNE COOKIE (Standard Characters, see [mark](#))

The literal element of the mark consists of FORTUNE COOKIE.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Robert Dabrowski, DBA Candia Vineyards, a sole proprietorship legally organized under the laws of New Hampshire, comprising of Robert Dabrowski, having an address of

702 High Street

Candia, New Hampshire 03034

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 033: Grape wine; Red wine; Still wines; Sweet wines; Table wines; White wine; Wine

In International Class 033, the mark was first used at least as early as 12/04/2010, and first used in commerce at least as early as 12/04/2010, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) bottle of wine with label showing mark and declaration of use from Applicant.

JPG file(s):

[Specimen File1](#)

[Specimen File2](#)

Original PDF file:

[spec-7611984136-184120408_.CANVIN_T01AUS-declaration_of_use.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

For informational purposes only, applicant's website address is: www.CandiaVineyards.com

The applicant's current Attorney Information:

Scott A. Daniels and Claire Zopf of Daniels Patent Law PLLC

43 Centre Street
Concord, New Hampshire 03301
United States

The attorney docket/reference number is CANVIN T01AUS.
The docket/reference number is CANVIN T01AUS.

The applicant's current Correspondence Information:

Scott A. Daniels
Daniels Patent Law PLLC
43 Centre Street
Concord, New Hampshire 03301
603 226 8610(phone)
603 226 8611(fax)
inbox@danielspatentlaw.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /sdaniels68/ Date Signed: 08/18/2011
Signatory's Name: Scott A. Daniels
Signatory's Position: Attorney of Record

RAM Sale Number: 7385
RAM Accounting Date: 08/19/2011

Serial Number: 85401769
Internet Transmission Date: Thu Aug 18 18:51:05 EDT 2011
TEAS Stamp: USPTO/FTK-76.119.84.136-2011081818510537
0828-85401769-4805db0dd7afb9586446794355
e8a9eb4ca-CC-7385-20110818184120408871

FORTUNE COOKIE





Fortune Cookie



• WHITE WINE •

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Candia Vineyards
Mark : FORTUNE COOKIE
International Class : 033
Docket : CANVIN T01AUS

DECLARATION OF Robert Dabrowski

I, Robert Dabrowski, am a United States citizen and a Corporate Officer of Candia Vineyards, a New Hampshire sole-proprietorship located at 702 High Street Candia, New Hampshire 03034-2040, and I hereby declare as follows:

Candia Vineyards has commenced use of "FORTUNE COOKIE" in interstate commerce in the United States at least as early as 12/04/2010 to the present date, as a Trademark for all the goods recited in the registration, namely; Class 033 - Grape wine; Red wine; Still wines; Sweet wines; Table wines; White wine; Wine;

The undersigned declarant has been hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both under 18 U.S.C. 1001 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, and declares that he is properly authorized to execute this declaration; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

EXECUTED on this date of 8/18, 20 11

NAME: Robert Dabrowski
Robert Dabrowski
Candia Vineyards

APPENDIX B

From: Saved by Windows Internet Explorer 8
Sent: Thursday, March 03, 2011 2:35 PM
Subject: OMB No. 1513-0020

OMB No. 1513-0020 (01/31/2009)

FOR TTB USE ONLY			DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE BUREAU APPLICATION FOR AND CERTIFICATION/EXEMPTION OF LABEL/BOTTLE APPROVAL (See Instructions and Paperwork Reduction Act Notice on Back)	
TTB ID 10167001000028				
1. REP. ID. NO. (If any)	CT 81	OR 33		
PART I - APPLICATION				
2. PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required) BWN-NH-15001		3. SOURCE OF PRODUCT (Required) <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Imported		8. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON LABEL (Required) CANDIA VINEYARDS, ROBERT DABROWSKI 702 HIGH ST CANDIA NH 03034
4. SERIAL NUMBER (Required) 100002		5. TYPE OF PRODUCT (Required) <input checked="" type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input type="checkbox"/> MALT BEVERAGE		
6. BRAND NAME (Required) FORTUNE COOKIE			8a. MAILING ADDRESS, IF DIFFERENT	
7. FANCIFUL NAME (If any)				
9. EMAIL ADDRESS DABROWSKI@COMCAST.NET		10. FORMULA/SOP NO. (If any)	11. LAB. NO. & DATE / PREIMPORT NO. & DATE (If any)	18. TYPE OF APPLICATION (Check applicable box(es)) a. <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL b. <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation.) c. <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL. TOTAL BOTTLE CAPACITY BEFORE CLOSURE _____ (Fill in amount) d. <input checked="" type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID. NO. ___10089001000001___
12. NET CONTENTS 750 MILLILITERS		13. ALCOHOL CONTENT 12.5	14. WINE APPELLATION IF ON LABEL	
15. WINE VINTAGE DATE IF ON LABEL		16. PHONE NUMBER (603) 867-9751	17. FAX NUMBER (603) 867-9751	
19. SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, celoseals, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (b) BLOWN, BRANDED OR EMBOSSED ON THE CONTAINER (e.g., net contents etc.). THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS. "750 ML" BLOWN ONTO BOTTLE				
PART II - APPLICANT'S CERTIFICATION				
Under the penalties of perjury, I declare; that all statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31, Certificate/Exemption of Label/Bottle				

Approval.		
20. DATE OF APPLICATION 06/16/2010	21. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT (Application was e-filed)	22. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT ROBERT DABROWSKI
PART III - TTB CERTIFICATE		
This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.		
23. DATE ISSUED 06/25/2010	24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU 	

FOR TTB USE ONLY	
QUALIFICATIONS	EXPIRATION DATE (if any)
STATUS THE STATUS IS APPROVED.	
CLASS/TYPE DESCRIPTION TABLE WHITE WINE	

AFFIX COMPLETE SET OF LABELS BELOW

Image Type: Back

Actual Dimensions: 2.5 inches W X 3.5 inches H



Image Type: Brand (front)

Actual Dimensions: 3.5 inches W X 5 inches H

Fortune Cookie



White Wine

Alc. 12.5% Vol.

TTB F 5100.31 (6/2006) PREVIOUS EDITIONS ARE OBSOLETE

APPENDIX C

NEW HAMPSHIRE STATE LIQUOR COMMISSION

P.O. BOX 503 CONCORD, NH 03301



P U R C H A S E O R D E R

PAGE 1 OF 1

90046
CANDIA VINEYARDS
702 HIGH STREET

CANDIA NH 03034

PURCHASE ORDER NO: 26732
DATE OF ORDER: 03/04/11
TERMS: NET 30
SHIPPING POINT: CANDIA VINEYARDS
DELIVERY POINT: NHSLC Concord Warehouse
F. O. B.: DESTINATION
EXP SHIP: 03/11/11
EXP ARRIVAL: 03/12/11
SHIP VIA: VENDOR DETERMINED

BRAND NAME	SIZE	PAK	CODE	QNTY	UNIT	AMOUNT
Fortune Cookie White	EE-750mL	12	15522	60	99.00	5940.00
TOTAL				60		5940.00

APPROVED BY:


COMMISSIONER