

ESTTA Tracking number: **ESTTA655603**

Filing date: **02/12/2015**

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	AHNFELDT WINES, LLC
Granted to Date of previous extension	02/14/2015
Address	1005 Jefferson St.MAILING: P.O. Box 6078 Napa, CA 94581 UNITED STATES

Correspondence information	AHNFELDT WINES, LLC P.O. Box 6078 Napa, CA 94581 UNITED STATES bruce@ahnfeldtwines.com, fred@ahnfeldtlaw.com Phone:707-253-1139
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Applicant Information

Application No	86344136	Publication date	12/16/2014
Opposition Filing Date	02/12/2015	Opposition Period Ends	02/14/2015
Applicant	Tri Vin Imports, Inc. 1 Park Avenue Mount Vernon, NY 10550 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Alcoholic beverages except beers

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3968228	Application Date	09/22/2007
Registration Date	05/31/2011	Foreign Priority Date	NONE
Word Mark	PROVOCATIVE		

Design Mark	PROVOCATIVE
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2007/08/05 First Use In Commerce: 2007/08/19 WINES AND SPIRITS

Attachments	77286456#TMSN.png(bytes) NOT. OF OPP. 86344136.pdf(221095 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	/Bruce L. Ahnfeldt/
Name	AHNFELDT WINES, LLC
Date	02/12/2015

1 Bruce L. Ahnfeldt, Manager
2 AHNFELDT WINES, LLC
3 Post Office Box 6078
4 Napa, California 94581
5 (707) 253-1139; Fax (707) 224-2518
6 Email: Bruce@ahnfeldtwines.com

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

9 In the Matter of Trademark Application
10 SERIAL NUMBER 86344136

11 For the Mark PROVODKATIVE

12 Published in the Official Gazette on
13 December 16, 2014

14 AHNFELDT WINES, LLC,

15 Opposer,

16 vs.

17 TRI VIN IMPORTS, INC.

18 Applicant.

Opposition No. _____

19 **NOTICE OF OPPOSITION TO TRADEMARK APPLICATION 86344136**

20 **OPPOSER**

21 AHNFELDT WINES, LLC
22 a California Limited Liability Company
23 through its Principal, Bruce L. Ahnfeldt

24 1005 Jefferson Street
25 P.O. Box 6078
Napa, CA 94581
707-253-1139
bruce@ahnfeldtwines.com

1 This Opposition is Timely

2 (1) On July 22, 2014, Tri Vin Imports, Inc., filed an application to register the
3 mark PROVODKATIVE. That application bears Serial Number 86344136. It was
4 published for Opposition on December 16, 2014.
5

6 (2) On January 14, 2015, the Opposer requested, and was granted, a 30 day
7 extension of time within which to file and serve this Opposition.

8 I.

9 GROUNDS FOR OPPOSITION

10 (3) The above-identified Opposer believes that it will be damaged by the
11 registration of the mark shown in the above-identified application and hereby opposes
12 same. The grounds for opposition are as follow:
13

14 A. The Opposer Has Standing to Oppose

15 the Registration of the mark PROVODKATIVE

16 (4) AHNfelDT WINES, LLC, is the maker and seller of PROVOCATIVE
17 wines. The PROVOCATIVE mark was first used on August 5, 2007, and was first used
18 in commerce on August 19, 2007.
19

20 (5) AHNfelDT WINES, LLC, registered the PROVOCATIVE mark on May
21 31, 2011. The PROVOCATIVE mark bears registration number 3,968,228.

22 (6) PROVOCATIVE wines are nationally marketed and sold. They are available
23 as a retail product and are also available at restaurants. They have been poured at
24 industry events throughout the United States.
25

1 (7) PROVOCATIVE wines are regularly entered in national competitions and
2 have won several awards. For example, two PROVOCATIVE varietals won Gold
3 Medals in the San Francisco Chronicle 2014 Wine Competition. Specifically, the Gold
4 Medal Award Winners were the 2011 PROVOCATIVE Cabernet Sauvignon and 2012
5 PROVOCATIVE Chardonnay.

6 (8) PROVOCATIVE Wine's 2012 Cabernet Sauvignon won a "double gold"
7 medal in the 2015 American Fine Wine Competition, which is held in Florida.
8

9 (9) PROVOCATIVE wines have been mentioned favorably in Wine Spectator
10 Magazine. For example, the PROVOCATIVE Cabernet was mentioned in the 11/15/08
11 issue of Wine Spectator as part of an article written by James Laube titled "California
12 Cabernet's Win-Win." PROVOCATIVE Cabernet Sauvignon was listed as an
13 "excellent" example of a 2005 vintage costing \$35.00 or less.¹
14

15 (10) PROVOCATIVE's 2007 Cabernet Sauvignon was featured in the online
16 version of Wine Spectator in an article titled "Contrasting Reds for Steak," written by
17 executive editor Thomas Matthews. It was one of two red wines compared in that article
18 and was the Napa Valley's representative in a comparison with a French red wine
19 produced by the Chateau La Roque winery.²
20

21 (11) Tri Vin Imports, Inc., has applied for registration of the PROVODKATIVE
22 mark under the identifier "Alcoholic beverages except beers."
23

24 ¹ See pages 58 and 60 of the issue The Cabernet Report, 11/15/08.

25 ² Wine Spectator online magazine, "Contrasting Reds for Steak" 04/11/11.

1 B. Priority and Likelihood of Confusion

2 (12) PROVOCATIVE wines were first marketed in August 2007. The
3 PROVOCATIVE mark was registered on May 11, 2011.

4 (13) PROVOCATIVE wines have been continuously produced, marketed and
5 sold, throughout the United States, commencing in August 2007.

6 (14) Applicant's proposed mark (PROVODKATIVE) so resembles Opposer's
7 mark that it is likely, when used on or in connection with the goods or services of the
8 Applicant, to cause confusion or to cause mistake or to deceive.

9 (15) It is likely that the purchasing public will mistakenly assume that Applicant's
10 goods originate from the same source as, or are somehow associated with,
11 PROVOCATIVE wines.

12 C. Dilution

13 (16) PROVOCATIVE wines are famous in the context of the wine and spirits
14 industry and related channels of commerce.

15 (17) The Applicant's proposed mark will dilute the distinctive quality of
16 Opposer's famous mark. It will weaken the connection in consumer's minds between
17 Opposer's mark and the wine produced by Opposer.

18 D. False Suggestion of a Connection

19 (18) Marketing a spirit with the name PROVODKATIVE would falsely suggest a
20 connection with Opposer's PROVOCATIVE wines.

21 ///

1 E. Lacks a Bona Fide Intent to Use

2 (19) The Applicant, Tri Vin Imports, Inc., previously applied to register the
3 PROVOCATIVE mark on June 23, 2008. (Serial Number 77505438.) That application
4 was abandoned on September 8, 2014.

5 (20) Opposer is informed and believes, and based thereon alleges, that at no time
6 after June 23, 2008, did Applicant produce, market, advertise or sell any spirit under the
7 PROVODKATIVE label.
8

9 (21) Opposer alleges that Applicant has no bona fide intent to use the
10 PROVODKATIVE mark.

11 WHEREFORE, this Opposer, Ahnfeldt Wines, LLC, believes and avers that it is
12 being, and will continue to be, damaged by registration of the proposed
13 PROVODKATIVE trademark and prays that said Application, Serial Number 86344136,
14 be rejected in accordance with the Trademark Act and that this opposition be sustained in
15 favor of Opposer.
16

17 Dated: February 12, 2015

Respectfully Submitted,
AHNFELDT WINES, LLC

18
19 /Bruce L. Ahnfeldt/

20 _____
Bruce L. Ahnfeldt, Manager
AHNFELDT WINES, LLC
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CERTIFICATE OF SERVICE BY MAIL

I am an attorney at Law, duly licensed to practice before all courts of the State of California. I am readily familiar with procedures for serving legal documents. I am over the age of eighteen years and not a party to this action. My business mailing address is Post Office Box 3778, Napa, California, 94558.

I do not represent, nor do I purport to represent, AHNFELDT WINES, LLC, in this proceeding. I have been authorized by AHNFELDT WINES, LLC, to effectuate service of its NOTICE OF OPPOSITION TO TRADEMARK APPLICATION 86344136.

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION TO TRADEMARK APPLICATION 86344136 has been served on the Applicant’s attorney by mailing said copy on February 12, 2015, via First Class Mail, postage prepaid to

PAULETTE R. CAREY
Attorney at Law
BUCHMAN LAW FIRM, LLP
510 Thornall Street, Suite 200
Edison, New Jersey 08837

Attorney for Applicant Tri Vin Imports, Inc.

Email: prcarey@buchmanlaw.com
Fax No.: 732 632 8760

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 12, 2015, at Napa, California.

/Frederick H. Brennan/

Frederick H. Brennan