

ESTTA Tracking number: **ESTTA666771**

Filing date: **04/15/2015**

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	Delicato Vineyards
Granted to Date of previous extension	04/15/2015
Address	12001 S. Highway 99 Manteca, CA 95336 UNITED STATES

Attorney information	D. Peter Harvey Harvey Siskind LLP 4 Embarcadero Center, 39th Floor San Francisco, CA 94111 UNITED STATES pharvey@harveysiskind.com, dthompson@harveysiskind.com, clee@harveysiskind.com Phone:415-354-0100
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Applicant Information

Application No	86319029	Publication date	12/16/2014
Opposition Filing Date	04/15/2015	Opposition Period Ends	04/15/2015
Applicant	MadTree Brewing LLC 5164 Kennedy Avenue Cincinnati, OH 45213 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 2013/02/08 First Use In Commerce: 2013/02/08 All goods and services in the class are opposed, namely: Beer

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3165707	Application Date	10/13/2004
Registration Date	10/31/2006	Foreign Priority Date	NONE
Word Mark	GNARLY HEAD		

Design Mark	GNARLY HEAD
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2005/04/15 First Use In Commerce: 2005/04/29 WINES

Attachments	76615588#TMSN.png(bytes) Notice of Opposition.150415.FINAL (00056995xA1ADA).pdf(397388 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	/Donald A. Thompson/
Name	Donald A. Thompson
Date	04/15/2015

1 2. The Asserted Mark predates the Opposed Mark. In particular, Opposer’s registered
2 and common law rights in the Asserted Mark predate the filing date of the Opposed Application,
3 predate any priority date of the Opposed Application, and predate any use of the Opposed Mark.

4 3. The Opposed Mark so resembles the Asserted Mark as to be likely to cause
5 confusion, mistake, or deception. Notably, the Opposed Mark and Asserted Mark both begin with
6 the inherently distinctive term “Gnarly,” both pertain to alcoholic beverages commonly sold to the
7 same consumers in the same trade channels, and both appear with gnarled plant designs, as used or
8 contemplated for use in commerce.

9 4. Accordingly, the Board should refuse registration under Section 2(d) of the Lanham
10 Act, 15 U.S.C. § 1052(d).

11 5. The parties have engaged in good faith settlement discussions surrounding this
12 dispute since at least October 29, 2014. The parties intend to continue their good faith settlement
13 discussions going forward.

14 WHEREFORE, Opposer prays that this opposition be sustained, that Serial No. 86319029 be
15 rejected, and that no registration be issued to Applicant.

16 Opposer hereby appoints Harvey Siskind LLP, a law firm composed of members of the bar of
17 the State of California, to act as its attorneys in this proceeding, with full power to prosecute this
18 proceeding, to receive all relevant communications, and to transact all relevant business with the United
19 States Patent and Trademark Office.

20 Dated: April 15, 2015

Respectfully submitted,

HARVEY SISKIND LLP

 /Donald A. Thompson/

By: Donald A. Thompson

Four Embarcadero Center, 39th Floor
San Francisco, CA 94111
Telephone: (415) 354-0100
Facsimile: (415) 391-7124

Attorneys for Opposer
Delicato Vineyards

EXHIBIT A

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 3,165,707

Registered Oct. 31, 2006

**TRADEMARK
PRINCIPAL REGISTER**

GNARLY HEAD

DELICATO VINEYARDS (CALIFORNIA COR-
PORATION)
12001 S. HIGHWAY 99
MANTECA, CA 95336

FOR: WINES, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 4-15-2005; IN COMMERCE 4-29-2005.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SN 76-615,588, FILED 10-13-2004.

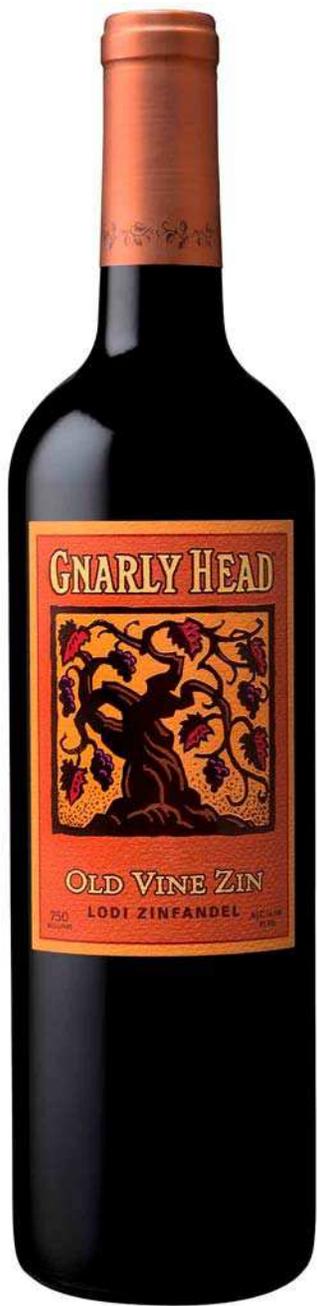
MAUREEN DALL, EXAMINING ATTORNEY

EXHIBIT B









GNARLY HEAD



OLD VINE ZIN

750 Lodi Zinfandel 12%

EXHIBIT C



CERTIFICATE OF TRANSMISSION

I hereby certify that a true and correct copy of the attached NOTICE OF OPPOSITION (Serial No. 86319029) is being electronically transmitted to the Trademark Trial and Appeal Board on April 15, 2015.

/Donald A. Thompson/
Donald A. Thompson

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