

ESTTA Tracking number: **ESTTA711148**

Filing date: **11/25/2015**

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	Wonderland Brewing Company, LLC
Granted to Date of previous extension	11/25/2015
Address	5450 W. 120th Ave. Broomfield, CO 80020 UNITED STATES

Attorney information	Thomas P. Howard Thomas P. Howard, LLC 842 W. South Boulder Rd. Louisville, CO 80027 UNITED STATES thoward@thowardlaw.com, tmdocket@thowardlaw.com Phone:303-665-9845
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Applicant Information

Application No	86556178	Publication date	07/28/2015
Opposition Filing Date	11/25/2015	Opposition Period Ends	11/25/2015
Applicant	Rhinegeist, LLC 1910 Elm Street Cincinnati, OH 45202 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 2015/01/30 First Use In Commerce: 2015/01/30 All goods and services in the class are opposed, namely: Beer

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Not in use in commerce at time of filing.

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ALICE		
Goods/Services	Beer		

Attachments	2015-11-25 - ALICE Notice of Opposition.pdf(18068 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	/Scott E. Brenner/
Name	Scott Brenner
Date	11/25/2015

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

Wonderland Brewing Company,
Opposer,

vs.

Rhinegeist, LLC,
Applicant.

Trademark Application No.: 86/556,178

Mark: ALICE

Filing Date: March 6, 2015

Publication Date: July 28, 2015

Opposition No.:

NOTICE OF OPPOSITION

Opposer, Wonderland Brewing Company (“Wonderland”) believes it will be damaged by the registration of the trademark ALICE under U.S. Application No. 86/556,178 (the “Application”), owned by Rhinegeist, LLC (the “Applicant”), and hereby opposes the Application.

As grounds for the opposition, Wonderland alleges that:

1. Wonderland is a Colorado Limited Liability Company, having a principal place of business at 5450 W. 120th Ave., Broomfield, CO 80020.
2. Applicant is an Ohio Limited Liability Company having a principal place of business at 1910 Elm Street, Cincinnati, OH 45202.
3. Wonderland is the owner of common law trademark rights in its ALICE mark for beer.
4. Wonderland used its ALICE mark to promote and sell beer at least as early as May 30, 2014.
5. Wonderland brews and sells its ALICE beer at its brewery and tasting room located in Broomfield, Colorado.
6. Wonderland packages and sells its ALICE beer in 12 ounce cans throughout, Colorado.
7. Wonderland promoted and served its ALICE beer at the Great American Beer Festival in 2014 and 2015.

8. Wonderland is in discussions with distributors to distribute its ALICE beer in the western United States.
9. Wonderland promotes its ALICE beer on its website, wonderlandbrewing.com.
10. On March 6, 2015, Applicant filed Application No. 86/556,178 for ALICE for "beer," in Class 032, claiming it first used the mark in commerce on January 30, 2015.
11. On information and belief, Applicant sells its ALICE beer from a single location located at 1910 Elm Street, Cincinnati, OH 45202.
12. The Application was published for opposition in the Official Gazette on July 28, 2015.
13. On August 27, 2015, Wonderland filed a 30-day request for extension of time to oppose the Application, which was granted, extending the deadline to oppose the Application until September 26, 2015.
14. On September 25, 2015, Wonderland filed an additional 60-day request for extension of time to oppose the Application, which was granted, extending the deadline to oppose the Application until November 25, 2015.
15. Opposer's filing of this notice is timely.

GROUNDS FOR OPPOSITION:

PRIORITY AND LIKELIHOOD OF CONFUSION

16. Wonderland incorporates by reference Paragraphs 1 through 15, inclusive, as if fully set forth herein.
17. Wonderland's ALICE mark is distinctive.
18. Wonderland began using its ALICE mark in in the U.S. to promote beer as least as early as May 30, 2014.
19. Wonderland has not abandoned the ALICE mark and continues to use it today.

20. Applicant began using ALICE to promote beer not earlier than January 30, 2015.
21. There is no question that Wonderland has priority in this matter.
22. Applicant's ALICE mark is identical to Wonderland's ALICE mark.
23. The parties' goods are identical. Both parties use the ALICE mark to promote beer.
24. In view of the identity between the parties' marks and identity of their goods, Applicant's ALICE mark so resembles Wonderland's ALICE mark previously used in the U.S., and not abandoned, as to be likely to cause confusion or to cause mistake or to deceive as to the origin, sponsorship, and/or approval of Applicant's goods, and is likely to falsely suggest an affiliation, connection, or association of Applicant and its goods with Wonderland and its goods, with consequent injury to Wonderland and to the public. Thus, Applicant's ALICE mark is unregistrable under 15 U.S.C. §1052(d) and should be refused registration.

GROUNDS FOR OPPOSITION:

NO USE IN COMMERCE AS OF THE DATE OF APPLICATION

25. Wonderland incorporates by reference Paragraphs 1 through 24, inclusive, as if fully set forth herein.
26. On information and belief Applicant had not used ALICE for beer in commerce on or before the date of its Application, March 6, 2015.
27. On information and belief, Applicant had not sold or transported beer marked with the ALICE mark across state lines on or before the date of its Application.
28. In view of the lack of use in commerce of the ALICE mark by the Applicant as of the date of the Application, the Applicant should be denied registration.

GROUNDS FOR OPPOSITION:

FRAUD

29. Wonderland incorporates by reference Paragraphs 1 through 28, inclusive, as if fully set forth herein.
30. Applicant or its agent, in filing its Application, declared that it “is using the mark in commerce on or in connection with the goods/services in the application.”
31. Applicant or its agent, when it filed its Application, stated that Applicant “first used [the ALICE mark] in commerce at least as early as 01/30/2015, and is now in use in such commerce.”
32. On information and belief Applicant had not used ALICE for beer in commerce on or before the date of its Application.
33. On information and belief, Applicant made a false representation to the USPTO, specifically that at the time it filed its Application it was using the ALICE mark in commerce on or in connection with the goods/services in the application.
34. Whether or not Applicant had used the ALICE mark in commerce as of the date of the Application is material to whether the mark is registerable.
35. Only marks used in commerce as of the date of the Application are entitled to a federal registration. 15 U.S.C. §1051(a)(1).
36. Applicant was represented by counsel at the time it filed its Application.
37. Applicant has applied to register more than 50 trademarks.
38. Applicant’s earliest application dates back to December 11, 2012.
39. Applicant has substantial experience in registering trademarks, dating back nearly three years.
40. On information and belief Applicant had knowledge of the falsity of its statements the regarding its use in commerce at the time it filed its Application.
41. On information and belief, Applicant made false statements regarding its use of the ALICE mark in commerce with the intent to deceive the U.S.P.T.O. into believing that the Applicant was using the ALICE mark in commerce as of the date it filed its Application.

42. On information and belief, Applicant's statement that "the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 01/30/2015, and first used in commerce at least as early as 01/30/2015, and is now in use in such commerce" is a false misrepresentation of material fact intended to deceive the U.S.P.T.O.
43. In view of the Applicant's fraudulent statements, the Applicant is not entitled to register the ALICE mark for beer.

WHEREFORE, Wonderland prays that this Notice of Opposition be sustained and that the Application be denied registration.

Respectfully submitted this 25th day of November, 2015.

By:
s/ Scott E. Brenner
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Counsel for Opposer

Certificate of Service

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Michael A. Marrero by mailing said copy on November 25, 2015, via First Class Mail, postage prepaid to:

Michael A. Marrero
Ulmer Berne LLP
600 Vine St
Ste 2800
Cincinnati, OH 45202-2448

/s Scott E. Brenner
Scott E. Brenner

Courtesy copies sent to:
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