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

Proceeding	91225053
Party	Defendant Rhinegeist, LLC
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Attachments	Wonderland v. Rhinegeist - Answer to Notice of Opposition.pdf(148752 bytes )

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

Mark: ALICE  
Application Ser. No. 86/556,178  
Publication Date: July 28, 2015

Wonderland Brewing Company,	)	
	)	
Opposer,	)	Opposition No. 91/225,053
	)	
vs.	)	
	)	
Rhinegeist, LLC,	)	
	)	
Applicant.	)	

**ANSWER TO OPPOSER’S NOTICE OF OPPOSITION**

Applicant Rhinegeist, LLC (“Applicant” or “Rhinegeist”), by and through its undersigned counsel, hereby answers Opposer Wonderland Brewing Company’s (“Opposer” or “Wonderland”) Notice of Opposition as follows:

1. Wonderland is a Colorado Limited Liability Company, having a principal place of business at 5450 W. 120th Ave., Broomfield, CO 80020.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1, and therefore denies those allegations.

2. Applicant is an Ohio Limited Liability Company having a principal place of business at 1910 Elm Street, Cincinnati, OH 45202.

**ANSWER:** Applicant admits the allegations of Paragraph 2.

3. Wonderland is the owner of common law trademark rights in its ALICE mark for beer.

**ANSWER:** Applicant denies the allegations of Paragraph 3.

4. Wonderland used its ALICE mark to promote and sell beer at least as early as May 30, 2014.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4, and therefore denies those allegations.

5. Wonderland brews and sells its ALICE beer at its brewery and tasting room located in Broomfield, Colorado.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5, and therefore denies those allegations.

6. Wonderland packages and sells its ALICE beer in 12 ounce cans throughout, Colorado.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6, and therefore denies those allegations.

7. Wonderland promoted and served its ALICE beer at the Great American Beer Festival in 2014 and 2015.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7, and therefore denies those allegations.

8. Wonderland is in discussions with distributors to distribute its ALICE beer in the western United States.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8, and therefore denies those allegations.

9. Wonderland promotes its ALICE beer on its website, wonderlandbrewing.com.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9, and therefore denies those allegations.

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.

**ANSWER:** Applicant admits that it filed the trademark application at issue on January 30, 2015 claiming first use in commerce “at least as early as” 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.

**ANSWER:** Applicant admits that it sells its ALICE beer at 1910 Elm Street in Cincinnati, Ohio, but denies that this is the sole location where its ALICE beer is sold.

12. The Application was published for opposition in the Official Gazette on July 28, 2015.

**ANSWER:** Applicant admits the allegations of Paragraph 12.

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.

**ANSWER:** Applicant admits the allegations of Paragraph 13.

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.

**ANSWER:** Applicant admits the allegations of Paragraph 14.

15. Opposer’s filing of this notice is timely.

**ANSWER:** Applicant admits the allegations of Paragraph 15.

**GROUND FOR OPPOSITION:**  
**PRIORITY AND LIKELIHOOD OF CONFUSION**

16. Wonderland incorporates by reference Paragraphs 1 through 15, inclusive, as if fully set forth herein.

**ANSWER:** Applicant repeats and incorporates by reference its responses to Paragraphs 1-15 as its response to Paragraph 16.

17. Wonderland's ALICE mark is distinctive.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17, and therefore denies those allegations.

18. Wonderland began using its ALICE mark in in the U.S. to promote beer as least as early as May 30, 2014.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18, and therefore denies those allegations.

19. Wonderland has not abandoned the ALICE mark and continues to use it today.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19, and therefore denies those allegations.

20. Applicant began using ALICE to promote beer not earlier than January 30, 2015.

**ANSWER:** Applicant denies the allegations of Paragraph 20.

21. There is no question that Wonderland has priority in this matter.

**ANSWER:** Applicant denies the allegations of Paragraph 21.

22. Applicant's ALICE mark is identical to Wonderland's ALICE mark.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22, and therefore denies those allegations.

23. The parties' goods are identical. Both parties use the ALICE mark to promote beer.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23, and therefore denies those allegations.

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.

**ANSWER:** Applicant denies the allegations of Paragraph 24.

**GROUND 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.

**ANSWER:** Applicant repeats and incorporates by reference its responses to Paragraphs 1-24 as its response to Paragraph 25.

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.

**ANSWER:** Applicant denies the allegations of Paragraph 26.

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.

**ANSWER:** Applicant denies the allegations of Paragraph 27.

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.

**ANSWER:** Applicant denies the allegations of Paragraph 28.

**GROUND FOR OPPOSITION: FRAUD**

29. Wonderland incorporates by reference Paragraphs 1 through 28, inclusive, as if fully set forth herein.

**ANSWER:** Applicant repeats and incorporates by reference its responses to Paragraphs 1-28 as its response to Paragraph 29.

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.”

**ANSWER:** Applicant admits the allegations of Paragraph 30.

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.”

**ANSWER:** Applicant admits the allegations of Paragraph 31.

32. On information and belief Applicant had not used ALICE for beer in commerce on or before the date of its Application.

**ANSWER:** Applicant denies the allegations of Paragraph 32.

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.

**ANSWER:** Applicant denies the allegations of Paragraph 33.

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.

**ANSWER:** Applicant admits the allegations of Paragraph 34.

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).

**ANSWER:** Applicant denies the allegations of Paragraph 35.

36. Applicant was represented by counsel at the time it filed its Application.

**ANSWER:** Applicant admits the allegations of Paragraph 36.

37. Applicant has applied to register more than 50 trademarks.

**ANSWER:** Applicant admits the allegations of Paragraph 37.

38. Applicant’s earliest application dates back to December 11, 2012.

**ANSWER:** Applicant admits the allegations of Paragraph 38.

39. Applicant has substantial experience in registering trademarks, dating back nearly three years.

**ANSWER:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39, and therefore denies those allegations.

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.

**ANSWER:** Applicant denies the allegations of Paragraph 40.

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.

**ANSWER:** Applicant denies the allegations of Paragraph 41.

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.

**ANSWER:** Applicant denies the allegations of Paragraph 42.

43. In view of the Applicant's fraudulent statements, the Applicant is not entitled to register the ALICE mark for beer.

**ANSWER:** Applicant denies the allegations of Paragraph 43.

**WHEREFORE,** Applicant respectfully requests the Board to dismiss Opposer's Notice of Opposition with prejudice.

Date: January 4, 2016

Respectfully submitted,

/s/Thomas M. Williams  
*Attorney for Applicant Rhinegeist, LLC*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing ANSWER TO OPPOSER'S NOTICE OF OPPOSITION has been served upon Opposer's counsel of record by depositing a copy thereof in the United States Mail, first-class postage prepaid on January 4, 2016, addressed as follows:

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