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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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Date	08/25/2016
Attachments	Wonderland v. Rhinegeist - Applicant's Motion to Amend to Concurrent Use Application.pdf(128299 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)	
)	Opposition No. 91/225,053
Wonderland Brewing Company,)	
Opposer,)	
)	
v.)	
)	
Rhinegeist, LLC,)	
Applicant.)	

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

APPLICANT’S MOTION TO AMEND TO CONCURRENT USE APPLICATION

Pursuant to 15 U.S.C. § 1052(d) and T.B.M.P. §§ 514, 1113.01, Applicant Rhinegeist, LLC (“Applicant” or “Rhinegeist”) hereby amends its pending unrestricted trademark application to an application seeking a concurrent use registration. Specifically, Applicant requests that the application be amended to a concurrent use application excluding the geographic area of the state of Colorado.

I. PROPOSED AMENDMENT

Applicant respectfully requests that its application to register the mark ALICE, identified in the caption above, be amended to one seeking concurrent use registration, as follows:

Applicant claims the right to exclusive use of the mark for the area comprising the entire United States, its territories and possessions, with the exception of the state of Colorado.

II. GROUNDS

Applicant seeks registration of the above-identified ALICE trademark subject to a concurrent use proceeding with the following party, which is known¹ to Applicant to be a possible exception to Applicant's right to exclusive use of the mark in commerce: Wonderland Brewing Company, a Colorado limited liability company with its place of business at 5450 W. 120th Ave., Broomfield, Colorado 80020.

Wonderland Brewing Company ("Wonderland") has alleged in the above-captioned opposition proceeding that it has used the mark ALICE in connection with beer since at least as early as May 30, 2014 in the state of Colorado. This alleged first use date would pre-date Applicant's March 6, 2015 filing date for its ALICE trademark application, which was filed on an actual use basis under Section 1(a) claiming January 30, 2015 as its first use in commerce. Wonderland does not own a federal trademark registration for ALICE, nor has it filed an application to register the mark in the U.S.P.T.O. Instead, Wonderland asserted its purported common law rights in the mark in the pending opposition.

Applicant adopted, first used, and applied for registration of its ALICE trademark innocently, without knowledge of the excepted user's purported use of its mark in Colorado. Applicant first became aware of Wonderland's claimed rights in the mark when Wonderland filed its Notice of Opposition. Applicant respectfully submits that there will be no likelihood of confusion resulting from the continued use of the marks by the parties as defined by the geographic scope of Applicant's proposed exception.

Applicant respectfully submits that its motion meets the jurisdictional and procedural requirements for a concurrent use proceeding. Section 2(d) sets forth two requirements. First, the applicant must allege innocent adoption and use prior to the excepted user's filing date, if any. Here, Applicant has alleged innocent adoption and use. Wonderland owns no registrations

¹ Applicant's knowledge is based on allegations in the Notice of Opposition filed in this proceeding.

or pending applications for ALICE. Therefore, Applicant has satisfied the first requirement. *Over the Rainbow, Ltd. v. Over the Rainbow, Inc.*, 227 U.S.P.Q. 879, 882 (T.T.A.B. 1985) (“Since users have no pending application or registration, it is clear that applicant has met the first or jurisdictional requirement for a concurrent use registration.”). Second, the applicant must allege that there will be no likelihood of confusion. Here, Applicant alleges that there will be no likelihood of confusion resulting from the parties’ continued use of their marks because Applicant seeks to exclude Wonderland’s geographic scope of use of the mark, which is limited to the state of Colorado. This satisfies the second requirement. *Bio Na Braza, LLC v. Terra Sul Corp.*, 110 U.S.P.Q.2d 1386, 1393 (T.T.A.B. 2014).

Through this motion, Applicant consents to entry of judgment against itself with respect to its right to an unrestricted registration and hereby moves to terminate this opposition proceeding in favor of a concurrent use proceeding involving the application as amended above.

III. CONCLUSION

Applicant respectfully requests that this application be amended to a concurrent use application, that this opposition proceeding be terminated, and that a concurrent use proceeding be initiated.

Date: August 25, 2016

Respectfully submitted,
Ulmer & Berne LLP

By: /s/Thomas M. Williams/
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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the following **APPLICANT'S MOTION TO AMEND TO CONCURRENT USE APPLICATION** upon Opposer's counsel via electronic mail, per the agreement of the parties, on August 25, 2016, addressed as follows:

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By: /s/Thomas M. Williams
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