

ESTTA Tracking number: **ESTTA731646**

Filing date: **03/07/2016**

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	Heartland Group Limited
Granted to Date of previous extension	03/06/2016
Address	78 Selwyn Place Nelson, NEW ZEALAND
Domestic Representative	ERICA R. HALSTEAD ASSOCIATE OF ATTORNEY OF RECORD ABELMAN, FRAYNE & SCHWAB 666 THIRD AVE. NEW YORK, NY 10017 UNITED STATES EHALSTEAD@LAWABEL.COM,docket@lawabel.com Phone:2129499022

### Applicant Information

Application No	86472566	Publication date	09/08/2015
Opposition Filing Date	03/07/2016	Opposition Period Ends	03/06/2016
Applicant	K Vintners, L.L.C. 820 Mill Creek Road Walla Walla, WA 99362 UNITED STATES		

### Goods/Services Affected by Opposition

Class 033. First Use: 2012/01/01 First Use In Commerce: 2012/01/01  
All goods and services in the class are opposed, namely: Wines

### Grounds for Opposition

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

U.S. Registration No.	2791634	Application Date	06/17/1999
Registration Date	12/09/2003	Foreign Priority Date	NONE
Word Mark	EVE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 031. First use: First Use: 2003/08/14 First Use In Commerce: 2003/08/14 [ PROPAGATION MATERIALS, NAMELY, GRAFTWOOD AND BUDWOOD, LIVE TREES, ] FRESH FRUITS, NAMELY, APPLES

U.S. Registration No.	4398154	Application Date	09/15/2009
Registration Date	09/10/2013	Foreign Priority Date	04/07/2009

Word Mark	EVE
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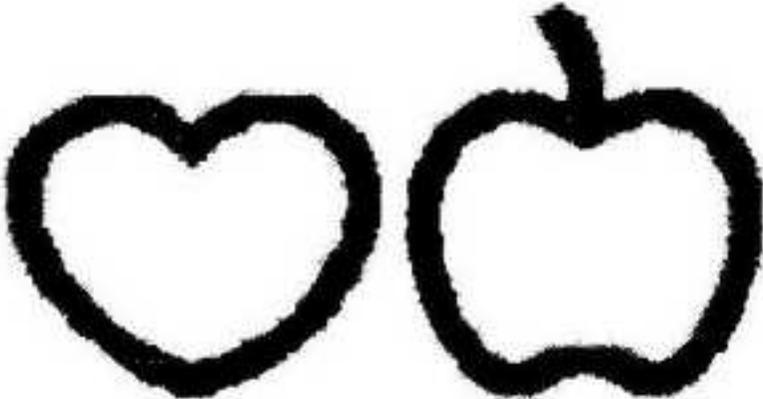
Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 029. First use: First Use: 0 First Use In Commerce: 0 Preserved apples; irradiated apples; sliced apples; processed apples
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U.S. Registration No.	3574183	Application Date	09/01/2006
Registration Date	02/10/2009	Foreign Priority Date	05/16/2006

Word Mark	NONE
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Design Mark	
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Description of	NONE
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Mark	
Goods/Services	Class 031. First use: First Use: 2002/12/31 First Use In Commerce: 2003/05/01 Fresh fruits [ and vegetables; plant seeds; natural plants, namely, living plants and dried plants; unprocessed grains; animal foodstuffs ]

Attachments	77827207#TMSN.png( bytes ) 78966360#TMSN.png( bytes ) EVE (apple design) NOTICE OF OPPOSITION.pdf(127299 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	/ERH/
Name	ERICA R. HALSTEAD, ASSOCIATE ATTORNEY
Date	03/07/2016

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

In re Application No. 86/472566

<p>HEARTLAND GROUP LIMITED,</p> <p style="margin-left: 100px;">Opposer,</p> <p style="margin-left: 100px;">v.</p> <p>K VINTNERS, LLC,</p> <p style="margin-left: 100px;">Applicant</p>
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Opposition No.

**NOTICE OF OPPOSITION**

Heartland Group Limited (“Opposer”), a corporation of New Zealand with a business address at 78 Selwyn Place, Nelson, New Zealand, believes that it will be damaged by registration of the above identified trademark and hereby opposes the same.

As grounds for opposition it is alleged that:

1. On December 5, 2014, K Vintners, LLC (“Applicant”), a corporation of the state of Washington with a business address at 820 Mill Creek Road, Walla Walla, Washington 99362,



USA, filed an application seeking registration of the mark (“Applicant’s Mark”) for wines. This application, assigned Serial No. 86/472566, claims a first use date of January 1, 2012.

2. Opposer owns the following wordmark registrations in the United States, collectively referred to as “Opposer’s EVE Marks.”

<b>EVE</b>	Reg. No. 2791634	fresh fruits, namely apples
<b>EVE</b>	Reg. No. 4398154	Preserved apples; irradiated apples; sliced apples; processed apples

3. Opposer owns the following design mark registration in the United States, hereinafter referred to as “Opposer’s Design Mark.”

	Reg. No. 3574183	fresh fruits and vegetables; plant seeds; natural plants, namely living plants and dried plants; unprocessed grains; animal foodstuffs
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Hereinafter, the three registrations may be referred to collectively as “Opposer’s Marks.”

4. Opposer filed its applications for the EVE Marks in 1999 and 2009, respectively. Accordingly, Opposer can claim constructive use rights in the mark EVE dating back to 1999.

5. Opposer filed its application for the Design Mark in 2006. Accordingly, Opposer can claim constructive use rights in the Design Mark dating back to 2006.

6. Opposer first used its EVE Mark in commerce since at least as early as August 2003.

7. Opposer first used its Design Mark in commerce since at least as early as May 2003.

8. Opposer’s constructive use rights tied to its EVE Marks predate both the filing date of Applicant’s Mark as well as any use which Applicant may have made of its mark in U.S. commerce.

9. Opposer’s constructive use rights tied to its Design Mark predates both the filing date of Applicant’s Mark as well as any use which Applicant may have made of Applicant’s Mark in U.S. commerce.

10. Opposer’s first commercial use of its EVE Marks predates both the filing date of Applicant’s Mark as well as any use which Applicant may have made of Applicant’s Mark in U.S. commerce.

11. Opposer’s first commercial use of its Design Mark predates both the filing date of Applicant’s Mark as well as any use which Applicant may have made of Applicant’s Mark in U.S. commerce.

12. By virtue of the distribution, sale, advertising and promotion of products bearing Opposer's Marks since at least 2003, Opposer's Marks are widely recognized by the purchasing public as identifying Opposer and its goods.

13. Applicant's Mark contains Opposer's EVE Mark in its entirety.

14. Applicant's Mark is substantially similar in appearance to Opposer's EVE Marks.

15. Applicant's Mark is substantially similar in sound to Opposer's EVE Marks.

16. Applicant's Mark conveys an overall commercial impression that is similar to that conveyed by Opposer's EVE Marks.

17. Applicant's Mark contains the design of an apple which is a dominant element of the mark.

18. Opposer's Design Mark contains the design of an apple which is a dominant element of the mark.

19. Applicant's Mark is substantially similar in appearance to Opposer's Design Mark.

20. Applicant's Mark conveys an overall commercial impression that is similar to that conveyed by Opposer's Design Mark.

21. The goods identified by Applicant's Mark are related to the goods identified by Opposer's Marks.

22. The goods identified by Applicant's Mark are likely to be marketed through the same or similar retail outlets as the goods identified in Opposer's Marks.

23. The goods identified in Applicant's Mark are likely to be marketed to the same or similar consumers as are the goods identified in Opposer's Marks.

24. Applicant's Mark is confusingly similar to Opposer's EVE Marks in sight, sound and overall commercial impression.

25. Applicant's Mark is confusingly similar to Opposer's Design Mark in sight, sound and overall commercial impression.

26. Accordingly, use and registration of Applicant's Mark is likely to deceive and to cause mistake or confusion among members of the public as to the source of Applicant's goods within the meaning of 15 U.S.C. §1052(d).

**WHEREFORE**, Opposer believes that it has a real interest in this proceeding and will be irreparably damaged by the registration of the Applicant's Mark, and respectfully requests that the Board sustain this Opposition and refuse registration of same.

Opposer requests that the requisite filing fee of \$300 be charged to the undersigned's Deposit Account No. 010035-6336.

Respectfully submitted,

s/Erica R. Halstead /  
LAWRENCE E. ABELMAN  
ERICA R. HALSTEAD

**ABELMAN, FRAYNE & SCHWAB**  
**666 Third Avenue**  
**New York, New York 10017**  
**(212) 949-9022**  
*Attorneys for Opposer*

Dated: March 7, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served via first class mail, postage prepaid, this 7th day of March 2016 upon counsel for Applicant:

Alexander Montgomery  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099

s/Erica Halstead/  
ERICA R. HALSTEAD