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

Proceeding	91226732
Party	Defendant K Vintners, L.L.C.
Correspondence Address	GRACE HAN STANTON PERKINS COIE LLP 1201 THIRD AVENUE, SUITE 4900 SEATTLE, WA 98101  amontgomery@perkinscoie.com
Submission	Answer
Filer's Name	Alexander M. Montgomery
Filer's e-mail	pctrademarks@perkinscoie.com, aedwards@perkinscoie.com
Signature	/Alexander M. Montgomery/
Date	06/15/2016
Attachments	FINAL Answer to Notice of Opposition.pdf(15817 bytes )

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

Heartland Group Limited,

Opposer,

v.

K Vintners, L.L.C.,

Applicant.

Opposition No.: 91226732

**ANSWER TO NOTICE OF OPPOSITION**

**ANSWER TO NOTICE OF OPPOSITION**

By and through its undersigned counsel, Applicant, K Vintners, L.L.C. (“Applicant”), hereby answers the Notice of Opposition filed by Heartland Group Limited (“Opposer”) against Applicant’s U.S. Application Ser. No. 86/472,566 (“Application”) to register the EVE CHARDONNAY WASHINGTON STATE and Design mark (“Applicant’s Mark”) as set forth and depicted in the Application. With the exception of Paragraphs 27–33 of the Answer, the numbered paragraphs in the Answer correspond with the numbered paragraphs of the Notice of Opposition. The admissions or denials stated in the numbered Paragraphs 1–26 of the Answer address the allegations contained in the corresponding numbered Paragraphs 1–26 of the Notice of Opposition, respectively.

1. Applicant admits that it filed Application Ser. No. 86/472,566 on December 5, 2014 and that the Application claims a first use date of “at least as early as” January 1, 2012. Applicant denies any remaining allegations contained in Paragraph 1 of the Notice of Opposition.

2. Applicant admits that United States Trademark Office records reflect that Opposer is listed as the current owner of U.S. Reg. No. 2,791,634 covering goods identified as “fresh fruits, namely, apples” in International Class 31 and U.S. Reg. No. 4,398,154 covering goods identified as “Preserved apples; irradiated apples; sliced apples; processed apples” in International Class 29.

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Opposer actually owns U.S. Reg. Nos. 2,791,634 and 4,398,154 and, therefore, denies the same. Applicant denies any remaining allegations contained in Paragraph 2 of the Notice of Opposition.

3. Applicant admits that United States Trademark Office records reflect that Opposer is listed as the current owner of U.S. Reg. No. 3,574,183 covering goods identified as “Fresh fruits” in Class 31. Applicant denies that U.S. Reg. No. 3,574,183 also covers “and vegetables; plant seeds; natural plants, namely, living plants and dried plants; unprocessed grains; animal foodstuffs” as alleged in Paragraph 3 of the Notice of Opposition. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Opposer actually owns U.S. Reg. No. 3,574,183 and, therefore, denies the same. Applicant denies any remaining allegations contained in Paragraph 3 of the Notice of Opposition.

4. Applicant admits that United States Trademark Office records reflect that Opposer filed the U.S. application underlying Reg. No. 2,791,634 in 1999 and the U.S. application underlying Reg. No. 4,398,154 in 2009. The allegation regarding Opposer’s claim of constructive use rights constitutes a legal conclusion to which no response is required. To the extent a response is required, Applicant denies the same. Applicant denies any remaining allegations contained in Paragraph 4 of the Notice of Opposition.

5. Applicant admits that United States Trademark Office records reflect that Opposer filed the U.S. application underlying Reg. No. 3,574,183 in 2006. The allegation regarding Opposer’s claim of constructive use rights constitutes a legal conclusion to which no response is required. To the extent a response is required, Applicant denies the same. Applicant denies any remaining allegations contained in Paragraph 5 of the Notice of Opposition.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Notice of Opposition and, therefore, denies the same.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Notice of Opposition and, therefore, denies the same.

8. The allegations in Paragraph 8 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Notice of Opposition and, therefore, denies the same.

9. The allegations in Paragraph 9 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Notice of Opposition and, therefore, denies the same.

10. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Notice of Opposition and, therefore, denies the same.

11. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Notice of Opposition and, therefore, denies the same.

12. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Notice of Opposition and, therefore, denies the same.

13. The allegations in Paragraph 13 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 13 of the Notice of Opposition.

14. The allegations in Paragraph 14 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 14 of the Notice of Opposition.

15. The allegations in Paragraph 15 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 15 of the Notice of Opposition.

16. The allegations in Paragraph 16 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 16 of the Notice of Opposition.

17. The allegations in Paragraph 17 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 17 of the Notice of Opposition.

18. The allegations in Paragraph 18 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 18 of the Notice of Opposition.

19. The allegations in Paragraph 19 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 19 of the Notice of Opposition.

20. The allegations in Paragraph 20 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 20 of the Notice of Opposition.

21. The allegations in Paragraph 21 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 21 of the Notice of Opposition.

22. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Notice of Opposition and, therefore, denies the same.

23. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Notice of Opposition and, therefore, denies the same.

24. The allegations in Paragraph 24 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 24 of the Notice of Opposition.

25. The allegations in Paragraph 25 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 25 of the Notice of Opposition.

26. The allegations in Paragraph 26 of the Notice of Opposition constitute legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations in Paragraph 26 of the Notice of Opposition.

27. Applicant denies any allegations in any unnumbered paragraphs of the Notice of Opposition, denies that Opposer will be damaged by registration of the Application, and denies that Opposer is entitled to any relief requested in any unnumbered paragraphs of the Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

28. The Notice of Opposition fails to state a claim upon which relief may be granted.

29. There is no likelihood of confusion between Applicant's Mark and Opposer's alleged trademarks as identified in the Notice of Opposition and set forth in U.S. Registrations No. 2,791,634, No. 4,398,154, and No. 3,574,183 ("Opposer's Alleged Marks").

30. Applicant's Mark is not dilutive of Opposer's Alleged Marks, as Opposer's Alleged Marks are not famous or even well-known.

31. Applicant's Mark is not deceptively similar to Opposer's Alleged Marks.

32. Applicant's Mark does not falsely suggest any association or connection with Opposer or Opposer's Alleged Marks.

33. Applicant reserves the right to amend its Answer to add Affirmative Defenses that are not now known but may later become known through discovery or other means.

WHEREFORE, Applicant respectfully requests that the Trademark Trial and Appeal Board dismiss the Notice of Opposition with prejudice.

DATED: June 15, 2016

**PERKINS COIE LLP**

By /s/Alexander M. Montgomery/

Grace Han Stanton  
Alexander M. Montgomery  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101-3099  
(206) 359-8000

**ATTORNEYS FOR APPLICANT K  
VINTNERS, L.L.C.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this **ANSWER TO NOTICE OF OPPOSITION** is being deposited with the United States Postal Service with sufficient postage as first class mail on June 15, 2016 in an envelope addressed to Opposer's counsel:

ERICA R. HALSTEAD  
ABELMAN, FRAYNE & SCHWAB  
666 THIRD AVE.  
NEW YORK, NY 10017

Signature: /s/Alexander M. Montgomery/

Printed Name: Alexander M. Montgomery