

ESTTA Tracking number: **ESTTA751271**

Filing date: **06/08/2016**

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	Pure Steeps Beverage, LLC
Granted to Date of previous extension	06/08/2016
Address	3110 E. Miraloma Ave. Anaheim, CA 92806 UNITED STATES

Attorney information	Ted F. Gerdes Gerdes Law 8950 West Olympic Boulevard, Suite 382 Beverly Hills, CA 90211 UNITED STATES ted@gerdeslaw.com Phone:310 385 9501
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Applicant Information

Application No	86757645	Publication date	02/09/2016
Opposition Filing Date	06/08/2016	Opposition Period Ends	06/08/2016
Applicant	Washington Vintners L.L.C. 1302 Puyallup St. Sumner, WA 98390 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Wine

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Deceptiveness	Trademark Act Section 2(a)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85840061	Application Date	02/04/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SECRET SQUIRREL		

Design Mark	SECRET SQUIRREL
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2011/11/00 First Use In Commerce: 2011/11/00 coffee concentrate

Attachments	85840061#TMSN.png(bytes) Opposition In re Applicaiotn No 86075645 06_08_16.pdf(186378 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	/ted gerdes/
Name	Ted F. Gerdes
Date	06/08/2016

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

In re Application No. 860757645
SECRET SQUIRREL

PURE STEEPS BEVERAGE, LLC

Opposer

v.

Opp.No. _____

WASHINGTON VINTNERS, L.L.C.

Applicant

NOTICE OF OPPOSITION

Opposer believes that it will be damaged by the registration of the above-identified mark and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Opposer alleges that:

1. Opposer is the owner of all right, title and interest in and to the mark SECRET SQUIRREL either alone or in combination with other words or designs ("Opposer's Mark") for a variety of goods and services including coffee concentrate, cold brew coffee, tea, juice and related beverages.
2. Through years of use, Opposer's Mark has been become well known and famous as a distinctive indicator of the origin of Opposer's goods and services and it is a valuable symbol of Opposer's goodwill.
3. The Patent and Trademark Office has recognized the validity of Opposer's Marks by approving the following for registration:
 - Application No. 85840061 SECRET SQUIRREL, coffee concentrate.

4. Opposer has used the mark in connection with the goods described herein since November of 2011.
5. Opposer's Application has been on file with the USPTO since February 4, 2013.
6. Opposer created the mark SECRET SQUIRREL for use in its beverage business.
7. Opposer's Mark is on products distributed by a large natural food distributor and online.
8. Applicant has not yet claimed use and has filed an Intent to Use Application.
9. Notwithstanding Opposer's prior established rights, Applicant recently applied for registration of the identical mark SECRET SQUIRREL for wine.
10. Upon information and belief, Applicant made no use of its alleged mark in connection with the sale of any products or services prior to the date of first use alleged in its application.
11. Upon information and belief, Applicant adopted its alleged mark with full knowledge of Opposer's Mark with a deliberate intent to imitate and cause confusion with Opposer's Mark.

LIKELIHOOD OF CONFUSION - §2(d)

12. The mark that Applicant seeks to register is identical to or so resembles Opposer's Mark that the use and registration thereof is likely to cause confusion, mistake and deception as to the source or origin of Applicant's goods and services and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's Mark.
13. Applicant's goods are so closely related to the goods and services of Opposer that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Opposer, or that Applicant has been licensed to use the mark SECRET SQUIRREL by Opposer, or that Applicant is in some way connected with, sponsored by, or affiliated with Opposer.
14. Likelihood of confusion is enhanced by the fact that the parties' marks are identical.

15. Likelihood of confusion is enhanced by the fact that the parties' goods and services are closely related.

16. Likelihood of confusion is enhanced by the fact that consumers are likely to believe that Applicant is using its alleged mark pursuant to a license from Opposer.

17. Applicant has never sought any license to use Opposer's mark SECRET SQUIRREL.

18. Likelihood of confusion may be presumed in light of the fact that Applicant obviously adopted an imitation of Opposer's Mark with prior knowledge of Opposer's Mark and with an intent to cause confusion and to capitalize on the popularity of Opposer's Mark.

19. Applicant is not affiliated or connected with, or endorsed or sponsored by, Opposer, nor has Opposer approved any of the goods offered or sold by Applicant under the mark SECRET SQUIRREL, nor has Opposer granted Applicant permission to use said mark.

DECEPTION/ FALSE SUGGESTION OF CONNECTION - §2(a)

20. Applicant's mark so closely resembles Opposer's Mark that it is likely to cause deception in violation of Section 2(a) of the Trademark Act, in that the mark misdescribes the nature or origin of the services. Purchasers are likely to believe that the misdescription actually describes the nature or origin of the services, and this is likely to materially alter purchasers' decisions to acquire Applicant's goods or services.

21. Applicant's alleged mark so closely resembles Opposer's Mark that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act. Applicant's alleged mark points uniquely to Opposer and purchasers will assume that goods sold under Applicant's alleged mark are connected with Opposer.

22. When Applicant's alleged mark is used on goods of the type described in its application, Applicant's alleged mark will cause purchasers to buy Applicant's goods or services based on

the mistaken assumption that Opposer is endorsing, attempting to promote, or encouraging the sale of Applicant's services by permitting Applicant to use said mark.

23. Applicant's alleged mark is deceptive in that it falsely suggests a connection with, or approval by, Opposer.

24. Use and registration by Applicant of the mark SECRET SQUIRREL will deprive Opposer of the ability to protect its reputation, persona and goodwill.

25. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's alleged mark and registration should be refused.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied.

PURE STEEPS BEVERAGE, LLC

By 

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Attorney for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been served upon Applicant's counsel Ryan E. Dodge, Jr., Christensen O'Connor Johnson Kindness PLLC, 1201 3rd Avenue, Suite 3600, Seattle, Washington 98101-3268 by first class mail, postage prepaid, on June 8, 2016.


Terri Zaneski