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



04-15-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #58

In the Matter of Trademark Applicaton

Serial No. 78/042,960

Filed on January 12, 2001

For the Mark WILD THING

Published In the Official Gazette (Trademarks) on August 7, 2001

**OPPOSER RUDOLF WILD GMBH &
CO.KG,**

Opposer,

Opposition No. 91150996

v.

SHELTON-MACKENZIE WINE COMPANY,

Applicant.

**ANSWER TO NOTICE OF
OPPOSITION**

TRADEMARK TRIAL AND
APPEAL BOARD
02 APR 25 PM 9:22

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Commissioner for Trademarks
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Arlington, VA 22202-3513

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to BOX TTAB NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on:

Date of Mailing Document: April 11, 2002

Name of Applicant, Attorney or Representative certifying mailing: Terrilyn B. Boyer

Signature: Terrilyn Boyer

Date of Signing: April 11, 2002

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I. ANSWER TO NOTICE OF OPPOSITION

The Applicant, Shelton-Mackenzie Wine Company, 4670 Katie Lee Way, Santa Rosa, California 95403, a California Corporation, responds to the Notice of Opposition as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph 1 of the Notice of Opposition and therefore denies it.

2. The Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph 2 of the Notice of Opposition and therefore denies it.

3. Applicant admits Opposer is the owner of U.S. Registration No. 1, 296, 602 but is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 3 and therefore denies the remaining allegations.

4. Applicant admits Opposer is the owner of U.S. Registration No. 1,586, 995 issued on March 3, 1990 for the mark WILD & Design for food flavoring, namely, flavors not in the nature of essential oils, but Applicant is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 4 and therefore denies the remaining allegations in paragraph 4.

5. The Applicant lacks knowledge or information sufficient to form a belief to the truth of the allegation set forth in paragraph 5 of the Notice of Opposition and therefore denies it.

6. Applicant denies the allegations contained in paragraph 6 of the Notice of Opposition.

7. Applicant denies that the goods in the application are closely related to Opposer's goods and that consumers are likely to be confused because the goods are being sold under confusingly similar marks. Applicant admits that Applicant's goods are wine from grapes. Applicant is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 7 and therefore denies the remaining allegations in paragraph 7.

COUNT ONE

LIKELIHOOD OF CONFUSION

8. Applicant repeats and realleges the admissions and/or denials in paragraphs 1 through 7 as is fully set forth herein.

9. Applicant denies the allegation contained in paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegation contained in paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegation contained in paragraph 11 of the Notice of Opposition.

COUNT TWO

DILUTION

12. Applicant repeats and realleges the admissions and/or denials in paragraphs 1 through 7 and 9 through 11 as if fully set forth herein.

13. Applicant denies the allegations contained in paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations contained in paragraph 14 of the Notice of Opposition.

II. AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE: ACQUIESCENCE

15. Further answering and by way of affirmative defense, Applicant would show that by its actions, Opposer has acquiesced to the use of the mark Wild Thing by Applicant. Applicant would also show that the Opposer has acquiesced to the use of the mark Wild Thing by Life Services Supplements, Inc., in International Class 032, which is the same class in which Opposer's registration number, 1, 586, 995 may be found.

SECOND AFFIRMATIVE DEFENSE: ESTOPPEL

16. Further answering and by way of affirmative defense, Applicant alleges that Opposer's Notice of Opposition is barred, in whole or in part, by the doctrine of estoppel for the reasons set forth in paragraph 15 above.

THIRD AFFIRMATIVE DEFENSE: LACHES

17. Further answering and by way of affirmative defense, Applicant alleges that Opposer's Notice of Opposition is barred, in whole or in part, by the doctrine of laches for the reasons set forth in paragraph 15 above.

FOURTH AFFIRMATIVE DEFENSE: UNCLEAN HANDS

18. Further answering and by way of affirmative defense, Applicant alleges that Opposer's Notice of Opposition is barred, in whole or in part, by the doctrine of unclean hands for the reasons set forth in paragraph 15 above.

WHEREFORE Applicant respectfully requests that Opposer's Opposition be denied and that Applicant's mark, Wild Thing, be registered.

Dated: April 11, 2002

Respectfully submitted,

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