



TTAB

08-04-2003

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

TTAB

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

In the Matter of Application Serial No. 76/419049
Published in the Official Gazette on July 1, 2003

FERNBREW PTY. LIMITED,)

Opposer,)

v.)

A.V. IMPORTS, INC.,)

Applicant.)

Opposition No. _____

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COMM. FOR TRADEMARKS

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO TTAB, COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202 ON July 31, 2003.

SHERIDAN ROSS P.C.

BY: *Bonnie B. Ludlow*

NOTICE OF OPPOSITION

Opposer, Fernbrew Pty. Limited, a company organized under the laws of Australia, having a business address of 129 Bathurst Road, Orange, Austral 2800, believes that it will be damaged by registration of the mark shown in Application Serial No. 76/419,049, and hereby opposes the same.

As grounds of opposition, it is alleged:

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has adopted and contentiously used the mark WALLABY CREEK as a trademark for alcoholic beverages.

2. Opposer is the owner of U.S. Trademark Application Serial No. 78/179,828 for the mark WALLABY CREEK and Design, filed on October 29, 2002 and claiming first use dates of February 15, 2000, for use in connection with wine.

WALLABY CREEK for goods identified as "wines and spirits." This application was filed on June 10, 2002, and was assigned Serial No. 76/419,049.

4. Applicant's mark so resembles Opposer's previously used mark as to be likely, when applied to the goods set forth in the Applicant's application, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.

5. Upon information and belief, Opposer is the first user and owner of the WALLABY CREEK mark. Applicant and Owner have entered into negotiations regarding a possible distribution and license agreement related to the WALLABY CREEK mark and product, however, no such agreement has been formally executed and Applicant has not been assigned rights in or to the WALLABY CREEK mark, nor given permission to federally register the WALLABY CREEK mark.

6. Upon information and belief, Applicant filed U.S. Trademark Application Serial No. 76/419,049 for the WALLABY CREEK despite its personal knowledge of Opposer's prior rights in and to the mark WALLABY CREEK and contrary to 15 U.S.C. § 1051 Section 1(b).

7. If Applicant is permitted to register its U.S. Trademark Application No. 76/419,049 for WALLABY CREEK despite this fraud, Opposer's right to exclusive use of its WALLABY CREEK mark will be impaired and Opposer will be damaged.

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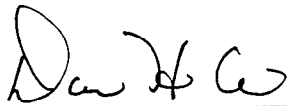
8. Opposer has enclosed a requisite fee of \$300.00 for filing this Notice of Opposition and has enclosed a copy of this Notice of Opposition.

WHEREFORE, Opposer prays that this Opposition be sustained and that the application for registration of Trademark Serial No. 76/419,049 for WALLABY CREEK be denied and refused.

Respectfully submitted,

SHERIDAN ROSS P.C.

Date: 7-31-03

By: 
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