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

Proceeding	91173294
Party	Defendant Waterford Vineyards, LLC Waterford Vineyards, LLC 14635 Corky's Farm Lane , VA 20197
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Date	11/16/2006
Attachments	Answer to Opposition_Waterford e sig2.pdf (8 pages)(38156 bytes)

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

RE: U.S. Trademark Application Serial No. 78/580,107
Published in the *Official Gazette* on July 25, 2006

WATERFORD WEDGWOOD PLC,)	
)	
Opposer,)	
)	
-v-)	Opposition No. 91173294
)	
WATERFORD VINEYARDS, LLC)	
)	
Applicant)	
)	
)	
)	
)	

ANSWER TO OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Commissioner:

In the matter of U.S. Trademark Application Serial No. 78/580,107, filed on March 4, 2005 by Waterford Vineyards, LLC (“Applicant”), to register the mark WATERFORD VINEYARDS (“Applicant’s WATERFORD VINEYARDS Mark”) in connection with “wines” in International Class 33 (“Applicant Goods”), and published in the Official Gazette on July 25, 2006, Waterford Vineyards hereby files its ANSWER to the Notice of Opposition filed against it by WATERFORD WEDGWOOD PLC (“Opposer”) and states as follows:

ANSWER

For its Answer to the Notice of Opposition, Applicant makes the following admissions, denials and averments:

1. Applicant admits the allegations contained in paragraph 1 of the Notice of Opposition.

2. Applicant denies the allegations contained in paragraph 2 of the Notice of Opposition, except to the extent that Applicant's first use of Applicant's WATERFORD VINEYARDS mark in connection with Applicant's Goods was at least as early as September 6, 2002.

3. Applicant denies the allegations contained in paragraph 3 of the Notice of Opposition, except to the extent that Applicant's first use of Applicant's WATERFORD VINEYARDS mark on or in connection with Applicant's Goods in commerce in the United States was at least as early as September 6, 2002.

4. Applicant does not have sufficient information to admit or deny the allegations contained in paragraph 4 of the Notice of Opposition and on that basis denies said allegations.

5. Applicant does not have sufficient information to admit or deny the allegations contained in paragraph 5 of the Notice of Opposition and on that basis denies said allegations.

6. Applicant does not have sufficient information to admit or deny the allegations contained in paragraph 6 of the Notice of Opposition and on that basis denies said allegations.

7. Applicant does not have sufficient information to admit or deny the allegations contained in paragraph 7 of the Notice of Opposition and on that basis denies said allegations.

8. Applicant does not have sufficient information to admit or deny the allegations contained in paragraph 8 of the Notice of Opposition and on that basis denies said allegations.

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

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

11. Applicant admits that the term VINEYARDS is disclaimed in Applicant's Application Serial No. 78/580,107 and denies the remaining allegations contained in paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations contained in paragraph 12 of the Notice of Opposition.

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.

15. Applicant admits the allegations contained in paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations contained in paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations contained in paragraph 17 of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE – DISTINGUISHING COMPONENT

18. Applicant's WATERFORD VINEYARDS Mark consists of WATERFORD VINEYARDS, and the component VINEYARDS serves to distinguish Applicant's WATERFORD VINEYARDS Mark from all of Opposer's WATERFORD Marks. None of Opposer's WATERFORD Marks include the component VINEYARDS or any other component of similar appearance, sound, meaning, or commercial impression.

SECOND AFFIRMATIVE DEFENSE – DIFFERENCES IN APPEARANCE AND COMMERCIAL IMPRESSION

19. Applicant's WATERFORD VINEYARDS Mark is presented in font, color, and other graphical appearance in a manner which is stylistically very different from the manner in which Opposer's WATERFORD Marks are presented and, as a result, creates a significantly different commercial impression from Opposer's WATERFORD Marks.

THIRD AFFIRMATIVE DEFENSE – DIFFERENT GOODS

20. Applicant uses Applicant's WATERFORD VINEYARDS Mark only on wines. None of the goods or services which Opposer alleges to provide under Opposer's WATERFORD Marks are wines or services related to wines, such as winemaking.

FOURTH AFFIRMATIVE DEFENSE – DISCRIMINATING PURCHASERS

21. Applicant's Goods are wines, which are sold to discriminating purchasers who pay particular attention to the source of the wine in question, typically evaluating the wine on the basis of geographic source of the grapes used, the variety or varieties of grapes used, the vintage of the grapes used, the winery which produced the wine, the identity of the winemaker, and the purchaser's prior experience with other wines produced by the same winery and/or winemaker.

FIFTH AFFIRMATIVE DEFENSE – DIFFERENT CHANNELS OF TRADE

22. Applicant's goods are wines, which are subject to governmental regulation and special laws relating to alcoholic beverages, and as a result are marketed through channels of trade which are different from those used for Opposer's Goods and Services (as defined in paragraph 5 of the Notice of Opposition).

SIXTH AFFIRMATIVE DEFENSE – NO EXCLUSIVE USE BY OPPOSER

23. Opposer has not been using WATERFORD, which is the only common component between Opposer's WATERFORD Marks and Applicant's WATERFORD VINEYARDS Mark, on a substantially exclusive basis.

24. There are at least 14 live registrations on the Principal Register containing the term Waterford, which marks are not owned by Opposer, including:

- a. Waterford Press, Registration No. 3065638

- b. Since 1951 Mantioc Spring Water Waterford Connecticut,
Registration No. 2966541
- c. Waterford Early Reading Program, Registration Nos. 2355367,
2355246, 2094666
- d. Waterford, Registration No. 2731000
- e. Seagrape Waterford, Registration No. 2457793
- f. Waterford Fair, Registration No. 2291950
- g. Waterford Place, Registration No. 2010118
- h. Waterford, Registration No. 2045055
- i. Waterford, Registration No. 2007379
- j. Waterford, Registration No. 2016005
- k. Waterford, Registration No. 1844162
- l. Waterford, Registration No. 0803332

25. In addition, there are numerous towns and other jurisdictions named Waterford throughout the United States, including the town in which Applicant's winery is located. As a result, there is a large number of businesses which use names and marks that include WATERFORD within the United States, in addition to the registrations cited above.

26. Such registrations and unregistered uses indicate that the term Waterford is not distinctive and its use as an indication of source is heavily dependent on context.

27. Such registrations and unregistered uses indicate that consumers are not likely to confuse Applicant's WATERFORD VINEYARDS Mark with Opposer's WATERFORD Marks.

28. Such registrations and unregistered uses indicate that the term Waterford is not famous for its association with Opposer's Goods and Services.

29. Such registrations and unregistered uses indicate that Applicant's use of Applicant's WATERFORD VINEYARDS Mark is not likely to dilute any of Opposer's WATERFORD Marks and that Opposer has no right to prevent Applicant from using Applicant's WATERFORD VINEYARDS Mark.

WHEREFORE, Applicant requests that Opposer's Opposition be dismissed, that Application Serial No. 78/580,107 be passed for registration, that a certificate of registration of WATERFORD VINEYARDS be issued to Applicant, and that such other relief as may be deemed just and proper be granted.

Respectfully submitted,

WATERFORD VINEYARDS, LLC
By Counsel

/Ralph M. Tener/

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Certificate of Service

I hereby certify that a true and complete copy of the foregoing ANSWER TO OPPOSITION has been served on Bassan N. Ibrahim, Buchanan Ingersoll & Rooney PC,

Counsel for Opposer, by mailing said copy on November 16, 2006, via First Class Mail, postage prepaid to:

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Counsel for Opposer

/Ralph M. Tener/
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