

ESTTA Tracking number: **ESTTA141938**

Filing date: **05/22/2007**

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	Avado Brands, Inc.
Granted to Date of previous extension	05/23/2007
Address	150 Hancock Street Madison, GA 30650 UNITED STATES

Attorney information	Charmaine Williams and Joel Feldman Greenberg Traurig LLP 3290 Northside Parkway, Suite 400 Atlanta, GA 30327 UNITED STATES atltrademark@gtlaw.com Phone:678-553-2100
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Applicant Information

Application No	78756509	Publication date	01/23/2007
Opposition Filing Date	05/22/2007	Opposition Period Ends	05/23/2007
Applicant	CHATEAU ST. CROIX WINERY & VINEYARD, LLC 1998a STATE ROAD 87 ST. CROIX FALLS, WI 54024 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 2005/05/10 First Use In Commerce: 2005/06/06
All goods and services in the class are opposed, namely: Wine

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	THOROUGHBRED RED		
Goods/Services	beer		

Attachments	THOROUGHBRED RED - Notice of Opposition.pdf (4 pages)(187517 bytes) Exhibit 1.pdf (1 page)(66126 bytes)
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Signature	/joel r. feldman/
Name	Joel R. Feldman, Esq.
Date	05/22/2007

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

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AVADO BRANDS, INC.,	:	
	:	
Opposer,	:	Opposition No.: _____
	:	
v.	:	
	:	
CHATEAU ST. CROIX	:	Mark: CHATEAU ST. CROIX
WINERY & VINEYARD, LLC	:	THOROUGHbred RED
	:	Serial No.: 78/756,509
	:	Filed: November 17, 2005
Applicant.	:	Published: January 23, 2007
	:	
-----X	:	

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Avado Brands, Inc. ("Opposer"), by and through its undersigned counsel, hereby opposes the registration of the above-identified application for the reason that it would be damaged thereby and states as follows:

OPPOSER'S BACKGROUND

1. Opposer is a Delaware corporation located and doing business at 150 Hancock Street, Madison, Georgia 30650.
2. Since at least as early as 1997, Opposer has been using the mark THOROUGHbred RED for beer.
3. Opposer initially applied to register THOROUGHbred RED for beer, in Class 32, in 1996 (U.S. Application Serial No. 75/186,010).

4. Opposer's application was refused registration based on an alleged likelihood of confusion with BULLEIT THOROUGHBRED KENTUCKY STRAIGHT BOURBON WHISKEY 50% ALC/VOL (100 PROOF) 750 ML (U.S. Trademark Registration No. 2,040,883) (hereinafter "BULLEIT Mark").

5. The BULLEIT Mark was cancelled on November 29, 2003.

6. Opposer reapplied to register the THOROUGHBRED RED mark on March 15, 2007 (U.S. Application Serial No. 77/131,812).

7. Opposer is well and favorably known, and has built up valuable goodwill and reputation in the mark THOROUGHBRED RED by virtue of its advertising and marketing efforts through the expenditure of considerable amounts of money throughout the United States.

8. By virtue of Opposer's continuous, exclusive, and widespread use of the mark THOROUGHBRED RED, Opposer has garnered substantial rights and is entitled to a broad scope of protection therefor.

APPLICANT'S BACKGROUND

9. Upon information and belief, Applicant is a Wisconsin limited liability company with an address at 1998a State Road 87, St. Croix Falls, Wisconsin 54024.

10. Applicant filed the application herein opposed for the mark CHATEAU ST. CROIX THOROUGHBRED RED for wine, in Class 33, on November 17, 2005, based on alleged use since May 10, 2005. Applicant's proposed mark was published in the Official Gazette on January 23, 2007.

11. Applicant's mark CHATEAU ST. CROIX THOROUGHBRED RED is confusingly similar to Opposer's mark THOROUGHBRED RED.

**COUNT I
LIKELIHOOD OF CONFUSION**

12. Opposer repeats and realleges each and every allegation set forth in paragraphs one through eleven as though set forth herein.

13. Opposer has been using its mark in connection with its goods long before Applicant commenced use or applied to register the mark CHATEAU ST. CROIX THOROUGHBRED RED.

14. The dominant portion of Applicant's mark is "THOROUGHBRED RED." The term "chateau" is descriptive as it relates to wine. See Exhibit 1. The term ST. CROIX is geographic in nature, referring to Applicant's location in St. Croix, Wisconsin.

15. Opposer uses its THOROUGHBRED RED mark on beer; Applicant uses its CHATEAU ST. CROIX THOROUGHBRED RED mark on wine. Beer and wine are similar goods, such that the use of a similar mark on beer and wine would cause a likelihood of confusion. See Fruit Industries, Ltd. v. Ph. Schneider Brewing Co., 46 U.S.P.Q. 487 (Comm'r Patents & Trademarks 1940); Krantz Brewing Corp. v. Henry Kelly Importing & Distributing Co., 96 U.S.P.Q. 219 (Patent Office Examiner in Chief 1953).

16. Due to the highly similar nature of the marks, concurrent use of the mark CHATEAU ST. CROIX THOROUGHBRED RED by Applicant and the mark THOROUGHBRED RED by Opposer will likely result in consumer confusion as to source, sponsorship, approval, or affiliation within the meaning of 15 U.S.C. §§ 1114 and 1125(a), and, as such, Opposer is likely to be damaged by the registration of Applicant's proposed mark within the meaning of 15 U.S.C. § 1063(a).

17. Applicant's proposed mark is unregistrable pursuant to 15 U.S.C. § 1052(d), as it so resembles a mark previously used in the United States by another and not abandoned as to be likely to cause confusion, mistake or to deceive.


CONCLUSION

18. Opposer, upon information and belief, avers that it will be damaged by the registration and use by Applicant of the alleged trademark CHATEAU ST. CROIX THOROUGHBRED RED, as set forth in Applicant's Trademark Application Serial No. 78/756,509, in that the mark is confusingly similar to Opposer's mark THOROUGHBRED RED.

WHEREFORE, Opposer prays that the instant opposition be sustained and registration of Applicant's mark CHATEAU ST. CROIX THOROUGHBRED RED be refused.

Date: May 22, 2007

Respectfully submitted,
GREENBERG TRAUIG, LLP

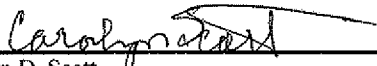


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CERTIFICATE OF ELECTRONIC TRANSMISSION

Date: May 22, 2007

I hereby certify that this paper is being transmitted electronically to the United States Patent & Trademark Office through the ESTTA electronic filing system at <http://esta.uspto.gov/>.



Carolyn D. Scott



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châ·teau [sha-toh; Fr. shah-toh] [Pronunciation Key](#) - [Show IPA Pronunciation](#)

-noun, plural -teaus, -teaux [-tohz; Fr. -toh] [Pronunciation Key](#) - [Show IPA Pronunciation](#).

1. (in France) a castle or fortress.
2. a stately residence imitating a distinctively French castle.
3. a country estate, esp. a fine one, in France or elsewhere on the Continent.
4. (*often initial capital letter*) a winegrower's estate, esp. in the Bordeaux region of France: often used as part of the name of a wine.

Also, *cha-teau*.

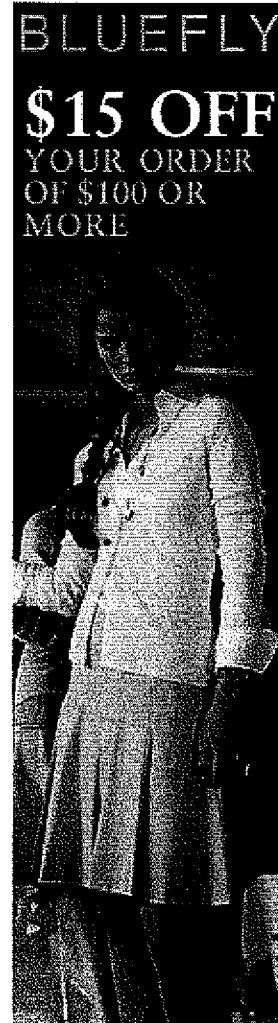
[Origin: 1730-40; < F << L *castellum* CASTELLUM,]

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