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

Proceeding	91184284
Party	Defendant Keystone Distillery, LLC
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Submission	Answer
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Date	08/18/2008
Attachments	AnswertoNoticeofOpp.pdf (4 pages)(84905 bytes)

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

McCORMICK DISTILLING CO., INC.)	
	)	Opposition No. 91184284
Opposer,	)	Mark: BLACK ROSE VODKA
	)	Serial No. 77/191217
vs.	)	Filing Date: May 23, 2008
)	
KEYSTONE DISTILLERY LLC	)	<u>CERTIFICATE OF ELECTRONIC FILING</u>
	)	I hereby certify that this paper is being deposited with
Applicant.	)	the USPTO, Trademark Trial and Appeal Board via
	)	electronic filing through their website located at
	)	http://esta.uspto.gov/ on August 18, 2008
)	
	)	By: _____s/Deborah A. Logan/s_____
)	

ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES

In response to the Notice of Opposition filed by Opposer on May 23, 2008, Applicant KEYSTONE DISTILLERY LLC, by and through its counsel, submits the following Answer:

As to the introductory paragraph preceding the first numbered Paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity thereof with regard to Opposer, and therefore denies the same.

1. Applicant admits that it seeks to register a stylized design mark for BLACK ROSE VODKA for vodka in International Class 33.
2. Applicant admits that its application was filed on May 26, 2007 on the basis of Section 1(b) of the trademark Act and claims a priority date of May 26, 2007.
3. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained within Paragraph 3 of the Notice of Opposition and therefore denies same.

4. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained within Paragraph 4 of the Notice of Opposition and therefore denies same.

5. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained within Paragraph 5 of the Notice of Opposition and therefore denies same.

6. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained within Paragraph 6 of the Notice of Opposition and therefore denies same.

7. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained within Paragraph 7 of the Notice of Opposition and therefore denies same.

8. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained within Paragraph 8 of the Notice of Opposition and therefore denies same.

9. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained within Paragraph 9 of the Notice of Opposition and therefore denies same.

10. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained within Paragraph 10 of the Notice of Opposition and therefore denies same.

11. Applicant admits that the goods listed in the application are “alcoholic beverages, namely Vodka”, but denies that the goods “are sufficiently related to Opposer’s crème liqueur sold under the TEQUILA ROSE mark”. Applicant also denies the allegation that “Applicant also sells

other alcoholic beverages” but admits as averred by Opposer that “it is likely that consumers will assume that Applicant is the source of any vodka with the mark BLACK ROSE VODKA”. Applicant also admits that both marks contain the term ROSE but denies that it is using that term in association with “a generic type of alcoholic beverage” as the term is specifically used in association with vodka.

12. Applicant denies the allegations in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations in Paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations in Paragraph 15 of the Notice of Opposition.

16. Applicant admits that if it were granted a registration herein opposed, it would obtain at least a *prima facie* exclusive right to use its mark but denies the remaining allegations in Paragraph 16 of the Notice of Opposition.

17. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained within Paragraph 17 of the Notice of Opposition and therefore denies same.

AFFIRMATIVE DEFENSES

1. Applicant’s use of its BLACK ROSE VODKA mark in relation to its vodka is not likely to cause confusion, mistake, or to deceive the public that goods under its mark emanate from or are otherwise endorsed by Opposer or is in any manner related to Opposer’s pink crème liqueur.

2. Opposer’s mark TEQUILA ROSE is not inherently distinctive, has not become well and favorably known to relevant trade and public and cannot claim exclusive use of the word ROSE with regard to alcoholic beverages.

2. Opposer will not be damaged by registration of Applicant’s BLACK ROSE VODKA mark.

3. Opposer fails to state a claim upon which relief can be granted.

PRAYER FOR RELIEF

WHEREFORE, Applicant prays that the TTAB enter judgment against Opposer as follows:

- A. That the Notice of Opposition be dismissed in its entirety with prejudice;
- B. That Opposer's requested relief be denied;
- C. That it be declared that Opposer is not and will not be damaged by registration of

Applicant's BLACK ROSE VODKA mark;

D. That it be declared that Opposer's opposition is frivolous and otherwise improper under Fed. R. Civ. P. 11 and applicable TTAB rules; and

E. That Applicant be awarded any and all appropriate relief as the TTAB deems just and proper.

Respectfully submitted,
LIPTON, WEINBERGER & HUSICK

Dated: August 18, 2008

By: /Deborah A. Logan, Esq./
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