

ESTTA Tracking number: **ESTTA301854**

Filing date: **08/19/2009**

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

Proceeding	91190981
Party	Defendant SOCIETE AGRICOLE DE LA DURANCOLE
Correspondence Address	John S. Egbert Egbert Law Offices, PLLC 412 Main Street, 7th Floor Houston, TX 77002 UNITED STATES mail@egbertlawoffices.com
Submission	Answer
Filer's Name	John S. Egbert
Filer's e-mail	mail@egbertlawoffices.com, kwilson@egbertlawoffices.com
Signature	/1811-256/
Date	08/19/2009
Attachments	1811-256 AnswerNoticeOpposition.LE ROCHER ROUGE.pdf (4 pages)(44191 bytes)

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

In the Matter of Application Serial No. 79/059,554
Published in the Official Gazette on March 10, 2009

E. & J. GALLO WINERY,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91190981
	§	
SOCIETE AGRICOLE DE LA	§	
DURANCOLE,	§	
	§	
Applicant.	§	

ANSWER TO NOTICE OF OPPOSITION

SOCIETE AGRICOLE DE LA DURANCOLE (hereinafter referred to as "Applicant"), for the Answer to the Notice of Opposition filed by E. & J. GALLO WINERY (hereinafter referred to as "Opposer"), against the application for registration of the trademark "LE ROCHER ROUGE", U.S. Application Serial No. 79/059,554, filed on August 22, 2008, and published in the Official Gazette on March 10, 2009, pleads and avers as follows:

1. Answering introductory paragraph 1 of Opposer's Notice of Opposition, Applicant specifically denies Opposer's claim that it will be damaged by registration of Applicant's Mark.
2. Answering introductory paragraph 2 of Opposer's Notice of Opposition, Applicant admits that it filed an application under 66(a) on August 22, 2008, U.S. Application Serial No. 79/059,554, for the mark "LE ROCHER ROUGE" for goods in International Class 33 and that said mark was published on March 10, 2009. Applicant also admits that a translation statement was submitted with the application.

3. Answering Paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations, including the allegation that Opposer is the owner of the cited registration and any allegations as to the alleged current status of the cited registration.

4. Answering Paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations, including the allegation that Opposer is the owner of the cited registration, the allegations as to the current status of the cited registration and the allegation as to priority of use over Applicant.

5. Answering Paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

6. Answering Paragraph 4 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

7. Answering Paragraph 5 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

AFFIRMATIVE DEFENSE

1. Applicant affirmatively alleges that Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

2. Applicant affirmatively alleges that Opposer lacks standing to bring the present Opposition proceeding against Applicant.

3. Applicant affirmatively alleges that the phrase "RED ROCK", the subject of the alleged trademark registration cited in Opposer's Notice of Opposition, has been used by various third parties for various goods and services and, as such, is a "weak" marks that is entitled to limited protection. Furthermore, Applicant affirmatively alleges that the term "RED" in relation to wine-related goods is a "weak" mark that is entitled to limited protection.

WHEREFORE, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or likely to be, damaged by the registration of Applicant's trademark; that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer, and Applicant prays that this opposition will be dismissed with prejudice and that Applicant be granted registration of its trademark.

Respectfully submitted,

August 19, 2009
Date

/1811-256/
John S. Egbert
Reg. No. 30,627
L. Jeremy Craft

Egbert Law Offices, PLLC
412 Main St., 7th Floor
Houston, Texas 77002
(713)224-8080
(713)223-4873 (Fax)
ATTORNEY FOR APPLICANT
SOCIETE AGRICOLE DE LA DURANCOLE

