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

Proceeding	91195709
Party	Defendant Jehonadav, Shlomo David
Correspondence Address	SERGEI OREL, ESQ. LAW OFFICE OF SERGEI OREL, LLC 646 ANDERSON AVE STE 2 CLIFFSIDE PARK, NJ 07010-1857 UNITED STATES sorel@sergei-orel.com
Submission	Answer
Filer's Name	Sergei Orel
Filer's e-mail	sorel@sergei-orel.com
Signature	/sorel/
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Attachments	Champarty - Answer to Opposition Notice.pdf (6 pages)(19477 bytes)

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

In the Matter of Application Serial No. 77/713,059
Mark: Champarty in Class 33

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COMITE INTERPROFESSIONEL DU VIN
DE CHAMPAGNE, :

and : **ANSWER TO NOTICE OF
OPPOSITION AND**
INSTITUT NATIONAL DE L'ORIGINE : **AFFIRMATIVE DEFENSES**
ET DE LA QUALITE :

Opposers, : **Opposition No. 91195709**
:

v.

SHOLOMO DAVID JEHONADAV,

Applicant.

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TO THE TRADEMARK TRIAL AND APPEAL BOARD:

Applicant, Shlomo David Johnadav, an individual, through the undersigned attorney, hereby answers the Notice of Opposition (the "Opposition") as follows:

1. As to paragraph 1 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

2. As to paragraph 2 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

3. As to paragraph 3 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

4. As to paragraph 4 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

5. As to paragraph 5 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

6. As to paragraph 6 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

7. As to paragraph 7 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

8. As to paragraph 8 of the Opposition, Applicant denies each and every allegation contained therein.

9. As to paragraph 9 of the Opposition, Applicant denies each and every allegation contained therein.

10. As to paragraph 10 of the Opposition, Applicant denies each and every allegation contained therein.

11. As to paragraph 11 of the Opposition, Applicant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

1. The Opposers have failed to allege grounds sufficient to sustain the Opposition.

2. The Applicant is entitled to receive a registration of its trademark “Champarty”, since Applicant’s mark is distinctive from mark CHAMPAGNE according to the tests of visual, phonetic, and commercial impression comparison.

3. Applicant made "fair use" of the mark, in his purpose for using the mark was not to compete unfairly with the mark CHAMPAGNE.

4. The Applicant is entitled to register the subject trademark in International Class 33 in that the scope of protection of the mark CHAMPAGNE referred to in Opposer’s opposition is limited in scope by the presence of at least another trademark registration No. 2,819,419 for KORBEL CALIFORNIA CHAMPAGNE that is registered in International Class 33 in respect of “champagne”. The owner is a California corporation F. Korbel & Brothers. The mark KORBEL CALIFORNIA CHAMPAGNE does not appear to apply to, or designate, a Champagne region sparkling wine.

5. Insofar as the USPTO has allowed registration of at least one mark, namely, the above-mentioned mark KORBEL CALIFORNIA CHAMPAGNE, in International Class 33, the mark CHAMPAGNE in respect of International Class 33 goods has been diluted.

6. The mark CHAMPAGNE has become generic, or semi-generic, for sparkling wine.

7. CHAMPAGNE has become a wine type, rather than a name of a specific geographical origin.

8. The opposers' opposition should not be sustained because of the doctrine of laches. The opposers did not oppose, and allowed to proceed to registration, the above mark KORBEL CALIFORNIA CHAMPAGNE. Furthermore, a term "Soviet Champagne" has been, and is still, used in the countries of the former Soviet Union for decades by manufacturers of sparkling wine there. The opposers appear to have allowed such use of the mark "Soviet Champagne" and do not appear to have opposed it.

9. The applicant has made fair use of the mark CHAMPAGNE.

10. The opposers have not provided proof of ownership of the mark CHAMPAGNE, and as such, they lack standing to bring this opposition.

11. The doctrine of double-entendre should protect the applicant and his use of the mark Champarty. The mark Champarty is not descriptive of the Champagne-style wine, as the term Champarty may be understood to evoke a meaning such as "Champ party", as in "Champion party", and not only "Champagne party", if one were to assume or imagine that "Champarty" evokes the meaning of "Champagne party".

12. The Applicant is entitled to register the subject trademark in International Class 33 in respect of "Alcoholic beverages except beers", because the Applicant properly filed an application for said mark which was examined by the USPTO and issued a Notice of Publication.

13. The Applicant's Device mark is a unique fanciful made up name "Champarty", and which is not similar to the mark "CHAMPAGNE".

14. The use and registration of Applicant's mark is not likely to cause confusion, to cause mistake, or to deceive the public as to source or origin of Applicant's goods.

15. There is no likelihood of confusion or mistake because, *inter alia*, Applicant's mark and Opposer's alleged marks are not confusingly similar.

16. There is no likelihood of confusion or mistake because, *inter alia*, Applicant's mark and Opposer's alleged mark convey different commercial impressions.

17. There is no likelihood of confusion or mistake because, *inter alia*, Applicant's mark and Opposer's alleged mark are dissimilar as to appearance.

18. There is no likelihood of confusion or mistake because, *inter alia*, consumers are not likely to believe that the goods bearing the Applicant's mark originate with or are authorized by Opposer.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, with prejudice, and that the application to register the subject Device mark be allowed to issue a registration to Applicant.

Respectfully submitted.

Dated: 28 August 2010

Law Office of Sergei Orel, LLC

By: /Sergei Orel/
Sergei Orel
Attorney for Applicant
1 Bridge Plaza North, Suite 185
Fort Lee, NJ 07024
Phone: (201) 945-5525
Fax: (201) 945-5529
Email: sorel@sergei-orel.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES was mailed by first-class mail, postage prepaid, in an envelope addressed to Peter M. Brody, Esq., Ropes and Gray, 700 12th St, NW, Ste 900, Washington, DC 20005, attorney for Opposer, this 28th day of August 2010.

/Sergei Orel/
Sergei Orel