

ESTTA Tracking number: **ESTTA397816**

Filing date: **03/14/2011**

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	Quady Winery Inc.
Granted to Date of previous extension	03/13/2011
Address	13181 Road 24 Madera, CA 93637 UNITED STATES

Attorney information	Margaret C. McHugh Kilpatrick Townsend & Stockton LLP Two Embarcadero Center, 8th Floor San Francisco, CA 94111 UNITED STATES mmchugh@kilpatricktownsend.com, tlalban@kilpatricktownsend.com, aschlette@kilpatricktownsend.com Phone:415-576-0200
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Applicant Information

Application No	79075401	Publication date	09/14/2010
Opposition Filing Date	03/14/2011	Opposition Period Ends	03/13/2011
International Registration No.	1019540	International Registration Date	09/29/2009
Applicant	Freixenet, S.A. Joan Sala, 2 E-08770 Sant Sadurn d'Anoia (Barcelona) SPAIN		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Sparkling wines
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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. Registration No.	1511192	Application Date	03/02/1988
Registration Date	11/01/1988	Foreign Priority Date	NONE
Word Mark	ELYSIUM		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1984/04/18 First Use In Commerce: 1984/05/09 WINES

Attachments	Notice of Opposition.PDF (12 pages)(1101985 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Margaret C. McHugh/
Name	Margaret C. McHugh
Date	03/14/2011

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

In re Application No. 79/075,401
Filed: September 29, 2009
Published: September 14, 2010 in the Official Gazette
For: FREIXENET ELYSSIA & Design

QUADY WINERY INC.,

Opposer,

vs.

FREIXENET, S.A.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

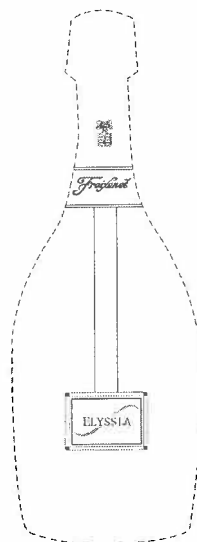
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Madam:

QUADY WINERY INCORPORATED, a California corporation, located and doing business at 13181 Road 24, Madera, California 93637, believes that it will be damaged by the registration in International Class 33 of the mark FREIXENET ELYSSIA & Design, as shown in Application Serial No. 79/075,401 filed by FREIXENET, S.A. (“Applicant”), a Spanish corporation, with a mailing address at Juan Sala, 2, Sant Sadumi d’Anoia, E-08770 Barcelona, Spain, and published in the Official Gazette of September 29, 2009, and hereby opposes registration thereof.

As grounds for opposition, Quady alleges:

1. Quady Winery Incorporated (“Opposer”) is the owner of incontestable Registration No. 1,511,192, for the mark ELYSIUM in Class 33 for “wines” (“Opposer’s Mark”). Opposer’s application for said registration was filed on March 2, 1988, based on use in commerce since at least as early as May 9, 1984, and matured to registration on November 1, 1988. A copy of Opposer’s Certificate of Registration for Registration No. 1,511,192 is attached as Exhibit A.
2. Opposer has used Opposer’s Mark extensively, exclusively, and continuously throughout the United States and elsewhere since at least as early as 1984. Opposer has sold millions of bottles of wine bearing the ELYSIUM mark. Opposer’s ELYSIUM wine has been very well received by the consuming public and has been the subject of numerous awards and favorable press over the years.
3. By virtue of Opposer’s extensive use and promotion of its mark, Opposer has established valuable goodwill in the mark, and the public has come to associate the mark with Opposer. As such, the public has come to know the mark ELYSIUM in connection with wines, as an indication of goods that originate from Opposer.
4. On September 29, 2009, Applicant filed U.S. Trademark Application Serial No. 79/075,401 for the mark FREIXENET ELYSSIA & Design (“Applicant’s Mark”) in connection with “sparkling wines” in International Class 33, under section 66(a) of the Trademark Act, claiming a priority filing date of April 5, 2009, under the Paris Convention.
5. The dominant part of Applicant’s Mark consists of the word mark ELYSSIA, which appears in the center of the wine bottle (which bottle shape is not claimed as part of the mark), as shown below:



6. Other claimed elements of Applicant's Mark consist of an imprint of a crest on the neck of the bottle, a band further down the neck with the word "FREIXENET" appearing in stylized font in the center of the band, and a thin stripe extending down the bottle from the band and terminating in the label containing the word "ELYSSIA."

7. The word ELYSSIA, which is the dominant source-identifying feature of Applicant's Mark, is highly similar in sight, sound and meaning to Opposer's Mark, ELYSIUM. As acknowledged by Applicant on its website, ELYSSIA stems from the same Latin root as ELYSIUM (*see* Exhibit B, attached). Indeed, the plural form of the Latin word ELYSIUM is ELYSIA, which is also shown in the dictionary excerpt, attached as Exhibit C.

8. As a result of these similarities, Applicant's Mark is highly similar in overall commercial impression to Opposer's Mark.

9. Further, the parties' respective marks are confusingly similar as actually used in commerce and in the marketplace, and as viewed by the consuming public. The ELYSSIA component of Applicant's Mark can be expected to be used alone, without the other elements of the trade dress, as a source identifier for Applicant's wine. In light of the close similarity

between ELYSIUM and ELYSSIA, and because both marks are used with wine, consumer confusion is highly likely.

10. Applicant's goods as described in the Application are in the same class, and are closely related to the goods identified in Opposer's Registration No. 1,511,192, with which goods Opposer has been using its mark for many years.

11. Opposer had commenced use and was using Opposer's Mark in commerce in connection with the goods described in trademark Registration Number 1,511,192, long before the date of Applicant's claimed priority date and long before Applicant first commenced use of Applicant's Mark in U.S. commerce.

12. As a result of the similarity between Opposer's Mark and Applicant's Mark, and the highly related nature of the parties' goods with which they use their respective marks, Applicant's Mark is likely to cause confusion, mistake or deception in the trade and among purchasers as to the source, origin or sponsorship of the parties' respective goods.

13. Pursuant to the allegations stated above, registration of Applicant's Mark shown in the opposed Application will result in damage to Opposer under the provisions of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. If the Application is permitted to register, the registration would presumptively entitle Applicant to *prima facie* exclusive ownership and rights to Applicant's Mark. Such registration would cause confusion among consumers as to the separate and distinct sources of Applicant's goods and Opposer's goods and the relationship of Opposer to Applicant, thereby damaging Opposer's goodwill in its mark, and resulting in irreparable harm to Opposer's business and reputation, all to the detriment of Opposer, who has expended considerable sums and effort in promoting its mark.

WHEREFORE, Opposer prays that this Opposition be sustained and that registration of U.S. Trademark Application Serial No. 79/075,401 be denied.

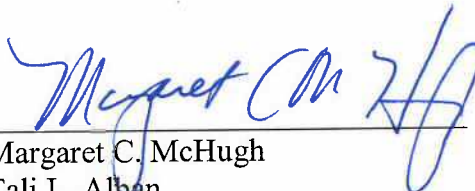
Please direct all notices, pleadings and process regarding this matter to:

Margaret C. McHugh, Esq.
Tali L. Alban, Esq.
Kilpatrick Townsend and Stockton LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834
Telephone: (415) 576-0200
Facsimile: (415) 576-0300
Email: mmchugh@kilpatricktownsend.com, tlalban@kilpatricktownsend.com

Respectfully submitted,

KILPATRICK TOWNSEND AND STOCKTON
LLP

Dated: March 14, 2011

By: 
Margaret C. McHugh
Tali L. Alban
Attorneys for Opposer

Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834
Telephone: (415) 576-0200
Facsimile: (415) 576-0300
Email: mmchugh@kilpatricktownsend.com; tlalban@kilpatricktownsend.com

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CERTIFICATE OF SERVICE

On March 14, 2011, I served the foregoing **NOTICE OF OPPOSITION** on the party(ies) in said action by depositing a true copy thereof with the United States Postal Service as first class mail, postage prepaid, at San Francisco, California, enclosed in a sealed envelope addressed as follows:



Danielle Vargas

EXHIBIT A

Int. Cl.: 33

Prior U.S. Cl.: 47

United States Patent and Trademark Office

Reg. No. 1,511,192

Registered Nov. 1, 1988

**TRADEMARK
PRINCIPAL REGISTER**

ELYSIUM

**QUADY WINERY INCORPORATED (CALIFOR-
NIA CORPORATION)
13181 ROAD 24
MADERA, CA 93637**

**FIRST USE 4-18-1984; IN COMMERCE
5-9-1984.**

SER. NO. 714,415, FILED 3-2-1988.

FOR: WINES, IN CLASS 33 (U.S. CL. 47).

JULIE B. SEYLER, EXAMINING ATTORNEY

EXHIBIT B

[Cordon Negro Brut](#)

[Cordon Negro Extra Dry](#)

[Carta Nevada Brut](#)

[Carta Nevada Semi Dry](#)

[Cordon Rosado Brut](#)

[Spumante](#)

[Brut Reserva 2007](#)

[Elyssia by Freixenet](#)

[Elyssia Pinot Noir](#)

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ELYSSIA BY FREIXENET

Freixenet is excited to announce the launch of Elyssia by Freixenet, an extraordinary harmony of Cava tradition married to the new openness in winemaking. From the Latin *Elysium* or Elysian fields, meaning heavenly or a state of perfect bliss, Elyssia sparkling wines offers a symmetry of old and new.

We challenged our winemakers to create a new level of refinement in Cava. This challenge inspired them to think about bold new blends while limiting yields in pressing to guarantee the highest quality. Elyssia sets out to offer a wine that meets the aspirational needs of sparkling wine and cava enthusiasts.

The sensual, modern bottle and packaging of Elyssia offers a distinctive, elegant look, reflecting both the craftsmanship of Freixenet and its commitment to innovation and beauty.

Elyssia by Freixenet offers two wines that feature classic international varietals in a new style. [Elyssia Pinot Noir Brut](#) takes the classic Pinot Noir grape and adds a touch of Trepat to create a distinctive new sparkling Rosado. The [Elyssia Gran Cuvée Brut](#) brings the idea of symmetry to life with combination of traditional Macabeo and Parellada Cava grapes blended with international favorites Chardonnay and Pinot Noir.



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EXHIBIT C



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Elysium

One entry found. On Off

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Main Entry: Ely-si-um

Pronunciation: \i-'li-zhē-əm, -zē-\

Function: *noun*

Inflected Form(s): *plural Ely-si-ums or -sia\-'zhē-ə, -zē-*

Etymology: Latin, from Greek *Elyision*

Date: 1567

1 : the abode of the blessed after death in classical mythology

2 : **PARADISE 2**

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Pronunciation Symbols

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MLA Style
"elysia." *Merriam-Webster Online Dictionary*. 2009.
Merriam-Webster Online. 13 August 2009
<<http://www.merriam-webster.com/dictionary/elysia>>

APA Style
elysia. (2009). In *Merriam-Webster Online Dictionary*.
Retrieved August 13, 2009, from <http://www.merriam-webster.com/dictionary/elysia>

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