

ESTTA Tracking number: **ESTTA464985**

Filing date: **04/02/2012**

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	The Absolut Company Aktiebolag
Granted to Date of previous extension	04/01/2012
Address	SE-117 97 Stockholm, SWEDEN
Party who filed Extension of time to oppose	V&S Vin and Sprit Aktiebolag
Relationship to party who filed Extension of time to oppose	V&S Vin and Sprit Aktiebolag is now known as The Absolut Company Aktiebolag. The relevant change of name was recorded with the Assignment Branch at Reel/Frame 4701/0660.

Attorney information	Joanne Ludovici-Lint McDermott Will & Emery LLP 600 13th Street NW Washington, DC 20005 UNITED STATES dciplit@mwe.com, jludovici-lint@mwe.com, emalis@mwe.com, ksandacz@mwe.com
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Applicant Information

Application No	85339872	Publication date	10/04/2011
Opposition Filing Date	04/02/2012	Opposition Period Ends	04/01/2012
Applicant	Royal Wine Corporation 63-65 North Hook Road Bayonne, NJ 07022 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Fruit juices; Sparkling water; all of the foregoing being lactose-free
Class 033. All goods and services in the class are opposed, namely: Cooking wine being lactose-free


Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
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Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1302003	Application Date	01/06/1983
Registration Date	10/23/1984	Foreign Priority Date	NONE
Word Mark	ABSOLUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1883/12/31 First Use In Commerce: 1978/05/03 Vodka		

U.S. Registration No.	1893279	Application Date	02/28/1994
Registration Date	05/09/1995	Foreign Priority Date	NONE
Word Mark	ABSOLUT COUNTRY OF SWEDEN VODKA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1978/05/03 First Use In Commerce: 1978/05/03 vodka		

U.S. Registration No.	2529817	Application Date	05/09/2001
Registration Date	01/15/2002	Foreign Priority Date	NONE
Word Mark	ABSOLUT		

Design Mark	ABSOLUT		
Description of Mark	The mark consists of the stylized term ABSOLUT shown in the color red. The color red encompasses the entire mark and is not limited to any particular portion of the mark. Applicant claims the color red as a feature of the mark.		
Goods/Services	Class 033. First use: First Use: 1979/04/17 First Use In Commerce: 1979/06/17 Vodka		

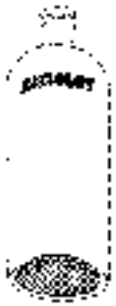
U.S. Registration No.	2540331	Application Date	05/09/2001
Registration Date	02/19/2002	Foreign Priority Date	NONE


Word Mark	ABSOLUT
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Design Mark	ABSOLUT		
Description of Mark	The mark consists of the stylized term "ABSOLUT" shown in the color blue. The color blue encompasses the entire mark and is not limited to any particular portion of the mark. The color blue is claimed as a feature of the mark.		
Goods/Services	Class 033. First use: First Use: 1979/04/17 First Use In Commerce: 1979/06/17 Vodka		

U.S. Registration No.	2651084	Application Date	05/17/2000
Registration Date	11/19/2002	Foreign Priority Date	NONE

Word Mark	ABSOLUT
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Design Mark			
Description of Mark	<p>The mark consists of the mark "ABSOLUT" and a three-dimensional configuration of a "punt" protrusion that is hemispheric in shape, emanating from the bottom of a bottle and invading the lower portion of the bottle itself, and which "punt" is visible within and under the bottle. The broken lining in the drawing represents the distinctive shape of the bottle and is intended to show the general position of the mark and is not a part of the mark as shown.</p>		
Goods/Services	<p>Class 033. First use: First Use: 1999/07/01 First Use In Commerce: 1999/07/01 Alcoholic beverages; namely, vodka</p>		

U.S. Registration No.	2688447	Application Date	04/15/2002
Registration Date	02/18/2003	Foreign Priority Date	NONE
Word Mark	ABSOLUT KURANT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 033. First use: First Use: 1992/09/27 First Use In Commerce: 1992/09/27 Alcoholic beverages, namely, vodka</p>		

U.S. Registration No.	2785564	Application Date	04/15/2002
Registration Date	11/25/2003	Foreign Priority Date	NONE
Word Mark	ABSOLUT PEPPAR		

Design Mark	ABSOLUT PEPPAR		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1986/00/00 First Use In Commerce: 1986/00/00 Alcoholic beverages, namely, vodka		


U.S. Registration No.	2785565	Application Date	04/15/2002
Registration Date	11/25/2003	Foreign Priority Date	NONE
Word Mark	ABSOLUT CITRON		
Design Mark	ABSOLUT CITRON		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1988/07/05 First Use In Commerce: 1988/07/05 Alcoholic beverages, namely, vodka		

U.S. Registration No.	2929287	Application Date	08/26/2002
Registration Date	03/01/2005	Foreign Priority Date	NONE
Word Mark	ABSOLUT RASPBERRI		
Design Mark	ABSOLUT RASPBERRI		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2004/08/31 First Use In Commerce: 2004/08/31 Alcoholic beverages namely distilled spirits		

U.S. Registration No.	2944410	Application Date	08/22/2002
Registration Date	04/26/2005	Foreign Priority	NONE

		Date	
Word Mark	ABSOLUT VANILIA		
Design Mark	ABSOLUT VANILIA		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2003/02/28 First Use In Commerce: 2003/02/28 Alcoholic beverages, namely, distilled spirits		

U.S. Registration No.	3032369	Application Date	01/25/2005
Registration Date	12/20/2005	Foreign Priority Date	NONE

Word Mark	ABSOLUT COUNTRY OF SWEDEN APEACH		
Design Mark	 <p>The design mark features the word "ABSOLUT" in a large, bold, black sans-serif font. Below it, "Country of Sweden" is written in a smaller, elegant, black cursive script. At the bottom, the word "APEACH" is written in a large, bold, black sans-serif font, matching the style of "ABSOLUT".</p>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2005/05/00 First Use In Commerce: 2005/05/00 Alcoholic beverages, namely, distilled spirits		

U.S. Registration No.	3163067	Application Date	11/14/2003
Registration Date	10/24/2006	Foreign Priority Date	NONE

Word Mark	ABSOLUT		
Design Mark	ABSOLUT		
Description of Mark	NONE		

Goods/Services	<p>Class 032. First use: First Use: 1883/00/00 First Use In Commerce: 1979/00/00 (Based on 44(e) Beers; non-alcoholic malt-based beverages; mineral, flavored and aerated waters; carbonated and non-carbonated soft drinks; sports drinks; energy drinks; fruit and fruit-flavored drinks; fruit juices; syrups and preparations for making beers, non-alcoholic malt-based beverages, mineral, flavored and aerated waters, carbonated and non-carbonated soft drinks, sports drinks, energy drinks, fruit and fruit-flavored drinks, and fruit juices; and non-alcoholic beverage mixes for making non-alcoholic cocktails and alcoholic cocktails, beers, non-alcoholic malt-based beverages, mineral, flavored and aerated waters, carbonated and non-carbonated soft drinks, sports drinks, energy drinks, fruit and fruit-flavored drinks, and fruit juices</p> <p>Class 033. First use: First Use: 1883/00/00 First Use In Commerce: 1979/00/00 (Based on Use in Commerce)(Based on 44(e)) Alcoholic beverages, namely, vodka, distilled liquor, distilled spirits, (Based on 44(e) wines, liquors, cordials, flavored brewed malt beverages, prepared alcoholic and wine cocktails, and alcoholic malt coolers</p>
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U.S. Registration No.	3161485	Application Date	11/25/2003
Registration Date	10/24/2006	Foreign Priority Date	NONE

Word Mark	ABSOLUT BAR
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 032. First use: Beers; non-alcoholic malt-based beverages; mineral, flavored and aerated waters; carbonated and non-carbonated soft drinks; sports drinks; energy drinks; fruit and fruit-flavored drinks; fruit juices; syrups and preparations for making beers, non-alcoholic malt-based beverages, mineral, flavored and aerated waters, carbonated and non-carbonated soft drinks, sports drinks, energy drinks, fruit and fruit-flavored drinks, and fruit juices</p> <p>Class 033. First use: Alcoholic beverages, namely, wines, vodka, liqueurs, cordials, distilled liquor, distilled spirits, flavored brewed malt beverages, prepared alcoholic and wine cocktails, and alcoholic malt coolers</p> <p>Class 041. First use: Education and providing of training, namely, arranging and conducting classes, workshops and seminars in the fields of food, beverages, beverage industry and the production, marketing and sale of food and beverages, and distributing course materials and printed materials in connection therewith; arranging and conducting educational exhibitions featuring food, beverages, beverage industry and the production, marketing and sale of food and beverages; entertainment services, namely, food and beverage tastings; providing information in the fields of art and culture by means of a global computer network; providing entertainment in the fields of art, culture, food, and beverages rendered via computer by means of a global computer network, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs,</p>
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	<p>and other multimedia materials; entertainment services, namely, providing multimedia internet television programs, radio programs and animations in the fields of art, culture, food and beverages via a global computer network; entertainment services, namely, conducting parties in restaurants, bars, cafes, lounges and other drinking and eating establishments; and entertainment services, namely, arranging live musical concerts and performances</p> <p>Class 043. First use:</p> <p>Services for providing food and drink, namely, restaurant, bar, cocktail lounge and cafe services; providing temporary housing accommodations; and providing information in the fields of food and beverage preparation by means of a global computer network</p>
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Related Proceedings	ABSOLUTELY KOSHER (Serial No. 85339849); ABSOLUTELY GLUTEN FREE (Serial No. 85318834)
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Attachments	<p>74494847#TMSN.gif (1 page)(bytes) 76254061#TMSN.gif (1 page)(bytes) 76254294#TMSN.gif (1 page)(bytes) 76050012#TMSN.gif (1 page)(bytes) 76395490#TMSN.gif (1 page)(bytes) 76395489#TMSN.gif (1 page)(bytes) 76395491#TMSN.gif (1 page)(bytes) 76444497#TMSN.gif (1 page)(bytes) 76443040#TMSN.gif (1 page)(bytes) 78553617#TMSN.jpeg (1 page)(bytes) 76559870#TMSN.gif (1 page)(bytes) 76978246#TMSN.gif (1 page)(bytes) ABSOLUTELY LACTOSE FREE - Notice of Opposition.pdf (7 pages)(20365 bytes)</p>
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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	/Joanne Ludovici-Lint/
Name	Joanne Ludovici-Lint
Date	04/02/2012

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

THE ABSOLUT COMPANY AKTIEBOLAG,

by change of name from

V&S VIN AND SPRIT AKTIEBOLAG

Opposer,

v.

ROYAL WINE CORPORATION,

Applicant.

Opposition No. _____

Serial No: 85/339,872

Mark: ABSOLUTELY LACTOSE FREE

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Application No.: 85/339,872
Mark: ABSOLUTELY LACTOSE FREE
Applicant: Royal Wine Corporation
Filed: June 7, 2011
Published: October 4, 2011
Opposed Classes:
International Class: 32
For: Fruit juices; Sparkling water; all of the foregoing being lactose-free
International Class: 33
For: Cooking wine being lactose-free

NOTICE OF OPPOSITION

THE ABSOLUT COMPANY AKTIEBOLAG, by change of name from V&S VIN AND SPRIT AKTIEBOLAG, a corporation organized and existing under the laws of Sweden, having its principal place of business at SE-117 97 Stockholm, Sweden (“Opposer”), by and through its attorneys, hereby states that it will be damaged by registration of the mark “ABSOLUTELY

LACTOSE FREE,” covered by U.S. Application Ser. No. 85/339,872, filed by ROYAL WINE CORPORATION, a corporation existing under the laws of New York, having its principal place of business at 63-65 North Hook Road, Bayonne, New Jersey 07022, (“Applicant”), and hereby opposes registration of same.

The grounds for opposition are as follows:

1. Opposer manufactures the world-famous vodka sold under the brand name ABSOLUT, which is sold throughout the United States. In addition, Opposer is and for many years has been engaged in the development, manufacture, promotion, distribution, offering for sale and sale of a wide variety of products and services under its ABSOLUT marks, including goods identified in the registrations cited in Paragraph 3, below.

2. Since long prior to Applicant’s filing of its application to register the mark “ABSOLUTELY LACTOSE FREE,” and prior to any use thereof by Applicant, Opposer has used, advertised and promoted in commerce, and continues to use, advertise and promote in commerce, Opposer’s ABSOLUT marks in connection with Opposer’s broad range of products and services.

3. Opposer owns extensive common law rights to its ABSOLUT marks. In addition, Opposer owns numerous U.S. trademark registrations for ABSOLUT alone and in combination with other terms and designs for a wide variety of products and services, including the goods identified in the registrations below. (Hereafter these registered and common law marks are collectively referred to as the “ABSOLUT Marks.”). Among Opposer’s federally registered marks are the following, which are currently registered on the Principal Register and have not been abandoned or cancelled:

Trademark	Reg. No.	Reg. Date	Selected Goods and Services
ABSOLUT	1,302,003	10/23/84	Vodka, in Class 33
ABSOLUT COUNTRY OF	1,893,279	05/09/95	Vodka, in Class 33

Trademark	Reg. No.	Reg. Date	Selected Goods and Services
SWEDEN			
ABSOLUT	2,529,817	01/14/02	Vodka, in Class 33
ABSOLUT	2,540,331	02/19/02	Vodka, in Class 33.
ABSOLUT & DESIGN	2,651,084	11/19/02	Alcoholic beverages; namely, vodka, in Class 33
ABSOLUT KURANT	2,688,447	02/18/03	Alcoholic beverages, namely, vodka, in Class 33
ABSOLUT PEPPAR	2,785,564	11/25/03	Alcoholic beverages, namely vodka, in Class 33
ABSOLUT CITRON	2,785,565	11/25/03	Alcoholic beverages, namely vodka, in Class 33
ABSOLUT RASPBERRI	2,929,287	03/01/05	Alcoholic beverages namely distilled spirits, in Class 33
ABSOLUT VANILIA	2,944,410	04/26/05	Alcoholic beverages, namely, distilled spirits, in Class 33
ABSOLUT COUNTRY OF SWEDEN APEACH	3,032,369	12/20/05	Alcoholic beverages, namely, distilled spirits, in Class 33
ABSOLUT	3,163,067	10/24/06	Beers; non-alcoholic malt-based beverages; mineral, flavored and aerated waters; carbonated and non-carbonated soft drinks; sports drinks; energy drinks; fruit and fruit-flavored drinks; fruit juices; syrups and preparations for making beers, non-alcoholic malt-based beverages, mineral, flavored and aerated waters, carbonated and non-carbonated soft drinks, sports drinks, energy drinks, fruit and fruit-flavored drinks, and fruit juices; and non-alcoholic beverage mixes for making non-alcoholic cocktails and alcoholic cocktails, beers, non-alcoholic malt-based beverages, mineral, flavored and aerated waters, carbonated and non-carbonated soft drinks, sports drinks, energy drinks, fruit and fruit-flavored drinks, and fruit juices, in Class 32; Alcoholic beverages, namely, vodka, distilled liquor, distilled spirits, wines, liquors, cordials, flavored brewed malt beverages, prepared alcoholic and wine cocktails, and alcoholic malt coolers, in Class 33
ABSOLUT BAR	3,161,485	10/24/06	Beers; non-alcoholic malt-based beverages; mineral, flavored and aerated waters; carbonated and non-carbonated

Trademark	Reg. No.	Reg. Date	Selected Goods and Services
			<p>soft drinks; sports drinks; energy drinks; fruit and fruit-flavored drinks; fruit juices; syrups and preparations for making beers, non-alcoholic malt-based beverages, mineral, flavored and aerated waters, carbonated and non-carbonated soft drinks, sports drinks, energy drinks, fruit and fruit-flavored drinks, and fruit juices, in Class 32;</p> <p>Alcoholic beverages, namely, wines, vodka, liqueurs, cordials, distilled liquor, distilled spirits, flavored brewed malt beverages, prepared alcoholic and wine cocktails, and alcoholic malt coolers, in Class 33</p>

4. The registrations set forth in Paragraph 3 are valid and subsisting and in full force and effect. In addition, Registration Nos. 1,302,003, 1,893,279, 2,435,456, 2,529,817, 2,540,331, 2,651,084, 2,688,447, 2,785,564, 2,785,565, 2,929,287, 2,994,410, and 3,032,369 have achieved incontestable status under 15 U.S.C. §§ 1065 and 1115(b).

5. Opposer has expended substantial resources to advertise and promote the above-described products, and other products and services, all under its ABSOLUT Marks.

6. By reason of Opposer’s advertisement, sale, offering for sale, promotion and use, and the world-wide distribution of Opposer’s products and services, Opposer’s ABSOLUT Marks have come to be recognized as signifying Opposer and its products and services. Opposer has built up extensive goodwill in its ABSOLUT Marks.

7. Long prior to Applicant’s filing of its application to register the mark “ABSOLUTELY LACTOSE FREE” and prior to use thereof by Applicant, purchasers have come to recognize Opposer’s ABSOLUT Marks as identifying goods and services emanating exclusively from Opposer.

8. Opposer's ABSOLUT Marks are famous and have been famous since long prior to Applicant's filing of its application to register the mark "ABSOLUTELY LACTOSE FREE" and prior to use thereof by Applicant.

9. Notwithstanding Opposer's rights in and to Opposer's ABSOLUT Marks, on June 7, 2011, Applicant filed Application Serial No. 85/339,872 for the mark "ABSOLUTELY LACTOSE FREE" for, in part:

Fruit juices; Sparkling water; all of the foregoing being lactose-free, in Class 32;
and

Cooking wine being lactose-free, in Class 33.

10. Applicant's herein-opposed application was published for opposition on October 4, 2011 in the Official Gazette (Trademarks) of the United States Patent and Trademark Office. Opposer was granted an extension of time until April 1, 2012 to file a notice of opposition. As April 1, 2012 fell on a Sunday, this Notice of Opposition is being timely filed.

11. Applicant's applied-for goods are similar to, related to and overlap with the products with which Opposer uses its ABSOLUT Marks.

12. Applicant's mark "ABSOLUTELY LACTOSE FREE" is confusingly similar to Opposer's ABSOLUT Marks, and Applicant's use and registration of "ABSOLUTELY LACTOSE FREE" with the goods set forth in Applicant's application are likely to cause confusion, deception, and/or mistake among the relevant public.

13. Applicant's use and registration of the mark "ABSOLUTELY LACTOSE FREE" are likely to falsely suggest a connection with Opposer and Opposer's ABSOLUT Marks.

14. Applicant's use and registration of the mark "ABSOLUTELY LACTOSE FREE" are likely to dilute the distinctiveness of Opposer's famous ABSOLUT Marks.

15. Applicant's use and registration of the mark "ABSOLUTELY LACTOSE FREE" interfere with Opposer's ABSOLUT Marks and will damage Opposer, its business and its goodwill.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark and prays that it be denied.

The requisite filing fee prescribed by 37 C.F.R. § 2.6(a)(17), in the amount of \$600.00, should be charged to Deposit Account No. 500417. If there are any additional fees due in connection with this Notice of Opposition, they should also be charged to Deposit Account No. 500417, and any excess fees should be credited to same. All correspondence relating to this matter should be directed to the undersigned attorney for Opposer.

Respectfully submitted,

THE ABSOLUT COMPANY AKTIEBOLAG

by change of name from

V&S VIN AND SPRIT AKTIEBOLAG

Dated: April 2, 2012

By: /Joanne Ludovici-Lint/
Joanne Ludovici-Lint
McDERMOTT WILL & EMERY LLP
600 13th Street, N.W.
Washington, D.C. 20005
Telephone: (202) 756-8000
Facsimile: (202) 756-8087

Attorney for Opposer

CERTIFICATE OF SERVICE

Opposer THE ABSOLUT COMPANY AKTIEBOLAG, hereby certifies that a copy of this NOTICE OF OPPOSITION has been served upon counsel of record for Applicant ROYAL WINE CORPORATION on this 2nd day of April, 2012, by First Class U.S. Mail, postage prepaid, at the following address:

Paulette R. Carey, Esq.
Buchman Law Firm LLP
510 Thornall Street, Suite 200
Edison, NJ 08837

/Joanne Ludovici-Lint/
Attorney for Opposer