

ESTTA Tracking number: **ESTTA565455**

Filing date: **10/16/2013**

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	One True Vine, LLC		
Entity	limited liability company	Citizenship	California
Address	1050 Adams Street Suite C St. Helena, CA 94574 UNITED STATES		

Attorney information	Ronald P. Oines, Lindsay J. Hulley Rutan & Tucker, LLP 611 Anton Boulevard Suite 1400 Costa Mesa, CA 92626 UNITED STATES roines@rutan.com, lhulley@rutan.com, trademarks@rutan.com Phone:714-641-5100		
----------------------	---	--	--

Applicant Information

Application No	85932923	Publication date	10/15/2013
Opposition Filing Date	10/16/2013	Opposition Period Ends	11/14/2013
Applicant	Vinum Cellars, Inc. Suite 6 135 Camino Dorado Napa, CA 94558 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Wine

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3800333	Application Date	09/15/2008
Registration Date	06/08/2010	Foreign Priority Date	NONE
Word Mark	CHERRY PIE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 033. First use: First Use: 2010/01/28 First Use In Commerce: 2010/01/28 Wines
----------------	--

Attachments	CHERRY BOMB Notice of Opposition.pdf(128774 bytes) CHERRY PIE Registration.pdf(419327 bytes)
-------------	---

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	/Lindsay J. Hulley/
Name	Ronald P. Oines, Lindsay J. Hulley
Date	10/16/2013

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

ONE TRUE VINE, LLC,

Opposer,

v.

VINUM CELLARS, INC.,

Applicant.

Opposition No.: TO BE ASSIGNED

Application Serial No.: 85/932,923

For the trademark: CHERRY BOMB

Filed: May 15, 2013

Published: October 15, 2013

NOTICE OF OPPOSITION

Opposer, One True Vine, LLC (“Opposer”), a California limited liability company having a place of business at 1050 Adams Street, Suite C, St. Helena, California 94574, believes that it will be damaged by registration of the mark CHERRY BOMB, shown in U.S. Application Serial No. 85/932,923 (“Application”), filed by Vinum Cellars, Inc. (“Applicant”), and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer is in the business of producing and selling wine and since substantially prior to the filing date of the Application, Opposer has used the mark CHERRY PIE in connection with its wines. As a result, Opposer’s CHERRY PIE mark has become well-known and recognizable to the public.

2. Opposer is the owner of U.S. Registration No. 3,800,333 for CHERRY PIE covering wines in International Class 33, which was filed on September 15, 2008 and registered on June 8, 2010.

A copy of the certificate of registration is attached herein as Exhibit A.

///

///

Applicant's Trademark Application

3. Upon information and belief, Applicant filed the Application on May 15, 2013 to register the mark CHERRY BOMB under a Section 1(b) basis ("Applicant's Mark").

4. As published on October 15, 2013, the Application covers "wine" in International Class 33.

**FIRST CLAIM FOR RELIEF
Likelihood of Confusion
Section 2(d) of The Lanham Act; 15 U.S.C. §1052(d)**

5. Opposer hereby incorporates the foregoing paragraphs as fully set forth herein.

6. Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), prohibits registration on the principal register of a mark that consists of or comprises a mark which so resembles a mark previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.

7. Upon information and belief, the goods identified in the Application are closely related and/or complementary to the goods and services offered under Opposer's CHERRY PIE Mark.

8. Applicant's Mark so resembles Opposer's CHERRY PIE Mark, as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, or to deceive.

9. The Trademark Trial and Appeal Board has authority under 15 U.S.C. § 1068 to refuse to register Applicant's Mark.

WHEREFORE, Opposer prays that Serial No. 85/932,923 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Please recognize Ronald P. Oines and Lindsay J. Hulley and the law firm of Rutan & Tucker, LLP, as attorneys for Opposer in this proceeding and address all communications to Mr. Oines at the

address below. This Notice of Opposition is being submitted electronically through ESTTA. The required fee is authorized to be charged against the Deposit Account of the Attorney for Opposer.

Respectfully submitted,

Dated: October 16, 2013

By: /Ronald P. Oines/
Ronald P. Oines
Lindsay J. Hulley
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, California 92626
Telephone: (714) 641-5100
roines@rutan.com
lhulley@rutan.com
Attorneys for Opposer,
One True Vine, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Opposer One True Vine, LLC, in the above-captioned Opposition proceeding and that on the date which appears below, she caused a copy of the foregoing **NOTICE OF OPPOSITION** to be served on the following with the United States Postal Service with fully pre-paid postage by first class mail service:

Applicant's Attorney of Record:

Gregory S. Bernabeo
Saul Ewing LLP
1500 Market St., Fl. 37
Philadelphia, PA 19102-2100

Dated: October 16, 2013
Costa Mesa, California

/Lindsay J. Hulley/
Lindsay J. Hulley

EXHIBIT A

United States of America

United States Patent and Trademark Office

CHERRY PIE

Reg. No. 3,800,333

Registered June 8, 2010

Int. Cl.: 33

TRADEMARK

PRINCIPAL REGISTER

ONE TRUE VINE, LLC (CALIFORNIA LIMITED LIABILITY COMPANY)
1050 ADAMS STREET, SUITE C
ST. HELENA, CA 94574

FOR: WINES, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 1-28-2010; IN COMMERCE 1-28-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-570,442, FILED 9-15-2008.

NANCY CLARKE, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office