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

Proceeding	91220488
Party	Defendant Two Hands Wines Pty Ltd
Correspondence Address	WILLIAM J. SAPONE WARE FRESSOLA MAGUIRE & BARBER LLP 755 MAIN ST STE 5 MONROE, CT 06468-2830  wsapone@wfmb-iplaw.com;wjs@warefressola
Submission	Answer
Filer's Name	William J. Sapone
Filer's e-mail	wsapone@wfmb-iplaw.com, wjs@warefressola.com
Signature	/WJS/
Date	03/16/2015
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>FITA PRETA VINHOS, LDA LLC, Opposer,</b>	<b>In The Matter Of Application No. 85/191,378</b>
<b>-against-</b>	<b>Opposition No.: 91220488</b>
<b>TWO HANDS WINES PTY LTD, Applicant.</b>	<b>For the mark: SEXY BEAST</b>

**APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION**

Applicant, Two Hands Wines Pty. Ltd. (hereafter "Two Hands" or "Applicant") answers the opposition filed by Fita Preta Vinhos, Lda LLC (hereafter "FPV" or "Opposer") as follows:

Opening Statement- Two Hands denies that FPV will be damaged by the registration of the mark SEXY BEAST. Two Hands admits that FPV has filed this opposition and that the identification of Applicant's mark is correct.

As to the numbered paragraphs in the Notice of Opposition, Two Hands responds as follows:

1. Applicant lacks sufficient information to form a belief as to the truth of the allegations of Opposition paragraph 1 and therefore denies the same.

2. Applicant lacks sufficient information to form a belief as to the truth of the allegations of Opposition paragraph 2 and therefore denies the same.

3. Applicant lacks sufficient information to form a belief as to the truth of the allegations of Opposition paragraph 3 and therefore denies the same.

4. Denied.

5. Denied.

6. Applicant denies that Opposer's mark "SEXY" is a strong mark, and lacks sufficient information to form a belief as to the truth of the remaining allegations of Opposition paragraph 6 and therefore denies the same.

7. Denied.

8. Applicant lacks sufficient information to form a belief as to the truth of the allegations of Opposition paragraph 8 and therefore denies the same.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

#### Prayer for Relief

Two Hands denies that FPV is entitled to any relief whatsoever, and specifically denies each and all of the averments and prayers for relief

#### **DEFENSES**

In further response to the Notice of Opposition, Two Hands asserts the following defenses:

13. Opposer has failed to state a claim upon which relief can be granted, and in particular, failed to state legally sufficient grounds for sustaining the

opposition.

14. Opposer's marks are not the same as or confusingly similar to Applicant's mark in terms of look, sound, connotation and/or commercial impression.

15. The opposition should be dismissed for fraud or unclean hands as:

a) the averment in opposition paragraph 4 that the mark "SEXY BEAST" is "an imitation or colorable imitation of Opposer's' mark "SEXY" trademark registration 4,030,300 and 3,872,904" is believed to be false, misleading and intended to deceive, as the Opposer's registered marks both include critical design elements, and registration no. 3,872,904 further includes the wording 2005 SEXY TINTO RED WINE VINHO REGIONAL ALENTEJANO PORTUGAL" and specific color claims, the actual marks represented here:



b) the repeated references to “Opposer’s mark “SEXY”” is believed to be false and intended to mislead, as Opposer does not have rights in a “SEXY” trademark, but has rights in two specific and distinctive combinations of the common word “sexy” with dominant design features as well as with additional wording, as illustrated above, and Opposer has intentionally overstated it’s alleged rights in the word “sexy” in the Notice of Opposition;

and,

c) the averment in paragraph 7 that Applicant’s use of the mark “SEXY BEAST” in connection with the Applicant’s goods that are identical to “Opposer’ mark “SEXY”” and on goods that travel in the same channel of trade as goods sold “under Opposer’s “SEXY”” mark will cause confusion, is believed to be false, misleading and intended to deceive, as Opposer’s registered marks co-exist on the register with U.S. Registration nos. 3774476 for SEXY WINE BOMB, Registration no. 3889212 for HAPPY POWER which includes the word “SEXY”, Registration no. 4216600 for SEXY THING, and UVA SEXY PREMIUM BLEND, all of which include wine in their description of goods and as such, all of which goods would necessarily move through the same channels of trade as Applicant’s and Opposer’s goods, with no apparent confusion or damage to Opposer’s marks.

16. No likelihood of confusion, mistake or deception exists between the Applicant’s mark and Opposer’s marks because the marks are distinctively different in appearance, sound, meaning and commercial impression.

17. The Opposer’s alleged trademarks are weak marks, as the word “sexy”

is common word in wide use as a trademark and/or as part of a trademark, including on identical third party goods, and the Opposer's marks are of insufficient strength to prevent registration of Applicant's mark.

18. Applicant's mark in its entirety is sufficiently distinctive and different from Opposer's alleged marks so as to avoid any confusion, deception or mistake as to source or sponsorship or association.

19. Applicant's mark is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

20. Applicants' mark is not the same as, or a close approximation of, Opposer's marks, nor would it be recognized as such.

### **RELIEF REQUESTED**

In view of the above, the Applicant requests that this opposition proceeding be dismissed with prejudice.

Dated: Monroe CT

March 16, 2015

Ware Fressola Maguire & Barber LLP  
Attorneys for Applicant

By: \_\_\_/William J. Sapone \_\_\_\_\_  
William J. Sapone  
755 Main Street  
Monroe CT 06468  
(203) 261-1234  
[wsapone@wfbm-iplaw.com](mailto:wsapone@wfbm-iplaw.com)  
[wjs@warefressola.com](mailto:wjs@warefressola.com)

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION** was served this 16<sup>th</sup> day of March 2015, by first class United States mail, to the following counsel of record:

Matthew A Becker  
The Law Office of Matthew A. Becker  
A Professional Law Corporation  
1003 Isabella Avenue  
Coronado, CA 92118  
matt@beckerlawfirm.com

\_\_\_\_\_/WJS/\_\_\_\_\_  
William J. Sapone  
Attorney for Applicant,  
Two Hands Wines Pty. Ltd.  
Ware Fressola Maguire & Barber LLP  
755 Main Street, Bldg. 5  
P.O. Box 224  
Monroe, Connecticut 06468  
Telephone No. (203) 261-1234  
Facsimile (203) 261-5676  
[wjapone@wfbm-iplaw.com](mailto:wjapone@wfbm-iplaw.com)  
[wjs@warefressola.com](mailto:wjs@warefressola.com)