

ESTTA Tracking number: **ESTTA674193**

Filing date: **05/26/2015**

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

Proceeding	91221518
Party	Defendant MadTree Brewing LLC
Correspondence Address	APRIL L. BESL DINSMORE & SHOHL LLP 255 E 5TH ST STE 1900 CINCINNATI, OH 45202-1971  april.besl@dinsmore.com
Submission	Answer
Filer's Name	April L Besl
Filer's e-mail	april.besl@dinsmore.com
Signature	/april l besl/
Date	05/26/2015
Attachments	Answer to Delicato Opposition.pdf(30322 bytes ) Exhibit A to GNARLY BROWN Answer.pdf(15632 bytes ) Exhibit B to GNARLY BROWN Answer.pdf(17497 bytes )

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

**DELICATO VINEYARDS**

**Opposer**

**vs.**

**MADTREE BREWING, LLC**

**Applicant.**

**Ser. No. 86/319029**  
**Opposition No. 91221518**

---

**ANSWER TO NOTICE OF OPPOSITION**

Applicant, MadTree Brewing, LLC (hereinafter “MadTree” or “Applicant”), an Ohio limited liability company with its principal place of business at 5164 Kennedy Avenue, Cincinnati, Ohio 45213 is the owner of an application for the mark GNARLY BROWN in Class 32 for “beer” (“Applicant’s Mark”). The application was filed by MadTree on June 24, 2014, and assigned Serial No. 86/319029.

With respect to the ESTTA-generated filing form, Applicant admits that its mailing address of record is 5164 Kennedy Avenue, Cincinnati, Ohio 45213 and that it owns Application Serial No. 86/319029 for the GNARLY BROWN mark shown in that application. As to the grounds for opposition, Applicant denies all such allegations and claims and denies that Opposer Delicato Vineyards (“Opposer”) has been or will be damaged by the registration of Applicant’s GNARLY BROWN mark. Applicant lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations in the ESTTA-generated filing form, and therefore denies them.

Applicant denies the averment in the first introductory paragraph of the Notice of Opposition that the registration of Applicant's trademark GNARLY BROWN will damage Opposer Delicato Vineyards (hereinafter "Opposer").

Applicant admits that it filed its GNARLY BROWN application on June 24, 2014 for use in connection with "beer," and that its application published for opposition on December 16, 2014. Applicant admits that the Trademark Trial and Appeal Board's publicly-accessible database reflects that that the Opposer filed a First 90 Day Request for Extension of Time to Oppose Applicant's GNARLY BROWN application on January 14, 2015 and that the deadline to file an opposition was extended to April 15, 2015. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments raised in the introductory paragraph of the Notice of Opposition and, therefore, denies the same. Applicant denies each and every allegation contained in the Notice of Opposition unless otherwise admitted or responded to as follows:

1. Applicant admits that the Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 3,165,707 for the mark GNARLY HEAD is owned by an entity identified as Delicato Vineyard, Inc. for use in connection with "wines" in Class 33. Applicant further admits that Exhibit C fully portrays a representation of Applicant's use of Applicant's Mark. Applicant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 1 and therefore denies the same.

2. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 2 and therefore denies same.
3. Applicant admits that Applicant's Mark is for GNARLY BROWN and is filed in connection with "beer." Applicant further admits that the Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 3,165,707 is for the word mark GNARLY HEAD and in connection with "wines." Applicant denies the remaining allegations in Paragraph 3.
4. Applicant denies each and every allegation in Paragraph 4.
5. Applicant admits that the parties have engaged in good faith settlement discussion and intend to continue such good faith settlement discussions going forward. Applicant denies the remaining allegations in Paragraph 5.

Applicant denies the allegations contained in the "Wherefore" clause at the end of Opposer's Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

Applicant states as follows for its affirmative defenses:

1. Petitioner fails to state a claim upon which relief can be granted.
2. Opposer's mark GNARLY HEAD currently co-exists on the Principal Register with the mark GNARLY VINE (Registration No. 2,826,938) for use in connection with "wine" in Int'l Class 33, owned by G3 Enterprises Inc, a Delaware Corporation, which application was filed on April 2, 2002, prior to the publicly-available filing date of the Opposer's application for GNARLY

HEAD. A copy of the Registration Certificate for the GNARLY VINE mark is attached as **Exhibit A**.

3. Opposer's mark GNARLY HEAD currently co-exists on the Principle Register with the mark GNARLY DUDES (Registration No. 3,366,876) for use in connection with "alcoholic beverages, except beers, namely, wines" in Int'l Class 33, owned by Two Hands U.S.A., LLC, a California limited liability company, which claims a first use date of November 30, 2004, prior to the publicly-available first use date claimed by Opposer. A copy of the Registration Certificate for the GNARLY DUDES mark is attached as **Exhibit B**.
4. Opposer's use of the word GNARLY in connection with wine is not inherently distinctive as claimed by Opposer because this evidence of third party use of the identical term use with identical goods is admissible and relevant evidence that the word GNARLY used in connection with wine is relatively weak and entitled to only a narrow scope of protection.
5. Applicant's GNARLY BROWN is sufficiently distinctively different from the GNARLY HEAD mark referenced by Opposer in the Notice of Opposition so as to avoid confusion, deception or mistake as to the source, sponsorship, association or approval of Applicant's goods.
6. The US Patent and Trademark Office Examining Attorney tasked with examining the application for Applicant's GNARLY BROWN mark approved the application for publication indicating that the Patent and Trademark Office

Examiner did not find a conflict between the two marks cited in the Notice of Opposition.

7. Opposer will sustain no damage, injury, or prejudice as a result of the issuance of a registration to Applicant for the services described in Application Serial No. 86/319029.

Applicant reserves the right to assert additional affirmative defenses as they may become known through the process of discovery.

**PRAYER FOR RELIEF**

WHEREFORE, MadTree Brewing, LLC prays that:

- A. This action be dismissed in its entirety with prejudice;
- B. That Applicant has such other and further relief as the Board may deem just and proper.

Dated: **May 26, 2015**

/ april l besl /

April L. Besl  
Michelle Browning Coughlin  
DINSMORE & SHOHL LLP  
255 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 977-8527-direct  
(513) 977-8141-fax  
april.besl@dinsmore.com

*Attorneys for Applicant  
MadTree Brewing, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was sent by first class mail, postage prepaid, on this 26th day of May, 2015 to D. Peter Harvey, Esq., Harvey Siskind LLP, 4 Embarcadero Center, 39<sup>th</sup> Floor, San Francisco, CA 94111.

/ april l best /  
\_\_\_\_\_  
April L Best

# **EXHIBIT A**



Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

**United States Patent and Trademark Office**

Reg. No. 2,826,938

Registered Mar. 30, 2004

**TRADEMARK  
PRINCIPAL REGISTER**

**GNARLY VINE**

G3 PROPERTIES, INC. (CALIFORNIA COR-  
PORATION)  
573 SANTA RITA AVENUE  
MODESTO, CA 95353

FIRST USE 5-30-1995; IN COMMERCE 5-30-1995.

SER. NO. 76-389,963, FILED 4-2-2002.

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

DARLENE BULLOCK, EXAMINING ATTORNEY

# **EXHIBIT B**

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 3,366,876

Registered Jan. 8, 2008

TRADEMARK  
PRINCIPAL REGISTER

GNARLY DUDES

TWO HANDS U.S.A. LLC (CALIFORNIA LTD  
LIAB CO)  
809 COOMBS STREET  
NAPA, CA 94559

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

FOR: ALCOHOLIC BEVERAGES, EXCEPT  
BEERS, NAMELY, WINES, IN CLASS 33 (U.S. CLS.  
47 AND 49).

SN 78-765,514, FILED 12-2-2005.

FIRST USE 11-30-2004; IN COMMERCE 11-30-2004.

CHERYL CLAYTON, EXAMINING ATTORNEY