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

Proceeding	91239923
Party	Defendant Hidden Acre Vines LLC
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Date	04/16/2018
Attachments	Answer to Opposition.pdf(267304 bytes)

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

HUNDRED ACRE WINE ESTATES, LLC

Opposer,

v.

HIDDEN ACRE VINES LLC,

Applicant.

Opposition No.: 91239923

Application Serial No.: 87595375

Trademark: HIDDEN ACRE VINES

ANSWER

ANSWER TO NOTICE OF OPPOSITION

Hidden Acre Vines LLC (“Applicant”) hereby answers the allegations set forth in the Notice of Opposition filed by Hundred Acre Wine Estate, LLC (“Opposer”) on March 8, 2018. Applicant denies the allegation in the unnumbered introductory paragraph of the Opposition which states that Opposer believes that it will be damaged by the issuance of a registration for the mark HIDDEN ACRE VINES. In response to the individually numbered paragraphs of the Opposition, Applicant responds as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Opposition, and on that basis denies each and every allegation contained therein.
2. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Opposition, and on that basis denies each and every allegation contained therein.

3. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Opposition, and on that basis denies each and every allegation contained therein.

4. Applicant admits the allegations in Paragraph 4 of the Opposition.

5. Applicant admits the allegations in Paragraph 5 of the Opposition.

6. Applicant realleges and incorporates by reference as though fully set forth herein the responses set forth in the paragraphs above.

7. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7 of the Opposition, and on that basis denies each and every allegation contained therein. Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) speaks for itself.

8. Applicant denies each and every allegation in Paragraph 8 of the Opposition.

9. Applicant denies each and every allegation in Paragraph 9 of the Opposition. Applicant is located on, and named after, Hidden Acre Lane in Paso Robles, California, in a different appellation than Opposer and in a different region of the State of California. The term ACRE is commonly used for alcoholic beverages, including wine. Wine labels using the term ACRE include but are not limited to: Half Acre, Heritage Acres, Hellacious Acres, White Acre, Red Acre, Secret Acre, One Acre One Guy One Wine, Quarter Acre, Acre, One Acre, 4 Acres, 3 Acre, 44 Acre, 50 Acre Ranch, Two Acres, Old Acre, 12 Acre, An Acre of Stone, Acres of Land, Acre Twenty-One, Burnt Acre, Charm Acres, Far Acre, Eighty Acres, 7 Acre, Five Acres, Seven Acre, Green Acres Ranch, Long Acre, Lost Acre, Sexton's Acre, Single Acre, Sonoma Acres, Sweet Acres Farms, Ten Acre, Crooked Acres Vineyard, Pickett Acre and Wise Acre. The addition of HIDDEN and VINES to Applicant's mark and the use of the word HUNDRED in Opposer's marks makes it

unlikely, when used in connection with the parties' goods, to cause confusion, to cause mistake, or to deceive.

10. Applicant admits that the Trademark Trial and Appeal Board has authority under 15 U.S.C. § 1068 to refuse to register a mark generally. However, Applicant denies that there is any basis for the Trademark Trial and Appeal Board to refuse to register Applicant's mark.

AFFIRMATIVE DEFENSES

For its further and separate affirmative defenses to the Opposition, Applicant alleges as follows:

1. AS A FIRST AFFIRMATIVE DEFENSE, the Opposition fails to state a claim upon which relief may be granted.
2. AS A SECOND AFFIRMATIVE DEFENSE, there is no likelihood of confusion, mistake or deception because, inter alia, the Mark and the alleged trademark of Opposer are not confusingly similar.
3. AS A THIRD AFFIRMATIVE DEFENSE, any similarity between the Mark and Opposer's alleged trademark is restricted to that portion of the Mark consisting of the word "ACRE," which is not distinctive. As a result, under the anti-dissection rule any secondary meaning Opposer may have in its alleged HUNDRED ACRE trademark is narrowly circumscribed to the exact trademark alleged and does not extend to any other feature of the trademark beyond the word "ACRE."
4. AS A FOURTH AFFIRMATIVE DEFENSE, Opposer's rights in and to the portion of its alleged HUNDRED ACRE trademark are generic or, in the alternative, merely descriptive of the goods or services offered under the mark. Opposer's alleged mark is therefore inherently unprotectable absent acquired distinctiveness, which the alleged HUNDRED ACRE mark lacks.

5. AS A FIFTH AFFIRMATIVE DEFENSE, the Opposition is barred by the doctrine of estoppel by consent.
6. AS A SIXTH AFFIRMATIVE DEFENSE, the Opposition is barred by the doctrine of estoppel by acquiescence.
7. AS A SEVENTH AFFIRMATIVE DEFENSE, the Opposition is barred by the doctrine of estoppel by laches.
8. AS AN EIGHTH AFFIRMATIVE DEFENSE, the Opposition is barred by the doctrine of equitable estoppel.
9. AS A NINTH AFFIRMATIVE DEFENSE, the Opposition is barred by the doctrine of unclean hands.
10. AS A TENTH AFFIRMATIVE DEFENSE, the Opposition is barred by the doctrine of fair use/collateral use.
11. AS AN ELEVENTH AFFIRMATIVE DEFENSE, the Opposition is barred by the doctrine of waiver.
12. AS A TWELFTH AFFIRMATIVE DEFENSE, the Opposition is barred on the ground that it has not incurred any damages, nor is there any likelihood of it incurring any damages, by the registration of Applicant's mark.
13. AS A THIRTEENTH AFFIRMATIVE DEFENSE, Applicant contends this Opposition is groundless, baseless in fact and an attempt to bully the applicant by means of costly litigation; that Opposer has not shown it has any right to oppose the mark owned by Applicant and Applicant prays that the Notice of Opposition be dismissed in its entirety.
14. There may be additional affirmative defenses to claims alleged by Opposer that are currently unknown to Applicant. Therefore, Applicant reserves the right to amend its Answer

to allege additional affirmative defenses in the event discovery of additional information indicates they are appropriate.

15. Applicant reserves the right to file a Counterclaim to cancel Registration No. 2778658 after it has been able to further investigate the facts and circumstances regarding the application, registration, and use of the mark HUNDRED ACRE, if any, by Opposer.

WHEREFORE, having fully answered, Applicant requests that the Opposition should be dismissed in its entirety and that Applicant's mark is entitled to, and should be approved for, registration.

Applicant does hereby appoint Neil M. Popowitz, Esq., along with the law firm of Freilich & Popowitz LLP, 10580 Wilshire Boulevard, Suite 56, Los Angeles, CA 90024 to transact all business on its behalf in connection with this Opposition.

Respectfully submitted,

FREILICH & POPOWITZ

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER has been served on:

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by forwarding said copy on April 16, 2018, via email (or insert other appropriate method of delivery) to: roines@rutan.com and lhulley@rutan.com.

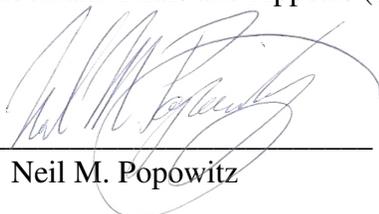
Date: April 16, 2018

Signature: 
Neil M. Popowitz

CERTIFICATE OF ELECTRONIC FILING

The undersigned certifies that this submission (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 16th day of April 2018.

Signature: _____



Neil M. Popowitz