

ESTTA Tracking number: **ESTTA947137**

Filing date: **01/12/2019**

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	CONSTELLATION BRANDS U.S. OPERATIONS INC.
Granted to Date of previous extension	01/12/2019
Address	235 NORTH BLOOMFIELD ROAD Canandaigua, NY 14424 UNITED STATES

Attorney information	STEPHEN L. BAKER BAKER AND RANNELLS PA 92 EAST MAIN STREET SUITE 302 SOMERVILLE, NJ 08876 UNITED STATES officeactions@br-tmlaw.com, k.hnasko@br-tmlaw.com, s.baker@br-tmlaw.com 9087225640
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Applicant Information

Application No	87945310	Publication date	11/13/2018
Opposition Filing Date	01/12/2019	Opposition Period Ends	01/12/2019
Applicant	The Vineyard House LLC 1581 Oakville Grade Oakville, CA 94562 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Wines
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Applicant Information

Application No	87944993	Publication date	11/13/2018
Opposition Filing Date	01/12/2019	Opposition Period Ends	
Applicant	The Vineyard House LLC 1581 Oakville Grade Oakville, CA 94562 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Wines

Applicant Information

Application No	87944990	Publication date	11/13/2018
Opposition Filing Date	01/12/2019	Opposition Period Ends	
Applicant	The Vineyard House LLC 1581 Oakville Grade Oakville, CA 94562 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Wines

Applicant Information

Application No	87944988	Publication date	11/13/2018
Opposition Filing Date	01/12/2019	Opposition Period Ends	
Applicant	The Vineyard House LLC 1581 Oakville Grade Oakville, CA 94562 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Wines

Applicant Information

Application No	87945312	Publication date	11/13/2018
Opposition Filing Date	01/12/2019	Opposition Period Ends	
Applicant	The Vineyard House LLC 1581 Oakville Grade Oakville, CA 94562 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Wines

Applicant Information

Application No	87945302	Publication date	11/13/2018
Opposition Filing Date	01/12/2019	Opposition Period Ends	
Applicant	The Vineyard House LLC 1581 Oakville Grade Oakville, CA 94562 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Wines
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Grounds for Opposition

No use of mark in commerce before application or amendment to allege use was filed	Trademark Act Sections 1(a) and (c)
Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	Vineyard House - Notice of Opposition 1-12.19.pdf(105718 bytes)
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Signature	/Stephen L. Baker/
Name	STEPHEN L. BAKER
Date	01/12/2019

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

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Constellation Brands U.S. Operations, Inc.	Opposition No. _____
	Mark: HENRY WALKER CRABB
	Serial No.: 87945310
	Filed: June 1, 2018
	Published: November 13, 2018
	Mark: HENRY WALKER (H.W.) CRABB
	Serial No.: 87944993
	Filed: June 1, 2018
	Published: November 13, 2018
	Mark: HENRY WALKER (H.W.)
	Serial No.: 87944990
	Filed: June 1, 2018
	Published: November 13, 2018
	Mark: HENRY WALKER
	Serial No.: 87944988
	Filed: June 1, 2018
	Published: November 13, 2018
	Mark: H.W. CRABB
	Serial No.: 87945312
	Filed: June 1, 2018
	Published: November 13, 2018
	Mark: HENRY W. CRABB
	Serial No.: 87945302
	Filed: June 1, 2018
	Published: November 13, 2018

Referred to hereinafter as the “Marks Being Opposed”

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NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C. SECTION 1063

In the matter of trademark applications for the Marks Being Opposed filed by Applicant, The Vineyard House LLC, (“Applicant”), for the Marks Being Opposed as

trademarks for wine ("Applicant's Goods"), published for opposition in the Official Gazette of November 13, 2018, the time to oppose having been extended; Opposer, Constellation Brands U.S. Operations, Inc., ("Opposer"), a corporation organized and existing under the laws of New York and located and doing business at 235 North Bloomfield Road, Canandaigua, NY 14424, believes that it will be damaged by the registration of the alleged marks identified in the caption above and opposes the registrations of the Marks Being Opposed under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13).

As grounds of opposition, it is alleged that:

1. Opposer is a wholly-owned subsidiary of Constellation Brands, Inc., ("CBI") a corporation existing under the laws of Delaware and located and doing business at Building 100, 207 High Point Drive, Victor, NY 14564.
2. CBI is the world's largest source of premium wines and Opposer is one of CBI's largest operating companies.
3. As one of CBI's largest operating companies, Opposer is the owner of no less than 200 U.S. trademarks and applications and registrations therefor as reflected in the records of the United States Patent and Trademark Office (USPTO).
4. Opposer is also the operator of several wineries to which several trademarks pertain.
5. Among the wineries operated by Opposer is Robert Mondavi Winery of 7801 Saint Helena Highway, Oakville, CA 94562.

6. Robert Mondavi Winery operates several vineyards including but not limited to TO KALON VINEYARD which has become recognized as one of the finest first-growth vineyards of the world.

7. Napa pioneer Hamilton Crabb, also known as Henry Walker Crabb and/or Henry W. Crabb and/or H.W. Crabb, first planted Opposer's TO KALON VINEYARD in 1868.

8. Opposer is the owner of the following incontestable registrations for TO KALON and variations thereof as well as pending applications therefor:

Trademark	Serial No.	Application Date	Registration No.	Registration Date	Class	Trademark
TO KALON*	73665622	06/09/1987	1489619	03/02/1988	33	Registered
TO KALON VINEYARD*	74456021	11/03/1993	1857851	07/19/1994	33	Registered
TO KALON 1886	87818643	03/02/2018			33	Pending
THE MIRACLE OF TO KALON	88010746	06/22/2018			33	Pending

*indicates incontestable registration

9. As the owner of TO KALON VINEYARD and the trademarks associated therewith, Opposer has a real, direct and personal stake in preventing the registration of marks that suggest a connection to TO KALON VINEYARD.

10. The Marks Being Opposed suggest a direct connection to TO KALON VINEYARD.

11. Opposer has an interest in using the Marks Being Opposed to promote TO KALON VINEYARD and Opposer's TO KALON marks.

12. Opposer's real, direct and personal stake in preventing the registration of the Marks Being Opposed is beyond that of the general public.

COUNT 1

FRAUD IN THE USPTO

13. Opposer repeats and re-alleges paragraphs 1 to 12 above with the same force and effect as is set forth herein at length.

14. On June 1, 2018, Applicant's behavior - concurrently filing for multiple ITU-based applications to register variations of Hamilton Crabb, also known as Henry Walker Crabb and/or Henry W. Crabb and/or H.W. Crabb is indicative of Applicant's lack of a bona fide intent to use the marks applied for.

15. Applicant's filing of numerous ITU trademark applications on the same date with the United States Patent and Trademark Office for variations of the same mark covering the same goods casts doubt on Applicant's bona fide intention to use any one of the Marks Being Opposed.

16. The legislative history of the Trademark Law Revision Act of 1988 ("TLRA") reveals that Congress intended the test of "bona fide" intent to be shown by "objective" evidence of "circumstances" showing a bona fide intent to use the marks for which applications have been filed.

17. At the time the applications were filed, Applicant had no documentary evidence demonstrating objective evidence of its bona fide intent to use Marks Being Opposed.

18. The need for objective evidence of a bona fide intent to use a mark is to keep a single business or individual from monopolizing a number of potential marks on the basis of a mere statement of intent to use the marks in the future.

19. Applicant's actions are indicative of an attempt to monopolize a number of potential marks on the basis of a mere statement of intent to use the marks in the future and without a bona fide intent to use the same.

20. On June 1, 2018, in Applicant's applications for the Marks Being Opposed, Applicant, having no bona-fide intent to use the Marks Being Opposed, knowingly made false and fraudulent statements in Applicant's applications wherein it falsely claimed, "The applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services" for Applicant's International class 033 services.

21. Applicant knowingly did not have a bona fide intent to use the Marks Being Opposed as Applicant has not taken steps to commence use of the Marks Being Opposed on Applicant's Goods.

22. The false and fraudulent declaration referred to above with respect to Applicant's Marks Being Opposed was made by Applicant with actual knowledge of falsity, and was not made on information and belief and was made by a person or entity who knew or should have known the same was false and fraudulent.

23. Applicant knowingly made false, material misrepresentations of fact in connection with Applicant's applications when it made the false and fraudulent declaration referred to above.

24. The false and fraudulent declaration referred to above with respect to Applicant's Marks Being Opposed was made with the intent to deceive the USPTO and that the USPTO rely upon the same.

25. The USPTO did rely on the false and fraudulent declarations when it acknowledged the filing of the applications and allowed Applicant's applications to publish.

26. As a result, Applicant willfully and knowingly perpetrated fraud on the United States Patent and Trademark Office.

27. Applicant is not entitled to a Registration on the Principal Register of Applicant's Marks Being Opposed as Applicant has never had any legitimate interest in Applicant's Marks Being Opposed, Applicant never had a bona-fide intent to use Applicant's Marks Being Opposed, and because Applicant knowingly committed fraud when it filed Applicant's applications.

28. Had it been aware of the false and fraudulent declaration referred to above and of Applicant's knowing fraudulent acts, the USPTO would not have accepted the filing of the applications, nor allowed Applicant's applications to publish.

COUNT II

NO BONA FIDE INTENT TO USE

29. Opposer repeats and re-alleges paragraphs 1 to 28 above with the same force and effect as if set forth herein at length.

30. Applicant's applications are void ab initio as Applicant had no good faith bona fide intent to use Applicant's Marks being Opposed for Applicant's Goods.

31. Applicant's actions in filing intent to use trademark applications are insufficient to establish a bona fide intent to use Applicant's Marks Being Opposed as applied for.

32. Applicant has taken no steps to begin commercial use of Applicant's Marks Being Opposed either prior to or subsequent to the filing of the Applicant's applications.

33. On June 1, 2018, when Applicant filed Applicant's applications, Applicant had no objective bona-fide intent to use Applicant's Marks Being Opposed.

34. The registration of the Marks Being Opposed to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer's TO KALON VINEYARD and Opposer's TO KALON marks, all to Opposer's irreparable damage.

35. Opposer believes that it is and will be damaged by registration of the Marks Being Opposed as applied for by Applicant.

WHEREFORE, Opposer prays that the applications for registration of Marks Being Opposed, filed on June 1, 2018 be denied and that this Opposition be sustained.

Respectfully submitted for Opposer

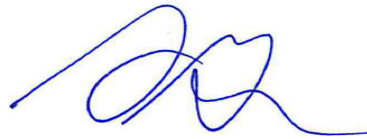
Constellation Brands U.S. Operations, Inc.

Dated: January 12, 2019

By: /Stephen L. Baker/
Stephen L. Baker
BAKER and RANNELLS PA
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Suite 302
Somerville, NJ 08876
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Notice of Opposition, in re: Constellation Brands U.S. Operations, Inc. v. The Vineyard House LLC. was served on January 12, 2019 on the Opposer's attorney by email directed to trademark@buchalter.com, and fbhatti@buchalter.com.



Stephen L. Baker