

ESTTA Tracking number: **ESTTA1032849**

Filing date: **01/31/2020**

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	The Vineyard House LLC		
Entity	Limited Liability Company	Citizenship	California
Address	1581 Oakville Grade Oakville, CA 94562 UNITED STATES		

Attorney information	Farah P. Bhatti Buchalter, a Professional Corporation 18400 Von Karman Ave., Suite 800 Irvine, CA 92612 UNITED STATES ipdocket@buchalter.com, fbhatti@buchalter.com, tspeiss@buchalter.com 949-224-6272		
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Applicant Information

Application No	88586993	Publication date	01/14/2020
Opposition Filing Date	01/31/2020	Opposition Period Ends	02/13/2020
Applicant	Constellation Brands U.S. Operations, Inc. 235 North Bloomfield Road Canandaigua, NY 14424 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: Alcoholic beverages, except beer; Wine

Grounds for Opposition

The mark is primarily geographically descriptive	Trademark Act Section 2(e)(2)
The mark is primarily geographically deceptively misdescriptive	Trademark Act Section 2(e)(3)
Geographic indication which, if used on or in connection with wine or spirits, identifies a place other than the origin of the goods	Trademark Act Section 2(a)

Related Proceedings	Opp. Nos. 91244819, 91244817
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Attachments	Notice of Opposition - TO KALON 1868.pdf(105524 bytes)
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Signature	/fbhatti/
Name	Farah P. Bhatti
Date	01/31/2020

3. Given the history of Napa Valley with regard to wine and winemaking, there were several vineyard designations that were used to identify the geographical locations of certain vineyards. Use of such vineyard designations was for the purpose of geographical designation of the property.

4. On August 21, 2019, Applicant filed an application for TO KALON 1868 based on an intent to use the alleged mark in connection with “alcoholic beverages, except beer; wine,” in International Class 33.

5. Applicant is a large multinational company with business interests in Napa Valley and is presumably in the business of producing alcoholic beverages including wine, some of which originates in Napa Valley.

6. Applicant’s mark is clearly a reference to the TO KALON vineyard designation which appears in many historical documents relating to H.W. Crabb, a Napa Valley pioneer wine cultivator. Mr. Crabb was considered a pioneer in developing Napa Valley as a wine region.

7. H.W. Crabb referred to his vineyards as TO KALON, which he translated as Greek for “the highest beauty.”

8. The TO KALON vineyards as used by Crabb include the property of several current owners of Napa Valley properties, and are not solely owned by Applicant.

9. A vineyard designation is used when a wine is derived from a single vineyard with that vineyard’s name appearing on the wine label. In other words, the vineyard designation describes the geographical area where the grapes in a wine were grown or the geographical boundaries of a vineyard.

10. The primary significance of TO KALON to the relevant public is the name as set forth by the first owner, H.W. Crabb and which specifically describes a geographical area of a vineyard in Napa Valley.

11. TO KALON implies a quality, reputation or characteristic of the wine based on the location and materially affects the purchaser's decision to buy the goods.

12. Applicant's alleged mark, TO KALON 1868, is primarily geographically descriptive when used on or in connection with Applicant's goods.

13. Relevant wine purchasers are familiar with TO KALON and the quality of the grapes and wine which emanate from this geographical location, especially given the higher prices of such goods.

14. Consumers purchasing the TO KALON labeled goods assume and expect that the goods originate from TO KALON. In other words, consumers make a goods/place association between use of TO KALON and the goods.

15. To the extent Applicant is using grapes from the original TO KALON vineyard, use of the mark is primarily geographically descriptive. In the event Applicant is using grapes from vineyards outside of the TO KALON vineyards, Applicant's use of the term TO KALON is primarily geographically deceptively misdescriptive.

16. Applicant should not be allowed to monopolize a geographically descriptive term to the detriment of other owners of TO KALON land in order to prevent such owners from rightfully being able to use the term to geographically describe the location where such owners grow its grapes.

17. Applicant does not own exclusive rights to use TO KALON as several other individuals and companies including Opposer own land that can be rightfully designated as TO KALON.

18. The applied-for-mark, as proposed to be used on or in connection with Applicant's identified goods, is primarily geographically descriptive and should be refused pursuant to Section 2(e)(2) of the Lanham Act, 15 U.S.C. §1052(e)(2).

19. The applied-for-mark, as proposed and if used in connection with grapes grown in areas other than the "vineyard designated" TO KALON vineyard, is geographically descriptive and primarily geographically deceptively misdescriptive within the meaning of Section 2(a), 2(e)(3) of the Lanham Act, 15 U.S.C. §1052(a), (e)(3), and therefore, registration of the mark must be refused.

20. The applied-for-mark, as proposed is deceptive under Section 2(a) of the Lanham Act, 15 U.S.C. §1052(a), as the primary significance of TO KALON is geographic, purchasers are likely to think that the goods originate from the TO KALON vineyard, the actual goods do not originate from the TO KALON vineyard, the origin of the goods is a material factor in the purchasing decision, and the mark was filed based on an intent to use in commerce.

21. Because Opposer and other third parties also have rights to use of the geographical designation TO KALON as it is a correct historical designation of their properties, Applicant should be denied exclusive rights to use of the geographical designation.

