

ESTTA Tracking number: **ESTTA1252728**

Filing date: **12/07/2022**

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	FUN WINE (USA) LLC
Granted to date of previous extension	12/11/2022
Address	20200 WEST DIXIE HWY SUITE 806 AVENTURA, FL 33180 UNITED STATES
Attorney information	JOSHUA M. GERBEN, ESQ. GERBEN PERROTT, PLLC 1050 CONNECTICUT AVE SUITE 500 WASHINGTON, DC 20036 UNITED STATES Primary email: jgerben@gerbenlawfirm.com Secondary email(s): filings@gerbenlawfirm.com, cjalandoni@gerbenlawfirm.com No phone number provided
Docket no.	06120-0085

Applicant information

Application no.	90876773	Publication date	06/14/2022
Opposition filing date	12/07/2022	Opposition period ends	12/11/2022
Applicant	Obshchestvo s ogranichennoy otvetstvennostyu "Beverages from Chernogolovka-Aqualife" SOEDINITELNAYA STR., BUILD. 2, APT. 34 CHERNOGOLOVKA MOSCOW REGION, 142432 RUSSIAN FEDERATION		

Goods/services affected by opposition

Class 032. First Use: None First Use In Commerce: None

All goods and services in the class are opposed, namely: Mineral and aerated waters and other non-alcoholic beverages, namely, water-based beverages also containing herbal extracts or flavored syrup; fruit beverages and fruit juices; syrups for making non-alcoholic beverages

Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks cited by opposer as basis for opposition

U.S. registration no.	4472297	Application date	12/12/2012
Register	Principal		
Registration date	01/21/2014	Foreign priority date	NONE
Word mark	FRIENDS FUN WINE		
Design mark			
Description of mark	NONE		
Goods/services	Class 033. First use: First Use: Jan 2013 First Use In Commerce: Jan 2013 Wine		

U.S. registration no.	5973651	Application date	04/27/2018
Register	Principal		
Registration date	01/28/2020	Foreign priority date	NONE
Word mark	FUN WINE		
Design mark			
Description of mark	NONE		
Goods/services	Class 033. First use: First Use: Nov 27, 2019 First Use In Commerce: Nov 27, 2019 Wine		

U.S. registration no.	6341966	Application date	05/25/2018
Register	Principal		
Registration date	05/04/2021	Foreign priority date	NONE
Word mark	FUN		

Design mark	<h1>FUN</h1>
Description of mark	NONE
Goods/services	Class 033. First use: First Use: Feb 26, 2021 First Use In Commerce: Feb 26, 2021 Wine

Attachments	87894510#TMSN.png(bytes) 87936431#TMSN.png(bytes) Opposition - FUN OLA 90876773 - 06120-0085 - 12.7.2022.pdf(87333 bytes)
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Signature	/Chad C. Jalandoni, Esq./
Name	Chad C. Jalandoni, Esq.
Date	12/07/2022

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

FUN WINE (USA) LLC,

Opposer,

v.

Obshchestvo s ogranichennoy otvetstvennostyu
"Beverages from Chernogolovka-Aqualife",

Applicant,

Opposition No.: _____

FUN + OLA

Serial No: 90876773

NOTICE OF OPPOSITION

FUN WINE (USA) LLC (hereinafter referred to as "Opposer"), a Florida limited liability company, believes that the mark shown in Application Serial No. 90876773 and its registration will cause damage to the Opposer and hereby opposes this application. Obshchestvo s ogranichennoy otvetstvennostyu "Beverages from Chernogolovka-Aqualife" (hereinafter referred to as "Applicant"), a Russian Federation obshchestvo s ogranichennoy otveststvennostyu (ooo), filed the application with the United States Patent and Trademark Office ("USPTO") and the Official Gazette published the mark on May 25, 2022.

As grounds for the opposition, Opposer alleges as follows:

1. Opposer is the owner of the common-law rights in the distinctive FRIENDS FUN WINE, FUN WINE, and FUN trademarks ("Opposer's Marks") and the goodwill associated therewith from its continuous use of the marks for wine ("Opposer's Goods") in the United States since at least as early as January 2013. Furthermore, Opposer owns U.S. Registration No. 4472297 "FRIENDS FUN WINE" on the principal register under Section 1(a) of the Lanham Act for Opposer's Goods in International Class 033 with a registration date of January 21, 2014, U.S. Registration No. 5973651 "FUN WINE" on the principal register under Section 1(a) of the Lanham

Act for Opposer's Goods in International Class 033 with a registration date of January 28, 2020, and U.S. Registration No. 6341966 "FUN" on the principal register under Section 1(a) of the Lanham Act for Opposer's Goods in International Class 033 with a registration date of May 4, 2021.

2. The Applicant filed U.S. Serial No. 90876773 ("Applicant's Application") under Section 1(b) of the Lanham Act on August 11, 2021, for "FUN + OLA" ("Applicant's Mark") for "Mineral and aerated waters and other nonalcoholic beverages, namely, water-based beverages also containing herbal extracts or flavored syrup; fruit beverages and fruit juices; syrups for making non-alcoholic beverages" in International Class 032 ("Applicant's Goods").

3. Opposer believes that, should Applicant's Application proceed to registration, Applicant will be given at least a *prima facie* right to exclusive use of the mark on related goods and services. Such use will cause a likelihood of confusion between Opposer's Marks and Applicant's Mark that would irreparably harm the Opposer's senior marks.

COUNT 1: PRIORITY AND LIKELIHOOD OF CONFUSION

4. Applicant's Mark, "FUN + OLA" is similar in sight, sound, and overall commercial impression to Opposer's Marks, "FRIENDS FUN WINE," "FUN WINE," and "FUN."

5. Applicant's Goods are similar to Opposer's Goods.

6. Opposer has sold and rendered Opposer's Goods in the United States under the Opposer's Marks since at least as early as January 2013, before any priority date to which Applicant's Application is entitled.

7. Opposer's use of Opposer's Marks have been valid and continuous since its date of first use and Opposer has not abandoned use of the marks. Opposer's Marks are symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in promotion of Opposer's Goods.

8. Opposer has priority through common-law rights that pre-date any priority date available to Applicant.

9. Therefore, Opposer has priority based on Opposer's first use of Opposer's Marks in the United States prior to the filing date of Applicant's Application or any other priority date available to Applicant.

10. In view of the fact that the parties' respective marks are similar and the parties' respective goods are similar and complementary, it is alleged that Applicant's Mark so resembles Opposer's Marks previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive, and therefore, the United States Patent and Trademark Office ("USPTO") should refuse Applicant's Mark under Section 2(d) of the Lanham Act.

11. If the USPTO grants Applicant the registration herein opposed, Applicant would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to Opposer.

12. In view of the above, Applicant is not entitled to federal registration of its alleged FUN + OLA trademark as Opposer has priority based on prior use of the Opposer's Marks in commerce in connection with similar goods.

13. By reason of all the foregoing, the registration of Applicant's Mark will gravely damage the Opposer.

WHEREFORE, by its undersigned attorney, FUN WINE (USA) LLC respectfully requests that this Notice of Opposition be sustained and that the USPTO refuse registration of U.S. Serial No. 90876773 "FUN + OLA."

Dated: December 7, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Gerben", with a stylized flourish at the end.

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