

ESTTA Tracking number: **ESTTA1092941**

Filing date: **11/03/2020**

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

Proceeding	92074275
Party	Defendant Robert Balentine and Daphne Cole-Balentine
Correspondence Address	PAUL W REIDL LAW OFFICE OF PAUL W REIDL 25 PINEHURST LANE SECOND FLOOR HALF MOON BAY, CA 94019 UNITED STATES Primary Email: paul@reidllaw.com 650-560-8530
Submission	Answer
Filer's Name	Paul W. Reidl
Filer's email	paul@reidllaw.com
Signature	/pwr/
Date	11/03/2020
Attachments	Answer.pdf(39530 bytes)

1 7. The allegations of Paragraph 7 of the Petition are denied.

2 7. The allegations of the second Paragraph 7 of the Petition are denied.

3 8. The allegations of the Paragraph 8 of the Petition are denied.

4 9. The allegations of the Paragraph 9 of the Petition are denied.

5 10. The allegations of the Paragraph 10 of the Petition are denied.

6 11. No response to Paragraph 11 of the Petition is required as Claim 2 was dismissed by the
7 Board in its Order of September 24, 2020. 8 TTABVUE.

8 12. No response to Paragraph 12 of the Petition is required as any fraud claim was dismissed
9 by the Board in its Order of September 24, 2020. 8 TTABVUE.

10 13. No response to Paragraph 13 of the Petition is required as Claim 2 was dismissed by the
11 Board in its Order of September 24, 2020. 8 TTABVUE.

12 14. No response to Paragraph 14 is required as Claim 2 was dismissed by the Board in its
13 Order of September 24, 2020. 8 TTABVUE.

14 **AFFIRMATIVE DEFENSES**

15 Respondent asserts the following affirmative defenses and reserves the right to amend its
16 Answer to include additional defences as may be disclosed in discovery:

17 1. **Morehouse.** Respondent owns an incontestable registration of an identical mark, 831,
18 for wine, no. 4,566,538. The marks are identical. The goods are legally and substantially identical. In
19 an Office Action dated July 24, 2020, the Examining Attorney for Petitioner's application refused
20 registration citing Respondent's incontestable registration. This mark has been in continuous use since
21 February 2013 and has a constructive use date of May 19, 2013. Thus, as a matter of equity, the Petition
22 should be denied.

23 2. **No Priority.** Petitioner does not have priority. Respondent's constructive use date is
24 August 7, 2015. Petitioner's application claims a first use date of May 26, 2016, which is after

1 Respondent's constructive use date. On information and belief, Petitioner cannot show by clear and
2 convincing evidence that it is entitled to an earlier first use date than that in its application. In fact,
3 none of the ratings attached as Exhibits C, D, and E to the Petition bears a date earlier than Respondent's
4 constructive first use date.

5 3. **Mootness.** Given current Office examination practices and the Board's previous
6 decisions on the similarity between beer and wine, Petitioner will not be able to overcome the Office
7 Action based on registration no. 4,566,538 nor can it petition to cancel the registration based on a claim
8 of priority because the registration is incontestable. Thus, at some point this proceeding will become
9 moot.

10 Respectfully submitted,

11 Dated: November 3, 2020

LAW OFFICE OF PAUL W. REIDL

12 /s/ Paul W. Reidl

13 Paul W. Reidl (CA. Bar. No. 155221)
14 25 Pinehurst Lane
15 Second Floor
16 Half Moon Bay, CA 94019
17 (650) 560-8530
18 paul@reidllaw.com

1 **PROOF OF SERVICE**

2 On November 3, 2020, I caused to be served the foregoing document described as follows:

3 **REPLY ON MOTION TO DISMISS CLAIM 2**

4 on Respondent by placing a true copy thereof in an e-mail to:

5 CANDACE L MOON
6 THE CRAFT BEER ATTORNEY APC
7 2260 EL CAJON BLVD #412
8 SAN DIEGO, CA 92104
9 UNITED STATES
10 candace@craftbeerattorney.com

11 Executed on November 3, 2020, at Half Moon Bay, California.

12 
13
14
15
16
17
18
19
20
21
22
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

EXHIBIT 1