

Opposition No.: 125,200
75/914,038
CAMAS WINERY

**UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**



02-12-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #01

In re Applicant: Scott, Stuart L.)	
)	Opposition No. 125,200
Serial No.: 75/914,038)	
)	Caymus Vineyards
Filed: February 9, 2000)	
)	v.
<u>Mark: CAMAS WINERY</u>)	Stuart L. Scott

TO: ASSISTANT COMMISSIONER FOR TRADEMARKS
BOX: TTAB NO FEE
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3513

EXPRESS ABANDONMENT OF APPLICATION

Applicant, Stuart L. Scott, hereby expressly abandons the above-referenced application without prejudice, pursuant to the Trademark Opposition Settlement Agreement. Please contact the undersigned with any questions or comments.

Dated: February 11, 2003.

Respectfully submitted,

Robert C. Cumbow
R. Corbin Houchins

GRAHAM & DUNN PC
1420 Fifth Avenue, Suite 3300
Seattle, Washington 98101-2390
(206) 340-2619

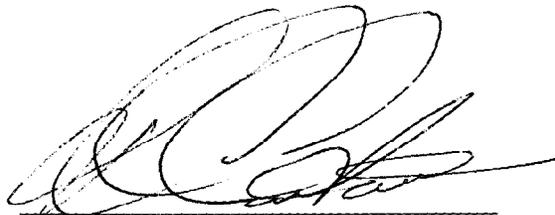
Attorneys for Applicant
Stuart L. Scott

11-20-03

CERTIFICATE OF SERVICE

I CERTIFY that on February 11, 2003, a copy of the foregoing EXPRESS ABANDONMENT regarding CAMAS WINERY Serial No. 75/914,038 was served by U.S. First Class Mail, postage prepaid on Opposer's following counsel of record:

Scott W. Petersen
Holland & Knight, LLP
55 West Monroe Street, Suite 800
Chicago, IL 60603
Tel: 312-263-3600



Robert C. Cumbow

CONFIDENTIAL SETTLEMENT AGREEMENT

This CONFIDENTIAL SETTLEMENT AGREEMENT ("Agreement") is made and entered into this 16 day of Jan, 2002, by and between CAYMUS VINEYARDS (hereinafter "CV"), a corporation organized and existing under the laws of California, with an office at 8700 Conn Creek Road, Rutherford, California 94573; and CAMAS WINERY a ~~corporation~~ sole proprietorship organized and existing under the laws of Idaho, with offices at 110 South Main Street, Moscow, Idaho 83843 (hereinafter "CAMAS WINERY").

WHEREAS, CV is the owner of the trademark CAYMUS which is used in connection with various goods and services including, but not limited to, wine and promotional products used in connection with the sale of wine; and

WHEREAS, CV owns a United States registration for the trademark CAYMUS (Reg. No. 1,833,996); and

WHEREAS, CAMAS WINERY has used the term "Camas" and/or "Camas Winery" on and in connection with WINE and has filed an application to register the mark CAMAS WINERY in the United States under Serial No. 75/914,038 (the "APPLICATION"); and

WHEREAS, CV filed an Opposition against the APPLICATION in the United States Patent & Trademark Office, Trademark Trial and Appeal Board. This Opposition has been docketed under Opposition No. 125,200; and

WHEREAS, the parties wish to resolve the litigation and the Opposition amicably under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises, releases and performances herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Acknowledgement of Rights.** CAMAS WINERY acknowledges that CV is the owner and proprietor of all right, title and interest in and to the valid trademark CAYMUS in Class 33 and the federal registration therefore, No. 1,833,996. CAMAS WINERY acknowledges that this trademark is valid and entitled to protection under the laws of the United States.

2. **Cessation of Use.** CAMAS WINERY acknowledges that except as noted below it will immediately begin the phase out of the business name and trademark "Camas Winery" and begin using the name "Camas Prairie Winery" as the business name and trademark for its wine. This change shall take place as follows:

A. CAMAS WINERY shall be allowed to maintain the business name "Camas Winery" for purposes of regulatory identification and compliance only. Apart from this exception and the exception noted in paragraph 2C, the "Camas Winery" trademark and business name as used with and displayed to the public shall be changed on labels, signage, in advertising and in promotional materials to "Camas Prairie Winery." CAMAS WINERY shall have six months in which to effect the change of labels and promotional materials deleting "Camas Winery" and using "Camas Prairie Winery";

B. CAMAS WINERY shall have two years in which to effect a change of all signage from "Camas Winery" to "Camas Prairie Winery";

C. CAMAS WINERY shall be allowed to use existing labeling which includes the "Camas Winery" name on the "Idaho Huckleberry Mead" label which bottles will be already labeled by December 31, 2005.

D. CAMAS WINERY agrees that it shall abandon the APPLICATION and sign an appropriate document to effect this abandonment with the USPTO.

E. CAMAS WINERY agrees that except as noted herein it shall not resume usage in any form of the business name and/or trademark CAMAS WINERY once the changes set forth herein have been effected.

3. Payment to CAMAS WINERY. CV recognizes the costs involved in making the aforementioned changes and in recognition of CAMAS WINERY's cooperation in this matter, as referenced and detailed in paragraph 2, CV agrees to pay CAMAS WINERY the one-time sum of Eight Thousand Dollars (\$8,000.00) ^{within 10 days of} ~~upon~~ execution of this Agreement. *SLS*

4. Dismissal and Enforcement of Action. The parties agree that upon abandonment of the APPLICATION, CV shall dismiss Opposition No. 125,200. Each party shall bear its own costs and expenses. In the event that either party seeks to enforce the terms and conditions of this Agreement, it is agreed that all legal and equitable remedies shall be available to the parties.

5. Binding Effect. This Agreement is to be binding upon the Parties, their officers, agents, employees, parents, affiliates and related companies, and their successors and assigns.

6. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and supersedes all previous agreements and discussions between the parties as to the matters herein addressed. No party shall be bound by any representation with respect to the subject matter of this Agreement other than as expressly set forth herein. This Agreement may not be amended or changed except in a writing signed by all parties hereto.

7. **Agreement to be Bound.** The parties hereto represent and warrant that they have or their duly authorized representatives have read this Agreement and fully understand it and have executed this Agreement with the intent to be fully bound according to its terms. The parties agree that in signing this Agreement they have relied solely on their own knowledge or their duly authorized representatives' knowledge and judgment and/or the advice of their attorneys and not upon any representation, warranty, advice, statement or action of any kind except to the extent that such representations, warranties, advice, statements or actions are contained in this Agreement.

8. **Full Release.** To effect a full and complete release as described herein above, the Parties expressly waive and relinquish all rights and benefits afforded them by Section 1542 of the California Civil Code, and do so understanding and acknowledging the significance and consequence of such specific waiver of section 1542. Section 1542 of the California Civil Code states as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor

at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of the Parties' claims against one another, the Parties expressly acknowledge that this Confidential Settlement Agreement contemplates the extinguishment of any such claim or claims the Parties may have against one another. The Parties know of no such actions at law nor in equity nor administrative proceedings currently pending (other than the Action which the Parties, by this Agreement, agree to dismiss and the trademark application which CAMAS WINERY agrees to abandon) that concern allegations based on or related to the Parties' claims. The Parties warrant that they have read this Agreement including this waiver of California Civil Code Section 1542, and that they understand the Agreement and the Section 1542 waiver, and so freely and knowingly enter into this Agreement. The Parties acknowledge that they may hereafter discover facts different from or in addition to those they now know or believe to be true regarding the matters released or described in this Agreement, and they agree that the releases and agreements contained in this Agreement shall be and will remain effective in all respects notwithstanding any later discovery of any such different or additional facts.

9. Mutual Release. CV and CAMAS WINERY hereby release and forever discharge each other and each other's attorneys, officers, directors, employees, agents and assigns of and from any and all actions, causes of

actions, claims, demands, damages, costs, loss of profits, expenses and compensation on account of any grounds whatsoever in law or in equity known or unknown arising out of the facts set forth in this Agreement.

10. Recitals. The recitals to this Agreement are an integral part of this Agreement.

11. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

12. Confidentiality. The parties shall keep the Agreement confidential and shall not disclose any details about the Agreement or the specific provisions or terms of the Agreement to any person or entity, except as required by the law or, if necessary, to prepare financial statements, audited accounts or similar financial reporting requirements. The parties also agree that no press releases or public relations releases about their resolutions of the litigation or the Agreement shall be issued or disseminated by the parties, their agents or employees. Notwithstanding the foregoing, however, nothing herein shall preclude Camas Winery from making known to its customers and distributors that its name change is the result of the amicable resolution of a dispute with another winery with a similar name. The Parties agree and covenant that they will not make any negative and/or disparaging remarks about the other Party, their employees, officers, Board of Directors, or products to any person or entity.

13. Invalidity. Should any provision of this Confidential Settlement Agreement be declared or be determined by any court to be illegal or invalid,

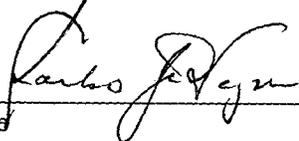
the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Confidential Settlement Agreement.

14. Interpretation. Counsel for the Parties have reviewed and participated in the drafting of this Agreement. Consequently, the normal rule of construction that ambiguities shall be resolved against the drafter shall not be used or applied in the interpretation of this agreement.

15. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set forth their hands and seals as of the date first written above.

CAYMUS VINEYARDS



Signature

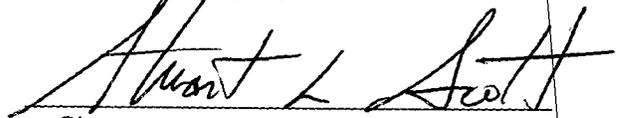
President

Title

1/16/03

Date

CAMAS WINERY



Signature

sole proprietor

Title

January 10, 2003

Date

CERTIFICATE OF MAILING

I CERTIFY that on February 11, 2003, I mailed (via U.S. EXPRESS MAIL #EL393569603US) the attached EXPRESS ABANDONMENT OF APPLICATION in triplicate regarding the mark "CAMAS WINERY" (Serial. No.: 75/914,038) to:

Hon. Commissioner for Trademarks
U.S. Patent and Trademark Office
BOX: TTAB NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513



Adina M. Davis



GRAHAM & DUNN PC

TTAB

February 11, 2003

ROBERT C. CUMBOW
(206) 340-9619
rcumbow@grahamdunn.com



02-12-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #01

VIA U.S. EXPRESS MAIL
(EL393569603US)

Hon. Director of Patents & Trademark Office
U.S. Patent and Trademark Office
Trademark Trial & Appeal Board
Box: TTAB NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Re: EXPRESS ABANDONMENT OF APPLICATION
Applicant: Scott, Stuart L.
Mark: CAMAS WINERY
Serial No.: 75/914,038
Opposition No.: 125,200

Hon. Director:

Enclosed for filing is an EXPRESS ABANDONMENT OF APPLICATION in triplicate regarding the application indicated above.

The Assistant Commissioner is hereby authorized to (1) charge any additional fees which may be required in connection with this filing, or (2) credit any over-payment, to Deposit Account No. 07-1847. Please address all communication regarding this matter to Robert C. Cumbow at the address listed below, or by phone at (206) 340-9619.

Very truly yours,

GRAHAM & DUNN

Robert C. Cumbow

RCC/sh

cc: Stuart L. Scott
R. Corbin Houchins