

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD-----X
D & M NEW WORLD MANAGEMENT, INC.,

Opposer

v.

Opposition No. 91162831
Mark: BLACK STORK

76.521, 791

TORGOVY DOM "AROMA" TA TRADE
HOUSE "AROMA".

Applicant.



01-20-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

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**OPPOSER'S SUR-REPLY TO APPLICANT'S RESPONSE TO
OPPOSER'S CROSS-MOTION FOR SUMMARY JUDGMENT**

Opposer, D & M NEW WORLD MANAGEMENT, INC., through its undersigned counsel, opposes Applicant's Response to Opposer's Cross-Motion for Summary Judgment and respectfully moves the Honorable Board to dismiss it. The gist of Applicant's claim is untimeliness but **Applicant had seen all of the evidence submitted with the Summary Judgment Motion before October 26, 2005 (and some of it, before Opposer even filed the Opposition)**. Opposer produced all of that material in its Answers to Applicant's Interrogatories and its Responses to Document Requests. It is entirely disingenuous on Applicant's part to pretend this is new evidence. This is not an introduction of evidence but continuous emphasis of **what Applicant has already seen**. A) Applicant has been aware that Opposer's export of 600 bottles of BLACK STORK brandy occurred eight months before Applicant filed its intent to use application

for the same mark B) Applicant has reviewed Opposer's Application for and Certification of Label/Bottle Approval for BLACK STORK dated September 27, 2002 C) Applicant has seen Opposer's Certificate of Goods Origin dated October 9, 2002 and matching Bill of Lading. All of this evidence was seen by Applicant before **February 1, 2005** and Opposer will be more than happy to provide the Board with Applicant's correspondence commenting on the same to prove it.

While Applicant hopes to cling to vain technicalities, the fact remains that Opposer has shown extensive prior use in commerce of BLACK STORK on brandy and has shared that evidence with Applicant at all times, even prior to filing this Opposition. The claim of untimeliness is only appropriate for new evidence; obviously, that is not the subject case.

It is hoped that the Board may now grant Opposer's Cross Motion for Summary Judgment given the relatively simple facts and Opposer's clear prior use. Such action is earnestly solicited.

January 17, 2006

Respectfully submitted,



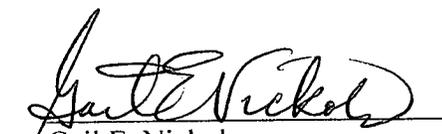
Gail E. Nickols
Attorney for Applicant
GRAHAM CAMPAIGN, P.C.
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New York, NY 10036
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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Opposer's Sur-Reply to Applicant's Response to Opposer's Cross-Motion has been sent by air mail, first class to:

Box TTAB
Comm. Of Trademarks
P.O. Box #1451
Alexandria, VA 22313

This 17th day of January 2006.


Gail E. Nickols

CERTIFICATE OF MAILING

It is hereby certified that a Copy of the foregoing Opposer's Sur-Reply to Applicant's Response to Opposer's Cross-Motion has been sent by air mail, first class to Applicant's attorney, Marina E. Volin, at her address of record:

Caesar, Rivise, Bernstein, Cohen & Pokotilow Ltd.
11th Floor-Seven Penn Center
1635 Market Street
Philadelphia, PA 19103-2212

This 17th day of January 2006.


Gail E. Nickols