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

Proceeding	91178682
Party	Defendant Domaines Pinnacle, Inc.
Correspondence Address	THOMAS W. BROOKE HOLLAND & KNIGHT LLP 2099 PENNSYLVANIA AVENUE, NW WASHINGTON, DC 20006-6801 UNITED STATES thomas.brooke@hklaw.com, ptdocketing@hklaw.com
Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	10/14/2008
Attachments	Amended Answer to Franciscan Amended Notice of Opposition.txt (2 pages) (3863 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Franciscan Vineyards, Inc.)
Opposer)

v.)

Opposition No. 91,178,68

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Domaines Pinnacle, Inc.)
Applicant.)

AMENDED ANSWER AND AFFIRMATIVE DEFENSES

Applicant Domaines Pinnacle, Inc. ("Applicant") answers the Amended

Notice of Opposition filed by Opposer Franciscan Vineyards, Inc ("Opposer") as follows:

1. Applicant is without knowledge of the goods and services, if any, offered by Opposer under the PINNACLES mark and therefore denies the allegations of Paragraph 1 of the Amended Notice of Opposition.
2. Applicant is without knowledge of any instances whereby Opposer has traded as or been known by the mark PINNACLES and therefore denies same. Applicant denies that Opposer's goods, including wine, are substantially identical or even related to the goods Applicant intends to offer under its DOMAINE PINNACLE and Design mark.
3. Applicant is without knowledge of the allegations of Paragraph 3 of the Amended Notice of Opposition and therefore denies same.
4. Applicant is without knowledge of the allegations of Paragraph 4 of the Amended Notice of Opposition and therefore denies same.
5. Applicant is without knowledge of the allegations of Paragraph 5 of the Amended Notice of Opposition and therefore denies same.
6. Admitted.
7. Applicant is without knowledge of the allegations of Paragraph 7 of the Amended Notice of Opposition and therefore denies same.
8. Denied.
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied.

AFFIRMATIVE DEFENSES

1. Opposer fails to state a claim upon which relief may be granted.
2. Opposer uses the word "Pinnacles" merely as the name of a varietal for wine, and not as a trademark for wines or any other goods.
3. Consumers are not likely to confuse applicant's apple-based non-alcoholic beverages and products from Quebec sold under the DOMAINE PINNACLE & Design mark with Opposer's wines sold under the PINNACLES varietal.
4. Other than wine, for which Opposer uses the PINNACLES mark as a varietal only, Opposer makes no use of the PINNACLES mark.
5. The goods of Applicant are wholly distinguishable from those of Opposer.
6. The Commercial impression created by Applicant's DOMAINE PINNACLE &

Design mark is completely different from that created by the varietal PINNACLES used by Opposer.

7. The mark PINNACLES is a plain word mark in traditional font. The mark DOMAINE PINNACLE & Design, however, comprises a design in form of a shaded square, a snowflake and an apple, in addition to the highly stylized word 'Pinnacle' and the stylized extra word 'Domaine'. The word 'Pinnacle' is not a prominent part of the mark DOMAINE PINNACLE & design, but the commercial impression of the composite mark is dominated by the elaborate design and extra stylized wording.

8. The mark PINNACLES as used by Opposer is primarily geographically descriptive, therefore not a strong mark. The property of Opposer is located at the base of the Pinnacles National Monument, which was established about a hundred years ago and encompasses an area of approximately 26,000 acres. Hence, there is only a marginal possibility that a potential customer would, upon seeing the mark, think of Opposer's varietal rather than recognizing the name as denoting the place of origin.

Respectfully Submitted,
DOMAINES PINNACLE, Inc.

/Thomas W. Brooke/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by electronic mail to Stephen L. Bker, Baker & Rannels, P.A., 575 Route 28, Suite 102, Raritan, NJ 08869 this 14th day of October, 2008.

Thomas W. Brooke

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