

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

vb

Mailed: January 13, 2009

Opposition No. 91178682

Franciscan Vineyards, Inc.

v.

Domaines Pinnacle, Inc.

Brian D. Brown, Interlocutory Attorney:

Opposer's October 14, 2008 amended notice of opposition and applicant's amended answer thereto are noted and have been made a part of the record. The Board also notes the motion to strike several of applicant's affirmative defenses asserted in the amended answer. While applicant has not submitted a responsive brief and to this point the motion remains uncontested, the motion to strike is denied for the following reasons.

First, Fed. R. Civ. P. 12(b) permits a party to assert in the answer the "defense" of failure to state a claim upon which relief may be granted. Moreover, an answer may include affirmative assertions that, although they may not rise to the level of an affirmative defense, nevertheless state the reasons for, and thus amplify, the defendant's denial of one or more of the allegations in the complaint. These

amplifications of denials, whether referred to as "affirmative defenses," "avoidances," "affirmative pleading," or "arguments," are permitted by the Board because they serve to give the plaintiff fuller notice of the position which the defendant plans to take in defense of its right to registration. See Trademark Trial and Appeal Board Manual of Procedure ("TBMP") §311.02(d) (2d ed. rev. 2004) and cases cited therein.

Accordingly, the motion to strike is **DENIED**.

Proceedings herein are now resumed and trial dates are reset below.

Proceedings resume:	1/13/2009
Discovery Period to close:	2/26/2009
30-day testimony period for party in position of plaintiff to close:	5/27/2009
30-day testimony period for party in position of defendant to close:	7/26/2009
15-day rebuttal testimony period to close:	9/9/2009

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>