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

Proceeding	91181755
Party	Defendant BeauxKat Enterprises LLC
Correspondence Address	Justin D Park Romero Park & Wiggins 155 - 108th Avenue NE, Suite 202 Bellevue, WA 98004 UNITED STATES jpark@rpwfirm.com
Submission	Other Motions/Papers
Filer's Name	Justin D. Park
Filer's e-mail	jpark@rpwfirm.com
Signature	/justin d. park/
Date	01/05/2009
Attachments	Dec_D Engler_Applicant_R_Opposer_M_SJ_01-05-2009.pdf ( 7 pages ) (150607 bytes )

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

FRANCISCAN VINEYARDS	)	
	)	Mark: BLACK RAVEN BREWING COMPANY
Opposer	)	Opposition No.: 91181755
v.	)	Serial No.: 77223446
	)	
BEAUXKAT ENTERPRISES LLC	)	
	)	
Applicant	)	

**DECLARATION OF DOUG ENGLER IN SUPPORT**  
**APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

I, Doug Engler, under penalty of perjury under the laws of the United States of America, do hereby declare as follows:

1. I am over the age of 18 and I am competent to testify to the matters set forth herein.
2. I am a Managing Member of The Bottle Shop, LLC dba "Malt and Vine", a retailer of beverages including beer and wine.
3. As the owner / operator of The Bottle Shop, LLC dba "Malt & Vine", Registered with the Secretary of the State of Washington June 2006, I have built a beer and wine retail business from the ground up. I have spent several thousands of hours on the floor with customers, directly engaged in the sales of beer and wine. Malt & Vine sold over \$500,000 of beer and wine in 2008. I also own and operate a wine cellaring facility for the storage and maturation of wines and have been collecting wine for over a decade. It is this industry experience that qualifies me to give the following opinion.
4. At Malt & Vine we offer our customers a selection of several hundred different beers and several hundred different wines. We also serve tap beer and offer wines by the glass. Attached as Exhibit A is a true and correct printout of a portion of our website at [www.maltandvine.com](http://www.maltandvine.com), which describes our business.
5. As a retailer, the way in which we market and merchandise beer to our customers is quite disparate from the way that we merchandise and market wine; from both a

physical standpoint and a psychological or emotional standpoint. Physically, beer is stored and served cold; our beer is sold, as it is in most establishments, from refrigerated merchandisers which are filled to maximize the amount of goods in the refrigerator. Physically, wine is presented in a different fashion altogether, more elegantly, on quality wooden racks, which are separate from the beer section. Whenever possible, wines are given copious amounts of space and not crowded to give them the feeling of being upscale, luxury goods. The sections in our store are clearly defined by the products themselves and there is never any confusion by our customers as to which product is which.

6. Beer customers and wine customers are not the same customer. People often inquire “Doug, are you more of a wine guy or a beer guy?” That this question comes up so repeatedly strikes directly at the heart of the matter here; in the minds of the end consumer, they have often internally DEFINED themselves as either a “beer person” or “wine person”. At our store we are often praised for having a good selection of both products, which gives both the “beer person” and the “wine person” something to enjoy and browse. A typical visit by a couple may have one perusing the beer and perhaps drinking a pint of ale, while the other examines the racks of wine and sips on a glass of Cabernet Sauvignon. We have several parties of individuals, regular customers, who have repeatedly expressed how great it is to visit an establishment where the “beer people” can get a beer and the “wine people” can get a glass of wine so that everyone is satisfied. We serve both beer and wine to appeal to a larger and broader base of customers; beer and wine are two separate markets and ultimately two different customers.
7. I am aware of the wines of the opposer professionally as I keep myself informed of most brands of domestically available wines, and I am aware that their parent company FVI, is owned by “Constellation Brands, Inc”, the largest wine company in the world, the world’s largest producer of wine, and the largest multi-category supplier of alcoholic beverages in the United States.
8. Although FVI and Constellation are very well known, their individual products of separate name do not enjoy the same fame as their parent companies. While it is true

that the products of the opposer have a substantial reputation, In my professional experience an individual seeing a bottle of Ravenswood wine on a wine rack and a bottle of Black Raven Brewing IPA in a refrigerated beer cooler would not think that the two products were in any way were related.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on this 4th day of January, 2009 at Redmond, Washington.



Doug Engler

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**Malt & Vine**  
16851 Redmond Way  
Redmond, WA 98052  
Phone:(425) 881-6461  
Fax:(425) 881-6905

**Monday - Saturday:**  
11am to 8pm  
**Sunday:**  
12noon to 6:00pm

## Beers on Tap Wines by the Glass!

Updated 12/30/2008 7:40pm PST  
BEERS ON TAP

- Trumer Pils
- Silver City Imperial Stout
- Russian River Pliny the Elder Double IPA
- Laughing Buddha Pandan Brown Ale
- Speakeasy Double Daddy Double IPA
- New Belgium Dunkel Weiss
- St. Bernardus Abt. 12
- Ninkasi Sleigh'r Winter Ale
- Saxo Belgian Blond
- BirdsView Hefeweizen
- Duchesse de Bourgogne Flemish Sour



FEATURED ITEM IN  
OUR ONLINE SHOP!  
**Pike Entire Stout -  
XXXXXX! - \$9.99**



### WINES BY THE GLASS

- Cycles Gladiator Cabernet Sauvignon
- Cycles Gladiator Syrah
- Notro Sangiovese
- Vizorro Blanco
- Stonecap Chardonnay
- Namaste Gewurztraminer

### CORKAGE / CRACKAGE SCHEDULE! BEER CRACKAGE:

- Up to \$2.98 = \$1
- \$2.99 to \$4.98 = \$1.50

- \$4.99 to \$9.98 = \$2.00
- \$9.99 to \$14.98 = \$2.50
- \$14.99 to \$19.98 = \$3.00
- \$19.99 and up = \$4.00

WINE CORKAGE

- Wines not on our glass pour list = \$5

All Corkage and Crackage prices per bottle served. More than 4 glasses, \$1 per. Crackage tier based on full retail price.

**""You can't be a real country unless you have a beer and an airline - it helps if you have some kind of a football team, or some nuclear weapons, but at the very least you need a beer." --Frank Zappa**

Please join our mailing list for updates and information on tastings and what's in store! - visit the [Mailing List](#) page for details!

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## Malt & Vine

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Redmond, WA 98052  
Phone:(425) 881-6461  
Fax:(425) 881-6905

## Directions

## About Malt & Vine

Malt and Vine provides a premium selection of craft beers and boutique wines to wine and beer lovers of the greater Seattle area. Conveniently located in downtown Redmond, our shop lets customers indulge their passions for beer and wine with the help of our knowledgeable staff, tasting events, and great values.

**"Wine is bottled poetry."** - Robert Louis Stevenson

Please join our mailing list for updates and information on tastings and what's in store! - visit the [Mailing List](#) page for details!

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Declaration of Doug Engler in Support of Applicant's Response to Opposer's Motion for Summary Judgment was forwarded by first class, postage pre-paid mail by depositing the same with the U.S. Postal Service on this 5<sup>th</sup> day of January, 2009 to the Opposer at the following address:

Stephen L. Baker  
Baker & Rannells  
575 Route 28, Suite 102  
Raritan, NJ 08869

A copy of the same was sent via e-mail on this 5<sup>th</sup> day of January, 2008 to the Opposer at the following e-mail addresses:

[officeactions@br-tmlaw.com](mailto:officeactions@br-tmlaw.com)  
[k.hnasko@br-tmlaw.com](mailto:k.hnasko@br-tmlaw.com)  
[n.friedman@br-tmlaw.com](mailto:n.friedman@br-tmlaw.com)  
[l.kurth@br-tmlaw.com](mailto:l.kurth@br-tmlaw.com)  
[s.baker@br-tmlaw.com](mailto:s.baker@br-tmlaw.com)

ROMERO PARK & WIGGINS P.S.

/Diana Sanders/  
Diana Sanders, Legal Assistant  
155 – 108<sup>th</sup> Avenue NE, Suite 202  
Bellevue, WA 98004  
(425) 450-5000 telephone  
(425) 450-0728 facsimile  
dsanders@rpwfirm.com