

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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

DUNN

Mailed:

Opposition No. 91181755

Franciscan Vineyards

v.

BeauxKat Enterprises LLC

Before Zervas, Cataldo, and Bergsman, Administrative
Trademark Judges:

By the Board:

This case comes up on opposer's motion, filed December 4, 2008, for summary judgment. The motion has been fully briefed.

Franciscan Vineyards opposes registration of applicant's mark BLACK RAVEN BREWING COMPANY (BREWING COMPANY disclaimed) for beer, the subject of Trademark Act Section 1(b) Application Serial No. 77223446, on the ground of priority and likelihood of confusion with opposer's pleaded registrations for the marks RAGIN RAVEN for wine and sauces (Registration Nos. 3336587 and 3153731), RAVENS for wine and clothing (Registration Nos. 2888963 and 3134833), RAVENSWOOD for clothing, wine, and sauces (Registration Nos.

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2118152, 2132719, and 3457923) and a stylized raven design for wine (Registration No. 2130653). Applicant filed an answer denying the salient allegations of the complaint.

Inasmuch as opposer introduced with its motion for summary judgment copies of its pleaded registrations showing that such registrations are valid, subsisting, and owned by opposer, for purposes of this motion for summary judgment, priority is not in issue. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). However, with respect to likelihood of confusion, the parties take conflicting positions, and each submits, among other evidence, affidavits supporting opposing views on the differences between beer and wine, and the channels of trade for those goods.

The party bringing a motion for summary judgment bears the burden of showing the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law. See Fed. R. Civ. Pro. 56(c); and *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986). In assessing each motion, the evidence must be viewed in a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. See *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

Upon careful consideration of the arguments and evidence presented by the parties, and resolving all reasonable inferences in the non-movant's favor, the Board finds that opposer has failed to carry its burden of establishing that it is entitled to judgment as a matter of law. At a minimum, opposer has failed to demonstrate the absence of a genuine issue of material fact as to the similarity of the marks, the similarity of the goods, and the similarity of the channels of trade for the parties' respective goods.

In view thereof, opposer's motion for summary judgment is denied.¹

Proceedings herein are resumed, and dates reset below.

Discovery Closes	CLOSED
Plaintiff's Pretrial Disclosures	4/21/09
Plaintiff's 30-day Trial Period Ends	6/5/09
Defendant's Pretrial Disclosures	6/20/09
Defendant's 30-day Trial Period Ends	8/4/09
Plaintiff's Rebuttal Disclosures	8/19/09
Plaintiff's 15-day Rebuttal Period Ends	9/18/09

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served

¹ Although we have only mentioned a few genuine issues of material fact in this decision, that is not to say that there are not other factual issues that may be disputed.

The parties should note that evidence submitted in support of or in opposition to a motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced in evidence during the appropriate trial period. See *Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993).

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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 Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
