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

Proceeding	91181755
Party	Plaintiff Franciscan Vineyards
Correspondence Address	Stephen L. Baker Baker & Rannells, PA 575 Route 28, Suite 102 Raritan, NJ 08869 UNITED STATES officeactions@br-tmlaw.com,k.hnasko@br-tmlaw.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Linda Kurth
Filer's e-mail	officeactions@br-tmlaw.com,k.hnasko@br-tmlaw.com
Signature	/Linda Kurth/
Date	06/01/2009
Attachments	5th Notice of Reliance.pdf (6 pages)(83245 bytes)

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

FRANCISCAN VINEYARDS, INC.,

Opposer,

v.

BEAUXKAT ENTERPRISES, LLC

Applicant.

Opposition No. 91181755

Mark: BLACK RAVEN BREWING
COMPANY

Serial No. 77223446

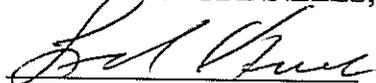
Filed: January 8, 2008

OPPOSER'S FIFTH NOTICE OF RELIANCE

Please take notice that Opposer, Franciscan Vineyards, Inc., pursuant to stipulation of the parties, is hereby noticing its reliance on the declaration of Joel Peterson attached hereto as Exhibit A. In his declaration, Mr. Peterson testifies under oath to Opposer's annual sales figures and advertising expenditures for Opposer's goods under Opposer's Marks. These figures are relevant to show Opposer's use of its Marks in commerce and to the issue of the likelihood of confusion between the marks at issue because of Opposer's widespread sales and advertising of its goods under its Marks.

Dated: June 1, 2009

BAKER AND RANNELLS, PA

By: 

Linda Kurth

Attorney for Opposer

575 Route 28, Suite 102

Raritan, New Jersey 08869

(908) 722-5640

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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FRANCISCAN VINEYARDS, INC.,

Opposition No. 91181755

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Mark: BLACK RAVEN BREWING
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Serial No. 77223446

BEAUXKAT ENTERPRISES, LLC

Filed: January 8, 2008

Applicant.

DECLARATION OF JOEL PETERSON

Joel Peterson declares as follows:

1. I am a co-founder of Ravenswood Winery (formerly Ravenswood Winery, Inc.), and a Senior Vice President of Constellation Brands, Inc. of 207 High Point Drive, Victor, NY 14564 ("CBI"), the parent company to Franciscan Vineyards, Inc., the Opposer in the above-captioned proceeding ("FVI"). I am also the current winemaker of Ravenswood Winery.

2. FVI is a wholly owned subsidiary of CBI.

3. I was employed by Ravenswood Winery at its inception in 1976, where my duties and responsibilities included management of all aspects of the winery operation.

4. I make this declaration in support of Opposer's trial brief, opposing application Ser. No. 77223446 for the mark BLACK RAVEN BREWING COMPANY for "beer" on the basis of likelihood of confusion. This declaration is made on personal knowledge and/or upon information contained in the corporate records of FVI and

Ravenswood Winery. If called to testify, I could and would testify competently to the statements made herein.

5. The annual sales of the RAVENS wines by FVI to wholesalers over the past seven years are:

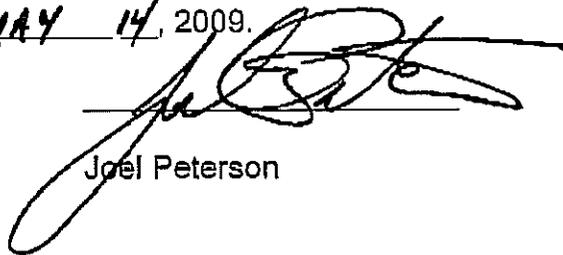
<u>Period</u>	<u>Annual Wholesale Sales (rounded off)</u>
FY ending 2/28/03	\$56,824,000
FY ending 2/29/04	\$58,126,000
FY ending 2/28/05	\$73,615,000
FY ending 2/28/06	\$72,786,000
FY ending 2/28/07	\$67,481,000
FY ending 2/29/08	\$68,633,000
FY ending 2/29/09	\$60,090,000

Thus, the average wholesale sales of the RAVENS wines over the above-referenced period are in excess of \$65 million per year. The retail value (i.e. the dollar value of the annual sales at retail) is approximately double the wholesale figures set forth above. Further, in Fiscal Year 2008, FVI made net sales with a value of approximately \$1.6 million at Ravenswood Winery's tasting room in Sonoma, California.

6. Beginning in 1981, FVI has also sold a large variety of branded gift items under the RAVENS Marks including, without limitation, various articles of clothing apparel and accessories, glassware, carafes, corkscrews, coasters, pepper grinders, crumb scrapers, BBQ sauce, olive oil, picnic bags, watches, bumper stickers, Christmas tree ornaments, totes, aprons, hand towels, and pendants. Aggregate sales of gift items for the five year period 1999-2003 were approximately \$666,000. In Fiscal Year 2008, the aggregate sales of gift items were approximately \$453,000.

7. FVI's advertising and promotional costs and expenses for its RAVENS wines have been well in excess of \$400,000 per year.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed on MAY 14, 2009.

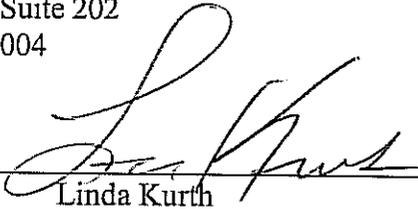


Joel Peterson

CERTIFICATE OF SERVICE

I hereby certify a copy of OPPOSER'S FIFTH NOTICE OF RELIANCE in re: Franciscan Vineyards, Inc. v. Beauxkat Enterprises, LLC., Opp. No. 91181755 was served on counsel for Applicant, this 1st day of June, 2009 by sending same via First Class Mail, postage prepaid, to:

Justin D. Park
Romero Park & Wiggins P.S.
155-108th Avenue NE, Suite 202
Bellevue, WA 98004


Linda Kurth