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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
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Date	08/26/2009
Attachments	Mot Strike Applicant's 2nd Notice of reliance.pdf (3 pages)(57916 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 MOTION TO STRIKE APPLICANT'S SECOND NOTICE OF RELIANCE

Opposer hereby moves to strike Paragraphs 2-7 and corresponding Exhibits B-F from Applicant's Second (2nd) Notice of Reliance on the bases that the exhibits attached to the Notice are neither "printed publications" nor "official records" as contemplated by and as required by Rule 2.122(e), and (2) the Applicant is improperly using these portions of the Second Notice of Reliance to attempt to present testimony as to the truth of matters stated on its attached exhibits, and/or to present legal argument. Accordingly, Opposer requests that Paragraphs 2-7 and corresponding Exhibits B-F in Applicant's 2nd Notice of Reliance be stricken.

Attached to Applicant's 2nd Notice of Reliance in Exhibits B-F purport to be "search results from the TESS database" that Applicant claims to be "evidencing registration records." There are no applications or registrations attached and/or accompanying the search results. As such, the exhibits to the notice are merely printouts of summary lists of underlying documents. Opposer objects to the search results to the extent they are meant by Applicant to take the place of or be considered the equivalent of the applications and/or registrations listed in the search. *See R. J. Reynolds Tobacco Co. v. Brown & Williamson Tobacco Corp.*, 226 USPQ 169, 174-75

(TTAB 1985); see also *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368 (TTAB 1998). As presented the notices are purely hearsay and lack relevance and/or meaning. They contain lists of both “dead” and “live” applications and registrations and there is no indication or and/or limitation in the purported searches as to goods and/or services involved. Further, Applicant inaccurately describes the printouts as “registration records.” A cursory review of the printouts shows that there are as many applications listed as registrations/

As is clear from the face of the Notice and the exhibits at issue, the same are not “printed publications” nor “official records” as contemplated by and as required by Rule 2.122(e). As such, Paragraphs 2-7 and corresponding Exhibits B-F of the Notice should be stricken.

In the event that Paragraphs 2-7 and corresponding Exhibits B-F are not stricken, Opposer reserves the right to object to those portions of the Second Notice of Reliance on substantive grounds at the time of briefing.

Respectfully submitted,



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August 26, 2009

I hereby certify that a copy of the foregoing Opposer's Motion to Strike Applicant's Second Notice of Reliance in re: Franciscan Vineyards, Inc. v. Beauxkat Enterprises, LLC, Opp. No.91181755, was served on counsel for Applicant, this 26th day of August, 2009, by sending same via EMAIL to jpark@rpwfirm.com and First Class Mail, postage prepaid, to:

Justin D. Park
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