

ESTTA Tracking number: **ESTTA302800**

Filing date: **08/26/2009**

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	Motion to Strike
Filer's Name	Linda Kurth
Filer's e-mail	officeactions@br-tmlaw.com,k.hnasko@br-tmlaw.com
Signature	/Linda Kurth/
Date	08/26/2009
Attachments	Mot Strike Applicant's 3rd Notice of reliance.pdf (3 pages)(48948 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 THIRD NOTICE OF RELIANCE

Opposer hereby moves to strike Applicant's Third Notice of Reliance in its entirety on the basis 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 that the Applicant is improperly using the 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 Applicant's Third Notice of Reliance be stricken in its entirety.

Attached as Exhibit A to Applicant's Third Notice of Reliance are alleged print outs from Internet sites www.access.gpo.gov and edocket.access.gop.gov allegedly showing pages from the Code of Federal Regulations, Title 27. Attached as Exhibit B are alleged print outs from an Internet site allegedly showing pages of the revised Code of Washington. Attached as Exhibit C are alleged copies of pages from an Internet site, www.leginfo.ca.gov allegedly showing pages from the California Business and Professions Code.

The printouts in Exhibits A, B, and C are not official records and are otherwise not authenticated. See also *Plyboo America Inc. v. Smith & Fong. Co.*, 51 USPQ2d 1644, 1634 n.3

(TTAB 1999). As is often cited, "Internet postings are transitory in nature as they may be modified or deleted at any time without notice." TBMP § 704.08. Thus, the documents are not proper subject matter for notices of reliance. As such Applicant's Third Notice of Reliance should be stricken in its entirety.

In the event that Applicant's Third Notice of Reliance is not stricken, Opposer reserves the right to object to the Notice of Reliance on substantive grounds at the time of briefing.

Respectfully submitted,



Linda Kurth
John M. Rannells
Baker and Rannells PA
Attorneys for Opposer
575 Route 28, Suite 102
Raritan, N.J. 08869
908-722-5640/jmr@br-tmlaw.com

August 26, 2009

I hereby certify that a copy of the foregoing Opposer's Motion to Strike Applicant's Third 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
Romero Park & Wiggins P.S.
155-108th Avenue NE, Suite 202
Bellevue, WA 98004



Linda Kurth