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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	Motion to Strike
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Date	08/26/2009
Attachments	Mot Strike Applicant's 4th Notice of reliance.pdf (3 pages)(42967 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

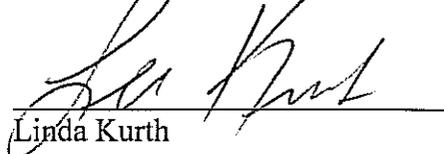
OPPOSER'S MOTION TO STRIKE APPLICANT'S FOURTH NOTICE OF RELIANCE

Opposer hereby moves to strike Applicant's Fourth Notice of Reliance in its entirety on the basis that the exhibits attached to the Notice are irrelevant to any issue before the Board in this proceeding.

Attached as Exhibits to Applicant's Fourth Notice of Reliance are excerpts from three magazines in general circulation. Applicant alleges that the excerpts demonstrate that usage of this trade channel or marketing method is not exclusive to beer, wine, or any other product. In *In re E. I. du Pont de Nemours & Co.*, 177 USPQ 563, 567 (CCPA 1973), the United States Court of Customs and Patent Appeals established a thirteen factor test to be followed by courts in determining likelihood of confusion in trademark cases. The third *du Pont* factor is the similarity or dissimilarity of established likely-to-continue trade channels. Exclusivity of a channel of trade or marketing method for the goods at issue is not one of the *du Pont* factors, and is completely irrelevant to the issue of likelihood of confusion between two similar marks being used for related goods. As such, Applicant's Fourth Notice of Reliance should be stricken in its entirety.

In the event that Applicant's Fourth 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,

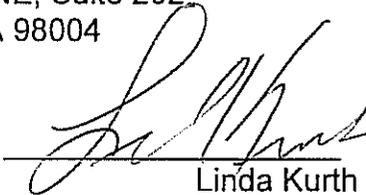


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August 26, 2009

I hereby certify that a copy of the foregoing Opposer's Motion to Strike Applicant's Fourth Notice of Reliance in re: Franciscan Vineyards, Inc. v. Beaukat 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