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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 5th Notice of reliance.pdf (4 pages)(102269 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 FIFTH NOTICE OF RELIANCE

Opposer hereby moves to strike Applicant's Fifth 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 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 Fifth Notice of Reliance be stricken in its entirety.

Attached as Exhibits to Applicant's Fifth Notice of Reliance are alleged copies of printouts and screenshots of Internet sites and articles from either unidentified or insufficiently identified magazines, including one that is just a table of contents from one magazine, purporting to show third party articles about Applicant. The exhibit includes the following:

- Screenshots of <http://blog.seattlepi.nwsourc.com>, titled, "What's on Tap: A Guide to Seattle Suds"
- <http://seattlest.com>, title, "The New Breweries Keep Coming"
- <http://seattlest.com>, title, "The Eastside – Beer Wasteland?"
- The table of contents of Beer Northwest Magazine article titled, "No Guts, No Beer: The Secrets Behind Starting a Brewery"
- <http://www.redmond-reporter.com>, titled, "Black Raven Brewery lands in Redmond"
- <http://www.redmond-reporter.com>, titled, "Mayor Taps the Keg"

- A page from the Seattle Weekly Magazine, titled, “Ravin’ ‘bout Raven”
- <http://www.seattledining.com>, titled, “Black Raven Brewing Company, Redmond’s new neighborhood brew pub”
- An article from an unidentified magazine titled, “Open at Last – Black Raven Brewing Company”
- <http://www.yelp.com> showing reviews of Black Raven Brewing
- An article allegedly from BEERnorthwest magazine, titled, “Openings – Black Raven Brewing Company”
- An article in Japanese allegedly from a magazine named Youmaga, showing a reference to Applicant, but without Cover, dates, or translation
- <http://www.printthis.clickability.com>, no article, just a photograph of Applicant and misidentified as pnwlocalnews.com
- <http://www.seattleweekly.com>, titled, Search & Distill: Going Back for Black Raven”
- Redmond Business newsletter, distributed by Greater Redmond Chamber of Commerce, titled, “Black Raven Brewery Redmond’s Newest Brew Pub”
- <http://www.northamericanbrewers.org>, purporting to show awards given by the North American Brewers’ Association

As is clear from the face of the Notice and the exhibits, the exhibits with Internet printouts and screenshots are not “printed publications” nor “official records” as contemplated by and as required by Rule 2.122(e) and are otherwise not authenticated. Thus, the documents are not proper subject matter for notices of reliance.

The articles from alleged magazines, do not include sufficient pages for authentication as explained:

- The exhibit page of the table of contents of Beer Northwest Magazine article titled, “No Guts, No Beer: The Secrets Behind Starting a Brewery” does not include the magazine cover, date of publication, or the pages of article to which the table of contents refers.
- The exhibit page allegedly from the Seattle Weekly Magazine, titled, “Ravin’ ‘bout Raven” includes no authentication evidence, specifically no cover page or other page showing the date of publication. There is no indication whatsoever that this article was actually printed in a magazine or other print media called Seattle Weekly.
- The exhibit page of an article titled, “Open at Last – Black Raven Brewing Company” is from an unidentified magazine. No authentication evidence was included with this page.
- An article allegedly from BEERnorthwest magazine, titled, “Openings – Black Raven Brewing Company” includes no cover pages, date of publication or other authentication.

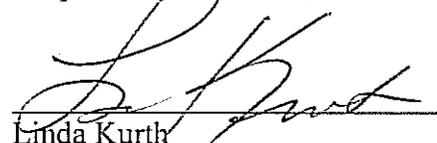
- An article in Japanese allegedly from a magazine named Youmaga, showing a reference to Applicant, was included without an English translation, magazine cover page, dates of publication or other authentication.
- The Redmond Business newsletter which purportedly is published by the Greater Redmond Chamber of Commerce, titled, “Black Raven Brewery Redmond’s Newest Brew Pub” does not qualify as an official record or printed publication as it is not in general circulation nor readily available to the public for authentication.

Applicant’s Fifth Notice of Reliance should be stricken in its entirety as all the exhibits attached to the Notice are neither “printed publications” nor “official records” as contemplated by and as required by Rule 2.122(e).

Moreover, Applicant’s Fifth Notice of Reliance does not comply with TBMP § 704.02. The notice merely includes proffered materials but does not include a cover sheet or a description of the proffered materials. Nor does not the notice indicate the relevance of those materials to the case.

In the event that Applicant’s Fifth Notice of Reliance is not stricken in its entirety, Opposer reserves the right to object to the Fifth Notice of Reliance in part or in its entirety 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 Fifth 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