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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	09/14/2009
Attachments	Reply to motion to strike.pdf (5 pages)(93759 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 REPLY TO APPLICANT'S RESPONSE TO MOTION TO STRIKE
APPLICANT'S NOTICES OF RELIANCE**

It is obvious from its Response that the Applicant has confused procedural objections, properly made under motions to strike, with substantive objections. TBMP § 707.02(b) provides for motions to strike on procedural grounds as follow:

Ordinarily, a procedural objection to a notice of reliance should be raised promptly, preferably by motion to strike if the defect is one that can be cured. However, if the ground for the objection is one that could not be cured even if raised promptly, the adverse party may wait and raise the procedural objection in or with its brief on the case. (Emphasis added).

707.02(b)(2) further provides:

An adverse party may object to a notice of reliance, in whole or in part, on the ground that the notice does not comply with the procedural requirements of the particular rule under which it was submitted, as, for example, that a 37 CFR § 2.122(e) notice of reliance on a printed publication does not include a copy of the printed publication, or does not indicate the general relevance thereof, or that the proffered materials are not appropriate for introduction by notice of reliance.

....If a motion to strike a notice of reliance raises objections that cannot be resolved simply by reviewing the face of the notice of

reliance (and attached documents), the Board will defer determination of the motion until final hearing. (Emphasis added).

Almost all of Opposer's objections to Applicant's Notices of Reliance are based on the inappropriateness of Applicant's evidence for introduction by notice of reliance. Opposer will briefly reply to Applicant's responses. The Board can make such determination from a simple review of the cover pages of each notice.

A. Applicant's First Notice of Reliance

Opposer confirms that Applicant has withdrawn Paragraph 2 and accompanying exhibit as improperly submitted.

B. Applicant's Second Notice of Reliance

Applicant improperly submitted TESS "search list" results without attaching registrations. Such listings provide no information concerning goods or services. Names on a list are not information that can be relied on for anything. Applicant should know better.

C. Applicant's Third Notice of Reliance

Once again, on its face the Notice of Reliance was inappropriately submitted as containing Internet downloads. These items submitted by notice of reliance were neither official records nor printed publications. As to Applicant's contention that there is no blanket prohibition on the submission of Internet documents, the case law and rules are crystal clear that there is, in fact, a blanket prohibition on submission of Internet downloads by notice of reliance UNLESS stipulated to the contrary by the parties. No such stipulation exists, and Opposer does not so stipulate, accordingly, there is nothing to cure.

D. Applicant's Fourth Notice of Reliance

Opposer did not object to the submission of the properly included magazine excerpts, only to the incorrect statements by Applicant as to its relevance and meaning. No such relevance exists in the context of this proceeding.

E. Applicant's Fifth Notice of Reliance

Applicant's fifth notice of reliance does not include a cover page explaining the attached Internet printouts nor explaining any alleged relevance. Opposer objects to a request by Applicant to cure this defect as being futile.

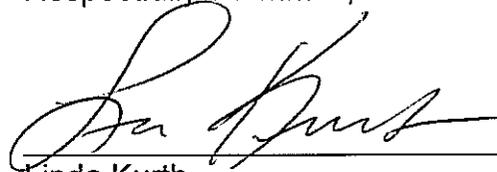
Even if Applicant were to submit a replacement notice with a proper cover page, any such cover page, the notice would still be defective. The attached Internet printouts are not official records or "printed publications" as that term is used in the Trademark Rules of Procedure. Applicant's defect cannot be cured. Again, Applicant's contention that there is no blanket prohibition on the submission of Internet documents by way of Notice of Reliance is incorrect UNLESS stipulated to the contrary by the parties. No such stipulation exists, and Opposer does not so stipulate, accordingly, there is nothing to cure and Opposer's motion to strike is appropriate.

F. Applicant's Sixth Notice of Reliance

Finally, the face of the sixth notice of reliance again clearly and simply reveals that the Internet downloads were inappropriately submitted under a notice of reliance. Wikipedia is not a recognized authority whose accuracy cannot be reasonably questioned.

Opposer respectfully requests that the Board grants its six (6) motions to strike Applicant's notices of Reliance in their entireties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Linda Kurth", written over a horizontal line.

Linda Kurth
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September 14, 2009

I hereby certify that a copy of the foregoing Opposer's Reply to Applicant's Response to Motion to Strike Applicant's Notices of Reliance in re: Franciscan Vineyards, Inc. v. Beaukat Enterprises, LLC, Opp. No.91181755, was served on counsel for Applicant, this 14th day of September, 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