

ESTTA Tracking number: **ESTTA295486**

Filing date: **07/15/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	White Rock Distilleries, Inc.
Granted to Date of previous extension	07/15/2009
Address	21 Saratoga Street Lewiston, ME 04241 UNITED STATES
Attorney information	Daniel I. Schloss Greenberg Traurig, LLP 200 Park Avenue, 34th Floor New York, NY 10166 UNITED STATES schlossd@gtlaw.com Phone:212-801-9200

Applicant Information

Application No	77598674	Publication date	03/17/2009
Opposition Filing Date	07/15/2009	Opposition Period Ends	07/15/2009
Applicant	Franciscan Vineyards, Inc. 1178 Galleron Road St. Helena, CA 94574 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 2004/05/00 First Use In Commerce: 2004/05/00 All goods and services in the class are opposed, namely: Wines
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Grounds for Opposition

The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Failure to function as a mark under 15 U.S.C. Sections 1051-1052, 1127

Related Proceedings	91185984
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Attachments	NotOpp77598674.pdf (9 pages)(448143 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Daniel I. Schloss/
Name	Daniel I. Schloss
Date	07/15/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF APPLICATION

Mark: PINNACLES RANCHES
Applicant: Franciscan Vineyards, Inc.
Serial No.: 77/598,674
Published in
the **Official Gazette**: March 17, 2009

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WHITE ROCK DISTILLERIES, INC., :
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 Opposer, :
 :
 :
 v. : Opposition No.
 :
 :
FRANCISCAN VINEYARDS, INC., :
 :
 :
 Applicant. :
-----X

NOTICE OF OPPOSITION

White Rock Distilleries, Inc. (hereinafter “Opposer”), a corporation organized and existing under the laws of the State of Maine and having a principal place of business at 21 Saratoga Street, Lewiston, Maine 04241, believes that it will be damaged by the registration of the mark shown in Application Serial No. 77/598,674 by Franciscan Vineyards, Inc. (hereinafter “Applicant”), and having been previously granted an extension of time to oppose, hereby opposes same.

As grounds for opposition, Opposer alleges the following:

1. Opposer White Rock Distilleries, Inc. is a manufacturer and importer of approximately 150 brands of fine spirits and liqueurs and operates a state-of-the-art facility on ten acres in Lewiston, Maine.

2. Opposer filed Application Serial No. 78/166,136 for the mark PINNACLE for “vodka” on an intent-to-use basis on September 20, 2002 (“Opposer’s Application”).

3. Opposer commenced use of the trademark PINNACLE in commerce for vodka at least as early as April 18, 2003 and filed an Amendment to Allege Use on March 5, 2007.

4. During the time Opposer has used the PINNACLE mark, it has expended large sums of money to advertise and promote its vodka products under the mark. As a result of such advertising and promotion, Opposer’s products sold and advertised under its PINNACLE mark has acquired public and consumer recognition throughout the United States, enjoys valuable goodwill, and are now assets of considerable value to Opposer.

5. Currently, there is an ongoing opposition proceeding before the Board, Opposition No. 91185984, in which Applicant is opposing Opposer’s Application based on an alleged likelihood of confusion with Applicant’s purported mark PINNACLES for wine, which is the subject of Registration No. 0997378.

6. In Opposition No. 91185984, Applicant amended its Notice of Opposition against Opposer’s Application to add claims of allegedly superior common-law rights in the purported mark PINNACLES RANCHES for wines. Since Applicant has asserted its purported PINNACLES RANCHES mark against Opposer’s application for the mark PINNACLE for vodka in Opposition No. 91185984, Opposer has standing to oppose this application.

COUNT I
Primarily Geographically Descriptive Under 15 U.S.C. §1052(e)(2)

7. Applicant’s proposed mark PINNACLES RANCHES is primarily geographically descriptive of the location of origin of Applicant’s wine as such location is just a few miles from an area in Monterey County, California known as “Pinnacles Ranch” and located at the outskirts

of the Pinnacles National Monument, which is administered by the National Park Service and attracts more than 150,000 visitors annually.

8. Since the term “Pinnacles Ranches” merely identifies the geographic area of origin of Applicant’s wines, consumers will correctly perceive the term as the name of a geographic location.

9. Attached as Exhibit A to this Notice of Opposition are true and correct copies of printouts from the web site of the United States Department of the Treasury’s Alcohol and Tobacco Tax and Trade Bureau (“TTB”), showing Certificates Label Approval (“COLAs”) for labels affixed to wines sold by Applicant. A COLA must be obtained before a wine may be legally sold in the United States.

10. The portions of the COLAs showing the approved label images submitted by Applicant include maps on which consumers can find the geographic location of Applicant’s “Pinnacles Ranches.”

11. Applicant’s Mark is unregistrable on the Principal Register because the primary significance of “Pinnacles Ranches” is the name of a geographic location, and as such, it is primarily geographically descriptive of the origin of Applicant’s goods pursuant to 15 U.S.C. §1052(e)(2).

COUNT II
Failure to Function as a Mark Under 15 U.S.C. §§1051-1052, 1127

12. Applicant does not use the term “Pinnacles Ranches” in a manner likely to be perceived by consumers as having any trademark significance. Instead, the term is used in an ancillary non-trademark manner that merely provides information regarding the geographic origin of Applicant’s goods, which goods are sold under a different mark, namely, ESTANCIA,

as shown in the specimen submitted by Applicant in the application herein opposed. A copy of the specimen is attached to this Notice of Opposition as Exhibit B.

13. Pursuant to 15 U.S.C. §§1051-1052, 1127, the term “Pinnacles Ranches,” as used by Applicant, does not function as a trademark to identify and distinguish Applicant’s goods.

COUNT III
Fraud Under 15 U.S.C. §1064(3)

14. In Applicant’s Application, Applicant failed to disclose the geographic significance of the term “Pinnacles Ranches” to the United States Patent and Trademark Office (“USPTO”).

15. Opposer thus committed fraud on the USPTO by withholding material information regarding its purported mark “Pinnacles Ranches” which, if known to the USPTO, would have resulted in a refusal to register Applicant’s Application pursuant to 15 U.S.C. §1052(e)(2).

WHEREFORE, Opposer prays that this opposition be sustained, that registration be denied to Applicant’s Application Serial No. 77/598,674, and that the Board grant such other relief as may be just and proper.

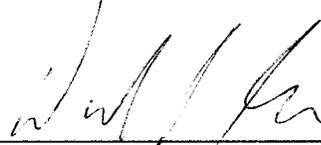
Please recognize as attorneys for Opposer, Daniel I. Schloss, Masahiro Noda, and Alan N.

Sutin of the law firm of Greenberg Traurig, LLP. All correspondence should be addressed to the attention of Daniel I. Schloss at said firm, 200 Park Avenue, 34th Floor, New York, NY 10166.

Respectfully submitted,

Dated: July 15, 2009

By:



Daniel I. Schloss
Masahiro Noda
Alan N. Sutin
GREENBERG TRAURIG, LLP
200 Park Avenue, 34th Floor
New York, New York 10166
(212) 801-9200

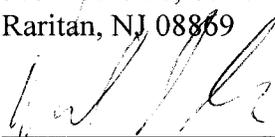
*Attorneys for Opposer
White Rock Distilleries, Inc.*

CERTIFICATE OF SERVICE

Date: July 15, 2009

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Opposition has been served by first class mail, postage prepaid, this 15th day of July 2009 upon Applicant at the following correspondence address of its counsel of record:

Stephen L. Baker, Esq.
Baker & Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869



Daniel I. Schloss

EXHIBIT A

OMB No. 1513-0020 (01/31/2009)

**DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
APPLICATION FOR AND CERTIFICATION/EXEMPTION OF
LABEL/BOTTLE APPROVAL**
(See Instructions and Paperwork Reduction Act Notice Below)

PART I - APPLICATION

1 REP. ID NO. (If any) 08064-003-000003		3 SOURCE OF PRODUCT (Required) <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Imported	
2 PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required) BW-CA-6212		5 TYPE OF PRODUCT (Required) <input checked="" type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input type="checkbox"/> MALT BEVERAGES	
4 SERIAL NUMBER (Required) YEAR: 0 8 - 0 1 7 4		8 NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT, OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON THE LABEL (Required) Franciscan Vineyards, Inc. 26200 Arnold Drive Sonoma, CA 95476 DBA Estancia Estates	
6 BRAND NAME (Required) Estancia		8a. MAILING ADDRESS, IF DIFFERENT Constellation Wines U.S. 235 North Bloomfield Road Canandagua, NY 14424	
7 FANCIFUL NAME (If any) Pinnacles Ranches		11 LAB NO. & DATE/PRE-IMPORT NO. & DATE (If any)	
9 EMAIL ADDRESS chris.benziger@cwine.com		18 TYPE OF APPLICATION (Check applicable box(es)) a <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL b <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation) c <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL TOTAL BOTTLE CAPACITY BEFORE CLOSURE _____ (Fill in amount) d <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID _____	
12 NET CONTENTS 375 ml - 3.0 L	13 ALCOHOL CONTENT 13.5%	14 WINE APPELLATION (If on label) Monterey	
15 WINE VINTAGE DATE (If on label) 2007	16 PHONE NUMBER 585-396-7570	17 FAX NUMBER 585-396-7831	
19 SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (b) BLOWN, BRANDED OR EMBOSSED ON THE CONTAINER (e.g., net contents, etc.) THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS. Net contents to be embossed on container.			

PART II - APPLICANT'S CERTIFICATION

Under the penalties of perjury, I declare that all statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31 Certificate/Exemption of Label/Bottle Approval.

20. DATE OF APPLICATION 2/29/08	21. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT <i>Christopher H. Benziger</i>	22. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT Christopher H. Benziger, Attorney-in-Fact
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PART III - TTB CERTIFICATE

This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.

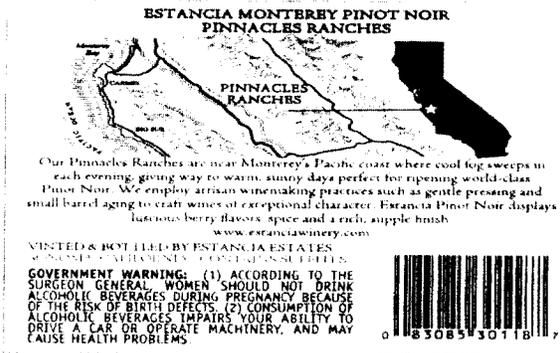
23. DATE ISSUED MAR 18 2008	APPLICANT'S AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU <i>Anna M. Seltzer</i>
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FOR TTB USE ONLY

QUALIFICATIONS

EXPIRATION DATE (If any)

AFFIX COMPLETE SET OF LABELS BELOW (See General Instructions 4, 6 and 7)



TTB F 5100.31 (6/2006) PREVIOUS EDITIONS ARE OBSOLETE

OMB No. 1513-0020 (01/31/2009)

**DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
APPLICATION FOR AND CERTIFICATION/EXEMPTION OF
LABEL/BOTTLE APPROVAL**
(See Instructions and Paperwork Reduction Act Notice Below)

PART I - APPLICATION

1 REP. ID. NO. (If any) 08064-003-000009

2 PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required)
BW-CA-6212

3 SOURCE OF PRODUCT (Required)
 Domestic Imported

4 SERIAL NUMBER (Required)
YEAR: 0 8 - 0 1 7 3

5 TYPE OF PRODUCT (Required)
 WINE
 DISTILLED SPIRITS
 MALT BEVERAGES

8 NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT, OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON THE LABEL (Required)
Franciscan Vineyards, Inc.
26200 Arnold Drive
Sonoma, CA 95476
DBA Estancia Estates

8a. MAILING ADDRESS, IF DIFFERENT
Constellation Wines U.S.
235 North Bloomfield Road
Canandaigua, NY 14424

6 BRAND NAME (Required)
Estancia

7 FANCIFUL NAME (If any)
Pinnacles Ranches

9 EMAIL ADDRESS
chris.benziger@wine.com

10 FORMULA/SOP NO. (If any)

11 LAB. NO. & DATE/PRE-IMPORT NO. & DATE (If any)

12 NET CONTENTS
375 ml - 3.0 L

13 ALCOHOL CONTENT
13.5%

14 WINE APPELLATION (If on label)
Monterey County

18 TYPE OF APPLICATION (Check applicable box(es))
a CERTIFICATE OF LABEL APPROVAL
b CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL
"For sale in _____ only" (Fill in State abbreviation)
c DISTINCTIVE LIQUOR BOTTLE APPROVAL TOTAL BOTTLE CAPACITY BEFORE CLOSURE
(Fill in amount)
d RESUBMISSION AFTER REJECTION
TTB ID

15 WINE VINTAGE DATE (If on label)
2007

16 PHONE NUMBER
585-396-7570

17 FAX NUMBER
585-396-7831

19 SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (b) BLOWN, BRANDED OR EMBOSSED ON THE CONTAINER (e.g., net contents, etc.). THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS
Net contents to be embossed on container.

PART II - APPLICANT'S CERTIFICATION

Under the penalties of perjury, I declare that all statements appearing on this application are true and correct to the best of my knowledge and belief, and that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31 Certificate/Exemption of Label/Bottle Approval.

20 DATE OF APPLICATION 2-29-08

21 SIGNATURE OF APPLICANT OR AUTHORIZED AGENT
Christopher H. Benziger

22 PRINT NAME OF APPLICANT OR AUTHORIZED AGENT
Christopher H. Benziger, Attorney-in-Fact

PART III - TTB CERTIFICATE

This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.

23 DATE ISSUED MAR 19 2008

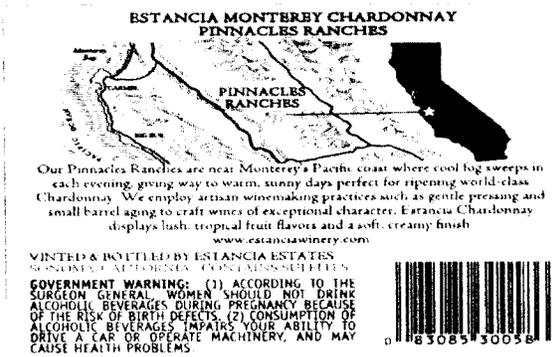
24 AUTHORITY SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
[Signature]

FOR TTB USE ONLY

QUALIFICATIONS

EXPIRATION DATE (If any)

AFFIX COMPLETE SET OF LABELS BELOW (See General Instructions 4, 6 and 7)



TTB F 5100.31 (6/2006) PREVIOUS EDITIONS ARE OBSOLETE

OMB No. 1513-0020 (01/31/2009)

TTB ID: 07323-003-000004

1. REP. ID NO. (If any): CT 81 OR 01

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
APPLICATION FOR AND CERTIFICATION/EXEMPTION OF
LABEL/BOTTLE APPROVAL

(See Instructions and Paperwork Reduction Act Notice Below)

PART I - APPLICATION

2. PLANT REGISTRY BASIC PERMIT/BREWER'S NO. (Required): [Blank]

3. SOURCE OF PRODUCT (Required): Domestic Imported

4. SERIAL NUMBER (Required): YEAR 0 7 0 1 5 1

5. BRAND NAME (Required): Pinnacles Ranches

6. MAIL ADDRESS: chris.benziger@ewine.com

7. PLANT/REG. NO. (If any): [Blank]

8. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT, OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON THE LABEL (Required): Franciscan Vineyards, Inc, 26200 Arnold Drive, Sonoma, CA 95476, DBA: Estancia Estates

8a. MAILING ADDRESS, IF DIFFERENT: Constellation Wines U.S., 235 North Bloomfield Road, Canandaigua, NY 14424

9. FORMULA/SOP NO. (If any): [Blank]

10. LAB. NO. & DATE PRE-IMPORT NO. & DATE (If any): [Blank]

11. TYPE OF APPLICATION (Check applicable box(es)):
 CERTIFICATE OF LABEL APPROVAL
 CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL
 DISTINCTIVE LIQUOR BOTTLE APPROVAL TOTAL BOTTLE CAPACITY BEFORE CLOSURE
 RESUBMISSION AFTER REJECTION

12. NET CONTENTS: 750 ml / 30 FL OZ

13. ALCOHOL CONTENT: 13.5%

14. WINE APPELLATION (If on label): Monterey County

15. VINE VINTAGE DATE (If on label): 2007

16. PHONE NUMBER: 888-396-7831

17. FAX NUMBER: 888-396-7831

18. SHOW ANY WORDING (as appearing on materials firmly affixed to the container, e.g., caps, corkscrews, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (if BLOWN, BRANDED OR EMBOSSED ON THE CONTAINER as per corkscrews etc.). THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS:
 On cork: Estancia, Uncork & Unwind, www.estanciawinery.com

PART II - APPLICANT'S CERTIFICATION

Under the penalties of perjury, I declare that all statements appearing on this application are true and correct to the best of my knowledge and belief, and that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB Form 5100.3 Certificate/Exemption of Label/Bottle Approval.

20. DATE OF APPLICATION: 11/17/07

21. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT: [Signature]

22. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT: Christopher H. Benziger, Attorney-in-Fact

PART III - TTB CERTIFICATE

This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.

23. DATE ISSUED: NOV 27 2007

24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU: [Signature]

FOR TTB USE ONLY

25. QUALIFICATIONS: [Blank]

26. EXPIRATION DATE (if any): [Blank]

AFFIX COMPLETE SET OF LABELS BELOW (See General Instructions 4, 6 and 7)

