

ESTTA Tracking number: **ESTTA332972**

Filing date: **02/18/2010**

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

Proceeding	91191056
Party	Defendant Franciscan Vineyards, Inc.
Correspondence Address	Stephen L. Baker BAKER & RANNELLS, PA 575 ROUTE 28 STE 102 RARITAN, NJ 08869-1354 UNITED STATES officeactions@br-tmlaw.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	John M. Rannells
Filer's e-mail	officeactions@br-tmlaw.com, k.hnasko@br-tmlaw.com, jmr@br-tmlaw.com, SchlossD@gtlaw.com
Signature	/john rannells/
Date	02/18/2010
Attachments	91191056 reconsider.pdf (4 pages)(156365 bytes)

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

-----X
White Rock Distilleries, Inc.

Opposer

v.

Franciscan Vineyards, Inc.

Applicant
-----X

Opposition No. 91191056

Mark: PINNACLES RANCHES

Serial No.: 77/598674

**APPLICANT'S MOTION FOR RECONSIDERATION
OF THE BOARD'S DECISION DENYING APPLICANT'S MOTION
TO DISMISS THE OPPOSITION IN ITS ENTIRETY
BASED UPON THE OPPOSER'S INITIAL DISCLOSURES**

On February 12, 2010, Applicant filed a motion to dismiss based upon the disclosures made by Opposer in its Initial Disclosures served upon Applicant. The Board, by decision dated February 18, 2010, summarily dismissed the motion stating that Applicant's motion "is in fact a motion to compel adequate initial discovery" and "is not supported by the required written statement . . . of good faith effort" to resolve.

Applicant respectfully submits that the Board has misconstrued Applicant's motion and that reconsideration of the motion to dismiss is in order. To the extent that Applicant alternatively moved to compel Opposer to amend its disclosures, Applicant withdraws the alternative motion.

The basis of Applicant's motion to dismiss is not grounded in inadequate disclosure. It is not "in fact a motion to compel adequate initial discovery". With the withdrawal of Applicant's alternative motion, Applicant is not moving to compel anything and is not moving for Opposer to

amend its Initial Disclosures or to provide so-called complete responses to anything. There is no discovery dispute.

Opposer's Initial Disclosures were timely served. Applicant is not arguing that the disclosures are incomplete. Quite to the contrary, Applicant argues that the disclosures are complete and that Opposer, vis-à-vis its Initial Disclosure document, has not a single shred of evidence to support the direct allegations and claims upon which the Notice of Opposition is allegedly based¹. There is nothing to compel here. There is no dispute. Disclosure was made.

There is no reason, legal or otherwise that Applicant cannot take Opposer at its word and on the representations and disclosures made by Opposer in its Initial Disclosures. While Initial Disclosures are a discovery vehicle, they are mandatory. They are required under the rules². Trademark Rules 2.120(a)(1), 2.120(a)(2), and 2.120(e)(1).

The Notice of Opposition in this matter has two Counts/claims, namely (1) that Applicant's mark is primarily geographically descriptive, and (2) that Applicant's mark fails to function as a mark. Opposer's Initial Disclosure document, complete in its own four corners, evidences that there are no persons, information or documents concerning, in any way, Opposer's claims set forth in its Notice of Opposition. There can be no dispute in that regard.

As stated in Rule 26(a)(1)(E) F.R.Civ.P. (*Basis for Initial Disclosure; Unacceptable Excuses*): "A party must make its initial disclosures based on the information then reasonably available to it." Applicant takes Opposer at its word, namely on the representations made by Opposer in its Initial Disclosures. Certainly, if Applicant took formal discovery of Opposer (i.e., through interrogatories, documents requests, and/or depositions) and Opposer responded without

¹ Opposer's allegations and claims are not made on "information and belief" but rather are directly and specifically averred.

² Whether a party serves discovery requests upon its adversary is permissive.

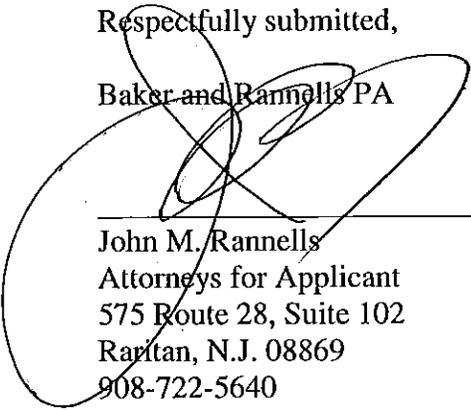
any evidence to support the allegations and claims in the Notice of Opposition, Applicant would have the right to file a motion for summary judgment and would not be required to first confer with its adversary to resolve anything.

Treating Opposer's Initial Disclosures as a discovery response provides adequate reason to dismiss the opposition for Opposer's failure to have any basis to its claims.

For the foregoing reasons, Applicant respectfully submits that reconsideration is in order and that Applicant's motion to dismiss should be granted.

Respectfully submitted,

Baker and Rannells PA



John M. Rannells
Attorneys for Applicant
575 Route 28, Suite 102
Raritan, N.J. 08869
908-722-5640
jmr@br-tmlaw.com

CERTIFICATE OF SERVICE

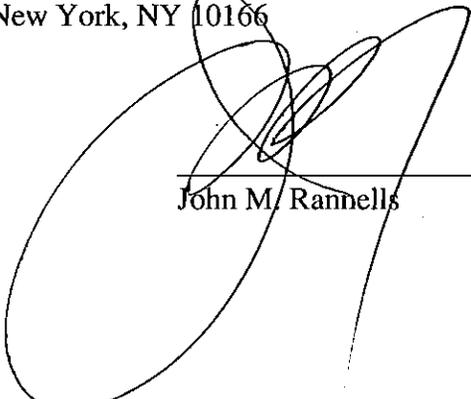
The undersigned hereby certifies that a true and correct copy of the foregoing

**APPLICANT'S MOTION FOR RECONSIDERATION
OF THE BOARD'S DECISION DENYING APPLICANT'S MOTION
TO DISMISS THE OPPOSITION IN ITS ENTIRETY
BASED UPON THE OPPOSER'S INITIAL DISCLOSURES**

has been served via first class mail, postage prepaid, this 18th day of February, 2010 upon
Opposer at the following address of its counsel of record:

Daniel I. Schloss
Greenberg Traurig, LLP
200 Park Avenue, 34th Floor
New York, NY 10166

Dated: February 18, 2010



John M. Rannells