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

Proceeding	91191056
Party	Plaintiff White Rock Distilleries, Inc.
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Attachments	White Rock's Statement of Evidentiary Objections FINAL.pdf ( 7 pages )(106629 bytes )

**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

WHITE ROCK DISTILLERIES, INC.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91191056
	)	
FRANCISCAN VINEYARDS, INC.,	)	
	)	
Applicant.	)	
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**OPPOSER WHITE ROCK DISTILLERIES, INC.’S  
STATEMENT OF EVIDENTIARY OBJECTIONS**

PLEASE TAKE NOTICE that Opposer, White Rock Distilleries, Inc. (hereinafter “White Rock”), pursuant to Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) §801.03, hereby files its Statement of Evidentiary Objections to certain of Applicant Franciscan Vineyards, Inc.’s exhibits submitted with Applicant’s Notices of Reliance and to certain of the exhibits to trial testimony of Geoffrey Scott Black, Daniel Comunale, Jon E. Guggino, Christine Lilienthal, and Robert Rannells. Specifically, White Rock objects to the introduction in evidence of the following documents:

1. White Rock objects to the admission in evidence of Exhibit A to the testimony of Geoffrey Scott Black – consisting of FY 2010 financial figures for “Pinnacles Skus” gross sales and “Pinnacles Related” marketing spend – to the extent that such is irrelevant to any issue in the instant proceeding. Such evidence must be excluded under Fed. R. Evid. 402. Fed R. Evid. 402

(“Evidence which is not relevant is not admissible.”); *Magnivision, Inc. v. Bonneau Co.*, 115 F.3d 956, 961 (Fed. Cir. 1997) (excluding evidence under Fed R. Evid. 402 where there was “no consequential fact to be proved” by the evidence in question); TBMP § 101.02.

2. White Rock objects to the admission in evidence of Exhibit 1 to the declaration of Daniel Comunale (hereinafter “Comunale Dec. Ex. \_\_\_”), consisting of the TDR record for Reg. No. 997,378 for Applicant’s mark PINNACLES, as such record has no probative value, and hence is irrelevant, in the instant proceeding where the only issues are whether Applicant’s purported mark “Pinnacles Ranches” is primarily geographically descriptive and whether it functions as a mark. Such evidence must be excluded under Fed. R. Evid. 402. *Id.*

3. White Rock objects to the admission in evidence of Comunale Dec. Ex. 2, namely, printouts of third party websites identifying “pinnacles formations around the world.” White Rock objects to the admission of such documents on grounds of hearsay, to the extent such printouts are offered to prove the truth of the matters asserted therein. *Standard Knitting, Ltd. v. Toyota Jidosha Kabushiki Kaisha*, 77 U.S.P.Q. 1917, 1922 (T.T.A.B. 2006) (sustaining objection to publication on hearsay grounds because “it is not admissible for the truth of the matters shown therein”). Further, White Rock objects on the grounds of relevance. Fed R. Evid. 402; *Magnivision*, 115 F.3d at 961; TBMP § 101.02. The issue in the instant proceeding is whether the term “Pinnacles Ranches” is primarily geographically descriptive -- not “Pinnacles” standing alone -- and none of the proffered printouts refer to any other location called “Pinnacles Ranches.”

4. White Rock objects on grounds of relevance to the admission in evidence of Comunale Dec. Ex. 4, consisting of printouts of various websites identifying manufacturers that purportedly produce both wine and vodka. These printouts have no probative value, and hence

are irrelevant in the instant proceeding, in which the only issues are whether Applicant's purported mark "Pinnacles Ranches" is primarily geographically descriptive and whether it functions as a mark. Fed R. Evid. 402; *Magnivision*, 115 F.3d at 961; TBMP § 101.02. Such evidence must therefore be excluded under Fed. R. Evid. 402. *Id.*

5. White Rock objects to the admission in evidence of Exhibit 4 to the testimony of Jon E. Guggino (hereinafter "Guggino Dep. Ex.") on grounds of relevance. Exhibit 4 consists of a purported TESS database printout of a different mark purportedly owned by Applicant. Such printout has no probative value, and hence is irrelevant, in the instant proceeding where the only issues are whether Applicant's purported mark "Pinnacles Ranches" is primarily geographically descriptive and whether it functions as a mark. Such evidence must be excluded under Fed. R. Evid. 402.

6. White Rock objects to the admission in evidence of Guggino Dep. Ex. 6 on grounds of relevance. Exhibit 6 contains several cease and desist letters sent by Applicant to third parties with the subject line "Your Unlawful Use of the PINNACLES trademark" and some subsequent correspondence in response thereto. None of the documents contained in Guggino Dep. Ex. 6 has any probative value, and hence is irrelevant in the instant proceeding where the only issues are whether Applicant's purported mark "Pinnacles Ranches" is primarily geographically descriptive and whether it functions as a mark. Such evidence must be excluded under Fed. R. Evid. 402.

7. White Rock objects to the admission in evidence of Exhibit B to the testimony of Christine Lilienthal (hereinafter "Lilienthal Dep. Ex. \_\_\_") to the extent that such is not properly made of record. Trademark Rule 2.122(d)(2) states that "[A] registration owned by any party to a proceeding may be made of record in the proceeding by that party by appropriate identification

and introduction during the taking of testimony or by filing a notice of reliance, which shall be accompanied by a copy (original or photocopy) of the registration prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration.” 37 C.F.R. § 2.122(d)(2). Exhibit B is comprised of a printout of the TESS database entry for Reg. No. 997378 for the mark PINNACLES without corresponding assignment records and changes in registration. As Exhibit B has no information about either the current status or title to the registration, such is not admissible. *See Research in Motion Ltd. v. NBOR Corp.*, 92 U.S.P.Q.2d 1926, 1928-29 & n.2 (T.T.A.B. 2009) (“A plaintiff relying on a TARR printout should be certain that the printout accurately reflects current title in the plaintiff.”). Further, White Rock objects on the basis that the witness lacked personal knowledge regarding the registration of PINNACLES as the mark was registered in 1974 – well before Ms. Lilienthal’s employment with Applicant and before Applicant purportedly owned the registration – and she had no personal knowledge regarding the renewal of the trademark registration during her tenure with Applicant. Fed. R. Evid. 602.

8. White Rock objects to the admission in evidence of Lilienthal Dep. Ex. F which was not properly made of record. Exhibit F is a TESS database printout of Registration No. 3148281 for the mark KEYES CANYON RANCHES. Since the TESS database printout does not show the current status of and current title to the registration as required under Trademark Rule 2.122(d)(2), Exhibit F is inadmissible. *See* 37 C.F.R. § 2.122(d)(2). Further, White Rock objects on the basis that the witness lacked personal knowledge as Ms. Lilienthal was not involved in prosecution or maintenance of trademarks during her tenure with Applicant. Fed. R. Evid. 602.

9. White Rock objects on grounds of relevance to the admission in evidence of Lilienthal Depo. Ex. O – consisting of photographs of a third party wine bottles showing use of the term “Valley Oaks” on the wine label and on the capsule. The only issues in the instant proceeding are whether Applicant’s purported mark “Pinnacles Ranches” is primarily geographically descriptive and whether it functions as a mark. Such evidence must be excluded under Fed. R. Evid. 402. *Id.*

10. White Rock objects to the admission in evidence of Lilienthal Depo. Ex. P to the extent that such is not properly made of record. Exhibit P is a TESS database printout of a third party registration for the mark KEYES CANYON RANCHES. Since the TESS database printout does not show the current status of and current title to the registration as required under Trademark Rule 2.122(d)(2), Exhibit P is inadmissible. *See* 37 C.F.R. § 2.122(d)(2). Further, White Rock objects on the basis that the witness lacked personal knowledge as Ms. Lilienthal was not involved in prosecution or maintenance of trademarks during her tenure with Applicant. Fed. R. Evid. 602.

11. White Rock objects to the admission in evidence of Exhibit 1 to the declaration of Robert Rannells as such evidence is wholly irrelevant in the instant proceeding. Fed R. Evid. 402; *Magnivision*, 115 F.3d at 961; TBMP § 101.02. Applicant introduced numerous photographs depicting wine bottles in their entirety as well as the capsule/foil area at the top of each bottle during its cross examination of Opposer’s expert witness Paul W. Reidl.<sup>1</sup> *See* Reidl Dep. Ex. 26. The only pertinent issues in the instant proceeding are whether Applicant’s purported mark “Pinnacles Ranches” is primarily geographically descriptive and whether it functions as a mark. Accordingly, such evidence must be excluded under Fed. R. Evid. 402. *Id.*

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<sup>1</sup> For the sole purpose of laying the foundation of the numerous photographs introduced by Applicant during the Reidl deposition, Opposer agreed and the parties stipulated to the submission of the declaration of Robert Rannells and the photographs as testimony. Opposer maintained its right to object on other grounds.

12. White Rock objects to the admission in evidence of Applicant's First Notice of Reliance Pursuant to 37 C.F.R. § 2.122(d)(2) (Docket Entry # 37) and Applicant's Corrected First Notice of Reliance Pursuant to 37 C.F.R. § 2.122(d)(2) (Docket Entry # 38), consisting of a copy of the registration certificate for Reg. No. 997,378 for the mark PINNACLES showing current title and status as well as a copy of the registration certificate for the mark PINNACLE issued in 1974 prior to a subsequent amendment to PINNACLES. Such record has no probative value, and hence is irrelevant, in the instant proceeding where the only issues are whether Applicant's purported mark "Pinnacles Ranches" is primarily geographically descriptive and whether it functions as a mark. Such evidence must be excluded under Fed. R. Evid. 402. *Id.*

13. White Rock objects to the admission in evidence of Applicant's First Notice of Reliance Pursuant to 37 CFR §2.122(e) (Docket Entry # 41) consisting of official records of the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Dept. of Treasury, namely, copies of various label approvals owned by E. & J. Gallo downloaded from the online public COLA registry and officials records of the U.S. Patent and Trademark Office identifying various U.S. trademark registrations owned by E. & J. Gallo. Such record has no probative value, and hence is irrelevant, in the instant proceeding where the only issues are whether Applicant's purported mark "Pinnacles Ranches" is primarily geographically descriptive and whether it functions as a mark. Such evidence must be excluded under Fed. R. Evid. 402. *Id.*

For the foregoing reasons, White Rock respectfully requests the Board to strike the aforementioned evidence from the record in the instant proceeding and give such documents and testimony and declarations related thereto no consideration.

Respectfully submitted,

Dated: June 17, 2011

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CERTIFICATE OF SERVICE

Date: June 17, 2011

The undersigned hereby certifies that a true and correct copy of the foregoing Opposer White Rock Distilleries, Inc.'s Statement of Evidentiary Objections has been served by first class mail, postage prepaid, this 17<sup>th</sup> day of June 2011 upon Franciscan Vineyards, Inc. at the following correspondence address of its counsel of record:

John M. Rannells, Esq.  
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/DANIEL I. SCHLOSS/  
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