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

Proceeding	91191056
Party	Defendant Franciscan Vineyards, Inc.
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Date	11/17/2009
Attachments	91191056 answer.pdf (5 pages)(203303 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 ANSWER TO THE NOTICE OF OPPOSITION
AND APPLICANT'S AFFIRMATIVE DEFENSES**

Applicant, Franciscan Vineyards, Inc., Inc. ("Applicant"), through its undersigned attorneys, responds to the Notice of Opposition as follows.

1. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations of paragraph 1 of the Notice of Opposition and leaves Opposer to its proofs.

2. Applicant admits that according to the TDR database records of the U.S. Patent and Trademark Office, Opposer filed ITU Application Ser. No. 78166136 for the mark PINNACLE for "vodka" on September 20, 2002.

3. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations of paragraph 3 of the Notice of Opposition and leaves Opposer to its proofs.

4. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations of paragraph 4 of the Notice of Opposition and leaves Opposer to its proofs.

5. Admitted, except that the bases upon which Applicant is opposing Opposer's Application in Opp. No. 91185984 speak for themselves and are not limited by the description set forth in paragraph 5 of this Notice of Opposition.

6. Admitted, except that the claims and allegations made in Opp. No. 91185984 speak for themselves and are not limited by the description set forth in paragraph 6 of this Notice of Opposition.

COUNT I

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

7. Applicant denies that its mark, PINNACLES RANCHES is primarily geographically descriptive of the location of origin of Applicant's wine. Applicant does not know what the Applicant is referring to as "an area in Monterey County, California known as Pinnacles Ranch" and therefore has insufficient knowledge or information upon which to form a belief concerning the allegations made concerning the same and leaves Opposer to its proofs. To the extent that a third party area known as "Pinnacles Ranch" exists, Applicant denies that the existence of the same is relevant or that it in any way renders Applicant's PINNACLES RANCHES mark primarily geographically descriptive. To the extent Opposer's reference is intended to refer to Applicant's own vineyards, Applicant denies that it in any way renders Applicant's PINNACLES RANCHES mark primarily geographically descriptive. Applicant admits the existence of Pinnacles National Monument but denies that the existence of the same is relevant or that it in any way renders Applicant's PINNACLES RANCHES mark primarily geographically descriptive. Applicant has insufficient knowledge or information upon which to form a belief concerning the remaining allegations of paragraph 7 of the Notice of Opposition and leaves Opposer to its proofs.

8. Applicant denies each and every allegation of paragraph 8 of the Notice of Opposition.

9. Admitted.

10. Applicant admits that it and/or one of its predecessors in interest selected the name "Pinnacles Ranches" as the name of one of its own vineyards and affirmatively asserts that said designation constitutes trademark, trade name, and service mark usage.

11. Applicant denies each and every allegation of paragraph 11 of the Notice of Opposition and further asserts that the Opposer's claim is absurd (it would mean that the name of every vineyard could not be a service mark for vineyard services or a trademark for wine, merely because the vineyard by its nature is a geographic location; it would mean that a farm whose produce bears a trademark constituting the name of the farm, would be primarily geographically descriptive merely because a farm by its nature is located somewhere).

COUNT II

12. Applicant admits that the mark "PINNACLES RANCHES" appears on the same label with Applicant's mark "ESTANCIA". Applicant denies all remaining allegations of paragraph 12 of the Notice of Opposition.

13. Applicant denies each and every allegation of paragraph 13 of the Notice of Opposition.

COUNT III

Count III of the Notice of Opposition is dismissed pursuant to the Board's Decision dated November 6, 2009 and accordingly does not require an answer.

AFFIRMATIVE DEFENSES

1. Applicant's mark, PINNACLES RANCHES, is not regarded by buyers as descriptive of a geographic location of origin of Applicant's products.

2. The mark and name "PINNACLES RANCHES" selected by Applicant and/or a predecessor in interest, has been promoted in such a way that the mark and name is and/or has become a trademark and service mark and is perceived as such by consumers and is used by Applicant in such a manner that the mark has trademark significance.

3. Any geographic significance to Applicant's mark is minor, obscure and/or remote and accordingly, Applicant's mark is not "primarily geographically descriptive".

4. Consumers are not likely to make a goods/place association of Applicant's wines and Applicant's PINNACLES RANCHES mark.

5. Applicant, and/or Applicant's predecessors in interest, naming one of its own vineyards "Pinnacles Ranches" does not make the term "Pinnacles Ranches" geographically descriptive and as such, the Notice of Opposition fails to state a claim upon which relief may be granted.

6. To the extent that Applicant's mark is construed to be geographically descriptive, the mark has become distinctive through the acquisition of secondary meaning.

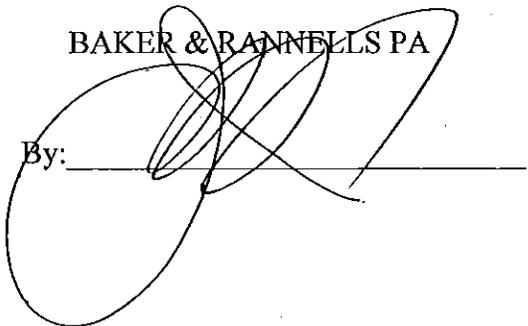
7. Opposer lack standing to bring the claims set forth in the Notice of Opposition.

WHEREFORE, Applicant prays that the Notice of Opposition initiated by the Opposer against Ser. No. 77598674 be dismissed.

Respectfully submitted,

BAKER & RANNELLS PA

By: _____



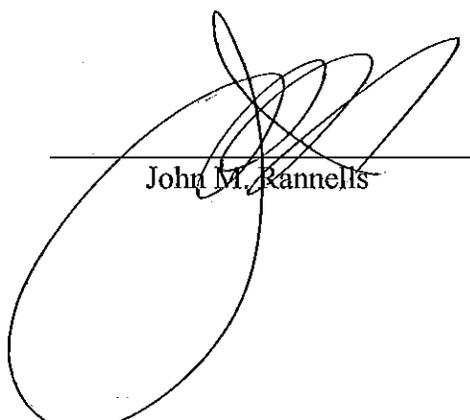
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CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing **APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION AND APPLICANT'S AFFIRMATIVE DEFENSES** in re: White Rock Distilleries, Inc. v. Franciscan Vineyards, Inc., Opposition No. 91191056 was served on counsel for Applicant, this 17th day of November, 2009 by sending same via First Class Mail, postage prepaid, to:

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

DATED: November 17, 2009



John M. Rannells