

ESTTA Tracking number: **ESTTA431118**

Filing date: **09/19/2011**

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

Proceeding	91197078
Party	Plaintiff Paul Jaboulet Aine
Correspondence Address	JULIE B SEYLER ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017 UNITED STATES jbseyler@lawabel.com, Rdahl@lawabel.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Julie B. Seyler
Filer's e-mail	JBSeyler@lawabel.com, Rdahl@lawabel.com
Signature	/Julie B. Seyler/
Date	09/19/2011
Attachments	PAUL JABOULET V GROSSNICKLE - NOT OF RELIANCE - APPLN ANS TO OPP INTERROGS.pdf (21 pages)(784874 bytes)

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

PAUL JABOULET AINE

Opposer,

v.

S.P. GROSSNICKLE, LLC,

Applicant

Opposition No. 91197078

NOTICE OF RELIANCE UNDER RULE 2.120(j)(3)(i)

Opposer hereby makes of record in connection with this opposition, a copy of Applicant's Answers to Opposer's Interrogatories, dated April 17, 2011.

Dated: September 19, 2011

Respectfully submitted,



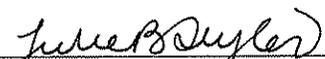
JULIE B. SEYLER

ABELMAN FRAYNE & SCHWAB
666 Third Avenue
New York, New York 10017
212-949-9022

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF RELIANCE was served by first class mail, postage prepaid this 19th day of September, 2011 upon the following:

Steven L. Smilay, Esq.
BOTKIN & HALL, LLP
105 East Jefferson Blvd., Ste. 400
South Bend, Indiana 46601



JULIE B. SEYLER

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

PAUL JABOULET AINE)

Opposer,)

v.)

Opposition No. 91197078

**APPLICANT'S ANSWERS TO
OPPOSER'S INTERROGATORIES
TO APPLICANT**

S.P. GROSSNICKLE, LLC)

Applicant.)
_____)

Applicant, pursuant to Section 2.120 of the Rules of Practice in Trademark Cases and Rule 33 of the Federal Rules of Civil Procedure, hereby sets forth the following responses and objections to Opposer's First Request for Production of Documents:

GENERAL OBJECTIONS

1. Applicant objects to the Interrogatories generally, and to each Interrogatory contained therein, to the extent that they call for information or documents protected from discovery or disclosure by any privilege or doctrine, including, without limitation, the attorney-client privilege or the work product doctrine. Such information is protected from disclosure and shall not be disclosed in response to the Interrogatories, and any inadvertent disclosure thereof shall not be a waiver of any privilege with respect to such information or of any work product protection which may attach thereto.

2. Applicant objects to the Interrogatories generally, and to each Interrogatory contained therein, and to the "Definitions" set forth in the Interrogatories, to the extent that they purport to impose upon Applicant obligations beyond those imposed under the Federal Rules of Civil Procedure. Applicant further objects to each Interrogatory to the extent it incorporates by reference a subpart in the form of an improper instruction and/or definition.

3. Applicant objects specifically to the definition of “Applicant,” “You,” and “Your” as overly broad, harassing and oppressive, and as seeking to invade attorney-client privilege and attorney work product. Applicant responds to each of the Interrogatories for itself alone.

4. Applicant objects to the Interrogatories generally, and to each Interrogatory contained therein, to the extent that they purport to require the disclosure of information within an unreasonably brief time period given the scope or nature of the information being sought and the schedule for this litigation.

5. Applicant objects to the Interrogatories generally, and to each Interrogatory contained therein, to the extent that they request proprietary or trade secret information of Applicant and/or third parties, or information that Applicant is under an obligation to a third party not to disclose.

6. Applicant objects to the Interrogatories generally, and to each Interrogatory contained therein, to the extent that they seek information, documents and things not relevant to any issue present in this proceeding, and are not reasonably calculated to lead to the discovery of admissible evidence.

7. Applicant objects to the Interrogatories generally, and to each Interrogatory contained therein, to the extent that they purport to require disclosure of documents or information that do not exist or are not in Applicant’s possession, custody or control.

8. Applicant objects to the Interrogatories generally, and to each Interrogatory contained therein, to the extent that they impose on Applicant an unreasonable burden or expense.

9. The information supplied in response to the Interrogatories is not based solely upon the knowledge of Applicant, but includes the knowledge of Applicant’s attorneys, unless privileged. The word usage and sentence structure is that of the attorneys who, in fact, prepared

the responses and said language does not purport to be the exact language of Applicant.

10. Applicant's responses are based on investigation and discovery to date and are not intended as a complete recitation of all information upon which Applicant will rely at trial or at other hearings in this action. As discovery and investigation proceed, non-privileged facts, information, and evidence may be discovered which are not included in these responses, but which may be responsive to the Interrogatories. Applicant expressly reserves the right to offer at trial or other proceedings in this action further or different information or evidence that is subsequently discovered which may concern matters covered by the Interrogatories. In addition, information and evidence now known may be imperfectly understood and, in good faith, may not be included in this response. Applicant reserves all rights to conduct investigation and discovery with reference to, or offer into evidence at trial or other proceedings in this action, any and all facts, information and evidence, notwithstanding the absence of such items in this response.

11. These General Objections are incorporated into every response to the Interrogatories. By responding to an Interrogatory, Applicant does not waive any general or specific objections, nor does Applicant concede the relevancy, materiality, or admissibility of any of the information sought therein.

12. Applicant's responses to the Interrogatories, while based on diligent inquiry and investigation by Applicant, necessarily reflect only the current state of Applicant's knowledge, understanding and belief based upon the information reasonably available to him at this time. Defendant may produce additional documents in discovery, and review of these documents may change Applicant's legal position and/or its responses to these Interrogatories. Applicant also anticipates that it may discover further documents and information. Without obligating itself to do so, Applicant reserves the right to modify, supplement, revise or amend these responses and to correct any inadvertent errors or omissions which may be contained herein, in light of

documents or information which it may subsequently obtain or discover. Applicant's responses to these Interrogatories are provided without prejudice to Applicant's using, relying on at trial or at any hearing, or otherwise relying on subsequently discovered documents or information, or documents or information omitted from these responses as a result of mistake, error or oversight.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1

List and describe each product on or in connection with which Applicant uses, intends to use or has ever used **Applicant's MARK**, alone or as part of another.

ANSWER:

Applicant objects to this interrogatory to the extent that it is overbroad and not reasonably limited so as to be calculated to lead to the discovery of admissible evidence in this proceeding. Without waiving this objection and inasmuch as the goods and services listed in Applicant's application are limited to "wine," with respect to "wine," Applicant responds to as follows:

45 Red
45 White
Apple
Blanc de Pinot Noir
Cabernet Franc
Cabernet Sauvignon
Chardonnay
Chenin Blanc
Cherry
Cherry Dessert
Conservancy
Gewurtztraminer
Hard Cider
Icebox Gewurtztraminer
Icebox Pinot Gris
Icebox Riesling
Late Harvest Chardonnay
Late Harvest Vignoles
Northpor
Nouveau Pinot Noir Rose

Peach Apricot Mead
Peach Cremant
Pear Cider
Pinot Gris
Pinot Gris – Trillium Hill Vineyard
Pinot Noir
Pinot Noir Rose
Reserve Chardonnay
Riesling
Rose of Cabernet Franc
Sauvignon Blanc
Select Harvest Riesling
Semi-Dry Riesling
Sparkling Cherry
Sparkling Hard Chapple
Sparkling Pinot Noir Rose
Sparkling Strawberry
Strawberry
Unwooded Chardonnay

INTERROGATORY NO. 2

- (a) Identify Applicant's first use of **Applicant's MARK** in interstate commerce in connection with each of the goods named in answer to Interrogatory No. 1, including the date of such use, the goods on which **Applicant's MARK** was first used, details of any *bona fide* sales involved, and the customer, if any, which purchased the specific product.
- (b) For each matter identified in (a) above, identify the persons having the most knowledge of such use.
- (c) State whether Applicant uses **Applicant's MARK** on labels that are applied to the goods.

ANSWER:

Applicant objects to this interrogatory on the grounds that it is vague and ambiguous with regard to what is meant by "*bona fide* sales" and because it is oppressive and burdensome with

respect to the identification of each customer who purchased each specific product. Without waiving these objections, Applicant responds as follows:

- (a) 45 Red, June 27, 2009
45 White, July 3, 2008
Apple, July 16, 2008
Blanc de Pinot Noir, May 2, 2010
Cabernet Franc, July 4, 2008
Cabernet Sauvignon, September 2, 2010
Chardonnay, July 4, 2008
Chenin Blanc, not applicable
Cherry, September 20, 2008
Cherry Dessert, July 4, 2008
Conservancy, March 21, 2009
Gewurtztraminer, May 15, 2010
Hard Cider, July 4, 2008
Icebox Gewurtztraminer, November 15, 2010
Icebox Pinot Gris, May 3, 2008
Icebox Riesling, August 1, 2009
Late Harvest Chardonnay, January 7, 2011
Late Harvest Vignoles, May 3, 2008
Northpor, August 19, 2009
Nouveau Pinot Noir Rose, December 11, 2008
Peach Apricot Mead, July 25, 2008
Peach Cremant, July 4, 2008
Pear Cider, October 20, 2009
Pinot Gris, May 3, 2008
Pinot Gris – Trillium Hill Vineyard, not applicable
Pinot Noir, July 4, 2008
Pinot Noir Rose, May 3, 2008
Reserve Chardonnay, July 4, 2008
Riesling, May 3, 2008
Rose of Cabernet Franc, not applicable
Sauvignon Blanc, June 24, 2010
Select Harvest Riesling, March 21, 2009
Semi-Dry Riesling, March 21, 2009
Sparkling Cherry, July 23, 2008
Sparkling Hard Chapple, August 26, 2010
Sparkling Pinot Noir Rose, August 3, 2008
Sparkling Strawberry, September 11, 2009
Strawberry, June 27, 2009
Unwooded Chardonnay, May 3, 2008
- b) Eric Grossnickle, 8580 E. Horn Road, Lake Leelanau, Michigan 49653.
- c) Yes.

INTERROGATORY NO. 3

- (a) Identify all persons who approved the selection of **Applicant's MARK**.
- (b) Describe the specific reasons for the selection of **Applicant's MARK**.

ANSWER:

- (a) Eric Grossnickle, Creative Director
- (b) Steve Grossnickle, Sole Member of Applicant, 1428 S. Freedom Parkway,
Winona Lake, Indiana 46590.

INTERROGATORY NO. 4

Identify all persons, including their business title and business address, who have final authority for the marketing, advertising and/or promotion of products for **Applicant's MARK**.

ANSWER:

Eric Grossnickle, Creative Director, 8580 E. Horn Road, Lake Leelanau, Michigan 49653.

Alanna Grossnickle, General Manager, 8580 E. Horn Road, Lake Leelanau, Michigan 49653.

INTERROGATORY NO. 5

- (a) Identify each purchaser and/or user of the products sold under **Applicant's MARK**, and describe the method of distribution. As used in this interrogatory "purchaser and/or user" refers to any class or classes of purchasers or users, such as may be identified by sex, age, economic status and geographic location and to the extent known, any breakdown which identifies the percentage of purchasers or users which fall into any of the

categories enumerated.

ANSWER:

Applicant objects to this interrogatory to the extent that it is overbroad and not reasonably limited so as to be calculated to lead to the discovery of admissible evidence in this proceeding. Without waiving this objection and inasmuch as the goods and services listed in Applicant's application are limited to "wine," with regard to "wine," Applicant responds to as follows:

Approximately 90% of Applicant's wine is sold to consumers over the age of 21. The majority of these people reside in Michigan, but purchasers have also come from Indiana, Illinois, Ohio, Colorado, California, Washington, Missouri, Iowa and other states.

Approximately 7% of Applicant's wine is sold through Elite Imperial Beverage in Michigan and Nelson Beverage in Warsaw, Indiana.

Approximately 3% of Applicant's wine is sold through local retailers in Leelanau and Grand Traverse counties in Michigan.

INTERROGATORY NO. 6

Describe the geographic area within the United States of the past and present distribution of the goods sold under **Applicant's MARK**.

ANSWER:

Applicant objects to this interrogatory to the extent that it is overbroad and not reasonably limited so as to be calculated to lead to the discovery of admissible evidence in this proceeding. Without waiving this objection and inasmuch as the goods and services listed in Applicant's application are limited to "wine," with regard to "wine," Applicant responds to as follows:

The vast majority of Applicant's wines are sold through Applicant's tasting room located at its winery in Lake Leelanau, Michigan. The balance are sold throughout Michigan and in

Warsaw, Indiana.

INTERROGATORY NO. 7

State the sales in dollars and units by Applicant for all goods sold under **Applicant's MARK** since the date of first use to date, by month.

ANSWER:

Applicant objects to this interrogatory on the grounds that it requests information which is proprietary and confidential and no protective order is currently in place with respect to such information. Applicant further objects to this interrogatory to the extent that it is overbroad and not reasonably limited so as to be calculated to lead to the discovery of admissible evidence in this proceeding. Without waiving these objections, Applicant's response is being provided on a CONFIDENTIAL – ATTORNEY'S EYES ONLY basis with the understanding that, as of the date of its response, Applicant, due a change in accounting systems has been unable to determine the number of cases sold on a monthly basis prior to September, 2009. Moreover, inasmuch as the goods and services listed in Applicant's application are limited to "wine," with regard to "wine," Applicant responds, with respect to wine, as follows:

May, 2008	\$ 6,415.00
June, 2008	\$ 30,308.00
July, 2008	\$ 46,489.00
August, 2008	\$ 29,360.00
September, 2008	\$ 52,126.00
October, 2008	\$ 5,270.00
November, 2008	\$ 12,663.00
December, 2008	\$ 22,254.00

January, 2009		\$ 6,487.00
February, 2009		\$ 2,128.00
March, 2009		\$ 18,552.00
April, 2009		\$ 14,344.00
May, 2009		\$ 45,549.00
June, 2009		\$ 73,830.00
July, 2009		\$115,052.00
August, 2009		\$141,860.00
September, 2009	332.0000 cases	\$ 91,366.00
October, 2009	421.2500 cases	\$ 91,320.00
November, 2009	384.3333 cases	\$ 42,963.00
December, 2009	83.5000 cases	\$ 13,402.00
January, 2010	45.9167 cases	\$ 11,304.00
February, 2010	97.6667 cases	\$ 19,644.00
March, 2010	56.5833 cases	\$ 12,424.00
April, 2010	75.5000 cases	\$ 14,908.00
May, 2010	281.0833 cases	\$ 39,648.00
June, 2010	302.9791 cases	\$ 92,909.00
July, 2010	572.3541 cases	\$117,949.00
August, 2010	439.6666 cases	\$125,136.00
September, 2010	390.8333 cases	\$ 93,140.00
October, 2010	510.4167 cases	\$160,537.00
November, 2010	222.4163 cases	\$ 59,798.00
December, 2010	96.8334 cases	\$ 19,493.00

January, 2011	73.1667 cases	\$ 13,438.60
February, 2011	121.4166 cases	\$ 23,885.00
March, 2011	62.2500 cases	\$ 12,984.55

INTERROGATORY NO. 8

- (a) State whether Applicant engages in advertising or other promotional activities relative to the goods bearing or connected with **Applicant's MARK**.
- (b) If the answer to (a) above is in the affirmative:
 - (i) Identify the types of advertising or promotional activities, including but not limited to catalogs, brochures or other media, including the Internet, or advertising means in which Applicant has used **Applicant's MARK**.
 - (ii) Identify the amount of money in dollars expended for advertising and promotion of goods bearing **Applicant's MARK** since the date of first use, by month or other relevant period.

ANSWER:

Applicant objects to this interrogatory on the grounds that it requests information which is proprietary and confidential and no protective order is currently in place with respect to such information. Applicant further objects to this interrogatory to the extent that it is overbroad and not reasonably limited so as to be calculated to lead to the discovery of admissible evidence in this proceeding. Without waiving these objections, Applicant's response is being provided on a CONFIDENTIAL – ATTORNEY'S EYES ONLY basis. Moreover, inasmuch as the goods and services listed in Applicant's application are limited to "wine," with regard to "wine," Applicant

responds to as follows:

(a) Yes

(b)

(i) Applicant's advertising with respect to wine has included newspapers, magazines, vacation guides, banners, brochures, bookmarks, gift certificates, shelf talkers, shelf cards, tasting placemats, tasting menus, tasting crib sheets, clothing, towels, private-label foods, wine and food accessories, signs on Applicant's property and vehicles.

(ii)

January, 2008	\$ 146.00
February, 2008	\$ 0.00
March, 2008	\$ 469.00
April, 2008	\$2,010.00
May, 2008	\$ 750.00
June, 2008	\$ 664.00
July, 2008	\$ 40.00
August, 2008	\$1,427.00
September, 2008	\$3,534.00
October, 2008	\$1,497.00
November, 2008	\$ 960.00
December, 2008	\$1,305.00
January, 2009	\$2,551.00
February, 2009	\$ 50.00

March, 2009	\$ 300.00
April, 2009	\$1,120.00
May, 2009	\$ 335.00
June, 2009	\$1,299.00
July, 2009	\$ 550.00
August, 2009	\$ 0.00
September, 2009	\$ 0.00
October, 2009	\$ 958.00
November, 2009	\$ 0.00
December, 2009	\$4,689.00
January, 2010	\$ 120.00
February, 2010	\$ 0.00
March, 2010	\$3,223.00
April, 2010	\$ 450.00
May, 2010	\$2,100.00
June, 2010	\$3,159.00
July, 2010	\$2,040.00
August, 2010	\$2,578.00
September, 2010	\$ 823.00
October, 2010	\$ 0.00
November, 2010	\$4,340.00
December, 2010	\$ 975.00

INTERROGATORY NO. 9

Identify all trademark searches and investigations, including all opinion letters or memos relating thereto, conducted by or for Applicant with respect to **Applicant's MARK** and/or the word PANDA including;

- (a) all marks searched and investigated;
- (b) by whom such searches and investigations were authorized;
- (c) whether a written report was rendered pursuant to these searches and investigations.

ANSWER:

- (a) "45"
- (b) Steve Grossnickle authorized the search and it was conducted by Applicant's counsel.
- (c) Applicant objects to this sub-part on the grounds that it is vague and ambiguous with respect to the meaning of "report." If the sub-part is inquiring as to whether the results of the search were in writing, Applicant responds in the affirmative.

INTERROGATORY NO. 10

Identify all proceedings (including but not limited to the Federal Courts, State Courts and the Patent and Trademark Office) in which Applicant has been or is involved which refer or relate to products or services to be sold in connection with **Applicant's MARK**; and identify all documents related thereto.

ANSWER:

The only proceedings in which Applicant has been involved in connection with

Applicant's Mark are the instant Opposition proceeding and the prosecution of Applicant's application for registration of **Applicant's Mark** before the USPTO.

INTERROGATORY NO. 11

- (a) State when and how Applicant first learned of Opposer's use of **Opposer's MARK**.
- (b) Identify all documents which refer or relate to such knowledge.

ANSWER:

- (a) Opposer's use of **Opposer's Mark** was contained in the search results noted in response to Interrogatory No. 9.
- (b) The search results and correspondence from Applicant's counsel to Applicant.

INTERROGATORY NO. 12

Identify the documents in Applicant's possession or control referring or relating to Opposer.

ANSWER:

The search results noted in response to Interrogatory No. 9, and correspondence from Applicant's counsel to Applicant.

INTERROGATORY NO. 13

- (a) Has Applicant or any person acting for or on behalf of Applicant received any communication, oral or in writing, from any person which suggests, implies or infers that Opposer may be connected or associated with

Applicant or which inquires as to whether there is or may be such as connection or association?

- (b) If so, identify each such communication, including Applicant's response thereto.

ANSWER:

- (a) No
- (b) Not applicable.

INTERROGATORY NO. 14

- (a) Is Applicant aware of any instance or occurrence in which any person was actually confused between Applicant's use of **Applicant's MARK** and Opposer's use of **OPPOSER'S MARKS**, or *vice versa*?
- (b) Identify all documents which refer or relate to each such instance or occurrence of actual confusion.

ANSWER:

- (a) No
- (b) Not applicable.

INTERROGATORY NO. 15

State whether Applicant has knowledge that third parties unrelated to Applicant or Opposer have used a trademark comprising of the numeral 45, in whole or in part.

ANSWER:

Yes

INTERROGATORY NO. 16

- (a) Has Applicant ever discontinued its use of **Applicant's MARK** for any goods for any period(s) of time?
- (b) If so, provide the dates of such non-use, when use was resumed and provide the reasons for such non-use.

ANSWER:

- (a) No
- (b) Not Applicable

INTERROGATORY NO. 17

Has Applicant ever received notice that Applicant's use of **Applicant's MARK** as part of a mark or in combination with any other word or words, allegedly infringed a mark used by another party? If so, for each such notice state:

- (a) the name and address of the person from whom it was received;
- (b) a description of the notice and Applicant's response thereto;
- (c) a description of the mark used by such other person and the goods or s services to which that person's mark was applied.

ANSWER:

No.

INTERROGATORY NO. 18

Has Applicant ever notified any party that a mark used by such party infringed any of **Applicant's MARK**. If so, for each such person state:

- (a) the name and address of the party who used the mark;

- (b) a description of such party's mark indicating in what respects it allegedly infringed Applicant's MARK and the goods or services to which the mark was applied;
- (c) the result, outcome or disposition of the notice to such other party.

ANSWER:

No.

INTERROGATORY NO. 19

- (a) Has Applicant or any person acting for or on its behalf obtained any statements or opinions regarding any of the issues in this opposition proceeding?
- (b) If so, identify the person or persons who rendered each statement or opinion, state whether it was oral or in writing, and identify all documents which refer to or relate thereto.

ANSWER:

- (a) Yes
- (b) Applicant has both discussed and corresponded with counsel regarding the issues in this opposition proceeding.

INTERROGATORY NO. 20

Identify the witnesses Applicant intends to call to testify on its behalf and identify the documents upon which Applicant intends to rely in connection with this opposition proceeding.

ANSWER:

At this point, Applicant has not completed its preparation for trial and, as a result, may not have identified all witnesses and documents which may be relevant. Without waiving its rights to call additional witnesses and produce additional documents, Applicant intends to call those witnesses rely on those documents identified in its Initial Disclosures.

INTERROGATORY NO. 21

- (a) Identify each person who participated in the preparation of Applicant's response to the foregoing interrogatories and who furnished any information in response thereto.

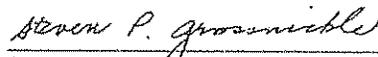
ANSWER:

Eric Grossnickle and Steve Grossnickle participated in the preparation of these responses with the assistance of Applicant's counsel.

I hereby affirm under the penalties for perjury that I have read the foregoing Answers to Interrogatories and that they are true and correct.

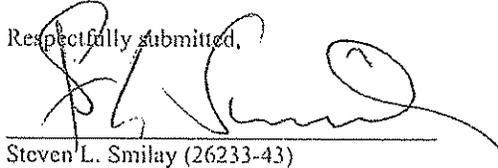
Dated this 17th day of April, 2011.

S.P. GROSSNICKLE, LLC



By: Steven P. Grossnickle
Its: Sole Member

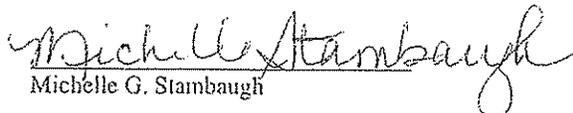
Respectfully submitted,


Steven L. Smilay (26233-43)
BOTKIN & HALL, LLP
105 East Jefferson Blvd., Ste. 400
South Bend, Indiana 46601
Telephone: (574) 234-3900
Fax: (574) 236-2839
Attorney for Applicant

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been served upon the following via United States Regular Mail on April 17th, 2011:

Julie B. Seyler
Abelman, Frayne & Schwab
666 Third Avenue
New York, New York 10017
Attorney for Applicant


Michelle G. Stambaugh