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

Proceeding	91200684
Party	Defendant Jeff Hill
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Attachments	duck_20110921175104.pdf (7 pages)(339617 bytes)

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

In re: Application Ser. No. 85177865
Published: March 15, 2011 in the Official Gazette
Applicant: Jeff Hill
Mark: DUCK BLIND WINERY

DUCKHORN WINE COMPANY,

Opposer,

v.

JEFF HILL,

Applicant.

Opposition No. 91200684

Serial No. 85177865

JOINT DISCOVERY PLAN

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Pursuant to Trademark Rule (hereinafter "TMRP") 2.120(a)(2), a Discovery Conference was held on September 16, 2011, by teleconference and was attended by the following parties and their representatives (hereinafter "Parties"):

- Chad Greeson, Esq. on behalf of Jeff Hill
- Ryan Bricker, Esq. on behalf of Duckhorn Wine Company

1. Initial Disclosures. The parties will begin to exchange the information required by FRCP 26(a)(1) on October 21, 2011, with additional exchanges to take place after this date every 30 days until all discoverable information subject to initial disclosures has been exchanged by the parties.

2. Discovery. The parties jointly propose the following discovery plan:

- (a)** Discovery will commence on September 21, 2011.

(b) A party must make its initial disclosures prior to seeking discovery.

(c) Discovery will be needed on the following subjects: the use of the opposer's mark in commerce in relation to wine; the nature of opposer's goods; the applicant's proposed mark in commerce in relation to wine; the nature of the applicant's goods; the use of similar marks in commerce in relation to wine by third parties; the applicant's proposed mark in comparison to the opposer's mark; whether the applicant's proposed mark will cause confusion, mistake, or deception in the trade and among purchasers as to the source, origin, or sponsorship of the parties' respective goods.

(d) The maximum number of written interrogatories, requests for admission, and depositions, and maximum time per deposition shall be governed by FRCP 26(b).

(e) Discovery will be completed by March 19, 2010, 180 days from the date of the initial disclosure.

3. Attorney-Client Privilege and Attorney Work Product. The parties have agreed that FRCP 26(b) will govern claims of privilege and/or attorney work product in preparation for trial. At this time the parties perceive no issues as to claims of privilege or protection that are ripe for the Board's attention. The parties reserve the right to seek an agreement or an order regarding claims of privilege or protection, by stipulation or motion, should the need arise.

4. Discovery of Electronically Stored Information. The parties jointly propose the following with respect to the discovery or electronically stored information or ESI:

(a) In accordance with FRCP 26(a)(1)(A)(ii), the parties agree to produce copies—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment. The parties have agreed to work in good faith to make such productions in an efficiently usable format.

(b) However, the parties reserve their rights to demand that all documents disclosed and produced in this action, including the initial disclosures, be provided in single-page

Portable Data File Format (“PDF”) or Tagged Image File Format (“TIFF”) images, along with fully searchable text, either by embedding the data in the image file or by providing a supplemental data file cross-referenced to each image file. Nothing herein shall be construed as a waiver by either party to its right to request additional electronic information such as the metadata corresponding to the files and/or the production of native files. See, FRCP 34(b)(1)-(2). The parties each reserve their rights to demand the production of electronically stored information such as the metadata corresponding to the files and/or the production of native files, in the form or forms as specified by the parties. At this point in time, the parties perceive no issues as to the discovery or disclosure of electronically stored information that are ripe for the Board’s attention.

(c) If, through inadvertence, a producing party discloses information or documents that it believes should have been designated as “Confidential” or “Confidential – Attorneys’ Eyes Only,” or that it believes should not have been disclosed at all pursuant to a privilege claim, it may subsequently designate such information or documents as belonging to the appropriate category or request return of such privileged documents. In the case of a subsequently-applied designation, after such designation is made, all receiving parties shall treat the information or documents accordingly. If the documents or information have been disclosed by the receiving party prior to the designation, the receiving party shall notify the producing party and shall also make a good faith effort to have the documents and/or information returned.

5. Protective Order. The parties intend to submit a proposed protective order on or before the deadline for Initial Disclosures, presently set for October 21, 2011.

6. Expert Disclosures. The Parties have agreed and hereby stipulate to the following deadlines with respect to the disclosure of expert witnesses.

(a) The deadline for disclosing expert witnesses and reports shall be March 19, 2012—i.e., the last day to conduct discovery as set forth above. Discovery pertaining to expert witnesses, however, shall continue beyond the close of discovery.

(b) The deadline for disclosing rebuttal witnesses and reports shall be April 19, 2012, thirty days after the close of discovery on March 19, 2012. Discovery pertaining to expert witnesses, however, shall continue beyond the close of discovery.

7. **Dispositive Motions.** All dispositive motions shall be filed before May 18, 2012—the commencement of Plaintiff's Trial Period set forth below in section 8.

8. **Pre-Trial Disclosures and Trial Periods.** The parties have agreed to the following deadlines with respect to pre-trial disclosures and trial periods:

- (a) Plaintiff's Pre-Trial Disclosures: May 3, 2012
- (b) Plaintiff's 30-Day Trial Period Ends: June 17, 2012
- (c) Defendant's Pre-Trial Disclosures: July 2, 2012
- (d) Defendant's 30-Day Trial Period Ends: August 16, 2012
- (e) Plaintiff's Rebuttal Disclosures: August 31, 2012
- (f) Plaintiff's 15-Day Rebuttal Period Ends: September 30, 2012

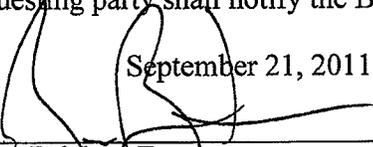
8. **Trial Briefs.** The parties have agreed to the following deadlines set forth in TMRP 2.128 with respect to trial briefs:

- (a) Plaintiff's Trial Brief: November 29, 2012
- (b) Defendant's Trial Brief: January 4, 2013
- (c) Plaintiff's Optional Reply Trial Brief: January 22, 2013

9. **Alternative Dispute Resolution Proceedings.** The parties have agreed that settlement cannot be evaluated until initial disclosures have been completed. At that time settlement may be enhanced by alternative disputes resolution such as the Board's ACR procedure, private mediation, or non-binding judicial arbitration. Should ACR be desired, the requesting party shall notify the Board on or before December 21, 2011.

September 21, 2011

September 21, 2011


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Attorneys of Record for Jeff Hill

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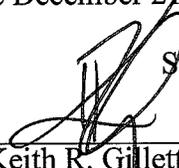
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Attorneys of Record for Jeff Hill

IT IS SO ORDERED.

Date: _____

Trade Mark and Appeal Board

This pleading has been filed electronically. Please direct all notices, pleadings and process regarding this matter to:

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CERTIFICATE OF SERVICE

On September 21, 2011, I served the foregoing **JOINT DISCOVERY PLAN** on the party(ies) in said action by depositing a true copy thereof with the United States Postal Service as first class mail, postage prepaid, at Walnut Creek, California, enclosed in a sealed envelope and via electronically at the e-mail address indicated below, showing no error in transmission, and addressed as follows:

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Dated: September 21, 2011


Elizabeth Barham