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

Proceeding	91203913
Party	Defendant Schmitt Söhne GmbH Weinkellerei
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CAIN CELLARS, INC. d/b/a CAIN VINEYARD
AND WINERY,

Opposer,

v.

SCHMITT SÖHNE GMBH WEINKELLEREI,

Applicant.

Opposition No. 91203913



Mark:
Application Serial No. 79-101857
Filing Date: May 28, 2011

ANSWER TO NOTICE OF OPPOSITION

Schmitt Söhne GmbH Weinkellerei (“Schmitt”) answers the claims of Cain Cellars, Inc. d/b/a Cain Vineyard and Winery (“Cain”) as follows. Where possible, paragraph numbers in the Answer correspond to the paragraph numbers used in the Notice of Opposition.

Introductory paragraph: Schmitt admits that it filed U.S. Trademark Application



No. 79-101857 for the design mark for use in association with

Alcoholic beverages except beers; Sparkling beverages, namely, champagne; Sparkling wines; Light sparkling wines; Sparkling wines made from fruit; Sparkling wines made from berries; Sparkling wine like beverages, namely, wine coolers, wines, wine containing beverages, namely, wine coolers, prepared cocktails and aperitifs made with spirits or wines

in Class 33. The prosecution of this application is as maintained in the records of the PTO, which speak for themselves.

1. Schmitt admits that Cain is named as the owner of U.S. Trademark Registration Nos. 3141106 and 2903428. The mark, goods and prosecution associated with the registration are as maintained in the records of the U.S. Patent & Trademark Office, which speak for themselves.

2. Schmitt admits the first sentence of this paragraph. Schmitt is without knowledge or information sufficient to form a belief as to the truth of the allegations of second sentence and therefore denies the same. Schmitt denies the remaining allegations of the paragraph.

3. Schmitt is without knowledge or information sufficient to form a belief as to the truth of the allegations of the paragraph and therefore denies the same.

4. Schmitt is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first, third and fourth sentences of the paragraph and therefore denies the same. Schmitt denies the remaining allegations of the paragraph.

5. Schmitt admits that it filed U.S. Trademark Application No. 78-835538 for the  design mark for use in association with wine. The prosecution of this application is as maintained in the records of the PTO, which speak for themselves. Schmitt is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the paragraph and therefore denies the same.

6. The prosecution of U.S. Trademark Application No. 78-835538 is as maintained in the records of the PTO, which speak for themselves. Schmitt is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the paragraph and therefore denies the same.

7. Deny.

AFFIRMATIVE DEFENSES

8. The long and substantial use of the mark by Schmitt in U.S. commerce without issue demonstrates the Cain fails to state a claim for likelihood of confusion.

9. Cain's reference to Schmitt's 2006 efforts to register a different mark fails to state a claim upon which relief may be granted.

10. Cain's claims are barred in whole or part by the doctrines of laches, estoppel, acquiescence and/or waiver.

REQUESTED RELIEF

WHEREFORE, Schmitt having answered Cain's Notice of Opposition, requests that:

1. Cain's Opposition be dismissed with prejudice.
2. Schmitt be granted such other relief as the Board deems just and equitable under the circumstances.

RESPECTFULLY SUBMITTED this 28th day of March, 2012.

s/ David A. Lowe, PTO Reg. No. 39,281
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Weinkellerei

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2012 a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was electronically filed before the Trademark Trial and Appeal Board and served U.S. Mail addressed as follows:

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s/Caitlin Blazier Kavanagh