

1 published for opposition in the Official Gazette on January 17, 2012. Applicant does not claim a date
2 of first use in the United States.

3 As grounds of opposition, Cain alleges that:

4 1. Cain is the owner of incontestable U.S. Trademark Registrations for FIVE and CAIN
5 FIVE used in connection with wine, including the following:

- 6 • FIVE, U.S. Reg. No. 3141106, for “wine” in Class 33. Cain filed its application to
7 register this mark on October 27, 2003, and the mark was registered on the Principal
8 Register on September 12, 2006.
- 9 • CAIN FIVE, U.S. Reg. No. 2903428, for “wine” in Class 33. Cain filed its application
10 to register this mark on October 27, 2003, and the mark was registered on the Principal
11 Register on November 16, 2004.

12 2. The foregoing registrations were based upon applications filed in the United States
13 Patent and Trademark Office (“USPTO”) on dates prior to the date of filing of Applicant’s
14 application. These registered marks are valid and subsisting and constitute *prima facie* evidence of
15 Cain’s exclusive right to use the marks in commerce on the goods specified in the registrations. In
16 view of the parties’ virtually identical marks and the closely related nature of the parties’ respective
17 goods, Cain alleges that Applicant’s claimed mark so resembles Cain’s registered marks as to be
18 likely to cause confusion, or to cause mistake, or to deceive existing and potential customers within
19 the markets for the parties’ products, as to their respective source, sponsorship, or affiliation.

20 3. Over the past 22 years, the public has learned to associate the marks FIVE and CAIN
21 FIVE with Cain’s wine. Wine professionals, as well as the greater purchasing public, have come to
22 assume a proprietary relationship between the Cain Vineyard and Winery and wine offered under the
23 marks FIVE and CAIN FIVE.

24 4. Cain believes that it will be damaged by registration of the 5 FÜNF mark, which depicts
25 both the Arabic number 5 and the word “Fünf,” which is the German word for “five.” Applicant’s mark
26 thus conveys the identical connotation to Cain’s registered FIVE marks. Cain spends substantial
27 amounts of money each year in marketing expenses to promote its FIVE wine through public events
28 such as wine presentations, wine dinners, wine tastings, and other events. Cain’s FIVE wine was

1 awarded Food & Wine Magazine's award for Best Bordeaux Blend in 2001, and has also won Decanter
2 Magazine's "Wine of the Month" award.

3 5. In 2006, Applicant sought to register the mark 5 FÜNF GERMAN RIESLING in
4 connection with wine. The USPTO refused this registration on the express ground that it was
5 "sufficiently similar" to Cain's FIVE Mark "to cause a likelihood of confusion under Section 2(d) of the
6 Trademark Act." A true and correct copy of the USPTO's rejection is annexed hereto as Exhibit A.

7 6. Defendants sought reconsideration of the USPTO's ruling. The USPTO denied that
8 request, stating that "no new facts or reasons have been presented that are significant and compelling
9 with regard to the point at issue." A true and correct copy of the USPTO's reconsideration refusal letter
10 is annexed hereto as Exhibit B.

11 7. Despite these refusals, and the knowledge that consumers would be confused by the use
12 of the substantively identical FÜNF mark on identical goods, Applicant proceeded to distribute, offer for
13 sale and sell FÜNF wine in the United States. Cain is informed and believes, and on that basis alleges,
14 that Applicant has done so with the intent to cause confusion among consumers as to source, sponsorship
15 or affiliation.

16 WHEREFORE, Cain prays that said application Serial No. 79101857 be rejected, that no
17 registration be issued thereon to Applicant, and that this opposition be sustained in favor of Cain.

18 Cain hereby appoints Harvey Siskind LLP, a law firm composed of members of the bar of the
19 State of California, to act as attorneys for Cain herein, with full power to prosecute said opposition, to
20 transact all relevant business with the U.S. Patent and Trademark Office and in the United States Courts
21 and to receive all official communication in connection with this opposition.

22
23 Dated: February 15, 2012

Respectfully submitted,

24 HARVEY SISKIND LLP
25 D. PETER HARVEY
26 NAOMI JANE GRAY

27 By /Naomi Jane Gray/
28 Naomi Jane Gray

Exhibit A
to Notice of Opposition

Offered by Cain Cellars, Inc.
d/b/a Cain Vineyard And Winery

Cain Cellars, Inc.
d/b/a Cain Vineyard And Winery v.
Schmitt Söhne GmbH Weinkellerei

Serial No. 79101857

To: Schmitt Soehne GmbH Weinkellerei (lewertoff.katrin@arentfox.com)
Subject: TRADEMARK APPLICATION NO. 78835538 - 5 FÜNF GERMAN RIESLI - DT-7256 / 43
Sent: 12/3/2007 10:46:15 AM
Sent As: ECOM108@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/835538

MARK: 5 FÜNF GERMAN RIESLI

78835538

CORRESPONDENT ADDRESS:

Katrin Lewertoff and Leslie K. Mitchell
Arent Fox LLP
1675 Broadway
New York NY 10019

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Schmitt Soehne GmbH
Weinkellerei

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

DT-7256 / 43

CORRESPONDENT E-MAIL ADDRESS:

lewertoff.katrin@arentfox.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 12/3/2007

THIS IS A FINAL ACTION.

This letter responds to applicant's communication filed on November 6, 2007.

The applicant has argued against the refusal to register under Section 2(d) in view of one registered mark. The examining attorney has considered the applicant's argument carefully but has found them unpersuasive. For the reasons set forth below, the refusal under Trademark Act Section 2(d), 15 U.S.C.

§1052(d) is now made FINAL with respect to U.S. Registration No. 3141106, 37 C.F.R. §2.64(a).

Section 2(d) Likelihood of Confusion

Registration was refused under Trademark Action Section 2(d), 15 U.S.C. §1052(d) because the mark for which registration is sought so resembles the mark shown in U.S. Registration No. 3141106 as to be likely, when used in connection with the identified services, to cause confusion, or to cause mistake, or to deceive.

The applicant's mark is "5 FUNF GERMAN RIESLING" in stylized font for "wines." The cited mark in Registration No. 3141106 is "FIVE" in stylized font for "wine."

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.* Regarding the issue of likelihood of confusion, all circumstances surrounding the sale of the goods and/or services are considered. *Industrial Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973). These circumstances include the marketing channels, the identity of the prospective purchasers, and the degree of similarity between the marks and between the goods and/or services. In comparing the marks, similarity in any one of the elements of sound, appearance or meaning may be sufficient to find a likelihood of confusion. In comparing the goods and/or services, it is necessary to show that they are related in some manner. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1536 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *In re Mack*, 197 USPQ 755, 757 (TTAB 1977); TMEP §§1207.01 *et seq.*

Finally, Trademark Act Section 2(d) bars registration where an applied-for mark so resembles a registered mark that it is likely, when applied to the goods and/or services, to cause confusion, mistake or to deceive the potential consumer as to the source of the goods and/or services. TMEP §1207.01. The overriding concern is to prevent buyer confusion as to the source of the goods and/or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368 (C.C.P.A. 1974).

Arguments

Comparison of the Marks

The applicant argues that the use of the same or similar term in different marks does not necessarily result in a finding of a likelihood of confusion. Similarly, applicant argues that the fact that the goods may be sold in the same channels of trade does not warrant a likelihood of confusion refusal. In addition, applicant provides other registrations that include the word "five" in various forms for wines. The examining attorney respectfully disagrees with these arguments for the following reason.

As noted in the Office Action dated May 16, 2007, applicant's mark, "5 FÜN F GERMAN RIESLING" is highly similar in connotation and commercial impression to registrant's mark, "FIVE." The only

difference is the applicant's use of the number "5" (as opposed to the word "five" in English) and the German word representing "five" with the addition of the generic words "german riesling." Regarding the issue of likelihood of confusion, the question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (C.C.P.A. 1972). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 54 USPQ2d 1894, 1890 (Fed. Cir. 2000); *Visual Information Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b).

Applicant's argument that the same or similar term in different marks does not necessarily result in a finding of a likelihood of confusion is contrary to the doctrine of foreign equivalents. An applicant may not register foreign words or terms if the English-language equivalent has been previously registered for related products or services and the consumer would be likely to translate the foreign word(s) into its English equivalent. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Perez*, 21 USPQ2d 1075 (TTAB 1991); *In re American Safety Razor Co.*, 2 USPQ2d 1459 (TTAB 1987); *In re Ithaca Industries, Inc.*, 230 USPQ 702 (TTAB 1986); *In re Hub Distributing, Inc.*, 218 USPQ 284 (TTAB 1983); TMEP §1207.01(b)(vi). Likewise, under the doctrine of legal equivalents, a pictorial representation and its literal equivalent may be found confusingly similar. This doctrine is based upon a recognition that a pictorial depiction and equivalent wording are likely to impress the same mental image on purchasers. See, e.g., *In re Rolf Nilsson AB*, 230 USPQ 141 (TTAB 1986) (design comprising the silhouette of the head of a lion and the letter "L" for shoes held likely to be confused with LION for shoes); *Puma-Sportschuhfabriken Rudolf Dassler KG v. Garan, Inc.*, 224 USPQ 1064 (TTAB 1984) (designs of mountain lion, for shirts and tops, held confusingly similar to PUMA, for items of clothing; the design of a puma, for items of sporting goods and clothing; and PUMA and design for T-shirts); *In re Duofold, Inc.*, 184 USPQ 638 (TTAB 1974) (design of eagle lined for the color gold, for various items of sports apparel, held likely to be confused with GOLDEN EAGLE and design of an eagle, for various items of clothing). Moreover, the number "5" and the word "five" are, in essence, phonetic equivalents and are thus similar sounding. Similarity in sound alone may be sufficient to support a finding of likelihood of confusion. *RE/MAX of America, Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980); *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469 (TTAB 1975); *In re Cresco Mfg. Co.*, 138 USPQ 401 (TTAB 1963); TMEP §1207.01(b)(iv). Accordingly, applicant's use of the numeral "5" and the German word "five" does not obviate the similarities between the marks.

Finally, applicant's addition of the words "german riesling" merely designates the type of wine with no source identifying significance, and as such is less significant for purposes of a Section 2(d) analysis. Disclaimed matter is typically less significant or less dominant when comparing marks. Although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); *In re National Data Corporation*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); and *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553 (TTAB 1987). See also *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); *In re El Torito Rests. Inc.*, 9 USPQ2d 2002 (TTAB 1988); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986).

Finally, applicant's submission of other marks containing the word "five" in some form are not relevant to the case at hand., notably because all of the marks contain an additional non-generic word or words that clearly create a different connotation and commercial impression from just the word or number "5." In fact, the approval for Registration No. 3210946, FÜN BEGINS AT 5, (owned by this applicant) was granted by the same examining attorney because it was determined that the additional wording "FÜN BEGINS AT" created a different commercial impression against the mark "FIVE." This is not the case with respect to this application. Here, the marks are basically, "FIVE" versus "5" and "FÜN" – all meaning simply "five."

The applicant's mark, 5 FÜN contains the same dominant feature, namely FIVE, as the registered mark, FIVE. Although the marks are compared in their entireties under a Section 2(d) analysis, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976). *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); TMEP §1207.01(b)(viii). Since the term FIVE is very significant in creating a commercial impression, the marks are highly similar in sound, appearance, meaning and connotation

Considering the above, the marks of both parties are sufficiently similar to cause a likelihood of confusion under section 2(d) of the Trademark Act.

Comparing the Goods

Notably, applicant does not refute that the goods are the same goods, namely, wine. Where the goods of the respective parties are the same, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), cert. denied 506 U.S. 1034 (1992); *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980); TMEP §1207.01(b). In this case, the goods are the same and would be encountered by, and purchased by the same class of purchasers most likely in the same purchasing trip and marketed through the same channels of trade.

Because the marks are highly similar and the good are the same, the similarities among the marks are so great as to create a likelihood of confusion among consumers as to the source of the goods. As such, the refusal for registration is made FINAL under Trademark Action Section 2(d).

Response to Final Action

If applicant fails to respond to this final action within six months of the mailing date, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final action by:

- (1) submitting a response that fully satisfies all outstanding requirements, if feasible (37 C.F.R. §2.64(a)); and/or
- (2) filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class (37 C.F.R. §§2.6(a)(18) and 2.64(a); TMEP §§715.01 and 1501 *et seq.*; TBMP Chapter 1200).

In certain circumstances, a petition to the Director may be filed to review a final action that is limited to

procedural issues, pursuant to 37 C.F.R. §2.63(b)(2). 37 C.F.R. §2.64(a). See 37 C.F.R. §2.146(b), TMEP §1704, and TBMP Chapter 1201.05 for an explanation of petitionable matters. The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

/cglasser/
Caryn Glasser
Trademark Examining Attorney
Law Office 108
Phone: (571) 270-1517
Fax: (571) 270-2517

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

To: Schmitt Soehne GmbH Weinkellerei (lewertoff.katrin@arentfox.com)
Subject: TRADEMARK APPLICATION NO. 78835538 - 5 FÜNF GERMAN RIESLI - DT-7256 / 43
Sent: 12/3/2007 10:46:17 AM
Sent As: ECOM108@USPTO.GOV
Attachments:

IMPORTANT NOTICE
USPTO OFFICE ACTION HAS ISSUED ON 12/3/2007 FOR
APPLICATION SERIAL NO. 78835538

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=78835538&doc_type=OOA& (or copy and paste this URL into the address field of your browser), or visit <http://tmportal.uspto.gov/external/portal/tow> and enter the application serial number to access the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable response time period. Your response deadline will be calculated from 12/3/2007.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.**

Exhibit B
to Notice of Opposition

Offered by Cain Cellars, Inc.
d/b/a Cain Vineyard And Winery

Cain Cellars, Inc.
d/b/a Cain Vineyard And Winery v.
Schmitt Söhne GmbH Weinkellerei

Serial No. 79101857

To: Schmitt Soehne GmbH Weinkellerei (lewertoff.katrin@arentfox.com)
Subject: TRADEMARK APPLICATION NO. 78835538 - 5 FÜNF GERMAN RIESLI - DT-7256 / 43
Sent: 6/25/2008 4:33:35 PM
Sent As: ECOM108@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/835538

MARK: 5 FÜNF GERMAN RIESLI

78835538

CORRESPONDENT ADDRESS:

Katrin Lewertoff and Leslie K. Mitchell
Arent Fox LLP
1675 Broadway
New York NY 10019

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Schmitt Soehne GmbH
Weinkellerei

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

DT-7256 / 43

CORRESPONDENT E-MAIL ADDRESS:
lewertoff.katrin@arentfox.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 6/25/2008

Applicant is requesting reconsideration of a final refusal issued/mailed December 3, 2007.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Accordingly, applicant's request for reconsideration is *denied*. The time for appeal runs from the date the final action was issued/mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c). If applicant has

already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

cglasser
/cglasser/
Caryn Glasser
Trademark Examining Attorney
Law Office 108
Phone: (571) 270-1517
Fax: (571) 270-2517

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

To: Schmitt Soehne GmbH Weinkellerei (lewertoff.katrin@arentfox.com)
Subject: TRADEMARK APPLICATION NO. 78835538 - 5 FÜNF GERMAN RIESLI - DT-7256 / 43
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Attachments:

IMPORTANT NOTICE
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APPLICATION SERIAL NO. 78835538

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link <http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial number=78835538&doc type=REC&> (or copy and paste this URL into the address field of your browser), or visit <http://tmportal.uspto.gov/external/portal/tow> and enter the application serial number to **access** the Office action.

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RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable **response time period**. Your response deadline will be calculated from 6/25/2008.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached **NOTICE OF OPPOSITION**, dated February 15, 2012 (Serial No. 79101857), was served:

(1) on Applicant's counsel by mailing a copy thereof via first-class mail, postage prepaid, on February 15, 2012, addressed to:

Thomas Schmitt Soehne
Dipl.-Ing. Karl-Heinz Serwe
Südallee 34
54290 Trier
Germany

and

(2) on Applicant by causing a copy thereof to be delivered by hand, on March 20, 2012, addressed to:

Schmitt Söhne GmbH Weinkellerei
c/o Director of the USPTO
Office of the General Counsel
United States Patent and Trademark Office
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, VA 22314


Cynthia Lee

CERTIFICATE OF TRANSMISSION

I hereby certify that a true and correct copy of the attached **NOTICE OF OPPOSITION**, dated February 15, 2012 (Serial No. 79101857), is being electronically transmitted to the Trademark Trial and Appeal Board on February 15, 2012.

Naomi Jane Gray
Naomi Jane Gray

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