

ESTTA Tracking number: **ESTTA466349**

Filing date: **04/10/2012**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Caymus Vineyards
Granted to Date of previous extension	05/02/2012
Address	P.O. Box 268 Rutherford, CA 94573 UNITED STATES

Attorney information	Anthony R. Masiello Holland & Knight LLP 2099 Pennsylvania Avenue, N.W. Washington, DC 20006 UNITED STATES anthony.masiello@hkllaw.com Phone:(202) 419-2405
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Applicant Information

Application No	85279926	Publication date	01/03/2012
Opposition Filing Date	04/10/2012	Opposition Period Ends	05/02/2012
Applicant	Caymus Medical, Inc. 41775 Elm Street, Suite 303 Murrieta, CA 92562 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Medical apparatus and instruments for use in surgery; Medical instruments for use in the fields of vascular surgery and nephrology for administering dialysis treatments; Surgical and medical apparatus and instruments for use in vascular surgery; Surgical devices and instruments; Surgical instruments for use in vascular surgery and nephrology
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Applicant Information

Application No	85281308	Publication date	01/17/2012
Opposition Filing Date	04/10/2012	Opposition Period Ends	
Applicant	Caymus Medical, Inc. 41775 Elm Street, Suite 303 Murrieta, CA 92562 UNITED STATES		

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All goods and services in the class are opposed, namely: Medical apparatus and instruments for use in surgery; Medical instruments for use in the fields of vascular surgery and nephrology for administering dialysis treatments; Surgical and medical apparatus and instruments for use in the field of vascular surgery; Surgical devices and instruments; Surgical instruments for use in the fields of vascular surgery and nephrology

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1833996	Application Date	05/04/1993
Registration Date	05/03/1994	Foreign Priority Date	NONE
Word Mark	CAYMUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1972/09/09 First Use In Commerce: 1972/09/09 wine		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CAYMUS VINEYARDS		
Goods/Services	Vineyards and vineyard operations; wines; grapes.		

Attachments	caymus notice_04_10_2012_17_44_47_493.pdf (16 pages)(517595 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/anthony masiello/
Name	Anthony R. Masiello
Date	04/10/2012

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

CAYMUS VINEYARDS)	
)	Opp. No. _____
Opposer)	
)	
v.)	(Serial No. 85/279,926)
)	
CAYMUS MEDICAL, INC.)	(Serial No. 85/281,308)
)	
Applicant)	
_____)	

NOTICE OF OPPOSITION

In the matter of Application Serial No. 85/279,926 for registration of the mark CAYMUS MEDICAL, filed March 29, 2011, by Caymus Medical, Inc. of 41775 Elm Street, Suite 303, Murrieta, California 92562 (hereinafter "Applicant") and published for opposition in the *Official Gazette* of January 3, 2012; and in the matter of Application Serial No. 85/281,308 for registration of the mark CAYMUS MEDICAL (and design), filed March 30, 2011 by Applicant and published for opposition in the *Official Gazette* of January 17, 2012; Caymus Vineyards, a corporation of California, having a mailing address of P.O. Box 268, Rutherford, California 94573 (hereinafter "Opposer") believes it would be damaged by registration of said alleged trademarks and hereby gives notice of its intention to oppose the registration of said trademarks.

Applications Serial Nos. 85/279,926 and 85/281,308 are herein referred to collectively as "the Applications." The marks CAYMUS MEDICAL and CAYMUS MEDICAL (and design), as set forth in the Applications, are herein referred to collectively as "Applicant's Marks."

Opposer has sought and received the requisite extensions of time in which to oppose these applications, making this Notice of Opposition timely.

As grounds for opposition, Opposer states as follows:

1. Opposer is a major domestic vineyard, grower of grapes and producer of fine wines. Opposer is the owner of all right, title, and interest in and to the well known and famous trademark CAYMUS. Opposer has been operating a vineyard, growing grapes and marketing its wine products under the trademark CAYMUS ("Opposer's Mark") and the corporate and trade name "Caymus Vineyards" ("Opposer's Trade Name") since at least as early as 1972. The wines sold under the CAYMUS trademark ("Opposer's Goods") are renowned among wine connoisseurs and members of the general public in the United States and around the world.

2. Opposer is the owner of United States Trademark Reg. No. 1,833,996 for the mark CAYMUS for wine ("Opposer's Registration"), which issued on May 3, 1994. Opposer's Registration is valid and subsisting and is incontestable under the provisions of 15 U.S.C. Section 1065. A certified copy of Opposer's Registration, prepared by the U.S. Patent and Trademark Office and showing the status and title of Opposer's Registration, is attached hereto as Exhibit 1. Opposer's Registration is conclusive evidence of Opposer's ownership of the mark CAYMUS, of the validity of the Opposer's Mark, and of Opposer's exclusive right to use the mark in commerce in connection with Opposer's goods. The Opposer is also the owner of various foreign registrations for the mark CAYMUS.

3. Opposer has been using Opposer's Mark in connection with Opposer's Goods continuously for nearly 40 years. During such time, Opposer has spent considerable time, effort and money in advertising and promoting its vineyard and wine products under Opposer's Mark. As a result of Opposer's vigorous marketing, advertising, and promotion of its goods under the mark CAYMUS, Opposer's Mark has become well-known and famous as a distinctive indicator of the origin of Opposer's Goods, has acquired a highly favorable reputation among members of the purchasing public, and has become a valuable symbol of Opposer's goodwill.

4. Opposer's wines offered under the CAYMUS trademark are among the most highly acclaimed wines in the world. Opposer's CAYMUS brand Special Selection Cabernet Sauvignon is the only wine to have been twice named "Wine of the Year" by Wine Spectator Magazine. Opposer's wines under the CAYMUS brand have been acclaimed in the special interest press by publications such as Wine Spectator, Quarterly Review of Wines, Wine & Spirits, and Robert Parker's Wine Advocate, as well as in the general interest press by publications such as The New York Times, Chicago Tribune, Los Angeles Times, Washington Times, Philadelphia Inquirer, Miami Herald, Atlanta Journal and Constitution, USA Today, Dallas Morning News, Houston Chronicle, Baltimore Sun, The Times Picayune (New Orleans), San Francisco Examiner, San Francisco Chronicle, Cleveland Plain Dealer, Denver Rocky Mountain News, New York Post, Orlando Sentinel, St. Paul Pioneer Press, Forth Worth Star Telegram, South Florida Sun-Sentinel, San Antonio Express-News, Pittsburgh Post-Gazette, Sun Herald (Biloxi), Columbus Dispatch, Reno Gazette-Journal, The Sacramento Bee, Greensboro News & Record (North Carolina), Long Beach Press-Telegram, The New Journal (Wilmington), Charlotte Observer, Wichita Eagle, Akron Beacon Journal, Palm Beach Post, Buffalo News, Tulsa World, Memphis Commercial Appeal, The

Oregonian, and others. Opposer's principal Chuck Wagner has been recognized for his achievement by the New York Institute of Technology, an educational institution that also confers degrees in the health professions.

5. Opposer adopted Opposer's Trade Name at least as early as 1972. Since that time Opposer has continuously operated under Opposer's Trade Name, as a result of which Opposer's Trade Name has developed great good will as an indicator of Opposer's identity and Opposer's reputation for the highest quality products and the highest integrity in its business relationships with consumers and associates alike.

6. Opposer's trademark CAYMUS is strong, inherently distinctive, and arbitrary as applied to Opposer's Goods. Moreover, the distinctiveness of Opposer's Mark as a source indicator for Opposer's Goods has been increased by virtue of Opposer's long-term use and vigorous promotion of Opposer's Mark over many years.

7. Opposer's trademark CAYMUS is famous and became famous long prior to any use by Applicant of Applicant's Marks and long prior to the filing dates of the Applications. Opposer's mark CAYMUS was determined to be "famous" by the Trademark Trial and Appeal Board in Caymus Vineyards v. Lisa Frank, Inc., Opposition Nos. 91092049 and 91092113 (1997).

8. Notwithstanding Opposer's prior rights in Opposer's Mark, Applicant filed the Applications in the U.S. Patent and Trademark Office on March 29, 2011 (Serial No.

85/279,926) and March 30, 2011 (Serial No. 85/281,308) for the purpose of obtaining U.S. registration of the Applicant's Marks. The goods identified in each of the Applications are "Medical apparatus and instruments for use in surgery; Medical instruments for use in the fields of vascular surgery and nephrology for administering dialysis treatments; Surgical and medical apparatus and instruments for use in the field of vascular surgery; Surgical devices and instruments; Surgical instruments for use in the fields of vascular surgery and nephrology" ("Applicant's Goods"). The Applications were filed on the basis of Applicant's intent to use each mark in Commerce, under 15 U.S.C. Section 1051(b).

9. On information and belief, Applicant has made no use of Applicant's Marks in connection with any goods.

10. Opposer has used, advertised and promoted Opposer's Mark and Opposer's Trade Name in interstate commerce from a date long prior to the filing dates of the Applications and long prior to any use by Applicant of either of Applicant's Marks.

11. Opposer's Registration issued long prior to the filing dates of the Applications and long prior to any use by Applicant of either of Applicant's Marks.

12. Upon information and belief, at the time Applicant filed the Applications and prior to any use of Applicant's Marks, Applicant knew or had reason to know of Opposer's prior rights in the trademark CAYMUS.

13. Opposer's Registration, which issued on May 3, 1994, constitutes constructive notice to Applicant of Opposer's claim of ownership of its trademark CAYMUS, as provided in 15 U.S.C. Section 1072.

COUNT I

Dilution - §43(c)

14. Opposer realleges and incorporates by reference the allegations contained in paragraphs 1 through 13, above, as if set forth in their entirety herein.

15. The designation MEDICAL is a generic word as used in trade in the field of Applicant's Goods.

16. The designation MEDICAL is incapable of functioning as an indicator of a commercial source of goods in the field of medical goods and is incapable of distinguishing Applicant's Goods from the goods of others in the field of medical goods.

17. Applicant's Mark CAYMUS MEDICAL, set forth in Application Serial No. 85/279,926, is essentially identical to Opposer's Mark, as it contains no distinctive matter other than the designation CAYMUS.

18. The literal portion of Applicant's Mark CAYMUS MEDICAL (and design), as set forth in Application Serial No. 85/281,308, is essentially identical to Opposer's Mark, as it contains no distinctive matter other than the designation CAYMUS.

19. Use of Applicant's Marks is likely to and will cause dilution by blurring and dilution by tarnishment of Opposer's Mark, impairing the distinctive quality of the Opposer's Mark.

20. Use or registration of Applicant's Marks will promote an association in the minds of the public between Applicant's Marks and Opposer's Mark, arising from the similarity between Applicant's Marks and Opposer's Mark, thereby impairing the distinctiveness of Opposer's Mark by lessening the capacity of Opposer's Mark to identify and distinguish Opposer's Goods.

21. On information and belief, Applicant intended to create an association between Applicant's Marks and Opposer's Mark because of the fame and good reputation of Opposer's Mark.

22. Use and registration of the Applicant's Marks will deprive Opposer of the ability to protect its reputation, persona, and goodwill.

23. Use and registration of Applicant's Marks is likely to harm the reputation of Opposer's Marks because prospective customers who encounter defects in the quality of

Applicant's Goods will attribute those defects to Opposer, thereby tarnishing and harming Opposer's goodwill, as represented by Opposer's Mark.

24. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's Mark and registration should be refused pursuant to the provisions of Section 43(c) of the Trademark Act, 15 U.S.C. §1125(c).

COUNT II

Likelihood of Confusion - §2(d)

25. Opposer realleges and incorporates by reference the allegations contained in paragraphs 1 through 24, above, as if set forth in their entirety herein.

26. The Applicant's Marks so closely resemble the Opposer's Mark and Opposer's Trade Name in appearance, sound and commercial impression that the use and registration thereof by Applicant are likely to cause confusion, mistake, and deception as to the source or origin of Applicant's Goods and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's Mark and Opposer's Trade Name.

27. The fame and renown of Opposer's Mark and Opposer's Trade Name are such that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's Marks are associated with or otherwise connected with Opposer, and to mistakenly believe that

Applicant's Goods are those of Opposer or that Applicant is in some way connected with, sponsored by, or affiliated with Opposer, all to Opposer's irreparable damage and injury.

28. Likelihood of confusion and deception is enhanced by the fact that Opposer's Goods and Opposer's commercial activities under Opposer's Mark and Opposer's Trade Name are provided or intended to be provided to the same classes of prospective customers as are Applicant's Goods.

29. Under the circumstances, registration and use of Applicant's Marks are likely to cause Opposer to lose control over the good and valuable reputation represented by and derived from Opposer's Mark and Opposer's Trade Name.

30. Registration of Applicant's Marks in light of the prior rights of Opposer in Opposer's Mark and Opposer's Trade Name is therefore likely to cause confusion, mistake and/or deception among members of the relevant purchasing public resulting in damage and injury to Opposer in violation of the provisions of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

COUNT III

False Suggestion of a Connection - §2(a)

31. Opposer realleges and incorporates by reference the allegations contained in paragraphs 1 through 30, above, as if set forth in their entirety herein.

32. Each of the Applicant's Marks is the same as, or a close approximation of, Opposer's Mark and Opposer's Trade Name, which are symbols of Opposer's identity and good will.

33. The designation CAYMUS in Applicant's Marks points uniquely and unmistakably to Opposer and would be recognized by the public as the symbol of Opposer's identity and good will.

34. Opposer is not connected with the Applicant, Applicant's Goods, or any activities performed by the Applicant under Applicant's Marks.

35. The fame and reputation of Opposer is such that, when Applicant's Marks are used with the Applicant's Goods, the public would presume, falsely, that there is a connection between Applicant and Opposer.

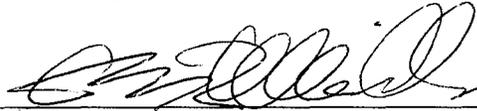
36. Applicant's Marks falsely suggest a connection with Opposer, and accordingly registration of Applicant's Marks should be refused under Section 2(a) of the Trademark Act, 15 U.S.C. §1052(a).

Opposer, Caymus Vineyards, prays that this Opposition be sustained and that the registration sought by Applicant be refused.

Respectfully Submitted,

Caymus Vineyards

DATE: April 10, 2012

By: 

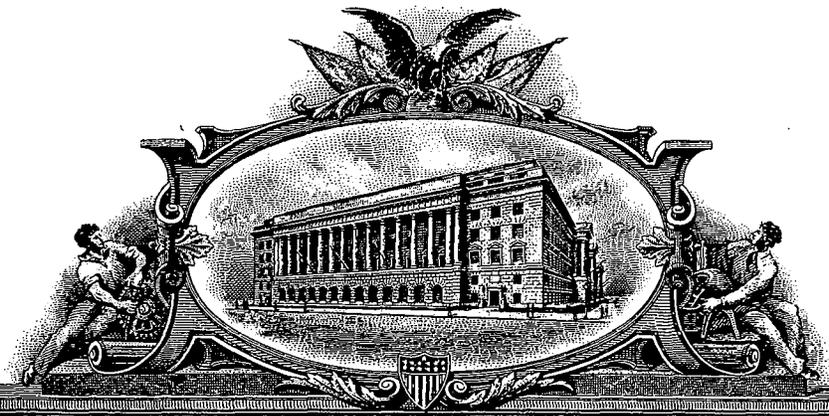
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EXHIBIT 1

Title and Status Copy of Opposer's U.S. Reg. No. 1,833,996

7339377



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

February 03, 2012

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,833,996 IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM *May 03, 1994*
1st RENEWAL FOR A TERM OF 10 YEARS FROM *May 03, 2004*
SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

CAYMUS VINEYARDS
A CALIFORNIA CORPORATION

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office

M. TARVER
Certifying Officer



Int. Cl.: 33

Prior U.S. Cl.: 47

United States Patent and Trademark Office **Reg. No. 1,833,996**
Registered May 3, 1994

**TRADEMARK
PRINCIPAL REGISTER**

CAYMUS

**CAYMUS VINEYARDS (CALIFORNIA CORPO-
RATION)
8700 CONN CREEK RD.
RUTHERFORD, CA 94573**

**FIRST USE 9-9-1972; IN COMMERCE
9-9-1972.**

SER. NO. 74-386,086, FILED 5-4-1993.

FOR: WINE, IN CLASS 33 (U.S. CL. 47).

LINDA E. BLOHM, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cl.: 47

United States Patent and Trademark Office

Reg. No. 1,833,996

Registered May 3, 1994

**TRADEMARK
PRINCIPAL REGISTER**

CAYMUS

**CAYMUS VINEYARDS (CALIFORNIA CORPO-
RATION)
8700 CONN CREEK RD.
RUTHERFORD, CA 94573**

**FIRST USE 9-9-1972; IN COMMERCE
9-9-1972.**

SER. NO. 74-386,086, FILED 5-4-1993.

FOR: WINE, IN CLASS 33 (U.S. CL. 47).

LINDA E. BLOHM, EXAMINING ATTORNEY

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the on April 10, 2012, the above Notice of Opposition is being electronically filed with the United States Patent and Trademark Office, Trademark Trial & Appeal Board. I further certify that a true copy of the foregoing Notice of Opposition has been served on April 10, 2012 by first class mail, postage prepaid, on counsel for Applicant at the following address:

Donald E. Stout, Esq.
Stout, Uxa, Buyan & Mullins, LLP
4 Venture, Suite 300
Irvine, California 92618



Anthony R. Masiello

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