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

Proceeding	91204667
Party	Plaintiff Caymus Vineyards
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CAYMUS VINEYARDS	)	
	)	Opp. No. 91204667
Opposer	)	
	)	
v.	)	(Serial No. 85/279,926)
	)	(Serial No. 85/281,308)
CAYMUS MEDICAL, INC.	)	
	)	
Applicant	)	
	)	

OPPOSER'S ANSWER TO FIRST AMENDED COUNTERCLAIM

Opposer Caymus Vineyards ("Opposer"), by and through its undersigned counsel, states as follows in answer to the First Amended Counterclaim (the "Counterclaim") set forth in Paragraphs 44 through 57 and 63 through 65 of Applicant's First Amended Answer filed on September 12, 2012. Opposer gives notice that it does not hereby assume any burden of proof that otherwise would rest upon Applicant. Opposer, by listing its defenses, does not concede, explicitly or implicitly, that any or all of the listed defenses are affirmative defenses. Opposer also does not by listing its defenses (here or elsewhere in the Answer) limit Opposer's to present any defense that does not need to be identified by Answer. Opposer answers the numbered paragraphs of the Counterclaim as follows.

44. Opposer denies the first sentence of paragraph 44 because paragraphs 1 - 43 of the First Amended Answer contain answers and defenses, not allegations. Opposer admits that in the First Amended Counterclaim, Applicant seeks cancellation of Registration No. 1,833,996, but denies that Applicant may obtain cancellation of Registration No. 1,833,996. Opposer denies that Registration No. 1,833,996 was obtained fraudulently.

45. Opposer admits that Applicant has attached Exhibit A and B to its First Amended Counterclaim. Opposer admits that in the document attached to the First Amended Counterclaim as Exhibit A, Linda E. Blohm, stated, in part, that "The applicant must indicate whether CAYMUS has any significance in the relevant trade, any geographical significance or any meaning in a foreign language." Opposer admits that the document attached to the First Amended Counterclaim as Exhibit A identifies the Serial No. as 74/386086, the Action No. as 01, the mailing date as 10/15/93, and the address as Scott W. Petersen, Hill, Steadman & Simpson, P.C., 85th Floor Sears Tower, Chicago, IL 60606. Opposer admits that Mr. Scott W. Petersen is a legal representative of Opposer. Opposer admits that in the document attached to the First Amended Counterclaim as Exhibit B, Linda E. Blohm stated, in part, that "In accordance with the telephone conversation of November 1, 1993, with Scott W. Petersen this Office has entered the amendments noted below in the referenced application." Opposer further admits that in the document attached to the First Amended Counterclaim as Exhibit B, Linda E. Blohm stated, in part, that "The wording "CAYMUS" has no meaning other than trademark significance." Opposer admits that the document attached to the First Amended Counterclaim as Exhibit B identifies the Action No. as 02 and the mailing date as 12/02/93. Opposer denies the last sentence and any remaining allegations in the first paragraph 45.

45. Opposer admits that Applicant has attached Exhibits C, D and E to its First Amended Counterclaim. Opposer admits that the word "Caymus" was the name of a Native American tribe. Opposer admits that George C. Yount received a land grant in 1836 that contained the phrase "Rancho Caymus," but denies that Exhibit D attached to the First Amended Answer is a copy of that land grant. Opposer admits that the Caymus Vineyards website states that Caymus Vineyards' Caymus Tasting Room is located at 8700 Conn Creek Road, Rutherford,

CA 94573. Opposer is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in the second Paragraph 45, and therefore, denies the same.

46. Opposer denies that the name "Caymus" has geographic significance. Opposer admits that Caymus Vineyards is located in Rutherford, California. Opposer is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 46, and therefore, denies the same.

47. Opposer admits that the "Rancho Caymus Inn" is located in Rutherford, California, that Rancho Caymus Inn is located within the same county as Caymus Vineyards, and that Opposer has knowledge of Rancho Caymus Inn. Opposer admits that a printout of what purports to be a part of the website "ranchocaymus.com" is attached to the First Amended Counterclaim as Exhibit G. Opposer admits that on August 7, 2013, the "ranchocaymus.com" website states, in part, that "Our Napa Valley Inn takes its name from land awarded in 1836 by General Mariano Vallejo to pioneer George C. Yount, Napa's first land grant. A sprawling hacienda named Caymus Rancho was built on the site and opened its doors to all those who visited the valley." Opposer denies the remaining allegations in paragraph 47.

48. Opposer admits that Applicant has attached an Exhibit H to its First Amended Counterclaim. Opposer denies the remaining allegations in paragraph 48.

49. Opposer admits that Applicant has attached an Exhibit J to its First Amended Counterclaim. Opposer denies that there is a Caymus, California, that a company could service. Opposer is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 49 and therefore denies same.

50. Opposer admits that Applicant has attached an Exhibit K to its First Amended Counterclaim. Opposer denies that there is a Caymus, California, that a company could service. Opposer is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 50 and therefore denies same.

51. Opposer admits that Applicant has attached an Exhibit L to its First Amended Counterclaim. Opposer is without information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 51 and therefore denies same.

52. Opposer admits that Applicant has attached an Exhibit M to its First Amended Counterclaim. Opposer is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 52 and therefore denies same.

53. Opposer admits that the Caymus Vineyards' Caymus Tasting Room is located in Rutherford, California, that Caymus Vineyards' Caymus Tasting Room is located within the same county as Rancho Caymus Inn, and that Caymus Inn is known to Opposer. Opposer denies the remaining allegations in paragraph 53.

54. Opposer admits that in the document attached to the First Amended Counterclaim as Exhibit A, Linda E. Blohm, stated, in part, that "The applicant must indicate whether CAYMUS has any significance in the relevant trade, any geographical significance or any meaning in a foreign language." Opposer denies the remaining allegations contained in paragraph 54.

55. Opposer admits that in the document attached to the First Amended Counterclaim as Exhibit A, Linda E. Blohm, stated, in part, that "The applicant must indicate whether CAYMUS has any significance in the relevant trade, any geographical significance or any meaning in a foreign language." Opposer denies the remaining allegations in paragraph 55.

56. Opposer denies the allegations in paragraph 56.

57. Opposer admits that Registration No. 1,883,996 was the subject of a Section 15 Affidavit of Use. Opposer admits that Registration No. 1,883,996 became incontestable on June 11, 2000. Opposer denies that Applicant is damaged thereby inasmuch as Applicant is not entitled to registration of the mark sought to be registered in Application No. 91204667. Opposer denies the remaining allegations in paragraph 57.

63. Opposer is without sufficient knowledge or information to form a belief as to the truth of the allegation as to what Applicant "believes," as set forth in Paragraph 63, and therefore denies same. Opposer admits that it has asserted ownership of U.S. Registration No. 1,833,996 in Opposition No. 91204667, but denies that Applicant is damaged thereby inasmuch as Applicant is not entitled to registration of the mark sought to be registered in Application No. 91204667. Opposer denies the remaining allegations in paragraph 63.

64. Opposer is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 64, and therefore, denies same.

65. Opposer denies the allegations in paragraph 65.

66. Opposer denies that Applicant is entitled to any of the relief in the WHEREFORE clause following paragraph 65, including subparts (a) - (d).

67. Opposer denies each and every allegation in Applicant's First Amended Counterclaim that is not expressly admitted in this Answer. Opposer reserves the right to assert additional defenses, affirmative defenses, and matters in avoidance that may be disclosed by additional investigation and discovery, and hereby reserves the right to amend its answer to assert any such defenses, affirmative defenses, or matters in avoidance.

DEFENSES, AFFIRMATIVE DEFENSES, AND MATTERS IN AVOIDANCE

68. The First Amended Counterclaim fails to state a claim upon which relief may be granted.

69. Applicant's counterclaim is barred due to Applicant's unclean hands.

70. Applicant's counterclaim is barred by the doctrine of waiver.

WHEREFORE, Opposer prays for judgment as follows:

(a) Applicant's counterclaim be dismissed with prejudice;

(b) Opposer's opposition be sustained;

(c) Applicant's trademark applications Serial Numbers 85/21038 and 85/279926 be denied;

(d) Opposer be awarded its reasonable attorneys' fees, expenses, costs and such other relief as may be appropriate.

Respectfully Submitted,

Caymus Vineyards

DATE: August 12, 2013

By: _____

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 12, 2013, a copy of the above Opposer's Answer to First Amended Counterclaim was served by first class mail, postage prepaid, on counsel for Applicant at the following address:

Donald E. Stout, Esq.
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Leo G. Rydzewski