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

In the matter of
Trademark Reg. No.: 2,799,507
For the mark: MEYER VINEYARD
Registered: December 23, 2003

MEIER'S WINE CELLARS, INC,	)	
	)	
Petitioner,	)	
	)	Cancellation No. 92044883
v.	)	
	)	
MEYER INTELLECTUAL PROPERTIES LIMITED,	)	
	)	
	)	
Registrant.	)	

REGISTRANT'S REQUEST FOR DISCOVERY TO RESPOND
TO MOTION FOR SUMMARY JUDGMENT

Attention: TTAB
Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

Registrant, Meyer Intellectual Properties Limited ("Meyer"), requests that it be allowed to conduct additional discovery pursuant to Rule 56(f), Federal Rules of Civil Procedure, in accordance with 37 CFR § 2.127(e)(1), and states:

1. Petitioner filed a Motion for Summary Judgment on May 19, 2006, approximately 3 1/2 months prior to the close of discovery which is set for September 1, 2006. The parties have previously exchanged and complied with each other's requests for production of documents and first set of interrogatories, and Meyer has recently supplemented its answer to Petitioners interrogatories with respect to naming an expert witness.

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2. Meyer obtained registration of its MEYER VINEYARD trade name on the Supplemental Register on December 23, 2003. Petitioner claims a prior use of its MEIER'S trade name in commerce, and that point is conceded.

3. Petitioner has asserted in its motion that the primary issue in the present proceeding is that a likelihood of confusion exists between Meyer's use of its trade name MEYER VINEYARD and Petitioner's use of the MEIER'S, or MEIER'S WINE CELLARS trade name. Petitioner then erroneously concludes as a matter of law in its Motion that there is no material issue of contested fact on the confusion issue.

4. There have been no reported instances of actual consumer confusion uncovered in the discovery performed to date. Meyer first introduced its wine to the market in 2002 and has sold approximately 1,000 cases since that time. It is pure speculation for Petitioner to assume as a matter of law that any purchaser of Meyer's wines has been or will be confused at the time of the purchase and mistakenly believed that he/she is purchasing Petitioner's wine.

5. Meyer is presently unable to present facts by affidavit to effectively demonstrate factual issues in its response to the Motion for Summary Judgment because it requires time, within the present discovery period, to obtain evidence relating to the lack of any likelihood of confusion in the marketplace between its products and Petitioner's products. In this regard, Meyer has retained Craig Joseph, FTI Consultants, located in Chicago, Illinois as an expert witness to conduct a consumer survey, and he is in the process of designing a survey to measure whether there is any likelihood of confusion between the parties' products.

6. Meyer needs, and therefore requests, sixty (60) days for its expert to (i) complete the consumer survey in several geographical locations in this country, (ii) assemble and analyze the results, and (iii) prepare a report on the results of said survey before Meyer can respond to

Petitioner's pending motion. In this regard, it is anticipated that Petitioner's attorneys may request the deposition of Meyer's expert when his survey and report are completed.

7. In light of the Declaration submitted by Petitioner's chairman, Robert A. Manchick, in support of the present Motion, Meyer also seeks to take Mr. Manchick's deposition on issues related to Petitioner's channels of trade and price points. In the alternative, Meyer seeks time to submit Requests to Admit to Petitioner on such issues.

8. Mr. Manchick was not previously identified by Petitioner in its response to Meyer's interrogatory requesting the identification of witnesses that Petitioner intends to call at trial. In fact, Petitioner did not identify any witnesses that it would call at trial which has rendered it difficult for Meyer to take depositions of appropriate agents of Petitioner. (Exhibit A, Interrogatory Answer No. 6).

9. No extensions of time have been requested by either party in these proceedings. Meyer seeks the requested discovery in the interest of justice to enable it to prepare an effective response to Petitioner's pending motion by identifying disputed factual issues.

10. The Declaration of Donald G. Mulack in support of this request for discovery is attached hereto.

WHEREFORE, Registrant, Meyer Intellectual Properties Limited, requests that it be granted sixty (60) days to conduct discovery to obtain consumer survey results, and to submit Requests to Admit to Petitioner, to enable Meyer to prepare an effective response to the present Motion demonstrating that there are material facts in dispute that will prevent summary disposition of the present cancellation proceedings.

Dated: June 6, 2006

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By:_____

Scott W. Petersen
Donald G. Mulack
131 S. Dearborn Street
30th Floor
Chicago, Illinois 60603
Phone: (312) 715-5789
Fax: (312) 578-6666

Attorneys for Registrant

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AFFIDAVIT OF DONALD G. MULACK

Donald G. Mulack, being first duly sworn on oath, states:

1. I am one of the attorneys for Registrant, Meyer Intellectual Properties Limited ("Meyer"), in the above cause, and in such capacity am in a position to know the truth of the facts stated herein.

2. This Affidavit is submitted in support of Meyer's request for discovery pursuant to Rule 56(f), Federal Rules of Civil Procedure, to respond to the Summary Judgment Motion filed by Petitioner, Meier's Wine Cellars.

3. At the time Petitioner filed its Motion on May 19, 2006, Meyer's attorneys were investigating to identify an appropriate expert witness to conduct a consumer survey that will demonstrate that there is no likelihood of confusion, mistake or association between Meyer's trade name and Petitioners trade name in the relevant market. Meyer's attorneys have now identified and retained the services of Craig Joseph, of FTI Consulting located in Chicago, Illinois, to conduct such survey.

4. Petitioner alleges as a primary dispositive issue in its summary judgment motion that there is a likelihood of confusion between Meyer's mark "MEYER VINEYARD" and its mark "MEIER WINE CELLARS. Meyer is unable at this time to present facts by Affidavit to demonstrate to the Board the existence of a genuine issue of fact on this issue for trial. As initially contemplated, Meyer needs and therefore has requested sixty (60) days to complete the consumer survey to demonstrate to the Board with evidence that the use of Meyer's trade name on wine labels does not create a likelihood of confusion, mistake or association with Petitioner's name.

5. Although Petitioner has evaded disclosing any witnesses that it intends to call at trial in its answers to interrogatories, it has submitted the Declaration of its chairman, Robert A. Manchick, and relies solely upon such witness in support of its summary judgment motion. As a result of this tactic by Petitioner, Meyer also seeks to depose Mr. Manchick on issues related to Petitioner's channels of trade and price points, or in the alternative, submit Requests to Admit on such issues.

VERIFICATION

The undersigned being warned that willful false statements and the like are punishable by fine or improvement, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, states under penalty of perjury that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

HOLLAND & KNIGHT, LLP

By:_____
Donald G. Mulack

Dated: June 6, 2006

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

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Meyer Intellectual Properties Limited,	)	
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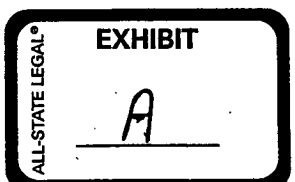
Registrant.	)	
	)	

PETITIONER'S FIRST SUPPLEMENTAL RESPONSE TO
REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER

Petitioner, Meier's Wine Cellars, Inc. ("Petitioner"), supplements its Response to Registrant's First Set of Interrogatories to Petitioner. All general and specific objections raised in the Petitioner's Response to Registrant's First Set of Interrogatories to Petitioner served November 10, 2005, are incorporated herein by reference.



SUPPLEMENTAL RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify each person employed by PETITIONER who is or was in a managerial or supervisory position in regard to the advertising, marketing, and promotion to the public of the products or services of PETITIONER under the designation "MEIER'S."

ANSWER:

Petitioner objects to this interrogatory as being overly broad and unduly burdensome to the extent that it requests information regarding "each" person. Petitioner has used MEIER'S as a trademark for more than 100 years, and it is burdensome to name each manager or supervisor for the entire duration. Notwithstanding, Petitioner responds as follows:

Kathleen M. Lim, Vice President of Marketing	7/19/82 - 8/29/97
Patrick Redinger, Assistant Director of Marketing	5/27/97 - 12/1597
Lynn Lubin, Director of Advertising	1/2/98 - Present

INTERROGATORY NO. 2:

State the location of all business records of PETITIONER relating to the advertisement, marketing, promotion, and offer of sale to the public of the PETITIONER'S products or services, setting forth the identity of each person having the best knowledge of the preparation and maintenance of such business records.

ANSWER:

Petitioner objects to this interrogatory as being overly broad and unduly burdensome to the extent that it requests the locating of "all" business records and the identity of "each" person. Notwithstanding, Petitioner responds as follows:

- 3116 Berea Road, Cleveland, Ohio 44111, Lynn Lubin
- 6955 Plainfield Road, Silverton, Ohio 45236, Jack Lucia

INTERROGATORY NO. 3:

State whether any search or investigation has been or is being conducted by or on behalf of PETITIONER regarding the registerability of the term "MEIER'S" by PETITIONER in the United States Patent and Trademark Office or in any state administrative agency or forum, and identify and describe each search or investigation, including by whom it was or is being conducted, and all documents referring or relating thereto. This includes the identification of any third parties who use MEIER'S, MEIER, MEYER VINEYARD, MEYER or any phonetic equivalent as a trademark or trade name.

ANSWER:

Petitioner objects to this interrogatory as being overly broad and unduly burdensome. Petitioner also objects on the ground that such information is protected by attorney-client privilege. Notwithstanding, Petitioner responds by stating that it has obtained a search for MEIER'S through Dialog, and copies of the search results will be provided.

INTERROGATORY NO. 4:

Describe or identify the process whereby PETITIONER or any person acting for or in concert with PETITIONER selected and adopted the term "MEIER'S" including any studies or surveys relating to the mark and any meetings in which the selection and adoption of the mark was discussed.

ANSWER:

Petitioner objects to this interrogatory as being overly broad and unduly burdensome. The PETITIONER has used MEIER'S as a trademark for more than 100 years. Those involved in its selection are no longer available. Notwithstanding, Petitioner responds by stating that relevant information may be derived from the documents. Articles of Incorporation were signed in 1906 by John M. Meier and John C. Meier, and federal permits have been provided.

INTERROGATORY NO. 5

Identify and describe each instance known to PETITIONER which may indicate a likelihood of confusion, mistake or deception or actual confusion, including but not limited to, any inquiries concerning PETITIONER's relationship to or affiliation with MEYER INTELLECTUAL PROPERTIES LIMITED or where a piece of correspondence, e-mail, telegram, telefax, telephone call or other thing intended for MEYER INTELLECTUAL PROPERTIES LIMITED has instead been received by PETITIONER, and identify the persons involved, the date and place of the incident and the persons at PETITIONER most knowledgeable about the incident.

ANSWER:

Petitioner continues to review its records and will supplement this response. At present, Petitioner is unaware of any instances of actual confusion.

INTERROGATORY NO. 6

Identify all witnesses that PETITIONER intends to call at trial, including any expert witnesses, and for each state the subject matter to which the witness is expected to testify, the substance of the facts and opinions to which the witness is expected to testify and summarize the grounds for each opinion.

ANSWER:

Petitioner has not yet determined the witnesses it will call at trial.

INTERROGATORY NO. 7

Identify all documents on which PETITIONER intends to rely at trial.

ANSWER:

Petitioner has not yet determined which documents it will rely on at trial.

INTERROGATORY NO. 8

If the PETITIONER's alleged MEIER'S mark has been the subject of an assignment, license or other agreement, then for each such assignment, license or other agreement, identify:

(i) the date such assignment, license or agreement was made, and the identity of the parties to said assignment, license or agreement;

(ii) whether the assignment was registered with the United States Patent and Trademark Office or any other public recording office and, if so, when and where it was recorded;

(iii) whether the licensor retained any right to control the nature or quality of goods in connection with the mark as used under the agreement, and if so, state the nature and extent of such control;

(iv) whether the licensor extended any control, and if so, describe each way in which the control was exercised; and

(v) identify all documents referring or relating thereto.

ANSWER:

The MEIER'S mark was originally used at least as early as 1895 on juice by individuals. The individuals formed The John C. Meier Grape Juice Company in 1906. In 1938, the company changed its name to Meier's Wine Cellars, Inc. Further details on chain of title may be found in the documents.

There are no license agreements.

As to Answers:

MEIER'S WINE CELLARS, INC.

By: Robert A. Manchick
Robert A. Manchick

Date: 12/9/05

STATE OF OHIO)
): SS
COUNTY OF CUYAHOGA)

Personally appeared before me this day, the above named **Robert A. Manchick** to me personally known, who acknowledged that he signed the foregoing instrument for the uses and purposes therein mentioned, and that the same is his free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 9TH day of DECEMBER, 2005.

Deneice K. Voss
Notary Public - DENEICE K. VOSS

DENEICE K. VOSS
Notary Public, State of Ohio
Recorded in Cuyahoga Cty.
My Comm. Expires 10-20-2007

(Seal)

As to objections:

Dated: December 12, 2005

Respectfully submitted,

FAY, SHARPE, FAGAN
MINNICH & McKEE, LLP

Christopher B. Fagan
Sandra M. Koenig
1100 Superior Avenue
Seventh Floor
Cleveland, Ohio 44114-2579
Phone: (216) 861-5582
Fax: (216) 241-1666

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on June 6, 2006 he caused true and correct copies of the above Registrant's Request For Discovery To Respond To Motion For Summary Judgment to be sent via First Class mail, and by facsimile, to the following parties:

Christopher B. Fagan
Sandra M. Koenig
1100 Superior Avenue, Seventh Floor
Cleveland, Ohio 44114-2579
Attorney for Petitioner

Donald G. Mulack

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