

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

In the matter of Trademark Registration No. 2,799,507  
For the mark MEYER VINEYARD  
Date registered December 23, 2003

Meier's Wine Cellars, Inc.,	)	
	)	
Petitioner,	)	
	)	Cancellation No. 92044883
v.	)	
	)	
Meyer Intellectual Properties Limited,	)	
	)	
Registrant.	)	
_____	)	

**PETITIONER'S OPPOSITION TO 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

Petitioner, Meier's Wine Cellars, Inc. ("Petitioner"), hereby opposes Registrant's Request for Discovery to Respond to Motion for Summary Judgment. Registrant, Meyer Intellectual Properties Limited ("Registrant"), has not demonstrated a need for discovery that is reasonably directed to obtaining facts essential to its opposition to the Motion for Summary Judgment.

Registrant seeks time to take discovery in order to obtain evidence relating to a likelihood of confusion in the marketplace between its products and Petitioner's products. In this regard, Registrant seeks to use an expert witness to conduct a survey to measure whether there is a likelihood of confusion between the parties' products (and

to use the results of that survey in responding to the Motion for Summary Judgment). Registrant also seeks to depose Petitioner's Chairman on issues related to trade and price points. In the alternative, Registrant seeks time to submit Request to Admit to Petitioner on such issues.

Registrant's request for additional discovery should be denied. The discovery that Registrant seeks to take is irrelevant and immaterial to the issues in the Motion for Summary Judgment.

Registrant's registration for MEYER VINEYARD is associated with one item, namely, "wine," without any limitation as to trade channels, price points, customer base or the like. As such, in the absence of any limitation in Registrant's statement of goods, the Trademark Trial and Appeal Board must presume that the goods move through all reasonable trade channels for wine and to all usual classes of customers for wine, regardless of price point or trade channels. See *Centraz Industries Inc. v. Spartan Chemical Co.*, 77 USPQ2d 1698 (TTAB 2006); citing *In re Elbaum*, 211 USPQ2d 639, 640 (TTAB 1981) ("[W]here the goods in a cited registration are broadly described and there are no limitations in the identifications of goods as to their nature, type, channels of trade or classes of purchasers, it is presumed that the scope of the registration encompasses all goods of the nature and type described, that the identified goods move in all channels of trade that would be normal for such goods, and that the goods would be purchased by all potential customers").

Registrant has already conceded that Petitioner has priority of use of its MEIER'S mark (see paragraph 2 of Registrant's Request for Discovery to Respond to Motion for Summary Judgment). Petitioner's Motion for Summary Judgment is supported by

evidence showing prior use of MEIER'S with both wine and sparkling fruit juice. Moreover, Registrant's MEYER VINEYARD registration has been cited under Section 2(d) against Petitioner's application to register MEIER'S for STILL WINES, SPARKLING WINES, SHERRY WINES, PORT WINES, MARSALA WINES, COOKING WINES, AND SWEET AND DRY VERMOUTHS in Class 33 and SPARKLING FRUIT JUICES AND DEALCOHOLIZED TRIPLE SEC in Class 32.

Accordingly, Registrant's request for additional discovery is immaterial to the issue of likelihood of confusion set forth in the Motion for Summary Judgment. Indeed, Petitioner has priority of use for MEIER'S for wine and other goods and, as such, any discovery obtained by Registrant with respect to the realities of the marketplace is irrelevant to the issue before the Board in Petitioner's Motion for Summary Judgment.

Furthermore, Registrant's request asserts that Mr. Robert Manchick was not identified by Petitioner in Registrant's interrogatory requesting the identification of witnesses that Petitioner intends to call at trial. It is asserted that Petitioner has not determined who it would call at trial, and Mr. Manchick's Declaration was submitted with the Motion for Summary Judgment in order to authenticate the exhibits submitted therewith. Moreover, in response to Registrant's argument that it was not able to take Mr. Manchick's deposition prior to the filing of the Motion for Summary Judgment, Registrant could have availed itself of a Rule 30(b)(6) deposition of Petitioner. There is no line of questioning that the Registrant can place before Mr. Manchick that would render further discovery necessary in order to respond to the Motion for Summary Judgment.

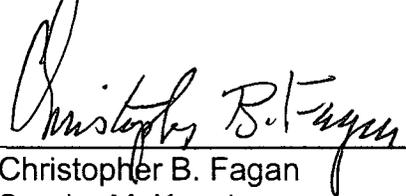
Furthermore, as will be noted from the Answers to the Interrogatories, they were executed on behalf of Petitioner, Meier's Wine Cellars, Inc., by the same Robert A. Manchick.

Accordingly, it is respectfully requested that the Trademark Trial and Appeal Board deny Registrant's Request for Discovery to Respond to Motion for Summary Judgment. Early notice to that effect is solicited.

Dated: June 23, 2006

Respectfully submitted,

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Attorneys for Petitioner  
Meier's Wine Cellars, Inc.

**CERTIFICATE OF MAILING**

I hereby certify that this **PETITIONER'S OPPOSITION TO REGISTRANT'S REQUEST FOR DISCOVERY TO RESPOND TO MOTION FOR SUMMARY JUDGMENT** is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Attention: TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on June 23, 2006.

By: Christine A. Hutter  
Christine A. Hutter

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **PETITIONER'S OPPOSITION TO REGISTRANT'S REQUEST FOR DISCOVERY TO RESPOND TO MOTION FOR SUMMARY JUDGMENT** was served by first class mail, postage prepaid, on June 23, 2006, on the following attorneys for Registrant:

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