

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

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Mailed: April 2, 2007

Cancellation No. 92044883

Meier's Wine Cellars, Inc.

v.

Meyer Intellectual
Properties Limited

Elizabeth A. Dunn, Attorney:

This case comes before the Board on respondent's motion, filed June 9, 2006, for discovery necessary to answer petitioner's motion for summary judgment. The motion has been opposed. The inordinate delay in acting upon this matter is regretted.

On August 31, 2005, Meier's Wine Cellars, Inc. filed a petition to cancel Registration No. 2799507 for the mark MEYER VINEYARD for "wine", alleging priority of use and likelihood of confusion with petitioner mark MEIER'S used on fruit juices and wine.¹ On May 19, 2006, petitioner filed a motion for summary judgment alleging that there are no genuine issues of material fact regarding petitioner's priority or likelihood of confusion, and that petitioner is entitled to judgment as a matter of law.

Thereafter respondent filed its motion for a sixty-day extension of time to enable respondent to conduct additional discovery pursuant to Fed. R. Civ. P. 56(f). Specifically, respondent's motion, supported by the affidavit of attorney Donald Mulack, seeks time to conduct a consumer survey on likelihood of confusion and to depose Robert Manchick, petitioner's chairman, who submitted an affidavit in support of the motion for summary judgment, on "issues related to Petitioner's channels of trade and price points."

Petitioner's argument against the survey does not contend that it is unnecessary but that any evidence obtained thereby will be futile in rebutting petitioner's evidence of likelihood of confusion. Petitioner also opposes the grant of the motion because the subject registration issued for "wine" without any restriction as to channels of trade or price. We agree with petitioner that the deposition of Mr. Manchick regarding price points and channels of trade is unnecessary. Where, as here, the registration lists unrestricted goods, the Board will not consider evidence showing that there are restrictions as the mark is actually used on the goods. The nature and scope of a party's goods must be determined on the basis of the goods recited in the registration. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002).

¹ The petition was subsequently amended to state that Registration No. 2799507 issued on the Supplemental Register.

Respondent's motion for discovery under Fed. R. Civ. P. 56(f) is granted with respect to the survey and denied with respect to the deposition of Mr. Manchick regarding price points and channels of trade.

Respondent is allowed until sixty days from the mailing date of this order to conduct its survey and to file its response to petitioner's motion for summary judgment.

Proceedings otherwise remain suspended.
