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Filing date: **06/21/2007**

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

Proceeding	92044883
Party	Plaintiff Meier's Wine Cellars, Inc. Meier's Wine Cellars, Inc. 3116 Berea Road Cleveland, OH 44111
Correspondence Address	SANDRA M. KOENIG FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114-2579 UNITED STATES
Submission	Reply in Support of Motion
Filer's Name	Sandra M. Koenig
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Date	06/21/2007
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**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,	)	
	)	
v.	)	
	)	Cancellation No. 92044883
Meyer Intellectual Properties Limited,	)	
	)	
	)	
Registrant.	)	
_____	)	

**PETITIONER'S REPLY TO REGISTRANT'S RESPONSE TO  
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

Petitioner, Meier's Wine Cellars, Inc. (hereinafter "Petitioner"), replies to Registrant's Response to Petitioner's Motion for Summary Judgment.

**I. PETITIONER'S MARK IS "MEIER'S" – NOT "MEIER'S WINE CELLARS"**

**a. REGISTRANT ALREADY CONCEDED THAT APPLICANT USES "MEIER'S"**

In paragraph 2 of Registrant's Request for Discovery to Respond to Motion for Summary Judgment, Registrant conceded that Petitioner has priority of use of Meier's. Paragraph 2 reads: "2. Meyer obtained registration of its Meyer Vineyard trademark 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.**" (Emphasis added.)

b. THE REGISTRANT'S CREATION OF A STRAW MAN IS TRANSPARENT AND MISLEADING

The Registrant is disingenuous in its attempt to distinguish the MEIER'S and MEYER VINEYARD marks. First, the Registrant creates a weak straw man by stating that the Petitioner's mark is not MEIER'S but instead is now MEIER'S WINE CELLARS. This premise is based presumably on the fact that the MEIER'S mark has appeared in a limited number of instances on the same label as the words "wine cellars" and thus, must now be included as part of MEIER's mark.

Next, the Registrant spends seven of its thirteen page motion based this ill-conceived premise, wherein every argument is based on the misleading and false notion that the Petitioner's mark is MEIER'S WINE CELLARS rather than MEIER'S. In support of this effort, the Registrant cites to several labels that show MEIER'S in a distinct commercial impression from remaining text, including the words "wine cellars." In one example, Registrant's Exhibit B contains label after label that includes the mark MEIER'S by itself or MEIER'S near any number of different terms such as "44," "American Cream Sherry," "Wine Cellar," and "No. 22 Sherry." In Registrant's Exhibit D, the MEIER'S mark stands alone in a band and is the only text on the label written in white text. The MEIER'S mark makes a distinct commercial impression on each label. Thus, there is no doubt that MEIER'S, standing alone, indicates the source of the wines and fruit juices recited in the goods listed in Petitioner's application for registration.

c. THE "MEIER'S" MARK MAKES A SEPARATE, DISTINCT IMPRESSION

The contention that the MEIER'S mark is or should be MEIER'S WINE CELLARS is false and inappropriate. The determinative factor is whether or not the subject matter

in question makes a separate and distinct commercial impression apart from the other element(s). See *In re Chemical Dynamics Inc.*, 839 F.2d 1569, 5 USPQ2d 1828 (Fed. Cir. 1988); *In re Servel, Inc.*, 181 F.2d 192, 85 USPQ 257 (C.C.P.A. 1950); *In re Miller Sports Inc.*, 51 USPQ2d 1059 (TTAB 1999); *In re Boyd Coffee Co.*, 25 USPQ2d 2052 (TTAB 1993); *In re Raychem Corp.*, 12 USPQ2d 1399 (TTAB 1989). “It all boils down to a judgment as to whether that designation for which registration is sought comprises a separate and distinct ‘trademark’ in and of itself.” See 1 *J.T. McCarthy, Trademarks and Unfair Competition* §19:59 (4<sup>th</sup> ed. 2005).

The mark sought to be registered is MEIER’S which is employed on various wines and fruit juices. Although other printed matter appears on the labeling, the petitioner has “culled out exactly that element which serves to distinguish [the] product from others.” See *McCarthy* §19:59. Petitioner manufactures a number of different beverages under the MEIER’S brand. For example, see Exhibit PA hereto which comprises the specimens in the Petitioner’s application for registration of MEIER’S . A number of wine varieties such as still wines, sparkling wines, sherry wines, port wines, etc. utilize the MEIER’S mark in various locations and alongside various words that relate to specific aspects of the beverage contained therein. Such usage speaks to the variety of different ways in which the MEIER’S mark can be employed to indicate source of product. See, Manchick Declaration Exhibits for examples of other labels bearing the MEIER’S mark.

II. THE PATENT AND TRADEMARK OFFICE EXAMINER HAS ALREADY CONCLUDED THAT "MEIER'S" AND "MEYER VINEYARD" ARE CONFUSINGLY SIMILAR

Petitioner seeks to register MEIER'S in association with sparkling juice, fruit juice, non-alcoholic triple sec, still wines, sherry wines, sparkling wines, port wines, marsala wines, cooking wines, and sweet and dry vermouths (Serial No. 76/465,378). This application stands rejected based on a likelihood of confusion with Reg. No. 2,799,507. See Exhibit PB, which comprises an Office Action in Serial No. 76/465378. Petitioner seeks to cancel Reg. No. 2799507 because it is blocking Serial No. 76/465378 from proceeding.

The Examining Attorney stated, "[t]he Applicant's mark is essentially the phonetic equivalent of the dominant portion of the Registrant's mark." As for the goods, the Examining Attorney stated, "[b]oth parties sell wines. The goods are closely related..." and "[t]he remaining goods are closely related in that they serve as substitutes for each other... ." See Exhibit PB, pages 2 and 3.

As Stated by the Examining Attorney when rejecting Petitioner's application to register the MEIER'S mark, "[t]he marks [MEIER'S and MEYER VINEYARD] are highly similar in sound, appearance, meaning and connotation." See *Notice of Suspension* dated July 12, 2003, Exhibit PC. Although the Registrant tries to distort facts and twist evidence in its favor, the finding is still the same: both marks are legally equivalent and a likelihood of confusion between the marks is inescapable.

Marks are legal equivalents if they create the same, continuing commercial impression such that a consumer would consider them both the same mark. *Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812-13 (Fed. Cir. 2001).

Therefore, a minor difference in the marks, such as pluralization or an inconsequential modification or modernization of the later mark, does not preclude a finding that the marks are legal equivalents. *Id.*; *In re Loew's Theatres, Inc.*, 223 USPQ 513, 514 n.5 (TTAB 1984), (the marks DURANGOS and DURANGO are legal equivalents; the marks 1-888-M-AT- R-E-S-S and (212) M-A-T-T-R-E-S were viewed as legal equivalents). If the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *ECI Division of E Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980).

MEIER'S and MEYER VINEYARD are two almost identical marks that create the same commercial impression in their use with the same goods, wine. MEIER and MEYER (the dominant portion of Registrant's mark) are pronounced identically and there is only a single letter that distinguishes them.

Thus, a consumer could be confused as to the source and of the wine they are purchasing since the respective marks are spelled almost identically. It may be difficult for a consumer to remember the source of the wine previously purchased down to the letter. The fact that these marks contain immaterial differences in appearance and sound is even more significant since both MEIER and MEYER VINEYARD are used with identical goods and sold in the same sales channels.

### III. THE REGISTRANT'S SURVEY EVIDENCE IS ANCILLARY AND IS NOT DISPOSITIVE IN A LIKELIHOOD OF CONFUSION ANALYSIS

The two key factors in a likelihood of confusion analysis under Section 2(d) are the similarity or dissimilarity of the marks, and the similarity or dissimilarity of the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 192 USPQ 24, 29 (CCPA 1976) (emphasis added). This analysis is performed utilizing the thirteen *duPont* factors which set forth the principal factors to be considered in determining whether confusion is likely. *In re E.I. duPont de Nemours & Co.*, 177 USPQ 563 (CCPA 1973). These factors "are not listed ... in order of merit. Each may from case to case play a dominant role. \*\*\* Reasonable men may differ as to the *weight* to give specific evidentiary elements in a particular case." *duPont* at 567.

The Registrant places far too much weight on a single *duPont* factor related to the extent of potential confusion between the MEIER'S and MEYER VINEYARD marks. The survey evidence is peripheral in view of the nearly identical marks that are both utilized with "wine."

As to the survey itself, respondents named the source of the Meyer product wine bottle as "Meyer" 164 times. Since these were oral responses, there is no verification as to spelling (i.e., whether there is an "i" or a "y") or to the use of the possessive form of the term (i.e., "s") (See page 10 of Survey report). The survey fails to indicate anything with respect to the similarities between Meier's and Meyer. Furthermore, the opinion of the surveyor, Craig M. Joseph PhD, is centered on registrant's use of MEYER VINEYARD rather than the right to remain registered in spite of the prior use of Meier's for identical goods.

The MEIER'S mark has been in use for over a century, and the continued existence of the MEYER VINEYARD registration continues to damage Petitioner as it is preventing the MEIER'S mark from its rightful registration.

#### IV. REGISTRANT'S EMPHASIS ON MARKETPLACE REALITIES IS IRRELEVANT

The Registrant's position regarding the relative sales price of the MEIER'S wine versus the sales price of the MEYER'S VINEYARD wine is misleading and completely irrelevant. See, e.g. *Registrant's Motion*, Exhibit 2. The Registrant has provided no limitation in its recitation of goods that has any bearing on the sale price of the wine to which the MEYER'S VINEYARD mark is used. Nor, are there restrictions on the appearance of the mark, bottles or label. Indeed, the only good listed by Registrant is "wine." When parties' respective application and registrations are unrestricted, and registrant's goods and services are identical to some of petitioner's goods and services, we must presume that at such time as applicant were to use his mark on the identified goods and recited services, the parties' respective goods and services will be traveling through the same channels of trade to the same classes of consumers. *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002) ("[A]bsent restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class of purchasers."); and *Kangol Ltd. v. KangaRoos U.S.A.*, 974 F.2d 161, 23 USPQ2d 1945, 1946 (Fed. Cir. 1992).

Moreover, the Registrant's effort is fruitless as this evidence is not weighed by the Board to make a determination in this proceeding. When a registration lists

unrestricted goods (e.g., "wine"), the Board does not consider evidence showing that there are restrictions as the mark is actually used on the goods. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002). The nature and scope of a party's goods must be determined on the basis of the goods recited in the registration. *Id.*

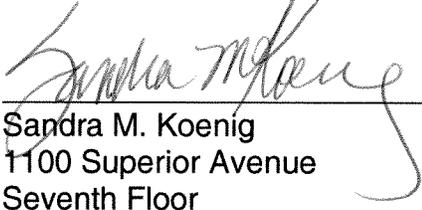
The Registrant has attempted to provide misleading arguments, distort facts and twist evidence in its favor. Metaphysical doubt as to material facts, however, will not defeat a motion for summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 US 574, 587 (1986). The finding is still the same, a likelihood of confusion between the marks is unavoidable. For these reasons, the MEYER VINEYARD registration must be cancelled.

### **SUMMARY**

For the foregoing reasons, Petitioner respectfully requests that the Board grant its Motion for Summary Judgment on the issue of likelihood of confusion and ultimately cancel Trademark Registration No. 2,799,507.

Respectfully submitted,  
FAY SHARPE LLP

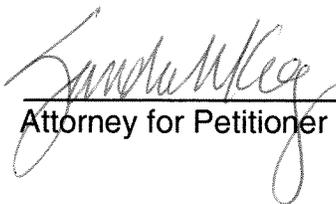
Date: June 21, 2007

  
\_\_\_\_\_  
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e-mail: skoenig@faysharpe.com  
Attorney for Petitioner  
Meier's Wine Cellars, Inc.

**CERTIFICATE OF SERVICE**

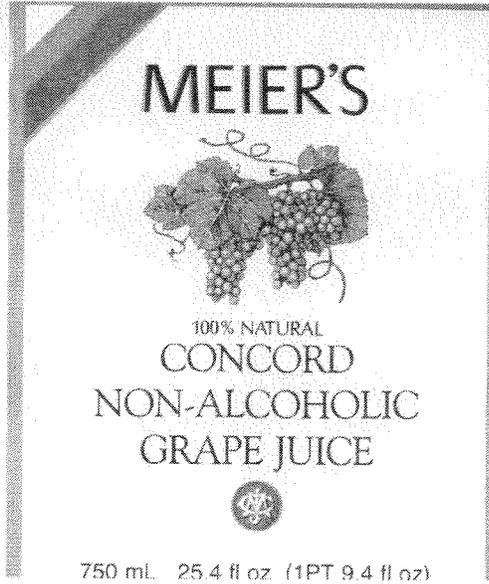
I hereby certify that a copy of the foregoing **PETITIONER'S REPLY TO REGISTRANT'S RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT** was served by first class mail, postage prepaid, on June 21, 2007, upon the following attorneys for Registrant:

Scott W. Petersen, Esq.  
Donald G. Mulack, Esq.  
HOLLAND & KNIGHT LLP  
131 South Dearborn Street, 30th Floor  
Chicago, Illinois 60603

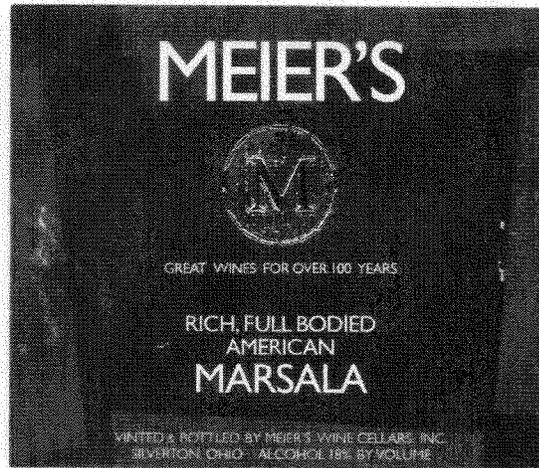
By:   
\_\_\_\_\_  
Attorney for Petitioner

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SPECIMEN - CLASS 32



SPECIMEN - CLASS 33



**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 76/465378

**APPLICANT:** Meier's Wine Cellars, Inc.

**\*76465378\***

**CORRESPONDENT ADDRESS:**

CHRISTOPHER B. FAGAN  
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP  
1100 SUPERIOR AVENUE, SEVENTH FLOOR  
CLEVELAND, OHIO 44114-2518

**RETURN ADDRESS:**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MARK:** MEIER'S

**CORRESPONDENT'S REFERENCE/DOCKET NO:** PMTZ 5 00066

Please provide in all correspondence:

**CORRESPONDENT EMAIL ADDRESS:**

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

**OFFICE ACTION**

**TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.**

Serial Number 76/465378

This letter responds to the applicant's communication filed on July 28, 2004 and December 27, 2004. The applicant correctly advised the Office that the prior pending applications have been abandoned, with the exception of Application No. 76456360, which has matured into Registration No. 2799507. Moreover, the applicant's claim of acquired distinctiveness is acceptable. Registration is refused under Trademark Act Section 2(d) for likelihood of confusion with Registration No. 2799507.

**Refusal - Likelihood of Confusion**

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 2799507 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

The Court in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods or services, and similarity of trade channels of the goods or services.

#### Similarity of Marks

The examining attorney must compare the marks for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977).

The registrant's mark is MEYER VINEYARD with VINEYARD disclaimed. The applicant's mark is MEIER'S. Disclaimed matter is typically less significant or less dominant when comparing marks. Although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997) (holding that DELTA is the dominant portion of the mark THE DELTA CAFÉ where the disclaimed word "café" is descriptive of applicant's services); *In re National Data Corporation*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); and *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553 (TTAB 1987). See also *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ 2d 1001 (Fed. Cir. 2002); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); *In re El Torito Rests. Inc.*, 9 USPQ2d 2002 (TTAB 1988); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986). Because VINEYARD has been disclaimed as generic, the dominant portion of the registrant's mark is MEYER. The applicant's mark is essentially phonetic equivalent of the dominant portion of the registrant's mark. Similarity in sound alone is sufficient to find a likelihood of confusion. *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469 (TTAB 1975); *In re Cresco Mfg. Co.*, 138 USPQ 401 (TTAB 1963). TMEP §1207.01(b)(iv).

The applicant has argued that the registrant's mark is weak because it is registered on the Supplemental Register. Even if applicant has shown that the cited mark is "weak," such marks are still entitled to protection against registration by a subsequent user of the same or similar mark for the same or closely related goods or services. See *Hollister Incorporated v. Ident A Pet, Inc.*, 193 USPQ 439 (TTAB 1976) and cases cited therein.

#### Similarity of Goods or Services and Channels of Trade

The goods or services of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods or services come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

The registrant's goods are wines. The applicant's goods are sparkling fruit juices and dealcoholized triple sec, still wines, sparkling wines, sherry wines, port wines, marsala wines, cooking wines, and sweet and dry vermouths. Both parties sell wines. The goods are closely related, in that they are likely to be sold to the same class of purchaser through the same channels of trade. *In re Sailerbrau Franz Sailer*, 23 USPQ2d 1719 (TTAB 1992) (Likelihood of confusion between CHRISTOPHER COLOMBUS for beer and CRISTOBAL COLON & design for sweet wine); *Somerset Distilling Inc. v. Speymalt Whisky Distributors Ltd.*, 14 USPQ2d 1539 (TTAB 1989) (likelihood of confusion between JAS. GORDON and design for scotch whisky and GORDON'S for distilled gin and vodka); *Schieffelin & Co. v. Molson Companies Ltd.*, 9 USPQ2d 2069 (TTAB 1989) (likelihood of confusion between BRAS D'OR for brandy and BRADOR for beer); *Bureau National Interprofessionnel Du Cognac v. International Better Drinks Corp.*, 6 USPQ2d 1610 (TTAB 1988) (likelihood of confusion between trademark COLAGNAC for cola flavored liqueur and certification mark COGNAC for brandy); *In re Leslie Hennessy, Jr.*, 226 USPQ 274 (TTAB 1985) (likelihood of confusion between HENNESSY for cognac brandy and A LESLIE HENNESSY SELECTION for wine); *United Rum Merchants Ltd. v. Fregal, Inc.*, 216 USPQ 217 (TTAB 1982)

(likelihood of confusion between TIA LOLA for bottled wine and TIA MARIA for liqueurs); *Monarch Wine Co., Inc. v. Hood River Distillers, Inc.*, 196 USPQ 855 (TTAB 1977) (likelihood of confusion between MONARCH for wine and MONARCH for whisky, rum, brandy, vodka); *In re AGE Bodegas Unidas, S.A.*, 192 USPQ 326 (likelihood of confusion between RIOJA SIGLO for wine and CENTURY for whisky). The remaining goods are closely related in that they serve as substitutes for each other. Sparkling fruit juice is served as a substitute drink for those who decline to consume alcohol, but still want a festive beverage.

For the foregoing reasons, the examining attorney refuses registration under Trademark Act Section 2(d).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

**Response Guidelines**

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant must sign the response. In addition to the identifying information required at the beginning of this letter, the applicant should provide a telephone number to speed up further processing. If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

**NOTICE: FEE CHANGE**

Effective January 31, 2005 and pursuant to the Consolidated Appropriations Act, 2005, Pub. L. 108-447, the following are the fees that will be charged for filing a trademark application:

(1) \$325 per international class if filed electronically using the Trademark Electronic Application System (TEAS);  
or

(2) \$375 per international class if filed on paper

These fees will be charged not only when a new application is filed, but also when payments are made to add classes to an existing application. If such payments are submitted with a TEAS response, the fee will be \$325 per class, and if such payments are made with a paper response, the fee will be \$375 per class.

The new fee requirements will apply to any fees filed on or after January 31, 2005.

**NOTICE: TRADEMARK OPERATION RELOCATION**

The Trademark Operation has relocated to Alexandria, Virginia. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

**Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Applicants, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at <http://www.uspto.gov/teas/index.html>.

USPTO

/Tracy Whittaker-Brown/

Examining Attorney, Law Office 111

U.S. Patent & Trademark Office

Phone: 571-272-9397

Fax: 571-273

**HOW TO RESPOND TO THIS OFFICE ACTION:**

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action issued via email you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

**STATUS OF APPLICATION:** To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

**VIEW APPLICATION DOCUMENTS ONLINE:** Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

**GENERAL TRADEMARK INFORMATION:** For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.**



**Print: Mar 4, 2005**

**76456360**

**DESIGN MARK**

**Serial Number**

76456360

**Status**

REGISTERED

**Word Mark**

MEYER VINEYARD

**Standard Character Mark**

No

**Registration Number**

2799507

**Date Registered**

2003/12/23

**Type of Mark**

TRADEMARK

**Register**

SUPPLEMENTAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

Meyer Intellectual Properties Limited CORPORATION BR.VIRGIN ISLANDS  
Kwun Tong Road Kowloon, Hong Kong CHINA

**Goods/Services**

Class Status -- ACTIVE. IC 033. US 047 049. G & S: WINE. First  
Use: 2002/08/01. First Use In Commerce: 2002/08/01.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VINEYARD" APART FROM  
THE MARK AS SHOWN.

**Filing Date**

2002/09/30

**Amended Register Date**

2003/09/05

**Examining Attorney**

STRYZ, KAREN M.

**Attorney of Record**

**Print: Mar 4, 2005**

**76456360**

DANIEL RIVIERA

**MEYER VINEYARD**

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/465378

APPLICANT: Meier's Wine Cellars, Inc.

CORRESPONDENT ADDRESS: CHRISTOPHER B. FAGAN, FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP, 1100 SUPERIOR AVENUE, SEVENTH FLOOR, CLEVELAND, OHIO 44114-2518

RETURN ADDRESS: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, ecom111@uspto.gov

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: MEIER'S

CORRESPONDENT'S REFERENCE/DOCKET NO: PMTZ 5 00066

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

- 1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 76/465378

NOTICE OF SUSPENSION

This letter responds to the applicant's communication filed on April 30, 2003. The applicant 1) amended its identification of goods, 2) claimed acquired distinctiveness under Trademark Act Section 2(f) and 3) argued against the potential refusal for likelihood of confusion with prior pending Application Nos. 76456361, 76-456360 and 76-381736. Item No. 1 is acceptable. Item Nos. 2 and 3 are unacceptable, as discussed below. Prior pending Application No. 76-381736 has been abandoned. Action on this application is suspended pending the disposition of:

- Application Serial No(s). 76-456361 and 76-456360

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application. See 37 C.F.R. §2.83. A copy of information relevant to this pending application(s) is attached. The applicant may request that the application be removed from suspension by presenting arguments related to the potential conflict between the relevant applications or other arguments related to the ground for suspension. The applicant's election to present or not to present arguments at this time will not affect the applicant's right to present arguments later.

### **Claim of Acquired Distinctiveness**

The applicant should provide the following statement in order to claim acquired distinctiveness of its mark based on 5 years use:

THE MARK HAS BECOME DISTINCTIVE OF THE APPLICANT'S GOODS AND SERVICES BY REASON OF SUBSTANTIALLY EXCLUSIVE AND CONTINUOUS USE IN COMMERCE BY THE APPLICANT FOR THE FIVE YEARS NEXT PRECEDING THE DATE OF THE STATEMENT.

The applicant must verify this statement with an affidavit or a declaration under 37 C.F.R. Section 2.20. 37 C.F.R. Section 2.41(b); TMEP section 1212.05.

### **Likelihood of Confusion**

The marks are highly similar in sound, appearance, meaning and connotation. When the applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956). Indeed, if the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *ECI Division of E Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980). As discussed below the goods are identical.

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