

ESTTA Tracking number: **ESTTA46487**

Filing date: **09/28/2005**

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

<b>Proceeding</b>	92044883
<b>Party</b>	Defendant Meyer Intellectual Properties Limited Meyer Intellectual Properties Limited Kwun Tong Road CNX Kowloon, Hong Kong,
<b>Correspondence Address</b>	Meyer Intellectual Properties Limited Kwun Tong Road CNX Kowloon, Hong Kong, CHINA
<b>Submission</b>	Amended Answer
<b>Filer's Name</b>	Scott W. Petersen
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<b>Signature</b>	/Scott W. Petersen/
<b>Date</b>	09/28/2005
<b>Attachments</b>	Meier's Wine v. Meyer - Amended Answer to Petition to Cancel.pdf ( 6 pages )

**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  
**Trademark:** MEYER VINEYARD  
**Registered:** December 23, 2003

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

**REGISTRANT'S AMENDED ANSWER TO PETITION TO CANCEL**

Registrant, Meyer Intellectual Properties Limited, a corporation of the British Virgin Islands and owner of the above-captioned registration) (hereinafter "MEYER" or "Registrant"), hereby answer paragraphs 1-9 of the Petition to Cancel filed against its trademark registration on MEYER VINEYARD, U.S. Registration No. 2,799,507.

1. Petitioner is the owner of the trademark MEIER'S.

**Answer:**

Registrant does not have sufficient knowledge or information as to the truth of the allegations contained in paragraph 1 and therefore denies the same.

2. Petitioner has used MEIER'S as a trademark for sparkling fruit juices since at least as early as 1895.

**Answer:**

Registrant does not have sufficient knowledge or information as to the truth of the allegations contained in paragraph 2 and therefore denies the same.

3. Petitioner has used MEIER'S as a trademark for wines since at least as early as 1935.

**Answer:**

Registrant does not have sufficient knowledge or information as to the truth of the allegations contained in paragraph 3 and therefore denies the same.

4. On November 7, 2002, Petitioner filed Application Serial No. 76/465,378 to register MEIER'S in the U.S. Patent & Trademark Office for:

SPARKLING FRUIT JUICES AND DEALCOHOLIZED TRIPLE SEC in Class 32; and

STILL WINES, SPARKLING WINES, SHERRY WINES, PORT WINES, MARSALA WINES, COOKING WINES, AND SWEET AND DRY VERMOUTHS in Class 33.

**Answer:**

Registrant does not have sufficient knowledge or information as to the truth of the allegations contained in paragraph 4 and therefore denies the same.

5. Serial No. 76/465,378 has been refused registration pursuant to Section 2(d) of the Lanham Act in light of Registration No. 2,799,507 which was filed by Registrant on September 30, 2002, and issued December 23, 2003, in association with:

WINE in Class 33.

**Answer:**

Registrant does not have sufficient knowledge or information as to the truth of the allegations contained in paragraph 5 and therefore denies the same.

6. Registrant's mark, MEYER VINEYARD, as registered in association with WINE, so resembles Petitioner's MEIER'S mark for SPARKLING FRUIT JUICES AND DEALCOHOLIZED TRIPLE SEC in Class 32 and STILL WINES, SPARKLING WINES, SHERRY WINES, PORT WINES, MARSALA WINES, COOKING WINES, AND SWEET AND DRY VERMOUTHS in Class 33 as to be likely to cause confusion, to cause mistake, or to deceive, to the damage and injury of Petitioner and the purchasing public.

**Answer:**

Denied.

7. There is no issue as to priority. Petitioner's use of MEIER'S on SPARKLING FRUIT JUICES AND DEALCOHOLIZED TRIPLE SEC in Class 32 and STILL WINES, SPARKLING WINES, SHERRY WINES, PORT WINES, MARSALA WINES, COOKING WINES, AND SWEET AND DRY VERMOUTHS in Class 33 is significantly prior to the earliest date on which Registrant may rely, constructive or otherwise.

**Answer:**

Registrant does not have sufficient knowledge or information as to the truth of the allegations contained in paragraph 7 and therefore denies the same.

8. Continued existence of Registration No. 2,799,507 on the Principal Register will give the impression that Registrant has at least a prima facie exclusive right to use the mark when, in fact, he does not.

**Answer:**

Denied.

9. Continued existence of Registration No. 2,799,507 on the Principal Register will be a continued source of damage and injury to the Petitioner in that Petitioner will be unable to obtain a registration for MEIER'S for SPARKLING FRUIT JUICES AND DEALCOHOLIZED TRIPLE SEC in Class 32 and STILL WINES, SPARKLING WINES, SHERRY WINES, PORT WINES, MARSALA WINES, COOKING WINES, AND SWEET AND DRY VERMOUTHS in Class 33.

**Answer:**

Denied.

**AFFIRMATIVE DEFENSES**

1. MEYER has priority of use of the trademark MEYER VINEYARD.
2. Upon information and belief, the Petitioner is barred from bringing this claim by the doctrine of laches.
3. The Petition to Cancel does not state a claim upon which relief can be granted.
4. The Petitioner has no standing on which to make a claim that its application has been refused by the PTO.

5. Upon information and belief, the Registrant has used the MEYER VINEYARD trademark in interstate commerce since the date set forth in the application.

6. The marks set forth herein are different in sound, appearance and meaning and in different channels of trade.

WHEREFORE, Registrant prays that the Petition to Cancel be dismissed with prejudice and that Registrant be awarded such other relief as the Trademark Trial and Appeal Board may deem just and proper.

Registrant appoints Scott W. Petersen, Stephan V. Stein, Lewis T. Steadman, Jr. and Todd S. Parkhurst of Holland & Knight LLP, 131 Dearborn Street, 30<sup>th</sup> Floor, Chicago, Illinois 60603, to act as its attorneys in the above-identified cancellation, to transact all business in the Patent and Trademark Office in connection with said cancellation and to receive all communications relating to the same.

**Meyer Intellectual Properties Limited**



Date: September 28, 2005

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Attorneys for Registrant

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence filed electronically on September 28, 2005, with the United States Patent & Trademark Office, Trademark Trial & Appeal Board.

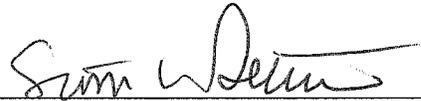


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Scott W. Petersen, Attorney for Registrant

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that the foregoing **Registrant's Amended Answer to Petition to Cancel** has been served on Petitioner's counsel by First Class Mail, postage prepaid on September 28, 2005.

Christopher B. Fagan  
Sandra M. Koenig  
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Scott W. Petersen, Attorney for Registrant