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

Proceeding	92048732
Party	Defendant Ronald Beckenfeld
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Submission	Reply in Support of Motion
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Date	06/21/2013
Attachments	Beckenfeld Declaration - Reply for MSJ.pdf(676980 bytes)

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

ALTVATER GESSLER – J.A. BACZEWSKI	:	Cancellation 92048732
INTERNATIONAL (USA) INC. and ALTVATER	:	
GESSLER – J.A. BACZEWSKI GMBH,	:	
	:	
Petitioners,	:	Registration No.: 2,731,948
	:	
v.	:	
	:	
RONALD BECKENFELD,	:	
	:	
Respondent	:	Attorney Docket No. B1001-9001

DECLARATION OF RONALD BECKENFELD

I, Ronald Beckenfeld, hereby state as follows:

1. This declaration is made in support of Registrant’s Reply in Support of Registrant’s Motion for Summary Judgment in the above-captioned matter.
2. I am the Respondent in this matter and owner, by assignment, of U.S. Registration No. 2,731,948, which is the subject of this action.
3. The prior owner of the Registration was Mutual Wholesale Liquor d/b/a International Import Export (“Mutual”). At the time the Registration was assigned to me, my father Mickey Beckenfeld was President and sole owner of Mutual.
4. I am the owner of Continental Vitamin Company (“CVC”), a company that manufactures and sells vitamin and dietary food supplements. CVC was incorporated in 1971.
5. Both Mutual and CVC operate out of the same office building and warehouse, located at 4510 S. Boyle Avenue in Los Angeles. The CVC and Mutual offices are immediately adjacent to one another, and share conference rooms and the reception area. In fact, I walk in and around Mutual’s offices each day I am at my office. As a result, I have easy access to Mutual’s employees, inventory and records.

6. My father and I were very close, and we spoke quite regularly about both Mutual's business and CVC's business. I also accompanied my father in the warehouse many times.

7. During the later years of his life, my father suffered from physical ailments and wasn't able to drive himself to the office regularly. I would often spend several hours with him, either driving with him to the offices, or else visiting him at his home on those days he did not travel to Mutual's offices. As a result, I was well informed about Mutual and issues faced by my father's business, including matters involving the MONOPOLOWA products.

8. Vitamins and dietary food supplements are a heavily regulated industry, and in my more than 40 years of business have become well acquainted with the need for establishing and maintaining quality control. CVC is drug licensed, and employs a Director of quality, quality assurance and quality control.

9. Over the years, CVC has manufactured and sold liquid products as part of its vitamin and dietary food supplement business. As a result, I have an understanding of what needs to be done regarding quality control for liquid products, including what strategies to employ, what steps to take, and even what equipment and resources can be used to inspect products for quality assurance purposes.

10. As a result of my regular conversations with my father and my close proximity to Mutual's business that I have been kept informed of relevant information regarding the MONOPOLOWA products.

11. In addition, I have offered, and been asked to provide, assistance to Mutual with respect to quality issues concerning the MONOPOLOWA products. For example, when Mutual was alerted to a problem concerning the accuracy of the alcohol content, I discussed with my father about Mutual establishing a quality control procedure to avoid such issues in the future. I explained to my father how Mutual should establish guidelines for quality control, including having samples

sent out for analysis using an alcohol hydrometer so the contents could be assayed, using random checks of lots, implementing stricter inventory controls and records so that Mutual could more easily track product from each shipment, and retaining sample from each production run in case future testing was required.

12. The assertion that I have had no interest in or involvement concerning MONOPOLOWA is not accurate. Since the Registration was assigned to me, I have regularly been receiving correspondence concerning MONOPOLOWA. I have had access to and reviewed correspondence concerning the product, its sales and related financial information, quality control issues, promotions and advertisements, and changes to the labels designs, for which I voiced my opinion on more than one occasion.

13. When the trademark and registration were assigned to me, as part of the transaction I entered into a license agreement with Mutual granting them the rights to continue the importation, distribution and sale of MONOPOLOWA products. At the time, I was aware that Mutual had a long history and involvement with the MONOPOLOWA product line, and trusted that they were well situated to continue in protecting the goodwill of the trademark.

14. I also monitor closely Mutual's adherence to the terms of our license agreement, and have on at least one occasion sent Mutual a notice of breach of the license's terms, along with a request to cure the same. My regular reviews of the products, the warehouse and the sales activities of Mutual, including my discussions with my father while he ran Mutual, have confirmed that to date this trust has been well placed, and that they have done nothing (with the exception of the one potential breach which was timely cured) to negatively impact on the goodwill in the mark.

15. In addition, since the death of my father last year, I have had several conversations with my brother-in-law Harvey Monastirsky concerning Mutual and its products, including the MONOPOLOWA line of products.

16. Additionally, I am a regular customer of the Trader Joe's grocery store chain, where the MONOPOLOWA vodka products are sold, and have routinely sought out and examined the products at such stores.

17. Petitioners' assertion that I am "utterly clueless" as to the MONOPOLOWA brand is baseless, and refers to (i) 2 errors in spelling made by my attorneys in the Motion for Summary Judgment, and (ii) the submission of labels which are in fact still used in the advertising and promotion of the MONOPOLOWA products. Copies of advertisements for sale of MONOPOLOWA vodka by online retailers using the label in question are attached as **Exhibit A**.

18. In summary, the assertion that I have "never had anything to do with" the MONOPOLOWA products or associated business is simply not true.

19. In preparation of this Declaration, I had the opportunity to review the declarations of Rasiel Gessler and Leonie Gessler, and found them to contain statements which contradict my understanding of the facts surrounding the assignment of the MONOPOLOWA trademark to Mutual in 1992.

20. Based on my discussions with my father, both at the time and since, and having read his deposition and the deposition of John Wilson, and the relevant related documents, it is my understanding that Petitioners sought out my father as a last resort to save their then-floundering business, and he agreed to assist them, but only in exchange for owning the rights in MONOPOLOWA in the US.

21. Specifically, prior to Mutual's involvement, MONOPOLOWA products did not have wide distribution or extensive sales in the United States. At that point in time, it was a mostly unknown product in the US. The fact that Petitioners had money problems at that time meant they lacked any significant sales or distribution, and had no cohesive or coherent advertising or promotional efforts.

22. In those few territories in which there were sales of MONOPOLOWA (Chicago; Texas), Petitioners' money issues prevented them from having a reliable, quality supplier or the necessary inventory of product available to make consistent or growing sales.

23. At first, my father had agreed to carry some of the MONOPOLOWA product, but he had only limited success in finding buyers interested in taking on this unknown product. He recognized that a more significant distribution network, along with an advertising campaign and a significant monetary investment were needed in order to make any inroads in getting real placement for the MONOPOLOWA products and for promoting the product to retailers and consumers.

24. In the early 1990s, Elek Gessler later approached Mutual in hopes they would be willing to provide the money needed to be able to stabilize Petitioners' business and allow for dependable production of the MONOPOLOWA products. I understand that Petitioners were in a financial bind (confirmed by Petitioners in their Response brief and materials), that they had been turned down by the banks and other traditional lenders, and that no other wholesalers had any interest in funding the MONOPOLOWA product, and so they turned to my father as their last chance for surviving.

25. As a result of these discussions with Elek Gessler, my father agreed to put up the funds necessary to guarantee steady production, including providing a letter of credit on Petitioners' behalf, improving the manufacturing plant's equipment, purchasing the labels, hiring a national sales manager and developing a national sales and marketing campaign to promote MONOPOLOWA vodka in the US and work towards getting placement of the products in as many markets as possible. However, my father would only agree to the significant financial undertaking and risk this plan of action entailed if Petitioners agreed to transfer ownership of the MONOPOLOWA brand to Mutual.

26. In essence, Petitioners were asking for all of the reward while asking Mutual to undertake all of the risk. But my father was a savvy businessman and would not take on a product promotion of this nature unless he had an ownership interest. After all, why would anyone want to spend the kind of time and money being considered, and take on such a high level of risk, without getting something in return.

27. Once the deal had been struck, Petitioners and Mutual prepared documents outlining their arrangement and confirming the sale of US rights in MONOPOLOWA to Mutual.

28. Despite their protestations, the business arrangements and division of activities between Mutual and Petitioners contradicts any claim that Petitioners are the manufacturers and brand owners in the United States. Petitioners have had no involvements with state or federal filings relating to the MONOPOLOWA products. Petitioners possessed no promotional materials, placed no advertisements, had no cooperative advertising program, and (until this year) had never developed nor paid for any US advertising or promotional campaigns. Petitioners did not employ sales managers or sales agents, owned no delivery trucks or bonded warehouses or other necessities required for national distribution of the product or otherwise necessary for growing a spirits distribution business. Petitioners have acquired no licenses from the states in which the MONOPOLOWA products are sold. Petitioners made no efforts to submit MONOPOLOWA products for award consideration. Petitioners offered no coupons or rebates to retailers or purchasers. Petitioners did not pay the bottling plant for any products shipped to the United States, and have relied on Mutual to maintain the letters of credit necessary to insure continued production of products for sale in the US. Petitioners took no steps to ever register the trademark in the United States prior to the initiation of this proceeding. Petitioners do not inspect the products being shipped to the US, resulting more than once in quality issues arising. It was only because of the

efforts of the Registrant and his predecessor in interest that the foregoing activities were properly handled.

29. Clearly, if Petitioners genuinely believed they owned the MONOPOLOWA trademark in the United States, they would have undertaken the activities listed above (or at least a majority of them). Instead, it was Mutual who undertook all of these efforts because the rights in the MONOPOLOWA trademark had indeed been transferred to Mutual in 1992.

30. Petitioners' role was solely as a broker. Petitioners had established a relationship with the manufacturer, but had no actual involvement with the production of the finished product, as proven by their failure to monitor the quality of the products shipped to the United States. Had Petitioners actually been involved in the manufacture of the products, they would have caught the various bottling issues that arose over the years, including the discrepancies in alcohol content and faulty bottle caps.

31. In addition, as brokers, Petitioners recognized the need for Mutual's involvement in the label designs and redesigns, and always sought their input before making any changes to the labels. Comments and complaints by retailers and distributors regarding changes to the labels were always reported to Mutual, who worked with Petitioners to address problems and concerns that had been raised.

32. Petitioners were compensated handsomely for their role as broker; as a result of their deal with my father, Petitioners have received millions of dollars in broker fees since the 1992 agreement between Petitioners and Mutual.

33. In short, Petitioners have never acted as the typical manufacturer/seller of products that they claim to be; rather, their activities in connection with MONOPOLOWA vodka products since the 90s makes clear their understanding that the US rights in MONOPOLOWA vodka were transferred to Mutual by Elek Gessler in 1992.

34. In preparation of this Declaration, I also had the opportunity to review the declaration of Harvey Monastirsky (the “Monastirsky Declaration”) and found it to contain numerous inaccuracies and misstatements. For example, in paragraph 4 of the Monastirsky Declaration, Harvey incorrectly states that Mutual was owned by my father Mickey and my mother Lillian until 2012, when in fact it was owned solely by my father. Similarly, in paragraph 5 of his declaration, Harvey appointed himself president of Mutual, but did so without the knowledge or approval of the current owners of the company.

35. In addition, the Monastirsky Declaration gives the false impression that Harvey had knowledge or involvement with the MONOPOLOWA product line and the business relationship between Mutual and Petitioners for decades, when in fact he did not become actively involved with that aspect of Mutual’s business until 2008, more than 15 years after the assignment of the trademark to Mutual. Thus, Harvey had no first hand knowledge of my father’s dealings with Elek Gessler (Paragraph 8), the 1992 agreement, assignment and confirmatory correspondence (Paragraph 9), the business dealings in the year following the assignment (Paragraph 10) or the 2002 filing of the trademark application for the MONOPOLOWA trademark (Paragraph 11). It is also clear that Harvey lacks the independent knowledge necessary to prepare the content of the Monastirsky Declaration, and that it was instead provided to Harvey by Petitioner and Petitioners’ counsel. This is clear because the language contained in the Monastirsky Declaration is virtually identical to that contained in the declaration of Rasiel Gessler.

36. The Monastirsky Declaration is also suspect due to Harvey’s questionable motives involving the MONOPOLOWA product. Harvey was not trusted or liked by my parents, and has not had a good relationship with me. Harvey recognizes that the continued ability to distribute the MONOPOLOWA products represents a substantial portion of his business, and I believe he is concerned that I may terminate the license agreement between myself and Mutual, which would

result in a significant financial blow to Mutual, and thus is willing to do whatever Petitioners request in order to maintain Mutual's ability to distribute and sell MONOPOLOWA products.

37. When I entered into the license with Mutual, my father wanted to give me money for each case, but I turned it down since it was more important for that money to be reinvested into the growth of the product. I didn't want to be actively involved in Mutual's sales efforts because of the poor relationship I had with Harvey; however, the license give me the ability to rescind the license in the event that Mutual's actions harm the brand.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: June ____, 2013

Ronald Beckenfeld

EXHIBIT A

Monopolowa Vodka 750ml

Jun 01, 2012- Made from select Austrian potatoes using a traditional old family recipe. (Special Order Item - May require an additional 3 to 5 business days. Please contact us to check availability. support@napacabs.com 800.410.6004)



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Burnett's Orange Vodka - 1L

SKU: 096749200405
\$10.95



More Items in Vodka



**Belvedere Vodka
Black Raspberry -
1L**

Nose - Rich, jammy raspberry notes with soft, delicate, rose aromas and an undercurrent of vanilla and baked red fruits. Palate - Luscious, full bodied mouthfeel with bright raspberry characteristics and elements of rich, succulen...



**Van Gogh Vodka
Double Espresso -
1L**

5 Stars Highest Recommendation – Spirit Journal -
Crafted to excellence, Van Gogh Double Espresso Double Caffeine Vodka delivers a wealth of flavor for those who expect more from their coffee. It's p...



**Bak's Zubrowka
Bison Grass Vodka
- 750ml**

WE 95 Pts - According to the Wine Enthusiast - Smells nicely of sweet grass, paraffin, acetate and wheat crackers. Aeration bolsters the aromatic impressions of the first round and adds a subtle spiciness that complements the grassy qu...



**Kru 82 Vodka -
750ml**

Makers Notes - KRU82 is a premium vodka with a remarkably clean and crisp taste. What sets our vodka apart from all the rest is an unusually smooth finish. But enough about us, KRU is really all about YOU and WHAT YOU WANT. The KRU bottle i...



Customers who bought Monopolowa Vodka 750ml also bought



**DeKuyper Luscious
Pomegranate**



**Crown Royal
Canadian Whisky -
1L**

Gold Medal 2005 San



**Stag's Leap Wine
Cellars 2005
Cabernet Sauvignon
Napa Valley Artemis**

Winemaker Notes -



**Mastroberardino 2007
Greco Di Tufo**

Tasting Notes - Straw-yellow with golden

[Pleasure - 1L](#)
Perfectly captures the taste of pomegranates. Use to create Pomegranate Martinis and many more exotic cocktails!
...

SKU: 080686367208

[Historical list may not be available](#)

Francisco spirits competition. The #1 selling, super premium Canadian for 10 years. Only the finest quality blends are used to produce this premium Canadian whiskey.

...
SKU: 087000007246

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This winery gained world recognition after the now famous blind tasting in Paris in when their 1973 SLV Cabernet was judged best above four First-Growth Bordeaux entries. Their Artemis Cabernet Sauvignon is decadent, wi...

SKU: 88593700200-05

[Historical list may not be available](#)

highlights. Aromas of white peach and white flowers, with a complementary hint of sulfury minerality that is typical of the terroir Steely, lean and fresh, with apricot and peach flavors of limited c...

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MONOPOLOWA VODKA



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Price: \$19.99
Availability: In Stock
Product Number: 8620839082
Average Rating: Not Rated
Country: Austria
Size: 1 Liter

Available Options:

Do you want this gift wrapped?:

Yes +\$2.50

Gift wrap message:

Qty:

Description	Additional Images (0)	Reviews (0)	Related Products (0)
<p>Monopolowa Vodka</p> <p>VODKA MONOPOLOWA is an excellent, smooth and dry vodka, particularly popular in Poland and in the United States, produced in Austria in accordance with an old family recipe from the highest quality triple distilled rectified spirits obtained from special varieties of potatoes.</p> <p>VODKA MONOPOLOWA'S rich texture and smoothness are further enhanced when served chilled with a twist of lemon or ice cold straight from the freezer. Due to its neutral character, VODKA MONOPOLOWA is also well suited for mixed drinks.</p> <p>40 % Alc./Vol. (80 Proof).</p> <p>-From the producer</p>			

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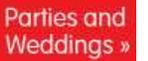
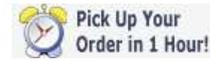
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DOUBLE GOLD SAN FRANCISCO SPIRITS COMPETITION Made from select Austrian potatoes using a traditional old family recipe.

SKU:56051

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VERNON P. | Whittier, CA | 1/24/2013

Monopolawa-- Potato vodka-- and say it right: Mo NAP OH LAH VAH!

This is tasty and well made and makes a wonderful gift. I have only purchased the one liter bottles-- from Trader Joe's-- but this 750 ml looks good too.

Was this helpful? [Yes](#) (1) [No](#) [Flag as inappropriate](#)

Nickolas R. | CA | 11/4/2012

A great potato vodka for cheap.

This vodka is one of the best for the price. The nose is slightly isopropyl-like, but the taste does not reflect that. It's VERY smooth, most likely because of its potato base. The taste is almost sweet, with a soft mouthfeel. If you like vodka that's easy to drink straight, Monopolowa definitely deserves a taste.

Was this helpful? [Yes](#) (3) [No](#) [Flag as inappropriate](#)

Christopher G. | Fresno, CA | 7/5/2012

Best vodka I've ever had. Forget Grey Goose.

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James M. | Seattle, WA | 6/2/2012

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