ESTTA Tracking number: **ESTTA731309**
Filing date: **03/04/2016**

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

Proceeding	92062271
Party	Defendant Villa Mari, LLC
Correspondence Address	VILLA MARI LLC 121 EAST FRONT STREET, SUITE 200 TRAVERSE CITY, MI 49684 UNITED STATES doug1@bishopheintz.com
Submission	Answer
Filer's Name	Douglas S. Bishop
Filer's e-mail	tracie1@bishopheintz.com, doug1@bishopheintz.com, dave1@bishopheintz.com
Signature	/DougB/
Date	03/04/2016
Attachments	Villa Mari Answer.pdf(696190 bytes)

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

HUNEEUS VINTNERS, LLC	Proceeding/ Cancellation No.: 9206227
Petitioner,	Registration No.: 4,638,402
v.	Issued: Nov. 11, 2014
VILLA MARI, LLC,	Mark: ILLUMINIST
Respondent.	

ANSWER TO PETITION FOR CANCELLATION

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

Villa Mari, LLC, Respondent, a Michigan limited liability company, with offices at 121 E. Front Street, Suite 200, Traverse City, Michigan 49684. Respondent denies that grounds exist for cancellation and responds to the Petition for Cancellation as follows:

1. Respondent is without sufficient knowledge and information to form a belief as to the truth of the allegation of paragraph 1 and, therefore, denies the same.

2. Respondent admits that the status of Petitioner's registration is set forth in the official records of the United States Patent & Trademark Office.

3. Respondent acknowledges that the records of the United States Patent & Trademark Office reflect that Petitioner is the owner of Registration No. 3,332,325. As to the balance of paragraph

3, Respondent is without sufficient knowledge or information to form a belief as to the truth thereof and, therefore, denies the same.

4. Respondent admits the allegations of paragraph 4 of the Petition.

5. Respondent admits that Petitioner's claimed use of its "ILLUMINATION" mark was prior to Respondent's claimed first use and application to register of its "ILLUMINIST" mark. Respondent further admits that Petitioner's Registration No. 3,332,325 issued prior to Respondent's claim of first use and prior to Respondent's application to register its "ILLUMINIST" mark.

6. Respondent denies that the marks of Petitioner and Respondent are virtually indistinguishable, as such statement is untrue. Respondent further denies that the dominant portion of Respondent's mark is "ILLUMINATE." Respondent denies that the marks are confusingly similar in appearance, sound and commercial impression, for the reason that such a statement is untrue.

7. Respondent admits that Petitioner's and Respondent's goods are both "wine" in International Class 33.

8. Respondent is not aware of any consumers of Respondent's wine who are also consumers of Petitioner's wine. Respondent is without sufficient knowledge or information to form a belief as to the information and belief of Petitioner and, therefore, denies the balance of paragraph 8.

9. Respondent is without sufficient knowledge and information to form a belief as to the specific channels of trade which Petitioner uses to offer and distribute wines under the "ILLUMINATION" mark and, therefore, denies the allegations of paragraph 9. Further, Respondent affirmatively states, on information and belief, that the channels of trade utilized by Respondent do not overlap and are substantially different than those utilized by Petitioner.

10. The statement of paragraph 10 is substantially an opinion. However, to the extent that it is intended as a factual assertion, the same is denied, for the reason that it is untrue.

11. The parties are currently negotiating a settlement. This Answer is filed with the understanding that Respondent may amend this Answer if the matter is not settled within ten (10) days. Petitioner would only consent to a ten (10) day extension to answer and online filing requires a thirty (30) day minimum extension.

Respondent's Affirmative Defenses

1. Latches. Petitioner failed to take affirmative action, in a timely manner, after knowledge of Respondent's application and/or registration, and Respondent was prejudiced thereby.

2. The commercial impression, visually and phonetically, of Respondent's mark is distinctively different from Petitioner's mark.

3. The channels of trade utilized by Respondent and Petitioner, for wine under their respective marks, are disparate and distinct.

WHEREFORE, Respondent prays that Petitioner's Petition be dismissed.

Respectfully submitted,

BISHOP & HEINTZ, P.C.

DATED: March 4, 2016

By: _____

Douglas S. Bishop (P27616)
Registration No. 30,822
Attorneys for Respondent
440 West Front at Oak Street
P.O. Box 707
Traverse City, MI 49684
(231) 946-4100

Certificate of Service

I certify that a true and complete copy of the foregoing Answer to Petition for Cancellation has been served on:

Jennifer Lee Taylor
Attorney for Petitioner Huneeus Vintners, LLC
Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105-2182

via first class mail, postage prepaid, on March 4, 2016, and by electronic transmission to said counsel for Petitioner at jtaylor@mofo.com.

Tracie M. Sears
Assistant to Attorney Douglas S. Bishop
DATED: March 4, 2016

G:\Tracie\word2\Intellectual Property\Villa Mari\Answer to Petition.wpd