

**TTAB**

---

**Opposition No. 91155165**

---

**TRADEMARK**  
Docket No. 110.2\*6/GJN/S307

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

**AUSTIN, NICHOLS & CO.,  
INCORPORATED**

Opposer,

v.

**STICHTING LODESTAR**

Applicant.

Opposition No. 91155165

**BRIEF FOR APPLICANT**



**03-28-2005**

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #72

## **TABLE OF CONTENTS**

|      |  |    |
|------|--|----|
| I.   | INTRODUCTION .....   | 1  |
| II.  | OPPOSER'S ENFORCEMENT PROGRAM,<br>AND EVIDENTIARY AND PROCEDURAL ISSUES .....  | 4  |
| A.   | Opposer Approaches All Trademark Issues, Including<br>This Opposition, Pursuant To An Overly Aggressive<br>Enforcement Program ..... | 5  |
| 1.   | Mr. Conway's "WILD TURKEY" enforcement<br>program is out of control .....  | 5  |
| 2.   | Opposer's enforcement program achieves<br>results through intimidation, not merit .....  | 13 |
| B.   | Opposer's Failure To Comply With FRCP 36 Constitutes<br>A Deemed Admission To Applicant's Requests For Admissions.....               | 14 |
| C.   | Opposer Filed Its Brief Late.....  | 16 |
| D.   | Opposer Submitted Several Exhibits In Violation<br>Of The Board's Evidentiary Rules .....  | 16 |
| III. | NO LIKELIHOOD OF CONFUSION EXISTS BETWEEN<br>"WILD GEESE" AND "WILD TURKEY" .....  | 18 |
| A.   | The Dominant Portions Of The Marks,<br>Namely "GEESE" And "TURKEY," Should Be Given<br>The Greatest Weight.....                      | 19 |
| 1.   | The term "WILD" is weak because it is commonly used as a<br>product name for alcoholic and non-alcoholic beverages.....              | 20 |
| 2.   | Opposer's use of its mark shows that "TURKEY" is<br>the dominant portion of its mark.....  | 26 |

|      |   |    |
|------|---|----|
| B.   | The Scope Of Protection Of "TURKEY" Is Narrow<br>Due To The Vast Number Of Similar Marks In The<br>Marketplace .....  | 28 |
| C.   | The Marks Differ In Appearance, Sound, Connotation And<br>Commercial Impression .....   | 34 |
| D.   | Consumers Of Alcoholic Beverages Are Aware Of<br>Differences In Trademarks When Purchasing Products .....   | 39 |
| E.   | Opposer's Theory That "WILD GEESE" Would Be<br>Perceived As A Line Extension Of "WILD TURKEY"<br>Is Premised On A Non-Existent "Family Of Marks"<br>For The Term "WILD" ..... | 41 |
| 1.   | Opposer does not have a family of "WILD" marks.....   | 41 |
| 2.   | The cases relied on by opposer do not support its<br>theories of "line extension" and "association confusion" .....   | 43 |
| III. | CONCLUSION .....  | 46 |

TABLE OF AUTHORITIES

CASES

|   |                |
|---|----------------|
| <i>Accu Personnel, Inc. v. Accustaff, Inc.</i><br>823 F. Supp. 1161 (D.Del. 1993) .....                         | 21             |
| <i>Champagne Louis Roederer v. Delicato Vineyards</i><br>148 F.3d 1373 (Fed. Cir. 1998).....                    | 18             |
| <i>Community of Roquefort v. Santo</i><br>443 F.2d 1196 (C.C.P.A. 1971) .....                                   | 19             |
| <i>In Re Dayco Products-Eaglemotive, Inc.</i><br>9 U.S.P.Q. 2d 1910 (T.T.A.B. 1988).....                        | 21             |
| <i>In re Denisi,</i><br>225 U.S.P.Q. 624 (T.T.A.B. 1985).....   | 20             |
| <i>E.I. DuPont DeNemours &amp; Co.</i><br>177 U.S.P.Q. 564 (C.C.P.A. 1973) .....                                | 18             |
| <i>Estate Guinness United Distillers &amp; Vintners B.V.</i><br>64 U.S.P.Q. 2d 1039 (S.D.N.Y. 2002).....        | 34             |
| <i>H. Sichel Sohne, GmbH v. John Gross &amp; Co. (Sohne II)</i><br>204 U.S.P.Q. 257 (T.T.A.B. 1979).....        | 43, 45, 47, 48 |
| <i>H. Sichel Sohne v. Michel Nonzain Selected Wines, Inc. (Sohne I)</i><br>202 U.S.P.Q. 62 (T.T.A.B. 1979)..... | 43, 45, 47, 48 |
| <i>Henri's Food Products Co. v. Kraft, Inc.</i><br>717 F.2d 352 (7th Cir. 1983) .....                           | 19             |
| <i>International Kennel Club, Inc. v. Mighty Star, Inc.</i><br>846 F.2d 1079 (7th Cir. 1988) .....              | 19             |
| <i>Keebler Co. v. Murray Bakery Products</i><br>866 F.2d 1386 (Fed. Cir. 1989).....                             | 18             |

---

---

**Opposition No. 91155165**

---

---

|  |    |
|--|----|
| <i>Kellogg Company v. Pack'em Enterprises, Inc.</i><br>951 F.2d 330 (Fed. Cir. 1991).....                          | 19 |
| <i>In Re Majestic Distilling Co.</i><br>65 U.S.P.Q. 2d 1201 (Fed. Cir. 2003).....                                  | 36 |
| <i>Marion Laboratories, Inc. v. Biochemical /Diagnostics, Inc.</i><br>6 U.S.P.Q. 2d 1215 (TTAB 1988) .....         | 43 |
| <i>Schieffelin &amp; Co.. v. The Molson Cos. Ltd.</i><br>9 U.S.P.Q. 2d 2069 (T.T.A.B. 1989).....                   | 36 |
| <i>Standard Brands, Inc. v. RJR Foods, Inc.</i><br>192 U.S.P.Q. 383 (T.T.A.B. 1976).....                           | 22 |
| <i>Tektronix, Inc. v. Daktronics, Inc.</i><br>534 F.2d 915 (C.C.P.A. 1976) .....                                   | 37 |
| <i>United Rum Merchants Limited v. Fregal, Inc.</i><br>216 U.S.P.Q. 217 (T.T.A.B. 1982).....                       | 45 |
| <i>Western Publishing Co. v. Rose Art Industries, Inc.</i><br>910 F.2d 57, 15 U.S.P.Q. 2d 1545 (2d Cir. 1990)..... | 21 |

**STATUTES/ ADMINISTRATIVE RULES**

|   |           |
|---|-----------|
| Federal Rules of Civil Procedure 36 ..... | 1, 15, 17 |
| TBMP § 411.01 .....                       | 16        |
| TBMP § 411.04 .....                       | 17        |

**DICTIONARY/TREATISE**

|  |        |
|--|--------|
| <i>The American Heritage® Dictionary of the English Language, Fourth Edition</i><br>(1981) ..... | 36, 37 |
| Thomas J. Mccarty, Mccarthy On Trademarks § 23:42-48 (2004) .....                                | 19     |

**I. INTRODUCTION**

The opposition to Applicant's WILD GEESE trademark application should be denied because no likelihood of confusion exists between Applicant's WILD GEESE and Opposer's WILD TURKEY trademarks.

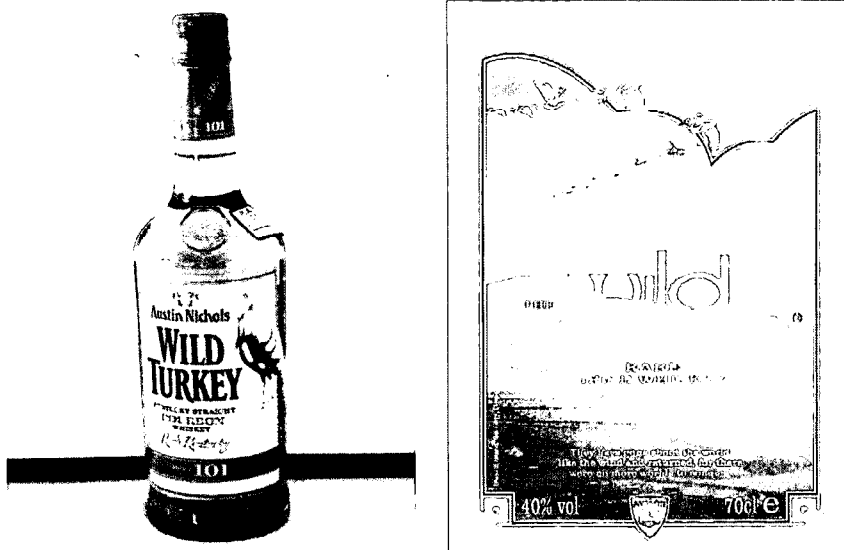
Applicant has been victimized by Opposer's overly aggressive and objectively unreasonable worldwide enforcement program for the WILD TURKEY trademark. This pending United States opposition is merely the latest dispute between these two parties, with all of the disputes having been initiated by the Opposer.

Currently, Applicant's WILD GEESE and Opposer's WILD TURKEY trademarks for alcoholic beverages co-exist as registered marks in Argentina, Australia, Chile, Hong Kong, South Korea, Mexico, Taiwan and Thailand. Moreover, Applicant has successfully defended oppositions filed by Opposer against its WILD GEESE trademark in South Korea and Thailand. Throughout the world, Opposer has never successfully prevented the registration of Applicant's WILD GEESE trademark.

Despite its worldwide failure to prevent the registration of Applicant's WILD GEESE trademark, Opposer has nevertheless implemented an enforcement program that is out of control and out of touch with the boundaries of United States trademark law (as well as the trademark laws of most other countries).

With respect to this opposition proceeding, Opposer provided extensive testimony about the range of third party trademark uses to which Opposer routinely objects, or otherwise takes action. As made clear by its testimony, Opposer erroneously believes it has the right to stop any third party trademark use for alcoholic beverages in the form of "WILD [any animal]," should it arbitrarily decide such use is problematic. Opposer attempts to justify its overreaching under the theory that the various third party "WILD" animal marks could be perceived as a "line extension" of WILD TURKEY. While such a theory could have merit if Opposer owned a family of "WILD" marks, Opposer only owns one "WILD" mark - WILD TURKEY.

In addition to its distorted understanding of its trademark rights, Opposer has a similarly confused sense of what is similar. For example, Opposer's intellectual property counsel testified that he believed the *visual appearance* of a product label for Applicant's WILD GEESE Irish Whisky (which is sold throughout the world, but not yet in the United States) and the *visual appearance* of a bottle of Opposer's WILD TURKEY bourbon whiskey are "very similar." Mr. Conway was examining the following two images:



While the dissimilarity of these two images should foreclose any possibility of consumer confusion, Opposer's position to the contrary reveals just how out of sync Opposer's trademark enforcement program is with United States trademark law.

With respect to the marks WILD GEESE and WILD TURKEY, there is no likelihood of consumer confusion because the marks are fundamentally different in appearance, sound, connotation, and commercial impression. The evidence of record establishes that the term "WILD" is a weak source identifier and is commonly used in the alcoholic beverage industry. Further, the evidence shows that "TURKEY" is the dominant portion of Opposer's mark. However, even as the dominant portion of Opposer's mark, the scope of protection afforded the "TURKEY" portion of the mark is quite narrow in light of the vast array of bird names and bird imagery used as product names for alcoholic beverages. Whatever rights Opposer may have in "TURKEY" is limited to "turkey" and does not extend to other types of birds or



animals that are not substantially similar to the word "TURKEY" or the image of a turkey.

Additionally, the widespread use of the term "WILD" and the names and images of birds has accustomed consumers to discerning between such marks. Accordingly, consumers will readily recognize alcoholic beverages sold under the marks WILD GEESE and WILD TURKEY as coming from different sources.

Finally, and consistent with its disregard for United States trademark law, Opposer has routinely ignored the rules of the United States Trademark Trial and Appeal Board ("TTAB") during this proceeding. First, Opposer failed to timely respond to Applicant's Requests for Admissions, thereby deeming each request admitted. As a result, these Opposer admissions foreclose any possibility of the existence of a likelihood of confusion. Second, Opposer filed its main brief two days late, with no explanation. Third, Opposer produced numerous untimely exhibits, and made those exhibits part of the evidentiary record, for the first time during Opposer's Testimony Depositions.

## **II. OPPOSER'S ENFORCEMENT PROGRAM, AND EVIDENTIARY AND PROCEDURAL ISSUES**

Before addressing the merits of Opposer's likelihood of confusion argument, Applicant addresses Opposer's unreasonable and overly aggressive enforcement program, and Opposer's failure to adhere to the established rules of the TTAB.

**A. Opposer Approaches All Trademark Issues, Including This Opposition, Pursuant To An Overly Aggressive Enforcement Program**

Opposer has adopted an objectively unreasonable enforcement program regarding its WILD TURKEY trademark that is blatantly unfair and out of touch with United States trademark law. This egregious enforcement program appears to have been developed by Opposer's intellectual property counsel, John Conway. *See Id.* at pp. 5-6, and Rebuttal Deposition of John Conway ("Conway Rebuttal") at pg. 6. Unfortunately, for companies unrelated to Opposer, Mr. Conway possesses a distorted view of the rights afforded Opposer by virtue of its ownership of the WILD TURKEY mark.

**1. Mr. Conway's "WILD TURKEY" enforcement program is out of control**

The testimony of Mr. Conway reveals a trademark enforcement program for WILD TURKEY that is simply out of control. Bank rolled by its large financial resources, Opposer has been able to harass many of Opposer's competitors, and has been able to stifle a significant amount of proper competition. Opposer has a notorious and extensive history of attacking any trademark application or trademark use that bears no similarity to its WILD TURKEY mark. For instance, in explaining Opposer's criteria for determining which third party trademark uses to challenge, Mr. Conway stated:

With Wild Turkey I look specifically at "Wild" and *any kind of animal*. I've done oppositions for anything "wild," be it *a fish, a deer*.

Conway Depo. at pg. 22, lines 3-6 (emphasis added).

Additionally, during Mr. Conway's deposition, he was asked by his counsel, "What is it about the usage of the name of *a game bird* that is concerning to you *as opposed to any old bird*?" Mr. Conway responded:

Well, I am concerned with *any old bird*. *I oppose any bird* because we have spent so much time and so much money building Wild Turkey...

Conway Depo. at pg. 34, lines 9-15.

To further put into perspective the outrageousness of Opposer's trademark enforcement policy, the following question and answer from Mr. Conway's rebuttal deposition is enlightening:

Q Are you in the business of pursuing every possible mark that you think is either over the line or close to the line, or what are the constrictions that you have there?

A The constriction is money.  
Personally I will chase after everything...

Conway Rebuttal at pg. 43, lines 8-14.

Mr. Conway also indicated that under certain circumstances, he would pursue an opposition against the term "WILD WHALE." *Id.* at pg. 22, lines 8-9. It is difficult to imagine a living being having less similarity to a turkey than a whale.

---

**Opposition No. 91155165**


---


As revealed by these examples, Opposer consistently overreaches beyond the legitimate trademark rights it may have in WILD TURKEY. Despite Opposer's assertions to the contrary, Opposer's actions demonstrate that it believes the WILD TURKEY mark gives it the right to object to any third party trademark uses for alcoholic beverages that include "WILD" plus any type of animal, or even simply the name and image of any bird, irrespective of the term "wild," whenever it should decide to take action.

The vast number of "success" stories described by Mr. Conway show a blatant abuse of Opposer's trademark rights. There can simply be no legitimate justification for Opposer sending, or considering to send, threatening letters or initiating opposition proceedings against companies selling alcoholic beverages under marks such as "WILD WHALE," "WILD KESTREL," "WILD BLUE HERON," "WILD RABBIT," "WILD COYOTE," "QUAIL CUVÉE," much less marks that are simply names of birds, such as "BLACK SWAN."

Below is a chart summarizing various revealing statements made by Mr. Conway during his rebuttal deposition when discussing what type of third party marks are objectionable to Opposer:

| <b>SUMMARY OF STATEMENTS FROM MR. CONWAY</b>   | <b>PAGE:LINE<br/>CITATION</b> |
|--|-------------------------------|
| "wild game birds or barnyard animals" in combination with "WILD" would "raise red flags" | 6:21-22                       |

|   |  |
|---|--|
| "any bird I look at, whether it's a canary or cardinal or a blue jay," in combination with "WILD" (e.g., WILD CANARY, WILD CARDINAL, WILD BLUE JAY)   | 6:24 to 7:1  |
| he would look at "deer, trout, rabbits, things that people normally hunt," in combination with "WILD" (e.g., WILD DEER, WILD TROUT, WILD RABBITS, etc.)   | 7:3-5  |
| he would look at "WILD" in conjunction with "all animals, be they elephants, whales or whatever" (e.g., WILD ELEPHANTS, WILD WHALES, etc.)  | 7:8-9  |
| may object to "WILD WHALE" if it had a "traditional image and packaging"  | 19:15-17   |
| <p>while looking at a label for a "WILD COYOTE VINEYARD" wine bottle, he stated "this actually is very close to the line, in fact I may take a second look at this one."</p> <p>The "WILD COYOTE VINEYARD" label vs. WILD TURKEY label:</p> <div data-bbox="181 1268 1036 1837" data-label="Image"></div> | 28:13-17<br><br>Opposer's<br>Ex. 1 and<br>Crowe Decl.<br>at Ex. 2, pg.<br>17 |
| had successfully "opposed" the winery "WILD CANARY"   | 19:22-24   |

|  |  |
|--|--|
| "opposed and stopped a WILD EAGLE from Rudolph Wild"   | 20:10-11   |
| stopped "WILD RABBIT" as part of a settlement with Rudolph Wild, which was discussed as Exhibit 53 and included an agreement not to use the mark WILD in connection with "turkeys, duck, geese, pheasants, quail, grouse, partridges, chukars, prairie hen/chickens, brants, rails, coots, gallinules,snipes, woodcocks, plovers, sandpipers, bobwhites, crows, swan, squab" | 21:18-22<br><br>Ex. 53   |
| "we, we did look at a WILDCAT, is not exactly a game animal, while it is an animal"  | 28:3-5   |
| having been brought to his attention, he stated he "would probably take a second look" at the use of "WILD HORSE" for wine<br><br>The "WILD HORSE" label vs. WILD TURKEY label:<br>   | 31:14-22<br><br>Opposer's<br>Ex. 1 and<br>Crowe Decl.<br>at Ex. 2. pg.<br>21 |
| concerning "CRANE LAKE" wine having a depiction of a crane, he states, "A crane is not a game bird, but we would look at this because it is a crane, it is a bird" and "I think this is just outside of something we would pursue, but it's close"   | 39:20-22   |

The "CRANE LAKE" label vs. WILD TURKEY label



Opposer's  
Ex. 1 and  
Crowe Decl.  
at Ex. 4, pg.  
32

concerning "FAMOUS GROUSE" Scotch Whiskey, he states "The image is very close to the image we like to portray, it's a grouse, which is a game bird, that's only one click over, this product would get at least a cease and desist, if not an opposition or a lawsuit from us, however" Opposer had already reached a settlement agreement with the FAMOUS GROUSE company

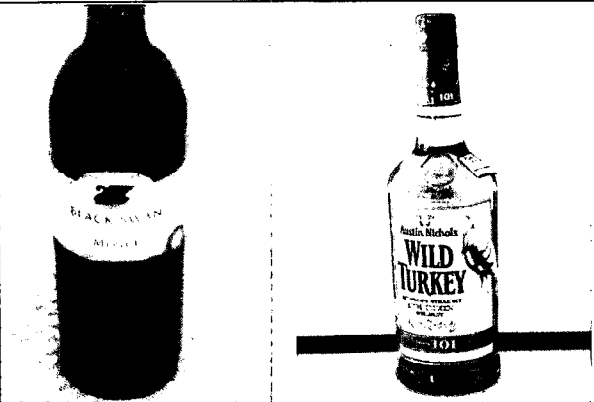

40:13 to 41:8

concerning "BLACK SWAN WINE" with a depiction of a swan, he states "We look at all swan marks immediately, because swans, we feel, are close enough to Turkeys" and implies that with a larger budget he would object to this product

45:5-17

The "BLACK SWAN WINE" label vs. WILD TURKEY LABEL:

Opposer's  
Ex. 1 and  
Crowe Decl.  
at Ex. 4, pg.  
38

|   |   |
|---|---|
|    |   |
| <p>“we sometimes look at birds like eagles because the imagery is sometimes very similar, even though the bird itself may not bear a striking resemblance [to a turkey].”</p> | <p>48:18-21</p>   |
| <p>“would definitely” bring “an opposition or some sort of action” against the hypothetical mark “WILD BLUE HERON” for pale ale</p>   | <p>51:1-5</p>   |
| <p>concerning “WHITE HAWK” for beer, he states “right now that’s okay, we may revisit that in the future”</p>   | <p>51:8-12</p>  |
| <p>concerning “RAPTOR BEER” and “RED TAIL BEER,” he states, “the fact that it’s a bird would be a concern” and “this falls close to the line”</p>                             | <p>52:5-14</p>  |
| <p>The "RAPTOR BEER" label vs. WILD TURKEY label:</p>                                      | <p>Opposer's<br/>Ex. 1 and<br/>Crowe Decl.<br/>at Ex. 4, pgs.<br/>56-57</p> |



|  |  |
|--|--|
| <p>The "RED TAIL BEER" label vs. WILD TURKEY label:</p> <div data-bbox="185 401 821 816" data-label="Image"> </div>                      |  |
| <p>concerning "QUAIL OAK" wine, he states, "the fact that it's quail obviously concerns me"</p>  | <p>53:9-12</p>   |
| <p>concerning "RAPPAHANNOCK RED ALE" with an image of a duck, he states "that's a very close, that's close to the line"</p>              | <p>86:9-10</p>   |
| <p>The "RAPPAHANNOCK RED ALE label vs. WILD TURKEY label:</p> <div data-bbox="185 1236 1101 1652" data-label="Image"> </div>             | <p>Opposer's<br/>Ex. 1 and<br/>Crowe Decl.<br/>at Ex. 7, pg.<br/>248</p> |
| <p>concerning a hypothetical product called "WILD KESTREL" for wine, he states, "that would instantly bring a letter, an opposition"</p> | <p>86:24 to 87:2</p>   |
| <p>when asked the question "do turkeys fly in flocks?", he responded,</p>  | <p>96:15 to 97:2</p>   |

|   |  |
|---|--|
| “Yes, they do.” He then explained that he actually once saw turkeys fly in a flock: “Well, I only saw them fly from the ground up into tress, but of course when I saw them I was also driving” |  |
|---|--|

In regard to the last statement contained in the chart above, even if Mr. Conway had experienced the rare event of watching a so-called “flock” of turkeys “fly from the ground up into trees,” he cannot justify his unreasonable view of what consumers are likely to find confusing with WILD TURKEY.

**2. Opposer's enforcement program achieves results through intimidation, not merit**

Under the guise of protecting its WILD TURKEY trademark, Opposer brags that it has been successful in stopping all of the third party trademark uses for which it did not approve. *See* Conway Depo. at pg. 30, lines 6-9. However, Applicant is not aware of a single instance where Opposer obtained a favorable decision by a United States court or tribunal that applied governing United States trademark law to the facts of the case. Rather, all of Opposer's enforcement efforts involved the other party acquiescing to Opposer in response to being bullied (i.e., they voluntarily stop using their trademarks, or default in inter partes proceedings, or enter into a settlement agreement).

Indeed, Opposer acknowledges that Opposer and Applicant are currently involved in several trademark disputes across the world involving these two marks,

but it fails to acknowledge that the only two matters that have been decided by a tribunal have found in favor of Applicant. Specifically, the Trademark Offices of South Korea and Thailand both concluded that Applicant's trademark WILD GEESE is not confusingly similar to Opposer's WILD TURKEY and, therefore, allowed WILD GEESE to register. *See* Applicant's Notice of Reliance at Exhibits 108-110 (decisions in favor of Applicant in opposition proceedings filed by Opposer in South Korea and Thailand).

Moreover, the marks WILD GEESE and WILD TURKEY already co-exist in numerous countries throughout the world. Specifically, WILD GEESE has been granted trademark registrations, along with Opposer's WILD TURKEY registrations, by the trademark offices of Argentina, Australia, Chile, Hong Kong, South Korea, Mexico, Taiwan, and Thailand. *See* Applicant's Notice of Reliance at Exhibits 82-107 (foreign trademark registrations for WILD GEESE and WILD TURKEY). In all of those countries, both marks have been able to peacefully co-exist in the marketplace, and Applicant is not aware of any instances of actual confusion.

**B. Opposer's Failure To Comply With FRCP 36 Constitutes A  
Deemed Admission To Applicant's Requests For Admissions**

All of the Requests for Admissions served by Applicant on Opposer are deemed admitted and, accordingly, a likelihood of confusion between WILD GEESE and WILD TURKEY cannot exist.

Opposer waited over five months to serve its responses to Applicant's Requests for Admissions, and because it did not comply with the requirements of FRCP 36 and TBMP § 411.01, all of the Applicant's requests are deemed admitted.

Based on Opposer's admissions, it cannot meet its burden of proof because its admissions specifically admit that its WILD TURKEY marks were not used in association with any of the relevant goods at issue here, including whiskey and the various types of alcoholic beverages. *See* Applicant's Ex. 112 (particularly, Applicant's Requests for Admissions Numbers 14, 19, and 25, relating to no use of Opposer's WILD TURKEY mark in association with whiskey, distilled liquor, and prepared alcoholic cocktails).

Applicant's counsel made repeated requests to Opposer's counsel to receive responses to its Requests for Admissions, which were initially served on Opposer on May 20, 2003, but for which Opposer did not serve its responses until October 24, 2003.<sup>1</sup>

To overcome these admissions, Opposer was required to file either a motion to withdraw or amend its untimely responses under FRCP 36(b), or make a showing

---

<sup>1</sup> Applicant's Requests for Admissions were made part of the record through Applicant's Notice of Reliance as Exhibit 112. Opposer's untimely responses thereto were submitted as Exhibit 113 to the Notice of Reliance. In addition, Applicant's counsel initiated several communications with Opposer's counsel concerning its failure to serve timely responses, as reflected by Exhibits 114-116, which included two letters from Applicant's counsel and one transcription of a telephone message Applicant's counsel received from Opposer's counsel. Opposer was clearly aware that its responses were extremely late, yet chose not to address the delinquency.

that its failure to timely respond was the result of excusable neglect. *See Id.*

Opposer has failed to take any of these necessary actions.

Accordingly, all of Applicant's Requests for Admissions are admitted by Opposer, which must necessarily result in a finding that no likelihood of confusion exists.

**C. Opposer Filed Its Brief Late**

Opposer's failure to follow the rules of the TTAB is further demonstrated by the fact it filed its Brief two days late (i.e., on February 18, 2005, instead of the February 16, 2005 date set by the Board). The late filing was made with no explanation.

**D. Opposer Submitted Several Exhibits In Violation Of The Board's Evidentiary Rules**

Several of the exhibits made of record by Opposer should be excluded because they were not produced in a timely manner. Opposer's Exhibit Nos. 11, 43, 48, 49, and 50 were produced long after the January 30, 2004, close of discovery and, therefore, should be excluded as evidence. *See* TBMP § 411.04 (stating that in inter partes proceedings an appropriate discovery sanction for failure to provide discovery is "prohibiting the disobedient party from introducing designated matters in evidence").

The following list identifies exhibits that should be excluded, including a brief description of the document, the date it was first provided to Applicant, and a

citation to the deposition testimony where Opposer admitted the document was produced untimely:

- Exhibit 11, identified as "Document entitled Pernod Ricard USA 2004 Media Spending," produced on September 1, 2004; *see* Uranga Depo. at pg. 54.
- Exhibit 14, identified as "Series of advertisements for Wild Turkey for 2004," produced in part on September 1, 2004 and in part on September 2, 2004; *see* Uranga Depo. at pg. 70.
- Exhibit 43, identified as "License Agreement Wild Turkey Barbecue and Gourmet Sauces," produced on September 1, 2004; *See* Uranga Depo. at pg. 112.
- Exhibit 48, identified as "Multi-page document printed out from the internet under the name Protege International," produced on September 2, 2004; *See* Uranga Depo. at pg. 137.
- Exhibit 49, identified as "Series of Copies of USPTO test reports for all of the International Class 33 Registrations for Wild Turkey from the USPTO web site," produced on September 1, 2004; *See* Conway Depo. at pg. 15.
- Exhibit 50, identified as "Wild Turkey applications printed from the USPTO web site," produced on September 1, 2004; *See* Conway Depo. at pg. 15.

### III. NO LIKELIHOOD OF CONFUSION EXISTS BETWEEN "WILD GEESE" AND "WILD TURKEY"

Consideration of the *DuPont* factors mandates that no likelihood of confusion will result if WILD GEESE and WILD TURKEY are allowed to coexist as registered marks. Out of the thirteen factors set forth in *E.I. DuPont DeNemours & Co.*, 177 U.S.P.Q. 564 (C.C.P.A. 1973), the most relevant factor is the dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. Other relevant factors include the conditions under which and buyers to whom sales are made (i.e., "unsophisticated/impulse" vs. "sophisticated/careful"), and the number and nature of similar marks in use on similar goods. *See Id.*

The dissimilarity of the marks WILD GEESE and WILD TURKEY is dispositive in this proceeding. The Federal Circuit has consistently recognized that "one DuPont factor may be dispositive in a likelihood of confusion analysis, especially when that single factor is the dissimilarity of the marks." *Champagne Louis Roederer v. Delicato Vineyards*, 148 F.3d 1373, 1375 (Fed. Cir. 1998) (affirming the Board's conclusion of no likelihood of confusion between the marks "CRISTAL" and "CRYSTAL CREEK" for alcoholic beverages, despite the fact that every DuPont factor favored the Opposer except the dissimilarity of the marks). *See also, Kellogg Company v. Pack'em Enterprises, Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991) and *Keebler Co. v. Murray Bakery Products*, 866 F.2d 1386, 1390 (Fed. Cir.

1989) (both affirming TTAB conclusions of no likelihood of confusion based on the dissimilarities of the marks).

**A. The Dominant Portions Of The Marks, Namely "GEESE" And "TURKEY," Should Be Given The Greatest Weight**

As a general rule, "[t]he commercial impression of a trade-mark is derived from it as a whole, not from its elements separated and considered in detail." *Estate of P. D. Beckwith, Inc. v. Commissioner of Patents*, 252 U.S. 538, 545-46 (1920) "For this reason [a trademark] should be considered in its entirety." *Id.* at 546. Also, in most composite marks, the impact of one part of the mark on the ordinary consumer is "dominant" over other, peripheral elements of the mark. See THOMAS J. MCCARTY, MCCARTHY ON TRADEMARKS § 23:42-48 (2004). The dominant portion of a mark is routinely determined to be the last term of a multi-term mark. See *Community of Roquefort v. Santo*, 443 F.2d 1196, 1199 (C.C.P.A. 1971) (finding ROQUITAL salad dressing not confusingly similar to ROQUEFORT cheese certification mark). In a likelihood of confusion analysis, the dominant portion of the mark is given greater force and effect. *International Kennel Club, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1087-88 (7th Cir. 1988) (holding that "if one word or feature of a composite trademark is the salient portion of the mark, it may be given greater weight than the surrounding elements" (citing *Henri's Food Products Co. v. Kraft, Inc.*, 717 F.2d 352, 356 (7th Cir. 1983))). Finally, no likelihood of confusion exists between two marks "where the common portion is not likely to be perceived



by purchasers as distinguishing source due to it is mere descriptiveness or the commonness of its use." *In re Denisi*, 225 U.S.P.Q. 624, 625 (T.T.A.B. 1985).

Here, the dominant portion of Applicant's mark is the term "GEESE." In contrast, the dominant part of Opponent's mark is "TURKEY." As addressed below, the shared portion of both marks, "WILD," is very commonly used and therefore is weak.

**1. The term "WILD" is weak because it is commonly used as a product name for alcoholic and non-alcoholic beverages**

The term "WILD" is not the dominant portion of Opposer's WILD TURKEY mark, but instead is a weak source identifier that is widely used as a trademark. Numerous third party trademarks for alcoholic and non-alcoholic beverages exist in the format of "WILD \_\_\_\_\_," including various types of animals. For example, as shown by the below charts, there are trademark registrations such as "WILD HARE," "WILD HORSE," and "WILD PIG," as well as widely available commercial products such as "WILD COYOTE," "WILD CAT," "WILD HORSE."

In addition to marks that follow the "WILD (animal)" format that Opposer claims to be always "concerned" about, there are several other "WILD" marks that demonstrate that "WILD" is commonly used and, thus, weak in a trademark sense.

The evidence includes federal registrations containing the term "WILD" and specimens of alcoholic and non-alcoholic beverages that are commercially available in the United States that contain the term "WILD." The evidence of third party

---

**Opposition No. 91155165**

---

registrations is probative to demonstrate that a particular mark, or portion thereof, has been adopted by others in the relevant field, and such evidence weakens the strength of the mark. *See, e.g., In re Dayco Products-Eaglemotive, Inc.*, 9 U.S.P.Q.2d 1910, 1911-12 (T.T.A.B. 1988). *See also, Western Publishing Co. v. Rose Art Industries, Inc.*, 910 F.2d 57, 61, 15 U.S.P.Q.2d 1545, 1548 (2d Cir. 1990) (the "numerosity of third party registrations" using a particular term weakens its strength). Similarly, "relevant to the strength of a mark is the impact of third party use. Where there are numerous similar marks, the mark in question may be found to have been weakened because consumers 'have been educated to distinguish between different [such] marks on the basis of minute distinctions.'" *Accu Personnel, Inc. v. Accustaff, Inc.*, 823 F. Supp. 1161, 1166 (D.Del. 1993) (quoting *Standard Brands, Inc. v. RJR Foods, Inc.*, 192 U.S.P.Q. 383, 385-386 (T.T.A.B. 1976)).

The following is a list of forty-two federal trademark registrations that include the term "WILD," as listed in Applicant's Notice of Reliance of November 3, 2004, including the exhibit numbers used in the Notice of Reliance:

| EXHIBIT NO. | MARK   | SERIAL NO.<br>(REG. NO.) | FILING DATE<br>(REG. DATE)            |
|-------------|--|--------------------------|---------------------------------------|
| 1           | WILD RED ALE A CAUSE FOR NATURE AND MAN-KIND ALIKE | 75-787229<br>(2637937)   | August 30, 1999<br>(October 22, 2002) |
| 2           | WILD BERRY SPLASH                                  | 75-299019<br>(2171247)   | May 28, 1997<br>(July 7, 1998)        |
| 3           | WILD SPIRIT  | 74-412708<br>(1909421)   | July 13, 1993<br>(August 1, 1995)     |

---

**Opposition No. 91155165**

---

| <b>EXHIBIT<br/>NO.</b> | <b>MARK</b>               | <b>SERIAL<br/>NO.<br/>(REG. NO.)</b> | <b>FILING DATE<br/>(REG. DATE)</b>         |
|------------------------|---------------------------|--------------------------------------|--|
| 4                      | WILD IRISH                | 73-343448<br>(1252400)               | December 28, 1981<br>(September 27, 1983)  |
| 5                      | DR. WILD                  | 75-247917<br>(2137247)               | February 26, 1997<br>(February 17, 1998)   |
| 6                      | EXPERIENCE THE WILD TASTE | 75-765027<br>(2473830)               | September 12, 1996<br>(July 31, 2001)      |
| 7                      | WILD ORCHARD JUICE        | 75-216026<br>(2084172)               | December 19, 1996<br>(July 29, 1997)       |
| 8                      | WILDLAND ARONIA           | 75-165026<br>(2171785)               | September 12, 1996<br>(July 7, 1998)       |
| 9                      | WILD RASPBERRY ALE        | 75-023566<br>(2102621)               | November 22, 1995<br>(October 7, 1997)     |
| 10                     | WILD WATER                | 74-606356<br>(2024868)               | December 2, 1994<br>(December 24, 1996)    |
| 11                     | WILDWOOD                  | 72-395196<br>(0992083)               | June 18, 1971<br>(August 27, 1974)         |
| 12                     | SCREAMING WILD BERRY      | 75-467545<br>(2383800)               | April 14, 1998<br>(September 5, 2000)      |
| 13                     | MINNESOTA WILD            | 75-425335<br>(2441734)               | January 29, 1998<br>(April 10, 2001)       |
| 14                     | WILDCAT MOUNTAIN VINEYARD | 75-337145<br>(2448046)               | July 21, 1997<br>(May 1, 2001)             |
| 15                     | TASTE THE WILD SIDE       | 75-224645<br>(2121734)               | January 13, 1997<br>(December 16, 1997)    |
| 16                     | WILD ORCHARD              | 75-216025<br>(2087915)               | December 19, 1996<br>(August 12, 1997)     |
| 17                     | WILDLAND                  | 75-165025<br>(2487762)               | September 12, 1996<br>(September 11, 2001) |
| 18                     | WILDCATTER'S CRUDE        | 75-040785<br>(2036890)               | January 5, 1996<br>(February 11, 1997)     |
| 19                     | WILD ISLAND               | 74-223985<br>(1745997)               | November 21, 1991<br>(January 12, 1993)    |
| 20                     | WILD VINES                | 75-628684<br>(2727426)               | January 27, 1999<br>(June 17, 2003)        |
| 21                     | WILD FRUITZ               | 75-524494<br>(2449616)               | July 23, 1998<br>(May 8, 2001)             |
| 22                     | WILD SPRINGS              | 75-253334<br>(2132715)               | March 7, 1997<br>(January 27, 1998)        |

---

**Opposition No. 91155165**


---

| <b>EXHIBIT<br/>NO.</b> | <b>MARK</b>                         | <b>SERIAL<br/>NO.<br/>(REG. NO.)</b> | <b>FILING DATE<br/>(REG. DATE)</b>       |
|------------------------|-------------------------------------|--------------------------------------|--|
| 23                     | WILD ORCHARD                        | 75-137514<br>(2151362)               | July 22, 1996<br>(April 14, 1998)        |
| 24                     | WILDCATTER'S                        | 75-040784<br>(2035340)               | January 5, 1996<br>(February 4, 1997)    |
| 25                     | WILDERBERRY                         | 73-761634<br>(1586020)               | November 3, 1988<br>(March 6, 1990)      |
| 26                     | WILD HARE                           | 75-570883<br>(2402633)               | October 15, 1998<br>(November 7, 2000)   |
| 27                     | WILD CARD                           | 75-139833<br>(2288104)               | July 25, 1996<br>(October 19, 1999)      |
| 28                     | WYATT'S WILD                        | 75-014214<br>(2213201)               | November 2, 1995<br>(December 22, 1998)  |
| 29                     | WILDFLOWER                          | 75-005983<br>(2076866)               | October 16, 1995<br>(July 8, 1997)       |
| 30                     | WILD RUSSIAN VANYA                  | 72-142743<br>(0756522)               | April 20, 1962<br>(September 10, 1963)   |
| 31                     | WILD FLY ALE                        | 76-186222<br>(2754963)               | December 26, 2000<br>(August 26, 2003)   |
| 32                     | WILD RICE CAPITAL BREWERY           | 75-863772<br>(2475212)               | December 3, 1999<br>(August 7, 2001)     |
| 33                     | WILD MOUNTAIN                       | 75-287772<br>(2567666)               | April 21, 1997<br>(May 7, 2002)          |
| 34                     | WILD BY NATURE MARKET               | 74-726672<br>(2149641)               | September 8, 1995<br>(April 7, 1998)     |
| 35                     | WILDHURST VINEYARDS                 | 74-448402<br>(1861118)               | October 18, 1993<br>(November 1, 1994)   |
| 36                     | WILD IRISH ROSE                     | 71-691822<br>(0632394)               | July 25, 1955<br>(August 7, 1956)        |
| 37                     | WILD PIG                            | 76-215151<br>(2658176)               | February 26, 2001<br>(December 10, 2002) |
| 38                     | A WILDLY DIFFERENT BREED OF<br>BEER | 75-526901<br>(2269067)               | July 29, 1998<br>(August 10, 1999)       |
| 39                     | WILD RIVER                          | 74-508801<br>(1883850)               | April 4, 1994<br>(March 14, 1995)        |
| 40                     | WILDCAT                             | 74-403921<br>(2507277)               | July 19, 1993<br>(November 13, 2001)     |
| 41                     | BERRY B. WILD                       | 74-146470<br>(1839064)               | March 11, 1991<br>(June 7, 1994)         |

---

**Opposition No. 91155165**

---

| <b>EXHIBIT<br/>NO.</b> | <b>MARK</b> | <b>SERIAL<br/>NO.<br/>(REG. NO.)</b> | <b>FILING DATE<br/>(REG. DATE)</b> |
|------------------------|-------------|--------------------------------------|------------------------------------|
| 42                     | WILD HORSE  | 73-606560<br>(1483753)               | June 26, 1986<br>(April 5, 1988)   |

In addition to federal registrations, Applicant submitted evidence of the widespread use of the term "WILD" incorporated in product names of beverages. See Declaration of Deanna D. Crowe of November 3, 2004 ("Crowe Decl.").

Applicant purchased the following alcoholic beverages containing the term "WILD from the Pasadena, California area," and provided pictorial representations of the products, which are widely available in the United States (the exhibit and page number depicting the specimen is indicated in parenthesis):

- A bottle of Carol Shelton WILD THING 2001 Old Vines Zinfandel (Ex. 2, pg. 13);
- A bottle of Folie a Deux "THE WILD BUNCH" Vineyard 2000 Old Vines Zinfandel (Ex. 2, pg. 14);
- A bottle of WILDHURST Vineyards 1999 Zinfandel (Ex. 2, pg. 15);
- A bottle of MacRostie WILDCAT Mountain Vineyard 2001 Syrah (Ex. 2, pg. 16);
- A bottle of WILD COYOTE Vineyard Reserve 2001 Syrah (Ex. 2, pg. 17);
- A bottle of J. Lohr WILDFLOWER 2002 Monterey Valdiguie (Ex. 2, pg. 18);
- A bottle of DeKuyper WILDERBERRY Schnapps Liqueur (Ex. 2, pg. 19);

---

**Opposition No. 91155165**

---

- A bottle of Alize WILD PASSION (Ex. 2, pg. 20);
- A bottle of WILD HORSE 2000 Zinfandel (Ex. 2, pg. 21);
- A bottle of WILD VINES Peach Chardonnay (Ex. 2, pg. 22);
- A bottle of Richards WILD IRISH ROSE Red Wine (Ex. 2, pg. 23);
- A bottle of Seagram's WILD BERRIES Flavored Cooler (Ex. 2, pg. 24);  
and
- A bottle of The Original WILD SPIRIT Drink of the Frontier (Ex. 2, pg. 25).

Crowe Declaration at pp. 1-2, and Exhibit 2 thereto.

In addition, Applicant purchased the following non-alcoholic beverages containing the term "WILD from the Pasadena, California area," which are widely available in the United States (the exhibit and page number depicting the specimen is indicated in parenthesis)

- A package of Caprisun All Natural WILD CHERRY (Ex. 3, pg. 26);
- A bottle of WILD OATS Purified Water (Ex. 3, pg. 27);
- A bottle of Welch's WILD BERRY Pourable Concentrate (Ex. 3, pg. 28);
- A bottle of A WILD OATS Grape Juice from Concentrate (Ex. 3, pg. 29); and
- A bottle of WILD CHERRY Pepsi (Ex. 3, pg. 30).

Crowe Decl. at pg. 3, and Exhibit 3 thereto.

Applicant also provided evidence of several other uses of the term "WILD" for alcoholic and non-alcoholic beverages in the Crowe Declaration at Exhibits 5 and 6 thereto.

The common and extensive use of the term "WILD" as a product name for beverages reveals the fact that "WILD" is a weak source identifier, and in this case, is the weaker portion of Opposer's WILD TURKEY mark.

**2. Opposer's use of its mark shows that "TURKEY" is the dominant portion of its mark**

In addition to "WILD" being a weak source identifier, Opposer's evidence of its own use, promotion, and advertising of the WILD TURKEY mark shows that "TURKEY" is the dominant portion of its mark.<sup>2</sup> Since the 1970's, Opposer has only used the mark WILD TURKEY, or the term "TURKEY" by itself, to refer to its WILD TURKEY products.

Illustrative examples of Opposer's on-going effort to gain consumer recognition in the term "TURKEY" by itself for its WILD TURKEY products are some of its radio commercials. Specifically, Opposer provided an audio CD as Exhibit 41, which contains seven of Opposer's current WILD TURKEY radio commercials. See Opposer's Exhibit 41 and Deposition of Joseph Uranga ("Uranga Depo") at pg. 102. The following statements from the radio commercials are

---

<sup>2</sup> Opposer provides no evidence of any recent, meaningful attempts to gain source recognition for the term "WILD" - as opposed to the entire mark WILD TURKEY - except for a limited number of advertisements from the 1970's. See *Opposer's Brief* at pp. 9-10 (e.g., advertisements with tag lines such as "Wild Gifts For Dad" and "Wild Gifts For Christmas"). Even in those limited uses, however, the advertisements contained a picture of a bottle of WILD TURKEY.

---

**Opposition No. 91155165**

---

representative of Opposer's use of the term "TURKEY" as a source identifier, and demonstrate that "TURKEY" is the dominant portion of its mark:

- "I'll take some TURKEY." (Track 2 at Ex. 41).
- "TURKEY, me, nice." (Track 2 at Ex. 41).
- "You're a TURKEY." (Track 3 at Ex. 41).
- "I'm drinking TURKEY." (Track 3 at Ex. 41).
- "Give me some of that TURKEY." (Track 4 at Ex. 41).
- "Who's got the TURKEY." (Track 4 at Ex. 41).

Additional examples of Opposer's uses that show that "TURKEY" is the dominant portion of its mark include the following Exhibits made of record by Opposer:

- Exhibit 2: Opposer's "Worldwide Field Guide," which provides detailed instructions on how to promote the WILD TURKEY product, including extensive instructions on how to use and reproduce "Opposer's" image of the turkey appearing on its WILD TURKEY bottle.
- Exhibit 7: Product labels with image of turkey.
- Exhibit 12: "Turkey on a roll" promotion plan.
- Exhibit 19: Various promotional items featuring dominant images of turkey.
- Exhibit 20: Various promotional items featuring dominant images of turkey.



- Exhibit 21: Turkey alone on cuff links.
- Exhibit 22: Turkey is dominant on bottle.
- Exhibit 25: Turkey alone on decanter and ceramics.
- Exhibit 26: Turkey alone on hats, shirts, coasters.
- Exhibit 27: Turkey alone on hats and shirts.
- Exhibit 28: "Turkey" recipes.
- Exhibit 40" Phrase "Turkey Shoot" used with WILD TURKEY.

These uses of the term "TURKEY" and/or the image of a turkey demonstrate the emphasis Opposer places on the "TURKEY" portion of its WILD TURKEY mark. No such significance has been placed on the "WILD" portion of its mark, which is consistent with the widespread third party uses of the term "wild." Accordingly, there is no question that "TURKEY" is the dominant portion of Opposer's mark.

**B. The Scope Of Protection Of "TURKEY" Is Narrow Due To The Vast Number Of Similar Marks In The Marketplace**

The scope of protection afforded the TURKEY portion of Opposer's mark is narrowly constricted due to the vast number of bird names and bird images used in association with alcoholic and non-alcoholic beverages in the United States.

The DuPont factor concerning the number and nature of similar marks, shows that consumers are already accustomed to discerning between a vast array of alcoholic beverages sold under with images and/or names of birds.

---

**Opposition No. 91155165**

---

Applicant submitted both federal registrations for such marks and evidence of products available in the marketplace with such marks. The following is a list of federal trademark registrations that include a name and/or image of a bird, as listed in Applicant's Notice of Reliance of November 3, 2004, including the exhibit numbers used in the Notice of Reliance:

| <b>EXHIBIT NO.</b> | <b>MARK</b>  | <b>SERIAL NO.<br/>(REG. NO.)</b> | <b>FILING DATE<br/>(REG. DATE)</b>       |
|--------------------|--|----------------------------------|--|
| 43                 | QUAIL HILL VINEYARD  | 78-062035<br>(2522842)           | May 4, 2001<br>(December 25, 2001)       |
| 44                 | QUAIL OAK  | 76-117809<br>(2501867)           | August 28, 2000<br>(October 30, 2001)    |
| 45                 | PALOMA MIX   | 75-937048<br>(2640327)           | March 7, 2000<br>(October 22, 2002)      |
| 46                 | 1551 BRUT CODORNIU OVER 400<br>YEARS OF TRADITION CODORNIU<br>CUVEE RAVENTOS METODO<br>TRADICIONAL | 75-927722<br>(2606471)           | February 25, 2000<br>(August 13, 2002)   |
| 47                 | EYE OF THE SWAN  | 75-812661<br>(2360427)           | September 30, 1999<br>(June 20, 2000)    |
| 48                 | CLASICO CODORNIU   | 75-716568<br>(2389579)           | May 20, 1999<br>(September 26, 2000)     |
| 49                 | THE FAMOUS GROUSE  | 75-677782<br>(2407942)           | April 6, 1999<br>(November 28, 2000)     |
| 50                 | OCCHIO DI PERNICE  | 75-646017<br>(2300140)           | February 22, 1999<br>(December 14, 1999) |
| 51                 | CODORNIU   | 75-588878<br>(2304164)           | November 16, 1998<br>(December 28, 1999) |
| 52                 | PALOMA   | 74-665102<br>(2046491)           | April 24, 1995<br>(March 18, 1997)       |
| 53                 | PAVONA   | 74-596729<br>(2010829)           | November 8, 1994<br>(October 22, 1996)   |
| 54                 | DOVETAIL RIDGE   | 74-488178<br>(1874113)           | February 8, 1994<br>(January 17, 1995)   |
| 55                 | CYGNET   | 74-199778<br>(1757123)           | July 31, 1992<br>(March 9, 1993)         |

---

**Opposition No. 91155165**

---

| <b>EXHIBIT<br/>NO.</b> | <b>MARK</b>  | <b>SERIAL<br/>NO.<br/>(REG. NO.)</b> | <b>FILING DATE<br/>(REG. DATE)</b>        |
|------------------------|--|--------------------------------------|---|
| 56                     | JOSEPH SWAN VINEYARDS  | 74-204020<br>(1751482)               | September 16, 1991<br>(February 9, 1993)  |
| 57                     | SWANSON  | 74-136271<br>(1666901)               | February 4, 1991<br>(December 3, 1991)    |
| 58                     | COLOMBO  | 73-735964<br>(1533535)               | June 23, 1988<br>(April 4, 1989)          |
| 59                     | PHEASANT RIDGE   | 73-727646<br>(1526045)               | May 10, 1988<br>(February 21,<br>1989)    |
| 60                     | MARK SWANN   | 73-669437<br>(1510374)               | June 30, 1987<br>(October 25, 1988)       |
| 61                     | THE FAMOUS GROUSE  | 73-590651<br>(1462166)               | March 31, 1986<br>(October 20, 1987)      |
| 62                     | THE FAMOUS GROUSE  | 73-590650<br>(1488756)               | March 31, 1986<br>(May 17, 1988)          |
| 63                     | QUAIL RIDGE  | 73-538998<br>(1370469)               | May 22, 1985<br>(September 3,<br>1985)    |
| 64                     | CODORNIU   | 73-516259<br>(1350937)               | January 4, 1985<br>(July 23, 1985)        |
| 65                     | WHITE PHEASANT   | 72-102385<br>(0715886)               | August 10, 1960<br>(May 23, 1961)         |
| 66                     | THE FAMOUS GROUSE  | 71-337499<br>(0306490)               | May 2, 1933<br>(September 19,<br>1933)    |
| 67                     | QUAIL SPRINGS HANDCRAFTED<br>BY DESCHUTES BREWERY BEND,<br>OREGON INDIA PALE ALE | 76-304989<br>(2653910)               | August 24, 2001<br>(November 26,<br>2002) |
| 68                     | QUAIL SPRINGS IPA  | 76-304984<br>(2612474)               | August 24, 2001<br>(August 27, 2002)      |
| 69                     | SWAN LAGER   | 75-151154<br>(2161324)               | August 16, 1996<br>(June 2, 1998)         |
| 70                     | GOLDEN PHEASANT  | 74-331067<br>(2139895)               | November 16, 1992<br>(March 3, 1998)      |
| 71                     | WHITE SWAN   | 74-222379<br>(1761545)               | November 18, 1991<br>(March 30, 1993)     |
| 72                     | Design only  | 76-392462                            | April 9, 2002                             |

---

**Opposition No. 91155165**

---

| <b>EXHIBIT<br/>NO.</b> | <b>MARK</b>  | <b>SERIAL<br/>NO.<br/>(REG. NO.)</b> | <b>FILING DATE<br/>(REG. DATE)</b>          |
|------------------------|--------------|--------------------------------------|---|
|                        |              | (2683320)                            | (February 4, 2003)                          |
| 73                     | Design only  | 76-328180<br>(2666031)               | October 22, 2001<br>(December 24,<br>2002)  |
| 74                     | ROCKHOPPER   | 76-322673<br>(2641004)               | October 9, 2001<br>(October 22, 2002)       |
| 75                     | GOLDENEYE    | 76-021855<br>(2652395)               | April 7, 2000<br>(November 19,<br>2002)     |
| 76                     | Design only  | 76-021809<br>(2560002)               | April 7, 2000<br>(April 9, 2002)            |
| 77                     | GOOSE ISLAND | 75-249061<br>(2132685)               | February 27, 1997<br>(January 27, 1998)     |
| 78                     | B            | 75-056830<br>(2129388)               | February 12, 1996<br>(January 13, 1998)     |
| 79                     | Design only  | 74-734781<br>(2011815)               | September 26,<br>1995<br>(October 29, 1996) |

In addition to federal registrations, Applicant submitted evidence of the widespread use of bird names and/or images as trademarks for alcoholic beverages in the United States. Specifically, Applicant purchased the following alcoholic beverages containing a name of a bird and/or an image of a bird based from Pasadena, California, and provided pictorial representations of the products (the exhibit and page number depicting the specimen is indicated in parenthesis):

- A bottle of Lynmar Quail Hill Vineyard 2000 Quail Cuvee Russian River Valley Pinot Noir (with bird imagery) (Ex. 4, pg. 31)
- A bottle of Crane Lake 1996 Chardonnay (with bird imagery) (Ex. 4, pg. 32)

- A bottle of The Famous Grouse Finest Scotch Whiskey (with bird imagery) (Ex. 4, pg. 33)
- A bottle of 2001 Covey Run Fume Blanc (with bird imagery) (Ex. 4, pg. 34)
- A bottle of Duck Pond 1999 Merlot (with bird imagery) (Ex. 4, pg. 35)
- A bottle of Duck Pond 2001 Pinot Noir (with bird imagery) (Ex. 4, pg. 36)
- A bottle of Sylvester Vineyard & Winery 2001 Cabernet Sauvignon (with bird imagery) (Ex. 4, pg. 37)
- A bottle of Black Swan Vineyard Merlot (with bird imagery) (Ex. 4, pg. 38)
- A bottle of Ravenswood Vintners Blend 2001 California Cabernet Sauvignon (Ex. 4, pg. 39)
- A bottle of Toucano (with bird imagery) (Ex. 4, pg. 40)
- A bottle of Renwood 2002 Viognier Select Series (with bird imagery) (Ex. 4, pg. 41)
- A bottle of Rumple Minze (with bird imagery) (Ex. 4, pg. 42)
- A bottle of Captain Morgan's Parrot Bay Puerto Rican Rum with Natural Coconut Flavor (with bird imagery) (Ex. 4, pg. 43);
- A bottle Bowmore Legend Islay Single Malt Scotch Whiskey (with bird imagery) (Ex. 4, pg. 45);
- A bottle of Mendocino Brewing Company Blue Heron Pale Ale (with bird imagery) (Ex. 4, pg. 47);
- A bottle of Mendocino Brewing Company White Hawk Original IPA (with bird imagery) (Ex. 4, pg. 51);
- A bottle of Mendocino Brewing Company Black Hawk Stout (with bird imagery) (Ex. 4, pg. 54);

- A bottle of Mendocino Brewing Company Raptor Red Lager (with bird imagery) (Ex. 4, pg. 56);
- A bottle of Mendocino Brewing Company Red Tail Ale (with bird imagery) (Ex. 4, pg. 57);
- A bottle of Mendocino Brewing Company Eye of the Hawk Ale (with bird imagery) (Ex. 4, pg. 58);
- The label for Quail Oak 1997 California Sauvignon Blanc (with bird imagery) (Ex. 4, pg. 59);
- The label for Quail Oak 2000 California Chardonnay (with bird imagery) (Ex. 4, pg. 61);
- The label for Quail Oak 1999 California Cabernet Sauvignon (with bird imagery) (Ex. 4, pg. 63);
- The label for Quail Oak 1999 California Merlot (with bird imagery) (Ex. 4, pg. 66); and
- The label for Quail Oak 2000 California Pinot Noir (with bird imagery) (Ex. 4, pg. 68).

Crowe Decl. at pp. 3-5 and Exhibit 4 thereto.

The extensive use of bird names and/or images as product names for alcoholic beverages demonstrates the ability of consumers to discern between several competing products having similar, but not identical, product names and bird images. In this case, there is no question that consumers are readily accustomed to seeing a number of bird names and images in the marketplace for alcoholic beverages.

In addition, alcoholic beverages such as wine and beer, and the various types of “hard liquors” such as whiskey, have been consistently recognized as related

goods for trademark purposes. *See, e.g., Guinness United Distillers & Vintners B.V.*, 64 U.S.P.Q.2d 1039, 1043 (S.D.N.Y. 2002) (Scotch whiskey and beer related); *In re Majestic Distilling Co.*, 65 U.S.P.Q.2d 1201, 1204 (Fed. Cir. 2003) (malt liquor and tequila related); and *Schieffelin & Co. v. The Molson Cos. Ltd.*, 9 U.S.P.Q.2d 2069, 2073 (T.T.A.B. 1989) (malt liquor and cognac related). Opposer agrees that these goods are related, as reflected by its citation to these same cases in its Brief, and by the fact that Opposer stated that it had objected to, or would object to, companies selling beer and wine under marks it contends are similar to its WILD TURKEY mark (e.g., WILD CANARY wine, WILD RABBIT wine, WILD BLUE HERON beer).

Here, the co-existence of several similar marks for related alcoholic beverages reduces the likelihood that consumers would fail to appreciate the differences between WILD GEESE and WILD TURKEY, and also serves to confirm that the proper scope of Opposer's WILD TURKEY mark is "WILD" plus "TURKEY," and not "WILD" plus all birds and animals. Therefore, this factor strongly favors a conclusion that no likelihood of confusion exists between the two marks.

**C. The Marks Differ In Appearance, Sound, Connotation And Commercial Impression**

The dissimilarity of the marks WILD GEESE and WILD TURKEY with respect to appearance, sound, connotation, and commercial impression requires a finding of no likelihood of confusion.

Applicant's mark consists of the two words "WILD" and "GEESE."

Opponent's mark consist of the two words "WILD" and "TURKEY." The only similarity between Applicant's mark and Opponent's mark is the word "WILD," the weak and commonly used portion of the marks. This is insufficient to justify a refusal to register Applicant's mark. *See Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917 (C.C.P.A. 1976).

In *Tektronix, Inc. v. Daktronics, Inc.*, the court considered whether the marks TEKTRONIX and DAKTRONICS were so similar as to cause confusion when applied to electronic equipment. The court found that the mere presence of a common or suggestive portion is usually insufficient to support a finding of a likelihood of confusion. *Id.* at 916-17. The court found that the differences in the remaining portions of TEKTRONIX and DAKTRONICS were sufficient to distinguish one from the other. *Id.* at 917.

Here, there is even less similarity between the marks than in *Tektronix*. In *Tektronix*, each company used *a single word* to describe its goods and services, with the suffix of each word being virtually the same: "-TRONICS" and "-TRONIX." Here, the conflicting marks comprise *two words*, having the common term "WILD" but being clearly distinguishable with regard to the second term "GEESE" versus "TURKEY." Also, TEKTRONIX and DAKTRONICS may be pronounced very similarly while GEESE and TURKEY, in contrast, differ in the number of syllables and have clearly distinguishable pronunciation.



Concerning connotation and commercial impression, consumers will readily recognize the differences between a turkey and a plurality of goose (i.e., geese). Immediately, the word "turkey" conjures-up the image of one large, awkward looking bird that is substantially land-bound. The word "geese," on the other hand, conjures of the image of several athletic looking birds that fly in formation. These common images are consistent with how the words "turkey" and "goose/geese" are defined in a standard dictionary:

- Turkey: "A large North American bird, *Meleagris gallopavo*, that has brownish plumage and a bare wattled head and neck and is widely domesticated for food."
- The *slang* definitions of "turkey" are "a stage play or other production that fails" and "a person regarded as continually inept; a misfit."
- Goose (plural geese): "Any of various wild or domesticated water birds of the family Anatidae, and especially of the genera *Anser* and *Branta*, characteristically having a shorter neck than that of a swan and a shorter, more pointed bill than that of a duck. ... The female of such a bird, as distinguished from a gander."
- The *slang* definitions of "goose" are "to poke (a person) between the buttocks" and "an unforewarned jab in the backside. [Possibly after GOOSE, from the supposed resemblance of an upturned thumb to an outstretched goose's neck.]."

*The American Heritage® Dictionary of the English Language, Fourth Edition (1981)*

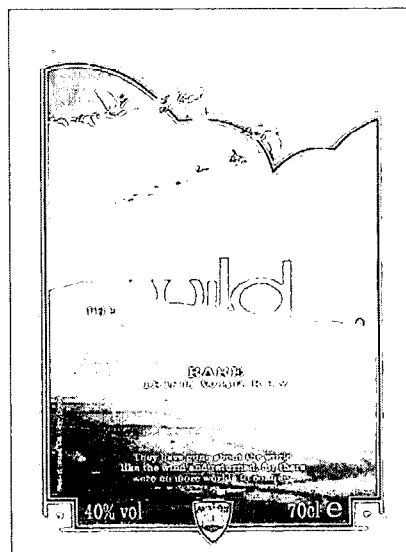
(A copy of the corresponding pages is attached hereto as Exhibit A).

These dictionary definitions are consistent with how an ordinary consumer would interpret the words "turkey" and "geese" when encountering them in the marketplace. The images of two different birds having entirely different physical attributes would immediately come to mind. Moreover, both words have very common and widely used slang meanings. Even Opposer used the slang meaning of "turkey" in its radio commercials (i.e., "You're a TURKEY." at Exhibit 41, track 3). Because the common meanings and slang meanings of words can be readily interchanged by consumers, the difference in both the common and slang meanings eliminates any possibility of consumer confusion.

For example, based on Opposer's radio commercials, it would be entirely appropriate for a consumer in a bar to tell a bartender, "Give me a TURKEY," when requesting a WILD TURKEY beverage. On the other hand, an entirely different response would be provoked by a consumer telling a bartender, "Give me a goose," when requesting a WILD GEESE beverage.

In addition to the connotations and impressions created by the words of the two marks, the images that accompany the two marks in the marketplace are entirely different. Although Applicant has not yet started selling its WILD GEESE Irish whiskey in the United States, it has sold the product elsewhere in the world. In that regard, John Conway, Opposer's intellectual property counsel, testified at

his deposition that he believed the visual appearance of Opposer's WILD TURKEY bottle of bourbon whiskey and Applicant's WILD GEESE bottle of Irish Whiskey were "very similar." See Conway Depo. at pg. 33, lines 5-6, comparing Exhibits 1 and 44; and Opposer's Brief at pg. 18 (noting that Applicant's WILD GEESE product, as shown in Exhibit 44, "appears visually similar in its packaging to Opposer's WILD TURKEY products," as shown in Exhibit 1). The images from Exhibits 1 and 44 that show the front labels of Opposer's and Applicant's products have been reproduced below in color:



Contrary to Opposer's assertions, Applicant submits that the visual presentations of the marks in the context of their respective products are very different, which only further supports the conclusion that the marks are different and will not be confused by consumers.

**D. Consumers Of Alcoholic Beverages Are Aware Of Differences  
In Trademarks When Purchasing Products**

The fourth DuPont factor, concerning the sophistication of purchasers, suggests that no likelihood of confusion would result from WILD GEESE and WILD TURKEY co-existing in the marketplace.

Opposer repeatedly refers to its consumers as being unsophisticated and likely to make impulse purchases. Opposer has provided no evidence, however, that supports these assertions. Rather, Opposer has slanted its characterization of the relevant consumers in an inconsistent manner.

Opposer suggests that consumers are either so unsophisticated that they will think WILD GEESE is actually WILD TURKEY, or they are so sophisticated that they will know WILD GEESE is not WILD TURKEY, but will think it is WILD TURKEY line expansion. Opposer has not offered, however, any criteria for determining when a consumer is or is not sophisticated, or how such sophistication would impact the consumer's ability recognize that WILD GEESE is not WILD TURKEY. Opposer cannot have it both ways.

Opposer has essentially admitted that consumers with knowledge of WILD TURKEY will likely know that WILD GEESE is different. *See* Opposer's Brief at pg. 30 (alleging that consumer's familiar with WILD TURKEY will not confuse WILD GEESE as being WILD TURKEY, but will think the two products come from the same source (i.e., Opposer's line expansion or family of marks theory)).

Moreover, Opposer specifically stated that consumers "buy brands," not the type of alcohol. *See* Uranga Depo. at pg. 121. More specifically, Mr. Uranga explained:

Based on my experience, the consumer buys brands. The consumer does not buy categories.

"I drink Wild Turkey," or "I drink Chivas Regal," or "I drink Jameson." I don't drink Irish whiskey. I don't drink bourbon. I don't drink Scotch. I drink my brand.

Uranga Depo. at pg. 121, lines 14-21.

Similarly, Opposer's intellectual property counsel, Mr. Conway, testified that he believes a high percentage of Opposer's customers go into a store specifically looking for the WILD TURKEY mark. *See* Conway Rebuttal at pp. 91, line 17 to 92, line 11.

Opposer's testimony directly supports the conclusion that consumers of alcoholic beverages exercise tremendous care when it comes to trademarks. The relevant consumers base their purchases on the trademarks identifying the products (i.e., the brands), not on the type of alcohol. Thus, purchasers of WILD TURKEY buy WILD TURKEY because they know the name WILD TURKEY. They clearly are able to distinguish between WILD TURKEY and all of the other products sold under the name "WILD" or under names of birds. Accordingly, given the brand loyalty of WILD TURKEY consumers, and alcoholic beverage consumers in general, consumers will have no difficulty discerning between WILD GEESE and WILD TURKEY.

**E. Opposer's Theory That "WILD GEESE" Would Be Perceived As A Line Extension Of "WILD TURKEY" Is Premised On A Non-Existent "Family Of Marks" For The Term "WILD"**

Opposer repeatedly asserts that consumers who have any knowledge of WILD TURKEY might believe that WILD GEESE is a "line extension" of WILD TURKEY. This entire notion would only be applicable if Opposer had establish a "family of marks" based on WILD TURKEY, and more particularly, marks comprising the common term "WILD." In reality, Opposer only has one mark - WILD TURKEY - and one trademark does not constitute a family.

**1. Opposer does not have a family of "WILD" marks**

To enjoy the benefits of a family of marks, Opposer must meet two requirements:

It has been held that in order to establish ownership of a family of marks it must be shown by competent evidence "first, that prior to the entry into the field of the opponent's mark, the marks containing the claimed 'family' feature or at least a substantial number of them, were used and promoted together by the proponent in such a manner as to create public recognition coupled with an association of common origin predicated on the 'family' feature; and second, that the 'family' feature is distinctive (i.e. not descriptive or highly suggestive or so commonly used in the trade that it cannot function as the distinguishing feature of any party's mark)."

*Marion Laboratories, Inc. v. Biochemical / Diagnostics, Inc.*, 6 U.S.P.Q.2d 1215, 1218-1219 (TTAB 1988).

In the *Marion Laboratories* case, the Opposer satisfied both requirements for establishing ownership of a family of eight marks that began with the prefix "TOXI-." *Id.* (Specifically, Opposer's family included "TOXI-LAB", "TOXI-GRAMS", "TOXI-DISCS", "TOXI-KIT", "TOXI-TIPS", "TOXI-DIP(S)", "TOXI-CONTROL", "TOXI-PACK", and "TOXI-RACK"). Based on that extensive family, the Board concluded that Applicant's proposed mark for "TOXI-PREP," which was to be used with the same general category of goods as those sold by the Opposer (i.e., products for the clinical screening of drugs), would likely be perceived by consumers as another member of the Opposer's family and, thus, likely to cause confusion.

Here, Opposer cannot satisfy either of the requirements for establishing a family of "WILD" marks. Opposer has not used any other marks beginning with "WILD" other than WILD TURKEY, and it is questionable whether such a family could even be created because "WILD" is commonly used in the alcoholic beverage industry.

Despite Opposer's lack of a family of "WILD" marks, it is attempting to enjoy the benefits of a family. Opposer believes it has the right to preclude any trademark having the format of "WILD (bird)," because any such mark would be perceived as an extension of WILD TURKEY. This assertion could have a degree of persuasiveness if Opposer had in fact established a family of marks relating to WILD TURKEY that contain the common term "WILD." For instance, if Opposer had already established line extensions under the names "WILD ROOSTER,"

"WILD CHICKEN," "WILD HEN," "WILD GOOSE," or any other similar "WILD \_\_\_\_" marks, then Opposer could be in a position to claim the rights associated with a family of marks.<sup>3</sup> Instead, Opposer simply spends a lot of time and money advertising its WILD TURKEY mark, and engaging in an overly aggressive enforcement program that manages to prevent many people from using marks that would never be confused with WILD TURKEY.

**2. The cases relied on by opposer do not support its theories of "line extension" and "association confusion"**

Opposer contends Applicant's mark WILD GEESE would somehow cause consumers to believe that it were a line extension of Opponent's WILD TURKEY mark or would be associated with it. *See* Opp. Brief at 21-23. As explained above, Opposer could make such an assertion if it had a family of "WILD \_\_\_\_" marks. Instead, Opposer simply relies on three cases where direct and association confusion were clearly established, namely the *United Rum* case and the two *H. Sichel Sohne* cases. These cases are readily distinguishable from the present case

---

<sup>3</sup> Furthermore, Opposer's current theory that it may "expand" its WILD TURKEY whiskey line to include Applicant's Irish whiskey product is simply an attempted justification for stifling fair competition. Opposer does not have any plan of "expanding" into Irish whiskey because it already has control of up to 90% of the Irish whiskey market with its six existing lines of whiskey it sells under the brand names of Jameson, Bushmills, Black Bush, Powers, Midleton, and Redbreast. *See* Deposition of John Uranga ("Uranga Depo.") at pg. 128, lines 13-16, and Exhibit 46.



and have no bearing on the conclusion that WILD GEESE will not be confused with WILD TURKEY.

Opposer relies on *United Rum Merchants Limited v. Fregal, Inc.*, 216 U.S.P.Q. 217 (T.T.A.B. 1982), arguing that the Board's finding that TIA MARIA was confusingly similar to TIA LOLA, for alcoholic beverages, is analogous to WILD GEESE versus WILD TURKEY for alcoholic beverages. Opp. Brief at 21-22. Opposer fails to acknowledge that likelihood of confusion was found in that case because both marks shared the dominant portion "TIA" and the non-dominant portions also sounded similar. See 216 U.S.P.Q. at 220. The Board found that the opponent's beverage was commonly referred to in short as "TIA," as a nickname for "TIA MARIA." *Id.* At the same time, MARIA and LOLA sound similar, both having two syllables and ending in the same "ah" sound. See *Id.*

Here, the shared term "WILD" is commonly used for alcoholic and non-alcoholic beverages and therefore constitutes the weak, non-dominant portion of both marks. See Section II(A)(1) above.. Opposer provided no evidence that consumers refer to WILD TURKEY whiskey by the word "WILD" alone. In fact, Opposer's evidence shows the opposite, namely that its consumers refer to WILD TURKEY whiskey simply as "TURKEY." See, e.g., Uranga Depo. at 142, and Section III(A)(2) above.

Furthermore, the dominant portions of the two marks, GEESE and TURKEY, sound very different with GEESE having one spoken syllable and ending

in an "s" sound, while TURKEY has two syllables and ends in an "e" sound. Accordingly, a finding that two marks with a shared dominant portion and a similar sounding non-dominant portion were found confusingly similar is inconsequential here, where the two marks merely share a commonly used, non-dominant portion and include clearly distinguishable dominant portion.

Opposer's reliance on *H. Sichel Sohne v. Michel Nonzain Selected Wines, Inc. (Sohne I)*, 202 U.S.P.Q. 62 (T.T.A.B. 1979) and *H. Sichel Sohne, GmbH v. John Gross & Co. (Sohne II)*, 204 U.S.P.Q. 257 (T.T.A.B. 1979), is also misplaced. In *Sohne I* and *Sohne II*, the Board found a likelihood of confusion between BLUE NUN and BLUE ANGEL, and between BLUE NUN and BLUE CHAPEL, respectively, for wine. *See id.* However, in both cases, the key factor was that the term BLUE was the keystone of the opposer's mark, *Sohne II*, 204 U.S.P.Q. at 259, and that *BLUE* was an arbitrary term to be used in combination with the term "NUN," as well as with the terms "ANGEL" or "CHAPEL." *See Sohne I*, 202 U.S.P.Q. 64, 66. The Board held in both cases that "similarity in meaning or significance alone [can be] sufficient to find likelihood of confusion . . . where . . . the marks are . . . arbitrary." *Sohne I*, 202 U.S.P.Q. at 65; *Sohne II*, 204 U.S.P.Q. at 260 (emphasis added).

Here, use of the term "WILD" is not arbitrary in combination with "GEESE" or "TURKEY." As the Opposer admitted in its Opposition Brief, both denote "*wild* game birds." Opp. Brief at 21 (emphasis added). Because there are two varieties of

geese and turkeys, namely wild and domesticated, the placement of the term "WILD" in front of "TURKEY" is not arbitrary, but rather is consistent with the image of a wild turkey that appears on Opposer's product. Because the term "WILD" neither serves as a keystone of either mark nor is arbitrary in combination with the terms "GEESE" or "TURKEY," the limited holdings in *Sohne I* and *Sohne II* have no application here.

Overall, none of the cases relied on by Opposer supports its attempt to enjoy the trademark rights associated with a family of marks, or help to overcome the inherent limitations in its single WILD TURKEY mark.

### **III. CONCLUSION**

Accordingly, Applicant respectfully requests that the Board deny the opposition and grant registration of the mark WILD GEESE as shown in Application Serial No. 76/074,330.

Respectfully submitted,  
CHRISTIE, PARKER & HALE, LLP

Date March 18, 2005

By Gary J. Nelson  
Gary J. Nelson  
Attorneys for Applicant  
P.O. Box 7068  
Pasadena, California 91109-7068  
626/795-9900



THE  
AMERICAN HERITAGE  
DICTIONARY  
OF THE ENGLISH LANGUAGE

AMERICAN DICTIONARY

YAWNO

AMERICAN DICTIONARY

Words that are believed to be registered trademarks have been checked with authoritative sources. No investigation has been made of common-law trademark rights in any word, because such investigation is impracticable. Words that are known to have current registrations are shown with an initial capital and are also identified as trademarks. The inclusion of any word in this Dictionary is not, however, an expression of the publishers' opinion as to whether or not it is subject to proprietary rights. Indeed, no definition in this Dictionary is to be regarded as affecting the validity of any trademark.

Copyright © 1969, 1970, 1971, 1973, 1975, 1976, 1978, 1979, 1980, 1981 by Houghton Mifflin Company. All rights reserved. For information about permission to reproduce selections from this book, write to Permissions, Houghton Mifflin Company, 2 Park Street, Boston, MA 02108.

ISBN: 0-395-20360-0 (new college edition; thumb-indexed)  
0-395-20359-7 (new college edition; plain edges)  
0-395-24575-3 (high-school edition)  
0-395-09066-0 (larger-format edition)

Library of Congress Catalog Card Number 76-86995

Manufactured in the United States of America

Computer-composed by Inforonics, Inc.  
in Maynard, Massachusetts

Austin Nichols & Co., Inc. v. Stichting Lodestar  
Opposition No. 91155165  
Exhibit A, Page 2  
Submitted by Applicant with Brief for Applicant

# googolplex gory

(10<sup>100</sup>); the number 1 followed by 100 zeros. [Coined by Edward Kasner (1878-1955), American mathematician.]

**goo-gol-plex** (gōō'gōl-plēks') *n.* The number 10 raised to the power googol; the number 1 followed by 10<sup>100</sup> zeros. [GOOGOL + (DU)PLEX.]

**gook** (gōōk, gōōk) *n. Slang.* 1. A dirty, sludgy, or slimy substance. 2. An Oriental. An offensive term used derogatorily. [Perhaps from Scottish *gowk*, simpleton, from Middle English *gowke*, cuckoo, from Old Norse *gaurk*, from Common Germanic *gaukaz* (unattested).]

**goon** (gōōn) *n.* 1. *Informal.* A thug hired to commit acts of intimidation or violence. 2. *Slang.* A stupid or oafish person. [From dialectal *gooney*, *gony*, fool; popularized by the comic-strip character Alice the *Goon*, created by E.C. Segar (1894-1938).]

**goo-nay bird** (gōō'nē). *Slang.* An albatross; especially, *Diomedea nigripes*, common on islands of the Pacific. [From dialectal *gooney*, fool. See *goon*.]

**goop** (gōōp) *n. Slang.* An ill-mannered person. [Coined by Gelett Burgess (1866-1951), American humorist.]

**goos-an-der** (gōōs-ān'dər) *n. British.* A bird, the common merganser, *Mergus merganser*. [Probably GOOSE + Old Norse *and* (stem *andar-*), duck (see *anot-* in Appendix\*).]

**goose** (gōōs) *n., pl. geese* (gēs) or *geeses* (for sense 5). 1. Any of various wild or domesticated water birds of the family Anatidae, and especially of the genera *Anser* and *Branta*, characteristically having a shorter neck than that of a swan and a shorter, more pointed bill than that of a duck. 2. The female of such a bird, as distinguished from a gander. 3. The flesh of such a bird, used as food. 4. *Informal.* A silly person; a simpleton. 5. A tailor's pressing iron with a long curved handle. —*cook one's goose.* *Informal.* To ruin one's chances. [Goose, geese; Middle English *goos*, *gees*, Old English *gās*, *gēs*. See *ghans-* in Appendix\*.]

**goose<sup>2</sup>** (gōōs) *tr.v. goosed, goosing, geeses. Slang.* To poke (a person) between the buttocks. —*pl. gooses. Slang.* An unforewarned jab in the backside. [Possibly after GOOSE, from the supposed resemblance of an upturned thumb to an outstretched goose's neck.]

**goose-ber-ry** (gōōs'bēr'ē, -bā-rē, gōōz'-) *n., pl. -ries.* 1. A spiny shrub, *Ribes grossularia*, native to Eurasia, having lobed leaves, greenish flowers, and edible greenish berries. 2. The fruit of this plant. 3. Any of several plants bearing fruit similar to the gooseberry, such as the Cape gooseberry (see). [Perhaps GOOSE + BERRY.]

**goose egg.** *Slang.* Zero, especially when written as a numeral to indicate that no points have been scored.

**goose-fish** (gōōs'fīsh') *n., pl. goosefish or -fishes.* Any of several anglerfishes of the genus *Lophius*, such as *L. americanus*, of North American Atlantic waters. Also called "monkfish."

**goose flesh.** Momentary roughness of skin caused by erection of the papillae in response to cold or fear. Also called "goose bumps," "goose pimples."

**goose-foot** (gōōs'fōōt') *n.; pl. -foots.* Any of various usually weedy plants of the genus *Chenopodium*, having small greenish flowers. [From the shape of its leaves.]

**goose grass.** A plant, cleavers (see).

**goose-herd** (gōōs'hūrd') *n.* One who tends a flock of geese.

**goose-neck** (gōōs'nēk') *n.* A slender, curved object or part, such as the flexible shaft of a type of desk lamp.

**goose step.** A military parade step done by swinging the legs sharply from the hips and keeping the knees locked.

**goose-step** (gōōs'stēp') *intr.v. -stepped, -stepping, -steps.* To execute or march in a goose step.

**goos-y** (gōōs'ē) *adj. -ier, -iest.* Also *goos-ey.* 1. Pertaining to or resembling a goose. 2. Foolish; scatterbrained. 3. Causing or affected with goose flesh.

**G.O.P.** Grand Old Party.

**go-pher** (gō'fər) *n.* 1. Any of various short-tailed, burrowing mammals of the family Geomyidae, of North America, having fur-lined external cheek pouches. Also called "pocket gopher." 2. A ground squirrel (see), especially one of the genus *Citellus*. 3. Any of several burrowing tortoises of the genus *Gopherus*; especially, *G. polyphemus*, of the southeastern United States. Also called "gopher tortoise." [Shortening of earlier *magophery*.]

**gopher snake.** A bull snake (see).

**Gopher State.** A nickname for Minnesota.

**go-pher-wood** (gō'fər-wōōd') *n.* Also **gopher wood** (for sense 1). 1. An unidentified wood, probably a kind of cypress, used in the construction of Noah's ark. Genesis 6:14. 2. A tree, the yellowwood (see). [Hebrew *gopher*.]

**Go-rakh-pur** (gō'rāk-pōōr', gōr'-). A city of eastern Uttar Pradesh, Republic of India. Population, 196,000.

**go-ral** (gō'rāl, gōr'-) *n.* Either of two goatlike antelopes, *Naemohedus goral* or *N. cranbrookii*, of mountainous regions of eastern Asia, having short, ridged, backward-curving horns in both sexes. [Hindi *gūral*, *goral*, possibly from Sanskrit *gaura*, gaur. See *gwou-* in Appendix\*.]

**Gor-di-an knot** (gōr'dē-ān). 1. An intricate knot tied by King Gordius of Phrygia and cut by Alexander the Great with his sword after hearing an oracle promise that whoever could undo it would be the next ruler of Asia. 2. An exceedingly complicated problem or deadlock. —*cut the Gordian knot.* To solve a problem by resorting to prompt and bold measures.

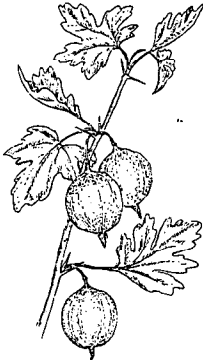
**Gor-don** (gōrd'n), **Charles George.** 18<sup>th</sup> in China, Africa, and India.

**Gordon setter.** A hunting dog of a breed, having a silky black and tan coat.

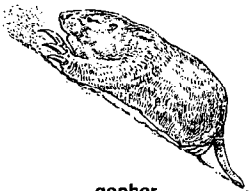
ā pat/ā pay/ār care/ā father/b bib/ch c needle/m mum/n no, sudden/ng thing/



goose<sup>1</sup>  
*Chloephaga picta*  
A female of the species



gooseberry  
*Ribes grossularia*



gopher  
*Geomys bursarius*



gorilla

**gore<sup>1</sup>** (gōr) *tr.v. gored, goring, gores.* To pierce with a horn or tusk. [Middle English *goren*, to pierce, from Old English *gār*. See *ghaiso-* in Appendix\*.]

**gore<sup>2</sup>** (gōr) *n.* 1. A triangular or tapering piece of cloth, part of a garment, such as a skirt, or in an umbrella, like a. 2. A small triangular piece of land. —*tr.v. gored.* To make or provide with a gore or gored. 2. A triangular piece of land. See *ghaiso-* in Appendix\*.]

**gore<sup>3</sup>** (gōr) *n.* Blood, especially coagulated blood, from a wound. [Middle English *gore*, Old English *gore*, from *Gor-gas* (gōr'gas), *William Crawford*. 1854-1920] army surgeon.

**gorge** (gōrj) *n.* 1. A deep, narrow passage with precipitous rocky sides, enclosed between mountains. 2. A narrow tranche or passageway from the rear into the bastion of a fortification. 3. The throat; gullet. 4. A narrow passage: The shipping lane was blocked by an ice. —*make one's gorge rise.* To make one feel violent anger or strong revulsion. —*v. gorged, gorging, gorges.* —*tr. stuff; satiate; glut.* Usually used reflexively. 2. To devour. —*intr.* To eat gluttonously. —*See Synonyms at gorge.* [Middle English, throat, from Old French, from Vulgar Latin *gurga* (unattested), variant of Latin *gurgus*, whirlpool. See *gwera-* in Appendix\*.] —*gorg'er n.*

**gor-geous** (gōr'jəs) *adj.* 1. Dazzlingly brilliant; resplendent; magnificent. 2. Strikingly beautiful or attractive. 3. Wonderful; delightful. [Middle English *gorgeous*, splendid, from Old French *gorgis*, stylish, fine, elegant, from *Gorgias* (circa 483-376 B.C.), Greek sophist and rhetorical stylist.] —*gor'geously adv.* —*gor'geously n.*

**gor-ger-in** (gōr'jər-ān) *n. Architecture.* The necking of a column. 2. A piece of armor protecting the throat. 3. An ornamental collar. 3. The scarflike part of a garment covering the neck and shoulders. 4. A band or patch of distinctive color on the throat, especially of a bird. [Middle English, from Old French, diminutive of *gorge*, throat, from *Gor-gon* (gōr'gōn) *n.* 1. *Greek Mythology.* Any of the three daughters Stheno, Euryale, and the mortal Medusa who had snakes for hair, and eyes which, if looked into, turned the beholder into stone. 2. *Small g.* A repulsively ugly or terrifying woman. [Middle English, from Latin *Gorgō*, from Greek, from *gor-terrible*.] —*Gor-go-ni-an* (gōr'gō-nē-ān) *adj.*

**gor-go-nei-on** (gōr'gō-nē-ōn) *n., pl. -neia* (-nē-ā). A representation of a Gorgon's head, especially one of Medusa. [From the neuter of *gorgoneios*, of a Gorgon, from *Gor-gon*.]

**gor-go-ni-an** (gōr'gō-nē-ān) *n.* Any of various corals of the order Scleractinia, having a flexible, often branching skeleton of horny material. —*adj.* Of or belonging to the Gorgonaceae. [From Latin *Gorgonia*, coral, from *Gorgō*, GORGON.]

**gor-gon-ize** (gōr'gō-nīz') *tr.v. -ized, -izing, -izes.* To have a paralyzing effect upon; petrify, as with fear. [From *Gor-gon*.]

**Gor-gon-zo-la** (gōr'gōn-zō'lā) *n.* A pungent, blue-veined, cream-colored Italian cheese made of pressed cow's milk. [First made at *Gorgonzola*, village near Milan, Italy.]

**go-ril-la** (gō-ril'ā) *n.* 1. A large anthropoid ape, *Gorilla*, of forests of equatorial Africa, having a stocky body, coarse, dark hair. 2. A brutish or thuglike man. [New Latin, from Greek *Gorillai*, name of African tribe of hairy men.]

**Gör-ing** (gō'r'ing), **Hermann.** Also **Goe-ring.** 1891-1946. German field marshal and Nazi politician.

**Go-ri-zia** (gō-rē'tsī-ā). A city and tourist center of northeastern Italy on the Yugoslav border. Population, 42,000.

**Gor-ki** (gōr'kē), **Maxim.** Pen name of Aleksei Peshkov. 1869-1936. Russian author of novels, plays, and essays.

**Gor-kiy** (gōr'kē). Also **Gor-ki**, **Gor-ky.** Formerly *Nizhni Novgorod* (nīzh'nē nōv'gō-rōd'). The fourth-largest city of the U.S.S.R., a major industrial and manufacturing center on the southern bank of the Volga in the west-central Russian S.F.S.R. Population, 1,042,000.

**Gör-litz** (gūr'līts). A city and manufacturing center of eastern East Germany on the western bank of the Neisse, 50 miles east of Dresden. Population, 96,000.

**Gor-lov-ka** (gōr-lōf'kā). A city and industrial center of the central Ukrainian S.S.R., 25 miles north of Donetsk. Population, 309,000.

**gor-mand.** Variant of *gourmand*.

**gor-mand-ize** (gōr'mān-dīz') *v. -ized, -izing, -izes.* —*intr.* To eat gluttonously; to gorge. —*tr.* To devour (food) gluttonously; to gorge. —*n. Rare.* Variant of *gourmandise*. [From *GOURMANDISE* (obsolete sense "gluttony").] —*gor'mand n.*

**Gor-no-Al-tay Autonomous Region** (gōr'nō-āl'tī-ā). Also **no-Al-tai.** An administrative division, 35,740 square miles in area, of the south-central Russian S.F.S.R. Population, 169,000. Capital, Gorno-Altaysk.

**Gor-no-Ba-dakh-shan Autonomous Region** (gōr'nō-bā-dākh-shān'). An administrative division, 24,590 square miles in area, of the southeastern Tadzhik S.S.R. Population, 86,000. Capital, Khorog.

**gorse** (gōrs) *n.* Any of several spiny, thickset shrubs of the genus *Ulex*; especially, *U. europaeus*, native to Europe, with fragrant yellow flowers. Also called "furze," "whin."

Austin Nichols & Co., Inc. v. Stichting Lodestar  
Opposition No. 91155165

Exhibit A, Page 3

Submitted by Applicant with Brief for Applicant

turkey buzzard

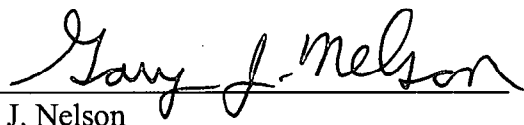
**CERTIFICATE OF MAILING AND SERVICE**

I certify that on March 18, 2005, the foregoing **BRIEF FOR APPLICANT** is being deposited with the United States Postal Service by first-class mail addressed to:

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

It is further certified that on March 18, 2005, the foregoing **BRIEF FOR APPLICANT** is being served by Federal Express Overnight Delivery addressed to:

Louis S. Ederer, Esq.  
TORYS LLP  
237 Park Avenue  
New York, New York 10017

By   
Gary J. Nelson  
Christie, Parker & Hale, LLP  
P.O. Box 7068  
Pasadena, CA 91109-7068