


TTAB

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

CAYMUS VINEYARDS)	
)	
Opposer,)	
)	Opposition No.
v.)	Serial No. 76/379,012
)	
CAYMAS SYSTEMS, INC.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Box TTAB Fee
Commissioner for Trademarks
Arlington, Virginia 22202-3514



11-28-2003
U.S. Patent & TMO/TTAB Mail Rpt Dt. #78

Sir/Madam:

In the matter of the intent-to-use application for registration of the mark CAYMAS SYSTEMS for "computer hardware, peripherals and software for enterprise and service provider networks" in International Class 9; "installation, maintenance and repair of computer hardware, peripherals and software for enterprise and service provider networks" in International Class 37; and "installation, maintenance and repair of computer software for enterprise and service provider network" in International Class 42; Serial No. 76/379,012 filed on March 6, 2002, by Caymas Systems, Inc. of Petaluma, California (hereinafter "APPLICANT") and published for opposition at page TM81 of the *Official Gazette* of September 9, 2003. Caymus Vineyards, a corporation of California, having an office and place of business at 8700

Conn Creek Rd., Rutherford, California 94573 (hereinafter "OPPOSER") believes it would be damaged by such registration and hereby gives notice of its intention to oppose the registration of said alleged trademark.

As grounds for opposition, OPPOSER states:

1. OPPOSER is a major domestic vineyard and producer of fine wines. OPPOSER's wines are sold under its trademark CAYMUS. The wines sold under the CAYMUS trademark are known to consumers around the world.

2. OPPOSER owns and has registered the trademark CAYMUS in the United States Patent & Trademark Office under No. 1,833,996 and has made use of the mark since as early as September 9, 1972. The trademark CAYMUS is registered in International Class 33 for "wine." Section 8 & 15 Declarations have been accepted and acknowledged by the PTO and therefore the CAYMUS trademark is incontestable. The registration has also been renewed.

3. OPPOSER has been using its trademark "CAYMUS" continuously for over thirty years. OPPOSER has established significant good will in the trademark for its wine products. OPPOSER has also used its CAYMUS trademark on a large variety of other products and actively promotes its products in its own name and through distributors and others through the internet.

4. OPPOSER has been operating a vineyard, growing grapes and marketing its wine products under the corporate and trade name Caymus

Vineyards since at least 1972. Since its inception in 1972, wines bearing the CAYMUS trademark have won a host of major competitions around the world and wine critics have hailed the virtues of wine bearing the CAYMUS trademark. CAYMUS cabernet sauvignon has been named "Wine of the Year" in the prestigious *Wine Spectator* magazine. CAYMUS is a "famous trademark." In fact, the CAYMUS trademark was adjudicated by this Board to be a "famous trademark" in the matter of *Caymus Vineyards v. Lisa Frank, Inc.* Opposition Nos. 92,049 and 92,113 Consolidated (see Opinion; January 2, 1997).

5. OPPOSER has established, through its corporate name Caymus Vineyards and by its product line, the highest integrity in its business relationships with consumers and associates alike. The wines of Caymus Vineyards, which are sold under the CAYMUS trademark, are known to wine connoisseurs and members of the consuming public in the United States and around the world.

6. OPPOSER currently is involved in promoting and advertising its products through the internet. A search of the Google search engine reveals over 4,800 "hits" of documents wherein "Caymus Vineyards" is mentioned on various web sites. *Opposer also has a variety of promotional items which bear the CAYMUS trademark which are sold or given away to consumers.* OPPOSER will continue to expand internet advertising and promotion as has become the custom and practice in the trade by manufacturers and distributors of both alcoholic and nonalcoholic beverages. Opposer also

plans to continue with the use of other collateral goods to promote its wine products. Such collateral goods include but are not limited to food products, clothing, stationery items and various types of paper goods.

7. OPPOSER's trademark CAYMUS is strong, distinctive, well-known, fanciful, arbitrary and a capricious mark. Applicant's proposed use of a virtually identical mark on its product line conveys to the public the assumptions that (1) APPLICANT and OPPOSER are directly connected or affiliated to each other; and/or (2) APPLICANT is using the mark with the express consent or approval of OPPOSER; (3) both of the foregoing.

8. APPLICANT'S trademark application Serial No. 76/379,012 is based on the intent to use the trademark for various computer hardware and software products and services. The APPLICANT has not, upon information and belief, yet made use of the trademark here sought to be registered.

9. Upon information and belief, at the time APPLICANT filed application No. 76/379,012, it had or should have had full knowledge of the prior adoption and extensive use of the trademark and trade name by OPPOSER. Upon information and belief, the APPLICANT is also a customer of the OPPOSER who is knowledgeable about the OPPOSER's name and products.

10. If the APPLICANT is permitted to use and register the trademark "CAYMAS SYSTEMS" recited in said application No. 76/379,012, there will be a significant likelihood of confusion, mistake and/or deception as to the

source of APPLICANT'S products. Applicant has also recognized a likelihood of confusion in adopting OPPOSER's famous CAYMUS mark, apparently believing that making a slight change in the spelling of the mark from "CAYMUS" to "CAYMAS," would avoid conflict. However, the sound and pronunciation of APPLICANT's proposed mark is identical.

11. APPLICANT's proposed use and registration of CAYMAS is likely to cause dilution of the distinctive quality of OPPOSER's famous CAYMUS mark.

OPPOSER, Caymus Vineyards, prays that this Opposition be sustained and that the registration sought by APPLICANT be refused.

OPPOSER hereby appoints Messrs. Scott W. Petersen, Thomas P. Arden, Elayna T. Pham, Robert J. Depke, Todd S. Parkhurst, Lewis T. Steadman, Jr. and all partners of the firm of Holland & Knight LLP (Telephone: 312-263-3600), to act as its attorneys in the matter of the above-identified Opposition with full power of substitution and revocation to prosecute this opposition and to transact all business in the United States Courts in connection with this opposition, to sign its name to all papers which may hereafter be filed in connection with said opposition, to receive all official communications related to the same and further directs that all correspondence be forwarded to:

Mr. Scott W. Petersen
Holland & Knight LLC
131 Dearborn Street, 30th Floor
Chicago, Illinois 60603

The Opposition filing fee in the amount of \$900.00 is submitted herewith along with two extra copies of this Opposition.

Respectfully submitted,

Caymus Vineyards

Date: November 25, 2003

By: 

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Attorneys for Opposers

CERTIFICATE OF FILING

I hereby certify that the above Notice of Opposition is being deposited in triplicate on November 25, 2003, with the United States Patent and Trademark Office in an envelope addressed to:

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



Attorneys for Opposer

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