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

Proceeding	91168224
Party	Plaintiff Unfiltered Napa LLC Unfiltered Napa LLC ,
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Signature	/Alison P. Schwartz/
Date	01/10/2007
Attachments	Opposer Response to Objections to Evidence.pdf (38 pages)(866859 bytes)

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

In The Matter of Application Serial No. 78/458,716
Filed on: July 29, 2004
For the Mark: TWENTY ROWS
Published in the *Official Gazette (Trademarks)* on October 25, 2005

UNFILTERED NAPA LLC

Opposer,

v.

Opposition No. 91168224

TWENTY ROWS LLC

Applicant.

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**OPPOSER'S RESPONSE TO TWENTY ROWS LLC'S OBJECTIONS TO EVIDENCE
SUBMITTED WITH OPPOSER'S RESPONSE TO APPLICANT'S MOTION FOR
SUMMARY JUDGMENT**

Unfiltered Napa LLC ("Opposer") responds to Twenty Rows LLC's ("Applicant")
Objections to Evidence Submitted with Opposer's Response to Applicant's Motion for Summary
Judgment ("Objections") as follows:

**1. OBJECTIONS TO PRINTED COPIES OF WEBSITE PAGES
FEATURING WINES (EXHS. G and J)**

Applicant objects to Exhibits G and portions of Exhibit J on the basis that they are
allegedly not self-authenticating, and must be properly authenticated by a competent person by
declaration or affidavit as to the nature, source and date of the materials. In response, Opposer
submits the Declaration of Alison P. Schwartz herewith in order to cure any alleged procedural
defect in the submitted evidence. *See e.g.*, TBMP 707.02(b)(2), which suggests the Board has
authority to allow a party to cure a procedural evidentiary defect ("When, on a motion to strike a

notice of reliance on the ground that it does not meet the procedural requirements of the rule under which it was filed, the Board finds that the notice is defective, but that the defect is curable, the Board may allow the relying party time to cure the defect, failing which the notice will stand stricken.”). Accordingly, Opposer submits that this objection is moot.

Moreover, Exhibit J attached to Opposer’s Response is comprised of pages produced by Opposer in response to discovery requests propounded by Applicant during the course of the pending Opposition. According to TBMP §528.05(a), “[A] party may make of record, for purposes of summary judgment, . . . documents or things produced in response to a request for production . . . A party need not submit these materials under a notice of reliance in order to make them of record for purposes of a summary judgment motion. Rather, the materials may be submitted as attachments or exhibits to a party’s brief on the motion.” Accordingly, Exhibit J is proper.

2. OBJECTIONS TO COPIES OF CATALOGS, NEWSPAPERS AND MAGAZINES (EXHS. G and J)

Applicant objects to portions of Exhibits G and J on the basis that they are allegedly not relevant, they are not in general circulation among the segment of the public relevant to these proceedings, and they must be properly authenticated. In response, Opposer submits the Declaration of Alison P. Schwartz herewith in order to cure any alleged procedural defect in the submitted evidence. Accordingly, Opposer submits that this objection is moot.

Moreover, Applicant’s objections based on relevancy are simply unsupported and improper. Thus, these objections should be denied.

Finally, as explained above, Exhibit J attached to Opposer’s Response is comprised of pages produced by Opposer in response to discovery requests propounded by Applicant during the course of the pending Opposition. According to TBMP §528.05(a), “[A] party may make of

record, for purposes of summary judgment, . . . documents or things produced in response to a request for production . . . A party need not submit these materials under a notice of reliance in order to make them of record for purposes of a summary judgment motion. Rather, the materials may be submitted as attachments or exhibits to a party's brief on the motion.” Accordingly, Exhibit J is proper.

3. OBJECTIONS TO PRINTED COPIES OF INTERNET CHAT ROOM POSTINGS (EXHS. M, N and O)

Applicant objects to Exhibits M, N and O on the basis that they are not properly authenticated. In response, Opposer submits the Declaration of Alison P. Schwartz herewith in order to cure any alleged procedural defect in the submitted evidence. Accordingly, Opposer submits that this objection is moot.

Applicant further objects that Exhibits M, N and O are inadmissible hearsay. Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Fed. R. Evid. 801(c). The postings submitted in Exhibits M, N, and O are not offered to prove the truth of the matters asserted therein, but rather they are offered to show that confusion exists in the marketplace. Thus, Applicant’s hearsay objection should be denied.

4. OBJECTIONS TO DECLARATIONS OF JAMES HARDER AND DENISE JOHNSON

Applicant objects to various paragraphs in the declarations of James Harder and Denise Johnson based on various blanket factual allegations that are either irrelevant or unsupported by the evidence of record. Thus the objections should be denied. For example, Applicant claims that Mr. Harder is neither a restaurateur nor a wine store owner. Applicant provides no basis for this factual allegation. Moreover, Mr. Harder already testified that he is a co-owner of Unfiltered

Napa, and that TWENTY BENCH® wine is sold through numerous channels, including to wine distributors, restaurants, directly to consumers and other distributors over the internet, to wine shops and to markets. (See Exh. F to Opposer's Response). Mr. Harder is thus personally familiar with the sale of his own company's wine in various markets, and thus competent to testify to such matters.

Applicant further objects to Mr. Harder's and Ms. Johnson's declarations as in admissible hearsay. As previously explained, hearsay is defined by the Federal Rules of Evidence as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Fed. R. Evid. 801(c). None of Mr. Harder's or Ms. Johnson's statements alleged to be hearsay constitute out of court statements offered to prove the truth of the matters asserted.

First, in his declaration, Mr. James Harder recalls various conversations he had with third parties. (April 30, 2006 Harder Decl. at Exhibit L attached to Opposer's Response). These statements were offered to prove the fact that the statements were made to Mr. Harder – not to prove the truth of the matters asserted in those conversations. For example, Mr. Harder's statement that the accountant for one of Opposer's customers requested an invoice for Twenty Rows rather than Twenty Bench was clearly not offered to prove the truth of the matter asserted, but rather as evidence that the third party declarant was confused. *See Finance Company of America v. BankAmerica Corp.*, 205 U.S.P.Q. 1016, 1035 (TTAB 1980) (with respect to testimony offered by opposer of its employees involved in the receipt or tabulation of misdirected mail or telephone calls "is not hearsay for it is accepted not for the truth of the statements made by the non-witnesses to them or the reasons therefore, but rather for the fact that the statements referred to in their testimony were made to them."); *Towers v. Advent Software*,

Inc., 1989 WL 274438, *2 at n.3 (TTAB 1989) (petitioner’s testimony that he remembered inquiries from prospective customers which, by their nature, indicated that there was confusion involving the products of the parties, does not constitute hearsay); *Armco, Inc. v. Armco Burglar Alarm Co., Inc.*, 693 F.2d 1155, 1160 at n.10 (5th Cir. 1982) (employee’s testimony about phone calls from and conversations with third parties not offered to show plaintiff and defendant were the same business, but to show that people *thought* they were).

Similarly, Ms. Denise Johnson’s testimony also does not constitute hearsay as it is not offered to prove the truth of the matter asserted – that customers “are frequently confused”. Rather, it is offered to show that she has witnessed actual confusion in the marketplace as well.

Even assuming for argument’s sake that the declarations submitted by Opposer in support of its motion for Summary Judgment do, as alleged by Applicant, constitute hearsay, these declarations are nevertheless admissible under the hearsay exceptions of Rule 803 of the Federal Rules of Evidence. In particular, Rule 803(3) states that “[a] statement of the declarant’s then existing state of mind” is not excluded by the hearsay rule, even though the declarant is available as a witness. In the trademark context, “testimony concerning employee’s statements about actual confusion” falls under an exception to the hearsay rule, and is thus admissible. *National Rural Electric Cooperative Assn. v. Suzlon Wind Energy Corp.*, 2006 WL 1151404, *6 n.4 (TTAB 2006). Accordingly, Mr. James Harder’s and Ms. Denise Johnson’s declaration testimony regarding statements about actual confusion are admissible under Rule 803(3) .

5. OBJECTIONS TO OPPOSER’S SUPPLEMENTAL ANSWERS TO INTERROGATORIES (EXH. I)

Applicant objects to the submission of Opposer’s supplemental answers to interrogatories on the grounds that the US Trademark Law Rules of Practice only permit the inquiring party to

submit answers to interrogatories into the record. This may be true with respect to use of discovery responses for trial evidence, but not with respect to summary judgment. See 37 CFR §2.127(e)(2) which states, “For purposes of summary judgment only, . . . an answer to an interrogatory . . . will be considered by the Trademark Trial and Appeal Board if any party files, with the party's brief on the summary judgment motion . . . or a copy of the interrogatory and answer thereto with any exhibit made part of the answer”¹

CONCLUSION

Based on the foregoing, Applicant’s objections to evidence submitted with Opposer’s response to Applicant’s Motion for Summary Judgment should be denied.

Respectfully submitted,

ATTORNEY FOR OPPOSER



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Dated: 1-10-2007

¹ Opposer did not submit a copy of the Interrogatories with the Answers thereto at Exhibit I, and thus respectfully requests the Board accept the replacement for Exhibit I attached hereto. Applicant was the party that served the Interrogatories, and thus is not prejudiced by Opposer’s failure to previously submit the Interrogatories together with the Supplemental Answers.

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

In The Matter of Application Serial No. 78/458,716
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UNFILTERED NAPA LLC,

Opposer,

v.

Opposition No. 91168224

TWENTY ROWS LLC

Applicant.

**DECLARATION OF ALISON P. SCHWARTZ IN SUPPORT OF OPPOSER'S
RESPONSE TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

I, Alison P. Schwartz, declare as follows:

1. I am an attorney for The Eclipse Group with offices located at 100 Tri-State International, Suite 128, Lincolnshire, Illinois, 60069.

2. I assisted with the preparation of Opposer's Response in Opposition to Applicant's Motion for Summary Judgment in Opposition No. 91168224 ("Opposer's Response"), including gathering evidence to support Opposer's Response.

3. Attached to Opposer's Response as Exhibit G are true and correct copies of the following:

- Several pages from Wine Street Inc.'s website, www.winestreet.com, obtained on December 14, 2006;
- A portion of a wine list for Calvert Woodley obtained at www.wineaccess.com/file/store/calvertwoodley/CWwinelist06.pdf on December 14, 2006;
- A page from The Wine Merchant website, www.winemaerchantraleigh.com, obtained on December 14, 2006;
- Several pages from the WineFetch website, www.winefetch.com, obtained on December 14, 2006;
- The December 2005 newsletter from K & L Wine Merchants, obtained from their website on December 14, 2006;
- Several pages from the website www.pearsonswine.com, obtained on December 14, 2006;
- A page from the Woodland Hills Wine Company website, www.whwineco.com, showing search parameters for a search run on December 14, 2006 for Cabernets and blends under \$20, and a page from the Woodland Hills Wine Company website showing the results of this search, obtained on December 14, 2006;

4. Attached to Opposer's Response as Exhibit H is a true and correct copy of the USPTO Trademark Electronic Search System ("TESS") report for U.S. Reg. No. 2,797,651 for the mark TWENTY BENCH.

5. Attached to Opposer's Response To Twenty Rows LLC's Objections To Evidence Submitted With Opposer's Response To Applicant's Motion For Summary Judgment as Supplemental Exhibit I are true and correct copies of Applicant's Interrogatories, and Opposer's Supplemental Answers to Interrogatories.

6. Attached to Opposer's Response as Exhibit M is a true and correct copy of an internet discussion found on the *wineaccess* website, www.wineaccess.com, obtained on December 14, 2006.

7. Attached to Opposer's Response as Exhibit N is a true and correct copy of an internet discussion found on the Wine Library TV website, tv.winelibrary.com, obtained on December 14, 2006.

8. Attached to Opposer's Response as Exhibit O is a true and correct copy of an internet discussion found on the Wine Spectator website, www.winespectator.com, obtained on December 14, 2006.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th
day of January 2007 at Lincolnshire, Illinois.


Alison P. Schwartz

**SUPPLEMENTAL
EXHIBIT I**

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

In The Matter of Application Serial No. 78/458,716

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Opposition No. 91168224

Applicant's First Set of Interrogatories

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Applicant TWENTY ROWS LLC ("Applicant") serves its First Set of Interrogatories upon Opposer UNFILTERED NAPA LLC ("Opposer"), to be answered fully in writing under oath. A copy of the answer shall be served upon Applicant's counsel within thirty (30) days after the service hereof. To the extent permitted by Rule 26(e) of the Federal Rules of Civil Procedure, these interrogatories are to be deemed continuing and the answers hereto are to be supplemented promptly upon Opposer's acquisition of further or additional information.

General Definitions and Instructions

All interrogatories are to be answered on the basis of Opposer's knowledge or information and belief, including that of its officers, employees, directors, or agents having such knowledge. If any answer is given on information and belief, such fact should be stated in the answer.

If any information called for in any interrogatory is being withheld on the grounds that it is subject to the attorney-client privilege or any other privilege, opposer is hereby directed to state with respect to such interrogatory that the information is being withheld and state the alleged ground of privilege.

The following definitions are applicable herein:

1. The terms "Opposer" and "you" or "yours" mean and refer to the Opposer UNFILTERED NAPA LLC, its subsidiaries and any merged or acquired subsidiaries; its predecessors, or controlled, controlling, or affiliated companies; and Opposer's past and present officers, employees, agents, representatives, and attorneys, all to the fullest extent the context permits.
2. The term "Applicant" means and refers to the Applicant, TWENTY ROWS LLC, and includes the Applicant herein, its predecessors in business, and their officers, directors, agents, employees, and attorneys, both present and past.
3. The term "Applicant's trademark" and similar terms means and refers to Applicant's "TWENTY ROWS" trademark, Serial No. 78/458,716, filed on July 29, 2004 for the services set forth in the aforesaid application.

4. The term "trademark shall mean any Federal, State or common law trademark or service mark, whether registered or unregistered.

5. The term "Opposer's trademarks" shall include any trademark or service mark owned by Opposer.

6. The term "person" refers to both natural persons and to corporate or other business entities, partnerships, groups, associations, governmental entities, or other organizations.

7. The term "document" is used herein in its customary broad sense as defined in FRCP 34(a)(1), and includes, without being limited to, the original and all copies (carbon, photocopy, photographic, microfilm, or otherwise), of any advertising or promotional material (including, without limitation, art work, copies of drafts thereof, proofs, tear sheets, scripts, storyboards, etc.), brochures, business cards, travel tickets, lodging confirmations, lists of customers, lists of customer inquiries, rate schedules, letters, correspondence, customer or other complaints, books, journals, ledgers, working papers, invoices, contracts, purchase orders, estimates, reports, memoranda, interoffice communications, records, studies, appraisals, papers, charts, recordings of or memoranda of any conversation (by telephone or otherwise), meeting or conference, or any other writing however produced or reproduced; all other handwritten, typed, printed, or otherwise visually or aurally reproduced materials, whether copies or originals, including, but not limited to, letters, cables, wires, memoranda, and interoffice communications; reports, notes, minutes, and recordings; drawings, blueprints,

sketches, charts, photographs, microfilm records, data compilations, and movies; copyrights, copyright registration applications, patents, trademarks, patent applications, trademark applications, assignments, contracts, agreements, licenses, and other official documents and legal instruments; published material of any kind; annual reports, reports to shareholders and minutes or reports of meetings of directors or executive boards or committees; advertising or promotional literature and press releases; engineering notebooks and data; and ledgers, bills, orders, books, records, and files that are in the possession, custody or control of Opposer or any of its officers, agents, or employees and/or Opposer's attorneys. The term "document" or "documents" also includes all copies that are not identical with the original.

8. The term "identify" as used herein means:

(a) in the case of a trademark, to state for each mark the: (i) serial number; (ii) registration number; (iii) name of mark; (iv) design of mark; (v) current status of mark; (vi) filing date of mark; (vii) registration date of mark; (viii) applicant for mark; (ix) owner of mark; and (x) goods and/or services offered under mark, delineated by class and description; (xi) the date of first use of the mark or trade name on the goods and/or services; (xii) the geographic areas in which the goods and/or services have been marketed and distributed; (xiii) the individuals, retail stores, or other purchasers to whom the goods and/or services were sold; and (xiv) the last date on which said goods and/or services were marketed or sold.

(b) in the case of a natural person, to state for each person his or her: (i) full name; (ii) present residence address and telephone number; (iii) present business address and telephone number; (iv) present position, business affiliation, and job description; and (v) if any of the information set forth in (i)-(iv) is unknown, so state and set forth the corresponding last known such information;

(c) in the case of a corporation or other business entity, to state for each corporation or business entity: (i) its full name; (ii) its legal form (i.e., corporation, partnership, etc.) and state of incorporation or legal formation; (iii) its address and principal place of business; (iv) the identity of officers or other persons having knowledge of the matter with respect to which the corporation or entity is named; and (v) the connection to Opposer's response; and

(d) in the case of a document, to state for each document: (i) the identity of the person(s) originating and preparing it and the sender; (ii) its general type (e.g., letter, memo, report, invoice, etc.), title, identifying number and the general nature of its subject matter; (iii) the identity of the addressees and distributees, if any; (iv) its date of preparation; (v) its date and manner of transmission, distribution and publication, if any; (vi) the location of each copy (including title, index number and location of the file in which it is kept or from which it was removed) and the identity of the present custodian or persons responsible for its filing or other disposition; and (vii) the identity of persons who can authenticate or identify it.

9. As used herein, "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary in order to bring within the scope of the request all documents and things which might otherwise be construed to be outside its scope.

10. As used herein, the singular shall always include the plural and the present tense shall always include the past tense.

11. The term "thing" as used herein refers to any tangible object other than a document, and includes objects of every kind and nature such as, but not limited to, prototypes, models, specimens, computer disks and tapes, videotapes and audiotapes.

Interrogatories

1. Identify each predecessor, parent, subsidiary, and affiliated company of Opposer.

2. Describe in detail the business conducted by Opposer since its formation.

3. Describe in detail how the name TWENTY BENCH was selected.

4. Identify each federal and state trademark application and registration owned by Opposer and state which of its trademarks Opposer believes is likely to be confused with Applicant's trademark "TWENTY ROWS".

5. Identify each domain name owned by Opposer and/or its parent, subsidiary, affiliate, principal, or agent and state the date of first registration of each such domain name.

6. Identify the date on which Opposer's marks were first used by Opposer on or in connection with any goods or services offered for sale, sold or distributed in interstate commerce, identify the goods or services on or in connection with which Opposer's marks were first used by Opposer in interstate commerce, and identify the place or location at which Opposer first used or displayed its Marks in interstate commerce.

7. State Opposer's expenditures for each year between 2000 and present for advertising and promoting Opposer's trademarks identified in response to Interrogatory No. 3.

8. Identify each person employed by Opposer and each outside agent or agency retained by Opposer who has been since 2000 or now is responsible for marketing, advertising and/or promotion of any goods or services offered for sale or sold under the trademarks identified in response to Interrogatory No. 3 or any variations thereof.

9. Identify each person employed by Opposer and each outside agent or agency retained by Opposer who has been since 2000 or now is responsible for bookkeeping and accounting with respect to of any goods or services offered for sale or sold under the trademarks identified in response to Interrogatory No. 3 or any variations thereof.

10. State whether Opposer or any person acting for or on its behalf has ever granted to any person any authorization or license to use the TWENTY BENCH trademark or any variation thereof and, if so, identify to whom such

authorization or license was granted; the date it was granted; the terms and conditions of such authorization or license, including the duration of permitted use; and the business, goods, and services for which the authorization or license was granted.

11. For each good and/or service bearing or sold under Opposer's trademarks identified in response to Interrogatory No. 3 or any variation thereof, set forth the approximate dollar amount of Opposer's annual sales of such goods and/or services.

12. Identify each instance in which Opposer has notified Applicant of any confusion between its goods and services and those of Applicant.

13. Identify each instance in which Opposer or anyone acting on its behalf has contacted Applicant or any representative of Applicant.

14. State the date and the manner in which Opposer first became aware of Applicant's use of the name "TWENTY ROWS" or any variation thereof, and identify each person connected or associated with Opposer who learned of such use, specifying the date on which each such person first learned of Applicant's use of the name and the manner in which such person acquired such information.

15. Identify any instance or occurrence in which any person was actually confused as to the source or origin of goods and/or services associated with Opposer and Applicant, and describe with specificity each such instance or occurrence.

16. State the date and manner in which Opposer first became aware of Applicant's TWENTY ROW trademark application, and identify each person who learned of such application.

17. Identify the trade channels through which Opposer has sold and now is offering and selling goods and/or services under the TWENTY BENCH trademark or any variation thereof.

18. State whether Opposer or any person acting for or on its behalf has conducted any type of inquiry or investigation of Applicant or its adoption, use, or registration of the TWENTY ROWS trademark, and if so state the date the inquiry or investigation was conducted; identify each person who conducted and reviewed it; and state with specificity the findings that were made.

19. State whether Opposer or any person acting for or on its behalf has obtained any statements or opinions regarding any of the issues in this proceeding, and if so identify the person or persons who rendered each statement or opinion and the person who obtained or received each statement or opinion, and state whether it was oral or in writing.

20. State whether Opposer or any person acting for or on behalf of Opposer has consulted with or retained the services of any expert with respect to any of the issues involved in this proceeding, and if so, identify each such expert, identify all documents upon which the expert will base her expert opinion, and describe the subject matter concerning which she was consulted or retained.

21. Identify all studies, surveys, marketing studies, focus groups, industry reports, or other consumer information relating to Opposer's TWENTY BENCH trademark, including but not limited to all such information and documentation relating to consumer understanding, recognition and/or belief about Opposer's TWENTY BENCH trademark or any variation thereof.

22. Identify the witnesses Opposer intends to call to testify on its behalf in connection with this proceeding and state the facts or subject matter about which each is expected to testify.

23. Identify all documents upon which Opposer intends to rely in connection with this proceeding.


24. State whether Opposer is aware of any past or present third-party uses or registrations of the designation "TWENTY BENCH", "TWENTY" and or any variation thereof with respect to any goods or services, and if so, identify each such third party and the goods or services for which the designation has been or is now used or registered.

25. Identify each person who participated in the preparation of Opposer's responses to the foregoing interrogatories or furnished any information in response thereto, and for each specify the interrogatory response for which each such person provided information or participated in the preparation of the response.

26. Identify all documents relating to the subject matter of the foregoing interrogatories and the preparation of Opposer's responses thereto.

Respectfully submitted,

Dated: January 24, 2006


By: Marcy J. Bergman
Merrit M. Jones

Cooper, White & Cooper LLP
201 California Street, 17th Floor
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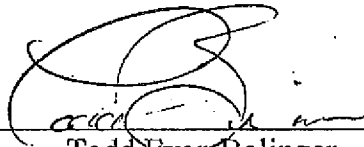
Attorneys for Applicant
Twenty Rows LLC

CERTIFICATE OF SERVICE ON COUNSEL FOR OPPOSER

It is hereby certified that on January 24, 2006, a copy of the foregoing Applicant's First Set of Interrogatories has been served on the attorneys for Opposer by Regular U.S. First Class Mail, postage prepaid, to their last known address of record:

Jennifer H. Hamilton
The Eclipse Group
10605 Balboa Blvd., #300
Granada Hills, CA 91344
(818) 488-8141

Dated: January 24, 2006



Todd Evan Bolinger

533797.1 / 14165-32501

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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OPPOSER'S SUPPLEMENTAL ANSWERS TO INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), and subject to the limitation of Interrogatory Nos. 7, 8, 9 and 11 by Applicant, pursuant to agreement by the Parties, Opposer Unfiltered Napa LLC ("Opposer") responds to Applicant's First Set of Interrogatories propounded by Applicant Twenty Rows LLC ("Applicant") as set forth below.

Opposer's responses and answers are made without waiving or intending to waive any objections as to relevancy, privilege, admissibility of any information provided in response or answers to the Interrogatories, in any subsequent proceeding or this or any other action, on any ground. A partial response or answer to any Interrogatory which has been objected to, in whole or in part, is not intended to be a waiver of the objection.

GENERAL OBJECTIONS

Opposer makes the following General Objections to Applicant's Interrogatories.

1. Opposer objects to the Interrogatories to the extent they would require Opposer to disclose confidential communications that are protected by the attorney-client privilege, or to the extent they would require Opposer to disclose information that comprises work product, including (a) material prepared in anticipation of litigation or this proceeding or in the course of litigation or this proceeding by Opposer or its representatives, or (b) mental impressions, conclusions, opinions or legal theories of its attorneys or other representatives. To the extent Opposer identifies or produces information, Opposer does not intend to identify or produce information protected from disclosure by the attorney-client privilege, work product doctrine or other privilege or doctrine, and any production of such information shall be deemed inadvertent and shall not constitute a waiver of any applicable protection or privilege.
2. Opposer objects to the Interrogatories to the extent they are vague, ambiguous, and unintelligible.
3. Opposer objects to the Interrogatories to the extent they seek information or documents that are neither relevant to the issues raised in this opposition nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent they ask for more information than is needed for a reasonable identification.
4. Opposer objects to the Interrogatories to the extent that Applicant seeks information and/or documents that are not within the possession, custody or control of Opposer and/or have previously been produced.
5. In providing a response to any of these Interrogatories, Opposer does not concede that the information given is properly discoverable or admissible, and reserves the

right to object further to discovery into the subject matter of these Interrogatories. Opposer further reserves all objections and other questions as to the competency, relevance, materiality, privilege and/or admissibility as evidence in any subsequent proceeding, or at a hearing of this or any other proceeding, or any information produced in response to any one of these Interrogatories.

6. All General Objections apply to and are incorporated in all of Opposer's responses to Applicant's Interrogatories.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Opposer objects to Applicant's Definitions and Instructions to the extent that they exceed the requirements of Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120) and applicable law.

2. Opposer notes that discovery in this case is currently ongoing and specifically reserves all rights to supplement and/or amend its answers and responses.

OPPOSER'S ANSWERS TO INTERROGATORIES

1. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

Opposer, Unfiltered Napa LLC has no predecessors, parents, subsidiaries or affiliated companies (as defined by Rule 12b-2 of the Regulations promulgated under the Securities Exchange Act of 1934 (as amended)).

2. See General Objections above. In particular, Opposer objects to Interrogatory No. 2 on the grounds that it is overbroad and unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Opposer responds as follows:

Since its formation, Opposer has been in the business of producing, marketing and selling wine.

3. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

In the fall of 2000 twenty tons of Cabernet Sauvignon grapes were taken to a California winery where they were crushed and isolated from the grapes actually grown at the winery. The grapes were made into wine and aged separately. Because the particular vineyard from which the twenty tons of grapes came did not have a name, one of the cellar hands chose to label the barrels "Twenty Bench" to signify the twenty tons of grapes from the gentle rising bench land vineyard from which they were picked. A year later, the winery owner entered into a business arrangement with Unfiltered Napa whereby Unfiltered Napa would market and sell the wine produced by the winery from the twenty tons of grapes. When representatives of Unfiltered

Napa initially came to sample the wine, they noticed the "Twenty Bench" label written in chalk on the side of the barrel, and decided to use it as the brand name for this new special wine.

4. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

Opposer owns the following federal trademark registrations:

- (a) U.S. Registration No. 2,797,651 for the mark TWENTY BENCH
- (b) U.S. Registration No. 3,007,885 for the mark SEVEN SINNERS

and the following federal applications:

- (a) U.S. Serial No. 78/513,495 for the mark PARCEL 41
- (b) U.S. Serial No. 78/513,500 for the mark WOODEN NICKEL
- (c) U.S. Serial No. 78/733,262 for the mark GUITARFISH
- (d) U.S. Serial No. 78/569,553 for the mark SPY ROCK
- (e) U.S. Serial No. 78/521,582 for the mark JADEN
- (f) U.S. Serial No. 78/779,855 for the mark TEN MILE
- (g) U.S. Serial No. 78/623,240 for the mark THOUSAND FOOT
- (h) U.S. Serial No. 78/862,664 for the mark THROWBACK

Based on the information currently known by Opposer, TWENTY BENCH is the only trademark registration or application identified above which is confusingly similar to Applicant's TWENTY ROWS mark.

5. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

Opposer owns the following domain names:

www.twentybench.com

www.unfilterednapa.com

www.sevensinners.com

www.ninenorthwines.com

6. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

Opposer first used the TWENTY BENCH mark in connection with wine sold, offered for sale or distributed in interstate commerce, both within and outside of California, at least as early as August, 2002.

7. See General Objections above. Opposer further and more particularly objects on the grounds that Opposer's financial data constitutes proprietary, confidential information; is wholly irrelevant to the issues raised in this opposition; and is not reasonably calculated to lead to the discovery of admissible evidence.

8. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

Jim Gill is the employee responsible for marketing, advertising and/or promotion of wine offered for sale or sold under the TWENTY BENCH trademark.

9. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

Regusci Vineyard Management, Inc is responsible for bookkeeping and accounting with respect to wine offered for sale or sold under the TWENTY BENCH trademark.

10. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

In July 2002, Opposer granted Regusci Vineyard Management, Inc. the right to use the TWENTY BENCH trademark in connection with the production and bottling of the TWENTY BENCH wine. The arrangement will remain in effect until terminated by either Regusci Vineyard Management, Inc. or Opposer.

11. See General Objections above. Opposer further and more particularly objects on the grounds that Opposer's financial data constitutes proprietary, confidential information; is wholly irrelevant to the issues raised in this opposition; and is not reasonably calculated to lead to the discovery of admissible evidence.

12. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

Opposer notified Applicant of instances of actual confusion on at least the following occasions: (1) May 25, 2005 via letter from Opposer's counsel; and (2) May 2, 2006 via Opposer's Motion for Summary Judgment.

13. See General Objections above. Opposer further and more particularly objects on the grounds that this Interrogatory is vague and ambiguous, overly broad, unduly burdensome, irrelevant to the issues raised in this opposition, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any information requested in this Interrogatory No. 13 is equally available to Applicant as to Opposer.

14. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

Opposer first learned of Applicant's use of the TWENTY ROWS mark when James Harder made a sales call to Dean & DeLuca in St. Helena, California, in approximately the fall of

2004. While at the sales call, Mr. Harder noticed that Dean & Deluca was carrying a wine under the name TWENTY ROWS.

15. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

Opposer has identified at least the following instances of actual confusion as to the source or origin of goods and/or services associated with Opposer and Applicant:

(a) September 2004 – discussion thread posted on wineaccess.com relating to determining the relationship between TWENTY BENCH and TWENTY ROWS. One writer in particular noted, “Many people are saying that Twenty Rows copied [Twenty Bench] as away to emulate their success.”

(b) December 16, 2005 – phone call received from Wine Cask in Santa Barbara, California asking for a copy of an invoice for a purchase of Twenty Rows Cabernet.

(c) December 21, 2005 – Call from the owner of Cellar Collections in Napa, California who inquired about purchasing Twenty Bench Cabernet. He explained that a customer called to order Twenty Bench and he told the customer that he had it in his inventory. But when he went to retrieve it he realized he had mistaken it for “Twenty Rows”. He further explained that upon learning there was a Twenty Bench Cabernet, he tracked down Unfiltered Napa and ordered it for the customer.

(d) April 12, 2006 – A broker representative of Unfiltered Napa in Southern California made a sales call at Silverlake Wine in Los Angeles, California. It was her first time calling on this new account so she presented the wine buyer, April Langford, the “Twenty Bench” Cabernet. Ms. Langford stated she really liked the wine and the price, but explained that they already had a Cabernet sold under the name “Twenty Rows” at the same price point. She

went on to explain she could not purchase Twenty Bench because it would confuse the customers.

(e) April 2006 -- Denise Johnson, General Manager of Napa Valley Winery Exchange in San Francisco, California, indicated that confusion often occurs between Twenty Bench and Twenty Rows.

(f) April 2006 -- Discussion with sales person from the Wine House in Los Angeles, California who stated that they carry both Twenty Bench Cabernet and Twenty Rows Cabernet, and that customers are quite often confused between the two.

16. See General Objections above. In particular, Opposer objects on the grounds that this Interrogatory seeks information protected by the attorney-client privilege and work product doctrine.

17. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

Opposer sells wine under the TWENTY BENCH mark to distributors, via phone and facsimile orders, directly to retailers, and via Opposer's website.

18. See General Objections above. In particular, Opposer objects on the grounds that this Interrogatory seeks information protected by the attorney-client privilege and work product doctrine.

19. See General Objections above. In particular, Opposer objects on the grounds that this Interrogatory is vague, ambiguous, and seeks information protected by the attorney-client privilege and work product doctrine.

20. See General Objections above. In particular, Opposer objects on the grounds that this Interrogatory seeks information protected by the work product doctrine. Subject to and

without waiver of the foregoing objections, Opposer states that it has not at this time consulted with or retained the services of any expert with respect to the issues in this proceeding.

21. See General Objections above. Subject to and without waiver of the General Objections, Opposer has not conducted any studies, surveys, marketing studies, focus groups, industry reports, or other consumer information relating to Opposer's TWENTY BENCH trademark.

22. See General Objections above. In particular, Opposer objects on the grounds that this Interrogatory seeks information protected by the work product doctrine. Opposer further objects to the extent this Interrogatory is premature, as no decisions have been made regarding witnesses expected to testify at the hearing.

23. See General Objections above. In particular, Opposer objects on the grounds that this Interrogatory is vague and overbroad, and seeks information protected by the work product doctrine. Opposer further objects to the extent this Interrogatory is premature, as no decision has been made regarding documents upon which Opposer intends to rely at the hearing.

24. See General Objections above. In particular, Opposer objects on the grounds that this Interrogatory is overly broad. Subject to and with waiver of the foregoing objections, Opposer states that it is not aware of any past or present third-party uses or registrations of the designation "TWENTY BENCH," and/or "TWENTY" in connection with wine, other than Applicant.

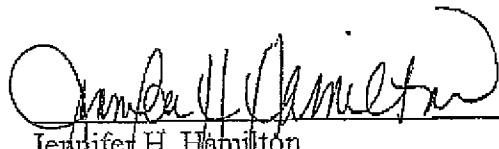
25. See General Objections above. Subject to and without waiving the General Objections, Opposer responds as follows:

James Harder and Jim Gill participated in the preparation of each of these responses to Applicant's Interrogatories.

26. See General Objections above. In particular, Opposer objects to Interrogatory No. 26 on the grounds that it is overbroad and unduly burdensome, seeks documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and seeks documents not in the possession, custody or control of Opposer. Subject to and without waiving the foregoing objections, Opposer directs Applicant to the documents already produced in the course of this proceeding.

Respectfully submitted,
ATTORNEY FOR OPPOSER

Dated: 5/18/06



Jennifer H. Hamilton
The Eclipse Group LLP
10605 Balboa Blvd., Suite 300
Granada Hills, CA 91344
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VERIFICATION

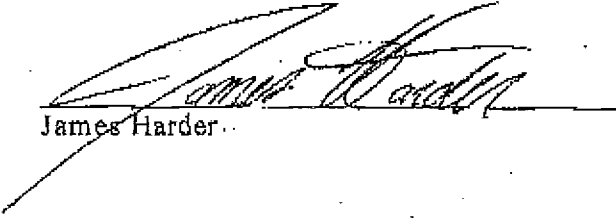
I, James Harder, declare and say:

I am the president and owner of Unfiltered Napa LLC, the Opposer in the current opposition, and am authorized to make this verification for and on its behalf.

I have read the foregoing **OPPOSER'S SUPPLEMENTAL ANSWERS TO INTERROGATORIES** and know the contents thereof. I am informed and believe to the best of my knowledge that the matters stated therein are true and on those grounds certify or declare that the same are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

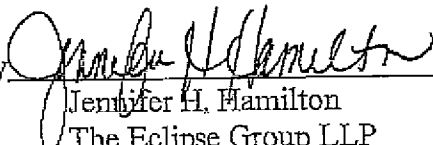
Executed this 18th day of May, 2006 at Napa, California.


James Harder

CERTIFICATE OF SERVICE

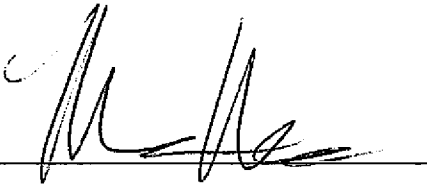
It is hereby certified that a true copy of the foregoing **OPPOSER'S SUPPLEMENTAL ANSWERS TO INTERROGATORIES** was mailed, first class, postage prepaid this 18th day of May, 2006, to the following attorneys for Applicant:

Marcy J. Bergman
Vijay Toke
Cooper, White & Cooper LLP
201 California Street, 17th Floor
San Francisco, CA 94111

By 
Jennifer H. Hamilton
The Eclipse Group LLP
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Granada Hills, CA 91344
(818) 488-8141 Telephone
(818) 332-4205 Facsimile
jhh@eclipsegrp.com

CERTIFICATE OF FILING

It is hereby certified that a true copy of the foregoing OPPOSER'S RESPONSE TO TWENTY ROWS LLC'S OBJECTIONS TO EVIDENCE SUBMITTED WITH OPPOSER'S RESPONSE TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT was filed with the United States Patent and Trademark Office Trademark Trial and Appeal Board electronically via ESTTA, this 10th day of January, 2007.

By  _____

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing OPPOSER'S RESPONSE TO TWENTY ROWS LLC'S OBJECTIONS TO EVIDENCE SUBMITTED WITH OPPOSER'S RESPONSE TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT was mailed, first class, postage prepaid this 10th day of January, 2007, to the following attorneys for Applicant:

Marcy J. Bergman
Vijay Toke
Cooper, White & Cooper LLP
201 California Street, 17th Floor
San Francisco, CA 94111

By 