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

Proceeding	91175371
Party	Plaintiff BARON HENRI DE CRESSAC
Correspondence Address	ANTONIO BORRELLI COWAN, LIEBOWITZ & LATMAN, P.C. 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES axb@cll.com, trademark@cll.com
Submission	Reply in Support of Motion
Filer's Name	Jason D. Sanders
Filer's e-mail	jds@cll.com, trademark@cll.com
Signature	/Jason D. Sanders/
Date	10/05/2007
Attachments	Baron Henri Reply Memo'.pdf (38 pages)(1102076 bytes)

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

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BARON HENRI DE CRESSAC,	:	Application Nos: 78/550,279
	:	78/550,292
Opposer,	:	
v.	:	REPLY MEMORANDUM OF
	:	LAW IN FURTHER SUPPORT OF
D & M NEW WORLD MANAGEMENT,	:	OPPOSER'S MOTION FOR
INC.,	:	SUMMARY JUDGMENT
	:	
Applicant.	:	Opposition No. 91175371
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Opposer Baron Henri de Cressac (“Opposer” or “de Cressac”) submits this memorandum of law in further support of his motion for summary judgment sustaining the opposition to the application by applicant D&M New World Management, Inc. (“Applicant” or “D&M”) to register the marks BARON HENRI DE CRESSAC and BARON HENRI DE CRESSAC PETITE CHAMPAGNE CONTROLLED 1ST GROWTH PETITE CHAMPAGNE V.S VERY SPECIAL COGNAC PRODUCT OF FRANCE 750 ML EMB 16089E 40% ALC./VOL. and Design, application Serial Numbers 78/550,279 and 78/550,292 (collectively, the “Applications” for the “BARON HENRI DE CRESSAC Marks” or the “Marks”).

INTRODUCTION

Simply put, D&M seeks a second bite at the same apple. To appreciate the audacity of D&M’s position in this Opposition, it is necessary to take a step back and think about what D&M is contending. In January 2005, D&M applied to register the Marks. When asked by the USPTO for evidence of de Cressac’s consent to register the Marks (forms of de Cressac’s name), the document upon which D&M relied was a purported assignment of rights from de Cressac to D&M (“the Assignment”). *See* Applicant’s Response to Office Action dated June 1, 2006.

In March 2007, there was an arbitration between the same parties (“the Arbitration”) regarding that exact purported Assignment. In the Arbitration, de Cressac claimed that D&M had

acquired the Assignment through fraud and misrepresentation. In April 2007, the award rendered in the Arbitration (“the Award”) voided the Assignment, with the Arbitrators accepting de Cressac’s claims. *See Sanders Dec. Ex. C at (B)(1)*. During the entire time from the filing of its purported consent in the USPTO, through the Arbitration, until after the issuance of the Award, the only document upon which D&M relied for its purported consent to register the Marks was the now-voided Assignment.

Only after the Award, did D&M change its position to contend that the document evidencing de Cressac’s purported consent was not the Assignment. *See June 18, 2007, Correspondence from Applicant to the USPTO submitting a different document as the basis for D&M’s claim of de Cressac’s consent to register the Marks.*

It is not that D&M disputes that it previously relied upon the Assignment as its evidence of consent, and D&M does not dispute that the arbitrators found that D&M defrauded Opposer into signing the Assignment; it is that D&M contends that it should be able to shift its claim after the ruling of the Arbitrators, to rely on different documents for the same purpose. Had D&M asserted different documentation during the Arbitration, that documentation most certainly would have been voided by the Arbitrators, as the Assignment was voided. But during the Arbitration, the only document upon which D&M relied as the consent to register the Marks, was the Assignment. Allowing D&M to change its assertions from tribunal to tribunal to avoid the results of the previous ruling would eviscerate the entire point of the Arbitration. It would allow D&M to wait and see what happens in the Arbitration, and if it wins, keep its claims, and if it loses, change its claims. D&M’s gamesmanship is a waste of judicial economy, and contemptuous of the judicial process.

ARGUMENT

1. SUMMARY JUDGMENT STANDARD

In opposing a motion for summary judgment, the non-movant must produce significant and probative evidence sufficient to establish “specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue of material fact does not exist unless the evidence is such that a reasonable finder of fact could return a verdict for the non-moving party. *Id.* at 250. Because this motion turns upon the legal issue of *res judicata*, and D&M has produced neither a clear legal argument nor any specific probative facts precluding the award of summary judgment, the Board should award summary judgment to Opposer, and obviate the re-litigation of the same issue decided in the Arbitration.

2. THE APPLICATIONS ARE BARRED BY *RES JUDICATA* AND *COLLATERAL ESTOPPEL*

a. D&M’s Claim of de Cressac’s Consent Is Barred By *Res Judicata*

Contrary to D&M’s stilted and misleadingly narrow interpretation of *res judicata*, the modern approach is that preclusion is effective “with respect to all or any part of a transaction, or series of connected transactions.” *Miller Brewing Company v. Coy International Corporation*, 230 U.S.P.Q. 675, 678 (T.T.A.B. 1986). D&M purposefully cites to out-dated case-law from the 1800s, attempting to mislead this Board as to the law.

The only Twentieth Century case upon which D&M relies for its narrow statement of *res judicata*, *Mercoïd Corp. v. Mid-Continent Inv. Co.*, 320 U.S. 661, 88 L. Ed. 376, 64 S. Ct. 268 (1944), has been criticized and distinguished to oblivion. In discussing the case, the Second Circuit stated that “for generations, the *Mercoïd* decision has been subject to serious criticism by the courts and by commentators.” *See Critical-Vac Filtration Corp. v. Minuteman Int’l Inc.*, 233 F.3d 697, 702 n.6 (2d Cir. 2000)(collecting cases)(stating that courts have limited the opinion “to the facts in that case.”).

The current view is that *res judicata* applies if “[a]n obvious logical relationship exists between [the] claims and the issues addressed by the earlier [proceeding], and the essential facts of the claims are so logically connected that considerations of judicial economy and fairness dictate that all the issues should have been resolved in one lawsuit.” *Critical-Vac Filtration Corp.*, 233 F.3d at 700. *Res judicata* prevents a subsequent litigation of all rights or remedies “with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.” *Clark v. Haas Group, Inc.*, 953 F.2d 1235, 1238 (10th Cir. 1992). If the facts underlying the new claim arise out of the same transaction or series of transactions as the previously decided claim, “a mere change in the legal theory does not create a new cause of action.” *Car Carriers, Inc. v. Ford Motor Co.*, 789 F.2d 589, 593 (7th Cir. 1986)(applying *res judicata* to bar second claim). Certainly, if a change in the legal theory does not create a new cause of action, offering a new document to support the same theory cannot do so either.

The Board need only look to the facts which are not in dispute:

- 1) D&M applied to register the Marks, and asserted the Assignment as the sole basis of “consent” of de Cressac. *See* Applicant Response to Office Action, dated June 1, 2006.
- 2) De Cressac contested this purported consent and in the Arbitration sought to have the Assignment voided. *See* Sanders Dec. Ex. B (De Cressac Arbitration Claim).
- 3) Both D&M and de Cressac participated in the Arbitration. *See* D&M Mem. at 8 (conceding that “there is no dispute that the Arbitration involved the same parties or their privies and that the arbitration Award was rendered by a panel of competent jurisdiction”).
- 4) The arbitral panel reviewed documents and heard testimony and arguments regarding the Marks, including evaluating every document currently relied upon by D&M in this proceeding. *See* Sanders Reply Dec. Ex. E (D&M’s Responses to de Cressac’s Document Requests, responding that all relevant documents were produced for the Arbitration); *See* Lazarus Dec. Exs. B, C, D and E (All marked in the top right corner with a “Claimant” exhibit number from the Arbitration).

5) The Award held that the Assignment – D&M’s purported consent to register the Marks – was void *ab initio*. See Sanders Dec. Ex. C, Award at (B)(1).

6) The Award held that D&M had no rights to the indicia of the Marks, namely, the molds and labels. See Sanders Dec. Ex. C, Award at (B)(5); See Sanders Reply Dec. Ex. G, (D&M Resp. to Interrog. 5, D&M declining to identify any rights to the Marks granted to it by the Award).

6) Only *after* the Award, in which the Assignment was held to be void, did D&M claim to the USPTO that different documents were the basis of de Cressac’s consent. See June 18, 2007 Correspondence from Applicant.

It would be nonsensical to say that there is no “logical relationship” between the claims in this Opposition (D&M’s claimed right to register the Marks) and the previous Arbitration (D&M’s claimed rights to the Marks, including registration based on the Assignment). See *Critical-Vac Filtration.*, 233 F.3d at 700 (preclusion exists if there is a “logical relationship” between the actions).

Further, there is also a clear relationship between the factual underpinnings of the two actions. Indeed, every document relied upon by D&M in this proceeding was presented to the arbitrators in the Arbitration. D&M currently relies upon Lazarus Exs. B, C, D and E as the documents evidencing de Cressac’s consent to register his name. On the top right of each of these documents are the exhibit number designation from when D&M, then claimant, entered them into evidence during the Arbitration (respectively marked as C-9, C-35(I), C-35(B) and C-35(C)). All of these documents were considered by the arbitrators, and rejected.

The correspondence submitted as Lazarus Dec. Ex. C provides an example of why it would be imprudent for the Board to allow the re-litigation of these same issues. D&M currently contends that this document evidences de Cressac’s consent for registration. However, the origin of this document was discussed at the Arbitration, when D&M introduced it as support for the Assignment. (It was marked as Claimant 35(I) in the Arbitration). At the Arbitration, it was shown that the language was provided by D&M, who told de Cressac that it was needed to be able to sell in the state

of Connecticut – not for a federal registration in D&M’s name. *See* Sanders Reply Dec. Ex. F (e-mail from D&M to de Cressac previously marked as R-29 in the Arbitration).

Not just this letter, but all of the evidence upon which D&M currently relies was previously evaluated by the Arbitrators, and rejected. Accordingly, for D&M to rely upon this document (or any of the documents that D&M now relies upon) as the basis for its federal registration not only undermines the prior ruling, it would effectively necessitate the re-litigation of the same issue of whether there was a valid transfer of rights from de Cressac to D&M regarding the Marks.

D&M’s contention that because Opposer withdrew a request for the Arbitrators to order D&M to transfer to Opposer the applications to register the Marks, the issues of rights to the Marks were not the same, is a non-sequitur. *See* Applicant Mem. at 10. That the parties discussed whether the Award could include an order to transfer the pending applications (as opposed to simply voiding the Assignment) proves that the claims and factual underpinnings of the proceedings were the same.

Further, in response to every document request from Opposer regarding documents concerning this Opposition, D&M stated that the responsive materials are the exact same documents produced in the Arbitration. *See* Sanders Reply Dec. Ex. E (Applicant’s Response to Opposer’s Document Requests). D&M’s document responses put the lie to its position. Obviously, by D&M’s own admission the Arbitration was centered on the same facts and documentation as this proceeding.

Although the Arbitration addressed all of D&M’s documents and claims, even it had not, D&M’s current claims of de Cressac’s consent would still be precluded. Because the documents and claims were part of the same transaction (or, at the very least, series of transactions), even if not addressed in the Arbitration, D&M’s failure to have raised the issue in the Arbitration would act as a waiver of its current claims. Because *res judicata* applies “with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose,” *Clark*, 953 F.2d at 1238, regardless of “a mere change in [D&M’s] theory” as to the basis of its alleged rights, *Car*

Carriers, Inc., 789 F.2d at 593, D&M's current contentions regarding de Cressac's purported consent are barred.

To allow D&M to continue to assert its rights to Baron Henri de Cressac's name, in light the Arbitration Award which found that D&M had defrauded de Cressac into executing the Assignment, and found that D&M had no rights to use the molds and labels with de Cressac's name, would not only "undermine the prior judgment," it would eviscerate it and make a mockery of the prior proceeding. Allowing D&M to alter its contentions, which are based upon the previously adjudicated same documents and events, allows "precisely the sort of piecemeal litigation, unnecessary expense, and waste of judicial resources that the doctrine of *res judicata* is designed to prevent." *Clark*, 953 F.2d at 1240.

b. D&M's Claim of a Transfer of Rights Is Precluded by *Collateral Estoppel*

Because the alleged transfer of rights in the Marks from de Cressac to D&M was the subject of the Arbitration, which was actually litigated, and the panel necessarily rejected D&M's claims in rendering the Award, and D&M had a full and fair opportunity to litigate the issue, D&M's current claims regarding de Cressac's consent are barred by *collateral estoppel*. See *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1366 (Fed. Cir. 2000).

c. The Pending Confirmation Does Not Vitiating the Preclusive Effect of the Award

This motion for summary judgment need not wait for confirmation of the Award. *Burger King Corp. v. B-K of Kansas, Inc.*, 1987 U.S. Dist. LEXIS 3606, (D. Kan 1987), relied upon by D&M (which, as far Opposer can tell, has been cited by no other court in the country) states that a court might chose to stay its decision while the confirmation is proceeding, not that it is required to do so. In any event, while there is no need to stay this motion pending the confirmation, Opposer will alert the Board if and when a decision on the confirmation is reached. At that time, the Award will be entitled to full preclusive effect.

3. D&M'S ALLEGED EVIDENCE DOES NOT MEMORIALIZE CONSENT FOR D&M TO REGISTER THE MARKS IN ITS OWN NAME.

Without the Assignment, D&M has no legally sufficient basis for claiming de Cressac's consent to register the Marks. In the face of the clear ruling of the arbitration panel, D&M now relies upon a few out-of-context pieces of correspondence, sent in or around the time of executing the Assignment. All of which were considered by the panel, and none of which are sufficient.

In discovery for this Opposition, on the final day of the discovery period, when asked directly to identify any agreement that memorializes Baron Henri de Cressac's consent for D&M to register the Marks, D&M was either unwilling or unable to do so. *See Sanders Dec. Ex. G at Interrogatory No. 4 (Applicant's Response to Opposer's Interrogatory No. 4.)*. The reason is that there is no such agreement, now that the Assignment has been voided.

Because the mark at issue is a person's family name, the standard of consent is necessarily high. In its responsive papers, Applicant does not dispute that the consent must be a clear and unmistakable statement by the individual that he gives his consent to a federal registration of the mark at issue in the name of the third-party. *See In re New John Nissen Mannequins*, 227 U.S.P.Q. 569, 570-71 (T.T.A.B. 1985)(allowance of a corporation to use a person's name in its corporate name or as part or all of a trademark not sufficient to constitute consent to registration of the mark); *TMT N. Am., Inc. v. Magic Touch Gmb H*, 124 F.3d 876, 882, 43 U.S.P.Q.2d 1912, 1916 (7th Cir. 1997)(in the absence of an express assignment to the U.S. distributor, the manufacturer continues to own the trademark rights). Accordingly, on their face, the few out of context documents upon which D&M relies do not meet these criteria.

In any event, the Board need not reach this issue. All of these pieces of correspondence and documentation were created in the context of the negotiation and execution of the Assignment. Because the Award's voiding of the Assignment results in preclusion of D&M's claims "with respect to all or any part of the transaction, or series of connected transactions," *Miller Brewing Company v.*

Coy International Corporation, 230 U.S.P.Q. 675, 678 (T.T.A.B. 1986), these documents cannot be relied upon by D&M in this proceeding.

4. THERE IS NO DISPUTE THAT GRANTING OF CERTIFICATES OF REGISTRATION WOULD INJURE OPPOSER

D&M neither disputes nor provides any evidence in opposition to de Cressac's contention that granting certificates of registration to D&M would injure de Cressac. Accordingly, this element is established. *Anderson*, 477 U.S. at 248.

CONCLUSION

The Arbitration held that that the Assignment was void *ab initio*, and it held that D&M had no rights to the molds and labels. It would be a mockery of that decision to say that D&M still had de Cressac's consent to register the Marks. It simply would make no sense.

For the foregoing reasons, Opposer's opposition to Applicant's application to register the BARON HENRI DE CRESSAC and BARON HENRI DE CRESSAC PETITE CHAMPAGNE CONTROLLED 1ST GROWTH PETITE CHAMPAGNE V.S VERY SPECIAL COGNAC PRODUCT OF FRANCE 750 ML EMB 16089E 40% ALC./VOL. and Design should be sustained.

Dated: New York, New York
October 5, 2007

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Jason D. Sanders/
Robert W. Clarida
Jason D. Sanders
Antonio Borrelli
1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

TABLE CONTENTS

ARGUMENT	3
1. SUMMARY JUDGMENT STANDARD.....	3
2. THE APPLICATIONS ARE BARRED BY <i>RES JUDICATA</i> AND <i>COLLATERAL ESTOPPEL</i>	3
a. D&M’s Claim of de Cressac’s Consent Is Barred By <i>Res Judicata</i>	3
b. D&M’s Claim of a Transfer of Rights Is Precluded by <i>Collateral Estoppel</i> ..	7
c. The Pending Confirmation Does Not Vitiating the Preclusive Effect of the Award.....	7
3. D&M’S ALLEGED EVIDENCE DOES NOT MEMORIALIZE CONSENT FOR D&M TO REGISTER THE MARKS IN ITS OWN NAME.....	8
4. THERE IS NO DISPUTE THAT GRANTING OF CERTIFICATES OF REGISTRATION WOULD INJURE OPPOSER	9
CONCLUSION.....	9

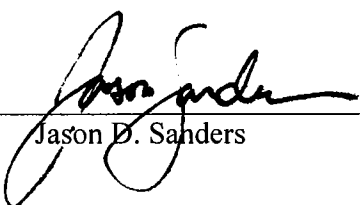
TABLE OF AUTHORITIES

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	3, 9
<i>Burger King Corp. v. B-K of Kansas, Inc.</i> , 1987 U.S. Dist. LEXIS 3606 (D. Kan 1987).....	7
<i>Car Carriers, Inc. v. Ford Motor Co.</i> , 789 F.2d 589 (7th Cir. 1986).....	4, 6
<i>Clark v. Haas Group, Inc.</i> , 953 F.2d 1235 (10th Cir. 1992).....	4, 6, 7
<i>Critical-Vac Filtration Corp. v. Minuteman International Inc.</i> , 233 F.3d 697 (2d Cir. 2000).....	3, 4, 5
<i>Jet, Inc. v. Sewage Aeration System</i> , 223 F.3d 1360 (Fed. Cir. 2000).....	7
<i>Mercoid Corp. v. Mid-Continent Investment Co.</i> , 320 U.S. 661, 88 L. Ed. 376, 64 S. Ct. 268 (1944).....	3
<i>Miller Brewing Company v. Coy International Corporation</i> , 230 U.S.P.Q. 675 (T.T.A.B. 1986)	3, 8
<i>In re New John Nissen Mannequins</i> , 227 U.S.P.Q. 569 (T.T.A.B. 1985)	8
<i>TMT N. America, Inc. v. Magic Touch GmbH</i> , 124 F.3d 876, 43 U.S.P.Q. 2d 1912 (7th Cir. 1997)	8

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of October, 2007, caused the foregoing REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT to be served upon Applicant, by mailing a copy first class, postage prepaid, to Applicant's counsel:

Anna Vishev
Ostrolenk, Faber, Gerb & Soffen, LLP
1180 Avenue of The Americas
New York, NY 10036-8403



Jason D. Sanders

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

In re Application Serial Nos. 78/550,279 and 78/550,292

Filed: January 19, 2005

For Marks: BARON HENRI DE CRESSAC and BARON HENRI DE CRESSAC PETITE
CHAMPAGNE CONTROLLED 1ST GROWTH PETITE CHAMPAGNE V.S VERY
SPECIAL COGNAC PRODUCT OF FRANCE 750 ML EMB 16089E 40% ALC./VOL. and
Design

Published in the Official Gazette: October 3, 2006 and October 10, 2006

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BARON HENRI DE CRESSAC, :
:
Opposer, : DECLARATION
v. :
:
D & M NEW WORLD MANAGEMENT, : Opposition No. 91175371
INC., :
:
Applicant. :
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**REPLY DECLARATION OF JASON D. SANDERS IN FURTHER
SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

JASON D. SANDERS, pursuant to 28 U.S.C. §1746, declares:

1. I am an associate at the firm of Cowan, Liebowitz & Latman, P.C., attorneys for Opposer Baron Henri de Cressac ("Opposer"). I submit this declaration in support of Opposer's motion for summary judgment.

2. Attached hereto as Exhibit E is a true and correct copy of Applicant's Responses to Opposer's First Set of Requests for Documents and Things, dated September 21, 2007.

3. Attached hereto as Exhibit F is a true and correct copy of an e-mail dated 7/05/05 from Applicant to Opposer, which was submitted as Exhibit [Respondent]-29 in the Arbitration between the parties.

4. Attached hereto as Exhibit G is a true and correct copy of Applicant's Responses to Opposer's First Set of Interrogatories, dated September 21, 2007.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON OCTOBER 4, 2007 AT NEW YORK, NEW YORK.



JASON D. SANDERS

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

In re Application Serial Nos. 78/550,279 and 78/550,292

Filed: January 19, 2005

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Published in the Official Gazette: October 3, 2006 and October 10, 2006

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BARON HENRI DE CRESSAC,	:
	:
Opposer,	:
v.	:
D & M NEW WORLD MANAGEMENT,	:
INC.,	:
	:
Applicant.	:
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Submitted in Support of
Opposer's Motion

Opposition No. 91175371

SANDERS REPLY DECLARATION

EXHIBIT E

#11

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

<p>BARON HENRI DE CRESSAC,</p> <p style="text-align: right;">Opposer,</p> <p style="text-align: center;">v.</p> <p>D & M NEW WORLD MANAGEMENT, INC.,</p> <p style="text-align: right;">Applicant.</p>

Application Nos. 78/550,279
78/550,292

Opposition No. 91175371

**RESPONSES TO OPPOSER'S FIRST SET
OF REQUESTS FOR DOCUMENTS AND THINGS
TO APPLICANT D & M NEW WORLD MANAGEMENT, INC.**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Applicant D&M New Wold Management, Inc. ("Applicant"), through its attorneys Ostrolenk, Faber, Gerb & Soffen, LLP, hereby replies to Opposer's First Set of Requests for Documents and Things as follows:

GENERAL OBJECTIONS

Applicant's General Objections to Opposer's First Set of Interrogatories are incorporated herein by reference.

Request No.1

A specimen of each different advertising and/or promotional piece bearing Applicant's Marks used or proposed to be used by Applicant in the United States, including without limitation all catalogs, circulars, leaflets, signs, point of sale materials

or promotional literature of any kind, and documents sufficient to identify dates of publication or distribution or intended publication or distribution for each such item.

Response to Request No. 1

Subject to the General Objections, Applicant responds as follows: Documents responsive to this Request were previously produced by Applicant in the course of the Arbitration including documents bates stamped 000000 – 001264; and/or documents Applicant produced responsive to Panel's Orders Nos. 1-8; and/or any and all of Applicant's miscellaneous items regarding advertisement/ promotional materials.

Request No.2

Documents sufficient to show each and every product or service that is, has been or will be sold, offered for sale, distributed, advertised or displayed in connection with Applicant's Marks.

Response to Request No. 2

Subject to the General Objections, Applicant responds as follows: Documents responsive to this Request were previously produced by Applicant in the course of the Arbitration including documents bates stamped 000000 – 001264; and/or documents Applicant produced responsive to Panel's Orders Nos. 1-8; and/or any and all of Applicant's miscellaneous items regarding advertisement/ promotional materials.

Request No.3

All documents concerning Opposer's grant of authorization to Applicant to federally register Applicant's Marks in the United States.

Response to Request No. 3

Subject to the General Objections, Applicant responds as follows: Documents responsive to this Request were previously produced by Applicant in the course of the Arbitration including documents bates stamped 000000 – 001264; and/or documents Applicant produced responsive to Panel's Orders Nos. 1-8; and/or any and all of Applicant's miscellaneous items regarding advertisement/ promotional materials.

Request No. 4

All documents concerning Applicant's use to date of Applicant's Marks, including but not limited to documents sufficient to identify (a) the date of first use of Applicant's Marks; (b) the geographic scope of use of the Applicant's Marks; (c) any and all customers to which goods or services have been sold under Applicant's Marks; (d) the amount of sales made under Applicant's Marks; and (e) each of Applicant's specific products or services offered or intended to be offered under Applicant's Marks in the United States.

Response to Request No. 4

Subject to the General Objections and to the extent such documents exist, Applicant responds as follows: Documents responsive to this Request were previously produced by Applicant in the course of the Arbitration including documents bates stamped 000000 – 001264; and/or documents Applicant produced responsive to Panel's Orders Nos. 1-8; and/or any and all of Applicant's miscellaneous items regarding advertisement/ promotional materials.

Request No. 5

Documents sufficient to show the first use in commerce by Applicant of goods in connection Applicant's Marks.

Response to Request No. 5

Subject to the General Objections and to the extent such documents exist, Applicant responds as follows: Documents responsive to this Request were previously produced by Applicant in the course of the Arbitration including documents bates stamped 000000 – 001264; and/or documents Applicant produced responsive to Panel's Orders Nos. 1-8; and/or any and all of Applicant's miscellaneous items regarding advertisement/ promotional materials.

Request No. 6

All documents concerning the advertising, marketing or promotion of products or services offered or intended to be offered under Applicant's Marks in the United States, including but not limited to any marketing plans, business plans, media plans, public relations materials, press kits and correspondence with advertising agencies, public relations firms, media planners, graphic designers or other similar entities.

Response to Request No. 6

Subject to the General Objections and to the extent such documents exist, Applicant responds as follows: Documents responsive to this Request were previously produced by Applicant in the course of the Arbitration including documents bates stamped 000000 – 001264; and/or documents Applicant produced responsive to Panel's Orders Nos. 1-8; and/or any and all of Applicant's miscellaneous items regarding advertisement/ promotional materials.

Request No. 7

All documents concerning Applicant's filing of Applications to Register Applicant's Marks, including but not limited to any and an correspondence with or from the United States Patent and Trademark Office concerning any such application.

Response to Request No. 7

Subject to the General Objections and to the extent such documents exist, Applicant responds as follows: Documents responsive to this Request were previously produced by Applicant in the course of the Arbitration including documents bates stamped 000000 – 001264; and/or documents Applicant produced responsive to Panel's

Orders Nos. 1-8; and/or any and all of Applicant's miscellaneous items regarding advertisement/ promotional materials.

Request No. 8

All documents concerning any consumer's association of Applicant's Marks with Opposer.

Response to Request No. 8

Subject to the General Objections and to the extent such documents exist, Applicant responds as follows: Documents responsive to this Request were previously produced by Applicant in the course of the Arbitration including documents bates stamped 000000 – 001264; and/or documents Applicant produced responsive to Panel's Orders Nos. 1-8; and/or any and all of Applicant's miscellaneous items regarding advertisement/ promotional materials.

Request No. 9

All newspaper, magazine or other articles, whether available-printed- or online, concerning any product or service offered in connection with Applicant's Marks.

Response to Request No. 9

Subject to the General Objections and to the extent such documents exist, Applicant responds as follows: Documents responsive to this Request were previously produced by Applicant in the course of the Arbitration including documents bates stamped 000000 – 001264; and/or documents Applicant produced responsive to Panel's Orders Nos. 1-8; and/or any and all of Applicant's miscellaneous items regarding advertisement/ promotional materials.

Request No.10

All documents concerning any claims, conflicts, objections, demands, oppositions or cancellation proceedings concerning Applicant's Marks.

Response to Request No. 10

Applicant objects to this Request to the extent it seeks documents protected by attorney-client privilege and/or work product doctrine.

Request No. 11

All documents referenced by, or otherwise concerning, any interrogatories served by Opposer in this proceeding.

Response to Request No. 11

Subject to the foregoing objection and to the General Objections and to the extent such documents exist, Applicant responds as follows: Documents responsive to this Request were previously produced by Applicant in the course of the Arbitration including documents bates stamped 000000 – 001264; and/or documents Applicant produced responsive to Panel's Orders Nos. 1-8; and/or any and all of Applicant's miscellaneous items regarding advertisement/ promotional materials.

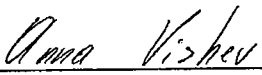
Request No. 12

All documents referenced by, or otherwise concerning, any responses to interrogatories served by Applicant in this proceeding

Response to Request No. 12

Applicant objects to this Request because to-date Applicant has not served any interrogatories.

Dated: September 21, 2007
New York, New York



Anna Vishev


OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
(212) 382-0700

Attorneys for Applicant

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR DOCUMENTS AND THINGS** was served upon counsel for Opposer this 21st day of September, 2007 by First-Class mail, postage prepaid, addressed as follows:

Jason D. Sanders, Esq.
COWAN, LIEBOWITZ & LATMAN, P.C.
1133 Avenue of the Americas
New York, New York 10036-6799



Anna Vishev

Ref. No. 27271.000

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

In re Application Serial Nos. 78/550,279 and 78/550,292

Filed: January 19, 2005

For Marks: BARON HENRI DE CRESSAC and BARON HENRI DE CRESSAC PETITE
CHAMPAGNE CONTROLLED 1ST GROWTH PETITE CHAMPAGNE V.S VERY SPECIAL
COGNAC PRODUCT OF FRANCE 750 ML EMB 16089E 40% ALC./VOL. and Design

Published in the Official Gazette: October 3, 2006 and October 10, 2006

-----X	:	
BARON HENRI DE CRESSAC,	:	
	:	
Opposer,	:	
v.	:	
	:	Submitted in Support of
D & M NEW WORLD MANAGEMENT,	:	Opposer's Motion
INC.,	:	
	:	
Applicant.	:	Opposition No. 91175371
-----X	:	

SANDERS REPLY DECLARATION

EXHIBIT F

Sujet : TRADEMARK LETTER
Date : 07/05/05 02:43:19 Paris, Madrid (heure d'été)
From: apollovs@hotmail.com (Dalia Kohler)
To: CRESSACUS@AOL.COM
CC: apollovs@hotmail.com

Dear Henri,

In order to register and sell in the state of Connecticut, we need a letter from the producer stating that we are the owners of the trademark. So, could you please make a letter stating that:

D & M New World Management, Inc., dba Apollo Fine Spirits, located at 50 Hempstead Gardens Drive, West Hempstead, NY 11552, is the owner of the Trademark, "Baron Henri de Cressac Cognac" and C.S.I. of _____ (address) is the producer and bottler of this cognac.

*Sincerely,
etc.*

Please type this on your letterhead and address the letter:

"To Whom it May Concern"

Best Regards,

Dalia

----- Headers -----

Return-Path: <apollovs@hotmail.com>
Received: from rly-xm06.mx.aol.com (rly-xm06.mail.aol.com [172.20.83.108]) by air-xm02.mail.aol.com (vx) with ESMTP id MAILINXM21-747427c0f1f10a; Fri, 06 May 2005 20:43:19 -0400
Received: from hotmail.com (bay103-f23.bay103.hotmail.com [65.54.174.33]) by rly-xm06.mx.aol.com (v105.26) with ESMTP id MAILRELAYINXM61-747427c0f1f10a; Fri, 06 May 2005 20:43:11 -0400
Received: from mail pickup service by hotmail.com with Microsoft SMTPSVC;
Fri, 6 May 2005 17:43:05 -0700
Message-ID: <BAY103-F234495AACEA0DBB77B093CDA1C0@phx.gb>
Received: from 65.54.174.204 by by103fd.bay103.hotmail.msn.com with HTTP;
Sat, 07 May 2005 00:43:04 GMT
X-Originating-IP: [65.54.174.204]
X-Originating-Email: [apollovs@hotmail.com]
X-Sender: apollovs@hotmail.com
From: "Dalia Kohler" <apollovs@hotmail.com>
To: CRESSACUS@AOL.COM
Cc: apollovs@hotmail.com
Subject: TRADEMARK LETTER
Date: Fri, 06 May 2005 20:43:04 -0400
Mime-Version: 1.0
Content-Type: text/html; format=flowed
X-OriginalArrivalTime: 07 May 2005 00:43:05.0436 (UTC) FILETIME=[BB3939C0:01C5529D]
X-AOL-IP: 65.54.174.33
X-AOL-SCOLL-SCORE: 0:0:0
X-AOL-SCOLL-URL_COUNT: 0

jeudi 19 mai 2005 AOL: Cressacus

CRESS 00232

EX. R-29

Ref. No. 27271.000

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

In re Application Serial Nos. 78/550,279 and 78/550,292

Filed: January 19, 2005

For Marks: BARON HENRI DE CRESSAC and BARON HENRI DE CRESSAC PETITE
CHAMPAGNE CONTROLLED 1ST GROWTH PETITE CHAMPAGNE V.S VERY SPECIAL
COGNAC PRODUCT OF FRANCE 750 ML EMB 16089E 40% ALC./VOL. and Design

Published in the Official Gazette: October 3, 2006 and October 10, 2006

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:
BARON HENRI DE CRESSAC, :
:
Opposer, :
:
v. :
:
D & M NEW WORLD MANAGEMENT, : Submitted in Support of
INC., : Opposer's Motion
:
Applicant. :
-----X
Opposition No. 91175371

SANDERS REPLY DECLARATION

EXHIBIT G

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

BARON HENRI DE CRESSAC,

Opposer,

v.

D & M NEW WORLD MANAGEMENT, INC.,

Applicant.

Application Nos. 78/550,279
78/550,292

Opposition No. 91175371

**RESPONSES TO OPPOSER'S FIRST SET
OF INTERROGATORIES TO APPLICANT
D & M NEW WORLD MANAGEMENT, INC.**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Applicant D&M New World Management, Inc. ("Applicant"), through its attorneys Ostrolenk, Faber, Gerb & Soffen, LLP, hereby replies to Opposer's First Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Applicant generally objects to Opposer's interrogatories to the extent that they seek information protected by the attorney-client privilege and/or work-product doctrine.
2. Applicant generally objects to Opposer's interrogatories to the extent that they are overly broad, unduly burdensome, seek irrelevant information and/or are not reasonably calculated to lead to the discovery of admissible evidence.
3. Applicant generally objects to Opposer's interrogatories to the extent that they seek information that does not exist and/or are not in the custody or possession of Applicant, or under the control of Applicant, or can more easily be obtained from Opposer or other third parties.

4. Applicant generally objects to Opposer's interrogatories to the extent that they prematurely call for information not yet required to be disclosed under the Federal Rules of Civil Procedure.

5. Applicant generally objects to Opposer's interrogatories to the extent that they seek protected trade secrets and/or other confidential, proprietary or sensitive commercial information.

6. Applicant reserves the right to excise or redact from any documents which they otherwise agree to produce those portions which: (i) contain protected trade secrets and/or other confidential, proprietary or sensitive commercial information; (ii) are unrelated to any relevant subject matter on the ground that such portions are not relevant to the subject matter of this action or likely to lead to the discovery of admissible evidence; or (iii) any documents or portions thereof that constitute or document settlement discussions.

7. Applicant generally objects to Opposer's "Instructions" to the extent that they are inconsistent with or require action beyond the requirements of the Federal Rules of Civil Procedure.

8. All of Applicant's responses incorporate and are subject to, without waiver, the foregoing General Objections as well as the additional specific objections set forth below.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify each product and/or service in connection with which Applicant has used in commerce or intends to use in commerce Applicant's Marks and for each such product and/or service, state:

(a) whether actual use in commerce has been made of Applicant's Marks in connection with each such product or service;

(b) if use in commerce has been made for such product or service, the date of first use in commerce;

(c) the actual or estimated revenues derived from sales of such product or service.

(d) Identify any persons employed by Applicant knowledgeable about any information contained in the responses to Interrogatories 1(a)-(c) above.

(e) Identify documentation sufficient to substantiate the information contained in the responses to Interrogatories 1(a)-(c) above.

(f) If any of the responses to Interrogatories 1(a)-(c) above refer to a product that was not provided to Applicant by Opposer, identify who provided such product to Applicant.

RESPONSE TO INTERROGATORY NO. 1:

Applicant objects to this interrogatory on the ground that it requests confidential, proprietary or sensitive commercial information. Applicant also objects to this interrogatory to the extent that it is vague and unduly burdensome. Such information can more readily be obtained through document requests and/or deposition. Applicant further objects to this Interrogatory because all documents responsive to this Interrogatory were produced in the course of the Arbitration and are currently in Opposer's possession. Subject to the foregoing objections and its General Objections, Applicant responds as follows:

Applicant's Marks are used in connection with cognac in the United States.

1(a) Yes;

1(b) November 2, 2004;

1(c) Information sought by this Interrogatory can be ascertained from the documents which were produced by Applicant in the Arbitration and which are currently in Opposer's possession;

1(d) Dalia Kohler and Leonid Dorfman, both of D & M New World Management, Inc., 50 Hempstead Gardens Drive, West Hempstead, NY 11552.

1(e) Information sought by this Interrogatory can be ascertained from the documents which were produced by Applicant in the Arbitration and which are currently in Opposer's possession;

1(f) None.

INTERROGATORY NO. 2:

For each advertisement or proposed advertisement promoting the sale of products or services on or in connection with which Applicant has used or intends to use Applicant's Marks in the United States, (a) state the date on which it was and/or is intended to be published, broadcast or distributed; (b) identify the media in which such advertisement appeared and/or is intended to appear; (c) identify any outside companies or agencies involved in creating or distributing such advertising; and (d) identify documentation sufficient to show the information contained in the responses to Interrogatories 2(a)-(c) above.

RESPONSE TO INTERROGATORY NO. 2:

Applicant objects to this interrogatory to the extent that it is vague and unduly burdensome. Such information can more readily be obtained through document requests and/or

deposition. Applicant further objects to this Interrogatory because substantially all documents responsive to this Interrogatory were produced in the course of the Arbitration and are currently in Opposer's possession. Subject to the foregoing objections and its General Objections, Applicant replies as follows: Applicant advertises and promotes products bearing the Applicant's Marks in print, on cable television and radio.

INTERROGATORY NO. 3:

Identify any document upon which Applicant contends memorializes Opposer's consent to Applicant's registration of Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 3:

Applicant objects to this Interrogatory to the extent it calls for a legal conclusion and prematurely calls for information not yet required to be disclosed under the Federal Rules of Civil Procedure. Subject to the foregoing objections and its General Objections, Applicant replies as follows:

1. Sales Agreement, dated April 28, 2005, Arbitration Bates Nos. 000268-000276;
2. Assignment of Trademark, dated April 28, 2005, Arbitration Bates Nos. 000254-000257;
3. Document executed by Henri De Cressac, dated May 15, 2005, Arbitration Bates No.

CRESS00231;

4. E-mail by Henri De Cressac, dated September 26, 2004, Arbitration Bates No. CRESS00219;
5. Document by Henri De Cressac, dated October 2, 2004, Arbitration Bates No. 000609.

Applicant reserves the right to supplement this list of documents.

INTERROGATORY NO. 4:

Identify any agreement, whether written or oral, upon which Applicant relies for Opposer's consent to Applicant to register Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 4:

Applicant objects to this Interrogatory because it calls for legal conclusions, prematurely calls for information not yet required to be disclosed under the Federal Rules of Civil Procedure, seeks privileged information and is duplicative of Interrogatory No. 3.

INTERROGATORY NO. 5:

Identify any rights regarding Applicant's Marks granted to Applicant by the Award

RESPONSE TO INTERROGATORY NO. 5:

Applicant objects to this Interrogatory because it calls for legal conclusions and prematurely calls for information not yet required to be disclosed under the Federal Rules of Civil Procedure.

INTERROGATORY NO. 6:

For any right claimed in response to Interrogatory 5, identify the specific language in the Award claimed to grant such rights

RESPONSE TO INTERROGATORY NO. 6:

Applicant objects to this Interrogatory because it calls for legal conclusions and prematurely calls for information not yet required to be disclosed under the Federal Rules of Civil Procedure.

INTERROGATORY NO. 7:

(a) Identify any instances of confusion or charges of likelihood of confusion between Applicant's products or services bearing Applicant's Marks, on the one hand, and Opposer, Opposer's products or services, on the other hand, including, without limitation, any misdirected mail, telephone calls or orders and or inquiries concerning association between the parties; and

(b) Identify an persons knowledgeable about any such instances of confusion identified in response to Interrogatory 7(a) above.

RESPONSE TO INTERROGATORY NO. 7:

Applicant objects to this Interrogatory because it seeks information that is not relevant to any claim or defense in this matter and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 8:

Identify an individuals known to Applicant who are named Baron Henri de Cressac

RESPONSE TO INTERROGATORY NO. 8:

None.

INTERROGATORY NO. 9:

Identify each person Applicant expects to call as a witness, expert or fact, and with respect to each such witness state the subject matter on which person is expected to testify.

RESPONSE TO INTERROGATORY NO. 9:

Applicant objects to this interrogatory on the ground that it is premature. Applicant has not yet designated those individuals it expects to provide testimony on its behalf during the trial testimony period.

INTERROGATORY NO. 10:

Identify each person or entity to which Applicant has sold any goods or services in connection with Applicant's Marks, and for each such person or entity, (a) state the nature of goods or services provided by Applicant; (b) state the amount of revenues derived from the sale of such goods or services; and (c) identify the individual at such entity who is most knowledgeable concerning the relationship between Applicant and such entity.

RESPONSE TO INTERROGATORY NO. 10:

Applicant objects to this interrogatory on the ground that it requests confidential, proprietary or sensitive commercial information. Applicant further objects to this interrogatory on the ground that it seeks information which is duplicative of the information sought in Interrogatory No. 1.

INTERROGATORY NO. 11:

Identify all trademark applications filed and trademark registrations owned by Applicant.

RESPONSE TO INTERROGATORY NO. 11:

Applicant objects to this interrogatory to the extent that it seeks information that is not relevant to any claim or defense in this matter. Applicant further objects to this Interrogatory because the information sought therein can be easily obtained from the records of the United States Trademark Office available at www.uspto.gov.

INTERROGATORY NO. 12:

(a) State whether Applicant plans to use Applicant's Marks on any goods and services beyond those listed in the identification of goods and services of Application Serial Nos. 78/550,279 and 78/550,292.

(b) If the answer to subpart (a) of this Interrogatory is anything other than an unqualified "no," list those goods and service Applicant is currently planning to offer under Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 12:

Applicant objects to this interrogatory on the ground that future uses of Applicant's Marks are not yet known.


INTERROGATORY NO. 13:

Identify all persons who assisted in the preparation of the responses to these Interrogatories, including the response or responses to which each such person contributed.

RESPONSE TO INTERROGATORY NO. 13:

Dalia Kohler and Leonid Dorfman, both of D & M New World Management, Inc., 50 Hempstead Gardens Drive, West Hempstead, NY 11552.

Dated: September 21, 2007
New York, New York



Anna Vishev

OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
(212) 382-0700

Attorneys for Applicant

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES** was served upon counsel for Opposer this 21st day of September, 2007 by First-Class mail, postage prepaid, addressed as follows:

Jason D. Sanders, Esq.
COWAN, LIEBOWITZ & LATMAN, P.C.
1133 Avenue of the Americas
New York, New York 10036-6799

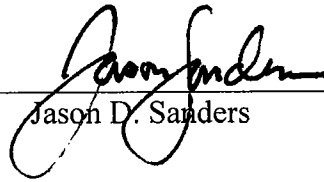
Anna Vishev

Anna Vishev

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of October, 2007, caused the foregoing
DECLARATION OF JASON D. SANDERS to be served upon Applicant, by mailing a copy
first class, postage prepaid, to Applicant's counsel:

Anna Vishev
Ostrolenk, Faber, Gerb & Soffen, LLP
1180 Avenue of The Americas
New York, NY 10036-8403



Jason D. Sanders