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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
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Date	08/17/2007
Attachments	baron.pdf ( 41 pages )(1219812 bytes )



Serial Numbers 78/550,279 and 78/550,292.

Dated: New York, New York  
August 17, 2007

Respectfully submitted,

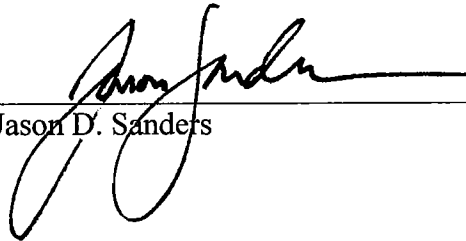
COWAN, LIEBOWITZ & LATMAN, P.C.  
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By: /Jason D. Sanders/  
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1133 Avenue of the Americas  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 17th day of August, 2007, caused the foregoing  
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

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.	:	MEMORANDUM OF LAW
	:	IN SUPPORT OF OPPOSER'S
D & M NEW WORLD MANAGEMENT,	:	MOTION FOR SUMMARY
INC.,	:	JUDGMENT
	:	
	:	
Applicant.	:	Opposition No. 91175371
-----X	:	

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## **PRELIMINARY STATEMENT**

Opposer Baron Henri de Cressac (“Opposer”) submits this memorandum of law in 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”).

## **FACTUAL BACKGROUND**

Opposer is a living individual whose personal name is BARON HENRI DE CRESSAC. On January 19, 2005, Applicant filed two applications to register the BARON HENRI DE CRESSAC Marks in connection with “wines and distilled spirits” in International Class 33.

On April 28, 2005, several months after D&M filed its Applications, Baron Henri de Cressac, as president of CSI International (“CSI”), signed a sales agreement with D&M for the sale of cognac.

On August 19, 2005, the United States Patent and Trademark Office sent a request to D&M to clarify whether the claimed BARON HENRI DE CRESSAC Marks were the “name of an individual.” Office Action date August 19, 2005. On February 9 and February 20, 2006, D&M responded regarding both BARON HENRI DE CRESSAC Marks that “Baron Henri De Cressac . . . is very much a real, living person.” D&M Responses to Office Actions.

On March 19 and March 20, 2006, D&M received Final Office Actions regarding the BARON HENRI DE CRESSAC Marks, stating for each that “while applicant has made



reference to the individual identified in the mark and suggests that a consent to registration of that name has been given, such a consent and statement have not been made of record.” Final Office Actions, dated March 19 and March 20, 2006.

On June 1, 2006, with regard to serial number 78/550,279, for registration of the mark BARON HENRI DE CRESSAC, D&M submitted a purported “Assignment of Trademark,” which would later become the subject of arbitration between Applicant and Opposer. Response to Office Action, dated June 1, 2006. This was the only document that D&M submitted in support of its claim of consent to register the BARON HENRI DE CRESSAC name.

With regard to serial number 78/550,292, for registration of the mark 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, no document evidencing consent to register the mark was submitted by Applicant.

In 2005 and into 2006, the sales agreement and purported assignment between CSI and D&M became a point of dispute between the parties. On May 26, 2006, D&M filed a Notice and Demand for Arbitration with the American Arbitration Association, in New York, New York commencing arbitration against CSI (the “Arbitration”). Declaration of Jason D. Sanders, Executed August 16, 2007 (“Sanders Dec.”), Ex. A. CSI responded with a claim for damages and a claim to invalidate the purported assignment of trademark *ab initio* on the grounds of fraud. Sanders Dec., Ex. B.

D&M actively participated in the arbitration process, including submitting an appearance, participating in the selection of the arbitrators, exchanging documents in discovery, presenting witnesses and extensive evidence, and filing a proposed award. Sanders Dec. ¶ 5; *see also*

Applicant's Answer to Notice of Opposition, at ¶ 3. Live arbitration hearings were held March 19-22, 2007. *Id.*

On May 1, 2007, the parties received the arbitration award (the "Award"), Sanders Dec., Ex. C. With regard to the BARON HENRI DE CRESSAC Marks, the panel held that the purported trademark assignment was void *ab initio*; and the Award did not grant D&M any rights to the BARON HENRI DE CRESSAC Marks. Sanders Dec., Ex. C.

Following this decision, instead of withdrawing its pending Applications, on June 15, 2007, in a last-ditch effort to evade the ruling of the arbitral panel, D&M submitted an additional document to the United States Patent and Trademark Office, ostensibly as the new purported basis of its claim of assignment and consent. *See* Sanders Dec. Ex. D. This document, which on its face is neither an assignment nor consent to registration, nor even accurately reflects the marks sought to be registered by Applicant, was already considered and rejected by the arbitral panel in issuing the Award. Simply put, Baron Henri de Cressac has never given his consent for D&M to register the BARON HENRI DE CRESSAC Marks, and opposes the Applications.

This motion is made on the grounds that (1) Applicant's failure to timely file an Answer to Opposer's Notice of Opposition is an independent grounds to sustain the opposition; and even if Applicant did not default, (2) the Applications are barred by *res judicata*, (3) the Applications are barred by *collateral estoppel*, and (4) the documents relied upon by Applicant are not sufficient to constitute consent to a federal registration of the BARON HENRI DE CRESSAC Marks. Any one of these grounds presents a sufficient independent reason to refuse to register the Marks.

## ARGUMENT

### 1. A DEFAULT JUDGMENT SHOULD BE ENTERED AGAINST APPLICANT

Trademark Rule 2.106(a) states that “If no answer is filed within the time set, the opposition may be decided as in the case of a default.” 37 C.F.R. § 2.106(a). The order instituting this opposition was mailed by the Board on January 29, 2007. The answer was due March 10, 2007. Though Applicant requested an extension of time on March 1, 2007, good cause was not shown, and no extension was granted. Applicant failed to timely file an answer by March 10, 2007, and accordingly, a default judgment should be entered.

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

#### a. The Opposition Must Be Sustained Because Applicant Does Not Have Opposer’s Consent to Register the BARON HENRI DE CRESSAC Marks

There is no dispute that Baron Henri de Cressac is a real person. Indeed, on August 19, 2005, the United States Patent and Trademark Office sent a request to D&M to clarify whether the claimed Marks were the “name of an individual.” Office Actions dated August 19, 2005. On February 9 and February 20, 2006, D&M responded regarding both Marks that “Baron Henri De Cressac . . . is very much a real, living person.” D&M Responses to Office Actions.

Section 2(c) of the Trademark Act, 15 U.S.C. § 1052(c), prohibits registration of a mark that “[c]onsists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent.” This consent must specifically state that the individual gives his consent to *federal registration* of the mark at issue. *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). Accordingly, D&M is required to obtain the specific consent of Baron Henri de Cressac prior to federal registration of the Marks.

Baron Henri de Cressac does not consent to D&M's registration of the mark BARON HENRI DE CRESSAC or the mark 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. In fact, through this Opposition, Baron Henri de Cressac opposes Applicant's registration of the BARON HENRI DE CRESSAC Marks.

b. The Applications Are Barred by *Res Judicata*

D&M cannot rely upon the already voided purported assignment or subsequent correspondence to substantiate its claim that Baron Henri de Cressac consents to the registration of the BARON HENRI DE CRESSAC Marks. D&M and CSI previously arbitrated the validity of the transfer of rights to the Marks, and a valid tribunal has already held that the purported transfer is void *ab initio*. See Sanders Dec. Ex. C at B(1). Accordingly, pursuant to the doctrine of *res judicata*, Applicant cannot rely upon either the purported assignment or the May 15, 2005 letter. Both documents were submitted by D&M as exhibits in the Arbitration and made part of Applicant's arguments to the arbitrators. Indeed, with regard to the May 15, 2005 letter, even in the form that it was sent to the United States Patent and Trademark Office, D&M's arbitration exhibit designation ([Claimant]-35(I)) is apparent on the top right corner of the document.

“*Res judicata*, a doctrine of claim preclusion, provides that when a final judgment is rendered on the merits, it acts as an absolute bar to a subsequent action between the same parties or those in privity with them, based upon the same claim.” *The Berlitz School of Languages of America, Inc. v. Everest House*, 619 F.2d 211, 214 (2d Cir. 1980)(precluding infringement claim based on previous adjudications). Preclusive effect is given not only “to all matters litigated and decided by [the court], but as to all relevant issues which could have been but were not raised and litigated in the suit.” *Heiser v. Woodruff*, 327 U.S. 726, 735, 66 S. Ct. 853, 857 (1946).

“[A] judgment upon the merits in one suit is *res judicata* in another where the parties and subject-matter are the same, not only as respects matters actually presented to sustain or defeat the right asserted, but also as respects any other available matter which might have been presented to that end.” *Woods v. Dunlop Tire Corp.*, 972 F.2d 36, 38 (2d Cir. 1992)(quoting *Grubb v. Public Utils. Comm'n of Ohio*, 281 U.S. 470, 479, 74 L. Ed. 972, 50 S. Ct. 374 (1930)).

This principle has been applied by the TTAB to preclude registrations of marks. *Miller Brewing Company v. Coy International Corporation*, 230 U.S.P.Q. 675, 678 (T.T.A.B. 1986)(barring the registration of a mark pursuant to *res judicata*). As the *Miller Brewing* court stated, when a previous ruling determines the validity of an applicant’s claim, the resulting preclusion is “with respect to all or any part of the transaction, or series of connected transactions.” *Miller Brewing*, 230 U.S.P.Q. at 678.

Here, the same two entities, D&M and CSI were parties to the Arbitration, which concerned the sales agreement and the purported transfer of rights regarding the HENRI DE CRESSAC Marks. D&M actively participated in the arbitration process, including submitting an appearance, participating in the selection of the arbitrators, exchanging documents in discovery, presenting witnesses and evidence, and filing a proposed award. Sanders Dec. ¶ 5. Live hearings were held before the arbitrators on March 19-22, 2007. *Id.* Indeed, D&M relied upon both the purported Assignment of Trademark, submitted by D&M in the arbitration as Ex C-44(A), and upon the letter dated 15/05/2005, submitted by D&M in the arbitration as Ex. C-35(I) as its claimed basis for rights in the BARON HENRI DE CRESSAC Marks. Sanders Dec. ¶ 6.

The Award held that the purported trademark assignment was void *ab initio*, Sanders Dec., Ex. D at B(1), that D&M did not have any rights to the molds and labels bearing the trademark pursuant to the sales agreement, *id.* at B(5), and otherwise rejected D&M’s claim to

the BARON HENRI DE CRESSAC Marks. *Id.* Accordingly, any asserted trademark rights arising from either the purported trademark assignment or the one-sentence letter which D&M characterizes as “correspondence” were rejected by the arbitrators.

Because the “parties and subject-matter are the same,” and the claims regarding the April 2005 purported assignment and the May 15, 2005 correspondence were either raised by D&M or “might have been presented” to the arbitrators, *res judicata* bars D&M’s assertion regarding its rights to the BARON HENRI DE CRESSAC Marks. *See Woods*, 972 F.2d at 38. The ruling of the arbitrators is “an absolute bar” to Applicant’s current claim regarding the BARON HENRI DE CRESSAC Marks, *see Berlitz School of Languages of America*, 619 F.2d at 214, and any part of the “transaction” or “series of connected transactions,” *Miller Brewing Company*, 230 U.S.P.Q. at 678 regarding the purported transfer of rights from Opposer to Applicant regarding the BARON HENRI DE CRESSAC Marks.

c. The Applications Are Barred by *Collateral Estoppel*

The Federal Circuit has stated that “[t]he doctrine of issue preclusion (also sometimes known as ‘collateral estoppel’), which serves to bar the revisiting of ‘issues’ that have been already fully litigated, requires four factors:

- (1) identity of the issues in a prior proceeding;
- (2) the issues were actually litigated;
- (3) the determination of the issues was necessary to the resulting judgment; and,
- (4) the party defending against preclusion had a full and fair opportunity to

litigate the issues.”

*Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1366 (Fed. Cir. 2000); *see also Brothers Research Corporation, v. Dura Lube, LLC*, 2006 TTAB LEXIS 237, at \*13-15 (T.T.A.B. July 5, 2006)(granting summary judgment to opposer on the grounds of collateral estoppel).

Here, the parties engaged in a full and fair arbitration of the issue of the assignment of the identical Marks at issue in this opposition. The issue was actually litigated and determination of the validity of the purported assignment was essential to the award issued. Accordingly, Applicant's reliance on such documentation is barred by *collateral estoppel*. See *Jet, Inc.*, 223 F.3d at 1366.

3. THE ONE-SENTENCE LETTER NOW RELIED UPON BY APPLICANT IS NOT CONSENT TO REGISTRATION OF THE MARKS.

On June 15, 2007, after the arbitration panel voided the purported assignment previously relied upon by Applicant, Applicant submitted to the USPTO a one-sentence letter dated May 15, 2005, that stated that D&M is the "owner" of the mark BARON HENRI DE CRESSAC and CSI is the "producer and bottler." Either intentionally or not, Applicant once again misled the United States Patent and Trademark Office regarding the marks at issue. Applicant's filing with the United States Patent and Trademark Office asserted that the letter stated that Applicant "is the owner of the trademark BARON HENRI DE CRESSAC and producer and bottler of the cognac." Indeed, the letter emphatically states that CSI is producer and bottler of the cognac, not Applicant. Further, the BARON HENRI DE CRESSAC Marks sought to be registered by Applicant, do not even accurately reflect the mark referenced in the letter, which references only the mark BARON HENRI DE CRESSAC COGNAC.

Regardless of whether Applicant's misstatement was intentional, reliance upon this letter is barred by *res judicata* and *collateral estoppel*.

Even if it were not rejected by the arbitrators, which it was, the letter is not a sufficient basis for a claim of an assignment of trademark rights. The letter, on its face, is neither a binding agreement nor an assignment of rights. Among other defects, there is no term, there is no consideration, nor is it even structured as an "agreement." Further, it contains no statement

regarding consent to D&M's filing a federal registration of the BARON HENRI DE CRESSAC Marks. Accordingly, the letter cannot be considered a binding assignment of rights or consent to federal registration. See *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).

4. GRANTING OF CERTIFICATES OF REGISTRATION WOULD INJURE OPPOSER

The granting of certificates of registration to Applicant for the BARON HENRI DE CRESSAC Marks would injure Opposer because the marks comprise or contain Opposer's identical personal name BARON HENRI DE CRESSAC and thus identify Opposer without his consent. The granting of certificates of registration to Applicant would also injure Opposer because the BARON HENRI DE CRESSAC Marks would falsely suggest a connection between Applicant and Opposer.



## CONCLUSION

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  
August 17, 2007

Respectfully submitted,

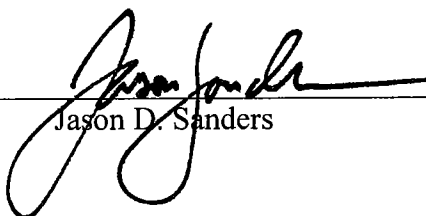
COWAN, LIEBOWITZ & LATMAN, P.C.  
Attorneys for Opposer

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 17th day of August, 2007, caused the foregoing  
MEMORANDUM OF LAW IN 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  
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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  
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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. :  
-----X

**DECLARATION OF JASON D. SANDERS IN 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. The law firm of Cowan, Liebowitz & Latman, P.C. was counsel for CSI International ("CSI") in the arbitration before the American Arbitration Association's International Center for Dispute Resolution, captioned D&M New World Management, Inc. d/b/a Apollo Fine Spirits v. CSI International (the "Arbitration").

3. Attached hereto as Exhibit A is a true and correct copy of the Notice and Demand for Arbitration filed by D&M New World Management, Inc. d/b/a Apollo Fine Spirits (“D&M”) with the American Arbitration Association.

4. Attached hereto as Exhibit B is a true and correct copy of the Answer to Demand for Arbitration and Counterclaims filed by CSI in the Arbitration.

5. D&M actively participated in the Arbitration, including submitting an appearance, participating in the selection of the arbitrators, exchanging documents in discovery, presenting witnesses and evidence before the arbitrators at the hearings which were held on March 19-22, 2007, and filing a proposed award.

6. During the Arbitration, D&M presented as exhibits both the purported Assignment of Trademark, submitted by D&M in the arbitration as Ex C-44(A), and the letter dated 15/05/2005, submitted by D&M in the arbitration as Ex. C-35(I).

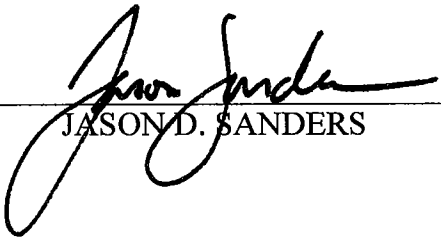
7. Attached hereto as Exhibit C is a true and correct copy of the Award issued in the Arbitration.

8. Attached hereto as Exhibit D is a true and correct copy of the letter dated 15/05/2005, submitted by D&M in the arbitration as Ex. C-35(I), and submitted to the United States Patent and Trademark Office on June 15, 2007.

9. As shown in these exhibits, the subject of the Arbitration concerned the rights in and alleged assignment of the BARON HENRI DE CRESSAC Marks.

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

EXECUTED ON AUGUST 16, 2007 AT NEW YORK, NEW YORK.

  
\_\_\_\_\_  
JASON D. SANDERS



AMERICAN ARBITRATION ASSOCIATION  
NEW YORK CITY, NEW YORK

-----X  
D&M NEW WORLD MANAGEMENT INC. :  
*doing business as* APOLLO FINE SPIRITS :

Claimant. :

-against- :

C S I INTERNATIONAL :

Respondent. :  
-----X

A A A File No.:

**NOTICE AND DEMAND**  
**FOR ARBITRATION**

PLEASE TAKE NOTICE that pursuant to the provisions of an agreement (the "Sales Agreement"), in writing and executed by and between D&M New World Management, Inc. doing/business/as Apollo Fine Spirits ("Claimant") and CSI International ("Respondent"), dated March 23, 2005 providing for dispute resolution at Article 9 as follows:

**9. GOVERNING LAW AND DISPUTE RESOLUTION**

9.1. This Agreement shall be governed and construed by in accordance with the laws of the State of New York applicable to agreements entirely made and performed in the State of New York.

8.2. In the event of any dispute, controversy or claim arise between Seller and Buyer, the parties agree to first promptly meet, and each agrees to use to their best efforts to reasonably resolve the dispute without resort to arbitration. In the event the parties are unable to resolve each dispute, controversy or claim, the parties agree such dispute shall be submitted to binding arbitration ("Arbitration") in the New York, New York regional office of the American Arbitration Association, before a panel of three arbitrators selected in accordance with the Commercial Arbitration Rules and procedures of the American Arbitration Association. Any and all disputes shall be submitted to Arbitration hereunder within one (1) year from the date the dispute first arose or shall be forever barred. Seller and Buyer agree that Arbitration hereunder shall be in lieu of all other remedies and procedures,

and shall be the exclusive method for resolving any disputes arising out of this Agreement. Any arbitration, action, suit or proceeding arising out of or relating to this Agreement may, among such other methods allowed by law, be commenced by delivering the notice, process or other mailing by internationally recognized express mail service to the party at the address set forth in the preamble hereof. Any such delivery shall be deemed to have the same force and effect as personal service. The prevailing party in any arbitration, action, suit or proceeding arising under or relating to this Agreement shall be entitled to recover from the other its attorneys' fees (in addition to its costs and expenses) incurred in connection therewith. This parties hereby agree that the courts, whether Federal or State, located in New York County, New York shall have exclusive jurisdiction of all cases and controversies arising under or relating to arbitration pursuant to this Agreement.

8.3. All communications and evidence during the course of any arbitration, including the hearing of the proceedings shall be in English language and shall be kept confidential by the parties.

8.4. The provisions of this Section 9 shall not prevent either party from seeking interim injunctive relief pending resolution of a dispute provided that any such request shall be made first to the arbitrators appointed pursuant to this Agreement, or, in the event that such Arbitrators are not appointed at the date of such request, the parties hereby agree that the courts, whether Federal or State, located in New York County, New York shall have exclusive jurisdiction of all cases and controversies arising under or relating to such request.

and because after the best efforts of Claimant, including meetings with Respondent, to reasonably resolve the disputes subject hereof, have failed to resolve the issues in dispute, the undersigned Claimant intends to conduct, and demands that Respondent participate and attend, a binding arbitration of controversies arising out and relating to the Sales Agreement in New York City, New York before a panel of three arbitrators selected in accordance with the Sales Agreement and the Commercial Arbitration Rules and Procedures of the American Arbitration Association.



### NATURE OF DISPUTE AND DAMAGES

Respondent has breached the Sales Agreement and by reason of such breach has caused money damages to Claimant.

Respondent's breach of the Sales Agreement includes, without limitation; a) willfully, wrongfully, and/or negligently failing to timely and properly produce and deliver or timely and properly cause the production and delivery of Product (as defined in the Sales Agreement) of the quality or quantity required by the Sales Agreement; and b) willfully, wrongfully and/or negligently failing and refusing to account for monies received by Respondent from Claimant in connection with the Sales Agreement; and c) misrepresentation of ownership, status of molds, labels and bottles related to Product.

Respondent's damages are presently undetermined but estimated to be not less than \$641,059.40. See Exhibit "A" annexed hereto and made a part of this Demand for Arbitration .

Respondent is further notified that a copy of this Demand for Arbitration, to which a true and correct copy of the Sales Agreement is annexed, will be filed with the American Arbitration Association Administrator with the request that it immediately take action in accordance with the Sales Agreement, this Demand and the Commercial Arbitration Rules and procedures of the American Arbitration Association.

Unless within twenty (20) days after service of this Notice and Demand for Arbitration Respondent applies pursuant to CPLR 7503, sub c, for a stay of the arbitration, you will thereafter be precluded from objecting a valid agreement was not made or has not

been complied with, and from asserting in Court the bar of a limitation of time.

Respectfully submitted this 26<sup>th</sup> day of May, 2006.

LAZARUS & LAZARUS, P.C.  
*Attorneys for Claimant*  
D&M NEW WORLD MANAGEMENT, INC.  
d/b/a APOLLO FINE SPIRITS, INC.

By: \_\_\_\_\_

HARLAN M. LAZARUS, ESQ. HML-0268  
240 Madison Avenue, 8<sup>th</sup> Floor  
New York, New York 10016  
(212) 889-7400

TO: CSI INTERNATIONAL  
DIRECT WINE AND SPIRITS  
90 ru de VINCENNES  
33000 BORDEAUX, FRANCE  
FDA NUMBER 152804840-34

AMERICAN ARBITRATION ASSOCIATION  
NEW YORK CITY, NEW YORK

-----X A A A File No.:

D&M NEW WORLD MANAGEMENT INC.  
*doing business as APOLLO FINE SPIRITS*

Plaintiff,

**AFFIDAVIT OF SERVICE**

-against-

C S I INTERNATIONAL

Defendant.

-----X  
STATE OF NEW YORK )

)SS.:

COUNTY OF NEW YORK )

TRACEY A. OWENS, being duly sworn, deposes and says:

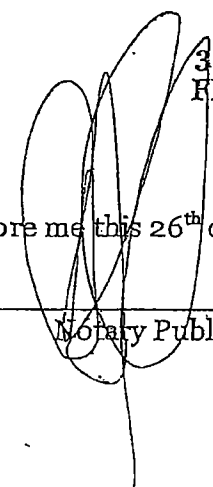
I am not a party to this action, I am over the age of 18 years and I reside in Kings County.


On May 26, 2006, I mailed a true copy of the following document: NOTICE AND DEMAND FOR ARBITRATION, by properly enclosing said document in a sealed wrapper for overnight delivery under the exclusive care and custody of DHL (INTERNATIONAL) OVERNIGHT EXPRESS MAIL COURIERS located within this City and State addressed to the following:

C S I INTERNATIONAL  
DIRECT WINE AND SPIRITS  
90 ru de VINCENNES  
33000 BORDEAUX, FRANCE  
FDA NUMBER 152804840-34

  
TRACEY A. OWENS

Sworn to before me this 26<sup>th</sup> day of May, 2004

  
\_\_\_\_\_  
Notary Public

HARLAN M. LAZARUS  
Notary Public, State of New York  
No. 31-4723982  
Qualified in New York County  
Commission Expires February 28, 2007 

AMERICAN ARBITRATION ASSOCIATION  
NEW YORK CITY, NEW YORK

X A:A A File No.:

D&M NEW WORLD MANAGEMENT INC.  
doing business as APOLLO FINE SPIRITS

Plaintiff,

**AFFIDAVIT OF SERVICE**

-against-

C S I INTERNATIONAL

Defendant.

STATE OF NEW YORK )

)SS.:

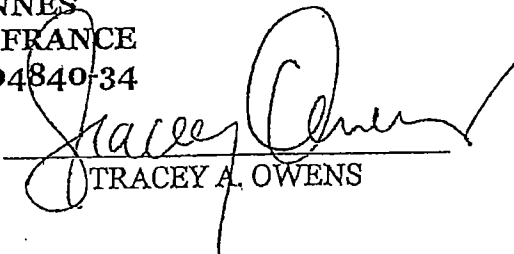
COUNTY OF NEW YORK )

TRACEY A. OWENS, being duly sworn, deposes and says:

I am not a party to this action, I am over the age of 18 years and I reside in Kings County.


On June 7, 2006, I mailed a true copy of the following document: NOTICE AND DEMAND FOR ARBITRATION, by properly enclosing said document in a sealed, pre-paid wrapper, for delivery by First Class, Certified, Return Receipt Requested, and Overnight Express Mail under the exclusive care and custody of the United States Postal Service located within this City and State addressed to the following:

C S I INTERNATIONAL  
DIRECT WINE AND SPIRITS  
90 ru de VINCENNES  
33000 BORDEAUX, FRANCE  
FDA NUMBER 152804840-34

  
TRACEY A. OWENS

Sworn to before me this 7<sup>th</sup> day of June, 2006

\_\_\_\_\_  
Notary Public

HARLAN M. LAZARUS  
Notary Public, State of New York  
No. 31-4723982  
Qualified in New York County  
Commission Expires February 28, 2007 

**EXHIBIT [A]**

---

BALANCE DUE TO APOLLO

PO#	INVOICE #	INVOICE DATE	EURO AMOUNT	EURO AMOUNT PAID	PRICE ERROR - ADJUSTMENT				
556	31032005	03/05/05	72862.44	70912.68	1949.76				
MOLD	31032005	03/05/05	17000.00	17000.00					
555	32032005	05/05/05	58837.63	54005.80	4831.83				
557	36032005	03/30/05	64001.33	63423.83	577.50				
595	45052005	25/05/05	33971.92	33971.92	6612.28				
639	60082005	05/09/005	70829.52	70829.52					
640	59082005	05/09/05	37404.00	37404.00					
640A	60082005	05/09/05	78256.80	78256.80					
677	10112005	09/11/05	79510.50	73735.50	5775.00				
678	11112005	11/14/05	59243.58	59243.58					
687	12112005	09/11/05	54957.38	53799.71	1157.67				
BILLING PRICE ERROR SEE PRICE LIST			626875.1	612583.34	14291.76				
TOTAL BALANCE DUE TO APOLLO					20,904.04				

MOLD APOLLO PAID 50% OF THE MOLD COST EURO 17000.00

ADVPRO CSI AND APOLLO AGREED ON 5% MARKETING, ADVERTISEMENT AND PROMOTION  
 612583.34 X 5% = EURO 30629.17

RE-GLUING GIFT BOX BARON HENRI DE CRESSAC DECANTER ARRIVE UNGLUED BECAUSE OF INSUFFICIENT CARE IN PRODUCTION  
 HENRI PERSONALLY SAW THE DAMAGED CALL THE MANUFACTURER AND THE OFFERED TO PAY FOR THE COST OF RE-GLUING ALL BOXES

1791 CASES X 12 BOTTLES = 21492 BOTTLES X \$ 3.00 A BOTTLE = \$64476.00

BOTTLE LEAKING BOTTLE ARE LEAKING BECAUSE THE WRONG SIZE CORKS WERE PRODUCED FOR THE LARGER SIZED BOTTLE 1.75 LITER

BARON HENRI DE CRESSAC V.S.	1008 BOTTLE X EURO 8.96 A BOTTLE = EURO 9031.68	CUSTOMS DUTY	OCEAN FR
BARON HENRI DE CRESSAC V.S.O.P.	936 BOTTLE X EURO 10.30 A BOTTLE = EURO 9640.80	2988 BTL	
BARON HENRI DE CRESSAC NAPOLEON 477 BOTTLE X EURO 11.14 A BOTTLE = EURO 5313.78			
BARON HENRI DE CRESSAC X.O.	567 BOTTLE X EURO 12.63 A BOTTLE = EURO 7161.21		

Rec'd 6-14-06

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

.....  
The name signed must be printed beneath

STATE OF

COUNTY OF

ss.:

I,

being duly sworn, depose and say: I am  
in the within action: I have read

Check Applicable Box  
 Individual Verification  
 Corporate Verification

Individual Verification

the  
the foregoing  
my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

and know the contents thereof; the same is true to

Corporate Verification

the  
a of

corporation and a party in the within action; I have read the foregoing  
and know the contents thereof: and the same is true to my own knowledge,

except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

.....  
The name signed must be printed beneath

STATE OF

COUNTY OF

ss.: (If both boxes are checked—indicate after names, type of service used.)

I,

being sworn, say: I am not a party to the action, am over 18 years

of age and reside at

On

I served the within

Check Applicable Box  
 Service By Mail  
 Personal Service on Individual

Service By Mail

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within this State, addressed to each of the following persons at the last known address set forth after each name:

Personal Service on Individual

by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:

worn to before me on

.....  
The name signed must be printed beneath

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 DECLARATION**

**EXHIBIT B**



AMERICAN ARBITRATION ASSOCIATION  
NEW YORK CITY, NEW YORK

-----  
D&M NEW WORLD MANAGEMENT INC. *doing*  
*business as* APOLLO FINE SPIRITS

Claimant,

AAA File No.

-against-

**ANSWER TO DEMAND  
FOR ARBITRATION  
AND COUNTERCLAIMS**

C S I INTERNATIONAL

Respondent.  
-----

As and for its Answer to the Demand for Arbitration of D&M New World Management Inc., d/b/a Apollo Fine Spirits ("D&M") and its counterclaims against D&M herein, respondent, CSI International ("CSI"), by its undersigned attorneys, hereby states as follows:

CSI denies the allegations that it has breached the Sales Agreement. CSI has delivered all goods required of it, at the quality and specifications required under the Sales Agreement and as directed by D&M; CSI has not misrepresented ownership of labels, bottles or molds under the Sales Agreement; and CSI has properly accounted for all funds and goods under the Sales Agreement. CSI therefore asks that D&M take nothing on its asserted claims.

CSI hereby counterclaims against D&M, and prays for an Award herein, as follows: (a) D&M fraudulently induced CSI to enter into the Sales Agreement and the scheduled Assignment of Trademark; (b) D&M's misrepresentations were relied upon by CSI and induced CSI to enter into the Sales Agreement and the scheduled Assignment of Trademark, to the detriment of CSI; (c) D&M failed to pay CSI for the goods sold and delivered under the Sales Agreement; and (d) D&M caused CSI to incur expenses under Sales Agreement, such as the acquisition of the raw materials to complete the shipments, upon reliance that D&M would fulfill its obligations, which D&M did not.

Accordingly, CSI hereby seeks a rescission of the Sales Agreement, including the scheduled Assignment of Trademark, and an award in quantum meruit for goods sold and delivered and/or damages and lost profits, of an amount to be determined but no less than \$385,440.35.

Respectfully submitted this 16<sup>th</sup> Day of August, 2006.

COWAN, LIEBOWITZ & LATMAN, P.C.

By: \_\_\_\_\_  
Robert W. Clarida  
Jason D. Sanders  
1133 Avenue of the Americas  
New York, New York 10036-6799  
(212) 790-9200  
*Attorneys for Respondent CSI  
International*



**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**  
**International Arbitration Tribunal**

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In the Matter of the Arbitration between

Re: 50 155 T 00263 06  
D & M New World Management, Inc.  
d/b/a Apollo Fine Spirits, Inc.  
vs  
C S I International Direct Wine And Spirits

**RECEIVED**  
APR 30 2007  
INTERNATIONAL CENTER

---

**AWARD OF ARBITRATORS**

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated April 28, 2005, and having been duly sworn, and having conducted hearings on March 19, 2007 through March 22, 2007, and having duly heard and considered the oral and documentary proofs and allegations of the Parties, and considered the pre-hearing memoranda and post-hearing proposed awards submitted by the parties, and confirmed on the record the claims dropped by the parties, and the Parties having agreed to a non-reasoned award as noted in Preliminary Hearing and Scheduling Order #1, do hereby AWARD as follows:

(A) As to Claimant's CLAIMS

1. Claimant's claim for breach by Respondent of the parties' Sales Agreement executed April 28, 2005 ("Sales Agreement") for failure to produce products is denied.
2. Claimant's claim for breach by Respondent of the Sales Agreement for misrepresentations of ownership of the molds and labels is denied.
3. Claimant's claim for breach by Respondent of the Sales Agreement for providing leaky bottles is granted.
4. Claimant's claim for recovery of advertising costs is denied.
5. Claimant's claim for recovery of lost profits is denied.
6. Claimant's claim for recovery of costs of the molds is denied.
7. Claimant's claim for recovery of costs of the dummy bottles is denied.
8. Claimant's claim for recovery of attorneys' fees and costs is denied.

9. In accordance with the above, within thirty (30) days of transmittal of this Award to the Parties, Respondent shall pay to Claimant as money damages in Euros the sum of 41,406.62 plus 6,832.10 interest from June 15, 2005 to April 15, 2007, totaling 48,238.72 Euros.

**(B) As to Respondent's COUNTERCLAIMS**

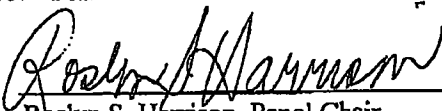
1. The Panel declares that the alleged assignment of the mark BARON HENRI DE CRESSAC COGNAC through the purported Assignment of Trademark executed April 28, 2005 is void ab initio.
2. Respondent's counterclaim for breach of the Sales Agreement for failure to pay for products and for unpaid invoices is granted.
3. Respondent's counterclaim for lost profits is granted.
4. Respondent's counterclaim for costs of inventory is granted in part.
5. The Panel declares that Claimant has no rights to the molds and labels for the trademark BARON HENRI DE CRESSAC COGNAC pursuant to the Sales Agreement.
6. In accordance with the above, within thirty (30) days from the date of transmittal of this Award to the Parties, Claimant shall pay to Respondent as money damages in Euros the following amounts, in each case plus interest at the rate of 9% from March 15, 2006 to April 15, 2007:
  - a) 112,015.45 plus 10,921.51 interest totaling 122,936.96 Euros for its claim for unpaid invoices.
  - b) 53,152 plus 5182.32 interest totaling 58,334.32 Euros for its claim for lost profits.
  - c) 112,253.70 plus 10,944.73 interest totaling 123,198.43 Euros for its claim for recovery of inventory costs.
7. Within thirty (30) days from the date of transmittal of this Award to the Parties, Claimant shall pay Respondent \$96,000.00 for attorneys' fees and \$10,263.45 for costs totaling \$106,263.45.


**(C)** The administrative fees and expenses of the International Centre for Dispute Resolution (ICDR) totaling **FOURTEEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS** (\$14,500.00) shall be borne sixty-seven percent (67%) by Claimant and thirty-three percent (33%) by Respondent. Therefore, Claimant shall reimburse Respondent the sum of **ONE THOUSAND TWO HUNDRED FIFTEEN DOLLARS AND ZERO CENTS** (\$1,215.00).


The compensation and expenses of the Arbitrators totaling ONE HUNDRED THOUSAND THIRTY SEVEN DOLLARS AND FIFTY CENTS (\$100,037.50) shall be borne sixty-seven percent (67%) by Claimant and thirty-three percent (33%) by Respondent. Therefore, Claimant shall reimburse Respondent the sum of SEVENTEEN THOUSAND FIFTEEN DOLLARS AND THIRTY FIVE CENTS (\$17,015.35), representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Respondent upon demonstration that these incurred costs have been paid.

(D) This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims and counterclaims not expressly granted herein are hereby denied.

We hereby certify that, for the purposes of Article 1 of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New York, New York.

Date: 4/27/07   
Roslyn S. Harrison, Panel Chair

Date: 4/25/07   
Kyle-Beth Hilfer

Date: 4/30/07   
Carroll E. Neesemann

State of New Jersey  
County of Union

I, Roslyn S. Harrison do hereby affirm upon my oath as Arbitrator that  
I am the individual described in and who executed this instrument, which is my Award.

4/27/07  
Date

Roslyn S. Harrison

State of New York  
County of Westchester

I, Kyle-Beth Hilfer do hereby affirm upon my oath as Arbitrator that  
I am the individual described in and who executed this instrument, which is my Award.

4/25/07  
Date

K-B Hilfer

State of New York  
County of New York

I, Candice Freeman do hereby affirm upon my oath as Arbitrator that  
I am the individual described in and who executed this instrument, which is my Award.

4/30/07  
Date

Candice Freeman





C-35(I)



*Office of Baron Henri de Cressac*

*Bordeaux le 15/05/2005*

*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. Located at  
90 rue de Vincennes Bordeaux France is the producer  
and bottler of this cognac.*

*Sincerely,*

*Henri de Cressac*

*Président*

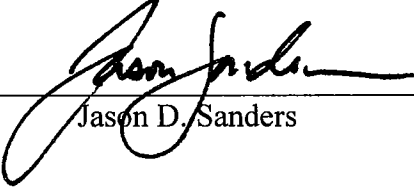
*CSI International  
Direct Wines & Spirits  
90 rue de Vincennes - 33000 Bordeaux France  
cressac@csi.com Tel (33) 636.124.225 Fax (33) 336.962.346*

CRESS 00231

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 17th day of August, 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