

ESTTA Tracking number: **ESTTA262077**

Filing date: **01/22/2009**

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

Proceeding	91178682
Party	Plaintiff Franciscan Vineyards, Inc.
Correspondence Address	Stephen L. Baker Baker and Rannells PA 575 Route 28, Suite 102 Raritan, NJ 08869 UNITED STATES officeactions@br-tmlaw.com, K.Hnasko@br-tmlaw.com,r.mcgonigle@br-tmlaw.com, s.baker@br-tmlaw.com
Submission	Motion to Compel Discovery
Filer's Name	Linda Kurth
Filer's e-mail	officeactions@br-tmlaw.com,k.hnasko@br-tmlaw.com,l.kurth@br-tmlaw.com
Signature	/Linda Kurth/
Date	01/22/2009
Attachments	Motion to Compel Discovery.pdf ( 61 pages )(931648 bytes )

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

-----X  
Franciscan Vineyards, Inc.

Opposer

Mark: DOMAINE PINNACLE  
and design

v.

Opposition No. 91178682

Domaine Pinnacle, Inc.

Serial No.: 78783236

Applicant

Filed: December 30, 2005

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**OPPOSER'S MOTION TO COMPEL DISCOVERY WITHOUT OBJECTIONS**  
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The Notice of Opposition in the present case was filed by Opposer, Franciscan Vineyards, Inc. ("Opposer") on or about August 1, 2007, against Applicant Domaine Pinnacle, Inc. ("Applicant"). Applicant filed its Answer on September 10, 2007. On February 11, 2008, Applicant filed a consented stipulation to suspend the matter pending settlement negotiations. Negotiations were not successful, and suspension was lifted on August 10, 2008.

Opposer served its First Set of Interrogatories, First Request for Production of Documents, and a Request for Admissions ("the Discovery Requests") on September 24, 2008. A copy of the Discovery Requests is attached as Exhibit "A" hereto. On that same day, Opposer filed a Motion to Amend its Pleadings. On October 24, 2008, Applicant filed its Amended Answer, and on that same day, Opposer filed a Motion to Strike Applicant's Affirmative Defenses.

Prior to serving its discovery responses, the parties engaged in a discovery conference during which Applicant's counsel requested an extension of time to respond to Opposer's discovery requests, and Opposer agreed to a thirty day extension. On November 15, 2008, the Board suspended the proceedings pending disposition of Opposer's Motion to Strike. Applicant did not file a response to the Motion. On November 28, 2008, Applicant sent its responses to Opposer's First Set of Discovery. A copy of Applicant's responses is attached as Exhibit "B" hereto.

On December 4, 2008, Opposer sent Applicant a letter addressing the deficiencies in Applicant's responses. A copy of Opposer's letter is attached as Exhibit "C" hereto. Opposer requested clarification on three of Applicant's responses to requests for admission. Opposer again requested production of documents, because in its responses, Applicant provided no documents whatsoever, but to each demand instead answered, "Documents will be produced." See Exhibit B.

As referenced in Opposer's letter of December 4, 2008, Applicant, to date, has not provided supplemental responses to the following of Opposer's Requests for Admission:

**Request No. 5:** Applicant was asked to admit that goods sold under Opposer's PINNACLES Mark were available at retail stores in the United States at the time Applicant filed its trademark application for Applicant's Mark. Applicant responded that it was without knowledge regarding Opposer's sales and therefore denies.

TBMP § 407.03(b) provides, "An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny."

Please state the nature of the inquiry made.

**Request #7.** Opposer asked Applicant to admit that Applicant's Mark has not acquired secondary meaning or acquired distinctiveness. Applicant has stated that this is a question of law and has refused to respond.

Applicant has a duty to respond. TBMP § 407.03 and Fed. R. Civ. P. 36(a) provides:

A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact...(emphasis added).

Secondary meaning or distinctiveness are terms defined by trademark caselaw. Please supplement this answer or Opposer will ask the Board to have the Request deemed to be admitted.

**Request No. 17:** Applicant was asked to admit that there is an overlap between purchasers and potential purchasers of goods offered under Applicant's Mark and goods offered under Opposer's Marks. Applicant responded that it is without knowledge of Opposer's purchasers and therefore denied.

TBMP § 407.03(b) provides, "An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny."

Please state the nature of the inquiry made and verify your denial.

When Opposer received no reply to its letter, Opposer sent an email on December 26, 2008 as follow up. A copy Opposer's email is attached as Exhibit "D" hereto. On January 14, 2009, the Board issued an Order denying in full Opposer's Motion to Strike Applicant's Affirmative Defenses. That same day, Opposer emailed Applicant noting that the Board had issued its Order, and requested a response to the outstanding discovery

issues, stating the suspension in the proceedings did not suspend Applicant's obligation to provide supplemental discovery. A copy Opposer's email is attached as Exhibit "E" hereto. Opposer also stated that if it received no response from Applicant within a week, namely until January 20, 2009, Opposer would be forced to file a motion to compel.

On January 20, 2009, Opposer filed a Motion for Reconsideration of the Board's Order, denying its Motion to Strike. That same day, attorneys for Opposer telephoned attorneys for Applicant and left a voice mail requesting that Applicant's attorneys call back so that the issues could be resolved. Opposer again stated that it would be forced to file a motion to compel if Applicant did not respond.

To date, Applicant has not responded to Opposer's letter, emails and phone call. Applicant has not served timely supplemental responses, and has served no documents at all.

### ARGUMENT

#### THE BOARD SHOULD ORDER APPLICANT TO RESPOND, WITHOUT OBJECTION, TO ALL OF OPPOSER'S DISCOVERY REQUESTS

As of the date of service of this motion, Applicant's documents and its supplemental responses to requests for admissions are nearly two months overdue. Since Applicant has provided no valid reason for having failed to respond to Opposer's discovery requests in a timely fashion, Applicant should now be directed to respond to such requests as put, i.e. without objection. Envirotech Corp. v. Compagnie Des Lampes, 219 U.S.P.Q. 448, 449-60 (TTAB 1979). (because opposer did not respond timely, "[applicant's] interrogatories must be answered completely and without objection."); MacMillan Bloedel Limited v. Arrow-M Corp., 203 U.S.P.Q. 952, 953-54 (TTAB 1979)

(movant is entitled to an order directing adversary to provide responses without objection so long as movant first attempted to obtain same from adversary before seeking intervention of the Board); Crane Co. v. Shimano Industrial Co., Ltd., 184 U.S.P.Q. 691 (TTAB 1975).

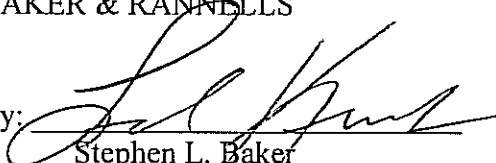
### CONCLUSION

For the reason set forth above, Opposer's Motion to Compel Applicant's Discovery Responses Without Objections should be granted.

Dated: January 22, 2009

Respectfully submitted,  
BAKER & RANNELLS

By:



Stephen L. Baker  
Linda Kurth  
Attorney for Opposer  
575 Route 28, Suite 102  
Raritan, New Jersey 08869  
Tel. 908-722-5640  
Fax. 908-725-7088

EXHIBIT A

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

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FRANCISCAN VINEYARDS, INC.,

Opposer,

v.

DOMAINE PINNACLE, INC.

Applicant.

---

Opposition No. 91178682

Mark: DOMAINE PINNACLE

Serial No.: 78/783,236

**OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT**

Opposer, Franciscan Vineyards, Inc. ("Opposer"), pursuant to Rule 2.120 of the Trademark Rules of Practice, and Rules 33 and 34 of the Federal Rules of Civil Procedure, hereby requests that Applicant, Domaine Pinnacle, Inc. ("Applicant"), answer separately and fully, in writing under oath, the following interrogatories by serving written responses thereto at the offices of Opposer's attorneys, Baker and Rannells PA, 575 Route 28, Suite 102, Raritan, New Jersey, 08869, within thirty (30) days after service of this request.

**DEFINITIONS AND INSTRUCTIONS**

1. As used herein, the term "Opposer" means and shall refer to the Opposer, Franciscan Vineyards, Inc.
2. As used herein, the term "Applicant" means and shall refer to Domaine Pinnacle, Inc., and any predecessors in interest to Domaine Pinnacle, Inc. and any predecessors in interest in and to the mark in issue, namely DOMAINE PINNACLE.



3. As used herein, the term "Person" as well as pronouns referring thereto shall include any business, legal or government entity or association, as well as natural persons.
4. As used herein, the term "identify" or the phrase "give the identity of" shall mean:
  - a. In the case of a natural person: his or her full name and an address, company title, and telephone number where the person can be contacted;
  - b. In the case of a corporation, business entity, or organization: (1) its full name; (2) the address of its principal place of business; and (3) the identity of any and all persons employed by or engaged by the entity that have relevant knowledge concerning the requested information;
  - c. In the case of a document: (1) the author(s) of the document; (2) any and all persons who received such document (including copies); (3) the date of such document; and (4) the general subject matter of such document;
  - d. In the case of a product: the generic and/or common commercial name of the product;
  - e. In the case of an instance or incident: (1) the identity of each person who participated in or who has knowledge of the instance or incident; (2) the circumstances surrounding the instance or incident; and (3) the date or the inclusive dates during which the instance or incident occurred.
5. The term "document" is used in the broadest sense consistent with Fed. R. Civ. P. Rule 34.
6. As used herein, the term "date" means the exact date, if known, and, if not known, the approximate date.
7. As used herein, the term "use" means actual or planned use.

8. With respect to each interrogatory to which an objection is made, state the specific grounds of the objection and answer any portion of the interrogatory which does not fall within the stated objection.

9. Any word written in the singular shall be construed as plural or vice-versa when necessary to facilitate the answer to the interrogatory.

10. As used herein, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed to be outside of its scope.

11. As used herein, the term "shown" shall be mean promoted and/or displayed.

12. As used herein, the term "Applicant's Mark" means and shall refer to the mark DOMAINE PINNALCE as shown in U.S. Trademark Appl. Serial No. 78/783,236 which is the subject of Opposer's Notice of Opposition.

13. As used herein, the term "Opposer's Marks" shall mean the mark PINNACLES, marks that contain the word PINNACLE and variations thereof as identified in paragraph 6 of the Notice of Opposition. As used herein the term "Opposer's Goods" shall mean those goods and services identified in the Notice of Opposition at paragraph 4 therein.

14. As used herein, the term "Applicant's Goods" means and shall refer to the goods recited in U.S. Trademark Appl. Serial No. 78/783,236.

15. These interrogatories are intended to be continuing. If, at any time after you prepare and furnish the requested discovery you ascertain or acquire additional responsive information, you are required to supplement and/or amend your responses as required by Rule 26(e) F.R.Civ.P.

16. For the convenience of the Board and the parties, each Interrogatory should be quoted in full immediately preceding the response.

17. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

### INTERROGATORIES

INTERROGATORY NO. 1: Describe, by common commercial name, each product that is intended to be sold or offered for sale in the United States under Applicant's Mark.

RESPONSE:

INTERROGATORY NO. 2: Identify all of Applicant's intended distributors, suppliers, sellers, and licensees of each product identified in response to Interrogatory No. 1.

RESPONSE:

INTERROGATORY NO. 3: Identify all tradeshow in the United States where any of Applicant's Goods bearing Applicant's Mark will be shown.

RESPONSE:

**INTERROGATORY NO. 4:** Identify all media through which Applicant intends to promote Applicant's Goods bearing Applicant's Mark in the United States.

**RESPONSE:**

**INTERROGATORY NO. 5:** Identify the person(s) with the most knowledge concerning Applicant's intended use of Applicant's Mark in the United States.

**RESPONSE:**

**INTERROGATORY NO. 6:** Set forth the date and circumstances under which Applicant first became aware of Opposer's Mark.

**RESPONSE:**

**INTERROGATORY NO. 7:** Identify all expert witnesses whose views or opinions have been sought by or on behalf of Applicant, whether or not such expert is expected to testify during Applicant's testimony period, concerning any aspect of this proceeding, and state the area of expertise of such witness.

**RESPONSE:**

**INTERROGATORY NO. 8:** Identify any surveys or studies ever conducted by or for Applicant concerning confusion or likelihood of confusion between Applicant, Applicant's Mark, or Applicant's Goods on the one hand, and Opposer, any of Opposer's Goods and/or Services, or Opposer's Marks on the other hand.

**RESPONSE:**

**INTERROGATORY NO. 9:**

Identify each publication or item of advertising or promotional material in which Applicant has advertised or promoted or will advertise or promote each product identified in Interrogatory No. 1, including the date of each such publication or item of advertising or promotional material and the type of persons to whom the item was distributed.

**RESPONSE:**

**INTERROGATORY NO. 10:** Identify the basis for Applicant's bona fide intent to use Applicant's Mark on Applicant's Goods.

**RESPONSE:**

**INTERROGATORY NO. 11:**

Identify by name, address and title all persons who participated in any way in the preparation of the answers or responses to these Interrogatories, including those persons who

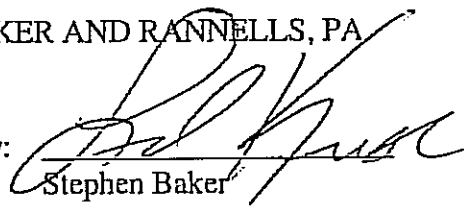
were consulted in the course of answering or responding to such interrogatory, and the documents relied upon in preparing such answers.

RESPONSE:

Dated: September 24, 2008

BAKER AND RANNELLS, PA

By:



Stephen Baker

Linda Kurth

Attorneys for Opposer

575 Route 28 – Suite 102

Raritan, New Jersey 08869

(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's FIRST INTERROGATORIES TO APPLICANT in re Franciscan Vineyards, Inc. v. Domaine Pinnacle, Inc., Opposition No. 91178682, was forwarded by email and first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 24<sup>th</sup> day of September, 2008, to the Attorney for Applicant at the following address:

THOMAS W. BROOKE  
HOLLAND & KNIGHT LLP  
2099 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20006-6801

/Linda Kurth/  
Linda Kurth

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

---

FRANCISCAN VINEYARDS, INC.,

Opposition No. 91178682

Opposer,

Mark: DOMAINE PINNACLE

v.

Serial No.: 78/783,236

DOMAINE PINNACLE, INC.

Applicant.

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**OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Opposer, Franciscan Vineyards, Inc. ("Opposer"), hereby requests that Applicant, Domaine Pinnacle, Inc. ("Applicant"), within thirty (30) days after service of this request, make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at trial.

**DEFINITIONS AND INSTRUCTIONS**

1. As used herein, the term "document" includes any tangible thing from or on which information can be stored, recorded, processed, transmitted, inscribed, or memorialized in any way by any means, regardless of technology or form.
2. Any word written in the singular shall be construed as plural or vice-versa when necessary to facilitate the answer to the request.
3. As used herein, the term "all" and "each" shall be construed as all and each to bring within the scope of the discovery request all responses that might be construed to be outside of its scope.



4. As used herein, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed to be outside of its scope.

5. As used herein, the term "Opposer's Marks" means and shall refer to those marks listed in paragraph 6 of Opposer's Notice of Opposition.

6. As used herein, the term "Applicant's Mark" shall mean the mark DOMAINE PINNACLE, Trademark Application Serial Number 78/783,236 and/or any other mark that includes the words "PINNACLE," in any form.

7. As used herein, "Applicant's Goods and Services" shall mean "Apple juices and apple-based non-alcoholic beverages" as currently described in Applicant's trademark application, Serial Number 78/783,236.

8. As used herein, "alcoholic beverages" shall mean any beverages that in liquid form which contains not less than one-half of one percent (.5%) of alcohol by volume.

OPPOSER'S REQUESTS FOR ADMISSIONS.

1. Admit that Applicant was aware of Opposer at the time Applicant filed its trademark application for Applicant's Mark.

**RESPONSE:**

2. Admit that Applicant was aware of Opposer's Marks at the time Applicant filed its trademark application for Applicant's Mark.

**RESPONSE:**

3. Admit that Applicant was aware of Opposer's Goods and Services at the time Applicant filed its trademark application for Applicant's Mark.

**RESPONSE:**

4. Admit that Applicant was aware of Opposer's Marks before selecting Applicant's Mark.

**RESPONSE:**

5. Admit that goods sold under Opposer's PINNACLES Mark were available at retail stores in the United States at the time Applicant filed its trademark application for Applicant's Mark.

**RESPONSE:**

6. Admit that Applicant had not begun using Applicant's Mark on Applicant's Goods and Services when it filed its trademark application on December 30, 2005.

**RESPONSE:**

7. Admit that Applicant's Mark has not acquired secondary meaning or acquired distinctiveness.

**RESPONSE:**

8. Admit that prior to December 30, 2005 Applicant made no use of the mark DOMAINE PINNACLE sufficient to give Applicant a proprietary interest therein.

**RESPONSE:**

9. Admit that Applicant's Mark and Opposer's Marks each contain the term PINNACLE.

**RESPONSE:**

10. Admit that consumers are more likely to remember the PINNACLE portion of Applicant's Mark.

**RESPONSE:**

11. Admit that Applicant intends to advertise its goods sold under Applicant's Mark in print advertising.

**RESPONSE:**

12. Admit that Applicant sells alcoholic beverages under the label DOMAINE PINNACLE.

**RESPONSE:**

13. Admit that Applicant sells alcoholic beverages in the United States under the name DOMAINE PINNACLE.

**RESPONSE:**

14. Admit that Applicant intends to only sell alcoholic beverages under the label DOMAINE PINNACLE.

**RESPONSE:**

15. Admit that apple-based non-alcoholic beverages include apple ciders.

**RESPONSE:**

16. Admit that apple ciders have an alcohol content.

**RESPONSE:**

17. Admit that there is an overlap between purchasers and potential purchasers of goods offered under Applicant's Mark and goods offered under Opposer's Marks.

**RESPONSE:**

18. Admit that the term PINNACLE in Applicant's Mark refers to Pinnacle Mountain in Quebec, Canada.

**RESPONSE:**

19. Admit that Applicant's Mark DOMAINE PINNACLE means Pinnacle Estate.

**RESPONSE:**

20. Admit that Applicant's orchard and cidery property is known as Pinnacle Estate.

**RESPONSE:**

21. Admit the property at which Applicant produces or intends to produce Applicant's Goods and Service under its DOMAINE PINNACLE mark is located on the slopes of Pinnacle Mountain.

**RESPONSE:**

Dated: September 24, 2008

BAKER AND RANNELLS, PA

By: 

Stephen L. Baker

Linda Kurth

Attorneys for Opposer

575 Route 28, Suite 102

Raritan, New Jersey 08869

(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's FIRST REQUEST FOR ADMISSIONS TO APPLICANT in re Franciscan Vineyards, Inc. v. Domaine Pinnacle, Inc., Opposition No. 91178682, was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 24<sup>th</sup> day of September, 2008, to the Attorney for Applicant at the following address:

THOMAS W. BROOKE  
HOLLAND & KNIGHT LLP  
2099 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20006-6801

/Linda Kurth/  
Linda Kurth

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

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FRANCISCAN VINEYARDS, INC.,

Opposition No. 91178682

Opposer,

Mark: DOMAINE PINNACLE

v.

Serial No.: 78/783,236

DOMAINE PINNACLE, INC.

Applicant.

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**OPPOSER'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS  
AND THINGS TO APPLICANT**

Opposer, Franciscan Vineyards, Inc. ("Opposer"), pursuant to Rule 2.120 of the Trademark Rules of Practice, and Rules 33 and 34 of the Federal Rules of Civil Procedure, hereby requests that Applicant, Domaine Pinnacle, Inc. ("Applicant"), answer separately and fully, in writing under oath, the following requests for production of documents and things by producing those documents specified herein within 30 days of service of this request at the offices of Baker and Rannells PA, 575 Route 28, Suite 102, Raritan, New Jersey, 08869.

**DEFINITIONS AND INSTRUCTIONS**

1. As used herein, the term "Opposer" means and shall refer to the Opposer, Franciscan Vineyards, Inc.



2. As used herein, the term "Applicant" means and shall refer to Domaine Pinnacle, Inc. and any predecessors in interest to Domaine Pinnacle, Inc. and any predecessors in interest in and to the mark in issue, namely DOMAINE PINNACLE.

3. As used herein, the term "Person" as well as pronouns referring thereto shall include any business, legal or government entity or association, as well as natural persons.

4. As used herein, the term "identify" or the phrase "give the identity of" shall mean:

a. In the case of a natural person: his or her full name and an address and telephone number where the person can be contacted;

b. In the case of a corporation, business entity, or organization: (1) its full name; (2) the address of its principal place of business; and (3) the identity of any and all persons employed by or engaged by the entity that have relevant knowledge concerning the requested information;

c. In the case of a document: (1) the author(s) of the document; (2) any and all persons who received such document (including copies); (3) the date of such document; and (4) the general subject matter of such document;

d. In the case of a product: the generic and/or common commercial name of the product;

e. In the case of an instance or incident: (1) the identity of each person who participated in or who has knowledge of the instance or incident; (2) the circumstances surrounding the instance or incident; and

(3) the date or the inclusive dates during which the instance or incident occurred.

5. The term "document" is used in the broadest sense consistent with Fed. R. Civ. P. Rule 34.

6. As used herein, the term "date" means the exact date, if known, and, if not known, the approximate date.

7. As used herein, the term "use" means actual or planned use.

8. With respect to each document request to which an objection is made, state the specific grounds of the objection and produce all documents that do not fall within the stated objection.

9. Any word written in the singular shall be construed as plural or vice-versa when necessary to facilitate the answer to the interrogatory.

10. As used herein, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed to be outside of its scope.

11. As used herein, the term "Applicant's Mark" means and shall refer to the mark DOMAINE PINNACLE as shown in U.S. Trademark Appl. Serial No. 78/783,236 which is the subject of Opposer's Notice of Opposition.

12. As used herein, the term "Opposer's Marks" shall mean the mark PINNACLES, marks that contain the word PINNACLE, and variations thereof as identified in paragraph 6 of the Notice of Opposition.

13. As used herein the term "Opposer's Goods" shall mean those goods and services identified in the Notice of Opposition at paragraph 4 therein.

14. As used herein, the term "Applicant's Goods" means and shall refer to the goods recited in U.S. Trademark Appl. Serial No. 78/783,236.

15. These discovery requests are intended to be continuing. If, at any time after you prepare and furnish the requested discovery you ascertain or acquire additional responsive information, you are required to supplement your production of documents as required by Rule 26(e) F.R.Civ.P.

16. For the convenience of the Board and the parties, each document request should be referenced in full immediately preceding the response. You are also requested to order and label the materials produced in accordance with the final paragraph of Rule 34(b), Fed. R. Civ. P.

17. If any document responsive to the following document requests is withheld or not produced on the basis of a claim of privilege, you shall provide a list containing the following information for each of the documents:

- (i) the date the document was prepared;
- (ii) the name, employment position and address of the author(s) and/or preparer(s) of the document;
- (iii) a brief description of the document;
- (iv) the subject matter of the document;
- (v) the names of people to whom copies were distributed;
- (vi) the reasons for withholding production of the document and any supporting facts. The claim of privilege or any other objection must be made in sufficient detail so as to permit the Board to adjudicate the validity of the claim or objection; and
- (vii) the number of the request under which the document would otherwise be produced.

18. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

**OPPOSER'S FIRST REQUEST FOR DOCUMENTS**

**DOCUMENT REQUEST NO. 1.** Produce all documents and things which were identified, required to be identified, and/or were used to answer the above Opposer's First Set of Interrogatories to Applicant.

Response:

**DOCUMENT REQUEST NO. 2.** Produce copies of all newspaper, magazine, newsletter, internet, trade journal and other articles in Applicant's possession that were distributed in or published in the United States and that mention or refer to Applicant's Mark.

Response:

**DOCUMENT REQUEST NO. 3.** Produce copies of all advertisements and/or promotional materials that Applicant plans to distribute or air in the United States concerning Applicant's Goods bearing Applicant's Mark.

Response:

**DOCUMENT REQUEST NO. 4.** Produce a specimen of (or photocopy or photograph of) each logo, label, packaging or other printed material bearing Applicant's Mark which are used, or are planned to be used, in the United States by or on behalf of Applicant on or in relation to Applicant's Goods.

Response:

**DOCUMENT REQUEST NO. 5.** Produce all documents concerning any surveys or studies ever conducted by or for Applicant concerning confusion or likelihood of confusion between Applicant, Applicant's Mark, or Applicant's Goods on the one hand, and Opposer, any of Opposer's Goods and/or Services, or Opposer's Mark on the other hand.

Response:

**DOCUMENT REQUEST NO. 8.** Produce all trademark or trade name searches, search reports, and/or clearances conducted by or on behalf of Applicant concerning registration or use or intended use of Applicant's Mark in the United States.

Response:

**DOCUMENT REQUEST NO. 9.** For each expert whose opinion may be relied upon in this proceeding, produce each document which concerns: (i) any opinions that may be presented at trial; (ii) the reasons for any such opinions; (iii) any data or information considered by the witness in forming the opinions; (iv) any exhibits used in support of or summarizing the opinions; (v) the compensation being paid to the witness, and (vi) any cases which the witness has testified at trial or by deposition.

Response:

**DOCUMENT REQUEST NO. 10.** Produce a copy of each business plan and a copy of each marketing plan created at any time that concerns the intended use of Applicant's Mark in the United States.

Response:

**DOCUMENT REQUEST NO. 11.** Produce documents sufficient to identify each (1) wholesaler, (2) distributor, and (3) retailer that has agreed to sell any of Applicant's Goods bearing Applicant's Mark in the United States.

Response:

**DOCUMENT REQUEST NO. 12.** Produce all documents that concern Opposer that were reviewed or discussed by Applicant prior to filing the application in issue in this proceeding.

Response:

**DOCUMENT REQUEST NO. 13.** Produce all Documents concerning the geographic locations in the United States in which Applicant intends to offer for sale and sell products using Applicant's Mark.

Response:

DOCUMENT REQUEST NO. 14 . Produce all invoices, cancelled checks, or other Documents concerning Applicant's intended sale of products using Applicant's Mark in the United States.

Response:

DOCUMENT REQUEST NO. 15. Produce all Documents concerning all communications between Applicant, on the one hand, and any and all of Applicant's manufacturers, suppliers, wholesalers, distributors and/or licensees, on the other hand, concerning products intended to be offered for sale using Applicant's Mark in the United States, including but not limited to, Documents concerning Applicant's purchase of products or materials used in manufacturing, labeling, packaging or distributing such products.

Response:

DOCUMENT REQUEST NO. 16. Produce all Documents concerning all communications between Applicant, on the one hand, and any individual or entity, on the other hand, concerning Opposer, Opposer's Marks, and/or Applicant's Mark.

Response:

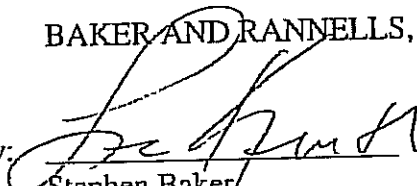
DOCUMENT REQUEST NO. 17. Produce all Documents evidencing Applicant's bona-fide intent to use its Mark on Applicant's Goods and Services.

Response:

Dated: September 24, 2008

BAKER AND RANNELLS, PA

By:



Stephen Baker

Linda Kurth

Attorneys for Opposer

575 Route 28 – Suite 102

Raritan, New Jersey 08869

(908) 722-5640



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's FIRST DEMAND FOR THE PRODUCTION OF DOCUMENTS AND THINGS re Franciscan Vineyards, Inc. v. Domaine Pinnacle, Inc., Opposition No. 91178682, was forwarded by email and first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 24<sup>th</sup> day of September, 2008, to the Attorney for Applicant at the following address:

THOMAS W. BROOKE  
HOLLAND & KNIGHT LLP  
2099 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20006-6801

/Linda Kurth/ :  
Linda Kurth

EXHIBIT B

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

FRANCISCAN VINEYARDS, INC.,

Opposition No. 91178682

Opposer,

Mark: DOMAINE PINNACLE

v.

DOMAINE PINNACLE, INC.

Serial No.: 78/783,236

Applicant.

**APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF  
INTERROGATORIES**

In accordance with Fed. R. Civ. P. 33, Applicant hereby submits its responses and objections to Opposer's First Set Of Interrogatories (the "Interrogatories").

**GENERAL OBJECTIONS**

1. Applicant objects to these interrogatories to the extent they purport to impose obligations beyond those set forth in the Trademark Rules of Practice.
2. Applicant objects to the extent the interrogatories seek information protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege. Such information will not be provided.
3. Applicant objects to the extent the interrogatories are overbroad, vague, indefinite and/or unduly burdensome.
4. Applicant objects to the extent the interrogatories are not relevant or reasonably calculated to lead to the discovery of admissible evidence.
5. Applicant objects to the extent the interrogatories seek a legal conclusion.
6. Applicant objects to the extent the interrogatories seek disclosure of information already in the possession of the Opposer.
7. Applicant objects because discovery is not complete and it is unclear what all the issues are in this litigation.

8. Applicant objects to disclosure of confidential business information as the parties have not yet entered into an agreement over a protective order. Upon execution of a mutually acceptable protective order, such information will be disclosed.

9. In responding to Opposer's First Set of Interrogatories, Applicant neither waives the foregoing objections, nor the specific objection set forth in its responses to particular interrogatories. In making its responses, Applicant does not concede that the information requested is relevant to this action or is calculated to lead to the discovery of admissible evidence. Applicant expressly reserves the right to object to further discovery into the subject matter of any of these interrogatories, to the introduction into evidence of any response or portion thereof, and to supplement its responses should further investigation disclose responsive information.

**INTERROGATORY NO. 1:** Describe, by common commercial name, each product that is intended to be sold or offered for sale in the United States under Applicant's Mark.

**RESPONSE:**

Applicant intends to sell apple-based non-alcoholic products namely sparkling and non-sparkling juice, sparkling sweet cider, ice cider, purees, compotes, jellies, jams, candies, pies, sauces, baby foods and cereals; Apple-based alcoholic beverages namely ice cider and ice apple wine under its mark in the United States.

**INTERROGATORY NO. 2:** Identify all of Applicant's intended distributors, suppliers, sellers, and licensees of each product identified in response to Interrogatory No. 1.

**RESPONSE:**

Applicant is working with Winesellers, Ltd., Skokie, Illinois to distribute alcoholic beverages in the U.S. It is not currently distributing any other products in the U.S.

**INTERROGATORY NO. 3:** Identify all tradeshow in the United States where any of Applicant's Goods bearing Applicant's Mark will be shown.

**RESPONSE:**



- With respect to the wares that are subject of this application, no trade shows to date

**INTERROGATORY NO. 4:** Identify all media through which Applicant intends to promote Applicant's Goods bearing Applicant's Mark in the United States.

**RESPONSE:**

Applicant maintains a website accessible to U.S. consumers.

**INTERROGATORY NO. 5:** Identify the person(s) with the most knowledge concerning Applicant's intended use of Applicant's Mark in the United States.

**RESPONSE:**

Charles Crawford

**INTERROGATORY NO. 6:** Set forth the date and circumstances under which Applicant first became aware of Opposer's Mark.

**RESPONSE:**

Applicant first learned of Opposer's Mark when it was cited during the prosecution of Applicant's original U.S. Trademark Application.

**INTERROGATORY NO. 7:** Identify all expert witnesses whose views or opinions have been sought by or on behalf of Applicant, whether or not such expert is expected to testify during Applicant's testimony period, concerning any aspect of this proceeding, and state the area of expertise of such witness.

**RESPONSE:**

No such witnesses have yet been identified.

**INTERROGATORY NO. 8:** Identify any surveys or studies ever conducted by or for Applicant concerning confusion or likelihood of confusion between Applicant, Applicant's Mark,

or Applicant's Goods on the one hand, and Opposer, any of Opposer's Goods and/or Services. or Opposer's Marks on the other hand.

RESPONSE:

No such surveys or studies have been conducted.

INTERROGATORY NO. 9:

Identify each publication or item of advertising or promotional material in which Applicant has advertised or promoted or will advertise or promote each product identified in Interrogatory No. 1, including the date of each such publication or item of advertising or promotional material and the type of persons to whom the item was distributed.

RESPONSE:

Applicant's website

INTERROGATORY NO. 10: Identify the basis for Applicant's bona fide intent to use Applicant's Mark on Applicant's Goods.

RESPONSE:

Applicant hopes to develop a line of apple based products for sale in the U.S. It currently sells some of the products from its apple orchard located in Quebec, Canada.

INTERROGATORY NO. 11:

Identify by name, address and title all persons who participated in any way in the preparation of the answers or responses to these Interrogatories, including those persons who were consulted in the course of answering or responding to such interrogatory, and the documents relied upon in preparing such answers.

RESPONSE:



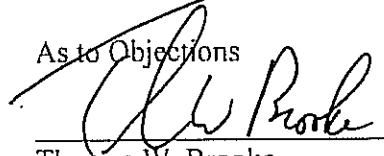
Charles Crawford.

Respectfully Submitted



Domaine Pinnacle, Inc.

As to Objections



Thomas W. Brooke

Holland & Knight LLP

2099 Pennsylvania Avenue, NW

Suite 100


Washington, D.C. 20006



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES was sent via first class mail to counsel for Opposer at the address listed below on November 28, 2008.

Stephen L. Baker  
Linda Kurth  
Attorneys for Opposer  
575 Route 28, Suite 102  
Raritan, New Jersey 08869



---

Thomas W. Brooke



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

FRANCISCAN VINEYARDS, INC.,

Opposition No. 91178682

Opposer,

Mark: DOMAINE PINNACLE

v.

DOMAINE PINNACLE, INC.

Serial No.: 78/783,236

Applicant.

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST REQUEST FOR ADMISSIONS**

1. Admit that Applicant was aware of Opposer at the time Applicant filed its trademark application for Applicant's Mark.

**RESPONSE:**

Admitted

2. Admit that Applicant was aware of Opposer's Marks at the time Applicant filed its trademark application for Applicant's Mark.

**RESPONSE:**

Applicant admits that it was aware of one U.S. Trademark Registration in the name of Registrant at the time Applicant filed its second U.S. Trademark Application.

3. Admit that Applicant was aware of Opposer's Goods and Services at the time Applicant filed its trademark application for Applicant's Mark.

**RESPONSE:**

Admitted

4. Admit that Applicant was aware of Opposer's Marks before selecting Applicant's Mark.

**RESPONSE:**

Denied

5. Admit that goods sold under Opposer's PINNACLES Mark were available at retail stores in the United States at the time Applicant filed its trademark application for Applicant's Mark.

**RESPONSE:**

Applicant is without knowledge regarding Opposer's sales and therefore denies

6. Admit that Applicant had not begun using Applicant's Mark on Applicant's Goods and Services when it filed its trademark application on December 30, 2005.

**RESPONSE:**

Admitted.

7. Admit that Applicant's Mark has not acquired secondary meaning or acquired distinctiveness.

**RESPONSE:**

Applicant objects in that this Request is question of law, and does not require a response. To the extent that a response is required, Applicant denies.

8. Admit that prior to December 30, 2005 Applicant made no use of the mark DOMAINE PINNACLE sufficient to give Applicant a proprietary interest therein.

**RESPONSE:**

Denied

9. Admit that Applicant's Mark and Opposer's Marks each contain the term PINNACLE.

**RESPONSE:**

Admitted

10. Admit that consumers are more likely to remember the PINNACLE portion of Applicant's Mark.

**RESPONSE:**

Applicant is without knowledge as to the reaction of consumers to its design mark and therefore denies.

11. Admit that Applicant intends to advertise its goods sold under Applicant's Mark in print advertising.

**RESPONSE:**

Admitted

12. Admit that Applicant sells alcoholic beverages under the label DOMAINE PINNACLE.

**RESPONSE:**

Admitted.

13. Admit that Applicant sells alcoholic beverages in the United States under the name DOMAINE PINNACLE.

**RESPONSE:**

Admitted.

14. Admit that Applicant intends to only sell alcoholic beverages under the label DOMAINE PINNACLE.

**RESPONSE:**

Denied

15. Admit that apple-based non-alcoholic beverages include apple ciders.

**RESPONSE:**

Admitted.

16. Admit that apple ciders have an alcohol content.

**RESPONSE:**

Applicant denies that all apple ciders have an alcohol content

17. Admit that there is an overlap between purchasers and potential purchasers of goods offered under Applicant's Mark and goods offered under Opposer's Marks.

**RESPONSE:**

Applicant is without knowledge of Opposer's purchasers and therefore denies.

18. Admit that the term PINNACLE in Applicant's Mark refers to Pinnacle Mountain in Quebec, Canada.

**RESPONSE:**

Admitted.

19. Admit that Applicant's Mark DOMAINE PINNACLE means Pinnacle Estate.

**RESPONSE:**

Denied.

20. Admit that Applicant's orchard and cidery property is known as Pinnacle Estate.

**RESPONSE:**

Admitted


21. Admit the property at which Applicant produces or intends to produce Applicant's Goods and Service under its DOMAINE PINNACLE mark is located on the slopes of Pinnacle Mountain.

**RESPONSE:**

Admitted

Respectfully Submitted,

Domaine Pinnacle, Inc.

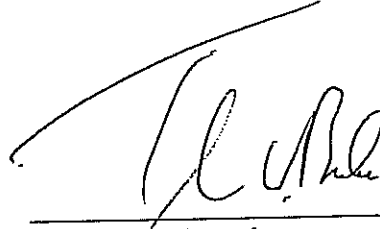
A handwritten signature in black ink, appearing to read 'T. Brooke', written over a horizontal line that extends to the left.

Thomas W. Brooke  
Holland & Knight LLP  
2099 Pennsylvania Avenue, NW, Suite 100  
Washington, D.C. 20006  
202 663-7271

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of APPLICANT'S RESPONSES TO OPPOSER'S FIRST REQUESTS FOR ADMISSION was sent via first class mail to counsel for Opposer at the address listed below on November 28, 2008.

Stephen L. Baker  
Linda Kurth  
Attorneys for Opposer  
575 Route 28, Suite 102  
Raritan, New Jersey 08869



Thomas W. Brooke

# 5846255\_v1

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

FRANCISCAN VINEYARDS, INC.,

Opposition No. 91178682

Opposer,

Mark: DOMAINE PINNACLE

v.

DOMAINE PINNACLE, INC.

Serial No.: 78/783,236

Applicant.

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST REQUEST FOR THE  
PRODUCTION OF DOCUMENTS AND THINGS**

**GENERAL OBJECTIONS**

1. Applicant objects to these document requests to the extent they purport to impose obligations beyond those set forth in the Trademark Rules of Practice.

2. Applicant objects to the extent the document requests seek information protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege. Such information will not be provided.

3. Applicant objects to the extent the document requests are overbroad, vague, indefinite and/or unduly burdensome.

4. Applicant objects to the extent the document requests are not relevant or reasonably calculated to lead to the discovery of admissible evidence.

5. Applicant objects to the extent the document requests seek disclosure of information already in the possession of the Opposer.

6. Applicant objects because discovery is not complete and it is unclear what all the issues are in this litigation.

7. Applicant objects to disclosure of confidential business information as the parties have not yet entered into an agreement over a protective order. Upon execution of a mutually acceptable protective order, such information will be disclosed.

In responding to Opposer's First Set of Document requests, Applicant neither waives the foregoing objections, nor the specific objection set forth in its responses to particular document requests. In making its responses, Applicant does not concede that the information requested is



relevant to this action or is calculated to lead to the discovery of admissible evidence. Applicant expressly reserves the right to object to further discovery into the subject matter of any of these document requests, to the introduction into evidence of any response or portion thereof, and to supplement its responses should further investigation disclose responsive information.

**DOCUMENT REQUEST NO. 1.** Produce all documents and things which were identified, required to be identified, and/or were used to answer the above Opposer's First Set of Interrogatories to Applicant.

Response:

Subject to General Objections 1-7, documents will be produced.

**DOCUMENT REQUEST NO. 2.** Produce copies of all newspaper, magazine, newsletter, internet, trade journal and other articles in Applicant's possession that were distributed in or published in the United States and that mention or refer to Applicant's Mark.

Response:

Documents will be produced.

**DOCUMENT REQUEST NO. 3.** Produce copies of all advertisements and/or promotional materials that Applicant plans to distribute or air in the **United** States concerning Applicant's Goods bearing Applicant's Mark.

Response:

Subject to General Objection 7, documents will be produced.

**DOCUMENT REQUEST NO. 4.** Produce a specimen of (or photocopy or photograph of) each logo, label, packaging or other printed material bearing Applicant's Mark which are used, or are planned to be used, in the United States by or on behalf of Applicant on or in relation to Applicant's Goods.

Response:

Subject to General Objection 7, documents will be produced.

**DOCUMENT REQUEST NO. 5.** Produce all documents concerning any surveys or studies ever conducted by or for Applicant concerning confusion or likelihood of confusion between Applicant, Applicant's Mark, or Applicant's Goods on the one hand, and Opposer, any of Opposer's Goods and/or Services, or Opposer's Mark on the other hand.

Response:

No such documents exist.

**DOCUMENT REQUEST NO. 8.** Produce all trademark or trade name searches, search reports, and/or clearances conducted by or on behalf of Applicant concerning registration or use or intended use of Applicant's Mark in the United States.

Response:

Subject to General Objection No. 2 and to the extent that such documents exist, they will be produced.

**DOCUMENT REQUEST NO. 9.** For each expert whose opinion may be relied upon in this proceeding, produce each document which concerns: (i) any opinions that may be presented at trial; (ii) the reasons for any such opinions; (iii) any data or information considered by the witness in forming the opinions; (iv) any exhibits used in support of or summarizing the opinions; (v) the compensation being paid to the witness, and (vi) any cases which the witness has testified at trial or by deposition.

Response:

No such documents exist.

**DOCUMENT REQUEST NO. 10.** Produce a copy of each business plan and a copy of each marketing plan created at any time that concerns the intended use of Applicant's Mark in the United States.

Response:

Subject to General Objection No. 7, documents will be produced.

**DOCUMENT REQUEST NO. 11.** Produce documents sufficient to identify each (1) wholesaler, (2) distributor, and (3) retailer that has agreed to sell any of Applicant's Goods bearing Applicant's Mark in the United States.

Response:

Subject to General Objection No. 7, documents will be produced.

**DOCUMENT REQUEST NO. 12.** Produce all documents that concern Opposer that were reviewed or discussed by Applicant prior to filing the application in issue in this proceeding.

Response:

Subject to General Objections Nos. 2, 3, 4 and 7 documents will be produced.

**DOCUMENT REQUEST NO. 13.** Produce all Documents concerning the geographic locations in the United States in which Applicant intends to offer for sale and sell products using Applicant's Mark.

Response:

Subject to General Objection No. 7, documents will be produced.

**DOCUMENT REQUEST NO. 14** . Produce all invoices, cancelled checks, or other Documents concerning Applicant's intended sale of products using Applicant's Mark in the United States.

Response:

Subject to General Objections Nos. 3 and 7, documents will be produced.

**DOCUMENT REQUEST NO. 15**. Produce all Documents concerning all communications between Applicant, on the one hand, and any and all of Applicant's manufacturers, suppliers, wholesalers, distributors and/or licensees, on the other hand, concerning products intended to be offered for sale using Applicant's Mark in the United States, including but not limited to, Documents concerning Applicant's purchase of products or materials used in manufacturing, labeling, packaging or distributing such products.

Response:

Subject to General Objections Nos. 3 and 7, documents will be produced.

**DOCUMENT REQUEST NO. 16**. Produce all Documents concerning all communications between Applicant, on the one hand, and any individual or entity, on the other hand, concerning Opposer, Opposer's Marks, and/or Applicant's Mark.

Response:

Subject to General Objections Nos. 2, 3 and 7, documents will be produced.

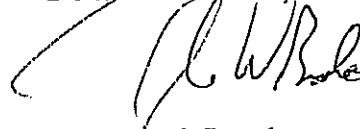
**DOCUMENT REQUEST NO. 17.** Produce all Documents evidencing Applicant's bona-fide intent to use its Mark on Applicant's Goods and Services.

Response:

Subject to General Objections No. 3 and 7, documents will be produced.

Respectfully Submitted,

Domaine Pinnacle, Inc.


A handwritten signature in black ink, appearing to read 'T. W. Brooke', is written over the printed name of the signatory.

Thomas W. Brooke  
Holland & Knight LLP  
2099 Pennsylvania Avenue, NW, Suite 100  
Washington, D.C. 20006  
202 663-7271

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of APPLICANT'S RESPONSES TO OPPOSER'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS AND THINGS was sent via first class mail to counsel for Opposer at the address listed below on November 28, 2008.

Stephen L. Baker  
Linda Kurth  
Attorneys for Opposer  
575 Route 28, Suite 102  
Raritan, New Jersey 08869



---

Thomas W. Brooke

# 5846359\_v1

EXHIBIT C

**BAKER AND RANNELLS, P.A.**  
**INTELLECTUAL PROPERTY ATTORNEYS**

STEPHEN L. BAKER ♦  
JOHN M. RANNELLS ♦  
NEIL B. FRIEDMAN ♦

RYAN A. MCGONIGLE ♦  
LINDA M. KURTH\*  
MOIRA J. SELINKA+

575 ROUTE 28 - SUITE 102  
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TELEPHONE (908) 722-5640  
FACSIMILE (908) 725-7088  
WWW.TMLAWWORLDWIDE.COM

NEW YORK OFFICE  
1350 BROADWAY, 10<sup>TH</sup> FLOOR  
NEW YORK, NY 10018  
TELEPHONE (212) 481-7007  
FACSIMILE (800) 688-8235

ADMITTED TO PRACTICE IN  
♦ NEW YORK & NEW JERSEY  
+ NEW JERSEY  
\* NEW JERSEY & REG. PATENT  
ATTORNEY

*PLEASE RESPOND TO THE NEW JERSEY ADDRESS*  
EMAIL: L.KURTH@BR-TMLAW.COM

December 4 2008

VIA EMAIL and FIRST CLASS MAIL

Thomas W. Brooke  
Holland and Knight, LLP  
2099 Pennsylvania Avenue, NW  
Washington, DC 20006-6801  
Thomas.brooke@hklaw.com

**Re: Franciscan Vineyards, Inc. v. Domaine Pinnacle, Inc.**  
**Opposition No. 91178682**

Dear Mr. Brooke:

We are writing to address deficiencies in Applicant's responses to Opposer's discovery requests.

**REQUESTS FOR ADMISSIONS**

**Request No. 5:** Applicant was asked to admit that goods sold under Opposer's PINNACLES Mark were available at retail stores in the United States at the time Applicant filed its trademark application for Applicant's Mark. Applicant responded that it was without knowledge regarding Opposer's sales and therefore denies.

TBMP § 407.03(b) provides, "An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny."

Please state the nature of the inquiry made.



**Request #7.** Opposer asked Applicant to admit that Applicant's Mark has not acquired secondary meaning or acquired distinctiveness. Applicant has stated that this is a question of law and has refused to respond.

Applicant has a duty to respond. TBMP § 407.03 and Fed. R. Civ. P. 36(a) provides:

A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact...(emphasis added).

Secondary meaning or distinctiveness are terms defined by trademark caselaw. Please supplement this answer or Opposer will ask the Board to have the Request deemed to be admitted.

**Request No. 17:** Applicant was asked to admit that there is an overlap between purchasers and potential purchasers of goods offered under Applicant's Mark and goods offered under Opposer's Marks. Applicant responded that it is without knowledge of Opposer's purchasers and therefore denied.

TBMP § 407.03(b) provides, "An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny."

Please state the nature of the inquiry made and verify your denial.

#### REQUEST FOR PRODUCTION OF DOCUMENTS

In response to every request made by Opposer, namely request numbers 1 - 17, Applicant responded that documents will be produced.

This is completely non-responsive. Applicant must provide its documents by mail per our stipulation. Please provide Applicant's documents, as well as its supplemental answers to requests for admission within 14 days, or Opposer may consider filing a Motion to Compel or for discovery sanctions.

Encl.

Sincerely,



Linda Kurth

Stephen L. Baker  
Baker & Rannels, PA  
Attorneys for Opposer

EXHIBIT D

**Linda Kurth**

---

**From:** Linda Kurth [l.kurth@br-tmlaw.com]  
**Sent:** Friday, December 26, 2008 8:28 AM  
**To:** 'thomas.brooke@hklaw.com'  
**Cc:** 'Kelly Hnasko'; 'Stephen L. Baker'  
**Subject:** Discovery Deficiencies in FVI v. Domaine Pinnacle Opp. no. 91178682  
**Attachments:** Ltr to Brooke 12-4-08.pdf

Dear Mr. Brooke,  
We have had no response to our letter of December 4, 2008, attached, regarding discovery deficiencies. If we do not receive the supplemental responses and documents immediately, for which our discovery requests were initially served on September 24, 2008, we will be forced to file a motion to compel.

Please feel free to call or email us if you would like to discuss the outstanding issues. Thank you.

Linda Kurth  
Baker & Rannells, PA  
(908) 722-5640

---

**From:** Linda Kurth [mailto:l.kurth@br-tmlaw.com]  
**Sent:** Thursday, December 04, 2008 12:33 PM  
**To:** 'thomas.brooke@hklaw.com'  
**Cc:** 's.baker@br-tmlaw.com'; 'Kelly Hnasko'  
**Subject:** FVI v. Domaine Pinnacle Opp. o. 91178682

Dear Mr. Brooke

Attached is our letter regarding discovery. Thank you.

Regards,  
Linda Kurth



Baker & Rannells PA  
575 Route 28, Suite 102  
Raritan, NJ 08869  
Telephone: (908) 722-5640  
Facsimile: (908) 725-7088  
E-mail: [l.kurth@br-tmlaw.com](mailto:l.kurth@br-tmlaw.com)

This email is confidential and may be legally privileged. If you received it in error please notify us immediately. If you are not the intended recipient you should not copy it, disclose its contents to others, or use it for any purpose.

EXHIBIT E

**Linda Kurth**

---

**From:** Linda Kurth [l.kurth@br-tmlaw.com]  
**Sent:** Wednesday, January 14, 2009 9:13 AM  
**To:** 'Thomas.brooke@hklaw.com'  
**Cc:** 'Stephen L. Baker'; 'Kelly Hnasko'  
**Subject:** FVI v. Domaine Pinnacle  
**Attachments:** Ltr to Brooke 12-4-08.pdf

Dear Mr. Brooke

We note that the Board has lifted suspension after denying Opposer's motion to strike Applicant's affirmative defenses. We also note that to date we have had no response to our letter of December 4, 2008 regarding discovery deficiencies (attached again). Most importantly, Applicant has never produced a single page of documentation in response to Opposer's demand for production of documents served on September 24, 2008. We agreed to extend the time you responses were due until the end of November, 2008. However, we still have had no response. The suspension with respect to the motion to strike did not suspend Applicant's obligation to respond to discovery.

As such, if we do not receive supplemental discovery and documents within one week of today, namely January 21, 2009, we will be forced to file a motion to compel. Please call or email if you would like to discuss the outstanding discovery issues.

Regards,  
Linda Kurth



Baker & Rannells PA  
575 Route 28, Suite 102  
Raritan, NJ 08869  
Telephone: (908) 722-5640  
Facsimile: (908) 725-7088  
E-mail: [l.kurth@br-tmlaw.com](mailto:l.kurth@br-tmlaw.com)


This email is confidential and may be legally privileged. If you received it in error please notify us immediately. If you are not the intended recipient you should not copy it, disclose its contents to others, or use it for any purpose.

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing Opposer's Motion to Compel Discovery Without Objections in re: Franciscan Vineyards, Inc. v. Domaine Pinnacle, Inc., Opposition No. 91178682 was served on counsel for Applicant, this 22nd day of January, 2009 by sending same via Email and First Class Mail, postage prepaid, to:

THOMAS W. BROOKE  
HOLLAND & KNIGHT LLP  
2099 PENNSYLVANIA AVENUE, NW  
WASHINGTON, DC 20006-6801  
thomas.brooke@hklaw.com

DATED: January 22, 2009

  
Linda Kurth