

ESTTA Tracking number: **ESTTA270239**

Filing date: **03/05/2009**

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 Extend
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	03/05/2009
Attachments	Motion to Extend Discovery 3-5-09.pdf (9 pages)(160204 bytes)

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

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Fransican 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 EXTEND DISCOVERY FOR 60 DAYS

On February 2, 2009, the Board denied Opposer's Motion to Compel Discovery as being premature. On February 12, 2009, the Board rendered a decision on Opposer's Request for Reconsideration and set the following discovery schedule:

DISCOVERY PERIOD TO CLOSE:	March 24, 2009
Plaintiff's 30-day testimony period to close:	June 22, 2009
Defendant's 30-day testimony period to close:	August 21, 2009
Plaintiff's 15-day rebuttal testimony period to close:	October 5, 2009

On February 19, 2009, Opposer contacted Applicant by email requesting production of outstanding discovery. That same day, attorneys for Opposer emailed Applicant to raise the question of a possible conflict of interest because attorneys for Applicant represent Opposer on other issues. Attorneys for Applicant responded by email that it would do a conflict check. The next day, attorneys for Applicant emailed indicating that they would be withdrawing from representation. On March 3, 2009, Opposer emailed attorneys for Applicant requesting confirmation on its withdrawal in light of the impending close of discovery on March 24. (See

Exhibit A showing print outs of referenced emails). To date, no response has been received and the TTAB website shows no filing reflecting withdrawal by attorneys for Applicant.

There are outstanding discovery requests to which Applicant has not responded. Opposer is uncertain if the attorneys for Applicant still intend to withdraw or not. Further, in the event that the attorneys for Applicant do withdraw based on a possible conflict of interest, Applicant will need time to obtain new representation.

For all these reasons, Opposer requests 60 day extension of the discovery period.

The proposed dates going forward are as follows:

Discovery Closes:	May 25, 2009
Plaintiff's 30-day Testimony Period Ends:	August 21, 2009
Defendant's 30-day Testimony Period Ends:	October 20, 2009
Plaintiff's 15-day Rebuttal Period Ends:	December 4, 2009

Dated: March 5, 2009

Respectfully submitted,

BAKER & RANNELLS

By: 

Stephen L. Baker

Linda Kurth

Attorneys for Opposer

575 Route 28, Suite 102

Raritan, New Jersey 08869

Tel. 908-722-5640

Fax. 908-725-7088

EXHIBIT A

Linda Kurth

From: Linda Kurth [l.kurth@br-tmlaw.com]
Sent: Thursday, February 19, 2009 12:25 PM
To: 'Thomas.brooke@hklaw.com'
Cc: 's.baker@br-tmlaw.com'; 'Kelly Hnasko'; 'Ron.Fondiller@cwine.com'
Subject: DOMAINE PINNACLE

Dear Mr. Brooke,

On February 12, 2009, the Board granted our request for reconsideration of our motion to strike Applicant's affirmative defenses. The proceedings are no longer suspended. As such, we request that Applicant produce responsive discovery documents first requested by Opposer on September 24, 2008. Five months have passed and Applicant has not provided a single page of documentation. Please produce documents by March 5, 2009.

If Applicant does not wish to defend itself against this action, Opposer will agree to Applicant withdrawing its application with prejudice and then Opposer will withdraw its opposition without prejudice.

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

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.

Linda Kurth

From: Linda Kurth [l.kurth@br-tmlaw.com]
Sent: Thursday, February 19, 2009 2:46 PM
To: 'thomas.brooke@hklaw.com'
Cc: 'Ron.Fondiller@cwine.com'; 's.baker@br-tmlaw.com'
Subject: DOMAINE PINNACLE

Dear Tom

If you go to www.cbrands.com and look in the company history you will see that it acquired FVI in June 1999. There is other information regarding FVI's relationship with CWUS on the site.

Linda Kurth

From: thomas.brooke@hklaw.com [mailto:thomas.brooke@hklaw.com]
Sent: Thursday, February 19, 2009 1:35 PM
To: l.kurth@br-tmlaw.com
Cc: Ron.Fondiller@cwine.com; s.baker@br-tmlaw.com
Subject: RE: DOMAINE PINNACLE - Possible Conflict of Interest

Linda.

I ran one a few years ago, when this first came up, but I am pretty sure we only included Franciscan Vineyards/Franciscan Brothers. Please send me the details regarding Constellation Brands, including its address and any other related companies and we will run another one.

When did Constellation Brands acquire Franciscan?

Tom

From: Linda Kurth [mailto:l.kurth@br-tmlaw.com]
Sent: Thursday, February 19, 2009 1:30 PM
To: Brooke, Thomas W (WAS - X77271)
Cc: Ron.Fondiller@cwine.com; s.baker@br-tmlaw.com
Subject: DOMAINE PINNACLE - Possible Conflict of Interest

Dear Mr. Brooke

Our client, Franciscan Vineyards is wholly owned by Constellation Brands U.S. They have informed us that they believe that your firm represents them for many matters and have raised the concern of the possibility of a conflict of interest for your firm to represent the Applicant for the Mark Domaine Pinnacle.

Can you please advise if you have run a conflicts check? Thank you.

Regards,
Linda Kurth

Linda Kurth

Subject: FW: DOMAINE PINNACLE - Possible Conflict of Interest

<michael.newman@hklaw.com>

To <Ron.Fondiller@cwine.com>

02/20/2009 10:42 AM

cc

Subject Re: DOMAINE PINNACLE - Possible Conflict of Interest

I spoke with Tom. We will be withdrawing from representation. I regret any concerns here.

Michael Brill Newman
Office: 415 743 6989
Mobile: 415 871 5663
michael.newman@hklaw.com

Please consider the environment before printing this email.

From: Ron.Fondiller@cwine.com
To: Brooke, Thomas W (WAS - X77271); Newman, Michael B (SFR - X56989)
Cc: l.kurth@br-tmlaw.com ; s.baker@br-tmlaw.com
Sent: Thu Feb 19 13:41:00 2009
Subject: RE: DOMAINE PINNACLE - Possible Conflict of Interest

michael: can you speak with Mr. Brooke about this?

<thomas.brooke@hklaw.com>

02/19/2009 01:37 PM

To <l.kurth@br-tmlaw.com>

cc <Ron.Fondiller@cwine.com>, <s.baker@br-tmlaw.com>

Subject RE: DOMAINE PINNACLE - Possible Conflict of Interest

Linda.

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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

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.

Linda Kurth

From: Linda Kurth [l.kurth@br-tmlaw.com]
Sent: Tuesday, March 03, 2009 2:42 PM
To: 'thomas.brooke@hklaw.com'
Cc: 'Stephen L. Baker'; 'Kelly Hnasko'
Subject: Domaine Pinnacle

Dear Thomas

Can you please confirm that you will be withdrawing from representation in this matter? We do not see on the TTAB website that any such paper has been filed, and discovery closes on March 24. 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

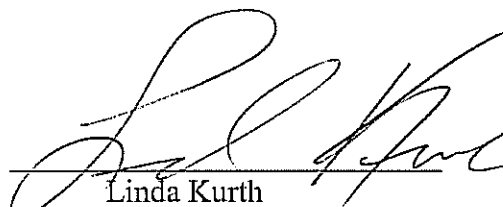
This email is confidential and may be legally privileged. If you received it in error please notify us immediately. If you are not the intended recipient you should not copy it, disclose its contents to others, or use it for any purpose.

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing Opposer's MOTION TO EXTEND DISCOVERY in re: Franciscan Vineyards, Inc. v. Domaine Pinnacle, Inc., Opposition No. 91178682 was served on counsel for Applicant, this 5th day of March, 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@hkclaw.com

DATED: March 5, 2009


Linda Kurth