

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

FSW/rk/vb

Mailed: September 17, 2009

Opposition No. 91178682

Franciscan Vineyards, Inc.

v.

Domaines Pinnacle, Inc.

**Frances S. Wolfson, Interlocutory Attorney:**

On June 9, 2009, the Board allowed applicant time in which to either appoint a new attorney or to state that applicant would represent itself.

Applicant's July 14, 2009 appearance stating that it chooses to represent itself in this proceeding is noted and the Board's records have been updated accordingly.<sup>1</sup>

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<sup>1</sup> Opposer's motion for default judgment (filed July 13, 2009) is noted. In view of the fact that applicant's submission indicating its intent to represent itself is dated July 9, 2009, the Board exercises its discretion to consider it. Opposer's motion for default judgment is thus considered moot. In the future, however, submissions that do not bear proper proof of service may not be considered, see General Guidelines, *infra*, and papers that are not filed in compliance with Trademark Rule 2.194 may not be awarded a filing date as of the date executed. Applicant is encouraged to obtain counsel to assist it in this proceeding.

Proceedings are resumed and discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE: **November 17, 2009**

30-day testimony period for party in position of plaintiff to close: **February 15, 2010**

30-day testimony period for party in position of defendant to close: **April 16, 2010**

15-day rebuttal testimony period for plaintiff to close: **May 31, 2010**

**IN EACH INSTANCE**, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within **thirty days** after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

General Information for Applicant

Applicant should note that although Patent and Trademark Rule 10.14 permits any person to represent itself in a Board proceeding, it is generally advisable for a person unfamiliar with the above-referenced rules to secure the services of an attorney familiar with such matters. The Office cannot aid in the selection of an attorney. If

applicant does not retain counsel, applicant must familiarize itself with the rules governing this proceeding. Strict compliance with all applicable rules and Board practices during the proceeding of an *inter partes* case before the Board is expected of all parties, whether or not represented by counsel.

One rule that applicant must pay particular attention to is **Trademark Rule 2.119**. That rule requires that a party filing any paper with the Board during the course of a proceeding must serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. With the paper that is filed with the Board, the party filing the paper must include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served, (2) the method of service (e.g., first class mail), (3) the person being served and the address used to effect service, and (4) the date of service.

Applicant should note that it is responsible for ensuring that the Board has its current correspondence address. If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be

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entered against the party. See TBMP § 117.07 (2d ed. rev. 2004).

Applicant should note that any paper it is required to file with the Board should not take the form of a letter; proper format should be utilized. The form of submissions is governed by Trademark Rule 2.126. See also TBMP § 106.03 (2d ed. rev. 2004). Also, applicant should note that any paper it is required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 and 2.198 is utilized. These rules are in Part One of Title 37 of the Code of Federal Regulations.

Applicant may access some of the materials referred to above by logging onto <http://www.uspto.gov> and making the connection to trademark materials. The files of this Board proceeding can be examined using TTABVUE, accessible at <http://ttabvue.uspto.gov>. (after entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.)

Finally, the Board's manual of procedure will be helpful. The first revision of the second edition (March 2004) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at [www.uspto.gov/web/offices/dcom/ttab/tbmp/](http://www.uspto.gov/web/offices/dcom/ttab/tbmp/).

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