

ESTTA Tracking number: **ESTTA181382**

Filing date: **12/18/2007**

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

Proceeding	91179505
Party	Plaintiff D'Vine Wine Franchise Systems USA, LLC
Correspondence Address	Jennifer L. Kovalcik; Amy S. Cahill STITES & HARBISON, PLLC 400 West Market Street, Suite 1800 Louisville, KY 40202 UNITED STATES jkovalcik@stites.com, acahill@stites.com
Submission	Motion to Compel Discovery
Filer's Name	Amy S. Cahill
Filer's e-mail	acahill@stites.com
Signature	/Amy S. Cahill/
Date	12/18/2007
Attachments	12182007 Renewed Motion to Compel.pdf (47 pages)(1505257 bytes)

requested item is available or exists, said items will be made available for copying . . . at the offices of [Applicant’s counsel]).”

In response to Opposer’s First Set of Interrogatories, Applicant objects to approximately half of the interrogatories on the basis that each is “irrelevant and not likely to lead to discoverable material.” For the Board’s convenience, Opposer sets forth the particular interrogatories and corresponding objections at issue below.

INTERROGATORY NO. 2

Identify (by name and title) each of Applicant’s supervisory employees responsible for the promotion, sale, and distribution of Applicant’s Services promoted and/or sold under Applicant’s Mark.

RESPONSE:

Objection, irrelevant and not likely to lead to discoverable material.

INTERROGATORY NO. 9

For each service and product identified in Interrogatory No. 5, state, by calendar quarter, the approximate income anticipated and received to date from sales of Applicant’s Services in connection with Applicant’s Mark.

RESPONSE:

Objection, irrelevant and not likely to lead to discoverable material.

INTERROGATORY NO. 10

Identify representative examples of each different promotional document and item used and being considered for use by Applicant in connection with the promotion and sale of Applicant’s Services in connection with Applicant’s Mark.

RESPONSE:

Objection, irrelevant and not likely to lead to discoverable material.

INTERROGATORY NO. 14

Identify (by title, publisher, issue date, page number, media outlet, Internet URL, and any other relevant designation), those printed and electronic publications (including web sites and broadcast media commercials) in which Applicant has promoted or plans to promote Applicant’s Services in connection with Applicant’s Mark.

RESPONSE:

Objection, irrelevant and not likely to lead to discoverable material. Without waiving the same, Applicant has advertised in a variety of Media throughout the years, including, but not limited to, newspapers, magazines, radio, direct mail, etc.

INTERROGATORY NO. 15

Identify (by name, date and location) all marketing venues (such as trade shows or fairs) where Applicant has promoted or plans to promote Applicant’s Services in connection with Applicant’s Mark.

RESPONSE:

Objection, irrelevant and not likely to lead to discoverable material.

INTERROGATORY NO. 16

Identify any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark.

RESPONSE:

Objection, irrelevant and not likely to lead to discoverable material.

INTERROGATORY NO. 17

Identify those persons having the most knowledge of any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark.

RESPONSE:

Objection, irrelevant and not likely to lead to discoverable material.

INTERROGATORY NO. 22

Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Applicant's Services in connection with Applicant's Mark, and the period of time during which each such person or agency has participated.

RESPONSE:

Objection, irrelevant and not likely to lead to discoverable material.

The TBMP provides that responses to interrogatories and requests for production of documents and things must be served within 30 days after the date of service of the request for discovery (if by First Class Mail, five extra days is added for responding to the request). A party that fails to respond to requests for discovery during the time allowed therefor, and that is unable to show that its failure was the result of excusable neglect may be found, upon motion to compel, to have forfeited its rights to object to the discovery requests on their merits. TBMP § 403.03.

Each of the interrogatories listed above is directly relevant to the issues surrounding the use of Applicant's proposed mark in connection with the services of the opposed application for D'VINE A WINE BAR (& Design). Such information is relevant and discoverable in Board opposition proceedings where likelihood of confusion is the grounds for objection to registration. *See J.B. Williams Co. v. Pepsodent G.m.B.H.*, 188 USPQ 577 (TTAB 1975)(identity of any advertising agency engaged by a party to advertise or promote party's involved goods or services is discoverable; names and addresses of party's officers with relevant knowledge are

discoverable); *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ147, 149 (TTAB 1985)(annual sales and advertising figures are relevant to use and likelihood of confusion and are thus discoverable); *Mack Trucks, Inc. v. Monroe Auto Equipment Co.*, 181 USPQ 286 (TTAB 1974)(Representative advertisements for products or services at issue discoverable).

In this case, there is no reason for Applicant's failure to respond to discovery until after a motion to compel was filed, some sixty (60) days after Opposer's discovery was served, and then respond incompletely. Opposer has made efforts to move this case forward by properly serving relevant and concise discovery requests on Applicant on the opening day of discovery. In response, Applicant has failed to respond to the discovery requests in a complete or timely fashion, or to repeated attempts by Opposer's counsel to ascertain the reason for the delay, and has failed to serve counsel for Opposer with a number of filings in the case.²

Without Applicant's discovery responses in hand, Opposer was forced to counsel a noticed Rule 30(b)(6) deposition of Applicant scheduled for Friday, November 30, 2007.

Opposer's counsel contacted Applicant's counsel regarding the deficient responses listed above and did not receive assurances that supplemental responses would be provided by a date certain. Given the discovery is now schedule to close on April 4, 2008, Opposer seeks the Board's intervention. A copy of emails evidencing a good faith effort to resolve this matter are attached as Exhibit D.

² Although Applicant's counsel represents that it requested an extension of time to respond to discovery from counsel for Opposer, when pressed, he could not provide any specifics and was unable to provide counsel for Opposer with any documentation that such an exchange had occurred. See email exchange attached as Exhibit C and Declaration of Amy S. Cahill attached to Opposer's Response to Motion to Compel.

Respectfully submitted,

s/ Amy S. Cahill

Amy S. Cahill

Stites & Harbison PLLC

400 West Market Street, Suite 1800

Louisville, Kentucky 40202

One of Attorneys for Opposer

December 18, 2007

Written Statement of Good Faith Effort

Opposer states that it has made a good faith effort, through its attorney, to resolve with Applicant the issues presented in this motion and has been unable to reach agreement pursuant to Trademark Rule 2.120(e) and TBMP § 523.02.

Certificate of Service

I hereby certify that a true copy of the foregoing OPPOSER'S RENEWED MOTION TO COMPEL DISCOVERY RESPONSES was sent via U.S. first class mail on December 18, 2007 to:

P. Adam Davis, Esquire
DAVIS & SARBINOFF, LLP
9000 Keystone Crossing, Suite 660
Indianapolis, Indiana 46240
Telephone: (317) 569-1296
Facsimile: (317) 569-1293
E-mail: adavis@d-slaw.com

s/ Amy S. Cahill _____

Amy S. Cahill

EXHIBIT A



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

D'VINE WINE FRANCHISE SYSTEMS)
USA, LLC,)
)
Opposer,)
)
v.)
)
D'VINE A WINE BAR, INC.,)
)
Applicant.)
_____)

OPPOSITION NO. 91179505

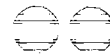
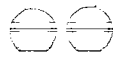
OPPOSER'S FIRST SET OF INTERROGATORIES

Opposer, D'Vine Wine Franchise Systems USA, LLC ("Opposer"), serves the following interrogatories under Rule 33, Fed.R.Civ.P., and Trademark Rules 2.116(a) and 2.120(d)(1), to be answered separately and fully in writing under oath by an officer or agent of Applicant, D'Vine A Wine Bar, Inc. ("Applicant"). Each separately numbered or lettered sub-part of each interrogatory requires a separate answer thereto. Furthermore, these interrogatories shall be deemed to be continuing to the fullest extent permitted by the Rules, and Applicant shall provide Opposer with any supplemental answers and additional information that are requested herein which shall become available to Applicant at a later date.

DEFINITIONS AND INSTRUCTIONS

The following interrogatories and Opposer's accompanying requests are subject to the definitions set forth below:

- A. The term "document" shall be construed in its broadest permissible sense, and shall include any and all means of conveying, storing, or memorializing information, whether in paper or other tangible physical form, or in electronic form, in the possession, custody, or control of



Applicant. Each comment, or addition to, or deletion from, a document shall constitute a separate document.

B. If Applicant refuses to identify and/or produce any document(s) based upon a claim of confidentiality, privilege, or work product immunity, Applicant shall, in log form, (i) identify each document by its author, intended recipient(s), the date of the document, and its general subject matter, and (ii) set forth for each withheld document the particular basis for the refusal of production.

C. As used herein, the term “regarding” means relating or referring to, incorporating, comprising, touching upon, indicating, evidencing, affirming, denying, concerned with, relevant to, or likely to lead to admissible evidence concerning.

D. As used herein, the term “Opposer’s Mark” shall refer to the D’VINE and D’VINE WINE trademarks set forth in Paragraph 2 of the Notice of Opposition. If Applicant’s answer or response applies to less than all of Opposer’s Marks, or if Applicant’s answer or response differs for any mark, Applicant shall state for which mark(s) each answer or response (or portion thereof) is applicable.

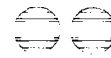
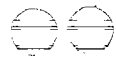
E. As used herein, the term “Applicant’s Mark” shall mean the D’VINE A WINE BAR (& Design) mark of Application Serial No. 78/437,993.

F. As used herein, the phrase “Applicant’s Services” shall refer to services actually and/or intended to be advertised, promoted, and/or sold in connection with Applicant’s Mark.

INTERROGATORIES

INTERROGATORY NO. 1

State the address of each location at which Applicant maintains a place of business for the promotion, sale, and distribution of Applicant’s Services promoted and/or sold under Applicant’s Mark.



INTERROGATORY NO. 2

Identify (by name and title) each of Applicant's supervisory employees responsible for the promotion, sale, and distribution of Applicant's Services promoted and/or sold under Applicant's Mark.

INTERROGATORY NO. 3

State the date Applicant selected Applicant's Mark for use in connection with Applicant's Services.

INTERROGATORY NO. 4

Identify (by name, job title, and relationship to Applicant) the person(s) who first conceived of Applicant's Mark for use by Applicant.

INTERROGATORY NO. 5

Identify, by common commercial descriptive name, each service and related product actually and/or intended to be offered for sale, advertised, and/or promoted by or on behalf of Applicant in connection with Applicant's Mark.

INTERROGATORY NO. 6

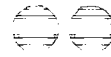
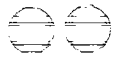
For each service and product identified in Interrogatory No. 5, state the date of first use or anticipated date of first use anywhere, and describe the circumstances surrounding such first use.

INTERROGATORY NO. 7

For each service and product identified in Interrogatory No. 5, state the date of first use or anticipated date of first use in commerce, and describe the circumstances surrounding such first use.

INTERROGATORY NO. 8

For each service and product identified in Interrogatory No. 5, state, by calendar quarter, the dollar volume budgeted and expended by Applicant to promote Applicant's Mark in connection



therewith.

INTERROGATORY NO. 9

For each service and product identified in Interrogatory No. 5, state, by calendar quarter, the approximate income anticipated and received to date from sales of Applicant's Services in connection with Applicant's Mark.

INTERROGATORY NO. 10

Identify representative examples of each different promotional document and item used and being considered for use by Applicant in connection with the promotion and sale of Applicant's Services in connection with Applicant's Mark.

INTERROGATORY NO. 11

Identify all searches of any type conducted by or on behalf of Applicant in connection with its selection, use, or decision to apply for Federal registration of Applicant's Mark.

INTERROGATORY NO. 12

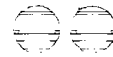
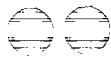
State whether Applicant had knowledge of Opposer's use or registration of any of Opposer's Marks identified in the Notice of Opposition prior to Applicant's selection, first use, or filing for Federal registration of Applicant's Mark.

INTERROGATORY NO. 13

If Applicant had prior knowledge of any of Opposer's Marks identified in the Notice of Opposition prior to Applicant's selection, first use, or filing for Federal registration of Applicant's Mark, state whether Applicant considered the issue of, and/or received any opinions concerning, a likelihood of confusion between Applicant's Mark and any of Opposer's Marks.

INTERROGATORY NO. 14

Identify (by title, publisher, issue date, page number, media outlet, Internet URL, and any



other relevant designation), those printed and electronic publications (including web sites and broadcast media commercials) in which Applicant has promoted or plans to promote Applicant's Services in connection with Applicant's Mark.

INTERROGATORY NO. 15

Identify (by name, date and location) all marketing venues (such as trade shows or fairs) where Applicant has promoted or plans to promote Applicant's Services in connection with Applicant's Mark.

INTERROGATORY NO. 16

Identify any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark.

INTERROGATORY NO. 17

Identify those persons having the most knowledge of any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark.

INTERROGATORY NO. 18

Identify each reported instance of actual confusion, mistake, or deception known to Applicant between Applicant's Services promoted or sold in connection with the Applicant's Mark and the products or services promoted or sold in connection with any of Opposer's Marks.

INTERROGATORY NO. 19

Identify any agreements, including franchise agreements, assignments, licenses, authorizations, permissions, or consents entered into by Applicant regarding Applicant's Mark.

INTERROGATORY NO. 20

Identify the geographical areas of trade within which Applicant's Services are or are intended

to be promoted and/or sold in connection with Applicant's Mark.

INTERROGATORY NO. 21

Identify the types of customers with whom Applicant does business in connection with Applicant's Mark, and the types of ultimate consumers to whom Applicant offers for sale Applicant's Services in connection with Applicant's Mark.

INTERROGATORY NO. 22

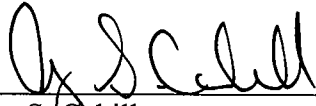
Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Applicant's Services in connection with Applicant's Mark, and the period of time during which each such person or agency has participated.

INTERROGATORY NO. 23

For each expert Applicant has retained to give testimony in this proceeding, provide the information required in Rule 26(a)(2)(B), Fed.R.Civ.P.

INTERROGATORY NO. 24

Identify each person who has supplied documents or information for, or who has participated in responding to, these interrogatories, Opposer's First Request for Production of Documents and Things, and Opposer's First Requests for Admissions.



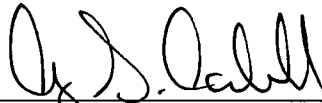
Amy S. Cahill
Jennifer L. Kovalcik
STITES & HARBISON, PLLC
400 West Market Street, Ste. 1800
Louisville, KY 40202
Telephone: (502) 587-3400

Attorneys for Opposer

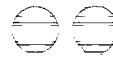
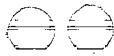
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES** was served on counsel for Applicant, this 8th day of October, 2007, by sending same via First Class Mail, postage prepaid, to:

P. Adam Davis
DAVIS & SARBINOFF, LLP
9000 Keystone Crossing, Ste. 660
Indianapolis, IN 46240



Amy S. Cahill



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

D’VINE WINE FRANCHISE SYSTEMS)
USA, LLC,)
)
Opposer,)
)
v.)
)
D’VINE A WINE BAR, INC.,)
)
Applicant.)

OPPOSITION NO. 91179505

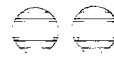
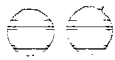
**OPPOSER’S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Opposer, D’Vine Wine Franchise Systems USA, LLC (“Opposer”), hereby requests, pursuant to Rule 34, Fed.R.Civ.P., and Trademark Rules 2.116(a) and 2.120(d)(2), that Applicant, D’Vine A Wine Bar, Inc. (“Applicant”), produce the documents and things listed below for inspection and copying, and that said production be made accompanying Applicant’s service of its responses to this Request upon Opposer at the offices of Stites & Harbison, PLLC, 400 West Market Street, Suite 1800, Louisville, Kentucky 40202.

DEFINITIONS AND INSTRUCTIONS

A. The definitions and instructions contained in Opposer’s First Set of Interrogatories (the “interrogatories”) are incorporated herein by reference.

B. With respect to any document requested below for which a claim of privilege, work product or confidentiality is made, specify (in log form) the nature of the document, identify by name, address, title and business affiliation, the writer, the addressee and all recipients thereof, and set forth the general subject matter to which the document relates, and its date.



C. Applicant shall separately identify the Request by number pursuant to which each document or thing is produced.

D. A written response to this Request is required pursuant to Rule 34, Fed.R.Civ.P.

REQUESTS

1. Produce representative specimens of the current and proposed advertising and promotional documents and electronic media bearing Applicant's Mark used or to be used by or on behalf of Applicant.

2. Produce those documents and things regarding the creation, selection, and adoption of Applicant's Mark by or on behalf of Applicant.

3. Produce those documents regarding any investigation such as a service mark, trademark, trade name, Internet name, or corporate name search concerning Applicant's selection, first use, or decision to apply for Federal registration of Applicant's Mark.

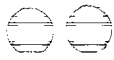
4. Produce those documents and things regarding the earliest use anywhere, and the earliest use in commerce, of Applicant's Mark by or on behalf of Applicant.

5. Produce those documents and things demonstrating the type(s) of products and services in connection with which Applicant's Mark has been used.

6. Produce those documents regarding the geographical areas and channels of trade in which Applicant's Mark has been used.

7. Produce those documents regarding any franchise, assignment, consent, authorization, license or permission between Applicant and any individual(s) or entity(ies) regarding Applicant's mark, including any modifications made thereto.

8. Produce those documents regarding each printed and electronic media publication in which Applicant has advertised or promoted, is advertising or promoting, or plans to advertise or promote its products or services in commerce in connection with Applicant's Mark.



9. Produce those documents regarding the types of customers with whom Applicant does or intends to do business in connection with Applicant's Mark, and the ultimate purchasers to whom Applicant offers or intends to offer products or services bearing Applicant's Mark.

10. Produce those documents regarding the dollar value of actual and/or projected sales of Applicant's Services in connection with Applicant's Mark since the date of first use of the mark.

11. Produce those documents regarding the amount of money expended and/or budgeted to promote Applicant's Services since the date of first use of the mark.

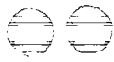
12. Produce those documents regarding the date and circumstances under which Applicant became aware of the use or registration of Opposer's Marks.

13. Produce those documents regarding any action taken by Applicant in response to its awareness of Opposer's Marks.

14. Produce copies of any surveys, market research tests, demographic or consumer profile studies, and focus group inquiries regarding the ultimate purchasers or potential ultimate purchasers of Applicant's Services actually or intended to be sold, offered for sale, advertised or promoted in connection with Applicant's Mark, including the results thereof.

15. Produce copies of any comparison studies, surveys, market research tests, and those documents regarding thereto, including the results thereof, concerning the services advertised, promoted, distributed and sold in commerce in connection with Applicant's Mark and the products or services advertised, promoted, distributed and sold in connection with Opposer's Marks identified in the Notice of Opposition, including, but not limited to, those relating to confusion or likelihood of confusion between Applicant's Services and the products or services advertised, promoted, distributed and sold in connection with Opposer's Marks.

16. Produce those documents regarding any instance in which a person has been



confused, mistaken, or deceived as to the source of Applicant's Services advertised, promoted, offered for sale, or sold in connection with Applicant's Mark, and the source of Opposer's products or services advertised, promoted, offered for sale, or sold in connection with Opposer's Marks.

17. Produce those documents and things forming the basis for the denial, in whole or in part, with respect to each of Applicant's responses to Opposer's First Requests for Admissions.

18. For each expert Applicant intends to call to provide testimony in this proceeding, produce.

a) any written report provided by said expert relating to the subject matter of this proceeding;

b) a complete written statement of all opinions to be expressed by the expert in this proceeding, and the basis and reason therefor;

c) all documents reflecting the data or other information considered by the expert in forming his/her opinions;

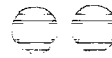
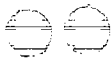
d) all exhibits to be used by the expert as a summary of or support for his/her opinions;

e) those documents stating the qualifications of the expert, such as would be reflected in a resume, *curriculum vitae*, biography, summary or otherwise;

f) a written list of all publications authored by the witness within the last ten years;

g) documents reflecting the compensation to be paid for the expert's preparation time and time taken to provide testimony; and

h) a written list of any other cases in which the witness has testified as an



expert at trial, in an administrative proceeding or by deposition within the past four years.

Respectfully submitted,

Amy S. Cahill
Jennifer L. Kovalcik
STITES & HARBISON, PLLC
400 West Market Street, Ste. 1800
Louisville, KY 40202
Telephone: (502) 587-3400

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS** was served on counsel for Applicant, this 8th day of October, 2007, by sending same via First Class Mail, postage prepaid, to:

P. Adam Davis
DAVIS & SARBINOFF, LLP
9000 Keystone Crossing, Ste. 660
Indianapolis, IN 46240

Amy S. Cahill

EXHIBIT B

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

D'VINE WINE FRANCHISE SYSTEMS)
USA, LLC,)
)
Opposer,)
)
v.)
)
D'VINE A WINE BAR, INC.,)
)
Applicant.)

OPPOSITION NO. 91179505

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

Applicant responds as follows:

INTERROGATORY NO. 1

State the address of each location at which Applicant maintains a place of business for the promotion, sale, and distribution of Applicant's Services promoted and/or sold under Applicant's Mark. 5252 East 82nd, Indianapolis, Indiana 46250.

INTERROGATORY NO. 2

Identify (by name and title) each of Applicant's supervisory employees responsible for the promotion, sale, and distribution of Applicant's Services promoted and/or sold under Applicant's Mark. Objection, irrelevant and not likely to lead to discoverable material.

INTERROGATORY NO. 3

State the date Applicant selected Applicant's Mark for use in connection with Applicant's Services. I believe it was in January of 2004, however, it may have been as early as January of 2003.

INTERROGATORY NO. 4

Identify (by name, job title, and relationship to Applicant) the person(s) who first conceived of Applicant's Mark for use by Applicant. Bennet Ackerman, owner and Brandon Cooper, friend.

INTERROGATORY NO. 5

Identify, by common commercial descriptive name, each service and related product actually and/or intended to be offered for sale, advertised, and/or promoted by or on behalf of Applicant in connection with Applicant's Mark. The sale of wine and other alcohol at a bar which is primarily a wine bar.

INTERROGATORY NO. 6

For each service and product identified in Interrogatory No. 5, state the date of first use or anticipated date of first use anywhere, and describe the circumstances surrounding such first use. The wine bar was opened in May of 2004 and that is when wine was first served.

INTERROGATORY NO. 7

For each service and product identified in Interrogatory No. 5, state the date of first use or anticipated date of first use in commerce, and describe the circumstances surrounding such first use.

See response to interrogatory no. 6.

INTERROGATORY NO. 8

For each service and product identified in Interrogatory No. 5, state, by calendar quarter, the dollar volume budgeted and expended by Applicant to promote Applicant's Mark in connection therewith. Objection, irrelevant and unlikely to lead to discoverable evidence. Without waiving the same, while I am not exactly sure, I believe it was more than \$15,000.00 for our opening and for each quarter thereafter we spend approximately 4% of sales, except recently, as we have relocated and have therefore deviated and applied more towards advertising.

INTERROGATORY NO. 9

For each service and product identified in Interrogatory No. 5, state, by calendar quarter, the approximate income anticipated and received to date from sales of Applicant's Services in connection with Applicant's Mark. Objection, irrelevant and unlikely to lead to discoverable evidence.

INTERROGATORY NO. 10

Identify representative examples of each different promotional document and item used and being considered for use by Applicant in connection with the promotion and sale of Applicant's Services in connection with Applicant's Mark. Objection, irrelevant and unlikely to lead to discoverable evidence.

INTERROGATORY NO. 11

Identify all searches of any type conducted by or on behalf of Applicant in connection with its selection, use, or decision to apply for Federal registration of Applicant's Mark. I am not sure what searches were conducted, as my attorney conducted said searches.

INTERROGATORY NO. 12

State whether Applicant had knowledge of Opposer's use or registration of any of Opposer's Marks identified in the Notice of Opposition prior to Applicant's selection, first use, or filing for Federal registration of Applicant's Mark. We had no knowledge.

INTERROGATORY NO. 13

If Applicant had prior knowledge of any of Opposer's Marks identified in the Notice of Opposition prior to Applicant's selection, first use, or filing for Federal registration of Applicant's Mark, state whether Applicant considered the issue of, and/or received any opinions concerning, a likelihood of confusion between Applicant's Mark and any of Opposer's Marks. We had no knowledge.

INTERROGATORY NO. 14

Identify (by title, publisher, issue date, page number, media outlet, Internet URL, and any other relevant designation), those printed and electronic publications (including web sites and broadcast media commercials) in which Applicant has promoted or plans to promote Applicant's Services in connection with Applicant's Mark. Objection, irrelevant and unlikely to lead to discoverable evidence. Without waiving the same, Applicant has advertised in a variety of Medias throughout the years, including, but not limited to, newspapers, magazines, radio, direct mail, etc.

INTERROGATORY NO. 15

Identify (by name, date and location) all marketing venues (such as trade shows or fairs) where Applicant has promoted or plans to promote Applicant's Services in connection with Applicant's Mark. Objection, irrelevant and unlikely to lead to discoverable evidence.

INTERROGATORY NO. 16

Identify any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark. Objection, irrelevant and unlikely to lead to discoverable evidence.

INTERROGATORY NO. 17

Identify those persons having the most knowledge of any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark. Objection, irrelevant and unlikely to lead to discoverable evidence.

INTERROGATORY NO. 18

Identify each reported instance of actual confusion, mistake, or deception known to Applicant between Applicant's Services promoted or sold in connection with the Applicant's Mark

and the products or services promoted or sold in connection with any of Opposer's Marks. To my knowledge, none. Opposer contacted me several years ago after we had already filed, but that was the only contact regarding Opposer.

INTERROGATORY NO. 19

Identify any agreements, including franchise agreements, assignments, licenses, authorizations, permissions, or consents entered into by Applicant regarding Applicant's Mark. None.

INTERROGATORY NO. 20

Identify the geographical areas of trade within which Applicant's Services are or are intended to be promoted and/or sold in connection with Applicant's Mark. Indianapolis and throughout the United States, England, France and Italy.

INTERROGATORY NO. 21

Identify the types of customers with whom Applicant does business in connection with Applicant's Mark, and the types of ultimate consumers to whom Applicant offers for sale Applicant's Services in connection with Applicant's Mark. Anybody 21 and older that would like to go to a bar that specializes in serving wine as well as other alcoholic beverages and food.

INTERROGATORY NO. 22

Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Applicant's Services in connection with Applicant's Mark, and the period of time during which each such person or agency has participated. Objection, irrelevant and unlikely to lead to discoverable evidence.

INTERROGATORY NO. 23

For each expert Applicant has retained to give testimony in this proceeding, provide the

information required in Rule 26(a)(2)(B), Fed.R.Civ.P. No experts have been identified as of yet.

INTERROGATORY NO. 24

Identify each person who has supplied documents or information for, or who has participated in responding to, these interrogatories, Opposer's First Request for Production of Documents and Things, and Opposer's First Requests for Admissions. Bennet G. Ackerman.

Date: December 4, 2007.

Respectfully Submitted,

s/ P. Adam Davis

P. Adam Davis

DAVIS & SARBINOFF, LLP

9000 Keystone Crossing, Suite 660

Indianapolis, Indiana 46240

Telephone: (317)569-1296

Facsimile: (317)569-1293

E-mail: adavis@d-slaw.com

Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on counsel for Applicant, this
4th day of December, 2007, by sending same via First Class Mail, postage prepaid, to:

Amy S. Cahill
Jennifer L. Kovalcik
STITES & HARBISON, PLLC
400 West Market Street, Ste. 1800
Louisville, KY 40202
Attorneys for Opposer

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

<hr/>)	
D’VINE WINE FRANCHISE SYSTEMS)	
USA, LLC,)	
)	
Opposer,)	
)	
v.)	
)	
D’VINE A WINE BAR, INC.,)	
)	
Applicant.)	
<hr/>)	

OPPOSITION NO. 91179505

**APPLICANT’S RESPONSE TO OPPOSER’S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Applicant responds as follows:

1. Produce representative specimens of the current and proposed advertising and promotional documents and electronic media bearing Applicant’s Mark used or to be used by or on behalf of Applicant. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

2. Produce those documents and things regarding the creation, selection, and adoption of Applicant’s Mark by or on behalf of Applicant. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

3. Produce those documents regarding any investigation such as a service mark, trademark, trade name, Internet name, or corporate name search concerning Applicant's selection, first use, or decision to apply for Federal registration of Applicant's Mark. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

4. Produce those documents and things regarding the earliest use anywhere, and the earliest use in commerce, of Applicant's Mark by or on behalf of Applicant. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

5. Produce those documents and things demonstrating the type(s) of products and services in connection with which Applicant's Mark has been used. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

6. Produce those documents regarding the geographical areas and channels of trade in which Applicant's Mark has been used. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-

569-1200 or via email at adavis@d-slaw.com.

7. Produce those documents regarding any franchise, assignment, consent, authorization, license or permission between Applicant and any individual(s) or entity(ies) regarding Applicant's mark, including any modifications made thereto. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

8. Produce those documents regarding each printed and electronic media publication in which Applicant has advertised or promoted, is advertng or promoting, or plans to advertise or promote its products or services in commerce in connection with Applicant's Mark. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

9. Produce those documents regarding the types of customers with whom Applicant does or intends to do business in connection with Applicant's Mark, and the ultimate purchasers to whom Applicant offers or intends to offer products or services bearing Applicant's Mark. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

10. Produce those documents regarding the dollar value of actual and/or projected

sales of Applicant's Services in connection with Applicant's Mark since the date of first use of the mark. Objection, irrelevant and unlikely to lead to discoverable information.

11. Produce those documents regarding the amount of money expended and/or budgeted to promote Applicant's Services since the date of first use of the mark. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

12. Produce those documents regarding the date and circumstances under which Applicant became aware of the use or registration of Opposer's Marks. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

13. Produce those documents regarding any action taken by Applicant in response to its awareness of Opposer's Marks. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

14. Produce copies of any surveys, market research tests, demographic or consumer profile studies, and focus group inquiries regarding the ultimate purchasers or potential ultimate purchasers of Applicant's Services actually or intended to be sold, offered for sale, advertised or promoted in connection with Applicant's Mark, including the results thereof. To the extent the

requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

15. Produce copies of any comparison studies, surveys, market research tests, and those documents regarding thereto, including the results thereof, concerning the services advertised, promoted, distributed and sold in commerce in connection with Applicant's Mark and the products or services advertised, promoted, distributed and sold in connection with Opposer's Marks identified in the Notice of Opposition, including, but not limited to, those relating to confusion or likelihood of confusion between Applicant's Services and the products or services advertised, promoted, distributed and sold in connection with Opposer's Marks. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

16. Produce those documents regarding any instance in which a person has been confused, mistaken, or deceived as to the source of Applicant's Services advertised, promoted, offered for sale, or sold in connection with Applicant's Mark, and the source of Opposer's products or services advertised, promoted, offered for sale, or sold in connection with Opposer's Marks. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

17. Produce those documents and things forming the basis for the denial, in whole or in part, with respect to each of Applicant's responses to Opposer's First Requests for Admissions. To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

18. For each expert Applicant intends to call to provide testimony in this proceeding, produce.

a) any written report provided by said expert relating to the subject matter of this proceeding;

b) a complete written statement of all opinions to be expressed by the expert in this proceeding, and the basis and reason therefor;

c) all documents reflecting the data or other information considered by the expert in forming his/her opinions;

d) all exhibits to be used by the expert as a summary of or support for his/her opinions;

e) those documents stating the qualifications of the expert, such as would be reflected in a resume, *curriculum vitae*, biography, summary or otherwise;

f) a written list of all publications authored by the witness within the last ten years;

g) documents reflecting the compensation to be paid for the expert's preparation time and time taken to provide testimony; and

h) a written list of any other cases in which the witness has testified as an

expert at trial, in an administrative proceeding or by deposition within the past four years.

To the extent the requested item is available or exists, said items will be made available for copying and or other acceptable method of recreation at the offices of Davis and Sarbinoff, LLP, located at 9000 Keystone Crossing, Suite 660, Indianapolis, Indiana 46240 and arrangements for the same can be made by contacting P. Adam Davis at 317-569-1200 or via email at adavis@d-slaw.com.

Date: December 4, 2007.

Respectfully Submitted,

s/ P. Adam Davis

P. Adam Davis

DAVIS & SARBINOFF, LLP

9000 Keystone Crossing, Suite 660

Indianapolis, Indiana 46240

Telephone: (317)569-1296

Facsimile: (317)569-1293

E-mail: adavis@d-slaw.com

Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on counsel for Applicant,
this 4th day of December, 2007, by sending same First Class Mail, postage prepaid, to:

Amy S. Cahill
Jennifer L. Kovalcik
STITES & HARBISON, PLLC
400 West Market Street, Ste. 1800
Louisville, KY 40202
Attorneys for Opposer

EXHIBIT C

Cahill, Amy

From: P. Adam Davis [adavis@d-slaw.com]
Sent: Wednesday, November 28, 2007 5:23 PM
To: Cahill, Amy
Subject: RE: D'Vine Opposition - Deposition Scheduled Friday CANCELLED

Amy, I have in my calendar that you guys agreed to extend our deadline for answering discovery. We are fully prepared to have all documents available on Friday however that you requested in your deposition notice. I am filing our Answer now. I apologize for the confusion.

P. Adam Davis, Esquire
DAVIS & SARBINOFF, LLP
Business Attorneys and Counsellors at Law
9000 Keystone Crossing, Suite 660
Indianapolis, Indiana 46240
Telephone: (317) 569-1296
Facsimile: (317) 569-1293
E-mail: adavis@d-slaw.com
Website: www.d-slaw.com

ATTENTION:

To ensure compliance with applicable Internal Revenue Service Regulations, we inform you that any tax advice contained in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

This message and all attachments are PRIVATE, and may contain information that is CONFIDENTIAL and PRIVILEGED. If you received this message in error, please notify the sender by reply e-mail and delete the message immediately.

From: Cahill, Amy [mailto:acahill@stites.com]
Sent: Wednesday, November 28, 2007 10:13 AM
To: P. Adam Davis
Cc: Tokar, Melissa
Subject: D'Vine Opposition - Deposition Scheduled Friday CANCELLED
Importance: High

Mr. Davis:

We will cancel the deposition of Applicant's Rule 30(b)(6) representative noticed for this Friday, November 30, in light of your client's failure to provide timely discovery responses. Without the responses to these discovery requests, we would be hampered in our efforts to discover additional relevant information during the deposition.

We will await the Board's decision on our Motion to Compel Discovery and reschedule the deposition accordingly.

Thank you,

Amy Cahill

12/18/2007

Cahill, Amy

From: Cahill, Amy
Sent: Thursday, November 29, 2007 10:00 AM
To: 'P. Adam Davis'
Subject: RE: D'Vine Opposition - Deposition Scheduled Friday CANCELLED

Mr. Davis:

Please forward any communication that suggests that we agreed to extend the date for your discovery responses. I do not recall that this topic was ever discussed. Because we will not have the responses in time to prepare for the deposition on Friday, we will reschedule the deposition.

Amy

From: P. Adam Davis [mailto:adavis@d-slaw.com]
Sent: Wednesday, November 28, 2007 5:23 PM
To: Cahill, Amy
Subject: RE: D'Vine Opposition - Deposition Scheduled Friday CANCELLED

Amy, I have in my calendar that you guys agreed to extend our deadline for answering discovery. We are fully prepared to have all documents available on Friday however that you requested in your deposition notice. I am filing our Answer now. I apologize for the confusion.

P. Adam Davis, Esquire
DAVIS & SARBINOFF, LLP
Business Attorneys and Counsellors at Law
9000 Keystone Crossing, Suite 660
Indianapolis, Indiana 46240
Telephone: (317) 569-1296
Facsimile: (317) 569-1293
E-mail: adavis@d-slaw.com
Website: www.d-slaw.com

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From: Cahill, Amy [mailto:acahill@stites.com]
Sent: Wednesday, November 28, 2007 10:13 AM
To: P. Adam Davis
Cc: Tokar, Melissa
Subject: D'Vine Opposition - Deposition Scheduled Friday CANCELLED
Importance: High

12/18/2007

EXHIBIT D

Cahill, Amy

From: Cahill, Amy
Sent: Monday, December 17, 2007 1:10 PM
To: 'P. Adam Davis'
Subject: D'Vine Opposition

Mr. Davis:

I am contacting you about certain deficiencies in your client's discovery responses and to request that you provide supplemental responses.

As an initial matter, it is our position that because the responses were served late, grounds for objection were forfeited. Therefore, all of the objections asserted in response to Opposer's First Set of Interrogatories and Opposer's First Request for Production of Documents are invalidly asserted. TBMP 403.03.

Second, you fail to identify or to produce any documents in response to Opposer's First Request for Production of Documents.

Third, even assuming that Applicant could properly maintain objections to Opposer's discovery requests, your objections to the following interrogatories are not well taken, as each of these interrogatories are directed to relevant discoverable information:

Int. 2 – The names of Applicant's employees responsible for promotion, sale and distribution of Applicant's services in connection with the opposed mark.

Int. 9 - The approximate income anticipated and received to date from sales of Applicant's Services in connection with Applicant's Mark.

Int. 10 - Representative examples of promotional documents used in connection with promotion and sale of Applicant's Services in connection with Applicant's Mark.

Int. 14 - The identification of printed and electronic publications in which Applicant has promoted or plans to promote Applicant's Services in connection with Applicant's Mark.

Int. 15 - Marketing venues (such as trade shows or fairs) where Applicant has promoted or plans to promote Applicant's Services in connection with Applicant's Mark.

Int. 16 - Market research conducted by Applicant regarding Applicant's Mark.

Int. 17 - The identity of those persons having knowledge of any market research.

Int. 22 - Persons or agencies that have created or distributed advertisements or promotions on behalf of Applicant.

Should your client be concerned about the disclosure of confidential information (which was not given as a basis for objection), Board rules provide for the entry of a Stipulated Protective Order that I would be happy to prepare.

12/18/2007

Please advise when Applicant will supplement these deficient responses.

Thank you,

Amy Cahill

Amy Sullivan Cahill, Esq.
Stites & Harbison PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202
502-587-3400
502-681-0597 Direct Dial
502-779-9805 Direct Fax
acahill@stites.com
www.stites.com

Cahill, Amy

From: P. Adam Davis [adavis@d-slaw.com]
Sent: Monday, December 17, 2007 1:15 PM
To: Cahill, Amy
Subject: RE: D'Vine Opposition

If you do not believe the objections raised were proper, please state the reasons why being sure to provide the facts and rules which support your reasoning specifically.

Secondly, you are absolutely incorrect with regard to our response dates. I am not going to address this matter any further unless it becomes an issue. I will take the deposition of you and every person in your office if need be.

Prepare a protective order because if I am convinced or compelled to provide different responses, they will need to be protected.

P. Adam Davis, Esquire
DAVIS & SARBINOFF, LLP
Business Attorneys and Counsellors at Law
9000 Keystone Crossing, Suite 660
Indianapolis, Indiana 46240
Telephone: (317) 569-1296
Facsimile: (317) 569-1293
E-mail: adavis@d-slaw.com
Website: www.d-slaw.com

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From: Cahill, Amy [mailto:acahill@stites.com]
Sent: Monday, December 17, 2007 1:10 PM
To: P. Adam Davis
Subject: D'Vine Opposition

Mr. Davis:

I am contacting you about certain deficiencies in your client's discovery responses and to request that you provide supplemental responses.

As an initial matter, it is our position that because the responses were served late, grounds for objection were forfeited. Therefore, all of the objections asserted in response to Opposer's First Set of Interrogatories and Opposer's First Request for Production of Documents are invalidly asserted. TBMP 403.03.

12/18/2007

Second, you fail to identify or to produce any documents in response to Opposer's First Request for Production of Documents.

Third, even assuming that Applicant could properly maintain objections to Opposer's discovery requests, your objections to the following interrogatories are not well taken, as each of these interrogatories are directed to relevant discoverable information:

Int. 2 – The names of Applicant's employees responsible for promotion, sale and distribution of Applicant's services in connection with the opposed mark.

Int. 9 - The approximate income anticipated and received to date from sales of Applicant's Services in connection with Applicant's Mark.

Int. 10 - Representative examples of promotional documents used in connection with promotion and sale of Applicant's Services in connection with Applicant's Mark.

Int. 14 - The identification of printed and electronic publications in which Applicant has promoted or plans to promote Applicant's Services in connection with Applicant's Mark.

Int. 15 - Marketing venues (such as trade shows or fairs) where Applicant has promoted or plans to promote Applicant's Services in connection with Applicant's Mark.

Int. 16 - Market research conducted by Applicant regarding Applicant's Mark.

Int. 17 - The identity of those persons having knowledge of any market research.

Int. 22 - Persons or agencies that have created or distributed advertisements or promotions on behalf of Applicant.

Should your client be concerned about the disclosure of confidential information (which was not given as a basis for objection), Board rules provide for the entry of a Stipulated Protective Order that I would be happy to prepare.

Please advise when Applicant will supplement these deficient responses.

Thank you,

Amy Cahill

Amy Sullivan Cahill, Esq.
Stites & Harbison PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202
502-587-3400
502-681-0597 Direct Dial
502-779-9805 Direct Fax
acahill@stites.com
www.stites.com

12/18/2007

Cahill, Amy

From: Cahill, Amy
Sent: Monday, December 17, 2007 1:56 PM
To: 'P. Adam Davis'
Subject: RE: D'Vine Opposition

Mr. Davis:

Each of the interrogatories listed below is directly relevant to the issues surrounding the use of Applicant's proposed mark in connection with the services of the opposed Application. Such information is relevant and discoverable in Board opposition proceeding where likelihood of confusion is the grounds for objection. These topics are covered in the TBMP and in the following cases. *See J.B. Williams Co. v. Pepsodent G.m.B.H.*, 188 USPQ 577 (TTAB 1975)(identity of any advertising agency engaged by a party to advertise or promote party's involved goods or services is discoverable; names and addresses of party's officers with relevant knowledge are discoverable); *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ147, 149 (TTAB 1985)(annual sales and advertising figures are relevant to use of likelihood of confusion and are thus discoverable); *Mack Trucks, Inc. v. Monroe Auto Equipment Co.*, 181 USPQ 286 (TTAB 1974)(Representative advertisements of products or services at issue discoverable).

Amy Cahill

From: P. Adam Davis [mailto:adavis@d-slaw.com]
Sent: Monday, December 17, 2007 1:15 PM
To: Cahill, Amy
Subject: RE: D'Vine Opposition

If you do not believe the objections raised were proper, please state the reasons why being sure to provide the facts and rules which support you reasoning specifically.

Secondly, you are absolutely incorrect with regard to our response dates. I am not going to address this matter any further unless it becomes an issue. I will take the deposition of you and every person in your office if need be.

Prepare a protective order because if I am convinced or compelled to provide different responses, they will need to be protected.

P. Adam Davis, Esquire
DAVIS & SARBINOFF, LLP
Business Attorneys and Counsellors at Law
9000 Keystone Crossing, Suite 660
Indianapolis, Indiana 46240
Telephone: (317) 569-1296
Facsimile: (317) 569-1293
E-mail: adavis@d-slaw.com
Website: www.d-slaw.com

ATTENTION:

To ensure compliance with applicable Internal Revenue Service Regulations, we inform you that any

12/18/2007

Cahill, Amy

From: P. Adam Davis [adavis@d-slaw.com]
Sent: Monday, December 17, 2007 1:58 PM
To: Cahill, Amy
Subject: RE: D'Vine Opposition

Fair enough, let me review these issues and will get back to you.

P. Adam Davis, Esquire
DAVIS & SARBINOFF, LLP
Business Attorneys and Counsellors at Law
9000 Keystone Crossing, Suite 660
Indianapolis, Indiana 46240
Telephone: (317) 569-1296
Facsimile: (317) 569-1293
E-mail: adavis@d-slaw.com
Website: www.d-slaw.com

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From: Cahill, Amy [mailto:acahill@stites.com]
Sent: Monday, December 17, 2007 1:56 PM
To: P. Adam Davis
Subject: RE: D'Vine Opposition

Mr. Davis:

Each of the interrogatories listed below is directly relevant to the issues surrounding the use of Applicant's proposed mark in connection with the services of the opposed Application. Such information is relevant and discoverable in Board opposition proceeding where likelihood of confusion is the grounds for objection. These topics are covered in the TBMP and in the following cases. *See J.B. Williams Co. v. Pepsodent G.m.B.H.*, 188 USPQ 577 (TTAB 1975)(identity of any advertising agency engaged by a party to advertise or promote party's involved goods or services is discoverable; names and addresses of party's officers with relevant knowledge are discoverable); *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ147, 149 (TTAB 1985)(annual sales and advertising figures are relevant to use of likelihood of confusion and are thus discoverable); *Mack Trucks, Inc. v. Monroe Auto Equipment Co.*, 181 USPQ 286 (TTAB 1974)(Representative advertisements of products or services at issue discoverable).

Amy Cahill

12/18/2007

Cahill, Amy

From: Cahill, Amy
Sent: Tuesday, December 18, 2007 11:55 AM
To: 'P. Adam Davis'
Subject: RE: D'Vine Opposition

Mr. Davis:

Given the delay in obtaining proper discovery thus far, we have no choice but to move forward with a renewed motion to compel. Should you address the deficiencies set forth in the interim, I will move to withdraw the renewed motion to compel.

Thank you,

Amy

From: P. Adam Davis [mailto:adavis@d-slaw.com]
Sent: Monday, December 17, 2007 1:58 PM
To: Cahill, Amy
Subject: RE: D'Vine Opposition

Fair enough, let me review these issues and will get back to you.

P. Adam Davis, Esquire
DAVIS & SARBINOFF, LLP
Business Attorneys and Counsellors at Law
9000 Keystone Crossing, Suite 660
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From: Cahill, Amy [mailto:acahill@stites.com]
Sent: Monday, December 17, 2007 1:56 PM
To: P. Adam Davis
Subject: RE: D'Vine Opposition

Mr. Davis:

12/18/2007