

ESTTA Tracking number: **ESTTA356971**

Filing date: **07/08/2010**

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

Proceeding	91190642
Party	Plaintiff Constellation Wines U.S., Inc.
Correspondence Address	STEPHEN L. BAKER BAKER AND RANNELLS, P.A. 575 ROUTE 28, SUITE 102 RARITAN, NJ 08869 UNITED STATES officeactions@br-tmlaw.com, k.hnasko@br-tmlaw.com, m.selinka@br-tmlaw.com
Submission	Other Motions/Papers
Filer's Name	Linda Kurth
Filer's e-mail	l.kurth@br-tmlaw.com,k.hnasko@br-tmlaw.com
Signature	/Linda Kurth/
Date	07/08/2010
Attachments	Motion to attend deps by telephone.pdf ( 54 pages )(983036 bytes )

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

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CONSTELLATION WINES U.S., INC.

Opposition No. 91190642

Opposer,

Mark: PAINTED HORSE & Design

v.

Serial No. 77/630,676

ASV WINES, INC.

Applicant.

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**OPPOSER'S MOTION FOR LEAVE TO PARTICIPATE IN DISCOVERY  
DEPOSITIONS BY TELEPHONE**

Opposer, Constellation Wines U.S., Inc. ("Opposer"), respectfully moves the Board for leave to participate in depositions noticed by Application by telephone.

On July 2, 2010, Applicant sent by U.S. Mail discovery depositions notices for various third party witnesses and party witnesses to the attorneys for Opposer (See Exhibit A for copies of all notices of deposition). Opposer received the notices on July 7, 2010. Following is a summary of Applicant's proposed schedule:

1. Kenneth Volk – July 14, 2010 in San Luis Obispo, California– 3<sup>rd</sup> party predecessor in interest to Opposer
2. Ken Minami – July 16, 2010 in Raritan, New Jersey – general counsel to Opposer
3. Christine Lilienthal - July 20, 2010 in San Rafael, California
4. Shayne Kline - July 21, 2010 in San Luis Obispo, California
5. Jeremy Philips July 21, 2010 in San Luis Obispo, California
6. Peak Wines International, Inc. (no individual designated July 22 in San Rafael, California

After receipt of the notices of deposition, on July 7, 2010, attorneys for Opposer emailed attorneys for Applicant informing them that Opposer's attorneys of record in this matter for Opposer were out of the office attending to another litigation. In a follow up telephone conference, Attorneys for Opposer requested, based on the short timing of the first deposition, namely July 14, only one week from receipt of the notices, that Applicant consent to Opposer's participation by telephone. Attorneys for Applicant would not consent.

Instead, Applicant's Attorney stated that she would only consider such a proposition if Opposer consented to extend discovery. Discovery is set to close on July 26, 2010, and Opposer is reluctant to extend this matter which has been pending for over a year. As a result, Opposer was forced to file the instant motion.

TPMB § 404.06 provides in part, "On stipulation of the parties, or on motion granted by the Board, a deposition may be taken or attended by telephone." See Fed. R. Civ. P. 30(b)(7), and *Hewlett-Packard Co. v. Healthcare Personnel Inc.*, 21 USPQ2d 1552, 1553 (TTAB 1991) (leave to take telephonic depositions should be liberally granted in appropriate cases current federal practice favors use of technological benefits).

Therefore, Opposer respectfully requests that its Motion for Leave to Participate in Discovery Depositions by Telephone be granted.

Dated: July 8, 2010

BAKER AND RANNELLS, PA

By: /s/Linda Kurth  
Stephen L. Baker  
Moirra J. Selinka  
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 complete copy of Opposer's **MOTION FOR LEAVE TO PARTICIPATE IN DISCOVERY DEPOSITIONS BY TELEPHONE** in re: Opposition No. 91190642 was forwarded by email on this 8th day of July, 2010 to the attorneys for the Applicant at the following address:

Anne Hiaring Hocking, Esq.  
Anne Hiaring Hocking [Anne@Hiaringsmith.com]

    /s/Linda Kurth  
Linda Kurth

EXHIBIT A

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

July 17

In The Matter Of Application Serial No. 77/630,676  
Mark: PAINTED HORSE & Cave Design  
Publication Date: April 14, 2009

CONSTELLATION WINES U.S., Inc.,

Opposer,

v.

ASV WINES, INC.,

Applicant.

OPPOSITION NO. 91190642

APPLICANT ASV WINES, INC.'S  
NOTICE OF DEPOSITION  
SUBPOENA TO KENNETH Q.  
VOLK, III

APPLICANT ASV WINES INC.'S NOTICE OF DEPOSITION SUBPOENA TO  
KENNETH Q. VOLK, III

PLEASE TAKE NOTICE THAT pursuant to Rule 45 of the Federal Rules of Civil Procedure and 2.116 and 2.120 of the Trademark Rules of Practice, Applicant ASV Wines, Inc. ("Applicant or ASV"), through its attorneys Haring + Smith, LLP, will issue a subpoena to Kenneth Q. Volk, III to testify at a deposition before a notary public, deposition officer, or other such person authorized to administer oaths, and will be recorded by audio, video and stenographic means, and produce documents listed in Attachment A to the Subpoena attached as Exhibit A on July 14, 2010 at 3:00 p.m. at McDaniel Reporting, 1302 Osos Street, San Luis Obispo, California 93401. If the

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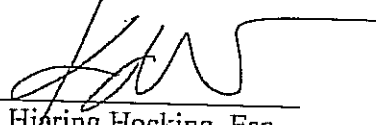
deposition is not completed on the date set, the taking of the deposition will be continued from day to day thereafter, weekend and holidays excepted, until completed.

Date:

7/2/10

By:

HIARING + SMITH, LLP

  
Anne Haring Hocking, Esq.  
Carol L. Smith, Esq.  
Vijay K. Toke, Esq.  
Kristin Newman de la Vega, Esq.  
101 Lucas Valley Road, Suite 300  
San Rafael, CA 94903  
Tel: (415) 457-2040  
Fax: (415) 457-2822  
Email: [info@haring-smith.com](mailto:info@haring-smith.com)

Attorneys for Applicant

CERTIFICATE OF SERVICE BY MAIL


This is to certify that one copy of the foregoing **APPLICANT'S NOTICE OF DEPOSITION SUBPOENA TO KENNETH Q. VOLK, III** was mailed by first class mail, postage prepaid, to Opposer's Counsel:

Stephen L. Baker  
Moira J. Selinka  
BAKER and RANNELLS, PA  
575 Route 28, Suite 102  
Raritan, New Jersey 08869

Tel: (908) 722-5640  
Fax: (908) 725-7088

Attorneys for Opposer

Dated: 7/2/10

Signed:   
Kristin N. de la Vega



UNITED STATES DISTRICT COURT
for the
Central District of California

CONSTELLATION WINES, U.S., INC.
Plaintiff
v.
ASV WINES, INC.
Defendant
Civil Action No. Opposition No. 91190642
U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
(If the action is pending in another district, state where:
(see above)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: KENNETH Q. VOLK, III, 281 BROAD STREET, SAN LUIS OBISPO, CA, 93405-2303

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: McDaniel Reporting, 1302 Osos Street, San Luis Obispo, CA 93401
Date and Time: 07/14/2010 3:00 pm

The deposition will be recorded by this method: CERTIFIED COURT REPORTER & VIDEO

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

SEE ATTACHMENT A

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 7/2/10
CLERK OF COURT

OR
[Signature]
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) ASV Wines, Inc.

, who issues or requests this subpoena, are:
Anne Haring Hocking, Esq., Vijay K. Toke, Esq., Kristin Newman de la Vega, Esq., Haring + Smith, LLP, 101 Lucas Valley Road, Suite 300, San Rafael, CA 94903
t: (415) 457-2040 / e: info@haringlaw.com

Civil Action No. Opposition No. 91190642

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* Kenneth Q. Volk, III  
was received by me on *(date)* \_\_\_\_\_

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## ATTACHMENT A

1. All documents that relate to, mention, concern, record, evidence, or refer to the date of first use and sale of wine under the WILD HORSE wine brand.
2. All documents that relate to, mention, concern, record, evidence, or refer to the continuous use and sales of wine under the WILD HORSE wine brand from 1981 to 2003.
3. Acquisition by Peak Wines International, Inc. of Santa Lucia Winery, Inc., including the WILD HORSE wine brand, in or around 2003.
4. All advertising, marketing, and promotional documents that relate to, mention, concern, or refer to the WILD HORSE wine brand from 1981 to 2003.
5. All documents that refer to, mention, concern, evidence, or relate to third party use of horse designs or the word "HORSE" for wine other than the WILD HORSE wine brand from 1981 to 2003.
6. All documents that refer to, mention, concern, or relate to the enforcement of the WILD HORSE wine brand from 1981 to 2003.
7. All documents that refer to, mention, concerning or relate to the defense of the WILD HORSE wine brand from 1981 to 2003.
8. All documents, including without limitation purchase orders, order forms, and price lists, that refer to, mention, concern, or relate to the manner by which consumers, including, but not limited to, retailers and wholesale distributors, purchased or ordered or referred to WILD HORSE wines from 1981 to 2003.

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

In The Matter Of Application Serial No. 77/630,676  
Mark: PAINTED HORSE & Cave Design  
Publication Date: April 14, 2009

July 16

CONSTELLATION WINES U.S., Inc.,	OPPOSITION NO. 91190642
Opposer,	APPLICANT ASV WINES, INC.'S
v.	NOTICE OF DEPOSITION OF
ASV WINES, INC.,	<u>KEN MINAMI</u>
Applicant.	

**APPLICANT ASV WINES INC.'S NOTICE OF DEPOSITION**

PLEASE TAKE NOTICE THAT pursuant to Rules 26, 30 and 34 of the Federal Rules of Civil Procedure and 2.120 of the Trademark Rules of Practice, Applicant ASV Wines, Inc. ("Applicant or ASV"), through its attorneys Haring + Smith, LLP, will take the deposition on oral examination of the following individual before a notary public, deposition officer, or other such person authorized to administer oaths, and will be recorded by audio, video and stenographic means, on the date, time and location set below or at some other mutually agreeable date, time, and location. If the deposition is not completed on the date set below, the taking of the deposition will be continued from day to day thereafter, weekend and holidays excepted, until completed. The party deponent identified below is further required to produce documents and tangible things as described on Attachment A at his or her deposition.

Name: Ken Minami  
Date: July 16, 2010  
Time: 9:00 a.m.  
Location: Baker and Rannells, PA, 575 Route 28, Suite 102, Raritan,  
New Jersey 08869

HIARING + SMITH, LLP

Date: 7/16/10

By: 

Anne Haring Hocking, Esq.  
Carol L. Smith, Esq.  
Vijay K. Toke, Esq.  
Kristin Newman de la Vega, Esq.  
101 Lucas Valley Road, Suite 300  
San Rafael, CA 94903  
Tel: (415) 457-2040  
Fax: (415) 457-2822  
Email: [info@hiaringsmith.com](mailto:info@hiaringsmith.com)

Attorneys for Applicant

CERTIFICATE OF SERVICE BY MAIL

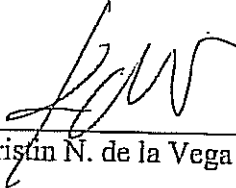
This is to certify that one copy of the foregoing **APPLICANT'S NOTICE OF DEPOSITION OF KEN MINAMI** was mailed by first class mail, postage prepaid, to Opposer's Counsel:

Stephen L. Baker  
Maira J. Selinka  
BAKER and RANNELLS, PA  
575 Route 28, Suite 102  
Raritan, New Jersey 08869

Tel: (908) 722-5640  
Fax: (908) 725-7088

Attorneys for Opposer

Dated: 7/1/10

Signed:   
\_\_\_\_\_

Kristin N. de la Vega

## ATTACHMENT A

1. All documents that refer to, mention, concern, evidence, or relate to the date of first use of Opposer's Marks.
2. All documents that refer to, mention, concern, evidence, or relate to the continuous use of Opposer's Marks from 1981 to present.
3. All documents that refer to, mention, concern, evidence, or relate to the advertising, marketing, and promotion of the WILD HORSE wine brand.
4. All documents that refer to, mention, concern, evidence, or relate to any confusion between Opposer's WILD HORSE wine brand and Applicant's PAINTED HORSE wine brand.
5. All documents, including without limitation purchase orders, order forms, price lists, that refer to, mention, concern, or relate to the manner by which consumers, including, but not limited to, retailers and wholesale distributors, purchase or order each of Opposer's WILD HORSE wines.
6. All documents that refer to, mention, concern, evidence, or relate to third party use of horse designs or the word "HORSE" for wine other than the WILD HORSE wine brand from 1981 to present.
7. All documents that refer to, mention, concern, or relate to enforcement of any of Opposer's rights, or any predecessor owner's rights, including Santa Lucia Winery, Inc. and Peak Wines International, Inc., in and to the WILD HORSE wine brand, including but not limited to Cancellation No. 92049187 brought by Opposer before the United States Patent and Trademark Office's Trademark Trial and Appeal Board.



8. All documents that refer to, mention, concern, or relate to the defense of any of Opposer's rights, or any predecessor owner's rights, including Santa Lucia Winery, Inc. and Peak Wines International, Inc., in and to the WILD HORSE wine brand, including but not limited to Opposition Nos. 91075634 and 91075682 brought by White Horse Distillers before the United States Patent and Trademark Office's Trademark Trial and Appeal Board.

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

July 20

In The Matter Of Application Serial No. 77/630,676  
Mark: PAINTED HORSE & Cave Design  
Publication Date: April 14, 2009

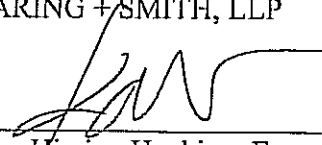
CONSTELLATION WINES U.S., Inc.,	OPPOSITION NO. 91190642
Opposer,	APPLICANT ASV WINES, INC.'S
v.	NOTICE OF DEPOSITION
ASV WINES, INC.,	SUBPOENA TO CHRISTINE
Applicant.	LILIENTHAL

**APPLICANT ASV WINES INC.'S NOTICE OF DEPOSITION SUBPOENA TO  
CHRISTINE LILIENTHAL**

PLEASE TAKE NOTICE THAT pursuant to Rule 45 of the Federal Rules of Civil Procedure and 2.116 and 2.120 of the Trademark Rules of Practice, Applicant ASV Wines, Inc. ("Applicant or ASV"), through its attorneys Hiaring + Smith, LLP, will issue a subpoena to Christine Lilienthal to testify at a deposition before a notary public, deposition officer, or other such person authorized to administer oaths, and will be recorded by audio, video and stenographic means, and produce documents listed in Attachment A to the Subpoena attached as Exhibit A, on July 20, 2010 at 10:00 a.m. at the offices of Hiaring + Smith, LLP, 101 Lucas Valley Road, Suite 300, San Rafael, California 94903. If the deposition is not completed on the date set, the taking of the

deposition will be continued from day to day thereafter, weekend and holidays excepted,  
until completed.

Date: 7/2/10

HIARING + SMITH, LLP  
By:   
Anne Haring Hocking, Esq.  
Carol L. Smith, Esq.  
Vijay K. Toke, Esq.  
Kristin Newman de la Vega, Esq.  
101 Lucas Valley Road, Suite 300  
San Rafael, CA 94903  
Tel: (415) 457-2040  
Fax: (415) 457-2822  
Email: [info@haring-smith.com](mailto:info@haring-smith.com)

Attorneys for Applicant

CERTIFICATE OF SERVICE BY MAIL

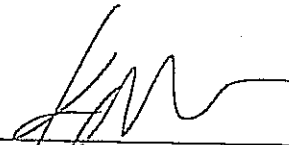
This is to certify that one copy of the foregoing **APPLICANT'S NOTICE OF DEPOSITION SUBPOENA TO CHRISTINE LILIENTHAL** was mailed by first class mail, postage prepaid, to Opposer's Counsel:

Stephen L. Baker  
Moira J. Selinka  
BAKER and RANNELLS, PA  
575 Route 28, Suite 102  
Raritan, New Jersey 08869

Tel: (908) 722-5640  
Fax: (908) 725-7088

Attorneys for Opposer

Dated: 7/2/10

Signed: 

Kristin N. de la Vega

UNITED STATES DISTRICT COURT

for the

Northern District of California

CONSTELLATION WINES, U.S., INC.

Plaintiff

v.

ASV WINES, INC.

Defendant

Civil Action No. Opposition No. 91190642
U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
(If the action is pending in another district, state where:
(see above)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: CHRISTINE LILIENTHAL, 6750 JEFFERSON STREET, YOUNTVILLE, CA, 94599-1228

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Haring + Smith, LLP, 101 Lucas Valley Road, Suite 300, San Rafael, CA 94903

Date and Time:

07/20/2010 10:00 am

The deposition will be recorded by this method: CERTIFIED COURT REPORTER & VIDEO

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

SEE ATTACHMENT A

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 7/2/10

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) ASV Wines, inc.

Anne Haring Hocking, Esq., Vijay K. Toke, Esq., Kristin Newman de la Vega, Esq., Haring + Smith, LLP, 101 Lucas Valley Road, Suite 300, San Rafael, CA 94903
t: (415) 457-2040 / e: info@haringlaw.com

Civil Action No. Opposition No. 91190642

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* CHRISTINE LILIENTHAL  
was received by me on *(date)* \_\_\_\_\_

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## ATTACHMENT A

1. All advertising, marketing, and promotional documents, that refer to, mention, concern, or relate to the WILD HORSE wine brand.
2. All documents that refer to, mention, concern, evidence, or relate to third party use of horse designs or the word "HORSE" for wine other than the WILD HORSE wine brand.
3. All documents that refer to, mention, concern, evidence, or relate to any confusion between the WILD HORSE wine brand and the PAINTED HORSE wine brand.
4. All documents, including without limitation purchase orders, order forms, and price lists, that refer to, mention, concern, or relate to the manner by which consumers, including, but not limited to, retailers and wholesale distributors, purchase, or order, or refer to each of Opposer's WILD HORSE wines.



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

In The Matter Of Application Serial No. 77/630,676  
Mark: PAINTED HORSE & Cave Design  
Publication Date: April 14, 2009

July 20

CONSTELLATION WINES U.S., Inc.,	OPPOSITION NO. 91190642
Opposer,	APPLICANT ASV WINES, INC.'S
v.	NOTICE OF DEPOSITION OF
ASV WINES, INC.,	<u>CHRISTINE LILIENTHAL</u>
Applicant.	

**APPLICANT ASV WINES INC.'S NOTICE OF DEPOSITION**

PLEASE TAKE NOTICE THAT pursuant to Rules 26, 30 and 34 of the Federal Rules of Civil Procedure and 2.120 of the Trademark Rules of Practice, Applicant ASV Wines, Inc. ("Applicant or ASV"), through its attorneys Haring + Smith, LLP, will take the deposition on oral examination of the following individual before a notary public, deposition officer, or other such person authorized to administer oaths, and will be recorded by audio, video and stenographic means, on the date, time and location set below or at some other mutually agreeable date, time, and location. If the deposition is not completed on the date set below, the taking of the deposition will be continued from day to day thereafter, weekend and holidays excepted, until completed. The party deponent identified below is further required to produce documents and tangible things as described on Attachment A at his or her deposition.

Name: Christine Lilienthal  
Date: July 20, 2010  
Time: 10:00 a.m.  
Location: Hiaring + Smith, LLP, 101 Lucas Valley Road, Suite 300,  
San Rafael, CA 94903

Date: 7/1/10

By: 

HIARING + SMITH, LLP

Anne Hiaring Hocking, Esq.  
Carol L. Smith, Esq.  
Vijay K. Toke, Esq.  
Kristin Newman de la Vega, Esq.  
101 Lucas Valley Road, Suite 300  
San Rafael, CA 94903  
Tel: (415) 457-2040  
Fax: (415) 457-2822  
Email: [info@hiaringsmith.com](mailto:info@hiaringsmith.com)

Attorneys for Applicant

CERTIFICATE OF SERVICE BY MAIL

This is to certify that one copy of the foregoing **APPLICANT'S NOTICE OF DEPOSITION OF CHRISTINE LILIENTHAL** was mailed by first class mail, postage prepaid, to Opposer's Counsel:

Stephen L. Baker  
Moirra J. Selinka  
BAKER and RANNELLS, PA  
575 Route 28, Suite 102  
Raritan, New Jersey 08869


Tel: (908) 722-5640  
Fax: (908) 725-7088

Attorneys for Opposer

Dated: \_\_\_\_\_

2/1/10

Signed: \_\_\_\_\_

  
Kristin N. de la Vega

## ATTACHMENT A

1. All documents that refer to, mention, concern, evidence, or relate to the date of first use of Opposer's Marks.
2. All documents that refer to, mention, concern, evidence, or relate to the continuous use of Opposer's Marks from 1981 to present.
3. All documents that refer to, mention, concern, evidence, or relate to the advertising, marketing, and promotion of the WILD HORSE wine brand.
4. All documents that refer to, mention, concern, evidence, or relate to any confusion between Opposer's WILD HORSE wine brand and Applicant's PAINTED HORSE wine brand.
5. All documents, including without limitation purchase orders, order forms, price lists, that refer to, mention, concern, or relate to the manner by which consumers, including, but not limited to, retailers and wholesale distributors, purchase or order each of Opposer's WILD HORSE wines.
6. All documents that refer to, mention, concern, evidence, or relate to third party use of horse designs or the word "HORSE" for wine other than the WILD HORSE wine brand from 1981 to present.
7. All documents that refer to, mention, concern, or relate to enforcement of any of Opposer's rights, or any predecessor owner's rights, including Santa Lucia Winery, Inc. and Peak Wines International, Inc., in and to the WILD HORSE wine brand, including but not limited to Cancellation No. 92049187 brought by Opposer before the United States Patent and Trademark Office's Trademark Trial and Appeal Board.

8. All documents that refer to, mention, concern, or relate to the defense of any of Opposer's rights, or any predecessor owner's rights, including Santa Lucia Winery, Inc. and Peak Wines International, Inc., in and to the WILD HORSE wine brand, including but not limited to Opposition Nos. 91075634 and 91075682 brought by White Horse Distillers before the United States Patent and Trademark Office's Trademark Trial and Appeal Board.

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

Jul 3 21

In The Matter Of Application Serial No. 77/630,676  
Mark: PAINTED HORSE & Cave Design  
Publication Date: April 14, 2009

CONSTELLATION WINES U.S., Inc.,

Opposer,

v.

ASV WINES, INC.,

Applicant.

OPPOSITION NO. 91190642

APPLICANT ASV WINES, INC.'S  
NOTICE OF DEPOSITION OF  
SHAYNE KLINE

APPLICANT ASV WINES INC.'S NOTICE OF DEPOSITION

PLEASE TAKE NOTICE THAT pursuant to Rules 26, 30 and 34 of the Federal Rules of Civil Procedure and 2.120 of the Trademark Rules of Practice, Applicant ASV Wines, Inc. ("Applicant or ASV"), through its attorneys Hiarling + Smith, LLP, will take the deposition on oral examination of the following individual before a notary public, deposition officer, or other such person authorized to administer oaths, and will be recorded by audio, video and stenographic means, on the date, time and location set below or at some other mutually agreeable date, time, and location. If the deposition is not completed on the date set below, the taking of the deposition will be continued from day to day thereafter, weekend and holidays excepted, until completed. The party deponent identified below is further required to produce documents and tangible things as described on Attachment A at his or her deposition.

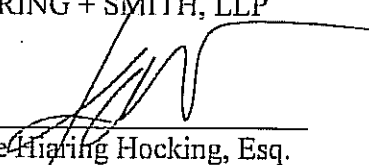
Name: Shane Kline  
Date: July 21, 2010  
Time: 12:00 p.m.  
Location: Law Office of Mary A. Harris, 960 Toro Street, San Luis  
Obispo, CA 93401

Date:

7/1/10

By:

HIARING + SMITH, LLP

  
Anne Haring Hocking, Esq.  
Carol L. Smith, Esq.  
Vijay K. Toke, Esq.  
Kristin Newman de la Vega, Esq.  
101 Lucas Valley Road, Suite 300  
San Rafael, CA 94903  
Tel: (415) 457-2040  
Fax: (415) 457-2822  
Email: [info@haring-smith.com](mailto:info@haring-smith.com)

Attorneys for Applicant

CERTIFICATE OF SERVICE BY MAIL

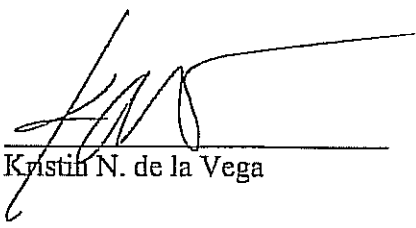
This is to certify that one copy of the foregoing **APPLICANT'S NOTICE OF DEPOSITION OF SHAYNE KLINE** was mailed by first class mail, postage prepaid, to Opposer's Counsel:

Stephen L. Baker  
Moira J. Selinka  
BAKER and RANNELLS, PA  
575 Route 28, Suite 102  
Raritan, New Jersey 08869

Tel: (908) 722-5640  
Fax: (908) 725-7088

Attorneys for Opposer

Dated: 7/1/10

Signed: 

Kristin N. de la Vega



## ATTACHMENT A

1. All documents that refer to, mention, concern, evidence, or relate to the date of first use of Opposer's Marks.
2. All documents that refer to, mention, concern, evidence, or relate to the continuous use of Opposer's Marks from 1981 to present.
3. All documents that refer to, mention, concern, evidence, or relate to the advertising, marketing, and promotion of the WILD HORSE wine brand.
4. All documents that refer to, mention, concern, evidence, or relate to any confusion between Opposer's WILD HORSE wine brand and Applicant's PAINTED HORSE wine brand.
5. All documents, including without limitation purchase orders, order forms, price lists, that refer to, mention, concern, or relate to the manner by which consumers, including, but not limited to, retailers and wholesale distributors, purchase or order each of Opposer's WILD HORSE wines.
6. All documents that refer to, mention, concern, evidence, or relate to third party use of horse designs or the word "HORSE" for wine other than the WILD HORSE wine brand from 1981 to present.
7. All documents that refer to, mention, concern, or relate to enforcement of any of Opposer's rights, or any predecessor owner's rights, including Santa Lucia Winery, Inc. and Peak Wines International, Inc., in and to the WILD HORSE wine brand, including but not limited to Cancellation No. 92049187 brought by Opposer before the United States Patent and Trademark Office's Trademark Trial and Appeal Board.

8. All documents that refer to, mention, concern, or relate to the defense of any of Opposer's rights, or any predecessor owner's rights, including Santa Lucia Winery, Inc. and Peak Wines International, Inc., in and to the WILD HORSE wine brand, including but not limited to Opposition Nos. 91075634 and 91075682 brought by White Horse Distillers before the United States Patent and Trademark Office's Trademark Trial and Appeal Board.

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

1/3 2/1

In The Matter Of Application Serial No. 77/630,676  
Mark: PAINTED HORSE & Cave Design  
Publication Date: April 14, 2009

CONSTELLATION WINES U.S., Inc.,

Opposer,

v.

ASV WINES, INC.,

Applicant.

OPPOSITION NO. 91190642

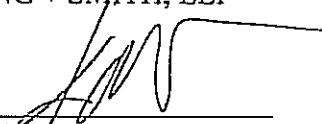
APPLICANT ASV WINES, INC.'S  
NOTICE OF DEPOSITION OF  
JEREMY PHILIPS

APPLICANT ASV WINES INC.'S NOTICE OF DEPOSITION

PLEASE TAKE NOTICE THAT pursuant to Rules 26, 30 and 34 of the Federal Rules of Civil Procedure and 2.120 of the Trademark Rules of Practice, Applicant ASV Wines, Inc. ("Applicant or ASV"), through its attorneys Haring + Smith, LLP, will take the deposition on oral examination of the following individual before a notary public, deposition officer, or other such person authorized to administer oaths, and will be recorded by audio, video and stenographic means, on the date, time and location set below or at some other mutually agreeable date, time, and location. If the deposition is not completed on the date set below, the taking of the deposition will be continued from day to day thereafter, weekend and holidays excepted, until completed. The party deponent identified below is further required to produce documents and tangible things as described on Attachment A at his or her deposition.

Name: Jeremy Philips  
Date: July 21, 2010  
Time: 9:00 a.m.  
Location: Law Office of Mary A. Harris, 960 Toro Street, San Luis  
Obispo, CA 93401

Date: 7/1/10

HIARING + SMITH, LLP  
By:   
Anne Hiaring Hocking, Esq.  
Carol L. Smith, Esq.  
Vijay K. Toke, Esq.  
Kristin Newman de la Vega, Esq.  
101 Lucas Valley Road, Suite 300  
San Rafael, CA 94903  
Tel: (415) 457-2040  
Fax: (415) 457-2822  
Email: [info@hiaringsmith.com](mailto:info@hiaringsmith.com)

Attorneys for Applicant

CERTIFICATE OF SERVICE BY MAIL

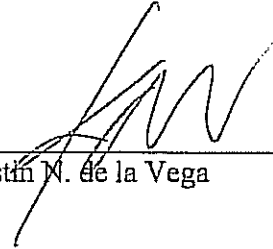
This is to certify that one copy of the foregoing **APPLICANT'S NOTICE OF DEPOSITION OF JEREMY PHILIPS** was mailed by first class mail, postage prepaid, to Opposer's Counsel:

Stephen L. Baker  
Moirra J. Selinka  
BAKER and RANNELLS, PA  
575 Route 28, Suite 102  
Raritan, New Jersey 08869

Tel: (908) 722-5640  
Fax: (908) 725-7088

Attorneys for Opposer

Dated: 2/1/10

Signed: 

Kristin N. de la Vega

## ATTACHMENT A

1. All documents that refer to, mention, concern, evidence, or relate to the date of first use of Opposer's Marks.
2. All documents that refer to, mention, concern, evidence, or relate to the continuous use of Opposer's Marks from 1981 to present.
3. All documents that refer to, mention, concern, evidence, or relate to the advertising, marketing, and promotion of the WILD HORSE wine brand.
4. All documents that refer to, mention, concern, evidence, or relate to any confusion between Opposer's WILD HORSE wine brand and Applicant's PAINTED HORSE wine brand.
5. All documents, including without limitation purchase orders, order forms, price lists, that refer to, mention, concern, or relate to the manner by which consumers, including, but not limited to, retailers and wholesale distributors, purchase or order each of Opposer's WILD HORSE wines.
6. All documents that refer to, mention, concern, evidence, or relate to third party use of horse designs or the word "HORSE" for wine other than the WILD HORSE wine brand from 1981 to present.
7. All documents that refer to, mention, concern, or relate to enforcement of any of Opposer's rights, or any predecessor owner's rights, including Santa Lucia Winery, Inc. and Peak Wines International, Inc., in and to the WILD HORSE wine brand, including but not limited to Cancellation No. 92049187 brought by Opposer before the United States Patent and Trademark Office's Trademark Trial and Appeal Board.

8. All documents that refer to, mention, concern, or relate to the defense of any of Opposer's rights, or any predecessor owner's rights, including Santa Lucia Winery, Inc. and Peak Wines International, Inc., in and to the WILD HORSE wine brand, including but not limited to Opposition Nos. 91075634 and 91075682 brought by White Horse Distillers before the United States Patent and Trademark Office's Trademark Trial and Appeal Board.

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

July 22

In The Matter Of Application Serial No. 77/630,676  
Mark: PAINTED HORSE & Cave Design  
Publication Date: April 14, 2009

CONSTELLATION WINES U.S., Inc.,

Opposer,

v.

ASV WINES, INC.,

Applicant.

OPPOSITION NO. 91190642

APPLICANT ASV WINES, INC.'S  
NOTICE OF DEPOSITION  
SUBPOENA TO PEAK WINES  
INTERNATIONAL, INC.

**APPLICANT ASV WINES INC.'S NOTICE OF DEPOSITION SUBPOENA TO  
PEAK WINES INTERNATIONAL, INC.**

PLEASE TAKE NOTICE THAT pursuant to Rule 45 of the Federal Rules of Civil Procedure and 2.116 and 2.120 of the Trademark Rules of Practice, Applicant ASV Wines, Inc. ("Applicant or ASV"), through its attorneys Hiaring + Smith, LLP, will issue a subpoena to Peak Wines International, Inc. to testify at a deposition before a notary public, deposition officer, or other such person authorized to administer oaths, and will be recorded by audio, video and stenographic means, and produce documents listed in Attachment A to the Subpoena attached as Exhibit A, on July 22, 2010 at 10:00 a.m. at the offices of Hiaring + Smith, LLP, 101 Lucas Valley Road, Suite 300, San Rafael, California 94903. If the deposition is not completed on the date set, the taking of the



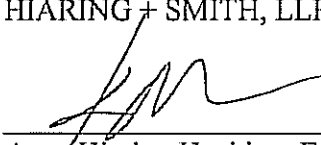
deposition will be continued from day to day thereafter, weekend and holidays excepted,  
until completed.

Date:

7/2/10

By:

HIARING + SMITH, LLP

  
\_\_\_\_\_  
Anne Haring Hocking, Esq.

Carol L. Smith, Esq.

Vijay K. Toke, Esq.

Kristin Newman de la Vega, Esq.

101 Lucas Valley Road, Suite 300

San Rafael, CA 94903

Tel: (415) 457-2040

Fax: (415) 457-2822

Email: [info@haring-smith.com](mailto:info@haring-smith.com)

Attorneys for Applicant

**CERTIFICATE OF SERVICE BY MAIL**

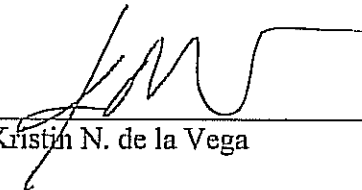
This is to certify that one copy of the foregoing **APPLICANT'S NOTICE OF DEPOSITION SUBPOENA TO PEAK WINES INTERNATIONAL, INC.** was mailed by first class mail, postage prepaid, to Opposer's Counsel:

Stephen L. Baker  
Moira J. Selinka  
BAKER and RANNELLS, PA  
575 Route 28, Suite 102  
Raritan, New Jersey 08869

Tel: (908) 722-5640  
Fax: (908) 725-7088

Attorneys for Opposer

Dated: 7/2/10

Signed:   
Kristin N. de la Vega

UNITED STATES DISTRICT COURT

for the

Northern District of California

CONSTELLATION WINES, U.S., INC. )
Plaintiff )
v. ) Civil Action No. Opposition No. 91190642
ASV WINES, INC. ) U.S. Patent and Trademark Office
Defendant ) Trademark Trial and Appeal Board
) (If the action is pending in another district, state where:
) (see above) )

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: PEAK WINES INTERNATIONAL, INC., 375 HEALDSBURG AVENUE, 2ND FL., HEALDSBURG, CA 95448 C/O C T CORPORATION SYSTEM, 818 WEST SEVENTH STREET, LOS ANGELES, CA 90017

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: SEE ATTACHMENT A

Table with 2 columns: Place: Hearing + Smith, LLP, 101 Lucas Valley Road, Suite 300, San Rafael, CA 94903; Date and Time: 07/22/2010 10:00 am

The deposition will be recorded by this method: CERTIFIED COURT REPORTER & VIDEO

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: SEE ATTACHMENT B

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 7/2/10 CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) ASV Wines, inc.

, who issues or requests this subpoena, are: Anne Haring Hocking, Esq., Vijay K. Toke, Esq., Kristin Newman de la Vega, Esq., Haring + Smith, LLP, 101 Lucas Valley Road, Suite 300, San Rafael, CA 94903 t: (415) 457-2040 / e: info@haringlaw.com

Civil Action No. Opposition No. 91190642

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* PEAK WINES INTERNATIONAL, INC.  
was received by me on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**

**(c) Protecting a Person Subject to a Subpoena.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## ATTACHMENT A

1. Date of first use and sale of wine under the WILD HORSE wine brand.
2. Continuous use of and sales of wine under the WILD HORSE wine brand from 1981 to 2008.
3. Acquisition of Santa Lucia Winery, Inc., including the WILD HORSE wine brand.
4. Acquisition by Constellation Wines U.S., Inc. of Peak Wines International, Inc.
5. Third party use of the WILD HORSE wine brand from 1981 to 2008.
6. Formal or informal complaints, objections, *inter partes* oppositions, *inter partes* cancellations, administrative proceedings, or civil actions filed, sent, or initiated by any third party concerning Peak Wines International, Inc.'s use of, application to register, registration of, or claim of rights in any of rights to the WILD HORSE wine brand from 1981 to 2008.
7. Formal or informal complaints, objections, *inter partes* oppositions, *inter partes* cancellations, administrative proceedings, or civil actions filed, sent, or initiated by Peak Wines International, Inc., in which Peak Wines International, Inc. relied on its use of or claimed rights in or to the WILD HORSE wine brand from 1981 to 2008.
8. Channels of trade through which the WILD HORSE wine brand was sold or offered for sale from 1981 to 2008.
9. Customers or consumers of the WILD HORSE wine brand, including but not limited to, retailers and wholesale distributors, from 1981 to 2008.

10. The sales, marketing, advertising and promotion of the WILD HORSE wine brand from 1981 to 2008.

## ATTACHMENT B

1. All documents that relate to, mention, concern, record, evidence, or refer to the date of first use and sale of wine under the WILD HORSE wine brand.
2. All documents that relate to, mention, concern, record, evidence, or refer to the continuous use and sales of wine under the WILD HORSE wine brand from 1981 to 2008.
3. All advertising, marketing, and promotional documents that refer to, mention, concern, or relate to the WILD HORSE wine brand from 1981 to 2008.
4. All documents that refer to, mention, concern, evidence, or relate to third party use of horse designs or the word "HORSE" for wine other than the WILD HORSE wine brand from 1981 to 2008.
5. All documents that refer to, mention, concern, or relate to the enforcement of the WILD HORSE wine brand from 1981 to 2008.
6. All documents that refer to, mention, concern, or relate to the defense of the WILD HORSE wine brand from 1981 to 2008.
7. All documents, including without limitation purchase orders, order forms, and price lists, that refer to, mention, concern, or relate to the manner by which consumers, including, but not limited to, retailers and wholesale distributors, purchased, or ordered, or referred to WILD HORSE wines from 1981 to 2008.
8. All documents that refer to, mention, concern, evidence, or relate to any confusion between the WILD HORSE wine brand and the PAINTED HORSE wine brand.



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

In The Matter Of Application Serial No. 77/630,676  
Mark: PAINTED HORSE & Cave Design  
Publication Date: April 14, 2009

*Undated*

CONSTELLATION WINES U.S., Inc.,

Opposer,

v.

ASV WINES, INC.,

Applicant.

OPPOSITION NO. 91190642

APPLICANT ASV WINES, INC.'S  
NOTICE OF DEPOSITION OF  
PERSON MOST  
KNOWLEDGEABLE PURSUANT  
TO FRCP 30(b)(6)

**APPLICANT ASV WINES INC.'S NOTICE OF DEPOSITION**

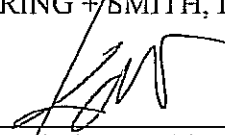
PLEASE TAKE NOTICE THAT pursuant to Rules 26, 30(b)(6) and 34 of the Federal Rules of Civil Procedure and 2.120 of the Trademark Rules of Practice, Opposer shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf at a deposition on oral examination, with respect to each of the matters set forth in Attachment A, before a notary public, deposition officer, or other such person authorized to administer oaths, and will be recorded by audio, video and stenographic means, on the date, time and location set below or at some other mutually agreeable date, time, and location. If the deposition is not completed on the date set below, the taking of the deposition will be continued from day to day thereafter, weekend and holidays excepted, until completed.

Opposer is requested to provide Applicant's counsel with written notice via facsimile, at least four (4) business days in advance of the deposition, of the name(s) and

position(s) of the designee(s) who has(have) consented to testify on behalf of Opposer on the matters set forth in Attachment A and as to which matters the designee(s) will testify.

The designee(s) are further required to produce documents and tangible things as described on Attachment B at their deposition.

Date: 7/1/10

HIARING + SMITH, LLP  
By:   
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Attorneys for Applicant

**CERTIFICATE OF SERVICE BY MAIL**

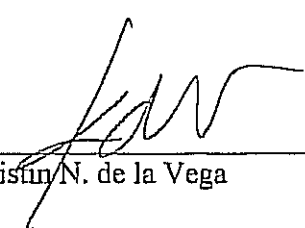
This is to certify that one copy of the foregoing **APPLICANT'S NOTICE OF DEPOSITION OF PERSON MOST KNOWLEDGEABLE PURSUANT TO FRCP 30(b)(6)** was mailed by first class mail, postage prepaid, to Opposer's Counsel:

Stephen L. Baker  
Moira J. Selinka  
BAKER and RANNELLS, PA  
575 Route 28, Suite 102  
Raritan, New Jersey 08869

Tel: (908) 722-5640  
Fax: (908) 725-7088

Attorneys for Opposer

Dated: 7/1/10

Signed: 

Kristin N. de la Vega

## ATTACHMENT A

1. Date and circumstances of first use of Opposer's Marks.
2. Continuous use and sales of wine under Opposer's Marks from 1981 to present.
3. Peak Wines International, Inc.'s ownership and enforcement of Opposer's Marks.
4. Opposer's acquisition of Peak Wines International, Inc.
5. Opposer's corporate structure, including, but not limited to, Opposer's relationship to Peak Wines International, Inc. and Santa Lucia Winery, Inc.
6. Third party use of either of Opposer's Marks from 1981 to present.
7. Formal or informal complaints, objections, *inter partes* oppositions, *inter partes* cancellations, administrative proceedings, or civil actions filed, sent, or initiated by any third party concerning Opposer's use of, application to register, registration of, or claim of rights in any of Opposer's Marks from 1981 to present.
8. Formal or informal complaints, objections, *inter parties* oppositions, *inter partes* cancellations, administrative proceedings, or civil actions filed, sent, or initiated by Opposer in which Opposer relied on its use of or claimed rights in any of Opposer's Marks from 1981 to present.
9. Channels of trade for Opposer's WILD HORSE wine brand from 1981 to present.
10. Customers or consumers of Opposer's WILD HORSE wine brand, including but not limited to, retailers and wholesale distributors, from 1981 to present.

11. The sales, marketing, advertising, and promotion of the WILD HORSE wine brand from 1981 to present.

## ATTACHMENT B

1. All documents that refer to, mention, concern, evidence, or relate to the date of first use of Opposer's Marks.
2. All documents that refer to, mention, concern, evidence, or relate to the continuous use of Opposer's Marks from 1981 to present.
3. All documents that refer to, mention, concern, evidence, or relate to the advertising, marketing, and promotion of the WILD HORSE wine brand.
4. All documents that refer to, mention, concern, evidence, or relate to any confusion between Opposer's WILD HORSE wine brand and Applicant's PAINTED HORSE wine brand.
5. All documents, including without limitation purchase orders, order forms, price lists, that refer to, mention, concern, or relate to the manner by which consumers, including, but not limited to, retailers and wholesale distributors, purchase or order each of Opposer's WILD HORSE wines.
6. All documents that refer to, mention, concern, evidence, or relate to third party use of horse designs or the word "HORSE" for wine other than the WILD HORSE wine brand from 1981 to present.
7. All documents that refer to, mention, concern, or relate to enforcement of any of Opposer's rights, or any predecessor owner's rights, including Santa Lucia Winery, Inc. and Peak Wines International, Inc., in and to the WILD HORSE wine brand, including but not limited to Cancellation No. 92049187 brought by Opposer before the United States Patent and Trademark Office's Trademark Trial and Appeal Board.

8. All documents that refer to, mention, concern, or relate to the defense of any of Opposer's rights, or any predecessor owner's rights, including Santa Lucia Winery, Inc. and Peak Wines International, Inc., in and to the WILD HORSE wine brand, including but not limited to Opposition Nos. 91075634 and 91075682 brought by White Horse Distillers before the United States Patent and Trademark Office's Trademark Trial and Appeal Board.