

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Mailed: June 15, 2015

Opposition Nos. **91215114 (parent)**
91216395

*Upper Shirley Vineyards, LLC and
Shirley Plantation LLC*

v.

Stillhouse Vineyards, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

Pursuant to a request by the parties, the Board held a telephone conference on June 8, 2015, to discuss the potential for utilizing the Accelerated Case Resolution procedure (ACR) in these consolidated proceedings. Michael W. Vary, Esq., of McCarthy, Lebit, Crystal & Liffman, Co., L.P.A., appeared on behalf of Opposer and Jarrod A. Thomas, Esq., of Strother Law Offices, PLC, appeared on behalf of Applicant.

As an initial matter, the Board commends the parties for proactively seeking the Board's involvement early in their considerations concerning the utility and benefits of ACR to these consolidated proceedings, particularly in view of the large number of claims asserted by Opposer against the involved applications.

The parties informed the Board that they have held preliminary discussions concerning the potential use of ACR and believed that the single (as opposed to

the cross) summary judgment model would be sufficient. In that regard, the summary judgment briefs and accompanying evidentiary submissions will serve as the parties' trial and briefing periods. The record will be created by the parties' testimony presented by affidavit or declaration and any exhibits referenced by the affiants or declarants. As to the briefs, the parties are generally limited to 25 pages for their main ACR summary judgment briefs inclusive of table of contents and cases, index of cases, description of the record, statement of the issues, recitation of facts, argument and summary with any reply brief by Opposer being limited to 10 pages. *See* Trademark Rule 2.127(a). However, the parties may stipulate to a greater page limit such as the 55 page limit allowed for final briefs under Trademark Rule 2.128(b). The Board observes, nonetheless, that very few of the cases before it are of such a nature as to require a brief on the case exceeding the established page limits.

As to the claims, Opposer stated its willingness to waive those claims that require expert evidence in the way of survey proofs to establish, such as its geographically deceptively misdescriptive and dilution claims, and to take limited discovery and stipulate to many facts as to the remaining claims with specifics to be discussed and negotiated by the parties in the near future. As noted during the conference, the parties' stipulations will be filed under separate cover and will not be counted towards the page limitations.

The Board conveyed to the parties the flexibility they have in structuring and customizing the ACR process to suit the needs of the proceeding so long as any

proposed stipulation does not contravene any applicable rules (such as the prohibition of extending the time for a reply brief under Trademark Rule 2.127(a)) and the parties are willing to stipulate to allow the Board to resolve genuine issues of material fact that may be presented by the record or which may be discovered at final hearing.

In view thereof, proceedings herein are **SUSPENDED** and the parties are allowed until **JULY 8, 2015**, to file an ACR stipulation with the Board confirming their selection of the ACR summary judgment model and setting forth any preliminary stipulations and limitations as well as a negotiated schedule for completing discovery, submitting further stipulations and filing briefs. The Board will confer with the parties to discuss the proposed ACR stipulation. To that end, the parties are to notify the above-signed interlocutory attorney via email and propose three mutually agreeable dates¹ and times to hold the conference.

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¹ The proposed dates should be no earlier than two weeks from the time of filing.