

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

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Mailed: August 4, 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 the conference held on June 8, 2015, and the Board's order of June 15, 2015, Opposers filed on July 9, 2015, a stipulation by the parties to proceed under the Board's Accelerated Case Resolution ("ACR") procedure.¹

In reviewing the filing, the Board confirms that the parties have stipulated to the following:

Opposer's Claims:

- Opposers will waive their claim of geographically deceptively misdescriptive under Section 2(e)(3) of the Trademark Act as to both oppositions;
- Opposers will waive their geographical indication claim under Section 2(a) as to both oppositions;
- Opposers will proceed on their false suggestion claim under Section 2(a) as to both oppositions;

¹ Opposer's filing fails to indicate proof of service on Applicant as required by Trademark Rule 2.119. In order to expedite this matter, Applicant is referred to <http://ttabvue.uspto.gov/ttabvue/v?pno=91215114&pty=OPP&eno=15> to view and obtain a copy of the filing.

- Opposers will proceed on their priority and likelihood of confusion claim under Section 2(d) as to both oppositions;
- Opposers will proceed on their dilution claim under Section 43(c) as to the child proceeding;
- Opposers will proceed on their nonuse claim as to the child proceeding.

Procedural Stipulations:

- The parties will proceed under a single summary judgment motion model;
- The Board may resolve any genuine disputes of material fact that may be presented by the record or which may be discovered by the panel considering the case at final hearing;
- Each party will be limited to two (2) discovery depositions with each deposition not to exceed seven (7) hours;
- The parties will continue to utilize traditional written discovery, i.e., interrogatories, document production requests and requests for admission;
- Discovery will close sixty (60) days from the date of approval by the Board;
- Opposers shall submit their summary judgment brief and supporting evidence no later than sixty (60) days from the close of discovery;
- Applicant shall submit its responsive brief and supporting evidence no later than ninety (90) days from the close of discovery;
- Opposers shall submit their reply brief, if any, no later than one hundred and five (105) days from the close of discovery;
- Briefing may include documents, declarations or affidavits, and discovery testimony but may not include testimony depositions.

Although the parties have not entered any factual stipulations, the Board nevertheless finds that this consolidated proceeding would benefit from the savings in time and expense afforded by the ACR procedure and hereby **GRANTS** the parties' request to proceed under ACR.²

This matter will proceed under the following schedule:³

Discovery Closes	10/3/2015
Opposers' ACR Brief and Evidence Due	12/2/2015

² The parties are encouraged to stipulate to any facts not in dispute to further streamline this proceeding.

³ These dates remain subject to the provisions of Trademark Rule 2.196.

Applicant's ACR Brief and Evidence Due	1/1/2016
Opposers' ACR Rebuttal Brief and Evidence Due (if any)	1/16/2016

The Board will render a final decision in accordance with the evidentiary burden at trial, that is, by a preponderance of the evidence. *See, e.g., Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1948 (Fed. Cir. 2000). The Board will endeavor to issue a decision on the merits within fifty (50) days of completion of briefing. As noted previously during the conference, the decision will be judicially reviewable under Trademark Rule 2.145.

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