

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 11, 2017

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

*Upper Shirley Vineyards, LLC and
Shirley Plantation LLC*

v.

Stillhouse Vineyards, LLC

Opposition No. **91218094**

*Shirley Plantation LLC and
Charles H. Carter*

v.

Stillhouse Vineyards, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

Under the Board's order of November 18, 2015, Opposition No. 91218094 was consolidated with prior-consolidated Opposition Nos. 91215114 and 91216395, for which the parties opted to proceed under ACR. Following additional motions between the parties and pursuant to the Board's order of September 30, 2016, Opposer filed on November 1, 2016, the parties' proposed revisions to their ACR stipulation to include the newly consolidated opposition.¹

¹ The delay in acting on the filing is regretted.

The proposed revisions are approved and the finalized stipulations are summarized below:

Opposers' Claims:

- Opposers will waive their claim of geographically deceptively misdescriptive under Section 2(e)(3) of the Trademark Act as to Opposition Nos. 91215114 and 91216395;
- Opposers will waive their geographical indication claim under Section 2(a) as to Opposition Nos. 91215114 and 91216395;
- Opposers will waive their dilution claim under Section 43(c) as to Opposition No. 91216395;
- Opposers will proceed on their false suggestion claim under Section 2(a) as to all three oppositions;
- Opposers will proceed on their priority and likelihood of confusion claim under Section 2(d) as to all three oppositions;
- Opposers will proceed on their nonuse claim as to Opposition No. 91216395.
- Opposers will proceed on all remaining claims in Opposition No. 91218094.

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 mailing date of this order;²
- Opposers shall submit their summary judgment brief and supporting evidence no later than forty-five (45) days from the close of discovery;
- Applicant shall submit its responsive brief and supporting evidence no later than seventy-five (75) days from the close of discovery;
- Opposers shall submit their reply brief, if any, no later than ninety (90) days from the close of discovery;
- Briefing may include documents, declarations or affidavits, and discovery testimony but may not include testimony depositions.

² The parties are reminded of the recent amendments to the Board's rules of practice (effective January 14, 2017). Some of those changes have been summarized at the conclusion of this order. The parties are encouraged to review them.

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. The decision will be judicially reviewable under Trademark Rule 2.145.

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NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD (“BOARD”) RULES OF PRACTICE (EFFECTIVE JANUARY 14, 2017).

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7, 2016, at 81 Fed. Reg. 69950. It sets forth **several** amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and *ex parte* appeal proceedings. A correction to the final rule was published on December 12, 2016, at 81 Fed. Reg. 89382.

For complete information, the parties are referred to:

- The Board’s home page on the uspto.gov website:
<http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule:
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- The correction to the final rule:
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2089382.pdf>
- A chart summarizing the affected rules and changes:
<http://www.uspto.gov/sites/default/files/documents/Chart%20Summarizing%20Rule%20Changes%2012-9-16.pdf>

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be made by email, unless otherwise stipulated. Trademark Rule 2.119.

- Response periods are no longer extended by five days for service by first-class mail, Priority Mail Express®, or overnight courier. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.
- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125.
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board's notice of institution constitutes service of complaints. Trademark Rules 2.105(a) and 2.113(a).

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of commencement of the proceeding, should read the entire Final Rule.