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

Proceeding	91225185
Party	Defendant Don Sebastiani & Sons International Wine Negotiants
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concept in the second part of the sentence when it states that VINEAU is confusingly similar to "the *unique proprietary source* of WATER FROM WINE, EAU DE VIN, WINE WATER, [NouvEau's] unique product under patent." *Ibid.* (italics added). NouvEau is not arguing VINEAU is confusingly similar to a trademark. Rather, NouvEau is arguing that VINEAU improperly describes its patented invention.

That theme is continued throughout NouvEau's pleading. Section B is solely focused on providing an accurate description of NouvEau's patent rights. 15 TTABVUE 3-5. NouvEau concludes with the statement that "[NouvEau] clearly has unique product patent claim to 'water from wine' that Applicant's VINEAU is attempting to mislead as to source in false statement of fact." 15 TTABVUE 5. Of course, "water from wine" is the English translation of "eau de vin," the basis of NouvEau's alleged trademark rights.

Sections C and D reiterate the concept again. In Section C, NouvEau states "VINEAU has the same meaning as Eau de Vin, water of wine or wine water, that is the statement of identity for [NouvEau's] unique product under its composition of matter patent made generic by Nouveau's invention." 15 TTABVUE 5. In Section D, NouvEau explains that "For over eight years these marks [WATER FROM WINE, EAU DE VIN and WINE WATER] have been used by NouvEau in commerce and in Class 032 non-alcoholic beverages to describe its unique patented water product made from wine." Rather than an allegation of trademark use, this is an allegation of NouvEau using these three "marks" [WATER FROM WINE, EAU DE VIN and WINE WATER] to identify its patented product. This is not a designation of source. This is not a valid basis for establishing trademark rights. This is not a basis for opposing the application to register VINEAU.

