

ESTTA Tracking number: **ESTTA949136**

Filing date: **01/22/2019**

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

Proceeding	91239589
Party	Plaintiff Maker's Mark Distillery, Inc.
Correspondence Address	MICHAEL D ADAMS MAYER BROWN LLP PO BOX 2828 CHICAGO, IL 60690-2828 UNITED STATES rassmus@mayerbrown.com, gbarcelona@mayerbrown.com, ah-intz@mayerbrown.com, ipdocket@mayerbrown.com, michaeladams@mayerbrown.com, xtang@mayerbrown.com 312-616-5600
Submission	Opposition/Response to Motion
Filer's Name	Daniel P. Virtue
Filer's email	ipdocket@mayerbrown.com, dvirtue@mayerbrown.com, rassmus@mayerbrown.com
Signature	/Daniel P. Virtue/
Date	01/22/2019
Attachments	56 d Motion for Opp. 91239589.pdf(65673 bytes) EXHIBIT A - Declaration of Rich Assmus - Exhibits_.pdf(489182 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

MAKER'S MARK DISTILLERY, INC.,

Opposer,

v.

BOWMAKER'S WHISKEY COMPANY,

Applicant.

Opposition No. 91239589

Serial No. 87,383,989

Mark: BOWMAKER'S WHISKEY

**OPPOSER'S RULE 56(D) MOTION FOR ADDITIONAL DISCOVERY IN RESPONSE
TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT OF NO CONFUSION**

Pursuant to TBMP § 528.06 and Fed. R. Civ. P. 56(d), Opposer Maker's Mark Distillery, Inc. ("Opposer") moves the Board for an order denying the summary judgment motion filed by Applicant Bowmaker's Whiskey Company ("Applicant") on December 21, 2018 (10 TTABVUE) (the "Summary Judgment Motion") and extending the general discovery period or, in the alternative, allowing specific additional discovery be taken in order to enable Opposer to effectively respond to the Summary Judgment Motion. Opposer seeks this relief because Applicant represented that it was considering a settlement offer and proposed extension of the schedule on consent as a guise for its true motive—deliberately running down the clock on the discovery period in order to file a summary judgment motion prior to furnishing *any* discovery to Opposer in this Opposition. *See* Section II.C below and the Declaration of Richard Assmus in Support of Opposer's Rule 56(d) Motion for Additional Discovery attached hereto as Exhibit A (the "Assmus Declaration") at ¶¶ 4-6; 11.

I. BACKGROUND

Opposer filed a notice of opposition in this case on February 20, 2018 (the “Opposition”) (1 TTABVUE) and its undersigned counsel first appeared in the case on May 9, 2018 (6 TTABVUE). The Opposition is premised on the grounds that Applicant’s application to register the word mark BOWMAKER’S WHISKEY (the “Contested Mark”) for use in connection with “distilled spirits; whiskey; bourbon” in Class 33 should be denied, as it is likely to cause confusion with Opposer’s extensive and longstanding use and registration of the term MAKER’S MARK and related trademarks for identical goods since as early as the 1950s.¹

Opposer contacted Applicant on November 26, 2018 and proposed to extend the case schedule since Opposer was still awaiting Applicant’s response to the most recent draft settlement agreement exchanged by the parties. Despite advising Opposer that Applicant would respond to the correspondence regarding the proposed settlement and proposed new schedule by the end of the week, Applicant’s counsel never replied.² Although Opposer expected to resolve the scheduling issues on consent, Opposer filed a Motion to Extend the Schedule Without Consent in an abundance of caution. 8 TTABVUE; Assmus Declaration ¶ 7. Opposer followed up with counsel for Applicant again in early December and heard nothing. Assmus Declaration ¶ 6, Exhibit 1. In fact, Opposer did not learn of Applicant’s position on either the settlement or the extension until Applicant filed its December 17, 2018 opposition to Opposer’s Motion to Extend the Schedule. 9 TTABVUE; Assmus Declaration ¶ 8. Applicant subsequently filed the Summary Judgment Motion and, five days later, served a blanket refusal to answer any of

¹ Opposer’s relevant registrations include U.S. Reg. No. 0678192 for MAKER’S MARK (registered November 8, 1957), U.S. Reg. No. 3967288 for MAKER’S 46 (registered May 24, 2011), U.S. Reg. No. 4964096 for MAKER’S (registered May 24, 2016), and U.S. Reg. No. 5286883 for MAKER’S MARK PRIVATE SELECT (registered September 12, 2017).

² A copy of the email correspondence referenced in this paragraph is attached hereto as Exhibit 1 to the Assmus Declaration.

Opposer's Requests for Production, Requests for Admission, or Interrogatories on the grounds that a Summary Judgment Motion pending. *See* Assmus Declaration ¶¶ 9-10, Exhibit 2.

In its Summary Judgment Motion, Applicant asks the Board to determine as a matter of law that there is no likelihood of confusion between the parties' respective marks because of their purported dissimilarity. (Summary Judgment Mot. Br. at 8.) In support of the Summary Judgment Motion, Applicant submits the Declarations of Bryan Parks (the "Parks Declaration") and Theodore Breiner (the "Breiner Declaration"). The Parks Declaration makes statements relating to Applicant's selection of the Contested Mark and intended use of the Contested Mark that Opposer has had no opportunity to test in discovery.

II. ARGUMENT

A. Nonmovants Are Not Required to Rebut Motions for Summary Judgment Without Adequate Discovery

Under the Federal Rules of Civil Procedure, "the parties must be afforded adequate time for general discovery before being required to respond to a motion for summary judgment." *Metro. Life Ins. Co. v. Bancorp Servs., LLC*, 527 F.3d 1330, 1336 (Fed. Cir. 2008). A party that believes it cannot effectively oppose a motion for summary judgment without first taking discovery may, in lieu of filing a substantive response to the motion, move the Board for time to take the discovery necessary to properly respond. TBMP § 528.06. When essential facts are unavailable to a nonmovant, the court may "(1) defer considering the motion or deny it, (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." Fed. R. Civ. P. 56(d); TBMP § 528.06. "As a general rule, the Board is liberal in its treatment of requests for discovery in response to motions for summary judgment." *U.S. Tennis Assoc. Inc. v. Veruba, LLC*, Opp. No. 91226656, 2017 WL 3670425, at *5 (TTAB Jul. 31, 2017). Allowing additional discovery be taken when there is a sufficient need is the "safeguard" to

which Rule 56 is directed and “provides nonmovants with protection from being ‘railroaded’ by premature summary judgment motions”. *Opryland USA Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 852 (Fed. Cir. 1992) (citation omitted) (reversing TTAB’s entry of summary judgment on the basis that it should have granted nonmovant’s request that additional discovery be taken prior to deciding the motion).

B. Applicant’s Summary Judgment Motion Erroneously Applies the Standard for Determining Likelihood of Confusion and Broader Discovery is Needed in Order to Resolve this Opposition

Under *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973), there are 13 factors the Board may consider in determining whether confusion between two marks is likely to occur. Applicant’s Summary Judgment Motion concedes that nearly all relevant factors favor Opposer. *See* Summary Judgment Mot. Br. at 7 (“Applicant accepts for the purpose of this motion that the parties’ goods are the same, the proximity of the goods in the market place, the same channels of trade, priority of use, and the MAKER’S MARK trademark is well-known.”) The sole factor Applicant relies upon in support of the Summary Judgment Motion is the purported dissimilarity between the two word marks at issue. *See* Summary Judgment Mot. Br. at 8. However, this theory contravenes established norms that “[w]hen goods are directly competitive, almost all courts will still require the use of a multi-factor analysis, and not simply compare the marks themselves for similarity.” 4 McCarthy on Trademarks and Unfair Competition, § 23:20.50 (5th ed.). It also ignores well-settled precedent that where, as here, the junior user’s mark would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion is diminished. 4 McCarthy on Trademarks and Unfair Competition, § 23:20.50 (5th ed.); *see also Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 877 (Fed. Cir. 1992) (reversing TTAB finding of no likely confusion where applicant sought to register the mark CENTURY LIFE OF AMERICA over

opposition from owner of CENTURY 21 mark, noting that the Board “gave insufficient weight to the use of these marks on identical services,” which “accentuates the likelihood of consumer confusion”); *In re Viterra Inc.*, 671 F.3d 1358, 1367 (Fed. Cir. 2012) (affirming Board’s refusal to register the mark XCEED for agricultural seeds due to likely confusion with the mark X-SEED (and design), noting the Board properly gave “‘heavy weight’ to the identical nature of the goods involved” and applicant erroneously focused “almost exclusively on the similarity of the marks at issue” on appeal).

Applicant overemphasizes the importance of the similarity or dissimilarity of the marks in sight, sound and meaning for purposes of determining whether confusion is likely to occur in this case. Given that the goods are identical and directly competitive, as they will be sold in the same stores to the same consumers, the Board should deny the Summary Judgment Motion and extend the general discovery period, consistent with the discretion it is authorized to exercise pursuant to Fed. R. Civ. P. 56(d) and TBMP § 528.06. *See Ansell Limited v. ATG Ceylon (PVT) Ltd.*, Opp. No. 91229956, 2018 WL 1557276, at *1 and 4 (TTAB Mar. 28, 2018) (denying motion for summary judgment after Rule 56(d) motion in response was fully briefed, rendering Rule 56(d) motion moot); *W. Clay Mackey v. Lawson’s Finest Liquids, LLC*, 2018 WL 1202646, at *1 (TTAB Mar. 6, 2018) (same).

C. Specific Additional Discovery is Needed for Opposer to Adequately Respond Even to the Narrow Question Applicant Poses on Summary Judgment

As detailed in the Assmus Declaration, Applicant has not produced any documents in response to Opposer’s 17 Requests for the Production of Documents and Things; nor has Applicant responded to a single one of Opposer’s 16 Interrogatories or 14 Requests for Admission. Assmus Declaration ¶ 11. In these outstanding discovery requests, which were served nearly one month prior to Applicant filing its Summary Judgment Motion, Opposer seeks

documents and other evidence squarely relevant to the subject of the pending Summary Judgment Motion, namely, whether a likelihood of confusion exists between the parties' respective marks. Opposer's unanswered discovery requests cover questions relating to the similarity between the marks in question as well as other *DuPont* factors such as the similarity of the parties' goods, similarity of trade channels, strength of prior user's marks, nature of any actual confusion, and market interface between the parties. Assmus Declaration ¶¶ 12-15, Exhibits 3-5.

As noted in section II.B above, Opposer submits that Applicant's Summary Judgment Motion applies the standard for determining likelihood of confusion between identical competing products erroneously and that broader discovery is needed in order to resolve this Opposition. However, if the Board is prepared to consider the possibility that likelihood of confusion could be determined based on facts relating to the similarity or dissimilarity of the marks alone, at a minimum Opposer requests the following specific additional discovery in order to address the arguments raised by Applicant in its Summary Judgment Motion:

- The oral examination of Bryan Parks, whose December 20, 2018 declaration was submitted by Applicant in support of the Summary Judgment Motion. *See* Exhibit A to the Summary Judgment Motion.
- Applicant's responses to Opposer's Interrogatory Nos. 9, 13 and 14 (*see* Assmus Declaration ¶ 12, Exhibit 3), which read as follows:

Interrogatory No. 9: Describe in detail any instances of actual or possible confusion, mistake, deception or association of any kind between Opposer or its products and/or services offered in connection with Opposer's Marks and Applicant's products or services offered in connection with the

Contested Mark.

Interrogatory No. 13: Describe in detail all facts which in any way support or relate to Your contention that the Contested Mark is not similar to any of Opposer's Marks in sight, sound, connotation, and overall commercial impression.

Interrogatory No. 14: Describe in detail all facts which in any way support or relate to Your contention that the Contested Mark, BOWMAKER'S, does not contain the word "MAKER'S" and that both parties do not use the word "Maker" in the possessive form.

- Applicant's responses to Opposer's Requests for Admission Nos. 5 and 6 (*see* Assmus Declaration ¶ 13, Exhibit 4), which read as follows:

Request No. 5: Admit that Maker's Mark owns or has used multiple marks that utilize the term "MAKER'S".

Request No. 6: Admit that the Contested Mark incorporates the term "MAKER'S" in its entirety.

- Any and all documents from Applicant that are responsive to Opposer's Requests for Production Nos. 1 and 5-10 (*see* Assmus Declaration ¶ 14, Exhibit 5), which read as follows:

Request No. 1: All Documents, Communications and Things evidencing, referring or relating to any current, planned, or contemplated uses of the Contested Mark in connection with your offering for sale of each of the Claimed Goods.

Request No. 5: All Documents, Communications and Things evidencing,

referring or relating to the creation, consideration, design, development, selection, and adoption of the Contested Mark, including any other marks, or versions of the Contested Mark, that were considered by You.

Request No. 6: All Documents, Communications and Things evidencing, referring or relating to Opposer's Marks.

Request No. 7: Representative specimens of use of the Contested Mark, including, but not limited to, labels, brochures, containers or trade dress You have used, currently use, or plan to use on or in connection with the Claimed Goods.

Request No. 8: All Documents, Communications and Things evidencing, referring or relating to advertising, marketing, and other promotional materials, including Internet and web based advertising, television advertising, signs, posters and displays which illustrate or depict the use or intended use of the Contested Mark.

Request No. 9: All Documents, Communications and Things evidencing, referring or relating to any instances of actual or possible confusion, mistake, deception or association of any kind between Opposer or its products and/or services offered in connection with Opposer's Marks and Applicant's products or services offered in connection with the Contested Mark.

Request No. 10: All Documents, Communications and Things evidencing, referring or relating to any market studies, surveys, focus groups or other studies which You have conducted or caused to be

conducted which relate to the Contested Mark, Opposer's Marks, or the Claimed Goods.

The Parks Declaration includes a discussion of the meaning and connotation ascribed to the term "bowmaker," an argument central to Applicant's Summary Judgment Motion. It also attaches samples of labels depicting how Applicant intends to use the Contested Mark on its goods. These exhibits are relevant to Applicant's argument that the marks at issue "appear different". Opposer requests that it be afforded the opportunity to depose Mr. Parks on the topics raised in his declaration, including the meaning of the term "BOWMAKER'S," Mr. Park's alleged intent in selecting the Contested Mark, and the sample uses of the Contested Mark shown on the labels attached to the declaration, including their font, type size, color, imagery, and other characteristics. Opposer will be disadvantaged if it is not allowed to take the deposition of Mr. Parks, as it has heretofore been unable to test the statements made by Mr. Parks through discovery and Applicant relies on these statements to support its Summary Judgment Motion.

With respect to the unanswered discovery requests, the aforementioned Interrogatories, Requests for Admission and Requests for Production all relate to one or more of the following factors that inform the degree of similarity between the marks: the appearance of the marks at issue, the letters and components the marks share in common, the commercial impression created or intended to be created by the marks, and any actual or perceived similarities between the marks known to Applicant. These factors are at the heart of Applicant's Summary Judgment Motion and Opposer will be disadvantaged if it must respond to the Summary Judgment Motion without the benefit of Applicant's responses. Accordingly, Opposer requests that Applicant be required to fully respond to the foregoing discovery requests, including producing all documents responsive to the requests that are within Applicant's possession, custody or control, at least 30

days before Opposer is required to file a response to the Summary Judgment Motion.

III. CONCLUSION

For the reasons stated above, Opposer respectfully requests that Applicant's Summary Judgment Motion be denied and general discovery be extended for a period of ninety days. Alternatively, Opposer requests that the Board enter an order requiring Applicant to (i) fully respond to Opposer's Interrogatory Nos. 9, 13 and 14, Requests for Admission Nos. 5 and 6, and Requests for Production Nos. 1 and 5-10 (including producing all responsive documents), and (ii) make Mr. Bryan Parks available for a deposition.

Respectfully submitted,

MAKER'S MARK DISTILLERY, INC.

Dated: January 22, 2019

By: /s/ Richard M. Assmus
Michael D. Adams
Richard M. Assmus
MAYER BROWN LLP
P.O. Box 2828
Chicago, IL 60690-2828
(312) 701-8623
(312) 701-8162
michaeladams@mayerbrown.com
rassmus@mayerbrown.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that, on January 22, 2019, I caused a copy of the foregoing **RULE 56(D) MOTION FOR ADDITIONAL DISCOVERY WITH SUPPORTING EXHIBITS** to be served upon Bowmaker's Whiskey Company by e-mail at the following addresses:

tbreiner@bbpatlaw.com, elisedelatorre@bbpatlaw.com, docketclerk@bbpatlaw.com

With courtesy copies sent by USPS Express mail to Bowmaker's Whiskey Company at the following address:

Theodore A. Breiner
Breiner & Breiner LLC
115 North Henry Street
Alexandria, VA 22314

Dated: January 22, 2019

/s/ Richard M. Assmus
Richard Assmus
Attorney for Opposer
Maker's Mark Distillery, Inc.

EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

MAKER'S MARK DISTILLERY, INC.,

Opposer,

v.

BOWMAKER'S WHISKEY COMPANY,

Applicant.

Opposition No. 91239589

Serial No. 87,383,989

Mark: BOWMAKER'S WHISKEY

DECLARATION OF RICHARD M. ASSMUS

I, Richard M. Assmus, hereby declare as follows:

1. I am a partner at the law firm Mayer Brown LLP, which represents Opposer Maker's Mark Distillery Inc. ("Opposer") in the above-captioned proceeding.
2. I submit this Declaration in support of Opposer's Rule 56(d) Motion for Additional Discovery in Response to Applicant's Motion for Summary Judgment of No Confusion.
3. The facts set forth in this Declaration are personally known to me. If called as a witness, I could and would competently testify to the facts stated herein.
4. Attached hereto as Exhibit 1 is a true and accurate copy of email correspondence between myself and counsel for Applicant Bowmaker's Whiskey Company ("Applicant") dating from November 26, 2018 to December 5, 2018.
5. In the correspondence at Exhibit 1, counsel for Applicant represented to me that he would respond to correspondence relating to a prior draft settlement agreement and a proposed

extension of the discovery schedule in this proceeding by the end of the last week of November 2018.

6. Despite counsel's representations, I never received any response regarding the draft settlement agreement or scheduling proposal that was the subject of the correspondence at Exhibit 1. This is true even after I followed up with counsel for the Applicant on December 5, 2018.

7. While awaiting Applicant's response regarding the proposed extension of the discovery schedule, Opposer filed a Motion to Extend the Schedule Without Consent in an abundance of caution.

8. Opposer did not learn of Applicant's position on either the settlement or proposed discovery extension until Applicant filed an opposition to the Motion to Extend the Schedule.

9. Applicant subsequently filed a Summary Judgment Motion and, five days later, served a blanket refusal to answer any of Opposer's Requests for Production, Requests for Admission, or Interrogatories on the grounds that it now has a summary judgment motion pending.

10. Attached hereto as Exhibit 2 is a true and accurate copy of the document referenced in paragraph 9 above, which is entitled Applicant's Objections to Opposer's First Set of Discovery and is dated December 26, 2018.

11. To date, Applicant has not produced any documents in response to Opposer's 17 Requests for the Production of Documents and Thing and has not responded to a single one of Opposer's 16 Interrogatories or 14 Requests for Admission.

12. Attached hereto as Exhibit 3 is a true and accurate copy of Opposer's First Set of Interrogatories to Applicant.

13. Attached hereto as Exhibit 4 is a true and accurate copy of Opposer's First Set of Requests for Admission to Applicant.

14. Attached hereto as Exhibit 5 is a true and accurate copy of Opposer's First Set of Requests for the Production of Documents and Things to Applicant.

15. The discovery requests at Exhibits 3-5 cover questions relating to, among other things, the similarity between the marks in question as well as other *DuPont* factors such as the similarity of the parties' goods, similarity of trade channels, strength of prior user's marks, nature of any actual confusion, and market interface between the parties.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 22, 2019


Richard M. Assmus

EXHIBIT 1

Assmus, Richard M.

From: Assmus, Richard M.
Sent: Wednesday, December 05, 2018 2:39 PM
To: 'Ted Breiner'
Cc: Adams, Michael D.
Subject: RE: Maker's Mark v. Bowmaker's Whiskey, Opposition No. 91239589 [IWOV-AME.FID2124370]

Ted—

Checking in on your and your client's review of the proposed settlement.

Rich

+++++

Richard M. Assmus
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 701-8623
rassmus@mayerbrown.com

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Tuesday, November 27, 2018 3:12 PM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey, Opposition No. 91239589 [IWOV-AME.FID2124370]

****EXTERNAL SENDER****

Rich,

I have been out of town on business the last two days. We will review your correspondence and be in touch. The next few days are hectic and it may not be until the end of the week, but wanted to touch base.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

This e-mail is confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do

so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Elise de la Torre at 703-684-6885 or e-mail Elisedelatorre@bbpatlaw.com if you need assistance.

From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Monday, November 26, 2018 6:19 PM
To: Ted Breiner <TBreiner@BBPatLaw.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>
Subject: Maker's Mark v. Bowmaker's Whiskey, Opposition No. 91239589 [IWOV-AME.FID2124370]

Ted—

Attached please find our first set of discovery requests.

In light of the coming deadlines (expert disclosures and discovery closing), we intend to move the TTAB for an extension of all deadlines by 3 months. Let us know if we may do so on consent for that period or some shorter period you suggest.

We last heard from you on settlement in mid-October. Has your client had an opportunity to review our proposal dated October 17? As we have discussed, we believe this is a matter that can be resolved quickly.

Rich

++++
Richard M. Assmus
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 701-8623
rassmus@mayerbrown.com

This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.

Mayer Brown is a global services provider comprising an association of legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian partnership).

Information about how we handle personal information is available in our [Privacy Notice](#).

EXHIBIT 2

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

MAKER'S MARK DISTILLERY, INC.,)
)
) Opposer,)
)
 v.) Opposition No. 91239589
)
)
) Serial No. 87/383,989
 BOWMAKER'S WHISKEY COMPANY,) Mark: BOWMAKER'S WHISKEY
)
) Applicant.)

- - - - -

APPLICANT'S OBJECTIONS TO
OPPOSER'S FIRST SET OF DISCOVERY

Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure and Rules 2.120 and 2.127(d) of the Trademark Rules of Practice, applicant Bowmaker's Whiskey Company ("Applicant") hereby responds to opposer Maker's Mark Distillery, Inc.'s ("Opposer") first set of discovery, namely, Opposer's First Set Of Requests For Admission To Bowmaker's Whiskey Company; Opposer's First Set Of Interrogatories To Bowmaker's Whiskey Company; and Opposer's First Set Of Requests For Production of Documents And Things To Bowmaker's Whiskey Company, as set forth hereafter.

Applicant objects to responding to Opposer's discovery at this time on the grounds that when a party

Opposition No. 91239589

timely files a motion for summary judgment, the case is suspended with respect to all matters not germane to the motion and the Board treats the proceeding as if it has been suspended as of the filing date of the potentially dispositive motion, and the suspension tolls the time to respond to outstanding discovery requests. 37 CFR §2.127(d); TBMP §510.03(a). Applicant has timely filed a motion for summary judgment in this case on December 21, 2018 and the case is suspended, including tolling the time for Applicant to respond to Opposer's above-referenced discovery.

Respectfully submitted,
BOWMAKER'S WHISKEY COMPANY

By: /Theodore A. Breiner/
Theodore A. Breiner
Registration No. 32,103
BREINER & BREINER, L.L.C.
115 North Henry Street
Alexandria, Virginia 22314-2903
Telephone (703) 684-6885
Facsimile (703) 684-8206
tbreiner@bbpatlaw.com

December 26, 2018

Attorneys for Applicant

Opposition No. 91239589

CERTIFICATE OF SERVICE

It is hereby certified that on this 26th day of
December, 2018, a true copy of the foregoing paper entitled-

APPLICANT'S OBJECTIONS TO
OPPOSER'S FIRST SET OF DISCOVERY

was served by email on -

Michael D. Adams
MAYER BROWN LLP
P.O. BOX 2828
Chicago, Illinois 60690-2828
michaeladams@mayerbrown.com
rassmus@mayerbrown.com
gbarcelona@mayerbrown.com
xtang@mayerbrown.com

/Theodore A. Breiner/

THEODORE A. BREINER

EXHIBIT 3

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

MAKER'S MARK DISTILLERY, INC.,

Opposer,

v.

BOWMAKER'S WHISKEY COMPANY,

Applicant.

Opposition No.: 91239589

Serial No. 87/383,989

Mark: BOWMAKER'S WHISKEY

**OPPOSER'S FIRST SET OF INTERROGATORIES
TO BOWMAKER'S WHISKEY COMPANY**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and TBMP § 405, Opposer, Maker's Mark Distillery, Inc. ("Maker's Mark" or "Opposer"), hereby serves its First Set of Interrogatories upon Applicant, Bowmaker's Whiskey Company ("Applicant"), to be answered separately and fully in writing and under oath. A copy of the answers shall be served upon Opposer's counsel within thirty (30) days of service hereof. These Interrogatories are deemed continuing in nature as permitted by Rule 26(e) of the Federal Rules of Civil Procedure and TBMP § 408 and are to be supplemented promptly upon Applicant's acquisition of further or additional information.

Opposer's Interrogatories shall be responded to in accordance with the Definitions and Instructions attached hereto as Appendices A and B, respectively.

INTERROGATORIES

Interrogatory No. 1: Identify, by common commercial descriptive name, each product or service bearing the Contested Mark that is offered for sale by the Applicant in the United States, or that the Applicant plans or contemplates offering for sale in the United States.

Interrogatory No. 2: For each product or service identified in Interrogatory No. 1 above, state the date of first use in U.S. commerce, and specify the details of such first use in commerce.

Interrogatory No. 3: For each product or service identified in Interrogatory No. 1 above, describe in detail such product or service and the manner in which the product or service is or will be offered for sale, including the actual or intended sale price and the marketing, sales, and distribution channels.

Interrogatory No. 4: Describe in detail any of Applicant's efforts, actions or expenditures that support or relate to Applicant's use or intent to use the Contested Mark in connection with the Claimed Goods and Services.

Interrogatory No. 5: Identify the Person or Persons responsible for, involved in or with knowledge of the creation, consideration, design, development, selection, and adoption of the Contested Mark, including any other marks, or versions of the Contested Mark, that were considered by You, and describe in detail the facts and circumstances relating to the creation, consideration, design, development, selection, and adoption of the Contested Mark.

Interrogatory No. 6: Describe in detail Your knowledge of Maker's Mark and any of its affiliates.

Interrogatory No. 7: Describe in detail the facts and circumstances under which You first learned of each of Opposer's Marks.

Interrogatory No. 8: Identify all establishments, retail outlets, distributors, or websites that currently carry, promote, or sell products bearing the Contested Mark, including the geographic locations of each, and any establishments, retail outlets, distributors, or websites that

Applicant plans to engage or contemplates engaging in order to carry, promote, or sell products bearing the Contested Mark.

Interrogatory No. 9: Describe in detail any instances of actual or possible confusion, mistake, deception or association of any kind between Opposer or its products and/or services offered in connection with Opposer's Marks and Applicant's products or services offered in connection with the Contested Mark.

Interrogatory No. 10: Describe in detail any clearance efforts undertaken by You, including any formal or informal trademark searches or investigations which You have conducted or caused to be conducted which refer or relate to the Contested Mark or Opposer's Marks.

Interrogatory No. 11: Describe in detail all facts which in any way support or relate to Your affirmative defense that Maker's Mark's opposition fails to state a claim upon which relief can be granted.

Interrogatory No. 12: Describe in detail all facts which in any way support or relate to Your affirmative defense that Applicant is entitled to exclusive use and registration of the Contested Mark for the Claimed Goods.

Interrogatory No. 13: Describe in detail all facts which in any way support or relate to Your contention that the Contested Mark is not similar to any of Opposer's Marks in sight, sound, connotation, and overall commercial impression.

Interrogatory No. 14: Describe in detail all facts which in any way support or relate to Your contention that the Contested Mark, BOWMAKER'S, does not contain the word "MAKER'S" and that both parties do not use the word "Maker" in the possessive form.

Interrogatory No. 15: Identify each Person who has supplied documents or information for, or who has participated in responding to, these Interrogatories, Opposer's First Set of Requests for Production of Documents and Things, and/or Opposer's First Set of Requests for Admission.

Interrogatory No. 16: If Applicant does not admit a particular request contained in Opposer's First Set of Requests for Admission, state the factual basis for why the request is not admitted.

Respectfully submitted,

MAKER'S MARK DISTILLERY, INC.

Dated: November 26, 2018

By: /s/ Richard M. Assmus
Michael D. Adams
Richard M. Assmus
MAYER BROWN LLP
P.O. Box 2828
Chicago, IL 60690-2828
(312) 701-8623
(312) 701-8162
michaeladams@mayerbrown.com
rassmus@mayerbrown.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that, on November 26, 2018, a copy of the foregoing **OPPOSER’S FIRST SET OF INTERROGATORIES** was served on Bowmaker’s Whiskey Company by email at the following addresses:

tbreiner@bbpatlaw.com, elisedelatorre@bbpatlaw.com, doctetclerk@bbpatlaw.com

With courtesy copies sent by USPS Express mail to Bowmaker’s Whiskey Company at the following address:

Theodore A. Breiner
Breiner & Breiner LLC
115 North Henry Street
Alexandria, VA 22314

Dated: November 26, 2018

/s/ Richard M. Assmus
Richard M. Assmus
Attorney for Opposer
Maker’s Mark Distillery, Inc.

APPENDIX A
DEFINITIONS

A. “Bowmaker’s,” “Applicant,” “You” and “Your” means applicant Bowmaker’s Whiskey Company, including, without limitation, any divisions, departments, parents, predecessors, successors, subsidiaries, affiliates, and other organizational or operating units and present or former officers, directors, employees, or agents and all Persons acting or purporting to act on Bowmaker’s Whiskey Company’s behalf.

B. “Maker’s Mark” means Opposer Maker’s Mark Distillery, Inc., including all of its officers, directors, employees, agents, consultants, attorneys, predecessors, subsidiaries and affiliates.

C. “Contested Mark” means the BOWMAKER’S WHISKEY name that Bowmaker’s Whiskey Company has sought to register with the USPTO as Serial Number 87/383,989.

D. “Contested Application” means the application for the BOWMAKER’S WHISKEY name bearing Serial Number 87/383,989.

E. “Opposer’s Marks” means the family of trademarks for the Maker’s Mark brand, including, but not limited to, U.S. Reg. No. 0678192 (MAKER’S MARK), U.S. Reg. No. 3967288 (MAKER’S 46), U.S. Reg. No. 4964096 (MAKER’S), and U.S. Reg. No. 5286883 (MAKER’S MARK PRIVATE SELECT).

F. “Licensee” means any Person, including any business entity, that is licensed or otherwise authorized to use the Contested Mark in the United States.

G. “Trademark” or “Mark” includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

H. “Claimed Goods” means each of the individual goods covered by the Contested Application, *i.e.*, (i) distilled spirits; (ii) whiskey; and (iii) bourbon.

I. “Document” is defined as having the broadest meaning ascribed to it by Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, all handwritten, typed, printed, graphic, digital and/or computer-stored matter such as correspondence, memoranda, notes, desk calendars, logs, drafts, work-papers, blueprints, drawings or sketches, minutes or recordings of meetings, speeches, presentations, conversations or telephone calls (whether recorded in writing, mechanically or electronically), records, studies, analyses, reports, forecasts, schedules, surveys, invoices, receipts, check stubs, CD-ROMs, computer data, any retrievable data, computer printouts, financial statements, balance sheets, profit and loss statements, statements of earnings, statements of net worth, credit reports, statements of operations, audit reports, financial summaries, statements of lists or assets, figures, statistics, agreements, government filings, inquires, reports, contracts, expense reports, photographs, slides, videos, communications (including, without limitation, electronic mail and web site information), and information or statistics contained on any memory device or other information storage and retrieval systems (whether stored, encoded, taped or coded electrostatically, electromagnetically, optically, digitally or otherwise). “Document” also means an authentic copy where the original is not in Registrant’s possession, custody or control and every copy of a document where the copy is not an identical duplicate of the original.

J. “Communication” means any exchange or transmission of words or ideas to another person or an entity, including, without limitation, conversations, discussions, letters, correspondence, memoranda, meetings, notes, speeches, cable, facsimile, telex, telephone call, electronic mail message or other transfer of information, whether written, oral or by any other

means, whether direct or indirect, formal or informal, and includes any document which abstracts, digests, transcribes or records any such communication.

K. “Things” means all physical items that are not considered documents and shall have the broadest interpretation of that term in Rule 34(a) of the Federal Rules of Civil Procedure.

L. “Identify,” when used with reference to a natural person, means to give, to the extent known, the person’s full name, present or last known address, and the present or last known place of employment. “Identify” when used with reference to any other type of person, means to give the person’s full name (including any assumed or business name), address(es) and form of organization (i.e. corporation, partnership, unincorporated association, etc.). Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person. “Identify” when used with reference to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; (iv) author(s), addressee(s) and recipient(s); and (iv) the present or last known location and custodian of the document. “Identify,” when used with reference to a communication, means to give its date, type (e.g., telephone conversation or discussion), the place where it occurred, the identity of the person who made the communication, the identity of the person who received the communication, the identity of each other person when it was made, and the subject matter discussed. “Identify,” when used to describe an agreement, means its date, the place where it occurred, the identity of all persons who were parties to the agreement, the identity of each person who has knowledge of the agreement and all other persons present when it was made, and the subject matter of the agreement.

M. “State” means to state all facts discoverable under Rule 26 of the Federal Rules of Civil Procedure that are known to Applicant. When used in reference to a contention, “state,” “state all facts”, “identify”, “identify all documents”, and “identify all communications”, shall include all facts, documents and communications negating, as well as supporting the contention. When used in reference to a contention, “identify each person” shall include persons having knowledge of facts negating, as well as supporting, the contention.

N. “Describe” or “describe in detail” means to provide a complete description and explanation of the facts, circumstances, analysis, opinion and other information relating to the subject matter of a specific interrogatory.

O. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

P. The terms “relate,” “refer,” “reflect,” “concern,” and “pertain” mean discussing, evidencing, mentioning, memorializing, describing, constituting, containing, analyzing, studying, reporting on, commenting on, recommending, concerning, reflecting, summarizing, referring to, pertaining to, supporting, refuting and/or purporting to evidence, mention, memorialize, describe, constitute, contain, concern, reflect, summarize, refer to, support, refute and/or in any way be relevant, in whole or in part.

Q. The term “any” shall be understood in either its most or least inclusive sense as it will bring within the scope of discovery requests all responses that might otherwise be construed to be out of its scope.

R. The use of a singular form of any word includes the plural and vice versa.

S. The connectives “and” and “or” shall be construed both disjunctively and conjunctively so as not to exclude any information otherwise within the scope of any discovery request.

APPENDIX B

INSTRUCTIONS

A. The Interrogatories are intended to be construed as broadly as their language permits. They are to be construed independently, except when such construction limits their scope. Any ambiguity should be resolved by selecting the broadest construction possible. If any Interrogatory or term in these Interrogatories is ambiguous or unclear to you, please contact the undersigned counsel as soon as possible so the Interrogatory can be clarified so as to avoid unnecessary delay in discovery. If an objection is made to part of an Interrogatory, then that part shall be specified and an answer or production given for the remaining parts.

B. Where an objection or claim of privilege is asserted in objection to any interrogatory or sub-part thereof, and an answer is not provided on the basis of such assertion, the objection shall (i) identify the nature of the privilege (including work product) which is being claimed and (ii) identify the following information:

- a. for documents: (1) the type of document; (2) general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document for a *subpoena duces tecum*, including where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author and the addressee to each other; and
- b. for oral communications: (1) the name of person making the communication and the names of the persons present while the communication was made and, where not apparent, the relationship of each person present to the person making the communication; (2) the date and place of the communication; and (3) the general subject matter of the communication.

C. If Applicant objects to the scope or breadth of any Interrogatory, Applicant is directed to (i) respond within the scope or breadth of production that Applicant contends is proper and (ii) define the scope or breadth in which Applicant has responded. Any limited response does not preclude Opposer from seeking additional discovery of the full scope or breadth of the Interrogatory.

EXHIBIT 4

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

MAKER’S MARK DISTILLERY, INC.,

Opposer,

v.

BOWMAKER’S WHISKEY COMPANY,

Applicant.

Opposition No.: 91239589

Serial No. 87/383,989

Mark: BOWMAKER’S WHISKEY

**OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSION
TO BOWMAKER’S WHISKEY COMPANY**

Pursuant to Federal Rules of Civil Procedure 26 and 36 and TBMP § 407, Opposer, Maker’s Mark Distillery, Inc. (“Maker’s Mark” or “Opposer”), hereby serves its First Set of Requests for Admission (the “Requests”) upon Applicant, Bowmaker’s Whiskey Company (“Applicant”), to be answered separately and fully in writing and under oath. A copy of the answers shall be served upon Opposer’s counsel within thirty (30) days of service hereof. These Requests are deemed continuing in nature as permitted by Rule 26(e) of the Federal Rules of Civil Procedure and TBMP § 408 and are to be supplemented promptly upon Applicant’s acquisition of further or additional information.

Opposer’s Requests shall be responded to in accordance with the Definitions attached hereto as Appendix A.

REQUESTS FOR ADMISSION

Request No. 1: Admit that Applicant was aware of the existence of Maker’s Mark before Applicant selected or designed the Contested Mark.

Request No. 2: Admit that Applicant was aware of the existence of Maker's Mark before Applicant filed to register the Contested Mark.

Request No. 3: Admit that Applicant was aware of the existence of one or more of Opposer's Marks before Applicant selected or designed the Contested Mark.

Request No. 4: Admit that Applicant was aware of the existence of one or more of Opposer's Marks before Applicant filed to register the Contested Mark.

Request No. 5: Admit that Maker's Mark owns or has used multiple marks that utilize the term "MAKER'S".

Request No. 6: Admit that the Contested Mark incorporates the term "MAKER'S" in its entirety.

Request No. 7: Admit that Applicant has not used the Contested Mark in U.S. commerce.

Request No. 8: Admit that Applicant's intent to use the Contested Mark is without Opposer's permission or authorization.

Request No. 9: Admit that Maker's Mark is the owner of a family of trademarks for use in connection with its Maker's Mark brand, including Opposer's Marks.

Request No. 10: Admit that Applicant is in possession of no Document or Thing evidencing that Applicant's rights in the Contested Mark are senior to Opposer's rights in the Opposer's Marks.

Request No. 11: Admit that Applicant is in possession of no Document or Thing which supports its contention that Opposer's Marks are not well-known.

Request No. 12: Admit that Opposer’s Marks each cover “whisky” and/or “distilled spirits,” both of which are identical to at least one Claimed Good cited in the Contested Application.

Request No. 13: Admit that Applicant did not conduct any U.S. trademark clearance searches for the Contested Mark.

Request No. 14: Admit that Applicant did conduct a U.S. trademark clearance search for the Contested Mark.

Respectfully submitted,

MAKER’S MARK DISTILLERY, INC.

Dated: November 26, 2018

By: /s/ Richard M. Assmus
Michael D. Adams
Richard M. Assmus
MAYER BROWN LLP
P.O. Box 2828
Chicago, IL 60690-2828
(312) 701-8623
(312) 701-8162
michaeladams@mayerbrown.com
rassmus@mayerbrown.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that, on November 26, 2018, a copy of the foregoing **OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSION** was served on Bowmaker’s Whiskey Company by email at the following addresses:

tbreiner@bbpatlaw.com, elisedelatorre@bbpatlaw.com, docketclerk@bbpatlaw.com

With courtesy copies sent by USPS Express mail to Bowmaker’s Whiskey Company at the following address:

Theodore A. Breiner
Breiner & Breiner LLC
115 North Henry Street
Alexandria, VA 22314

Dated: November 26, 2018

/s/ Richard M. Assmus
Richard M. Assmus
Attorney for Opposer
Maker’s Mark Distillery, Inc.

APPENDIX A
DEFINITIONS

A. “Bowmaker’s,” “Applicant,” “You” and “Your” means applicant Bowmaker’s Whiskey Company, including, without limitation, any divisions, departments, parents, predecessors, successors, subsidiaries, affiliates, and other organizational or operating units and present or former officers, directors, employees, or agents and all Persons acting or purporting to act on Bowmaker’s Whiskey Company’s behalf.

B. “Maker’s Mark” means Opposer Maker’s Mark Distillery, Inc., including all of its officers, directors, employees, agents, consultants, attorneys, predecessors, subsidiaries and affiliates.

C. “Contested Mark” means the BOWMAKER’S WHISKEY name that Bowmaker’s Whiskey Company has sought to register with the USPTO as Serial Number 87/383,989.

D. “Contested Application” means the application for the BOWMAKER’S WHISKEY name bearing Serial Number 87/383,989.

E. “Opposer’s Marks” means the family of trademarks for the Maker’s Mark brand, including, but not limited to, U.S. Reg. No. 0678192 (MAKER’S MARK), U.S. Reg. No. 3967288 (MAKER’S 46), U.S. Reg. No. 4964096 (MAKER’S), and U.S. Reg. No. 5286883 (MAKER’S MARK PRIVATE SELECT).

F. “Trademark” or “Mark” includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

G. “Claimed Goods” means each of the individual goods covered by the Contested Application, *i.e.*, (i) distilled spirits; (ii) whiskey; and (iii) bourbon.

H. “Document” is defined as having the broadest meaning ascribed to it by Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, all handwritten, typed, printed, graphic, digital and/or computer-stored matter such as correspondence, memoranda, notes, desk calendars, logs, drafts, work-papers, blueprints, drawings or sketches, minutes or recordings of meetings, speeches, presentations, conversations or telephone calls (whether recorded in writing, mechanically or electronically), records, studies, analyses, reports, forecasts, schedules, surveys, invoices, receipts, check stubs, CD-ROMs, computer data, any retrievable data, computer printouts, financial statements, balance sheets, profit and loss statements, statements of earnings, statements of net worth, credit reports, statements of operations, audit reports, financial summaries, statements of lists or assets, figures, statistics, agreements, government filings, inquires, reports, contracts, expense reports, photographs, slides, videos, communications (including, without limitation, electronic mail and web site information), and information or statistics contained on any memory device or other information storage and retrieval systems (whether stored, encoded, taped or coded electrostatically, electromagnetically, optically, digitally or otherwise). “Document” also means an authentic copy where the original is not in Registrant’s possession, custody or control and every copy of a document where the copy is not an identical duplicate of the original.

I. “Things” means all physical items that are not considered documents and shall have the broadest interpretation of that term in Rule 34(a) of the Federal Rules of Civil Procedure.

J. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

K. The terms “relate,” “refer,” “reflect,” “concern,” and “pertain” mean discussing, evidencing, mentioning, memorializing, describing, constituting, containing, analyzing, studying, reporting on, commenting on, recommending, concerning, reflecting, summarizing, referring to, pertaining to, supporting, refuting and/or purporting to evidence, mention, memorialize, describe, constitute, contain, concern, reflect, summarize, refer to, support, refute and/or in any way be relevant, in whole or in part.

L. The term “any” shall be understood in either its most or least inclusive sense as it will bring within the scope of discovery requests all responses that might otherwise be construed to be out of its scope.

M. The use of a singular form of any word includes the plural and vice versa.

N. The connectives “and” and “or” shall be construed both disjunctively and conjunctively so as not to exclude any information otherwise within the scope of any discovery request.

EXHIBIT 5

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

MAKER'S MARK DISTILLERY, INC.,

Opposer,

v.

BOWMAKER'S WHISKEY COMPANY,

Applicant.

Opposition No.: 91239589

Serial No. 87/383,989

Mark: BOWMAKER'S WHISKEY

**OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS TO BOWMAKER'S WHISKEY COMPANY**

Pursuant to Federal Rules of Civil Procedure 26 and 34 and TBMP § 406, Opposer, Maker's Mark Distillery, Inc. ("Maker's Mark" or "Opposer"), hereby requests that Applicant, Bowmaker's Whiskey Company ("Applicant"), produce for inspection and copying the following documents at the offices of Mayer Brown LLP, 71 S Wacker Dr., Chicago, IL 60606 or by such other means and at such other time and place as may be agreed upon by the parties, and that said production be made within 30 days of the date of service of this request. These Requests for Production are deemed continuing in nature as permitted by Rule 26(e) of the Federal Rules of Civil Procedure and TBMP § 408 and are to be supplemented promptly upon Applicant's acquisition of further or additional documents or things.

Opposer's requests for documents and things shall be responded to in accordance with the Definitions and Instructions attached hereto as Appendices A and B, respectively.

REQUESTS FOR PRODUCTION

Request No. 1: All Documents, Communications and Things evidencing, referring or relating to any current, planned, or contemplated uses of the Contested Mark in connection with your offering for sale of each of the Claimed Goods.

Request No. 2: All Documents, Communications and Things evidencing, referring or relating to any current, planned or contemplated uses of the Contested Mark in connection with Your offering for sale goods or services other than the Claimed Goods.

Request No. 3: All Documents, Communications and Things evidencing, referring or relating to the markets, intended audience or channels of trade through which You use or intend to use the Contested Mark.

Request No. 4: All Documents, Communications and Things evidencing, referring or relating to the price points at which You intend to offer for sale each of the Claimed Goods bearing the Contested Mark.

Request No. 5: All Documents, Communications and Things evidencing, referring or relating to the creation, consideration, design, development, selection, and adoption of the Contested Mark, including any other marks, or versions of the Contested Mark, that were considered by You.

Request No. 6: All Documents, Communications and Things evidencing, referring or relating to Opposer's Marks.

Request No. 7: Representative specimens of use of the Contested Mark, including, but not limited to, labels, brochures, containers or trade dress You have used, currently use, or plan to use on or in connection with the Claimed Goods.

Request No. 8: All Documents, Communications and Things evidencing, referring or relating to advertising, marketing, and other promotional materials, including Internet and web based advertising, television advertising, signs, posters and displays which illustrate or depict the use or intended use of the Contested Mark.

Request No. 9: All Documents, Communications and Things evidencing, referring or relating to any instances of actual or possible confusion, mistake, deception or association of any kind between Opposer or its products and/or services offered in connection with Opposer's Marks and Applicant's products or services offered in connection with the Contested Mark.

Request No. 10: All Documents, Communications and Things evidencing, referring or relating to any market studies, surveys, focus groups or other studies which You have conducted or caused to be conducted which relate to the Contested Mark, Opposer's Marks, or the Claimed Goods.

Request No. 11: All Documents, Communications and Things evidencing, referring or relating to any objections, litigation, proceeding or dispute that refers or relates to Your use of or application to register the Contested Mark, including any settlement or mutual co-existence agreements.

Request No. 12: All Documents, Communications and Things evidencing, referring or relating to any clearance efforts by You, including formal or informal trademark searches or investigations which You have conducted or caused to be conducted which refer or relate to the Contested Mark or Opposer's Marks.

Request No. 13: All Documents, Communications and Things evidencing, referring or relating to the circumstances under which You first became aware of Opposer's Marks.

Request No. 14: All Documents which in any way support or relate to Your affirmative defense that Maker's Mark's opposition fails to state a claim upon which relief can be granted.

Request No. 15: All Documents which in any way support or relate to Your affirmative defense that Applicant is entitled to exclusive use and registration of the Contested Mark for the Claimed Goods.

Request No. 16: All Documents which in any way support or relate to Your affirmative defense that Opposer has not been or will not be damaged by Applicant's use and registration of the Contested Mark as applied for in the Contested Application.

Request No. 17: All Documents that in any way support or relate to Your responses to Opposer's First Set of Interrogatories to Applicant dated November 26, 2018, Opposer's First Set of Requests for Admission dated November 26, 2018, and any subsequent sets of Interrogatories and Requests for Admission served on Applicant.

Respectfully submitted,

MAKER'S MARK DISTILLERY, INC.

Dated: November 26, 2018

By: /s/ Richard M. Assmus
Michael D. Adams
Richard M. Assmus
MAYER BROWN LLP
P.O. Box 2828
Chicago, IL 60690-2828
(312) 701-8623
(312) 701-8162
michaeladams@mayerbrown.com
rassmus@mayerbrown.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that, on November 26, 2018, a copy of the foregoing **OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION** was served on Bowmaker’s Whiskey Company by email at the following addresses:

tbreiner@bbpatlaw.com, elisedelatorre@bbpatlaw.com, docketclerk@bbpatlaw.com

With courtesy copies sent by USPS Express mail to Bowmaker’s Whiskey Company at the following address:

Theodore A. Breiner
Breiner & Breiner LLC
115 North Henry Street
Alexandria, VA 22314

Dated: November 26, 2018

/s/ Richard M. Assmus
Richard M. Assmus
Attorney for Opposer
Maker’s Mark Distillery, Inc.

APPENDIX A
DEFINITIONS

A. “Bowmaker’s,” “Applicant,” “You” and “Your” means applicant Bowmaker’s Whiskey Company, including, without limitation, any divisions, departments, parents, predecessors, successors, subsidiaries, affiliates, and other organizational or operating units and present or former officers, directors, employees, or agents and all Persons acting or purporting to act on Bowmaker’s Whiskey Company’s behalf.

B. “Maker’s Mark” means Opposer Maker’s Mark Distillery, Inc., including all of its officers, directors, employees, agents, consultants, attorneys, predecessors, subsidiaries and affiliates.

C. “Contested Mark” means the BOWMAKER’S WHISKEY name that Bowmaker’s Whiskey Company has sought to register with the USPTO as Serial Number 87/383,989.

D. “Contested Application” means the application for the BOWMAKER’S WHISKEY name bearing Serial Number 87/383,989.

E. “Opposer’s Marks” means the family of trademarks for the Maker’s Mark brand, including, but not limited to, U.S. Reg. No. 0678192 (MAKER’S MARK), U.S. Reg. No. 3967288 (MAKER’S 46), U.S. Reg. No. 4964096 (MAKER’S), and U.S. Reg. No. 5286883 (MAKER’S MARK PRIVATE SELECT).

F. “Trademark” or “Mark” includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

G. “Claimed Goods” means each of the individual goods covered by the Contested Application, *i.e.*, (i) distilled spirits; (ii) whiskey; and (iii) bourbon.

H. “Document” is defined as having the broadest meaning ascribed to it by Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, all handwritten, typed, printed, graphic, digital and/or computer-stored matter such as correspondence, memoranda, notes, desk calendars, logs, drafts, work-papers, blueprints, drawings or sketches, minutes or recordings of meetings, speeches, presentations, conversations or telephone calls (whether recorded in writing, mechanically or electronically), records, studies, analyses, reports, forecasts, schedules, surveys, invoices, receipts, check stubs, CD-ROMs, computer data, any retrievable data, computer printouts, financial statements, balance sheets, profit and loss statements, statements of earnings, statements of net worth, credit reports, statements of operations, audit reports, financial summaries, statements of lists or assets, figures, statistics, agreements, government filings, inquires, reports, contracts, expense reports, photographs, slides, videos, communications (including, without limitation, electronic mail and web site information), and information or statistics contained on any memory device or other information storage and retrieval systems (whether stored, encoded, taped or coded electrostatically, electromagnetically, optically, digitally or otherwise). “Document” also means an authentic copy where the original is not in Applicant’s possession, custody or control and every copy of a document where the copy is not an identical duplicate of the original.

I. “Communication” means any exchange or transmission of words or ideas to another person or an entity, including, without limitation, conversations, discussions, letters, correspondence, memoranda, meetings, notes, speeches, cable, facsimile, telex, telephone call, electronic mail message or other transfer of information, whether written, oral or by any other means, whether direct or indirect, formal or informal, and includes any document which abstracts, digests, transcribes or records any such communication.

J. “Things” means all physical items that are not considered documents and shall have the broadest interpretation of that term in Rule 34(a) of the Federal Rules of Civil Procedure.

K. “Identify,” when used with reference to a natural person, means to give, to the extent known, the person’s full name, present or last known address, and the present or last known place of employment. “Identify” when used with reference to any other type of person, means to give the person’s full name (including any assumed or business name), address(es) and form of organization (i.e. corporation, partnership, unincorporated association, etc.). Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person. “Identify” when used with reference to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; (iv) author(s), addressee(s) and recipient(s); and (iv) the present or last known location and custodian of the document. “Identify,” when used with reference to a communication, means to give its date, type (e.g., telephone conversation or discussion), the place where it occurred, the identity of the person who made the communication, the identity of the person who received the communication, the identity of each other person when it was made, and the subject matter discussed. “Identify,” when used to describe an agreement, means its date, the place where it occurred, the identity of all persons who were parties to the agreement, the identity of each person who has knowledge of the agreement and all other persons present when it was made, and the subject matter of the agreement.

L. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

M. The terms “relate,” “refer,” “reflect,” “concern,” and “pertain” mean discussing, evidencing, mentioning, memorializing, describing, constituting, containing, analyzing, studying, reporting on, commenting on, recommending, concerning, reflecting, summarizing, referring to, pertaining to, supporting, refuting and/or purporting to evidence, mention, memorialize, describe, constitute, contain, concern, reflect, summarize, refer to, support, refute and/or in any way be relevant, in whole or in part.

N. The term “any” shall be understood in either its most or least inclusive sense as it will bring within the scope of discovery requests all responses that might otherwise be construed to be out of its scope.

O. The use of a singular form of any word includes the plural and vice versa.

P. The connectives “and” and “or” shall be construed both disjunctively and conjunctively so as not to exclude any information otherwise within the scope of any discovery request.

APPENDIX B

INSTRUCTIONS

A. The Requests are intended to be construed as broadly as their language permits. They are to be construed independently, except when such construction limits their scope. Any ambiguity should be resolved by selecting the broadest construction possible. If any Request or term in these Requests is ambiguous or unclear to you, please contact the undersigned counsel as soon as possible so the request can be clarified so as to avoid unnecessary delay in discovery. If an objection is made to part of a request, then that part shall be specified and an answer or production given for the remaining parts.

B. If any responsive document has been lost or destroyed, Identify (i) the author, (ii) the date of loss or destruction, (iii) the reason for loss or destruction, (iv) the identity of those directing the destruction, if any, and (v) the substance of the document.

C. If Applicant objects to the scope or breadth of any request, Applicant is directed to (i) respond within the scope or breadth of production that Applicant contends is proper and (ii) define the scope or breadth in which Applicant has responded. Any limited response does not preclude Opposer from seeking additional discovery of the full scope or breadth of the request.

D. Produce all documents that exist or have been maintained in electronic form in the electronic media required to be accessed and read by appropriate electronic equipment or, if necessary, written identification of the electronic equipment or software needed to access the electronic data.

E. These Requests seek all documents, objects or other tangible things described in the enumerated categories that are in Applicant's possession, custody or control.