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

Proceeding no.	91264972
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.:  
88008025 (CRABB'S BLACK BURGUNDY)  
Published in the Official Gazette of June 2, 2020

CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,

Opposer,

v.

THE VINEYARD HOUSE LLC,

Applicant.

Opposition No. 91264972

**OPPOSER'S MOTION TO COMPEL  
FURTHER RESPONSES TO INTERROGATORIES AND REQUESTS FOR  
ADMISSION, AND PRODUCTION OF DOCUMENTS**

Opposer Constellation Brands U.S. Operations, Inc. ("Opposer") hereby moves to compel Applicant The Vineyard House LLC ("Applicant") to provide further responses to Opposer's First Sets of Interrogatories and Requests for Admission, and to produce documents responsive to Opposer's First Set of Requests for Production.

**I. BACKGROUND**

This motion reflects the culmination of Applicant's ongoing failure to fulfill its obligation to participate in the discovery process. On December 20, 2021, Applicant served responses to the written discovery at issue. As discussed below, those responses were woefully deficient for a host of reasons, including the inclusion of general and boilerplate objections, objections that ignored basic sentence construction, and even objections of the sort that Applicant's counsel

itself had earlier asserted were inappropriate. Moreover, although Applicant stated it would produce documents responsive to 19 of the Requests for Production, it never did so.

For that reason, on March 14, 2022, and March 18, 2022, Opposer sent Applicant deficiency letters regarding this proceeding and another co-pending proceeding, and noticed depositions of Applicant and its principal. Rather than address the deficiencies or even schedule a call to discuss them, in response to the letters Applicant's counsel simply asserted cryptically that their client was suddenly "unavailable" for an undetermined period of time.

Based on the same vague and unsupported assertion, on April 1, 2022, Applicant filed a Motion to Suspend, requesting that the Board stay these proceedings for six months. [17 TTABVUE.] In its Motion, Applicant claims that "Applicant has been diligent in its defense of the oppositions and has been timely in responding to discovery requests from Opposer. Applicant has also timely responded to meet and confer requests received from Opposer." [17 TTABVUE 2-3.] This is simply not true. As explained below, Applicant failed to produce any documents during the more than 3 month period between serving its written discovery responses and suddenly becoming "unavailable," and responded to Opposer's deficiency letters not with a time and date to meet and confer, but rather a flat refusal to do so.

Opposer should not be required to sit idly by waiting for Applicant to decide if, and when, it wants to actively participate in the defense of this proceeding. As discussed herein, many of the deficiencies with Applicant's responses should have been and can be addressed by counsel, without input from their client. For example, if Applicant was aware of responsive documents and stated they would be produced when it served its written responses in December, 2021, those documents can be produced now. Similarly, the inappropriate objections were interposed by, and therefore should be addressed by, counsel. Moreover, Applicant was

represented by the same law firm in a federal district court trial involving many of the same issues raised in this proceeding; Applicant's counsel is thus fully aware of many of the facts raised in this proceeding, and could provide substantive responses to the discovery at issue.

Accordingly, Opposer is seeking an order granting this motion and requiring Applicant to produce documents and provide supplemental / amended written responses within 20 days of the date this motion is decided. In the event Applicant's Motion to Suspend is granted, the Board can still issue an order on this motion, requiring the same documents and responses within 20 days of the suspension being lifted.

### **HISTORY OF PROCEEDINGS**

This proceeding is one of eight TTAB proceedings, and two federal court lawsuits, involving the mark "TO KALON" and Hamilton W. Crabb, also known as Henry Walker Crabb and H.W. Crabb, [Wilton Decl. ¶ 2.] To understand the background of this motion, and put it in context, a bit of history is in order.

In the mid-1800's, Mr. Crabb purchased farmland in the Napa County area of California and founded "Hermosa Vineyards." [1 TTABVUE 5, ¶ 6.] In or about 1886, after adding additional acreage to his holdings, Mr. Crabb began calling his company the "To-Kalon Wine Company." [Id. at ¶ 7.] By virtue of his pioneering efforts, Mr. Crabb had in the 19<sup>th</sup> Century become closely associated with the brand "To Kalon." [Id. at ¶ 8.] Following Mr. Crabb's death, his land was sold off among several buyers. [Id. at ¶ 10.] Both Mr. Crabb, and his To-Kalon Wine Company, faded into history.

Opposer's predecessor-in-interest, Robert Mondavi Winery, was founded in 1966, and over the following decade or so Mondavi acquired, *inter alia*, the majority of the original Crabb vineyard properties. [Id. at ¶ 11.] After researching the historic roots of Mr. Crabb and the To-

Kalon Wine Company, in the mid-1980's, Mondavi adopted the mark "TO KALON" to use on and in connection with wine from grapes grown on portions of the Mondavi estate. In addition, Mondavi took steps to resurrect the history of the TO KALON mark, and its association with Mr. Crabb.

The current saga began in 2018 when Applicant, which is located near the Mondavi winery and the historic To Kalon vineyard land, decided it wanted to associate itself with TO KALON and Mr. Crabb. Notwithstanding the fact that Applicant does not own land that was part of the historic To Kalon vineyard, a factual finding made by the District Court when enjoining Applicant from using "TO KALON," [Wilton Decl. Ex. A: Rule 52 Order After Trial On The Merits at 6:21-23, 6:26-7:1, 7 n.5, & 15:15-16.], Applicant filed multiple applications to register TO KALON-formative and CRABB-formative marks. [Wilton Decl. ¶ 3.] Applicant then filed oppositions to several applications to register TO KALON-formative marks filed by Opposer and a petition to cancel Opposer's incontestable registrations for TO KALON and TO KALON VINEYARD. [Wilton Decl. ¶4.]

These filings were followed by Applicant filing suit against Opposer in the United States District Court for the Northern District of California, *The Vineyard House v. Constellation Brands U.S. Operations, Inc.*, Case No. 19-cv-01424, which was consolidated with Opposer's later-filed lawsuit<sup>1</sup> against TVH (the "Civil Action"). [Wilton Decl. ¶ 5-6.] Applicant was represented by the same law firm in the Civil Action as it is in this proceeding. [Id.]

The Civil Action proceeded to a bench trial that concluded in December, 2020. [Wilton Decl. ¶ 7.] The trial began on November 30, 2020, and concluded on December 9, 2020. [Id.] The Court heard from 13 witnesses, and admitted and reviewed over 600 exhibits. [Id.]

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<sup>1</sup> *Constellation Brands U.S. Operations, Inc. v. The Vineyard House, LLC*, Case No. 3:20-cv-00238 (N.D. Cal. filed Jan. 10, 2020).

Following the conclusion of the trial, the District Court issued a 24-page Rule 52 Order After Trial On The Merits. [Id. Ex. A.] The District Court considered and decided many of the same issues presented by this proceeding. In the end, Opposer prevailed. [Id.] Judgment was entered against Applicant and in favor of Opposer in the Civil Action, and a permanent injunction was issued prohibiting Applicant’s use of TO KALON in connection with wine. [Judgment Under Rule 58: Wilton Decl. Ex. B.] Applicant did not appeal the judgment. [Wilton Decl. ¶ 8.]

Following the entry of judgment, on July 26, 2021, the District Court held that the Civil Action was “exceptional” under 15 U.S.C. § 1117(a) and awarded \$2.3 million in fees and costs against Applicant. [Wilton Decl. Ex. C: Post-Trial Order Re: Attorneys’ Fees And Expert Fees.]

### **HISTORY OF DISCOVERY**

On October 29, 2021, Opposer served the written discovery at issue on this motion. [Wilton Decl. ¶ 11 and Exs. D, E and F.] On December 20, 2021, Applicant served the discovery responses at issue on this motion. [Id. Exs. G, H and I.] In its response to the Requests for Production, Applicant represented that it would be producing documents responsive to 19 of the Requests. [Id. ¶ 12 & Ex. I.] It has not produced a single document. [Id. ¶ 12.]

### **MEET AND CONFER EFFORTS**

After its last settlement proposal was rejected by Applicant, on March 14, 2022, Opposer’s counsel wrote to Applicant’s counsel setting forth in detail why Applicant’s written responses were deficient. [Wilton Decl. ¶ 13 & Exs. J & K.] In addition, Opposer’s counsel’s communication reminded Applicant that it had stated it would be producing documents in December, 2021, and yet those documents had not been produced. [Id.]

Opposer asked that Applicant either provide amended responses and the responsive documents by March 25, 2022, or suggest a time prior to March 21, 2022 during which the parties could speak directly regarding the issues raised by Opposer. [Id. ¶ 14.]

Rather than respond substantively to the deficiency letter, on March 23, 2022, Applicant's counsel sent an email stating the following:

“Due to an unforeseen event, the client is unavailable and we are unable to communicate with him [sic] for a period of time, the length of which is currently undetermined.”

[Wilton Decl. ¶ 15 & Ex. L.] On March 25, 2022, Opposer's counsel again wrote to Applicant's counsel reminding Applicant of its discovery obligations. In response, Applicant's counsel provided the same cryptic response:

“[A]s we advised you on Wednesday, due to an unforeseen event, our client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined. For obvious reasons, this unavailability is impactful on the matters now pending before the Board.”

[Wilton Decl. ¶ 16 & Ex. M.]

Then, on April 1, 2022, Applicant filed its motion to suspend, requesting a six month adjournment of these proceedings. [17 TTABVUE.] Applicant once again did not provide any factual basis for its request, instead explaining that “Due to Applicant's right to medical privacy, Applicant's counsel cannot further elaborate on the details of the situation.”<sup>2</sup> [17 TTABVUE 3.]

While Opposer would have preferred that Applicant engage with it to discuss the deficiencies in Applicant's discovery responses, Applicant's counsel has made it abundantly clear that that discussion is not going to occur in the near term, if ever. As a result, given Applicant's counsel's express statements, any further attempts to meet and confer would be pointless.

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<sup>2</sup> Opposer is addressing the lack of merit of Applicant's suspension request in its opposition to that motion.

While Opposer's counsel is sympathetic to Applicant's counsel's purported dilemma, the relationship between Applicant and its counsel is not of Opposer's concern; Applicant has an obligation to engage in the discovery process and has affirmatively chosen not to do so. Most importantly, that lack of engagement substantially predates the current "unforeseen event."

## **II. ARGUMENT**

### **A. Legal Standard**

A motion to compel discovery should be granted where, as here (1) Opposer made a good faith attempt to resolve this matter, and (2) Applicant failed to provide responses to properly served discovery requests, or produce documents or information responsive to Opposer's discovery requests. See 37 C.F.R. § 2.120(f); TBMP § 523.01-02. "[E]vasive or incomplete disclosure, answer, or response...must be treated as a failure to disclose, answer, or respond." Fed. R. Civ. P. 37(a)(4).

### **B. General Failures To Comply With Discovery**

In addition to its failure to provide meaningful responses to many of Opposer's interrogatories and requests for admission, Applicant has failed to comply with long-settled and basic principles related to its responses.

#### **1. Applicant's Asserted General Objections Are Improper.**

Applicant's responses to Opposer's Interrogatories and Requests for Production are prefaced with a section titled "General Objections." [Wilton Decl. Ex. G, p. 2 & Ex. I, p. 2.] Applicant's responses to Opposer's Requests for Admissions are prefaced by a section titled "Preliminary Statement and General Objections." [Id. Ex. H, p. 1.] Moreover, nearly all of Applicant's written responses to the enumerated interrogatories and requests include assertions



of boilerplate and general objections. Many simply refer to and “incorporate” the entire Preliminary Statement and General Objections.<sup>3</sup>

Objections “must be specifically asserted in response to each [request] against which they are interposed, and the ground or basis for each objection must be stated with specificity.”

TBMP § 405.04(b); see also Fed. R. Civ. P. 33(b)(4); *Amazon Technologies, Inc. v. Wax*, 93 USPQ2d 1702, 1704 (TTAB 2009). Opposer therefore requests that Applicant be ordered to amend its responses to remove its General Objections.

## **2. Applicant’s Objections Based On Confidentiality Are Improper**

The impropriety of Applicant’s boilerplate objections are exemplified by Applicant’s repeated objection that an interrogatory or request seeks “confidential and proprietary business information,” or similar language. [Wilton Decl. Ex. G: Interrogatory Nos. 1-8, 10-20, 25; & Ex. I: Request for Production Nos. 8-16, 18-20, 26.] Board proceedings are governed by the Board’s automatically imposed standard protective order. 37 C.F.R. § 2.116(g). As a result, “[o]bjections based on the confidentiality of information or matter being sought are expected to be minimal in view of the automatic imposition of the Board’s standard protective order.”

TBMP § 410. To the extent any information requested by Opposer is, in fact, confidential or proprietary, Applicant may designate its response or any documents produced as “confidential” or even “for attorney’s eyes only.” TBMP § 412.

Opposer therefore requests Applicant be ordered to reconsider any objections on this basis and amend or supplement its responses and production accordingly.

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<sup>3</sup> The fact Applicant asserted general and boilerplate objections is particularly surprising given that Applicant’s counsel, as counsel of record for Applicant’s related company, To Kalon Stock Farm, LLC (“TKSF”) in separate proceedings before the Board, stated in a meet and confer letter that “The use of boilerplate and general objections is improper under the federal rules.” [Wilton Decl. ¶ 17.] Opposer agrees.

**3. Applicant's Objections Based On Relevance Are Boilerplate And Improper**

Applicant's improper use of boilerplate objections is exemplified by the fact it objected to each of the first 21 interrogatories on the ground that each purportedly "seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." [Wilton Decl. Ex. G.] Ignoring that the standard for relevance changed six years ago, Applicant's reliance on the repeated rote objection is improper and calls into question what information it believes it is entitled to withhold. Opposer therefore requests Applicant be ordered to served amended responses, without the relevance objection, that respond to the subject matters of the actual interrogatories or requests.

**4. Applicant Should Be Required to Produce Responsive Documents**

In its December 20, 2021 response to Opposer's Requests for Production, Applicant stated it "will produce non-privileged documents in its possession, custody or control that are responsive" (or similar language) to Request for Production Nos. 1, 3, 4, 5, 6, 9, 10, 12, 13, 15, 17, 18, 19, 21, 22, 23, 24, 25, 27, 28, 29, and 32.. More than three months have passed since the responses were served, and Applicant still has failed to produce responsive documents, and has not given any indication it intends to do so. [Wilton Decl. ¶ 12.]

"A party served with a request for discovery has a duty to thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party *within the time allowed for responding to the request.*" TBMP § 408.02. As a result, Applicant was required to have identified any the documents it considered responsive at the time in served its response in December, 2021. The purported *current* unavailability of

Applicant's principal does not excuse Applicant's failure to produce documents "within the time allowed for responding" to the Requests.

Opposer therefore requests Applicant be ordered to produce the non-privileged responsive documents it stated it was producing or, in the absence of such documents, confirm that Applicant is not in the possession of non-privileged responsive documents.

**5. Applicant Should Be Required To State Whether Documents Are Being Withheld From Production**

The Federal Rules of Civil Procedure require responding parties to make clear whether any responsive materials are being withheld on the basis of any objections asserted. Fed. R. Civ. P. 34(b)(2)(c). While Applicant asserted a host of general and boilerplate objections, it failed to state whether it was withholding documents based on those objections. Opposer therefore requests Applicant be ordered to amend its responses to the Requests for Production to comply with this requirement.

**C. Applicant Should Be Required To Provide Amended Responses To Opposer's Interrogatory Nos. 11, 15-16, 18, & 27-31**

**1. INTERROGATORY NO. 11**

**Interrogatory No. 11:**

Identify any advertising, marketing, or other promotional materials used in connection with Applicant's Goods that reference Mr. H.W. Crabb (a/k/a Hamilton W. Crabb, Hiram W. Crabb, or Henry W. Crabb).

**Response To Interrogatory No. 11:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant uses H.W. Crabb's Hermosa Valley and H.W. Crabb's Hermosa

Vineyard Block 5 Crabb's Black Burgundy on its wine bottles and in connection with the sale of these particular products.

This interrogatory seeks information regarding the means by which TVH advertises, markets, and promotes any goods that reference Mr. H.W. Crabb. Applicant's boilerplate objections based on relevance and confidentiality are not well taken. *See Mack Trucks, Inc. v. Monroe Auto Equipment Co.*, 181 USPQ 286, 288 (TTAB 1974) (granting motion to compel identification of advertisements).<sup>4</sup> In light of the allegations in this proceeding, namely that Applicant is attempting to associate itself with Opposer, discovery regarding how it uses and advertises goods under the Opposed Marks is relevant. Applicant's response, that "Applicant uses H.W. Crabb's Hermosa Valley and H.W. Crabb's Hermosa Vineyard Block 5 Crabb's Black Burgundy ... in connection with the sale of these particular products," fails to identify "advertising, marketing, or other promotional materials." Opposer requests that Applicant be ordered to identify and produce any advertising, promotion or marketing materials it has used in connection with the Opposed Marks.

## 2. INTERROGATORY NOS. 15, 16

### **Interrogatory No. 15:**

For each location identified in response to Interrogatory Nos. 13 and 14, state whether that location was ever used by Mr. H.W. Crabb (a/k/a Hamilton W. Crabb, Hiram W. Crabb, or Henry W. Crabb) as vineyard land.

### **Response To Interrogatory No. 15:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous and unintelligible so as to make a response impossible without speculation to its meaning, particularly with respect to the term "vineyard land." Subject to and

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<sup>4</sup> In *Mack*, the Board allowed the responding party to produce a representative sample of advertisements in light of the burden of producing *all* advertisements. 181 USPQ at 287-288. Applicant has not objected that identifying its advertising would be burdensome.

without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Yes.

**Interrogatory No. 16:**

Describe all facts supporting your response to Interrogatory No. 15.

**Response To Interrogatory No. 16:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous, and unintelligible so as to make a response impossible without speculation to its meaning, particularly with respect to the term “vineyard land.” Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant commissioned a historical report and was informed that its land was owned by H.W. Crabb.

On a preliminary note, in response to Interrogatory Nos. 13 and 14 (the interrogatories referenced in Interrogatory No. 15), Applicant stated that it “sources the grapes used to produce its goods from [and] produces wine from grapes grown on, its own vineyards at 1581 Oakville Grade, Napa, California.” Applicant’s boilerplate objections to these two interrogatories based on relevance and confidentiality are not well taken. Whether Applicant’s goods have a connection to historic vineyards owned and operated by Mr. Crabb is obviously relevant to the claims and allegations that the Opposed Marks are misdescriptive and create a false association with Opposer’s TO KALON marks. Applicant’s objections that the interrogatories are vague, ambiguous, and unintelligible, particularly as to the wording “vineyard land” are also not well taken. The meaning of vineyard land is also self-evident: land used for vineyards.

Notwithstanding its objections, Applicant responded unambiguously: “Yes.” That response directly contradicts the unambiguous findings of fact made by the District Court in the Civil Action. [Wilton Decl. Ex. A: Rule 52 Order at 6:21-23, 6:26-7:1, 7 n.5, & 15:15-16.] In an apparent attempt to sidestep the impact of the District Court’s findings, in response to Interrogatory No. 16 Applicant states that “Applicant commissioned a historical report and was informed that its land was owned by H.W. Crabb.” By omitting the word “vineyard” Applicant attempts to sidestep the actual interrogatory, which seeks all facts supporting Applicant’s

contention that it grows grapes and produces wine from grapes on land used by Mr. Crabb as *vineyard* land.

If Applicant intends to rely on facts not considered by the District Court when it determined Applicant did *not* own any of Mr. Crabb's historic vineyard land, then Applicant should be ordered to provide those facts. If it has nothing more than a report that was considered and rejected by the District Court to support its contention, then it should be ordered to so state. In any event, Applicant should be ordered to provide an amended response to Interrogatory No. 16.

### **3. INTERROGATORY NOS. 17 & 18**

#### **INTERROGATORY NO. 17:**

State whether Applicant's Goods are made from Refosco or Mondeuse wine grapes.

#### **RESPONSE TO INTERROGATORY NO. 17:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous, and unintelligible so as to make a response impossible without speculation to its meaning.

#### **Interrogatory No. 18:**

State the grape variety (or varieties) from which Applicant's Goods are made..

#### **Response To Interrogatory No. 18:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous, and unintelligible so as to make a response impossible without speculation to its meaning.

Applicant's boilerplate objections based these interrogatories are vague, ambiguous, and unintelligible, are not well taken.. Moreover, the objections based on vagueness do not state why the interrogatories are in any manner "unintelligible"; these interrogatories seek information

about the variety or varieties of grapes Applicant uses or intends to use to make CRABB'S BLACK BURGUNDY-branded wine. Further, Applicant's boilerplate objections based on relevance and confidentiality are also not well taken. These interrogatories seek information regarding, among other things, the ingredients of TVH's goods, which is relevant to the claims that the Opposed Mark is misdescriptive. Applicant should be ordered to serve a supplemental response to this interrogatory.

#### **4. INTERROGATORY NOS. 26-29**

##### **Interrogatory No. 26:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 38 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 7].

##### **Response To Interrogatory No. 26:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

##### **Interrogatory No. 27:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 390 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 8].

##### **Response To Interrogatory No. 27:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

##### **Interrogatory No. 28:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 40 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 8].

##### **Response To Interrogatory No. 28:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

**Interrogatory No. 29:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 41 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 8].

**Response To Interrogatory No. 29:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

Each of these interrogatories seeks information Applicant intends to rely upon to support its so-called "Affirmative Defenses." Rather than provide that information, Applicant has simply responded that the allegations "speak for themselves." They do not. Moreover, because Applicant provides no legal authority supporting the notion that any of its allegations labeled "Affirmative Defenses" are, in fact, defenses, they should all be stricken.

For example, Paragraph 38 asserts, in circular fashion, that "[t]here is no likelihood of confusion, mistake or deception between [the parties' marks] as the respective parties' marks are not confusingly similar." The non-exclusive reasons for that assertion are that "[t]he marks themselves are not confusingly similar as they differ in sound/pronunciation, appearance, connotation and commercial impression" and "[t]here is no evidence of threatened or actual confusion." If, in fact, the bare recitation in Paragraph 38 represents all of the evidentiary facts Applicant intends to rely upon to support this defense then it should be required to so state.

Paragraph 39 provides that "Opposer does not have exclusive rights to utilize the terms H.W. CRABB or CRABB to the exclusion of all other third parties and should not be permitted to monopolize the marks that are not confusingly similar to Opposer's marks." Again, if Applicant has any factual basis for the conclusion that "Opposer does not have exclusive rights to utilize the terms "H.W. CRABB or CRABB" then it is required to provide those facts in response to this interrogatory. The same holds true for the remaining conclusions in this



paragraph. If, in fact, Applicant does not have a factual basis for this defense then not only should it so state, it should also withdraw the defense. *See* Fed. R. Civ. P. 11.

Similarly, Paragraph 40 asserts that “Opposer has suffered no damages nor will it suffer damages in the future by Registration of Applicant’s marks.” This is a legal conclusion, not a factual statement. If Applicant has a factual basis for this “defense” it should be required to provide it. If it does not, this defense should be withdrawn.

Finally, Paragraph 41 asserts “[t]he claims alleged by Opposer in the Notice of Opposition are frivolous, alleged with the knowledge that there is no likelihood of confusion between the marks of the respective parties and alleged in bad faith.” Breaking this “defense” into its component parts, Applicant alleges that Opposer’s asserted claims are “frivolous.” Yet Applicant, in its interrogatory response, provides no factual or legal basis for its conclusion. Similarly, Applicant alleges that Opposer has “knowledge” of a lack of likely confusion and that “Opposer” is acting in “bad faith.” There are no facts alleged to support these very specific assertions, and Applicant’s interrogatory response provides none. Applicant should be required to provide such facts, or withdraw this “defense.”

**D. Applicant Should Be Required To Provide Amended Responses To  
Opposer’s Request for Admission Nos. 1-6, 8-12, 14-15, & 28**

**1. REQUEST FOR ADMISSION NOS. 1, 2**

**Request For Admission No. 1:**

Admit that the District Court held in the Civil Action that the marks TO KALON and TO KALON VINEYARD have “gained substantial notoriety in the wine market among consumers and those in the trade.”

**Response To Request For Admission No. 1:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the ground that it seeks information that is not relevant to the parties’ claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant,

on behalf of itself and no other individual or entity, responds as follows: The District Court holding speaks for itself.

**Request For Admission No. 2:**

Admit that the District Court held in the Civil Action that “TVH’s intent is unambiguous. TVH wants consumers to associate its wine with the wine which they understand to be sourced from those formerly belonging to the H.W. Crabb’s To Kalon Vineyard.”

**Response To Request For Admission No. 2:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the ground that it seeks information that is not relevant to the parties’ claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: The District Court holding speaks for itself.

Rule 36(a)(1)(B), (2) allows a party to seek an admission that a document is genuine. In this case, Opposer simply sought admissions regarding the content of the District Court’s Rule 52 Order. As a participant in the Civil Action, Applicant is readily familiar with the District Court’s holding and should be able to admit or deny requests regarding its contents.

Rather than do so, however, Applicant skirted the very purpose of Rule 36 - to narrow the issues for trial - by responding that the District Court’s order in the Civil Action “speaks for itself.” While not binding authority here, a court in the District of Columbia succinctly explained why Applicant’s response is improper:

[I]f the request for admission quotes a documents and asks the other party to admit that the document contains the material quoted, it should be admitted if the quotation is accurate and denied if it is not. The tautological “objection” that the finder of fact can read the document for itself to see if the quote is accurate is not a legitimate objection but an evasion of the responsibility to either admit or deny a request for admission, unless a legitimate objection can be made or the responding party explains in detail why it can neither admit or deny the request. Fed. R. Civ. P. 36. See *Sigmund v. Starwood Urban Retail VI, LLC*, 236 F.R.D. 43, 46 (D.D.C. 2006). It is also a waste of time, since the “objection” that the document speaks for itself does not move the ball an inch down the field and defeats the narrowing of issues in dispute that is the purpose of the rule permitting requests for admission.

*Miller v. Holzmann*, 240 F.R.D. 1, 4 (D.D.C. 2006).

Because Applicant's boilerplate relevance objections are meritless - the fame of Opposer's asserted marks and Applicant's intent in selecting the Opposed Marks are relevant to the issues in virtually all Board proceedings, including this one - Applicant should be ordered to admit, or deny, these requests. In doing so, Applicant should be reminded that it was a party to the Civil Action, that the District Court issued its Rule 52 Order following trial, that Applicant did not appeal the Order, and that the quoted language comes directly from the Order. [Wilton Decl. Ex. A: Rule 52 Order at 13:8-9 & 14:3-5.]

## **2. REQUEST FOR ADMISSION NOS. 3, 4, 9 & 10:**

### **Request for Admission No. 3**

Admit that Applicant's Goods are not made from grapes sourced from land once owned and used by Mr. H.W. Crabb to grow grapes.

### **Response to Request for Admission No. 3**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "land once owned and used" is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

### **Request For Admission No. 4:**

Admit that Applicant's Goods are not made with grapes sourced from land once owned and used by Mr. H.W. Crabb to produce wine.

### **Response To Request For Admission No. 4:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "land once owned and used" is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

### **Request For Admission No. 8:**

Admit that Applicant's Goods are not made on land once owned by Mr. H.W. Crabb to grow grapes.

### **Response To Request For Admission No. 9:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "land once owned"

is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**Request For Admission No. 10:**

Admit that Applicant's Goods are not made on land once owned by Mr. H.W. Crabb to produce wine.

**Response To Request For Admission No. 10:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "land once owned" is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

These requests seek admissions regarding the connection between Applicant and its goods, on the one hand, and H.W. Crabb and his historic vineyard, on the other. Those issues were tried, and decided, by the District Court.

Applicant's objections that the wording "land once owned and used," and "land once owned" are so vague and ambiguous as to prevent Applicant from determining the nature of the requests are not well taken. The plain meaning of these phrases is self-evident. Moreover, Applicant's denials of facts that have already been decided will lead to unnecessary motion practice. Applicant should be ordered to provide amended responses without objection and admit the requests (or deny if it believes it can without violating Fed. R. Civ. P. 11).

**3. REQUEST FOR ADMISSION NOS. 6, 7, & 8**

**Request For Admission No. 6:**

Admit that sophisticated wine consumers immersed in the Northern California wine industry associate Mr. H.W. Crabb with "To Kalon."

**Response To Request For Admission No. 6:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that the phrases "sophisticated wine consumers" and "immersed in the Northern California wine industry" are vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request insofar as it calls for speculation as to the associations made by third parties.

**Request For Admission No. 7:**

Admit that sophisticated merchants immersed in the Northern California wine industry associate Mr. H.W. Crabb with “To Kalon.”

**Response To Request For Admission No. 7:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that the phrases “sophisticated merchants” and “immersed in the Northern California wine industry” are vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request insofar as it calls for speculation as to the associations made by third parties.

**Request For Admission No. 8:**

Admit that sophisticated professionals immersed in the Northern California wine industry associate Mr. H.W. Crabb with “To Kalon.”

**Response To Request For Admission No. 8:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that the phrases “sophisticated professionals” and “immersed in the Northern California wine industry” are vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request insofar as it calls for speculation as to the associations made by third parties.

In the Civil Action, the District Court, after seven days of trial testimony and a review of hundreds of exhibits, made this unequivocal finding:

The Court finds, based on a complete review of all the evidence, that sophisticated wine consumers, merchants, and professionals immersed in the Northern California wine industry have a current understanding of To Kalon.

[Wilton Decl. Ex. A: Rule 52 Order at 9:16-18.] Thus, Request Nos. 8, 9 and 10 simply seek admissions regarding an express finding of the District Court, a finding that Applicant is collaterally estopped from attacking. Yet, rather than simply admit these Requests, Applicant interposed the objections that the phrases “sophisticated wine consumers,” “sophisticated merchants,” “sophisticated professionals” and “immersed in the Northern California wine industry” are so vague and ambiguous as to prevent Applicant from determining the nature of the requests. Given that the phrases come directly from the District Court’s ruling, the objections are not well taken. Nor do the requests require speculation on Applicant’s part; the issues were

tried and decided in the Civil Action. Applicant should be ordered to provide amended responses without objection and admit the requests (or deny if it believes it can without violating Fed. R. Civ. P. 11).

#### **4. REQUEST FOR ADMISSION NOS. 12, 13**

##### **Request For Admission No. 12:**

Admit that the letters H.W.C. are identical to the initials of Mr. H.W. Crabb.

##### **Response To Request For Admission No. 12:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as speculative and seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

##### **Request For Admission No. 13:**

Admit that the letters HWC are identical to the initials of Mr. H.W. Crabb.

##### **Response To Request For Admission No. 13:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as speculative and seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, response as follows: Denied.

These requests sought what should be straight-forward admissions of self-evident facts, namely that H.W. Crabb's initials (H.W.C.) are identical to the letters H.W.C. (or HWC). The subject matter of the Requests are relevant both to the determination of the similarity and the meanings of the marks at issue in this proceeding. Applicant's relevance objection is therefore not well taken. Moreover, Applicant objects that these requests are "speculative" in some fashion; there is nothing "speculative" about whether three letters correspond to the initials of a person. They do, or they do not. While Applicant's admission may not be strictly necessary to prove these self-evident facts, the fact Applicant has not only objected to these Requests but *denied* them reflects Applicant's general approach to its discovery obligations. Applicant should be ordered to admit these Requests, without objection.

## 5. REQUEST FOR ADMISSION NO. 31:

### **Request For Admission No. 31:**

Admit that all documents produced by Applicant in response to Opposer's First Set of Interrogatories to Applicant and Opposer's First Set of Requests for Production of Documents and Things to Applicant are authentic under Rule 901 of the Federal Rules of Evidence.

### **Response To Request For Admission No. 31:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request insofar as it seeks a legal determination as to authenticity pursuant to the Federal Rules of Evidence.

Rule 36(a)(1)(B), (2) allows a party to seek an admission that a document is genuine.

Such requests are explicitly permitted by the Board's rules. 37 C.F.R. § 2.120(i). While Applicant's statement that the request "seeks a legal determination as to authenticity pursuant to the Federal Rules of Evidence" is a correct restatement of what the request is seeking, that is neither a basis for an objection nor a reason not to respond substantively to the request. The very purpose of Rule 36 is to narrow the issues for trial. Yet Applicant apparently believes that it is not required to comply with even the simplest of requests, namely confirming that the documents *it* produces (assuming it ever does so) are authentic. Such gamesmanship should not be allowed. Applicant should be ordered to provide a supplemental response to this request.

### **E. Applicant Should Be Ordered To Review, And Amend, Its Responses to Opposer's Requests For Production**

As noted in Opposer's March 18, 2022 meet and confer letter, because Applicant failed to produce a single document in response to Opposer's Requests for Production, it was impossible for Opposer to determine whether it would be necessary to spend time pointing out the deficiencies in Applicant's responses to those Requests. In other words, Opposer took the view that discussing improper general objections, boilerplate objections, and instances of improper responses should not be an abstract exercise.

Yet, given Applicant's abject failure to participate in the meet and confer process, Opposer asks that Applicant be ordered to review its responses to the Requests for Production in light of the deficiencies outlined above, and serve amended responses that address those deficiencies. It is hoped that, in this fashion, the parties can avoid further motion practice.

### **III. CONCLUSION**

As discussed above, Applicant has failed to meet its obligation to participate meaningfully in the discovery process. Opposer therefore respectfully requests an order issue requiring Applicant to address the deficiencies outlined herein, produce documents, and that Applicant cooperate in any further discovery in this proceeding.

Date: April 21, 2022

By: /s/ Kenneth L. Wilton

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **OPPOSER’S MOTION TO COMPEL FURTHER RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSION, AND PRODUCTION OF DOCUMENTS** has been served on Applicant The Vineyard House LLC, by forwarding said copy on April 21, 2022, via email, to the correspondence address of record for Applicant The Vineyard House LLC at fbhatti@buchalter.com, ipdocket@buchalter.com with a courtesy copy to mseror@buchalter.com; hblan@buchalter.com.

*/Helen Kang/* \_\_\_\_\_  
Helen Kang

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

In the Matter of Application Serial No.:  
88008025 (CRABB'S BLACK BURGUNDY)  
Published in the Official Gazette of June 2, 2020

CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,

Opposer,

v.

THE VINEYARD HOUSE LLC,

Applicant.

Opposition No. 91264972

**OPPOSER'S MOTION TO COMPEL  
FURTHER RESPONSES TO INTERROGATORIES AND REQUESTS FOR  
ADMISSION, AND PRODUCTION OF DOCUMENTS**

Opposer Constellation Brands U.S. Operations, Inc. ("Opposer") hereby moves to compel Applicant The Vineyard House LLC ("Applicant") to provide further responses to Opposer's First Sets of Interrogatories and Requests for Admission, and to produce documents responsive to Opposer's First Set of Requests for Production.

**I. BACKGROUND**

This motion reflects the culmination of Applicant's ongoing failure to fulfill its obligation to participate in the discovery process. On December 20, 2021, Applicant served responses to the written discovery at issue. As discussed below, those responses were woefully deficient for a host of reasons, including the inclusion of general and boilerplate objections, objections that ignored basic sentence construction, and even objections of the sort that Applicant's counsel

itself had earlier asserted were inappropriate. Moreover, although Applicant stated it would produce documents responsive to 19 of the Requests for Production, it never did so.

For that reason, on March 14, 2022, and March 18, 2022, Opposer sent Applicant deficiency letters regarding this proceeding and another co-pending proceeding, and noticed depositions of Applicant and its principal. Rather than address the deficiencies or even schedule a call to discuss them, in response to the letters Applicant's counsel simply asserted cryptically that their client was suddenly "unavailable" for an undetermined period of time.

Based on the same vague and unsupported assertion, on April 1, 2022, Applicant filed a Motion to Suspend, requesting that the Board stay these proceedings for six months. [17 TTABVUE.] In its Motion, Applicant claims that "Applicant has been diligent in its defense of the oppositions and has been timely in responding to discovery requests from Opposer. Applicant has also timely responded to meet and confer requests received from Opposer." [17 TTABVUE 2-3.] This is simply not true. As explained below, Applicant failed to produce any documents during the more than 3 month period between serving its written discovery responses and suddenly becoming "unavailable," and responded to Opposer's deficiency letters not with a time and date to meet and confer, but rather a flat refusal to do so.

Opposer should not be required to sit idly by waiting for Applicant to decide if, and when, it wants to actively participate in the defense of this proceeding. As discussed herein, many of the deficiencies with Applicant's responses should have been and can be addressed by counsel, without input from their client. For example, if Applicant was aware of responsive documents and stated they would be produced when it served its written responses in December, 2021, those documents can be produced now. Similarly, the inappropriate objections were interposed by, and therefore should be addressed by, counsel. Moreover, Applicant was

represented by the same law firm in a federal district court trial involving many of the same issues raised in this proceeding; Applicant's counsel is thus fully aware of many of the facts raised in this proceeding, and could provide substantive responses to the discovery at issue.

Accordingly, Opposer is seeking an order granting this motion and requiring Applicant to produce documents and provide supplemental / amended written responses within 20 days of the date this motion is decided. In the event Applicant's Motion to Suspend is granted, the Board can still issue an order on this motion, requiring the same documents and responses within 20 days of the suspension being lifted.

### **HISTORY OF PROCEEDINGS**

This proceeding is one of eight TTAB proceedings, and two federal court lawsuits, involving the mark "TO KALON" and Hamilton W. Crabb, also known as Henry Walker Crabb and H.W. Crabb, [Wilton Decl. ¶ 2.] To understand the background of this motion, and put it in context, a bit of history is in order.

In the mid-1800's, Mr. Crabb purchased farmland in the Napa County area of California and founded "Hermosa Vineyards." [1 TTABVUE 5, ¶ 6.] In or about 1886, after adding additional acreage to his holdings, Mr. Crabb began calling his company the "To-Kalon Wine Company." [Id. at ¶ 7.] By virtue of his pioneering efforts, Mr. Crabb had in the 19<sup>th</sup> Century become closely associated with the brand "To Kalon." [Id. at ¶ 8.] Following Mr. Crabb's death, his land was sold off among several buyers. [Id. at ¶ 10.] Both Mr. Crabb, and his To-Kalon Wine Company, faded into history.

Opposer's predecessor-in-interest, Robert Mondavi Winery, was founded in 1966, and over the following decade or so Mondavi acquired, *inter alia*, the majority of the original Crabb vineyard properties. [Id. at ¶ 11.] After researching the historic roots of Mr. Crabb and the To-

Kalon Wine Company, in the mid-1980's, Mondavi adopted the mark "TO KALON" to use on and in connection with wine from grapes grown on portions of the Mondavi estate. In addition, Mondavi took steps to resurrect the history of the TO KALON mark, and its association with Mr. Crabb.

The current saga began in 2018 when Applicant, which is located near the Mondavi winery and the historic To Kalon vineyard land, decided it wanted to associate itself with TO KALON and Mr. Crabb. Notwithstanding the fact that Applicant does not own land that was part of the historic To Kalon vineyard, a factual finding made by the District Court when enjoining Applicant from using "TO KALON," [Wilton Decl. Ex. A: Rule 52 Order After Trial On The Merits at 6:21-23, 6:26-7:1, 7 n.5, & 15:15-16.], Applicant filed multiple applications to register TO KALON-formative and CRABB-formative marks. [Wilton Decl. ¶ 3.] Applicant then filed oppositions to several applications to register TO KALON-formative marks filed by Opposer and a petition to cancel Opposer's incontestable registrations for TO KALON and TO KALON VINEYARD. [Wilton Decl. ¶4.]

These filings were followed by Applicant filing suit against Opposer in the United States District Court for the Northern District of California, *The Vineyard House v. Constellation Brands U.S. Operations, Inc.*, Case No. 19-cv-01424, which was consolidated with Opposer's later-filed lawsuit<sup>1</sup> against TVH (the "Civil Action"). [Wilton Decl. ¶ 5-6.] Applicant was represented by the same law firm in the Civil Action as it is in this proceeding. [Id.]

The Civil Action proceeded to a bench trial that concluded in December, 2020. [Wilton Decl. ¶ 7.] The trial began on November 30, 2020, and concluded on December 9, 2020. [Id.] The Court heard from 13 witnesses, and admitted and reviewed over 600 exhibits. [Id.]

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<sup>1</sup> *Constellation Brands U.S. Operations, Inc. v. The Vineyard House, LLC*, Case No. 3:20-cv-00238 (N.D. Cal. filed Jan. 10, 2020).

Following the conclusion of the trial, the District Court issued a 24-page Rule 52 Order After Trial On The Merits. [Id. Ex. A.] The District Court considered and decided many of the same issues presented by this proceeding. In the end, Opposer prevailed. [Id.] Judgment was entered against Applicant and in favor of Opposer in the Civil Action, and a permanent injunction was issued prohibiting Applicant’s use of TO KALON in connection with wine. [Judgment Under Rule 58: Wilton Decl. Ex. B.] Applicant did not appeal the judgment. [Wilton Decl. ¶ 8.]

Following the entry of judgment, on July 26, 2021, the District Court held that the Civil Action was “exceptional” under 15 U.S.C. § 1117(a) and awarded \$2.3 million in fees and costs against Applicant. [Wilton Decl. Ex. C: Post-Trial Order Re: Attorneys’ Fees And Expert Fees.]

### **HISTORY OF DISCOVERY**

On October 29, 2021, Opposer served the written discovery at issue on this motion. [Wilton Decl. ¶ 11 and Exs. D, E and F.] On December 20, 2021, Applicant served the discovery responses at issue on this motion. [Id. Exs. G, H and I.] In its response to the Requests for Production, Applicant represented that it would be producing documents responsive to 19 of the Requests. [Id. ¶ 12 & Ex. I.] It has not produced a single document. [Id. ¶ 12.]

### **MEET AND CONFER EFFORTS**

After its last settlement proposal was rejected by Applicant, on March 14, 2022, Opposer’s counsel wrote to Applicant’s counsel setting forth in detail why Applicant’s written responses were deficient. [Wilton Decl. ¶ 13 & Exs. J & K.] In addition, Opposer’s counsel’s communication reminded Applicant that it had stated it would be producing documents in December, 2021, and yet those documents had not been produced. [Id.]

Opposer asked that Applicant either provide amended responses and the responsive documents by March 25, 2022, or suggest a time prior to March 21, 2022 during which the parties could speak directly regarding the issues raised by Opposer. [Id. ¶ 14.]

Rather than respond substantively to the deficiency letter, on March 23, 2022, Applicant's counsel sent an email stating the following:

“Due to an unforeseen event, the client is unavailable and we are unable to communicate with him [sic] for a period of time, the length of which is currently undetermined.”

[Wilton Decl. ¶ 15 & Ex. L.] On March 25, 2022, Opposer's counsel again wrote to Applicant's counsel reminding Applicant of its discovery obligations. In response, Applicant's counsel provided the same cryptic response:

“[A]s we advised you on Wednesday, due to an unforeseen event, our client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined. For obvious reasons, this unavailability is impactful on the matters now pending before the Board.”

[Wilton Decl. ¶ 16 & Ex. M.]

Then, on April 1, 2022, Applicant filed its motion to suspend, requesting a six month adjournment of these proceedings. [17 TTABVUE.] Applicant once again did not provide any factual basis for its request, instead explaining that “Due to Applicant's right to medical privacy, Applicant's counsel cannot further elaborate on the details of the situation.”<sup>2</sup> [17 TTABVUE 3.]

While Opposer would have preferred that Applicant engage with it to discuss the deficiencies in Applicant's discovery responses, Applicant's counsel has made it abundantly clear that that discussion is not going to occur in the near term, if ever. As a result, given Applicant's counsel's express statements, any further attempts to meet and confer would be pointless.

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<sup>2</sup> Opposer is addressing the lack of merit of Applicant's suspension request in its opposition to that motion.

While Opposer's counsel is sympathetic to Applicant's counsel's purported dilemma, the relationship between Applicant and its counsel is not of Opposer's concern; Applicant has an obligation to engage in the discovery process and has affirmatively chosen not to do so. Most importantly, that lack of engagement substantially predates the current "unforeseen event."

## **II. ARGUMENT**

### **A. Legal Standard**

A motion to compel discovery should be granted where, as here (1) Opposer made a good faith attempt to resolve this matter, and (2) Applicant failed to provide responses to properly served discovery requests, or produce documents or information responsive to Opposer's discovery requests. See 37 C.F.R. § 2.120(f); TBMP § 523.01-02. "[E]vasive or incomplete disclosure, answer, or response...must be treated as a failure to disclose, answer, or respond." Fed. R. Civ. P. 37(a)(4).

### **B. General Failures To Comply With Discovery**

In addition to its failure to provide meaningful responses to many of Opposer's interrogatories and requests for admission, Applicant has failed to comply with long-settled and basic principles related to its responses.

#### **1. Applicant's Asserted General Objections Are Improper.**

Applicant's responses to Opposer's Interrogatories and Requests for Production are prefaced with a section titled "General Objections." [Wilton Decl. Ex. G, p. 2 & Ex. I, p. 2.] Applicant's responses to Opposer's Requests for Admissions are prefaced by a section titled "Preliminary Statement and General Objections." [Id. Ex. H, p. 1.] Moreover, nearly all of Applicant's written responses to the enumerated interrogatories and requests include assertions



of boilerplate and general objections. Many simply refer to and “incorporate” the entire Preliminary Statement and General Objections.<sup>3</sup>

Objections “must be specifically asserted in response to each [request] against which they are interposed, and the ground or basis for each objection must be stated with specificity.”

TBMP § 405.04(b); see also Fed. R. Civ. P. 33(b)(4); *Amazon Technologies, Inc. v. Wax*, 93 USPQ2d 1702, 1704 (TTAB 2009). Opposer therefore requests that Applicant be ordered to amend its responses to remove its General Objections.

## **2. Applicant’s Objections Based On Confidentiality Are Improper**

The impropriety of Applicant’s boilerplate objections are exemplified by Applicant’s repeated objection that an interrogatory or request seeks “confidential and proprietary business information,” or similar language. [Wilton Decl. Ex. G: Interrogatory Nos. 1-8, 10-20, 25; & Ex. I: Request for Production Nos. 8-16, 18-20, 26.] Board proceedings are governed by the Board’s automatically imposed standard protective order. 37 C.F.R. § 2.116(g). As a result, “[o]bjections based on the confidentiality of information or matter being sought are expected to be minimal in view of the automatic imposition of the Board’s standard protective order.”

TBMP § 410. To the extent any information requested by Opposer is, in fact, confidential or proprietary, Applicant may designate its response or any documents produced as “confidential” or even “for attorney’s eyes only.” TBMP § 412.

Opposer therefore requests Applicant be ordered to reconsider any objections on this basis and amend or supplement its responses and production accordingly.

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<sup>3</sup> The fact Applicant asserted general and boilerplate objections is particularly surprising given that Applicant’s counsel, as counsel of record for Applicant’s related company, To Kalon Stock Farm, LLC (“TKSF”) in separate proceedings before the Board, stated in a meet and confer letter that “The use of boilerplate and general objections is improper under the federal rules.” [Wilton Decl. ¶ 17.] Opposer agrees.

**3. Applicant's Objections Based On Relevance Are Boilerplate And Improper**

Applicant's improper use of boilerplate objections is exemplified by the fact it objected to each of the first 21 interrogatories on the ground that each purportedly "seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." [Wilton Decl. Ex. G.] Ignoring that the standard for relevance changed six years ago, Applicant's reliance on the repeated rote objection is improper and calls into question what information it believes it is entitled to withhold. Opposer therefore requests Applicant be ordered to served amended responses, without the relevance objection, that respond to the subject matters of the actual interrogatories or requests.

**4. Applicant Should Be Required to Produce Responsive Documents**

In its December 20, 2021 response to Opposer's Requests for Production, Applicant stated it "will produce non-privileged documents in its possession, custody or control that are responsive" (or similar language) to Request for Production Nos. 1, 3, 4, 5, 6, 9, 10, 12, 13, 15, 17, 18, 19, 21, 22, 23, 24, 25, 27, 28, 29, and 32.. More than three months have passed since the responses were served, and Applicant still has failed to produce responsive documents, and has not given any indication it intends to do so. [Wilton Decl. ¶ 12.]

"A party served with a request for discovery has a duty to thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party *within the time allowed for responding to the request.*" TBMP § 408.02. As a result, Applicant was required to have identified any the documents it considered responsive at the time in served its response in December, 2021. The purported *current* unavailability of

Applicant's principal does not excuse Applicant's failure to produce documents "within the time allowed for responding" to the Requests.

Opposer therefore requests Applicant be ordered to produce the non-privileged responsive documents it stated it was producing or, in the absence of such documents, confirm that Applicant is not in the possession of non-privileged responsive documents.

**5. Applicant Should Be Required To State Whether Documents Are Being Withheld From Production**

The Federal Rules of Civil Procedure require responding parties to make clear whether any responsive materials are being withheld on the basis of any objections asserted. Fed. R. Civ. P. 34(b)(2)(c). While Applicant asserted a host of general and boilerplate objections, it failed to state whether it was withholding documents based on those objections. Opposer therefore requests Applicant be ordered to amend its responses to the Requests for Production to comply with this requirement.

**C. Applicant Should Be Required To Provide Amended Responses To Opposer's Interrogatory Nos. 11, 15-16, 18, & 27-31**

**1. INTERROGATORY NO. 11**

**Interrogatory No. 11:**

Identify any advertising, marketing, or other promotional materials used in connection with Applicant's Goods that reference Mr. H.W. Crabb (a/k/a Hamilton W. Crabb, Hiram W. Crabb, or Henry W. Crabb).

**Response To Interrogatory No. 11:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant uses H.W. Crabb's Hermosa Valley and H.W. Crabb's Hermosa

Vineyard Block 5 Crabb's Black Burgundy on its wine bottles and in connection with the sale of these particular products.

This interrogatory seeks information regarding the means by which TVH advertises, markets, and promotes any goods that reference Mr. H.W. Crabb. Applicant's boilerplate objections based on relevance and confidentiality are not well taken. *See Mack Trucks, Inc. v. Monroe Auto Equipment Co.*, 181 USPQ 286, 288 (TTAB 1974) (granting motion to compel identification of advertisements).<sup>4</sup> In light of the allegations in this proceeding, namely that Applicant is attempting to associate itself with Opposer, discovery regarding how it uses and advertises goods under the Opposed Marks is relevant. Applicant's response, that "Applicant uses H.W. Crabb's Hermosa Valley and H.W. Crabb's Hermosa Vineyard Block 5 Crabb's Black Burgundy ... in connection with the sale of these particular products," fails to identify "advertising, marketing, or other promotional materials." Opposer requests that Applicant be ordered to identify and produce any advertising, promotion or marketing materials it has used in connection with the Opposed Marks.

## 2. INTERROGATORY NOS. 15, 16

### **Interrogatory No. 15:**

For each location identified in response to Interrogatory Nos. 13 and 14, state whether that location was ever used by Mr. H.W. Crabb (a/k/a Hamilton W. Crabb, Hiram W. Crabb, or Henry W. Crabb) as vineyard land.

### **Response To Interrogatory No. 15:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous and unintelligible so as to make a response impossible without speculation to its meaning, particularly with respect to the term "vineyard land." Subject to and

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<sup>4</sup> In *Mack*, the Board allowed the responding party to produce a representative sample of advertisements in light of the burden of producing *all* advertisements. 181 USPQ at 287-288. Applicant has not objected that identifying its advertising would be burdensome.

without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Yes.

**Interrogatory No. 16:**

Describe all facts supporting your response to Interrogatory No. 15.

**Response To Interrogatory No. 16:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous, and unintelligible so as to make a response impossible without speculation to its meaning, particularly with respect to the term “vineyard land.” Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant commissioned a historical report and was informed that its land was owned by H.W. Crabb.

On a preliminary note, in response to Interrogatory Nos. 13 and 14 (the interrogatories referenced in Interrogatory No. 15), Applicant stated that it “sources the grapes used to produce its goods from [and] produces wine from grapes grown on, its own vineyards at 1581 Oakville Grade, Napa, California.” Applicant’s boilerplate objections to these two interrogatories based on relevance and confidentiality are not well taken. Whether Applicant’s goods have a connection to historic vineyards owned and operated by Mr. Crabb is obviously relevant to the claims and allegations that the Opposed Marks are misdescriptive and create a false association with Opposer’s TO KALON marks. Applicant’s objections that the interrogatories are vague, ambiguous, and unintelligible, particularly as to the wording “vineyard land” are also not well taken. The meaning of vineyard land is also self-evident: land used for vineyards.

Notwithstanding its objections, Applicant responded unambiguously: “Yes.” That response directly contradicts the unambiguous findings of fact made by the District Court in the Civil Action. [Wilton Decl. Ex. A: Rule 52 Order at 6:21-23, 6:26-7:1, 7 n.5, & 15:15-16.] In an apparent attempt to sidestep the impact of the District Court’s findings, in response to Interrogatory No. 16 Applicant states that “Applicant commissioned a historical report and was informed that its land was owned by H.W. Crabb.” By omitting the word “vineyard” Applicant attempts to sidestep the actual interrogatory, which seeks all facts supporting Applicant’s

contention that it grows grapes and produces wine from grapes on land used by Mr. Crabb as *vineyard* land.

If Applicant intends to rely on facts not considered by the District Court when it determined Applicant did *not* own any of Mr. Crabb's historic vineyard land, then Applicant should be ordered to provide those facts. If it has nothing more than a report that was considered and rejected by the District Court to support its contention, then it should be ordered to so state. In any event, Applicant should be ordered to provide an amended response to Interrogatory No. 16.

### **3. INTERROGATORY NOS. 17 & 18**

#### **INTERROGATORY NO. 17:**

State whether Applicant's Goods are made from Refosco or Mondeuse wine grapes.

#### **RESPONSE TO INTERROGATORY NO. 17:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous, and unintelligible so as to make a response impossible without speculation to its meaning.

#### **Interrogatory No. 18:**

State the grape variety (or varieties) from which Applicant's Goods are made..

#### **Response To Interrogatory No. 18:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous, and unintelligible so as to make a response impossible without speculation to its meaning.

Applicant's boilerplate objections based these interrogatories are vague, ambiguous, and unintelligible, are not well taken.. Moreover, the objections based on vagueness do not state why the interrogatories are in any manner "unintelligible"; these interrogatories seek information

about the variety or varieties of grapes Applicant uses or intends to use to make CRABB'S BLACK BURGUNDY-branded wine. Further, Applicant's boilerplate objections based on relevance and confidentiality are also not well taken. These interrogatories seek information regarding, among other things, the ingredients of TVH's goods, which is relevant to the claims that the Opposed Mark is misdescriptive. Applicant should be ordered to serve a supplemental response to this interrogatory.

#### **4. INTERROGATORY NOS. 26-29**

##### **Interrogatory No. 26:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 38 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 7].

##### **Response To Interrogatory No. 26:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

##### **Interrogatory No. 27:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 390 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 8].

##### **Response To Interrogatory No. 27:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

##### **Interrogatory No. 28:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 40 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 8].

##### **Response To Interrogatory No. 28:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

**Interrogatory No. 29:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 41 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 8].

**Response To Interrogatory No. 29:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

Each of these interrogatories seeks information Applicant intends to rely upon to support its so-called "Affirmative Defenses." Rather than provide that information, Applicant has simply responded that the allegations "speak for themselves." They do not. Moreover, because Applicant provides no legal authority supporting the notion that any of its allegations labeled "Affirmative Defenses" are, in fact, defenses, they should all be stricken.

For example, Paragraph 38 asserts, in circular fashion, that "[t]here is no likelihood of confusion, mistake or deception between [the parties' marks] as the respective parties' marks are not confusingly similar." The non-exclusive reasons for that assertion are that "[t]he marks themselves are not confusingly similar as they differ in sound/pronunciation, appearance, connotation and commercial impression" and "[t]here is no evidence of threatened or actual confusion." If, in fact, the bare recitation in Paragraph 38 represents all of the evidentiary facts Applicant intends to rely upon to support this defense then it should be required to so state.

Paragraph 39 provides that "Opposer does not have exclusive rights to utilize the terms H.W. CRABB or CRABB to the exclusion of all other third parties and should not be permitted to monopolize the marks that are not confusingly similar to Opposer's marks." Again, if Applicant has any factual basis for the conclusion that "Opposer does not have exclusive rights to utilize the terms "H.W. CRABB or CRABB" then it is required to provide those facts in response to this interrogatory. The same holds true for the remaining conclusions in this



paragraph. If, in fact, Applicant does not have a factual basis for this defense then not only should it so state, it should also withdraw the defense. *See* Fed. R. Civ. P. 11.

Similarly, Paragraph 40 asserts that “Opposer has suffered no damages nor will it suffer damages in the future by Registration of Applicant’s marks.” This is a legal conclusion, not a factual statement. If Applicant has a factual basis for this “defense” it should be required to provide it. If it does not, this defense should be withdrawn.

Finally, Paragraph 41 asserts “[t]he claims alleged by Opposer in the Notice of Opposition are frivolous, alleged with the knowledge that there is no likelihood of confusion between the marks of the respective parties and alleged in bad faith.” Breaking this “defense” into its component parts, Applicant alleges that Opposer’s asserted claims are “frivolous.” Yet Applicant, in its interrogatory response, provides no factual or legal basis for its conclusion. Similarly, Applicant alleges that Opposer has “knowledge” of a lack of likely confusion and that “Opposer” is acting in “bad faith.” There are no facts alleged to support these very specific assertions, and Applicant’s interrogatory response provides none. Applicant should be required to provide such facts, or withdraw this “defense.”

**D. Applicant Should Be Required To Provide Amended Responses To  
Opposer’s Request for Admission Nos. 1-6, 8-12, 14-15, & 28**

**1. REQUEST FOR ADMISSION NOS. 1, 2**

**Request For Admission No. 1:**

Admit that the District Court held in the Civil Action that the marks TO KALON and TO KALON VINEYARD have “gained substantial notoriety in the wine market among consumers and those in the trade.”

**Response To Request For Admission No. 1:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the ground that it seeks information that is not relevant to the parties’ claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant,

on behalf of itself and no other individual or entity, responds as follows: The District Court holding speaks for itself.

**Request For Admission No. 2:**

Admit that the District Court held in the Civil Action that “TVH’s intent is unambiguous. TVH wants consumers to associate its wine with the wine which they understand to be sourced from those formerly belonging to the H.W. Crabb’s To Kalon Vineyard.”

**Response To Request For Admission No. 2:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the ground that it seeks information that is not relevant to the parties’ claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: The District Court holding speaks for itself.

Rule 36(a)(1)(B), (2) allows a party to seek an admission that a document is genuine. In this case, Opposer simply sought admissions regarding the content of the District Court’s Rule 52 Order. As a participant in the Civil Action, Applicant is readily familiar with the District Court’s holding and should be able to admit or deny requests regarding its contents.

Rather than do so, however, Applicant skirted the very purpose of Rule 36 - to narrow the issues for trial - by responding that the District Court’s order in the Civil Action “speaks for itself.” While not binding authority here, a court in the District of Columbia succinctly explained why Applicant’s response is improper:

[I]f the request for admission quotes a documents and asks the other party to admit that the document contains the material quoted, it should be admitted if the quotation is accurate and denied if it is not. The tautological “objection” that the finder of fact can read the document for itself to see if the quote is accurate is not a legitimate objection but an evasion of the responsibility to either admit or deny a request for admission, unless a legitimate objection can be made or the responding party explains in detail why it can neither admit or deny the request. Fed. R. Civ. P. 36. See *Sigmund v. Starwood Urban Retail VI, LLC*, 236 F.R.D. 43, 46 (D.D.C. 2006). It is also a waste of time, since the “objection” that the document speaks for itself does not move the ball an inch down the field and defeats the narrowing of issues in dispute that is the purpose of the rule permitting requests for admission.

*Miller v. Holzmann*, 240 F.R.D. 1, 4 (D.D.C. 2006).

Because Applicant's boilerplate relevance objections are meritless - the fame of Opposer's asserted marks and Applicant's intent in selecting the Opposed Marks are relevant to the issues in virtually all Board proceedings, including this one - Applicant should be ordered to admit, or deny, these requests. In doing so, Applicant should be reminded that it was a party to the Civil Action, that the District Court issued its Rule 52 Order following trial, that Applicant did not appeal the Order, and that the quoted language comes directly from the Order. [Wilton Decl. Ex. A: Rule 52 Order at 13:8-9 & 14:3-5.]

## **2. REQUEST FOR ADMISSION NOS. 3, 4, 9 & 10:**

### **Request for Admission No. 3**

Admit that Applicant's Goods are not made from grapes sourced from land once owned and used by Mr. H.W. Crabb to grow grapes.

### **Response to Request for Admission No. 3**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "land once owned and used" is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

### **Request For Admission No. 4:**

Admit that Applicant's Goods are not made with grapes sourced from land once owned and used by Mr. H.W. Crabb to produce wine.

### **Response To Request For Admission No. 4:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "land once owned and used" is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

### **Request For Admission No. 8:**

Admit that Applicant's Goods are not made on land once owned by Mr. H.W. Crabb to grow grapes.

### **Response To Request For Admission No. 9:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "land once owned"

is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**Request For Admission No. 10:**

Admit that Applicant's Goods are not made on land once owned by Mr. H.W. Crabb to produce wine.

**Response To Request For Admission No. 10:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "land once owned" is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

These requests seek admissions regarding the connection between Applicant and its goods, on the one hand, and H.W. Crabb and his historic vineyard, on the other. Those issues were tried, and decided, by the District Court.

Applicant's objections that the wording "land once owned and used," and "land once owned" are so vague and ambiguous as to prevent Applicant from determining the nature of the requests are not well taken. The plain meaning of these phrases is self-evident. Moreover, Applicant's denials of facts that have already been decided will lead to unnecessary motion practice. Applicant should be ordered to provide amended responses without objection and admit the requests (or deny if it believes it can without violating Fed. R. Civ. P. 11).

**3. REQUEST FOR ADMISSION NOS. 6, 7, & 8**

**Request For Admission No. 6:**

Admit that sophisticated wine consumers immersed in the Northern California wine industry associate Mr. H.W. Crabb with "To Kalon."

**Response To Request For Admission No. 6:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that the phrases "sophisticated wine consumers" and "immersed in the Northern California wine industry" are vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request insofar as it calls for speculation as to the associations made by third parties.

**Request For Admission No. 7:**

Admit that sophisticated merchants immersed in the Northern California wine industry associate Mr. H.W. Crabb with “To Kalon.”

**Response To Request For Admission No. 7:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that the phrases “sophisticated merchants” and “immersed in the Northern California wine industry” are vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request insofar as it calls for speculation as to the associations made by third parties.

**Request For Admission No. 8:**

Admit that sophisticated professionals immersed in the Northern California wine industry associate Mr. H.W. Crabb with “To Kalon.”

**Response To Request For Admission No. 8:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that the phrases “sophisticated professionals” and “immersed in the Northern California wine industry” are vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request insofar as it calls for speculation as to the associations made by third parties.

In the Civil Action, the District Court, after seven days of trial testimony and a review of hundreds of exhibits, made this unequivocal finding:

The Court finds, based on a complete review of all the evidence, that sophisticated wine consumers, merchants, and professionals immersed in the Northern California wine industry have a current understanding of To Kalon.

[Wilton Decl. Ex. A: Rule 52 Order at 9:16-18.] Thus, Request Nos. 8, 9 and 10 simple seek admissions regarding an express finding of the District Court, a finding that Applicant is collaterally estopped from attacking. Yet, rather than simply admit these Requests, Applicant interposed the objections that the phrases “sophisticated wine consumers,” “sophisticated merchants,” “sophisticated professionals” and “immersed in the Northern California wine industry” are so vague and ambiguous as to prevent Applicant from determining the nature of the requests. Given that the phrases come directly from the District Court’s ruling, the objections are not well taken. Nor do the requests require speculation on Applicant’s part; the issues were

tried and decided in the Civil Action. Applicant should be ordered to provide amended responses without objection and admit the requests (or deny if it believes it can without violating Fed. R. Civ. P. 11).

#### **4. REQUEST FOR ADMISSION NOS. 12, 13**

##### **Request For Admission No. 12:**

Admit that the letters H.W.C. are identical to the initials of Mr. H.W. Crabb.

##### **Response To Request For Admission No. 12:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as speculative and seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

##### **Request For Admission No. 13:**

Admit that the letters HWC are identical to the initials of Mr. H.W. Crabb.

##### **Response To Request For Admission No. 13:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as speculative and seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, response as follows: Denied.

These requests sought what should be straight-forward admissions of self-evident facts, namely that H.W. Crabb's initials (H.W.C.) are identical to the letters H.W.C. (or HWC). The subject matter of the Requests are relevant both to the determination of the similarity and the meanings of the marks at issue in this proceeding. Applicant's relevance objection is therefore not well taken. Moreover, Applicant objects that these requests are "speculative" in some fashion; there is nothing "speculative" about whether three letters correspond to the initials of a person. They do, or they do not. While Applicant's admission may not be strictly necessary to prove these self-evident facts, the fact Applicant has not only objected to these Requests but *denied* them reflects Applicant's general approach to its discovery obligations. Applicant should be ordered to admit these Requests, without objection.

## 5. REQUEST FOR ADMISSION NO. 31:

### **Request For Admission No. 31:**

Admit that all documents produced by Applicant in response to Opposer's First Set of Interrogatories to Applicant and Opposer's First Set of Requests for Production of Documents and Things to Applicant are authentic under Rule 901 of the Federal Rules of Evidence.

### **Response To Request For Admission No. 31:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request insofar as it seeks a legal determination as to authenticity pursuant to the Federal Rules of Evidence.

Rule 36(a)(1)(B), (2) allows a party to seek an admission that a document is genuine.

Such requests are explicitly permitted by the Board's rules. 37 C.F.R. § 2.120(i). While Applicant's statement that the request "seeks a legal determination as to authenticity pursuant to the Federal Rules of Evidence" is a correct restatement of what the request is seeking, that is neither a basis for an objection nor a reason not to respond substantively to the request. The very purpose of Rule 36 is to narrow the issues for trial. Yet Applicant apparently believes that it is not required to comply with even the simplest of requests, namely confirming that the documents *it* produces (assuming it ever does so) are authentic. Such gamesmanship should not be allowed. Applicant should be ordered to provide a supplemental response to this request.

### **E. Applicant Should Be Ordered To Review, And Amend, Its Responses to Opposer's Requests For Production**

As noted in Opposer's March 18, 2022 meet and confer letter, because Applicant failed to produce a single document in response to Opposer's Requests for Production, it was impossible for Opposer to determine whether it would be necessary to spend time pointing out the deficiencies in Applicant's responses to those Requests. In other words, Opposer took the view that discussing improper general objections, boilerplate objections, and instances of improper responses should not be an abstract exercise.

Yet, given Applicant's abject failure to participate in the meet and confer process, Opposer asks that Applicant be ordered to review its responses to the Requests for Production in light of the deficiencies outlined above, and serve amended responses that address those deficiencies. It is hoped that, in this fashion, the parties can avoid further motion practice.

### **III. CONCLUSION**

As discussed above, Applicant has failed to meet its obligation to participate meaningfully in the discovery process. Opposer therefore respectfully requests an order issue requiring Applicant to address the deficiencies outlined herein, produce documents, and that Applicant cooperate in any further discovery in this proceeding.

Date: April 21, 2022

By: /s/ Kenneth L. Wilton

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Attorneys for Opposer  
CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.



# **EXHIBIT A**

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**THE VINEYARD HOUSE, LLC,**  
Plaintiff,

v.

**CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,**  
Defendant.

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**CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,**  
Consolidated Plaintiff,

v.

**THE VINEYARD HOUSE, LLC,**  
Consolidated Defendant.

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Case No. 4:19-cv-01424-YGR  
CONSOLIDATED CASE

**RULE 52 ORDER AFTER TRIAL ON THE  
MERITS**

“To Kalon:” Defined by the Greeks as “Highest Good” or the “Highest Beauty.” Undisputedly used in Napa Valley by the famous winemaker H.W. Crabb beginning as early as 1886. More recently trademarked by Robert Mondavi Winery (“RMW”) in 1988. The roots of this action are embedded in the fundamental question of what “To Kalon” represents or signifies now and for the last hundred and thirty years. Like much in nature, “To Kalon” has transformed with time. Yet, despite this change, one conclusion is certain: The Vineyard House (“TVH”) cannot use the term in any way, shape, or form. Based on a seven-day bench trial, the Court’s rationale is detailed below in its Findings of Fact and Conclusions of Law.<sup>1</sup>

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<sup>1</sup> The Court will not encumber these Findings of Fact and Conclusions of law with voluminous record cites as the same is clearly identified in the parties’ post-trial filings found at Docket Numbers 239 and 240-4. The Court admitted, considered, and reviewed over 600 exhibits.

United States District Court  
Northern District of California

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**I. FINDINGS OF FACT**

**A. History of To Kalon**

One cannot appreciate the full context of the significance of To Kalon without traveling back to the 1880s. Historians have told the tale, as early as 1889 (later reprinted in 1973), of the life of H. W. Crabb that was known:

Nestled cosily back from the county road, and half hidden by a wilderness of vines and trees, is the celebrated To Kalon Vineyard, belonging to Mr. Henry [sic] W. Crabb. The fact that Mr. Crabb is an Ohio man may have something to do with his phenomenal success as a vigneron, but his confrères seem to think that study and much practical experience are the qualifications which have crowned To Kalon products with success. "The name To Kalon " said Mr. Crabb, "is Greek, and means the highest beauty or the highest good but I try to make it mean the boss vineyard." There are 350 acres in vines ranging from 12 to 18 years old, and the whole tract is well sheltered from the sea breeze.

\* \* \*

As a successful wine-maker Mr. Crabb is without a peer in the State,  
....

Wines and Vines of California, pp. 108, 109, (1889) (later reprinted in 1973) (TX0311); *see also* California Wineries, Napa Valley, Volume One, p.79 (1975) (TX0312).

The legacy of Hamilton Walker Crabb<sup>2</sup> was repeated in numerous books among other names which have remained constant in the Napa Valley for well over a century:

Napa County's viticulture began as a direct descendant of Sonoma's when George Yount crossed the western Mayacamas range separating the two parallel valleys and set out cuttings from General Vallejo's Mission vines. Then for more than two decades it slumbered, progressing little, until Charles Krug made the same crossing. Krug brought with him the ideas and ideals of Agoston Haraszthy, and he sparked the Napa Valley's dramatic ascent to pre-eminence in both quantity and, to many palates, quality. It was at first a slow ascent, but between 1870 and 1880 wine production increased nearly ten-fold. By the end of that decade Napa was producing about half as many gallons as the state's leader, Sonoma, and almost as many as second-place Los Angeles County. A decade after that it led them all. . . .

An even more adventuresome vineyardist was Hamilton Walker Crabb, an Ohioan who came to the Napa Valley in 1865 and, although

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<sup>2</sup> Some historians refer to Mr. Crabb as "Henry W. Crabb," while others "Hamilton W. Crabb." The Court relies on the official probate records of the individual to refer to him as "Hamilton."

1 close to middle age, began planting vines with youthful single-  
 2 mindedness. He had a passionate interest in experimenting with  
 3 different varieties, and he bought all he could lay his hands on, . . . .  
 A decade after he began he had nearly two hundred varieties, by the  
 1880s some four hundred.

4 Winemaking in California, Ruth Teiser, pp. 82, 83 (1983) (TX0339). The record is replete with  
 5 references showing that Mr. Crabb used To Kalon (or some variation thereof) as a brand on wine,  
 6 the name of a company, and the name of his vineyard, all simultaneously. The suggestion that it  
 7 only referred to a vineyard is defied by the evidence in the record.

8 According to Andrew Beckstoffer, the history of H.W. Crabb was well-known and well-  
 9 documented when Mr. Beckstoffer arrived in the valley in approximately 1967 or 1968 from  
 10 Connecticut charged with researching Napa Valley for Heublein, Inc., which was entering the  
 11 domestic wine business and in the process of buying the now well-known wineries called  
 12 Inglenook and Beaulieu Vineyards, in addition to Italian Swiss Colony. Assuredly, those  
 13 interested in, and knowledgeable of, the history of California wines, were familiar with the history  
 14 of H.W. Crabb.

15 While the precise boundaries of Mr. Crabb's vineyard may have been illusive, the general  
 16 reference to the land was not. Mr. Beckstoffer found five or six different books and each one  
 17 mentioned that the "To Kalon Vineyard as being the most outstanding vineyard in Napa Valley . .  
 18 . ." (Trial Transcript ("TT"), Vol. 2, p. 236: 8-9.) He believes the references included such  
 19 publications as including Wines & Vines (1937); F. Schoonmaker and T. Marvel, American  
 20 Wines (1941); Wines & Vines, Vol. 24, No. 8 (1943); Wines & Vines, Vol. 32, No. 2 (1951).  
 21 Before 1988, other books existed which referenced To Kalon as part of Napa Valley's history,  
 22 continued before 1988.<sup>3</sup> That said, there is sparse evidence that signs or maps demarcated the  
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24 <sup>3</sup> (See TT, Vol. 2, pp.250-56 (citing Wines & Vines, Vol. 50, No. 2 (1969); D. Corey,  
 25 Hamilton Walker Crabb (1973); F. Wait, Wines & Vines of California (1973, reprint of 1889  
 26 book) (TX0311); M. Topolos and B. Dobson, California Wineries: Vol. I, Napa Valley (1975)  
 27 (TX0312); R. Teiser and C. Harroun, Winemaking in California (1983) (TX0339); and in 1988  
 28 and thereafter: B. Dobson, Fruit of the Vine, 200 Years of Winemaking in California, (1988)  
 (TX0353); T. Pinney, A History of Wine in America, (1989); D. Berger and R. Hinkle, An Inside  
 Look at Napa Valley (1991); C. Sullivan, Napa Wine - A History from Mission Days to Present  
 (1994); I. Haynes, Ghost Wineries of Napa Valley. (1995); C. Sullivan, A Companion to  
 California Wine, (1998); L. Weber, Old Napa Valley, The History to 1900 (1998); S. Koplan, A  
 Sense of Place: An Intimate Portrait of the Niebaum-Coppola Winery and the Napa Valley (1999);

1 boundaries of the vineyard (precise or otherwise) unlike other geographic areas such as the  
 2 existing townships in Napa Valley or established American Vinicultural Areas (“AVA”). The  
 3 Court acknowledges one historic map which showed the vineyard, but it was more of a general  
 4 attraction.

5 Mr. Beckstoffer testified that he believed he learned the location of H.W. Crabb’s To  
 6 Kalon Vineyard, that being the “357 . . . contiguous acres in Oakville, California” where he  
 7 “cultivate[d] grapes,” in 1969, through his research and Beaulieu Vineyard’s winemaker, Mr.  
 8 Andre Tchelistcheff. (TT, Vol 2, pp. 243:14-15, 246:8-19.) More precisely, Mr. Crabb purchased  
 9 240.66 acres in 1868, then 119.83 contiguous acres in 1879 for a total of 360.49. All of this land  
 10 sits in a geological formation called an alluvial fan on the floor of the Napa Valley which is  
 11 created from a mixture of gravel and rock that had washed down the Mayacamas Mountains and  
 12 settled onto the Napa Valley floor. No dispute exists that Mr. Crabb harvested grapes for wine  
 13 from this acreage.

14 Rather, this action raised the question of whether wine grapes were grown on a separate  
 15 parcel up the hill known as the Baldrige Parcel. An excellent summary of the historical record in  
 16 this regard can be found in a report which plaintiff itself commissioned in 2018 to submit to the  
 17 Napa County Planning Commission long before the filing of this action. (*See* TX1002.) That it  
 18 was not done for purposes of litigation increases its reliability and credibility.

19 The report instructed that in 1872, Mr. Crabb switched from cultivating table grapes to  
 20 wine grapes and renamed his operations “Hermosa Vineyards.” *Hermosa* meaning “beautiful” in  
 21 Spanish. The nature of the soil contributed to the success of his wine making. By 1878, he had  
 22 planted half his property with 120,000 vines becoming, by the end of the decade, “one of the  
 23 largest, most productive wineries in Napa Valley and perhaps the state.”

24 Fourteen years later, in 1886, Mr. Crabb renamed his winery as the To-Kalon Winery  
 25 Company. Over his career, Mr. Crabb won numerous domestic and European wine awards, spoke  
 26 at conferences, wrote prolifically, and shared his expertise and knowledge about viticulture. He

27 \_\_\_\_\_  
 28 W. Heintz, California's Napa Valley, One Hundred Sixty Years of Wine Making (1999)).

1 also established a nationwide distribution network with locations in Washington D. C. and  
2 Chicago. “His winery operation [was] characterized as a “young town” employing approximately  
3 80 to 100 workers and comprised of a practical and efficient complex of well-insulated, one- and  
4 two-story, wood-frame buildings.” Unquestionably, he was both a pioneer and instrumental force  
5 within the developing wine industry of Napa Valley.

6 **B. Acquisition of the Baldrige Property**

7 In 1889, William Baldrige<sup>4</sup> sold his property, approximately 168.5 acres, including his  
8 residence and the associated ancillary buildings to Mr. Crabb (“Baldrige Parcel”). Ten years  
9 later, Mr. Crabb died.

10 The evidence with respect to how Mr. Crabb actually used the Baldrige Parcel is scant,  
11 but with the purchase, Mr. Crabb owned over 500 acres of property. Unfortunately, plaintiff’s  
12 proffered historian, Dr. Scott Miltenberger, engaged in conjecture at trial to support TVH’s trial  
13 position. Undisputedly, the land was known to be, and is, primarily “hilly acreage.” (TX1002, p.  
14 20.) Indeed, as plaintiff’s own report found, “[o]nly a narrow, flat portion of Baldrige’s original  
15 property appears to have been cultivated for agricultural use, with the remaining portion consisting  
16 of wooded foothills of the Mayacamas Mountains.” (*Id.*; *see also* TX1003 p.10.) Notably, Mr.  
17 Crabb loved horse racing and the need to grow hay to support this hobby has support in the record.

18 The Court finds the best evidence regarding Mr. Crabb’s use of the land, at least relative to  
19 wine making, are the probate records for “Hamilton W. Crabb,” dated March 25, 1899, which  
20 included an 11-page “Inventory and Appraisal” detailing his holdings. (TX1440.) With  
21 respect to his account receivables, the records identify certain affiliates, namely “To Kalon Wine  
22 Co” in Washington D.C. and “To Kalon Vineyard” in Chicago, Illinois. However, more  
23 importantly, his “Real Estate” holdings, which were listed and consistent with the other historical  
24 records, provide the best evidence of the use of his three parcels. The inventory reads:

25  
26  
27 <sup>4</sup> William Baldrige himself had historical significance and was recognized as a “pioneer  
28 of pioneers.” Interestingly, he apparently “found himself in the position of single-handedly  
accepting the surrender of John Sutter at Sutter’s Fort. (TX 1002, p. 15.) Winemaking, though,  
was never mentioned among Mr. Baldrige’s fortes.

United States District Court  
Northern District of California

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First Tract – Home Place. Situated at Oakville in Napa County California and described as follows to wit [legal description and appraisal of land]. . . .

All of said land is planted to Resistant Vineyard, nearly all grafted, and 160 acres in bearing-we appraise the value of Vineyard improvement at \$35,900.

We appraise the Building improvements on said tract at \$14,900.

Second Tract- Known as Lewelling place, adjoining the above and described as follows, [legal description and appraisal of land]. . . .

45 acres of said land is planted to resistant vineyard and to orchard, the value of which we appraise at 2,250.

We appraise the Building improvements on said land at 2,400.

Third Tract-Baldrige Farm, [legal description]

We appraise the land with the valuable timber thereon at \$3240.

The Building improvements thereon at 600.

The system of Reservoirs and piping and the Water rights of said place in connection with first two tracts above described, we value at \$8000

(TX1440 (emphasis in original).) The inventory also referenced “70 acres growing hay in field on Lewelling tr.” and “Baldrige [sic] tract” valued at \$500 and \$150, respectively. Then, in the summary or “Recapitulation,” the Inventory makes a distinct separation in Mr. Crabb’s “Real Estate” between the “To Kalon Vineyard Property at Oakville 359 acres” valued at “\$91250” and the “Baldrige Tract, including Water Rights” valued at “\$11840.”

How Mr. Crabb may have used the referenced water rights, piping and timber is irrelevant to whether he ever planted a vineyard on the Baldrige property. The evidence overwhelming confirms that he did not, at least not with any commercial value, and that the Baldrige tract was principally “wooded” or full of “valuable timber.” To find otherwise would require the Court to ignore a legal document, the entire purpose of which was to document accurately the state of Mr. Crabb’s affairs at the time of his death.

The argument that Mr. Crabb planted commercial vines on the Baldrige tract lacks any

1 evidentiary basis.<sup>5</sup> That newspapers articles may have mentioned that Mr. Crabb’s vineyards were  
2 over 500 acres does not compel a contrary result. (*See, e.g.*, TX0211.) The accuracy of such  
3 articles must always be considered against other known information. Collapsing the extent of Mr.  
4 Crabb’s ownership of lands into a newspaper blurb regarding this vineyard does not seem  
5 particularly problematic from a “news” point of view but it does not persuade on the issue of  
6 actual use given the evidence to the contrary.

7 After Mr. Crabb’s death, the winery operations continued until 1939 when a fire closed the  
8 operations. Not until 1951 does credible evidence, that being a United States Geological Survey  
9 topographic map, show vineyards growing on the Baldrige Parcel. With brief ownership by  
10 Robert Lieff in 1982, Gil Nickel acquired a portion of the Baldrige lands in 1984, transferred  
11 ownership to the Nickel Land Company which Jeremy Nickel inherited in 2003 upon his father’s  
12 death. He then transferred the property to Nickel Vineyard Company LLC, which leases the land  
13 back to TVH (both of which are wholly owned by Jeremy Nickel).

### 14 C. Representations to the Trademark Office

15 Robert Mondavi Winery was awarded the following U.S. Trademark Registrations (the  
16 “TO KALON Registrations”):

17 **Mark** TO KALON  
18 **Date of Reg.** May 24, 1988  
**Reg. No. Goods** 1,489,619 Wine (IC 033)<sup>6</sup>

19 As a starting point, the TO KALON Registrations have achieved incontestability, which is  
20 conclusive evidence of Constellation’s exclusive right to use TO KALON and TO KALON

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22 <sup>5</sup> Importantly, plaintiff knew before filing suit that the historic record indicated that the  
23 Baldrige property was primarily wooded, and that “Baldrige’s original estate does not appear to  
24 have been cultivated with grapes used by the To-kalon Vineyard Co.” (TX1002, pp. 9, 10.) Mr.  
25 Baldrige lived on the property for four decades and while he may have grown grapes there is no  
26 indication that he did so to produce wine as opposed to raisins or sugar as was the custom of other  
27 Napa Valley farmers. (*Id.*, pp. 14-17; *see also* TX1003 at 5-7.)

28 <sup>6</sup> Constellation Brands U.S. Operations Inc.’s (“Constellation”) predecessor trademark  
owner, RMW, was originally granted registrations for TO-KALON and TO-KALON VINEYARD  
(with hyphens). In 2004 and 2008, however, Constellation amended its registrations (as permitted  
under 15 U.S.C. § 1057(e)) to remove the hyphens, modernizing them to TO KALON and TO  
KALON VINEYARD. (TX1027 at 1-2; TX1042 at 1-2; Dkt. No. 202 at ¶7(m).)



1 VINEYARD on wine. (TX1027 at 3, 8; TX1042 at 3, 5; 15 U.S.C. § 1115(b); Dkt. No. 202 at  
2 ¶7(n).)

3 Plaintiff's challenge dates back to the initial application process. In response to an Office  
4 Action from the United States Patent and Trademark Office (USPTO) requesting additional  
5 information regarding the proposed trademark, Robert Mondavi Winery, stated:

6 TO KALON . . . has no present meaning or significance in the  
7 relevant trade or industry. Prior to the turn of the 20th Century,  
8 there was a winery in the Napa Valley which used the name  
9 "Tokalon." Upon information and belief, that winery was sold off  
10 in parcels during the first fifteen to twenty years of the 20th  
Century and use of the name was discontinued. Accordingly,  
although the name has some historical significance, it has no  
current meaning or significance in the wine industry.

11 (TX0018.) The evidence of whether it had "no present meaning or significance" is mixed. On the  
12 one hand, the history of Mr. Crabb was well-documented in the voluminous historical writings  
13 about the Napa Valley. (*See supra* note 3.) However, documentation alone does not necessarily  
14 mean, for trademark purposes, that the "relevant trade or industry" afforded the phrase meaning  
15 and significance.

16 The Court acknowledges that Mr. Beckstoffer credibly testified that when the USPTO  
17 asked Robert Mondavi whether the name To Kalon had any historic or current meaning, and Mr.  
18 Mondavi claimed it did not, that Mr. Beckstoffer reasonably believed that Mr. Mondavi knew that  
19 he was misrepresenting the truth. (TT, Vol 2, p. 249: 5-7.) "[E]verybody – anybody you talked to  
20 in the Napa Valley in those days would – would recall and would state that To Kalon was a  
21 vineyard, a famous vineyard owned by Hamilton Crabb." (*Id.* 249:14-16.) That being said, Mr.  
22 Beckstoffer also admitted that Mr. Mondavi had a reputation for honesty and believed that the  
23 winemaker, more than the land, drove successful winemaking. Further, RMW *did* advise the  
24 USPTO of the historic vineyard and even Mr. Beckstoffer admitted to doing research to find the  
25 boundaries of Mr. Crabb's original contiguous parcels.

26 Ironically, Mr. Mondavi himself may have added to the confusion as he worked to make  
27 famous the trademark he had acquired. He repeatedly retold a story of the original significance of  
28 the land remarking:

1 As I [Mondavi] narrowed my search, I considered three different  
 2 properties in and around Oakville. There was one, though, that stood  
 3 head and shoulders above the others. It was a vineyard with a  
 4 distinguished history and a magical name, To Kalon. I had first  
 5 encountered To Kalon during one of our early expansion phases at  
 6 Krug. We needed more grapes to boost production, and were looking  
 7 for a good vineyard to buy or lease. Old Louis M. Martini, Sr., one  
 8 of the most knowledgeable and hardheaded vintners in the Napa  
 9 Valley urged me to take a look at the To Kalon Vineyard in Oakville.  
 “Bob,” he said, “that darn place at To Kalon is one of the finest places  
 in California for Cabernet Sauvignon.” I went to see To Kalon, and  
 Louis was right. It was a fine property producing first-rate grapes. So  
 at my urging, we began buying grapes grown on the To Kalon  
 property, and in 1958, I think it was, we went even further. We  
 purchased a 325-acre parcel of To Kalon for Krug in the name of the  
 parent company my father had formed, C. Mondavi & Sons.

10 (TX0356 pp. 57-58; *see also* TT, Vol. 2, pp. 254-256.) A review of the actual deed transfers  
 11 indisputably demonstrates that Mr. Mondavi’s story was not true. As noted, one can reasonably  
 12 presume that he created the story to heighten the stature of To Kalon.

13 Even from today’s perspective, the record is replete with conflicting evidence showing  
 14 how narrow, or alternatively, how widespread, is the reference to To Kalon. Mr. Nickel himself  
 15 testified that he (originally) and normal wine consumers generally do not know the origins of To  
 16 Kalon. The Court finds, based on a complete review of all the evidence, that sophisticated wine  
 17 consumers, merchants, and professionals immersed in the Northern California wine industry have  
 18 a current understanding of To Kalon. However, that finding does not extend to the time prior to  
 19 1988. Rather, prior to 1988, the Court finds that the knowledge was much more limited and  
 20 certainly not widespread.

#### 21 **D. Survey Evidence**

22 The survey evidence presented in this case was fundamentally flawed and provides  
 23 virtually no useful evidence for resolving the issues of confusion in this action. Moreover, the  
 24 manner in which the surveyor, Matthew G. Ezell, created and conducted the survey strains  
 25 credulity and presents a cautionary tale for those who seek to provide courts with useful  
 26 information.

27 The generic “EverReady” survey approach was intended to be used either in a specific  
 28 context or requires modification to provide any useful insights. The use here revealed virtually

1 nothing. The critical presumption underlying the approach is that the respondents have been  
2 exposed to the mark. This is necessary because they must make a “mental leap” to the senior  
3 mark in order for there to be any revelation of confusion. Without the exposure, the survey does  
4 not work, at least not without modification.

5 Where the query concerns marks for everyday products, used by vast majority of  
6 consumers, such as Apple, Coca-Cola, or EverReady, the short simple survey can provide some  
7 insights. That is not, and never was, this case.<sup>7</sup> Here, the mark at issue concerned a very narrow  
8 group of individuals. Mr. Nickel describes his clientele as “affluent connoisseurs, and collectors  
9 of Napa cult cabernets.” That description can be reasonably expanded to include a consumer of  
10 ultra-premium and luxury-premium wine, which are generally priced above \$100, and affluent  
11 consumers of high-end Napa County red wines. (*See* Dkt. No. 239 at 11; Dkt. No. 240-4 at 53.)

12 The relevant universe is those who one reasonably believes are potential purchasers of the  
13 juniors’ goods. Mr. Ezell did not sufficiently determine whether those surveyed were actually  
14 prospective purchasers of the class of goods. Using a generic web-based survey pool, who are not  
15 adequately screened, does little to find the relevant universe. In fact, it is unlikely that such a tool  
16 could ever be used to find affluent consumers of Napa Valley wines willing to spend luxury prices  
17 of over \$100 per bottle.

18 Mr. Ezell performed no validation to test, even at the highest level, the results of his  
19 survey. For instance, extrapolating the survey data to the national framework suggests that 84  
20 percent of wine drinking consumers have ordered one bottle of wine online or through a wine  
21 club, which would be more than half of all Americans. Focusing solely on those who purchased a  
22 bottle of wine of \$100 or more, the data suggests that 32 percent of wine consumers or 20 percent  
23 of Americans bought such a bottle online or through a wine club.

24 Further, the questions were not particularly helpful to determine whether TVH’s use of To

25 \_\_\_\_\_  
26 <sup>7</sup> The notion that Mr. Ezell conducted the survey in this manner because Constellation  
27 claimed it was a “strong source identifier” for “Constellation Brands” itself in an unverified  
28 complaint strains credulity and elevates a technicality over substance. Rule 8 requires only notice  
pleading. The belief that such a tactic would warrant any measure of serious consideration defies  
logic.

1 Kalon as a vineyard designation would cause confusion with the use of To Kalon as a trademark.  
 2 Remarkably, Mr. Ezell even miscategorized statements from respondents with respect to  
 3 confusion.

4 Given the stark failures in conducting the survey, the Court finds Mr. Ezell’s credibility to  
 5 be entirely lacking and affords his opinion little to no weight.

## 6 **II. CONCLUSIONS OF LAW**

### 7 **A. Claims at Issue in Both Actions**

8 Having issued a preliminary injunction in this action, the Court begins with Constellation’s  
 9 claim that TVH’s use of the name To Kalon constitutes trademark infringement under the Lanham  
 10 Act, 15 U.S.C. § 1114.

11 TVH is liable for infringement under 15 U.S.C. § 1114 for using the To Kalon marks if:  
 12 (1) Constellation owns a valid, protectable trademark; (2) TVH used the name To Kalon on wine  
 13 products without Constellation’s consent; and (3) such use was in a manner likely to cause  
 14 confusion among ordinary consumers as to the source, sponsorship, affiliation, or approval of such  
 15 wine. *See Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014) (trademark  
 16 infringement claim requires trademark owner to show (1) it has a protected ownership interest in  
 17 the subject mark, and (2) the accused infringer’s use of a similar mark is likely to cause consumer  
 18 confusion, thereby infringing the trademark owner’s rights.); *Dep’t of Parks & Rec. v. Bazaar Del*  
 19 *Mundo Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006); *E & G Gallo Winery v. Gallo Cattle Co.*, 967  
 20 F.2d 1280, 1290 (9th Cir. 1992).

21 When assessing confusion, courts in the Ninth Circuit generally use the eight “*Sleekcraft*  
 22 factors” to guide their analysis, namely (1) the similarity of the marks; (2) the relatedness of the  
 23 goods; (3) the marketing channels used; (4) the strength of the senior mark; (5) the degree of care  
 24 likely to be exercised by purchasers; (6) the defendant’s intent in selecting its mark; (7) any  
 25 evidence of actual confusion; and (8) the likelihood the parties will expand their product lines.  
 26 *E & G Gallo Winery*, 967 F.2d at 1290. The factors are not exhaustive, some are more important  
 27 than others, and not all are necessarily relevant in each case. *See E & G Gallo*, 967 F.2d at 1290;  
 28 *cf. also GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1209 (9th Cir. 2000) (“[w]e have

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1 previously emphasized the minimal importance of the intent factor”); *Brookfield Comm., Inc. v.*  
2 *West Coast Ent. Corp.*, 174 F.3d 1036, 1060 (9th Cir. 1999) (“an intent to confuse customers is  
3 not required”).

4 Here, no material dispute exists as to the first two elements: First, Constellation owns a  
5 valid, protectable trademark in the term To Kalon. Whether it should be cancelled is a separate  
6 and distinct inquiry. Second, TVH not only used the mark without consent, but it did so in  
7 violation of this Court’s preliminary injunction and steadfastly maintains that it should be able to  
8 use it. Thus, the Court focuses on the final element, that is, likelihood of confusion. The evidence  
9 strongly shows likelihood of confusion under *Sleekcraft*. First, TVH used the precise words of the  
10 trademark on both sides of the bottle which establishes similarity: To Kalon and To Kalon  
11 Vineyard.



28 (TX0085, TX0086.)

1 Second, the goods overlap: both parties sell high end luxury wines. The wines at issue do  
2 not just retail for over \$100. The highest end “cult” wines sell for over \$300 including TVH wines.

3 Next, the marketing channels overlap: both use wine clubs and online sales. Further, TVH  
4 wants to expand to include sales at the vineyard itself as is shown by its application to the Napa  
5 County Planning Commission for a tasting room.

6 With respect to the strength of the mark and degree of care by consumers, the Court notes  
7 that while the clock cannot be turned back 33 years to determine with surgical precision the extent  
8 of the market’s historical knowledge of To Kalon, what *is* known is that in the last 33 years, the  
9 mark has gained substantial notoriety in the wine market among consumers and those in the trade.  
10 The mark is understood to be connected to the alluvial fields in the Oakville American Viticultural  
11 Area, but even experts in the field cannot easily distinguish between, on the one hand, the Home  
12 Place parcel or the Lewelling parcel (which TVH calls “historic To Kalon”), or on the other hand,  
13 the contiguous additional acreage which has the same geologic characteristics, such as the I-Block.  
14 That RMW, and now Constellation, use the term as a both a brand and a reference to all of their  
15 alluvial fields in the Oakville AVA does not weaken the mark. Rather, it is the combined effect  
16 that has strengthened the mark.

17 Further, there is no credible evidence to show, nor is it logical to believe, that consumers  
18 would be able to distinguish the infringing wine from those which appropriately bear the  
19 trademark given how the label creates the source of confusion. Said differently, while the wine  
20 from the hilly Baldrige parcel may taste differently than the wine from the alluvial valley parcels,  
21 one first encounters the product by looking at a label. The use of To Kalon has meaning and the  
22 precise location of parcels is difficult to discern, whether it be a valley parcel or a nearby hillside  
23 parcel. (*See e.g.* TX1413, TX1414 (maps denoting different vineyard blocks on the valley floor).)  
24 Nothing on a label can explain to a consumer the lines on a parcel map which have changed with  
25 ownership, nor the geological differences of valley versus hillside land, all of which took many  
26 hours of trial time to unravel. It is not reasonable to expect consumers to read TVH’s label and  
27 understand the historic and geological differences in the various parcels at play. Rather, confusion  
28 is much more likely if “To Kalon” is allowed on the label. Further, and as noted above, TVH’s



1 attempt to show lack of confusion fails entirely given the significant inadequacies of the purported  
2 survey.<sup>8</sup>

3 Finally, TVH's intent is unambiguous. TVH wants consumers to associate its wine with  
4 the wine which they understand to be sourced from those formerly belonging to the H.W. Crabb's  
5 To Kalon Vineyard. According to Nova Cadamatre, the issue and price of "cult" wines is largely  
6 a function of access. The more demand for a limited production of wines, the higher the price.  
7 For instance, TVH sells 75 percent of the grapes from the Baldrige property to Harlan Estates  
8 whose wine is widely known as a cult wine. Those are priced between \$350 to \$750 per bottle.  
9 (TT, Vol. 3, p. 509:15-18.) While Mr. Nickel may be truthful when he claims not to want to be  
10 affiliated with "Mondavi," increasing the prestige of his wine by affiliating it with To Kalon is a  
11 wholly different motivation. If TVH can increase the prestige of its wine, then it can increase  
12 demand, and over time, increase the price of a self-admitted "cult wine."

13 Thus, the Court finds all the *Sleekcraft* factors are satisfied and the risk of confusion  
14 substantial. Constellation has proved a prima facie case of trademark infringement.

15 TVH asserts numerous affirmative defenses including that (i) TVH used the name To  
16 Kalon fairly and in good faith only to describe the goods and their geographic origin and not as a  
17 trademark, (ii) the trademark registrations should be cancelled, (iii) Constellation has unclean  
18 hands, and (iv) Constellation abandoned the trademark. The Court addresses each.

19 **B. Affirmative Defenses**

20 *i. Fair Use*

21 TVH claims fair use in referencing To Kalon on its wine bottles because H. W. Crabb  
22 owned the Baldrige Parcel for the last ten years of his life and produced wine from grapes grown  
23 thereon. The Court disagrees.

24 In general, the first requirement of the "fair use" defense is that the use a party seeks to  
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26 <sup>8</sup> Interestingly, the one person in the survey who revealed knowledge of the senior mark  
27 (as is necessary for the efficacy of the survey) indicated that there *was* confusion. Many others  
28 also identified confusion, though not credited by the "expert," and only acknowledged in post-trial  
briefing by the lawyers.

1 exclude from a claim of infringement must be “otherwise than as a mark.” 15 U.S.C. § 1115(b)(4).  
 2 A phrase functions as a trademark if it is used to “identify and distinguish” a party’s goods from  
 3 those sold by others and to indicate source. *See id.*, § 1127; *see also TMEP*, § 1202. In some  
 4 circumstances, however, a junior user can use another’s registered trademark so long as it is in a  
 5 non-trademark, geographical sense. 2 McCarthy on Trademarks and Unfair Competition § 14:17  
 6 (5th ed. September 2020 Update) (hereafter “McCarthy on Trademarks”). Producers of goods that  
 7 are located in a specific place have a limited right to tell purchasers of their location. McCarthy  
 8 on Trademarks, at § 14:12; *see Sazerac Brands, LLC v. Peristyle, LLC*, 892 F.3d 853, 855 (6th  
 9 Cir. 2018) (affirming judgment for defendant who used Old Taylor Distillery to describe its  
 10 location). 15 U.S.C. § 1115(b)(4) allows a fair use for trademarks that describe “the geographic  
 11 origin” of a junior trademark user’s product. *See* 15 U.S.C. § 1115(b)(4); *see also Sazerac*  
 12 *Brands, LLC v. Peristyle, LLC*, 892 F.3d at 855-859 (references were descriptive and geographic  
 13 because they “referred to Old Taylor to pinpoint the historic location where [the distiller] planned  
 14 to make a new bourbon, not to brand that bourbon.”).

15 As referenced above, the Court does not find that the historical record supports TVH’s  
 16 claim that Mr. Crabb grew wine grapes on the Baldrige Parcel. TVH’s hired historian  
 17 manipulated a sentence in a historic report to conclude incredulously that such a vineyard was not  
 18 only possible, but likely.<sup>9</sup> Counsel’s post hoc attempt to rehabilitate Dr. Miltenberger does not  
 19 persuade where he was adamant in his trial testimony and unflinching in his resolve with respect  
 20 to his opinion. The Court agrees that Mr. Crabb was an innovator and a businessman, but one  
 21 must strain to suggest that he used the Baldrige parcel to grow grapes given the probate records.  
 22 At most, one might surmise that the parcel contained a source of water which he piped to the  
 23 valley.

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24  
 25 <sup>9</sup> “A: I -- I still believe that it's more -- more likely, given the description, that it was at the  
 26 Baldrige property. You know, what's been laid out is a possible -- is a possible reading. I can see  
 27 a reading where in terms of experimentation and because in the 1890s there was some notion that  
 28 perhaps the hillsides produced better fruit, more resistant fruit, that you could have it both ways,  
 experiment on the valley floor and experiment at Baldrige. I see that as a possibility as well.”  
 (TT Vol. 1, p. 95:14-22.)



1 TVH's theory does not have support in even less historic times. Mr. Beckstoffer himself  
2 testified that he only knew the land as a forest dating back to the late 1960s. TVH's own wine  
3 expert Doug Frost conceded that the wine industry *did not* consider the reference to To Kalon to  
4 include hillside vineyards and the ARG report submitted for the TVH's tasting room also  
5 concluded the same.

6 Given the overwhelming lack of evidence to support this theory, to allow TVH to make  
7 such a representation on its wine would itself mislead the wine consuming public. The affirmative  
8 defense of fair use fails. Similarly, TVH's claim for declaratory relief of non-infringement due to  
9 fair use also fails.

10 *ii. Cancellation*

11 Next TVH requests cancellation of the mark. Here, TVH claims that RMW  
12 misrepresented a material fact to the USPTO in the trademark application process, RMW knew  
13 that these representations were false when it made them, RMW made such misrepresentations  
14 intending to induce the USPTO to rely on them, and the USPTO reasonably relied thereon. 15  
15 U.S.C. § 1115(b)(1); *Intellimedia Sports, Inc. v. Intellimedia Corp.*, 43 U.S.P.Q.2D (BNA) 1203,  
16 1206 (Trademark Trial & App. Bd. May 20, 1997) (fraud on the USPTO as basis for cancellation  
17 of registered mark); *see, Int'l House of Pancakes v. Elca, Corp.*, 1982 TTAB LEXIS 17, \*9  
18 (Trademark Trial & App. Bd. November 30, 1982) (same). Cancellation on the basis of fraud on  
19 the USPTO requires "clear and convincing evidence for the elements of fraud on the [US]PTO."  
20 *OTR Wheel Engineering, Inc. v. West Worldwide Services, Inc.*, 897 F.3d 1008, 1020 (9th Cir.  
21 2018). For a claim for cancellation based on fraud, a party must establish the following elements:  
22 "1) a false representation regarding a material fact; 2) the registrant's knowledge or belief that the  
23 representation is false; 3) the registrant's intent to induce reliance upon the misrepresentation; 4)  
24 actual, reasonable reliance on the misrepresentation; and 5) damages proximately caused by that  
25 reliance." *Id.* at 1019.

26 RMW's application shows that RMW explicitly advised the USPTO that To Kalon had  
27 previously had a historical usage, stating: "[p]rior to the turn of the 20th Century, there was a  
28 winery in the Napa Valley which used the name 'Tokalon.'" This was true, as is the fact that the

1 “use of the name was discontinued.” Had the name been as famous in the 1980s as it is today, it  
2 would have been unnecessary for Mr. Mondavi to commission a historical report on the land  
3 which compiled all the historic information. The context of the commission increases the  
4 reliability of its findings and provides circumstantial evidence of Mr. Mondavi’s state of mind.  
5 Notably, TVH identifies no motive for the alleged misrepresentation or need to have skewed the  
6 historical record. Nor does the Court discern one. Rather it is much more likely that the name was  
7 known to some but not all. Moreover, the representation to the USPTO was accurate.

8 In terms of whether RMW could have been more complete in its response to the USPTO,  
9 the Court agrees with Mr. Robert Cissel who credibly testified that this historic information is not  
10 the type of material information which is determinative of whether the “primary significance” of a  
11 term is geographic. To Kalon does not refer to an AVA or a town or any other primary geographic  
12 location. The record is replete with evidence showing that Mr. Crabb used To Kalon both as a  
13 brand *and* as a reference to his vineyard. TVH’s attempt to make a stark distinction which did not  
14 exist historically fails.

15 The weight of the evidence supports the finding that RMW provided the USPTO with  
16 sufficient information and did not represent the then-current historical view of To Kalon, and, in  
17 any event, given that historic use of the term as both a brand and a vineyard, there was no need for  
18 the USPTO to reject the application on the basis that the “primary significance” of the term was  
19 geographic. The affirmative defense of cancellation fails. Similarly, TVH’s claim for declaratory  
20 relief of non-infringement due to cancellation also fails.

21 *iii. Unclean Hands*

22 TVH argues that it should have no liability for infringement of Constellation’s “To Kalon”  
23 marks because Constellation has unclean hands, in that it has misrepresented the origin, nature,  
24 characteristics, qualities, or geographic origins of its goods by selling wine labeled “To Kalon”  
25 that is not at least 95 percent sourced from the “Home Place” and “Lewelling Place” parcels. 15  
26 U.S.C. § 1125(a). The Court disagrees.

27 To prevail on an unclean hands defense, the party “must demonstrate that the [opposing  
28 party’s] conduct is inequitable and that the conduct relates to the subject matter of its claims.”

1 *Fuddruckers, Inc. v. Doc's B.R. Others, Inc.*, 826 F.2d 837, 847 (9th Cir.1987). “[E]quity requires  
2 that those seeking its protection shall have acted fairly and without fraud or deceit as to the  
3 controversy in issue.” *Id.* A party must demonstrate unclean hands in a trademark action by  
4 “clear, convincing evidence.” *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 833 (9th Cir.  
5 2011).

6 Here, Constellation not only has an incontestable mark which it can use accordingly, but,  
7 the manner in which it has used the mark does not misrepresent the origin, nature, characteristics,  
8 qualities or geographic origins of the wine on the labels. All of the wines at issue originate from  
9 either the Home Place or Lewelling Place parcels or those areas contiguous thereto which have the  
10 same alluvial geographic structure and the same microclimate which contribute to the flavor of the  
11 grapes. There is no misrepresentation. Nor is there a requirement, given the incontestable mark,  
12 that Constellation only use the mark on the wines originating from those two parcels.

13 The lawsuit between Mondavi and Beckstoffer which ended in a settlement and license  
14 agreement resolved any issues which may have existed by specifying labeling practices to protect  
15 against any legitimate concern. There is no evidence that Constellation is in violation of those  
16 practices. The affirmative defense of unclean hands fails. Similarly, TVH’s claim for relief based  
17 on false advertising and false designation of origin under 15 U.S.C. 1125(a) also fails.<sup>10</sup>

18 *iv. Abandonment and Naked Licensing*

19 Finally, TVH argues that Constellation has effectively abandoned the mark by failing to  
20 control licensing adequately—in other words, Constellation has issued naked licenses to its  
21 sublicensees and has effectively abandoned the To Kalon trademark.

22 To prove abandonment, TVH must show that Constellation licensed the use of the To  
23 Kalon and To Kalon Vineyard trademarks and then failed to control the quality of goods produced  
24 by its licensees and sub-licensees in an adequate manner. *Barcamerica Int’l USA Tr. v. Tyfield*  
25 *Importers, Inc.*, 289 F.3d 589, 595-96 (9th Cir. 2002). “[T]he proponent of a naked license theory  
26

27 \_\_\_\_\_  
28 <sup>10</sup> Accordingly, to the extent not otherwise addressed in this Order, the Court declines to  
address Constellation’s affirmative defenses to TVH’s affirmative claims for relief.

1 of trademark abandonment must meet a stringent standard of proof.” *FreecycleSunnyvale v.*  
2 *Freecycle Network*, 626 F.3d 509, 514-15 (9th Cir. 2010).<sup>11</sup> As the Ninth Circuit has explained:

3 Naked licensing occurs when the licensor fails to exercise adequate  
4 quality control over the licensee. . . . Naked licensing may result in  
5 the trademark's ceasing to function as a symbol of quality and a  
6 controlled source. . . . We have previously declared that naked  
7 licensing is inherently deceptive and constitutes abandonment of any  
8 rights to the trademark by the licensor. . . . Consequently, where the  
9 licensor fails to exercise adequate quality control over the licensee, a  
10 court may find that the trademark owner has abandoned the  
11 trademark, in which case the owner would be estopped from asserting  
12 rights to the trademark. . . .

13 *Id.* at 515-16 (internal quotation marks and citations omitted). The purpose of “controlling” the  
14 “quality of goods” is to protect the trademark.

15 Trial evidence demonstrated that the fundamental approach to marketing of wines has  
16 remained relatively consistent for decades. The focus on quality is preeminent.

17 This is all promotion. It did not happen overnight, nor by accident.  
18 Greater affluence, with the consequent increase in travel and social  
19 occasions, has opened new vistas on the world of wine. The “new”  
20 consumer with an informed taste for good wine did not just suddenly  
21 appear, as Agricultural Economist Dr. Kirby Moulton says, “like  
22 Venus on the half-shell.” He is the result of quiet but persistent  
23 industry promotion. . . . Quality is still and above all the answer.  
24 Nobody needs a crystal ball to predict that quality wines will never be  
25 oversupplied.

26 California Wineries, Napa Valley, Volume One, p.79 (1975) (TX0312). Thus, in the wine  
27 industry and the maintenance of one’s trademark, the focus is on quality and, perhaps, for lower-  
28 end wines consistency. In this way, the issue of quality differs given the nature of the wine.  
29 Importantly, the question of commercial adequacy, in terms of control, cannot be untethered from  
30 the realities of the industry itself nor arbitrarily tied to stale generic requirements as TVH would  
31 have the Court do.

32 Even assuming TVH could argue abandonment as an affirmative defense, the facts do not

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33 <sup>11</sup> To date, the Ninth Circuit has not clarified whether a “stringent standard of proof”  
34 requires “clear and convincing” evidence or a “preponderance of the evidence.” *Id.* The parties  
35 have both indicated that they believe the “clear and convincing” standard applies. In any event,  
36 the Court need not resolve this issue, because under either evidentiary standard, TVH has failed to  
37 show that Constellation has indeed abandoned the To Kalon mark under a naked licensing theory.  
38

1 support TVH's position. Undisputedly, Constellation has licensed the trademark to Beckstoffer  
2 who has sub-licensed to wineries who buy grapes from Beckstoffer's vineyards. Here,  
3 Constellation and Beckstoffer are operating in an electronic age. Hard files do not exist as they  
4 did in the past so the lack thereof does not prove abandonment. Informality does not necessarily  
5 mean lack of control in a close-knit environment. Everyone of import to the question, that is  
6 Constellation, Beckstoffer, and all the sublicensees, have an incentive to ensure the quality of the  
7 goods, and by extension, the strength of the trademark as it is the trademark that adds value and  
8 goodwill to the goods. Thus, the fact that Constellation receives reports with hyperlinks showing  
9 the wine ratings of wine critics for wines using the To Kalon trademarks is evidence of control.  
10 The acknowledgement and informal monitoring that wines being produced from these grapes are  
11 done so by some of the most prominent wine makers in the industry and sold at luxury prices is  
12 evidence of control. The periodic tasting of the wines also evidences control.

13 Had a formal program been implemented, this issue would never have been raised, but to  
14 claim abandonment strains credulity. There is no need to overregulate quality where no evidence  
15 exists that quality is in peril. The process of producing luxury wines is organic, artistic and  
16 extends over many years. The day-to-day informal monitoring of these wines evidences control.  
17 Mr. Beckstoffer admitted that at least once, he had to discuss concerns with a sublicensee over  
18 which he would have terminated the license due to quality issues.<sup>12</sup> The law does not demand  
19 documentation, although documentation often resolves issues without the need of litigation.

20 That Gallo Wineries conducts chemical experiments to monitor its mass produced, low-  
21 end wines does not serve as useful corollary. Again, issues regarding adequate control need not be  
22 formulaic. Mr. Paul Reidl credibly testified as to the process used by Gallo Wineries, but the  
23 concern about a consistent flavor or any health effects from a low-end product does not mean that  
24 its approach is commercially reasonable for luxury wines. Even Mr. Reidl's template for a license

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25  
26 <sup>12</sup> Counsel's cross-examination of Mr. Beckstoffer did not persuade. Mr. Beckstoffer  
27 credibly testified that under his sublicense agreement he was entitled to terminate for failure to  
28 comply with the requirements therein including quality issues. Counsel's attempt to corner him on  
certain technical language in the sublicense failed and did not result in any evidence to support  
plaintiff's theory.

1 tied to quality control (*see* TX00011D) is consistent with the actions taken by Constellation and  
 2 Beckstoffer. Moreover, the informal approach used here has, in fact, worked. There is not even a  
 3 hint of a suggestion that the wines produced by the licensees and sub-licensees were not of high  
 4 quality.

5 In short, it appears that the “defense” was raised merely as a hail-Mary attempt to cancel a  
 6 mark so TVH could capitalize on it. Notably, the claim was never made until after the Court  
 7 issued its preliminary injunction and the prospect of an award of attorneys’ fees became more  
 8 realistic. The claim of abandonment fails.

### 9 C. Constellation’s State Law Claims

10 Constellation’s three state law claims turn on essentially the same tests as do their federal  
 11 law counterpart claims. *See Cleary v. News Corp.*, 30 F.3d 1255, 1262-63 (9th Cir. 1994) (“This  
 12 Circuit has consistently held that state common law claims of unfair competition and actions  
 13 pursuant to California Business and Professions Code § 17200 are ‘substantially congruent’ to  
 14 claims made under the Lanham Act.”) (quoting *International Order of Job’s Daughters v.*  
 15 *Lindeburg & Co.*, 633 F.2d 912, 916 (9th Cir. 1980)). The elements of the state law count for  
 16 trademark infringement<sup>13</sup> (Fourth Claim), unfair competition<sup>14</sup> (Fifth Claim) and Section 17200 of  
 17 California Business and Professions Code<sup>15</sup> (Sixth Claim) overlap with that of the federal claim.

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18  
 19 <sup>13</sup> TVH shall be liable for infringement under California common law if: (i) Constellation  
 20 made prior use of the TO KALON or TO KALON VINEYARD trademarks, and (ii) there is a  
 21 likelihood that TVH’s uses of the name To Kalon will be confused with Constellation’s use of  
 those marks. *See Wood v. Apodaca*, 375 F. Supp. 2d 942, 947-48 (N.D. Cal. 2005).

22 <sup>14</sup> TVH shall be liable for unfair competition under California common law if: (i) TVH  
 23 wrongly exploited Constellation’s TO KALON and/or TO KALON VINEYARD trademarks,  
 24 and/or reputation, and (ii) Constellation suffered a “competitive injury” as a result of TVH’s  
 25 conduct. *Walter v. Mattel, Inc.*, 210 F.3d 1108, 1111 (9th Cir. 2000) (“Claims for false  
 26 designation of origin under the Lanham Act and unfair competition under California common law  
 both share a single test: likelihood of confusion.”); *Microsoft Corp. v. Buy More, Inc.*, No. 15-  
 56544, 703 F. App’x 476, 480 (9th Cir. June 27, 2017) (“The analysis for these claims is therefore  
 identical to the analysis for [the trademark owner’s] trademark infringement claim.”) (internal  
 citations omitted).

27 <sup>15</sup> TVH shall be liable under California Business & Professions Code § 17200 *et seq.* if TVH  
 28 committed either (i) an unlawful business practice, or (ii) a fraudulent business practice, or (iii) an  
 unfair business practice, or (iv) an act prohibited by Bus & Prof. Code 17500 *et seq.*, and

1 The Court relies on the prior analysis except as is noted herein. The Fourth Claim for  
 2 trademark infringement under state law is the same as the federal claim and the Court finds in  
 3 favor of Constellation on the same grounds as discussed above. With respect to Fifth Claim for  
 4 unfair competition, the first element is satisfied for the same reasons as discussed above. With  
 5 respect to the second element regarding “competitive injury,” the Court finds it is satisfied by  
 6 TVH’s acts of selling wine with the good will which accompanied the use of Constellation’s  
 7 trademark. The Court finds in Constellation’s favor on this claim. However, with respect to the  
 8 Sixth Claim, while the Court finds the first element satisfied for the same reasons referenced  
 9 above, Constellation failed to provide any evidence that it lost money or property. This claim fails  
 10 for lack of proof.

### 11 **III. RELIEF**

12 The Court acknowledges that Constellation has withdrawn its claims for damages (*see* Dkt.  
 13 No. 236, n.16), but seeks injunctive relief. Given the findings of fact and conclusions of law, a  
 14 permanent injunction is aptly supported.

15 Under Ninth Circuit law, an injunction should issue upon proof that the plaintiff (1)  
 16 “suffered an irreparable injury; (2) that remedies available at law . . . are inadequate to compensate  
 17 for that injury; (3) that . . . the balance of hardships between the [parties] [warrants] a remedy in  
 18 equity; and (4) that the public interest would not be disserved by a permanent injunction.” *eBay*  
 19 *Inc. v. MercExchange LLC*, 547 U.S. 388, 391 (2006); *see also Herb Reed Enter., LLC v. Florida*  
 20 *Enter. Mgmt., Inc.*, 736 F.3d 1239, 1249 (9th Cir. 2013). Each of those factors has unquestionably  
 21 been met.

22 The loss of control over one’s trademarks, reputation, and goodwill is “a quintessentially  
 23 irreparable injury.” *Adidas Am., Inc. v. Skechers USA, Inc.*, 149 F. Supp. 3d 1222, 1249 (D. Or.  
 24 2016) (citing *Herb Reed*, 736 F.3d at 1250); *see also Toyo Tire & Rubber Co. v. Kabusikiki*

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25  
 26 Constellation has suffered injury in fact and has lost money or property as a result of the unfair  
 27 competition. Cal. Bus. & Prof. Code § 17200; *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1127  
 28 (9th Cir. 2009); *Saunders v. Superior Court*, 27 Cal. App. 4th 832, 838-39 (1994) (explaining  
 what “unlawful” and “fraudulent” business practices are).



1 *Kaisha Tokyo Nihoon Rubber Corp*, 2015 WL 6501228, \*4 (D. Nev. Oct. 26, 2015) (finding  
2 irreparable harm where trademark owner had “spent considerable time and effort building its  
3 reputation”); McCarthy on Trademarks, § 30:47.70 (“A likelihood of damage to reputation is by  
4 its nature ‘irreparable.’ Like trying to un-ring a bell, trying to ‘compensate’ after the fact for  
5 damage to business goodwill and reputation cannot constitute a just or full compensation.”).<sup>16</sup>

6 As trial evidence showed, To Kalon has become a fixture in Northern California’s wine  
7 industry. Attempting to quantify the goodwill which would be lost, especially amongst the narrow  
8 luxury wine market, is incredibly difficult. Without an injunction, The Vineyard House, LLC will  
9 continue to try and use the term for its own benefit and such use will not only be a violation of  
10 Constellation’s trademark rights but will harm the public as it will suggest an inference regarding  
11 the origin of the wine that is unsupported in any credible manner. The Vineyard House, LLC will  
12 suffer no hardship as it has no right, or credible basis, to use the term.

13 Further, the evidence demonstrated convincingly that Mr. Nickel, as the sole owner of The  
14 Vineyard House, LLC, has acted in a manner to combine and leverage his various commercial  
15 pursuits and does not maintain boundaries. In a vacuum, such conduct may be reasonable from a  
16 small business perspective. However, given the context here, the Court has little to no confidence  
17 that Mr. Nickel will be able to keep separate his horse, or stock, farm business which caters to the  
18 billionaires of Wellington, Florida from his wine business as run by The Vineyard House, LLC  
19 which caters to consumers of luxury cult wines. Relief is issued given that context.

20  
21  
22 <sup>16</sup> The Trademark Modernization Act of 2020 (codified as part of the Consolidated  
23 Appropriations Act, 2021, Pub. L. 116-260) was signed into law on December 27, 2020. That  
24 law, *inter alia*, modified the text of 15 U.S.C. § 1116(a) relating to awarding injunctive relief in  
25 trademark infringement actions by inserting the following sentence after the first sentence:

26 A plaintiff seeking any such injunction shall be entitled to a rebuttable  
27 presumption of irreparable harm upon a finding of a violation  
28 identified in this subsection in the case of a motion for a permanent  
injunction or upon a finding of likelihood of success on the merits for  
a violation identified in this subsection in the case of a motion for a  
preliminary injunction or temporary restraining order.

Pub. L. 116-260. Here, in light of the Court’s analysis, the insertion of the above sentence only  
reinforces the appropriateness of a permanent injunction requested by Constellation.



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Accordingly, the requested relief shall be granted and The Vineyard House, LLC and any and all of its agents, members, officers, directors, employees, and/or principals shall be permanently enjoined from using the words To Kalon or To Kalon Vineyard or any variation thereof in any manner on any wine, wine-related product, reference to a wine product, or event or activity where such wine is present or referenced. The permanent injunction extends to any affiliate of The Vineyard House, LLC and its principal Jeremy Nickel including without limitation the To-Kalon Farm.<sup>17</sup>

The Clerk of the Court is directed to enter judgment accordingly and to close this matter.<sup>18</sup>

This Order terminates Docket Numbers 236, 237, and 240.

**IT IS SO ORDERED.**

Dated: January 26, 2021

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE

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<sup>17</sup> The Court defers any finding on attorneys’ fees until further briefing from the parties.

<sup>18</sup> Additionally, for the good cause shown therein, the Court **GRANTS** the parties’ administrative motions to seal with respect to the parties’ post-trial briefing.

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**THE VINEYARD HOUSE, LLC,**  
Plaintiff,

v.

**CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,**  
Defendant.

Case No. 4:19-cv-01424-YGR  
CONSOLIDATED CASE

**JUDGMENT UNDER RULE 58**

**CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,**  
Consolidated Plaintiff,

v.

**THE VINEYARD HOUSE, LLC,**  
Consolidated Defendant.

**TO ALL PARTIES AND COUNSEL OF RECORD**, based on the findings of fact and conclusions of law filed concurrently herewith, and for good cause showing,


**JUDGMENT IS HEREBY ENTERED** in favor of Constellation Brands U.S. Operations, Inc and against The Vineyard House, LLC.

**FURTHER**, The Vineyard House, LLC and any and all of its agents, members, officers, directors, employees, and/or principals are **HEREBY PERMANENTLY ENJOINED** from using the words To Kalon or To Kalon Vineyard or any variation thereof in any manner on any wine, wine-related product, reference to a wine product, or event or activity where such wine is present or referenced. The permanent injunction extends to any affiliate of the The Vineyard House and its principal Jeremy Nickel including without limitation the To Kalon Farm.

Notice or a copy of this injunction shall be provided to all employees.

**IT IS HEREBY ORDERED AND ADJUDGED.**

Dated: January 26, 2021

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE

United States District Court  
Northern District of California

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# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**THE VINEYARD HOUSE, LLC.,**

Plaintiff,

v.

**CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,**

Defendant.

Case No. 4:19-cv-01424-YGR

CONSOLIDATED CASE

**POST-TRIAL ORDER RE: ATTORNEYS’  
FEES AND EXPERT FEES**

Dkt. Nos. 249, 250

**CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,**

Plaintiff,

v.

**THE VINEYARD HOUSE, LLC,**

Defendant.

On January 26, 2021, this Court issued a Rule 52 Order After Trial on the Merits (“Rule 52 Order,” Dkt. No. 244) finding in favor of Constellation Brands U.S. Operations, Inc. (“Constellation”) and against The Vineyard House, LLC (“TVH”) on both the declaratory relief action, Case No. 19-cv-1424 (“Main Action”) and the action necessitated by TVH’s active infringement of Constellation’s trademark, Case No. 20-cv-238 (“Second Action”).<sup>1</sup> Thereafter, Constellation filed a “Motion of Attorney Fees” and recovery of expert witness fees which is now fully briefed. The Court, having considered the briefing, and good cause appearing, **HEREBY GRANTS IN PART** the motion as follows:<sup>2</sup>

<sup>1</sup> The Court assumes familiarity with the contents of the Rule 52 Order and the procedural history of this consolidated case.

<sup>2</sup> The Court also **GRANTS** Constellation’s motion to seal (Dkt. No. 248), because the request is narrowly tailored and only includes confidential information. Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds these motions appropriate for decision without oral argument.

United States District Court  
Northern District of California

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1     **I.       LEGAL FRAMEWORK**

2           The parties do not dispute the standard to be used in evaluating the motion, only its  
3 application. Two legal standards apply. First, with respect to attorneys’ fees, the Lanham Act  
4 provides that in “exceptional cases,” a court “may award reasonable attorney fees to the prevailing  
5 party.” 15 U.S.C. § 1117(a). As the Supreme Court has explained, however, an “exceptional case”  
6 is “simply one that stands out from others with respect to the substantive strength of a party’s  
7 litigating position (considering both the governing law and the facts of the case) or the  
8 unreasonable manner in which the case was litigated.” *Octane Fitness, LLC v. ICON Health &*  
9 *Fitness, Inc.*, 572 U.S. 545, 554 (2014); *accord SunEarth, Inc. v. Sun Earth Solar Power Co., Ltd.*,  
10 839 F.3d 1179, 1180 (9th Cir. 2016). When determining whether to exercise its equitable  
11 discretion to award fees, a court is instructed to look to the “totality of the circumstances,” and  
12 should consider factors such as “frivolousness, motivation, objective unreasonableness (both in the  
13 factual and legal components of the case) and the need in particular circumstances to advance  
14 considerations of compensation and deterrence.” *Octane Fitness*, 572 U.S. at 554 n.6 (*quoting*  
15 *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994)). Second, with respect to expert witness  
16 fees, Federal Rule of Civil Procedure 26(b)(4)(E) provides that absent “manifest injustice,” a party  
17 who seeks discovery from an expert must “pay the expert a reasonable fee for time spent in  
18 responding to [the] discovery.” Fed. R. Civ. P. 26(b)(4)(E). The Court addresses each.

19     **II.       APPLICATION**

20           **A.       Attorneys’ Fees Under the Lanham Act**

21           This Court cannot recall a single instance where it awarded attorneys’ fees under a  
22 standard requiring “exceptional” or “extraordinary” circumstances (as opposed to fees authorized  
23 by statute or contract to a prevailing party). In short, this case should never have been tried.  
24 Perhaps, it should never have been brought. Unlike Mr. Beckstoffer, TVH did not have a  
25 legitimate claim.  
26

27           However, even giving TVH the benefit of the doubt, certainly, after the Court issued a  
28 preliminary injunction, the action should have resolved. The fact that TVH ignored a walk-away

1 offer is baffling. To the extent that TVH now interprets the Court’s Rule 52 Order to argue that its  
 2 claim had any merit, the Court can only surmise that TVH has seized on a few phrases included to  
 3 cushion the landing for the lawyers hired to pursue, unfortunately, a client’s bidding.<sup>3</sup> Ultimately  
 4 though, a line must exist across which litigants, and lawyers, should not cross without  
 5 consequence. This is the line defined by the concept of “exceptional.” This is the line that TVH  
 6 cavalierly traversed without any regard for the attendant costs or impact.

7 Mr. Nickel, whose actions are one and the same with TVH, showed himself to be one who  
 8 cared not whether he was acting in a rash manner, who indiscriminately ignored the findings of  
 9 experts when the findings did not suit him and the established parameters of the law in the context  
 10 of pending litigation, while later downplaying the actions in his testimony. Courts should be used  
 11 in good faith and not as a relatively free means to test one’s self-centered, unfounded ideas. An  
 12 award of attorneys’ fees impresses upon those who use the courts primarily for self-indulgent  
 13 purposes, and without regard for the law, that the cost will be greater than that expended on their  
 14 own side of the ledger.

15 The Court will not regurgitate the findings of the Rule 52 Order which outlined the lack of  
 16 any substantive legal or factual basis for pursuing the lawsuit,<sup>4</sup> other than to highlight some  
 17 critical issues which epitomize the point:

- 18 1. Constellation owns and owned an incontestable trademark on the term TO KALON and  
 19 TO KALON VINEYARD on wine since 1988. Moreover, the Patent and Trademark  
 20 Office warned TVH against using the mark.
- 21 2. The record evidence contained overwhelming numbers of references showing that Mr.  
 22 Crabb used To Kalon (or some variation thereof) as a brand on wine, the name of a  
 23 company, and the name of his vineyard, all simultaneously. While, of course, the term  
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25 <sup>3</sup> For instance, the reference in the Rule 52 Order that the “record is replete with  
 26 conflicting evidence showing how narrow, or alternatively, how widespread, is the reference to To  
 27 Kalon” says nothing about the unambiguous finding that To Kalon does not, and never has, related  
 to the Baldrige property.

28 <sup>4</sup> The Court concurs with the recitation of citations to the record in Constellation’s moving  
 papers. As noted, the Court does not repeat the same here.

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also included the alluvial fields in Oakville, the argument that it only referred to a vineyard was specifically contradicted by the evidence for which there was no argument addressing this glaring inconsistency.

3. TVH’s case is not, and never was, Mr. Beckstoffer’s case, the latter of whom owned some of the alluvial, grape-growing fields which were previously owned by H.W. Crabb. Further, Mr. Beckstoffer acted as a reasonable businessperson would in settling his own case with a license, understanding the metes and bounds of the law.
4. No historical records exist to show that the Baldrige Parcel was ever used to grow grapes. This was confirmed by an independent examiner, *before the litigation commenced*, hired by TVH itself and relied upon for permitting purposes with Napa County. The examiner explicitly advised of the lack of any connection to wine making. The hiring of an academic who is willing to testify to a strained reading of a couple of sentences in a historic report does not provide a valid counter-narrative. Rather, it is easily disregarded as irrelevant.
5. Mr. Nickel demonstrated himself to be obsessive in his desire to leverage the To Kalon name by importing it to all parts of his various businesses including wine and horse racing and ignoring the advice of his own employees regarding the use of the term as a likely trademark violation.
6. Finally, TVH raised so many issues in a desperate attempt to make something out of nothing that it is not surprising that costs skyrocketed. Constellation did have to defend and respond in kind. Constellation submits, and TVH does not contend otherwise, that the parties exchanged 63 sets of discovery or responses and twenty-two expert reports, including a damages expert opining that TVH was entitled to approximately \$25.7 million in damages. The parties took 21 depositions; 5 of which were experts. Motion practice included two rounds of motions related to pleadings, preliminary injunctions, and discovery disputes. For trial, the parties presented more than 1000 trial exhibits.

Across the board, TVH’s theories proffered at trial lacked merit and any factual basis. The notion that one can hire an expert who is willing to testify to some proffered theory does not create a



1 foundation to argue that the lawsuit had a meritorious basis. An expert's opinion must be  
2 grounded in the record. Where the factual basis is vacuous, so too are the expert's opinions.

3 TVH's authorities do not compel a different result as each is distinguishable. *See Globefill*  
4 *Inc., v. Elements Spirits, Inc.*, 756 F. App'x 764, 766 (9th Cir. 2019) (affirming the district court's  
5 determination that the case was not exceptional where the losing party had reasonable litigation  
6 positions); *Angioscore, Inc. v. Trireme Med., Inc.*, No. 12-CV-03393-YGR, 2015 WL 8293455, at  
7 \*2 (N.D. Cal. Dec. 9, 2015) (finding no exceptional case where the case was reasonably litigated  
8 by all parties); *Netlist, Inc. v. Diablo Techs., Inc.*, No. 13-CV-5962 YGR, 2015 WL 5157315, at  
9 \*2 (N.D. Cal. Sept. 1, 2015), aff'd, 667 F. App'x 774 (Fed. Cir. 2016) (finding no exceptional case  
10 where plaintiff submitted credible evidence and expert testimony, thereby making the case not  
11 objectively unreasonable); *Blue Spike, LLC v. Adobe Sys., Inc.*, No. 14-CV-01647-YGR, 2015 WL  
12 5542995, at \*2 (N.D. Cal. Sept. 18, 2015), aff'd, 710 F. App'x 889 (Fed. Cir. 2018) (finding no  
13 exceptional case where defendant conceded that plaintiff had at least a colorable basis for an  
14 infringement case against it); *Gonzalez v. Tagged, Inc.*, No. 16-CV-00574-YGR, 2016 WL  
15 4376343, at \*3 (N.D. Cal. Aug. 17, 2016) (holding no exceptional case where a magistrate judge's  
16 prior finding and a jury verdict suggested that plaintiff's underlying lawsuit was not objectively  
17 unreasonable). As noted above, and confirmed by case cites, this Court does not award such fees  
18 lightly.

19 In summary, when a myopic view of litigation untethered to the realities of the facts and  
20 the law converge, one finds an "exceptional" case. Fortunately, for the courts and opposing  
21 parties, such cases are seldom seen. Usually, resources or business judgment serve to counsel  
22 reasonableness. Unfortunately, no such external force bridled the plaintiff here.

### 23 **B. Reasonableness of Attorneys' Fees**

24 The parties agree that to "calculate reasonable attorneys' fees in a case brought under the  
25 Lanham Act, courts utilize the lodestar method." *Athena Cosmetics, Inc. v. Timbo Trading Co.*,  
26 2020 WL 4805470, at \*3 (C.D. Cal. 2020) "The lodestar figure is calculated by multiplying the  
27 number of hours the prevailing party reasonably expended on the litigation (as supported by  
28

1 adequate documentation) by a reasonable hourly rate for the region and for the experience of the  
2 lawyer.” *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir. 2016).

3 Constellation seeks reimbursement of fees of \$4,419,57.90. Alternatively, they seek  
4 reimbursement of \$190,517.30 with respect to the Second Action and \$2,570,164 on the Main  
5 Action for time spent after the Court’s issuance of the Preliminary Injunction Order. (*See* Second  
6 Action, Dkt. 40.) Even though the Court could likely find recoverable fees incurred *prior* to the  
7 issuance of its Order Granting Motion for Preliminary Injunction (“PI-Order”), those fees incurred  
8 after are certainly recoverable. Three factors weigh towards that infliction point. First, by that  
9 date, the legal theories and the Court’s analysis had been vetted. Second, Constellation offered to  
10 resolve the matter with both sides walking away without further expense. Third, TVH understood  
11 its factual arguments and expert analysis. Given Constellations’ offer, much of the remaining  
12 depositions and intense trial preparation could have reasonably been avoided.

13 **Number of Hours Spent:**

14 With respect to the Second Action, the total hours billed equaled 246.5, and with respect to  
15 the other, the hours billed post the PI-Order totaled 3,260.2. In one paragraph, TVH complains  
16 that Constellation’s counsel “overstaffed and over-worked this case” contrasting it with its own  
17 approach of using two lawyers and one paralegal billing “far fewer hours.” TVH cites  
18 Constellation’s use of ten lawyers, five paralegals, and three other billable staff. Notably, plaintiff  
19 does not take issue with a single entry, nor does it advise the Court how many hours its own  
20 counsel spent. Rather, it merely asks the Court to reduce the amount so that “only hours  
21 reasonable expended” are assessed.

22 TVH overstates the facts. A review of the documentation shows that the case was  
23 principally litigated by five attorneys (Edward Colbert, Erik Kane, William Merone, Jeremy  
24 Boczko, and Armin Ghiam). The ranges of experience are appropriate for the size and complexity  
25 of this case. The others played an insignificant role. Further, the hours billed post the PI-Order  
26 were reasonably incurred. Having reviewed the billings, the Court confirms that defense counsel  
27 has eliminated block billing, potentially duplicative charges, and those billings related to an  
28 unsuccessful claim.

1           However, the Court does make further adjustments. First, given the award of attorneys’  
 2 fees, the Court does eliminate those hours expended (a) on Constellation’s unsuccessful attempt to  
 3 settle and (b) on the unsuccessful opposition to the TVH’s motion to amend. These entries  
 4 subtotal \$7,326.41 and \$41,470.19, respectively. Second, the Court does not award any fees for  
 5 the filing of the motion for attorneys’ fees. Not only is over \$102,500.00 excessive for this  
 6 motion, but the entries contain research attempting to find authority to support this portion of the  
 7 award. Having not read any legal justification in the briefing, the Court surmises that Constellation  
 8 could not find any such authority. Third, the research relative to the Bill of Costs was also  
 9 excessive and the Court discounts those fees by \$10,000.00. Finally, the Court deducts an across-  
 10 the-board amount of ten percent. It is the Court’s experience that attorneys can always be more  
 11 efficient. A ten percent savings is a reasonable estimate to achieve that end.

12           **Hourly Billing Rates:**

13           TVH argues that the billing rates tendered are not commensurate with those more  
 14 common in the Northern District of California, but are at a premium for New York and  
 15 Washington, D. C. The Court disagrees. While slightly on the high side, the rates are within the  
 16 range of those charged in the Northern District by lawyers practicing intellectual property.  
 17 Constellation has justified the rates with third party analysis and the amounts are consistent with  
 18 others with which this Court is familiar.

19           **Summary:**

20           Based on the foregoing, the Court calculates the award of attorneys’ fees as follows: On  
 21 the requested amount of \$190,517.30 with respect to the Second Action plus \$2,570,164 for work  
 22 on the Main Action after the PI Order subtotaling \$2,760,681.30, the Court deducts (a) \$7,326.41;  
 23 (b) \$41,470.19; (c) \$102,500.00; and (d) \$10,000.00 resulting in \$2,599,384.70. From this figure,  
 24 the Court deducts ten percent and awards a net amount of \$2,339,446.23.

25           **C. Expert Fees Under Federal Rule of Civil Procedure 26(b)(4)(E)**

26           Federal Rule of Civil Procedure 26(b)(4)(E) mandates that a court “require that [a] party  
 27 seeking discovery [from an expert]: (i) pay the expert a reasonable fee for time spent in responding  
 28 to discovery under Rule 26(b)(4)(A) or (D); and (ii) for discovery under (D), also pay the other

1 party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts  
2 and opinions." Subsection (A) applies here as it relates to the "Deposition of an Expert Who May  
3 Testify," more specifically, it provides that "[a] party may depose any person who has been  
4 identified as an expert whose opinions may be presented at trial."

5 In terms of evaluating the reasonableness of the request, the Court agrees that it should use  
6 its discretion and consider objective criteria such as: "(1) the witness's area of expertise; (2) the  
7 education and training required to provide the expert insight that is sought; (3) the prevailing rates  
8 of other comparably respected available experts; (4) the nature, quality, and complexity of the  
9 discovery responses provided; (5) the fee actually charged to the party who retained the expert; (6)  
10 fees traditionally charged by the expert on related matters; and (7) any other factor likely to assist  
11 the court in balancing the interest[s] implicated by Rule 26." *Granite Rock Co. v. Int'l Bhd. of*  
12 *Teamsters*, No. C 04-2767 JW (RS), 2008 WL 618897, at \*1 (N.D. Cal. Mar. 3, 2008) *citing*  
13 *Fisher-Price, Inc. v. Safety 1st, Inc.*, 217 F.R.D. 329, 333 (D. Del. 2003).

14 Here, Constellation seeks reimbursement of \$20,981 which represents the expert fees  
15 associated with four depositions, both in terms of preparation for the deposition and the deposition  
16 itself. The parties disagree over whether Constellation can seek amounts for preparation.  
17 Apparently, district courts are split on this issue and the Ninth Circuit has not ruled.

18 To resolve the dispute, the Court relies on the plain language of the rule and finds that  
19 nothing in the plain language mandates the reimbursement for preparation time associated with the  
20 deposition. The extent to which such preparation is needed and beneficial lies more with the  
21 responding party rather than the party noticing the deposition. Given the obligation to reimburse,  
22 the noticing party can control the extent to which it requires the testimony in order to prepare for  
23 trial. Thus, the Court awards \$11,681.00 which represents the 16.33 hours the three experts  
24 actually spent in deposition. The Court finds the hourly rates charged reasonable. Certainly,  
25 plaintiff was on notice of the amount and could have shortened the deposition if it believed the  
26 rates were too high.

### 27 **III. CONCLUSION**


28 For the reasons set forth herein, the Court **HEREBY GRANTS** the motion but in an amount

1 less than the full amount requested, namely attorneys' fees in the amount of \$2,339,446.23 and  
2 reimbursement of expert fees in the amount of \$11,681.00 for a total amount of \$2,351,127.23.

3 This Order terminates Docket Nos. 249 and 250.

4 **IT IS SO ORDERED.**

5 Dated: July 28, 2021

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7 YVONNE GONZALEZ ROGERS  
8 UNITED STATES DISTRICT JUDGE  
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United States District Court  
Northern District of California

# **EXHIBIT D**

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

In the Matter of Application Serial No.:  
88008025 (CRABB’S BLACK BURGUNDY)  
Published in the Official Gazette of June 2, 2020

CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,

Opposer,

v.

THE VINEYARD HOUSE LLC,

Applicant.

Opposition No. 91264972

**OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT**

PROPOUNDING PARTY: Opposer Constellation Brands U.S. Operations, Inc.

RESPONDING PARTY: Applicant The Vineyard House LLC

SET NO.: One

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer, Constellation Brands U.S. Operations, Inc. (“CBUSO”) hereby propounds the following interrogatories to Applicant, The Vineyard House LLC (hereinafter “Applicant”). These interrogatories are to be answered separately, fully, and under oath, within thirty (30) days of service.

**DEFINITIONS**

For purposes of these Interrogatories:

1. “Opposer” means the Opposer in these consolidated proceedings, CBUSO.

2. “Applicant” means the Applicant in these consolidated proceedings, The Vineyard House LLC.
3. “Applicant’s Mark” means the mark CRABB’S BLACK BURGUNDY, U.S. Application No. 88008025.
4. “Applicant’s Goods” means wine that is manufactured, advertised, promoted, marketed, distributed, and/or sold in connection with Applicant’s Mark.
5. “Opposed Application” means the application that is the subject of these consolidated proceedings.
6. “Opposer’s Marks” means the marks TO KALON (U.S. Reg. No. 1489619), TO KALON VINEYARD (U.S. Reg. No. 1857851), and H.W.C. or HWC.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

State the facts and circumstances concerning the conception, creation, and adoption of Applicant’s Mark, including why the mark was adopted.

### **INTERROGATORY NO. 2:**

State the name, title, and address of each person involved in the conception, creation, and adoption of Applicant’s Mark.

### **INTERROGATORY NO. 3:**

State the name, title, and address of each person involved in the clearance of Applicant’s Mark.

### **INTERROGATORY NO. 4:**

State the meaning and/or significance of “CRABB” as used in Applicant’s Mark.

### **INTERROGATORY NO. 5:**

State the meaning and/or significance of “BURGUNDY” as used in Applicant’s Mark.



**INTERROGATORY NO. 6:**

Describe in detail the steps Applicant has undertaken to use Applicant's Mark in commerce.

**INTERROGATORY NO. 7:**

Identify each channel of trade through which Applicant's Goods have been sold or are intended to be sold.

**INTERROGATORY NO. 8:**

Identify, by age and demographic, the targeted classes of consumers to whom Applicant's Goods have been sold or are intended to be sold.

**INTERROGATORY NO. 9:**

State when Applicant first became aware of Opposer's Marks.

**INTERROGATORY NO. 10:**

State under what circumstances Applicant first became aware of Opposer's Marks.

**INTERROGATORY NO. 11:**

Identify any advertising, marketing, or other promotional materials used in connection with Applicant's Goods that reference Mr. H.W. Crabb (a/k/a Hamilton W. Crabb, Hiram W. Crabb, or Henry W. Crabb).

**INTERROGATORY NO. 12:**

Identify any advertising, marketing, or other promotional materials used in connection with Applicant's Goods that reference "To Kalon" in any manner.

**INTERROGATORY NO. 13:**

State the location (or locations) from which Applicant sources the grapes used to produce Applicant's Goods.

**INTERROGATORY NO. 14:**

State the location (or locations) at which Applicant produces and bottles Applicant's Goods.

**INTERROGATORY NO. 15:**

For each location identified in response to Interrogatory Nos. 13 and 14, state whether that location was ever used by Mr. H.W. Crabb (a/k/a Hamilton W. Crabb, Hiram W. Crabb, or Henry W. Crabb) as vineyard land.

**INTERROGATORY NO. 16:**

Describe all facts supporting your response to Interrogatory No. 15.

**INTERROGATORY NO. 17:**

State whether Applicant's Goods are made from Refosco or Mondeuse wine grapes.

**INTERROGATORY NO. 18:**

State the grape variety (or varieties) from which Applicant's Goods are made.

**INTERROGATORY NO. 19:**

Identify all domain names owned or operated by Applicant that include CRABB.

**INTERROGATORY NO. 20:**

Identify all trademarks owned by Applicant, both registered or unregistered, that contain the name CRABB.

**INTERROGATORY NO. 21:**

Identify any communications or inquiries from a third party regarding whether there is a relationship between Applicant and wines sold under Opposer's Marks.

**INTERROGATORY NO. 22:**

Identify any communications or inquiries from a third party regarding whether there is a relationship between Applicant's Goods and wines sold under Opposer's Marks.

**INTERROGATORY NO. 23:**

Identify any communications or inquiries from a third party regarding whether there is a relationship between Applicant's Goods and Opposer.

**INTERROGATORY NO. 24:**

Identify any communications or inquiries from a third party regarding whether there is a relationship between Opposer and Applicant.

**INTERROGATORY NO. 25:**

State with particularity the factual basis for Applicant's denial in Paragraphs 15 and 16 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 5] that the origins of Applicant's Goods have no historic association with Mr. H.W. Crabb.

**INTERROGATORY NO. 26:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 38 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 7].

**INTERROGATORY NO. 27:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 39 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 7].

**INTERROGATORY NO. 28:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 40 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 7].

**INTERROGATORY NO. 29:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 41 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 7].

**INTERROGATORY NO. 30:**

Identify every person who supplied information for and/or participated in responding to this First Set of Interrogatories to Applicant.

**INTERROGATORY NO. 31:**

Identify every person who supplied information for and/or participated in responding to Opposer's First Set of Request for Production of Documents and Things to Applicant.

**INTERROGATORY NO. 32:**

For each of Applicant's responses to a Request for Admission included in Opposer's First Set of Request for Admission propounded concurrently herewith that is not an unqualified admission, state all facts that support Applicant's response.

Respectfully submitted,

SEYFARTH SHAW LLP

Date: October 29, 2021

By: *Kenneth L. Wilton*

Kenneth L. Wilton

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John C. Heinbockel

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Attorneys for Opposer

CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT** has been served on Farah Bhatti, counsel for Applicant, by forwarding said copy on October 29, 2021, via email, to the correspondence address of record for Applicant at fbhatti@buchalter.com and ipdocket@buchalter.com, with a courtesy copy to mseror@buchalter.com.

*/Kenneth L. Wilton/*

\_\_\_\_\_  
Kenneth L. Wilton

# **EXHIBIT E**

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

In the Matter of Application Serial No.:  
88008025 (CRABB’S BLACK BURGUNDY)  
Published in the Official Gazette of June 2, 2020

CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,

Opposer,

v.

THE VINEYARD HOUSE LLC,

Applicant.

Opposition No. 91264972

**OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT**

PROPOUNDING PARTY: Opposer Constellation Brands U.S. Operations, Inc.

RESPONDING PARTY: Applicant The Vineyard House LLC

SET NO.: One

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer, Constellation Brands U.S. Operations, Inc. (“CBUSO”) hereby propounds the following requests for admission to Applicant, The Vineyard House LLC (hereinafter “Applicant”). These requests will be deemed admitted unless Applicant responds to them separately and fully within thirty (30) days of service.

**DEFINITIONS**

For purposes of these Requests for Admission:

1. “Opposer” means the Opposer in these consolidated proceedings, CBUSO.

2. “Applicant” means the Applicant in these consolidated proceedings, The Vineyard House LLC.
3. “Applicant’s Mark” means the mark CRABB’S BLACK BURGUNDY, U.S. Application No. 88008025.
4. “Applicant’s Goods” means wine that is manufactured, advertised, promoted, marketed, distributed, and/or sold in connection with Applicant’s Mark.
5. “Civil Action” means the lawsuit captioned *The Vineyard House, LLC v. Constellation Brands U.S. Operations, Inc.*, Case No. 4:19-cv-01424-YGR filed in the Northern District of California and the lawsuit with which it was consolidated, namely the lawsuit captioned *Constellation Brands U.S. Operations, Inc. v. The Vineyard House, LLC*, Case No. 20-cv-00238-YGR also filed in the Northern District of California.
6. “Opposed Application” means the application that is the subject of these consolidated proceedings.
7. “Opposer’s Marks” means the marks TO KALON (U.S. Reg. No. 1489619), TO KALON VINEYARD (U.S. Reg. No. 1857851), H.W.C. and HWC.

### **REQUESTS FOR ADMISSION**

#### **REQUEST FOR ADMISSION NO. 1:**

Admit that the District Court held in the Civil Action that the marks TO KALON and TO KALON VINEYARD have “gained substantial notoriety in the wine market among consumers and those in the trade.”

#### **REQUEST FOR ADMISSION NO. 2:**

Admit that the District Court held in the Civil Action that “TVH’s intent is unambiguous. TVH wants consumers to associate its wine with the wine which they understand to be sourced from those formerly belonging to the H.W. Crabb’s To Kalon Vineyard.”



**REQUEST FOR ADMISSION NO. 3:**

Admit that Applicant's Goods are not made with grapes sourced from land once owned and used by Mr. H.W. Crabb to grow grapes.

**REQUEST FOR ADMISSION NO. 4:**

Admit that Applicant's Goods are not made with grapes sourced from land once owned and used by Mr. H.W. Crabb to produce wine.

**REQUEST FOR ADMISSION NO. 5:**

Admit that Mr. H.W. Crabb is a person of historical importance in the wine industry.

**REQUEST FOR ADMISSION NO. 6:**

Admit that sophisticated wine consumers immersed in the Northern California wine industry associate Mr. H.W. Crabb with "To Kalon."

**REQUEST FOR ADMISSION NO. 7:**

Admit that sophisticated merchants immersed in the Northern California wine industry associate Mr. H.W. Crabb with "To Kalon."

**REQUEST FOR ADMISSION NO. 8:**

Admit that sophisticated professionals immersed in the Northern California wine industry associate Mr. H.W. Crabb with "To Kalon."

**REQUEST FOR ADMISSION NO. 9:**

Admit that Applicant's Goods are not made on land once owned by Mr. H.W. Crabb to grow grapes.

**REQUEST FOR ADMISSION NO. 10:**

Admit that Applicant's Goods are not made on land once owned by Mr. H.W. Crabb to produce wine.

**REQUEST FOR ADMISSION NO. 11:**

Admit that the CRABB portion of Applicant's Mark refers to Mr. H.W. Crabb.

**REQUEST FOR ADMISSION NO. 12:**

Admit that the letters H.W.C. are identical to the initials of Mr. H.W. Crabb.

**REQUEST FOR ADMISSION NO. 13:**

Admit that the letters HWC are identical to the initials of Mr. H.W. Crabb.

**REQUEST FOR ADMISSION NO. 14:**

Admit that a connection to Mr. Crabb is a material factor in the purchasing decision of wine consumers.

**REQUEST FOR ADMISSION NO. 15:**

Admit that a connection to land once used by Mr. Crabb as a vineyard is a material factor in the purchasing decision of wine consumers.

**REQUEST FOR ADMISSION NO. 16:**

Admit that Applicant selected Applicant's Mark to convey an association with Mr. H.W. Crabb.

**REQUEST FOR ADMISSION NO. 17:**

Admit that Applicant's Goods do not originate from the Burgundy (Bourgogne) region of France.

**REQUEST FOR ADMISSION NO. 18:**

Admit Applicant did not use Applicant's Mark prior to January 1, 1996.

**REQUEST FOR ADMISSION NO. 19:**

Admit that Applicant's Goods do not comply with any standards of control related to the geographic indications of Burgundy wine.

**REQUEST FOR ADMISSION NO. 20:**

Admit that the geographic origin of wine is material to the purchasing decision of wine consumers.

**REQUEST FOR ADMISSION NO. 21:**

Admit that Applicant's Goods are not made from Refosco or Mondeuse wine grapes.

**REQUEST FOR ADMISSION NO. 22:**

Admit Applicant that third parties have inquired whether Applicant's Goods originate from the Burgundy (Bourgogne) region of France.

**REQUEST FOR ADMISSION NO. 23:**

Admit that the goods identified in Opposed Application are identical to the goods identified in Opposer's registrations for the marks TO KALON (U.S. Reg. No. 1489619) and TO KALON VINEYARD (U.S. Reg. No. 1857851).

**REQUEST FOR ADMISSION NO. 24:**

Admit that the goods identified in Opposed Application are identical to the goods with which Opposer has used the H.W.C. and HWC marks.

**REQUEST FOR ADMISSION NO. 25:**

Admit that Applicant's Goods, on the one hand, and goods sold under Opposer's Marks, on the other, are promoted through the same trade channels.

**REQUEST FOR ADMISSION NO. 26:**

Admit that Applicant's Goods, on the one hand, and goods sold under Opposer's Marks, on the other, are promoted to the same classes of consumers.

**REQUEST FOR ADMISSION NO. 27:**

Admit that you are not aware of any third party use of a trademark consisting of or containing the term CRABB used in connection with wine.

**REQUEST FOR ADMISSION NO. 28:**

Admit that third parties have inquired regarding whether there is a relationship between Applicant and wines sold under Opposer's Marks.

**REQUEST FOR ADMISSION NO. 29:**

Admit that Applicant is the owner of the domain name historyofto-kalon.com.

**REQUEST FOR ADMISSION NO. 30:**

Admit that Applicant's sole member, Mr. Jeremy Nickel, is the owner of the domain name historyofto-kalon.com.

**REQUEST FOR ADMISSION NO. 31:**

Admit that all documents produced by Applicant in response to Opposer's First Set Of Interrogatories To Applicant and Opposer's First Set of Requests for Production of Documents and Things to Applicant are authentic under Rule 901 of the Federal Rules of Evidence.

Respectfully submitted,

SEYFARTH SHAW LLP

Date: October 29, 2021

By: *Kenneth L. Wilton*

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Attorneys for Opposer

CONSTELLATION BRANDS U.S.

OPERATIONS, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT** has been served on Farah Bhatti, counsel for Applicant, by forwarding said copy on October 29, 2021, via email, to the correspondence address of record for Applicant at fbhatti@buchalter.com, ipdocket@buchalter.com with a courtesy copy to mseror@buchalter.com.

*/Kenneth L. Wilton/*  
\_\_\_\_\_  
Kenneth L. Wilton

# **EXHIBIT F**

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

In the Matter of Application Serial No.:  
88008025 (CRABB’S BLACK BURGUNDY)  
Published in the Official Gazette of June 2, 2020

CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.,

Opposer,

v.

THE VINEYARD HOUSE LLC,

Applicant.

Opposition No. 91264972

**OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO APPLICANT**

PROPOUNDING PARTY: Opposer Constellation Brands U.S. Operations, Inc.

RESPONDING PARTY: Applicant The Vineyard House LLC

SET NO.: One

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer, Constellation Brands U.S. Operations, Inc. (“CBUSO”) hereby requests that Applicant, The Vineyard House LLC (hereinafter “Applicant”) produce for Opposer’s inspection and copying the documents and things requested below at the offices of Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles, California 90067, and that Applicant serve a written response to these Requests, both within 30 days of service of these Requests.

**DEFINITIONS**

For purposes of these Requests:

1. “Opposer” means the Opposer in these consolidated proceedings, CBUSO.

2. “Applicant” means the Applicant in these consolidated proceedings, The Vineyard House LLC.
3. “Applicant’s Mark” means the mark CRABB’S BLACK BURGUNDY, U.S. Application No. 88008025.
4. “Applicant’s Goods” means wine that is manufactured, advertised, promoted, marketed, distributed, and/or sold in connection with Applicant’s Mark.
5. “Opposed Application” means the application that is the subject of these consolidated proceedings.
6. “Opposer’s Marks” means the marks TO KALON (U.S. Reg. No. 1489619), TO KALON VINEYARD (U.S. Reg. No. 1857851), and H.W.C. or HWC.
7. “Document” is synonymous in meaning and equal in scope to its usage in Federal Rule of Civil Procedure 34(a)(1)(A). The term “document” refers to any document now or at any time in Applicant's possession, custody, or control. A person is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.
8. “All documents” is meant to include all documents in Applicant’s possession, custody or control, whether the documents were created or compiled by Applicant or by any other person or entity for any reason.
9. “Communication” shall mean the transmittal of information in the form of facts, ideas, inquiries, or otherwise, including, but not limited to, every manner or means of disclosure, transfer, or exchange, and every disclosure, transfer, or exchange of information, whether orally,



in writing, face-to-face, by telephone, by text message, by mail, by personal delivery, by inter- or intranet, by facsimile, by electronic mail, transfer, recording, or otherwise.

10. “All communications” is meant to include all communications in the possession, custody or control of Applicant, whether the communications were drafted, sent, or received by Applicant or by any other person or entity.

## **REQUESTS FOR PRODUCTION**

### **REQUEST FOR PRODUCTION NO. 1:**

All documents and communications evidencing, referring to, or otherwise relating to the conception, creation, and adoption of Applicant’s Mark, including all lists of proposed marks and related research.

### **REQUEST FOR PRODUCTION NO. 2:**

All non-privileged documents and communications evidencing, referring to, or otherwise relating to any trademark search and/or investigation conducted by or on behalf of Applicant in connection with the conception, creation and adoption of Applicant’s Mark.

### **REQUEST FOR PRODUCTION NO. 3:**

Documents sufficient to identify all trademarks owned by Applicant, both registered or unregistered, that contain the name CRABB.

### **REQUEST FOR PRODUCTION NO. 4:**

All documents and communications evidencing or explaining the significance of “CRABB” as used in Applicant’s Mark.

### **REQUEST FOR PRODUCTION NO. 5:**

All documents and communications evidencing or explaining the significance of “BURGUNDY” as used in Applicant’s Mark.

**REQUEST FOR PRODUCTION NO. 6:**

All documents or communications evidencing, referring to, or otherwise relating to how contemporary consumers understand the meaning or significance of “BLACK BURGUNDY.”

**REQUEST FOR PRODUCTION NO. 7:**

Documents and communications sufficient to identify the location (or locations) from which Applicant sources the grapes used to produce Applicant’s Goods.

**REQUEST FOR PRODUCTION NO. 8:**

Documents and communications sufficient to identify the location (or locations) at which Applicant produces and bottles Applicant’s Goods.

**REQUEST FOR PRODUCTION NO. 9:**

Documents and communications sufficient to identify the grape variety (or varieties) from which Applicant makes Applicant’s Goods.

**REQUEST FOR PRODUCTION NO. 10:**

All documents and communications evidencing, referring to, or otherwise relating to Applicant’s bona fide intent to use Applicant’s Mark in commerce.

**REQUEST FOR PRODUCTION NO. 11:**

All documents and communications evidencing, referring to, or otherwise relating to business plans reflecting Applicant’s actual or intended use of Applicant’s Mark.

**REQUEST FOR PRODUCTION NO. 12:**

Documents and communications sufficient to identify all anticipated channels of trade for Applicant’s Goods.

**REQUEST FOR PRODUCTION NO. 13:**

Documents and communications sufficient to identify all anticipated points of sale for Applicant’s Goods.

**REQUEST FOR PRODUCTION NO. 14:**

All documents and communications evidencing, referring to, or otherwise relating to the expected retail price for Applicant's Goods.

**REQUEST FOR PRODUCTION NO. 15:**

Documents and communications sufficient to identify the targeted classes of consumers to whom Applicant intends to market or promote, or currently markets and promotes, Applicant's Goods.

**REQUEST FOR PRODUCTION NO. 16:**

Documents and communications sufficient to identify the expenditures incurred in the development, production, distribution, promotion and advertising of Applicant's Goods.

**REQUEST FOR PRODUCTION NO. 17:**

All documents and communications evidencing, referring to, or otherwise relating to when and under what circumstances Applicant first became aware of Opposer.

**REQUEST FOR PRODUCTION NO. 18:**

For each of Opposer's Marks, all documents and communications evidencing, referring to, or otherwise relating to when and under what circumstances Applicant first became aware of that mark.

**REQUEST FOR PRODUCTION NO. 19:**

For each of Opposer's Marks, all documents and communications evidencing, referring to, or otherwise relating to when and under what circumstances Applicant first became aware of the U.S. trademark registration for that mark.

**REQUEST FOR PRODUCTION NO. 20:**

Copies of all advertising, marketing, or other promotional materials used in connection with Applicant's Goods that reference "To Kalon" in any manner.

**REQUEST FOR PRODUCTION NO. 21:**

Copies of all advertising, marketing, or other promotional materials used in connection with Applicant's Goods that reference Mr. H.W. Crabb (a/k/a Hamilton W. Crabb, Hiram W. Crabb, or Henry W. Crabb).

**REQUEST FOR PRODUCTION NO. 22:**

Copies of any Certificates of Label Approval (COLA) that Applicant has applied for or obtained from the Alcohol and Tobacco Tax and Trade Bureau (TTB) that include the name CRABB.

**REQUEST FOR PRODUCTION NO. 23:**

Copies of all front or back wine labels (including any etchings or silk-screened printings on bottles) for wine produced or sold by Applicant that include the name CRABB.

**REQUEST FOR PRODUCTION NO. 24:**

All documents and communications evidencing, referring to, or otherwise relating to inquiries from a third party regarding whether there is a relationship between Applicant and wines sold under Opposer's Marks.

**REQUEST FOR PRODUCTION NO. 25:**

All documents and communications evidencing, referring to, or otherwise relating to inquiries from a third party regarding whether there is a relationship between Opposer and Applicant.

**REQUEST FOR PRODUCTION NO. 26:**

Copies of all agreements entered into between Applicant and any third party related to Applicant's Mark.

**REQUEST FOR PRODUCTION NO. 27:**

All documents and communications identified in Applicant's Initial Disclosures.

**REQUEST FOR PRODUCTION NO. 28:**

All documents and communications reviewed and/or consulted in preparing Applicant's responses to these Requests for Production.

**REQUEST FOR PRODUCTION NO. 29:**

All documents and communications identified and/or referenced in Applicant's responses to Opposer's First Set of Interrogatories to Applicant.

**REQUEST FOR PRODUCTION NO. 30:**

All non-privileged documents and communications referring or relating to Opposer.

**REQUEST FOR PRODUCTION NO. 31:**

All non-privileged documents and communications referring or relating to Opposer's Marks.

**REQUEST FOR PRODUCTION NO. 32:**

All non-privileged documents and communications evidencing, referring to, or otherwise relating to the Affirmative Defense stated at Paragraph 38 of Applicant's Amended Answer to the Notice of Opposition filed on November 8, 2020 [5 TTABVUE 7].

**REQUEST FOR PRODUCTION NO. 33:**

All non-privileged documents and communications evidencing, referring to, or otherwise relating to the Affirmative Defense stated at Paragraph 39 of Applicant's Amended Answer to the Notice of Opposition filed on November 8, 2020 [5 TTABVUE 7].

**REQUEST FOR PRODUCTION NO. 34:**

All non-privileged documents and communications evidencing, referring to, or otherwise relating to the Affirmative Defense stated at Paragraph 40 of Applicant's Amended Answer to the Notice of Opposition filed on November 8, 2020 [5 TTABVUE 7].

**REQUEST FOR PRODUCTION NO. 35:**

All non-privileged documents and communications evidencing, referring to, or otherwise relating to the Affirmative Defense stated at Paragraph 41 of Applicant's Amended Answer to the Notice of Opposition filed on November 8, 2020 [5 TTABVUE 7].

Respectfully submitted,

SEYFARTH SHAW LLP

Date: October 29, 2021

By: John C. Heinbockel/

Kenneth L. Wilton

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Attorneys for Opposer

CONSTELLATION BRANDS U.S.

OPERATIONS, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO APPLICANT** has been served on Farah Bhatti, counsel for Applicant, by forwarding said copy on October 29, 2021, via email, to the correspondence address of record for Applicant at fbhatti@buchalter.com and ipdocket@buchalter.com, with a courtesy copy to mseror@buchalter.com.

*/Kenneth L. Wilton/*

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Kenneth L. Wilton

# **EXHIBIT G**



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

<p>Constellation Brands U.S. Operations, Inc.,</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>The Vineyard House LLC</p> <p style="text-align:center">Applicant.</p>	<p>Opposition No.: 91264972</p> <p>APPLICANT THE VINEYARD HOUSE LLC'S RESPONSE TO OPPOSER CONSTELLATION BRANDS U.S. OPERATIONS, INC. FIRST SET OF INTERROGATORIES</p>
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PROPOUNDING PARTY:                    CONSTELLATION BRANDS U.S. OPERATIONS, INC.  
RESPONDING PARTY:                    APPLICANT THE VINEYARD HOUSE LLC  
SET NO:                                    ONE (1)

**APPLICANT'S RESPONSE TO OPPOSER'S INTERROGATORIES (SET 1)**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Rule 2.120 of the Trademark Rules of Practice, and §405 of the Trademark Trial and Appeal Board Manual of Procedure, Applicant, The Vineyard House LLC ("Applicant") hereby responds to the First Set of Interrogatories by Constellation Brands U.S. Operations, Inc. ("Constellation") as follows:

**PRELIMINARY STATEMENT**

1.        These responses are made solely for the purpose of, and in relation to, this action. Further, these responses are based upon Applicant's perception and understanding of the nature and type of information and documents requested, and upon the information presently known and available to Applicant and its attorneys as of the time of the response. Each response is given subject to all appropriate objections which would require the exclusion of any statement

contained herein if made by a witness present and testifying in court. All such objections and grounds therefore are reserved.

2. Applicant's responses are based upon its present knowledge, information and belief. Applicant has not completed its investigation and discovery of the facts related to this proceeding. Further discovery, independent investigation, legal research and analysis may supply additional facts and/or add meaning to known facts. Without acknowledging any obligation to do so, except as required by law, Applicant reserves the right to amend, supplement, correct or clarify its responses to the Interrogatories when and if new or additional information becomes available.

3. Applicant reserves the right to object to the use and/or admissibility of any of its responses to the Interrogatories at the trial of this action, at any other proceeding, or in any other action or proceeding.

4. Nothing contained in these responses should be construed as an admission relating to the coexistence or non-existence of any fact, and no response is to be considered an admission respective of the relevance or admissibility of any information contained therein.

5. The following responses are submitted without prejudice to Applicant's right to produce evidence of any subsequently discovered fact or facts which Applicant may later recall or discover. The responses contained herein are made in a good-faith effort to supply as much factual information as is presently known, but in no way prejudices Applicant's ability to engage in further discovery, research or analysis.

6. Applicant incorporates by reference this Preliminary Statement and the following General Objections in each and every response set forth below.

#### **GENERAL OBJECTIONS**

A. Applicant objects to the Interrogatories propounded by Opposer to the extent they seek information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence with respect to the issues in this action.

B. Applicant objects to the Interrogatories are burdensome and as designed, in whole

or in part, to harass rather than to serve any legitimate discovery purpose.

C. Applicant objects to the Interrogatories as overbroad and not limited to a reasonable time period.

D. Applicant objects to the Interrogatories to the extent they seek information of a commercially sensitive nature. Revealing such information would substantially and irreparably injure Applicant by revealing information which derives independent economic value from not being generally known or which has been acquired primarily through confidential research and development efforts by or on behalf of Applicant.

E. Applicant objects to the Interrogatories to the extent they seek privileged information protected by the attorney-client privilege or the attorney-work product doctrine. Such privileged information includes, but is not limited to the following:

- a. Information which constitutes, reflects, refers to or relates to confidential communications between officers, directors or employees of Applicant and counsel;
- b. Information which constitutes, reflects, refers to or relates to the impressions, conclusions, opinions or mental process of counsel, their agents or employees.

F. Applicant objects to the Interrogatories to the extent they seek information relating to employees or customers of Applicant, the disclosure of which would invade their right to privacy.

## **RESPONSES**

### **INTERROGATORY NO. 1:**

State the facts and circumstances concerning the conception, creation and adoption of Applicant's Mark, including why the mark was adopted.

### **RESPONSE TO INTERROGATORY NO. 1:**

Applicant incorporates its Preliminary Statement as set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought it

confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: During the course of performing historical research of its property, Applicant learned that part of its property was owned by H.W. Crabb. Applicant also learned that Crabb had sold wine under the name CRABB'S BLACK BURGUNDY. Applicant therefore decided to adopt the name for its wine.

**INTERROGATORY NO. 2:**

State the name, title and address of each person involved in the conception, creation, and adoption of Applicant's Mark.

**RESPONSE TO INTERROGATORY NO. 2:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Jeremy Nickel, Manager, The Vineyard House LLC, 1581 Oakville Grade, Napa, California 94558. Mr. Nickel can be contacted through the undersigned counsel.

**INTERROGATORY NO. 3:**

State the name, title and address of each person involved in the clearance of Applicant's Mark.

**RESPONSE TO INTERROGATORY NO. 3:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant also objects as the interrogatory seeks information that is attorney-client privileged. Applicant further objects to this interrogatory as vague, ambiguous, and unintelligible so as to make a response impossible

without speculation to its meaning, particularly with respect to the term “clearance.” Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Jeremy Nickel, Manager, The Vineyard House LLC, 1581 Oakville Grade, Napa, California 94558. Mr. Nickel can be contacted through the undersigned counsel.

**INTERROGATORY NO. 4:**

State the meaning and/or significance of “CRABB” as used in Applicant’s Mark.

**RESPONSE TO INTERROGATORY NO. 4:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant also objects as the interrogatory seeks information that is attorney-client privileged. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: CRABB as used in Applicant’s Mark is meant to reference H.W. CRABB, who was a previous owner of Applicant’s property.

**INTERROGATORY NO. 5:**

State the meaning and/or significance of “BURGUNDY” as used in Applicant’s Mark.

**RESPONSE TO INTERROGATORY NO. 5:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant also objects as the interrogatory seeks information that is attorney-client privileged. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: BURGUNDY as used in Applicant’s mark is meant to reference the term CRABB’S BLACK BURGUNDY which was the name of a wine produced and sold by H.W. CRABB in

the late 1800s/early 1900s.

**INTERROGATORY NO. 6:**

Describe in detail the steps Applicant has undertaken to use Applicant's Mark in commerce.

**RESPONSE TO INTERROGATORY NO. 6:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant also objects as the interrogatory seeks information that is attorney-client privileged. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant is using CRABB'S BLACK BURGUNDY in connection with its wine.

**INTERROGATORY NO. 7:**

Identify each channel of trade through which Applicant's Goods have been sold or are intended to be sold.

**RESPONSE TO INTERROGATORY NO. 7:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant uses and will use the Applicant's Mark in all channels of trade that are customary and normal for the goods of the type provided by Applicant.

**INTERROGATORY NO. 8:**

Identify, by age and demographic, the targeted classes of consumers to whom Applicant's Goods have been sold or are intended to be sold.

**RESPONSE TO INTERROGATORY NO. 8:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant's targeted classes of consumers are all normal and customary classes of consumers that are looking for goods of the type provided by Applicant.

**INTERROGATORY NO. 9:**

State when Applicant first became aware of Opposer's Mark.

**RESPONSE TO INTERROGATORY NO. 9:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that it first became aware of Opposer's marks in 2011.

**INTERROGATORY NO. 10:**

State under what circumstances Applicant first became aware of Opposer's Marks.

**RESPONSE TO INTERROGATORY NO. 10:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that it first became aware of Opposer's marks in 2011 when it had commissioned research regarding its landholdings in Oakville, California by a third party, Architectural Resources Group.

**INTERROGATORY NO. 11:**

Identify any advertising, marketing, or other promotional materials used in connection with Applicant's Goods that reference Mr. H.W. Crabb (a/k/a Hamilton W. Crabb. Hiram W. Crabb, or Henry W. Crabb).

**RESPONSE TO INTERROGATORY NO. 11:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant uses H.W. Crabb's Hermosa Valley and H.W. Crabb's Hermosa Vineyard Block 5 Crabb's Black Burgundy on its wine bottles and in connection with the sale of these particular products.

**INTERROGATORY NO. 12:**

Identify any advertising, marketing or other promotional materials used in connection with Applicant's Goods that reference "To Kalon" in any manner.

**RESPONSE TO INTERROGATORY NO. 12:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: None.

**INTERROGATORY NO. 13:**

State the location (or locations) at which Applicant sources the grapes used to produce Applicant's Goods.



**RESPONSE TO INTERROGATORY NO. 13:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant sources the grapes used to produce its goods from its own vineyards at 1581 Oakville Grade, Napa, California.

**INTERROGATORY NO. 14:**

State the location (or locations) at which Applicant produces and bottles Applicant's goods.

**RESPONSE TO INTERROGATORY NO. 14:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant produces wine from grapes grown on its own property in Napa at 1581 Oakville Grade, Napa, California.

**INTERROGATORY NO. 15:**

For each location identified in response to Interrogatory Nos. 13 and 14, state whether that location was ever used by Mr. H.W. Crabb (a/k/a Hamilton W. Crabb, Hiram W. Crabb, or Henry W. Crabb) as vineyard land.

**RESPONSE TO INTERROGATORY NO. 15:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is

confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous and unintelligible so as to make a response impossible without speculation to its meaning, particularly with respect to the term “vineyard land.” Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Yes.

**INTERROGATORY NO. 16:**

Describe all facts supporting your response to Interrogatory No. 15.

**RESPONSE TO INTERROGATORY NO. 16:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous, and unintelligible so as to make a response impossible without speculation to its meaning, particularly with respect to the term “vineyard land.” Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds a follows: Applicant commissioned a historical report and was informed that its land was owned by H.W. Crabb.

**INTERROGATORY NO. 17:**

State whether Applicant’s Goods are made from Refosco or Mondeise wine grapes.

**RESPONSE TO INTERROGATORY NO. 17:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous, and unintelligible so as to make a response impossible without speculation to its meaning.

**INTERROGATORY NO. 18:**

State the grape variety (or varieties) from which Applicant's Goods are made.

**RESPONSE TO INTERROGATORY NO. 18:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant further objects to this Interrogatory as vague, ambiguous, and unintelligible so as to make a response impossible without speculation to its meaning.

**INTERROGATORY NO. 19:**

Identify all domain names owned or operated by Applicant that include CRABB.

**RESPONSE TO INTERROGATORY NO. 19:**

Applicant incorporates the Preliminary Statement set forth above, Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows:  
None.

**INTERROGATORY NO. 20:**

Identify all trademarks owned by Applicant, both registered or unregistered, that contain the name CRABB.

**RESPONSE TO INTERROGATORY NO. 20:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows:

H.W. CRABB'S HERMOSA VALLEY, H.W. CRABB'S GROWER & PRODUCER HIGH GRADE CALIFORNIA WINES & BRANDIES HERMOSA VALLEY OAKVILLE NAPA CO. CAL., H.W. CRABB;S HERMOSA VINEYARD, CRABB'S BLACK BURGUNDY, H.W. CRABB'S BOSS VINEYARD, H.W. CRABB'S TO -KALON WINE CO., H.W. CRABB'S TO-KALON WINERY, H.W. CRABB'S TO-KALON VALLEY, H.W. CRABB'S TO-KALON VALLEY VINEYARD, H.W. CRABB, HENRY WALKER CRABB, HENRY W. CRABB, HENRY WALKER (H.W.) CRABB, CRABB'S HALTER VALLEY OAKVILLE, CRABB'S HALTER VALLEY, CRABB'S HALTER TO KALON VALLEY.

**INTERROGATORY NO. 21:**

Identify any communications or inquiries from a third party regarding whether there is a relationship between Applicant and wines sold under Opposer's Marks.

**RESPONSE TO INTERROGATORY NO. 21:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: None.

**INTERROGATORY NO. 22:**

Identify any communications or inquiries from a third party regarding whether there is a relationship between Applicant's Goods and wines sold under Opposer's Marks.

**RESPONSE TO INTERROGATORY NO. 22:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: None.

**INTERROGATORY NO. 23:**

Identify any communications or inquiries from a third party regarding whether there is a relationship between Applicant's Goods and Opposer.

**RESPONSE TO INTERROGATORY NO. 23:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: None.

**INTERROGATORY NO. 24:**

Identify any communications or inquiries from a third party regarding whether there is a relationship between Opposer and Applicant.

**RESPONSE TO INTERROGATORY NO. 24:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: None.

**INTERROGATORY NO. 25:**

State with particularity the factual basis for Applicant's denial in Paragraphs 15 and 16 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 (5 TTAB 70 that the origins of Applicant's Goods have no historic association with Mr. H.W. Crabb.

**RESPONSE TO INTERROGATORY NO. 25:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further, that the information sought is confidential and proprietary business information. Applicant also objects as the interrogatory seeks information that is attorney-client privileged. Applicant further objects to this Interrogatory as vague, ambiguous and unintelligible so as to make a response impossible without speculation to its meaning. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: CRABB as used in Applicant's Mark is meant to reference H.W. CRABB, who was a previous owner of Applicant's property.

**INTERROGATORY NO. 26:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 38 of Applicant's amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 7].

**RESPONSE TO INTERROGATORY NO. 26:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

**INTERROGATORY NO. 27:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 39 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 7].

**RESPONSE TO INTERROGATORY NO. 27:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

**INTERROGATORY NO. 28:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 40 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 [5 TTABVUE 7].

**RESPONSE TO INTERROGATORY NO. 28:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity,

responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

**INTERROGATORY NO. 29:**

Describe the complete factual and legal basis for the Affirmative Defense asserted at Paragraph 41 of Applicant's Amended Answer to the Notice of Opposition filed November 8, 2020 95 TTABVUE 7].

**RESPONSE TO INTERROGATORY NO. 29:**

Applicant incorporates the Preliminary Statement set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that the defense as set forth speaks for itself both factually and legally.

**INTERROGATORY NO. 30:**

Identify each person who supplied information for and/or participated in responding to this First Set of Interrogatories to Applicant.

**RESPONSE TO INTERROGATORY NO. 30:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to this Interrogatory to the extent it calls for a legal conclusion and/or information that may be protected from disclosure by the attorney client privilege or work product privilege. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Jeremy Nickel.

**INTERROGATORY NO. 31:**

Identify every person who supplied information for and/or participated in responding to Opposer's First Set of Request for Production of Documents and Things to Applicant.

**RESPONSE TO INTERROGATORY NO. 31:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to this Interrogatory to the extent it calls for a legal conclusion and/or information that may be protected from disclosure by the attorney client privilege or work product privilege. Subject to

and without waiving the foregoing objections, on behalf of itself and no other individual or entity, responds as follows: Jeremy Nickel.

**INTERROGATORY NO. 32:**

For each of Applicant's responses to a Request for Admission included in Opposer's First Set of Request for Admission propounded concurrently herewith that is not an unqualified admission, state all facts that support Applicant's response.

**RESPONSE TO INTERROGATORY NO. 32:**

Applicant incorporates the Preliminary Statement set forth above. Applicant objects to the extent the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Applicant objects to this Interrogatory as compound. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant believes that the response to the Request for Admission as set forth speaks for itself.

Dated: December 20, 2021

Respectfully Submitted.

The Vineyard House LLC

By: \_\_\_\_\_/s/\_\_\_\_\_

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Attorneys for Applicant



CERTIFICATE OF SERVICE

The undersigned hereby certifies that RESPONSE TO FIRST SET OF INTERROGATORIES TO APPLICANT was served on Opposer at the email address of record below on December 20, 2021.

[kwilton@seyfarth.com](mailto:kwilton@seyfarth.com)  
[emaluf@seyfarth.com](mailto:emaluf@seyfarth.com)  
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\_\_\_\_\_  
/s/

Matthew L. Seror

# **EXHIBIT H**

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

<p>Constellation Brands U.S. Operations, Inc.,</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>The Vineyard House LLC</p> <p style="text-align:center">Applicant.</p>	<p>Opposition No.: 91264972</p> <p>Mark: CRABB’S BLACK BURGUNDY</p> <p>APPLICANT THE VINEYARD HOUSE LLC’S RESPONSE TO OPPOSER CONSTELLATION BRANDS U.S. OPERATIONS, INC. FIRST SET OF ADMISSIONS TO APPLICANT</p>
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PROPOUNDING PARTY:                    CONSTELLATION BRANDS U.S. OPERATIONS, INC.  
RESPONDING PARTY:                    APPLICANT THE VINEYARD HOUSE LLC  
SET NO:                                        ONE (1)

**RESPONSE TO FIRST SET OF REQUESTS FOR ADMISSIONS TO APPLICANT**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. §2.120 of the Trademark Rules of Practice, Applicant The Vineyard House LLC (“Applicant”) hereby provides the following Responses to the First Set of Requests for Admissions propounded by Opposer Constellation Brands U.S. Operations, Inc. (“Opposer”) as follows:

**PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

1.        Applicant states that discovery is ongoing and will continue as long as permitted and that Applicant has not yet completed its investigation in this matter. Applicant specifically reserves its right to introduce any evidence from any source and/or testimony from any witness in this matter.

2.        Applicant states that its responses are based on its present knowledge, information or belief. Applicant also states that it is responding to the requests as it interprets and understands each request. Further discovery and investigation may reveal information not

presently known to Applicant upon which Applicant may rely at the time of trial. Applicant reserves its right, without assuming any obligation not required by law, to amend or supplement its responses to the requests as necessary.

3. Applicant states that the information and/or documents provided in its responses to the request do not constitute an admission that such information is relevant to the pending litigation. Applicant specifically reserves all objections to the relevancy or admissibility at trial, or in connection with any motion, hearing, or other proceeding, of any information provided.

4. Applicant states that nothing in these responses should be construed as an admission relative to the existence or non-existence of any fact and no response is to be considered an admission about the relevance or admissibility of any information contained herein.

5. Applicant hereby objects to each and every request as being vague and ambiguous.

6. Applicant hereby objects to each and every request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. No response contained herein will include such privileged information.

7. Applicant objects to each and every request as seeking information that is not relevant to the proceeding. Applicant further objects that Opposer has failed to show a basis for seeking any of the information including any showing that such admission is likely to lead to the discovery of admissible evidence.

8. Applicant objects to the definition of "Applicant" to the extent it seeks a response to this request from individuals and entities that are not party to this proceeding.

9. Applicant objects to each and every request as being burdensome and oppressive and to the extent the request seeks the summary of information, then Opposer is in the same position as Applicant to create any such summary and if Applicant is required to provide such information, Opposer should be required to prepare such summaries from the documents produced.

## **RESPONSES TO REQUESTS FOR ADMISSION**

### **REQUEST FOR ADMISSION NO. 1:**

Admit that the District Court held in the Civil Action that the marks TO KALON and TO KALON VINEYARD have “gained substantial notoriety in the wine market among consumers and those in the trade.”

### **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the ground that it seeks information that is not relevant to the parties’ claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: The District Court holding speaks for itself.

### **REQUEST FOR ADMISSION NO. 2:**

Admit that the District Court held in the Civil Action that “TVH’s intent is unambiguous. TVH wants consumers to associate its wine with the wine which they understand to be sourced from those formerly belonging to the H.W. Crabb’s To Kalon Vineyard.”

### **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the ground that it seeks information that is not relevant to the parties’ claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: The District Court holding speaks for itself.

### **REQUEST FOR ADMISSION NO. 3:**

Admit that Applicant’s Goods are not made with grapes sourced from land once owned and used by Mr. H.W. Crabb to grow grapes.

### **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that “land once owned and used” is vague and

ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 4:**

Admit that Applicant's Goods are not made with grapes sourced from land once owned and used by Mr. H.W. Crabb to produce wine.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "land once owned and used" is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 5:**

Admit that H.W. Crabb is a person of historical importance in the wine industry.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "historical importance" is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: H.W. Crabb or Hamilton Walker Crabb was an historical person that was widely recognized as one of the most significant pioneer winemakers in Napa Valley and won several national and international awards and gained notoriety prior to the turn of the 20<sup>th</sup> century.

**REQUEST FOR ADMISSION NO. 6:**

Admit that sophisticated wine consumers immersed in the Northern California wine industry associate Mr. H.W. Crabb with "To Kalon."

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that the phrases, “immersed in the Northern California wine industry” and “sophisticated wine consumers” are vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request insofar as it calls for speculation as to the associations made by third parties.

**REQUEST FOR ADMISSION NO. 7:**

Admit that sophisticated merchants immersed in the Northern California wine industry associate Mr. H.W. Crabb with “To Kalon.”

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that the phrases “sophisticated merchants” and “immersed in the Northern California wine industry” are vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request insofar as it calls for speculation as to the associations made by third parties.

**REQUEST FOR ADMISSION NO. 8:**

Admit that sophisticated professionals immersed in the Northern California wine industry associate Mr. H.W. Crabb with “To Kalon.”

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that the phrases “sophisticated professionals” and “immersed in the Northern California wine industry” are vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request insofar as it calls for speculation as to the associations made by third parties.

**REQUEST FOR ADMISSION NO. 9:**

Admit that Applicant’s Goods are not made on land once owned by Mr. H.W. Crabb to grow grapes.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that “land once owned” is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 10:**

Admit that Applicant’s Goods are not made on land once owned by Mr. H.W. Crabb to produce wine.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that “land once owned” is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 11:**

Admit that the CRABB portion of Applicant’s Mark refers to Mr. H.W. Crabb.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, response as follows: The term CRABB identifies the historical person Hamilton Walker Crabb or H.W. Crabb.

**REQUEST FOR ADMISSION NO. 12:**

Admit that the letter H.W.C. are identical to the initials of Mr. H.W. Crabb.

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as speculative and seeks information that is not relevant to the



parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows:  
Denied.

**REQUEST FOR ADMISSION NO. 13:**

Admit that the letters HWC are identical to the initials of Mr. H.W. Crabb.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as speculative and seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, response as follows:  
Denied.

**REQUEST FOR ADMISSION NO. 14:**

Admit that a connection to Mr. Crabb is a material factor in the purchasing decision of wine consumers.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "material factor" is vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request insofar as it calls for speculation as to the materiality of specific factors utilized by consumers when making purchasing decisions.

**REQUEST FOR ADMISSION NO. 15:**

Admit that a connection to land once used by Mr. Crabb as a vineyard is a material factor in the purchasing decision of wine consumers.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "connection to land" is vague and ambiguous and Applicant cannot determine the nature of this request. Applicant objects to this Request

insofar as it calls for speculation as to the materiality of specific factors utilized by consumers when making purchasing decisions.

**REQUEST FOR ADMISSION NO. 16:**

Admit that Applicant selected Applicant's Mark to convey an association with Mr. H.W. Crabb.

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "convey an association" is vague and ambiguous and Applicant cannot determine the nature of this request. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 17:**

Admit that Applicant's Goods do not originate from the Burgundy (Bourgogne) region of France.

**RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as it seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, response as follows: Applicant admits that its goods do not originate from the Burgundy (Bourgogne) region of France.

**REQUEST FOR ADMISSION NO. 18:**

Admit Applicant did not use Applicant's Mark prior to January 1, 1996.

**RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as it seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections,

Applicant, on behalf of itself and no other individual or entity, response as follows: Applicant admits that it did not use the CRABB'S BLACK BURGUNDY mark prior to January 1, 1996.

**REQUEST FOR ADMISSION NO. 19:**

Admit that Applicant's Goods do not comply with any standards of control related to the geographic indications of Burgundy wine.

**RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as it seeks information that is not relevant to the parties' claims and defenses in this proceeding. Applicant objects to this Request as vague and ambiguous insofar as it references, but fails to identify, the "standards of control related to the geographic indications of Burgundy wine."

**REQUEST FOR ADMISSION NO. 20:**

Admit that geographic origin of wine is material to the purchasing decision of wine consumers.

**RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as speculative and seeks information that is not relevant to the parties' claims and defenses in this proceeding. Applicant objects to this Request insofar as it calls for speculation as to the materiality of specific factors utilized by consumers when making purchasing decisions.

**REQUEST FOR ADMISSION NO. 21:**

Admit that Applicant's Goods are not made from Refosco or Mondeuse wine grapes.

**RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request as it seeks information that is not relevant to the parties' claims and defenses in this proceeding.

**REQUEST FOR ADMISSION NO. 22:**

Admit Applicant that third parties have inquired whether Applicant's Goods originate from the Burgundy (Bourgogne) region of France.

**RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "third parties" is vague and ambiguous and Applicant cannot determine the nature of this request. Applicant also objects to this request as it seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 23:**

Admit that the goods identified in Opposed Application are identical to the goods identified in Opposer's registrations for the marks TO KALON (U.S. Reg. No. 1489619) and TO KALON VINEYARD (U.S. Reg. No. 1857851).

**RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "identical" is vague and ambiguous and Applicant cannot determine the nature of this request. Applicant also objects to this request as it seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 24:**

Admit that the goods identified in Opposed Application are identical to the goods with which Opposer has used the H.W.C. and HWC marks.

**RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "identical" is vague and ambiguous and

Applicant cannot determine the nature of this request. Applicant also objects to this request as it seeks information that is not relevant to the parties' claims and defenses in this proceeding.

Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 25:**

Admit that Applicant's Goods, on the one hand, and goods sold under Opposer's Marks on the other, are promoted through the same trade channels.

**RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "promoted" is vague and ambiguous and Applicant cannot determine the nature of this request. Applicant also objects to this request as it seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 26:**

Admit that Applicant's Goods, on the one hand, and goods sold under Opposer's Marks, on the other, are promoted to the same classes of consumers.

**RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that "promoted" and "same classes of consumers" is vague and ambiguous and Applicant cannot determine the nature of this request. Applicant also objects to this request as it seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 27:**

Admit that you are not aware of any third party use of a trademark consisting of or containing the term CRABB used in connection with wine.

**RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request on the basis that “third party” is vague and ambiguous and Applicant cannot determine the nature of this request. Applicant also objects to this request as it seeks information that is not relevant to the parties’ claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied. Applicant’s investigation is ongoing.

**REQUEST FOR ADMISSION NO. 28:**

Admit that third parties have inquired regarding whether there is a relationship between Applicant and wines sold under Opposer’s Marks.

**RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 29:**

Admit that Applicant is the owner of the domain name historyofto-kalon.com.

**RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request for Admission as it relates to a party that is not involved in the current proceedings and seeks a response to this Request from individual and entities that are not party to this proceeding. Applicant objects to this Request as it seeks information that is not relevant to the parties’ claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**RESPONSE FOR ADMISSION NO. 30:**

Admit that Applicant’s sole member, Mr. Jeremy Nickel, is the owner of the domain name historyofto-kalon.com

**RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this request for Admission as it relates to a party that is not involved in the current proceedings and seeks a response to this Request from individual and entities that are not party to this proceeding. Applicant objects to this Request as it seeks information that is not relevant to the parties' claims and defenses in this proceeding. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 31:**

Admit that all documents produced by Applicant in response to Opposer's First Set of Interrogatories to Applicant and Opposer's First Set of Requests for Production of Documents and Things to Applicant are authentic under Rule 901 of the Federal Rules of Evidence.

**RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects to this Request insofar as it seeks a legal determination as to authenticity pursuant to the Federal Rules of Evidence.

Dated: December 20, 2021

Respectfully Submitted.

The Vineyard House LLC

By: \_\_\_\_\_ /s/

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Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that RESPONSE TO FIRST SET OF ADMISSIONS TO APPLICANT was served on Opposer at the email address of record below on December 20, 2021.

[kwilton@seyfarth.com](mailto:kwilton@seyfarth.com)  
[emaluf@seyfarth.com](mailto:emaluf@seyfarth.com)  
[hkang@seyfarth.com](mailto:hkang@seyfarth.com)  
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/s/

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Matthew L. Seror



# **EXHIBIT I**

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

<p>Constellation Brands U.S. Operations, Inc.,</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>The Vineyard House LLC</p> <p style="text-align:center">Applicant.</p>	<p>Opposition No.: 91264972</p> <p>APPLICANT THE VINEYARD HOUSE LLC'S RESPONSE TO OPPOSER CONSTELLATION BRANDS U.S. OPERATIONS, INC. FIRST SET OF PRODUCTION OF DOCUMENTS</p>
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**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

PROPOUNDING PARTY:            CONSTELLATION BRANDS U.S. OPERATIONS, INC.  
RESPONDING PARTY:            APPLICANT THE VINEYARD HOUSE LLC  
SET NO:                                ONE (1)

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and §406 of the Trademark Trial and Appeal Board Manual of Procedure, Applicant The Vineyard House LLC ("Applicant") provides the following responses to the Requests for Production of Documents (Set One) Addressed to Applicant served by Opposer Constellation Brands U.S. Operations, Inc. ("Opposer").

**PRELIMINARY STATEMENT**

1.        These responses are made solely for the purpose of, and in relation to, this action. Further, these responses are based upon Applicant's perception and understanding of the nature and type of information and documents requested, and upon the information presently known and available to Applicant and its attorneys as of the time of the response. Each response is given subject to all appropriate objections which would require the exclusion of any statement

contained herein if made by a witness present and testifying in court. All such objections and grounds therefore are reserved.

2. Applicant's responses are based upon its present knowledge, information and belief. Applicant has not completed its investigation and discovery of the facts related to this proceeding. Further discovery, independent investigation, legal research and analysis may supply additional facts or documents and/or add meaning to known facts or documents. Without acknowledging, any obligation to do so, except as required by law, Applicant reserves the right to amend, supplement, correct or clarify its responses to the requests when and if new or additional information or documents become available.

3. Applicant reserves the right to object to the use and/or admissibility of any of its responses to the Requests at the trial of this action, at any other proceeding, or in any other action or proceeding.

4. Nothing contained in these responses should be construed as an admission relating to the existence or non-existence of any fact or document, and no response is to be considered an admission respective of the relevance or admissibility of any information contained therein.

5. The following responses are submitted without prejudice to Applicant's right to produce evidence of any subsequently discovered fact or facts which Applicant may later recall or discover. The responses contained herein are made in a good-faith effort to supply as much factual information as is presently known, but in no way prejudices Applicant's ability to engage in further discovery, research or analysis.

### **GENERAL OBJECTIONS**

1. Applicant objects to the Requests as burdensome and as designed, in whole or in part, to harass rather than to serve any legitimate discovery purpose.

2. Applicant objects to the Requests as to the extent they seek information of a commercially sensitive nature. Revealing such information would substantially and irreparably

injure Applicant by revealing information which derives independent economic value from not being generally known or which has been acquired primarily through confidential research and development efforts by or on behalf of Applicant.

3. Applicant objects to the Requests to the extent they seek privileged information protected by the attorney-client privilege or the attorney-work product doctrine. Such privileged information includes but is not limited to the following:

- a. Information which constitutes, reflects, refers to or relates to confidential communications between officers, directors or employees of Applicant and counsel;
- b. Information which constitutes, reflects, refers to or relates to the impressions, conclusions, opinions or mental process of counsel, their agents or employees.

4. Applicant objects to the Requests to the extent they seek documents relating to employees or customers of Applicant, the disclosure of which would invade their right to privacy.

5. Applicant objects to the Requests to the extent Opposer has exceeded the limit for Requests for Production.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

#### **REQUEST FOR PRODUCTION NO. 1:**

All documents and communications evidencing, referring to, or otherwise relating to the conception, creation and adoption of Applicant's Mark, including all lists of proposed marks and related research.

#### **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is compound, overbroad in time and scope and burdensome insofar as the Request call for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request to the extent it calls for documents protected from disclosure by the attorney work product doctrine or

attorney client privilege. Applicant objects to this Request as irrelevant to the claims and defenses at issue in this action. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents in its possession, custody or control that are responsive to this Request.

**REQUEST FOR PRODUCTION NO. 2:**

All non-privileged documents and communications evidencing, referring to, or otherwise relating to any trademark search and/or investigations conducted by or on behalf of Applicant in connection with the conception, creation and adoption of Applicant's Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request as irrelevant to the claims and defenses in this action.

**REQUEST FOR PRODUCTION NO. 3:**

Documents sufficient to identify all trademarks owned by Applicant, both registered or unregistered, that contain the term CRABB.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of documents that are readily available to Opposer through the USPTO TESS website. Applicant objects to this Request as irrelevant to the claims and defenses in this action. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents in its possession, custody or control that are responsive to this Request.

**REQUEST FOR PRODUCTION NO. 4:**

All documents and communications evidencing or explaining the significance of “CRABB” as used in Applicant’s Marks.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of “all” such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request to the extent it calls for documents protected from disclosure by the attorney work product doctrine or attorney client privilege. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents in its possession, custody or control that are responsive to this Request.

**REQUEST FOR PRODUCTION NO. 5:**

All documents and communications evidencing or explaining the significance of “BURGUNDY” as used in Applicant’s Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of “all” such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request to the extent it calls for documents protected from disclosure by the attorney work product doctrine or attorney client privilege. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents in its possession, custody or control that are responsive to this Request.

**REQUEST FOR PRODUCTION NO. 6:**

All documents or communications evidencing, referring to, or otherwise relating to how contemporary consumers understand the meaning or significance of “BLACK BURGUNDY.”

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of “all” such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request as vague and ambiguous as to the phrase “contemporary consumers.” Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents in its possession, custody or control that are responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 7:**

Documents and communications sufficient to identify the location (or locations) from which Applicant sources the grapes used to produce Applicant’s Goods.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is overbroad in time and scope and burdensome. Applicant objects to this Request as irrelevant to the claims and defenses at issue in this action. Moreover, even if the documents sought were relevant, the extraordinary burden imposed by this Request far outweighs any minimal relevance.

**REQUEST FOR PRODUCTION NO. 8:**

Documents and communications sufficient to identify the location (or locations) at which Applicant produces and bottles Applicant’s Goods.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is overbroad in time and scope and burdensome.

Applicant objects to this Request as irrelevant to the claims and defenses at issue in this action. Moreover, even if the documents sought were relevant, the extraordinary burden imposed by this Request far outweighs any minimal relevance. Applicant also objects to this Request to the extent it seeks confidential or proprietary information.

**REQUEST FOR PRODUCTION NO. 9:**

Documents and communications sufficient to identify the grape variety (or varieties) from which Applicant makes Applicant's Goods.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is overbroad in time and scope and burdensome. Applicant objects to this Request as irrelevant to the claims and defenses at issue in this action. Applicant also objects to this Request to the extent it seeks confidential or proprietary information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents in its possession, custody or control that are responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 10:**

All documents and communications evidencing, referring to, or otherwise relating to Applicant's bona fide intent to use Applicant's Marks in commerce.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant also objects to this Request to the extent it seeks confidential or proprietary information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as



follows: Applicant will produce non-privileged documents sufficient to evidence Applicant's intended use of the marks at issue, if available.

**REQUEST FOR PRODUCTION NO. 11:**

All documents and communications evidencing, referring to, or otherwise relating to business plans reflecting Applicant's actual or intended use of Applicant's Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant objects to the use of the phrase, "business plans" as vague, ambiguous and overbroad. Applicant objects to this Request as irrelevant to the claims and defenses at issue in this action. Moreover, even if the documents sought were relevant, the extraordinary burden imposed by this Request far outweighs any minimal relevance. Applicant also objects to this Request to the extent it seeks confidential or proprietary information.

**REQUEST FOR PRODUCTION NO. 12:**

Documents and communications sufficient to identify all anticipated channels of trade.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overboard in time and scope and burdensome. Applicant also objects to this Request to the extent that it seeks confidential or proprietary information. Applicant objects to this Request as irrelevant to the claims and defenses at issue in this action insofar as the Request does not specifically relate to the goods at issue in this case. Moreover, even if the documents sought were relevant, the extraordinary burden imposed by this Request far outweighs any minimal relevance. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity,

responds as follows: Applicant will produce non-privileged documents sufficient to evidence Applicant's anticipated channels of trade for Applicant's products, if available.

**REQUEST FOR PRODUCTION NO. 13:**

Documents and communications sufficient to identify all anticipated points of sale for Applicant's Goods.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overboard in time and scope and burdensome. Applicant also objects to this Request to the extent that it seeks confidential or proprietary information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents sufficient to evidence Applicant's anticipated points of sale, if available.

**REQUEST FOR PRODUCTION NO. 14:**

All documents and communications evidencing, referring to, or otherwise relating to the expected retail price for Applicant's Goods.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. In addition, the documents sought are irrelevant to the claims and defenses asserted in this action. Applicant also objects to this Request to the extent it seeks confidential or proprietary information.

**REQUEST FOR PRODUCTION NO. 15:**

Documents and communications sufficient to identify the targeted classes of consumers to whom Applicant intend to market or promote, or currently markets and promotes, Applicant's Goods.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overboard in time and scope and burdensome. Applicant also objects to this Request to the extent that it seeks confidential or proprietary information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents, if available.

**REQUEST FOR PRODUCTION NO. 16:**

Documents and communications sufficient to identify the expenditures incurred in the development, production, distribution, promotion and advertising of Applicant's Goods.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope (particularly with respect to documents related to the development, production or distribution of Applicant's Goods). In addition, the documents sought are irrelevant to the claims and defenses asserted in this action. Moreover, even if the documents sought were relevant, the extraordinary burden imposed by this Request far outweighs any minimal relevance. Applicant also objects to this Request to the extent it seeks confidential or proprietary information.

**REQUEST FOR PRODUCTION NO. 17:**

All documents and communications evidencing, referring to, or otherwise relating to when and under what circumstances Applicant first became aware of Opposer.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request to the

extent it calls for documents protected from disclosure by the attorney work product doctrine or attorney client privilege. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents, if available.

**REQUEST FOR PRODUCTION NO. 18:**

For each of Opposer's Marks, all documents and communications evidencing, referring to, or otherwise relating to when and under what circumstances Applicant first became aware of that mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request to the extent it calls for documents protected from disclosure by the attorney work product doctrine or attorney client privilege. Applicant also objects to this Request to the extent it seeks confidential information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents, if available.

**REQUEST FOR PRODUCTION NO. 19:**

For each of Opposer's Marks, all documents and communications evidencing, referring to, or otherwise relating to when and under what circumstances Applicant first became aware of the U.S. Trademark registration for that mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request to the

extent it calls for documents protected from disclosure by the attorney work product doctrine or attorney client privilege. Applicant also objects to this Request to the extent it seeks confidential information. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents, if available.

**REQUEST FOR PRODUCTION NO. 20:**

Copies of all advertising, marketing or other promotional materials used in connection with Applicant's Goods that reference "To Kalon" in any manner.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. In addition, the documents sought are irrelevant to the claims and defenses asserted in this action. Applicant also objects to this Request to the extent it seeks confidential or proprietary information.

**REQUEST FOR PRODUCTION NO. 21:**

Copies of all advertising, marketing or other promotional materials used in connection with Applicant's Goods that reference Mr. H.W. Crabb (a/k/a/ Hamilton W. Crabb, Hiram W. Crabb, or Henry W. Crabb).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents, if available.

**REQUEST FOR PRODUCTION NO. 22:**

Copies of any Certificates of Label Approval (COLA) that Applicant has applied for or obtained from the Alcohol and Tobacco Tax and Trade Bureau (TTB) that include the name CRABB.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overboard in time and scope and burdensome. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents, if available.

**REQUEST FOR PRODUCTION NO. 23:**

Copies of all front or back labels (including any etchings or silk-screened printings on bottles) for wine produced or sold by Applicant that include the term CRABB.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overboard in time and scope and burdensome. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents, if available.

**REQUEST FOR PRODUCTION NO. 24:**

All documents and communications evidencing, referring to, or otherwise relating to inquiries from a third party regarding whether there is a relationship between Applicant and wines sold under Opposer's Marks.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also

makes the Request overly burdensome and harassing. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents, if available.

**REQUEST FOR PRODUCTION NO. 25:**

All documents and communications evidencing, referring to, or otherwise relating to inquiries from a third party regarding whether there is a relationship between Opposer and Applicant.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of “all” such documents, which also makes the Request overly burdensome and harassing. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents, if available.

**REQUEST FOR PRODUCTION NO. 26:**

Copies of all agreements entered into between Applicant and any third party related to Applicant’s Marks.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of “all” such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request as seeking documents that are irrelevant to the claims or defenses asserted herein. Moreover, even if the documents sought were relevant, the extraordinary burden imposed by this Request far outweighs any minimal relevance. Applicant also objects to this Request to the extent it seeks confidential or proprietary information.

**REQUEST FOR PRODUCTION NO. 27:**

All documents and communications identified in Applicant's Initial Disclosures.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant further objects to this Request as it calls for the production of publicly available information such as Opposer's websites which are readily available and accessible by Opposer. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents which are not publicly available if any such documents exist.

**REQUEST FOR PRODUCTION NO. 28:**

All documents and communications reviewed and/or consulted in preparing Applicant's responses to these Requests for Production.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the ground that this request is compound, overbroad in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents that it can locate in its possession, custody or control.

**REQUEST FOR PRODUCTION NO. 29:**

All documents and communications identified and/or references in Applicant's responses to Opposer's First Set of Interrogatories to Applicant.



**RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is overbroad in time and scope and burdensome insofar as the Request calls for the production of “all” such documents, which also makes the Request overly burdensome and harassing. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents responsive to this Request that it can locate in its possession, custody or control.

**REQUEST FOR PRODUCTION NO. 30:**

All non-privileged documents and communications referring or relating to Opposer.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is overboard in time and scope and burdensome insofar as the Request calls for the production of “all” such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request as irrelevant to the claims and defenses at issue in this action. Moreover, even if the documents sought were relevant, the extraordinary burden imposed by this Request far outweighs any minimal relevance.

**REQUEST FOR PRODUCTION NO. 31:**

All non-privileged documents and communications referring or relating to Opposer’s Marks.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is overbroad in time and scope and burdensome insofar as the Request calls for the production of “all” such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request as irrelevant to the claims and defenses at issue in this action. Moreover, even if the documents

sought were relevant, the extraordinary burden imposed by this Request far outweighs any minimal relevance.

**REQUEST FOR PRODUCTION NO. 32:**

All non-privileged documents and communications evidencing, referring to, or otherwise relating to the Affirmative Defense stated at Paragraph 38 of Applicant's Amended Answer to the Notice of Opposition filed on November 8, 2020 [5 TTABVUE 7].

**RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is overboard in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request to the extent it calls for documents protected from disclosure by the attorney work product doctrine or attorney client privilege. Applicant also objects to this Request insofar as it seeks documents already in the possession of the Requesting Party, i.e. documents evidencing Opposer's use of its mark. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant will produce non-privileged documents responsive to this Request that are in its possession, custody or control. Applicant's investigation is ongoing.

**REQUEST FOR PRODUCTION NO. 33:**

All non-privileged documents and communications evidencing, referring to, or otherwise relating to the Affirmative Defense stated at Paragraph 39 of Applicant's Amended Answer to the Notice of Opposition filed on November 8, 2020 [5 TTABVUE 7].

**RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is overboard in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request to the

extent it calls for documents protected from disclosure by the attorney work product doctrine or attorney client privilege. Applicant objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant does not believe it has documents responsive to this Request in its possession, custody or control. Applicant's investigation is ongoing.

**REQUEST FOR PRODUCTION NO. 34:**

All non-privileged documents and communications evidencing, referring to, or otherwise relating to the Affirmative Defense stated at Paragraph 40 of Applicant's Amended Answer to the Notice of Opposition filed on November 8, 2020 [5 TTABVUE 7].

**RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is overboard in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also makes the Request overly burdensome and harassing. Applicant objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant does not believe it has documents responsive to this Request in its possession, custody or control. Applicant's investigation is ongoing.

**REQUEST FOR PRODUCTION NO. 35:**

All non-privileged documents and communications evidencing, referring to, or otherwise relating to the Affirmative Defense stated at Paragraph 41 of Applicant's Amended Answer to the Notice of Opposition filed on November 8, 2020 [5 TTABVUE 7].

**RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

Applicant incorporates the Preliminary Statement and General Objections set forth above. Applicant objects on the grounds that this request is overboard in time and scope and burdensome insofar as the Request calls for the production of "all" such documents, which also

makes the Request overly burdensome and harassing. Applicant objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Applicant, on behalf of itself and no other individual or entity, responds as follows: Applicant does not believe it has documents responsive to this Request in its possession, custody or control. Applicant's investigation is ongoing.

Dated: December 20, 2021

Respectfully Submitted.

The Vineyard House LLC

By: \_\_\_\_\_ /s/

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Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that RESPONSE TO FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO APPLICANT was served on Opposer at the email address of record below on December 20, 2021.

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\_\_\_\_\_  
/s/  
Matthew L. Seror



# **EXHIBIT J**



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March 14, 2022

Farah P. Bhatti  
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**Re: Constellation Brands U.S. Operations v. The Vineyard House, LLC,  
TTAB Opposition No. 91264970**

Dear Farah:

We have reviewed The Vineyard House, LLC's responses to Constellation Brands U.S. Operations, Inc.'s first set of written discovery responses in the referenced opposition proceeding. TVH's responses are deficient for the reasons set forth herein. We therefore request that TVH supplement its responses to address those deficiencies.

Mirroring the demand made in your April 20, 2021 correspondence sent in the *CBUSO v. To Kalon Stock Farm* proceedings, please confirm by March 21, 2022 that TVH will provide supplemental or amended responses, and serve such responses no later than March 25, 2022, together with the documents it stated it would produce in its December 20, 2021 response. To the extent that TVH refuses to supplement or amend its responses as requested herein, please provide your availability for a meet and confer conference on or before March 21, 2022, and provide TVH's basis for not revising or amending its responses in advance of that conference.

If you decide not to schedule the meet and confer, we will assume that TVH will be providing complete amended and supplemental responses that address in full the deficiencies outlined below.

### **General Deficiencies**

Failure To Produce Documents: In its December 20, 2021 response to CBUSO's Requests for Production, TVH stated it "will produce non-privileged documents in its possession, custody or control that are responsive" (or similar language) to Request for Production Nos. 1, 3, 4, 5, 8, 10, 11, 13, 15, 17, 19, 20, 21, 22, 23, 25, 26, 27, and 30. Almost three months have passed since the responses were served. TVH has still not produced responsive documents. Please tell us when we can expect the production.

General And Boilerplate Objections Are Improper: TVH's responses to CBUSO's Interrogatories and Requests for Production are prefaced with a section titled "General Objections". TVH's responses to CBUSO's Requests for Admissions are prefaced by a section titled "Preliminary Statement and General Objections". Moreover, nearly all of TVH's written responses to the enumerated interrogatories and requests include assertions of boilerplate and



general objections. Many simply refer to and “incorporate” the entire Preliminary Statement and General Objections. The fact that TVH asserted general and boilerplate objections is particularly surprising given that you, in an April 20, 2021 letter on behalf of a related company (To Kalon Stock Farm, LLC), raised concerns about CBUSO’s responses to discovery requests. TKSF complained that “The use of boilerplate and general objections is improper under the federal rules.” We agree, as does the Board. Objections “must be specifically asserted in response to each [request] against which they are interposed, and the ground or basis for each objection must be stated with specificity.” TBMP § 405.04(b); *see also* Fed. R. Civ. P. 33(b)(4); *Amazon Technologies, Inc. v. Wax*, 93 USPQ2d 1702, 1704 (TTAB 2009). We therefore request that TVH amend its responses to remove its General Objections.

The impropriety of TVH’s boilerplate objections are exemplified by TVH’s repeated objection that an interrogatory or request seeks “confidential and proprietary business information,” or similar language. [Interrogatory Nos. 1-8, 10-22, 32; Request for Production Nos. 7-14, 16-18, 24.] Board proceedings are governed by the TTAB’s standard protective order. As the Board explains, “objections based on the confidentiality of information or matter being sought are expected to be minimal in view of the automatic imposition of the Board’s standard protective order.” TBMP § 410. To the extent any information requested by CBUSO is, in fact, confidential or proprietary, TVH may designate its response or any documents produced as “confidential” or even “for attorney’s eyes only.” TBMP § 412. We therefore request that TVH carefully reconsider any objections on this basis and amend or supplement its responses and production accordingly.

Further, TVH has objected to each of the first 22 interrogatories on the ground that each purportedly “seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.” Ignoring that the standard for relevance changed six years ago, the repeated objection reflects nothing more than boilerplate. We therefore request that TVH carefully reconsider any objections on this basis and amend its responses accordingly.

Failure To State Whether Documents Being Withheld: The Federal Rules require responding parties to make clear whether any responsive materials are being withheld on the basis of any objections asserted. Fed. R. Civ. P. 34(b)(2)(c). TVH did not do so in its responses to the Requests for Production. We therefore request TVH amend its responses to the Requests for Production to comply with this requirement.

## **Specific Deficiencies**

### **A. TVH’s Responses to CBUSO’s First Set of Interrogatories**

Interrogatory No. 7: This interrogatory seeks information regarding the channels of trade through which TVH offers or intends to offer goods under the Opposed Marks. After asserting its meritless boilerplate relevance and confidentiality objections, TVH stated that it uses or will use the Opposed Marks “in all channels of trade that are customary and normal for the goods of the type provided by Applicant.” In your April 20, 2021 letter in the TKSF proceedings, you took CBUSO to task for providing a similar response regarding the channels of trade for its goods. After discussion between counsel, CBUSO supplemented its response. It is axiomatic that discovery principles are reciprocal; we expect TVH will supplement its responses accordingly.

Interrogatory No. 8: This interrogatory asks for a description “by age and demographic” of all targeted classes of consumers to whom TVH intends to market its goods. TVH’s response—that the goods will be marketed to “all normal and customary classes of consumers that are looking for goods of the type provided by Applicant”—makes no mention of age or demographic and is thus non-responsive. We request TVH serve a supplemental response to this interrogatory.

Interrogatory No. 11: This interrogatory seeks information regarding the means by which TVH advertises, markets, and promotes any goods that reference Mr. H.W. Crabb. TVH’s boilerplate objections based on relevance and confidentiality are not well taken. Discovery regarding how a mark is used is proper, and is relevant to numerous issues in this proceeding. TVH’s response, that “Applicant uses H.W. Crabb’s Hermosa Valley and H.W. Crabb’s Hermosa Vineyard Block 5 Crabb’s Black Burgundy on its wine bottles and in connection with the sale of these particular products,” is non-responsive because it fails to identify “advertising, marketing, or other promotional materials.” We request TVH serve a supplemental response to this interrogatory.

Interrogatory Nos. 15 & 16: These interrogatories seek information about the locations at which TVH grows grapes and produces wine, and those locations’ connection to Mr. H.W. Crabb. Specifically, the interrogatories requested information about whether those locations had ever been used by Mr. Crabb for viticulture. TVH’s boilerplate objections based on relevance and confidentiality are not well taken. Whether TVH’s goods have a connection to historic vineyards owned and operated by Mr. Crabb is obviously relevant to the claims and allegations that the Opposed Marks are misdescriptive and create a false association with Opposer’s TO KALON marks. TVH’s objections that the interrogatories are vague, ambiguous, and unintelligible, particularly as to the wording “vineyard land” are also not well taken. Simple sentence construction reveals that the interrogatories are neither vague nor ambiguous. The meaning of vineyard land is also self-evident: land used for vineyards.

We have to concede, however, that Interrogatory No. 15 must have been unclear, because TVH responded unambiguously: “Yes.” That response directly contradicts the similarly unambiguous findings of fact made by the District Court in the Civil Action. For clarity, and by incorporating TVH’s responses to Interrogatory Nos. 13 & 14, Interrogatory No. 15 simply asks whether TVH’s property and vineyards at 1581 Oakville Grade, Napa, California, were ever used as vineyards by Mr. H.W. Crabb. The District Court said “No.” With the benefit of this clarification, we request TVH consider whether a supplemental or amended response to this interrogatory is necessary.

Furthermore, TVH’s response to Interrogatory No. 16, that TVH’s “land was owned by H.W. Crabb” is non-responsive, since it does not describe “all facts” supporting the response to Interrogatory No. 15. Mr. Crabb’s ownership of land does not automatically lead to the conclusions that that land was used for vineyards.

Interrogatory No. 18: TVH’s boilerplate objection that the interrogatory is vague, ambiguous, and unintelligible, is not well taken. Simple sentence construction reveals that the interrogatory is neither vague nor ambiguous. This interrogatory seeks information about whether TVH adopted or considered adopting any variations of the design depicted in the opposed Application No. 88699893. Further, TVH’s boilerplate objections based on relevance and confidentiality are also not well taken. This interrogatory seeks information regarding, among other things, the

selection and adoption of marks involved in this proceeding, information that the Board has squarely held is discoverable. TBMP § 414(4) (“Information concerning a party’s selection and adoption of its involved mark is generally discoverable (particularly of a defendant)”). We request TVH serve a supplemental response to this interrogatory.

Interrogatories Nos. 27-31: TVH’s responses, that each “defense as set forth speaks for itself factually and legally” is non-responsive. If TVH does not have any facts to support its asserted defenses then the defenses should not have been asserted in the first instance, and in any event should now be withdrawn.

### **B. TVH’s Responses to CBUSO’s First Set of Requests for Production**

As noted above, TVH has not yet produced any of the documents it indicated it would be producing in response to 19 of the Requests for Production, and has failed to indicate whether it is withholding documents from production pursuant to its objections to any of the Requests. Additionally, several responses (*e.g.*, Nos. 31-34) state that Applicant’s investigation is ongoing. As a result, CBUSO cannot assess whether it is worthwhile spending time addressing any of the specific objections. CBUSO will address those objections, if necessary, following TVH’s production of documents.

### **C. TVH’s Responses to CBUSO’s First Set of Requests for Admission**

Request for Admission Nos. 1 & 2: As we are certain you are aware, Rule 36(a)(1)(B), (2) allows a party to seek an admission that a document is genuine. TVH’s response, that the District Court’s order in the Civil Action “speaks for itself” is both improper and non-responsive. The very purpose of Rule 36 is to narrow the issues for trial. As a participant in the Civil Action, TVH is familiar with the District Court’s holding and should be able to admit or deny requests about it.

Request for Admission Nos. 3, 4, 5, 6, 11 & 12: These requests seek admissions regarding the connection between TVH and its goods, on the one hand, and H.W. Crabb and his historic vineyard. TVH’s objections that the wording “once used,” “once called,” “land once owned and used,” and “land once owned” is so vague and ambiguous as to prevent TVH from determining the nature of the requests are not well taken. The plain meaning of these phrases is self-evident. Indeed, TVH’s response to Request No. 3 uses “once used,” itself. Furthermore, the subject matter of these requests has been litigated before the District Court, which made factual findings about this subject matter. TVH should provide amended responses that clarify its denials or, in the alternative, admit the requests.

Request for Admission No. 7: This request seeks an admission regarding the identity of H.W. Crabb and the significance of the Opposed Marks. TVH’s objection that the wording “historical significance” is so vague and ambiguous that TVH cannot determine the nature of the request is not well taken. The plain meaning of the wording is self-evident. TVH used similar language to describe H.W. Crabb in its December 13, 2018 response to an office action refusing TVH’s CRABB’S BLACK BURGUNDY application, App. Ser. No. 88008025:

- “Given the notoriety of Crabb’s wine and its *historical significance* as it relates to Napa Valley, even after Crabb’s death, he is widely known in connection with Napa Valley wine.”

- “The *historical significance* outweighs any surname significance.”

TVH should provide amended responses that clarify its denial or, in the alternative, admit the request.

Request for Admission Nos. 8, 9, & 10: These requests seek admissions about the significance of the Opposed Marks and how the marks are perceived by consumers. TVH’s objection that the wording “sophisticated wine consumers,” “sophisticated merchants,” “sophisticated professionals” and “immersed in the Northern California wine industry” is so vague and ambiguous as to prevent TVH from determining the nature of the requests are not well taken. This wording was taken directly from the District Court’s Rule 52 Order, with which TVH is already familiar. Moreover, the concept of consumer sophistication is well-established in American trademark law. TVH’s response is non-responsive. TVH should be able to admit or deny the requests.

Request for Admission Nos. 14 & 15: These requests seek admissions relevant to the similarity and meanings of the marks at issue in this proceeding. Specifically, they ask TVH to admit whether H.W. Crabb’s initials (H.W.C.) are identical to the initials H.W.C. (or HWC). TVH’s objections that these requests are “speculative” and seek information not relevant to the parties’ claims and defenses in this proceeding are not well taken. TVH should provide amended responses that clarify its denials or, in the alternative, admit the requests.

Request for Admission Nos. 16 & 17: These requests seek admissions regarding whether a connection between a wine and H.W. Crabb would affect a wine consumer’s purchasing decision. TVH’s objection to Request No. 16 that the wording “material factor” is so vague and ambiguous as to prevent TVH from determining the nature of the requests is not well taken. CBUSO points out that the wording was apparently perfectly comprehensible when TVH responded to Request No. 17, which uses identical language. Materiality is a well-defined concept, and the plain language of the request is self-evident.

Furthermore, TVH’s objections that the requests are “speculative” are not well taken. TVH and its founder have conducted extensive research into the history of H.W. Crabb and his vineyards, and have been embroiled in litigation relating to the same for nearly three years. Presumably, TVH has in that time formed an opinion about whether wine consumers may value a connection between a wine and Mr. Crabb’s vineyards.

Finally, TVH’s objections that the information sought by these requests is not relevant to the parties’ claims and defenses in this proceeding are not well taken and border on bad faith. The requests are relevant to the meaning of TVH’s marks, TVH’s intentions in adopting the marks, and whether consumers would presume a connection between TVH’s goods and H.W. Crabb (and, by extension, CBUSO). TVH should provide an amended response that clarify its denial or, in the alternative, admit the requests.

Request for Admission No. 18: This request seeks an admission concerning whether the Opposed Marks suggest a connection with a person, H.W. Crabb. TVH’s objection that the wording “convey an association” is so vague and ambiguous as to prevent TVH from determining the nature of the request is not well taken. The plain meaning of the request is self-evident, and is nearly identical to the language of Trademark Act Section 2(a). TVH should provide an amended response that clarifies its denial or, in the alternative, admits the request.

Request for Admission Nos. 20 & 21: These requests seek admissions regarding the similarity or relatedness of the goods at issue in this proceeding. TVH's objections that the word "identical" is so vague and ambiguous as to prevent TVH from determining the nature of the requests are not well taken. Nor are TVH's objections that these requests are not relevant. Both of these objections border on bad faith. The relatedness of goods is obviously relevant in any proceeding involving claims of likelihood of confusion. It is one of the *du Pont* factors. And the information sought by these requests is also relevant to CBUSO's claim of false suggestion of a connection and CBUSO's entitlement to a statutory cause of action.

The Opposed Applications cover "wines" in Class 33. CBUSO's pleaded marks are registered for, and/or are used in connection with, "wine." TVH should be able to admit or deny these requests. TVH should provide amended responses that clarify its denials or, in the alternative, admit the requests.

Request for Admission Nos. 22 & 23: These requests seek admissions regarding the similarity or relatedness of channels of trade in which Applicant's goods are marketed and the classes of consumers to whom they are sold. TVH's objections that the word "promoted" is so vague and ambiguous as to prevent TVH from determining the nature of the requests are not well taken. To "promote" is to attempt to sell or popularize by advertising or publicity. The plain meaning is self-evident. TVH should provide amended responses that clarify its denials or, in the alternative, admit the requests.

Request for Admission No. 24: TVH's objections that the wording "third party" is vague and ambiguous are not well taken. "Third party" is a common phrase that appears in numerous dictionaries, and is used more than 50 times in the TBMP. TVH's objections on grounds of relevance are not well taken. Third party use of similar marks is relevant to, among other things, whether consumers would associate CRABB with any particular individual or entity. Information concerning a party's awareness of third party use of the same or similar marks for the same or closely related goods as mark involved in a proceeding is discoverable to the extent that the responding party has actual knowledge thereof. TBMP § 414(9). *See also Domino's Pizza Inc. v. Little Caesar Enterprises Inc.*, 7 USPQ2d 1359, 1363 n.9 (TTAB 1988) (relevant to show purchaser perception of the marks). TVH should provide amended responses that clarify its denial or, in the alternative, admit the request.

Request for Admission No. 28: As we are certain you are aware, Rule 36(a)(1)(B), (2) allows a party to seek an admission that a document is genuine. Such requests are explicitly permitted by the Board's rules. 37 C.F.R. § 2.120(i). Thus, while TVH's statement that the request "seeks a legal determination as to authenticity pursuant to the Federal Rules of Evidence" is correct, that is neither a basis for an objection nor a reason not to respond substantively to the request. The very purpose of Rule 36 is to narrow the issues for trial. TVH, through its member Mr. Nickel, who TVH identified as the only person who participated in preparing responses to the written discovery requests, should be able to admit or deny whether the documents TVH produces are authentic. TVH should provide a supplemental response to this request.

## **Conclusion**

In sum, we request that you respond to this correspondence by confirming that TVH will cure the deficiencies identified herein by March 25, 2022, or else provide your availability to meet and confer on or before March 21, 2022. We look forward to your written response and/or

speaking with you on each of these issues to determine what issues can be resolved without the Board's assistance.

This letter is not intended as a full recitation of the facts or a complete review of the applicable law. This letter is written without prejudice to our client's rights and remedies, all of which are expressly reserved.

Very truly yours,

SEYFARTH SHAW LLP

*/s/ Kenneth L. Wilton*

Kenneth L. Wilton

KLW:jch

# **EXHIBIT K**



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March 18, 2022

**VIA E-MAIL**

Farah P. Bhatti  
Buchalter  
18400 Von Karman Avenue  
Irving, California 92612

**Re: Constellation Brands U.S. Operations v. The Vineyard House, LLC,  
TTAB Opposition No. 91264972**

Dear Farah:

We have reviewed The Vineyard House, LLC's responses to Constellation Brands U.S. Operations, Inc.'s first set of written discovery responses in the referenced opposition proceeding. TVH's responses are deficient for the reasons set forth herein. We therefore request that TVH supplement its responses to address those deficiencies.

Mirroring the demand made in your April 20, 2021 correspondence sent in the *CBUSO v. To Kalon Stock Farm* proceedings, please confirm by March 25, 2022 that TVH will provide supplemental or amended responses, and serve such responses no later than March 29, 2022, together with the documents it stated it would produce in its December 20, 2021 response. To the extent that TVH refuses to supplement or amend its responses as requested herein, please provide your availability for a meet and confer conference on or before March 25, 2022, and provide TVH's basis for not revising or amending its responses in advance of that conference.

If you decide not to schedule the meet and confer, we will assume that TVH will be providing complete amended and supplemental responses that address in full the deficiencies outlined below.

**General Deficiencies**

Failure To Produce Documents: In its December 20, 2021 response to CBUSO's Requests for Production, TVH stated it "will produce non-privileged documents in its possession, custody or control that are responsive" (or similar language) to Request for Production Nos. 1, 3, 4, 5, 6, 9, 10, 12, 13, 15, 17, 18, 19, 21, 22, 23, 24, 25, 27, 28, 29, and 32. Almost three months have passed since the responses were served. TVH has still not produced responsive documents. Please tell us when we can expect the production.

General And Boilerplate Objections Are Improper: TVH's responses to CBUSO's Interrogatories and Requests for Production are prefaced with a section titled "General Objections". TVH's responses to CBUSO's Requests for Admissions are prefaced by a section



titled “Preliminary Statement and General Objections”. Moreover, nearly all of TVH’s written responses to the enumerated interrogatories and requests include assertions of boilerplate and general objections. Many simply refer to and “incorporate” the entire Preliminary Statement and General Objections. The fact that TVH asserted general and boilerplate objections is particularly surprising given that you, in an April 20, 2021 letter on behalf of a related company (To Kalon Stock Farm, LLC), raised concerns about CBUSO’s responses to discovery requests. TKSF complained that “The use of boilerplate and general objections is improper under the federal rules.” We agree, as does the Board. Objections “must be specifically asserted in response to each [request] against which they are interposed, and the ground or basis for each objection must be stated with specificity.” TBMP § 405.04(b); *see also* Fed. R. Civ. P. 33(b)(4); *Amazon Technologies, Inc. v. Wax*, 93 USPQ2d 1702, 1704 (TTAB 2009). We therefore request that TVH amend its responses to remove its General Objections.

The impropriety of TVH’s boilerplate objections are exemplified by TVH’s repeated objection that an interrogatory or request seeks “confidential and proprietary business information,” or similar language. [Interrogatory Nos. 1-8, 10-20, 25; Request for Production Nos. 8-16, 18-20, 26.] Board proceedings are governed by the TTAB’s standard protective order. As the Board explains, “objections based on the confidentiality of information or matter being sought are expected to be minimal in view of the automatic imposition of the Board’s standard protective order.” TBMP § 410. To the extent any information requested by CBUSO is, in fact, confidential or proprietary, TVH may designate its response or any documents produced as “confidential” or even “for attorney’s eyes only.” TBMP § 412. We therefore request that TVH carefully reconsider any objections on this basis and amend or supplement its responses and production accordingly.

Further, TVH has objected to each of the first 21 interrogatories and Interrogatory Nos. 25 and 32 on the ground that each purportedly “seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.” Ignoring that the standard for relevance changed six years ago, the repeated objection reflects nothing more than boilerplate. We therefore request that TVH carefully reconsider any objections on this basis and amend its responses accordingly.

Failure To State Whether Documents Being Withheld: The Federal Rules require responding parties to make clear whether any responsive materials are being withheld on the basis of any objections asserted. Fed. R. Civ. P. 34(b)(2)(c). TVH did not do so in its responses to the Requests for Production. We therefore request TVH amend its responses to the Requests for Production to comply with this requirement.

## **Specific Deficiencies**

### **A. TVH’s Responses to CBUSO’s First Set of Interrogatories**

Interrogatory No. 7: This interrogatory seeks information regarding the channels of trade through which TVH offers or intends to offer goods under the CRABB’S BLACK BURGUNDY mark. After asserting its meritless boilerplate relevance and confidentiality objections, TVH stated that it uses or will use the Opposed Mark “in all channels of trade that are customary and normal for the goods of the type provided by Applicant.” In your April 20, 2021 letter in the TKSF proceedings, you took CBUSO to task for providing a similar response regarding the channels of trade for its goods. After discussion between counsel, CBUSO supplemented its

response. It is axiomatic that discovery principles are reciprocal; we expect TVH will supplement its responses accordingly.

Interrogatory No. 8: This interrogatory asks for a description “by age and demographic” of all targeted classes of consumers to whom TVH intends to market its goods. TVH’s response—that the goods will be marketed to “all normal and customary classes of consumers that are looking for goods of the type provided by Applicant”—makes no mention of age or demographic and is thus non-responsive. We request TVH serve a supplemental response to this interrogatory.

Interrogatory No. 11: This interrogatory seeks information regarding the means by which TVH advertises, markets, and promotes any goods that reference Mr. H.W. Crabb. TVH’s boilerplate objections based on relevance and confidentiality are not well taken. Discovery regarding how a mark is used is proper, and is relevant to numerous issues in this proceeding. TVH’s response, that “Applicant uses H.W. Crabb’s Hermosa Valley and H.W. Crabb’s Hermosa Vineyard Block 5 Crabb’s Black Burgundy on its wine bottles and in connection with the sale of these particular products,” is non-responsive because it fails to identify “advertising, marketing, or other promotional materials.” We request TVH serve a supplemental response to this interrogatory.

Interrogatory Nos. 15 & 16: These interrogatories seek information about the locations at which TVH grows grapes and produces wine, and those locations’ connection to Mr. H.W. Crabb. Specifically, the interrogatories requested information about whether those locations had ever been used by Mr. Crabb for viticulture. TVH’s boilerplate objections based on relevance and confidentiality are not well taken. Whether TVH’s goods have a connection to historic vineyards owned and operated by Mr. Crabb is obviously relevant to the claims and allegations that the Opposed Mark is misdescriptive and create a false association with Opposer’s TO KALON marks. TVH’s objections that the interrogatories are vague, ambiguous, and unintelligible, particularly as to the wording “vineyard land” are also not well taken. Simple sentence construction reveals that the interrogatories are neither vague nor ambiguous. The meaning of vineyard land is also self-evident: land used for vineyards.

We have to concede, however, that Interrogatory No. 15 must have been unclear, because TVH responded unambiguously: “Yes.” That response directly contradicts the similarly unambiguous findings of fact made by the District Court in the Civil Action. For clarity, and by incorporating TVH’s responses to Interrogatory Nos. 13 & 14, Interrogatory No. 15 simply asks whether TVH’s property and vineyards at 1581 Oakville Grade, Napa, California, were ever used as vineyards by Mr. H.W. Crabb. The District Court said “No.” With the benefit of this clarification, we request TVH consider whether a supplemental or amended response to this interrogatory is necessary.

Furthermore, TVH’s response to Interrogatory No. 16, that TVH’s “land was owned by H.W. Crabb” is non-responsive, since it does not describe “all facts” supporting the response to Interrogatory No. 15. Mr. Crabb’s ownership of land does not automatically lead to the conclusion that that land was used for vineyards.

Interrogatory Nos. 17 & 18: TVH’s boilerplate objection that these interrogatory are vague, ambiguous, and unintelligible, is not well taken. Simple sentence construction reveals that these interrogatories are neither vague nor ambiguous. These interrogatories seek information

about the variety or varieties of grapes Applicant uses or intends to use to make CRABB'S BLACK BURGUNDY-branded. Further, TVH's boilerplate objections based on relevance and confidentiality are also not well taken. These interrogatories seek information regarding, among other things, the ingredients of TVH's goods, which is relevant to the claims that the Opposed Mark is misdescriptive. We request TVH serve supplemental responses to these interrogatories.

Interrogatories Nos. 26-29: TVH's responses, that each "defense as set forth speaks for itself both factually and legally" is non-responsive. If TVH does not have any facts to support its asserted defenses then the defenses should not have been asserted in the first instance, and in any event should now be withdrawn.

### **B. TVH's Responses to CBUSO's First Set of Requests for Production**

As noted above, TVH has not yet produced any of the documents it indicated it would be producing in response to 22 of the Requests for Production, and has failed to indicate whether it is withholding documents from production pursuant to its objections to any of the Requests. Additionally, several responses (*e.g.*, Nos. 32-35) state that Applicant's investigation is ongoing. As a result, CBUSO cannot assess whether it is worthwhile spending time addressing any of the specific objections. CBUSO will address those objections, if necessary, following TVH's production of documents.

### **C. TVH's Responses to CBUSO's First Set of Requests for Admission**

Request for Admission Nos. 1 & 2: As we are certain you are aware, Rule 36(a)(1)(B), (2) allows a party to seek an admission that a document is genuine. TVH's response, that the District Court's order in the Civil Action "speaks for itself" is both improper and non-responsive. The very purpose of Rule 36 is to narrow the issues for trial. As a participant in the Civil Action, TVH is familiar with the District Court's holding and should be able to admit or deny requests about it.

Request for Admission Nos. 3, 4, 9, & 10: These requests seek admissions regarding the connection between TVH and its goods, on the one hand, and H.W. Crabb and his historic vineyard. TVH's objections that the wording "once used," "once called," "land once owned and used," and "land once owned" is so vague and ambiguous as to prevent TVH from determining the nature of the requests are not well taken. The plain meaning of these phrases is self-evident. Furthermore, the subject matter of these requests has been litigated before the District Court, which made factual findings about this subject matter. TVH should provide amended responses that clarify its denials or, in the alternative, admit the requests.

Request for Admission No. 5: This request seeks an admission regarding the identity of H.W. Crabb and the significance of the Opposed Mark. TVH's objection that the wording "historical significance" is so vague and ambiguous that TVH cannot determine the nature of the request is not well taken. The plain meaning of the wording is self-evident. TVH used similar language to describe H.W. Crabb in its December 13, 2018 response to an office action refusing the Opposed Application:

- “Given the notoriety of Crabb’s wine and its *historical significance* as it relates to Napa Valley, even after Crabb’s death, he is widely known in connection with Napa Valley wine.”
- “The *historical significance* outweighs any surname significance.”

TVH should provide amended responses that clarify its denial or, in the alternative, admit the request.

Request for Admission Nos. 6, 7, & 8: These requests seek admissions about the significance of the Opposed Mark and how the mark is perceived by consumers. TVH’s objection that the wording “sophisticated wine consumers,” “sophisticated merchants,” “sophisticated professionals” and “immersed in the Northern California wine industry” is so vague and ambiguous as to prevent TVH from determining the nature of the requests are not well taken. This wording was taken directly from the District Court’s Rule 52 Order, with which TVH is already familiar. Moreover, the concept of consumer sophistication is well-established in American trademark law. TVH’s response is non-responsive. TVH should be able to admit or deny the requests.

Request for Admission Nos. 12 & 13 These requests seek admissions relevant to the similarity and meanings of the marks at issue in this proceeding. Specifically, they ask TVH to admit whether H.W. Crabb’s initials (H.W.C.) are identical to the initials H.W.C. (or HWC). TVH’s objections that these requests are “speculative” and seek information not relevant to the parties’ claims and defenses in this proceeding are not well taken. TVH should provide amended responses that clarify its denials or, in the alternative, admit the requests.

Request for Admission Nos. 14 & 15 These requests seek admissions regarding whether a connection between a wine and H.W. Crabb would affect a wine consumer’s purchasing decision. TVH’s objection to Request No. 14 that the wording “material factor” is so vague and ambiguous as to prevent TVH from determining the nature of the requests is not well taken. Materiality is a well-defined concept, and the plain language of the request is self-evident.

Furthermore, TVH’s objections that the requests are “speculative” are not well taken. TVH and its founder have conducted extensive research into the history of H.W. Crabb and his vineyards, and have been embroiled in litigation relating to the same for nearly three years. Presumably, TVH has in that time formed an opinion about whether wine consumers may value a connection between a wine and Mr. Crabb’s vineyards.

Finally, TVH’s objections that the information sought by these requests is not relevant to the parties’ claims and defenses in this proceeding are not well taken and border on bad faith. The requests are relevant to the meaning of TVH’s marks, TVH’s intentions in adopting the marks, and whether consumers would presume a connection between TVH’s goods and H.W. Crabb (and, by extension, CBUSO). TVH should provide an amended response that clarify its denial or, in the alternative, admit the requests.

Request for Admission No. 16 This request seeks an admission concerning whether the Opposed Mark suggests a connection with a person, H.W. Crabb. TVH’s objection that the wording “convey an association” is so vague and ambiguous as to prevent TVH from determining the nature of the request is not well taken. The plain meaning of the request is self-

evident, and is nearly identical to the language of Trademark Act Section 2(a). TVH should provide an amended response that clarifies its denial or, in the alternative, admits the request.

Request for Admission No. 19: This request seeks an admission concerning whether the goods sold under the CRABB'S BLACK BURGUNDY mark comply with the standards of control applied to wines that emanate from Burgundy Wine. TVH's objection that the wording "standards of control" is so vague and ambiguous as to prevent TVH from determining the nature of the request is not well taken. The wording "standards of control" is commonly used in connection with controlled designations of origin, and self-evidently refers to the criteria a wine must meet to use a protected geographic indication. TVH should provide an amended response that clarifies its denial or, in the alternative, admit the request.

Response for Admission No. 20: This request seeks an admission regarding the purchasing decisions of consumers of the goods at issue. TVH's objection that the request is "speculative" is not well taken. TVH and its founder have a long history in the wine industry and are presumably knowledgeable about whether wine consumers consider the geographic origin of a wine in their purchasing decisions. Likewise, TVH and its founder have conducted extensive research regarding Napa Valley and the historic To Kalon Vineyard. Presumably, TVH has in that time formed an opinion about whether wine consumers may consider the geographic origin of wine in their purchasing decisions. TVH should provide an amended response that clarifies its denial or, in the alternative, admit the request.

Response for Admission No. 21: TVH's boilerplate objection based on relevance is not well taken. This request seeks information regarding the ingredients of TVH's goods and is relevant to the claims that the Opposed Mark is misdescriptive. TVH should provide an amended response that clarifies its denial or, in the alternative, admit the request.

Request for Admission Nos. 23 & 24: These requests seek admissions regarding the similarity or relatedness of the goods at issue in this proceeding. TVH's objections that the word "identical" is so vague and ambiguous as to prevent TVH from determining the nature of the requests are not well taken. Nor are TVH's objections that these requests are not relevant. Both of these objections border on bad faith. The relatedness of goods is obviously relevant in any proceeding involving claims of likelihood of confusion. It is one of the *du Pont* factors. And the information sought by these requests is also relevant to CBUSO's claim of false suggestion of a connection and CBUSO's entitlement to a statutory cause of action.

The Opposed Application covers "wines" in Class 33. CBUSO's pleaded marks are registered for, and/or are used in connection with, "wine." TVH should be able to admit or deny these requests. TVH should provide amended responses that clarify its denials or, in the alternative, admit the requests.

Request for Admission Nos. 25 & 26: These requests seek admissions regarding the similarity or relatedness of channels of trade in which Applicant's goods are marketed and the classes of consumers to whom they are sold. TVH's objections that the word "promoted" is so vague and ambiguous as to prevent TVH from determining the nature of the requests are not well taken. To "promote" is to attempt to sell or popularize by advertising or publicity. The plain meaning is self-evident. TVH should provide amended responses that clarify its denials or, in the alternative, admit the requests.

Request for Admission No. 27: TVH's objection that the wording "third party" is vague and ambiguous is not well taken. "Third party" is a common phrase that appears in numerous dictionaries, and is used more than 50 times in the TBMP. TVH's objections on grounds of relevance are not well taken. Third party use of similar marks is relevant to, among other things, whether consumers would associate CRABB with any particular individual or entity. Information concerning a party's awareness of third party use of the same or similar marks for the same or closely related goods as mark involved in a proceeding is discoverable to the extent that the responding party has actual knowledge thereof. TBMP § 414(9). *See also Domino's Pizza Inc. v. Little Caesar Enterprises Inc.*, 7 USPQ2d 1359, 1363 n.9 (TTAB 1988) (relevant to show purchaser perception of the marks). TVH should provide amended responses that clarify its denial or, in the alternative, admit the request.

Request for Admission No. 31: As we are certain you are aware, Rule 36(a)(1)(B), (2) allows a party to seek an admission that a document is genuine. Such requests are explicitly permitted by the Board's rules. 37 C.F.R. § 2.120(i). Thus, while TVH's statement that the request "seeks a legal determination as to authenticity pursuant to the Federal Rules of Evidence" is correct, that is neither a basis for an objection nor a reason not to respond substantively to the request. The very purpose of Rule 36 is to narrow the issues for trial. TVH, through its member Mr. Nickel, who TVH identified as the only person who participated in preparing responses to the written discovery requests, should be able to admit or deny whether the documents TVH produces are authentic. TVH should provide a supplemental response to this request.

## **Conclusion**

In sum, we request that you respond to this correspondence by confirming that TVH will cure the deficiencies identified herein by March 29, 2022, or else provide your availability to meet and confer on or before March 25, 2022. We look forward to your written response and/or speaking with you on each of these issues to determine what issues can be resolved without the Board's assistance.

This letter is not intended as a full recitation of the facts or a complete review of the applicable law. This letter is written without prejudice to our client's rights and remedies, all of which are expressly reserved.

Very truly yours,

SEYFARTH SHAW LLP

*/s/ Kenneth L. Wilton*

Kenneth L. Wilton

KLW:jch

# **EXHIBIT L**

**From:** Seror, Matthew L. <mseror@buchalter.com>  
**Sent:** Wednesday, March 23, 2022 3:32 PM  
**To:** Wilton, Kenneth  
**Cc:** Heinbockel, John; Kang, Helen; Bhatti, Farah P.  
**Subject:** Constellation v. Vineyard House Proceedings [IWOV-BN.FID2786059]

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This message came from outside your organization.

Ken-

I wanted to follow up with you regarding the pending Board proceedings between our respective clients (Opposition Nos. 91245800, 91246515, 91264972 and 91264970)

Due to an unforeseen event, the client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined.

As a result, we are seeking an extension of all currently set dates (including discovery deadlines). At this point, we think 6 months would be appropriate given the circumstances.

Please advise if your client will consent to this extension. If not, we intend on filing an appropriate motion in these proceedings.

## Buchalter

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**Matthew L. Seror**

Shareholder

T (213) 891-5731

F (213) 630-5798

[mseror@buchalter.com](mailto:mseror@buchalter.com)

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# **EXHIBIT M**

## Heinbockel, John

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**From:** Seror, Matthew L. <mseror@buchalter.com>  
**Sent:** Friday, March 25, 2022 7:07 PM  
**To:** Wilton, Kenneth  
**Cc:** Bhatti, Farah P.; Heinbockel, John; Terzoli, Roberto S.; Kang, Helen  
**Subject:** Constellation Brands v. Vineyard House [IWOV-BN.FID2786059]  
**Attachments:** 2022-03-25 - Letter to Buchalter re 91264970.pdf

### This Message Is From an External Sender

This message came from outside your organization.

Ken-

We have received the attached letter from your office this afternoon (I note that I was not copied on the email where it was transmitted. Please copy me on all correspondence relating to the Constellation/Vineyard House matters).

As for the substance of the letter, as we advised you on Wednesday, due to an unforeseen event, our client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined. For obvious reasons, this unavailability is impactful on the matters now pending before the Board. As a result, and recognizing the foregoing, I indicated in my earlier correspondence that we were seeking an extension of all currently set dates (including discovery related dates), and asked whether your client would consent to the extension. I do not believe a response to our request has been received (unless it was sent and I was not copied).

Please advise as to your position on our request at your earliest convenience.

## Buchalter

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### Matthew L. Seror

Shareholder

**T** (213) 891-5731

**F** (213) 630-5798

[mseror@buchalter.com](mailto:mseror@buchalter.com)

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **OPPOSER’S MOTION TO COMPEL FURTHER RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSION, AND PRODUCTION OF DOCUMENTS** has been served on Applicant The Vineyard House LLC, by forwarding said copy on April 21, 2022, via email, to the correspondence address of record for Applicant The Vineyard House LLC at fbhatti@buchalter.com, ipdocket@buchalter.com with a courtesy copy to mseror@buchalter.com; hblan@buchalter.com.

*/Helen Kang/* \_\_\_\_\_  
Helen Kang