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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents and Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Avenue, Arlington, Virginia 22202-3513 on

John B. Kelly, Reg. No. 24,269 Date 1/30/04

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

Schramsberg Vineyards Company,)
)
 Petitioner,)
)
 v.)
)
 Richard U. Heppler, an individual,)
)
 Registrant-Respondent.)
 _____)

In the Matter of
U.S. Reg. No. 2,090,436
for MIRABELL
Granted August 26, 1997

Cancellation No. 92/032,901

Assistant Commissioner for Trademarks
BOX - NO FEE
TRADEMARK TRIAL AND APPEAL BOARD
2900 Crystal Drive
Arlington, Virginia 22202-3514

REQUEST FOR DISMISSAL OF PETITION FOR CANCELLATION

As counsel of record for Petitioner, Schramsberg Vineyards Company, and authorized to do so, the Petition for Cancellation is hereby conditionally dismissed - in accordance with a private settlement agreement reached by the parties.

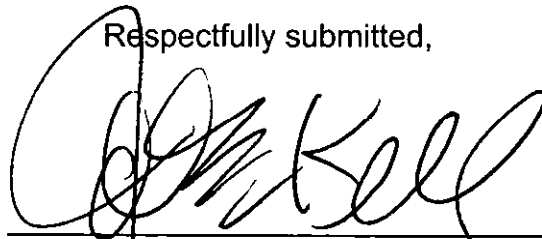
Specifically, the cancellation has been amicably resolved by the parties with a "CONSENT AGREEMENT" (a fully executed copy of which is attached) - and this conditional dismissal shall be with prejudice when Respondent effects an amendment to



U.S. Reg. No. 2,090,436 for MIRABELL, granted August 26, 1997 in accordance with paragraph 4 of the CONSENT AGREEMENT.

The TTAB is invited to contact the attorneys of record for the parties if further information or documentation is desired.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Kelly", written over a horizontal line.

Dated: January 30, 2004

John E. Kelly
Reg. No. 24,269
KELLY BAUERSFELD LOWRY & KELLEY, LLP
6320 Canoga Avenue, Suite 1650
Woodland Hills, California 91367
(818) 347-7900
Attorneys for Schramsberg Vineyards Company,
Petitioner

CONSENT AGREEMENT

This Agreement is entered into by and between Richard U. Heppler, an individual and Spirits of Valley Forge, both having a business address on Spring Hollow Road, Phoenixville, PA 19460 (collectively "Heppler") -and- Schramsberg Vineyards Company, a corporation of the State of California with an address at 1400 Schramsberg Road, Calistoga, CA 94515 ("Schramsberg").

WHEREAS, Heppler is the owner of the trademark MIRABELL, shown by U.S. Reg. No. 2,090,436 granted August 26, 1997, used for goods described as "wine and spirits/Int. Cl. 33;

WHEREAS, Schramsberg is the owner of the trademark MIRABELLE, used for wines and champagnes since April 1991 and owns a trademark application S.N. 76/350,393, filed December 20, 2001 in the United States Patent and Trademark Office (USPTO) for registration of MIRABELLE in connection with goods described as "wines and champagnes"/Int. Cl. 33;

WHEREAS, the parties are involved in an adversary proceeding before the Trademark Trial and Appeal Board (TTAB), i.e., Canc. No. 32,901, filed April 15, 2002 - and desire to resolve their dispute; and

WHEREAS, the parties have exchanged information about their respective marks and goods and have concluded that their respective marks can co-exist and no likelihood of confusion would be caused by concurrent use of their marks for the associated goods;


NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in this Agreement - the parties reciprocally consent to the co-existence and use of their respective marks for the associated goods and specifically agree as follows:

1. Heppler agrees that he will not object to Schramsberg's use, registration or application for registration of the mark MIRABELLE with respect to wines and champagnes.
2. Heppler gives consent and agrees that Schramsberg's application S.N. 76/350,393, filed December 20, 2001 for MIRABELLE, used for goods described as wines and champagnes/Int. Cl. 33 may be registered in the USPTO.
3. Schramsberg agrees that it will not object to Heppler's use, registration or application for the registration of the mark MIRABELL with respect to brandy.
4. Schramsberg consents to the maintenance of Heppler's U.S. Reg. No. 2,090,436 for MIRABELL, granted August 26, 1997, provided the description-of-goods is amended to substitute "brandy" for "wine and spirits" -and- Heppler agrees to take all steps necessary with the USPTO to so amend his registration. Schramsberg agrees to dismiss Canc. No. 32,901, now pending before the TTAB, when Heppler amends Reg. No. 2,090,436 for MIRABELL to substitute "brandy" for the existing description-of-goods "wine and spirits".

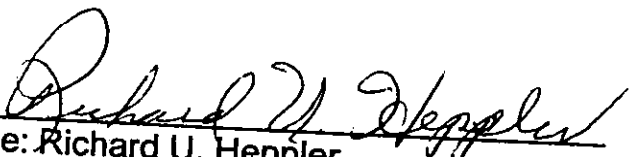
5. (a) The parties believe in good faith there is no likelihood of confusion between their respective uses of MIRABELLE for wines and champagnes by Schramsberg and MIRABELL for brandy by Heppler - because, in part, of significant differences of the respective goods marketed by the parties, the channels of trade in which the respective goods move and because to date there has been no substantial actual confusion. Should instances of apparent or actual confusion occur in the future, the parties agree to notify each other and take reasonable measures as may be necessary to eliminate confusion.
- (b) In the interests of minimizing confusion in the marketplace, Heppler further agrees to the following restrictions on use of MIRABELL for brandy:
- (i) annual sales shall not exceed One Hundred Fifty Thousand Dollars (\$150,000) -and-
 - (ii) sales and marketing shall be restricted to the northeastern and mid-western areas of the United States and, in addition, Florida, Tennessee, Pennsylvania, Connecticut, New York, Illinois, Minnesota, and Wisconsin.
6. The parties agree that upon request from one another, each will give their assistance at the expense of the requesting party, including the execution of appropriate documents and written consent to the grant of

9. This Agreement shall be binding upon and inure to the benefit of the parties, their parent corporations, affiliates, subsidiaries, partners, successors, licensees and assigns. The parties agree to give notice of this Agreement to their related companies, if any, and all others described generally in this provision.
10. This Agreement shall be applicable throughout the United States.
11. This Agreement shall remain in full force and effect so long as neither party, their respective licensees, affiliates, subsidiaries or assigns, etc.: (i) is in material breach of any term of this Agreement -or- (ii) abandons use of their mark. Abandonment shall mean the discontinuance of use

4

Date: 8-4-03 
RICHARD U. HEPPLER, an individual

SPIRITS OF VALLEY FORGE

Date: 8-4-03 By: 
Name: Richard U. Heppler
Title: owner


5

with intent not to resume such use -and- three years of no use shall be prima facie evidence of abandonment.

12. This Agreement represents the entire agreement between the parties and may be amended only by a writing signed by both parties.
13. The effective date of this Agreement shall be the last indicated date with the parties' signatures below.

SCHRAMSBERG VINEYARDS COMPANY

Date: 8/14/03

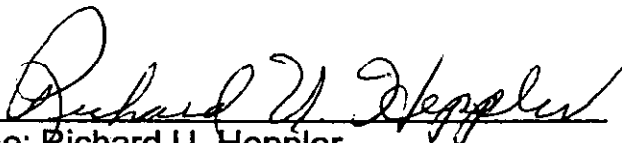
By: 
Name: FRED ZAMMATARO
Title: CFO

Date: 8-4-03


RICHARD U. HEPPLER, an individual

SPIRITS OF VALLEY FORGE

Date: 8-4-03

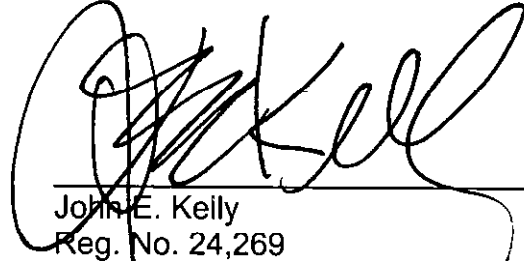
By: 
Name: Richard U. Heppler
Title: owner

CERTIFICATE OF SERVICE

As an attorney of record for Petitioner, Schramsberg Vineyards Company, I hereby certify that a true and correct copy of this paper has been sent by first class U.S. Mail, postage prepaid, to the attorneys of record for Registrant, Richard U. Heppler, as follows:

Marc D. Machtinger, Esq.
Law Office of Marc D. Machtinger, Ltd.
750 West Lake Cook Road
Suite 350
Buffalo Grove, Illinois 60089

KELLY BAUERSFELD LOWRY & KELLEY, LLP



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Date: January 30, 2004

Attorneys for Schramsberg Vineyards Company,
Petitioner