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*[Signature]* 1/30/04  
John E. Kelly, Reg. No. 24,269 Date

Applicant: Schramsberg Vineyards Company )  
Serial No.: 76/350,393 )  
Filed: December 20, 2001 )  
Mark: MIRABELLE )  
Int. Class: 33 )  
Our Docket: 32758A )  
Examiner: Christopher Adkins, Esq. )

Law Office 113

BOX RESPONSES NO FEE  
NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

Dear Sir or Madam:

This paper responds to the Trademark Examiner's "Suspension Action" dated June 18, 2003, suspending further proceedings pending the outcome of a cancellation before the TTAB, i.e., No. 32,901.

In that regard, Applicant submits a copy of its "Request for Dismissal of Petition for Cancellation", mailed concurrently to the TTAB regarding Cancellation No. 32,901, requesting the cancellation be dismissed in accordance with a private settlement

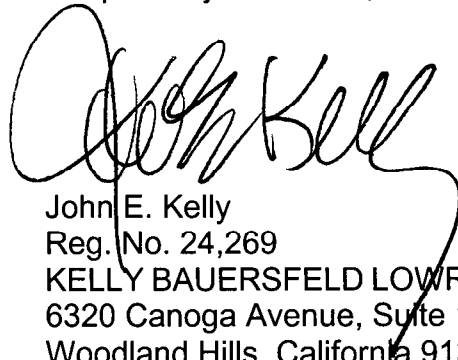


agreement reached by the parties. For the Examiner's convenience, full copies of the Request and the parties' "CONSENT AGREEMENT" are attached.

The parties have considered potential likelihood of confusion and have agreed to take steps to avoid and/or handle any isolated instances that may occur.

Accordingly, Applicant requests that its application be taken out of "suspension" for resumption of prosecution and that the mark MIRABELLE be approved for publication.

Respectfully submitted,



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

cc: Marc D. Machtinger, Esq.  
Law Office of Marc D. Machtinger, Ltd.  
750 West Lake Crook Road  
Suite 350  
Buffalo Grove, Illinois 60048

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



02-02-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #39

**REQUEST FOR DISMISSAL OF PETITION FOR CANCELLATION**

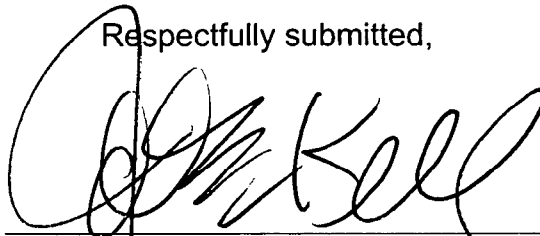
As counsel of record for Petitioner, Schramsberg Vineyards Company, and authorized to do so, the Petition for Cancellation is hereby conditionally dismissed - in accordance with a private settlement agreement reached by the parties.

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

registration of the respective marks of the parties for their respective goods as identified in paragraph 5.

7. The parties agree that either of them may provide a copy of this Agreement to the United States Patent and Trademark Office in support of prosecuting applications and sustaining registrations for their respective marks, i.e., MIRABELLE used for wines and champagnes by Schramsberg and MIRABELL used for brandy by Hepler.
8. The parties agree to respect one another's trade identity rights in and to their respective marks and will not oppose, seek cancellation of, or otherwise challenge one another's rights to the use and registration of their respective marks for the associated goods.
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





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.

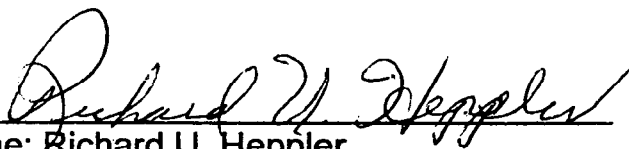
13. The effective date of this Agreement shall be the last indicated date with the parties' signatures below.

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

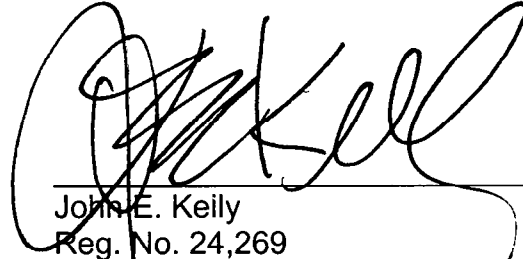
Date: 8-4-03 By:   
Name: Richard U. Heppler  
Title: owner

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

Date: January 30, 2004

Attorneys for Schramsberg Vineyards Company,  
Petitioner