TTAB

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

In the matter of Trademark Registration No. 1,487,042
For the mark: RUSSKAYA
Date registered: May 3, 1988
Petitioner's Ref . No.: SPIG USA TC-04/23956

| | | |
|---|---|---|
| A.V. IMPORTS, INC., | : | |
| | : | |
| Petitioner, | : | |
| | : | Cancellation No. 92043340 |
| v. | : | |
| | : | |
| SPIRITS INTERNATIONAL, N.V., | : | |
| | : | |
| Respondent and Registrant. | : | |
| | : | |

03-10-2005
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #74

## RESPONDENT'S FIRST SET OF INTERROGATORIES TO PETITIONER

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Respondent requests that Petitioner answer the Interrogatories propounded below. Written responses and/or documents sought pursuant to these Interrogatories are to be produced on April 11, 2005 at 9:00 am at the offices of Fross Zelnick Lehrman & Zissu P.C., 866 United Nations Plaza, New York, NY 10017, or a mutually agreeable location, date and time.

## INSTRUCTIONS AND DEFINITIONS

Unless the terms of a particular request specifically indicate otherwise, the definitions and instructions set forth in Respondent's First Set of Requests for the Production of Documents

and Things are hereby incorporated by reference as if fully set forth herein. The following additional definitions and instructions also apply to these Interrogatories:

A. The term "identify," when referring or relating to a natural person, means that person's full name, present or last known home and business addresses (including street name and number, city or town, state, zip code, and telephone number), present or last known business position, affiliation, and address, and all job titles or positions, if any, held in conjunction with employment or affiliation with Petitioner or any other entity related thereto at any time, and the dates of tenure in each such job title or position.

B. The term "identify," when referring or relating to a person other than a natural person, means its full name and type of organization, and the address of its principal place of business (including street name and number, city or town, state, zip code, and telephone number).

C. The term "identify," when referring or relating to a document, means the type of document (e.g., letter, notebook, etc.), the date of the document (and, if no date appears thereon, the answer shall so state and shall give the date or approximate date that such document was prepared), the title of the document, a brief summary of the subject matter of the document, the identification of the person who prepared the document the identification of the person who signed the document, the identification of the person for whom the document was prepared, and the identification of the recipient or addressee of the document (whether specifically named therein or not); in addition, if the document requested to be identified is not in the possession, custody, or control of Petitioner, the identification of the person who has possession, custody, or control over the original of the document, and each person who has possession, custody, or control over each copy of the document; furthermore, if the document requested to be identified

10. Describe the current and projected market for goods bearing Petitioner's Mark in the United States, including but not limited to projected customers, ultimate consumers and dollar and unit sales, and identify all documents that support your answer.

11. Identify all attempts at securing licenses or permits from the ATF for the purpose of importing goods bearing Petitioner's Mark into the United States, including all actions undertaken in connection with each attempt, and the outcome of each attempt, including whether or not a license or permit was ultimately issued in connection with each attempt, and identify all documents that support your answer.

12. Identify all distributions of goods bearing Petitioner's Mark in the United States, including the date, quantity and location of the distribution and the names, addresses and telephone numbers of the distributors involved, and identify all documents that support your answer.

13. Identify all sales of goods bearing Petitioner's Mark in the United States, including the date, quantity and location of each sale, and identify all documents that support your answer.

14. Identify all offers for sale of goods bearing Petitioner's Mark in the United States, including the date, quantity and location of each offer, and identify all documents that support your answer.

15. Identify each advertisement for goods bearing Petitioner's Mark in the United States, including the date of the advertisement, and identify all documents that support your answer.

16. Identify all channels of trade in which Petitioner's Mark has been or will be used in the United States, and identify all documents that support your answer.

17. Explain your past and present business plans for Petitioner's Mark in the United States, and identify all documents that support your answer.

18. Identity any alternative marks Petitioner has considered using instead of Petitioner's Mark and the nature and extent of use of such alternative marks to date.

19. Explain why Petitioner prefers Petitioner's Mark to other available alternatives.

20. Identify all differences between the actual or intended presentation Petitioner's Mark on products and the presentation of the Registered Mark on products, and identify all documents that support your answer.

Dated: New York, New York
March 7, 2005

Respectfully submitted,

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: _____
Lisa Pearson
Attorneys for Petitioner
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

## CERTIFICATE OF SERVICE

I hereby by certify that on March 7, 2005 the foregoing Respondent's First Set of Interrogatories to Petitioner were served via first class mail, postage prepaid, upon the following:

Andrew C. Aitken, Reg. No. 36,729
Jennifer D. Jesinoski
Venable LLP
575 7th Street N.W.
Washington, D.C. 20004
Attorneys for Petitioner

Yvonne Sharpy

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

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For the mark: RUSSKAYA
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| A.V. IMPORTS, INC., | : | |
| Petitioner, | : | Cancellation No. 92043340 |
| v. | : | |
| SPIRITS INTERNATIONAL, N.V., | : | |
| Respondent and Registrant. | : | |

03-10-2005
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #74

**RESPONDENT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO PETITIONER**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Respondent requests that Petitioner produce for inspection and copying the documents specified below. The documents sought pursuant to these Requests are to be produced on April 11, 2005 at 9:00 a.m., at the offices of Fross Zelnick Lehrman & Zissu P.C., 866 United Nations Plaza, New York, NY 10017, or a mutually agreeable location, date and time.

## INSTRUCTIONS AND DEFINITIONS

Unless the terms of a particular request specifically indicate otherwise, the following definitions and instructions are applicable throughout these requests and are incorporated into each specific request:

A. The term "Respondent" means Spirits International, N.V., and any and all affiliates, predecessors, or successors-in-interest, attorneys, agents, representatives and/or employees of any of the above-mentioned entities or persons.

B. The term "Petitioner," "you" or "your" means A. V. Imports, Inc. and any and all affiliates, predecessors, or successors-in-interest, attorneys, agents, representatives and/or employees of any of the above-mentioned entities or persons.

C. The term "Registered Mark" means the word mark covered by U.S. Federal Trademark Registration No. 1,487,042, in any form or presentation.

D. The term "Petitioner's Mark" means the mark covered by U.S. Trademark Application Serial No.76/573,600, in any form or presentation.

E. The term "trademark" means any word, name, symbol, design, shape, number, slogan, or device, or any combination thereof, that is used by a person or corporation to identify and distinguish the person's or corporation's products, from the products of others. The use of the term "mark" is to be considered as the use of the term "trademark."

F. The term "Respondent's Goods" means all products that Respondent has sold, advertised, marketed, offered for sale, distributed, or otherwise caused to be provided in the United States or that Respondent intends to sell, advertise, market, offer for sale, distribute, or otherwise cause to be provided in the United States, under or in connection with or in association

with Petitioner's Mark, including but not limited to the following: "vodka," in International Class 33.

G. The term "Respondent's Goods" means all products that Respondent has sold, advertised, marketed, offered for sale, distributed, or otherwise caused to be provided in the United States or that Respondent intends to sell, advertise, market, offer for sale, distribute, or otherwise cause to be provided in the United States, under or in connection with or in association with Petitioner's Mark, including but not limited to "vodka," in International Class 33.

H. The term "channels of trade" means each type of person or entity buying, or otherwise receiving, each good directly from Petitioner (e.g., distributor, retailer, end-user), each type of person or entity distributing, marketing or advertising each good throughout the chain of distribution between the producer and end-user, and each type of person or entity to whom such person or entity distributes, markets or advertises each good, in the United States.

I. The term "specimen" means an example of a use that supports the mark.

J. The term "distiller" means persons or entities that produce and/or manufacture the product(s) sold under the Registered Mark or Petitioner's Mark.

K. The term "use" in connection with the Registered Mark or Petitioner's Mark means any and all forms of use, including but not limited to sales, offers for sale, advertising, marketing and distribution in connection with goods bearing or otherwise incorporating mark.

L. The term "ATF" means the Bureau of Alcohol, Tobacco and Firearms.

M. The terms "document" or "documents" are used in the broadest sense permissible under Rule 34 of the Federal Rules of Civil Procedure and include, without limitation(s), all writings (whether in handwritten, typed, printed, stenographic, or other form), drawings, graphs, charts, photographs, recordings, copies or mechanical or photocopy reproductions of any or all of

the foregoing items, and non-paper information storage means, such as tape, film, computer, and/or electronic memory devices.

N. Where any items contain marking(s) not appearing in the original or are altered from the original, then all such items must be considered as separate documents and identified and produced as such.

O. The term "concerning" means relating to, referring to, regarding, having any relationship with, pertaining to, evidencing, or constituting evidence of, in whole or in part, the subject matter of the particular request.

P. The terms "person" or "persons" include any natural person, corporation, partnership, joint venture, unincorporated association, trust, government entity, and all other entities of any nature whatsoever.

Q. The term "allegation" includes all claims, contentions, assertions, statements, charges, recitations, and declarations made as of the date of the Petition to Cancel, and/or at the time of answering these requests, and/or at the time of adjudication of any issue in this Petition, and/or at any time between the date these requests are answered and the adjudication date.

R. The term "rely" means to look to for support or to depend upon as of the date of the Petition for Cancellation, and/or at the time of answering these requests, and/or at the time of adjudication of any issue in this action, and/or at any time between the date these requests are answered and the adjudication date.

S. The use in these requests of the name of a party or business organization shall specifically include all officers, directors, attorneys, agents, representatives, employees, parents, affiliates, subsidiaries, divisions, and predecessors- or successors-in- interest of the party or business organization.

T. Each request shall be read to be inclusive rather than exclusive. Accordingly, the words "and" as well as "or" shall be construed disjunctively or conjunctively as necessary, in order to bring within the scope of this document request all documents that might otherwise be construed to be outside its scope. "Including" shall be construed to mean "without any limitation." The word "all" includes "any" and vice versa. The past tense shall include the present tense so as to make the request inclusive rather than exclusive. The singular shall include the plural and vice versa. The masculine includes the feminine and vice versa.

U. These requests apply to all documents within the possession, custody or control of Respondent and any and all affiliates, predecessors-in-interest, successors-in-interest, and all attorneys, agents, representatives, and/or employees of any of the above-mentioned entities or persons, whether directly or indirectly under its control.

V. All documents that respond, in whole or in part, to any portion or clause of any paragraph of any of the requests shall be produced.

W. All documents necessary for a correct understanding of a document responsive to any of the requests shall be produced with the responsive document(s).

X. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objections.

Y. If any document requested herein is withheld on the basis of any claim of privilege, work product, or otherwise, Respondent is requested to identify each such document withheld by specifying:

a. the type of document;

b. the date of the document;

c. the subject matter of the document;

d. the author(s) and recipient (s) of the document; and

e. the nature of the privilege asserted.

Z. If any document requested has been lost, discarded, or destroyed, each such document so lost, discarded, or destroyed shall be identified as completely as possible. Identification of each such document shall include without limitation, the information required pursuant to paragraph "Y." sections "(a)" through "(d)," above, as well as: date of disposal; manner of disposal; reason for disposal; persons authorizing the disposal; persons having knowledge of the disposal; and persons disposing of the document.

AA. The following requests shall be deemed to be continuing and, in the event Respondent secures or discovers any documents responsive to these requests after production of the documents requested herein, Respondent shall provide such documents promptly to Petitioner and, if appropriate, supplement its responses hereto and/or its list(s) of documents withheld on the grounds of privilege.

## DOCUMENT REQUESTS

1. All documents that support or refute your allegations in the Petition to Cancel.

2. All documents concerning your allegation that the Registered Mark has been abandoned in the United States.

3. All documents concerning your actual or intended adoption, use and registration of Petitioner's Mark in the United States.

4. All documents concerning your actual or intended adoption, use and registration of any alternative to Petitioner's Mark in the United States.

15. All communications with the U.S. Patent and Trademark Office concerning the Registered Mark or Petitioner's Mark.

16. All documents related to the importation of goods bearing the Registered Mark into the United States, including but not limited to commercial invoices, pro forma invoices, packing lists, bills of lading, air way bills, Customs forms and any additional documentation presented or required to make entry into the United States in Petitioner's possession, custody or control.

17. All documents concerning the distribution of goods bearing the Registered Mark in the United States in Petitioner's possession, custody or control.

18. All lists of distributors that have distributed goods bearing the Registered Mark in the United States in Petitioner's possession, custody or control.

19. All documents concerning all sales of goods or offers for sale of goods bearing the Registered Mark in the United States.

20. All correspondence with actual or potential distributors of goods bearing Petitioner's Mark in the United States in Petitioner's possession, custody or control.

21. All contracts with distributors of goods bearing Petitioner's Mark in the United States.

22. All documents concerning all advertising and promotion of goods bearing the Registered Mark in the United States, including but not limited to labeling, media and point-of-sale materials, in Petitioner's possession, custody or control.

23. Documents sufficient to show the sales of goods, in terms of units and dollars, bearing Petitioner's Mark in the United States.

24. All documents concerning all offers for sale of goods bearing Petitioner's Mark in the United States.

25. All documents concerning the marketing of goods bearing Petitioner's Mark in the United States, including but not limited to internal marketing plans, business plans and strategic plans.

26. All documents concerning all channels of trade in which Petitioner's Mark has been or will be used in the United States.

27. Documents sufficient to show the amount of income you have earned in connection with the sale of goods bearing Petitioner's Mark in the United States.

28. All financial statements that include data about sales of goods bearing Petitioner's Mark in the United States.

29. All documents concerning the Respondent or the Registered Mark.

30. All correspondence with distillers of the products that are or will be sold, offered for sale or advertised in the United States under Petitioner's Mark.

31. All contracts with distillers of the products that are or will be sold, offered for sale or advertised in the United States under Petitioner's Mark.

32. All search reports relating to the Registered Mark or Petitioner's Mark.

33. All documents concerning Petitioner's plans with respect to Petitioner's Mark.

34. All documents concerning Petitioner's adoption of Petitioner's Mark and the reasons therefor.

35. All documents you intend to rely upon as evidence in this proceeding.

36. All documents concerning the actual or potential market for RUSSKAYA vodka in the United States.

37. All documents concerning the design, format or presentation of Petitioner's Mark or the Registered Mark.

Dated: New York, New York
March 7, 2005

Respectfully submitted,

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: Lisa Pearson
Lisa Pearson
Attorneys for Petitioner
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

## CERTIFICATE OF SERVICE

I hereby by certify that on March 7, 2005 the foregoing Respondent's First Set of Requests for the Production of Documents and Things to Petitioner were served via first class mail, postage prepaid, upon the following:

Andrew C. Aitken, Reg. No. 36,729
Jennifer D. Jesinoski
Venable LLP
575 7th Street N.W.
Washington, D.C. 20004
Attorneys for Petitioner

Yvonne Sharpy

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