

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

TTAB

In the matter of Trademark Registration

Reg. No. : 2,282,461
Mark : RUSTICO
Registered: October 5, 1999

75/293,539

DEPARTMENT OF
TRADEMARK OFFICE
2005 AUG 24 P 4:00
TRADEMARK TRIAL AND APPEAL BOARD

Tri-Star Marketing, LLC,
Petitioner,
v.
Nino Franco Spumanti S.R.L.
Registrant.

Cancellation No. 92043953
(VINO RUSTICO v. RUSTICO)



PROTECTIVE ORDER

08-24-2005
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

Pursuant to Rule 36(c) of the Fed. R. Civ. P., 37 C.F.R. §2.120(f), and the stipulation fo the parties hereto, by their respective attorneys, it is hereby **ORDERED** that:

1. This Stipulation and protective Order governs the handling of all documents, deposition testimony and exhibits, interrogatory answers, requests to admit and responses thereto, and other written, recorded or graphic matter, and information therein (hereinafter referred to as "Discovery Material"), provided by, or produced by any party or non-party ("producing party"), to any other party ("receiving party"), as well as any material submitted during testimony periods in connection with this proceeding.

Provisions Relating to Confidential Material

2. At, or prior to, disclosure (or as provided in paragraph 5), a party or non-party may designate any Discovery Material produced in this action as "Confidential Material" under the terms of this Protective Order. In designating discovery material as "Confidential Material" a party, or non-party, certifies in good faith that such material is a trade secret or

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other confidential research, development, or commercial information, or otherwise within the scope of Fed. R. Civ. P. 26(c), or the precedents thereto. Such designation extends to both the material so designated, and to the substance of the materials so designated and information therein (hereinafter "Confidential Material").

3. Confidential Material will not be disclosed to persons other than outside counsel of record and in-house legal counsel for the receiving party, their associated counsel, and paralegals and clerical personnel employed by such counsel, and engaged in preparation of the receiving party's case, stenographic reporters, members of the Trademark Trial and Appeal Board (TTAB) and its administrative personnel, and such other persons as may be qualified pursuant to this Order to receive Confidential Material, each of whom at the time of the first such disclosure shall be advised of the terms of this Order. No person who examines Confidential Material, or to whom the substance of Confidential Material is disclosed, shall disclose such Confidential Material or its substance to any person who is not entitled to receive that information under the terms of this Order. Confidential Material shall be used solely for the purposes of this proceeding.

4. No person being deposed may be shown, or otherwise have disclosed to him, discovery material designated as Confidential Material, to which the deponent would not otherwise have had lawful access; provided however, that nothing herein shall prevent use by the receiving party of any Confidential Material of a producing party in a deposition or examination of (a) any employee, officer or director of that producing party or other person designated to testify pursuant to Rule 30(b)6 (b) in a deposition or communication with any person not affiliated with the producing party, as long as such category (a) or (b) person either authored, lawfully received, or had prior lawful access to the Confidential Material.

5. If counsel of record for any party believes that any question that will be put to a witness at a deposition upon oral examination will disclose Confidential Material of that party, or that answers to any question will require such disclosure, or if such Confidential Material will be used as an exhibit during examination, such counsel shall so notify opposing counsel. Thereafter, the deposition of the witness, or confidential portions thereof, shall be taken only in the presence of persons entitled to access to the Confidential Material, and shall be separately bound by the reporter and marked as provided in paragraph 8. If any party uses Confidential Material or information derived therefrom at any deposition, in accordance with paragraph 4, the portion of the transcript thereof which relates to the Confidential Material or information shall be confidential and subject to the nondisclosure provisions of this Protective Order. The producing party may, in good faith, on the record to the deposition or by written notice to counsel for all parties no later than five (5) business days after receipt of a deposition transcript, designate all or any other portion thereof as "Confidential" under the terms of his Protective Order. During and until the five (5) business day period expires, all transcripts and the information contained therein will be deemed confidential, in their entirety, under the terms of this Protective Order.

6. If any party objects to a designation of information as confidential, that party may, at any time, notify the designating party in writing that the propriety of the designation of any document or information as "Confidential" is disputed. The parties will first try to resolve such dispute on an informal basis. Subsequently, if necessary, application may be made to the TTAB by the party seeking to challenge the designation of material as confidential and the challenging party may, if requested by the TTAB, submit the disputed material under seal as provided in paragraph 8 for in camera review by the TTAB. Should application be made to the TTAB seeking relief from a party's designation of material as confidential, the

confidential status of the information shall be maintained until a final ruling on the application by the TTAB.

7. All persons described above to whom the counsel of record for Petitioner or Registrant discloses any Confidential Material, or the substance of Confidential Material, shall agree to be bound by the terms of this Order before such disclosure is made. It shall be the responsibility of counsel of record who discloses any Confidential Material to fully advise all such persons as to the terms of the Confidentiality Agreement and as to their obligations with respect thereto.

8. All motion papers, memoranda, affidavits, exhibits, transcripts and other papers (collectively "TTAB papers") prepared in this proceeding, or to be filed with the TTAB, that contain copies of, or disclose the contents of, all or any portion of any Confidential Material, shall be marked with the title of the proceeding and the words: CONFIDENTIAL PURSUANT TO TTAB ORDER, NOT TO BE OPENED OR REVIEWED EXCEPT BY THE TTAB AND OUTSIDE COUNSEL FOR THE PARTIES"; shall be filed with the TTAB under seal, and, until further order of the TTAB, shall not be made available to anyone other than the TTAB, outside counsel for the parties to this action, and such other persons as are permitted access pursuant to this Order. Where possible, only the confidential portions of filings with the TTAB shall be filed under seal.

9. The provisions of this Order shall continue in effect until otherwise ordered by the TTAB after notice and an opportunity to be heard is afforded to the parties consenting thereto. The final determination or settlement of this proceeding shall not relieve any person who has received any Confidential Material, or agreed to be bound by the terms of this Order, from the obligations imposed by this Order, and the TTAB shall retain jurisdiction after such final determination or settlement to take appropriate action to enforce the provisions of this Order. Notwithstanding the foregoing, within thirty days

after the final determination or settlement of this proceeding (including any appeals), all Confidential Materials and copies thereof shall, at the option of counsel for the parties who have been provided with such material, either (a) be returned to counsel for those persons who produced such Confidential Material, or (b) be destroyed along with any summaries or notes containing same, provided, however, that counsel for the parties who have been provided with such Confidential Material may maintain, for the record, one copy in counsel's files only; and counsel for the parties who received Confidential Material shall thereafter promptly certify in writing to counsel for the persons who furnished said Confidential Material that, to the best of counsel's knowledge and belief, all Confidential Material and any summaries or notes containing same have been returned or destroyed except for the copy in counsel's files.

10. No party hereto shall be deemed to have waived any other objection to discovery or to the use of Confidential Material or writings in this proceeding.

11. Neither the designation of discovery material as "confidential", nor the failure to object to any other party's designation of material as "confidential", is an admission that such information does or does not constitute a trade secret or information entitled to protection under any legal theory.

12. This stipulation and order shall not apply to items or information that is, or becomes, publicly available other than through the actions of the receiving party in violation of this Order, or that any party obtains or has obtained from any source, other than those specified in paragraph 1 above, provided said party has no knowledge, information or reason to believe that said source wrongfully obtained the information, or is disclosing such information in violation of this Order.

13. This Order may be amended by further stipulation of the parties subject to the approval of the TTAB. Any party

hereto may apply to the TTAB for modification of this Order, provided, however, that the modifications will not harm the rights and interests of producing parties as described in paragraph 3, and will not be made merely to accommodate an intervenor's desire to inspect protected documents or testimony or information.

14. Testimony and evidence taken during the testimony periods in this proceeding or otherwise submitted with a Notice of Reliance may likewise be designated as Confidential Material as provided herein, and filed as provided in paragraph 8.

Date

SO ORDERED:
Trademark Trial and Appeal Board


by _____

Agreed By the Parties and Their Counsel:

TRI-STAR MARKETING, LLC
Petitioner

Dated August 8, 2005

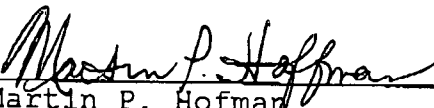
Dickenson, Peatman + Fogarty
809 Coombs Street
Napa, CA 94559

by 

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NINO FRANCO SPUMANTI S.R.L.
Registrant

Dated May 13 2005

by 

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