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

Proceeding	92045271
Party	Plaintiff Wiscon Corp. Wiscon Corp. Wiscon Corp 1945 N 15th Ave Melrose Pk, IL 60160 UNITED STATES
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Submission	Motion to Compel Discovery
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Date	12/13/2006
Attachments	Wiscon-Cantine-Mot2Cmpl-1212.pdf ( 13 pages )(240010 bytes ) Wisc-cantine-Mot2cml-ExhsA-B.pdf ( 19 pages )(378363 bytes ) Wisc-cantine-Mot2cml-ExhC-F.pdf ( 24 pages )(529324 bytes )

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

<p>WISCON CORP.</p> <p style="text-align: center;">Petitioner</p> <p>v.</p> <p>CANTINE CAPUTO, S.p.A.</p> <p style="text-align: center;">Registrant</p>	<p>Cancellation No. 92,045,271</p> <p>Reg. No. 2,984,449</p> <p><b>Motion to Compel Production of Documents</b></p>
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**MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Petitioner Wison Corp., by and through its counsel of record indicated below, herewith moves this Honorable Board, pursuant to the Federal Rules of Civil Procedure, Rule 37(a)(2)(A) and Trademark Rules, 37 C.F.R. § 2.120(e), to issue an Order compelling Registrant, Cantine Caputo, S.p.A., to produce documents requested in Petitioner's First Request For Documents to Registrant, (Exhibit A, hereto) which was served on January 30, 2006. Here, the undersigned counsel had repeatedly contacted Registrant's counsel demanding the production of documents. The Registrant's counsel has been, for all practical purposes, completely nonresponsive to any of these demand, consequently, necessitating the filing of the instant motion.<sup>1</sup>

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<sup>1</sup>The Registrant's counsel only sent (1) one correspondence regarding the documents informing Petitioner's counsel, "I have contacted the client...In the event I hear from them I will advise you accordingly." (Exhibit E). No where in that correspondence did Registrant's counsel give a time to expect the production of documents.

The grounds for this Motion are as follows:

1. On January 30, 2006, Petitioner Wiscon Corp. ("Petitioner"), served upon counsel for Registrant, Cantine Caputo, S.p.a ("Registrant"), Petitioner's First Set of Discovery Requests, which included: 1) Interrogatories to Registrant Cantine Caputo, S.p.a (Exhibit B, hereto); and Requests for Documents to Registrant (Exhibit A, hereto).
2. On October 13, 2006, Petitioner received Registrant's Response to Petitioner's First Set of Discovery Requests, (Exhibit C, hereto) but did not receive any of the required documents. Not only did Petitioner not receive any documents, Registrant made no mention of any time that Registrant planned on producing such documents.
3. On November 28, 2006, (46) forty-six days after the such documents should have been provided, Petitioner sent to Registrant's counsel, by facsimile, a written correspondence demanding Registrant to produce the documents or contact Petitioner within (7) seven business days. (Exhibit D).
4. On December 4, 2006, Registrant's counsel responded to Petitioner's counsel, by facsimile, a written correspondence stating that counsel had contacted his client, the Registrant, and had not received any response from them, but will advise Petitioner accordingly. (Exhibit E). In no where of that correspondence did Registrant's counsel inform the Registrant's counsel the time frame of when he would get back to Petitioner's counsel. There was no mention of an actual date when Petitioner's counsel could expect to receive any documents. Also, there was absolutely no explanation for the delay.

5. On December 4, 2006, Petitioner sent to Registrant's counsel, by facsimile, a written correspondence informing counsel that Registrant has still not produce any documents and has not been advised as to an actual date by which Petitioner will receive the required documents. Counsel for Petitioner then went on to inform counsel for Registrant that, unless all required documents are provided, Petitioner will file this Motion to Compel. (Exhibit F).
6. Petitioner's counsel has made a good faith effort, by conference or correspondence, to resolve with the Registrant the issues presented in the motion, and has been unable to reach an agreement. Registrant has been uncooperative and completely unresponsive in providing an actual date for production of the required documents.
7. In support of this motion, Petitioner is submitting herewith 1) its Brief in Support of Petitioner's Motion to Compel Production, 2) Exhibits A - F; and 3) a Declaration in support of Petitioner's Motion to Compel Production.

WHEREFORE Petitioner moves this Honorable Board to grant its Motion to Compel the Production of Documents because the Petitioner's counsel had repeatedly contacted Registrant's counsel demanding the documents and the Registrant's counsel has been completely uncooperative and unresponsive in this matter.

Dated: December 13, 2006

Respectfully Submitted,

A handwritten signature in black ink that reads "JoAnne M. Denison". The signature is written in a cursive style and is underlined.

JoAnne M. Denison,  
Attorney for Wiscon Corp.

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

WISCON CORP.  Petitioner  v.  CANTINE CAPUTO, S.p.A.  Registrant	Cancellation No. 92,045,271  Reg. No. 2,984,449  Motion to Compel Production of Documents
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December 13, 2006

## DECLARATION IN SUPPORT OF MOTION

The undersigned herewith states as follows:

1. On January 30, 2006, Petitioner Wiscon Corp. ("Petitioner"), served upon counsel for Registrant, Cantine Caputo, S.p.a ("Registrant"), Petitioner's First Set of Discovery Requests, which included: 1) Interrogatories to Registrant Cantine Caputo, S.p.a (Exhibit B, hereto); and Requests for Documents to Registrant (Exhibit A, hereto).
2. On October 13, 2006, Petitioner received Registrant's Response to Petitioner's First Set of Discovery Requests, (Exhibit C, hereto) but did not receive any of the required documents. Not only did Petitioner not receive any documents, Registrant made no mention of any time that Registrant planned on producing such documents.
3. On November 28, 2006, (46) forty-six days after the such documents should have

been provided, Petitioner sent to Registrant's counsel, by facsimile, a written correspondence demanding Registrant to produce the documents or contact Petitioner within (7) seven business days. (Exhibit D).

4. On December 4, 2006, Registrant's counsel responded to Petitioner's counsel, by facsimile, a written correspondence stating that counsel had contacted his client, the Registrant, and had not received any response from them, but will advise Petitioner accordingly. (Exhibit E). No where, in any of the correspondence did Registrant's counsel inform the Registrant's counsel the time frame of when he would get back to Petitioner's counsel. There was no mention of an actual date when Petitioner's counsel could expect to receive any documents. Also, there was absolutely no explanation for the delay.
5. On December 4, 2006, Petitioner sent to Registrant's counsel, by facsimile, a written correspondence informing counsel that Registrant has still not produce any documents and has not been advised as to an actual date by which Petitioner will receive the required documents. Counsel for Petitioner then went on to inform counsel for Registrant that, unless all required documents are provided, Petitioner will file this Motion to Compel. (Exhibit F).
6. Petitioner's counsel has made a good faith effort, by conference or correspondence, to resolve with the Registrant the issues presented in the motion, and has been unable to reach an agreement. Registrant has been uncooperative and completely unresponsive in providing an actual date for production of the required documents.

Dated: December 13, 2006

JoAnne Denison

JoAnne M. Denison



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CERTIFICATE OF SERVICE

I hereby certify that the attached PETITIONER'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS and PETITIONER'S BRIEF IN SUPPORT OF MOTION TO COMPEL are being sent by facsimile and by US Postal Service, First Class Mail, postage prepaid, on December 13, 2006, in an envelope addressed to:

Andrew C. Aitken, Esq.  
Venable LLP  
575 7th Street, NW  
Washington, DC 20004-1601  
Fax (202) 344-8300

JoAnn Denison

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

WISCON CORP.  Petitioner  v.  CANTINE CAPUTO, S.p.A.  Applicant	Cancellation No. 92,045,271  Petitioner's Brief in Support of Motion to Compel
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PETITIONER'S BRIEF IN SUPPORT OF MOTION TO COMPELI. Introduction

This brief is filed in support of Petitioner's Motion to Compel, filed herewith. Petitioner now brings this Motion to Compel due to the complete lack of response from the Registrant as to when the Petitioner can expect to actually receive the documents it requires to prosecute the above cancellation proceeding. On multiple occasions, the Petitioner's counsel has contacted the Registrant's counsel and demanded the production of the required documents. At no time did the Registrant's counsel produce any documents and, furthermore, he has been completely unresponsive in providing an actual date of for the production of the required documents. The Petitioner's motion should be granted because: 1) Petitioner's counsel had made a good faith effort, by conference or correspondence, to resolve with the Registrant, the issues presented in the motion; and 2) Registrant has been uncooperative and completely unresponsive in producing the

documents, as well as, failing to provide an actual date to expect their production.

## II. Petitioner's List and Brief Description of Documents Not Produced by Registrant

Registrant has not produced any documents to Petitioner's First Request for Documents Nos. 1-41. Registrant has responded to Petitioner's First Request for Documents, but has failed to produce any of the documents it stated it would provide therein. (For a further List and Description, See Copy of Registrant's Response to Petitioner's First Request for Documents, Exhibit C).

## III. Argument

Accordingly, "If a party fails...to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion before the Trademark Trial and Appeal Board for an order to compel...production and an opportunity to inspect and copy." Trademark Rule 2.120(e), 37 C.F.R § 2.120(e). The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. *Id.* It is well settled that motions to compel must comply with the special requirements of Trademark Rule 2.120 (e) to receive favorable treatment by the Board. See TBMP § 523.02 and the authorities cited therein.

Here, the Petitioner's counsel has made a good faith effort to resolve the issue by multiple facsimile correspondences with the counsel of the Registrant, but has been unable to reach an agreement because the Registrant's counsel has been completely

uncooperative and unresponsive. Therefore, the Board should grant Petitioner's Motion to Compel.

A. Petitioner has made a good faith effort and despite these efforts, Registrant has been unresponsive and failed to produce any documents.

According to Trademark Rule 2.2120(e), the moving party must show that they have made a good faith effort to resolve the issues presented in the motion. *Id.* See also *Envirotech Corp. v. Compagnie Des Lampes*, 219, USPQ 448 (TTAB 1979), *Medtronic, Inc. v. Paccsetter Systems, Inc.*, 222 USPQ 80, 83 (TTAB 1984), and *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666, 667 (TTAB 1986). Here, the Petitioner's counsel has made numerous attempts corresponding with the Registrant's counsel to resolve the issue in this motion. Despite of these efforts, the Registrant has been uncooperative and unresponsive, failing to satisfy the discovery needs of the Petitioner, and thus instigating this motion.

On October 13, 2006, Petitioner received Registrant's Response to Petitioner's First Set of Discovery Requests, (Exhibit C) but did not receive any documents. For (46) forty-six days, Petitioner's counsel received no correspondence from the Registrant on whether she would be receiving any of the documents that Registrant agreed to produce in his Response. On November 28, 2006, Petitioner's counsel sent to Registrant's counsel, by facsimile, a written correspondence demanding Registrant to produce the documents or contact Petitioner within 7 business days with a production date. (Exhibit D). On December 4, 2006, Registrant's counsel responded to Petitioner's counsel, by facsimile, a written correspondence stating that counsel had contacted their client, the

Registrant, and had not received any response from them, but will advise Petitioner accordingly. (Exhibit E). In that correspondence, the Registrant's counsel failed to state whether they would be producing any documents or when the Petitioner's counsel would expect such documents actually be received. *Id.* On December 4, 2006, Petitioner's counsel sent to Registrant's counsel, by facsimile, a written correspondence informing him that Registrant has still not produce any documents and he has not given a time that Petitioner could expect to receive such documents. (Exhibit F). Petitioner's counsel then went on to inform Registrant's counsel that, unless all required documents were provided, Petitioner will file a Motion to Compel. *Id.* Since that time, Registrant's counsel has been completely unresponsive and uncooperative in producing any documents. "If the party seeking discovery is dissatisfied with his opponents answer to [his] contact, he may then file a motion to compel supported by the statement required..." *Envirotech*, 219 USPQ at 450. Here, the Petitioner's counsel, left with no documents and no idea of when to expect such documents, was left with no choice but to file this Motion.

Overall, Petitioner's counsel has made numerous attempts to correspond with the Registrant's counsel to resolve this issue, but has been unable to reach an agreement. Since good faith effort had been made to resolve the issue, no agreement had been reached, and Registrant had been completely uncooperative and unresponsive, the Board should grant this Motion to Compel the Production of Documents.

III. Conclusion

For the reasons state herein, Petitioner's Motion to Compel the Production of Documents should be granted forthwith by this Honorable Board.

Dated: December 13, 2006

Respectfully submitted,

  
JoAnne M. Denison

Denison & Assocs, PC  
212 W. Washington St., #2004  
Chicago, IL 60606  
(312) 553-1300 phone  
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# EXHIBIT A

WISCON CORP. v. CANTINE CAPUTO S.PA.  
CANCELLATION NO. 92,045,271

## STATEMENT

A. As used herein, "Registrant's Mark" refers to the mark "CAPUTO" and all variations thereof, whether used alone or in combination with other words, terms and/or designs.

B. As used herein, "Petitioner's Mark" refers to the mark "CAPUTO" and all variations thereof, whether used alone or in combination with other words, terms and/or designs.

C. As used herein, "person" or "persons" means both natural persons and artificial entities.

D. As used herein, "entity" or "entities" means a corporation, partnership, joint venture, sole proprietorship, trust, association, firm and any other business style in whatever form.

E. Where identification of a "person" is requested, please state the correct legal name, the last known address and telephone number, employer, job title or description, and relationship to or capacity with Registrant, if any.

F. As used herein, "document" and "documents" means any paper, writing and graphic or aural material, however recorded or reproduced, in any media, paper, electronic or otherwise, including drafts or other preliminary material, in Registrant's possession, custody or control, or of which Petitioner has knowledge, wherever located, whether an original or copy. Each copy of a document embodying or having attached to it any alterations, notes, comments or other material not embodied in or attached to the original or any other copy being identified shall be deemed a separate document.



G. Where identification of a document or thing is requested, please state the date of the document, identify the author, specify the type of document (e.g., letter, memorandum, e-mail, chart, etc.) Or some other means of identifying it, identify each of the recipients, specify its present location and identify its custodian, and, if a document was but is not longer in Registrant's possession or control, please state what disposition was made of it and when.

H. Whenever an interrogatory seeks the identity of documents and things, Petitioner will accept Registrant's production of the documents or thing in lieu of all elements of the identification which otherwise would be required pursuant to paragraph G, above, except the identification of each recipient of the document or thing which must be provided but only if all documents and things are segregated by the interrogatory to which their identification should have been responsive.

I. In the event Registrant believes an interrogatory cannot be answered without disclosing proprietary information, Registrant should otherwise answer such interrogatory to the fullest extent possible and disclose the reason why Registrant is not providing the additional information necessary to answer the interrogatory completely. If a document or thing contains proprietary information, such information may be deleted prior to Registrant's producing the document, as long as Registrant marks which portion of the document or thing contains the deleted material.

J. The following interrogatories are deemed continuing in character and, therefore, require the filing by Registrant of supplemental answers if other, further, or different information is secured or available prior to the trial of the above proceeding.

## REQUEST FOR PRODUCTION OF DOCUMENT

1. Produce any and all documents that support the registration of the mark CAPUTO.
2. Produce any and all documents that relate to the length of time the mark CAPUTO has been used on food products and services.
3. Produce any and all documents related to sales, distribution and processing of food products with which the mark CAPUTO has been affiliated, and on which it has been used, including name, address, phone and all other identifying information on vendors, customers and other entities involved in the sale and distribution of CAPUTO products in the US, including past, present and future sales of said products.
4. Produce any and all documents relating to sales of CAPUTO branded products analyzed by year and by quarter for each product line sold.
5. Provide copies of all and any accounting records to support any and all sales figures.
6. Produce any representative samples that show the CAPUTO mark imprinted both on packaging for food products and also on any advertising, marketing materials, websites, on brochures, invoices and any other variety of manners customary in the trade.
7. Produce representative samples of any and all documents relating to or referring to any and all marketing, including advertising, distribution of promotional materials, coupons, internet displays, direct mail, or telephone solicitation relating to the

CAPUTO mark.

8. Produce representative samples or any and all documents showing or evidencing the CAPUTO mark.
9. Produce any and all documents that support or relate to the length of time the mark CAPUTO has been used in intrastate, interstate commerce and foreign.
10. Produce any and all documents that support or relate to your contention that you own the entire right, title and interest in and to the mark CAPUTO.
11. Produce any and all agreements that involve the ownership, transfer, assignment, sale, or licensing of the mark CAPUTO.
12. Produce any and all correspondence or memoranda that discuss the agreements produced in response to Interrogatory Request Number 10.
13. Produce any and all documents sent by you or on your behalf to the U.S. Patent & Trademark Office, or any division or branch thereof, concerning the application for registration of the mark CAPUTO.
14. Produce any and all documents related the use of the mark CAPUTO in the following manner in interstate, intrastate and foreign commerce; a grocery store, any website offering wine products for sale by internet, mail, phone and fax.
15. Produce any and all documents, including any consumer surveys or questionnaires, indicating that the marks CAPUTO and CAPUTO for the two distinct companies do not create a likelihood of confusion to consumers.
16. Produce documents sufficient to identify each and every grocery store or other retail outlet at which CAPUTO branded products and services are sold in the United

- States. This Request is only intended to cover those grocery stores or other retail outlets at which Registrant is aware that CAPUTO branded products are sold.
17. Produce any and all documents that support or relate to your contention that the marks CAPUTO and CAPUTO are distinguishable to the consumer in the target marketplace.
  18. Produce documents sufficient to identify: (a) each of your employees involved in the sale of goods and services sold under the CAPUTO mark during the last five years; and (b) each of your distributors of goods and services sold under the CAPUTO mark during the last five years.
  19. Produce any and all documents that evidence or refer to any and all communications between Registrant and any Third Party regarding the use of the word CAPUTO in any business that relates or refers to CAPUTO Goods and Services or in any food business.
  20. Produce any and all documents that evidence or refer to any and all communications between Registrant and any Third Party regarding the use of the word CAPUTO in commerce that relates to CAPUTO Goods and Services or in any food business.
  21. Produce any trademark searches regarding the mark CAPUTO, including any searches that identify the use of CAPUTO as a mark for Goods and Services, and food-related services, such as restaurants or grocery stores by any Third Party in the United States.
  22. Produce any and all documents that evidence or refer to any confusion in the

marketplace between the mark CAPUTO and CAPUTO as used in business, goods or services, including any memoranda, correspondence, advertisements, or product samples.

23. Produce any and all documents that evidence or refer to any confusion in the marketplace between the mark CAPUTO and CAPUTO including, but not limited to, marketing surveys, shelf position surveys, and trademark surveys.
24. Produce any and all documents that show the retail outlets in which goods or services bearing the CAPUTO mark have been sold since the date of first use for such goods or services, and the dollar and unit amount of the sales in each of the retail locations, on at least a monthly and yearly basis.
25. Produce any and all documents sufficient to show the types of wines sold under the CAPUTO mark by Registrant, and the date of first use of the CAPUTO mark by Registrant for each such wine; and for each type of wine, whether Registrant continues to sell that type of wine and, if not, the date upon which Registrant ceased sale of the type(s) of wine.
26. Produce any and all documents sufficient to show all Related Companies of the Registrant with respect to the use of the Registrant's mark, CAPUTO, in connection with the sale of CAPUTO goods and services.
27. Produce any and all documents which evidence the dollar amount which has been spent in the advertising and promotion of the goods and services rendered under the CAPUTO mark on at least a monthly and yearly basis both in the United States and elsewhere.

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28. Produce representative samples of any and all documents evidencing advertising and promotion relative to goods and services rendered under the CAPUTO mark.
  29. Produce any and all documents evidencing or discussing the relationship (whether adverse or cooperative) between Registrant and any other persons using the term CAPUTO in connection with the offering for sale of goods or services in the wine business in interstate, intrastate commerce and abroad.
  30. Produce any and all documents that relate to, or discuss, your decision to apply for the registration of CAPUTO.
  31. Produce any and all documents that relate to your adoption of the word CAPUTO as a mark.
  32. Produce any and all news and press releases relating to the CAPUTO mark.
  33. Produce any and all demand letters, cease and desist letters, and notices of opposition regarding the CAPUTO mark, and documents relating to or referring to the same.
  34. Produce any and all demand letters that you yourself have filed opposing registration of another mark based on the use of the CAPUTO mark.
  35. Produce any and all documents relating to cancellations or other proceedings filed with the U.S. Patent & Trademark Office relating to the CAPUTO mark.
  36. Produce any and all documents sent or received by you or by someone acting on your behalf in connection with any and all adversarial proceedings involving the CAPUTO mark or any variation thereof, including, without limitation, proceedings before the TTAB, Bureau of Customs, FTC, or any court.

37. Produce all deposition transcripts, answers to Interrogatories, responses to requests for production of documents, and answers to requests for admission of facts in all proceedings and litigations involving the CAPUTO mark deriving from any court or administrative body.
38. Produce any and all documents sent or received by you or by someone on your behalf in connection with any objections to the use, attempted use, intended use, registration, intended registration or attempted registration of the CAPUTO mark or any mark alleged to be confusingly similar therewith.
39. Produce any and all documents relating to service mark registrations and applications to register concerning the CAPUTO mark.
40. Produce any and all documents reviewed or consulted in connection with the responses to any interrogatories.
41. Produce all documents that you identified in your answers to Interrogatories which were served upon you herewith, namely, Interrogatories No. 1-5, 9, 16, 20 and 21.

Respectfully submitted,

  
JoAnne M. Denison  
Counsel of Record for Wiscon Corp.

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# EXHIBIT B

WISCON CORP. v. CANTINE CAPUTO S.PA.  
CANCELLATION NO. 92,045,271



## INTERROGATORIES

1. 1. Identify the business of Registrant by setting forth its:
  - a. Form of organization;
  - b. Addresses of all business offices;
  - c. The nature of its business;
  - d. The names and addresses of all predecessors in business;
  - f. The identity and addresses of all related corporations, including, but not limited to holding corporations, parent corporations, subsidiaries and divisions, or corporations holding more than half the stock of Registrant, the names and addresses of these entities and the nature of the business carried on by each;
    - g. Identify all documents which establish or tend to establish the information being provided in this Interrogatory.
2. a. Identify each officer (or person of comparable managerial responsibility) of Registrant, and all entities identified in 1(e) and (f), above, and set forth the duties of each thereof in the conduct of the business of these entities.
  - b. Identify all documents which establish or tend to establish the information provided in this Interrogatory.
3. a. Separately identify each product and/or service ("product/service") upon which was applied Registrant's Mark (see instructions for definition of "Registrant's Mark");
  - b. Set forth the common or industry name or designation for each such product/service.
  - c. Identify all documents which establish or tend to establish the information being

provided in this Interrogatory.

4. State each of Registrant's Marks ever used, and currently used by Registrant, and give approximate dates (month/year) of any such use.
5. Identify every agreement, by nature of a license or otherwise, which Registrant or anyone in privity therewith entered into relating to or involving the use, nature of goods and/or quality of goods/services provided under Registrant's Mark.
6. Identify all communications, documents and things referring or relating to any conflict of the use of Registrant's Mark with any other mark of a third party, including notices to and from third parties regarding conflicts and/or trademark or service mark infringement, etc.
7. Separately with respect to each product/service offered under Registrant's Mark:
  - a. Set forth the dates when Registrant's Mark was first used and last used in commerce anywhere in the United States and abroad on each and every product/service offered under Registrant's Mark.
  - b. Identify specimens illustrating all manners in which Registrant has used its Mark, including, but not limited to: boxes, bags, cartons, other containers and packaging, tags, labels, placards, counter cards, stationary, business cards, brochures, advertising, etc;
  - c. Identify all documents and things relating to the use of the specimens identified in the answer to part (b) of this interrogatory, including invoices, shipping labels and documents and all things which can or will be used to establish dates of first use in interstate and/or intrastate commerce;

- d. Identify the entity or entities from which Registrant procured or acquired the specimens identified in the answer to part (b) of this interrogatory;
- e. Identify all advertising and promotional materials used, other than the specimens identified in the answer to part (b) of this interrogatory relating to, using, or involving Registrant's Mark;
- f. State all advertising agencies used, if any, for all products/services sold under the Registrant's Mark, including mark variations;
- g. State whether there has ever been any period of six months or longer when Registrant's Mark was not used, including variations, in connection with its goods/services and provide reasons, if any for such non-use;
- h. Identify all promotional programs used by Registrant for Registrant's Mark, and identify all documents and things referring or relating to promotional programs involving Registrant's Mark.
- i. For each year of any sales by Registrant, state the sales volume in dollars and units sold of all product/services sold under Registrant's Mark, according to the common designation used by Registrant to identify its products/services, of sales made by year for Registrant's Mark.
- j. For each year of any sales by Registrant, state the amount of advertising expenditures made by Registrant, according to the common designation used by Registrant to identify its products/services expended each year by Registrant since Registrant's Mark was first used.
- k. Identify the person or persons having the most complete knowledge of answers

to this Interrogatory.

8. With respect to the use of Registrant's Mark, separately for each product/service offered under the mark, please state, with reference to the US and/or any foreign country where first used in that country, if priority or any benefit is claimed therewith:
  - a. The person who created or conceived of the mark;
  - b. The date on which the mark was first applied to any goods or services;
  - c. The location where the mark was first applied to any goods/services;
  - d. The goods/services to which this mark was first applied;
  - e. The individual responsible for the decision to adopt and use this mark;
  - f. All persons who participated in the decision to adopt and use the mark;
  - g. The date of the ultimate decision of Registrant to use this mark;
  - h. The geographical locations where the goods/services using the mark were first sold or used;
  - i. The person or persons having the most knowledge of answers provided to this Interrogatory; and,
  - j. Identify all documents which establish or tend to establish the information being provided in this Interrogatory.
9. Identify the name of any predecessor in interest, if any from which Registrant claims it acquired any interest in any of its marks, state the circumstances surrounding any acquisition of Registrant's Mark, and identify any documents and things associated with acquisition of rights through a predecessor in interest.

10. Identify the person or persons having the most complete knowledge of all trademark investigations (infringement, availability, etc.) regarding Registrant's Mark, and identify all documents and things referring or relating to all such investigations, including, but not limited to, requests for and results of any and all investigations of the records of the U.S. Patent and Trademark Office, state and local agencies, common law usages and otherwise.
11. a. State whether Registrant has become aware of any other uses of the marks containing the term "CAPUTO" either alone or in combination with other terms, words or designs, or any mark which Registrant believes might conflict with its use of Registrant's Mark.
- b. Identify all documents pertaining or relating to Registrant's awareness of conflicts between its mark and other marks containing the term "CAPUTO" or a variation thereof, including, but not limited to: cease and desist letters, responses from such letters, samples of labels, advertising, brochures and other things found by Registrant, and state how such items were discovered.
12. Identify all third parties which sell or distribute goods/services under any of Registrant's Mark, and identify all documents and things associated with said third parties, including, but not limited to license agreements, sample purchase orders, documents evidencing negotiations for licensing, etc.
13. State whether any of the goods/services identified in the answer to Interrogatory 10 are offered by Registrant or the third party under any other mark or without a mark in addition to those being provided under the mark and identify all documents and

- things associated with those marks.
14.
    - a. Describe the geographical area of the United States in which Registrant has sold its goods or provided services which are identified by Registrant's Mark (include variations,) and identify separately, by licensee, all such goods/services provided by area through any licensee and state dates of use for each geographic area.
    - b. Describe the class of purchasers to which Registrant sells or has sold its goods/services under its mark either by itself or through a licensee, and give approximate percentages of each class or type of purchaser or distributor sold to.
    - c. Describe the channels of trade which goods/services of Registrant bearing Registrant's Mark travel through.
    - d. Identify the person or persons having the most complete knowledge of the facts set forth in the answer to this Interrogatory; and,
    - e. Identify all documents which establish or tend to establish the information being provided in this Interrogatory.
  15. Identify each employee or agent of Registrant who has ordered products bearing Registrant's Mark for sale to consumers, or has ordered materials (advertising, brochures, flyers, ads, etc.) bearing Registrant's Mark or packaging or labeling which have been provided to prospective purchasers or customers.
  16. For each year Registrant's mark has been used, identify all manufacturers of product and amounts of product purchased from that manufacturer bearing the mark according to the common model or product designation code used by Registrant to identify its products.

17. Identify all documents and things involved or relating to each attempt to register Registrant's Mark with any governmental agency, including any refusal to grant the registration sought, cancel any such registration, etc.
18. Identify all documents and things relating to any policies Registrant may have regarding use/display of Registrant's Mark.
19. State whether Registrant will assert or claim in this proceeding that Registrant's Mark has acquired any goodwill associated therewith and identify all documents and things tending to establish goodwill associated with any of Registrant's Mark, including, but not limited to, business records, financial records, sales and advertising records, etc.
20. State whether Registrant is aware of any instance where, because of Petitioner's use of "CAPUTO" or Registrant's use of "CAPUTO" any person has been confused, mistaken or deceived as to source of origin, and if so, state when, the parties and marks involved and identify all documents and things associated with such claims.
21. State whether Registrant has had conducted any surveys (including, but not limited to, shelf positioning, likelihood of confusion, etc.) relating to the use of Registrant's Mark, and identify copies of the results of such surveys.
22. State all reasons and identify all documents and things which establish or tends to establish why Registrant believes that "CAPUTO" is not confusingly similar to Petitioner's Mark, "CAPUTO."
23. Identify all persons who are or were responsible for reviewing the Official Gazette of the Patent Office for marks which do or might conflict with Registrant's Mark and

- state the time periods for which they held this responsibility.
24. Identify each person, if any, whom Registrant expects to call as an expert witness during the testimony period of this opposition proceeding and provide a brief synopsis of the expected testimony of such witness.
  25. State whether any documents or things referring or relating to any Interrogatory provided herein are no longer available and state the reasons for the unavailability.
  26. Identify any and all copies of any written document retention or destruction policy which the Registrant has.
  27. Identify every person consulted with who provided information, documents or things in the preparation of answers to the foregoing interrogatories and identify the particular interrogatory about which each person provided information.
  28. Identify all vendors by name, address, phone number and list all items purchased through them both past and present with whom you or your affiliates are currently using.
  29. Identify all customers who have purchased wine products from you in the past, have current order or open orders, or who have pre-ordered both in the U.S. and in foreign territory.
  30. Identify by specific number count of all visitors to any of your websites referring to the term or mark "CAPUTO."
  31. Identify all websites that make reference to the term or mark "CAPUTO."



Respectfully submitted,



JoAnne M. Denison

Counsel of Record for Wiscon Corp.

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Chicago, IL 60606-3487  
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# EXHIBIT C

WISCON CORP. v. CANTINE CAPUTO S.P.A.  
CANCELLATION NO. 92,045,271

DEC 12 2008 10:55 AM  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Wiscon Corp.

Petitioner,

vs.

Cantine Caputo S.p.a.

Respondent and Registrant.

Attorney's Reference: 40907-184225

Cancellation No. 92045271

Reg. No. 2984449

Mark: CAPUTO

**REGISTRANT'S RESPONSE TO PETITIONER'S FIRST  
REQUEST FOR DOCUMENTS**

Pursuant to Rules of the Trademark Trial and Appeal Board 37 CFR 2.120 (1) and Rule 34 Fed.R.Civ.P., Registrant Cantine Caputo S.p.a (hereinafter Registrant or Cantine Caputo), hereby responds to Petitioner Wiscon Corp. (Wiscon or Petitioner), First Set of Requests for Documents to Registrant.

**INTRODUCTION**

The following response is based upon information and documents presently available to and located by Cantine Caputo and its attorneys. Cantine Caputo has not completed investigation of the facts to this case, has not completed discovery in this action, and has not completed preparation for trial. The responses given herein are without prejudice to Cantine Caputo's right to produce any subsequently discovered documents or to revise these responses if further discovery so indicates.

Cantine Caputo's response shall not be deemed to constitute admissions (i) that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence, or (ii) that any statement or characterization in Wiscon's First set of Request for Documents is accurate or complete.

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GENERAL OBJECTIONS

1. Cantine Caputo objects to each instruction, definition or request to the extent that it seeks documents that are protected from discovery by the attorney-client privilege, attorney work product immunity doctrine, or any other applicable privilege. Nothing in these responses shall be construed as a waiver of any such privilege.

2. Cantine Caputo objects to each instruction, definition or request to the extent that it seeks to impose any obligation or responsibility upon Cantine Caputo other than those mandated by the Rules of the Trademark Trial and Appeal Board.

3. Cantine Caputo objects to each instruction, definition or request to the extent that it calls for an interpretation of any term or terms not defined on the grounds that its interpretation of such term or terms may not be consistent with what Wiscon intended.

4. Cantine Caputo objects to each instruction, definition or request to the extent that it purports to seek or require Cantine Caputo to produce or provide information that is not within its possession, custody or control.

5. The applicable foregoing general objections are hereby incorporated by reference into each of the specific objections and responses that follow, and shall not be repeated in every response to which they are applicable.

6. Cantine Caputo objects to providing confidential information without first entering into an appropriate protective order protecting such information from disclosure.

7. Cantine Caputo objects to producing the documents in 30 days because it presents an undue burden on the Registrant. Cantine Caputo will produce documents

according to an agreed upon schedule or, in the absence of such an agreed upon schedule, pursuant to its own reasonable time frame for production.

8. Registrant objects to identifying each document potentially responsive to these requests because it is unduly burdensome and objects to segregating documents as requested in view of duplicative and extensive requests that Petitioner has proponded because the exercise is unduly burdensome.

8. In addition to the foregoing general objections, Cantine Caputo has specific objections to certain document requests as set forth below. The stating of a specific objection or response shall not be construed as a waiver of these general objections. Canine Caputo reserves the right to supplement these responses and to make further objections.

### **RESPONSE TO SPECIFIC REQUESTS**

#### **REQUEST NO. 1**

Produce any and all documents that support the registration of the mark CAPUTO.

#### **RESPONSE TO REQUEST NO. 1**

The Registrant objects to this request because the term "the mark CAPUTO" is not defined and therefore is vague and ambiguous. The Registrant further objects to this request because it is overly broad and unduly burdensome. Notwithstanding these objections, Registrant will provide a copy of the specimen and other documents filed with the Trademark office used to support the registration.

#### **REQUEST NO. 2**

Produce any and all documents that relate to the length of time the mark CAPUTO has been used on food products and services.

#### **RESPONSE TO REQUEST NO. 2**

The Registrant objects to this request because the term "the mark CAPUTO" is not defined and therefore is vague and ambiguous. The Registrant further objects because the term "food products and services" is vague and ambiguous. The Registrant further objects to this request because it is overly broad and unduly burdensome. Notwithstanding these objections, the Registrant will provide any documents that

evidence its sales or distribution of food products in the United States under the CAPUTO mark.

**REQUEST NO. 3**

Produce any and all documents related to sales, distribution and processing of food products with which the mark CAPUTO has been affiliated, and on which it has been used, including name, address, phone and all other identifying information on vendors, customers and other entities involved in the sale and distribution of CAPUTO products in the US, including past, present and future sales of said products.

**RESPONSE TO REQUEST NO. 3**

The Registrant objects to this request because the term "the mark CAPUTO" is not defined and therefore is vague and ambiguous. Registrant further objects because the term "food products and services" is vague and ambiguous. The Registrant further objects to this request because it is overly broad and unduly burdensome. Notwithstanding these objections, the Registrant will provide any documents that evidence the identity of any distributor of its wines in the United States under the CAPUTO mark that is affiliated with Registrant in response to this request.

**REQUEST NO. 4**

Produce any and all documents relating to sales of CAPUTO branded products analyzed by year and by quarter for each product line sold.

**RESPONSE TO REQUEST NO. 4**

The Registrant objects to this request because the term the mark "CAPUTO" is not defined and therefore is vague and ambiguous. The Registrant further objects to this request because it is overly broad and unduly burdensome. Notwithstanding these objections, Registrant will provide documents sufficient to show the sale of products it has made under the CAPUTO mark since 1995 in the United States.

**REQUEST NO. 5**

Provide copies of all and any accounting records to support any and all sales figures.

**RESPONSE TO REQUEST NO. 5**

Registrant objects to this request because the terms "accounting records" and "sales" figures are vague and ambiguous. The Registrant further objects to this request because it is overly broad and unduly burdensome. Notwithstanding these objections, Registrant will provide documents sufficient to show the sale of products it has made under the CAPUTO mark in the United States since the launch of its products in the United States.

**REQUEST NO. 6**

Produce any representative samples that show the CAPUTO mark imprinted both on packaging for food products and also on any advertising, marketing materials, websites, on brochures, invoices and any other variety of manners customary in the trade.

**RESPONSE TO REQUEST NO. 6**

The Registrant objects to this request because the term the mark "CAPUTO" is not defined and therefore is vague and ambiguous. Registrant further objects because the term "food products" is vague and ambiguous. The Registrant further objects to this request because it is potentially overly broad and unduly burdensome. Notwithstanding these objections, Registrant will provide documents representative of advertising and marketing materials for the sale of products it has made under the CAPUTO mark since 1995 in the United States in response to this request.

**REQUEST NO. 7**

Produce representative samples of any and all documents relating to or referring to any and all marketing, including advertising, distribution of promotional materials, coupons, internet displays, direct mail, or telephone solicitation relating to the CAPUTO mark.

**RESPONSE TO REQUEST NO. 7**

The Registrant objects to this request because the term the mark "CAPUTO" is not defined and therefore is vague and ambiguous. The Registrant further objects to this request because it is overly broad and unduly burdensome. Notwithstanding these objections, Registrant will provide documents representative of marketing, including advertising, distribution of promotional materials, coupons, internet displays, direct mail, or telephone solicitation relating to the CAPUTO mark as used by the Registrant in connection with the sale of wines in the United States.

**REQUEST NO. 8**

Produce representative samples or any and all documents showing or evidencing the CAPUTO mark.

**RESPONSE TO REQUEST NO. 8**

The Registrant objects to this request because the term the mark "CAPUTO" is not defined and therefore is vague and ambiguous. Registrant further objects because the request is overly broad, potentially unduly burdensome and encompasses irrelevant material and is not reasonably calculated to lead to the discovery of relevant evidence. Notwithstanding these objections, Registrant will provide representative samples of the

CAPUTO mark as used by the Registrant in connection with the sale of wines sold in the United States in response to this request.

**REQUEST NO. 9**

Produce any and all documents that support or relate to the length of time the mark

CAPUTO has been used in intrastate, interstate commerce and foreign.

**RESPONSE TO REQUEST NO. 9**

The Registrant objects to this request because the term "the mark CAPUTO" is not defined and therefore is vague and ambiguous. Registrant further objects because the request is overly broad, potentially unduly burdensome and encompasses irrelevant material and is not reasonably calculated to lead to the discovery of relevant evidence. Notwithstanding these objections, Registrant will provide documents sufficient to show the duration of use of the CAPUTO mark as used by the Registrant in connection with the sale of wines in the United States.

**REQUEST NO. 10**

Produce any and all documents that support or relate to your contention that you own the entire right, title and interest in and to the mark CAPUTO.

**RESPONSE TO REQUEST NO. 10**

The Registrant objects to this request because the term "the mark CAPUTO" is not defined and therefore is vague and ambiguous. Registrant further objects because the request is vague and ambiguous, and potentially overly broad and unduly burdensome. Notwithstanding these objections Cantine Caputo will agree to make a reasonable search for documents that show it owns its trademark CAPUTO.

**REQUEST NO. 11**

Produce any and all agreements that involve the ownership, transfer, assignment, sale, or licensing of the mark CAPUTO.

**RESPONSE TO REQUEST NO. 11**

The Registrant objects to this request because the term "the mark CAPUTO" is not defined and therefore is vague and ambiguous. Notwithstanding these objections, Registrant will produce any documents that evidence of the transfer ownership or license of the CAPUTO mark as used by the Registrant in connection with the sale of wines.



**REQUEST NO. 12**

Produce any and all correspondence or memoranda that discuss the agreements produced in response to Interrogatory Request Number 10.

**RESPONSE TO REQUEST NO. 12**

The Registrant objects to this request because the term the mark "CAPUTO" is not defined and therefore is vague and ambiguous. Notwithstanding these objections, Registrant will produce any correspondence or related memoranda that relate to the transfer of ownership or license of the CAPUTO mark as used by the Registrant in connection with the sale of wines.

**REQUEST NO. 13**

Produce any and all documents sent by you or on your behalf to the U.S. Patent & Trademark Office, or any division or branch thereof, concerning the application for registration of the mark CAPUTO.

**RESPONSE TO REQUEST NO. 13**

The Registrant objects to this request because the term the mark "CAPUTO" is not defined and therefore is vague and ambiguous. Notwithstanding this objection Registrant will produce documents in response to this request as they relate to the filing and prosecution of trademarks owned by the Registrant.

**REQUEST NO. 14**

Produce any and all documents related the use of the mark CAPUTO in the following manner in interstate, intrastate and foreign commerce; a grocery store, any website offering wine products for sale by internet, mail, phone and fax.

**RESPONSE TO REQUEST NO. 14**

The Registrant objects to this request because the term "the mark CAPUTO" is not defined and therefore is vague and ambiguous. The Registrant objects to this request because it is overly broad and unduly burdensome. Notwithstanding this objection, Registrant will produce representative documents depicting the Registrants CAPUTO mark as used in the United States.

**REQUEST NO. 15**

Produce any and all documents, including any consumer surveys or questionnaires, indicating that the marks CAPUTO and CAPUTO for the two distinct companies do not create a likelihood of confusion to consumers.

**RESPONSE TO REQUEST NO. 15**

The Registrant objects to this request because it is overly broad and unduly burdensome and vague and ambiguous. Notwithstanding this objection, Registrant will produce any consumer surveys or questionnaires indicating that the marks CAPUTO owned by Registrant and CAPUTO as owned by Petitioner do not create a likelihood of confusion to consumers.

**REQUEST NO. 16**

Produce documents sufficient to identify each and every grocery store or other retail outlet at which CAPUTO branded products and services are sold in the United States.

This Request is only intended to cover those grocery stores or other retail outlets at which Registrant is aware that CAPUTO branded products are sold.

**RESPONSE TO REQUEST NO. 16**

The Registrant objects to this request because it is overly broad and unduly burdensome and vague and ambiguous. The Registrant objects to this request because the term the mark "CAPUTO" is not defined and therefore is vague and ambiguous. Registrant further objects because it is duplicative of other requests. Notwithstanding this request, Registrant will provide any documents that identify retail outlets which sell its Caputo wines.

**REQUEST NO. 17**

Produce any and all documents that support or relate to your contention that the marks CAPUTO and CAPUTO are distinguishable to the consumer in the target marketplace.

**RESPONSE TO REQUEST NO. 17**

Registrant agrees to produce documents responsive to this request.

**REQUEST NO. 18**

Produce documents sufficient to identify: (a) each of your employees involved in the sale of goods and services sold under the CAPUTO mark during the last five years; and (b) each of your distributors of goods and services sold under the CAPUTO mark during the last five years.

**RESPONSE TO REQUEST NO. 18**

Registrant agrees to produce any document responsive to this request.

**REQUEST NO. 19**

Produce any and all documents that evidence or refer to any and all communications between Registrant and any Third Party regarding the use of the word CAPUTO in any business that relates or refers to CAPUTO Goods and Services or in any food business.

**RESPONSE TO REQUEST NO. 19**

Registrant agrees to produce any document responsive to this request.

**REQUEST NO. 20**

Produce any and all documents that evidence or refer to any and all communications between Registrant and any Third Party regarding the use of the word CAPUTO in commerce that relates to CAPUTO Goods and Services or in any food business.

**RESPONSE TO REQUEST NO. 20**

Registrant objects to this request because it is vague and ambiguous. Notwithstanding its objection, Registrant agrees to produce any document responsive to this request to the best of its understanding of the request as it relates to activities in the United States.

**REQUEST NO. 21**

Produce any trademark searches regarding the mark CAPUTO, including any searches that identify the use of CAPUTO as a mark for Goods and Services, and food-related services, such as restaurants or grocery stores by any Third Party in the United States.

**RESPONSE TO REQUEST NO. 21**

Registrant objects to this request because it is vague and ambiguous. Notwithstanding its objection, Registrant agrees to produce any trademark search that has been conducted relating to the Caputo mark in the United States.

**REQUEST NO. 22**

Produce any and all documents that evidence or refer to any confusion in the marketplace between the mark CAPUTO and CAPUTO as used in business, goods or services, including any memoranda, correspondence, advertisements, or product samples.

**RESPONSE TO REQUEST NO. 22**

Registrant objects to this request because it is vague and ambiguous. Notwithstanding this objection, Registrant agrees to produce any documents that tend to show confusion between Registrant's CAPUTO mark and associated wines and the Petitioner's CAPUTO mark as used in connection with the sale of cheese.

**REQUEST NO. 23**

Produce any and all documents that evidence or refer to any confusion in the marketplace between the mark CAPUTO and CAPUTO including, but not limited to, marketing surveys, shelf position surveys, and trademark surveys.

**RESPONSE TO REQUEST NO. 23**

Registrant objects to this request because it is vague and ambiguous. Notwithstanding this objection, Registrant agrees to produce any documents that tend to show confusion between Registrant's CAPUTO mark and associated wines and the Petitioner's CAPUTO mark as used in connection with the sale of cheese, including but not limited to marketing surveys, shelf position surveys, and trademark surveys.

**REQUEST NO. 24**

Produce any, and all documents that show the retail outlets in which goods or services bearing the CAPUTO mark have been sold since the date of first use for such goods or services, and the dollar and unit amount of the sales in each of the retail locations, on at least a monthly and yearly basis.

**RESPONSE TO REQUEST NO. 24**

Registrant objects to this request because it is overly broad and unduly burdensome. Notwithstanding this objection, to the extent they exist, Registrant will produce documents sufficient to show those retail outlets that sell wines under the CAPUTO mark in the United States.

**REQUEST NO. 25**

Produce any and all documents sufficient to show the types of wines sold under the CAPUTO mark by Registrant, and the date of first use of the CAPUTO mark by Registrant for each such wine; and for each type of wine, whether Registrant continues to sell that type of wine and, if not, the date upon which Registrant ceased sale of the type(s) of wine.

**RESPONSE TO REQUEST NO. 25**

Registrant objects to this request because it is overly broad and unduly burdensome. Registrant agrees to produce any document responsive to this request with respect to sale of wine in the United States.

**REQUEST NO. 26**

Produce any and all documents sufficient to show all Related Companies of the Registrant with respect to the use of the Registrant's mark, CAPUTO, in connection with the sale of CAPUTO goods and services.

**RESPONSE TO REQUEST NO. 26**

Registrant agrees to produce any document responsive to this request.

**REQUEST NO. 27**

Produce any and all documents which evidence the dollar amount which has been spent in the advertising and promotion of the goods and services rendered under the CAPUTO mark on at least a monthly and yearly basis both in the United States and elsewhere.

**RESPONSE TO REQUEST NO. 27**

Registrant objects to this request because it is overly broad and unduly burdensome. Registrant agrees to produce any document responsive to this request as it relates to the United States.

**REQUEST NO. 28**

Produce representative samples of any and all documents evidencing advertising and promotion relative to goods and services rendered under the CAPUTO mark.

**RESPONSE TO REQUEST NO. 28**

Registrant objects to this request because it is overly broad and unduly burdensome. Registrant agrees to produce any document responsive to this request as it relates to the United States.

**REQUEST NO. 29**

Produce any and all documents evidencing or discussing the relationship (whether adverse or cooperative) between Registrant and any other persons using the term CAPUTO in connection with the offering for sale of goods or services in the wine business in interstate, intrastate commerce and abroad.

**RESPONSE TO REQUEST NO. 29**

Registrant objects to this request because it is overly broad, unduly burdensome, vague and ambiguous and not reasonably calculated to lead to the discovery of relevant information. Notwithstanding this objection, Registrant will agree to produce documents that evidence any joint ventures or distribution relationships between Registrant and any entity in the United States.

**REQUEST NO. 30**

Produce any and all documents that relate to, or discuss, your decision to apply for the registration of CAPUTO.

**RESPONSE TO REQUEST NO. 30**

Registrant objects to this request because it is overly broad, unduly burdensome, vague and ambiguous and not reasonably calculated to lead to the discovery of relevant information. Notwithstanding this objection, Registrant agrees to produce any non-privileged document responsive to this request relating to the registration for the CAPUTO mark by Registrant in the United States.

**REQUEST NO. 31**

Produce any and all documents that relate to your adoption of the word CAPUTO as a mark.

**RESPONSE TO REQUEST NO. 31**

Registrant agrees to produce any document responsive to this request.

**REQUEST NO. 32**

Produce any and all news and press releases relating to the CAPUTO mark.

**RESPONSE TO REQUEST NO. 32**

Registrant objects to this request because it is overly broad, unduly burdensome, vague and ambiguous and not reasonably calculated to lead to the discovery of relevant information. Notwithstanding this objection, Registrant agrees to produce representative copies of any document responsive to this request with respect to press releases issued in the United States.

**REQUEST NO. 33**

Produce any and all demand letters, cease and desist letters, and notices of opposition regarding the CAPUTO mark, and documents relating to or referring to the same.

**RESPONSE TO REQUEST NO. 33**

Registrant objects to this request because it is overly broad and potentially unduly burdensome. Notwithstanding this objection, Registrant agrees to produce any document responsive to this request as it relates to U.S. related proceedings or demands made to parties located in the U.S.

**REQUEST NO. 34**

Produce any and all demand letters that you yourself have filed opposing registration of another mark based on the use of the CAPUTO mark.

**RESPONSE TO REQUEST NO. 34**

Registrant objects to this request because it is overly broad and potentially unduly burdensome. Notwithstanding this objection, Registrant agrees to produce any document responsive to this request as it relates to U.S. proceedings or demands made to parties located in the U.S.

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**REQUEST NO. 35**

Produce any and all documents relating to cancellations or other proceedings filed with the U.S. Patent & Trademark Office relating to the CAPUTO mark.

**RESPONSE TO REQUEST NO. 35**

Registrant agrees to produce any document responsive to this request.

**REQUEST NO. 36**

Produce any and all documents sent or received by you or by someone acting on your behalf in connection with any and all adversarial proceedings involving the CAPUTO mark or any variation thereof, including, without limitation, proceedings before the TTAB, Bureau of Customs, FTC, or any court.

**RESPONSE TO REQUEST NO. 36**

Registrant objects to this request because it is overly broad and potentially unduly burdensome. Notwithstanding this objection, Registrant agrees to produce any documents responsive to this request as they relate to U.S. proceedings and to the extent that the request is not unduly burdensome.

**REQUEST NO. 37**

Produce all deposition transcripts, answers to interrogatories, responses to requests for production of documents, and answers to requests for admission of facts in all proceedings and litigations involving the CAPUTO mark deriving from any court or administrative body.

**RESPONSE TO REQUEST NO. 37**

Registrant objects to this request because it is overly broad and potentially unduly burdensome. Notwithstanding this objection, Registrant agrees to produce any document responsive to this request, as it relates to any U.S. proceedings and to the extent that the request is not unduly burdensome.

**REQUEST NO. 38**

Produce any and all documents sent or received by you or by someone on your behalf in connection with any objections to the use, attempted use, intended use, registration,



intended registration or attempted registration of the CAPUTO mark or any mark alleged to be confusingly similar therewith.

**RESPONSE TO REQUEST NO. 38**

Registrant objects to this request because it is overly broad and potentially unduly burdensome. Notwithstanding this objection, Registrant agrees to produce any document responsive to this request as it relates to activities in the United States.

**REQUEST NO. 39**

Produce any and all documents relating to service mark registrations and applications to register concerning the CAPUTO mark.

**RESPONSE TO REQUEST NO. 39**

Registrant objects to this request because it is overly broad, unduly burdensome, vague and ambiguous and not reasonably calculated to lead to the discovery of relevant information. Notwithstanding this objection, Registrant agrees to produce any service mark registrations relating to the CAPUTO mark filed by Registrant in the U.S.

**REQUEST NO. 40**

Produce any and all documents reviewed or consulted in connection with the responses to any interrogatories.

**RESPONSE TO REQUEST NO. 40**

Registrant hereby incorporates each of its objections set forth in its Answers to Interrogatories. Registrant further objects to this request to the extent it calls for the identification and/or production of documents protected from discovery based upon attorney-client privilege or immune from discovery under the work product immunity doctrine.

**REQUEST NO. 41**

Produce all documents that you identified in your answers to interrogatories which were served upon you herewith, namely, Interrogatories No. 1-5, 9, 16, 20 and 21.

**RESPONSE TO REQUEST NO. 41**

Registrant hereby incorporates each of its objections set forth in its Answers to Interrogatories.

As to Objections,



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Andrew C. Aitken  
Venable, LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20004  
(202) 344-4000

Dated: October 13, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October 2006, a true and complete copy of Registrant's Response to Petitioner's First Request for Documents was served as follows:

via regular mail on:

JoAnne M. Denison  
JoAnne Denison & Associates, PC  
212 West Washington Street, #2004  
Chicago, Illinois 60606-3487

Counsel for Petitioner  
Wiscon Corp.

  
\_\_\_\_\_  
Andrew C. Aitken

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# EXHIBIT D

WISCON CORP. v. CANTINE CAPUTO S.PA.  
CANCELLATION NO. 92,045,271

# DENISON & ASSOCS, PC.

FEDERAL LITIGATION, PATENTS, TRADEMARKS AND COPYRIGHTS

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★--ADMITTED NC (INACTIVE) & US PATENT BAR

November 28, 2006

Mr. Andrew C. Aitken  
Venable , LLP  
575 7th Street, N.W.  
Washington, D.C. 20004  
VIA FACSIMILE

Re: Mark: CAPUTO  
TTAB Cancellation Proceeding No. 92,045,271  
Requests for Documents

Dear Andrew;

Regarding the Requests for Documents for the above cancellation proceedings, we have yet to receive any documents from you. These documents are now overdue by 46 days.

We request that you produce such documents within 7 business days. If you fail to produce such documents or contact us within the 7 days, we will be forced to file a Motion to Compel Discovery and we are forthwith demanding your immediate response.

Sincerely,

  
JoAnne M. Denison

Encl.

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# EXHIBIT E

WISCON CORP. v. CANTINE CAPUTO S.P.A.  
CANCELLATION NO. 92,045,271

Andrew C. Aitken

(202) 344-8165

acaiken@venable.com

December 4, 2006

VIA FACSIMILE 312 553 1307

JoAnne M. Denison, Esq.  
JoAnne Denison & Associates, PC  
212 West Washington Street, #2004  
Chicago, Illinois 60606-3487

Re: Wiscon Corp. v. Cantine Caputo S.p.a.  
Cancellation No. 92045271

Dear Ms. Denison

I write in response to your letter of November 28, 2006. Please be advised that I have contacted the client and have not yet had any response from them. In the event I hear from them I will advise you accordingly.

Very truly yours,

  
Andrew C. Aitken

ACA:mo

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# EXHIBIT F

WISCON CORP. v. CANTINE CAPUTO S.P.A.  
CANCELLATION NO. 92,045,271



# DENISON & ASSOCS. PC.

FEDERAL LITIGATION, PATENTS, TRADEMARKS AND COPYRIGHTS

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★--ADMITTED NC (INACTIVE) & US PATENT BAR

December 4, 2006

Mr. Andrew C. Aitken  
Venable, LLP  
575 7th Street, N.W.  
Washington, D.C. 20004  
VIA FACSIMILE

Re: Mark: CAPUTO  
Cancellation Proceeding No. 92,045,271  
Title: Wiscon Corp. v. Cantine Caputo S.p.a.  
Your Response, dated December 4, 2006, to our Request for Documents

Dear Andrew;

This is in response to your letter dated December 4, 2006. Even though you stated that you have contacted your client, but have yet had any response from them, you have not stated whether you will be producing any documents within our requested seven (7) business days. These documents are now overdue by 52 days.

Although we are normally willing to grant short seven (7) day extensions of time, in this case, your documents are way overdue and we have heard nothing from you as to when we might actually receive the documents.

As stated in our last correspondence, if you fail to produce any documents or contact us regarding such documents, we will proceed accordingly and file a Motion to Compel Discovery on December 8, 2006. We are forthwith demanding your immediate response.

Sincerely,

  
JoAnne M. Denison

cc: Mr. Nat Caputo, via Telefax

Enclosure

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