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

<p>WISCON CORP. Petitioner v. CANTINE CAPUTO, S.p.A. Registrant</p>	<p>Cancellation No. 92,045,271 Reg. No. 2,984,449 Motion for Sanctions in the Nature of Entry of Judgment against Registrant</p>
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**MOTION FOR SANCTIONS IN NATURE OF ENTRY OF JUDGMENT AGAINST
APPLICANT-REGISTRANT**

Petitioner, Wiscon Corp. (“Wiscon”), by and through its counsel of record below, herewith moves this Honorable Board to grant the present Motion for Sanctions in the Nature of Entry of Judgment against Registrant in its favor and against Registrant, Cantine Caputo's, (“Cantine”) as to cancellation of Registration Number 2,984,449, for Cantine’s mark, pursuant to *Trademark Rule 2.120(g)(1)*, on the grounds that 1) Cantine has effectively failed to follow the instructions of the Board to turn over *all discovery without objection* or it may be subject to the sanction of dismissal¹, and 2) CANTINE has persisted in maintaining a pattern of self created delays and improper extensions of time. On December 3, 2007, Wiscon received woefully inadequate

¹See Exhibit C attached hereto, Table of Objections and Documents Not Produced.

answers to its January 30, 2006 discovery requests, with numerous objections made to these requests and many document requests were further objected to, and only a handful of documents were provided to Wiscon. See Exhibit C, Table of Objections and Documents not Produced, attached hereto. The Board, should, therefore, grant this Motion, enter judgment against Registrant, and cancel Registrant's registration of the mark CAPUTO on the grounds that it creates a likelihood of confusion with respect to Petitioner's mark CAPUTO.

I. FACTS

On Dec. 30, 2005, Cantine's attorney filed his first request to withdraw. On January 30, 2006, the Petitioner Wiscon served discovery requests upon Cantine. (Exhibit A, attached hereto). Included in these discovery requests were Opposer-Petitioner's First Request to Admit, First Request for Production of Documents and First Set of Interrogatories. On February 14, 2006, the Board denied Cantine's attorney's request to withdraw. On March 16, 2006, Cantine's attorney responded to the Board's denial by informing the Board he would continue to represent Cantine and withdrew his request for withdrawal.

Subsequently, after successfully creating and maintaining numerous delays, Cantine eventually provided answers to some of Wiscon's discovery requests on October 13, 2006, nearly ten (10) months since Cantine was originally served. Not only did it take Cantine ten (10) months to eventually respond to the January 30, 2006 discovery requests, Cantine never properly responded to the Requests for Production

of Documents and it objected to most of those requests on improper grounds.² On December 13, 2006, the Petitioner timely filed a Motion to Compel Discovery.

Many additional delays soon followed. First, the case was suspended when the Registrant's counsel filed *his second* Motion to Withdraw on January 2, 2007. (Doc. No. 11, Canc. No. 92,045,271). Next, when no counsel was appointed, the Board issued an order to show cause why default judgment should not be granted for Cantine's apparent loss of interest in the proceedings on June 1, 2007. (Doc. No. 14, Canc. No. 92,045,271). On June 29, 2007, Cantine then requested an extension of time without serving the Petitioner. Then, on July 19, 2007 Cantine informed the TTAB that they could not proceed inasmuch as they were continuing to search for new legal counsel.

After all of this, the TTAB graciously still gave Cantine forty-five (45) days from the issuance of their ruling on September 7, 2007 to provide a response to the Petitioner's Motion to Compel Discovery. (Doc. 18). On October 10, 2007, Cantine stated they would represent themselves and on October 19, 2007, Cantine filed a response stating they *agreed to provide any documents responsive to Petitioner's requests*. (Doc. 20, Emphasis added).

On November 7, 2007, the Board issued a document, stating in part, "petitioner's motion to compel is hereby GRANTED as conceded." (Doc. No. 21, Canc. No. 92,045,271, p. #1). On that date, the Board ordered Cantine to deliver documents

²The Requests for Production of Documents were served on January 30, 2006. Former counsel for Cantine objected to most of the Requests for Production of Documents on Dec. 7, 2006 and delivered no documents.

responsive to Wiscon's requests for production, "*without objections*," by December 1. *Id.* Emphasis added. On December 3, 2007, *almost TWO years* since Cantine was originally served with discovery for Wiscon, Wiscon received Cantine's documents in response to Wiscon's request for production, but *with objections* to almost all of the requests. See Exhibit C, Table of Objections and Documents Not Produced, attached hereto. Furthermore, many of the requests for documents were met with no documents at all, and Cantine stated numerous and highly improper refusals to produce in its answers.

WHEREFORE Petitioner Wiscon moves this Honorable Board to grant Petitioner's Motion for Sanctions in the Nature of Entry of Judgment against Registrant in favor of the Petitioner and cancel Registrant Cantine's U.S. Trademark Registration Number 2,984,449 for the mark CAPUTO to fully and finally put an end to a parade of mulish shenanigans intended only to waste the time and resources of both the Board and Wiscon Corporation³. Cantine has amply made clear its continued intent to needlessly drag out these proceedings and only comply with rules and regulations pertaining to cancellations on a meager basis at best. Cantine has shown it will engage in such behavior even in the face of an Order of the Board demanding otherwise.

³It should be further noted that Cantine is using the mark CAPUTO on wines in the US since 1992. Cantine has already admitted they decided to use CAPUTO for wine after they were aware Wiscon was using CAPUTO on cheese since 1978. Wine and cheese are closely related products. See Exhibit D, Cantine's Answers to Wiscon's Request to Admit No. 17, attached hereto.

Respectfully submitted,

/s/JoAnne M. Denison/e-signature

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

<p>WISCON CORP. Petitioner v. CANTINE CAPUTO, S.p.A. Registrant</p>	<p>Cancellation No. 92,045,271 Reg. No. 2,984,449 Petitioner's Brief in Support Motion for Sanctions in the Nature of Entry of Judgment</p>
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WISCON'S BRIEF IN SUPPORT OF MOTION FOR SANCTIONS IN NATURE OF ENTRY OF JUDGMENT AGAINST CANTINE

I. Introduction

This brief is filed in support of Petitioner's (hereinafter sometimes "Wiscon") Motion for Sanctions in the Nature of Entry of Judgment against Registrant Cantine Caputo, S.p.A. (hereinafter sometimes "Cantine"). The grounds for this Motion is: Cantine has effectively failed to provide all documents *without objections* in compliance with the Order of the TTAB dated November 7, 2007. See Exhibit C, attached hereto.

Because Cantine did not comply with the Board's discovery order, Wiscon now respectfully moves for judgment against Cantine.

II. BACKGROUND OF THE PROCEEDINGS

On December 30, 2005, Cantine's attorney filed its first request to withdraw. (Doc. No. 4, Canc. No. 92,045,271). On January 30, 2006, Petitioner Wiscon served upon counsel for Registrant Cantine, Petitioner's First Set of Discovery Requests, which

included: Admissions, Interrogatories, and Requests for Documents to Registrant Cantine Caputo, S.p.A. See Exhibit A. On February 14, 2006, the Board denied Cantine's attorney's request to withdraw. (Doc. No. 6). On March 16, 2006, Cantine's attorney responded to the Board's denial by informing the Board he would continue to represent Cantine and withdrew his request for withdrawal. (Doc. No. 7).

Afterwards, Cantine provided answers to Wiscon's discovery requests on Oct. 13, 2006, nearly ten (10) months since Cantine was originally served, but Wiscon did not receive any of the required documents. (See Exhibit C, Doc. No. 10, Canc. No. 92,045,271). Not only did Petitioner not receive any documents, Registrant made no mention of any time that Registrant planned on producing such documents. On Dec. 13, 2006, the Petitioner timely filed a Motion to Compel Discovery. (Doc. No. 10)

On November 28, 2006, (46) forty-six days after the such documents should have been provided, Petitioner sent to Registrant's counsel, by facsimile, written correspondence demanding Registrant to produce the documents or contact Petitioner within (7) seven business days. (*Id.* Exhibit D). On December 4, 2006, Registrant's counsel responded to Petitioner's counsel, by facsimile, written correspondence stating that counsel had contacted his client, Cantine, and had not received any response from them, but will advise Petitioner accordingly. (*Id.* Exhibit E). Nowhere within that correspondence did Cantine's counsel inform the Wiscon's counsel the time frame of when he would respond to Petitioner's counsel or provide the long overdue discovery. 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.

On December 4, 2006, Petitioner sent to Registrant's counsel, by facsimile,

written correspondence informing counsel that Registrant has still not produced any documents and has not been advised as to an actual date by which Petitioner will receive the required documents. (Doc. No. 10, Canc. No. 92,045,271, Exhibit F).

Counsel for Petitioner then went on to inform counsel for Registrant that, unless all required documents are provided, Petitioner intended to file a Motion to Compel. *Id.*

More delays soon followed. First, the case was suspended when the Registrant's counsel withdrew the second time. (Doc. No. 13, Canc. No. 92,045,271). Next, when no counsel was appointed, the Board issued an order to show cause why default judgment should not be granted for Cantine's apparent loss of interest in the proceedings. (Doc. No. 14, Canc. No. 92,045,271). On June 29, 2007 Cantine then requested an extension of time without serving the Petitioner. (Doc. No. 15, Canc. No. 92,045,271). Then, on July 19, 2007 Cantine informed the TTAB that they did not lose interest, but were looking for an attorney. (Doc. No. 19, Canc. No. 92,045,271). Finally, after Cantine stated they would represent themselves, the TTAB gave Cantine 45 days from the issuance of their ruling on September 7, 2007, to provide a response to the Petitioner's motion to compel discovery. (Doc. No. 18, Canc. No. 92,045,271).

On October 19, 2007, Cantine filed a reply stating they *agreed to provide any documents responsive to Petitioner's requests* by Dec. 1, 2007. (Doc. No. 20, Canc. No. 92,045,271).

On November 7, 2007, the Board issued an order granting Petitioner's Motion to Compel Discovery filed 12/13/2006, as conceded by the Registrant. (Doc. No. 21, Canc. No. 92,045,271). The Board further ordered that the Registrant was to serve, "*without objections*, documents responsive to Petitioner's first set of request of

productions.” *Id.*

On December 3, 2007, nearly two years since Petitioner first served its discovery, Petitioner received the Registrant’s response to its first set of request for documents, but out of the forty-one (41) requests, twenty-five (25) came with objections, no more than a handful of documents were provided, and eight requests came with zero documents and continuing refusals to provide documents. (See Exhibit B attached hereto).

After *almost TWO years* of waiting for documents, filing numerous responses to object to Cantine’s mulish and obstructive behavior resulting in multiple delays due solely to actions of Cantine, Cantine finally answered some discovery requests, refused to answer others, refused to provide many documents requested, but had been in fact ordered to answer all of them *without objection*, which they refused to do. (See Exhibit B and C attached hereto).

III. ARGUMENT

The law is clear that if a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions as defined in *Trademark Rule* 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2), including entry of judgment. *MHW Ltd. V. Simex, Aussenhandelsgesellschaft Savelberg KG*, 59 USPQ2d 1477, 1478 (TTAB 2000) *citing, Baron Philippe de Rothschild S.A. v. Style-Rite Optical Mfg. Co.*, 55 USPQ2d 1848 (TTAB 200) and TBMP § 527.01. Default judgment is a harsh remedy, but it is justified where no less drastic remedy would be effective, and there is a strong showing of willful evasion. See *Unicut*

Corporation v. Unicut, Inc. 220 USPQ 1013 (TTAB 1983).

In this case, Wiscon's Motion for Sanctions in the Nature of Entry of Judgment against should be granted because Registrant Cantine, has shown a clear pattern of wilful, dilatory tactics to avoid Registrant's discovery responsibilities and it further willfully failed to comply with the Board's September 7, 2007 order. *Baron Philippe de Rothschild*, 55 USPQ2d at 1854.

A. Registrar did not comply with the Board's order to provide discovery without objection, and therefore should be subject to default judgment.

The Board should issue default judgment against Cantine because they did not comply with the Board's order stating they should reply to the requests for documents without objection and provide all documents requested. The law is clear that if a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions as defined in *Trademark Rule* 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2), including entry of judgment against the noncompliant party. *MHW Ltd. V. Simex, Aussenhandelsgesellschaft Savelberg KG*, 59 USPQ2d 1477, 1478 (TTAB 2000) *citing Baron Philippe de Rothschild S.A. v. Style-Rite Optical Mfg. Co.*, 55 USPQ2d 1848 (TTAB 200) and TBMP § 527.01. Default judgment is a harsh remedy, but it is justified where no less drastic remedy would be effective, and there is a strong showing of willful evasion. *See Unicut Corporation v. Unicut, Inc.* 220 USPQ 1013 (TTAB 1983).

In *MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelberg KG*, *supra*, the Board found that the Opposer not only repeatedly failed to meet its discovery obligations, but also repeatedly failed to comply with the Board's orders. Likewise,

Registrant Cantine, has engaged in repeated dilatory tactics to avoid its discovery responsibilities, as evidenced by repeated suspensions of proceedings and extensions of time. Furthermore, Cantine has willfully failed to comply with the Board's September 7, 2007 order stating that all documents requested should be produced without objection. By filing discovery with objections and by failing to provide all requested documents, after the Board had specifically told them not to, Cantine has demonstrated bad faith on substantially the same level of the bad faith found in *Baron Philippe de Rothschild*, 55 USPQ2d at 1951, where an attorney knew at least a month beforehand that the most knowledgeable witness on the matter would be unavailable on extended maternity leave, but did not ask for an extension until well after it was due to have been filed. Cantine's blatant disregard for the orders of this Board and its history of stalling and dilatory tactics leave no other alternative other than subjecting Cantine to sanctions in the nature of entry of judgment against them.

B. Registrant has a history of long delays and dilatory tactics which is sufficient grounds for default judgment.

Furthermore, the Board should grant Wiscon's Motion for Sanctions in the form of default judgment because Cantine has failed to provide a number of the requested documents despite repeated requests.⁴ It is within the power of the Board to enter judgment against the parties who have engaged in delaying tactics and willfully

⁴It should be noted that Cantine has not turned over any attorney-client documents, despite the fact they delayed these proceedings for over a year because they were allegedly "seeking counsel," another clear indication of a continuing pattern of lies and bad faith before this Board. Also, Cantine's objections are groundless, such as "already in the records" of the TTAB." This is clearly not a standard for producing documents.

disregarding the Board's orders. See *MHW Ltd.*, 59 USPQ2d 1477; *Baron Philippe de Rothschild S.A.*, 55 USPQ2d 1848; and *Caterpillar Tractor Co. v. Catfish Anglers Together, Inc.*, 194 USPQ 99 (TTAB 1976).

As explained in the facts above, the Registrant has had a history of delays and dilatory tactics, just as were employed in the cases above which led to default judgment. Since the initiation of these proceedings, Cantine has lagged and procrastinated during all aspects of the proceedings by requesting time extension after time extension. Its standard level of participation has been meager compliance of the Rules and Regulations at best, and feigning ignorance or wilful noncompliance in many instances. With the start of the discovery period at January 30, 2006, (Doc. No. 2 of Canc. No. 92,045,271), Cantine has had more than ample time to respond to discovery requests, which were originally served on January 30, 2006. Now, 23 months later, it has provided woefully inadequate response that consisted almost entirely of objections and refusals to answer and many requested documents were not provided at all. On December 3, 2007, Petitioner received the Registrant's response to their first set of request for documents, but out of the forty-one (41) requests, twenty-five (25) came with objections with documents and eight requests came with no documents at all and refusals to provide documents. (See Exhibit B).

As a result of Cantine's repeated delays and stalling tactics, these proceedings have not progressed beyond discovery. Furthermore, the Registrant has not even responded to all the discovery requests served nearly *two years ago*. Given this pattern of behavior, it is appropriate for the board to grant sanctions in the form of entry of default judgment.

V. CONCLUSION

Cantine should be subject to a judgment against it based upon the following grounds: 1) failure to comply with the Board's order stating that they should respond *without objection* to the Requests for Production of Documents, 2) its repeated failures to comply with discovery requirements, namely production of documents and 3) a repeating pattern of failure to follow the rules and regulations of the TTAB, including service and improper extensions of time. Because of their extremely egregious and mulish behavior, Wiscon respectfully requests that default judgment be granted in its favor.

Respectfully Submitted,

/s/JoAnne M. Denison/e-signature

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CERTIFICATE OF SERVICE

I certify that I have mailed a copy of the foregoing pleading, **MOTION FOR SANCTIONS IN NATURE OF ENTRY OF JUDGMENT AGAINST REGISTRANT**, and **PETITIONER'S BRIEF IN SUPPORT OF MOTION FOR SANCTIONS IN NATURE OF ENTRY OF JUDGMENT AGAINST REGISTRANT** via email as shown on their website and first class mail, (Global Priority) postage prepaid to:

Cantine Caputo, S.p.A.

Via Garibaldi 64

Teverola (CE), Italy 81030

info@caputo.it

this January 2, 2008.

/s/JoAnne Denison/e-signature

EXHIBIT A

WISCON CORP. v. CANTINE CAPUTO S.p.a.
Cancellation No. 92,045,271

Petitioner's First Set of Discovery Requests served Jan. 30, 2006

CERTIFICATE OF SERVICE

I certify that I have mailed a copy of the foregoing pleadings, Interrogatories to Defendants, Requests to Admit, and Request for Documents first class mail postage prepaid to:

Mr. Andrew C. Aitken in care of Cantine Caputo S.p.A.
Venable, LLP
P.O.Box 34385
Washington, DC 20043-9998

this January 30, 2006.

Joey Dennis

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.

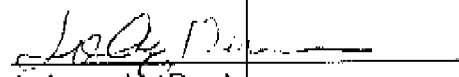
17. Produce any and all documents that support or relate to your contention that the marks CAPUTO and CAPUTO are distinguishable to the consumer in the target marketplace.
18. Produce documents sufficient to identify: (a) each of your employees involved in the sale of goods and services sold under the 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.

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,



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Counsel of Record for Wiscon Corp.

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EXHIBIT B

WISCON CORP. v. CANTINE CAPUTO S.p.a.

Cancellation No. 92,045,271

Cantine's Discovery Responses received Dec. 03, 2007

CAPUTO

1890

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WISCON CORP.
Petitioner
v.
CANTINE CAPUTO S.p.A.
Registrant

Cancellation No. 92,045,271
Reg. No. 2,984,449

Response to Petitioner's Motion to Compel

Carinara, 29th October 2007

With reference to Petitioner's Motion to Compel production of documents dated 13th December 2006, and following United States Patent and Trademark Office letter dated September 7th with which the Board extended respondent's time for responding to petitioner's motion to compel, please find enclosed the responses at Petitioner's requests.

We remain at your disposal for any further information you may need.

Best Regards,


Mario Caputo
Cantine Caputo S.p.A.

**RESPONSE TO PETITIONER MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**

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" because it 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 with the responses to petitioner motion to compel all the documents used to support the registration.

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" because it is not defined and therefore is vague and ambiguous. 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 provides the following documents that evidence its sales or distribution of food products in the United States under the CAPUTO mark:

- Original labels and backlabels used in 1997 for wines sales in U.S. Sales on national and international markets, included US market, started before 1997.
- Copies of certification of approval of labels and backlabels issue by US BAFT from year 1997 that certifies the use in commerce of mark CAPUTO in US. Original documents are located in the offices of Verdoni Imports, Inc., Hawthorne, NJ 07506.
- copies of invoices and export certifications that confirms the sales of CAPUTO wines in US from years 1996-1997. Original invoices and export certifications are in Registrant's possession.

Sales on international and national markets started before 1997. According to Italian law, we have to keep documents for ten years. So documents issued before 1997 are no more available in our offices. Notwithstanding, if you think it will be necessary, we shall do further researches in order to find documents related to the use of mark CAPUTO before year 1997.

In the meantime, please find also attached:

- picture of labels dated 1995, confirming that Caputo brand was used before 1997 on national and international markets.
- A press release dated May 1989.

3. Produce any and all documents related to sales, distribution and processing of food products with which mark CAPUTO has been affiliated, and on which it has been used, including name address, phone and all other entities involved in the sale and distribution of CAPUTO products in 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" because it is not defined and therefore is vague and ambiguous. 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 provides the following documents that evidence the identity of distributors of food products in the United States that has sold and sell such food products under the CAPUTO mark that are affiliated with Registrant:

- commercial invoices and export certificates. Original invoices and export certifications are in Registrant's possession. Sales on US market started before 1997. According to Italian law, we have to keep documents for ten years. So documents issued before 1997 are no more available in our offices. Notwithstanding, if you think it will be necessary, we shall do further researches in order to find documents related to the sales of mark CAPUTO before year 1997.
- A list of some US importers with contact details who sold and/or are selling products under the CAPUTO mark that are affiliated with Registrant. The complete list of all our US distributors are not available in our offices. Notwithstanding, if it will be necessary, we shall do further researches and ask our US importers to forward us such information.
- A list of some US accounts that sales CAPUTO wines. The complete list of all our US US accounts are not available in our offices. Notwithstanding, if it will be necessary, we shall do further researches and ask our US importers to forward us such information.

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" because it is not defined and therefore is vague and ambiguous. 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, Registrant attaches a file recording the sales amount from 1995 to 2006 of the sale of products in under the CAPUTO mark.

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

RESPONSE TO REQUEST NO. 5

Registrant further objects because the terms "accounting records" and sales figures is vague and ambiguous. The Registrant further objects to this request because it is overly broad and unduly burdensome.

Notwithstanding these objections, Registrant attaches copy of correspondence between Registrant and sales figures, pricelist and business plans. Original documents are in Registrant's possession. The commercial correspondence between Registrant and US importers is very broad. If it will be necessary, we shall provide further documents.

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.

RESPONSE TO REQUESTS NO. 6 & 7

The Registrant objects to this requests because the term the mark "CAPUTO" because it 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 encloses the following documents:

- advertising material
- bottles pictures on which the CAPUTO mark is printed on
- brochures
- business cards
- international awards
- magazines
- websites pages, ect.

Original documents are in Registrant's possession.

If it will be necessary, we shall produce further samples and documents showing the mark CAPUTO.

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" because it is not defined and therefore is vague and ambiguous. Notwithstanding these objections, Registrant encloses the following documents:

- business cards
- letter paper with CAPUTO mark
- envelope with CAPUTO mark

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" because it is not defined and therefore is vague and ambiguous. Notwithstanding these objections, Registrant encloses the following will documents:

- invoices issue from 1992 showing interstate commerce. Interstate commerce started previously: actually is the fourth generation of Caputo who is selling wines with Caputo mark. There are records of sales of wines under Caputo mark at the beginning of 1900's. Wines have been sold through the years with Caputo mark by different companies hold by Caputo family (Sabatino Caputo, Nicola Caputo, Corrado Caputo, Sessa Agnese, Corrado's wife, Nicola Caputo e Mario Caputo): La Vite srl, Corcap di Corrado Caputo, Cantine Terra di Lavoro srl, CIB Italia, ect. The last company involved in sales of Caputo wines is Cantine Caputo that start its activity in 1977. Enclose copy of Italian Chamber Certificate showing the date of foundation of Cantine Caputo. Sales on national markets started before 1992. According to Italian law, we have to keep documents for ten years. So documents issued before 1992 are no more available in our offices. Notwithstanding, if you think it will be necessary, we shall do further researches in order to find documents related to the use of mark CAPUTO before year 1992.
 - invoices for foreign commerce: please refer to response to request no.2
- Original documents are in Registrant's possession.

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" because it 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 enclose the following documents:

- copy of Italian Chamber of Commerce certification showing that Caputo is not only a mark but the owner name and the company name
- copy of Mr Caputo identity card showing that Caputo is the family name of the owner of the company.
- copy of some trademarks registered by Caputo family in Italy and abroad containing the name Caputo.

Original documents are in Registrant's possession.

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 never transferred or sold the mark CAPUTO.

REQUEST NO. 12

Produce any and all correspondence or memoranda that discuss the agreements produced

in response to Interrogatory Request Number 11.

RESPONSE TO REQUEST NO. 12

No agreements of licence of CAPUTO mark exist.

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

All the documents supporting the registration of the mark CAPUTO in US are published on the United State Patent and Trademark website and already in possession of the Petitioner.

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" because it is not defined and therefore is vague and ambiguous. The Registrant objects to this request because it is overly brand and unduly burdensome.

Notwithstanding this objection, the Registrant encloses the following documents:

- list of some grocery, restaurants, distributors, wine shops that sold or are selling the Registrant product marked CAPUTO
- some copies of advertising of shops selling Caputo wines.
- list of some websites where wines marked CAPUTO can be bought.

If it will be necessary, we shall produce further documents related the use of the mark CAPUTO in the following manner in interstate, intrastate and foreign commerce.

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. The Registrant is not aware of any incident of confusion, mistake or deception and the Registrant's customers are not aware of the Petitioner products. So, no documents can be exhibit.

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" because it is not defined and therefore is vague and ambiguous. Registrant further objects because it is duplicative of other requests.

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 document responsive to this request. So, please find attached some photos of shops where Caputo wines are sold and photos that show that the Registrant's wines are not on the same shelves as the Petitioner's products.

If necessary, we shall produce further documents to support or relate to the contention that the marks CAPUTO and CAPUTO are distinguishable to the consumer in the target marketplace.

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 the requested information. Please find enclosed:

- list of employees involved in the sales of wines under the Caputo mark at Cantine Caputo in the last five years
- list of some importers of Caputo worldwide. Concerning distributors and accounts, information are not in our possession. If necessary, lists of distributors and customers will be asked to our importers and agents worldwide.

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

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" because it is not defined and therefore is vague and ambiguous. Registrant further objects because it is duplicative of other requests.

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

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" because it is not defined and therefore is vague and ambiguous. Registrant further objects because it is duplicative of other requests.

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 encloses websites searches of Third Party using the mark CAPUTO for goods and service, and food-related service, in US and worldwide showing that CAPUTO is first of all a family name.

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. Registrant is not aware of any incident of confusion between Registrants Caputo mark and associated wines goods 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. Furthermore, Registrant is not aware of any confusion between Registrants Caputo mark and associated wines goods and the Petitioner's Caputo mark as used in connection with the sale of cheese.

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, if necessary and to the extent they exist, Registrant will produce documents sufficient to show those retail outlets that sell wines under the Caputo mark. Actually information relative to retails outlets are not in our possession but must be asked to our importers and agents worldwide. The Registrant, in fact, sells mainly through importers and not directly to retailers.

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 encloses the current pricelist with all the wines that he sells actually on national and foreign markets.

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 encloses copy of the Italian Certificate of Chamber of Commerce of the related company Cantine Terra di Lavoro owned by Caputo family. Cantine Terra di Lavoro sells Registrant's wines

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 encloses a file which evidences the euro amount that has been spent by the Registrant in the advertising and promotion of goods and services rendered under the CAPUTO mark on an yearly basis.

Furthermore, please take note that promotional activities and advertising have been made also by our importers and distributors worldwide. If necessary, we shall provide you with such information.

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

Please refer to response to requests no.6 and 7.

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

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" because it is not defined and therefore is vague and ambiguous. Registrant further objects because it is duplicative of other requests.

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

Actually is the fourth generation of the Caputo family who is selling wine with the mark CAPUTO. The selling of CAPUTO wines started at the beginning of 1900's. In the last twenty years as the volume of sales grew up and the market expanded quickly in Italy and abroad, CAPUTO family decided to registered the mark CAPUTO to defend the property of their family name on their wines.

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 did not adopted the word CAPUTO as a mark but used is family name as mark.

REQUEST NO. 32

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

RESPONSE TO REQUEST NO. 32

Registrant encloses copies of some press releases relating to CAPUTO mark. If necessary, Registrant will do researches and produce further news and press releases.

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 confirms that any document responsive to this request as it relates to U.S. related demands or proceedings, is already in possession of the Petitioner as it is related to the Petitioner's opposition.

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 affirms that he never filed an opposition against the registration of another mark based on the use of the CAPUTO mark.

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 confirms that the only existing proceedings or cancellations are those between Cantine Caputo and Wisconsin Corp. So, all the documents are already in possession of the Petitioner.

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 confirms that the only existing proceedings or cancellations are those between Cantine Caputo and Wisconsin Corp. So, all the documents are already in possession of the Petitioner.

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 confirms that the only existing proceedings or litigations are those between Cantine Caputo and Wisconsin Corp. So, all the documents are already in possession of the Petitioner.

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 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. 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.

EXHIBIT C

WISCON CORP. v. CANTINE CAPUTO S.p.a.
Cancellation No. 92,045,271

Wiscon Corp.'s Table of Objections and Documents Not Produced

EXHIBIT C: TABLE OF OBJECTIONS AND DOCUMENTS NOT PROVIDED

Request Number	Document Requested	Cantines' Response and Documents Provided
1	Documents supporting the registration of the mark CAPUTO.	Objected to; no documents provided. Should have provided correspondences to and from their attorney and the Trademark Office.
2	Documents relating to the length of time the mark CAPUTO has been used on food products and services.	Objected to; provided labels for wine from 1997, copies of certification of approved labels, copies of invoices, pictures of labels from 1995, and a press release dated May 1989.
3	Documents relating to sales, distribution, and processing of food products affiliated with the mark CAPUTO.	Objected to; provided commercial invoices and export certificates, list of US importers, and list of US accounts that sell CAPUTO wines.
4	Documents related to sales of CAPUTO branded products analyzed by year and by quarter for each product line sold.	Objected to; provided file recording the sales amount from 1995-2006 of the sale of products under CAPUTO mark. Should have provided sales for 2007.
5	Copies of accounting records to support sales figures.	Objected to; provided copy of correspondence between Registrant and sales figures, pricelist and business plans.
6	Representative samples showing CAPUTO mark on food products, advertising, invoices or other customary manner.	Objected to; provided advertising material, bottles pictures on which the CAPUTO mark is printed on, brochures, business cards, international awards, and magazines, website pages.
7	Samples of documents relating to marketing, including advertising and promotions.	Objected to; provided advertising material, bottles pictures on which the CAPUTO mark is printed on, brochures, business cards, international awards, magazines, and website pages.

8	Representative samples of documents showing the CAPUTO mark.	Objected to; provided business cards, letter paper with CAPUTO mark, envelope with CAPUTO mark
9	Documents that support or relate to the length of time the mark CAPUTO has been used in intrastate, interstate commerce and foreign.	Objected to; invoices from 1992 onward showing interstate commerce.
10	Documents that support or relate to your contention that you own the entire right, title, and interest in the mark CAPUTO.	Objected to; copy of Italian Chamber of Commerce certification showing that Caputo is not only a mark but the owner name and the company name, copy of Mr. Caputo identity card showing that Caputo is the family name of the owner of the company, copy of some trademarks registered by Caputo family in Italy and abroad containing the name Caputo.
11	Agreements that involve ownership, transfer, assignment, sale, or licensing of the mark CAPUTO.	Registrant never transferred or sold mark CAPUTO.
12	Correspondence or memoranda that discuss agreements produced in response to interrogatory request #10.	No license agreements of CAPUTO mark exist.
13	Documents sent by you or on your behalf to the U.S. Patent and Trademark Office, or any division or branch thereof, concerning the application for registration mark CAPUTO.	Objected to as publicly available. No file records and documents provided

14	Documents related to 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.	Objected to; list of grocery, restaurants, distributors, and wine shops that sold or are selling the Registrant product marked CAPUTO, some copies of advertising of shops selling Caputo wines, list of some websites where wines marked CAPUTO can be bought.	
15	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.	Objected to; not aware of confusion. No documents provided.	
16	Documents sufficient to identify each and every grocery store or other retail outlet at which you are aware CAPUTO branded products and services are sold in the United States	Objected to as vague, ambiguous, and duplicative. No documents provided.	
17	Documents that support or relate to your contention that the marks CAPUTO and CAPUTO are distinguishable to the consumer in the target marketplace.	Photos of shops where CAPUTO wines are sold and photos that show that the Registrant's wines are not on the same shelves as the Petitioner's products.	

18	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.	List of employees involved in the sale of goods under Caputo Mark at Cantine Caputo in the last five years, list of some importers of Caputo worldwide; most names not provided.	
19	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.	Objected to. No documents provided.	
20	Documents that evidence or refer to any and all communications between Registrant and any Third Party regarding the use of the word CAPUTO in in commerce that relates or refers to CAPUTO Goods and Services or in any food business.	Objected to. No documents provided.	
21	Trademark searches regarding the mark CAPUTO, including searches that identify the use of CAPUTO as a mark for Goods and Services, and food-related service, such as restaurants or grocery stores by any Third Party in the United States.	Website searches showing CAPUTO used for goods and services, and showing CAPUTO is a family name.	

22	Documents that evidence or refer to any confusion in the marketplace between the mark CAPUTO and CAPUTO as used in business, goods or services.	Objected to; not aware of confusion. No documents provided.	
23	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	Objected to; not aware of confusion. No documents provided.	
24	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.	Objected to. No documents provided.	
25	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 for each type of wine, whether Registrant ceased sale of the type(s) of wine.	Current pricelist with wine types actually sold, but no information regarding types of wines provided.	

26	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.	Copy of the Italian Certificate Chamber of commerce of the related company Cantine Terra Di Lavoro, no other documents provided.	
27	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.	A file which evidences the Euro amount that has been spent by the Registrant in the advertising and promotion of goods and services rendered under the CAPUTO mark on a yearly basis; no information with respect to US Sales provided.	
28	Representative samples of any and all documents evidencing advertising and promotion relative to goods and services rendered under the CAPUTO mark.	See requests 6 and 7. No documents provided.	
29	Documents evidencing or discussing the relationship between Registrant and 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.	Objected to. No documents provided	
30	Documents that relate to, or discuss, your decision to apply for the registration of CAPUTO.	Discusses decision to register instead of providing documents which do so.	

31	Documents that relate to your adoption of the word CAPUTO as a mark.	States CAPUTO is family name. No documents provided.
32	Any and all news and press releases relating to the CAPUTO mark.	Copies of press releases were provided.
33	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.	Objects to. States Petitioner already possesses these documents; no documents provided.
34	Any and all demand letters that you yourself have filed opposing registration of another mark based on the use of the CAPUTO mark.	Objected to; stated never filed opposition.
35	Any and all documents relating to cancellations or other proceedings filed with the U.S. Patent & Trademark Office relating to the CAPUTO mark.	States that Petitioner is already in possession of documents because the only existing proceedings are between Caputo and Wiscon. No further documents were provided. No attorney correspondences and no other correspondences.
36	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.	Only proceedings current ones, so Petitioner is in possession of all documents. No other documents provided.

37	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.	Objected to. The only proceedings are between Cantine Caputo and Wiscon, so all documents already in possession of Petitioner; no documents provided.	
38	Documents sent or received by you or 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.	Objected to. No documents provided.	
39	Documents relating to service mark registrations and applications to register concerning the CAPUTO mark.	Objected to. No documents provided	
40	Documents reviewed or consulted in connection with the response to any interrogatories.	Objected to; and further objects citing attorney-client privilege or work product immunity doctrine. No documents provided	
41	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.	Incorporates objections set forth in answers to interrogatories. No documents provided	

EXHIBIT D

WISCON CORP. v. CANTINE CAPUTO S.p.a.
Cancellation No. 92,045,271

Cantine's Answers to Petitioner's Request to Admit.

**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 ADMISSIONS**

Pursuant to 37 CFR 2.120(a) and Fed. R. Civ. P. 36, Registrant Cantine Caputo, S.p.a. hereby responds to Petitioner's First Set of Requests for Admission as follows:

ADMISSION NO. 1.

The term CAPUTO as related to wines and food products is arbitrary.

RESPONSE TO ADMISSION NO. 1:

Registrant objects to this request because it calls for a legal conclusion. To the extent a response is required it is Denied.

ADMISSION NO. 2.

The mark CAPUTO is well known as used in connection with food products.

RESPONSE TO ADMISSION NO. 2:

The Registrant is without sufficient knowledge to admit or deny this allegation and it is therefore denied.

ADMISSION NO. 3.

The mark CAPUTO is highly valuable.

RESPONSE TO ADMISSION NO. 3:

The Registrant objects to this request because the term "the mark CAPUTO" is not defined and therefore is vague and ambiguous and the term "highly valuable" is vague and ambiguous.

Notwithstanding these objections, the Registrant admits that it regards its CAPUTO mark as applied to the sale of wine as a valuable asset.

ADMISSION NO. 4.

The mark CAPUTO has established secondary meaning in the marketplace.

RESPONSE TO ADMISSION NO. 4:

Registrant objects to this request because it calls for a legal conclusion. The Registrant further objects to this request because the term "the mark CAPUTO" is not defined and therefore is vague and ambiguous. Notwithstanding this objection, the Registrant admits that the term CAPUTO has secondary meaning in the marketplace as used by Registrant and when applied to wines.

ADMISSION NO. 5.

Petitioner's first use date for the "CAPUTO" mark was as early as 1978.

RESPONSE TO ADMISSION NO. 5:

Denied.

ADMISSION NO. 6.

The mark "CAPUTO" was used by Petitioner on wines prior to the date on which Registrant first commenced using the mark "CAPUTO" in connection with wine.

RESPONSE TO ADMISSION NO. 6:

Denied.

ADMISSION NO. 7.

Registrant was aware that prior to the adoption of the mark "CAPUTO," Petitioner had a full line of grocery products including class 29 for cheese with registration no. 2,009,696; class 29&30 for cheese, nondairy processed cheese, vegetable oil, corn oil, and processed peppers, namely pepperoncini and pasta with Registration No. 1,763,053; and cheese, processed cheese, edible oils, spices and vinegar with Registration No. 2,464,986.

RESPONSE TO ADMISSION NO. 7:

Denied.

ADMISSION NO. 8.

Registrant's mark is identical to Petitioner's mark.

RESPONSE TO ADMISSION NO. 8:

Admitted.

ADMISSION NO. 9.

Registrant's mark "creates a likelihood of confusion in the relevant marketplace" to Registration No. 2,899,306.

RESPONSE TO ADMISSION NO. 9:

Denied.

ADMISSION NO. 10.

Registrant's uses its CAPUTO mark on the same goods which Petitioner uses its mark upon.

RESPONSE TO ADMISSION NO. 10:

Denied.

ADMISSION NO. 11.

Registrant's Goods are targeted to the same consumers as Petitioner's goods.

RESPONSE TO ADMISSION NO. 11:

Denied.

ADMISSION NO. 12.

Registrant's Goods are offered through the same channels of trade as Petitioner's goods.

RESPONSE TO ADMISSION NO. 12:

Denied.

ADMISSION NO. 13.

Consumers encountering Registrant's Goods are likely to believe that such goods are affiliated with or emanate from Petitioner.

RESPONSE TO ADMISSION NO. 13:

Denied.

ADMISSION NO. 14.

Use of Petitioner's Mark for Registrant's goods creates a likelihood of confusion, mistake or deception.

RESPONSE TO ADMISSION NO. 14:

Denied.

ADMISSION NO. 15.

Registrant selected Registrant's mark with the knowledge that Petitioner had already the same mark for its goods.

RESPONSE TO ADMISSION NO. 15:

Denied.

ADMISSION NO. 16.

Registrant's selected Petitioner's mark with the intent to cause a likelihood of confusion, mistake or deception with Petitioner's mark.

RESPONSE TO ADMISSION NO. 16:

Denied.

ADMISSION NO. 17.

Registrant was aware that the mark CAPUTO was used prior to its applying for registration for the same mark.

RESPONSE TO ADMISSION NO. 17:

The Registrant objects to this request because the term "the mark CAPUTO" is not defined and therefore is vague and ambiguous. Registrant admits that it was aware of petitioner's CAPUTO mark for cheese when it filed its application.

ADMISSION NO. 18.

Registrant is aware that the mark CAPUTO is well recognized for Italian wine and food products distribution marketplace.

RESPONSE TO ADMISSION NO. 18:

Denied.

ADMISSION NO. 19.

Registrant intended to infer a false suggestion of a connection between the Registrant and the Petitioner by using CAPUTO for wines.

RESPONSE TO ADMISSION NO. 19:

Denied.

ADMISSION NO. 20.

Petitioner's mark CAPUTO is an indicator of very high quality Italian products.

RESPONSE TO ADMISSION NO. 20:

Denied.

ADMISSION NO. 21.

Registrant was aware, prior to selecting its CAPUTO mark that Petitioner's food products branded with the mark CAPUTO are sold nationwide.

RESPONSE TO ADMISSION NO. 21:

Denied.

ADMISSION NO. 22.

Registrant's use of the mark "Caputo.it.com" as its domain name creates a likelihood of confusion in the relevant marketplace due to Petitioner's heavy useage of the mark CAPUTO in the area of food products and food distribution and sales services.

RESPONSE TO ADMISSION NO. 22:

Denied.

ADMISSION NO. 23.

Registrant is aware that by its use of CAPUTO for wines as Petitioner using its "CAPUTO" mark, will dilute the value, scope and/or effect of the Petitioner's line of CAPUTO brand products.

RESPONSE TO ADMISSION NO. 23:

Denied.

ADMISSION NO. 24.

Registrant is aware of actual confusion that has occurred, or is occurring, between Registrant's Goods and Petitioner's goods.

RESPONSE TO ADMISSION NO. 24:

Denied.

ADMISSION NO. 25.

Instances of actual confusion between Registrant's mark and Petitioner's mark have damaged Petitioner.

RESPONSE TO ADMISSION NO. 25:

Denied.

ADMISSION NO. 26.

Continued Federal Registration of Registrant's mark would cause damage to Petitioner.

RESPONSE TO ADMISSION NO. 26:

Denied.

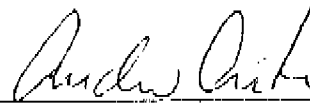
ADMISSION NO. 27.

Registrant is aware that a trademark search should have been conducted prior to its adoption of the CAPUTO mark in the United States for use on its wines.

RESPONSE TO ADMISSION NO. 27:

Denied.

Dated: October 13, 2006



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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 Admissions** was served as follows:

via regular mail on:

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Andrew C. Aitken