

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 9, 2011

Cancellation No. 92053211

CONSTELLATION BRANDS, INC.

v.

RUDD WINES, INC.

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

This case now comes up on petitioner's motion, filed December 13, 2010, to strike respondent's affirmative defense that petitioner has failed to state a claim for relief under 15 U.S.C. Section 1064(a).

In support of its motion, petitioner argues that it has alleged facts in support of its standing, as a producer of wine with a right to use the term MIXED BLACKS to describe its wine; and that it has asserted available grounds, abandonment, genericness, and that respondent's mark is merely descriptive. Respondent has not filed a response thereto.

In view thereof, petitioner's motion is granted as conceded and respondent's affirmative defense that the petition to cancel fails to state a claim upon which relief can be granted is hereby stricken. See Trademark Rule 2.127(a).

Respondent's answer is otherwise noted and entered.
Proceedings are resumed and dates are reset as follows:

Cancellation No. 92053211

Deadline for Discovery Conference	3/24/2011
Discovery Opens	3/24/2011
Initial Disclosures Due	4/23/2011
Expert Disclosures Due	8/21/2011
Discovery Closes	9/20/2011
Plaintiff's Pretrial Disclosures	11/4/2011
Plaintiff's 30-day Trial Period Ends	12/19/2011
Defendant's Pretrial Disclosures	1/3/2012
Defendant's 30-day Trial Period Ends	2/17/2012
Plaintiff's Rebuttal Disclosures	3/3/2012
Plaintiff's 15-day Rebuttal Period Ends	4/2/2012

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
