

ESTTA Tracking number: **ESTTA567520**

Filing date: **10/28/2013**

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

Proceeding	92057705
Party	Defendant Cape Wine Ventures, LLC
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Date	10/28/2013
Attachments	Answer.PDF(1432992 bytes)

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

In re Trademark of:

Registrant: Cape Wine Ventures, LLC
Registration No. 4,265,402
Registration Date: December 25, 2012
Mark: BANDANA

**ROUND HILL CELLARS d/b/a
RUTHERFORD WINE COMPANY,**

Plaintiff/Petitioner,

v.

Cancellation No. 92057705
Interlocutory Attorney Robert Coggins

CAPE WINE VENTURES, LLC,

Defendant/Registrant.

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**REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION
AND AFFIRMATIVE DEFENSES**

TO: THE COMMISSIONER OF PATENTS AND TRADEMARKS

Cape Wine Ventures (“Registrant”), through its attorneys, Howard & Howard Attorneys PLLC, submits the following Answer to Petitioner’s Petition for Cancellation:

1. Registrant’s U.S. Trademark Registration for BANDANA for wine in Class 33 (Reg. No. 4,265,402) was issued on December 25, 2012. Registrant’s constructive first use of the BANDANA mark is September 1, 2011 and the alleged first use of this mark in commerce is October 28, 2011.

ANSWER:

Admitted.

2. Petitioner owns U.S. Trademark Registration No. 4,292,641 issued on February 19, 2013, for the mark RED BANDANA for alcoholic beverages except beers in International Class 33 with a first use date of November 13, 2012, and a filing date of November 30, 2009, which filing date precedes the filing date of the BANDANA Registration or any known date of first use of the BANDANA mark for wine by Registrant.

ANSWER:

Admitted that the record on Petitioner’s Registration includes statements to reflect the above, but Registrant can neither admit nor deny the first use date or any intent to use, and leaves Petitioner to its proofs.

3. Petitioner has continuously used the trademark RED BANDANA in association with wine and the offering of wine for sale throughout the United States since as early as November 13, 2012.

ANSWER:

Registrant can neither admit nor deny, and leaves Petitioner to its proofs.

4. Petitioner alleges that Registrant’s BANDANA mark is likely to cause confusion, mistake or to deceive the public. Petitioner’s RED BANDANA mark for alcoholic beverages

In re Trademark of:

Registrant: Cape Wine Ventures, LLC

Registration No. 4,265,402 | **Registration Date:** 12/25/12

Mark: BANDANA

Page 2 of 7

except beers is nearly identical to Registrant's BANDANA mark for wine, differing merely by Petitioner's use of the descriptive leading term RED, and the respective goods on which the marks are used are identical, substantially similar or related and said goods are purchased by the same group of consumers. Accordingly, Registrant's BANDANA mark is confusingly similar to Petitioner's mark such that Registrant is not entitled to the continued registration of its BANDANA mark and Registrant's BANDANA Registration should therefore be cancelled in accordance with Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d).

ANSWER:

Denied.

5. Accordingly, Petitioner avers that for the reasons aforesaid, it will be damaged by the continued registration of Registrant's BANDANA mark.

ANSWER:

Denied.

In re Trademark of:

Registrant: Cape Wine Ventures, LLC

Registration No. 4,265,402 | **Registration Date:** 12/25/12

Mark: BANDANA

Page 3 of 7

AFFIRMATIVE DEFENSES

Cape Wine Ventures (“Registrant”) for its Affirmative or Special Defenses states as follows:

1. Registrant’s use of the mark BANDANA with the design as it appears in the application has not created and will not create any likelihood of confusion in the marketplace.
2. Petitioner is estopped from bringing the claims, or has otherwise acquiesced, in the Cancellation due to Registrant’s use of the mark BANDANA in the United States for almost two (2) years.
3. Petitioner’s claims are barred by laches and Registrant’s prior use and/or registration of the mark.
4. Petitioner has acquiesced in Registrant’s use and/or registration of the mark BANDANA in the United States.
5. Petitioner has failed to state a claim upon which relief can be granted.
6. Registrant has priority of first use of its mark over Petitioner’s marks and is entitled to a registration of the proposed mark for Class 33 by Registrant, upon information and belief, based upon a lack of intent to use by Petitioner at various relevant times or a lack of proof.
7. Registrant is entitled to a registration for the mark BANDANA for restricted use in connection with, at a minimum, wines.

In re Trademark of:

Registrant: Cape Wine Ventures, LLC

Registration No. 4,265,402 | **Registration Date:** 12/25/12

Mark: BANDANA

Page 4 of 7

8. Registrant reserves the right to plead additional affirmative defenses as discovery progresses as Registrant has not had the opportunity to complete discovery to know all of the available Affirmative Defenses at this stage of the Cancellation Proceeding.

WHEREFORE, Registrant prays that the Petition to Cancel U.S. Trademark Registration No. 4,265,402 be denied.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: October 28, 2013

By: /Jeffrey A. Sadowski/

Jeffrey A. Sadowski, Reg. No. 29,005

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In re Trademark of:

Registrant: Cape Wine Ventures, LLC

Registration No. 4,265,402 | **Registration Date:** 12/25/12

Mark: BANDANA

Page 5 of 7

CERTIFICATE OF SERVICE

The undersigned certifies that on October 28, 2013 he filed *Registrant's Answer to Petition for Cancellation and Affirmative Defenses* along with this accompanying *Certificate of Service* using the Trademark Electronic Application System ("TEAS"), which generated a Notification of Electronic Filing to all persons currently registered with the Board in the above-referenced matter.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: October 28, 2013

By: /Jeffrey A. Sadowski/

Jeffrey A. Sadowski, Reg. No. 29,005

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