

ESTTA Tracking number: **ESTTA671646**

Filing date: **05/11/2015**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Franciscan Vineyards, Inc.
Granted to Date of previous extension	05/23/2015
Address	1178 Galleron Road ST. HELENA, CA 94574 UNITED STATES
Attorney information	Stephen L. Baker Baker and Rannells PA 575 Route 28 Raritan, NJ 08869 UNITED STATES officeactions@br-tmlaw.com, K.Hnasko@br-tmlaw.com ,n.friedman@br-tmlaw.com,r.mcgonigle@br-tmlaw.com

Applicant Information

Application No	86309080	Publication date	03/24/2015
Opposition Filing Date	05/11/2015	Opposition Period Ends	05/23/2015
Applicant	Home Box Office, Inc. 1100 Avenue of the Americas New York, NY 10036 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: alcoholic beverages, namely, beer, ale, lager, stout, porter and shandy; energy drinks; non-alcoholic cocktail mixes; non-alcoholic beverages, namely, carbonated beverages and fruit drinks

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2888963	Application Date	03/14/2003
Registration Date	09/28/2004	Foreign Priority Date	NONE

Word Mark	RAVENS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1978/10/23 First Use In Commerce: 1978/10/23 Wine

U.S. Registration No.	3134833	Application Date	02/02/2003
Registration Date	08/29/2006	Foreign Priority Date	NONE
Word Mark	RAVENS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1983/12/31 First Use In Commerce: 1983/12/31 [APRONS,] SHIRTS, T-SHIRTS, CAPS, JACKETS Class 033. First use: First Use: 1978/10/23 First Use In Commerce: 1980/02/29 WINES		

U.S. Registration No.	2118152	Application Date	03/07/1997
Registration Date	12/02/1997	Foreign Priority Date	NONE
Word Mark	RAVENSWOOD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1990/06/30 First Use In Commerce: 1990/06/30 clothing, namely, aprons, bandanas, caps, gym shorts, hats, jeans jackets, polo-shirts, tank tops, T-shirts, and sweatshirts		


U.S. Registration No.	2132719	Application Date	03/07/1997
Registration Date	01/27/1998	Foreign Priority Date	NONE
Word Mark	RAVENSWOOD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1978/10/23 First Use In Commerce: 1980/02/29 wine		

U.S. Registration No.	3457923	Application Date	12/20/2007
Registration Date	07/01/2008	Foreign Priority Date	NONE
Word Mark	RAVENSWOOD		

Design Mark	RAVENSWOOD
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2004/08/00 First Use In Commerce: 2004/08/00 [Barbeque sauce;] Picante sauce; Ready-made sauces; Sauces; Sauces for barbecued meat

U.S. Registration No.	3954905	Application Date	09/07/2010
Registration Date	05/03/2011	Foreign Priority Date	NONE
Word Mark	RAVENSWOOD		
Design Mark	RAVENSWOOD		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2010/04/01 First Use In Commerce: 2010/04/01 Buyers' club services; Customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes; Retail gift shops; Retail-store and on-line retail store services featuring wines and wine accessories		

U.S. Registration No.	2130653	Application Date	03/07/1997
Registration Date	01/20/1998	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1978/10/23 First Use In Commerce: 1980/02/29 wine

Attachments	77356861#TMSN.png(bytes) 85123735#TMSN.png(bytes) 75253593#TMSN.png(bytes) doc02455520150511170259.pdf(3922444 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Stephen L Baker/
Name	Stephen L. Baker
Date	05/11/2015

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

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Franciscan Vineyards, Inc.

Mark: THREE-EYED RAVEN

Opposer

v.

Home Box Office, Inc.

Serial No.: 86309080

Filed: June 13, 2014

Applicant

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NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C SECTION 1063

In the matter of trademark application Serial No. 86309080 filed by Applicant, Home Box Office, Inc. ("Applicant"), for THREE-EYED RAVEN as a trademark for alcoholic beverages, namely, beer, ale, lager, stout, porter and shandy; energy drinks; non-alcoholic cocktail mixes; non-alcoholic beverages, namely, carbonated beverages and fruit drinks ("Applicant's Goods"), published for opposition in the Official Gazette of March 24, 2015, the time to oppose having been extended, Opposer, Franciscan Vineyards, Inc. ("Opposer") a corporation organized and existing under the laws of the Delaware and located and doing business at 1178 Galleron Road, St. Helena, California 94574, believes that it will be damaged by the registration of the alleged mark shown in Application Serial No. 86309080 and opposes the registration under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13).

As grounds of opposition, it is alleged that:

1. Opposer is the owner of numerous trademarks in a variety and constantly expanding number of classes that contain the word RAVEN and/or ravens designs and

variations thereof ("Opposer's Marks") as trademarks, trade names, and as service marks. Examples of Opposer's Marks are as follows:

Trademark	Serial No.	Application Date	Registration No.	Registration Date	Class	Trademark
RAVENS*	78225748	3/14/03	2888963	9/28/04	33	Registered
RAVENS*	78209897	2/2/03	3134833	8/29/06	25,33	Registered
RAVENSWOOD*	75253704	3/7/97	2118152	12/2/97	25	Registered
RAVENSWOOD*	75253709	3/7/97	2132719	1/27/98	33	Registered
RAVENSWOOD*	77356861	12/20/07	3457923	7/1/08	30	Pending
RAVENSWOOD	85123735	0/7/10	3954905	5/3/11	35	Registered
Mark Consists of the design of 3 Black Ravens In a Circle * 	75253593	3/7/97	2130653	1/20/98	33	Registered

* designates an incontestable registration

2. In addition to the above, Opposer uses a wide variety of raven designs on its web site and elsewhere to promote its goods and service – see <http://www.ravenswoodwinery.com/#home> and the various pages connected thereto, copies of which are attached thereto.

3. Opposer is now and for many years has been trading as and known by the Opposer's Marks, identifying Opposer as the source of a wide variety of goods, including alcoholic beverages, namely wine, the latter being in part substantially identical and in part closely related Applicant's Goods intended to be offered under its alleged mark THREE-EYED RAVEN.

4. Because Applicant's mark is THREE-EYED RAVEN for alcoholic beverages, namely, beer, ale, lager, stout, porter and shandy; energy drinks; non-alcoholic cocktail mixes; non-alcoholic beverages, namely, carbonated beverages and fruit drinks, confusion is enhanced where Opposer uses the design mark of Three Black Ravens and word marks RAVENS and/or RAVENSWOOD for wine in class 33 and related goods and services in class 25, 30 and 35.

5. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the use of Opposer's Mark for goods and services in classes 33 as well as 25, 30 and 35 .

6. The use by Opposer of the Opposer's Mark for the Opposer's goods alleged herein is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

7. Upon information and belief, Applicant intends to distribute and sell its goods through the same channels of trade as Opposer, and direct its respective goods to the same ultimate consumer as Opposer.

8. The Opposer's Marks and Applicant's THREE-EYED RAVEN mark are confusingly similar when applied to the goods of the parties.

9. The goods of Applicant and Opposer are in part substantially identical and in part closely related, and Applicant's intended use of THREE-EYED RAVEN in connection with its goods is without the consent or permission of Opposer.

10. Since Opposer owns the Opposer's Mark by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

11. The registration of the mark THREE-EYED RAVEN to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

12. As a result of long use, widespread advertising and promotion, and successful sales for nearly Thirty years, Opposer's Marks have become distinctive and

famous, (being well-known and highly regarded throughout the United States), long prior to the date Applicant filed its application to registrar Applicant's Mark.

13. Upon information and belief, Applicant intends to use the design of one or more ravens on its intended label for its intended goods or otherwise in association with its alleged THREE-EYED RAVEN mark, which would exacerbate the damage likely to be suffered by Opposer and would be indicative of Applicant's intent to cause confusion as between its alleged mark and the Opposer's Marks.

COUNT 1

LIKELIHOOD OF CONFUSION

14. The registration of Applicant's Mark to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's Goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), all to Opposer's irreparable damage.

COUNT II

FRAUD IN THE USPTO

15. Opposer repeats and re-alleges paragraphs 1 to 14 above with the same force and effect as if set forth herein at length.

16. On June 13, 2014, in Applicant's application, Applicant, having no bona-fide intent to use Applicant's Mark, knowingly made a false and fraudulent statement in Applicant's application wherein it falsely claimed, "The applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services" for Applicant's International class 032 services.

17. Applicant knowingly did not have a bona fide intent to use Applicant's Mark as Applicant has not taken steps to commence use of its Mark on Applicant's Goods.

18. The false and fraudulent declaration referred to above with respect to Applicant's Mark was made by Applicant with actual knowledge of its falsity, and was not made on information and belief and was made by a person or entity who knew or should have known the same was false and fraudulent.

19. Applicant knowingly made a false, material misrepresentation of fact in connection with Applicant's application when it made the false and fraudulent declaration referred to above.

20. The false and fraudulent declaration referred to above with respect to Applicant's Mark was made with the intent to deceive the USPTO and that the USPTO rely upon the same.

21. The USPTO did rely on the false and fraudulent declaration when it acknowledged the filing of the applications and allowed Applicant's application to publish.

22. As a result, Applicant willfully and knowingly perpetrated a fraud on the United States Patent and Trademark Office.

23. Applicant is not entitled to a Registration on the Principal Register of Applicant's Mark as Applicant has never had any legitimate interest in Applicant's Mark, Applicant never had a bona-fide intent to use Applicant's Mark, and because Applicant knowingly committed fraud when it filed Applicant's application.

24. Had it been aware of the false and fraudulent declaration referred to above and of Applicant's knowing fraudulent acts, the USPTO would not have accepted the filing of the applications, nor allowed Applicant's application to publish.

COUNT III

NO BONA FIDE INTENT TO USE

25. Opposer repeats and re-alleges paragraphs 1 to 24 above with the same force and effect as if set forth herein at length.

26. Applicant's application is void ab initio as Applicant had no good faith bona fide intent to use Applicant's Mark for Applicant's Services.

27. Applicant's actions in filing intent to use trademark applications is insufficient to establish a bona fide intent to use Applicant's Mark as applied for.

28. Applicant has taken no steps to begin commercial use of Applicant's Mark either prior to or subsequent to the filing of the Applicant's application.

29. On June 13, 2014, when Applicant filed Applicant's application, Applicant had no objective bona-fide intent to use Applicant's Mark.

30. The registration of the THREE-EYED RAVEN mark to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

31. Opposer believes that it is and will be damaged by registration of the mark applied for by Applicant.

WHEREFORE, Opposer prays that the application for registration of Home Box Office, Inc., Serial No.: 86309080, filed on June 13, 2014 be denied and that this Opposition be sustained.

Respectfully submitted for Opposer
Franciscan Vineyards, Inc.

By: /Stephen L. Baker/
Stephen L. Baker
BAKER & RANNELLS
575 Route 28
Suite 102
Raritan, NJ 08869
(908) 722-5640

Dated: May 11, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Notice of Opposition, in re Franciscan Vineyards, Inc. v. Home Box Office, Inc. was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 11th day of May, 2015 to the attorney for Applicant at the following address:

JUDITH MCCOOL
HOME BOX OFFICE, INC.
1100 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036-6712

/Stephen L. Baker/
Stephen L. Baker



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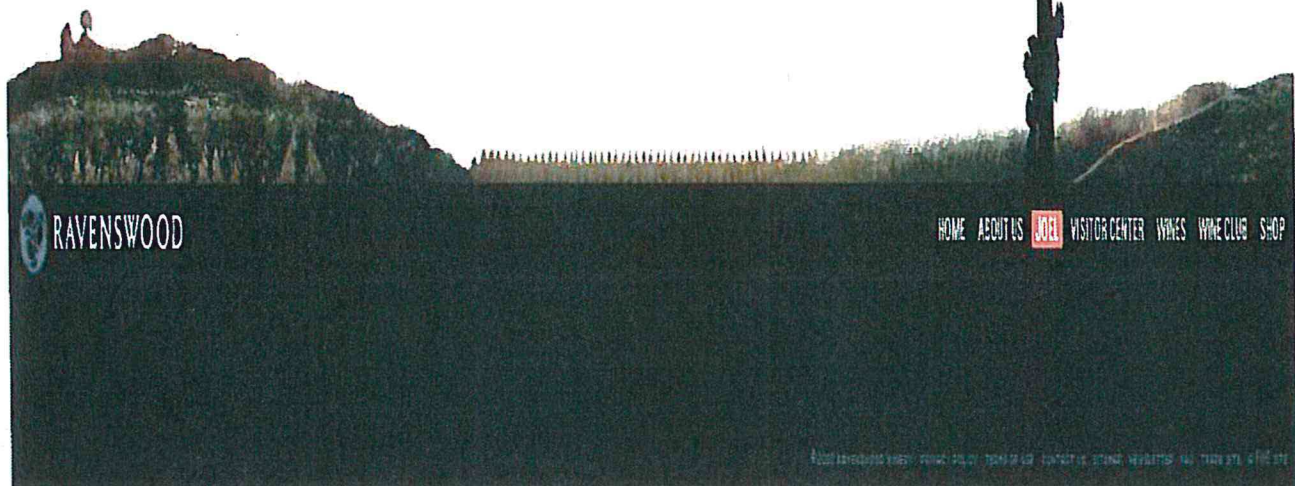
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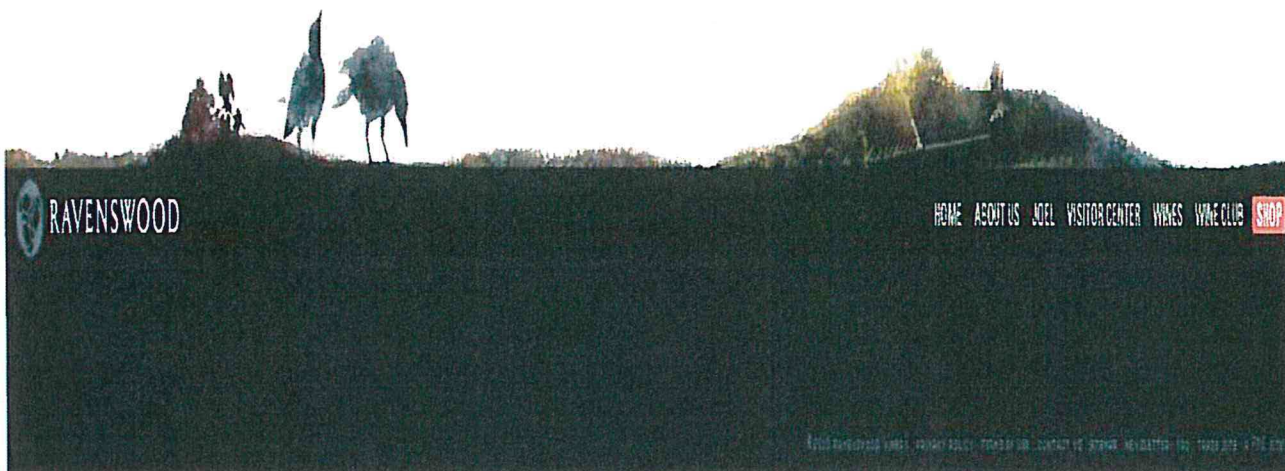
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