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10
 11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

13
 14 SULLIVAN VINEYARDS CORP.,

15 Plaintiff,

16 v.

17 O.S. WINERY, LLC,

18 Defendant.

CASE NO. CV 03-0525 MJJ

**ANSWER OF O.S. WINERY, LLC TO
 SULLIVAN VINEYARDS CORP.'S
 COMPLAINT**

19
 20 Defendant answers Plaintiff's "Complaint for (1) Federal Trademark Infringement,
 21 (2) Federal Unfair Competition, (3) California Statutory Unfair Competition, (4) Unauthorized
 22 Infringement of a Trademark to Enhance the Commercial Value of Defendant's Product,
 23 (5) Common Law Trademark Infringement, (6) Common Law Unfair Competition:"

24 1. Plaintiff admits this Court has jurisdiction over actions for federal
 25 trademark infringement and federal false designation of origin arising under the Lanham Act and
 26 denies each other allegation of paragraph 1 of the Complaint herein.

27 2. Defendant denies that claims pursuant to the provisions of the cited
 28 California statutes constitute claims for unfair competition under the trademark laws of the United

1 States as a matter of law.

2 3. Defendant admits that this Court has supplemental jurisdiction over causes
3 of action so related to causes of action over which it has original jurisdiction that they form a part
4 of the same case or controversy under Article III of the United States Constitution.

5 4. The Defendant denies that it resides in this district and that it has committed
6 any act of infringement in this district.

7 5. Defendant denies that he has caused any harm directed at Plaintiff.

8 6. Defendant is without knowledge or information sufficient to form a belief
9 as to the truth of the allegations in paragraph 6, and on that ground denies the same.

10 7. Defendant admits the allegations of paragraph 7.

11 8. Defendant denies that it has conducted infringing acts in any judicial
12 district.

13 9. Defendant incorporates by this reference its response to each of the
14 paragraphs of the complaint incorporated by reference in paragraph 9.

15 10. Defendant is without knowledge or information sufficient to form a belief
16 as to the truth of the allegations in paragraph 10, and on that ground denies the same.

17 11. Defendant denies Plaintiff's name is distinctive or constitutes a trademark.
18 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
19 other allegations in paragraph 11, and on that ground denies the same.

20 12. Defendant is without knowledge or information sufficient to form a belief
21 as to the truth of the allegations in paragraph 12, and on that ground denies the same.

22 13. Defendant is without knowledge or information sufficient to form a belief
23 as to the truth of the allegations of paragraph 13, and on that ground denies the same.

24 14. Defendant is without knowledge or information sufficient to form a belief
25 as to the truth of the allegations of paragraph 14.

26 15. Defendant is without knowledge or information sufficient to form a belief
27 as to the truth of the allegations of paragraph 15 and on that ground denies the same.

28 16. Defendant denies each allegation of paragraph 16.

1 17. Defendant is without knowledge or information sufficient to form a belief
2 as to the allegations that Plaintiff is the proprietor of any trademarks and, if so, whether its use
3 thereof began many years before Defendant began use of its marks, and on that ground denies the
4 same. Defendant denies each other allegation of paragraph 17.

5 18. Defendant denies the allegations of paragraph 18.

6 19. Defendant denies the allegations of paragraph 19.

7 20. Defendant denies the allegations of paragraph 20.

8 21. Defendant denies the allegations of paragraph 21.

9 22. Defendant is without knowledge or information sufficient to form a belief
10 as to the allegations that Plaintiff will incur liability for costs and attorney's fees, and on that
11 ground denies the same. Defendant denies each other allegation of paragraph 22.

12 23. Defendant denies the allegations of paragraph 23.

13 24. Defendant denies the allegations of paragraph 24.

14 25. Defendant incorporates by this reference its response to each of the
15 paragraphs of the complaint incorporated by reference in paragraph 25.

16 26. Defendant is without knowledge or information sufficient to form a belief
17 as to the truth of the allegations in paragraph 26, and on that ground denies the same.

18 27. Defendant denies the allegations of paragraph 27.

19 28. Defendant denies the allegations of paragraph 28.

20 29. Defendant denies the allegations of paragraph 29.

21 30. Defendant denies the allegations of paragraph 30.

22 31. Defendant denies the allegations of paragraph 31.

23 32. Defendant incorporates by this reference its response to each of the
24 paragraphs of the complaint incorporated by reference in paragraph 33.

25 33. Plaintiff is without knowledge or information sufficient to form a belief as
26 to whether Plaintiff has built valuable good will in its marks. Plaintiff denies each other allegation
27 of paragraph 34.

28 34. Defendant denies the allegations of paragraph 34.

1 35. Admit.
2 36. Defendant denies the allegations of paragraph 36.
3 37. Defendant denies the allegations of paragraph 37.
4 38. Defendant denies the allegations of paragraph 38.
5 39. Defendant incorporates by this reference its response to each of the
6 paragraphs of the complaint incorporated by reference in paragraph 40.
7 40. Admit.
8 41. Defendant denies the allegations of paragraph 41.
9 42. Defendant denies the allegations of paragraph 42.
10 43. Defendant incorporates by this reference its response to each of the
11 paragraphs of the complaint incorporated by reference in paragraph 44.
12 44. Defendant denies the allegations of paragraph 44.
13 45. Defendant denies the allegations of paragraph 45.
14 46. Defendant denies the allegations of paragraph 46.
15 47. Defendant is without knowledge or information sufficient to form a belief
16 as to the allegations that Plaintiff will incur liability for costs and attorney's fees, and on that
17 ground denies the same. Defendant denies each other allegation of paragraph 47.
18 48. Defendant denies the allegations of paragraph 48.
19 49. Defendant denies the allegations of paragraph 49.
20 50. Defendant incorporates by this reference its response to each of the
21 paragraphs of the complaint incorporated by reference in paragraph 51.
22 51. Defendant denies the allegations of paragraph 51.
23 52. Defendant denies the allegations of paragraph 52.
24 53. Defendant is without knowledge or information sufficient to form a belief
25 as to the allegations that Plaintiff will incur liability for costs and attorney's fees, and on that
26 ground denies the same. Defendant denies each other allegation of paragraph 53.
27 54. Defendant denies the allegations of paragraph 54.
28 55. Defendant denies the allegations of paragraph 55.

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AFFIRMATIVE DEFENSES

As affirmative defenses, the plaintiff alleges:

56. Each of the allegations of the complaint fails to state a claim upon which relief can be granted.

57. Each of the purported claims is barred by estoppel, fraud, laches, waiver, limitations of actions, and consent.

58. Plaintiff not entitled to any relief because of its unclean hands.

59. Defendant's infringement, if any, of any rights claimed by Plaintiff in any mark was innocent and wholly without knowledge by Defendant of any such rights.

WHEREFORE, Defendant prays that Plaintiff take nothing by its complaint that Defendant be awarded its costs of suit in defending this action.

DATED: July 2, 2003

HANCOCK ROTHBERT & BUNSHOFT LLP

By: 

Michael L. Donovan

Attorneys for Defendant O.S. WINERY, LLC