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

Proceeding	91237481
Party	Defendant Frank Spirits LLC
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12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 FRANK FAMILY VINEYARDS, a
15 California limited liability company,

16 Plaintiff,

17 v.

18 FRANK SPIRITS, LLC, a Texas limited liability
19 company; and DOES 1 through 10,

20 Defendants.

CASE NO. 3:17-cv-06505

COMPLAINT

- 1. **Federal Trademark Infringement**
- 2. **Federal Unfair Competition**
- 3. **California Unfair Competition**
- 4. **Common Law Trademark Infringement**
- 5. **Common Law Unfair Competition**
- 6. **Declaratory Relief**

DEMAND FOR JURY TRIAL

21 Plaintiff Frank Family Vineyards, LLC for its Complaint against Defendant Frank Spirits, LLC
22 and DOES 1 THROUGH 10, alleges as follows:

23 **INTRODUCTION**

24 1. This is an action to redress violations of federal trademark and unfair competition laws
25 (15 U.S.C. § 1114 *et seq.*, and § 1125 *et seq.*), California’s unfair competition law (Cal. Bus. & Prof.
26 Code § 17200 *et seq.*) and common law trademark infringement and unfair competition as a result of
27 Defendant’s willful and unauthorized use of a trademark in connection with the sale of alcoholic
28 beverages that is confusingly similar to Plaintiff’s trademark, and as more fully set forth herein.

1 Plaintiff seeks injunctive relief restraining Defendant's infringement of Plaintiff's trademarks,
2 monetary damages, attorneys' fees and costs, declaratory relief and such other relief as shall be
3 deemed just and proper by the Court.

4 THE PARTIES

5 2. Plaintiff Frank Family Vineyards, LLC ("**Plaintiff**" or "**Frank Family**") is a limited
6 liability company organized and existing under the laws of California, with an office at 1091 Larkmead
7 Lane, Calistoga, California 94515. Frank Family owns and operates a winery located in Napa Valley
8 that has been producing and selling wine throughout the United States since 2001, including wine
9 under the federally-registered trademark FRANK FAMILY VINEYARDS.

10 3. On information and belief, Defendant Frank Spirits, LLC ("**Defendant**" or "**Frank**
11 **Spirits**") is a limited liability company organized and existing under the laws of Texas, with addresses
12 at 206 E. 9th Street, Suite 1300, Austin, Texas 78701 and in Scottsdale, Arizona. On information and
13 belief, Frank Spirits was created for the purpose of producing, marketing and distributing alcoholic
14 beverages, including a vodka, under the trademarks FRANK SPIRITS and FRANK (the "**FRANK**
15 **SPIRITS Marks**").

16 4. The true names and capacities, whether individual, corporate, associate or otherwise, of
17 Defendants DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues said
18 Defendants by such fictitious names (collectively with Defendant Frank Spirits referred to as
19 "**Defendants**"). Plaintiff will seek leave of the Court to amend this Complaint when the names and
20 capacities of said Defendants have been ascertained.

21 5. Plaintiff is informed and believes, and on such information and belief alleges, that at all
22 times herein mentioned Defendants DOES 1 through 10, inclusive, were the agents, employees,
23 servants, consultants, principals, employers or masters of each of their Co-Defendants and each
24 Defendant has ratified, adopted or approved the acts or omissions hereinafter set forth of the remaining
25 Defendants, and each and every Defendant. Plaintiff is further informed and believes, and on such
26 information and belief alleges, that each of these fictitiously named Defendants is responsible in some
27 manner for acts and/or omissions herein alleged.

28

JURISDICTION AND VENUE

1
2 6. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §
3 1338(a), in that this case arises under the Lanham Act and trademark laws of the United States. The
4 Court has pendant jurisdiction over the related unfair competition claims under 28 U.S.C. §1338(b).

5 7. This Court has personal jurisdiction over Defendants and venue is proper in this Judicial
6 District pursuant to 28 U.S.C. § 1391(b) because, *inter alia*, (a) Defendant and/or its agents are doing
7 business in this District; (b) events giving rise to the claims alleged herein occurred or will occur in
8 interstate commerce, in the State of California, and in this District, as a result of Defendant’s violations
9 of the asserted trademarks as alleged below; and (c) Defendant and/or its agents have purposefully
10 availed themselves of the opportunity to conduct commercial activities in this forum.

11 8. Pursuant to Civil Local Rule 3-2(c), this is an intellectual property matter that is to be
12 assigned on a district-wide basis.

13 **FACTS COMMON TO ALL CLAIMS**

14 9. Since 2001, and long prior to the acts of Defendant complained of herein, Plaintiff has
15 consistently marketed, promoted, and sold wines under the trademark FRANK FAMILY
16 VINEYARDS (the “**FRANK FAMILY Mark**”).

17 10. Plaintiff owns a valid federal trademark registration, U.S. Registration No. 4346342, for
18 the mark FRANK FAMILY VINEYARDS in International Class 033 for “Wines.” The application
19 was filed on October 1, 2012 and registered on June 4, 2013 with a first use in commerce of May 2001.
20 Attached hereto as **Exhibit 1** is a true and correct copy of U.S. Registration No. 4346342.

21 11. Plaintiff also owns a valid federal trademark registration, U.S. Registration No.
22 4821534, for a design mark prominently featuring the FRANK FAMILY mark in International Class
23 033 for “Wines.” The application was filed on January 28, 2015 and registered on September 29, 2015
24 with a first use in commerce of May 1, 2001 (collectively, this registration with the above-referenced
25 registration will hereinafter be referred to as the “**FRANK FAMILY Registrations**”). Attached
26 hereto as **Exhibit 2** is a true and correct copy of U.S. Registration No. 4821534. The design mark
27 registration contains the wording FRANK FAMILY in stylized font with the wording VINEYARDS
28 written below in smaller, stylized font. *See Ex. 2.*

1 12. The FRANK FAMILY Registrations are valid, subsisting, and conclusive evidence of
2 the validity of the marks, Plaintiff's ownership of the marks, and Plaintiff's exclusive right to use the
3 marks in commerce on or in connection with the goods and services specified therein.

4 13. Since 2001, Plaintiff has sold millions of bottles of wine bearing the FRANK FAMILY
5 Mark and is well-known throughout the country for the FRANK FAMILY Mark for alcoholic
6 beverages. Plaintiff's FRANK FAMILY-branded wine products have received widespread recognition
7 in national trade and consumer publications, including Wine & Spirits, Wine Enthusiast, Wine
8 Spectator, The New York Times, The Chicago Tribune, Washington Post, Travel+Leisure, and others.

9 14. Plaintiff has invested a substantial amount of time, effort and money in promoting and
10 producing the FRANK FAMILY Mark and ensuring the high quality of goods provided under the
11 FRANK FAMILY Mark. As a result of Plaintiff's investment of substantial financial resources,
12 extensive marketing efforts and widespread sales for over sixteen years throughout the United States,
13 the FRANK FAMILY Mark has acquired significant goodwill. The FRANK FAMILY Mark is widely-
14 recognized and respected by consumers through the United States, as well as by members of the trade,
15 as an exclusive designation of source for the goods of Plaintiff. As a result of the widespread and
16 continuous distribution, promotion and sale of alcoholic beverages under the FRANK FAMILY Mark,
17 the FRANK FAMILY Mark has acquired distinctiveness among consumers of alcoholic beverages.

18 15. On information and belief, Defendant's CEO Philip Risk and CFO Kent Croutcher
19 launched Frank Spirits on or around January 2017.

20 16. On information and belief, Defendants registered the domain www.frankvodka.com on
21 January 3, 2017 with the domain registrar GoDaddy. In addition to maintaining a website, Defendants
22 maintain a presence on major social networking sites such as Facebook and Instagram to market and
23 promote their infringing alcoholic beverage products.

24 17. On information and belief, Defendants formed a limited liability company for Frank
25 Spirits, LLC that was registered with the Texas Secretary of State on February 6, 2017 for the purpose
26 of producing, distributing and selling alcoholic beverage products.

27 18. On February 21, 2017, Frank Spirits filed a trademark application with the United
28 States Patent and Trademark Office ("USPTO"), Application Serial No. 86637690 (the "Frank

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