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Court File No. \_\_\_\_\_

**FEDERAL COURT**

**APPLICATION UNDER** r. 300(d) of the *Federal Court Rules*, SOR/98-106 and Section 56 of the *Trademarks Act*, R.S.C. 1985, c. T-13, in relation to Applications No. 1,933,684 for CRABB’S HALTER VALLEY and 1,933,686 for H.W. CRABB

**BETWEEN:**

**CONSTELLATION BRANDS U.S. OPERATIONS, INC.**

Applicant

- and -

**THE VINEYARD HOUSE, LLC**

Respondent

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant’s solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: December 29, 2025

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Issued by: *(Registry Officer)*

Address of local office: Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa ON

TO: **The Vineyard House LLC**  
1581 Oakville Grade  
Oakville, CA 94562  
United States of America

AND TO: **Canadian Intellectual Property Office**  
**Attn: Trademarks Opposition Board**  
Place du Portage 1  
50 Victoria Street, Room C-114  
Gatineau QC K1A 0C9

AND TO: **Attorney General of Canada**  
50 O'Connor Street, 5<sup>th</sup> Floor  
Ottawa ON K1A 0H8

## APPLICATION

### RELIEF SOUGHT:

1. The Applicant, Constellation Brands U.S. Operations, Inc. (the “**Applicant**” or “**CBUSO**”), by way of Application pursuant to section 56 of the *Trademarks Act*, RSC, 1985, c T-13 (the “*Trademarks Act*”), appeals the decision of the Registrar of Trademarks (the “**Registrar**”), dated October 30, 2025, reported at 2025 TMOB 214 (the “**Decision**”), regarding the registration of the CRABB’S HALTER VALLEY and H.W. CRABB trademarks (hereinafter collectively referred to as the “**Trademarks**”) respectively applied for under application numbers 1,933,684 and 1,933,686 (hereinafter collectively referred to as the “**Applications**”, and individually as the “CRABB’S HALTER VALLEY Application” and the “H.W. CRABB Application”). In that Decision, the Registrar rejected the Applicant’s oppositions to the registration of the Trademarks. The Decision was communicated to the Applicant on October 30, 2025.
2. Accordingly, the Applicant makes an Application for:
  - a. an order pursuant to subsection 56(5) of the *Trademarks Act*, granting the Applicant leave to adduce new evidence in addition to that adduced before the Board;
  - b. an order reversing the Decision of the Registrar with respect to the Trademarks, and directing the Registrar to refuse the Applications;
  - c. an award of costs to the Applicant; and
  - d. such further and other order as this Honourable Court may deem just.

**THE GROUNDS FOR THIS APPLICATION ARE:**

3. On December 3, 2018, (the “**Filing Date**”) The Vineyard House LLC (the “**Respondent**” or “**TVH**”) filed the Applications to register the CRABB’S HALTER VALLEY and H.W. CRABB Trademarks in association with “wines” (the “**Goods**”) in International Class 33.
4. The Applications claim priority to trademark applications filed in the United States of America on June 1, 2018 (the “**Deemed Filing Date**”).
5. The CRABB’S HALTER VALLEY Application was assigned application number 1,933,684 and was advertised in the *Trademarks Journal* on June 16, 2021, while the H.W. CRABB application was assigned application number 1,933,686 and was advertised in the *Trademarks Journal* on October 20, 2021.
6. The Applicant opposed the CRABB’S HALTER VALLEY Application by way of a Statement of Opposition filed on December 16, 2021, and opposed the H.W. CRABB Application by way of a Statement of Opposition filed on April 20, 2022.

*The Grounds of Opposition*

7. In each of the Statements of Opposition to registration of the Trademarks, CBUSO alleged the following grounds of opposition:
  - a) Pursuant to Paragraph 38(2)(d) and Section 2 of the *Trademarks Act*, the Trademarks are not distinctive of TVH because they do not distinguish, nor are they adapted to distinguish, the Goods specified in the Applications from the goods of others, and more particularly, the goods of CBUSO or its licensees.
  - b) Pursuant to Paragraphs 38(2)(b) and 12(1)(b) of the *Trademarks Act*, the Trademarks are not registrable in view that they were and are deceptively misdescriptive of the place of origin of the Goods in association with which they are allegedly proposed to be used because

they describe the Goods as being produced using grapes from vineyards planted by Mr. Crabb, when in fact, the land used by TVH to produce wine was never planted as a vineyard by Mr. Crabb.

- c) Pursuant to Paragraph 38(2)(a.1) of the *Trademarks Act*, the Applications were filed in bad faith since at the Filing Date and all other material times, TVH had knowledge of the CBUSO's TO KALON trademark and its trademarks incorporating the initials of Mr. H.W. Crabb (the "**H.W.C Marks**") and the inclusion of Mr. Crabb's name in the Trademarks is and was intended to mislead consumers into believing that (i) TVH's Goods are associated with the Applicant; or (b) TVH produces wine using grapes from vineyards planted by Mr. Crabb, when it knew that the land was never planted as a vineyard by Mr. Crabb.
- d) Pursuant to Paragraphs 38(2)(c) and 16(1)(a) of the *Trademarks Act*, as of the Filing Date and at all material times, TVH was not entitled to and is not entitled to the registration of the Trademarks in Canada in association with the Goods since, as of the Filing Date and at all other material times, the Trademarks were confusing with CBUSO's TO KALON trademark and H.W.C Marks which were previously used or made known in Canada by CBUSO or its licensees with wine, and which were not abandoned as of the dates of advertisement of the Applications.
- e) Pursuant to Paragraph 38(2)(e) of the *Trademarks Act*, at the Filing Date, TVH was not using, had not used and did not propose to use the Trademarks in Canada in association with the Goods specified in the Applications since TVH did not intend to use the Trademarks as trademarks in accordance with section 2 and 4 of the *Trademarks Act*.

Pursuant to Paragraph 38(2)(f) of the *Trademarks Act*, at the Filing Date, TVH was not entitled to use the Trademarks in Canada in association with the Goods specified in the Applications because it knew that such use contravened, contravenes or is likely to contravene paragraph 7(b) and subsections 7(d)(i) and 7(d)(ii) of the *Trademarks Act*.

*Evidence relied upon before the Trademarks Opposition Board*

8. In support of its oppositions, the Applicant filed the following evidence:
  - The Affidavit of Chad Harding, sworn on December 2, 2022 (the “**Harding Affidavit**”) alongside Exhibits A to I. Mr. Harding was not cross-examined on his Affidavit;
  - The Affidavit of Erik C. Kane, sworn on December 2, 2022 (the “**Kane Affidavit**”) alongside Exhibits A to E. Mr. Kane was not cross-examined on his Affidavit; and
  - The Affidavit of Kenneth L. Wilton, sworn on December 2, 2022 (the “**Wilton Affidavit**”) alongside Exhibits A to P. Mr. Wilton was not cross-examined on his Affidavit;
9. In defence of the oppositions, the Respondent filed the Affidavit of David Green, sworn on November 6, 2023 (the “Green Affidavit”) alongside Exhibits A to J. Mr. Green was not cross-examined on his Affidavit.
10. As its reply evidence, the Applicant filed:
  - The Affidavit of Kathy Paterson, sworn on May 17, 2024 (the “**Paterson Affidavit**”) alongside Exhibits A to H5; and
  - The Affidavit of Kenneth L. Wilton, sworn on May 14, 2024 (the “**Second Wilton Affidavit**”) alongside Exhibits A to C.

The Trademark Opposition Board's decision

11. In a decision dated October 30, 2025, Member Jaimie Bordman, acting on behalf of the Registrar, rejected the Applicant's oppositions. In particular, Member Bordman concluded that:
  - a. The Harding Affidavit provided no evidence that Canadians had ever purchased any wines associated with the TO KALON trademark or H.W.C. Marks. Furthermore, there was no evidence that CBUSO has promoted any of the TO KALON trademark and the H.W.C. Marks in Canada, at least in the traditional sense of advertising and marketing. Notably, Mr. Bordman considered the media coverage referred to in the Harding Affidavit and concluded that there was no evidence of any media content publicizing TO KALON, the H.W.C. Marks, or Mr. Crabb's connection thereto, for more than five years preceding the material dates for this ground.
  - b. The Harding Affidavit did not allow a reasonable conclusion that the Trademarks described that the Respondent's wines were produced using grapes from the vineyards planted by Mr. Crabb as the Applicant's evidence did not permit a reasonable conclusion that Canadian wine consumers or dealers, by and large, were aware of Mr. Crabb and his story, thus making it unlikely that the average Canadian wine purchaser would know of Mr. Crabb or the vineyards he planted in Napa Valley.
  - c. There was no evidence that the Respondent knew that its property was not part of Mr. Crabb's vineyard as of the filing dates of the applications since the Respondent argued that its property *was* part of Mr. Crabb's vineyard, suggesting that the Respondent believed its property *was* used by Mr. Crabb for growing grapes.
  - d. There was no evidence that the Applicant's wines were actually sold or otherwise transferred in Canada, as required by the definition of "use"

under section 4 of the *Trademarks Act*, since the Harding Affidavit does not state whether sales or transfers of such wines actually occurred in Canada, nor does it state when such sales or transfers (if any) began.

- e. There was no evidence to suggest that the Respondent did not at least propose to use the Trademarks in Canada, albeit Member Bordman refused to rule on the question of whether the Respondent's evidence demonstrating sales of wines marked with H.W. CRABB'S HERMOSA VALLEY constituted use of the H.W. CRABB trademark in Canada.
- f. The Applicant's evidence was insufficient to establish that the TO KALON trademark or the H.W.C. Marks had acquired any appreciable reputation in Canada or to conclude that the Canadian public would be aware of Mr. Crabb, or his historical association with TO KALON.

### The Appeal

- 12. The Applicant now appeals the October 30, 2025 Decision of the Registrar.
- 13. In an opposition proceeding, while there is an initial burden on the opponent to prove the facts on which it bases its allegations, the legal onus is on the trademark applicant to show, on the basis of all the evidence, that its application for registration does not contravene the provisions of the Act.
- 14. The Registrar erred in fact, in law, and in mixed fact and law in at least the following ways:
  - a. By finding that articles published in 2013 and 2016 by the well-known Canadian news publications the Toronto Sun and the Vancouver Sun, respectively, was insufficient to satisfy the Applicant's initial evidential burden to allow a reasonable conclusion that the H.W. Crabb name and the TO KALON trademark had become sufficiently known and distinctive in Canada;

- b. By finding that, despite the Applicant having publicized in Canada the connection between Mr. Crabb and his historical association with the wine sold by Applicant, Applicant's predecessor-in-title, and their licensees, and the presence of articles from the well-known publications the Toronto Sun and the Vancouver Sun, respectively published in 2013 and in 2016, such evidence was insufficient to demonstrate that Canadian wine consumers were aware of Mr. Crabb and its story to satisfy the Applicant's initial evidential burden;
- c. By finding that the Applicant's evidence was insufficient to satisfy the Applicant's initial evidential burden to demonstrate that the H.W. Crabb name had become sufficiently known in Canada, when the Applicant's evidence showed that it had publicized the connection between H.W. Crabb and the Applicant sufficiently in Canada that two well-known publications independently publicized that connection prior to the filing date of the Respondent's Applications to register the CRABB'S HALTER VALLEY and H.W. CRABB Trademarks, that Canadians had attended the Applicant's certification program discussing the connection between H.W. Crabb and the Applicant, and that the Respondent had not filed any evidence showing that it had sold any wine in Canada in association with either of the Trademarks;
- d. By finding that the date of the U.S. Court's judgment, namely January 26, 2021, is the date at which it can be concluded that TVH first knew that its property was not a part of Mr. Crabb's historic vineyard and was not used by Mr. Crabb for growing grapes for the purpose of winemaking; and
- e. By finding that the U.S. Court's judgment finding that TVH's property was not part of Mr. Crabb's historic vineyard and was not used by Mr. Crabb for growing grapes for the purpose of winemaking failed to satisfy the Applicant's initial evidential burden and shift the legal onus

to TVH to show it did not know that its land was never planted as a vineyard by Mr. Crabb.

15. The Applicant seeks leave to adduce new evidence before this Court. Should leave be granted and the evidence adduced by the Applicant is found to be material and of probative value, the standard of review will be *de novo*.
16. Should leave to adduce new evidence not be granted, or should this Court find that the new evidence is not material and not of probative value, the standard of review shall be that of a palpable and overriding error.

#### **DOCUMENTARY EVIDENCE**

17. A copy of the materials filed before the Board when it rendered the Decision, including the Harding Affidavit, the Kane Affidavit, the Wilton Affidavit, the Paterson Affidavit, the Second Wilton Affidavit as well as the file maintained by the Registrar in respect of the CRABB'S HALTER VALLEY and H.W. CRABB Applications;
18. Subject to the Applicant's request seeking leave to adduce new evidence in addition to the evidence adduced before the Registrar, such further documents and affidavits filed in accordance with any scheduling order made by this Court pursuant to paragraph 47 of the *Case and Trial Management Guidelines for Complex Proceedings, Proceedings under the PM9NOC) Regulations, and Appeals under Subsection 56(1) of the Trademarks Act*, dated July 18, 2025.
19. Such other affidavit evidence and other material as counsel shall advise that the Applicant may file in accordance with the *Federal Courts Rules*; and
20. Such further and other material as counsel may advise and this Honourable Court may permit.

**RULE 317 REQUEST**

21. The Applicant requests, pursuant to Rule 317(1) of the Federal Courts Rules, the Registrar of Trademarks to send a certified copy of the material that is not in the possession of the Applicant but is in the possession of the Registrar of Trademarks to the Applicant and to the Registry, namely the file history of the opposition proceedings as they relate to Applications number 1,933,684 and 1,933,686.

Date: December 29, 2025

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