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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 The **YAKAMA NATION GENERAL**
11 **COUNCIL,**

12 Plaintiff,

13 v.

14 **SHERIDAN VINEYARD; DINEEN**
15 **VINEYARD; and XPRESS LIQUOR AND**
16 **WINE; and ST HILAIRE CELLARS,**
17 Defendants.

) No.

) **COMPLAINT FOR DECLARATORY**
) **AND INJUNCTIVE RELIEF**

18 COMES NOW, the undersigned on behalf of plaintiffs and respectfully alleges as
19 follows:
20

21 I. INTRODUCTION

22 1. A. This is a complaint in a civil action seeking declaratory and injunctive relief
23 enjoining defendant from utilizing the names “Kamiakin”, “Yakama”, or any other derivative
24 or shortened version of the names on wine or any other alcohol beverage on products they
25 manufacture or sell.
26

27
28 COMPLAINT - 1
29

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II. PARTIES

2.A. Plaintiff is the Yakama Nation General Council, which is the governing body of the Yakama Nation composed of all voting age members of the Yakama Nation.

2.B. On information and belief, Defendant Sheridan is a business engaged in the production and commercial distribution and sale of Kamiakin wine.

2.C. On information and belief, Defendant Dineen Vineyard is a business which advertises via the internet and sells wines, including Kamiakin Red Blend.

2.D. Defendant Xpress Liquor and Wine is a business which sells wine, including “the Yakima Collection”.

2.E. On information and belief, Defendant St Hilaire Cellars produces custom wine labels, including labels for the Yakima Collection.

III. JURISDICTION AND VENUE

3.A. The Court has jurisdiction over this cause pursuant to 28 USC 1331 and 15 USC 1125 in that defendants, in connection with the sale of goods in commerce, have used the names Kamiakin and/or Yakama in a manner likely to cause confusion as to its association with Kamiakin who signed the Yakama Treaty of 1855 (12 Stat. 951) and the Yakama Nation as to the approval or sponsorship of defendant’s product and has misapplied or misappropriated a hereditary proprietary tribal name and affixed it to its product label, contrary to the intent and purposes of 18 USC 1163 and the Indian Arts and Crafts Act, Public Law 101-644.

3.B. The Court has jurisdiction over this cause pursuant to 28 U.S.C. §1362 in that this civil action is brought by a governing body of an Indian tribe recognized by the United States

1 Secretary of Interior and involves an issue arising under the treaties, constitution or laws of the
2 United States.

3 3.C. The Court has jurisdiction pursuant to the Lanham Act, 15 U.S.C. §§1051, *et seq.*,
4 in that defendants' use of names belonging to or uniquely associated with plaintiff infringes
5 upon plaintiff's property right in violation of trademark and patent laws.

6
7 3.B. Venue is appropriate in the United States District Court for the Eastern District of
8 Washington under 28 USC 1391 (b) and (c) in that the acts complained of occurred
9 substantially in this district and all plaintiffs and defendants reside or do business within the
10 Eastern District of Washington.

11 IV. FACTUAL ALLEGATIONS

12 4.A. Kamiakin is a leader among the people of what is now called the Yakama Nation.

13 4.B. Kamiakin was against the use of alcohol beverages.

14 4.C. Kamiakin was one of the main negotiators of the Treaty between the United States
15 government and the fourteen tribes and bands whose leaders signed that treaty.

16 4.D. Kamiakin was designated as the Head Chief of his People (Exhibit A).

17 4.E. Kamiakin signed the Yakama Treaty of 1855 on behalf of the fourteen tribes and
18 bands for which he was designed as leader (Id., Exhibit A).

19 4.F. In the record of the Treaty Council and in the treaty language, Kamiakin expressed
20 his opposition to the consumption of alcohol beverages.

21 4.G. According to the laws of the people, tribal names such as Kamiakin are incorporeal
22 hereditary property which may only be utilized by the members of the deceased's family. Such

1 names are bequeathed through ceremony from generation to generation. This is unlike the
2 common names of persons outside the tribe, which can be utilized without permission.

3
4 4.H. Defendants Sheridan Vineyards and Dineen Vineyards utilize the name Kamiakin
5 on its wine sold by them (Exhibit B).

6 4.I. The label on wine sold by Defendants Sheridan and Dineen plainly is plainly
7 intended to refer to Kamiakin, a leader of the Yakama Nation in the mid-1800's.

8
9 4.J. The consumption of alcohol was discouraged by Kamiakin and in signing the Treaty
10 he memorialized his opposition to the consumption of alcohol beverages.

11 4.M. The use of the hereditary name of Kamiakin on a wine bottle, misleads people that
12 it somehow honors Kamiakin and defendants have no permission to use his name for
13 commercial purposes or any derivative which clearly by innuendo is the property of his
14 descendants and his tribe.

15
16 4.N. Plaintiff have suffered shock and embarrassment and emotional distress at the use
17 of this name on a wine bottle in that it is contrary to what Kamiakin believed in, plays in to the
18 stereotype of approval of use of alcohol by Native people, and is contrary to the teachings
19 plaintiffs try to convey to their future generations.

20
21 4.O. The Confederated Tribes and Bands of the Yakama Nation holds at least 10 live
22 trademarks that include the name Yakama (Exhibit C).

23
24 4.P. The law of the Yakama Nation, specifically Yakama General Council Resolution
25 Number GC-03-2020, prohibits use of the name Yakama for commercial purposes on any
26 product without approval of the Yakama Nation General Council (Exhibit D).

1 4.Q. On information and belief, defendant Xpress Liquor and Wine uses the name
2 Yakama, or variations thereof on a product sold by it under the name Yakima Collection. On
3 information and belief, defendant St Hilaire Cellars manufactured the label affixed to the
4 product. The label depicts Indians on horseback which are intended to reflect Yakama people
5 (Exhibits E, F).
6

7 4.R. Defendants use of the name Yakama upon the labels of its products has the
8 potential to mislead consumers by implying that the product is approved by or associated with
9 the Yakama People.
10

11 4.S. None of the defendants have permission or a licensing agreement to utilize the
12 names Yakama or Kamiakin for commercial purposes.
13

14 V. CLAIMS FOR RELIEF

15 5.A. Defendants' application of the name Kamiakin and Yakama to their products
16 violates the Lanham Act, 15 U.S.C. § 1125 and constitutes misapplication of tribal property
17 contrary to 18 U.S.C. 1163 and the Indian Arts and Crafts Act.
18

19 5.B. Defendant's conduct violates the Civil Rights Act of 1964 in that use of plaintiffs
20 ancestral tribal name and or official name subjects plaintiff's members to discrimination in
21 that, in business relations with persons other than tribal Indians, the commercial use of
22 proprietary names associated with another require permission or a contractual licensing
23 agreement. The appropriation of proprietary names of plaintiff and placement on wine bottles
24 for sale imposes shame and ridicule upon plaintiff's members whose treaty with the United
25 States prohibits their use and possession of alcohol beverages.
26
27

1 5.C. By the acts and facts alleged above, plaintiffs assert the ancillary or pendent state
2 law claim of violation of Revised Code of Washington section 19.86.010, *et seq.*, in that
3 defendants use of the name in and or Yakama on its label occurs in trade or commerce and its
4 use is unfair to plaintiffs and deceptive to the public.
5

6 VI. PRAYER FOR RELIEF

7 6.A. As a direct and proximate result of the foregoing conduct, plaintiffs have suffered
8 harm and have no adequate remedy at law.
9

10 For the foregoing reasons, the court should declare that defendants' use of the name
11 Kamiakin or Yakama on its commercial products is unauthorized and contrary to law and
12 enjoin defendants from continuing to use same.
13

14 DATED this 21st day of January, 2021.
15
16
17
18
19

20 Respectfully submitted,
21 YAKAMA NATION GENERAL COUNCIL
22 By:

23 *S/ Jack W. Fiander*

24 Jack W. Fiander, WSBA 13116
25 Counsel for Plaintiff
26 Yakama Nation General Council
27 Townuk Law Offices, Ltd.
28 Sacred Ground Legal Services, Inc.
29

**TREATY WITH THE YAKIMA, 1855. June 9, 1855. | 12 Stat., 951. | Ratified Mar. 8, 1859.
| Proclaimed Apr. 18, 1859.**

Articles of agreement and convention made and concluded at the treaty-ground, Camp Stevens, Walla-Walla Valley, this ninth day of June, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the undersigned head chiefs, chiefs, headmen, and delegates of the Yakama, Palouse, Pisquouse, Wenatshapam, Klikatat, Klinquit, Kowwas-say-ee, Li-ay-was, Skin-pah, Wish-ham. Shyiks, Ochechotes, Kah milt-pah, and Se-ap-cat, confederated tribes and bands of Indians, occupying lands hereinafter bounded and described and lying in Washington Territory, who for the purposes of this treaty are to be considered as one nation, under the name of ““Yakama,”” with Kamaiakun as its head chief, on behalf of and acting for said tribes and bands, and being duly authorized thereto by them.

* * *

ARTICLE 9. The said confederated tribes and bands of Indians desire to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same, and, therefore, it is provided that any Indian belonging to said confederated tribes and bands of Indians, who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her annuities withheld from him or her for such time as the President may determine.

* * *

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and the undersigned head chief, chiefs, headmen, and delegates of the aforesaid confederated tribes and bands of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS, Governor and Superintendent. [L. S.]

Kamaiakun, his x mark. [L. S.]

Exhibit A

Excerpt of Yakama Treaty of 1855

* * *



Exhibit B
Kamiakin Rosé Wine



United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System (TESS)

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	87902237	5886269	YAKAMA	TSDR	LIVE
2	85741781	4456292	YAKAMA NATION	TSDR	LIVE
3	85741665	4467520	YAKAMA NATION	TSDR	LIVE
4	85741792	4918436	YAKAMA NATION	TSDR	LIVE
5	85741821		YAKAMA INDIAN NATION TREATY OF 1855	TSDR	DEAD
6	85741815		YAKAMA INDIAN NATION TREATY OF 1855	TSDR	DEAD
7	85741785	5036728	YAKAMA NATION	TSDR	LIVE
8	85741720	4951609	YAKAMA NATION	TSDR	LIVE
9	85741774	4918435	YAKAMA NATION	TSDR	LIVE
10	85741681	4918434	YAKAMA NATION	TSDR	LIVE
11	85741820		YAKAMA INDIAN NATION TREATY OF 1855	TSDR	DEAD
12	85741818		YAKAMA INDIAN NATION TREATY OF 1855	TSDR	DEAD
13	85741635		YAKAMA NATION	TSDR	DEAD
14	85741771	4909069	YAKAMA NATION	TSDR	LIVE
15	85741731	4909068	YAKAMA NATION	TSDR	LIVE
16	85741793		YAKAMA NATION	TSDR	DEAD
17	85741587		YAKAMA NATION	TSDR	DEAD
18	78910614	3383252	YAKAMA JUICE	TSDR	DEAD
19	78909596	3383244	YAKAMA JUICE	TSDR	DEAD
20	89001558		CONFEDERATED TRIBES AND BANDS YAKAMA NATION TREATY OF 1855	TSDR	LIVE

Exhibit C

http://tmsearch.uspto.gov/bin/showfield?f=toc&state=4809%3A47zd4l.1.1&p_search=search&p_L=50&BackReference=&p_plural=yes&p_s_PARA1=&p_tagrepl%7E%3A=PARA1%24LD&expr=PARA1+AND+PARA2&p_s_PARA2=yakama&p_tagrepl%7E%3A=PARA2%24COMB&p_op_ALL=AND&a_default=search&a_search=Submit+Query&a_search=Submit+Query



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

RESOLUTION

GC-03-2020

WHEREAS, the Fourteen Confederated Tribes and Bands of the Yakama Nation are to be considered as one Sovereign Nation and a federally recognized Tribe according to the U.S.- Yakama Treaty of June 9, 1855 (12 Stat. 951), and

WHEREAS, the Yakama Nation General Council membership, according to the February 1944 Resolution, Resolution T-38-56 and GC-02-81 (as amended by GCM-40-94) retains the exclusive authority and responsibility to act on measures of great importance to the people of the Yakama Nation, and

WHEREAS, the Yakama Nation General Council membership, during an Annual General Council meeting held at the Toppenish Community Center on December 11, 2019, with a quorum present, voted on General Council Motion GCM-12-2020, which states: "A matter of great importance that no person or entity shall use the name Yakama, on any product without approval of the General Council." Motion made by Jack Fiander (YN Roll #4261) and seconded by Terry Goudy-Rambler (YN Roll #947) and,


WHEREAS, a discussion was held on the motion by the General Council membership and a vote was taken on GCM-12-2020 after a call for the question came from the floor. The official results of the vote were: FOR 220, AGAINST 4, ABSTAIN 136, and the motion passed; and,

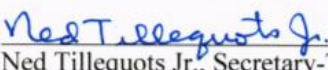
NOW, THEREFORE BE IT RESOLVED, that the Yakama Nation General Council membership, acting through the General Council Executive Board, hereby enacts GCM-12-2020 into a Yakama Nation General Council Resolution. and

BE IT FINALLY RESOLVED, that the Yakama Nation General Council membership reserves unto itself, acting through the General Council Executive Board, the authority and responsibility to carry out the enforcement and implementation as stated in GCM-12-2020 as necessary and as enacted through a duly adopted Yakama Nation General Council Resolution.

DONE AND DATED, this 13th day of January, 2020, by the Yakama Nation General Council Executive Board, acting under authority, the February 1944 Resolution, Yakama General Council Resolution T-38-56 and Yakama General Council Resolution GC-02-81 (as amended by GCM-40-94).


Roger Fiander, Chairman
Yakama Nation General Council


LaRena Sohapp, Vice-Chair
Yakama Nation General Council


Ned Tillequots Jr., Secretary-Treasurer
Yakama Nation General Council

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COMPLAINT - 10

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Exhibit E

Yakima Collection Label
Yakamas on Horseback

COMPLAINT - 11

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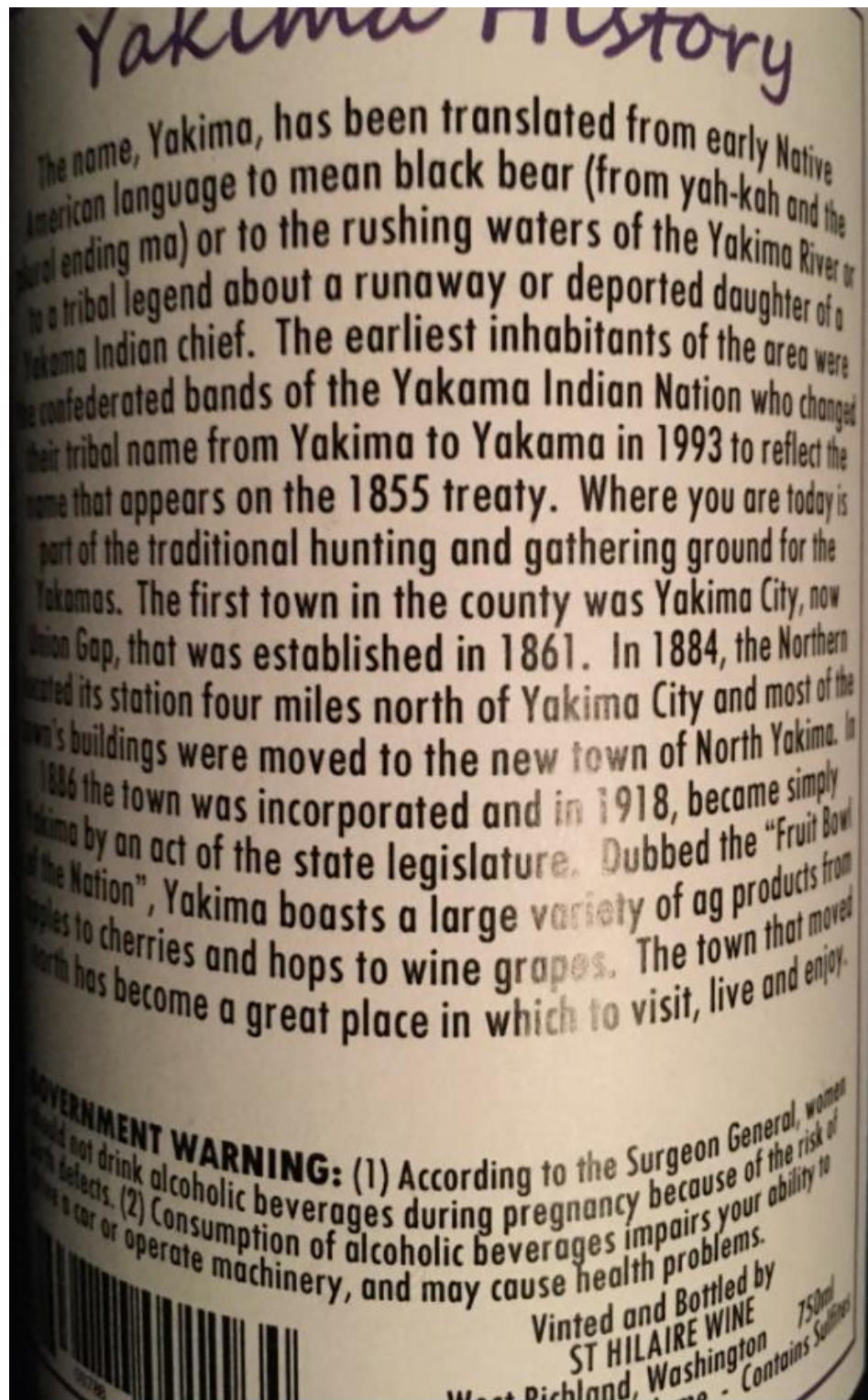


Exhibit F
Yakima Collection Label