

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

Opposer: Forrester & CA., S.A.
No:
Serial No: 75/916,692

BOX TTAB FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

01 JUN 13 PM 1:01
TRADEMARK TRIAL AND
APPEAL BOARD

PETITION PURSUANT TO C.F.R. § 1.10

Counsel for Potential Opposer/Opposer hereby petitions the Board under 37 C.F.R. § 1.10 (d) for clarification that the filing date of the Extension of Time to File Notice of Opposition ("Extension Request") in the referenced matter is March 29, 2001, the date which is shown on the Certificate of Express Mail of the Extension Request (see Exhibit A hereto).

There is a discrepancy between the March 29, 2001 date on the Certificate of Express Mail and receipt dates shown on the return postcard sticker by the USPTO, as well as the Express Mail receipt (see Exhibits B and C hereto). The latter two documents show a date of March 30, 2001, one business day after the March 29 deadline.

Serial No. 75/916,692 on SOLA VISTA was published in the Official Gazette of February 27, 2001 at page TM 292, Volume 1243, making the last day to file a Notice of Opposition or an Extension of Time to Oppose March 29, 2001. We received instructions from

our client to extend the time to oppose on March 29; and on that day, we prepared an Extension of Time to File Notice of Opposition, and filed the Extension Request on March 29, 2001, as shown on the Express Mail Certificate of Exhibit A. After receipt of the return postcard from the USPTO (Exhibit B), I noticed the date of March 30 shown on the sticker of Exhibit B, rather than the known timely mailing date of March 29, 2001. I checked the TARR status of Ser. No. 75/916,692, which stated that an extension of time to oppose had been filed. Because there is no indication of acceptance of the extension, I also called and left a message with one of the paralegal specialists at the TTAB to check on the matter when I did not get a timely acceptance of the extension. My phone call was not returned as of the date of this Petition.

There was a delay in matching the Express Mail receipt (Exhibit C) with the file, but as of last week, once this document was put with the file and reviewed, it was apparent that there had clearly been some problem or error at the Post Office in processing the Express Mail forwarded on March 29, 2001. Because March 30, rather than March 29 was entered onto the Express Mail receipt of Exhibit C, it was then clear that the problem was not merely a misdated sticker from the USPTO which we had seen on the return postcard of Exhibit B.

This petition is thus being promptly filed, within a few days of confirmation of the postal error and prior to any notification of a problem with the Extension Request by the USPTO. A clear indication that there was, in fact, an error by the Post Office in processing the Extension Request is that the purple date stamp which is normally stamped on the back of Express Mail receipts is absent. We note that this stamp is present on the Express Mail receipt for the Notice of Opposition of Exhibit D, as such stamp is always affixed on Express Mail labels in the normal

course of proper handling of Express Mail by the Post Office.

Attached as Exhibit D hereto is a Notice of Opposition which was timely filed on May 25, 2001, within the sixty day period requested in the Extension Request of Exhibit A. As required under § 1.10, in both Exhibits A and D, the stickers provided with the Express Mail labels were affixed to the papers. The mailroom clerk who carries the mail to the express mailbox is no longer employed by this firm, so we cannot provide an affidavit from her. However, she was experienced in Express Mail drop-off, and we never had any case of late or mis-handled Express mail drop during the duration of her employment.

Attached as Exhibit E hereto is an Affidavit of Diane Gordon, which attests that she is an experienced legal assistant having been employed by our firm for 12 years, who prepared and handled the Express mailing of the Extension Request on March 29, as shown by her signature on the Certificate of Express Mail of Exhibit A, in accordance with normal office procedure. The Express Mail Certificate of Exhibit A signed by Mrs. Gordon states a timely filing date of the Extension Request, namely March 29, 2001.

The Express Mail Receipt (Exhibit C) lists March 30, only one business day later. Thus this Petition fits within the "one business day later" provision of § 1.10. It is clear that the Express Mail receipt (Exhibit C) of the Extension Request was not processed by the Post Office in the normal course, as it does not contain a purple date stamp which is always applied on the back of such receipts by the Post Office in their normal processing of Express Mail.

It is therefore respectfully requested that the Board accord to the Extension of Time to File Notice of Opposition of Exhibit A the timely date, namely March 29, 2001, shown on the Certificate of Express Mail, making the Extension Request and the subsequent Notice of

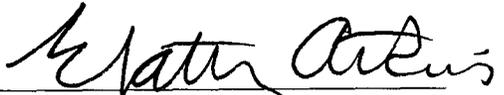
Opposition timely.

Dated: New York, New York
June 12, 2001

Respectfully submitted,

NIMS, HOWES, COLLISON,
HANSEN & ATKINS

Attorneys for Forrester & CA., S.A.

By: 
Elizabeth Atkins

605 Third Avenue, Suite 3500
New York, New York 10158
(212) 661-9700

EL021104567US

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

In re Application of

E. & J. Gallo Winery
Modesto, California

SERIAL NO.: 75-916,692
FILED: February 11, 2000
MARK: SOLA VISTA

Re: Extension of Time to File
Notice of Opposition - Rule 2.102

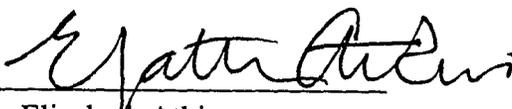
MADAM:

In the matter of the above-identified application which was published in the Official Gazette of February 27, 2001, pg. TM 292, Volume 1243, Number 4, it is respectfully requested that the time for filing a Notice of Opposition to the above application be extended for a period of sixty (60) days from March 29, 2001 up to and including May 28, 2001.

This request for extension of time is not made for purposes of delay. Potential Opposer requires additional time to fully investigate and consider the published application.

Respectfully submitted,

NIMS, HOWES, COLLISON,
HANSEN & LACKERT
Attorneys for Potential Opposer
605 Third Avenue, Suite 3500
New York, New York 10158
(212) 661-9700

By: 
Elizabeth Atkins
William R. Hansen

Dated: New York, New York
March 29, 2001

Potential Opposer is:
Forrester & CA., S.A.
Lugar de Aldeia Nova
Avintes, Vila Nova de Gaia
Portugal

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

In re Application of

E. & J. Gallo Winery
Modesto, California

SERIAL NO.: 75-916,692
FILED: February 11, 2000
MARK: SOLA VISTA

Re: Extension of Time to File
Notice of Opposition - Rule 2.102

CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR §1.10

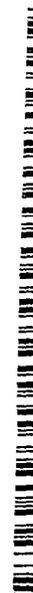
"Express Mail" mailing label number: EL021104567US

Date of Deposit: March 29, 2001

I hereby certify that an original and two copies of a request for extension of time to file a Notice of Opposition is being deposited with the United States Postal Service "Express mail Post Office to Addressee" service under 37 CFR §1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, Box TTAB, No Fee, 2900 Crystal Drive, Arlington, VA 22202-3513.



Diane Gordon



Express Mail No. EL021104567US

The stamp of the Patent and Trademark Office hereon may be taken as acknowledgment of receipt of an original and two copies of a Request for an Extension of Time to File a Notice of Opposition in connection with the above referenced application.

Applicant: EJ Gallo Winery
 Ser. No. 75-916,692
 Filed: Feb. 11, 2000
 Trademark SOLA VISTA
 Potential Opposer: Forrester & CA., S.A.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



POST OFFICE TO ADDRESSEE

EL021104567US

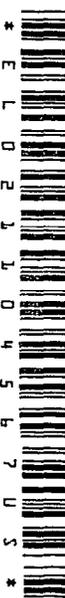
ORIGIN (POSTAL USE ONLY)			DELIVERY (POSTAL USE ONLY)		
PO ZIP Code	Day of Delivery <input type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>	Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Date In Mo. Day Year	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$	Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Time In <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee	Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee	Signature of Addressee or Agent		
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Total Postage & Fees \$	Name - Please Print		

CUSTOMER USE ONLY	
METHOD OF PAYMENT: Express Mail Corporate Acct. No. Federal Agency Acct. No. or Postal Service Acct. No.	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery. <input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday Customer Signature

FROM: (PLEASE PRINT) PHONE (212) 661-9700
 Elizabeth Atkins, Esq.
 Nims, Howes, Collison,
 Hansen & Lackert
 605 Third Avenue, Suite 3500
 New York, NY 10158
 #11795/SN75-916,692

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