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UNITED STATE PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



07-22-2002

U.S. Patent & TMOfo/TM Mail Ropt Dt. #26

In the Matter of Application
Serial No. 76-313866

Published in the O.G. of 4-2-02 at TM 454

E. & J. GALLO WINERY,)
)
Opposer,)
)
v.)
)
DALMONT FOODS, L.C.C.)
)
Applicant.)

Opposition No.

NOTICE OF OPPOSITION

E. & J. Gallo Winery, a corporation organized and existing under the laws of the State of California, believes that it will be damaged by the registration of the trademark shown in Applicant Serial Number 76-313866 filed September 13, 2001, and hereby opposes registration of same.

As grounds for opposition, Opposer by its attorney, Paul W. Reidl, respectfully shows and alleges as follows:

1. Opposer is a corporation organized and existing under the laws of the State of California with its principal place of business at 600 Yosemite Boulevard, Modesto, California 95354.

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2. At all times here mentioned Opposer has been actively engaged in the production, distribution and sale of wines and other goods in the United States under the trademark and trade name GALLO.

3. Opposer owns all rights in and to, among others, the federal trademark registrations listed below, each of which is valid and subsisting, uncanceled and unrevoked:

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>ISSUE DATE</u>	<u>GOODS</u>
GALLO	444,756	3-24-53	Wines
ERNEST & JULIO GALLO	778,837	10-20-64	Wines
GALLO	887,959	03/17/70	Meats/cheese
GALLO	891,339	5-19-70	Wines and Champagnes
GALLO	1,319,587	02/12/85	Meats/cheese
GALLO	1,650,478	7-09-91	Corkscrews
JULIO R. GALLO	1,813,967	12-28-93	Wines
ERNEST GALLO	1,815,078	1-4-94	Wines
GALLO SONOMA	1,911,682	8-15-95	Wines
GALLO OF SONOMA	2,231,215	3-9-99	Wines
GALLO	2,320,063	2-20-00	Clothing

4. The GALLO family of marks was first used by Opposer in 1933. By virtue of the extensive use and promotion of its GALLO mark, and the widespread sale of its alcoholic beverages under the GALLO mark, the trademark and trade name GALLO has come to be recognized throughout the United States as identifying goods finding their

origin in or otherwise associated with Opposer. As a further result of Opposer's use and marketing efforts, and of the widespread recognition of the GALLO mark, this mark has become famous.

5. Opposer first began using the GALLO trademark and trade name in 1933 when Ernest and Julio Gallo founded the company. The GALLO trademark and trade name has been used continuously since that time. Opposer has sold billions of bottles of wine throughout the United States bearing the GALLO trademark and has spent over \$600,000,000 promoting it. Goods bearing the GALLO trademark are sold and promoted to retail consumers nationwide. They are also heavily promoted, sold and displayed in restaurants and other food service establishments. The GALLO trademark has a high degree of consumer recognition and in the United States stands exclusively for goods made or licensed by Opposer. Courts have held without exception that the GALLO trademark is extraordinarily strong and is entitled to the broadest possible protection.¹

6. Opposer has vigorously protected its trademark against third party infringement and dilution and has stopped others from using its marks on a wide variety of goods and services, including: habanero sauce, salsa, beer, mezcal, cheese, wine, rice, coffee bags, shoes, sportswear, t-shirts, caps, bar towels, tote bags, jeans, jackets, canned vegetables, pasta, pickled jalapeño peppers, garlic butter, olive oil, dinnerware, tobacco products, toys, potato chips, hosiery, ties and related products, the naming of

¹ Those cases include *E. & J. Gallo Winery v. Spider Webs Ltd.*, 129 F.Supp. 2d 1033 (S.D. Tex. 2001), *affirmed*, 2002 U.S. App. LEXIS 5928 (5th Cir. 2002); *E. & J. Gallo Winery v. Pasatiempos Gallo, S.A.*, 905 F.Supp. 1403 (E.D. Cal. 1994); *E. & J. Gallo Winery v. Consorzio del Gallo Nero*, 782 F.Supp. 457 (N.D. Cal. 1991); *E. & J. Gallo Winery v. Gallo Cattle Company*, 12 U.S.P.Q.2d 1657 (E.D. Cal. 1989), *affirmed*, 967 F.2d 1280 (9th Cir. 1992).

thoroughbred race horses, playing cards, board games, confetti, poker chips, compact discs, stereo equipment, drafting tables, women's coats, men's hats, cigars, ceramics, veterinary products, sauces, socks and scarves, pasta, and as domain names for web sites. That enforcement program has preserved the effectively exclusive connection between the GALLO trademark and Opposer.

7. The mark herein opposed comprises the words JUANA GALLO. The principal and dominant feature of the mark, GALLO, is identical to the principal and dominant feature of Opposer's famous GALLO family of marks. The marks are similar in sight, sound, meaning and appearance. The service for which the applied-for mark is intended for use according to the application identification is restaurants.

8. Wine is consumed primarily with food. Wine is promoted frequently with food, and many wine labels (including some bearing the GALLO Marks) contain food and wine pairings. Wine and food (including salame and cheese) are served, promoted and displayed in restaurants. Corkscrews are used to open bottles of wine in restaurants and wait staff in restaurants frequently wear t-shirts and other items bearing the name of wine brands. Given the close proximity between restaurants and Opposer's goods, consumers will invariably associate Applicant's mark with GALLO. Given the fame of Opposer's mark, the similarity of the marks, and the similarity of goods and services, consumer confusion is likely if not inevitable.

9. The GALLO trademark was distinctive and famous long before Applicant adopted it. Opposer has used the GALLO trademark for nearly 70 years and has spent over \$600,000,000 promoting it. Wines bearing the GALLO trademark have been sold for decades in all retail channels where wines can be sold lawfully, including in

restaurants. The GALLO trademark is well-known to consumers, the trade, and Applicant. The GALLO brand stands uniquely for goods produced or licensed by Opposer.

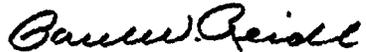
10. Applicant is attempting, plans, and intends to create consumer identification of the term "Gallo" on a nationwide basis with a restaurants owned, operated or franchised by them. Applicant's use of the GALLO trademark in this manner is likely to dilute the distinctive quality of the GALLO trademark. It causes and will cause Opposer to lose control of the manner in which its famous trademark is promoted and will be directly contrary to Opposer's promotional efforts. It also threatens to create, and will likely create, in the minds of consumers on a nationwide basis the impression and understanding that there are now two GALLO brands, one for wine and another for restaurants, where for nearly seventy years there has only been one.

WHEREFORE, it is respectfully prayed that this opposition be sustained and that the mark which is the subject of Serial No. 76-313866 be denied registration.

The opposition fee in the sum of \$300.00 is filed herewith.

Dated: Modesto, California
July 17, 2002

E. & J. GALLO WINERY

By 
Paul W. Reidl
600 Yosemite Boulevard
Modesto, California 95354
(209) 341-4733

E. & J. GALLO WINERY

600 Yosemite Boulevard
P. O. Box 1130
Modesto, California 95354

Paul W. Reidl
Associate General Counsel
Legal Department

Tel: (209) 341-4733
Fax: (209) 341-6270
Email: Paul.Reidl@ejgallo.com



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U.S. Patent & TMO/TM Mail Rpt Dt. #26



July 17, 2002

VIA EXPRESS MAIL

Box TTAB
FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

TRADEMARK TRIAL AND
APPEAL BOARD
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Re: E. & J. Gallo Winery - Notice of Opposition

Dear Sir:

Enclosed is an original and one copy of a Notice of Opposition signed by E. & J. Gallo Winery, as Opposer, to be filed against Dalmont Foods, L.C.C. Also enclosed is a \$300.00 check to cover the fee for filing the opposition.

Thank you for your attention to this matter.

Sincerely,

Paul W. Reidl

"Express Mail" mailing label number: EF 276204145 US

Date of Deposit: 7-19-02

I hereby certify that this paper or fee 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 Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Name: _____

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