

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD



E. & J. GALLO WINERY,

Opposer,

v.

DALMONT FOODS, L.L.C.,

Applicant.

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Opposition No. 91152288
Mark: JUANA GALLO

12-19-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #36

E. & J. GALLO WINERY,

Opposer,

v.

DALMONT FOODS, L.L.C.,

Applicant.

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Opposition No. 91153269
Mark: JUANA GALLO COCINA
MEXICANA

TO: Trademark Trial and Appeal Board

**MOTION TO CONSOLIDATE PROCEEDINGS
AND BRIEF IN SUPPORT THEREOF**

Opposer E. & J. Gallo Winery ("Gallo") files this motion to consolidate the above-captioned opposition proceedings and brief in support thereof, and shows as follows:

1. On July 17, 2002, Gallo filed its notice of opposition in Opposition No. 91152288 against applicant Dalmont Foods, L.L.C. ("Dalmont"). This opposition proceeding opposes

registration of the mark JUANA GALLO for restaurants as identified in Application Serial No. 76/313,866.

2. On August 13, 2002, Gallo filed its notice of opposition in Opposition No. 91153269 against applicant Dalmont. This opposition proceeding opposes registration of the stylized mark JUANA GALLO COCINA MEXICANA for restaurants as identified in Application Serial No. 76/316,680.

3. The parties are identical in both opposition proceedings.

4. Both opposition proceedings oppose registration of Dalmont's related marks which contain the word "GALLO" and are used for restaurants.

5. In both opposition proceedings, Gallo complains that Dalmont's use of its related marks for restaurants is likely to be confused with Gallo's eleven federal trademark registrations for GALLO or ERNEST & JULIO GALLO or JULIO R. GALLO or ERNEST GALLO or GALLO SONOMA or GALLO OF SONOMA for wines, meats, cheese, wines and champagnes, corkscrews and clothing, being Registrations Nos. 444,756; 778,837; 887,959; 891,339; 1,319,587; 1,650,478; 1,813,967; 1,815,078; 1,911,682; 2,231,215; and 2,320,063.

6. In both opposition proceedings, Gallo complains that Dalmont's use of its related marks in connection with restaurants is likely to dilute the distinctive quality of Gallo's eleven federally registered trademarks.

7. As shown above, the two opposition proceedings involve common questions of law and fact.

8. Because of the common questions of law and fact, there will be significant savings in time, effort and expense to be gained from consolidation.

9. Consolidation will not result in any prejudice or inconvenience to any party. The two opposition proceedings were filed within thirty days of each other, and both opposition proceedings are currently in the discovery stage. An answer has been filed in both opposition proceedings.

10. Gallo prays that the Board order Opposition No. 91153269 consolidated with Opposition No. 91152288 under the style and cause number of Opposition No. 91152288. Gallo further prays that the Board reset the discovery and testimony periods to that of the "youngest" of the consolidated cases, being Opposition No. 91153269.

WHEREFORE, Gallo prays that Opposition No. 91153269 be consolidated with Opposition No. 91152288 under the style and case number of Opposition No. 91152288 and that the discovery period for the consolidated cases be reset for the discovery and testimony period established for Opposition No. 91153269.

Respectfully submitted,



Craig W. Weinlein
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Attorneys for Opposer
E. & J. Gallo Winery

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by first class mail in accordance with 37 C.F.R. § 2.119, on this 19 day of December, 2002.

Craig Weirich.

CERTIFICATE OF CONFERENCE

On December 10, 2002, the undersigned wrote a letter to counsel for applicant to confer about this motion. A copy of the letter is attached hereto as Exhibit A. Counsel for applicant has not responded; therefore, the motion is presented to the Board for its determination.

Craig Weirich.

CARRINGTON
COLEMAN
SLOMAN &
BLUMENTHAL L.L.P.
ATTORNEYS AT LAW

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December 19, 2002



Sent Via Express Mail

12-19-2002

U.S. Patent & TMOrc/TM Mail Rcpt Dt. #36

Box TTAB - NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

RE: Opposition No. 91152288; E. & J. Gallo Winery v.
Dalmont Foods, L.L.C.
Opposition No. 91153269; E. & J. Gallo Winery v.
Dalmont Foods, L.L.C.

Dear Assistant Commissioner:

Enclosed are the original and three copies of a Motion to Consolidate Proceedings and Brief in Support Thereof concerning the above-referenced opposition proceedings. Please return a file-stamped copy of this document to me in the enclosed, self-addressed, postage-paid envelope.

By copy of this letter, I am serving counsel for applicant with a copy of the enclosure.

Very truly yours,

Craig W. Weinlein

CWW:pb
Enclosures

cc: Via 1st Class Mail
Mr. Lawrence S. Hosmer
Mr. Michael L. Diaz
Mr. John G. Fischer

TTAB
DEC 19 2002
11 59:30 AM

DEC 24 11 59:00 AM

CERTIFICATE OF MAILING BY EXPRESS MAIL

I, Paulette Burrow, do hereby certify that the foregoing document is being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to Box TTAB - NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on this date of December 19, 2002.

Paulette Burrow
Signature

Paulette Burrow
Name

ET 653 666 755 US
Express Mail Label Number

December 19, 2002
Date of Deposit