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

Proceeding	91181380
Party	Defendant MIMULANI AG
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Date	08/14/2009
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

E. & J. GALLO WINERY,

Opposer,

v.

MIMULANI AG,

Applicant.

Opposition No. 91181380

Opposition No. 91181381

Opposition No. 91181383

Opposition No. 91181384

Opposition No. 91181385

Opposition No. 91181386

Opposition No. 91181388

(Consolidated)

**APPLICANT'S OPPOSITION TO
OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD**

Opposer E. & J. Gallo Winery ("Gallo") engaged in willful or neglectful delay in pursuing discovery. The negligence was well within its reasonable control, and, as set forth below, its motion appears to be made in bad faith. Gallo's motion to reopen discovery should be denied.

I. Legal Background

Gallo must show that its failure to pursue discovery within the discovery period constitutes "excusable neglect" under F. R. Civ. P. 6(b)(2). Following the Supreme Court, the Board held in Pumpkin Ltd. v. The Seed Corps., 43 USPQ2d 1582 (TTAB 1997), that the determination of whether a party's neglect is excusable is:

at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1] the danger of prejudice to the [nonmovant], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

43 USPQ2d 1582; see also FirstHealth of the Carolinas, Inc. v. CareFirst of Md., Inc., 479 F.3d 825, 829 (Fed. Cir. 2007). Accordingly, the Board's assessment of the excusability of Gallo's negligent failure to obtain the discovery it now seeks should be assessed according these four factors.

II. Factual Background

As noted in Gallo's motion (pg. 1), Gallo served its first set of document requests, interrogatories and admissions on August 18, 2008 and counsel for both parties agreed to extend the deadline for Mimulani's response by two weeks to October 6, 2008. On October 6, 2008 Mimulani timely served responses to the requests. (Goehring Decl., ¶¶ 2 & 3). Copies of the original responses are attached hereto as Exhibit A and clearly include a certificate of service indicating that the responses were served on October 6, 2008 to "Paul Reidl" at "E. & J. Gallo Winery, P.O. Box 1130, Modesto, CA 95353". (Ex. A). Within the next two days, on October 7 or 8, 2008, Mimulani also served production documents consisting of several labeled and Bates numbered documents. (Goehring Decl., ¶ 4). These documents are attached hereto as Exhibit B.

Further corroborating the October 2008 service dates of Mimulani's responses and the document production are Exhibits C and D attached hereto. Exhibit C is an October 6, 2008 email internal to Young & Thompson wherein one of the firm's trademark paralegals, Hue Morrison, reminds Mimulani's counsel, Jeffrey Goehring, that that day was the deadline for service of Mimulani's responses. Exhibit D hereto is an email from the undersigned counsel to Mimulani sent on October 15, 2009 and with privileged portions redacted. The unredacted

portions of the email corroborate the October 6, 2008 service of the responses and the service of the document production.

During the relevant time in the fall of 2008, discovery in this matter was set to close on December 25, 2009. Discovery efforts by both parties remained active during the months of October and November of 2009. In particular, Mimulani served a complete second set of discovery requests (admissions, interrogatories, and document requests) on October 15, 2008. The cover letter accompanying service identified certain deficiencies in Gallo's responses to Mimulani's first set of requests, namely that Gallo produced no documents despite indications in its responses that documents would be produced.

Gallo served responses to Mimulani's October 15 requests on November 11, 2008. Gallo again failed to produce any documents in response to either Mimulani's first or second set of document requests. Moreover, Gallo's counsel's cover letter accompanying Gallo's responses failed to address the issue of Gallo's non-existent document production as raised in Mimulani's letter of October 15, 2008. Instead, Gallo's counsel raised a discovery issue of its own, inquiring as to dates when Gallo could take Mimulani's deposition in the United States. The cover letter also alleged that this inquiry regarding depositions had been made previously despite that no such previous inquiry had actually been made. (Lebow Decl., ¶ 6). Gallo's counsel's November 11, 2008 inquiry as to deposition dates was the first time Gallo had raised this issue with counsel for Mimulani. Id.

Gallo's counsel's November 11, 2008 cover letter made no allegation of Mimulani being delinquent in responding to Gallo's discovery requests. Pursuant to the parties' express

agreement to extend the deadline, Gallo would have been expecting such responses in early October, more than one month prior to Gallo's counsel's November 11, 2008 cover letter.

On December 11, 2008, 14 days prior to the close of discovery, Mimulani's counsel received a second set of request for admissions from Gallo, dated December 9, with a cover letter that, for the first time, alleged that no responses to Gallo's August requests had been received. This statement is demonstrably inaccurate. The request for admissions enclosed with the cover indisputably establish that Gallo had, at the very minimum, received Mimulani's document production served in early October 2008 because one of the admissions specifically references a Mimulani production document by Bates number. Gallo's Admission No. 159 references Mimulani's production document Bates No. 000002. The admission asks Mimulani to admit that "The document 'Mimulani AG 000002' is an accurate depiction of the manner in which Applicant uses APPLICANT'S MARK." The citation to the Bates number necessarily confirms that Gallo had received Mimulani's document production.

On December 19, 2008, 6 days prior to the close of discovery, counsel for Mimulani emailed counsel for Gallo and indicated that responses were in fact timely served on October 6, 2008 and attached scans of the originals to the email. (See Ex. A to Reidl Decl., accompanying Gallo's Motion). Prior to drafting the email, counsel for Mimulani, Jeff Goehring, reviewed the P.O. Box address to which the responses were served, as listed in the responses' certificate of service. (Goehring Decl., ¶ 10). Mr. Goehring also reviewed the P.O. Box number and street address listed at the bottom of the letterhead of Gallo's counsel's December 9 and November 11, 2008 letters. Id. Mr. Goehring noticed that the address in the certificates of service were "P.O. Box 1130, Modesto, CA 95353" while the street / P.O. Box address on Gallo's letterhead was

"P.O. Box 1130, 600 Yosemite Boulevard, Modesto, California 95354", i.e. the address of service was the P.O. Box and the zip code 95353 while the letterhead listed the P.O. Box and a street address, 600 Yosemite Boulevard, with a single zip code for both, 95354. Id. Mr. Goehring therefore suggested in the Dec. 19 email that if the responses were not yet received, it may have been because they were sent to 95353 instead of 95354 as listed on the letter head. (See Ex. A to Reidl Decl., accompanying Gallo's Motion).

However, Mr. Goehring's speculation as to why service to "P.O. Box 1130, Modesto, CA 95353" may have resulted from the fact that the alleged non-receipt was incorrect. In reality, the 95353 zip code is the correct zip code when sending mail to Gallo's P.O. Box 1130 in Modesto, CA, while the 95354 zip code is the correct zip code only when sending mail to Gallo's street address in Modesto, CA: 600 Yosemite Boulevard. (Goehring Decl., ¶ 9). This is confirmed by a recent telephone conversation with a Mr. Leo Soto at the Paradise Rd. U.S. Post Office in Modesto, CA. Id.

This is also confirmed by a review of the address used by Gallo. In particular, when Gallo or a third party uses P.O. Box 1130 as an address, the 95353 zip code is used and the 600 Yosemite Boulevard street address is not used. (Ex. E, Gallo's counsel's signature page for its second set of requests for admissions; and Ex. F, printouts from the internet showing various third parties listing Gallo's address using P.O. Box 1130 with the 95353 zip code and not using the Yosemite Boulevard street address or the 95354 zip code). Also, when Gallo and third parties use the 600 Yosemite Boulevard street address, the 95354 zip code is used. See Ex. G, a mid-2008 email from counsel for Gallo to counsel for Mimulani with a signature line using the

street address and the 95354 zip code; and Ex. H, printout from the internet showing various third parties using Gallo's street address and the 95354 sip code).

The only discrepancy in the above noted, correct ways of indicating Gallo's two addresses appears in Gallo's own letterhead on which its November 11 and December 9, 2008 cover letters were printed and which gave rise to Mr. Goehring's confusion and his initial erroneous suggestion that the address of service may have been erroneous.

Gallo repeatedly represents in its Motion and in its counsel's sworn statements accompanying its motion that it received no documents from Mimulani. (See Gallo's Motion at pg. 2 last full paragraph and paragraph bridging pages 5-6; and Reidl Decl., ¶¶ 6 & 7). As is apparent from the above, Gallo's statements that it received no document production is flatly inaccurate and serves to mislead the Board as to what Gallo did and did not receive. Gallo's reference to Mimulani's labeled and Bates numbered document production in Gallo's Admission No. 128 is proof that Gallo indeed received documents in response to its requests for production despite its representations and sworn statements that it did not.

Gallo's Motion and its counsel's sworn declarations also fail to inform the Board that the address to which Mimulani's October 6, 2008 responses were served, as indicated in the certificate of service, was a correct address. Instead, counsel for Mimulani actively misleads the Board by characterizing the address as incorrect. (Gallo's motion ¶¶ bridging pgs. 2-3 and 5-6).

The notion that the responses may have been sent to the wrong address arose from Mimulani's counsel's comparison in his Dec. 19, 2008 email of the zip code used in serving the responses with the zip code noted on Gallo's letterhead (95354 vs 95353). As noted and evidenced above, the address of service was in fact entirely correct, a fact which was

undoubtedly known to Gallo's counsel. Nevertheless, Gallo urges the Board that "there is no dispute that Applicant did not properly serve timely discovery responses" (Gallo's motion pg. 2-3), based solely on Mimulani's counsel's incorrect suggestion that there was a zip code discrepancy. However, Mimulani's counsel's incorrect suggestion in his email regarding a discrepancy does not change the fact that the responses were served to "Paul Reidl" at "E. & J. Gallo Winery, P.O. Box 1130, Modesto, CA 95353" and that this is the correct address. Gallo's brief obfuscates the issue by repeatedly alleging that Mr. Goehring's email constitutes some sort of admission that establishes that the responses were in fact sent to the wrong address.

Given the above evidence, there can be no dispute that Mimulani did properly serve timely responses, exactly contrary to Gallo's characterization. The evidence shows that the question is not whether Mimulani's counsel is misrepresenting whether or not it properly and timely served responses. Rather, the question is whether Gallo's counsel is misrepresenting whether or not it received the timely and properly served responses.

III. Argument in Support of Opposition

All four equitable Pioneer factors weigh against reopening the discovery period, particularly the fourth and third. Accordingly, the factors are addressed in reverse order below.

A. Gallo's motion includes misrepresentations, omissions, and obfuscations of key facts as well as baseless accusations against Mimulani's counsel

Gallo's counsel admits in its brief that, "if Applicant had properly served responses on October 6, Opposer would have received them long ago." (Gallo motion, pg. 6). Given that the evidence is that Gallo did timely and properly serve its responses on October 6, the only

conclusion can be, as Gallo admits, that Gallo did receive the responses and that it is misrepresenting this fact to the Board just as it misrepresented whether or not it received production documents from Mimulani. Gallo's counsel's misleading the Board as to receipt of Mimulani's production documents should cast substantial doubt on the veracity of its assertions regarding receipt of Mimulani's responses.

Moreover, Gallo's counsel omits key information regarding what constitutes its correct address and has made the demonstrably inaccurate representation to the Board that Mimulani's responses were served to the wrong address.

Finally, counsel for Mimulani believes Gallo's counsel's bad faith is also evidenced by his expressly questioning (see Gallo's Motion at pg. 2 last full paragraph and paragraph bridging pages 5-6; and Reidl Decl., ¶ 7) the veracity of Mimulani's counsel's assertions that responses were served on October 6. Gallo's counsel's attacks were made without any evidence, and, as shown above, are incorrect. Attacking counsel's honesty with no evidence whatsoever is truly maligning and can only be considered as made in bad faith.

B. The circumstances leading to Gallo's request to re-open were within Gallo's control

Gallo's counsel's demonstrated misrepresentations constitute bad faith are sufficiently egregious and inequitable as to outweigh the other three equitable considerations. Nonetheless, taking this factor on its face, Gallo's allegation that it did not receive Mimulani's responses is seriously suspect given Gallo's other misrepresentations. Whether knowing or inadvertent, it is likely that Gallo's representations regarding Mimulani's responses are incorrect and that the U.S. Post Office did not fail to deliver a properly addressed package. In short, Gallo's allegation

likely arises from either (1) its own mishandling of documents, (2) counsel's failure to review its record prior to raising this issue or filing the motion, or (3) knowing misrepresentation. If any of these were the case, the "circumstances" leading to Gallo's request to reopen would necessarily have been within Gallo's control and this factor would favor Mimulani.

Even if it is believed that Mimulani's discovery responses were not delivered, it was still entirely within Gallo's control to conduct discovery in a manner that would have precluded its present request. The timeline when Gallo could have taken action began in early October, when it was expecting to receive Mimulani's responses as had been expressly agreed by the parties' counsel. The timeline also began when Gallo received Mimulani's labeled and Bates numbered document production served in early October in response to Gallo's document requests.

If Gallo did not receive the written responses related to the document production as it alleges, it could have and should have notified counsel for Mimulani. Instead, Gallo waited over two months to raise the alleged failure to receive Mimulani's discovery responses, and when it finally did write a letter to Mimulani's counsel regarding the discovery responses, the letter was received by Mimulani's counsel only two weeks prior to the close of discovery. It was not reasonable for Gallo to delay during the last months of the discovery period before raising only two weeks prior to the close of discovery a discovery dispute that could have been raised months earlier.

Also, upon receipt of a copy of Mimulani's responses by email on December 19, 2008, counsel for Gallo could have requested a stipulation to extend the discovery deadline prior to the discovery cutoff of December 25, 2008. Careful review of the dates shows that Gallo's counsel inexplicable waited until after the deadline to request a stipulated extension by letter dated

December 29, 2008. (Harvey Decl. and Ex. A thereto, accompanying Gallo's motion)¹. As an alternative to a stipulation, Gallo could have unilaterally requested an extension for mere "good cause" under Rule 6(b)(1) at any time between Dec. 19 and Dec. 25. Instead, Gallo did nothing and now asks the Board to excuse its neglect to the substantial prejudice of Mimulani.

Although the time period in question was near the holiday season, Gallo has offered no reason why other authorized individuals within either Gallo's in-house legal department or its outside counsel's firm could not have acted during this time. Mimulani notes that the Board does not consider circumstances such as an office move, death, or clerical error to excuse neglect absent substantial and specific explanation. See HKG Indus., Inc. v. Perma-Pipe, Inc., 49 USPQ 2d 1156 (T.T.A.B. 1998) (finding that a failure to explain why other authorized individuals could not have assumed responsibility after counsel's death weighed against finding excusable neglect). Accordingly, the Board should not discount Gallo's neglect merely because the relevant time was prior to Christmas.

C. Reopening discovery will likely result in additional discovery disputes and/or lengthy discovery procedures, substantially delaying this proceeding

If discovery were reopened both parties would serve additional discovery and additional discovery disputes are likely to arise. In particular, Gallo has previously expressed its desire to depose Mimulani live and in the U.S. Any attempt to do so will precipitate a discovery dispute

¹ The voice mails Mr. Harvey left for Mimulani's counsel also came on December 29, 2008 (well before he became Gallo's counsel of record on July 29, 2009) after the close of discovery. However, these voicemails did not contain any request for a stipulated extension. (See transcription of voicemail on page 3 of Mimulani's Feb 9, 2009 Reply).

resulting in substantial delay.² Other unidentifiable disputes are also likely to arise. Judging from prior proceedings in this case, each discrete discovery dispute delays this proceeding by approximately 8 months.

D. Mimulani will be prejudiced if discovery is re-opened

The substantial additional discovery and disputes that will arise if discovery is reopened will significantly increase costs for Mimulani and affect its ability to litigate this case, to the prejudice of Mimulani.

IV. Conclusion

WHEREFORE Opposer's motion should be denied.

Dated: August 14, 2009

Respectfully submitted,

/Mark Lebow/
Mark Lebow
Young & Thompson
209 Madison Street, Suite # 500
Alexandria, Virginia 22314
Tel: (703) 521-2297

Attorney for Applicant Mimulani AG

² Even if Gallo conducted depositions upon written questions, this would also substantially delay this proceeding due to the cumbersome nature of the process. As noted in 37 CFR § 2.20(a) and TBMP § 404.07(b), because discovery depositions must be both noticed and taken during the discovery period, a party desirous of taking a discovery deposition on written questions should initiate the procedure *early* in its discovery period.

CERTIFICATE OF SERVICE

I hereby certify the foregoing APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD; DECLARATION OF MARK LEBOW; DECLARATION OF JEFFREY GOEHRING, and Exhibits A – H, were deposited as first class U.S. Mail, postage prepaid, to Seth I. Appel, Harvey Siskind LLP, Four Embarcadero Center, 39th Floor, San Francisco, CA 94111.

/Chris Munsell/

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E. & J. GALLO WINERY,

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MIMULANI AG,

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Opposition No. 91181380

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Opposition No. 91181383

Opposition No. 91181384

Opposition No. 91181385

Opposition No. 91181386

Opposition No. 91181388

(Consolidated)

**DECLARATION OF MARK LEBOW IN SUPPORT OF
APPLICANT'S OPPOSITION TO
OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD**

I, Mark Lebow, declare as follows:

1. I am counsel for Applicant Mimulani AG. I make this declaration freely and of my own personal knowledge. If called upon to testify, I could and would testify as to the matters set forth.
2. Exhibit A hereto are true and correct copies of the signature page and certificate of service page of Mimulani AG responses to E. & J. Gallo Winery's first set of interrogatories, document requests, and admissions.
3. Exhibit B hereto are true and correct copies of Mimulani AG production documents Bates labeled 000001 – 000004.
4. Exhibit D hereto is a true and correct copy of an email I sent, via an assistant's email account, to French counsel for Mimulani AG, through whom we represent Mimulani AG.

5. Attachere hereto as Exhibit G is a true and correct copy of email correspondence I had with Paul Reidl, counsel for Opposer, on July 25, 2008.
6. Counsel for E. & J. Gallo Winery made no inquiry to me regarding possible availability and dates for deposition of Mimulani AG prior to the inquiry in counsel's November 11, 2008 letter. Accordingly, upon information and belief, counsel for E. & J. Gallo Winery was incorrect when he suggested in that letter that I had not replied to a prior inquiry.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed this 14th day of August 2009.

/Mark Lebow/
Mark Lebow

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Opposition No. 91181388

(Consolidated)

DECLARATION OF JEFFREY GOEHRING IN SUPPORT OF
APPLICANT'S OPPOSITION TO
OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD

I, Jeffrey Goehring, declare as follows:

1. I am counsel for Applicant Mimulani AG. I make this declaration freely and of my own personal knowledge. If called upon to testify, I could and would testify as to the matters set forth.
2. On October 6, 2008 I served Mimulani AG's responses to the first set of document request, interrogatories, and request for admissions of E. & J. Gallo Winery.
3. To effect service, as indicated in the certificate of service on each response, I mailed the responses by U.S. mail to Paul W. Reidl at E. & J. Gallo Winery. P.O. Box 1130, Modesto, CA 95353.
4. On October 7 or October 8, 2008 I served Mimuilani AG's document production consisting of labeled and Bates numbered documents numbering 000001 – 000004.

5. Exhibit C attached hereto is a true and correct copy of an email I received on October 6, 2008 from Young & Thompson's trademark paralegal, Hue Morrison.
6. Exhibit E hereto is a true and correct copy of the signature page of E. & J. Gallo Winery's Second Set of Requests for Admissions.
7. Attached hereto as Exhibit F are true and correct copies of various pages I printed from the internet on August 13 and/or 14, 2009.
8. Attached hereto as Exhibit H are true and correct copies of various pages I printed from the internet on August 13 and/or 14, 2009.
9. On August 13, 2009 I spoke with a Mr. Leo Soto at the Paradise St. U.S. Post Office in Modesto, CA. I inquired regarding the correct zip that should be used when sending mail to P.O. Box 1130 in Modesto, CA. Specifically, I asked whether the zip code 95353 or 95354 should be used when sending mail to this P.O. Box. Mr. Soto was immediately familiar with the P.O. Box number I was inquiring about and informed me that zip code number 95353 was the correct zip code to use when sending mail to the P.O. Box. Upon further inquiry he informed me that the 95354 zip code should only be used when sending mail to E. & J. Gallo Winery's street address at 600 Yosemite Boulevard.
10. In drafting my email of December 19, 2008 to counsel for E. & J. Gallo Winery I compared the address used to serve Mimulani AG discovery responses to the address listed on the stock letterhead of the letters dated November 11, 2008 and December 9, 2008 received from Gallo's counsel. I noticed that the address on the letterhead stock included a street address as well as a P.O. Box number, while the address used for service included only a P.O. Box number. I also notices a discrepancy in the last digit of the addresses listed.

DECLARATION OF JEFFREY GOEHRING IN SUPPORT OF APPLICANT'S OPPOSITION TO OPPOSER'S
MOTION TO REOPEN DISCOVERY PERIOD
Opposition No. 91181380
Page 3 of 3

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed this 14th day of August 2009.

/Jeffrey Goehring/
Jeffrey Goehring

EXHIBIT A

APPLICANTS MARK in the United States and, if the answer is anything other than an unambiguous "no", IDENTIFY each.

RESPONSE:

No, Applicant has not retained any such third parties.

INTERROGATORY NO. 17:

Describe the target audience or class of consumer for goods bearing APPLICANTS MARK in the United States.

RESPONSE:

Applicant's target audience is all cognac drinkers.

INTERROGATORY NO. 18:

IDENTIFY each importer YOU use or plan to use to import goods bearing APPLICANT'S MARK into the United States.

RESPONSE:

Applicant does not use any importer at this time and has not selected any particular importer for any possible use in the future.

Respectfully submitted,


Mark Lebow

Attorney for Applicant

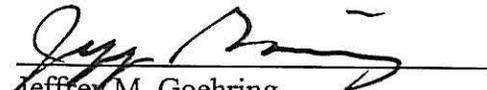
Young & Thompson
209 Madison Street, # 500

Alexandria, Virginia 22314
Tel: (703) 521-2297

Dated: October 6, 2008

CERTIFICATE OF SERVICE

I hereby certify the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES** was deposited as first class U.S. Mail to Paul W. Reidl, Attorney for Opposer, E. & J. Gallo Winery, P.O. Box 1130, Modesto, CA 95353 this 6th day of October 2008.


Jeffrey M. Goehring

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

Respectfully submitted,



Mark Lebow

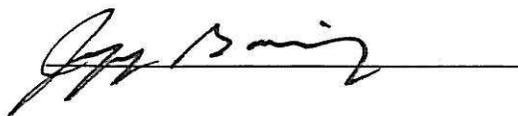
Attorney for Applicant

Young & Thompson
209 Madison Street, # 500
Alexandria, Virginia 22314
Tel: (703) 521-2297

Dated: October 6, 2008

CERTIFICATE OF SERVICE

I hereby certify the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** was deposited as first class U.S. Mail to Paul W. Reidl, Attorney for Opposer, E. & J. Gallo Winery, P.O. Box 1130, Modesto, CA 95353 this 6th day of October 2008.



118. After Gallo object to the application to register GALLISS in Ireland, the application was refused registration.

RESPONSE:

Admit.

119. After Gallo object to the application to register GALLISS in the United Kingdom the application was refused registration.

RESPONSE:

Admit.

120. After Gallo object to the application to register GALLISS in Germany, the application was refused registration.

RESPONSE:

Admit.

121. After Gallo object to the application to register GALLISS in Sweden, the application was refused registration.

RESPONSE:

Admit.

Respectfully submitted,



Mark Lebow

Attorney for Applicant

Young & Thompson
209 Madison Street, # 500
Alexandria, Virginia 22314
Tel: (703) 521-2297

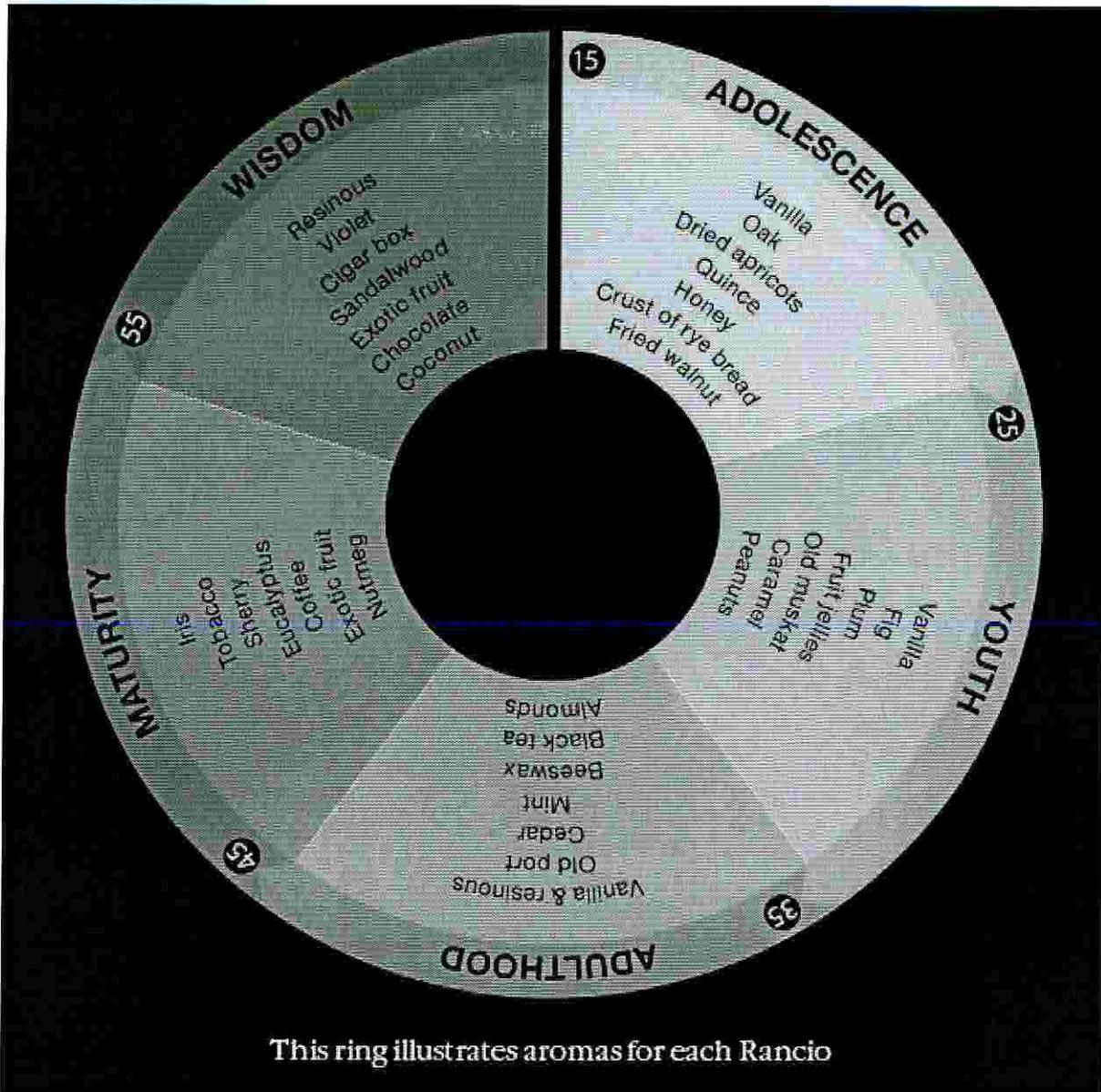
Dated: October 6, 2008

CERTIFICATE OF SERVICE

I hereby certify the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS** was deposited as first class U.S. Mail to Paul W. Reidl, Attorney for Opposer, E. & J. Gallo Winery, P.O. Box 1130, Modesto, CA 95353 this 6th day of October, 2008.

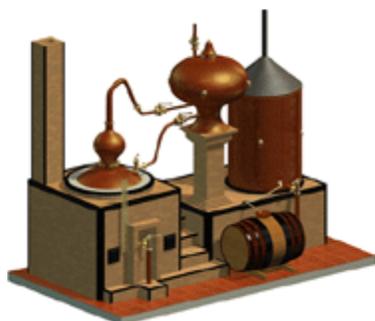

Jeffrey M. Goehring

EXHIBIT B





Concept



A veritable fireworks **Alambic** display of spices and peppery notes, softened by the fragrant scent of flowers. Finesse **Alambic** and elegance are the major characteristics.

Art of production

- G** – garantie: guaranty of conformity of grapes to the standards and production to original French technology of cognac (is produced strictly in accordance with the 1909 Decree)
- A** – alambic charentais traditionnel: traditional Charente still, ensuring fractional distillation of cognac wine (double distillation, a technology existing since 15th century)
- LL** - lignine: one of the main components of oak, which causes presence in cognac of unique flower bouquet; with oxidation of lignin the aromatic substances appear, characterizing notes of "Rancio"
- I** – international: produced following the French traditions, on the one hand, and according to the taste preferences of cognac consumers of Russia and CIS countries, on the other hand. GALLISS is really an international brand with mission to unify Mankind as inhabitants of the planet Earth
- SS** – super selection: GALLISS cognacs consist of strictly selected cognac spirits from the best cognac regions (Grande and Petite Champagne, Fins Bois), which are produced according to all technological requirements toward qualities and quantities (the art of blending and partnership)



Rancio concept

GALLISS Rancio concept means that selection of cognac spirits is made during their phases of maturing, at the time, when they discover maximum of their tasting qualities:

Optimal development of bouquet of «RANCIO ADOLESCENCE» is achieved at the age of 15... 18 yyears. For this reason the first product in the GALLISS range – Premium V.S.O.P – is made of spirits with minimum age of

MIMULANI AG
000003

The ring illustrates aromas for each Rancio

15 y.o. For the same reason none of GALLISS cognacs consist of spirits younger than 15 y.o.

Development of bouquet of «RANCIO YOUTH» is achieved with the spirits of 20...30 y.o. This type of spirits form GALLISS premium X.O.

Bouquet «RANCIO ADULTHOOD» is developed in cognac spirits with the age of 30...40 y.o. This Rancio corresponds to GALLISS Flamme d'Or

Further transformation and concentration of aroma occurs in the blending of «RANCIO MATURITY» with the spirits age of 40...50 y.o.

Maximum concentration of cognac spirits aroma is achieved at the stage of «RANCIO WISDOM» with the average age of spirits blended of 55 years

A distinctive peculiarity of all development and maturing phases is that the color, aroma and taste of the GALLISS Cognacs is formed mainly due to oxidation transformation of aromatic substances and their concentration during ageing of the cognac spirits

EUROCIS HOLDING A/S | Moscow Office | telephone: +7 (095) 937 6720 | fax: +7 (095) 937 6730 | sales@galliss.com
Administrative Head Office | Aarhusgade 129, DK-2100 Copenhagen | Denmark | telephone: +45 39 18 07 07 | fax: +45 39 18 03 03
Copyright © 2003 «Galliss Spirit and Wines». Design by [Park](#)

EXHIBIT C

Jeff Goehring

From: Hue Morrison

Sent: Monday, October 06, 2008 11:43 AM

To: Jeff Goehring

Subject: Just a reminder Our Response to Interr due today for 0540-1048-1 E. & J. Gallo Winery v. MIMULANI AG

Very truly yours,

Hue Morrison (Mrs.)

Trademark Paralegal

Young & Thompson

Our new address, effective February 27, 2008

209 Madison Street

Suite 500

Alexandria, Virginia 22314

Telephone: (703) 521-2297 x 167

Facsimile (703)685-0573

hmorrison@young-thompson.com

EXHIBIT D

Hue Morrison

From: Hue Morrison
Sent: Wednesday, October 15, 2008 5:50 PM
To: 'aquinov@aquinov.fr'
Subject: Opposition to GALLISS trademarks Our Refs. 0540-1048-1/1050-1/1051-1 /1052-1/1053-1/1054-1/1055-1 Your Refs. BP/SB/MQ GALLISS pc02-pc03-01-02-03-04-05 Email 1 of 2
Attachments: Applicant's 2nd Request for Production.pdf; Applicant's 2nd Request for Admissions to Opposer.pdf; Applicant's 1st Set of Interrogatories.pdf; Exhibit 5.pdf; Exhibit 4.pdf; Exhibit 3.pdf; Exhibit 2.pdf; Exhibit 1.pdf; Exhibit 9.pdf; Exhibit 8.pdf; Exhibit 7.pdf; Exhibit 6.pdf

October 15, 2008

Aquinov
Allée de la Forestière
F-33750 Beychac & Caillau
France

VIA EMAIL AND COURIER

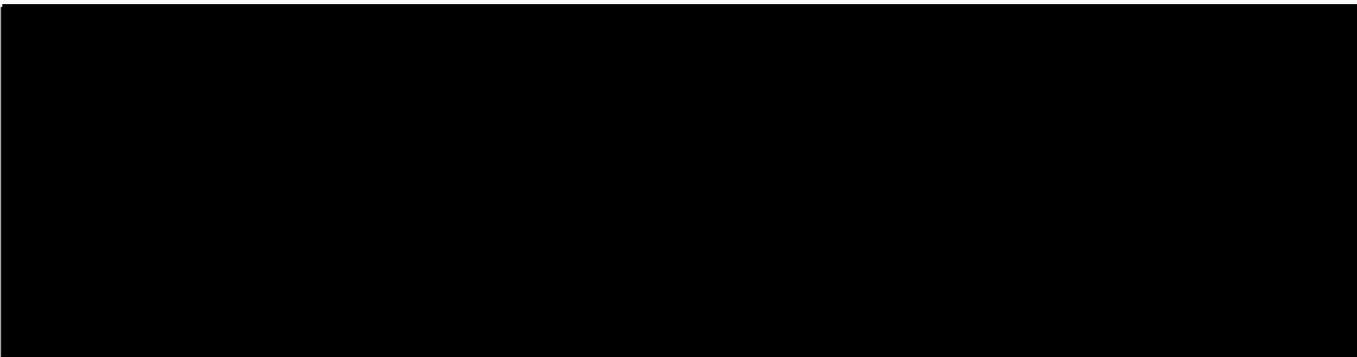
Re: Opposition to GALLISS trademarks
Our Refs. 0540-1048-1/1050-1/1051-1 /1052-1/1053-1/1054-1/1055-1
Your Refs. BP/SB/MQ GALLISS pc02-pc03-01-02-03-04-05

Dear Colleagues:

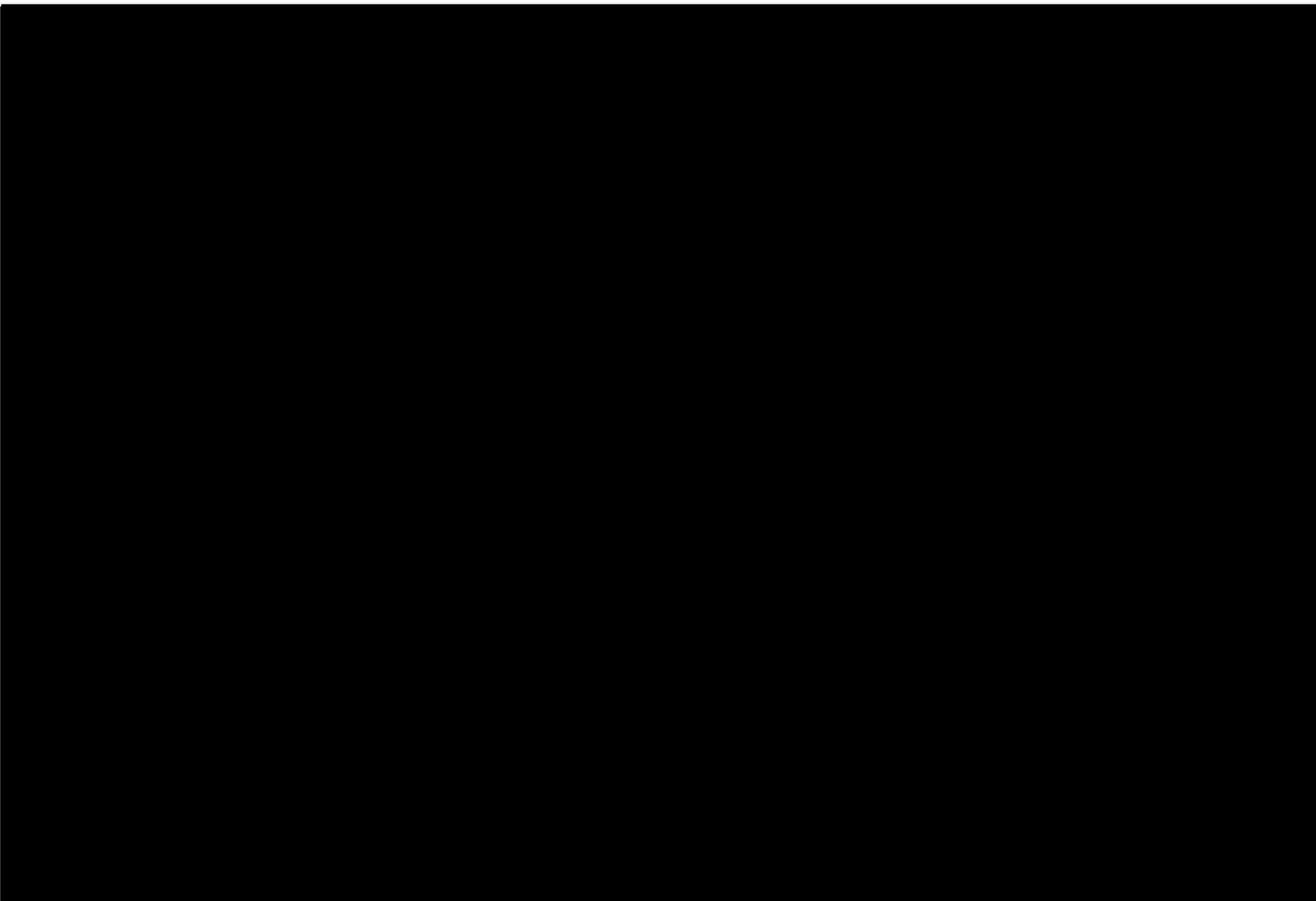
Thank you for your email of October 3, 2008 and the information attached thereto.

We completed responses to Gallo's discovery requests and served them Monday the 6th within the deadline. Enclosed please find your copies of those documents as filed.

In responding to the above requests by Gallo, we also produced four documents that were responsive to the requests. They included the flavor wheel and the image of the new bottle design you emailed us on October 3. They also included a printout of the galliss.com web site under the heading "concept", i.e. galliss.com/concept/. 



10/15/2008



Very truly yours,

/ml/

Mark Lebow

Mark Lebow | Young & Thompson

209 Madison St. | Suite 500

Alexandria, VA 22314

Tel: (703) 521-2297 | Fax: (703) 685-0573

mlebow@young-thompson.com | www.young-thompson.com

Skype: gaucho000

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10/15/2008

Exhibit E

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Respectfully submitted,



Dated: December 9, 2008

Paul W. Reidl
Associate General Counsel
E. & J. Gallo Winery
P. O. Box 1130
Modesto, CA 95353
Tel: (209) 341-4733
Fax: (209) 341-5030
Paul.reidl@ejgallo.com

Attorney for Opposer.
E. & J. Gallo Winery

Exhibit F

SCHEDULE D Income - Gifts

CALIFORNIA FORM 700
<small>FAIR POLITICAL PRACTICES COMMISSION</small>
Name <div style="text-align: center; border-bottom: 1px solid black; margin-top: 5px;">Cynthia K. Tuck</div>

▶ NAME OF SOURCE
California State University - Fresno

ADDRESS
5010 N. Woodrow Ave., Fresno, CA 93740

BUSINESS ACTIVITY, IF ANY, OF SOURCE
NA

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
<u>6 / 13 / 08</u>	<u>\$ 8.95</u>	<u>Lunch (1)</u>
<u>9 / 12 / 08</u>	<u>\$ 29.11</u>	<u>Dinner (1)</u>
<u>9 / 13 / 08</u>	<u>\$ 12.63</u>	<u>Lunch (1)</u>

▶ NAME OF SOURCE
European Energy Forum

ADDRESS
Ave. Ariane 7, 1200 Bruxelles, Belgium

BUSINESS ACTIVITY, IF ANY, OF SOURCE
Nonprofit Association w/some Business Members

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
<u>5 / 13 / 08</u>	<u>\$ 75.75</u>	<u>Dinner at Meeting</u>
<u> / / </u>	<u>\$ </u>	<u> </u>
<u> / / </u>	<u>\$ </u>	<u> </u>

▶ NAME OF SOURCE
E & J Gallo Winery

ADDRESS
PO Box 1130, Modesto, CA 95353

BUSINESS ACTIVITY, IF ANY, OF SOURCE
Winery

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
<u>10 / 16 / 08</u>	<u>\$ 143.29</u>	<u>Dinner (2)</u>
<u> / / </u>	<u>\$ </u>	<u> </u>
<u> / / </u>	<u>\$ </u>	<u> </u>

▶ NAME OF SOURCE
California State Protocol Foundation

ADDRESS
1215 K Street, Sacramento, CA 95814

BUSINESS ACTIVITY, IF ANY, OF SOURCE
NA

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
<u>8 / 13 / 08</u>	<u>\$ 36.49</u>	<u>Gift Bag (3)</u>
<u>8 / 13 / 08</u>	<u>\$ 17.18</u>	<u>Reception (3)</u>
<u>8 / 14 / 08</u>	<u>\$ 42.12</u>	<u>Reception (3)</u>

▶ NAME OF SOURCE
California State Protocol Foundation

ADDRESS
1215 K Street, Sacramento, CA 95814

BUSINESS ACTIVITY, IF ANY, OF SOURCE
NA

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
<u>11 / 18 / 08</u>	<u>\$ 32.88</u>	<u>Lunch (4)</u>
<u>11 / 18 / 08</u>	<u>\$ 120.52</u>	<u>Reception (5)</u>
<u>11 / 18 / 08</u>	<u>\$ 73.81</u>	<u>Reception (6)</u>

▶ NAME OF SOURCE
California State Protocol Foundation

ADDRESS
1215 K Street, Sacramento, CA 95814

BUSINESS ACTIVITY, IF ANY, OF SOURCE
NA

DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
<u>11 / 19 / 08</u>	<u>\$ 32.88</u>	<u>Lunch (4)</u>
<u> / / </u>	<u>\$ </u>	<u> </u>
<u> / / </u>	<u>\$ </u>	<u> </u>

Comments: See Attachment 2

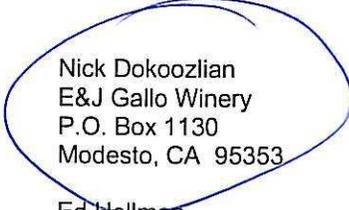
**Guiding Committee for the Viticulture Consortium West and the California
Competitive Grant Program for Research in Viticulture and Enology
2009-2010 Funding Cycle**

Douglas Adams
Viticulture & Enology
University of California
One Shields Avenue
Davis, CA 95616

Daniel Kluepfel
USDA/ARS
Department of Plant Pathology
University of California, Davis
Davis, CA 95616

Kevin Corliss
660 Frontier Road
Prosser, WA 99350

Daryl Salm
Valley Farm Management
Drawer A
Soledad, CA 93960

 Nick Dokoozlian
E&J Gallo Winery
P.O. Box 1130
Modesto, CA 95353

Rhonda Smith
UCCE
133 Aviation Blvd. Suite 109
Santa Rosa, CA 95403

Ed Hellman
Texas A&M Agricultural Research & Extension
Center
1102 E. FM 1294
Lubbock, TX 79403-6603

Robert Wample
Vit. & Enology Research Center
California State University
Fresno, CA 93740-8003

Andrew Johnson
Beringer Wine Estates
P.O. Box 111
St. Helena, CA 94574

James Wolpert
Viticulture & Enology
University of California
One Shields Avenue
Davis, CA 95616

Additional members to the Guiding Committee: These members provide expertise and broader representation for conducting the "California Competitive Grant Program for Research in Viticulture and Enology" This program is directed by Dr. Deborah Golino (UC-DANR). It is funded by the State of California contingent on industry matching funds.

Andrew Waterhouse
Viticulture & Enology
University of California
Davis, CA 95616

Richard G. Peterson
Enology and Viticulture Consultant
1120 Darms Lane
Napa, CA 94558

Kent Daane
9240 So. Riverbend Ave.
Kearney Agricultural Center
Parlier, CA 93648

Karen Ross,
California Association of Winegrape Growers
601 University Avenue, Suite 135
Sacramento, CA 95825

The Viticulture Consortium is authorized to fund only viticulture research. The California Competitive Grant Program for Research in Viticulture and Enology is intended to fund research in both viticulture and enology, and is open to all California public institutions with research expertise in viticulture and enology.

Ex-officio members of the Guiding Committee:

Thomas A. Bewick
National Program Leader – Horticulture

USDA/CSREES/PAS
Mailstop 2220
Washington, DC 20250

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Company Profile Updated: 14-APR-09

E. and J. Gallo Winery

Private Company, Headquarters Location
 PO Box 1130, Modesto, CA 95353-1130, United States
 (800)322-2389, (209)341-3111, (209)341-3569 fax, <http://www.ejgallo.com>
 Primary SIC: Wines Brandy & Brandy Spirits, Primary NAICS: Wineries
 Description: Manufacturing: Distiller of wine. [More](#)

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Family owned and operated since 1933, E. & J. Gallo Winery is in transition. The winery is the world's biggest wine maker. selling 50 million cases of wine in 1998. Now, Gallo is moving away from the lower-

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<< 0043201 >>

E. & J. GALLO WINERY
REGULATORY AFFAIRS & COMPLIANCE DEPARTMENT - TELEPHONE 209-341-3391; FAX 209-341-1561

October 20, 2003

Chief, Regulations and Procedures Division
Alcohol & Tobacco Tax & Trade Bureau
P.O. Box 50221
Washington, D.C. 20091-0221

RE: TTB NOTICE No.4. FLAVORED MALT BEVERAGES & RELATED PROPOSALS

Ladies/Gentlemen:

This letter contains the comments of E. & J. Gallo Winery on the regulatory proposals in TTB Notice No. 4.

In a notice published in the June 2, 2003, Federal Register, the Alcohol and Tobacco Tax and Trade Bureau extended the deadline for comments on this notice to October 21, 2003. This extension was based on E. & J. Gallo Winery's request for additional time to conduct a study involving the aging of reformulated products under normal conditions to determine the impact of the proposed changes to the malt beverage alcohol source standards on Winery flavored-malt-beverage products. The TTB also noted that the additional time would give other commenters time to conduct studies on their products.

E. & J. Gallo Winery conducted a study on two of its thirteen flavored-malt-beverage products—Bartles & Jaymes Original and Berry Flavored Malt Coolers. The Winery's current formulation for those products was compared with the alternative formulations proposed in Notice No. 4. One alternative had 51% of the alcohol derived from the malt base, and the other alternative had flavors contributing no more than 0.5% alcohol by volume to the final product. Due to the limited time available, the Winery was only able to evaluate these products as they would be under normal shipping and storage conditions three and one-half (3½) months after production.

After reviewing the results, the Winery has determined that the study was inconclusive. It appeared that each of the two products we investigated were impacted differently by the change in malt percentage. The indication is that all of our products must be studied individually to understand the full impact of the proposed change. There was no time to explore this issue in time for these comments. In addition, due to the time needed to properly handle, ship, and distribute flavored malt beverages, even product aged three and one-half months is not representative of the age of most product consumed. Much more time would be necessary in order to yield results useful to

P.O. BOX 1130, MODESTO, CALIFORNIA 95353 TELEPHONE (209) 341-3111



DEPARTMENT OF ENVIRONMENTAL RESOURCES

3800 Cornucopia Way, Suite C, Modesto, CA 95358-9492
Phone: 209.525.6700 Fax: 209.525.6774

BOARD OF SUPERVISORS

2008 NOV 21 P 1:17

November 21, 2008

Ms. Christine Ferraro
Clerk of the Board of Supervisors
1010 Tenth Street, Suite 6500
Modesto, CA 95354

RE: 2009 Appointments to the Local Task Force (LTF) on Solid Waste Management

Dear Ms. Ferraro:

The City of Patterson and the City of Ceres has notified me of their new appointments to the LTF. Please find enclosed correspondence and e-mail. The new City representatives are listed below:

Monica Sandoval
City of Patterson
P.O. Box 667
Patterson, CA 95363

Kay Dunkel
City of Ceres
2720 2nd Street
Ceres, CA 95307-3292

The following Industry and County members have agreed to serve another term:

Dennis Shuler
Gilton Solid Waste Management
1722 Mono Drive
Modesto, CA 95358

Mark MacKenzie
E & J Gallo Winery
P.O. Box 1130
Modesto, CA 95353

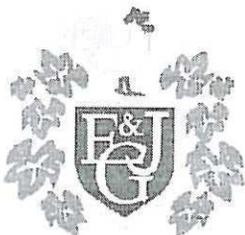
Michael Franck
Fink Road Landfill
4000 Fink Road
Crows Landing, CA 95313

If you have any questions, please contact me at 525-6752.

Sincerely,

Bryan Kumimoto REHS
Senior Resource Management Specialist

Enclosures



E. & J. Gallo Winery
Technology and Quality Department
Chemistry Group

Student Internship
Chemistry

E. & J. Gallo Winery is the world's foremost winery in the art and science of grape growing and wine making; and in the distribution and marketing of wines world wide. With four wineries strategically located in various parts of California and access to grapes from vineyards in all of the premier grape-growing areas of California, E. & J. Gallo Winery produces wines in every category, to suit every taste.

Currently, our Internship Program is searching for appropriate candidates to fill 6-month positions (approximately 6/16-12/15/09) within our Chemistry group. The specific timeframe will focus on the time leading up to-, during, and post-harvest of 2009.

Interns are expected to assist in daily research activities or manage a portion of an ongoing project, depending on their level of research experience. This is an excellent opportunity to gain hands on experience in an industrial research environment and increase your skill base for graduate school or future employment.

Job Summary

As a member of the Chemistry Group, the student intern will participate in team projects that contribute to the improvement of the Winery's commercial processes and wine quality.

Specifically, the intern will assist in projects focused on:

1. Evaluating the chemical characteristics of grapes throughout their maturation process.
2. Developing rapid Chemical methods and strategies to measure and monitor positive grape attributes and defects at the winery receiving station (test stand).
3. Correlating wine Chemical characterizations with Sensory attributes to model wine aging and to determine product shelf life.

This project work will involve:

1. Developing and conducting wine aging experiments.
2. Performing and developing chemical analyses to characterize grapes, fermentations, and wines.
3. Using computer software to statistically analyze data.
4. Working in a production setting during harvest. This could include harvesting experimental grapes in the vineyard, analyzing supplier grapes when they arrive at the winery for crushing, and taking samples from tanks in the winery.

Qualifications, Skills, and Prior Experience Required

- Partial completion of a B.S. / B. A. degree in Chemistry or related field.
- Strong analytical and problem-solving capabilities.
- Excellent written and oral communication skills.
- Excellent organizational skills with the ability to successfully manage multiple assignments.
- Self-motivated with a passion for research

Please Direct Inquiries To:

Dr. Michael Cleary
Director, Chemistry
E. & J. Gallo Winery
P.O. Box 1130
Modesto, CA 95353
(209) 341-6200
mike.cleary@ejgallo.com

Exhibit G

Mark Lebow

From: Mark Lebow
Sent: Friday, July 25, 2008 2:38 PM
To: 'Reidl, Paul'
Subject: RE: Galliss Oppositions

Hello Paul,

Believe it or not, I just pulled this file to email you now when your follow up came in.

Indeed I have now heard back from my client in this matter. They noted that during previous negotiations between the parties with respect to the European dispute Gallo had rejected our client's request at that time to have the agreement extended to all countries. I believe you highlighted this point when we initially spoke about the case.

As perceived by our clients, Gallo could not accept the request to extend the agreement to the U.S. and Canada because the conflict at that moment was limited to Europe and Gallo could not grant the same freedoms of use and registration with respect to the U.S. and Canada.

Our client now wonders if there is any situation, having appropriate conditions on use, which would permit this matter to be resolved by agreement in the U.S. They have not proposed any specific conditions, but leave that possibility to your suggestion. Are there any mutual benefits that could be accounted for by an agreement?

Best regards,

Mark Lebow | Young & Thompson
209 Madison St. | Suite 500
Alexandria, VA 22314
Tel: (703) 521-2297 | Fax: (703) 685-0573
mlebow@young-thompson.com | www.young-thompson.com
Skype: gaucho000

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From: Reidl, Paul [mailto:Paul.Reidl@ejgallo.com]
Sent: Friday, July 25, 2008 2:21 PM
To: Mark Lebow
Subject: Galliss Oppositions

WITHOUT PREJUDICE/

Hi Mark:

I've been patient with your client here but as you can tell from the calendar we need either to resolve this case or reset the schedule so that we can prepare it properly. Have you heard from them yet?

Thanks

Paul

/Paul W. Reidl/

Paul W. Reidl | Associate General Counsel | E. & J. Gallo Winery | 600 Yosemite Boulevard | Modesto, CA 95354 |
Tel.: (209) 341-4733 | Fax: (209) 341-6270 | Cel: (209) 988-4847 | E-mail: paul.reidl@ejgallo.com

=====
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Exhibit H

E. & J. Gallo Winery Modesto, CA, United States

Company Description

Hoover's coverage by Barbara Murray

E. & J. Gallo Winery brings merlot to the masses. The company is one of the world's largest winemakers, thanks in part to its inexpensive jug and...

Headquarters:
600 Yosemite Blvd.
Modesto, CA 95354
United States (Map)

Key E. & J. Gallo Financials

Company Type	Private - Main Headquarters
Fiscal Year-End	December
2007 Sales (mil.)	\$3,150.0 (est.)
2007 Employees	5,000



Latest E. & J. Gallo Jobs

jobs by Indeed

Finance Analyst II - International Business Unit
HR Coordinator ? College Recruiting
Assistant Winemaker

Rankings

#130 in Forbes Largest Private Companies

Competition

Competitive Landscape for Wineries

Demand for wine is driven by the restaurant and hotel industries, the level of business entertainment spending, and consumer income. A winery's profitability depends on production volume and...

Top E. & J. Gallo Competitors

Constellation Wines
Foster's Americas
Kendall-Jackson

E. & J. Gallo Executives

Title	Name & Bio	Contact
Co-Chairman	James E. (Jim) Coleman	Network E-mail
Co-Chairman	Robert J. (Bob) Gallo	Network E-mail
Co-Chairman, President, and CEO	Joseph E. (Joe) Gallo	Network E-mail

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E & J Gallo Winery

Contact this Company

Contact Information about E & J Gallo Winery

Address: 600 Yosemite Blvd
Modesto, CA,
95354-2760

Phone: 209-341-3111

Toll Free: 800-322-2389

Fax: 209-579-3307

Website: www.gallo.com

Is This Your Company?

Business Activity: Manufacturer / Exporter / Importer

Products Description:

Winery; manufactures glass packing, bottling & canning bottles; vineyard Wine processing services, Brewery processing services, Non alcoholic fruit based beverage processing services, Water beverages processing services, Infused beverages processing services, Coffee processing services, Tea processing services, Spirits distilling or blending services

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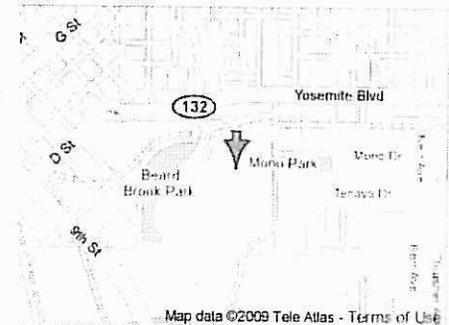
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Directions

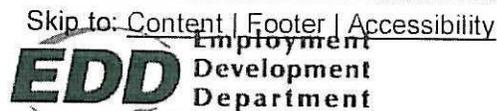


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Employer Details

[Back](#) [New Search](#)  [Printer Friendly Version](#)

Employer Name: E & J GALLO WINERY

Business Description: WINERIES (MFRS)

Employer Address: 600 YOSEMITE BLVD
MODESTO, CA 95354-2760
[Map This Address](#)

Mailing Address: PO BOX 1130
MODESTO, CA 95353-1130

Contact: JAMES E COLEMAN, PRESIDENT

Telephone: 209-341-3111

Website: [EJGALLO.COM](#) (Links to external websites are for informational purposes only. The information on external websites is believed accurate but not guaranteed.)

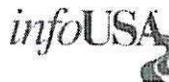
Employer Size Class: 1,000-4,999 Employees

Industry Description: Wineries (NAICS code: 312130)

This industry comprises establishments primarily engaged in one or more of the following: (1) growing grapes and manufacturing wine and brandies; (2) manufacturing wine and brandies from grapes and other fruits grown elsewhere; and (3) blending wines and

Related Links

[Local Area Profile](#)



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