

ESTTA Tracking number: **ESTTA331127**

Filing date: **02/08/2010**

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

Proceeding	91181380
Party	Plaintiff E. & J. Gallo Winery
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Date	02/08/2010
Attachments	Resp.MTW.100208.pdf (4 pages)(17493 bytes)

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

3 _____)
4 E. & J. GALLO WINERY,) **Opposition No. 91181380**
5 Opposer,) Opposition No. 91181381
6 v.) Opposition No. 91181383
7 MIMULANI AG) Opposition No. 91181384
8 Applicant.) Opposition No. 91181385
) Opposition No. 91181386
) Opposition No. 91181388
) (Consolidated)

9 **OPPOSER’S RESPONSE TO MOTION TO WITHDRAW**

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11 Counsel for Applicant Mimulani AG (“Applicant”) filed a motion to withdraw on February 3,
12 2010. According to the certificate of service attached thereto, Applicant’s motion was “sent” to counsel
13 for Opposer E. & J. Gallo Winery (“Opposer”) that day. The Board granted the motion to withdraw on
14 February 5, 2010. Opposer, through its counsel, received the service copy of the motion today.

15 The motion to withdraw states: “Opposer has knowingly and freely assented to termination of
16 the undersigned counsel’s and his firm’s employment in this matter.” That is not true. In fact,
17 Applicant’s counsel never even informed Opposer (or its counsel) of its intention to move to
18 withdraw. Opposer (and its counsel) only became aware of the motion after it was filed.

19 The Board’s order granting the motion to withdraw gives Applicant the option of appointing
20 new counsel, or filing a paper stating that Applicant chooses to represent itself. Applicant is a
21 foreign company located in Switzerland. In light of the Board’s recent orders regarding discovery
22 (e.g., the Board’s February 3 order reopening the discovery period for 60 days), Opposer
23 respectfully contends that Applicant should be required to appoint new counsel in the United States
24 to facilitate the completion of discovery.

25 Given the timing of Applicant’s counsel’s motion to withdraw – the motion was filed on
26 February 3, the very day the Board held a telephone conference on Opposer’s motion to reopen the
27 discovery period and announced its intention to grant Opposer’s motion – the motion to withdraw
28

1 appears to be an attempt to complicate Opposer's efforts to complete discovery within the 60-day
2 reopened discovery period. Indeed, while the motion states that Applicant's counsel intended to
3 withdraw as early as August 2009, Applicant's counsel did not mention the possibility of withdrawal
4 during the February 3 telephone conference. On the contrary, Applicant's counsel implied that he
5 would work with Opposer's counsel to resolve the parties' discovery disputes and to coordinate the
6 taking of depositions.

7 In conclusion, Opposer respectfully requests that the withdrawal of Applicant's counsel be
8 conditioned on Applicant appointing new counsel in the United States.

9
10 Dated: February 8, 2010

Respectfully submitted,

11 HARVEY SISKIND LLP

12 _____
/s/

13 By: Seth I. Appel

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17 Attorneys for Opposer
18 E. & J. Gallo Winery
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1 **CERTIFICATE OF TRANSMISSION**

2 I hereby certify that true and correct copies of the attached **OPPOSER’S RESPONSE TO**
3 **MOTION TO WITHDRAW** is being electronically transmitted to the Trademark Trial and Appeal
4 Board on February 8, 2010.

5 _____
6 /s/
7 Seth I. Appel

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