

ESTTA Tracking number: **ESTTA296264**

Filing date: **07/20/2009**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	E. & J. GALLO WINERY
Granted to Date of previous extension	08/12/2009
Address	600 YOSEMITE BOULEVARD MODESTO, CA 95354 UNITED STATES

Attorney information	Paul W. Reidl Law Office of Paul W. Reidl 3300 Wycliffe Drive MODESTO, CA 95355 UNITED STATES reidl@sbcglobal.net Phone:(209) 526-1586
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Applicant Information

Application No	77624586	Publication date	04/14/2009
Opposition Filing Date	07/20/2009	Opposition Period Ends	08/12/2009
Applicant	Darryn Travis Enterprises LLC 808 Industry Dr. Tukwila, WA 98188 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 2005/03/01 First Use In Commerce: 2007/08/15 All goods and services in the class are opposed, namely: wine

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3428177	Application Date	05/11/2005
Registration Date	05/13/2008	Foreign Priority Date	NONE
Word Mark	STARBOROUGH		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2008/03/04 First Use In Commerce: 2008/03/04 WINES

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Starborough (common law)		
Goods/Services	Wines		

Attachments	78628153#TMSN.jpeg (1 page)(bytes) Scarborough Opposition.pdf (5 pages)(98618 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/pwr/
Name	Paul W. Reidl
Date	07/20/2009

1 UNITED STATE PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3

4 In the Matter of Application

5 Serial No. 77/624,586

6 _____)
7 **E. & J. GALLO WINERY,**)

8 Opposer,)

9 v.)

10 **DARRYN TRAVIS ENTERPRISES, LLC,**)

11 Applicant.)
12 _____)
13

Opposition No. _____

NOTICE OF OPPOSITION

14 E. & J. Gallo Winery, a corporation organized and existing under the laws of the State of
15 California, believes that it will be damaged by the registration of the trademark shown in Applicant
16 Serial Number 77624586, filed December 2, 2008, and hereby opposes registration of same.

17 As grounds for opposition, Opposer by its attorney, Paul W. Reidl, respectfully shows and
18 alleges as follows:
19

20 1. Opposer is a corporation organized and existing under the laws of the State of
21 California with its principal place of business at 600 Yosemite Boulevard, Modesto, California
22 95354.

23 2. At all times here mentioned Opposer has been actively engaged in the production,
24 distribution and sale of wines in the United States under the trademark STARBOROUGH.

25 //

26 //
27

1 3. Opposer is the owner of the federal registration of the trademark STARBOROUGH
2 (no. 3428177, filed May 11, 2005) for wines. A copy is attached as Exhibit A. This registration is in
3 full force and effect.

4 4. The STARBOROUGH mark was first used on wines by Opposer in March 2008. By
5 virtue of the extensive use and promotion of its STARBOROUGH mark, and the widespread sale of
6 its wines under the STARBOROUGH mark, the trademark STARBOROUGH has come to be
7 recognized throughout the United States as identifying alcoholic beverages finding their origin in or
8 otherwise associated with Opposer. The STARBOROUGH mark is strong, is a market leader in its
9 category, and is recognized among a substantial number of wine consumers.
10

11 5. The mark herein opposed comprises the words O'SHEA SCARBOROUGH. It is very
12 similar to Opposer's STARBOROUGH mark. The dominant portion of the mark, SCARBOROUGH,
13 is virtually identical to Opposer's STARBOROUGH mark. The products for which the applied-for
14 mark is allegedly used according to the application are wines. These products are identical to the
15 products for which Opposer's STARBOROUGH mark is registered. In the normal course of trade,
16 Opposer's goods and Applicant's goods would be purchased by the same purchasers in the same
17 channels of trade and would be marketed and promoted in the same channels. Accordingly,
18 consumers would inevitably be led to mistakenly believe that Applicant's O'SHEA
19 SCARBOROUGH wines are produced by, are sponsored by, or are affiliated with Opposer.
20

21 6. Applicant claims to have first used its mark on wines in March 2005, and in commerce
22 in August 2007. Both of these statements are false. Applicant could not have lawfully used its mark
23 on wines prior to the issuance of a Certificate of Label Approval by the Alcohol and Tobacco Tax
24 and Trade Bureau. The first Certificate of Label Approval for wines bearing Applicant's mark was
25 issued on May 28, 2008. This occurred after Opposer had both filed and commenced use of its mark.
26 On information and belief, Applicant knew this at the time it filed its application.
27

PROOF OF SERVICE AND MAILING

1
2 On July 20, 2009, I caused to be served the foregoing document described as follows:
3 **NOTICE OF OPPOSITION** on the Applicant in this action by placing a true copy thereof enclosed
4 in an envelope, postage prepaid addressed as follows:

5 MICHAEL P. MAHONEY
6 BAILEY CAVALIERI LLC
7 SUITE 2100
8 10 WEST BROAD STREET
9 COLUMBUS, OHIO 43215

10 Executed on July 20, 2009, at Modesto, California.

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EXHIBIT A

TRADEMARK REGISTRATION No. 3,428,177

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

Reg. No. 3,428,177

United States Patent and Trademark Office

Registered May 13, 2008

**TRADEMARK
PRINCIPAL REGISTER**

STARBOROUGH

E. & J. GALLO WINERY (CALIFORNIA CORPORATION)
606 YOSEMITE BOULEVARD
MORFISTO, CA 95354

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: WINE IN CLASS 33 (U.S. CLS. 47 AND 49).

SN 78-628,153. FILED 5-11-2005.

FIRST USE 3-7-2008 IN COMMERCE 3-1-2008.

TRACY CROSS, EXAMINING ATTORNEY