

ESTTA Tracking number: **ESTTA313569**

Filing date: **10/27/2009**

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	Diageo Chateau & Estate Wines Company
Granted to Date of previous extension	12/09/2009
Address	240 Gateway Road West Napa, CA 94558 UNITED STATES
Attorney information	Jennifer J. Millones Diageo North America, Inc. 801 Main Avenue Norwalk, CT 06851 UNITED STATES trademarks@diageo.com, jennifer.millones@diageo.com, jeanette.alindogan@diageo.com Phone:203-229-7152

Applicant Information

Application No	77740751	Publication date	08/11/2009
Opposition Filing Date	10/27/2009	Opposition Period Ends	12/09/2009
Applicant	InnoVino International, Inc. Suite 108 7707 N University Drive Tamarac, FL 33321 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Alcoholic beverages, namely, wines

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	78531977	Application Date	12/14/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	VINAVERA		

Design Mark	VINAVERA
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 Alcoholic beverages, namely, wine

Attachments	78531977#TMSN.jpeg (1 page)(bytes) NOTICE OF OPPOSITION SN 77740751 VINVERO INNOVINO INTERNATIONAL, INC.pdf (5 pages)(1279451 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	/Jennifer J. Millones/
Name	Jennifer J. Millones
Date	10/27/2009

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

In the Matter of Application Serial No. 77/740,751
Published in the Official Gazette on August 11, 2009
Mark: VINVERO
International Class: 33

DIAGEO CHATEAU & ESTATE WINES
COMPANY,

Opposer,

-against-

INNOVINO INTERNATIONAL, INC.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Diageo Chateau & Estate Wines Company believes it will be damaged by registration of the mark VINVERO as shown in the above-identified application, Serial No. 77/740,751, and hereby opposes the same pursuant to Section 13(a) of the Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1063(a).

As grounds for the opposition, Opposer alleges that:

1. Opposer Diageo Chateau & Estate Wines Company ("Opposer") is a corporation organized and existing under the laws of the state of California, with its principal place of business located at 240 Gateway Road West, Napa, California 94558.
2. Opposer has used the VINAVERA trademark in commerce in the United States in connection with wine since at least as early as May 1, 2005 – more than four years before May 19, 2009, the filing date of the intent-to-use application herein opposed.

3. During its continuous use of the VINAVERA mark, Opposer and its authorized wholesalers, distributors and retail accounts have expended considerable time, effort and money in advertising and publicizing the sale of wine bearing the VINAVERA mark in the United States.

4. During its continuous use of the VINAVERA mark, Opposer has directly and indirectly sold, and offered for sale, wine bearing the VINAVERA mark in a trading area of broad geographical scope encompassing, inter alia, all of the states and territories of the United States.

5. During its continuous use of the VINAVERA mark, Opposer has directly and indirectly sold, and offered for sale, wine bearing the VINAVERA mark in both on and off-premise trade channels, including without limitation, restaurants, bars, grocery stores, alcohol beverage control stores, and retail stores in the United States.

6. During its continuous use of the VINAVERA mark, Opposer has directly and indirectly sold, and offered for sale, wine bearing the VINAVERA mark to wholesalers, distributors and individuals over the legal purchase age for alcohol in the United States.

7. In addition to Opposer's common law rights in the VINAVERA mark, Opposer owns U.S. Trademark Application Serial No. 78/531977, filed December 14, 2004, that covers "alcoholic beverages, namely, wine." This application remains pending, and was published for opposition on August 11, 2009. A post-publication amendment, deleting certain additional goods from the application, was entered on September 24, 2009.

8. By the application herein opposed, Serial No. 77/740,751, Applicant seeks to register the VINVERO mark. The application was filed on the basis of Applicant's purported intent to use the VINVERO mark in International Class 33 in connection with wine.

9. The goods for which Applicant seeks registration are the same as the goods in connection with which Opposer's VINAVERA mark have been used and are in use.

10. Applicant filed the intent-to-use application for its VINVERO mark on May 19, 2009, more than four years after Opposer filed its pending application to register and commenced use of the VINAVERA mark.

11. Upon information and belief, the products sold in connection with Opposer's VINAVERA mark and the products identified by Application Serial No. 77/740751 are intended to be directed to identical classes of purchasers and to be distributed through the same channels of trade.

12. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

13. Registration should be refused pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), on the grounds that Applicant's use of its VINVERO mark will falsely suggest a connection between Applicant and Opposer, to the damage of Opposer.

14. Registration should be refused pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's VINVERO mark so closely resembles the VINAVERA mark used consistently by Opposer in the United States, as to be likely, when used on or in connection with the goods identified in the Application, to cause confusion, or to cause mistake, or to deceive, with the consequent injury to the Opposer and to the public.

WHEREFORE, Opposer believes it will be damaged by the registration of Applicant's VINVERO mark for the goods identified in Application Serial Number 77/740,751 and respectfully requests that the opposition be sustained and registration of said mark be denied.

Pursuant to 37 C.F.R. §2.6(a)(17), Opposer respectfully requests that the \$300.00 statutory filing fee for filing a Notice of Opposition in one international class, and any additional amount, be charged to Deposit Account No. 083120.

All communication should be addressed to Opposer's counsel at the below stated address.

Dated: Norwalk, Connecticut
October 27, 2009

Respectfully submitted,



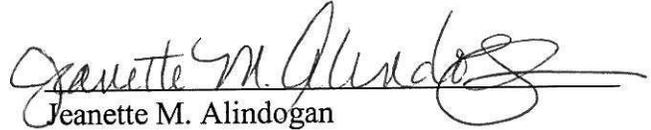
Jennifer J. Millones
801 Main Avenue
Norwalk, Connecticut 06851

OPPOSER DIAGEO CHATEAU & ESTATE
WINES COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing NOTICE OF OPPOSITION to be served, via first class mail, postage prepaid, on this 27th day of October 2009, to Applicant's Attorney of Record for Application Serial no. 77/740751 as identified on the Patent and Trademark Office's TARR database as follows:

Danielle Beth Hall, Esq.
1 Alexander Street
Suite 203
Yonkers, NY 10701


Jeanette M. Alindogan