

ESTTA Tracking number: **ESTTA504047**

Filing date: **11/06/2012**

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	01/09/2013
Address	600 Yosemite Boulevard Modesto, CA 95354 UNITED STATES
Attorney information	Steven M. Weinberg Holmes Weinberg, PC 30765 Pacific Coast Highway Suite 411 Malibu, CA 90265 UNITED STATES hwtrademarks@gmail.com, sfinkelstein@holmesweinberg.com Phone:310.457.6100

Applicant Information

Application No	85436336	Publication date	09/11/2012
Opposition Filing Date	11/06/2012	Opposition Period Ends	01/09/2013
Applicant	Grenade Beverage LLC 2030 East 4th Street, Suite 212D Orange, CA 92705 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Nutritional supplements
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	444756	Application Date	02/11/1946
Registration Date	03/24/1953	Foreign Priority Date	NONE
Word Mark	GALLO		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class U047 (International Class 033). First use: First Use: 1909/00/00 First Use In Commerce: 1909/00/00 WINES		

U.S. Registration No.	778837	Application Date	10/22/1963
Registration Date	10/20/1964	Foreign Priority Date	NONE
Word Mark	ERNEST & JULIO GALLO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U047 (International Class 033). First use: First Use: 1958/08/04 First Use In Commerce: 1958/08/04 Wines		

U.S. Registration No.	891339	Application Date	09/17/1969
Registration Date	05/19/1970	Foreign Priority Date	NONE
Word Mark	GALLO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U047 (International Class 033). First use: First Use: 1909/00/00 First Use		

	In Commerce: 1909/00/00 WINES [AND CHAMPAGNES]
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U.S. Registration No.	964331	Application Date	09/15/1972
Registration Date	07/17/1973	Foreign Priority Date	NONE
Word Mark	E & JG GALLO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U047 (International Class 033). First use: First Use: 1972/08/28 First Use In Commerce: 1972/08/28 WINES		

U.S. Registration No.	1911682	Application Date	06/28/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	GALLO SONOMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1994/06/20 First Use In Commerce: 1994/06/20 wines		

U.S. Registration No.	3128127	Application Date	04/28/2005
Registration Date	08/08/2006	Foreign Priority Date	NONE
Word Mark	GALLO FAMILY VINEYARDS		

Design Mark	
Description of Mark	The mark consists of the design of the heads of two roosters and the wording "Gallo Family Vineyards".
Goods/Services	Class 033. First use: First Use: 2005/11/01 First Use In Commerce: 2005/11/01 WINES

Attachments	71496376#TMSN.gif (1 page)(bytes) 72179529#TMSN.gif (1 page)(bytes) 72338083#TMSN.gif (1 page)(bytes) 72435846#TMSN.gif (1 page)(bytes) 78618997#TMSN.jpeg (1 page)(bytes) 2012.11.06_Notice of Opposition_EL GALLO ENERGIA.pdf (4 pages)(24287 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	/Steven M. Weinberg/
Name	Steven M. Weinberg
Date	11/06/2012

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

In re Serial No. 85/436,336

E. & J. Gallo Winery,

Opposer,

v.

Grenade Beverage LLC,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

TO: ASSISTANT COMMISSIONER FOR TRADEMARKS
BOX TTAB –FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Opposer E. & J. Gallo Winery (“Gallo”), a corporation organized and existing under the laws of the State of California, believes that it would be damaged by registration of the above-referenced mark, and hereby opposes the same. As grounds for this Opposition, Gallo respectfully alleges as follows:

1. Opposer Gallo is a corporation organized and existing under the laws of the State of California having a place of business at 600 Yosemite Blvd., Modesto, California 95354.
2. Gallo is the exclusive owner in the United States, *inter alia*, of the following federally registered GALLO® word marks, the GALLO® composite word and design marks featuring a rooster design, and other word and design marks that incorporate the GALLO® word mark (collectively, the “GALLO® Marks”):

Reg. Number	Reg. Date	Trademark
0444756	03/24/1953	GALLO (stylized word mark)
0778837	10/20/1964	ERNEST & JULIO GALLO (stylized word mark)
0891339	05/19/1970	GALLO (stylized word mark)
0964331	07/17/1973	E & JG GALLO (stylized word mark)
1911682	08/15/1995	GALLO SONOMA
3128127	08/08/2006	GALLO FAMILY VINEYARDS (stylized word mark)

3. These registrations are valid and enforceable, and Gallo's exclusive rights in each of the foregoing registered marks are incontestable.

4. Gallo has used the GALLO brand name in the United States since at least the 1950's. For more than fifty years, Gallo has produced, advertised, promoted, distributed and sold goods and services in interstate commerce under its GALLO® Marks.

5. The mark subject to this Opposition is EL GALLO ENERGÍA and Rooster Design, Serial No. 85/436,336 (the "Opposed Mark") for "Nutritional supplements" in International Class 005.

6. Applicant filed United States Application Serial No. 85/436,336 with the U.S. Patent and Trademark Office on or about September 30, 2012. The Application for the Opposed Mark is based on an intent to use. Upon information and belief, the Opposed Mark has not yet been used in commerce.

7. Because Gallo first used its GALLO® Marks on wine many decades before Applicant filed its application for the Opposed Mark, and such use has been continuous, Gallo has priority of use.

8. By virtue of Gallo's long, continuous, extensive and exclusive use and marketing, promotion and sale of, and the widespread sale and purchase of alcoholic and non-alcoholic beverages and other commercially related products under the GALLO® Marks, the GALLO® Marks have come to be recognized by the relevant public as identifying wine, beverages and

commercially related products as having their origin or otherwise associated exclusively with Opposer. Further, the GALLO® Marks for beverages are “famous.”

9. The Opposed Mark for the International Class 005 goods is similar, *inter alia*, in appearance, meaning and sound to the GALLO® Marks. The Opposed Mark contains and is primarily comprised of the word GALLO, and evokes the same or highly similar connotation as the GALLO® Marks. In addition, the Opposed Mark contains an image of a rooster similar to that in Reg. Nos. 0964331 and 3128127. Upon information and belief, Applicant intends to use the Opposed Mark in connection with *liquid beverage* nutritional supplements. Thus, the International Class 005 goods the Opposed Mark will be used for are commercially related to the International Class 033 goods for which the GALLO® Marks are used. Accordingly, it is likely that consumers will mistakenly believe that the Opposed Mark for the International Class 005 goods is connected to or associated with Opposer.

10. The registration of the Opposed Mark for International Class 005 would be inconsistent with Gallo’s rights in its GALLO® Marks and will cause damage to Gallo.

WHEREFORE, Gallo respectfully prays that registration of the Opposed Mark not be permitted.

DATED this 6th day of November, 2012.

Respectfully submitted,

By: /s/ Steven M. Weinberg
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing NOTICE OF OPPOSITION was served by first class mail to Applicant's counsel at the following address:

Susan M. Natland
Brigette B. Chaput
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, California 92614

DATED: November 6, 2012

By: /s/ Nanette C. Cunningham
Nanette C. Cunningham
Paralegal