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

Proceeding	91207867
Party	Plaintiff E. & J. Gallo Winery
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**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. 91207867

**RESPONSE TO TTAB ORDER**

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

The civil action which occasioned the suspension of this proceeding is still ongoing.

Attached to this response is the current Scheduling Order in that action.

Respectfully submitted,

By: /s/ Michael J. Salvatore  
Michael J. Salvatore  
Holmes Weinberg, PC  
30765 Pacific Coast Highway, Suite 411  
Malibu, CA 90265  
310.457.6100  
msalvatore@holmesweinberg.com

Attorneys for Petitioner E. & J. Gallo Winery

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing RESPONSE TO TTAB ORDER and attachment was served by first class mail to Applicant at the following address:

Paul Sandford  
Grenade Beverage LLC  
PO Box 12003  
Orange, CA 92859

DATED: August 28, 2014

By: /s/ Nelda Piper  
Nelda Piper  
Paralegal



1           **II.     Appearances of Counsel**

2           D. Greg Durbin, Steven Weinberg, Michael Salvatore telephonically appeared on behalf  
3 of Plaintiff.

4           Steven Yuen telephonically appeared on behalf of Defendant.

5           **III.    Consent to Magistrate Judge**

6           Pursuant to 28 U.S.C. § 636(c), to the parties who have not consented to conduct all  
7 further proceedings in this case, including trial, before United States Magistrate Judge Stanley A.  
8 Boone, you should be informed that because of the pressing workload of United States district  
9 judges and the priority of criminal cases under the United States Constitution, you are encouraged  
10 to consent to magistrate judge jurisdiction in an effort to have your case adjudicated in a timely  
11 and cost effective manner. Presently, when a civil trial is set before Judge Ishii, any criminal trial  
12 set which conflicts with the civil trial will take priority, even if the civil trial was set first.  
13 Continuances of civil trials under these circumstances may no longer be entertained, absent a  
14 specific and stated finding of good cause, but the civil trial may instead trail from day to day or  
15 week to week until the completion of either the criminal case or the older civil case. The parties  
16 are advised that they are free to withhold consent or decline magistrate jurisdiction without  
17 adverse substantive consequences.

18           **IV.    Initial Disclosure under Fed. R. Civ. P. 26(a)(1)**

19           Initial disclosures required by Fed. R. Civ. P. 26(a)(1) have been completed.

20           **V.     Amendments to Pleading**

21           The parties do not anticipate any amendments to the pleadings at this time. The parties  
22 are advised that filing motions and/or stipulations requesting leave to amend the pleadings does  
23 not reflect on the propriety of the amendment or imply good cause to modify the existing  
24 schedule, if necessary. All proposed amendments must (A) be supported by good cause pursuant  
25 to Fed. R. Civ. P. 16(b) if the amendment requires any modification to the existing schedule, *see*  
26 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992), and (B) establish,  
27 under Fed. R. Civ. P. 15(a), that such an amendment is not (1) prejudicial to the opposing party,  
28 (2) the product of undue delay, (3) proposed in bad faith, or (4) futile, *see* Foman v. Davis, 371

1 U.S. 178, 182 (1962).

2 **VI. Discovery Plan and Cut-Off Dates**

3 The parties are ordered to complete all non-expert discovery on or before **June 11, 2014**  
4 and all expert discovery on or before **June 25, 2014**.

5 The parties are directed to disclose all expert witnesses, in writing, on or before **May 14,**  
6 **2014** and to disclose all supplemental experts on or before **June 11, 2014**. The written  
7 designation of retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P.**  
8 **26(a)(2), (A), (B) and (C) and shall include all information required thereunder.** Failure to  
9 designate experts in compliance with this order may result in the Court excluding the testimony or  
10 other evidence offered through the experts that are not properly disclosed in compliance with this  
11 order.

12 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to  
13 experts and their opinions. Experts must be fully prepared to be examined on all subjects and  
14 opinions included in the designation. Failure to comply will result in the imposition of sanctions,  
15 which may include striking the expert designation and the exclusion of their testimony.

16 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement  
17 disclosures and responses to discovery requests will be strictly enforced.

18 The parties are cautioned that the discovery/expert cut-off deadlines are the dates by  
19 which all discovery must be completed. Absent good cause, discovery motions will not be heard  
20 after the discovery deadlines. Moreover, absent good cause, the Court will only grant relief on a  
21 discovery motion if the relief requested requires the parties to act before the expiration of the  
22 relevant discovery deadline. In other words, discovery requests and deposition notices must be  
23 served sufficiently in advance of the discovery deadlines to permit time for a response, time to  
24 meet and confer, time to prepare, file and hear a motion to compel and time to obtain relief on a  
25 motion to compel. Counsel are expected to take these contingencies into account when proposing  
26 discovery deadlines. Compliance with these discovery cutoffs requires motions to compel be  
27 filed *and heard* sufficiently in advance of the discovery cutoff so that the Court may grant  
28 effective relief within the allotted discovery time. A party's failure to have a discovery dispute

1 heard sufficiently in advance of the discovery cutoff may result in denial of the motion as  
2 untimely.

3 **VII. Pre-Trial Motion Schedule**

4 Unless prior leave of Court is obtained at least seven (7) days before the filing date, all  
5 moving and opposition briefs or legal memorandum in civil cases shall not exceed twenty-five  
6 (25) pages. Reply briefs filed by moving parties shall not exceed ten (10) pages. Before  
7 scheduling any motion, the parties must comply with all requirements set forth in Local Rule 230  
8 and 251.

9 **A. Non-Dispositive Pre-Trial Motions**

10 As noted, all non-expert discovery, including motions to compel, shall be completed no  
11 later than **June 11, 2014**. All expert discovery, including motions to compel, shall be completed  
12 no later than **June 25, 2014**. Compliance with these discovery cutoffs requires motions to compel  
13 be filed *and heard* sufficiently in advance of the discovery cutoff so that the Court may grant  
14 effective relief within the allotted discovery time. A party's failure to have a discovery dispute  
15 heard sufficiently in advance of the discovery cutoff may result in denial of the motion as  
16 untimely. Non-dispositive motions are heard on Wednesdays at 10:00 a.m., before United States  
17 Magistrate Judge Stanley A. Boone in Courtroom 9.

18 In scheduling any non-dispositive motion, the Magistrate Judge may grant Applications  
19 for an Order Shortening Time pursuant to Local Rule 144(e). However, if counsel does not  
20 obtain an Order Shortening Time, the Notice of Motion must comply with Local Rule 251.

21 Counsel may appear and argue non-dispositive motions by telephone, providing a written  
22 request to so appear is made to the Magistrate Judge's Courtroom Clerk no later than three (3)  
23 court days before the noticed hearing date. In the event that more than one attorney requests to  
24 appear by telephone, then it shall be the obligation of the moving party(ies) to arrange and  
25 originate a conference call to the court.

26 ***Discovery Disputes:*** If a motion is brought under Fed. R. Civ. P. 37, the parties must  
27 prepare and file a Joint Statement re Discovery Disagreement ("Joint Statement") as required by  
28 Local Rule 251. The Joint Statement must be filed seven (7) calendar days before the scheduled

1 hearing date. Courtesy copies of all motion-related documents, declarations, and exhibits must be  
2 delivered to the Clerk's Office by 10:00 a.m. on the fourth court day prior to the scheduled  
3 hearing date. Motions will be removed from the court's hearing calendar if the Joint Statement is  
4 not timely filed or if courtesy copies are not timely delivered. In order to satisfy the meet and  
5 confer requirement set forth in Local Rule 251(b), the parties must confer and talk to each other  
6 in person, over the telephone or via video conferencing before the hearing about the discovery  
7 dispute. The Court may issue sanctions against the moving party or the opposing party if either  
8 party fails to meet and confer in good faith.

9 **B. Dispositive Pre-Trial Motions**

10 All dispositive pre-trial motions shall be filed no later than **June 25, 2014** and heard  
11 pursuant to the Local Rules in Courtroom 2 before United States Senior District Judge Anthony  
12 W. Ishii. In scheduling such motions, counsel shall comply with **Fed. R. Civ. P 56 and Local**  
13 **Rules 230 and 260.**

14 ***Motions for Summary Judgment or Summary Adjudication:*** Prior to filing a motion for  
15 summary judgment or motion for summary adjudication, the parties are ORDERED to meet, in  
16 person or by telephone, and confer to discuss the issues to be raised in the motion.

17 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment  
18 where a question of fact exists; 2) determine whether the respondent agrees that the motion has  
19 merit in whole or in part; 3) discuss whether issues can be resolved without the necessity of  
20 briefing; 4) narrow the issues for review by the court; 5) explore the possibility of settlement  
21 before the parties incur the expense of briefing a summary judgment motion; and 6) to arrive at a  
22 Joint Statement of Undisputed Facts.

23 The moving party shall initiate the meeting and provide a draft of the Joint Statement of  
24 Undisputed Facts. **In addition to the requirements of Local Rule 260, the moving party shall**  
25 **file a Joint Statement of Undisputed Facts.**

26 In the Notice of Motion, the moving party shall certify that the parties have met and  
27 conferred as ordered above or set forth a statement of good cause for the failure to meet and  
28 confer.

1           **VIII. Pre-Trial Conference Date**

2           The Pre-Trial conference is set for **September 17, 2014 at 8:30 a.m. in Courtroom 2**  
3 before United States Senior District Judge Anthony W. Ishii.

4           The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule**  
5 **281(a)(2)**. The parties are further directed to submit a digital copy of their Pretrial Statement in  
6 Word format, directly to Senior District Judge Anthony W. Ishii's chambers by email at  
7 AWIorders@caed.uscourts.gov.

8           Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** for the Eastern  
9 District of California, as to the obligations of counsel in preparing for the pre-trial conference.  
10 The Court will insist upon strict compliance with those rules. In addition to the matters set forth  
11 in the Local Rules, the Joint Pretrial Statement shall include a Joint Statement of the Case to be  
12 used by the Court to explain the nature of the case to the jury during voir dire.

13           **IX. Trial Date**

14           Trial is set for **October 28, 2014 at 9:00 a.m. in Courtroom 2** before Senior United  
15 States District Judge Anthony W. Ishii.

16           A.     This is a jury trial.

17           B.     Counsels' Estimate of Trial Time: 5 Days.

18           C.     Counsels' attention is directed to Local Rule 285 for the Eastern District of  
19 California.

20           **X. Settlement Conference**

21           Should the parties desire a settlement conference, they will jointly request one of the  
22 court, and one will be arranged. In making such request, the parties are directed to notify the  
23 court as to whether or not they desire the undersigned to conduct the settlement conference or to  
24 arrange for one before another judicial officer.

25           **XI. Request for Bifurcation, Appointment of Special Master, or other Techniques**  
26 **to Shorten Trial**

27           Not applicable at this time.

28           **XII. Related Matters Pending**

1 There are no pending related matters.

2 **XIII. Compliance with Federal Procedure**

3 All counsel are expected to familiarize themselves with the Federal Rules of Civil  
4 Procedure and the Local Rules of the Eastern District of California, and to keep abreast of any  
5 amendments thereto. The Court must insist upon compliance with these Rules if it is to  
6 efficiently handle its increasing case load and sanctions will be imposed for failure to follow the  
7 Rules as provided in both the Federal Rules of Civil Procedure and the Local Rules for the  
8 Eastern District of California.

9 Additional requirements and more detailed procedures for courtroom practice before  
10 United States Magistrate Judge Stanley A. Boone can be found at the United States District Court  
11 for the Eastern District of California's website ([www.caed.uscourts.gov](http://www.caed.uscourts.gov)) under Judges; United  
12 States Magistrate Judge Stanley A. Boone (SAB). In the area entitled "Case Management  
13 Procedures," there is a link to "Standard Information." All parties and counsel shall comply with  
14 the guidelines set forth therein.

15 **XIV. Effect of this Order**

16 The foregoing order represents the best estimate of the court and counsel as to the agenda  
17 most suitable to dispose of this case. The trial date reserved is specifically reserved for this case.  
18 If the parties determine at any time that the schedule outlined in this order cannot be met, counsel  
19 are ordered to notify the court immediately of that fact so that adjustments may be made, either  
20 by stipulation or by subsequent status conference.

21 **Stipulations extending the deadlines contained herein will not be considered unless**  
22 **they are accompanied by affidavits or declarations, and where appropriate attached**  
23 **exhibits, which establish good cause for granting the relief requested. The parties are**  
24 **advised that due to the impacted nature of civil cases on the district judges in the Eastern**  
25 **District of California, Fresno Division, that stipulations to continue set dates are disfavored**  
26 **and will not be granted absent good cause.**

27 **Lastly, should counsel or a party appearing pro se fail to comply with the directions**  
28 **as set forth above, an ex parte hearing may be held and contempt sanctions, including**

1 monetary sanctions, dismissal, default, or other appropriate judgment, may be imposed  
2 and/or ordered.

3  
4 IT IS SO ORDERED.

5 Dated: January 22, 2014

  
UNITED STATES MAGISTRATE JUDGE

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