

ESTTA Tracking number: **ESTTA760920**

Filing date: **07/27/2016**

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

| | |
|------------------------|---|
| Proceeding | 91207867 |
| Party | Plaintiff E. & J. Gallo Winery |
| Correspondence Address | STEVEN M WEINBERG HOLMES WEINBERG PC 30765 PACIFIC COAST HIGHWAY, SUITE 411 MALIBU, CA 90265 UNITED STATES smweinberg@holmesweinberg.com |
| Submission | Other Motions/Papers |
| Filer's Name | Michael J. Salvatore |
| Filer's e-mail | hwtrademarks@gmail.com, msalvatore@holmesweinberg.com |
| Signature | /MJSalvatore/ |
| Date | 07/27/2016 |
| Attachments | 2016.07.27_Response to TTAB Order.pdf(234776 bytes) |

**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 docket 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
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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 92857

DATED: July 27, 2016

By: /s/ Scott Corburn
Scott Corburn
Paralegal

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 14-16949**Docketed:** 10/09/2014**Nature of Suit:** 3840 Trademark

E. & J. Gallo Winery v. Grenade Beverage, LLC

Appeal From: U.S. District Court for Eastern California, Fresno**Fee Status:** Paid**Case Type Information:**

- 1) civil
- 2) private
- 3) null

Originating Court Information:**District:** 0972-1 : [1:13-cv-00770-AWI-SAB](#)**Lead:** **Court Reporter:** Otilia Figueroa**Trial Judge:** Anthony W. Ishii, Senior District Judge**Date Filed:** 05/22/2013**Date Order/Judgment:**

09/08/2014

Date Order/Judgment EOD:

09/08/2014

Date NOA Filed:

10/07/2014

Date Rec'd COA:

10/08/2014

Prior Cases:

None

Current Cases:

None

E. & J. GALLO WINERY, a California corporation
 Plaintiff - Appellee,

D. Greg Durbin, Esquire
 Direct: 559-433-1300
 [COR LD NTC Retained]
 McCormick Barstow Sheppard Wayte & Carruth
 7647 N. Fresno Street
 Fresno, CA 93720

Steven M. Weinberg
 Direct: 310-457-6100
 [COR LD NTC Retained]
 Holmes Weinberg PC
 Suite 411
 30765 Pacific Coast Highway
 Malibu, CA

v.

GRENADE BEVERAGE, LLC, a California limited liability
 company
 Defendant - Appellant,

John Joseph Gulino, Esquire, Attorney
 Direct: 714-541-6900
 [COR LD NTC Retained]
 John J. Gulino
 Suite # 309
 2107 North Broadway
 Santa Ana, CA 92821

E. & J. GALLO WINERY, a California corporation,

Plaintiff - Appellee,

v.

GRENADE BEVERAGE, LLC, a California limited liability company,

Defendant - Appellant.

- 10/09/2014 [1](#) DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Fee due from Appellant Grenade Beverage, LLC on 10/07/2014. Mediation Questionnaire due on 10/16/2014. Transcript ordered by 11/06/2014. Transcript due 12/08/2014. Appellant Grenade Beverage, LLC opening brief due 01/15/2015. Appellee E. & J. Gallo Winery answering brief due 02/17/2015. Appellant's optional reply brief is due 14 days after service of the answering brief. [9271429] (RT) [Entered: 10/09/2014 11:34 AM]
16 pg, 611.27 KB
- 10/10/2014 [2](#) Received notification from District Court re: payment of docket fee. Amount Paid: USD 505.00. Date paid: 10/10/2014. [9272615] (RT) [Entered: 10/10/2014 09:22 AM]
- 10/14/2014 [3](#) Filed (ECF) Appellant Grenade Beverage, LLC Motion to substitute counsel. Date of service: 10/14/2014. [9276640] (Yuen, Steven) [Entered: 10/14/2014 07:29 PM]
4 pg, 90.97 KB
- 10/15/2014 [4](#) Attorney Steven W. Yuen in 14-16949 substituted by Attorney John Joseph Gulino in 14-16949 [9278182] (RR) [Entered: 10/15/2014 04:29 PM]
- 10/16/2014 [5](#) Attorney Steven Marc Weinberg in 14-16949 substituted by Attorney Steven M. Weinberg in 14-16949 (to allow for filing) [9279589] (RY) [Entered: 10/16/2014 02:45 PM]
- 10/16/2014 [6](#) Filed (ECF) Appellee E. & J. Gallo Winery Mediation Questionnaire. Date of service: 10/16/2014. [9279694] (Weinberg, Steven) [Entered: 10/16/2014 03:03 PM]
5 pg, 584.11 KB
- 10/20/2014 [7](#) Filed order MEDIATION: The court of appeals' records do not indicate that appellant has filed a mediation questionnaire in accordance with Cir. R. 3-4. Within seven (7) days of the filing date of this order, appellant shall file a Mediation Questionnaire...dismiss the appeal voluntarily... or show cause in writing why this appeal should not be dismissed. Failure to comply with this order will result in dismissal pursuant to Ninth Cir. R. 42-1. [9282309] (BS) [Entered: 10/20/2014 10:30 AM]
2 pg, 87.92 KB
- 10/23/2014 [8](#) Filed (ECF) Appellant Grenade Beverage, LLC Mediation Questionnaire. Date of service: 10/23/2014. [9288290] (Gulino, John) [Entered: 10/23/2014 02:52 PM]
3 pg, 136.24 KB
- 12/29/2014 [10](#) MEDIATION CONFERENCE SCHEDULED - The court has scheduled a telephone Assessment Conference, 01/13/2015, 3:00 p.m. PACIFIC Time. The Circuit Mediator will initiate the conference call by contacting each person on the attached list. Please be available for the call at least five minutes before the scheduled time. Counsel should review the attached list and inform the Mediation Assistant by email at least 72 hours in advance of the scheduled call of any corrections to the list.... [9364623] (CL) [Entered: 12/29/2014 04:44 PM]
5 pg, 313.02 KB
- 12/30/2014 [11](#) Filed order MEDIATION (PWS): The briefing schedule previously set by the court is amended as follows: appellant shall file an opening brief on or before February 17, 2015; appellee shall file an answering brief on or before March 19, 2015; appellant may file an optional reply brief within fourteen (14) days from the service date of the answering brief. [9365522] (WL) [Entered: 12/30/2014 11:40 AM]
1 pg, 33.21 KB
- 01/14/2015 [12](#) Filed Mediation order: This case is not selected for inclusion in the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further settlement discussions. [9383268] (CL) [Entered: 01/14/2015 04:23 PM]
1 pg, 184.48 KB
- 02/13/2015 [13](#) Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant Grenade Beverage, LLC. New requested due date is 03/19/2015. [9421731] [14-16949] (Gulino, John) [Entered: 02/13/2015 03:21 PM]
- 02/14/2015 [14](#) **Streamlined request [13] by Appellant Grenade Beverage, LLC to extend time to file the brief is approved. Amended briefing schedule: Appellant Grenade Beverage, LLC opening brief due 03/19/2015. Appellee E. & J. Gallo Winery answering brief due 04/20/2015. The optional reply brief is due 14 days from the date of service of the answering brief.** [9422128] (CB) [Entered: 02/14/2015 01:36 PM]
- 03/20/2015 [15](#) Filed (ECF) Appellant Grenade Beverage, LLC Urgent Motion to extend time to file Opening brief until 04/20/2015. Date of service: 03/20/2015. [9466272] [14-16949] (Gulino, John) [Entered: 03/20/2015 03:17 PM]
9 pg, 537.85 KB

- 03/23/2015 [16](#)
1 pg, 39.52 KB Filed clerk order (Deputy Clerk: AMT): Appellant's late motion for a second extension of time to file the opening brief is granted. The opening brief is due April 20, 2015. Appellant's counsel is reminded that a motion for an extension of time should include a statement that the court reporter is not in default with regard to any designated transcripts. See 9th Cir. R. 31-2.2(b)(7). The answering brief is due May 20, 2015. The optional reply brief is due within 14 days after service of the answering brief. [9467054] (AF) [Entered: 03/23/2015 09:26 AM]
- 04/20/2015 17 Submitted (ECF) Opening Brief for review. Submitted by Appellant Grenade Beverage, LLC. Date of service: 04/20/2015. [9502255] [14-16949] --[COURT UPDATE: Attached corrected brief. 04/22/2015 by TL] --[COURT UPDATE: Restricted brief. 04/28/2015 by TL] (Gulino, John) [Entered: 04/20/2015 07:20 PM]
- 04/22/2015 18 Submitted (ECF) excerpts of record. Submitted by Appellant Grenade Beverage, LLC. Date of service: 04/22/2015. [9505609] [14-16949] (Gulino, John) [Entered: 04/22/2015 04:24 PM]
- 04/23/2015 [19](#)
2 pg, 187.69 KB Filed clerk order: The opening brief [17] submitted by Grenade Beverage, LLC is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the excerpts of record [18] submitted by Grenade Beverage, LLC. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [9506123] (KT) [Entered: 04/23/2015 10:14 AM]
- 04/28/2015 [20](#)
22 pg, 225.19 KB Filed (ECF) Appellant Grenade Beverage, LLC Urgent Motion for miscellaneous relief [Motion to file Appellant's Opening Brief and Excerpts under seal]. Date of service: 04/28/2015. [9517288] [14-16949] (Gulino, John) [Entered: 04/28/2015 12:24 PM]
- 04/28/2015 [21](#)
1 pg, 39.31 KB Filed clerk order (Deputy Clerk: AMT): Appellant's motion to file the opening brief and excerpts of record under seal is granted. The opening brief and excerpts of record shall be filed and maintained under seal. See 9th Cir. R. 27-13. The remainder of the briefs shall also be maintained under seal. The answering brief remains due May 20, 2015. [9518019] (OC) [Entered: 04/28/2015 04:40 PM]
- 05/07/2015 22 Filed Appellant Grenade Beverage, LLC paper copies of excerpts of record [18] in 1 volume(s) UNDER SEAL. [9529401] (KT) [Entered: 05/07/2015 02:39 PM]
- 05/07/2015 23 Received 7 paper copies of Opening brief [17] filed by Grenade Beverage, LLC. [9529698] (SD) [Entered: 05/07/2015 04:09 PM]
- 05/20/2015 24 Submitted (ECF) Answering Brief for review. Submitted by Appellee E. & J. Gallo Winery. Date of service: 05/20/2015. [9544114] [14-16949] --[COURT UPDATE: Restricted brief only, per order [21](#)]. 05/20/2015 by TL]--[COURT UPDATE: Removed supplemental excerpts of record (stricken per order [31](#))]. 05/29/2015 by RY] (Weinberg, Steven) [Entered: 05/20/2015 11:19 AM]
- 05/20/2015 [25](#)
2 pg, 187.79 KB Filed clerk order: The answering brief [24] submitted by E. & J. Gallo Winery is filed UNDER SEAL. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the supplemental excerpts of record [24] submitted by E. & J. Gallo Winery. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [9544570] (LA) [Entered: 05/20/2015 01:52 PM]
- 05/20/2015 [26](#)
3 pg, 136.07 KB Filed (ECF) Appellee E. & J. Gallo Winery Motion to strike portion of Appellee's brief and supplemental excerpts of record. Date of service: 05/20/2015. [9545053] [14-16949] (Weinberg, Steven) [Entered: 05/20/2015 03:57 PM]
- 05/21/2015 [27](#)
20 pg, 1.07 MB Filed Appellee E. & J. Gallo Winery motion to file supplemental excerpts of record UNDER SEAL (entitled "Notification of filing under seal and motion to file under seal"). Deficiencies: None. Served on 05/20/2015. [9547573] (TLH) [Entered: 05/22/2015 11:29 AM]
- 05/21/2015 [28](#)
2 pg, 472.3 KB Received UNDER SEAL original and 0 copies of Appellee E. & J. Gallo Winery answering brief of 29 pages. Supplemental excerpts of record in 2 volumes UNDER SEAL. Served on 05/20/2015. Major

deficiencies: incorrect brief covers, brief and excerpts are unbound, insufficient copies of brief and excerpts, paper version is not identical to electronic version, motions pending. Notified counsel. [9547642]--[Edited 05/29/2015 by LA: brief is an incorrect duplicate of brief in entry #24] (TLH) [Entered: 05/22/2015 11:52 AM]

- 05/27/2015 29 Received corrected deficiency of 4 copies of correctly bound supplemental excerpts of record in 2 volumes UNDER SEAL from Appellee E. & J. Gallo Winery. (motion to seal pending) [9551141] (LA) [Entered: 05/27/2015 11:47 AM]
- 05/27/2015 30 Received 7 paper copies of Answering brief [24] filed by E. & J. Gallo Winery. [9551460] (SD) [Entered: 05/27/2015 02:14 PM]
- 05/29/2015 [31](#)
1 pg, 39.42 KB Filed clerk order (Deputy Clerk: AMT): Appellee's motion to strike redacted supplemental excerpts of record is granted. The clerk shall strike the supplemental excerpts of record served May 20, 2015 (entry #24) and shall file the corrected supplemental excerpts of record received May 27, 2015 (entry #29). Appellee's motion to file under seal supplemental excerpts of record is granted. The supplemental excerpts of record shall be filed and maintained under seal. See 9th Cir. R. 27-13. [9554807] (WL) [Entered: 05/29/2015 01:02 PM]
- 05/29/2015 32 Filed Appellee E. & J. Gallo Winery supplemental excerpts of record in 2 volumes UNDER SEAL. [9557303] (LA) [Entered: 06/01/2015 03:39 PM]

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