

ESTTA Tracking number: **ESTTA525255**

Filing date: **03/06/2013**

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	03/06/2013
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, msalvatore@holmesweinberg.com Phone:310-457-6100

Applicant Information

Application No	85635364	Publication date	11/06/2012
Opposition Filing Date	03/06/2013	Opposition Period Ends	03/06/2013
Applicant	Gallo Lea Organics, LLC 9 Inglewood Road Asheville, NC 28804 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2010/02/15 First Use In Commerce: 2010/05/02 All goods and services in the class are opposed, namely: Kits comprised of ingredients for preparing pizza
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

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.	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]		

U.S. Registration No.	887959	Application Date	01/17/1969
Registration Date	03/17/1970	Foreign Priority Date	NONE
Word Mark	GALLO		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1962/11/19 First Use In Commerce: 1968/07/22 PREPARED MEAT PRODUCTS-NAMELY, SALAME, SAUSAGE, MORTADELLA, CURED MEATS [, AND MEAT LOAF] ; AND CHEESE

Attachments	71496376#TMSN.gif (1 page)(bytes) 72338083#TMSN.gif (1 page)(bytes) 72316889#TMSN.gif (1 page)(bytes) 2013.03.06_Notice of Opposition re GALLOLEA2.pdf (4 pages)(47939 bytes)
-------------	---

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	/MJSalvatore/
Name	Michael J. Salvatore
Date	03/06/2013

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

In re Serial No. 85/635,364

E. & J. Gallo Winery,

Opposer,

v.

Gallo Lea Organics, 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, and other word and design marks that incorporate the GALLO® word mark (collectively, the “GALLO® Marks”):

Reg. Number	Reg. Date	Trademark	International Class
0444756	03/24/1953	GALLO (stylized word mark)	033

0891339	05/19/1970	GALLO (stylized word mark)	033
0887959	03/17/1970	GALLO (and cable car design)	029

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 trademark 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 GalloLea, Serial No. 85/635,364 (the “Opposed Mark”) for “Kits comprised of ingredients for preparing pizza” in International Class 030.

6. Applicant filed United States Application Serial No. 85/635,364 with the U.S. Patent and Trademark Office on or about May 25, 2012. The Application for the Opposed Mark is based on actual use.

7. Because Gallo first used its GALLO® Marks on wines and related products including prepared meats and cheeses 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 wines and commercially related products under the GALLO® Marks, the GALLO® Marks have come to be recognized by the relevant public as identifying wines and commercially related products as having their origin or otherwise associated exclusively with Opposer. Further, the GALLO® Marks for wines are “famous.”

9. The Opposed Mark for the International Class 030 goods is similar, *inter alia*, in appearance and sound to the GALLO® Marks. Further, the Opposed Mark contains and is primarily comprised of the word GALLO, and thus evokes a highly similar connotation to the GALLO® Marks. In addition, Applicant intends to use the Opposed Mark in connection with kits for making pizza. Wine and pizza are often a favored pairing. Further, prepared meats and cheeses are often used as pizza toppings. Thus, the International Class 030 goods the Opposed Mark will be used for are commercially related to the International Class 029 and 033 goods for which the GALLO® Marks are used. Accordingly, it is likely that consumers will mistakenly believe that the Opposed Mark for pizza kits is connected to or associated with Opposer.

10. The registration of the Opposed Mark 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 March, 2013.

Respectfully submitted,

By: /s/ Steven M. Weinberg
Steven M. Weinberg
Holmes Weinberg, PC
30765 Pacific Coast Highway, Suite 411
Malibu, CA 90265
310.457.6100
smweinberg@holmesweinberg.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

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

Todd A. Serbin, Esq.
Nachmias Morris & Alt, P.C.
1201 Main Street, Suite 1840
Columbia, SC 29201-3274
tserbin@nmapc.net

DATED: March 6, 2013

By: /s/ Nelda Piper
Nelda Piper
Paralegal