

ESTTA Tracking number: **ESTTA567878**

Filing date: **10/29/2013**

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	10/30/2013
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	85790557	Publication date	07/02/2013
Opposition Filing Date	10/29/2013	Opposition Period Ends	10/30/2013
Applicant	AUTENTICA TEQUILERA S.A. DE C.V. Morelos 285, Colonia Centro Tequila, Jalisco, MXX C.P.46400 MXX		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Alcoholic beverages, namely, tequila and pre-mixed cocktails

Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

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 033. First use: First Use: 1909/00/00 First Use In Commerce: 1909/00/00 WINES [AND CHAMPAGNES]

Attachments	72338083#TMSN.gif(bytes) 2013.10.29_Notice of Opposition re GALOPE.pdf(22622 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	10/29/2013

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

In re Serial No. 85/790,557

E. & J. Gallo Winery,

Opposer,

v.

Autentica Tequilera S.A. de C.V.,

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

Reg. Number	Reg. Date	Trademark
0891339	05/19/1970	GALLO (stylized word mark)

3. This registration is valid and enforceable, and Gallo's exclusive rights in the foregoing registered mark 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 GALOPE, Serial No. 85/790,557 (the "Opposed Mark") for "Alcoholic beverages, namely, tequila and pre-mixed cocktails" in International Class 033.

6. Applicant filed United States Application Serial No. 85/790,557 with the U.S. Patent and Trademark Office on or about November 29, 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 wines 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 other 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 alcoholic beverages are "famous."

9. Gallo recently has begun selling tequila in the United States.

10. The Opposed Mark for the International Class 033 goods is similar, *inter alia*, in appearance and sound to the GALLO® Marks. The Opposed Mark is comprised of the word GALOPE, and evokes a highly similar connotation as the GALLO® Marks. In addition, Applicant intends to use the Opposed Mark in connection with tequila. Thus, the International Class 033 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 033 goods is connected to or associated with Opposer.

11. 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 29th day of October, 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 Petitioner E. & J. Gallo Winery

CERTIFICATE OF SERVICE

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

Julianne Abelman
ABELMAN, FRAYNE & SCHWAB
666 Third Avenue
New York, New York 10017-5621

DATED: October 29, 2013

By: /s/ Nelda Piper
Nelda Piper
Paralegal