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

Proceeding	91213249
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 hwtrademarks@gmail.com, msalvatore@holmesweinberg.com
Submission	Motion to Compel Discovery
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Signature	/MJSalvatore/
Date	11/10/2014
Attachments	2014.11.10_Gallo Motion to Compel re GALOPE.filing.pdf(137425 bytes)

**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.)	Opposition No. 91213249
)	
AUTENTICA TEQUILERA S.A. DE C.V.)	
)	
Applicant.)	
)	

**OPPOSER’S MOTION TO COMPEL APPLICANT’S RESPONSES TO OPPOSERS
DOCUMENT REQUESTS AND INTERROGATORIES**

Opposer E. & J. GALLO WINERY (“Opposer”) hereby moves pursuant to 37 C.F.R. § 2.120(e) to compel Applicant AUTENTICA TEQUILERA S.A. DE C.V.’s (“Applicant”) answers to Opposer’s First Set of Interrogatories (the “Interrogatories”) and responses to Opposer’s First Set of Requests for the Production of Documents and Things (“Requests for Production,” and collectively with the Interrogatories, the “Discovery Requests”).

On July 24, 2014, Opposer served the Discovery Requests by mailing copies of each to Applicant’s counsel at Abelman Frayne & Schwab, 666 Third Avenue, New York, NY 10017. Copies of Opposer’s Discovery Requests are attached hereto as “**Exhibit A.**”

Applicant’s responses to Opposer’s Discovery Requests were due on August 28, 2014, pursuant to 37 C.F.R. §§ 2.119(c) and 2.120(a)(3) and TBMP §§ 113.05, 403.03, 405.04(a) and 406.04(a). To date, Opposer has not received any responses to the Discovery Requests from Applicant. On September 9, 2014, Opposer’s counsel advised Applicant’s counsel of Applicant’s failure to respond to the Discovery Requests, to which Applicant’s counsel replied that the Discovery Requests had been inadvertently attached to the wrong file, but that Opposer’s previously proposed settlement terms were “generally acceptable.” The parties, by and through their respective counsel, agreed to file a 60 day suspension of the proceeding for the purposes of

finalizing a settlement agreement (which agreement was sent to Applicant's counsel on September 25, 2014), in connection with which Opposer granted Applicant a 60-day extension of its time to respond to the Discovery Requests, which Applicant's counsel agreed would be due on October 27, 2014. Despite several follow ups regarding the status of the settlement agreement, Applicant's counsel has not responded. A copy of the email chain reflecting the above correspondence is attached hereto as "**Exhibit B.**" At no time did Applicant request a further extension of its time to respond to the Discovery Requests, and to date, no response to the Discovery Requests (or the settlement agreement) have been received by Opposer. Opposer is aware that the Board's September 9, 2014 order suspending this proceeding states that "[t]he parties are allowed thirty days from resumption in which to serve responses to any outstanding discovery requests." However, in light of the agreement between the parties which extended the deadline for discovery responses to October 27, 2014, Opposer respectfully requests an order be issued requiring Applicant to respond to the Discovery Requests as agreed.

As demonstrated above, Opposer's Counsel made a good faith effort pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02 to confer with Applicant regarding Applicant's failure to respond to Opposer's Discovery Requests prior to filing this Motion. *See* Ex. B. However, Opposer has received no response from Applicant, thereby necessitating the instant Motion.

As of the date of this motion, Applicant has failed to serve any answers or responses to the Discovery Requests, and has yet to produce a single document. Accordingly, Opposer seeks an order (1) finding that Applicant has waived any and all objections to Opposer's Discovery Requests pursuant to TBMP §§ 403.03(a), 405.04(a) and 406.04(a); and (2) compelling Applicant to respond to Opposer's Discovery Requests, without objections. Opposer also requests that the Board further suspend the instant proceeding pending disposition of the instant Motion pursuant to 37 C.F.R. § 2.120(e)(2) and TBMP § 510.03(a).

Dated: November 10, 2014

HOLMES WEINBERG, PC

By /s/ Michael J. Salvatore
Michael J. Salvatore
30765 Pacific Coast Highway, Suite 411
Malibu, California 90265

Telephone: (310) 457-6100
Email: msalvatore@holmesweinberg.com

Attorneys for E. & J. GALLO WINERY

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S MOTION TO COMPEL APPLICANT'S RESPONSES TO OPPOSERS DOCUMENT REQUESTS AND INTERROGATORIES has been served on Applicant's counsel by mailing a copy on November 10, 2014, via United States Postal Service Priority Mail, postage prepaid, to:

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

/s/ Nelda Piper
Nelda Piper

Exhibit A

**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. 91213249

**OPPOSER’S FIRST SET OF INTERROGATORIES TO
APPLICANT AUTENTICA TEQUILERA S.A. DE C.V.**

Opposer E. & J. GALLO WINERY (“Opposer”) propounds the following OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT AUTENTICA TEQUILERA S.A. DE C.V. and requests that, pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. §2.120) applicant serve responses to these Interrogatories at the offices of Opposer’s counsel, Steven M. Weinberg, Holmes Weinberg, PC, 30765 Pacific Coast Highway, Suite 411, Malibu, California 90265, within thirty (30) days from the service hereof.

DEFINITIONS AND INSTRUCTIONS

A. “APPLICANT” and “YOU” shall refer to AUTENTICA TEQUILERA S.A. DE C.V., its corporate parents, subsidiaries and affiliates, if any; and their officers, directors, employees, attorneys, agents, and other representatives.

B. “OPPOSER” or “GALLO” shall refer to Opposer E. & J. GALLO WINERY, its corporate parents, subsidiaries and affiliates, if any; and their officers, directors, shareholders, employees, attorneys, agents or other representatives.

C. The term “EVIDENCING” means showing, tending to show, proving, or tending to prove.

D. The term “RELATING” means concerning, relating to, referring to, commenting upon, describing, associated with, comprising or constituting.

E. The term “APPLICANT’S MARK” means the trademark that is the subject of United States Patent and Trademark Office Serial No. 85/790,557.

F. The term “APPLICATION” means the application for registration of APPLICANT’S MARK, Serial No. 85/790,557.

G. The term “OPPOSER’S MARK” means the mark that is the subject of United States Patent and Trademark Office Registration No. 0891339 and the trademark GALLO as protected under the common law.

H. The “COMPLAINT” refers to the Notice of Opposition filed by OPPOSER in this proceeding.

I. The “ANSWER” refers to the Answer filed by Applicant in this action.

J. The term “PERSON” is defined as any natural person or any business, legal or governmental entity, or association.

K. The terms “COMMUNICATE” and “COMMUNICATION” mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

L. When referring to a document, to “IDENTIFY” means to give, to the extent known, the (i) type of document; (ii) title of the document; (iii) general subject matter; (iv) date of the document; (v) author(s), addressee(s), and recipient(s); and (iv) the production numbers assigned to the document (or, if no production numbers have been assigned, the number of pages in the document).

M. When referring to a PERSON, to “IDENTIFY” means to give, to the extent known, the (i) name of the PERSON; (ii) last known contact information of the PERSON, including without limitations such PERSON’S physical address, place of business, telephone number and email address; and (iii) the title such PERSON holds at any IDENTIFIED place of business.

N. The term “DESCRIBE” means to provide a complete and detailed explanation of the facts, circumstances, analysis, opinion and other information RELATING to subject matter of a specific interrogatory.

O. The terms “ALL” and “EACH” shall be construed as all and each.

P. The connectives “AND” and “OR” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

Q. The use of the singular form of any word includes the plural and vice versa.

R. The word “DOCUMENT” means all documents and electronically stored information as contemplated by FRCP Rules 26 and 34, including: any written or graphic matter or other means of preserving thought or expression, and all tangible things from which information can be processed or transcribed, whether printed, recorded or reproduced by any other mechanical, electronic or computerized process, or written or produced by hand, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copy or otherwise, including but not limited to: correspondence, memoranda, notes, logs, messages, letters, e-mail, records, telegrams, teletype, telefax, bulletins, diaries, communications, interoffice and intraoffice telephone call diaries, chronological data, minutes, books, reports, charts, ledgers, invoices, worksheets, computer printouts and computer memory, word processing data, schedules, affidavits, contracts, agreements, patents, licenses, legal pleadings, transcripts, statistics, surveys, magazine or newspaper articles, stories or clippings, graphic or aural records or representations of any kind, including without limitation photographs, charts, graphs, microfiche, microfilm, videotape, recordings, motion pictures and electronic, mechanical or electric recordings or representations of any kind (including, without limitation, tapes, cassettes, discs, and recordings). The term DOCUMENT includes documents containing COMMUNICATIONS. Accordingly, a request for DOCUMENTS includes DOCUMENTS containing relevant COMMUNICATIONS.

S. The term “THIRD-PARTY” shall refer to any person or entity other than APPLICANT or OPPOSER.

T. The term “DEMOGRAPHICS” as used in reference to consumers or potential consumers means the general characteristics of the consumers to whom the goods are sold or are intended to be sold, including gender, age range, geographic locations, range of annual salary and other such general characteristics if known.

U. The term “MARKETING” means ADVERTISING and PROMOTION.

V. The term “ADVERTISING” means any communication intended to bring goods sold under a trademark or service mark to the attention of potential and actual consumers and/or to induce their purchase, whether general, direct or interactive in nature, including television and radio commercials, long and short form infomercials, print ads, point of purchase and other in-store displays, banner ads and other web-based ads, ads appearing on search engine results and social media websites such as Google and Facebook ads, and the like.

W. The term “PROMOTION” means activities or events intended to bring goods sold under a trademark or service mark to the attention of potential and actual consumers and/or to induce their purchase, whether general, direct or interactive in nature, including sweepstakes, contests, sponsored events, print or web-based coupons (an example of the latter being GroupOn), events that involve the use of goods (for example, wine tasting events), and all other activities and events having as their purpose in whole or part to promote goods sold or to be sold under a trademark or service mark.

X. The term “BRAND IDENTITY” means the development of the look and feel and/or persona for a trademark or service mark, including logo development, package design and other activities usually associated with “brand identity.”

Y. If YOU refuse to respond in whole or in part to any Interrogatory, YOU must state each specific ground for YOUR refusal. If YOU claim privilege as a ground for not responding in whole or in part, describe the factual basis for YOUR claim of privilege in sufficient detail so as to permit the Board to adjudicate the validity of the claim. At a minimum, this must include for each response so withheld: the general subject matter of the information withheld; and the specific grounds for withholding the response. If YOU object to responding to any part of any Interrogatory, YOU must respond fully to the portions of the Interrogatory to which you do not object.

Z. Unless otherwise specified, these interrogatories pertain only to YOUR activities in the United States.

INTERROGATORIES

Please respond to the following interrogatories:

1. IDENTIFY DOCUMENTS EVIDENCING APPLICANT’S intended uses in commerce of APPLICANT’S MARK for each of the goods identified in the APPLICATION.
2. IDENTIFY DOCUMENTS describing each of the goods identified in the APPLICATION.
3. IDENTIFY all DOCUMENTS RELATING to the clearance of APPLICANT’S MARK, including without limitation all trademark clearance searches and opinions RELATING to such clearance. As used here, “clearance” means the activities engaged in or on behalf of APPLICANT RELATING to determining whether APPLICANT’S MARK was available for use and registration for the goods identified in the APPLICATION.

4. IDENTIFY all DOCUMENTS RELATING to the selection of APPLICANT'S MARK, including without limitation any and all other trademarks and service marks considered by APPLICANT as alternatives for APPLICANT'S MARK.
5. For each of the goods APPLICANT intends to offer under APPLICANT'S MARK, IDENTIFY each distributor and retailer through which APPLICANT intends to sell such goods, if any.
6. For each of the goods APPLICANT intends to offer under APPLICANT'S MARK, IDENTIFY each of the channels of trade through which APPLICANT intends to sell such goods.
7. For each of the goods that APPLICANT intends to offer under APPLICANT'S MARK, IDENTIFY any and all planned or intended ADVERTISING for each good and the media in which APPLICANT plans to advertise it.
8. For each of the goods that APPLICANT intends to offer under APPLICANT'S MARK, IDENTIFY any and all of the PROMOTIONS planned for each good.
9. For each of the goods that APPLICANT intends to offer under APPLICANT'S MARK, IDENTIFY the DEMOGRAPHICS of the intended consumers of such goods.
10. For each of the goods that APPLICANT intends to offer under APPLICANT'S MARK, IDENTIFY the suggested retail purchase price of such goods.
11. IDENTIFY all PERSONS who will be in charge of or who will have primary responsibility for sales of goods sold under APPLICANT'S MARK when APPLICANT'S MARK is used.
12. IDENTIFY all PERSONS who will be in charge of or will have primary responsibility for MARKETING of goods sold under APPLICANT'S MARK when APPLICANT'S MARK is used.
13. IDENTIFY all PERSONS employed by or under contract with YOU who will sell goods under APPLICANT'S MARK.
14. IDENTIFY all PROMOTION agencies or other THIRD PARTIES YOU use or will use in connection with the MARKETING of goods for sale under APPLICANT'S MARK.
15. IDENTIFY all ADVERTISING agencies or other THIRD PARTIES YOU use or will use in connection with the ADVERTISING or other MARKETING of goods for sale under APPLICANT'S MARK.

16. IDENTIFY all BRAND IDENTITY agencies or other THIRD PARTIES YOU use or will use RELATING to APPLICANT'S MARK.

17. IDENTIFY all of YOUR primary contacts at each of the PROMOTION, ADVERTISING and BRAND IDENTITY agencies YOU have used or intend to use in connection with the MARKETING of goods for sale under APPLICANT'S MARK.

18. DESCRIBE all facts EVIDENCING YOUR assertion in YOUR first affirmative defense that "The marks are not confusingly similar. Applicant's mark is visually and phonetically distinct from that of Opposer and therefore, the marks are not likely to be confused. Applicant's mark is comprised of three syllables, whereas Opposer's mark is comprised of two."

19. IDENTIFY all DOCUMENTS EVIDENCING YOUR assertion in YOUR first affirmative defense that "The marks are not confusingly similar. Applicant's mark is visually and phonetically distinct from that of Opposer and therefore, the marks are not likely to be confused. Applicant's mark is comprised of three syllables, whereas Opposer's mark is comprised of two."

20. DESCRIBE all facts EVIDENCING YOUR assertion in YOUR second affirmative defense that "The Parties' respective marks do not share a similar commercial meaning, and thus are not likely to cause confusion. When translated from Spanish to English, GALLO means "rooster/chicken/hen" and GALOPE means "gallop."

21. IDENTIFY all DOCUMENTS EVIDENCING YOUR assertion in YOUR second affirmative defense that "The Parties' respective marks do not share a similar commercial meaning, and thus are not likely to cause confusion. When translated from Spanish to English, GALLO means "rooster/chicken/hen" and GALOPE means "gallop."

22. DESCRIBE all facts EVIDENCING YOUR assertion in YOUR third affirmative defense that "Under the doctrine of foreign equivalents, the different meanings of the marks are significant when assessing a likelihood of confusion."

23. IDENTIFY all DOCUMENTS EVIDENCING YOUR assertion in YOUR third affirmative defense that "Under the doctrine of foreign equivalents, the different meanings of the marks are significant when assessing a likelihood of confusion."

24. DESCRIBE all facts EVIDENCING YOUR assertion in YOUR fourth affirmative defense that "Spanish is a language known to numerous people in the United States and the different meanings of GALLO and GALOPE will be significant in a likelihood of confusion analysis."

25. IDENTIFY all DOCUMENTS EVIDENCING YOUR assertion in YOUR fourth affirmative defense that "Spanish is a language known to numerous people in the United States

and the different meanings of GALLO and GALOPE will be significant in a likelihood of confusion analysis.”

26. DESCRIBE all facts EVIDENCING YOUR assertion in YOUR fifth affirmative defense that “Opposer’s mark is comprised of the term GALLO which refers to its corporate name, E. & J. Gallo Winery, and is the surname of the founders, Ernest and Julio Gallo. Applicant’s mark GALOPE means “gallop.” Accordingly, the commercial impressions presented by each of the Parties’ marks are highly dissimilar.”

27. IDENTIFY all DOCUMENTS EVIDENCING YOUR assertion in YOUR fifth affirmative defense that “Opposer’s mark is comprised of the term GALLO which refers to its corporate name, E. & J. Gallo Winery, and is the surname of the founders, Ernest and Julio Gallo. Applicant’s mark GALOPE means “gallop.” Accordingly, the commercial impressions presented by each of the Parties’ marks are highly dissimilar.”

28. DESCRIBE all facts EVIDENCING YOUR assertion in YOUR sixth affirmative defense that “The Parties’ respective goods are not confusingly similar. Applicant’s mark will be used in connection with tequila and tequila cocktails, which are distinct from Opposer’s wines.”

29. IDENTIFY all DOCUMENTS EVIDENCING YOUR assertion in YOUR sixth affirmative defense that “The Parties’ respective goods are not confusingly similar. Applicant’s mark will be used in connection with tequila and tequila cocktails, which are distinct from Opposer’s wines.”

30. DESCRIBE all facts EVIDENCING YOUR assertion in YOUR seventh affirmative defense that “Opposer’s mark was not cited as a bar to registration of the contested application. It is the opinion of the Trademark Office that the two marks may peacefully co-exist.”

31. IDENTIFY all DOCUMENTS EVIDENCING YOUR assertion in YOUR seventh affirmative defense that “Opposer’s mark was not cited as a bar to registration of the contested application. It is the opinion of the Trademark Office that the two marks may peacefully co-exist.”

32. DESCRIBE all facts EVIDENCING YOUR assertion in YOUR eighth affirmative defense that “Opposer’s mark currently co-exists on the Federal Register with numerous third party “GAL” and “GALL” marks in connection with alcoholic beverages, including wine and tequila. Applicant’s mark should likewise be allowed to co-exist.”

33. IDENTIFY all DOCUMENTS EVIDENCING YOUR assertion in YOUR eighth affirmative defense that “Opposer’s mark currently co-exists on the Federal Register with numerous third party “GAL” and “GALL” marks in connection with alcoholic beverages, including wine and tequila. Applicant’s mark should likewise be allowed to co-exist.”

34. DESCRIBE all facts EVIDENCING YOUR assertion in YOUR ninth affirmative defense that “Opposer’s mark currently peacefully co-exists with several “GALLOP” and “GALOPE” marks being used for identical goods, namely, wines, in U.S. commerce. Applicant’s mark, which covers goods that are not identical to wines, should likewise be allowed to co-exist.”

35. IDENTIFY all DOCUMENTS EVIDENCING YOUR assertion in YOUR ninth affirmative defense that “Opposer’s mark currently peacefully co-exists with several “GALLOP” and “GALOPE” marks being used for identical goods, namely, wines, in U.S. commerce. Applicant’s mark, which covers goods that are not identical to wines, should likewise be allowed to co-exist.”

36. IDENTIFY for each of the foregoing Interrogatories each PERSON who provided information or DOCUMENTS RELATING to each such answer.

37. IDENTIFY each expert consulted by APPLICANT in connection with this proceeding.

38. IDENTIFY all DOCUMENTS provided to YOU by each expert, including all written reports contemplated by F.R.C.P 26(a)(2)(b).

39. IDENTIFY all DOCUMENTS RELATING to each and every survey, study or poll conducted by or on behalf of YOU in connection with this proceeding.

40. IDENTIFY all DOCUMENTS to be offered by YOU at trial (during your Testimony Period) in this proceeding.

41. DESCRIBE APPLICANT’S policy with respect to retention of documents, including business records.

Dated: July 24, 2014

HOLMES WEINBERG, PC

By /Steven M. Weinberg/
Steven M. Weinberg

30765 Pacific Coast Highway, Suite 411
Malibu, California 90265
Telephone: (310) 457-6100
Email: smweinberg@holmesweinberg.com

Attorneys for E. & J. GALLO WINERY

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT AUTENTICA TEQUILERA S.A. DE C.V.** has been served on Applicant's counsel by mailing a copy on July 24, 2014, via United States Postal Service Priority Mail, postage prepaid, to:

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

/Nelda Piper/
Nelda Piper

**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. 91213249

**OPPOSER’S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND
THINGS TO APPLICANT AUTENTICA TEQUILERA S.A. DE C.V.**

Opposer E. & J. GALLO WINERY (“Opposer”) propounds the following OPPOSER’S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT AUTENTICA TEQUILERA S.A. DE C.V. and requests that, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. §2.1.20) all documents and things responsive to these Requests be produced at the offices of Opposer’s counsel, Steven M. Weinberg, Holmes Weinberg, PC, 30765 Pacific Coast Highway, Suite 411, Malibu, California 90265, within thirty (30) days from the service hereof.

DEFINITIONS AND INSTRUCTIONS

A. “APPLICANT” and “YOU” shall refer to AUTENTICA TEQUILERA S.A. DE C.V., its corporate parents, subsidiaries and affiliates, if any; and their officers, directors, employees, attorneys, agents, and other representatives.

B. “OPPOSER” or “GALLO” shall refer to Opposer E. & J. GALLO WINERY, its corporate parents, subsidiaries and affiliates, if any; and their officers, directors, shareholders, employees, attorneys, agents or other representatives.

C. The term “EVIDENCING” means showing, tending to show, proving, or tending to prove.

D. The term “RELATING” means concerning, relating to, referring to, commenting upon, describing, associated with, comprising or constituting.

E. The term “APPLICANT’S MARK” means the trademark that is the subject of United States Patent and Trademark Office Serial No. 85/790,557.

F. The term “APPLICATION” means the application for registration of APPLICANT’S MARK, Serial No. 85/790,557.

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H. The “COMPLAINT” refers to the Notice of Opposition filed by OPPOSER in this proceeding.

I. The “ANSWER” refers to the Answer filed by APPLICANT in this action.

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K. The terms “COMMUNICATE” and “COMMUNICATION” mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

L. When referring to a document, to “IDENTIFY” means to give, to the extent known, the (i) type of document; (ii) title of the document; (iii) general subject matter; (iv) date of the document; (v) author(s), addressee(s), and recipient(s); and (vi) the production numbers assigned to the document (or, if no production numbers have been assigned, the number of pages in the document).

M. When referring to a PERSON, to “IDENTIFY” means to give, to the extent known, the (i) name of the PERSON; (ii) last known contact information of the PERSON, including without limitations such PERSON’S physical address, place of business, telephone number and email address; and (iii) the title such PERSON holds at any IDENTIFIED place of business.

N. The terms “ALL” and “EACH” shall be construed as all and each.

O. The connectives “AND” and “OR” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

P. The use of the singular form of any word includes the plural and vice versa.

Q. The word “DOCUMENT” means all documents and electronically stored information as contemplated by FRCP Rules 26 and 34, including: any written or graphic matter or other means of preserving thought or expression, and all tangible things from which information can be processed or transcribed, whether printed, recorded or reproduced by any other mechanical, electronic or computerized process, or written or produced by hand, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copy or otherwise, including but not limited to: correspondence, memoranda, notes, logs, messages, letters, e-mail, records, telegrams, teletype, telefax, bulletins, diaries, communications, interoffice and intraoffice telephone call diaries, chronological data, minutes, books, reports, charts, ledgers, invoices, worksheets, computer printouts and computer memory, word processing data, schedules, affidavits, contracts, agreements, patents, licenses, legal pleadings, transcripts, statistics, surveys, magazine or newspaper articles, stories or clippings, graphic or aural records or representations of any kind, including without limitation photographs, charts, graphs, microfiche, microfilm, videotape, recordings, motion pictures and electronic, mechanical or electric recordings or representations of any kind (including, without limitation, tapes, cassettes, discs, and recordings). The term DOCUMENT includes documents containing COMMUNICATIONS. Accordingly, a request for DOCUMENTS includes DOCUMENTS containing relevant COMMUNICATIONS.

R. The term “THIRD-PARTY” shall refer to any person or entity other than APPLICANT or OPPOSER.

S. The term “DEMOGRAPHICS” as used in reference to consumers or potential consumers means the general characteristics of the consumers to whom the goods are sold or are intended to be sold, including gender, age range, geographic locations, range of annual salary and other such general characteristics if known.

T. The term “MARKETING” means ADVERTISING and PROMOTION.

U. The term “ADVERTISING” means any communication intended to bring goods under a trademark or service mark to the attention of potential and actual consumers and/or to induce their purchase, whether general, direct or interactive in nature, including television and radio commercials, long and short form infomercials, print ads, point of purchase and other in-store displays, banner ads and other web-based ads, ads appearing on search engine results and social media websites such as Google and Facebook ads, and the like.

V. The term “PROMOTION” means activities or events intended to bring goods sold under a trademark or service mark to the attention of potential and actual consumers and/or to induce their purchase, whether general, direct or interactive in nature, including sweepstakes, contests, sponsored events, print or web-based coupons (an example of the latter being GroupOn), events

that involve the use of goods (for example, wine tasting events), and all other activities and events having as their purpose in whole or part to promote goods sold or to be sold under a trademark or service mark.

W. The term “BRAND IDENTITY” means the development of the look and feel and/or persona for a trademark or service mark, including logo development, package design and other activities usually associated with “brand identity.”

X. If YOU refuse to produce any DOCUMENT responsive in whole or in part to any Request, YOU must state each specific ground for YOUR refusal. If YOU claim privilege as a ground for not producing any DOCUMENT in whole or in part, describe the factual basis for YOUR claim of privilege in sufficient detail so as to permit the Court to adjudicate the validity of the claim. At a minimum, this must include for each DOCUMENT so withheld: the author(s); the addressee(s) and person(s) copied; the general subject matter of the DOCUMENT; the date of the DOCUMENT; and the specific grounds for withholding the DOCUMENT. If YOU object to producing any part of any DOCUMENT, YOU must produce the portions of the DOCUMENT to which you do not object.

Y. If any portion of a DOCUMENT is responsive to this Request, then the entire DOCUMENT shall be produced. DOCUMENTS produced pursuant to this Request shall be produced in the order in which they appear in YOUR files, and shall not be shuffled or otherwise rearranged. DOCUMENTS that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form.

Z. Unless otherwise specified, these requests pertain only to YOUR activities in the United States.

REQUESTS FOR PRODUCTION

Please produce the following DOCUMENTS:

1. DOCUMENTS EVIDENCING APPLICANT’S intended uses in commerce of APPLICANT’S MARK for each of the goods identified in the APPLICATION.
2. DOCUMENTS describing each of the goods identified in the APPLICATION.
3. All DOCUMENTS RELATING to the clearance of APPLICANT’S MARK, including all trademark clearance searches and opinions RELATING to such clearance. As used here, “clearance” means the activities engaged in or on behalf of APPLICANT RELATING to determining whether APPLICANT’S MARK was available for use and registration for the goods identified in the APPLICATION.

4. All DOCUMENTS RELATING to the selection of APPLICANT'S MARK, including any and all other trademarks and service marks considered by APPLICANT as alternatives for APPLICANT'S MARK.
5. For each of the goods APPLICANT intends to offer under APPLICANT'S MARK, DOCUMENTS sufficient to IDENTIFY each distributor and retailer through which APPLICANT intends to sell such goods, if any.
6. For each of the goods APPLICANT intends to offer under APPLICANT'S MARK, DOCUMENTS sufficient to IDENTIFY each of the channels of trade through which APPLICANT intends to sell such goods.
7. For each of the goods that APPLICANT intends to offer under APPLICANT'S MARK, DOCUMENTS sufficient to IDENTIFY any and all planned or intended ADVERTISING for each good and the media in which APPLICANT plans to advertise it.
8. For each of the goods that APPLICANT intends to offer under APPLICANT'S MARK, DOCUMENTS sufficient to IDENTIFY any and all of the PROMOTIONS planned for each good.
9. For each of the goods that APPLICANT intends to offer under APPLICANT'S MARK, DOCUMENTS sufficient to IDENTIFY the DEMOGRAPHICS of the intended consumers of such goods.
10. DOCUMENTS sufficient to IDENTIFY for each of the goods APPLICANT intends to offer under APPLICANT'S MARK, the suggested retail purchase price of such goods.
11. DOCUMENTS sufficient to IDENTIFY all PERSONS who will be in charge of or will have primary responsibility for sales of goods sold under APPLICANT'S MARK when APPLICANT'S MARK is used.
12. DOCUMENTS sufficient to IDENTIFY all PERSONS who will be in charge of or will have primary responsibility for MARKETING of goods sold under APPLICANT'S MARK when APPLICANT'S MARK is used.
13. DOCUMENTS sufficient to IDENTIFY all PERSONS employed by or under contract with YOU who will sell goods under APPLICANT'S MARK.
14. DOCUMENTS sufficient to IDENTIFY all PROMOTION agencies or other THIRD PARTIES YOU use or will use in connection with the PROMOTION or other MARKETING of goods for sale under APPLICANT'S MARK.

15. DOCUMENTS sufficient to IDENTIFY all ADVERTISING agencies or other THIRD PARTIES YOU use or will use in connection with the ADVERTISING or other MARKETING of goods for sale under APPLICANT'S MARK.

16. DOCUMENTS sufficient to IDENTIFY all BRAND IDENTITY agencies or other THIRD PARTIES YOU use or will use RELATING to APPLICANT'S MARK.

17. DOCUMENTS sufficient to IDENTIFY all of YOUR primary contacts at each of the PROMOTION, ADVERTISING and BRAND IDENTITY agencies YOU have used or intend to use in connection with the MARKETING of goods for sale under APPLICANT'S MARK.

18. All DOCUMENTS EVIDENCING YOUR assertion in YOUR first affirmative defense that "The marks are not confusingly similar. Applicant's mark is visually and phonetically distinct from that of Opposer and therefore, the marks are not likely to be confused. Applicant's mark is comprised of three syllables, whereas Opposer's mark is comprised of two."

19. All DOCUMENTS EVIDENCING YOUR assertion in YOUR second affirmative defense that "The Parties' respective marks do not share a similar commercial meaning, and thus are not likely to cause confusion. When translated from Spanish to English, GALLO means "rooster/chicken/hen" and GALOPE means "gallop."

20. All DOCUMENTS EVIDENCING YOUR assertion in YOUR third affirmative defense that "Under the doctrine of foreign equivalents, the different meanings of the marks are significant when assessing a likelihood of confusion."

21. All DOCUMENTS EVIDENCING YOUR assertion in YOUR fourth affirmative defense that "Spanish is a language known to numerous people in the United States and the different meanings of GALLO and GALOPE will be significant in a likelihood of confusion analysis."

22. All DOCUMENTS EVIDENCING YOUR assertion in YOUR fifth affirmative defense that "Opposer's mark is comprised of the term GALLO which refers to its corporate name, E. & J. Gallo Winery, and is the surname of the founders, Ernest and Julio Gallo. Applicant's mark GALOPE means "gallop." Accordingly, the commercial impressions presented by each of the Parties' marks are highly dissimilar."

23. All DOCUMENTS EVIDENCING YOUR assertion in YOUR sixth affirmative defense that "The Parties' respective goods are not confusingly similar. Applicant's mark will be used in connection with tequila and tequila cocktails, which are distinct from Opposer's wines."

24. ALL DOCUMENTS EVIDENCING YOUR assertion in YOUR seventh affirmative defense that "Opposer's mark was not cited as a bar to registration of the contested application. It is the opinion of the Trademark Office that the two marks may peacefully co-exist."

25. ALL DOCUMENTS EVIDENCING YOUR assertion in YOUR eighth affirmative defense that “Opposer’s mark currently co-exists on the Federal Register with numerous third party “GAL” and “GALL” marks in connection with alcoholic beverages, including wine and tequila. Applicant’s mark should likewise be allowed to co-exist.”

26. ALL DOCUMENTS EVIDENCING YOUR assertion in YOUR ninth affirmative defense that “Opposer’s mark currently peacefully co-exists with several “GALLOP” and “GALOPE” marks being used for identical goods, namely, wines, in U.S. commerce. Applicant’s mark, which covers goods that are not identical to wines, should likewise be allowed to co-exist.”

27. All DOCUMENTS referenced, IDENTIFIED or relied on in responding to each of OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT.

28. All DOCUMENTS provided to YOU by each expert, including all written reports contemplated by F.R.C.P 26(a)(2)(b).

29. All DOCUMENTS RELATING to each and every survey, study or poll conducted by or on behalf of YOU in connection with this proceeding.

30. All DOCUMENTS to be offered by YOU at trial (during your Testimony Period) in this proceeding.

31. All DOCUMENTS RELATING to APPLICANT’S policy with respect to retention of documents, including business records.

Dated: July 24, 2014

HOLMES WEINBERG, PC

By /Steven M. Weinberg/
Steven M. Weinberg

30765 Pacific Coast Highway, Suite 411
Malibu, California 90265
Telephone: (310) 457-6100
Email: smweinberg@holmesweinberg.com

Attorneys for E. & J. GALLO WINERY

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT AUTENTICA TEQUILERA S.A. DE C.V.** has been served on Applicant's counsel by mailing a copy on July 24, 2014, via United States Postal Service Priority Mail, postage prepaid, to:

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

 /Nelda Piper/
Nelda Piper

Exhibit B

From: Michael J Salvatore
To: ["ABELMAN, J."](#)
Cc: [Nelda Piper](#)
Subject: RE: Gallo v. Autentica Tequilera - Opposition Proceeding re GALOPE
Date: Thursday, October 30, 2014 11:23:27 AM

Hi Julie,

We will be filing a Motion to Compel the discovery responses tomorrow afternoon as it appears that your client will not be responding to the discovery requests or the agreement.

-Mike

Michael J. Salvatore
Holmes Weinberg, PC
30765 Pacific Coast Highway, Ste. 411 | Malibu CA 90265
t: 310.457.6100 x 201 | c. 914.263.1001 | f: 310.457.9555
msalvatore@holmesweinberg.com | [www.holmesweinberg.com](#) | Bio

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-----Original Message-----

From: Michael J Salvatore
Sent: Monday, October 27, 2014 11:09 AM
To: 'ABELMAN, J.'
Cc: Nelda Piper
Subject: RE: Gallo v. Autentica Tequilera - Opposition Proceeding re GALOPE

Hi Julie,

I am writing to follow up on the below. We have not heard an update since September 9. By our calculation, your client's discovery responses are due today. Please let us know as soon as possible if we should expect to receive the discovery responses or a signed agreement.

Thank you,

Mike

Michael J. Salvatore
Holmes Weinberg, PC
30765 Pacific Coast Highway, Ste. 411 | Malibu CA 90265
t: 310.457.6100 x 201 | c. 914.263.1001 | f: 310.457.9555 msalvatore@holmesweinberg.com | [www.holmesweinberg.com](#) | Bio

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-----Original Message-----

From: Michael J Salvatore
Sent: Monday, October 13, 2014 10:28 AM
To: 'ABELMAN, J.'
Cc: Nelda Piper
Subject: RE: Gallo v. Autentica Tequilera - Opposition Proceeding re GALOPE

Hi Julie,

I am writing to follow up on the below/attached. Please advise as to the status of this one.

Thanks,

Mike

Michael J. Salvatore
Holmes Weinberg, PC
30765 Pacific Coast Highway, Ste. 411 | Malibu CA 90265
t: 310.457.6100 x 201 | c. 914.263.1001 | f: 310.457.9555 msalvatore@holmesweinberg.com |
www.holmesweinberg.com | Bio

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-----Original Message-----

From: Michael J Salvatore
Sent: Thursday, September 25, 2014 7:04 PM
To: 'ABELMAN, J.'
Cc: Nelda Piper
Subject: RE: Gallo v. Autentica Tequilera - Opposition Proceeding re GALOPE

Hi Julie,

Attached please find a settlement agreement outlining the below terms which has been approved by our client. If everything looks OK, please return a signed copy of the agreement to us and we will remit a fully executed copy once counter-signed by Gallo.

Best,

Mike

Michael J. Salvatore
Holmes Weinberg, PC
30765 Pacific Coast Highway, Ste. 411 | Malibu CA 90265
t: 310.457.6100 x 201 | c. 914.263.1001 | f: 310.457.9555 msalvatore@holmesweinberg.com |
www.holmesweinberg.com | Bio

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-----Original Message-----

From: ABELMAN, J. [<mailto:JABELMAN@lawabel.com>]
Sent: Tuesday, September 09, 2014 12:22 PM
To: Michael J Salvatore
Cc: Nelda Piper
Subject: RE: Gallo v. Autentica Tequilera - Opposition Proceeding re GALOPE

Hi Mike. I agree to everything in your message. Thank you for your cooperation. I am working out of the office this week but will be able to review the agreement if you have the draft this week.

Kind regards,
Julie

Julianne Abelman
ABELMAN, FRAYNE & SCHWAB
666 Third Avenue
New York, New York 10017-5621
Tel: 212-949-9022; Fax: 212-949-9190
e-mail: jabelman@lawabel.com

-----Original Message-----

From: Michael J Salvatore [<mailto:MSalvatore@holmesweinberg.com>]
Sent: Tue 9/9/2014 3:20 PM
To: ABELMAN, J.
Cc: Nelda Piper
Subject: RE: Gallo v. Autentica Tequilera - Opposition Proceeding re GALOPE

Thanks for letting us know, Julie. Since it seems that we may be close to a settlement, why don't we file a 60 day suspension of the proceeding to work through the settlement, and in the meantime, we are OK with a 60 day extension of your client's time to respond to the outstanding discovery requests (with the responses to be due on 10/27), subject to further suspension/extension as necessary to continue settlement efforts.

Please let me know if that sounds OK, and if you will accept service of the consented motion to suspend via email. If OK, I will work on a settlement agreement and send it for your client's review once approved by Gallo.

-Mike

Michael J. Salvatore
Holmes Weinberg, PC
30765 Pacific Coast Highway, Ste. 411 | Malibu CA 90265
t: 310.457.6100 x 201 | c. 914.263.1001 | f: 310.457.9555 msalvatore@holmesweinberg.com |
www.holmesweinberg.com | Bio

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-----Original Message-----

From: ABELMAN, J. [<mailto:JABELMAN@lawabel.com>]
Sent: Tuesday, September 09, 2014 11:54 AM
To: Michael J Salvatore

Cc: Nelda Piper
Subject: RE: Gallo v. Autentica Tequilera - Opposition Proceeding re GALOPE
Importance: High

Dear Michael,

Thank you for your message. I am sorry for the delay in responding. Your discovery was matched with the wrong file. Please suspend the proceedings.

The terms of your May 1 settlement proposal were generally acceptable; we only had some concerns regarding future type fonts. However, I believe it would be easiest to work with a draft agreement along the terms of your proposal, and make small modifications if necessary. I expect we will be able to resolve this quickly.

Kind regards,
Julie

Julianne Abelman
ABELMAN, FRAYNE & SCHWAB
666 Third Avenue
New York, New York 10017-5621
Tel: 212-949-9022; Fax: 212-949-9190
e-mail: jabelman@lawabel.com

-----Original Message-----

From: Michael J Salvatore [<mailto:MSalvatore@holmesweinberg.com>]
Sent: Tue 9/9/2014 12:50 PM
To: ABELMAN, J.
Cc: Nelda Piper
Subject: RE: Gallo v. Autentica Tequilera - Opposition Proceeding re GALOPE

Hi Julie,

That is strange. The attached discovery requests were served to your office on July 24, 2014. We have confirmed that the US Priority Mail envelope containing the requests was delivered to your office on July 28 at 11:18 am. Please let us know when we can expect to receive responses to the discovery requests. We may need to file a suspension or extension of the proceeding so that my client will have enough time to review the responses and take any necessary depositions, etc.

Also, I have not received a response to my May 1 email to you setting out my client's proposed settlement terms, despite several follow ups. If your client is interested in moving forward with the May 1 settlement proposal, please let me know and we will send you an agreement along those terms for review.

Thank you,

Mike

Michael J. Salvatore
Holmes Weinberg, PC
30765 Pacific Coast Highway, Ste. 411 | Malibu CA 90265
t: 310.457.6100 x 201 | c. 914.263.1001 | f: 310.457.9555 msalvatore@holmesweinberg.com |
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-----Original Message-----

From: ABELMAN, J. [<mailto:JABELMAN@lawabel.com>]
Sent: Tuesday, September 09, 2014 8:07 AM
To: Michael J Salvatore
Cc: Nelda Piper
Subject: RE: Gallo v. Autentica Tequilera - Opposition Proceeding re GALOPE
Importance: High

Hi Michael. I have not seen any discovery requests. We have not intentionally disregarded your discovery. I am not in the office but have asked my assistant to search for this. Did you send it by regular mail? Can you send me a copy by e-mail? (I am working from out of the office this week.)

Our client will certainly respond to discovery and is still interested in settlement. I don't have my file with me but will reply back to you later today.

Kind regards,
Julie

Julianne Abelman
ABELMAN, FRAYNE & SCHWAB
666 Third Avenue
New York, New York 10017-5621
Tel: 212-949-9022; Fax: 212-949-9190
e-mail: jabelman@lawabel.com

-----Original Message-----

From: Michael J Salvatore [<mailto:MSalvatore@holmesweinberg.com>]
Sent: Mon 9/8/2014 1:26 PM
To: ABELMAN, J.
Cc: Nelda Piper
Subject: RE: Gallo v. Autentica Tequilera - Opposition Proceeding re GALOPE

Hi Julie,

We have not received any response to the written discovery requests that were served by Gallo on July 24. Please let us know by 5PM tomorrow, September 9, if your client will be responding to the requests.

Thank you,

Mike

Michael J. Salvatore
Holmes Weinberg, PC
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Bio <<http://www.holmesweinberg.com/attorneys/Michael-Salvatore>>

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