

ESTTA Tracking number: **ESTTA734270**

Filing date: **03/17/2016**

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

Proceeding	91222795
Party	Plaintiff Consorzio Tutela Vini Emilia
Correspondence Address	PAOLO A STRINO GIBBONS PC ONE PENN PLAZA, 37TH FLOOR NEW YORK, NY 10119 UNITED STATES ipdocket@gibbonslaw.com
Submission	Motion to Extend
Filer's Name	Paolo A. Strino
Filer's e-mail	ipdocket@gibbonslaw.com
Signature	/PAS/
Date	03/17/2016
Attachments	EMILIA Motion to Extend Deadline with Exhibits for Filing.pdf(706755 bytes )



Opposer has acted reasonably, has not abused the privilege of extension and has attempted to secure the other party's consent.

The following arguments and remarks are submitted in support of this motion.

### FACTUAL BACKGROUND

The parties in this opposition have been engaged in a multiple-country trademark dispute for a few years. In 2011, Opposer brought a lawsuit against Molinos IP S.A (hereinafter "Applicant") in Argentina, Applicant's home country. The 2011 litigation is still pending.

The Argentinean dispute involves trademark issues specific to that jurisdiction. However, such issues are similar in nature or related to those that form the subject of the instant proceeding.

The parties have been seeking a mutually agreeable resolution that would end the dispute not simply in the United States but internationally.

Settlement discussions have been conducted primarily by Italian counsel for Opposer and by Argentinean counsel for Applicant, i.e. the lead counsels residing in each party's country of origin. The parties have also held direct meetings without legal counsel.

Settlement discussions have not been sporadic, but substantial and ongoing. Several draft settlement proposals have circulated among the parties.

Italian counsel informed the undersigned that around February 25, 2016, Argentinean counsel for Applicant communicated with him indicating willingness to continue settlement discussions.

To the best of Opposer's knowledge, in a recent meeting between the Director of Consorzio and a representative of Molinos SA, Mr. Edoardo Lopardo, the latter indicated that Molinos S.A. was ready to define the dispute along terms that the parties had recently discussed.

While an agreement has not been formally reached, Opposer relied on the continuation of good faith discussions that were still in place and had not been terminated.

Opposer served initial disclosure timely in this proceeding.

Reasonably anticipating progress based on those good-faith discussions and in an abundance of caution, on March 2, 2016 Opposer served Applicant's U.S. counsel with interrogatories and requests for document production in time to comply with the discovery deadlines in the current opposition . See Exhibit 1.

Multiple times, Opposer's counsel requested that Applicant's counsel, Janice Housey acknowledge receipt of the discovery requests and indicate whether Applicant planned to respond to the same. Simultaneously, Opposer sought her consent to a request for an extension of the discovery deadlines.

Applicant's counsel did not reply nor acknowledge receipt of the discovery request until a third email by Opposer, on March 16, 2016. In her communication, Applicant's counsel neither denied nor consented to the extension request but simply stated that her "main contact [was] currently out of the office". See Exhibit 2.

Opposer has no reason to doubt that U.S. counsel for Applicant is aware of the ongoing, substantial settlement discussions in this matter that have taken place until very recently.

To date, Applicant has not served Opposer with any discovery request.

#### ARGUMENT

Pursuant to 37 C.F.R. § 2.120(a)(2) and T.M.E.P. § 403.04, Opposer requests that its motion to extend discovery be granted for good cause.

A common reason for extending the discovery period is to enable the parties to pursue settlement efforts. Opposer recognizes that a better course of action for a party in pursuit of settlement is to seek the adverse party's permission to extend the relevant deadlines.

In fact, Opposer has attempted to secure such consent since at least as early as March 2, 2016.

However, with a sudden change of attitude and in apparent disregard for long-standing settlement discussions led by Italian and Argentinean counsels, Applicant simply ignored Opposer's request.

Opposer also understands that the Board is disinclined to grant a motion to extend time if settlement discussions between the parties have been sporadic, and the moving party acted unreasonably. However, the circumstances of this matter show that Opposer acted responsibly and diligently throughout the discovery period.

Opposer timely served its Initial Disclosures. Until recently, Opposer, directly or through its Italian counsel, participated in discussions to settle the dispute internationally.

Well before the close of the discovery period, Opposer served requests for the production of documents and things, and interrogatories.

Further, Opposer wishes to receive an answer to its discovery requests before close of discovery as originally set, a prerogative that is now denied due to Applicant's sudden lack of communication regarding the extension of the deadlines.

Opposer's request for a sixty-day extension does not abuse the privilege of extension, nor does it prejudice Applicant.

Opposer demonstrated good cause for an extension of the discovery period.

No fee is required in connection with the instant motion. However, the Commissioner is authorized to draw on the Deposit Account of Gibbons P.C., Account No. 03/3839, with reference to file 113251.91161, if the accompanying fee is insufficient or inadvertently omitted.

WHEREFORE Opposer prays the Board to grant this motion and extend the discovery deadline by 60 days for good cause.

Respectfully Submitted,

Dated: March 17, 2016

By:



Paolo A. Strino  
Wendy R. Stein  
Gibbons P.C.  
One Pennsylvania Plaza  
New York, NY 10004  
(212) 613.2023  
ipdocket@gibbonslaw.com

ATTORNEYS FOR OPPOSER

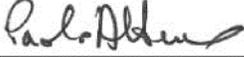
**CERTIFICATE OF SERVICE AND FILING**

I hereby certify that a true and complete copy of the foregoing MOTION TO EXTEND DISCOVERY DEADLINES BY 60-DAYS WITHOUT CONSENT, including any exhibits thereof, has been served on Applicant, by mailing said copy on March 17, 2016, via First Class Mail, postage prepaid to Applicant's attorney of record.

JANICE HOUSEY  
SYMBUS LAW GROUP LLC  
PO BOX 777  
BERRYVILE, VA 22611  
jhousey@symbus.com

A courtesy copy is also being sent to Applicant's address of record.

The undersigned further certifies that this correspondence is being transmitted electronically to the Commissioner for Trademarks on March 17, 2016, by filing the same electronically at <http://esta.uspto.gov/filing-type.jsp>

By   
Paolo A. Strino  
Gibbons P.C.  
One Pennsylvania Plaza  
New York, NY 10004  
(212) 613.2023  
ipdocket@gibbonslaw.com

# EXHIBIT 1

## Strino, Paolo A.

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**From:** Strino, Paolo A.  
**Sent:** Wednesday, March 16, 2016 4:12 PM  
**To:** Janice Housey  
**Subject:** RE: ESTTA. Change of Correspondence Address confirmation receipt ID: ESTTA733908

Thank you for your reply.

---

**From:** Janice Housey [mailto:jhousey@symbus.com]  
**Sent:** Wednesday, March 16, 2016 4:10 PM  
**To:** Strino, Paolo A.  
**Subject:** Re: ESTTA. Change of Correspondence Address confirmation receipt ID: ESTTA733908

Paolo—

Thank you.

I have indeed shared your correspondence with my client and have not received any instructions. My main contact is currently out of the office.

Janice

### *Note new address!*

#### *Janice Housey*

Symbus Law Group, LLC

PO Box 777

Berryville, VA 22611

703.957.5274 office

703.851.6737 cell

540.518.9037 fax

Courier Address:

11710 Plaza America Dr., Ste 2000, Reston, VA 20190

#### ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

This communication is subject to the attorney-client privilege of confidentiality, and is intended only for the identified recipient. If you have received this message in error, please contact the sender and destroy all copies, hard and electronic, in your possession. Thank you.

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**From:** "Strino, Paolo A." <PStrino@gibbonslaw.com>  
**Date:** Wednesday, March 16, 2016 at 4:06 PM  
**To:** Janice Housey <jhousey@symbus.com>  
**Subject:** RE: ESTTA. Change of Correspondence Address confirmation receipt ID: ESTTA733908

We acknowledge receipt.

Separately, did you receive our previous correspondence, including our discovery requests as well as our request for your consent to extend the deadlines?

Further, my client's Italian counsel confirms that the parties are still engaged in settlement discussions for the resolutions of this matter in multiple countries, predictably with effects in the United States as well.

I look forward to your reply.

Best regards,  
Paolo Strino



**Disclaimer**

The contents of this message, together with any attachments, may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, printing, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify me immediately by reply e-mail or call the Gibbons P.C. Help Desk at 973-596-4900 (e-mail: [helpdesk@gibbonslaw.com](mailto:helpdesk@gibbonslaw.com)) and delete this message, along with any attachments, from your computer.

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**From:** Janice Housey [<mailto:jhousey@symbus.com>]  
**Sent:** Wednesday, March 16, 2016 3:58 PM  
**To:** Strino, Paolo A.  
**Subject:** FW: ESTTA. Change of Correspondence Address confirmation receipt ID: ESTTA733908

Please see change of correspondence.

Note new address!  
Janice Housey  
Symbus Law Group, LLC  
PO Box 777  
Berryville, VA 22611  
703.957.5274 office  
703.851.6737 cell  
540.518.9037 fax  
Courier Address:  
11710 Plaza America Dr., Ste 2000, Reston, VA 20190

**ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

This communication is subject to the attorney-client privilege of confidentiality, and is intended only for the identified recipient. If you have received this message in error, please contact the sender and destroy all copies, hard and electronic, in your possession. Thank you.

On 3/16/16, 3:53 PM, "[estta-server@uspto.gov](mailto:estta-server@uspto.gov)" <[estta-server@uspto.gov](mailto:estta-server@uspto.gov)> wrote:

>Change of Correspondence Address  
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>Tracking No: ESTTA733908  
>  
>  
>

>ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

>

>We have received your Change of Correspondence Address submitted  
>through the Trademark Trial and Appeal Board's ESTTA electronic  
>filing system. This is the only receipt which will be sent for  
>this submission. If the Board later determines that your  
>submission is inappropriate and should not have been accepted  
>through ESTTA, you will receive notification and appropriate  
>action will be taken.

>

>Please note:

>

>Unless your submission fails to meet the minimum legal  
>requirements for filing, the Board will not cancel the filing or  
>refund any fee paid.

>

>If you have a technical question, comment or concern about your  
>ESTTA submission, call 571-272-8500 during business hours or  
>e-mail at [estta@uspto.gov](mailto:estta@uspto.gov).

>

>The status of any Board proceeding may be checked using TTABVUE  
>which is available at <http://ttabvue.uspto.gov>. Complete  
>information on Board proceedings is not available through TSDR.  
>Please allow a minimum of 2 business days for TTABVUE to be  
>updated with information on your submission.

>

>The Board will consider and take appropriate action on your filing  
>in due course.

>

>A printable version of your request is attached to this e-mail.

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>ESTTA server at <http://estta.uspto.gov>

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>ESTTA Tracking number: ESTTA733908

>Filing date: 03/16/2016

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

>

>Proceeding : 91222795

>Applicant : Molinos IP S.A.

>

>Change of Correspondence Address

>

>Please change the correspondence address for the Molinos IP S.A. from

>JANICE HOUSEY

>SYMBUS LAW GROUP LLC

>PO BOX 11085

>MC LEAN, VA 22102-7985

>UNITED STATES

>[jhousey@symbus.com](mailto:jhousey@symbus.com) Phone:

>

> to the new correspondence address as follows:

>

>JANICE HOUSEY

>SYMBUS LAW GROUP LLC

>PO BOX 777

>BERRYVILE, VA 22611

>UNITED STATES

>[jhousey@symbus.com](mailto:jhousey@symbus.com) Phone:

>

>Certificate of Service

>

>The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by Facsimile or email (by agreement only) on this date.

>

>Respectfully submitted,

>/Janice Housey/

>Janice Housey

>[jhousey@symbus.com](mailto:jhousey@symbus.com)

>03/16/2016

**Strino, Paolo A.**

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**From:** Strino, Paolo A.  
**Sent:** Friday, March 11, 2016 6:08 PM  
**To:** 'jhousey@symbus.com'  
**Cc:** 'trademarks@symbus.com'; Owens, Tonya T.  
**Subject:** RE: EMILIA NIETO SENETINER; Opposition No.: 91222795

Dear Sirs:

We refer to our email of last week.

Initially, we would appreciate if you could acknowledge receipt of the same, together with its attachments. A paper copy was also transmitted via first class mail.

Further, please let us know whether you intend to provide responses to our document request and interrogatories. In that case, let us know when we can expect to receive them and whether you consent to a 60-day extension of time in this matter.

We look forward to your reply.

Best regards,  
Paolo Strino

Paolo A. Strino  
**Director**  
Gibbons P.C.  
One Pennsylvania Plaza  
37th Floor  
New York, NY 10119  
Direct: 212.613.2023  
Mobile: 215.667.5990

[pstrino@gibbonslaw.com](mailto:pstrino@gibbonslaw.com) | [www.gibbonslaw.com](http://www.gibbonslaw.com)  
Newark | **New York** | Trenton | Philadelphia | Wilmington

# EXHIBIT 2

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

In re Serial Nos.: 85/725,718; 85/733,729

Marks: EMILIA NIETO SENETINER; MENDOZA-WINE OF ARGENTINA EMILIA NIETO  
SENETINER DESDE and Design

Published in the Official Gazette on June 16, 2015

-----X  
:   
CONSORZIO TUTELA VINI EMILIA :   
:   
Opposer, :   
:   
v. : Opposition No. 91222795   
:   
MOLINOS IP S.A. :   
:   
Applicant. :   
:   
-----X

Honorable Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER’S FIRST SET OF INTERROGATORIES**

Pursuant to Fed. R. Civ. P. 33, and Rule 2.120 of the Trademark Rules of Practice, Opposer requests that Applicant answer, in writing and under oath, the interrogatories propounded below. Such responses must be made within thirty (30) days of service of these interrogatories, in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

**INTRODUCTION AND DEFINITIONS**

- A. As used herein, the term "person(s)" includes not only natural persons, officers, managing agents, supervisory personnel, and employees, but also includes, without limitation, firms, partnerships, associations, corporations and other legal entities, divisions, departments or other units thereof.
- B. "Applicant" shall mean the nominal Applicant, Molinos IP S.A. and any predecessor in interest and/or title.
- C. "Opposer" shall mean the nominal Opposer, Consorzio Tutela Vini Emilia and any predecessor(s) or successor(s) in interest, and any partnership and/or corporation in which

Opposer has an ownership interest and/or Opposer controls and which uses Opposer's Marks (as hereinafter defined) in any way, as well as all divisions, licensees, parent, subsidiary, affiliated or related companies thereof, and the partners, principals, directors, officers, agents and employees thereof. When an answer is supplied with respect to any predecessor or successor in interest, division, licensee, parent, subsidiary, affiliated or related company, this fact should be stated and such predecessor in interest, division, licensee, parent, subsidiary, affiliated or related company should be fully identified by name and principal place of business.

- D. As used herein, the term "Applicant's Marks" shall mean the term(s) EMILIA NIETO SENETINER as subject of Appl. Ser. Nos.: 85/725,718 and 85/733,729; in any and all formats, used alone or in combination with any other word(s) or design(s), or symbol(s).
- E. As used herein, the term 'Opposer's Marks' shall collectively mean the term EMILIA; and/or any other mark, name, or designation containing the term(s) EMILIA or phonetic equivalent, in any and all forms and formats, used alone or in combination with any other word(s), design(s) or symbol(s).
- F. As used herein, the term "document" is used in its broadest sense, to include, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether an original, master or copy; including but not limited to, communications, including intra-company communications and correspondence; cablegrams, radio-grams and telegrams; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; reports; customer lists; books, manuals, publications and diaries; laboratory engineering reports; reports of test results; notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; customer surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; instruction manuals; user manuals; computer software; operation manuals; pamphlets, catalogs and catalog sheets; advertisements, including story board and/or scripts for television commercials; circulars; trade letters; press publicity and trade and product releases; product descriptions; drafts of original or preliminary notes on, and marginal comments appearing on, any document; applications for approval by a governmental agency; other reports and records; and any other information-containing paper, writing or physical thing.
- G. As used herein, "communication" is used in its broadest sense, to include, without limitation, the following:
- (1) any document, as defined in paragraph F, above; and
  - (2) any conversation, discussion, dialogue, conference, report, message,

- (3) account, interview, exchange, and/or consultation, whether oral or written.
- H. "Identify" or "identification" with respect to a person, means provide the person's:
- (1) name;
  - (2) last known residential address;
  - (3) last known business address;
  - (4) last known employer or business affiliation; and
  - (5) occupation and business position held.
- I. "Identify" or "identification" with respect to a company, partnership, firm, corporation or other non-juristic person, shall mean provide:
- (1) the name;
  - (2) if incorporated, the place of incorporation;
  - (3) if unincorporated, the name of the partners and/or principals; and
  - (4) the address of such entity's principal place of business.
- J. "Identify" or "identification" with respect to a document, shall mean provide:
- (1) the identity of the person or persons who prepared it, the sender, and all
  - (2) recipient(s), if any;
  - (3) the title of the document;
  - (4) a description of the general nature of its subject matter(s);
  - (5) the date of preparation;
  - (6) the date and manner of distribution and publication, if any;
  - (7) the location of each copy, and the identity of the present custodian; and
  - (8) the identity of the person or persons who can identify and/or authenticate it.
- K. "Identify" or "identification" with respect to an act, occurrence, circumstance, or event (collectively "act"), shall mean providing:
- (1) a description of the act;
  - (2) the date(s) the act occurred;
  - (3) where the act occurred;
  - (4) the identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act);
  - (5) the identity of all persons who have any knowledge or information, about or regarding the act, including the identity of each witness to the act;
  - (6) when the act, or omission, first became known to Applicant; and
  - (7) the circumstances and manner in which knowledge of the act was first obtained by Applicant.
- L. "Identify" or "identification" with respect to goods, products, or services shall mean:
- (1) state the common descriptive name of said good, product or service;
  - (2) state the model number, identify the manufacturer and location of manufacture thereof;

- (3) provide a detailed description of the purpose, function, and/or application of said good, product or service; and
- (4) describe in detail the channels of trade in which such product or service is sold and/or rendered.

M. "Identify" or "identification" with respect to a search, survey, poll, or other investigation (collectively "search") shall mean:

- (1) state the date and location of the search;
- (2) identify and describe all documents examined or investigated in connection with the search;
- (3) if applicable, state the size of the sample surveyed, how that sample was selected, and the questions asked;
- (4) identify each person(s) who conducted the search;
- (5) state all results and conclusions of the search, including, if applicable, each answer to each question posed;
- (6) with respect to a search or similar investigation, identify each reference disclosed by providing the mark or name which is the subject of such reference, the owner of the mark or name, the Applicant or Applicant, the registration or serial number, and the goods and services listed in, or in connection with, such reference;
- (7) identify each person who rendered any conclusions or opinion relating to such search;
- (8) identify each person to whom the results, in whole or in part, of such search and/or any conclusion or opinion relating to such search, were communicated, and the date(s) of such communication;
- (9) identify each person who has knowledge or information with respect to the search; and
- (10) identify all documents which contain any results of, and/or refer or relate in any way to, such search.

N. "Advertising" and/or "promotional materials" shall mean, without limitation, advertisements, including advertising copy, advertising slicks, and line art; product packaging, labels, brochures, photographs, product sheets, point of sale displays, audio or video tapes; catalogues or other product guide books; signage, price lists, warranty information, and/or any other document or material used and/or distributed to promote and/or solicit business, shipments, sales, and/or orders of products or services of Applicant.

O. "Identify" or "identification" with respect to "channels of trade" with respect to a product or service shall mean, without limitation:

- (1) describe the circumstances surrounding the sale, distribution and/or rendition of such product/service; and
- (2) state whether sales are through anyone, or more, of the following means:
  - a) retail;

- b) Wholesale;
- c) Catalogue;
- d) mail order;
- e) direct mail;
- f) direct contact with customers;
- g) other means and, if so, describe the nature of the sale;
- h) provision of sample goods or services;
- i) trade shows;
- j) Subscription;
- k) visits by salespersons;
- l) any combination of the above sub-sections (a) through (k) inclusive, of this definition, and if so, identify the applicable channels.

P. As used herein, "media" or "medium" shall be construed to comprise newspapers, consumer magazines-trade publications, trade shows, catalogues, and any means of audio or video transmission, and "identify" or "identification" with respect to "media" or "medium" shall mean, without limitation:

- (1) provide, for each print medium: the name of the publication or print media; the date; volume number; geographical area and size of circulation; and if directed to a particular trade, industry, or type of reader/customer, describe such trade/industry/reader;
- (2) provide, for each audio and video transmission (including radio and television): the station and/or network on which such transmission was broadcast; the geographical area of broadcast; and the date of each broadcast;
- (3) provide, for each direct mailing or other direct distribution: the geographic area and dates of such distribution; the number of such mailings/direct distributions sent or disseminated; a general description of the persons to whom distributed; and if a mailing list was used, the source and identification of each such mailing list;
- (4) identify, for each medium referring or relating in any way to Applicant's products or services, the specifically referenced product(s) or service(s) and mark(s) therefor; and
- (5) identify the persons employed or associated with Applicant who have most knowledge of same.

Q. "Identify" or "identification" with respect to any advertisement or promotional materials shall mean:

- (1) identify the medium in which such advertisement/promotional material was published, broadcast or otherwise disseminated;
- (2) identify each person who created, ordered, distributed and/or placed such advertisement;

- (3) state where, when, and to whom said advertisement or promotional material, and/or copies of same, were distributed, and the number of copies distributed at each such place and time; and
- (4) identify documents which would show when and where the advertisement was placed broadcast/distributed and the costs thereof, including an identification of the advertisement itself.

R. "Identify" or "identification" with respect to "price" or "cost", shall mean, without limitation, the retail (or suggested retail), and wholesale, price or cost to the purchaser of the subject product and/or service.

S. "Identify" or "identification" with respect to a retail outlet or store shall mean:

- (1) the retail outlet or store name;
- (2) the address of the retail outlet or store;
- (3) the owner(s) of the retail outlet or store;
- (4) the date on which the retail outlet or store was first opened to the public; and
- (5) to identify the products, services, and business offered or rendered by or from such retail outlet or store.

T. "Identify" or "identification" with respect to an agreement, an assignment, license, understanding, or other contract or grant or transfer of rights, (collectively "agreement") shall mean:

- (1) identify the type of agreement, i.e. "assignment", "license", "consent to use", "distributorship agreement", etc.;
- (2) state the date and term of duration of the agreement, and whether such still is in effect;
- (3) identify the geographic scope of the agreement;
- (4) identify the parties to the agreement;
- (5) state whether the agreement is oral or in writing;
- (6) describe in detail any rights and/or property transferred by the agreement, including whether the goodwill in any business, in whole or in part, was transferred as part of, or . in connection with, the agreement and, if so, describe in detail the nature and extent of any goodwill assigned, licensed, granted, or transferred;
- (7) if the agreement is a trademark or service mark license, identify the manner of control which is, or was, to be exercised with respect to the quality and character of the goods or services, on or in connection with which any affected mark was to be, or has been, used under such agreement;
- (8) state whether the assignor, licensor; grantor, transferor still was doing business at the time of the assignment, license, understanding, grant, transfer;
- (9) state whether the assignment/grant/transfer was one in bankruptcy;

- (10) state whether the agreement was recorded in the Patent and Trademark Office or any other public record and, if so, state the date and place of such recordation(s);
- (11) state in detail the conditions and terms of such agreement;
- (12) identify all documents which evidence or refer or relate in any way to such agreement, including the agreement itself, if in writing;
- (13) identify each person who drafted and/or participated in any way in the negotiations and/or drafting of the agreement, and/or who approved the same; and
- (14) identify each person involved in or who has participated in the enforcement and/or execution of the agreement.

U. "Identify" or "identification" with respect to any objection or complaint regarding the use of a name or mark, lawsuit, opposition, cancellation, or other *inter partes* proceeding, shall mean identify:

- (1) the person making the objection or complaint and/or on whose behalf the objection or complaint was made and/or who brought such lawsuit, opposition, cancellation or other *inter partes* proceeding;
- (2) the date when such objections, complaint, lawsuit, opposition, cancellation or other proceeding was made and/or instituted;
- (3) with respect to any lawsuit or proceeding, the parties thereto;
- (4) the civil action or docket number and/or other identifying indicator used by the tribunal before whom such was brought;
- (5) the court or other tribunal before whom the proceeding was brought;
- (6) the trademark(s) and/or service mark(s) at issue; and
- (7) the disposition and/or resolution of such objection, complaint or proceeding.

V. "Identify" or "identification" with respect to "expert witness", shall mean, without limitation:

- (1) identify such person;
- (2) describe the qualifications for such expert;
- (3) identify all articles, books or other publications authored in whole or in part by such expert;
- (4) identify all documents which such expert has reviewed and/or upon which such expert may rely in connection with his or her testimony; and
- (5) provide all of the information set forth in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

W. "Identify" or "identification" with respect to a trademark or service mark registration or application shall mean:

- (1) the identification of the agency or office and when filed, and/or who issued such registration;
- (2) the names of the Opposer and Applicant;
- (3) the serial and registration number;

- (4) the filing and issue date(s);
- (5) the present status thereof;
- (6) if registration was refused, the reason(s) for such refusal;
- (7) identify all documents referring to such registration/application filed in connection with such registration or application including the registration/application itself; and
- (8) identify whether any assignment or other documents have been received, and if so, what and when in connection with such registration application.

- X. "Identify" or "identification" with respect to an instance of confusion or mistake and/or an instance where a person thought, arrived or otherwise indicated a belief there may be an association between the parties herein and/or other products or businesses means state:
- (1) the identity of the person(s) confused or mistaken;
  - (2) the details of such event, including the "mistake" made and the substance of the "confusion";
  - (3) the date and place of such event and/or instance of mistake or confusion;
  - (4) a description of the details of the manner in which such confusion, mistake, belief, assumption or indication was communicated or came to the attention of Applicant;
  - (5) the details of the response or communication, if any, made by or on behalf of Applicant directly or indirectly, to the person so confused or mistaken or who communicated such confusion or mistake to Applicant;
  - (6) the identity of each person having knowledgeable of such confusion or mistake; and
  - (7) the identity of all documents and communications which refer or relate in any way to such confusion or mistake.

Y. As used herein, "and" or "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

Z. As used herein, "referring or relating to" means comprising, relating to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

AA. If Applicant is aware that a document or a group of documents once existed, but has been destroyed, in addition to the identification of the document as described herein, Applicant also is requested to state when the document or group of documents was destroyed, who destroyed it, why it was destroyed, and the circumstances under which it was destroyed.

- BB. With respect to each document withheld on the ground of a claim of attorney privilege, identify such document in accordance with these definitions and instructions, and state in detail the basis and nature of such claim of privilege.
- CC. These interrogatories shall be deemed to be continuing, requiring Applicant to serve upon Applicant amended or supplemental answers promptly after Applicant has acquired additional knowledge or information relating in any way to such interrogatories.
- DD. With respect to any interrogatory which is asserted to be over broad, or unduly burdensome, state all information requested which can be provided without undue burden, and/or which is relevant or might lead to the discovery of admissible evidence.
- EE. All discovery requests should be interpreted as referring to activities within the United States and/or interstate commerce and/or commerce which may be lawfully regulated by the Congress, unless otherwise indicated, or unless Applicant intends to rely upon activities outside the United States to which a request relates.

### **INTERROGATORIES**

1. Identify the officer or agent answering the interrogatories.
  - (a) Was such officer or agent, at all times referred to herein, associated with or employed by Applicant?
  - (b) State the duties and the scope of such duties performed by such officer or agent at all times referred to herein.
2. State whether any alternative marks were considered. If so, list said alternative marks or forms of Applicant's Marks.
  - (a) Identify those who were responsible for the ultimate selection of Applicant's Marks.
  - (b) Identify copies of all documents pertaining in any way to the adoption of Applicant's Marks by Applicant.
  - (c) Before or after the selection of Applicant's Marks, did Applicant obtain any legal opinion or trademark search report, indicating Applicant's freedom to use (or lack thereof) Applicant's Marks? If so, by whom? Identify copies of any such reports and/or opinions, the dates they were obtained and any document pertaining in any way to such opinions and reports.

- (d) Was any attempt made to directly or indirectly to contact the owners of the marks uncovered in the legal opinion or trademark search report? If so, identify those contacted and when.
3. State whether at the time the mark EMILIA NIETO SENETINER was adopted, Molinos IP S.A., including its current or past officers or employees was aware that the name Emilia identifies a geographic location in Italy.
- (a) Please also state whether such individuals were aware that the location Emilia is known for its wine?
4. State whether Molinos IP S.A., including any of its officers, agents or employees, is aware of other geographic locations in the world named Emilia, other than the location identified under 3 above.
- (a) In the event that the answer to 4 is affirmative, please state whether this location is known for its wine or related products.
5. State the alleged date (*month, day and year*) of Applicant's first sale and/or test sale in the U.S., if any, for Applicant's products under Applicant's Marks, and the manner and extent of such first use, including the goods upon which such mark was used and the amount of such goods sold and distributed and to whom they were sold and distributed.
- (a) State the classes of purchasers and total sales for any stated period.
6. When did Applicant first become aware of Opposer? Of Opposer's use (including any Opposer's licensees) of Applicant's Marks? Of Opposer's Marks?
7. Was trademark protection of Applicant's Marks sought by Applicant? If so, state:
- (a) Who authorized and executed procurement of such trademark registration? When?
- (b) Who prepared the trademark application?
8. At any time during prosecution of any such trademark application, did Applicant bring to the attention of the Patent Office, the existence of Applicant's Marks? If so, when?
- (a) Identify a copy of the trademark application including a copy of all correspondence with the Patent Office pertaining to registration of Applicant's Marks.
9. If Applicant has started using Applicant's Marks in U.S. commerce in conjunction with any products or services, were Applicant's products and/or services provided nationally prior to any registration of the mark by Applicant? If so, when did national sales commence?

10. When did Applicant first start to advertise using Applicant's Marks in its current form or alternative form?
- (a) Is Applicant aware of the appearance of Applicant's Marks in any form in any magazine? If so, identify a copy of the page or pages showing Applicant's product with Applicant's Marks.
11. Are Applicant's products and services provided (or intended to be provided) under Applicant's Marks sold to wholesale distributors who distribute to retail stores? If so, identify such distributors and, if available, the total sales of products and services under Applicant's Marks to such distributors.
12. If available, identify and provide a sample of Applicant's products and services under Applicant's Marks whether sold to retail stores, distributors or final clients.
13. Is Applicant aware of any of its distributors, or final retail stores who distribute, or will distribute, its products as well as Opposer's products? If so, identify such entities.
14. Does Applicant import, distributes or sell any original wine products bearing the mark EMILIA and produced in Italy?
- (a) If the answer to 14 is affirmative, does Applicant advertise, or sell such EMILIA-marked products as originating from Italy?
- (b) If the answer to 14 is affirmative, does Applicant advertise, or sell such EMILIA-marked products stating that they originate from Italy?
- (c) Are Italian EMILIA-denominated products provided by Applicant to its customers, distributors and wholesalers, sold at the same price as domestic EMILIA-marked products?
- i. Please identify a schedule of price for both Italian EMILIA-denominated products and domestic EMILIA-denominated products.
- ii. Please state both the regular price, and any discounted price.
- (d) If the answer to (c) is affirmative, state if on average Applicant's customers, wholesalers, and/or distributors are paying a higher price to purchase from Applicant Italian EMILIA-denominated products or domestic EMILIA-denominated products.
- (e) Please identify copies of advertising, promotional material and sale records responsive to all the questions in this paragraph.

15. With regard to non-Italian products including the denomination EMILIA, produced, advertised and/or sold by Applicant, or by someone else on Applicant's behalf, please state the following:

(a) Geographic areas of production.

(b) Whether they include any of the following varieties:

Varieties of red wines

- Ancellotta or Lancellotta, including but not limited to sparkling, novello, and partially fermented grape must;
- Barbera, including but not limited to sparkling, novello, and partially fermented grape must;
- Cabernet (from Cabernet Franc and/or Cabernet Sauvignon), also novello;
- Cabernet Franc, including but not limited to novello;
- Cabernet Sauvignon, including but not limited to novello;
- Fogarina, including but not limited to sparkling, novello, raisin and partially fermented grape must;
- Fortana, including but not limited to sparkling, novello, and partially fermented grape must;
- Lambrusco red sparkling, novello sparkling, and partially fermented grape must;
- Lambrusco sparkling pink and champagne;
- Lambrusco (vinified in white), sparkling, novello sparkling, and partially fermented grape must;
- Malbo Gentile, including but not limited to sparkling, novello, raisin, and partially fermented grape must;
- Marzemino, including but not limited to sparkling, novello, raisin, and partially fermented grape must;
- Merlot including but not limited to novello;
- Pinot Noir, including but not limited to sparkling and champagne;
- Pinot Noir (vinified in white), including but not limited to sparkling and champagne;
- Sangiovese, including but not limited to novello;

Varieties of white wines

- Alionza, including but not limited to sparkling, and partially fermented grape must;
- Chardonnay, including but not limited to sparkling, and partially fermented grape must;
- Malvasia (from Malvasia di Candia Aromatica), including but not limited to sparkling, raisin, and partially fermented grape must;

- Malvasia Bianca, including but not limited to sparkling, and partially fermented grape must;
- Montù, including but not limited to sparkling, and partially fermented grape must;
- Moscato Bianco, including but not limited to sparkling, and partially fermented grape must;
- Pignoletto, including but not limited to sparkling, and raisin;
- Pinot Blanc, including but not limited to sparkling and champagne;
- Pinot Grigio, including but not limited to sparkling and champagne;
- Italic Riesling, including but not limited to sparkling and champagne;
- Sauvignon, including but not limited to sparkling, and raisin;
- Spergola, including but not limited to sparkling, and raisin;
- Trebbiano, including but not limited to sparkling and champagne;

- (c) Whether the grape production area includes any location in the administrative territory of the Italian provinces of Bologna, Ferrara, Modena, Parma, Piacenza, and Reggio Emilia.
- (d) Describe the production method for the wine, including time of minimum aging, storage (including location, temperature and humidity).
- (e) Identify the chemical properties for the finished products, including alcoholic content for each wine sold or intended to be sold under Applicant's Marks:
- i. chemical properties: Moisture, Protein, Fat, Sodium chloride, Fat on the dry, physical properties: - Bottom shape - Face shape, Weight, Height, Diameter; Microbiology and sanitary conditions.
- (f) Identify any type of forage or feed supplied to the cattle produced by Applicant.
- (g) Describe the type of monitoring activity that Applicant has in place to control the quality of the feed/forage, as well as the quality of the final product.
- (h) Identify copies of documents in support of the answer to all the questions in this paragraph.
16. Please describe any connection between Opposer, the Emilia region and/or Italy, including whether Opposer has any branch, subsidiary or affiliated company therein, and whether its current or past employees have visited, while acting within the scope of their duties, wine producers, manufactures, or distributors in in the Emilia area and/or elsewhere in Italy.
- (a) For any such trip made in connection with the production, importation, or sale of wine and alcoholic beverages by Applicant, please provide the date (at least year) for such visits or trips to Italy and/or in the Emilia area. Please provide the role of

the employee/officer making the visit, purpose of the visit, geographic area of the visit, and organization or companies met in Italy in connection with the trip.

17. Please produce samples of products, or images therein, bearing Applicant Mark and sold in U.S. commerce at the time of the filing date of June 16, 2015.

18. Please specify in details the manner in which Applicant's Marks was used, if at all, at the time of the filing date, including the type of use (e.g. in sales, on products, in advertising), the nature and extent of such use.

(a) Please identify copies of materials or documents evidencing such use.

19. If Applicant has at any time discontinued and then resumed use of its mark, please indicate the dates when the mark was not in use, the dates of resumption of such use, and describe the reasons for such discontinuation and resumption.

20. Describe in details the activities performed by Applicant over the years regarding the control over manufacturing and the quality control of the products bearing Applicants' mark. Please provide accurate dates for such activities.

(a) Identify copies of all documents pertaining in any way to Applicant's control over the manufacturing and quality of the products bearing Applicants' Mark.

21. Identify copies of agreements, from any producer to whom Applicant requested to make the products using Applicant's Marks.

22. Identify copies of any written agreement, from any ingredient supplier, grape supplier, or grape juice supplier to whom Applicant requested to supply ingredients for the products using Applicant's Marks.

23. State whether Applicant has performed any of the following preparatory activities in anticipation of Applicant's intended use of Applicant's Marks in the United States:

(a) Has Applicant made any specific plans relating to the use in U.S. commerce of Applicant's Marks? Identify any document evidencing such plans, along with an explanation as to whether such plans were made prior or after the filing date of the application for Applicant's Marks.

(b) Has Applicant made any plans relating to the ingredients and features for the products listed in the application and/or their packaging? Identify any document evidencing such plans.

(c) Has Applicant entered into negotiations or agreements with any licensee for the use of Applicant's Marks on any of the products listed in the application for Applicant's Marks? Identify any documents, including pertinent correspondence, evidencing such negotiations or agreements.

24. State the alleged date (*month, day and year*) of Applicant's first sale and/or test sale in the U.S., if any, for Applicant's product under Applicant's Marks, and describe the manner and extent of such use, including the goods upon which such mark was used and the amount of such goods sold and distributed and to whom they were sold and distributed.
25. Was trademark protection of Applicant's Marks sought by Applicant in the U.S. and abroad? If so, state:
- (a) Who authorized and executed procurement of such trademark registration? When?
  - (b) Who prepared the trademark application? Please also indicate the application and registration date and current status for these registrations in each country.
26. When did Applicant first start to advertise using Applicant's Marks in its current form or alternative form?
- (a) Is Applicant aware of the appearance of Applicant's Marks in any form in any magazine? If so, identify a copy of the page or pages showing Applicant's product with Applicant's Marks.
27. Are Applicant's products sold under Applicant's Marks provided to wholesale distributors who distribute to retail stores? If so, identify such distributors and, if available, the total sales of products and services under Applicant's Marks to such distributors.
28. If available, identify a sample of Applicant's products under Applicant's Marks whether sold to retail stores, distributors or final clients.
29. Is Applicant aware of other manufacturers, distributors or retailers, who distribute, or will distribute, Applicant's wine products bearing the EMILIA mark, as well as EMILIA products from Italy? If so, identify such entities.
30. When and under what circumstances was Applicant first contacted by Opposer with respect to Applicant's use of Applicant's Marks?
- (a) Identify copies of any correspondence between Opposer and Applicant relating to Applicant's use of Applicant's Marks.
31. Please provide a list of industry associations, membership organizations or other food-related consortia of which Applicant is a member or an associate.

- (a) Please identify copy of correspondence or material from and to these entities discussing use of the word EMILIA, as well as EMILIA products originating in Italy.

Respectfully Submitted,

Dated: March 2, 2016

By: 

Paolo A. Strino  
Wendy R. Stein  
GIBBONS P.C.  
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New York, NY 10119  
(212) 613-2000  
ipdocket@gibbonslaw.com  
pstrino@gibbonslaw.com  
ATTORNEY FOR OPPOSER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES, including any exhibits thereof, has been served on Applicant, by mailing said copy on March 2, 2016, via First Class Mail, postage prepaid to Applicant's Attorney of record, at:

Janice Housey  
Symbus Law Group LLC  
PO BOX 11085  
Mc Lean, VA 22102-7985

An electronic copy is also provided via email at [jhousey@symbus.com](mailto:jhousey@symbus.com)

Respectfully Submitted,

Dated: March 2, 2016

By:  \_\_\_\_\_

Paolo A. Strino  
GIBBONS P.C.  
1 Pennsylvania Plaza  
New York, NY 10119  
(212) 613-2000

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

In re Serial Nos.: 85/725,718; 85/733,729

Marks: EMILIA NIETO SENETINER; MENDOZA-WINE OF ARGENTINA EMILIA NIETO  
SENETINER DESDE and Design

Published in the Official Gazette on June 16, 2015

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CONSORZIO TUTELA VINI EMILIA :   
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Opposer, :   
:   
v. : Opposition No. 91222795   
:   
MOLINOS IP S.A. :   
:   
Applicant. :   
:   
-----X

Honorable Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER’S REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS  
PURSUANT TO FED. R. CIV. P. 34**

Further to Opposer's First Set of Interrogatories to Registration, whose definitions are hereby incorporated by reference, Opposer, Consorzio Tutela Vini Emilia hereby requests Applicant, Molinos IP S.A., to identify and produce at the offices of Gibbons P.C., within the time and in the manner specified by the applicable rules, the following documents and to permit Opposer to inspect and copy said documents:

1. All documents and things requested to be identified in Interrogatory 2 of Opposer's First Interrogatories to Applicant.
2. All documents and things requested to be identified in Interrogatory 8 of Opposer's First Interrogatories to Applicant.
3. All documents and things requested to be identified in Interrogatory 9 of Opposer's First Interrogatories to Applicant.
4. All documents and things requested to be identified in Interrogatory 10 of Opposer's First Interrogatories to Applicant.
5. All documents and things requested to be identified in Interrogatory 11 of Opposer's First

- Interrogatories to Applicant.
6. All documents and things requested to be identified in Interrogatory 12 of Opposer's First Interrogatories to Applicant.
  7. All documents and things requested to be identified in Interrogatory 14 of Opposer's First Interrogatories to Applicant.
  8. All documents and things requested to be identified in Interrogatory 15 of Opposer's First Interrogatories to Applicant.
  9. All documents and things requested to be identified in Interrogatory 16 of Opposer's First Interrogatories to Applicant.
  10. All documents and things requested to be identified in Interrogatory 17 of Opposer's First Interrogatories to Applicant.
  11. All documents and things requested to be identified in Interrogatory 18 of Opposer's First Interrogatories to Applicant.
  12. All documents and things requested to be identified in Interrogatory 20 of Opposer's First Interrogatories to Applicant.
  13. All documents and things requested to be identified in Interrogatory 22 of Opposer's First Interrogatories to Applicant.
  14. All documents and things requested to be identified in Interrogatory 23 of Opposer's First Interrogatories to Applicant.
  15. All documents and things requested to be identified in Interrogatory 28 of Opposer's First Interrogatories to Applicant.
  16. All documents and things requested to be identified in Interrogatory 30 of Opposer's First Interrogatories to Applicant.
  17. All documents and things requested to be identified in Interrogatory 31 of Opposer's First Interrogatories to Applicant.

Respectfully Submitted,

Dated: March 2, 2016

By: 

Paolo A. Strino  
Wendy R. Stein  
GIBBONS P.C.  
One Pennsylvania Plaza  
New York, NY 10119  
(212) 613-2000  
ipdocket@gibbonslaw.com  
pstrino@gibbonslaw.com  
ATTORNEY FOR OPPOSER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS, including any exhibits thereof, has been served on Applicant, by mailing said copy on March 2, 2016, via First Class Mail, postage prepaid to Applicant's Attorney of record at:

Janice Housey  
Symbus Law Group LLC  
PO BOX 11085  
Mc Lean, VA 22102-7985

An electronic copy is also provided via email at [jhousey@symbus.com](mailto:jhousey@symbus.com)

Respectfully Submitted,

Dated: March 2, 2016

By:

  
\_\_\_\_\_

Paolo A. Strino  
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1 Pennsylvania Plaza  
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