

ESTTA Tracking number: **ESTTA687638**

Filing date: **08/04/2015**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	E. & J. GALLO WINERY
Granted to Date of previous extension	08/05/2015
Address	600 YOSEMITE BOULEVARD MODESTO, CA 95354 UNITED STATES

Attorney information	Steven M. Weinberg Holmes Weinberg, PC 30765 Pacific Coast Hwy Suite 411 Malibu, CA 90265 UNITED STATES hwtrademarks@gmail.com, msalvatore@holmesweinberg.com Phone:310 457 6100
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**Applicant Information**

Application No	86380534	Publication date	04/07/2015
Opposition Filing Date	08/04/2015	Opposition Period Ends	08/05/2015
Applicant	Randy Stoller 3325 Mt. Prospect Rd Franklin Park, IL 60131 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Vodka
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	694649	Application Date	08/03/1959
Registration Date	03/15/1960	Foreign Priority Date	NONE
Word Mark	BOONE'S FARM		

Design Mark	<b>Boone's Farm</b>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1959/07/22 First Use In Commerce: 1959/07/22 WINES		

U.S. Registration No.	3789860	Application Date	09/16/2009
Registration Date	05/18/2010	Foreign Priority Date	NONE

Word Mark	BOONE'S FARM		
Design Mark	<b>BOONE'S FARM</b>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1959/07/22 First Use In Commerce: 1959/07/22 Wines		

U.S. Registration No.	1496065	Application Date	11/09/1987
Registration Date	07/12/1988	Foreign Priority Date	NONE

Word Mark	BOONE'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1959/07/22 First Use In Commerce: 1959/07/22 WINE		

U.S. Registration No.	4510869	Application Date	09/12/2013
Registration Date	04/08/2014	Foreign Priority Date	NONE
Word Mark	BOONE'S		

Design Mark	<h1>BOONE'S</h1>
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1959/07/22 First Use In Commerce: 1959/07/22 Alcoholic beverages except beers

Attachments	72078868#TMSN.png( bytes ) 77827663#TMSN.png( bytes ) 86063397#TMSN.png( bytes ) 2015.08.04_Notice of Opposition re BOONE COUNTY VODKA.pdf(142664 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Nelda Piper/
Name	Nelda Piper
Date	08/04/2015

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

In re Serial No. 86/380,534

E. & J. Gallo Winery,  
Opposer,

v.

Randy Stoller,  
Applicant.

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

TO: ASSISTANT COMMISSIONER FOR TRADEMARKS  
**BOX TTAB –FEE**  
2900 Crystal Drive  
Arlington, VA 22202-3513

Opposer E. & J. Gallo Winery (“Gallo”), a corporation organized and existing under the laws of the State of California, believes that it would be damaged by registration of the above-referenced mark, and hereby opposes the same. As grounds for this Opposition, Gallo respectfully alleges as follows:

1. Opposer Gallo is a corporation organized and existing under the laws of the State of California, having a place of business at 600 Yosemite Blvd., Modesto, California 95354.
2. Gallo is the exclusive owner in the United States of the federally registered trademark BOONE’S FARM (Stylized) for “wines” (Reg. No. 0694649), as registered on the Principal Register on March 15, 1960, the federally registered trademark BOONE’S FARM for “Wines” (Reg. No. 3789860), as registered on the Principal Register on May 18, 2010, the federally registered trademark BOONE’S for “wine” (Reg. No. 1496065), as registered on the

Principal Register on July 12, 1988, and the federally registered trademark BOONE'S for "Alcoholic beverages except beers" (Reg. No. 4510869), as registered on the Principal Register on April 8, 2014 (collectively the "BOONE'S® Marks"), which were first used in 1959.

3. These registrations are valid and enforceable, and Gallo's exclusive rights in Reg. Nos. 0694649 and 1496065 are incontestable.

4. The mark subject to this Opposition is BOONE COUNTY JAIL VODKA, Serial No. 86/380,534 (the "Opposed Mark") for "Vodka," in International Class 033.

5. Applicant filed United States Application Serial No. 86/380,534 with the U.S. Patent and Trademark Office on or about August 28, 2014. The Application for the Opposed Mark is based on an intent to use. Upon information and belief, the Opposed Mark has not been used in commerce.

6. Because Gallo first used the BOONE'S® Marks on wines and malt beverages many years before Applicant filed its application for the Opposed Mark, and such use has been continuous, Gallo has priority of use.

7. By virtue of Gallo's long, continuous, extensive and exclusive use and marketing, promotion and sale of wines and related products under the BOONE'S® Marks, the BOONE'S® Marks have come to be recognized by the relevant public as identifying wines and related products having their origin or otherwise associated exclusively with Gallo.

8. The Opposed Mark for the International Class 033 goods is confusingly similar in overall commercial impression to the BOONE'S® Marks. Thus, the Opposed Mark evokes the same or a highly similar connotation as the BOONE'S® Marks. Further, Applicant's stated intended goods for the Opposed Mark are related to the goods for which Gallo uses the BOONE'S® Marks. Accordingly, it is likely that consumers will mistakenly believe that the

Opposed Mark for the International Class 033 goods is connected to or associated with Gallo or its BOONE'S FARM® products.

9. The registration of the Opposed Mark would be inconsistent with Gallo's rights in its BOONE'S® Marks and will cause damage to Gallo.

WHEREFORE, Gallo respectfully prays that registration of the Opposed Mark not be permitted.

DATED this 4th day of August, 2015.

Respectfully submitted,

By: /s/ Steven M. Weinberg  
Steven M. Weinberg  
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Attorneys for Opposer E. & J. Gallo Winery

**CERTIFICATE OF SERVICE**

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

Mr. Daniel Christus  
McDermott Will & Emery LLP  
227 W. Monroe St.  
Chicago, Illinois 60606

DATED: August 04, 2015

By: /s/ Nelda Piper  
Nelda Piper  
Paralegal