

ESTTA Tracking number: **ESTTA775671**

Filing date: **10/10/2016**

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

Proceeding	91229806
Party	Defendant Gallos Danny Juan, Inc.
Correspondence Address	LIZMARY LOPEZ ALVAREZ PO BOX 8992 SAN JUAN, PR 00910 lizmarylopez@gmail.com;emartz83@gmail.com
Submission	Answer
Filer's Name	Lizmary Lopez Alvarez
Filer's e-mail	lizmarylopez@gmail.com
Signature	/Lizmary Lopez Alvarez/
Date	10/10/2016
Attachments	GDJ Answer to OPP GALLO.pdf(213808 bytes)

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

In the Matter of:
Application Serial No. 86/908,449

E. & J. GALLO WINERY,)	Opposition No. 912229806
Opposer,)	
)	
v.)	Answer to Opposition
)	
Gallos Danny Juan, Inc.)	
Applicant,)	

ANSWER TO OPPOSITION

Applicant Gallos Danny Juan, Inc., a corporation organized under the laws of the Commonwealth of Puerto Rico, for his answer to the Notice of Opposition filed by E. & J. Gallo Winery against the application for registration of Gallos Danny Juan's trademark NUTRI GALLO, Serial No. 86908449 filed February 16, 2016, pleads as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant admits the paragraph does not require allegation, if required the applicant accordingly denies.
2. Answering paragraph 2 of the Notice of Opposition, Applicant admits does not require allegation, if required the applicant accordingly denies.
3. Answering paragraph 3 of the Notice of Opposition, Applicant admits does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegation.

4. Answering paragraph 4 of the Notice of Opposition, Applicant admits does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegation.
5. Answering the paragraph 5 of the Notice of Opposition, Applicant admits the allegation thereof.
6. Answering the paragraph 6 of the Notice of Opposition, Applicant admits the allegation thereof.
7. Answering paragraph 7 of the Notice of Opposition, Applicant admits does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegation.
8. Answering paragraph 8 of the Notice of Opposition, Applicant admits does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegation.
9. Answering paragraph 9 of the Notice of Opposition, Applicant admits does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegation.
10. Answering paragraph 10 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
11. Answering paragraph 11 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
12. Answering paragraph 11 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

13. Applicant further affirmatively alleges that as a result of its continuous substantial usage of its mark NUTRI GALLO since adoption, this mark is a valuable asset of Applicant and carries considerable goodwill and consumer acceptance of its products sold under the mark. Such goodwill and widespread usage has made the mark distinctive to the Applicant.
14. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception because, inter alia, Applicant's mark and the pleaded marks of Opposer are not confusingly similar.
15. Applicant affirmatively alleges that there is no likelihood of confusion, mistake or deception because, inter alia, Applicant mark and the pleaded marks of Opposer are not confusingly similar. Any similarity, if at all, between Applicant's mark and the pleaded marks of Opposer is in the portion "GALLO" which, upon information and belief, has been used and registered by numerous third parties in the animals, foods, restaurant, and processed foods business. As a result, Opposer cannot base any similarity between its pleaded marks and the mark of Applicant of the "GALLO". Any trademark or service mark rights that Opposer may have are narrowly circumscribed to the goods or services indicated and any other use would not lead to a likelihood of confusion.
16. Applicant further affirmatively alleges that Opposer's "GALLO" mark is limited to the categories included in the Opposer's registries, while the Applicant's mark and application is in a different category, not included in the Opposer's registries.
17. Applicant further affirmatively alleges that Opposer's "GALLO" mark is or has become generic for inexpensive, convenient or easy but low quality or commercialized versions of items and therefore cannot have meaning as a trademark.

18. Applicant further affirmatively alleges that Applicant has been using its mark and developing consumer recognition and goodwill in its mark and Opposer has done nothing and is consequently barred by laches, acquiescence and estoppel from opposing Applicant's application.
19. Applicant further affirmatively alleges that there is no likelihood of dilution of Opposer's mark by tarnishment because Opposer's marks are associated with wines and services, whereas Applicant's mark is associated with natural supplements for roosters or cocks.
20. Applicant further affirmatively alleges that there is no likelihood of dilution by blurring because Opposer's and Applicant's marks are not sufficiently similar; there are upon information and belief, numerous uses and registration of third party marks with the "GALLO" formative; neither Applicant nor Applicant's predecessors in interest intended any association with Opposer's marks or any of them' and upon information and belief, ordinary prospective purchasers of Applicant's products do not associate Applicant's and Opposer's mark.
21. The Applicants reserves the right to include any other affirmative defense that may arise from the Opposition process.

WHEREFORE, Applicant requests that the notice of opposition be dismissed.

Respectfully submitted,
Gallos Danny Juan, Inc.

By: /s/ Lizmary López Álvarez
Lizmary López Álvarez
Attorney, CWPR 18,465
PO Box 8992, San Juan P.R. 00910
787-639-9213
lizmarylopez@gmail.com
Attorney for Applicant

Date: October 9, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND COMPLETE COPY OF THE FOREGOING Applicant's Answer to Notice of Opposition has been served on opposing counsel by mailing said copy on October 9, 2016, via email and on October 10, 2016, via First Class Mail, postage prepaid to:

Michael J. Salvatore
Steven M. Weinberg
Holmes Weinberg, PC
30765 Pacific Coast Highway, Suite 411
Malibu, CA 90265
310.457.6100
msalvatore@holmesweinberg.com
smweinberg@holmesweinberg.com

/s/ Lizmary López Álvarez