

ESTTA Tracking number: **ESTTA580837**

Filing date: **01/09/2014**

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

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	Dark Star Cellars LLC		
Entity	Limited Liability Company	Citizenship	California
Address	2985 Anderson Road Paso Robles, CA 93446 UNITED STATES		

Attorney information	Michael J. Emling Emling Forensics PC 8380 Vineyard Drive Paso Robles, CA 93446 UNITED STATES mike@emling.com Phone:562 491 1400
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### Registration Subject to Cancellation

Registration No	4347035	Registration date	06/04/2013
Registrant	E. & J. GALLO WINERY 600 YOSEMITE BOULEVARD MODESTO, CA 95354 CANADA		

### Goods/Services Subject to Cancellation

Class 033. First Use: 2012/12/18 First Use In Commerce: 2012/12/18  
All goods and services in the class are cancelled, namely: Wines

### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	DARK STAR		
Goods/Services	Wine		

Attachments	140107.dark star.petition to cancel.attachement version.pdf(35050 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	/Michael J. Emling/
Name	Michael J. Emling
Date	01/09/2014

- 1 1. Petitioner Dark Cellars LLC is a California limited  
2 liability company in good standing, located at 2985  
3 Anderson Road., Paso Robles, California, 93446.
- 4 2. Respondent E. & J. Gallo Winery is a California Corporation  
5 in good standing, located at 600 Yosemite Boulevard,  
6 Modesto, California, 95354.
- 7 3. Respondent E. & J. Gallo Winery registered a trademark in  
8 the word mark "Dark Star" under registration number  
9 4347035. The registration is on Class 33, Wines. The  
10 claimed date of first use is December 18, 2012. The  
11 claimed date of first use in commerce is December 18, 2012.
- 12 4. Petitioner Dark Cellars LLC has superior rights to the  
13 trademark "Dark Star" for wines based on priority of use.
- 14 5. Dark Star Cellars was founded in 1994. It was licensed to  
15 produce wine in 1996. Petitioner began selling wines under  
16 the name "Dark Star" in 1997. The first sales in commerce  
17 occurred no later than October 27, 1997, by which time  
18 individuals from the State of New York and the State of  
19 Florida had joined the Dark Star wine club.
- 20 6. Petitioner's use of the mark "Dark Star" has been open and  
21 obvious, and readily ascertainable by the simplest search  
22 techniques, including any basic Internet search.