

ESTTA Tracking number: **ESTTA722813**

Filing date: **01/26/2016**

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	Constellation Brands U.S. Operations, Inc.
Granted to Date of previous extension	03/23/2016
Address	235 North Bloomfield Road Canandaigua, NY 14424 UNITED STATES

Attorney information	Stephen L. Baker Baker and Rannells PA 575 Route 28 Raritan, NJ 08869 UNITED STATES officeactions@br-tmlaw.com,K.Hnasko@br-tmlaw.com,s.baker@br-tmlaw.com Phone:908 722 5640
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Applicant Information

Application No	86687357	Publication date	11/24/2015
Opposition Filing Date	01/26/2016	Opposition Period Ends	03/23/2016
Applicant	Bello Family Vineyard, LLC 929 Main St. St. Helena, CA 94574 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 2011/06/11 First Use In Commerce: 2011/06/11 All goods and services in the class are opposed, namely: Fortified wines; Grape wine; Port wines; Red wines; Rose wines; Sparkling grapewine; Sparkling wines; Still wines; Sweet wines; Table wines; White wine; Wines

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

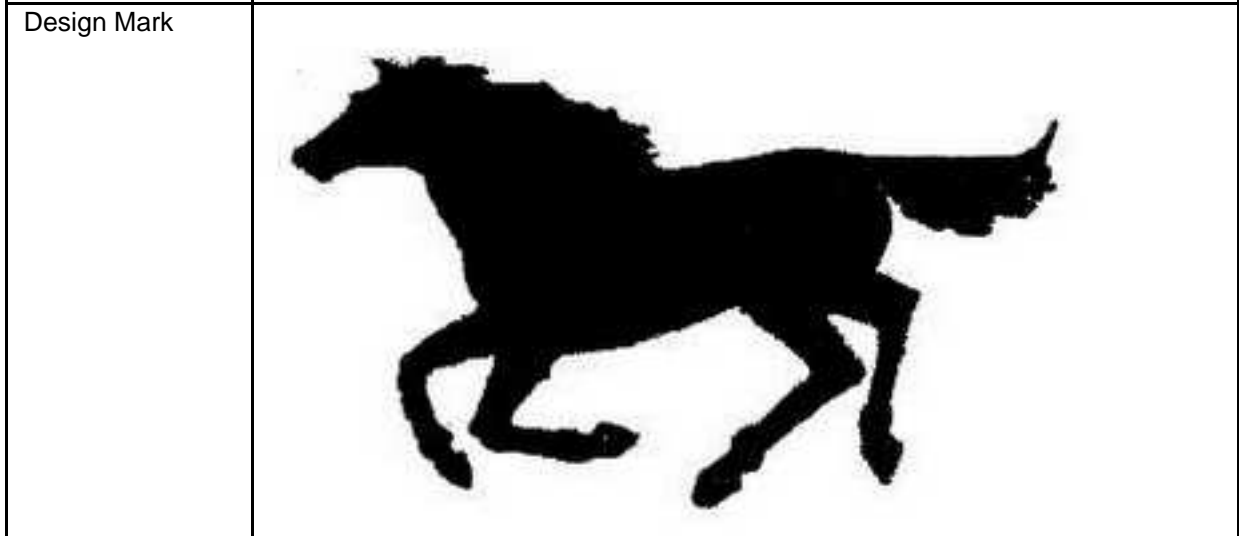
Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1483753	Application Date	06/26/1986
Registration Date	04/05/1988	Foreign Priority	NONE

		Date	
Word Mark	WILD HORSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1986/03/26 First Use In Commerce: 1986/05/27 WINES		

U.S. Registration No.	3516357	Application Date	03/31/2008
Registration Date	10/14/2008	Foreign Priority Date	NONE

Word Mark	NONE
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Description of Mark	The mark consists of a drawing of a horse.
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Goods/Services	Class 033. First use: First Use: 1986/03/26 First Use In Commerce: 1986/05/27 Wines
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U.S. Registration No.	3649988	Application Date	08/25/2008
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Registration Date	07/07/2009	Foreign Priority Date	NONE
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Word Mark	CHEVAL SAUVAGE
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Description of Mark	NONE
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Goods/Services	Class 033. First use: First Use: 1992/10/02 First Use In Commerce: 1992/10/02 Wines
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Word Mark WILD HORSE and design of horse as shown in Reg. No. 3516357		
Goods/Services	wine club services, online retail services featuring wine, entertainment services, namely, wine tastings; conducting guided tours of a winery and vineyard, entertainment events and food service; apparel, coasters, beverage glassware, bar accessories, education services, and entertainment services		

Attachments	77435887#TMSN.png(bytes) 77554915#TMSN.png(bytes) doc06106620160126153002.pdf(4453915 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	/Stephen L. Baker/
Name	Stephen L. Baker
Date	01/26/2016

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

Constellation Wines U.S. Operations, Inc.

Opposition No.

Opposer,
v.

Mark:
Serial No. 86687357

Bello Family Vineyard, LLC

Filed: July 8, 2015

Applicant.



NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C. § 1063

Opposer, Constellation Wines U.S. Operations, Inc. (“Opposer”), by its attorneys Baker and Rannells, PA, alleges on knowledge as to its own acts and otherwise on information and belief and as grounds for opposition as follows:

1. Opposer believes that allowing Application Serial No. 86687357 to proceed to registration will cause Opposer damage.
2. Opposer, Constellation Wines U.S. Operations, Inc., is a corporation organized and existing under the laws of the State of Delaware, doing business at 235 North Bloomfield Road Canandaigua NY 14424
3. Applicant, Bello Family Vineyard, LLC (“Applicant”), is limited liability company formed under the laws of California with offices at 929 Main St., St. Helena CA 94574.

4. On July 8, 2015 , Applicant filed an intent to use Application, namely



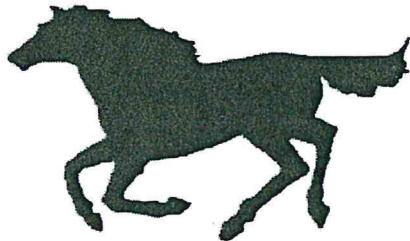
Serial No. 86687357, for the mark (“Applicant’s Mark”) as a trademark for

Applicant’s Goods and Services, namely:

Goods and Services IC 033. US 047 049. G & S: Fortified wines; Grape wine; Port wines; Red wines; Rose wines; Sparkling grape wine; Sparkling wines; Still wines; Sweet wines; Table wines; White wine; Wines. FIRST USE: 20110611. FIRST USE IN COMMERCE: 20110611

5. Application Ser. No. 86687357 was published for opposition in the Official Gazette on November 24, 2015, the time to Oppose having been extended.

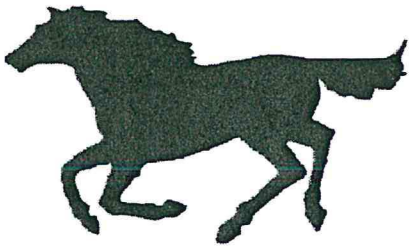
6. Opposer is the owner of the trademarks, trade name and service marks



WILD HORSE and

, for wine.

7. Opposer is the owner of?

Serial Number	Reg. Number	Mark
73606560	1483753*	WILD HORSE in Class 33
77435887	3516357*	 <p style="text-align: right;">-Class 33</p>
77554915	3649988*	CHEVAL SAUVAGE in class 33 (translates into English as Wild or Savage Horse)
77456971	3571757	UNBRIDLED in class 33

* designates registrations which have become incontestable pursuant to 15 USC §1065.

hereinafter collectively referred to as “Opposer’s Marks” for its winery, wine tours and tastings, wines, apparel, coasters, beverage glassware, bar accessories, education services, and entertainment services and related goods and services (“Opposer’s Goods and Services”).

8. Exhibit A annexed hereto demonstrates the common law use of Opposer’s Marks on use on wine club services, online retail services featuring wine, entertainment services, namely, wine tastings; conducting guided tours of a winery and vineyard, entertainment events and food service.

9. In addition to the above, Opposer offers for sale various wine related goods under Opposer’s Marks.

10. Opposer’s word marks WILD HORSE and CHEVAL SAUVAGE are the legal equivalent of Applicant’s design of “wild” horse.

11. Applicant's horse is unbridled and is this the equivalent of Opposer's UNBRIDLED word mark.

12. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant using Opposer's Marks as a trademark.

13. Opposer is now and has been for many years trading as and known by Opposer's Marks, identifying Opposer as the source of high quality products.

14. Applicant's Goods and Services are the same or substantially similar or generally related to Opposer's Goods and Services.

15. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the use of Opposer's Marks for Opposer's Goods and Services.

16. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the sale of high quality products under Opposer's Marks.

17. Since long prior to any date which may be claimed by Applicant, Opposer on its own behalf has been, and is now engaged in the sale of high quality products related to those of Applicant under Opposer's Marks in interstate commerce.

18. The use by Opposer of Opposer's Marks for Opposer's Goods and Services alleged herein, is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

19. Opposer's Marks and Applicant's Mark are substantially identical and confusingly similar when applied to the goods and services of the parties.

20. Since Opposer owns Opposer's Marks by virtue of prior use, confusion, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

21. Opposer's Goods and Services have been widely advertised, offered for sale and sold throughout the United States under Opposer's Marks and Opposer's Marks are famous.

COUNT 1

LIKELIHOOD OF CONFUSION

22. The registration of Applicant's Mark to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's Goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), all to Opposer's irreparable damage.

COUNT II

FRAUD IN THE USPTO

23. Opposer repeats and re-alleges paragraphs 1 to 22 above with the same force and effect as if set forth herein at length.

24. On July 8, 2015, in Applicant's application, Applicant, having no use or bona-fide intent to use Applicant's Mark on all the goods in the application, knowingly made a false and fraudulent statement in Applicant's application wherein it falsely claimed, "the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use

by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application;" for Applicant's International class 33 goods, namely Fortified wines; Grape wine; Port wines; Red wines; Rose wines; Sparkling grape wine; Sparkling wines; Still wines; Sweet wines; Table wines; White wine; Wines.

25. To the extent Applicant had any use of its alleged mark as of July 8, 2015, such use as demonstrated by Applicant's web site (<http://www.bellofamilyvineyards.com/Bello-Wines>), was and is still limited to grape wine, red wine, still wines and wine.

26. Statement's made to the effect that Applicant used its mark on namely Fortified wines; Port wines; Rose wines; Sparkling grape wine; Sparkling wines; Sweet wines; and White wine were false at the time the same were made and continue to be false.

27. The false and fraudulent declaration referred to above with respect to Applicant's Mark was made by Applicant with actual knowledge of its falsity, and was not made on information and belief and was made by a person or entity who knew or should have known the same was false and fraudulent.

28. Applicant knowingly made a false, material misrepresentation of fact in connection with Applicant's application when it made the false and fraudulent declaration referred to above.

29. The false and fraudulent declaration referred to above with respect to Applicant's Mark was made with the intent to deceive the USPTO and that the USPTO rely upon the same.

30. The USPTO did rely on the false and fraudulent declaration when it acknowledged the filing of the applications and allowed Applicant's application to publish.

31. As a result, Applicant willfully and knowingly perpetrated a fraud on the United States Patent and Trademark Office.

32. Applicant is not entitled to a Registration on the Principal Register of Applicant's Mark as Applicant has never had any legitimate interest in Applicant's Mark, and because Applicant knowingly committed fraud when it filed Applicant's application.

33. Had it been aware of the false and fraudulent declaration referred to above and of Applicant's knowing fraudulent acts, the USPTO would not have accepted the filing of the applications, nor allowed Applicant's application to publish.

COUNT III

NO BONA FIDE INTENT TO USE

34. Opposer repeats and re-alleges paragraphs 1 to 33 above with the same force and effect as if set forth herein at length.

35. Applicant's application is void ab initio as Applicant had no bona fide use Applicant's Mark for all the goods claimed as Applicant's Goods.

COUNT IV

UNFAIR ASSOCIATION

36. Opposer repeats and re-alleges paragraphs 1 to 35 above with the same force and effect as if set forth herein at length.

37. Applicant's Mark falsely suggests a connection with Opposer, and/or will bring Opposer into contempt or disrepute, in violation of §2(a) of the Lanham Act, 15 U.S.C. §1052(a), all to Opposer's irreparable damage.

38. Applicant's use of Applicant's Mark points uniquely and unmistakably to Opposer.

39. Consumers that encounter Applicant's Mark will recognize Applicant's Mark as pointing uniquely and unmistakably to Opposer.

40. Issuance of registration for Applicant's Mark to Applicant would create a false and misleading connection to Opposer all to the irreparable damage of consumers and Opposer.

41. Issuance of registration for Applicant's Mark to Applicant would create a cloud on Opposer's rights to use Opposer's Marks for Opposer's Goods and Services.

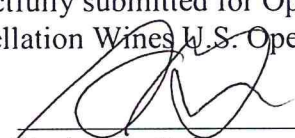
42. Opposer believes that it is and will be damaged by registration of the mark applied for by Applicant.

WHEREFORE, Opposer prays that the application for registration of Applicant's Mark, Serial No. 86687357, filed on July 8, 2015 be denied and that this Opposition be sustained.

Dated: January 26, 2016

Respectfully submitted for Opposer
Constellation Wines U.S. Operations, Inc.

By:



Stephen L. Baker
John M. Rannells
Jesus Vazquez
BAKER and RANNELLS, PA
92 East Main Street – Suite 302
Somerville, New Jersey 08876
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Notice of Opposition, in was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 26th day of January, 2016 to the attorney for the Applicant at the following address:

MARC E. HANKIN
Hankin Patent Law Apc
12400 Wilshire Blvd Ste 1265
Los Angeles, CA 90025-1041

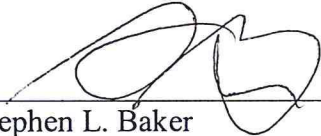
By 
Stephen L. Baker

EXHIBIT A



Unwind.
Leave the
Highway
Behind.

Does life often take
you off the beaten
path? Then you
should stop by
and visit us.

Unbridled.
Like no other.

Winery Tours & Tastings

Tasting

Wild Horse Winery's tasting room is located in the heart of Templeton amidst the rolling hills, olive groves, vineyards and beautiful oak trees. Visit the tasting room and sample our special Reserve wines which are only available at the winery. These include 4 different Pinot Noirs (our flagship wine) plus Malbec, Sauvignon Blanc, Merlot, Chardonnay, Viognier and much more.

Family and pet friendly, our tasting room offers a lovely patio for picnics and don't forget to visit the llamas! Floyd, Dolly and Salvador love visitors so bring an apple or carrots (and your camera).

Walk-In Tastings

\$5.00 per person, for five samples
Tasting fees are waived with each wine purchase

Reservations required for groups of ten or more. Call 805-798-6310 to make your group reservation.

Pinot on the Patio

\$15.00 per person
\$12.00 per wine club member

Pinot on the Patio is a special tasting outside where we pair our four reserve Pinots with four cheeses. The pinots are served side by side so it's a great way to sample them all and really get the most out of the different terroirs and vineyards the Pinots come from.

Offered daily pending weather

Reservations required for groups of ten or more. Call 805-798-6310 to make your group reservation.

FEEDBACK

http://www.wildhorsewinery.com/Visit-Us/Tours-and-Tastings

File Edit View Favorites Tools Help

Page Safety Tools

No feeds detected on this page (Alt+J)
Feeds provide updated website content

reservation

Pinot on the Patio

\$15.00 per person
\$12.00 per wine club member

Pinot on the Patio is a seated tasting outside where we pair our four reserve Pinots with four cheeses. The pinots are served side by side so it's a great way to sample them all and really get the most out of the different terroirs and vineyards the Pinots come from.

Offered daily pending weather.

Reservations required for groups of ten or more. Call 805-785-6310 to make your group reservation.

Cheese & Charcuterie Plate

Reservations Required

\$15.00 per person

Enjoy a delightful collection of local cheeses and charcuterie perfect for a snack or paired with our wine tastings.

Call 805-785-6310 to make your Cheese & Charcuterie reservation.

Tours

A Grape to Glass Experience - Unique, Fun and Educational!

Join us for a Grape to Glass tour at Wild Horse Winery. Learn what happens in the vineyards and in the cellar, and end with a special wine tasting. During the tour, we encourage you to bring just two things: your walking shoes and lots of questions! This is your unique opportunity to learn and experience the down and dirty details of Wild Horse Winery.

\$15 per person
Complimentary for wine club members and up to 3 guests

Available Saturday and Sunday, reservations requested. Call the Visitor Center for more information at 805.785.6310.

FEEDBACK

4:54 PM
1/25/2016

Internet Explorer browser window showing the website <http://www.wildhorsewinery.com/Events>. The address bar also displays "Trademark Electronic Search S..." and "Events - Wild Horse Winery".

The website header includes the Wild Horse logo and navigation links: Home, Our Wines, Our Winery, Visit Us, and Wine Club. Account information shows "YOUR ACCOUNT | LOGIN" and "CART 0 ITEMS \$0.00".

The main content area features a large image of a vineyard with the text: "Unwind. Leave the Highway Behind. Does life often take you off the beaten path? Then you should stop by and visit us." Below this is a smaller image with the text: "Unbridled. Like no other."

The "Upcoming Events" section for February 2016 features a "Mardi Gras Pick Up Party!" scheduled for 1:00 PM to 4:00 PM on Sat, Feb 20, 2016. Contact information is provided: Leslie 805-766-6315, leslie.churchill@wildhorsewinery.com. An image of Mardi Gras masks is displayed below the event details.

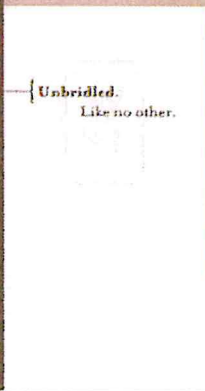
A vertical "FEEDBACK" button is visible on the right side of the page.

The Windows taskbar at the bottom shows the system clock at 4:55 PM on 1/25/2016, along with various application icons.



Undeniable Advantages. Our Wine Club.

Join and become a member of our Wild Horse Family. We'll keep you up to date on our latest releases, parties and other winery events.



Wild Horse Winery & Vineyards Wine Club Members Enjoy:

- Special wine discounts - 20% on all wine purchases, 10% on reds, and case discounts offered
- 15% discount on all non-wine merchandise
- Complimentary reserve tastings for you and five friends when you visit the Wild Horse Winery & Vineyards tasting room
- Exclusive invitations to our member-only events
- Updates from the winery in regular newsletters and emails so you don't miss out
- Share the love - Purchase gift memberships for friends & family...and there is no membership fee to join!

Have a questions? Feel free to call us at 565.577.3597

Pinot Lovers

Each Pinot Noir Club quarterly shipment includes two bottles of our favorite Wild Horse Pinot Noir. Selections are chosen from our Central Coast series, Unbridled series or even our Cheval Sauvage.



FEEDBACK

Red & White Wines

Each Red & White Wines Club quarterly shipment includes three bottles, two reds and one white, including Unlimited and tasting room exclusives.

Quarterly Shipments:

- Shipped during February, May, September and November
- 20% off all wine orders & 30% off wine club shipment members
- Average shipment price range: \$70-\$100 + Shipping & taxes (where applicable)

[Join Now](#)



Reds Only

Each Red Wine Club quarterly shipment includes three bottles of red wine including Unlimited and tasting room exclusives.

Quarterly Shipments:

- Shipped during February, May, September and November
- 20% off all wine orders & 30% off wine club shipment members
- Average shipment price range: \$70-\$110 + Shipping & taxes (where applicable)

[Join Now](#)



Case Club

Purchase one case of wine twice a year (March and October). You choose the wines you want to receive. If we don't hear from you, we'll send you a mixed case of our favorite wines.

Two 12-Bottle Shipments Per Year:

- Shipped during April and October
- 20% off all orders
- Receive the pre-selected shipment, or choose your own

[Join Now](#)



FEEDBACK

Internet Explorer browser window showing the Wild Horse Winery website. The address bar displays <http://www.wildhorsewinery.com/Wine-Club>. The page content includes:

- Join Now** button
- Reds Only** section:
 - Each Red Wine Club quarterly shipment includes three bottles of red wine including Unlabeled and tasting room exclusives.
 - Quarterly Shipments:**
 - Shipped during February, May, September and November.
 - 20% off all wine orders & 30% off wine club shipment residents.
 - Average shipment price range: \$70-\$110 + Shipping & Taxes (where applicable).
 - Join Now** button
- Case Club** section:
 - Purchase one case of wine twice a year (March and October). You choose the wines you want to receive. If we don't hear from you, we'll send you a mixed case of our favorite wines.
 - Two 12-Bottle Shipments Per Year:**
 - Shipped during April and October.
 - 20% off all orders.
 - Receive the pre-selected shipment or choose your own.
 - Join Now** button

Navigation links: [Shipping Information](#) | [Contact Us](#) | [Privacy Policy](#) | [Terms Of Use](#) | [Returns & Cancellations](#) | [Trade](#) | [Where to Buy](#) | [Site Map](#)

Responsible drinking notice:
Please enjoy our wines responsibly.
© 2016 Wild Horse Winery and Vineyards, Templaton, CA
1437 Wild Horse Winery Ct., Templaton, CA 93465 | 805.755.6300

Windows taskbar at the bottom shows the time as 5:02 PM on 1/25/2016.