

ESTTA Tracking number: **ESTTA913528**

Filing date: **08/03/2018**

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

|                        |   |
|------------------------|---|
| Proceeding             | 91236165  |
| Party                  | Plaintiff<br>Vina Concha y Toro S.A.  |
| Correspondence Address | GEORGE W LEWIS<br>WESTERMAN HATTORI DANIELS & ADRIAN LLP<br>1250 CONNECTICUT AVE, NWSUITE SUITE 700<br>WASHINGTON, DC 20036<br>UNITED STATES<br>Email: trademarkmail@whda.com, glewis@whda.com, tjeffery@whda.com |
| Submission             | Reply in Support of Motion  |
| Filer's Name           | Seth Natter   |
| Filer's email          | snatter@natterip.com, docket@natterip.com, us.docket@natterip.com   |
| Signature              | /Seth Natter/   |
| Date                   | 08/03/2018  |
| Attachments            | Reply.pdf(17002 bytes )<br>EXHIBIT N.pdf(145413 bytes )   |

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

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|-----------------------|---|--------------------------|
| Viña Concha y Toro SA | : |                          |
| Opposer               | : |                          |
|                       | : |                          |
| v.                    | : | Opposition No.: 91236165 |
|                       | : |                          |
| Citadel Trading Corp. | : |                          |
|                       | : |                          |
| Applicant.            | : |                          |

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REPLY

Applicant, by its attorneys, hereby replies to Opposer's response to Applicant's motion to compel.

**Point 1.**

More than 6 months have passed since service of Applicant's Interrogatories and Production Requests, yet verified Interrogatory Answers have not been produced.

**Point 2.**

Of the 1032 documents produced by Opposer, only one document, No.VINA 000141, has been identified as being responsive to a specific document request. 1031 documents remain unidentified.

**Point 3.**

Opposer's unverified answer to Interrogatory No. 8 is inadequate. Opposer's Initial Disclosures (Exhibit B) recites the following:

**“Individuals Believed Likely to Have Discoverable Information to Support Petitioner's Claims and Defenses.**

The following list identifies those individuals likely to have discoverable information that Petitioner may use to support the grounds stated in its Opposition. Opposer's statements are based on information presently available to it, and it reserves the right to supplement the list as discovery progresses. Subject to the foregoing, Opposer discloses the following individual:

Italo Jofré, assistant-manager for sales of Viña Concha y Toro S.A. is the Company executive who has responsibilities for matters involving the sale, advertising. Promotion and distribution of AMELIA brand wine in the U.S. Mr. Jofré is resident on the Opposer's corporate Offices in Chile.”

Interrogatory No. 8 requests a summary of the substance of Mr. Jofré's knowledge relating to the promotion and distribution of wines under Opposer's Marks in the United States. While it is Opposer's intention to introduce Mr. Jofré's testimony by way of affidavit, (see Exhibit N attached) Opposer has refused to furnish a summary of his knowledge. Opposer's answer merely repeats that he has knowledge.

**Point 4.**

Interrogatory No. 14, seeks actual gross wholesale and retail sales, by month and year, of Opposer's wines, other than those sold under Opposer's Marks in the United States for each year since 2010 and an identification of all documents related thereto.

This interrogatory was objected to on the grounds that the information is not relevant. Attention is directed to Paragraph 1 of the Notice of Opposition wherein Opposer alleges to be "...America's largest exporter of wine from Chile." Interrogatory No. 14 requests information relevant to this allegation.

**Point 5.**

Interrogatory 15 requests an identification of negative comments relating to Opposer's wines from wine rating entities, publications, consumers, retailers and distributors.

Opposer's initial unverified answer comprised an objection that the information was not relevant and that the information was outside Opposer's possession and control. In Opposer's response to the instant motion, Opposer's now states that it has produced documents relating to all reviews and ratings. Conspicuously absent from this new response is any indication that the documents relate to negative comments or an identification of the document numbers which are responsive. Further, there is no mention, in the current response, of negative comments from consumers, retailers and distributors.

**Conclusion**

**Applicant's motion should be granted:**

Verified Interrogatory Answers should be required.

All documents produced should be identified.

A full and complete answer to Interrogatory No. 8 should be required.

A full and complete answer to Interrogatory No. 14 should be required.

A full and complete answer to Interrogatory No. 15 should be required.

Dated: New York NY  
August 3, 2018

Respectfully submitted,  
Natter & Natter  
Attorneys for Applicant  
501 Fifth Avenue  
New York NY 10017  
212-840-8300 Ext 3  
/Seth Natter/  
By: Seth Natter  
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**CERTIFICATE OF SERVICE**

This will certify that on August 3, 2018 a copy of the foregoing Reply is being e-mailed to the attorney for Opposer, George W. Lewis as follows: glewis@whda.com.

/Seth Natter/  
Seth Natter

# EXHIBIT N

## Seth Natter

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**From:** Lewis, George  
**Sent:** Wednesday, November 29, 2017 2:55 PM  
**To:** Seth Natter  
**Cc:** Jeffery, Tracey  
**Subject:** RE: Vina Concha y Toro S.A. vs. Citadel Trading Corp - Mark: MYLIA - Application Serial No. 87254798 - OT170010US0  
**Attachments:** Opposer's Initial Disclosures to Applicant.pdf

Seth Natter  
Natter & Natter  
501 Fifth Avenue  
New York, NY 10017

RE: Vina Concha y Toro S.A. vs. Citadel Trading Corp.  
Mark: MYLIA  
Trademark Application Serial No. 87254798  
Our Ref.: OT170010US0

Dear Seth,

Please see the attached.

Please also note that I am still waiting for your response to our proposal to rely on affidavits for the introduction of evidence during the trial stage as provide for by TBMP Sections 702.02 and 703.01. Since our client is out of the country, the alternative is to take testimony by means of written depositions. This issue was raised by us during the Discovery Conference and should have been resolved before the parties could go forward.

Yours truly,  
/george/  
George W. Lewis  
Westerman, Hattori, Daniels & Adrian

GWL/

Attachment

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