

ESTTA Tracking number: **ESTTA969533**

Filing date: **04/25/2019**

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

Proceeding	91236165
Party	Plaintiff Vina Concha y Toro S.A.
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Date	04/25/2019
Attachments	OT170010US00 Opposers Response to Applicants Renewed Motion for Sanctions.pdf(91119 bytes )

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

Viña Concha y Toro SA	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91236165
	)	Application Serial No. 87254798
Citadel Trading Corp.	)	Mark: MYLIA
	)	
Applicant.	)	
	)	

**OPPOSER’S OPPOSITION TO APPLICANT’S RENEWED MOTION FOR  
DISCOVERY SANCTIONS**

Opposer, Viña Concha y Toro S.A. (“Opposer”) hereby opposes and responds to Applicant Citadel Trading Corp.’s Renewed Motion for Discovery Sanctions filed and served on April 5, 2019.

This Board’s November 5, 2018, Decision and Order allowed Opposer 20 days from November 5, 2018 to serve 1) verified supplemental responses to Interrogatory Nos. 8, 14 and 15. On November 19, 2018 Opposer served on Applicant a verified copy of Opposer’s Responses and indicated that it would consider whether further Supplemental Responses might be required in light of the Board’s Order.

The Board’s February 27, 2019 Decision Denied Applicant’s Motion without Prejudice on the ground that it failed to introduce Opposer’s Supplemental Responses.

In its Prior and Current Motion for Sanctions, Applicant asserts that Opposer failed to meet its obligations and seeks the following sanctions:

- 1) Opposer be precluded from offering testimony of Italo Joffré, by way of affidavit or otherwise;
- 2) Opposer be precluded from offering any evidence relating to the promotion and distribution of wines under Opposer’s Marks in the United States;
- 3) Opposer be precluded for offering any evidence to substantiate the

allegations in Paragraph 1 of the Notice of Opposition that Opposer is Latin America's largest producer of wine and accounts for nearly a quarter of Chile's total wine production and that Opposer is America's largest exporter of wine from Chile.

Interrogatory No. 8 requests a "summary of the substance of Italo Jofré's knowledge relating to the promotion and distribution of wines under Opposer's Marks in the United States." Mr. Italo Jofré is the sales representative in the U.S. market for AMELIA branded wines and has knowledge of the promotion, marketing and distribution of wines sold under Opposer's Marks in the United States. The Board stated in its November 5, 2018 Order:

The record shows that this is an individual whom Opposer identified in its initial disclosures as likely to have discoverable information to support Opposer's claims, though no actual information is provided in response to the interrogatory. Opposer's response is obfuscating at best. Applicant is entitled to probe the specifics of the disclosed individual's knowledge<sup>1</sup>

As pointed out in Applicant's prior and instant Motion, Opposer sought assistance and clarification of the Interrogatory 8.2 Based upon counsel's comments, Applicant was insisting upon the subject matter of the witness' testimony. This interrogatory seeks a "summary of the substance of Mr. Italo Jofré's knowledge relating to the promotion and distribution of wines under Opposer's Marks in the United States." The Board stated that Applicant was "... entitled to probe the specifics of the disclosed individual's knowledge." This inquiry does not entitle the Applicant to the specifics of the witnesses proposed testimony. As regards this apparent impasse, Applicant's position is that since objection to Interrogatory No. 8 was neither raised in Opposer's initial response, nor in Opposer's Response to Applicant's Motion to Compel. 10 TTABVUE 2. the objection has been waived and cannot be asserted. Fed. R. Civ. P. 33(b)(4),

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<sup>1</sup> While this person has discoverable information, Applicant never noticed his deposition or moved in a timely manner that would have left Applicant the option to seek further information.

<sup>2</sup> The Motion fails to mention or include as Exhibits the November 23, 2018 email exchange between counsels on this subject that occurred prior to the due date to provide. Opposer tried in good faith to provide Applicant with additional information. Counsel for Applicant initially offered to discuss this matter, but lost interest when asked to commit his position and comments to writing and when it became apparent that the parties' counsel had different understandings of the matter sought by the Interrogatory.

TBMP §405.04(b). This is not the basis for the impasse. The parties disagree as to the nature of the information sought by the Interrogatory. Applicant insisted upon the details of Mr. Jofré's proposed testimony. Opposer insists that "summary of the substance of Italo Jofré's knowledge" refers to his qualifications as a witness. Had Applicant cooperated, this impasse might have been resolved.

Mr. Italo Jofré is identified as the Sales Representative for the U.S., and by virtue of this position, he has knowledge of the sales, marketing, distribution and promotion of AMELIA brand wine in the U.S. This is the substance of his knowledge and this was sufficient notice for further discovery.

Interrogatory No. 14 seeks the 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 identify all documents related thereto. Applicant has responded in its Answer to the Interrogatories that Opposer is neither a retailer nor wholesaler and does not have access to this information. Applicant's Motion claims that because Opposer is a part owner of Excelsior Wine Company, LLC, it should have access to such information. The sale and distribution of wine in the U.S. is far more complicated than suggested by Applicant's Motion. The laws differ from state to state and in some cases from county to county and from consumer to commercial sales. In many jurisdictions direct sales from exporter or distributor is prohibited so that in many cases there are intervening third parties in the chain of sale. Applicant does not have access to the aggregate wholesale figures sought by the Interrogatory. The fact that there is a relationship between Opposer and Excelsior Wine Company, LLC does not alter these circumstances.

Interrogatory No. 15 requests all negative comments relating to Opposer's wines from wine rating entities, publications, consumers, retailers and distributors. Opposer has produced documents relating to all reviews and ratings in its possession and control and this was so stated

in the Supplemental responses.

Opposer submits that there is no basis for:

1. Precluding from offering testimony of Italo Joffré, by way of affidavit or otherwise in connection with his activities as the Sales Representative including the advertising, promotion, marketing and related matters of AMELIA brand wine in the U.S.;
2. for precluding Opposer from offering any evidence relating to the promotion and distribution of wines under Opposer's Marks in the United States. Neither Interrogatories 8, 14 or 15 related to that subject. Interrogatory 14, specifically related to Opposer's wines other than AMELIA brand wine.
3. for prohibiting Opposer from offering any evidence that Opposer is Latin America's largest producer of wine and accounts for nearly a quarter of Chile's total wine production and that Opposer is America's largest exporter of wine from Chile. Opposer has not failed to answer or produce documents related to these subjects.

Respectfully submitted,

**VIÑA CONCHA Y TORO S.A.**

Date: April 25, 2019

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Attorneys for Opposer

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing **OPPOSER'S RESPONSE TO APPLICANT'S RENEWED MOTION FOR DISCOVERY SANCTIONS** was served on Applicant via e-mail on this 25<sup>th</sup> day of April, 2019, at their email address of record with the TTAB as follows:

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