

ESTTA Tracking number: **ESTTA1119490**

Filing date: **03/10/2021**

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	EBM Associates, LLC
Granted to Date of previous extension	03/10/2021
Address	132 EAST CARRILLO STREET SANTA BARBARA, CA 93101 UNITED STATES
Party who filed Extension of time to oppose	Miller Family Wine Company, LLC
Relationship to party who filed Extension of time to oppose	null

Attorney information	JOSEPH T. NABOR FITCH EVEN TABIN & FLANNERY LLP 120 S. LASALLE STREET SUITE 2100 CHICAGO, IL 60603 UNITED STATES Primary Email: trademark@fitcheven.com Secondary Email(s): jtnabo@fitcheven.com 312-577-7000
Docket Number	21299-150570

**Applicant Information**

Application No.	90023457	Publication date	11/10/2020
Opposition Filing Date	03/10/2021	Opposition Period Ends	03/10/2021
Applicant	Vintage Wine Estates, Inc. 205 CONCOURSE BOULEVARD SANTA ROSA, CA 95403 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 033. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Alcoholic beverages except beers

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3092643	Application Date	02/28/2005
Registration Date	05/16/2006	Foreign Priority Date	NONE
Word Mark	BIEN NACIDO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1980/01/01 First Use In Commerce: 1980/01/01 wines		

U.S. Registration No.	3158172	Application Date	11/16/2005
Registration Date	10/17/2006	Foreign Priority Date	NONE
Word Mark	BIEN NACIDO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1980/01/01 First Use In Commerce: 1980/01/01 raw unprocessed wine grapes		

U.S. Registration No.	4929089	Application Date	05/11/2015
Registration Date	03/29/2016	Foreign Priority Date	NONE
Word Mark	BIEN SALUD WINERY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2015/04/16 First Use In Commerce: 2015/07/17 Wines		

U.S. Registration No.	5732181	Application Date	08/14/2018
Registration Date	04/23/2019	Foreign Priority Date	NONE
Word Mark	BIEN NACIDO ESTATE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 033. First use: First Use: 2016/03/08 First Use In Commerce: 2018/04/05 Wines

U.S. Registration No.	5750030	Application Date	09/12/2018
Registration Date	05/14/2019	Foreign Priority Date	NONE
Word Mark	BIEN NACIDO & SOLOMON HILLS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 039. First use: First Use: 2016/05/01 First Use In Commerce: 2016/08/01 Delivery of wine to wine club members on a periodic basis Class 041. First use: First Use: 2016/05/01 First Use In Commerce: 2016/08/01 Entertainment services, namely, wine tastings; Entertainment services, namely, wine and food tastings; Entertainment services, namely, arranging, conducting and organizing social events featuring wine; Educational services, namely, conducting programs and events pertaining to wine and food pairing, and winemaking		

Attachments	21299-150570 BIEN SUR Not of Opp.pdf(1377409 bytes )
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Signature	/Joseph T. Nabor/
Name	JOSEPH T. NABOR
Date	03/10/2021

21299-150570

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

EBM Associates, LLC,	)
	)
Opposer,	)
	)
v.	)
	)
Vintage Wine Estates, Inc.,	)
	)
Applicant.	)
<hr style="width: 25%; margin-left: 0;"/>	
Serial No.: 90023457	)
Filed: June 26, 2020	)
Mark: BIEN SÛR	)
Published: November 10, 2020	)

NOTICE OF OPPOSITION

The EBM Associates, LLC, a Delaware limited liability company, located and doing business at 132 East Carrillo Street, Santa Barbara, California 93101 (hereinafter referred to as “EBM”), believes that it will be damaged by registration of the Bien Sûr trademark Application No. 90023457 filed by Vintage Wine Estates, Inc., a California corporation, (hereinafter referred to as “Applicant”), and opposes the same on the following grounds:

COUNT I – LIKELIHOOD OF CONFUSION

1. EBM owns various trademark registrations related to wine, wine grapes, and entertainment and educational services pertaining to wine that include and are dominated by “Bien”.
2. Based on its current and continued actual use of the BIEN NACIDO trademark anywhere and in U.S. commerce beginning at least as early as January 1, 1980 and the February 28, 2005 filing of Application No. 78576245, EBM owns incontestable Registration No. 3092643 for the standard character BIEN NACIDO mark issued on May 16, 2006 for use on “Wines” in International Class 33. A current print out of information from the USPTO electronic database records showing the current status and title of Registration No. 3092643 appears in Exhibit A. Said registration is

presently valid and subsisting and is now owned by EBM and is *prima facie* evidence of EBM's exclusive right to use said mark in commerce on the goods.

3. Based on its current and continued actual use of the BIEN NACIDO trademark anywhere and in U.S. commerce beginning at least as early as January 1, 1980 and the November 16, 2005 filing of Application No. 78755041, EBM owns incontestable Registration No. 3158172 for the standard character BIEN NACIDO mark issued on October 17, 2006 for use on "Raw unprocessed wine grapes" in International Class 31. A current print out of information from the USPTO electronic database records showing the current status and title of Registration No. 3158172 appears in Exhibit B. Said registration is presently valid and subsisting and is now owned by EBM and is *prima facie* evidence of EBM's exclusive right to use said mark in commerce on the goods.

4. Based on its current and continued actual use in U.S. commerce beginning at least as early as July 17, 2015 and the May 11, 2015 filing of Application No. 86625948, EBM owns Registration No. 4929089 for the standard character BIEN SALUD WINERY mark issued on March 29, 2016 for use on "Wines" in International Class 33. A current print out of information from the USPTO electronic database records showing the current status and title of Registration No. 4929089 appears in Exhibit C. Said registration is presently valid and subsisting and is now owned by EBM and is *prima facie* evidence of EBM's exclusive right to use said mark in commerce on the goods and services.

5. Based on its current and continued actual use in U.S. commerce beginning at least as early as April 5, 2018 and the August 14, 2018 filing of Application No. 88078332, EBM owns Registration No. 5732181 for the standard character BIEN NACIDO ESTATE mark issued on April 23, 2019 for use on "Wines" in International Class 33. A current print out of information from the USPTO electronic database records showing the current status and title of Registration No. 5732181 appears in Exhibit D. Said registration is presently valid and subsisting and is now owned by EBM and is *prima facie* evidence of EBM's exclusive right to use said mark in commerce on the goods.

6. Based on its current and continued actual use in U.S. commerce beginning at least as early as August 1, 2016 and the September 12, 2018 filing of Application No. 88114735, EBM owns Registration No. 5750030 for the standard character BIEN NACIDO & SOLOMON HILLS mark issued on May 14, 2019 for use on “Delivery of wine to wine club members on a periodic basis” in International Class 39; and “Entertainment services, namely, wine tastings; Entertainment services, namely, wine and food tastings; Entertainment services, namely, arranging, conduction and organizing social events featuring wine; Educational services, namely, conducting programs and events pertaining to wine and food pairing, and winemaking” in International Class 41. A current print out of information from the USPTO electronic database records showing the current status and title of Registration No. 5750030 appears in Exhibit E. Said registration is presently valid and subsisting and is now owned by EBM and is *prima facie* evidence of EBM’s exclusive right to use said mark in commerce on the goods and services.

7. EBM is the owner of all right, title and interest in the foregoing Federal trademark registrations.

8. The aforesaid marks of EBM have been promoted together in connection with wine, wine grapes, and entertainment and educational services pertaining to wine, and constitute the “Bien” family of marks.

9. The Applicant filed Application Serial No. 90023457 on June 26, 2020 seeking registration of the mark BIEN SÛR under Section 1(b) for use on “Alcoholic beverages except beers,” in International Class 33.

10. Applicant intends to use the BIEN SÛR mark without the consent of EBM and, on information and belief, with the intent to trade and capitalize on the goodwill generated by EBM’s extensive and exclusive use of its “Bien” family of marks.

11. On information and belief, EBM established priority in and use of each and all of the marks in the “Bien” family of marks long before any priority that Applicant can establish in its claimed BIEN SÛR mark.

12. EBM has acquired substantial distinctiveness over the years in connection with each and all of the marks in the “Bien” family of marks through the high quality of its “Bien” marked goods and services and use, marketing, publicity, advertising, promotion and resulting public recognition of its “Bien” marked goods and services throughout the United States, such that each and all of the “Bien” family of marks have come to represent substantial and valuable goodwill to EBM.

13. On information and belief, persons who select, purchase or trade in goods and services that EBM provides under its “Bien” family of marks also select, purchase or trade in the same or closely related types of goods specified in the BIEN SÛR trademark application.

14. On information and belief, the goods specified in BIEN SÛR trademark application are marketed and sold to the same or related customers and in the same or related channels of trade as EBM’s goods and services in connection with the “Bien” family of marks.

15. The BIEN SÛR mark for which the Applicant seeks registration is confusingly similar to each and all of the “Bien” family of marks and causes the likelihood of confusion, mistake or deception that the Applicant’s goods are those of EBM or are otherwise endorsed, sponsored, or approved by EBM.

16. If the Applicant is granted registration of its BIEN SÛR mark as shown in Application No. 90023457, the Applicant will thereby obtain *prima facie* exclusive right to use the BIEN SÛR mark, and such registration of the BIEN SÛR mark will impair, diminish, and dilute EBM’s goodwill and rights in its “Bien” family of marks and cause irreparable injury to EBM in violation of Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d).

#### COUNT II – FEDERAL TRADEMARK DILUTION

17. Paragraphs 1-16 are incorporated by reference herein.

18. EBM has expended substantial monies in marketing, advertising and promoting each and all of the “Bien” family of marks on its goods and services.

19. EBM possesses extremely valuable goodwill in the “Bien” family of marks by reason of its extensive use, marketing, publicity, advertising, and geographic extent of its use and promotion. This goodwill was established long prior to Applicant’s filing of Application Serial No. 90023457.

20. The “Bien” family of marks is famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and each and all of the “Bien” family of marks became famous prior to the filing date of the opposed application or any other priority date on which the Applicant may rely.

21. Registration of the proposed BIEN SÛR mark would be likely to impair the distinctiveness, cause dilution by blurring, tarnish the reputation, and cause dilution by tarnishment of EBM's famous "Bien" family of marks in violation of 15 U.S.C. § 1125(c). Accordingly, pursuant to 15 U.S.C. § 1063, the proposed BIEN SÛR mark is not entitled to registration.

COUNT III – FALSELY SUGGESTS A CONNECTION WITH OPPOSER

22. Paragraphs 1-21 are incorporated by reference herein.

23. Applicant’s proposed use and application of the BIEN SÛR mark would falsely suggest a connection with EBM and/or EBM’s goods and services thereby causing loss, damage, or injury to EBM in violation of Section 2(a) of the Trademark Act of 1946, 15 U.S.C. § 1052(a).

24. Applicant’s proposed mark is the same or a close approximation to each and all of the “Bien” family of marks, which EBM has used to promote wines, wine grapes and entertainment and educational services pertaining to wine since long before Applicant filed for the BIEN SÛR mark.

25. Applicant is not connected with EBM and the goods and services which Applicant proposes to provide are not connected with EBM or the “Bien” family of marks.

26. Because the BIEN SÛR mark is dominated by “Bien” and is the same or a close approximation to each and all of the “Bien” family of marks, it falsely suggests a connection with EBM.



27. BIEN SÛR unmistakably points to EBM and did so prior to the filing of the Application to register the mark.

28. The fame or reputation of EBM is such that, when the mark is used with Applicant's goods, a connection with EBM would be presumed.

PRAYER FOR RELIEF

WHEREFORE, EBM prays that this Opposition be sustained, that Application No. 90023457 be rejected, and that registration of the BIEN SÛR trademark for the goods and services specified therein be refused.

Date: March 10, 2021

Respectfully submitted,

By:

  
Joseph T. Nabor  
FITCH, EVEN, TABIN & FLANNERY, LLP  
120 South LaSalle Street, Suite 2100  
Chicago, Illinois 60603-3406  
Telephone: (312) 577-7000  
Email: Trademark@fitcheven.com

*Attorney for Opposer*

# **Exhibit A**

**Trademarks > Trademark Electronic Search System (TESS)**

TESS was last updated on Wed Mar 10 03:17:22 EST 2021

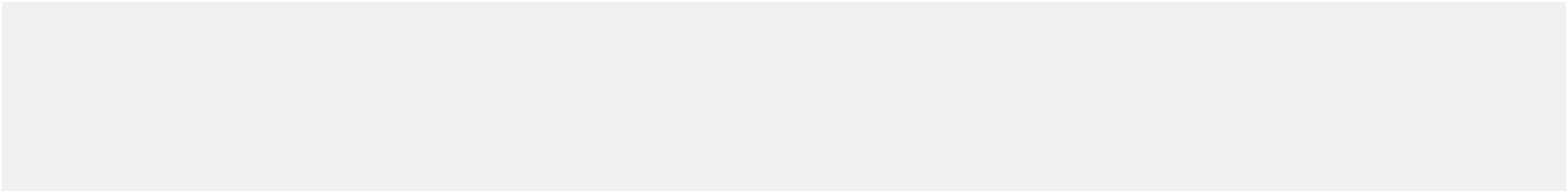
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**Record 1 out of 1**[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) (*Use the "Back" button of the Internet Browser to return to TESS*)**BIEN NACIDO**

<b>Word Mark</b>	BIEN NACIDO
<b>Translations</b>	The foreign wording in the mark translates into English as WELL BORN.
<b>Goods and Services</b>	IC 033. US 047 049. G & S: wines. FIRST USE: 19800101. FIRST USE IN COMMERCE: 19800101
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78576245
<b>Filing Date</b>	February 28, 2005
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	February 21, 2006
<b>Registration Number</b>	<b>3092643</b>
<b>Registration Date</b>	May 16, 2006
<b>Owner</b>	(REGISTRANT) EBM ASSOCIATES, LLC LIMITED LIABILITY COMPANY CALIFORNIA 132 E. Carillo St Santa Barbara CALIFORNIA 93101
<b>Attorney of Record</b>	Brett Locker
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL-2(F)
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20150624.
<b>Renewal</b>	1ST RENEWAL 20150624
<b>Live/Dead Indicator</b>	LIVE

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For Serial Number: **78576245**

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# **Exhibit B**

**Trademarks > Trademark Electronic Search System (TESS)**

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# BIEN NACIDO

<b>Word Mark</b>	BIEN NACIDO
<b>Translations</b>	The foreign wording in the mark translates into English as WELL BORN.
<b>Goods and Services</b>	IC 031. US 001 046. G & S: raw unprocessed wine grapes. FIRST USE: 19800101. FIRST USE IN COMMERCE: 19800101
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78755041
<b>Filing Date</b>	November 16, 2005
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	August 1, 2006
<b>Registration Number</b>	<b>3158172</b>
<b>Registration Date</b>	October 17, 2006
<b>Owner</b>	(REGISTRANT) EBM ASSOCIATES, LLC ROBERT N. MILLER IV, Manager USA citizen LIMITED LIABILITY COMPANY CALIFORNIA 132 E. Carillo St Santa Barbara CALIFORNIA 93101
<b>Attorney of Record</b>	Brett Locker
<b>Prior Registrations</b>	3092643
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20161023.

**Renewal** 1ST RENEWAL 20161023  
**Live/Dead Indicator** LIVE

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**For Serial Number: 78755041**

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# **Exhibit C**



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**Record 1 out of 1**

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# BIEN SALUD WINERY

<b>Word Mark</b>	BIEN SALUD WINERY
<b>Translations</b>	The English translation of the wording "BIEN SALUD" in the mark is "GOOD HEALTH".
<b>Goods and Services</b>	IC 033. US 047 049. G & S: Wines. FIRST USE: 20150416. FIRST USE IN COMMERCE: 20150717
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	86625948
<b>Filing Date</b>	May 11, 2015
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	November 10, 2015
<b>Registration Number</b>	<b>4929089</b>
<b>Registration Date</b>	March 29, 2016
<b>Owner</b>	(REGISTRANT) Turn Key Wine Brands LLC LIMITED LIABILITY COMPANY CALIFORNIA 132 East Carrillo Street Santa Barbara CALIFORNIA 93101  (LAST LISTED OWNER) MILLER FAMILY WINE COMPANY, LLC LIMITED LIABILITY COMPANY CALIFORNIA 132 EAST CARRILLO STREET SANTA BARBARA CALIFORNIA 93101
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Brett Locker
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WINERY" APART FROM THE MARK AS SHOWN

**Type of Mark**      TRADEMARK  
**Register**            PRINCIPAL  
**Live/Dead  
Indicator**            LIVE

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[Assignments on the Web](#) > [Trademark Query](#)**Trademark Assignment Abstract of Title****Total Assignments: 2****Serial #:** [86625948](#)**Filing Dt:** 05/11/2015**Reg #:** [4929089](#)**Reg. Dt:** 03/29/2016**Registrant:** Turn Key Wine Brands LLC**Mark:** BIEN SALUD WINERY**Assignment: 1****Reel/Frame:** [6499/0910](#)**Recorded:** 12/03/2018**Pages:** 4**Conveyance:** CHANGE OF NAME**Assignor:** [TURN KEY WINE BRANDS, LLC](#)**Exec Dt:** 03/12/2018**Entity Type:** LIMITED LIABILITY COMPANY**Citizenship:** CALIFORNIA**Assignee:** [MILLER FAMILY WINE COMPANY, LLC](#)**Entity Type:** LIMITED LIABILITY COMPANY**Citizenship:** CALIFORNIA

132 EAST CARRILLO STREET

SANTA BARBARA, CALIFORNIA 93101

**Correspondent:** BRETT LOCKER

311 EAST CARRILLO STREET

SCHLEY LOOK GUTHRIE &amp; LOCKER LLP

SANTA BARBARA, CA 93101

**Assignment: 2****Reel/Frame:** [7212/0783](#)**Recorded:** 03/05/2021**Pages:** 2**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** [MILLER FAMILY WINE COMPANY LLC](#)**Exec Dt:** 03/03/2021**Entity Type:** LIMITED LIABILITY COMPANY**Citizenship:** NONE**Assignee:** [EBM ASSOCIATES, LLC](#)**Entity Type:** LIMITED LIABILITY COMPANY**Citizenship:** DELAWARE

132 EAST CARRILLO ST

SANTA BARBARA, CALIFORNIA 93101

**Correspondent:** COURTNEY E. TAYLOR

6465 NURSERY WAY

SAN LUIS OBISPO, CA 93405

Search Results as of: 03/10/2021 12:22 PM

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# **Exhibit D**

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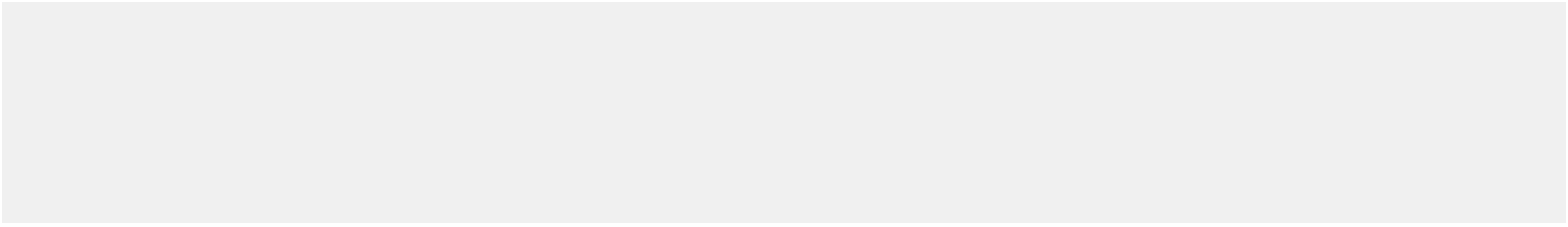
[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#)[Logout](#)

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**Record 1 out of 1**[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) ( Use the "Back" button of the Internet Browser to return to TESS)**BIEN NACIDO ESTATE**

<b>Word Mark</b>	BIEN NACIDO ESTATE
<b>Translations</b>	The English translation of the Spanish wording "BIEN NACIDO" the mark is "WELL BORN".
<b>Goods and Services</b>	IC 033. US 047 049. G & S: Wines. FIRST USE: 20160308. FIRST USE IN COMMERCE: 20180405
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	88078332
<b>Filing Date</b>	August 14, 2018
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	February 5, 2019
<b>Registration Number</b>	<b>5732181</b>
<b>Registration Date</b>	April 23, 2019
<b>Owner</b>	(REGISTRANT) EBM Associates, LLC LIMITED LIABILITY COMPANY CALIFORNIA 132 E. Carrillo Street Santa Barbara CALIFORNIA 93101
<b>Attorney of Record</b>	Brett Locker
<b>Prior Registrations</b>	3092643;3158172
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ESTATE" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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# **Exhibit E**

**Trademarks > Trademark Electronic Search System (TESS)**

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**Record 1 out of 1**[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) ( Use the "Back" button of the Internet Browser to return to TESS)**BIEN NACIDO & SOLOMON HILLS****Word Mark** BIEN NACIDO & SOLOMON HILLS**Translations** The English translation of the Spanish wording "BIEN NACIDO" the mark is "WELL BORN".**Goods and Services** IC 039. US 100 105. G & S: Delivery of wine to wine club members on a periodic basis. FIRST USE: 20160501. FIRST USE IN COMMERCE: 20160801

IC 041. US 100 101 107. G &amp; S: Entertainment services, namely, wine tastings; Entertainment services, namely, wine and food tastings; Entertainment services, namely, arranging, conducting and organizing social events featuring wine; Educational services, namely, conducting programs and events pertaining to wine and food pairing, and winemaking. FIRST USE: 20160501. FIRST USE IN COMMERCE: 20160801

**Standard Characters Claimed****Mark Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 88114735**Filing Date** September 12, 2018**Current Basis** 1A**Original Filing Basis** 1A**Published for Opposition** February 26, 2019**Registration Number** 5750030**Registration Date** May 14, 2019**Owner** (REGISTRANT) EBM Associates, LLC LIMITED LIABILITY COMPANY CALIFORNIA 132 East Carrillo Street Santa Barbara CALIFORNIA 93101

**Attorney of Record** Brett Locker

**Prior Registrations** 3092643;3158172;4592758;AND OTHERS

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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For Serial Number: **88114735**

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.6  
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