

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

E. & J. GALLO WINERY

versus

CERVEZA GALLO S.A. INC. d/b/a GALLO
CERVEZA, CERVEZA GALLO, INC.,
CHRISTOPHER J. ALEXANDER and
MARIA E. BELCHER

CIVIL ACTION

NO. _____

VERIFIED COMPLAINT FOR DAMAGES AND OTHER RELIEF

Plaintiff, E. & J. Gallo Winery, by its attorneys, for its Complaint against Defendants Cerveza Gallo S.A., Inc., Cerveza Gallo, Inc., Christopher J. Alexander and Maria E. Belcher hereby alleges as follows:

1. Plaintiff, E. & J. Gallo Winery (“Plaintiff” or “Gallo”) is the exclusive owner of the famous federally registered trademark GALLO for wine and other commercially related products (the “GALLO mark”). Plaintiff also is the exclusive owner of variations of the GALLO mark consisting of the word mark GALLO combined with rooster designs (the “GALLO & ROOSTER DESIGN marks”) (collectively, “The GALLO Marks”).

2. Through this action, Gallo seeks damages and injunctive relief for federal trademark infringement of the GALLO Marks under 15 U.S.C. §§ 1051, *et seq.*, the use of false designations of origin under 15 U.S.C. § 1125(a), arising from Defendants Cerveza Gallo S.A., Inc.’s, Cerveza Gallo, Inc.’s, Christopher J. Alexander’s¹ (“Alexander”) and Maria E. Belcher’s (“Belcher”) (collectively “Defendants”) unauthorized use of the mark “CERVEZA GALLO” and/or “GALLO CERVEZA” with and

¹ On information and belief, also known as J. Christopher Alexander.

without a rooster design in connection with the sale of wine and/or beer. Gallo further seeks a declaratory judgment with respect to the validity of certain Louisiana state trade name and trademark registrations procured by Defendants.

THE PARTIES

3. Gallo is a corporation organized and existing under the laws of the State of California having a place of business at 600 Yosemite Boulevard, Modesto, California 95354.

4. Upon information and belief, Defendant Cerveza Gallo S.A., Inc. is a corporation organized under the laws of the state of Louisiana with its principal place of business located at 3751 Government Street, Suite A, Baton Rouge, Louisiana 70806. Upon further information and belief, Defendant does business under the trade name Gallo Cerveza.

5. Upon Information and belief, Defendant Cerveza Gallo, Inc. is a corporation organized under the laws of the state of Louisiana, with its principal place of business located at 5700 Florida Boulevard, Suite 1210, Baton Rouge, Louisiana 70896, and who is and/or was doing business in the state of Louisiana, but whose corporate charter was revoked on or about November 16, 2006.

6. Upon information and belief, Defendant Alexander is an individual whose place of residence is believed to be in Louisiana and his principle place of business is located at 3751 Government Street, Suite A, Baton Rouge, Louisiana 70806.

7. Upon information and belief, Defendant Belcher is an individual whose place of residence is believed to be in Louisiana and her principle place of business is located at 3751 Government Street, Suite A, Baton Rouge, Louisiana 70806.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367. Plaintiff's claims are, in part based on violations of the Lanham Act, as amended, 15 U.S.C. §§ 1051, *et seq.* The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. This Court also has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the action is between citizens of different States and the amount in controversy exceeds \$75,000.

9. Venue properly lies within the Middle District of Louisiana pursuant to 28 U.S.C. § 1391(b)(1) because Defendants Cerveza Gallo S.A., Inc. and Cerveza Gallo, Inc. reside in this District. Venue is also proper under 28 U.S.C. § 1391(b)(2), in that a substantial part of the events giving rise to the claims occurred in this judicial district.

FACTUAL BACKGROUND

10. Since at least 1933, Gallo has been making, marketing and selling wines and other alcoholic beverages under the GALLO Marks, and has used the GALLO mark as part of its trade name E. & J. Gallo Winery.

11. Gallo owns all rights in and to, among others, the federal trademark registrations listed below, each of which is valid and subsisting, uncancelled, and unrevoked:

Trademark	Reg. No.	Issue Date	Goods
GALLO	0444756	03/24/1953	Wines
GALLO	0891339	03/19/1970	Wines [and Champagnes]
GALLO FAMILY	3128127	08/08/2006	Wines

VINEYARDS (rooster design plus words)			
GALLO (rooster design plus words)	3382558	02/12/2008	Beer Mugs, Earthenware Mugs, Glass Mugs, Mugs, and Porcelain Mugs; and Caps, Shirts, and Jackets
THE GALLO EDGE (rooster design plus words)	3746812	02/09/2010	Business Information Services on Wine-Retailing; Business Merchandise Display Services; Business Management Services

12. In addition, Gallo's exclusive rights in Reg. Nos. 0444756 and 0891339 are incontestable.

13. Gallo has expended substantial and significant sums of money on advertising and promotion of Gallo's goods under the GALLO Marks, including print advertisements, event marketing, packaging, point of sale displays, internet marketing through commercial and social media sites, and other ways customary in the trade.

14. By virtue of Gallo's long, continuous, extensive and exclusive use and marketing, promotion and sale of wine and commercially related products under the GALLO Marks, Gallo has established significant goodwill in the GALLO Marks and the goods associated therewith, and the GALLO Marks have acquired secondary meaning and have come to be recognized by the relevant public as identifying products or services having their origin and otherwise associated exclusively with Gallo.

15. Also through its extensive use of the GALLO Marks, Gallo owns common law trademark rights in the GALLO Marks for all of the goods it sells and services in which it engages, including without limitation the marketing, promotion and sale of wines and other alcoholic beverages.

DEFENDANTS' UNLAWFUL USE OF THE GALLO MARKS

16. Upon information and belief, Defendant Cerveza Gallo, Inc. was formed as a corporation and organized under the laws of Louisiana on or about July 16, 2003. According to the Secretary of State's records, Cerveza Gallo Inc.'s corporate charter was revoked on or about November 16, 2006.

17. Upon information and belief on or about July 16, 2003, Defendant Cerveza Gallo Inc. obtained two registrations from the state of Louisiana, described as follows:

- a. Louisiana Trade Name and Trademark registration for "CERVEZA GALLO AND LOGO: A ROOSTER CIRCLED BY NAME ACROSS AND INFO. OF CO. AROUND TRADITION AND PRIDE OF GUATEMALA FOUNDED SINCE 1896" (LA Book No. 57-8715) in International Class 33 for WINES & SPIRITS (the "2003 Cerveza Gallo State Registration"). The registration documents related to the 2003 Cerveza Gallo State Registration indicates that Defendant Cerveza Gallo Inc.'s type of business is "BEER" and that the date the mark was first used was January 1, 2003; and
- b. Louisiana Trade Name and Trademark registration for "GALLO CERVEZA AND LOGO: A ROOSTER CIRCLED BY NAME ACROSS AND INFO. OF CO. AROUND TRADITION AND PRIDE OF GUATEMALA FOUNDED SINCE 1896" (LA Book No. 57-8716) in International Class 33 for WINES

& SPIRITS (the “2003 Gallo Cerveza State Registration”). The registration documents related to the 2003 State Registration indicates that Defendant Cerveza Gallo Inc.’s type of business is “BEER” and that the date the mark was first used was January 1, 2003

(collectively referred to herein as the “2003 State Registrations”).

18. Upon information and belief, on or about May 5, 2011, Defendant Cerveza Gallo S.A., Inc. filed an application with the United States Patent and Trademark Office (“USPTO”) for the word mark “GALLO CERVEZA TRADICION Y ORGULLO DE GUATEMALA FAMOSA DESDE 1896” with a design consisting of a rooster image in the center of an oval with the word “GALLO” prominently emblazoned across the oval (Serial No. 85313455) (the “USPTO Application”). In the USPTO Application, Defendant applied for registration in International Class 35 for “Retail Store services featuring beer.”

19. Upon information and belief, on or about May 6, 2011, the day after filing of the USPTO Application, Defendant Alexander and Defendant Belcher formed Cerveza Gallo S.A., Inc. as a corporation organized under the laws of Louisiana and began using the names “GALLO CERVEZA” and/or “CERVEZA GALLO” as trade names.

20. In addition to the USPTO Application, Defendants Alexander and Belcher (the “Individual Defendants”), as individuals, obtained a Louisiana Trade Name registration for “CERVEZA GALLO AND LOGO: A ROOSTER CIRCLED BY NAME ACROSS AND INFO. OF CO. AROUND TRADITION AND PRIDE OF GUATEMALA FOUNDED SINCE 1896” (LA Book No. 62-9440) for use in connection with

“MANUFACTURED AND RETAIL SALE ‘BEER’” (the “2011 State Registration”) (collectively with the USPTO Application and the 2003 State Registrations, the “Infringing Filings”). The records related to the 2011 State Registration indicate that the Individual Defendants first used the trade name identified in the 2011 State Registration on May 1, 2011.

21. Upon information and belief, Defendants collectively and/or individually have been engaging or intend to engage in the marketing, promotion, importation and sale of beer under one or more of the trademarks and trade names that are the subject of the Infringing Filings (the “Infringing Marks”).

22. The Infringing Marks wholly incorporate and emphasize the GALLO mark and contain a rooster design just as Gallo has with the GALLO Marks.

23. Defendants’ use of the Infringing Marks, and each of them, in connection with beer is confusingly similar to the GALLO Marks and is likely to cause confusion, mistake or deceive the public.

24. Upon information and belief, given the fact that the GALLO mark is “famous” and Gallo is known throughout the country as a major producer of wine and other alcoholic beverages, Defendants’ uses of the Infringing Marks, and each of them, are designed to confuse the relevant public into believing that Defendants’ goods and services are connected or associated with Gallo and are intended to benefit from the relevant public’s familiarity with Gallo and the GALLO Marks. Therefore, such uses by Defendants of the Infringing Marks are willful.

25. Gallo has attempted to resolve this dispute amicably by way of a letter to Defendant Belcher, who, upon information and belief, is also the president and principal

agent of Defendant Cerveza Gallo S.A., Inc. However, Gallo has received no substantive response from Defendant Belcher, only a vague email from another individual named Thesia Jones indicating that she planned “to have this matter cleared up immediately.” Despite a follow-up request for a substantive response, no further correspondence was received from Defendant Belcher or any other party associated with Defendant Cerveza Gallo S.A., Inc.

FIRST CAUSE OF ACTION

(Trademark Infringement Under 15 U.S.C. § 1114(I))

26. Gallo realleges and incorporates by reference paragraphs 1 through 25, inclusive, as though fully set forth herein.

27. As described above, Gallo is the owner of the GALLO Marks and holds several federal registrations for the GALLO mark and the GALLO & ROOSTER DESIGN marks, including certain incontestable registrations. The GALLO Marks are strong in that they are inherently distinctive because they are arbitrary and/or fanciful when used in connection with the goods and services offered by Gallo. Additionally, further strengthening the GALLO Marks, they also have acquired distinctiveness through secondary meaning based on Gallo’s extensive use of the GALLO Marks in connection with the marketing, promotion and sale of its goods and services.

28. Defendants’ uses in commerce of the Infringing Marks, and each of them, are likely to cause confusion, or to cause mistake, or to deceive, particularly given (1) the strength and famousness of the GALLO Marks; (2) the undeniable similarity of the Infringing Marks to the GALLO Marks; (3) the close proximity in the marketplace of Defendants’ goods and Gallo’s goods; (4) the fact that Defendants’ goods offered under

the Infringing Marks are or will be offered in the same retail outlets and to the same purchasers as Gallo's goods; and (5) the likely similarity of advertising media used by Defendants and Gallo.

29. Upon information and belief, Defendants were aware of Gallo's business and the GALLO Marks prior to the adoption and use of the Infringing Marks and adopted them intentionally to confuse the public and trade on the goodwill and reputation of the GALLO Marks.

30. Defendants either had actual notice and knowledge, or constructive notice, of Gallo's ownership and registrations of the GALLO Marks pursuant to 15 U.S.C. § 1072 prior to Defendants' uses of the Infringing Marks.

31. Defendants' conduct, as described herein, constitutes trademark infringement in violation of U.S.C. § 1114(l).

32. Defendants' uses of the Infringing Marks, and each of them, will cause substantial harm to Gallo's goodwill, business reputation and profits unless the relief sought herein is granted.

33. As a direct and proximate result of Defendants' conduct alleged herein, Gallo has suffered, and continues to suffer, actual damages in an amount to be determined according to proof at the time of trial.

34. Defendants' deliberate and intentional conduct as alleged herein constitutes an exceptional case, entitling Gallo to an award of reasonable attorney's fees and for judgment in the amount of three times Gallo's actual damages and/or Defendants' profits, as well as prejudgment interest pursuant to 15 U.S.C. § 1117.

35. Gallo also has been irreparably injured and damaged by Defendants' conduct, and unless permanently enjoined, will suffer further harm for which Gallo has no adequate remedy at law.

SECOND CAUSE OF ACTION

(Use of False Designations of Origin Under 15 U.S.C. § 1125(a))

36. Gallo realleges and incorporates by reference paragraphs 1 through 35, inclusive, as though fully set forth herein.

37. Defendants' unauthorized uses of the Infringing Marks, and each of them, falsely suggests that their products and services are connected with, sponsored by, affiliated with, or related to Gallo, and constitutes the use of false designations of origin in violation of 15 U.S.C. § 1125(a) regarding both Gallo's registered and common law trademark rights.

38. As a direct and proximate result of Defendants' conduct alleged herein, Gallo has suffered, and continues to suffer, actual damages in an amount to be determined according to proof at the time of trial.

39. Gallo also has been irreparably injured and damaged by Defendants' conduct, and unless permanently enjoined, will suffer further harm for which Gallo has no adequate remedy at law.

THIRD CAUSE OF ACTION

(Declaratory Relief Of State Trademark And Trade Name Validity And Removal Of State Registrations)

40. Gallo realleges and incorporates by reference paragraphs 1 through 39, inclusive, as though fully set forth herein.

41. A real and actual controversy exists between Gallo and Defendants Gallo Cerveza, Inc., Alexander and Belcher as to whether any of the 2003 State Registrations and 2011 State Registration are valid and whether any infringement of the marks that are the subject of those registrations has occurred. The controversy is of sufficient immediacy and reality to warrant declaratory relief.

42. Gallo is presently faced with the choice of abandoning its long-standing use of the GALLO Marks used in connection with its products and services offered in Louisiana, or risking liability for damages and other potential relief based on Defendant Gallo Cerveza Inc.'s 2003 State Registrations and Defendant Alexander's and Defendant Belcher's 2011 State Registration.

43. For all the reasons discussed above, Defendant Gallo Cerveza Inc.'s 2003 State Registrations and Defendant Alexander's and Defendant Belcher's 2011 State Registration are invalid and subject to cancellation.

44. Pursuant to La. R.S. 51:219 Gallo seeks a declaration that (a) Defendant Gallo Cerveza Inc.'s 2003 State Registrations and (b) Defendant Alexander's and Defendant Belcher's 2011 State Registration are invalid and subject to cancellation, so that there will be no controversy or question clouding Gallo's right to use the GALLO Marks in association with its products and services that are made available in Louisiana.

FOURTH CAUSE OF ACTION

(Declaratory Relief Of Non Infringement Of State Trade Name Registration Marks)

45. Gallo realleges and incorporates by reference paragraphs 1 through 44, inclusive, as though fully set forth herein.

46. To the extent that the Court determines that Defendant Gallo Cerveza Inc.'s 2003 State Registrations and Defendant Alexander's and Defendant Belcher's 2011 State Registration are valid and/or not subject to cancellation, Plaintiff seeks a declaration that it is not liable for infringement of the same, or any of them. Among other statutory and equitable defenses, Gallo's use of the GALLO Marks in connection with its products and services is protected under the doctrines of fair use, good faith, and laches.

47. Gallo seeks a declaration of non-infringement so that there will be no controversy clouding Gallo's use of the GALLO Marks in association with its products and services made available in Louisiana.

FIFTH CAUSE OF ACTION

(Declaratory Judgment And Change Of Corporate Names)

48. Gallo realleges and incorporates by reference paragraphs 1 through 47, inclusive, as though fully set forth herein.

49. For the reasons set forth above, Gallo also seeks a declaration that the Defendants are not entitled to use and/or register the corporate names Cerveza Gallo, Inc. and/or Cerveza Gallo S.A., Inc.

50. Additionally, Gallo seeks an order from the Court requiring that the names of both Defendant Cerveza Gallo, Inc., and Cerveza Gallo S.A., Inc. be changed to some other name which does not incorporate the word "Gallo" and is not otherwise confusingly similar to "Gallo" or any of the GALLO Marks.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Gallo prays for the following relief:

A. Judgment in favor of Gallo and against the Defendants on all of Gallo's claims asserted in this Complaint;

B. That the Court order by permanent injunction pursuant to 15 U.S.C. § 1116(a) that Defendants, and their respective agents, employees, representatives, servants, successors, assigns, and all those acting under their control and/or on their behalf and/or in concert with them, be enjoined from (1) using in any manner the GALLO Marks, or any of them, or any name, mark or domain name that wholly incorporates Gallo's Mark or is otherwise confusingly similar to or a colorable imitation of the GALLO Marks, including without limitation the Infringing Marks, or any of them; and (2) engaging in any act or thing calculated or likely to cause confusion or mistake in the minds of members of the public, or prospective customers of Gallo's goods, as to the source of Defendants' goods or services offered for sale, distributed or sold, or likely to deceive members of the public or prospective customers into believing that there is some connection between Defendants or their goods and services and Gallo;

C. That the Court order the Defendants, pursuant to 15 U.S.C. § 1116(a), to file with this Court and serve upon Gallo within thirty (30) days after entry of the injunction, a detailed report in writing under oath of Defendants Alexander and Belcher and a person with authority at Defendant Cerveza Gallo, Inc. and Defendant Cerveza Gallo S.A., Inc. setting forth in detail all actions taken to comply with the injunction, and that it has ceased all use of the Infringing Marks in connection with the advertising, promotion or sale of any goods or services;

D. That the Court order the Defendants pursuant to 15 U.S.C. § 1118 to deliver to Gallo for destruction, or to show proof of said destruction or sufficient modification to eliminate the infringing matter, all articles, packages, wrappers, products, displays, labels, signs, circulars, letterhead, business cards, promotional items, clothing, literature, sales aids, or any other matter in the possession, custody or control of Defendants or their agents bearing the GALLO Marks or the Infringing Marks, in any manner, or any mark that is confusingly similar to or a colorable imitation of the GALLO Marks, including without limitation the Infringing Marks, both alone and in combination with other words or terms;

E. That the Court order Defendants to change their entity names and trade names to names that do not in any manner incorporate the name GALLO alone or in combination with any other words or designs;

F. That the Court order Defendants to take all necessary steps to cancel with prejudice (1) any trademark, service mark or trade name application for registration or registration it may have or control in the United States for the Infringing Marks, or either of them, including without limitation USPTO Application Serial No. 85313455; (2) the Louisiana Trade Name and Trademark Registration for "CERVEZA GALLO AND LOGO: A ROOSTER CIRCLED BY NAME ACROSS AND INFO. OF CO. AROUND TRADITION AND PRIDE OF GUATEMALA FOUNDED SINCE 1896" (Book No. 62-9440); (3) the Louisiana Trade Name and Trademark registration for "CERVEZA GALLO AND LOGO: A ROOSTER CIRCLED BY NAME ACROSS AND INFO. OF CO. AROUND TRADITION AND PRIDE OF GUATEMALA FOUNDED SINCE 1896" (LA Book No. 57-8715); and (4) Louisiana Trade Name and Trademark registration for

“GALLO CERVEZA AND LOGO: A ROOSTER CIRCLED BY NAME ACROSS AND INFO. OF CO. AROUND TRADITION AND PRIDE OF GUATEMALA FOUNDED SINCE 1896” (LA Book No. 57-8716);

G. That the Court enter judgment pursuant to 15 U.S.C. § 1117 against Defendants in the amount of Gallo’s actual damages, Defendants’ profits, Gallo’s reasonable attorneys’ fees and costs of suit, and pre-judgment interest;

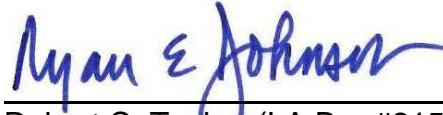
H. That the Court enter judgment against Defendants for enhanced damages under 15 U.S.C. § 1117 and punitive damages under state law as appropriate;

I. That the Court enter judgment declaring that Defendant Gallo Cerveza Inc.’s 2003 State Registrations and Defendant Alexander’s and Defendant Belcher’s 2011 State Registration are invalid and subject to cancellation, or alternatively, that Gallo’s conduct does not constitute infringement of Defendant Gallo Cerveza Inc.’s 2003 State Registrations and Defendant Alexander’s and Defendant Belcher’s 2011 State Registration;

J. That the Court enter judgment declaring that the Defendants are not entitled to use of the names Cerveza Gallo, Inc. or Cerveza Gallo S.A., Inc. and requiring that Defendants change the names of these two defendants to some other name which does not incorporate the word “Gallo” and is not otherwise confusingly similar to “Gallo” or any of the GALLO Marks; and

K. That the Court grant such other and further relief as the Court deems appropriate, just and proper.

Respectfully submitted,



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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

E. & J. GALLO WINERY

CIVIL ACTION

versus

NO. _____

CERVEZA GALLO S.A. INC. d/b/a GALLO
CERVEZA, CHRISTOPHER J.
ALEXANDER and MARIA E. BELCHER

VERIFICATION

I am competent to testify to the matters set forth herein and would so testify if called to do so in open court and under oath.

I am a Marketing Manager of E. & J. Gallo Winery, and have reviewed the allegations in the forgoing Verified Complaint against the defendants, Cerveza Gallo S.A. Inc. d/b/a Gallo Cerveza, Christopher J. Alexander, and Maria E. Belcher.

To the best of my knowledge, information, and belief formed after reasonable inquiry, all of the allegations in the foregoing Verified Complaint are true and correct.



Karen Mizell

STATE OF CALIFORNIA)
)
Stanislaus County)

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2012, by Karen Mizell, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

See Attached Certificate
Notary Public Signature

Notary Public Seal

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Stanislaus

Subscribed and sworn to (or affirmed) before me

on this 13th day of January, 2012,
Date Month Year

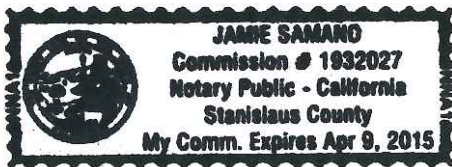
by
(1) Karen Mizell
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and

(2) _____
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)



Place Notary Seal Above

Signature Jamie Samano
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Verified Complaint for Damages

Document Date: 1-13-12 Number of Pages: _____

Signer(s) Other Than Named Above: N/A

RIGHT THUMBPRINT OF SIGNER #1

Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2

Top of thumb here