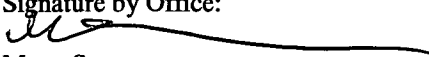


**Notification of Provisional Refusal of Protection based on an Opposition (to WIPO)**

pursuant to Rule 17(3) of the Common Regulations under the Madrid Agreement concerning the international registration of marks and the Protocol relating to that Agreement.

- I. Name and address of the Office making the notification:  
The Norwegian Patent Office Telephone : + 47 22 38 73 00  
P.O. Box 8160 Dep., N-0033 Oslo, NORWAY Telefax : + 47 22 38 73 01
- II. The international registration which is subject to the opposition : **0842363 - SPRING VALLEY**
- III. Date of Subsequent Designation (if any) : (yyyy.mm.dd)
- IV. Name and address of the holder of the international registration which is subject to the opposition:  
**Lidl Stiftung & Co KG**  
**Stiftsbergstrasse 1**  
**74167 NECKARSULM**  
**DE**
- V. Name and address of the opponent(s) :  
**E & J Gallo Winery**  
**P.O. Box 1130**  
**CA95354 MODESTO**  
**US**
- VI. Grounds for opposition :  
(i)  Absolute grounds:  
(ii)  Relative grounds: **Section 14.1.6**  
 **Likelihood of confusion with**  
National application number(s):  
**200208205 - ERNEST & JULIO GALLO SIERRA VALLEY**  
International registration number(s):  
 Likelihood of confusion with Tradename(s) :  Likelihood of confusion with mark(s) which is/are established by use:  
**See continuation sheet.**
- VII. The scope of the opposition  
(i)  The opposition affects all goods and services.  
(Refusal for all goods and services)  
(ii)  The opposition affects some of the goods and services.  
(See continuation sheet under XII)
- VIII. The relevant provisions of the **Norwegian Trademarks Act and Regulations** are enclosed.
- IX. A respond to the opposition shall be **received** by the Norwegian Patent Office no later than **3 months** from the date of the notification from the Norwegian Patent Office (The time limit is indicated next to the date of prov. refusal under X). The respond must be filed through the intermediary of a representative domiciled in Norway. **A copy of the opposition will be sent to you upon your request.** Please note that the decision made by the Norwegian Patent Office can be appealed to the Appeal board by either party within two months from the date of the decision.
- X Date (yyyy.mm.dd) of prov. refusal: **2006.02.17** Response must be received within: **2006.05.17**
- XI Signature by Office:  
  
Mona Svensen

(National Trademark application number: **200502197**)

Number of continuation sheets: 2

Continuation sheet no : 1

Int. reg. number **0842363**

**Prior marks on which the opposition is based :**

Priority date (if any) :  
(yyyy.mm.dd)

Date of subsequent designation (if any) :  
(yyyy.mm.dd)

National registration date and number :  
**2003.03.06 - 218083** (yyyy.mm.dd)

National application date and number :  
**2002.09.10 - 200208205** (yyyy.mm.dd)

International registration date and number :  
(yyyy.mm.dd)

Name and address of the holder :

**E & J Gallo Winery**  
**P.O. Box 1130**  
**CA95354 MODESTO**  
**US**

Name and address of the Norwegian representative :

**Acapo AS**  
**Postboks 1880 Nordnes**  
**5817 BERGEN**  
**NO**

Reproduction of the former mark :  
**ERNEST & JULIO GALLO SIERRA VALLEY**

*List of goods and services:*

<b>Klasse 33</b>	<b>Alkoholholdige drikker (unntatt øl)</b>
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## Extracts from the Trademark Act

**Section 2.** The exclusive right to a trademark may also be acquired without registration when the trademark is established by use.

A trademark is considered to be established by use when it is well known within the circle of trade concerned in this country as a distinctive sign for someone's goods.

**Section 6.** Under this Act signs shall be deemed liable to be confused only if they relate to identical or similar goods. This is however not a necessary condition for likelihood of confusion when the sign with the earlier right is the holder's own name or business name.

Moreover, signs that are similar shall be considered liable to be confused even if they do not relate to identical or similar goods, if the sign with the earlier right is so well known and established in this country that it would imply an unreasonable exploitation of or be detrimental to its goodwill if the other sign were to be used by someone else.

**Section 13.** A trademark which is to be registered must be capable of distinguishing the goods of the holder from those of others. The trademark may not exclusively, or with no more than minor alterations or additions, indicate the kind, quality, quantity, use, price or geographical origin of the goods or the date of their production. In deciding whether a trademark has a distinctive character, however, all factual circumstances shall be taken into consideration, in particular how long and how extensively the trademark has been in use.

Trademarks which consist exclusively of the shape of the goods or their packaging may not be registered if the shape or the packaging results from the nature of the goods themselves, is necessary to obtain a technical result, or imparts considerable value to the goods.

**Section 14.** A trademark may not be registered if:

1. it is contrary to law or public order or is liable to cause offence;
2. it is liable to deceive;
3. without authorisation by the competent authorities, it includes official coats of arms, flags or other official emblems or badges, including official national or foreign certification or hallmarks or stamps required for goods identical with or similar to those for which registration is applied, or coats of arms, flags or other emblems, abbreviations or designations of intergovernmental organisations, or international marks, seals or signs the unauthorised use of which is forbidden by law. Nor shall the trademark be registered if it includes anything liable to be confused with such emblems or badges, etc. as referred to in this section. Foreign emblems or badges, etc., with the exception of flags of States, shall nevertheless not prevent registration until they have been published in a notice in the publication issued by the Patent Office;
4. it includes anything liable to be understood as another person's business name or as another person's name or portrait and which obviously does not refer to a person long dead;
5. it includes anything liable to be understood as the distinguishing title of the protected artistic, literary or musical

work of another person, or infringes the copyright to such a work or the photography or design rights of another person

6. it is liable to be confused with the name or business name of another person or with a trademark registered for another person in accordance with an application filed earlier, or which was established by use for another person at the time when the application for registration was filed;
7. it is liable to be confused with a trademark which someone else has started to use before the applicant, and the applicant was aware of this use when he filed his application for registration;
8. it is liable to be confused with an international registration of a trademark, provided that this registration is effective in Norway in accordance with section 53 from an earlier date than the date of the filing of the application.

In cases as mentioned in subparagraphs 4 to 8 of the first paragraph, registration may nevertheless take place if the holder of the earlier right consents and there are no other obstacles to registration.

Trademarks which consist of or contain geographical indications with respect to wine or spirits, may not be registered for wine and spirits, unless the product has the geographical origin the indication indicates.

**Section 21.** Any person may file an opposition to the registration of a trademark. A notice of opposition shall be presented in writing, shall state the reasons for the opposition and shall be filed with the Patent Office within two months from the date of publication. In special cases, the Patent Office may upon request grant the opponent a short additional time limit in which to supply further documentation in support of the opposition.

The Patent Office shall dismiss an opposition which does not meet the requirements in the first paragraph.

The Patent Office shall notify the holder of the registration of oppositions and shall afford him an opportunity to file his observations.

If an opposition to the registration of a trademark is filed, this shall be recorded in the Trademark Register and notice thereof published.

Even if the opposition is withdrawn, the opposition proceedings may continue if special circumstances so indicate.

**Section 21a.** Following an opposition the Patent Office shall cancel the registration of the trademark wholly or in part if the trademark was registered in contravention of the present Act and the obstacle preventing registration still exists.

The Patent Office shall reject the opposition if there is no obstacle to upholding the registration. [...]