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4 Attorney for Plaintiff  
5 E. & J. Gallo Winery

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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**

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11 **E. & J. GALLO WINERY,**  
a California corporation,

12 Plaintiff,

13 v.

14  
15 **THE SPANISH TABLE, INC.,**  
a Washington Corporation,

16 Defendant.  
17

Case No.

**COMPLAINT FOR**

**FEDERAL TRADEMARK INFRINGEMENT,  
FEDERAL TRADEMARK DILUTION, STATE  
TRADEMARK INFRINGEMENT, STATE  
TRADEMARK DILUTION, STATE UNFAIR  
COMPETITION, and UNJUST ENRICHMENT**

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19 Plaintiff E. & J. Gallo Winery for its complaint against Defendant The Spanish Table, Inc.,  
20 alleges as follows:

21 **JURISDICTION AND VENUE**

22 1. This is an action seeking injunctive relief for federal trademark infringement under 15  
23 U.S.C. §§ 1051 *et seq.*, state trademark infringement under California Business and Professions Code  
24 § 14200 *et seq.*, federal trademark dilution under 15 U.S.C. § 1125 (c), state trademark dilution under  
25 California Business and Professions Code § 14200 *et seq.*, unfair competition under California  
26 Business and Professions Code § 17200, and unjust enrichment.  
27  
28



1	GALLO SONOMA	1,911,682	8/15/95	Wines
2	GALLO OF SONOMA	2,231,215	3/9/99	Wines
3	GALLO	2,320,063	2/20/00	Clothing

4 6. Gallo first began using the GALLO trademark in 1933 when Ernest Gallo and Julio  
5 Gallo founded the company. The GALLO trademark has been used continuously since that time.  
6 Gallo has sold billions of bottles of wine throughout the United States bearing the GALLO trademark  
7 and has spent over \$600,000,000 promoting it. Goods bearing the GALLO trademark are sold and  
8 promoted to consumers nationwide. The GALLO trademark has a high degree of consumer  
9 recognition and in the United States stands exclusively for goods made or licensed by Gallo. Courts  
10 have held without exception that the GALLO trademark is extraordinarily strong and distinctive and  
11 is entitled to the broadest possible protection.<sup>1</sup>

12 7. The term “Gallo” means “rooster” in Italian and, for many years, Gallo has used  
13 roosters in its logo. Both its corporate crest and its “two roosters” logo prominently feature roosters.  
14 These logos are registered trademarks of Gallo:

15	<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>ISSUE DATE</u>	<u>GOODS</u>
16	GALLO CREST	964,331	7/17/73	Wines
17	TWO ROOSTERS	2,159,050	5/19/98	Wines
18	GALLO and DESIGN	3,128,127	8/8/06	Wines

19 8. Gallo has vigorously protected its trademark against third party infringement and  
20 dilution and has stopped others from using its marks on a wide variety of goods and services,  
21 including: habanero sauce, salsa, beer, mezcal, cheese, wine, rice, coffee bags, shoes, sportswear, t-  
22 shirts, caps, bar towels, tote bags, jeans, jackets, canned vegetables, pasta, pickled jalapeño peppers,  
23 garlic butter, olive oil, dinnerware, tobacco products, toys, potato chips, hosiery, ties and related  
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25  
26 <sup>1</sup> Those cases include *E. & J. Gallo Winery v. Spider Webs Ltd.*, 129 F.Supp. 2d 1033 (S.D. Tex.  
27 2001), *affirmed*, 286 F.3d 270 (5<sup>th</sup> Cir. 2002); *E. & J. Gallo Winery v. Pasatiempos Gallo, S.A.*,  
28 905 F.Supp. 1403 (E.D. Cal. 1994); *E. & J. Gallo Winery v. Consorzio del Gallo Nero*, 782  
F.Supp. 457 (N.D. Cal. 1991); *E. & J. Gallo Winery v. Gallo Cattle Company*, 12 U.S.P.Q.2d  
1657 (E.D. Cal. 1989), *affirmed*, 967 F.2d 1280 (9<sup>th</sup> Cir. 1992).

1 products, the naming of thoroughbred race horses, playing cards, board games, confetti, poker chips,  
2 compact discs, stereo equipment, drafting tables, women's coats, men's hats, polo shirts, cigars,  
3 ceramics, veterinary products, sauces, socks and scarves, pasta, and as domain names for web sites.  
4 That enforcement program has preserved the effectively exclusive connection between the GALLO  
5 trademark and Gallo.

6 9. Defendant owns retail stores in Seattle, Washington; Sante Fe, New Mexico; Berkeley,  
7 California; and Mill Valley, California. It also operates a web site, [www.spanishtable.com](http://www.spanishtable.com). It sells  
8 food products, wine and other beverages, kitchen supplies, cookbooks, and similar goods to  
9 consumers in its retail stores, via mail order from its retail stores, and via mail order from and through  
10 its web site. Its goods are available for purchase by everyone, including persons residing in this  
11 District. Defendant has satisfied orders from and sold goods to persons in this District.

12 10. Defendant imports and sells pasta bearing the trademark GALLO. A photograph of  
13 this product is annexed as Exhibit 1 to this Complaint. This pasta is made by a company in Spain. In  
14 1984, in response to a cease and desist letter from Gallo, the Spanish producer agreed not to sell pasta  
15 bearing the trademark GALLO in the United States. In 1994, the Spanish producer asked GALLO to  
16 consent to its sales of pasta bearing the trademark GALLO in the United States. Gallo refused. In  
17 1995, in response to a cease and desist letter from Gallo, the Spanish producer also agreed to cease  
18 and desist sales of pasta bearing the trademark GALLO in the Commonwealth of Puerto Rico.

19 11. Defendant began selling pasta bearing the trademark GALLO without authorization  
20 from Gallo. This unauthorized use of the GALLO trademark by Defendant creates a likelihood of  
21 confusion with Gallo's marks and products and constitutes an infringement of Gallo's trademark  
22 rights under 15 U.S.C. §§ 1114 *et seq.*

23 12. Defendant's infringing conduct is willful, intentional, deliberate, and in bad faith. On  
24 information and belief, Defendant did not seek the advice of trademark counsel prior to beginning use  
25 of the GALLO trademark on pasta. When Gallo objected in writing to Defendant's use of the  
26 GALLO trademark on pasta, Defendant asserted that continuing to use the GALLO trademark was  
27 "important[t] to our reputation" and it refused to cease and desist.

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1 WHEREFORE, Gallo prays for relief as set forth below.

2 **CLAIM TWO**

3 **(California Trademark Infringement)**

4 13. Gallo realleges and incorporates by reference the allegations of paragraphs 1 through  
5 12.

6 14. Gallo owns all rights in and to the California trademark registrations listed below.

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8 <u>MARK</u>	9 <u>NUMBER</u>	10 <u>DATE</u>	11 <u>GOODS</u>
12 GALLO	28047	02/07/46	Wines
13 ERNEST & JULIO 14 GALLO	97828	07/16/93	Wines
15 GALLO SONOMA	99242	08/10/94	Wines

16 15. Gallo first used the registered trademark in California in 1933 and has used it  
17 continuously in California since that time.

18 16. Defendant's unauthorized use of the GALLO mark creates a likelihood of confusion  
19 with Gallo's marks and products and constitutes an infringement of Gallo's trademark rights under  
20 California Business and Professions Code § 14200 *et seq.*

21 WHEREFORE, Gallo prays for relief as set forth below.

22 **CLAIM THREE**

23 **(Federal Trademark Dilution)**

24 17. Gallo realleges and incorporates by reference the allegations of paragraphs 1 through  
25 16.

26 18. The GALLO trademark was strong, distinctive and famous long before Defendant  
27 adopted it. Gallo has used the GALLO trademark for over 75 years and has spent over \$600,000,000  
28 promoting it. The GALLO trademark is widely known. Wines and other goods bearing the GALLO  
trademark have been sold for decades in all retail channels where they can be sold lawfully. The  
GALLO brand stands uniquely for goods produced or licensed by Gallo.



1           25.     As a result of the conduct of Defendant, it has been unjustly enriched at the expense of  
2 Gallo and the law thereby implies a contract by which the Defendant must pay to Gallo the amount by  
3 which, in equity and good conscience, the Defendant has been unjustly enriched at the expense of  
4 Gallo.

5           WHEREFORE, Gallo seeks judgment against the Defendants as follows:

6           1.     An injunction against Defendant enjoining any further infringement of Gallo's  
7 trademark in the United States;

8           2.     An injunction against Defendant enjoining further dilution of Gallo's trademark in the  
9 United States;

10          3.     An injunction against Defendant enjoining any further acts of unfair competition with  
11 Gallo in the United States.

12          4.     An award in the amount by which Defendant has been unjustly enriched;

13          5.     Costs of suit, including Gallo's reasonable attorneys' fees; and

14          6.     Such further relief as this Court deems just.

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Dated: April 13, 2009

LAW OFFICE OF PAUL W. REIDL

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By:           /PAUL W. REIDL/            
Paul W. Reidl

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Attorney for Plaintiff

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E. & J. Gallo Winery

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**EXHIBIT 1**

to

**COMPLAINT FOR FEDERAL TRADEMARK INFRINGEMENT,  
FEDERAL TRADEMARK DILUTION, STATE TRADEMARK INFRINGEMENT,  
STATE TRADEMARK DILUTION, STATE UNFAIR COMPETITION,  
and UNJUST ENRICHMENT**

