

STEVEN D. MANNING  
DENNIS B. KASS  
ANTHONY J. ELLROD  
EUGENE P. RAMIREZ  
FREDRIC W. TRESTER  
LAWRENCE D. ESTEN  
MILDRED K. O'LINN \*  
THOMAS R. GILL  
ALFRED M. DE LA CRUZ  
ERWIN A. NEPOMUCENO  
BRIAN T. MOSS \*  
JEFFREY M. LENKOV  
MARGUERITE L. JONAK \*  
JOHN D. MARINO  
MICHAEL L. SMITH  
LOUIS W. PAPPAS  
SHARI L. ROSENTHAL  
EUGENE J. EGAN  
CLIFFORD A. CLANCEY  
RINAT B. KLIER-ERLICH  
ROBERT B. ZELMS †  
R. ADAM ELLISON  
SCOTT WM. DAVENPORT  
JASON J. MOLNAR \*  
DAVID V. ROTH  
KATHLEEN A. HUNT \*  
STEVEN J. RENICK  
JAMES J. PERKINS \*  
JAMES E. GIBBONS  
DANIEL B. HERBERT \*  
DARIN L. WESSEL \*  
L. TREVOR GRIMM  
MARK A. HAGOPIAN  
DAVID GORNEY  
SUZIE ZACHAR IRWIN †  
DONALD R. DAY \*  
ALAN C. JABLIN \*  
D. HIEP TRUONG  
TIMOTHY J. KRAL  
MICHAEL A. WEISMANTEL  
JANET D. JOHN \*  
KEVIN H. LOUTH  
TRACIE L. CHILDS

SHARON S. JEFFREY  
CANDACE E. KALLBERG  
DAVID R. REEDER \*  
TOBY D. BUCHANAN  
LADELL H. MÜHLESTEIN  
PETER C. CATALANOTTI  
SEVAN GOBEL  
RICHARD G. GARCIA  
JOHN M. HOCHHAUSLER  
ANTHONY S. VITAGLIANO †  
JOHN M. COWDEN \*  
JENNIFER SUPMAN  
KEITH RICKER †  
DEBORA VERDIER †  
ELIZABETH MURPHY  
MARY E. WORK  
JEANETTE DIXON  
RICHARD MACK †  
ARI MARKOW  
KENNETH S. KAWABATA  
ROBYN PARK FREIBERG  
STEVEN AMUNDSON \*  
PAUL HANNA  
TONY M. SAIN  
MARILYN R. VICTOR \*  
MARTIN HOLLY  
ANDY J. SEMOTIUK \*  
JULIE M. FLEMING  
ROBERT E. MURPHY \*  
NINA RICCI FRANCISCO  
PARI K. SCROGGIN \* †  
DONALD R. BECK  
ANNEMARIE MCDOWELL \*  
MINAS SAMUELIAN  
CHRISTOPHER KANJO  
LORI B. WADE  
LALO GARCIA  
FRANK M. LAFLEUR  
ROBERT P. WARGO \*  
SCOTT A. ALLES †  
ALEJANDRO CARAVEO  
MATTHEW P. NOEL  
MAHASTI KASHEFI

**MANNING & KASS**  
**ELLROD, RAMIREZ, TRESTER LLP**  
ATTORNEYS AT LAW

ONE BATTERY PARK PLAZA  
4TH FLOOR  
NEW YORK, NEW YORK 10004  
TELEPHONE: (212) 858-7769  
FACSIMILE: (212) 858-7543  
WEB SITE: WWW.MANNINGLLP.COM

May 31, 2016

JONATHAN J. LABRUM \*  
GENE W. LEE  
LISA WONG  
KAREN LUH  
CHRISTOPHER WARREN  
DONALD APPLEGATE  
JONATHAN D. SAYRE  
HEATHER M. ANTONIE  
KAREN LIAO  
KATIE ALLEN  
JASON J. DOSHI  
TAMARA DARWEESH  
ZUBIN FARINPOUR  
LAURA MCADAMS  
CHRISTINE WALTON  
VI APPLIN  
GRETCHEN COLLIN  
ARTIN AVETISOVE  
RODRIGO J. BOZOGHLIAN  
MIRIAM RENZI  
ANGELA POWELL  
MAX HIGGINS  
KYRA BUCH  
MICHAEL LE  
ORCHID BARZIN  
D. ROCKEY GOODELL III \*  
JENIFER WALLIS ‡  
MARISSA GITTLER  
MATTHEW E. KEARL  
OLEN GUIAB \*  
COURTNEY ARBUCCI  
JENNIFER KANTER  
JUSTIN SHERGILL  
NARINE AVANES  
ERIK BABAKHANIAN  
ADAM ROEHRICK  
LESLIE BRALEY  
TONYA N. MALEK  
BRANDON BRAGA  
MONICA DE LEON  
NEGIN IRANINEJADIAN  
CORI GROVER  
AMY WILKENS †

MELISSA PALOZOLA  
EMILY EDWARDS  
ERIN UYESHIMA  
JESI WOLNIK  
CARL CHEA  
LINNETTE FLANIGAN  
FATIMA BADREDDINE  
STEVE PYUN  
RANDALL ROMERO  
INDOO DESAI \*  
DANIEL SULLIVAN  
EVAN SCHUIBE  
KAVEH KESHMIRI  
HILA GOLCHET  
MARYAM MALEKI  
RYAN GUIBOA  
ALEXANDRA SEIBERT  
JULIA LEVITSKAIA  
MICHAEL COOPER  
BRIAN SUBA  
BRIGITTE KHOURY  
KAYLEIGH MCGUINNESS  
LUCAS ROWE  
PAUL MITTELSTADT  
ADAM BESAGNO  
ANDREW MALLETT  
OMAR SUBAT  
JILL COHOE  
NICOLE THRELKEL  
A. FOSTER SHI  
MAE ALBERTO  
DAVID BEDERMAN  
JESSICA MAWRENCE  
CATHERINE BARNARD  
JACOB KOZACZUK  
LYLE CHAN  
MARCIA COOK  
MICHAEL KVVAT  
GEOFFREY CRUIZ  
BRIAN SMITH

OF COUNSEL  
THOMAS R. WAGNER

\* Admitted in Multiple Jurisdiction  
† Admitted to Practice Law in Arizona  
...L.

**VIA E-MAIL, FACSIMILE AND U.S. MAIL**

Joseph C. Gioconda, Esq.  
GIOCONDA LAW GROUP PLLC  
100 Park Avenue, 16th Floor  
New York, NY 10017-5538

**Re: Salvatore Ferragamo, S.P.A. v. Ferragamo Winery dba**  
**Ferragamowinery.com, and Vincent Anthony Ferragamo**  
Case No.: 1:16-cv-03313

Dear Mr. Gioconda:

Our client Vincent Ferragamo, retired NFL Super Bowl quarterback for the Los Angeles Rams, has retained us to represent him and his interests in the above-referenced matter. Please accept this letter as our good faith effort to meet and confer per the Individual Practice Rules of the Honorable Judge Victor Marrero. We intend to file a Motion to Dismiss for lack of personal jurisdiction, failure to state a claim, and improper venue. We will also file a Motion to Transfer Venue. Additionally, your client's laches bars any recovery.

This letter is intended to obviate the need for bringing motions as to the above issues, as required by the Individual Rules of the Honorable Victor Marrero, United States District Court Judge -- Southern District of New York. We are hopeful that we can resolve this dispute informally.

As you know from speaking with my law partner Jeffrey Lenkov, and as is obvious, Super Bowl quarterback Vincent Ferragamo made a name for himself playing for the Los Angeles Rams among other NFL teams. Upon retiring from the National Football League, he planted his own vineyard on his own property in California, and named it Tenuta di Ferragamo ("Ferragamo

Joseph C. Gioconda, Esq.

Re: **Salvatore Ferragamo, S.P.A. v. Ferragamo Winery dba Ferragamowinery.com, and Vincent Anthony Ferragamo**

May 31, 2016

Page 2

Estate"). The winery has been winning awards for its 2011, 2012 and 2013 vintages. Vince named the wines after his own daughters.

**Motion to Dismiss for Deficiency in Pleading (Rules 8(a) and 9(b))**

A pleading that only alleges conclusory allegations without any facts that would give the defendant reasonable notice of the conduct in question or the factual basis for the cause of action is insufficient to state a claim under Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8 requires that a complaint include facts (as distinct from legal "labels" and "conclusions") giving rise to a "plausible" (rather than merely "conceivable") entitlement to relief. *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007).

The allegation of a violation of the Lanham Act is akin to a fraud claim, and thus must be plead with particularity. The cybersquatting allegations also require a factual basis for alleging bad faith intent, as defined by the Anticybersquatting Consumer Protection Act. The complaint is devoid of any facts alleging that Vince Ferragamo was registering, trafficking in, or using an Internet domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else.

Plaintiff here alleges counterfeit usage of trademarks, but fails to plead with any particularity facts supporting its claim that defendant used a "false designation of origin", or "false and/or misleading descriptions or representations", or how defendant's use of his own name is likely to dilute plaintiff's trademarks. There are no facts plead which purport to demonstrate any willful acts or intent to deceive on the part of Vince Ferragamo, for simply using his own name on his own winery. He has never used the name Salvatore Ferragamo or any of the marks or designs registered by Salvatore Ferragamo. Vince Ferragamo does not sell shoes. Vince's winery is in California, and he uses his daughters' names for his labels, and his website's images are of his estate in Orange Park Acres, California. He is well known as a National Football League Super Bowl quarterback for the Los Angeles Rams. He is also a local hero and selling his wine locally. There is no confusion between your client, a shoe manufacturer and Mr. Ferragamo. Your client appears to have purchased a bottle of wine from Mr. Ferragamo as a one-off transaction to set up its lawsuit. Your client makes shoes, not wine.

**Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue Rules 12(b)(2) and 12(b)(3)**

The burden is on plaintiff to establish that venue is proper in New York. Defendant resides in the Central District of California, specifically the unincorporated area of Orange Park Acres. Venue is not proper under 28 U.S.C. § 1391(b)(1), since Vince Ferragamo does not reside in the Southern District of New York, and also under § 1391(b)(3), since Defendant resides in California, making venue available in the Central District of California. Your claim that a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part

Joseph C. Gioconda, Esq.

Re: **Salvatore Ferragamo, S.P.A. v. Ferragamo Winery dba Ferragamowinery.com, and Vincent Anthony Ferragamo**

May 31, 2016

Page 3

of property that is the subject of the action is situated in New York is simply lacking in basis. Vince Ferragamo has never purposely availed himself of the jurisdiction of New York. He sold a bottle of wine to you, and you only bought the bottle to create this lawsuit. Moreover, your client is an Italian Company with no principal place of business in New York.

Why was this lawsuit filed in New York?

### **Laches**

Your client is estopped from bringing this action, as it is guilty of laches, even assuming there is a viable case for trademark infringement which we contend there is not. Case law supports findings that Plaintiff's delay in bringing this action for infringement after years of Vince Ferragamo's usage of his own name on his own estate's wines will bar requests for monetary and injunctive relief. *United States v. Milstein*, 401 F.3d 53, 63 (2d Cir. 2005); *Conopco, Inc. v. Campbell Soup Co.*, 95 F.3d 187, 193 (2d Cir. 1996), and see *Columbia University v. Columbia/HCA Healthcare Corp.*, 964 F. Supp. 733 (S.D.N.Y. 1997) and *Saratoga Vichy Spring Co., Inc. v. Lehman*, 625 F.2d 1037, 1040 (2d Cir. 1980). Your client knew about Mr. Ferragamo for years, but did nothing to enforce its trademark. Your client has not sold any wine in the United States and has not demonstrated any intent to do so. It is patently unfair for your client to sit on a trademark that they never used, and then try to prevent our client from using his own name to sell a noncompeting product.

### **Conclusion**

We trust that you will withdraw your complaint, to eliminate the need for costly and time-consuming motions.

Very truly yours,

**MANNING & KASS  
ELLROD, RAMIREZ, TRESTER LLP**



Marguerite L. Jonak, Esq.  
Jeffrey M. Lenkov, Esq.

MLJ/JML: ll

cc: Honorable Victor Marrero  
United States District Judge  
Southern District of New York