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

Proceeding	77807946
Applicant	Cintron Beverage Group, LLC
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Submission	Request for Reconsideration
Attachments	Request for Reconsideration - CINTRON stylized.pdf (8 pages)(244699 bytes) Declaration of Richard Wyatt.pdf (2 pages)(76837 bytes) CINTRON - Exhibit B - ancestry.pdf (1 page)(30074 bytes)
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Date	07/02/2010

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

In re the Application of:

Cintron Beverage Group, LLC

Application Serial No.: 77/807,946

Filed: 19 August 2009

Mark: CINTRON (stylized)

Classes: 30 and 32

Request for Reconsideration of the Final Refusal to Register

Applicant respectfully request reconsideration of the Final refusal to register the stylized mark CINTRON in Application Serial No. 77/807,946. While a Notice of Appeal was filed on 5 May 2010 in this case, the Final refusal issued on 18 February 2010, thus this request is timely filed during the six-month response period and a Request to suspend Applicant's Appeal under 37 CFR §2.142(d) is not necessary.

Applicant respectfully requests that the Examining Attorney consider the evidence presented herewith and attached hereto as Exhibit A, which was not previously presented in the Application. It is not believed that fees are due with this filing, however, Should the USPTO determine that fees are necessary to accomplish this filing, authorization is hereby granted to charge account No. 50-2424.

Amendment

In the Final Refusal dated 18 February 2010, the Examining Attorney maintained a refusal under Section 2(e)(4) regarding the Application of Cintron Beverage Group, LLC ("Applicant") for registration of the (stylized) mark CINTRON for energy drinks, sports drinks, and tea-based and fruit-flavored beverages.

Applicant respectfully requests that the Examining Attorney reconsider the refusal to register Applicant's mark in light of the arguments and evidence presented herein, including evidence provided in the attached Declaration (Exhibit A), which is submitted to show that the mark CINTRON is recognized by consumers as a source indicator and is not, as the Examining Attorney states "primarily merely a surname."

I. CINTRON is not primarily merely a surname.

The question of whether a term is primarily merely a surname depends on the primary, not the secondary, significance to the purchasing public. TMEP § 1211.01. Thus, the issue is not whether the mark CINTRON exists as a surname, rather the issue is what is the primary significance to the relevant purchasing public.¹ Any doubt as to the issue of whether a term is primarily merely a surname is resolved in favor of Applicant and for publication of the mark.²

Among factors to be considered in determining whether a term is "primarily merely a surname" are: (i) whether the surname is rare; (ii) whether anyone connected

¹ See *Ex parte Rivera Watch Corp.* 106 USPQ 145, 149 (Comm. 1955).

² See *In re United Distillers plc*, 56 USPQ2d 1220, 1222 (TTAB 2000); and *In re Benthin Management GmbH*, 37 USPQ 1332, 1334 (TTAB 1995).

with the applicant has a surname matching the term; (iii) whether the term has any other recognized meaning; (iv) whether the term has the “look and feel of a surname”; and (v) whether the manner in which the mark is displayed might negate any surname significance, collectively known as the “Benthin Factors.”³ It is Applicant’s position that the Benthin Factors all weigh in favor of registration of the mark CINTRON.

By way of background, Cintron Beverage Group, LLC was founded in 2006 and the mark CINTRON has been in use continuously to describe innovative beverages, specifically energy drinks and sports drinks, for nearly four years, since August 2006. Moreover, the relevant purchasing public recognizes the mark CINTRON as the source of “liquid energy” beverages of assorted exotic flavors through the use of CINTRON 21 (Registration No. 3,410,949) and CINTRON ENERGY ENHANCER (Registration No. 3,600,401), both of which are owned by Applicant. Thus, to the relevant purchasing public, the term CINTRON is a coined term and source identifier; it is recognized as the source of beverages such as energy drinks and sports drinks.

The Examining Attorney has provided entries from various websites and evidence of 300 names from an on-line directory (www.411.com) to support a finding that the mark CINTRON is “primarily merely a surname.”

The entries from the various websites essentially show that there is no standard English definition for the word CINTRON, but that CINTRON exists as a surname with a popularity rank of 2801 according to the latest U.S. census. Individuals listed with assertedly the surname CINTRON include Conchita Cintron, a bull-fighter. Relevant

³ See *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995).

purchasing consumers, however, are unlikely to be aware of this or any of the individuals presented by the Examining Attorney.

Moreover, Applicant respectfully submits that out of a population of over 280,000,000 people in the United States, 300 persons is an infinitesimally low number in comparison. Percentage-wise, those individuals with the name Cintron represent less than 0.000107 % of the U.S. population and thus, Cintron is an extremely rare surname.

It has been previously held by the Trademark Trial and Appeal Board that an excess of 400 examples of a surname from a comprehensive directory of the United States is evidence of extreme rareness of the surname. Specifically, the TTAB reversed a Section 2(e)(4) refusal to register the mark BAIK for vodka, finding that the Examining Attorney had failed to establish a *prima facie* case that BAIK is primarily merely a surname. The evidence submitted by the Examining Attorney essentially comprised 456 hits from a Verizon database, however, with only 456 hits, the Board found BAIK to be an "extremely rare surname."⁴ Thus, Applicant respectfully asserts that the first Benthin Factor weighs in favor of registration.

Applicant has previously submitted that no one with Cintron Beverage Group, LLC has the last name of Cintron. As such, the second Benthin Factor weighs in favor of registration.

Not only is Cintron an extremely rare surname, it also does not have the "look and feel" of a surname like Smith or Jones. A search of Ancestry.com, the world's largest on-line resource for family history documents and family trees, reveals that

⁴ See *In re Joint-Stock Company "Baik"*, 84 USPQ2d 1921 (TTAB 2007).

Cintron is of Hispanic origin. **Cintrón**, as it is known, is a Hispanic name that perhaps is a nickname from a variant of the Spanish word *cinturón*, meaning “belt” – see the attached summary from Ancestry.com, attached hereto as Exhibit B.

CINTRON, rather than being a recognized surname, is a foreign term and evokes the exotic; at the very least it is an unusual word. CINTRON has the look, feel and sound of an arbitrary or fanciful term, like Kodak does. Thus, Applicant respectfully asserts that the third and fourth Benthin Factors weigh in favor of registration.

Based in the foregoing, it is clear that CINTRON is an extremely rare surname. Moreover, CINTRON is not the surname of anyone connected with Cintron Beverage Group, LLC. Nor does CINTRON have the “look and feel” of a surname, but rather the look and feel of an arbitrary term. Applicant seeks to register CINTRON in stylized form, including letters which are stylized to the point that the letters also function as a design element. As such, Applicant respectfully asserts that the stylized features of Applicant’s mark create a non-surname impression in the minds of purchasers of Applicant’s beverages.

Thus, all of the relevant Benthin factors weigh in favor of registration. Furthermore, any doubt as to whether or not the term is primarily merely a surname must be resolved in favor of Applicant.⁵

II. CINTRON is a source indicator.

Applicant’s mark CINTRON has significance and meaning to the relevant purchasing public. As discussed previously, consumers recognize the mark CINTRON

⁵ See *In re Benthin Management GmbH*, 37 USPQ2d 1332, 1334 (TTAB 1995).

as the source of “liquid energy” beverages of assorted exotic flavors through the use of CINTRON 21 (Registration No. 3,410,949) and CINTRON ENERGY ENHANCER (Registration No. 3,600,401), both of which are owned by Applicant and have been in continuous use in commerce for nearly four years. Thus, to the relevant purchasing public, the term CINTRON is a coined term and source identifier; it is recognized as the source of beverages such as energy drinks and sports drinks.

Further evidence of significance and meaning of the mark CINTRON to the relevant purchasing public is presented in the attached Declaration of Richard Wyatt, Chief Executive Officer of Applicant, Cintron Beverage Group.⁶

Applicant has had annual sales of beverages with the CINTRON mark totaling over 3 million dollars since 2007 alone.⁷ Moreover, Applicant promotes its mark by engaging in sponsorships at high-profile events such as: Power-Boating World Championships; the X-Games; sponsorship of a Cintron Race Boat; and promotion over the Internet and by social networking sites, such as Facebook.⁸ These marketing channels, together with advertising and promotion, are in excess of one million dollars in expenditures by Applicant.⁹ Furthermore, consumers recognize CINTRON beverages across the United States, including Hawaii, as well as Australia, Central America and

⁶ See Exhibit A.

⁷ See Exhibit A, para 7.

⁸ See Exhibit A, para 9.

⁹ See Exhibit A, para 8.

Africa.¹⁰ Thus, it is respectfully asserted that CINTRON is well recognized as a source indicator by the relevant purchasing public.

Taking into account all of the evidence presented herein, it is respectfully submitted that CINTRON is not primarily a surname, and that the stylized mark CINTRON is in condition for publication on the Principal Register.

Even if doubt exists as to whether CINTRON is primarily a surname or looks and feels like a surname, such doubt should be resolved in favor of Applicant. The Application should be published and allowed to be opposed by any interested party who believes that it would be damaged by the mark's registration.¹¹

Respectfully submitted,

Montgomery, McCracken, Walker & Rhoads, LLP

By: /Robert R. Axenfeld/

Robert R. Axenfeld, Attorney for Applicant

¹⁰ See Exhibit A, para 11.

¹¹ See *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995).

Exhibit A**DECLARATION OF RICHARD WYATT
In support of US Application Serial Nos. 77/807,941 and 77/807,946**

Applicant hereby respectfully submits the following Declaration in support of the registration of the marks associated with the above-identified trademark Applications.

The undersigned declares and states:

1. I am the Chief Executive Officer of Cintron Beverage Group, LLC (Applicant).
2. I have personal knowledge of the facts as stated herein and am qualified to make such statements.
3. Applicant, Cintron Beverage Group, LLC., was founded in 2006 and produces and distributes beverages, including a line of energy drinks and teas that feature ingredients to boost energy, under the brand name CINTRON.
4. Applicant is also the owner of US Registrations Nos. 3,410,949 for CINTRON 21 and 3,600,401 for CINTRON ENERGY ENHANCER, which are used to describe Applicant's beverages.
5. The mark CINTRON was first used in commerce to describe beverages, including energy drinks and sports drinks, as early as August 2006.
6. The mark CINTRON has been in continuous use in commerce to describe Applicant's beverages for nearly four years.
7. Since 2007, Applicant has had annual sales of beverages with the CINTRON mark totaling over three-million dollars.
8. Applicant spends approximately one-million dollars each year on marketing in connection with CINTRON-beverage-related advertising, promotion, sponsorships and manufacturing.
9. Applicant also promotes its CINTRON mark by promotional venues including sponsorships, such as the following:
 - Applicant was a key sponsor at the Power Boating World Championship in Key West, Florida in November 2009, featuring a "CINTRON-sponsored boat".
 - Applicant was a host at the X-games in Aspen, Colorado in January 2010, hosting a party featuring CINTRON energy drinks.

- Applicant sponsors a race boat with the CINTRON mark thereon. The race boat has been in approximately twenty (20) separate-race venues in the United States since 2007.
- Applicant has internet-commercial videos, such as Facebook, featuring CINTRON beverages therein.

10. Applicant is widely known by consumers as a source of innovative-energy drinks in the United States.

11. Applicant sells or has sold CINTRON beverages across the continental United States and Hawaii; as well as Australia, and countries in Central America and Africa.

12. The undersigned is unaware of any consumers that associate the CINTRON mark with a person or surname.

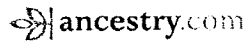
13. I declare further that all statements made herein are of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registrations issuing thereon.

Dated: 6-26-10

By: _____

Richard Wyatt, CEO

Cintron Beverage Group, LLC



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The Cintron Surname

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Cintron Name Meaning and History

Hispanic (Puerto Rico; Cintrón): unexplained; perhaps a nickname from a variant of Spanish *cinturón* 'belt'.

Dictionary of American Family Names, Oxford University Press, ISBN 0-19-508137-4

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Cintron Family Facts

[Name Distribution \(US\)](#)[Name Distribution \(UK\)](#)[Name Distribution \(Scotland\)](#)[Place of Origin](#)[Immigration Year](#)[Ports of Departure](#)[Life Expectancy](#)[Occupations](#)[Civil War Service](#)

Name History and Origin for Cintron

Cintron

Hispanic (Puerto Rico; Cintrón): unexplained; perhaps a nickname from a variant of Spanish *cinturón* 'belt'.

Dictionary of American Family Names, Oxford University Press, ISBN 0-19-508137-4

HOW IS THIS HELPFUL?

Naming patterns can help you learn more about your family's cultural and ethnic background.

You might find alternate name spellings which are helpful when searching for family records.

Are you a Facebook user? Add Cintron family facts to your Facebook profile.

EXHIBIT

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