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

Mario Diaz

Opposer,

v.

Servicios De Franquicia Pardo's S.A.C.

Applicant.

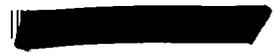
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Opposition No. 91159871

MOTION FOR SUMMARY JUDGMENT

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12-29-2004

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Opposition No. 91159871

**SERVICIOS DE FRANQUICIA PARDO'S S.A.C.'S
MOTION FOR SUMMARY JUDGMENT**

Applicant, Servicios de Franquicia Pardo's S.A.C. ("Serfransac"), moves the Trademark Trial and Appeal Board, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment that Serfransac has priority over Opposer Mario Diaz ("Diaz") for the mark PARDO'S CHICKEN for use with restaurant services in the United States under Article 7 of the General Inter-American Convention for Trademark and Commercial Protection of Washington, 1929, also known as the Pan American Convention of 1929 ("Pan American Convention").

I. SUMMARY OF BASIS FOR MOTION

1. Likelihood of confusion is not an issue since both parties take the position that the marks are likely to be confused based upon the fact that the marks and services are identical.

2. Under Article 7 of the Pan American Convention, of which the United States and Peru are contracting states, an owner of a mark protected in one of the contracting states has the

right to oppose use and registration of an interfering mark in any of the other contracting states, and upon proof that the interfering party had knowledge of the existence and continuous use of the mark in the contracting state, may claim the preferential right to use and register such mark where the claim is being made.

3. Serfransac is the owner of a well-known restaurant in Peru and Chile operating under the mark PARDO'S CHICKEN. Serfransac owns trademark registrations for the mark PARDO'S CHICKEN for restaurant services in Peru and throughout South and Latin America.

4. Diaz was aware of Serfransac's PARDO'S CHICKEN restaurants in Peru prior to adopting and using his PARDO'S CHICKEN mark in the United States and prior to filing his U.S. trademark application.

5. Under these circumstances, summary judgment on the issue of priority is warranted, and the opposition should be dismissed with prejudice.

II. BACKGROUND

Serfransac, through a predecessor-in-interest, has owned and operated restaurants in Peru under the mark PARDO'S CHICKEN since 1986. Serfransac owns registrations for the mark PARDO'S CHICKEN for use with restaurant services in Peru and Chile, and throughout Latin and South America. For the past several years, since at least as early as May, 2000, Serfransac has undertaken exploratory efforts concerning expansion into the United States, by taking such actions as making contact with suppliers of food products in the United States and advertising its services in English on a web site accessible to U.S. consumers, www.pardoschicken.com.

In March of 2002, Diaz, a Peruvian citizen currently residing in the United States, filed to incorporate in the State of Florida under the name Pardo's Chicken, Inc. In July, 2002, Diaz put up a sign advertising the opening of his PARDO'S CHICKEN restaurant in Miami, Florida, which signage used the same stylization and color format for the mark PARDO'S CHICKEN as that used by Serfransac in Peru. Diaz subsequently opened his restaurant in mid-2003, with a menu very similar to that of Serfransac's PARDO'S CHICKEN restaurants in Peru and Chile.

On November 14, 2002, Serfransac applied to register the mark PARDO'S CHICKEN in connection with restaurant services with the United States Patent and Trademark Office ("PTO"). Actually, this was a second application by Serfransac, the first having been inadvertently abandoned. One day later, on November 15, 2002, Diaz applied to register the mark PARDO'S CHICKEN for restaurant services with a drawing reflecting the identical format and stylization as used by Serfransac for its PARDO'S CHICKEN mark in Peru (and Chile). Diaz's application, based on an intent-to-use, was refused on the ground of a likelihood of confusion with Serfransac's prior filed application.

Diaz filed an opposition against Serfransac's PARDO'S CHICKEN application on March 23, 2004, claiming priority of use in the United States. The opposition was instituted, and the proceeding is currently within the discovery phase. Both parties have obtained written discovery, but as of yet, no depositions have been taken. An affidavit of Serfransac's Director and General Manager, discovery responses from Opposer Diaz, namely, Opposer's Objections and Responses to Applicant's First Set of Interrogatories ("Opp. Int. Resp.") and Opposer's Objections and Responses to Applicant's First Set of Requests for Admissions ("Opp. Resp. Adm."), and declaration of a vendor who obtained a copy of the file history of Diaz's application, are attached in support of this Motion as Attachments A, B, C and D, respectively.

III. UNDISPUTED FACTS FOR PURPOSES OF THE MOTION

1. Serfransac has offered restaurant services under the PARDO'S CHICKEN mark in Peru since 1986 (the service offerings were through Serfransac's predecessor-in-interest prior to 1998), and has made continuous use of the mark in Peru since that date. Affidavit of Arnold H. Wu, Paragraph 3.

2. Since 1986, Serfransac's predecessor-in-interest or Serfransac has opened eleven restaurants under the mark PARDO'S CHICKEN in Peru, and one in Chile. Affidavit of Arnold H. Wu, Paragraph 4.

3. Serfansac is the owner of Peruvian trademark Registration No. 08699 for the mark PARDO'S CHICKEN for restaurant services in International Class 42. This registration issued on June 6, 1991 in the name of Willy Wong Luck and was later assigned to Serfansac. This registration is valid and subsisting. Affidavit of Arnold H. Wu, Paragraph 6, and Exhibit B thereto.

4. Serfansac is also the owner of the following Peruvian trademark registrations for the mark PARDO'S CHICKEN, for restaurant or food related services, which are valid and subsisting:

Registration No. 00032113, issued on April 16, 2003, for the mark PARDO'S CHICKEN (in special script colors red and green), for the entire class heading covering commercial business management, commercial administration, office work, advertising, franchise administration and direction and commercial administration related to franchises, in International Class 35;

Registration No. 00019995, issued on January 14, 2000, for the mark PARDO'S CHICKEN and Design, for distribution, transportation, packing and warehousing of food and beverages, organization of travel and other services, in International Class 39;

Registration No. 00084467, issued on October 29, 2002, for the mark PARDO'S CHICKEN (stylized), for the entire class heading covering coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, and ice, in International Class 30;

Registration No. 00084466, issued on October 29, 2002, for the mark PARDO'S CHICKEN (stylized), for the entire class heading covering meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruit and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, in International Class 29;

Registration No. 00084191, issued on October 23, 2002, for the mark PARDO'S CHICKEN (stylized), for the entire class heading covering agricultural, horticultural and forestry products and grains not included in other classes, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, in International Class 31;

Registration No. 00019994, issued on January 14, 2000, for PARDO'S CHICKEN and Design, for the entire class heading covering catering services, temporary accommodations, medical, sanitary and beauty care services, veterinary and agricultural services, legal services, scientific and industrial research, computer programming, services that cannot be classified in other classes, and other services included in this class, in International Class 42; and

Affidavit of Arnold H. Wu, Paragraph 7 and Exhibit C thereto.

5. Serfransac owns registrations for the PARDO'S CHICKEN mark for use in connection with restaurant services and other food related services throughout Central and South America, including for Bolivia, Chile, Colombia, Ecuador, Mexico and Panama. Affidavit of Arnold H. Wu, Paragraph 8.

6. Diaz is a Peruvian citizen who was born in Peru and lived in Peru prior to residing in the United States. See Attachment B, Opp. Int. Resp. No. 2 and Attachment C, Opp. Resp. Adm. No. 11.

7. Diaz claims his priority date for use of PARDO'S CHICKEN is his date of incorporation of Pardo's Chicken, Inc. in Florida in March of 2002. See Attachment B, Opp. Int. Resp. No. 6, and Attachment C, Opp. Resp. Adm. No. 27.

8. In approximately July of 2002, Diaz erected a sign for PARDO'S CHICKEN over the door of an unopened restaurant, showing PARDO'S CHICKEN in the same stylization and color as that used by Serfransac in Peru and Chile. Affidavit of Arnold H. Wu, Paragraph 5, 10 and Exhibits A and D thereto; and Attachment C, Opp. Resp. Adm. No. 29.

9. Serfransac filed an application to register the mark PARDO'S CHICKEN for eat-in and take-out restaurant services on November 14, 2002. Affidavit of Arnold H. Wu, Paragraph 11.

10. On November 15, 2002, Diaz filed an application to register the mark PARDO'S CHICKEN for restaurant services, using the same stylization of the mark as used by Serfransac in connection with Serfransac's restaurants in Peru. A copy of the application file history is attached to the declaration by Jean Paterson, the vendor who obtained the copy of the file history, attesting that the file history is a true and correct copy of the file at the United States Patent and Trademark Office, and is designated Attachment D.

11. Diaz was aware of the PARDO'S CHICKEN restaurants in Peru prior to adopting and using the PARDO'S CHICKEN name and mark in the United States and prior to applying to register the mark in the United States, as evidenced by his responses to Applicant's First Set of Interrogatories Nos. 1-20 to Opposer and Applicant's First Set of Request for Admissions to Opposer. See Attachment B, Opp. Int. Resp. No. 18, and Attachment C, Opp. Resp. Adm. No. 9.

IV. ARGUMENT AND AUTHORITIES

A. General Authorities

Rule 56 of the Federal Rules of Civil Procedure, relating to summary judgment, is made applicable to proceedings before the Trademark Trial and Appeal Board by the Trademark Rules of Practice, 37 C.F.R. § 2.116(a).

The purpose of a motion for summary judgment is to promote judicial economy by avoiding an unnecessary trial and saving time and expense when there is no genuine issue of material fact and any additional evidence would not change the result in the case. Pure Gold, Inc. v. Syntex (U.S.A.), Inc., 739 F.2d 624, 222 U.S.P.Q. 741 (Fed. Cir. 1984); Exxon Corp. V. National Foodline Corp., 579 F.2d 1244, 198 U.S.P.Q. 407 (CCPA 1978). Summary judgment should be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), Fed. R. Civ. P.

Since both parties are of the position that there is a likelihood of confusion based on the similarities in the marks and the services, as evidenced by the pleadings, likelihood of confusion is not an issue in this case. The only issue to be resolved is priority, and this is an appropriate issue for resolution by summary judgment. Hornblower & Weeks Inc. v. Hornblower & Weeks Inc., 60 U.S.P.Q.2d 1733 (TTAB 2001).

B. Serfransac Has Priority in the United States Under the Pan American Convention

1. The Trademark Trial and Appeal Board has Jurisdiction to Consider Claims under the Convention

The Trademark Trial and Appeal Board (“Board”) has held that it has jurisdiction to consider claims under the Pan American Convention. British American Tobacco Co. v. Philip Morris Inc., 55 USPQ2d 1585 (TTAB 2000), aff’d British-American Tobacco Co. v. Philip Morris Inc., 2001 TTAB LEXIS 167 (TTAB February 27, 2001). In British American Tobacco Co., the Board found that because the Pan American Convention was self-executing, and claims under Article 8 of the Pan American Convention related to subject matter within the Board’s jurisdiction, the Board had jurisdiction to consider the cancellation claim.

In reaching its decision, the Board first noted that the Pan American Convention was self-executing and, therefore, had the force of a federal statute independent of the Lanham Act. The Board cited the Supreme Court’s holding in Bacardi Corporation of America v. Domenech, 311 U.S. 150, 161, 47 U.S.P.Q. 350, 355 (1940), in which the Court stated “[t]his treaty on ratification became a part of our law. No special legislation in the United States was necessary to make it effective.” As such, a claim under the Pan American Convention could be brought independent of the Lanham Act.

The Board then considered the issue of whether the Pan American Convention fell within its jurisdiction since the Pan American Convention was independent of the Lanham Act, and since the Board derived its jurisdiction under the Lanham Act. The Board recognized that it was authorized under the Lanham Act to determine the registrability of marks in the context of ex parte appeals and in inter partes proceedings, including the authority to order the cancellation of registrations. The Board held that since the claim brought before it under Article 8 of the Pan

American Convention expressly related to the registrability of marks, it had jurisdiction to consider a claim under Article 8.

The Board further found that acceptance of an Article 8 claim under the Pan American Convention did not violate the doctrine of territoriality, but rather was one of the reasoned exceptions to the doctrine. Under the doctrine of territoriality, a trademark is recognized as having a separate existence in each sovereign territory in which it is registered or legally recognized as a mark. The Board noted that there were several exceptions to this doctrine created by international treaties and conventions to which the United States was a party, most notable of which were "those exceptions to territoriality pertaining to famous marks; to priority application filings status and registration of marks based on foreign filings and registrations, as embodied in Section 44 of the Lanham Act; and to geographical indications, as embodied in Section 2 of the Lanham Act." British American Tobacco Co. at 1589. The Board concluded that Article 8 of the Pan American Convention required such an exception to the doctrine of territoriality.

In the present case, a claim is being brought under Article 7 of the Pan American Convention. Article 7 provides:

Any owner of a mark protected in one of the Contracting States in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the Contracting States, shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its registration or deposit is being sought, and upon proof that the person who is using such mark or applying to register or deposit it, had knowledge of the existence and continuous use in any of the Contracting States of the mark on which opposition is based upon goods of the same class, the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit it in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

General Inter-American Convention for Trademark and Commercial Protection of Washington, Feb. 20, 1929, art. 7, 46 Stat. 2907, 2918, 2 Bevans 751, 754.

As with Article 8, Article 7 relates to the registrability of a mark in an inter partes proceeding. Since the Board is authorized under the Lanham Act to determine the registrability of marks in the context of ex parte appeals and in inter partes proceedings, the Board has jurisdiction to consider the claim before it under Article 7 of the Pan American Convention.

2. Serfransac Has Priority in the United States Under Article 7 of the Pan American Convention

Under Article 7 of the Pan American Convention, an owner of a mark protected in one of the contracting states has the right to oppose use and registration of an interfering mark in any of the other contracting states, and upon proof that the interfering party had knowledge of the existence and continuous use of the mark in the contracting state, may claim the preferential right to use and register such mark where the claim is being made. As stated in Article 1, the principal purpose of the Pan American Convention is to bind the contracting states to grant nationals of other contracting states and others entitled to its benefits the same rights and remedies which their laws extend to their own nationals or domiciled persons. Both Peru and the United States are parties to the Pan American Convention.

Serfransac clearly may oppose Diaz's use and registration of the PARDO'S CHICKEN mark for restaurant services in the United States and may claim preferential right to use the mark because (1) Serfransac has legal protection of the PARDO'S CHICKEN mark in Peru, a contracting state to the Pan American Convention; and (2) Diaz had knowledge of the existence

and continuous use of the mark PARDO'S CHICKEN in Peru prior to using and applying to register the PARDO'S CHICKEN mark in the United States.

Serfransac, which has owned a well-known restaurant chain in Peru under the mark PARDO'S CHICKEN since 1986 (through a predecessor-in-interest), owns several registrations that are valid and subsisting for the PARDO'S CHICKEN mark in Peru for use with restaurants and related services. As supported by the enclosed Affidavit of Arnold H. Wu, Serfransac owns, among other registrations, Registration No. 08699, issued on June 6, 1991, for the mark PARDO'S CHICKEN for use with restaurant services in International Class 42. Since Serfransac has legal protection for the mark PARDO'S CHICKEN in Peru in connection with restaurant services, including a registration issued well prior to the date Diaz adopted the name and mark PARDO'S CHICKEN and applied to register his alleged mark in the United States, Serfransac would be entitled to oppose use and registration of the mark PARDO'S CHICKEN by Diaz for restaurant services in the United States under Article 7 of the Pan American Convention.

Diaz has admitted his knowledge of the existence and use of the PARDO'S CHICKEN mark in Peru prior to his having adopted and applied to register the mark in the United States. (See Attachment C, Opp. Resp. Adm. No. 9). The denials made in response to several of the requests were based on the thin averment that Diaz did not know there was a relationship between Applicant and the PARDO'S CHICKEN of Peru. Diaz is a Peruvian citizen who was born and did live in Peru prior to residing in the United States. In response to Applicant's Interrogatory No. 18, in which Opposer was requested to describe when and by what means Opposer first became aware of Applicant's PARDO'S CHICKEN mark being used for restaurant services outside of the United States, Diaz responded that "Opposer learned of Applicant's

purported use of the mark outside of the United States by its letter dated November 18, 2002. To further answer this Interrogatory, although Opposer was aware of restaurants in Peru called Pardo's Chicken, he was not aware until said date of any relationship between those establishments and Applicant." See Attachment B, Opp. Int. Resp. No. 18. In response to Applicant's Request for Admission No. 9 that Diaz had visited one of Applicant's PARDO'S CHICKEN restaurants before he adopted the PARDO'S CHICKEN name or mark for his business in the U.S., Diaz responded: "[d]enied insofar as Opposer had no knowledge of Applicant's relationship with the restaurant in Peru known as Pardo's Chicken." See Attachment C, Opp. Resp. Adm. No. 9. This denial was clearly based only on the premise that Diaz did not know of Applicant's relationship with the PARDO'S CHICKEN restaurant in Peru and not on the premise that Diaz was unaware of the PARDO'S CHICKEN restaurant in Peru. Article 7 requires that the interfering party be aware of the existence and continued use of the mark in one of the contracting states, but does not require a knowledge of the owner of the mark. Here, it is clear that Diaz was aware of the existence and use of the PARDO'S CHICKEN mark in Peru.

As further evidence of Diaz's knowledge of the PARDO'S CHICKEN restaurants in Peru, prior to opening his restaurant under the PARDO'S CHICKEN mark, Diaz put up a sign over the door of the unopened restaurant with the wording PARDO'S CHICKEN in the same stylization and color as that used by Serfransac in Peru and now in Chile. Compare the signage of Diaz, Affidavit of Arnold Wu, Exhibit D, with the mark used by Serfransac, Affidavit of Arnold Wu, Exhibit A. Moreover, on November 15, 2002, Diaz filed an application to register the mark PARDO'S CHICKEN with a drawing that reflected the same stylization as Serfransac's PARDO'S CHICKEN mark in Peru (which drawing was subsequently amended to a typed drawing format upon objection by the Examiner to two drawings in one application). See

Attachment D, Declaration by Jean Paterson regarding file history for Diaz application. It is clear by the signage use and by his application to register the same stylized format of the mark PARDO'S CHICKEN as that used by Serfansac, that Diaz was familiar with the PARDO'S CHICKEN mark in Peru. Because Serfansac has registration protection of the mark in Peru, and because Diaz had knowledge of the use of the PARDO'S CHICKEN mark in Peru, Serfansac may claim prior rights in the PARDO'S CHICKEN mark for restaurant services in the United States under Article 7 of the Pan American Convention.

CONCLUSION

Serfansac is the owner of registrations in Peru for the mark PARDO'S CHICKEN for use in connection with restaurant services and other food related services. The oldest of these date back to 1991. Serfansac currently uses the PARDO'S CHICKEN mark in Peru and Chile and, through a predecessor-in-interest, has continuously used the PARDO'S CHICKEN mark in Peru since 1986. Diaz had knowledge of the existence and use of the PARDO'S CHICKEN mark in Peru prior to using and applying to register his mark in the United States. Consequently, Serfansac is entitled to claim priority for the mark PARDO'S CHICKEN in the United States over Diaz pursuant to the Pan American Convention.

Therefore, the Board is urged to grant summary judgment to Serfransac and to dismiss the opposition with prejudice.

Respectfully submitted,

SERVICIOS DE FRANQUICIA PARDO'S S.A.C.

Date: December 29, 2004 By:



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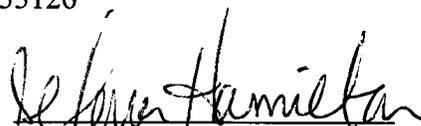
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Attorneys for Applicant

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Servicios de Franquicia Pardo's S.A.C.'s Motion for Summary Judgment" was served upon Opposer's attorney this 29th day of December, 2004, by first class mail, postage prepaid, as follows:

Edward M. Joffe, Esq.
Sandler, Travis & Rosenberg, P.A.
5200 Blue Lagoon Drive Suite 600
Miami, FL 33126


Selena Hamilton

APPLT. BRF. ATTACHMENT A

OPP. 91159871

Mario Diaz v. Servicios De Franquicia Pardo's S.A.C.

MOTION FOR SUMMARY JUDGMENT

5. Attached as Exhibit A is a promotional piece used by Serfransac for its PARDO'S CHICKEN restaurant in Peru and Chile. The stylization and color used for the mark PARDO'S CHICKEN dates back to 1986, through Serfransac's predecessor-in-interest.

6. Serfransac is the owner of Peruvian trademark registration, Registration No. 08699, for the mark PARDO'S CHICKEN for restaurant services in International Class 42. This registration issued on June 6, 1991 in the name of Willy Wong Luck and was assigned to Serfransac. This registration is valid and subsisting, and a certified copy of the registration and assignment is attached as Exhibit B hereto.

7. Serfransac is also the owner of the following Peruvian trademark registrations for the mark PARDO'S CHICKEN, for restaurant or food related services, which are valid and subsisting:

Registration No. 00032113, issued on April 16, 2003, for the mark PARDO'S CHICKEN (in special script colors red and green), for the entire class heading covering commercial business management, commercial administration, office work, advertising, franchisc administration and direction and commercial administration related to franchises, in International Class 35;

Registration No. 00019995, issued on January 14, 2000, for the mark PARDO'S CHICKEN and Design, for distribution, transportation, packing and warehousing of food and beverages, organization of travel and other services, in International Class 39;

Registration No. 00084467, issued on October 29, 2002, for the mark PARDO'S CHICKEN (stylized), for the entire class heading covering coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, and ice, in International Class 30;

Registration No. 00084466, issued on October 29, 2002, for the mark PARDO'S CHICKEN (stylized), for the entire class heading covering meat, fish, poultry and game;

meat extracts; preserved, dried and cooked fruit and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, in International Class 29;

Registration No. 00084191, issued on October 23, 2002, for the mark PARDO'S CHICKEN (stylized), for the entire class heading covering agricultural, horticultural and forestry products and grains not included in other classes, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, in International Class 31;

Registration No. 00019994, issued on January 14, 2000, for PARDO'S CHICKEN and Design, for the entire class heading covering catering services, temporary accommodations, medical, sanitary and beauty care services, veterinary and agricultural services, legal services, scientific and industrial research, computer programming, services that cannot be classified in other classes, and other services included in this class, in International Class 42; and

Certified copies of these registrations are attached as Exhibit C.

8. Serfransac owns registrations for the PARDO'S CHICKEN mark for use in connection with restaurant services and other food related services throughout Central and South America, including Bolivia, Chile, Colombia, Ecuador, Mexico, and Panama.

9. For the past several years, since at least as early as May, 2000, Serfransac has undertaken exploratory efforts to expand into the United States, by taking such actions as making contact with suppliers of food products in the United States and advertising its services in English on a web site accessible to U.S. patrons at www.pardoschicken.com.

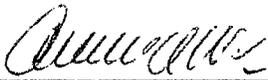
10. Prior to opening his restaurant, Mario Diaz put up a sign for PARDO'S CHICKEN over the door of the unopened restaurant which sign used the mark PARDO'S CHICKEN in the same stylization and color as that used by Serfransac in Peru and Chile. I personally witnessed this sign. A photograph showing such use is attached as Exhibit D.

11. Serfransac filed an application to register the mark PARDO'S CHICKEN for use in connection with eat-in and take-out restaurant services in the United States on November 14, 2002.

12. Attached as Exhibit E are certified copies of pages from the 1997 Menu Journal, Year No. 5, Edition No. 18, with English translations. The recognition of PARDO'S CHICKEN restaurants back in 1997 reflects the notoriety of Serfransac's PARDO'S CHICKEN mark in Peru well before Opposer adopted or used the PARDO'S CHICKEN mark in the United States.

13. The foregoing information has been derived from my personal knowledge or from the business records of Serfransac.

Date: December 27, 2004 By:


Name: Arnold H. Wu
Title: Director and General Manager

INDIVIDUAL ACKNOWLEDGEMENT CERTIFICATE

Republic of Peru)
Province and City of Lima) ss:
Embassy of the)
United States of America)

I, **Charles Skipwith Smith**, Consul of the United States of America at Lima, Peru, duly commissioned and qualified, do hereby certify that on this day the individual(s) named below appeared before me and acknowledged to me that the attached instrument was executed freely and voluntarily:

ARNOLD HENRY WU WONG

This Embassy assumes no responsibility for the contents of the document.



CHARLES SKIPWITH SMITH
CONSUL - U.S. EMBASSY
LIMA - PERU

My commission expires:

December 27, 2004
(Date)

WU AFFIDAVIT EXHIBIT A

OPP. 91159871

Mario Diaz v. Servicios De Franquicia Pardo's S.A.C.

MOTION FOR SUMMARY JUDGMENT

**EL
N°1**

**En Sabor,
Calidad
y Servicio**

para toda
la familia



Pardo's chicken

LA CADENA N°1 EN POLLOS A LA BRASA

WU AFFIDAVIT EXHIBIT B

OPP. 91159871

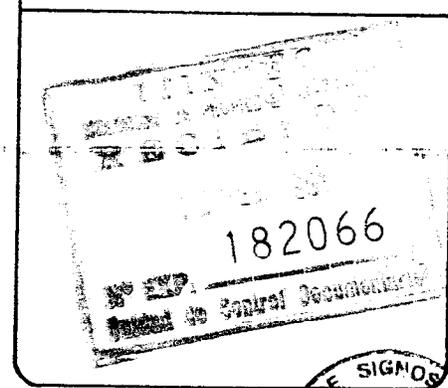
Mario Diaz v. Servicios De Franquicia Pardo's S.A.C.

MOTION FOR SUMMARY JUDGMENT



A LA DIRECCION DE PROPIEDAD INDUSTRIAL

08699



El suscrito solicita registro de la Marca de Servicio conforme a las disposiciones vigentes y a las siguientes especificaciones:

1. SOLICITANTE:

Nombre o Razón Social:

WILLY WONG LUCK

País

PERU

L.E. 07271376

L.M. Bb-58-08859

L.T. 1452029

C.E.



Nombre:

JOHNNY BAZAN MARTOS

L.E. 07232148

L.M. 2143730634

L.T. 6985308

2. DESCRIPCION DE LA MARCA.

2.1 Facsimil

La marca de servicio está constituida por la denominación " PARDO'S CHICKEN " y logotipo, conforme aparece.



Traducción: Pardo's - Niguna, Chicken - Pollo etc.

2.2 Servicios que distingue:

Servicios de restaurant en general

Clase N.O.

42

2.3 Reserva:

La denominación " Pardo's Chicken " y logotipo, conforme aparece.

3. DOMICILIO LEGAL:

Dr. Azángaro 1075 Of.532- A Lima 1.

FORMULARIO No. 00820

[Signature]
JOHNNY BAZAN MARTOS
APOD. EN LA PROP. INDUSTRIAL
L.E. No. 07232148
FIRMA DEL SOLICITANTE

ASIENTO DE RENOVACION

EXPEDIENTE N.- 9605665(96.03.14)

R.D. N.- 004661 INDECOPI/CO

FECHA : 06-05-96

VENCIMIENTO: 2006-06-06

[Signature]
REGISTRADOR

ASIENTO N.- 02

EXPEDIENTE N.- 9863616-T

Por R.D. N.- 2137 Del 98-06-26

Se ha dispuesto Insistir la trans-
ferencia a favor de SERVICIOS
DE FRANQUICIA PARDOS S.A.
SERFRANSA de Peru

Lima, 26 JUN. 1998 de 199

[Signature]
REGISTRADOR

ASIENTO DE RENOVACION

EXPEDIENTE N.- _____

R.D. N.- _____

FECHA : _____

VENCIMIENTO: _____

REGISTRADOR

ASIENTO N.- 03

EXPEDIENTE N.- _____

Por R.D. N.- _____ Del 14 SET 99

Se ha dispuesto Insistir la adecuación
de nombre del titular de la mar-
ca al nombre del titular p.p.a.
del COM. SERVICIOS DE FRAN-
QUICIA PARDOS S.A.C.

Lima, 14 SET. 1999 de 199

[Signature]
REGISTRADOR

ASIENTO DE RENOVACION

EXPEDIENTE N.- _____

R.D. N.- _____

FECHA : _____

VENCIMIENTO: _____

REGISTRADOR

ASIENTO N.- _____

EXPEDIENTE N.- _____

Por R.D. N.- _____ Del _____

Se ha dispuesto _____

Lima, _____ de _____ de 199

REGISTRADOR

El Area de Registro y Archivo de la Oficina de
Signos Distintivos del INDECOPI

CERTIFICA:
Que la presente copia es exactamente
igual al original que he tenido a la vista y
confrontado.

Lima,

24 NOV. 2004

[Signature]
Dra. ASHYADEE VASQUEZ DONAYRE
Encargado del Area de Registro y Archivo
Oficina de Signos Distintivos
INDECOPI

REPUBLICA DEL PERU (THE REPUBLIC OF PERU)

INSTITUTO DE INVESTIGACION TECNOLOGICA INDUSTRIAL Y DE
NORMAS TECNICAS -- ITINTEC (INSTITUTE OF INDUSTRIAL
TECHNOLOGICAL INVESTIGATION AND TECHNICAL RULES) -ITINTEC
DIRECCION DE PROPIEDAD INDUSTRIAL - SECTOR INDUSTRIA
(INDUSTRIAL PROPERTY HEAD OFFICE -INDUSTRY SECTOR)

APPLICATION FOR THE REGISTRATION OF A SERVICE MARK

Application No.182066

Form No.00820

TO THE INDUSTRIAL PROPERTY HEAD OFFICE

Pursuant to the provisions in force, the undersigned hereby files an application to register a Trademark with the following specifications:

1. APPLICANT (Natural or juridical person)

-Name or business name: WILLY WONG LUCK

-Country: PERU

-Voter's identification card: 07271376

-Military identification card: Bb-58-08859

-Taxpayer's identification card: 1452029

LEGAL REPRESENTATIVE OR ATTORNEY-IN-FACT

-Name: JOHNNY BAZAN MARTOS

-Voter's identification card: 07232148

-Military identification card: 2143730634

-Taxpayer's identification card: 6985308

2. TRADEMARK DESCRIPTION

The service mark is composed of the denomination "PARDO'S CHICKEN" and logotype, according to the accompanying facsimile.

2.1 Facsimile

Pardo's Chicken (stylized)

Translation: Pardo's - no translation

Chicken - Poultry

2.2 Services to be covered

Restaurant services in general.

Class: 42

2.3 Claim: The denomination "Pardo's Chicken" and logotype, according to the accompanying drawing.

3. LEGAL ADDRESS

Jr. Azángaro 1075, Office 532-A, Lima 1.

-(illegible signature)

Jhonny Bazán Martos

Industrial Property Legal Representative

4. TECHNICAL OPINION

Since the application for trademark registration complies with the legal requirements, registration thereof is hereby approved.

3rd June 1991

-(illegible signature)

Nerida Nieva Baldeon

Chief of the Trademark Division

ITINTEC

5. GRANTING RESOLUTION

Directoral Resolution No. 079639 - Industrial Property Head
Office

Lima, 6th June 1991

Pursuant to articles 56, 68, 69 and other appropriate
articles of Decision 85 of the Cartagena Agreement,
approved by Legislative Decree 22532; and in accordance
with the opinions given;

IT IS HEREBY RESOLVED:

To grant the service mark registration for a ten(10) year
period as of the date hereof.

Let it so be registered and published.

-(signature) Dr. Luis Chávez Loyola

Director of Industrial Property

ITINTEC

6. REGISTRATION

Volume : 41

Page : 140

Date : 17th June 1991

-(illegible signature)

Lucio Vásquez Cubas

Technician of the Registration, Renewal and Filing Unit

ITINTEC

7. CERTIFICATE OF REGISTRATION

Having complied with all the formalities required by law,
Certificate No.08699 is hereby issued.

RENEWAL ENTRY

File No. 9605665 (96.03.14)

Directoral Resolution No.004661 INDECOPI/OSD

Date: 06-05-1996

Expiration: 06-06-2006

-(illegible signature)

Registrar

Entry No.02

File No. 9863616-T

By Directoral Resolution No.2137 of 26th June 1998, it has
been decided to register the assignment in favor of
SERVICIOS DE FRANQUICIA PARDO'S S.A. SERFRANSA, from Peru.

Lima, 26th June 1998

-(illegible signature)

Registrar

Entry No.03

File No. ----

By Directoral Resolution No.---- of 14th September 1999, it has been decided to change of name of the owner of the service mark, which now must be read as SERVICIOS DE FRANQUICIA PARDO'S S.A.C.

Lima, 14th September 1999

-(illegible signature)

Registrar

The Registry and Filing Unit of the Trademark Office of INDECOPI, CERTIFIES:

That this is a true and correct copy of the original, which has been produced before me and I have duly examined.

Lima, 24th November 2004

-(illegible signature)

Dr. Ashyadee Vásquez Donayre Responsible for the Registry and Filing Unit of the Trademark Office - INDECOPI

REG118/P.05
30/11/04

WU AFFIDAVIT EXHIBIT C

OPP. 91159871

Mario Diaz v. Servicios De Franquicia Pardo's S.A.C.

MOTION FOR SUMMARY JUDGMENT

Registro de la Propiedad Industrial

Oficina de Signos Distintivos

CERTIFICADO N° 00032113



La Oficina de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 004237-2003/OSD - INDECOPI de fecha 16 de Abril de 2003, ha quedado inscrito en el Registro de Marcas de Servicio, el siguiente signo:

Signo : EL LOGOTIPO CONFORMADO POR LA DENOMINACION PARDO'S CHICKEN ESCRITA EN LETRAS CARACTERISTICAS EN LOS COLORES ROJO Y VERDE, CONFORME AL MODELO ADJUNTO

Distingue : GESTION DE NEGOCIOS COMERCIALES, ADMINISTRACION COMERCIAL, TRABAJOS DE OFICINA, PUBLICIDAD, ADMINISTRACION Y DIRECCION DE FRANQUICIAS Y ADMINISTRACION COMERCIAL RELACIONADA CON FRANQUICIAS

Clase : 35 de la Clasificación Internacional.

Solicitud : 0169093-2002

Titular : SERVICIOS DE FRANQUICIA PARDO'S S.A.C. SERFRANSAC

País : PERU

Vigencia : 16 de Abril de 2013

Tomo : 161

Folio : 113

Dra. TERESA MERA GOMEZ
Jefa de la Oficina de
Signos Distintivos
INDECOPI

REPÚBLICA DEL PERÚ (THE REPUBLIC OF PERU)

INSTITUTO NACIONAL DE DEFENSA DE LA COMPETENCIA Y DE LA
PROTECCIÓN DE LA PROPIEDAD INTELECTUAL -- INDECOPI
(NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND THE
PROTECTION OF INTELLECTUAL PROPERTY -- INDECOPI)

REGISTRY OF INDUSTRIAL PROPERTY

TRADEMARK OFFICE

CERTIFICATE N°00032113

The Trademark Office of the National Institute for the Defense of Competition and the Protection of Intellectual Property - INDECOPI, certifies that under Resolution N°004237-2003/Trademark Office - INDECOPI, dated 16 April 2003, the following mark has been registered in the Service Mark Registry:

Mark: The logotype composed of the denomination PARDO'S CHICKEN in characteristic letters, in red and green colors, according to the accompanying drawing.

To distinguish: Commercial business management,
commercial administration, office work, advertising,
franchise administration and direction and commercial
administration related to franchises.

Class: 35 of the International Classification

Application No.: 0169093-2002

Owner: SERVICIOS DE FRANQUICIA PARDO'S S.A.C.
SERFRANSAC

Country: PERU

In force until: 16th April 2013

Volume: 161

Page: 113

(Trademark in characteristic letters)

-(signature) Dr. Teresa Mera Gomez

Chief of the Trademark Office

INDECOPI

**AREA DE REGISTRO Y ARCHIVO DE LA OFICINA DE SIGNOS
DISTINTIVOS - INDECOPI**

(REGISTRY AND FILING UNIT OF THE TRADEMARK OFFICE-INDECOPI)

I, the undersigned, certify that the present document is a true copy of the original, which has been produced before me and which I have duly examined.

Lima, 24th November 2004

-(signature) Dr. Ashyadee Vásquez Donayre

Registry and Filing Unit

Trademark Office - INDECOPI

Seal

REG120/P.02

30/11/04

Registro de la Propiedad Industrial

Oficina de Signos Distintivos

CERTIFICADO N° 00019995



La Oficina de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 000107-2000/OSD - INDECOPI de fecha 14 de Enero de 2000, ha quedado inscrito en el Registro de Marcas de Servicios, el siguiente signo:

- Signo : EL LOGOTIPO CONSTITUIDO POR LA DENOMINACION PARDO'S CHICKEN ESCRITA EN LETRAS CARACTERISTICAS DE COLOR NEGRO SOBRE EL PORTAL DE UN ARCO DE COLOR OCRE, AL CENTRO LA FIGURA DE UN POLLO ESTILIZADO VESTIDO CON MAMELUCO DE COLOR VERDE CLARO, EN CUYA PARTE CENTRAL APARECE LA DENOMINACION PARDO'S EN LETRAS ROJAS CON BORDES AMARILLOS Y CHICKEN EN LETRAS VERDES CON BORDES AMARILLOS, LAS PATAS
- Continua en la siguiente página
- Distingue : SERVICIOS DE REPARTO DE ALIMENTOS PREPARADOS Y BEBIDAS; TRANSPORTE; EMBALAJE Y ALMACENAJE DE MERCANCIAS; ORGANIZACION DE VIAJES Y DEMAS SERVICIOS COMPRENDIDOS
- Clase : 39 de la Clasificación Internacional.
- Solicitud : 088931-1999
- Titular : SERVICIOS DE FRANQUICIA PARDO'S S.A.C.
- País : PERU
- Vigencia : 14 de Enero de 2010
- Tomo : 100
- Folio : 195





Registro de la Propiedad Industrial

Oficina de Signos Distintivos

Signo : Y PICO SON DE COLOR AMARILLO Y LA CRESTA DE COLOR ROJO;
CONFORME AL MODELO ADJUNTO,



LUIS ALONSO GARCIA MUÑOZ-NAJAR
Jefe de la Oficina de
Signos Distintivos
INDECOPI

3 DISTINTIVOS
DE ROJO
NO
201

REPÚBLICA DEL PERÚ (THE REPUBLIC OF PERU)

INSTITUTO NACIONAL DE DEFENSA DE LA COMPETENCIA Y DE LA
PROTECCIÓN DE LA PROPIEDAD INTELECTUAL -- INDECOPI
(NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND THE
PROTECTION OF INTELLECTUAL PROPERTY -- INDECOPI)

REGISTRY OF INDUSTRIAL PROPERTY

TRADEMARK OFFICE

CERTIFICATE N°00019995

The Trademark Office of the National Institute for the Defense of Competition and the Protection of Intellectual Property - INDECOPI, certifies that under Resolution N°000107-2000/Trademark Office - INDECOPI, dated 14 January 2000, the following mark has been registered in the Service Mark Registry:

Mark: The logotype composed of the denomination PARDO'S CHICKEN, in characteristic letters, in black color, above the portal of an ocher-colored arch, at the center the figure of an stylized chicken wearing a light green overall having on the center the denomination Pardo's in red letters with yellow edges, the chicken's legs and beak are yellow and the comb is red; according to the accompanying drawing.

To distinguish: Prepared food and beverage delivery services; merchandise transport, packaging and storage

services; travel organization services and other services included in this class.

Class: 39 of the International Classification

Application No.: 088931-1999

Owner: SERVICIOS DE FRANQUICIA PARDO'S S.A.C.

Country: PERU

In force until: 14th January 2010

Volume: 100

Page: 195

(Trademark logotype)

-(signature) Luis Alonso García Muñoz-Nájar

Chief of the Trademark Office

INDECOPI

**AREA DE REGISTRO Y ARCHIVO DE LA OFICINA DE SIGNOS
DISTINTIVOS - INDECOPI**

(REGISTRY AND FILING UNIT OF THE TRADEMARK OFFICE-INDECOPI)

I, the undersigned, certify that the present document is a true copy of the original, which has been produced before me and which I have duly examined.

Lima, 24th November 2004

-(signature) Dr. Ashyadee Vasquez Donayre

Registry and Filing Unit

Trademark Office - INDECOPI

Seal

Registro de la Propiedad Industrial

Oficina de Signos Distintivos

CERTIFICADO N° 00084467



La Oficina de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 012127-2002/OSD - INDECOPI de fecha 29 de Octubre de 2002, ha quedado inscrito en el Registro de Marcas de Producto, el siguiente signo:

Signo : LA DENOMINACION PARDO'S CHICKEN ESCRITA EN LETRAS CARACTERISTICAS EN LOS COLORES ROJO Y VERDE; CONFORME AL MODELO ADJUNTO

Distingue : CAFE, TE, CACAO, AZUCAR, ARROZ, TAPIOCA, SAGU, SUCEDANEOS DEL CAFE; HARINAS Y PREPARACIONES HECHAS DE CEREALES, PAN, PASTELERIA Y CONFITERIA, HELADOS COMESTIBLES; MIEL, JARABE DE MELAZA; LEVADURAS, POLVOS PARA ESPONJAR; SAL, MOSTAZA; VINAGRE, SALSAS (CONDIMENTOS); ESPECIAS, HIELO

Clase : 30 de la Clasificación Internacional.

Solicitud : 158167-2002

Titular : SERVICIOS DE FRANQUICIA PARDO'S S.A.C. SERFRANSAC

País : PERU

Vigencia : 29 de Octubre de 2012

Tomo : 422

Folio : 177

Dra. TERESA MERA GOMEZ
 Jefa de la Oficina de
 Signos Distintivos
 INDECOPI

REPÚBLICA DEL PERÚ (THE REPUBLIC OF PERU)

INSTITUTO NACIONAL DE DEFENSA DE LA COMPETENCIA Y DE LA
PROTECCIÓN DE LA PROPIEDAD INTELECTUAL -- INDECOPI
(NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND THE
PROTECTION OF INTELLECTUAL PROPERTY -- INDECOPI)

REGISTRY OF INDUSTRIAL PROPERTY

TRADEMARK OFFICE

CERTIFICATE N°00084467

The Trademark Office of the National Institute for the Defense of Competition and the Protection of Intellectual Property - INDECOPI, certifies that under Resolution N°012127-2002/Trademark Office - INDECOPI, dated 29 October 2002, the following mark has been registered in the Service Mark Registry:

Mark: The denomination PARDO'S CHICKEN in
characteristic letters, in red and green colors; according
to the accompanying drawing.

To distinguish: Coffee, tea, cocoa, sugar, rice,
tapioca, sago, artificial coffee; flour and preparations
made from cereals, bread, pastry and confectionery, ices;
honey, treacle; yeast, baking-powder; salt, mustard;
vinegar, sauces (condiments); spices; ice.

Class: 30 of the International Classification

Application No.: 158167-2002

Owner: SERVICIOS DE FRANQUICIA PARDO'S S.A.C.
SERFRANSAC

Country: PERU

In force until: 29th October 2012

Volume: 422

Page: 177

-(signature) Dr. Teresa Mera Gomez

Chief of the Trademark Office

INDECOPI (trademark in characteristic letters)

**AREA DE REGISTRO Y ARCHIVO DE LA OFICINA DE SIGNOS
DISTINTIVOS - INDECOPI**

(REGISTRY AND FILING UNIT OF THE TRADEMARK OFFICE-INDECOPI)

I, the undersigned, certify that the present document is a true copy of the original, which has been produced before me and which I have duly examined.

Lima, 24th November 2004

-(signature) Dr. Ashyadee Vásquez Donayre

Registry and Filing Unit

Trademark Office - INDECOPI

Seal

REG123/P.02
30/11/04

Registro de la Propiedad Industrial

Oficina de Signos Distintivos

CERTIFICADO N° 00084466



La Oficina de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 012126-2002/OSD - INDECOPI de fecha 29 de Octubre de 2002, ha quedado inscrito en el Registro de Marcas de Producto, el siguiente signo:

Signo : LA DENOMINACION PARDO'S CHICKEN ESCRITA EN LETRAS CARACTERISTICAS EN LOS COLORES ROJO Y VERDE; CONFORME AL MODELO ADJUNTO

Distingue : CARNE, PESCADO, AVES Y CAZA; EXTRACTOS DE CARNE; FRUTAS Y LEGUMBRES EN CONSERVA, SECAS Y COCIDAS; GELATINAS, MERMELADAS, COMPOTAS; HUEVOS, LECHE Y PRODUCTOS LACTEOS; ACEITES Y GRASAS COMESTIBLES

Clase : 29 de la Clasificación Internacional.

Solicitud : 158166-2002

Titular : SERVICIOS DE FRANQUICIA PARDO'S S.A.C. SERFRANSAC

Pais : PERU

Vigencia : 29 de Octubre de 2012

Tomo : 422

Folio : 176

Dra. TERESA MERA GOMEZ
 Jefa de la Oficina de
 Signos Distintivos
 INDECOPI

REPÚBLICA DEL PERÚ (THE REPUBLIC OF PERU)

INSTITUTO NACIONAL DE DEFENSA DE LA COMPETENCIA Y DE LA
PROTECCIÓN DE LA PROPIEDAD INTELECTUAL -- INDECOPI
(NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND THE
PROTECTION OF INTELLECTUAL PROPERTY -- INDECOPI)

REGISTRY OF INDUSTRIAL PROPERTY

TRADEMARK OFFICE

CERTIFICATE N°00084466

The Trademark Office of the National Institute for the Defense of Competition and the Protection of Intellectual Property - INDECOPI, certifies that under Resolution N°012126-2002/Trademark Office - INDECOPI, dated 29 October 2002, the following mark has been registered in the Service Mark Registry:

Mark: The denomination PARDO'S CHICKEN in characteristic letters, in red and green colors; according to the accompanying drawing.

To distinguish: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruit and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats.

Class: 29 of the International Classification

Application No.: 158166-2002

Owner: SERVICIOS DE FRANQUICIA PARDO'S S.A.C.
SERFRANSAC

Country: PERU
In force until: 29th October 2012
Volume: 422
Page: 176

-(signature) Dr. Teresa Mera Gomez

Chief of the Trademark Office

INDECOPI (trademark in characteristic letters)

**AREA DE REGISTRO Y ARCHIVO DE LA OFICINA DE SIGNOS
DISTINTIVOS - INDECOPI**

(REGISTRY AND FILING UNIT OF THE TRADEMARK OFFICE-INDECOPI)

I, the undersigned, certify that the present document is a true copy of the original, which has been produced before me and which I have duly examined.

Lima, 24th November 2004

-(signature) Dr. Ashyadee Vásquez Donayre

Registry and Filing Unit

Trademark Office - INDECOPI

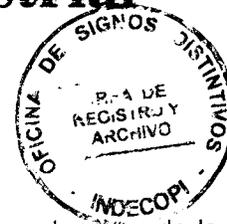
Seal

REG124/P.02
30/11/04

Registro de la Propiedad Industrial

Oficina de Signos Distintivos

CERTIFICADO N° 00084191



La Oficina de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 011883-2002/OSD - INDECOPI de fecha 23 de Octubre de 2002, ha quedado inscrito en el Registro de Marcas de Producto, el siguiente signo:

Signo : LA DENOMINACION PARDO'S CHICKEN ESCRITA EN LETRAS CARACTERISTICAS EN LOS COLORES ROJO Y VERDE; CONFORME AL MODELO ADJUNTO

Distingue : PRODUCTOS AGRICOLAS, HORTICOLAS, FORESTALES Y GRANOS, NO COMPRENDIDOS EN OTRAS CLASES; ANIMALES VIVOS; FRUTAS Y LEGUMBRES FRESCAS; SEMILLAS, PLANTAS Y FLORES NATURALES; ALIMENTOS PARA LOS ANIMALES, MALTA

Clase : 31 de la Clasificación Internacional.

Solicitud : 158168-2002

Titular : SERVICIOS DE FRANQUICIA PARDO'S S.A.C. SERFRANSAC

Pais : PERU

Vigencia : 23 de Octubre de 2012

Tomo : 421

Folio : 101

Dra. TERESA MERA GOMEZ
Jefa de la Oficina de
Signos Distintivos
INDECOPI

REPÚBLICA DEL PERÚ (THE REPUBLIC OF PERU)

INSTITUTO NACIONAL DE DEFENSA DE LA COMPETENCIA Y DE LA
PROTECCIÓN DE LA PROPIEDAD INTELECTUAL -- INDECOPI
(NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND THE
PROTECTION OF INTELLECTUAL PROPERTY -- INDECOPI)

REGISTRY OF INDUSTRIAL PROPERTY

TRADEMARK OFFICE

CERTIFICATE N°00084191

The Trademark Office of the National Institute for the Defense of Competition and the Protection of Intellectual Property - INDECOPI, certifies that under Resolution N°011883-2002/Trademark Office - INDECOPI, dated 23 October 2002, the following mark has been registered in the Service Mark Registry:

Mark: The denomination PARDO'S CHICKEN in
characteristic letters, in red and green colors; according
to the accompanying drawing.

To distinguish: Agricultural, horticultural and
forestry products and grains not included in other classes;
live animals; fresh fruits and vegetables; seeds, natural
plants and flowers; foodstuffs for animals; malt.

Class: 31 of the International Classification

Application No.: 158168-2002

Owner: SERVICIOS DE FRANQUICIA PARDO'S S.A.C.
SERFRANSAC

Country: PERU

In force until: 23rd October 2012

Volume: 421

Page: 101

-(signature) Dr. Teresa Mera Gomez

Chief of the Trademark Office

INDECOPI (trademark in characteristic letters)

AREA DE REGISTRO Y ARCHIVO DE LA OFICINA DE SIGNOS

DISTINTIVOS - INDECOPI

(REGISTRY AND FILING UNIT OF THE TRADEMARK OFFICE-INDECOPI)

I, the undersigned, certify that the present document is a true copy of the original, which has been produced before me and which I have duly examined.

Lima, 24th November 2004

-(signature) Dr. Ashyadee Vásquez Donayre

Registry and Filing Unit

Trademark Office - INDECOPI

Seal

REG125/P.02
30/11/04

Registro de la Propiedad Industrial

Oficina de Signos Distintivos

CERTIFICADO N° 00019994



La Oficina de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual - INDECOPI, certifica que por mandato de la Resolución N° 000106-2000/OSD - INDECOPI de fecha 14 de Enero de 2000, ha quedado inscrito en el Registro de Marcas de Servicios, el siguiente signo:

- Signo : EL LOGOTIPO CONSTITUIDO POR LA DENOMINACION PARDO'S CHICKEN ESCRITA EN LETRAS CARACTERISTICAS DE COLOR NEGRO SOBRE EL PORTAL DE UN ARCO DE COLOR OCRE, AL CENTRO LA FIGURA DE UN POLLO ESTILIZADO VESTIDO CON MAMELUCO DE COLOR VERDE CLARO, EN CUYA PARTE CENTRAL APARECE LA DENOMINACION PARDO'S EN LETRAS ROJAS CON BORDES AMARILLOS.
- Continua en la siguiente página
- Distingue : RESTAURACION (ALIMENTACION); HOSPEDAJE TEMPORAL; CUIDADOS MEDICOS, DE HIGIENE Y DE BELLEZA; SERVICIOS VETERINARIOS Y DE AGRICULTURA; SERVICIOS JURIDICOS; INVESTIGACION CIENTIFICA E INDUSTRIAL; PROGRAMACION PARA ORDENADORES; SERVICIOS QUE NO PUEDEN SER CLASIFICADOS EN OTRA CLASE; Y DEMAS SERVICIOS
- Clase : 42 de la Clasificación Internacional.
- Solicitud : 088930-1999
- Titular : SERVICIOS DE FRANQUICIA PARDO'S S.A.C.
- País : PERU
- Vigencia : 14 de Enero de 2010
- Tomo : 100
- Folio : 194





Registro de la Propiedad Industrial

Oficina de Signos Distintivos

Signo : Y CHICKEN EN LETRAS VERDES CON BORDES AMARILLOS, LAS PATAS Y PICO SON DE COLOR AMARILLO Y LA CRESTA DE COLOR ROJO; CONFORME AL MODELO ADJUNTO,



LUIS ALONSO GARCIA MUÑOZ-NAJAR
Jefe de la Oficina de
Signos Distintivos
INDECOPI



REPÚBLICA DEL PERÚ (THE REPUBLIC OF PERU)

INSTITUTO NACIONAL DE DEFENSA DE LA COMPETENCIA Y DE LA
PROTECCIÓN DE LA PROPIEDAD INTELECTUAL -- INDECOPI
(NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND THE
PROTECTION OF INTELLECTUAL PROPERTY -- INDECOPI)

REGISTRY OF INDUSTRIAL PROPERTY

TRADEMARK OFFICE

CERTIFICATE N°00019994

The Trademark Office of the National Institute for the Defense of Competition and the Protection of Intellectual Property - INDECOPI, certifies that under Resolution N°000106-2000/Trademark Office - INDECOPI, dated 14 January 2000, the following mark has been registered in the Service Mark Registry:

Mark: The logotype composed of the denomination PARDO'S CHICKEN, in characteristic letters, in black color, above the portal of an ocher-colored arch, at the center the figure of an stylized chicken wearing a light green overall having on the center the denomination Pardo's in red letters with yellow edges and the denomination Chicken in green letters with yellow edges, the chicken's legs and beak are yellow and the comb is red; according to the accompanying drawing.

To distinguish: Catering services; temporary
accommodations; medical, sanitary and beauty care services;

veterinary and agricultural services; legal services;
scientific and industrial research; computer programming;
services that cannot be classified in other classes; and
other services included in this class.

Class: 42 of the International Classification

Application No.: 088930-1999

Owner: SERVICIOS DE FRANQUICIA PARDO'S S.A.C.

Country: PERU

In force until: 14th January 2010

Volume: 100

Page: 194

(Trademark logotype)

-(signature) Luis Alonso García Muñoz-Nájar

Chief of the Trademark Office

INDECOPI

**AREA DE REGISTRO Y ARCHIVO DE LA OFICINA DE SIGNOS
DISTINTIVOS - INDECOPI**

(REGISTRY AND FILING UNIT OF THE TRADEMARK OFFICE-INDECOPI)

I, the undersigned, certify that the present document
is a true copy of the original, which has been produced
before me and which I have duly examined.

Lima, 24th November 2004

-(signature) Dr. Ashyadee Vasquez Donayre

Registry and Filing Unit

Trademark Office - INDECOPI

Seal

REG126/P.02

30/11/04

WU AFFIDAVIT EXHIBIT D

OPP. 91159871

Mario Diaz v. Servicios De Franquicia Pardo's S.A.C.

MOTION FOR SUMMARY JUDGMENT

Florida Leichter
(305) 477-7747



WU AFFIDAVIT EXHIBIT E

OPP. 91159871

Mario Diaz v. Servicios De Franquicia Pardo's S.A.C.

MOTION FOR SUMMARY JUDGMENT

AREGALIA Prize, key to success: efficient service.

On the night of the granting of awards, sponsored by AREGALA, to the best restaurants in Lima this year, many were excited to hear the names of the classified restaurants and then were touched when one of the winners announced was PARDO'S CHICKEN. It was not a five fork, nor a qualified chef. It was a fast grilled food restaurant.

That night it was affirmed that prize was awarded for its service, coziness, and specialization. It is for that reason that we approached the person responsible for creating a restaurant that was awarded a prize by the most demanding experts in gastronomy who had come to our city to attend the Greta Event.

Willy Wong, although this name might not ring a bell to many, those in the restoration business know he has a place of honor. With almost fifteen years in the gastronomic arena of Lima, he has conquered thousands of Limenians and has made PARDO'S CHICKEN, a restaurant engaged in grilled fast food, a favorite; thus praising those who placed their bet in Peru, at a time when most people were packing their bags to flee the country.

To get to know closely men who have one way or another turned Peru into its business headquarters, breaking the famous myth "no one is prophet in his homeland", gives us hope that a country that was overcoming a crisis is on its way to development.

While others fled, he came back to his homeland and left the dreams of a young person who was 20 or 21 a couple of dozens of years ago.

M.J. What has been your progress, Mr. Wong? We started our talk in an office located on the second floor of the restaurant located on block 5 of Benavides in Miraflores.

WW.- I must start by telling you that I first went to medical school in La Plata, Argentina for three years. I came back to Peru when Universidad Cayetano Heredia opened. We (five of us came back) thought we could carry on with our studies from Peru, but things got worse and I started selling prescription drugs. After a while, I decided to open up my own restaurant.

M.J. Why the shift?

WW.- The situation, forecasts, and anxiety to grow.

M.J. Where did you start?

WW.- It was the 80's and I decided to open my first store on Juan de Arona. I called my first establishment Orly, then I opened Adriatis, Fontanela ... five in all. Then, I opened Chicken's Hut, which was successful and that's when I decide to go on with Pardo's Chicken. I changed the name so that the restaurant was named after the street where it was located. When we moved to Benavides and Alcanfores, I decided to keep the name.

M.J. You set up a business in the corner of Benavides and Alcanfores that was considered a blank spot in business?

WW.- Yes. We turned it into a lively corner. We bet on that site and we won. We were the first there, Mass (now Santa Isabel) followed; other restaurants, agencies, and the commercial activity started growing, turning it into a top class commercial center.

Time has gone by. Now he has a wife, Elsa Montoya, originally from Ica; and their three children: Laura, Katia, and Susan, currently in college. One of them is studying in the USA, she has "a gift for painting", he acknowledged with pride. The other young girl is studying Foreign Trade at ADEX. Laura, a long dark haired teenager with a fair body, works with him in his daily tasks at Pardo's Chicken.

The Wongs have been living in the world of restoration in San Isidro and Miraflores. Currently, its famous restaurant is located on his own property. It has a modern design, with great light and warmth. It has three rooms decorated in light pink and green with very lively and comfortable spaces ... and a top quality services which has been achieved through 12 hours of daily hard work. But actually, you end up working 24 hours because, according to Mr. Wong no aspect should be overlooked – this is the key to success, this middle aged man adds with an enigmatic smile, a feature of his personality.

PARDO'S CHICKEN has a staff of 78 persons who serve over 600 guests every day. For this reasons the waiters have taken classes at CENFOTUR. Its young, diligent and nice hostesses are trained by a demanding head of hostesses.

M.J. What you call service is the location, service, and quality... are prices reasonable?

W.W. With the experience gained over two decades in this business, we served 350 menus per day in a class A zone like San Isidro, we try to offer quality, comfort, and reasonable prices ... I believe this is one of the secrets of our success.

He adds that other "secrets" are the agreement with Fernando Ikea (a leading chicken breeder), the import through third parties of pork ribs, beef, and hearts for steaks and anticuchos. This strategy allows Pardo's Chicken to offer special prices and excellent service.

But, since the business world is demanding, it is not enough to survive, but to progress growth is needed.

For this reason, this entrepreneur, a winner in Lima, in restoration, will soon open new establishments in Lima; this time in San Borja. "Pardo's Chicken" will grow through franchises.

We share with our partners our secret on preparing beef", Willy Wong finally added.

Captions:

Mr. Willy Wong and his daughter Laura, the craftsmen of the success of Pardo's Chicken.

Willy Wong and his daughter in the restaurant.

Source: Menu Journal Argentina, Bolivia, Chile, Ecuador, Peru, Venezuela

CONFEDERACIÓN PERUANA DE ASOCIACIONES GASTRONÓMICAS
CERTIFICADO Que la presente fotocopia ha sido tomada de su original que se encuentra en el archivo de la Comisión de Turismo y Gastronomía de la Asociación de Gastronomía de Lima.

Lima, _____ 06 JUN. 2004

[Signature]
 MARIO VALDEZ
 Presidente de la Asociación de Gastronomía de Lima

Trofeo AREGALA 96

Premio a los restaurantes que destacaron en el año, en Lima-Perú

Es para Miraflores un honor el compartir con los representantes de los países asistentes al MEGAEVENTO GASTRONÓMICO sus artes culinarias y probar así la difusión y la integración de nuestros países a través del arte que nació con el hombre...me refiero al arte de comer que todos conocemos como «gastronomía», estas fueron las palabras con las que el actual alcalde de Miraflores el Dr. Fernando Andrade Carmona pronunció su discurso la noche de clausura del Festival que AREGALA organizó en capital peruana, en reconocimiento a los platos que el país de las Incas tiene y que debe ser difundidos al mundo.

Como en años anteriores, pero cambiando el escenario, AREGALA llevó a cabo la primera semana de junio la noche de Gala de Aregala que realiza anualmente en las ciudades donde se desarrolla el Festival y Congreso que los asociados a esta prestigiosa asociación gastronómica organizan con la finalidad de impulsar el arte culinario del turismo.

En esta oportunidad fue Lima la legida, la capital peruana ya en 1992

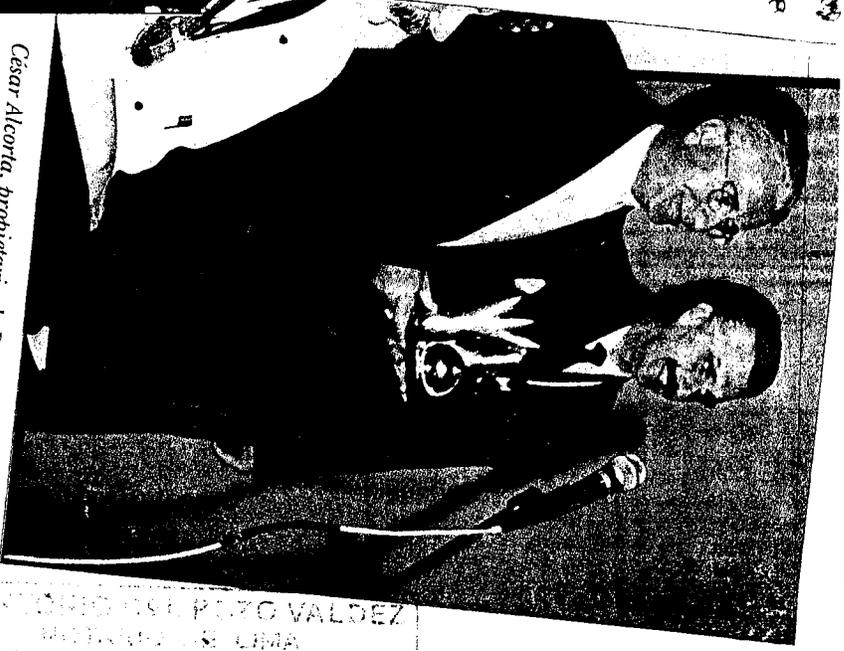
había asistido a un evento similar, pero que tuvo en el Cusco la clausura del mismo. En esta ocasión Aregala presentó a los asistentes al «Festival

música y baile del folklore de los países asistentes que tuvo como corolario la



Katia Wong, representando al Pardo's Chicken, recibe el merecido premio al que se hizo acreedor su restaurante.

Gastronómico en los Destinos Aéreos Hispanoamericanos» un espectáculo de gastronomía total salpicado de



César Alcorca, propietario de Brigas de Cachiche y Diego Situa, presidente de la Asociación, momentos de la entrega del trofeo AREGALA 96.

elegidos como los mejores en su especialidad experimentaron al darse a conocer a los 10 galardonados

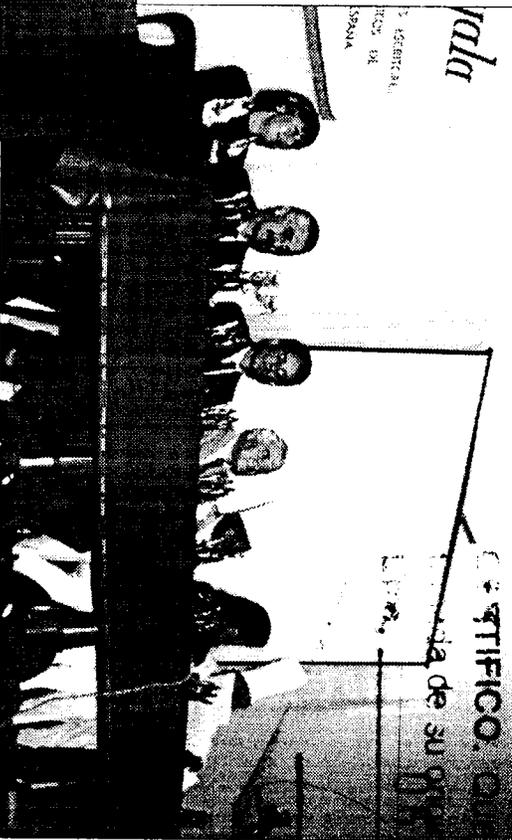
Los designados luego de una exigente calificación se hicieron acreedores al Trofeo Aregala 96, una hermosa estatuita bañada en oro de 18 kl. y que los designa como los mejores restaurantes, institutos o personalidades del mundo gastronómico de Lima.

La Comisión calificadora estuvo integrada por la Sra. Ana Larrañaga, Directora de la revista Gastronomía del país Vasco, España, Don José Luis San-

MARIO VALDEZ PÉREZ VALDEZ
 MARIANO S. LIMA
 TEL: 442-7232 FAX: 442-7232
 E-MAIL: mariovaldez@compuserve.com
 026 12 años

CHILE MENU JOURNAL ECUADOR MENU JOURNAL PERU MENU JOURNAL VENEZUELA

ana, presidente de la Asociación culinaria de Cuba, el sr. Gilberto Smith Duquesne presidente de la Federación Culinaria de Latinoamérica y el Caribe y representante de la Wacs en América Central.



Ana Larranaga, Diego Silva, Fernando Andrade, Boris Romero, Gilberto Smith D. Ana Benitez Muro y José Luis Santana, conformaron la mesa de honor.



la presente fotocopia de su...
 al que he tenido a la vista. Don...
 [Signature]
 ALDAMO DEL POZO VALDE...
 ABOGADO NOTARIO DE M...

AREGLA 96 TROPHY

Prizes for restaurants that stood out during the year, Lima – Peru

“It is an honor for Miraflores to share with the countries present at the GREAT GASTRONOMIC EVENT its culinary arts and thus promote the dissemination of our cuisines and the integration of our countries through an art that began at the same time as Man ... I am talking about the art of eating that we all know as gastronomy.” These are the opening words of the Mayor of Miraflores Dr. Fernando Andrade Carmona in his speech on the closing night of the Festival sponsored by AREGLA in the capital city of Peru, in recognition to the rich culinary tradition of the Inca’s and which must be shared with the rest of the world.

As in past years, but in different scenarios, AREGLA held its AREGLA’s Gala night the first week of June. This is an activity it organizes annually in the city that hosts the Festival and Congress organized by the members of this prestigious gastronomic organization in order to promote culinary art and tourism.

This time, Lima was selected. The capital of Peru had hosted a similar event in 1992, but the closing had taken place in Cuzco. On this occasion, Aregala gave the attendees to the “Gastronomic Festival in Air Destination in Hispanic America” a gastronomic show colored with folklore music and dance from the countries present. At the GALA NIGHT, the attendees shared the feelings of the owners of the restaurants selected as the best of their kind, especially when the names of the ten winners were announced.

After a demanding qualification process, the winners won the Aregala 96 Trophy, a beautiful 18 kl. gold-plated statue, which recognizes them as the best restaurant, institution or celebrity of the gastronomic world in Lima.

The qualifying commission was composed by Mrs. Ana Larrañaga, Director of the Gastronomic Review of the Pais Vasco, Spain; Mr. Jose Luis Santana, chairman of the Culinary association of Cuba; Mr. Gilberto Smith Duquesne, chairman of the Latin American and the Caribbean Culinary Federation; and the WACS representative in Central America.

Mr. Fernando Andrade Carmona, Mayor for the District of Miraflores; Mr. Diego Silva Lehman, chairman of AREGALA; and Lic. Ana Benitez Muro, from Mexico.

The winning restaurants were: “Brujas de Cachiche”, for its style and environment; “El Peregrino”, for its creative international cuisine; “Royal”, for best oriental cuisine; “Pardo’s Chicken”, for its entrepreneurial accomplishment in fast roasted food; the restaurant at the Miraflores Casino Club, for its excellent service; “Punta Sal”, for its prestige and quality service in fish and seafood.

The restaurant that won the Aregala 96 international trophy was “Trapiche Viejo” of Panama. Special prizes were awarded to Mr. Eladio Espinoza, the owner of the restaurant “San Isidro”, for his 30 years in the gastronomic world in Peru and to the Escuela Superior de Administración Hotelera and Turismo – INAT (Hotel Management and Tourism School).

The ceremony held on the eve of the closing of the Great Gastronomic Event was attended by diplomats from the countries present, high officers from the airlines and companies sponsoring the event, members of the Miraflores Social Club, etc.

Caption:

Katia Wong, on behalf of Pardo’s Chicken, receives the prize her restaurant won.

APPLT. BRF. ATTACHMENT B

OPP. 91159871

Mario Diaz v. Servicios De Franquicia Pardo's S.A.C.

MOTION FOR SUMMARY JUDGMENT

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

RECEIVED

Mario Diaz)
)
Opposer,)
)
v.)
)
Servicios De Franquicia Pardo's S.A.C.)
)
Applicant.)

OCT 26 2004

FULBRIGHT & JAWORSKI

Opposition No. 91159871

**OPPOSER'S OBJECTIONS AND RESPONSES TO
APPLICANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Opposer, Mario Diaz, hereby serves upon Applicant's counsel, within the time provided by the Federal Rules Civil Procedure and Trademark Rules of Practice, Opposer's Objections and Responses to Applicant's First Set of Interrogatories subject to the General Objections set forth below:

PRELIMINARY STATEMENT

The responding party has not yet completed its investigation of the facts relating to this action, its discovery in this action, or its preparation for trial of this action. Consequently, these responses are given without prejudice to the right of any responding party to amend its responses as a later time on the basis of subsequently discovered evidence.

GENERAL OBJECTIONS

1. Opposer objects to those interrogatories to the extent they seek information which is protected from disclosure under the attorney-client privilege or work product immunity.
2. Opposer objects to those interrogatories to the extent that they are unduly broad and burdensome. Unless other wise indicated, Opposer will provide relevant responses.
3. Opposer objects to any interrogatories which seek the discovery of information subject to

the attorney-client privilege or work product immunity.

4. Opposer objects to these interrogatories to the extent that the information sought has been previously asked and answered.

5. Opposer objects to these interrogatories to the extent that they seek information which is neither relevant to the issues raised in this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.

6. To the extent Applicant's requests seek information which Opposer considers to be confidential research, development or commercial information, responses will be provided as warranted under the terms of the Protective Order in this action.

7. To the extent that Opposer responds to an interrogatory, this should not be construed as a representation or admission that the responses are admissible at trial.

INTERROGATORY NO. 1

Provide the full given name of Opposer, including mother's maiden name.

Response:

Mario Alfonso Diaz Pascual.

INTERROGATORY NO. 2

Identify whether Opposer has ever lived in Peru, and if so, provide the dates in which Opposer has lived in Peru and the addresses in Peru where Opposer has lived.

Response:

Opposer lived in Peru since 1968 to 1972 in Diego Ferrer 33 Miraflores Peru, and from 1972 to 1993 in Diego Ferrer 354 Apartment B Miraflores Peru.

INTERROGATORY NO. 3

Identify with particularity each service or good promoted, sold, rendered or proposed to be promoted, sold or rendered by Opposer (see definitions and instructions) in connection with the mark or designation "PARDO'S CHICKEN" (see definitions and instructions) at any time in

the United States.

Response:

Opposer operates restaurants named "Pardo's Chicken" that sell meals featuring chicken products such as wings and tenders, ribs and a variety of side dishes such as French fries, salads and soups.

INTERROGATORY NO. 4

Identify the person or persons in the employ of or associated in any manner with Opposer most knowledgeable with respect to the following:

- (a) Conception of the term "PARDO'S CHICKEN";
- (b) Selection and adoption of the term "PARDO'S CHICKEN";
- (c) Sales of goods or services under the term "PARDO'S CHICKEN" in the United States;
- (d) Advertising and promotion of services and/or goods identified by the term "PARDO'S CHICKEN" in the United States.

Response:

Mario Diaz is the person most knowledgeable of any and all business operations, business development plans and related business information in connection with the Pardo's Chicken Restaurant operating in Miami, Florida.

INTERROGATORY NO. 5

Identify all advertising agency, public relations, web-site design or internet consulting firms that are now or have ever been employed by Opposer in connection with the use of the mark or designation "PARDO'S CHICKEN," including the identity of those persons responsible for Opposer's account with respect to the use of the mark or designation "PARDO'S CHICKEN."

Response:

Opposer employs no advertising agency, public relations, web site design or internet consulting firm. However, Opposer further answers this inquiry by indicating that it has engaged certain of these types of agencies and will provide information related to such privileged business contacts upon the entrance of a suitable Protective Order protecting the confidentiality of proprietary work product.

INTERROGATORY NO. 6

State the earliest date Opposer intends to rely upon for priority in this proceeding and describe in detail the circumstances giving rise to such alleged actual priority rights, specifically including, but not limited to, an identification of the mark or designation being relied upon, the specific type of use of the mark, the product or services offered under that mark or designation on that date, and the persons in the employ of or associated in any manner with Opposer most knowledgeable with respect to such use or filing.

Response:

The priority date is March 2002 on which date opposer incorporated Pardo's Chicken Inc. in Florida as the corporate name under which it would offer restaurant service.

INTERROGATORY NO. 7

(a) Explain in detail when Opposer made first technical service mark use, i.e., operation of a restaurant, of the Opposer's "PARDO'S CHICKEN" mark in the United States and identify the person(s) most knowledgeable about such use.

Response:

Opposer's restaurant commence operations in July 2003.

(b) Identify the person(s) most knowledgeable about the continuity of use in the United States of the Opposer's "PARDO' S CHICKEN" mark from the date of first use identified in response to Interrogatory 6 through to the present.

Response:

Mario Diaz is the person most knowledgeable of the continuity of the mark use.

INTERROGATORY NO. 8

Describe, in general, the nature of any businesses located in or doing business with the United States in which Opposer (see definitions and instructions) is currently involved.

Response:

Opposer currently operates a restaurant that specializes in chicken based meals.

INTERROGATORY NO. 9

Explain in detail how Opposer conceived and arrived at the selection of the mark or designation "PARDO'S CHICKEN," including the timing of the process, the alternatives considered, and the factors used or considered in selecting the term "PARDO'S CHICKEN."

Response:

Pardo is a very well known and important Avenue in Peru familiar to Opposer.

INTERROGATORY NO. 10

Explain in detail how Opposer conceived and arrived at the stylization of the drawing submitted on November 15, 2002 with Opposer's Application Serial No. 76/467,713, including, but not limited to, the reasons why this stylization was chosen, and the person(s) who prepared the drawing.

Response:

Object to this interrogatory on basis that it is unlikely to lead to any evidence relevant to this case insofar as there is no "stylization" of the trademark used in U.S. commerce by Opposer and it is the literal component of Applicant's trademark that gave rise to this opposition proceeding.

INTERROGATORY NO. 11

State the inclusive dates subsequent to the dates set forth in answer to Interrogatory No. 6

during which the mark or designation "PARDO'S CHICKEN" has been used by or on behalf of Opposer in connection with each of the services, or goods if applicable, identified in response to Interrogatory No. 3, and for each such year (or month for periods of less than a year), state the manner in which the mark was used and the geographical areas of the United States in which Opposer sold or advertised the services under the mark or designation "PARDO'S CHICKEN."

Response:

Subsequent to March 2002 through to the present date, opposer has operated a restaurant in South Florida and promoted its restaurant services beyond state borders.

INTERROGATORY NO. 12

Identify each publication and broadcast advertisement (e.g., radio, television, web-site) authorized by or on behalf of Opposer for distribution in the United States in which goods or services under the mark or designation "PARDO'S CHICKEN" have been, or are scheduled to be mentioned, by stating the following:

(a) State the title(s) and date(s) of each publication in which any advertisement appeared or is scheduled to appear; and

Response:

Clipper Magazine August 20003

Magazine Sol Miami September 2003

Clipper Magazine September 2003

Clipper Magazine December 2003

Clipper Magazine January 2004

(b) Identify each actual or scheduled broadcast by date(s), and station(s) or web-site(s), and whether the broadcast was or will be on radio, television or computer.

Response:

Channel Sur From March 6 2004 to March 12 2004 during the following times.

11:00 P.M.- 12:00 P.M Thursday and Friday.

9:00 P.M.- 10:00 P.M. Monday, Tuesday & Wednesday.

10:00 P.M.- 12:30 A.M Saturday.

10:00 P.M.- 12:00 P.M. Sunday.

12:00 P.M.- 1:00 A.M Sunday.

INTERROGATORY NO. 13

Identify each advertisement not already identified in Interrogatory No. 12, such as billboards or signs, in which Opposer has displayed his "PARDO'S CHICKEN" mark, or is scheduled to display its mark, the date(s) in which each advertisement was or will be displayed, and the person(s) who prepared or will prepare each advertisement.

Response:

None.

INTERROGATORY NO. 14

Describe with particularity all of the channels of trade in or through which Opposer markets and sells any products or services under the mark or designation "PARDO'S CHICKEN" in the United States.

Response:

Opposer offers restaurant services in the United States and advertises those services in magazines and in broadcast media.

INTERROGATORY NO. 15

Identify with particularity the classes or types of purchasers, including targeted ethnic groups or communities, to whom Opposer promotes his "PARDO'S CHICKEN" services and those classes or types of purchasers who purchase Opposer's "PARDO'S CHICKEN" services.

Response:

Opposer does not target any particular ethnic group, his business focus on the diverse

Florida Community.

INTERROGATORY NO. 16

Identify all instances of actual confusion, mistake or deception known to Opposer as to the source or origin, sponsorship or association as between his use or advertising of any mark or designation consisting of or including the term "PARDO' S CHICKEN" for any services and Applicant's "PARDO'S CHICKEN" mark and/or Applicant's PARDO'S CHICKEN restaurants in Peru or Chile, by stating for each such instance the following:

- (a) the date of such instance and the person or entity confused;
- (b) the nature of the confusion; and
- (b) the person in Opposer's organization to whom the instance was reported.

Response:

None.

INTERROGATORY NO. 17

Describe when and by what means Opposer first became aware of Applicant's "PARDO'S CHICKEN" mark being used or advertised in the United States. Further identify the person or persons having most knowledge of these facts.

Response:

Opposer is not aware that Applicant has ever used the Pardo's Chicken trademark in the United States. To further this interrogatory, however, Applicant apparently placed a notice in a local newspaper called Peruanisimo dated July 30, 2003.

INTERROGATORY NO. 18

Describe when and by what means Opposer first became aware of Applicant's PARDO'S CHICKEN mark being used for restaurant services outside the United States, and the person or persons having most knowledge of these facts.

Response:

Opposer learned of Applicant's purported use of the mark outside of the United States by its letter dated November 18, 2002. To further answer this Interrogatory, although Opposer was aware of restaurants in Peru called Pardo's Chicken, he was not aware until said date of any relationship between those establishments and Applicant.

INTERROGATORY NO. 19

Identify each person whom Opposer expects to call as an expert witness at "trial," state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Response:

No such witnesses have yet been identified.

INTERROGATORY NO. 20

Identify those persons who had more than a clerical role in the answering of the foregoing interrogatories or in any search for documents in connection with said interrogatories or the Applicant's First Requests for Production of Documents.

Response:

No such parties.

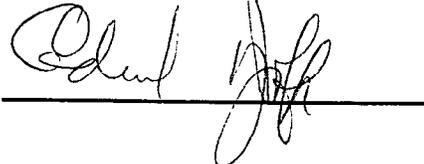
Respectfully submitted,

By: 

Mario Diaz

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Opposer's Response to Applicant's First Set of Interrogatories" was served upon Applicant's attorney this 25 day of Oct, by first class mail, postage prepaid, upon J. Paul Williamson, Esq. and Cynthia Henderson, Esq., Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, N.W., Washington, D.C. 20004.



APPLT. BRF. ATTACHMENT C

OPP. 91159871

Mario Diaz v. Servicios De Franquicia Pardo's S.A.C.

MOTION FOR SUMMARY JUDGMENT

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

RECEIVED

OCT 20 2004

FULBRIGHT & JAWORSKI

Opposition No. 91159871

Mario Diaz)
)
 Opposer,)
)
 v.)
)
 Servicios De Franquicia Pardo's S.A.C.)
)
 Applicant.)

**OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF
REQUESTS FOR ADMISSIONS**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant, Servicios de Franquicia Pardo's S.A.C., requests that Opposer, Mario Diaz, admit or deny the following Requests for Admissions within thirty (30) days after service, in accordance with the Trademark Rules of Practice.

If the response to any request is believed by Opposer to constitute confidential information or trade secrets, it should be so designated and access to that response will be confined to Opposer's counsel unless further dissemination is authorized by mutual agreement of the parties or by order of the Trademark Trial and Appeal Board.

Opposer shall identify and quote verbatim each request for admission to which objection is made, and the supporting reasons for the objection. Each answer to a request for admission shall specifically admit or deny the matter, or set forth in detail reasons why Opposer cannot truthfully admit or deny the matter. Each denial shall fairly meet the substance of the requested admission. If Opposer must qualify an answer or deny only a part of the matter on which an admission is requested, Opposer must specify so much of the request as is true and qualify or deny the remainder. Any answer giving lack of information or knowledge as a reason for failure to admit or

deny must be accompanied by a statement that Opposer has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable Opposer to admit or deny.

For purposes of Applicant's First Set of Requests for Admissions to Opposer, Applicant adopts the definitions and instructions set forth in Applicant's First Set of Interrogatories Nos. 1-20 to Applicant.

REQUESTS

REQUEST NO. 1

Admit that Opposer's PARDO'S CHICKEN mark is identical to Applicant's PARDO'S CHICKEN mark.

Response:

Denied.

REQUEST NO. 2

Admit that the services offered by Opposer under his PARDO'S CHICKEN mark are of the same nature as the services applied for by Applicant under its PARDO'S CHICKEN mark.

Response:

Admitted.

REQUEST NO. 3

Admit that the services offered by Opposer under his PARDO'S CHICKEN mark are closely related to the services applied for by Applicant under its PARDO'S CHICKEN mark.

Response:

Admitted.

REQUEST NO.4

Admit that the main fare offered by Opposer's PARDO'S CHICKEN restaurant is chicken.

Response:

Admitted.

REQUEST NO. 5

Admit that Opposer was aware of Applicant's PARDO'S CHICKEN mark for restaurant services offered in Peru prior to the date Opposer adopted the PARDO' S CHICKEN name and mark for his business in the United States.

Response:

Denied.

REQUEST NO. 6

Admit that Opposer was' aware of Applicant's PARDO'S CHICKEN mark for restaurant services offered in Peru prior to the date Opposer first posted any signs for Opposer's PARDO'S CHICKEN restaurant in the United States.

Response:

Denied. Opposer had no knowledge of Applicant's relationship with the restaurant in Peru known as Pardo's Chicken.

REQUEST NO.7

Admit that Opposer was aware of Applicant's advertising in the United States of Applicant's PARDO'S CHICKEN restaurants prior to the date Opposer adopted the PARDO'S CHICKEN name or mark for his business in the United States.

Response:

Denied.

REQUEST NO. 8

Admit that Opposer was aware of Applicant's advertising in the United States of Applicant's PARDO'S CHICKEN restaurants prior to the date Opposer first posted any signs for Opposer's PARDO'S CHICKEN restaurant in the United States.

Response:

Denied.

REQUEST NO. 9

Admit that Opposer had visited one of Applicant's PARDO'S CHICKEN restaurants outside of the United States prior to the date Opposer adopted the PARDO'S CHICKEN name or mark for his business in the United States.

Response:

Denied insofar as Opposer had no knowledge of Applicant's relationship with the restaurant in Peru known as Pardo's Chicken.

REQUEST NO. 10

Admit that Opposer had visited one of Applicant's PARDO'S CHICKEN restaurants outside of the United States prior to the date Opposer first posted any signs for Opposer's PARDO'S CHICKEN restaurant in the United States.

Response:

Denied insofar as Opposer had no knowledge of Applicant's relationship with the restaurant in Peru known as Pardo's Chicken.

REQUEST NO. 11

Admit that Opposer was born in Peru.

Response:

Admitted.

REQUEST NO. 12

Admit that Opposer lived up to his early adulthood in Peru.

Response:

Denied. Opposer is still in his early adulthood and currently resides in the United States.

REQUEST NO. 13

Admit that Opposer has traveled to Peru during the last ten years.

Response:

Admitted.

REQUEST NO. 14

Admit that Opposer has a Peruvian passport.

Response:

Admitted.

REQUEST NO. 15

Admit that Opposer has relatives living in Peru.

Response:

Admitted.

REQUEST NO. 16

Admit that Opposer offers rotisserie chicken in his PARDO'S CHICKEN restaurant.

Response:

Admitted.

REQUEST NO. 17

Admit that Opposer knew that Applicant offered rotisserie chicken in Applicant's PARDO'S CHICKEN restaurants in Peru prior to the time Opposer first posted any signs for Opposer's PARDO'S CHICKEN restaurant in the United States.

Response:

Denied.

REQUEST NO. 18

Admit that the menu for Opposer's PARDO'S CHICKEN restaurant is similar to the menu for Applicant's PARDO'S CHICKEN restaurants in Peru and Chile.

Response:

Denied.

REQUEST NO. 19

Admit that Opposer's PARDO'S CHICKEN restaurant offers an appetizer by the name of Chicharron de Polio con Choclo.

Response:

Admitted.

REQUEST NO. 20

Admit that Opposer's PARDO'S CHICKEN restaurant offers two salads which have the names Ensalada Especial Cocida and Ensalada Especial Fresca.

Response:

Admitted.

REQUEST NO. 21

Admit that Opposer offers at least three types of Peruvian beer in his PARDO'S CHICKEN restaurant, namely, Cuzquena, Piisen and Cristal.

Response:

Admitted.

REQUEST NO. 22

Admit that at least two out of the four desserts offered by Opposer in his PARDO'S CHICKEN restaurant are Peruvian, namely, Arroz con Leche and Suspiro a la Limena.

Response:

Admitted.

REQUEST NO. 23

Admit that Opposer's first signage for Opposer's PARDO'S CHICKEN restaurant used the same stylization and coloring for the PARDO'S CHICKEN mark as used by Applicant for

Applicant's PARDO'S CHICKEN restaurants in Peru.

Response:

Denied.

REQUEST NO. 24

Admit that Opposer filed his federal trademark application for the PARDO'S CHICKEN mark on November 15, 2002 with a drawing using a typed version of PARDO'S CHICKEN and a depiction using the same stylization for the PARDO'S CHICKEN mark as used by Applicant for Applicant's PARDO'S CHICKEN restaurants in Peru.

Response:

Denied.

REQUEST NO. 25

Admit that Opposer amended his application to have the drawing reflect only the block letter version of PARDO'S CHICKEN after Applicant's PARDO'S CHICKEN application was cited as a potential bar by the Trademark Examiner.

Response:

Denied.

REQUEST NO. 26

Admit that Opposer did not open his PARDO'S CHICKEN restaurant for business until after the date Opposer filed his federal application to register the mark PARDO'S CHICKEN.

Response:

Admitted.

REQUEST NO. 27

Admit that Opposer had not used his PARDO'S CHICKEN mark prior to the date he filed papers to incorporate in Florida under the name "Pardo's Chicken, Inc."

Response:

Admitted.

REQUEST NO. 28

Admit that the only advertising of Opposer incorporating the PARDO'S CHICKEN mark, prior to his PARDO'S CHICKEN restaurant opening for business, was a sign on the front of the unopened restaurant.

Response:

Admitted.

REQUEST NO. 29

Admit that the first signage for Opposer's PARDO'S CHICKEN restaurant was not posted in a public place until after July 1, 2002.

Responses:

Admitted.

REQUEST NO. 30

Admit that Applicant's PARDO'S CHICKEN restaurants are well-known in Peru.

Response:

Denied.

REQUEST NO. 31

Admit that Applicant's PARDO'S CHICKEN restaurants in Peru are well-known within the Peruvian communities in South Florida and Greater Miami.

Responses:

Denied.

REQUEST NO. 32

Admit that Opposer has targeted certain of his promotional efforts to Peruvians residing in South Florida or Greater Miami because they are acquainted with Applicant's PARDO'S

CHICKEN restaurants in Peru.

Response:

Denied.

REQUEST NO. 33

Admit that Opposer has targeted some of his promotional efforts for his PARDO'S CHICKEN restaurant to persons with a South American heritage.

Response:

Denied.

REQUEST NO. 34

Admit that Opposer has run advertisements for his PARDO'S CHICKEN restaurant on the television network "SUR," between the hours of 10 p.m. to 11 p.m. and between Monday to Friday, a time period in which a news show from Lima, Peru is aired.

Response:

Admitted that Opposer has advertisings on SUR between the hours of 10 p.m. to 11 p.m.

REQUEST NO. 35

Admit that Opposer has run advertisements for his PARDO'S CHICKEN restaurant on the television network "SUR," between the hours of 10 p.m. to 11 p.m. on Sundays, a time period in which a Peruvian show by the name of Cuarto Poder is aired.

Response:

Admitted that Opposer has advertisings on SUR between the hours of 10 p.m. to 11 p.m.

REQUEST NO. 36

Admit that Opposer runs television advertisements for his PARDO'S CHICKEN restaurant during times in which Peruvian television shows are aired in order to target Peruvian viewers.

Response:

Denied.

REQUEST NO. 37

Admit that Opposer had viewed Applicant's web site at www.pardoschicken.com prior to his adopting the PARDO'S CHICKEN mark.

Response:

Denied.

REQUEST NO. 38

Admit that Opposer had viewed Applicant's web site at www.pardoschicken.com prior to his commencing use of the PARDO'S CHICKEN mark.

Response:

Denied.

REQUEST NO. 39

Admit that Opposer was aware of Applicant's publicly stated intention to expand its PARDO' S CHICKEN restaurant services into the United State prior to the date Opposer adopted the PARDO'S CHICKEN mark.

Response:

Denied.

REQUEST NO. 40

Admit that Opposer was aware of Applicant's publicly stated intention to expand its PARDO' S CHICKEN restaurant services into the United State prior to the date Opposer commenced use of the PARDO'S CHICKEN mark.

Response:

Denied.

REQUEST NO. 41

Admit that Opposer has not approached Applicant to obtain a license to use the mark PARDO'S CHICKEN.

Response:

Admitted.

REQUEST NO. 42

Admit that Opposer has not obtained a license or a franchise from Applicant to use the mark PARDO'S CHICKEN.

Response:

Admitted.

REQUEST NO. 43

Admit that PARDO'S CHICKEN is a distinctive mark for restaurant services.

Response:

Admit that Pardo's Chicken is a distinctive mark in the United States for signifying restaurant services offered by Opposer.

REQUEST NO. 44

Admit that Opposer received a letter from counsel for Applicant about Opposer's use of PARDO'S CHICKEN prior to Opposer filing his application to register PARDO'S CHICKEN in the United States Patent and Trademark Office.

Response:

Admitted.

REQUEST NO. 45

Admit that a person who has eaten at or who is familiar with Applicant's PARDO'S CHICKEN restaurants in Peru or Chile is likely to believe that Opposer's PARDO'S CHICKEN restaurant is affiliated with or sponsored by such restaurants of Applicant.

Response:

Denied.

REQUEST NO. 46

Admit that Opposer has received inquiries or communications by patrons to his PARDO'S CHICKEN restaurant as to whether his restaurant is related to the PARDO'S CHICKEN restaurants in Peru or Chile.

Response:

Denied.

REQUEST NO. 47

Admit that Opposer has received inquiries or communications from third parties which reflect a question or a perception that Opposer's PARDO'S CHICKEN restaurant is related to Applicant's PARDO'S CHICKEN restaurants in Peru or Chile.

Response:

Denied.

REQUEST NO. 48

Admit that when employees of Opposer's PARDO'S CHICKEN restaurant have received telephone inquiries by customers placing orders as to whether the Opposer's restaurant is associated with Applicant's PARDO'S CHICKEN restaurants in Peru and Chile, Opposer's employees have responded that the restaurants are related.

Response:

Denied.

REQUEST NO. 49

Admit that Opposer adopted the PARDO'S CHICKEN mark to take advantage of the recognition of this name by persons familiar with Applicant's PARDO'S CHICKEN restaurants in Peru or Chile.

Response:

Denied.

Respectfully submitted,

By: _____

Mario Diaz

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Applicant's First Set of Requests for Admissions" was served upon Opposer's attorney this 15 day of October 2004, by first class mail, postage prepaid, upon J. Paul Williamson, Esq. and Cynthia Henderson, Esq., Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Edward M. Joffe, Esq.

APPLT. BRF. ATTACHMENT D

OPP. 91159871

Mario Diaz v. Servicios De Franquicia Pardo's S.A.C.

MOTION FOR SUMMARY JUDGMENT

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

Mario Diaz

Opposer,

v.

Servicios De Franquicia Pardo's S.A.C.

Applicant.

§
§
§
§
§
§
§
§

Opposition No. 91159871

DECLARATION OF JEAN PATERSON

I, Jean Paterson, a U.S. citizen over the age of 18 years of age, declare and state:

1. I am an experienced intellectual property research service provider operating as an individual proprietor with a business address of 3102 South High Street, Arlington, Virginia 22202. I have worked in my present position for over 15 years.
2. On or about July 23, 2004, I was contacted by Traci Himes-Escamilla, a paralegal with Fulbright & Jaworski L.L.P., about obtaining a true and correct copy of the U.S. Patent and Trademark Office ("PTO") file history for Application Serial No. 76/467,713 for the Mark PARDO'S CHICKEN in the name of Mario Diaz.
3. On or about July 23, 2004, I requested a copy of the file for Application Serial No. 76/467,713 at the PTO's Trademark Assistance Center. Once the file was retrieved by the Trademark Assistance Center, I copied the contents of the file, except for certain PTO clerical/administration papers, and forwarded a copy to Traci Himes-Escamilla at Fulbright & Jaworski L.L.P.

Affidavit of Jean Paterson
Opposition No. 91159871

4. To the best of my knowledge, the file history I copied on July 23, 2004 which is attached to this declaration is a true, correct and complete copy of the PTO records, except for PTO clerical or administrative pages, for U.S. Application Serial No. 76/467,713 for the Mark PARDO'S CHICKEN in the name of Mario Diaz.
5. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 8th day of December, 2004, at Arlington, Virginia.



Jean Paterson

Trademark

FORM PTO-102
5/99

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

76-467713 +



Pardo's Chicken

PARDO'S CHICKEN
PRINCIPAL
LAW OFFICE 108

Katherine Stoides

76-467713 +

FILING DATE
November 15, 2002

ORIGINAL APPLICANT
Diaz, Mario

GOODS/SERVICES (CLASS 043)
restaurant services

FILING BASIS
ITU

ORIGINAL CORRESPONDENT
MARIO DIAZ

THIS FILE HAS BEEN SCANNED AND THE ENTIRE
CONTENTS ARE IN TIGRS. DO NOT ADD ANY
COMMENTS TO THIS FILE UNLESS YOU HAVE
VERIFIED THAT THE DOCUMENT IS IN TIGRS. DO
NOT WRITE ANYTHING NEW ON THE FILE WRAPPER.

ATTORNEY ADVISOR: _____

Approved for Publication (Principal Register) (Signature/Date)

Approved for Registration (Section 1(d)) (Signature/Date)

Approved for Registration (Supplemental Register) (Signature/Date)

NOP

NOA

Abandoned

(Date)

Trademark

U.S. PATENT & TRADEMARK OFFICE
76467713

Serial Number
(Bar Code)

NEW CASE DELIVERED

MAY 30 2003

PROSECUTION HISTORY

LAW OFFICE 110	Entry	Date	Initials
1.	Prel. Audit A, sub dwg	6/19/03	
2.	FOA	6/10/03	JUL 11 2003 #7
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76467713

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

11/21/2002 TSMITH 00000014 76467713
01 FC:6001 325.00 OP

PTO Form 1478 (Rev 9/98)
OMB Control #0651-0009 (Exp. 08/31/2004)

Trademark/Service Mark Application

* To the Commissioner for Trademarks *

<DOCUMENT INFORMATION>
<TRADEMARK/SERVICEMARK APPLICATION>
<VERSION 1.22>

<APPLICANT INFORMATION>

<NAME> Mario Diaz
<STREET> 15763 SW 74th Lane
<CITY> Miami
<STATE> FL
<COUNTRY> USA
<ZIP/POSTAL CODE> 33193
<TELEPHONE NUMBER> 305-383-8850
<FAX NUMBER> 305-513-0427
<E-MAIL ADDRESS> mdiaz@telemedianet.com
<AUTHORIZE E-MAIL COMMUNICATION> Yes

<APPLICANT ENTITY INFORMATION>

<INDIVIDUAL: COUNTRY OF CITIZENSHIP> Peru

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> PARDO'S CHICKEN

<TYPED FORM> Yes

~ Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended). ~

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<INTENT TO USE: SECTION 1(b)> Yes

~ Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. §1051(b), as amended.) ~

<INTERNATIONAL CLASS NUMBER> 043

<LISTING OF GOODS AND/OR SERVICES> Restaurant services

<FEE INFORMATION>

<TOTAL FEES PAID> 325
<NUMBER OF CLASSES PAID> 1
<NUMBER OF CLASSES> 1

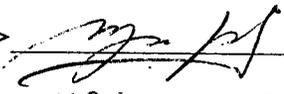
<LAW OFFICE INFORMATION>

~ The USPTO is authorized to communicate with the applicant at the below e-mail address ~

<E-MAIL ADDRESS FOR CORRESPONDENCE> mdiaz@telemedianet.com

<SIGNATURE AND OTHER INFORMATION>

~ PTO-Application Declaration: The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. ~

<SIGNATURE>  _____ * please sign here*

<DATE> NOV - 13 - 2002

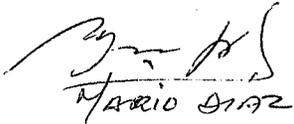
<NAME> Mario Diaz

<TITLE> Owner

The information collected on this form allows the PTO to determine whether a mark may be registered on the Principal or Supplemental register, and provides notice of an applicant's claim of ownership of the mark. Responses to the request for information are required to obtain the benefit of a registration on the Principal or Supplemental register. 15 U.S.C. §§1051 et seq. and 37 C.F.R. Part 2. All information collected will be made public. Gathering and providing the information will require an estimated 12 or 18 minutes (depending if the application is based on an intent to use the mark in commerce, use of the mark in commerce, or a foreign application or registration). Please direct comments on the time needed to complete this form, and/or suggestions for reducing this burden to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231. Please note that the PTO may not conduct or sponsor a collection of information using a form that does not display a valid OMB control number.

Drawing Page

Date/Time Stamp: Monday, 11-11-2002 13:11:08 EST


MARIO DIAZ

Applicant:

Mario Diaz
15763 SW 74th Lane
Miami , FL 33193
USA

Date of First Use Anywhere: Intent-To-Use (Section 1(b))

Date of First Use In Commerce: Intent-To-Use (Section 1(b))

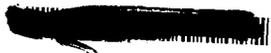
Goods and Services:

Restaurant services

Mark:

PARDO'S CHICKEN

Pardo's Chicken



11-15-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #10

U.S. Patent & TMO/c/TM



76467713

To: Díaz, Mario (mdiaz@telemedianet.com)
Subject: TRADEMARK APPLICATION NO. 76467713 - PARDO'S CHICKEN - N/A
Sent: 6/10/03 7:50:07 PM
Sent As: ECom110
Attachments: H:\aevidence\76467468P001OF002.JPG
H:\aevidence\76467468P002OF002.JPG

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/467713

APPLICANT: Diaz, Mario

CORRESPONDENT ADDRESS:
MARIO DIAZ
15763 SW 74TH LANE
MIAMI, FL 33193

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom110@uspto.gov

MARK: PARDO'S CHICKEN

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:
mdiaz@telemedianet.com

- Please provide in all correspondence:
1. Filing date, serial number, mark and applicant's name.
 2. Date of this Office Action.
 3. Examining Attorney's name and Law Office number.
 4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

RE: Serial Number 76/467713

The assigned examining attorney has reviewed the referenced application and determined the following.

SEARCH OF THE OFFICE RECORDS

Although the examining attorney has searched the Office records and has found no similar *registered* mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), the examining attorney encloses information regarding pending Application Serial No. 76-467468. 37 C.F.R. §2.83.

There may be a likelihood of confusion between the applicant's mark and the mark in the above noted application under Section 2(d) of the Act. The filing date of the referenced application precedes the applicant's filing date. If the earlier-filed application matures into a registration, the examining attorney may refuse registration under Section 2(d).

INFORMALITIES

The applicant must address the following informalities

Significance

The applicant must indicate whether "PARDO" or "PARDO'S" has any significance in the relevant trade, any geographical significance, or any meaning in a foreign language. 37 C.F.R. §2.61(b).

Disclaimer

The applicant must disclaim the descriptive wording "CHICKEN" apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §§1213 and 1213.03(a). The wording is merely descriptive because it appears to describe the main item featured in the applicant's restaurant.

The computerized printing format for the *Trademark Official Gazette* requires a standard form for a disclaimer. TMEP §1213.08(a)(i). A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use CHICKEN apart from the mark as shown.

See In re Owatonna Tool Co., 231 USPQ 493 (Comm'r Pats. 1983).

Drawing

The drawing depicts the mark twice – in typed form and in a stylized form. As the applicant is restricted to depicting the mark in one form, the drawing is unacceptable. The applicant must therefore submit a substitute drawing depicting the mark in either typed form or in special form.

The requirements for a typed drawing are as follows:

The Office prefers that the drawing be typed on a separate sheet of smooth, nonshiny, white paper 8 to 8½ inches (20.3 to 21.6 cm.) wide and 11 inches (27.9 cm.) long, and that the sheet contain a heading listing, on separate lines, the applicant's complete name; the applicant's address; the goods or services recited in the application; and, if the application is filed under Section 1(a) of the Act, the dates of first use of the mark and of first use of the

mark in commerce; or, if the application is filed under Section 44(d), the priority filing date of the foreign application.

The mark must be typed entirely in capital letters, without spaces between the letters.

37 C.F.R. §2.52; TMEP §§807.01(a), 807.01(b), 807.01(c) and 807.06.

The requirements for a special-form drawing are as follows:

- (1) The drawing must appear in black and white; no color is permitted.
- (2) Every line and letter must be black and clear.
- (3) The use of gray to indicate shading is unacceptable.
- (4) The lining must not be too fine or too close together.
- (5) The preferred size of the area in which the mark is displayed is 2½ inches (6.1 cm.) high and 2½ inches (6.1 cm.) wide. It should not be larger than 4 inches (10.3 cm.) high or 4 inches (10.3 cm.) wide.
- (6) If the reduction of the mark to the required size renders any details illegible, the applicant may insert a statement in the application to describe the mark and these details.

37 C.F.R. §2.52; TMEP §§807.01(b) and 807.07(a). The Office will enforce these drawing requirements strictly.

The Office prefers that the drawing be depicted on a separate sheet of smooth, nonshiny, white paper 8 to 8½ inches (20.3 to 21.6 cm.) wide and 11 inches (27.9 cm.) long, and that the sheet contain a heading listing, on separate lines, the applicant's complete name; the applicant's address; the goods or services recited in the application; and, if the application is filed under Section 1(a) of the Act, the dates of first use of the mark and of first use of the mark in commerce; or, if the application is filed under Section 44(d), the priority filing date of the foreign application. 37 C.F.R. §2.52(b); TMEP §§807.01(a), 807.01(b), 807.01(c) and 807.07(a).

Response

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant must sign the response. In addition to the identifying information required at the beginning of this letter, the applicant should provide a telephone number to speed up further processing.

In all correspondence to the Patent and Trademark Office, the applicant should list the name and law office of the examining attorney, the serial number of this application, the mailing date of this Office action, and the applicant's telephone number.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Katherine Stoides/
Examining Attorney
Law Office 110
(703) 308-9110 ext.166

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

Print: Jun 10, 2003

76467468

Pardo's Chicken

Serial Number

76467468

Status

NON-FINAL ACTION - MAILED

Word Mark

PARDO'S CHICKEN

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

Servicios de Franquicia Pardo's S. A. C. CORPORATION PERU Avenida Dos de Mayo 1002 Lima 27 PERU

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Eat-in and take-out restaurant services.

Foreign Country Name

PERU

Foreign Registration Number

012449

Foreign Registration Date

1997/02/17

Foreign Expiration Date

2007/02/17

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "No claim is made to the exclusive right to use Pardo's and Chicken apart from the mark as shown." APART FROM THE MARK AS SHOWN.

Description of Mark

Print: Jun 10, 2003

76467468

"The mark consists of Pardo's Chicken."

Translation Statement

"The foreign wording in the mark translates into English as brownish-gray chicken."

Filing Date

2002/11/14

Examining Attorney

GLYNN, GERALD T.

TRADEMARK LAW OFFICE 110
Serial Number: 76/467713
Mark: PARDO'S CHICKEN

RE: Action #1 – e-mailed 06/10/2003
Examining atty – Katherine Stoides

1A

Filing Date: November 15, 2002
Applicant's Name: Mario Diaz
Telephone: (305) 383-8850
Zip code: 33193

RE: Significance:

Please amend the application to read as follows:

"Pardo" or "Pardo's" signifies a street in Peru

PRINT

RE: Disclaimer

Please amend the application to read as follows:

No claim is made to the exclusive right to use CHICKEN apart from the mark as shown.

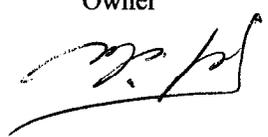
PRINT

RE: Drawing

Please amend the application to reflect the enclosed drawing page

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Mario Diaz
Owner



Sub drwg

76467713

Drawing Page

Applicant:

Mario Diaz
15763 SW 74th Lane
Miami, FL 33193
USA

Date of First Use Anywhere: Intent-To-Use (Section 1(b))

Date of First Use In Commerce: Intent-To-Use (Section 1(b))

Goods and Services:

Restaurant services

Mark:

PARDO'S CHICKEN



To: Diaz, Mario (mdiaz@telemedianet.com)
Subject: TRADEMARK APPLICATION NO. 76467713 - PARDO'S CHICKEN - N/A
Sent: 8/28/03 8:29:04 AM
Sent As: ECom110

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/467713

APPLICANT: Diaz, Mario

CORRESPONDENT ADDRESS:
MARIO DIAZ
15763 SW 74TH LANE
MIAMI, FL 33193

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom110@uspto.gov

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: PARDO'S CHICKEN

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:
mdiaz@telemedianet.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

RE: Serial Number 76/467713

NOTICE OF SUSPENSION

Action on this application is suspended pending the disposition of:

- Application Serial No(s). **76-467468**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application. See 37 C.F.R. §2.83. A copy of information relevant to this pending application(s) **was sent previously**. The applicant may request that the application be removed from suspension by presenting arguments related to the potential conflict between the relevant applications or other arguments related to the ground for suspension. The applicant's election to present or not to present arguments at this time will not affect the applicant's right to present arguments later.

Amendments to the Record

The disclaimer, substitute drawing and statement regarding the significance of the mark are accepted and have been made of record.

/Katherine Stoides/
Examining Attorney
Law Office 110
(703) 308-9110 ext. 166

