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May 31, 2006

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TTAB

VIA U.S. MAIL

Hon. Commissioner For Trademarks
Trademark Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Sociedad Anónima Viña Santa Rita
Opposition No. 91170426

78649789

Dear Commissioner:

In reference to the above-described matter, enclosed please find the original Certificate of Service of our Amended Notice Of Opposition, which was filed yesterday, 5/30/06. A copy of the Amended Notice of Opposition is attached for your ready reference. We are providing you with this Certificate of Service to show that opposing counsel was served.

Should you have any questions or concerns, please let us know.

Very truly yours,

Mironda Lewis
Secretary to
Michelle J. Hirth

W02-WEST:FML\400006364.1
Encls.

cc: Michelle Hirth

06-07-2006
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #72

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this **AMENDED NOTICE OF OPPOSITION** was served on the following counsel for Applicant/Registrant by first class mail postage, prepaid, May 30, 2006:

Andrew W. Ransom, Esq.
Malloy & Malloy, P.A.
2800 S.W. 3rd Avenue
Miami, Florida 33129

Miranda Lewis

CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as "Express Mail" postage prepaid in an envelope addressed to: Commissioner of Trademarks, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, Virginia 22313-1451 on May 30, 2006

COPY

Signature

Mironda Lewis
Name

Amended Notice of Opposition (6 pgs);
Return Postcard

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Sociedad Anónima Viña Santa Rita, Opposer, v. Angela J. Barbato, Applicant.	Opposition No.: 91170426 Serial No.: 78/649,789 Filed: June 13, 2005 Published: March 14, 2006 Trademark: **'RITA PUNCH**

AMENDED NOTICE OF OPPOSITION

General Allegations

1. Sociedad Anónima Viña Santa Rita ("Opposer"), a Chilean corporation with offices located at Apoquindo 3721, 13th Floor, Las Condes, Santiago, Chile, believes that it will be damaged by the registration of the proposed trademark shown in Application Serial No. 78/649,789 for the goods identified in International Class 32 and hereby opposes said application for the goods identified in International Class 32 under Section 13 of the United States Trademark Act, 15 U.S.C. § 1063 and, more specifically, under Sections 2(a) and 2(d) of the United States Trademark Act, 15 U.S.C. §§ 1052(a) and (d), as set forth in more detail herein.

2. Angela J. Barbato ("Applicant"), an individual with an address of 2971 NE 16th Avenue, Oakland Park, Florida 33334-5211, United States, filed Application Serial No. 78/649,789 for the proposed 'RITA PUNCH mark on June 13, 2005 ("Application"). The

identification of goods for the Application reads as follows: "non-alcoholic cocktail mix," which may be mixed with alcohol to make alcoholic beverages, in International Class 32. The Application was published for opposition on March 14, 2006. Opposer timely filed its Notice of Opposition. Opposer files this Amended Notice of Opposition in response to Applicant's Motion for a More Definite Statement to avoid delay in this matter.

3. Opposer is the owner of record of, *inter alia*, Registration No. 2275710, registration issued on September 7, 1999, for the SANTA RITA mark for use in connection with "wines of all kinds" in International Class 33; Opposer is the owner of record of, *inter alia*, Registration No. 2782373, registration issued on November 11, 2003, for the SANTA RITA TRIPLE C mark for use in connection with "wines" in International Class 33; Opposer is the owner of record of, *inter alia*, Registration No. 2644007, registration issued on October 29, 2002, for the SANTA RITA FLORESTA mark for use in connection with "wines" in International Class 33; Opposer is the owner of record of, *inter alia*, Registration No. 2776392, registration issued on October 21, 2003, for the SANTA RITA MEDALLA REAL mark for use in connection with "wines" in International Class 33 (collectively, the "SANTA RITA Marks").

4. Opposer manufactures, advertises and sells wines under the SANTA RITA Marks in international and United States domestic interstate commerce. Opposer has continually offered and sold wines under the SANTA RITA Marks since at least as early as October 1883.

5. Opposer has invested millions of dollars in advertising and promotion of its wines, including those bearing the SANTA RITA Marks. Opposer uses the SANTA RITA Marks on its wines throughout the world, including in the United States. On information and

belief, the SANTA RITA Marks have become well-known and recognized as Opposer's marks among consumers in the relevant industry.

Opposer sets forth the statutory and factual basis for each separate claim upon which it relies in this Opposition Proceeding as follows:

Claim One

(Likelihood of Confusion: Section 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d))

6. Opposer hereby incorporates by this reference all of the allegations in Paragraphs 1 through 5 above.

7. Opposer is the owner of record of, *inter alia*, the SANTA RITA Marks.

8. Opposer manufactures, advertises and sells wines under the SANTA RITA Marks in international and United States domestic interstate commerce. Opposer has continually offered and sold wines under the SANTA RITA Marks since at least as early as October 1883.

9. Opposer has invested millions of dollars in advertising and promotion of its wines, including those bearing the SANTA RITA Marks. Opposer uses the SANTA RITA Marks on its wines throughout the world, including in the United States. On information and belief, the SANTA RITA Marks have become well-known and recognized as Opposer's marks among consumers in the relevant industry.

10. Pursuant to Section 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d), Applicant's proposed 'RITA PUNCH mark, used for "non-alcoholic cocktail mixes" which may be mixed with alcohol to make alcoholic beverages, so resembles Opposer's *registered* SANTA RITA Marks, for "wines" which are alcoholic beverages, registration of Applicant's proposed 'RITA PUNCH mark is "likely...to cause confusion, or to cause mistake, or to deceive." (*See* 15 U.S.C. § 1052(d).)

11. Applicant's proposed 'RITA PUNCH mark is confusingly similar to Opposer's previously used and registered SANTA RITA Marks. Coexistence of these identical marks is likely to cause confusion, or to cause mistake, or to deceive the public, injuring Opposer and the consuming public.

12. Applicant's use of the proposed 'RITA PUNCH mark in connection with the goods identified in International Classes 32— "non-alcoholic cocktail mix"—is likely to cause confusion, or to cause mistake, or to deceive the public, injuring Opposer and the consuming public. These goods (i.e., non-alcoholic cocktail mixes which may be mixed with alcohol to make alcoholic beverages) are very similar and related to "wines" in International Class 33 (i.e., alcoholic beverages).

13. Thus, the registration of Applicant's proposed 'RITA PUNCH mark on the Principal Register would be inconsistent with Opposer's rights under its many preexisting registrations and long standing usage and would thus damage Opposer.

Claim Two

(False Association: Section 2(a) of the United States Trademark Act, 15 U.S.C. § 1052(a))

14. Opposer hereby incorporates by this reference all of the allegations in Paragraphs 1 through 13 above.

15. Opposer is the owner of record of, *inter alia*, the SANTA RITA Marks.

16. Opposer manufactures, advertises and sells wines under the SANTA RITA Marks in international and United States domestic interstate commerce. Opposer has continually offered and sold wines under the SANTA RITA Marks since at least as early as October 1883.

17. Opposer has invested millions of dollars in advertising and promotion of its wines, including those bearing the SANTA RITA Marks. Opposer uses the SANTA RITA Marks on its wines throughout the world, including in the United States. On information and belief, the SANTA RITA Marks have become well-known and recognized as Opposer's marks among consumers in the relevant industry.

18. On information and belief, Applicant's use of the proposed 'RITA PUNCH mark will disparage Opposer, falsely suggest an association with Opposer, and/or bring Opposer into disrepute in violation of Section 2(a) of the United States Trademark Act, 15 U.S.C. § 1052(a). (*See* 15 U.S.C. § 1052(a).)

19. Opposer's SANTA RITA Marks are of sufficient fame and have a sufficient reputation among consumers such that, if and when Applicant's proposed 'RITA PUNCH mark is used in connection with the goods identified in International Class 32, consumers will presume that Applicant's use is associated with Opposer.

20. Thus, the registration of Applicant's proposed 'RITA PUNCH mark on the Principal Register would be inconsistent with Opposer's rights under its many preexisting registrations and long standing usage and would thus damage Opposer.

Conclusion

THEREFORE, Opposer respectfully requests that Application Serial No. 78/649,789 for the goods in International Class 32 be rejected, that no registration be issued in connection with this Application for the goods in International Class 32 and that the Board rule in favor of Opposer in this Opposition Proceeding.

DATED: May 30, 2006

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By

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