

ESTTA Tracking number: **ESTTA419300**

Filing date: **07/12/2011**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Vedozi, Inc.
Granted to Date of previous extension	07/20/2011
Address	220 N. Main St. Natick, MA 01760 UNITED STATES
Attorney information	Jeremy D. Bisdorf Jaffe, Raitt, Heuer & Weiss, P.C. 201 S. Main St., Suite 300 Ann Arbor, MI 48104 UNITED STATES trademark@jaffelaw.com Phone:(734) 222-4776

Applicant Information

Application No	77807946	Publication date	03/22/2011
Opposition Filing Date	07/12/2011	Opposition Period Ends	07/20/2011
Applicant	Cintron Beverage Group, LLC 7400 Brewster Avenue Philadelphia, PA 19153 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2007/05/00 First Use In Commerce: 2007/05/00 All goods and services in the class are opposed, namely: tea-based beverages
Class 032. First Use: 2006/08/01 First Use In Commerce: 2006/08/01 All goods and services in the class are opposed, namely: energy drinks, sports drinks, fruit flavored beverages

Grounds for Opposition

The mark is primarily merely a surname	Trademark Act section 2(e)(4)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Related Proceedings	Opposition No. 91200636; Cintron Beverage Group LLC v. Vedozi, Inc., United States District Court for the Eastern District of Pennsylvania, Civil Action No. 2:11-cv-03926-JS
Attachments	Notice of Opposition - 77807946.pdf (128 pages)(2827067 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/jdb/
Name	Jeremy D. Bisdorf
Date	07/12/2011

3. On each of November 23, 2009, February 18, 2010 and August 5, 2010, the Office refused to register Applicant's mark because the mark was primarily merely a surname. See Exhibit A for copies of these Office Actions and further evidence in support of Opposer's assertion that the mark is primarily merely a surname.
4. On February 2, 2011, Applicant submitted a Response to Office Action containing the statement that the mark had become distinctive of the goods provided by Applicant under Section 2(f) of the Trademark Act and as a result, the mark was entitled to be registered even if it was primarily merely a surname. See the Response to Office Action attached as Exhibit B (the "Response").
5. In the Response, Applicant argues that the mark had become distinctive of its goods as evidenced by its ownership on the Principal Register of the same mark for related goods or services in CINTRON ENERGY EHHANCER (Reg. No. 3600401) and CINTRON 21 (Reg. No. 3410949) (collectively, the "Current Registrations"). See Response at Page 4 as marked in the attached Exhibit B.
6. Neither of the Current Registrations are for the mark "CINTRON" as an independent and single word or in a similar stylized font and, therefore, neither of the Current Registrations are for the same mark as described in the Application.
7. Applicant has committed fraud upon the Office by stating that the marks covered by the Current Registrations are for the same mark described in the Application.
8. Further, Opposer is currently seeking the cancellation of the Current Registrations within their first five (5) years of registration in the United States Federal District Court for the Eastern District of Pennsylvania (Case # 2:11-cv-03926-js) and, therefore, Applicant's ability to rely on the continued registration of the Current Registrations is in doubt.

9. In the Response, Applicant states that “The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate **for at least the five years immediately before the date of this statement.**” (emphasis added). See Exhibit C which includes a part of the Response with the aforementioned statement marked.

10. Applicant has also provided a confusing and inconsistent statement within the Response where it states that “the application [sic] has been in continuous and exclusive use in commerce for at least since the origin of the company in 2006, which is now **substantially** five years ago.” (emphasis added). See Response at Page 6 as marked in the attached Exhibit B

11. Applicant was first organized in the State of Delaware on May 16, 2006.

12. The date of the first use of the mark, as stated in the Application, is August 1, 2006 with respect to goods in Class 032 and May 2007 with respect to goods in class 030.

13. Since the Response was dated February 2, 2011, Applicant has committed fraud upon the Office by stating that the mark had become distinctive of its goods through the Applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before February 2, 2011.

14. Applicant’s statement that “the application [sic] has been in continuous and exclusive use in commerce for at least since the origin of the company in 2006, which is now substantially five years ago,” is confusing, legally meaningless and insufficient to support a claim of acquired distinctiveness under Section 2(f) of the Trademark Act.

15. Applicant’s self serving affidavit from Richard Wyatt and pictures of Cintron advertising do not meet Applicant’s burden for proving acquired distinctiveness of the CINTRON mark by a

fair preponderance of the evidence showing an association between the CINTRON mark and Applicant in the minds of a substantial number of the relevant section of the consuming public.

16. Upon the belief of Opposer, Applicant is currently and will be unable to show by a fair preponderance of the evidence that a substantial number of the relevant section of the consuming public recognize an association between the CINTRON mark and Applicant.

17. Applicant is not the worldwide owner of the CINTRON trademark as Applicant is not the first user of the CINTRON brand in association with beverage products in all countries outside of the United States.

NOW, THEREFORE, Opposer requests that Application Serial No. 77/807,946 be refused and that this Opposition be sustained.

Respectfully submitted,

VEDOZI, INC.,
a Maryland corporation

By: Jeremy D. Bisdorf
Jeremy D. Bisdorf
Peter M. Falkenstein
Joan H. Lowenstein
Lawrence R. Jordan
Co-Counsel for Opposer

Date: July 12, 2011

JAFFE, RAITT, HEUER & WEISS, P.C.
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Ann Arbor, MI 48104-2176
Tel.: (734) 222-4776
Fax: (734) 222-4769
jbisdorf@jaffelaw.com
trademark@jaffelaw.com

Exhibit A

To: Cintron Beverage Group, LLC (raxenfeld@mmwr.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77807946 - CINTRON - N/A
Sent: 11/23/2009 3:25:37 PM
Sent As: ECOM111@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
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[Attachment - 15](#)
[Attachment - 16](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/807946

MARK: CINTRON

77807946

CORRESPONDENT ADDRESS:
ROBERT R. AXENFELD
MONTGOMERY, MCCrackEN, WALKER &
RHOADS,
123 S BROAD ST FL 24
PHILADELPHIA, PA 19109-1099

RESPOND TO THIS ACTION:
<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Cintron Beverage Group, LLC

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:
raxenfeld@mmwr.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 11/23/2009

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SEARCH OF OFFICE'S DATABASE OF MARKS

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

SECTION 2(e)(4) REFUSAL – PRIMARILY MERELY A SURNAME

Registration is refused because the applied-for mark is primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4); *see* TMEP §1211. The primary significance of the mark to the purchasing public determines whether a term is primarily merely a surname. *In re Etablissements Darty et Fils*, 759 F.2d 15, 17-18, 225 USPQ 652, 653 (Fed. Cir. 1985); *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 832, 184 USPQ 421, 422 (C.C.P.A. 1975); *see* TMEP §§1211, 1211.01.

Please see the attached evidence from 411.com, establishing the surname significance of the surname Cintron. This evidence shows the applied-for mark appearing substantially in excess of 300 times as a surname in a nationwide telephone directory of names.

A mark deemed primarily merely a surname may be registered on the Principal Register under Trademark Act Section 2(f) by satisfying one of the following:

(1) Submit a claim of ownership of one or more prior registrations on the Principal Register for a mark that is the same as the mark in the application and for the same or related goods and/or services. 37 C.F.R. §2.41(b); TMEP §§1212, 1212.04. The following wording is suggested: **"The mark has become distinctive under Section 2(f) of the goods or services as evidenced by ownership of U.S. Registration No(s). [indicate] on the Principal Register for the same mark for the same or related goods and/or services."** TMEP §1212.04(e).;

(2) Submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §§2.20, 2.33: **"The mark has become distinctive of the goods and/or services through applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement."** 37 C.F.R. §2.41(b); TMEP §1212.05(d).; or

(3) Submit actual evidence of acquired distinctiveness. 37 C.F.R. §2.41(a); TMEP §1212.06. Such evidence may include the following: examples of advertising and promotional materials that specifically promote the applied-for mark as a trademark and/or service mark in the United States; dollar figures for advertising devoted to such promotion;

dealer and consumer statements of recognition of the applied-for mark as a trademark and/or service mark; and any other evidence that establishes recognition of the applied-for mark as a source-identifier for the goods and/or services. *See In re Ideal Indus., Inc.*, 508 F.2d 1336, 184 USPQ 487 (C.C.P.A. 1975); *In re Instant Transactions Corp. of Am.*, 201 USPQ 957 (TTAB 1979); TMEP §§1212.06 *et seq.*

Trademark Act Section 2(f), 15 U.S.C. §1052(f); *see* 37 C.F.R. §2.41; TMEP §§1211, 1212.

If applicant cannot satisfy one of the above, applicant can amend the application to seek registration on the Supplemental Register. Trademark Act Section 23, 15 U.S.C. §1091; *see* 37 C.F.R. §§2.47, 2.75(a).

CLAIM OF OWNERSHIP OF REGISTRATIONS

If applicant is the owner of U.S. Registration Nos. 3600401 and 3410949, then applicant must submit a claim of ownership. *See* 37 C.F.R. §2.36; TMEP §812. The following standard format is suggested:

Applicant is the owner of U.S. Registration Nos. 3600401 and 3410949.

If applicant has questions about its application or this Office action, please contact the assigned trademark examining attorney at the telephone number below.

/Mark T. Mullen/
Examining Attorney
Law Office 111
phone (571) 272-9201
fax (571) 273-9111

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the

complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Print: Nov 23, 2009

78928691

DESIGN MARK

Serial Number

78928691

Status

REGISTERED

Word Mark

CINTRON ENERGY ENHANCER

Standard Character Mark

Yes

Registration Number

3600401

Date Registered

2009/03/31

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Cintron Beverage Group, LLC LIMITED LIABILITY COMPANY DELAWARE 7400
Brewster Avenue Philadelphia PENNSYLVANIA 19153

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Energy
drinks; Sports drinks. First Use: 2006/08/01. First Use In Commerce:
2006/08/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ENERGY ENHANCER" APART
FROM THE MARK AS SHOWN.

Filing Date

2006/07/13

Examining Attorney

KAUFMAN, LAURIE

Attorney of Record

Jeffrey Zucker

Cintron Energy Enhancer

Print: Nov 23, 2009

78951185

DESIGN MARK

Serial Number
78951185

Status
REGISTERED

Word Mark
CINTRON 21

Standard Character Mark
Yes

Registration Number
3410949

Date Registered
2008/04/08

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Cintron Beverage Group, LLC LIMITED LIABILITY COMPANY DELAWARE 7400
Brewster Avenue Philadelphia PENNSYLVANIA 19153

Goods/Services
Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Energy
drinks; Sports drinks. First Use: 2006/08/01. First Use In Commerce:
2006/08/01.

Filing Date
2006/08/14

Examining Attorney
WEBSTER, MICHAEL

Attorney of Record
Jeffrey Zucker

Cintron 21

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First Name CINTRON

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 1846 Whitney Way
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 (407) 678-2956
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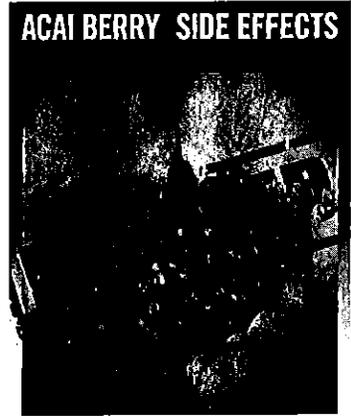
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Clinton, A
 5962 Brookside Dr SE
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7754 W Garland Ct
Frankfort, IL 60423-6964
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Boston, MA 02127-2544
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 Springfield, MA 01104-3724
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Cindy Gee	Lyman Hall High School	Wallingford, CT	View Info
Eileen Cintron	Rafael C. Y. Molina Intermediate School 184	Bronx, NY	View Info
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<p>HOME LISTING</p> <p>Cintron, Ana C Age: 45-49 4430 Fairview Dr Christiansburg, VA 24073-6082 Listing Detail</p>	<p>SPONSORED LINKS</p> <p>Lookup Background Info for Ana Cintron View Photos of Christiansburg Singles!</p> <p>FOR SALE Christiansburg Property Search</p>
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<p>HOME LISTING</p> <p>Cintron, Angela 604 Cavalier Dr Newport News, VA 23608-1686 (757) 886-0003 Listing Detail</p>	<p>SPONSORED LINKS</p> <p>Lookup Background Info for Angela Cintron View Photos of Newport News Singles!</p> <p>FOR SALE Newport News Property Search</p>
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<p>HOME LISTING</p> <p>Cintron, Annabelle F 104 N Hope St Hampton, VA 23663-1749 (757) 723-5769 Listing Detail</p>	<p>SPONSORED LINKS</p> <p>Lookup Background Info for Annabelle Cintron. View Photos of Hampton Singles!</p> <p>FOR SALE Hampton Property Search</p>
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<p>HOME LISTING</p> <p>Cintron, Anthony L Age: 50-54 507 Hill Ave Hopewell, VA 23860-4308 Listing Detail</p>	<p>SPONSORED LINKS</p> <p>Lookup Background Info for Anthony Cintron. View Photos of Hopewell Singles!</p> <p>FOR SALE Hopewell Property Search</p>
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<p>HOME LISTING</p> <p>Cintron, Aviles M</p> <p>2108 Ball St Chesapeake, VA 23323-4701 (757) 485-2006</p> <p>Listing Detail</p>	<p>SPONSORED LINKS</p> <p>Lookup Background Info for Aviles Cintron. View Photos of Chesapeake Singles!</p> <p>FOR SALE Chesapeake Property Search</p>
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<p>HOME LISTING</p> <p>Cintron, Barbara</p> <p>11110 Copeland Ct Fredericksburg, VA 22407-2591</p> <p>Listing Detail</p>	<p>SPONSORED LINKS</p> <p>Lookup Background Info for Barbara Cintron. View Photos of Fredericksburg Singles!</p> <p>FOR SALE Fredericksburg Property Search</p>
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Name	City	State	Age	People Report
Barbara Cintron	Alexandria	VA	70	View Details
Hector Cintron	Alexandria	VA	39	View Details
Carlos Cintron	Alexandria	VA	77	View Details
Jose Cintron	Alexandria	VA	67	View Details

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Rebecca Cintron	Bowling Green High School	Bowling Green, VA	View Info
Guillermo	Garfield High School	Woodbridge, VA	View Info

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People Search ?

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Cintron

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Name	City	State	Age	People Report
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name	City	State	Age	Profile Page
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Damario Clinton	Allentown	PA	46	View Details

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To: Cintron Beverage Group, LLC (raxenfeld@mmwr.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77807946 - CINTRON - N/A
Sent: 11/23/2009 3:25:46 PM
Sent As: ECOM111@USPTO.GOV
Attachments:

**IMPORTANT NOTICE REGARDING YOUR TRADEMARK
APPLICATION**

Your trademark application (Serial No. 77807946) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office ("USPTO") has written a letter (an "Office action") on 11/23/2009 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

1. Read the Office letter by clicking on this [link](http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77807946&doc_type=OOA&)
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OR go to <http://tmportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).
3. Respond within 6 months, calculated from 11/23/2009 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) **Response to Office Action form**. If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

Failure to file any required response by the applicable deadline will result in the **ABANDONMENT** (loss) of your application.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.

To: Cintron Beverage Group, LLC (raxenfeld@mmwr.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77807946 - CINTRON - N/A
Sent: 2/18/2010 11:15:49 AM
Sent As: ECOM111@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
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[Attachment - 21](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/807946

MARK: CINTRON

77807946

CORRESPONDENT ADDRESS:

ROBERT R. AXENFELD
MONTGOMERY, MCCrackEN, WALKER &
RHOADS,
123 S BROAD ST FL 24
PHILADELPHIA, PA 19109-1099

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

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<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Cintron Beverage Group, LLC

CORRESPONDENT'S REFERENCE/DOCKET
NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:
raxenfeld@mmwr.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 2/18/2010

THIS IS A FINAL ACTION.

This Office action is in response to applicant's communication filed on January 19, 2010.

SECTION 2(e)(4) REFUSAL – PRIMARILY MERELY A SURNAME

The refusal under Trademark Act Section 2(e)(4) is now made FINAL for the reasons set forth below. *See* 15 U.S.C. §1052(e)(4); 37 C.F.R. §2.64(a).

Applicant initially contends the proposed mark CINTRON is a rare surname. The examining attorney must respectfully disagree. The enclosed additional evidence from 411.com clearly indicates the surname CINTRON appears in excess of 100 times in white pages phone books. Further, even if its assumed CINTRON is a rare surname its primary and only significance is that of a surname. No other meaning for the term exists in the application record. Although "CINTRON" appears to be a relatively rare surname, a rare surname may be unregistrable under Trademark Act Section 2(e)(4) if its primary significance to purchasers is that of a surname. *E.g., In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985); *In re Giger*, 78 USPQ2d 1405 (TTAB 2006); *see* TMEP §1211.01(a)(v). **There is no minimum number of telephone directory listings needed to prove that a mark is primarily merely a surname.** *See* TMEP §1211.02(b)(i); *see, e.g., In re Petrin Corp.*, 231 USPQ 902 (TTAB 1986). *See attachments.*

There is no rule as to the kind or amount of evidence necessary to make out a prima facie showing that a term is primarily merely a surname. This question must be resolved on a case-by-case basis. TMEP §1211.02(a); *see, e.g., In re Monotype Corp. PLC*, 14 USPQ2d 1070 (TTAB 1989); *In re Pohang Iron & Steel Co.*, 230 USPQ 79 (TTAB 1986). The entire record is examined to determine the surname significance of a term. The following are examples of evidence that is generally considered to be relevant: telephone directory listings, excerpted articles from computerized research databases, evidence in the record that the term is a surname, the manner of use on specimens, dictionary definitions of the term and evidence from dictionaries showing no definition of the term. TMEP §1211.02(a).

Evidence that a word has no meaning or significance other than as a surname is relevant to determining whether the word would be perceived as primarily merely a surname. *See In re Petrin Corp.*, 231 USPQ 902, 903 (TTAB 1986); TMEP §1211.02(b)(vi). The attached evidence from Onelook.com shows that the word CINTRON does not appear in the dictionary/the atlas/the gazetteer. Thus, this word appears to have no meaning or significance other than as a surname. In fact, the only definition that appears from an

Onelook.com search is that of a surname. The term CINTRON has no meaning in a foreign language, no alternate dictionary meaning and only appears as a surname. The sole and only meaning for the term CINTRON is that of a surname. *See attachments.*

Therefore, for the foregoing reasons, the refusal to register is maintained and made FINAL. Trademark Act Section 2(e)(4).

SUPPLEMENTAL REGISTER

The applied-for mark has been refused registration on the Principal Register. Applicant may respond to the refusal by submitting evidence and arguments in support of registration and/or by amending the application to seek registration on the Supplemental Register. *See* 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816. Amending to the Supplemental Register does not preclude applicant from submitting evidence and arguments against the refusal(s). TMEP §816.04.

OPTIONS

If applicant does not respond within six months of the date of issuance of this final Office action, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final Office action by:

- (1) Submitting a response that fully satisfies all outstanding requirements, if feasible; and/or
- (2) Filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class.

37 C.F.R. §§2.6(a)(18), 2.64(a); TBMP ch. 1200; TMEP §714.04.

In certain rare circumstances, a petition to the Director may be filed pursuant to 37 C.F.R. §2.63(b)(2) to review a final Office action that is limited to procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

If applicant has questions about its application or this Office action, please contact the assigned trademark examining attorney at the telephone number below.

/Mark T. Mullen/
Examining Attorney
Law Office 111
phone (571) 272-9201
fax (571) 273-9111

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received

notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Find the school you attended in Alexandria, VA	Members: 6296	Enter another zipcode: 22314	Submit
	Thomas Jefferson High School (th	classmates.com	
	Members: 5321		

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2. [Cintron](#): Rhymezone [[home](#), [info](#)]
3. [Cintron](#): LookWAYup Translating Dictionary/Thesaurus [[home](#), [info](#)]

Quick definitions (*Cintron*)

***n* name:** A surname (common: 1 in 25000 families; popularity rank in the U.S.: #2801)

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Cintron

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Cintron is a good fighter, winning his last bout, but he doesn't have the big name to give Shane one last big payday and BIG fight. — *Battle Red Blog*

Jose A. Morales-Cintron, 300 block of Pine Street, \$30,000 — *Berks county news*

He withdrew from the Williams fight and instead took a rematch with Antonio Margarito (the winner of Margarito-Cintron was contractually guaranteed a shot at Miguel Cotto that July). — *BoxingScene.com*

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UNIDENTIFIED FEMALE: Edna Cintron (ph). — CNN Transcript Sep 11, 2004

More examples »

Definitions (0)

▶ American Heritage Dictionary

▶ Century Dictionary

▶ GNU Webster 1.8.2

▶ WordNet

▶ Elsewhere on the web



916Chris: Stacked show tonight, scheduled guests are Sergio Martinez, Kermit Cintron, and Jose Benavidez www.hipitalkradio.com/leave-it-in-the-ring(Thu, February 18, 04:11 AM)

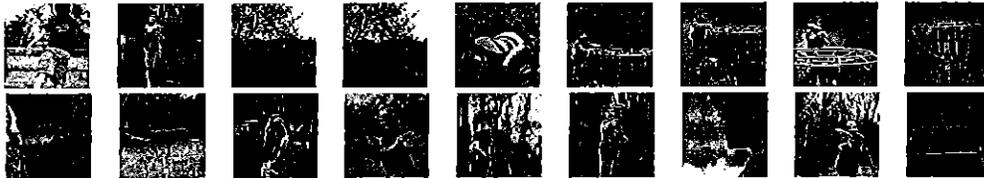


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dja2law: Borough president taps new BOEDC president|Marlene Cintron, tapped to run the Bronx Overall Economic Development ... <http://sohja.com/x7eaY>(Thu, February 18, 01:01 AM)

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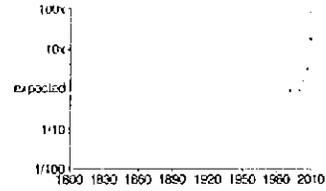
- ▶ American Heritage Dictionary
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Bubble size: how much this word was used in a year
Bubble height: used more or less than expected, vs. all uses evenly distributed

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Definitions of Cintron:

- **name:** A surname (common: 1 in 25000 families; popularity rank in the U.S.: #2801)

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Cintron (definition)

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Definition of **Cintron** 13438 Define Doc

1. (n) Last name. frequency rank in the U.S. is 2601

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A Cintron

[PHONE](#)

📍 7754 W Garland Ct Frankfort, IL

A Cintron

[PHONE](#)

📍 14 Mulberry St Haverhill, MA

A Cintron

[PHONE](#)

📍 60 Pilling St Haverhill, MA

A Cintron

[PHONE](#)

📍 15 Nursery St Springfield, MA

A Cintron

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📍 452 Plainfield St Springfield, MA

A Cintron

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📍 84 Edison St Pontiac, MI **Household: Enalida Cintron**



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Do NOT BLEACH
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📍 84 Edison St Pontiac, MI Household: Enelida Cintron

A Cintron [PHONE](#)

📍 424 High St Perth Amboy, NJ Age: 35-39
Household: William M Cintron, Candida Cintron

A Cintron [PHONE](#)

📍 3518 Bainbridge Ave Bronx, NY

A Cintron [PHONE](#)

📍 2105 79th St Brooklyn, NY

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📍 177 Sunflower Ln Islandia, NY Household: Rosa H Cintron

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Lucia Frechiel	Carlaque Aquaybana Superior Escuelas	Bayamon, OV	View Info
Josue Cintron	Eugenio Maria De Hostos High School	Mayaguez, OV	View Info
James Cintron	Bronx High School of Science	Bronx, NY	View Info

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A Cintron

PHONE

1223 Notchbrook Rd Stowe, VT

A R Cintron

PHONE

879 Argus Ct Bethlehem, PA

Abed Cintron

PHONE

242 E Shelleracker Rd Jesup, GA

Abel Cintron

PHONE

2200 Tiebout Ave Bronx, NY

Abel L Cintron

PHONE

1467 Margarete Crescent Or Apopka, FL

Age: 45-49
Household: Nicholas Cintron

Abellino E Cintron

PHONE

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📍 1902 Cartier St Flint, MI Age: 65+

Abigael Cintron

[FRONT](#)

📍 1600 Army Dr, Apt F2 Utica, NY Household: Elys Cintron

Abigail Cintron

[PHONE](#)

📍 47 Rosas Farm Rd East Haven, CT Job: Yolaby Inc., President

Abigail Cintron

[FRONT](#)

📍 3835 Whitney Ave Hamden, CT Job: Subway, Owner

Abigail Cintron

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📍 1350 Dixwell Ave Hamden, CT Job: Subway, Owner

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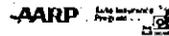
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Abigail Cintron

[PHONE](#)

PO Box 340323 Hartford, CT Age: 30-34

Abigail Cintron Jr

[PHONE](#)

193 Whalley Ave New Haven, CT Job: Feliz Uic, Member

Abigail Cintron

[PHONE](#)

315 Foxon Blvd New Haven, CT Job: Subway, Manager

Abigail Cintron

[PHONE](#)

191 Spring St Walthersfield, CT

Abigail Cintron

[PHONE](#)

29 S Oxalis Dr Orlando, FL Age: 65+ Household: Domingo Cintron

Abigail Cintron

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📍 45 Beaver Terrace Cir Framingham, MA Age: 45-49

Abigail Cintron

PHONE

📍 2836 N Third St Philadelphia, PA Age: 35-39
Household: Alberto Cintron

Abigail C Cintron

PHONE

📍 7707 Acadian Dr Orlando, FL Age: 65+
Household: Ruben A Cintron

Abigato Cintron

PHONE

📍 66 York St New Haven, CT Job: Subway Sandwiches & Salads, Owner

Abimael Cintron

PHONE

📍 1159 Eagle Dr Salinas, CA Household: Jamie M Cintron, Luz S Cintron, Nali

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Josue Cintron	Eugenia Maria De Hostos High School	Mayaguez, OV	View Info
James Cintron	Bronx High School of Science	Bronx, NY	View Info

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Abner Cintron

PHONE

39 Passaic Ave, Fl 1 Nutley, NJ Age: 25-29

Abner Cintron

PHONE

1242 Prendergast Ave Jamestown, NY Household: Felix Cintron

Abner N Cintron

PHONE

6921 Cypress Rd, Apt C19 Plantation, FL Age: 65+ Household: Elsie Cintron

Abraham Cintron Jr

PHONE

2717 N Fairhill St Philadelphia, PA Age: 50-54

Abraham Cintron

PHONE

682 Calle Ceyres Fajardo Street Capri Calle Fajardo, PR Job: Abraham Cintron Santiago, Owner

Abrahana R Cintron

PHONE

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3219 Silver Lake Ct Kissimmee, FL

Ada Cintron

[PHONE](#)

341 N Broad St Lancaster, PA Household: Eddie Cintron, Nilda E Rivera-Cintron

Ada B Cintron

[PHONE](#)

24 Van Wagenen St Newark, NJ Household: Luis A Cintron, Pedro T Sierra, Braca

Ada I Cintron

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2664 Muscatello St Orlando, FL Age: 65+ Household: Angel R Cintron, Edward Cintron, Ra

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Adellna C Cintron

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📍 755 White Plains Rd, Apt 16C
Bronx, NY
Age: 35-39

Adellna C Cintron

[FRONT](#)

📍 PO Box 1785
Canyon Lake, TX
Age: 55-59
Household: Jose M Cintron

Adolph J Cintron Jr

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📍 1863 B2nd St
Brooklyn, NY
Household: Adolph Cintron

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1863 62nd St Brooklyn, NY Household: Adolph Cintron

Adminda Cintron

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1025 Brentwood Way, Apt B Atlanta, GA

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1903 Holland Ave Bronx, NY Household: Norma I Cintron

Adminda Cintron

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3506 Peronne Ave Norfolk, VA

Adolfo R Cintron

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7812 Sagebrush Pl Orlando, FL Age: 40-44 Household: Josefina A Cintron, Fe Acosta, Magh

Adolph Cintron

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1863 62nd St Brooklyn, NY Household: Adolph J Cintron

Adrian Cintron

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1364 Rainree Bnd, Apt 307 Clermont, FL Household: Deania Cintron

Adrian Cintron

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6113 Westgate Dr, Apt 1425 Orlando, FL Job: Detailing Traffic, Chief Executive Officer

To: Cintron Beverage Group, LLC (raxenfeld@mmwr.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77807946 - CINTRON - N/A
Sent: 2/18/2010 11:15:49 AM
Sent As: ECOM111@USPTO.GOV
Attachments: [Attachment - 1](#)
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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/807946

MARK: CINTRON

77807946

CORRESPONDENT ADDRESS:
ROBERT R. AXENFELD
MONTGOMERY, MCCRACKEN, WALKER &
RHOADS,
123 S BROAD ST FL 24
PHILADELPHIA, PA 19109-1099

RESPOND TO THIS ACTION:
<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Cintron Beverage Group, LLC

CORRESPONDENT'S REFERENCE/DOCKET
NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:
raxenfeld@mmwr.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 2/18/2010

THIS IS A FINAL ACTION.

This Office action is in response to applicant's communication filed on January 19, 2010.

SECTION 2(e)(4) REFUSAL – PRIMARILY MERELY A SURNAME

The refusal under Trademark Act Section 2(e)(4) is now made FINAL for the reasons set forth below. *See* 15 U.S.C. §1052(e)(4); 37 C.F.R. §2.64(a).

Applicant initially contends the proposed mark CINTRON is a rare surname. The examining attorney must respectfully disagree. The enclosed additional evidence from 411.com clearly indicates the surname CINTRON appears in excess of 100 times in white pages phone books. Further, even if its assumed CINTRON is a rare surname its primary and only significance is that of a surname. No other meaning for the term exists in the application record. Although "CINTRON" appears to be a relatively rare surname, a rare surname may be unregistrable under Trademark Act Section 2(e)(4) if its primary significance to purchasers is that of a surname. *E.g., In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985); *In re Giger*, 78 USPQ2d 1405 (TTAB 2006); *see* TMEP §1211.01(a)(v). **There is no minimum number of telephone directory listings needed to prove that a mark is primarily merely a surname.** *See* TMEP §1211.02(b)(i); *see, e.g., In re Petrin Corp.*, 231 USPQ 902 (TTAB 1986). *See attachments.*

There is no rule as to the kind or amount of evidence necessary to make out a prima facie showing that a term is primarily merely a surname. This question must be resolved on a case-by-case basis. TMEP §1211.02(a); *see, e.g., In re Monotype Corp. PLC*, 14 USPQ2d 1070 (TTAB 1989); *In re Pohang Iron & Steel Co.*, 230 USPQ 79 (TTAB 1986). The entire record is examined to determine the surname significance of a term. The following are examples of evidence that is generally considered to be relevant: telephone directory listings, excerpted articles from computerized research databases, evidence in the record that the term is a surname, the manner of use on specimens, dictionary definitions of the term and evidence from dictionaries showing no definition of the term. TMEP §1211.02(a).

Evidence that a word has no meaning or significance other than as a surname is relevant to determining whether the word would be perceived as primarily merely a surname. *See In re Petrin Corp.*, 231 USPQ 902, 903 (TTAB 1986); TMEP §1211.02(b)(vi). The attached evidence from Onelook.com shows that the word CINTRON does not appear in the dictionary/the atlas/the gazetteer. Thus, this word appears to have no meaning or significance other than as a surname. In fact, the only definition that appears from an

Onelook.com search is that of a surname. The term CINTRON has no meaning in a foreign language, no alternate dictionary meaning and only appears as a surname. The sole and only meaning for the term CINTRON is that of a surname. *See attachments.*

Therefore, for the foregoing reasons, the refusal to register is maintained and made FINAL. Trademark Act Section 2(e)(4).

SUPPLEMENTAL REGISTER

The applied-for mark has been refused registration on the Principal Register. Applicant may respond to the refusal by submitting evidence and arguments in support of registration and/or by amending the application to seek registration on the Supplemental Register. *See* 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816. Amending to the Supplemental Register does not preclude applicant from submitting evidence and arguments against the refusal(s). TMEP §816.04.

OPTIONS

If applicant does not respond within six months of the date of issuance of this final Office action, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final Office action by:

- (1) Submitting a response that fully satisfies all outstanding requirements, if feasible; and/or
- (2) Filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class.

37 C.F.R. §§2.6(a)(18), 2.64(a); TBMP ch. 1200; TMEP §714.04.

In certain rare circumstances, a petition to the Director may be filed pursuant to 37 C.F.R. §2.63(b)(2) to review a final Office action that is limited to procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

If applicant has questions about its application or this Office action, please contact the assigned trademark examining attorney at the telephone number below.

/Mark T. Mullen/
Examining Attorney
Law Office 111
phone (571) 272-9201
fax (571) 273-9111

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received

notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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Quick definitions (*Cintron*)
name: A surname (common: 1 in 25000 families, popularity rank in the U.S.: #2801)

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Cintron

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— BBC News | News Front Page | World Edition

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Cintron is a good fighter, winning his last bout, but he doesn't have the big name to give Shane one last big payday and BIG fight. — *Battle Red Blog*

Jose A. Morales-Cintron, 300 block of Pine Street, \$30,000 — *Berks county news*

He withdrew from the Williams fight and instead took a rematch with Antonio Margarito (the winner of Marganito-Cintron was contractually guaranteed a shot at Miguel Cotto that July). — *BoxingScene.com*

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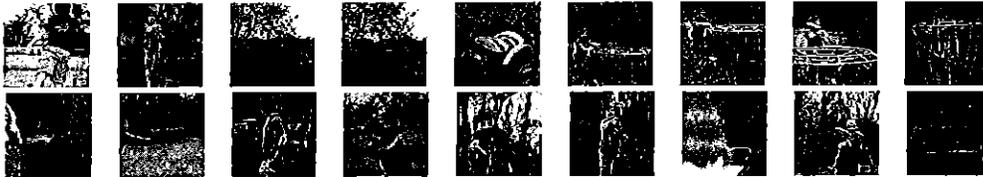


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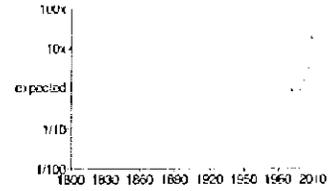
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Definitions of Cintron:

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Cintron (definition)

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1. (n) Last name, frequency rank in the U.S. is 2801

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If you're sure it's a word, try doing a general web search for *Cintron*: [Google](#), [AltaVista](#), [other sources...](#)

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A Cintron

PHONE

📍 7754 W Garland Ct Frankfort, IL

A Cintron

PHONE

📍 14 Mulberry St Haverhill, MA

A Cintron

PHONE

📍 60 Pilling St Haverhill, MA

A Cintron

PHONE

📍 15 Nursery St Springfield, MA

A Cintron

PHONE

📍 452 Plainfield St Springfield, MA

A Cintron

PHONE

📍 84 Edison St Pontiac, MI **Household:** Enelida Cintron



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84 Edison St Pontiac, MI Household: Enelida Cintron

A Cintron

[Profile](#)

424 High St Perth Amboy, NJ Age: 35-39
Household: William M Cintron, Candida Cintron

A Cintron

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3518 Bainbridge Ave Bronx, NY

A Cintron

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2105 79th St Brooklyn, NY

A Cintron

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177 Sunflower Ln Islandia, NY Household: Rosa H Cintron

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James Cintron	Bronx High School of Science	Bronx, NY	View Info

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[PHONE](#)

📍 1229 Notchbrook Rd Stowe, VT

[A R Cintron](#)

[PHONE](#)

📍 879 Argus Ct Bethlehem, PA

[Abel Cintron](#)

[PHONE](#)

📍 242 E Shellcracker Rd Jesup, GA

[Abel Cintron](#)

[PHONE](#)

📍 2200 Tiebout Ave Bronx, NY

[Abel L Cintron](#)

[PHONE](#)

📍 1467 Margarete Crescent Dr Apopka, FL **Age: 45-49**
Household: Nicholas Cintron

[Abelno E Cintron](#)

[PHONE](#)

📍 1902 Cartier St Flint, MI Age: 65+

Abigael Cintron

PHONE

📍 1600 Armory Dr, Apt F2 Utica, NY Household: Elys Cintron

Abigall Cintron

PHONE

📍 47 Roses Farm Rd East Haven, CT Job: Yotaby Inc. President

Abigall Cintron

PHONE

📍 3835 Whitney Ave Hamden, CT Job: Subway, Owner

Abigall Cintron

PHONE

📍 1350 Dixwell Ave Hamden, CT Job: Subway, Owner

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Iran Cintron		New York, NY	Social Network Found
Americo Cintron	68	Menlo Park, CA	Social Network Found
Ison Cintron	26	United States	Social Network Found

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Josue Cintron	Eugenio Maria De Hostos High School	Mayaguez, OV	View Info
James Cintron	Bronx High School of Science	Bronx, NY	View Info

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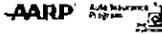
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Ablgall Cintron

PHONE

PO Box 340923 Hartford, CT Age: 30-34

Ablgall Cintron Jr

PHONE

193 Whalley Ave New Haven, CT Job: Felrz Lic, Member

Ablgall Cintron

PHONE

315 Foxon Blvd New Haven, CT Job: Subway, Manager

Ablgall Cintron

PHONE

191 Spring St Wethersfield, CT

Ablgall Cintron

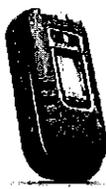
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📍 45 Beaver Terrace Cir Framingham, MA Age: 45-49

Abigail Cintron

PHONE

📍 2836 N Third St Philadelphia, PA Age: 35-39
Household: Alberto Cintron

Abigail C Cintron

PHONE

📍 7707 Acadian Dr Orlando, FL Age: 65+
Household: Ruben A Cintron

Abigato Cintron

PHONE

📍 66 York St New Haven, CT Job: Subway Sandwiches & Salads, Owner

Abimael Cintron

PHONE

📍 1159 Eagle Dr Salinas, CA Household: Jamie M Cintron, Luz S Cintron, Nath

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René Cintrón	New Orleans	LA	Available	View Details
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Abner Cintron

PHONE

📍 59 Passaic Ave, Fl 1 Nutley, NJ Age: 25-29

Abner Cintron

PHONE

📍 1242 Prendergast Ave Jamestown, NY Household: Felix Cintron

Abner N Cintron

PHONE

📍 6921 Cypress Rd, Apt C19 Plantation, FL Age: 65+ Household: Elsie Cintron

Abraham Cintron Jr

PHONE

📍 2717 N Fairhill St Philadelphia, PA Age: 50-54

Abraham Cintron

PHONE

📍 632 Calle Cepres Fajardo Street Cepr Calle Fajardo, PR Job: Abraham Cintron Santiago, Owner

Abrahana R Cintron

PHONE

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3219 Silver Lake Ct Kissimmee, FL

Ada Cintron

[PHONE](#)

341 N Broad St Lancaster, PA Household: Eddie Cintron, Nilda E Rivera-Cintron

Ada B Cintron

[PHONE](#)

24 Van Wagenen St Newark, NJ Household: Luis A Cintron, Pedro T Sierra, Brac

Ada I Cintron

[PHONE](#)

2664 Muscatello St Orlando, FL Age: 65+ Household: Angel R Cintron, Edward Cintron, Re

Ada S Cintron

[PHONE](#)

209 Tassie Pl Brooklyn, NY

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Name	City	State	Email	People Report
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Lucia Fiechel	Carlisle Aquayhiana Superior Escuelas	Bayamon, OV	View Info
Josue Cintron	Eugenio Maria De Hostos High School	Mayaguez, OV	View Info
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Learn 1 simple trick, discovered by a mom.



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Learn the trick, discovered by a mom, to turn yellow teeth white.



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Adelina C Cintron

[PHONE](#)

📍 755 White Plains Rd, Apt 16C Bronx, NY Age: 35-39

Adelina C Cintron

[PHONE](#)

📍 PO Box 1785 Canyon Lake, TX Age: 55-59
Household: Jose M Cintron

Adolph J Cintron Jr

[PHONE](#)

📍 1863 82nd St Brooklyn, NY Household: Adolph Cintron

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 1803 62nd St	Brooklyn, NY	Household: Adolph Cintron	
<u>Adminda Cintron</u>			<u>PHONE</u>
 1025 Brentwood Way, Apt B	Atlanta, GA		
<u>Adminda Cintron</u>			<u>PHONE</u>
 1903 Holland Ave	Bronx, NY	Household: Norma I Cintron	
<u>Adminda Cintron</u>			<u>PHONE</u>
 3506 Peronne Ave	Norfolk, VA		
<u>Adolfo R Cintron</u>			<u>PHONE</u>
 7812 Sagebrush Pl	Orlando, FL	Age: 40-44 Household: Josefina A Cintron, Fv Acosta, Magr	
<u>Adolph Cintron</u>			<u>PHONE</u>
 1863 62nd St	Brooklyn, NY	Household: Adolph J Cintron	
<u>Adrian Cintron</u>			<u>PHONE</u>
 1364 Raintree Blvd, Apt 307	Clermont, FL	Household: Deania Cintron	
<u>Adrian Cintron</u>			<u>PHONE</u>
 6113 Westgate Dr, Apt 1425	Orlando, FL	Job: Detailing Traffic, Chief Executive Officer	

To: Cintron Beverage Group, LLC (raxenfeld@mmwr.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77807946 - CINTRON - N/A
Sent: 8/5/2010 10:40:03 AM
Sent As: ECOM111@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 77/807946

MARK: CINTRON

77807946

CORRESPONDENT ADDRESS:

ROBERT R. AXENFELD
MONTGOMERY, MCCRACKEN, WALKER &
RHOADS
123 SOUTH BROAD STREET FLOOR 24
PHILADELPHIA, PA 19109-1099

CLICK HERE TO RESPOND TO THIS LETTER:
<http://www.uspto.gov/teas/eTEASpageD.htm>

APPLICANT: Cintron Beverage Group, LLC

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:

raxenfeld@mmwr.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 8/5/2010

This Office action is in response to applicant's communication filed on July 2, 2010. It appears based upon applicant's response that applicant intends to seek registration under Trademark Act Section 2(f) but does not specifically state so for the record. Therefore, the following is advised.

SECTION 2(f) ACQUIRED DISTINCTIVENESS

If applicant believes that its mark has acquired distinctiveness, that is, that it has become a distinctive source-indicator for the goods and/or services, applicant may seek registration on the Principal Register

under Trademark Act Section 2(f). See 15 U.S.C. §1052(f). The Office will decide each case on its own merits.

In determining whether the proposed mark has acquired distinctiveness, the following factors are generally considered: (1) length and exclusivity of use of the mark in the United States by applicant; (2) the type, expense and amount of advertising of the mark in the United States; and (3) applicant's efforts in the United States to associate the mark with the source of the goods and/or services, such as unsolicited media coverage and consumer studies. See *In re Steelbuilding.com*, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005). A showing of acquired distinctiveness need not consider all of these factors, and no single factor is determinative. *In re Steelbuilding.com*, 415 F.3d at 1300, 75 USPQ2d at 1424; see TMEP §§1212 *et seq.*

Evidence of acquired distinctiveness may include specific dollar sales under the mark, advertising figures, samples of advertising, consumer or dealer statements of recognition of the mark as a source identifier, affidavits, and any other evidence that establishes the distinctiveness of the mark as an indicator of source.

See 37 C.F.R. §2.41(a); *In re Ideal Indus., Inc.*, 508 F.2d 1336, 184 USPQ 487 (C.C.P.A. 1975); *In re Instant Transactions Corp.*, 201 USPQ 957 (TTAB 1979); TMEP §§1212.06 *et seq.*

The burden of proving that a mark has acquired distinctiveness is on the applicant. *Yamaha Int'l Corp. v. Yoshino Gakki Co.*, 840 F.2d 1572, 6 USPQ2d 1001, 1004 (Fed. Cir. 1988); *In re Meyer & Wenthe, Inc.*, 267 F.2d 945, 122 USPQ 372 (C.C.P.A. 1959); TMEP §1212.01. An applicant must establish that the purchasing public has come to view the proposed mark as an indicator of origin.

Allegations of sales and advertising expenditures do not per se establish that a term has acquired significance as a mark. An applicant must also provide the actual advertising material so that the examining attorney can determine how the term is used, the commercial impression created by such use, and the significance the term would have to prospective purchasers. TMEP §1212.06(b); see *In re Boston Beer Co.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999); *In re Packaging Specialists, Inc.*, 221 USPQ 917, 920 (TTAB 1984).

The ultimate test in determining acquisition of distinctiveness under Trademark Act Section 2(f) is not applicant's efforts, but applicant's success in educating the public to associate the claimed mark with a single source. TMEP §1212.06(b); see *In re Packaging Specialists*, 221 USPQ at 920; *In re Redken Labs., Inc.*, 170 USPQ 526 (TTAB 1971).

SURNAME REFUSAL

The refusal under Trademark Act Section 2(e)(4) is maintained. See 15 U.S.C. §1052(e)(4); 37 C.F.R. §2.64(a).

If applicant has questions about the application or this Office action, please telephone the assigned trademark examining attorney at the telephone number below.

/Mark T. Mullen/
Examining Attorney

Law Office 111
phone (571) 272-9201
fax (571) 273-9111

TO RESPOND TO THIS LETTER: Use the Trademark Electronic Application System (TEAS) response form at <http://teasroa.uspto.gov/roa/>. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

Exhibit B

Response to Office Action

The table below presents the data as entered.

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SERIAL NUMBER	77807946
LAW OFFICE ASSIGNED	LAW OFFICE 111
MARK SECTION (no change)	
ADDITIONAL STATEMENTS SECTION	
SECTION 2(f) BASED ON EVIDENCE	The mark has become distinctive of the goods/services, as demonstrated by the attached evidence.
2(f) EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	e2f-6519892163-121453247 . Cintron 946 - Response to Office Action reduced .pdf
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	<u>\\TICRS\EXPORT1\IMAGEOUT1\778\079\77807946\xml3\ROA0038.JPG</u>
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SECTION 2(f)	The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.
SIGNATURE SECTION	
DECLARATION SIGNATURE	The filing Attorney has elected not to submit the signed declaration, believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .

RESPONSE SIGNATURE	/evelyn h mcconathy/
SIGNATORY'S NAME	Evelyn H. McConathy
SIGNATORY'S POSITION	Attorney of Record, Pennsylvania bar member
DATE SIGNED	02/02/2011
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Feb 02 12:18:06 EST 2011
TEAS STAMP	USPTO/ROA-65.198.92.163-2 0110202121806634918-77807 946-4801c48524cbffdef198c 582458e5478c-N/A-N/A-2011 0202121453247319

P10 Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **77807946** has been amended as follows:

ADDITIONAL STATEMENTS

Section 2(f), based on Evidence

The mark has become distinctive of the goods/services, as demonstrated by the attached evidence.

Original PDF file:

e2f-6519892163-121453247 . Cintron 946 - Response to Office Action reduced .pdf

Converted PDF file(s) (38 pages)

2(f) evidence-1

2(f) evidence-2

2(f) evidence-3

2(f) evidence-4

2(f) evidence-5

2(f) evidence-6

2(f) evidence-7

2(f) evidence-8

2(f) evidence-9

2(f) evidence-10

2(f) evidence-11

2(f) evidence-12

2(f) evidence-13
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2(f) evidence-32
2(f) evidence-33
2(f) evidence-34
2(f) evidence-35
2(f) evidence-36
2(f) evidence-37
2(f) evidence-38

Section 2(f), based on Use

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

SIGNATURE(S)

Declaration Signature

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review, require a signed declaration.

Response Signature

Signature: /evelyn h mcconathy/ Date: 02/02/2011

Signatory's Name: Evelyn H. McConathy

Signatory's Position: Attorney of Record, Pennsylvania bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power

of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 77807946

Internet Transmission Date: Wed Feb 02 12:18:06 EST 2011

TEAS Stamp: USPTO/ROA-65.198.92.163-2011020212180663

4918-77807946-4801c48524cbffdef198c58245

8e5478c-N/A-N/A-20110202121453247319

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Mark: CINTRON
Serial No: 77/807946
Office Action Date: 8/05/10
Applicant: Cintron Beverage Group, LLC
Response Date: 2/02/11

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Attention: Mark Mullen, Esquire
Trademark Attorney
Law Office 111
Phone: (571) 272-9201

RESPONSE TO OFFICE ACTION

Dear Examiner Mullen:

Thank you for speaking with me on Friday, January 28, 2011 in an effort to forward this mark to Registration and to preserve the client's rights in and to the mark. In accordance with your suggestion, we elect to change the filing status of the mark from 1A to §2(f) of the Lanham Act, based upon the substantially 5 years of continuous and exclusive use of the word mark CINTRON in connection with other combined-word trademarks held by the owner Cintron Beverage Group, LLC, and the considerable marketing and investment into CINTRON as a brand that is well recognized by the public in association with tea and juice beverages, energy drinks and bottled water in International Classes 30 and 32.

Applicant hereby requests a change of filing status from 1A to §2(f) under the Lanham Act based upon continuous and exclusive use for substantially 5 years to date.

If the Applicant is relying solely on its ownership of one or more prior registrations as proof of acquired distinctiveness, as will be shown below regarding the CINTRON mark, the §2(f) claim does not have to be verified. Therefore, an Applicant or Applicant's attorney may authorize amendment of an application to add such a claim through an Examiner's amendment, if otherwise appropriate. 37 C.F.R. §2.41(b).

Applicant's undersigned attorney so authorizes an Examiner's amendment as discussed with the Examiner by telephone.

Applicant timely responds within the 6-month permitted response time the key rejections set forth in the Office Action dated August 5, 2010 related to:

1. §2(f) Acquired Distinctiveness; and
2. Maintained Surname Refusal under 37 C.F.R. §2.64(a).

Applicant's change of filing status to §2(f) will resolve the surname issue, which has been maintained by the Examiner throughout the several previous Responses and in an Appeal Brief in this matter. Applicant does not acquiesce to the assertion that the mark CINTRON is primarily a surname, and Applicant maintains all previous arguments for why the mark is, in fact, not based upon a surname. Applicant has not based the mark on Cintron as a surname. However, Applicant is at an impasse with the Trademark Office regarding the use of CINTRON as a surname; and instead the option is provided by the Trademark Office to change the filing status of this mark to §2(f), which Applicant accepts in an effort to move this case forward to registration on the Primary Register, with all rights and privileges attendant thereto.

Acquired Distinctiveness

The guidelines for establishing acquired distinctiveness are generally covered by the TMEP in Section 1212. There, the TMEP lays out three types of acquired distinctiveness evidence:

(1) ownership of one or more prior registrations on the Principal Register for the same mark, for related goods, mark may be accepted as prima facie evidence of distinctiveness.

TMEP 1212.03(b);

(2) five years of continuous and exclusive use of the mark (Trademark Rule 2.41(b));
and

(3) actual evidence of acquired distinctiveness.

(1) Ownership of One or More Prior Registrations on the Principal Register

The first type of evidence turns on Applicant's prior registration and continuous use of CINTRON 21 (Reg. 3410949, Reg. Date April 8, 2008) as filed on Aug. 21, 2006 and claiming a First date of Use and First Commercial Date of at least August 1, 2006 for energy

and sports drinks in International Class 32. The CINTRON brand name has not changed since that first date of use. The CINTRON 21 mark was granted without disclaimer and without rejection. Applicant submitted one specimen for the class showing the mark as used in commerce on or in connection with an item in the class, specifically images of the mark CINTRON 21 as it appears on the aluminum can containing the sports drink and energy drink as sold in interstate commerce. See attached Exhibit 1 showing all three specimen photographs as filed on January 18, 2008, showing continuous use of the mark at that time.

Applicant's also own a prior registration and continuous use of CINTRON ENERGY ENHANCER (Reg. 3600401, Reg. Date March 31, 2009) as filed on Aug. 21, 2006 and claiming a First date of Use and First Commercial Date of at least August 1, 2006 for energy and sports drinks in International Class 32. The CINTRON brand name has not changed since that first date of use. The CINTRON ENERGY ENHANCER mark was granted with a disclaimer of the words "ENERGY ENHANCER" except as used in Applicant's mark – but with no disclaimer required of the term "CINTRON" in the combined word mark. Applicant submitted one specimen for the class showing the mark as used in commerce on or in connection with an item in the class, specifically images of the mark CINTRON ENERGY ENHANCER as it appears on the aluminum can containing the sports drink and energy drink as sold in interstate commerce. See attached Exhibit 2 showing the specimen photograph as filed on January 19, 2009, showing continuous use of the mark at that time.

The following are general guidelines regarding claiming ownership of prior registrations as a method of establishing acquired distinctiveness.

1212.04(a) Sufficiency of Claim vis-à-vis Nature of the Mark: The Examining attorney has the discretion to determine whether the nature of the mark sought to be registered is such that a claim of ownership of a prior registration for the same or similar goods or services is enough to establish acquired distinctiveness. For example, if the mark sought to be registered is deemed to be highly descriptive or misdescriptive of the goods or services named in the application, the examining attorney may require additional evidence of acquired distinctiveness. See *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985) (claim of ownership of a prior registration held insufficient to establish acquired distinctiveness where registration was refused as primarily geographically deceptively misdescriptive); *In re Kerr-McGee Corp.*, 190 USPQ 204 (TTAB 1976) (claim of ownership

of prior registrations held insufficient to establish acquired distinctiveness where registration was refused on ground that the subject matter was merely an ornamental border or "carrier" for words and symbols appearing within). These cases do not apply in this situation and should not prevent a finding of acquired distinctiveness.

1212.04(c) Relatedness of Goods or Services: The examining attorney should determine whether the goods or services named in the application are sufficiently similar to the goods or services named in the prior registration(s). If the relatedness is self-evident, the examining attorney can generally accept the §2(f) claim without additional evidence. This is most likely to occur with ordinary consumer goods or services where the nature of the goods or services is commonly known and readily apparent (e.g., a prior registration for hair shampoo and new application for hair conditioner). Applicant asserts that the relatedness is evident of the above identified marks containing exactly the recognized brand name that is under application. Consequently Applicant is not reiterating the section of this code regarding when the relatedness is not self-evident, requiring expert testimony.

1212.04(d) Registration Must Be in Full Force and Effect and on Principal Register: Applicant's prior registrations as identified above are active and in full force and on the primary register. Consequently Applicant is not reiterating the section of this code regarding when these factors are absent.

1212.04(e) Form of §2(f) Claim Based on Ownership of Prior Registrations: Applicant hereby adopts the following language used to claim distinctiveness under §2(f) on the basis of ownership of one or more prior registrations:

* [The mark has become distinctive of the goods (or services) as evidenced by ownership of U.S. Registration No(s). CINTRON ENERGY ENHANCER (Reg. 3600401, Reg. Date March 31, 2009) and CINTRON 21 (Reg. 3410949, Reg. Date April 8, 2008) on the Principal Register for the same mark for the same or related goods or services. Accordingly, Applicant's ownership is demonstrated in the US Trademark Office record from a first date of at least August 1, 2006, substantially 5 years ago, and the intervening registrations demonstrate both growth and expansion of the products under the CINTRON brand, as well as continued use and exclusivity.

(2) Five Years of Continuous and Exclusive Use of the Mark (TMEP 1212.05)

The following are general guidelines regarding the statutorily suggested proof of five years' use as a method of establishing acquired distinctiveness.

1212.05(a) Sufficiency of Claim Vis-à-Vis Nature of the Mark: For most surnames, the statement of five years' use will be sufficient to establish acquired distinctiveness.

1212.05(b) "Substantially Exclusive and Continuous:" The five years of use do not have to be exclusive, but may be "substantially" exclusive. This makes allowance for use by others that may be inconsequential or infringing, which does not necessarily invalidate the applicant's claim. *L.D. Kichler Co. v. Davoil, Inc.*, 192 F.3d 1349, 52 USPQ2d 1307 (Fed. Cir. 1999). Applicant has conducted commercially provided searches in countries where they believe other might be using the mark to assure exclusivity, not just in the US, where they have maintained exclusivity, but around the world. In fact a search was conducted last week in Trinidad by Thompson and Thompson for Applicant – and no use of CINTRON for any beverage product was found. Applicant is also actively enforcing the exclusivity of its mark in Nigeria, Zimbabwe and South Africa. In July 2010, a company in Panama approached Applicant seeking permission distribute the CINTRON brand of beverages, but requested that they be permitted to name their Panamanian company "Cintron Panama" or a similar blending with Applicant's brand name CINTRON. Applicant refused permission to dilute the exclusivity of the mark, and CINTRON PANAMA was denied. Documentation and sworn statements are not currently provided, but will be provided upon request for these and other instances in which exclusivity was maintained.

Applicant's use of the mark during the five years was continuous, with no period of "nonuse" or suspension of trade in the goods or services in connection with which the mark is used, and to the contrary use has been consistently expanded during this period.

1212.05(c) Use "as a Mark:" The substantially exclusive and continuous use must be "as a mark." 15 U.S.C. §1052(f). *See In re Craigmyle*, 224 USPQ 791 (TTAB 1984) (registrability under §2(f) not established by sales over a long period of time where there was no evidence that the subject matter had been used as a mark); *In re Kwik Lok Corp.*, 217 USPQ 1245, 1248 (TTAB 1983) (declarations as to sales volume and advertising expenditures held insufficient to establish acquired distinctiveness. Indeed, Applicant's CINTRON brand was so maintained in the above identified marks and in general use of the brand.

1212.05(d) Form of the Proof of Five Years' Use: If the applicant chooses to seek registration under §2(f), 15 U.S.C. §1052(f), by using the statutory suggestion of five years of use as proof of distinctiveness, the applicant should submit a claim of distinctiveness that reads as follows.

Accordingly, Applicant so states that:

The CINTRON mark (77/77807946) has become distinctive of the goods (or services) through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.

The claim of five years of use is generally required to be supported by an affidavit or declaration under 37 C.F.R. §2.20, signed by the applicant or representative. See 37 C.F.R. §2.41(b). Accordingly attached is new sworn Declaration under 37 C.F.R. § 2.20 by Richard Wyatt, CEO of Cintron Beverage Group, LLC, (attached as Exhibit 3), which reiterates the sworn Declaration of record by Richard Wyatt, signed 6/26/10, as filed with the Request for Reconsideration after Final in this case on 7/2/10. The present Declaration further adds that the mark has become distinctive or that the Applicant believes that the mark has become distinctive, it specifically contain a refers to distinctiveness as applied to Applicant's goods or services, or to use in association with the Applicant's goods or services, to relate the distinctiveness created by the five years' of continuous and substantially exclusive use to the goods or services specified in the application. While a clarifying response does not have to be verified, a substitute statement as in the present situation must be verified, i.e., supported by a declaration under 37 C.F.R. §2.20, signed by Applicant.

Thus, the Declaration shows that the application has been in continuous and exclusive use in commerce for at least since the origin of the company in 2006, which is now substantially 5 years ago.

Adding "fruit-flavored beverages" to Applicant's sports and energy drinks the previous registrations in Class 32 is certainly a natural area of expansion, wherein the consumers would believe that such products emanate from a single source, Cintron Beverage Group, LLC, especially given Applicant's heavy advertising campaign regarding the new product. Similarly, the expansion into what has proven to be an ever expanding selection of tea-based beverages, as registered with a first date of use in May 2007 in Class 30 is also a natural area of expansion, wherein the consumers would certainly believe that such products

]

*

emanate from a single source, Cintron Beverage Group, LLC, again especially given Applicant's heavy advertising campaign regarding the new product. These facts further demonstrate both growth and expansion of the products under the CINTRON brand, as well as continued use and exclusivity over a period of substantially 5 years.

The term CINTRON is a term coined by Applicant and a source identifier of their brand, which is recognized world wide as a source of beverages, such as energy and sports drinks, and more recently with fruit based and tea-based beverages. As indicated in the sworn Declaration of Richard Wyatt attached hereto Applicant has had annual sales of beverages with the CINTRON mark totaling over \$3 million dollars since 2007 alone. Moreover, Applicant promoted its CINTRON brand, shown as the present trademark, by engaging in sponsorships at high-profile events such as:

- Power-Boating World Championships;
- the X-Games;
- sponsorship of a Cintron Race Boat; and
- promotion over the Internet and by social networking sites, such as Facebook.*

The expenditures for these marketing channels, together with advertising and promotion are in excess of \$1 million dollars in expenditures by Applicant.* Furthermore, consumers recognize CINTRON beverages across the United States, Australia, Central America and Africa. Thus, it is respectfully asserted that CINTRON is well recognized in light of continuous and exclusive use, and has acquired distinctiveness as required under §2(f) over use for substantially 5 years.

(3) §1212.06 Establishing Distinctiveness by Actual Evidence

Different types of evidence have been used, alone or in combination, to establish acquired distinctiveness. No single evidentiary factor is determinative. The value of a specific type of evidence and the amount necessary to establish acquired distinctiveness will vary according to the facts of the specific case, but the following headings are useful.

1212.06(a) Long Use of the Mark in Commerce: See foregoing discussion of 5 years of continuous and exclusive use.

1212.06(b) Advertising Expenditures: See Declaration of Richard Wyatt. Applicant asserts that it has been successful in educating the public to associate the proposed mark with a single source, as shown in the material attached to the Declaration. Applicant further

indicates in the Declaration the types of media through which the goods and services have been advertised (e.g., the Internet).

1212.06(c) Affidavits or Declarations Asserting Recognition of Mark as Source

Indicator: Such material is not applied at this time, but could be acquired.

1212.06(d) Survey Evidence, Market Research and Consumer Reaction Studies: Such

material is not applied at this time, but could be acquired.

1212.06(e) Miscellaneous Considerations Regarding Evidence Submitted to Establish

Distinctiveness: Cintron Beverages Group is the first and only user of CINTRON in classes 30 and 32 for the identified beverages, but certainly not the sole producer of such goods, since others produce under other brand names.

1212.07 Form of Application Asserting Distinctiveness: To base a registration on

acquired distinctiveness under §2(f), 15 U.S.C. §1052(f), an applicant must indicate its intent to do so. See foregoing underlined statements in opening section and bold statements above, that registration is requested under §2(f); a statement that the mark has become distinctive, or that the applicant believes the mark has become distinctive of the goods or services in commerce; the statement relating to five years' use in commerce as suggested in §2(f); and further in light of the evidence submitted in support of acquired distinctiveness.

In conclusion, Applicant submits that for all of the reasons articulated above, its application for changing status to §2(f) as stated, and the supporting evidence of substantially 5 years of continuous and exclusive use as a trademark should be accepted as proving that on a basis of acquire distinctiveness – the mark CINTRON should be published, and if not opposed, registered on the Primary Register. Applicant requests that the refusal of registration based on an assertion of surname is now moot in light of the acquired distinctiveness, and it is requested that the change be made by Examiner's Amendment and the mark moved to registration.

If, however, the Examining Attorney disagrees with Applicant's position or finds that additional evidence is needed, Applicant asks the Examining Attorney to contact the

undersigned to permit submission of further evidence of acquired distinction under §2(f) for this mark.

Respectfully submitted,

Date: February 2, 2011

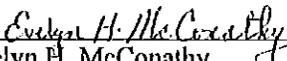
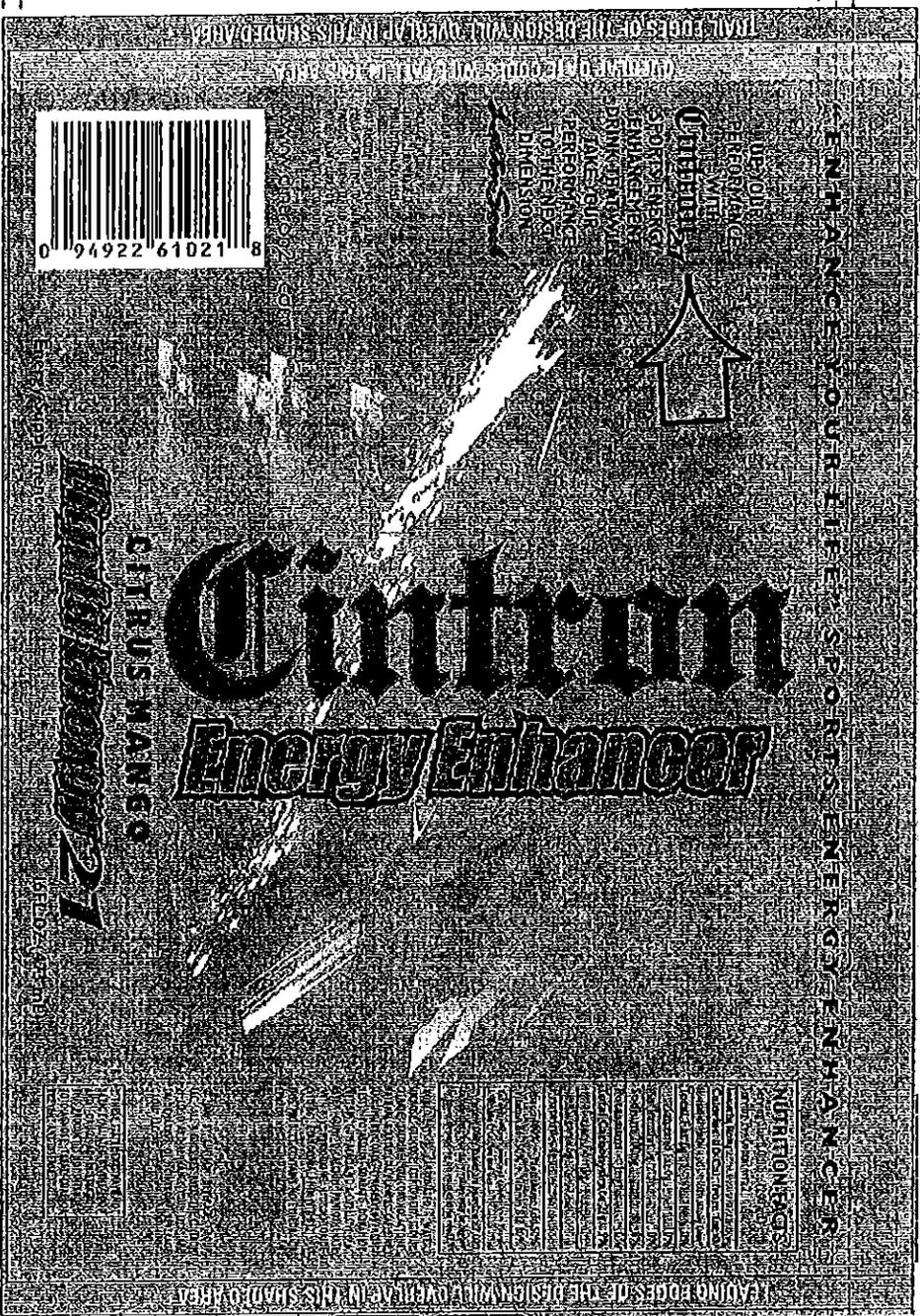

Evelyn H. McConathy
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MONTGOMERY, McCRACKEN,
WALKER & RHOADS, LLP
123 South Broad Street
Philadelphia, PA 19109-1099
Tel: (215) 772.7550
Fax: (215) 772.7620

EXHIBIT 1





206
204

LITHO LIMIT (8.29)
TYPE LIMIT (7.71)

LITHO LIMIT (5.81)
TYPE LIMIT (5.62)

REXAM BEVERAGE CAN GAPP

ARTWK GRAPHIC ARTS & PRINTING PLATES

JOB NO.	DATE	VERSION	REV	DATE
1	04-26-02		1	
2			2	
3			3	
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The party signing above (Customer) agrees that Rexam Beverage Can Company (RBCC) will not be responsible, after the return of blank and white proofs, color separations and color proofs with a Customer signature, for any errors, omissions, and the production by the Customer. RBCC assumes no responsibility for such approval, proofs and separations, or for errors/productions made using them, regarding non-compliance with local, state or Federal laws and regulations including, but not limited to, the Federal Food, Drug and Cosmetic Act, the Federal Fair Packaging and Labeling Act, nor claims or for conflicts with the rights of third parties in connection with trademarks, designs, labels, copyrights or other composition, used by signing above the Customer agrees to indemnify and hold RBCC harmless for any and all damages sustained by RBCC as a result of any actions, including by a third party, based on such grounds.

UP YOUR
PERFORMANCE
WITH
Dimension
SPORTS ENERGY
ENHANCEMENT
DRINK THAT WILL
TAKE YOUR
PERFORMANCE
TO THE NEXT
DIMENSION.

MADE IN THE USA

PACKAGE THROUGH
CENTRON BEVERAGE LLC
PHILADELPHIA PA 19153

NOT RECOMMENDED FOR CHILDREN OR
IS SENSITIVE TO CAFFEINE. MAY
CAUSE DROWSINESS OR INTERFERE WITH
DRUGS, TELLER'S, OR PREVENT
DISEASE OR OTHER MEDICAL CONDITIONS.



EXHIBIT 2



EXHIBIT 3

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Mark: CINTRON
Serial No: 77/77807941 and 77/807,946
Office Action Date: 8/05/10
Applicant: Cintron Beverage Group, LLC
Response Date: 2/01/11

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Attention: Mark Mullen, Esquire
Trademark Attorney
Law Office 111
Phone: (571) 272-9201

DECLARATION OF RICHARD WYATT

In support of US Application Serial Nos. 77/807,941 and 77/807,946

Applicant hereby respectfully submits the following Declaration in support of the request for the change in status to §2(f), based upon acquired distinctiveness of the marks associated with the above-identified trademark Applications for a continuous and substantially exclusive period of substantially 5 years.

The undersigned declares and states:

1. I am the Chief Executive Officer of Cintron Beverage Group, LLC (Applicant).
2. I have personal knowledge of the facts as stated herein and am qualified to make such statements.
3. Applicant, Cintron Beverage Group, LLC, was founded in 2006, and it produces and distributes beverages, including a line of energy drinks and teas, under the brand name CINTRON.
4. Applicant is also the owner of US Registrations Nos. 3,410,949 for CINTRON 21 and 3,600,401 for CINTRON ENERGY ENHANCER, which are used in association with Applicant's sports and energy drinks, although the product lines under the CINTRON brand have expanded into tea-based and fruit-based beverages.

5. The mark CINTRON was first used in commerce in association with beverages, specifically energy drinks and sports drinks, as early as August 2006.
6. Accordingly, the mark CINTRON has been in continuous and substantially exclusive use in commerce to describe Applicant's beverages for substantially 5 years, over which time, the mark has become distinctive, or at least Applicant believes that the mark has become distinctive.
7. US Application Serial Nos. 77/807,941 (word mark) and 77/807,946 (stylized word mark) have over the past at least 5 years acquired specific distinctiveness as applied to Applicant's goods, or as used in association with the Applicant's goods or services, as specified in the application in Class 30 in association with "tea-based beverages," and in Class 32 in association with "energy drinks, sports drinks, fruit flavored beverages" as show by the specimen photographs provided with the filing of the application.
8. Since 2006, Applicant has had annual sales of beverages bearing the CINTRON mark totaling over three-million dollars.
9. Applicant spends approximately one-million dollars each year on marketing in connection with CINTRON-beverage-related advertising.
10. Applicant also promotes its CINTRON mark by promotional venues including sponsorships, such as the following:
 - Applicant was a key sponsor at the Power Boating World Championship in Key West, Florida in February 2010, featuring a "CINTRON-sponsored boat." See attached photograph at Exhibit 4.
 - Applicant was a host at the X-games in Aspen, Colorado in January 2010, hosting a party featuring CINTRON energy drinks. See attached photograph at Exhibit 5.
 - Applicant sponsors a race boat with the CINTRON mark thereon. The race boat has been in approximately twenty (20) separate-race venues in the United States since 2007. See attached photograph at Exhibit 6.
 - Applicant has internet-commercial videos, such as Facebook, featuring CINTRON beverages therein.
11. Applicant is widely known by consumers as a source of innovative-energy drinks in the United States.
12. Applicant has sold CINTRON beverages across the continental United States and Hawaii; as well as in Australia, and countries in Central America and Africa.

13. The undersigned is unaware of any consumers that have associated the CINTRON mark with a person or surname.

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

Dated: February 1, 2011

By: 
Richard Wyatt, CEO
Cintron Beverage Group, LLC

EXHIBIT 4

Cintron

TASTE IS THE DIFFERENCE!

View site on
your mobile device

Home

Liquid Energy

Teas and Fruit Drinks

Get Cintron Now

Cintronography

Cintron Buzz

Newsletter

News / PR

Mix-n-Cintron

Contact Cintron

Cintron

EVENTS

KEY WEST, Fla. - Offshore Powerboat Race winner of the World Championship 2010



Cintron cruises at Key West World Championships (11.11.10) Cintron—
Trotted by Rich Wyatt of Moon Township, Pa. — was the fastest boat in
Wednesday's opener of the Key West World Championships. The silver
50-foot D/ste with twin 1,400-horsepower engines averaged 114.9 mph
over the smooth, 42.4-mile course that began and ended in Key West
Harbor. For the first four laps, Cintron — competing in the four-seat
Superboat Unlimited class — traded the lead with CUS, driven by Rand
Scism and throbbed by owner Bob Dull, both of Missouri. But at Turn 2,
outside the harbor, the race began to fall apart for CUS, and the team
dropped out with one lap to go. "We came into Turn 2 together at about 145 miles an hour," Granat said. "We were
probably no less than four or five feet apart. He took a flir, and I know he came around and it had to be a really, really tight
turn. By that time, we had already navigated the turn. So it seemed that's where he started to fall off. They've got two days to
fix their boat. I want to see them back in the water." The second event of the three-race championship begins at 10 a.m.
Friday. The final event to determine world champions in 13 classes is Sunday.

1 | 2 | [Read more](#)

Cintron Boat News

Cintron Amazon Deals

Cintron Tasting Team

Cintron Vehicles

Cintron Bands



Cintron Shots!



KEY WEST, Fla. - Offshore

Cintron Powerboat

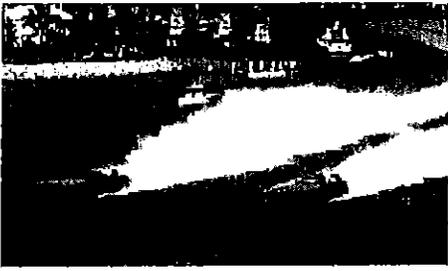
Cintron Powers & Games

Win Cintron Stuff!

Join our mailing list and
instantly be entered to win
a CINTRON™ Liquid Energy
Snowboard!



[Click Here To Enter](#)



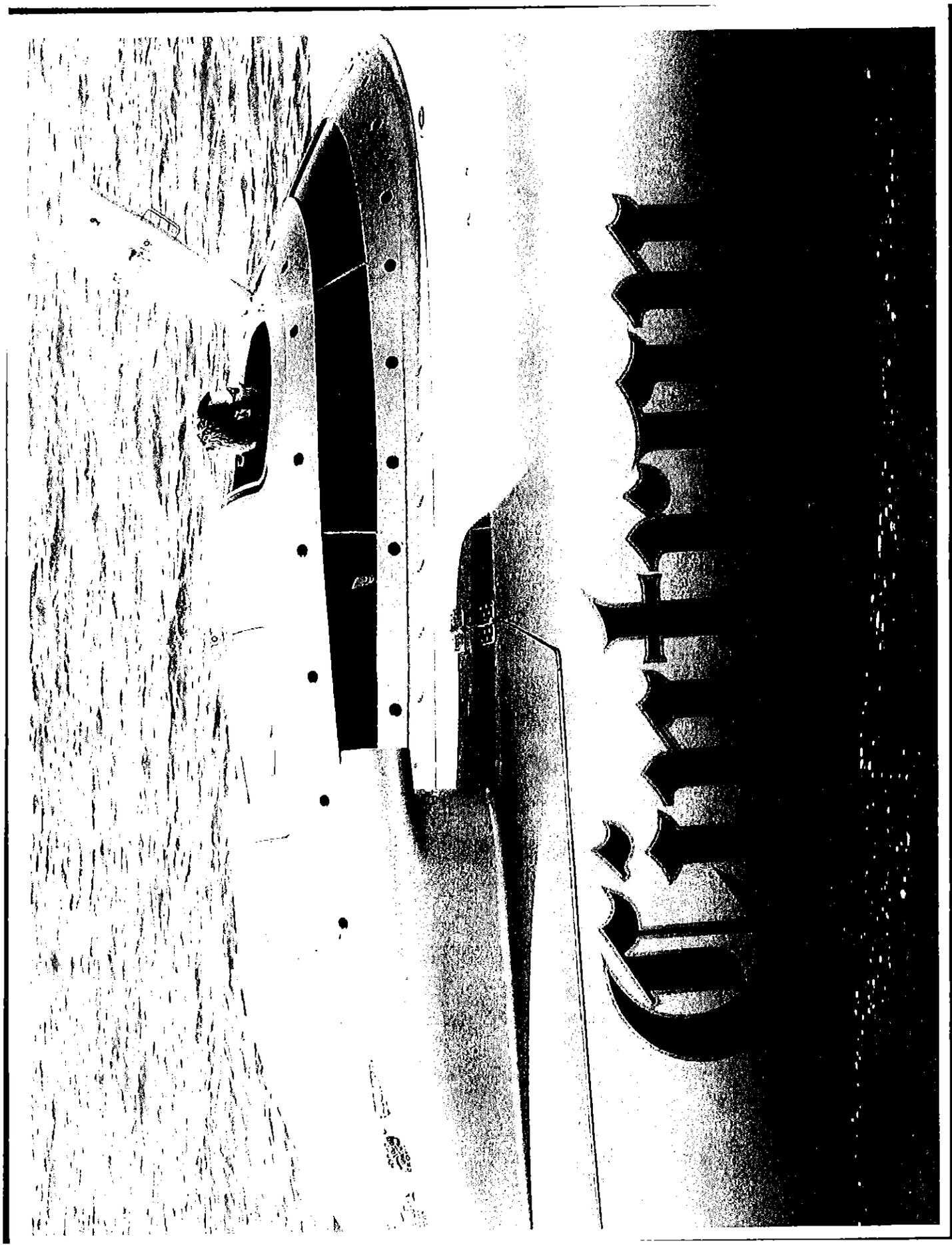


EXHIBIT 5



- Home
- Liquid Energy
- Teas and Fruit Drinks
- Get Cintron Now
- Cintronography
- Cintron Buzz
- Newsletter
- News / PR
- Mix-n-Cintron
- Contact Cintron

EVENTS

Cintron Powers X-Games



Aspen, Colorado

Cintron Powers the X-Games 2010!

Cintron Liquid Energy recently attended the X-Games in Aspen, Colorado. We threw a terrific, and flavor filled party featuring all of our Liquid Energy Drinks, Citrus Mango, Tropical Acai, Pineapple Passion and Cranberry Splash!



Our loyal Cintron Liquid Energy FANATICS got to power up during the day and then mix Cintron Liquid Energy with their favorite beverage of choice to power them through the night!

[Previous page](#) 1 2 3

- Cintron Boat News
- Cintron Amazon Deals
- Cintron Tasting Team
- Cintron Vehicles
- Cintron Bands



Cintron Shots!



KLYWST, IL - Offshore

Cintron Powerbeology

Cintron Powers X-Games

Win Cintron Stuff!

Join Our Party and Win Instantly Be Entered To Win a CINTRON™ Liquid Energy Snowboard!



[Click Here To Enter](#)



Image 1 of 3

06/06/00

06/06/00



Image 2 of 5

Untitled

11/1/2015

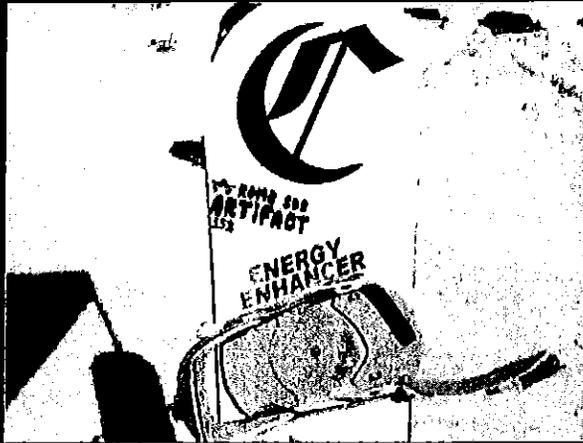


Image 1 of 3

Untitled

Close

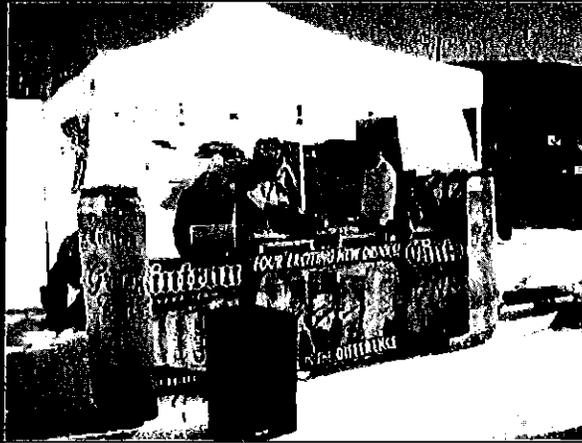


Image 4 of 5

Untitled

01/15/35



Image 5 of 5

Bottled

12/11/17

EXHIBIT 6



- Home
- Liquid Energy
- Teas and Fruit Drinks
- Get Cintron Now
- Cintronography
- Cintron Buzz
- Newsletter
- News / PR
- Mix n' Cintron
- Contact Cintron

EVENTS

Cintron Powerboating!

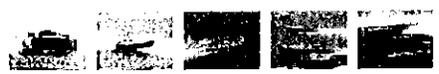
Key West, Florida.



Cintron Liquid Energy Blasts Off At Powerboating World Championships!

Cintron Liquid Energy, powered its way through the competition at the Key West Powerboating Championships in Key West, Florida. Cintron always brings a festive, high-energy and flavor filled party featuring all of our Liquid Energy Drinks: Citrus Mango, Tropical Azul, Pineapple Passion and Cranberry Splash! The Cintron

Powerboat Crew stays fit best. When we need that extra boost to beat the competition, we ELAST OFF with Cintron Liquid Energy!



[Previous page](#) [1](#) [2](#) [3](#) [Next page](#)

- Cintron Boat News
- Cintron Amazon Deals
- Cintron Tasting Team
- Cintron Vehicles
- Cintron Bands



Cintron Shots!



- KEY WEST, FL - 01/20/10
- Cintron Powerboating
- Cintron Powers X Games

Win Cintron Stuff!

Join Our Mailing List and Instantly Be Eligible To WIN a CINTRON™ Liquid Energy Snowboard!



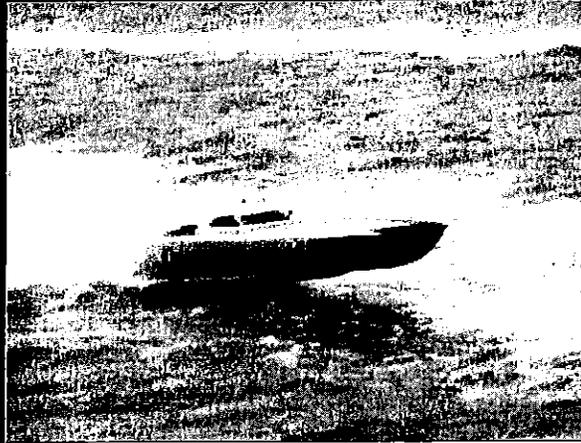
[Click Here To Enter](#)



Image 1 of 1

Drummed

01-16-14



Unlabeled

Image 2 of 5

0197605



04/2017

Unlabeled

04/2017



Page 4 of 7

United

Page 4



Image 5 of 5

Untitled

Image 4

Quintan
Racing
21



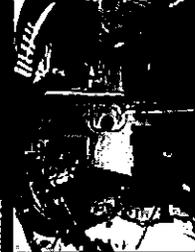
Quintan
Racing
12



Super Cat Unlimited



Similar 1,400 HP X 2

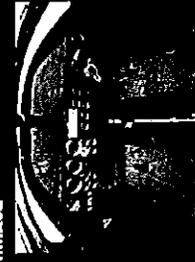


Cockpit

Super Vee Unlimited



Similar 1,000 HP X 2



Cockpit



www.quintanbeveragegroup.com

Exhibit C

RESPONSE SIGNATURE	/evelyn h mcconathy/
SIGNATORY'S NAME	Evelyn H. McConathy
SIGNATORY'S POSITION	Attorney of Record, Pennsylvania bar member
DATE SIGNED	02/02/2011
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Feb 02 12:18:06 EST 2011
TEAS STAMP	USPTO/ROA-65.198.92.163-2 0110202121806634918-77807 946-4801c48524cbffdef198c 582458e5478c-N/A-N/A-2011 0202121453247319

PTO Form 1957 (Rev 9/2006)
OMB No. 0651-0050 (Exp 04/30/2011)

**Response to Office Action
To the Commissioner for Trademarks:**

Application serial no. 77807946 has been amended as follows:

ADDITIONAL STATEMENTS

Section 2(f), based on Evidence

The mark has become distinctive of the goods/services, as demonstrated by the attached evidence.

Original PDF file:

e2f-6519892163-121453247 . Cintron 946 - Response to Office Action reduced .pdf

Converted PDF file(s) (38 pages)

- 2(f) evidence-1
- 2(f) evidence-2
- 2(f) evidence-3
- 2(f) evidence-4
- 2(f) evidence-5
- 2(f) evidence-6
- 2(f) evidence-7
- 2(f) evidence-8
- 2(f) evidence-9
- 2(f) evidence-10
- 2(f) evidence-11
- 2(f) evidence-12

2(f) evidence-13
2(f) evidence-14
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2(f) evidence-35
2(f) evidence-36
2(f) evidence-37
2(f) evidence-38

Section 2(f), based on Use

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

]

SIGNATURE(S)

Declaration Signature

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review, require a signed declaration.

Response Signature

Signature: /evelyn h mcconathy/ Date: 02/02/2011

Signatory's Name: Evelyn H. McConathy

Signatory's Position: Attorney of Record, Pennsylvania bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power

of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 77807946

Internet Transmission Date: Wed Feb 02 12:18:06 EST 2011

TEAS Stamp: USPTO/ROA-65.198.92.163-2011020212180663

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