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

Proceeding	91200639
Party	Plaintiff Vedozi, Inc.
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Submission	Response to Board Order/Inquiry
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Date	08/29/2011
Attachments	'946 Response to Board Inquiry.pdf (4 pages)(45432 bytes) Vedozi_s Answer, Affirmative Defenses and Counterclaim to Plaintiff_s Complaint [12] 20110712.PDF (69 pages)(291233 bytes)

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

In the Matter of Application Serial No. **77/807,946**
For the Mark: **CINTRON** (stylized)

Published in the Official Gazette on March 22, 2011 in International Classes 030 and 032

VEDOZI, INC.,
a Maryland corporation

Opposer,

v.

CINTRON BEVERAGE GROUP, LLC,
a Delaware limited liability company

Applicant.

Opposition No.: 91200639

Interlocutory Attorney:
Robert Coggins

To: Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

RESPONSE TO BOARD INQUIRY

On August 25, 2011, the Board ordered Opposer to provide the Board with the current status of, and a copy of the operative complaint and answer from the current civil litigation between Opposer and Applicant.

In response, Opposer attaches as Exhibit A a copy of Opposer's "Answer, Affirmative Defenses and Counterclaim to Plaintiff's Verified Complaint" as filed by Opposer with the United States District Court for the Eastern District of Pennsylvania on July 12, 2011 in Civil Action No. 2:11-cv-03926-JS. Applicant has filed a Motion to Dismiss Opposer's claim and has not yet submitted an Answer.

Respectfully submitted,

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

Date: August 29, 2011

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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To: Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

CERTIFICATE OF SERVICE

I, Jeremy D. Bisdorf, do hereby certify that on August 29, 2011, a true and complete copy of the **RESPONSE TO BOARD INQUIRY** and this **CERTIFICATE OF SERVICE** has been served upon the following attorney of record for the above mentioned trademark application by means of United States First Class Mail to Addressee:

Evelyn H. McConathy
Montgomery, McCracken, Walker & Rhoads
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Philadelphia, Pennsylvania 19109

/jdb/
Jeremy D. Bisdorf
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Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CINTRON BEVERAGE GROUP LLC,	:	
	:	
Plaintiff,	:	Civil Action No. 2:11-cv-03926-JS
	:	
vs.	:	ELECTRONICALLY FILED
	:	
VEDOZI, INC. (d/b/a VEDOZI LIMITED)	:	
	:	
and	:	
	:	
VICTOR EDOZIEN,	:	
	:	
Defendants.	:	
	:	

**DEFENDANT VEDOZI, INC.’S ANSWER, AFFIRMATIVE DEFENSES AND
COUNTERCLAIM TO PLAINTIFF’S VERIFIED COMPLAINT**

ANSWER

Defendant, Vedozi, Inc. (“Vedozi”), for its Answer to Plaintiff Cintron Beverage Group LLC’s (“CBG”) Verified Complaint states as follows:

1. This action arises, *inter alia*, under the Lanham Trademark Act of 1946 (the “Lanham Act”), 15 U.S.C. § 1051 *et seq.*, and Pennsylvania common law- and is an action for infringement of United States trademarks, infringement of common law trademarks, unfair competition, other violations of the Lanham Act, copyright infringement, breach of contract, and other claims under the law of the Commonwealth of Pennsylvania for actions on the part of Defendants Vedozi and its President, Victor Edozien (“Edozien”), taken to the personal and commercial detriment of Cintron.

ANSWER:

In answer to paragraph 1, Vedozi admits only that CBG has brought claims for infringement of United States trademarks, infringement of common law trademarks, unfair competition, other violations of the Lanham Act, copyright infringement, breach of contract, and other claims under the law of the Commonwealth of Pennsylvania. Vedozi denies that any of CBG's claims are legitimate and further denies that it has taken any actions to the personal and commercial detriment of CBG.

The Parties

2. Cintron is a Delaware limited liability company with its principal place of business in Philadelphia. Cintron is in the business of developing, marketing, selling, and promoting energy drink products and other beverage products.

ANSWER:

In answer to paragraph 2, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

3. Cintron's Chairman is Wes Wyatt; Cintron's Chief Executive Officer is Richard Wyatt.

ANSWER:

In answer to paragraph 3, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

4. Defendant Vedozi, Inc. (d/b/a Vedozi, Limited) ("Vedozi") is a Maryland corporation with its principal place of business at 220 North Main Street, Suite 102, Natick, Massachusetts. Vedozi is in the business of, among other things, distributing beverages to customers.

ANSWER:

Admitted.

5. The President of Vedozi is Victor Edozien (“Edozien”), who, upon information and belief, is a United States citizen and resides in Massachusetts.

ANSWER:

Admitted.

6. On or about March 24, 2008, Cintron and Vedozi (collectively, the “Parties”) entered into a Distribution Agreement whereby Cintron granted Vedozi the exclusive right to distribute Cintron products directly and through affiliates and subdistributors in certain African countries.

ANSWER:

In answer to paragraph 6, Vedozi states that the parties’ contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 6.

7. By way of a Fourth Addendum to the Distribution Agreement executed May 26, 2009, Vedozi’s exclusive right to distribute Cintron products was expanded to the entire continent of Africa. (A copy of the Distribution Agreement and Fourth Addendum (collectively, the “Agreement”) is attached hereto as Exhibit A.)

ANSWER:

In answer to paragraph 7, Vedozi states that the parties’ contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 7.

Jurisdiction and Venue

8. This Court has subject matter jurisdiction in this matter under 28 U.S.C. §§ 1331 and 1338(a) because this Complaint asserts federal questions under the Lanham Act, and has supplemental jurisdiction over the related state law claims asserted in this matter pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

ANSWER:

Admitted.

9. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states.

ANSWER:

Paragraph 9 states a legal conclusion to which no response is required. Vedozi is also without knowledge or information sufficient to form a belief as to the truth of the amount in controversy, and it therefore denies said averment.

10. Venue is appropriate under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district and the defendants explicitly have consented to personal jurisdiction in courts in Philadelphia, Pennsylvania, as set forth in the Agreement. (See Ex. A, at 1117.)

ANSWER:

In answer to paragraph 10, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 10.

Cintron's Business Activity and Trademark Registrations in the United States

11. Cintron manufactures its beverages in the United States using cans and bottles produced by a U.S. supplier. Cintron then ships the final products to their distributors across the globe for sale to end customers.

ANSWER:

In answer to paragraph 11, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

12. Cintron began selling energy drinks in the United States in 2006 and, in 2007, began selling teas and fruit beverages as well.

ANSWER:

In answer to paragraph 12, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

13. Cintron's drink products include energy drinks in a variety of flavors, including: Original, Cranberry Splash, Pineapple Passion, Mango, Tropical Azul, and Sugar-Free Tropical Azul. Cintron produces these energy drinks in either 8.4-ounce or 16-ounce cans.

ANSWER:

In answer to paragraph 13, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

14. Cintron also produces and sells teas in a variety of favors, including: Lemon, Peach Mango, and Sweet Tea. Cintron typically produces these teas in 24-ounce cans and 14-ounce glass bottles, but also specially-produces them in 12-ounce cans for Vedozi's distribution in Africa.

ANSWER:

In answer to paragraph 14, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

15. Finally, Cintron produces non-carbonated, fruit-flavored beverages, including the following flavors: Fruit Punch, GrapeAde, OrangeAde, and Watermelon-Strawberry. Cintron typically produces these fruit drinks in 24-ounce cans and 14-ounce glass bottles, but also specially-produces them in 12-ounce cans for Vedozi's distribution in Africa.

ANSWER:

In answer to paragraph 15, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

16. In July and August of 2006, respectively, Cintron filed trademark applications with the U.S. Patent and Trademark Office (“USPTO”) for “CINTRON 21” (Registration No. 3,410,949) and “CINTRON ENERGY ENHANCER” (Registration No. 3,600,401), which registrations were granted on April 8, 2008 and March 31, 2009, respectively.

ANSWER:

Admitted.

17. On August 19, 2009, Cintron filed two trademark applications at the USPTO for their beverages in International Class (“IC”) 030 and IC 032¹ under Section 1(a) of the Lanham Act (15 U.S.C. § 1051(a): (1) the word mark CINTRON (Serial No. 77/807,941); and (2) the stylized CINTRON word mark (Serial No. 77/807,946). These CINTRON applications were moved to publication by the Trademark Examiner and published for opposition by the USPTO on March 15, 2011 and March 22, 2011, respectively. (The trademarks and pending trademarks referenced in this paragraph and the preceding paragraph hereafter are collectively referred to as the “CINTRON Trademarks.”) (*See* Ex. 13 for copies of Cintron’s trademark registrations, pending trademark applications, and publication notices for pending trademark applications in the United States.)

¹ The IC 030 classification is for tea-based drinks; the IC 032 classification is for energy drinks and fruit drinks.

ANSWER:

Admitted.

18. Since Cintron's inception, Cintron has actively and continuously used the CINTRON Trademarks on the cans and bottles in which it sells its beverages, as well as on the promotional and marketing materials it disseminates with respect to its beverages.

ANSWER:

In answer to paragraph 18, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

19. Since 2006, Cintron has had annual world-wide sales of beverages bearing the CINTRON Trademarks in excess of one million dollars.

ANSWER:

In answer to paragraph 19, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

20. Cintron has sold CINTRON beverages across the continental United States and Hawaii, as well as in Australia, and countries in Central America and Africa.

ANSWER:

In answer to paragraph 20, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

21. The CINTRON Trademarks have over the past nearly five years acquired specific distinctiveness with respect to Cintron's sale of energy drinks and other beverages.

ANSWER:

In answer to paragraph 21, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

22. Additionally, Cintron has spent approximately on average of one million dollars each year in connection with marketing, advertising, and promoting the CINTRON brand; its distributors around the world spend additional money on advertising.

ANSWER:

In answer to paragraph 22, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

23. Specifically, Cintron promotes the CINTRON mark through various promotional media, venues, and sponsorships, including at the Power Boating World Championships, the X-games, various boat races throughout the United States, concerts around the world, and on the Internet.

ANSWER:

In answer to paragraph 23, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

The Distribution Agreement

24. The Agreement with Vedozi grants Vedozi the exclusive right to distribute Cintron's products in Africa.

ANSWER:

In answer to paragraph 24, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 24.

25. Vedozi is obliged under the Agreement to “use its best reasonable efforts to distribute [Cintron’s products] to customers” and to “aggressively sell, promote, and merchandise [Cintron’s products] to customers,” adhering to Cintron’s promotional guidelines.

ANSWER:

In answer to paragraph 25, Vedozi states that the parties’ contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 25.

26. The Agreement specifically provides that Cintron may assist Vedozi with the marketing of Cintron’s products in Africa and will honor reasonable requests for promotional support.

ANSWER:

In answer to paragraph 26, Vedozi states that the parties’ contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 26.

27. In fact, at the request of Edozien, acting individually and in his capacity as President of Vedozi, in June of 2010, Cintron spent approximately \$30,000 to pay for a music artist who has an endorsement deal with Cintron in the United States to travel to South Africa to perform with a popular South African musician at a concert sponsored by Cintron; Cintron also regularly sent at Vedozi’s request product samples and other Cintron-related merchandise to assist Vedozi with his distribution activities in Africa.

ANSWER:

Vedozi denies the averments of paragraph 27.

28. Pursuant to the Agreement, Vedozi is to submit marketing materials intended for use in connection with the distribution of CINTRON products to Cintron for written approval prior to use, which it has done on a number of occasions.

ANSWER:

In answer to paragraph 28, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 28.

29. Vedozi is permitted to appoint sub-distributors to assist with its obligations under the Agreement. Specifically, Vedozi is permitted, without prior authorization by Cintron, to appoint its "Affiliates" as subdistributors, An "Affiliate," as defined in the Agreement, is "any entity owned or controlled by, owning or controlling, or under common ownership or control with, such party." (See Ex. A, at ¶¶ 1.4 & 2.4.)

ANSWER:

In answer to paragraph 29, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 29.

30. Vedozi is permitted under the Agreement to appoint subdistributors that do not qualify as an "Affiliate" only after first obtaining the written authorization of Cintron. (See Ex. A, at ¶ 2.4.)

ANSWER:

In answer to paragraph 30, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 30.

31. Vedozi explicitly acknowledged in the Agreement that it "shall not directly or indirectly sell or distribute the Product outside of [Africa] without the prior written permission of [Cintron]." (See Ex. A, at ¶9.)

ANSWER:

In answer to paragraph 31, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 31.

32. In signing the Agreement, Edozien, acting individually and in his capacity as President of Vedozi, explicitly agreed that, although he would have the right to use Cintron's Intellectual Property as hereinafter defined to promote the good will and sale of Cintron's products in Africa, as Cintron's distributor, he has no rights in Cintron's Intellectual Property. (*See* Ex. A, at ¶¶ 10.1 & 10.2.)

ANSWER:

In answer to paragraph 32, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 32.

33. Indeed, Edozien, acting individually and in his capacity as President of Vedozi, explicitly agreed that 101 trademarks, trade dress, copyright and goodwill as they relate to the Product [which is defined in the Agreement to include all of Cintron's then-existing and future products], packaging, image, merchandising and advertising materials (the "Intellectual Property") remain the sole and exclusive property of Cintron. (*See* Ex. A, at ¶ 10.1.)

ANSWER:

In answer to paragraph 33, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 33.

34. Edozien, acting individually and in his capacity as President of Vedozi, further explicitly agreed with Cintron's representation that it "is the owner of the Intellectual Property [and] that it has and will have the right to license the Intellectual Property to [Vedozi] throughout the term of the Agreement." (*See* Ex. A, at ¶ 10.2.)

ANSWER:

In answer to paragraph 34, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 34.

35. The Agreement further contains an indemnity provision whereby Vedozi explicitly agreed to "indemnify and hold [Cintron] harmless from and against any and all Losses arising out of, resulting from or otherwise connected with any allegation of . . . (2) any negligent act, misfeasance or nonfeasance by Distributor; (3) any breach by Distributor of the covenants, representations and warranties contained in this Agreement; (4) any wrongful or misleading claim, advertising or representation by Distributor or by any agent or representative of Distributor regarding the Products; or (5) Distributor's failure to comply with any other provisions of this Agreement." (*See* Ex. A, at ¶ 8.3.)

ANSWER:

In answer to paragraph 35, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 35.

36. Pursuant to the Agreement, Vedozi is to submit to Cintron monthly reports concerning his sales activities, the number and identity of the customers to whom it is selling CINTRON beverages (including name, address, telephone number, and contact person), and its product inventory, but has never done so. (*See* Ex. A., at ¶ 3.6.)

ANSWER:

In answer to paragraph 36, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 36.

37. Vedozi also is to deliver to Cintron purchase forecasts for each calendar year prior to December 1 in the calendar year preceding the forecast year, updated quarterly, as well as monthly product case volume estimates for each item, but has never done so. (*See* Ex. A., at ¶ 3.8.)

ANSWER:

In answer to paragraph 37, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 37.

38. Vedozi is not permitted to directly or indirectly sell or distribute Cintron's products outside of Africa without the prior written permission of Cintron. (*See* Ex. A, at ¶ 9.)

ANSWER:

In answer to paragraph 38, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 38.

39. The Agreement is explicitly governed by and to be interpreted in accordance with Pennsylvania law and the Parties agreed that all actions relating to or arising from the Agreement were to be brought in federal or state court in Pennsylvania. (*See* Ex. A, at ¶ 17.)

ANSWER:

In answer to paragraph 39, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 39.

Cintron's Product Designs and Labels

40. When preparing to sell CINTRON beverages in Africa, Cintron used the original U.S. CINTRON can designs, which contained the CINTRON Trademarks, and made slight modifications to the information provided as part of the design, as appropriate for distribution in Africa.

ANSWER:

In answer to paragraph 40, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

41. While Cintron has sole decision-making authority with respect to the final design of the cans, Cintron confers with Edozien, acting individually and in his capacity as President of Vedozi, at times to ensure that the can designs contain accurate information concerning Vedozi's distribution in Africa.

ANSWER:

Vedozi admits only that CBG on occasion provided designs to Vedozi for its review. Vedozi denies the remainder of the averments of paragraph 41.

42. The can designs that Cintron has approved and used to make the products that it sold to Vedozi for distribution in Africa include both the CINTRON word mark and the CINTRON stylized word mark. (*See* Ex. C, can designs used for beverage products manufactured by Cintron for distribution in Africa.)

ANSWER:

Vedozi admits only that the cans used to make the products that CBG sold to Vedozi for distribution included both the CINTRON word mark and the CINTRON stylized word mark. In further answer to paragraph 42, Vedozi states that the document attached as Exhibit C speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 42.

43. The can designs for the products that Cintron sold to Vedozi for distribution in Africa explicitly state that Cintron manufactures the products, owns the copyright for the can design, and owns the trademarks for the CINTRON word and the CINTRON logo. (*See generally* Ex. C.)

ANSWER:

In answer to paragraph 43, Vedozi states that the document attached as Exhibit C speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 43.

44. When modifying the CINTRON can designs for the products that Cintron sold to Vedozi for distribution in Africa, Cintron stated, using the distributor names and addresses provided by Vedozi, that the African importer for the products was “Vedozi Inc. T/A Cintron Africa,” located at “7A Katampe Estate, Phase 2, Abuja, Nigeria” (the “Nigerian Address”) and also located at “#203 Nautilus Sanderling Road, Cape Town, 7945 South Africa.” (See generally Ex. C.)

ANSWER:

In answer to paragraph 44, Vedozi states that the document attached as Exhibit C speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 44.

45. Vedozi did not seek Cintron’s authorization to use “Vedozi Inc. T/A Cintron Africa,” located at the Nigerian Address, as a subdistributor of Vedozi, indicating that the entity is an “Affiliate” of Vedozi, as defined in the Agreement.

ANSWER:

Vedozi denies the averments of paragraph 45.

46. Cintron also included the web address for the African importer on the can designs, which was either “WWW.CINTRONAFRICA.COM” or “WWW.VEDOZI.COM.” (See Ex. C.)

ANSWER:

In answer to paragraph 46, Vedozi states that the document attached as Exhibit C speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 46.

47. Finally, Cintron's website "cintronbeveragegroup.com" also is listed on the cans distributed in Africa, as is the "MADE IN THE USA" designation. (*See Ex. C.*)

ANSWER:

In answer to paragraph 47, Vedozi states that the document attached as Exhibit C speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 47.

48. Cintron forwarded to Edozien, acting individually and in his capacity as President of Vedozi, proofs of each of the final can designs for his review; Cintron, however, always is responsible for sending the final can designs to the can manufacturer for production.

ANSWER:

Vedozi denies the averment that Victor Edozien was acting individually. In further answer to paragraph 48, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining averments therein, and it therefore denies said averments.

49. The can design for Cintron beverage products sold to Vedozi for distribution in Africa has remained substantially the same since Cintron and Vedozi began operating pursuant to the Agreement.

ANSWER:

In answer to paragraph 49, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining averments therein, and it therefore denies said averments.

Vedozi's CINTRON-Related Activities in Africa

50. Following the execution of the Agreement, Cintron conducted itself according to the terms of the Agreement, providing Vedozi with CINTRON beverage products upon his written request (typically by a written purchase order communicated electronically or other electronic communication).

ANSWER:

Vedozi denies the averments of paragraph 50.

51. Specifically, Vedozi ordered, and Cintron shipped to Vedozi, energy drinks in the 8.4 oz. can size in the following flavors: Original, Cranberry Splash, Pineapple Passion, Tropical Azul, and Sugar Free Tropical Azul. Vedozi ordered, and Cintron shipped to Vedozi, teas in the 12 oz. can size in the following flavors: Green Tea, Peach Tea, and Mango-Green Tea. Vedozi also ordered, and Cintron shipped to Vedozi, fruit drinks in the 12 oz. can size in the Watermelon-Strawberry flavor.

ANSWER:

Vedozi admits only that it ordered and CBG shipped certain energy drinks, teas and fruit drinks to Vedozi. Vedozi denies the remaining averments of paragraph 51.

52. For more than the first two years that the Parties operated under the Agreement, Vedozi paid for shipments of CINTRON product when received.

ANSWER:

Vedozi admits that it paid for shipments of products received from CBG. Vedozi denies the remaining averments of Paragraph 52.

53. In total, Vedozi placed twelve purchase orders for a total of 25,839 cases of Cintron's energy drinks and other beverage products that Cintron shipped to Vedozi pursuant to the Agreement.

ANSWER:

Vedozi denies the averments of paragraph 53.

54. Cintron does not at this time have any information concerning Vedozi's current inventories with respect to the CINTRON products that it shipped to Vedozi in Africa.

ANSWER:

In answer to paragraph 54, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

55. Throughout the course of the Parties' relationship; Vedozi has forwarded to Cintron for its approval promotional and marketing materials that it has used to promote CINTRON products in Africa.

ANSWER:

Vedozi denies the averments of paragraph 55.

56. These promotional and marketing materials also include the CINTRONAFRICA.COM website, which is an active website that advertises each of Cintron's products identified above, including illustrations of each of the products with the can and bottle label designs produced by Cintron. The CINTRON Trademarks are clearly depicted on the website. (See Ex. D for pages from the current CINTRONAFRICA.COM website depicting CINTRON products.)

ANSWER:

Vedozi admits only that the website CINTRONAFRICA.COM is an active website. In further answer to paragraph 56, Vedozi states that the document attached as Exhibit D speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 56.

57. The CINTRONAFRICA.COM website also lists promotional activities in Africa involving Cintron's energy drinks and other products at various events and venues across Africa. (See *id.*)

ANSWER:

In answer to paragraph 57, Vedozi states that the document attached as Exhibit D speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 57. [

58. Additionally, Cintron Africa maintains a Facebook page, which depicts the CINTRON stylized word mark and identifies the flavors of CINTRON energy drink that Cintron produces and has sold to Vedozi for distribution in Africa. The page also states, “[t]he Latin accent of the drink flavors, trademark logo and can design appeal to the fast growing Hispanic demographic in American marketplace, and is now very popular among African Ws, models, actors, actresses, dancers, fashion icons and pop star,” [sic] (*See* Ex. E for a printout of Cintron Africa’s current Facebook page.)

ANSWER:

In answer to paragraph 58, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

Trademark Activities in Africa

59. In the Spring of 2010, Cintron discovered that Edozien, acting individually and in his capacity as President of Vedozi, had directed the filing of trademark applications for CINTRON Trademarks in South Africa and Nigeria, the two countries that Vedozi identified as its distribution centers on the Cintron cans.

ANSWER:

Vedozi denies the averments of paragraph 59.

60. Specifically, Cintron discovered that “Annette V. Edozien” had filed a trademark application in Nigeria for the CINTRON word mark (in IC 030) on behalf of “Nettadoz Enterprises” (“Nettadoz”), an entity which Edozien referred to in communications with Cintron as a “partner.” The Nettadoz CINTRON application was filed on February 19, 2008, while Edozien, acting individually and in his capacity as President of Vedozi, was negotiating the Agreement with Cintron. In the application, Nettadoz Enterprises lists its address as “139 Nnebisi Road, Umuezei, Asaba, Delta State” (the “Nettadoz Address”).

ANSWER:

Vedozi denies that Edozien was acting individually. In further answer to paragraph 60, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments therein, and it therefore denies said averments.

61. Upon information and belief, Annette V. Edozien is the wife of Edozien.

ANSWER:

Vedozi denies the averments of paragraph 61.

62. Upon making this discovery, Cintron filed trademark applications of its own in Nigeria on May 11, 2010 for the CINTRON word and stylized word marks (in IC 030 and IC 032), which were published on December 31, 2010. Nettadoz Enterprises subsequently blocked the Cintron applications through the formal opposition of each application. Cintron formally opposed Nettadoz’s CINTRON trademark applications in February of 2011.

ANSWER:

In answer to paragraph 62, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

63. Additionally, in March of 2010, Cintron discovered that, on or about November 11, 2009, “Vedozi Investments (Pty) Ltd.,” which lists one of its directors as “Edozien, 21 Connecticut Ave., Natick, Mass. 01760,” filed trademark applications for the CINTRONAFRICA and CINTRON word marks (in IC 032) in South Africa.

ANSWER:

In answer to paragraph 63, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

64. Upon information and belief, “21 Connecticut Ave., Natick, Mass. 01760” is Edozien’s home address.

ANSWER:

Vedozi denies the averments of paragraph 64.

65. Upon making this discovery, Cintron attempted to file trademark applications in South Africa for the CINTRON name and the CINTRON stylized word mark (in IC 030 and IC 032), but the South African registrar has provisionally refused Cintron’s trademark applications due to their similarity to the applications filed under the direction of Edozien, acting individually and in his capacity as President of Vedozi, which applications have impaired Cintron’s rights in its own Intellectual Property.

ANSWER:

In answer to paragraph 65, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

66. Cintron also discovered in the Spring of 2010 that “Cheers Enterprises (Private) Ltd” had filed a trademark application in Zimbabwe for the CINTRON word mark (in IC 032) on September 16, 2009.

ANSWER:

In answer to paragraph 66, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

67. Upon making this discovery, on or about June 10, 2010, Cintron filed trademark applications in Zimbabwe for the CINTRON word and stylized word marks (in IC 030 and IC 032). These applications are pending.

ANSWER:

In answer to paragraph 67, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

68. Upon discovering the trademark filings in these three countries, Cintron confronted Edozien about the filings. In response, Edozien, acting individually and in his capacity as President of Vedozi, represented that he had authorized Vedozi’s affiliates, partners, and/or related individuals and entities to file the trademark applications on behalf of Cintron in order to prevent Cintron from being the victim of intellectual property piracy (which Edozien said is a common occurrence in Africa). Edozien further represented that he intended to assign all trademark applications and rights with respect to the CINTRON Trademarks and name to Cintron.

ANSWER:

Vedozi denies the averments of paragraph 68.

69. Over the course of the next several months, the Parties engaged in discussions regarding Vedozi's assignment to Cintron of all trademark applications and trademark rights filed and/or obtained with respect to CINTRON.

ANSWER:

Vedozi denies the averments of paragraph 69.

70. Throughout the course of these discussions, Edozien, acting individually and in his capacity as President of Vedozi, repeatedly represented to Cintron that all CINTRON-related trademarks applied for in Africa would be assigned to Cintron.

ANSWER:

Vedozi denies the averments of paragraph 70.

71. By the beginning of 2011, the negotiations had failed to result in the assignment of the trademarks.

ANSWER:

Vedozi denies the averments of paragraph 71.

72. Throughout the course of these discussions, Cintron continued to ship products to Vedozi in Africa under the Agreement, with the last shipment taking place on or about January 17, 2011.

ANSWER:

Vedozi admits that there have been no shipments from CBG to Vedozi since January 17, 2011. Vedozi denies the remainder of the averments of paragraph 72.

73. Shortly thereafter, for the first time Edozien, acting individually and in his capacity as President of Vedozi, told Cintron that, due to Vedozi's sales and marketing efforts in Africa, Edozien believed he was entitled to Cintron's Intellectual Property in Africa and that he had no intention of assigning any intellectual property rights to Cintron.

ANSWER:

Vedozi denies the averments of paragraph 73.

74. At this point, realizing that Edozien, acting individually and in his capacity as President of Vedozi, had intentionally misled Cintron and that he apparently intended to misappropriate Cintron's Intellectual Property rights in Africa, Cintron conducted a broader search to see if Vedozi, Edozien, and/or any of their affiliates, partners, or other related entities or individuals had filed trademark applications for the CINTRON Trademarks elsewhere in Africa.

ANSWER:

Vedozi denies the averments of paragraph 74.

75. What Cintron discovered was astounding. Indeed, since the beginning of 2011, Cintron has discovered that Edozien, acting individually and in his capacity as President of Vedozi, and/or individuals and entities apparently related and otherwise believed to be directed by or otherwise affiliated with Vedozi and/or Edozien have filed a number of trademark applications across the continent of Africa, asserting ownership of the CINTRON word mark and stylized word mark, as well as ownership of variations of the CINTRON name, including CINTRONAFRICA.

ANSWER:

Vedozi denies the averments of paragraph 75 as they relate to Vedozi and Edozien. In further answer to paragraph 75, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein as it relates to other individuals or entities, and it therefore denies said averments.

76. To date, in addition to the original trademark applications in South Africa, Nigeria, and Zimbabwe, Cintron has discovered trademark applications for the CINTRON Trademarks in Africa filed by Vedozi and/or Edozien, acting individually and in, his capacity as President of Vedozi, and their affiliates, partners, or other related entities or individuals in the countries of Morocco, Mozambique, Uganda, and Zambia, as well as additional trademark filings in Nigeria.

ANSWER:

Vedozi denies the averments of paragraph 76 as they relate to Vedozi and Edozien. In further answer to paragraph 76, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein as it relates to other individuals or entities, and it therefore denies said averments.

77. Specifically, on March 5, 2010, “Vedozi, Ltd.,” again care of “Annette V. Edozien” at the Nettadoz Address filed trademark applications in Nigeria for the CINTRON stylized word mark (in IC 030 and IC 032). By the time Cintron learned of this, the opposition period had expired.

ANSWER:

In answer to paragraph 77, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

78. Cintron further found that, in Mozambique, on or about December 2, 2010 and January 6, 2011, “Vedozi Inc., T/A Cintron;” which lists its business address as the Vedozi address in Natick Massachusetts, filed trademark applications for the CINTRON stylized word mark (in IC 030), as well as the CINTRONAFRICA word mark (in IC 030 and IC 032). Cintron filed formal oppositions to these applications on June 9, 2011. Cintron also filed its own trademark applications for the CINTRON word mark and the CINTRON stylized word mark (both in IC 030 and IC 032) in Mozambique on June 6, 2011.

ANSWER:

In answer to paragraph 78, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

79. Cintron also discovered that, on January 21, 2011, “Vedozi, Inc.,” located at the Nigerian Address, filed a trademark application in Zambia for the CINTRON word mark (in IC 032).

ANSWER:

In answer to paragraph 79, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

80. Cintron further discovered that, on February 15, 2011, “Vedozi Inc., T/A Cintron Africa,” located at the Nigerian Address, filed trademark applications in Morocco for the CINTRON and CINTRONAFRICA word marks (in IC 030 and IC 032).

ANSWER:

In answer to paragraph 80, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

81. In Uganda, on or about February 16, 2011, Edozien, acting individually and in his capacity as President of Vedozi, filed two trademark applications, one for the CINTRON stylized word mark (in IC 032) and another for the CINTRONAFRICA word mark (in IC 030), listing the Vedozi address in Natick, Massachusetts.

ANSWER:

Vedozi denies the averments of paragraph 81.

82. Cintron authorized none of the trademark applications for the CINTRON word or stylized word marks that were filed by Vedozi, Edozien, their affiliates, partners, and/or other related entities and/or individuals in any country in Africa.

ANSWER:

Vedozi denies the averments of paragraph 82 as they relate to Vedozi and Edozien. In further answer to paragraph 82, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein as it relates to other individuals or entities, and it therefore denies said averments.

83. In January 2011, Cintron discovered that Vedozi had been marketing and/or selling his own tea product, called “Envo,” that was labeled with a design owned and copyrighted by Cintron that contained alternating light and dark rays above a flowering plant. (See Ex. F for the “Envo” Sweet Tea label design and the CINTRON Sweet Tea can design.)

ANSWER:

Vedozi denies the averments of paragraph 83.

84. The design of the sweet tea label used by Vedozi for the Envo product is substantially similar to the design of the label that Cintron uses for its sweet tea product. (See Ex. F.)

ANSWER:

Vedozi denies the averments of paragraph 84.

85. In June 2011, Cintron was notified that, in April 2011, Nettadoz had filed a Counter Statement to Cintron's formal opposition to Nettadoz's trademark application, asserting that it is the "proprietor" of CINTRON, that it has been "carrying on business worldwide in association with CINTRON, that it had never been in a distribution agreement with Cintron, and that CINTRON is Nettadoz's "brain child." (*See* Ex. G, Counter Statement to Notice of Opposition, dated April 8, 2011.)

ANSWER:

In answer to paragraph 85, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

Trademark Activities in Europe

86. In the Fall of 2010, Wes Wyatt of Cintron disclosed to Edozien, acting individually and in his capacity as President of Vedozi, Cintron's intent to pursue a distributor to sell CINTRON products in Europe.

ANSWER:

Vedozi denies the averments of paragraph 86.

87. Cintron was in the process of finalizing negotiations with a European distributor to begin European sales of CINTRON beverage products when the prospective distributor discovered that there was a pending Community Trademark ("CTM") application in Europe for the CINTRON name.

ANSWER:

In answer to paragraph 87, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

88. Indeed, on February 24, 2011, “MVEDOZI” filed a CTM application for the CINTRON word on behalf of the purported “owner” of the mark, “VEDOZI LIMITED t/a CINTRONAFRICA,” located at the Nigerian Address. (See Ex. H, MVEDOZI’s CTM application, dated 2/24/2011.)

ANSWER:

In answer to paragraph 88, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

89. The CTM application covers 27 countries of the European Union, including Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

ANSWER:

In answer to paragraph 89, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

90. Cintron did not authorize the filing of this CTM application.

ANSWER:

In answer to paragraph 90, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

91. Further, in the Fall of 2010, Cintron had disclosed to Edozien, acting individually and in his capacity as President of Vedozi, that it was looking into producing CINTRON products in Austria in order to decrease the costs of shipping CINTRON products from the United States to Vedozi in Africa.

ANSWER:

Vedozi denies that Edozien was acting individually. In further answer to paragraph 91, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

92. Upon information and belief, using the CTM application as evidence of product ownership and intellectual property rights, Vedozi has placed an order with more than one manufacturer in Austria to produce beverage products in cans with a nearly-identical design as the cans previously authorized by Cintron for distribution of its products in Africa, including the CINTRON Trademarks (the "Austrian Orders").

ANSWER:

Vedozi denies the averments of paragraph 92.

93. Cintron did not authorize the Austrian Orders.

ANSWER:

In answer to paragraph 93, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

94. Cintron has, to date, been unable to determine the source or type of beverage products with which Vedozi intends to fill the cans that are to be created pursuant to the Austrian Orders.

ANSWER:

In answer to paragraph 94, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

95. Cintron does not have knowledge regarding the quantity of cans requested in the Austrian Orders or where Vedozi intends to sell or otherwise distribute these products once manufacture is complete.

ANSWER:

In answer to paragraph 95, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

96. Upon information and belief, Vedozi intends to introduce these unknown beverage products bearing the CINTRON Trademarks into the stream of commerce in Africa and/or Europe in the immediate future.

ANSWER:

Vedozi denies the averments of paragraph 96.

97. Cintron cannot rule out the possibilities that the Austrian Orders were not Vedozi's first requests to produce beverages bearing the CINTRON Trademarks in Europe or elsewhere or that Vedozi is already distributing its own beverage products under the CINTRON name and using the CINTRON Trademarks in Europe, Africa, or elsewhere.

ANSWER:

Vedozi is unable to answer paragraph 97 based on how the paragraph is phrased, and it therefore denies said averments.

Vedozi's Activities in the United States

98. Cintron presently has trademark applications pending before the USPTO for the "CINTRON" name and the "CINTRON" stylized word mark.

ANSWER:

Admitted.

99. On or about April 6, 2011, Vedozi and its affiliate or partner "Nettadoz Enterprises" each submitted a request for a ninety-day extension of time within which to submit an opposition to Cintron's trademark applications in the United States. (*See Ex. I* (copies of Vedozi and Nettadoz Enterprises' requests for extensions to oppose).)

ANSWER:

Vedozi denies that Nettadoz Enterprises constitutes an affiliate or partner of Vedozi. In further answer to paragraph 99, Vedozi states that the attached document speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 99.

100. Absent these requests for extensions, Cintron would have been granted registration of each trademark by the end of the opposition period on April 14, 2011 and April 21, 2011, respectively.

ANSWER:

In answer to paragraph 100, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

101. Upon information and belief, Vedozi (or any of its affiliates or partners, including Nettadoz Enterprises) has not previously attempted to sell or actually sold any CINTRON products in the United States.

ANSWER:

Admitted as to Vedozi. In further answer to paragraph 101, Vedozi denies that Nettadoz Enterprises constitutes an affiliate or partner of Vedozi and Vedozi is without knowledge or information sufficient to form a belief as to the truth of the averments therein as it relates to other individuals or entities, and it therefore denies said averments.

102. Upon information and belief, neither Vedozi nor its affiliate or partner Nettadoz Enterprises has any valid basis on which to file objections to Cintron's trademark applications pending before the USPTO.

ANSWER:

Vedozi denies the averments of paragraph 102 as they relate to Vedozi. Vedozi also denies that Nettadoz Enterprises constitutes an affiliate or partner of Vedozi. In further answer to paragraph 102, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein as it relates to other individuals or entities, and it therefore denies said averments.

COUNT ONE

CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN

Trademark Infringement Under the Lanham Act - 15 U.S.C. § 1051 et seq.

103. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 103, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

104. The CINTRON Trademarks are valid and legally protectable.

ANSWER:

Vedozi neither admits nor denies the averments of paragraph 104 because they state a legal conclusion to which no response is required.

105. Cintron has made active, continuous, and exclusive use of the “CINTRON” mark and the “CINTRON” stylized word mark, including the “CINTRON 21” and “CINTRON ENERGY ENHANCER” marks for which Cintron has obtained formal registrations from the USPTO, with respect to energy drinks and other beverage products for nearly five years.

ANSWER:

In answer to paragraph 105, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

106. Cintron has promoted and used the CINTRON Trademarks in interstate commerce since 2006.

ANSWER:

In answer to paragraph 106, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

107. Cintron is the exclusive owner of each of the CINTRON Trademarks.

ANSWER:

Vedozi neither admits nor denies the averments of paragraph 107 because they state a legal conclusion to which no response is required.

108. Vedozi was engaged in 2008 pursuant to the Agreement to be a distributor of Cintron’s products in Africa.

ANSWER:

In answer to paragraph 108, Vedozi states that the parties’ contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 108.

109. Edozien, acting individually and in his capacity as President of Vedozi, explicitly acknowledged in the Agreement that Cintron owns all Intellectual Property with respect to all of Cintron's products.

ANSWER:

Vedozi denies that Edozien was acting individually. In further answer to paragraph 109, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 109.

110. As described above, Edozien, acting individually and in his capacity as President of Vedozi, and/or individuals and entities directed by or closely related to Vedozi and/or Edozien, have filed trademark applications and, in some instances, obtained registrations for the CINTRON name in multiple countries in Africa, as well as in Europe.

ANSWER:

Vedozi denies the averments of paragraph 110 as they relate to Vedozi and Edozien. In further answer to paragraph 110, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein as it relates to other individuals or entities, and it therefore denies said averments.

111. Vedozi and Edozien, acting individually and in his capacity as President of Vedozi, have intentionally directed this trademark activity in an effort to misappropriate Cintron's Intellectual Property.

ANSWER:

Vedozi denies the averments of paragraph 111.

112. Vedozi and Edozien, acting individually and in his capacity as President of Vedozi, and/or individuals and entities directed by or closely related to Vedozi and/or Edozien, have intentionally misrepresented on their improper trademark applications in Africa and Europe that they own and/or have developed CINTRON.

ANSWER:

Vedozi denies the averments of paragraph 112.

113. As further described above, and upon information and belief, Vedozi has without Cintron's permission placed orders in Austria for the production of cans to be labeled with the CINTRON Trademarks and/or nearly identical imitations thereof.

ANSWER:

Vedozi denies the averments of paragraph 113.

114. As described above, Vedozi has distributed or intends to distribute in the immediate future unknown beverage products not produced by Cintron in cans that are labeled with the CINTRON Trademarks without Cintron's permission.

ANSWER:

Vedozi denies the averments of paragraph 114.

115. Vedozi's actions have caused and/or are likely to cause confusion in the marketplace.

ANSWER:

Vedozi denies the averments of paragraph 115.

116. Upon information and belief, Vedozi's actions were and are intended to cause - and are likely to cause - confusion, mistake, and a deception as to the source of origin and sponsorship or approval of goods by Cintron by using the CINTRON Trademarks, which belong to Cintron.

ANSWER:

Vedozi denies the averments of paragraph 116.

117. Vedozi sells or is intending to sell energy drinks and other beverage products bearing the CINTRON Trademarks through the same channels of trade and to the same end customers as those served by Cintron, including the exact same customers to whom Vedozi has been selling as Cintron's distributor in Africa.

ANSWER:

Vedozi denies the averments of paragraph 117.

118. Cintron has no control over Vedozi's sale of beverage products in cans that are labeled with the CINTRON Trademarks and, as a result, Cintron's valuable good will in its trademarks will be irreparably damaged by Vedozi's acts.

ANSWER:

Vedozi denies the averments of paragraph 118.

COUNT TWO
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
False Designation of Origin/False Description and Presentation of Goods Under the
Lanham Act - 15 U.S.C. § 1125(a)

119. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 119, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

120. As described above, Vedozi and Edozien, acting individually and in his capacity as President of Vedozi, have promoted, marketed, sought production of, and sold or are intending in the immediate future to sell energy drinks and beverage products utilizing the names, trademarks, and logos of Cintron, including the CINTRON Trademarks, without permission or authority of Cintron.

ANSWER:

Vedozi denies the averments of paragraph 120.

121. Vedozi's and/or Edozien's use of the images, trademarks, and logos belonging to Cintron is likely to cause confusion to purchasers.

ANSWER:

Vedozi denies the averments of paragraph 121.

122. Vedozi, by misappropriating and using the names, likeness, and other indicia of CINTRON, has misrepresented and falsely described (or will in the immediate future) to the general public the origin and source of the CINTRON beverage products so as to create the likelihood of confusion by the general public and audience as to both their source and sponsorship.

ANSWER:

Vedozi denies the averments of paragraph 122.

123. Vedozi's activities, including the use of the CINTRON Trademarks on beverage products that he is producing or will soon be producing without Cintron's approval and the contents of the advertising on the CINTRONAFRICA.COM website, Facebook, and in other venues, constitute express and implied misrepresentations that Vedozi's products bearing the CINTRON Trademarks are promoted, sponsored, authorized and/or approved by Cintron.

ANSWER:

Vedozi denies the averments of paragraph 123.

124. Vedozi has not obtained from Cintron any permission, authority or any type of license to use the CINTRON Trademarks beyond the limited rights granted in the Agreement and certainly not in conjunction with beverage products that are not manufactured by Cintron.

ANSWER:

Vedozi denies that it has used any trademarks owned by CBG beyond the rights granted in the parties' contract. In further answer to paragraph 124, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 124.

125. Vedozi's above-described actions are in violation of Section 43(a) of the Lanham Act in that Vedozi has used (or will in the immediate future use), in connection with goods and services, a false designation of origin and false description or presentation associated with beverage products that Vedozi is producing.

ANSWER:

Vedozi denies the averments of paragraph 125.

COUNT THREE
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Counterfeiting Under the Lanham Act 15 U.S.C. § 1051 et seq.

126. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 126, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

127. As described above, after previously agreeing that Cintron owned all rights in the CINTRON Trademarks, Vedozi and Edozien, acting individually and in his capacity as President of Vedozi, have intentionally promoted, marketed, sought production of, and sold or are intending in the immediate future to sell energy drinks and other beverage products utilizing identical or nearly identical copies of the CINTRON Trademarks.

ANSWER:

Vedozi denies the averments of paragraph 127.

128. Vedozi and Edozien, acting individually and in his capacity as President of Vedozi, have (or will in the immediate future) intentionally reproduce the CINTRON Trademarks so as to deceive customers into thinking that they are purchasing genuine CINTRON beverages when, in fact, they are or will be getting an entirely different beverage product produced by Vedozi and/or Edozien in a can or bottle specifically-designed to look like CINTRON beverages produced by Cintron in the United States.

ANSWER:

Vedozi denies the averments of paragraph 128.

COUNT FOUR
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Trademark Dilution Under the Lanham Act - 15 U.S.C. § 1125(c)

129. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 129, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

130. Cintron is well-known among "huge population[] segments" as a source of innovative beverages.

ANSWER:

In answer to paragraph 130, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

131. Cintron has promoted and used the CINTRON Trademarks in interstate commerce since 2006 and has promoted and used the CINTRON Trademarks in international commerce since 2008.

ANSWER:

In answer to paragraph 131, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and it therefore denies said averments.

132. As described above, notwithstanding its obligations and rights under the Agreement that it has been operating under since 2008, upon information and belief, Vedozi and/or Edozien, acting individually and in his capacity as President of Vedozi, have promoted, marketed, sought production of, and sold or are intending to sell as their own products and for their own profit energy drinks and beverage products utilizing the names, trademarks, and logos of Cintron, including the CINTRON Trademarks, without permission or authority of Cintron.

ANSWER:

Vedozi denies the averments of paragraph 132.

133. Vedozi's and/or Edozien's use or intended use of identical or nearly identical images, trademarks, and logos belonging to Cintron has diluted or will dilute the value and esteem of the CINTRON Trademarks because it will be impossible to distinguish Cintron's beverage products from the copycat products.

ANSWER:

Vedozi denies the averments of paragraph 133.

134. Additionally, Vedozi's and/or Edozien's advertising of beverage products on the CINTRONAFRICA.COM website and on Facebook includes illustrations of Cintron's products with the can and bottle label designs produced by Cintron. The CINTRON Trademarks also are clearly depicted on the website, clearly suggesting that Vedozi's and/or Edozien's beverage products are one and the same as the CINTRON beverage products produced by Cintron in the United States that Vedozi and Edozien, acting individually and in his capacity as President of Vedozi, have distributed for Cintron in Africa pursuant to the Agreement.

ANSWER:

Vedozi denies the averments of paragraph 134.

**COUNT FIVE
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Trade Dress Infringement Under the Lanham Act - 15 U.S.C. § 1125(c)**

135. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 135, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

136. As described above, upon information and belief, Vedozi and/or Edozien, acting individually and in his capacity as President of Vedozi, have promoted, marketed, sought production of, and sold or are intending to sell energy drinks and beverage products utilizing identical or nearly identical can designs and bottle labels that include the names, trademarks, and logos of Cintron, without permission or authority of Cintron.

ANSWER:

Vedozi denies the averments of paragraph 136.

137. The CINTRON Trademarks, including the logos used on Cintron's cans and bottles, are inherently distinctive and specifically identify Cintron's beverage products.

ANSWER:

Vedozi neither admits nor denies the averments of paragraph 104 because they state a legal conclusion to which no response is required.

138. Consumers are likely to be confused between the source of Vedozi's and/or Edozien's beverage products and the source of Cintron's beverage products, as there is no way for the consumer to tell the difference between the two products by looking at the can or bottle label designs.

ANSWER:

Vedozi denies the averments of paragraph 138.

COUNT SIX
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Common Law Trademark Infringement and Unfair Competition

139. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 139, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

140. Vedozi and/or Edozien, acting individually and in his capacity as President of Vedozi, committed the above-described acts willfully and with full knowledge of the rights of Cintron and with the intention of deceiving and misleading the public, of wrongfully misappropriating and trading upon the internationally-recognized value of the goodwill and reputation inherent in the CINTRON Trademarks, of benefiting from and depriving Cintron of the benefits thereof, and of diverting from Cintron to Vedozi and/or Edozien the benefits arising from the goodwill of Cintron.

ANSWER:

Vedozi denies the averments of paragraph 140.

141. Vedozi's misappropriation and unfair competition has interfered with and will continue to interfere with Cintron's rights and ability to exploit the commercial value of the above-referenced names, logos, and trademarks belonging to Cintron.

ANSWER:

Vedozi denies the averments of paragraph 141.

142. Upon information and belief, Vedozi has received or in the immediate future will receive substantial profits from its unauthorized use and misappropriation of the above-referenced names, logos, and trademarks, and Vedozi has been unjustly enriched thereby.

ANSWER:

Vedozi denies the averments of paragraph 142.

143. Vedozi's above-described willful and unauthorized misappropriation of the above-referenced names and marks and of the reputation and goodwill of Cintron has caused or will cause substantial and irreparable damage, injury, and loss to Cintron and constitutes unfair competition and an infringement of Cintron's rights in those names, logos, and trademarks.

ANSWER:

Vedozi denies the averments of paragraph 143.

144. Vedozi's acts were all committed without Cintron's consent and are in violation of Pennsylvania common law, which prohibits unfair competition.

ANSWER:

Vedozi denies the averments of paragraph 144.

COUNT SEVEN
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Common Law Copyright Infringement

145. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 145, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

146. Cintron electronically forwarded to Edozien, acting individually and in his capacity as President of Vedozi, for his review can designs that were being used for the products that Cintron was producing for Vedozi to distribute in Africa.

ANSWER:

Vedozi denies that Edozien was acting individually. Vedozi admits the remainder of the averments of paragraph 146.

147. These can designs included Cintron's design for its sweet tea beverage product.

ANSWER:

Vedozi admits the averments of paragraph 147, but denies that Edozien was acting individually.

148. Cintron has a common law copyright in this design, as well as the other designs on its cans and bottle labels.

ANSWER:

Vedozi neither admits nor denies the averments of paragraph 148 because they state a legal conclusion to which no response is required.

149. Vedozi began marketing and/or selling his own sweet tea - "Envo" - using a can design or label that is substantially similar to that of the CINTRON Sweet Tea can design.

ANSWER:

Vedozi denies the averments of paragraph 149.

150. There is substantial similarity between Cintron's Sweet Tea can design and Vedozi's Envo can design because they both include-alternating dark and light rays above a flowering plant. (*See* Ex. F.)

ANSWER:

Vedozi denies the averments of paragraph 150.

**COUNT EIGHT
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Trademark Dilution Under Pennsylvania Common Law**

151. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 151, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

152. As described above, notwithstanding its obligations and rights under the Agreement that is governed by Pennsylvania law and that the Parties have been operating under since 2008, Vedozi, and/or Edozien, acting individually and in his capacity as President of Vedozi, have promoted, marketed, sought production of, and sold or are intending to sell as their own products and for their own profit energy drinks and beverage products utilizing the names, trademarks, and logos of Cintron, including the CINTRON Trademarks, without permission or authority of Cintron.

ANSWER:

Vedozi denies the averments of paragraph 152.

153. Vedozi's and/or Edozien's use or intended use of identical or nearly identical images, trademarks, and logos belonging to Cintron .has diluted or will in the immediate future dilute the value and esteem of the Cintron Trademarks because it will be impossible to distinguish Cintron's beverage products from the copycat Vedozi products.

ANSWER:

Vedozi denies the averments of paragraph 153.

154. Additionally, the content of Vedozi's and/or Edozien's advertising of its products on the CINTRONAFRICA.COM website and on Facebook clearly suggests that its beverage products are one and the same as the CINTRON beverage products produced by Cintron in the United States that Vedozi has distributed for Cintron in Africa.

ANSWER:

Vedozi denies the averments of paragraph 154.

**COUNT NINE
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Unjust Enrichment**

155. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 155, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

156. Vedozi and/or Edozien, acting individually and in his capacity as President of Vedozi, utilized or is intending to utilize the CINTRON Trademarks to their benefit and at the same time to Cintron's detriment.

ANSWER:

Vedozi denies the averments of paragraph 156.

157. Vedozi's and/or Edozien's above-described actions constitute an unjust enrichment in the unauthorized use of Cintron's names, logos, and trademarks,

ANSWER:

Vedozi denies the averments of paragraph 157.

158. Vedozi and/or Edozien have received or will in the immediate future receive substantial profits from their unauthorized use and misappropriation of the commercial goodwill of the above-referenced names, logos, and trademarks, and Vedozi and Edozien have become unjustly enriched as a result of these actions.

ANSWER:

Vedozi denies the averments of paragraph 158.

**COUNT TEN
CINTRON V. VEDOZI, INC.
Breach of Contract**

159. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 159, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

160. Cintron and Vedozi had a valid and legally-binding agreement whereby Cintron would supply energy drink products and other beverage products to Vedozi so that Vedozi, in turn, could distribute those products in Africa. (See Ex. A.)

ANSWER:

In answer to paragraph 160, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 160.

161. Cintron performed all of its obligations under the Agreement, including the timely production and delivery of all energy drink products and other beverages ordered by Vedozi.

ANSWER:

Vedozi denies the averments of paragraph 161.

162. Vedozi breached its agreement with Cintron by, among other things, asserting ownership of and otherwise inappropriately using Cintron's Intellectual Property, misrepresenting and causing its affiliates, partners, and agents to misrepresent Vedozi's rights to Cintron's Intellectual Property, making arrangements to manufacture, sell, and/or distribute CINTRON products outside of the permitted territory, and failing to supply the reports and forecasts required under the Agreement.

ANSWER:

Vedozi denies the averments of paragraph 162.

COUNT ELEVEN
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Fraudulent Misrepresentation

163. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 163, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

164. Edozien, acting individually and in his capacity as President of Vedozi, represented to Cintron that he had filed for trademark protection with respect to the CINTRON name in certain African countries on Cintron's behalf in order to avoid piracy of Cintron's Intellectual Property. Edozien further represented to Cintron that he intended to assign the Intellectual Property rights to Cintron.

ANSWER:

Vedozi denies the averments of paragraph 164.

165. Edozien, acting individually and in his capacity as President of Vedozi, repeatedly represented that he would assign all Intellectual Property to Cintron knowing that such representations were false and with the intent of causing Cintron to rely on the false representations and delay any effort to pursue rights in its Intellectual Property on its own behalf in Africa.

ANSWER:

Vedozi denies the averments of paragraph 165.

166. Cintron justifiably relied on the representations of Edozien, acting individually and in his capacity as President of Vedozi, that, as its distributor in Africa with whom it was still conducting business, he was acting on Cintron's behalf in filing for trademark protection with respect to the CINTRON name in the African countries in which Vedozi intended to distribute Cintron's products pursuant to the Agreement.

ANSWER:

Vedozi denies the averments of paragraph 166.

167. The representations of Edozien, acting individually and in his capacity as President of Vedozi, were material to Cintron's decision to not submit or otherwise delay the submission of its own applications for trademark rights in Africa.

ANSWER:

Vedozi denies the averments of paragraph 167.

168. Cintron reasonably and justifiably relied for the better part of a year on Edozien's representations, during which time Edozien, Vedozi, and/or their affiliates, partners, and related entities and individuals proceeded to assert ownership of the CINTRON Trademarks and name, without Cintron's knowledge, contrary to Edozien's representations, contrary to Cintron's rights in the Intellectual Property, and with no intent to ever assign those rights to Cintron.

ANSWER:

Vedozi denies the averments of paragraph 168.

169. As a result of Cintron's justifiable reliance on Vedozi's material misrepresentations, Cintron has been injured by delaying the filing of its own trademark applications, as well as delaying its investigation of Edozien's and Vedozi's improper activities, such that Vedozi, Edozien, and/or their affiliates, partners, and related entities and individuals have obtained trademark registrations that Cintron must expend substantial resources to oppose or attempt to revoke.

ANSWER:

Vedozi denies the averments of paragraph 169.

COUNT TWELVE
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Negligent Misrepresentation

170. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 170, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

171. Edozien, acting individually and in his capacity as President of Vedozi, had a duty to Cintron to exercise reasonable care with respect to his conduct and business dealings pursuant to the Agreement.

ANSWER:

Vedozi denies that Edozien was acting individually. Vedozi neither admits nor denies the remainder of the allegations contained in Paragraph 171 because they state a legal conclusion to which no response is required.

172. Edozien, acting individually and in his capacity as President of Vedozi, made statements to Cintron regarding his intent to transfer the Intellectual Property to Cintron that he purportedly had applied for or directed his affiliates, partners, and related entities to apply for on Cintron's behalf when he knew that such statements were false.

ANSWER:

Vedozi denies the averments of paragraph 172.

173. Edozien, acting individually and in his capacity as President of Vedozi, made such statements intending to induce Cintron to delay efforts to file trademark applications in Africa on its own behalf and to delay Cintron's investigation of Vedozi's and Edozien's improper activities.

ANSWER:

Vedozi denies the averments of paragraph 173.

174. Cintron justifiably relied on Edozien's statements regarding his intent to assign all intellectual property rights obtained regarding the CINTRON name to Cintron.

ANSWER:

Vedozi denies the averments of paragraph 174.

175. As a result of Cintron's justifiable reliance on Edozien's material misrepresentations, Cintron has been injured by delaying its own filing of trademark applications as well as its investigation of Edozien's and Vedozi's improper activities, such that Vedozi, Edozien, and/or their affiliates, partners, and related entities and individuals have obtained trademark registrations that Cintron must expend substantial resources to oppose or attempt to revoke.

ANSWER:

Vedozi denies the averments of paragraph 175.

**COUNT THIRTEEN
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Declaratory and Injunctive Relief**

176. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 176, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

177. As set forth in detail above, notwithstanding the prior acknowledgement of Edozien, acting individually and in his capacity as President of Vedozi, that Cintron owns the Intellectual Property with respect to its products, Vedozi, Edozien, and/or their partners, affiliates, and other related entities and individuals have wrongfully filed registrations for and asserted ownership of Cintron's Intellectual Property.

ANSWER:

Vedozi denies the averments of paragraph 177 as they relate to Vedozi and Edozien. In further answer to paragraph 177, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein as it relates to other individuals or entities, and it therefore denies said averments.

178. Further, upon information and belief, Vedozi and/or Edozien presently are in the process of producing beverages of their own, improperly using the CINTRON Trademarks and have sold or will in the immediate future begin selling those products to customers in Africa and/or Europe.

ANSWER:

Vedozi denies the averments of paragraph 178.

179. As a direct result of this misappropriation of Cintron's Intellectual Property, Cintron has and continues to suffer financial loss and harm to its business reputation.

ANSWER:

Vedozi denies the averments of paragraph 179.

180. The harm to Cintron is continuing in nature and constitutes an immediate and irreparable harm for which Cintron has no adequate remedy at law.

ANSWER:

Vedozi denies the averments of paragraph 180.

**COUNT FOURTEEN
CINTRON V. VEDOZI, INC. AND VICTOR EDOZIEN
Declaratory and Injunctive Relief - Accounting of Profits**

181. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 181, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

182. As set forth in detail above, Vedozi has breached the valid and binding Agreement with Cintron concerning the distribution of CINTRON products on the continent of Africa.

ANSWER:

Vedozi denies the averments of paragraph 182.

183. Pursuant to the Agreement, Vedozi has an obligation to provide monthly reports regarding the identity of its customers and sales activities, which Vedozi has not done.

ANSWER:

In answer to paragraph 183, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 183.

184. Further, as set forth in detail above, notwithstanding the prior acknowledgement of Edozien, acting individually and in his capacity as President of Vedozi, that Cintron owns the Intellectual Property with respect to its products, Vedozi, Edozien, and/or their partners, affiliates, and other related entities and individuals have wrongfully filed registrations for and asserted ownership of Cintron's Intellectual Property.

ANSWER:

Vedozi denies the averments of paragraph 184 as they relate to Vedozi and Edozien. In further answer to paragraph 184, Vedozi states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein as it relates to other individuals or entities, and it therefore denies said averments.

185. Moreover, upon information and belief, Vedozi and/or Edozien presently are in the process of producing beverages of their own, improperly using the CINTRON Trademarks and have sold or will in the immediate future begin selling those products to customers in Africa and/or Europe.

ANSWER:

Vedozi denies the averments of paragraph 185.

186. As a direct result of this misappropriation of Cintron's Intellectual Property, Vedozi, Edozien, and/or their partners, affiliates, and other related entities and individuals continue to profit from Cintron's Intellectual Property and, as a result, Cintron has suffered and continues to suffer financial loss and harm to its business reputation.

ANSWER:

Vedozi denies the averments of paragraph 186.

187. The harm to Cintron is continuing in nature and constitutes an immediate and irreparable harm for which Cintron has no adequate remedy at law.

ANSWER:

Vedozi denies the averments of paragraph 187.

**COUNT FIFTEEN
CINTRON V. VEDOZI, INC.
Contractual Indemnity**

188. Cintron hereby incorporates the preceding paragraphs by reference as though set forth at length herein.

ANSWER:

In answer to paragraph 188, Vedozi incorporates its answers to the preceding paragraphs of Plaintiff's Complaint.

189. Vedozi agreed to indemnify Cintron for all losses arising from, among other things, Vedozi's negligent acts or misfeasance, Vedozi's breach of the Agreement, Vedozi's wrongful or misleading representations regarding CINTRON products, or any such misrepresentation by any affiliate, partner, agent or representative of Vedozi.

ANSWER:

In answer to paragraph 189, Vedozi states that the parties' contract speaks for itself; and in all other respects, Vedozi denies the averments of paragraph 189.

190. Vedozi has caused Cintron to sustain losses under the Agreement in an amount not thus far determined, plus pre-judgment interest, post-judgment interest, attorney's fees, costs, and other damages by, among other things misappropriating Cintron's Intellectual Property.

ANSWER:

Vedozi denies the averments of paragraph 190.

WHEREFORE, Defendant Vedozi, Inc. respectfully requests that this Honorable Court dismiss Plaintiff's Complaint and award Vedozi, Inc. its attorney's fees and costs, and any other relief that this Court deems just.

AFFIRMATIVE DEFENSES

Defendant, Vedozi, Inc. ("Vedozi"), for its Affirmative Defenses to Plaintiff Cintron Beverage Group LLC's ("CBG") Verified Complaint states as follows:

1. CBG fails to state claims upon which relief may be granted.
2. CBG's claims fail, in whole or in part, because one or more of the trademarks at issue are invalid and/or unenforceable.
3. Vedozi is not a proper party to some or all of CBG's claims.
4. CBG's alleged damages (if any) would have been caused by individuals or entities that are not parties to this litigation.
5. CBG's claims are barred, in whole or in part, by the doctrine of unclean hands.
6. CBG's claims are barred, in whole or in part, by the doctrine of waiver.
7. CBG's claims are barred, in whole or in part, by the doctrine of acquiescence.
8. CBG's claims are barred, in whole or in part, by the doctrine of estoppel.
9. CBG's claims, in whole or in part, are barred by the applicable statutes of limitation.
10. CBG's claims are barred, in whole or in part, by a failure to mitigate its damages.
11. Some of CBG's claims are frivolous and were filed without reasonable inquiry and for improper purposes within the meaning and provisions of Fed. R. Civ. P. 11.

12. Vedozi expressly reserves the right to amend and/or add affirmative defenses as further information is adduced through discovery or otherwise.

WHEREFORE, Defendant Vedozi, Inc. respectfully requests that this Honorable Court dismiss Plaintiff's Complaint and award Vedozi, Inc. its attorney's fees and costs, and any other relief that this Court deems just.

COUNTERCLAIM

Defendant/Counter-Plaintiff, Vedozi, Inc., a Maryland corporation ("Vedozi"), by and through its undersigned counsel, for its Counterclaim as and against Plaintiff/Counter-Defendant Cintron Beverage Group, LLC ("CBG"), states as follows:

Introduction

1. This is an action for cancellation of two trademarks registered in the name of CBG. As alleged below, the marks in question are both primarily merely surnames. CBG has failed to make a showing that either of the marks has attained the acquired distinctiveness required of marks that are composed primarily merely of surnames to be registered on the Principal Register of the U.S. Patent and Trademark Office ("USPTO" or "PTO"). As alleged herein, the marks in fact have not achieved secondary meaning among the relevant cross-section of the consuming public sufficient to warrant registration and neither mark has been in use for over five (5) years. The USPTO, therefore, should not have granted registration on the Principal Register to those marks; and this Court should therefore order the marks canceled pursuant to 15 U.S.C. § 1119, which authorizes the Court to do so.

2. Vedozi has standing to bring this claim in accordance with 15 U.S.C. § 1064 because it believes it is or will be damaged by the continued registration of the marks CINTRON 21 and CINTRON ENERGY ENHANCER.

Parties and Jurisdiction

3. Counter-Plaintiff Vedozi is a Maryland corporation, having its principal place of business in Boston, Massachusetts.

4. Counter-Defendant CBG is, upon information and belief, a Delaware limited liability company, having its principal place of business in Philadelphia, Pennsylvania, within this District.

5. This action arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.*

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

COUNT I

Cancellation of Trademark Reg. No. 3,410,949

8. Vedozi incorporates the allegations of all paragraphs of this Counterclaim as though fully restated herein.

9. CBG is the current listed owner of U.S. Trademark Registration No. 3,410,949 for the mark CINTRON 21 (the “‘949 Mark”), for “Energy drinks; Sports drinks.” (*See Exhibit 1* hereto, Registration Certificate for the ‘949 Mark.)

10. CBG filed its application for the ‘949 Mark on August 14, 2006.

11. The ‘949 Mark was registered on April 8, 2008.

12. The ‘949 Mark is composed primarily merely of a surname – “CINTRON” and its primary significance to purchasers is that of a surname.

13. Even after considering the arguments of CBG, in subsequent trademark applications filed by CBG, the United States Patent and Trademark Office has repeatedly ruled that CINTRON is primarily merely a surname.

14. The USPTO has provided detailed evidence and explanations in support of its position against CBG that CINTRON is primarily merely a surname.

15. A mark that is composed of primarily merely a surname is not entitled to registration on the Principal Trademark Register pursuant to 15 USC §1052(e).

16. CBG has proffered no evidence that would permit registration of the '949 Mark on any other grounds.

17. Continued registration of the '949 Mark would be inconsistent with the Trademark Act.

18. Because this action involves a registered trademark, this Court has the authority to order the cancellation of the registration of the '949 Mark pursuant to 15 U.S.C. § 1119 (Power of Court over Registration).

COUNT II

Cancellation of Trademark Reg. No. 3,600,401

19. Vedozi incorporates the allegations of all paragraphs of this Counterclaim as though fully restated herein.

20. CBG is the current listed owner of U.S. Trademark Registration No. 3,600,401 for the mark CINTRON ENERGY ENHANCER (the "'401 Mark'"), for "Energy drinks; Sports drinks." (See **Exhibit 2** hereto, Registration Certificate for the '401 Mark.)

21. CBG filed its application for the '401 Mark on July 13, 2006.

22. The '401 Mark was registered on March 31, 2009.

23. The registration for the '401 Mark contains the following disclaimer: "NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ENERGY ENHANCER" APART FROM THE MARK AS SHOWN."

24. The '401 Mark is composed primarily merely of a surname – "CINTRON" and its primary significance to purchasers is that of a surname.

25. Even after considering the arguments of CBG, in subsequent trademark applications filed by CBG, the United States Patent and Trademark Office has repeatedly ruled that CINTRON is primarily merely a surname.

26. The USPTO has provided detailed evidence and explanations in support of its position against CBG that CINTRON is primarily merely a surname.

27. A mark that is composed of primarily merely a surname is not entitled to registration on the Principal Trademark Register pursuant to 15 USC §1052(e).

28. CBG has proffered no evidence that would permit registration of the Mark on any other grounds.

29. Continued registration of the '401 Mark would be inconsistent with the Trademark Act.

30. Because this action involves a registered trademark, this Court has the authority to order the cancellation of the registration of the '401 Mark pursuant to 15 U.S.C. § 1119 (Power of Court over Registration).

WHEREFORE, Vedozi respectfully requests that this Court enter a judgment in favor of Vedozi, ordering the USPTO to cancel CBG's federal trademark registration No. 3,410,949 and No. 3,600,401, and granting Vedozi such other relief as this Honorable Court deems just.

Date: July 12, 2011

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Vedози, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of *Defendant Vedozi, Inc.'s Answer, Affirmative Defenses and Counterclaim to Plaintiff's Verified Complaint* is being served via ECF Notification and electronic mail on the following persons:

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EXHIBIT 1

Int. Cl.: 32

Prior U.S. Cls.: 45, 46, and 48

Reg. No. 3,410,949

United States Patent and Trademark Office

Registered Apr. 8, 2008

**TRADEMARK
PRINCIPAL REGISTER**

Cintron 21

CINTRON BEVERAGE GROUP, LLC (DELA-
WARE LTD LIAB CO)
7400 BREWSTER AVENUE
PHILADELPHIA, PA 19153

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: ENERGY DRINKS; SPORTS DRINKS, IN
CLASS 32 (U.S. CLS. 45, 46 AND 48).

SN 78-951,185, FILED 8-14-2006.

FIRST USE 8-1-2006; IN COMMERCE 8-1-2006.

MICHAEL WEBSTER, EXAMINING ATTORNEY

EXHIBIT 2

Int. Cl.: 32

Prior U.S. Cls.: 45, 46, and 48

United States Patent and Trademark Office

Reg. No. 3,600,401

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**TRADEMARK
PRINCIPAL REGISTER**

Cintron Energy Enhancer

CINTRON BEVERAGE GROUP, LLC (DELA-
WARE LIMITED LIABILITY COMPANY)

7400 BREWSTER AVENUE

PHILADELPHIA, PA 19153

FOR: ENERGY DRINKS; SPORTS DRINKS, IN
CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 8-1-2006; IN COMMERCE 8-1-2006.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

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

SN 78-928,691, FILED 7-13-2006.

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