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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.
Correspondence Address	JEREMY D BISDORF JAFFE RAITT HEUER & WEISS 201 S MAIN ST STE 300 ANN ARBOR, MI 48104 UNITED STATES trademark@jaffelaw.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Jeremy D. Bisdorf
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Signature	/jdb/
Date	09/09/2011
Attachments	'946 Amended Notice of Opposition Part 1.pdf (74 pages)(3055676 bytes) '946 Amended Notice of Opposition Part 2.pdf (52 pages)(2387400 bytes)

4. Prior to Opposer's business activities in Africa, Applicant had never obtained any African trademark rights for the "Cintron" brand.
5. As a result of Applicant's failure to secure any trademark rights in Africa for the "Cintron" brand, certain African sub-distributors independently acquired the trademark rights to the "Cintron" brand in various countries within Africa.
6. As a result of these sub-distributors acquiring their own "Cintron" trademark rights within Africa, the sub-distributors no longer need Opposer to supply them with "Cintron" branded products because they have the right to produce and sell such products in Africa without Opposer.
7. In an attempt to continue a business, Opposer may decide to facilitate and manage the production of "Cintron" branded products for other parties besides Applicant that have the right to use the "Cintron" brand outside of the United States.
8. If Applicant is successful in obtaining a registration for CINTRON in the United States, then, based on Applicant's prior actions and statements, Opposer believes that Applicant will attempt to use said registration to wrongfully prevent Opposer from facilitating the production of "Cintron" branded products for distribution and sale outside of the United States for the benefit of parties that have the senior trademark rights outside of the United States to that mark.
9. Opposer has been sued by Applicant for trademark infringement with respect to the Current Registrations (as defined below) in the United States Federal District Court for the Eastern District of Pennsylvania (Case # 2:11-cv-03926-js) (the "Lawsuit"). *See Plaintiff's Response to Board Inquiry* as filed on August 29, 2011.
10. The Current Registrations have as their dominant term the name "Cintron."

11. Applicant's Trademark Application Serial No. 77/807,946 (the "Application") has as its entire word mark the name "Cintron."

12. If Applicant is successful in registering the mark described in the Application (the "Mark"), then Applicant will likely add additional claims of trademark infringement to its current pending claims against Opposer in the Lawsuit.

13. Therefore, Opposer believes it will be damaged by registration of the Mark in Classes 030 and 032 and hereby opposes the Application.

B. First Cause for Opposition – The Mark is Primarily Merely a Surname

14. On each of November 23, 2009, February 18, 2010 and August 5, 2010, the Office refused to register the Mark because it was primarily merely a surname. *See* EXHIBIT 2 for copies of these Office Actions and further evidence in support of Opposer's assertion that the Mark is primarily merely a surname.

15. Applicant itself acknowledges that "Cintron" is a common Latin surname. *See* EXHIBIT 3, printout from Applicant's website acknowledging that the "Cintron" term is taken from "a common Latin surname and in tribute to Edgardo Cintron."

16. The Mark is primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4). Therefore, registration should be denied.

C. Second Cause for Opposition – Fraud on the Office

17. In applying for and attempting to prosecute the Mark through to publication, Applicant has committed fraud on the Office in a variety of ways that mandate that the approval of the mark for registration be rescinded and this Opposition be sustained.

**1. First Example of Fraud on the Office –
Fraudulent Reference to Prior Registrations**

18. On February 2, 2011, Applicant submitted a Response to Office Action containing the statement that the Mark had become distinctive of the goods provided by Applicant under Section 2(f) of the Trademark Act and as a result, the Mark was entitled to be registered even if it was primarily merely a surname. See the Response to Office Action attached as EXHIBIT 4 (the “Response”).

19. In the Response, Applicant argues that the Mark had become distinctive of its goods as evidenced by its ownership on the Principal Register of the same mark for related goods or services in CINTRON ENERGY EHHANCER (Reg. No. 3600401) and CINTRON 21 (Reg. No. 3410949) (collectively, the “Current Registrations”). See Exh. 4 at 4.

20. Neither of the Current Registrations are for the mark “CINTRON” as an independent and single word or in a similar stylized font and, therefore, neither of the Current Registrations are for the same mark as described in the Application.

21. Applicant has committed fraud upon the Office by stating that the marks covered by the Current Registrations are for the same mark described in the Application.

2. Second Example of Fraud on the Office – Fraudulent Claim Regarding Length of Use

22. In the Response, Applicant states that “The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.” (emphasis added). See EXHIBIT 5, which includes a part of the Response with the aforementioned statement highlighted.

23. Applicant has also provided a deliberately confusing and inconsistent statement within the Response, where it states that “the application [sic] has been in continuous and exclusive use

in commerce for at least since the origin of the company in 2006, which is now substantially five years ago.” (emphasis added). See Response at Page 6.

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

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

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

3. Third Example of Fraud on the Office – Fraudulent Claim
As to Worldwide Ownership of the Mark

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

28. Any statement made by Applicant in the Application or materials in support of the Application that indicates that Applicant is the sole owner of the “Cintron” brand throughout the world is false and constitutes fraud upon the Office.

D. Inability to Rely on Section 2(f) Acquired Distinctiveness

29. Neither the Office nor Applicant can rely on Applicant’s false statement to the Office that Applicant engaged in substantially exclusive and continuous use of the Mark in commerce that the U.S. Congress may lawfully regulate for at least five years.

30. Opposer is currently seeking the cancellation of the Current Registrations within their first five (5) years of registration in the Lawsuit and, therefore, Applicant’s ability to rely on the continued registration of the Current Registrations is in doubt.

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

32. Additionally, Applicant's self serving affidavit from Richard Wyatt and pictures of Cintron advertising do not meet Applicant's burden for proving acquired distinctiveness of the CINTRON mark by a fair preponderance of the evidence showing an association between the CINTRON mark and Applicant in the minds of a substantial number of the relevant segment of the consuming public.

33. Opposer believes that Applicant is currently and will be unable to show by a fair preponderance of the evidence that a substantial number of the relevant segment of the consuming public recognize an association between the CINTRON mark and Applicant.

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

Respectfully submitted,

VEDOZI, INC.,
a Maryland corporation

By: /jdb/

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Counsel for Opposer

Date: September 9, 2011

EXHIBIT 1

CINTRON BEVERAGE GROUP LLC DISTRIBUTION AGREEMENT

Preamble

This Distribution Agreement ("Agreement") entered into as of the 24 day of March, 2008 between Cintron Beverage Group LLC, a Delaware Limited Liability Company, with its principal place of business at 7400 Brewster Avenue, Philadelphia, Pennsylvania, 19153 (hereinafter "Supplier") and Vedozi, Inc.(dba VEDOZI Limited), a Maryland corporation in Natick, Massachusetts U.S.A with its principal place of business at Lakewood Office Park, 220 North Main Street, Suite 102, Natick MA 01760 USA, (hereinafter Distributor).

Recital

Whereas, Supplier is in the business of developing, marketing, selling and promoting certain energy drink products including the Product (as hereinafter defined):

Whereas, Distributor is in the business of distributing beverages to customers and has the facilities, personnel, and expertise necessary to successfully market the Product in the Territory (as hereinafter defined); and

Whereas, Distributor wishes to obtain, and Supplier is willing to grant Distributor, an exclusive right to distribute the Product, directly and through affiliates and subdistributors, to retail customers for purposes of resale in the Territory.

Now Therefore, In consideration of the foregoing premises and the mutual representations and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Supplier and Distributor, intending to be legally bound, hereby agree as follows:

1. **Definitions:** for purpose of this Agreement, the following terms shall have the respective meanings indicated below:
 - 1.1 **Product:** Cintron products, each as defined in Exhibit A attached hereto collectively, shall be referred to herein as the "Product" or "Products". Any other beverages sold or marketed by Supplier that Supplier wishes to introduce in the Territory shall be offered to Distributor and if accepted shall be deemed Products under this Agreement.
 - 1.2 **Quota:** as set forth in Exhibit B attached hereto, consisting of an Initial Stocking Order, which has already been ordered. Distributor shall not be liable to Supplier for any damages as a result of any failure to meet a targeted quota, but such failure shall give Supplier rights as set forth in Section 12.2.
 - 1.3 **Territory:** as set forth in Exhibit C attached hereto.
 - 1.4 **Affiliate:** An Affiliate of a party shall mean any entity owned or controlled by, owning or controlling, or under common ownership or control with, such party.

2. Grant of Distribution Right

- 2.1 Subject to the terms and conditions of this Agreement, Supplier hereby grants to Distributor, and Distributor hereby accepts from Supplier, a nontransferable (except as provided in Section 14) exclusive right to distribute the Products to customers located in the Territory.
- 2.2 Supplier shall be free to sell or distribute Products in the Territory to any or all of the following which Distributor fails to effectively service, provided Supplier first gives Distributor notice of such failure, specifying the class, channel, geographic segment or chain Distributor has failed to service, and Distributor does not cure such failure within ninety (90) days of such notice :
- a) in any class or channel of trade, including but not limited to grocery, mass market, drug, convenience/gas, club stores, health clubs;
 - b) in any significant, definable, geographic segment of the Territory;
 - c) in any chain consisting of twenty (20) or more stores (whether within or without the territory)
- 2.3 Supplier shall be free to sell or distribute Products in the Territory not carried by the Distributor by Distributor's own decision. Supplier may also sell or distribute Products through alternate channels of distribution. Alternate channels of distribution include, but are not limited to , Internet sales, sales to franchised locations, and any other channels of distribution Supplier defines in its sole discretion.
- 2.4 Distributor may appoint sub-distributors in furtherance of its obligations under this Agreement to service the Territory encompassed by this Agreement. Distributor may use any Affiliate of Distributor as a subdistributor. Any other such appointments shall be subject to prior written approval by Supplier (to be approved or disapproved in Supplier's reasonable discretion).

In the event this Agreement is terminated, any and all sub-distributor agreements shall be automatically terminated. The Distributor agrees to indemnify and hold harmless Supplier against any and all damages and costs, including attorneys' fees and all other expenses incidental thereto, incurred as a result of any claim(s) asserted by any of the Distributors' sub-distributors other than by reason of Supplier's wrongful conduct. In the event that any subdistributor engages in conduct which would constitute a material breach of this Agreement if engaged in by Distributor, Supplier may notify the Distributor of such conduct and it shall be the obligation of the Distributor (i) to give the subdistributor notice thereof and such opportunity to cure (if any) as Distributor would have under this Agreement if it engaged in such conduct and (ii) if lawful, to terminate the sub-distributor if such conduct is not timely cured or if the conduct is not subject to cure and to use its reasonable efforts to minimize any disruption of service of the retail accounts being serviced by said sub-distributor.

3. Obligations of Distributor

- 3.1 **Distribution to customers:** Distributor shall use its best reasonable efforts to distribute the Product to customers throughout the Territory
- 3.2 **Minimum commitments:** In each annual period, Distributor shall order from Supplier and pay for an amount of Product equal to or in excess of the Quota set forth in Exhibit B.
- 3.3 **Promotional efforts:** Distributor shall aggressively sell, promote and merchandise the Product to customers in the Territory, and shall adhere to the Supplier's promotional guidelines and practices, as updated from time to time by Supplier.
- 3.4 **Supplier assistance:** Supplier may assist Distributor with the marketing of Product within the Territory and will use its reasonable efforts to honor reasonable requests for promotional support.
- 3.5 **Distributor service:** Distributor shall use its reasonable efforts to properly and effectively service all customers within the Territory.
- 3.6 **Reports:** Distributor shall deliver to Supplier no later than 10 days after the end of each month during the term of this Agreement a written report showing the following for the preceding month:
- a). monthly depletions of Product by case for each item
 - b). year to date sales of Product in cases for each item
 - c). number and identity (including purchaser's name, address, telephone number, and contact) of active accounts purchasing the Product
 - d). monthly ending inventory
- 3.7 **Distributor inventory:** Distributor agrees to maintain adequate inventory of Product to meet demand, except that Distributor will not be held accountable for shortages caused by Supplier.
- 3.8 **Distributor Forecasts:** Distributor agrees to deliver to Supplier written non-binding purchase forecasts for each calendar year that this agreement is in force and effect. Such forecasts shall be delivered by December 1 in the calendar year preceding the forecast year, and will provide monthly Product case volume estimates for each item, and shall be updated on a quarterly basis. Distributor will use its reasonable efforts to anticipate increased volume requirements, and communicate said requirements to Supplier on a timely basis.
- 3.9 **Inventory management:** Distributor agrees to properly manage inventory age and storage conditions, maintaining FIFO processes in its warehouses, and proactively managing warehouse conditions to avoid excessive heat and light exposure. Additionally, Distributor agrees to use its reasonable efforts to monitor and manage its customer's retail trade inventory to ensure that customers and consumers are provided quality products for purchase.

4. **Order Procedure**

- 4.1 **Orders:** All orders for Product requested by Distributor shall be in writing and received by Supplier at least seven (7) days prior to the requested ship date.
- 4.2 **Supplier acceptance:** All orders for Product by Distributor shall be subject to acceptance by Supplier and shall not be binding upon Supplier until the earlier of written confirmation or shipment, and in the case of acceptance by shipment, only as to the portion of the order actually shipped. Notwithstanding the foregoing, and so long as Distributor is not in breach of this Agreement or any other agreement with Supplier, Supplier shall accept all orders of Distributor except in a case of shortage of Product, in which event Supplier shall allocate such Product in a fair and equitable manner among its distributors. For purposes of determining whether Distributor has met any Quota, it shall be credited with having purchased any quantities ordered by Distributor and not accepted and shipped by Supplier.
- 4.3 **Controlling terms:** The terms and conditions of this Agreement shall apply to each order accepted or shipped by Supplier hereunder. Any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgement or confirmation that are different from or in addition to the terms hereof hereunder shall not be binding on the parties, unless signed and returned by the party to whom such shipment was sent.
- 4.4 **Supplier confirmation:** Supplier reserves the right to cancel or suspend any orders placed by Distributor and accepted by Supplier, or refuse or delay shipment thereof, if Distributor fails (1) to make any payment as provided herein; (2) to meet credit or financial requirements reasonably established by Supplier from time to time; or (3) to otherwise comply with the terms and conditions of this Agreement.
- 4.5 **Distributor cancellation:** once an order has been accepted by Supplier, it may not be cancelled by Distributor unless (1) Supplier has failed to ship the order, or any portion thereof, within fourteen (14) days of the confirmed shipping date of such order; and (2) Distributor provides written notice of such cancellation, and Supplier acknowledges such cancellation in writing.

5. **Price and Payment**

- 5.1 **Prices to Distributor:** the price payable by Distributor for the Product shall be as set forth on Exhibit D attached hereto, or as otherwise established by Supplier from time to time, in the Supplier's sole discretion.

The initial prices to be paid by Distributor for the Product are set forth on Exhibit D annexed hereto.

- 5.2 **Payment:** Distributor shall pay for Product within thirty (30) days after the date of delivery of Product. At Supplier's option, shipments may be made on Supplier's credit terms generally in effect at the time an order is accepted. Furthermore, Supplier reserves the right to vary, change or limit the amount or duration of credit to be allowed to Distributor and its distributors generally, or if Distributor is past due in its payment for Product. Distributor shall pay a late fee of 1.5% per month compounded for any late payments and shall pay a costs of collection, including attorney's fees.

- 5.3 **Freight:** Supplier shall pay freight charges for all full truckload orders shipped to Distributor's specified location within the USA. Distributor will pay freight for shipments that are not a full truckload. Distributor may, at any time, elect to pick up Product orders at Supplier's warehouse.

6.0 **Warranty**

- 6.1 If any governmental agency determines that any Products are (1) not fit for human consumption, are contaminated in excess of acceptable levels, (2) constitute a human health hazard, or (3) are otherwise not saleable, or otherwise recommends their recall, or if Supplier determines that Products are (a) not saleable or (b) for any reason, should be recalled, Supplier shall repurchase the Products from Distributor at the Delivered Price, plus all handling, distribution and shipping costs incurred by the Distributor in retrieving, transporting, reclaiming and destroying or otherwise disposing of Products subject to such determination or recall.

7. **Confidential Information**

During the course of performance of this Agreement, each party may disclose certain confidential information, which confidential information includes, but is not limited to information pertaining to Supplier's and Distributor's financial affairs, business systems, marketing strategies, trade secrets, products, designs, flavors, equipment, manufacturing process, technology and other technical and commercial information ("Confidential Information") to the other party solely to permit the other party to perform its obligations under this Agreement. Each party shall use its reasonable efforts, not less than those used to protect its own confidential information, to maintain the secrecy of all such Confidential Information. Neither party shall use, disclose, or otherwise exploit any Confidential Information of the other for any purpose not specifically authorized by such other party in this Agreement. All files, lists, records, documents, drawings, marketing and advertising campaigns that incorporate or refer to any Confidential Information shall be returned or destroyed by the receiving party promptly upon termination of this Agreement. Confidential Information shall only be disclosed to those employees of the receiving party that need such information to effectively perform such party's obligations under this Agreement.

8. **Indemnification and Insurance**

- 8.1 Supplier shall indemnify and hold Distributor harmless from and against any and all Losses arising out of, resulting from or otherwise connected with any allegation of (1) the defective manufacture, bottling or packaging of Products; (2) any negligent act, misfeasance or nonfeasance by Supplier; (3) any breach by Supplier of the agreements, representations and warranties contained in this Agreement; (4) any wrongful or misleading claim, advertising or representation by Supplier or by any agent or representative of Supplier regarding the Products; (5) any claim or action by a Third Party with respect to Distributor's use of the Trademarks or other material which Supplier uses or claims to own; (6) any Third Party that such person or entity has any

right, claim or color of right granted or allowed by Supplier to purchase, sell, market or distribute Products in Territory; and (7) Supplier's failure to comply with any other provisions of this Agreement. At the request of Distributor, Supplier will defend any of the foregoing claims, suits, actions or proceedings by any Third Party against Distributor.

8.2 Supplier shall obtain and maintain, and will continue to maintain at all times during the term of this Agreement, at its own expense, comprehensive general liability and product liability insurance. Supplier at its own expense shall add Distributor as an additional insured to such insurance policies.

8.3 Distributor shall indemnify and hold Supplier harmless from and against any and all Losses arising out of, resulting from or otherwise connected with any allegation of (1) the negligent handling or delivery of Products; (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. At the request of Supplier, Distributor will defend any of the foregoing claims, suits, actions or proceedings by any Third Party against Supplier.

8.4 Distributor shall obtain and maintain, and will continue to maintain at all times during the term of this Agreement, at its own expense, comprehensive general liability and product liability insurance, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, with at least \$5 million excess liability coverage, which limits shall be increased from time to time upon Supplier's reasonable demand. Distributor shall provide Supplier with a certificate of insurance.

9. **Transshipment:** Distributor shall not directly or indirectly sell or distribute the Product outside of the Territory described in Exhibit C without the prior written permission of Supplier.

10. **Trademarks**

10.1 All trademarks, trade dress, copyright and goodwill as they relate to the Product, packaging, image, merchandising and advertising materials (the "Intellectual Property") remain the sole and exclusive property of the Supplier. The Supplier grants the Distributor the right, during the term of this Agreement, to use the Intellectual Property and Product image to promote the goodwill and sale of the Products in the Territory. All proposed marketing materials Distributor intends to use shall be submitted by Distributor to Supplier for written approval in advance of any use.

10.2 Supplier represents and warrants that it is the owner of the Intellectual Property, that it has and will have the right to license the Intellectual Property to Distributor throughout the term of this Agreement, and that Distributor's use of the Intellectual Property will not infringe or violate the rights of any third party.

11. **Term:** This Agreement shall commence as of the Effective Date and shall remain in force until terminated pursuant to section 12 of this Agreement.

12. **Termination**

This Agreement may be terminated as follows:

12.1 By the Supplier in the event of:

- a) the liquidation or dissolution or notice thereof of the Distributor's usual business;
- b) an assignment by the Distributor for the benefit of creditors;
- c) the filing of a voluntary or involuntary petition under the provisions of the United States Bankruptcy Code or the appointment of a receiver for the property of the Distributor, the filing of which remains uncontested and undischarged by the Distributor at the end of sixty (60) days after such filing;

12.2 Supplier may terminate this Agreement for cause in the event of (i) the occurrence of any of the events set forth in Section 12.1 above, (ii) a material breach by Distributor of any provisions of this Agreement which is not cured as provided below, or (iii) in the event that Distributor fails to purchase any Product for a period of ninety (90) consecutive days, which is not cured as provided below. Supplier shall provide Distributor with written notice, which notice shall (i) specify in detail the nature of such cause for termination and (ii) provide the Distributor an opportunity to cure such breach within ninety (90) days of Distributor's receipt of such written notice, except in the event of a failure to pay for Products when due, in which case the cure period shall be ten (10) days. If Distributor cures the breach or failure within such period, the Agreement shall not be terminated. If such breach is of a nature that it cannot reasonably be cured within ninety (90) days after receipt of such notice by Distributor, the Supplier may terminate this Agreement only if the Distributor falls either: (a) to commence to cure such breach within ninety (90) day period and thereafter to proceed diligently to cure such breach; or (b) if such breach is of a nature that it cannot be reasonably cured, to establish reasonable procedures to prevent recurrence.

12.3 Distributor may terminate this Agreement for cause in the event of a material breach by Supplier of any provision of this Agreement. Distributor shall provide Supplier with written notice, which notice shall (i) specify in detail the nature of such cause for termination and (ii) provide the Supplier an opportunity to cure such breach within thirty (30) days of Supplier's receipt of such written notice. If Supplier cures the breach or failure within such period, the Agreement shall not be terminated. If such breach is of a nature that it cannot reasonably be cured within thirty (30) days after receipt of such notice by Supplier, the Distributor may terminate this Agreement only if the Supplier fails either: (a) to commence to cure such breach within such thirty (30) day period and thereafter to proceed diligently to cure such breach; or (b) if such breach is of a nature that it cannot be reasonably cured, to establish reasonable procedures to prevent recurrence.

12.4 Supplier may not terminate this Agreement without cause.

12.5 Distributor may terminate this Agreement without cause, in its sole and absolute discretion, at any time upon 120 days' advance written notice to Supplier.

12.6 **Consequences of termination:** Upon termination of this Agreement, Distributor may continue to sell its remaining inventory of Product until such inventory has been disposed of. Termination shall not terminate Distributor's obligation to pay Supplier for all Product previously shipped or charged by Supplier, or ordered by Distributor, or Supplier's obligation to pay co-op or other promotional funds to Distributor. In no event shall either party hereto have any obligation or liability for incidental, special or consequential damages arising out of or in connection with this Agreement.

13. **Modifications, Amendments, and Waivers:** This agreement may not be modified or amended, including by custom, usage of trade, or course of dealing, except by an instrument in writing signed by both of the parties hereto. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by the other party, which waiver shall be effective only with respect to the specific obligation described therein. The waiver by either party hereto of a breach of any obligation of the other shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this Agreement.

14. **Assignment:** Supplier's grant of distribution rights hereunder is based upon its trust and confidence in the Distributor and the current owners of the Distributor. The Distributor's rights and/or obligations under this Agreement may not be transferred or assigned in any manner, voluntary or involuntary, to any other person or entity, without the written consent of the Supplier. For purposes of this provision, a transfer or assignment shall include, but not be limited to the following: (a) gift; (b) merger of Distributor with any other entity; and (c) sale, gift, transfer or issuance of more than 25% of the equity ownership or stock of Distributor to any person, persons or entities other than the current owners or their direct family. Supplier will not unreasonably withhold such consent if Distributor timely provides Supplier with all information it reasonably requires and determines that such transfer or assignment will not significantly impair Supplier rights or opportunities hereunder nor put Supplier at risk in any of its other business dealings.

Supplier shall have the unconditional right to assign this Agreement to any individual or entity.

15. **Force Majeure:** The performance of Supplier and Distributor of their respective obligations under this Agreement shall be excused to the extent it is substantially prevented by reason of any act of God, acts of government, strike, lock-out or other industrial or transportation disturbance, terrorism, fire, flood, lack of material, law, regulation or ordinance, war or war conditions, any failure by Distributor to perform on account of the failure of Supplier to supply Distributor with products, or by reason of any other matter beyond such party's reasonable control and under such circumstances, then such performance shall be deemed suspended during the continuation of such circumstances and for a reasonable time thereafter.

16. **Notices:** Unless otherwise specifically provided, all notices required or permitted by this Agreement shall be in writing and may be delivered personally, or may be sent by

overnight courier or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address;

If to the Supplier:

Cintron Beverage Group, LLC
7400 Brewster Avenue
Philadelphia, PA 19153

With a copy to:

If to the Distributor: *VEDOZI Limited*
220 North Main Street, #102
With a copy to: *Nahlek USA 01760 USA*

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by overnight delivery at the close of business on the first business day after dispatch; (3) by certified mail, five (5) business days after delivery to the U.S. postal authorities by the party serving notice.

17. **Governing Law:** The validity and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

Any action arising out of or relating to this Agreement shall be litigated only in federal or state court in Philadelphia, Pennsylvania.

18. **Authority:** Each party has all requisite corporate power and authority to enter into this Agreement. This Agreement has been duly and validly executed and delivered by the parties and constitutes a legal, valid and binding agreement of the parties, enforceable in accordance with its terms.

19. **Entire Agreement:**
This Agreement constitutes the entire understanding and contract between the parties and supersedes and all prior and contemporaneous, oral or written representations, communication, understandings, and agreements between the parties with respect to the subject matter hereof. The parties acknowledge and agree that neither of the parties is entering into this Agreement on the basis of any representations or promises not expressly contained herein.

Cintron Beverage Group, LLC (Supplier)

By: _____

Title: _____

Vedozl Limited (Distributor)

By: Viktor Edgren

Title: President and CEO

EXHIBIT A

Product

The following products shall be provided to Distributor by Supplier:

Cintron non-priced teas, all sizes, all flavors

Cintron energy drinks, all sizes, all flavors

Cintron non-priced fruit drinks, all sizes, all flavors

Cintron, all sizes, variety pack

Cintron future labeled products

V.G.

EXHIBIT B

Quota

1. **Initial Stocking Order:** _____.

Distributor shall not be liable to Supplier for any damages as a result of any failure to meet a Quota, but such failure shall give Supplier rights as set forth in Section 12.2.

2. **Cooperative Spending:** Where legal, Supplier and Distributor each agree to contribute matching funds for media, visi-coolers, cold drink equipment, glide racks, truck decals, and other merchandizing materials in amounts to be mutually agreed upon annually. All equipment purchased with such funds shall be the property of Distributor, but Distributor shall remove the Trademarks from such equipment reasonably promptly after termination of this Agreement.

Where legal, Supplier and Distributor agree to contribute matching funds, in amounts to be mutually agreed upon annually, to be paid on a 50/50 cooperative basis from time to time as offered and designated by Supplier and accepted by Distributor for market support programs such as:

- a. chain authorizations, including free fill allowances and slotting
- b. in store sampling and couponing
- c. Distributor sales incentives
- d. sponsorships within the Territory
- e. price promotions

Territory

- ② Republic of South Africa

- ③ Uganda

$$\mathbb{V} \cdot \mathbb{E}$$

T.E.

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[illegible]

EXHIBIT D

Prices

<u>Item</u>	<u>Pack Size</u>	<u>Price/Case</u>
Cintron non-priced energy drinks,	24 x 16 oz	\$ 24.00
Cintron non-priced teas,	24 x 23.5 oz	\$ 13.50
Cintron non-priced fruit drinks,	24 x 23.5 oz	\$ 14.50
Cintron,	(Any additional Pkgs.)	\$

All prices are FOB delivered Distributor warehouse and are subject to change by written notice to Distributor. All prices are for full truckload quantities per destination. Items may be mixed within each truckload.

EXHIBIT 2

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

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/807946

MARK: CINTRON

77807946

CORRESPONDENT ADDRESS:

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

RESPOND TO THIS ACTION:

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

GENERAL TRADEMARK INFORMATION:

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

APPLICANT: Cintron Beverage Group, LLC

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

N/A

CORRESPONDENT E-MAIL ADDRESS:

raxenfeld@mmwr.com

OFFICE ACTION

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

ISSUE/MAILING DATE: 11/23/2009

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

SEARCH OF OFFICE'S DATABASE OF MARKS

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

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

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

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

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

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

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

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

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

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

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

CLAIM OF OWNERSHIP OF REGISTRATIONS

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

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

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

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

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

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

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

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

Print: Nov 23, 2009

78928691

DESIGN MARK

Serial Number
78928691

Status
REGISTERED

Word Mark
CINTRON ENERGY ENHANCER

Standard Character Mark
Yes

Registration Number
3600401

Date Registered
2009/03/31

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

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

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

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

Filing Date
2006/07/13

Examining Attorney
KAUFMAN, LAURIE

Attorney of Record
Jeffrey Zucker

Cintron Energy Enhancer

DESIGN MARK

Serial Number
78951185

Status
REGISTERED

Word Mark
CINTRON 21

Standard Character Mark
Yes

Registration Number
3410949

Date Registered
2008/04/08

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

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

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

Filing Date
2006/08/14

Examining Attorney
WEBSTER, MICHAEL

Attorney of Record
Jeffrey Zucker

Cintron 21

SEARCH FAMILY TREES:

First Name (Optional) Last Name:

Search

One Great Family



First Name

CINTRON

Search

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Civil War and Later Veterans Pension Index (100% complete)	15
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Name	Age	City	State	Result
ALEX CINTRON	49			View Details
ALLAN CINTRON				View Details
ALEX CINTRON				View Details
ANGEL CINTRON	27			View Details
ANTHONY CINTRON	35			View Details

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Sort by: Select

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Cintron, A

300 Seven Hickories Rd
Clayton, DE 19938-3294
(302) 659-3562

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HOME LISTING

Cintron, A

1846 Whitney Way
Winter Park, FL 32792-1415
(407) 678-2956

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**FOR
SALE**

[Winter Park Home Search](#)

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HOME LISTING

Cintron, A

5962 Brookside Dr SE
Mableton, GA 30126-2893

[Listing Detail](#)

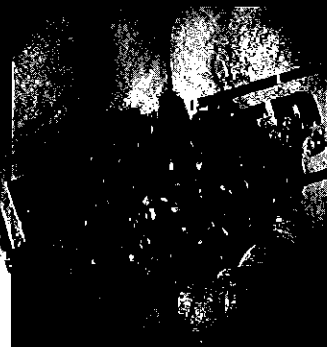
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HOME LISTING Cintron, A 22 W Ninth St Boston, MA 02127 2544 Listing Detail	SPONSORED LINKS Lookup Background Info for A Cintron. View Pics of Boston Singles!  Boston Home Search  View A Clinton's Profile
HOME LISTING Cintron, A 14 Mulberry St Haverhill, MA 01830-3915 Listing Detail	SPONSORED LINKS Lookup Background Info for A Cintron. View Pics of Haverhill Singles!  Haverhill Home Search  View A Clinton's Profile
HOME LISTING Cintron, A 60 Pilling St Haverhill, MA 01832-5318 Listing Detail	SPONSORED LINKS Lookup Background Info for A Cintron. View Pics of Haverhill Singles!  Haverhill Home Search  View A Clinton's Profile
HOME LISTING Cintron, A 19 Glendell Ter Springfield, MA 01108-1208	SPONSORED LINKS Lookup Background Info for A Cintron. View Pics of Springfield Singles! 

Springfield, MA 01100-1200
(413) 788-6316
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HOME LISTINGS

Clinton, A
162 Quincy St
Springfield, MA 01109-3611
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HOME LISTINGS

Clinton, A
15 Nursery St
Springfield, MA 01104-3724
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Anthony Clinton	Haleyville	AL	35	View Details
Alex Clinton	Bakersfield	CA	49	View Details
Angel Clinton	Colorado Springs	CO	27	View Details
Alan Clinton	Altamonte Springs	FL		View Details

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Name	School	Location	Alumni Info
Teresa Clinton	Dunedin High School	Dunedin, FL	View Info
		Wellington	

Cindy Oee	Lyman Hall High School	Wallingford, CT	View Info
Eileen Cinchon	Rafael C. Y. Molina Intermediate School 184	Bronx, NY	View Info
Esmeralda Romaupe	Herbert H. Lehman High School 405	Bronx, NY	View Info

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[Cintron, Alfi](#)

9220 Weathersfield Dr
Bristow, VA 20136-1712
(571) 222-7390

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[Cintron, Ana C](#)

Age: 45-49
4430 Fairview Dr
Christiansburg, VA 24073-6082

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HOME LISTING

[Cintron, Angela](#)

604 Cavalier Dr
Newport News, VA 23608-1686
(757) 886-0003

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Cintron, Angela
925 Churchill Ln
Newport News, VA 23608-7728
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Cintron, Angelo
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(757) 886-0003
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Cintron, Anna M
Age: 45-49
13228 Guildtown Pl
Bristow, VA 20136 5615
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Cintron, Annabelle F
104 N Hope St
Hampton, VA 23663-1749
(757) 723-5769
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HOME LISTING

Cintron, Anthony L
Age: 60-64
507 Hill Ave
Hopewell, VA 23860-4308
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HOME LISTING

Cintron, Aviles M

2108 Bell St
Chesapeake, VA 23323-4701
(757) 485-2006
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Cintron, Barbara

11110 Copeland Ct
Fredericksburg, VA 22407-2591
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Barbara Cintron	Alexandria	VA	70	View Details
Hector Cintron	Alexandria	VA	39	View Details
Carlos Cintron	Alexandria	VA	77	View Details
Jose Cintron	Alexandria	VA	67	View Details

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Luis Cintron	US Postal Service	Alexandria, VA	View Info
Rebecca Cintron	Bowling Green High School	Bowling Green, VA	View Info
Guillermo	Gar-Field High School	Woodbridge, VA	View Info

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People Search

Basic Search

Advanced Search

First Name

Last Name

Cintron

City or ZIP/Postal

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required

Search



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Name	City	State	Age	People Report
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name	city	state	age	request page
Carlos Cintren	Allentown	PA	39	View Details
Alex Cintren	Allentown	PA	25	View Details
Carmen Cintren	Allentown	PA	50	View Details
Domingo Cintren	Allentown	PA	40	View Details

[See all records for Cintren](#)

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

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

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

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

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

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. Respond within 6 months, calculated from 11/23/2009 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) Response to Office Action form. If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

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

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

To: Cintron Beverage Group, LLC (raxenfeld@mmwr.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77807946 - CINTRON - N/A
Sent: 2/18/2010 11:15:49 AM
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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/807946

MARK: CINTRON

77807946

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

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

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APPLICANT: Cintron Beverage Group, LLC

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

N/A

CORRESPONDENT E-MAIL ADDRESS:
raxenfeld@mmwr.com

OFFICE ACTION

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

ISSUE/MAILING DATE: 2/18/2010

THIS IS A FINAL ACTION.

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

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

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

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

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

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

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

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

SUPPLEMENTAL REGISTER

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

OPTIONS

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

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

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

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

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

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

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

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

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

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

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We found 3 dictionaries with English definitions that include the word *Cintron*:

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2. [Cintron](#): Rhymezone ([home](#), [info](#))
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Quick definitions (*Cintron*)

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

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Conchita Cintron was a lone woman in a macho profession might also have made a feature film despite the antipathy of many to her chosen sport, bull fighting. — *BBC News | News Front Page | World Edition*

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

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

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

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

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Definitions (0)

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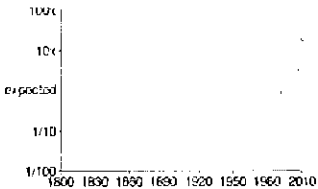
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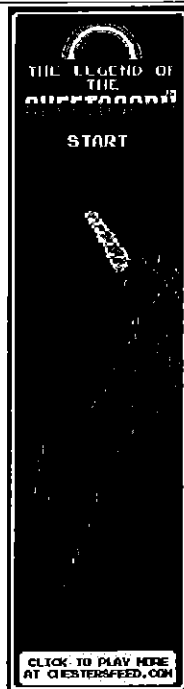


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Definitions of *Cintron*:

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

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Cintron (definition)

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Definition of Cintron

1990

Options Help

1. (n) Last name, frequently rank in the U.S. (s 280)

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18 84 Edison St Pontiac, MI Household: Enelida Cintron

A Cintron

PHOTO

18 424 High St Perth Amboy, NJ Age: 35-39
Household: William M Cintron, Candida Cintron

A Cintron

PHOTO

18 3518 Bainbridge Ave Bronx, NY

A Cintron

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18 2105 79th St Brooklyn, NY

A Cintron

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18 177 Sunflower Ln Islandia, NY Household: Rosa H Cintron

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Josue Cintron	Eugenio Maria De Hostos High School	Mayaguez, OV	View Info
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242 E Shellcracker Rd Jesup, GA

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2200 Tiebout Ave Bronx, NY

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1467 Margaret Crescent Apopka, FL
Dr

Age: 45-49
Household: Nicholas Cintron

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1902 Cartier St Flint, MI Age: 65+

Abigael Cintron

PHONE

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

Abigail Cintron

PHONE

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

Abigail Cintron

PHONE

3635 Whitney Ave Hamden, CT Job: Subway, Owner

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1350 Dixwell Ave Hamden, CT Job: Subway, Owner

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Abigail Cintron

Full Name

PO Box 340323

Hartford, CT

Age: 30-34

Abigail Cintron Jr

PHONE

193 Whalley Ave

New Haven, CT

Job: Feliz LLC, Member

Abigail Cintron

Full Name

315 Foxon Blvd

New Haven, CT

Job: Subway, Manager

Abigail Cintron

Full Name

191 Spring St

Wethersfield, CT

Abigail Cintron

PHONE

29 S Oxalis Dr

Orlando, FL

Age: 65+
Household: Domingo Cintron

Abigail Cintron

Full Name

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Abigail Cintron

PHONE

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

Abigail C Cintron

PHONE

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

Abigato Cintron

PHONE

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

Abimael Cintron

PHONE

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

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Name	School	Location	Alumni Info
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Lidia Franche	Carlisle Aquashana Superior Escuelas	Bayamon, OV	View Info
Josue Cintron	Eugenio Maria De Hostos High School	Mayaguez, OV	View Info
James Cintron	Bronx High School of Science	Bronx, NY	View Info

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Abner Cintron

[PHONE](#)

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

Abner Cintron

[PHONE](#)

1242 Prendergast Ave Jamestown, NY Household: Felix Cintron

Abner N Cintron

[PHONE](#)

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

Abraham Cintron Jr

[PHONE](#)

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

Abraham Cintron

[PHONE](#)

692 Calle Cepres Fajardo Street Capr Calle Fajardo, PR Job: Abraham Cintron Santiago, Owner

Abrahana R Cintron

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3219 Silver Lake Ct Kissimmee, FL

Ada Cintron

PHONE

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

Ada B Cintron

PHONE

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

Ada I Cintron

PHONE

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

Ada S Cintron

PHONE

209 Taaffe Pl Brooklyn, NY

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Alex Cintron	Bakersfield	CA	49	View Info
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Alex Cintron	Tucson	AZ		View Info
Angel Cintron	Colorado Springs	CO	27	View Info

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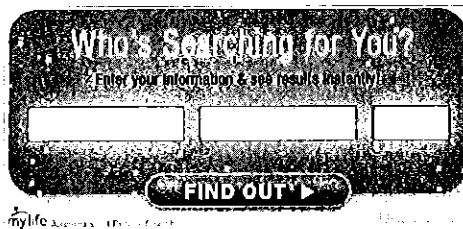
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Name	School	Location	Alumni Info
Yvonne Cintron	Segundo Roz Belvis High School	Hormigueros, OV	View Info
Lidia Fractal	Casique Aguaybana Superior Escuelas	Bayamon, OV	View Info
Jaime Cintron	Eugenio Maria De Hostos High School	Mayaguez, OV	View Info
James Cintron	Bronx High School of Science	Bronx, NY	View Info

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Adelina C Cintron

[FRONT](#)

755 White Plains Rd,
Apt 16C

Bronx, NY

Age: 35-39

Adellna C Cintron

[FRONT](#)

PO Box 1785

Canyon Lake, TX

Age: 55-59

Household: Jose M Cintron

Adolph J Cintron Jr

[FRONT](#)

1863 B2nd St

Brooklyn, NY

Household: Adolph Cintron

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1003 82nd St Brooklyn, NY Household: Adolph Cintron

Adminda Cintron

PHONE

1025 Brentwood Way, Atlanta, GA Apt B

Adminda Cintron

PHONE

1903 Holland Ave Bronx, NY Household: Norma I Cintron

Adminda Cintron

PHONE

3506 Peronne Ave Norfolk, VA

Adolfo R Cintron

PHONE

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

Adolph Cintron

PHONE

1853 82nd St Brooklyn, NY Household: Adolph J Cintron

Adrian Cintron

PHONE

1364 Raintree Bnd, Clermont, FL Apt 307 Household: Deanie Cintron

Adrian Cintron

PHONE

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

To: Cintron Beverage Group, LLC (raxenfeld@mmwr.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77807946 - CINTRON - N/A
Sent: 2/18/2010 11:15:53 AM
Sent As: ECOM111@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 77807946) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office ("USPTO") has written a letter (an "Office action") on 2/18/2010 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

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

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

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. Respond within 6 months, calculated from 2/18/2010 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) [Response to Office Action form](#). If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

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

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

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

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

APPLICATION SERIAL NO. 77/807946

MARK: CINTRON

77807946

CORRESPONDENT ADDRESS:

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

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

APPLICANT: Cintron Beverage Group, LLC

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

N/A

CORRESPONDENT E-MAIL ADDRESS:

raxenfeld@mmwr.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

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

ISSUE/MAILING DATE: 8/5/2010

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

SECTION 2(f) ACQUIRED DISTINCTIVENESS

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

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

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

Evidence of acquired distinctiveness may include specific dollar sales under the mark, advertising figures, samples of advertising, consumer or dealer statements of recognition of the mark as a source identifier, affidavits, and any other evidence that establishes the distinctiveness of the mark as an indicator of source. See 37 C.F.R. §2.41(a); *In re Ideal Indus., Inc.*, 508 F.2d 1336, 184 USPQ 487 (C.C.P.A. 1975); *In re Instant Transactions Corp.*, 201 USPQ 957 (TTAB 1979); TMEP §§1212.06 *et seq.*

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

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

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

SURNAME REFUSAL

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

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

/Mark T. Mullen/
Examining Attorney

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

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

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

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

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

To: Cintron Beverage Group, LLC (raxenfeld@mmwr.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77807946 - CINTRON - N/A
Sent: 8/5/2010 10:40:09 AM
Sent As: ECOM111@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 77807946) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office action”) on 8/5/2010 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

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

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

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. Respond within 6 months, calculated from 8/5/2010 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) [Response to Office Action form](#). If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

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EXHIBIT 3

Cintron

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Cintron Band

Cintron invites you to enjoy the Latin pop sounds of The Cintron Band lead by percussionist Edgardo Cintron.

* [Our refreshing iced teas, fruit drinks, and great tasting Liquid Energy shots and drinks are named Cintron in honor of this common Latin surname and in tribute to Edgardo Cintron. Visit our [happenings and events](#) page to see where The Cintron Band will be next appearing. And in the meantime, pour yourself a Cintron over ice and enjoy a pop of Latin-inspired refreshment.



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About Us

Our Thirst Quenching Road to Success

Cintron Beverages started in 2006, when Wes Wyatt, an innovator and business developer asked: "Wouldn't it be cool if we created an energy drink that actually tasted good?"

This new drink would need to be created with only natural flavors and have a taste that was as appealing as the burst you got from the energy-enhancing ingredients. The company turned first to the popular sweet, tangy, and refreshing flavors of citrus. They found additional inspiration with tropical fruits along with the vibrancy of Latin-inspired recipes. Cintron Original was the result.

* [The name Cintron, dubbed for a popular Latin surname, embodies the energy and flavors of this growing beverage company. With the success of the Cintron Original, the company extended their winning formula for developing great-tasting products to iced teas, fruit ades, and the industry's best tasting line of energy drinks. With fresh flavors like Pineapple Passion, Tropical Azul, Cranberry Splash, Citrus Mango, and Original Citrus, stores can't keep their shelves stocked.

As successor to his father since 2008, CEO Rich Wyatt has maintained effective sales and marketing strategies, securing Cintron as a premium lifestyle brand that embodies fun, energy, a commitment to health, and above all, great taste.

We at Cintron are proud to be a growing beverage company. Our diversified portfolio of premium beverages satisfies the palettes of an expanding customer base who are seeking premium beverages made from natural ingredients. With innovative products and exceptional flavors, Cintron continues to savor success each step of the way.

Experience the flavor of Cintron!

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EXHIBIT 4

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77807946
LAW OFFICE ASSIGNED	LAW OFFICE 111
MARK SECTION (no change)	
ADDITIONAL STATEMENTS SECTION	
SECTION 2(f) BASED ON EVIDENCE	The mark has become distinctive of the goods/services, as demonstrated by the attached evidence.
2(f) EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	e2f-6519892163-121453247 . Cintron 946 - Response to Office Action reduced .pdf
CONVERTED PDF FILE(S) (38 pages)	\\TICRS\EXPORT1\IMAGEOUT1\778\079\77807946\xml3\ROA0002.JPG
	\\TICRS\EXPORT1\IMAGEOUT1\778\079\77807946\xml3\ROA0003.JPG
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SECTION 2(f)	The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.
SIGNATURE SECTION	
DECLARATION SIGNATURE	The filing Attorney has elected not to submit the signed declaration, believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .

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

PTO Form 1957 (Rev 9/2005)
OHD No. 0851-0050 (Exp. 01/30/2011)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. 77807946 has been amended as follows:

ADDITIONAL STATEMENTS

Section 2(f), based on Evidence

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

Original PDF file:

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

Converted PDF file(s) (38 pages)

2(f) evidence-1

2(f) evidence-2

2(f) evidence-3

2(f) evidence-4

2(f) evidence-5

2(f) evidence-6

2(f) evidence-7

2(f) evidence-8

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2(f) evidence-38

Section 2(f), based on Use

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

SIGNATURE(S)

Declaration Signature

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

Response Signature

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

Signatory's Name: Evelyn H. McConathy

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

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

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

Serial Number: 77807946

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

TEAS Stamp: USPTO/ROA-65.198.92.163-2011020212180663

4918-77807946-4801c48524cbffdef198c58245

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

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

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

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

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

RESPONSE TO OFFICE ACTION

Dear Examiner Mullen:

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

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

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

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

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

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

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

Acquired Distinctiveness

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

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

TMEP 1212.03(b);

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

(3) actual evidence of acquired distinctiveness.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Accordingly, Applicant so states that:

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

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

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

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

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

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

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

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

(3) §1212.06 Establishing Distinctiveness by Actual Evidence

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

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

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

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

1212.06(c) Affidavits or Declarations Asserting Recognition of Mark as Source Indicator: Such material is not applied at this time, but could be acquired.

1212.06(d) Survey Evidence, Market Research and Consumer Reaction Studies: Such material is not applied at this time, but could be acquired.

1212.06(e) Miscellaneous Considerations Regarding Evidence Submitted to Establish Distinctiveness: Cintron Beverages Group is the first and only user of CINTRON in classes 30 and 32 for the identified beverages, but certainly not the sole producer of such goods, since others produce under other brand names.

1212.07 Form of Application Asserting Distinctiveness: To base a registration on acquired distinctiveness under §2(f), 15 U.S.C. §1052(f), an applicant must indicate its intent to do so. See foregoing underlined statements in opening section and bold statements above, that registration is requested under §2(f); a statement that the mark has become distinctive, or that the applicant believes the mark has become distinctive of the goods or services in commerce; the statement relating to five years' use in commerce as suggested in §2(f); and further in light of the evidence submitted in support of acquired distinctiveness.

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

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

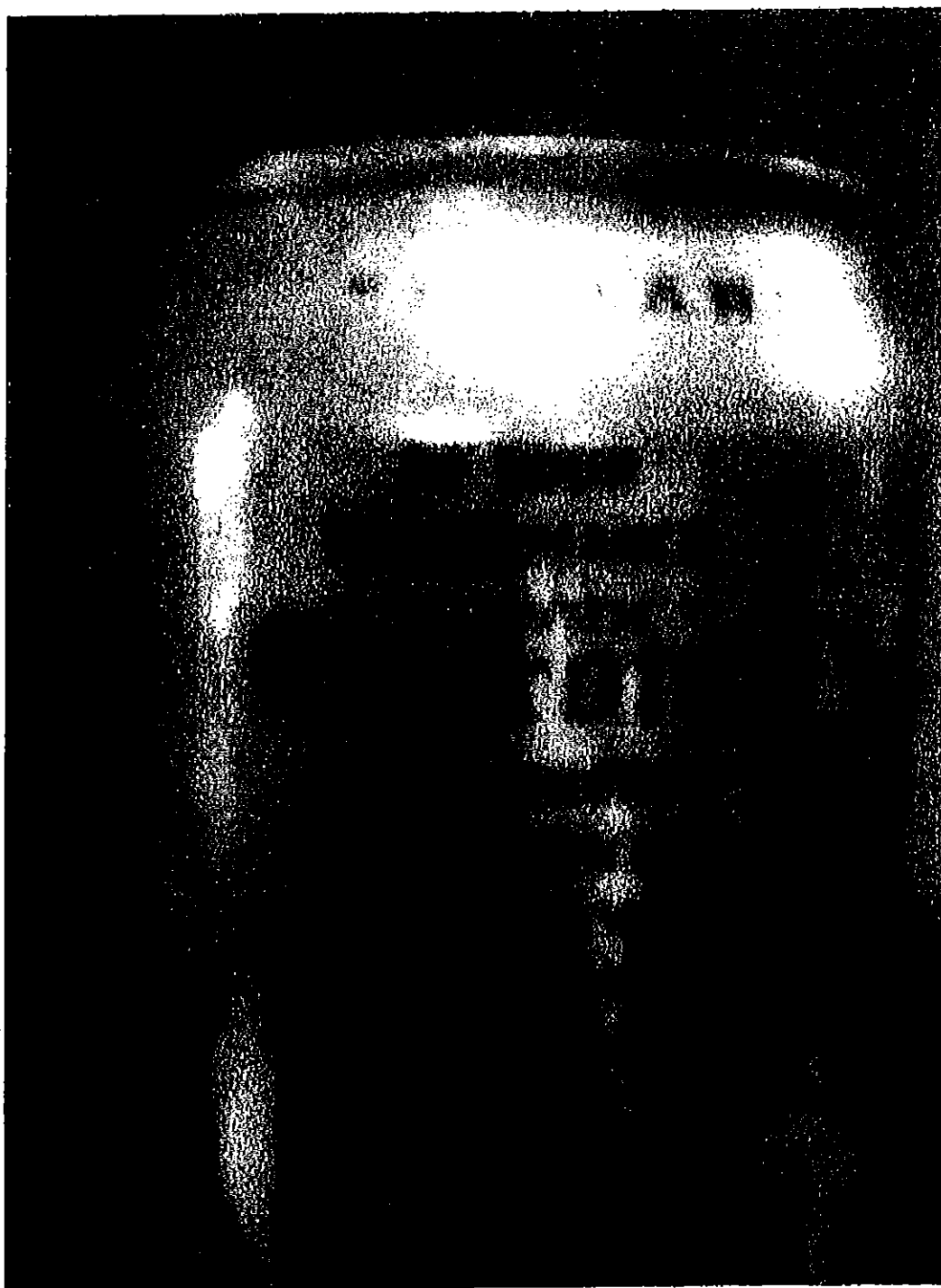
undersigned to permit submission of further evidence of acquired distinction under §2(f) for this mark.

Respectfully submitted,

Date: February 2, 2011


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

EXHIBIT 1

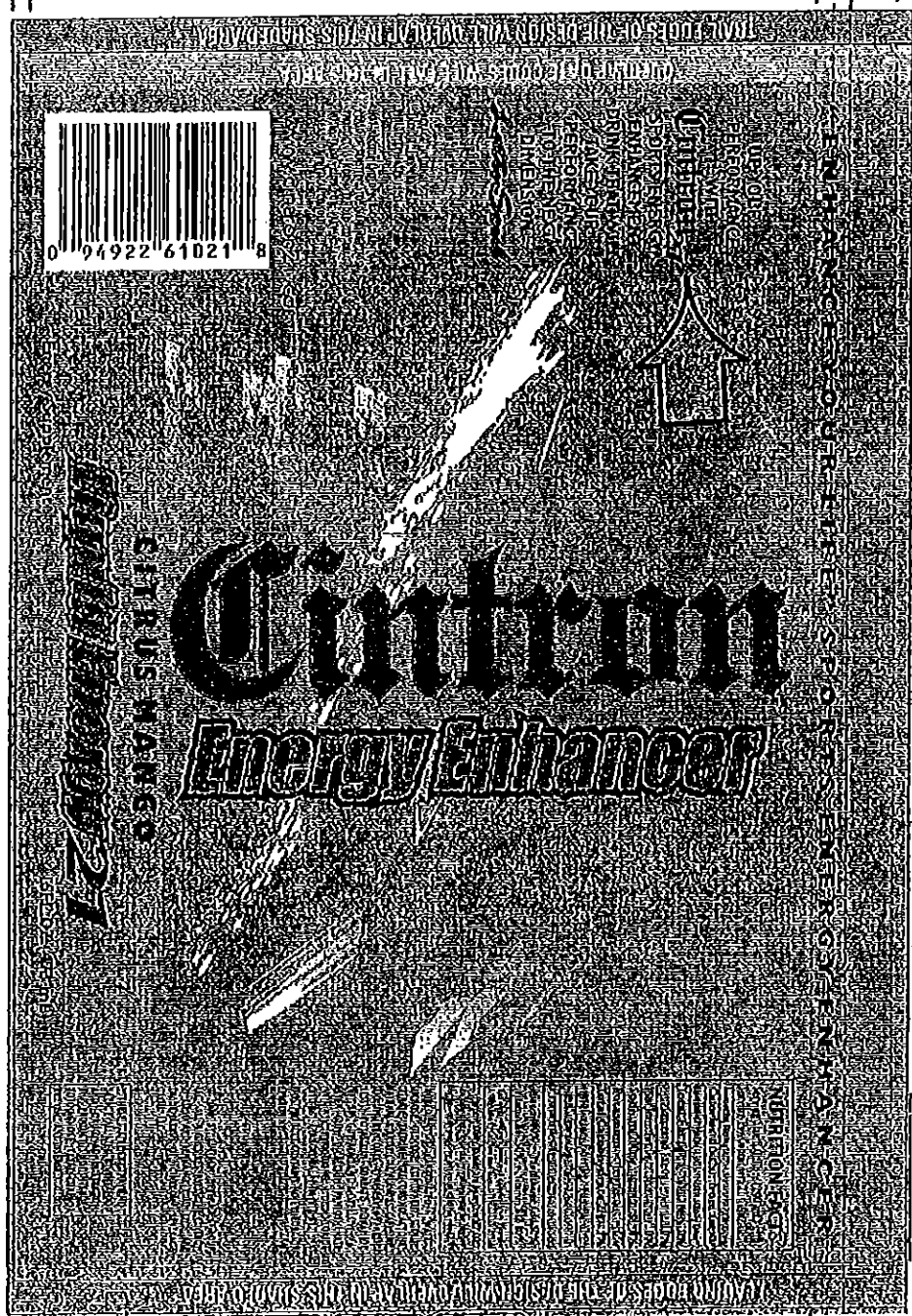




-LITHO LIMIT	(8.29)
-TYPE LIMIT	(7.71)

LITHO LIMIT (5.81)

(18'9) LHM7 OH17



PEXAM BEVERAGE CAN GAP

REXAM BEVERAGE CAN GAPP		3	
ISSUED	ARTWK	ISSUED	1
2000	CONTROL	2000	1
JUL 2000 (JULY 2000)		04-26-02	
GRAPHIC ARTS & PRINTING PLATES		15	
REVISED		15	
ISSUED	ARTWK	ISSUED	1
2000	CONTROL	2000	1
JUL 2000 (JULY 2000)		04-26-02	
GRAPHIC ARTS & PRINTING PLATES		15	
REVISED		15	

5

The party signing above ("Customer") by that Return Signature Can Company ("RSCC") will not be responsible, either the return of stock and whole product, under separations and order goods with a Customer signature, for any reason, and the stockholder by the Customer, RSCC assumes no responsibility for said returned goods and separations, or for services/products made using them, regarding participation with local, state or Federal laws and regulations including, but not limited to, the Federal Food, Drug and Cosmetic Act, and Federal Fair Packaging and Labeling Act, and others or for conflicts with the spirit of said statute in connection with said return, subject to the return of stock and separations, and by signing above the Customer agrees to indemnify and hold RSCC harmless for any and all damages sustained by RSCC as a result of any statute, including by a third party, based on said grounds.

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EXHIBIT 2

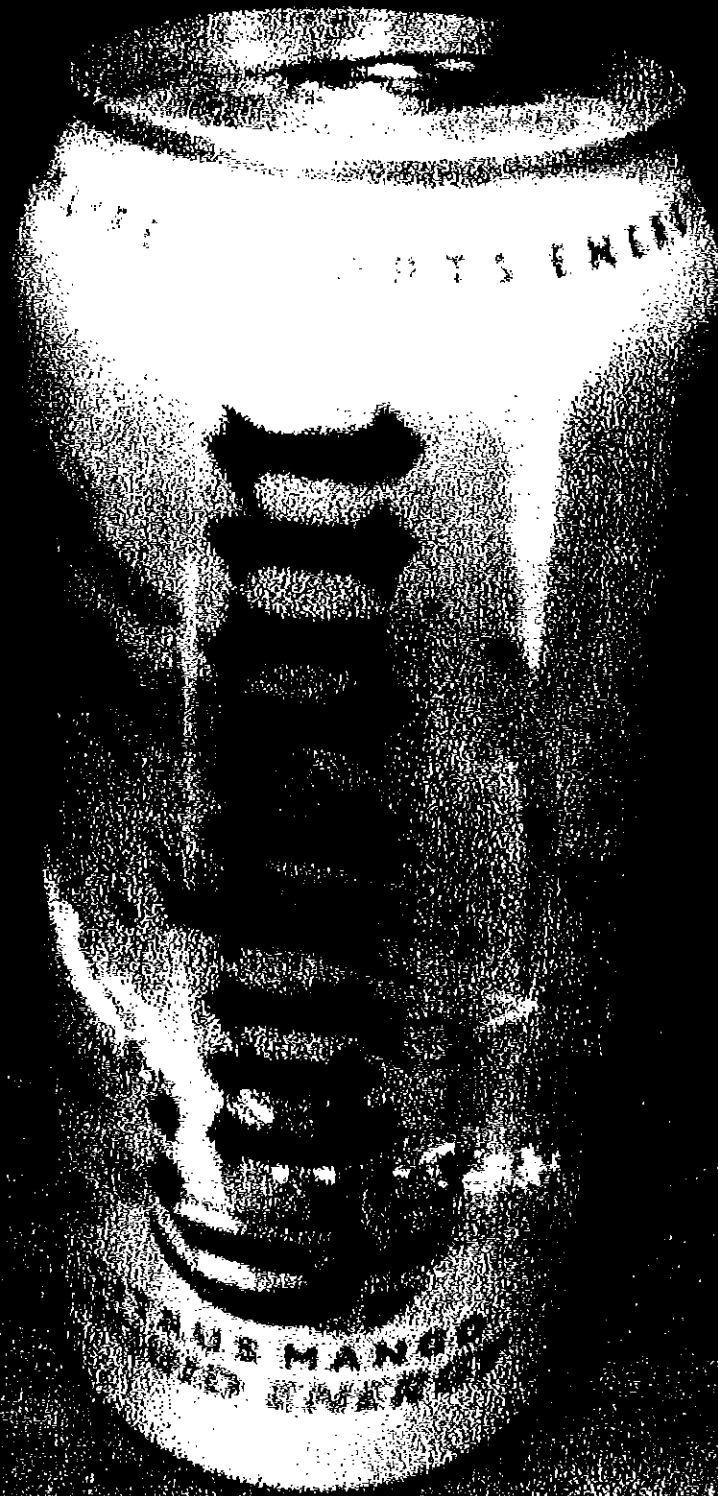


EXHIBIT 3

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

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

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

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

DECLARATION OF RICHARD WYATT

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

Applicant hereby respectfully submits the following Declaration in support of the request for the change in status to §2(1), based upon acquired distinctiveness of the marks associated with the above-identified trademark Applications for a continuous and substantially exclusive period of substantially 5 years.

The undersigned declares and states:

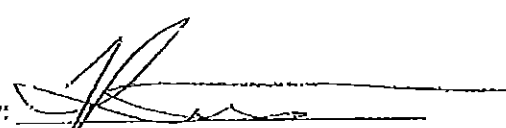
1. I am the Chief Executive Officer of Cintron Beverage Group, LLC (Applicant).
2. I have personal knowledge of the facts as stated herein and am qualified to make such statements.
3. Applicant, Cintron Beverage Group, LLC, was founded in 2006, and it produces and distributes beverages, including a line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

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

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

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

Dated: February 1, 2011

By: 

Richard Wyatt, CEO

Cintron Beverage Group, LLC

EXHIBIT 4

Cintron

TASTE is the DIFFERENCE!

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TO DATE

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Liquid Energy

Teas and Fruit Drinks

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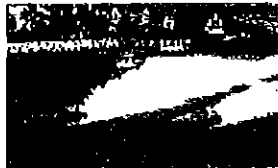
Mix-n-Cintron

Contact Cintron

Cintron

EVENTS

KEY WEST, Fla. • Offshore Powerboat Race Winner of the World Championship 2010



Cintron cruises at Key West World Championships (11.11.10) Cintron —
piloted by Rich Ryan of Moon Township, Pa. — was the fastest boat in
Wednesday's opening of the Key West World Championships. The other
50-foot class with two 1,400-horsepower engines averaged 114.9 mph
over the smooth, 42.4-mile course that began and ended in Key West
Harbor. For the first four laps, Cintron — controlling in the four boat
Superboat Unlimited class — traded the lead with CWS, driven by Randy
Selen and piloted by owner Bob Hull, both of Hillsdale, N.J. But at Turn 2,
outside the harbor, the race began to fall apart for CWS, and the team

dropped out with one lap to go. "We came into Turn 2 together at about 145 miles an hour," Ryan said. "We were
probably no less than four or five feet apart. He took a R, er, and I know he came around and it had to be a really, really tight
turn. By that time, we had already navigated the turn. Sort of seemed that's where he started to fall off. They've got two days to
fix their boat. I want to see them back in the water." The second event of the three-race championship begins at 10 a.m.
Friday. The final event to determine world champions in 13 classes is Sunday.

12/3/2010

Cintron Boat News

Cintron Amazon Deals

Cintron Tasting Team

Cintron Vehicles

Cintron Bands



Cintron Shots!



KEY WEST, Fla. Offshore
CintronPowerboat
CintronPowerXtreme

Win Cintron Stuff!

Join Cintron's List and
Instantly Be Entered To Win
a CINTRON™ Liquid Energy
Sample Pack!



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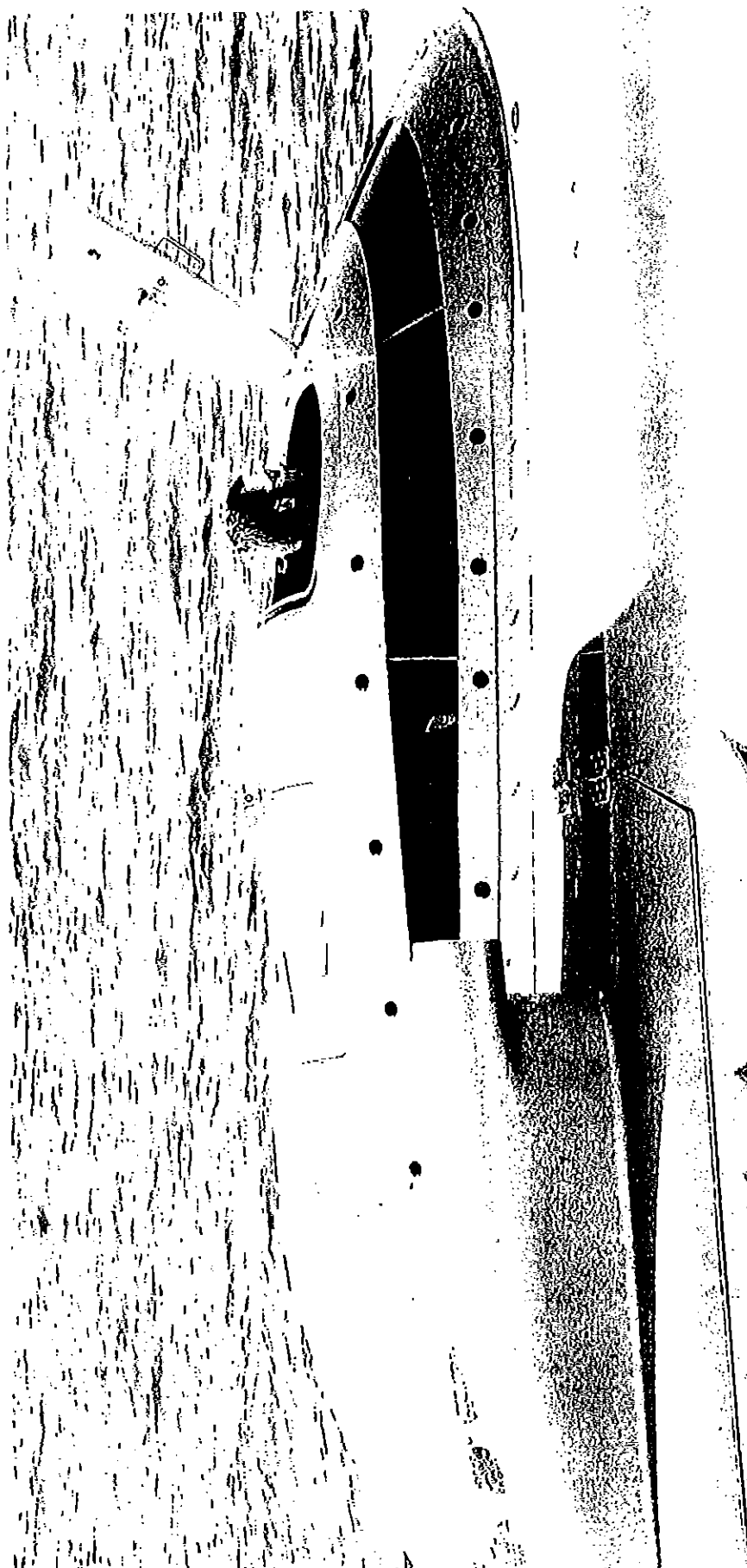


EXHIBIT 5



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Liquid Energy

Teas and Fruit Drinks

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EVENTS

Cintron Powers X-Games



Aspen, Colorado

Cintron Powers the X-Games 2010!

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



Our loyal Cintron Liquid Energy ENTHUSIASTS get to power up during the day and then nix Cintron Liquid Energy with their favorite beverage of choice to power them through the night!

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

Cintron Best News

Cintron Amazon Deals

Cintron Tasting Team

Cintron Vehicles

Cintron Bands



Cintron Shots!



REVIEW ME, HX - Outdoors

Cintron Power the show!

Cintron Powers X-Games

Win Cintron Stuff!

Don't Miss Out! Enter our exciting contest to win a CINTRON Liquid Energy snowboard!



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Image 1 of 1

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Image 2 of 5

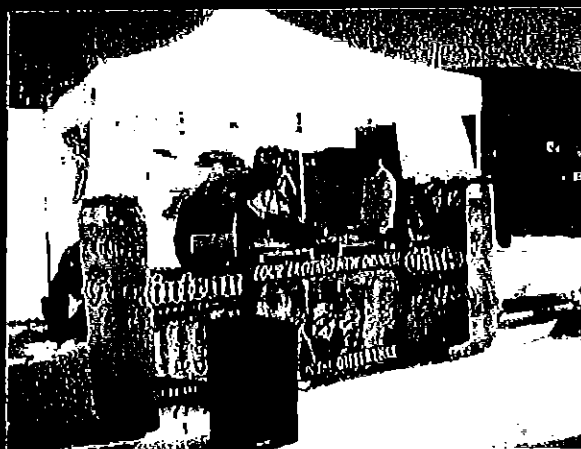
Page 2



Image 1 of 2

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Image 1



Untitled

Image 4 of 5

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Image 5 of 5

Unlabeled

0111-17

EXHIBIT 6

Cintron

TASTE IS THE DIFFERENCE!

View Site in
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EVENTS

Cintron Powerboating!

Key West, Florida

Cintron Liquid Energy Blasts Off At Powerboating World Championships!



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

Powerboat Crew says it best, "When we need that extra boost to beat the competition, we BLAST OFF with Cintron Liquid Energy!"



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Cintron Shots!



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Win Cintron Stuff!

Join Our Making List and Instantly Be Entered To Win A CINTRON Liquid Energy Showboard!

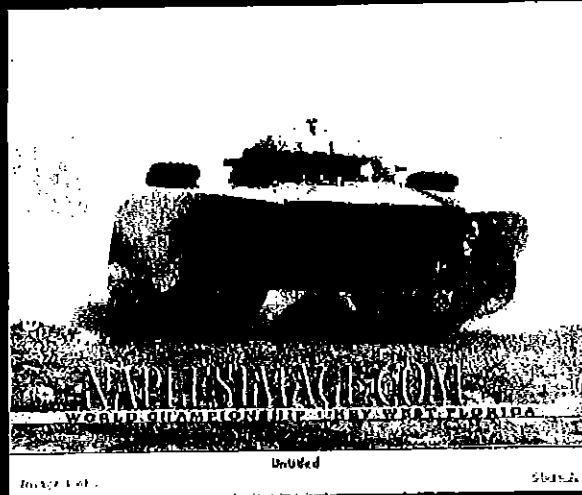


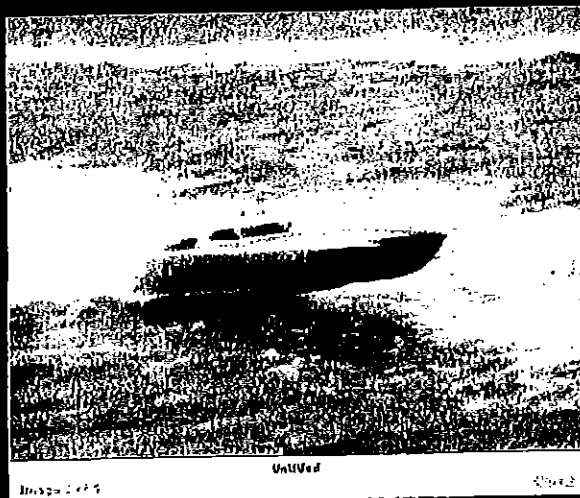
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Designed by Mark House, Inc.

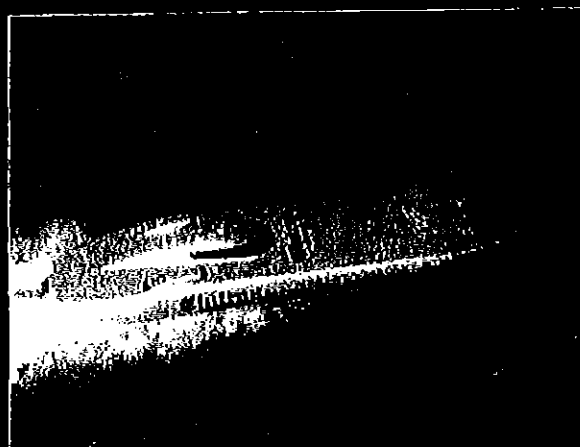




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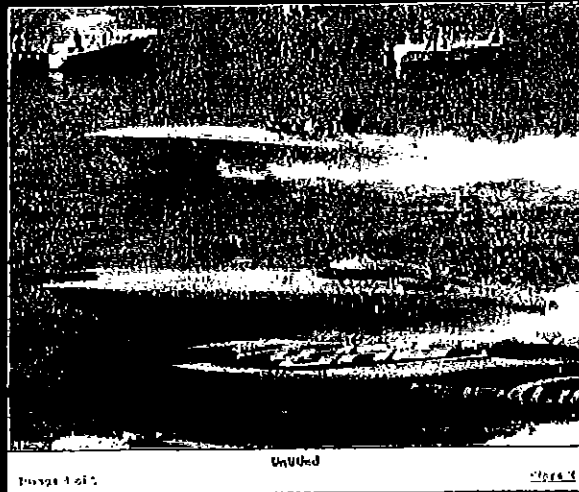
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Image 4-075

Image 4-075



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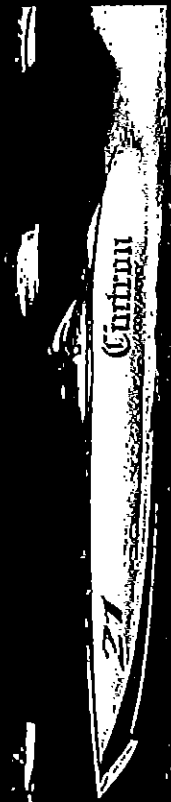


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Cumtun
21 Rens



Cumtun
12 Rens

Super Cat Unlimited



Starter 1400 HP x 2

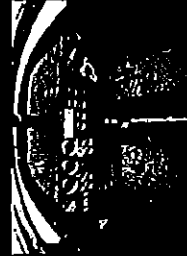


Cockpit

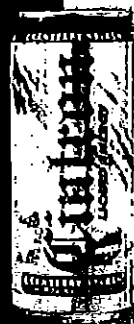
Super Vee Unlimited



Starter 1000 HP x 2



Cockpit



www.cumtunbeveragesgroup.com

EXHIBIT 5

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

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/01/2011)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. 77807946 has been amended as follows:

ADDITIONAL STATEMENTS

Section 2(f), based on Evidence

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

Original PDF file:

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

Converted PDF file(s) (38 pages)

2(f) evidence-1

2(f) evidence-2

2(f) evidence-3

2(f) evidence-4

2(f) evidence-5

2(f) evidence-6

2(f) evidence-7

2(f) evidence-8

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2(f) evidence-38

Section 2(f), based on Use

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

*

SIGNATURE(S)

Declaration Signature

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

Response Signature

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

Signatory's Name: Evelyn H. McConathy

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

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

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

Serial Number: 77807946

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

TEAS Stamp: USPTO/ROA-65.198.92.163-2011020212180663

4918-77807946-4801c48524cbffdef198c58245

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