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

In the Matter of:  
Trademark Registration No. 2,375,219  
For: CUZCATLAN COLA CHAMPAGNE and Design  
International Class: 32  
and  
Trademark Registration No. 2,396,051  
For: CUZCATLAN and Design  
International Class: 32  
and  
Trademark Registration No. 2,423,027  
For: CUZCATLAN and Design  
International Class: 32  
and  
Trademark Registration No. 2,433,109  
For: CUZCATLAN ROJITA and Design  
International Class: 32  
and  
Trademark Registration No. 2,463,527  
For: CUZCATLAN COLA CHAMPAGNE and Design  
International Class: 32



02-27-2004

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

GEORGE CONTOS and NEIL PRYOR )  
Petitioners )

vs. ) Cancellation No.

C.B.I. INTERNATIONAL, INC. )  
F/K/A CUZCATLAN BEVERAGES, INC. )

Registrant. )

03/03/2004 K61880NS 00000073 2375219

01 FC:6401 1500.00 OP )

CONSOLIDATED PETITION FOR CANCELLATION

Assistant Commissioner for Trademarks  
Attn: Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington VA 22202-3513

Sir:

GEORGE CONTOS and NEIL PRYOR, individuals doing business in the State of New York and having a mailing address c/o Demetro, 500 E. 83<sup>rd</sup> Street, Suite 6G, New York, New York 10028, believe that they are being and will be damaged by the above-identified registrations and hereby petition to cancel same.

To the best of Petitioners' knowledge, the name and address of the owner of the above-identified registrations is C.B.I. International, Inc. f/k/a Cuzcatlan Beverages, Inc., a Florida corporation that changed its name from Cuzcatlan Beverages, Inc. to C.B.I. International, Inc. by document filed with the Secretary of State of Florida on November 19, 2001, attached hereto as Exhibit A, having a mailing address of 13015 S.W. 89 Place, Suite 225, Miami, Florida 33176 (hereinafter "C.B.I.").

The grounds for cancellation are as follows:

1. Petitioners are the owners of the mark CUZCATLAN for soft drinks.
2. On February 26, 2001, the United States Bankruptcy Court, Southern District of Florida, Honorable Larry L. Lessen, United States Bankruptcy Judge, Ordered by a Final Judgment in Favor of Trustee, Alan Goldberg, and issued an injunction precluding Cuzcatlan Beverages, Inc. (the Registrant herein) from utilizing the CUZCATLAN trademark (Exhibit B).
3. On July 10, 2001 the Trustee Alan Goldberg assigned the CUZCATLAN trademark to George Contos and Neil Pryor (Petitioners

herein). Said assignment was recorded August 2, 2001, and is found at Reel 2338 Frame 0526 through Reel 2339 Frame 0530 in the U.S. Patent and Trademark Office (Exhibit C).

4. Petitioners are using and have continuously used the mark CUZCATLAN for soft drinks by and through their predecessors in interest since at least as early as May 3, 1988.

5. Petitioners are the owners of a pending U.S. Federal Trademark application for the mark CUZCATLAN, Serial No. 78/271,564, for soft drinks, filed July 8, 2003.

6. In an Office Action dated August 28, 2003, the Trademark Examiner refused registration of Petitioners' mark stating, inter alia, that Petitioners' mark, when used on or in connection with Petitioners' identified goods so resembles the marks in U.S. Registration No. 2,375,219 for CUZCATLAN COLA CHAMPAGNE and Design for soft drinks, Registration No. 2,396,051 for CUZCUTLAN and Design for soft drinks, Registration No. 2,423,027 for CUZCATLAN and Design for soft drinks, Registration No. 2,433,109 for CUZCATLAN ROJITA and Design for soft drinks, and Registration No. 2,463,527 for CUZCATLAN COLA CHAMPAGNE and Design for soft drinks, as to be likely to cause confusion, to cause mistake or to deceive.

7. Registrant, C.B.I., is enjoined by Court order, from utilizing the trademark CUZCATLAN (see Exhibit B), and on

information and belief, C.B.I., its officers and directors have had actual notice of said injunction.

8. On information and belief, Registrant has abandoned its CUZCATLAN COLA CHAMPAGNE and Design mark (U.S. Registration No. 2,375,219, the '219 Registration), its CUZCATLAN and Design mark (U.S. Registration No. 2,396,051, the '051 Registration), its CUZCATLAN and Design mark (U.S. Registration No. 2,423,027, the '027 Registration), its CUZCATLAN ROJITA and Design mark (U.S. Registration No. 2,433,109, the '109 Registration) and its CUZCATLAN COLA CHAMPAGNE and Design mark (U.S. Registration No. 2,463,527, the '527 Registration) by discontinuing use of same.

9. Petitioners are and will be damaged by the continued registration of the '219, '051, '027, '109 and '527 registrations in that these said registrations have been cited by the Examiner against Petitioners' pending application for its mark CUZCATLAN as the basis for the Examiner's refusal to register Petitioners' mark CUZCATLAN and because the '219, '051, '027, '109 and '527 registrations give Registrant statutory rights to which Registrant is not entitled and because Petitioners' legal and exclusive use of its CUZCATLAN mark will be impaired by continuing the '219, '051, '027, '109 and '527 registrations of the Registrant.

10. Petitioners are and will be damaged by the continued registration of the '219 registration for the mark CUZCATLAN COLA

CHAMPAGNE and Design in that said registration is likely to cause confusion, mistake or deception with Petitioners' mark CUZCATLAN in view of the similarity of the marks and the goods being offered in connection with each respective mark.

11. Petitioners are and will be damaged by the continued registration of the '051 registration for the mark CUZCATLAN and Design in that said registration is likely to cause confusion, mistake or deception with Petitioners' mark CUZCATLAN in view of the similarity of the marks and the goods being offered in connection with each respective mark.

12. Petitioners are and will be damaged by the continued registration of the '027 registration for the mark CUZCATLAN and Design in that said registration is likely to cause confusion, mistake or deception with Petitioners' mark CUZCATLAN in view of the similarity of the marks and the goods being offered in connection with each respective mark.

13. Petitioners are and will be damaged by the continued registration of the '109 registration for the mark CUZCATLAN ROJITA and Design in that said registration is likely to cause confusion, mistake or deception with Petitioners' mark CUZCATLAN in view of the similarity of the marks and the goods being offered in connection with each respective mark.

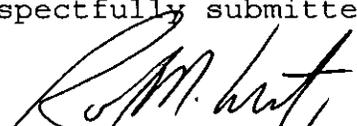
14. Petitioners are and will be damaged by the continued registration of the '527 registration for the mark CUZCATLAN COLA

CHAMPAGNE and Design in that said registration is likely to cause confusion, mistake or deception with Petitioners' mark CUZCATLAN in view of the similarity of the marks and the goods being offered in connection with each respective mark.

WHEREFORE, Petitioners pray that this Consolidated Petition for Cancellation be sustained in favor of Petitioners, and that Registration Nos. 2,375,219, 2,396,051, 2,423,027, 2,433,109 and 2,463,527 be canceled.

A check in the amount of \$1,500.00 (\$300.00 for each mark) for petition fees under 37 C.F.R. § 2.111(c)(1) is enclosed herewith. The Commissioner is hereby authorized to charge any deficiency in the petition fees or any additional fees in connection herewith to our Deposit Account No. 18-2262.

Respectfully submitted,

  
\_\_\_\_\_  
Robert M. Schwartz, Esq.  
Deborah Tellerman Berkowitz, Esq.  
Matthew S. Nelles, Esq.  
RUDEN, McCLOSKEY, SMITH, SCHUSTER &  
RUSSELL, P.A.  
200 E. Broward Blvd.  
Fort Lauderdale, FL 33301  
Telephone: (954) 527-6252  
Facsimile: (954) 333-4252  
Email: Robert.Schwartz@ruden.com

Date: February 27, 2004

Enclosures: (a) Duplicates of Petition and Exhibits  
(b) Check for \$1,500.00

CERTIFICATE OF MAILING BY "EXPRESS MAIL"  
"Express Mail" mailing label number EL577422176US

Date of Deposit February 27, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Assistant Commissioner for Trademarks, Attn: Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington VA 22202-3513.

JULIE LAMDANSKI

(Typed or printed name of person mailing paper or fee)

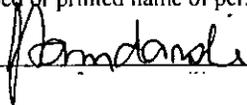


Exhibit A

**P97000064/55**

Requester's Name \_\_\_\_\_  
 \_\_\_\_\_  
 Cuzcatlan Beverages, Inc.  
 13015 S.W. 89th Place  
 # 225  
 Miami, FL 33176  
 City/State/Zip \_\_\_\_\_ Phone # \_\_\_\_\_

100004687151--2  
 -11/19/01--01040--003  
 \*\*\*\*\*35.00 \*\*\*\*\*35.00

Office Use Only

**CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):**

1. \_\_\_\_\_  
 (Corporation Name) (Document #)
2. \_\_\_\_\_  
 (Corporation Name) (Document #)
3. \_\_\_\_\_  
 (Corporation Name) (Document #)
4. \_\_\_\_\_  
 (Corporation Name) (Document #)

- Walk in       Pick up time       Certified Copy  
 Mail out       Will wait       Photocopy       Certificate of Status

**NEW FILINGS**

- Profit
- Not for Profit
- Limited Liability
- Domestication
- Other

**OTHER FILINGS**

- Annual Report
- Fictitious Name

**AMENDMENTS**

- Amendment *name chg*
- Resignation of R.A., Officer/Director
- Change of Registered Agent
- Dissolution/Withdrawal
- Merger

**REGISTRATION/QUALIFICATION**

- Foreign
- Limited Partnership
- Reinstatement
- Trademark
- Other

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 SECRETARY OF STATE  
 TALLAHASSEE, FLORIDA  
**FILED**

Examiner's Initials *AK 11/29*

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF

Cuzcatlan Beverages, Inc.

(present name)

*Pursuant to the provisions of section 607.1006, Florida Statutes, this Florida profit corporation adopts the following articles of amendment to its articles of incorporation:*

**FIRST:** Amendment(s) adopted: *(indicate article number(s) being amended, added or deleted)*

Article I, Name is being amended by changing name of entity  
to C.B.I. International, Inc.

**SECOND:** If an amendment provides for an exchange, reclassification or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, are as follows:

N/A

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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FILED

Exhibit B

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

In re:

CASE NO. 99-15998-BKC-AJC  
CHAPTER 7

IMPACT DISTRIBUTORS, INC.,

Debtor.

\_\_\_\_\_  
ALAN L. GOLDBERG, as Chapter 7  
Trustee for the Bankruptcy Estate of  
Impact Distributors, Inc.,

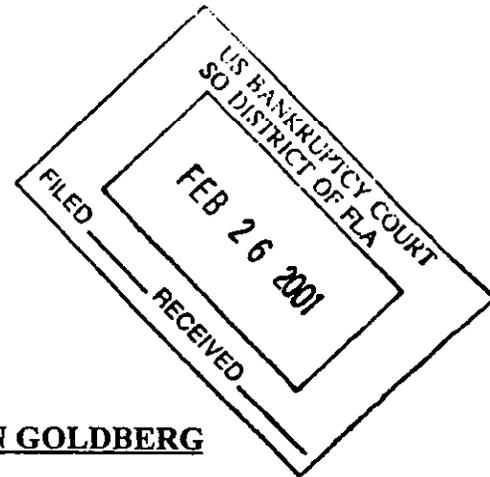
ADV. PRO. NO. 00-1057-BKC-AJC-A

Plaintiff,

v.

CUZCATLAN BEVERAGES, INC.,  
IMPACT FOOD AND BEVERAGES, LLC.,  
and NEIL PRYOR AND GEORGE CONTOS  
as Assignees of HAMILTON BANK, N.A.

Defendants.  
\_\_\_\_\_



**FINAL JUDGMENT IN FAVOR OF TRUSTEE, ALAN GOLDBERG**

THIS CAUSE having come before the Court for trial on an adversary proceeding brought by the Chapter 7 trustee, Alan Goldberg (the "Trustee", "Plaintiff", or "Goldberg"), pursuant to Fed. R. Bankr. Pro. 7001(1) and (9), seeking to avoid as a fraudulent transfer the Debtor's interest in a trademark, and to determine whether the interest in and to that trademark is property of the estate pursuant to 11 U.S.C. § 541(a), and the Court, having entered a separate Memorandum Opinion finding that the trademark remains property of the estate, hereby ORDERS:

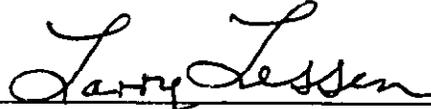
1. Judgment is entered in favor of the Trustee as to Count IV of the Amended Complaint seeking Declaratory Judgment. The Trademark is property of the estate and the Trustee is directed

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to notice the sale of the Trademark to Contos and Pryor, subject to higher and better offers. Contos and Pryor as assignees of Hamilton Bank, N.A. have a lien interest in the Trademark.

2. As the Court finds that the estate is the owner of the Trademark, Judgment is entered in favor of the Trustee as to Count V of the amended Complaint, and an injunction is hereby issued precluding the Defendants and all parties in active concert with them who receive actual notice of this injunction from utilizing the Trademark.

ORDERED in the Southern District of Florida on this 26 day of February, 2001.



HONORABLE LARRY L. LESSEN  
UNITED STATES BANKRUPTCY JUDGE

2/26/01  
L  
Copies to:

Brian Rich, Esq. (Counsel for Trustee)

Jesus Sanchelima (Counsel for Debtor)

(Attorney Rich is hereby ordered to immediately serve a conformed copy of this Order on all interested parties and to obtain a certificate of service).

Exhibit C

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

RE

08-03-2001

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

101798190

To the Honorable Commissioner of Patents

Final documents or copy thereof.

1. Name of conveying party(ies): ALAN L. GOLDBERG as Chapter 7 Trustee for the Bankruptcy Estate of IMPACT DISTRIBUTORS, INC. Individual(s) Association General Partnership Limited Partnership Corporation-State Other TRUSTEE FOR BANKRUPTCY ESTATE Additional name(s) of conveying party(ies) attached? Yes No 3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other Execution Date: July 10, 2001

2. Name and address of receiving party(ies) Name: GEORGE CONTOS Internal Address: 7-17-01 Street Address: 301 East 79th St, Apt 21 City: New York State: NY Zip: 10021 Individual(s) citizenship United States Association General Partnership Limited Partnership Corporation-State Other If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 1,699,307 Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Robert M. Schwartz, Esq. Ruden McClosky et al Internal Address: Street Address: 200 E. Broward Blvd City: Ft. Lauderdale State: FL Zip: 33301

6. Total number of applications and registrations involved: 1 7. Total fee (37 CFR 3.41): \$ 40.00 Enclosed Authorized to be charged to deposit account 8. Deposit account number: 18-2262 (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Robert M. Schwartz, Esq. Name of Person Signing Signature Date 7/18/01 Total number of pages including cover sheet, attachments, and document: 5

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

08/02/2001 BYTME 00000185 182262 1699307 01 FC:481 40.00 CH

TRADEMARK REEL: 002338 FRAME: 0626

Continuation from Item 2

Name and address of receiving party(ies)

Name: NEIL PRYOR

Street Address: 301 East 79<sup>th</sup> St, Apt 21  
New York, NY 10021

Individual(s) citizenship: United States

**ASSIGNMENT OF TRADEMARK**

WHEREAS, IMPACT DISTRIBUTORS, INC., a Florida corporation having filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code, had adopted and used continuously and uninterruptedly, and is the owner of the following trademark now registered in the United States Patent and Trademark Office:

<u>Trademark</u>	<u>Registration No.</u>	<u>Date of Registration</u>
CUZCATLAN	1,699,307	July 7, 1992

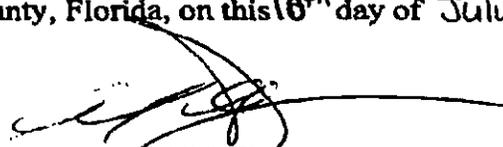
WHEREAS, ALAN L. GOLDBERG, whose address is 111 SW Third Street, Suite 701, Miami, Florida 33130, is the Chapter 7 Trustee of the Bankruptcy Estate of IMPACT DISTRIBUTORS, INC.;

WHEREAS, on February 26, 2001, the United States Bankruptcy Court of the Southern District of Florida, in Adversary Proceeding No. 00-1057-BKC-AJC-A, entered a Final Judgment in Favor of Trustee, Alan Goldberg, directing ALAN L. GOLDBERG to notice the sale of the Trademark to GEORGE CONTOS and NEIL PRYOR, individually, whose address is 301 East 79<sup>th</sup> Street, Apt. 21 R, New York, New York 10021;

WHEREAS, on April 16, 2001, the United States Bankruptcy Court of the Southern District of Florida, in Case No. 99-15998-BKC-AJC, entered an Order Granting Trustee's Motion for Order Authorizing Sale of Trademark Free and Clear of Liens and Encumbrances pursuant to 11 U.S.C. § 363 authorizing the Trustee's sale of the Trademark to Contos and Pryor;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ALAN L. GOLDBERG, as Chapter 7 Trustee for the Bankruptcy Estate of IMPACT DISTRIBUTORS, INC., hereby assigns, conveys and transfers to GEORGE CONTOS and NEIL PRYOR, jointly, the entire right, title, and interest in to the name and mark "CUZCATLAN" and all rights that the Bankruptcy Estate of Impact Distributors, Inc. has or may have, including, without limitation, the Estate's right, title and interest in United States Trademark Registration Number 1,699,307 (the "Trademark") and the goodwill of the business connected with the use of and symbolized by said trademark and registration thereof.

Signed at Miami, Miami-Dade County, Florida, on this 10<sup>th</sup> day of July 2001.



ALAN L. GOLDBERG  
as Chapter 7 Trustee for the Bankruptcy  
Estate of Impact Distributors, Inc.

### BILL OF SALE

**Know All Men by These Presents**, that ALAN L. GOLDBERG, as Chapter 7 Trustee of the Bankruptcy Estate of Impact Distributors, Inc., of Miami, Miami-Dade County, Florida, party of the first part, for and in consideration of the sum of Ten 00/100 DOLLARS (\$10.00) lawful money of the United States and other good and valuable consideration, to him paid by, GEORGE CONTOS and NEIL PRYOR, parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto the said parties of the second part, their successors, assigns, agents, representatives, and any Party claiming by, through or under any such Parties, the following:

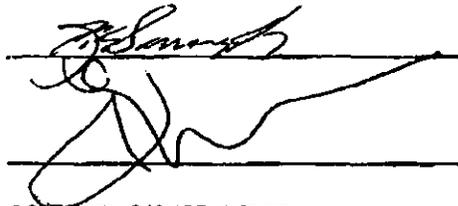
The name and mark "CUZCATLAN" and all rights that the Bankruptcy Estate of Impact Distributors, Inc. has or may have, including, without limitation, the Estate's right, title and interest in United States Trademark Registration Number 1,699,307 (the "Trademark").

**To Have and to Hold** the same unto the said parties of the second part, their heirs, executors, administrators and assigns forever.

**And** he does, for himself and his successors, assigns, agents, and representatives, and any Party claiming by, through or under any such Parties, covenants to and with the said parties of the second part, their successors, assigns, agents, and representatives, and any Party claiming by, through or under any such Parties, that he has the authority of the United States Bankruptcy Court of the Southern District of Florida to dispose of the above property; that it is free from all encumbrances; that he has good right and authorization to sell the same aforesaid, and that he will warrant and defend the sale of the said property hereby made, unto the said parties of the second part their successors, assigns, agents, representatives, and any Party claiming by, through or under any such Parties, against the lawful claims and demands of all persons whomsoever.

**In Witness Whereof**, the party of the first part has caused his signature to be hereto affixed on this 10<sup>th</sup> day of July, 2001.

Signed, sealed and delivered  
in the presence of (2 witnesses):



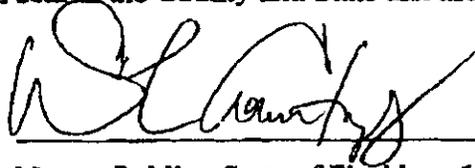
  
ALAN L. GOLDBERG  
as Chapter 7 Trustee for the Bankruptcy  
Estate of Impact Distributors, Inc.

STATE OF FLORIDA            )  
  ) SS:  
COUNTY OF

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by ALAN L. GOLDBERG, as Chapter 7

Trustee for the Bankruptcy Estate of Impact Distributors, Inc., who is personally known to me ~~or who has produced~~ \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 10<sup>th</sup> day of July, 2001.



\_\_\_\_\_  
Notary Public, State of Florida at Large

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:

