

cooperation. Thus far, however, these efforts have been unsuccessful and the discovery period will soon close. The bases for this motion are set forth in the accompanying Memorandum.

Respectfully submitted,

ERNESTINA CASTRO, S.A. DE. C.V.

By: Chiara Giuliani

Cristina A. Carvalho
Chiara Giuliani
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
(202) 857-6000

Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Motion is being served upon Registrant's counsel Robert B. Golden, Lackenbach Siegel LLP, One Chase Road, Scarsdale, New York 10583 this 20th day of April 2005 marked first class mail, postage prepaid.

Chiara Giuliani

CERTIFICATE OF MAILING

It is hereby certified that the attached Motion (re Canc. No. 92043753) is being deposited with the U.S. Postal Service address to the Hon. Commissioner for Trademarks, P.O. BOX 1451, Alexandria, Virginia 22313 this 20th day of April 2005 marked first class mail, postage prepaid.

Chiara Giuliani

mark PAN SANTA EDUVIGIS have enjoyed great success among the American public, and the mark has become a valuable asset and symbol of Petitioner's goodwill

Registrant Doceira Campos Do Jordao Ltda. has obtained Registration No. 2,781,559 for the mark SANTA EDWIGES & Design for "farinaceous food pastes, namely, alimentary pastes; cookies; biscuits; petit beurre biscuits; crackers; rusks; cake paste and cake powder, namely, cake mixes; cakes; sweetmeats; caramels; chewing gum; chocolate; edible ices; candy; ferments for pastes, namely yeast; corn flakes; pies; fondants, fruit jellies in the nature of confectionery; bread rolls; pancakes; bread; popped popcorn; petit fours, puddings; ice cream; waffles; and panettones" The application which matured into this registration was filed on October 9, 2002, based on an intent to use the mark in commerce and on a foreign registration. In order to prevent any public confusion or deception and to protect the commercial value of its mark, Petitioner filed this cancellation proceeding.

On January 28, 2005, Petitioner properly served written interrogatories and document requests on Registrant. Copies are attached hereto as Exhibits A, and B, respectively. In these requests, Petitioner sought information critical to the Board's determination of Petitioner's claims that Registrant's mark is confusingly similar to Petitioner's marks under Section 2(d) of the Trademark Act, and that Registrant's mark is likely to cause deception or falsely suggest a connection with Petitioner, in violation of Section 2(a) of the Trademark Act. Among other things, Petitioner seeks information and documents related to the use of Registrant's mark in the United States, and information and documents related to the creation, selection and adoption of Registrant's mark.

Registrant's answers to Petitioner's discovery requests were due on or before March 4, 2005. However, Registrant failed to serve any answers by that deadline and to contact

Petitioner's counsel to request an extension of time. Registrant simply ignored the deadline. On March 15, Petitioner's counsel sent to Registrant's counsel a letter stating that Registrant's answers to Petitioner's discovery requests were past due and requesting whether Registrant intended to voluntarily serve them. A copy of this letter is attached as Exhibit C.

On March 16, 2005, opposing counsel sent a fax in response stating that Registrant had been awaiting the Board's decision on Petitioner's motion for leave to amend the petition for cancellation in case such decision "affected the scope of permissible, or relevant discovery". A copy of opposing counsel's fax is attached as Exhibit D. Opposing counsel stated also that, if authorized by his client, he would provide objections and answers to Petitioner's discovery requests by May 7, 2005, or within 30 days of April 7, 2005, the deadline for filing Registrant's answer to Petitioner's amended petition for cancellation. However, Registrant's reasons for withholding its answers were clearly unfounded.

When opposing counsel sent his fax on March 16, 2005, the Board had already issued its decision on Petitioner's motion for leave to amend the petition for cancellation. In said decision, issued on March 8, 2005, the Board stated clearly that all discovery and trial dates remained as originally set when the proceeding was instituted. Moreover, the Board's order on Petitioner's motion for leave to amend the petition for cancellation could not have affected "the scope of permissible, or relevant discovery", since Petitioner's amended petition for cancellation is identical to the original petition except for Paragraphs 2 and 3 where Petitioner pleads its federal trademark registration for the mark PAN SANTA EDUVIGIS.

On March 17, 2005, Petitioner's counsel sent a letter to opposing counsel objecting to Registrant's unilateral decision to provide answers to Petitioner's discovery requests after the closing date of the discovery period and more than two months after the due date of March 4,

2005, and requesting that Registrant's answers be provided by March 25, 2005. A copy of this letter is attached as Exhibit E. Registrant's answers were not served by this new deadline, no extension was requested and no communication was received from Registrant's counsel.

Because no answers were provided by this new deadline, and no communication was received from opposing counsel, on March 29, 2005, Petitioner's counsel sent to opposing counsel a letter highlighting Registrant's reiterated unjustified failure to provide answers to Petitioner's discovery requests, stating that Petitioner's counsel was complying with its obligation to engage in a good faith effort to resolve the matter before filing a motion to compel, and asking for a response by April 5, 2005. A copy of this letter is attached as Exhibit F.

On April 5, 2005, opposing counsel called Petitioner's counsel and stated that no answers to Petitioner's discovery requests had been drafted, that his client had so far failed to authorize him to draft them, that he might hear from his client in the near future, and that, if authorized by Registrant, he would provide the answers in the following weeks. No reasons for the failure to serve Registrant's answers to Petitioner's discovery requests were given, other than the fact that Registrant is a foreign company. Moreover, although asked repeatedly, opposing counsel refused to indicate the date by which Registrant would serve its answers to Petitioner's discovery requests. No additional communications from Registrant's counsel were received. So far, no answers to Petitioner's discovery requests have been served.

Thus, despite Petitioner's repeated good faith efforts to secure sufficient and proper responses to its interrogatories and requests for production, Registrant has failed to respond. Moreover, Registrant refused to even indicate when, or if, responses will ever be provided.

This motion seeks an order compelling Registrant to provide complete answers to Petitioner's Interrogatory Nos. 1-37 and the documents requested by Petitioner in Document

Request Nos. 1-45, or, in the alternative, for an order entering judgment in Petitioner's favor, in case Registrant's failure to respond is deemed by the Board sanctionable under 37 C.F.R. § 2.120(g).

II. ARGUMENT

Registrant Should Be Compelled To Respond To Petitioner's Interrogatories And Requests For Production

Registrant should be compelled to respond to Petitioner's discovery requests because so far it has blatantly violated its obligation to cooperate in discovery refusing to provide its answer with no reasonable justification.

Petitioner's served its discovery requests on January 28, 2005, by first class mail, and thus answers were due on March 4, 2005. Exhibits A and B. Rules involving the time for answering discovery requests are very clear. Under 30 CFR §2.120(a) "the time to respond may be extended upon stipulation of the parties, or upon motion granted by the Board, or by order of the Board". The Board never ordered such an extension, and no motion for extension was ever filed. Moreover, Registrant never contacted Petitioner to request an extension. Rather, Registrant simply chose to ignore the deadline of March 4, 2005. Only after Petitioner's counsel expressly requested, in the letter of March 15, 2005 (Exhibit C), whether Registrant intended to comply with its discovery obligations, Registrant's counsel clearly admitted that he had unilaterally planned to serve Registrant's answers by May 7, 2005, over two months after the due date, without even informing Petitioner's counsel. Exhibit D. Registrant's counsel attempted to justify its client's obvious violations of its discovery obligations citing irrelevant facts and circumstances, and "creating" his own rules. Registrant's counsel stated that he had been awaiting the Board's decision on Petitioner's motion for leave to amend the petition for cancellation, in case said decision "affected the scope of permissible, or relevant discovery".

This is merely an obvious attempt to cover Registrant's unjustified failure to comply with its obligations.

First, if, for any reason, Registrant needed additional time to prepare and serve Registrant's answers to Petitioner's discovery requests, clearly Registrant should have requested Petitioner's consent to any extension of the time for serving its answers, and Registrant failed to do so. Moreover, Registrant was clearly aware that the Board's decision on Petitioner's motion for leave to amend the petition for cancellation did not, and could not have, any effect on the "scope of permissible, or relevant discovery". As explained above, the amended petition for cancellation is virtually identical to the petition originally filed. The only difference between the two documents consists in two paragraphs in which Petitioner expressly pleads a federal trademark registration for its mark. It is obvious that this minor change in the petition for cancellation could not have any effect whatsoever on Petitioner's discovery requests, which seek information and documents pertaining to Registrant's use and registration of Registrant's alleged mark. This conclusion is further supported by the fact that, in its decision on Petitioner's motion for leave to amend the petition for cancellation, the Board expressly confirmed all discovery dates as originally set in the order instituting the proceeding.

Finally, the Board issued its decision on Petitioner's motion for leave to amend the petition for cancellation on March 8, 2005. Thus, on March 16, 2005, the date of its fax letter to Petitioner's counsel, Registrant's counsel had had ample time to review the Board's decision, determine that, as expected, it did not effect the scope of Petitioner's discovery requests, and prepare and serve Registrant's responses, but he chose not to do so. Thus, it is obvious that Registrant did not have any reasonable justification to refuse to timely provide responses to Petitioner's discovery requests.

In its fax letter of March 16, 2005, Registrant's counsel stated also that Registrant's answer to Petitioner's amended petition for cancellation was due on April 7, 2005, and that, if authorized by Registrant, he would have served Registrant's answers and objections to Petitioner's discovery requests by May 7, 2005. Exhibit D. With blatant disregard of all applicable rules, and of Registrant's duty to cooperate in discovery, Petitioner's consent to an extension was not requested. Rather, Registrant's counsel simply communicated to Petitioner's counsel that he was giving himself a unilateral two month extension of the time for serving Registrant's answers to Petitioner's discovery requests. In the following weeks Registrant confirmed its deliberate violation of its discovery obligations and its obvious attempt to unduly delay solution of this proceeding. In its letter of March 17, 2005, Petitioner's counsel requested that Registrant's answers to Petitioner's discovery requests be served by March 25, 2005, thus effectively granting Registrant a *de facto* 21-day extension. Registrant chose to ignore Petitioner's request and did not answer the letter. Exhibit E. When Petitioner's counsel, on March 29, 2005, sent a new letter granting Registrant eleven additional days to serve its answers, Registrant's counsel waited until the last day to contact Petitioner's counsel to merely state that, if authorized in the future by Registrant, he would have prepared and served Registrant's answers to Petitioner's discovery requests. However, although said answers were already over a month past due, Registrant's counsel admitted that his client still had not decided whether to provide its responses, and repeatedly refused to indicate an approximate date by which Registrant's answers would have been served.

Registrant's behavior is clearly unacceptable and amounts to a blatant violation of its duty to cooperate with Petitioner in discovery. With Registrant's refusal to provide Petitioner responses to Petitioner's discovery requests, Registrant is preventing Petitioner from obtaining

information and documents which are essential to support Petitioner's case, and relevant to the issue of likelihood of confusion between Registrant's mark and Petitioner's mark. Thus, Registrant should be compelled to provide its answers to Petitioner's discovery requests as soon as possible.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests an order compelling Registrant (1) to answer Petitioner's Interrogatory Nos. 1-37; and (2) to produce all documents responsive to Petitioner's Document Request Nos. 1-45 or indicate to Petitioner that no responsive documents exist. In the alternative, if Registrant's failure to respond is found sanctionable under 37 C.F.R.. § 2.120(g), Petitioner respectfully requests that the Board enter judgment against Registrant on Petitioner's claims. Finally, Petitioner also moves that the close of discovery be extended for a period of sixty (60) days after the date on which the Board rules on this motion and that other dates be reset accordingly.

ERNESTINA CASTRO, S.A. De C.V

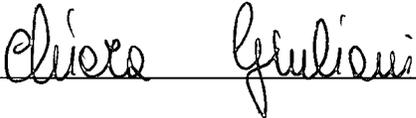
By: Chiara Giuliani

Cristina A. Carvalho
Chiara Giuliani
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
(202) 857-6000

Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing is being served upon Registrant's counsel Robert B. Golden, Lackenbach Siegel LLP, One Chase Road, Scarsdale, New York 10583 this 20th day of April 2005 marked first class mail, postage prepaid.



CERTIFICATE OF MAILING

It is hereby certified that the attached Motion (re Canc. No. 92043753) is being deposited with the U.S. Postal Service address to the Hon. Commissioner for Trademarks, P.O. BOX 1451, Alexandria, Virginia 22313 this 20th day of April 2005 marked first class mail, postage prepaid.



expense reports, memoranda, notes, minutes, letters and other correspondence, testimony, summaries, abstracts, studies, surveys, graphs, statistics, tables, forms, work papers, logs, indexes, drafts, advertisements, and scripts; and (b) any mechanical, magnetic or electronic or other recordings of any voice, sound, image or data including but not limited to photographs, microfilms, video and audio tapes, film, and any other data compilation in Registrant' possession, custody or control wherever located.

2. "Tangible things" shall mean any physical object not included within the definition of "document" above including, but not limited to, models, mock-ups, prototypes and samples.

3. The pronouns "you" and "your" and/or the term "Registrant" shall mean the Registrant Doceira Campos Do Jordao Ltda., in the above-captioned action, and all of its parents, predecessors, subsidiaries, affiliates, divisions and groups, and each of its directors, officers, employees, shareholders, agents, representatives, attorneys and consultants.

4. The term "Petitioner" shall mean the Petitioner Ernestina Castro, S.A. DE C.V. in the above-captioned action, and all of its parents, predecessors, subsidiaries, affiliates, divisions and groups, and each of its directors, officers, employees, shareholders, agents, representatives, attorneys and consultants.

5. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders. The past tense includes the present tense where the clear meaning is not distorted by change of tense.

6. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make these document requests inclusive rather than exclusive.

7. “Each”, “any” and “all” mean each and every.

8. “Person” means any individual or entity, including but not limited to partnerships, corporations or any other form of business or any legal, governmental, or business entity.

9. “Entity” means any legal or business entity of any kind and includes, without limitation, corporations, partnerships, trusts, associations and organizations.

10. The term “communication” means any exchange or transmission of words or ideas to another person or an entity, including without limitation conversations, discussions, e-mails, facsimiles, letters, memoranda, meetings, notes, speeches, or other transfer of information, whether written, oral, or by any other means, whether direct or indirect, formal or informal, and includes any document which abstracts, digests, transcribes or records any such communication.

11. The term “Registrant’s Mark” refers to the alleged mark identified in U.S. Reg. No. 2,781,559 SANTA EDWIGES & Design, or any similar mark, used alone or in combination with other words, numbers, phrases, or designs, as a trademark, service mark, trade name or other trade identity symbol, by Registrant.

12. The term “Petitioner’s Mark” refers to the mark identified in U.S. Registration No. 2,585,075 PAN SANTA EDUVIGIS, and in Paragraphs 1 and 2 of the Amended Petition for Cancellation.

13. The term “mark” includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127, both federally registered and those protected by state or common law.

14. The term “referring or relating to” means comprising, relating to, or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

15. As used herein, the terms “identify” or to “state the identity” of means:

(1) In the case of a person, to state:

- a. name;
- b. last known residence;
- c. employer or business affiliation; and
- d. occupation and business position held.

(2) In the case of a company, to state:

- a. the name;
- b. if incorporated, the place of incorporation;
- c. the principal place of business; and
- d. the identity of the person or persons having knowledge of the matter with respect to which the company is named.

(3) In the case of a document, to state:

- a. the identity of the person or persons who prepared it, the sender and recipient, if any;
- b. the title or a description of the general nature of its subject matter;
- c. the date of preparation;
- d. the date and manner of distribution and publication, if any;
- e. the location of each copy and the identity of the present custodian;
- f. the identity of the person or persons who can identify it;

- g. the contents of the document verbatim; and
- h. if privilege is claimed, the specific basis for the claim.

In lieu of the foregoing, a copy may be supplied.

- (4) In the case of an act or event, to state:
 - a. a description of the act or event;
 - b. when it occurred;
 - c. where it occurred;
 - d. the identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e. the identity of all persons who have knowledge, information or belief about the act;
 - f. when the act, event or omission first became known; and
 - g. the circumstances and manner in which such knowledge was first obtained.

16. The terms "state," "describe," or "explain," when used with respect to a fact, event, action, defense, or allegation, mean provide a complete description of all details concerning such fact, event, action, defense, or allegation, including the identity of documents that reflect, refer, relate, evidence, or pertain in any way to such fact, event, action, defense, or allegation, and all persons who had knowledge relating to such fact, event, action, defense, or allegation.

B. Instructions

The following instructions apply in answering these interrogatories:

1. These requests are continuing in nature and, pursuant to Rule 26 of the Federal Rules of Civil Procedure, Registrant has a duty to supplement its answers promptly upon obtaining or learning of further material information.
2. The answer to each Interrogatory shall include such knowledge or information as is within Registrant' possession, custody, or control including, but not limited to, knowledge, information and documents in the possession, custody, or control of Registrant' accountants, consultants, attorneys, or other agents or representatives.
3. The answers to these Interrogatories must be furnished separately and fully in writing under oath or verification by an officer of Registrant declaring, under penalty of perjury, that the answers are true and accurate to the best of his or her current knowledge, information, and belief. If an answer depends upon the knowledge of a person other than the person signing the answers, each such person should be identified in the answer.
4. Your answers shall include the knowledge of your representatives and agents including, but not limited to, your consultants, accountants and your attorneys.
5. If you object to all or any part of an interrogatory, state the grounds of the objection with sufficient specificity to permit determination of the basis for and propriety of such objection, including citations where legal authority is relied upon, and answer the extent the interrogatory is not objectionable. All objections shall be signed by the attorney who is responsible for making them.

6. All answers and objections to interrogatories shall be made within 30 days of the service of these Interrogatories in writing.

7. You shall not refer to documents generally in lieu of answering; if the burden upon you of deriving an answer from documents is the same as it is upon Petitioner, you may elect to refer to documents that are specifically identified from which the response may be readily obtained. Such a response constitutes a representation under oath by you and your counsel that, after reasonable investigation, those conditions have been met.

8. The full text of the Interrogatory (or part thereof) to which any answer is intended to respond is to be restated immediately preceding such answer.

9. If, at any time, you obtain knowledge that the answer given in response to any Interrogatory was not correct when given, a statement in writing under penalty of perjury consisting of the correct answer to such Interrogatory shall be promptly provided.

10. If you contend that any item of information requested by these Interrogatories is privileged, in whole or in part, as a ground for its non-production or non-disclosure, for each alleged privileged item or document, provide all information required by Rule 26 of the Federal Rules of Civil Procedure, the Local Rules and relevant case law.

INTERROGATORIES

1. Identify all persons who have the best knowledge concerning the facts relating to the claims and defenses asserted in this proceeding, including without limitation, facts relating to the adoption and first use of Registrant's Mark; the sale of any goods or services under Registrant's Mark; the nature, development, advertisement and

promotion of such goods or services; manufacture or creation of any goods sold under Registrant's Mark; the assignment or licensing of any rights in Registrant's Mark; and Registrant's knowledge of the use and/or registration of Petitioner's Mark, and for each person identified, specify his or her areas of knowledge.

2. Identify and describe the date(s) and manner in which Registrant or any of its officers, directors, managing agents or attorneys first learned of the use, intended use, registration or application for registration of Petitioner's Mark, specifying the identity of the person(s) who first obtained such knowledge.

3. Identify and describe the facts relating to the acquisition, selection, adoption, creation and/or design of Registrant's Mark, including without limitation, the identity of the person/persons who selected the mark; the circumstances that lead to the adoption of Registrant's Mark for Registrant's products or services, including the reasons for the final selection of the mark and the date of the selection.

4. Identify and describe each type of product or service that Registrant ever sold or offered for sale under Registrant's Mark in the United States.

5. Identify and describe the facts relating to the date(s) and manner in which Registrant's Mark was first used in connection with the sale of each product or service required to be identified in the preceding interrogatory, and specify whether such use complied with all applicable federal or state statutes, rules and regulations.

6. Identify all persons who designed, created, printed or made each package, label, product and any other materials on which Registrant's Mark has ever been displayed including, without limitation, all Web pages, advertisements, brochures, sales

literature, catalogs, or other materials, specifying which items were designed, created or made by each such person.

7. Identify and describe in details all facts and circumstances relating to the first use of Registrant's Mark by the Registrant, if any, including without limitation, the identity of the first customer, the specific nature of the each product or service first sold under Registrant's Mark, the geographic location(s) where the first sale of any product or service under Registrant's Mark took place.

8. Identify and describe for each product sold or planned to be sold under Registrant's Mark, the geographic area in which sales have been made or products have been distributed, specifying for each good and each geographic area the dates when such distribution started and, in case, ended.

9. Identify and describe the facts relating to any search or evaluation of any records conducted with respect to Registrant's Mark, including any search to determine whether other persons had used or registered any mark consisting of or containing the words EDWIGES, EDUVIGIS or EDUVIS, specifying all records examined and all persons involved in each search or evaluation.

10. Identify all persons who provided, assisted in providing, received or heard any oral or written opinion as to the availability or registrability of Registrant's Mark.

11. Identify on an annual basis for each year since Registrant's Mark was first used, the amount of revenue derived from the sale of each product or service offered under Registrant's Mark.

12. Identify on an annual basis for each year since Registrant's Mark was first used, the dollar amount of advertising and promotional expenditures incurred for each type of product or service offered under said mark.

13. Identify all advertising and promotional methods, or types of media, used in advertising or promoting the sale of any products or services under Registrant's Mark, specifying each publication, radio station, television station, Internet website or other advertising medium used in connection with such advertising or promotion and the date(s) on which such advertising or promotional activity occurred.

14. Identify each person that has ever assisted with or participated in the advertising of Registrant's Mark, including all persons involved in creating, printing or disseminating any such advertising.

15. Identify and describe all communications, meetings or conversations between the Registrant and Petitioner, and the substance of each communication.

16. Identify the types of customer or potential customer to whom Registrant has sold or intends to sell goods or services under Registrant's Mark.

17. Identify all retailers, Internet web sites, wholesalers, distributors, sales agents, manufacturers representatives, and other persons who have ever engaged in the sale or distribution of products under Registrant's Mark.

18. Identify all persons with whom Registrant has discussed, or to whom Registrant has sent any communications, referring or relating to the offer, sale or distribution or of any goods or services under Registrant's Mark.

19. Identify all persons or entities known to Registrant that have ever used any mark consisting of or containing the words EDWIGES or EDUVIGIS for products in Int. Class 30.

20. Identify and describe each third party to whom Registrant has ever communicated any objection concerning the use, attempt to register or registration of any mark consisting of or containing the words EDWIGES or EDUVIGIS.

21. Describe with particularity the facts relating to each and every instance in which a person has been confused, mistaken, or deceived as to the identity of the parties to this proceeding, or the relationship of the parties or their products and services, or the source of their respective product(s) or service(s), including for each instance, the identity of each person who was confused or mistaken, the date and place of the incident, a description of the circumstances that led to the person's being confused, mistaken, or deceived, how Registrant became aware of the confusion, the product(s) or service(s) involved, Registrant's response to the confusion, and the identity of the person who handled such response, and all documents referring or relating to the incident.

22. Identify all employees of Registrant and other persons who have received, seen or heard any telephone call, mail, e-mail, fax, or other communications directed to Registrant, and state whether any such person ever received, saw, or heard any communication intended for Petitioner, or any such communication referring or relating to Petitioner's Mark.

23. Identify and describe any instances in which any third-party has ever inquired as to whether there is any connection, relationship or agreement between the Registrant and Petitioner

24. Identify and describe with particularity all Patent and Trademark Office proceedings, all civil or criminal actions, and all other proceedings to which Registrant has ever been a party, involving Registrant's Mark or goods or services of the type sold under Registrant's Mark, specifying the name of all parties; all names or marks involved; the outcome of each such claim, proceeding or action; and each proceeding or action number.

25. Identify and describe the facts concerning any agreements between Registrant and any third party referring or relating to Registrant's Mark, including without limitation all licenses, assignments, or other agreements.

26. Identify each manufacturer and the location of each manufacturing plant or other production facility at which each product sold under Registrant's Mark was manufactured or produced.

27. Identify and describe all product specifications, manufacturing instructions, quality control requirements and other information relating to the nature and quality of any products sold under Registrant's Mark.

28. Identify and describe the facts relating to the any complaints received by Registrant concerning products sold under Registrant's mark, including the nature and reasons of each such complaint, the identity of each person who made any such complaint, each person who received or handled each such complaint and any action taken by Registrant in response to any such complaint.

29. Identify and describe all facts on which you base your claim in the first Affirmative Defense in your Answer to the Petition for Cancellation that Petitioner's claims are barred by the doctrine of laches.

30. Identify and describe all facts on which you base your claim in the first Affirmative Defense in your Answer to the Petition for Cancellation that Petitioner's claims are barred by the doctrine of acquiescence.

31. Identify and describe all facts on which you base your claim in the first Affirmative Defense in your Answer to the Petition for Cancellation that Petitioner's claims are barred by the doctrine of estoppel.

32. Identify and describe all facts on which you base your claim in the first Affirmative Defense in your Answer to the Petition for Cancellation that Petitioner's claims are barred by the doctrine of waiver.

33. Identify and describe all facts on which you base your claim in the second Affirmative Defense in your Answer to the Petition for Cancellation that "Registrant's mark SANTA EDWIGES & Design is not confusingly similar to Petitioner's mark PAN SANTA EDUVIGIS".

34. Identify and describe all facts on which you base your claim in the third Affirmative Defense in your Answer to the Petition for Cancellation that "[t]here is no likelihood of confusion".

35. Identify all expert witnesses expected to be called to testify on Registrant's behalf in this proceeding, including the subject are on which each expert will testify, the substance of any facts and opinions to which each expert is expected to testify, a summary of the grounds for each opinion, and the facts showing the qualifications of each expert.

36. Identify all translations into English of the name "EDUVIGIS".

37 Identify each person who provided information or otherwise assisted in the preparation of answers to the foregoing interrogatories specifying the information each person provided.

If the response to any interrogatory is believed by Registrant to contain confidential information or trade secrets, it should be so designated and access thereto will be confined to Petitioner's counsel unless further dissemination thereof is authorized by mutual agreement of the parties or by order of the Board.

ERNESTINA CASTRO, S.A. DE C.V.



Cristina A. Carvalho
Chiara Giuliani
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339
Telephone: (202) 857-6000
Facsimile: (202) 857-6395

Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been served on Registrant's counsel Robert B. Golden, Lackenbach Siegel, One Chase Road, Scarsdale, NY 10583, marked first-class mail, postage prepaid this 28th day of January 2005.



blueprints, files, electronic mail, computer data and/or tapes, reports, travel reports, expense reports, memoranda, notes, minutes, letters and other correspondence, testimony, summaries, abstracts, studies, surveys, graphs, statistics, tables, forms, work papers, logs, indexes, drafts, advertisements, and scripts; and (b) any mechanical, magnetic or electronic or other recordings of any voice, sound, image or data including but not limited to photographs, microfilms, video and audio tapes, film, and any other data compilation in Registrant's possession, custody or control wherever located.

2. "Tangible things" shall mean any physical object not included within the definition of "document" above including, but not limited to, models, mock-ups, prototypes and samples.

3. The pronouns "you" and "your" and/or the term "Registrant" shall mean the Registrant Doceira Campos Do Jordao Ltda, and all of its parents, predecessors, subsidiaries, affiliates, divisions and groups, and each of their directors, officers, employees, shareholders, agents, representatives, attorneys and consultants.

4. The term "Petitioner" shall mean the Petitioner Ernestina Castro, S.A. De C.V. in the above-captioned action, and all of its parents, predecessors, subsidiaries, affiliates, divisions and groups, and each of their directors, officers, employees, shareholders, agents, representatives, attorneys and consultants.

5. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders. The past tense includes the present tense where the clear meaning is not distorted by change of tense.

6. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make these document requests inclusive rather than exclusive.

7. "Each", "any" and "all" mean each and every.

8. "Person" means any individual or entity, including but not limited to partnerships, corporations or any other form of business or any legal, governmental, or business entity.

9. "Entity" means a legal or business entity of any kind and includes, without limitation, corporations, partnerships, trusts, associations and organizations.

10. The term "communication" means any exchange or transmission of words or ideas to another person or an entity, including without limitation conversations, discussions, e-mails, facsimiles, letters, memoranda, meetings, notes, speeches, or other transfer of information, whether written, oral, or by any other means, whether direct or indirect, formal or informal, and includes any document which abstracts, digests, transcribes or records any such communication.

11. The term "Registrant's Mark" refers to the alleged mark identified in U.S. Reg. No. 2,781,559 SANTA EDWIGES & Design, or any similar mark, used alone or in combination with other words, numbers, phrases, or designs, as a trademark, service mark, trade name or other trade identity symbol, by Registrant.

12. The term "Petitioner's Mark" refers to the mark identified in U.S. Registration No. 2,585,075 PAN SANTA EDUVIGIS, and in Paragraphs 1 and 2 of the Amended Petition for Cancellation.

13. The term "mark" includes any registered or unregistered trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127.

14. The term "referring or relating to" means comprising, relating to, or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

B. Instructions

The following instructions apply in answering these document requests:

1. These requests are continuing in nature and, pursuant to Rule 34 of the Federal Rules of Civil Procedure, Registrant has a duty to supplement its document production promptly upon obtaining or learning of further responsive documents. Therefore, if any document described in this request is not in existence or in your control at the time of this request, but comes into existence or into your control later, Registrant must immediately produce such document.

2. In accordance with Rule 34 of the Federal Rules of Civil Procedure, all documents produced for inspection and copying shall be organized and labeled to correspond with the categories in the request or shall be produced as they are kept in the usual course of business. Any document described in more than one category may be grouped with documents in any of the categories in which it is described.

3. This document requests production of all responsive documents in Registrant's possession, custody or control from all files, wherever located, whether active, in storage or otherwise, and whether public or nonpublic.

4. If any document requested was formerly in your possession, custody or control and has been transferred, lost, altered or destroyed, submit in lieu of each document a written statement which:

a. Describes in detail the nature of the document and its contents;

- b. Identifies the person who prepared or authored the document, and if applicable, the person to whom the document was sent or transferred;
- c. Specifies the date on which the document was prepared, transmitted or both;
- d. Specifies, if possible, the date on which the document was lost, altered or destroyed and, if altered or destroyed, the conditions or reasons for such alteration or destruction and the persons requesting and performing such destruction.

CLAIM OF PRIVILEGE

If you contend that documents responsive to any request are privileged, in whole or in part, as a ground for their non-production and/or production in redacted form, for each allegedly privileged document provide all information required by Rule 26(b)(5) of the Federal Rules of Civil Procedure, including but not limited to: (1) state expressly the factual and legal grounds for exclusion, and (2) for each document provide the: (a) author, (b) title, (c) date, (d) addressee(s), recipient(s) and/or distributee(s), (e) type of document, and (f) subject matter.

DOCUMENT REQUESTS

1. All documents that Registrant was required to identify in its responses to Petitioner's first set of interrogatories, or from which it derived information used in preparing those responses.

2. All documents referring or relating to the date(s) and manner in which Registrant or any of its officers, directors or managing agents first learned of the use or registration of Petitioner's Mark.

3. All documents referring or relating to the organizational structure of Registrant, including without limitation any articles of incorporation, by-laws, and lists of Registrant's current or former officers, directors and managerial employees and/or descriptions of their duties and responsibilities.

4. All documents referring or relating to the selection, availability, adoption, creation, design, proposal to use, attempt to register, or registration of Registrant's Mark, including without limitation, any minutes or notes from any meetings in which such topics were discussed.

5. All documents referring or relating to any search or evaluation of any records conducted by or on behalf of Registrant to determine whether other persons had used or sought registration of any mark containing the word EDWIGES, EDUVIGIS or EDUVIS, or whether Registrant's use of Registrant's Mark would conflict with the rights of any person.

6. Representative samples of all documents or other materials on which Registrant's Mark has been displayed including without limitation all products, packaging, labels, bags, wrappers, containers, Web pages, advertisements, brochures, sales literature, signs, handbills, stationery, business cards, decals, badges, catalogs or other materials.

7. All documents referring or relating to the creation, design, development, printing or manufacture of any materials on which Registrant's Mark has ever been displayed including without limitation any correspondence, purchase orders, records of payment or invoices sent to or received from any person involved in such creation, design, development, printing or manufacture.

8. Representative samples of all documents or other materials that identify, explain, or describe each of the products or services ever offered or sold or intended for sale by Registrant under Registrant's Mark.

9. All invoices, purchase orders, contracts or other documents referring or relating to the date and manner in which Registrant's Mark was first used in connection with the sale of each type of product or service offered under Registrant's Mark.

10. All documents referring or relating to the date and manner in which Registrant's Mark was first used in connection with the advertising of each type of product or service ever offered under Registrant's Mark.

11. All documents referring or relating to the revenues Registrant has derived from the sale of each product or service offered under Registrant's Mark from the date of first use of said Mark to the present, and the total amount of revenue Registrant has derived from the date of first use of Registrant's Mark to the present, including without limitation all financial reports or sales summaries referring or relating to products sold under Registrant's Mark.

12. Documents referring or relating to the nature and amount of any and all advertising or promotional expenditures incurred in connection with each product or service offered under Registrant's Mark from the date of first use to the present.

13. All documents referring or relating to Registrant's Mark that were sent to or received from any advertising agency, public relations firm, or design firm.

14. All marketing plans, media plans, business plans or other strategic planning documents referring or relating to Registrant's Mark or products or services offered or intended for sale under said Mark.

15. All documents referring or relating to any meetings, correspondence, telephone calls or other communications between Registrant and Petitioner.

16. All documents referring or relating to Registrant's Mark that Registrant has filed with or received from any federal, state or local governmental office or regulatory agency, including without limitation all documents filed or received in connection with any application to register Registrant's Mark.

17. All documents referring or relating to any third party use, registration or application to register a mark including the words EDWIGES, EDUVIGIS or EDUVIS, or any similar word or phrase.

18. All documents referring or relating to any objections made by Registrant concerning use or registration by any third party of any mark containing the words EDWIGES, EDUVIGIS or EDUVIS, or any similar word or phrase.

19. All documents referring or relating to any civil, criminal or administrative action or proceeding involving Registrant's Mark, including without limitation any proceeding before the United States Patent and Trademark Office or any state or federal court, or the National Advertising Division of the Council of Better Business Bureaus.

20. All documents referring or relating to any complaints received from customers or others concerning the nature or quality of any products or services sold under Registrant's Mark or the advertisements used in connection with such products or services.

21. All documents referring or relating to any press release, newspaper article or other publication that mentions Registrant or any products or services sold or offered under Registrant's Mark.

22. All documents referring or relating to any misdirected mail, telephone calls, or other instances wherein any person or business entity has allegedly been confused, mistaken or deceived as a result of the use of Registrant's Mark.

23. All documents referring or relating to any action taken, or planned to be taken, by Registrant to identify or prevent any instances of alleged confusion with Petitioner's Mark arising from the use of Registrant's Mark.

24. All documents referring or relating to the target audience for all advertisements containing Registrant's Mark.

25. All documents referring or relating to the classes or types of purchasers to whom products or services have been sold, or are planned to be sold, under Registrant's Mark.

26. All documents referring or relating to the methods of sale or channels of trade or distribution through which products or services have been sold or offered, or are planned to be sold or offered, under Registrant's Mark.

27. All documents referring or relating to any focus group, survey, poll or other research referring or relating to Registrant's Mark, or the products or services offered, or planned to be offered, under Registrant's Mark.

28. All documents referring or relating to communications between Registrant and its employees regarding the use and/or protection of its alleged intellectual property rights in Registrant's Mark, or in any mark including the words EDWIGES, EDUVIGIS or EDUVIS, or any similar word or phrase.

29. All documents referring or relating to any surveys or research that Registrant has commissioned, performed or considered performing to determine whether

any likelihood of confusion has arisen because of Registrant's use of Registrant's Mark and the use of any other name or mark, including use of Petitioner's Mark by Petitioner.

30. All documents referring or relating to the compliance or non-compliance by Registrant with federal, state and local laws and regulations in connection with the manufacture, advertisement and distribution of products sold or services offered under Registrant's Mark and packaging labels and advertisements used in connection with such products or services.

31. All documents referring or relating to any licenses, assignments or agreements related to Registrant's Mark.

32. All documents referring or relating to all prospective customers for Registrant's products or services.

33. All documents referring or relating to any domain names ever owned by Registrant which contain the words EDWIGES, EDUVIGIS, or EDUVIS, or any similar words or phrases.

34. All documents referring or relating to any manufacturing instructions, quality control requirements and other information relating to the nature and quality of any products sold under Registrant's Mark.

35. All Documents referring or relating to any complaints received by Registrant concerning products sold under Registrant's mark, including the identity of each person who made any such complaint, each person who received or handled each such complaint and any action taken by Registrant in response to any such complaint.

36. For each location where Registrant manufactures and/or has manufactured goods sold or offered, or planned to be sold or offered under Registrant's Mark, all

documents referring or relating to such manufacturing activity, including without limitation the dates when such activity started and ended, and the number of such goods produced per year.

37. All documents referring or relating to Petitioner or any of its related companies, or Petitioner's Mark, or any products or services sold under Petitioner's Mark.

38. All documents referring or relating to any other marks used by Registrant in connection with its business.

39. All documents referring or relating to the allegation contained in the First Affirmative Defense of Registrant's Answer to the Petition for Cancellation that Petitioner's claims are barred by the doctrine of laches.

40. All documents referring or relating to the allegation contained in the First Affirmative Defense of Registrant's Answer to the Petition for Cancellation that Petitioner's claims are barred by the doctrine of acquiescence.

41. All documents referring or relating to the allegation contained in the First Affirmative Defense of Registrant's Answer to the Petition for Cancellation that Petitioner's claims are barred by the doctrine of estoppel.

42. All documents referring or relating to the allegation contained in the First Affirmative Defense of Registrant's Answer to the Petition for Cancellation that Petitioner's claims are barred by the doctrine of waiver.

43. All documents referring or relating to the allegation contained in the Second Affirmative Defense of Registrant's Answer to the Petition for Cancellation that

"Registrant's mark SANTA EDWIGES & Design is not confusingly similar to Petitioner's mark PAN SANTA EDUVIGIS".

44. All documents referring or relating to the allegation contained in the Third Affirmative Defense of Registrant's Answer to the Petition for Cancellation that "[t]here is no likelihood of confusion".

45. All documents referring or relating to any instance when anyone has used the term EDUVIGIS rather than EDWIGES when referring to Registrant's Mark or products sold under said mark.

ERNESTINA CASTRO, S.A. DE C.V.



Cristina A. Carvalho
Chiara Giuliani
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339
Telephone: (202) 857-6000
Facsimile: (202) 857-6395

Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been served on Registrant's counsel Robert B. Golden, Lackenbach Siegel, One Chase Road, Scarsdale, NY 10583, marked first-class mail, postage prepaid this 28th day of January 2005.



Arent Fox
ATTORNEYS AT LAW

Chiara Giuliani
202.857.8920 DIRECT
202.857.6395 FAX
giuliani.chiara@arentfox.com

March 15, 2005

VIA FACSIMILE AND MAIL

Robert B. Golden, Esq.
Lackenbach Siegel LLP
One Chase Road
Scarsdale, New York, NY 10583

URGENT

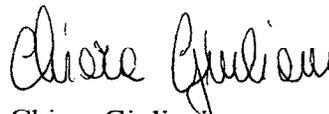
**Re: Ernestina Castro, S.A. de C.V. v. Doceira Campos Do Jordao Ltda.
Cancellation No. 92043753**

Dear Mr. Golden:

This is in connection with the above referenced cancellation proceeding. On January 28, 2005, we served our client's discovery requests on Doceira Campos Do Jordao Ltda ("Doceira"). Responses were due on or before March 4, 2005. However, no responses have been served, nor an extension of time has been requested. Please advise at your earliest convenience whether Doceira will voluntarily respond to our client's discovery requests.

We look forward to hearing from you.

Sincerely,


Chiara Giuliani

cc: Cristina A. Carvalho, Esq.

TECH/290895.1

Lackebach
INTELLECTUAL PROPERTY
ATTORNEYS SINCE 1923 **Siegel, LLP**

WRITER'S DIRECT DIAL
(914) 723-4389
jrollings@LSLLP.com

March 16, 2005

Via Facsimile: 202-857-6395

Chiara Giuliani, Esq.
Arent Fox PLLC
1050 Connecticut Avenue, NW
Washington, D.C. 20036

Re: **Ernestina Castro, S.A. de C.V. v. Doceira Campos Do Jordao Ltda.**

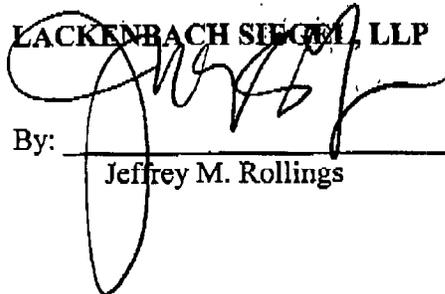
Dear Ms. Giuliani:

We are in receipt of your letter of March 15th regarding Doceira Campos' responses to your client's discovery requests. Be advised that we certainly intend to respond "voluntarily," and had been awaiting the Board's determinations regarding your client's motion to amend its petition in the event such determinations affected the scope of permissible, or relevant discovery. The Board's current order granting your motion, and adopting your submitted amended petition, requires our client to file an answer to the amended petition on or before April 7th. We are awaiting our client's authorization to so file, and thereafter will address the outstanding discovery and provide objections and responses within no more than 30 days after filing the answer.

In view of the new pleadings in this matter and necessary extensions of time, we would recommend submitting a consent motion to extend the current scheduling order by 60 days for all deadlines. Please let us know, and we can prepare the necessary documents. Otherwise, feel free to contact us to discuss any of the above.

Very truly yours,

LACKENBACH SIEGEL, LLP

By: 

Jeffrey M. Rollings

Chiara Giuliani
202.857.8920 DIRECT
202.857.6395 FAX
giuliani.chiara@arentfox.com

March 17, 2005

VIA FACSIMILE AND MAIL

Jeffrey M. Rollings, Esq.
Lackenbach Siegel LLP
One Chase Road
Scarsdale, New York, NY 10583

URGENT

**Re: Ernestina Castro, S.A. de C.V. v. Doceira Campos Do Jordao Ltda.
Cancellation No. 92043753**

Dear Mr. Rollings:

This is in response to your fax letter of March 16, 2005, in connection with the above referenced matter.

We are surprised to learn that no answers to our client's discovery requests were served by the deadline of March 4, 2005, because you intended to wait for the Board's decision on our motion to amend the petition for cancellation in case such decision "affected the scope of permissible, or relevant discovery". In your letter you also indicate that you plan to provide "objections and responses" only by May 7, 2005, within 30 days from April 7, 2005, the deadline set by the Board for the filing of your client's answer to the amended petition. However, we are aware of no rule allowing your client to serve its responses to Ernestina Castro's discovery requests within the time frame you indicated. If more time was needed to prepare and serve those responses, you should have requested our consent to an extension. Because you failed to do so, your client's responses are now several weeks past due.

Under 30 CFR §2.120(a) responses to discovery requests "must be served within 30 days from the date of service of such discovery requests". Under TBMP §403.03, if the service of the discovery requests is made by first class mail, five additional days are allowed for serving the responses. Since we served our client's discovery requests by first class mail on January 28, 2005, your client's responses were due not later than March 4, 2005. Under 30 CFR §2.120(a) "the time to respond may be extended upon stipulation of the parties, or upon motion granted by the Board, or by order of the Board". However, the parties never stipulated to an extension of the time for serving your client's responses to Ernestina Castro's discovery requests, and we are not aware of any motion filed with the Board requesting, or any order of the Board granting, such an extension. By contrast, the order of the Board dated March 8, 2005, granting our motion to amend the petition, explicitly states that discovery and trial dates remain as set on the Board's

TECH/291346.1

Robert B. Golden, Esq.
March 17, 2005
Page 2

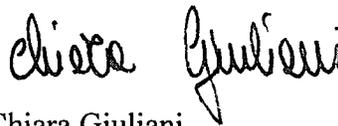
Arent Fox
ATTORNEYS AT LAW

order instituting this proceeding. Thus, it appears that your client failed to serve its answers to our client's discovery requests, or to request our consent to an extension, by the deadline, choosing to unilaterally grant itself an extension of more than two months. Please note that under TBMP §403.03, when a party fails to answer discovery requests by the time allowed, without excusable neglect, it may be found by the Board, upon motion to compel, to have forfeited its right to object to the discovery requests on their merits, and thus may be forced to provide responses without those objections.

In light of all the above, the date of May 7, 2005, as the deadline for serving your client's responses to Petitioner's discovery requests is not acceptable, and those responses are already past due. Please provide your client's complete responses by **March 25, 2005**.

We look forward to hearing from you.

Sincerely,



Chiara Giuliani

cc: Cristina A. Carvalho, Esq.

Chiara Giuliani
202.857.8920 DIRECT
202.857.6395 FAX
giuliani.chiara@arentfox.com

March 29, 2005

VIA FACSIMILE AND MAIL

Jeffrey M. Rollings, Esq.
Lackebach Siegel LLP
One Chase Road
Scarsdale, New York, NY 10583

URGENT

**Re: Ernestina Castro, S.A. de C.V. v. Doceira Campos Do Jordao Ltda.
Cancellation No. 92043753**

Dear Mr. Rollings:

This is in connection with the above referenced matter.

The purpose of this letter is to bring to your attention again the fact that your client's answers are now several weeks past due, and must be provided. Our client's discovery requests were served on January 28, 2005, by first class mail. Although Doceira's answers were due by March 4, 2005, no answers were served. Specifically, your client did not provide any answer to Petitioner's First Request for Production of Documents (Requests Nos. 1-45), and to Petitioner's First Set of Interrogatories (Interrogatories Nos. 1-37). Moreover, your client did not provide any responsive documents. Notwithstanding our letters of March 15, 2005, and March 17, 2005, in which we requested that Doceira's answers be served by March 25, 2005, no answers and no responsive documents have been provided.

Therefore, we are writing to you to comply with our mutual obligation to engage in a good faith effort to resolve discovery disputes before filing a motion to compel. To avoid unduly prolonging this matter, please respond by **April 5, 2005**. If we do not hear from you by that date, we will assume that you will not voluntarily comply with your discovery obligations, and we will seek appropriate relief from the TTAB.

We look forward to hearing from you.

TECH/293293.1

Robert B. Golden, Esq.
March 29, 2005
Page 2

Arent Fox
ATTORNEYS AT LAW

Sincerely,



Chiara Giuliani

cc: Cristina A. Carvalho, Esq.