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

9841077

In the matter of trademark Registration No. 2,991,780

For the mark LOS PASTELES VERDES DEL PERU

Issued on September 6, 2005



09-13-2006

U.S. Patent & TMO/TM Mail Rpt Dt. #32

LETTER OF TRANSMITTAL

Commissioner for Trademarks
Post Office Box 1451
Alexandria, VA 22313-1451

Sir:

Transmitted herewith is the petition of Victor Hugo Acuna Lecca for the cancellation of Registration No. 2,991,780 for the mark LOS PASTELES VERDES DEL PERU along with a duplicate copy of the petition.

A check in the amount of \$600 in payment of the petition fee for cancellation of the mark in both International Class 9 and International Class 41 is also enclosed.

Respectfully submitted,

Roland H. Shubert
Attorney for Petitioner

Post Office Box 2339
Reston, VA 20195-0339

(703) 435-4141

September 12, 2006

Post Office Express Mail Receipt No. EQ 985262029 US

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

In the Matter of Registration No. 2,991,780

For the mark **LOS PASTELES VERDES DEL PERU**

Issued on September 6, 2005

Victor Hugo Acuna Lecca)	Index No.:
)	
Petitioner,)	
)	PETITION FOR
- against -)	CANCELLATION
)	
Music Art Productions, Inc.)	
)	
Registrant.)	

Commissioner for Trademarks
Post Office Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Petitioner, an individual doing business and residing at 1214 Sunrise Ct., Herndon, VA 20170, believes that he is being damaged by Registration No. 2,991,780 and hereby petitions to cancel same on the following grounds:

1. Upon information and belief, Registrant, Music Art Productions, Inc. a corporation organized and existing under the laws of California, and doing business at 6821 Tujunga Avenue, North Hollywood, California 91605 is the owner of United States Trademark Registration No. 2,991,780 for LOS PASTELES VERDES DEL PERU for Sound Recordings, Series of Recorded Audio Cassettes and Compact Disks and Records Containing Music in International Class 9, and for Entertainment in the Nature of Live Musical Performances by a Musical Band in International Class 41.

2. Registrant claims a date of first use of the LOS PASTELES VERDES DEL PERU mark in both International Class 9 and in International Class 41 on September 7, 1987.

3. Upon information and belief, Petitioner states that he founded a musical group rendering live performances in Chimbote, Peru in 1970 which he named "Los Pasteles Verdes" and that he has been the director of that musical group to this date, thereby establishing a first use of the trademark LOS PASTELES VERDES in International Class 41 in 1970.

4. Upon information and belief, Petitioner states that he caused to be recorded and released for public sale in Peru a sound recording of a performance of his musical group, Los Pasteles Verdes, in the form of a long-playing record in 1974, thereby establishing a first use of the trademark LOS PASTELES VERDES in International Class 9 at least as early as 1974.

5. Registrant claims a date of first use in commerce of the LOS PASTELES VERDES DEL PERU in both International Class 9 and in International Class 41 on March 6, 2000.

6. Upon information and belief, Petitioner states that he arranged for the first tour of his musical group, Los Pasteles Verdes, in the United States, and that its first performance was at Ft. Worth, Texas at a ballroom dance in 1978 followed by performances in San Antonio and Austin, Texas; then in Berkley, San Jose, San Francisco, and Sacramento, California; in Phoenix, Arizona and other cities, more than 30 in all, thereby establishing a date of first use of the trademark LOS PASTELES VERDES in International Class 41 at least as early as 1978.

7. Upon information and belief, Petitioner states that he caused to be recorded and released for public sale in interstate commerce in the United States a sound recording of a performance of his musical group, Los Pasteles Verdes, in the form of an audio cassette at least as early as 1983, thereby establishing a date of first use in commerce of the trademark LOS PASTELES VERDES in International Class 9 at least as early as 1983.

8. Registrant is not the owner of the trademark LOS PASTELES VERDES DEL PERU which is the subject of Registration No. 2,991,780.

9. Petitioner's LOS PASTELES VERDES common law trademark is inherently distinctive as used in connection with sound recordings in the form of audio cassettes and compact disks, and as used for entertainment in the nature of live musical performances by a musical band.

10. In addition, Petitioner's LOS PASTELES VERDES common law trademark has been used in connection with entertainment in the nature of a live musical group performing at public dances and other events for more than thirty-five years; first in Peru, and later in Mexico, the United States, and in other countries. Petitioner's common law trademark has also been used in connection with audio recordings including audio cassettes and compact disks for more than 30 years, first in Peru and later in the United States and other countries. As a result of Petitioner's widespread and longstanding use of the trademark in connection with entertainment in the nature of live musical performances, and in connection with audio recordings containing music, Petitioner's LOS PASTELES VERDES trademark has acquired greater distinctiveness and extensive goodwill and is well known and recognized by consumers and the trade as identifying audio recordings containing music, and as identifying entertainment in the nature of a live musical group that is affiliated with or has been authorized by Petitioner.

11. Registrant's goods and services are closely related to, if not identical with, Petitioner's goods and services and, upon information and belief, have been promoted through the same channels of trade. Hence, Registrant's use of the mark LOS PASTELES VERDES DEL PERU in connection with audio recordings containing music and with entertainment in the nature of live musical performances is likely to cause confusion, mistake or deception as to the source of origin of Registrant's goods and services in that the public, the trade and others are likely to believe that Registrant's goods and services are provided by, sponsored by, approved by, licensed by, affiliated with or in some other way legitimately connected to Petitioner. That likelihood of confusion, mistake or deception as to the source of origin of Registrant's goods and services is increased further by the fact that Petitioner's musical group, Los Pasteles Verdes, originated in Peru and is identified with Peru.

12. Moreover, the continued existence of Registrant's LOS PASTELES VERDES DEL PERU registration casts a cloud upon Petitioner's right to continue to use and expand the use of its LOS PASTELES VERDES trademark.

In the matter of Registration No. 2,991,780
Petition for Cancellation
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WHEREFORE, Petitioner believes that he has been and will be damaged by Registration No. 2,991,780 and prays that this Petition for Cancellation be sustained in favor of Petitioner, that judgment be entered against Registrant and that U.S. Trademark Registration No. 2,991,780 be canceled.

Dated: *September 12, 2006*

Respectfully Submitted,

VICTOR HUGO ACUNA LECCA
By Counsel

A handwritten signature in black ink, appearing to read "Roland H. Shubert", written over a horizontal line.

Roland H. Shubert
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