ESTTA Tracking number: **ESTTA341416**

Filing date: **04/08/2010**

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

| | |
|---|---|
| Proceeding | 92048199 |
| Party | Defendant<br>Youssef Mehanna and Susana de la Cruz jo int venture, The |
| Correspondence Address | Sherry L. Singer<br>1430 Broadway, Suite 1101<br>New York, NY 10018<br>UNITED STATES<br>slsesq@hotmail.com |
| Submission | Other Motions/Papers |
| Filer's Name | Sherry L. Singer |
| Filer's e-mail | slsesq@hotmail.com |
| Signature | /SLS/ |
| Date | 04/08/2010 |
| Attachments | 100334.pdf ( 22 pages )(44884 bytes ) |

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

In the Matter of Registration No. 2881888

| | | |
|---|---|---|
| JUAN ANTONIO DE LA CRUZ GONZALEZ,<br><br>Petitioner,<br><br>v.<br><br>YOUSSEF MEHANNA and SUSANA DE LA CRUZ, JOINT VENTURE,<br><br>Respondents. | . | Cancellation No. 92048199 |

**RESPONDENTS' TRIAL BRIEF**

Sherry L. Singer
Attorney at Law
1430 Broadway
Suite 1101
New York, NY 10018
(212) 643-0748

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Statutes**



**Other Authorities**

## I. INTRODUCTION

This case derives from a family dispute over trademark rights to the mark "Kuz" on hair care products. Petitioner, Juan Antonio de la Cruz Gonzalez, who has registered the trademark "KUZ" on hair care products in the Dominican Republic, seeks cancellation of the registration of "KUZ" in the United States (Registration No. 2,881,888). The mark in the United States is owned by the joint venture of Susana de la Cruz and Youssef Mehanna.

Although Petitioner is an individual, he seeks to assert claims for a corporation in the Dominican Republic, Adovi Cosmetica Capilar, S.A. This corporation was set up by the father of Juan Antonio de la Cruz Gonzalez and Susana de la Cruz for the benefit of his children. Petitioner refuses to recognize that Adovi Cosmetica Capilar, S.A. is an entity distinct from him personally. Petitioner provides as proof of priority of use six invoices issued by Adovi Cosmetica Capilar, S.A.

Petitioner has provided confusing and contradictory testimony as to (1) the basis for his authority to enforce rights for the corporation Adovi Cosmetica Capilar, S.A., and (2) why he and the corporation are the same for all relevant purposes herein. This is a fatal flaw in the Petitioner's case. Petitioner must prove these key elements by a preponderance of the evidence. Respondents bear no burden in disproving these key elements.

A cancellation proceeding is recognized as a particularly serious trademark proceeding. The rights and property interests of the Respondents, who have invested time, energy and finances in developing a product and mark in the United States are at

stake. The burden of proof is on the Petitioner to show that Registration 2,881,888 is invalid. Petitioner has failed to meet this burden.

## II. DESCRIPTION OF THE RECORD

1. Petitioner's Discovery Deposition of Respondent Susana de la Cruz (12/9/2008 at 10:00 A.M.)
2. Petitioner's Discovery Deposition of Respondent Youssef Mehanna (12/9/2008 at 11:00 A.M.)
3. Respondents' Discovery Deposition of Juan Antonio de la Cruz Gonzalez (11/21/2008 at 10:25 A.M.)
4. Petitioner's Trial Deposition of Juan Antonio de la Cruz Gonzalez (7/10/2009 at 9:45 A.M.).
5. Petitioner's Trial Deposition of Juan Antonio de la Cruz Gonzalez as witness for Adovi Cosmetica Capilar, S.A. (7/10/2009 at 10:39 A.M.), along with Exhibits.
6. Respondents' Trial Deposition of Susana de la Cruz (10/14/2009 at 10:10 A.M.), along with Exhibits.
7. Petitioner's Response to Respondents' First Set of Interrogatories, along with Exhibits (Respondents' Notice of Reliance).
8. Petitioner's Response to Respondents' Second Set of Interrogatories, along with Exhibits (Respondents' Notice of Reliance).
9. Petitioner's Response to Respondents' Request for Admissions (Respondents' Notice of Reliance).

## III. STATEMENT OF ISSUES

A. Does Petitioner's registration of the trademark "Kuz" in the Dominican Republic give him the right to the trademark in the United States?

B. Has Petitioner proven that he is the manufacturer of Kuz hair care products in the Dominican Republic?

C. Has Petitioner proven that he has the legal authority to represent and bind the corporation Adovi Cosmetica Capilar, S.A.?

D. If he does have such authority, when did he obtain such authority? How did he obtain such authority?

E. Has Petitioner proven his priority of use in the United States?

F. Has Petitioner met his burden in proving that trademark registration 2,881,888 is invalid?

## IV. STATEMENT OF FACTS

### A. Petitioner claims rights to "Kuz" trademark in the United States based on his registration in the Dominican Republic

Petitioner claims that he is entitled to worldwide rights, including the right in the United States, to the mark "KUZ" on hair care products. He presents as evidence supporting this right, a registration for the mark in the Dominican Republic. He claims that he is entitled to the mark in the United States and seeks to cancel Respondents' registration for "Kuz" (Registration 2,881,888).

### B. The manufacturer of Kuz products in the Dominican Republic is Adovi Cosmetica Capilar, S.A., not Juan Antonio de la Cruz Gonzalez

The manufacturer of "Kuz" hair care products in the Dominican Republic is Adovi Cosmetica Capilar, S.A., and not Juan Antonio de la Cruz Gonzalez. The

following is from the deposition testimony of Petitioner Juan Antonio de la Cruz Gonzalez (28:17—29:3):

> Q: In your response to the interrogatories you gave me a long list of persons that were employed in production of Kuz products. There were over 20 people.
>
> A. Yes. What happens is they are directed by me.
>
> Q. Who pays them?
>
> A. I do.
>
> Q. Not Adovi Cosmetica ?
>
> A. The company, but I'm the president.

**C. Adovi Cosmetica Capilar, S.A. is a family enterprise**

Both Petitioner Juan Antonio de la Cruz Gonzalez and Respondent Susana de la Cruz have testified to the fact that Adovi Cosmetica Capilar, S.A. was a family enterprise funded by their father.

Respondent Susana de la Cruz provided the following testimony (Petitioner's Deposition of Susana de la Cruz at 6:18-7:9)

> Q. Since it's [Kuz is] a family mark, why is it registered in your name and your husband's name?
>
> A. Because it belongs to me here in the United States and it belongs to my brother in Santo Domingo because that's what my father's request was.
>
> Q. Do you have—you said your father gave it to you. Can you describe that transaction?
>
> A. The capital, my father had the capital. We didn't have the capital. He's the one

that had it. All the businesses were my father's.

**D. The predecessor corporation to Adovi Cosmetica Capilar, S.A. was Arte Xirey, C Por A.**

The predecessor corporation of Adovi Cosmetica Capilar, S.A. was Arte Xirey, C. Por A. (Arxireyca). A copy of the incorporation document for Arte Xirey is part of the record of this proceeding. (Respondents' Notice of Reliance Tab C Exhibit A). (The same document is also included as Exhibit 5 annexed to Respondents' Deposition of Susana de la Cruz). This document has been accepted by both Petitioner and Respondents as accurately reflecting the shares held by the various shareholders in Arte Xirey. The document shows a total of 3,121 shares allotted to the shareholders. Petitioner is shown as having 135 shares. Respondent Susana de la Cruz is shown as having 189 shares.

The Petitioner has explained that the name of the company Arte Xirey was changed to Adovi Cosmetica Capilar, S.A. (Respondent's Deposition of Juan Antonio de la Cruz Gonzalez at 53:13—54-4):

> Q. You claim that Arte Xirey was changed to Adovi Cosmetica Capilar, S.A.; is that correct?
>
> A. Yes
>
> Q. When did this take place. Just give me the year.
>
> A. It had to be in 2001. Because it was documentation that my father was the one that did the accounting. He was the one that made the changes, the accounting, through a lawyer also.

Q. Were there any documents filed with the government of the Dominican Republic that changed the name of Arte Xirey?

A. By law, of course

Q. So documents were filed?

A. Of course.

**E. Petitioner held only about 4% of the shares of Arte Xirey. He has not provided documentation as to when and how he acquired additional shares of Adovi Cosmetica Capilar, S.A.**

Although Petitioner was repeatedly asked about subsequent changes in corporate ownership of Adovi Cosmetica Capilar, S.A., Petitioner gave confused and inconsistent answers.

The following testimony was given by Petitioner (Respondent's Deposition of Juan Antonio de la Cruz Gonzalez at 54:19—56:11):

Q: You claim that you own 99.6 percent of the shares of Adovi Cosmetica Capilar S.A.?

A. Yes, of course.

Q. So that's correct?

A. Yes.

Q. 99.6, okay. I want you to tell me how this came about. Because the Arte Xirey document that I showed you showed that you had 135 of 3121 shares. That's a little more than 4 percent of the shares of the company.

A. Arte Xirey is a company that was closed. And my father, what he did was he started up again to use the taxes that had already been paid through here and

transferred it to Adovi Cosmetica Capilar where I was the major shareholder. He made the changes wherein it shows that Adovi Cosmetica, I was the president.

Q. I thought you answered before that Arte Xirey had changed its name to Adovi Cosmetica?

A. Right

Q. Not that it was a separate corporation, but that it changed its name?

A. Yes. There's the commercial registrations.

Q. One of the things that I'm confused about in this situation is that—I understand your position is that you now own 99.6 percent. I do not know how this came about. I don't know what year it happened. I don't know whether there were changes over the past seven, eight, nine years. I really need clarification as to when the changes were made. Can you give me some dates?

A. In 2001.

Q. So, in 2001, you're saying that the name was changed; is that true?

A. Yes.

Q. And the shares were changed?

A. Of course, Through my father.

Respondents requested the dates of all changes in corporate ownership in Adovi Cosmetica Capilar, S.A. (Interrogatory No. 3) (Respondents' Notice of Reliance, Tab C, Page 4). The Petitioner responded as follows: "(a) See Shareholder's List Year 2004 and 2007. (b) See Requests for production documents for more info. (Respondents' Notice of Reliance, Tab C, Page 4). The Petitioner attached three documents to this response. One document, the Certificado de Registro Mercantil, lists shareholder, but not

their shares (Respondents' Notice of Reliance, Exhibit B, Tab C). The other documents are dated August 9, 2004 and November 20, 2007 and show different shareholders and shares (Respondents' Notice of Reliance, Exhibits C and D, Tab C).

Petitioner has not shown how or when he acquired a majority stake in Adovi Cosmetica Capilar, S.A. He has providedcontradictory and muddled answers when asked about the ownership of Adovi Cosmetica Capilar, S.A. and the documentary evidence he has provided is equally contradictory. (See Respondents' Notice of Reliance: Respondent's deposition of Juan Antonio de la Cruz Gonzalez; Respondents' First Set of Interrogatories, Respondents' Second Set of Interrogatories).

**F. The invoices submitted in support of Petitioner's claim of priority of use were issued by Adovi Cosmetica Capilar, S.A., and not by Petitioner**

The Petitioner has submitted six invoices as proof of his "priority of use" in the United States. These invoices were submitted as exhibits (Exhibits 1 and 2) to Petitioner's deposition of Juan Antonio de la Cruz Gonzalez as a witness for Adovi Cosmetica Capilar.

The Petitioner submitted the following invoices:

| Date | Invoice Number | Party Issuing Invoice | Party to Whom Invoice was Issued |
|---|---|---|---|
| 7/19/03 | 6 | Adovi Cosmetica Capilar, S.A. | Adovi Cosmetica Capilar Int'l. Inc., NY (Contact Susana de la Cruz) |
| 8/26/03 | 9 | Adovi Cosmetica Capilar, S.A. | Adovi Cosmetica Capilar Int'l. Inc., San Juan (Contact Ines Cotto Puesan) |
| 11/01/03 | 12 | Adovi Cosmetica | Adovi Cosmetica Capilar |

| | | | |
|---|---|---|---|
| | | Capilar, S.A. | Int'l. Inc., NY (Contact Susana de la Cruz) |
| 7/1/04 | 00000001 | Adovi Cosmetica Capilar, S.A. | Adovi Cosmetics Int. Inc. (Contact: Susana de la Cruz) |
| 6/14/03 | 5 | Adovi Cosmetica Capilar, S.A. | Adovi Cosmetica Capilar Int'l. Inc., PR (Contact Ines Cotto Puesan) |
| 6/10/03 | 3 | Adovi Cosmetica Capilar, S.A. | Primary Ones Inc., NY (Contact Sr. Jose, Alex Y. Victor) |

An analysis of these invoices discloses the following key facts:

1. All of the invoices were issued by Adovi Cosmetica Capilar, S.A.
2. Petitioner has submitted two versions of Invoice 9 into evidence. One invoice (submitted under Exhibit 1) shows a total amount of $78,777.60, while the other invoice (submitted under Exhibit 2) shows a total invoice amount of $29,692.56. The invoices are identical except for the unit values and the total value. Petitioner has also furnished (under Exhibit 2) an Exportation Certificate from the Dominican Republic showing the price at $29,692.56 for Invoice 9.

In her trial testimony, Respondent Susana de la Cruz has challenged the invoices submitted by Petitioner, and has furnished copies of the actual invoices paid. (Respondents' Deposition of Susana de la Cruz at 15:4-23:18). A comparison of the invoices submitted by Petitioner as Exhibits in his trial testimony with the invoices submitted by Respondent Susana de la Cruz is informative. The invoices submitted by Susana de la Cruz show prices that are identical to those on Invoice 9 (at the lower price) submitted by Petitioner.

Petitioner's credibility is called into question by the submission of false invoices.

Petitioner has testified that the Respondents failed to pay for goods shipped. This is a claim that Respondent Susana de la Cruz vehemently denies. In her deposition testimony, she states that the reason that she no longer imported from the Adovi Cosmetica Capilar, S.A. was the lack of quality control (Petitioner's Deposition of Susana de la Cruz at 11:20-21).

**G. Petitioner suggested that Respondent Susana de la Cruz register the mark in the United States**

Petitioner has testified that he specifically suggested that his sister register the mark in the United States. The following testimony is from the discovery deposition of Petitioner (Respondent's Deposition of Juan Antonio de la Cruz Gonzalez at 5:3-6:17):

> Q: Please state why you should be considered the owner of the mark Kuz in the United States?
>
> A: Because when I had the intention of sending the trademark to the United States, it started with a familiar intention. And to assure that the trademark was in good hands, I asked my sister to declare the trademark under her name and another sister in Boston.
>
> Q: Didn't you say that you wanted them to register the mark in the United States?
>
> A: Exactly. Under the name of a sister of mine. Both sisters.

Susana de la Cruz directly refutes Petitioner's contention that Petitioner suggested that Susana register the mark in the United States along with another sister. Respondent Susana de la Cruz testified at her trial deposition (Respondents' deposition of Susana de

la Cruz at 5:16- 6:2) as follows:

> Q: Now, he [Petitioner] mentioned another sister in Boston, Magdalena. Was there ever an intention that she would be involved in the direct distribution of the products in the United States or that she would be registering the trademark in the United States? .
>
> A: No. Magdalena never has been a person to go out in the street. She's always been a desk person. She works in a bank and she wasn't going to leave her job.

The documentary evidence, namely the invoices and shipping documents, make no reference to the sister in Boston, Magdalena. Susana de la Cruz was the only sister involved in the sale of Kuz products in the United States.

## V. ARGUMENT

### A. Trademark Law is Territorial: Petitioner's Registration in the Dominican Republic Does Not Give Him an Automatic Right to the Trademark in the United States

Petitioner has expressed his belief that the registration of the trademark "Kuz" in the Dominican Republic necessarily gives him the right to the mark in the United States. The Petitioner fails to recognize the principle of territorialism as applied to trademarks. "The concept of territoriality is basic to trademark law; trademark rights exist in each country solely according to that country's statutory scheme". Person's Co., Ltd. v. Christman, 900 F. 2d 1565, 1568-1569, 14 U.S.P.Q. 2d 1477 (Fed. Cir. 1990).

The principle of territorialism in trademarks was more recently enunciated in the leading case of ITC Ltd. v. Punchgini, Inc., 482 F.3d 135, 82 U.S.P.Q. 2d 1414 (2d Cir.

2007), aff'd. 518 F. 3d 159, 86 U.S.P.Q. 2d 1115 (2d Cir. 2008).

> Precisely because a trademark has a separate legal existence under each country's laws, ownership of a mark in one country does not automatically confer upon the owner the exclusive right to use that mark in another country. Rather, a mark owner must take the proper steps to ensure that its rights to that mark are recognized in any country in which it seeks to assert them. Cf. Barcelona.com, Inc. v. Excelentisimo Ayuntamiento de Barcelo, 330 F. 3d 617, 628 (4th Cir. 2003) ("United States courts do not entertain actions seeking to enforce trademark rights that exist only under foreign law."). Id. at 155.

The Second Circuit, in the ITC case, Id., considered whether marks that were famous abroad were exempt from the principle of territoriality. The ITC court rejected the argument that "famous marks" were entitled to an exemption from the principle of territoriality under trademark law. Even though the name "Bukhara" for restaurants might be "famous", there was nothing in U.S. law that provided an exception for "famous marks" from the mandates of the Lanham Act. The Trademark Trial and Appeal Board more recently reached the same conclusion. Bayer Consumer Care AG v. Belmora LLC, Cancellation No. 92047741 (April 6, 2009) [precedential].

Petitioner does not suggest that the mark "Kuz" is a famous mark. We raise the issue herein to point out that even "famous marks" do not get automatic rights under the Lanham Act.

**B. Petitioner Bears the Burden of Proof; He Has Failed to Meet this Burden**

The Petitioner bears the burden of proof in a cancellation proceeding. The Cold War Museum, Inc. v. Cold War Air Museum, Inc., Case No. 2009-1172 (Fed. Cir. 2009). This burden is substantially greater than in an opposition proceeding, since in a cancellation proceeding there is a presumption of validity attaching to the trademark registration. Id. at 8. The court in W.D. Byron & Sons, Inc. v. Stein Bros. Mfg. Co., 377

F. 2d 1001, (CCPA 1967) recognized this greater burden placed on a petitioner in a cancellation proceeding, noting that "in a cancellation proceeding, as distinguished from an opposition or an ex parte proceeding, where long established and valuable rights may be involved, cancellation must be granted with due caution and only after a most careful consideration of all the facts and circumstances."

The party seeking cancellation has the burden to establish a prima facie case that the registration is invalid. By statute, there is a presumption of validity to a trademark registration. 15 U.S.C. §1057 (b).

> "Due to this presumption of validity, the burden of persuasion in a cancellation proceeding rests on the party seeking to cancel the registration.. Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc., 892 F.2d 1021, 1023 (Fed. Cir. 1989). A party seeking to cancel a registration must overcome the registration's presumption of validity by a preponderance of the evidence. See, e.g., W.Fla. Seafood v. Jet Rests, 31 F.3d 1122, 1125 (Fed. Cir. 1994)".
> The Cold War Museum, Inc. v. Cold War Air Museum, Inc., 2009-1172 (Fed. Cir. 2009).

**C. There is No Likelihood of Confusion**

Petitioner claims "likelihood of confusion" and cites a long list of cases on the criteria for determining "likelihood of confusion". The names "Kuz" and "Kuz" are clearly identical. That is not the issue in this case.

Likelihood of confusion does not exist in a vacuum. One must ask this basic question: what might Respondents' mark be confused with? Petitioner apparently claims that the Respondents' mark "Kuz" would be confused with the mark "Kuz" that Petitioner has registered in the Dominican Republic. This is an ingenious argument, since the Respondents alone developed the name recognition for Kuz in the United States. People in the United States would not have any confusion based on the mark "Kuz" that

was used in a foreign country, and had no name recognition in this country. As previously detailed, even marks that are "famous" do not get special treatment in the United States, under the Lanham Act. Clearly, "Kuz" is not a famous mark, or even one that was known to a significant group of people.

Respondents have worked conscientiously and consistently over many years to promote the mark Kuz, and to gain a positive reputation for the mark in the United States. Respondents in no way capitalized on the reputation of "Kuz" in the Dominican Republic, since the mark had no reputation when the mark was registered here. Furthermore, even if "Kuz" had a reputation in the Dominican Republic that is totally irrelevant to the trademark registration of the mark in the United States. See e.g., Person's v. Christman, 900 F. 2d 1565 (1990); ITC Ltd. v. Punchgini, 482 F. 3d 135 (2007); Bayer Consumer Care v. Belmora, Cancellation 92047741 (TTAB 2009).

"The use of an unregistered mark in foreign trade does not in any way assure its owner that mark will merit Lanham Act protection; it only makes such protection possible. For an unregistered mark that is used in foreign trade to merit Lanham Act protection, that mark must be distinctive among United States consumers". International Bancorp, LLC v. Societe des Bains de Mer et du Cercle des Estranger a Monaco, 329 F.3d 359, 370, 66 U.S.P.Q. 2d 1705 (4th Cir. 2003).

McCarthy, in his treatise on trademark law analyzed the International Bancorp. case (id.) (referred to widely as the Monte Carlo case). 4 McCarthy on Trademarks and Unfair Competition, § 29.4 (2009). McCarthy stated that "the Monte Carlo Casino court should have looked to the 43(a)(1) requirement that there be a likelihood of confusion caused by the junior user's actions. That cannot happen unless the senior user's mark is

known to U.S. potential buyers of defendant's services. If there is no reputation in the U.S., U.S. customers have no knowledge of the mark and use by another firm could not cause any likelihood of confusion".4 McCarthy on Trademarks and Unfair Competition, § 29.4.

**D. The Respondents Did Not Commit Fraud in Registering the Mark "Kuz" in the United States**

Petitioner raises an allegation of fraud in his brief. This issue had never previously been raised by Petitioner, and is clearly without any merit. The TTAB should refuse to consider this untimely raised allegation. We point out, however, that the filing of the trademark application for "KUZ" by respondents was done in good faith. The respondents did not make any false, material representations with the intent to deceive the PTO. The Petitioner's assertion that Respondent has admitted to using the Petitioner's product for its specimen of use (page 21, Respondent's Brief) is baffling. Respondent Susana de la Cruz admitted to using a specimen from an Adovi Cosmetica Capilar, S.A. product. Petitioner has conceded that Adovi Cosmetica Capilar, S.A. was shipping goods to his sister Susana in 2003 and 2004.

Fraud is a serious allegation that should not be raised without clear evidence. The United States Court of Appeals for the Federal Circuit recently spoke out on the issue of fraud in trademark cases. In Re Bose Corporation, 2008-1448 (Fed. Cir. 2009). The Court cited Metro Traffic Control, Inc. v. Shadow Network Inc., 104 F.3d 336 (Fed. Cir. 1997) for the proposition that fraud can only be found where there is a "willful intent to deceive". In Re Bose, 2008-1448 (Fed. Cir. 2008-1448 (Fed. Cir. 2009). "Unless the challenger can point to evidence to support an inference of deceptive intent, it has failed

to satisfy the clear and convincing evidence standard required to establish a fraud claim". Id.

**E. Invention of Mark Does Not Determine Trademark Rights in the United States**

Petitioner, in his trial brief, contends that Petitioner Juan de la Cruz Gonzalez, came up with the name Kuz and the butterfly logo, and that he is therefore entitled to the trademark rights for these marks in the United States. Respondents do not concede Petitioner's assertion in this regard. However, whether or not Petitioner came up with the name or the logo is irrelevant in determining trademark rights in the United States. As McCarthy states in his treatise: "Unlike patent law, rights in trademarks are not gained through discovery or invention of the mark, but only through actual usage. Trademark priority is not automatically granted to the person who was first to conceive of the idea of using a given symbol as a mark". McCarthy on Trademarks and Unfair Competition § 16.11 (9/2007).

**F. Petitioner Has Not Established Priority of Use in the United States**

Petitioner has submitted six invoices in support of his priority of use claim. All six of these invoices were issued by Adovi Cosmetica Capilar, S.A., not by petitioner Juan Antonio de la Cruz Gonzalez. Petitioner's use of these invoices as evidence of his priority of use is misplaced. We note, however, that three of these invoices were for goods shipped directly to Respondents. One of the other invoices was to Primary Ones, a customer of Respondent Susana de la Cruz. Respondent Susana de la Cruz has testified that she "told Adovi Cosmetica Capilar to send that merchandise to Alex [contact at Primary Ones]". (Respondent's Deposition of Susana de la Cruz at 22:23—23-1).

**G. Corporation is Entity Distinct From Individual**

This cancellation action has been brought by an individual (Juan Antonio de la Cruz Gonzalez), not a corporation. As we have previously established, Petitioner has not shown when and how he acquired a majority interest in Adovi Cosmetica Capilar, S.A. (Respondents dispute Petitioner's assertion that Juan de la Cruz has a majority interest in the corporation).

Assuming *arguendo* that Petitioner did acquire a controlling interest in the corporation, this would not affect this case. A corporation is an entity distinct from its shareholders.

## VI. CONCLUSION

The Petitioner has failed to meet his burden of proof, which requires him to establish a prima facie case that the Kuz registration (2,881,888) is invalid. The Petitioner, who registered the trademark "Kuz" in the Dominican Republic does not gain automatic rights to this mark in the United States. The evidence shows clearly that the de la Cruz family in the Dominican Republic established an enterprise (Adovi Cosmetica Capilar, S.A) that manufactured Kuz hair care products. Petitioner is not Adovi Cosmetica Capilar, S.A. and his attempt to cast himself as Adovi Cosmetica Capilar, S.A. must be firmly rejected.

The Respondents properly registered the trademark "Kuz" in the United States, and this registration (2,881,888) should not be cancelled.

Accordingly the cancellation proceeding should be dismissed with prejudice.

Dated this 7th day of April, 2010

/SLS/
Sherry L. Singer
Attorney at Law
1430 Broadway
Suite 1101
New York, NY 10018
(212) 643-0748
slsesq@hotmail.com
Attorney for Respondents

CERTIFICATE OF FILING

I hereby certify that this Respondents' Trial Brief is being filed with the Trademark Trial and Appeal Board using the ESTTA filing system of the United States Patent and Trademark Office on the below date:

Date: April 8, 2010

/SLS/
Sherry L. Singer

CERTIFICATE OF SERVICE

I hereby certify that this Respondents' Trial Brief is being duly served upon the Petitioner by electronic mail and by a copy thereof by mailing via the U.S. Postal Service in a sealed envelope as first class mail with postage thereupon fully prepaid and addressed to: Jeffrey Furr, Esq., 2622 Debolt Road, Utica, Ohio 43080.

/SLS/
Sherry L. Singer