

ESTTA Tracking number: **ESTTA427729**

Filing date: **08/30/2011**

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

**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Jose Guzman		
Entity	Individual	Citizenship	UNITED STATES
Address	744 West 8th Street Santa Rosa, CA 95401 UNITED STATES		

Attorney information	Ronald P. Wargo Friedemann Goldberg LLP 420 Aviation Blvd Suite 201 Santa Rosa, CA 95403 UNITED STATES rwargo@frigolaw.com Phone:707-543-4900		
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**Registration Subject to Cancellation**

Registration No	3979438	Registration date	06/14/2011
Registrants	Cisneros Amaya, Leonel Suite B 1732 Rumrill Blvd. San Pablo, CA 94806 UNITED STATES  Valdez Sanchez, Juan Suite B 1732 Rumrill Blvd. San Pablo, CA 94806 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 041. First Use: 2010/05/22 First Use In Commerce: 2010/05/22 All goods and services in the class are cancelled, namely: Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band
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**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	85323094	Application Date	05/17/2011
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	LA SEÑAL DE TIERRA CALIENTE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/03/31 First Use In Commerce: 2010/04/21 Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band		

Attachments	85323094#TMSN.jpeg ( 1 page )( bytes ) PETITION001.PDF ( 10 pages )(129361 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/rpw/
Name	Ronald P. Wargo
Date	08/30/2011

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

Jose Guzman

Petitioner,

v.

Juan Valdez Sanchez and  
Leonel Cisneros Amaya,

Registrant.

Cancellation No.:

PETITION FOR CANCELLATION

Registration No.: 3,979,438

Registration Date: June 14, 2011

Petitioner Jose Guzman (“Petitioner”) believes that he will be damaged by the continued registration by Juan Valdez Sanchez and Leonel Cisneros Amaya (“Registrants”) of the mark LA SEÑAL DE TIERRA CALIENTE for use in connection with those goods and services listed in Class 41 (“Registrants’ Goods and Services”) in Registration No. 3,979,438 (the “Registration”) and hereby petition to fully cancel the Registration. As grounds for its petition, Petitioner alleges as follows:

**I. PARTIES**

1. Petitioner Jose Guzman is a resident of California and a citizen of the United States.
2. Petitioner is informed and believes, and based thereon alleges, that Registrant Juan Valdez Sanchez is a citizen of Mexico and a resident of California.
3. Petitioner is informed and believes, and based thereon alleges, that Registrant Leonel Cisneros Amaya is a citizen of Mexico and a resident of California.

**II. PETITIONER’S MARK**

4. Petitioner provides services using, and has applied to register, the mark LA SEÑAL DE TIERRA CALIENTE (“Petitioner’s Mark”), for entertainment services in the nature of live musical performances, live music concerts, and live performances by a musical band in Class 41, all as set forth in Petitioner’s U.S. Trademark Application No. 85/323,094 (“Petitioner’s Application”) filed with Joel Jimenez Ceron and Rosindo Guzman. TARR Records for Petitioner’s Application are attached.

5. Petitioner is informed and believes, and based thereon alleges, that Registrants' Mark will be cited as a bar to registration of Petitioner's Mark.

### **III. REGISTRANTS' MARK**

6. The Registration resulted from an application filed on May 24, 2010 pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b) ("Registrants' Application").
7. On October 26, 2010, the application that matured into the Registration was published for opposition.
8. On December 21, 2010, the United States Patent and Trademark Office issued a Notice of Allowance in connection with Registrants' Application.
9. On February 10, 2011, Registrants filed a Statement of Use claiming they first used Registrants' Mark on May 22, 2010, and first used Registrants' Mark in commerce on May 22, 2010.

### **IV. CLAIMS**

#### **A. LIKELIHOOD OF CONFUSION**

10. Petitioner, together with his co-applicants, has been using the mark LA SEÑAL DE TIERRA CALIENTE since beginning a band in California with the same name in March 2005.
11. Petitioner, together with his co-applicants, has used the mark LA SEÑAL DE TIERRA CALIENTE outside California since at least April 21, 2010, and possibly before that date.
12. Registrants' Mark LA SEÑAL DE TIERRA CALIENTE is identical to Petitioner's Mark.
13. Registrants' goods and services in Class 41 are identical to Petitioner's goods and services. Indeed, both Petitioner and Registrants use the identical Mark with a musical band.
14. Petitioner and Registrants both reside in the same state, California.
15. Petitioner has continuously used the Mark in California since March 31, 2005, which is prior to the date Registrants claim that they first used the identical Mark in California.

16. Petitioner has used the Mark outside California since April 21, 2010, which is prior to the date that Registrants claim that they first used the identical Mark outside California.
17. Petitioner is likely to be damaged by continued registration of Registrant's Mark because Petitioner is unable to register Petitioner's Mark for Petitioner's Goods and Services and is thus denied the benefits afforded by registration of Petitioner's Mark.

**B. FRAUD**

18. When filing Registrants' Application, Registrants verified that "to the best of [Registrants'] knowledge and belief, no other person has the right to use [Registrant's Mark] in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.
19. Petitioner is informed and believes, and based thereon alleges, that Registrants knew about Petitioner's band prior to May 24, 2010, the date of Registrants' Application, because Registrants attended concerts and shows by Petitioner's band using Petitioner's Mark prior to May 24, 2010.
20. Registrants knew that Petitioner had superior rights to the Mark and believed that a likelihood of confusion would result.
21. Because of the identical Marks and the identical services connected to the Marks, Registrants had no reasonable basis for believing anything other than a likelihood of confusion would result.
22. Registrants, by failing to disclose these facts to the Patent and Trademark Office, intended to procure a registration to which Registrants were not entitled.

**V. PETITIONER HAS STANDING TO SEEK THE REMEDIES REQUESTED**

23. Petitioner is likely to be damaged by continued registration of Registrant's Mark because Petitioner is unable to register Petitioner's Mark for Petitioner's Goods and Services and is thus denied the benefits afforded by registration of Petitioner's Mark.

**V. REQUEST FOR RELIEF**

WHEREFORE, Petitioner requests that Registration No. 3,979,438 be cancelled.

DATED: August 30, 2011

Respectfully submitted,

**FRIEDEMANN GOLDBERG LLP**

By:   
\_\_\_\_\_  
Ronald P. Wargo II  
Attorneys for Petitioner  
420 Aviation Blvd, Suite 201  
Santa Rosa, CA 95403  
(707) 543-4900

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail on August 30, 2011, in an envelope addressed to Leonel Cisneros Amaya, 1732 Rumrill Blvd Suite B, San Pablo, CA 94806 and Juan Valdez Sanchez, 1732 Rumrill Blvd Suite B, San Pablo, CA 94806.

Signature: 

Printed Name: SHAROL DUEÑAS

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-08-30 14:07:35 ET**

**Serial Number:** 85323094 [Assignment Information](#) [Trademark Document Retrieval](#)

**Registration Number:** (NOT AVAILABLE)

**Mark**

LA SEÑAL DE TIERRA CALIENTE

**(words only):** LA SEÑAL DE TIERRA CALIENTE

**Standard Character claim:** Yes

**Current Status:** New application will be assigned to an examining attorney approximately 3 months after filing date.

**Date of Status:** 2011-05-20

**Filing Date:** 2011-05-17

**Filed as TEAS Plus Application:** Yes

**Currently TEAS Plus Application:** Yes

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** (NOT AVAILABLE)

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 042 -New Application Processing

**Date In Location:** 2011-05-20

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Guzman, Jose

**Address:**

Guzman, Jose  
744 West 8th Street  
Santa Rosa, CA 95401  
United States

**Legal Entity Type:** Individual**Country of Citizenship:** United States

2. Guzman, Rosindo

**Address:**

Guzman, Rosindo  
744 West 8th Street  
Santa Rosa, CA 95401  
United States

**Legal Entity Type:** Individual**Country of Citizenship:** United States

3. Ceron, Joel Jimenez

**Address:**

Ceron, Joel Jimenez  
744 West 8th St.  
Santa Rosa, CA 95401  
United States

**Legal Entity Type:** Individual**Country of Citizenship:** United States

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**GOODS AND/OR SERVICES**

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**International Class:** 041**Class Status:** Active

Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band

**Basis:** 1(a)**First Use Date:** 2005-03-31**First Use in Commerce Date:** 2010-04-21

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**ADDITIONAL INFORMATION**

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**Translation:** The English translation of LA SEÑAL DE TIERRA CALIENTE in the mark is The Signal from Hot Land.

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-05-20 - New Application Office Supplied Data Entered In Tram

2011-05-20 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Ronald P. Wargo

**Correspondent**

RONALD P. WARGO

FRIEDEMANN GOLDBERG LLP

420 AVIATION BLVD STE 201

SANTA ROSA, CA 95403-1039

Phone Number: 707-543-4900

Fax Number: 707-543-4910

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**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-08-30 14:09:04 ET**

**Serial Number:** 85046380 [Assignment Information](#) [Trademark Document Retrieval](#)

**Registration Number:** 3979438

**Mark**

**La Señal de Tierra Caliente**

**(words only):** LA SEÑAL DE TIERRA CALIENTE

**Standard Character claim:** Yes

**Current Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.

**Date of Status:** 2011-06-14

**Filing Date:** 2010-05-24

**Filed as TEAS Plus Application:** Yes

**Currently TEAS Plus Application:** Yes

**Transformed into a National Application:** No

**Registration Date:** 2011-06-14

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 109

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2011-05-06

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Cisneros Amaya, Leonel

**Address:**

Cisneros Amaya, Leonel  
Suite B 1732 Rumrill Blvd.  
San Pablo, CA 94806  
United States

**Legal Entity Type:** Individual**Country of Citizenship:** Mexico**Phone Number:** 510 932 8147

2. Valdez Sanchez, Juan

**Address:**

Valdez Sanchez, Juan  
Suite B 1732 Rumrill Blvd.  
San Pablo, CA 94806  
United States

**Legal Entity Type:** Individual**Country of Citizenship:** Mexico**Phone Number:** 510 932 8147

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**GOODS AND/OR SERVICES**

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**International Class:** 041**Class Status:** Active

Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band

**Basis:** 1(a)**First Use Date:** 2010-05-22**First Use in Commerce Date:** 2010-05-22

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**ADDITIONAL INFORMATION**

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**Translation:** The English translation of "LA SEÑAL DE TIERRA CALIENTE" in the mark is THE SIGNAL FROM HOT LAND.

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-06-14 - Registered - Principal Register

2011-05-07 - Notice Of Acceptance Of Statement Of Use E-Mailed

2011-05-06 - Law Office Registration Review Completed

2011-04-25 - Allowed for Registration - Principal Register (SOU accepted)

2011-04-25 - Assigned To Examiner

2011-03-02 - Statement Of Use Processing Complete

2011-02-10 - Use Amendment Filed

2011-03-02 - Case Assigned To Intent To Use Paralegal

2011-02-10 - TEAS Statement of Use Received

2010-12-21 - NOA E-Mailed - SOU Required From Applicant

2010-10-26 - Notice Of Publication E-Mailed

2010-10-26 - Published for opposition

2010-09-20 - Law Office Publication Review Completed

2010-09-20 - Assigned To LIE

2010-09-11 - Approved For Pub - Principal Register

2010-09-07 - Assigned To Examiner

2010-05-27 - New Application Office Supplied Data Entered In Tram

2010-05-27 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Correspondent**

CISNEROS AMAYA, LEONEL  
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Phone Number: 510 932 8147

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