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

Proceeding	92054452
Party	Defendant Leonel Cisneros Amaya and Juan Valdez Sanchez
Correspondence Address	LEONEL CISNEROS AMAYA STE B, 1732 RUMRILL BLVD SAN PABLO, CA 94806 UNITED STATES ccamara@anki.com.mx
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Suma N Ramaswamy Canzius
Filer's e-mail	trademark@matlocklawgroup.com
Signature	/suma n ramaswamy canzius/
Date	10/11/2011
Attachments	valdez motion.pdf (10 pages)(230833 bytes)

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5

6 Attorneys for Registrant:
Juan Valdez Sanchez
7

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

11 **JOSE GUZMAN,**
12
13 Petitioner,

14 v.

15 **JUAN VALDEZ SANCHEZ and**
16 **LEONEL CISNEROS AMAYA**

17
18 Registrants
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CANCELLATION NO. 92054452
REGISTRATION No. 3979438

REGISTRANT'S MOTION TO AMEND
REGISTRATION NO. 3979438:
LA SENALDE TIERRA CALIENTE AND
MEMORANDUM IN SUPPORT
THEREOF; DECLARATION OF
REGISTRANT JUAN VALDEZ SANCHEZ
AND DECLARATION OF HECTOR
ARUMBULA

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23 **MOTION TO AMEND REGISTRATION**

24 This Motion is based on the Memorandum herein, the pleadings and papers on file in this
25 action, such matters of which the Board may take judicial notice, and argument and evidence to
26 be presented.
27

1 Dated: October 10, 2011

Matlock Law Group, PC

2
3 By: /s/Suma N Ramaswamy-Canzius

4 Suma N. Ramaswamy-Canzius
5 Attorneys for Registrant
6 Juan Valdez Sanchez
7

8 **MEMORANDUM IN SUPPORT OF REGISTRANT'S**
9 **MOTION TO AMEND REGISTRATION NO. 3979438**

10 **INTRODUCTION**

11
12 Petitioner Jose Guzman (hereinafter "Petitioner") filed a Petition of Cancellation against
13 Registrants Juan Valdez Guzman and Leonel Cisneros Amaya to cancel Registrants' registered
14 service mark "LA SENAL DE TIERRA CALIENTE". Registrant Juan Valdez Sanchez
15 (hereinafter "Registrant") through his undersigned attorney hereby files the Answer, Motion to
16 Amend Registration and this memorandum in support of his Motion to Amend registration No.
17 3979438. The Motion to Amend Registration specifically requests the Board to allow Registrant to
18 amend the First Date of Use and the First Date of Use in Commerce.
19

20 **I. STATEMENT OF FACTS**

21 Registrants have been using the mark LA SEÑAL DE TIERRA CALIENTE as the name of
22 their musical band at least as early as 2004. A Declaration by Registrant Juan Valdez Sanchez
23 is attached herewith in support of this assertion. Further support is provided by a declaration of
24 Hector Arumbula who signed a contract engaging Registrant's band to perform at a dance in
25 November of 2004. The contract is also attached for reference.

26 Registrant Juan Valdez Sanchez and Co-Registrant Leonel Cisneros Amaya filed a
27 Pro Se trademark application for the service mark "LA SEÑAL DE TIERRA CALIENTE" on

1 May 24, 2010, pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §105(b). The mark
2 reflects the name of their musical band with the same name. The application was published for
3 opposition on October 26, 2010. On December 21, 2011, a Notice of Allowance was issued for
4 this application. On February 10, 2011, Co-Registrant signed and submitted a Statement of
5 Use, without assistance of counsel, inadvertently claiming the dates of First Use and the First
6 Use in Commerce as being May 22, 2010.

7 On May 17, 2011 Petitioner filed U.S. Trademark Application No. 85/323,094 for the
8 identical service mark, alleging First Use Date of March 31, 2005 and First Use in Commerce
9 Date of April 21, 2010 for their musical band. On August 30, 2011, Petitioner filed a Petition
10 of Cancellation to the Board, alleging Priority of use of the service mark and Likelihood of
11 Confusion, requesting the Cancellation of Registrant's mark.

12 13 II. LEGAL ARGUMENT

14 15 A. PRESUMPTION OF VALIDITY ATTACHES TO A REGISTERED MARK, 16 AND THE PARTY SEEKING CANCELLATION MUST REBUT THIS 17 PRESUMPTION BY A PREPONDERANCE OF THE EVIDENCE AND 18 REGISTRANT HAS PRIORITY BASED ON DATES OF FIRST USE AND 19 FIRST USE IN COMMERCE.

18 In a Cancellation proceeding, "a presumption of validity attaches to a service mark
19 registration, and the party seeking cancellation must rebut this presumption by a preponderance
20 of the evidence." West Florida Seafood Inc. v. Jet Restaurants Inc., 31F.3d 1122, 31 USPQ
21 1660, 1662 (Fed. Cir.1994).

23 Registrant Juan Valdez Sanchez has a service mark which was registered on June 14,
24 2011, which carries a presumption of validity. However, the determination must be made of
25 which party has priority. In a cancellation proceeding, it is well settled that priority is not
26 necessarily established because a party owns a registered mark. Brewski Beer Co. v. Brewski
27

1 Brothers, Inc., 47 USPQ2d 1281, 1284 (TTAB 1998). The petitioner as a plaintiff in a
2 cancellation proceeding must establish prior rights in the same mark in order to prevail, by a
3 preponderance of the evidence.

4 In the Petition for Cancellation and in his trademark application, Petitioner alleges that
5 his mark has been used outside California since April 20, 2010 and in California since March
6 31, 2005. In addition to the presumption of validity of Registrant's mark, Registrant can
7 demonstrate priority dating back to at least as early as 2004. Petitioner has not shown priority
8 over Registrant's use date by a preponderance of the evidence.
9

10 III. CONCLUSION

11 In conclusion, for the foregoing reasons, Registrant Juan Valdez Sanchez respectfully
12 requests that this Court grant this Motion to Amend his registration to accurately reflect the
13 First Date of Use and the First Date of Use in Commerce.
14

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17 DATED: October 10, 2011

MATLOCK LAW GROUP, P.C.

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21 By: /s/ Suma N Ramaswamy-Canzius
SUMA N. RAMASWAMY-CANZIUS
22 Attorneys for Registrant Juan Valdez Sanchez
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1 RE: Jose Guzman v. Juan Valdez Sanchez and Leonel Cisneros Amaya
2 Cancellation No. 92054452

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5 **PROOF OF SERVICE**

6 I am a registered process server in the County of Contra Costa, California, and am over the age
7 of eighteen (18) years and not a party to the within cause; On the date set out below, I
8 **PERSONALLY SERVED** the attached **MOTION AND MEMORANDUM IN SUPPORT**
9 **OF MOTION TO AMEND REGISTRATION NO. 3979438** on the party listed below in
said cause, by placing a true copy thereof enclosed in a sealed envelope to the business address
of Ronald P. Wargo II as listed below:

10 **Roald P. Wargo II**
11 **Attorney for Petitioner**
12 **420 Aviation Blvd., Suite 201**
Santa Rosa, CA 95043

13 I certify and declare under the penalty of perjury under the laws of the State of California that
14 the foregoing is true and correct and that this declaration was executed on October 11, 2011
15 in Santa Rosa, California.

16
17 _____
David W. Daniels
18 Registered Process Server
19 Contra Costa County Reg # 789
20 PO Box 1611
Antioch, CA 94531
21 925-565-3690
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1 Matlock Law Group, A Professional Law Corporation
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8 Attorneys for Registrant Juan Valdez Sanchez

9
10 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
11 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

12 **JOSE GUZMAN,**

13 Petitioner,

14 v.

15 **JUAN VALDEZ SANCHEZ and**
16 **LEONEL CISNEROS AMAYA**

17 Registrants.

Cancellation No. 92054452

**DECLARATION AND AFFADAVIT OF
JUAN VALDEZ SANCHEZ IN SUPPORT
OF REGISTRANT'S ANSWER TO
PETITIONER'S PETITION FOR
CANCELLATION**

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22 I, JUAN VALDEZ SANCHEZ, declare:

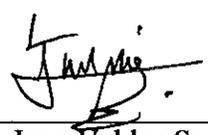
23 1. I, JUAN VALDEZ SANCHEZ, am the registered co-owner of Service Mark
24 "LA SENAL DE TIERRA CALIENTE" (Reg. 3979438) for: Entertainment Services in the
25 nature of live music performances; Entertainment, namely, live music concerts; Entertainment,
26 namely, live performances by a musical band, in Class 41 (U.S.CLS. 100,101 and 107)

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28 Declaration and Affidavit of Juan Valdez Sanchez
In support of registrant's reply to petitioner's
Petition for cancellation 92054452

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2. I hereby attest that I have used the service mark "LA SENAL DE TIERRA CALIENTE" continuously at least as early as November 6, 2004.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, if called upon to testify, I could or would competently testify thereto, and that this declaration was executed this 23rd day of September, 2011 at Walnut Creek, California.

By: 
_____ Juan Valdez Sanchez

**Declaration and Affidavit of Juan Valdez Sanchez
In support of registrant's reply to petitioner's
Petition for cancellation 92054452**

1 Matlock Law Group, A Professional Law Corporation
2 Anne-Leith W. Matlock (SBN 244351)
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8 Attorneys for Registrant Juan Valdez Sanchez

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

12 **JOSE GUZMAN,**

13 Petitioner,

14 v.

15 **JUAN VALDEZ SANCHEZ and**
16 **LEONEL CISNEROS AMAYA**

17 Registrants.

Cancellation No. 92054452

**DECLARATION AND AFFADAVIT OF
HECTOR ARAMBULA IN SUPPORT OF
REGISTRANT'S ANSWER TO
PETITIONER'S PETITION FOR
CANCELLATION**

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22 I, HECTOR ARAMBULA, declare:

23 1. I, HECTOR ARAMBULA, was employed as an authorized booking agent for
24 Monterrey Artist Inc. (dba Monterrey Productions) headquartered at 7254 Wible Road in
25 Bakersfield, California on October 26, 2004.

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28 Declaration and Affidavit of Juan Valdez Sanchez
In support of registrant's reply to petitioner's
Petition for cancellation 92054452

1 In my official capacity as booking agent, I signed the "Artist Engagement Contract" on
2 October 26, 2004 for the band "LA SENAL DE TIERRA CALIENTE" to perform at La Fiesta
3 Ballroom, 212 E. 18th Street in Bakersfield, California 93307 on November 6, 2004. A copy
4 of this contract is hereby attached as Exhibit I.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct, if called upon to testify, I could or would competently testify
7 thereto, and that this declaration was executed this 26 day of September 2011
8 at Bakersfield, CA

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11 By:  _____
12 Hector Arambula

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28 Declaration and Affidavit of Juan Valdez Sanchez
In support of registrant's reply to petitioner's
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ARTIST ENGAGEMENT CONTRACT

AGREEMENT made this 26th Day of October 2004 BETWEEN
La Senal de Tierra Caliente Here in after referred to as "ARTIST" and
Hector Arambula Here in after to as "PURCHASER"

IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

The "PURCHASER" hereby engages the "ARTIST" hereby agrees to perform the Engagement "Addit-terms and conditions".

1. **PLACE AND ADDRESS OF ENGAGEMENT:** La Fiesta Ballroom
212 E 18th St. Bakersfield CA 93307
2. **DATE(s) OF ENGAGEMENT:** November 6 2004
3. **HOURS OF ENGAGEMENT:** 2 sets of 45 minutes each
4. **TYPE OF ENGAGEMENT:** Dance
5. **FULL PRICE AGREED UPON:** \$2000.00 (Two Thousand Dollars)
6. **THE "PURCHASER" WILL MAKE PAYMENT AS FOLLOWS** The day of the event
7. **SPECIAL PROVISIONS:** Purchaser will provide sound and lights.
8. **BILLING AGREEMENT:**

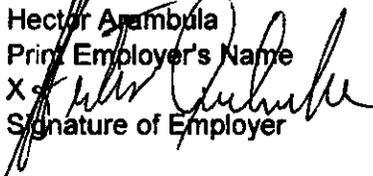
ADDITIONAL TERMS AND CONDITIONS

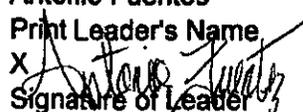
The agreement of the musicians to perform is further subject to proven inability due to sickness, accidents, or accidents die to means of transportation, riots, strikes, epidemics, acts of God or any other legitimate conditions beyond the control of the musicians.

MONTERREY PRODUCTIONS acts soley as an agent for Artist(s) herein and it is understood by purchaser that **MONTERREY PRODUCTIONS** may in no way be held responsible for non-performance, lateness or any action by Artist(s) which interferes with performances of this agreement **NOTE:** Any cancellation by the purchaser will result in forfeit of deposit.

In the event the purchaser fails, neglects or refuses to pay the wage or other payments agreed upon herein and suit is commenced to recover the aforesaid or any part thereof, purchaser shall be responsible for the Attorney's fee, court cost and expenses incurred in recovery of the sums due.

If the show gets cancel because of rain in an out door event purchaser must pay 100% of the contract plus all expenses in cure.

Hector Arambula
Print Employer's Name
X 
Signature of Employer

Antonio Fuentes
Print Leader's Name
X 
Signature of Leader