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

Proceeding	92055569
Party	Plaintiff Ecuabeverage Corporation
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of: Trademark Registration No. 3,949,746

For the Trademark: "TROPICAL (AND DESIGN)" (International Class 32)

Registered: April 26, 2011

ECUABEVERAGE CORPORATION,	:	
	:	Cancellation No. 92055569
Petitioner,	:	
	:	
v.	:	
	:	
BALORU S.A.,	:	
	:	
Respondent.	:	

PETITIONER ECUABEVERAGE CORPORATION'S
REPLY MEMORANDUM IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT, PURSUANT TO FED.R.CIV.P. 56

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Certificate of Service, dated August 7, 2012

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PETITIONER ECUABEVERAGE CORPORATION'S
REPLY MEMORANDUM IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT, PURSUANT TO FED.R.CIV.P. 56

I. Introduction

Petitioner Ecuabeverage Corporation (“Ecuabeverage”) hereby respectfully files its *Reply Memorandum*, in response to the *Opposition* served by Respondent Baloru S.A. (“Baloru”) on July 23, 2012 (via First Class Mail) in support of Ecuabeverage’s *Motion for Summary Judgment* seeking to either: (a) cancel Baloru’s Trademark Registration No. 4,120,917 for the mark “TROPICAL (AND DESIGN)” for failure to include a disclaimer of the term “TROPICAL” on the ground that Baloru can claim no exclusivity to this term for the marketing of beverage goods in the United States; or (b) require Baloru to enter a disclaimer of the term “TROPICAL,” by a date certain, as a condition for maintaining its trademark registration. Baloru’s *Opposition* either concedes the material facts necessary for the entry of judgment in Ecuabeverage’s favor or simply fails to challenge facts that should be viewed as material for permitting the Board to correctly enter judgment in favor of Ecuabeverage as a matter of law.

II. Ecuabeverage is Agreeable to the Entry of a Disclaimer of the Term “TROPICAL” in its Own Trademark Registration, No. 2,892,511

Baloru points out (*Opp.* at 3) that Ecuabeverage, owner of U.S. Trademark Registration No. 2,892,511 which includes the term “TROPICAL” for beverage goods, has not disclaimed “TROPICAL” in its own registration. Ecuabeverage hereby agrees to amend its own trademark registration for the purpose of entering a disclaimer of the term “TROPICAL” in the event that the T.T.A.B. grants Ecuabeverage’s summary judgment motion and either cancels Baloru’s trademark registration, No. 4,120,917, or requires

Baloru to amend its registration to enter a disclaimer of “TROPICAL” in order to avoid cancellation.

III. Ecuabeverage’s Motion for Summary Judgment is Procedurally Proper at This Time, As Both the T.T.A.B. and Baloru Have So Indicated

Baloru confusingly argues (*Opp.* at 2, 5-8) that Ecuabeverage’s *Motion for Summary Judgment* is procedurally premature, even though Baloru acknowledges that Ecuabeverage served its *Initial Disclosures* on June 5, 2012 (*Opp.* at 2), which is the sole prerequisite set forth in 37 C.F.R. §1.127(e)(1). To the extent that Baloru seeks to argue passed this salient point in the Rules, Baloru’s contention would appear to be that “a party may not make its initial disclosures until after discovery has opened and the parties have conducted their Federal Rule 26(f) meeting.” (*Opp.* at 4) There is simply no prohibition or logical basis in any procedural rule that bars a party from providing an opposing party a form of discovery prior to when required by either order or rule and, not surprisingly, the Board entered an *Order* on June 29, 2012, acknowledging Ecuabeverage’s service of its *Initial Disclosures* upon Baloru and suspending proceedings pending resolution of Ecuabeverage’s outstanding summary judgment motion.

Baloru’s procedural argument challenging the timeliness of Ecuabeverage’s summary judgment motion is also disingenuous, inasmuch as Baloru’s counsel, Thomas M. Wilentz, conceded in an e-mail on June 18, 2012, in connection with the instant cancellation proceeding that:

“If you are going to file a motion for summary judgment tomorrow or Wednesday then I agree that we need not hold a discovery conference at this time.”

See, Reply Exhibit 1: E-Mail Exchange Between Counsel on June 18, 2012.

Ecuabeverage's summary judgment motion should therefore be seen as procedurally proper at this time, as even acknowledged by opposing counsel.

IV. The Affidavit of Eric Miller Does Not Constitute "Testimony Taken" under 37 C.F.R. §1.122(f), Was Freely Offered Into Evidence in Federal Court by a Party in Privity with Baloru and, As Evidence, Should Be Treated No Differently Than PTO-Recorded Assignments in Evidence, To Which Baloru Has Not Objected

Baloru insists that the *Affidavit of Eric Miller*, presented as "Exhibit 5" in support of Ecuabeverage's *Motion for Summary Judgment*, filed June 20, 2012, cannot properly be considered by the Board, because Ecuabeverage has not filed a separate motion for its entry under 37 C.F.R. §1.122(f) (*Opp.* at 8), which requires that the Board grant, on motion, a request to introduce into evidence "testimony taken" in another proceeding, whether in a judicial forum or an administrative one. The *Affidavit of Eric Miller* does not literally amount to testimony "taken" by Ecuabeverage or any other party. Rather, the *Affidavit of Eric Miller*, clearly prepared by counsel, was freely offered by Eric Miller, president of Brooklyn Bottling of Milton, New York, Inc. ("Brooklyn Bottling"), and electronically filed by Brooklyn Bottling's attorney. The sworn statement of Eric Miller was not obtained, or "taken," by Ecuabeverage (or any party) upon examination or cross-examination in any court proceeding or deposition.

Eric Miller's *Affidavit* was filed in federal court by Brooklyn Bottling in a manner entirely analogous to that of Brooklyn Bottling's assignment of U.S. Trademark Reg. No. 1,474,395, signed by Eric Miller and annexed as "*Exhibit 7*" to Ecuabeverage's summary judgment motion. The *Affidavit* filed in federal court is nothing more than a public document regarding the property rights and interest of the trademark of U.S. Trademark Registration No. 1,474,395 as Brooklyn Bottling, then the exclusive owner of the registered trademark, perceived those property rights; the assignment to Baloru of the

trademark of Reg. No. 1,474,395 is a further document defining those property rights. No objection by Baloru to the entry into evidence of Brooklyn Bottling's assignment to it of Trademark Reg. No. 1,474,395 has been raised – or could be raised!

Brooklyn Bottling is in privity with Baloru and, as such, the *Affidavit of Eric Miller* cannot be viewed as a “self-serving” document that was prepared by Ecuabeverage and to which Baloru had not been provided a right to challenge, via cross-examination, the statements made by Eric Miller in his *Affidavit*. The interests of Brooklyn Bottling (Eric Miller) and Baloru are aligned with one another, if not identical. Even if Baloru wished to obtain testimony from Mr. Miller regarding the statements he freely provided in his *Affidavit*, Eric Miller would be absolutely barred from providing any testimony that contradicted his prior sworn statements. *See, Block v. City of Los Angeles*, 253 F.3d 410, 419 n. 2 (9th Cir. 2001) (“A party cannot create a genuine issue of material fact to survive summary judgment by contradicting his earlier version of the facts.”); *Camfield Tires, Inc. v. Michelin Tire Corp.*, 719 F.2d 1361, 1365 (8th Cir. 1983) (“If testimony under oath, however, can be abandoned many months later by the filing of an affidavit, probably no cases would be appropriate for summary judgment.”); *Radobenko v. Automated Equip. Corp.*, 520 F.2d 540, 544 (9th Cir. 1975) (party cannot create a disputed issue of material fact by presenting testimony that contradicts previous sworn testimony); *Perma Research and Dev. Co. v. Singer Co.*, 410 F.2d 572, 578 (2d Cir. 1969) (party cannot “raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony”). Any request by Baloru to examine Mr. Miller on the sworn statements that he freely offered into the federal litigation with Ecuabeverage would be pointless.

Further, while not entirely clear from the disjointed array of factual and legal attempts to contrive a basis for denying Ecuabeverage summary judgment, any allegation by Baloru that the *Affidavit of Eric Miller* might itself constitute inadmissible hearsay is overcome by the hearsay exception of F.R.E. 803(15), entitled “Statements in Documents That Affect an Interest in Property.” See, *Silverstein v. Chase*, 260 F.3d 142, 149 (2d Cir. 2001) (“The requirements for admissibility under Rule 803(15) are that the document is authenticated and trustworthy, that it affects an interest in property, and that the dealings with the property since the document was made have been consistent with the truth of the statement.”), citing *United States v. Weinstock*, 863 F.Supp. 1529, 1534 (D. Utah 1994) (“Based on the authorities examined it is concluded that a document does not have to be a dispositive document to be admissible under Rule 803(15) if the document otherwise affects an interest in property, is authenticated, is trustworthy, and of course, the dealings with the property since the document was made have been consistent with the truth of the statement or the purport of the document.” (footnote omitted)). Eric Miller’s *Affidavit* includes along its upper-margin electronic filing documentation in federal district court; the *Affidavit* “affects an interest in property”; and no plausible objection can be raised by Baloru regarding its authenticity or trustworthiness.

Separate and apart from any conceivable hearsay objection or other evidentiary attack which might be buried in Baloru’s mass of opposition papers, Eric Miller’s *Affidavit* constitutes an “admission against interest” and its admissibility under F.R.E. 801(d)(2) “is premised upon our adversarial system rather than in reliance upon indicia of reliability or trustworthiness.” *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1374 (3d Cir. 1992).

Title 37, C.F.R. §2.122(a) provides, in relevant part, that “[t]he rules of evidence for proceedings before the Trademark Trial and Appeal Board are the Federal Rules of Evidence.” Eric Miller’s *Affidavit*, as freely offered into a federal court action, was sworn testimony not sought by Ecuabeverage (despite its extreme usefulness), but was evidently perceived for whatever reason as beneficial to Brooklyn Bottling, Baloru’s privy, when Brooklyn Bottling sought to define its rights possessed in the “TROPICAL PURO SABOR NACIONAL” registered trademark, particularly as to the protectability of the contested term “TROPICAL,” at the time Brooklyn Bottling owned this trademark and prior to its assignment to Baloru. None of this is contested and Eric Miller’s *Affidavit* is unquestionably admissible under the Federal Rules of Evidence. Whatever objection Baloru might wish to raise to the *Affidavit of Eric Miller*, Baloru cannot seek – and Eric Miller would have no right to provide – testimony that contradicted the sworn statements that Mr. Miller willingly and unconditionally offered into the federal court record.

Ecuabeverage could file a separate motion for the admissibility of the *Affidavit of Eric Miller* under 37 C.F.R. §2.122(f), however, Ecuabeverage does not perceive this rule as applying to sworn admissions against interest, as opposed to “testimony taken” by a hostile party or, for that matter, any party in another litigated proceeding. The *Affidavit of Eric Miller*, while offered in litigation and filed in federal court, could just as easily have been an unsworn statement found on Brooklyn Bottling’s website or contained in, or annexed to, an assignment document recorded in the PTO, and, as such, would clearly not fall within the parameters of 37 C.F.R. §2.122(f). The fact that Eric Miller’s *Affidavit* was freely offered under oath and filed in a federal court enhances its authentication and reliability and should not be subjected to the greater requirements of 37 C.F.R. §2.122(f)

than other documents having admissions against interest, whether sworn or unsworn, by a privy to a proceeding before the T.T.A.B., would be required to meet, merely because of the fortuitous occurrence of having been filed in a court as “sworn testimony.” Should the Board not agree with Ecuabeverage’s position under 37 C.F.R. §2.122(f), the Board is requested to treat this section of Ecuabeverage’s *Reply Memorandum* as a “motion” under Rule 2.122(f) and invite a response from Baloru to Ecuabeverage’s arguments.

V. Ecuabeverage Has “Standing” under 15 U.S.C. §1064 to Petition for Cancellation

Baloru has informally “moved” (*Opp.* at 21-22) for dismissal of the *Petition for Cancellation* for failure of Ecuabeverage to show a “‘reasonable basis’ for its belief that it would suffer some kind of damage if the mark is registered.” Baloru’s contended lack of standing by Ecuabeverage is without merit. The Federal Circuit held in *International Order of Job’s Daughter v. Lindeburg & Co.*, 727 F.2d 1087, 1091-1092, 220 USPQ 1017, 1020 (Fed. Cir. 1984), that all that §14 of the Lanham Act requires “is that the cancellation petitioner plead and prove facts showing a ‘real interest’ in the proceeding in order to establish standing.” Ecuabeverage’s cancellation petition informs of on-going litigation between Ecuabeverage and Baloru’s U.S. distributor (*Opp.* at 2-3), Brooklyn Bottling, regarding Ecuabeverage’s use of “TROPICAL” in the marketing of competing goods. Brooklyn Bottling’s attorney, Panagiota Betty Turfariello, who is listed as a “domestic representative” on at least one of Baloru’s trademark registrations (*Reply Exhibit 2*), expressed an intent in court (*Petition for Cancellation*, Exhibit 2 at p. 16) to again bring suit against Ecuabeverage on a registered trademark, now owned by Baloru, S.A., on the basis of Ecuabeverage’s use of “TROPICAL.” Nothing more is required for showing a “reasonable basis” of damage for standing to petition for cancellation.

VI. All Material Facts Sufficient for the Entry of Summary Judgment in Ecuabeverage's Favor Have Been Conceded by Baloru in its Opposition

The following material facts are undisputed by the parties:

(1) “Brooklyn Bottling of Milton, New York, Inc. (Brooklyn Bottling), in turn, is a U.S. distributor of soft drinks made from concentrate or syrup manufactured by Baloru.” (*Opp.* at 2-3); and,

(2) Ecuabeverage “is a direct competitor of Brooklyn Bottling.” (*Opp.* at 3).

Additionally, Baloru’s Trademark Registration No. 1,474,395 for the mark “TROPICAL PURO SABOR NACIONAL” recites goods listed as “soft drinks and flavored syrups used in the preparation of making soft drinks,” while the goods recited in Baloru’s Trademark Registration No. 4,120,917 for the mark “TROPICAL (AND DESIGN)” are simply “soft drinks.” Hence, there cannot be a genuine dispute between the parties that the entirety of the goods recited in Trademark Registration No. 4,120,917 is encompassed within the scope of the goods recited in Trademark Registration No. 1,474,395. No factual or legal argument can therefore be made by Baloru on the basis of there being any distinction whatsoever between the goods recited in Trademark Registration Nos. 1,474,395 and 4,120,917.

Baloru does not contest that it is Brooklyn Bottling’s assignee of Trademark Reg. No. 1,474,395 for the mark “TROPICAL PURO SABOR NACIONAL.” (*Opp.* at 18-19) Baloru’s *Opposition* cites to no case law disputing the prevailing law that an assignee may be subject to all the liabilities of its assignor in relation to the property that is the subject of the assignment and that “the knowledge of an assignor must be attributed to its assignee.” *See, Hyosung America, Inc. v. Sumagh Textile Co., Ltd.*, 934 F. Supp. 570,

574-576 (S.D.N.Y. 1996) (noting that “the knowledge of an assignor must be attributed to its assignee”), *aff'd in part, rev'd in part on other grounds*, 137 F.3d 75 (2d Cir. 1998). Baloru does not contest that Brooklyn Bottling exclusively owned Reg. No. 1,474,395 at the time Eric Miller swore to the statements affirmed in his *Affidavit*. Aside from challenging the admissibility of Eric Miller’s *Affidavit* under 37 C.F.R. §2.122(f), which challenge Ecuabeverage submits is meritless, Baloru’s sole legal defense to either the cancellation of Trademark Reg. No. 4,120,917 or a requirement that Baloru disclaim “TROPICAL” as a condition for maintaining Registration No. 4,120,917, is that the assignment from Brooklyn Bottling did not pertain to Reg. No. 4,120,917. Baloru does not dispute the case law relied upon by Ecuabeverage, holding that a disclaimer of terms is required where a registrant can make no exclusive right to a term within its registration. *See, In re Slokevage*, 441 F.3d 957, 962, 78 USPQ2d 1395, 1399 (Fed. Cir. 2006) (“The disclaimer requirement ‘provides the benefits of the Lanham Act to applicants for composite marks with unregistrable components’ and, at the same time, ‘prevents an applicant from claiming exclusive rights to disclaimed portions apart from composite marks.’”), *citing Dena Corp. v. Belvedere International Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991) (“A disclaimer shows that the applicant enjoys no exclusive rights to the disclaimed symbols apart from the composite mark.”).

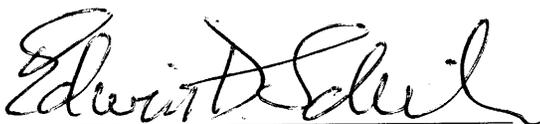
Baloru cites to no case law contrary to the legal position advanced by Ecuabeverage that a registrant not able to claim exclusivity to a term incorporated in a composite trademark must disclaim that term as a condition for registration of the composite mark. Instead, Baloru takes the position (*Opp.* at 18-19) that whatever the liabilities of the assignor Baloru has assumed from Brooklyn Bottling as a consequence of its assignment

of Trademark Registration No. 1,474,395, and specifically the liability of Brooklyn Bottling's acknowledgment that Ecuabeverage has the right to "use the term 'tropical' to market its product" (as sworn to by Eric Miller), have no relevance to any potential exclusivity that Baloru might seek to claim to "TROPICAL" for Reg. No. 4,120,917, notwithstanding that the entirety of the goods ("soft drinks") recited in Tmk. Reg. No. 4,120,917, is encompassed within the goods recited in Trademark Reg. No. 1,474,395.

Baloru is, quite literally, arguing that this Board permit it to acknowledge as an "assignee" that it has no exclusive right to "TROPICAL" in Reg. No. 1,474,395, but can nevertheless claim exclusive rights to "TROPICAL" in Registration No. 4,120,917, even though the goods of Reg. No. 4,120,917 are fully within the scope of the goods recited in Registration No. 1,474,395. Baloru cannot legally be allowed to claim an exclusive right to a term in one registration – "TROPICAL" – while conceding non-exclusivity of the very same term for the same goods in another registration at the same point in time; an irreconcilable legal inconsistency. Based upon the parties' filings on Ecuabeverage's summary judgment motion any contended factual disputes should therefore be disregarded as immaterial.¹ Ecuabeverage's motion for summary judgment should be granted.

Respectfully submitted

ECUABEVERAGE CORPORATION

By 
Edwin D. Schindler
Attorney for Petitioner

1. Because Ecuabeverage's is entitled to summary judgment, it follows that Baloru's Rule 11 motion is substantively frivolous, in addition to procedurally flawed. *Hedges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1328-1329 (2d Cir. 1995) (sanctions vacated for failure to comply with separate motion and "safe harbor" requirements of Rule 11).

REPLY EXHIBIT 1



RE: Discovery Conference - Cancellation Proceeding No. 92055569 Ecuabeverage Corporation v. Baloru S.A.

Monday, June 18, 2012 11:01 AM

From: "Thomas M. Wilentz" <twilentz@tmwlaw.com>
To: "Edwin Schindler" <edschindler@att.net>

Dear Ed,

If you are going to file a motion for summary judgment tomorrow or Wednesday then I agree that we need not hold a discovery conference at this time.

Regards,
Tom

Thomas M. Wilentz, Attorney at Law, PLLC
75 South Broadway, 4th Floor
White Plains, New York 10601

Tel 914-723-0394
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From: Edwin Schindler [mailto:edschindler@att.net]
Sent: Monday, June 18, 2012 10:24 AM
To: Thomas M. Wilentz
Subject: Re: Discovery Conference - Cancellation Proceeding No. 92055569 Ecuabeverage Corporation v. Baloru S.A.

Dear Mr. Wilentz,

Thanks for your e-mail . . . We will be filing a motion for summary judgment for this cancellation proceeding, as we have done for the initial one (in addition to other cancellation petitions to be filed.)

In any event, I am available for a discovery conference on Wednesday, if you still wish to have one, though I anticipate filing a summary judgment motion for this proceeding either tomorrow or

Wednesday. Please let me know if you wish to proceed with the discovery conference, in any event, though I don't view it as necessary.

Finally, you may use this e-mail address as my primary one. The edschindler@optonline.net may also regularly be used. The remaining two I use for back-up and "online storage," so to speak.

Sincerely,

Ed

--- On Mon, 6/18/12, Thomas M. Wilentz <twilentz@tmwlaw.com> wrote:

From: Thomas M. Wilentz <twilentz@tmwlaw.com>
Subject: Discovery Conference - Cancellation Proceeding No. 92055569 Ecuabeverage Corporation v. Baloru S.A.
To: EDSchindler@att.net
Cc: edschindler@optonline.net, EdwinSchindler@gmail.com, EdwinSchindler@yahoo.com
Date: Monday, June 18, 2012, 10:09 AM

Dear Mr. Schindler,

I am the attorney representing Baloru in the above-referenced proceeding. I am writing to check your availability for the mandatory discovery conference. I would be available this week, except Friday.

Please let me know a day and time between now and Thursday when you would be available for us to have the conference. I think it would be easiest to conference via telephone.

By the way, is there one particular email address that I can use for correspondence with you? You listed four email addresses on the cancelation petition.

Looking forward to your reply.

Regards,
Tom Wilentz

Thomas M. Wilentz, Attorney at Law, PLLC
75 South Broadway, 4th Floor
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REPLY EXHIBIT 2



United States Patent and Trademark Office

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Trademark Assignment Abstract of Title

Total Assignments: 6Serial #: [73489879](#)

Filing Dt: 07/16/1984

Reg #: [1474395](#)

Reg. Dt: 01/26/1988

Registrant: BANCO DEL PACIFICO S.A.

Mark: TROPICAL PURO SABOR NACIONAL

Assignment: 1Reel/Frame: [0615/0358](#)

Received:

Recorded: 08/09/1988

Pages: 1

Conveyance: ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

Assignor: [BANCO DEL PACIFICO, S.A.](#)

Exec Dt: 07/15/1988

Entity Type: UNKNOWN

Citizenship: NONE

Entity Type: UNKNOWN

Citizenship: NONE

Assignee: [BALORU INTERNATIONAL, INC.](#)

Correspondent: VALDES-FAULI, COBB & PETREY
SUITE 3400 - ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FL 33131-1897

Assignment: 2Reel/Frame: [3442/0298](#)

Received: 12/12/2006

Recorded: 12/12/2006

Pages: 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: [BALORU INTERNATIONAL INC.](#)

Exec Dt: 11/24/2006

Entity Type: CORPORATION

Citizenship: FLORIDA

Entity Type: CORPORATION

Citizenship: PANAMA

Assignee: [ROYAL SIGNATURE INC.](#)

AVENIDA BALBOA, CENTRO COMERCIAL PLAZA PATILLA
OFICINA 61 A, PRIMER ALTO
PANAMA, PANAMA

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160 NORTH WACKER DRIVE
CHICAGO, IL 60606

Assignment: 3Reel/Frame: [3721/0531](#)

Received: 02/15/2008

Recorded: 02/15/2008

Pages: 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: [ROYAZ SIGNATURE INC.](#)

Exec Dt: 02/11/2008

Entity Type: CORPORATION

Citizenship: FLORIDA

Entity Type: CORPORATION

Citizenship: NEW YORK

Assignee: [BROOKLYN BOTTLING OF MILTON, NY, INC.](#)

1900 LINDEN BLVD.
BROOKLYN, NEW YORK 11207

Correspondent: JAZOBSON + LOLFIN, PC
JEFFREY & JAZOBSON
60 MADISON AVE, SUITE 1026
NEW YORK, NY 10010

Assignment: 4Reel/Frame: [4014/0784](#)

Received: 06/30/2009

Recorded: 06/30/2009

Pages: 7

Conveyance: SECURITY INTEREST

Assignor: [BROOKLYN BOTTLING OF MILTON, NY, INC.](#)

Exec Dt: 02/11/2008

Assignment: 5

Assignee: ROYAL SIGNATURE INC.
AVENIDA BALBOA, CENTRO COMERCIAL PLAZA PAITILLA
OFICINA 61 A, PRIMER ALTO
PANAMA, PANAMA

Correspondent: JUSTIN R. YOUNG, DINEFF TRADEMARK LAW
160 NORTH WACKER DRIVE
CHICAGO, IL 60606

Domestic rep: JUSTIN R. YOUNG, DINEFF TRADEMARK LAW
160 NORTH WACKER DRIVE
CHICAGO, IL 60606

Entity Type: CORPORATION
Citizenship: NEW YORK
Entity Type: CORPORATION
Citizenship: PANAMA

Assignment: 5

Reel/Frame: 4550/0310 **Received:** 05/27/2011

Recorded: 05/27/2011

Pages: 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: BROOKLYN BOTTLING OF MILTON, NY, INC.

Exec Dt: 04/25/2011
Entity Type: CORPORATION
Citizenship: NEW YORK
Entity Type: SOCIEDAD ANONIMA(SA)
Citizenship: ECUADOR

Assignee: BALORU S.A.
KM. 16 1/2, VIA DAULE
GUAYAQUIL, ECUADOR

Correspondent: PANAGIOTA BETTY TUFARIELLO, ESQ.
25 LITTLE HARBOR RD.
MT. SINAI, NY 11766

Domestic rep: PANAGIOTA BETTY TUFARIELLO, ESQ.
25 LITTLE HARBOR ROAD
MOUNT SINAI, NY 11766

Assignment: 6

Reel/Frame: 4549/0363 **Received:** 05/26/2011

Recorded: 05/26/2011

Pages: 2

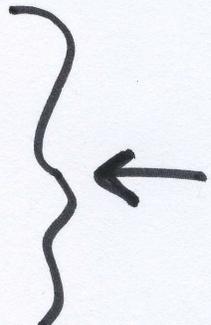
Conveyance: RELEASE BY SECURED PARTY

Assignor: ROYAL SIGNATURE INC.

Exec Dt: 05/02/2011
Entity Type: CORPORATION
Citizenship: PANAMA
Entity Type: CORPORATION
Citizenship: NEW YORK

Assignee: BROOKLYN BOTTLING OF MILTON, NY, INC.
1900 LINDEN BLVD.
BROOKLYN, NEW YORK 11207

Correspondent: PANAGIOTA BETTY TUFARIELLO, ESQ.
25 LITTLE HARBOR RD.
MT. SINAI, NY 11766



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Web interface last modified: Jan 26, 2012 v.2.3.1

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CERTIFICATE OF SERVICE

I, EDWIN D. SCHINDLER, hereby certify that I served a true, and complete, copy of Ecuabeverage Corporation's *Reply Memorandum in Support of its Motion for Summary Judgment, Pursuant to Fed.R.Civ.P. 56* (including Reply Exhibits 1 – 2) upon the following counsel-of-record for Respondent Baloru S.A. via First-Class Mail, postage pre-paid:

Thomas M. Wilentz
75 South Broadway, 4th Floor
White Plains, New York 10601

on August 7, 2012.

A handwritten signature in black ink, appearing to read "Edwin D. Schindler", written in a cursive style. The signature is positioned above a horizontal line.

Edwin D. Schindler
Attorney for Petitioner
Reg. No. 31,459