

ESTTA Tracking number: **ESTTA553605**

Filing date: **08/13/2013**

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 R Ibarra		
Entity	Individual	Citizenship	UNITED STATES
Address	754 The Alameda Ste 3307 San Jose, CA 95126 UNITED STATES		

Attorney information	Darren S. Rimer Rimer & Mathewson LLP 30021 Tomas, Suite 300 Rancho Santa Margarita, CA 92688 UNITED STATES trademarks@rimermath.com Phone:9493671541		
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Registration Subject to Cancellation

Registration No	3659551	Registration date	07/21/2009
International Registration No.	NONE	International Registration Date	NONE
Registrant	PARTY FIESTA, S.A. C/ Miguel Hernandez, 74-80 Hospitalet de Llobegat Barcelona, 08908 SPAIN		

Goods/Services Subject to Cancellation

Class 035. All goods and services in the class are cancelled, namely: Online retail store services featuring paper and cardboard articles and party items; retail store services featuring paper and cardboard articles and party items; wholesale store services featuring paper and cardboard articles and party item; import and export agencies; wholesaling and retailing; franchising, namely, consultation and assistance in business management, organization and promotion
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Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85425291	Application Date	09/17/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	PARTY FIESTA BALLOON DECOR
Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2007/02/14 First Use In Commerce: 2007/02/14 Arranging professional workshop and training courses; Arranging, organizing, conducting and hosting birthday parties; Entertainment services, namely, conducting parties; Party and wedding planning and coordination services; Party and wedding planning consultation services; Party and wedding planning, coordination and consultation services; Party planning; Party planning consultation; Providing children's party centers for the purpose of entertaining children and celebrating birthdays; Providing information in the field of wedding party planning; Providing information regarding wedding planning for wedding parties; Rental of table-top decorative wishing wells for parties; Social club services, namely, arranging, organizing, and hosting social events, get-togethers, and parties for club members

Attachments	pet for cancellation.pdf(3414652 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	/Darren S. Rimer/
Name	Darren S. Rimer
Date	08/13/2013

Case **IBARJ-001M**
Trademark Opposition

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

In Re U.S. Registration No. 3,659,551

Jose Rolando Ibarra)	
)	Cancellation No.
Petitioner,)	
)	
vs.)	
)	
Party Fiesta, S.A.)	
)	
Registrant.)	
_____)	

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Sir/Madam:

In the matter of U.S. Trademark Registration No. 3,659,551 for the mark PARTY FIESTA, registered July 21, 2009, to Party Fiesta, S.A., a corporation of Spain (“Registrant”), for online retail store services featuring paper and cardboard articles and party items; retail store services featuring paper and cardboard articles and party items; wholesale store services featuring paper and cardboard articles and party item; import and export agencies; wholesaling and retailing; franchising, namely, consultation and assistance in business management, organization and promotion, in International Class 35, Jose Rolando Ibarra, an individual, having an address of 754 The Alameda Ste 3307, San Jose, CA 95126 (“Petitioner”), believes that he will be damaged by the continued registration of this

trademark and hereby petitions to cancel the same. As grounds for cancellation, it is alleged as follows:

1. Petitioner filed a trademark application for the mark PARTY FIESTA BALLOON DECOR for the following services: Arranging professional workshop and training courses; Arranging, organizing, conducting and hosting birthday parties; Entertainment services, namely, conducting parties; Party and wedding planning and coordination services; Party and wedding planning consultation services; Party and wedding planning, coordination and consultation services; Party planning; Party planning consultation; Providing children's party centers for the purpose of entertaining children and celebrating birthdays; Providing information in the field of wedding party planning; Providing information regarding wedding planning for wedding parties; Rental of table-top decorative wishing wells for parties; Social club services, namely, arranging, organizing, and hosting social events, get-togethers, and parties for club members, in International Class 41. Petitioner filed this trademark application on September 17, 2011, which was assigned serial no. 85/425,291.

2. In connection with application serial no. 85/425,291, on February 19, 2013, the United States Patent and Trademark Office issued a final Office Action for Petitioner's trademark application. A true and correct copy of this Office Action is attached hereto as **Exhibit 1**, along with a status copy of Registrant's registration.

3. The substantive basis for the rejection of Petitioner's trademark application was the existence of Registrant's trademark on the Principal Register, finding a likelihood of confusion between Petitioner's mark as compared with the Registrant's mark.

4. Upon information and belief, Registrant has abandoned its trademark presented in its registration for PARTY FIESTA.

5. Registrant's abandonment of its trademark is evidenced by its apparent lack of business in interstate commerce for the services which are the subject of the registration.

6. Registrant's abandonment of its trademark is further evidenced by its website, portions of which are shown in Exhibit 2, which lists retail stores in the following countries:

Spain

Portugal

France

Panama

United Kingdom

Dominican Republic

Andorra

menu.stores.sk (A store in Bratislava, Slovakia)

Notably, Registrant does not have any retail stores in the United States, and Registrant does not sell its products for shipment to the United States.

7. Prior to July 22, 2012, Registrant did not offer any of its services under its PARTY FIESTA trademark to any consumers in the United States.

8. In any event, Petitioner has been engaged in the business of offering various party planning services, wedding planning services, and related services since long prior to Registrant's priority date for its registration. Petitioner has used, in interstate commerce, the trademark PARTY FIESTA BALLOON DECOR for the aforementioned services since long prior to Registrant's priority date in the instant registration. Petitioner's use of Petitioner's PARTY FIESTA BALLOON DECOR trademark for its services predates Registrant's filing date and priority date for the instant trademark owned by Registrant.

9. As a result of the continuous and extensive use of Petitioner's PARTY FIESTA BALLOON DECOR trademark, such mark has become and continues to function as a valuable business and marketing asset of Petitioner, and serves to indicate to the trade and consuming public the services originating from Petitioner.

10. Notwithstanding Petitioner's rights in and to Petitioner's trademark, Registrant, on information and belief, filed its application to register its PARTY FIESTA trademark under Section 44(e) of the Trademark Act on February 18, 2008. Such application relied upon Registrant's earlier-filed registration in the European Union, Registration No. 4425088, registered August 4, 2006 with OHIM.

11. Petitioner enjoys priority of use of its pleaded trademark in the United States over any use or constructive use of the Registrant's trademark.

12. As found by the trademark examining attorney for Petitioner's pending trademark application serial no. 85/425,291, Registrant's PARTY FIESTA trademark is confusingly similar to Petitioner's PARTY FIESTA BALLOON DECOR trademark, and its registration and use by Registrant for the services claimed in the subject registration is likely to cause confusion, deception and mistake.

13. Registrant's use of the instant trademark interferes with Petitioner's use of his trademark, and use of, and continued registration of, the instant trademark by Registrant will seriously damage Petitioner. There is additional damage to Petitioner because Registrant's mark has been cited as a bar to Petitioner's application, even though Petitioner enjoys priority of use over Registrant.

14. On the foregoing basis, Petitioner believes it has been damaged by, and will continue to be damaged by, the continued existence of United States Registration No. 3,659,551.

15. To the best of Petitioner's knowledge, United States Registration No. 3,659,551 was last owned by Party Fiesta, S.A. The address listed for Registrant is C/ Miguel Hernandez, 74-80, Hospitalet de Llobegat, Barcelona, 08908 SPAIN. The registrant also lists a domestic representative as follows: Lawrence E. Abelman, Abelman Frayne & Schwab, 666 Third Avenue, 10th Floor, New York, NY 10017.

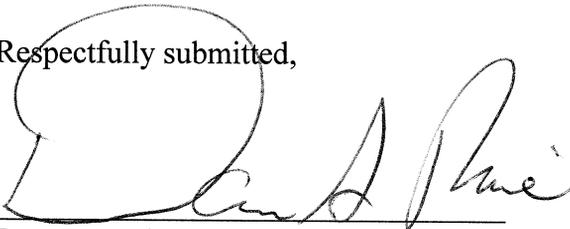
WHEREFORE, Petitioner prays for cancellation of United States Registration No. 3,659,551.

The filing fee for this Cancellation Action in the amount of \$300.00 (one international class) is being filed online.

Date: 8/12/13

Respectfully submitted,

By:



Darren S. Rimer
RIMER & MATHEWSON LLP
30021 Tomas, Suite 300
Rancho Santa Margarita, CA 92688
(949) 367-1541

Counsel for Petitioner

EXHIBIT 1

To: Jose Rolando Ibarra (trademarks@rimermath.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85425291 - PARTY FIESTA BALLOON DECOR - IBARJ-001T
Sent: 2/19/2013 2:43:01 PM
Sent As: ECOM102@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85425291

MARK: PARTY FIESTA BALLOON DECOR

85425291

CORRESPONDENT ADDRESS:

Darren S. Rimer
RIMER & MATHEWSON LLP
30021 Tomas, Suite 300
Rancho Santa Margarita CA 92688

CLICK HERE TO RESPOND TO THIS LETTER
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Jose Rolando Ibarra

CORRESPONDENT'S REFERENCE/DOCKET NO :

IBARJ-001T

CORRESPONDENT E-MAIL ADDRESS:

trademarks@rimermath.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 2/19/2013

THIS IS A FINAL ACTION.

This Office action is in response to applicant's communication filed on January 28, 2013.

By way of background, an Office action was issued on July 26, 2012, refusing registration under SECTION

2(d) and requiring a disclaimer. Applicant's response properly added the disclaimer and that requirement is fulfilled. Applicant's only argument against the Section 2(d) refusal was priority of use, which as explained previously and again below, is not relevant in this ex parte proceeding.

Accordingly, for the reasons set forth below, the refusal under Trademark Act Section 2(d) is now made **FINAL** with respect to U.S. Registration No(s). 3659551. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.64(a).

SECTION 2(D) REFUSAL – LIKELIHOOD OF CONFUSION

The refusal of registration of the applied-for mark because of a likelihood of confusion with the mark in U.S. Registration No. 3659551 is maintained and made **FINAL**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

The applied-for mark is PARTY FIESTA BALLOON DECOR for “Arranging professional workshop and training courses; Arranging, organizing, conducting and hosting birthday parties; Entertainment services, namely, conducting parties; Party and wedding planning and coordination services; Party and wedding planning consultation services; Party and wedding planning, coordination and consultation services; Party planning; Party planning consultation; Providing children's party centers for the purpose of entertaining children and celebrating birthdays; Providing information in the field of wedding party planning; Providing information regarding wedding planning for wedding parties; Rental of table-top decorative wishing wells for parties; Social club services, namely, arranging, organizing, and hosting social events, get-togethers, and parties for club members.” The registered mark is PARTY FIESTA for “Online retail store services featuring paper and cardboard articles and party items; retail store services featuring paper and cardboard articles and party items; wholesale store services featuring paper and cardboard articles and party item; import and export agencies; wholesaling and retailing; franchising, namely, consultation and assistance in business management, organization and promotion.”

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). In the seminal decision *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), the court listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all the factors are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1355, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

In any likelihood of confusion determination, two key considerations are similarity of the marks and similarity or relatedness of the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); TMEP §1207.01; *see also In re Dixie Rests. Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357,

1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Additionally, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §1207.01, (a)(vi).

Comparison of the Marks

Marks are compared in their entirety for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

Upon review, the applied-for mark is similar to the registered mark because both marks share the wording PARTY FIESTA. The wording PARTY FIESTA is the only wording in the registered mark. The wording PARTY FIESTA is the dominant matter in the applied-for mark as it is the first wording and the only non-disclaimed wording. Although marks are compared in their entirety, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. *See In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751.

Consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *see also Mattel Inc. v. Funline Merch. Co.*, 81 USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered” when making purchasing decisions).

Although marks are compared in their entirety, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter is typically less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii).

Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and “21” CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975)

(LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

The mere addition of a term to a registered mark generally does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Trademark Act Section 2(d), especially when the additional wording is disclaimed. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (GASPAR'S ALE and JOSE GASPAR GOLD); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975) (BENGAL and BENGAL LANCER); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (C.C.P.A. 1967) (THE LILLY and LILLI ANN); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266 (TTAB 2009) (TITAN and VANTAGE TITAN); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002 (TTAB 1988) (MACHO and MACHO COMBOS); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (CAREER IMAGE and CREST CAREER IMAGES); *In re Riddle*, 225 USPQ 630 (TTAB 1985) (ACCUTUNE and RICHARD PETTY'S ACCU TUNE); TMEP §1207.01(b)(iii).

Accordingly, the applied-for mark and the registered mark(s) are similar under Section 2(d) for refusal purposes.

Comparison of the Goods/Services

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods and/or services need only be related in some manner or the conditions surrounding their marketing be such that they will be encountered by the same consumers under circumstances that would lead to the mistaken belief that the goods and/or services originate from the same source. *Gen. Mills Inc. v. Fage Dairy Processing Indus.*, 100 USPQ2d 1584, 1597 (TTAB 2012); TMEP §1207.01(a)(i); *see On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d at 1086, 56 USPQ2d at 1475; *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Here, the services of the parties are related because, as explained in the January 5, 2012 Office actions and attachments, the services of the applicant and registrant are frequently seen under the same mark. In fact, applicant itself also provides retail party services as seen by the specimens submitted in this case. Thus, even though applicant did not apply for protection for the retail services, it is in fact operating under a very similar mark for nearly identical services and, in the case of the services listed in the application, highly related services.

Once again, applicant's only argument is regarding priority of use. Even where applicant to have and prove priority of use, that claim is not relevant to the ex parte proceeding at issue here. Applicant's claim of priority of use is not relevant to this ex parte proceeding. *See In re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278 (C.C.P.A. 1971). Trademark Act Section 7(b), 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register is prima facie evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the mark in commerce on or in connection with the goods and/or services specified in the certificate. During ex parte prosecution, the trademark examining attorney has no authority to review or to decide on matters that constitute a collateral attack on the cited registration. TMEP §1207.01(d)(iv).

Conclusion

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

Given the similarity between the marks as well as the relatedness of the relatedness of the services, the applied-for mark is refused registration under Section 2(d).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

RESPONSE OPTIONS TO FINAL OFFICE ACTION

Applicant must respond within six months of the date of issuance of this final Office action or the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond by providing one or both of the following:

- (1) A response that fully satisfies all outstanding requirements;
- (2) An appeal to the Trademark Trial and Appeal Board, with the appeal fee of \$100 per class.

37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.6(a)(18); TBMP ch. 1200.

In certain rare circumstances, an applicant may respond by filing a petition to the Director pursuant to 37 C.F.R. §2.63(b)(2) to review procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

GENERAL INFORMATION

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/Mark Shiner/
Trademark Examining Attorney
Law Office 102
Phone: 571-272-1489
E-mail: mark.shiner@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Feb 19, 2013

77399835

DESIGN MARK

Serial Number

77399835

Status

REGISTERED

Word Mark

PARTY FIESTA

Standard Character Mark

No

Registration Number

3659551

Date Registered

2009/07/21

Type of Mark

SERVICE MARK

Register

SUPPLEMENTAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

PARTY FIESTA, S.A. CORPORATION SPAIN C/ Miguel Hernandez, 74-80
Hospitalet de Llobegat Barcelona SPAIN 08908

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Online retail store services featuring paper and cardboard articles and party items; retail store services featuring paper and cardboard articles and party items; wholesale store services featuring paper and cardboard articles and party item; import and export agencies; wholesaling and retailing; franchising, namely, consultation and assistance in business management, organization and promotion.

Foreign Country Name

ERPNTY CMNTY TM OFC

Foreign Registration Number

4425088

Foreign Registration Date

2006/08/04

Print: Feb 19, 2013

77399835

Foreign Expiration Date

2015/08/16

Description of Mark

The mark consists of the colors orange, grey, blue, yellow, red, green and white in the wording "PARTY FIESTA", with the color orange appearing in the letters "P" and "F", the color grey appearing in the shadow of all of the letters, the color blue appearing in the letters "A" and "E", the color yellow appearing in the letters "R" and "T", the color red appearing in the letters "T" and "E", the color green appearing in the letters "Y" and "S", and the color white appearing in the outer border of all of the letters.

Colors Claimed

The color(s) orange, grey, blue, yellow, red, green and white is/are claimed as a feature of the mark.

Translation Statement

The foreign wording in the mark translates into English as "PARTY".

Filing Date

2008/02/18

Amended Register Date

2008/12/03

Examining Attorney

DALIER, JOHN

Attorney of Record

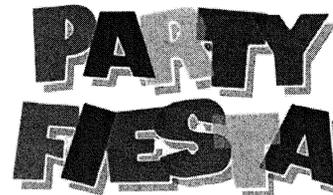
Arturo Perez-Guerrero

PARTY FESTIVAL

STATUS DOCUMENTS

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Generated on: This page was generated by TSDR on 2013-08-12 20:35:59 EDT**Mark:** PARTY FIESTA**US Serial Number:** 77399835**Application Filing Date:** Feb. 18, 2009**US Registration Number:** 3659551**Registration Date:** Jul. 21, 2009**Register:** Supplemental**Mark Type:** Service Mark**Date Amended to Current Register:** Dec. 03, 2008**Register:****Status:** Registered. The registration date is used to determine when post-registration maintenance doc**Status Date:** Jul. 21, 2009

Mark Information

Mark Literal Elements: PARTY FIESTA**Standard Character Claim:** No**Mark Drawing Type:** 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED F**Description of Mark:** The mark consists of the colors orange, grey, blue, yellow, red, green and white in the wording appearing in the letters "P" and "F", the color grey appearing in the shadow of all of the letters, and "E", the color yellow appearing in the letters "R" and "T", the color red appearing in the lett in the letters "Y" and "S", and the color white appearing in the outer border of all of the letters.**Color Drawing:** Yes**Color(s) Claimed:** The color(s) orange, grey, blue, yellow, red, green and white is/are claimed as a feature of the**Translation:** The foreign wording in the mark translates into English as "PARTY".

Foreign Information

Foreign Registration Number: 4425088**Foreign Registration Date:** Aug. 04, 2009**Foreign Application/Registration Country:** EUROPEAN (EU) OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (OHIM)**Foreign Expiration Date:** Aug. 16, 2014

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Online retail store services featuring paper and cardboard articles and party items; retail store services featuring paper and cardboard articles and party items; wholesale store services featuring paper and cardboard articles and party items; wholesaling and retailing; franchising, namely, consultation and assistance in business management

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101,

Class Status: ACTIVE

Basis: 44(e)

Basis Information (Case Level)

Filed Use: No	Currently Use: No
Filed ITU: No	Currently ITU: No
Filed 44D: No	Currently 44D: No
Filed 44E: Yes	Currently 44E: Yes
Filed 66A: No	Currently 66A: No
Filed No Basis: No	Currently No Basis: No

Current Owner(s) Information

Owner Name: PARTY FIESTA, S.A.

Owner Address: C/ Miguel Hernandez, 74-80
Hospitalet de Llobegat
Barcelona 08908
SPAIN

Legal Entity Type: CORPORATION

State or Country Where Organized: SPAIN

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Lawrence E. Abelman

Attorney Primary Email Address: fterranella@lawabel.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Lawrence E. Abelman
Abelman Frayne & Schwab
666 Third Avenue
10th Floor
New York, NEW YORK 10017

UNITED STATES

Phone: 2129499022

Fax: 21294991

Correspondent e-mail: fterranella@lawabel.com

Correspondent e-mail Yes
Authorized:

Domestic Representative

Domestic Representative Name: Lawrence E. Abelman

Phone: 21294990

Fax: 2129499190

Domestic Representative e-mail: fterranella@lawabel.com

Domestic Representative e-mail Authorized: Yes

Prosecution History

Date	Description	Proceeding Number
Jul. 02, 2013	ATTORNEY REVOKED AND/OR APPOINTED	
Jul. 02, 2013	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jul. 21, 2009	REGISTERED-SUPPLEMENTAL REGISTER	
Jun. 18, 2009	LAW OFFICE PUBLICATION REVIEW COMPLETED	76537
Jun. 15, 2009	APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER	
Jun. 13, 2009	TEAS/EMAIL CORRESPONDENCE ENTERED	76537
Jun. 13, 2009	CORRESPONDENCE RECEIVED IN LAW OFFICE	76537
Jun. 07, 2009	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 24, 2009	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 24, 2009	NON-FINAL ACTION E-MAILED	6325
Mar. 24, 2009	NON-FINAL ACTION WRITTEN	72503
Feb. 24, 2009	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Feb. 24, 2009	ASSIGNED TO LIE	76537
Feb. 19, 2009	APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER	
Dec. 04, 2008	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Dec. 03, 2008	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889

Dec. 03, 2008	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 03, 2008	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 03, 2008	NON-FINAL ACTION E-MAILED	6325
Jun. 03, 2008	NON-FINAL ACTION WRITTEN	72503
May 29, 2008	ASSIGNED TO EXAMINER	72503
Feb. 22, 2008	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jul. 21, 2008

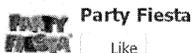
Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

EXHIBIT 2



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Accessories

Online Shop Costumes Accessories Hats Child cowboy hat

Child cowboy hat

0 Me gusta 0 Enviar

Wigs

Makeup

Professional Makeup

Jewellery and Nails

Hairpieces

Hats

Hats and caps

Glasses

Animal Kits

Wings

Sox

Tutu

Gloves

Boas

Weapons and Brooms

Masks and Masks

Hawaiian



Description

If you want to look like a real cowboy Wild West, can not miss in your disguise a weapon, a Sheriff Star and this beautiful child hat brown with white details in the center of the cup has a sheriff's star.

Women's Costumes

Man Costumes

Child Costumes

Girl Costumes

Theme Costumes

Licenses

Online Shop	Company	Stores	Franchises	Contact
Parties	Company	Spain	Franchise	Contact
Costumes	Human Resources	Portugal	Information	
Weddings Baptisms		France	Request Franchise	
and Communion		Panama	Information	
Summer		United Kingdom	Intranet	
Seasons		Dominican Republic		
		Andorra		
		menu.stores.sk		

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PROOF OF SERVICE

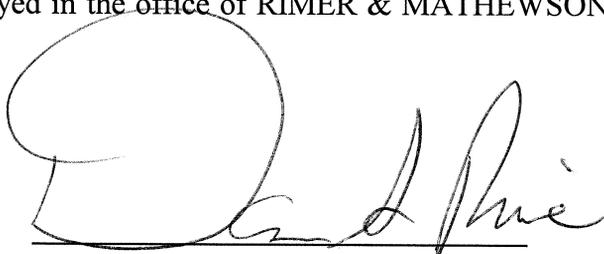
State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 30021 Tomas, Suite 300, Rancho Santa Margarita, California 92688. On August 12, 2013, the attached **PETITION FOR CANCELLATION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Party Fiesta, S.A.
C/ Miguel Hernandez, 74-80
Hospitalet de Llobegat
Barcelona, 08908
SPAIN

Lawrence E. Abelman
Abelman Frayne & Schwab
666 Third Avenue, 10th Floor
New York, NY 10017

Executed on August 12, 2013. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of RIMER & MATHEWSON LLP at whose direction service was made.



Darren S. Rimer