TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: September 11, 2015

Cancellation No. 92062224 – 77859711
Registration No. 3846482

PROVEEDORES Y SOLUCIONES DAC SA
DEL HOTEL 2DO MILENIO 100MTS
RIO SEGUNDO ALAJUELA BARRIO EL CARMEN
SAN JOSE, COSTA RICA

Emm. Kokologiannis and Sons, Societe Anonyme of Trade, Hotels and Tourism S.A.

v.

Proveedores y Soluciones DAC S.A.

PETER S SLOANE
LEASON ELLIS LLP
ONE BARKER AVENUE, FIFTH FLOOR
WHITE PLAINS, NY 10601 UNITED STATES

Amy Matelski, Paralegal Specialist:

The petitioner (plaintiff) identified above has filed a petition for cancellation of the above-identified registration owned by respondent (defendant). A service copy of the petition for cancellation was forwarded to respondent by the petitioner. An electronic version of the petition for cancellation, and of the entire proceeding, is viewable on the Board's web page via the TTABVUE link: http://ttabvue.uspto.gov/ttabvue/.

PETITIONER DIRECTED TO FORWARD COPY TO OWNER OF RECORD

The Board acknowledges that petitioner included proof that it forwarded a service copy of its petition to respondent. However, the proof of service indicates that petitioner sent that service copy to an attorney for respondent, rather than to respondent. As provided in amended Trademark Rule 2.111(a), a petitioner must include "proof of service on the owner of record for the registration, or the owner's domestic representative of record, at the correspondence address of record." The

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rule does not direct a petitioner to serve an attorney, though an attorney should be served if the attorney is the respondent's designated domestic representative. The reference in the rule to correspondence address is a reference to the address for the owner of the registration or the domestic representative, if one has been appointed. While petitioner's proof of service is a reasonable attempt to effect service, petitioner is directed to forward an additional copy of its petition to the owner of record for the registration, at its address of record. In addition, any future filing must be served directly on the owner of the registration. If an attorney files an answer or other paper for respondent, thereby entering an appearance, petitioner may thereafter forward service copies to that attorney rather than respondent.

RESPONDENT MUST FILE AND SERVE ANSWER

As required in the schedule set forth below, **respondent must file an answer within forty (40) days from the mailing date of this order.** (For guidance regarding when a deadline falls on a Saturday, Sunday or federal holiday, *see* Trademark Rule 2.196.) Respondent's answer must comply with Fed. R. Civ. P. 8(b), must contain admissions or denials of the allegations in the petition for cancellation, and may include available defenses and counterclaims. For guidance regarding the form and content of an answer, *see* Trademark Rule 2.114(b), and TBMP §§ 311.01 and 311.02. Failure to file a timely answer may result in entry of default judgment and the cancellation of the registration.

SERVICE OF ANSWER AND OF ALL FILINGS

The answer, and **all** other filings in this proceeding, **must** be served in a manner specified in Trademark Rule 2.119(b), and **must** include proof of service. For guidance regarding the service and signing of all filings, *see* TBMP §§ 113-113.04. As noted in TBMP § 113.03, proof of service should be in the following certificate of service form:

> *I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party).*
>
> *Signature*_____
> *Date*_____

The parties may agree to forward service copies by electronic transmission, *e.g.*, e-mail. *See* Trademark Rule 2.119(b)(6) and TBMP §113.04. Pursuant to Trademark Rule 2.119(c), however, five additional days are afforded only to actions taken in response to papers served by first-class mail, "Express Mail," or overnight courier, not by electronic transmission.

LEGAL RESOURCES AVAILABLE AT WEB PAGE

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. These rules, as well as amendments thereto, the Manual of Procedure (TBMP), information on Accelerated Case Resolution (ACR) and Alternative Dispute Resolution (ADR), and many Frequently Asked Questions, are available on the Board's web page, at: http://www.uspto.gov/trademarks/process/appeal/index.jsp. For a general description of Board proceedings, *see* TBMP §102.03.

FILING PAPERS ONLINE

The link to the Board's electronic filing system, ESTTA (Electronic System for Trademark Trials and Appeals), is at the Board's web page, at: http://estta.uspto.gov/. The Board **strongly encourages parties to use ESTTA** for all filings. ESTTA provides various electronic filing forms; some may be used as is, and others may require attachments. For technical difficulties with ESTTA, parties may call 571-272-8500. Due to potential technical issues, parties should not wait until the last date of a deadline for filing papers. The Board may decline to consider any untimely filing.

PETITIONER'S OBLIGATION IF SERVICE IS INEFFECTIVE

If a service copy of the petition for cancellation is returned to petitioner as undeliverable or petitioner otherwise becomes aware that service has been ineffective, petitioner must notify the Board in writing within ten (10) days of receipt of the returned copy. Notification to the Board may be provided by any means available for filing papers with the Board, but preferably should be provided **by written notice filed through ESTTA**. For guidance regarding notice of ineffective service, *see* Trademark Rule 2.111(b) and TBMP § 309.02(c)(2).

While petitioner is under no obligation to search for current correspondence address information for, or investigate the whereabouts of, any respondent petitioner is unable to serve, if petitioner knows of any new address information for the respondent, petitioner must report the address to the Board. If a petitioner notifies the Board that a service copy sent to a respondent was returned or not delivered, including any case in which the notification includes a new address for the respondent discovered by or reported to petitioner, the Board will give notice under Trademark Rule 2.118.

FORMAT FOR ALL FILINGS

Trademark Rule 2.126 sets forth the required form and format for all filings. The Board may **decline to consider** any filing that does not comply with this rule, including, but not limited to motions, briefs, exhibits and deposition transcripts.

CONFERENCE, DISCOVERY, DISCLOSURE AND TRIAL SCHEDULE

Time to Answer	10/21/2015
Deadline for Discovery Conference	11/20/2015
Discovery Opens	11/20/2015
Initial Disclosures Due	12/20/2015
Expert Disclosures Due	4/18/2016
Discovery Closes	5/18/2016
Plaintiff's Pretrial Disclosures	7/2/2016
Plaintiff's 30-day Trial Period Ends	8/16/2016
Defendant's Pretrial Disclosures	8/31/2016
Defendant's 30-day Trial Period Ends	10/15/2016
Plaintiff's Rebuttal Disclosures	10/30/2016
Plaintiff's 15-day Rebuttal Period Ends	11/29/2016

PARTIES ARE REQUIRED TO HOLD DISCOVERY CONFERENCE

As noted in the schedule above, the parties are required to schedule and to participate with each other in a discovery conference by the deadline in the schedule. For guidance, *see* Fed. R. Civ. P. 26(f), Trademark Rule 2.120(a)(2), and TBMP § 401.01. In the conference, the parties are required to discuss (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling or at least narrowing the scope of claims or defenses, and (3) arrangements for disclosures, discovery and introduction of evidence at trial, if the parties are unable to settle at this time.

Discussion of amendments of otherwise prescribed procedures can include limitations on disclosures and/or discovery, willingness to stipulate to facts, and willingness to stipulate to more efficient options for introducing at trial information or materials obtained through disclosures or discovery.

The parties must hold the conference in person, by telephone, or by any means on which they agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such request is made no later than ten (10) days prior to the conference deadline. *See* Trademark Rule 2.120(a)(2). A request for Board participation must be made either through an ESTTA filing, or by telephone call to the assigned interlocutory attorney whose name is on the TTABVUE record for this proceeding. A party should request Board participation only after the parties have agreed on possible dates and times for the conference. A conference with the participation of a Board attorney will be by telephone, and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the Board attorney.

PROTECTIVE ORDER FOR CONFIDENTIAL INFORMATION

The Board's Standard Protective Order is applicable, and is available at: http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp. During their conference, the parties should discuss whether they agree to supplement or amend the standard order, or substitute a protective agreement of their choosing, subject to approval by the Board. *See* Trademark Rule 2.116(g) and TBMP § 412. The standard order does not automatically protect a party's confidential information and its provisions for the designation of confidential information must be utilized as needed by the parties.

ACCELERATED CASE RESOLUTION

During their conference, the parties should discuss whether they wish to seek mediation or arbitration, and whether they can stipulate to follow the Board's Accelerated Case Resolution (ACR) process for a more efficient and economical means of obtaining the Board's determination of the proceeding. For guidance regarding ACR, *see* TBMP § 528. Detailed information on ACR, and examples of ACR cases and suggestions, are available at the Board's webpage, at: http://www.uspto.gov/trademarks/process/appeal/index.jsp.

DISCOVERY AND INTERLOCUTORY PROCEDURES

For guidance regarding discovery, *see* Trademark Rule 2.120 and TBMP Chapter 400, regarding the deadline for and contents of initial disclosures, *see* Trademark Rule 2.120(a)(2) and TBMP § 401.02, and regarding the discoverability of various matters, *see* TBMP § 414. Certain provisions of Fed. R. Civ. P. 26 are applicable in modified form. The interlocutory attorney has discretion to require the parties, or to grant a request made by one or both parties, to resolve matters of concern to the Board, or a contested motion, by telephone conference. *See* Trademark Rule 2.120(i)(1) and TBMP § 502.06(a).

TRIAL

For guidance regarding trial and testimony procedures, *see* Trademark Rules 2.121, 2.123 and 2.125, as well as TBMP Chapter 700. The parties should review authorities regarding the introduction of evidence during the trial phase, including by notice of reliance and by taking testimony from witnesses. For instance, any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties, and any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on each adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after completion of the testimony deposition.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing is not required, but will be scheduled upon request of any party, pursuant

to Trademark Rule 2.129. For guidance regarding briefing and an oral hearing, *see* TBMP §§ 801-802.

PARTIES NOT REPRESENTED BY COUNSEL

This proceeding is similar to a civil action in a federal district court. The Board **strongly** advises all parties to secure the services of an attorney who is familiar with trademark law and Board procedure. Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. Parties not represented by such an attorney are directed to read the Frequently Asked Questions, available at the Board's web page: http://www.uspto.gov/trademarks/process/appeal/index.jsp.

PARTIES MUST NOTIFY BOARD OF OTHER PENDING ACTIONS

If the parties are, or during the pendency of this proceeding become, parties in another Board proceeding or a civil action involving the same or related marks, or involving any issues of law or fact which are also in this proceeding, they shall notify the Board immediately, so the Board can consider whether consolidation and/or suspension of proceedings is appropriate. *See* TBMP § 511.

United States Patent and Trademark Office
Commissioner for Trademarks
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Alexandria, VA 22313-1451
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PAR AVION

92062224

PROVEEDORES Y SOLUCIONES DAC SA
DEL HOTEL 2DO MILENIO 100MTS
RIO SEGUNDO ALAJUELA BARRIO EL CARMEN
SAN JOSE,
COSTA RICA

CORREOS DE COSTA RICA
Unidad de trabajo: EC91
Fecha: 15-10-15
Sector #: 12 Nombre:
☐ Dirección Insuficiente
☐ Dirección Inexacta
☐ Ausente
☐ Rehusado
☐ Apdo. No Existe

CORREOS
DE COSTA RICA
CENTRO DE TRATAMIENTO MIXTO
MODULO NACIONAL MIXTO

Fecha: ____________

Estimado cliente este envío se ha recibido

☑ Roto	☑ Abierto
☐ Cinta Adhesiva	☐ Reengomado
☐ Húmedo	☐ Sucio
☐ Con Grapas	☐ Otros

Funcionario ____________

Estimado (a) Cliente,

Correos de Costa Rica, S.A. se permite saludarle y a la vez informarle que el presente envío, procedente del exterior, se recibió con deterioro en su embalaje, producto del tráfico internacional desde el país de origen. Dicho deterioro no se ha originado durante el proceso de tratamiento en nuestras plantas de proceso, mismas que siguen altas normas de calidad y de seguridad, para brindar un servicio de altura a las y los clientes del Servicio Postal.

Nuestra Administración Postal ha procedido a reparar y sellar el envío dirigido a usted, siguiendo los procedimientos universales aceptados por los operadores postales adscritos a la Unión Postal Universal (UPU), de la cual nuestra empresa forma parte.

Rogamos las disculpas del caso, siendo en todo momento una situación fuera de nuestro control, por lo cual hemos procedido responsablemente a la reparación del embalaje para ponerlo en sus manos con seguridad y calidad.

Rogamos acepte nu... mayor ...deración,

Correos de C... Ric... A.

...NAC...
MESA DE REPARACION
REVISADO POR EL SUPERVISOR

Nombre: ____________

Fecha: ____________

RECIBIDO EN
MAL ESTADO

CTP