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

Proceeding	92063668
Party	Plaintiff Barrio Fiesta Manufacturing Corporation
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**IN THE UNITED STATES PATENT AND TRADE MARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BARRIO FIESTA MANUFACTURING
CORPORATION,

Petitioner,

v.

JUNE FRANCIS RONO, ASHLEY KIRSTEN
C. RONO AND JUSTIN CHRISTIAN C.
RONO,

Registrants.

Cancellation No. 92063668

In the Matter of Registration No. 4,034,365
Mark: BARRIO FIESTA EXPRESS
Date Issued: October 4, 2011

PETITIONER’S REPLY BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

I.

INTRODUCTION

Petitioner Barrio Fiesta Manufacturing Corporation, together with Petitioner Consuelo Ongpauco-Cauton in her parallel petition (Cancellation No. 92063674), moved for summary judgment in their respective petitions to cancel the ‘365 Mark “Barrio Fiesta Express” based on the indisputable facts that Petitioner and the Ongpauco family used “Barrio Fiesta” in commerce well before Registrants applied for the ‘365 Mark.^{1/}

In support of their motions, Petitioner and Ongpauco-Cauton submitted testimony from multiple witnesses – two substantive declarations^{2/} and eight witnesses’ deposition testimony.^{3/} Supporting evidence also includes (a) inventory records from Petitioner’s United States distributor dating back to 1989 [Avanzado Exs. 2-A through D], (b) documents from Registrants’ operations, website, and conduct relating to the ‘365 Mark [Avanzado Exs. 3-J through P, JJ through MM], (c) documents concerning Petitioner’s products, operations and trademark filings [Avanzado Exs. 3-R through DD], and (d) Petitioner’s and the Ongpauco family’s trademark registration filings and proceedings [Avanzado Exs. 3-EE through II]. The evidence also includes undisputed facts regarding the creation of Petitioner and the consent of the Ongpauco family to Petitioner’s Barrio Fiesta packaged food products. [See Avanzado Exs. 3-V, 3-Z & 3-AA (consent agreements); Cauton Depo. at 54:1-55:20, Avanzado Ex. 3-B]

Rather than present actual evidence of Registrants’ use in commerce which predates this evidence, Registrants resort to unsupported denials and declarations which contradict deposition testimony and documents. As detailed below, Registrants’ opposition is insufficient to create grounds to deny summary judgment. Petitioner’s motion should be granted.

1. For the sake of brevity and consistency, Petitioner uses the same terms in this reply defined in its moving papers.

2. Erlinda Alianan and Ronald Yu [Avanzado Decl. Exs. 1 & 2, respectively]

3. Bonifacio E. Ongpauco [Avanzado Ex. 3-A], Cesar Cauton [Avanzado Ex. 3-B], Erwin Santos [Avanzado Ex. 3-C], third party food manufacturer/packager, Ramar Foods International [Avanzado Ex. 3-D], Registrant June Rono (individually and as a corporate designee) [Avanzado Exs. 3-E & F], Registrant Justin Rono [Avanzado Ex. 3-G], Registrant Ashley Rono [Avanzado Ex. 3-H], and Registrants’ employee, Michelle Villanueva [Avanzado Ex. 3-I].

II.

REGISTRANTS' OPPOSITION DOES NOT CREATE TRIABLE ISSUES OF FACT

A. Petitioner's Prior Use of "Barrio Fiesta" Marks Is Undisputed

Petitioner submitted evidence of its manufacture and sales of "Barrio Fiesta" products in the United States continuously since 1987. [Facts ¶¶ 9-20] Petitioner also submitted evidence that the Ongpauco family has used "Barrio Fiesta" marks in restaurants continuously in the United States since 1987. [Facts ¶¶ 3-8] Registrants do not – because they cannot – submit any evidence that they used their registered mark before 2011. Instead, they contend that they are not required to submit evidence of prior use because of their registration. [Opp. at 6-8]

Of course, Registrants' contention is contrary to law. *Grupo Gigante S.A. de C.V. v. Dallo & Co.*, 391 F.3d 1088, 1093 (9th Cir. 2004) ("priority ordinarily comes with earlier use of a mark in commerce... [and] [i]t is 'not enough to have invented the mark first or even to have registered it first'"); *Sengoku Works Ltd. v. RMC Int'l, Ltd.*, 96 F.3d 1217, 1219 (9th Cir. 1996) ("It is axiomatic in trademark law that the standard test of ownership is priority of use."); *Hydro-Dynamics, Inc. v. George Putnam & Co.*, 811 F.2d 1470, 1472 (Fed. Cir. 1987) ("The common law and the Lanham Act require that trademark ownership be accorded to the first bona fide user." (citing *New England Duplicating Co. v. Mendes*, 190 F.2d 415, 417 (1st Cir. 1951) ("the exclusive right to the use of a mark...claimed as a trademark is founded on priority of appropriation"))). Thus, a non-registrant user of a mark can rebut the presumption of registrant's ownership by a preponderance of the evidence when "the non-registrant can show that he used the mark in commerce first, then the registration may be invalidated." *Sengoku Works*, 96 F.3d at 1219-20 (citing *Vuitton et Fils S.A. v. J. Young Enterprises*, 644 F.2d 769, 775-76 (9th Cir. 1981); *Rolley, Inc. v. Younghusband*, 204 F.2d 209 (9th Cir. 1953)).

Put differently, registration "has no effect" on common law rights, "which requires a mark to have been used in commerce before a protectible ownership interest in the mark arises." *Department of Parks & Recreation v. Bazaar Del Mundo, Inc.*, 48 F.3d 1118, 1125 (9th Cir. 2005) (citing *Kellogg Co. v. Nat'l Biscuit Co.*, 305 U.S. 111, 117 n.3, 59 S.Ct. 109, 83 L.Ed. 73 (1938); *Cal. Cooler v. Loretto Winery, Ltd.*, 774 F.2d 1451, 1454 (9th Cir. 1985)). More succinctly, "the party claiming ownership must have been the first to actually use

the mark in the sale of goods or services.” *Department of Parks & Recreation*, 48 F.3d at 1125 (quoting *Sengoku Works*, 96 F.3d at 1119); *see also* 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 19:110 (4th ed.) (“use in commerce...should be interpreted with flexibility so as to encompass various genuine, but less traditional, trademark uses”).

Not only is Petitioner’s evidence of prior use undisputed – even June admits purchasing Petitioner’s products in the “mid-2000s” *before* Registrants applied for and obtained the ‘365 Mark.

Q: Are you able to estimate a date that you purchased Barrio Fiesta food products of Barrio Fiesta Manufacturing Corporation in the United States?

A: Again, I don’t recall specifically. I do remember, perhaps, buying it mid- -- mid-2000s, perhaps.

Q: Okay. But certainly before you purchased the Barrio Fiesta Restaurant located in Milpitas?

A: Yes.

[Facts ¶ 25 (June Depo. at 36:6-38:4 (Avanzado Ex. 3-E)]^{4/}

Registrants’ authorities do not support their contention that they are exempt from proving prior use. For example, in *Casual Corner Assocs. v. Casual Stores of Nevada, Inc.*, 493 F.2d 709, 712-14 (9th Cir. 1974) (Opp. at 6), plaintiff failed to show continuous use of an unregistered mark prior to the registration date of the incontestable mark at issue. Thus, in *Casual Corner*, the party asserting common law rights did not prove prior use. *Id.* Registrants (even with their registration) are not immune from proving use in commerce before the date an unregistered mark which was in fact used in commerce.

Here, Registrants present no evidence that shows their use of a “Barrio Fiesta” mark predated the use by Petitioner or Ongpauco-Cauton. Thus, the undisputed evidence establishes: (1) the Ongpauco family used the “Barrio Fiesta” mark continually in the United

4. June attempts to contradict this testimony in his declaration, and thereby “dispute” Petitioner’s facts and evidence, by claiming that he “was not aware that [Petitioner] was importing products in any sort of significant quantities at the time he purchased” the Milpitas BF Restaurant. [See Registrants’ Resp. to Petitioners’ Separate Statement of Undisputed Facts (“Registrants’ Facts”) ¶ 24; *but see* Registrants’ Facts ¶ 25 (admitting that June testified as quoted)] As detailed below, Section II.C *infra*, Registrants cannot defeat summary judgment by submitting declarations which contradict deposition testimony or provide only unsupported denials of Petitioner’s evidence.

States in multiple restaurants since 1987 (and in the Philippines since 1958) [Bonifacio Depo. at 8:5-9:20 (Avanzado Ex. 3-A); Cauton Depo. at 11:7-12:8 (Avanzado Ex. 3-B)]; (2) Petitioner has manufactured and imported and sold in the United States its “Barrio Fiesta” food products since 1987 [Bonifacio Depo. at 22:2-5, 24:14-20, 43:8-22, 51:16-20, 54:8-12; 69:12-17 (Avanzado Ex. 3-A)]; and (3) Petitioner and its distributors have sold “Barrio Fiesta” products in the United States continuously at least as early as 1989 – years before the registration of the ‘365 Mark [Alianan Decl. ¶¶ 3-6 (Avanzado Ex. 1); Yu Decl. ¶¶ 3-11 (Avanzado Ex. 2 & Exs. 2-A through D)]. In contrast, Registrants first used a “Barrio Fiesta” mark in 2011 when June bought the Milpitas BF Restaurant. [June Depo. at 143:24-144:9 (Avanzado Ex. 3-F) & Avanzado Ex. 3-N (Purchase Agreement); RJN ¶¶ C, D, E & F & RJN Ex. 3; Avanzado Exs. 3-O, 3-P & 3-JJ]

Registrants, lacking any evidence to create a factual dispute on the foregoing facts, are left to attack Petitioner’s evidence with unsupported denials.^{5/} Registrants’ contentions do not (and cannot) save them from summary judgment here.

B. Prior Trademark Filings Support The Grant of Summary Judgment

Registrants do not dispute that Petitioner was formed by Bonifacio (a member of the Ongpauco family) in 1987 and immediately began to manufacture packaged food products under the Barrio Fiesta label. [See Registrants’ Facts ¶¶ 9-10] Registrants also do not dispute that Bonifacio and other members of the Ongpauco family previously applied for and/or received trademark registrations for “Barrio Fiesta” marks prior to the ‘365 Mark. [See Registrants’ Facts ¶ 42 (Bonifacio’s 1993 California trademark registration), ¶ 43 (Bonifacio’s 2006 USPTO trademark application with a first use date specified in 1987), ¶ 44 (Petitioner’s 2007 trademark application specifying a first use date in 1987), ¶¶ 45-49 (Ongpauco family’s California trademark filings and registration between 1986 and 2011)] However, Registrants claim that

5. Registrants dispute otherwise undisputed facts concerning the Ongpauco family restaurants in the United States on the basis that June “believed [his restaurant] to be the only operational restaurant using the Barrio Fiesta mark.” [See, e.g., Registrants’ Facts ¶¶ 5, 6 & 8] Registrants provide no evidence that they used a Barrio Fiesta mark prior to date established by Petitioner’s witnesses – other than June’s “belief.” Registrants also dispute otherwise undisputed facts concerning Petitioner’s importation and sales of Barrio Fiesta products, contending that Petitioner’s USPTO filings after the Bonifacio sale to Splash Corporation constitute admissions that Petitioner was not using a Barrio Fiesta mark until after Registrants’ ‘365 Mark. [See, e.g., Registrants’ Facts ¶¶ 11-15, 17-18, 20 & 41; Opp. at 8-9] Registrants’ contentions are supported by neither law nor evidence, as detailed below.

Petitioner's filings in 2011 and after, stating an "intent to use" marks, constitute admissions that Petitioner had not used "Barrio Fiesta." [See Opp. at 8] Registrants mischaracterize the record.

As an initial matter, Registrants ignore their admissions that Petitioner, its predecessor and the Ongpauco family filed for and obtained a number of Barrio Fiesta trademarks between 1993 and 2011 – *before* Registrants applied for the '365 Mark – and all specifying dates of first use before the '365 Mark. [Registrants' Facts ¶¶ 42-52] In addition, Respondents neglect to mention that Bonifacio sold a majority interest in Petitioner to Philippines-based Splash Corporation, which as Petitioner's new majority owner caused Petitioner to file those trademark applications. [Bonifacio Depo. 43:23-45:12 (Avanzado Ex. 3-A)] Thus, the citation to Section 1(b) in applications filed by Petitioner's new owner for other product classifications does not (and cannot) mean that Petitioner's use of "Barrio Fiesta" since 1987 can simply be disregarded.

Moreover, the law is clear: Petitioner's applications and other filings cannot be deemed as admissions because the date of first use specified in such filings is not conclusive. *Neville Chem. Co. v. Lubrizol Corp.*, 1977 TTAB LEXIS 116, *17, 196 U.S.P.Q. (BNA) 756 (TTAB 1977) ("It is well established that a party to an inter partes proceeding before the Board is not restricted to the date of first use set forth in its application or registration, but is entitled to carry the date of first use back to a prior date by proper evidence."); *Management & Computer Services v. Management Analysis Corp.*, 1973 TTAB LEXIS 324, *7, 181 U.S.P.Q. (BNA) 529 (TTAB 1973) ("Applicant is not bound by the date of first use alleged in the application for registration and applicant is entitled to carry the date of first use back to a prior date by proper evidence."); *see also Hydro-Dynamics, Inc. v. George Putnam & Co.*, 811 F.2d 1470, 1472-73 (Fed. Cir. 1987) (failure to submit evidence of use prior to date in application). In other words, proof of "priority of appropriation" is still the key to determining which party possesses superior trademark rights. *New England Duplicating Co.*, 190 F.2d at 417; *Sengoku Works Ltd.*, 96 F.3d at 1219; *Hydro-Dynamics, Inc. v. George Putnam & Co.*, 811 F.2d at 1472.

In sum, therefore, Petitioner has provided clear and convincing evidence of prior use in the United States dating back to the 1980s – including numerous trademark applications,

filings and registrations which establish a first use date well before Registrants' 2011 application. Registrants cannot defeat summary judgment on the basis of these filings.

C. Registrants' Self Serving and Uncorroborated Declarations Cannot Create Triable Issues Of Material Fact

Registrants' declarations, contradicting deposition testimony and containing unsupported denials, are insufficient to create triable issues of fact. The Federal Rules of Evidence govern this proceeding. *Brunswick Corp. v. British Seagull Ltd.*, 35 F.3d 1527, 1534 (Fed. Cir. 1994) (citing 37 CFR 2.122 (a)). Cases make clear that a party cannot defeat summary judgment through unsupported declarations. *Batiz v. American Commercial Security Services*, 776 F. Supp. 2d 1087, 1097-99 (C.D. Cal. 2011) (quoting *F.T.C. v. Neovi, Inc.*, 604 F.3d 1150, 1159 (9th Cir. 2010); citing *McSherry v. City of Long Beach*, 584 F.3d 1129, 1138 (9th Cir. 2009) ("Summary judgment requires facts, not simply unsupported denials...")). "The general rule...is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991). Such declarations are considered "sham testimony" and are inadmissible. *Id.* at 266-67; *see also Hansen v. U.S.*, 7 F.3d 137, 138 (9th Cir. 1993) ("When the nonmoving party relies only on its own affidavits to oppose summary judgment, it cannot rely on conclusory allegations unsupported by factual data to create an issue of material fact."). Registrants' opposition is insufficient to deny summary judgment.

1. June Rono's Denial That He Intended to Associate With The Filipino "Barrio Fiesta" Mark Is False

June's declaration claims that he "never attempted to intentionally or otherwise associate my Barrio Fiesta Restaurant in Milpitas (or any of my restaurants or other products) with the Ongpauco Family Brand of the Philippines or the mark "The Original Barrio Fiesta of Manila." [June Decl. ¶7] June's uncorroborated denial flies in the face of two indisputable facts.

First, Registrants admit that they "used the Barrio Fiesta logo and design created in the Philippines by the Ongpauco's" in their application for the Mark. [See Registrants' Facts ¶34] Registrants' website boasts a "history dating back to 1952" [Avanzado Ex. 3-F] – an

obvious reference to the Ongpauco family restaurants in the Philippines.^{6/} More importantly, on May 13, 2013, June filed trademark application No. 85/930,531 to register the Ongpauco mark – “The Original Barrio Fiesta of Manila” – in the United States (the “‘531 Rono Application”). On September 3, 2013, the USPTO issued an office action refusing the ‘531 Rono Application under Section 2(D) for likelihood of confusion with another Ongpauco family “Barrio Fiesta” mark. The ‘531 Rono Application was deemed abandoned on March 4, 2014 when June failed to respond to the action letter.^{7/}

This indisputable evidence establishes that, notwithstanding June’s bald denial, Registrants attempt to associate themselves with the Ongpauco family Barrio Fiesta brand. Under the Federal Rules and the authorities thereunder, such June’s “sham testimony” is insufficient to support a denial of summary judgment.

2. June Rono’s Claim that Registrants Are Selling Marked Packaged Foods Is False

June claims that he is “developing and selling packaged foods bearing the Barrio Fiesta Express mark.” [June Decl. ¶ 11] Again, June’s declaration testimony contradicts deposition testimony. Registrant Justin Rono testified that he has no knowledge of any packaged foods bearing the Barrio Fiesta mark being sold in markets in the United States other than Petitioner’s Barrio Fiesta products. [Justin Depo. 34:24-35:8 (Avanzado Ex. 3-G)]

In addition, the only company Registrants approached to produce packaged food products testified that no products bearing the “Barrio Fiesta Express” mark have been produced or sold. June approached one company, Ramar Foods International Corporation (“Ramar”), regarding the production of packaged foods under the Barrio Fiesta Express name but their discussions did not go anywhere. [June Depo. 232:13-244:9 (Avanzado Ex. 3-F), Ramar Depo.

6. While Registrants attempt to “dispute” the indisputable [*see* Registrants’ Facts ¶ 35], Registrants did not (and cannot) deny that their website claims an association with the “history dating back to 1952” of the Ongpauco family Barrio Fiesta restaurants in the Philippines. [Avanzado Ex. 3-L]

7. The ‘531 Rono Application for “The Original Barrio Fiesta of Manila” is attached hereto as Exhibit 7. The USPTO’s September 3, 2013 Office Action is attached hereto as Exhibit 8. Petitioner hereby requests that the Board take judicial notice of these documents and the ‘531 Rono Application files pursuant to Rule 201 of the Federal Rules of Evidence in conjunction with Petitioner’s original request for judicial notice filed concurrently with its motion.

79:11-81:5, 82:12-15, 83:4-87:21, 89:19-90:11, 93:3-7, 93:13-96:24, 97:18-25, 99:3-101:7 (Avanzado Ex. 3-D)]^{8/} Ramar does not manufacture food products for Registrants. [Ramar Depo. 90:12-22, 100:23-101:4 (Avanzado Ex. 3-D)] Ramar testified that discussions remained in the exploratory phase because Registrants are not logistically ready to embark on such a project. [Ramar Depo. 79:11-81:5, 83:4-87:21, 89:19-90:11, 93:3-93:7, 93:13-96:24, 99:23-101:7, 103:1-103:8 (Avanzado Ex. 3-D); *see also* June Depo. 109:2-111:12 (Avanzado Ex. 3-E) & June Depo. 235:11-236:25, 241:23-242:9, 247:6-10 (Avanzado Ex. 3-F)]

In sum, Registrants attempt to manufacture disputes of fact in declarations despite the clear deposition testimony and documentary evidence to the contrary. Indeed, Registrants submit no evidence of packaging, sales or other documentary evidence to support June's claim of packaged food sales – in stark contrast to Petitioner's (undisputed) evidence of packaging and sales. [Bonifacio Depo. at 22:2-23:18 (Avanzado Ex. 3-A) & Avanzado Ex. 3-R (Barrio Fiesta product and packaging) (*see also* Registrants' Facts ¶ 10); Yu Decl. ¶¶ 5-13, Avanzado Ex. 2-A through D (sales inventory documents)] Registrants' unsupported denials and declarations contradicting deposition testimony are insufficient to defeat summary judgment.^{9/}

D. Registrants' Arguments Regarding "De Minimis" Sales And "Market Penetration" Are Unsupported By Evidence Or Law

Registrants' contentions minimize Petitioner's evidence of prior use without actually producing evidence that Registrants' use of Barrio Fiesta predated the use of Petitioner and the Ongpauco family. [*E.g.*, Opp. at 7 (Petitioner's evidence "at best shows the operation of a single restaurant in the Los Angeles, California area and sporadic/*de minimis* sales of an unspecific amount of packaged foods to unspecified locations without any corroborating documentation"); Opp at 9-12 (arguing Petitioner's need to show it "conducted sufficient

8. Ramar's president, Susie Quesada, was the designee for Ramar's Rule 30(b)(6) deposition. [Ramar Depo. 8:20-9:3 (Avanzado Ex. 3-D)]

9. June's remaining factual claim that he "believed" that there were no other Barrio Fiesta Restaurants in the United States besides the Milpitas BF Restaurant [Registrants' Facts ¶¶ 5, 6 & 8 (citing June Decl. ¶ 8)] is nothing more than an unsupported denial decried by the Ninth Circuit. *See McSherry*, 584 F.3d at 1138. More importantly, June's "belief" (whether true or not) is irrelevant to whether Petitioner or the Ongpauco's used "Barrio Fiesta" before 2011 when Registrants applied for the '365 Mark.

business to penetrate the market in all 50 states prior to 2011”)] Registrants misstate the law – *Christian Faith Fellowship Church v. Adidas AG*, 841 F.3d 986 (Fed. Cir. 2016) (sale of 2 hats across state lines sufficient to establish use in commerce) – and the evidence.

As detailed above, Petitioner’s testimonial evidence is both extensive *and* corroborated. Erlinda Alianan [Avanzado Ex. 1] and Ronald Yu [*Id.* Ex. 2] testified by declaration to Petitioner’s distribution of Barrio Fiesta products in the United States since the 1980s and authenticated sales inventory documents to support that testimony. [Avanzado Ex. 2-A through D] Petitioner also submitted deposition testimony from eight witnesses, including testimony from June admitting that he purchased Petitioner’s Barrio Fiesta products before Registrants applied for the ‘365 Mark. [See Registrants’ Facts ¶ 25; June Depo. at 36:6-38:4 (Avanzado Ex. 3-E)] Finally, Petitioner’s evidence includes evidence of its products, operations and trademark filings [Avanzado Exs. 3-R through DD] as well as evidence of the Ongpauco family’s trademark registration filings and proceedings [Avanzado Exs. 3-EE through II] – all of which establish that Petitioner and the Ongpaucos used “Barrio Fiesta” in commerce before Registrants applied for the ‘365 Mark.

Registrants also misstate the law. In *Christian Faith Fellowship Church*, the Federal Circuit reversed the TTAB’s decision canceling a mark for failure to use it in commerce. The TTAB held that the church’s sales of two marked hats across state lines was *de minimis* and “insufficient to show use that affects interstate commerce.” 841 F.3d at 988-89. The *Christian Faith Fellowship Church* court reversed, reaffirming the rejection of a “*de minimis* test for the ‘use in commerce’ requirement” and holding that “the Lanham Act by its terms extends to all commerce which Congress may regulate.” *Id.* at 994 (citing *Larry Harmon Pictures Corp. v. Williams Rest. Corp.*, 929 F.2d 662, 666 (Fed. Cir. 1991)). The court concluded that “[i]t is beyond dispute that ‘the definition of commerce in the Lanham Act means exactly what the statute says, i.e. “all commerce which may lawfully be regulated by Congress.”’” *Id.* at 995 (citing *Larry Harmon Pictures Corp.*, 929 F.2d at 666).

Petitioner submitted evidence to show that its sales and the Ongpauco family restaurant operations all predated Registrants’ application for the ‘365 Mark. Registrants failed to provide any evidence showing prior use. Summary judgment should be granted.

E. Registrants' Other Contentions Are Meritless

Registrants take issue with Petitioner's reliance on *Grupo Gigante* and the famous mark exception to the territoriality rule. [Opp. at 4-5] Registrants cite *ITC Ltd. v. Punchgini, Inc.*, 482 F.3d 135 (2d Cir. 2007) for the proposition that "federal law does not recognize a 'famous mark' exception." Although the Second Circuit declined to follow it, *Grupo Gigante* shows that the Ninth Circuit – federal law – "recognizes" the "famous mark" exception. *ITC Ltd.*, 482 F.3d at 155-65. More importantly, contrary to Registrants' contention, the *ITC Ltd.* court details the TTAB's long standing recognition of the famous marks doctrine. *Id.* at 158-59 (citing *Mother's Rests. Inc. v. Mother's Other Kitchen, Inc.*, 1983 TTAB LEXIS 117, *8, 218 U.S.P.Q. (BNA) 1046 (TTAB 1983); *First Niagara Ins. Brokers, Inc. v. First Niagara Fin. Group, Inc.*, 2005 TTAB LEXIS 453, *30-31, 77 U.S.P.Q.2D (BNA) 1334 (TTAB 2005)). In this proceeding, *Grupo Gigante* and the famous mark exception applies.

Registrants' contention that Petitioner is "not even alleged that it has an agreement, license or otherwise obtained the right" to use the Ongpauco family's mark [Opp. at 5] ignores facts they do not dispute regarding Petitioner's creation and operations. Petitioner was created by an Ongpauco with the family's consent. [Registrants' Facts ¶ 9; Avanzado Ex. 3-V (Ongpauco consent to Petitioner's creation)] The Ongpauco family reaffirmed their consent in 2011. [Avanzado Exs. 3-Z & 3-AA (consent agreements); Cauton Depo. at 54:1-55:20, Avanzado Ex. 3-B] Petitioner's use of Barrio Fiesta was authorized by the Ongpauco family.

III.

CONCLUSION

For all the foregoing reasons, therefore, Petitioner Barrio Fiesta Manufacturing Corporation respectfully requests that the Court grant its motion for summary judgment.

DATED: April 27, 2017

THE AVANZADO LAW FIRM

By: 
Melvin N.A. Avanzado
Attorneys for Petitioner
Barrio Fiesta Manufacturing Corporation

EXHIBIT 7

Trademark/Service Mark Application, Principal Register

Serial Number: 85930531

Filing Date: 05/13/2013

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85930531
MARK INFORMATION	
*MARK	The Original Barrio Fiesta of Manila
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	The Original Barrio Fiesta of Manila
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Rono, June Francis A.
*STREET	1659 North Capital Avenue Suite 321
*CITY	San Jose
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	95132
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
APPLICANT INFORMATION	
*OWNER OF MARK	Rono, Justin Christian C.
*STREET	1659 North Capitol Avenue Suite 321
*CITY	San Jose
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	95132
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States

APPLICANT INFORMATION	
*OWNER OF MARK	Rono, Ashley Kristen C.
*STREET	1659 North Capitol Avenue Suite 321
*CITY	San Jose
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	95132
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	043
*IDENTIFICATION	Restaurants, namely, food and beverage services
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/31/1992
FIRST USE IN COMMERCE DATE	At least as early as 12/31/1992
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	SPE0-7514953149-162919208_ web 1 original barrio of manila .pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\859\305\85930531\xml1\APP0003.JPG
SPECIMEN DESCRIPTION	web page download
ATTORNEY INFORMATION	
NAME	/James Cai/
ATTORNEY DOCKET NUMBER	Barrio-02-2013
FIRM NAME	Schein & Cai LLP
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EMAIL ADDRESS	jcai@sacattorneys.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/James Cai/
SIGNATORY'S NAME	James Cai
SIGNATORY'S POSITION	Attorney
DATE SIGNED	05/13/2013
SIGNATURE	/James Cai/
SIGNATORY'S NAME	James Cai
SIGNATORY'S POSITION	Attorney
DATE SIGNED	05/13/2013
SIGNATURE	/James Cai/
SIGNATORY'S NAME	James Cai
SIGNATORY'S POSITION	Attorney
DATE SIGNED	05/13/2013

Trademark/Service Mark Application, Principal Register

Serial Number: 85930531

Filing Date: 05/13/2013

To the Commissioner for Trademarks:

MARK: The Original Barrio Fiesta of Manila (Standard Characters, see [mark](#))

The literal element of the mark consists of The Original Barrio Fiesta of Manila.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicants, June Francis A. Rono, a citizen of United States, having an address of
1659 North Capital Avenue Suite 321
San Jose, California 95132
United States

Justin Christian C. Rono, a citizen of United States, having an address of
1659 North Capitol Avenue Suite 321
San Jose, California 95132
United States

Ashley Kristen C. Rono, a citizen of United States, having an address of
1659 North Capitol Avenue Suite 321
San Jose, California 95132
United States

request registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 043: Restaurants, namely, food and beverage services

In International Class 043, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 12/31/1992, and first used in commerce at least as early as 12/31/1992, and is now in use in such commerce. The applicants are submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) web page download.

Original PDF file:

[SPE0-7514953149-162919208_.web.1_original_barrio_of_manila_.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

The applicant's current Attorney Information:

/James Cai/ of Schein & Cai LLP
111 N. Market Street Suite 1020
San Jose, California 95113
United States

The attorney docket/reference number is Barrio-02-2013.

The applicant's current Correspondence Information:

/James Cai/
Schein & Cai LLP
111 N. Market Street Suite 1020
San Jose, California 95113
(408) 436-0789x201(phone)
(408) 436-0758(fax)

jcai@sacattorneys.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /James Cai/ Date: 05/13/2013

Signatory's Name: James Cai

Signatory's Position: Attorney

Signature: /James Cai/ Date: 05/13/2013

Signatory's Name: James Cai

Signatory's Position: Attorney

Signature: /James Cai/ Date: 05/13/2013

Signatory's Name: James Cai

Signatory's Position: Attorney

RAM Sale Number: 85930531

RAM Accounting Date: 05/14/2013

Serial Number: 85930531

Internet Transmission Date: Mon May 13 16:41:03 EDT 2013

TEAS Stamp: USPTO/BAS-XX.XXX.XX.XXX-2013051316410395

2226-85930531-500e14e9520784a20fe8c62272

e095e63299d6f7e9af4da25afeb186c0db6aa4-C

C-3992-20130513162919208515

The Original Barrio Fiesta of Manila



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EXHIBIT 8

To: Rono, June Francis A. (jcai@sacattorneys.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85930531 - THE ORIGINAL BARRIO FIESTA OF - Barrio-02-20
Sent: 9/3/2013 10:31:58 AM
Sent As: ECOM103@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
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[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)
[Attachment - 12](#)

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 85930531

MARK: THE ORIGINAL BARRIO FIESTA OF

85930531

CORRESPONDENT ADDRESS:

/JAMES CAI/

SCHEIN & CAI LLP

111 N MARKET ST STE 1020

SAN JOSE, CA 95113-1118

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Rono, June Francis A.

CORRESPONDENT'S REFERENCE/DOCKET NO:

Barrio-02-20

CORRESPONDENT E-MAIL ADDRESS:

jcai@sacattorneys.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: 9/3/2013

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

LIKELIHOOD OF CONFUSION – REFUSAL UNDER SECTION 2(D)

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. **1712454**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

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

In this case the marks are very similar. Applicant's proposed mark is **BARRIO FIESTA**, and the registered mark is **BF THE ORIGINAL BARRIO FIESTA OF MANILA (with design)**. The marks share the wording BARRIO FIESTA which creates a similar commercial impression between the marks.

Consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark. *In re Power Distrib., Inc.*, ___ USPQ2d ___, Ser. No. 77825939, 2012 TTAB LEXIS 402, at *5 (Sept. 29, 2012); *see Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *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).

For a composite mark containing both words and a design, the word portion may be more likely to be impressed upon a purchaser's memory and to be used when requesting the goods and/or services. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); TMEP §1207.01(c)(ii); *see In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908, 1911 (Fed. Cir. 2012) (citing *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir. 1983)). Thus, although such marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366, 101 USPQ2d at 1911 (Fed. Cir. 2012) (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)).

The word portions of the marks are nearly identical in appearance, sound, connotation, and commercial impression; therefore, the addition of a design element does not obviate the similarity of the marks in this case. *See In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993); TMEP §1207.01(c)(ii).

Although marks are compared in their entireties, 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).

Comparison of services

Where the goods and/or services of an applicant and registrant are “similar in kind and/or closely related,” the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods and/or services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

The parties’ goods are highly related. Applicant’s goods are “ **restaurants, namely, food and beverage services**” and registrant’s services are **restaurant services**

Viewing all of the factors together, based on the similarity of the registered mark(s) to the proposed mark and the similarity of the goods and/or services, confusion as to source is likely. Purchasers familiar with the mark(s) of the cited registration(s), upon seeing applicant’s mark, would be likely to conclude that applicant’s goods and/or services emanated from the same source, or that applicant’s goods and/or services were associated with and/or sponsored by the registrant(s). Accordingly, registration is refused due to the likelihood of confusion.

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

EARLIER FILED APPLICATION – POTENTIAL 2(D) REFUSAL

The filing date of pending U.S. Application Serial No. **85384724** precedes applicant’s filing date. See attached referenced application. If the mark in the referenced application registers, applicant’s mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant’s response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant’s mark and the mark in the referenced application. Applicant’s election not to submit arguments at this time in no way limits applicant’s right to address this issue later if a refusal under Section 2(d) issues.

INFORMALITIES

Applicant must respond to the requirement(s) set forth below.

Translation required

Applicant must submit an English translation of all foreign wording in the mark. 37 C.F.R. §2.32(a)(9); *see* TMEP §809. In the present case, the wording “BARRIO FIESTA” requires translation.

The following translation statement is suggested:

The English translation of the word “BARRIO” in the mark is “NEIGHBORHOOD PARTY”.

TMEP §809.03.

Claim prior registration

If applicant owns U.S. Registration No. 4034365, then applicant must submit for the application record a claim of ownership of this registration. *See* 37 C.F.R. §2.36; TMEP §812. See the attached copy of the registration. *See* TMEP §812.

Applicant may use the following format to claim ownership of the registration:

Applicant is the owner of U.S. Registration No. 4034365.

Disclaimer required

Applicant must disclaim the descriptive wording “OF MANILLA” apart from the mark as shown because it merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s goods and/or services. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); TMEP §§1213, 1213.03(a).

Specifically, the attached evidence from *Collins Dictionary* shows this wording refers to the chief port of the Philippines. Applicant’s specimen of record indicates that applicant’s restaurant features Filipino food. Therefore, the wording merely describes a feature of the restaurant services, namely, Filipino food.

Applicant may submit the following standardized format for a disclaimer:

No claim is made to the exclusive right to use “OF MANILA” apart from the mark as shown.

TMEP §1213.08(a)(i); *see In re Owatonna Tool Co.*, 231 USPQ 493 (Comm’r Pats. 1983).

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1041, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005); TMEP §1213.01(b).

Trademark Examining Attorney

Law Office 103

Phone: 571-272-9207

carolyn.pendleton@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/mailling 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>.

DESIGN MARK

Serial Number

74159245

Status

CANCELLATION PENDING

Word Mark

BE THE ORIGINAL BARRIO FIESTA OF MANILA

Standard Character Mark

No

Registration Number

1712454

Date Registered

1992/09/01

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Barrio Fiesta International, Inc. CORPORATION CALIFORNIA PO Box 30159
WALNUT CREEK CALIFORNIA 94598

Goods/Services

Class Status -- ACTIVE. IC 042. US 100. G & S: restaurant
services. First Use: 1990/08/01. First Use In Commerce: 1990/08/01.

Prior Registration(s)

1544981

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "OF MANILA" APART FROM
THE MARK AS SHOWN.

Description of Mark

The mark consists, in part of, the words "THE ORIGINAL BARRIO FIESTA
OF MANILA" and the stylized letters "BF" and design.

Translation Statement

The English translation of the words "BARRIO FIESTA" in the mark is
"town festival".

Print: Sep 2, 2013

74159245

Filing Date

1991/04/22

Examining Attorney

WEIGELL, CHARLES

Attorney of Record

RICHARD L MORRIS JR ESQ

UN FIDICOM

Barrio FIESTA
BY BARCELONA



DESIGN MARK

Serial Number

85384724

Status

FIRST EXTENSION - GRANTED

Word Mark

BARRIO FIESTA

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Barrio Fiesta Manufacturing Corporation CORPORATION PHILIPPINES T.
Santiago St. corner R. Jacinto St. Valenzuela City Metro Manila
PHILIPPINES

Goods/Services

Class Status -- ACTIVE. IC 029. US 046. G & S: meat, fish, poultry, and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk; milk products, namely, ice cream, ice milk and frozen yogurt; edible oils and fats; confectionery, namely, non-dairy based mix for making whipped topping.

Goods/Services

Class Status -- ACTIVE. IC 030. US 046. G & S: coffee and artificial coffee; tea; cocoa; sugar; rice; tapioca; sago; flour; preparations made from cereals, namely, cereal-derived food bars; bread, pastry and confectionery, namely, bases for bakery goods, brownie mixes, cake mixes, cookie mixes, frosting and icing mixes, mixes for baking batters, muffin mixes, pudding mixes, pastry mixes, mixes for candy making; ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, condiments, namely, sauces; spices; ice.

Translation Statement

The English translation of "BARRIO" in the mark is "NEIGHBORHOOD".

Filing Date

2011/07/29

Print: Sep 2, 2013

85384724

Examining Attorney

CRAWFORD, MARY

Attorney of Record

Michael J. Leonard

BARRIO FIESTA

DESIGN MARK

Serial Number

85243004

Status

REGISTERED

Word Mark

BARRIO FIESTA EXPRESS

Standard Character Mark

Yes

Registration Number

4034365

Date Registered

2011/10/04

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Rono, Ashley Kirsten C. INDIVIDUAL UNITED STATES 1629 Wharton Road San Jose CALIFORNIA 95132

Owner

Rono, Justin Christian C. INDIVIDUAL ARMENIA 1629 Wharton Road San Jose CALIFORNIA 95132

Goods/Services

Class Status -- ACTIVE. IC 043. US 100 101. G & S: Fast-food restaurants. First Use: 2011/01/03. First Use In Commerce: 2011/01/03.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EXPRESS" APART FROM THE MARK AS SHOWN.

Translation Statement

The English translation of "Barrio Fiesta" in the mark is "Neighborhood Party".

Filing Date

Print: Sep 2, 2013

85243004

2011/02/15

Examining Attorney
FELDMAN, DAWN

Barrio Fiesta Express

Collins

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Definition of "Manila"

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Manila (mə'nīlə )

► Definitions

noun

1. the chief port of the Philippines, on S Luzon on Manila Bay: capital of the republic until 1948 and from 1976; seat of the Far Eastern University and the University of Santo Tomas (1611). Pop: 10 677 000 (2005 est)
2. a type of cigar made in this city

Word Frequency ●●●●●

Spread the Word



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3. *often not capital short for* [Manila hemp](#). [Manila paper](#)

► Example Sentences Including 'Manila'

Chart 204 for the Philippines is set for 9.15 a. m. on 4 July 1946, in the capital, Manila.
Campion, Nicholas THE BOOK OF WORLD HOROSCOPES

For instance, there's one young alumnus starting a business headquartered in London, listed in New York, and with a back office in Manila.
BUSINESS TODAY (2000)

Four years before, while the ship was docked in Manila, Jarvis, feeling disenchanted with the West and Western women, had met his match.

Lunnon-Wood, Mike LET NOT THE DEEP

Mahathir Mohamad, prime minister of Malaysia, told reporters the government had not yet received a request for help from Manila.
GLASGOW HERALD (2001)

No one immediately claimed responsibility for the attack in Koronadal, about 950 kilometres south of Manila.
GLOBE AND MAIL (2003)

On Sunday the authorities had barricaded the jail in the capital, Manila.
INDEPENDENT (1999)

Taken by some backstreet photographer in Manila, the grainy image had been posted home by Billy, along with a letter.

Mark Mills AMAGANSETT (2004)

The Birds International, Inc. exotic bird farm is located off a highway on the outskirts of Quezon City, the sister sprawl of Manila.

Tony Juniper SPIX'S MACAW: THE RACE TO SAVE THE WORLD'S RAREST BIRD (2002)

Three detachments of constabulary were captured by Filipino insurgents operating within 16 miles of Manila.
GLOBE AND MAIL (2003)

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"manila" photos from Flickr



Browse Dictionary	#	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z
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- | | | |
|--|---|--|
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| The Collins French-English Dictionary | The Collins English-German Dictionary | The Collins German-English Dictionary |
| The Collins English-Spanish Dictionary | The Collins Spanish-English Dictionary | The Collins English-Italian Dictionary |
| The Collins Italian-English Dictionary | The Collins English Thesaurus | The Collins American Thesaurus |
| Latest New Word Suggestions | | |

To: Rono, June Francis A. (jcai@sacattorneys.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85930531 - THE ORIGINAL BARRIO FIESTA OF - Barrio-02-20
Sent: 9/3/2013 10:31:59 AM
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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **9/3/2013** FOR U.S. APPLICATION SERIAL NO. 85930531

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **9/3/2013** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document:

PETITIONER'S REPLY BRIEF IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

has been served on the date set forth below upon Registrants by sending an electronic copy by email and a hard copy by FedEx overnight delivery to:

James Cai, Esq.
SAC Attorneys LLP
111 North Market Street, Suite 1020
San Jose, California 95113
<jcai@sacattorneys.com>

Executed on April 27, 2017 at Los Angeles, California.



Melvin N.A. Avanzado