

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: September 20, 2004

Concurrent Use No. 94002083

El Viajero Cheese Company,
Inc.

V.

MARQUEZ BROTHERS
INTERNATIONAL, INC.

MARQUEZ BROTHERS INTERNATIONAL, INC.
1670 LAS PLUMAS AVENUE, SUITE C
SAN JOSE, CA 95133

Angela Campbell, Paralegal Specialist:

The applicant in application Serial No. [concurrent use applicant's serial no. 76130223] has applied for a concurrent use registration for the trademark or service mark set forth below.

Name of applicant : El Viajero Cheese Company, Inc.
Applicant's address : 18 Huntington Place
Brooklyn, NY 11231
Applicant's mark : EL VAQUERO
Goods or services : processed diary products
excluding ice cream, ice milk
and frozen yogurt in
International Class 29
Filing date : September 18, 2000
Territory of use : for the States of New York, New
Jersey, Connecticut,
Massachusetts, Rhode Island,
Maryland, Delaware, Virginia,
Florida and the District of
Columbia

Attorney : Catherine S. Bridge
1358 Clove Road
Staten Island, NY 10301

In its application, the applicant has recited as an exception to its allegation of exclusive use of said mark, use by you of an identical or very similar mark. Your mark, goods or services, and territory of use, *as acknowledged in* the referenced application, are set out below in a summary of details of the application. A copy of the application as filed is included herewith.

Your mark : VAQUERO

Your goods or services : Mexican foods; namely cheese and cream

Your territory of use : the entire United States except for the States of New York, New Jersey, Connecticut, Massachusetts, Rhode Island, Maryland, Delaware, Virginia, Florida, the District of Columbia, Pennsylvania, Vermont, West Virginia, Kentucky, Tennessee, North Carolina, Alabama and Georgia.

Since the Office has determined that applicant's mark appears entitled to registration, subject to a concurrent use proceeding with you, a concurrent use proceeding is hereby instituted under the provisions of Section 2(d) of the Trademark Act of 1946.

The proceeding will be conducted in accordance with the Rules of Practice in Trademark cases, as set out in Title 37 of the Code of Federal Regulations. Rule 2.99 thereof, under which this notice is given, provides that:

An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified as a concurrent user in the application, but a statement, if desired, may be filed within forty days after the mailing of the notice; in the case of any other party specified as a concurrent user in the application,

an answer must be filed within forty day after the mailing of the notice.

You are allowed until **40 days from the mailing date above** to file an answer in accordance with Rule 2.99. If filed, the answer should be directed to the allegations relating to concurrent use recited in the application identified herein.

You are also requested to advise the Board of any relevant applications or registrations, other than those already listed herein, which should be included in this concurrent use proceeding. Your response, if any, should be in writing and should be filed on or before October 30, 2004.

DISCOVERY AND TESTIMONY PERIODS ARE SET AS INDICATED BELOW.

IN EACH INSTANCE, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party WITHIN THIRTY DAYS after completion of the taking of testimony. Rule 2.125.

Discovery to open:	November 3, 2004
Discovery to close:	May 2, 2005
Testimony period for party in position of plaintiff to close: (opening thirty days prior thereto)	July 31, 2005
Testimony period for party in position of defendant to close: (opening thirty days prior thereto)	September 29, 2005
Rebuttal testimony period to close: (opening fifteen days prior thereto)	November 13, 2005

Briefs shall be filed in accordance with Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Rule 2.129.

CC:

CATHERINE SMITH BRIDGE
1358 CLOVE ROAD
STATEN ISLAND, NY 10301