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Attorney Dkt. No. 224677US-33

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

TEQUILA CAZADORES, S.A. de C.V.,)
)
Opposer,)
)
v.)
)
TEQUILA CENTINELA, S.A. de C.V.,)
)
Applicant.)
_____)



05-22-2003

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

Opposition No. 125,436
Appln. Serial No. 76/112,825
Mark: CABRITO & Design

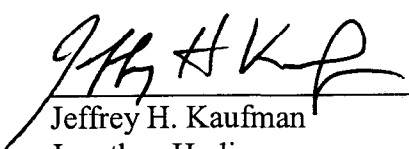
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TRADEMARK TRIAL AND APPEAL BOARD

REQUEST TO SUBSTITUTE DECLARATION
OF JOSE DEJESUS HERNANDEZ-MENDEZ

Applicant respectfully requests that the attached *original* Declaration of Jose DeJesus Hernandez-Mendez be substituted for the copy of the Declaration of Jose DeJesus Hernandez-Mendez that was filed in connection with Applicant's Opposition to Renewed Motion by Barcardi & Company for Summary Judgment on May 20, 2003. The original Declaration was not available to Applicant's counsel on the date the Opposition to Renewed Motion was filed.

Respectfully submitted,

TEQUILA CENTINELA, S.A. de C.V.

By: 
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Attorneys for Applicant

Date: May 22, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **REQUEST TO SUBSTITUTE DECLARATION OF JOSE DEJESUS HERNANDEZ-MENDEZ** was served on counsel for Opposer, this 22nd day of May, 2003, by sending same via First Class Mail, postage prepaid, to:

Jeffrey L. Squires, Esquire
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and

Janice W. Housey, Esquire
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4. The U. S. representative who filed the CABRITO & Design application on Centinela's behalf was a company called "Mr. Trademark." I now understand that "Mr. Trademark" is not a lawyer and was unable to provide my company with legal advice regarding trademark filings in the United States.

5. As originally filed, the goods identified in the CABRITO & Design Application were: "alcoholic beverages (excluding beer), namely distilled liquor, wine, wine coolers, prepared alcoholic cocktails and aperitifs, alcoholic drinks, namely, liqueurs, hard cider, brandy spirits, distilled liquors, distilled spirits, gin, wine, whiskey, vodka, whiskey, rum, tequila, anisette, aguamiel, aguardiente" in International Class 33.

6. During the review process for the CABRITO & Design Application, the U. S. Patent and Trademark Office required Centinela to revise the Identification of Goods. As published for Opposition by third parties, the goods associated with the CABRITO & Design Application were identified as follows: "alcoholic beverages, excluding beer, namely distilled liquor, wine, wine coolers, prepared alcoholic cocktails and aperitifs, and alcoholic drinks, namely, liqueurs, hard cider, brandy spirits, distilled liquors, distilled spirits, gin, wine, whiskey, vodka, rum, tequila, anisette aguamiel, aguardiente" in International Class 33.

7. After Cazadores filed its Opposition against the CABRITO & Design Application, Centinela consulted with its counsel in Mexico, who in turn contacted Jeffrey Kaufman, Esq., a member of the firm of Oblon, Spivak, McClelland, Maier & Neustadt, P.C., so that Centinela could be properly represented.

8. After consulting with Mexican counsel and Mr. Kaufman, it was discovered that the Identification of Goods and the dates of first use in the CABRITO & Design Application, as

published for Opposition, did not reflect the true commercial realities of Centinela's use of the CABRITO & Design mark as of the filing date of the CABRITO & Design Application.

9. The Identification of Goods for the CABRITO & Design Application, as filed, stated those goods on which Centinela intended to use the mark in commerce with the United States. However, it is now my understanding that, because the CABRITO & Design Application was filed on the basis of Centinela's use of the mark in commerce with the United States, Centinela could only state those goods in its application on which the CABRITO & Design was already being used as of the filing date of the application.

10. It is my understanding that Cazadores' United States Opposition, as originally filed, only sought to defeat the CABRITO & Design Application based upon an alleged likelihood of confusion with or dilution of Cazadores' rights in the mark CAZADORES with and without the design of the head of a deer. Cazadores' original Opposition did not accuse Centinela of committing fraud in the filing of the CABRITO & Design Application.

11. On August 30, 2002, before Bacardi sought the first time to enter the Opposition, before Bacardi sought the first time to amend the Opposition to assert a claim of fraud, and before Bacardi the first time moved for summary judgment based on fraud, Centinela filed a motion to amend the identification of goods in the CABRITO & Design Application so that it would read as follows: "alcoholic beverages, excluding beer, namely distilled liquor, prepared alcoholic cocktails and aperitifs, and alcoholic drinks, namely liqueurs, distilled liquors, distilled spirits, tequila" in International Class 33. Specimens showing Centinela's use in commerce with the United States of the CABRITO & Design mark on each of these amended goods, at least as early as March 1, 1996, are collectively attached to this Declaration as Exhibit A.

12. The reason for this requested amendment was and is to more accurately reflect the true commercial realities of Centinela's use of the CABRITO & Design mark as of the filing date of the CABRITO & Design Application.

13. As published for Opposition, the date of first use anywhere and the date of first use in commerce in the CABRITO & Design Application were stated as August 25, 1995.

14. Centinela also sought to amend the date of first use anywhere and date of first use in commerce stated in the CABRITO & Design Application so that these dates read as follows: First Use Anywhere: August 22, 1995; First Use in Commerce: March 1, 1996.

15. The reason for this requested amendment was and is to conform the stated dates of first use anywhere and first use in commerce in the CABRITO & Design Application with those dates that are reflected in Centinela's records.


16. It is my understanding that Bacardi again seeks to have the United States Trademark Trial and Appeal Board declare the CABRITO & Design Application void from the day of its initial filing, on the grounds that the application was fraudulently filed. The reason for Bacardi's renewed accusation of fraud, I understand, is that Centinela intentionally sought a United States registration for more goods than those to which Centinela was entitled. Centinela absolutely denies Bacardi's accusation.

17. The mistakes made in Centinela's CABRITO & Design Application, as originally filed, were made not because Centinela wished to mislead or defraud the U. S. Patent and Trademark Office or the United States public. The mistakes were made in the Application because Centinela did not receive legal advice when the document was prepared. It is my understanding that the CABRITO & Design Application was not prepared, filed or prosecuted by a lawyer, and that "Mr. Trademark" is not a firm capable of providing legal advice.

18. I have read the copies of the Affidavit of Eduardo Miquel, the Affidavit of Lois Asensio and the Declaration of Richard Goldberg in support of Bacardi's motion for summary judgment. Each of these individuals stated by written testimony their "understanding" of Centinela's business, the tequila industry generally, or the use of trademarks for tequila and other alcoholic beverages. None of these persons has complete knowledge or understanding of Centinela's business, the products Centinela produces and sells or the manner in which Centinela uses its trademarks.

I DECLARE that I hold the title of the person signing this Declaration; that all facts contained in this Declaration are true to the best of my own knowledge; that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements have been made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this Declaration, the Application involved in this proceeding or any registration resulting therefrom.

TEQUILA CENTINELA, S.A. de C.V.

Signature:  _____

Name: Jose de Jesus Hernandez-Mendez
(printed or typewritten)

Title/Position: Director General

Date: May 19, 2003

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