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

Proceeding.	91205718
Applicant	Defendant Licores Veracruz, S.A. de C.V.
Other Party	Plaintiff Grupo Industrial Muyaad S.A. DE C.V.

Motion for Suspension in View of Civil Proceeding With Consent

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Licores Veracruz, S.A. de C.V. hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Licores Veracruz, S.A. de C.V. has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein.

Licores Veracruz, S.A. de C.V. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

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.

Respectfully submitted,

/John A. Tang/

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08/16/2012

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

Grupo Industrial Muyaad S.A. de C.V.,	§	
	§	
Opposer,	§	
	§	Opposition No. 91205718
v.	§	
	§	
Licores Veracruz, S.A. de C.V,	§	
	§	
Applicant.	§	

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT’S MOTION TO STAY THE PROCEEDING

Applicant, Licores Veracruz, S.A. de C.V. (“Licores Veracruz”) by and through its undersigned counsel, moves to stay the above-captioned proceeding pending the resolution of a civil action filed in federal court, pursuant to 37 C.F.R. §2.117(a).

I. STATEMENT OF FACTS

Opposer, Grupo Industrial Muyaad S.A. de C.V. (“Muyaad”), began this opposition proceeding on June 20, 2012 against Licores Veracruz’s application for registration, U.S. Application No. 77/917,080 for a configuration of a revolver as a trademark for tequila (the “’080 Application”). Licores Veracruz filed the ‘080 Application on January 21, 2010.

On October 10, 2010, Muyaad filed a trademark application under Application Serial No. 85/165,314 (the “’314 Application”) for a configuration of a revolver for alcoholic beverages, except beers. On February 14, 2011, Examining Attorney Lesley LaMothe refused registration of the ‘314 Application on the ground of Section 2(d) of the Lanham Act citing *inter alia*, Applicant’s U.S. Registration No. 3,503,969 for a configuration of an automatic pistol for alcoholic beverages, except beers.

Furthermore, Examining Attorney LaMothe cited the '080 Application as a potential bar to registration of Opposer's mark. Consequently, on September 7, 2011, the Office suspended the '314 Application pending the disposition of Applicant's '080 Application, which is the application at issue in this proceeding.

Applicant is the owner of several applications and registrations for configuration trademarks that have configurations of various weapons, such as a revolver and an automatic pistol. One of Applicant's registrations is U.S. Registration No. 3,503,968, for a configuration mark in the shape of an automatic pistol for alcoholic beverages, except beers. In an effort to enforce its automatic pistol trademark against third-party infringers, on April 19, 2012 Applicant, with its U.S. exclusive distributor, Mexcor Distributors, Inc. ("Mexcor"), filed a Complaint for *inter alia*, trademark infringement and unfair competition, in the Southern District of Texas against Purveyors, LLC, a distributor of tequila sold in automatic pistol shaped bottles (*Mexcor Distributors, Inc. v. Purveyors, LLC*, Case No. 4:12-CV-01240).

In Purveyor's Answer to the Complaint, Purveyor denied Applicant's allegations. In addition, in its Counter-claims, Purveyor's alleged *inter alia*, that it was the exclusive distributor of a revolver shaped bottle containing tequila and that Applicant's distributor Mexcor was infringing the revolver shaped mark. Purveyor identified the manufacturer of the tequila in the revolver-shaped bottles as Opposer and also identified the '314 Application as the application for Opposer's revolver shaped bottle mark. .

Applicant filed an Answer denying Purveyor's allegations and, in a First Amended Original Complaint filed July 27, 2012, requested the court to issue an order to, *inter alia*, have the U.S. Patent and Trademark Office dismiss this opposition proceeding with prejudice and deny registration of the '314 Application in view of

Applicant's common law rights to the revolver-shaped configuration mark.. A copy of Applicant's filed Answer and First Amended Original Complaint are attached to this Motion.

II. ARGUMENT

The civil action in the Southern District of Texas court involves the same issues as the instant opposition proceeding, namely, which party owns the trademark rights to alcoholic beverages, except beers, in a revolver-shaped bottle. Accordingly, the instant proceeding should be stayed pending disposition of the Texas action.

The Trademark Trial and Appeal Board ("Board"), in its discretion, may suspend a proceeding if, as here, a party to the proceeding is involved in a federal civil action bearing on the same issues. 37 C.F.R. § 2.117(a) states that:

[w]henver it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

37 C.F.R. § 2.117(a). The Trademark Trial and Appeal Board Manual of Procedure (TBMP) mirrors § 2.117(a), and further explains that "to the extent that a civil action in a Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is often binding upon the Board." TBMP § 510.02(a). To the extent that the Federal action's determinations will bear on the issues before the Board, the Board may, in its discretion, suspend the proceedings. *Id.*

In the instant case before the Board, Muyaad opposes Licores Veracruz's application to register the revolver-shaped configuration mark because it is confusingly similar to the '314 Application. Applicant's action before the Southern District of Texas against Muyaad and its exclusive distributor Purveyors is for, *inter alia*, unfair competition in the nature of trademark infringement caused by use of the revolver-shaped

configuration mark for tequila and alcoholic beverages, except beers. In order to determine whether there is trademark infringement, the Texas federal court will have to determine whether Opposer's mark for alcoholic beverages, except beers is confusingly similar to Applicant's mark for tequila and which party has superior trademark rights to its mark. This action raises the same issues and will be determined on the basis of much the same facts.

Because any decision in the Texas federal action may be dispositive of the issues before this Board, the Board should grant Applicant's motion to stay the instant proceedings pending disposition of the federal suit.

Opposer respectfully requests that proceedings in this action be suspended pending disposition of this motion to stay.

III. CONSENT

On August 14, 2012, Applicant's co-counsel, Michelle Brockway, notified Opposer's counsel, Michael Machat, via email that Applicant intended to file this Motion to Stay the proceeding pending the disposition of the Texas civil action. Opposer through Opposer's counsel, via a reply email, consented to this Motion to Stay the instant proceeding.

IV. CONCLUSION

Applicant, Licores Veracruz, respectfully requests that in the interest of efficiency and pursuant to 37 C.F.R. § 2.117(a), the Board enter an order granting Licores Veracruz's Motion to Stay and suspend further proceedings pending disposition of Civil Action No. 4:12-CV-01240.

Date: August 16, 2012

Respectfully submitted,

STRASBURGER & PRICE, LLP

/John A. Tang/

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Licores Veracruz, S.A. de C.V

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was served upon all counsel of record via U.S. Mail in accordance with the Rules of the Trademark Trial and Appeal Board this 16th day of August, 2012 to:

Michael Machat
Machat & Associates PC
9107 Wilshire Blvd.
Suite 500
Beverly Hills, CA 90210

/John A. Tang/
John A. Tang

4. Counter-Defendants admit the allegations contained in paragraph 4 to the extent they do not imply that Licores Veracruz's products are limited to tequila products sold in bottles in the shape of weapons.

5. Counter-Defendants admit that the Fun Caliber product in the shape of a revolver is currently being imported into the United States, ostensibly by Purveyors. Counter-Defendants lack knowledge or information sufficient to form a belief about the intended identity of Purveyors' "predecessors in interest" or the date at which that person or entity allegedly began distributing Fun Caliber. Based on their lack of knowledge, Counter-Defendants therefore they deny the remainder of the allegations contained in paragraph 5.

6. Counter-Defendants admit that Grupo Industrial Muyaad S.A. de C.V. ("Muyaad") filed an application for a U.S. Trademark of a bottle design in the shape of a revolver indicating it intended to use the design. Counter-Defendants also admit that serial number 85165314 was assigned to that application. Counter-Defendants deny the allegations contained in paragraph 6 to the extent Purveyors intends to imply that the United States Patent and Trade Office actually issued a registration of the trademark to Purveyors. Additionally, Counter-Defendants lack knowledge or information sufficient to form a belief about whether Muyaad has given Purveyors a license to act as its exclusive United States importer and sales and marketing agent for "this product," and on this basis deny such allegation.

7. Counter-Defendants deny the allegations contained in paragraph 7.

8. Counter-Defendants admit marketing products under the brand name Hijos de Villa. Otherwise they deny the allegations contained in paragraph 8.

9. Counter-Defendants deny the allegations contained in paragraph 9.

10. Assuming the “mark” referred to in paragraph 10 is Purveyors’ alleged trademark referred to in paragraph 6 above, Counter-Defendants deny the mark belongs to Purveyors and on this basis deny the allegations contained in paragraph 10.

11. Counter-Defendants incorporate by reference their responses to paragraphs 1 through 10.

12. Counter-Defendants deny the allegations contained in paragraph 12.

13. Counter-Defendants deny the allegations contained in paragraph 13 and deny that Purveyors is entitled to relief it seeks in that paragraph.

14. Counter-Defendants deny that Purveyors is entitled to the relief it seeks in paragraph 14.

15. Counter-Defendants incorporate by reference their responses to paragraph 1 through 15.

16. Counter-Defendants admit they sell an Hijos de Villa tequila product in a revolver-shaped bottle in Texas and elsewhere in the United States. They deny that the design mark of that product belongs to Purveyors, and on this basis therefore deny the remaining allegations in paragraph 16.

17. Counter-Defendants deny the allegations contained in paragraph 17.

18. Counter-Defendants deny the allegations contained in paragraph 18 and deny that Purveyors is entitled to the relief it seeks in that paragraph.

19. Counter-Defendants deny that Purveyors is entitled to the relief it seeks in paragraph 19.

20. Counter-Defendants incorporate by reference their responses to paragraph 1 through 19.

21. Counter-Defendants deny the allegations contained in paragraph 21 and deny that Purveyors is entitled to the relief it seeks in that paragraph.

22. Counter-Defendants incorporate by reference their responses to paragraph 1 through 22.

23. Counter-Defendants deny the allegations contained in paragraph 23 and deny that Purveyors is entitled to the relief it seeks in that paragraph.

B. Affirmative Defenses

24. Purveyors' counter-claims are barred by the doctrine of prior use.

25. Any recovery by Purveyors under its alleged causes of action is barred by the applicable statute of limitations.

26. Purveyors' counter-claims are barred by the doctrine of unclean hands.

27. Purveyors' counter-claims are barred by the doctrine of laches.

C. Prayer

WHEREFORE, Plaintiffs/Counter-Defendants Mexcor Distributors, Inc. and Licores Veracruz S.A. de C.V. request that the Court grant relief and enter judgment in its favor against Defendant/Counter-Plaintiff Purveyors, LLC, as follows:

- a) Entry of judgment that Purveyors take nothing and dismiss all of its claims with prejudice;
- b) Award all costs in favor of Plaintiffs/Counter-Defendants and assess all costs against Purveyors;
- c) Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/Gary J. Siller

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**ATTORNEY-IN-CHARGE FOR PLAINTIFFS
MEXCOR DISTRIBUTORS, INC. AND LICORES
VERACRUZ S.A. DE C.V.**

**OF COUNSEL:
STRASBURGER & PRICE, LLP**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been filed with the Court via ECF/CM electronic filing in accordance with Local Rule 5.1 on this the 26th day of July, 2012.

/s/Gary J. Siller

GARY R. SILLER

2. Defendant Purveyors LLC is a domestic limited liability company with its principal place of business located in Houston, Harris County, Texas. It has already made an appearance in this case.

3. Defendant Joel Abel Murillo (“Murillo”) is the managing member of Purveyors, LLC and an individual residing in Texas who is presently doing business or engaging in business or transacting business in Texas. He may be served at 7023 Bent Branch Drive, Houston, TX 77088-6505. In the alternative, he may be served at the address listed for Purveyors in its Certificate of Formation, 9510 Bundy Lane, Houston, Texas 77080.

4. Defendant Grupo Industrial Muyaad S.A. de C.V. (“Grupo Muyaad”) is a Mexican corporation with its offices at Leandro Valle 289, Tonalá Centro, Tonalá, Jalisco 45400, Mexico. Grupo Muyaad is presently doing business or engaging in business or transacting business in Texas and in the United States generally. In addition, it has placed and continues to place its products into the stream of commerce with the intention that they be sold in Texas and the United States.

5. Grupo Muyaad has not appointed or maintained a registered agent for service of process in Texas and maintains no regular place of business in this state. It may be served with process pursuant to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”) by delivering originals and copies of Plaintiff’s First Amended Original Complaint, copies of the summons, and the signed USM 94 Form, along with translated copies of each, to the Mexican

Central Authority, Secretaria de Relaciones Exteriores, Dirección General de Asuntos Jurídicos, Plaza Juárez no. 20, Piso 5º, Colonia Centro, Delegación Cuauhtémoc, 06010 Mexico D.F., Mexico, who will then effect service on Grupo Muyaad.

6. Defendant Megawine, Inc. (“Megawine”) is a California corporation presently doing business or engaging in business or transacting business in Texas but has not appointed or maintained a registered agent for service of process in Texas and maintains no regular place of business in this state. Megawine is therefore deemed to have appointed the Texas Secretary of State as its registered agent for service of process. Tex. Civ. Prac. & Rem. Code § 17.044(b). The Summons for Plaintiff’s First Amended Complaint should therefore be served on Megawine, Inc., by serving the Texas Secretary of State pursuant to Texas Business Organizations Code section 17.026 and Federal Rule of Civil Procedure 4 (h)(1) and (e)(1).

7. Accordingly, upon receipt by the Secretary of State of the Summons for Megawine, Inc., a copy of the Summons and Plaintiff’s First Amended Complaint should be mailed certified mail, return receipt requested, by the Secretary of State to Megawine, Inc., to the attention of its president and registered agent, Boris Shats, at 14718 Raymer St. “B,” Van Nuys, California 91405.

JURISDICTION AND VENUE

8. Plaintiff’s action is primarily for trademark infringement and unfair competition under the Trademark Act (“Lanham Act”), 15 U.S.C. § 1051, *et seq.*,

15 U.S.C. § 1125(a), and Texas common laws on trademarks and unfair competition. This Court has jurisdiction over this case under 28 U.S.C. §§ 1331 and 1338 and supplemental jurisdiction under 28 U.S.C. § 1367(a). Venue in this Court is proper under 28 U.S.C. § 1391(b).

FACTUAL BACKGROUND

9. Licores Veracruz is the owner of three trademarks at issue in this case. All involve distinctive bottle designs used in connection with the manufacturing, marketing, and sale of alcoholic beverage products. Licores Veracruz, through its importers and distributors, markets and sells these products in the United States under the trademark Hijos de Villa.

10. One trademark at issue involves a federally registered trademark under United States Patent & Trademark Office (“USPTO”) Registration number 3,503,968 (the “Pistol Registration”), which Licores Veracruz filed September 5, 2007 and was registered September 23, 2008. The registration is valid, subsisting, and in full force and effect. The drawing and description in the Pistol Registration show an inherently distinctive automatic pistol-shaped bottle design used in connection with alcoholic beverages, with the exception of beers. Licores Veracruz also owns the Mexican trademark registration of the bottle design, as noted in the United States certificate of registration.

11. Licores Veracruz also owns and uses the trademark for a distinctive revolver-shaped bottle used in connection with alcoholic beverages. Licores Veracruz has manufactured tequila products contained in the distinctive revolver-shaped bottles and sold them through its United States importers and distributors

since at least 2006 and continues to do so to this day. On January 21, 2010, Licores Veracruz filed a United States trademark application for registration of a three-dimensional design of the distinctive revolver-shaped bottle used in connection with tequila products. The USPTO assigned that application serial number 77/917,080 (the "080 Application").

12. Licores Veracruz also owns and uses the trademark for a third trademark at issue in this case, a distinctive rifle-shaped bottle used in connection with alcoholic beverages. Since at least 2004, Licores Veracruz has manufactured tequila products contained in distinctive rifle-shaped bottles and sold them in commerce under the Hijos de Villa brand in the United States and does so to this day.

13. These three Licores Veracruz registrations and trademarks remain in full force and effect. Each is Licores Veracruz's property, and Licores Veracruz is the sole owner of all rights to the business and goodwill appurtenant to the registrations and trademarks. The United States registrations provide constructive notice to others of Licores Veracruz's claim of ownership of the marks. 16 U.S.C. § 1072. They also constitute *prima facie* evidence of the marks' validity and of Licores Veracruz's exclusive right to use the marks in connection with the specified goods, namely alcoholic beverages.

14. For a period of many years, Licores Veracruz has been continuously using the marks in connection with the importation, distribution, and sale of the products throughout the United States and other countries. Licores Veracruz has invested significant sums in developing, advertising, and promoting

the marks. The marks therefore have acquired a valuable reputation, and the public recognizes that the marks exclusively identify Licores Veracruz products.

15. In addition to being Purveyors' managing member, Defendant Murillo is, on information and belief, the owner of Grupo Muyaad, a Mexican entity that manufactures tequila products for export to the United States. Murillo—fully aware of the Plaintiff's trademark rights in the automatic pistol-, revolver-, and rifle-shaped bottle designs—conspired with Defendants Grupo Muyaad and Megawine to establish Purveyors as a sham entity in whose name products infringing on Licores Veracruz's trademarks would be manufactured by Muyaad, imported into the United States by Purveyors, and marketed and distributed by Megawine. Defendants Murillo and Grupo Muyaad formed Purveyors as a mere tool or business conduit, and they have controlled, dominated, and operated Purveyors as their own individual business and alter ego. The entity also is a sham used to evade Megawine's, Murillos's, and Grupo Muyaad's legal duties, including their duties not to infringe on Licores Veracruz's trademark rights.

16. That Purveyors was never intended to operate as an entity separate from Murillo is evidenced by, among other things, the fact that the address at which Purveyors obtained United States Alcohol and Tobacco Tax and Trade Bureau alcohol importer permit number TX-I-15062 is nothing more than a Morningstar Mini-Storage facility with units for lease to the general public. Correspondence Plaintiff mailed to that address (6400 W. Little York, Houston, Texas) to the attention of the person Purveyors listed with the federal

Department of the Treasury as its representative was returned unclaimed. It was unclaimed because, on belief, Purveyors conducts no importation operations at that address.

17. That Purveyors is a sham entity and a mere tool or business conduit is also evidenced by its apparent lack of any address at all at which it conducts business or where its owners, employees, or officers may be contacted. In March 2012, Murillo filed a Certificate of Formation for Purveyors, LLC with the Texas Secretary of State naming himself as the entity's registered agent. In it he listed 9510 Bundy Lane, Houston, Texas, as the entity's address and as his address for service of process. However, when—less than three months later—Plaintiff tried to serve Murillo with this lawsuit at the Bundy Lane address, the process server was met at the door by the house's purported tenants, who stated that Murillo owned the property but did not reside or work there. In fact, Harris County property records indicated that Murillo had—for years—given a Brooklyn, New York mailing address to that agency. To the extent Murillo resided in New York rather than in Texas, his company violated Texas law requiring individual registered agents to reside in the state and be available for service at the address they furnish to the Secretary of State. See Tex. Bus. Orgs. Code § 5.201. In short, Purveyors is not and never has operated as the entity it purports to be and has attempted to enjoy the benefits of a Texas limited liability company without subjecting itself to its legal obligations.

18. Neither Murillo, Grupo Muyaad, Megawine, nor Purveyors has ever been authorized or licensed to use Licores Veracruz's marks. Even so, they have

begun manufacturing, importing into, and marketing and distributing in the United States three Grupo Muyaad-manufactured infringing alcoholic beverage products.

19. The first such infringing product is contained in a bottle shaped like an automatic pistol. That product is called “Eagle Shot Tequila” (“Eagle Shot”). Knowing that Licores Veracruz had long owned the rights to the bottle’s design and that the USPTO had granted its Pistol Registration, Murillo in September 2011 caused Purveyors to submit an Application for and Certification/Exemption of Label/Bottle Approval to the Department of Treasury for the label that appears on the infringing Eagle Shot bottle.

20. In addition, in the fall of 2010, Grupo Muyaad, under the direction of Murillo, filed U.S. application no. 85/168,627 (the “627 Application”) for trademark registration of an automatic pistol design for alcoholic beverages, except beers, that was nearly identical and confusingly similar to Licores Veracruz’s Pistol Registration. Based on Licores Veracruz’s Pistol Registration of its fanciful pistol design, the USPTO Trademark Examining Attorney refused registration of Grupo Muyaad’s mark. Grupo Muyaad’s feeble attempt to convince the U.S. Trademark Examining Attorney that the marks were not confusingly similar was denied. In a September 7, 2011 Office Action rejecting Grupo Muyaad’s arguments for registration, the Examining Attorney stated, “In this case, the similarity of the marks, a configuration of beverage bottle in the shape of a gun used for the same goods, alcoholic beverages except beer, would be likely to cause confusion to the potential consumer as to the source of those goods.” Grupo

Muyaad's application is currently suspended pending the disposition of another party's application for registration.

21. In March 2012, Licores Veracruz sent Megawine a letter demanding that it cease and desist from selling Eagle Shot and from otherwise using Licores Veracruz's trademarks. In subsequent communications, Boris Shats, Megawine's president, stated he would deplete his "minimal" inventory of Eagle Shot by selling it only within California. On belief, Mr. Shats has failed to keep his promise; the product continues to be advertised by United States retailers, who could only obtain it from Megawine, which is Eagle Shot's sole United States distributor,

22. In March and again in April 2012, Licores Veracruz sent cease-and-desist letters to Murillo and Purveyors demanding they stop importing and/or selling Eagle Shot and cease otherwise using Licores Veracruz's trademarks. They did not respond.

23. The second trademark at issue in this case involves Licores Veracruz's revolver-design trademark, for which it filed the 080 Application. In violation of that trademark, Murillo, Grupo Muyaad, Megawine, and Purveyors are manufacturing, importing into, and marketing and distributing in the United States a Grupo Muyaad-manufactured product called "Fun Caliber Tequila Reposado" ("Fun Caliber"), an infringing alcoholic beverage product contained in a bottle shaped like a revolver. The Defendants are doing so despite knowing that—long before Fun Caliber came into existence—Licores Veracruz had filed the 080 Application for the revolver-shaped bottle mark and had long been

manufacturing a nearly identical product and marketing and distributing this trademarked product design in the United States.

24. Purveyors also has submitted an Application for and Certification/Exemption of Label/Bottle Approval to the Department of Treasury in order to obtain the label that appears on the infringing Fun Caliber bottle.

25. In addition, in the fall of 2010, Grupo Muyaad, under the direction of Murillo, filed under application number 85/165,314 a U.S. application for trademark registration (the "314 Application") for an infringing revolver design for alcoholic beverages, except beers, that was nearly identical and confusingly similar to that belonging to Licores Veracruz.

26. The Examining Attorney refused registration of Grupo Muyaad's mark reflected in the 314 Application in view of Licores Veracruz's registered Pistol Registration. The 314 Application is currently suspended awaiting the disposition of other earlier filed applications, including Licores Veracruz's 080 Application for the revolver-shaped bottle mark.

27. On June 20, 2012. Grupo Muyaad filed a Notice of Opposition with the USPTO (Proceeding No. 91205718) opposing registration of Licores Veracruz 080 Application for the revolver-shaped bottle mark. Rather than answering the Notice, Licores Veracruz intends to file a Motion to Suspend the opposition proceeding with the USPTO in view of this case.

28. By virtue of its prior use, Plaintiff Licores Veracruz has superior trademark rights to and in the distinctive revolver bottle design for which it has applied for registration under the 080 Application and superior trademark rights to

and in the distinctive automatic pistol bottle design reflected in the Pistol Registration.

29. Finally, Murillo, Grupo Muyaad, Megawine, and Purveyors are manufacturing, importing into, and marketing and distributing a tequila product contained in a rifle-shaped bottle that infringes on another Licores Veracruz product. This infringing product, “Old Carbine Tequila Reposado” (“Old Carbine”), infringes on the Licores Veracruz trademark, which had been used in commerce in the United States under the Hijos de Villa trademark long before the appearance of Old Carbine. Purveyors also has submitted an Application for and Certification/Exemption of Label/Bottle Approval to the Department of Treasury in order to obtain the label that appears on the infringing Old Carbine bottle. Defendants’ use of the word “carbine” rather than “rifle” in the infringing product’s brand name in no way avoids the fact that the product is confusingly similar to Licores Veracruz’s mark and therefore violates its rights to the trademark.

30. Megawine currently advertises and markets all three of the infringing products—Eagle Shot, Fun Caliber, and Old Carbine—on its website and distributes them in the United States. Its distribution of the products has led to widespread marketing and sale of the infringing products by retailers across the country, causing confusion and further injury to Plaintiff.

**COUNT I:
VIOLATION OF 15 U.S.C. § 1114(1)**

31. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

32. Purveyors's, Murillo's, Grupo Muyaad's, and Megawine's intentional, deliberate, and unauthorized use and continued use of Licores Veracruz's registered automatic pistol-shaped bottle mark, including sales of infringing products, are likely to cause confusion, mistake, and deception among the public as to the origin or sponsorship of its products. 15 U.S.C. § 1114(1). Consumers are likely to be misled into believing that Defendants' goods are provided by, licensed by, sponsored by, or approved by Plaintiff or that Defendants or their goods are otherwise associated with Plaintiff or its goods.

33. Upon information and belief, Defendants' conduct is willful, deliberate, in bad faith, and undertaken with knowledge of Plaintiff's prior rights and with full knowledge that Defendants have no right, license, or authority to use Plaintiff's registered mark or any designations confusingly similar thereto.

34. Defendants' acts are intended to reap the benefit of the goodwill that Plaintiff has created in the registered mark and constitute infringement of Plaintiff's federally registered mark in violation of Section 32 of the Lanham Act, 15 U.S.C. 1114(1).

35. Plaintiff has therefore suffered, and will continue to suffer, irreparable damage to its reputation and goodwill. As a result, it is entitled to its damages sustained, Defendants' profits, and up to three times Plaintiff's actual damages. 15 U.S.C. § 1117(a).

36. Pursuant to 15 U.S.C. § 1116(a), Plaintiff also is entitled to preliminary and permanent injunctive relief to prevent Defendants' ongoing trademark infringement and acts of unfair competition.

**COUNT II:
VIOLATION OF 15 U.S.C. § 1125(a)**

37. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

38. Purveyors's, Murillo's, Grupo Muyaad's, and Megawine's intentional and deliberate use and continued and unauthorized use of Licores Veracruz's marks is likely to cause confusion, mistake, and deception among the public as to the origin or sponsorship of its products. 15 U.S.C. § 1125(a).

39. Upon information and belief, Defendants' conduct is willful, deliberate, in bad faith and undertaken with knowledge of Plaintiff's prior rights, and with full knowledge that Defendants have no right, license, or authority to use Plaintiff's marks or any designations confusingly similar thereto.

40. Defendants' acts are intended to reap the benefit of the goodwill that Plaintiff has created in its marks and to gain unfair advantage in the marketplace, and constitute false designations of origin and false representations in commerce in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

41. Plaintiff has therefore suffered, and will continue to suffer, irreparable damage to its reputation and goodwill. As a result, it is entitled to its damages sustained, Defendants' profits, and up to three times Plaintiff's actual damages. 15 U.S.C. § 1117(a).

42. Pursuant to 15 U.S.C. § 1116(a), Plaintiff also is entitled to preliminary and permanent injunctive relief to prevent Defendants' ongoing trademark infringement and acts of unfair competition.

**COUNT III:
VIOLATION OF TEX. BUS. & COM. CODE 16.29**

43. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

44. Defendants' actions are likely to dilute the distinctive quality of Plaintiff's marks and injure its business reputation, in violation of Section 16.29 of the Texas Business and Commerce Code.

45. Defendants' actions have caused and are causing irreparable injury to Plaintiff and will continue to damage Plaintiff and to deceive the public. Plaintiff has no adequate remedy at law

**COUNT IV:
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION UNDER
TEXAS COMMON LAW**

46. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

47. Purveyors's, Murillo's, Grupo Muyaad's, and Megawine's acts as described herein constitute deliberate and intentional trademark infringement and unfair competition in violation of the common law of Texas.

48. By reason of the foregoing, Plaintiff has suffered and will continue to suffer irreparable damage to its reputation and goodwill for which there is no adequate remedy at law. It is therefore entitled to actual damages.

49. Under the law of the State of Texas, Plaintiff is entitled to preliminary and permanent injunctive relief to prevent Defendants' continuing trademark infringement and continuing acts of unfair competition.

**COUNT V:
UNJUST ENRICHMENT AND REQUEST FOR ACCOUNTING**

50. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

51. By unlawfully using and continuing to use Licores Veracruz's mark, Purveyors, Murillo, Grupo Muyaad, and Megawine have been unjustly enriched. Plaintiff is entitled to an accounting and disgorgement of the profits Defendants have made during the period in which they have used the mark without authority.

**COUNT VI:
LIKELIHOOD OF CONFUSION UNDER 15 U.S.C. §1052(a)**

52. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

53. By virtue of its prior use, Plaintiff Licores Veracruz has superior trademark rights over Grupo Muyaad to and in the distinctive automatic pistol bottle design reflected in its Pistol Registration and superior trademark rights in the distinctive revolver bottle design reflected in Plaintiff's 080 Registration under 15 U.S.C. §1052(d). Plaintiff would be harmed by the registration of Grupo Muyaad's 314 and 627 Applications. Plaintiff is therefore entitled to a dismissal with prejudice USPTO Trademark Opposition Proceeding No. 91205718 and denial of registration of Grupo Muyaad's applications under the 314 and 627 Applications.

**COUNT VII:
REQUEST FOR ATTORNEYS' FEES**

54. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

55. Plaintiff is entitled to its attorneys' fees because Defendants' acts of trademark infringement and unfair competition in violation of section 1125(a) of the Lanham Act have been intentional and deliberate, in that Defendants have deliberately and intentionally refused to cease importing, distributing, marketing, and selling the infringing alcoholic beverages even after being informed of their infringement. This case is therefore "exceptional," entitling Plaintiff to its attorneys' fees and expenses. 15 U.S.C. § 1117(a)(3).

WHEREFORE, Plaintiff Licores Veracruz prays for judgment against Defendants as follows:

- a) Pursuant to 15 U.S.C. § 1116 and the common law of the State of Texas, that Defendants, their officers, agents, employees, servants, attorneys, successors, and assigns be preliminarily and permanently enjoined from
 - i. directly or indirectly manufacturing, distributing, importing, advertising, or marketing any automatic pistol-, revolver-, or rifle-shaped bottle designs containing alcoholic beverages; or
 - ii. inducing or enabling others to directly or indirectly manufacture, distribute, import, advertise, or market any such bottle designs containing alcoholic beverages;
- b) That the Court order Defendants to account for and pay over to Plaintiff their profits earned from the date of their first use of Licores Veracruz's automatic pistol-, revolver-, or rifle-shaped marks, as well as such damages as may be determined at trial;
- c) That the Court award to Plaintiff three times its actual damages;

- d) That the Court order the USPTO to dismiss with prejudice Trademark Opposition Proceeding No. 91205718 and deny and refuse Grupo Muyaad's application numbers 85/165,314 and 85/168,627 for registration;
- e) That the Court award to Plaintiff its reasonable attorneys' fees incurred in connection with this matter; and
- f) That the Court award Plaintiff such further relief, legal or equitable, general or special, as the Court may deem just and equitable.

Respectfully submitted,

/s/Gary J. Siller

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**ATTORNEY-IN-CHARGE FOR PLAINTIFF
MEXCOR DISTRIBUTORS, INC. AND
LICORES VERACRUZ S.A. DE C.V.**

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been filed with the Court via ECF/CM electronic filing in accordance with Local Rule 5.1 on this the 27th day of July, 2012.

/s/Gary J. Siller

GARY R. SILLER