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

Proceeding	91161093
Party	Defendant Cerveceria Modelo de Guadalajara, S.A. de C.V.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HIJOS DE RIVERA, S.A.,

Opposer/Petitioner,

v.

CERVECERIA MODELO DE
GUADALAJARA, S.A. DE C.V.,

Applicant/Registrant.

Opposition No.: 91161093
Cancellation No.: 92043580
(Consolidated)

**RESPONSE OF APPLICANT/REGISTRANT TO
MOTION OF OPPOSER/PETITIONER
TO DISMISS COUNTERCLAIMS**

Applicant/Registrant Cerveceria Modelo de Guadalajara, S.A. de C.V. ("Modelo") hereby responds to the motion to dismiss counterclaims that was filed by Opposer/Petitioner Hijos de Rivera, S.A. ("Hijos") on October 29, 2008.

Modelo filed an express abandonment of its U.S. Trademark Registration No. 2,694,752 and an express abandonment of its U.S. Trademark Application Serial No. 75/699,879 on September 26, 2008. Those filings rendered moot the present opposition and cancellation proceedings. Modelo is content to advance its common law rights in the United States vis-à-vis Hijos without the benefit at this time of obtaining a registration or of canceling any registration owned by Hijos.

Modelo believed at the time that it made its express abandonment filings that its actions and its position with respect to these proceedings would be clear both to the Board and to Hijos. Modelo did not seek consent from Hijos in relation to the abandonment filings or in relation to

Modelo's withdrawal from these proceedings. Modelo is aware that, as a result, judgment in the opposition and cancellation proceedings will be entered against it with prejudice. Modelo simply does not wish to litigate the substantive issues in this forum at this time.

However, before the Board had an opportunity to act on Modelo's filings, Hijos filed a summary judgment motion asserting that there exists ambiguity with respect to Modelo's intentions, and in particular with respect to a counterclaim Modelo pleaded in the opposition proceeding.

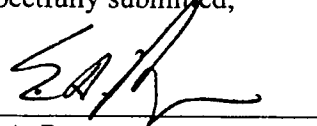
In order to remove any ambiguity, Modelo has today filed a Notice of Withdrawal of Counterclaims, thus rendering Hijos's summary judgment motion moot. Modelo has not sought consent from Hijos in relation to the notice, and Modelo is aware that the Board must enter judgment against it on the counterclaim with prejudice. Again, Modelo simply does not wish to litigate the substantive issues in this forum at this time.

Modelo has received from the PTO a Commissioner's Order dated December 3, 2008 stating that its U.S. Trademark Registration No. 2,694,752 was canceled as a result of the Board's grant of a petition by Hijos. It is respectfully submitted that that was incorrect, and Modelo hereby requests a clarifying order from the Board. The Board rightly entered judgment in favor of Hijos in the opposition and cancellation proceedings, but Modelo's registration is canceled because Modelo expressly abandoned it without seeking consent, not because of a petition by Hijos. Modelo hereby requests that the Board facilitate through a clarifying Order the correction and reissue of the Commissioner's Order.

In conclusion, there is no relief to grant in relation to Hijos's summary judgment motion. Modelo has removed from these proceedings the only issues before the Board, namely whether Modelo will continue to own U.S. Trademark Registration No. 2,694,752 and U.S. Trademark

Application Serial No. 75/699,879 and whether Hijos will continue to own U.S. Trademark Registration No. 2,165,199. The Trademark Rules of Practice call upon the Board to enter judgment in favor of Hijos, and Modelo does not ask for a contrary result. However, Modelo does ask the Board – as noted above – to clarify its Order of November 18, 2008 to the extent it was unclear to the Commissioner.

Respectfully submitted,



Dated: December 18, 2008

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing RESPONSE OF APPLICANT/REGISTRANT TO MOTION OF OPPOSER/PETITIONER TO DISMISS COUNTERCLAIMS to be served upon counsel for Opposer/Petitioner on today's date by First Class Mail postage prepaid, as follows:

Otto O. Lee
Aylin Demirci
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12 South First Street, 12th Floor
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Date: 12/18/2008


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