

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

In the Matter of Trademark Registration:

Reg. No.: 2,694,752  
Mark: ESTRELLA CLARA DORADA and Label  
Design  
Registered: March 11, 2003  
Int'l Classes: 32  
Our File: L4759

HIJOS DE RIVERA, S.A.	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	CANCELLATION NO. 92/043580
CERVECERIA MODELO DE	)	
GUADALAJARA, S.A. DE C.V. ,	)	
	)	
Registrant.	)	
_____	)	

BOX TTAB  
Assistant Commissioner  
For Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

**ANSWER**

Registrant, Cerveceria Modelo de Guadalajara, S.A. de C.V. ("Registrant"), through its attorneys, hereby answers the Petition to Cancel filed by Hijos De Rivera, S.A. ("Petitioner") as follows:

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 and, therefore, denies all allegations contained therein.
2. Registrant admits that Registration No. 2694752 is for the trademark ESTRELLA

CLARA DORADA (and Design) and is registered for use on beer in International Class 32.

Registrant denies the remaining allegations of paragraph 2, due to the distinguishing features in Registrant's mark, namely "CLARA" and "DORADA."

3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of paragraph 3 and, therefore, denies all allegations contained therein.

4. Registrant admits the allegations of paragraph 4.

5. Registrant admits that it abandoned its applications for CLARA ESTRELLA DORADA, with Serial No. 74585197, and ESTRELLA DORADA 74585196, by failing to file a Statement of Use. Registrant admits that it abandoned its application ESTRELLA DORADA, Serial No. 74134767 by not responding to an office action. Registrant denies the remaining allegations of paragraph 5.

6. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and, therefore, denies the allegations contained therein.

7. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and, therefore, denies the allegations contained therein.

8. Registrant admits that Registration No. 2694752 disclaims CLARA and DORADA apart from the mark as shown. Registrant denies the remaining allegations contained in paragraph 8, in that the "CLARA" and "DORADA" words remain integral parts of the mark as a whole and serve to distinguish Registrant's mark from Petitioner's Mark, thereby alleviating potential consumer confusion.

9. Registrant denies the allegations contained in paragraph 9.

10. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 and, therefore, denies all allegations contained therein.

11. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 and, therefore, denies all allegations contained therein.

12. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 and, therefore, denies all allegations contained therein.

13. Registrant admits that in 2001 Registrant applied for registration of its mark ESTRELLA CLARA DORADA and that such application was registered on March 11, 2003. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 13 and, therefore, denies all allegations contained therein.

14. Registrant denies the allegations contained in paragraph 14.

15. Registrant denies the allegations contained in paragraph 15.

16. Registrant denies the allegations contained in paragraph 16.

#### **AFFIRMATIVE DEFENSES**

1. Petitioner lacks standing to bring this Petition to Cancel.
2. Petitioner has failed to state a claim for which relief may be granted.
3. Petitioner cannot show how it reasonably believes that it will be damaged by registration of Registrant's mark.
4. Petitioner is barred from cancelling Registrant's registration under the doctrine of

laches.

5. Petitioner is barred from cancelling Registrant's registration under the doctrine of unclean hands.

6. Petitioner is barred from cancelling Registrant's registration under the doctrine of estoppel.

7. Petitioner is barred from cancelling Registrant's registration under the doctrine of acquiescence.

8. Petitioner is barred from cancelling Registrant's registration on the grounds of abandonment.

9. Petitioner is barred from cancelling Registrant's registration on the grounds that Petitioner's trademark use has become too *deminimus* to warrant trademark protection.

10. Petitioner is barred from cancelling Registrant's registration due to fraud based upon Petitioner's false misrepresentations in its filings to the U.S. Patent and Trademark Office with regard to the use of its mark in United States commerce.

11. There is no likelihood of confusion, mistake or deception due to distinguishing features between the two marks, namely the words "CLARA" and "DORADA"

12. No damage or injury has resulted, will result, or can result to Opposer from registration of Applicant's mark due, among other factors, to the differences between the marks, namely the words "CLARA" and "DORADA"

WHEREFORE, Registrant respectfully prays:

1. That the petition to cancel be dismissed with prejudice;

2. That registration of Registration No. 2,694,752 be confirmed; and
3. That any such further relief be granted Registrant as may be deemed appropriate.

Respectfully submitted,

Dated: October 22, 2004



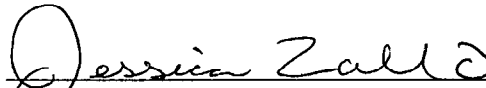
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Attorneys for Registrant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 22, 2004, a copy of the foregoing **ANSWER** was sent by U.S. Mail, postage prepaid, to counsel for Petitioner as follows:

Otto O. Lee  
Erin Williams  
INTELLECTUAL PROPERTY LAW GROUP LLP  
12 South First Street, 12<sup>th</sup> Floor  
San Jose, CA 95113

A handwritten signature in cursive script, reading "Jessica Zallo", written over a horizontal line.

Jessica Zallo  
YANNY & SMITH  
1925 Century Park East, Suite 1260  
Los Angeles, CA 90067

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BOX TTAB NO FEE  
Assistant Commissioner  
For Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

TRANSMITTAL LETTER

Please find enclosed herewith:

(1) ANSWER; (2) an Acknowledgment Post Card. Please charge any additional fees due, or credit any overage, to Deposit Account No. 25-0050

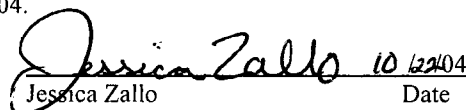
Submitted by,

  
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Attorneys for Opposer

Dated: 10/22, 2004

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Services as first class mail in an envelope addressed to: Box TTAB, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on this date October 22, 2004.

  
Jessica Zallo      10/22/04  
Date

