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

Proceeding	92043622
Party	Plaintiff VINA SAN PEDRO S.A.
Correspondence Address	CYNTHIA CLARKE WEBER SUGHRUE MION, PLLC 2100 PENNSYLVANIA, AVENUE, N.W. WASHINGTON, DC 20037-3202
Submission	Other Motions/Papers
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Signature	/Cynthia C. Weber/
Date	03/21/2006
Attachments	201105 Petitioner_s Opposition to Registrant_s Motion for Relief From Judgment or to Set Aside Defau.PDF (4 pages) 201105 Declaration of Cynthia Clarke Weber.pdf.PDF (3 pages)

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

In re the Matter of

Registrant: Barker's Landing, Inc

Registration No. 2,449,486

Mark: SAN PEDRO CAFE

Issued: May 8, 2001

Vina San Pedro S.A.,

Petitioner,

v.

Barker's Landing, Inc.,

Registrant.

Cancellation

**PETITIONER'S OPPOSITION TO REGISTRANT'S
FROM JUDGMENT OR TO SET ASIDE**

Petitioner, Vina San Pedro S.A., hereby opposes Registrar's Judgment or Motion to Set Aside Default under Federal Rule 60(b). It does not appear that Rule 55(c) applies, as a final proceeding. Regardless, Registrant has not met the requirements for default judgment. None of the bases for relief from judgment under Fed.R.Civ.Pro., exist in this case, and the Motion should be denied.

Petitioner submits the Declaration of its counsel, C. [Name], based on the following facts: Registrant's Registration No. 2,449,486 for

against Petitioner's two pending applications for SAN PEDRO 78/140,824 and 78/140,831. Petitioner is also the owner of Reg mark VINA SAN PEDRO.

When Petitioner could not overcome the citation by Attorney, Petitioner's counsel wrote to counsel for the Registrant a consent. In that letter, Petitioner's counsel advised as follows:

If your client will not consent to registration [Petitioner's] mark, we will have to petition to cancel registration based on Vina San Pedro's prior registration SAN PEDRO, Reg. No. 1,571,222. Not only did we issue well before your client's application filing date, but it is incontestable.

After a long negotiation, Registrant refused to grant Petitioner from selling wines through restaurants and the catering. Petitioner advised counsel for Registrant the limitation was not acceptable and to file the Petition for Cancellation.

Since Petitioner's wines are sold through restaurants, and Registrant has superior rights in SAN PEDRO, Petitioner filed the Petition for Cancellation in 2004. The Trademark Trial and Appeal Board served the Petition on Registrant of record for Registration No. 2,449,486 at the address of record. The Trademark Trial and Appeal Board issued a Notice of Default on Registrant in default judgment on December 18, 2004. Counsel for Petitioner filed the Trademark Trial and Appeal Board's Orders.

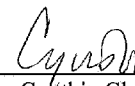
The default judgment was entered on December 18, 2004. On January 10, 2006, counsel for Registrant evidently discovered

Petitioner to consent to setting aside the default judgment. Registrant was notified that absent a consent which did not attend the Trademark Trial and Appeal Board, the Trademark Trial and Appeal Board would petition to cancel. The Trademark Trial and Appeal Board procedures correctly.

It is Registrant who did not advise the Patent and Trademark Office of its new address. It is Registrant who did not check on the status of the trademark for more than a year. There is no basis under Rule 60(b) for setting aside the Trademark Trial and Appeal Board's decision. Petitioner respectfully requests that the Registrant's Motion be denied.

Respectfully submitted,


VINA SAN PEDRO

By: 
Cynthia Clara
SUGHRUE
2100 Pennsylvania
Washington, DC
(202) 663-7100
Attorneys for

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **PETITION**
REGISTRANT'S MOTION FOR RELIEF FROM JUDICIAL
DEFAULT has been mailed this 21st day of March, 2006, by first-class

Carol N. Skinner
Skinner and Associates
212 Commercial Street
Hudson, Wisconsin 54016



Cynt

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In re the Matter of

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Cancellation

DECLARATION OF CYNTHIA CLARKE

I, Cynthia Clarke Weber, declare and state as follows:

1. I am counsel for Vina San Pedro S.A., Petitioner, in the above-captioned cancellation proceeding.

2. I am the counsel of record for two applications to register the mark SAN PEDRO CAFE for wines in Class 33, Serial Nos. 78/140,824 and 78/140,831.

3. During prosecution of the '824 and '831 applications, the mark SAN PEDRO CAFE No. 2,449,486 for the mark SAN PEDRO CAFE was cited under Section 2(e) of the Trademark Act of 1946, and I was unable to persuade the Examining Attorney to withdraw the citation.

4. Accordingly, on October 7, 2003 I wrote to counsel for Barker's Landing, Inc., Registrant, to obtain consent and sent two Consent documents for execution. I explained that the mark SAN PEDRO CAFE was cited under Section 2(e) of the Trademark Act of 1946, and I was unable to persuade the Examining Attorney to withdraw the citation.

If your client will not consent to registration of [redacted] we will have to petition to cancel your client's [redacted] on Vina San Pedro's prior registration for VIN [redacted] Reg. No. 1,571,222. Not only did that regist [redacted] before your client's application filing date, it is no [redacted]

5. After considerable negotiations, Registrant refused to [redacted] not improperly attempt to preclude Petitioner from selling its w [redacted] caterers.

6. I advised Registrant's counsel that "I doubt it is [redacted] goods are not sold in restaurants or by catering businesses" and [redacted] deleted from the Consent. Counsel for Registrant responded as f [redacted]

My client will not agree to sign a consent agree [redacted] protections I've inserted. He does not want you [redacted] mark SAN PEDRO if they are selling their [redacted] restaurant/catering arena. It would be difficult f [redacted] he believed confusion is unlikely, if that were [redacted] asked him to sign the agreements as revised, i [redacted] them, before he leaves tomorrow.

Email dated March 11, 2004.

7. I responded immediately as follows:

Since my client's rights are superior, he [redacted] have any say over that [trade channels]. However [redacted] sign your versions before he leaves and send th [redacted] check with the client, and if we cannot use th [redacted] with the trade channel limitations] we will pursu [redacted] route instead. Thanks.

Email dated March 11, 2004.

8. As Petitioner could not agree to exclude restauran [redacted] of trade, Petitioner filed the Petition to Cancel.

9. I received the Trademark Trial and Appeal Bo [redacted] 2004, October 25, 2004 and December 18, 2004.

9. I received the Trademark Trial and Appeal Board's decision on August 11, 2004, October 25, 2004 and December 18, 2004.

I declare under penalty of perjury that the foregoing is true and correct.

Date: March 21, 2006


Cynthia