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Filing date: **03/22/2006**

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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Date	03/22/2006
Attachments	2001105 Petitioner's Opposition to Registrant's Motion w-Declaration of Cynthia Clarke Weber_0001.tif (1 page) 2001105 Petitioner's Opposition to Registrant's Motion w-Declaration of Cynthia Clarke Weber_0002.tif (1 page) 2001105 Petitioner's Opposition to Registrant's Motion w-Declaration of Cynthia Clarke Weber_0003.tif (1 page) 2001105 Petitioner's Opposition to Registrant's Motion w-Declaration of Cynthia Clarke Weber_0004.tif (1 page) 2001105 Petitioner's Opposition to Registrant's Motion w-Declaration of Cynthia Clarke Weber_0005.tif (1 page) 2001105 Petitioner's Opposition to Registrant's Motion w-Declaration of Cynthia Clarke Weber_0006.tif (1 page) 2001105 Petitioner's Opposition to Registrant's Motion w-Declaration of Cynthia Clarke Weber_0007.tif (1 page)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL 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 No.: 92/043,622

**PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION FOR RELIEF
FROM JUDGMENT OR TO SET ASIDE DEFAULT**

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

Petitioner submits the Declaration of its counsel, Cynthia Weber, attesting to the following facts: Registrant's Registration No. 2,449,486 for SAN PEDRO CAFÉ was cited

against Petitioner's two pending applications for SAN PEDRO & Design for wines, Serial Nos. 78/140,824 and 78/140,831. Petitioner is also the owner of Registration No. 1,571,222 for the mark VINA SAN PEDRO.

When Petitioner could not overcome the citation by arguing with the Examining Attorney, Petitioner's counsel wrote to counsel for the Registrant on October 7, 2003 requesting a consent. In that letter, Petitioner's counsel advised as follows:

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

After a long negotiation, Registrant refused to grant a consent unless it precluded Petitioner from selling wines through restaurants and the catering business. Petitioner's counsel advised counsel for Registrant the limitation was not acceptable, and Petitioner would have to file the Petition for Cancellation.

Since Petitioner's wines are sold through restaurants, and Petitioner believes it has superior rights in SAN PEDRO, Petitioner filed the Petition for Cancellation on August 19, 2004. The Trademark Trial and Appeal Board served the Petition for Cancellation on the Registrant of record for Registration No. 2,449,486 at the address which was of record. The Trademark Trial and Appeal Board issued a Notice of Default on October 25, 2004 and entered a default judgment on December 18, 2004. Counsel for Petitioner received all of the Trademark Trial and Appeal Board's Orders.


The default judgment was entered on December 18, 2004. More than a year later, on January 10, 2006, counsel for Registrant evidently discovered the cancellation and requested

Petitioner to consent to setting aside the default judgment. Petitioner declines to do so. Registrant was notified that absent a consent which did not attempt to limit its trade channels, Petitioner would petition to cancel. The Trademark Trial and Appeal Board followed its own procedures correctly.

It is Registrant who did not advise the Patent and Trademark Office of its new address, if it has a new address. It is Registrant who did not check on the status of its registration for more than a year. There is no basis under Rule 60(b) for setting aside the default judgment, and Petitioner respectfully requests that the Registrant's Motion be denied.

Respectfully submitted,


VINA SAN PEDRO S.A.

By: 
Cynthia Clarke Weber
SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3202
(202) 663-7927
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION FOR RELIEF FROM JUDGMENT OR TO SET ASIDE DEFAULT** has been mailed this 21st day of March, 2006, by first-class mail, postage prepaid to:

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



Cynthia Clarke Weber

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re the Matter of

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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 No.: 92/043,622

DECLARATION OF CYNTHIA CLARKE WEBER

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

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

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

3. During prosecution of the '824 and '831 applications, Registrant's Registration No. 2,449,486 for the mark SAN PEDRO CAFÉ was cited under Section 2(d) as a bar. I was unable to persuade the Examining Attorney to withdraw the citation.

4. Accordingly, on October 7, 2003 I wrote to counsel for Registrant to request a consent and sent two Consent documents for execution. I explained the situation as follows:

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

5. After considerable negotiations, Registrant refused to grant a consent which did not improperly attempt to preclude Petitioner from selling its wines in restaurants and through caterers.

6. I advised Registrant's counsel that "I doubt it is accurate to say that the client's goods are not sold in restaurants or by catering businesses" and requested that the limitation be deleted from the Consent. Counsel for Registrant responded as follows:

My client will not agree to sign a consent agreement without the protections I've inserted. He does not want your client using the mark SAN PEDRO if they are selling their product in the restaurant/catering arena. It would be difficult for him to say that he believed confusion is unlikely, if that were the case. I have asked him to sign the agreements as revised, in case you want them, before he leaves tomorrow.

Email dated March 11, 2004.

7. I responded immediately as follows:

Since my client's rights are superior, he [Registrant] doesn't really have any say over that [trade channels]. However, please have him sign your versions before he leaves and send them to me. I will check with the client, and if we cannot use them [the Consents with the trade channel limitations] we will pursue the cancellation route instead. Thanks.

Email dated March 11, 2004.

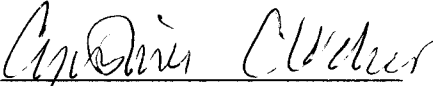
8. As Petitioner could not agree to exclude restaurants and caterers from its channels of trade, Petitioner filed the Petition to Cancel.

9. I received the Trademark Trial and Appeal Board's Orders dated August 25, 2004, October 25, 2004 and December 18, 2004.

9. I received the Trademark Trial and Appeal Board's Orders dated August 25, 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 Clarke Weber