

ESTTA Tracking number: **ESTTA73242**

Filing date: **03/28/2006**

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

Proceeding	92045434
Party	Plaintiff Vitasoy International Holdings LimitedVitasoy International Holdings Limited Vitasoy International Holdings Limited 1 Kin Wong StreetTuen Mun New Territories, HONG KONG
Correspondence Address	Carole F. Barrett Howard Rice et alia Three Embarcadero Center, 7th Floor San Francisco, CA 94111-4024 UNITED STATES trademark@howardrice.com
Submission	Other Motions/Papers
Filer's Name	Jeffrey M. Rosenfeld
Filer's e-mail	jrosenfeld@howardrice.com, tmetasavage@howardrice.com
Signature	/Jeff Rosenfeld/
Date	03/28/2006
Attachments	Thomas W. Wellington ltr 03282006.pdf (3 pages)

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN

A Professional Corporation

Three Embarcadero Center
Seventh Floor
San Francisco, CA 94111-4024
Telephone 415.434.1600
Facsimile 415.217.5910
www.howardrice.com

March 28, 2006

Thomas W. Wellington
Interlocutory Attorney
Trademark Trial And Appeal Board
United States Patent And Trademark Office

I hereby certify that this paper is being submitted electronically to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, on the date shown above.

Carole F. Barrett 3/28/06
Carole F. Barrett

Re: *Vitasoy International Holdings Limited v. Pedro Maria Barroeta Urquiza*
Cancellation No.: 92045434
Mark: **VITATEA (Class 30)**
Ser. No.: 79/000,958

Dear Mr. Wellington:

Petitioner, Vitasoy International Holdings Limited ("VIHL"), hereby respectfully submits this letter, requesting that the Trademark Trial And Appeal Board (the "Board") find that the Registrant's answer to the above-referenced cancellation proceeding is deficient, and to require Registrant to amend its answer to comply with the Rules of Practice in Trademark Proceedings or, in the alternative, to find that VIHL's Petition For Cancellation is deemed admitted by Registrant in most respects.

On February 7, 2006, VIHL filed a Petition to Cancel Mr. Urquiza's registration for the mark, VITATEA with the United States Patent and Trademark Office (Application Serial No. 79/000,958). On March 10, 2006, Mr. Urquiza sent a purported answer to the Board in response to VIHL's Petition to Cancel. However, this answer does not conform to the requirements set out in 37 C.F.R. §2.114(b)(1) and Federal Rule of Civil Procedure 8, and it is impossible for VIHL to determine what allegations contained in its Petition to Cancel Mr. Urquiza has admitted or denied. A copy of Mr. Urquiza's purported answer is enclosed herein.

37 C.F.R. §2.114(b)(1) requires that:

[a]n answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the

Thomas W. Wellington
March 28, 2006
Page 2

averments upon which the petitioner relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, respondent shall so state and this will have the effect of a denial.

And Federal Rule of Civil Procedure 8(d) states:

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.

While VIHL's Petition to Cancel contains 34 enumerated paragraphs, all containing separate claims, Mr. Urquiza's purported answer only contains two paragraphs. The first paragraph in Mr. Urquiza's answer denies claims 6, 7, and 8 in VIHL's Petition to Cancel. The second paragraph in Mr. Urquiza's answer, is a general argument regarding the merits of the allegations in VIHL's Petition To Cancel, which, under the applicable Rules, should not be contained in an answer. *See* 37 C.F.R. §2.114(b)(1). The second paragraph does not identify any specific allegations from VIHL's Petition To Cancel that Mr. Urquiza is denying, nor does it constitute a general denial of every allegation in the Petition to Cancel. Because Mr. Urquiza's answer fails to adhere to the Trademark Rules and the Federal Rules, VIHL cannot determine which of its allegations Mr. Urquiza has admitted or denied.

Petitioner respectfully requests that the Board require Mr. Urquiza to submit an amended answer that conforms with the Trademark Rules, or in the alternative, that the Board deem as admitted, every allegation in VIHL's Petition to Cancel, other than Paragraphs 6, 7, and 8, pursuant to Federal Rule of Civil Procedure 8(d).

Sincerely,



Carole F. Barrett
Attorney for Petitioner

PROOF OF SERVICE

The undersigned declares and says as follows: my business address is Three Embarcadero Center, Seventh Floor, San Francisco, CA 94111-4065. I am employed in the City and County of San Francisco; I am over the age of 18 years, and I am not a party to this cause. I am readily familiar with this business' practices for collection and processing of correspondence for mailing with the United States Postal Services. On the same day that a sealed envelope is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Date of Deposit: March 28, 2006

I served the within Letter dated March 28, 2006 to Trademark Trial and Appeal Board
Re: Answer to Cancellation on:

Pedro Maria Barroeta Urquiza
Calle San Juan de la Cruz
3-Portal 2, 1 B
E-28223 Pozuelo de Alarcon
Madrid, Spain

by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, for deposit in the United States mail for collection and mailin gon this day following ordinary business practices of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, PC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration is executed in San Francisco, California, this 28th day of March, 2006.


By: Terry Metasavage