

Mr. Thomas W. Wellington  
Interlocutory Attorney  
Trademark Trial and Appeal Board  
UNITED STATES PATENT AND TRADEMARK OFFICE

April 19, 2006

Subject: **Answer to Cancellation procedure. N° 9204534, filed to cancel  
Registration No. 3023852, VITATEA.**

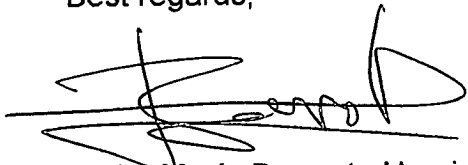
Re: Vitasoy Internacional Holdings Limited v. Pedro María Barroeta Urquiza  
Cancellation N° 92045434  
Mark: VITATEA (class 30)  
Ser. No.: 79/000,958  
Trademark N°.: 3023852

Dear Mr Wellington:

Many thanks for your kindly help with your suggests about a correct presentation of the Answer to Cancellation procedure N° 9204534, filed to cancel Registration N° 3023852, VITATEA.

Please find attached the letter sent to Miss Carole F. Barret, Attorney for Petitioner, with comments to all the claims asserted and the Proof of Service.

Best regards,



Pedro María Barroeta Urquiza



04-27-2006

Carole F. Barrett  
Attorney for Petitioner  
Howard Rice et alia  
Three Embarcadero Center, 7th Floor  
San Francisco, CA 94111-4024  
USA

April 19, 2006

**Subject: Answer to Cancellation procedure. N° 9204534, filed to cancel  
Registration No. 3023852, VITATEA.**

Re: Vitasoy Internacional Holdings Limited v. Pedro María Barroeta Urquiza  
Cancellation N° 92045434  
Mark: VITATEA (class 30)  
Ser. No.: 79/000,958  
Trademark N°.: 3023852

Dear Miss Barret:

Pedro María Barroeta Urquiza, in reply to the Cancellation procedure mailed on February 10, 2006, and requested by Mr. Thomas W. Wellington, Interlocutory Attorney of Trademark Trial and Appeal Board, in letter mailed April 1, 2006, I would like to make the following observations to each of 34 claims or allegations asserted:

Claim 1: It is true.

Claim 2: It is true

Claim 3: It is true.

Claim 4: It is true.

Claim 5: It is true.

Claim 6: It is not true. The VITATEA mark has been used in the United States. Green Tea Soda VITATEA®, as you can see on the website [www.unidrinks.com](http://www.unidrinks.com), was presented at the FANCY FOOD Fair held in New York in 27-29 June 2004 in the stand pertaining to EUROBUBBLIES, INC, with headquarters at 1417 6th Street, 302 Santa Monica, CA 90401. It has been promoted and advertised to many of this company's clients. Therefore, registration of the VITATEA trademark is duly consolidated by an effective use in the United States market.

Claim 7: It is not true. VITATEA mark has been promoted and advertised to many of the EUROBUBBLIES, INC company's clients.

Claim 8: It is not true. The VITATEA mark has been used in the United States in the product Green Tea Soda VITATEA® that was presented at the FANCY FOOD Fair held in New York in 27-29 June 2004 in the stand pertaining to EUROBUBBLIES, INC, with headquarters at 1417 6th Street, 302 Santa Monica, CA 90401. It has been promoted and advertised to many of this company's clients. Therefore, registration of the VITATEA trademark is duly consolidated by an effective use in the United States market.

Claim 9: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 10: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 11: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 12: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 13: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 14: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 15: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 16: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 17: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 18: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 19: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 20: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 21: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 22: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 23: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 24: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 25: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 26: Ok. NO problem.

Claim: 27: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 28: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 29: I have not sufficient information to form a belief as to the truth or averment of this allegation, but that is a subjective allegation about the behaviour and real thinking of consumers.

Claim 30: I have not sufficient information to form a belief as to the truth or averment of this allegation. But it would be necessary to prove that VITA marks constitute **famous** marks.

Claim 31: That is not true, because there are substantive differences between VITA mark and VITATEA mark, which must be considered as a whole. There is no denominative identity between the trademarks cited and the VITATEA mark, which must be considered as a whole, as the USPTO did in their prior analysis of similarities, which did not identify any problem with existing trademarks. Furthermore, and as can be easily confirmed, many other trademarks incorporating the term VITA currently coexist without problems since they compose very different denominations, not only for products in Class 30, but also for other classes of food and beverages. Among them I would mention VITA BY S.PELLEGRINO, Reg. No. 2298309 and VITALITY, Reg. No. 2802591, which are both connected with tea.

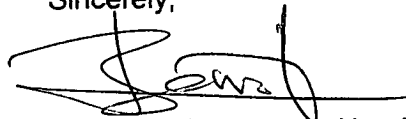
Claim 32: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 33: I have not sufficient information to form a belief as to the truth or averment of this allegation.

Claim 34: I do not admit that resemblance between the marks, "to cause dilution to the distinctive quality of Petitioner's VITA Marks", because when comparing signs, a global appreciation of the visual, phonetic and conceptual similarity of the marks in question must be made. Furthermore, "VITA" has absolutely no distinctive character in relation to the goods in question. "VITA" is a Latin word for "Life, vitality" and with this meaning is part of many trademarks in the pharmaceutical and para-pharmaceutical and food and beverages areas, trademarks that currently coexist without problems since they compose very different denominations, not only for products in Class 30, but also for other classes of food and beverages. Among them I would mention VITA BY S.PELLEGRINO, Reg. No. 2298309 and VITALITY, Reg. No. 2802591, which are both connected with tea. In contrast, "VITATEA" is clearly distinctive.

WHEREFORE, and for all the above, I earnestly request to you the withdrawal of the petition of cancellation that has been filed, leaving the duly registered VITATEA trademark as is so that we can continue marketing and business activity in the United States.

Sincerely,



Pedro María Barroeta Urquiza  
Calle San Juan de la Cruz 3-Portal 2, 1º B  
E-28223 Pozuelo de Alarcón (Madrid)  
Telephone: (34) 91 3153155  
Facsimile: (34) 91 3154167  
Email: pedro.barroeta@unidrinks.com

## PROOF OF SERVICE

The undersigned declares and says as follows: my business address is Calle Atenas, 2, Oficina E-Norte, 28224 Pozuelo de Alarcón-Madrid-Spain. I am employed in Pozuelo de Alarcón. I am over the age of 18 years, and I am not party to this cause. I am readily familiar with this business practices for collection and processing of correspondence for mailing with the Spain Postal Services. On the same day that I sealed envelope is placed for collection and mailing, it is deposited in the ordinary course of business with the Spain Postal Service with postage fully prepaid.

Date of Deposit: April 19, 2006

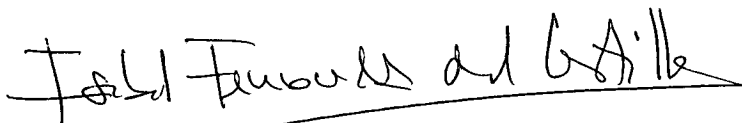
I served the within Letter dated April 19, 2006 to Trademark Trial and Appeal Board.

Re: Answer to Cancellation on:

Carole F. Barrett  
Attorney for Petitioner  
Howard Rice et alia  
Three Embarcadero Center, 7th Floor  
San Francisco, CA 94111-4024  
USA

By placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, for deposit in the Spain mail for collection and mailin gon this day following ordinary practices of Pedro María Barroeta Urquiza office.

I declare under penalty of perjury under the laws of the State of Spain that the foregoing is true and correct, and that this Declaration is executed in Madrid, this 19<sup>th</sup> day of April, 2006.



By: Isabel Fernández del Castillo