

ESTTA Tracking number: **ESTTA243907**

Filing date: **10/21/2008**

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

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	Remington Health Products, LLC		
Entity	Limited Liability Company	Citizenship	Texas
Address	808 Blue Mound Road Fort Worth, TX 76131 UNITED STATES		

Attorney information	Robert M. Chiaviello Jr. Fulbright & Jaworski L.L.P. 2200 Ross Avenue; Suite 2800 Dallas, TX 75201 UNITED STATES DOIPDocket@Fulbright.com, efrazier@fulbright.com
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### Registration Subject to Cancellation

Registration No	3406625	Registration date	04/01/2008
Registrant	SUIZA FRUIT CORPORATION P.O. BOX 363207 DE DIEGO AVENUE CORNER SAN PATRICIO AVENUE SAN JUAN, 009693207 PR		

### Goods/Services Subject to Cancellation


Class 029. First Use: 2004/06/24 First Use In Commerce: 2004/06/24 All goods and services in the class are cancelled, namely: Milk and milk products, namely yogurt
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### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2552892	Application Date	05/30/1997
Registration Date	03/26/2002	Foreign Priority Date	NONE
Word Mark	DRINKABLES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1998/09/00 First Use In Commerce: 1998/09/00 vitamins, dietary supplements, and mineral supplements, all in liquid form		

U.S. Registration No.	2863590	Application Date	04/30/2002
Registration Date	07/13/2004	Foreign Priority Date	NONE
Word Mark	DRINKABLES LIQUID SUPPLEMENTS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/06/00 First Use In Commerce: 2002/06/00 Vitamins, dietary supplements, nutritional supplements, and mineral supplements		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	DRINKABLES		
Goods/Services	Liquid health products		

Attachments	78125189#TMSN.gif ( 1 page )( bytes ) Cancellation - Suiza.pdf ( 17 pages )(491611 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/rmc/
Name	Robert M. Chiaviello Jr.
Date	10/21/2008

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

In the matter of Registration No.: 3,406,625  
By Suiza Fruit Corporation. for the Mark: SUIZA POWER-YO' DRINKABLE LOWFAT  
YOGURT & Design  
Registration Issued on April 1, 2008;

REMINGTON HEALTH PRODUCTS,  
LLC,

Remington,

v.

SUIZA FRUIT CORPORATION

Registrant.

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Cancellation No.: \_\_\_\_\_

**PETITION FOR CANCELLATION**

Remington Health Products, LLC (“Remington”), a limited liability company organized and existing under the laws of the state of Texas, having its principal place of business at 808 Blue Mound Road, Fort Worth, Texas 76131, believes that it is and will continue to be damaged by the existence of Registration No. 3,406,625 for the mark SUIZA POWER-YO' DRINKABLE LOWFAT YOGURT & Design in Class 29, owned by Suiza Fruit Corporation (“Registrant”) and hereby petitions to cancel the registration under the provisions of 15 U.S.C. § 1064.

As grounds of cancellation, Remington asserts that:

1. Since at least as early as 1998, Remington, or its predecessor-in-interest, has adopted and continuously used the mark DRINKABLES for liquid health products.
2. Remington owns U.S. Registration No. 2,552,892 for the mark DRINKABLES as a trademark registered in connection with the following goods:

Vitamins, dietary supplements, and mineral supplements, all in liquid form in Class 5.

The United States Patent & Trademark Office (“USPTO”) issued U.S. Registration No. 2,552,892 on March 26, 2002, with Remington, or its predecessor-in-interest, having filed the underlying application on May 30, 1997. Remington, or its predecessor-in-interest, has continuously used DRINKABLES in interstate commerce in connection with the specified goods since at least as early as 1998. Registration No. 2,552,892 is valid, subsisting and in full force and effect. A true and correct copy of the TARR record and USPTO Assignment Division record for the aforesaid registration are attached hereto as Exhibit A. The filing date for Registration No. 2,552,892 precedes Registrant’s filing date of January 22, 2005 and date of first use of June 26, 2004 and Remington’s or its predecessor-in-interest’s, date of first use of the mark DRINKABLES precedes Registrant’s filing date of January 22, 2005 and date of first use of June 26, 2004.

3. Remington owns U.S. Registration No. 2,863,590 for the following composite word and design mark (hereinafter referred to as DRINKABLES Design):



as a trademark registered in connection with the following goods:

Vitamins, dietary supplements, nutritional supplements, and mineral supplements in Class 5. The USPTO issued U.S. Registration No. 2,863,590 on July 13, 2004 with Remington having filed the underlying application on April 30, 2002. Remington has continuously used the DRINKABLES Design mark in interstate commerce in connection with the specified goods

since at least as early as June 2002. Registration No. 2,863,590 is valid, subsisting and in full force and effect. A true and correct copy of the TARR record and USPTO Assignment Division records for the aforesaid registration are attached hereto as Exhibit B. The filing date for Registration No. 2,863,590 precedes Registrant's filing date of January 22, 2005 and date of first use of June 26, 2004, and Remington's date of first use of the DRINKABLES Design mark precedes Registrant's filing date of January 22, 2005 and date of first use of June 26, 2004.

4. Remington's marks referenced in paragraphs 1 through 3 will hereafter be referred to as "Remington's Marks."

5. Remington's Marks are inherently distinctive and serve to distinguish Remington and the goods originating with Remington from those of others, and to distinguish the source of Remington's goods.

6. Remington has expended substantial amounts of time, money and effort in advertising and promoting Remington's Marks and the goods offered thereunder. As a result, Remington has developed substantial goodwill in Remington's Marks.

7. Registrant owns U.S. Registration No. 3,406,625 for the mark SUIZA POWER-YO' DRINKABLE LOWFAT YOGURT & Design ("Registrant's Mark") as a trademark in connection with the following goods (hereinafter referred to as "Registrant's Goods"):

Milk and milk products, namely yogurt in class 29.

This registration was filed on January 22, 2005, subsequent to Remington's 1998 and 2002 dates of first use of Remington's Marks and the filing dates of both of the registrations for Remington's Marks.

8. Registrant's Mark so resembles Remington's Marks as to be likely, when used on or in connection with Registrant's Goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to falsely believe that Registrant's Goods offered and provided under Registrant's Mark are sponsored, endorsed, or approved by Remington, or are in some way affiliated, connected, or associated with Remington. Cancellation is therefore appropriate under 15 U.S.C. § 1052(d).

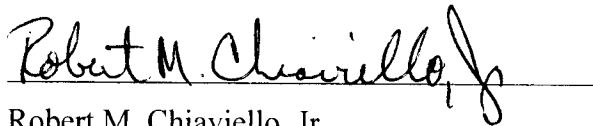
9. The registration of Registrant's Mark by Registrant is a source of damage to Remington because purchasers are likely to attribute the source or sponsorship of Registrant's Goods to Remington.

WHEREFORE, Remington prays that this Petition For Cancellation be sustained and that Registration No. 3,406,625 be cancelled in its entirety.

A fee in the amount of \$300.00 as required in 37 C.F.R. § 2.6(a)(17) is submitted herewith. If the amount is insufficient, or should any additional fees under 37 C.F.R. § 2.6 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Commissioner for Trademarks is authorized to deduct or credit said fees from or to Fulbright & Jaworski Deposit Account No. 06-2380.

Dated: October 1, 2008

Respectfully submitted,



Robert M. Chiaviello, Jr.

Erin B. Frazier

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201

Telephone: 214.855.8000

Fax: 214.855.8200


Email: [DOIPDocket@Fulbright.com](mailto:DOIPDocket@Fulbright.com)

COUNSEL FOR REMINGTON HEALTH  
PRODUCTS, LLC

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing PETITION FOR CANCELLATION and associated Exhibits were served by First Class Mail on October 21, 2008, upon Registrant's attorney at the address below:

Miguel A. Negron-Matta  
60-E, ESTEBAN PADILLA STREET  
BAYAMON 00959 Puerto Rico

  
\_\_\_\_\_  
Erin B. Frazier



# EXHIBIT A

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2008-09-29 17:24:21 ET**

**Serial Number:** 75300688 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2552892

**Mark (words only):** DRINKABLES

**Standard Character claim:** No

**Current Status:** Section 8 and 15 affidavits have been accepted and acknowledged.

**Date of Status:** 2007-05-07

**Filing Date:** 1997-05-30

**Transformed into a National Application:** No

**Registration Date:** 2002-03-26

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 105

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 40S -Scanning On Demand

**Date In Location:** 2007-05-18

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. REMINGTON HEALTH PRODUCTS, LLC

**Address:**  
REMINGTON HEALTH PRODUCTS, LLC  
804 BLUE MOUND ROAD  
FORT WORTH, TX 76131  
United States

**Legal Entity Type:** Limited Liability Company  
**State or Country Where Organized:** Texas

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**GOODS AND/OR SERVICES**

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**International Class:** 005

**Class Status:** Active

vitamins, dietary supplements, and mineral supplements, all in liquid form

**Basis:** 1(a)

**First Use Date:** 1998-09-00

**First Use in Commerce Date:** 1998-09-00

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2007-05-18 - Case File In TICRS

2007-05-07 - Section 8 (6-year) accepted & Section 15 acknowledged

2007-04-24 - Assigned To Paralegal

2007-03-26 - Section 8 (6-year) and Section 15 Filed

2007-03-26 - TEAS Section 8 & 15 Received

2002-11-27 - Section 7 correction issued

2002-08-01 - Request for new certificate filed

2002-08-01 - PAPER RECEIVED

2002-03-26 - Registered - Principal Register

2001-12-03 - Allowed for Registration - Principal Register (SOU accepted)

2001-11-29 - Assigned To Examiner

2001-11-26 - Statement of use processing complete

2001-11-26 - Extension 3 granted

2001-11-07 - Amendment to Use filed

2001-11-07 - Extension 3 filed

2001-05-18 - Extension 2 granted

2001-05-08 - Extension 2 filed

2001-01-17 - Extension 1 granted

2000-11-09 - Extension 1 filed

Latest Status Info

- 2000-05-09 - Notice of allowance - mailed
- 2000-03-10 - Opposition terminated for Proceeding
- 2000-03-10 - Opposition dismissed for Proceeding
- 1998-08-18 - Opposition instituted for Proceeding
- 1998-05-15 - Extension Of Time To Oppose Received
- 1998-04-28 - Published for opposition
- 1998-03-27 - Notice of publication
- 1998-02-03 - Approved for Pub - Principal Register (Initial exam)
- 1998-01-28 - Examiner's amendment mailed
- 1998-01-03 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Linda M. Merritt

**Correspondent**

Linda M. Merritt

Fulbright & Jaworski L.L.P.

22000 ROSS AVENUE, Suite 2800

DALLAS TX 75201

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## Assignments on the Web &gt; Trademark Query

## Trademark Assignment Abstract of Title

**Total Assignments: 6****Serial #:** 75300688**Filing Dt:** 05/30/1997**Reg #:** 2552892**Reg. Dt:** 03/26/2002**Registrant:** Remington Health Products, Inc.**Mark:** DRINKABLES**Assignment: 1****Reel/Frame:** 1986/0281**Received:** 11/08/1999**Recorded:** 11/02/1999**Pages:** 10**Conveyance:** CHANGE OF NAME DOCUMENT. RE-RECORD TO CORRECT NATURE OF CONVEYANCE, PREVIOUSLY RECORDED ON REEL 1809, FRAME 0486.**Assignor:** REMINGTON HEALTH PRODUCTS, INC.**Exec Dt:** 09/30/1997**Entity Type:** CORPORATION**Citizenship:** TEXAS**Entity Type:** CORPORATION**Citizenship:** TEXAS**Assignee:** STEELE INVESTMENTS, INC.

932 BLUE MOUND ROAD

FORT WORTH, TEXAS 76131

**Correspondent:** BAKER & BOTTS, L.L.P.

ROBERT M. CHIAVIELLO, JR., ESQ.

2001 ROSS AVENUE

DALLAS, TEXAS 75201

**Assignment: 2****Reel/Frame:** 2314/0094**Received:** 06/15/2001**Recorded:** 05/30/2001**Pages:** 6**Conveyance:** CHANGE OF NAME**Assignor:** REMINGTON HEALTH PRODUCTS, INC.**Exec Dt:** 09/30/1997**Entity Type:** CORPORATION**Citizenship:** TEXAS**Entity Type:** CORPORATION**Citizenship:** TEXAS**Assignee:** STEELE INVESTMENT, INC.

932 BLUE MOUND ROAD

FORT WORTH, TEXAS 76131

**Correspondent:** BAKER BOTT L.L.P.

ROBERT M. CHIAVIELLO, JR., ESQ.

2001 ROSS AVENUE

DALLAS, TX 75201

**Assignment: 3****Reel/Frame:** 2314/0144**Received:** 06/15/2001**Recorded:** 05/30/2001**Pages:** 5**Conveyance:** CHANGE OF NAME (CORRECTION TO DOCUMENT RECORDED AT REEL 001809, FRAME 0486 EFFECTIVE ON OCTOBER 29, 1998)**Assignor:** REMINGTON HEALTH PRODUCTS, INC.**Exec Dt:** 09/30/1997**Entity Type:** CORPORATION**Citizenship:** TEXAS**Entity Type:** CORPORATION**Citizenship:** TEXAS**Assignee:** STEELE INVESTMENTS, INC.

932 BLUE MOUND ROAD

FORT WORTH, TEXAS 76131

**Correspondent:** BAKER BOTTS L.L.P.

ROBERT M. CHIAVIELLO, JR. ESQ.

2001 ROSS AVENUE

DALLAS, TX 75201

**Assignment: 4****Reel/Frame:** 2314/0076**Received:** 06/15/2001**Recorded:** 05/30/2001**Pages:** 5**Conveyance:** CORRECTION TO DOCUMENT RECORDED AT REEL 001809, FRAME 0486**Assignor:** STEELE INVESTMENTS, INC.**Exec Dt:** 10/01/1997**Entity Type:** CORPORATION

**Assignee:** REMINGTON HEALTH PRODUCTS, LLC  
932 BLUE MOUND ROAD  
FORT WORTH, TEXAS 76131

**Citizenship:** TEXAS

**Entity Type:** TEXAS LIMITED LIABILITY COMPANY

**Citizenship:** NONE

**Correspondent:** BAKER BOTTS LLP  
ROBERT M. CHIAVIELLO, JR., ESQ.  
2001 ROSS AVENUE  
SUITE 600  
DALLAS, TEXAS 75201-2980

**Assignment: 5**

**Reel/Frame:** 2346/0725

**Received:** 08/14/2001

**Recorded:** 07/27/2001

**Pages:** 5

**Conveyance:** ASSIGNS THE ENTIRE INTEREST

**Assignor:** STEELE INVESTMENTS, INC.

**Exec Dt:** 10/01/1997

**Entity Type:** CORPORATION

**Citizenship:** TEXAS

**Entity Type:** LIMITED LIABILITY COMPANY

**Citizenship:** TEXAS

**Assignee:** REMINGTON HEALTH PRODUCTS, LLC  
932 BLUE MOUND ROAD  
FORT WORTH, TEXAS 76131

**Correspondent:** BAKER BOTTS L.L.P.  
DANA C. JEWELL, ESQ.  
2001 ROSS AVENUE  
SUITE 600  
DALLAS, TEXAS 75201-2980

**Assignment: 6**

**Reel/Frame:** 1809/0486

**Received:** 11/06/1998

**Recorded:** 10/29/1998

**Pages:** 9

**Conveyance:** BILL OF SALE

**Assignors:** REMINGTON HEALTH PRODUCTS, INC.

**Exec Dt:** 07/01/1998

**Entity Type:** CORPORATION

**Citizenship:** TEXAS

**Exec Dt:** 07/01/1998

**Entity Type:** CORPORATION

**Citizenship:** TEXAS

**Entity Type:** CORPORATION

**Citizenship:** TEXAS

**Assignees:** STEELE INVESTMENTS, INC.  
932 BLUE MOUND ROAD  
FORT WORTH, TEXAS 76131  
REMINGTON HEALTH PRODUCTS, LLC  
932 BLUE MOUND ROAD  
FORT WORTH, TEXAS 76131

**Correspondent:** FELSMAN, BRADLEY, GUNTER & DILLON  
MELVIN A. HUNN  
201 MAIN STREET, SUITE 1600  
FORT WORTH, TEXAS 76102-3105

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.0.1  
Web interface last modified: April 20, 2007 v.2.0.1

Search Results as of: 09/29/2008 05:24 PM

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## EXHIBIT B

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2008-09-29 17:24:57 ET**

**Serial Number:** 78125189 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2863590

**Mark**



**(words only):** DRINKABLES LIQUID SUPPLEMENTS

**Standard Character claim:** No

**Current Status:** Registered.

**Date of Status:** 2004-07-13

**Filing Date:** 2002-04-30

**Transformed into a National Application:** No

**Registration Date:** 2004-07-13

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 105

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2004-07-22

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Remington Health Products, LLC

**Address:**

Remington Health Products, LLC  
804 Blue Mound Road  
Fort Worth, TX 76131  
United States

**Legal Entity Type:** Limited Liability Company



**State or Country Where Organized:** Texas

**Phone Number:** 214-953-6716

**Fax Number:** 214-953-6503

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### GOODS AND/OR SERVICES

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**International Class:** 005

**Class Status:** Active

Vitamins, dietary supplements, nutritional supplements, and mineral supplements

**Basis:** 1(a)

**First Use Date:** 2002-06-00

**First Use in Commerce Date:** 2002-06-00

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### ADDITIONAL INFORMATION

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**Disclaimer:** "LIQUID SUPPLEMENTS"

**Design Search Code(s):**

**10.09.01** - Capsules, medicinal/nonmedicinal; Pills; Tablets, medicines; Tablets, nonmedical products in tablet form

**Prior Registration Number(s):**

2550254

2552892

2585754

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### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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### PROSECUTION HISTORY

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2004-04-13 - PAPER RECEIVED

2004-07-13 - Registered - Principal Register

2004-03-05 - Allowed for Registration - Principal Register (SOU accepted)

2004-02-20 - EXAMINERS AMENDMENT E-MAILED

2003-11-21 - TEAS Change Of Correspondence Received

2003-11-12 - Assigned To Examiner

2003-11-09 - Case File In TICRS

2003-09-29 - Statement of use processing complete

2003-09-29 - Amendment to Use filed

2003-09-29 - PAPER RECEIVED  
2003-09-09 - Notice of allowance - mailed  
2003-05-08 - PAPER RECEIVED  
2003-02-06 - Extension Of Time To Oppose Received  
2003-01-21 - Published for opposition  
2003-01-01 - Notice of publication  
2002-11-18 - Approved for Pub - Principal Register (Initial exam)  
2002-10-14 - Communication received from applicant  
2002-10-14 - TEAS Response to Office Action Received  
2002-10-01 - Non-final action mailed  
2002-09-20 - Assigned To Examiner  
2002-09-09 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Robert M. Chiaviello, Jr.

**Correspondent**

Robert M. Chiaviello, Jr.  
Fulbright & Jaworski L.L.P.  
2200 Ross Avenue, Suite 2800  
Dallas TX 75201-2784  
Phone Number: 214-855-8000  
Fax Number: 214-855-8200

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**No assignment has been recorded at the USPTO**

**For Serial Number: 78125189**

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Web interface last modified: April 20, 2007 v.2.0.1

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