

## RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies):**

Grupo Empresarial Labiofoam, f/k/a Laboratorios Biologicos Farmaceuticos, d/b/a Labiofoam

- Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation- State: CUBA  
 Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached?  Yes  No

**3. Nature of conveyance )/Execution Date(s) :**

Execution Date(s) January 22, 2010

- Assignment                               Merger  
 Security Agreement                   Change of Name  
 Other SEE ATTACHED SHEET

**2. Name and address of receiving party(ies)**

Additional names, addresses, or citizenship attached?  Yes  No

Name: Grupo Empresarial Labiofoam, f/k/a Laboratorios

Internal Biologicos Farmaceuticos, d/b/a Labiofoam

Address: \_\_\_\_\_

Street Address: Avenida Independencia, KM 1648

City: Boyeros, Havana

State: \_\_\_\_\_

Country: CUBA                              Zip: \_\_\_\_\_

- Association      Citizenship \_\_\_\_\_  
 General Partnership      Citizenship \_\_\_\_\_  
 Limited Partnership      Citizenship \_\_\_\_\_  
 Corporation      Citizenship CUBA  
 Other \_\_\_\_\_      Citizenship \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
 (Designations must be a separate document from assignment)

**4. Application number(s) or registration number(s) and identification or description of the Trademark.**

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,225,596

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

BIORAT

**5. Name & address of party to whom correspondence concerning document should be mailed:**

Name: Jenifer deWolf Paine

Internal Address: Trademark File Room

Street Address: 1595 Broadway

City: New York

State: NY                                      Zip: 10036-8299

Phone Number: (212) 969-3000

Fax Number: (212) 969-2900

Email Address: trademark@proskauer.com

**6. Total number of applications and registrations involved:**

1

**7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$** 40.00

- Authorized to be charged to deposit account  
 Enclosed

**8. Payment Information:**

Deposit Account Number 162500

Authorized User Name Jenifer deWolf Paine

**9. Signature:**

  
 Signature

February 19, 2010

Date

Jenifer deWolf Paine

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 5

**Nature of Conveyance**

This submission is to correct an error made in a previously recorded document at Reel/Frame 4110/0174 that erroneously affects the identified application(s) or registration(s).



**Declaration of José A. Fraga Castro Under TMEP § 503.06(c)**

1. I am the Director of Grupo Empresarial Labiofam, formerly known as Laboratorios Biológicos Farmaceuticos, d/b/a Labiofam ("Labiofam"), which has a place of business at Avenida Independencia, KM 1648, Boyeros, Havana, Cuba. I have authority to speak for that entity on the topics covered in this Declaration. All statements made herein of my own knowledge are true. Statements made in this declaration concerning legal proceedings in the United States are upon information provided by United States counsel and are believed to be true.

2. LABIOFAM is the owner of U.S. Trademark Reg. No. 2,225,596 for the mark BIORAT (the "Labiofam Mark"). Labiofam filed the application for the Labiofam Mark on December 2, 1997, and at no time thereafter has Labiofam assigned its rights to the Labiofam Mark to any party.

3. On December 8, 2009, an "Assignment Cover Sheet" with an accompanying document was filed, purporting to transfer the Labiofam Mark to Mr. Nilo Jerez of Coral Gables, Florida ("Jerez"). This recorded document was submitted with erroneous information, as detailed below.

4. The accompanying document was an *ex parte* Writ of Attachment on Judgment ("Writ") that Jerez obtained from the Clerk of the United States District Court for the District of Columbia without Court order, in violation of United States law.

5. Jerez then purported to execute the Writ of Attachment against the Labiofam Mark by recording the Writ under Reel/Frame Number 4110/0174.

6. By recording the Writ, Jerez sought to seek satisfaction of a default judgment issued by a Florida state court (the Eleventh Judicial Circuit In and For Miami-Dade County, Florida) against the Republic of Cuba on January 30, 2007, Case No. 05-18719 CA9 ("State Default Judgment"). On May 6, 2009, the United States District Court for the Southern District of Florida, in Case No. 08-23405, issued a judgment upon default giving "full faith and credit" to the State Default Judgment ("Federal Florida Default Judgment"). Jerez registered the "full faith and credit" default judgment in the United States District Court for the District of Columbia on September 1, 2009 pursuant to 28 U.S.C. § 1963 ("Registered Judgment"), with docket number 09-00466. On October 2, 2009, Jerez obtained from the Clerk of this Court the Writ in satisfaction of the Registered Judgment.

7. Labiofam was not named in the State Default Judgment, the Federal Florida Default Judgment, or the Registered Judgment (hereafter sometimes collectively "Judgments") Labiofam was not a party to the lawsuits and proceedings resulting in said Judgments, did not participate with any those lawsuits or proceedings, and was not given any notice of those lawsuits and proceedings.

8. No court has ever authorized execution upon Labiofam's property, including the Labiofam Mark, to satisfy the Judgments. No court has ever determined or held Labiofam liable for the Judgments.

9. On November 19, 2009, Labiofam filed a motion in the United States District Court for the District of Columbia, Case No. 09-mc-00466, to vacate the Writ as invalid and contrary to law. On December 21, 2009, Jerez filed papers in opposition to that motion to vacate. Labiofam's reply papers will be filed shortly. The Court has not yet decided Labiofam's motion to vacate the Writ.

JOSÉ A. FRAGA CASTRO  
Grupo Empresarial  
LABIOFAM

10. Jerez' purported execution by recording the Writ under an Assignment Cover Sheet, purporting to show an assignment of the Labiofam Mark to Jerez, was improper, unlawful, and of no effect for multiple reasons, including without limitation:

(a) Labiofam was not named in the State Default Judgment, the Federal Florida Default Judgment or the Registered Judgment, was not a party to the lawsuits and proceedings resulting in said Judgments, did not participate in any of those lawsuits or proceedings, and was not given any notice of those lawsuits and proceedings.

(b) The United States Department of Treasury's Cuban Assets Control Regulations ("CACR"), 31 C.F.R. §§ 515.201, 515.203, 515.310, prohibit execution upon property, including specifically trademark registrations, in which Cuba or a Cuban national has an interest, unless execution is specifically licensed by the Treasury Department's Office of Foreign Assets Control ("OFAC"). Labiofam is a Cuban national, and therefore this prohibition applies to its trademarks. OFAC has not issued a license authorizing the Writ, execution on the Labiofam Mark or any other Labiofam property, or execution in satisfaction of Jerez's Judgments. Under the CACR, the Writ, and any purported execution thereon, including the Assignment Cover Sheet, are therefore "null and void, and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to" the Labiofam Mark or Labiofam's other property. 31 C.F.R. § 515.203.

(c) In the Writ, Jerez asserts that Labiofam is an "agency or instrumentality" of the Republic of Cuba, and Jerez, by the Writ, seeks to satisfy a judgment against the Republic of Cuba. For both reasons, the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602, et. seq. applies to the Writ and the instant Assignment Cover Sheet. The FSIA expressly prohibits any attachment or execution of the property of a foreign state or an agency or instrumentality of a foreign state unless a judge of a court has ordered such attachment or execution. 28 U.S.C. § 1610 (c). No judge of a court has ordered the Writ or execution upon the property of Labiofam or any other property in satisfaction of the Judgments. Rather, the Writ, contrary to the FSIA, was issued by the Clerk of the Court without judicial order. The Writ and the Assignment Cover Sheet are therefore invalid and no effect.

(d) Under the Foreign Sovereign Immunities Act, the property of a foreign state and of an agency or instrumentality of a foreign state are immune from attachment and execution unless a statutory exception to immunity applies. FSIA, 28 U.S.C. § 1609. None of the statutory exceptions to this immunity applies. No court has found that any of the exceptions apply, and no court has made the findings necessary for any of the exceptions to apply.

(e) The Florida state court (the Eleventh Judicial Circuit In and For Miami-Dade County, Florida) lacked personal and subject matter jurisdiction over Jerez's action against the Republic of Cuba. The exclusive source of such jurisdiction is the Foreign Sovereign Immunities Act. The Florida state court did not even reference the FSIA in its judgment, and did not make the findings required for there to be jurisdiction under the FSIA. There was no legal basis for jurisdiction under the FSIA, including, inter alia, because Jerez admittedly was not a citizen of the United States at the time of the acts sued upon.

(f) As applied to the Labiofam Mark, the Writ and the Assignment Cover Sheet are contrary to the United States' obligations under the General Inter-American Convention for Trade Mark and Commercial Protection (the "IAC"), 46 Stat. 2907 (1930) and the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), 33 I.L.M. 81 (1994).

UR JUSTICE FINANCIAL  
Clerk of Court  
LABIOFAM

11. Labiofam remains the true and correct owner of the Labiofam Mark. The chain of title for the Labiofam Mark should not be considered altered by the incorrect "Assignment" recorded. Labiofam has been and continues to be the owner of the Labiofam Mark.

12. United States counsel for Labiofam in this matter has contacted counsel for Jerez, William John McKeague, and asked him to file corrective documents. Mr. McKeague refused.

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

Executed on 22 January, 2010.

DR JOSE A. FRAGA CASTRO

Grupos Empresarial  
LABIOFAM

\_\_\_\_\_  
José A. Fraga Castro  
Director of Laboratorios Biologicos Farmaceuticos

22/1/10