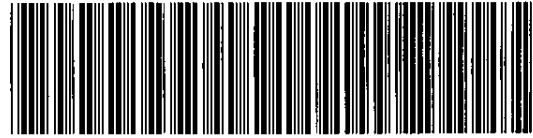


T11000001128



800213506268

T11-1128

10/26/11--01019--008 **87.50

*No Amigos
1476309*

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

11 NOV 22 PM 1:34

FILED

N. CAUSSEUX

NOV 22 2011

EXAMINER

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(Business Entity Name)

W11-35075

(Document Number)

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COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: Amigos Original Tex-Mex within circle with sombrero
(Mark to be registered)

The enclosed Trademark/Service Mark Application, specimens and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Theodore D. Estes, Esq.
(Name of Person)

Divine & Estes, P.A.
(Firm/Company)

24 S. Orange Avenue
(Address)

Orlando, FL 32801
(City/State and Zip Code)

For further information concerning this matter, please call:

Theodore D. Estes at (407) 426-9500
(Name of Person) (Area Code & Daytime Telephone Number)

MAILING ADDRESS:
Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

STREET/COURIER ADDRESS:
Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

(NOTE: The information contained in this cover letter will be included in the permanent record and will be available to the general public.)



FLORIDA DEPARTMENT OF STATE
Division of Corporations

October 27, 2011

THEODORE D. ESTES, ESQUIRE
DIVINE & ESTES, P.A.
24 SOUTH ORANGE AVENUE
ORLANDO, FL 32801

SUBJECT: AMIGOS RESTAURANT & CANTINA ORIGINAL TEX-MEX
ESTABLISHED 1988 & DESIGN OF SOMBRERO
Ref. Number: W11000055075

We have received your document for AMIGOS RESTAURANT & CANTINA ORIGINAL TEX-MEX ESTABLISHED 1988 & DESIGN OF SOMBRERO and your check(s) totaling \$87.50. However, the enclosed document has not been filed and is being returned for the following correction(s):

We must deny registration pursuant to sections 495.021(1)(f) and 495.181, Florida Statutes. There is a federal registration on file with the U.S. Patent and Trademark Office for "AMIGOS", Registration Number "1476309", for the same or similar name and class(es).

Pursuant to s. 495.035(5), F.S., this application will be considered abandoned if the applicant fails to reply or resubmit the corrected/amended application within three months from date of this letter.

If you have any questions concerning the filing of your document, please call (850) 245-6918.

Nanette Causseaux
Document Specialist Supervisor

Letter Number: 311A00024568

DIVINE & ESTES

Professional Association
ATTORNEYS AT LAW
P. O. Box 3629
Orlando, Florida 32802-3629
Telephone (407) 426-9500
Fax (407) 426-8030

Russell W. Divine
Theodore D. Estes
Asima M. Azam
William Jeff Earnshaw

24 South Orange Avenue
Orlando, Florida 32801
email: wjearnshaw@divineestes.com

November 10, 2011

Via Overnight Delivery

Registration Section
Florida Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

*OK per -
KIB
Keep Hr. &
documentation*

Re: Response to Denial of Trademark Applications
Ref. Numbers: W11000055073 & W11000055075

Dear Sirs:

This letter is in response to the denial of applications for two different "Amigos Original Tex-Mex" service marks submitted on behalf of Ivest Hospitality, LLC (the denials are enclosed). Both of these marks were previously registered with the State of Florida since July 5, 1990 (Documents No. T13297 & T13296) until they expired in 2010 and were inadvertently not renewed. When Ivest Hospitality contacted your office regarding reinstatement of the service marks, which have remained in continual use, your office indicated that there was not a process for reinstatement, and that the marks would need to be re-registered via new applications. We were surprised to receive the letters from your office indicating that both applications had been denied because of an existing "Amigos" mark registered with the U.S. Patent and Trademark Office, particularly because that service mark does not resemble the marks in the application and also because there is no record of that service mark ever being used in Florida.

In the denial letters your office pointed to sections 495.021(1)(f) and 495.181, Florida Statutes, as the basis of the denial of the applications. Section 495.021(1)(f) provides:

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it: Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive. Registration shall not be denied solely on the basis of reservation or registration by another of a corporate name or fictitious name that is the same or similar to the mark for which registration is sought." (emphasis added)

Ref. Numbers: W11000055073 & W11000055075
Response to Denial of Trademark Applications
Page 2

There is nothing in §495.021(1)(f) regarding denial of an application based purely on the registration of a mark with the U.S. Patent & Trademark Office. Instead, the provision looks to whether the mark is so similar to a mark registered or previously used in the State of Florida as to likely cause confusion or mistake or to deceive. In this case, the existing "Amigos" in question is a Nebraska fast-food restaurant chain that does not have any record of operating anywhere outside of Nebraska and has a service mark which is completely distinct from the marks sought to be registered with your office. I have enclosed some information on the "Nebraska Amigos" pulled from that company's website for your review. You will see that the only similarity between the Nebraska Amigos' service mark and the marks sought to be registered is the commonly used Spanish word "Amigos".

The Florida Supreme Court has outlined eight factors in determining the registrability of a mark under chapter 495 where there are questions of "likelihood of confusion", including:

- (1) the degree of resemblance between the conflicting designations;
- (2) the similarity of the marketing methods and channels of distribution;
- (3) the characteristics of the prospective purchasers and the degree of care they exercise;
- (4) the degree of distinctiveness of the senior user's mark;
- (5) where the goods or services are not competitive, the likelihood that prospective buyers would expect the senior user to expand into the field of the junior user;
- (6) where the goods or services are sold in different territories, the extent to which the senior user's designation is known in the junior user's territory;
- (7) the intent of the junior user; and
- (8) evidence of actual confusion.

Great Southern Bank v. First Southern Bank, 625 So.2d 463 (Fla. 1993).

In regards to the service marks submitted to your office, all of the listed factors support registration of the marks. Not only are the marks distinct from the Nebraska Amigos mark, but the Nebraska Amigos mark is certainly not well known in Florida and after 30 years of reported existence there is not a single restaurant outside of the State of Nebraska.

As for the other statute cited in the denial letter, Section 495.181 provides:

The intent of this chapter is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, as amended. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing this chapter.

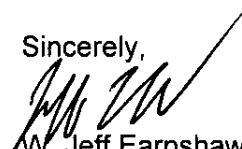
While §495.181 indicates that the intention of Chapter 495 is to develop a system consistent with the federal Trademark Act, nothing in §495.181 precludes the registration of a trademark or service mark in Florida if a mark containing the same or similar name and class is already registered with U.S. Patent and Trademark Office. The consistency referred to in the statute refers to the interpretation and application of Chapter 495; it does not preclude registration of a service mark based solely on the similar or same name as a federal trademark.

Ref. Numbers: W11000055073 & W11000055075
Response to Denial of Trademark Applications
Page 3

The service marks in question are distinct from the Nebraska Amigos mark. The Nebraska Amigos mark has never been used in Florida and, given the reported history of the restaurant, it is highly unlikely that the Nebraska Amigos mark will ever be used in Florida. The marks contained in the application, on the other hand, have been continually in use in Florida for over twenty-one years, were previously registered with the State of Florida, and are only being re-registered because of an unintended lapse in the registration status.

I hope that you will approve the resubmitted applications enclosed with this letter. I believe that you will see that they are distinct from the Nebraska Amigos mark and that they otherwise qualify for registration. If you require any further information or have any questions regarding the applications or this letter, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Sincerely,



W. Jeff Earnshaw, Esq.

Enclosures
cc: Andrew Hyltin



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History



President and Founder, Roger Moore, at the first Amigos location in 1980

The first Amigos opened on June 17, 1980 in Lincoln, Nebraska at 5500 'O' Street. "Amigos" was trademarked and chosen as the name of this new concept to convey the idea that this was a place for "Friends". From day one, the goal has been to serve fresh, quality food in a friendly way, just as you would to good friends.

Roger and Janice Moore developed the Amigos concept and are the majority stockholders of Growth Management Corporation which operates Amigos restaurants. Roger had formerly worked for Selection Research Institute (now Gallup) consulting with restaurant companies in the selection of managers. Janice was an English

teacher. Both had a strong desire to own and operate their own business and liked the idea of developing a niche in the Mexican food business.

Many **value-added ideas** have been implemented by Amigos such as: fast-food ordering with food being delivered to the table, salsa bars where customers can spice their food as they wish, free refill machines, and bonus items on Combo Meals. **Amigos** was one of the first companies to offer tuition reimbursement bonuses to their employees who agree to work during the busiest shifts.

As the Amigos Restaurant chain grew, so did the marketing efforts. Radio ads have been utilized since 1981. In October of 1983, the first 4-color flier was designed and distributed. By 1987, the company was ready for television ads and produced the first four spots using a new slogan and jingle, "**The Best is Under Our Hat.**"



One of the Original Amigos Freestanding Signs With A Reader Board

SEARCH

TODAY'S SPECIAL
\$2.09
CHICKEN SOFT TACO
\$2.49
BBQ BURGER

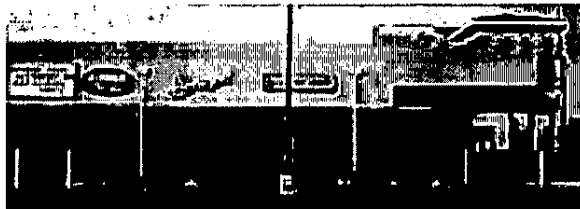


Roger and Janice Moore After Roger was named "Restaurateur of the Year" in 1992.

Amigos has won many awards in its history. In 1989, Amigos (with 20 units) was named one of the top growth chains in the country by **Restaurants Institutions Magazine**.

Roger Moore was named 'Restaurateur of the Year' in 1992 by the Nebraska Restaurant Association. Then in 1993, Roger was awarded the "Entrepreneur of the Year" award from the University of Nebraska College of Business Administration, the school from which he graduated.

In 2003, the decision was made to cobrand our restaurants with our *own* 'American' food concept called **Kings Classic**. The concept of two brands in one location had been done in other regions of the country, but was fairly new to the Midwest. The advantage of cobranding is that the varied menu can meet the tastes of everyone in the family or group at one location. Kings Classic brings to the menu Fast 'n Frosty drinks like Shakes, smoothies, as well as Burgers, French Fries, and Cheese Frenchees. The newest venture has been into the breakfast day part and over half of the chain currently offers Breakfast Burritos and other menu items for our early morning customers.



The drive-thru only location at 33rd and Highway 2 in Lincoln

The Amigos/Kings Classic chain now includes **30 restaurants**, all in the state of Nebraska. These locations include a variety of formats: mall food courts, drive-thru only locations, and restaurants with both dining room and drive-thru service. The first franchise of Amigos/Kings Classic was granted in June of 2006. Kevin Kershner, who has been with the company for 20 years, became the first franchisee, assuming ownership of six of the Amigos/Kings Classic locations.

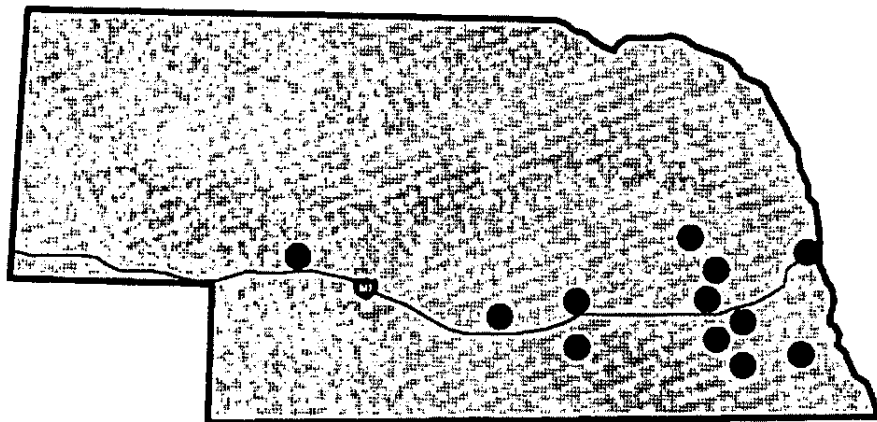


- [Locations](#)
- [What's New](#)
- [Menus](#)
- [Nutrition](#)
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- [Contact Us](#)



Locations

Select a city from the map below to view information about each location.



SEARCH

TODAY'S SPECIAL
\$2.09
 CHICKEN SOFT TACO
\$2.49
 BBQ BURGER

Auburn

1002 J Street
 402-274-2442
 Also serving Breakfast, Kopeli Coffee

Beatrice

1120 N. 6th Street
 402-223-4375
 Also serving Breakfast, Kopeli Coffee

Columbus

309 E. 23rd Street
 402-563-2140
 Also serving Breakfast

3111 23rd Street
 402-564-6252

Crete

342 E. 13th Street

402-826-5511
Also serving Breakfast

David City

375 Nebraska
402-367-6008

Grand Island

2325 N. Webb Road
308-384-1336

2504 S. Locust St.
308-384-5579

Hastings

607 S. Burlington
402-463-5923

Kearney

1122 Second Avenue
308-237-2428

4207 Second Avenue
308-234-6991

Lincoln

1411 O Street
402-475-9819
Also serving Winchell's, Breakfast, Kopeli Coffee

1515 Pine Lake Road
402-328-8797
Also serving Winchell's, Breakfast, Kopeli Coffee

1520 S. Coddington
402-476-5090
Also serving Breakfast, Kopeli Coffee

2240 N. 48th Street
402-465-4433
Also serving Winchell's, Breakfast, Kopeli Coffee

2631 E Street
402-476-4101
Also serving Breakfast, Kopeli Coffee

2825 Cornhusker Highway
402-466-6088

4200 S. 14th Street

402-423-6794

Also serving Winchell's, Breakfast, Kopeli Coffee

4700 W. Huntington

402-470-2250

Also serving Breakfast, Kopeli Coffee

5500 O Street

402-466-5525

Also serving Breakfast, Kopeli Coffee

5540 Old Cheney

402-420-2484

Also serving Breakfast, Kopeli Coffee

5701 NW 1st Street

402-476-4226

Also serving Breakfast, Kopeli Coffee

6310 Havelock Avenue

402-466-9222

Also serving Breakfast, Kopeli Coffee

6891 A Street Bldg. 21

402-489-9944

Also serving Winchell's, Breakfast, Kopeli Coffee

North Platte

1210 S. Jeffers St.

308-534-0920

Omaha

8412 W. Dodge Road

402-390-0726

Also serving Winchell's, Breakfast, Kopeli Coffee

Papillion

8440 S. 72nd

402-614-7711

Seward

442 N. 6th Street

402-643-3708

4200 S. 14th Street | Lincoln, NE 68502 | 402-488-8500 or 800-825-0012
designed & developed by Pickering Creative Group

APPLICATION FOR THE REGISTRATION OF A TRADEMARK OR SERVICE MARK
PURSUANT TO CHAPTER 495, FLORIDA STATUTES

FILED
11 NOV 22 PM 1:34
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

TO: Division of Corporations
Post Office Box 6327
Tallahassee, FL 32314

PART I

1. OWNER/APPLICANT: Enter the name and address of the individual or the business entity to be listed as the owner of the Trademark and/or Service Mark on the records of the Florida Department of State.

(a) Owner's/Applicant's name: Ivest Hospitality, LLC

(b) Owner's/Applicant's business address: 24 S. Orange Avenue
Orlando, FL 32801
City/State/Zip

If different, Owner's/Applicant's mailing address: _____
City/State/Zip

(c) Owner's/Applicant's telephone number: (407) 426-9500

Check the appropriate box to indicate the Owner/Applicant is a(n):

- Individual Corporation Joint Venture Limited Liability Company
- General Partnership Limited Partnership Union Other: _____

If the Owner/Applicant is a business entity, the business entity must have an active filing or registration on file with the Florida Department of State. If the Owner/Applicant is not an individual, enter the business entity's Florida registration/document number in #1, the state or country under the laws of which the business entity is currently formed, organized or incorporated under in #2, and the entity's federal employer identification number (EIN) in #3.

(1) Florida registration/document number: L01000019343

(2) Domicile State or Country: Florida

(3) Federal Employer Identification Number: 59-3760516

2. (a) SERVICE MARK: If the owner/applicant is using the name, logo, design and/or slogan being registered in connection with a type of service, the mark is a service mark. If the mark is a service mark, the applicant/owner must list the specific service(s) the mark is being used in connection with. For example: furniture moving services, diaper services, house painting services, wholesale and retail sales of tractor equipment, etc. If the owner/applicant is using the mark to identify services available in the market place, enter the specific service(s) being rendered here:

(Note: List only those services currently being rendered by the owner/applicant. Do not include future services.)

Restaurant and Bar Services

2. (b) TRADEMARK: If the owner/applicant is using the name, logo, design and/or slogan being registered in connection with an actual product manufactured by the owner/applicant or on the owner/applicant's behalf, the mark is a trademark. If the mark is a trademark, the applicant/owner must list the specific product(s) the name, logo, design and/or slogan is being used to identify. For example: ladies sportswear, cat food, barbecue grills, shoe laces, etc. If the owner/applicant is using the name, logo, design and/or slogan to identify goods available in the market place, enter the specific product(s) the name, logo, design and/or slogan is being used to identify:

(Note: List only those product(s) currently available. Do not include future products.)

2. (c) HOW IS THE NAME, LOGO, DESIGN AND/OR SLOGAN CURRENTLY USED:

SERVICE MARKS: If the name, logo, design and/or slogan are/is being used in connection with a type of service, you must specify the form(s)/mean(s) of advertisement the applicant/owner is using to advertise the services to the general public. For example: newspaper advertisements, business cards, brochures, flyers, pamphlets, menus, etc. If the mark is being used in connection with a type of service, state how the name, logo, design and/or slogan are/is being used in advertising here:

newspaper and online advertisements, business cards, letterhead, menu, signs, brochures

TRADEMARKS: If the name, logo, design and/or slogan are/is being used to identify a product manufactured by or for the applicant/owner, you must specify how the mark is applied or affixed to the actual product or its packaging. For example: a tag, label, imprinted or engraved on the actual product, etc. If the mark is being used in connection with a specific product, state how the name, logo, design and/or slogan is applied or affixed to the actual product(s) or the packaging:

2. (d) FEE(S) AND CLASS(ES): There are a total of 45 classes or categories in which all products or services must be categorized. The fee to register a mark is \$87.50 per class. Make check payable to Florida Department of State.

List the class(es) which apply to the product(s) and/or service(s) listed in 2(a) and/or 2(b) above:

Class 43

PART II

1. You must state the date the name, logo, design and/or slogan was first used in the state of Florida, and, if it was used in another state or country, the date you first used the name, logo, design and/or slogan in the other state or country. Enter the month, day, and year the name, logo, design and/or slogan was first used by the applicant/owner, the predecessor, or a related company in Florida. If the name, logo, design and/or slogan has been used in another state or country, then you must also enter the month, day, and year the name, logo, design and/or slogan was/were used in another state or country, when applicable.

Note: The Florida Statutes require a mark to be in use prior to registration.

(a) Date first used in other state or country, if applicable: 7/05/1990

(b) Date first used in Florida: 7/05/1990

PART III

ENTER NAME, LOGO, DESIGN AND/OR SLOGAN BEING REGISTERED:

1. Enter the name, a brief description of the logo or design, and/or the slogan you are registering. The description of the logo and/or design must be 25 words or less. List the exact name, slogan, and/or description of the logo/design here: (NOTE: The name, logo, design and/or slogan listed in this section must match the exact name, logo, design and/or slogan listed on your specimens or examples.)

Round logo with "ORIGINAL TEX-MEX ESTABLISHED 1988" within border and large "AMIGOS"
and smaller "RESTAURANT & CANTINA" underneath a sombrero with "A" on the front.

Provide the English translation of any and all terms listed #1 above, when applicable: Amigos means "friends" in Spanish.
Cantina means "bar" in Spanish.

2. **DISCLAIMER STATEMENT** (if applicable):

Your mark may include a word or design that is commonly used by others. Commonly used terms or designs must be disclaimed. When you disclaim a specific term or design, you are acknowledging this term is commonly used by others and that you do not claim the exclusive right to use the disclaimed term or design. All geographical terms and representations of cities, states or countries must be disclaimed (i.e., Miami, Orlando, Florida, the design of the state of Florida, the design of the United States of America, etc.). Corporate suffixes and terms readily associated with the specific product(s) and/or(s) service being provided must also be disclaimed.

Enter all terms listed in #1 above which require a disclaimer in the space provided below:

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE THE TERM(S) Restaurant & Cantina and Original Tex-Mex
and Established 1988 "APART FROM THE MARK AS SHOWN."

3. ATTACH OR INCLUDE THREE SPECIMENS OR EXAMPLES OF THE TRADEMARK OR SERVICE MARK BEING REGISTERED

Chapter 495, F.S., requires you to submit three specimens (samples or examples) of the mark in use. You must submit three specimens FOR EACH CLASS listed in Part I #2(d). The name, logo, design and/or slogan on the specimens must be identical to the name, logo, design and/or slogan being registered. You may provide three identical specimens or three different specimens. For each service mark class (classes 35-45), you may provide three newspaper advertisements, business cards, brochures, flyers, or any combination thereof. For each trademark class (classes 1-34), you may provide three tags, labels, boxes, etc. or any combination thereof. Photographs of bulky specimens are acceptable if the mark being registered and the good(s) or product(s) are clearly legible.

SIGNATURE OF APPLICANT/OWNER AND NOTARIZATION:

I, Theodore D. Estes, being sworn, depose and say that I am the owner and the applicant herein, or that I am authorized to sign on behalf of the owner and applicant herein, and to the best of my knowledge no other person except a related company has registered this mark in this state or has the right to use such mark in Florida either in the identical form thereof or in such near resemblance as to be likely, when applied to the goods or services of such other person to cause confusion, to cause mistake or to deceive. I make this affidavit and verification on my/the applicant's behalf. I further acknowledge that I have read the application and know the contents thereof and that the facts stated herein are true and correct.

Theodore D. Estes, Authorized Representative

Typed or printed name of applicant

Applicant's signature
(List name and title)

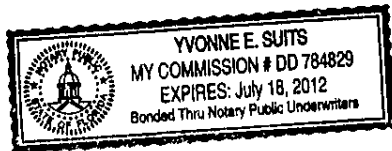
STATE OF Florida

COUNTY OF Orange

Sworn to and subscribed before me on this 20th day of October, 2011, Theodore D. Estes
(Name of Individual Signing)

who is personally known to me whose identity I proved on the basis of _____

(Seal)



Notary Public Signature

Notary's Printed Name

Yvonne E. Suits

My Commission Expires: _____

FILING FEE: \$87.50 per class

FILED
11 NOV 22 PM 1:34
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

OFFICIAL SPECIMEN

Back to School Special

Buy 1 Entree and get the 2nd Entree*1/2 Price!
When you join Amigos Mobile VIP Club™



To Join Text "Amigos 2" to 25827

Show opt-in text to server. One promo per customer.

*2nd entree must be of equal or lesser value

Standard Messaging Rates Apply. Reply Stop to Opt Out