

ESTTA Tracking number: **ESTTA16039**

Filing date: **09/29/2004**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Cuban Cigar Brands, N.V.
Granted to Date of previous extension	09/29/2004
Address	Cuban Cigar Brands, N.V. 5900 North Andrews Avenue Fort Lauderdale, FL 33309 UNITED STATES

Attorney information	Russell D. Dize Grimes & Battersby, LLP 488 Main Avenue, 3rd Floor Norwalk, CT 06851 UNITED STATES dize@gandb.com Phone:(203) 849-8300
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Applicant Information

Application No	76540766	Publication date	06/01/2004
Opposition Filing Date	09/29/2004	Opposition Period Ends	09/29/2004
Applicant	LEVY CAFE, INC.		

Goods/Services Affected by Opposition

Class 034. First Use: 19970901 First Use In Commerce: 19970901
All goods and services in the class are opposed, namely: cigars made with Cuban seed tobacco

Attachments	Notice of Opposition.pdf (12 pages)
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Signature	/Russell D. Dize/
Name	Russell D. Dize
Date	09/29/2004

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

In the Matter of Application Serial No. 76/540,766
Published in the *Official Gazette* on June 1, 2004

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Cuban Cigar Brands, N.V.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.:
	:	
Levy Cafe, Inc.,	:	
	:	
Applicant.	:	
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NOTICE OF OPPOSITION

Cuban Cigar Brands, N.V. ("Opposer" or "CCB") believes that it will be damaged by registration of the mark shown in Application Serial No. 76/540,766 and hereby opposes same.

COUNT I

1. Opposer CCB is a corporation organized and existing under the laws of the Netherlands Antilles, having an office at 5900 North Andrews Avenue, Fort Lauderdale, Florida 33309.

2. Altadis U.S.A. is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 5900 North Andrews Avenue, Fort Lauderdale, Florida 33309. Opposer has granted Altadis U.S.A. an exclusive license to use the trademarks, trade names, trade dress, service marks and brand names associated with MONTECRISTO brand cigars in the United States.

3. Opposer is a wholly-owned subsidiary of Altadis U.S.A. Opposer brings this Opposition on behalf of itself, its licensee, Altadis U.S.A., and its parents Altadis U.S.A. and

Altadis Holdings U.S.A. (collectively, "Altadis U.S.A. Group").

4. Opposer is the owner of:

(a) The trademark "MONTE CRISTO & Crossed Swords" Design which includes a distinctive and well known fleur de lis design and U.S. Trademark Registration No. 332,324 for the trademark "MONTE CRISTO & Crossed Swords" Design which includes such fleur de lis design for "Cigars, Cigarettes and Cut Tobacco" in Class 34 on the Principal Register. A copy of Opposer's trademark registration certificate for this mark is attached to this Notice of Opposition as Exhibit A and incorporated herein by reference.

(b) The trademark "Crossed Swords" Design with the aforementioned distinctive and well known fleur de lis design and U.S. Trademark Registration No. 1,459,466 for the trademark "Crossed Swords" Design which includes such fleur de lis design for "Cigars" in Class 34 on the Principal Register. A copy of Opposer's trademark registration certificate for this mark is attached to this Notice of Opposition as Exhibit B and incorporated herein by reference (collectively, the "MONTECRISTO trademarks").

5. Opposer's MONTECRISTO trademarks include its distinctive and famous fleur de lis design prominently displayed in the center of the marks.

6. Opposer's MONTECRISTO trademark cigars have a cigar band attached to them which also makes prominent use of its distinctive and famous "fleur de lis" design, in a composite design that includes other elements that are arbitrary, fanciful and distinctive of Opposer's cigars (the "fleur de lis bands").

7. MONTECRISTO cigars are manufactured in the Dominican Republic by Altadis U.S.A.'s subsidiary Tabacalera de Garcia ("TdG"), pursuant to a license granted by Opposer. The cigars are imported, promoted and distributed by Altadis U.S.A.

8. The MONTECRISTO trademarks which incorporate Opposer's fleur de lis design and Opposer's distinctive fleur de lis bands were developed and first used by Opposer's predecessor, Menendez Garcia y Compania Limitada ("M&G"), a Cuban limited liability company. Upon information and belief, M&G commenced use of the MONTECRISTO trademarks which incorporate the fleur de lis design and the fleur de lis bands in the United States at least as early as July 25, 1935 in connection with premium cigars. From their inception, M&G's MONTECRISTO cigars were considered among the finest premium cigars in the world.

9. Opposer CCB is the successor-in-interest to M&G, having purchased M&G's U.S. rights in the MONTECRISTO trademarks which incorporate the fleur de lis design and in the design of the fleur de lis bands in 1976.

10. Upon information and belief, Opposer's predecessors-in-interest used the MONTECRISTO trademarks which incorporate the fleur de lis design and the fleur de lis bands in the U.S. continuously until some time after the Castro government nationalized the Cuban cigar industry in 1960, following the Cuban revolution. Upon information and belief, Opposer reintroduced the MONTECRISTO brand after its predecessor M&G successfully litigated with the Cuban government over the ownership of the U.S. rights in the marks. The MONTECRISTO trademarks which include the fleur de lis design and the fleur de lis bands were reintroduced in 1978.

11. Since the inception of their use, the MONTECRISTO trademarks which incorporate the fleur de lis design and the fleur de lis bands have been used by the Altadis U.S.A. Group and their predecessors-in-interest only in connection with the finest quality premium cigars and licensed merchandise. Opposer's MONTECRISTO cigars are considered to be among the finest premium cigars available in the United States, and they are sold throughout the

United States. Opposer's MONTECRISTO cigars have been extensively advertised and are among the most prestigious cigar brands available in the United States, are highly coveted by cigar aficionados and are used by the media as a symbol of luxury and excellence.

12. Opposer's MONTECRISTO trademarks which incorporate its fleur de lis design, and cigars depicted with Opposer's fleur de lis bands, are used on its MONTECRISTO packaging, on its marketing, advertising, and promotional material, on the Internet and in other forums. Prior to the acquisition of any rights Applicant may claim in the mark CUBAN STOCK HECHO A MANO DOMINICAN REPUBLIC and Design, Opposer's MONTECRISTO trademarks which incorporate its fleur de lis design, and Opposer's fleur de lis bands, were, and continue to be, famous. They are widely recognized by the trade and the public and have built up extensive good will.

13. Opposer's MONTECRISTO trademarks which incorporate its fleur de lis design and its fleur de lis bands are inherently distinctive to the public and the trade with respect to cigars and serve primarily as designators of origin of Opposer's products.

14. As a result of the widespread use and display of Opposer's MONTECRISTO brand cigars: (a) the public and the trade use the MONTECRISTO trademarks which incorporate the fleur de lis design and the fleur de lis bands to identify and refer to Opposer's MONTECRISTO brand cigars; (b) cigars marked with these trademarks are recognized by the trade and the public as high quality premium cigars emanating from a single source; and (c) these trademarks have built up secondary meaning and extensive goodwill.

15. Applicant's CUBAN STOCK HECHO A MANO DOMINICAN REPUBLIC and Design mark is confusingly similar to Opposer's registered and well-known MONTECRISTO trademarks which incorporate its fleur de lis design. Applicant's mark incorporates a design in

the center of the mark that is likely to be confused with Opposer's distinctive and famous fleur de lis design, which is also displayed in the center of Opposer's MONTECRISTO trademarks.

16. Further, Applicant's mark incorporates a design that is clearly a copy of the design of Opposer's famous and distinctive fleur de lis bands. Applicant has simply substituted the words CUBAN STOCK for MONTECRISTO.

17. Applicant's goods are the same as and/or are related to the goods sold and provided in connection with Opposer's MONTECRISTO trademarks and Opposer's fleur de lis bands and/or represent a natural zone of expansion for Opposer and such goods would travel and/or be promoted through the same channels of trade for sale to, and use by, the same class of purchasers.

18. Thus, Applicant's use of the mark CUBAN STOCK HECHO A MANO DOMINICAN REPUBLIC and Design for "cigars made with Cuban seed tobacco" in Class 34 is likely to cause confusion, mistake or deception as to the source of origin of Opposer's products in that the public, the trade and others are likely to believe that Applicant's products are provided by, sponsored by, approved by, licensed by, affiliated with or in some other way legitimately connected to Opposer's products.

COUNT II

19. Opposer repeats and realleges the allegations set forth in paragraphs 1 through 18 as though fully set forth herein.

20. Opposer's MONTECRISTO trademarks which incorporate its fleur de lis design and Opposer's fleur de lis band trade dress are distinctive and famous and had become famous long prior to the acquisition of any rights Applicant may claim in the mark CUBAN STOCK HECHO A MANO DOMINICAN REPUBLIC and Design.

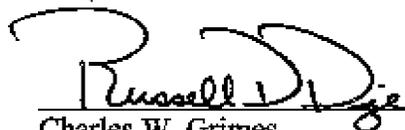
21. Use of the mark CUBAN STOCK HECHO A MANO DOMINICAN REPUBLIC and Design by Applicant causes dilution of the distinctive quality of Opposer's famous MONTECRISTO trademarks which incorporate its fleur de lis design and Opposer's fleur de lis band trade dress.

22. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in use of its mark and thereby dilute Opposer's rights in its distinctive and famous MONTECRISTO trademarks which incorporate its fleur de lis design and Opposer's fleur de lis band trade dress.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and Applicant's application to register the mark CUBAN STOCK HECHO A MANO DOMINICAN REPUBLIC and Design for "cigars made with Cuban seed tobacco" be denied in all respects.

Dated: September 29, 2004

Respectfully submitted,



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Edmund J. Ferdinand, III
Russell D. Dize
Attorneys for Opposer
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Telephone No.: (203) 849-8300
Attorney Docket No.: CB077USL

EXHIBIT A

The United States of America



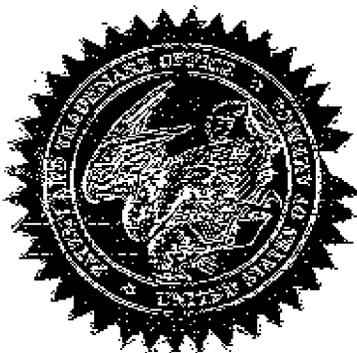
CERTIFICATE OF RENEWAL

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for renewal of registration of the Mark shown herein, a copy of said Mark and pertinent data from the Registration being annexed hereto and made a part hereof,

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Registration renewed under the Trademark Act of 1946, as amended, and said Registration has been duly renewed in the Patent and Trademark Office to the registrant named herein.

This Registration shall remain in force for TEN years from the date that said Registration was due to expire unless sooner terminated as provided by law.



In Testimony whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this ninth day of April 1996.

Bence Lehman

Commissioner of Patents and Trademarks

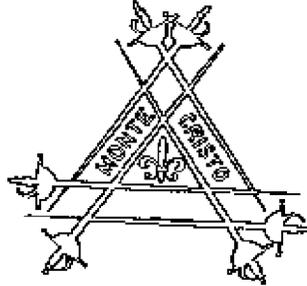
Int. Cl.: 34

Prior U.S. Cl.: 17

United States Patent and Trademark Office
10 Year Renewal

Reg. No. 332,324
Registered Feb. 11, 1936
Renewal Term Begins Feb. 11, 1996

TRADEMARK
PRINCIPAL REGISTER



CUBAN CIGAR BRANDS N.V. (NETHERLAND ANTILLES CORPORATION)
5900 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33309, BY ASSIGNMENT AND ASSIGNMENT FROM PARTICULARES, S.A. (CUBA CORPORATION) VEDADO, HABANA, CUBA

OWNER OF CUBA REG. NO. 51004,
DATED 8-5-1935.

FOR: CIGARS, CIGARETTES, AND CUT TOBACCO, IN CLASS 17 (INT. CL. 34).

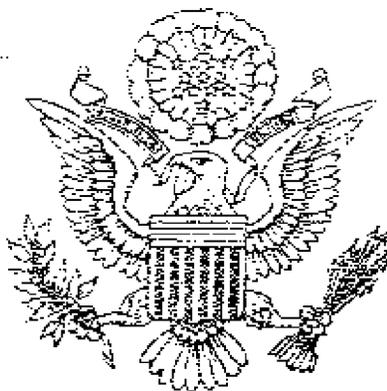
FIRST USE 7-25-1935; IN COMMERCE 7-25-1935.

SER. NO. 71-368,577 FILED 8-22-1935.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Apr. 9, 1996.*

COMMISSIONER OF PATENTS AND TRADEMARKS

EXHIBIT B



Nº 1459466

THE UNITED STATES OF AMERICA

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

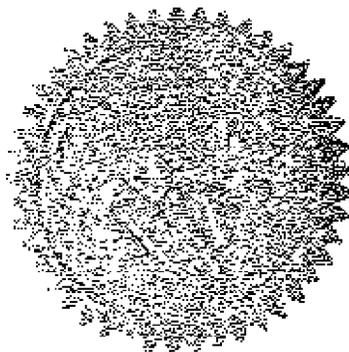
And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this twenty-ninth day of September, 1987.

Commissioner of Patents and Trademarks

Int. Cl.: 34

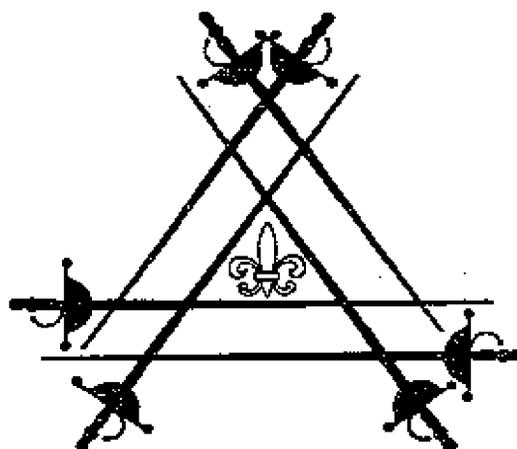
Prior U.S. Cl.: 17

United States Patent and Trademark Office

Reg. No. 1,459,466

Registered Sep. 29, 1987

TRADEMARK
PRINCIPAL REGISTER



CUBAN CIGAR BRANDS, N.V. (NETHERLD
ANTILLES CORPORATION)
HARMON MEADOW PLAZA, 400 PLAZA
DRIVE
SECAUCUS, NJ 07094

FIRST USE 7-25-1935. IN COMMERCE
7-25-1935.
OWNER OF U.S. REG NOS 332,324 AND
1,173,547.

SER NO 643,099, FILED 2-5-1987.

FOR CIGARS IN CLASS 34 (U.S. CL. 17)

ROGER KATZ, EXAMINING ATTORNEY