

BULKY DOCUMENTS

(exceeds 300 pages)

Proceeding/Serial No: 91165519

Filed: 8-4-07

Title: Opposer's Corporacion Habanos

S.A. Motion for Summary

Part 1 **of** 4

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TTAB

August 4, 2006

VIA EXPRESS MAIL POST OFFICE TO ADDRESSEE

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

Re: *Corporacion Habanos, S.A. v. Anncas, Inc., Opposition No. 91165519*
(HAVANA CLUB)

Dear Commissioner:

Enclosed please find Opposer Corporacion Habanos, S.A.'s Motion for Summary Judgment and Points and Authorities in Support Thereof, and Declarations of David B. Goldstein, Manuel Garcia Morejon, Richard B. Perelman, and Eumelio Espino Marrero, and Exhibits thereto, in the above-referenced matter. Please note that the Garcia Morejon Declaration is unsigned at this time, as Mr. Garcia Morejon is traveling abroad. A signed Declaration will be filed as soon as it is available, which is expected early next week.

Thank you for your attention to this matter.

Sincerely,



David B. Goldstein

cc: Henry Rodriguez, Esq. (via Express Mail, w/enc.)

Enc.

08-04-2006

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

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

In the matter of Trademark Application
Serial No. 78/363024
Filed February 5, 2004
For the mark HAVANA CLUB
Published in the *Official Gazette* on December 14, 2004

CORPORACION HABANOS, S.A.,)	
)	
Opposer,)	Opposition No. 91165519
)	
v.)	
)	
ANNCAS, INC.,)	
)	
Applicant.)	
)	

**OPPOSER CORPORACION HABANOS, S.A.'s MOTION FOR SUMMARY
JUDGMENT AND POINTS AND AUTHORITIES IN SUPPORT THEREOF**

PLEASE TAKE NOTICE THAT Opposer Corporacion Habanos, S.A. ("Habanos S.A." or "Opposer"), pursuant to 37 C.F.R. § 2.127 and Rule 56 of the Federal Rules of Civil Procedure, moves the Trademark Trial and Appeal Board ("the Board") to render summary judgment: 1) sustaining the Opposition and refusing registration of Application Serial No. 78/363024; and 2) dismissing Applicant's counterclaim to cancel Registration No. 2,177,837, owned by Opposer. In support of this motion, Opposer submits the Declarations of Manuel Garcia Morejon, David B. Goldstein, Richard B. Perelman, Eumelio Espino Marrero, and exhibits annexed thereto, including the deposition of Applicant's principal, William Bock; responses to discovery requests; and documentary evidence made of record herein.

INTRODUCTION

I. This proceeding arises from Applicant's selection of a mark calculated to foster among American consumers a false, misleading and deceptive geographic association between Applicant's non-Cuban cigars and Havana, Cuba, the place most renown in the world for the production of high-quality cigars. The mark, HAVANA CLUB, refers to the capital city of Cuba and the surrounding province of that same name. Havana, Cuba is so closely associated with high quality cigars from Cuba that Cuban cigars are commonly referred to as "Havanas" in cigar books (including in book titles) and magazines, as well as in general media. Dictionaries define "Havana" not only as the capital of Cuba, but as a "Cuban cigar." The goods/place association between Havana, Cuba and cigars is so powerful and so plainly material to a consumer's purchasing decision that Applicant's deliberate choice of HAVANA CLUB (out of the near-infinite universe of names) for a cigar product that does not come from Havana or Cuba is inarguably primarily geographically deceptively misdescriptive and deceptive.

In fact, the United States Patent and Trademark Office ("USPTO") initially determined, correctly, that Applicant's HAVANA CLUB mark for "cigars" is not entitled to registration, because it is geographically deceptively misdescriptive within the meaning of section 2(e)(3) of the Lanham Act, 15 U.S.C. § 1052(e)(3). Subsequently, however, the USPTO erroneously, and without explanation, approved the mark for publication based solely on Applicant's unexplained amendment of its identification of goods from "cigars" to "cigars made from Cuban seed tobacco," despite the fact that Applicant's goods admittedly do not come from or originate in Havana or Cuba. Rather, "Cuban seed tobacco" is essentially a marketing term used in the United States that suggests, falsely and misleadingly, to U.S. cigar consumers an association

with Cuba and Cuban cigars, based on the claim of a remote genetic descent, and which in fact has no relevant connection or association with Havana, or Cuba, or Cuban tobacco or cigars.

Thus, the precise, but important, issue for the Board is whether a mark such as HAVANA CLUB, which is indisputably geographically deceptively misdescriptive for “cigars,” somehow becomes eligible for registration based on a claim that the proposed cigars will be made from what the Applicant describes as “Cuban seed tobacco,” based on the unverifiable claim of a remote genetic link to Cuba. Because the evidence establishes that nothing about the terms “Cuban seeds” or “Cuban seed tobacco” can cure the fact that the challenged mark, HAVANA CLUB, is otherwise not eligible for registration, the Opposition should be sustained and the mark should be refused registration, as the USPTO initially, and correctly, concluded.

II. In what can only be characterized as a frivolous counterclaim, and one wholly unrelated to the Opposition, Applicant seeks to cancel Opposer’s registered mark, Registration No. 2,177,837, for HABANOS UNICOS DESDE 1492 & DESIGN, for which a Section 8 Declaration has been granted. Applicant’s sole claim for cancellation is abandonment, a claim without any basis in law or fact. *See Arechabala v. Havana Rum & Liquors, S.A.*, Canc. No. 22,881 (TTAB Oct. 19, 1995) (Exhibit 22 to Declaration of David B. Goldstein, dated August 3, 2006 (“Goldstein Decl.”)). As Applicant and its counsel knew, or should have known, before filing this frivolous counterclaim, the USPTO, consistent with United States law, has repeatedly recognized that the Cuban Assets Control Regulations, 31 CFR Part 515 (“CACR”), which prohibit the importation of cigars or other tobacco products and all other commodities except informational materials from Cuba, constitute grounds for excusable nonuse within the meaning of Section 8(b)(2) of the Act, 15 U.S.C. § 1058(b)(2).

Further, failure to recognize excusable nonuse in this circumstance would place the United States in plain violation of Article 5(C)(1) of the Paris Convention for the Protection of Industrial Property, 21 U.S.T. 1583 (1970), and the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property ("TRIPs"), 33 I.L.M. 81 (1994), including Article 19. Such violations would provide justification under international and treaty law for Cuba to change its current policy of providing reciprocal protection despite nonuse to over 4,000 marks of United States nationals registered in Cuba.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Opposer submits that the pleadings and evidence hereby made of record demonstrate the lack of any genuine dispute as to the following material facts:

A. Application and Opposition Proceedings

On February 5, 2004, Applicant submitted an intent-to-use application, Serial No. 78/363024, to register the mark HAVANA CLUB in International Class 34 for "cigars." Exhibit 1 to Declaration of David B. Goldstein, dated August 3, 2006 ("Goldstein Decl."). On September 1, 2004, the USPTO issued an Office Action that stated, in pertinent part:

Registration is refused because the proposed mark consists of or comprises *geographically deceptively misdescriptive matter* in relation to the identified goods. Trademark Act Section 2(e)(3), 15 U.S.C. §1052(e)(3); [citations omitted].

The primary significance of the term "Havana" is geographic. The public is likely to believe that applicant's goods come from this place because Havana, Cuba, is a place where cigars are produced. Furthermore, this belief would materially influence consumers to purchase the goods because Havana, Cuba, a location where cigars are produced, is renown for the production of cigars and purchasers would base the purchase of those goods upon the misconception that applicant's goods originate from Havana, Cuba. *See In re House of Windsor, Inc.*, 221 USPQ 53 (TTAB 1983), *recon. denied*, 223 USPQ 191 (TTAB 1984).

Although applicant's proposed mark contains the term "Club", under Trademark Act Section 2(e)(3) the geographically deceptively misdescriptive matter need not

be the entire mark, or even the dominant portion of the mark. It is sufficient if some portion of the proposed mark is geographically deceptively misdescriptive with respect to the goods and/or services in question. *See e.g., American Speech-Language Hearing Ass'n v. National Hearing Aid Society*, 224 USPQ 798, 808 (TTAB 1984).

Goldstein Decl. Exh. 1 (emphasis added).

On September 16, 2004, the USPTO issued an Examiner's Amendment based on a conversation between the Examiner and Applicant's attorney on September 15, 2004, in which the identification of goods was amended from "cigars" to "cigars made from Cuban seed tobacco." *Id.* The PTO file contains no other information concerning that September 15 oral communication, the term "Cuban seed tobacco," or on what grounds or why the Examiner determined that this amendment overcame the initial refusal to register. Applicant has not produced any evidence that any information was communicated by Applicant to the USPTO other than the oral request to amend the identification of the goods as noted. Applicant never challenged the initial refusal for "cigars," or otherwise argued the USPTO was incorrect in that refusal.

The USPTO issued a Notice of Publication on November 24, 2004, and the mark was published for opposition on December 14, 2004. *Id.*

Opposer, which exports genuine Cuban cigars throughout the world, with the exception of the United States, to which exports are prohibited by the CACR, *see* Declaration of Manuel Garcia Morejon ("Garcia Morejon Decl.") ¶¶ 10, 12, filed timely requests for extensions of time to file its Notice of Opposition, which were granted. On June 10, 2005, upon receipt of a specific license from the Treasury Department's Office of Foreign Assets Control ("OFAC"), Goldstein Decl. Exh. 2, Opposer filed a timely Notice of Opposition. The Opposition asserted that the mark HAVANA CLUB is deceptive, deceptively misdescriptive, and primarily

geographically deceptively misdescriptive within the meaning of Section 2(a), (e)(1), (3) of the Act, 15 U.S.C. § 1052(a), (e)(1), (3). The Opposition further asserted that Applicant made a false, material misrepresentation to the USPTO in amending its goods from “cigars” to “cigars made from Cuban seed tobacco,” for the purpose of overcoming the initial refusal to register.

On August 3, 2005, Applicant filed its Answer and Counterclaim. In its Counterclaim, Applicant seeks to cancel Opposer’s registered mark, HABANOS UNICOS DESDE 1492 & DESIGN, Registration No. 2,177,837 (hereinafter “HABANOS UNICOS”), which Applicant admits is owned by Opposer. Counterclaim, ¶ 3. The sole ground alleged for cancellation is alleged abandonment, based on the allegation that Opposer has not made use of the mark “in commerce, as regulated by the United States Congress.” The Counterclaim omitted the fact that on March 23, 2004, the USPTO had accepted Habanos S.A.’s Section 8 Declaration based on excusable nonuse because of the CACR for the HABANOS UNICOS mark. Goldstein Decl. Exh. 3. Opposer filed its Reply to the Counterclaim on October 31, 2005.

By stipulation dated and filed May 10, 2006, Applicant withdrew and dismissed with prejudice its Third Affirmative Defense (“Lack of Place/Goods Association”) in Applicant’s Answer.¹ See Stipulation to Withdraw Motions and to Dismiss Applicant’s Third Affirmative Defense, ¶ 6 (Docket No. 13).

B. The Meaning of “Havana” in the United States

¹ The dismissed Affirmative Defense had alleged:

LACK OF PLACE/GOODS ASSOCIATION:

Applicant contends that the [HAVANA CLUB] Mark is not geographically deceptively misdescriptive under Section 2(e)(3) because there are no cigar manufacturers within the city of Havana, Cuba, nor are there any cigar manufacturers of significance within the province of Havana, Cuba, and the city of Havana does not have a reputation as a source of cigars. Cigars are produced in other provinces of Cuba (e.g. Pinar del Rio.).

These allegations concerning Havana, Cuba were obviously false, a fact which Applicant’s principal – William Bock – explicitly conceded in his deposition, at one point suggesting that perhaps they were a “typographical error.” Bock Dep. at 135; *id.* at 132-35 (Goldstein Decl. Exh. 13).

Havana is known in the United States primarily as the capital of and the largest city in Cuba, with a population of over 2 million people. It is also the name of the province in Cuba that surrounds the city. See Goldstein Decl. Exh. 4 (*The Columbia Gazetteer of North America* (2000), further describing Havana as “The largest city and chief port of the West Indies, and the political, economic, and cultural center of Cuba.”); *id.* Exh. 5 (similar dictionary entries). As the USPTO correctly recognized, “The primary significance of the term “Havana” is geographic.” *Id.* Exh. 1.

Havana, Cuba has long been famous in the United States, and throughout the world, for its manufacture and export of high-quality cigars made from Cuban tobacco. The association between Havana and Cuban cigars is so powerful and so extraordinary that Cuban cigars are commonly known in the United States and throughout the world as “Havanas” or “Havana cigars.” As widely used and understood in the United States and among United States cigar consumers, the evidence establishes that the term “Havana” for cigars means, and can only mean, a Cuban cigar.

The 2000 *Columbia Gazetteer* entry for “Havana,” for example, states: “Local industries include ... factories making the famous *Havana* cigars.” *Id.* Exh. 4 (emphasis added). That *Gazetteer*, in its authoritative overview of Cuba, identifies cigars as one of five “important” exports, and that the island’s agricultural sector includes “high-quality tobacco” as one of a small number of principal crops. *Id.* *The Encyclopedia Britannica Online* article on Havana identifies “tobacco production, particularly the *world-famous Havana cigars*,” as one of Havana’s important industries. *Id.* Exh. 6 (emphasis added); see also *id.* (article on Cuba: identifying “tobacco (notably cigars)” as a principal export); *id.* Exh. 7 (dictionary and encyclopedia articles on Cuba and Havana noting importance of cigars, including “Havana cigars have brought Cuba

world fame,” “Havana cigars, an internationally popular product,” attached to USPTO Office Action, dated Feb. 9, 2001 concerning an unrelated application for HAVANA CLUB, App. No. 7551393, in IC 25). Likewise, the PTO here has acknowledged that “Havana, Cuba, is a place where cigars are produced [and] is renown for the production of cigars.” *Id.* Exh. 1.

Dictionaries published in the United States recognize that “Havana” means a Cuban cigar, in addition to the capital city of Cuba. Goldstein Decl. Exh. 5: *The American Heritage Dictionary of the English Language* (4th ed. 2000) (“2. A cigar made in Cuba, especially one of fine quality.”); *Webster’s New Collegiate Dictionary* (1977) (“a cigar made in Havana, or in Cuba, or of Cuban tobacco”); *The Random House Dictionary of the English Language Unabridged* (2d ed. 1987) (“2. a cigar made in Cuba or of Cuban tobacco”); *Random House Webster’s Dictionary* (4th ed. 2001) (“2. A cigar made in Cuba”).

Numerous books and expert guides on cigars published or distributed in the United States likewise define “Havana” as a Cuban cigar, and the term is commonly used in such publications to denote a 100% Cuban origin cigar. Goldstein Decl. Exh. 8: examples include H. Paul Jeffers & Kevin Gordon, *The Good Cigar: A Celebration of the Art of Cigar Smoking*, at 196 (1996) (defining “Havana (Habana) [as] ‘A Cuban cigar’”); *id.* at 44 (stating that Havana is “[s]o powerfully associated with the best tobacco in the world” that it is “synonymous worldwide with a fine cigar”); Joel Sherman, *Nat Sherman’s A Passion for Cigars*, 23-24 (1996) (Cuban cigars “[n]icknamed ‘Havanas’ at least by the 1920’s”; “Calvin Coolidge was so possessive of his Havanas”; German Blitz of London in 1941 destroyed a tobacco shop where a portion of Winston Churchill’s “treasured cache of Havanas” were stored); A. Bati & S. Chase, *The Cigar Companion: A Connoisseur’s Guide* at 15 (bad weather in Cuban tobacco fields led to sharp drop in “production of Havanas” in 1991-93); *id.* at 16 (Habanos S.A. “took over most of the

marketing responsibilities for Havanas from the state-owned Cubatabaco” in 1994); *id.* at 45 (referring to Cuba’s 42 different sizes of “handmade Havanas,” distinguishing from non-Cuban, “[n]on-Havana brands”); P. Garmiriam, *The Gourmet Guide to Cigars* 12 (1990) (referring to Cuban cigars as “Havanas”); T. Gage, *The Complete Idiot’s Guide to Cigars* 78 (1997) (“Havana” cigar tobacco synonymous with “Cuban” cigar tobacco, and distinguished from tobacco grown “outside Cuba”); *id.* at 82 (“Havanas” are “truly a Cuban product”); *id.* at 84 (“The Least You Need to Know: Havana cigars feature only Cuban tobacco.”); S. Weiss, *The Cigar Enthusiast* 18 (1997) (1962 trade embargo “meant neither Cuban tobacco nor Havana cigars could be legally imported” into United States).

The use of the term “Havana” to refer to cigars from Cuba frequently appears in the titles of cigar books. Goldstein Decl. Exh. 9: M. Nee & A. Martinez Rius, *An Illustrated Encyclopedia of Post-Revolution Havana Cigars*; *id.* at 193 (quoting 1928 American Fair Trade Association bulletin on “Havana Misbranding:” “‘Havana’ as a trade name for cigars is with little doubt the oldest trade name in America as it has been used since the days of Columbus to describe tobacco grown on the Island of Cuba.”); Gerard Pere et Fils, *The Connoisseur’s Guide to Havana Cigars* (S. Johnston, transl., 1992); Gerard Pere et Fils, *Havana Cigars* (1997); C. Del Todesco, *The Havana Cigar: Cuba’s Finest* (English transl., 1997); N. Stout, *Habanos, The Story of the Havana Cigar* (1997); R. Perelman, *Perelman’s Pocket Cyclopedia of Havana Cigars* (1997 ed.) (generally referring to “Havana cigars” as cigars manufactured in Cuba from Cuban-grown tobacco).

The term “Havana” has also been regularly and consistently used for many years to refer to Cuban-origin cigars in news and feature stories appearing in magazines, newspapers, and other publications, directed both to the cigar-consuming public, to the cigar trade, and to the

general public in the United States. *See* Goldstein Decl. Exh. 10 (sample of articles from the cigar consumer magazines *Cigar Aficionado* and *Smoke*, and from cigar websites, using “Havana” or “Havanas” to refer to a Cuban cigar); *id.* Exh. 11 (collecting sample of articles since 1990 using “Havana” or “Havanas” to refer to a Cuban cigar, from mainstream media, including *The New York Times*, *Los Angeles Times*, *USA Today*, *Forbes*, the *San Francisco Chronicle*, the *Boston Globe*, and the *Chicago Tribune*)

Havana has also long been renown for its cigar factories. *See Perelman’s Pocket Cyclopedia of Havana Cigars*, at 29-31, 33-34 (Goldstein Decl. Exh. 9). U.S.-based cigar magazines often report on these famous Cuban cigar factories, evidencing that U.S. cigar consumers are both aware of and interested in this information. Goldstein Decl. Exh. 10 (J. Suckling, *Cigar Aficionado*, “The Rolling Rooms: Six Factories that Manufacture Most of Cuba’s Export Quality Cigars Each Specialize in Certain Brand and Sizes” (Fall 1994) (reporting on “six key export-cigar factories in Havana,” and describing them as “to cigars what Moët & Chandon, Roederer and Mumm are to Champagne”).²

Applicant admitted that it has no evidence that the terms “Havana cigar” or “Havanas” refer to anything other than a cigar from Cuba, and it has produced no contrary evidence. Bock Dep. at 123, 125 (Goldstein Decl. Exh. 13) (conceding that he had never seen “Havana cigars”

² In response to Opposer’s Document Request No. 9 (Second Set) for the documents “upon which Applicant intends to rely” for the claim “that Havana, Cuba is not renown for production of cigars,” Applicant identified *one* document, an article, “Cuba at the Crossroads,” *Smoke* (2003) (0187-91, 0196), which, remarkably, states on the opening page:

All the while, *the nation has been defined by one symbol* – even more consistent and long-lived than Castro’s bearded visage – and *that is the Cuban cigar*. Cuba is to tobacco what France is to wine, Switzerland is to watch-making, and Scotland is to malt whisky – the standard by which all others are measured. . . . Habanos, S.A., the state-owned corporation that produces the world’s most sought-after cigars, wants to ensure that their 500-year legacy of cigar craftsmanship continues well into the next millennium.

(Emphasis added). Goldstein Decl. Exh. 14.

refer to anything but a cigar from Cuba; and that “Havana is used in cigar book titles to refer solely to Cuban cigars”).³ Likewise, Applicant could not produce a single article, description or other publication in which the terms “Havana” or “Havanas” were used to refer to a non-Cuban cigar.⁴

This ubiquitous association between “Havana” and Cuban cigars for U.S. cigar consumers is exemplified in the appearance of Applicant’s own press release dated January 4, 2006, on a cigar website, which contained this “Cigar Fact” adjacent to Applicant’s press release: “On Cuban cigars, the terms ‘Made in Cuba’ and ‘Made in Havana’ are considered interchangeable because virtually all Cuban cigars for export are made in factories in or around Havana. For more than a century, a Cuban cigar and a Havana cigar have been synonymous.” Goldstein Decl. Exh. 12; Bock Dep. at 145-47.

C. The Meaning of “Cuban seed tobacco” for tobacco not grown in Cuba

In response to the PTO’s initial refusal based on its finding that the mark HAVANA CLUB is primarily geographically deceptively misdescriptive for “cigars,” Applicant amended its identification of goods to “cigars made from Cuban seed tobacco.” Applicant provided the USPTO with no information concerning the meaning of “Cuban seed tobacco” and the Examiner gave no reason or explanation for his acceptance of the application based on that amendment.

³ After testifying that he was “not sure that” “Havana was synonymous with Havana cigars,” Bock conceded that he has no “information other than [his] own assumptions,” and that the basis for his assumption was, “Maybe its just because – I don’t know. The – that the Havana cigar isn’t what it used to be. Maybe that’s – maybe that’s where I’m biased on it. I don’t know.” He admitted that “when you say ‘the Havana cigar is not what it used to be,’ you mean the cigars from Cuba are not what they use to be?” “That’s correct.” Bock Dep. at 127-28.

⁴ In response to Opposer’s Document Request No. 5 (Second Set) seeking any such documents, Applicant identified only one document, an article, “Hot Habana Nights,” from *Smokeshop* (February 2006) (000197-98, 202), which *never* used either term (let alone to refer to non-Cuban cigars), and merely reported on a retail store in Mississippi called Habana Smoke Shoppe. Goldstein Decl. Exh. 14.

The undisputed facts, however, establish that “Cuban seed tobacco” *does not come from* or *originate in* Havana or Cuba, the “Cuban seeds” do not come from Cuba, and there is no association or connection between “Cuban seed tobacco” and Havana or Cuba, Cuban tobacco or Cuban cigars, other than the possibility of a remote genetic link from almost 50 years ago. These facts are both admitted by Applicant and established in the expert Declarations of Richard B. Perelman and Eumelio Espino Marrero. Thus, whatever Applicant’s “Cuban seed tobacco” actually is, and regardless whether Applicant is using that term with the specific intent to further mislead U.S. consumers into drawing a false association between its HAVANA CLUB mark and Cuba or Cuban cigars, HAVANA CLUB is just as primarily geographically deceptively misdescriptive for “cigars made from Cuban seed tobacco” as it is for “cigars.”

Applicant admits that neither its proposed cigars, the tobacco proposed to be used in those cigars, or the seeds from which the tobacco will be grown come from Havana or Cuba, and it acknowledges it has not sought a license from OFAC authorizing it to import such Cuban-origin goods. *See* Applicant’s Response to Int. No. 26 (First Set) (Goldstein Decl. Exh. 15). Rather, Applicant concedes that it “intends to use tobacco grown from Cuban-seed descended from seeds that were taken from Cuba in the late 1950’s and early 1960’s,” probably to be grown in Honduras, Nicaragua, or the Dominican Republic. *Id.* Resp to Inter. No. 16(a), (f); *id.* Resp. to Inter. No. 21 (“Applicant, by using the term ‘Cuban seed tobacco,’ means that the tobacco to be used in Applicant’s product is grown from seed descended from seeds that previously came from tobacco plants grown in Cuba,” as “Identified in Applicant’s answer to Interrogatory No. 16(f)”; Bock Dep. at 77, 83-95 (Goldstein Decl. Exh. 13).

Applicant’s claim that these seeds are remote descendants of seeds from Cuba is itself unverified and unverifiable. Applicant admits that it has no direct knowledge that the intended

tobacco in fact does come from seeds that are distant descendants of seeds that came from Cuba, as opposed to seeds that in fact have no Cuban ancestry, and that its claim is based solely on what a tobacco grower in Nicaragua told him. Bock Dep. at 84-86. Applicant also admits that the *only* claimed connection or relationship between Applicant's HAVANA CLUB cigars and Havana or Cuba is that they "will have the connection of being produced from tobacco grown from seeds derived from tobacco plants grown in Cuba," again referring to the seeds claimed to have been taken from Cuba almost 50 years ago; Applicant expressly disclaimed any other connection or relationship with Cuba or Havana. App. Resp. to Inter. No. 19 (First Set); Bock Dep. at 89-91.

These admissions dispositively establish the absence of any legally relevant connection between Applicant's "Cuban seed tobacco" and Havana or Cuba that could overcome the USPTO's initial refusal. Even if the Board were to go beyond these admissions, however, and examine evidence concerning characteristics of the tobacco or cigars, all such evidence powerfully establishes the absence of any connection between Cuban tobacco and non-Cuban "Cuban seed" tobacco. Thus, Applicant admits that it has no information that the proposed "Cuban seed" cigars share any characteristics, such as taste, flavor or aroma, with Cuban-origin cigars, and Applicant has produced no such evidence. Bock Dep. at 96-99. Applicant also admits that the characteristics and qualities it seeks in its proposed HAVANA CLUB cigars are not limited to "Cuban seed" tobacco, and that the taste of "Cuban seed" tobacco "varies," based on "where it's grown, what tobacco" is used. Bock Dep. at 97-98.

Opposer's accompanying expert declarations powerfully confirm Applicant's admissions of a lack of any relevant connection between Applicant's claimed Cuban seed tobacco and Cuba, Havana, or Cuban cigars or tobacco. The expert declaration of one of Cuba's leading tobacco

geneticists elaborates upon Applicant's admissions. See Declaration of Eumelio Espino Marrero, dated August 3, 2006, filed herewith. As he explains:

tobacco grown outside of Cuba from seeds such as applicant claims it will cultivate, does not retain a meaningful relationship with the distinctive characteristics of Cuban tobacco, which is world famous. I do not say "no relation" because, according to the applicant, the seed it possesses has a very remote genetic link with tobacco cultivated in Cuba, but ... the multiple generations of reproduction of the original seed outside of Cuba by technical personnel not knowledgeable of Cuban varieties have certainly produced substantial differences in quality as well as in the phenotype aspects of this seed with respect to the original Cuban tobacco.

Id. ¶ 5. According to Espino Marrero:

The quality of Cuban tobacco is derived from four major factors: the genetic purity of our original black tobacco, the soil and climate present in the Vuelta Abajo zone in the Province of Pinar del Rio and the accumulated experience of the Cuban tobacco producers and the manufacture workers who make the final cigars. When one of these factors is missing, undoubtedly, the cigar produced does not have the characteristics that distinguish a Cuban cigar.

Id. ¶ 7. Espino Marrero further explains these basic agricultural facts: As a result of different soil, climate, and growing conditions, different tobacco and seed selection and production processes inside and outside Cuba, including the uniformity in those processes inside Cuba, and the desire for different tobacco qualities and characteristics, the tobacco grown outside of Cuba with seeds descended from seeds taken from Cuba will diverge more and more, generation by generation, with tobacco grown in Cuba. *Id.* ¶¶ 8-10. Thus:

As a result of these factors, tobacco produced in Nicaragua or any other country, from a seed of Cuban origin, even of the first generation, will be different from tobacco produced in Cuba from the same seed the seeds generated in successive generations of reproduction outside of Cuba will not demonstrate the same genetic characteristics of the original seed because they are produced and selected under conditions different from those of Cuba. With each generation there will be greater genetic deterioration of the original seed and, thus, the quality and characteristics of the tobacco produced from these seeds will increasingly diverge from the tobacco produced from the original seed. For example, when I was in Nicaragua in the 1980s, I could see that the tobacco

produced from the Corojo variety seed reproduced from the original Cuban seed, did not manifest the same organoleptic characteristics as Corojo grown in Cuba.

Id. ¶¶ 11-12. Espino Marrero concludes:

Thus, from the point of view of an agronomist or geneticist, there is no meaningful or relevant connection between Cuban tobacco cultivated in Cuba and tobacco produced from a seed that was originally Cuba but which has been cultivated outside of Cuba, much less after 45 generations following the departure of that seed from Cuba.

Id. ¶ 13.

The American cigar authority and cigar journalist, Richard B. Perelman, the author of *Perelman's Pocket Cyclopedia of Cigars*, published annually since 1995, and author of three editions of *Perelman's Pocket Cyclopedia of Havana Cigars*, also has provided his expert opinion. Declaration of Richard B. Perelman, dated August 2, 2006. Perelman explains the absence of any connection between "Cuban seed" tobacco and Cuban tobacco or Cuban cigars, other than the possibility of a remote ancestry, and further explains that "Cuban seed" is essentially a marketing tool in the United States that fosters a misleading association between Cuban and non-Cuban cigars. As Perelman explains:

One might logically conclude that "Cuban seed" tobacco would refer to tobacco grown from the same seeds as used in Cuba to grow tobacco there. This is not the case. Such references are in fact generally used in the United States to refer to tobacco grown outside Cuba, which is of a strain which may (or may not) have originated, many generations previously, from seeds taken from Cuba either prior to or at the time of the nationalization of the tobacco industry by the Cuban (Revolutionary) government in or about 1960.

Id. ¶ 9. Perelman also notes that "Cuban seed" claims, such as those made by Applicant, are unverifiable: "there is no way for the distributor of finished cigars, or the consumer, to verify that such tobacco is descended from such seeds." *Id.* As Perelman further explains, the most common reference to "Cuban seed" in the United States is to a variety of tobacco grown in the Dominican Republic known as "Piloto Cubano," which *perhaps* is derived from seeds that were

taken from Cuba many decades or even centuries ago. ¶¶ 11-14, 17. This “Piloto Cubano” variety was not cultivated in Cuba in or around 1960, Espino Marrero Declaration ¶ 18, and so would not be the source of the seeds Applicant claims were taken from Cuba in or about 1960. Applicant in fact was unable to identify the strain or variety of the tobacco claimed to have been taken from Cuba. App. Resp. to Int. No. 16 (Goldstein Decl. Exh. 15); Bock Dep. at 98-99.

According to Perelman, “it is clear that “Piloto Cubano” or “Cuban seed” tobacco, no matter how characterized, is *not* Cuban.” Id. ¶ 18. Further:

[R]eferences by manufacturers or distributors simply to “Cuban seed,” or Piloto Cubano, without any other identification of the variety or characteristics of the tobacco, generally signifies to consumers in the United States (either accurately or inaccurately) an element of flavor in the cigar. In either case, the use of these terms also tries to signify or to suggest to U.S. consumers and to the trade a highly questionable or possibly false connection to Cuba of the distant past. When a manufacturer or distributor uses the term “Cuban seed” for tobacco that is *not* Piloto Cubano, with no further information about the variety or strain, then in fact the “Cuban seed” tobacco may or may not have the strength of flavor assumed by the consumer, and would then serve solely to suggest a highly questionable or possibly false connection to or association with Cuba, or Cuban tobacco or cigars of the distant past. It certainly has no relation at all to Cuban cigars of today.

Id. ¶ 19; *see also id.* ¶¶ 22-23 (“The use of the term ‘Cuban seed,’ therefore, is generally used in the U.S. industry to suggest a highly questionable link to an imagined taste or quality (Cuban) in the minds of sellers (tobacconists) and buyers (smokers) of cigars”; “when not referring to Piloto Cubano or to another particular strain, ‘Cuban seed’ ... only has the purpose of making a highly questionable reference to Cuba.”); *id.* ¶ 15 (referencing testimony of a prominent cigar retailer in an unrelated case: “Cuban seed is a joke of the industry....When you say it’s a joke, you mean it’s meaningless as to the quality of the cigar? Right”).

D. Opposer’s Registered Mark HABANOS UNICOS DESDE 1492 & DESIGN

Applicant seeks in its counterclaim to cancel Habanos S.A.’s registered mark HABANOS UNICOS DESDE 1492 & DESIGN, Reg. No. 2,177,837, solely on the ground of abandonment

from nonuse of the mark in United States commerce. Counterclaim ¶¶ 4-5. Applicant admits that Habanos S.A. “owns the U.S. Registration No. 2,177,837 for HABANOS UNICOS DESDE 1492.” *Id.* ¶ 2.

On August 16, 1996, Habanos S.A. filed a section 44(e) application for the mark HABANOS UNICOS DESDE 1492 & DESIGN (sometimes “HABANOS UNICOS”), based on its Cuban registration; the mark was registered on the Principal Register on August 4, 1998, without opposition. Goldstein Decl. Exh. 3. On January 30, 2004, Habanos S.A. filed a Section 8 Declaration of excusable nonuse, based on the CACR’s prohibitions on use of the mark in United States commerce. *Id.* The Declaration stated that the mark “is currently in use in commerce in Cuba and in numerous other countries,” and that Habanos S.A. “intends to sell and transport goods using this mark in the United States as soon as the above-cited prohibition is lifted.” *Id.* (§ 8 Declaration ¶¶ 3, 6). On March 23, 2004, the USPTO accepted the Section 8 Declaration. *Id.*

Habanos S.A. owns several other registrations in the USPTO for which its Section 8 Declarations of excusable nonuse, based on the CACR’s prohibitions on use of the mark in United States commerce, have been accepted: VEGAS ROBAINA, Reg. No. 2,197,155 (accepted February 25, 2004); VEGAS ROBAINA & DESIGN, Reg. No. 2380359 (July 26, 2006); LA VIGIA, Reg. No. 2,110,538 (September 13, 2003); CUABA, Reg. No. 2,237,940 (September 1, 2005); CUABA DESIGN, Reg. No. 2,202,488 (March 22, 2005); and VEGUEROS, Reg. No. 2,254,638 (November 16, 2004). Goldstein Decl. Exh. 16. The PTO has never refused to accept such Declarations from Habanos S.A. or any other Cuban national to Opposer’s knowledge.

Likewise, the PTO has uniformly accepted Section 8 and combined Sections 8 & 9 Declarations of excusable nonuse, based on the CACR's prohibitions on use of the mark in United States commerce, from another Cuban cigar enterprise, Empresa Cubana del Tabaco ("Cubatabaco"), for the following cigar or cigar-related marks: LA PERLA, Reg. No. 2,128,050 (February 25, 2004); Design Mark, Reg. No. 2,145,804 (October 17, 2003); EDMUNDO DANTES, Reg. No. 1,957,322 (Aug. 30, 2001; Aug. 18, 2005), EDMUNDO DANTES & DESIGN, Reg. No. 1,948,393 (August 30, 2001; June 10, 2005); LA CASA DEL HABANO, Reg. No. 2,212,119 (IC 35, 42) (April 7, 2005); LA CASA DEL HABANO, Reg. No. 1,970,911 (IC 34) (April 11, 2003; September 7, 2005); QUAI D'ORSAY, Reg. No. 1,653,845 (September 4, 1997; August 19, 2001); and BEHIKE & DESIGN, Reg. No. 1,557,163 (February 12, 1996). Goldstein Decl. Exh. 17.

The PTO has also uniformly accepted Section 8 and combined Sections 8 & 9 Declarations of excusable nonuse, based on the CACR's prohibitions on use of the mark in United States commerce, from other Cuban nationals, including: RON CANEY ORO LIGHT LEGITIMO RON CUBANO, Reg. No. 1,956,024 (April 30, 2002; March 27, 2006); SUCHEL & DESIGN, Reg. No. 2,124,635 (October 23, 2003); BIORAT, Reg. No. 2,225,596 (November 16, 2005); FRESKITO, Reg. No. 2,091,185 (March 30, 2004); and MELAGENINA, Reg. No. 1,414,696 (March 1, 1993).⁵ Goldstein Decl. Exh. 18.

Habanos S.A. has also produced uncontradicted and overwhelming evidence of its intent to use the mark in commerce in the United States as soon as U.S. law allows. This evidence shows that Habanos S.A. uses the mark extensively and universally (in multiple languages) in

⁵ The PTO's acceptance of these section 8 declarations has not been a *pro forma* rubber stamp. For example, the PTO accepted the Declarations for LA CASA DEL HABANO, Reg. No. 2,212,119, and for HABANA HABANA CUBA, Reg. No. 2,202,488, only after initial refusal and response from the trademark owners. Goldstein Decl. Exh. 19.

connection with the sale and promotion of its 100% Cuban-origin cigar products outside the United States (“Habanos” means “Havana cigars,” and the mark translates as: “unique Havana cigars since 1492”), including in promotions, advertisements and on cigar accessories, and affixing of the dominant feature of the mark, the HABANOS logo, to each of its cigar packages. *See* Garcia Morejon Decl. ¶¶ 13-16, and Exh. 1 (Opposer’s Response to Applicant’s Interrogatory Nos. 3-5); *id.* Exh. 3-4.

The unrebutted evidence further establishes that Habanos S.A. intends to enter the U.S. cigar market, the largest in the world, including through the use and promotion of its HABANOS UNICOS mark, as it does throughout the rest of the world, as soon as U.S. law permits. *Id.* ¶¶ 17-21. To that end, Habanos S.A. has regularly advertised the HABANOS UNICOS mark in the primary U.S. cigar consumer magazines, *Cigar Aficionado* and *Smoke*, and other cigar trade magazines, since soon after Habanos S.A.’s creation in 1994, and continues to do so. *Id.* ¶¶ 19, and Exh. 5 (collecting dozens of advertisements over past decade). Habanos S.A. also engages in other promotional activities, particularly with journalists for U.S. cigar-oriented publications. *Id.* ¶ 20. Habanos S.A. engages in advertising of the HABANOS UNICOS mark in the United States and other promotional activities in order to promote and maintain the familiarity of U.S. cigar consumers with Habanos S.A.’s Cuban cigar products, and its ubiquitous HABANOS UNICOS mark, with the intent of facilitating the entry of Habanos S.A.’s cigar products into the U.S. market as soon as U.S. law permits. *Id.* ¶ 21.

In addition, Opposer has brought several TTAB Opposition proceedings and court actions against applications for or uses of the term “HABANOS,” including based on trademark and trade name claims. *See, e.g., Corporacion Habanos, S.A., et al. v. Don Rivera, Inc.*, Opposition No. 91152898 (TTAB) (HABANOS REY, stipulated abandonment of the mark); *Corporacion*

Habanos, S.A. v. Superior Cigars U.S.A., Inc., Opposition No. 91170189 (TTAB) (HABANOS PUROS ECUADOR, pending, motion for default judgment filed); *Corporacion Habanos, S.A., et al. v. Consolidated Cigar Corp.*, Opposition No. 91104731 (TTAB) (HABANOS FABRICA DE TABACOS, stipulated abandonment); *Corporacion Habanos, S.A. v. Habanos, Inc., et al.*, 03 CV 1963 (KMW) (S.D.N.Y. July 1, 2003) (default judgment entered, including on trademark claim for infringement of HABANOS logo). See Goldstein Decl. Exh. 20.

This un rebutted evidence establishes what logic and common sense compel: when the embargo is lifted, Habanos S.A. intends to sell its coveted Cuban cigars in the U.S. market, and it will use its HABANOS UNICOS mark in connection with the sales and promotion of its cigar products, just as it does throughout the rest of the world today. Garcia Morejon Decl. ¶¶ 17-21.

RELEVANT STATUTORY AUTHORITY

Under § 2(e) of the Lanham Act, a trademark must be refused registration if it “[c]onsists of a mark which (1) when used on or in connection with the goods of the applicant is . . . deceptively misdescriptive of them . . . [or] (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them.” 15 U.S.C. § 1052(e)(1), (3). Under § 2(a), a trademark shall be refused registration on the principal register if it “[c]onsists of or comprises... deceptive... matter...” 15 U.S.C. § 1052(a). Under § 1(a)(3)(B) of the Act, an application seeking registration of a mark used in commerce must include a verified statement that “to the best of the verifier's knowledge and belief, the facts recited in the application are accurate.” 15 U.S.C. § 1051(a)(3)(B).

Section 1058(b)(2) of the Act provides that the owner of a registered mark may, in lieu of the requisite affidavits showing use of the mark in commerce, submit an affidavit “showing that

any such nonuse [of the mark] is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.” 15 U.S.C. § 1058(b)(2).

ARGUMENT

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Sweats Fashions, Inc. v. Pannill Knitting Co., Inc.*, 833 F.2d 1560, 1562 (Fed. Cir. 1987); TBMP § 528.01.

Here, the uncontested material evidence demonstrates that Habanos S.A. is entitled to judgment as a matter of law on each of the grounds stated in the Notice of Opposition. Habanos S.A. is also entitled to summary judgment on Applicant’s counterclaim, because the undisputed facts establish as a matter of law that Habanos S.A. has not abandoned the challenged mark.

I. APPLICANT’S MARK CANNOT BE REGISTERED BECAUSE IT IS PRIMARILY GEOGRAPHICALLY DECEPTIVELY MISDESCRIPTIVE

Under Sections 2(e)(1) and 2(e)(3) of the Lanham Act, 15 U.S.C. § 1052(e)(1), (3), the USPTO must deny registration if “(1) the primary significance of the mark is a generally known geographic location, (2) the consuming public is likely to believe the place identified by the mark indicates the origin of the goods bearing the mark, when in fact the goods do not come from that place, and (3) the misrepresentation was a material factor in the consumer’s decision.” *In re California Innovations*, 329 F.3d 1334, 1341 (Fed. Cir. 2003); see TMEP § 1210.01(b) (four factor test, treating goods/place association, and whether the goods do not come from that place as separate factors). Here, there is no genuine issue of material fact as to Opposer’s satisfaction of each of the prongs of the *California Innovations* test. Indeed, the PTO has already found that the mark is primarily geographically deceptively misdescriptive for “cigars,” reversing itself

solely on its unexplained misunderstanding concerning the term “Cuban seed tobacco.” Because the Examiner did not explain his rationale for reversing his initial refusal, it is unclear which prong or prongs of the *California Innovations* test he believed were overcome by Applicant’s amendment of the identification of goods from “cigars” to “cigars made from Cuban seed tobacco” and so each factor is addressed below.⁶

A. The Primary Significance of the Mark is a Generally Known Geographic Location – Havana, Cuba

With respect to the first prong, the primary significance of Applicant’s HAVANA CLUB mark is indisputably a generally known geographic location. Havana is Cuba’s largest and most important city and its capital, and the largest city among the Caribbean Islands. This fact is established by the undisputed and overwhelming evidence cited in the Statement of Facts, Point B, *supra*, including the *Columbia Gazetteer*, and the referenced dictionaries and encyclopedias. *See In re Save Venice New York*, 259 F.3d 1346, 1353 n.5 (Fed. Cir. 2001).

In addition to this undisputed evidence, and dispositively, this Board has already held, repeatedly, that “the primary significance of HAVANA [is] a city in Cuba.” *See In re Bacardi & Co., Ltd.*, 48 U.S.P.Q.2d 1031, 1033 (TTAB 1997) (*Bacardi I*) (HAVANA SELECT, HAVANA CLIPPER, HAVANA PRIMO, OLD HAVANA, HABANA CLASICO); *In re Bacardi & Co., Ltd.*, 1997 TTAB Lexis 169, at *3 (TTAB 1997) (*Bacardi II*) (HAVANA STYLE); *In re Boyd Gaming Corp.*, 57 U.S.P.Q.2d 1944, 1946 (TTAB 2000) (ROYAL HAVANA RESORT AND CASINO, HAVANA RESORT & CASINO).

Likewise, the USPTO has already determined, in its examination of the challenged mark herein, that “[t]he primary significance of the term ‘Havana’ is geographic.” Applicant did not

⁶ The only other change to the application in response to the Office Action – Applicant’s disclaimer of “Havana” – could not have altered the original finding, because a party cannot avoid refusal under section 2(e)(3) by disclaiming the geographic component of the mark. *See In re Hiromichi Wada*, 194 F.3d 1297, 1300-02 (Fed.Cir.1999).

contest this finding in the USPTO. Nor has Applicant produced *any* evidence that contradicts, undermines, or even disputes this obvious and correct conclusion.

The mere addition of the generic term “CLUB” to “HAVANA” does not alter the fact that the primary significance of the mark is a generally known geographic location, as the PTO recognized both here and in other applications for HAVANA CLUB by unrelated parties. *See, e.g.,* Application No. 7571393 (IC 25) (Goldstein Decl. Exh. 7). Likewise, the TTAB has already considered the effect of similar composite marks, and held that the primary significance of each of the marks “HAVANA SELECT,” “HAVANA PRIMO,” “HAVANA CLIPPER,” “OLD HAVANA,” and “HAVANA STYLE” is a generally known geographic location. *See Bacardi I* at 1034; *Bacardi II* at *3-4; *see also In re Boyd Gaming Corp.*, 57 U.S.P.Q.2d 1944, 1946 (TTAB 2000) (primary significance of ROYAL HAVANA RESORT & CASINO and HAVANA RESORT AND CASINO for clothing and cosmetics is geographic, despite additional wording); *see California Innovations*, 329 F.3d at 1342; *In re Colorado Steakhouse*, 71 U.S.P.Q.2d 1921, 1927, (TTAB 2004) (“addition of the generic word ‘steakhouse’ ...[does not] detract[] from the primary geographical significance of the mark,” citing *Bacardi I*); *In re U.S. Cargo Inc.*, 49 U.S.P.Q.2d 1702, 1704 (TTAB 1998); *American Speech-Language Hearing Ass’n v. National Hearing Aid Society*, 224 USPQ 798, 808 (TTAB 1984).

That the mark’s primary significance is geographic is reinforced by the fact that the only other meaning of “Havana” noted in dictionaries, Gazetteers, and publications is a cigar made in Havana or from Cuba, as opposed to some commonly known meaning unrelated to the generally known geographic location.⁷ Obviously, Applicant cannot, and does not, contend that it is entitled to register HAVANA CLUB by claiming that the primary significance of the mark is not

⁷ Compare *Jack’s Hi-Grade Foods*, 226 U.S.P.Q. 1028 (T.T.A.B. 1985), in which the applicant argued that the primary significance of “Neopolitan” was a popular ice cream product, not Naples, Italy. Notably, the Board rejected that argument, which can not even be made here.

Havana, Cuba, but *a cigar from Havana, Cuba*, when its cigars admittedly do not come from Havana or Cuba.

Finally, Applicant's amendment of the identification of goods from "cigars" to "cigars made from Cuban seed tobacco," has no possible relevance to, and cannot change, the fact that the primary significance of HAVANA CLUB is a known geographic location, and there is no indication that the Examiner made such an irrational finding.

B. Consumers Are Likely to Believe There is A Goods-Place Association Between Havana and Cigars

Dispositively, Applicant has waived any argument that U.S. cigar consumers are not likely to make the requisite goods/place association. As noted, *supra*, on May 10, 2006, Applicant withdrew and dismissed with prejudice its Third Affirmative Defense ("Lack of Place/Goods Association"). Prior to dismissal, that Affirmative Defense had been wholly contradicted by the overwhelming evidence, including the testimony of Applicant's own principal. Bock Dep. at 123-28. Having dismissed, and thereby waived, that Affirmative Defense, Applicant cannot be heard now to assert that a goods/place association is lacking here. Thus, the Board should look no further than the voluntary dismissal with prejudice. *See* TBMP §§ 311.02(c); 314.

Even if the Board were to address the merits, the showing required to establish a goods-place association, which is not a high one, is easily met here. *See In re Les Halles de Paris J.V.*, 334 F.3d 1371, 1374 (Fed. Cir. 2003) ("[T]he goods-place association often requires little more than a showing that the consumer identifies the place as a known source of the product"); *U.S. Cargo*, 49 U.S.P.Q.2d at 1704. Indeed, a goods-place association may be shown without any evidence that "the place is well-known or noted for the goods." *In re Loew's Theatres, Inc.*, 769 F.2d 764, 767 (Fed. Cir. 1985; *id.* at 766-68 (association need be made merely by "more than a

de minimis segment of the public”); see *Jack’s Hi-Grade Foods*, 226 U.S.P.Q at 130; TMEP § 1210.04(a) (citing decisions). In adding the “materiality” test under section 2(e)(3), the Federal Circuit reaffirmed *Loew’s Theatres’s* low threshold to establish the requisite goods/place association. *California Innovations*, 329 F.3d at 1338, 1340 (“relatively easy burden of showing a naked goods-place association”).

Here, the overwhelming and undisputed evidence establishes that the American cigar-consuming public “is likely to believe [that Havana] indicates the origin of the goods bearing the mark.” *California Innovations*, 329 F.3d at 1341. Indeed, it would be difficult to imagine a stronger case of a goods/place association than Havana and cigars, where Havana is so well-known and noted for cigars that Cuban cigars are commonly called “Havanas.” If the cultivation of tobacco in a Mexican state barely known for tobacco is sufficient to establish a goods-place association, see *Loew’s Theatres*, then surely Havana’s unrivaled status for its “world-famous Havana cigars,” *Encyclopedia Britannica Online* (Goldstein Decl. Exh. 4), surely meets the test.

Here, the PTO Examiner already concluded, correctly, that “[t]he public is likely to believe that applicant’s goods come from this place because Havana, Cuba, is a place where cigars are produced.” Goldstein Decl. Exh. 1. Applicant neither challenged this finding before the PTO, nor produced any evidence in discovery that could support a finding that the public is *not* likely to make an association between Havana and cigars. Indeed, rather than contest this indisputable fact, Applicant dismissed this affirmative defense with prejudice. And again, nothing in the amendment from “cigars” to “cigars made from Cuban seed tobacco” can alter the fact that there is a goods/place association between Havana and cigars. Indeed, such deliberate linkage of “Havana” and “Cuban” would only reinforce the consumers likely belief in *and* the materiality of a goods/place association.

Further, in *Bacardi I*, the Board specifically held that U.S. consumers were likely to make a goods/place association between Havana and rum products. The Board relied on “evidence from dictionaries, encyclopedias and gazetteers indicating that HAVANA, Cuba is a major city which produces a variety of goods, among which ‘rum’ is listed as a significant product.” *Bacardi I*, 48 U.S.P.Q.2d at 1035; *see also Boyd Gaming*, 57 U.S.P.Q.2d at 1946-47 (finding likelihood of goods/place association with clothing, cosmetics, hotels, and resorts and Havana, Cuba). The PTO reached the same conclusion with respect to applications for the identical mark -- HAVANA CLUB -- for clothing based on the same type of evidence. *See* App. No. 75751393 (IC 25) (Goldstein Decl. Exh. 7).

Opposer here has submitted extensive, uncontradicted evidence from the same type of sources, *as well as* from books, magazines, and news articles establishing Havana, Cuba’s extraordinary renown for the production and export of cigars (indisputably far greater than for clothing, cosmetics, hotels, furniture, or even rum), and the consumer association between cigars and Havana. *See* Statement of Facts, Point B, *supra*, and cited exhibits. Further, as in *Bacardi I*, 48 U.S.P.Q.2d at 1035, Applicant here has produced no evidence “that, in view of the U.S. trade sanctions against Cuba, purchasers will know that no products on the U.S. market could originate in Cuba.”

Thus, under the “relatively easy burden” of *California Innovations*, Opposer easily establishes the requisite goods/place association.

C. The Goods-Place Association Will Be Material to the Consumers’ Purchasing Decision

The third prong of the *California Innovations* test is also easily satisfied on the record here. Again, the USPTO has already correctly found, in its examination of Applicant’s mark, that “this belief [“that applicant’s goods come from” Havana] *would materially influence*

consumers to purchase the goods because Havana, Cuba, a location where cigars are produced, *is renown* for the production of cigars and purchasers would base the purchase of those goods upon the misconception that applicant's goods originate from Havana, Cuba." Goldstein Decl. Exh. 1 (emphasis added).

This PTO finding is verified by the overwhelming, unrebutted evidence submitted by Opposer, which establishes Havana, Cuba's extraordinary renown in the U.S. as a source of high quality cigars. Given this powerful, positive reputation, a consumer's belief that a cigar is of Cuban origin is, as a general matter, highly material to the decision whether to purchase that cigar. By contrast, Applicant has not only produced no evidence refuting this finding, but expressly withdrew its (patently false, indeed frivolous) allegation in its dismissed Third Affirmative Defense that "the city of Havana does not have a reputation as a source of cigars."

In *California Innovations*, the Federal Circuit elaborated on the "materiality" standard. "[I]f there is evidence that goods like applicant's or goods related to applicants *are a principal product* of the geographical area named by the mark, then the deception will most likely be found material and the mark, therefore, deceptive." 329 F.3d at 1341 (quoting *House of Windsor*, 221 USPQ at 57) (emphasis added). Similarly, "[I]f the place is noted for the particular goods, a mark for such goods which do not originate there is likely to be deceptive under § 2(a) and not registrable." *Id.* (quoting *Loew's Theatres*, 769 F.2d at 768 n.6).⁸

The court further explained the materiality standard by reference to two prior decisions that did not directly address "materiality," *Save Venice, supra*, and *In re Hiromichi Wada*, 194 F.3d 1297 (Fed.Cir.1999), but which the court found met that standard. *Id.* at 1340-41. In *Save Venice*, the court pointed to "the 'substantial evidence available showing that Venice, Italy is *known for glass, lace* [, that] all of the applicant's goods are associated with *traditional*

⁸ The tests for deceptiveness under § 2(a) and § 2(e)(3) are now identical. See Point II, *infra*.

Venetian products.” *Id.* at 1341 (quoting *Save Venice*, 259 F.3d at 1354 (emphasis supplied in *California Innovations*). Further:

in *Wada*, there was "evidence that showed ... New York is *well-known* as a place where leather goods and handbags are designed and manufactured." *Wada*, 194 F.3d at 1299-1300 (emphasis added). the public, "upon encountering goods bearing the mark NEW YORK WAYS GALLERY, would believe that the goods" originate in New York, "*a world-renown* fashion center ... *well-known* as a place where goods of this kind are designed, manufactured, or sold." *Id.* This showing that the place was not only *well-known*, but *renowned* for the products at issue supports a finding of materiality.

California Innovations, 329 F.3d at 1341 (emphasis added, citing *House of Windsor*, 221 USPQ at 57); *see also In re Consolidated Specialty Restaurants Inc.*, 71 USPQ2d 1921, 1928-29 (finding materiality upon “a showing of a very strong services-place association....The evidence ... clearly establishes that Colorado is known for its steaks and that the public is aware of the connection of Colorado with high quality steak (or beef)”; *Daesang Corp. v. Rhee Bros., Inc.*, 77 U.S.P.Q.2d 1753, 2005 WL 1163142 (D. Md. 2005) (finding materiality because South Korean region “has been renowned for its high quality of gochujang”).

Applying this standard, the PTO was clearly correct in its initial finding of materiality. The uncontradicted evidence establishes that Havana, Cuba is “well-known” and “a world-renown ... center” for the production of cigars. *See* Statement of Facts, Point B, and exhibits cited therein. Indeed, the *only* evidence cited by Applicant concerning renown proves the point: “the nation has been defined by one symbol ... the Cuban cigar. Cuba is to tobacco what France is to wine, Switzerland is to watch-making, and Scotland is to malt whisky – the standard by which all others are measured.” Goldstein Exh. 14.

The fact that Applicant has chosen HAVANA CLUB for a cigar product that is not from Havana or Cuba is itself highly relevant to discerning materiality. Out of the universe of possible names for cigars, there is no reason for Applicant to have chosen HAVANA other than

to seek to have consumers link its non-Havana product with Havana, Cuba's fame and reputation for great cigars. *See In re Perry Mfg. Co.*, 12 U.S.P.Q.2d 1751 (TTAB 1989). A mistaken impression that Applicant's cigars are of Cuban origin will function in precisely this desired manner, by leading consumers who might not otherwise purchase Applicant's cigars to do so. Nor are there, to Opposer's knowledge, any United States cigar marks that make a similar false and misleading connection or association with any city or location known for the production or manufacture of cigars, other than to Havana or other locations in Cuba. For example, cigars manufactured in the Dominican Republic, or made with Dominican tobacco, are not branded with locations in Honduras, and cigars manufactured in Nicaragua, or made with Nicaraguan tobacco, are not branded with Dominican locations.

Once again, nothing in the amendment from "cigars" to "cigars made from Cuban seed tobacco" could rationally alter the PTO's materiality finding, and there is no indication that it did so. Again, if anything, the "Cuban seed" claim in conjunction with HAVANA CLUB would make consumers even more likely to purchase Applicant's product based on the deceptive goods/place association.

D. Applicant's Goods Do Not Come From Havana, Cuba

The final part of the *California Innovations* test is that "in fact the goods do not come from that place" named in the mark. 329 F.3d at 1341; TMEP § 1210.01(b) ("(2) the goods or services do not originate in the place identified in the mark"). "Goods or services may be said to 'originate' from a geographic location if, for example, they are *manufactured, produced or sold there.*" TMEP § 1210.03 (emphasis added); *id.* (noting that "a product might be found to originate from a place if the *main* component or ingredient is made in that place") (emphasis

added). See *Fred Hayman Beverly Hills Inc. v Jacques Bernier Inc.*, 38 U.S.P.Q.2d 1691, 1694-95 (TTAB 1996).

Here, it is undisputed, and Applicant explicitly admits, that Applicant's "Cuban seeds" *do not come from* Havana, Cuba, *id.* (emphasis added), do not *originate* in Havana, Cuba, and *none* of the components or ingredients, let alone the *main* one, comes from Havana, Cuba, but rather are claimed, without any verification or first hand knowledge, to be distant descendants of seeds taken from Cuba 45-50 years ago, that there is no other claimed connection or association with Cuba or Havana, and no claim of any shared qualities or characteristics with Cuban cigars or Cuban tobacco. See Statement of Facts, Point C, *supra*, and expert declarations and exhibits cited therein.

Further, the CACR, 31 C.F.R. § 515.204 (July 8, 1963), broadly and explicitly bar Applicant not only from selling *cigars* that come from Cuba, but also any cigars that are "made or derived in whole or in part of any article which is the *growth, produce* or manufacture of Cuba" or "*is of Cuban origin,*" or "is or has been located in or transported from or through Cuba." (Emphasis added). Applicant has acknowledged that it does not have, and has not sought, a license exempting it from the CACR restrictions on the import of Cuban-origin goods.

Based on the undisputed and admitted facts that Applicant's goods *do not come from* Havana (or Cuba) (and legally could not, in whole or in part, even be derived from goods from Cuba), this factor of the *California Innovations* test is plainly met, and that should end the inquiry. There is no ambiguity in this factor, and no reason to believe that the Federal Circuit meant something other than what it said: "*in fact* the goods do not come from that place." Neither the Board nor the Federal Circuit (or its predecessor) has ever deviated from this standard, to Opposer's knowledge. See, e.g. *Loew's Theatres*, 769 F.2d at 767-68; *Nantucket*,

677 F.2d at 99; *Singer Manufacturing Co. v. Birginal-Boigsby Corp.*, 319 F.2d 273, 275 (CCPA 1963). The TMEP's explication is just as clear and straightforward: whether the goods, or a "main component or ingredient" "are manufactured, produced or sold there." TMEP §1210.03.

Opposer has not located any case that supports Applicant's position that a possible remote genetic link between the raw material and the named geographic location overcomes or satisfies section 2(e)(3), when "*in fact* the goods do not come from that place." Here, however, the Examiner apparently, but without explanation, believed that such a claimed remote genetic association with Cuba (not even Havana) was all that is required.⁹ Yet obviously absurd results would follow if the following test were substituted for the current bright-line inquiry whether the goods come from the named place: "and in fact there is no genetic, or other association or connection, however remote, between the goods and that place." Such a standard would put the PTO, and ultimately this Board and the Federal Circuit, either in the impossible position of arbiter of complex scientific issues of genetic identity or subjective inquiries into similarity of characteristics based on genetic source, *or* it would have to allow *any* claim of genetic source, no matter how remote, unverifiable (or false), to overcome a section 2(e)(3) obstacle to registration, precisely as occurred here. Yet it is only under such a standard that a Notice of Allowance could have issued for Applicant's 100% non-Cuban goods.

⁹ It is possible that the Examiner may have mistakenly believed that Applicant's intended "cigars made from Cuban seed tobacco" would actually "come from" Havana, or at least the seeds would. In the Examiner's defense, he may have been misled by prior false claims by other applicants that cigars made from "Cuban seed" *did* come from Havana (claims, that if true, would be in clear violation of the CACR). For example, in an unrelated matter, an applicant falsely claimed, to the same Examiner, that, based on its "Cuban seed" claim, "applicant's goods [cigars] come (at least in part) from Havana, Cuba." Goldstein Decl. Exh. 21. Faced with an Opposition from the Opposer herein, that applicant agreed to abandon its application. *See id.* Exh. 20 (HABANOS REY, Opp. No. 91152898; App. No. 76/168197). Here, by contrast, Applicant concedes that its goods *do not* come from Cuba, in whole or in part.

Some examples from some well known cases that would either put the PTO into an impossible position as genetic fact-finder, or that would make a mockery and dead letter of section 2(e)(3), follow:

- Could an applicant register NEOPOLITAN for sausage made in the U.S. from U.S.-raised hogs merely by claiming that its hogs were multi-generation descendants of hogs imported from Italy (not even from Naples) 45 years earlier, *see Jack's Hi-Grade, supra*?
- Could an applicant register THE VENICE COLLECTION for cotton goods manufactured in Nicaragua with cotton grown in Nicaragua, based on a claim that the Nicaraguan cotton was grown from the descendants of seeds taken from Italy 45 years earlier (not even from Venice), *see Save Venice, supra*?
- Would the result for HAVANA SELECT have been different if the rum manufacturer claimed that the sugar cane used to make the rum was descended from sugar cane removed from Cuba 45 years earlier (not even from Havana), *see Bacardi I?*
- Could an applicant register TOSCANA for furniture manufactured in the U.S. by claiming that the wood for its furniture came from U.S.-grown trees that were multiple generations descended from seeds of trees grown in Italy (and not even in Tuscany), *see In re Broghill Furniture Ind., Inc.*, 60 USPQ2d 1511 (TTAB 2001)?

To pose these questions is to answer them. Yet there is no factual or legal difference here, as Applicant admits that the sole and only claimed connection or relationship to Cuba is that Applicant's cigars will be made from tobacco grown from seeds that are remote and distant descendants of seeds from plants grown in Cuba almost 50 years ago. The *California Innovations* standard means what it says, and for obvious and good reason: if "in fact the goods do not come from that place," then that part of the section 2(e)(3) test is met, regardless of claims (fanciful or not) of a genetic link, however remote, to that place.

Even if the Board were prepared to modify the clear standard heretofore consistently applied with a vague "claim of remote genetic descent" test when the Applicant could prove that the characteristics or qualities of the product were the same as goods actually from the named place (a test that, again, would place the USPTO, the Board, and the Federal Circuit in the position of arbiters of such impossibly subjective inquiries), here, Applicant makes no such

claim. Indeed, it admits just the opposite, a fact confirmed by the Expert Declarations of Espino Marrero and Richard Perelman, which dispel any link or association between Applicant's proposed cigars and Havana, Cuba or Cuban cigars or Cuban tobacco, in terms of any quality or characteristic of the seeds, tobacco, or cigars. See Statement of Facts, Point C, *supra*. Thus, even if this Board is prepared to adopt a novel test in which manufactured goods -- produced in one place from raw materials that are remote genetic descendants of raw materials from another place -- are said to "come from that place" if an applicant can prove: 1) the goods are in fact genetic descendants; and 2) the goods retain the quality and characteristics of the goods from the identified location, such a claim is not, and could not, be asserted here.

Because the goods "in fact do not come from" Havana, Cuba, and because the other *California Innovations* factors are met, the mark is geographically deceptively misdescriptive, and cannot be registered.

II. APPLICANT'S MARK IS "DECEPTIVE" UNDER SECTION 2(a) OF THE ACT

Under *California Innovations*, a showing that a mark is primarily geographically deceptively misdescriptive necessarily establishes that the mark is also "deceptive" under 15 U.S.C. § 1052(a). See *California Innovations*, 329 F.3d at 1338 ("distinction between geographically deceptive marks and primarily geographically deceptively misdescriptive marks" has been "obliterated"). The same showing of materiality has long been an element under Section 2(a). *In re Budge Manuf. Co.*, 857 F.2d 773, 775 (Fed. Cir. 1988). Thus, Opposer is entitled to prevail under Section 2(a) for the same reasons set out above under section 2(e)(3). See *Loew's Theatres*, 769 F.2d at 768 n.6 ("[I]f the place is noted for the particular goods, a mark for such goods which do not originate there is likely to be deceptive under § 2(a) and not registrable under any circumstances."); *House of Windsor*, 221 U.S.P.Q. at 56-57.

III. THE APPLICATION SHOULD BE REFUSED BECAUSE OF APPLICANT'S MATERIAL MISREPRESENTATIONS AND OMISSIONS TO THE USPTO

Applicant's misrepresentations to the USPTO during the application process, in not disclosing that its claimed "Cuban seed tobacco" has no association or connection to Cuba, Cuban tobacco or Cuban cigars, other than a possible remote genetic link, is an independent ground for refusing registration of a mark. "Fraud in procuring a trademark registration or renewal occurs when an applicant knowingly makes false, material representations of fact in connection with his application." *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 48 (Fed. Cir. 1986). Both "knowingly inaccurate" and "knowingly misleading statements" may support a refusal of registration on grounds of fraud. *Bart Schwartz Int'l Textiles, Ltd. v. FTC*, 289 F.2d 665, 669 (C.C.P.A. 1961), quoted in *Torres*, 808 F.2d at 48); Siegrun D. Kane, *Practicing Law Institute, Trademark Law: A Practitioner's Guide* § 19:2.2, at 19-10 (2003) (noting that fraud in the application process is recognized ground to sustain an opposition to registration).

As the recent decision of *Daesang Corp. v. Rhee Bros., Inc.*, 2005 WL 1163142 (D. Md. May 13, 2005), makes clear, fraud in the procurement of a registration includes not only affirmatively false statements, but the omission of information material to the PTO's decision.

It is well established that an applicant for a registration of a trademark has a duty of candor in his communications with the PTO.... Consequently, there is no presumption of validity attached to a PTO registration where pertinent information is not presented to the PTO. Fraud arises, therefore, not only where the applicant makes false statements ... but also where the applicant fails to make full disclosure of all material facts....

Id. at *8-9 (emphasis added; internal citations omitted).

Here, Applicant, without any explanation or elaboration, amended its identification of goods from "cigars" to "cigars made from Cuban seed tobacco" for the sole purpose of overcoming the Examiner's initial refusal based on the determination that HAVANA CLUB for

cigars is primarily geographically deceptively misdescriptive. Applicant, however, in proffering the amendment for that purpose, failed to disclose what it admittedly knew, that there is in fact no relevant association or connection to Cuba, Cuban cigars or Cuban tobacco. Applicant thereby “fail[ed] to make full disclosure of all material facts” to the USPTO in seeking a registration. *Id.*

Specifically, Applicant failed to disclose any of the following material facts to which Applicant admitted in discovery: the “Cuban seeds” did not in fact come from Cuba; they were allegedly taken from Cuba over 45 years earlier, but that Applicant has no first hand knowledge of that claim, and cannot verify that claim; the claimed “Cuban seed tobacco” would be (at most) remote genetic descendants of tobacco long ago grown in Cuba; there is no other connection or relationship to Cuba other than this possible remote genetic descent; Applicant did not know the strain or the variety of the “Cuban seed tobacco”; Applicant had no information that the proposed tobacco would share any characteristics with Cuban-origin cigars; the characteristics and qualities sought by Applicant do not only come from “Cuban seed tobacco”; and the characteristics of tobacco grown from claimed “Cuban seeds” varies based on where it is grown and what tobacco is used.

Had Applicant made disclosure of these material facts, the Examiner would have realized that Applicant’s proposed cigars made from “Cuban seed tobacco” would not come from Havana or Cuba, and would have no connection to Havana or Cuba that might overcome the initial refusal, and that HAVANA CLUB for “cigars made from Cuban seed tobacco” is just as primarily geographically deceptively misdescriptive as HAVANA CLUB for “cigars.”

IV. HABANOS S.A. HAS NOT ABANDONED ITS REGISTERED MARK HABANOS UNICOS DESDE 1492 & DESIGN

Applicant's counterclaim for cancellation of Opposer's registered mark, HABANOS UNICOS DESDE 1492 & DESIGN, Reg. No. 2,177,837, on the sole ground of abandonment is wholly without merit, for numerous reasons, set forth below, including that: 1) the Board, in *Arechabala v. Havana Rum & Liquors, S.A.*, Canc. No. 22,881 (TTAB Oct. 19, 1995) (Goldstein Decl. Exh. 22), and the USPTO, in at least two dozen instances, have accepted without exception the Cuban trade embargo as excusable nonuse under 15 U.S.C. § 1058(b)(2); 2) the CACR expressly authorize Cuban nationals to maintain their registrations in the U.S.; 3) cancellation of Opposer's registration would put the United States in violation of both the Paris Convention and TRIPs, and would be contrary to the policy of reciprocal protection of trademarks with Cuba expressly stated by the United States since the embargo's inception 43 years ago, in the interest of securing Cuba's protection of U.S. trademarks (notwithstanding the embargo and its own use requirements, Cuba has permitted hundreds of U.S. corporations to register and maintain over 4,000 U.S.-owned trademarks in Cuba); and 4) Opposer has presented overwhelming and uncontested evidence that Opposer has a *bona fide* intent to use the mark in U.S. commerce as soon as U.S. law permits.

1. If a mark is not in use in commerce, but the owner of the registration believes the registration should not be canceled, the owner may file an affidavit or declaration showing that nonuse is due to special circumstances that excuse the nonuse, and is not due to any intention to abandon the mark. 15 U.S.C. § 1058(b)(2); 37 C.F.R § 2.161(f)(2). "Nonuse may be considered excusable where the owner of the registration is willing and able to continue use of the mark in commerce, *but is unable to do so due to a trade embargo*. T.M.E.P. §1604.11 (emphasis added).

In *Arechabala*, the Board addressed the identical issue raised here, whether a registered mark belonging to a Cuban national should be cancelled for abandonment as a result of nonuse

because of the United States embargo on trade with Cuba. The Board specifically held that the CACR, by preventing use in commerce of a mark,¹⁰ “excuses their nonuse of the mark under the Trademark Act.” *Id.* at 19; *see id.* 15-19. That ruling is dispositive here. *Arechabala* relied on numerous cases that establish that when “a party has not used a mark in the United States because such use is prohibited by U.S. law, that party has not abandoned the mark within the meaning of Section 45 of the Trademark Act.” *Id.* at 17 (citing cases). *See* 2 J.Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 17.16 (4th ed).

Consistent with, and subsequent to *Arechabala*, and as detailed in the Statement of Facts, Point D, *supra*, and exhibits cited therein, Opposer filed a timely Section 8 Declaration demonstrating excusable nonuse of the HABANOS UNICOS mark due to the CACR, including stating that the mark is in use in commerce outside the United States and that Habanos S.A. has the intent to use the mark in commerce as soon as U.S. law permits. The USPTO accepted that Declaration on March 23, 2004. Goldstein Decl. Exh. 2. Likewise, the PTO has uniformly, and without exception, accepted approximately two dozen other substantively identical Section 8 or combined Section 8 and 9 Declarations filed by Opposer and other Cuban nationals, based on excusable nonuse due to the CACR. *Id.* Exh. 16-18. The Section 8 Declaration, and its acceptance by the USPTO, should be dispositive here, and nothing further should be required, just as no additional evidentiary showing is imposed by Cuban law on United States registrants claiming excusable nonuse. *See Imperial Tobacco Ltd. v. Phillip Morris, Inc.*, 899 F.2d 1575, 1581 (Fed. Cir. 1990) (“If a registrant's nonuse is excusable, the registrant has overcome the presumption that its nonuse was coupled with an ‘intent not to resume use’”).

¹⁰ The TTAB specifically cited 31 CFR §§ 515.201, 515.204, and 515.311 as prohibiting the importation and use in U.S. commerce of Cuban origin goods. *See also* 31 C.F.R. § 515.302(a)(2).

2. The Board in *Arechabala* also recognized that 31 CFR § 515.527(a) specifically authorizes Cuban nationals to engage in transactions in the United States for “filing in the United States applications for trademark registrations, prosecuting said applications, receiving registration certificates *and renewal certificates*, and recording any instrument affecting title to trademark registrations.” *Arechabala*, at 16 (emphasis added). Likewise, 31 CFR § 515.528 explicitly authorizes U.S. nationals to engage in the same types of transactions in Cuba to register and to maintain their Cuban trademark registrations. OFAC has expressly advised, “The authorization contained in § 515.527 and the parallel provisions of § 515.528 are intended to provide reciprocal protection for the intellectual property of Cuba and the United States.” Goldstein Decl. Exh. 23 (HAB00583). With respect to such interest by the United States in reciprocity, Opposer notes that there are more than 4,000 registered marks in Cuba that are owned by United States persons.

Clearly, it makes no sense for the CACR to authorize the registration and renewal of marks in the USPTO for the purpose of “provid[ing] reciprocal protection for the intellectual property of Cuba and the United States,” only to have the Board hold that registered marks of Cuban nationals are abandoned because of the prohibitions against use in the same CACR.

3. If the Board were to cancel the HABANOS UNICOS registration based on abandonment because the CACR prevented use in commerce, the U.S. would be in violation of the Paris Convention and TRIPs, both of which require recognition of excusable nonuse in the circumstances here. Such action would also alter, in contravention of the purpose of the CACR as stated by OFAC, the longstanding balance that heretofore has existed, in which Cuba has provided reciprocal protection to more than 4,000 marks of U.S. nationals registered in Cuba.

Article 5(C)(1) of the Paris Convention (to which both Cuba and the United States are parties) provides: "If, in any country, use of the registered mark is compulsory, the registration may be cancelled only after a reasonable period, and then only if the person concerned does not justify his inaction." Both the United States and Cuba are also members of the World Trade Organization ("WTO"), and hence are bound by the TRIPs Agreement. Article 2(1) of TRIPs provides, "Members shall comply with Articles 1-12 and 19 of the Paris Convention (1967)," thereby making Article 5(C) of the Paris Convention enforceable through TRIPs. 33 I.L.M. 81, 85 (1994). In addition, under Article 19(1) of TRIPs, a Member that imposes a trademark use requirement (such as the U.S.) must recognize excusable nonuse when the obstacle to use is caused by that State's restrictions, such as the CACR:

If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of nonuse, *unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for nonuse.*

TRIPs, Art. 19(1) (emphasis added), 33 I.L.M. at 90.

Therefore, if the Board were to cancel the HABANOS UNICOS mark for nonuse (inconsistent with section 1058(b)(2), *Arechabala*, and two dozen USPTO actions), that action would place the United States in violation of TRIPs, and would subject the U.S. to a binding WTO proceeding and trade sanctions. *See* TRIPs, Art. 64, 33 I.L.M. at 107; WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, 33 I.L.M. 112 (*see also* http://www.wto.int/english/docs_e/legal_e/legal_e.htm for text of WTO Agreements).

U.S. companies are also generally forbidden by the CACR (with a few exceptions, primarily in the areas of food, medicine and informational materials) from using their marks in

Cuba. Although it is U.S. law, not Cuban law, that prohibits most U.S. companies from doing business in Cuba, the Cuban courts to date have explicitly recognized that marks owned by United States persons in Cuba may not be cancelled on grounds of nonuse, holding instead that the U.S.-imposed embargo excuses United States nationals from compliance with the post-registration use requirement of Cuban law. *See* Decision No. 428, ADMT No. 582-97 (Kraft Foods, Inc./KOOL AID) (copy and translation annexed as Exh. 24 to Goldstein Decl.). Cancellation of Cuban-owned registrations at the USPTO based on nonuse because of the CACR would, therefore, fundamentally alter the balance of reciprocity currently in place between the intellectual property regimes of the two nations, and would provide justification under international and treaty law for Cuba to change its current policy.

4. In light of the above-discussed actions of the Board and the USPTO, the United States' international obligations, and the interest in reciprocal trademark relations, nothing more should be required of Habanos S.A. here to defeat the counterclaim of abandonment than its Section 8 Declaration -- which attested that Habanos S.A. has not used the mark in U.S. commerce because of the CACR, that it uses the mark in commerce in numerous countries around the world, and that it intends to use the mark in U.S. commerce as soon as U.S. law allows -- and the USPTO's acceptance of that Declaration. If the Board insists on looking beyond the Declaration and its acceptance, however, then a review of the overwhelming, uncontradicted evidence indisputably establishes Habanos S.A.'s *bona fide* intent to use the mark in U.S. commerce. In sharp contrast, Anncas, with the ultimate burden of proof, has proffered *no* evidence whatsoever contradicting the truth of any of the statements in that Declaration.

A mark is defined as abandoned only when it has not been used in commerce for at least three years *and* "when its use has been discontinued with intent not to resume such use." 15

U.S.C. § 1125(1). Following the three-year period of nonuse, the registrant need only come forward with evidence of intent to resume use of the mark. *See Cerveceria Centroamericana, S.A. v. Cerveceria India Inc.*, 892 F.2d 1021, 1025-26 (Fed Cir. 1989). Once the registrant has met this burden of production, the ultimate burden of proof (and production) shifts back to the petitioner to prove abandonment. *See id.* at 1026; *id.* at 1023-24 (“the burden of proof is placed upon those who seek cancellation”; petitioner likely faces greater evidentiary burden in cancellation than in opposition proceedings, in which “the registrant benefits from a presumption of validity”). “The presumption of abandonment is readily rebutted by a showing that nonuse is due to special circumstances which excuse nonuse and is not due to any intention to abandon the mark.” *Arechabala*, at 14-15.

Here, the *unrebutted* evidence shows that Habanos S.A. uses the HABANOS UNICOS mark throughout the world in advertisements, in-store promotions, brochures, price lists, posters, clothing, and on numerous types of cigar-related accessories in connection with the sale and promotion of Habanos S.A.’s Cuban-origin cigars; and that the most prominent feature of the mark, the stylized “HABANOS” logo, appears on the packaging of every Habanos S.A. cigar product sold throughout the world. Statement of Facts, Point D, *supra*, Garcia Morejon Decl. ¶¶ 15-16, and Exh. 3-4. Under *Arechabala*, the fact that Habanos S.A. is currently using the mark in trade in other countries, where there are no prohibitions on trade, is alone sufficient to demonstrate that it has the requisite intent to use the mark in commerce in the United States, has not abandoned the mark, and is not merely seeking to reserve a right in the mark. *Arechabala*, at 19. Again, counterclaimant has offered *no* contrary evidence.

In addition to extensive worldwide use of the mark, the uncontradicted evidence also establishes direct ongoing efforts to promote the mark in the United States, thereby further

demonstrating the intent to use the mark upon the lifting of the embargo. The United States, the largest premium cigar market in the world, is undeniably a substantial potential market for Cuban cigars once the embargo is lifted, and the current interest in Cuban cigars among U.S. cigar consumers, as reflected in the attention that U.S. cigar magazines lavish on Cuban cigars, would obviously quickly translate into substantial sales of Habanos S.A.'s 100% Cuban-origin cigars. Garcia Morejon Decl. ¶¶ 17-21. As part of its efforts to cultivate the substantial U.S. market despite the embargo, Habanos S.A. has regularly advertised its HABANOS UNICOS mark, and its HABANOS logo, in either *Cigar Aficionado* or *Smoke*, the two major U.S. cigar consumer magazines, since soon after Habanos S.A.'s creation in 1994, as well as in other U.S. publications. See Garcia Morejon Decl. ¶ 20, and Exh. 5. Plainly, there would be no point in placing dozens of advertisements of its HABANOS UNICOS mark for over a decade in magazines directed to U.S. cigar consumers, unless Habanos S.A. had a *bona fide* intent to use the mark in the U.S. upon the lifting of the embargo.

Counterclaimant has failed to produce a shred of evidence in support of its claim that Habanos S.A. has abandoned the mark. Indeed, Applicant's principal, William Bock, did not even know that a counterclaim seeking such cancellation had been brought by his lawyers on Applicant's behalf. Bock Dep. at 28-29, 135-36. He further admitted that he had no knowledge or understanding of how Habanos S.A. had allegedly abandoned its mark. *Id.* at 136-38. Indeed, he did not even know what mark Anncas was seeking to cancel. *Id.* at 28, 29, 136. It is plain that Applicant's counsel asserted this counterclaim without investigation of either the relevant facts or law, including the CACR, the USPTO's treatment of Cuban marks, including the mark at issue, the international obligations of the United States under the Paris Convention and TRIPs, or the overwhelming public evidence of Habanos S.A.'s advertising of the mark in the U.S. and its

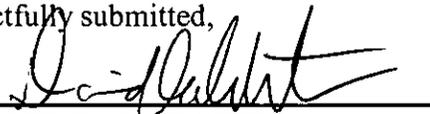
extensive use around the world. No law and no facts support this frivolous counterclaim, and its dismissal on summary judgment is required.

CONCLUSION

For the reasons stated herein, and on the papers submitted herewith, Opposer's motion for summary judgment: 1) refusing registration of Applicant's mark, HAVANA CLUB, Serial No. 78/363024; and 2) dismissing Applicant's counterclaim to cancel Registration No. 2,177,837, owned by Opposer, should be granted.

Dated: New York, New York
August 4, 2006

Respectfully submitted,



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Attorneys for Opposer Corporation Habanos, S.A.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of Opposer Corporacion Habanos, S.A.'s Motion for Summary Judgment and Points and Authorities in Support Thereof, and Declarations of David B. Goldstein, Manuel Garcia Morejon, Richard B. Perelman, and Eumelio Espino Marrero, and Exhibits thereto, were served on Applicant by mailing, postage prepaid, said copy on August 4, 2006 via U.S. Express Mail to:

Henry Rodriguez, Esq.
SANCHELIMA & ASSOCIATES, P.A.
235 S.W. Le Jeune Road
Miami, FL 33 134- 1762
Counsel for Applicant Anncas, Inc.



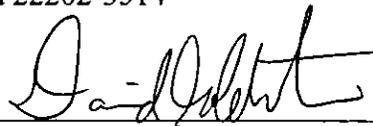
DAVID B. GOLDSTEIN

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of Opposer Corporacion Habanos, S.A.'s Motion for Summary Judgment and Points and Authorities in Support Thereof, and Declarations of David B. Goldstein, Manuel Garcia Morejon, Richard B. Perelman, and Eumelio Espino Marrero, and Exhibits thereto, is being deposited with the Unites States Postal Service with sufficient postage as Express Mail Post Office to Addressee, in an envelope addressed to :

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

on August 4, 2006



DAVID B. GOLDSTEIN

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

In the matter of Trademark Application
Serial No. 78/363024
Filed February 5, 2004
For the mark HAVANA CLUB
Published in the *Official Gazette* on December 14, 2004

_____)	
CORPORACION HABANOS, S.A.,)	
)	Opposition No. 91165519
Opposer,)	
)	
v.)	
)	
ANNCAS, INC.,)	
)	
Applicant.)	
_____)	

DECLARATION OF RICHARD B. PERELMAN

I, Richard B. Perelman, state as follows:

1. I am the founder and President of Perelman, Pioneer & Company, located in Los Angeles. I am a 1981 graduate of Loyola Law School in Los Angeles, and have been a Member of the California Bar since 1981, although I do not currently practice law. Since 1994, I have been the author of *Perelman's Pocket Cyclopedia of Cigars*, an annual publication which catalogs the more than 1,200 brands of handmade, machine-made and small cigars marketed nationally in the United States. A copy of my *curriculum vitae* is attached as Exhibit 1.
2. In addition to 12 editions of *Perelman's Pocket Cyclopedia of Cigars*, I have been the author of three editions of *Perelman's Pocket Cyclopedia of Havana Cigars*, published in 1997, 1998, and 2005, covering Cuban cigar production and Cuban cigar brands. In the development of this book, I have made two trips to Cuba under license from the Treasury Department of the

United States, including visits to Cuban tobacco plantations.

3. Since mid-2004, I have been the editor-in-chief of CigarCyclopedia.com, the first web site to offer daily coverage of cigars, cigar brand news, accessories, issues and people in cigars and smoking. As of June 2006, this site was visited more than 90,000 times monthly.

4. I have also contributed numerous articles concerning cigars to publications including *CigarCafe* (an America Online-affiliated site), *Cigars & More*, *Cigar Lifestyles*, *Penthouse*, *Smoke* magazine, *Smokeshop* magazine (a trade publication), *The Cigar Monthly* and currently as a regular columnist for the *European Cigar-Cult Journal*, a quarterly published in Vienna, Austria in German and English.

5. Because of my heavy involvement on the information side of the United States cigar industry, I have spent thousands of hours speaking with industry representatives including cigar distributors, cigar manufacturers, cigar retailers, cigar rollers, tobacco growers and processors and others involved in the trade. Since the second edition of *Perelman's Pocket Cyclopedia of Cigars*, we have included the country of origin of the wrapper, binder and filler tobaccos of all handmade brands which we list in our book. In order to gather this information, I have spent a substantial amount of time discussing tobacco, its origins and processing with growers, cigar makers and cigar distributors, either in person or via telephone or electronic mail.

6. It must be noted that my *Pocket Cyclopedia of Cigars* is designed as an information source for consumers, so that they can obtain information provided by manufacturers and distributors. I do not personally vouch for the accuracy of any of the information contained in the book and this is stated clearly in the introduction to our listings of handmade, machine-made and small cigars:

“Each brand listing includes notes on country of manufacture, the origin of the tobaccos used, shapes, names, lengths, ring gauges, wrapper color and a brief description *as supplied by the manufacturers and/or distributors of these brands.*” As an example, the descriptive information attached to the brand listing for Romeo y Julieta Vintage cigars states: “Made with perfectly fermented tobacco, the wrapper is selected for a natural, oily sheen and silky appearance. The binder is aged Mexican leaf and the filler is superbly blended Cuban seed and long-leaf Dominican tobaccos. Introduced in 1993, this is a finesse cigar, mild-to-medium in body with very round flavor and made in extremely limited supply.” This information was provided by the distributor of the brand and was not independently verified by me, but was re-written for our format. It offers the reader information about the cigar that the manufacturer or distributor provides, either in written promotional materials or in response to questions asked by me in face-to-face conversations, telephonic conversations or by electronic mail.

7. I have not been, until this case, retained as an expert witness in any proceeding. I am not employed by any cigar company or any cigar magazine (as noted, I do write a quarterly column for the *European Cigar-Cult Journal*). The attorneys for Corporacion Habanos, S.A. have asked me to assist them, for which I am to be paid an hourly fee of \$300. In the course of this effort, I have been provided with, and have reviewed the following documents:

- The Notice of Opposition and the Answer and Counterclaim in this proceeding;
- Applicant’s Response to Opposer’s First Set of Interrogatories;
- Applicant’s First Document Production, numbered 0001-0030;
- Excerpts of deposition or trial testimony given in *Empresa Cubana del Tabaco v. General Cigar Co., Inc.*, 97 Civ 8399 (S.D.N.Y.) concerning “Cuban seed” tobacco, by Oscar Boruchin, the owner of Mike’s Cigars of Miami, Florida, one of the largest cigar retailers and distributors in the U.S.; Edgar Cullman, Jr., former CEO and President of

General Cigar, the second largest manufacturer and distributor of premium cigars in the U.S.; and Angel (Daniel) Nunez, then Executive Vice-President of Tobacco Operations, and now President of General Cigar (excerpts are annexed to my Declaration as Exhibit 2).

I have also been informed that Applicant has produced in discovery, among other documents, selected pages from the 2005 edition of *Perelman's Pocket Cyclopedia of Cigars*, specifically 55, 58, 60, 70, 80, 83-84, 90-92, 96-97, 105, 127, 132-33, 138-39, 147-48, 152, 168, 172-33, 188, 206, 214, 235, 252-53, 272-75, 288-89, 296-97, 306, 326, 372, 401, 404-05, 428, 448.

8. I have been asked by counsel for Habanos, S.A. to answer, to the best of my ability and in view of my experience as a close observer of the United States cigar industry, as well as my knowledge of the Cuban cigar industry, the following three questions:

What does the term "Cuban seed tobacco" or "Cuban seeds" mean or refer to when used for tobacco or tobacco seeds that are not grown in Cuba?

9. One might logically conclude that "Cuban seed" tobacco would refer to tobacco grown from the same seeds as used in Cuba to grow tobacco there. This is not the case. Such references are in fact generally used in the United States to refer to tobacco grown outside Cuba, which is of a strain which may (or may not) have originated, many generations previously, from seeds taken from Cuba either prior to or at the time of the nationalization of the tobacco industry by the Cuban (Revolutionary) government in or about 1960. It should be noted that there is no way for the distributor of finished cigars, or the consumer, to verify that such tobacco is descended from such seeds.

10. For purposes of providing my expert opinion, I have been asked to assume that the

Applicant here claims that its proposed HAVANA CLUB-labeled cigars will be made from tobacco grown outside Cuba from seeds that are many generations descended from seeds taken from Cuba in or about 1960. I have also been asked to assume that Applicant does not know the variety or strain of "Cuban seed" tobacco that he claims was taken from Cuba and which he intends to use for his HAVANA CLUB cigars.

11. The most common use of the "Cuban seed" reference in the United States is to a commonly-grown type of cigar tobacco in the Dominican Republic called "Piloto Cubano." This variety of leaf generally offers a heavier body and taste than other types of cigar tobacco grown in the Dominican Republic. In this way, manufacturers and distributors seek to indicate to cigar buyers that the strength and flavor of a specific cigar is more substantial than if made from lighter tobaccos such as Connecticut Shade or Dominican Olor, among others. However, some cigars made with Piloto Cubano tobacco are mild or medium-bodied, depending on the nature of the blend, for example Ashé and Dunhill (both promoted as mild to medium bodied). Likewise, cigars from "Cuban seed" tobacco are likewise sometimes mild to medium bodied (*e.g.*, Bering, Bravo, Romeo y Julieta Vintage, and others. *See Perelman's Pocket Cyclopedia of Cigars* (2006 ed), excerpts annexed hereto as Exh. 3.

12. Although Piloto Cubano tobacco uses the term "Cubano," it is unknown if such tobacco variety actually originated in Cuba or not. My understanding of the vague and uncertain connection between Cuba, "Cuban seed" and "Piloto Cubano," including whether there is any link at all at, is reflected in the testimony excerpts of prominent and highly regarded cigar men in the *Cubatabaco v. General Cigar* case, referenced above.

13. For example, then-General Cigar President and CEO Edgar Cullman, Jr. testified in

Paragraph 106 of his written direct testimony: “‘Cuban seed’ refers to ‘Piloto Cubano,’ which is a type of Dominican tobacco whose seeds trace their genetic origins to tobacco grown in Cuba hundreds of years ago. It is common in the industry to advertise cigars sold in the U.S. as having been manufactured with Cuban seed.”

14. Likewise, General Cigar’s head of tobacco, Daniel Nunez, a native of the Dominican Republic, testified that “Piloto Cubano” tobacco has been grown in the Dominican Republic at least since the 1930’s and 1940’s, that “Probably it was developed in Cuba and brought into the Dominican Republic. Probably,” that “Cuban seed” is used to refer to “Piloto Cubano,” and, when asked whether there is a connection between “Cuban seed” and Cuba, answered, “Not that I know of.” (Nunez Dep at 24-26).

15. Oscar Boruchin, the cigar distributor and retailer, himself a Cuban-American, may have put it most clearly and accurately with respect to the use of the term “Cuban seed” and the U.S. cigar market:

Q. Do you have any understanding of what is meant by three varieties of Cuban seed?

A. Cuban seed is a joke of the industry, everybody, every manufacturer. I have -- like, I show you hundreds of brand cigars that always have with Cuban seed. So this is something that everybody uses in the industry. It’s common. And I laugh about it because that must be the great-grandchildren of the original Cuban seed. It’s supposed to come out of Cuba in the ‘50s or ‘60s. The great-great-great-grandchildren.

So this is something that if you look at the contents of most of the cigars made in Honduras and Dominican Republic, any manufacturer will tell you Cuban seed, filler, planted in Dominican Republic or Honduras. This is very common use of the word.

Q. When you say it’s a joke, you mean it’s meaningless as to the quality of the cigar?

A. Right.

Boruchin Dep. at 108-09.

16. In the 2006 edition of *Perelman's Pocket Cyclopedia of Cigars*, the listings of handmade brands include 23 references to "Cuban seed" and 15 references to "Piloto Cubano" tobacco and in one case they are used together as a combined reference. The references to "Cuban seed" may or may not refer to "Piloto Cubano."

What significance, if any, does the United States cigar industry attach to non-Cuban origin tobacco claimed to be grown from "Cuban seeds," or to cigars claimed to be made from "Cuban seed" tobacco?

17. As noted above, references to "Piloto Cubano" long-filler tobacco from the Dominican Republic generally indicate the strength of the leaf used in a particular blend. They do not indicate any relationship with tobacco grown in Cuba.

18. Moreover, it is clear that "Piloto Cubano" or "Cuban seed" tobacco, no matter how characterized, is *not* Cuban. Tobacco called "Cuban seed" is usually grown in the Dominican Republic, and occasionally elsewhere, including Nicaragua. These other locations have climates and soil which are different from Cuba, and from each other. In addition, the characteristics of so-called "Cuban seed" tobacco grown in the Dominican Republic and elsewhere are not static, but change according to current developments in agronomy for resistance to disease, growth size, leaf size, and desired characteristics, such as strength, aroma, and color to meet evolving consumer tastes, and so on. This reinforces the general understanding of so-called "Cuban seed" tobacco as a reference – especially in marketing efforts to consumers – to strength of flavor, or as a title of a variety of tobacco (generally referring to Piloto Cubano) and not an indication of any tangible relationship with tobacco grown in the past (or present) in Cuba. This is consistent with the depositions given by Mr. Boruchin, Mr. Cullman and Mr. Nunez, discussed above.

19. Thus, references by manufacturers or distributors simply to “Cuban seed,” or Piloto Cubano, without any other identification of the variety or characteristics of the tobacco, generally signifies to consumers in the United States (either accurately or inaccurately) an element of flavor in the cigar. In either case, the use of these terms also tries to signify or to suggest to U.S. consumers and to the trade a highly questionable or possibly false connection to Cuba of the distant past. When a manufacturer or distributor uses the term “Cuban seed” for tobacco that is *not* Piloto Cubano, with no further information about the variety or strain, then in fact the “Cuban seed” tobacco may or may not have the strength of flavor assumed by the consumer, and would then serve solely to suggest a highly questionable or possibly false connection to or association with Cuba, or Cuban tobacco or cigars of the distant past. It certainly has no relation at all to Cuban cigars of today. s

20. “Cuban seed” is not the only reference of this type in the cigar industry. The highly-prized and expensive wrapper leaf grown in Connecticut is now also grown in Ecuador at much lower cost and is sometimes referred to as “Connecticut seed” wrapper. However, such references indicate only the style and heft of the leaf and do not indicate that the taste, aroma and combustability are identical to that of leaf grown in Connecticut, unless the manufacturer is trying to deceive potential buyers that Connecticut leaf is used when it is not. Unfortunately, that is sometimes the case.

Does “Cuban seed” tobacco generally, or “tobacco grown from Cuban seed” as claimed by Applicant in its Interrogatory response, have any association or connection with Havana, Cuba, or Cuba? If so, what is that association or connection?

21. As discussed in detail in my above-responses, there is no direct connection between

tobacco referred to as “Cuban seed” or “Piloto Cubano” grown in the Dominican Republic and other locations and tobacco grown in Cuba today. Most Cuban tobacco grown today is from types developed since 1960 and especially since 1980 as the Cubans have created new strains which are resistant to diseases such as blue mold, black shank and others. Moreover, the general term “Cuban seed” means little with reference to tobacco grown in Cuba prior to 1960 since many types of tobacco were grown there and the term “Cuban seed” is a general term and not specific to any type of tobacco. Among many types, the predominant strains grown for cigars in pre-Revolutionary Cuba included Criollo for binder and filler leaves and Corojo for wrappers and some binders. Within these classifications, there were many sub-strains and independently-owned (at that time) farms often developed their own types to meet the needs of their customers. A long list of other types of tobacco were grown for use in cigarettes and pipes.

22. Thus, any reference simply to “Cuban seed” makes no specific reference to any kind of tobacco grown in Cuba, either today or in some decades. When used in its most common way, “Cuban seed” refers to Dominican Piloto Cubano, which is generally heavier leaf in body and flavor than some other strains, and which also corresponds to the U.S. consumers’ stereotype of Cuban cigars as much stronger in taste and body than American-made cigars prior to the mid-1980s. The use of the term “Cuban seed,” therefore, is generally used in the U.S. industry to suggest a highly questionable link to an imagined taste or quality (Cuban) in the minds of sellers (tobacconists) and buyers (smokers) of cigars.

23. Thus, the words “Cuban seed” can only, and at most, be considered today as a shorthand reference to a strength of flavor and body, rather than to any meaningful connection to Cuba, its tobacco or cigars. As I have also explained, however, when not referring to Piloto Cubano or to

another particular strain, “Cuban seed” does not even perform this informational function accurately, and so only has the purpose of making a highly questionable reference to Cuba. As one recent article from *Cigar Magazine* (annexed hereto as Exhibit 3) summed up the “Cuban seed” marketing phenomenon in the United States: “The advertisements for these cigar brands that literally died on the vines sure made a lot of lofty claims and every last one was made from ‘choice Cuban seed.’ (yeah, so was Ricky Ricardo.)”

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated this 2nd day of August, 2006
Los Angeles, California

A handwritten signature in black ink, appearing to read "R. B. Perelman", written over a horizontal line.

Richard B. Perelman



ALL-STATE LEGAL 680-22-0310 ED11 RECYCLED

RICHARD B. PERELMAN

3580 Wilshire Boulevard, Suite 1290 • Los Angeles, California 90010 USA

Telephone: (213) 365-7965 • Facsimile: (213) 365-7895

Electronic mail: rperelman@perelman-pioneer.com

Employment History and Professional Credentials:

CIGAR CYCLOPEDIA.COM

Los Angeles, CA

(Owned and operated by Perelman, Pioneer & Company, further described below)

Founder and Editor-in-Chief of the first website to offer daily (weekday) coverage of cigars, accessories, people and issues, beginning in June 2004. The site expanded existing publishing activities in the cigar area, including:

- ▶ *Perelman's Pocket Cyclopedia of Cigars* (12 editions: 1995-present)
The only comprehensive guide to cigars marketed nationally in the United States, updated annually. More than 150,000 copies have been sold and brand coverage has expanded from 370 in the first edition to 1,206 in the 2006 edition.
- ▶ *Perelman's Pocket Cyclopedia of Havana Cigars* (3 editions: 1997-present)
Provides complete coverage of Cuban cigar brands, sizes, manufacture and history in a pocket-sized format. New editions were published in 1997, 1998 and 2005.
- ▶ *Perelman's Pocket Cigar Finder* (12 editions: 1996-present)
Directory of cigar brands offered in national distribution in the United States and the contact information for brand manufacturers and distributors. Published in 10 editions as a support publication for the trade from 1996-2004 and then for publication on *CigarCyclopedia.com*.
- ▶ *Cigar writer and columnist:*
Provided articles and columns to the following publications:
 - CigarCafe, an America Online-affiliated site (1997-1998)
 - Cigar Lifestyles (1998)
 - The Cigar Monthly (1993-1997)
 - Cigars & More (1998)
 - European Cigar-Cult Journal (2005-2006)
 - Penthouse Magazine (2006)
 - Smokeshop Magazine (1998-2006)
- ▶ *Le Cigar Noir* and other cigar-themed events (1994-2005)
Creator and producer of more than 30 cigar-themed events, including 25 editions of "Le Cigar Noir," promoted in conjunction with *Smoke* magazine and held across the country in locations including Beverly Hills, Newport Beach, Santa Monica, San Diego and San Francisco, California; Honolulu, Hawaii; Chicago, Illinois; New Orleans, Louisiana; Cleveland, Ohio and Toronto, Canada between 1996-2000.

RICHARD B. PERELMAN, continued

Mr. Perelman also managed the cigar tasting program for the famed Friars Club in Beverly Hills, California from 2002-2004.

PERELMAN, PIONEER & COMPANY

Los Angeles, CA

Founder and President of the company, which provides special event consulting, management and publications services from April, 1987 to the present. A selection of clients includes:

- ▶ America-Japan Week (Long Beach, CA: 1997)
- ▶ Anschutz Entertainment Group (Los Angeles, CA: 2003)
- ▶ Comision Pro-Sede Olimpiadas 2004 (San Juan, Puerto Rico: 1987)
- ▶ Comite Organizador Olympic Barcelona '92 (COOB '92) (Barcelona, Spain: 1992)
- ▶ Federation Internationale de Tir a l'Arc (Lausanne, Switzerland: 1996)
- ▶ Federation Internationale de Volley-Ball (Lausanne, Switzerland: 1990)
- ▶ Los Angeles 2012 Olympic Bid Committee (Los Angeles, CA: 2001)
- ▶ National Columbus Quincentennial Celebration (New York, NY; 1992)
- ▶ Reform Party National Convention (Long Beach, CA: 2000)
- ▶ Salt Lake Organizing Committee for the XIX Olympic Winter Games (Salt Lake City, UT: 2002)
- ▶ Seattle Organizing Committee for the 1990 Goodwill Games (Seattle, WA: 1990)
- ▶ Super Bowl XXVII Host Committee (Los Angeles, CA: 1993)
- ▶ World Baseball Classic (New York, NY: 2006)
- ▶ World Cup USA 1994 (Los Angeles, CA: 1994)
- ▶ World University Games (Buffalo, NY: 1993)

Also producers of publications including *A Guide to the Athletes of the XVI Olympic Winter Games: Albertville* (1992); *Unforgettable: The 100 Greatest Moments in Los Angeles Sports History* (1995) and *Perelman's College Football Companion* (1998-99).

LIBERTY WEEKEND

New York, NY

(a division of the Statue of Liberty-Ellis Island Foundation)

Director/Accreditation and News Operations: December 1985-August 1986:

- ▶ Responsible for guest, media and staff accreditation and access system, New York Coliseum building leasing and operations and news media logistics for the July 3-6 celebration of the centennial year of the Statue of Liberty.
- ▶ Project scope included accreditation system design and processing for 18,089 applicants, management of the New York Coliseum for show rehearsals, props, wardrobe and the Center for News Media; planning and provision of services for 590 news agencies/5,116 accredited media operating at 11 sites.

RICHARD B. PERELMAN, continued

- ▶ Directly responsible for 12 full-time staff and 50 short-term staff; budget authority for the combined areas totaled nearly \$1 million.

LOS ANGELES OLYMPIC ORGANIZING COMMITTEE **Los Angeles, CA**

Editor-in-chief/Official Report of the Games of the XXIIIrd Olympiad: September 1984-June 1985:

- ▶ Responsible for all phases of production of the two-volume, 1,584-page, hard-bound Official Report of the 1984 Olympic Games.
- ▶ Project scope included compilation and editing of 3,566-page manuscript, selection of 1,045 color photographs, artwork, layout, printing and binding within a nine-month time frame.
- ▶ Directly responsible for 26 full-time employees, negotiation and administration of service agreements with all major vendors; control of project budget in excess of \$4.4 million.

Vice President/Press Operations: February 1981-September 1984:

- ▶ Responsible for planning and provision of services for 8,700 news media (press, photographic, radio and television) who attended the Games of the XXIIIrd Olympiad.
- ▶ Project scope included media accreditation, housing, information services, Main Press Center, photography, technology, transportation and operations at 36 sports and athlete village sites.
- ▶ Directly responsible for 25 full-time employees and 1,378 Games-period employees; controlled budget of \$5.0 million cash and \$4.4 million of in-kind goods and services.

MEMBER OF THE STATE BAR OF CALIFORNIA

Admitted to practice: December, 1981.

- ▶ Author of "Violence in Professional Sports: Is it Time for Criminal Penalties?," 2 *Loyola Entertainment Law Journal* 75 (1983).
- ▶ Member of the American Bar Association, including Forum Committees on Communications Law and the Entertainment and Sports Industries.

USA TRACK & FIELD

Indianapolis, IN

Served as national statistician and national team press officer from 1977-81 while an undergraduate and graduate student.

RICHARD B. PERELMAN, continued

- ▶ Editor of 36 books and pamphlets on U.S. track and field, including development of the *American Athletics Annual*, *Indoor Track*, *United States Cross Country Handbook* and the *United States Junior Track & Field Annual*.
- ▶ Press officer for six national teams competing in 13 meets in eight nations, including the 1980 United States Olympic track & field team and the 1979 and 1981 United States World Cup teams.

Education:

LOYOLA LAW SCHOOL

Los Angeles, CA

Degree: Juris Doctor awarded May, 1981.
Honors: Dean's List, 1979-80 and 1980-81 terms.
Activities: Executive Editor, *Loyola of Los Angeles Entertainment Law Journal*; Intern to United States Magistrate Ralph J. Geffen, Fall 1980.

UNIVERSITY OF CALIFORNIA, LOS ANGELES

Los Angeles, CA

Degree: Bachelor of Arts in Economics awarded June, 1978.
Honors: Chancellor's Marshall at Commencement, 1978;
Member, Honors Program, 1975-78.
Activities: Manager of the UCLA track & field team, 1975-78;
Sportswriter, *The Daily Bruin*, 1976-78.

Additional information and references available upon request.

(v15: 70606)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMPRESA CUBANA DEL TABACO d.b.a.
CUBATABACO,

Plaintiff,

v.

CULBRO CORPORATION and
GENERAL CIGAR CO., INC.,

Defendants.

Civil Action No.
97 Civ. 8399 (RWS)

**DIRECT TESTIMONY OF
EDGAR M. CULLMAN, JR.**

1. My name is Edgar M. Cullman, Jr. and I am the President and Chief Executive Officer of General Cigar Co., Inc.

Personal Background

2. I graduated from Yale University with a B.A. in 1968. After graduating from Yale I enlisted in the U.S. Army. I was posted to the 500th Military Intelligence Group in Japan. In 1971 I was honorably discharged from the Army at the rank of Specialist 4th Class. Subsequently I entered the trainee program at Manufacturer's Hanover Trust Company and worked in the credit area in two branches. After almost three years with Manufacturer's Hanover, I entered the family business in 1974.

3. The Cullman family has been involved in the tobacco business since my great-grandfather emigrated from Germany. For over a century, my family has been involved in the buying, selling, and growing of tobacco leaf. My father became involved in the cigar industry when he purchased a controlling interest in General Cigar Company in 1961.

4. I joined General Cigar as an Executive Trainee. I learned every aspect of the cigar business from growing and processing tobacco to cigar making, as well as marketing and sales. I started working in Puerto Rico where we sorted Connecticut wrappers. Later I

worked in our operations in Kingston, Jamaica; Tampa, Florida; and Wilkes-Barre and Philipsburg, Pennsylvania. My job was to document all aspects of the cigar business and thereby educate myself in the business in preparation for a management position.

5. In 1976, I was appointed Senior Vice President/Cigars and Tobacco of General Cigar. In December 1976 I was appointed Executive Vice President in charge of marketing for General Cigar. In 1978 I was appointed Executive Vice President and Chief Operating Officer of General Cigar. In 1980, I became President of General Cigar and a member of the company's Board of Directors. I became President of Culbro Corporation in 1984. By that time, Culbro, which was formed in the 1970s as the parent company of General Cigar, had businesses in a wide variety of industries, including pharmaceuticals, plastics, distribution, real estate, plant nurseries, mortgage finance and snack foods. From the late 1980s through the late 1990s many of those companies were sold or spun off.

6. In 1996, I became Chief Executive Officer of Culbro. In 1997, Culbro was merged into General Cigar Holdings, Inc. As part of that transaction, all of the remaining Culbro businesses other than its cigar business were spun off into a separate entity. In 1999, General Cigar sold its mass-market cigar business to Swedish Match. In 2000, General Cigar went private, and Swedish Match acquired a 64% interest in General Cigar.

7. When I was named President of Culbro in 1984, my focus shifted away from the cigar business to a broader one, because Culbro owned operating companies in the multitude of industries mentioned above. I was therefore not as involved in the day-to-day management of General Cigar during that period. I was, of course, still ultimately responsible for the cigar business, as I was for all our businesses. It was not until 1997, by which time we had sold off most of our non-cigar businesses, that I began once again to focus solely on cigars.

start of the sales year. The marketing plan identifies the 1997 Retail Tobacco Dealers Association ("RTDA") convention as the target for introduction of a new COHIBA super-premium cigar.

105. I was disappointed that it had taken so long to get the cigar to market but I wanted us to get the blend and marketing correct. I wanted to create a smoking experience that was really something special to the consumer. The company was also very busy dealing with the incredible demand for its other products.

106. I believe we chose the blend for our super-premium COHIBA sometime in 1996 or 1997, though I do not recall precisely when that occurred. We ended up choosing a blend composed of a Cameroon wrapper, Jember binder, and Cuban seed filler tobacco from the Dominican Republic. "Cuban seed" refers to "Piloto Cubano," which is a type of Dominican tobacco whose seeds trace their genetic origins to tobacco grown in Cuba hundreds of years ago. It is common in the industry to advertise cigars sold in the U.S. as having been manufactured with Cuban seed. Because Cuban cigars cannot legally be sold in the U.S., most premium cigar smokers are familiar with what we (and other U.S. cigar companies) mean by "Cuban seed."

107. Sometime in January 1997, while General Cigar was in the midst of planning for the re-launch of COHIBA and the introduction of our new super-premium cigar, I learned that Cubatabaco had filed a petition with the PTO to cancel General Cigar's ownership. I was very surprised to hear about this and did not understand why Cubatabaco would have done such a thing.

108. After Cubatabaco filed its petition, I took it upon myself to try to open a dialogue with them, in order to persuade them that it was in both parties' interests for General Cigar to continue developing its own Dominican-made COHIBA brand in the U.S. while the

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EMPRESA CUBANA DEL TABACO,)
d.b.a. CUBATABACO,)
)
Plaintiff,)
)
- against -)
)
CULBRO CORPORATION, and)
GENERAL CIGAR CO., INC.,)
)
Defendants.)

Index No.
97 Civ. 8399
(RWS)

DEPOSITION OF ANGEL NUNEZ
New York, New York
Tuesday, October 30, 2001

Reported by:
LINDA DEVECKA
JOB NO. 127330

nunez.excerpts

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7

October 30, 2001

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9:40 a.m.

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Deposition of Defendants Culbro

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Corporation and General Cigar Co., Inc.,

14

by ANGEL NUNEZ, held at the offices of

15

Rabinowitz, Boudin, Standard, Krinsky &

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Lieberman, P.C., 740 Broadway, New York,

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New York, pursuant to Notice, before LINDA

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DEVECKA, a Notary Public of the State of

19

New York.

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2 A P P E A R A N C E S:

3

4 RABINOWITZ, BOUDIN, STANDARD,

5 KRINSKY & LIEBERMAN, P.C.

6 Attorneys for Plaintiff

7 740 Broadway at Astor Place, 5th Floor

8 New York, New York 10003-9518

9 BY: DAVID B. GOLDSTEIN, ESQ.

10

11

12 MORGAN & FINNEGAN, LLP
13 Attorneys for Defendants
14 345 Park Avenue
15 New York, New York 10154-0053
16 -and-
17 LATHAM & WATKINS, ESQS.
18 885 Third Avenue
19 New York, New York 10022-4802
20 BY: ELENA C. NORMAN, ESQ.
21
22

23 ALSO PRESENT:

24 ROSS WOLLEN

25 - oOo -

□

4

1
2 IT IS HEREBY STIPULATED AND AGREED by
3 and between the attorneys for the respective
4 parties herein, that filing and sealing be
5 and the same are hereby waived.

6 IT IS FURTHER STIPULATED AND AGREED
7 that all objections, except as to the form of
8 the question, shall be reserved to the time
9 of the trial.

10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be sworn to
12 and signed before any officer authorized to
13 administer an oath, with the same force and
14 effect as if signed and sworn to before the
15 Court.

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2 A N G E L N U N E Z , called as a witness,
3 having been duly sworn by a Notary Public,
4 was examined and testified as follows:

5 EXAMINATION BY

6 MR. GOLDSTEIN:

7 Q. Mr. Nunez, would you please state your
8 full name and address.

9 A. Angel Daniel Nunez. Address is Bonce
10 #15 La Rinconada, Santiago, Dominican Republic.

□

23

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Nunez

2 A. They did grow a little bit.

3 Q. It wasn't a large-scale production?

4 A. No, sir.

5 Q. What did you do for the Dominican
6 Institute of Tobacco?

7 A. Plant breeding.

8 Q. For what kind of tobacco?

9 A. Mostly for long filler, Piloto Cubano.

10 Q. That's for cigars or for cigarettes?

nunez.excerpts

- 11 A. Both.
- 12 Q. When you say "breeding," what were you
13 trying to accomplish?
- 14 A. Different and improved varieties of
15 tobacco. Tobacco varieties.
- 16 Q. What is Piloto Cubano?
- 17 A. It's a seed grown locally.
- 18 Q. Why "Cubano"?
- 19 A. Why "Cubano"?
- 20 Q. Is there a connection to Cuba or is it
21 a name?
- 22 A. It's a name.
- 23 Q. Is Piloto Cubano considered Cuban seed
24 tobacco?
- 25 A. Yes.

□

24

1 Nunez

- 2 Q. Why is it considered Cuban seed?
- 3 A. Why?
- 4 Q. Yes.
- 5 A. Probably it was developed in Cuba and
6 brought into the Dominican Republic. Probably.
- 7 Q. It's probable that the seed was from
8 Cuba originally some generations ago?
- 9 A. Probably.
- 10 Q. Is there any other connection to Cuba
11 other than that the seed may have come from Cuba
12 some generations earlier?
- 13 A. Connections in -- can you be specific
14 when you say "connections"?
- 15 Q. Is there any other connection to Cuba

16 of the Piloto Cubano?

17 MS. NORMAN: Objection. He has already
18 testified as to his understanding of the
19 meaning of the term.

20 Q. Any others?

21 A. No.

22 Q. In the industry there are sometimes
23 references to Cuban seed tobacco; are you aware of
24 that?

25 A. Yes.

□

25

1 Nunez

2 Q. Is Cuban seed tobacco and Piloto Cubano
3 the same thing?

4 A. No.

5 Q. What is the difference?

6 A. Piloto Cubano is today the Dominican
7 seed that has been grown for decades. Why the
8 name Cubano on that, I don't know, but it's been
9 many decades, since the '30s and '40s.

10 Q. Since the '40s this has been grown in
11 the Dominican Republic?

12 A. I don't know exactly how long back.
13 Since I remember that's the name, that's the seed
14 that's been grown locally and it's used for
15 cigarettes and for long filler cigars.

16 Q. What is Cuban seed tobacco?

17 A. Cuban seed, if I translate it like --
18 There is no such thing as I know as
19 Cuban seed.

20 Q. The Cohiba that General Cigar sells,
21 the filler is Piloto Cubano; is that correct?

nunez.excerpts

22 A. Yes.

23 Q. You are aware when they advertised it
24 they advertised it as Cuban seed; you are aware of
25 that, right?

□

26

1 Nunez

2 A. It's a generic name.

3 Q. "Cuban seed" is a generic name for
4 what? That's what I am trying to find out.

5 A. For a style of tobacco.

6 Q. Is there any connection between Cuban
7 seed and Cuba?

8 A. Not that I know.

9 Q. Not that you know?

10 A. No.

11 Q. What is the style that "Cuban seed"
12 refers to?

13 A. The Piloto Cubano Cuban seed or just
14 Cuban seed.

15 Q. You said Cuban seed is a style of
16 tobacco?

17 A. A generic name, I think I said. A
18 generic name.

19 Q. A generic name for what?

20 A. For the long filler. The style is
21 short in size, relatively short.

22 I mean, we have to have a description
23 of what -- is that what you are looking for, a
24 description of that specific type of seed?

25 Q. I know that General Cigar said its

□

27

1 Nunez
2 cigar was three varieties of Cuban seed. All I am
3 trying to find out is what Cuban seed tobacco is.
4 You said it's a style of tobacco and
5 you said it was a generic name for long filler
6 tobacco; is that correct?

7 A. Yes.

8 I will have to explain the whole
9 concept as I perceive it, as I understand it, to
10 understand what we call generic name and where the
11 seeds are coming from and everything.

12 Q. Okay. Can you do that?

13 A. I can try. It's very difficult in
14 tobacco to understand and to have the whole
15 history of the seeds.

16 Cuba has had a name for many years as
17 well as Sumatra. We have been crossing -- just
18 like grapes, we have been using seed from many
19 countries for decades, and depending where it
20 comes from, traditionally the name comes with it.

21 Q. Is all long filler tobacco grown in the
22 Dominican Republic, Cuban seed tobacco?

23 A. No. Some have origin right in the
24 Dominican, some have been crossed with Sumatra and
25 been grown for --

□

28

1 Nunez

2 It depends on who actually worked with
3 that specific seed for many years, and just a
4 single select.

5 Q. What makes the Piloto Cubano used in
6 General Cigar's Cohiba Cuban seed tobacco?

nunez.excerpts

7 MS. NORMAN: Objection. I think you
8 are characterizing the witness's testimony.

9 MR. GOLDSTEIN: The record will speak
10 for itself.

11 MS. NORMAN: You can answer.

12 A. Repeat the question.

13 Q. What makes the Piloto Cubano that is
14 used in General Cigar's Cohiba Cuban seed tobacco?

15 A. We have the name when the seeds are
16 brought from any origin, we keep the origin as a
17 name. And every time we select it, we always --
18 just like Sumatra seed, we keep the name of the
19 origin, where the seed is coming from.

20 Q. Is there a limit to how many
21 generations there can be and still be considered
22 Cuban seed?

23 A. I don't think so.

24 Q. Does it denote a quality of the tobacco
25 in terms of either a taste or a strength?

□

29

1 Nunez

2 A. It could.

3 Q. But not necessarily? It's more a
4 designation of origin as opposed to a quality of
5 plant or whether it's robust or mild?

6 MS. NORMAN: Objection. Is that a
7 question or are you testifying?

8 MR. GOLDSTEIN: I am asking.

9 MS. NORMAN: Can you restate that as a
10 question to the witness.

11 MR. GOLDSTEIN: I thought it was.

12 MS. NORMAN: It was a statement.

13 Q. Does the name "Cuban seed" denote
14 anything other than probable origin?

15 A. It could relate to the style of the
16 tobacco. It could.

17 Q. By "style" you mean?

18 A. I think I will have to --
19 In tobacco, not so many things are
20 so -- I can try.

21 Q. Can you summarize what you mean by
22 "style"?

23 A. Yes. I will try.
24 Just like a horse breed, you still keep
25 the origin from the original name. A style of

□

30

1 Nunez

2 tobacco -- we call style of tobacco and we have a
3 description of it. It's not written, because
4 these things are not documented in tobacco.

5 Q. Is Piloto Cubano itself considered in
6 the tobacco businesses to have certain
7 characteristics in terms of taste or strength?

8 A. Yes.

9 Q. What are those characteristics?

10 A. Oily, narrow leaf, small veins,
11 specific flavor and specific strength.

12 Q. What is the specific flavor? Is there
13 a term for it or it has its flavor?

14 A. It has its flavor.

15 Q. And specific strength, it has a
16 strength. What kind of a strength does it consist
17 of?

18 A. Strength is medium to high. That's the
19 description of the product.

20 Q. Is it considered in the tobacco
21 industry to be a taste in any way similar to Cuban
22 long filler tobacco?

23 A. Similar?

24 Q. Yes.

25 A. No, sir.

□

31

1 Nunez

2 Q. Is it considered within the industry to
3 be specifically known as not similar to a Cuban
4 taste?

5 A. I don't think so either.

6 Q. Is Piloto Cubano a species?

7 A. No, just a variety.

8 Q. Are there other varieties of Cuban seed
9 tobacco grown in the Dominican Republic other than
10 Piloto Cubano?

11 A. Yes.

12 Q. Can you name a couple?

13 A. I can name one. San Vicente.

14 Q. Any others that you are aware of?

15 A. No.

16 Q. Is San Vicente used in any premium
17 cigars sold in the United States that you are
18 aware of?

19 A. Yes.

20 Q. Used by General Cigar?

21 A. No, sir.

22 Q. When you were in the Tobacco Institute,

nunez.excerpts

23 the Dominican Institute of Tobacco, did you do

24 anything other than breeding Piloto Cubano?

25 A. Yes.

boruchin excerpts

0001
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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CASE NO. 97 Civ. 8399 (RWS)

EMPRESA CUBANA DEL TABACO d.b.a.)
CUBATABACO,)
)
PLAINTIFF,)
)
-against-)
)
CULBRO CORPORATION and)
GENERAL CIGAR CO., INC.,)
)
DEFENDANT.)
----- X

DEPOSITION OF OSCAR L. BORUCHIN
Taken before BARRY S. BATTERMAN, RPR,
Registered Professional Reporter and Notary Public
in and for the State of Florida at Large, pursuant
to Notice of Taking Deposition filed in the above
cause.

2650 Southwest 27th Avenue
Second Floor Conference Room
Miami, Florida
9:40 A.M. - 1:25 P.M.
Tuesday, July 25, 2000

APPEARANCES
ON BEHALF OF THE PLAINTIFF
RABINOWITZ, BOUDIN, STANDARD
KRINSKY & LIEBERMAN, P.C.
740 Broadway
New York, New York 10003
BY: DAVID B. GOLDSTEIN, ESQ.

ON BEHALF OF THE DEFENDANT AND THE WITNESS

MORGAN & FINNEGAN, LLP
345 Park Avenue
New York, New York 10154-0053
BY: JANET DORE, ESQ.

ALSO PRESENT: DIANA BORUCHIN, ESQ.

boruchin excerpts

23
24
25
0003

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0004

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1 Thereupon:
2 OSCAR L. BORUCHIN
3 was called as a witness and, having been first duly
4 sworn, was examined and testified as follows:
5 DIRECT EXAMINATION
6 BY MR. GOLDSTEIN:
7 Q. Mr. Boruchin, could you please state your
8 name and business address for the record?
9 A. Oscar Boruchin. 1030 Kane Concourse, Bay
10 Harbor, Florida, 33154.

0108

1 paragraphs, could have been provided by her.
2 Q. But you don't know about the rest of it?
3 A. No.
4 Second thing here, that neither us nor
5 Susan had knowledge, like the contents of the cigar,
6 like the wrapper and all that. We didn't really
7 know that until actually the party.
8 Q. So you think that would have had to come
9 from a General Cigar source?
10 A. Yeah.
11 Q. Speaking of that, where you pointed to the
12 wrapper and such, just above that it says the cigar
13 features three varieties of Cuban seed and Dominican
14 filler tobacco.
15 A. Right. We were not aware of how the blend
16 was made or --
17 Q. Do you have any understanding of what is

boruchin excerpts

18 meant by three varieties of Cuban seed?

19 A. Cuban seed is a joke of the industry,
20 everybody, every manufacturer. I have -- like, I
21 show you hundreds of brand cigars that always have
22 with Cuban seed. So this is something that
23 everybody uses in the industry. It's common. And I
24 laugh about it because that must be the
25 great-grandchildren of the original Cuban seed.

0109

1 It's supposed to come out of Cuba in the '50s or
2 '60s. The great-great-great-grandchildren.

3 so this is something that if you look at
4 the contents of most of the cigars made in Honduras
5 and Dominican Republic, any manufacturer will tell
6 you Cuban seed, filler, planted in Dominican
7 Republic or Honduras. This is very common use of
8 the word.

9 Q. When you say it's a joke, you mean it's
10 meaningless as to the quality of the cigar?

11 A. Right.

12 Q. Do you know what is meant by three
13 varieties of Cuban?

14 A. No.

15 Q. You're selling it today --

16 A. Yes.

17 Q. Do you know what that refers to?

18 A. No.

19 Q. If a customer asks, "what's this three
20 varieties of Cuban seed," do you know what to tell
21 them?

22 A. Cuban seed tobacco, they call it Jember
23 wrapper, which is, I believe, Dominican wrapper.

24 Q. Binder or wrapper?

25 A. Binder. Indonesian. Cameroon wrapper.

0110

1 That's what we say.

2 Q. If a customer came and said, "what is this
3 three varieties", what --

4 A. We have to say exactly that, three
5 varieties of Cuban. Because we don't know -- is no
6 other specification.

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*Perelman's
Pocket Cyclopedia
of Cigars
2006 edition*



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On the Cover

The amazing White House humidor created for Altadis U.S.A. for its new Montecristo Classic and Montecristo White brands. Issued in late 2005, it has space for 300-500 cigars and is a unique showpiece.

Photograph courtesy of Altadis U.S.A.

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*Perelman's
Pocket Cyclopedia
of Cigars*

2006 edition

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Please send comments, inquiries, questions and suggestions to the author at:

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cigars, accessories, issues and people*

INTRODUCTION

The renaissance continues.

That's the story in cigars for 2005, as increased consumption led to the introduction and return of more than 100 brands for the second consecutive year.

After receding in five consecutive editions from 2000 through 2004, the number of brands profiled jumped from 1,091 in the 2005 edition to 1,206 for 2006, a jump of almost 11%. The all-time high of 1,448 was reached in 1999. We may get there again.

Here are a few tips to help users of this book, to make your exploration and research efforts more fun:

About this book:

We have provided critical details on a lot of cigars. A total of 1,206 brands are profiled, comprising more than 5,000 models. That's a lot more than the 370 brands we started with in our inaugural edition in 1995.

We note that our listing represents virtually every brand *marketed* nationally. Readers will find some brands which are not listed here, but which are available at his or her local smokeshop. These brands are very likely:

- Private label or unbranded cigars offered by major manufacturers, on which store names are placed for local sale;
- House brands produced for individual cigar lounges, mail-order houses or retailers, which are not available through wholesalers for national distribution to tobacco stores;

INTRODUCTION

- ▶ Cigars produced by small, local factories and marketed regionally, or brands which are still *available* nationally, but without any active marketing effort behind them;
- ▶ New lines introduced after this book was completed;
- ▶ Close-outs (still widely sold!) or discontinued brands no longer produced or available from manufacturers.

This should not dissuade readers from trying or enjoying these cigars. We actively encourage everyone to try new cigars and refrain from the kind of "cigar snobbery" which is so easy for premium cigar smokers to fall into. *The best cigar you will ever smoke might be the next one you try.*

Readers looking for details on these brands may wish to consult our previous editions, which covered many brands now out of production. Please visit our *CigarCyclopedia.com* web site if you wish to purchase back issues of our *Perelman's Pocket Cyclopedia of Cigars*.

About the brands:

We have tried to list, for each handmade brand, the country of origin of the wrapper, filler and binder. While we have received wonderful cooperation from the manufacturers and distributors, more than one executive has told us something like, "This is what we would like to use, but if we can't get it, we will blend in something else."

In most cases, this should *not* be of great concern. After all, most consumers buy specific cigars based on an expectation of taste and draw, not on the ingredients. Recent history shows that

INTRODUCTION

master blenders have little difficulty re-configuring brands with different tobaccos to achieve the same taste and quality of construction.

About the shapes:

The major trends in brands and shapes for 2005 showed (1) fewer shapes in most brands, concentrated on bigger ring gauges. (2) more strongly-flavored blends and (3) more consumer-friendly packaging. The clearest trends are for:

- ▶ Continued introduction of new lines which are extensions of well-known brands, giving the new blends a major marketing advantage;
- ▶ More perfecto and "box-pressed" shapes with reference to old Cuban sizes and shapes and larger ring gauges;
- ▶ New packaging not only offering the smoker their favorite brands in packs of 3, 4, 5 or 10, but also sampler packs of brands with a range of sizes in a single box. For so many smokers who enjoy a variety of brands, this is a welcome (and cost-saving) development indeed!

A list of the brands which feature extra large, extra long or striped-wrapper cigars is listed in section 2.04.

Cuban cigars:

Because of our concentration on cigars available in the U.S., listings of cigars produced in Cuba are not included. In response to many requests for this information, however, we have produced a companion volume, *Perelman's Pocket Cyclopedia of Havana Cigars*, available through your local tobacconist or by writing to us directly.

3.
**HANDMADE CIGARS:
LISTINGS BY BRAND**

This section provides the details on 1,052 brands of cigars, *actively marketed nationally* in the United States, a net *increase* of 101 brands from the 2005 edition. Each brand listing includes notes on country of manufacture, the origin of the tobaccos used, shapes, names, lengths, ring gauges, wrapper color and a brief description *as supplied by the manufacturers and/or distributors of these brands*. Ring gauges for some brands of cigarillos were not available.

Please note that while a cigar may be manufactured in one country, it may contain tobaccos from many nations. The designation "handmade" indicates the use of long-filler tobacco unless otherwise noted.

Although manufacturers have recognized more than 70 shades of wrapper color, six major color groupings are used here. Their abbreviations include:

- DC = Double Claro: green, also known as American Market Selection or "AMS."
- Cl = Claro: a very light tan color.
- CC = Colorado Claro: a medium brown common to many cigars
- Co = Colorado: reddish-brown.
- CM = Colorado Maduro: dark brown.
- Ma = Maduro: very dark brown (also "double Maduro")
- Os = Oscuro: black.

Many manufacturers call their wrapper colors "Natural" or "English Market Selection." These colors cover a wide range of browns and we have generally grouped them in the "CC" range. Darker wrappers such as those from Cameroon show up most often in the "CM" category.

HANDMADE CIGARS: BRAND LISTINGS

Corona	No. 3	5½	44	CM
Petit Corona	No. 4	5½	43	CM
Robusto	Robusto	5¼	50	CM
Robusto	Double Robusto	5¼	52	CM
Toro	Presidente	6¼	50	CM
Torpedo	Belicoso	5¾	52	CM

Here is the result of careful planning and brilliant execution in the making of a new brand from the workshops of Tabacalera A. Fuente. The flawless construction and smooth taste of this medium-bodied cigar make it a rewarding experience from the beginning.

ARZT DE LOS REYES

Handmade in Santiago, Dominican Republic.

Wrapper: Ecuador Binder: Dom. Rep. Filler: Dom. Rep.

<i>Shape</i>	<i>Name</i>	<i>Lgth</i>	<i>Ring</i>	<i>Wrapper</i>
Churchill	Monarch	7	48	CM
Grand Corona	Regent	6	47	CM
Long Corona	Prince	6	42	CM
Toro	Duke	6	50	CM
Robusto	Viscount	4½	50	CM

This brand was introduced in 1998 by veteran connoisseur Gary Arzt and re-introduced in 2003 by De Los Reyes Cigars. It has a medium body with a Connecticut-seed wrapper and offered in boxes of 25.

ARUBA

Handmade, with mixed filler, in Santiago, Dominican Republic.

Wrapper: Indonesia Binder: Indonesia Filler: Honduras

<i>Shape</i>	<i>Name</i>	<i>Lgth</i>	<i>Ring</i>	<i>Wrapper</i>
Double Corona	Churchill	7½	50	CM
Toro	Toro	6	50	CM
Robusto	Robusto	5	50	CM

HANDMADE CIGARS: BRAND LISTINGS

a Piloto Cubano filler combined with a Sumatra wrapper and Dominican Olor binder, packed in elegant all-cedar boxes of 25.

ASHTON CLASSIC

Handmade in Santiago, Dominican Republic.

Wrapper: USA/Connecticut Binder: Dom. Rep. Filler: Dom. Rep.

<i>Shape</i>	<i>Name</i>	<i>Lgth</i>	<i>Ring</i>	<i>Wrapper</i>
Double Corona	Churchill	7½	52	CC
Churchill	Prime Minister	6¾	48	CC
Lonsdale	8-9-8	6½	44	CC
Panatela	Panetela	6	36	CC
Corona	Corona	5½	44	CC
Slim Panatela	Cordial	5	30	CC
Toro	Double Magnum	6	50	CC
Robusto	Magnum	5	50	CC
Small Panatela	Esquire	4¼	32	CC-Ma
Torpedo	Sovereign	6¾	55	CC
Toro	Crystal Belicoso <i>(tubed)</i>	6	49	CC
Lonsdale	Crystal No. 1 <i>(tubed)</i>	6½	44	CC
Corona	Imperial <i>(tubed)</i>	5½	44	CC
Toro	Monarch <i>(tubed)</i>	6	50	CC

Robert Levin of Holt's Tobacconist of Philadelphia, Pennsylvania set out to create a great cigar in 1985 . . . and he succeeded. Ashton cigars are manufactured without compromise at the Tabacalera A. Fuente, blending six tobaccos: Dominican filler and Dominican-grown, Cuban-seed binder leaves with perfect shade-grown wrapper leaves from the Connecticut Valley for a medium-bodied taste.

ASHTON AGED CABINET SELECTION

Handmade in Santiago, Dominican Republic.

Wrapper: USA/Connecticut Binder: Dom. Rep. Filler: Dom. Rep.

HANDMADE CIGARS: BRAND LISTINGS

BELMORE CAMEROON SELECTION ★New★

Handmade in Santiago, Dominican Republic.

Wrapper: Cameroon Binder: Dom. Rep. Filler: Dom. Rep.

Shape	Name	Lgth	Ring	Wrapper
Torpedo	Petit Torpedo	5	46	CM
Torpedo	Small Torpedo	5½	48	CM
Torpedo	Torpedo	6	50	CM

Three sizes, three torpedos in this line, introduced to the U.S. in 2005, with a full-bodied flavor in boxes of 10.

BELMORE E.R.P. SELECTION ★New★

Handmade in Santiago, Dominican Republic.

Wrapper: Ecuador Binder: Dom. Rep. Filler: Dom. Rep.

Shape	Name	Lgth	Ring	Wrapper
Corona	Selection No. 1	5½	44	CC
Grand Corona	Selection No. 2	6	46	CC
Churchill	Selection No. 3	6½	48	CC
Churchill	Selection Tubos (tubed)	7	48	CC

This is a special blend introduced in 2005 that celebrates the 25th anniversary of the Charles Fairmorn factory. It's medium in body and offered in boxes of 20 except for the Tubos, offered in 10s.

BERING

Handmade in Cofradia and Danli, Honduras.

Wrapper: Honduras, USA/Connecticut Binder: Honduras Filler: Dominican Republic, Honduras, Mexico, Nicaragua

Shape	Name	Lgth	Ring	Wrapper
Lonsdale	Barons	7¼	42	CC-Ma
Pyramid	Belicoso	6¾	52	CC-Ma
Lonsdale	Casinos (glass tube)	7¼	42	DC-CC
Grand Corona	Cazadores	6¼	45	CCxxx

HANDMADE CIGARS: BRAND LISTINGS

Long Corona	Corona Royale (tubed)	6	41	CC
Grand Corona	Corona Grande	6½	46	DC-CC
Slim Panatela	Gold No. 1 (tubed)	6½	33	CC
Giant	Grande	8½	52	CC
Toro	Hispanos	6	50	CC-Ma
Corona	Imperials (tubed)	5½	42	CC-Ma
Lonsdale	Inmensas	7½	45	CC-Ma
Cigarillo	No. 8	4¼	24	CC
Long Corona	Plazas	6	43	DC-CC
Robusto	Robusto	4¼	50	CC
Torpedo	Torpedo	7	54	CC
Toro	Sabor Especial	6	50	CC
<i>Machine-made:</i>				
Cigarillo	Bering Filter	3½	20	CC

Bering is a premium handmade cigar imported from Honduras. This blend of specially selected Cuban-seed, long-leaf tobaccos is the reason for the smooth draw and mild-to-medium-bodied taste. The Imperials are available with vanilla flavoring. Berings are available in 15 shapes and a variety of wrappers and in a variety of packaging: 8s, 10s, 15s, 25s and 50s. The tiny Bering Filter, with a Nicaraguan wrapper, was introduced in 2000.

The flavored, mild-bodied Sabor Especial and box-pressed versions of the Hispano and Corona Grande were added in 2001. The Sabor Especial uses a special Honduran wrapper and is available in Amaretto, Irish Cream, rum and vanilla flavors.

BERING DOMINICAN HALLMARK

Handmade in Villa Gonzalez, Dominican Republic.

Wrapper: USA/Connecticut Binder: Indonesia Filler: Dom. Rep.

Shape	Name	Lgth	Ring	Wrapper
Robusto	Robusto	4½	50	CC
Toro	Toro	6	50	CC

HANDMADE CIGARS: BRAND LISTINGS

This cigar is made by a small factory of the same name. These are medium-to-full bodied cigars, available in 25s.

BRAVO

Handmade in Tamboril, Dominican Republic.

Wrapper: Mexico, USA/Connecticut Binder: Dom. Rep. Filler: Dom. Rep.

<i>Shape</i>	<i>Name</i>	<i>Lgth</i>	<i>Ring</i>	<i>Wrapper</i>
Long Corona	Corona	6	44	CC
Robusto	Robusto	5	50	CC
Toro	Toro	6	50	CC
Double Corona	Churchill	7	50	CC-Ma
Giant	Presidente	8½	50	CC

Introduced in 2004 by the Bravo Cigar Factory, this is a mild-to-medium-bodied blend: 80% Seco and 20% Cuban-seed leaves in the filler. Most shapes use Connecticut wrapper, but the maduro wrapper is grown in Mexico. It is presented in boxes of 25.

BRETON COROJO VINTAGE

Handmade in Santiago, Dominican Republic.

Wrapper: Dom. Rep. Binder: Dom. Rep. Filler: Dom. Rep.

<i>Shape</i>	<i>Name</i>	<i>Lgth</i>	<i>Ring</i>	<i>Wrapper</i>
Corona Extra	Magnum 46	5½	46	CM
Long Panatela	Lancero	7½	38	CM
Petit Corona	Corvette	4½	40	CM

Introduced in 1999, this is a medium-to-full-bodied brand, offered in all-cedar boxes of 12.

BRETON LEGEND SERIES

Handmade in Santiago, Dominican Republic.

Wrapper: Indonesia Binder: Dom. Rep. Filler: Dom. Rep.

<i>Shape</i>	<i>Name</i>	<i>Lgth</i>	<i>Ring</i>	<i>Wrapper</i>
Giant	Churchill	8	50	CM

HANDMADE CIGARS: BRAND LISTINGS

DUE MONDI

Handmade in Santiago, Dominican Republic.

Wrapper: USA/Pennsylvania

Binder: USA/Kentucky

Filler: Nicaragua, Peru, USA/Kentucky

Shape	Name	Lgth	Ring	Wrapper
Perfecto	Tosbano	7¾	50	CM

This unique cigar, made by Litto Gomez of La Flor Dominicana fame, can be enjoyed as is, or cut in half as in Italy to enjoy twice!

DUNHILL

Handmade in La Romana, Dominican Republic.

Wrapper: USA/Connecticut

Binder: Dom. Rep.

Filler: Brazil, Dom. Rep.

Shape	Name	Lgth	Ring	Wrapper
Double Corona	Peravias	7	50	CI
Toro	Condados	6	48	CI
Lonsdale	Diamantes	6¾	42	CI
Panatela	Samanas	6½	38	CI
Corona	Valverdes	5½	42	CI
Robusto	Altamiras (tubed)	5	48	CI
Churchill	Cabreras (tubed)	7	48	CI
Robusto	Romanos	4½	50	CI
Corona	Tabaras	5½	42	CI
Torpedo	Centenas	6	50	CI

Introduced in 1989, Dunhill's master cigar makers roll a special selection of Piloto Cubano and Olor tobaccos from the Cibao Valley of the Dominican Republic. Wrapping the blend in a Dominican binder, the bunch is then finished with the finest quality Connecticut shade-grown leaf from the Windsor Valley. Prior to final packaging, these cigars are aged in cedar-lined rooms to provide the final mellowing of their mild-to-medium-bodied flavor.

HANDMADE CIGARS: BRAND LISTINGS

<i>Great Discovery's series:</i>				
Robusto	Lot 96 Series B Maduro <i>(tubed)</i>	5	50	Ma

Introduced by Altadis USA in 2003, this blend features an earthy, medium-to-full-bodied flavor thanks to its blackened maduro wrapper and three-nation interior filler blend. The Mini-Belicoso and Belicoso shapes are box pressed. All shapes are offered in boxes of 25 with the Petite Robusto also offered in 3-packs.

ROMEO Y JULIETA VINTAGE

Handmade in La Romana, Dominican Republic.

Wrapper: Ecuador Binder: Mexico Filler: Dom. Rep.

<i>Shape</i>	<i>Name</i>	<i>Lgth</i>	<i>Ring</i>	<i>Wrapper</i>
Long Corona	I	6	43	CC
Grand Corona	II	6	46	CC
Robusto	III	5	50	CC
Churchill	IV	7	48	CC
Double Corona	V	7½	50	CC
Pyramid	VI	7	60	CC

Made with perfectly fermented tobacco, the wrapper is selected for a natural, oily sheen and silky appearance. The binder is aged Mexican leaf and the filler is superbly blended Cuban seed and long-leaf Dominican tobaccos. Introduced in 1993, this is a finesse cigar, mild-to-medium in body with very round flavor and made in extremely limited supply.

ROSA CUBA

Handmade, with mixed filler, in Esteli, Nicaragua.

Wrapper: Ecuador Filler: Dominican Republic, Honduras, Nicaragua Binder: Nicaragua

<i>Shape</i>	<i>Name</i>	<i>Lgth</i>	<i>Ring</i>	<i>Wrapper</i>
Short Panatela	Angels	4½	38	CC
Corona	Flor de Rosa	5½	44	CC

Declaration of Translation
Of Declaration of Eumelio Espino Marrero

Debra Evenson declares under penalty of perjury under the laws of the United States that the following is true and correct:

1. I am a lawyer, licensed to practice law in the State of New York, and am of counsel to the law firm Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. I was professor of law at DePaul University School of Law from 1980-1993 where I taught comparative international law. I am fluent in the Spanish language.

2. I translated the Declaration of Eumelio Espino Marrero, signed on August 2, 2006, and his Curriculum Vitae. I attach hereto a copy of the original documents in Spanish and the translation thereof which is a true and correct translation into English.

3. Because of the exigencies of time, I am sending a scanned copy of this signed declaration by email and will send the original signed declaration by express courier.

Signed this 3rd day of August of 2006



DEBRA EVENSON

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

In the matter of Trademark Application
Serial No. 78/363024
Filed February 5, 2004
For the mark HAVANA CLUB
Published in the *Official Gazette* on December 14, 2004

_____)	
CORPORACION HABANOS, S.A.,)	
)	Opposition No. 91165519
Opposer,)	
)	
v.)	
)	
ANNCAS, INC.,)	
)	
Applicant.)	
_____)	

DECLARACION DE EUMELIO ESPINO MARRERO

Yo, Eumelio Espino Marrero, declaro lo siguiente:

1. Soy Sub Director Técnico Productivo del Instituto Cubano de Investigación de Tabaco, y ciudadano cubano, con residencia en Avenida 53, No. 6602, e/66 y 68, San Antonio de los Baños, Provincia La Habana, Cuba. Los abogados de Habanos, S.A., empresa cubana y Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., me han solicitado mi opinión como experto en el asunto titulado arriba, relacionado con la afirmación del Solicitante hecha en la Oficina de Marcas y Patentes de los Estados Unidos, que sus tabacos que llevarán la etiqueta HAVANA CLUB, serán "confeccionados a partir de semilla de tabaco cubano".

2. No es práctica en Cuba recibir honorarios para proporcionar un informe de experto y presento la Declaración siguiente sin cobrar. Nunca he sido anteriormente contratado como perito en un proceso legal en los Estados Unidos o en alguna otra parte.

3. Mi padre fue productor de tabaco y posteriormente se desempeñó como especialista en la fase pre-industrial del tabaco y finalmente como torcedor, lo que hace que mi relación con este cultivo sea prácticamente desde mi nacimiento. Desde 1970, he trabajado en el desarrollo y mejoramiento genético de la semilla de tabaco para los puros cubanos, es decir, los puros fabricados en Cuba con tabaco cien por cien cultivado y procesado en Cuba. Actualmente el 100% de las variedades que se cultivan en Cuba para estos fines han sido obtenidas por mi equipo de trabajo.

A partir del 2001 paso a desempeñar la responsabilidad de Sub-Director Técnico Productivo del Instituto de Investigaciones del Tabaco, que implica el asesoramiento técnico de todos los productores agrícolas y la introducción de nuevas tecnologías y productos en la práctica productiva del tabaco.

4. Recibi mi Maestría en Ciencias Biológicas con mención en Genética Vegetal en la escuela de Biología de la Universidad de la Habana en 1996. Mi tesis abarcó el tema del mejoramiento genético del tabaco. Soy reconocido como experto en el tabaco cubano y como consecuencia he sido invitado a brindar asistencia técnica a cultivadores de tabaco en México, Brasil y Nicaragua. También me han invitado para impartir conferencias magistrales y participar en eventos y proyectos de investigación por todo el mundo sobre el desarrollo de variedades de tabaco, incluyendo Francia, Inglaterra, México, Japón, Canadá, Nicaragua, Italia, Suiza y en la antigua Unión Soviética. En 1995, impartí una conferencia en Rutgers University en New Jersey sobre "El origen y desarrollo de tabaco

en Cuba." Además, he publicado más de 50 artículos sobre tabaco cubano y la genética de las variedades de tabaco. Mi libro *The Cuban Cigar*, se publicó en los Estados Unidos en 1996. Una copia de mi Curriculum Vitae está adjunta a este Informe. Como resultado de mis viajes, investigaciones, experiencia y contactos, no soy solamente un experto en la genética de tabaco cubano, sino también tengo mucho conocimiento sobre tabaco cultivado fuera de Cuba para la producción de puros, particularmente en México, Nicaragua y Brasil.

Basado en mi conocimiento y experiencia profesional, emito la opinión experta que sigue:

He sido informado que el solicitante en este proceso, ha afirmado que sus tabacos, a los cuales pretende poner la etiqueta HAVANA CLUB, serán confeccionados con tabaco cultivado fuera de Cuba a partir de semillas que el solicitante afirma ser descendientes de semillas traídas de Cuba aproximadamente en el año 1960, y luego cultivadas por muchas generaciones fuera de Cuba, aparentemente en Nicaragua. También tengo entendido que el solicitante no ha identificado la variedad de semillas de tabaco que pretende utilizar para producir el tabaco a utilizar en dichos puros. Como el tabaco es un cultivo anual y presumiendo que los puros del solicitante serán fabricados con tabaco cultivado de dichas semillas, como se afirma, el tabaco cultivado hoy en día sería aproximadamente 45 generaciones de distancia de las semillas originales que se afirman haber sido traídas de Cuba aproximadamente en 1960.

5. En mi opinión como experto, el tabaco cultivado fuera de Cuba con semillas como las que el solicitante afirma que se van a cultivar, no preserva una relación significativa con las características distintivas del tabaco de cubano, mundialmente

famoso. No digo "ninguna relación" porque según el solicitante, la semilla que actualmente posee tiene un vínculo genético muy remoto con el tabaco cultivado en Cuba, pero reitero que no se puede afirmar que sea semilla de tabaco genuinamente cubano la que el solicitante pretende utilizar, porque las múltiples generaciones de multiplicación de la semilla original fuera de Cuba y por personal técnico no identificado con las variedades cubanas, con seguridad han provocado diferencias sustanciales tanto en calidad como en su aspecto fenotípico, de esta semilla, con respecto al tabaco original cubano.

6. Por tanto, los puros que se confeccionan con tabaco producidos a partir de estas semillas, genéticamente diferenciadas del tabaco negro cubano, no puede preservar las características organolépticas que identifican al tabaco cubano en el mundo.

7. La calidad del tabaco cubano obedece a cuatro grandes factores: la pureza genética de nuestro tabaco negro original, el suelo y el clima existentes en la zona de Vuelta Abajo en la provincia de Pinar del Río y la experiencia acumulada por los productores tabacaleros cubanos y los obreros industriales, que finalmente confeccionan el puro. Cuando uno de estos cuatro factores falla, el puro que se obtiene sin lugar a dudas no reúne las características que distinguen a un puro cubano.

8. Semillas de tabaco llevadas de Cuba al principio de los años 60 y sembradas en otro país, en este caso aparentemente Nicaragua, generación tras generación, no producirá un tabaco con la misma calidad y características del tabaco cubano, por las razones expuestas a continuación. Primero, las semillas sembradas en suelo y clima diferente al de Cuba no expresan todo su potencial genético y por tanto, no se puede seleccionar por las mismas características fenotípicas que se hace en Cuba. Segundo, si la selección de

esta semilla es realizada por un personal técnico no totalmente identificado con las características de la variedad original, nunca podrá preservar en las generaciones sucesivas de multiplicación, las características distintivas de esta variedad original.

9. Desde el principio de los 60, métodos específicos han sido implementados en Cuba a nivel nacional para garantizar la preservación de las características genéticas de cada variedad de tabaco utilizado para fabricar los puros cubanos. Bajo este programa, la producción de las semillas de tabaco está controlada por el Instituto de Investigaciones de Tabaco según procedimientos estrictos. Todas las fases de selección y producción de la semilla Original y Básica son realizados por un genetista calificado para garantizar la perpetuación de las características genéticas de las variedades. La producción de las semillas para el uso comercial se realiza en fincas especialmente diseñadas y creadas para estos fines, bajo el control técnico del Instituto de Investigación del Tabaco.

10. La tripa y el capote utilizados para hacer puros cubanos de altísima calidad, se cultivan en la región conocida como "Vuelta Abajo" en la provincia del Pinar del Río. Esta región se caracteriza por su suelo y las condiciones climáticas que garantizan la expresión en el tabaco cubano de las características organolépticas (calidad) que lo diferencian de cualquier otro tabaco producido en otras partes del mundo, incluyendo la propia Cuba. Es decir, tabaco cubano producido en cualquier otra parte de Cuba, que no sea la zona de Vuelta Abajo, no puede ser utilizado como tripa y capote de los puros cubanos de mayor renombre, porque sus características organolépticas no responden al patrón de estos puros.

11. Como consecuencia de estos factores, el tabaco producido en Nicaragua o cualquier otro país, a partir de semilla original cubana, aún en la primera generación, será diferente al tabaco producido en Cuba con la misma semilla.

12. Repito, sin comentar sobre la calidad del tabaco no cubano o los puros fabricados de este tabaco y los métodos empleados para la producción de semilla en cada país, las semillas generadas en generaciones sucesivas de multiplicación fuera de Cuba, no mostrarán las mismas características genéticas de la semilla original, porque son producidas y seleccionadas bajo condiciones diferentes a las de Cuba. Con cada generación, habrá mayor deterioro genético de la semilla original y por tanto, la calidad y características del tabaco producido a partir de estas semillas, será cada vez más diferente del tabaco producido a partir de la semilla original. Por ejemplo, cuando estuve en Nicaragua en la década de los 80, pude apreciar que el tabaco producido con la semilla de la variedad Corojo multiplicada a partir de la semilla original cubana, no mostraba las mismas características organolépticas del Corojo cultivado en Cuba.

13. Por lo tanto, desde el punto de vista de un agrónomo o genetista, no hay una conexión significativa o relevante entre el tabaco cubano cultivado en Cuba y el tabaco que se produzca a partir de semilla originalmente cubana, pero cultivada fuera de Cuba y mucho menos, después de 45 generaciones posteriores a la salida de esa semilla de Cuba.

14. No existe un análisis de ADN o prueba bioquímica para mostrar si una semilla obtenida fuera de Cuba por x generaciones se diferencia genéticamente de la semilla original, sin embargo, mediante pruebas comparativas realizadas en igualdad de condiciones, donde se evalúe las características fenotípicas y organolépticas, sí son capaces de detectar las diferencias que puedan existir entre estos dos tipos de semillas.

15. Otro caso que se puede dar, y tender a confundir a los no expertos, es la afirmación de que variedades que llevan un nombre relacionado con Cuba, como por ejemplo "Piloto Cubano" cultivado fundamentalmente en la República Dominicana, se puede producir un tabaco con similares características al cubano. En estos casos la diferencia aún es mayor, porque por lo regular estas variedades no tienen ningún vínculo genético con el tipo de tabaco negro cubano. Tal es el caso del mencionado "Piloto Cubano", que nunca se cultivó en Cuba con fines comerciales y que las pruebas realizadas en estudios comparativos con las variedades cubanas, han podido demostrar que es un tabaco totalmente diferente al cubano.

Declaro bajo pena de perjurio bajo las leyes de los Estados Unidos de América que lo anterior es verdad y correcto hasta que yo sepa y creo.

Fecha el día 2 de agosto de 2006
La Habana, Cuba



Eumelio Espino Marrero

CURRICULUM VITAE

Eumelio Miguel Espino Marrero

Residencia: Avenida 53, No. 6602
E/ 66 and 68
San Antonio de los Baños
Havana Province, Cuba

Empleo

- 2000- la fecha Sub-Director Técnico Productivo
Instituto de Investigaciones del Tabaco
Cuba
- 1985-la fecha Sub-Director Investigación Científica
Instituto de Investigaciones del Tabaco
Cuba
- 1970-1985 Jefe del Programa de Mejoramiento Genético del Tabaco
Instituto de Investigaciones del Tabaco
Cuba

Estudios

Diplomas

- 1996 Maestría en Ciencia, Universidad de la Habana, Escuela de Ciencias
Biológicas
Tesis: El mejoramiento de genético de semillas de tabaco
- 1985 Licenciado en Ingeniería, Escuela de Agronomía de la Universidad de la
Habana.

Cursos Especializados

- 1997 Genética vegetal, Universidad de la Habana, Escuela de Biología.
- 1988 Diseño experimental, Instituto de investigación de Cítricos y Frutas,
Ministerio de Agricultura
- 1982 Mejoramiento Genético del Tabaco, Instituto del Tabaco de Bergerac,
Francia.
- 1977 Genética Cuantitativa, Instituto Nacional de Ciencia Agrícola.

1969-73 Cursos avanzados en biología y genética vegetal, Universidad de la Habana, Escuela de Biología.

Investigaciones

Resultados obtenidos de las Investigaciones realizados en el Instituto de Investigaciones: nuevas variedades de tabaco, por ejemplo Tabaco Negro “Escambray-70”, “Habana-92”, “Habana-2000”, y “Habana Vuelta Arriba”.

Además, las investigaciones han incluido:

- Aplicación del método haploide-diploide en el mejoramiento del tabaco
- Parámetros genéticos-estadísticos, información básica para el mejoramiento.
- Metodología para la evaluación del Banco de Germoplasma
- Metodología para la producción de semilla.
- Análogos Androesteriles

Experiencia Internacional

- 1971 Suiza: Participar en la reunión del ISO de estandarización de métodos y técnicas empleadas en investigaciones del tabaco.
- 1971 Italia: Participar en la reunión de CORESTA y observar la aplicación práctica de técnicas de “cultivos de haploides”.
- 1972 Canadá: Tobacco Research Station, Delhi, Ontario. Intercambio de experiencias técnicas empleados en la investigación y producción del tabaco.
- 1973 Japón: Conocer la organización y métodos generales empleados en el mejoramiento del tabaco en la Corporación del Tabaco y Sal.
- 1975-76 México: Entrenar técnicos del cultivo “in vitro” de anteras. TABAMEX
- 1980 Nicaragua: Asesoramiento técnico. Instituto Nicaragüense de Reforma Agraria.
- 1981 Nicaragua: Asesoramiento técnico. Instituto Nicaragüense de Reforma Agraria.
- 1981 URSS: Estudiar las técnicas y métodos empleados en la URSS en el mejoramiento del tabaco. Instituto de Mejoramiento del Tabaco de Majorka.
- 1982 Francia: Recibir un adiestramiento sobre el mejoramiento de la resistencia al moho azul en tabaco.

- 1984 Canadá: Intercambio actualizado sobre aspectos de investigación del tabaco. Tobacco Research Station Delhi, Ontario.
- 1990 Nicaragua: Asesoramiento técnico a Estación Experimental del Tabaco de Estelí.
- 1995 Estados Unidos: Impartir una conferencia sobre el mejoramiento genético del tabaco en Cuba. Universidad de Rutgers, New Jersey.
- 1995 Inglaterra: Presentar ponencia. Reunión Internacional del Grupo Agrophyto (CORESTA)
- 1996-la fecha México: Asesoramiento técnico a la compañía ASAGRE.
- 1997 México: Presentar ponencia sobre Mejoramiento Genético. Gori Xigar Symposium
- 1997 Suiza: Presentar ponencia. Congreso de CORESTA.
- 1998-2004 Brasil: Asesoramiento técnico a la compañía DANCO.
- 1998 Argentina: Intercambio técnico sobre mejoramiento del tabaco. Cooperativa tabacalera Tucumán.
- 1999 Brasil: Intercambio técnico., Souza-Cruz
- 2003 España: Intercambio técnico, CETARSA

Investigaciones Conjuntas

Instituto de Reforma Agraria, Nicaragua: 1981, 1982

Estación Experimental del Tobacco, Estelí, Nicaragua: 1984, 1985, 1987, 1988, 1989, 1990

Instituto de Investigaciones de Bergerac, Francia: 1984, 1986, 1988

Instituto de Investigaciones de Krasnodar, URSS: 1986, 1989

Publicaciones seleccionadas

Libros

Cuban Cigar Tobacco: Why Cuban Cigars are the World's Best (New Jersey: T.F.H. Publications) 1996.

Instructivo Técnico para el cultivo del tabaco (Ministerio de Agricultura, La Habana, Havana, Cuba) 1998.

Artículos seleccionados

“El cultivo ‘in vitro’: Nueva perspectiva en el mejoramiento del tabaco en Cuba”, *Agrotecnia de Cuba*, 1974.

“Ensayo comparativo entre dos líneas de la variedad Corojo”, *Cubatabaco*, 1975.

“Componentes de la varianza en pruebas de variedades de tabaco negro”, *Agrotecnia de Cuba*, 1975

“Evaluación de variedades de tabaco rubio en Pruebas de Concursantes”, *Cubatabaco*, 1975.

“Evaluación de variedades de tabaco Burley”, *Cubatabaco*, 1976.

“Análisis dialéctico de algunos caracteres cuantitativos en variedades de tabaco negro”, *Agrotecnia de Cuba*, 1976.

“Efecto de la interacción genotipo-ambiente, en la composición química del tabaco negro cubano (N. tabaco L.), *Agrotecnia de Cuba*, 1976.

“Correlación fenotípica entre caracteres del tabaco negro cubano (N. tabacum), *Agrotecnia de Cuba*. 1977.

“Uso de la androgenesis en el mejoramiento genético del tabaco negro cubano (N. tabacum L.), *Agrotecnia de Cuba*, 1978.

“Componentes de la varianza y estabilidad fenotípica en variedades de tabaco rubio (N. Tabacum L.), *Ciencia técnica de la Agricultura*, 1980.

“Análisis de la variación cuantitativa en variedades de tabaco rubio (N. Tabacum L.), *Ciencia técnica de la Agricultura*, 1980.

“Escambray-70: Nueva variedad de tabaco negro para cultivo al sol, *Ciencia técnica de la Agricultura*, 1980.

“Características y aspectos fitotécnicos de la variedad de tabaco negro ‘Escambray-70’” *Ciencia técnica de la Agricultura*, 1980.

“Algunas características de las variedades de tabaco (N. Tabacum) cultivadas en Cuba”, folleto publicado por el Centro de Investigación y desarrollo Agrícola CIDA), Ministerio de Agricultura de Cuba, 1980.

“Efecto de diferentes factores ambientales sobre el comportamiento de las variedades de tabaco negro cubanas”, *Agrotecnia de Cuba*, 1984.

“Nuevas variedades de tabaco Burley con posibilidades comerciales en Cuba”, *Ciencia técnica de la Agricultura*, 1984.

“Obtención de nuevas variedades de tabaco rubio”, *Ciencia técnica de la Agricultura*, 1985.

“Obtención de análogos androesteriles de variedades de tabaco cubano (n. tabacum), *Ciencia técnica de la Agricultura*, 1985.

“Nuevas variedades de tabaco negro para cultivo bajo tela resistente al moho azul (P. tabacina), *Agrotecnia de Cuba*, 1987.

“Obtención de fuentes de resistencia múltiple en el tabaco negro cubano”, *Ciencia técnica de la Agricultura*, 1988.

“Evaluación de variedades de tabaco ante la infección del fuego salvaje y el moho azul en las condiciones de la URSS”, *Ciencia técnica de la Agricultura*, 1988.

“Evaluación integral de la variedad ‘Corojo Especial’ (Habana 7.5.1.) como productora de capa”, *Agrotecnia de Cuba*, 1989.

“Haban P.R.: Nueva variedad de tabaco negro (N. tabacum L.) con resistencia múltiple y buenas características comerciales”, *Agrotecnia de Cuba*, 1989.

“Resultados de ocho años de colaboración franco-cubana en el mejoramiento genético del tabaco”, *Cubatabaco*, 1991.

“Origen y mejoramiento del tabaco negro cubano”, *Tobacco Journal Internacional*, 1993.

“Dos nuevas variedades de tabaco negro para cultivo bajo tela resistentes al moho azul”, *Cultivos Agroindustriales*, 1994.

“Nuevas variedades de tabaco resistentes al moho azul obtenidas en la Est. Exp. De Tabaco de Cabaiguán”, *Infociencia*, 1996.

“Determinación de la altura de desbotonado y método de cosecha en la variedad de tabaco Habana-92”, *Infociencia*, 1996.

“Caracterización biométrica de híbridos inter específicos y progenitores del género *Nicotiana*”, *Revista Biología*, Vol 11 (1997), pp. 71-80.

“Habana-92 y ‘Habana-2000’: Dos nuevas variedades de tabaco negro cubano resistentes al moho azul (*P. tabacina* Adam)”, *Revista Cubana Agricultura*, Vol. 1, No. 1 1998.

“Nueva variedad de tabaco negro resistentes al moho azul (*P. tabacina*) para cultivo en las provincias centrales y orientales”, *Cubatabaco*, 1998.

“Habana Vuelta Arriba: Variedad de tabaco negro para cultivo en la región central y oriental de Cuba”, *Cubatabaco*, 1999.

“Comportamiento en la zona central del país de las variedades resistentes al moho azul”, *Cubatabaco*, 2002.

“Manual práctico del Supervisor Agrícola”, 1ro edición, 2002, 2do edición 2006.

“Nuevas líneas de tabaco negro resistentes al moho azul”, *Cubatabaco*, 2003.

“Evaluación de la resistencia a enfermedades en tabaco negro”, *Cubatabaco*, 2003.

“Incorporación de la EMC en las variedades Habana-92 y Habana-2000”, *Cubatabaco*, 2004.

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

In the matter of Trademark Application
Serial No. 78/363024
Filed February 5, 2004
For the mark HAVANA CLUB
Published in the *Official Gazette* on December 14, 2004

CORPORACION HABANOS, S.A.,)	
)	
Opposer,)	Opposition No. 91165519
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v.)	
)	
ANNCAS, INC.,)	
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Applicant.)	
)	

DECLARATION OF EUMELIO ESPINO MARRERO

I, Eumelio Espino Marrero, state as follows:

1. I am the Vice Director of Technical Production of the Cuban Institute of Tobacco Research, and a Cuban citizen, residing at Avenida 53, No. 6602, e/66 and 68, San Antonio de los Baños, Havana Province, Cuba. I have been requested by the American lawyers for Habanos, S.A, a Cuban enterprise -- Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. -- to provide my expert opinion in the above-captioned matter concerning the Applicant's claim in the United States Patent and Trademark Office that its proposed HAVANA CLUB-labeled cigars will be "made from Cuban seed tobacco."

2. It is not the practice in Cuba to receive fees for providing an expert report, and I submit the following Declaration without charge. I have never previously been retained as an expert witness in legal proceedings in the United States or elsewhere.

3. My father was a tobacco grower and later worked as a specialist in the pre-industrial phase of tobacco production and finally as a cigar roller, which means that I have had a relationship to this plant practically since the time I was born. Since 1970, I have worked in the development and genetic improvement of tobacco seed for Cuban cigars, that is, the cigars manufactured in Cuba from 100% tobacco grown and processed in Cuba. Currently, 100% of the varieties cultivated in Cuba for this purpose have been obtained by my work team. Since 2001, I have assumed the responsibility of Vice Director of Technical Production of the Institute of Tobacco Research, which involves providing technical assistance to all the agricultural producers and the introduction of new technologies and products for tobacco production.

4. I received my Masters degree in Biological Sciences with a specialty in Plant Genetics from the School of Biology of the University of Havana in 1996. My theses dealt with the subject of the genetic improvement of tobacco. I am a recognized expert on Cuban tobacco and, as a result, have been invited to provide technical assistance to cultivators of tobacco in Mexico, Brazil and Nicaragua. I have also been invited to give master lectures and to participate in events and research projects all over the world on the development of varieties of tobacco, including in France, England, Mexico, Japan, Canada, Nicaragua, Italy, Switzerland and the former Soviet Union. In 1995, I gave a lecture at Rutgers University in New Jersey on "The origin and development of tobacco in Cuba." In addition, I have published more than 50 articles on Cuban tobacco and the genetics of varieties of tobacco. My book, *The Cuban Cigar*, was published in the United States in 1996. A copy of my Curriculum Vitae is attached to this Report. As a result of my travel, research, experience and contacts, I am not only an expert on the genetics of

Cuban tobacco, but I also have considerable knowledge of tobacco cultivated outside of Cuba for the production of cigars, particularly in Mexico, Nicaragua and Brazil.

Based on my professional knowledge and experience, I issue the following expert opinion:

I have been informed that the applicant in this proceeding has claimed that its cigars, to which it intends to attach the label HAVANA CLUB, will be made from tobacco cultivated outside of Cuba from seeds that the applicant claims are descendants of seeds taken from Cuba in about 1960, and later cultivated for many generations outside of Cuba, apparently in Nicaragua. I also understand that the applicant has not identified the variety of tobacco seeds it intends to use to produce the tobacco for said cigars. Since tobacco is an annual crop, and assuming that applicant's cigars will be made from tobacco cultivated from said seeds, as it claims, the tobacco cultivated today will be approximately 45 generations removed from the original seeds that it claims were taken from Cuba in about 1960.

5. In my expert opinion, tobacco grown outside of Cuba from seeds such as applicant claims it will cultivate, does not retain a meaningful relationship with the distinctive characteristics of Cuban tobacco, which is world famous. I do not say "no relation" because, according to the applicant, the seed it possesses has a very remote genetic link with tobacco cultivated in Cuba, but I reiterate that it cannot be claimed that the seed which applicant intends to use is a genuine Cuban tobacco seed, because the multiple generations of reproduction of the original seed outside of Cuba by technical personnel not knowledgeable of Cuban varieties have certainly produced substantial

differences in quality as well as in the phenotype aspects of this seed with respect to the original Cuban tobacco.

6. Thus, cigars made from tobacco produced from these seeds, genetically different from black Cuban tobacco, cannot retain the organoleptic characteristics that identify Cuban cigars worldwide.

7. The quality of Cuban tobacco is derived from four major factors: the genetic purity of our original black tobacco, the soil and climate present in the Vuelta Abajo zone in the Province of Pinar del Rio and the accumulated experience of the Cuban tobacco producers and the manufacture workers who make the final cigars. When one of these factors is missing, undoubtedly, the cigar produced does not have the characteristics that distinguish a Cuban cigar.

8. Tobacco seeds taken from Cuba at the beginning of the 1960s and planted in another country, in this case apparently Nicaragua, generation after generation, will not produce tobacco with the same quality and characteristics of Cuban tobacco for the reasons stated below. First, seeds planted in different soil and a different climate than that of Cuba do not manifest all of their genetic potential and, thus, cannot be selected by the same phenotype characteristics used in Cuba. Second, if the selection of this seed is made by personnel not totally knowledgeable of the characteristics of the original variety, they can never retain the distinctive characteristics of the original variety in successive generations of reproduction..

9. Since the early 1960s, specific methods have been implemented in Cuba at a national level to guarantee the preservation of the genetic characteristics of each variety of tobacco used to produce Cuban cigars. Under this program, the production of tobacco

seeds is controlled by the Institute of Tobacco Research following strict procedures. All phases of selection and production of the Original and Basic seed are carried out by a qualified geneticist to guarantee the perpetuation of the genetic characteristics of the varieties. The production of the seeds for commercial use is carried out by specially designed farms for this purpose under the technical supervision of the Institute of Tobacco Research.

10. The filler and the binder used to make Cuban cigars of high quality are grown in the region known as "Vuelta Abajo" in the Province of Pinar del Rio. This region is characterized by its soil and climate conditions that guarantee the organoleptic (quality) characteristics in Cuban tobacco that differentiate it from any other tobacco grown in other parts of the world, including in Cuba. That is, Cuban tobacco produced in any other part of Cuba, that is not the Vuelta Abajo zone, cannot be used for filler and binder of the well known Cuban cigars, because their organoleptic characteristics do not satisfy the standards of these cigars.

11. As a result of these factors, tobacco produced in Nicaragua or any other country, from a seed of Cuban origin, even of the first generation, will be different from tobacco produced in Cuba from the same seed.

12. I repeat, without commenting on the quality of the non-Cuban tobacco or the cigars made from this tobacco and the methods employed to produce the seed in each country, the seeds generated in successive generations of reproduction outside of Cuba will not demonstrate the same genetic characteristics of the original seed because they are produced and selected under conditions different from those of Cuba. With each generation there will be greater genetic deterioration of the original seed and, thus, the

quality and characteristics of the tobacco produced from these seeds will increasingly divergent from the tobacco produced from the original seed. For example, when I was in Nicaragua in the 1980s, I could see that the tobacco produced from the Corojo variety seed reproduced from the original Cuban seed, did not manifest the same organoleptic characteristics as Corojo grown in Cuba.

13. Thus, from the point of view of an agronomist or geneticist, there is no meaningful or relevant connection between Cuban tobacco cultivated in Cuba and tobacco produced from a seed that was originally Cuba but which has been cultivated outside of Cuba, much less after 45 generations following the departure of that seed from Cuba.

14. There is no existing DNA analysis or biochemical test that can demonstrate that a seed obtained outside of Cuba for x generations is genetically different from the original seed. However, by employing comparative tests made under the same conditions, where the phenotype and organoleptic characteristics can be evaluated, it is possible to detect the differences that exist between these two types of seeds.

15. Another example that one could give, and which may confuse the non-expert, is the claim that varieties that bear a name related to Cuba, for example "Piloto Cubano", cultivated mainly in the Dominican Republic, produce tobacco with similar characteristics to Cuban tobacco. In this case the difference is even greater because in general these varieties do not have any genetic link with a type of Cuban black tobacco. This is the case with the mentioned "Piloto Cubano", which never was cultivated in Cuba for commercial purposes and which comparative studies undertaken with Cuban varieties have shown is a tobacco that is totally different from Cuban tobacco.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated this 2nd day of August, 2006
Havana, Cuba

[signature]
Eumelio Espino Marrero

CURRICULUM VITAE

Eumelio Miguel Espino Marrero

Residence: Avenida 53, No. 6602
E/ 66 and 68
San Antonio de los Baños
Havana Province, Cuba

Employment

- 2000- present Vice Director of Technical Production
National Institute of Tobacco Research
Cuba
- 1985-present Vice Director of Scientific Research
National Institute of Tobacco Research
Cuba
- 1970-1985 Head of Program of genetic improvement of tobacco
National Institute of Tobacco Research
Cuba

Education

Degrees

- 1996 Master in Science, University of Havana School of Biological Sciences
Master's Thesis: The genetic improvement of tobacco seeds
- 1985 Degree of Engineer, School of Agronomy of the University of Havana

Specialized Courses

- 1997 Plant genetics, University of Havana, School of Biology.
- 1988 Experimental Design, Institute of Fruit and Citrus Research, Ministry of Agriculture
- 1982 Genetic Improvement of Tobacco, Tobacco Institute of Bergerac, France
- 1977 Quantitative Genetics, National Institute of Agricultural Science
- 1969-73 Advanced courses in biology and plant genetics, University of Havana, School of Biological Sciences

Research

Research at the National Institute of Tobacco Research has resulted in the development of new varieties of tobacco including: Black Tobacco "Escambray-70", "Habana-92", "Habana-2000", and "Habana Vuelta Arriba".

In addition, research has involved the following:

- The Application of the haploide-diploide method in the improvement of tobacco
- Genetic-statistic parameters, basic information for the improvement of tobacco
- Methodology for the evaluation of the Germoplasma Bank
- Methodology for seed production
- Androsterile analogues

International Experience

- 1971 Switzerland: Participated in the ISO meeting of standardization of methods and techniques employed in tobacco research
- 1971 Italy: Participated in the CORESTA meeting to observe the practical application of techniques of the "cultivation of haploids"
- 1972 Canada: Tobacco Research Station, Delhi, Ontario. Exchange of technical experience in methods employed in research and production of tobacco.
- 1973 Japan: Study the organization and general methods employed in tobacco improvement at the Tobacco and Salt Corporation.
- 1975-76 Mexico: Train technicians in "in vitro" cultivation of antaras at TABAMEX
- 1980 Nicaragua: Technical assistance at the Nicaraguan Institute of Agrarian Reform.
- 1981 Nicaragua: Technical assistance to the Nicaraguan Institute of Agrarian Reform.
- 1981 USSR: Study the techniques and methods used to improve tobacco at the Institute for Tobacco Improvement and the Majorka Institute.
- 1982 France: Receive training on the improvement of blue mold resistant tobacco.
- 1984 Canada: Exchange on aspects of contemporary tobacco research. Tobacco Research Station Delhi, Ontario.

- 1990 Nicaragua: Technical assistance to the Experimental Tobacco Station in Esteli.
- 1995 United States: Lecture at Rutgers University, New Jersey, on the genetic improvement of tobacco in Cuba.
- 1995 England: Presented paper at the International Meeting of the Agrophyte Group (CORESTA)
- 1996-present Mexico: Technical assistance to the ASAGRE company.
- 1997 Mexico: Presented paper on Genetic Improvement of Tobacco at the Gori Xigar Symposium
- 1997 Switzerland: Presented paper at the CORESTA conference.
- 1998-2004 Brazil: Technical assistance to the DANCO company.
- 1998 Argentina: Technical exchange on tobacco improvement at the Tucuman Tobacco Cooperative.
- 1999 Brazil: Technical exchange, Souza-Cruz
- 2003 Spain: Technical exchange, CETARSA

Joint Research Projects

Institute of Agrarian Reform, Nicaragua: 1981, 1982

Experimental Tobacco Station, Esteli, Nicaragua: 1984, 1985, 1987, 1988, 1989, 1990

Bergerac Research Institute, France: 1984, 1986, 1988

Krasnodar Research Institute, USSR: 1986, 1989

Publications

Books

Cuban Cigar Tobacco: Why Cuban Cigars are the World's Best (New Jersey: T.F.H. Publications) 1996.

Instructivo Técnico para el cultivo del tabaco (Technical instruction for the cultivation of tobacco), (Ministry of Agriculture, Havana, Cuba) 1998.

Selected Articles

“El cultivo ‘in vitro’: Nueva perspectiva en el mejoramiento del tabaco en Cuba” (In Vitro cultivation: New perspectives on the improvement of tobacco in Cuba), *Agrotecnia de Cuba*, 1974.

“Ensayo comparativo entre dos líneas de la variedad Corojo” (Comparative test between two lines of the Corojo variety), *Cubatabaco*, 1975.

“Componentes de la varianza en pruebas de variedades de tabaco negro” (Components of the variance in tests of varieties of black tobacco), *Agrotecnia de Cuba*, 1975

“Evaluación de variedades de tabaco rubio en Pruebas de Concursantes” (Evaluation of varieties of light tobacco in tests of candidates), *Cubatabaco*, 1975.

“Evaluación de variedades de tabaco Burley” (Evaluation of varieties of Burley tobacco), *Cubatabaco*, 1976.

“Análisis dialéctico de algunos caracteres cuantitativos en variedades de tabaco negro” (Dialectic analysis of some quantitative characters in varieties of black tobacco), *Agrotecnia de Cuba*, 1976.

“Efecto de la interacción genotipo-ambiente, en la composición química del tabaco negro cubano (N. tabaco L.) (The effect of genetic-environmental interaction in the chemical composition of black Cuban tobacco), *Agrotecnia de Cuba*, 1976.

“Correlación fenotípica entre caracteres del tabaco negro cubano (N. tabacum) (Phenotypical correlation between characters of black Cuban tobacco), *Agrotecnia de Cuba*. 1977.

“Uso de la androgenesis en el mejoramiento genético del tabaco negro cubano (N. tabacum L.) (Use of androgyny in the genetic improvement of Cuban black tobacco), *Agrotecnia de Cuba*, 1978.

“Componentes de la varianza y estabilidad fenotípica en variedades de tabaco rubio (N. Tabacum L.) (Components of the variety and phenotype stability in light tobacco), *Ciencia técnica de la Agricultura*, 1980.

“Análisis de la variación cuantitativa en variedades de tabaco rubio (N. Tabacum L.) (Análisis of the quantitative variation in varieties of light tobacco), *Ciencia técnica de la Agricultura*, 1980.

“Escambray-70: Nueva variedad de tabaco negro para cultivo al sol” (Escambray-70: A new variety of black tobacco for sun cultivation), *Ciencia técnica de la Agricultura*, 1980.

“Características y aspectos fitotécnicos de la variedad de tabaco negro ‘Escambray-70’” (Characteristics and phytotechnical aspects of the black tobacco variety ‘Escambray-70’) *Ciencia técnica de la Agricultura*, 1980.

“Algunas características de las variedades de tabaco (N. Tabacum) cultivadas en Cuba” (Some characteristics of the varieties of tobacco cultivated in Cuba), brochure published by Center for Agricultural Research and Development (CIDA), Ministry of Agriculture of Cuba, 1980.

“Efecto de diferentes factores ambientales sobre el comportamiento de las variedades de tabaco negro cubanas” (Effects of different environmental factors in the behavior of Cuban varieties of black tobacco), *Agrotecnia de Cuba*, 1984.

“Nuevas variedades de tabaco Burley con posibilidades comerciales en Cuba” (New varieties of Burley tobacco with commercial possibilities in Cuba), *Ciencia técnica de la Agricultura*, 1984.

“Obtención de nuevas variedades de tabaco rubio” (Achievement of new varieties of light tobacco), *Ciencia técnica de la Agricultura*, 1985.

“Obtención de análogos androesteriles de variedades de tabaco cubano (n. tabacum) (Achievement of analogous androesteriles of varieties of Cuban tobacco), *Ciencia técnica de la Agricultura*, 1985.

“Nuevas variedades de tabaco negro para cultivo bajo tela resistente al moho azul (P. tabacina) (New varieties of black tobacco resistant to blue mold for shade cultivation), *Agrotecnia de Cuba*, 1987.

“Obtención de fuentes de resistencia múltiple en el tabaco negro cubano” (Achievement of sources of multiple resistance in Cuban black tobacco), *Ciencia técnica de la Agricultura*, 1988.

“Evaluación de variedades de tabaco ante la infección del fuego salvaje y el moho azul en las condiciones de la URSS” (Evaluation of the varieties of tobacco affected by wild fire and blue mold in the USSR), *Ciencia técnica de la Agricultura*, 1988.

“Evaluación integral de la variedad ‘Corojo Especial’ (Habana 7.5.1.) como productora de capa” (Integral evaluation of the ‘Corojo Especial’ variety (Habana 7.5.1.) as producer of binder), *Agrotecnia de Cuba*, 1989.

“Haban P.R.: Nueva variedad de tabaco negro (N. tabacum L.) con resistencia múltiple y buenas características comerciales” (Haban P.R.: A new variety of black tobacco with multiple resistance and good commercial characteristics), *Agrotecnia de Cuba*, 1989.

“Resultados de ocho años de colaboración franco-cubana en el mejoramiento genético del tabaco” (Results of eight years of French-Cuban collaboration in the genetic improvement of tobacco), *Cubatabaco*, 1991.

“Origen y mejoramiento del tabaco negro cubano” (Origin and improvement of Cuban black tobacco), *Tobacco Journal Internacional*, 1993.

“Dos nuevas variedades de tabaco negro para cultivo bajo tela resistentes al moho azul” (Two new varieties of black tobacco for shade cultivation resistant to blue mold), *Cultivos Agroindustriales*, 1994.

“Nuevas variedades de tabaco resistentes al moho azul obtenidas en la Est. Exp. De Tabaco de Cabaiguán” (New varieties of tobacco resistant to blue mold at the Experimental Station of Cabaiguán), *Infociencia*, 1996.

“Determinación de la altura de desbotonado y método de cosecha en la variedad de tabaco Habana-92” (Determination of the height and method of harvesting of the tobacco variety Habana-92), *Infociencia*, 1996.

“Caracterización biométrica de híbridos inter específicos y progenitores del género *Nicotiana*” (Biometric characterization of inter species Hybrids and ancestors of the genus *Nicotiana*), *Revista Biología*, Vol 11 (1997), pp. 71-80.

“Habana-92 y ‘Habana-2000’: Dos nuevas variedades de tabaco negro cubano resistentes al moho azul (*P. tabacina* Adam)” (Habana-92 and Habana-2000: Two new varieties of Cuban black tobacco resistant to blue mold), *Revista Cubana Agricultura*, Vol. 1, No. 1 1998.

“Nueva variedad de tabaco negro resistentes al moho azul (*P. tabacina*) para cultivo en las provincias centrales y orientales” (New variety of black tobacco resistant to blue mold for cultivation in central and eastern provinces), *Cubatabaco*, 1998.

“Habana Vuelta Arriba: Variedad de tabaco negro para cultivo en la región central y oriental de Cuba” (Habana Vuelta Arriba: Variety of black tobacco for cultivation in the central and eastern region of Cuba), *Cubatabaco*, 1999.

“Comportamiento en la zona central del país de las variedades resistentes al moho azul” (Behaviour in the central zone of the country of varieties resistant to blue mold), *Cubatabaco*, 2002.

“Manual práctico del Supervisor Agrícola” (Practical Manual for the Agricultural Supervisor), 1st edition, 2002, 2nd edition 2006.

“Nuevas líneas de tabaco negro resistentes al moho azul” (New lines of black tobacco resistant to blue mold), *Cubatabaco*, 2003.

“Evaluación de la resistencia a enfermedades en tabaco negro” (Evaluation of the resistance to diseases in black tobacco), *Cubatabaco*, 2003.

“Incorporación de la EMC en las variedades Habana-92 y Habana-2000” (Incorporation of EMC in the varieties Habana-92 and Habana-2000), *Cubatabaco*, 2004.

**Declaration of Translation
Of Declaration of Manuel García Morejon**

Debra Evenson declares under penalty of perjury under the laws of the United States that the following is true and correct:

1. I am a lawyer, licensed to practice law in the State of New York, and am of counsel to the law firm Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. I was professor of law at DePaul University School of Law from 1980-1993 where I taught comparative international law. I am fluent in the Spanish language.

2. I translated the Declaration of Manuel García Morejon. I attach hereto a copy of the original document in Spanish and the translation thereof which is a true and correct translation into English.

3. Because of the exigencies of time, I am sending a scanned copy of this signed declaration by email and will send the original signed declaration by express courier.

Signed this 3rd day of August of 2006


DEBRA EVENSON

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

CORPORACION HABANOS, S.A.,	:	
	:	
Opposer,	:	
	:	Opposition No. 91165519
- against -	:	
	:	
ANNCAS, INC.,	:	
	:	
Applicant.	:	
	:	

DECLARACION DE MANUEL GARCIA MOREJON

Yo, Manuel García Morejón, declaro lo siguiente:

1. Tengo más de 18 años de edad, de mente sana y capaz de dar el presente testimonio.
2. Tengo mi domicilio en Calle D, No. 508, entre 21 y 23, Vedado, Plaza de la Revolución, Ciudad de La Habana, Cuba.
3. Recibí mi diploma de Licenciado en Economía y Comercio Exterior en 1982 cuando cumplí mis estudios universitarios en Berlín, Alemania.
4. Entiendo y hablo con fluidez el español así como alemán. Puedo leer documentos en inglés. Hablo y entiendo inglés pero no me considero capaz de hablar inglés con fluidez.
5. El 15 de mayo de 2006, firmé el documento titulado Opposer's Objections and Responses to Applicant's First Set of Interrogatories to Corporación Habanos, S.A., que está adjunto al presente como Anexo 1.
6. Desde 1996 he sido Vicepresidente Comercial de Corporación Habanos, S.A. (en adelante "Habanos S.A."), así como miembro del "Comité de Dirección" de Habanos S.A., que está compuesto de los ejecutivos de Habanos S.A. y es el órgano que determina las políticas día a

día de la compañía. También soy miembro del Consejo de Administración (the Board of Directors) de Habanos S.A., que está compuesto por los representantes de los accionistas y decide las políticas estratégicas de alto nivel de la compañía.

7. En mi capacidad como Vicepresidente Comercial, controlo el desarrollo y implementación de las estrategias y políticas relacionados con la promoción, la publicidad y los precios de los puros cubanos. Bajo esta capacidad, he dirigido investigación de los mercados, orientado el desarrollo de los productos, gestionado la distribución de los productos a través de los canales del comercio internacional, he ejercido la responsabilidad para el diseño y compra de anuncios y desarrollado las relaciones comerciales con terceros operando en los países de Europa, Sudamérica y el América del Norte. Como parte de mis responsabilidades de trabajo, viajo extensivamente por el mundo, generalmente por lo menos una vez al mes, incluyendo por Europa, Canadá, Asia, el Medio Oriente y Latinoamérica.

8. Desde 1991 hasta 1996, antes de incorporarme a Habanos S.A., trabajaba en Alemania como director general del 5th Ave Products Trading GmbH ("5th Avenue"), una empresa que posee le distribución exclusiva de puros de origen cubano para todo Alemania (por puros de origen cubano quiero decir puros fabricados en Cuba de tabaco cien por cien cultivados y procesados en Cuba). En mi capacidad como director general de 5th Avenue, era responsable de las operaciones, incluyendo las iniciativas de mercadeo.

9. Desde su formación en 1994, Habanos S.A. ha sido responsable de la promoción y mercadeo de los puros cubanos de exportación mundial, con la excepción de los Estados Unidos, a lo cual las exportaciones de Cuba están prohibidas debido al embargo comercial contra Cuba. Durante todo el tiempo que he fungido como Vicepresidente Comercial, Habanos S.A. ha promovido y comercializado un gran número de marcas tabacaleras diferentes.

10. Durante el tiempo que cumplía con mis responsabilidades en las empresas Habanos S.A. and 5th Avenue, me familiaricé con los distintos aspectos del comercio internacional de puros. Una característica de dicho comercio es la alta opinión que ha alcanzado los puros de origen cubano.

11. Uno de los objetivos principales de Habanos S.A. es ampliar la exportación de puros cubanos en todo el mundo, aprovechando la reputación única de los puros hechos en Cuba. Para estos fines, Habanos S.A. continúa vendiendo y promoviendo las marcas notorias que han logrado fama antes de la Revolución del 1959, manteniendo no solo estas marcas, pero también los diseños tradicionales utilizados en su habilitación. También, Habanos S.A. ha desarrollado nuevas marcas que hacen referencia a Cuba, por ejemplo SAN CRISTÓBAL DE LA HABANA y CUABA.

12. Habanos S.A. ha obtenido el registro en los Estados Unidos de la marca HABANOS UNICOS DESDE 1492 & DESIGN, Registration No. 2177837, en inglés "unique Havana cigars since 1492." "Havana cigars" y "Havanas" son términos utilizados comúnmente, sobre todo en los países de habla inglesa, para denotar puros hechos en Cuba exclusivamente de tabaco cultivado en Cuba. Tengo conocimiento que los términos "Havanas" y "Havana cigars" son utilizados con frecuencia en los libros y artículos sobre puros, incluyendo en los títulos de los libros, para denotar puros de origen cubano. Tengo entendido que se están presentando de forma independiente en este proceso ejemplos de dicho uso. Nunca he visto los términos "Havanas" o "Havana cigars" utilizados para denotar algo que no sea un puro de origen cubano.

13. La palabra español "Habanos" también es, e históricamente ha sido y entendido por todo el mundo, incluyendo los países de habla inglesa, para denotar puros hechos en Cuba exclusivamente de tabaco cultivado en Cuba. "Habanos" es una apelación de origen para puros

de Cuba oficialmente registrada desde 1968, protegida bajo el Acuerdo de Lisboa para la Protección de las Apelaciones de Origen y su Registro Internacional (del cual Cuba es miembro, pero los Estados Unidos no). Asimismo, desde 1967, "Habana" es una apelación de origen registrada oficialmente bajo el Acuerdo de Lisboa para "la hoja o tabaco manufacturado, así como los productos hechos de dicho tabaco" de la "Provincia de La Habana" Copias de los certificados de Apelación de Origen de "Habanos" y "Habana" y el listado de Internet de los registros bajo el Acuerdo de Lisboa están adjuntos al presente como Anexo 2.

14. Habanos S.A. utiliza su marca HABANOS UNICOS DESDE 1492 & DESIGN, amplia y universalmente en el comercio con todo el mundo en conexión con la venta, la publicidad y la promoción de sus puros de origen cubano, incluyendo en los anuncios de revistas, la promoción en puntos de venta, y en los accesorios, por ejemplo: ceniceros, fósforos, encendedores, corta puros, listas de precio, tubos, bolsos, ropa, afiches, puros promocionales y otros artículos, en idioma español, inglés, francés y alemán. Ejemplos de dicho uso de la marca HABANOS UNICOS DESDE 1492 & DESIGN, presentados en el proceso de discovery en este asunto están adjuntos al presente como Anexo 3.

15. La figura predominante de la marca HABANOS UNICOS DESDE 1492 & DESIGN – el logo "HABANOS" estilizado – está fijado en cada envase de puros cubanos distribuidos por Habanos S.A. Muestras de dicho uso del logo HABANOS, presentados en el proceso de discovery en este asunto, están adjuntos al presente como Anexo 4.

16. El mercado más grande y lucrativo para los puros premium es el mercado estadounidense. Aunque este mercado está cerrado actualmente a Habanos, S.A. para la exportación de puros de origen cubano, debido al embargo de los Estados Unidos contra los productos cubanos, dado el tamaño y la importancia del mercado de los Estados Unidos y su

proximidad a Cuba, Habanos S.A. tiene la intención de entrar en este mercado con sus puros de origen cubano tan pronto que se lo permita la ley de los Estados Unidos. Asimismo, tan pronto que se lo permita la ley de los Estados Unidos, Habanos S.A. pretende utilizar su marca registrada HABANOS UNICOS DESDE 1492 & DESIGN en el comercio en conexión con la promoción y la publicidad en los Estados Unidos de sus puros de origen cubano, de igual forma que lo hace en el resto del mundo. Habanos S.A. estima que las ventas anuales de sus puros en los Estados Unidos, promovido con su marca HABANOS UNICOS DESDE 1492 & DESIGN y con el logo HABANOS fijado, excederá fácilmente a los \$10 millones cuando se termine el embargo.

17. Habanos S.A. nunca ha tenido la intención de abandonar su marca HABANOS UNICOS DESDE 1492 & DESIGN en los Estados Unidos, y siempre ha tenido la intención de utilizar la marca en el comercio de los Estados Unidos tan pronto se lo permita la ley estadounidense.

18. Relacionado con su intento de entrar en el mercado estadounidense tan pronto que la ley estadounidense lo permita, Habanos S.A. realiza distintas actividades para mantener y ampliar la fama de los puros de origen cubano en los Estados Unidos. Entre sus actividades, Habanos S.A. ha insertado anuncios de su marca HABANOS UNICOS DESDE 1492 & DESIGN y el logo estilizado HABANOS con regularidad en las revistas más importantes de los consumidores de puros publicadas en los Estados Unidos, *Cigar Aficionado* y *Smoke*, desde muy temprano después de la formación de Habanos S.A. en 1994, y continuando hasta hoy, así como en las publicaciones comerciales de los Estados Unidos, *Tobacco International* y *Distribution International*. Ejemplos de dichos anuncios en estas publicaciones, presentados en el proceso de discovery en este asunto, están adjuntos al presente como Anexo 5. Desde 2001 el costo de dichos anuncios ha excedido los \$275,000.

19. Otras actividades de Habanos S.A. relacionadas con su intento de entrar en el mercado estadounidense tan pronto que la ley estadounidense lo permita, incluye la solicitud de los registros de distintas marcas en los Estados Unidos y mantener vigente dichos registros, incluyendo la marca HABANOS UNICOS DESDE 1492 & DESIGN. En Enero del 2004, Habanos, S.A presentó una Declaración Sección 8 para la marca HABANOS UNICOS DESDE 1492 & DESIGN basado en la justificación del no uso debido al embargo, que me han informado fue aceptado por la USPTO. Otras actividades incluyen publicidad adicional, otorgando entrevistas a periodistas de los Estados Unidos para publicaciones tabacaleras, y facilitando el acceso de dichos periodistas a las fábricas cubanas de puros, a las vegas, a los cultivadores de tabaco y a otros vinculados a la industria tabacalera cubana. En parte como resultado de dichos esfuerzos, los puros cubanos y la evolución de la industria tabacalera cubana están reportados ampliamente en las publicaciones para los consumidores de puros y las para la industria en los Estados Unidos.

20. Todas estas actividades de información crean el interés y la familiarización con y el reconocimiento de los puros cubanos y Habanos, S.A. entre los consumidores de puros premium en los Estados Unidos y son dirigidas a facilitar la entrada en el mercado de los Estados Unidos de los productos de Habanos, S.A. que son promovidos y vendidos en conexión con la marca registrada HABANOS UNICOS DESDE 1492 & DESIGN, tan pronto que la ley estadounidense lo permita.

Declaro bajo pena de perjurio bajo las leyes de los Estados Unidos que lo anterior es la verdad y correcto hasta que sepa y creo.

Dated this ___ day of August , 2006

Havana, Cuba

MANUEL GARCIA MOREJON

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

CORPORACION HABANOS, S.A.,	:	
	:	
Opposer,	:	
	:	Opposition No. 91165519
- against -	:	
	:	
ANNCAS, INC.,	:	
	:	
Applicant.	:	

DECLARATION OF MANUEL GARCIA MOREJON

I, Manuel Garcia Morejon, declare as follows:

1. I am over the age of 18, of sound mind, and capable of giving testimony herein.
2. I reside at Calle D, No. 508, between 21 and 23, Vedado, Plaza of the Revolution, Havana City, Cuba.
3. I received my Degree in Economics and Foreign Commerce in 1982 after completing university studies in Berlin, Germany.
4. I am fluent and literate in the Spanish and German languages. I am able to read documents in English. I speak and understand spoken English, but I do not consider myself fluent in spoken English.
5. On May 15, 2006, I signed the document entitled Opposer's Objections and Responses to Applicant's First Set of Interrogatories to Corporacion Habanos, S.A., which is annexed hereto as Exhibit 1.
6. Since 1996 I have been Commercial Vice President of Corporacion Habanos, S.A. (hereinafter "Habanos S.A."), as well as a member of the "Comite de Direccion" of Habanos S.A., which is made up of the executives of Habanos S.A. and is the body that makes the day to

day executive policy decisions for the company. I am also a member of the Consejo de Administracion (the Board of Directors) of Habanos S.A., which is made up of shareholder representatives, and which sets the high level strategic policies of the company.

7. In my capacity as Commercial Vice President, I oversee the development and implementation of strategies and policies related to the promotion, advertising and pricing of Cuban cigars. In that capacity, I have commissioned market research, guided product development, managed distribution of the products via channels of international trade, exercised responsibility for the design and purchase of advertising, and developed commercial relationships with third parties dealing in countries in Europe, South America, and North America. As part of my job responsibilities, I travel extensively throughout the world, generally at least once a month, including throughout Europe, Canada, Asia, the Middle East and Latin America.

8. From 1991 to 1996, prior to joining Habanos S.A., I worked in Germany as the general director of 5th Ave Products Trading GmbH ("5th Avenue"), an enterprise that was the exclusive distributor of Cuban-origin cigars throughout Germany (by Cuban-origin cigars I mean cigars manufactured in Cuba from tobacco 100% grown and processed in Cuba). In my capacity as 5th Avenue's general director, I was responsible for operations including marketing initiatives.

9. From its formation in 1994, Habanos S.A. has been responsible for the promotion and marketing of Cuban cigar exports throughout the world, with the exception of the United States, to which cigar exports from Cuba are banned by the United States trade embargo of Cuba. Throughout my tenure as Commercial Vice President, Habanos S.A. has promoted and marketed a large number of different cigar brands.

10. During the time I fulfilled my responsibilities at Habanos S.A. and 5th Avenue, I have become familiar with various aspects of the international cigar trade. One characteristic of this trade is the high regard achieved by Cuban-origin cigars.

11. One of Habanos S.A.'s principal objectives is to expand the export of Cuban cigars throughout the world by capitalizing on the unique reputation of cigars made in Cuba from Cuban tobacco. Toward that end, Habanos S.A. continues to market and promote the well-known brands that had become famous before the 1959 Revolution, retaining not only those brand names, but also the traditional designs used in their packaging. Habanos S.A. has also developed new marks that allude to Cuba, such as SAN CRISTÓBAL DE LA HABANA and CUABA.

12. Habanos S.A. has obtained the United States trademark registration for the mark HABANOS UNICOS DESDE 1492 & DESIGN, Registration No. 2177837, in English "unique Havana cigars since 1492." "Havana cigars" and "Havanas" are commonly used terms, especially in English-speaking countries, to denote cigars made in Cuba exclusively from tobacco grown in Cuba. I am aware that the terms "Havanas" and "Havana cigars" are frequently used in cigar books and cigar magazine articles, including in book titles, to denote Cuban-origin cigars. I understand that examples of such uses are being separately submitted in this proceeding. I have never seen the terms "Havanas" or "Havana cigars" used to denote anything other than Cuban-origin cigars.

13. The Spanish word "Habanos" also is, and historically has been, understood throughout the world, including in English-speaking countries, to denote cigars made in Cuba exclusively from tobacco grown in Cuba. "Habanos" is an official registered appellation of origin for cigars from Cuba since 1968, protected under the Lisbon Agreement for the Protection

of Appellations of Origin and their International Registration (to which Cuba, but not the United States, is a party). Likewise, "Habana" is an official registered appellation of origin under the Lisbon Agreement for "leaf or manufactured tobacco, as well as products made with such tobacco" from the "Province of Havana", since 1967. Copies of the certificates of Appellation of Origin of "Habanos" and "Habana" and internet printouts of the registrations under the Lisbon Agreement are annexed hereto as Exhibit 2.

14. Habanos S.A. extensively and universally uses its mark, HABANOS UNICOS DESDE 1492 & DESIGN, in commerce throughout the world in connection with the sale, advertising and promotion of its Cuban-origin cigars, including in magazine advertisements, in-store promotions, and accessories, such as ashtrays, matches, lighters, cigar cutters, price lists, cigar tubes, bags, clothing, posters, promotional cigars, and other items, including in Spanish, English, French and German. Samples of such uses of the HABANOS UNICOS DESDE 1492 & DESIGN mark, produced in discovery in this matter, are annexed hereto as Exhibit 3.

15. The dominant feature of the HABANOS UNICOS DESDE 1492 & DESIGN mark – the stylized "HABANOS" logo – is affixed to every package of Cuban cigars distributed by Habanos S.A. Samples of such uses of the HABANOS logo, produced in discovery in this matter, are annexed hereto as Exhibit 4.

16. The United States premium cigar market is the largest and most lucrative in the world. Although that market is currently closed to the export by Habanos S.A. of Cuban-origin cigars, due to the United States embargo of Cuban goods, given the size and importance of the United States market and its proximity to Cuba, Habanos S.A. intends to enter that market with its Cuban-origin cigars as soon as United States law permits. Likewise, Habanos S.A. intends to use its registered HABANOS UNICOS DESDE 1492 & DESIGN mark in commerce in

connection with the promotion and advertisement of its Cuban-origin cigars in the United States, just as it does throughout the rest of the world. Habanos S.A. estimates that its annual sales of its cigars in the United States, promoted with its HABANOS UNICOS DESDE 1492 & DESIGN mark, and affixed with the HABANOS logo, will easily exceed \$10 million upon the end of the embargo.

17. Habanos S.A. has never had any intention of abandoning its mark HABANOS UNICOS DESDE 1492 & DESIGN in the United States, and has always had the intent to use the mark in commerce in the United States as soon as U.S. law permits.

18. In connection with its intent to enter the U.S. market as soon as U.S. law permits, Habanos S.A. engages in various activities to maintain and to expand the renown of Cuban-origin cigars in the United States. Among its activities, Habanos S.A. has regularly advertised its HABANOS UNICOS DESDE 1492 & DESIGN mark and the stylized HABANOS logo in the leading consumer cigar magazines published in the United States, *Cigar Aficionado* and *Smoke*, since soon after Habanos S.A.'s formation in 1994, and continuing through today, as well as in the United States trade publications *Tobacco International* and *Distribution International*. Samples of such advertising in these publications, produced in discovery in this matter, are annexed hereto as Exhibit 5. The cost of such advertising since 2001 has been in excess of \$275,000.

19. Other activities of Habanos S.A. in connection with its intent to enter the U.S. market as soon as U.S. law permits include applying for registrations for various marks in the United States and maintaining those registrations, including for the HABANOS UNICOS DESDE 1492 & DESIGN mark. In January 2004, Habanos, S.A. filed a Section 8 Declaration for the HABANOS UNICOS DESDE 1492 & DESIGN mark based on excusable nonuse due to

the embargo, which I have been informed was accepted by the USPTO. Other activities include additional advertising, giving interviews with United States journalists for cigar publications, and facilitating the access of such journalists to Cuban cigar factories, farms, tobacco growers, and others involved in the Cuban cigar industry. In part as a result of such efforts, Cuban cigars and developments in the Cuban cigar industry are extensively reported in cigar consumer and trade publications in the United States.

20. All of these informational activities create interest, familiarity and brand recognition among premium cigar consumers in the United States for Cuban cigars and for Habanos S.A., and are intended to facilitate the entry of Habanos S.A.'s cigars, which are promoted and sold in connection with the registered mark HABANOS UNICOS DESDE 1492 & DESIGN, into the U.S. market as soon as U.S. law permits.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated this ___ day of August , 2006
Havana, Cuba

MANUEL GARCIA MOREJON

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

In the matter of Trademark Application
Serial No. 78/363024
Filed February 5, 2004
For the mark HAVANA CLUB
Published in the *Official Gazette* on December 14, 2004

CORPORACION HABANOS, S.A.,)	
)	
Opposer,)	Opposition No. 91165519
)	
v.)	
)	
ANNCAS, INC.,)	
)	
Applicant.)	
)	

**OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF
INTERROGATORIES TO CORPORACION HABANOS, S.A.**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer Corporation Habanos, S.A. ("Opposer" or "Habanos"), by and through counsel, hereby objects and responds to Applicant Anncas, Inc.'s ("Applicant") First Set of Interrogatories to Opposer, as follows:

GENERAL OBJECTIONS

1. Opposer objects to the Interrogatories, definitions and instructions to the extent that they seek to impose obligations different from or in addition to the requirements of Fed.R.Civ.P. 26 and 33 and 37 C.F.R. § 2.120, and to the extent they are confusing, inconsistent, vague, oppressive, or unintelligible.

2. Opposer objects to the Interrogatories to the extent they seek disclosure of information concerning Opposer's registered mark HABANOS UNICOS DESDE 1492, the

English translation of that mark: “HABANOS (or “HAVANAS”) Unique Since 1492,” any other foreign language translation of that mark, or the dominant feature of that mark – the stylized word “HABANOS” as it appears in the registered mark (together “Opposer’s Mark”), and/or Applicant’s counterclaim, because that counterclaim, which purports to seek to cancel the registration of Opposer’s Mark, is interposed in bad faith, for an improper purpose and to harass, and is knowingly brought without any meritorious basis in law or fact, and without proper legal or factual investigation. Further, Applicant admits that this counterclaim is brought “to challenge the policy that the Cuban embargo excuses non-use of a mark,” a purely legal question for which no fact discovery is appropriate or necessary.

3. Opposer objects to the Interrogatories to the extent they seek disclosure of information that is protected by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege or is otherwise protected from disclosure under applicable privileges, laws, or rules of the Republic of Cuba or the United States of America. Opposer further objects to providing any information concerning privileged matters that would, in effect, reveal privileged information.

4. Opposer objects to the Interrogatories to the extent they may be construed to request disclosure of information not relevant to the claims or defenses in this proceeding or not reasonably calculated to lead to the discovery of admissible evidence.

5. Opposer objects to the Interrogatories to the extent that they are unduly burdensome, vague, ambiguous, overbroad, oppressive, repetitive, confusing, or unintelligible. Opposer further objects to the extent that certain of the requests could be construed to require identification of numerous persons with duplicative, highly tangential or minimal potentially relevant information, or information duplicative or cumulative of information provided or

available to Applicant.

6. Opposer objects to the numerous Interrogatories (almost half) that purport to seek documents, information concerning documents or purport to require Opposer to “identify” documents that are requested in Applicant’s First Request for Production of Documents and Things, or that could have been requested by Applicant in a request for documents or things.

7. Opposer objects to the Interrogatories to the extent they seek information already in the possession of Applicant or that is publicly available, including in books, magazines, newspapers, other published media, the Internet, laws, regulations, or court or administrative decisions.

8. Opposer reserves the right to supplement or amend any and all parts of the responses provided herein.

9. Opposer submits these responses without conceding the relevancy or materiality of the subject matter of any of the Interrogatories.

10. Opposer’s general objections shall be deemed to continue throughout the responses to the specific Interrogatories that follow, even where not further referred to in such responses.

11. All Opposer’s responses to the Interrogatories are based on information and belief that the persons identified have information responsive to the Interrogatories.

Without waiver of the foregoing objections, Opposer specifically responds and objects to Applicant’s Interrogatories as follows:

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify the names and addresses of the persons with the most knowledge pertaining to the matters asserted in the Notice of Opposition.

Manuel Garcia Morejon, Corporacion Habanos, S.A., Avenida 3ra, No. 2006 Miramar, Havana, Cuba; Adargelio Garrido de la Grana, Corporacion Habanos, S.A., Avenida 3ra, No. 2006 Miramar, Havana, Cuba; Ana Lopez Garcia, 83 Reivermead Court, Ranelagh Gardens, London England, SW6 3SA.

INTERROGATORY NO. 2:

Identify each document upon which any particular response to an Interrogatory is based. State the Interrogatory to which each document pertains.

Opposer objects to this Interrogatory on the following grounds: unduly burdensome, oppressive, and vague; seeks to impose discovery obligations greater than that permitted by the relevant rules; some Interrogatory Responses may not be based on any documents, or may be based on multiple documents; seeks information that is not relevant to any claim or defense in this proceeding; Applicant has sought and has had the opportunity to seek documents through Requests for Production of Documents. See Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto.

INTERROGATORY NO. 3:

Identify and describe any and all uses by Opposer of the designation **HABANOS UNICOS DESDE 1492 AND DESIGN**, or any variation thereof, on any of Opposer' [sic] goods.

Opposer objects to this Interrogatory on the following grounds: it fails to distinguish between uses in the United States and outside the United States; seeks information that is not relevant to any claim or defense in this proceeding; Applicant's counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer, and without basis in law or fact; the request to "[i]dentify and describe any and all uses" is oppressive, unduly burdensome, and vague; the terms "any variation thereof" and "uses" are not defined and are vague.

Subject to and without waiving its general and specific objections, Opposer states that Opposer's Mark is used in the United States in advertising appearing in U.S.-based cigar publications, and on websites accessible in the United States, including Opposer's website, www.habanos.com. Outside the United States, Opposer's Mark is used in advertising, promotions, on cigar accessories, including ashtrays, lighters, matches, bags, etc, and the dominant feature of Opposer's Mark, the stylized HABANOS logo, is affixed to each package of Opposer's cigar products. See Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto.

INTERROGATORY NO. 4:

(a) Set forth the date on which Opposer first decided to adopt the designation **HABANOS UNICOS DESDE 1492 AND DESIGN** or any variation thereof.

(b) Describe the circumstances and method by which Opposer adopted the designation **HABANOS UNICOS DESDE 1492 AND DESIGN** or any variation thereof.

(c) Set forth the reasons why any proposed marks or names, if any, were rejected.

(d) Identify all documents relating to Opposer's decision to select, adopt, acquire and/or use the designation **HABANOS UNICOS DESDE 1492 AND DESIGN** or any variation thereof, including and not limited to any agreements and/or assignments relating to the mark **HABANOS UNICOS DESDE 1492 AND DESIGN**.

Opposer objects to this Interrogatory on the following grounds: it seeks information that is not relevant to any claim or defense in this proceeding; is unduly burdensome, oppressive, vague, and confusing; subpart (c) is additionally unintelligible; Applicant's counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer, and without basis in law or fact; the request to "Identify all documents" in subpart (d) seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory process; the term "any variation thereof" is vague and undefined; and Applicant either has sought, or has had the opportunity to seek, this information through Requests for Production of Documents; see Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto.

Subject to and without waiving Opposer's general and specific objections, Opposer has used Opposer's mark in advertisements in the United States at least since 1995, and on goods outside the United States at least since 1995, many years prior to the date Applicant filed its intent to use application in the USPTO for the mark HAVANA CLUB for "cigars."

INTERROGATORY NO. 5:

Identify each document referring or relating in any way to any application, registration, or acquisition by Opposer of any mark containing or comprising the designation **HABANOS UNICOS DESDE 1492 AND DESIGN** or any variation thereof.

Opposer objects to this Interrogatory on the grounds that the request to "Identify each document" is unduly burdensome, oppressive, and vague; seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory process; it seeks information that is not relevant to any claim or defense in this proceeding; Applicant's counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer; Applicant either has sought, or has had the opportunity to seek, this information through Requests for Production of Documents; see Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto.

INTERROGATORY NO. 6:

Identify each document referring or relating in any way to any opposition, cancellation, or litigation in which Opposer were [*sic*] involved, and concerned a mark containing or comprising the terms "Havana," "Habanos," "Cuban," or any variation thereof.

Opposer objects to this Interrogatory on the grounds that the request to "identify each document" is unduly burdensome, oppressive, and vague; seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory process; such

information is publicly available; Applicant has had the opportunity to seek this information through Requests for Production of Documents; the term "any variation thereof" is vague and undefined; the request as to "Cuban" seeks information that is not relevant to any claim or defense in this proceeding.

Subject to and without waiving Opposer's general and specific objections, Opposer has brought the following responsive court actions and TTAB Opposition proceedings: *Corporacion Habanos, S.A., et al. v. Don Rivera, Inc.*, Opposition No. 91152898 (TTAB) (HABANOS REY); *Corporacion Habanos, S.A. v. Superior Cigars U.S.A., Inc.*, Opposition No. 91170189 (TTAB) (HABANOS PUROS ECUADOR); *Corporacion Habanos, S.A., et al. v. Consolidated Cigar Corp.*, Opposition No. 91104731 (TTAB) (HABANOS FABRICA DE TABACOS); *Corporacion Habanos, S.A. v. Habanos, Inc., et al.*, 03 CV 1963 (KMW) (S.D.N.Y.). Documents concerning these proceedings are available in public court or TTAB files.

INTERROGATORY NO. 7:

Identify each document referring or relating in any way to any opposition, cancellation, or litigation in which Opposer were [*sic*] involved, and concerned a mark containing or comprising the designation **HABANOS UNICOS DESDE 1492 AND DESIGN** or any variation thereof.

Opposer objects to this Interrogatory on the grounds that the request to "identify each document" is unduly burdensome, oppressive, and vague; seeks information that is not relevant to any claim or defense in this proceeding; Applicant's counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer; the term "any variation thereof" is undefined; seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory process; Applicant has had the opportunity to seek this information through Requests for Production of Documents.

Subject to and without waiving Opposer's general and specific objections, Opposer is unaware of any person other than Opposer using the "designation **HABANOS UNICOS DESDE 1492 AND DESIGN**" in the United States. Opposer does not know what Applicant means by "any variation thereof."

INTERROGATORY NO. 8:

Identify all documents that refer or relate in any way to Opposer's use, intent to use, or plans for use in commerce of the designation **HABANOS UNICOS DESDE 1492 AND DESIGN** or any variation thereof.

Opposer objects to this Interrogatory on the grounds that the request to "identify all documents" is unduly burdensome, oppressive, and vague; seeks information that is not relevant to any claim or defense in this proceeding; Applicant's counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer; the term "any variation thereof" is undefined; seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory process; Applicant either has sought, or has had the opportunity to seek, this information through Requests for Production of

Documents; *see* Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto.

INTERROGATORY NO. 9:

Identify the total dollar amount of Opposer's annual sales in commerce over the past five years, and the projected annual sales over the next five years, for goods bearing the designation **HABANOS UNICOS DESDE 1492 AND DESIGN** or any variation thereof, and identify the goods sold bearing the mark.

Opposer objects to this Interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in this proceeding; Applicant's counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer, and without basis in law or fact; and the term "any variation thereof" is vague and not defined.

Subject to and without waiving Opposer's general and specific objections, Opposer has not had any sales in "commerce" over the past five years, as defined by Applicant herein, of Opposer's Mark, solely due to the United States Treasury Department's Cuban Asset Control Regulations ("CACR"). The total dollar amount of Opposer's sales in "commerce" over the next five years of goods bearing Opposer's Mark depends on whether and when U.S. law so permits.

INTERROGATORY NO. 10:

Identify the projected sales figures of Opposer's goods bearing the designation **HABANOS UNICOS DESDE 1492 AND DESIGN** or any variation thereof, in commerce for the first five years after the Cuban embargo is lifted.

Opposer objects to this Interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in this proceeding; Applicant's counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer, and without basis in law or fact; and the term "any variation thereof" is vague and not defined.

Subject to and without waiving Opposer's general and specific objections, Opposer expects that upon the removal of restrictions set forth in the CACR or other applicable law concerning the sale of Cuban origin goods in the United States, that Opposer's annual sales in "commerce" as defined by Applicant herein, of goods affixed with Opposer's Mark will exceed \$10 million annually.

INTERROGATORY NO. 11:

Identify the approximate dollar amount of Opposer's annual advertising and promotional expenditures for goods bearing the designation **HABANOS UNICOS DESDE 1492 AND DESIGN**.

Opposer objects to this Interrogatory on the grounds that it seeks information that is not

relevant to any claim or defense in this proceeding; Applicant's counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer, and without basis in law or fact; it fails to distinguish between advertising and promotions in the United States and outside the United States; the Applicant's advertisements in the United States are available to Applicant in publicly available publications,

Subject to and without waiving Opposer's general and specific objections, with respect to the United States, advertising expenditures for the period 2001-the present exceeds \$275,000; *see* Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto.

INTERROGATORY NO. 12:

Identify by title, full name, present business address and home address, all persons who participated or will participate in and/or authorized or will authorize and/or directed or will direct the promotion of Opposer's goods bearing **HABANOS UNICOS DESDE 1492 AND DESIGN**, or any variation thereof.

Opposer objects to this Interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in this proceeding; calls for speculation; does not distinguish between activities in the United States and outside the United States; Applicant's counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer, and without basis in law or fact; and the term "any variation thereof" is vague and not defined.

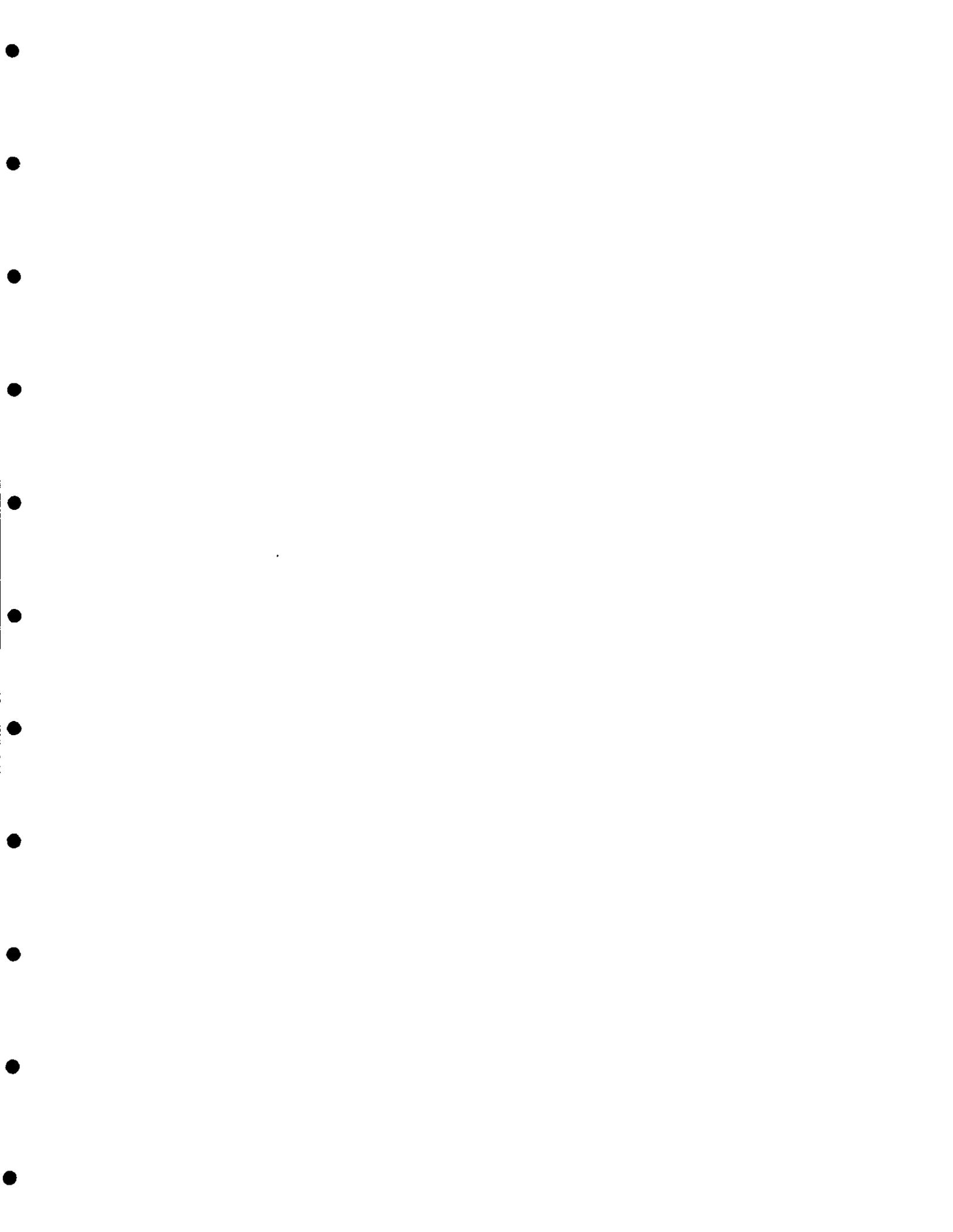
Subject to and without waiving Opposer's general and specific objections, with respect to the United States, persons include Ana Lopez Garcia and Manuel Garcia Morejon.

INTERROGATORY NO. 13:

State the advertising media (radio, TV, newspapers, yellow pages, internet, etc ...) used or intended to be used by Opposer, to promote its goods or services under the designation **HABANOS UNICOS DESDE 1492 AND DESIGN**, by listing the names of the advertising companies, addresses, and duration of the advertisements.

Opposer objects to this Interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in this proceeding; does not distinguish between in the United States and outside the United States; Applicant's counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer, and without basis in law or fact; and seeks information that is publicly available.

Subject to and without waiving Opposer's general and specific objections, with respect to the United States, Opposer's Mark has appeared in advertisements in United States publications at least since 1995, including *Smoke*, *Cigar Aficionado*, *Tobacco International*, and *Distribution International*, and on Opposer's website, accessible in the U.S., www.habanos.com; *see* Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto. Opposer intends to continue to place similar advertisements in the same or similar United



States media.

INTERROGATORY NO. 14:

Identify each different advertisement, brochure, promotional material and the like, known to Opposer, which contains or bears the designation **HABANOS UNICOS DESDE 1492 AND DESIGN** or any variation thereof, which has been used or disseminated or is intended to be used or disseminated by Opposer in commerce.

Opposer objects to this Interrogatory on the grounds that the request to “identify each different advertisement, brochure, promotional material and the like” is unduly burdensome, oppressive, and vague; seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory process; Applicant either has sought, or has had the opportunity to seek, this information through Requests for Production of Documents; *see* Opposer’s Response to Applicant’s First Request for Production of Documents, and documents produced or made available for inspection thereto; it seeks information that is not relevant to any claim or defense in this proceeding; the term “any variation thereof” is vague and undefined; Applicant’s counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer, and without basis in law or fact; and seeks information that is publicly available.

Subject to and without waiving Opposer’s general and specific objections, *see* Response to Interrogatory No. 13; *see* Opposer’s Response to Applicant’s First Request for Production of Documents, and documents produced or made available for inspection thereto.

INTERROGATORY NO. 15:

Identify any licenses, assignments, consents to use, coexistence agreements and the like, granted by or to Opposer concerning the designation **HABANOS UNICOS DESDE 1492 AND DESIGN**, or any variation thereof.

Opposer objects to this Interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in this proceeding; does not distinguish between in the United States and outside the United States; Applicant’s counterclaim, to which this Request purports to relate, is interposed for an improper purpose, to harass and to burden Opposer, and without basis in law or fact; and the term “any variation thereof” is vague and undefined.

Subject to and without waiving Opposer’s general and specific objections, there are none to identify with respect to the United States.

INTERROGATORY NO. 16:

Identify and describe any and all uses in commerce known to Opposer of the designations “Havana,” “Habanos,” “Cuban,” or any variation thereof, on cigars or related goods.

Opposer objects to this Interrogatory on grounds of relevance to the extent it seeks information about “uses in commerce” of “Cuban”; the terms “any variations thereof” and “related goods” are vague and undefined; the term “designations” is ambiguous, vague, confusing; and undefined; the Interrogatory’s request to “identify and describe any and all uses” is unduly burdensome and oppressive; and improperly seeks to impose on Opposer obligations

concerning publicly available information that is equally available to Applicant.

Subject to and without waiving Opposer's general and specific objections, Opposer is aware of numerous examples of the use of the terms "Havana" and "Habanos" to define and to describe cigars made in Cuba from tobacco grown in Cuba, including in dictionary definitions, book titles, and usages in cigar and general media publications. *See* Opposer's Response to Applicant's First Request for Production of Documents, documents produced or made available for inspection thereto; *see* Opposer's Notice of Opposition. Opposer is not aware of usages of the terms "Havana" or "Habanos" to define or to describe cigars not made in Cuba and not made from tobacco grown in Cuba.

Opposer is aware of information that is publicly available that a "flavored" cigar product is sold "in commerce" under the brand name HAVANA HONEYYS, with no connection to Cuba. Opposer is aware that there are several marks registered in the USPTO in International Class 34 for cigars with no connection to Cuba that contain the word "Havana." Opposer is also aware that publicly available lists of cigar "brands" in the United States include "brands" with the word "Havana" that have no connection to Cuba. Opposer is unaware whether any of these registered or listed "brands" (other than HAVANA HONEYYS) are currently in fact in actual use in commerce, or have more than de minimis or highly localized use in commerce in the United States.

Opposer is aware of several attempts either to use or to register the term "Habanos" in connection with cigars in the United States, each of which Opposer has successfully challenged, or is currently challenging; *see* Response to Interrogatory No. 6.

INTERROGATORY NO. 17:

Identify each document referring or relating in any way to any opposition, cancellation, or litigation in which Opposer was involved, and concerned a mark containing or comprising the designation "Havana," "Habanos," "Cuban," or any variation thereof, for cigars or related goods.

Opposer objects to this Interrogatory on the ground that it is virtually identical to, and is completely subsumed by Interrogatory No. 6; *see* Opposer's Response to Interrogatory No. 6.

INTERROGATORY NO. 18:

Identify all documents that refer or relate in any way to the use in commerce of the designations "Havana," "Habanos," "Cuban," or any variation thereof for cigars or related goods.

Opposer objects to this Interrogatory on the grounds that the request to "identify all document" is unduly burdensome, oppressive, and vague; the request for information concerning "Cuban" is not relevant to any claim or defense in this proceeding; the terms "any variations thereof" and "related goods" are vague and undefined; the term "designations" is ambiguous, vague, confusing, unintelligible, and undefined; it seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory process; Applicant either has sought, or has had the opportunity to seek, this information through Requests for Production of Documents; *see* Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for

inspection thereto. *See also* objections and response to Interrogatory No. 16, incorporated herein by reference.

INTERROGATORY NO. 19:

Identify any licenses, assignments, consents to use, coexistence agreements and the like, granted by or to Opposer concerning the designations "Havana," "Habanos," "Cuban," or any variation thereof for cigars or related goods.

Opposer objects to this Interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in this proceeding; does not distinguish between in the United States and outside the United States; the terms "any variations thereof" and "related goods" are vague and undefined; and the term "designations" is ambiguous, vague, confusing, unintelligible, and undefined.

Subject to and without waiving Opposer's general and specific objections, there are none to identify with respect to the United States; authorized distributors of Habanos, S.A. outside the United States are authorized to use the mark HABANOS UNICOS DESDE 1492.

INTERROGATORY NO. 20:

Identify each person with information concerning Opposer's knowledge or awareness of the use or meaning of the words "Havana," "Habanos," "Cuban," or any variation thereof, as used in the cigar industry within the United States.

Opposer objects to this Interrogatory on grounds of relevance to the extent it seeks information about uses in commerce of "Cuban"; the term "any variations thereof" is vague and undefined.

Subject to and without waiving Opposer's general and specific objections, persons "with information concerning Opposer's knowledge or awareness," in addition to counsel, include Ana Lopez Garcia and Manuel Garcia Morejon.

INTERROGATORY NO. 21:

State with particularity any information of which Opposer is aware of concerning the use or meaning of the words "Havana," "Habanos," "Cuban," or any variation thereof, as used in the cigar industry within the United States.

See objections and responses to Interrogatories Nos. 16 and 24, incorporated herein by reference.

INTERROGATORY NO. 22:

Identify all documents that refer or relate in any way to the use or meaning of the words "Havana," "Habanos," "Cuban," or any variation thereof, as used in the cigar industry within the United States.

Opposer objects to this Interrogatory on the grounds that the request to "identify all

documents" is unduly burdensome, oppressive, and vague; seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory process; Applicant either has sought, or has had the opportunity to seek, this information through Requests for Production of Documents; *see* Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto. *See also* objections and response to Interrogatory No. 16, incorporated herein by reference.

INTERROGATORY NO. 23:

Identify each person with knowledge of any actual or planned survey, study, test, market research, or analysis concerning the perceived country of origin among U.S. consumers of cigars sold in commerce bearing the designations "Havana," "Habanos," "Cuban," or any variation thereof, any perceived geographic association with cigars sold in commerce bearing the designations "Havana," "Habanos," "Cuban," or any variation thereof, or any association by potential U.S. consumers between cigars sold in commerce bearing the designations "Havana," "Habanos," "Cuban," or any variation thereof, and Cuba or Havana, Cuba and state with particularity the findings of any such survey, study, test, market research, or analysis.

Opposer objects to this Interrogatory on grounds of relevance to the extent it seeks information concerning use of the term "Cuban"; the term "any variations thereof" is vague and undefined; and the term "designations" is ambiguous, vague, confusing, unintelligible and undefined.

Subject to and without waiving Opposer's general and specific objections, there are no such persons or other information to identify at this time.

INTERROGATORY NO. 24:

State with particularity any information of which Opposer is aware concerning the perceived country of origin among U.S. consumers of cigars sold in commerce bearing the designations "Havana," "Habanos," "Cuban," or any variation thereof, any perceived geographic association with cigars sold in commerce bearing the designations "Havana," "Habanos," "Cuban," or any variation thereof, or any association by potential U.S. consumers between cigars sold in commerce bearing the designations "Havana," "Habanos," "Cuban," or any variation thereof, and Cuba or Havana, Cuba.

See objections and response to Interrogatory 16, incorporated herein by reference. In addition, the USPTO has recognized, with respect to Applicant's application and with respect to other applications, that the use of "Havana" and/or "Habanos" for cigars not from Cuba is geographically deceptively misdescriptive within the meaning of section 2(e)(3) of the Lanham Act. Certain USPTO Examining Attorneys, erroneously in Opposer's view, have found that an applicant's assertion that such non-Cuban origin cigars are from something claimed to be "Cuban seed" tobacco provides a basis to overcome that ground for refusal to register. Furthermore, that persons, such as Applicant, seek to register or to sell cigars, which have no connection or association with Cuba, under names that use "Havana" or "Habanos," demonstrates the fact that U.S. cigar consumers understand that the term "Havana" when used with cigars indicates a connection or association with Cuba and Cuban origin cigars. That U.S. consumers make this connection or association, and that persons in the U.S. cigar industry are

aware and expect that consumers will make this connection or association, is further proven by the fact that, to Opposer's knowledge, no U.S. cigar manufacturers or distributors attempt to use or to register cigar marks that make a similar false or misleading connection or association with a city or other location known for the production or manufacture of cigars, outside of Cuba.

INTERROGATORY NO. 25:

Identify all documents that refer or relate in any way to the perceived country of origin among U.S. consumers of cigars sold in commerce bearing the designations "Havana," "Habanos," "Cuban," or any variation thereof, any perceived geographic association with cigars sold in commerce bearing the designations "Havana," "Habanos," "Cuban," or any variation thereof, or any association by potential U.S. consumers between cigars sold in commerce bearing the designations "Havana," "Habanos," "Cuban," or any variation thereof, and Cuba or Havana, Cuba.

Opposer objects to this Interrogatory on the grounds that the request to "identify all documents" is unduly burdensome, oppressive, and vague; on grounds of relevance to the extent it seeks information about uses in commerce of "Cuban"; the term "any variations thereof" is vague and undefined; this Interrogatory seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory process; Applicant either has sought, or has had the opportunity to seek, this information through Requests for Production of Documents; *see* Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto.

See also objections and responses to Interrogatories Nos. 16 and 24, incorporated herein by reference.

INTERROGATORY NO. 26:

Identify each person with information concerning Opposer's knowledge or awareness of the use or meaning of the term "Cuban seed" or "Cuban seed tobacco," as used in the cigar industry within the United States.

Opposer objects to this Interrogatory in that "each person with information concerning Opposer's knowledge or awareness" is confusing, ambiguous and vague.

Subject to and without waiving Opposer's general and specific objections, persons "with information concerning Opposer's knowledge or awareness," in addition to counsel, include Manuel Garcia Morejon and Ana Garcia Lopez. *See also* response to Interrogatory No. 29.

INTERROGATORY NO. 27:

State with particularity any information of which Opposer is aware concerning the use or meaning of the term "Cuban seed" or "Cuban seed tobacco," as used in the cigar industry within the United States.

Opposer objects to this Interrogatory to the extent that such information is publicly available; the request for "any information" is unduly burdensome, vague, overbroad and oppressive.

Opposer is aware that some persons and entities in the U.S. cigar industry, such as Applicant, seek to draw a false and misleading association or connection to Cuba, the country most renowned for the production of high-quality cigars, by claiming that their non-Cuban cigars were grown from "Cuban seeds" or are made from "Cuban seed tobacco." Opposer understands that these "Cuban seed" claims generally fall into three categories: 1) tobacco claimed to be grown from distant descendants of seeds that were originally taken from Cuba well over 50 years ago, and then grown for many generations from seeds descended from those generation after generation outside Cuba; 2) tobacco claimed to be grown from distant descendants of seeds that were originally taken from Cuba between 1959 and the early 1960's and then grown for many generations outside Cuba (Applicant's claim here); and 3) tobacco that is called "Cuban seed," but that in fact is not tobacco grown from distant descendants of seeds that came from Cuba.

Tobacco grown from such claimed "Cuban seeds" has no association or connection to Cuba or Havana, Cuba or Cuban tobacco in terms of the quality, appearance, taste, aroma, strength, or any other relevant characteristic of the tobacco or the cigars made from that tobacco. Today, "Cuban seed" is widely recognized as having no current, relevant or meaningful association, connection or affiliation with Cuba, Cuban tobacco, or Cuban cigars. *See also* Opposer's Response to Applicant's First Request for Production of Documents, documents produced or made available for inspection thereto, and publicly available published articles and other published materials.

INTERROGATORY NO. 28

Identify all documents that refer or relate in any way to the use or meaning of the term "Cuban seed" or "Cuban seed tobacco," as used in the cigar industry within the United States.

Opposer objects to this Interrogatory on the grounds that the request to "identify all documents" is unduly burdensome, oppressive, and vague; seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory process; Applicant either has sought, or has had the opportunity to seek, this information through Requests for Production of Documents; *see* Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto.

INTERROGATORY NO. 29

If Opposer or any person acting for or on behalf of Opposer has consulted with or retained the services of any expert with respect to any of the issues involved in this opposition, identify each such expert and describe the subject matter on which he or she was consulted or retained, and identify all documents which refer or relate thereto.

Opposer objects to this Interrogatory on the grounds that the request to "identify all documents" is unduly burdensome, oppressive, and vague; seeks to impose discovery obligations greater than that permitted by the relevant rules, is an abuse of the Interrogatory

process; Applicant either has sought, or has had the opportunity to seek, this information through Requests for Production of Documents; *see* Opposer's Response to Applicant's First Request for Production of Documents, and documents produced or made available for inspection thereto.

Opposer may retain one or more expert in this proceeding, including, without limitation, Richard Perelman, Perelman, Pioneer & Company, P.O. Box 67548, Los Angeles, CA 90067 USA.: "Cuban seeds" and "Cuban seed" tobacco; Eumelio Espino Marrero, Avenida 53, No. 53, Between 66 and 68, San Antonio de los Banos, Province of Havana, Cuba; Vice Director of Development, Institute of Tobacco Studies (Instituto de la Investigacion de Tabaco): "Cuban seeds" and "Cuban seed" tobacco.

INTERROGATORY NO. 30

Identify each person who participated in the preparation of Opposer's responses to the foregoing interrogatories and who furnished any information in response thereto.

Opposer objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or the work product doctrine.

Subject to and without waiving Opposer's general and specific objections, in addition to outside and in-house counsel, Manuel Garcia Morejon.

INTERROGATORY NO. 31

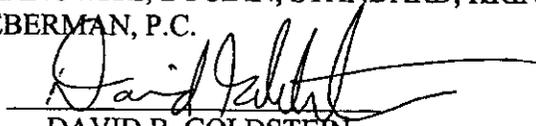
Identify each person who provided or collected documents in response to Opposer's First Request for Production of Documents and Things. State the responsibilities of each person.

Opposer objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or the work product doctrine.

Subject to and without waiving Opposer's general and specific objections, outside and in-house counsel and their staff.

Dated: New York, New York
May 12, 2006

RABINOWITZ, BOUDIN, STANDARD, KRINSKY &
LIEBERMAN, P.C.

By: 

DAVID B. GOLDSTEIN

111 Broadway, 11th Floor

New York, New York 10006-1901

(212) 254-1111

Attorneys for Opposer Corporacion Habanos, S.A.

I declare under penalty of perjury of the laws of the United States that the foregoing
OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF
INTERROGATORIES TO CORPORACION HABANOS, S.A. are true and correct to the best of
my knowledge, information, and belief.

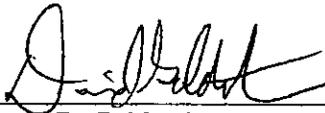
Executed this the ____
day of May, 2006.

Manuel Garcia Morejon

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served on Applicant by U.S. Mail, first class, postage prepaid, on May 12, 2006, to:

Henry Rodriguez
Sanchelima & Associates, P.A.
235 S.W. Le Jeune Road
Miami, FL 33134-1762
Attorneys for Applicant Anncas, Inc.



David B. Goldstein

I declare under penalty of perjury of the laws of the United States that the foregoing
OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF
INTERROGATORIES TO CORPORACION HABANOS, S.A. are true and correct to the best of
my knowledge, information, and belief.

Executed this the 5th
day of May, 2006.

M. Garcia
Manuel Garcia Morejon

BUREAUX INTERNATIONAUX RÉUNIS
POUR LA PROTECTION DE LA PROPRIÉTÉ INTELLECTUELLE
Service de l'enregistrement international des appellations d'origine
32, chemin des Colombettes, 1211 Genève 20 (Suisse)



Certificat d'inscription au registre international des appellations d'origine

(Arrangement de Lisbonne du 31 octobre 1958)

Les indications figurant au verso sont conformes aux inscriptions faites au
Registre international des appellations d'origine.

Genève, le 24 OCT. 1968

Bureaux internationaux réunis
pour la protection
de la propriété intellectuelle

pr le Directeur:

A handwritten signature in black ink, appearing to be "J. M. ...", written over the text "pr le Directeur:".

Date d'enregistrement N° d'enregistrement

27 décembre 1967 478

Pays requérant:

RÉPUBLIQUE DE CUBA

Administration compétente:

Registro de la propiedad industrial,
Teniente Rey N° 405, La Habana

Titulaire(s):

Empresa Cubana del Tabaco (Cubatabaco)

Appellation d'origine:

HABANOS

Produit:

Cigares

Aire de production:

Tout le territoire national de la République
de Cuba

*Titre et date des dispositions législatives ou réglementaires
ou décisions judiciaires reconnaissant la protection dans
le pays d'origine:*

Décret N° 3598 du 23 novembre 1967

Date d'envoi de la demande:

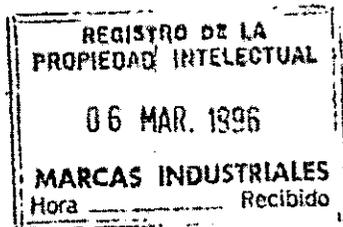
15 décembre 1967



Number	478
Date	27.12.1967
Holder	Empresa Cubana del Tabaco (Cubatabaco)
Appellation	HABANOS
Publication	N° 3 : 09/1968
Country of Origin	CU
Nice Classification	34
Product	Cigares / Cigars / Cigarros puros
Area of Production	Tout le territoire national de la République de Cuba / The entire national territory of the Republic of Cuba / Todo el territorio nacional de la República de Cuba
Legal basis	Décret N° 3598 du 23 novembre 1967 / Decree N° 3598 of November 23, 1967 / Decreto 3598 de 23 de noviembre de 1967
Refusal	MX - 08.08.1969
Language	Français / French / Francés
Note	À l'égard des enregistrements internationaux effectués à partir du 1er avril 2002, les traductions de l'appellation d'origine et, le cas échéant, leur translittération, figurent dans des rubriques distinctes de celle de l'appellation d'origine elle-même / With regard to international registrations effected from April 1, 2002 onwards, the translation of an appellation of origin and, where relevant, its transliteration, will appear under a heading separate from that of the appellation of origin itself / Con respecto a los registros internacionales efectuados a partir del 1° de abril de 2002, las traducciones de las denominaciones de origen y, cuando sea pertinente, sus transcripciones, deberán aparecer bajo títulos diferentes de aquellos relativos a dichas denominaciones de origen

BUREAUX INTERNATIONAUX RÉUNIS
POUR LA PROTECTION DE LA PROPRIÉTÉ INTELLECTUELLE

Service de l'enregistrement international des appellations d'origine
32, chemin des Colombettes, 1211 Genève 20 (Suisse)



Certificat d'inscription au registre international des appellations d'origine

(Arrangement de Lisbonne du 31 octobre 1958)

Les indications figurant au verso sont conformes aux inscriptions faites au
Registre international des appellations d'origine.

Genève, le 24 OCT. 1968

Bureaux internationaux réunis
pour la protection
de la propriété intellectuelle

par le Directeur:

Date d'enregistrement

N° d'enregistrement

27 décembre 1967

479

Pays requérant:

RÉPUBLIQUE DE CUBA

Administration compétente:

Registro de la propiedad industrial,
Teniente Rey N° 405, La Habana

Titulaire(s):

Empresa Cubana del Tabaco (Cubatabaco)

Appellation d'origine:

HABANA

Produit:

Tabac en branch ou manufacturé, ainsi que les
produits élaborés avec ce tabac

Aire de production:

Province de La Havane

*Titre et date des dispositions législatives ou réglementaires
ou décisions judiciaires reconnaissant la protection dans
le pays d'origine:*

Décret N° 3599 du 23 novembre 1967

Date d'envoi de la demande:

15 décembre 1967



Number	479
Date	27.12.1967
Holder	Empresa Cubana del Tabaco (Cubatabaco)
Appellation	HABANA
Publication	N° 3 : 09/1968
Country of Origin	CU
Nice Classification	34
Product	Tabac en branche ou manufacturé, ainsi que les produits élaborés avec ce tabac / Leaf or manufactured tobacco, as well as products made with such tobacco / Tabaco en rama o manufacturado, así como los productos elaborados con este tabaco
Area of Production	Province de La Havane / Province of Havana / Provincia de La Habana
Legal basis	Décret N° 3599 du 23 novembre 1967 / Decree N° 3599 of November 23, 1967 / Decreto 3599 de 23 de noviembre de 1967
Refusal	MX - 08.08.1969
Language	Français / French / Francés
Note	À l'égard des enregistrements internationaux effectués à partir du 1er avril 2002, les traductions de l'appellation d'origine et, le cas échéant, leur translittération, figurent dans des rubriques distinctes de celle de l'appellation d'origine elle-même / With regard to international registrations effected from April 1, 2002 onwards, the translation of an appellation of origin and, where relevant, its transliteration, will appear under a heading separate from that of the appellation of origin itself / Con respecto a los registros internacionales efectuados a partir del 1° de abril de 2002, las traducciones de las denominaciones de origen y, cuando sea pertinente, sus transcripciones, deberán aparecer bajo títulos diferentes de aquellos relativos a dichas denominaciones de origen

ALL STATE LEGAL 630-222-6210 ED11 RECYCLED



 **Habanos**
Únicos desde 1492

 **Habanos**
Únique depuis 1492

 **Habanos**
Einzigartig seit 1492

 **Habanos**
Unique since 1492

Unique since 1492

Unique depuis 1492

Uniquo seit 1492

Unicos desde 1492

95-071

196-727



Habitat for Humanity

HAB00003

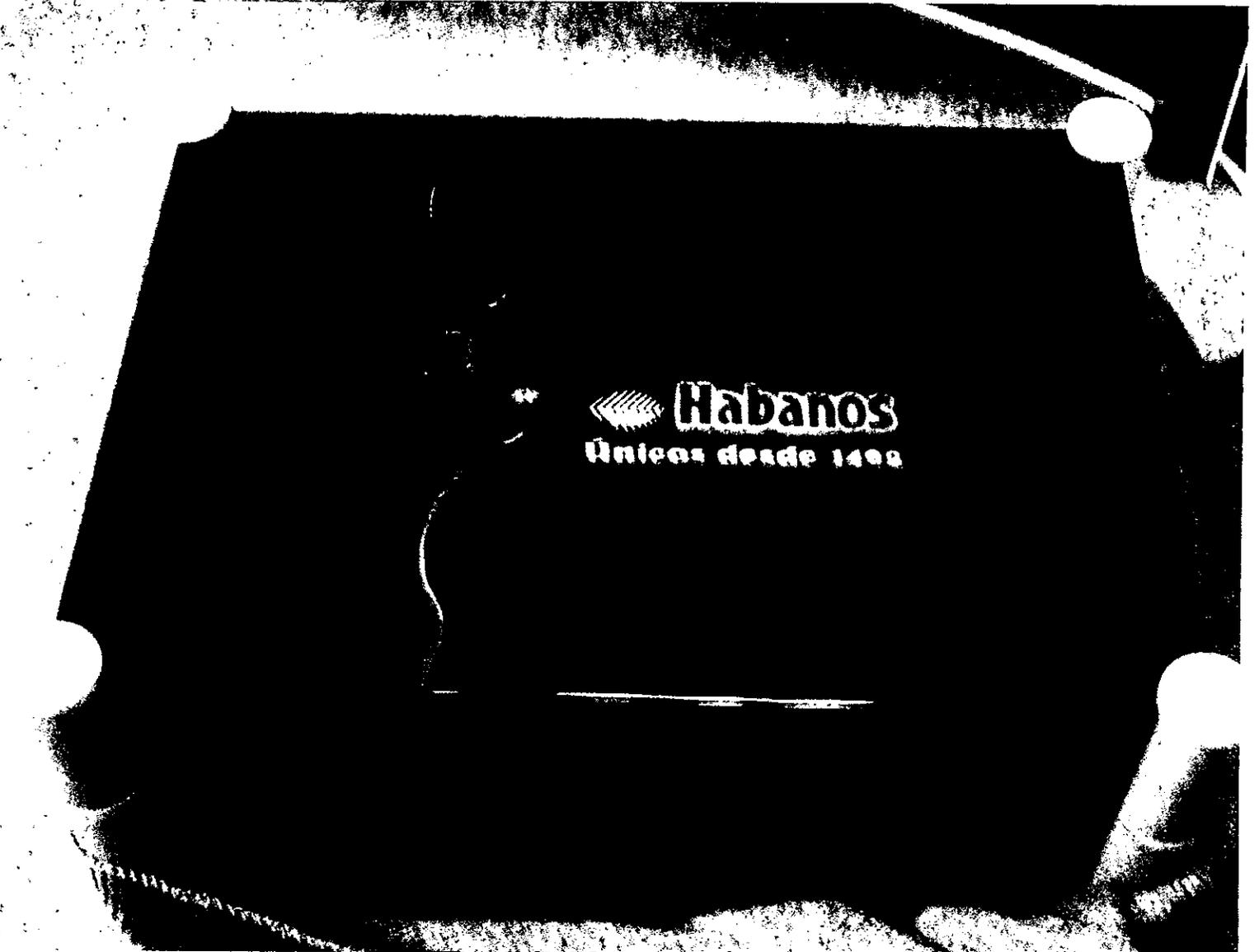


E. H. Morgan (b) Serf 1 row

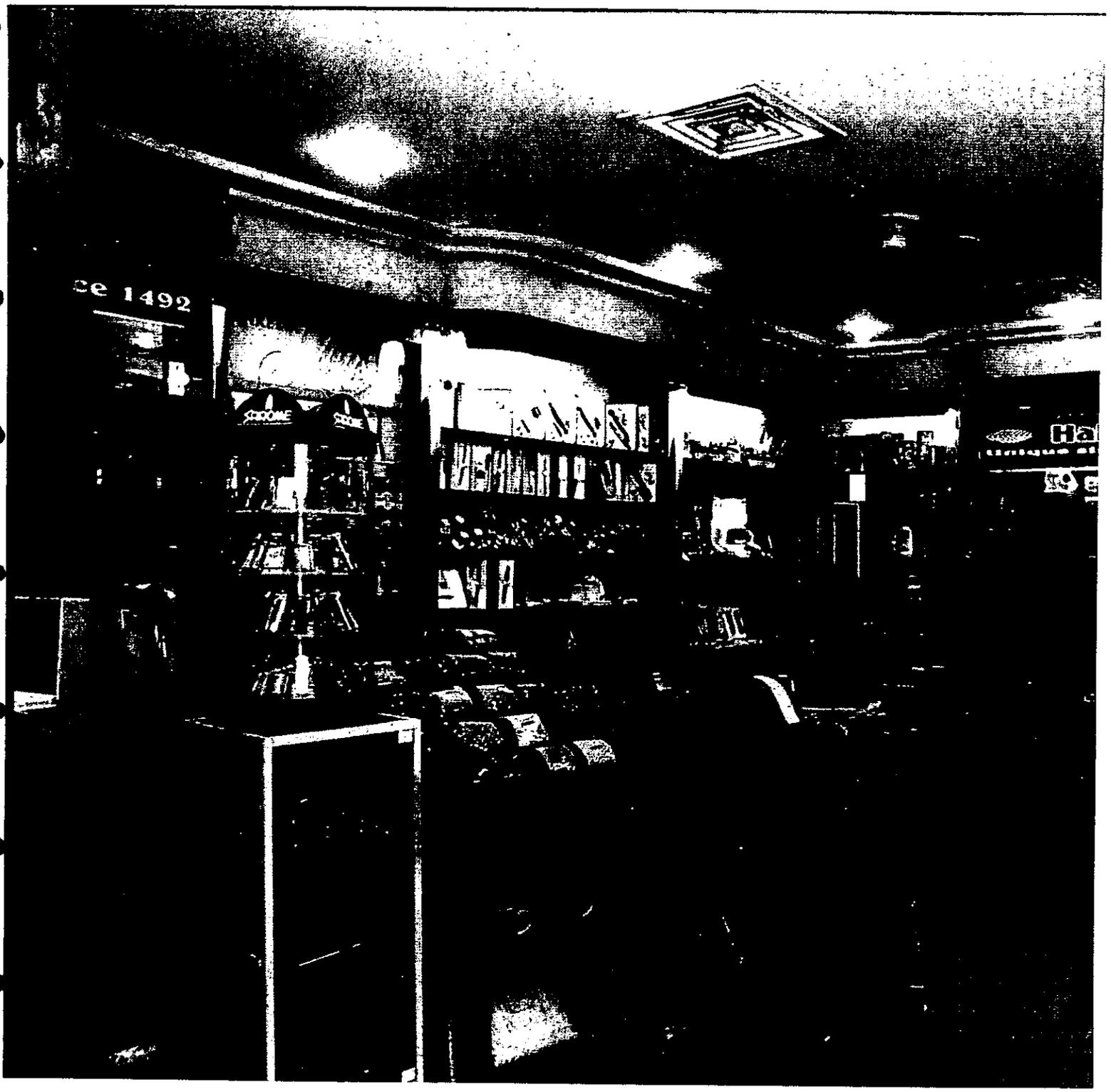
HAB00004

 **Habanos**
Einzigartig seit 1492





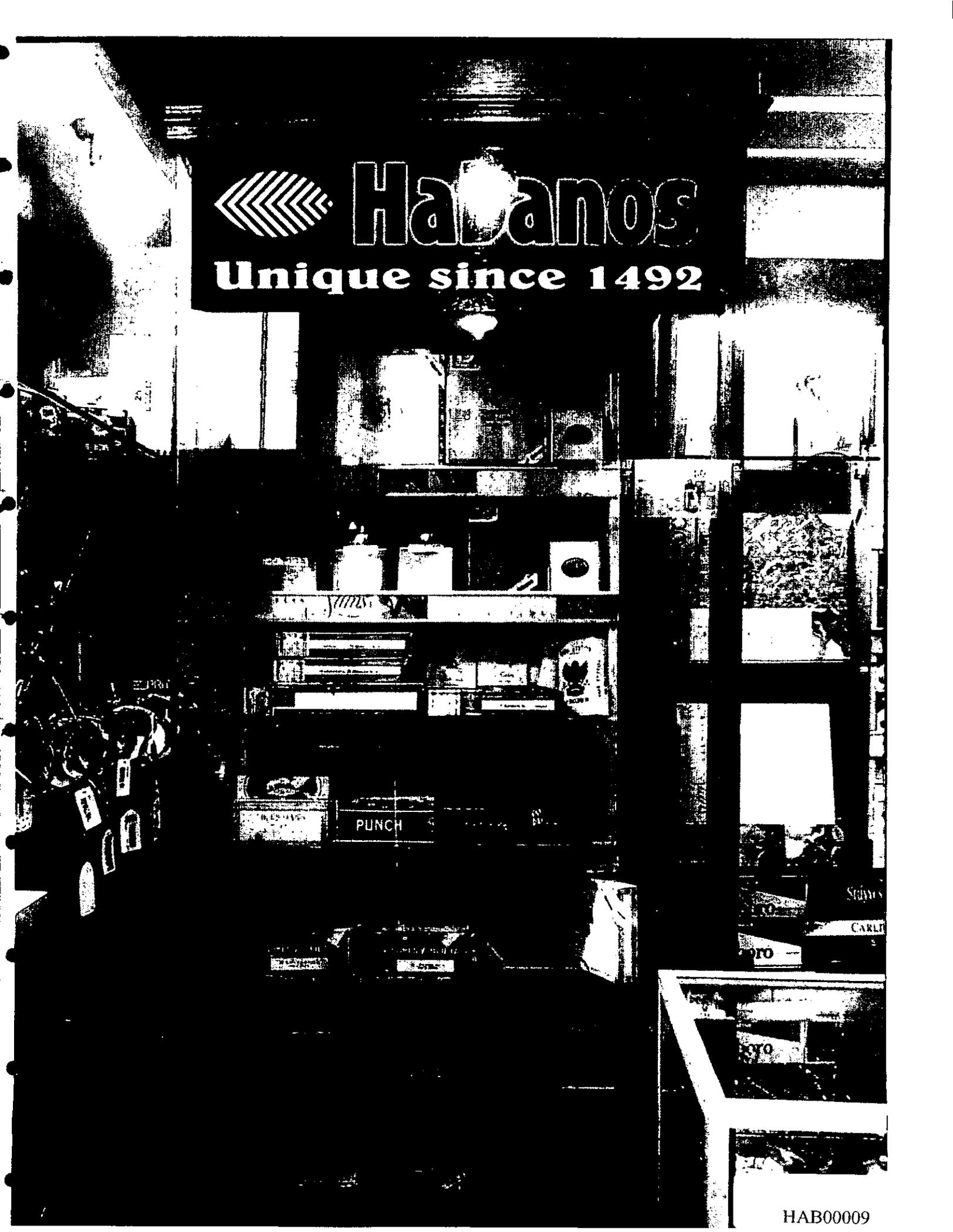
Habanos
Únicos desde 1492





Habanos

Unique since 1492



RESERVA

PUNCH

Stays
CARLI
ORO











Habanero

Einzigartig seit 1492





Habanos

Einzigartig seit 1492

HAVANAS

FROM
BENCH
TO BOX

... BLEND OF SUN, SOIL AND SKILL

 **Habanos**
unique since 1492

... BLEND


un

HAB00016

↑
Santuario

Rue
Royale

[Blank]

[Blank]

[Blank]

Tolosa
Klassico

Reprosa

[Blank]

Best
Sweets
Plus
CASA DEL
HABANO



Habanos

Unicos desde 1492

Visitenos en:
Calle Samuel Lewis y Santa Rita.
Centro Comercial Plaza Obarrio
Planta Baja, Local #5.
Apdo. 6-3876 El Dorado.
Tels.: 213-8240 Fax: 214-8584.
Panama Rep. de Panamá.

Rechace Falsificaciones
Authenticity guaranteed

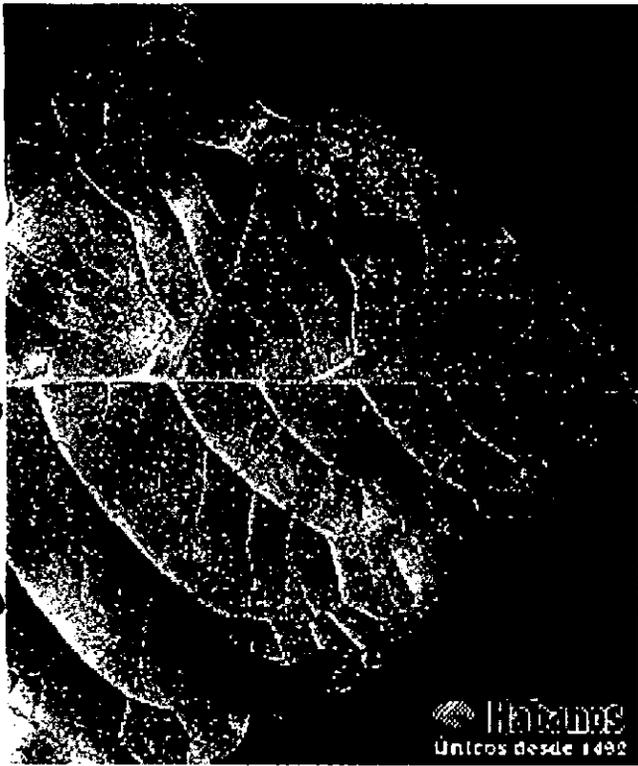
GRUPO ALDOA INTERNACIONAL

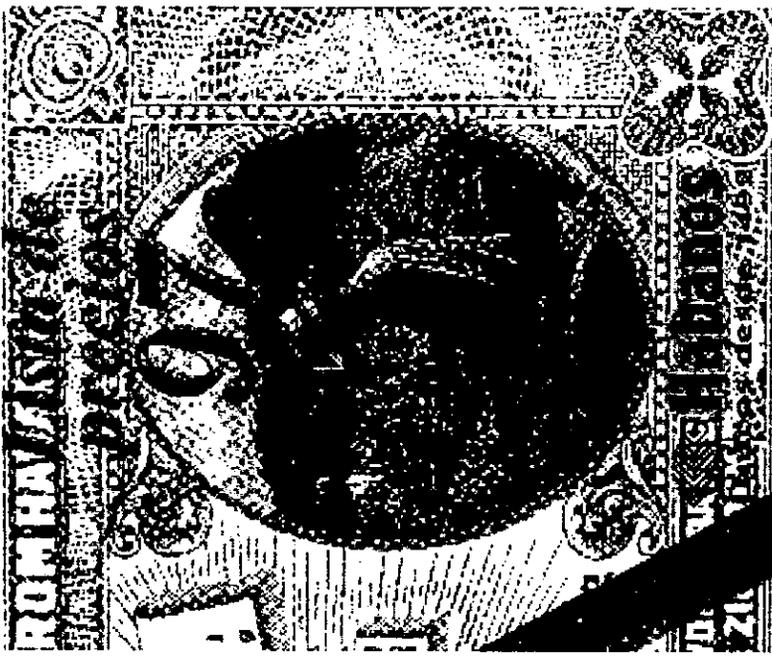
Adel Aland
Pedro Gonzalez
San Luis R.
Sancho Panza
Larranaga
Juan Lopez
Antonio Alonzo
Vegueros
Jean d'Orsay
Fonseca
Eduardo de Canno
Quintero
Incl. Piedra
Montanana

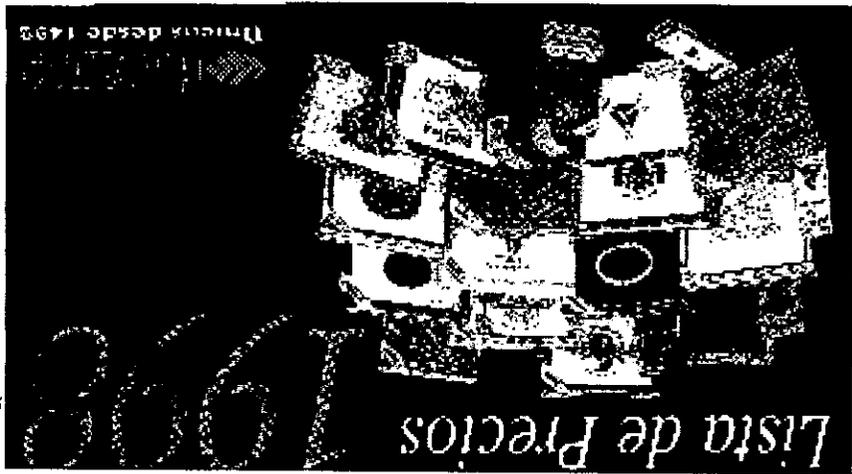
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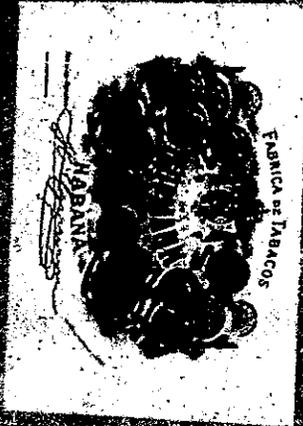


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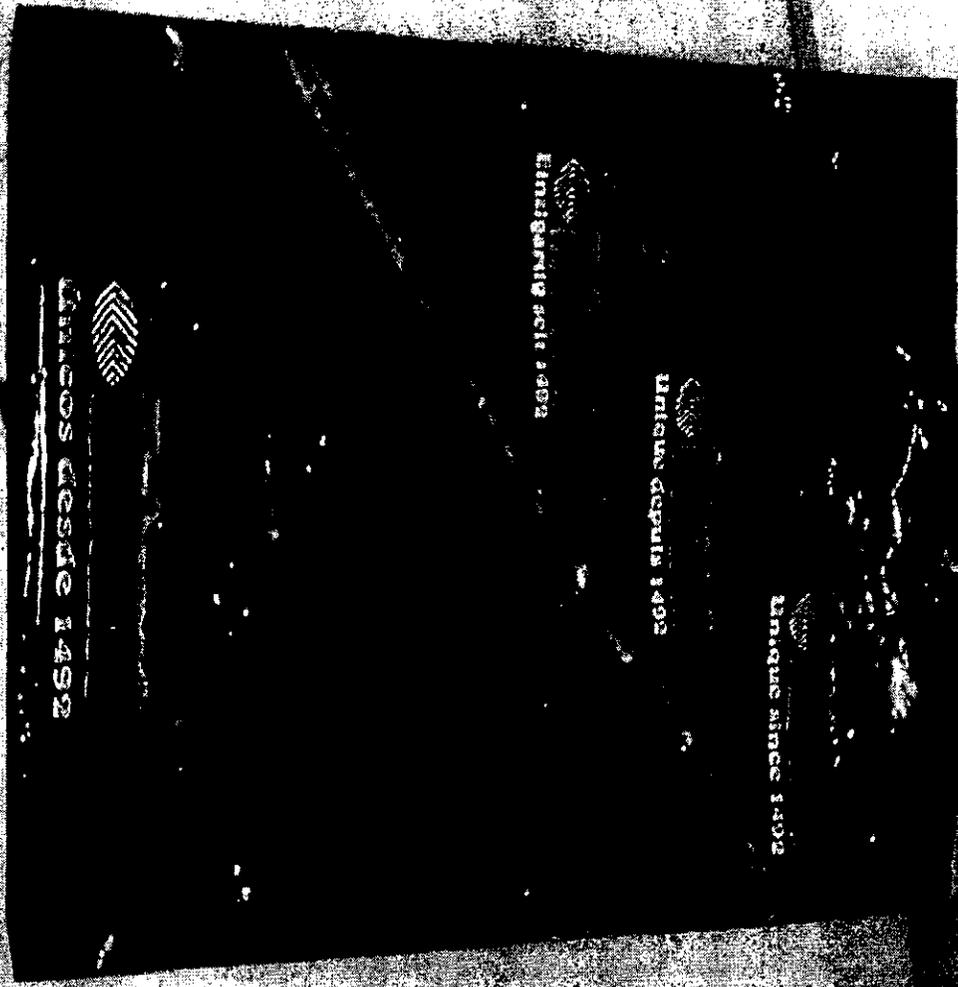
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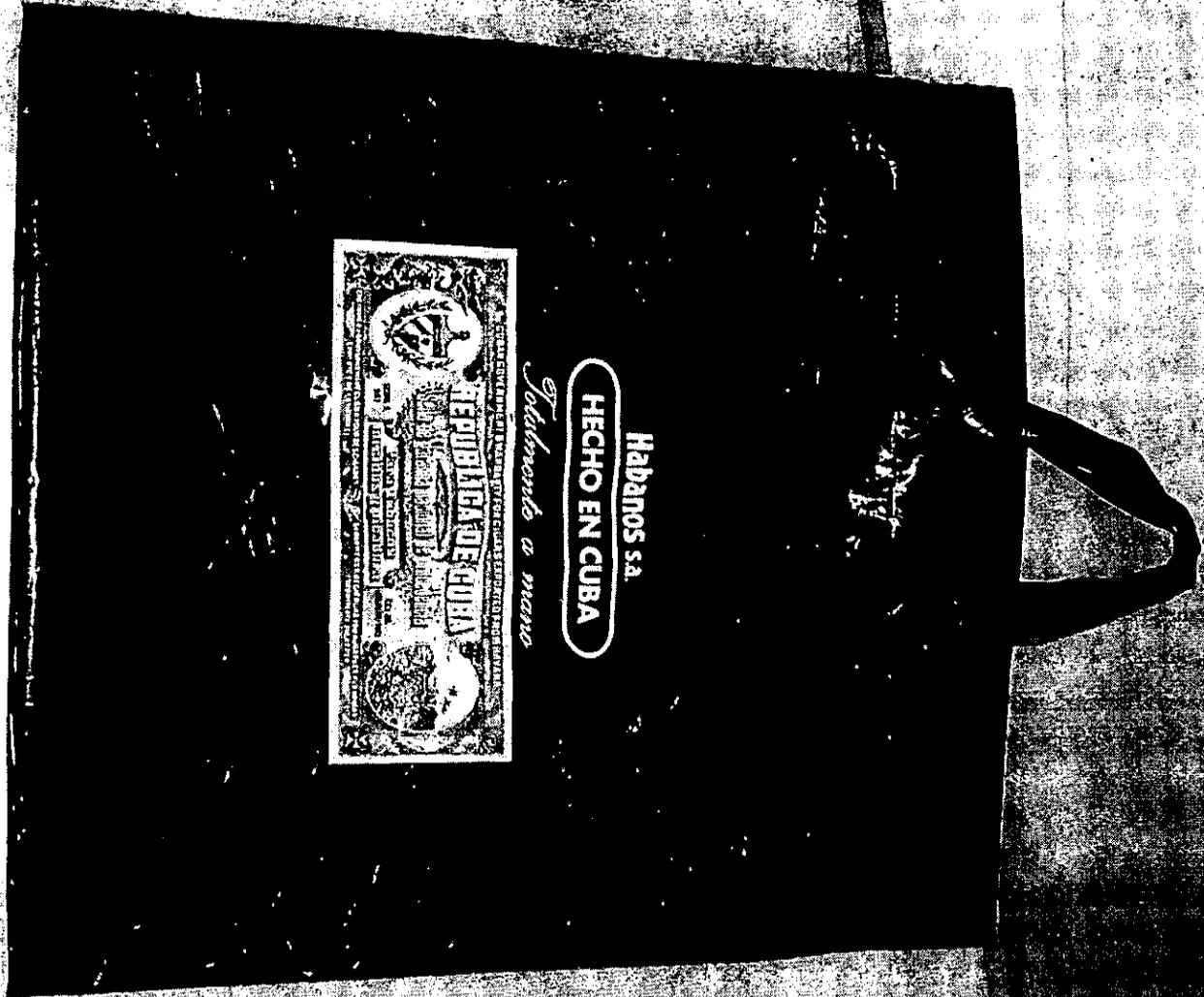




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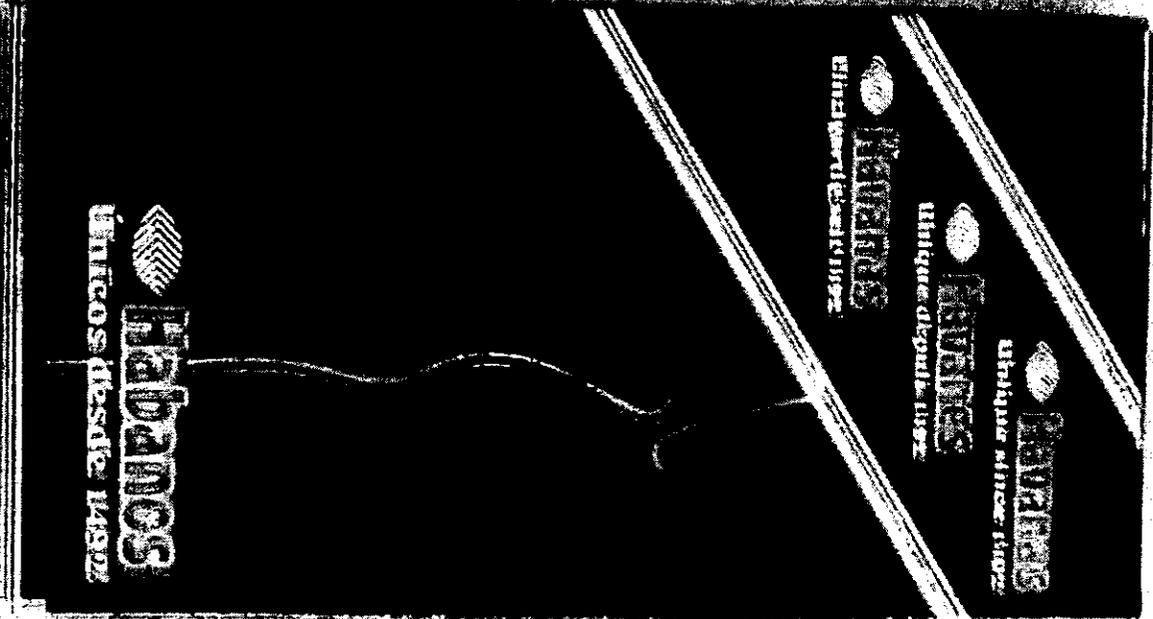
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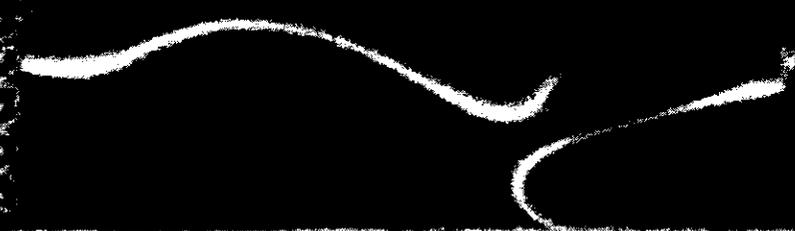
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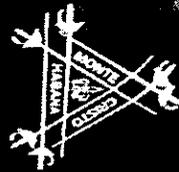
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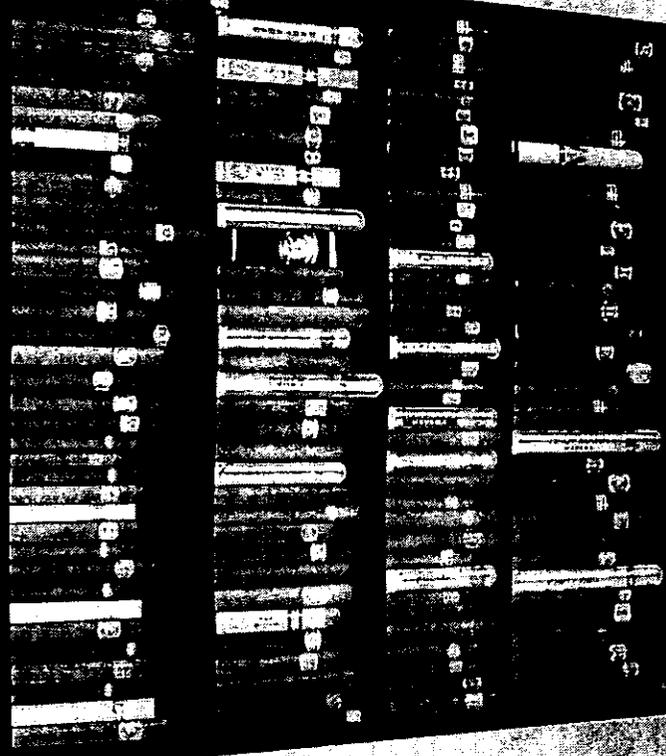


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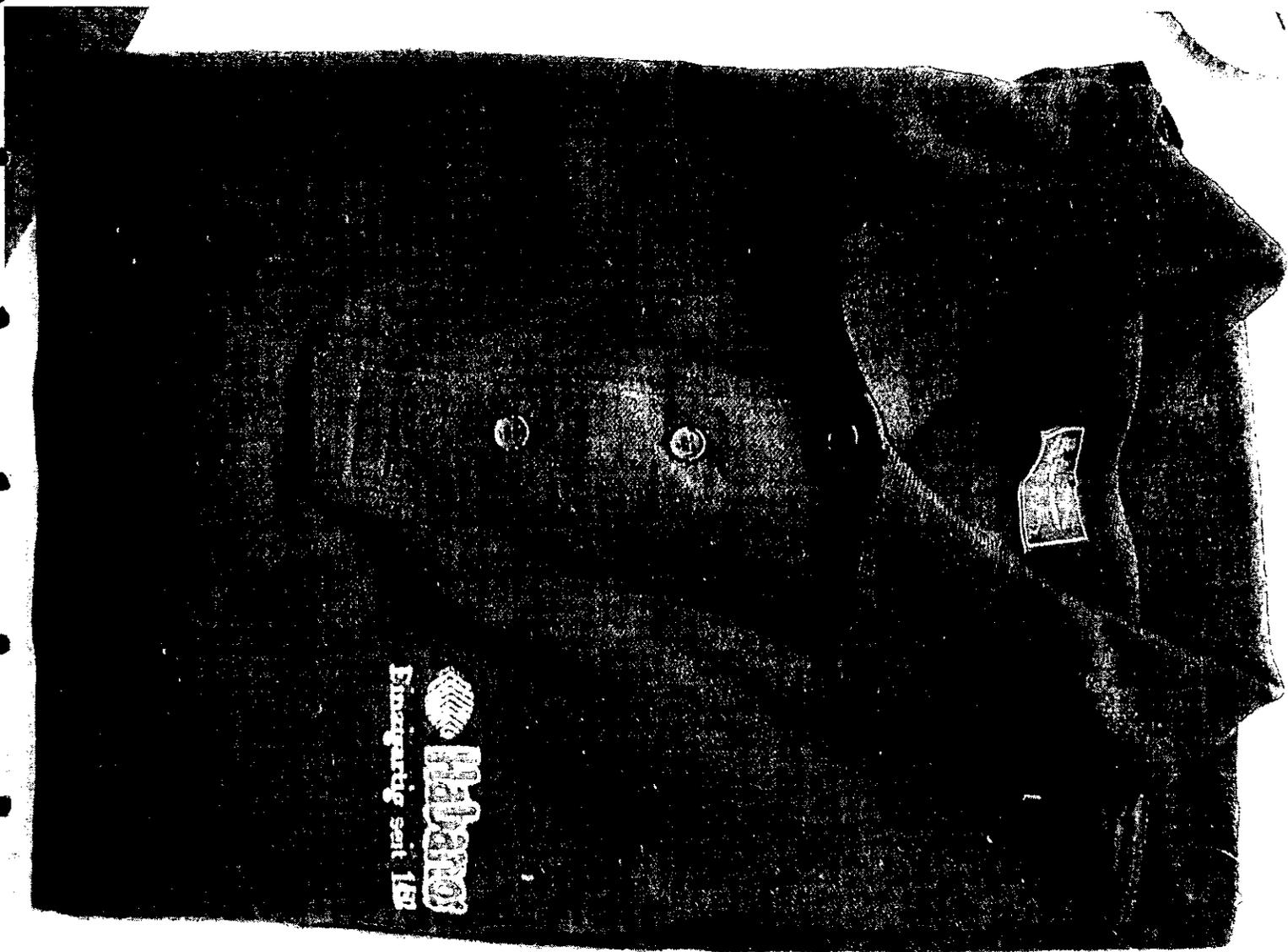




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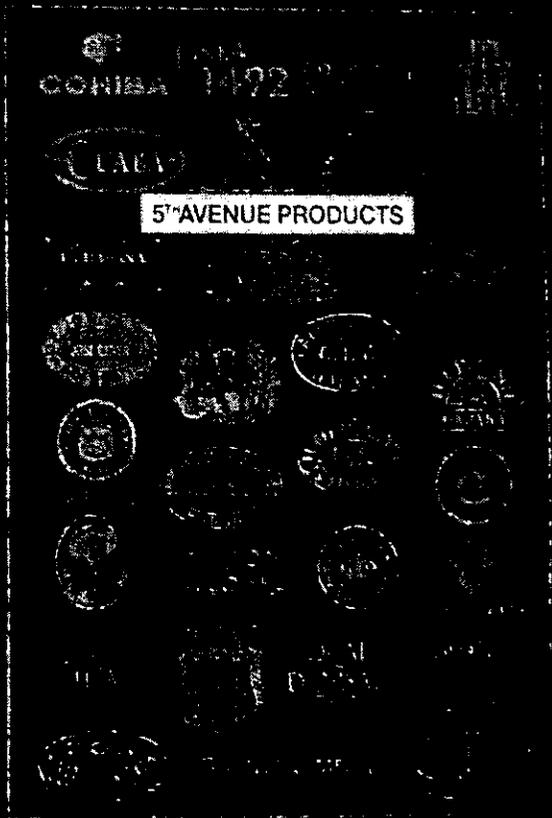
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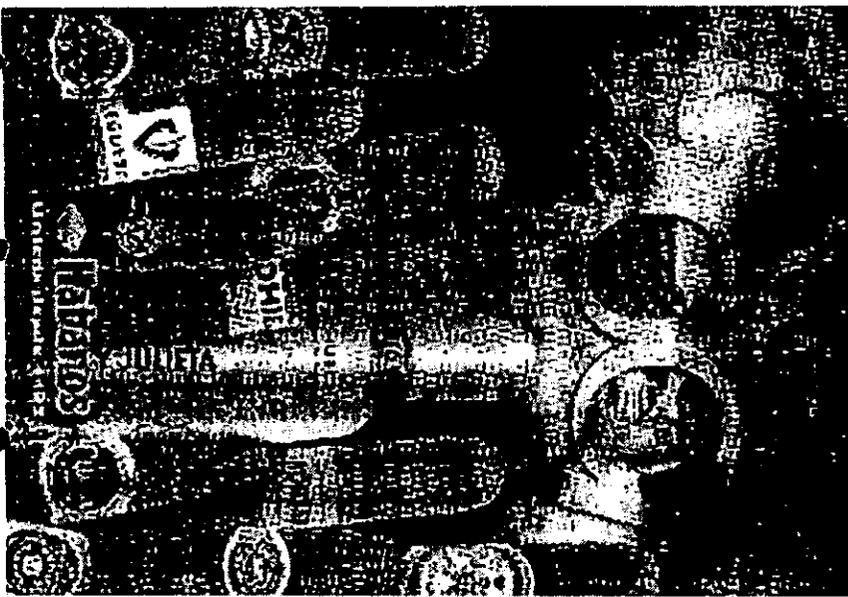
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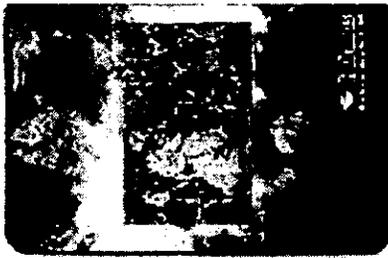
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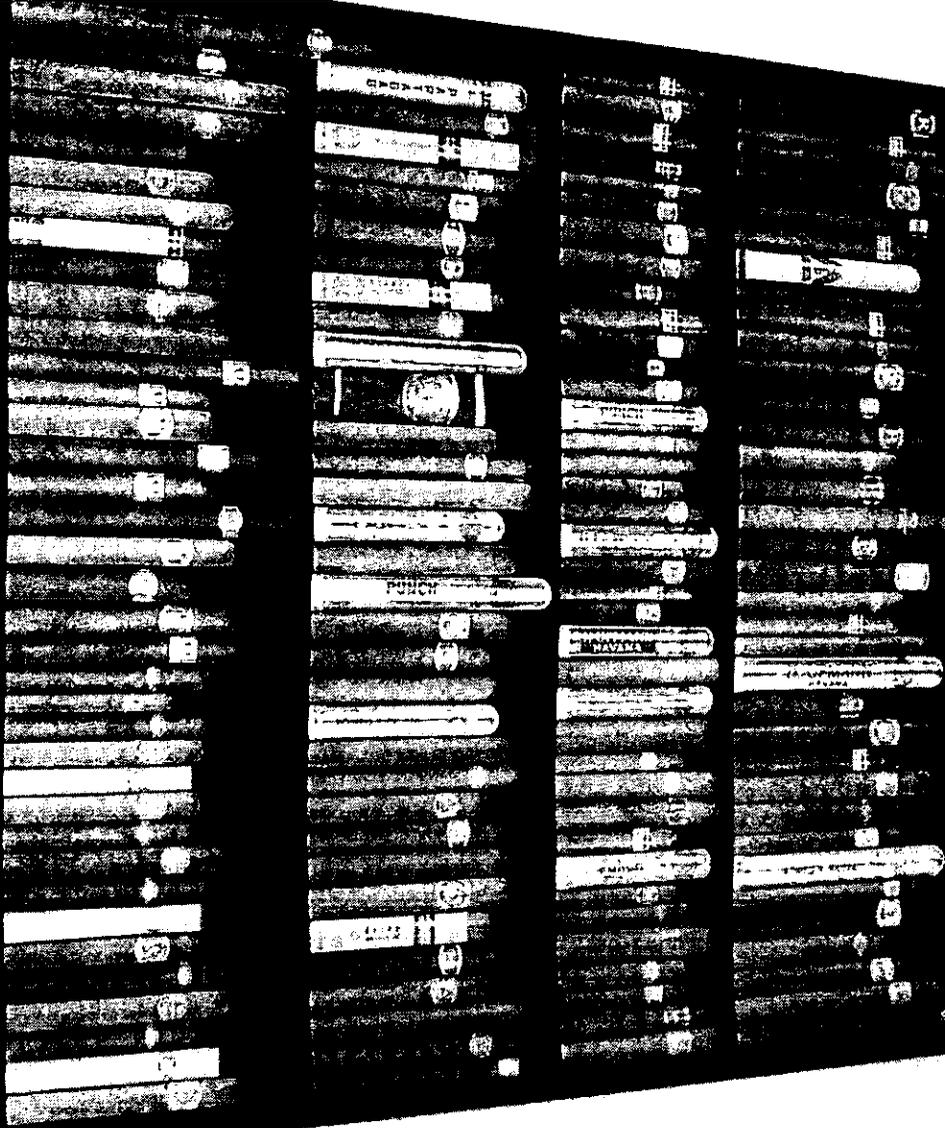


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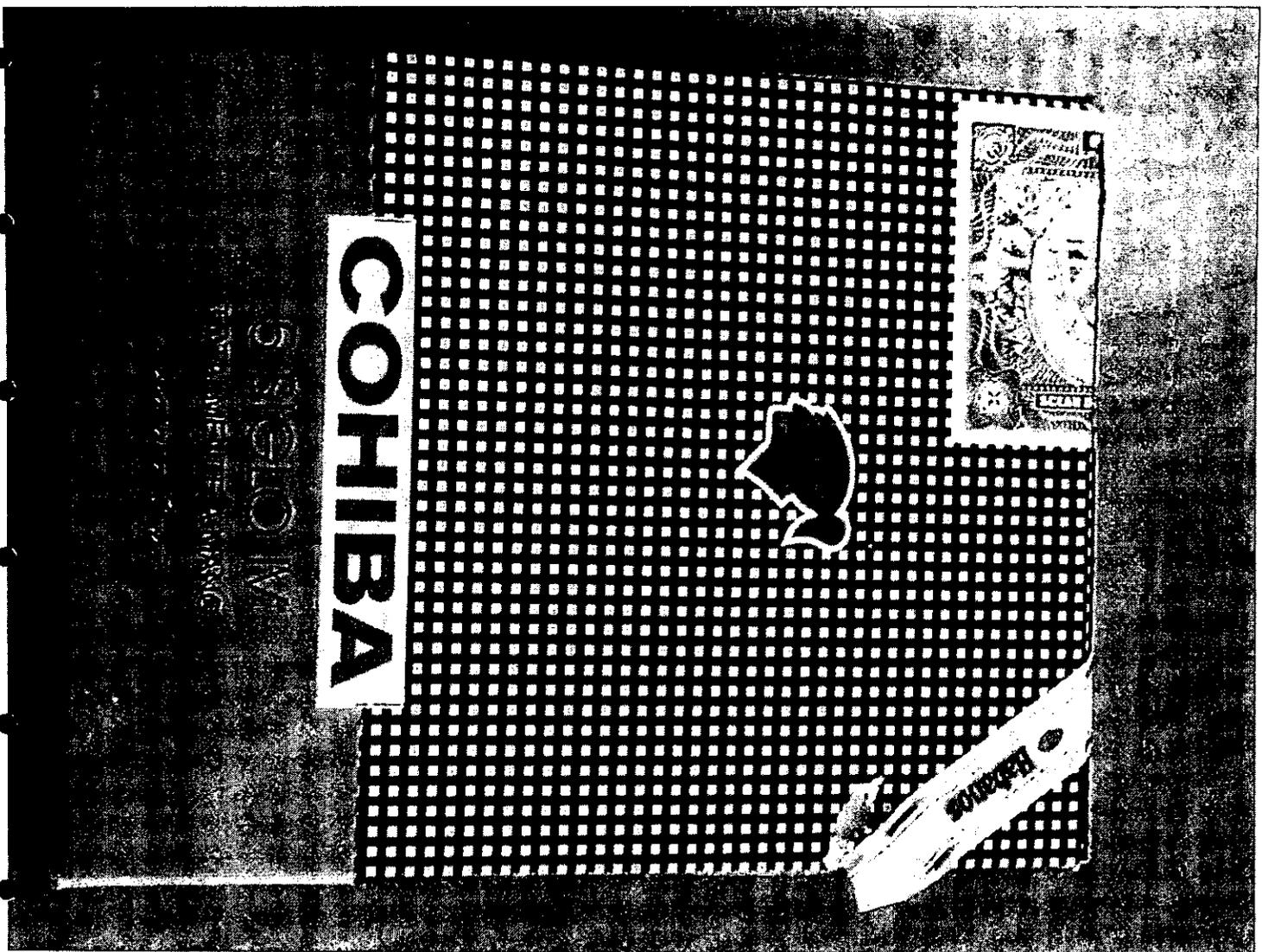
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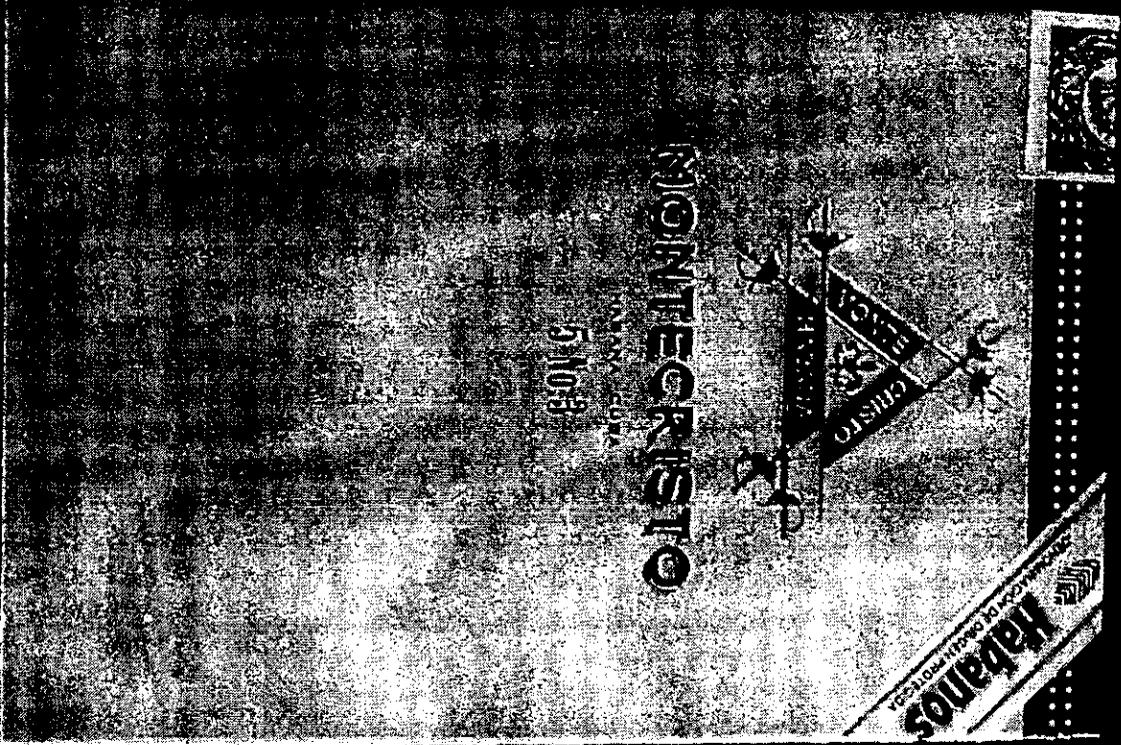


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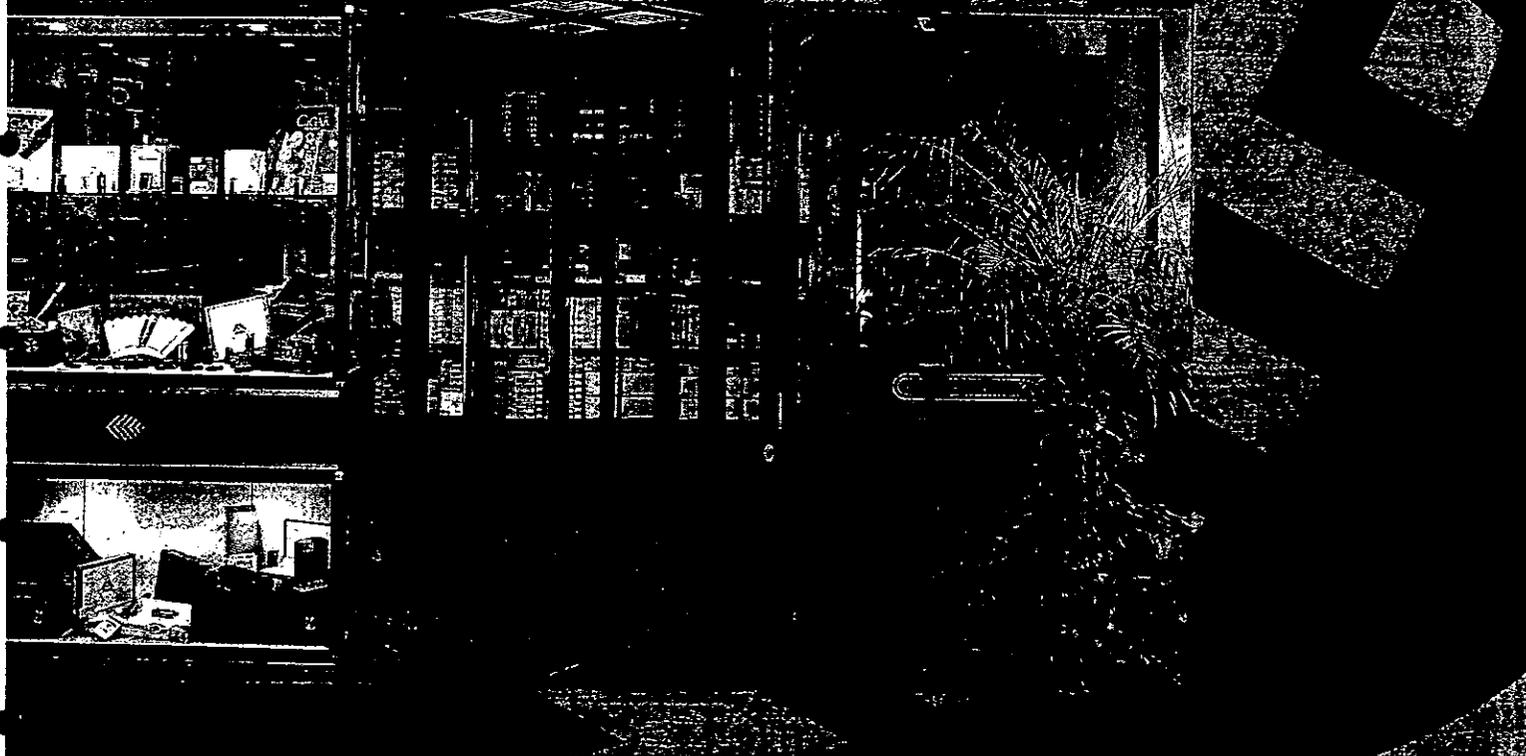
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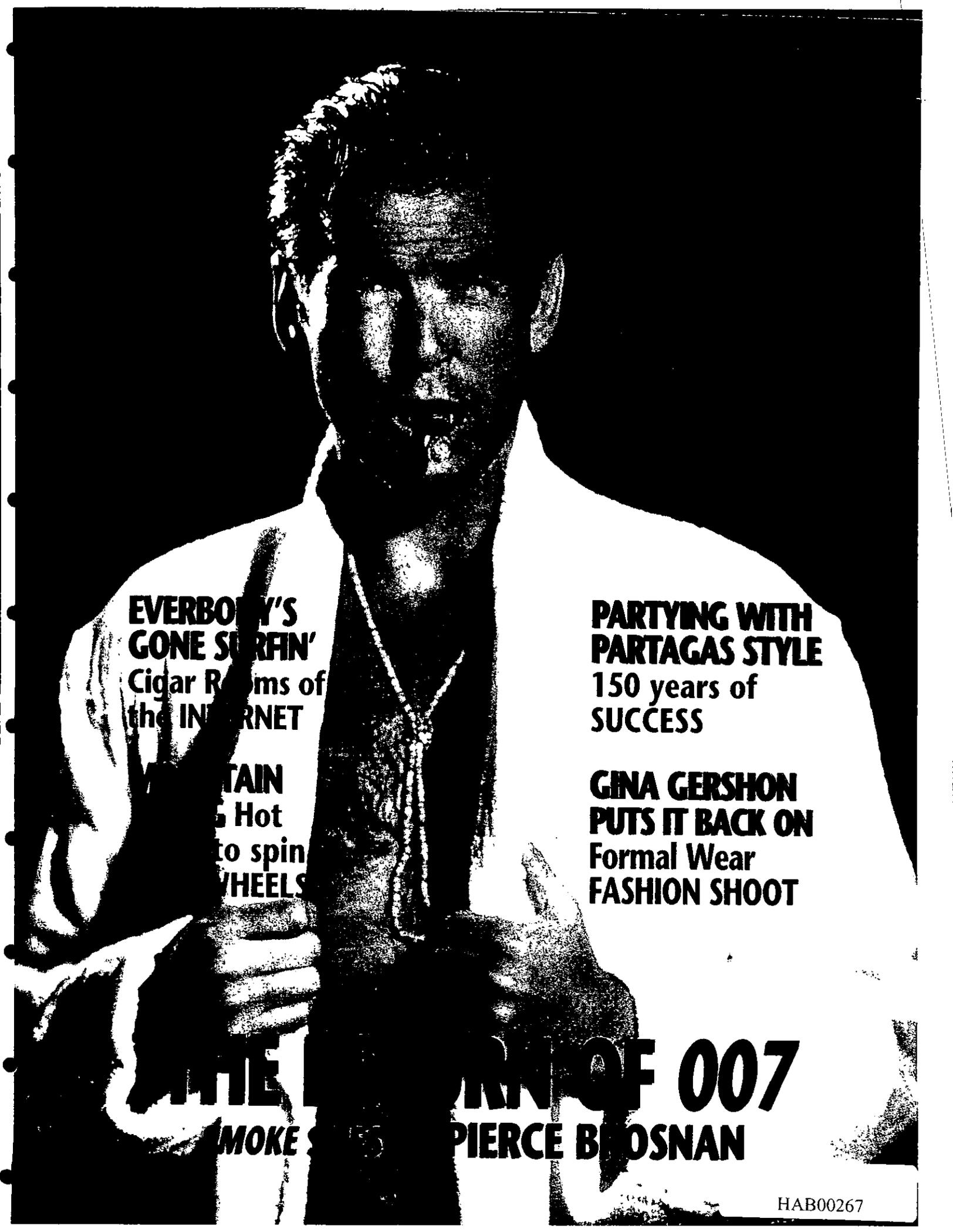
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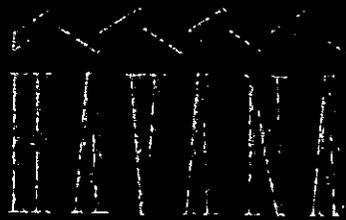
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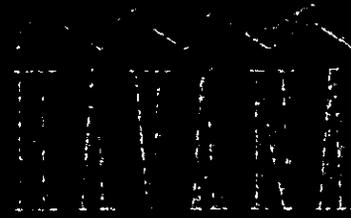
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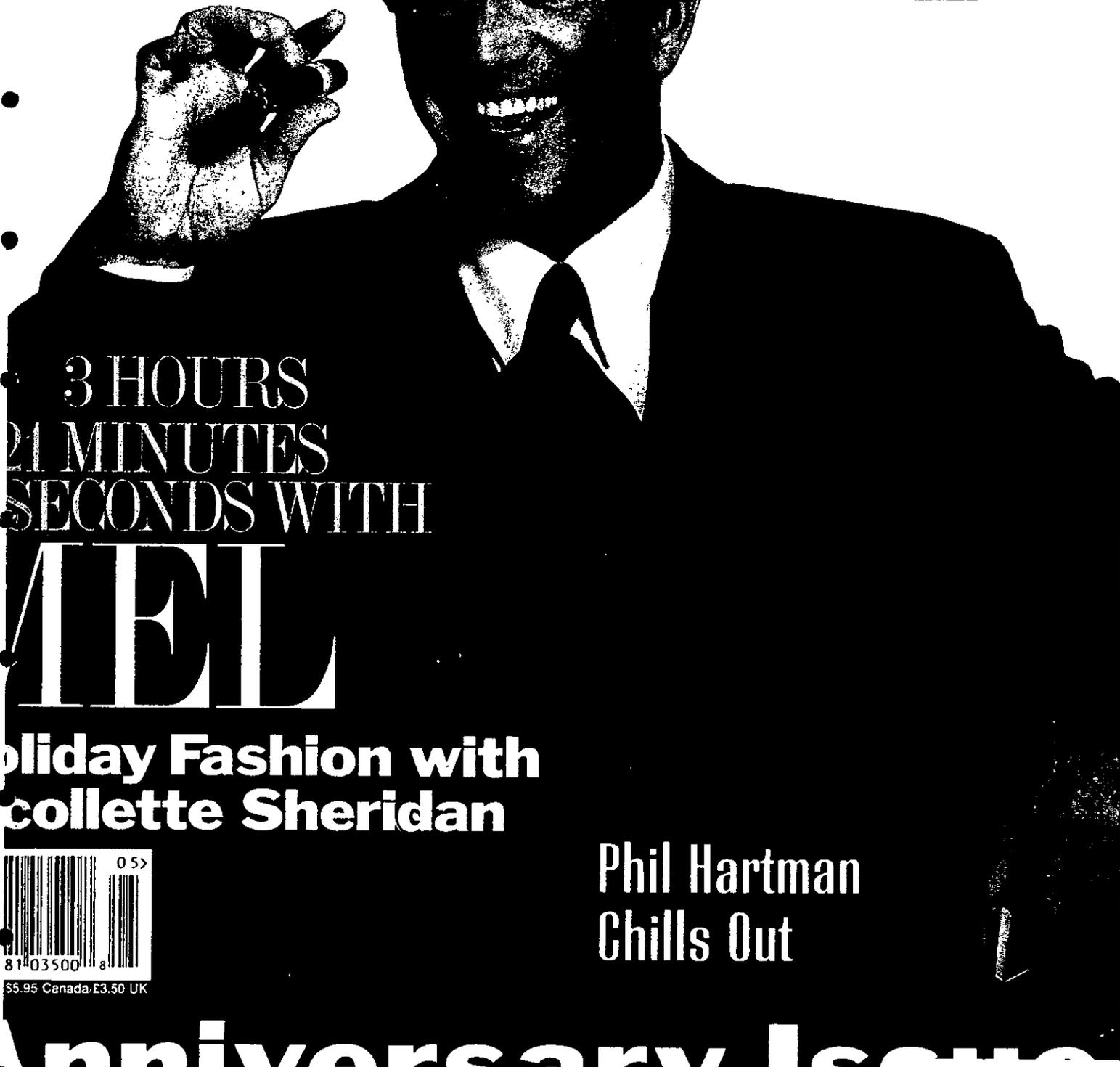
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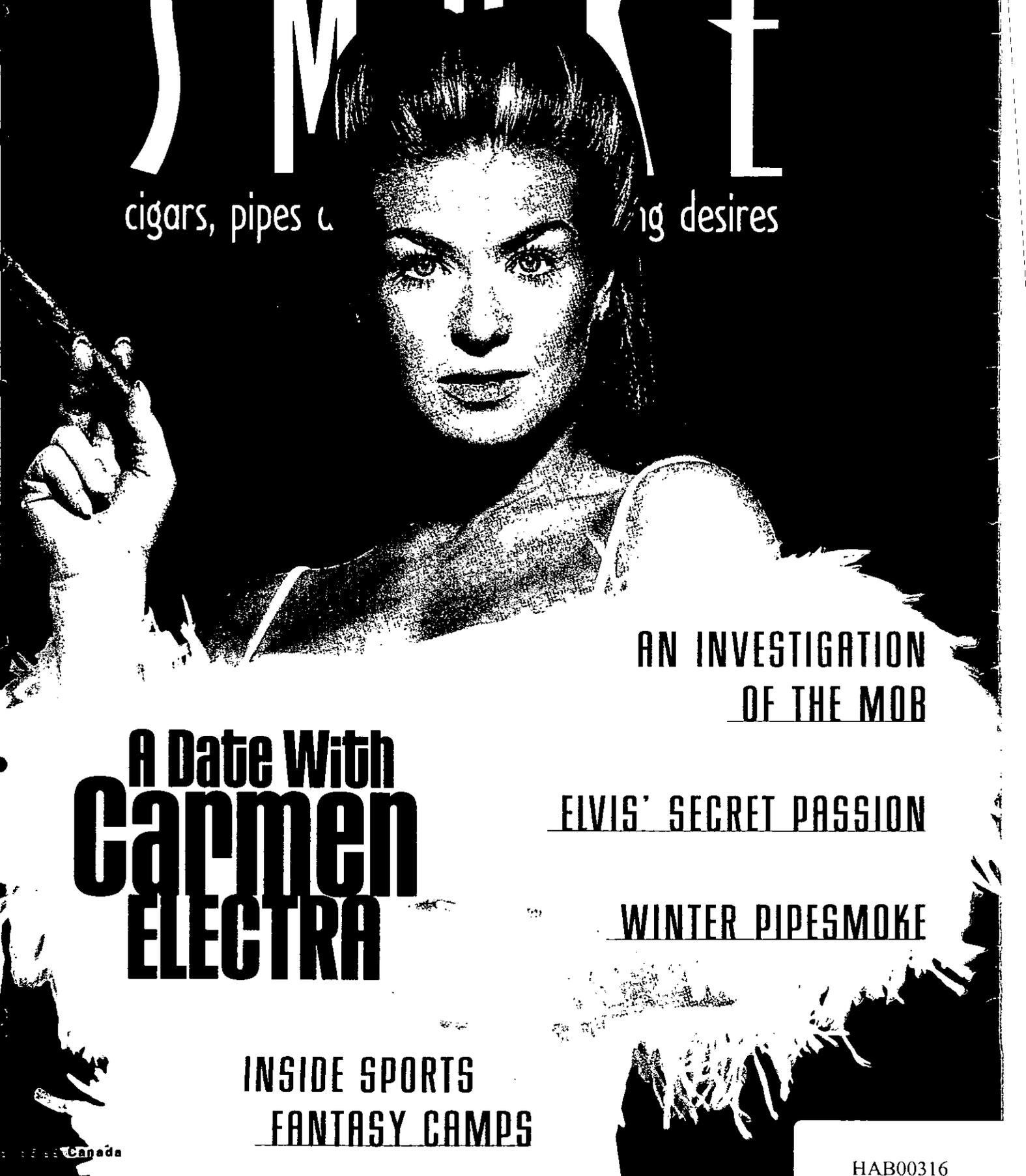
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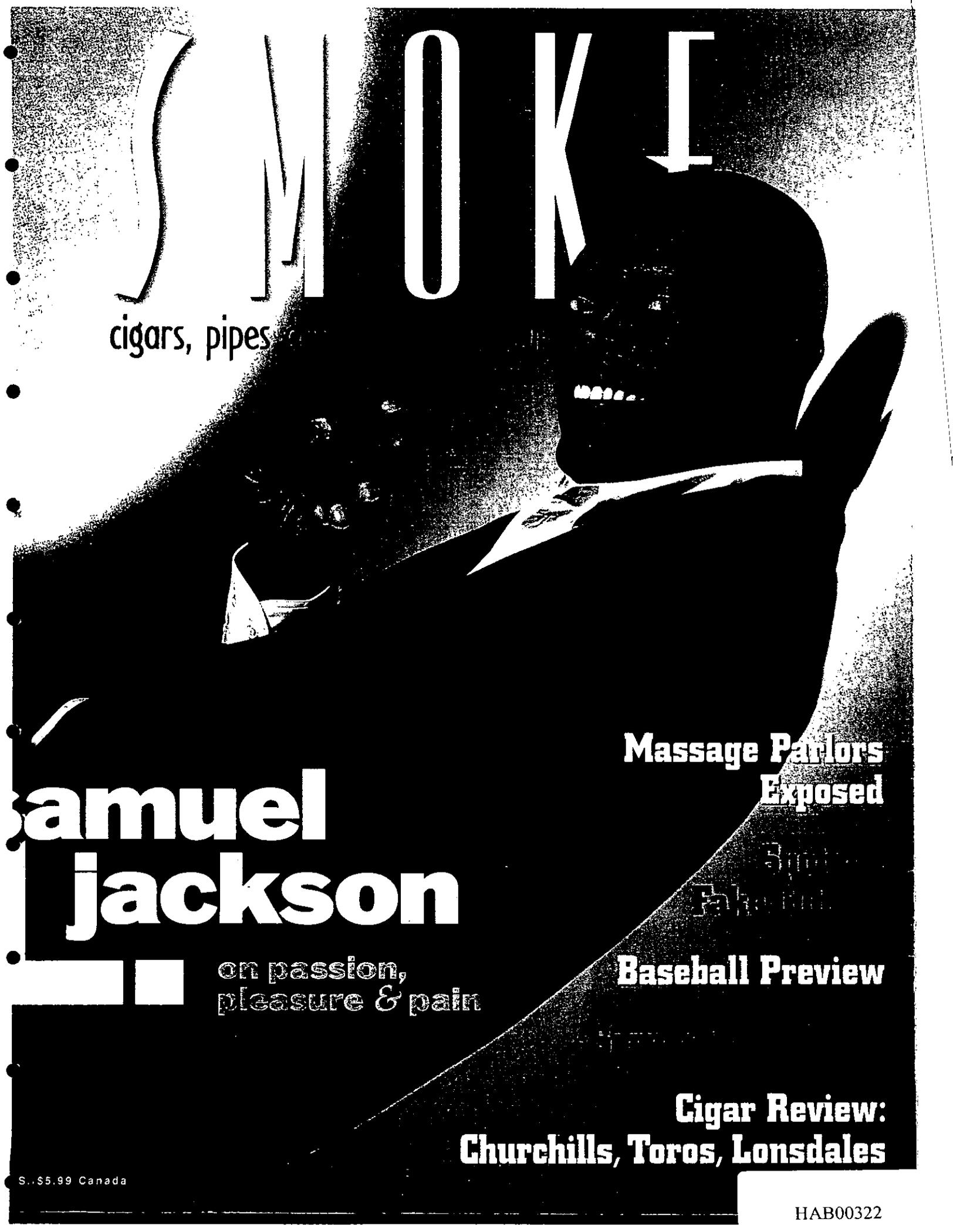
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