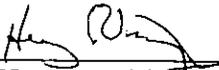


CERTIFICATE OF SERVICE

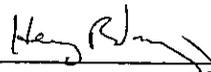
I HEREBY CERTIFY that a true correct copy of the foregoing, Applicant's Motion for Summary Judgment, was served via U.S. First Class Mail pursuant to 37 C.F.R. § 1.10, this 22nd of September, 2006, to David B. Goldstein and Michael Krinsky, Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., Attorney for Opposer, 111 Broadway, Eleventh Floor, New York, New York 10006-1901.

BY: 
Henry Rodriguez, Esq.

CERTIFICATE OF EXPRESS MAIL

I hereby certify that this correspondence is being deposited with the United States Postal Service's "First Class Mail" "to Addressee" service pursuant to 37 C.F.R. § 1.10, VIA Express Mail, in an envelope addressed to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on the above referenced date.

Date of Deposit: Sep. 22, 2006

BY: 
Henry Rodriguez, Esq.

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

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

**MEMORANDUM OF LAW IN SUPPORT OF APPLICANT'S
RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Applicant, **Anncas, Inc.**, (hereafter "Applicant"), by and through its counsel, **SANCHELIMA & ASSOCIATES, P.A.**, hereby files its memorandum of law in support of its response to Opposer's motion for summary judgment, in accordance with Rule 56 of the Federal Rules of Civil Procedure.

I. PRELIMINARY STATEMENT

Applicant moves the Board to deny Opposer's motion for summary judgment. The Board must determine if Applicant's use of the mark HAVANA CLUB for cigars made from Cuban-seed tobacco is deceptive, deceptively misdescriptive, or primarily geographically deceptively misdescriptive. Opposer improperly frames that issue as a foregone conclusion, focusing the matter solely on whether the Applicant's intended use of Cuban seed tobacco negates a primarily geographically deceptively misdescriptiveness objection. In truth,

Opposer's limited question is part of the entire legal analysis necessary in determining primarily geographically deceptively misdescriptiveness. The evidence establishes both that the primary meaning of Applicant's inherently distinctive composite mark is not geographic and that Cuban seed tobacco is an industry-accepted descriptor for these goods. The latter point has been acknowledged and credited by the USPTO during the application process for HAVANA CLUB and several other registrations.

Applicant's request for denial of Opposer's motion for summary judgment extends to the counterclaim for cancellation of the mark HABANOS UNICOS DESDE 1492 and Design. Opposer incorrectly characterized this compulsory counterclaim as frivolous and without basis in law or fact. Given Opposer's objections and limited response to Applicant's discovery requests on this issue, Applicant has no reason to believe the claim was without basis in fact. As to basis in law, Opposer's excusable non-use based on the Cuban Assets Control Regulations does not negate the need for Opposer to have a continued bona fide intent to use its mark in commerce. Opposer has provided no evidence in support of its bona fide intent to use.

II. STANDARD

In cases involving marks incorporating geographic terms, the Board must apply established standards of law regarding whether the mark constitutes a deceptive, deceptively misdescriptive, and/or primarily geographically deceptively misdescriptive mark. Under §2(a), a trademark is only refused registration if it "[c]onsists of or comprises ... deceptive, ... matter;" under §2(e)(1), a trademark is only 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;” and under §2(e)(3), a trademark is only refused registration if it “[c]onsists of a mark which ... (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(a), (e)(1), (e)(3).

In cases involving cancellation of a registration, the Board must apply established standards of law regarding what constitutes abandonment of a mark. There is a presumption of abandonment after three years of nonuse and an “intent not to resume use can be inferred from circumstances.” 15 U.S.C. §1127. In cases where a registration is based on a foreign registration and there has been no use in the U.S., “cancellation is proper if a lack of intent to use in the United States accompanies the nonuse.” Rivard v. Linville, 45 U.S.P.Q.2d 1374 (Fed. Cir. 1998).

III. LEGAL ARGUMENT

A. Whether Applicant’s mark is Primarily Geographically Deceptively Misdescriptive

Trademark law requires that the Opposer prove through a preponderance of the evidence that Applicant’s mark is primarily geographically deceptively misdescriptive, as contemplated by 15 U.S.C. §1052(e)(3). There is no genuine issue of material fact given the uncontested material evidence. Opposer notes that to determine if a mark should be refused registration based 2(e)(3), a four-pronged test is used: 1. the primary significance of the mark is a generally known geographic location, 2. the goods or services do not originate in the place identified in the mark, 3. purchasers would be likely to believe that the goods or services originate in the geographic place identified in the mark, and 4 the misrepresentation is a material factor in the consumer's decision to buy the goods or use the services. See TMEP §1210.01(b). However, Opposer improperly characterizes this four-pronged test as the test used to determine deceptive

misdescriptiveness under section 2(e)(1). See Opposer's Motion for Summary Judgment (hereinafter Opposer MSJ) page 21. That analysis requires a two-pronged test: 1. the matter sought to be registered misdescribes the goods, and 2. consumers must be likely to believe the misrepresentation. See TMEP §1209. The Applicant will show that Opposer cannot satisfy neither the primarily geographically deceptively misdescriptiveness test nor the deceptive misdescriptiveness test. The primary significance of Applicant's mark is not geographic, the reasonably prudent consumer would not believe that Applicant's goods originate in Cuba, and alternatively, that the goods do have a direct link to Cuba.

i. The Primary Significance of the Mark

Opposer contends that the primary significance of Applicant's mark is geographic and that the CLUB is a generic term, which adds nothing to the distinctivity of HAVANA CLUB. In support of this claim, Opposer cites several dictionary definitions, gazetteers, and publications that note the meaning of "Havana" is geographic. However, composite marks should not be dissected to determine the geographic significance of its constituent parts. "It is the likely reaction of customers to the total mark that is at issue." 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §14:11 (4th ed. 2001). In analyzing Applicant's mark in full, the conclusion Opposer presents is untenable. CLUB, in and of itself, is not generic. It is an arbitrary term bearing no relationship to any characteristic or quality of Applicant's goods. Opposer attempts to correlate Applicant's mark with a series of composite marks that the TTAB has held to be geographic (HAVANA SELECT, HAVANA PRIMO, HAVANA STYLE, etc...). See Opposer MSJ p. 23. However, those cited marks are distinguishable from HAVANA CLUB because it is not a composite of two descriptive or laudatory terms but a distinctive union of a descriptive and an arbitrary term that conveys the vibrancy and style of Caribbean nightlife. See

Applicant's Motion for Summary Judgment (hereinafter Applicant's MSJ) - ¶3 of Declaration; In re Jacques Bernier Inc., 13 U.S.P.Q.2d 1725 (Fed. Cir. 1990) ("a geographic mark may indicate that a product is stylish or of high quality, i.e. HYDE PARK or NANTUCKET for clothing, and FIFTH AVENUE for a car"). Applicant's mark similarly suggests a certain style and aura of high quality that, in conjunction with its non-geographic composite meaning, forms the primary non-geographic significance of the mark.

Opposer fails to note that it is well settled that "[a] mark that has a popular significance apart from its geographical meaning is not ... 'primarily' geographical." 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §14:28 (4th ed. 2001); In re International Taste, 53 U.S.P.Q.2d 1604 (T.T.A.B. 2000) (The Board held that the meaning of HOLLYWOOD FRIES and Design [a star element] was not primarily geographic as the term also referred to the entertainment industry, a connotation strengthened by the design element). Similarly, Applicant's mark HAVANA CLUB also refers to the fame, style, and high quality associated with the mark "Havana Club" for rum, owned by a third party, that forms the primary, popular significance of Applicant's mark. Also see Opposer's MSJ – Exhibit 22, p. 11-12 (regarding the rum HAVANA CLUB's exposure and fame within the U.S. via the movie "The Firm" and U.S. magazine articles). Applicant entered into a consent agreement with said party permitting Applicant's use of the mark HAVANA CLUB for the goods listed in its application. See Applicant's MSJ - Exhibit D. This fame encompassed by Applicant's mark creates a powerful non-geographic meaning akin to the meaning tapped by the owner of HOLLYWOOD FRIES and Design.

ii. **Likelihood of Consumers Believing Applicant's Goods Originate in Cuba and Materiality of Misrepresentation to Consumer Purchasing Decisions**

Opposer improperly characterizes Applicant's withdrawal of its argument in its Third Affirmative Defense as waiving all arguments that relate to the likelihood of consumers believing Applicant's goods originate in Havana, Cuba or the materiality of that belief on consumers' purchasing decisions. Applicant's withdrawal was only of the following specific argument: "Applicant contends that the 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)." See Applicant's Answer [emphasis added]. Applicant properly maintains that the relevant U.S. consuming public, upon encountering Applicant's mark in the U.S. marketplace, will not reasonably believe that the goods originate in Havana, Cuba due to following non-waived arguments: 1. the long-standing presence of the Cuban embargo, and 2. the broad and continuous exposure the relevant consuming public has to cigars bearing marks that incorporate the term "Havana," "Habana," or "Cuba."

The evidence shows that a consumer's decision to purchase Applicant's goods will not be materially impacted by Applicant's use of the word "Havana" in its composite mark. Opposer cites numerous cases that support the standard noted in In re Loew's Theatres, "if a 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 registerable." See Opposer's MSJ p. 27-28. However, those cases are distinguishable from the instant case because: 1. Applicant's mark is a distinctive composite mark (not a geographic term mark like "Durango" or "Bahia" or a composite of solely descriptive terms like "Colorado Steakhouse"), and 2. the U.S. consumer is barred from

encountering in commerce any goods emanating from the place noted for that particular good (whereas consumers do have access to gochujang from Soon Chang, South Korea, chewing tobacco from Durango, Mexico, and cigars from Bahia, Brazil). It is undisputed that U.S. consumers cannot legally obtain cigars manufactured in Cuba due to the Cuban embargo. It is undisputed that this effect has impacted the U.S. cigar market for over forty years. More importantly, the relevant consumers know full well of the existence of and the effects of the Cuban embargo upon the U.S. cigar market. See Applicant's MSJ - ¶7 of Declaration and Exhibit JA, Bates Nos. 131-150 (for Cuban embargo, see Nos. 137-139). Alternatively, that knowledge should necessarily be imputed upon the relevant consumer mindset due to the fame Opposer alleges is associated with Cuba for cigars. If U.S. cigar consumers so readily associate the best cigars in the world with Havana, Cuba, and thus would logically want to obtain them, they would quickly discover their desires to be legally unobtainable.

The present circumstances are akin to the holding in In re George Washington Ate Here, Inc. In that case, the Board held that the reasonably informed consumer would not believe the statement made by the fanciful mark GEORGE WASHINGTON ATE HERE, as the statement was historically impossible. In re George Washington Ate Here, Inc., 167 U.S.P.Q. 702 (T.T.A.B. 1970). Likewise, a reasonably informed consumer would not think HAVANA CLUB cigars originate in Cuba as it is historically and legally impossible. Applicant urges the Board to hold likewise in the instant case.

Upon encountering Applicant's cigars bearing the mark HAVANA CLUB, the reasonable U.S. consumer is not likely to think the product was manufactured in Havana or any other place in Cuba. In fact, the U.S. consumer has been exposed to numerous cigars bearing marks that incorporate the geographic terms "Havana" or similar variations thereof (e.g. Havana

Blend, La Vieja Havana, Havana Sun Grown, Havana Honeys, Joya de Havana, Havana Cuba Premier Selection, Gran Habano, etc...), which do not and cannot originate in Havana or Cuba. See Applicant's MSJ - ¶5 of Declaration and Exhibits B, Bates Nos. 104, 116, 117, 165, 176, 178, and 192. Several of these marks have been registered with PTO. See Applicant's MSJ - ¶6 of Declaration and Exhibit C. For example, a cursory review of just one U.S. distributor's cigar catalog (Phillips & King International's Cigar Cutter) shows many companies advertising cigars with marks that include the term "Havana," "Cuba," or similar variations thereof (e.g. Havana Sweets, La Vieja Habana, El Rico Habano, Camacho Havana, Cuban Rejects, La Gloria Cubana, etc...). See Applicant's MSJ - Exhibit B, Bates Nos. 83 through 90. Given the uncontradicted evidence of consumer exposure to similar marks for similar goods and the lack of exposure to Cuban-imported cigars, Opposer cannot meet the high standard required by the materiality test. In the event the Board finds that there is a goods/place association between the geographic term in the mark and the goods, such a finding is "negated by showing that the goods/place association is not the primary meaning a geographic mark connotes, but instead suggests that the product is stylish or of high quality." James E. Hawes, Trademark Registration Practice, §7:7 (2nd ed. 2003).

Should the reasonable consumer have any lingering doubts regarding the origin of Applicant's goods, U.S. Customs regulations will dispel any such doubts. Said regulations require Applicant to state the country of origin of the goods on the containers for said goods, including the retail boxes in which the goods are sold to U.S. consumers. See ¶8 of Declaration. Given the preceding arguments and evidence, a finding similar to that stated by the Board in In re Venice Maid Co. Inc. should apply to the instant case. The Board in that case found that the composite mark VENICE MAID, despite a clear implication from the mark that the products

originate in Italy, was not primarily geographically deceptively misdescriptive (i.e. consumers were not likely to make a goods-place association) because the mark itself was “fanciful and suggestive of the method of food preparation in Italy” and the judicial notice the Board took regarding “the marketing of Italian-type food products under marks that include Italian names or other words and phrases suggesting Italy.” In re Venice Maid Co. Inc. 222 U.S.P.Q. 618 (T.T.A.B. 1984). Applicant also draws the Board’s attention to In re Amerise. The Board in that case found that the composite mark ITALIAN MAIDE, despite a clear implication from the mark that the products originate in Italy, was not deceptive (i.e. consumers were not likely to immediately assume the goods came from Italy) because the mark itself had a double meaning and the fact that “it is not unusual in today’s market to find tomato paste, spaghetti sauce, and like products of American manufacture sold under Italian names and marks.” In re Amerise, 160 U.S.P.Q. 687 (T.T.A.B. 1969). The facts in the present case are even more favorable for Applicant. HAVANA CLUB has no similarly clear implication of origin. HAVANA CLUB is an inherently distinctive combined mark (see arguments *supra*). Likewise, it is not unusual in today’s market to find cigar products of non-Cuban manufacture sold under Cuban names and marks, including using the term “Havana.”

iii. Connection between Applicant’s Goods and Havana or Cuba

The final prong of the test touches on the misdescriptive requirement of 2(e)(3), i.e. the origination of the goods covered by Applicant’s mark. Opposer would focus the Board on the examples provided in the TMEP §1210.03 linking origination with the good being manufactured, produced, or sold in a given place. However, the Board need not go beyond the fundamental meaning of the term “originate,” and look to the illustrative examples. It is undisputed that Applicant’s Cuban seed tobacco bears an identifiable and tangible connection to Havana or

Cuba. Applicant's goods will bear a direct link to Cuba due to its requirement that the tobacco to be used in the manufacture of its cigars be of Cuban-seed (also known as Havana-seed). See Applicant's MSJ - ¶3 of Declaration. Cuban-seed tobacco is a term commonly used in the cigar industry. See Applicant's MSJ - ¶4 of Declaration and Exhibit ¶A (for examples of marketplace use of Cuban-seed, including industry catalogs, articles, and advertisements). The term denotes tobacco grown from seeds descended from Cuban tobacco plants or seeds taken from Cuba prior to the Cuban embargo. See Applicant's MSJ - ¶4 of Declaration and Exhibit ¶A, Bates Nos. 131-150 & 159 (for origin of Cuban-seed, see Nos. 138-140). Thus, through the use of tobacco of Cuban-seed, Applicant obviates any misdescriptiveness that U.S. consumers might, however unlikely, associate with its mark due to incorporation of the term "Havana."

Additionally, it has been the policy of the PTO to support this accepted marketplace usage by permitting the registration of numerous trademarks that incorporate the geographic terms "Havana," "Cuba," or similar variations thereof, for cigars and other tobacco products derived from Cuban-seed. See Applicant's MSJ - ¶6 of Declaration and Exhibit C. A few registrations of marks incorporating these geographic terms have been permitted without reference to the type of seed. Applicant urges the Board to continue the PTO's policy by holding HAVANA CLUB to not be primarily geographically deceptively misdescriptive and permit registration of the mark on the Principal Register. Applicant posits that it is the PTO's role to safeguard consumer expectancy and promote consistency in the marketplace. The Board can only promote this policy goal if it continues in its acknowledgement of the relevance of Cuban seed tobacco to the U.S. cigar industry and the importance to U.S. cigar consumers of cigars made of Cuban seed tobacco.

B. Whether Applicant's mark is Deceptive

Trademark law requires that the Opposer prove through a preponderance of the evidence that Applicant's mark is deceptive as contemplated by 15 U.S.C. §1052(a). To determine if a mark consisting of a geographic term should be refused registration based 2(a), the "materiality" test is used. Applicant incorporates its arguments and conclusions regarding the primarily geographically deceptively misdescriptiveness and the materiality test of its mark in III.A. (*supra*) herein. Should the Board determine that HAVANA CLUB is not primarily geographically deceptively misdescriptive, the mark cannot be held to be deceptive either.

C. Whether Applicant committed fraud upon the PTO in the application process

A motion for summary judgment is an improper tool for addressing such issues as fraud upon the PTO. Copelands' Enterprise Inc. v. CNV Inc., 20 U.S.P.Q.2d 1295 (Fed. Cir. 1991). However, Applicant denies Opposer's allegation that Applicant misrepresented to the PTO Examiner that the cigars to be covered by its mark were to be of Cuban seed and denies that Cuban seed tobacco bears no association or connection to Cuba. Cuban seed tobacco is a widely used and accepted term in the U.S. cigar industry (see arguments and evidence in III.A.iv, *supra*). Applicant has had the intention, since the inception of its mark, that its cigar bearing the mark HAVANA CLUB would be of Cuban-seed tobacco. See Applicant's MSJ - ¶3 of Declaration.

D. Whether Opposer abandoned its mark upon which it claims Standing

Opposer characterizes the potential decision to cancel its mark registration as somehow violating the U.S.'s obligations under international law. However, any such decision to cancel Opposer's registration would arise due to the coupling of non-use with a lack of a bona fide intent to use the mark in U.S. commerce. A decision so grounded would not violate any

international obligation, as the Board would have reached said decision fully within accepted legal principles.

A bona fide intent to use has a specific meaning and an objective test. This objective test requires Opposer to provide evidence of its intent such as, “in the form of a written plan of action for a new product or service, a new line of goods, or for the re-branding of an existing line of goods.” 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §19:14 (4th ed. 2001). The Board has supported this view of an objective test for bona fide intent “when it held that if an ITU applicant, when challenged in an opposition, has no documents supportive of or bearing on its claimed intent to use, then this absence of evidence is alone sufficient to prove that applicant lacked a bona fide intention to use.” Id. at §19:14, referencing Commodore Elecs., Ltd. v. CBM Kabushiki Kaisha, 26 U.S.P.Q.2d 1503 (T.T.A.B. 1993); Lane Ltd. v. Jackson Int’l Trading Co., 33 U.S.P.Q.2d 1351 (T.T.A.B. 1994) (Board noted that “Applicant’s evidence of its implementation and formulation of its business plan ... constitutes credible, objective corroboration of its ... bona fide intention to use the mark in commerce on tobacco.”).

Opposer stated in its §8 Affidavit that it “intends to sell and transport goods using this mark in the United States as soon as the above-cited [the Cuban embargo] prohibition is lifted.” See Applicant’s MSJ - Exhibit E, Bates Nos. HAB00062 through HAB00069. This mere hope of the lifting of the Cuban embargo at some unknown future date does not satisfy the objective good-faith test required by the Lanham Act. In response to Applicant’s request for documentation supporting its claim of a bona fide intent to use its mark in U.S. commerce, Opposer has produced no written business plan in support of its claim. See Applicant’s MSJ - Exhibit G (Interrogatory No. 8 & Request for Production No. 8).

Opposer claims the evidence it submitted showing use of the mark abroad clearly shows intent to use the mark in U.S. commerce despite its admitted nonuse. Opposer has produced images of its foreign use of its mark (and other designations) and images of its advertisement bearing its mark (and other designations that falls outside the scope of its registration). See Applicant's MSJ - Exhibit E, Bates Nos. HAB00001-HAB00058 and HAB00242-HAB00472 & HAB00582, respectively). Opposer mischaracterizes the decision of the board in *Arechabala v. Havana Rum & Liquours, S.A.* (Canc. No. 22,811 [T.T.A.B. Oct. 19, 1995]) that use abroad alone suffices to demonstrate the requisite intent to use in the U.S. See Opposer's MSJ p. 41. The Board acknowledged Havana Rum's worldwide use, but did not directly correlate that use as the basis for finding Havana Rum had the intent "to use the mark in the [U.S.] as soon as it is legally possible to do so," *Arechabala*, at 19. The Board was unclear on exactly what evidence based its decision to acknowledge Havana Rum's intent to use. Thus, it does not follow that Opposer's foreign use suffices to base a bona fide intent to use in the U.S.

Yet, examining Opposer's U.S. advertisements shows deficiencies that indicate abandonment of its registration. 99 of 110 advertisements bear a designation different from the mark appearing on the registration. They show either "Habanos" (with and without the design element) or "Habanos Unique Since 1492" (with design). Only 10% of these advertisements produced bear the registered mark HABANOS UNICOS DESDE 1492 and Design. Additionally, the reasonable consumer would not gather that the designations used by Opposer were in connection with the goods listed in its registration (i.e. raw tobacco, cigars, cigarettes, cut tobacco rappee, matches, tobacco, tobacco pipes, pipe-holders, ashtrays, match boxes, cigar cases, and humidors). Many of the advertisements give the impression that Opposer's designations are connected with the service of distribution of or the retail sale of tobacco

products. See Applicant's MSJ - Exhibit E, Bates Nos. HAB00309, HAB00310, HAB00318, HAB00319, HAB00338, HAB00398, HAB00406, HAB00407). This negligible advertising of its mark in the U.S. cannot support an objective test of bona fide intent to use. Without a more concrete showing of documents evincing its business plan, "there will be little in the record to evidence the "objective" factors Congress said were necessary to test," a bona fide intention to use. 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §19:14 (4th ed. 2001). Opposer has failed to provide any dispositive, objective evidence supporting its supposed bona fide intent to use.

IV. CONCLUSION

In view of the arguments, facts, and evidence presented herein, Opposer's Motion for Summary Judgment should be denied. Applicant prays this Board to enter a decision in its favor dismissing this opposition and canceling Opposer's registration forthwith.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true correct copy of the foregoing, Memorandum of Law in Support of Applicant's Motion for Summary Judgment, was served via U.S. First Class Mail pursuant to 37 C.F.R. § 1.10, this 22nd of September, 2006, to David B. Goldstein and Michael Krinsky, Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., Attorney for Opposer, 111 Broadway, Eleventh Floor, New York, New York 10006-1901.

BY: Henry Rodriguez
Henry Rodriguez, Esq.

CERTIFICATE OF EXPRESS MAIL

I hereby certify that this correspondence is being deposited with the United States Postal Service's "First Class Mail" "to Addressee" service pursuant to 37 C.F.R. § 1.10, VIA Express Mail, in an envelope addressed to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on the above referenced date.

Date of Deposit: Sept. 22, 2006

BY: Henry Rodriguez
Henry Rodriguez, Esq.