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

Proceeding	91165519
Party	Defendant Anncas, Inc. Anncas, Inc. 16112 N.W. 13th Avenue, Suite E Miami, FL 33169
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application
Serial No. 78/363,024
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.	)	

APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR LEAVE TO FILE BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT IN EXCESS OF PAGE LIMITS

Applicant, Anncas, Inc.., ("Applicant"), by and through its counsel, Sanchelima & Associates, P.A., responds to Corporacion Habanos S.A.'s ("Opposer") Motion for Leave to File Brief in Support of Motion for Summary Judgment in Excess of Page Limits (hereinafter "Motion for Leave"). Applicant respectfully requests that Opposer's untimely Motion for Leave be denied and that Opposer's August 4, 2006 Motion for Summary Judgment be stricken and given no consideration.

Trademark Rule 2.127(a) limits a party's brief in support of a given motion to 25 pages. Opposer's Motion for Summary Judgment, submitted on August 4, 2006, was a total length of 43 pages. On September 22, 2006, Opposer filed its untimely Motion for Leave. Though Trademark Rule 2.128(b) reads "Without prior leave of the Trademark Trial and Appeal Board, a

main brief on the case shall not exceed fifty-five pages in length in its entirety," Rule 2.127(a) does not contemplate this option of obtaining prior leave of the board to exceed the stated page limits. Thus, Opposer's Motion for Leave is void *ab initio*.

Should the Board decided to consider Opposer's Motion for Leave, Applicant urges the Board to deny said motion. It is standard Board procedure to strike motions that exceed page limits. The Board has noted that, "[I]f a party files a brief in excess of the relevant limit, without having filed a timely motion for leave to exceed the limit of the rule, then the brief shall be stricken without leave to file a substitute." United Foods Inc. v. United Air Lines Inc., 33 U.S.P.Q.2d 1542 (TTAB 1994). In the instant case, Opposer filed its Motion for Leave 7 weeks after filing its Motion for Summary Judgment. It is only "with the Board's permission, *timely sought*, will a brief of a length exceeding those limitations be accepted." Realnetworks, Inc. v. Real Telephony, Inc., 2002 T.T.A.B Lexis 124 (TTAB 2002) (emphasis added). Thus, the following holding should be applied to Opposer's brief, "since applicant failed to seek prior approval of the Board to file a brief in excess of the page limitation imposed by the rule, applicant's brief is hereby stricken, in accordance with the Board's policy, in its entirety and without leave to file a substitute brief which meets the limit." D.A.R.E. America v. Dare To Be Great, Inc. 1997 T.T.A.B. Lexis 137 (TTAB 1997).

If the Board proceeds to consider Opposer's rationale for its need to file an overlength brief, Applicant would contravene the points Opposer raises in its Motion for Leave. Opposer claims that it required the extra pages to address three distinct legal issues, including a four-factor analysis for one issue. In fact, there were four different legal issues raised by Opposer's Notice of Opposition, and one additional issue raised by Applicant's counterclaim. This reasoning should not persuade the Board. Applicant addressed all five of these issues, including

multi-factor analysis in three of them, in its 23 page Motion for Summary Judgment filed on August 4, 2006. Presented with a generally analogous situation to the instant case, the Board noted, "petitioner argues that it needs the extra pages to be able to reply to all arguments raised by respondent in its main brief on the case. Again, we are unpersuaded. Respondent's brief was … well under the limit for such a brief." United Foods Inc., 33 U.S.P.Q.2d at 1543. Opposer also argues that it was important to address at length the meaning of "Havana" and "Cuban seed" in the cigar industry. As evinced by its arguments and evidence in its Motion for Summary Judgment, Applicant also feels that the marketplace meanings of the terms "Havana" and "Cuban seed" are important, however it was able to address this topic within the 25 page limit. Opposer should have been able to do likewise also.

Applicant notes that Opposer does not adequately explain why it did not seek leave to file its excessive brief prior to the filing of its Motion for Summary Judgment. Applicant will be prejudiced by the granting of Opposer's Motion for Leave because Opposer would then have approximately 87% more space to elaborate its arguments than Applicant had.

WHEREFORE, Applicant respectfully prays that the Board deny Opposer's Motion for Leave to File Brief in Support of Motion for Summary Judgment in Excess of Page Limits and strike from the record Opposer's Motion for Summary Judgment without any consideration and without leave to file a substitute brief.

Respectfully submitted,

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By: _____/hr/_____
Henry Rodriguez, Esq.

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 27th 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: _____/hr/_____
Henry Rodriguez, Esq.

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that a true correct copy of the foregoing was filed electronically with the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451, via the Electronic System for Trademark Trials and Appeals (ESTTA) this 27th of September, 2006.

BY: _____/hr/_____
Henry Rodriguez, Esq.