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

Proceeding	91165519
Party	Plaintiff Corporacion Habanos, S.A. Corporacion Habanos, S.A. Corporacion Habanos, S.A. Avenida 3ra, #2006, e/20 y 22Miramar Havana, CUBA
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD

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

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

Opposer Corporacion Habanos, S.A. ("Opposer"), through undersigned counsel, hereby files its Reply in support of its motion for leave to file its brief in support of its motion for summary judgment, filed on August 4, 2006, in excess of the page limits, and in support thereof states as follows:

As previously explained, Opposer, through its undersigned counsel, inadvertently did not file its motion for extra pages at the time it filed its motion for summary judgment on August 4, 2006. The failure to file was an oversight committed during the finalization and filing of Opposer's summary judgment motion, Declarations and exhibits, in which filing of the motion for leave was simply overlooked. Undersigned counsel discovered this mistake when it reviewed the TTAB docket sheet as it prepared to file its Opposition to Applicant's motion for summary judgment on September 22, 2006. Undersigned has apologized for this oversight, and apologizes again, but contends that this inadvertent error should not prejudice Opposer's position on the two substantive matters before the Board, one of which raises a recurring issue concerning consumer deception not previously addressed by the Board, and the other a significant United States

foreign policy issue concerning the reciprocal protection of intellectual property in the United States and Cuba.

Applicant Anncas, Inc.'s effort to exploit counsel's inadvertence through misstatements of, and improper citations to, Board decisions should be rejected. Applicant relies heavily on two cases that are designated "THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE T.T.A.B." – *D.A.R.E. America v. Dare to be Great, Inc.*, 1997 WL 688176 (T.T.A.B. 1997); and *Realnetworks, Inc. v. Real Telephony*, 2002 WL 122613 (T.T.A.B. 2002). As such, these citations should be disregarded. *See* TBMP 101.03 & n.5 (citing cases). If not disregarded, Opposer notes that Applicant inaccurately cites these cases. In both cases, it appears that the party filing the oversize brief *never* moved for leave to file that brief, and further, that in *Realnetworks*, the party had used Roman numerals on some pages in a manner that the Board found to be "an impermissible attempt to circumvent Board rules regarding page limitations of briefs." *Realnetworks*, at *2; *D.A.R.E.*, at *2 n.11. Neither case addressed a situation in which the party filed a motion for leave to file the oversize brief (albeit inadvertently after the fact), and there is no issue here of Opposer improperly trying to circumvent the page limitations.

Applicant also ignores the fact that in *United Foods Inc. v. United Air Lines Inc*, 33 USPQ2d 1542 (T.T.A.B. 1995), the Board considered the motion for leave on the merits, found the reasons for the extra pages insufficient, and then granted the petitioner "*15 days from the date of this decision to file a substitute reply brief conforming to the 25-page limit*." *Id*. at 1543 (emphasis added). Moreover, in rejecting the request for extra pages, the Board noted that the movant's main brief was only 18 pages (out of a limit of 55) and that the 30 pages was unnecessary to reply to the respondent's three (3) page brief. *Id*. (Opposer also notes that the

Board stated that the motion is to be filed "on or before the due date for the brief," but that the better practice is not to file the brief with the motion. *Id*. at 1542 n.1).

Neither *United Foods*, nor the cases Applicant cites, nor any other case Opposer has found addresses the situation here of simple inadvertence in not filing the motion for leave with the main brief, followed by filing of a motion for leave long prior to any action on the substantive motion. Particularly as there are compelling reasons for the oversize brief, and no prejudice to Applicant, as shown below, Opposer respectfully contends that the motion for leave should be considered on the merits; at a minimum, Opposer should be permitted to file a brief conforming to the page limits.

Although Applicant claims prejudice, it has shown none. Its own brief for summary judgment was 20 pages, and its brief in opposition to Opposer's motion was 16 pages, so plainly it was not limited or prejudiced by the 25 page limits. That Applicant's brief on its motion for summary judgment was within the page limits is simply non-responsive to the reasons for Opposer's oversize brief, as Opposer previously set forth in its motion.

With all due respect, the issues raised on Opposer's Opposition and in Applicant's distinct and unrelated counterclaim are unusual, and it may further be acknowledged that more is at stake for Opposer than for Applicant, who has one intent-to-use mark at issue. Applicant's counterclaim seeks to destroy the long-standing United States policy of reciprocal protection of intellectual property, including through trademark registrations, between the United States and Cuba, despite the embargo, which puts at risk all of Opposer's registered marks in the United States. Opposer's Opposition challenges the PTO's apparent, but unexplained practice of refusing registration to marks that seek to use the term "Havana" for "cigars," while allowing registration for cigars made from "Cuban seed" tobacco, apparently based on a misunderstanding

by the PTO of some relevant association between Havana or Cuba and "Cuban seed" tobacco. Opposer contends in good faith that the approximately 30 pages devoted to setting forth the extensive evidence and law on the multiple issues raised by Opposer's claims, including the meaning of "Cuban seed" to counter the apparent misapprehension of that term, and the approximately 13 pages devoted to Applicant's counterclaim, was necessary and appropriate considering the nature and public importance of the issues.

WHEREFORE, Opposer requests that its Motion for leave to file its brief in support of its motion for summary judgment, filed on August 4, 2006, in excess of the page limits be granted, and that, in the alternative, Opposer be granted leave to file a brief conforming to the page limits.

Dated: New York, New York
October 11, 2006

Respectfully submitted,

/David B. Goldstein/
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was emailed to and was served on Applicant by mailing, postage prepaid, said copy on October 11, 2006 via U.S. Mail to:

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/David B. Goldstein/
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CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that he has caused a true and correct copy of Opposer's Reply In Support Of Motion For Leave To File Summary Judgment Brief In Excess Of Page Limits to be filed electronically through the ESTTA system on October 11, 2006.

/David B. Goldstein/
DAVID B. GOLDSTEIN