



## **BULKY DOCUMENTS**

(exceeds 300 pages)

**Proceeding/Serial No:** 91165519

**Filed:** 11-26-2007

**Title:** Notice of Filing Original Transcripts of Trial  
Testimony

**Part 1 of 1**



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

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

**NOTICE OF FILING ORIGINAL TRANSCRIPTS OF TRIAL TESTIMONY**

Opposer Corporacion Habanos, S.A. ("Opposer") hereby notifies the Trademark Trial and Appeal Board ("TTAB") that the original transcripts of the trial testimony of Richard B. Perelman, with corrections and signature; Eumelio Espino Marrero, with corrections and signature; and Manuel Garcia Morejon, with signature, are being filed herewith by Express Mailing to the Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA, 22202-3514, and that this Notice, without transcripts, is also being filed via ESTTA. Copies of these transcripts, prior to corrections and signing, were previously filed with the Board and served upon Applicant, and the corrections and signature pages are being served herewith on Applicant.

Dated: New York, New York  
November 20, 2007

Respectfully submitted,

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*Attorneys for Opposer Corporation Habanos, S.A.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the transcripts of the trial testimony of Richard B. Perelman, Eumelio Espino Marrero, and Manuel Garcia Morejon, were previously served upon Applicant, and that one copy of the foregoing document and true and correct copies of the corrections and signature pages of said transcripts were served on Applicant by mailing, postage prepaid, by United States Express Mail, postage prepaid, on November 20, 2007 to:

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Manuel Garcia Morejon

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A P P E A R A N C E S

FOR THE OPPOSER:

BY: Mr. David B. Goldstein  
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PRESENT FROM HABANOS, S.A.:

BY: Lic. Manuel Garcia  
HABANOS, S.A.  
Calle 3ra No. 2006 e/ 20 y 22  
Miramar, Playa  
Ciudad de la Habana, Cuba

The Interpreters: Maria Esther Lemus  
Veronica Mendez

\* \* \* \* \*

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I N D E X

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MANUEL GARCIA MOREJON

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Manuel Garcia Morejon

1 MANUEL GARCIA MOREJON,  
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 OPPOSER'S DIRECT WRITTEN QUESTIONS

5 Question No. 1:

6 Q. Please state your full name and residence  
7 address for the record.

8 A. My name is Manuel Garcia Morejon. I live in  
9 District D, Number 508 in Havana, Cuba.

10 Question No. 2:

11 Q. Do you understand that you are under oath?

12 A. Yes.

13 Question No. 3:

14 Q. Is there any reason that you cannot testify  
15 truthfully today?

16 A. None.

17 Question No. 4:

18 Q. Are you taking any medicine that might impair  
19 your ability to answer the questions truthfully and  
20 accurately?

21 A. No.

22 Question No. 5:

23 Q. Do you understand that I will be reading  
24 questions that have been prepared by the lawyers in  
25 this case?

Manuel Garcia Morejon

1 A. Yes.

2 Question No. 6:

3 Q. Do you understand that these questions will  
4 be translated into Spanish by the interpreter here,  
5 that you are to answer these questions in Spanish,  
6 that the interpreter will translate your answers into  
7 English, and that I will record the English answers?

8 A. Yes.

9 Question No. 7:

10 Q. If you want me or the interpreter to repeat a  
11 question again, please tell the interpreter to do so,  
12 okay?

13 A. Yes.

14 Question No. 8:

15 Q. Do you understand that if you do not  
16 understand a question, I can only repeat the question;  
17 I cannot clarify, or reformulate or explain the  
18 question:

19 A. Yes. Okay.

20 Question No. 9:

21 Q. If an attorney has made an objection to a  
22 question, I will read the objection after I have read  
23 the question. Please do not answer the question until  
24 I have read both the question and any objection, and  
25 they have both been translated into Spanish, all

1 right?

2 A. Okay.

3 Question No. 10:

4 Q. If you need a break, please tell me, and we  
5 will take a break after you have answered a pending  
6 question, all right.

7 A. Yes. All right.

8 Question No. 11:

9 Q. Are you a citizen of the Republic of Cuba?

10 A. Yes.

11 Question No. 12:

12 Q. Are you a citizen of any other country?

13 A. No.

14 Question No. 13:

15 Q. Is Spanish your primary language?

16 A. Yes.

17 Question No. 14:

18 Q. Do you speak English or understand spoken  
19 English?

20 A. Yes. A little bit.

21 Question No. 15:

22 Q. Do you consider yourself fluent in speaking  
23 English and understanding spoken English?

24 A. No.

25 Question No. 16:

1 Q. Are you able to read English?

2 A. Yes.

3 Question No. 17:

4 Q. Are you aware that this matter involves a  
5 dispute between Corporacion Habanos, S.A. and a  
6 company in the United States, Anncas, Inc., concerning  
7 Anncas's attempt to register HAVANA CLUB as a  
8 trademark for cigars in the United States?

9 A. Yes.

10 Question No. 18:

11 Q. Are you also aware that the Applicant does  
12 not currently sell "Havana-Club"-labeled cigars in the  
13 United States or elsewhere?

14 A. No.

15 Question No. 19:

16 Q. Prior to your involvement in this proceeding,  
17 were you aware of the United States company Anncas,  
18 Inc.?

19 A. No.

20 Question No. 20:

21 Q. Do you know who William Bock is?

22 A. No.

23 Question No. 21:

24 Q. What is your educational background after  
25 high school, including the names of any schools, dates

1 attended, areas of study, and any degrees received?

2 A. I have a bachelor's degree in foreign  
3 affairs -- in foreign trade, I'm sorry, and I have a  
4 specialization in marketing. I studied in Berlin in  
5 the old democratic republic of Germany and I received  
6 my bachelor's degree in 1982.

7 Question No. 22:

8 Q. Are you currently employed by Corporacion  
9 Habanos, S.A.?

10 A. Yes.

11 Question No. 23:

12 Q. I will usually refer to Corporacion Habanos,  
13 S.A. either as Habanos, or Habanos, S.A., is that  
14 clear?

15 A. Yes.

16 Question No. 24:

17 Q. Describe the type of business in which  
18 Habanos is engaged.

19 A. The corporation, Habanos, S.A., is  
20 responsible of the commercialization of all the Cuban  
21 tobacco products, excluding cigarettes all over the  
22 world. It's the one that give us the guidelines for  
23 the marketing strategies, the cost strategies for all  
24 these products at the world level.

25 Question No. 25:

1 Q. What is your current position and title with  
2 Habanos?

3 A. I am the corporate vice president of --  
4 commercial vice president of the corporation.

5 Question No. 26:

6 Q. Since what year have you been employed by  
7 Habanos?

8 A. Since its foundation in the year 1994.

9 Question No. 27:

10 Q. How long have you been in your current  
11 position?

12 A. Eleven years.

13 Question No. 28:

14 Q. Please describe your primary responsibilities  
15 in that position.

16 A. I am responsible for the commercialization of  
17 all the Cuban tobacco excluding cigarettes, especially  
18 Habanos cigars, Habanos. Everything that has to do  
19 with the marketing of the products, their promotion,  
20 cost strategies, introduction of our products in new  
21 markets. In general terms, the commercialization of  
22 Habanos all over the world.

23 Question No. 29:

24 Q. In particular, what are your responsibilities  
25 concerning the promotion and marketing of Cuban-origin

1 cigars?

2 A. Well, I am the direct responsible of these  
3 activities within the Habanos corporation. That means  
4 that I am responsible of setting all the marketing  
5 strategies directed to the commercialization of these  
6 products in regards to cost, distribution,  
7 commercialization, promotion, advertising, PR --  
8 public relations, I mean -- and also the export from  
9 Cuba, Habanos to all over the world.

10 Question No. 30:

11 Q. For what areas of the world are you  
12 responsible?

13 A. All over the world excluding the North  
14 American market. Because legally we cannot  
15 commercialize or trade our products in that country.

16 THE INTERPRETER: By North America he  
17 means the United States.

18 THE WITNESS: (In English) The United  
19 States of America.

20 Question No. 31:

21 Q. Do your responsibilities include awareness of  
22 trademark registrations of Habanos, S.A. throughout  
23 the world?

24 A. What do you mean by awareness? Yes. In my  
25 responsibility, I am aware of all the records that has

1 been made by the Habanos corporation, however, I am  
2 not responsible for them.

3 Question No. 32:

4 Q. Does this knowledge include trademark  
5 registrations in the United States?

6 A. Yes, in the general sense.

7 Question No. 33:

8 Q. What is the Comite de Direccion of Habanos,  
9 S.A., including its responsibilities?

10 A. The Comite de Direccion of Habanos, S.A. is  
11 the executive direction organizing in charge of the  
12 daily operations. They are in charge of everything.  
13 They execute the strategies that the administrators  
14 are setting up. It's a body that meets at least once  
15 a month.

16 Question No. 34:

17 Q. Are you a member of that body?

18 A. Yes.

19 Question No. 35:

20 Q. What is the Consejo de Administracion of  
21 Habanos, S.A., including its responsibilities?

22 A. This body, the Consejo de Administracion of  
23 Habanos, S.A. is the maximum executive body. They  
24 meet every three months and they are in charge of the  
25 administration, managing. They are the ones that set

1 up all the strategies and then the Comite de Direccion  
2 is the one that executes these strategies. They are  
3 the maximum responsables of managing and  
4 administrating the corporation.

5 Question No. 36:

6 Q. Are you a member of that body?

7 A. Yes.

8 Question No. 37:

9 Q. Do you travel outside of Cuba in connection  
10 with your work for Habanos?

11 A. Yes. A lot.

12 Question No. 38:

13 Q. Since 2000, approximately how often each year  
14 do you travel outside Cuba in connection with your  
15 employment with Habanos?

16 A. All -- every month. All the months.

17 Question No. 39:

18 Q. What are some of the countries that you have  
19 traveled to since 2000?

20 A. Let's start with the main markets. In  
21 Europe, Spain, France, Germany, England, Hong Kong,  
22 Asia, Japan, China, Australia, Canada, Argentina  
23 Mexico. Practically all the countries. Currently,  
24 Habanos is present in most all the countries of the  
25 world with the exception of the United States.

1 Question No. 40:

2 Q. Have you ever traveled to the United States  
3 on behalf of Habanos?

4 A. Only once.

5 Question No. 41:

6 Q. If so, when?

7 A. In the year 2000.

8 Question No. 42:

9 Q. Did you testify under oath in 2000 at a  
10 deposition involving litigation in the United States  
11 court in New York City between the Cuban cigar  
12 enterprise known as Cubatabaco and the American cigar  
13 company, General Cigar, concerning a dispute over the  
14 COHIBA cigar mark?

15 A. Yes.

16 Question No. 43:

17 Q. Where did that deposition take place?

18 A. In New York.

19 Question No. 44:

20 Q. Describe any previous positions you held with  
21 Habanos, including the dates, job titles and primary  
22 responsibilities?

23 A. In Habanos, I have only been vice president;  
24 commercial vice president.

25 Question No. 45:

Manuel Garcia Morejon

1 Q. Have you had any other employment in the  
2 tobacco or cigar industry?

3 A. Yes. Before being the vice president of  
4 Habanos, I was the general manager of the company, the  
5 exclusive dealers or distributors in Germany of the  
6 Habanos.

7 Question No. 46:

8 Q. If yes, identify your prior employers in the  
9 tobacco or cigar industry, including the name and  
10 location by city and country for each such employer.

11 A. The company where I was a general director,  
12 the name was Fifth Avenue. Products trading. They  
13 were located in Germany in the city of  
14 Waldshut-Tiengen.

15 Question No. 47:

16 Q. For each such employer in the tobacco or  
17 cigar industry, please describe the nature and type of  
18 that employer's business.

19 A. Precisely as I told you, I was in Fifth  
20 Avenue and I was the general director for that  
21 company. I was the top executive, the highest ranking  
22 executive that I was in charge of the daily activities  
23 of the company. And that was the marketing, the  
24 commercialization, the distribution, the promotion,  
25 all the Habanos in Germany. Then after that, in

1 Habanos.

2 Question No. 48:

3 Q. For each such employer, what were your dates  
4 of employment?

5 A. In Germany in Fifth Avenue since the year  
6 1990 to the beginning of 1996. In the Habanos  
7 Corporation, since 1996 up to date.

8 Question No. 49:

9 Q. For each such employer, describe your job  
10 responsibilities, including your position and title.

11 A. Well, I have explained this to you  
12 practically. I said that I've seen in both cases the  
13 responsible of the commercialization, distribution,  
14 marketing, promotion of the Habanos. In the case of  
15 the Fifth Avenue in the German markets, both  
16 responsible for the local -- for the local market and  
17 the duty free in Habanos for the entire world.

18 Question No. 50:

19 Q. Have you had any other employment outside the  
20 tobacco or cigar industry?

21 A. Yes.

22 Question No. 51:

23 Q. If yes, identify your prior employers outside  
24 the tobacco industry, including the name and location  
25 by city and country for each such employer.

1           A.     Well, before going to Germany for the Fifth  
2 Avenue company, I was employee of the ministry of  
3 foreign commerce of the Republic of Cuba and I was a  
4 specialist in under the vice ministry of exports. And  
5 among my duties, I had to research markets for the  
6 traditional products to be exported from the Cuban  
7 market.

8 Question No. 52:

9           Q.     For each such employer, what were your dates  
10 of employment?

11          A.     In the ministry of foreign commerce, I was  
12 there since 1982 up to the year 1990 when I went to  
13 Germany.

14 Question No. 53:

15          Q.     For each such employer outside the tobacco  
16 industry, please describe the nature and type of that  
17 employer's business.

18          A.     The name of the position that I had was  
19 researcher of commercial markets, and I repeat, I was  
20 responsible for marketing research for the traditional  
21 products to be exported from Cuba. That's the only --  
22 all the time I was in that position, in that place.

23 Question No. 54:

24          Q.     Are you familiar with Cigar Aficionado  
25 magazine?

1           A.    Yes.

2 Question No. 55:

3           Q.    Is it a United States publication?

4           A.    Yes.

5 Question No. 56:

6           Q.    What type of magazine is Cigar Aficionado?

7           A.    The Cigar Aficionado magazine, as the name  
8 tells, is a specialized magazine in cigars.

9 Question No. 57:

10          Q.    Is it your understanding that the main  
11 readership for Cigar Aficionado are American cigar  
12 consumers?

13          A.    Yes, they are cigar consumers. They are  
14 consumers, not American consumers. Consumers in  
15 general. Maybe they are general cigar consumers.

16 Question No. 58:

17          Q.    Has Habanos advertised in Cigar Aficionado?

18          A.    Yes.

19 Question No. 59:

20          Q.    Are you familiar with Smoke magazine?

21          A.    Yes.

22 Question No. 60:

23          Q.    Is Smoke a United States publication?

24          A.    Yes.

25 Question No. 61:

1 Q. What type of magazine is Smoke?

2 A. Pretty similar to Cigar Aficionado. It's a  
3 specialized magazine in cigars. And it's mainly  
4 focused or directed to the consumers of cigars.

5 Question No. 62:

6 Q. Is it your understanding that the main  
7 readership for Smoke magazine are American cigar  
8 consumers?

9 A. Yes.

10 Question No. 63:

11 Q. Does Habanos advertise in Smoke magazine?

12 A. Yes.

13 Question No. 64:

14 Q. As part of your job responsibilities, do you  
15 regularly read Cigar Aficionado and Smoke?

16 A. Yes.

17 Question No. 65:

18 Q. Do you regularly read the articles concerning  
19 Cuba or Cuban cigars?

20 A. Yes.

21 Question No. 66:

22 Q. Have you been interviewed by reporters for  
23 either Cigar Aficionado or Smoke magazines in  
24 connection with the Cuban cigar industry?

25 A. Yes.

1 Question No. 67:

2 Q. Approximately how often?

3 A. At least once a year.

4 Question No. 68:

5 Q. Have you met with other American journalists  
6 or writers concerning the Cuban cigar industry?

7 A. It's possible, yes.

8 Question No. 69:

9 Q. Have you heard or seen the English word  
10 "Havana" or "Havanas" used in connection with cigars?

11 A. Yes.

12 Question No. 70:

13 Q. What do those terms, "Havana" or "Havanas,"  
14 mean when used in connection with cigars?

15 A. The term Havana or Havanas mainly for the  
16 English speaking people, Anglo-Saxons, typically when  
17 they want to express when they are using this term is  
18 the cigars coming from Cuba.

19 Question No. 71:

20 Q. What does the term "Havana cigar" mean?

21 A. The cigars coming from Cuba that are produced  
22 in Cuba that are produced hundred percent with Cuban  
23 raw material under the quality parameters that have  
24 been established by the official manufacturing plants  
25 in Cuba. That's the term Havana cigar.

1 Question No. 72:

2 Q. In your experience, do English speakers  
3 interchangeably use the English language terms "Havana  
4 cigar" and "Cuban cigar"?

5 A. Yes. For the Cuban cigar, yes.

6 Question No. 73:

7 Q. Are you aware of English-language cigar books  
8 published in the United States that use the term  
9 "Havana" in the title to refer to cigars from Cuba?

10 A. Yes.

11 Question No. 74:

12 Q. Can you give some examples of such titles?

13 A. Yes. For example, there is a book that is  
14 very famous and it was written from Hong Kong, advised  
15 by Cuban people. It's called an illustrated  
16 Encyclopedia Revolution of the Havana Cigars that is  
17 very famous and it's very used. There is another one,  
18 the Consumer Guide of the Havana Cigar written by a  
19 very famous retailer from Switzerland. His name is  
20 Gerard, and there is another one, very famous,  
21 Perryman Encyclopedia of Havana Cigar, just to name a  
22 few. These are the ones that are most used.

23 Question No. 75:

24 Q. Are you aware of English-language cigar books  
25 published in the United States that use the term

1 "Havana" in the text of the books to refer to cigars  
2 from Cuba?

3 A. Yes. Precisely the three that I just  
4 mentioned to you. Even in the title of the book the  
5 terms Havana cigars appear. And, of course, in the  
6 text, many times it's repeatedly appeared, these three  
7 books that I mentioned to you before. I would say  
8 that these are the most known and the most used books.  
9 Question No. 76:

10 Q. In reading articles in Cigar Aficionado or  
11 Smoke magazine, have you seen the word "Havana" used  
12 to refer to a cigar from Cuba?

13 A. Yes.  
14 Question No. 77:

15 Q. In interviews or meetings with journalists,  
16 writers or others from the United States, do they  
17 commonly use the words "Havana cigar" or "Havanas" to  
18 refer to cigars from Cuba?

19 OBJECTION: As to question no. 77, it is  
20 immaterial and irrelevant what they use to refer to  
21 cigars from Cuba. Furthermore, the designation in  
22 question here is HAVANA CLUB.

23 THE WITNESS: Yes.  
24 Question No. 78:

25 Q. Are you aware whether any cigar companies in

1 the U.S. use the word "Havana" as part of the name of  
2 a cigar brand that they sell in the United States?

3 A. Yes.

4 Question No. 79:

5 Q. Other than such use of "Havana" as part of  
6 the name of a cigar brand in the United States, have  
7 you ever seen or heard the words "Havana" or  
8 "Havanas," used in connection with cigars, to mean  
9 anything other than a cigar from Cuba?

10 A. No.

11 Question No. 80:

12 Q. If a cigar is not manufactured in Cuba and is  
13 not made from Cuban grown tobacco, is that cigar a  
14 "Havana," or a "Havana cigar"?

15 A. No.

16 Question No. 81:

17 Q. What does the word "Habanos" mean in  
18 connection with cigars?

19 OBJECTION: As to question nos. 81 and  
20 82. There is no geographical limitation and thus  
21 irrelevant insofar as the relevant U.S. market is not  
22 affected.

23 THE WITNESS: I already mentioned this  
24 before. As I told you, for me, that ban what van  
25 Habano or Habanos cigar is a product elaborated in

1 Cuba that contains hundred percent of raw material  
2 coming from Cuban raw material elaborated under  
3 quality parameters that are set by the manufacturing  
4 plant officials in Cuba and that's it. It's a product  
5 that it's manufactured in Cuba with Cuban raw  
6 materials in official manufacturing plants in Cuba.

7 Question No. 82:

8 Q. What does the word "Habano" mean in  
9 connection with cigars?

10 A. The same as I answered in the previous  
11 question.

12 Question No. 83:

13 Q. Have you heard the terms "Habano" or  
14 "Habanos" used by English speakers to refer to cigars  
15 from Cuba?

16 OBJECTION: As to questions no. 83 and  
17 84. There is no foundation to infer that what the  
18 witness' perception is of the word HABANOS extends to  
19 the rest of the U.S. population. Irrelevant as to  
20 other non-US English speakers could interpret the word  
21 HABANO or HABANOS to mean.

22 THE WITNESS: Yes.

23 Question No. 84:

24 Q. Have you heard the terms "Habano" or  
25 "Habanos" used by English speakers form the United

1 States to refer to cigars from Cuba?

2 A. Yes.

3 Question No. 85:

4 Q. Have you read articles in Cigar Aficionado in  
5 which the term "Habano" or "Habanos" is used to  
6 describe Cuban-origin cigars?

7 OBJECTION: As to question 85. Vague  
8 and the documents speak for themselves.

9 THE WITNESS: Yes. The response is yes.

10 Question No. 86:

11 Q. In connection with your job responsibilities  
12 at Habanos, S.A., are you knowledgeable about  
13 registrations of Cuban appellations (or denominations)  
14 of origin relating to cigars and tobacco?

15 A. Yes.

16 Question No. 87:

17 Q. As part of your job responsibilities as Vice  
18 President of Habanos, have you previously seen  
19 certificates of Cuban appellation (or denomination) of  
20 origin registrations relating to cigars and tobacco?

21 A. Yes.

22 Question No. 88:

23 Q. Is the term "Habanos" registered as an  
24 appellation of origin for cigars from Cuba under any  
25 international agreement or treaty?

1                   OBJECTION: As to question nos. 88  
2 through 124 and Exhibit "1," these questions and  
3 foreign registration as irrelevant to these  
4 proceedings. Double J. of Broward, Inc. v. Skalony  
5 Sportswear GmbH, 21 U.S.P.A. 2d. 1609 (TTAB 1991).  
6 Opposer has not used its purported denomination of  
7 origin in the United States and thus has no actionable  
8 rights that could be damaged by the registration of  
9 the application mark.

10                   THE WITNESS: Yes. The Lisbon agreement  
11 or treaty. The Lisbon arrangement, agreement.  
12 Question No. 90:

13           Q. Please review the document what I am handing  
14 to you that has been marked as Garcia Morejon Exhibit  
15 1. Do you recognize that document?

16           A. It's the registration certificate for the  
17 origin appellation international registration from the  
18 Habanos word at the Republic of Cuba for cigars.

19 Question No. 91:

20           Q. What do you recognize this Exhibit 1 to be?

21           A. This is a registration certificate for the  
22 origin appellation international registry for the  
23 Habanos word by the Cubatabaco company. This is made  
24 by the Cuban tobacco company which is Empresa Cubana  
25 del Tabaco for the word Habanos.

1 Question No. 92:

2 Q. Is this the international "Habanos"  
3 appellation of origin registration that you were just  
4 discussing?

5 A. Yes.

6 Question No. 93:

7 Q. Are you familiar with this registration in  
8 connection with your work?

9 A. Yes.

10 (Opposer offers Garcia Morejon Exhibit 1  
11 in evidence.)

12 Question No. 94:

13 Q. What does the word "Habana" mean in  
14 connection with cigars?

15 A. I've heard that some other times. For me as  
16 for many other people it means cigars that are made in  
17 Cuba with 100 percent Cuban raw material made at the  
18 official manufacturing plants in Cuba under very  
19 demanding parameters of quality set by those  
20 manufacturing plants in Cuba and 100 percent made in  
21 Cuba.

22 Question No. 95:

23 Q. Is "Habana" also the Spanish word for  
24 "Havana," the capital city of Cuba?

25 A. Yes.

1 Question No. 96:

2 Q. Is the term "Habana" registered as an  
3 appellation of origin for tobacco and tobacco products  
4 from the Province of Havana, Cuba under any  
5 international agreement or treaty?

6 A. Yes.

7 Question No. 97:

8 Q. If so, what international agreement?

9 A. The Lisbon agreement.

10 Question No. 98:

11 Q. Please review the document that I am handing  
12 to you that has been marked as Garcia Morejon Exhibit  
13 2. Do you recognize that document?

14 A. Yes.

15 Question No. 99:

16 Q. What do you recognize this Exhibit 2 to be?

17 A. This is the registration certificate for the  
18 appellation of origin international registry for the  
19 word Habana made by the company Empresa Cubana del  
20 Tabaco (Cubatabaco). And it's related to the word  
21 Habana, with a B, as a tobacco leaf or manufactured as  
22 a cigar leaf or manufactured tobacco as well as  
23 products made with such tobacco and made at the  
24 province of Havana.

25 Question No. 100:

1 Q. Is this the "Habana" appellation of origin  
2 registration that you were just discussing?

3 A. Yes.

4 Question No. 101:

5 Q. Are you familiar with this registration in  
6 connection with your work?

7 A. Yes.

8 (Opposer offers Garcia Morejon Exhibit 2  
9 in evidence.)

10 Question No. 102:

11 Q. Does Habanos, S.A. use the "Habanos"  
12 denomination of origin on the packaging of its  
13 Cuban-origin cigars?

14 A. Yes.

15 Question No. 103:

16 Q. How does it use the "Habanos" denomination of  
17 origin on its cigar packaging?

18 A. With the sticker Habanos which is the  
19 definition of origin like the one over there.

20 Question No. 104:

21 Q. Please review the document that I am handing  
22 to you that has been marked as Garcia Morejon Exhibit  
23 3, with the Bates numbers HAB0039-40 appearing in very  
24 tiny print. Do you recognize that document?

25 A. Yes.

1 Question No. 105:

2 Q. What do you recognize that document to be?

3 A. This is a package of Cuban product called  
4 Montecristo No. 5. It's not No. 5, it's No. 3. It's  
5 No. 3. Means it's five cigars of Montecristo No. 3.  
6 This is a photocopy. On the top right side is the  
7 sticker I was talking about previously which is the  
8 denomination of origin protected for Habanos that we  
9 use in all packages for the Habanos products. On the  
10 other side shows the back of that package showing on  
11 the top right side the warranty and certificate and it  
12 mentions it's a product made by Habanos, S.A. It says  
13 it is made in Cuba, entirely handmade.

14 Question No. 106:

15 Q. Please describe how the term "Habanos"  
16 appears on this photocopy?

17 A. I already explained. It appears on a sticker  
18 on the top right side meaning it is the denomination  
19 of origin protected for Habanos. The Habanos  
20 appellation of origin. I repeat, this is the Habanos  
21 appellation of origin protected.

22 Question No. 107:

23 Q. Are you familiar with this packaging in  
24 connection with your work for Habanos, S.A.?

25 A. Yes.

1 (Opposer offers Garcia Morejon Exhibit 3  
2 in evidence.)

3 Question No. 108:

4 Q. Does Habanos, S.A. place the "Habanos" logo  
5 that appears on Exhibit 3 on the packaging of its  
6 other cigar products?

7 A. Habanos, S.A., the corporation, places the  
8 Habanos logo in all the packaging for Habanos cigars.

9 Question No. 109:

10 Q. Why does it use the "Habanos" denomination of  
11 origin logo on all its packaging?

12 A. To identify the origin and to identify it is  
13 an Habano as to differentiate from other products  
14 which are not from Cuba.

15 Question No. 110:

16 Q. Do you see the words "Hecho en Cuba" on the  
17 photocopy of the back of the cigar box in Exhibit 3?

18 A. Yes.

19 Question No. 111:

20 Q. What do the words "Hecho en Cuba" mean?

21 A. That the product has been made in Cuba. It  
22 indicates what that product comes from.

23 Question No. 112:

24 Q. Does Habanos place the words "Hecho en Cuba"  
25 on its cigar packaging for all of its cigar products?

1           A.    Yes.

2 Question No. 113:

3           Q.    Why does Habanos place the words "Hecho en  
4 Cuba" on its cigar boxes?

5           A.    To indicate where the product comes from,  
6 that it has been made in Cuba.

7 Question No. 114:

8           Q.    On the photocopy of the front of the cigar  
9 box in Exhibit 3, do you see the words "Habana Cuba"?

10          A.    Yes.

11 Question No. 115:

12          Q.    What do the words "Habana Cuba" refer to on  
13 the Habanos, S.A.'s cigar packaging?

14          A.    It refers to where the product comes from,  
15 that it's an Habano and it has been made in Cuba.

16 Question No. 116:

17          Q.    Does Habanos place the words "Habana Cuba" on  
18 its cigar packaging?

19          A.    Yes.

20 Question No. 117:

21          Q.    Why does Habanos place the words "Habana  
22 Cuba" on its cigar packaging?

23          A.    To reflect the place the product comes from,  
24 that it's a Cuban product made in Cuba.

25 Question No. 118:

1 Q. Still looking at Exhibit 3, can you identify  
2 the green and white sticker appearing on HAB 39 and  
3 40?

4 A. Yes.

5 Question No. 119:

6 Q. What is that sticker?

7 A. That's the official warranty seal of the  
8 Republic of Cuba.

9 Question No. 120:

10 Q. Is it placed on all Habanos cigar boxes?

11 A. Yes.

12 Question No. 121:

13 Q. Do the cigars that Habanos, S.A. markets  
14 throughout the world use only tobacco grown in Cuba?

15 A. Yes.

16 Question No. 122:

17 Q. Are the cigars that Habanos, S.A. markets  
18 throughout the world manufactured only in Cuba?

19 A. Yes.

20 Question No. 123:

21 Q. Does Habanos want cigar consumers to know  
22 that its cigars are manufactured in Cuba using only  
23 tobacco grown in Cuba?

24 A. Yes.

25 Question No. 124:

1 Q. Why is that?

2 A. It's for identification purposes and to make  
3 a differentiation in order for the consumer not to be  
4 confused, that they know that Habanos are the best  
5 cigars produced only in Cuba.

6 Question No. 125:

7 Q. Based on your experience in the cigar  
8 industry, do cigars made in Cuba from Cuban tobacco  
9 have a particular reputation?

10 A. Yes.

11 Question No. 126:

12 Q. What is that reputation?

13 A. The specialist and the people, the  
14 connoisseurs and experts consider them the best cigars  
15 in the world.

16 Question No. 127:

17 Q. Based on your experience in the cigar  
18 industry, does that reputation of Cuban cigars extend  
19 to cigar consumers in the United States?

20 A. Yes.

21 Question No. 128:

22 Q. What is the basis for that view?

23 A. The publications we discussed previously that  
24 are oriented to the cigar consumers, Cigar Aficionado  
25 and Smoke, and in my work as I travel a lot all over

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1 the world, I have met North American citizens, smokers  
2 who have referred to the Habana cigars as the best in  
3 the world. They are aware of that reputation. We  
4 normally meet at trade fairs, expos, events that are  
5 organized all over the world.

6 Question No. 129:

7 Q. Since you have been Vice President of  
8 Habanos, S.A. in 1996 to the present, has Habanos ever  
9 supplied Cuban cigar leaf or Cuban tobacco to any  
10 person or enterprise in Honduras, Nicaragua, or the  
11 Dominican Republic for their use in the manufacture of  
12 any product?

13 A. No.

14 OBJECTION: As to question nos. 129  
15 through 136, the proper foundation has not been laid  
16 to show that the deponent would know whether anyone  
17 has brought Cuban tobacco seeds to other countries in  
18 the recent past. The U.S. embargo, until recently,  
19 permitted limited importation of Cuban goods.  
20 Nationals from Central America and other countries  
21 never had the limitations that U.S. citizens and  
22 residents have. Therefore, it is not relevant whether  
23 the witness has supplied cigar leaves or seeds to  
24 anyone, including Applicant or its principals.

25 Question No. 130:

1 Q. Since you have been Vice President of  
2 Habanos, S.A. in 1996 to the present, has Habanos,  
3 S.A. ever supplied Cuban cigar leaf or Cuban tobacco  
4 to William Bock or Anncas, Inc., or to any other  
5 company associated with William Bock?

6 A. No.

7 Question No. 131:

8 Q. Since you have been Vice President of  
9 Habanos, S.A. in 1996 to the present, has Habanos,  
10 S.A. supplied Cuban cigar leaf or Cuban tobacco to any  
11 person or company for the manufacture of cigars  
12 intended for use in the United States?

13 A. No.

14 Question No. 132:

15 Q. If Applicant's "Havana Club"-labeled cigars  
16 are made in Nicaragua or elsewhere outside of Cuba,  
17 from tobacco that is not grown in Cuba, are these  
18 cigars "Havana" cigars?

19 A. No.

20 Question No. 133:

21 Q. If not, why not?

22 A. As I have previously said, the Habana cigars  
23 are cigars made in Cuba with 100 percent Cuban raw  
24 material at the official manufacturing plants in Cuba  
25 under very demanding quality parameters set by those

1 plants.

2 Question No. 134:

3 Q. Are you aware of claims made by people or  
4 companies in the cigar industry in the United States  
5 that their non-Cuban cigars are made from something  
6 they call "Cuban seed" tobacco?

7 A. Yes, I'm aware.

8 Question No. 135:

9 Q. What is your understanding of such claims of  
10 "Cuban seed" tobacco?

11 A. My understanding is this Cuban seed tobacco  
12 is some -- that at certain point in time, seeds were  
13 brought from Cuba to another place and they grew the  
14 tobacco from those seeds somewhere else but it should  
15 have been more than 40 years ago because right now it  
16 is forbidden. It's totally illegal to extract any of  
17 these seeds from Cuba for somebody has done it, they  
18 should have done it against the law.

19 Question No. 136:

20 Q. To your knowledge, is it possible to look at  
21 or smoke a cigar and tell if it is made from tobacco  
22 that is grown from seeds that are several generations  
23 descended from seeds taken from Cuba?

24 A. That's not possible to my knowledge.

25 Question No. 137:

1 Q. Are you aware that the Applicant here claims  
2 in this proceeding that its "Havana-Club"-labeled  
3 cigars will be made from tobacco grown from seeds that  
4 are descendants of seeds taken from Cuba in about  
5 1960?

6 OBJECTION: Question no. 137  
7 mischaracterized the products of Applicant. Applicant  
8 intends to purchase Cuban seed tobacco products but  
9 not necessarily from any particular generation.

10 THE WITNESS: The answer for the  
11 question is no.

12 Question No. 138:

13 Q. Does that information change your position as  
14 to whether Applicant's "Havana Club"-labeled cigars  
15 are Havana cigars?

16 A. No.

17 Question No. 139:

18 Q. Why is that?

19 A. Because they are not cigars made in Cuba,  
20 they are not made with 100 percent Cuban raw material  
21 at the official manufacturing plants in Cuba. And  
22 they are not made under the quality parameters set by  
23 those plants.

24 Question No. 140:

25 Q. Is the Applicant in this case, Anncas, Inc.,

1 in any way associated with Habanos, S.A.?

2 A. No.

3 Question No. 141:

4 Q. Are you aware of any connection between  
5 Applicant's proposed "Havana Club"-labeled cigars and  
6 cigars from Cuba?

7 A. No. None.

8 Question No. 142:

9 Q. Are you aware of any connection between  
10 Applicant's proposed "Havana Club"-labeled cigars and  
11 tobacco grown in Cuba?

12 A. No.

13 Question No. 143:

14 Q. Are you aware of any connection between  
15 Applicant's proposed "Havana Club"-labeled cigars and  
16 either Cuba or Havana?

17 A. No.

18 Question No. 144:

19 Q. Has Habanos, S.A. ever authorized the  
20 Applicant to use "Havana" in connection with its  
21 cigars?

22 OBJECTION: Question no. 144. Same as  
23 fifth objection, above.

24 THE WITNESS: No.

25 Question No. 145:

1 Q. Has Habanos, S.A. ever authorized any company  
2 or person in the United States to use "Havana" in  
3 connection with cigars?

4 A. No.

5 Question No. 146:

6 Q. Are you aware that Habanos, S.A. has  
7 registered with the United States Patent and Trademark  
8 Office the trademark HABANOS UNICOS DESDE 1492 AND  
9 DESIGN?

10 OBJECTION: Question nos. 146 through  
11 149 are irrelevant. The opposition is not based on  
12 Section 2d. Even if it were, Opposer's lack of use of  
13 the mark makes its registration an unenforceable paper  
14 registration.

15 THE WITNESS: Yes.

16 Question No. 147:

17 Q. In connection with your work at Habanos,  
18 S.A., have you seen that registration?

19 A. Yes. Yes.

20 Question No. 148:

21 Q. Please look at what has been marked as Garcia  
22 Morejon Exhibit 4. Do you recognize this document?

23 A. Yes.

24 Question No. 149:

25 Q. What do you recognize this document to be?

1           A.    It's the main registered of the trademark  
2   Habanos Unicos Since 1492 before the Office of Patents  
3   and Trademark Office of the United States.  And also  
4   it's registered made by the Corporacion Habanos.

5                               (Opposer offers Garcia Morejon Exhibit 4  
6                               in evidence.)

7   Question No. 150:

8           Q.    If you look at the lower right hand corner  
9   where it says "The English translation of the words  
10  'Habanos Unicos Desde'in the mark is," can you please  
11  read aloud the English translation?

12                               OBJECTION:  For question no. 150  
13  Applicant objects since the document speaks for  
14  itself.  The translation accepted by the Examiner is  
15  only one possible translation.

16                               THE WITNESS:  You told me to read it,  
17  right?

18  Question No. 151:

19           Q.    Is Habanos, S.A. currently able to sell  
20  cigars in the United States?

21           A.    No.

22  Question No. 152:

23           Q.    Why not?

24           A.    Due to the embargo, the blockage existing  
25  since many years ago to enter Cuban products into the

1 American markets, the United States market.

2 Question No. 153:

3 Q. Does Habanos generally consider the United  
4 States cigar market in its marketing strategies for  
5 its brands even though it cannot sell its cigars in  
6 the United States?

7 A. Yes.

8 Question No. 154:

9 Q. Why?

10 A. Because American market, it's a very  
11 important one. It's the leader market in these kind  
12 of products in the world. And we are interested in  
13 promoting there our trademarks so they can know our  
14 products, and when the embargo is lifted, we can enter  
15 with our products and our products are already known  
16 there.

17 Question No. 155:

18 Q. Does Habanos currently advertise in the  
19 United States cigar publication Smoke?

20 OBJECTION: Question nos. 155 through  
21 204. Applicant objects to these questions as being  
22 irrelevant to these proceedings in that this  
23 opposition is not based on Section 2d. Furthermore,  
24 the assertion "HABANOS UNICOS SINCE 1492" is false  
25 since neither Opposer, nor its predecessor in interest

1 can claim to be selling cigars when Cuba was  
2 discovered in 1492. This false statement, even if  
3 advertised and some day used, will not amount to valid  
4 use.

5 THE WITNESS: Yes.

6 Question No. 156:

7 Q. Has Habanos also advertised in the United  
8 States cigar publication Cigar Aficionado?

9 A. Yes.

10 Question No. 157:

11 Q. Does Habanos also advertise in the United  
12 States trade publication Tobacco Journal  
13 International?

14 A. Yes.

15 Question No. 158:

16 Q. Why does Habanos advertise in these United  
17 States publications if it cannot sell cigars to U.S.  
18 consumers today?

19 A. Well, as I told you before, to promote and to  
20 let the audience know our products in that market.  
21 Because it's a very important market for the future of  
22 our products. And that's why we want them to know who  
23 we are and what are we doing.

24 Question No. 159:

25 Q. Does Habanos intend to sell Cuban-origin

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1 cigars in the United States as soon as United States  
2 law permits the sale of Cuban cigars in the U.S.?

3 A. Yes.

4 Question No. 160:

5 Q. As Commercial Vice President of Habanos, do  
6 you have responsibility of placing of advertisements  
7 in United States publications?

8 A. Yes.

9 Question No. 161:

10 Q. In its advertisements in the United States,  
11 does Habanos use the stylized "Habanos" logo that also  
12 appears on the Habanos cigar packaging reviewed in  
13 Garcia Morejon Exhibit 3?

14 A. Yes.

15 Question No. 162:

16 Q. In its advertisements in the United States,  
17 does Habanos also use its registered trademark  
18 "HABANOS Unicos Desde 1492"?

19 A. Yes.

20 Question No. 163:

21 Q. In its advertisements in the United States,  
22 does Habanos also use English language versions of its  
23 "HABANOS Unicos Desde 1492" mark?

24 A. Yes.

25 Question No. 164:

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1 Q. Please look at what has been marked as Garcia  
2 Morejon Exhibit 5, with the Bates Numbers HAB00264-65.  
3 Can you please identify that document?

4 A. Yes. HAB00264 is the cover for the Cigar  
5 Aficionado of the October month. And the other one,  
6 the other page, is an advertisement of Habanos,  
7 Habanos Unicos Since 1492 in English, where we are  
8 promoting and advertising the different stores, the  
9 specialized Habanos stores that sell Habanos in  
10 London.

11 Question No. 165:

12 Q. What is the date on the magazine cover, HAB  
13 264?

14 A. October 1998.

15 Question No. 166:

16 Q. Looking at HAB 265, is this an advertisement  
17 of Habanos, S.A.?

18 A. Yes.

19 Question No. 167:

20 Q. What is shown on the bottom of the  
21 advertisement on HAB 265?

22 A. This one? Unique since 1492 Habanos, the  
23 stylized leaf of the tobacco and in English, the logo.

24 Question No. 168:

25 Q. In the upper right corner, the ad states,

1 "Where to find your Havanas in London/Specialists in  
2 Havanas." What does the term "Havanas" refer to in  
3 this ad?

4 A. To the cigars coming from Cuba, the Habanos.

5 (Opposer offers Garcia Morejon Exhibit 5  
6 in evidence.)

7 Question No. 169:

8 Q. Please look at what has been marked as Garcia  
9 Morejon Exhibit 6, with Bates Numbers HAB00292-97.

10 Can you please identify that document?

11 A. Yes. These are photocopies of some pages  
12 from the Smoke magazine.

13 Question No. 170:

14 Q. Looking at HAB00293, what is the date of the  
15 magazine?

16 A. Winter edition of the Smoke magazine, 1996,  
17 1997.

18 Question No. 171:

19 Q. Can you describe what is being shown on  
20 HAB00296-97?

21 A. The Smoke, the image of smoke, the stylized  
22 image of smoke with the logo in this case with Habanos  
23 in Spanish, in the case of the 296. The word Habanos  
24 with the stylized leaf and the logo in English, and in  
25 297, Habanos in English with the logo in English and

1 our institutional image of the smoke.

2 Question No. 172:

3 Q. Are these advertisements of Habanos, S.A.?

4 A. Well, yes. In 296, yes. 297 is from our  
5 distributor, an exclusive distributor, from Habanos to  
6 a specific region.

7 (Opposer offers Garcia Morejon Exhibit 6  
8 in evidence.)

9 Question No. 173:

10 Q. Looking at HAB 295, what is the "Havana  
11 House"?

12 A. "Havana House" is the company as is stated in  
13 our exclusive distributor in Canada. And I repeat  
14 it's the exclusive distributor of Habanos in Canada.

15 Question No. 174:

16 Q. What does the term "Havana" refer to in  
17 "Havana House"?

18 A. This company is the exclusive distributor for  
19 Habanos in Canada.

20 Question No. 175:

21 Q. What is shown on the bottom of the  
22 advertisement on HAB 283?

23 A. I don't know what do you refer to. However,  
24 in every case here, these are advertisements for  
25 Habanos or for the distributors of Habanos. And in

1 this case, in the case of the 294, it's an  
2 advertisement of the casa de Havana in Canada.

3 Question No. 176:

4 Q. Looking at HAB 297, what is shown at the  
5 bottom of the advertisement?

6 A. The logo. Once again, Habanos in English  
7 with the stylized leaf from the tobacco and the logo  
8 in English. Unique since 1492.

9 Question No. 177:

10 Q. Is that phrase, "HAVANAS Unique since 1492,"  
11 the English version of the mark "HABANOS Unicos desde  
12 1492"?

13 A. Yes.

14 Question No. 178:

15 Q. What does the term "HAVANAS" as used in this  
16 ad refer to?

17 A. Habanos in Spanish.

18 Question No. 179:

19 Q. In the upper right corner of HAB 297 is the  
20 text, "Havana Cigar Divans in the Orient." What is  
21 "Havana Cigar Divan"?

22 A. That's the response that I told you  
23 previously, Havanas Cigar Divan is in advertising made  
24 to specialized stores that sell Habanos in different  
25 countries of Asia and Australia.

1 Question No. 180:

2 Q. At the bottom of the column, just above the  
3 HAB 297, the text of the ad states "Exclusive  
4 distributor of all Havana cigars for Asia Pacific.  
5 What does the term "Havana cigars" refer to in that  
6 text?

7 A. To the cigars coming from Cuba, the Habanos.

8 Question No. 181:

9 Q. Please look at what has been marked as Garcia  
10 Morejon Exhibit 7, with the Bates Numbers HAB00438-40.  
11 Can you please identify that document?

12 A. Yes. Photocopies of some pages of the Smoke  
13 magazine.

14 Question No. 182:

15 Q. Looking at HAB00439, what is the date of the  
16 magazine?

17 A. Fall 2004.

18 Question No. 183:

19 Q. Can you describe what is being shown on  
20 HAB00440?

21 A. The advertising that Habanos -- that the  
22 corporation Habanos, S.A. makes about their Casa Del  
23 Habano, the Havana House.

24 Question No. 184:

25 Q. Is HAB 440 an advertisement of Habanos, S.A.?



1 Q. Please look at what has been marked as Garcia  
2 Morejon Exhibit 8, with the bates Numbers HAB00456-57.  
3 Can you please identify that document?

4 A. It's a photocopy of some pages of Tobacco  
5 Journal International magazine. And 57 is  
6 advertisement of Habanos with the institutional smoke  
7 image and some text.

8 Question No. 189:

9 Q. Looking at HAB00456, what is the date of the  
10 magazine?

11 A. December, January 2005. I understand it is  
12 the last edition for that year, 2005, but looking at  
13 this, it only says December, January, and underneath  
14 it has 6/2005.

15 Question No. 190:

16 Q. Can you describe what is being shown on  
17 HAB00457, including the band with the word "Habanos"  
18 in the lower right?

19 A. This is, as I said, the advertisement insert  
20 with the smoke image, institutional smoke image and  
21 also the sticker saying Habanos denomination of origin  
22 protected.

23 Question No. 191:

24 Q. Is HAB 457 an advertisement of Habanos, S.A.?

25 A. Yes.

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1 Question No. 192:

2 Q. Can you understand the English text in the  
3 advertisement?

4 A. Yes.

5 (Opposer offers Garcia Morejon Exhibit 8  
6 in evidence.)

7 Question No. 193:

8 Q. Can you read the third line of text in the  
9 advertisement on HAB 457?

10 A. The third line Habanos cigar is one of them.

11 Question No. 194:

12 Q. Does Habanos, S.A. use the Habanos Unicos  
13 Desde 1492 mark in its promotional and marketing  
14 activities outside the United States?

15 A. Yes.

16 Question No. 195:

17 Q. Does it use that mark in its English  
18 translation as well as in the Spanish?

19 A. Yes.

20 Question No. 196:

21 Q. Please look at what has been marked as Garcia  
22 Morejon Exhibit 9, with the Bates Number HAB00038.  
23 Can you please identify that document?

24 A. This is a carton packet of Habanos where you  
25 can see the institutional smoke image and the

1 institutional logo with the Habanos Unicos since 1492  
2 in four languages.

3 Question No. 197:

4 Q. Is this a product of Habanos, S.A.?

5 A. Yes. It used to be a promotional packaging.

6 As of now, we only use it in two languages which is  
7 English and Spanish.

8 Question No. 198:

9 Q. How does Habanos, S.A. use this product?

10 A. To promote our products, this is a carton  
11 package where we put -- we place the cigars to promote  
12 them.

13 Question No. 199:

14 Q. In what languages is the mark Habanos Unicos  
15 Desde 1492 shown in Exhibit 9?

16 A. It is in Spanish, English, French and German.

17 Question No. 200:

18 Q. Can you please read aloud the text on Exhibit  
19 9?

20 A. Habanos unique since 1492. Habanos unique --  
21 I don't speak French, I don't know, and the other is  
22 in German. Habanos in German.

23 (Witness read text in four languages.)

24 (Opposer offers Garcia Morejon Exhibit 9  
25 in evidence.)

1 Question No. 201:

2 Q. Were you previously given a copy of any of  
3 the questions asked here today?

4 A. No.

5 Question No. 202:

6 Q. Were you previously shown any of the  
7 questions that have been asked here today?

8 A. No.

9 Question No. 203:

10 Q. Were you previously told orally what any of  
11 the questions would be here today, even if you were  
12 not shown the questions?

13 A. No. No, I was not shown or read any  
14 question. We just discussed in general terms about  
15 this deposition.

16 Question No. 204:

17 Q. Did you have any discussions in preparation  
18 for this deposition with anyone other than the  
19 attorneys for Habanos?

20 A. Only with the Habanos.

21 APPLICANT'S CROSS WRITTEN QUESTIONS

22 Question No. 1:

23 Q. Have you heard anyone from the United States  
24 referring to Cuban cigars as HAVANA CLUB cigars?

25 OBJECTION: Objection, relevance.

1 THE WITNESS: No.

2 Question No. 2:

3 Q. Have you heard anyone from the United States  
4 referring to rum as HAVANA CLUB rum?

5 OBJECTION: Objection, relevance.

6 THE WITNESS: Yes.

7 Question No. 3:

8 Q. Are you aware of the existence of the brands  
9 registered in the U.S. Patent and Trademark Office  
10 that include the word HABANA, attached hereto as  
11 Exhibit "A"?

12 OBJECTION: Objection to the form, vague  
13 and ambiguous; objection, relevance.

14 THE WITNESS: I only know Habana in  
15 Spanish with a B. I only know number six, which is  
16 one of our registrations at the U.S. Patent and  
17 Trademark Office.

18 Question No. 4:

19 Q. Can you please list those trademarks included  
20 in Exhibit "A" that you are not aware of.

21 OBJECTION: Objection to the form, vague  
22 and ambiguous; objection, relevance.

23 THE WITNESS: I know nothing.

24 Question No. 5:

25 Q. Do you agree with the definition for HABANOS

1 of the dictionary excerpt attached hereto as Exhibit  
2 "B"?

3 OBJECTION: Objection, no English  
4 translation provided to Exhibit B; objection,  
5 relevance.

6 THE WITNESS: Well, there's three  
7 definitions for Habanos, number, one, two and three.  
8 First, this is a definition that comes from a long  
9 time ago. It comes from the year 1917. But  
10 definition no. one which says pertaining to the Habana  
11 and by extension to the item of Cuba and it is more  
12 specially about tobacco, I believe it is accurate.  
13 And I also agree with the definition no. three which  
14 says a cigar made at the Cuban island with the leaf of  
15 the plant from that country. And to me, the  
16 definition no. two, which refers to the color of a  
17 light color tobacco is not accurate. I cannot say not  
18 correct, but I don't know how to say. It's not that  
19 it's not correct but it's not accurate.

20 Question No. 6:

21 Q. Is the word HABANOS used in some Spanish  
22 speaking countries to mean PURO?

23 OBJECTION: Objection, relevance.

24 THE WITNESS: To mean the Cuban origin  
25 cigar, not a cigar in general.

1 Question No. 7:

2 Q. Do you agree that the translation of your  
3 Exhibit "4" can also be: "UNIQUE CIGARS SINCE 1492"?

4 OBJECTION: Objection, relevance.

5 THE WITNESS: No, I don't agree.

6 Question No. 8:

7 Q. What is the relationship, if any, between  
8 Consolidated Cigar Corporation and Opposer?

9 OBJECTION: Objection to the form,  
10 vague; objection, relevance.

11 THE WITNESS: None.

12 Question No. 9:

13 Q. What is the relationship, if any, between  
14 Opposer and Altadis?

15 A. Altadis is Spanish company with domicile in  
16 Madrid which is 50 percent partner shareholders with  
17 Habanos. That is I'm talking about Altadis, S.A., a  
18 Spanish corporation located in Madrid which is a  
19 50 percent shareholder of Habanos. But Altadis only  
20 as that, I don't know what it means.

21 Question No. 10:

22 Q. What is the relationship, if any, between  
23 Altadis and Consolidated Cigar Corporation?

24 OBJECTION: Objection to the form,  
25 vague; objection, relevance.

1 THE WITNESS: I understand that at some  
2 point Consolidated Cigar Corporation was acquired by  
3 Altadis and became a subsidiary, but I have no  
4 knowledge about that.

5 Question No. 11:

6 Q. Are you aware of the existence of the  
7 trademark HAVANA SWEETS for cigars?

8 OBJECTION: Objection to the form,  
9 vague; objection to the extent it calls for a legal  
10 conclusion; objection, relevance.

11 THE WITNESS: Yes. Yes, I know.

12 Question No. 12:

13 Q. Are the HAVANA SWEETS cigars sold by an  
14 entity related to the Opposer? By related, this is  
15 defined as any company that is affiliated and/or  
16 controlled by Opposer.

17 OBJECTION: Objection, relevance;  
18 objection to the form, vague, ambiguous.

19 THE WITNESS: No.

20 Question No. 13:

21 Q. Are the cigars sold in the United States by  
22 Opposer's related company(ies) made with Cuban  
23 tobacco?

24 OBJECTION: Objection, lack of  
25 foundation, assumes facts not in evidence. Objection,

1 relevance.

2 THE WITNESS: No.

3 Question No. 14:

4 Q. Are the cigars sold in the United States by  
5 Opposer's related company(ies) made with tobacco grown  
6 from Cuban seeds?

7 OBJECTION: Objection, lack of  
8 foundation, assumes facts not in evidence. Objection,  
9 relevance; objection as to what Applicant means by  
10 "Cuban seeds" in this question.

11 THE WITNESS: That's what the  
12 registration of the brands claims. I don't know the  
13 cigar.

14 Question No. 15:

15 Q. Are you aware of the existence of the mark  
16 HABANA CUBA & DESIGN, as depicted in U.S. registration  
17 number 2,202,488?

18 OBJECTION: Objection, registration  
19 certificate or other registration documents not shown  
20 to deponent; mischaracterizes the mark. Objection,  
21 relevance.

22 THE WITNESS: Yes, I know. I'm aware.

23 Question No. 16:

24 Q. Does Opposer use the mark referred to in the  
25 previous interrogatory?

Manuel Garcia Morejon

1 OBJECTION: See Objection to Question  
2 15.

3 THE WITNESS: Yes.  
4 Question No. 17:

5 Q. Where does Opposer sell the products bearing  
6 the mark referred to in the previous two  
7 interrogatories?

8 OBJECTION: See Objection to Question  
9 No. 15.

10 THE WITNESS: In other countries of the  
11 world. As examples I can give you, Germany  
12 Switzerland, England, Canada, Hong Kong, et cetera,  
13 et cetera. And so on.

14 OPPOSER'S REDIRECT WRITTEN QUESTIONS  
15 Question No. 1:

16 Q. Other than as used as part of the name of a  
17 non-Cuban cigar brand in the United States, have you  
18 ever seen or heard the words "Habana," "Habanos," used  
19 in connection with cigars, to mean anything other than  
20 a cigar from Cuba?

21 OBJECTION: Applicant objects to  
22 Opposer's redirect question no. 1 as being irrelevant,  
23 confusing and vague.

24 THE WITNESS: Yes.  
25 Question No. 2:

1 Q. To your knowledge in your capacity as  
2 Commercial Vice President of Habanos from 1996 to the  
3 present, has Habanos ever sold seeds from Cuban grown  
4 tobacco for export from Cuba?

5 OBJECTION: Applicant objects to  
6 Opposer's redirect questions no. 2, 3 and 4 as being  
7 irrelevant. The witness' knowledge is irrelevant as  
8 to whether Opposer has sold seeds or not. There is no  
9 foundation laid to indicate that any and all exports  
10 of Cuban Tobacco seeds have to be authorized by the  
11 witness.

12 THE WITNESS: No.

13 Question No. 3:

14 Q. To your knowledge in your capacity as  
15 Commercial Vice President of Habanos from 1996 to the  
16 present, has Habanos ever authorized the export of  
17 seeds of Cuban grown tobacco?

18 THE WITNESS: No.

19 Question No. 4:

20 Q. Do you otherwise have any knowledge of the  
21 sale or export of seeds from Cuban grown tobacco since  
22 you began to work for Habanos in 1996?

23 A. No.

24 APPLICANT'S RECROSS-EXAMINATION WRITTEN QUESTIONS

25 Question No. 1:

1 Q. Have you seen the word HAVANA, HABANA or  
2 HABANOS used with products other than Cigars?

3 A. Yes.

4 Question No. 2:

5 Q. The products that use the mark HAVANA, HABANA  
6 or HABANOS that you have seen, were they produced or  
7 manufactured in Cuba?

8 A. Yes. Havana Club rum.

9 Question No. 3:

10 Q. Do you contend that your position as Vice  
11 President of Habanos enables you to know and/or  
12 approve any exports of tobacco seeds from the Republic  
13 of Cuba?

14 A. I don't understand the question.

15 (Question repeated by interpreter.)

16 THE WITNESS: Does the question mean if  
17 in my position I'm the one who approves any exports of  
18 tobacco from the Republic of Cuba? I don't know if  
19 that is what the question means. Can you repeat one  
20 more time in English?

21 (Question repeated in English.)

22 THE WITNESS: I don't understand the  
23 question, not in Spanish and not in English. If  
24 nobody can explain to me, I cannot answer the  
25 question.

Manuel Garcia Morejon

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(Deposition on written questions  
concluded at 11:34.)

\* \* \* \* \*



Manuel Garcia Morejon

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I, MANUEL GARCIA MOREJON, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

\_\_\_\_\_  
MANUEL GARCIA MOREJON, Witness

-----  
THE STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_, on this day personally appeared MANUEL GARCIA MOREJON, known to me (or proved to me under oath or through \_\_\_\_\_ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE  
STATE OF \_\_\_\_\_  
COMMISSION EXPIRES: \_\_\_\_\_

197153a

Manuel Garcia  
MANUEL GARCIA MOREJON, witness

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9 THE STATE OF \_\_\_\_\_ )  
10 COUNTY OF \_\_\_\_\_ )

11:34

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12 Before me, \_\_\_\_\_, on this day  
13 personally appeared MANUEL GARCIA MOREJON, known to me  
14 (or proved to me under oath or through

11:34

15 \_\_\_\_\_ (description of identity card or  
16 other document) to be the person whose name is  
17 subscribed to the foregoing instrument and  
18 acknowledged to me that they executed the same for the  
19 purposes and consideration therein expressed.

11:34

20 Given under my hand and seal of office this  
21 \_\_\_\_\_ day of \_\_\_\_\_.

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NOTARY PUBLIC IN AND FOR THE  
STATE OF \_\_\_\_\_  
COMMISSION EXPIRES: \_\_\_\_\_

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TRADEMARK

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

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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

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CORPORACION HABANOS, S.A.,

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Opposer,

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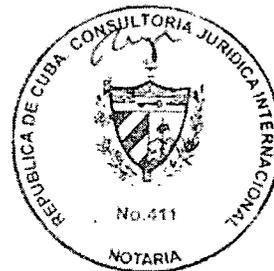
v.

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ANNCAS, INC.,

Opposition No. 91165519



*MG*

197153a

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12 Applicant. )

13 CERTIFICATE FROM THE  
14 DEPOSITION ON WRITTEN QUESTIONS  
11:34 15 OF MANUEL GARCIA MOREJON  
16 MAY 15, 2007

17 I, MONIQUE M. HINCHCLIFF, a Certified Shorthand  
18 Reporter in and for the State of Texas, do hereby  
19 certify that the foregoing deposition on written  
11:34 20 questions is a full, true and correct transcript;  
21 That the foregoing deposition on written questions  
22 of MANUEL GARCIA MOREJON, the witness, hereinbefore  
23 named was at the time named, taken by me in  
24 stenograph, on May 15, 2007, the said witness having  
11:34 25 been by me first duly cautioned and sworn to tell the

66

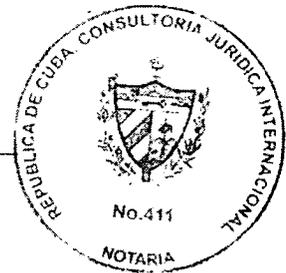
11:34 1 truth, the whole truth, and nothing but the truth, and  
2 the same were thereafter reduced to typewriting by me  
3 or under my direction.

4 I further certify that I am neither counsel for,  
11:34 5 related to, nor employed by any of the parties or  
6 attorneys in the action in which this proceeding was  
7 taken, and further that I am not financially or  
8 otherwise interested in the outcome of the action.

9 WITNESS MY HAND, this the \_\_\_\_\_ day of  
11:34 10 \_\_\_\_\_, A.D., 2007.

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11:34 15  
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MONIQUE M. HINCHCLIFF  
Texas CSR 6199  
Expiration Date: 12/31/07  
ESQUIRE DEPOSITION SERVICES  
Firm Registration No. 77  
9901 IH-10 West, Suite 630



*Handwritten signature*

-----AUTENTICACIÓN DE FIRMA-----

**DOCTOR LINO ADRIÁN REYES HERNÁNDEZ.** Notario de Consultoría Jurídica Internacional, con competencia nacional y sede en el Municipio Playa, Ciudad de La Habana, República de Cuba.-----

**DOY FE** que la firma que antecede es auténtica del Señor **MANUEL GARCÍA MOREJÓN**, natural de Melena del Sur, La Habana, ciudadano cubano, mayor de edad, casado, vice-presidente, vecino de Calle D número 508, apartamento 1-P, entre 21 y 23, Municipio Plaza de la Revolución, Ciudad de La Habana, con Identidad Permanente número 57103101663; por haber sido puesta la firma a mi presencia y haberlo identificado por su documento de identificación.-----

**ASIMISMO DOY FE** de entender el idioma inglés, en que está escrito el documento a cuyo pie aparece la firma que se autentica.-----

Ciudad de La Habana, 8 de noviembre de 2007. **DOY FE**.-----



*Lino Adrián Reyes Hernández*  
Dr. Lino Adrián Reyes  
Hernández

Manuel Garcia Morejon

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TRADEMARK  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL 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.	)	
_____	)	

CERTIFICATE FROM THE  
DEPOSITION ON WRITTEN QUESTIONS  
OF MANUEL GARCIA MOREJON  
MAY 15, 2007

I, MONIQUE M. HINCHCLIFF, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the foregoing deposition on written questions is a full, true and correct transcript;

That the foregoing deposition on written questions of MANUEL GARCIA MOREJON, the Witness, hereinbefore named was at the time named, taken by me in stenograph, on May 15, 2007, the said Witness having been by me first duly cautioned and sworn to tell the

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truth, the whole truth, and nothing but the truth, and the same were thereafter reduced to typewriting by me or under my direction.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

WITNESS MY HAND, this the 20 day of June, A.D., 2007.

  
\_\_\_\_\_  
MONIQUE M. HINCHCLIFF  
Texas CSR 6199  
Expiration Date: 12/31/07  
ESQUIRE DEPOSITION SERVICES  
Firm Registration No. 77  
9901 IH-10 West, Suite 630  
San Antonio, TX 78230  
(210)331-2280



<p style="text-align: center;"><b>A</b></p> <p><b>ability</b> 4:19  <b>able</b> 7:1 40:19  <b>above-styled</b> 1:19  <b>accepted</b> 40:14  <b>accurate</b> 55:12,17  55:19  <b>accurately</b> 4:20  <b>acknowledged</b>  64:18  <b>acquired</b> 57:2  <b>action</b> 66:6,8  <b>actionable</b> 25:7  <b>activities</b> 10:3  14:22 51:14  <b>ad</b> 44:25 45:3 47:16  48:3  <b>address</b> 4:7  <b>Administracion</b>  11:20,22  <b>administrating</b>  12:4  <b>administration</b>  11:25  <b>administrators</b>  11:13  <b>advertise</b> 18:11  41:18 42:11,16  <b>advertised</b> 17:17  42:3,7  <b>advertisement</b> 44:6  44:16,21 46:22  47:2,5 48:25 49:3  50:6,19,24 51:3,9  <b>advertisements</b>  43:6,10,16,21  46:3,24  <b>advertising</b> 10:7  44:8 47:23 48:21  <b>advised</b> 20:14  <b>affairs</b> 8:3  <b>affiliated</b> 57:15  <b>affix</b> 64:2  <b>Aficionado</b> 3:11  16:24 17:6,7,11</p>	<p>17:17 18:2,15,23  21:10 24:4 33:24  42:8 44:5  <b>ago</b> 36:15 40:25  55:9  <b>agree</b> 54:25 55:13  56:2,5  <b>agreement</b> 24:25  25:10,11 27:5,8,9  <b>aloud</b> 40:11 52:18  <b>Altadis</b> 56:14,15,17  56:19,23 57:3  <b>ambiguous</b> 54:13  54:22 57:18  <b>America</b> 10:16,19  34:20  <b>American</b> 10:14  13:12 17:11,14  18:7 19:5 34:1  41:1,10  <b>amount</b> 42:3  <b>and/or</b> 57:15 61:11  <b>Anglo-Saxons</b>  19:16  <b>Anncas</b> 1:10 7:6,17  35:4 37:25 63:2  65:10  <b>Anncas's</b> 7:7  <b>answer</b> 4:19 5:5,23  37:10 61:24  <b>answered</b> 6:5 23:10  <b>answers</b> 5:6,7  <b>Antonio</b> 66:16  <b>APPEAL</b> 1:2 65:2  <b>appear</b> 21:5  <b>Appearances</b> 3:2  <b>appeared</b> 21:6  64:13  <b>appearing</b> 28:23  32:2  <b>appears</b> 29:16,17  30:5 43:12  <b>appellation</b> 24:19  24:24 25:17,22  26:3 27:3,18 28:1</p>	<p>29:20,21  <b>appellations</b> 24:13  <b>Applicant</b> 1:11  7:11 34:24 37:1,7  37:7,25 38:20  40:13 41:21 58:9  59:21 60:5 65:11  <b>Applicant's</b> 3:6,7  35:15 37:14 38:5  38:10,15 53:21  60:24  <b>application</b> 1:3  25:9 65:3  <b>approve</b> 61:12  <b>approves</b> 61:17  <b>approximately</b>  12:13 19:2  <b>areas</b> 8:1 10:11  <b>Argentina</b> 12:22  <b>AROCHI</b> 1:23  <b>arrangement</b> 25:11  <b>articles</b> 18:18 21:10  24:4  <b>Asia</b> 12:22 47:25  48:4  <b>asked</b> 53:3,7  <b>assertion</b> 41:24  <b>associated</b> 35:5  38:1  <b>assumes</b> 57:25 58:8  <b>attached</b> 54:10  55:1  <b>attempt</b> 7:7  <b>attended</b> 8:1  <b>attorney</b> 5:21  <b>attorneys</b> 53:19  66:6  <b>audience</b> 42:20  <b>Australia</b> 12:22  47:25  <b>authorized</b> 38:19  39:1 60:10,16  <b>Avenue</b> 14:12,20  15:5,15 16:2  <b>aware</b> 7:4,11,17</p>	<p>10:25 20:7,24  21:25 34:3 36:3,7  37:1 38:4,9,14  39:6 54:8,20 57:6  58:15,22  <b>awareness</b> 10:21,24  <b>A.D</b> 66:10  <b>a.m</b> 1:21,21</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>B</b> 2:3 27:21 54:15  55:2,4  <b>bachelor's</b> 8:2,6  <b>back</b> 29:10 30:17  <b>background</b> 7:24  <b>ban</b> 22:24  <b>band</b> 50:17  <b>based</b> 33:7,17  39:11 41:23  <b>basis</b> 33:22  <b>bates</b> 28:23 44:2  45:9 48:10 50:2  51:22  <b>bearing</b> 59:5  <b>began</b> 60:22  <b>beginning</b> 15:6  <b>behalf</b> 13:3  <b>believe</b> 55:12  <b>Berlin</b> 8:4  <b>best</b> 33:4,14 34:2  <b>bit</b> 6:20  <b>blockage</b> 40:24  <b>BOARD</b> 1:2 65:2  <b>Bock</b> 7:21 35:4,5  <b>body</b> 11:14,17,22  11:23 12:6  <b>book</b> 20:13 21:4  <b>books</b> 20:7,24 21:1  21:7,8  <b>bottom</b> 44:20 46:21  47:5 48:2  <b>BOUDIN</b> 2:3  <b>box</b> 30:17 31:9  <b>boxes</b> 31:4 32:10  <b>brand</b> 22:2,6 59:17</p>	<p><b>brands</b> 41:5 54:8  58:12  <b>break</b> 6:4,5  <b>Broadway</b> 2:4  <b>brought</b> 34:17  36:13  <b>Broward</b> 25:4  <b>business</b> 8:17 14:18  16:17</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>C</b> 2:1  <b>call</b> 36:6  <b>Calle</b> 2:7  <b>called</b> 20:15 29:3  49:13  <b>calls</b> 57:9  <b>Canada</b> 12:22  46:13,14,19 47:2  59:12  <b>capacity</b> 60:1,14  <b>capital</b> 26:24  <b>card</b> 64:15  <b>carton</b> 51:24 52:10  <b>casa</b> 47:2 48:22  49:7,8,13  <b>case</b> 4:25 15:14  37:25 45:22,23  46:24 47:1,1  <b>cases</b> 15:12  <b>cause</b> 1:20  <b>cautioned</b> 65:25  <b>Central</b> 34:20  <b>certain</b> 36:12  <b>certificate</b> 3:9,9,15  25:16,21 27:17  29:11 58:19 65:13  <b>certificates</b> 24:19  <b>Certified</b> 65:17  <b>certify</b> 65:19 66:4  <b>cetera</b> 59:12,13  <b>change</b> 37:13 63:3  <b>Changes</b> 3:14 63:1  <b>charge</b> 11:11,12,24  14:22</p>
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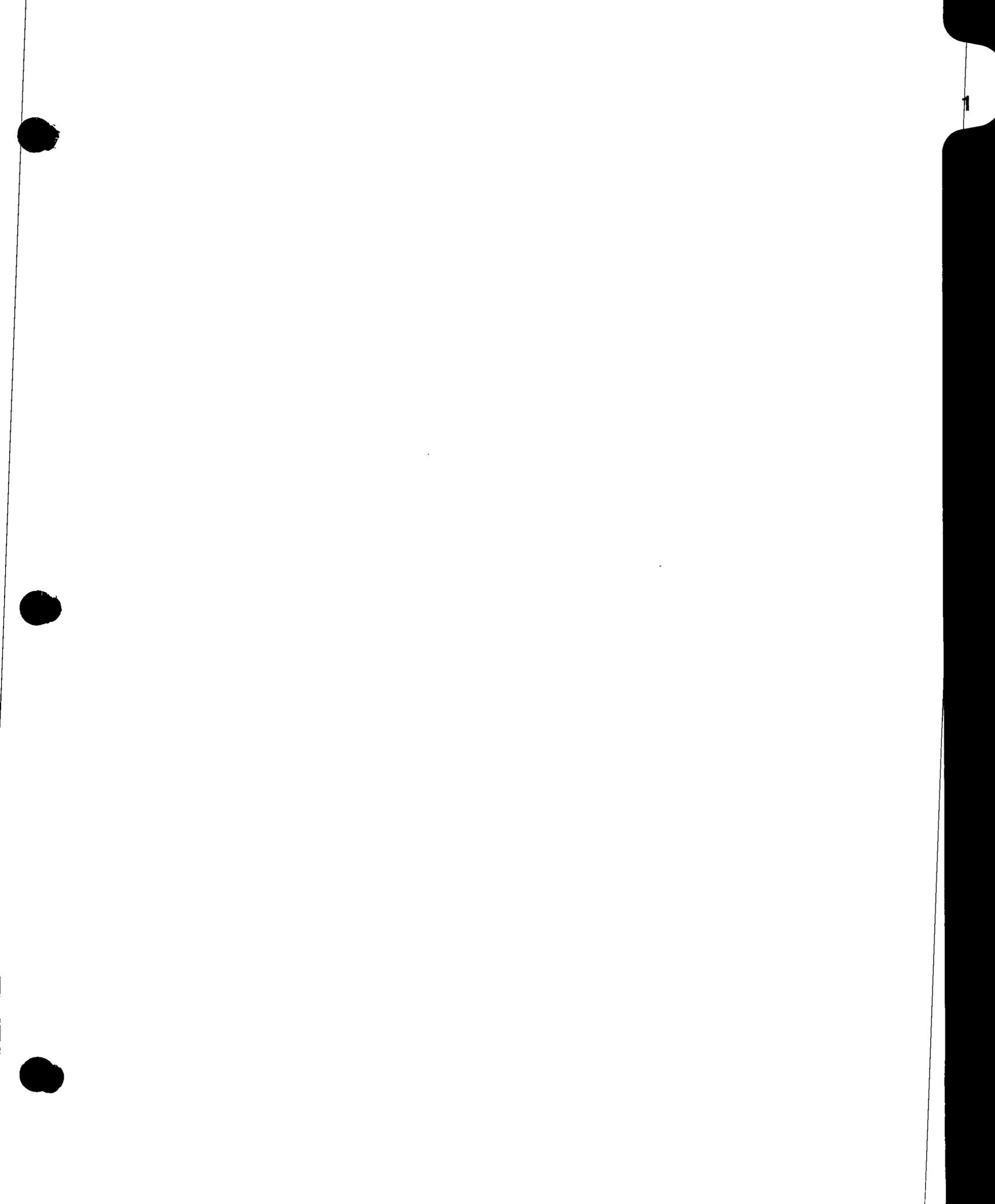
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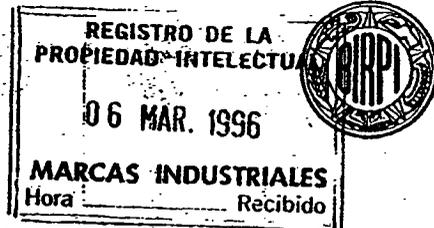
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BUREAUX INTERNATIONAUX RÉUNIS  
POUR LA PROTECTION DE LA PROPRIÉTÉ INTELLECTUELLE  
Service de l'enregistrement international des appellations d'origine  
32, chemin des Colombettes, 1211 Genève 20 (Suisse)



# 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 "M. J. ...".



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:*

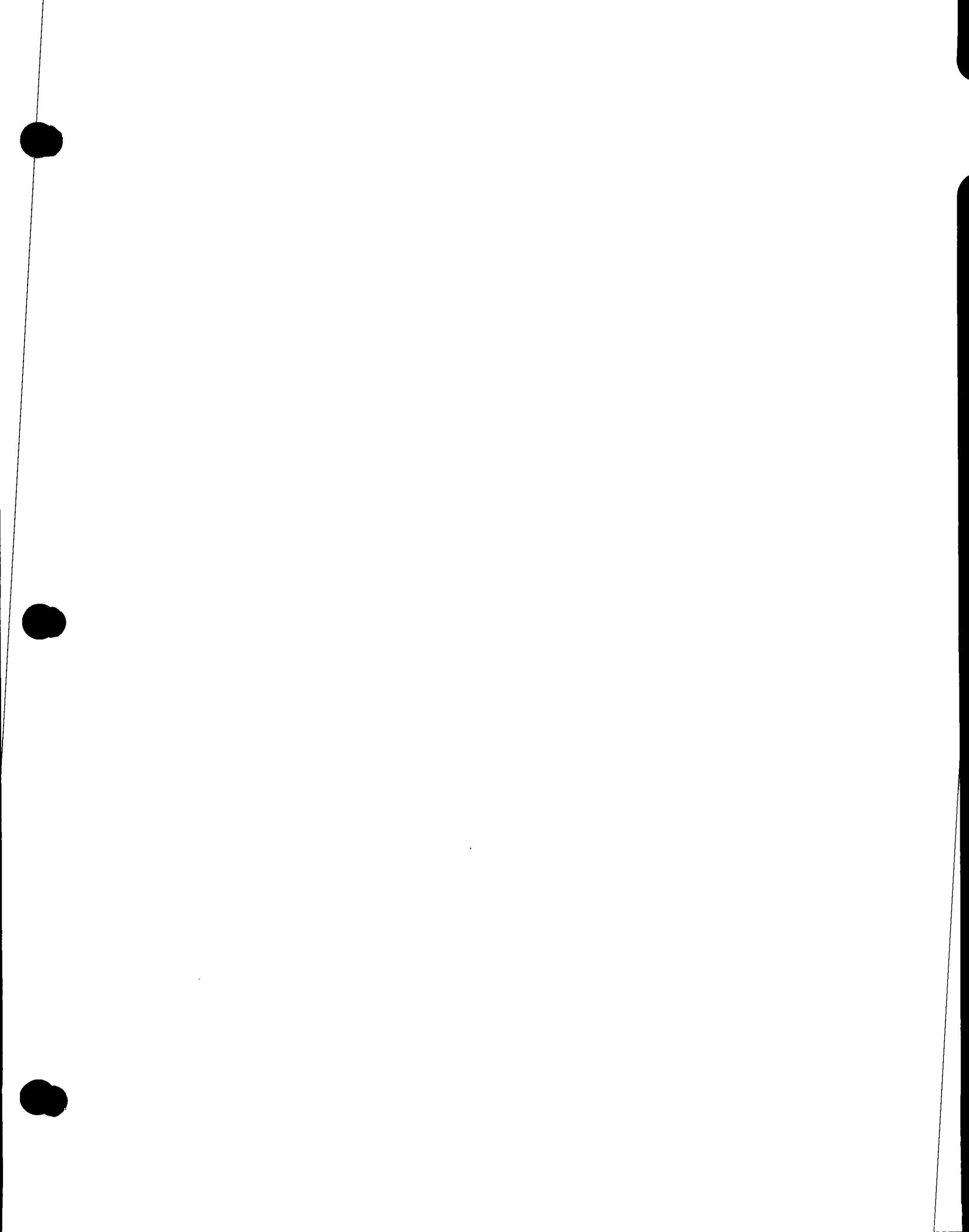
Décret N° 3598 du 23 novembre 1967

*Date d'envoi de la demande:*

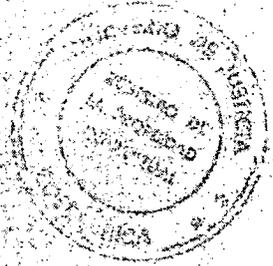
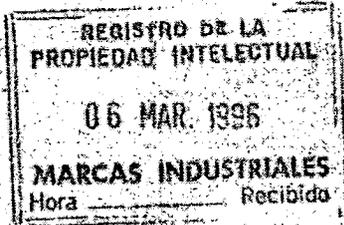
15 décembre 1967



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)



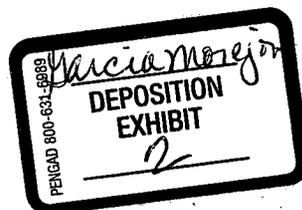
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Les indications figurant au verso sont conformes aux inscriptions faites au  
Registre international des appellations d'origine.

Genève, le 24 OCT. 1968

Bureaux internationaux réunis  
pour la protection  
de la propriété intellectuelle  
pr le Directeur



Date d'enregistrement

27 décembre 1967

N° d'enregistrement

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 branche 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:*

Decret N° 3599 du 23 novembre 1967

*Date d'envoi de la demande:*

15 décembre 1967

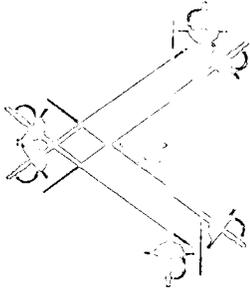


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Number	479
Date	27.12.1967
Holder	Empresa Cubana del Tabaco (Cubatabaco)
Appellation	<b>HABANA</b>
Publication	N° 3 : 09/1968
Country of Origin	CU
Nice Classification	34
Product	Tabac en branche ou manufacturé, ainsi que les produits élaborés avec 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 <b>Habana</b>
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



DENO-INICIACION DE ORIGEN PROTEGIDA



XXXXXXXXXXXXXXXXXXXX

570.8

PENGAD 800-681-6889  
*Garcia Mejia*  
DEPOSITION  
EXHIBIT  
3

HAB0039





7029705



# THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

September 12, 2006

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,177,837 IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM August 04, 1998

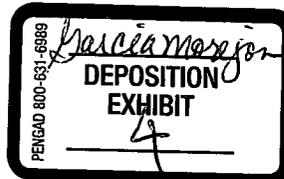
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SAID RECORDS SHOW TITLE TO BE IN:

*Registrant*

By Authority of the  
Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark Office

P. SWAIN  
Certifying Officer



Int. Cl.: 34

Prior U.S. Cls.: 2, 8, 9 and 17

**United States Patent and Trademark Office**

Reg. No. 2,177,837

Registered Aug. 4, 1998

**TRADEMARK  
PRINCIPAL REGISTER**



CORPORACION HABANOS, S.A. (CUBA CORPORATION)  
MERCADERES NO. 21  
ENTRE O'REILLY Y EMPEDRADO  
HAVANA, CUBA

FOR: RAW TOBACCO, CIGARS, CIGARETTES, CUT TOBACCO, RAPPÉE, MATCHES, TOBACCO, TOBACCO PIPES, PIPE-HOLDERS, ASHTRAYS, MATCH BOXES, CIGAR CASES, AND HUMIDORS, IN CLASS 34 (U.S. CLS. 2, 8, 9 AND 17).

OWNER OF CUBA REG. NO. 121,980, DATED 1-10-1995, EXPIRES 1-10-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HABANOS UNICOS DESDE 1492", APART FROM THE MARK AS SHOWN.

THE MARK IS LINED FOR THE COLORS RED AND GOLD. THE LINING COMPOSING THE DESIGN OF THE TOBACCO LEAF DOES NOT INDICATE COLOR BUT IS A FEATURE OF THE MARK.

THE MARK CONSISTS OF A BLACK RECTANGLE WITH THE DESIGN OF A TOBACCO LEAF AND THE WORDING "HABANOS UNICOS DESDE 1492."

THE ENGLISH TRANSLATION OF THE WORDS "HABANOS UNICOS DESDE" IN THE MARK IS "UNIQUE HAVANA CIGARS SINCE".

SER. NO. 75-151,320, FILED 8-16-1996.

DAVID C. REIHNER, EXAMINING ATTORNEY





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# Anniversary Issue

HAB00292

# SMOKE™

NOVEMBER 1996/1997  
VOLUME II  
NUMBER 11

## cover

### 108 Mel The Magnificent

After landing a pair of gold statuettes at last year's Academy Awards, actor/director/producer Mel Gibson shows no signs of slowing down. Hollywood's most bankable commodity sits with Seven McDonald for an exclusive interview.

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### 56 SMOKE America: Lone Star Cigars

Bob Ashley's back with our continuing series on USA born & bred cigar companies. This issue, Bob heads deep into the heart of Texas for a look at Finck Cigar Co.

### 70 SMOKE Pictorial: Made in Japan

Kiseru pipes once dominated Japanese tobacco tradition; today they are mainly found in souvenir shops and museums.

### 78 I Spy for the FBI

What do James Bond, Maxwell Smart, and Derek Flint have in common? Find out as Chris Rubin looks at the latest in high-tech spy gadgetry.

### 89 Big Apple Shopping

New York, New York, it's a helluva town, particularly for stogie-lovers. Sean T. Barry scopes out NYC's illustrious smokeshops and lounges.

### 118 The Fine Art of Smoking

Magritte may not have had his pipe, but Ruby Tuesday has his cigar. Jim Mauro and John Scotello explore the relationship between fine art and fine cigars.

### 126 Briar Patch

Alan Schwartz goes to Saint-Claude, France the birthplace of briar. Magnifique! Plus, Ultimate author Richard Carlton Hacker explains how Santa got his pipe.

### 140 A Woman's World

Entertainment editor Seven McDonald wrangles an open panel of gal pals who discuss the finer points of cigars, men, and oral sex.

### 146 That Voodoo That You Don't

Santeria, everybody's favorite spooky religion, puts cigar smoking in a whole new light. Michael Karnow gets ritualistic with a Santeria priest and proves he's no chicken.

### 154 Age of Enlightenment

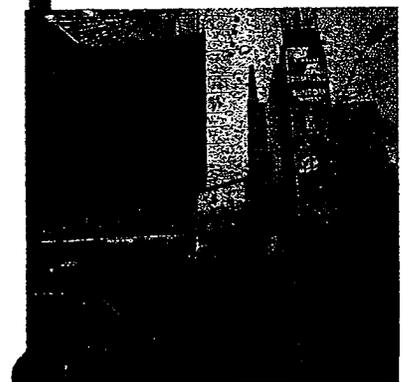
Dr. Adrian Bartoli's continuing guide to cigar maturation further explains the science behind aging your precious smokes.



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HAB00293

WINTER ISSUE • SMOKE

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HAB00438

## Features

## 14 Chicago Loves Cigars

While New York and L.A. continue to systematically shun them, the Midwest's Windy City continues to provide a haven for defiant cigar enthusiasts. Not only does Chicago boast a wealth of smoke shops with great selections and distinctive neighborhood flair, it also offers bars, restaurants, and nightlife destinations that actually welcome your lit logic. Favorite son Mike Ditka and civic hero Michael Jordan — cigar smokers both — would surely be proud.

by Gerry Edelman

photos by Linda Gits and Marty Bader

## 2 Leaves of the Valley

As cigar makers from Santiago to Esteli grow, some of the best wrapper tobacco in the world comes from the U.S., specifically from a small valley in northern Connecticut that has a longer tobacco tradition than most realize. Building on the continuing success of its golden-brown shade and dark, oily roadleaf, the growers of the Connecticut River Valley have gone back to the past, reviving a spicy, century-old Havana-seed leaf that is well on its way to becoming the hottest new cigar wrapper on the market.

by Mark Bernardo

## 8 Cigar-Friendly Wheels

There's nothing quite like cruising down a long stretch of road while leisurely puffing on a favorite cigar. For some people in some areas, their automobile is the only place where they can truly enjoy a smoke in peace. Of course, not all cars are created equal, and some are more suitable than others for the highly personal practice of road smoking. We choose the best in three popular categories — a road-scorching sports car, a rugged Jeep, and a hybrid pick-up truck — for driving and puffing pleasure.

by Robert Farago



## cover story

## 47 THE MANY FACES OF JOE MANTEGNA

After 184 movies, numerous TV appearances, and a theater career that includes a Tony Award, Joe Mantegna has built a career that has defied typecasting and defined versatility. Equally comfortable playing mobsters, cops, family men, politicians, and real-life characters of all stripes, the seasoned star of TV's "Joan of Arcadia" and the upcoming film *Pontormo* (not to mention the voice of "The Simpsons'" animated capo, Fat Tony, and narrator of a special-edition DVD documentary on the Fuente family) also takes time to appreciate the good things in life, including handmade cigars. By Mark Bernardo; photos by Chris Amey

HAB00439

FALL 2004 | SMOKE 7

LA CASA DEL HABANO 



HAB00440

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# TOBACCO JOURNAL

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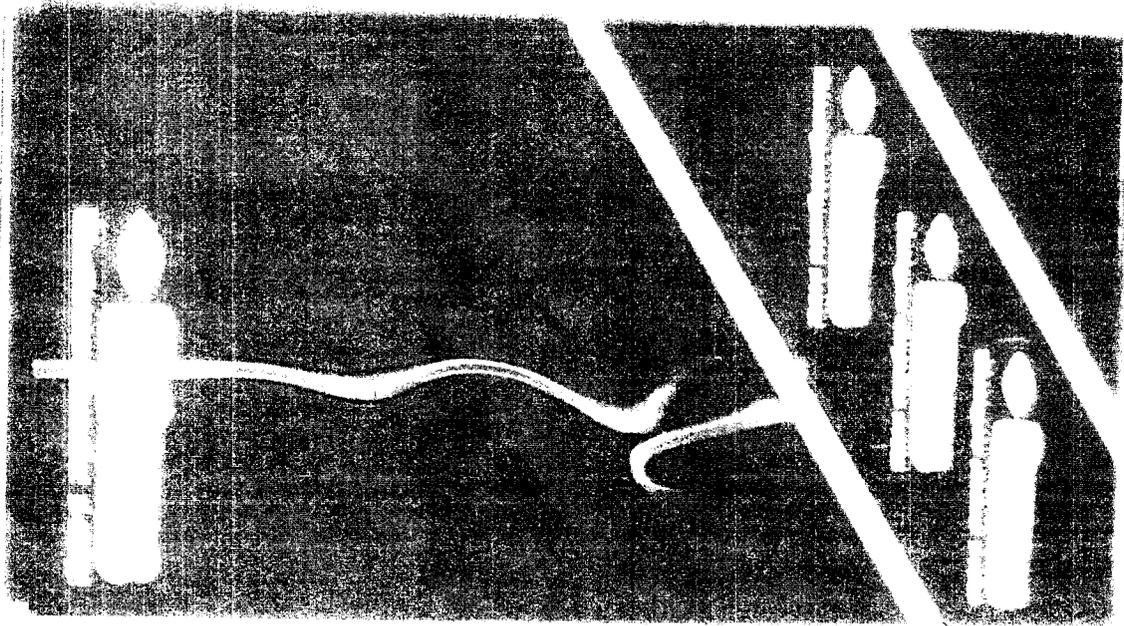
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Eumelio Espino Marrero

TRADEMARK  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL 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.	)	
_____	)	

\*\*\*\*\*

DEPOSITION ON WRITTEN QUESTIONS OF

EUMELIO ESPINO MARRERO

MAY 15, 2007

\*\*\*\*\*

DEPOSITION ON WRITTEN QUESTIONS of EUMELIO ESPINO MARRERO, produced as a witness at the instance of the Opposer, and duly sworn, was taken in the above-styled and numbered cause on the 15th day of May, 2007, from 11:40 a.m. to 2:28 p.m., before Monique M. Hinchcliff, CSR in and for the State of Texas, reported by machine shorthand, at the office of AROCHI, MARROQUIN & LINDER, Torre Mural, Insurgentes Sur 1605, 20th Floor, 03900 MEXICO, D.F. MEXICO.

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A P P E A R A N C E S

FOR THE OPPOSER:

BY: Mr. David B. Goldstein  
RABINOWITZ, BOUDIN, STANDARD, KRINSKY &  
LIEBERMAN, P.C.  
111 Broadway, 11th Floor  
New York, New York 10006

PRESENT FROM HABANOS, S.A.:

BY: Lic. Manuel Garcia  
HABANOS, S.A.  
Calle 3ra No. 2006 e/ 20 y 22  
Miramar, Playa  
Ciudad de la Habana, Cuba

The Interpreters: Maria Esther Lemus  
Veronica Mendez

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I N D E X

Appearances ..... 2

FIRST  
REFERENCE

EUMELIO ESPINO MARRERO

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Eumelio Espino Marrero

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EUMELIO ESPINO MARRERO,  
having been first duly sworn, testified as follows:

OPPOSER'S DIRECT WRITTEN QUESTIONS

Question No. 1:

Q. Please state your full name and residence address for the record.

A. Eumelio Miguel Espino Marrero. My address is 53 Avenue, Number 6302 between the 63 and 68, San Antonio de los Banos, Cuba.

Question No. 2:

Q. Do you understand that you are under oath?

A. Yes.

Question No. 3:

Q. Is there any reason that you cannot testify truthfully today?

A. I feel good. No problem.

Question No. 4:

Q. Are you taking any medicine that might impair your ability to answer the questions truthfully and accurately?

A. No.

Question No. 5:

Q. Do you understand that I will be reading questions that have been prepared by the lawyers in this case?

1           A.    Yes.

2           Question No. 6:

3           Q.    Do you understand that these questions will  
4           be translated into Spanish by the interpreter here,  
5           that you are to answer these questions in Spanish,  
6           that the interpreter will translate your answers into  
7           English, and that I will record the English answers?

8           A.    Yes.

9           Question No. 7:

10          Q.    If you want me or the interpreter to repeat a  
11          question again, please tell the interpreter to do so,  
12          okay?

13          A.    Okay.

14          Question No. 8:

15          Q.    Do you understand that if you do not  
16          understand a question, I can only repeat the question;  
17          I cannot clarify, or reformulate or explain the  
18          question?

19          A.    Yes.

20          Question No. 9:

21          Q.    If an attorney has made an objection to a  
22          question, I will read the objection after I have read  
23          the question. Please do not answer the question until  
24          I have read both the question and any objection, and  
25          they have both been translated into Spanish, all

1 right?

2 A. Okay.

3 Question No. 10:

4 Q. If you need a break, please tell me, and we  
5 will take a break after you have answered a pending  
6 question, all right?

7 A. Okay.

8 Question No. 11:

9 Q. Are you a citizen of the Republic of Cuba?

10 A. Yes.

11 Question No. 12:

12 Q. Are you a citizen of any other country?

13 A. No.

14 Question No. 13:

15 Q. Is Spanish your primary language?

16 A. Yes.

17 Question No. 14:

18 Q. Do you speak English or understand spoken  
19 English?

20 A. No.

21 Question No. 15:

22 Q. Are you fluent in English?

23 A. No.

24 Question No. 16:

25 Q. Are you able to read documents in English?

1           A.     With a lot of difficulties hardly.

2     Question No. 17:

3           Q.     What year were you born?

4           A.     '48.

5     Question No. 18:

6           Q.     Are you aware that this matter involves a  
7     dispute between Corporacion Habanos, S.A. and a  
8     company in the United States, Anncas, Inc., concerning  
9     Anncas's attempt to register HAVANA CLUB as a  
10    trademark for cigars in the United States?

11          A.     Yes.

12    Question No. 19:

13          Q.     Prior to your involvement in this proceeding  
14    were you aware of the United States company Anncas,  
15    Inc.?

16          A.     No.

17    Question No. 20:

18          Q.     Do you know who William Bock is?

19          A.     No.

20    Question No. 21:

21          Q.     What is your educational background after  
22    high school, including the names of any schools, dates  
23    attended, areas of study, and any degrees received?

24          A.     Agriculture engineering. In the Agronomy of  
25    the University of Havana from 1977 to 1983. Then I

1 did a master's degree in biological sciences with a  
2 specialization in plant genetics in the year 1996.

3 Question No. 22:

4 Q. What were the topics of any thesis papers  
5 that you prepared?

6 A. You mean prepared or furnished. Genetic  
7 Improvement for the Tobacco in Cuba.

8 Question No. 23:

9 Q. Have you taken any other specialized courses  
10 related to your work in tobacco?

11 A. Yes.

12 Question No. 24:

13 Q. If so, what courses?

14 A. In the year 1982, it was a training course in  
15 the Bergerac Institute in France about the same issue,  
16 tobacco improvement or enhancement.

17 Question No. 25:

18 Q. Have you ever been employed by Corporacion  
19 Habanos, S.A.?

20 A. No.

21 Question No. 26:

22 Q. Have you ever been employed by Empresa Cubana  
23 del Tabaco, also known as Cubatabaco?

24 A. Yes.

25 Question No. 27:

1 Q. By whom are you currently employed?

2 A. The Institute of Tobacco Research of Cuba.

3 Question No. 28:

4 Q. What is your current position and title with  
5 the Cuban Institute of Tobacco Research (Instituto  
6 Cubano de Investigacion de Tabaco)?

7 A. Technical and productive under director.

8 Question No. 29:

9 Q. Is this Institute part of any government  
10 ministry in Cuba?

11 A. Yes.

12 Question No. 30:

13 Q. If so, what ministry?

14 A. The ministry of agriculture.

15 Question No. 31:

16 Q. Since what year have you been employed by the  
17 Cuban Institute of Tobacco Research?

18 A. Since 1977.

19 Question No. 32:

20 Q. How long have you been in your current  
21 position?

22 A. In the last one, since the year 2000.

23 Question No. 33:

24 Q. Describe your primary responsibilities in  
25 this position.

1           A.    My responsibilities are to carry out the  
2 agricultural extensionism and also in the industrial  
3 link of the manufacturing chain.

4 Question No. 34:

5           Q.    Describe any prior positions you held with  
6 the Cuban Institute of Tobacco Research, including the  
7 dates, job titles and primary responsibilities.

8           A.    Since the year 1977 up to the year 2000, I  
9 was in charge of -- I was the scientific under  
10 director. I was responsible of the genetic  
11 improvement or enhancement of tobacco in Cuba.

12 Question No. 35:

13           Q.    What are the primary functions of the Cuban  
14 Institute of Tobacco Research?

15           A.    In a general sense, it's to create the  
16 scientific basis that in all the productive chain of  
17 the tobacco lead us to have the necessary efficiency.  
18 And besides, in the Institute, also has the  
19 responsibility for quality control of all the  
20 productive chain of the tobacco.

21 Question No. 36:

22           Q.    Specifically what role, if any, does this  
23 Institute play in the selection, perpetuation and  
24 production of the genetic characteristics of Cuban  
25 tobacco?

1           A.    Firstly, in the Institute, we develop the  
2 programs for genetic enhancement directed to get new  
3 commercial varieties that will have basically  
4 resistance to the main sicknesses that happen and  
5 appropriate potential for production and to comply  
6 with the main premise that we have, to preserve the  
7 organoleptical pattern, and as organoleptical  
8 pattern, we mean the aroma, the flavor, the strength,  
9 that is to say, all the features, all the  
10 characteristics that can be appreciated by the senses,  
11 when you are smoking a cigar.

12 Question No. 37:

13           Q.    Could you briefly describe how the Institute  
14 performs this function?

15           A.    We develop enhancement programs following or  
16 according to the conventional methods, the traditional  
17 methods. That is to say we have inter-variety  
18 methods, crossings, and also genealogical selection.  
19 This is the fundamental method that we use to get new  
20 varieties. The crossings of one variety with another  
21 one. The crossing of varieties.

22 Question No. 38:

23           Q.    Have you had any other employment in the  
24 tobacco or cigar industry?

25           A.    No.

1 Question No. 39:

2 Q. If yes, identify your other employers in the  
3 tobacco or cigar industry.

4 A. When I work with Cubatabaco from the year  
5 1970 to the year 1977, my role was to be in charge of  
6 directing the group of tobacco enhancement.

7 Question No. 40:

8 Q. Please provide the name and location by city  
9 and country for each such employer.

10 A. I don't understand.

11 THE INTERPRETER: I used a term he did  
12 not understand so I'm going to repeat it.

13 (Interpreter repeated question.)

14 THE WITNESS: I have only worked in  
15 Cuba. And as I already explained to you, I started in  
16 Cubatabaco and then I went to the Institute of the  
17 Tobacco.

18 Question No. 41:

19 Q. For each such employer in the tobacco or  
20 cigar industry, please describe the nature and type of  
21 that employer's business.

22 A. The business of the company, Cubatabaco, was  
23 in charge of the production and sales of tobacco in  
24 Cuba. And because they were also in charge of  
25 investigation and research, I started working in that

1 department. Then the Institute has no business. It's  
2 a research institute.

3 Question No. 42:

4 Q. For each such employer, what were your dates  
5 of employment?

6 A. I have already said that, but I'm going to  
7 repeat it. From the year 1970 to 1977, I work in  
8 Cubatabaco, and then from 1977 up to now in the  
9 Institute of Research.

10 Question No. 43:

11 Q. For each such employer, describe your job  
12 responsibilities, including your position and title.

13 A. I already mentioned this.

14 Question No. 44:

15 Q. To the extent not previously described in  
16 answer to the above questions, can you please describe  
17 your role in the genetic development and improvement  
18 of tobacco seeds in Cuba?

19 A. Of course. As I mentioned already, since the  
20 year 1977, I am in charge of directing the program of  
21 genetic enhancement of the tobacco in Cuba. And when  
22 I have to carry out other functions, I have never  
23 stopped directing these programs. Therefore, all the  
24 new varieties that we have get in the country have  
25 been obtained by the team that I direct, that I lead.

1 Question No. 45:

2 Q. To the extent not previously answered, what  
3 role, if any, have you had in the development of the  
4 tobacco seeds currently cultivated in Cuba for use in  
5 the manufacture of cigars?

6 A. I think that I already answered this in the  
7 previous question.

8 Question No. 46:

9 Q. Can you give specific examples of the  
10 research that you have conducted or participated in?

11 A. Yes. I have carried out investigations of  
12 basic characteristics trying to look for the genetic  
13 relationships that rule the characters of the plants  
14 that are of commercial interest. And I have studied  
15 also, and also as a basic knowledge, the effect of the  
16 general type environment interaction, that is to say,  
17 we have studied the behavior of our varieties in  
18 different locations and years, and this has given us  
19 of to which extent these variables are susceptible to  
20 the environment in which they are being grown. And  
21 also, of course, we have developed, as I already  
22 mentioned to you, the programs focused to getting new  
23 varieties that correspond to the demands of the crops  
24 in Cuba.

25 Question No. 47:

1 Q. Was your father a tobacco farmer when you  
2 were growing up?

3 A. He was tobacco producer.

4 Question No. 48:

5 Q. In what part of Cuba was that tobacco farm  
6 located?

7 A. Siego Diago (phonetic). In the center of the  
8 island. Means blinds of Avila.

9 Question No. 49:

10 Q. Is that area of Cuba known for the quality of  
11 its tobacco?

12 A. Yes. It is right in the so-called Zona de  
13 Remarios (phonetic).

14 Question No. 50:

15 Q. Did you participate in tobacco cultivation,  
16 harvesting, or processing while a child and teenager?

17 A. Not directly participating because I was  
18 studying.

19 Question No. 51:

20 Q. In what ways?

21 A. Well, I knew tobacco because my father told  
22 me. I lived in a tobacco zone where the tobacco is  
23 one of the main crops so we inhale tobacco in the  
24 environment.

25 Question No. 52:

1 Q. Have you had any employment outside of the  
2 tobacco or cigar industry?

3 A. No.

4 Question No. 53:

5 Q. If yes, identify your prior employers outside  
6 the tobacco industry, the nature of that employer's  
7 business, and the dates of such employment.

8 A. (No answer.)

9 Question No. 54:

10 Q. Have you ever traveled outside Cuba in  
11 connection with your work concerning tobacco or  
12 cigars?

13 A. Yes.

14 Question No. 55:

15 Q. To what countries have you traveled in  
16 connection with such work?

17 A. Let me try to remember. I have visited the  
18 former Soviet Union, Japan, England Spain,  
19 Switzerland, Italy, Canada, Mexico, Nicaragua, Costa  
20 Rica, Peru, Brazil, Argentina. I think I'm not  
21 missing any of them.

22 Question No. 56:

23 Q. When did you first travel outside Cuba in  
24 connection with such work?

25 A. In the year 1972.

1 Question No. 57:

2 Q. Have you provided technical assistance  
3 outside of Cuba concerning the production of tobacco?

4 A. Yes.

5 Question No. 58:

6 Q. If so, can you provide some examples of such  
7 assistance, including the countries, and the nature  
8 of your work?

9 A. The nature of the work always has been  
10 tobacco enhancements. I have rendered technical  
11 assistance in Nicaragua, practically during the whole  
12 '80s. I also gave technical assistance in Mexico  
13 since the year 1996 up to these days and in Brazil  
14 since the year 1998 up to the year 2004.

15 Question No. 59:

16 Q. As a result of your work outside Cuba, do you  
17 consider yourself knowledgeable about tobacco  
18 cultivation in other countries?

19 A. At least of the countries that I have  
20 visited, yes.

21 Question No. 60:

22 Q. What countries in particular?

23 A. Well, I forgot one. I think that when I  
24 mentioned the visited countries I didn't mention the  
25 United States. I forgot it.

1 Question No. 61:

2 Q. Have you attended conferences outside Cuba on  
3 tobacco matters?

4 A. Yes.

5 Question No. 62:

6 Q. If so, can you provide some examples of such  
7 conferences and the subject matter?

8 A. Yes, of course, in the CORESTA conferences,  
9 CORESTA, it's an organization that gathers tobacco  
10 research in the world, and it also develops  
11 conferences every certain time in which they are going  
12 to present or introduce their works. In these CORESTA  
13 conferences I have participated in Italy, England and  
14 Switzerland. Besides, I have also presented works,  
15 speakers in the United States, in the state university  
16 of New Jersey. I also presented papers in Spain, here  
17 in Mexico, in Japan, in Argentina, Costa Rica, and I  
18 don't know if I am missing some country.

19 Question No. 63:

20 Q. Have you ever been invited to lecture abroad  
21 on tobacco matters?

22 A. Yes, the ones I have already mentioned.

23 Question No. 64:

24 Q. Again, if so, can you provide some examples  
25 of lectures you have given and the topics?

1           A.     Sometimes the topics has been tobacco  
2 enhancement and some other times it has been  
3 development and origin and development of the black  
4 Cuban tobacco.

5 Question No. 65:

6           Q.     Have you ever been to the United States?

7           A.     Yes.

8 Question No. 66:

9           Q.     If so, when and for what purpose?

10          A.     It was in 1995. The purpose I already said,  
11 was a conference, a lecture I gave at the state  
12 university of New Jersey.

13 Question No. 67:

14          Q.     What was the topic of any lectures that you  
15 gave in the United States?

16          A.     Origin and enhancement of the black Cuban  
17 tobacco.

18 Question No. 68:

19          Q.     Have you published articles on tobacco?

20          A.     Yes.

21 Question No. 69:

22          Q.     Approximately how many?

23          A.     Should be about 50 currently.

24 Question No. 70:

25          Q.     Can you generally describe the main topics

1 that you have written about?

2 A. The results of my research which have been  
3 the ones that I have already mentioned. For example,  
4 basic research on the quantitative genetics field,  
5 results of enhancement progress, introduction of new  
6 techniques of genetic enhancement of new tobacco in  
7 Cuba, and in general, all around the topic of tobacco  
8 enhancement.

9 Question No. 71:

10 Q. Have you published any books on cigars or  
11 tobacco?

12 A. Yes.

13 Question No. 72:

14 Q. If so, what books?

15 A. The Cuban Cigar Tobacco, which was published  
16 in the U.S., also Technical Instruction for the  
17 Cultivation of Tobacco in Cuba and there's a book that  
18 I didn't see in my resume published about 1998, if I  
19 can remember well, 1998, entitled The Black Cuban  
20 Tobacco Resources Phylogenetic Resources.

21 Question No. 73:

22 Q. What is the subject matter of Instructivo  
23 Tecnico para el cultivo del tabaco (Technical  
24 instruction for the cultivation of tobacco)?

25 A. The way the tobacco must be grown in Cuba for

1 the different agriculture zones.

2 Question No. 74:

3 Q. Have any of the books been published in  
4 English?

5 A. Yes, the first one.

6 Question No. 75:

7 Q. Do you recall what year Cuban Cigar Tobacco  
8 was published?

9 A. 1996.

10 Question No. 76:

11 Q. What topics does this book discuss?

12 A. This book has a general description of the  
13 whole tobacco process from the seed to the industrial  
14 work.

15 Question No. 77:

16 Q. Were you requested by the lawyers for  
17 Habanos, S.A. in the United States to provide your  
18 expert opinion in this proceeding?

19 A. Yes.

20 Question No. 78:

21 Q. Concerning what issue or issues were you  
22 asked to provide an expert opinion?

23 A. Regarding the topic of what the applicant  
24 wants to do, that we discussed at the beginning.

25 Question No. 79:

1 Q. Have you been paid a fee for providing your  
2 expert opinion in this matter?

3 A. No.

4 Question No. 80:

5 Q. Have you ever previously been retained as an  
6 expert in legal proceedings in the United States or  
7 anywhere else?

8 A. No.

9 Question No. 81:

10 Q. If yes, please describe the circumstances.

11 A. (No answer.)

12 Question No. 82:

13 Q. For purposes of preparing your expert  
14 opinion, were you advised by counsel for Habanos to  
15 assume that particular facts, as stated to you by the  
16 attorneys, are true for purposes of this proceeding?

17 A. I cannot understand the question. Repeat the  
18 question. I have to give my opinion regarding those  
19 facts assuming they are true, but I need to give my  
20 own opinion.

21 Question No. 83:

22 Q. In particular, were you told by the attorneys  
23 for Habanos that the Applicant here intends to  
24 manufacture its HAVANA CLUB labeled cigars outside of  
25 Cuba from tobacco cultivated outside of Cuba?

1           A.    Yes.

2           Question No. 84:

3           Q.    Were you also told by the attorneys for  
4           Habanos that the tobacco that Applicant intends to use  
5           for these cigars will be grown from tobacco seeds that  
6           Applicant claims are descended from seeds that were  
7           taken from Cuba in the late 1950's and early 1960's,  
8           and later cultivated for many generations outside of  
9           Cuba, most likely in Nicaragua?

10          A.    Yes.

11          Question No. 85:

12          Q.    Were you also told by the attorneys for  
13          Habanos that the Applicant has not identified the  
14          variety of tobacco seeds that it intends to use to  
15          produce the tobacco for these cigars?

16          A.    Yes.

17          Question No. 86:

18          Q.    Do you recall previously providing a written  
19          report of your expert opinion in this matter?

20          A.    Yes.

21          Question No. 87:

22          Q.    Please review the document that I am handing  
23          to you that has been marked as Espino Marrero Exhibit  
24          1. Do you recognize that document?

25                           OBJECTION: As to Exhibit "1," Applicant

1 objects to the introduction of deponent's declaration  
2 as hearsay. The Rules do not provide for the  
3 introduction of declarations during the testimony  
4 period.

5 THE WITNESS: Yes.

6 Question No. 88:

7 Q. What do you recognize that document to be?

8 A. This is a written statement from me,  
9 including my resume.

10 Question No. 89:

11 Q. Does Exhibit 1 contain both a Spanish  
12 language report and a translation in English?

13 A. Yes.

14 Question No. 90:

15 Q. Please turn several pages in the Spanish  
16 language version, to the page with Paragraph 15 and a  
17 signature. Is that your signature?

18 A. Yes.

19 Question No. 91:

20 Q. Do you recall signing this document on or  
21 about August 2, 2006?

22 A. About the date, I cannot be accurate about  
23 it.

24 Question No. 92:

25 Q. Did you review this document in Spanish prior

1 to signing it?

2 A. Yes.

3 Question No. 93:

4 Q. Did you review the curriculum vitae in  
5 Spanish attached to the report prior to signing it?

6 A. Yes.

7 Question No. 94:

8 Q. The fourth page of your curriculum vitae  
9 states "Selected articles" ("Articulos  
10 seleccionados"). Have you published additional  
11 articles on tobacco in addition to those shown on your  
12 curriculum vitae?

13 A. Yes.

14 Question No. 95:

15 Q. If so, approximately how many?

16 A. Probably about ten.

17 Question No. 96:

18 Q. Were the articles that were selected for  
19 inclusion on your curriculum vitae your more  
20 significant articles?

21 A. Yes. Especially those that I appear as a  
22 main author, however, there are some that are -- that  
23 I appear as a co-author that were included because of  
24 the relevance for the topic.

25 Question No. 97:

1 Q. At the time you signed it, did you believe  
2 the statements in your expert report and curriculum  
3 vitae to be true and accurate?

4 A. Yes.

5 Question No. 98:

6 Q. At the time you signed it, did the opinions  
7 that you stated in the expert report accurately  
8 reflect the opinions that you held?

9 A. Yes.

10 Question No. 99:

11 Q. Have you recently reviewed the report and  
12 curriculum vitae in preparation for this deposition?

13 A. Yes.

14 Question No. 100:

15 Q. Are the statements in your report and  
16 curriculum vitae still true and accurate?

17 A. Yes.

18 Question No. 101:

19 Q. Do you continue to hold the same opinions  
20 that you stated in your expert report?

21 A. Yes.

22 Question No. 102:

23 Q. Are there any statements or opinions in your  
24 expert report that you would change or correct at this  
25 time?



1 in evidence.)

2 Question No. 107:

3 Q. Please look at what has been marked as  
4 Opposer's Exhibit 2. Do you recognize that document?

5 A. Yes.

6 Question No. 108:

7 Q. What do you recognize this Exhibit 2 to be?

8 A. That is part of the book published in the  
9 United States.

10 Question No. 109:

11 Q. Is this the same book indicated on your  
12 curriculum vitae as "Cuban Cigar Tobacco"?

13 A. Yes.

14 Question No. 110:

15 Q. You are the author of this book?

16 A. Yes.

17 Question No. 111:

18 Q. Were you assisted in publishing the book in  
19 English?

20 A. Yes. The translation was made.

21 (Opposer offers Espino Marrero Exhibit 2  
22 in evidence.)

23 Question No. 112:

24 Q. If you look at the photocopy of page 20 of  
25 your book, in the top left, you use the term "Habano,"

1 do you see that?

2 A. Yes.

3 Question No. 113:

4 Q. What does the term "Habano" mean in  
5 connection with cigars?

6 A. Habano is a cigar made in Cuba with 100  
7 percent Cuban tobacco.

8 Question No. 114:

9 Q. On page 21, in the lower right, you use the  
10 term "Havanas," do you see that?

11 A. Yes.

12 Question No. 115:

13 Q. What does the term "Havanas" mean in  
14 connection with cigars?

15 A. For English speaking people, that's the same  
16 word as Habano.

17 Question No. 116:

18 Q. If you look at the photocopy of page 61 of  
19 your book, in the left column you use the term  
20 "Havanas" and in the lower right column, you use the  
21 term "Habanos," do you see that?

22 A. Yes.

23 Question No. 117:

24 Q. What does the term "Habanos" mean in  
25 connection with cigars?

1           A.    I already said that.

2 Question No. 118:

3           Q.    On page 79, in the left column, you use the  
4 term "Havana cigars," do you see that?

5           A.    Yes.

6 Question No. 119:

7           Q.    What does the term "Havana cigars" mean?

8           A.    It's a synonym of Habanos.

9 Question No. 120:

10          Q.    Have you ever heard or seen the term "Havana  
11 cigars" or "Havanas" used to refer to cigars that are  
12 not made from tobacco grown in Cuba?

13          A.    No.

14 Question No. 121:

15          Q.    Is tobacco an annual crop?

16          A.    Yes.  However, I want to make a  
17 clarification.  From the botanical point of view, it  
18 is considered an annual species because it complies  
19 with its plant cycle within one year.  Now, what it  
20 wants to be known, if it is grown once a year, it can  
21 be done like that or not.  For example, in Cuba,  
22 there's only one season to plant the tobacco because  
23 if we do it out of that time, we won't have the best  
24 performance and quality.  However, in other countries  
25 such as Nicaragua, Mexico, they perform two tobacco

1 crops a year.

2 Question No. 122:

3 Q. Is Cuban-grown tobacco used for high quality,  
4 premium Cuban cigars have distinctive qualities and  
5 characteristics?

6 A. Yes.

7 Question No. 123:

8 Q. Can you describe these distinctive qualities  
9 and characteristics?

10 A. Its aroma and its flavor are specially  
11 unique.

12 Question No. 124:

13 Q. If seeds taken from Cuba in 1960 were planted  
14 in Nicaragua, and then the seeds produced from that  
15 crop were planted in the next growing season, and so  
16 on, how many generations removed from the seeds taken  
17 from Cuba would be seeds that were planted today?

18 A. If it is said that those varieties were taken  
19 out in the '60s, currently, they must have more than  
20 45 generations.

21 Question No. 125:

22 Q. Would that be true for other locations in  
23 Central America or the Caribbean?

24 OBJECTION: As to question No. 125, no  
25 proper foundation was laid for the question. No basis

1 for the deponent's answer in that he has not visited  
2 the countries he is testifying about.

3 THE WITNESS: Starting from the basis  
4 that only one production per year were made, such a  
5 seed would have more than 45 generations. For a  
6 country such as Nicaragua or Mexico, they plant two  
7 generations per year, it would have more than 90  
8 generations.

9 Question No. 126:

10 Q. In your expert opinion, does tobacco grown  
11 outside of Cuba from seeds that are many generations  
12 descended from seeds that came from Cuba, retain a  
13 meaningful relationship with the characteristics that  
14 are distinctive of Cuban tobacco?

15 OBJECTION: As to question No. 126, it  
16 lacks proper foundation in that it assumes that  
17 today's Cuban tobacco has kept the characteristics of  
18 the 1960's product, or is closer than non-Cuban grown  
19 product using seeds that are removed for the same  
20 number of generations.

21 THE WITNESS: No.

22 Question No. 127:

23 Q. In brief summary, why is that?

24 A. As I have already explained, the black Cuban  
25 tobacco is very susceptible to the interaction

1 genotype environment, meaning that when it is grown on  
2 different environments, the characteristics expression  
3 of it are different. And that brings a problem when a  
4 seed is going to be produced out of Cuba. Because a  
5 tobacco or the variety in this case does not express  
6 the characteristics it would do in Cuba. And it  
7 becomes impossible to select due to those  
8 characteristics that are expressed in Cuba. And if we  
9 add the fact that probably this selection is made by  
10 specialists who does not have a very deep knowledge of  
11 the Cuban tobacco, makes everything worse. And the  
12 result is that year after year, the variety will  
13 change from the original pattern.

14 Question No. 128:

15 Q. Would you say there is no relation at all  
16 between tobacco descended many generations from seeds  
17 that came from Cuba and Cuban grown tobacco?

18 OBJECTION: As to question No. 128, it  
19 lacks relevancy. All seeds that came from many  
20 generations of Cuban grown tobacco in the 1960's have  
21 evolved.

22 THE WITNESS: Never. It would be  
23 absolute. That doesn't mean that there's no  
24 relationship at all. Undoubtedly, there's a genetical  
25 relationship. However, in regards to the

1 organoeptical characters and the agronomical  
2 characters in general, yes, it's going to be a  
3 difference against the original pattern.

4 Question No. 129:

5 Q. If there is some relation, what is that  
6 relation?

7 A. I already told you this. A genetical one.

8 Question No. 130:

9 Q. What are the major factors that account for  
10 the characteristics of Cuban tobacco used for high  
11 quality, premium cigars?

12 A. For my -- in my opinion, there are four main  
13 factors. First, the kind of tobacco. It has to be  
14 black Cuban tobacco. Secondly, the soil. Third, the  
15 weather, the climate. And then fourth, the men. And  
16 the men, not only as an agricultural producer, but  
17 also as an industrial worker, the one that elaborates,  
18 that manufactures the cigar. The experience that has  
19 been accrued, accumulated in Cuba, both the  
20 agricultural producers and the industrial workers,  
21 it's a very determinate factor in the quality of the  
22 tobacco. And this, along with the other three that I  
23 mentioned previously, these factors are so important  
24 that when one of these factors is missing, then you  
25 don't get the quality that distinguishes the Habano in

1 the world.

2 Question No. 131:

3 Q. Where in Cuba is the tobacco grown that is  
4 used for high quality, premium cigars?

5 A. It's grown in the Zona of Vuelta Abajo in the  
6 province of Pina Velrio (phonetic). Then the wrapper  
7 can be grown in the whole tobacco area of the island.

8 Question No. 132:

9 Q. Is the soil and climate where tobacco is  
10 grown in Nicaragua the same as in that region of Cuba?

11 A. No.

12 Question No. 133:

13 Q. Can tobacco grown elsewhere replicate the  
14 characteristics of tobacco grown in the Vuelta Abajo  
15 area of Cuba?

16 A. No.

17 Question No. 134:

18 Q. Why is that?

19 A. At the interaction of the four factors that I  
20 already mentioned.

21 Question No. 135:

22 Q. If you took tobacco seeds from the same plant  
23 grown in that part of Cuba, and planted some in that  
24 location in Cuba and some in Nicaragua, would the  
25 tobacco be different?

1           A.    Yes.

2           Question No. 136:

3           Q.    Would the cigars made from that tobacco grown  
4           in Nicaragua be different from the cigars made from  
5           the tobacco grown in Cuba?

6           A.    Yes.

7           Question No. 137:

8           Q.    Would this be true of any other country, not  
9           just Nicaragua?

10                           OBJECTION:  As to question No. 137, no  
11           proper foundation was laid for the question.  No basis  
12           for the deponent's answer in that he has not visited  
13           the countries he is testifying about.

14                           THE WITNESS:  Yes.  For every country.  
15           Because as I already explained to you, the Cuban black  
16           tobacco is very susceptible, very sensitive to the  
17           action, to the interaction, general type environment  
18           when it has been grown in a different environment, and  
19           we have to understand as environment, soil, climate  
20           and the man that cultivates it also, then it no longer  
21           has the same characteristic.

22           Question No. 138:

23           Q.    Would the differences in soil and climate  
24           conditions between Cuba and Nicaragua or elsewhere  
25           cause these differences in the quality and

1 characteristics of the tobacco to increase generation  
2 by generation?

3 A. Yes.

4 Question No. 139:

5 Q. Why or why not?

6 A. Because of what I explained to you before.

7 Question No. 140:

8 Q. Would the seed selection process differ based  
9 on where the tobacco is grown?

10 A. I already explained that in order to be able  
11 to maintain from generation to generation the  
12 distinctive characteristics of black Cuban cigar, the  
13 production of that seed has to be carried out under  
14 the general environmental conditions in which that  
15 variety is going to be grown. For example, when in  
16 Cuba, we are going to cultivate or to reproduce the  
17 seed of a variety that is going to be produced for a  
18 crop of production that in our country is being  
19 produced under a cloth, then the seeds of that  
20 variety, we have to produce it also under that  
21 condition. That is to say under cloth. If we don't  
22 do that, then we have the risk that losing little by  
23 little the characteristics of these variables.  
24 Besides, it is a very necessary factor, indispensable  
25 factor, for the specialist in charge of the

1 multiplication of this seed, being the geneticist with  
2 more knowledge and expertise about these varieties,  
3 and if it's possible, the geneticist that created that  
4 variety. Because otherwise, the distinctive  
5 characteristics are going to be vary.

6 Question No. 142:

7 Q. How does a different seed selection process,  
8 generation after generation, affect the  
9 characteristics of tobacco grown outside Cuba from  
10 seeds descended from seeds taken from Cuba, as  
11 compared to tobacco grown in Cuba based on your  
12 Institute's selection processes?

13 A. Because outside the area of our Institute  
14 that embraces all the experimental stations we have in  
15 the main tobacco zones of the country, out of those  
16 conditions, it is impossible to select by the  
17 characteristics -- by the distinctive characteristics  
18 of every variety simply because in another environment  
19 in another location, the plant is not going to express  
20 with loyalty the characteristics that it does express  
21 in the area or in the zone that we cultivated in Cuba.

22 Question No. 143:

23 Q. Why?

24 A. Because of what I have explained before.

25 Question No. 144:

1 Q. Do you have any first hand experience with  
2 what you have been describing concerning the effects  
3 of soil, climate and seed selection processes on the  
4 characteristics of tobacco grown outside Cuba from  
5 descendants of seeds that came from Cuba?

6 A. Yes.

7 Question No. 145:

8 Q. Can you describe that experience?

9 A. I've seen Cuban tobacco and the seeds were  
10 taken from Cuba before the '60s in Nicaragua, and it  
11 no longer was the original Cuban tobacco. And I am  
12 talking about the '80s. And you can imagine then and  
13 now in 2007, well, those differences are higher.

14 Question No. 146:

15 Q. In your view, do the differences in tobacco  
16 resulting from different soil, climate and selection  
17 over several generations mean that non-Cuban cigars  
18 are bad cigars, or only that they have different  
19 qualities and characteristics from Havana cigars?

20 A. I would never say that they are bad. I  
21 simply state that they are different to the Habanos.

22 Question No. 147:

23 Q. In your opinion, can cigars manufactured  
24 outside Cuba from tobacco grown outside Cuba have the  
25 same characteristics and qualities as Havana cigars?

1           A.    No.

2    Question No. 148:

3           Q.    Are you familiar with tobacco known as  
4    "Piloto Cubano"?

5                         OBJECTION:  As to question Nos. 148  
6    through 154.  These questions lack relevancy and  
7    should be stricken from the record.  The "Piloto  
8    Cubano" seeds are not even tangentially related to the  
9    issues in this case.

10                        THE WITNESS:  No.

11   Question No. 149:

12           Q.    What is "Piloto Cubano"?

13           A.    I understand that is a variety that is being  
14    cultivated in Dominican Republic.

15   Question No. 150:

16           Q.    Where is that tobacco grown?

17           A.    I already said that.  I don't know if it's  
18    cultivated in other parts of the world.

19   Question No. 151:

20           Q.    Is "Piloto Cubano" cultivated in Cuba today  
21    for commercial purposes?

22           A.    It has never been cultivated in Cuba for  
23    commercial purposes.

24   Question No. 152:

25           Q.    Was Piloto Cubano tobacco ever cultivated in

1 Cuba for commercial purposes?

2 A. No.

3 Question No. 153:

4 Q. Is it a descendant of the black tobacco grown  
5 in Cuba and used for high quality, premium cigars?

6 A. As far as I understand, no.

7 Question No. 154:

8 Q. What is the basis for your statements  
9 concerning "Piloto Cubano"?

10 A. It's a variety that I don't know.

11 Question No. 155:

12 Q. If you went into a tobacco shop outside of  
13 Cuba and purchased cigars made in Nicaragua that  
14 stated they were grown from "Cuban seed" tobacco, is  
15 there any way that you, as a tobacco expert, could  
16 verify the claim that the tobacco is grown from "Cuban  
17 seeds" by looking at, smelling, feeling or smoking the  
18 cigars?

19 OBJECTION: As to question No. 155,  
20 there is no foundation. The witness has not stated  
21 whether he is a cigar connoisseur.

22 THE WITNESS: No.

23 Question No. 156:

24 Q. To your knowledge, would an ordinary cigar  
25 consumer have any way of knowing if non-Cuban cigars

1 that are claimed to be made from "Cuban Seed tobacco,"  
2 are in fact made from tobacco grown from seeds that  
3 are descended from seeds from Cuba?

4 OBJECTION: As to question No. 156,  
5 there is no foundation for qualifying the witness as a  
6 market expert or what consumers (in other  
7 jurisdictions where he is not acquainted with consumer  
8 behavior) will do.

9 THE WITNESS: No. In reality, they have  
10 no way to know that.

11 Question No. 157:

12 Q. Were you previously given a copy of any of  
13 the questions that have been asked here today?

14 A. No.

15 Question No. 158:

16 Q. Were you previously shown any of the  
17 questions that have been asked here today?

18 A. No.

19 Question No. 159:

20 Q. Were you previously told orally what any of  
21 the questions would be here today, even if you were  
22 not shown the questions?

23 A. No.

24 Question No. 160:

25 Q. Did you have any discussions in preparation

1 for this deposition with anyone other than the  
2 attorneys for Habanos?

3 A. No.

4 APPLICANT'S CROSS WRITTEN QUESTIONS  
5 (Opposer objects to Applicant's objections to the  
6 extent that they constitute legal argument and  
7 assertions of fact, and not objections.)

8 Question No. 1:

9 Q. On page 79 of Exhibit "2" of your direct  
10 examination, you use "Havana cigars" and "Habanos  
11 cigars." Are they interchangeable terms?

12 A. Yes.

13 Question No. 2:

14 Q. Describe what empirical data have you relied  
15 on to support the answers to Opposer's direct  
16 questions?

17 OBJECTION: Objection to the form, vague  
18 and overbroad.

19 THE WITNESS: In my 37 years that I have  
20 been working in this field of genetic enhancement and  
21 in all issues related with tobacco industry in Cuba,  
22 allow me to respond to the questions that I have been  
23 asked.

24 Question No. 3:

25 Q. Do you have any experience purchasing raw

1 tobacco leaves in Central America?

2 A. I don't buy tobacco. I am not a buyer of  
3 tobacco.

4 Question No. 4:

5 Q. Do you have any experience in marketing?

6 A. No.

7 Question No. 5:

8 Q. Do you have any experience in marketing in  
9 the tobacco industry? If so describe how you gained  
10 this experience.

11 OBJECTION: Objection, relevance.

12 THE WITNESS: No.

13 Question No. 6:

14 Q. Do you know of the existence of a trademark  
15 for Cuban cigars that uses the words HAVANA CLUB?

16 OBJECTION: Objection to the extent it  
17 calls for a legal conclusion.

18 THE WITNESS: No.

19 Question No. 7:

20 Q. What do the words HAVANA CLUB mean to you?

21 A. Nothing?

22 Question No. 8:

23 Q. Is there a rum labeled HAVANA CLUB?

24 A. In Cuba, it is with a B.

25 Question No. 9:

1 Q. Do the words HAVANA CLUB denote a geographic  
2 area in Cuba? If so, in what province and  
3 municipality?

4 A. In reality, the word, the term Havana, in the  
5 English language is related with a geographic zone.  
6 It is related with the province of La Havana, in fact,  
7 with Cuba.

8 Question No. 10:

9 Q. What information did you rely upon to answer  
10 question No. 156?

11 A. There is no chemical way or biochemical way  
12 that allows to identify if a cigar has seeds or leaf  
13 from Cuba or not.

14 Question No. 11:

15 Q. To your knowledge, would an ordinary cigar  
16 consumer have any way of knowing if non-Cuban cigars  
17 that are claimed to be made from "non-Cuban seeds,"  
18 are in fact made from tobacco grown from seeds that  
19 did not descend from seeds from Cuba?

20 OBJECTION: Objection to the form; lack  
21 of foundation, assumes facts not in evidence.

22 THE WITNESS: No.

23 Question No. 12:

24 Q. Have you visited all regions where cigars are  
25 produced in order to ascertain that it is impossible

1 to equal or exceed the quality of Cuban cigars? If  
2 so, please list those areas that you have visited to  
3 arrive at this conclusion.

4 OBJECTION: Objection to the form,  
5 compound, vague; objection, relevance;  
6 mischaracterizes deponent's expert testimony.

7 THE WITNESS: Do I have to answer? I  
8 haven't visited all the countries that produce cigars.  
9 I have only visited Nicaragua, Brazil, Mexico. No.  
10 Question No. 13:

11 Q. Do you know what penalties are imposed for  
12 perjury in the United States?

13 OBJECTION: Objection to the extent it  
14 calls for a legal conclusion.

15 THE WITNESS: No.  
16 Question No. 14:

17 Q. Do you feel that you are subject to, or  
18 affected by, in any way to the perjury laws of the  
19 United States?

20 A. I guess so.

21 Question No. 15:

22 Q. Do you know what Connecticut wrapper is?

23 A. Yes.

24 Question No. 16:

25 Q. Does all the Connecticut wrapper used in

1 Cigars?

2 OBJECTION: Objection to the form.

3 THE WITNESS: I don't know what you mean  
4 by this question.

5 Question No. 17:

6 Q. Do you contend that it is likely to deceive  
7 the U.S. Consumer if a seller advertises its cigars as  
8 having Connecticut wrapper when it is not produced in  
9 Connecticut?

10 OBJECTION: Objection, relevance.

11 THE WITNESS: I am not a specialist in  
12 tobacco in Connecticut tobacco.

13 Question No. 18:

14 Q. Are you aware of any attempts to reproduce  
15 the characteristics of the Cuban seed tobacco in  
16 countries other than Cuba?

17 OBJECTION: Objection, vague as to what  
18 Applicant is referring to as "the Cuban seed tobacco."

19 THE WITNESS: Yes. The answer is yes.

20 Question No. 19:

21 Q. Please describe such attempts and the  
22 countries where they took place.

23 OBJECTION: See Objection to Question  
24 18.

25 THE WITNESS: When the Cuban revolution

1 won, some tobacco growers immigrate to other  
2 countries, for example, Nicaragua, Honduras, Dominican  
3 Republic and then they took the original Cuban  
4 cigarette with them, they took also technology with  
5 them, however, they could not take with them neither  
6 the soil or the climate and they haven't been able to  
7 produce Cuban tobacco in those places.

8 OPPOSER'S REDIRECT WRITTEN QUESTIONS

9 (Applicant's General Objections to Opposer's Redirect  
10 Written Questions)

11 1. Applicant objects to this witness' opinion as an  
12 expert and his testimony other than his personal  
13 knowledge. In particular, applicant objects to all  
14 hearsay statements and moves to strike them from the  
15 records.

16 2. Additionally, the witness has not been qualified  
17 as a witness, nor has Opposer offered the witness as  
18 an expert. At the very least, the witness' testimony  
19 is not sufficient to qualify him as an expert for  
20 matters relating to the tobacco industry outside Cuba.

21 3. Applicant objects to redirect questions Nos. 7  
22 and 8 as being leading questions.

23 Question No. 1:

24 Q. Earlier, you testified that tobacco is an  
25 annual crop. Is that true generally for the tobacco

1 growing areas in Central America and the Caribbean?

2 A. At that time, I clarified that from the  
3 botanics perspective, tobacco is an annual crop,  
4 however, that doesn't mean that you cannot get two  
5 crops in one year. There are countries, as I already  
6 mentioned, like Nicaragua and Mexico that get two  
7 crops of tobacco a year.

8 Question No. 2:

9 Q. Do you need to visit each country in that  
10 region to know that tobacco is an annual crop in that  
11 region?

12 A. In the regions that I have visited, I already  
13 know if they have one crop or two crops per year. In  
14 the countries that I haven't visited, of course I  
15 don't know that.

16 Question No. 3:

17 Q. Why is that?

18 A. In the specific case of Cuba, we do only one  
19 crop per year because as I already mentioned, if we  
20 cultivate tobacco in the no ideal era or time, then we  
21 are not going to get the exquisite quality of the  
22 Cuban tobacco, neither the yield. In other countries,  
23 maybe where the quality of their tobacco allows them  
24 or the climatic and the soil conditions allow them to  
25 do that well, they can have two crops a year.

1 Question No. 4:

2 Q. Do you need physically to visit a country to  
3 know that cigars made from tobacco grown in that  
4 country will be different than cigars made from  
5 tobacco grown in Cuba, even if seeds from the same  
6 plant are used?

7 A. No.

8 Question No. 5:

9 Q. Why is that?

10 A. As I have already explained, I have full  
11 knowledge that the black Cuban tobacco only expresses  
12 its distinctive characteristics when it's cultivated  
13 in Cuba by Cuban producers.

14 Question No. 6:

15 Q. In responding to any of the questions earlier  
16 today, were you claiming to testify as an expert in  
17 marketing?

18 A. No.

19 Question No. 7:

20 Q. What is the basis of your earlier testimony  
21 in response to Direct Question No. 155 as to whether  
22 there is any way that you, as a tobacco expert, could  
23 verify a claim that a cigar made in Nicaragua and  
24 claimed to be made from "Cuban Seed tobacco" is in  
25 fact made from tobacco grown from seeds that are

1 descended from seeds from Cuba?

2 A. I already explained for you.

3 Question No. 8:

4 Q. What is the basis of your earlier testimony  
5 in response to Direct Question No. 156 as to whether  
6 an ordinary cigar consumer would have any way of  
7 knowing if non-Cuban cigars that are claimed to be  
8 made from "Cuban Seed tobacco" are in fact made from  
9 tobacco grown from seeds that are descended from seeds  
10 from Cuba?

11 A. I already explained that before.

12 APPLICANT'S RECROSS WRITTEN QUESTIONS

13 Question No. 1:

14 Q. What is the support for your answer to  
15 Opposer's Redirect question No. 1 that you have relied  
16 on?

17 A. I have already explained that.

18 Question No. 2:

19 Q. If you were to visit the different countries  
20 that you have testified about, would you be in a  
21 better position to verify what you have testified  
22 about?

23 A. No.

24 Question No. 3:

25 Q. How does the soil and climate conditions

1 affect the tobacco grown in the different countries  
2 that you have testified about?

3 A. To give an answer to that question, I would  
4 have to be a soil specialist and I am not. But what I  
5 can tell you is when we grow our own varieties on  
6 different soils, even within Cuba itself, they have a  
7 different response to those environments.

8 Question No. 4:

9 Q. Have you ever visited Nicaragua?

10 A. Yes.

11 Question No. 5:

12 Q. Have you inspected Applicant's cigar samples?

13 A. No. I understand the Applicant didn't leave  
14 the samples.

15 (Deposition on written questions  
16 concluded at 2:28.)

17 \* \* \* \* \*

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2 RE: declaracion eumelio-ULTIMA  
CORPORACION HABANOS, S.A. VS. ANNCAS, INC.

3 PAGE LINE CHANGE REASON

4: 4 8 (number) "6602", instead of "6362" and  
(between the) "66" instead of "63"/through lack of undarstanding.

11:34 5 7 4 "47"instead of"48"/through lack of  
undarstanding.

6 15 7 "Ciego de Avila" instead of "Siego Diago"/  
through lack of undarstanding.

7 15 13 "Remedios" instead of "Remarios"/through lack of  
undarstanding.

8 35 6 "Pinar del Río" instead of Pina velrio"/  
through lack of undarstanding.

9 37 <sup>44</sup> 21 "Havana Club has excellent quality" instead  
of "Nothing"/through lack of undarstanding.

11:34 10 44 24 "Yes" instead of "In Cuba, it is with a B"/  
through lack of undarstanding.

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-----AUTENTICACIÓN DE FIRMA-----

**DOCTOR LINO ADRIÁN REYES HERNÁNDEZ**, Notario de Consultoría Jurídica Internacional, con competencia nacional y sede en el Municipio Playa, Ciudad de La Habana, República de Cuba.-----

**DOY FE** que la firma que antecede es auténtica del Señor **EUMELIO MIGUEL ESPINO MARRERO**, natural de Chambas, Camagüey, ciudadano cubano, mayor de edad, casado, sub-director, vecino de Calle 53 número 6602, entre 66 y 68, Municipio San Antonio de los Baños, Provincia La Habana, con Identidad Permanente número 47050801964; por haber sido puesta la firma a mi presencia y haberlo identificado por su documento de identificación.-----

**ASIMISMO DOY FE** de entender el idioma inglés, en que está escrito el documento a cuyo pie aparece la firma que se autentica.-----

Ciudad de La Habana, 09 de noviembre de 2007. **DOY FE**.-----



*[Handwritten Signature]*  
Dr. Lino Adrián Reyes  
Hernández





Eumelio Espino Marrero

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I, EUMELIO ESPINO MARRERO, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

\_\_\_\_\_

EUMELIO ESPINO MARRERO,  
Witness

-----

THE STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_, on this day personally appeared EUMELIO ESPINO MARRERO, known to me (or proved to me under oath or through \_\_\_\_\_ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE  
STATE OF \_\_\_\_\_  
COMMISSION EXPIRES: \_\_\_\_\_

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TRADEMARK  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL 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.	)	
_____	)	

CERTIFICATE FROM THE  
DEPOSITION ON WRITTEN QUESTIONS  
OF EUMELIO ESPINO MARRERO

MAY 15, 2007

I, MONIQUE M. HINCHCLIFF, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the foregoing deposition on written questions is a full, true and correct transcript;

That the foregoing deposition on written questions of EUMELIO ESPINO MARRERO, the Witness, hereinbefore named was at the time named, taken by me in stenograph, on May 15, 2007, the said Witness having been by me first duly cautioned and sworn to tell the

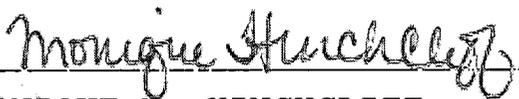
Eumelio Espino Marrero

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truth, the whole truth, and nothing but the truth, and the same were thereafter reduced to typewriting by me or under my direction.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

WITNESS MY HAND, this the 20 day of June, A.D., 2007.

  
\_\_\_\_\_  
MONIQUE M. HINCHCLIFF  
Texas CSR 6199  
Expiration Date: 12/31/07  
ESQUIRE DEPOSITION SERVICES  
Firm Registration No. 77  
9901 IH-10 West, Suite 630  
San Antonio, TX 78230  
(210) 331-2280



<p style="text-align: center;"><b>A</b></p> <p><b>Abajo</b> 35:5,14  <b>ability</b> 4:19  <b>able</b> 6:25 37:10  48:6  <b>above-styled</b> 1:19  <b>abroad</b> 18:20  <b>absolute</b> 33:23  <b>account</b> 34:9  <b>accrued</b> 34:19  <b>accumulated</b> 34:19  <b>accurate</b> 24:22  26:3,16  <b>accurately</b> 4:20  26:7  <b>acknowledged</b>  54:18  <b>acquainted</b> 42:7  <b>action</b> 36:17 56:6,8  <b>add</b> 33:9  <b>addition</b> 25:11  27:17  <b>additional</b> 25:10  <b>Additionally</b> 48:16  <b>additions</b> 27:14,21  <b>address</b> 4:6,7  <b>advertises</b> 47:7  <b>advised</b> 22:14  <b>affect</b> 38:8 52:1  <b>affix</b> 54:2  <b>agricultural</b> 10:2  34:16,20  <b>agriculture</b> 7:24  9:14 21:1  <b>agronomical</b> 34:1  <b>Agronomy</b> 7:24  <b>allow</b> 27:23 43:22  49:24  <b>allows</b> 45:12 49:23  <b>America</b> 31:23  44:1 49:1  <b>Anncas</b> 1:10 7:8,14  53:2 55:10  <b>Anncas's</b> 7:9  <b>annual</b> 30:15,18</p>	<p>48:25 49:3,10  <b>answer</b> 4:19 5:5,23  13:16 16:8 22:11  27:5 32:1 36:12  45:9 46:7 47:19  51:14 52:3  <b>answered</b> 6:5 14:2  14:6  <b>answers</b> 5:6,7  43:15  <b>Antonio</b> 4:9 56:16  <b>APPEAL</b> 1:2 55:2  <b>appear</b> 25:21,23  27:16  <b>Appearances</b> 3:2  <b>appeared</b> 54:13  <b>applicant</b> 1:11  21:23 22:23 23:4  23:6,13,25 47:18  48:11,13,21 52:13  55:11  <b>Applicant's</b> 3:6,7  43:4,5 48:9 51:12  52:12  <b>Application</b> 1:3  55:3  <b>appreciated</b> 11:10  <b>appropriate</b> 11:5  <b>approximately</b>  19:22 25:15  <b>area</b> 15:10 35:7,15  38:13,21 45:2  <b>areas</b> 7:23 46:2  49:1  <b>Argentina</b> 16:20  18:17  <b>argument</b> 43:6  <b>AROCHI</b> 1:23  <b>aroma</b> 11:8 31:10  <b>arrive</b> 46:3  <b>articles</b> 19:19 25:9  25:11,18,20 27:17  27:18  <b>Articulos</b> 25:9  <b>ascertain</b> 45:25</p>	<p><b>asked</b> 21:22 42:13  42:17 43:23  <b>assertions</b> 43:7  <b>assistance</b> 17:2,7  17:11,12  <b>assisted</b> 28:18  <b>assume</b> 22:15  <b>assumes</b> 32:16  45:21  <b>assuming</b> 22:19  <b>attached</b> 25:5  <b>attempt</b> 7:9  <b>attempts</b> 47:14,21  <b>attended</b> 7:23 18:2  <b>attorney</b> 5:21  <b>attorneys</b> 22:16,22  23:3,12 43:2 56:6  <b>August</b> 24:21 27:15  <b>author</b> 25:22 28:15  <b>Avenue</b> 4:8  <b>Avila</b> 15:8  <b>aware</b> 7:6,14 47:14  <b>A.D</b> 56:10  <b>a.m</b> 1:21</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>B</b> 2:3 44:24  <b>background</b> 7:21  <b>bad</b> 39:18,20  <b>Banos</b> 4:9  <b>based</b> 37:8 38:11  <b>basic</b> 14:12,15 20:4  <b>basically</b> 11:3  <b>basis</b> 10:16 31:25  32:3 36:11 41:8  50:20 51:4  <b>beginning</b> 21:24  <b>behavior</b> 14:17  42:8  <b>believe</b> 26:1 27:22  <b>Bergerac</b> 8:15  <b>best</b> 30:23  <b>better</b> 51:21  <b>biochemical</b> 45:11  <b>biological</b> 8:1</p>	<p><b>black</b> 19:3,16 20:19  32:24 34:14 36:15  37:12 41:4 50:11  <b>blinds</b> 15:8  <b>BOARD</b> 1:2 55:2  <b>Bock</b> 7:18  <b>book</b> 3:10 20:17  21:11,12 27:11  28:8,11,15,18,25  29:19  <b>books</b> 20:10,14  21:3  <b>born</b> 7:3  <b>botanical</b> 30:17  <b>botanics</b> 49:3  <b>BOUDIN</b> 2:3  <b>Brazil</b> 16:20 17:13  46:9  <b>break</b> 6:4,5  <b>brief</b> 32:23  <b>briefly</b> 11:13  <b>brings</b> 33:3  <b>Broadway</b> 2:4  <b>business</b> 12:21,22  13:1 16:7  <b>buy</b> 44:2  <b>buyer</b> 44:2</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>C</b> 2:1  <b>Calle</b> 2:7  <b>calls</b> 44:17 46:14  <b>Canada</b> 16:19  <b>card</b> 54:15  <b>Caribbean</b> 31:23  49:1  <b>carried</b> 14:11 37:13  <b>carry</b> 10:1 13:22  <b>case</b> 4:25 27:22  33:5 40:9 49:18  <b>cause</b> 1:20 36:25  <b>cautioned</b> 55:25  <b>center</b> 15:7  <b>Central</b> 31:23 44:1  49:1</p>	<p><b>certain</b> 18:11  <b>Certificate</b> 3:12  55:13  <b>Certified</b> 55:17  <b>certify</b> 55:19 56:4  <b>chain</b> 10:3,16,20  <b>change</b> 26:24 27:8  33:13 53:3  <b>changes</b> 3:11 27:3  53:1  <b>characteristic</b>  36:21  <b>characteristics</b>  10:24 11:10 14:12  31:5,9 32:13,17  33:2,6,8 34:10  35:14 37:1,12,23  38:5,9,17,17,20  39:4,19,25 47:15  50:12  <b>characters</b> 14:13  34:1,2  <b>charge</b> 10:9 12:5  12:23,24 13:20  37:25  <b>chemical</b> 45:11  <b>child</b> 15:16  <b>cigar</b> 11:11,24 12:3  12:20 16:2 20:15  21:7 28:12 29:6  34:18 37:12 41:21  41:24 45:12,15  50:23 51:6 52:12  <b>cigarette</b> 48:4  <b>cigars</b> 7:10 14:5  16:12 20:10 22:24  23:5,15 29:5,14  29:25 30:4,7,11  30:11 31:4 34:11  35:4 36:3,4 39:17  39:18,19,23,25  41:5,13,18,25  43:10,11 44:15  45:16,24 46:1,8  47:1,7 50:3,4 51:7</p>
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**Declaration of Translation  
Of Declaration of Eumelio Espino Marrero**

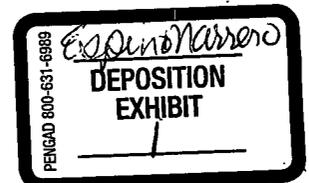
Debra Evenson declares under penalty of perjury under the laws of the United States that the following is true and correct:

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 3<sup>rd</sup> 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, c/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. Recibí 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

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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

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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.

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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.

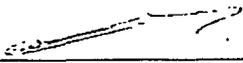
13. Por lo tanto, desde el punto de vista de un agrónomo o genetista, no hay una conexión significativa o relevante entre el tabaco cubano cultivado en Cuba y el tabaco que se produzca a partir de semilla originalmente cubana, pero cultivada fuera de Cuba y mucho menos, después de 45 generaciones posteriores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



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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 le 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. Gorl 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 genero 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

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CORPORACION HABANOS, S.A.,	)	
	)	
Opposer,	)	Opposition No. 91165519
	)	
v.	)	
	)	
ANNCAS, INC.,	)	
	)	
Applicant.	)	
<hr/>	)	

**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 Gorl 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 comercial posibiliteís 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 cultiva 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.



# CUBAN CIGAR TOBACCO

WHY CUBAN CIGARS ARE THE WORLD'S BEST



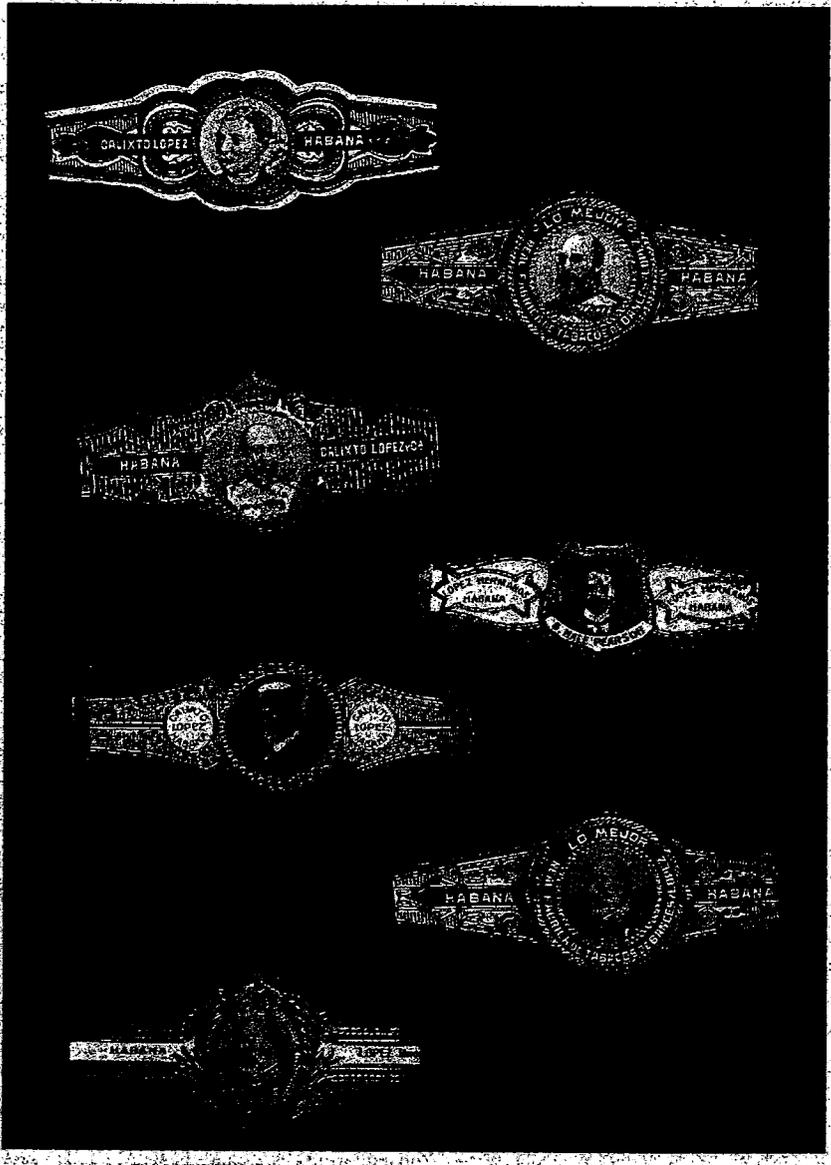
ESPINO MARRERO  
DEPOSITION  
EXHIBIT  
2

EUMELIO ESPINO MARRERO



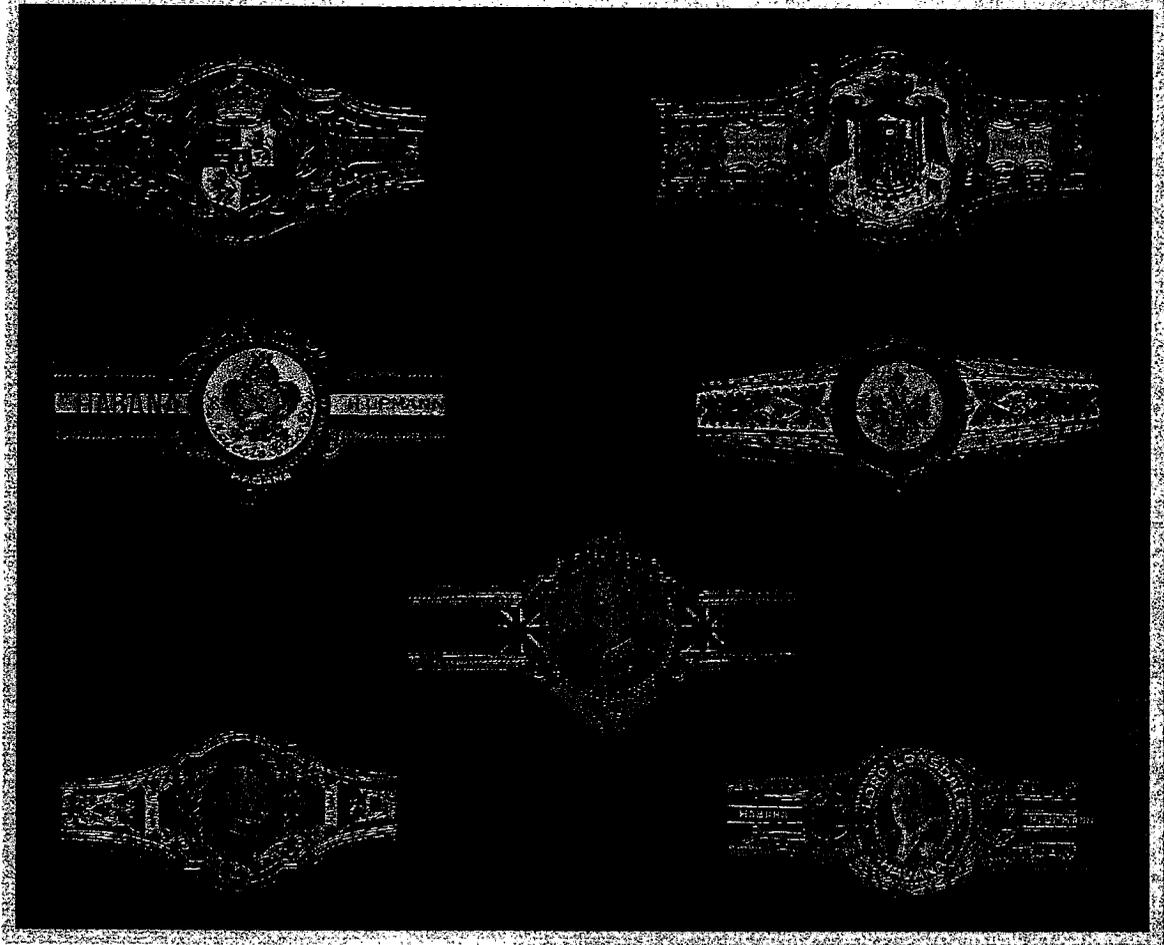
# CUBAN TOBACCO

WHY CUBAN CIGARS ARE THE WORLD'S BEST.



by Eumelio Espino Marrero





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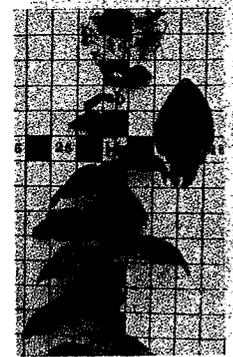


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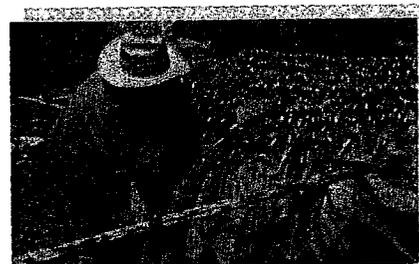
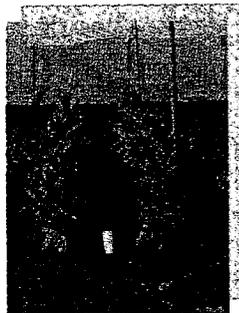


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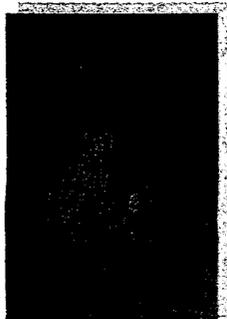


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# ORIGINS OF ITS CULTIVATION IN CUBA

The species *Nicotiana tabacum* L. is a natural amphidiploid between the *Nicotiana sylvestris* and one of the species of the tomentosae section. According to the detailed investigations by Gerstel (1960) and other researchers, it is reasonable to assume that the species is the *Nicotiana tomentosiformis* Goodspeed.

From the phytogeographic data on the dispersion of the *N. tabacum* predecessors (*N. sylvestris* and *N. tomentosiformis*) it follows that the genetic origin of the *N. tabacum*, as an interspecific primary hybrid, can be placed in the area comprised by the pre-mountainous region of the Andes in present day Bolivia, the exact intersection of the areas where the *N. sylvestris* and *N. tomentosiformis* are found.

Taking the term "center of origin", coined by Vavilov (1926), as the meeting place between a species' genetic origin and the center where that species was initially cultivated, the area of the *N. tabacum*'s center of origin can be broadened to the Peruvian - Ecuatorian - Bolivian Andes, the seat of the ancient Inca and Chibcha civilizations, whose peoples were the first to grow this species.

Numerous findings indicate that the *N. tabacum* was grown for a long time in the American continent and that the area dedicated to its cultivation covered the territories occupied today by Mexico, Central America,

the Caribbean and vast portions of South America. This great dispersion over different climates and types of soils originated a variety of eco-agricultural strains adapted to that very diversity of natural conditions which constitute the direct predecessors of the tobacco varieties known today.

According to Mangelsdorf and Smith (1949), the existing paleontological data place the

beginning of maize cultivation in Mexico somewhere between 6000 and 5000 BC, while in Central and South America it can be traced back to 3000 to 2000 BC. It is therefore reasonable to assume that it was precisely during this period of contact that the introduction of tobacco to Central America and Mexico occurred, following a route exactly op-

posite to that of maize. Consequently, it was during the course of that same period that tobacco also came into the Antilles and Cuba.

During Columbus' first voyage, while his ships were at anchor in the bay known today as Gibara, on 2 November 1492, indigenous Cubans showed the Admiral and his men a few dried leaves of a plant that was totally unknown to the Europeans but seemed to be cherished dearly by the natives. Puzzled by the origin and possible uses of the leaves, Columbus ordered two of his men, Rodrigo de Xerez and Luis de Torres, to take two of the natives as guides and march inland to find out what those leaves so enthusiastically presented



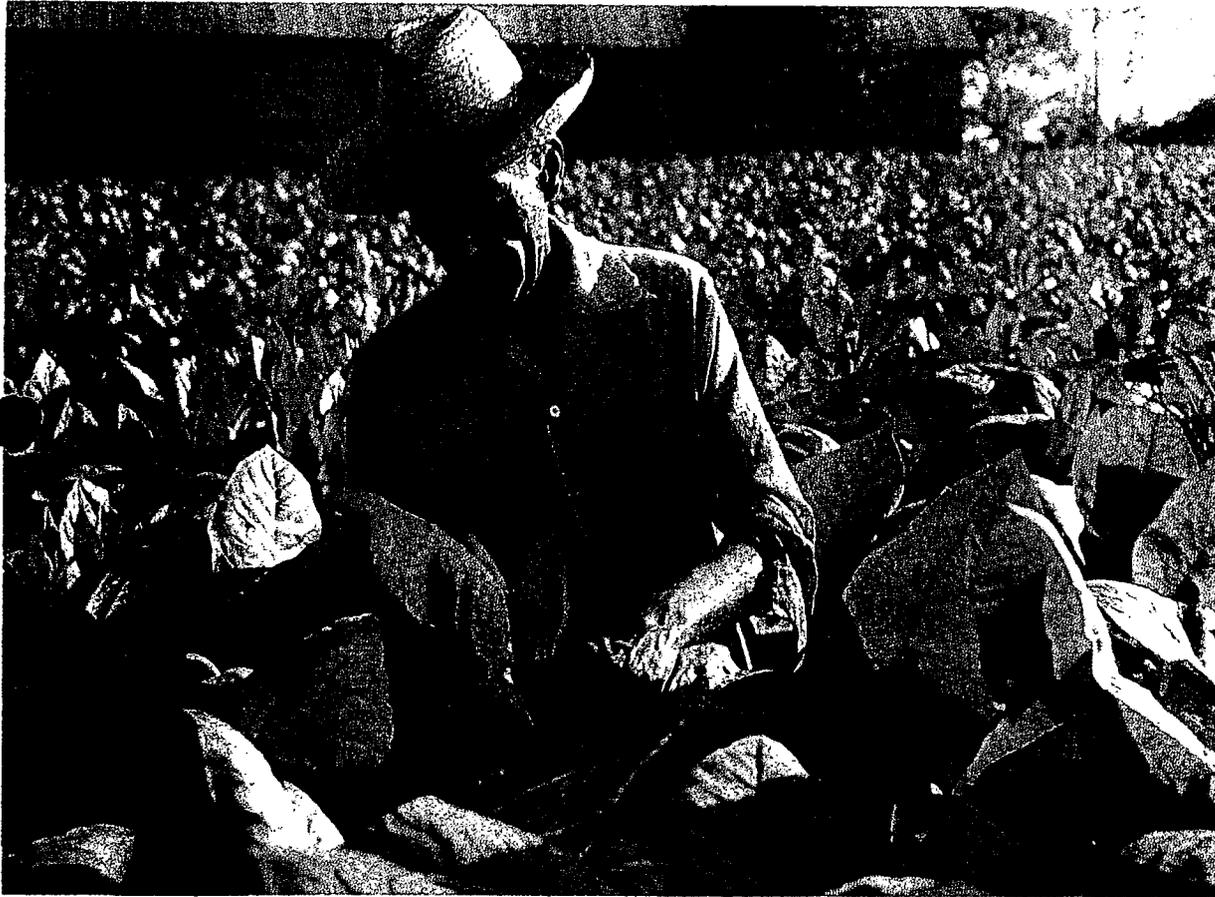
On November 2, 1492 Christopher Columbus and his men are presented with dried tobacco leaves by the Cuban Indians. This historic moment was captured in many old illustrations like this one.



## TRADITIONAL VARIETIES

There is very little information on the varieties of tobacco that were cultivated in Cuba since pre-Columbian days to the present century except for a few incomplete descriptions that leave out their names and fundamental characteristics. What is really known for fact is that plantations were very heterogenous as

ers themselves. They used to harvest the main plant and after the first, second or even third sprouting did they collect the seeds, without any consideration as to the fundamental traits of the original plant, let alone the differences that might exist between the plants whose sprouts had generated the seeds.



The typical *Criollo* plantations in which one of Cuba's most popular tobacco varieties is grown. These vegas (areas in which tobaccos are grown) are in the finest tobacco-growing lands in the world in the Vuelta Abajo in Pinar del Rio Province.

a result of the inadequate seed production system, which was made at random without any selection whatsoever of the plants that were earmarked for seed, nor was there any awareness of the need to isolate those plants to prevent undesirable crossings of different strains. Throughout this long period of time, seeds were generally produced by the tobacco farm-

This made it impossible to have genetically pure tobacco varieties to guarantee the required uniformity of the plantations and the necessary stability of the yields and quality of the produce. In spite of this, Cuban tobacco won early fame as the best in the world, and not even when new seeds from other countries were introduced into the Cuban planta-

tions did the leaves from the island cease to be the most highly regarded of all. This shows the all-important role of the climate and the particular characteristics of the Cuban soils, which give black tobacco a distinctive quality that sets it apart from the ones harvested anywhere in the world.

Nevertheless, it must be pointed out that if genetically stable strains of genuine native black tobacco are combined with Cuba's extraordinary natural conditions for the growing of this plant, the results must necessarily be superior, raising the quality of the product to inimitable standards. That is why, since the first decade of this century, a considerable attention was given to the identification and preservation of the original Cuban varieties, as well as to the development of new and equally good strains.

In 1907, an American researcher working in Cuba, H. Hasselbring, took Cuban seeds to the United States in order to study the behavior of those varieties in another climate and under totally different cultivation conditions. In the tobacco plantations developed from those seeds, he observed a striking diversity which he initially thought was a possible effect of the climatic change. The following year, Hasselbring planted the same seeds on the grounds of the former Agricultural Station in Santiago de las Vegas, very near Havana, and again observed the same phenotypic diversity that characterized the Cuban plantations of the times. He concluded that this heterogeneity was the result of an indiscriminate mixing of seeds from different varieties of tobacco and from the various hybrid forms that already existed.

A view of the Criollo tobacco growing in the sun. This area is the Guanés in Pinar del Río.





highly priced Cuban black tobacco. In 1940, after three years of hard work, the present commercial variety named "Criollo" was finally developed and it fulfilled every requirement to make an "Habano" a unique product for its indisputable and matchless organoleptic quality.

The "Criollo" variety has a potential mean yield of about 1900 kilos per hectare, its shoots are numerous and well developed and its average height with inflorescence is 1.75 meters. The plant normally carries 16 usable leaves, set 7cm apart, and its largest leaf is approximately 27 cm wide and 43 cm long. It is resistant to the black-shank, but highly vulnerable to the blue mould and the tobacco mosaic virus (TMV). At present it is used as a commercial variety and cultivated in open sunshine in Pinar del Río.

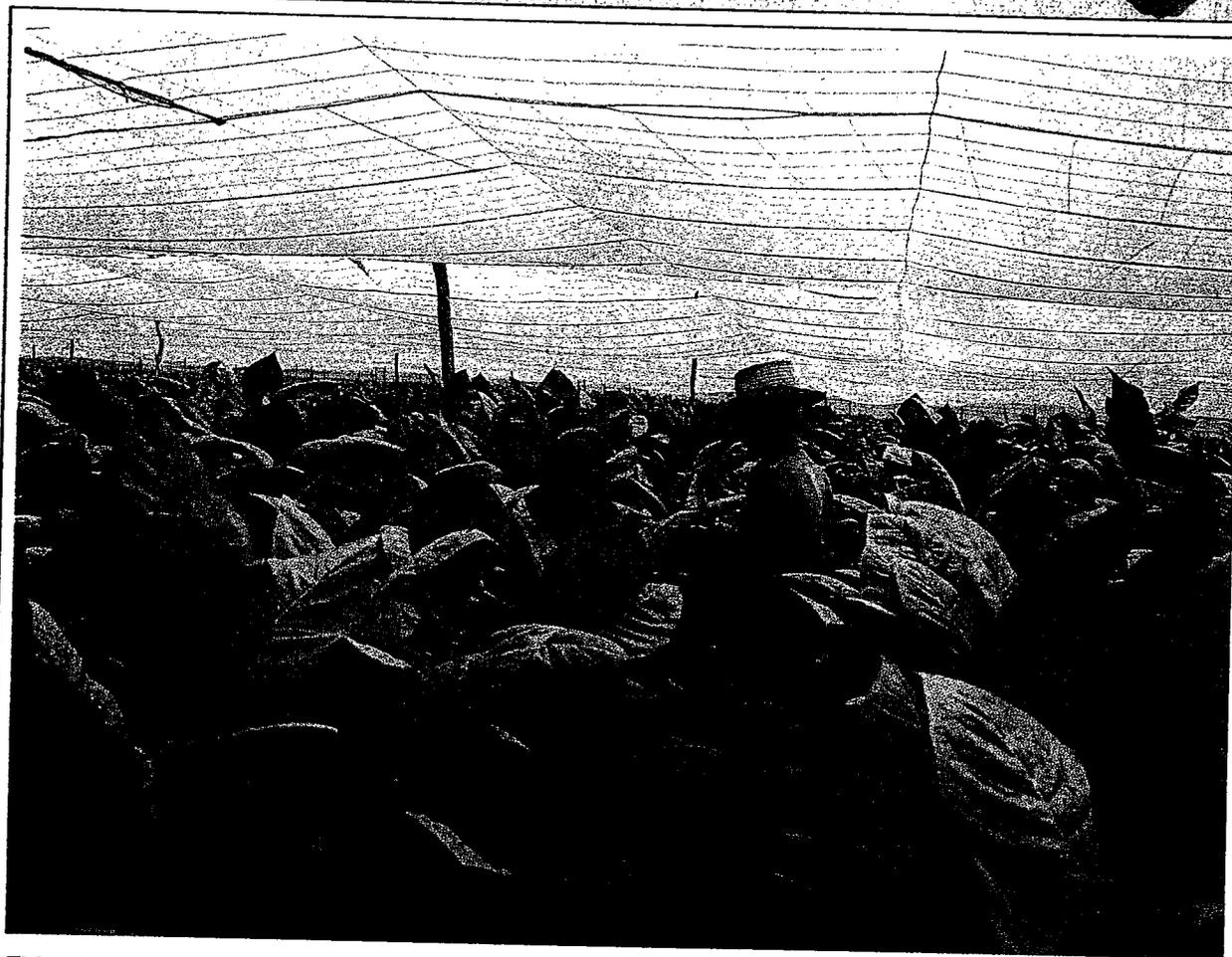
In the thirties, a few years before the introduction of the "Criollo" as a commercial variety, Pinar del Río began to grow a new variety

known as "Pelo de Oro" (Golden Hair). The origin of this variety is uncertain. Some say it was brought over from Mexico by the **Cuban Land & Tobacco Leaf Co.**, that used to own large tobacco plantations in the San Juan Y Martínez zone, while others believe it is the result of natural cross-breeding between some of the Cuban black tobacco strains and the Middle East "Esmirna" variety that was grown in small quantities in Pinar del Río.

Regardless of its origins and in spite of its excellent organoleptic quality, the "Pelo de Oro" variety is different from the original black tobacco of Cuba and was therefore never established as a commercial variety in the world famous "Vuelta Abajo" region. But the "Pelo de Oro" was nonetheless grown with considerable success in the central region of Cuba, known as Remedio, and soon expanded over to the eastern part of the island, Vuelta Arriba, where it became the main commercial tobacco variety to this day.

This vega is covered with cheese cloth to protect the plants from the sun and insects. This shade-grown tobacco is basically used for *capa* or *wrapper* as it is called in English.





This plantation is growing the *corojo* variety of cigar tobacco. It has been used in Cuba for *capa* (=wrapper) since 1947 for high quality Havana cigars.

The leaves of the "Pelo de Oro", aside from their distinctive high quality, mature with great uniformity which permits their collection in bunches. This variety produces an outstanding number of wrapper leaves allowing three and even four gleanings from a single plant; this raises its production potential to about 2300 kg/hectare. On average, it gives 12 to 14 usable leaves per plant, set 8 cm apart, and the largest leaf is normally 25 cm wide and 45 cm long. The "Pelo de Oro" is resistant to the black-shank, but highly vulnerable to the blue mould and the "orobanche", a parasitic plant that wreaks havoc in the regions where this tobacco variety is cultivated.

In the early forties, Daniel Rodríguez, one of the leading tobacco producers in Pinar del Río, hired a Dutch botanist named Nienhuys to develop a new variety that would preserve all the virtues of the Cuban black tobacco but that would also produce excellent wrapper

leaves. Rodríguez launched an improvement program based on cross-breeding "Criollo" strains with a good wrapper producing "Sumatra" variety. After long years of testing, Rodríguez and Nienhuys obtained the present commercial variety "Corojo", named after the farm where it was initially developed.

The "Corojo" variety is noted for its superb wrapper leaves, which constitute the distinguishing mark of Cuban rolled cigars, known the world over as "Havanas". This variety yields some 2000 kg/hectare, with 20 per cent of this produce in high quality wrapper leaves. It gives 16 to 18 usable leaves per plant, set 10 cm apart; its height, including inflorescence, is 2.07 m. The central leaves are 28 to 30 cm wide and 48 to 50 cm long. It produces abundant shoots but it is only moderately resistant to the black-shank and highly vulnerable to the blue mould and the mosaic virus.



At present, the techniques used in the cultivation of Cuban black tobacco are in keeping with the agronomical peculiarities of the varieties introduced since 1940 and with the potential yields of the soils dedicated to that crop. However, the principles that rule the present techniques are essentially the same as the ones traditionally applied in the cultivation of tobacco in Cuba.

In the initial years of this century, the technique of covering the tobacco plants with cheese-cloth (shade grown or covered tobacco), was introduced in Cuba to obtain wrapper leaves with a better color and texture than ones produced until then in the open sunshine plantations. Mr. Calixto López was the first to use the cheese-cloth covers at his farm **Guainacabo**, in the municipality of San Luís, Pinar del Río province. Shortly after that, Don Luis Marx adopted this system at his farm **Zorrilla**, near the town of Alquizar, in the Partido region.

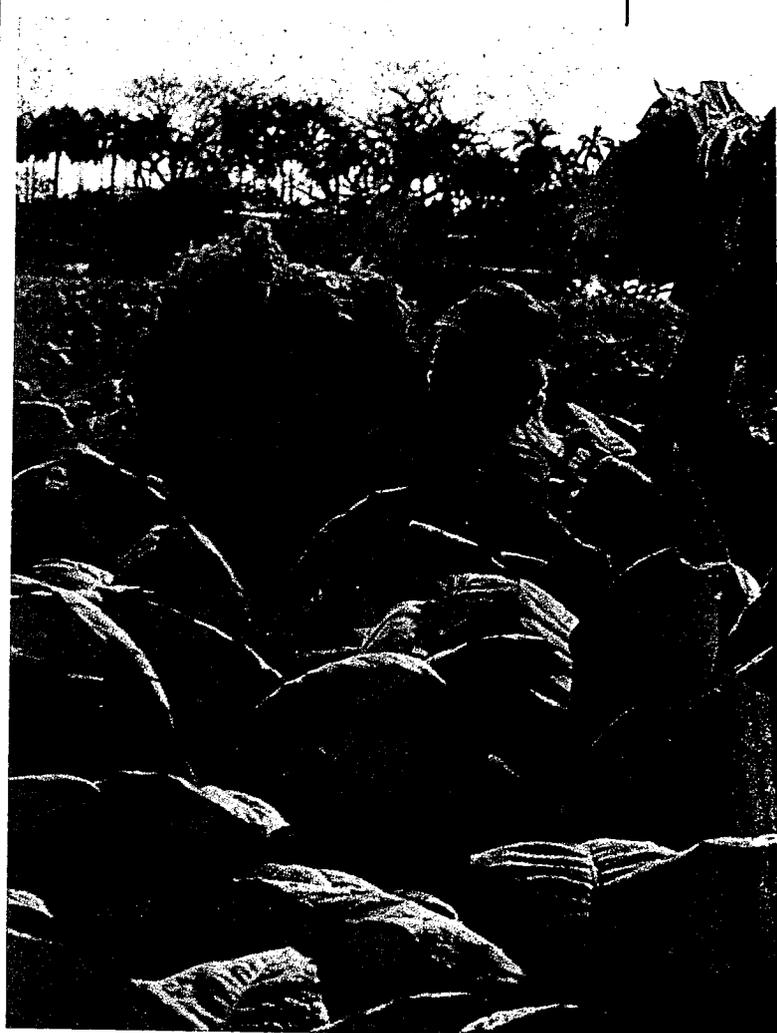
Simultaneously, the tobacco Trust also applied this method in some of its Vuelta Abajo farms, after which most of the leading tobacco growers of the country - except the Vuelta Arriba farmers - followed suit. Together with the covered cultivation method, the leaf by leaf picking was also introduced in the Partido region, eliminating the cutting in pairs. The loose leaves were now sewn together and hung to dry from wooden staffs. This new procedure soon included the open sunshine tobacco harvested in that region and in the best plantations of Vuelta Abajo.

It is therefore safe to say that since the first decade of this century Cuban black tobacco was grown under the three agricultural regimes that are still applied to this day. These regimes are designed to produce tobacco for different industrial uses (wrapper, binder, filler and pipe tobacco), and each is known in Cuba as "sunshine tobacco on staffs", "sown sunshine tobacco" and "covered tobacco".

The "sunshine tobacco on staffs" is the black tobacco cultivated under full sunshine conditions whose leaves are harvested in pairs. This is done by progressively cutting the stem of the plant in sections that contain two or three leaves, depending on their dimensions. When the plant reaches the optimal technical maturity, harvesting begins by cutting the top

part of the stem that contains the last two or three leaves of the plant. This is done several times until the lower section with two or three leaves is finally cut. This method also permits the harvesting of "capaduras", which are the leaves that reappear from the shoots of the principal plant after harvesting. The sections of stem or "mancuernas" are placed on wooden staffs and placed in the curing barns to dry. This tobacco is generally used as filler and binder for manufacturing cigars for the domestic market, for leaf tobacco exports and for the national cigarette industry. About 30% of the black tobacco that is grown today in Pinar del Río and more than 90% of the type produced in the central and eastern regions of Cuba fall into that category.

On the other hand, "sewn sunshine tobacco" is also cultivated under full sunshine conditions but harvested leaf by leaf. This method consists of picking first the lower





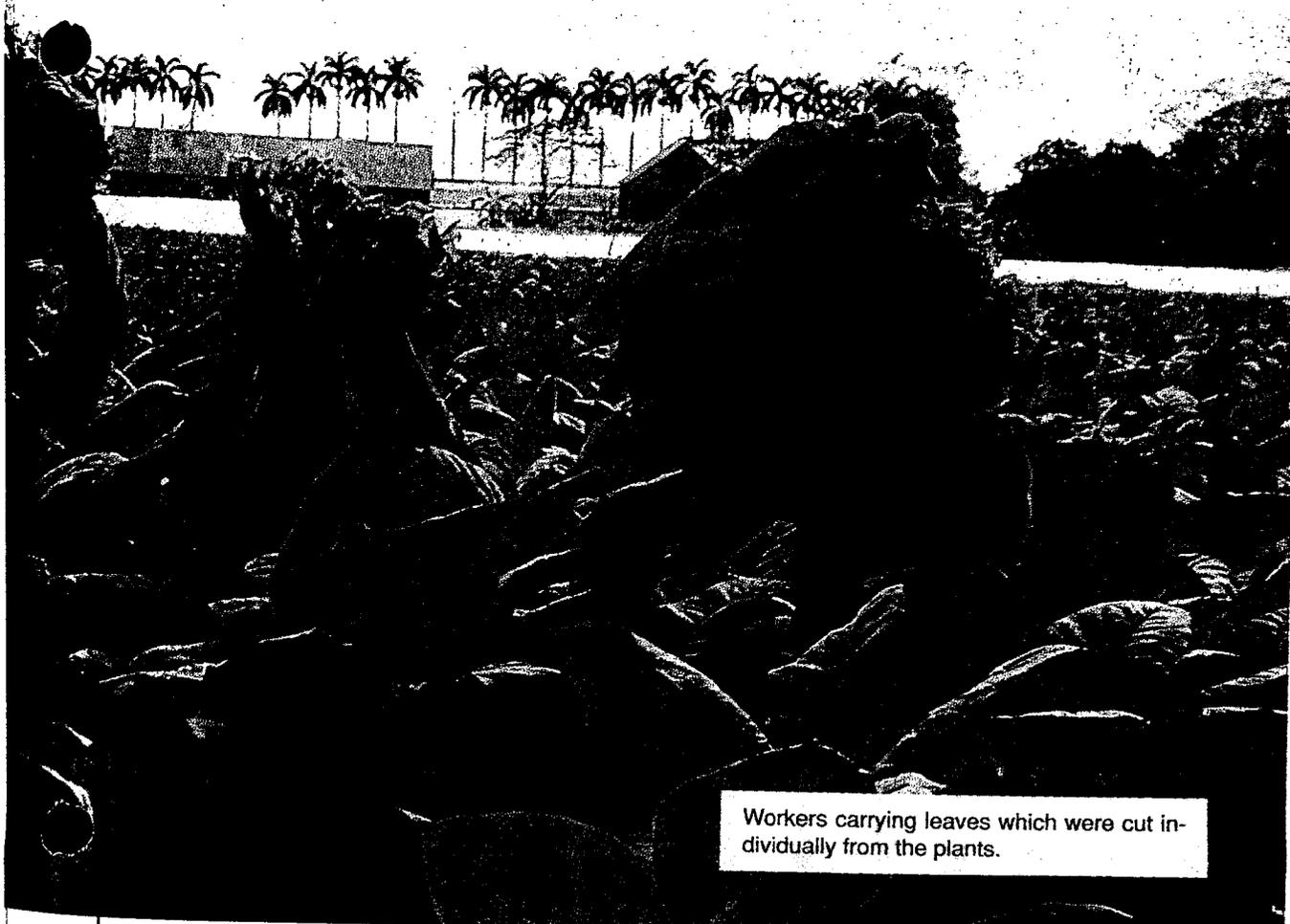
## METHODS OF CULTIVATION AND HARVESTING



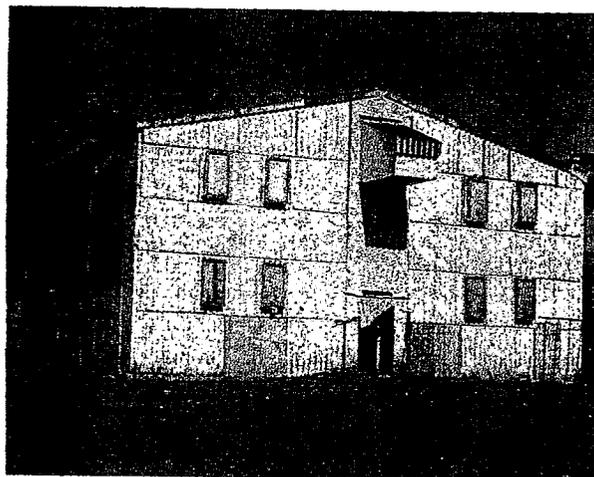
leaves of the plant and proceeding upwards along the stem when the leaves successively reach their optimal maturity. The two or three leaves that mature simultaneously are picked manually, so in five "pickings", at 7 to 8 day intervals, all the leaves of a single plant are collected. The leaves are immediately sewn together with an appropriate string or thread using a specially designed needle. All the tobacco of the premium plantations of Pinar del Río is grown and harvested according to this method and it is basically used as binder and filler in the manufacture of Havanas or, in the case of the choice plantation produce, for leaf-tobacco exports and as raw material for the national cigar and cigarette industries.

Lastly, "shade grown" or "covered tobacco" is the one grown under cheese-cloth covers. Sunlight has a great influence on the texture and elasticity of the leaves, as well as on the intensity and uniformity of their color; by

regulating their exposure to direct sunlight, the plants produce excellent wrapper leaves that show very thin veins. In general, covered tobacco is less exposed to the attack by insects and the destructive effects of the weather, like strong winds, heavy rainfall and sleet. At the present time, all the tobacco of the Partido zone, in the province of Havana, is cultivated under cloth, as well as a considerable part of the tobacco grown in the San Juan y Martínez and San Luís municipalities in Pinar del Río. The tobacco leaves grown by this method are hand picked one by one and then sewn together for drying. In this case, six to eight "pickings" are done, depending on the number of leaves that were left on the plant when unbudded. All the wrapper leaves used in the manufacture of Habanos come from different varieties of Cuban black tobacco specifically developed for this purpose and cultivated by the covered method.



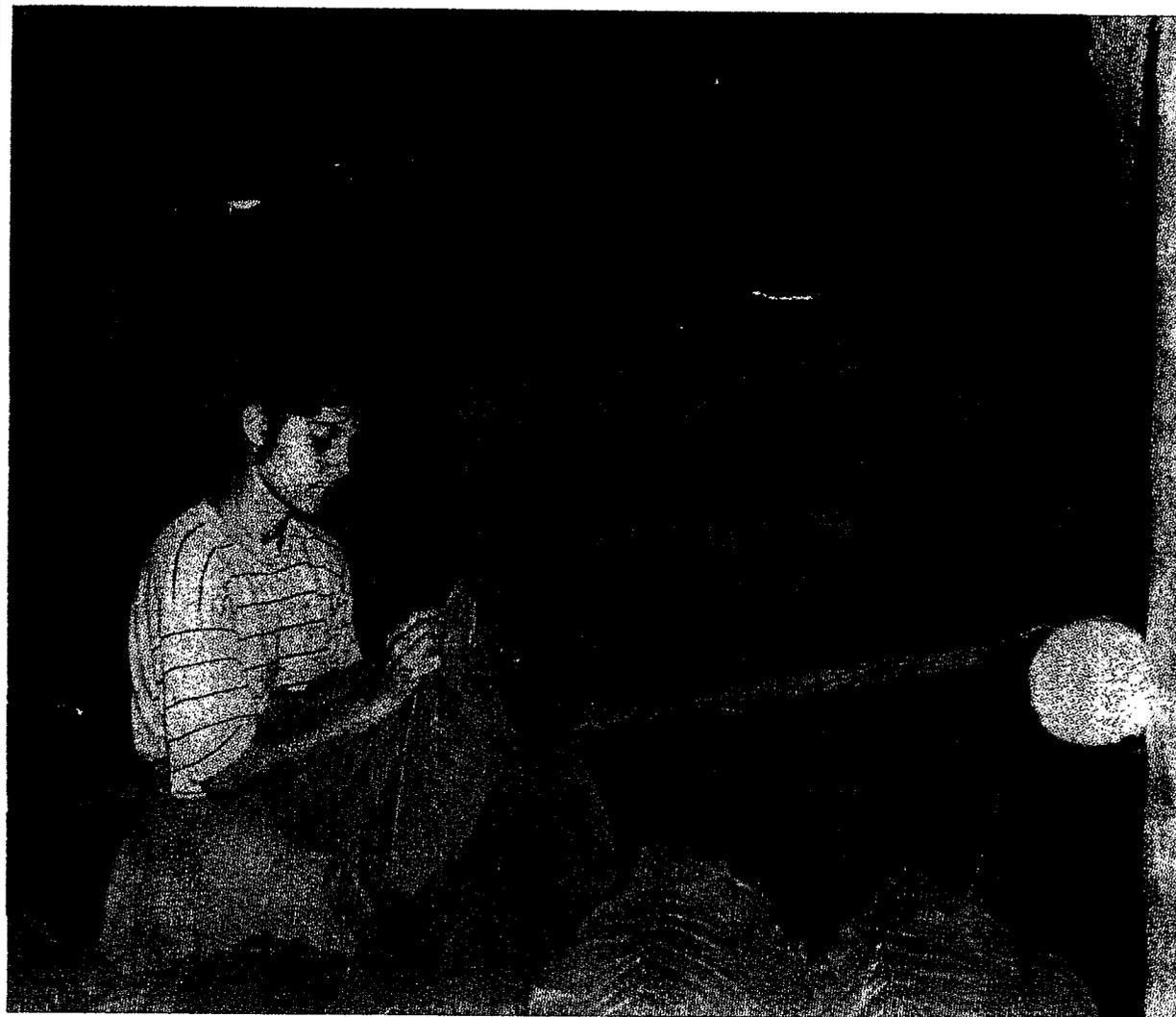
Workers carrying leaves which were cut individually from the plants.



The most modern curing barns are much larger and are made of concrete. These barns are typical of the wrapper (capa) processing barns in Havana province.

In the case of tobacco cultivated under cheese-cloth, the classification takes into account basic features of the leaf like color, texture, gloss, size, elasticity and the flaws or overall damages it may show. Thus, more than 50 different classes are sorted out and only the very best are used as wrapper for the world famous Habanos cigars. These wrapper leaves must have the right color, ranging from light brown to very light brown; reddish brown leaves are also admitted, but in all cases their color has to be uniform and glossy. The leaves must be either thin or slightly thin, with tenuous veins, elastic and adequately oily. They must be flawless, but if they show any damages, these can only be found near the central nerve, in order not to affect the part of the leaf

In the curing barns, farmers sew the leaves which are individually cut from the plant, so they can be hung on drying rods as shown in the background of this photo.





used as wrapper. Their dimensions may vary, but size determines in what type of cigar will a specific wrapper be used.

Tobacco grown in the fine plantations of Vuelta Abajo, where the filler and binder material for Habanos are produced, is divided into four categories or "timings", according to the position occupied by the leaves on the plant and their distinctive characteristics. These are:

**Volado (filler).** The three or four lowest leaves on the plant. Normally thin, soft textured, low on nicotin and aromatic, they burn very easily. These constitute the Strength No. 1.

**Seco (dry).** Leaves coming from the central section of the plant. Very good texture, very aromatic with medium nicotine content, they burn easily. These constitute the Strength No. 2.

**Ligero (light).** The two or three leaves im-

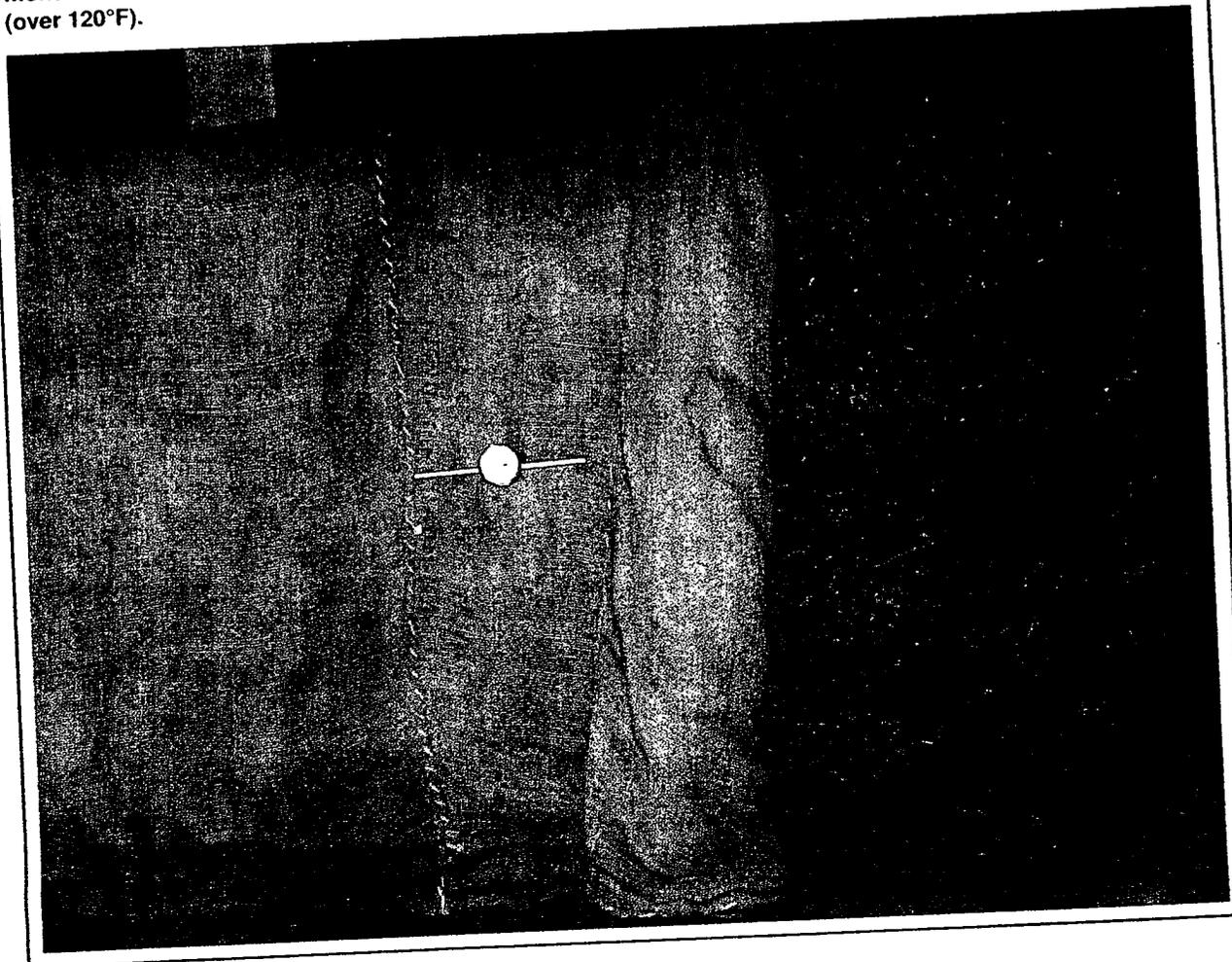
mediately below the top two on the plant. Noted for their coarse texture, high nicotine content and strong taste. These constitute the Strength No. 3.

**Medio Tiempo (mid-term).** The top two leaves that crown the plant. Very coarse texture, difficult to burn, very high nicotine content and extremely strong taste. These constitute the Strength No. 4.

After completing its second fermentation period, the tobacco that comes from fine plantations is sorted out into classes according to texture, size and damage levels. More than 30 different classes are recognized, but only those that fall into the categories or "timings" previously described are used as filler and binder for Habanas.

Once selected, each class of tobacco is individually packed into bales and, depending

The first stage of fermentation may be when the dried tobacco are packed in *pilones* which are covered variably with plantain leaves, cheese cloth or potato sacking. This first fermentation stage lasts about one month. Various fermentation processes, especially when water is added, can bring the temperature to 50°C (over 120°F).

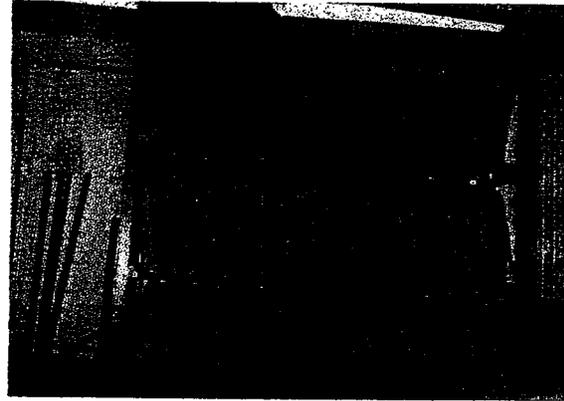




## CIGAR MANUFACTURE

The industrial process begins with the moistening of the tobacco leaves selected as wrapper, to soften and make them supple enough to be handled without getting torn or damaged. Next comes the stripping, which in the case of wrapper leaves the central nerve is completely eliminated, producing two halves or "sides" of leaf. The "sides" are then classified according to their color and size; the lighter ones are used for the smaller cigar types or "vitolas", while the darker ones are destined to the larger sizes.

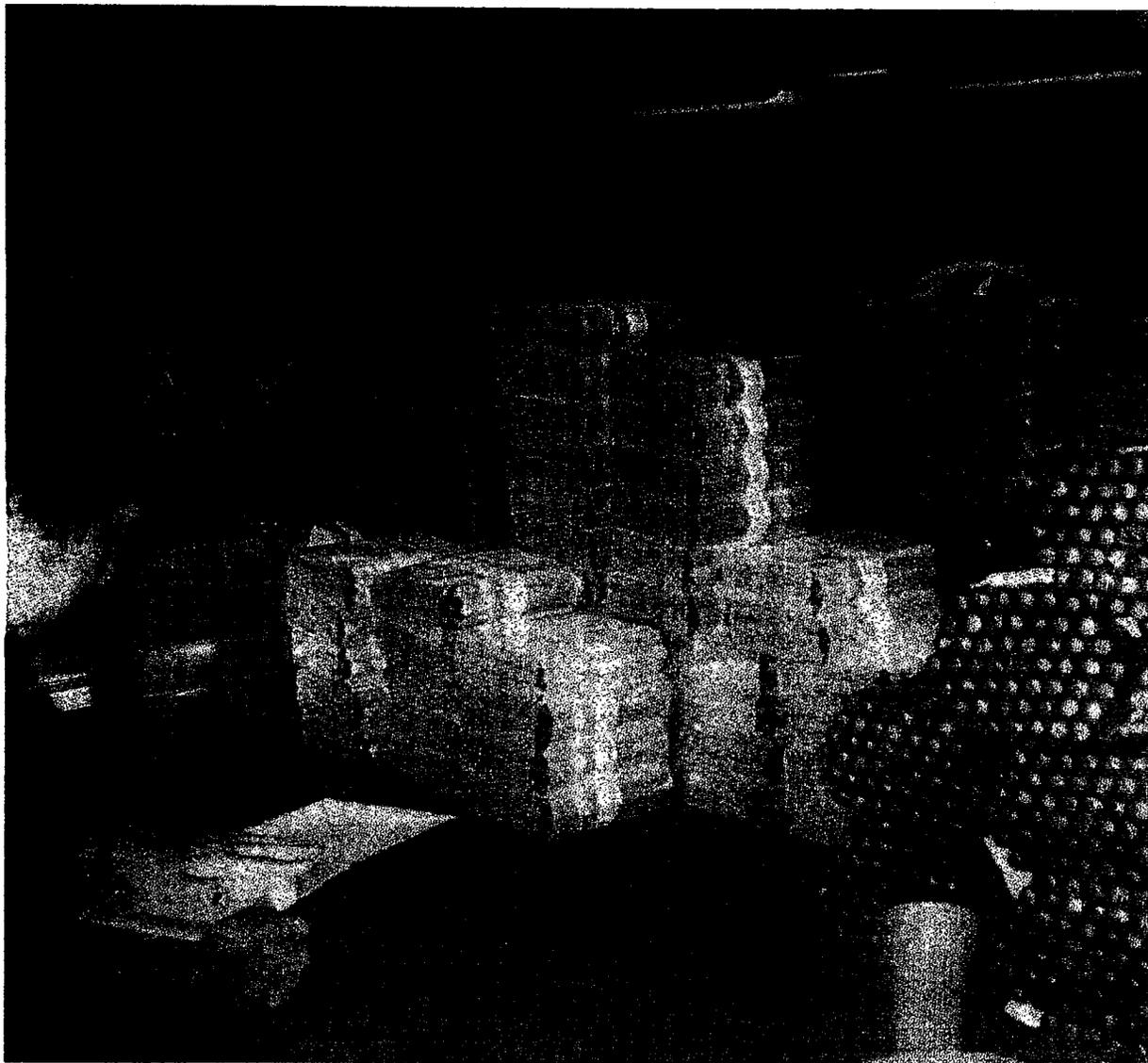
While this is being done with the wrapper leaves, the binder and the blend of filler that will be used in a specific vitola are prepared at



The capa is hung to dry and stabilize after it has been dampened.

The *Casa de Partagas* is just one of the many factories producing Havana cigars. This 1996 photo shows the factory as it now exists. It is visited daily by hundreds of foreign aficionados who buy their favorite cigars at about 30% of the price in their own country.





The final process is putting the cigars carefully into the boxes and being sure they are of uniform size.

From the lockers, the cigars are taken to the color sorting room where they are expertly grouped to ensure that every layer in the boxes shows a perfectly even hue. Before the final packaging, each cigar is banded with a paper ring that identifies the brand. These bands are designed in countless forms and are generally very attractive. The bands and the beautiful prints that embellish the boxes make Havana cigars a highly refined product.

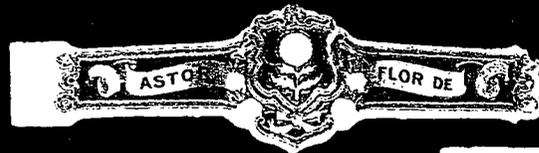
Finally, as part of the quality control procedures in every factory, a panel of tasters checks the organoleptic characteristics of the product by smoking samples of each batch of cigars. The Tasting Committee has

a specially designed room where each taster can individually smoke and determine the quality of the product without any influence from his fellow tasters nor any prior information about the samples being evaluated, since these are always blind tests.

The judgement passed by the Tasting Committee on the finished cigars constitutes one of the determining factors for the approval of their commercialization as superior quality products. These rigorous tests and the strict technical control applied from the agricultural phase of tobacco up to its final stage in the industry help preserve the unaltered quality that distinguishes Habanos cigars throughout the world.

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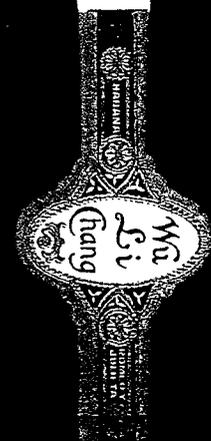
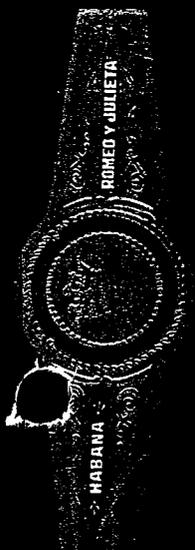
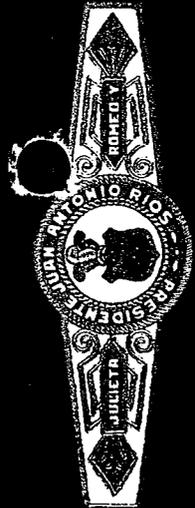
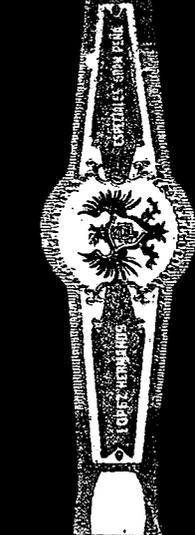
# CUBAN CIGAR TOBACCO

## WHY CUBAN CIGARS ARE THE WORLD'S BEST

The author, Eumelio Espino Marrero, was born in Ciego de Avila, Cuba on May 8, 1947. In 1968 he began his studies on plant genetics with emphasis on plant improvement. By 1970 he had specialized in tobacco.

In 1983 Mr. Marrero graduated as an agricultural expert from the Instituto Superior de Ciencias Agricolas (The Higher College for Agriculture) in Havana.

In 1985 he became the Scientific Sub-director of the Cuban Tobacco Research Center where he concentrated on the development of better grades of tobacco. He has developed five new varieties of tobacco which are now in full production in Cuba and has received national acclaim for his achievements in this field. He publishes regularly on the subject and has 40 articles to his credit on the genetics of tobacco.



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Perelman  
3 Article from Cigar Magazine 58  
entitled "Boomtime Memoirs,"  
Bates stamped HAB00576 through  
HAB00581

INSTRUCTION NOT TO ANSWER

(None)

1 Los Angeles, California, Friday, August 31, 2007

2 9:36 a.m. - 12:01 p.m.

3

4

5 MR. GOLDSTEIN: We're going to want to read and sign.

6 I want a full transcript, a mini and an E-tran.

7 Send me the original and I will arrange for reading and

8 signing. I want it by September 15th.

9 MR. SANCHELIMA: I'm Jesus Sanchelima. I represent  
10 the applicant.

11 MR. GOLDSTEIN: I represent the opposer.

12 MR. SANCHELIMA: I am in Miami.

13 MR. GOLDSTEIN: Is that everybody who is here?

14 MR. SANCHELIMA: Yes, just me and Pablo, my  
15 assistant.

16 MR. GOLDSTEIN: Pablo is with you?

17 MR. SANCHELIMA: He may come in and out.

18 MR. GOLDSTEIN: Let's go on the record.

19 Before we swear in the witness, I just want to  
20 note for the record that it's a telephone deposition by  
21 agreement and stipulation of the parties. And as a  
22 formality, Jay, do you have any objection to marking the  
23 re-notice of taking the trial testimony from August 21 as  
24 Perelman Exhibit 1?

25 MR. SANCHELIMA: Just the notice?

1 MR. GOLDSTEIN: Yeah.

2 MR. SANCHELIMA: Are you within your testimony  
3 period?

4 MR. GOLDSTEIN: Yeah, under the stipulation I am.

5 MR. SANCHELIMA: I don't know. Let's just go on with  
6 the deposition. We'll battle over this stuff later.  
7 Because I don't know. I don't have the benefit of that.  
8 I haven't really read any of that stuff.

9 MR. GOLDSTEIN: All right.

10 MR. SANCHELIMA: Just take your deposition. We'll go  
11 forward. I can't say one way or another.

12 MR. GOLDSTEIN: Why don't we swear the witness and  
13 have him state his name and address for the record.

14

15 RICHARD B. PERELMAN,  
16 having been administered an oath, was examined and  
17 testified as follows:

18 THE WITNESS: Yes, I do.

19 My name is Richard Brian Perelman. I'm located  
20 here in Los Angeles. I am in my office at 3580 Wilshire  
21 Boulevard, Suite 1290, Los Angeles, 90010.

22

23 EXAMINATION

24 BY MR. GOLDSTEIN:

25 Q Mr. Perelman, you understand you're under oath?

1           **A     Yes, I do.**

2           Q     And because this is a telephone deposition, if  
3 you have any trouble hearing either of the attorneys,  
4 please let us know and we'll repeat or rephrase any  
5 questions. Do you understand that?

6           **A     Yes, I do.**

7           Q     In particular, if you don't understand a  
8 question, you can advise that you don't understand the  
9 question. Okay?

10          **A     Okay.**

11          Q     And if you need to take a break, you should let  
12 us know, and that's okay also. But you should answer a  
13 pending question.

14          **A     Okay.**

15          Q     And you'll have to answer. You won't be able to  
16 nod or things like that.

17          **A     Right.**

18          Q     You should be aware that Mr. Sanchelima has the  
19 right to object to questions that I ask, and if he asks  
20 questions I would have the right to object to those  
21 questions. The reporter will take down the objections,  
22 but you'll still answer the questions unless for some  
23 reason there's an instruction not to answer and you want  
24 to follow that instruction.

25          **A     Okay. I understand.**

1 Q And you also understand that you're giving  
2 testimony in a matter before the Trademark Trial and  
3 Appeal Board known as Corporacion Habanos, S.A. versus  
4 Anncas, Inc. concerning the cigar mark, Havana Club?

5 A Yes, I understand.

6 Q Mr. Perelman, where are you currently employed?

7 A I am the president of Perelman Pioneer & Company  
8 in Los Angeles, California.

9 Q Are you also an owner or the owner of the  
10 company?

11 A I am the owner.

12 Q In addition to being president, is there a board  
13 and are you on that board?

14 A There is a board, and I am a member of that  
15 board.

16 Q Now, I just want to briefly go into some of your  
17 background. What kind of college or post-college  
18 education have you had?

19 A I graduated from UCLA with honors in 1978, and I  
20 graduated from Loyola Law School in 1981. I am a member  
21 of the California bar, although I do not currently  
22 practice law.

23 Q And when you graduated in 1981, or thereafter,  
24 have you practiced law?

25 A I have not been a member of a law firm. I was

1 an intern for United States Magistrate during my term  
2 in -- my last term in law school.

3 Q But after graduation you haven't actually  
4 practiced law; is that correct?

5 A That's correct.

6 Q And just briefly, after law school and before  
7 the founding of Perelman Pioneer, what kind of jobs did  
8 you have? What did you do?

9 A I was hired after graduation by the Los Angeles  
10 Olympic Organizing Committee, and I was the vice president  
11 responsible for press operations from 1981 to 1984. After  
12 the 1984 Olympic games were concluded, I was the editor in  
13 chief of the official report of the 1984 Olympic games,  
14 and that lasted through 1985. And in the 1985/1986 time  
15 period, I worked for David Wolper in the organization of  
16 the so-called Liberty Weekend, the centennial celebration  
17 of the Statue of Liberty in New York.

18 And after that program finished in 1986, I  
19 founded this company.

20 Q And you founded Perelman Pioneer in what year?

21 A 1986.

22 Q What does Perelman Pioneer do?

23 A Perelman Pioneer is involved in the management  
24 of special events and in publishing.

25 Q And does it have activities related to the cigar

1 industry?

2           **A**     **Yes. We're deeply involved in the publishing**  
3 **area with regard to cigars. We have a website,**  
4 **CigarCyclopedia.com, which is either the first or second**  
5 **largest cigar information site in the United States. We**  
6 **also publish the Perelman's Pocket Cyclopedia of Cigars,**  
7 **which has now completed 13 editions. We're getting ready**  
8 **for the 14th edition in 2008. And we have published three**  
9 **editions of a companion pocket encyclopedia about Havana**  
10 **cigars. That started in 1997. We did a 1998 edition and**  
11 **we did an edition in 2005.**

12           **Q**     **When you say you have done 13 editions of the**  
13 **Perelman's Pocket Cyclopedia Cigars and you're on your**  
14 **14th, is that an annual, you put it out each year?**

15           **A**     **Yes, we began in 1995. That was the first**  
16 **edition. And the 2007 is the 13th edition. 2008 will be**  
17 **the 14th edition. It's published annually in December.**

18           **Q**     **And what does your Cigar Cyclopedia website do?**

19           **A**     **Well, the website is an all-in-one reference to**  
20 **cigars, both those cigars which are marketed in the United**  
21 **States and Cuban cigars, based primarily on our two books.**  
22 **We also were the first site to introduce daily news**  
23 **coverage of the cigar industry Monday through Friday.**

24                   **The Pocket Cyclopedia and the Pocket Cyclopedia**  
25 **of Havana Cigars are designed to provide primarily**

1 consumers with an overview of the, in the case of the  
2 Pocket Encyclopedia, cigars marketed nationally in the  
3 United States, and in the case of the Havana Encyclopedia  
4 with cigars which are made for export from Cuba.

5 Q And are you, your company, or -- let me ask it  
6 this way. Is the website affiliated with any cigar  
7 company, cigar distributor or manufacturer or retailer?

8 A It is operated independently by our company.  
9 However, we do have advertising from some cigar companies  
10 on the website.

11 Q And in terms of the book that's also published  
12 by your company, independent of any other cigar company?

13 A Yes. That's correct. It's not funded by any  
14 individual cigar company. However, we do accept  
15 advertising from cigar companies.

16 Q What kind of news does the website focus on, in  
17 terms of cigars?

18 A We try and cover the waterfront as much as  
19 possible. We deal with information about brands, about  
20 cigar events, about legislation, regulation, oddities,  
21 auctions, anything that we think would be of interest to  
22 our readership, which is now fairly large. We had 150,000  
23 visits to our website last month.

24 Q And what percent of Perelman Pioneer's business  
25 would you say is cigar-business related or cigar-industry

1 related?

2 **A At the present time I think the percentage is**  
3 **probably in the 60 percent range, maybe a little higher in**  
4 **terms of the amount of time spent.**

5 Q And how many staff do you have working on the  
6 cigar side of your business?

7 **A On the cigar side there are three people who**  
8 **are, for all intents and purposes, full-time working on**  
9 **various aspects of the website and the Pocket Cyclopedia,**  
10 **which are produced jointly. It's all part of the same**  
11 **effort.**

12 Q And you smoke cigars; is that correct?

13 **A Yes, I certainly do.**

14 Q And when did you start smoking cigars?

15 **A I started smoking 1989, I think, was the start**  
16 **of it.**

17 Q And from the consumption side, from the side of  
18 someone who is a cigar smoker, as opposed to from the  
19 information side, do you consider yourself to be  
20 knowledgeable about cigars?

21 **A Yes. I've put in enough time and have smoked**  
22 **thousands of cigars and I think I would be -- I would**  
23 **consider myself to be widely versed and extremely**  
24 **knowledgeable about cigars.**

25 **There are people in the industry who will call**

1 me expert, but I would just simply prefer to be called  
2 very knowledgeable.

3 Q What led you into cigar-related work, like the  
4 Cyclopedia? I guess that was your first endeavor in the  
5 cigar business?

6 A Yes. The Cyclopedia was a development from my  
7 own background in special events and sports, dealing with  
8 the Olympics and other events. The best analogy I can  
9 make would be to the sport of baseball, where there is a  
10 book called the Baseball Register that comes out every  
11 year, and it has the records of all the players who are on  
12 major league rosters.

13 When I got into cigars and was interested in  
14 finding new and different cigars that I could try that  
15 would be interesting and that were not stocked at my local  
16 tobacco shop, I tried to find some sort of book or  
17 publication that would list all the cigars that were  
18 available, and I couldn't find one. So necessity being  
19 the mother of invention, I created my own book, and we  
20 have been selling it ever since.

21 Q Can you describe how your company puts together  
22 the annual Cigar Cyclopedia, in other words, how does it  
23 gather the information?

24 A Yes. We gather the information primarily  
25 through three different avenues. We attend the two major

1 trade shows that deal with cigars in the United States.  
2 There's a show that focuses on machine-made cigars and  
3 little cigars, and that is called the Tobacco Plus Expo.  
4 And that's held annually in late March in Las Vegas.

5 For the premium side of the business, the  
6 handmade cigars, which is by far the majority of the  
7 cigars that we cover in the Pocket Encyclopedia, we attend  
8 the annual four-day Retail Tobacco Dealers of America  
9 trade show. The 2007 edition was just held earlier this  
10 month in Houston, Texas. So that's the first leg.

11 We then will make telephone calls and send faxes  
12 and electronic mail messages to every other manufacturer  
13 or distributor of cigars which are marketed nationally in  
14 the United States that we either know of or can find, and  
15 we ask them to fill out a form or to send us information  
16 that would allow us to list their brands or to disqualify  
17 them from listing in the next edition of the Pocket  
18 Encyclopedia. That effort for the 2008 edition is about to  
19 begin.

20 And then the third aspect is we get every year a  
21 number of manufacturers and distributors who call us or  
22 write to us either by snail mail or by electronic mail or  
23 by telephone calls asking us to list their brands. And we  
24 gather the information that we need from them and then we  
25 make a decision as to whether to list them or not.

1 Q In the course of the years of putting together  
2 the book, who have you spoken to on the chain from growers  
3 to retailers?

4 A Well, everybody, because there are cigar  
5 manufacturers and distributors who are also growers and  
6 are completely vertically integrated. They grow the leaf.  
7 They harvest the leaf. They cure the leaf and then they  
8 blend it and create the cigars. We deal mostly with  
9 manufacturers and distributors. But a significant number  
10 of those people, especially manufacturers, also are deeply  
11 involved in the agricultural aspects.

12 Q Over the years, I don't know if you can do an  
13 estimate or not, but can you estimate how much time you've  
14 spent speaking with, dealing with people in the United  
15 States in the cigar industry in the course of putting  
16 together your books and the website?

17 A Well, it's thousands of hours. It's easily a  
18 thousand hours a year. We spend an enormous amount of  
19 time talking with people on the telephone and exchanging  
20 electronic mail messages and going through a lot of  
21 printed material that we're sent, along with a lot of  
22 cigars. We have a lot of cigars that we get sent. And we  
23 try to sample most of them and then to write reports on  
24 them. But we spend an enormous amount of time, not only  
25 myself, but the other two associates we have here, dealing

1 with people in the cigar industry.

2 Q And you talked about how the people you deal  
3 with in the industry provide you with information about  
4 their products. What information is it that they provide  
5 that you publish in the Pocket Cyclopedia?

6 A We're primarily interested in the name of the  
7 brand, where it is produced, what sizes and shapes they  
8 make, how those sizes and shapes are packaged, the wrapper  
9 color. And then the details of where the tobacco that is  
10 in those cigars is grown; that is, what country.

11 So for all of the premium cigars, with only a  
12 handful of exceptions, we list in what country the  
13 wrapper, binder and filler leaves for each cigar are  
14 grown. And in many cases we will get substantial  
15 additional detail from the manufacturers and distributors  
16 that in many cases will tell us what kind of tobacco or  
17 something specific about the tobacco that is included in  
18 their cigars.

19 For example, many cigars that use Mexican  
20 wrappers are of a maduro shade, meaning it's a very dark  
21 cigar and many of the manufacturers will tell us this is a  
22 Mexican morron, m-o-r-r-o-n, wrapper, which is a specific  
23 kind of tobacco which is grown in Mexico.

24 Q The information that you publish in your book  
25 about the country of origin of the tobacco and the other

1 information, that's information provided to you by the  
2 manufacturers or the distributors?

3 **A Yes, that's correct.**

4 **Q Do you verify the accuracy? I mean, if someone**  
5 **says it's a Mexican morron wrapper, is there a way for you**  
6 **to verify that?**

7 **A Other than asking them additional questions,**  
8 **it's impossible for us to verify. There are people who**  
9 **will tell you that the wrapper or binder or filler is a**  
10 **kind of tobacco, and then we always come back with the**  
11 **question, "Where was it grown?" So there will be people**  
12 **who will say this is a Connecticut-shade wrapper to which**  
13 **our response is, "Is it grown in the United States in**  
14 **Connecticut, or is it grown in Ecuador or somewhere else?"**  
15 **And sometimes it's grown in the United States and**  
16 **sometimes it's grown in Ecuador or in some third country.**

17 **But we have no way of independently verifying**  
18 **where these leaves are grown because there's no**  
19 **identification on the leaf itself.**

20 **Q You can't look at the cigar and say, "Ha ha.**  
21 **It's not grown here. It's grown there"?**

22 **A It's not possible. Maybe there's someone**  
23 **somewhere who can do it, but I'm not aware of anybody.**  
24 **And we certainly can't do it.**

25 **Q Approximately how many premium brands does your**

1 annual Pocket Cyclopedia list?

2 **A Well, it fluctuates with the industry. Our**  
3 **first edition in 1995 had 370 brands. And that included**  
4 **handmade, machine-made and small cigars.**

5 **The 2007 edition had 1,233 brands, I believe,**  
6 **and approximately 1,094 of those were handmade brands.**

7 **Q And you also published something called**  
8 **Perelman's Pocket Cyclopedia of Havana Cigars. You**  
9 **mentioned that?**

10 **A Yes, that's correct.**

11 **Q And what is that?**

12 **A The Pocket Cyclopedia of Havana Cigars was**  
13 **created in response to many requests that we got from**  
14 **readers of the Pocket Cyclopedia saying, "You have to do**  
15 **something about Cuban cigars," so we did. We compiled a**  
16 **book that was first published in '97. That sold out very**  
17 **quickly at the height of the cigar boom. We then did**  
18 **another edition in 1998 where we printed more copies and**  
19 **it didn't sell -- it sold about as well as the previous**  
20 **one, but we expected it to do better. So we didn't do a**  
21 **third edition until 2005. And we'll probably do a fourth**  
22 **edition in 2008.**

23 **Q And why is the book called Pocket Cyclopedia of**  
24 **Havana Cigars?**

25 **A Because it deals solely with Cuban cigars. It**

1 does not deal with any other kind of cigars. Only cigars  
2 which are produced in Cuba.

3 Q And another word for a cigar from Cuba is a  
4 Havana cigar; is that right?

5 A Yes, Cuban cigars are generally referred to as  
6 Havanas, which is a historical reference to the cigar  
7 capital of the world, if you will, Havana, Cuba, which is  
8 where most of the major factories, not all, but most of  
9 the major factories which produce cigars in Cuba were  
10 located in the past and are located now.

11 Q And have you been to Cuba in connection with  
12 research for the Pocket Cyclopedia of Havana Cigars?

13 A Yes. I was there twice in 1997 and 1998. Both  
14 times under license from the U.S. Treasury Department.

15 Q What did you do in Cuba as part of gathering  
16 information, I mean, just generally, your overview?

17 A I met with officials in the Cuban cigar  
18 industry. I visited some of the fields and curing barns  
19 in Cuba. And I went to a series of briefings and tours of  
20 cigar factories in Cuba.

21 MR. GOLDSTEIN: Can the reporter pull from the pile  
22 the document that on the first page has Perelman's Pocket  
23 Cyclopedia of Havana Cigars, Third Edition?

24 THE WITNESS: Okay. He has handed me a document  
25 here, which has the cover of our third edition book on it.

1 MR. GOLDSTEIN: And can you mark that as Perelman  
2 Exhibit 1 for identification.

3 (Deposition Exhibit 1 was marked for  
4 identification by the court reporter.)

5 MR. SANCHELIMA: Do I have a copy of that?

6 MR. GOLDSTEIN: It's from the e-mail. I had  
7 described that document to you.

8 MR. SANCHELIMA: Do you have a Bates number? I got  
9 Bates number HAB 00484 to 489. That's what I've got.  
10 That's the Perelman's Pocket Cyclopedia of Havana Cigars.

11 MR. GOLDSTEIN: The version I sent is from one of the  
12 exhibits to the summary judgment, which I had identified  
13 in my e-mail to you. That's the copy they have. But it's  
14 the same thing. It's about seven or eight pages from  
15 the -- excerpt from the beginning of the book.

16 MR. SANCHELIMA: You didn't send me this exhibit with  
17 the e-mail?

18 MR. GOLDSTEIN: With the e-mail I said where I got it  
19 from, and I asked if you needed anything.

20 MR. SANCHELIMA: I don't have it here.

21 MR. GOLDSTEIN: Well, I identified it for you. It's  
22 in the summary judgment documents.

23 Richard can tell you what pages it is.

24 MR. SANCHELIMA: How many pages are you talking  
25 about?

1 MR. GOLDSTEIN: Nine pages.

2 MR. SANCHELIMA: Can you fax it to me so that I can  
3 have a copy?

4 MR. GOLDSTEIN: Yeah, I think I identified it.

5 MR. SANCHELIMA: You may have. The easiest way, if  
6 you can drop it in a fax machine now and we can move on.

7 MR. GOLDSTEIN: What's that?

8 MR. SANCHELIMA: If you can move on to some other  
9 topic and in the meantime fax it, have your secretary fax  
10 it to my number, and then we'll catch up with this exhibit  
11 later on.

12 MR. GOLDSTEIN: Okay. We'll come back to that. It's  
13 the last few pages of either Exhibit 8, 9 or 10 of my  
14 summary judgment exhibit. It's the one that refers to  
15 books that have "Havana" in the title, but you'll get it  
16 by fax.

17 MR. SANCHELIMA: I'm back.

18 BY MR. GOLDSTEIN:

19 Q Do you also -- have you also written articles  
20 about cigars for cigar magazines?

21 A Yes.

22 Q And what magazines either have you written for  
23 or do you write for?

24 A I'm a quarterly columnist for the European  
25 Cigar-Cult Journal. I have also written for Smokeshop

1 Magazine, which is a trade publication. Penthouse.  
2 Cigars & More, which is a magazine that's now defunct.  
3 Cigar Lifestyles, that's another magazine that's now  
4 defunct. And a number of others.

5 Q Were you retained by the lawyers for Habanos,  
6 S.A. to provide an expert opinion in this matter?

7 A Yes.

8 Q And have you ever previously been retained as an  
9 expert in any matter?

10 A No.

11 Q And are you being paid an hourly fee in this  
12 case?

13 A Yes.

14 Q And do you know how much you're being paid?

15 A \$300 an hour.

16 Q Were you asked by the lawyers for Habanos, S.A.  
17 to prepare an expert report?

18 A Yes, I was.

19 Q And did you prepare such a report?

20 A Yes.

21 Q And did you sign the document?

22 A Yes.

23 MR. GOLDSTEIN: Why don't we mark as -- if you  
24 could look for the document that has the case caption  
25 and declaration of Richard Perelman and mark that as

1 Perelman 2.

2 (Deposition Exhibit 2 was marked for  
3 identification by the court reporter.)

4 THE WITNESS: Okay. I have it.

5 BY MR. GOLDSTEIN:

6 Q The reporter is showing you what's been  
7 marked --

8 MR. SANCHELIMA: Can you fax this to me? Is it one  
9 page? Two page?

10 MR. GOLDSTEIN: No. It's like 51 pages. I told you  
11 in me e-mail that's what I was going to be using.

12 MR. SANCHELIMA: I don't have it with me. So I'm  
13 going to oppose to its introduction because I don't have a  
14 copy.

15 MR. GOLDSTEIN: You do have a copy. It's been filed  
16 in the TKB. You definitely have a copy.

17 MR. SANCHELIMA: I may have it in my file, but not  
18 here with me.

19 MR. GOLDSTEIN: Well, I sent you an e-mail saying I  
20 was going to be using it.

21 MR. SANCHELIMA: We'll deal with that later. Go on.

22 BY MR. GOLDSTEIN:

23 Q The reporter is showing you what has been marked  
24 as Perelman Exhibit 2. Can you identify that document?

25 A Yes, I have it in front of me.

1 Q And what is that document?

2 A It says "Declaration of Richard B. Perelman" and  
3 there are exhibits attached to it.

4 Q And is that the expert report we've been  
5 referring to?

6 A It appears to be so, yes.

7 Q If you look on page 10.

8 A Page 10.

9 Q Is that your signature?

10 A That is my signature.

11 Q Ask it's above "Richard B. Perelman" in type?

12 A Yes.

13 Q And the date on that?

14 A Second day of August, 2006.

15 Q And was this, your expert report, accurate when  
16 prepared?

17 A Yes.

18 Q Have you reviewed it recently?

19 A I have.

20 Q And is the report still accurate?

21 A There are a couple of minor changes because we  
22 are one year after the filing of this report, the number  
23 of editions of Perelman's Pocket Cyclopedia of Cigars has  
24 changed from 12 to 13. And the reference number of visits  
25 to our CigarCyclopedia.com website is now not the same.

1 It was cited on page 2 as 90,000 times as of June 2006.

2 And the number was in excess of 150,000 times in the month  
3 of July 2007.

4 Q And other than that, are there any other changes  
5 to that report?

6 A So far as I know, no.

7 Q After page 10 there's an Exhibit 1. And what is  
8 that?

9 A There is what I would call a resume, what you  
10 would call a curriculum vitae.

11 Q For yourself?

12 A That's correct.

13 MR. SANCHELIMA: Just so the record is clear, I am  
14 objecting to all those exhibits.

15 MR. GOLDSTEIN: What's that, Jay?

16 MR. SANCHELIMA: I am objecting to all those exhibits  
17 that are included in the report also.

18 MR. GOLDSTEIN: Do you want to take five minutes and  
19 pull it from your file instead of making these objections  
20 when it's sitting in your office somewhere?

21 MR. SANCHELIMA: I have to look for them and my  
22 paralegal went to lunch now. So when he comes back, I  
23 will see if he can look for them. I have another person  
24 looking for them, but I can't find them.

25 MR. GOLDSTEIN: Do you want me to e-mail them to you

1 because this is ridiculous. I told you what I was going  
2 to use. You have the documents. You didn't tell me you  
3 didn't have them, and now you're objecting because you  
4 didn't bring them into the room with you.

5 MR. SANCHELIMA: If we were in a deposition, we would  
6 have all the documents that you're offering in front of us  
7 for inspection and so forth.

8 MR. GOLDSTEIN: That's why I told you in advance what  
9 I was using.

10 MR. SANCHELIMA: What did you tell me in advance, the  
11 memo from August 29th? Is that the one you're referring  
12 to? The one two days ago? That's not enough notice for  
13 me.

14 MR. GOLDSTEIN: Two days to go into your file and  
15 find documents?

16 MR. SANCHELIMA: It's not the only case I have. Do  
17 you want to e-mail it to me?

18 MR. GOLDSTEIN: I'll e-mail them to you.

19 MR. SANCHELIMA: I just received Exhibit 1.

20 MR. GOLDSTEIN: What's that?

21 MR. SANCHELIMA: I just received Exhibit 1.

22 MR. GOLDSTEIN: Which is what?

23 MR. SANCHELIMA: The one that you marked.

24 MR. GOLDSTEIN: The one that I faxed to you?

25 MR. SANCHELIMA: Perelman's Pocket Cyclopedia of

1 Havana Cigars?

2 MR. GOLDSTEIN: Yes.

3 MR. SANCHELIMA: That's what I got.

4 MR. GOLDSTEIN: I am forwarding you now the documents  
5 that I sent to the reporter.

6 Let's take five minutes while you figure out  
7 what's going on.

8 (Recess.)

9 BY MR. GOLDSTEIN:

10 Q Let's go back to Exhibit 1. The reporter is  
11 showing you what has been marked as Perelman Exhibit 1.  
12 Can you identify that document?

13 A Yes, I can. It's some pages photocopied from  
14 our third edition of Perelman's Pocket Cyclopedia of  
15 Havana Cigars.

16 Q And on the second page in it says, "Compiled by  
17 Richard B. Perelman, published by Perelman Pioneer &  
18 Company"?

19 A Correct.

20 Q That's you?

21 A That's correct.

22 Q And the publication date is 2005; is that  
23 correct?

24 A Correct.

25 Q And these are excerpts from the third edition of

1 the book that you were talking about that you published  
2 about Cuban cigars?

3 **A That's correct.**

4 MR. GOLDSTEIN: And opposer offers Perelman Exhibit 1  
5 in evidence.

6 BY MR. GOLDSTEIN:

7 Q If you take a look, the first numbered page,  
8 "Introduction"?

9 **A Yes, I see it.**

10 Q And in the second sentence of the first  
11 paragraph you refer to, "The world of Havana cigars has  
12 become much more dynamic."

13 **A Yes.**

14 Q And by "Havana cigars" you're referring to Cuban  
15 cigars; is that correct?

16 **A Yes, that's correct.**

17 MR. GOLDSTEIN: That's all I have on that.  
18 Have you got your e-mail?

19 MR. SANCHELIMA: If it's his report, why do you need  
20 his report if you have it there?

21 MR. GOLDSTEIN: Pardon?

22 MR. SANCHELIMA: You're going to be asking questions  
23 about this report?

24 MR. GOLDSTEIN: Yes. Ready to go?

25 MR. SANCHELIMA: I have not received it. I'll tell

1 you what. If you send me a copy with the transcript of  
2 the report and he says that everything he wrote in that  
3 report is accurate, I won't have an objection.

4 MR. GOLDSTEIN: I'm up to Exhibit 1. I just want to  
5 make sure that's his C.V. I just want to ask him if  
6 there's any inaccuracies or changes to that.

7 BY MR. GOLDSTEIN:

8 Q Mr. Perelman, we were on Exhibit 1 of your  
9 expert report, which is what you described as your resume.

10 A Right.

11 Q And that was accurate at the time you put  
12 together your report?

13 A Yes.

14 Q And is it still accurate?

15 A I believe it is. There may be some minor  
16 changes. For example, we've now done 13 editions of the  
17 Pocket Encyclopedia instead of 12, but with minor  
18 differences having to do with one year being past, it's  
19 otherwise accurate.

20 Q And could you very briefly identify what Exhibit  
21 2 and Exhibit 3 are?

22 A Well, Exhibit 1, as you mentioned, is the  
23 resume. Then the next item is a document which is  
24 captioned, "Direct testimony of Edgar M. Cullman, Jr." in  
25 a matter before the United States District Court, Southern

1 **District of New York, "Cubatabaco versus Culbro Corp. and**  
2 **General Cigar Co., Inc."**

3 Q And those following pages of Exhibit 2 were  
4 provided to you by the attorneys for Habanos, S.A.?

5 A **Yes, that's correct.**

6 Q And then Exhibit 3, if you continue, that's  
7 excerpts from Perelman's Pocket Cyclopedia Cigars 2006  
8 edition; is that right?

9 A **Well, there's another --**

10 Q I'm just pointing to where Exhibit 3 is. It's  
11 like the blank page.

12 A **Well, there's a blank page here, that's correct.**  
13 **But then the next thing I have are excerpts from testimony**  
14 **of, or deposition of Angel Nunez.**

15 Q Right. If you could just skip forward to where  
16 you see a blank page with the number 3 on it, which is  
17 Exhibit 3. And the next page is Perelman's Pocket  
18 cyclopedia Cigars.

19 A **There is a blank page here. There is no**  
20 **number -- oh, I see it there. It's up in the upper**  
21 **right-hand corner. I see it. Okay. I was looking at the**  
22 **bottom. So there is a page which is otherwise blank**  
23 **except for the number 3.**

24 Q Right. And following that is?

25 A **Appears to be excerpts from the 2006 edition of**

1 **Perelman's Pocket Cyclopedia of Cigars.**

2 MR. GOLDSTEIN: Opposer offers Perelman Exhibit 2 in  
3 evidence.

4 MR. SANCHELIMA: I have an objection as to any  
5 documents that were not authored by Mr. Perelman,  
6 including the deposition experts of the District Court  
7 Division. There's no foundation as to how this document  
8 would be an exception to the Hearsay Rule. So that's my  
9 objection.

10 MR. GOLDSTEIN: You're objecting to Exhibit 2 to the  
11 report; is that right?

12 MR. SANCHELIMA: Well, to those documents --  
13 apparently Exhibit 2 has those exhibits associated with  
14 it, 1, 2, 3 and 4, I believe.

15 MR. GOLDSTEIN: Right.

16 MR. SANCHELIMA: I still have not received that  
17 e-mail. I don't want to obstruct your deposition  
18 necessarily. But any such documents that are not authored  
19 by the deponent is not sufficient basis for me to accept  
20 them being as authentic or in any way relevant to what  
21 we're talking about here.

22 MR. GOLDSTEIN: Just so it's clear, he's identified  
23 them as coming from the attorneys for Habanos, S.A., and  
24 you're objecting that that's the extent of his  
25 identification; is that correct?

1 MR. SANCHELIMA: Right.

2 MR. GOLDSTEIN: So it's not a question of me going  
3 through each one with him.

4 MR. SANCHELIMA: I don't have them all here, but I'm  
5 not --

6 MR. GOLDSTEIN: You may not have them in front of  
7 you, but you do have them.

8 MR. SANCHELIMA: If you want me to finish my  
9 objection, then I'll be glad to do it. I don't know if we  
10 can both talk at the same time.

11 MR. GOLDSTEIN: I thought you were done. I'm having  
12 a little trouble hearing you.

13 MR. SANCHELIMA: I object to any such document that  
14 were not authored by Mr. Perelman or in any way kept in  
15 the normal course of business or in any way would be an  
16 exception to the hearsay rule. That's my objection.

17 And the authenticity of those documents has not  
18 been established either.

19 MR. GOLDSTEIN: We'll argue it later, but it's  
20 documents that the expert is relying on, and they're being  
21 offered for what the expert is relying on. And I don't  
22 think there's any hearsay issue. It's neither here nor  
23 there.

24 BY MR. GOLDSTEIN:

25 Q Mr. Perelman, in connection with your retention

1 as an expert in this matter, were you provided with  
2 documents by attorneys?

3 **A Yes.**

4 Q Attorneys for Habanos, S.A.?

5 **A Yes.**

6 Q Do you recall what they were?

7 **A Well, they were the documents that I just noted**  
8 **in the package that I was handed by the reporter. There**  
9 **were excerpts of testimony by Edgar Cullman, Jr., by Oscar**  
10 **Boruchin. There were documents in this matter, responses**  
11 **to interrogatories and document production items. A large**  
12 **sheaf of papers was forwarded to me, which I reviewed at**  
13 **the request of the attorneys.**

14 Q And the documents that were provided to you by  
15 the attorneys are listed in your expert report?

16 **A Yes.**

17 Q Were you asked to assume certain facts about  
18 applicant's cigars -- when I say asked by the attorneys  
19 for Habanos, S.A., to assume certain facts about the  
20 applicant's cigars?

21 **A Yes.**

22 Q Do you recall what facts you were asked to  
23 assume?

24 **A My memory is that the attorneys asked me to**  
25 **assume that this new cigar, "Havana Club," was going to be**

1 created with what were called Cuban seed tobaccos, and I  
2 was further asked to assume that there was no  
3 specification of the tobaccos other than to be called  
4 Cuban seed.

5 MR. SANCHELIMA: I object to the question as being  
6 speculative.

7 MR. GOLDSTEIN: You object -- I'm sorry?

8 MR. SANCHELIMA: Speculative. The question that you  
9 asked.

10 MR. GOLDSTEIN: Okay.

11 BY MR. GOLDSTEIN:

12 Q And do you recall what you were asked to assume  
13 about when the Cuban seed supposedly came from Cuba?

14 MR. SANCHELIMA: Same objection.

15 THE WITNESS: Do you want me to answer?

16 MR. GOLDSTEIN: Yeah. You'll basically answer when  
17 there's objections.

18 THE WITNESS: Okay. My memory is that the tobaccos  
19 which were deemed to be Cuban seed did not, in fact, come  
20 from Cuba, but were of seeds which may have come from Cuba  
21 at some time in the distant past, but not recently.

22 BY MR. GOLDSTEIN:

23 Q And on what matter or matters were you asked to  
24 provide your expert opinion?

25 A I was asked to provide an opinion on the meaning

1 of "Cuban seed tobacco" with regard to cigars which are  
2 produced today outside of Cuba, using tobaccos which were  
3 not grown in Cuba.

4 Q And in particular were you asked to answer three  
5 specific questions concerning Cuban seed tobacco not grown  
6 in Cuba?

7 A Yes.

8 Q And are those three questions set out in your  
9 expert report?

10 A Yes.

11 Q And I don't expect you to recall them verbatim,  
12 but do you recall that the first question was, "What does  
13 the term 'Cuban seed tobacco' or 'Cuban seed' mean or  
14 refer to when used for tobacco or tobacco seeds that are  
15 not grown in Cuba?"

16 A Yes, my memory is that that's correct. I'm not  
17 looking at the report now.

18 Q What does the term "Cuban seed tobacco" or  
19 "Cuban seeds" mean or refer to when used for tobacco or  
20 tobacco seeds that are --

21 MR. SANCHELIMA: I object to this question as being  
22 outside the expertise of this witness.

23 BY MR. GOLDSTEIN:

24 Q You can answer.

25 A In my opinion, and in my experience, the use of

1 the term "Cuban seed" for cigars which are manufactured  
2 for distribution in the United States has to do primarily  
3 with information that the manufacturer or distributor is  
4 trying to communicate to the consumer about the strength  
5 or heft of the leaf which is being used in the cigar. It  
6 would indicate that <sup>it</sup> is a stronger tobacco than in  
7 comparison to other types.

8 Q This term generally as used in the United States  
9 refer to tobacco grown from seeds that are themselves from  
10 Cuba?

11 A Possibly in the distant, distant past. But  
12 there is a particular strain of so-called Cuban seed  
13 tobacco, which is called Piloto Cubano, which is grown  
14 extensively in the Dominican Republic. And some  
15 manufacturers and distributors use the terms "Piloto  
16 Cubano" and "Cuban seed" interchangeably, which from the  
17 standpoint of the consumer and what it means in the U.S.  
18 cigar trade today simply indicates what the heft or  
19 strength of the style of tobacco that's being used is. It  
20 does not indicate that the tobacco is itself from Cuba.

21 Q And do you have an understanding when these  
22 seeds are claimed to have been taken from Cuba?

23 MR. SANCHELIMA: Same objection. Outside the  
24 expertise of this witness.

25 THE WITNESS: It is generally understood to the point

1 of not ever being questioned that when there is a  
2 reference to Piloto Cubano or to Cuban seed, we're talking  
3 about some distant relationship with Cuba at a time prior  
4 to the United States trade embargo. So that would be  
5 1962. And so we're talking about some relationship to  
6 tobacco seeds that could have come from Cuba in the 1940s  
7 or 1950s or maybe 1960 or '61. But not any time after  
8 that.

9 BY MR. GOLDSTEIN:

10 Q You're referring to the seeds the tobacco today  
11 are multi-generational descendents from the seeds that  
12 were claimed to have come from Cuba?

13 A **That's correct. Dozens and dozens and dozens of**  
14 **generations later.**

15 MR. SANCHELIMA: My objection to this question is  
16 that there is no proper foundation. In addition, it's  
17 outside the scope of this witness's purported expertise.

18 BY MR. GOLDSTEIN:

19 Q Is there a way for a distributor in the United  
20 States of finished cigars to know if the tobacco in those  
21 cigars really comes from seeds that are descended from  
22 seeds that once upon a time came from Cuba?

23 MR. SANCHELIMA: Same objection as before.

24 THE WITNESS: Other than asking the manufacturer of  
25 the cigar or the provider of the tobacco for an indication

1 or a promise that the tobacco came from specific seeds,  
2 there is no identifiable way to discern where a specific  
3 leaf of tobacco was grown or from what seeds it was grown.  
4 The leaf itself is not marked in any way.

5 BY MR. GOLDSTEIN:

6 Q And is there any way for a typical or a U.S.  
7 cigar consumer to know that the cigar he's smoking really  
8 comes from seeds that are multi-generational descendents  
9 of seeds from Cuba?

10 A I would say it's impossible.

11 Q And would that be true for someone like you who  
12 would call yourself either experienced or expert in  
13 cigars?

14 A Yes, that's correct.

15 Q Would there be any way for anyone to know, other  
16 than the person who originally took the seeds and then  
17 grew the seeds generation after generation, where those  
18 seeds actually originated?

19 MR. SANCHELIMA: Objection. Improper foundation.  
20 Outside the witness's expertise.

21 THE WITNESS: I'm not aware of any way that someone  
22 other than the person who is actually providing the seed  
23 for planting would know.

24 BY MR. GOLDSTEIN:

25 Q You referred to something called Piloto Cubano.

1 And what is that?

2 **A Piloto Cubano is an identified strain of tobacco**  
3 **which is grown primarily in the Dominican Republic for use**  
4 **in handmade cigars.**

5 Q And is that also referred to by some as Cuban  
6 seed tobacco?

7 **A Yes. There are some manufacturers and**  
8 **distributors who use the terms interchangeably.**

9 Q And in your book, do manufacturers identify  
10 their tobacco as Piloto Cubano?

11 **A Yes, some do.**

12 Q And some identify it as Cuban seed?

13 **A Yes.**

14 Q And when they say Cuban seed, you don't have a  
15 way of knowing whether they're referring to Piloto Cubano  
16 unless they tell you?

17 **A That's correct.**

18 Q And is it your understanding that not all  
19 tobacco claimed to be Cuban seed is Piloto Cubano?

20 **A I am certain that that is true.**

21 Q Is it your understanding that the strain of  
22 tobacco called Piloto Cubano originated from seeds that  
23 came from Cuba?

24 **A That is what I have been told. I have no way of**  
25 **verifying that that in fact is the case. But that is what**

1 I have been told.

2 Q And within the U.S. cigar industry, is there a  
3 common understanding of the origins of Piloto Cubano  
4 tobacco?

5 A The generally understood nature of Piloto Cubano  
6 in the U.S. cigar industry is that it may have originated  
7 from seeds that came from Cuba at some time in the distant  
8 past. But the primary use of that term is to identify the  
9 strength and style of that kind of tobacco vis-a-vis other  
10 kinds and styles of tobacco.

11 Q And what is the style that's associated with  
12 Piloto Cubano?

13 A Piloto Cubano is generally -- that term and that  
14 type of tobacco are used to communicate to the consumer  
15 that the style of leaf and the heft of the leaf in terms  
16 of its smoking qualities are heavier and stronger than  
17 other kinds of leaf. For example, Dominican Olor, which  
18 is a different kind of leaf, which happens to be native to  
19 the Dominican Republic, that's a lighter leaf and is not  
20 considered to be as strong.

21 From the consumer's point of view, this places a  
22 stereotype of Cuban cigars being, in general, heavier and  
23 stronger than cigars that were smoked in the United  
24 States, particularly up until the 1980s.

25 MR. SANCHELIMA: I want to make sure that the court

1 reporter noted my objection that it has been all along  
2 that the testimony is outside the scope of expertise for  
3 which this witness is purported to be offered.

4 BY MR. GOLDSTEIN:

5 Q To your knowledge is there, in fact, any  
6 connection between Piloto Cubano and Cuba, other than the  
7 possibility that the seeds once originated in Cuba?

8 A None that I'm aware of.

9 Q And you had noted in Exhibit 2 of your expert  
10 report that there was some testimony that you're referring  
11 to that I had provided you with, or the attorneys for  
12 Habanos, which included me, had provided you with, from a  
13 case in the Southern District of New York, Empresa Cubana  
14 del Tabaco, Cubatabaco, vs. Culbro Corporation and General  
15 Cigar Co., Inc. Correct?

16 A Yes, that's correct.

17 Q While that case was going on, were you generally  
18 aware of the dispute?

19 A I was aware of the dispute. It was a well-known  
20 case.

21 Q And it involved a cigar. Do you recall the  
22 brand that was involved?

23 A Cohiba, if I remember correctly.

24 Q And one of the things I gave you was the excerpt  
25 from the direct testimony of Edgar M. Cullman, Jr. Do you

1 know who he is?

2 **A Yes, I do.**

3 **Q And who is he?**

4 **A Right now he is a member of the Culbro**  
5 **Investment Trust. At the time that he was involved in**  
6 **this case, he was the son of the principal owner and one**  
7 **of the executives of Culbro Corporation, C-u-l-b-r-o, and**  
8 **General Cigar Company.**

9 MR. SANCHELIMA: Where did you send that declaration?  
10 What e-mail did you use?

11 MR. GOLDSTEIN: I sent it to Jesus@Sanchelima.com and  
12 it's reading back to me -- give me a minute -- it's  
13 reading back to me Sanchelima, Jesus, which is you.

14 MR. SANCHELIMA: That's what your software identifies  
15 it as.

16 MR. GOLDSTEIN: Right. But the e-mail I used was  
17 Jesus@Sanchelima.com.

18 MR. SANCHELIMA: Right. Okay. I haven't gotten it  
19 yet.

20 MR. GOLDSTEIN: I also have a JSanchelima@Yahoo.com.

21 MR. SANCHELIMA: Don't use that. Don't use the Yahoo  
22 because there's not enough bandwidth here. Go ahead.

23 MR. GOLDSTEIN: I'm going to resend it. But that's  
24 the e-mail I used. I want you to have this, Jay.

25 MR. SANCHELIMA: Well, I have received everybody

1 else's. I have received 83 e-mails, and none of them are  
2 yours.

3 MR. GOLDSTEIN: You want it to Jesus@Sanchelima.com;  
4 right?

5 MR. SANCHELIMA: Right. J-e-s-u-s at Sanchelima,  
6 S-a-n-c-h-e-l-i-m-a.

7 MR. GOLDSTEIN: That's where I'm sending it. I'm  
8 going to resend both of them. I'm trying to find your  
9 paralegal's -- do you know Pablo's e-mail?

10 MR. SANCHELIMA: Send it to him, too.

11 MR. GOLDSTEIN: That's why I'm asking. Do you know  
12 his?

13 MR. SANCHELIMA: Legal@Sanchelima.com -- I'm sorry.  
14 LegalAssist@Sanchelima.com.

15 We received it and it's being printed now. 51  
16 pages.

17 MR. GOLDSTEIN: Do you want to wait a couple minutes?

18 MR. SANCHELIMA: Yeah. Let me see. All right. It's  
19 beginning to print. I have a declaration of Richard  
20 Perelman.

21 MR. GOLDSTEIN: That's Exhibit 2.

22 BY MR. GOLDSTEIN:

23 Q How would you describe General Cigar in terms of  
24 its relative size in the American cigar industry as a  
25 manufacturer and distributor?

1           **A**     **Swedish Match is -- General Cigar Company is now**  
2 **part of Swedish Match. And Swedish Match is the second**  
3 **largest seller of cigars in the U.S. market.**

4           **Q**     **And prior to its acquisition by Swedish Match,**  
5 **General Cigar itself?**

6           **A**     **General Cigar was the second largest distributor**  
7 **of premium cigars in the United States. It at one time**  
8 **was the second largest distributor of all kinds of cigars,**  
9 **but it sold its business in parts to Swedish Match.**

10          **Q**     **And do you know or did you know Mr. Cullman when**  
11 **he was in the cigar business?**

12          **A**     **Yes, I certainly did.**

13          **Q**     **Did you consider him a knowledgeable person in**  
14 **the cigar business?**

15          **A**     **Yes, absolutely.**

16          **Q**     **Do you recall what he said in that testimony**  
17 **that you were provided with regarding Piloto Cubano and**  
18 **Cuban seed?**

19          **A**     **My memory is that he dismissed any direct**  
20 **relationship between Piloto Cubano or Cuban seed tobaccos**  
21 **and Cuba itself.**

22          **Q**     **And the next excerpt was from a deposition of**  
23 **Angel Nunez from the same case. Do you recall that?**

24          **A**     **Yes.**

25          **Q**     **And do you know --**

1 MR. SANCHELIMA: One second. Let me get that. Whose  
2 deposition?

3 MR. GOLDSTEIN: Angel Nunez.

4 BY MR. GOLDSTEIN:

5 Q Excerpt from a deposition from October 30th,  
6 2001 in the same case. Do you know Angel Nunez?

7 A Yes. He's known as Daniel, Daniel Nunez.

8 Q And who is he?

9 A At the time of this deposition I believe  
10 Mr. Nunez was one of the people in charge of agronomy for  
11 General Cigar in the Dominican Republic. He is now  
12 president of General Cigar.

13 Q Do you recall him providing testimony concerning  
14 Piloto Cubano or Cuban seed?

15 A Yes. My memory is -- and I'm not looking at the  
16 deposition now, but my memory is that Daniel indicated  
17 that there was no direct connection between -- no current  
18 connection between Piloto Cubano or Cuban seed and Cuba  
19 itself. That it was a type of tobacco that was grown.

20 MR. SANCHELIMA: Objection.

21 BY MR. GOLDSTEIN:

22 Q Was the testimony of Mr. Cullman and Mr. Nunez  
23 that you looked at consistent with your understanding of  
24 Cuban seed tobacco?

25 MR. SANCHELIMA: Same objection.

1 THE WITNESS: Yes.

2 BY MR. GOLDSTEIN:

3 Q There was, I guess, a third excerpt, and that  
4 was from Oscar Boruchin from the same case from a  
5 deposition in July 2000 in Miami. Did you look at that  
6 excerpt?

7 A Yes, I did.

8 Q Do you know who Oscar Boruchin is?

9 A Yes.

10 Q And who is he?

11 A Oscar is the principal owner of a very large  
12 retail and wholesale cigar company called Mike's Cigars in  
13 Bay Harbor, Florida.

14 Q Do you have an understanding of whether  
15 Mr. Boruchin is a Cuban American, someone who was born in  
16 Cuba and now lives in the United States?

17 A Yes, he has told me that.

18 MR. SANCHELIMA: Objection. Hearsay.

19 BY MR. GOLDSTEIN:

20 Q Did you look at the testimony excerpts that you  
21 were provided from him?

22 A Yes.

23 Q Let me strike the question because it was  
24 incoherent.

25 Do you recall reviewing the deposition testimony

1 excerpts that you were provided with, from Mr. Boruchin's  
2 testimony?

3 **A Yes.**

4 Q And what do you recall of that concerning Cuban  
5 seed tobacco?

6 MR. SANCHELIMA: Objection. The document speaks for  
7 itself.

8 BY MR. GOLDSTEIN:

9 Q You can answer.

10 **A Mr. Boruchin's testimony, as I remember it, was**  
11 **along the lines that the words "Cuban seed" were a widely**  
12 **understood joke within the cigar industry, and that in his**  
13 **view everybody knew that this type of tobacco was based**  
14 **on, or perhaps not based on, seeds that came from Cuba**  
15 **many, many, many, many generations ago and was not at all**  
16 **current or had any current relationship with the island of**  
17 **Cuba.**

18 Q And do you agree with Mr. Boruchin that Cuban  
19 seed, the term "Cuban seed" is a joke?

20 **A I think that's a very accurate way to put it.**

21 Q And why do you consider it a joke?

22 **A Mr. Boruchin's testimony is in line with exactly**  
23 **the same kinds of information that I'm given by**  
24 **manufacturers and distributors, and, in fact, tobacco**  
25 **growers that I spoke with today.**

1 Q Which is?

2 A That so-called Cuban seed tobacco has nothing to  
3 do with Cuba, but in fact refers to a strain of tobacco  
4 which is stronger in taste and heft and presence in the  
5 mouth than other kinds of tobacco grown in other places.

6 MR. SANCHELIMA: Same objection.

7 BY MR. GOLDSTEIN:

8 Q Now, you had testified earlier, I believe, that  
9 Piloto Cubano provided -- the term Piloto Cubano may  
10 provide consumers with some information about the taste or  
11 flavor of the cigar; is that correct?

12 A That's correct.

13 Q And are cigars made from Piloto Cubano  
14 necessarily full-bodied or stronger cigars?

15 MR. SANCHELIMA: Objection.

16 THE WITNESS: Not necessarily. It depends on the  
17 blend. A cigar maker can blend a cigar with some Piloto  
18 Cubano tobacco in it, but it, in fact, can be even a  
19 mild-bodied cigar depending on what the rest of the leaves  
20 are that are included in that cigar.

21 BY MR. GOLDSTEIN:

22 Q Now, what about if the person -- let me strike  
23 the question.

24 I think I asked you this earlier. Some of your  
25 manufacturers or distributors identified their cigars

1 simply as Cuban seed; is that correct?

2           **A**     **They identified their cigars as being made with**  
3 **Cuban seed tobaccos, not necessarily being Cuban seed.**  
4 **There is no cigar that I'm aware of that's called Cuban**  
5 **seed as a brand name.**

6           **Q**     **You're correct. And my question meant to ask it**  
7 **that way. Your book identifies -- manufacturers have**  
8 **identified to you and published in your book that their**  
9 **cigars are made from tobaccos claimed to be from Cuban**  
10 **seed without further identification; is that correct?**

11           **A**     **It is correct to say that manufacturers and**  
12 **distributors have said that there are tobaccos which they**  
13 **claim to be Cuban seed which are included in their cigars.**  
14 **I'm not aware of any cigar which is made only from Cuban**  
15 **seed tobaccos. There have been such cigars in the past,**  
16 **but I'm not aware of any currently.**

17           **Q**     **If the manufacturer/distributor just says "Cuban**  
18 **seed" without identifying a variety or strain, does that**  
19 **tell the consumer anything about the cigar?**

20           **MR. SANCHELIMA: Objection.**

21           **THE WITNESS: It can potentially, depending on what**  
22 **else is told to the consumer, identify for the consumer**  
23 **that there are tobaccos in the cigar, potentially a large**  
24 **percentage of the tobaccos in the cigar which are made up**  
25 **of leaves which have a stronger flavor and presence in the**

1 mouth, potentially also aroma that would be stronger than  
2 if they were made with other kinds of tobacco.

3 For example, tobaccos from Connecticut or from  
4 Dominican Olor or other places.

5 BY MR. GOLDSTEIN:

6 Q Just for clarity, I'm distinguishing for  
7 purposes of that question between something identified as  
8 Piloto Cubano tobacco and something simply identified as  
9 Cuban seed tobacco.

10 MR. SANCHELIMA: I don't understand what you're  
11 saying. Is that a question?

12 MR. GOLDSTEIN: It is a question.

13 BY MR. GOLDSTEIN:

14 Q And I just tried to ask for clarification, if  
15 that makes a difference in your answer.

16 A In my answer?

17 Q Yes.

18 A No, it doesn't. The terms are in some cases  
19 used interchangeably.

20 Q Okay.

21 A And it is not -- having had hundreds and  
22 hundreds and hundreds of discussions about this issue with  
23 manufacturers and distributors, face to face, over the  
24 course of the last 15 years, there is a wide variety of  
25 expertise on the part of the manufacturers and

1 distributors. Some know a lot about their cigars and some  
2 don't frankly know that much. And in many cases these  
3 terms are used interchangeably.

4 Q Of the questions that you were asked to provide  
5 your expertise on, the second question was, "What  
6 significance, if any, does the United States cigar  
7 industry attach to non-Cuban origin tobacco claimed to be  
8 grown from Cuban seeds or to cigars claimed to be made  
9 from Cuban seed tobacco"?

10 MR. SANCHELIMA: Objection. Form.

11 MR. GOLDSTEIN: I'm just simply asking if he recalls  
12 that that was one of the questions that he was asked to  
13 answer.

14 THE WITNESS: I recall the question.

15 BY MR. GOLDSTEIN:

16 Q And what is your answer to that question?

17 MR. SANCHELIMA: Objection.

18 THE WITNESS: Is it okay to answer?

19 MR. GOLDSTEIN: Yes.

20 THE WITNESS: The question that you've asked, I  
21 answered it in the report, and continue to believe today  
22 that the U.S. cigar industry communicates to the consumer  
23 the strength or style of tobacco which is used in a cigar  
24 by identifying it as Piloto Cubano or by Cuban seed, but  
25 that it does not have necessarily, except by those who are

1 being somewhat unscrupulous in my view, any relationship  
2 to Cuba itself.

3 BY MR. GOLDSTEIN:

4 Q When you say "unscrupulous," what are you  
5 referring to?

6 A If a manufacturer or distributor is trying to  
7 create an impression in the minds of consumers that  
8 somehow the tobacco which is being used and is being  
9 called Cuban seed has a close tie or a close nexus to  
10 tobacco which is grown in Cuba and is used in the  
11 production of Cuban cigars, that would be false.

12 MR. SANCHELIMA: I have a standing objection on  
13 anything that has to do with consumer perception from this  
14 witness that qualifies as an expert in that area.

15 BY MR. GOLDSTEIN:

16 Q Does the use of the term "Cuban seed tobacco"  
17 provide retailers or consumers with any useful information  
18 regarding any relationship between those cigars and cigars  
19 that originate in Cuba?

20 MR. SANCHELIMA: In addition to the previous  
21 objections, also form.

22 BY MR. GOLDSTEIN:

23 Q You can answer.

24 A My answer would be no.

25 Q Are you aware of marketing parallels in the

1 United States to the use of Cuban seed tobacco?

2 **A I'm not sure I understand the question.**

3 **Q Okay. Other marketing efforts in the United**  
4 **States that use a point of origin of tobacco, using that**  
5 **name for tobacco that comes from another place?**

6 **A If I understand your question correctly, yes, I**  
7 **am aware.**

8 **Q Okay. And what is that?**

9 **A There is a very highly prized type of wrapper**  
10 **leaf called Connecticut shade, and this kind of tobacco is**  
11 **very popular and is widely known as a preferred style of**  
12 **wrapper tobacco. However, an enormous amount of this**  
13 **style of tobacco is grown in Ecuador, as well as in other**  
14 **countries. But especially in Ecuador. And so you have**  
15 **Connecticut shade leaf which actually comes from**  
16 **Connecticut, but you also have an enormous amount of**  
17 **Connecticut seed leaf which comes from Ecuador.**

18 **Q But it's not from Connecticut?**

19 **A But it is not from Connecticut. And we identify**  
20 **in our book that it is not Connecticut leaf, but in fact**  
21 **it is Connecticut seed leaf, and this would indicate the**  
22 **style and heft and presence in the mouth that can be**  
23 **expected from that kind of leaf, not that it is from**  
24 **Connecticut. And we ask this question very specifically**  
25 **of all of our manufacturers and distributors who provide**

1     **information for this book.**

2           Q     Is it your understanding from being involved in  
3     the industry what are some of the important factors in  
4     terms of the quality and characteristics of tobacco, in  
5     terms of how, where it's grown, things like that?

6           MR. SANCHELIMA:  Objection.  And also vague.

7           MR. GOLDSTEIN:  Let me rephrase the question.

8     BY MR. GOLDSTEIN:

9           Q     Are you aware of the factors in the growth of  
10    tobacco that are widely considered within the industry  
11    important in terms of the quality and characteristics of  
12    the tobacco that's grown?

13          MR. SANCHELIMA:  Objection.  Improper foundation.

14          THE WITNESS:  Should I go ahead and answer?

15          MR. GOLDSTEIN:  Yes, please.

16          THE WITNESS:  Manufacturers and distributors, and  
17    especially those manufacturers who grow their own tobacco,  
18    have taken great pains with me to educate me about the  
19    ways that they develop tobaccos and the way that they grow  
20    tobacco and then cure and age tobacco before it becomes  
21    blended.

22                    And there are many, many factors that go into it  
23    because this is an agricultural product.  So tobacco is  
24    going to be different based on when during the year it is  
25    grown, where it is grown, how it is grown, meaning how the

1 height of the plant is managed, and when the harvesting is  
2 done. All of these and many other items go into how the  
3 tobacco is shaped in terms of its taste, pliability and  
4 use in cigars.

5 BY MR. GOLDSTEIN:

6 Q Do you recall that you were asked a third  
7 question, which was -- do you recall that you were asked  
8 to answer a third question as part of your expert report,  
9 and that question was, "Does Cuban seed tobacco generally,  
10 or tobacco grown from Cuban seed as claimed by applicant  
11 in its interrogatory response, have any association or  
12 connection with Havana, Cuba, or Cuba, and if so, what is  
13 that association or connection?"

14 MR. SANCHELIMA: Form.

15 BY MR. GOLDSTEIN:

16 Q Do you recall that being one of the questions  
17 you were asked to answer?

18 A Yes, I do.

19 MR. SANCHELIMA: Form.

20 BY MR. GOLDSTEIN:

21 Q Is there any association or connection with  
22 Havana, Cuba or Cuba?

23 MR. SANCHELIMA: Objection.

24 BY MR. GOLDSTEIN:

25 Q Of Cuban seed tobacco generally or tobacco grown

1 from Cuban seed that is distant descendent from seeds  
2 claimed to be taken from Cuba?

3           **A**     **In my opinion and to my knowledge there is no**  
4 **relationship between Cuban seed tobaccos and the city of**  
5 **Havana, Cuba, the Cuban cigar industry or Cuban tobacco**  
6 **except potential and unprovable relationship that goes**  
7 **back many, many, many generations and dozens of years. As**  
8 **a matter of fact, it would be more than 40 years.**

9           **Q**     And in your opinion, by calling your cigars  
10 Cuban seed tobacco, does that indicate a connection or  
11 similarity to Cuban cigars or Cuban tobacco, in terms of  
12 taste or aroma?

13           **MR. SANCHELIMA:** Objection.

14           **THE WITNESS:** Shall I go ahead and answer?

15           **MR. GOLDSTEIN:** Yes, please.

16           **THE WITNESS:** Okay. A manufacturer/distributor who  
17 promotes the fact that it has what it believes as Cuban  
18 seed tobaccos in its cigars may be trying to imply some  
19 sort of relationship or nexus to Cuba or the Cuban cigar  
20 industry, but there really is none.

21           **BY MR. GOLDSTEIN:**

22           **Q**     Why, in your opinion, do U.S. cigar distributors  
23 or manufacturers want consumers to associate their  
24 non-Cuban cigars with Cuba and Cuban cigars?

25           **MR. SANCHELIMA:** Same objection.

1 THE WITNESS: Cuba is the historic heart of the cigar  
2 industry, going all the way back to the 1600s<sup>83</sup> production  
3 of cigars was headquartered in Havana after the decree of  
4 the Spanish crown, which allowed production of cigars for  
5 commercial use.

6 So there is a long, long, long history of the  
7 production of cigar tobacco and the production of actual  
8 cigars in Cuba, and that history and romance, if you will,  
9 is what is being attached by manufacturers and  
10 distributors who use terms like "Cuban seed."

11 BY MR. GOLDSTEIN:

12 Q If you would look on page 10 of your expert  
13 report, the page that has your signature.

14 A Okay.

15 Q And it's the continuation of paragraph 23, which  
16 starts on page 9.

17 A Yes.

18 Q There's a reference at the end of the paragraph  
19 to an article from Cigar Magazine annexed hereto as  
20 Exhibit 3. Do you see that?

21 A I see the language, yes.

22 MR. GOLDSTEIN: First, let me clarify on the record  
23 that where it says "Exhibit 3," it should say "Exhibit 4,"  
24 because there's already an Exhibit 3 in the report, which  
25 we've identified which was excerpts from the 2006 Perelman

1 Pocket Cyclopedia. I want to make that clarification.

2 And second, in my copy, and probably in all  
3 copies, this article was not attached. So I want to  
4 identify that article, since I don't think it was ever  
5 attached. And that was my office's mistake.

6 So if I could ask the reporter to find the  
7 document that says "Boomtime Memoirs," which at the bottom  
8 it says, "Cigar Magazine," and has a Bates number, and if  
9 you could mark that as Perelman Exhibit 3 for  
10 identification of this deposition.

11 (Deposition Exhibit 3 was marked for  
12 identification by the court reporter.)

13 THE WITNESS: Okay, the reporter has handed it to me.  
14 I have it in my possession.

15 MR. SANCHELIMA: This Exhibit 4, the exhibit that  
16 would have been 4 in his declaration is actually a  
17 separate exhibit that you're now producing for the first  
18 time. And was that one of the documents that you sent me?

19 MR. GOLDSTEIN: Yes, it's one of the documents in the  
20 e-mail. It's not being produced for the first time. It's  
21 produced as HAB00576 through 581 by us, and was not  
22 attached to his declaration, even though it should have  
23 been.

24 MR. SANCHELIMA: Okay. But --

25 MR. GOLDSTEIN: We're not marking it as part of the

1 expert report. We're marking it as Perelman Exhibit 3.

2 MR. SANCHELIMA: Okay. So it's going to be a  
3 separate exhibit.

4 MR. GOLDSTEIN: Yes.

5 MR. SANCHELIMA: Hold on. I have a document called  
6 "Boomtime Memoirs."

7 MR. GOLDSTEIN: That's it.

8 MR. SANCHELIMA: That's Exhibit 3 for this  
9 deposition. Okay.

10 BY MR. GOLDSTEIN:

11 Q Are you looking at that?

12 A Yes, I see it.

13 Q In the bottom it shows it's from Cigar Magazine,  
14 Summer 2006. Do you see that?

15 A Yes.

16 Q Are you familiar with this article?

17 A Yes. It was a hoot.

18 Q Is it the article that's being referred to in  
19 your expert report?

20 A Yes.

21 MR. GOLDSTEIN: And opposer offers Perelman Exhibit 3  
22 in evidence.

23 BY MR. GOLDSTEIN:

24 Q And if you would turn to page 81 of the article,  
25 which also has the production numbers HAB00580.

1           **A     Right.**

2           Q     And it's sort of the pull out, I don't know if  
3 journalism has a word for that?

4           **A     It's called a pull quote.**

5           Q     I knew it was "pull" something. What is the  
6 article talking about, first of all?

7           **A     This particular article is by an author named**  
8 **Tom Zarzecki, who is a terrific writer and tremendously**  
9 **funny, especially with sarcasm. And this is a sarcastic**  
10 **look at the many strange brands which came onto the U.S.**  
11 **market during the period that was known as the cigar boom**  
12 **during the middle and late part of the 1990s.**

13          Q     And what does the pull quote say?

14          **A     The pull quote says, "The advertisements for**  
15 **these Boom brands sure made a lot of lofty claims; every**  
16 **last one was made from, quote, 'choice Cuban seed,'**  
17 **unquote. Yeah, so was Ricky Ricardo."**

18          Q     And you quote that language at the end of your  
19 expert report on paragraph 23 as, in your words, summing  
20 up the Cuban cigar marketing phenomenon in the United  
21 States.

22          **A     Yes.**

23          Q     What did you mean by that?

24          **A     The use of the term "Cuban seed," if it is used**  
25 **to try and convince consumers, which was certainly the**

1 case during the cigar boom and is regrettably still the  
2 case in some instances today, that the cigars that are  
3 produced with a style of tobacco somehow are similar in  
4 some way, other than they're both cigars, to those cigars  
5 produced in Cuba, it's not a correct association.

6 MR. SANCHELIMA: Same objection.

7 BY MR. GOLDSTEIN:

8 Q And Ricky Ricardo, you understand, is referring  
9 to whom?

10 A To Ricky Ricardo, who was the Cuban-born actor  
11 who starred in the Lucy Show -- in "I love Lucy", I'm sorry,  
12 and was married to Lucille Ball. 86

13 MR. SANCHELIMA: Same objection. And also it's  
14 irrelevant.

15 MR. GOLDSTEIN: I have no further questions subject  
16 to any redirect.

17 MR. SANCHELIMA: I need a couple minutes.

18 MR. GOLDSTEIN: Okay.

19

20 EXAMINATION

21 BY MR. SANCHELIMA:

22 Q Mr. Perelman, the company that you work for, is  
23 it exclusively dedicated to cigar, reporting of cigar  
24 events and so forth or does it do something else?

25 A No, as I mentioned in my previous answer, we

1 work on special events and have done so since 1986, and we  
2 also run our CigarCyclopedia.com website and publish these  
3 books. As I indicated, at present we're spending about 60  
4 to 70 percent of our time on the cigar website and on the  
5 production of our new book.

6 Q What is the other 40 percent spent on?

7 A The other time that we spend is based on special  
8 event work, which right now we're deemphasizing. We also  
9 run a website called the SportsExaminer.com. And we are  
10 now beginning the production of a daily ten-minute  
11 audiocast on sports, which is going to be placed on a  
12 website called TheGoodSports.TV.

13 Q So the other 40 percent is completely unrelated  
14 to cigar?

15 A That's correct.

16 Q When were you retained by, I believe, Habanos,  
17 S.A.?

18 A I think the first call came in early 2006.

19 Q Did you provide Habanos, S.A. with a report at  
20 that time?

21 A Not in early 2006. In the middle of 2006 I was  
22 given a list of questions, and I provided a report to  
23 them.

24 Q As part of the work that you did for Habanos,  
25 S.A., did you conduct any surveys?

1           **A     No.**

2           Q     Have you ever conducted any surveys?

3           **A     I don't understand the question.  A survey for**  
4 **what purpose?**

5           Q     Well, let's say for consumer surveys.

6           **A     No, we have not done consumer surveys.**

7           Q     Does Habanos, S.A. advertise in any of your  
8 publications?

9           **A     Not that I'm aware of.**

10          Q     Do you know if Habanos, S.A. sells any products  
11 in the United States?

12          **A     I'm not aware that they do.**

13          Q     What would be the damages for Habanos, S.A. if  
14 the applicant registered its mark?

15          MR. GOLDSTEIN:  Objection to the question.

16          Irrelevant.  There's no claim for damages and the TKB  
17 can't award them.

18          THE WITNESS:  Should I answer?

19          MR. GOLDSTEIN:  Yes.  And it calls for a legal  
20 conclusion.  But you can answer.

21          THE WITNESS:  As I understand it, the applicant is  
22 trying to register the name "Havana Club"?

23          BY MR. SANCHELIMA:

24          Q     I don't know.  You were hired as an expert.  You  
25 tell me.

1           **A**     Well, my understanding is, based on the  
2     information that's been provided to me, that the applicant  
3     is trying to register the name "Havana Club," which is a  
4     very, very famous, currently produced rum that is made in  
5     Cuba. And in my view, the registration of this name could  
6     be potentially confusing to consumers of cigars that this  
7     particular cigar, Havana Club, could have some more  
8     relationship to Cuba than something named Havana Dreams or  
9     Havana Wonder or something like that, because it is also  
10    the name of a very well-known rum, which is currently  
11    produced in Cuba and is widely known worldwide.

12           **Q**     Let me ask the question again because maybe you  
13    didn't understand. I am not asking you any questions  
14    pertaining to Cuba or pertaining to the producer of the  
15    Havana rum. I am asking you what damages do you think  
16    that the opposer, Habanos, S.A., would suffer from the  
17    registration of the mark "Havana Club"?

18           **A**     **Confusion in the marketplace --**

19           MR. GOLDSTEIN: Same objection. Including objection  
20    that it calls for a legal conclusion. It doesn't matter  
21    what he thinks our damages are.

22           THE WITNESS: My answer is the same. Confusion in  
23    the marketplace.

24           BY MR. SANCHELIMA:

25           **Q**     Confusion with Habanos products? Is that what

1 you're saying?

2 **A Yes.**

3 Q But you've previously testified that Habanos,  
4 S.A. is not using the mark or selling any products in the  
5 United States; is that correct?

6 **A Yes, that's correct.**

7 Q And how could it be confused in a market where  
8 it has no presence?

9 MR. GOLDSTEIN: Objection to the form. Calls for a  
10 legal conclusion. These are legal questions that are  
11 before the board. Completely irrelevant to this witness.

12 THE WITNESS: Should I answer?

13 MR. GOLDSTEIN: Yes.

14 BY MR. SANCHELIMA:

15 Q Mr. Perelman, the objections are just to voice  
16 counsel's position with the questions that have been posed  
17 to you. But you should answer all the questions.

18 **A I want to make sure that everyone has stated  
19 there objections so I don't talk over anybody.**

20 MR. GOLDSTEIN: . Just for clarity, Richard, unless you  
21 get an instruction not to answer, and I don't think you'll  
22 get one, when we're done objecting, you should just go  
23 ahead and answer.

24 THE WITNESS: I'm just waiting for everyone to be  
25 done so that there isn't any confusion.

1 MR. GOLDSTEIN: I understand because you can't see  
2 us.

3 THE WITNESS: Exactly.

4 Mr. Sanchelima, my answer to your question would  
5 be that you're making an assumption that this brand would  
6 only be sold in the United States and would never leave  
7 the borders of this country. And in point of fact, there  
8 are very significant number of cigars which are produced  
9 for the United States market which are also sold widely  
10 overseas, and in other markets.

11 BY MR. SANCHELIMA:

12 Q So what is the answer to the question? What  
13 specific damages can you point to at this point, from  
14 everything that you've read and all the conversations that  
15 you've had with the representatives of Habanos, S.A., that  
16 would indicate to you that Habanos, S.A. would be damaged  
17 by the registration of the Havana Club mark?

18 MR. GOLDSTEIN: Same set of objections.

19 THE WITNESS: My answer is that it could potentially  
20 create confusion in the marketplace.

21 BY MR. SANCHELIMA:

22 Q Other than that?

23 A Other than that, I don't have any other opinion.

24 Q Do you know if Habanos, S.A. produces rum?

25 A I'm not aware that they do, but it does not

1 necessarily mean that they don't. I am not aware of it.

2 Q You mentioned that you gathered information from  
3 manufacturers and distributors and growers of tobacco  
4 products; is that correct?

5 A That's correct.

6 Q These manufacturers, and possibly distributors,  
7 control the blends of the cigars; is that correct?

8 A In some cases yes, in some cases no.

9 Q And when they report to you those who control  
10 the -- I withdraw that.

11 In what cases do they control the blends?

12 A Generally, those who are manufacturers or are  
13 distributors who have a very, very close relationship with  
14 the manufacturers are in a position to control their  
15 blends with great precision. However, there are numerous  
16 smaller distributors who are not in a position to control  
17 their blend as closely as they would like, and they're  
18 simply depending on the maker to supply them with cigars  
19 to their specifications.

20 Q But they cannot control the nature or quality of  
21 those products that they receive. Is that what you're  
22 saying?

23 A I'm saying that they do not, in fact, control  
24 it. They could control it if they wished to do so and if  
25 they had the manpower and financial ability to place one

1 or more of there representatives at the place of  
2 manufacture.

3 Q So those who report to you the particular  
4 countries where the tobacco was grown, it is possible that  
5 the information you're getting is not accurate. Is that  
6 correct?

7 A That is a possibility.

8 Q There is nothing that would prevent a particular  
9 manufacturer from using tobacco from a particular country,  
10 let's say Nicaragua, and then the next month change it to  
11 Honduras?

12 A Yes, that is certainly a possibility.

13 Q And they could be reporting to you that they're  
14 getting the product from one country when, in fact, a few  
15 days later they could change it, and they don't have to  
16 ask you for permission or there is no duty for them to  
17 report to you before you go to print, that they have  
18 changed the country where those tobacco products are  
19 grown?

20 A Yes, that is correct.

21 Q Have you grown tobacco?

22 A Myself?

23 Q Yes.

24 A No.

25 Q And you would agree with me that smoking

1 tobacco, there is an element of subjective taste for each  
2 individual, wouldn't you?

3 **A Yes. Everyone's test is individual.**

4 Q You would probably like Maduros and somebody  
5 else would like a lighter cigar and so forth?

6 **A Yes, that's certainly true.**

7 Q And also you could say the same thing about  
8 strength of the cigar?

9 **A Yes, that's true.**

10 MR. GOLDSTEIN: Form.

11 BY MR. SANCHELIMA:

12 Q And Cuban cigars, or Cuban seed cigars, or  
13 cigars that were grown in Cuba, are not always the  
14 strongest cigars; is that correct?

15 **A That's correct.**

16 Q You also mentioned that the Connecticut wrapper  
17 is sometimes grown in Ecuador, I believe you said?

18 **A I said that there is Connecticut seed tobacco,  
19 which is grown in Ecuador.**

20 Q And when the manufacturers or distributors  
21 advertise tobacco products that have Connecticut wrappers  
22 that are grown in Ecuador, how do they describe their  
23 cigars?

24 MR. GOLDSTEIN: Objection to the form.

25 THE WITNESS: I believe in general -- and this is not

1 true for every single case -- but in general the reference  
2 would be to Connecticut seed tobacco, although in some  
3 cases the manufacturers -- I have seen manufacturers that  
4 simply say it's Connecticut wrapper, even though it's not  
5 grown in Connecticut, which means they're saying something  
6 which is not true.

7 BY MR. SANCHELIMA:

8 Q And how about for the Cameroon wrapper -- I'm  
9 asking if you would have the same opinion if we were  
10 talking about a Cameroon wrapper?

11 A Cameroon wrapper has only recently been  
12 attempted to be grown in other countries, within the last  
13 two years, I believe.

14 Prior to that time if someone told us that a  
15 wrapper, or if they advertised that a cigar leaf came from  
16 Cameroon, it almost certainly did come from Cameroon  
17 because it has such unique growing characteristics there.

18 Q But that cigar would be a style cigar more than  
19 a particular test, wouldn't it?

20 A Cameroon wrappers create a different kind of  
21 texture in the smoking of the cigar, more so than the  
22 flavor. It's quite unique relative to the texture that it  
23 gives and the aroma.

24 Q And would you call that a style cigar?

25 A I would call that a style of tobacco.

1 Q Style of tobacco. That's what I meant.

2 And the same thing with Connecticut style.

3 A It's a style of leaf. The way that the cigar  
4 tastes and the way that it has a presence in the mouth is  
5 going to depend on the blend of tobaccos which are used.

6 Q But you as a smoker since 1989, you would  
7 suspect, you would have a particular expectation from that  
8 particular cigar because of the type of wrapper that  
9 you're going to be getting. Would you not agree with that  
10 statement?

11 A I would say that I would have an expectation of  
12 elements that I would expect in that cigar because the  
13 wrapper is one of perhaps five, six, seven or eight leaves  
14 which is used.

15 Q And if you were to smoke a cigar that comes from  
16 seeds that originated in Cuba, would you have also a  
17 particular expectation?

18 A I want to be clear, Mr. Sanchelima. The way  
19 your question is phrased, you asked me if I would have a  
20 particular expectation if I was smoking a cigar made with  
21 tobacco from seeds from Cuba. Is that your question?

22 Q Yes.

23 A I would not. Because it doesn't mean anything.  
24 There are so many different kinds of tobacco which are  
25 grown in Cuba and have been grown over many, many years in

1 Cuba, that I as a long-time smoker and as someone who is  
2 deeply involved in the trade, I understand that there's  
3 all different kinds of tobaccos which are raised in Cuba.

4 So if someone told me that, "Here is a cigar  
5 that is made from tobacco whose seeds come from Cuba,"  
6 that wouldn't really tell me anything about what to  
7 expect.

8 Q So your testimony today is that magically once  
9 those seeds leave the territory of Cuba, whatever plants  
10 come from those seeds are going to be genetically  
11 different and they're going to be tasting different. Is  
12 that what you're saying?

13 MR. GOLDSTEIN: I'm going to object. There's no  
14 foundation that the seeds that your client is talking  
15 about came from Cuba. He's already testified he's talking  
16 about multi-generational descendents.

17 MR. SANCHELIMA: Make your objections brief, please.  
18 You don't need to coach the witness.

19 MR. GOLDSTEIN: I'm not coaching the witness.

20 MR. SANCHELIMA: Nobody has discussed my client's  
21 seeds. My client's seeds are not even around yet.

22 MR. GOLDSTEIN: Your client's testimony is your  
23 client's testimony under oath.

24 MR. SANCHELIMA: You don't need to coach this witness  
25 and tell him -- just place your objection and let's move

1 on.

2 MR. GOLDSTEIN: I've raised my objection.

3 MR. SANCHELIMA: But it doesn't have to be a speaking  
4 objection where you convey information to this witness. I  
5 am in cross-examination.

6 MR. GOLDSTEIN: Ask your question.

7 MR. SANCHELIMA: Would the court reporter ask the  
8 question, please.

9 (Record read as follows:

10 "So your testimony today is that  
11 magically once those seeds leave the  
12 territory of Cuba, whatever plants come  
13 from those seeds are going to be  
14 genetically different and they're going  
15 to be tasting different. Is that what  
16 you're saying?")

17 THE WITNESS: My answer is yes.

18 BY MR. GOLDSTEIN:

19 Q Could you explain why?

20 A Certainly. When you transport the seeds of any  
21 plant, tobacco or any other, this is a matter of eighth  
22 grade botany class, to a different location where the soil  
23 is different, and the nutrients are different and the  
24 style of farming is different, and the sun and the moon  
25 and all the rest are in a different location, it's going

1 to impact the taste of the fruit or vegetable matter that  
2 comes from that plant.

3 This is clearly true, for example, in the  
4 difference, as a voracious consumer of oranges, between  
5 oranges which are grown here in California, those grown in  
6 Florida, and those grown in other places. The taste is  
7 different even though they're all Oranges.

8 Q So your testimony today is that if you were to  
9 smoke two different cigars, one that was grown in Cuba,  
10 and the other one of identical seeds that was grown  
11 somewhere else, you would taste the difference. Is that  
12 your testimony?

13 A I am saying that if the cigars were produced  
14 identically -- remember that there are many steps in  
15 between the growing of the tobacco and the creation of a  
16 cigar. If we assume that the production, the harvesting,  
17 the curing, the blending and the manufacture of the cigars  
18 was absolutely identical, I believe I would be able to  
19 taste the difference between the two cigars, that's  
20 correct.

21 Q Have you ever conducted that experiment?

22 A No, because so far as I know, it's impossible to  
23 do so.

24 Q Your client, Habanos, S.A., asked you to make a  
25 couple of assumptions in your report. As I remember --

1 and correct me if I'm wrong -- one of them was that the  
2 cigars would come from the distant past, I believe you  
3 termed it. Could you tell us what you meant by "distant  
4 past"?

5 MR. GOLDSTEIN: Objection to the form.

6 BY MR. SANCHELIMA:

7 Q Do you understand the question, Mr. Perelman?

8 A I believe I do, Mr. Sanchelima. I will try to  
9 answer it to the best of my ability.

10 Q If you don't understand something that I ask,  
11 please bring it to my attention so that I can clarify.

12 A Okay. If I understand the question correctly,  
13 you're asking me why would I agree to answer -- why would  
14 I agree to the assumption that the seeds are from the  
15 distant past?

16 Q Let's do it differently. What were the  
17 assumptions that you were asked to make, that the client  
18 asked you to make?

19 A They provided an assumption that the cigar to be  
20 called "Havana Club" would be made with so-called Cuban  
21 seed tobaccos, and that these tobaccos would have been  
22 grown from seeds that would have come from Cuba many,  
23 many, many years ago.

24 Q Now, this many, many years ago that you're  
25 referring to, are you referring to 40 years ago, when the

1 embargo was instituted and it was no longer legal to  
2 import Cuban goods to the United States? Is that what  
3 you're referring to?

4 **A Yes, that's correct.**

5 Q So that would take us to about 50 years ago,  
6 1960 or '62?

7 **A Between '60 and '62, you are correct.**

8 Q Now, this embargo applies to the United States;  
9 is that correct?

10 **A That's correct.**

11 Q But it does not apply to other countries such as  
12 Nicaragua, Honduras and other tobacco-producing countries;  
13 is that correct?

14 **A That's correct.**

15 Q And you have really no evidence of any  
16 obstruction that growers from those countries would have  
17 in importing seeds after the so-called embargo here in the  
18 United States, do you?

19 **A I have no personal knowledge.**

20 Q The importers or manufacturers or tobacco  
21 growers in Nicaragua, Honduras, and so forth, they can  
22 freely, without violating their local laws, import tobacco  
23 seeds, even today; is that correct?

24 MR. GOLDSTEIN: Objection. It calls for a legal  
25 conclusion as to foreign law, as well as legal conclusion

1 of the consequences of the United States law.

2 THE WITNESS: My understanding is that growers in  
3 other countries can import Cuban products without any  
4 impingement from the United States. But I am not aware of  
5 any individual circumstance because I am not -- it's not a  
6 subject I've ever discussed with a grower.

7 BY MR. SANCHELIMA:

8 Q In your conversations with your client, Habanos,  
9 S.A., have they told you that they have never exported any  
10 seeds to any countries?

11 A It was never discussed.

12 Q You were in Cuba in the '90s; is that correct?

13 A 1997 and 1998.

14 Q And you were under a specific license, I believe  
15 you said. Was that a specific license?

16 A Yes. I was given a license for journalistic  
17 purposes by the Office of Foreign Assets Control.

18 Q And you published the results or disseminated  
19 the findings that you drew after that?

20 A Well, I used some of the information that I  
21 obtained in Cuba in the publication of our first two  
22 editions of the Pocket Cyclopedia of Havana Cigars.

23 Q In your investigation did you speak to any  
24 growers in Cuba?

25 A Yes, I did.

1 Q And do you know if Cuba exports its seeds of  
2 tobacco plants?

3 A If I believe the information that I was given by  
4 the senior executives of the Cuban tobacco industry who  
5 addressed a forum that I attended, they said no. The  
6 farmers that I spoke with, I never discussed the issue  
7 with them because I was interested in what they were  
8 growing.

9 Q Mr. Perelman, if you were to assume that you're  
10 a distributor or manufacturer of cigars, and if you were  
11 to tell a retailer that you have a lot of Cuban cigars,  
12 would they believe you?

13 A That I had a lot, meaning a large quantity or --

14 Q A lot for sale that you want to sell to them, of  
15 Cuban cigars, do you think that they would believe you?

16 A The ones who are unsophisticated might. Any  
17 retailer who is reasonably sophisticated I think would not  
18 believe me.

19 MR. SANCHELIMA: I have no further questions.

20 MR. GOLDSTEIN: I might just have one or two.

21

22 FURTHER EXAMINATION

23 BY MR. GOLDSTEIN:

24 Q Mr. Sanchelima asked you a question concerning  
25 whether a manufacturer might say to you that the cigar's

1 tobacco originates from one place, but in fact it might  
2 originate from some place else, and you would have no way  
3 of knowing whether that was true or false; is that  
4 correct?

5 **A That's correct.**

6 Q And there's nothing that prevents a distributor  
7 from telling you for purposes of your book that they use  
8 what's called Cuban seed tobacco when, in fact, they  
9 don't, and there would be no way for you to know whether  
10 that was true or false?

11 **A There would be no way for me to know, that's**  
12 **correct.**

13 MR. GOLDSTEIN: I have no further questions.

14 MR. SANCHELIMA: That's it with me.

15 MR. GOLDSTEIN: Okay. Jay, thank you.

16 We're going to read and sign. And I guess we'll  
17 talk Tuesday.

18 THE REPORTER: Mr. Sanchelima, do you need a copy?

19 MR. SANCHELIMA: They'll give me one eventually.

20 MR. GOLDSTEIN: I think I have to give them one  
21 unfortunately, which means I'll have to pay for one.

22 (Deposition concluded at 12:01 p.m.)

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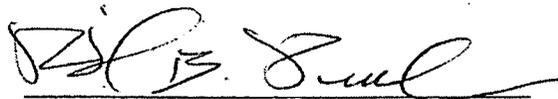
25

I, RICHARD B. PERELMAN, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this 1st day of OCTOBER,  
2007, at LOS ANGELES, CALIFORNIA.

(City)

(State)



RICHARD B. PERELMAN

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 9-17-07



RUBEN GARCIA  
CSR No. 11305

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