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

Proceeding	91165519
Party	Defendant Anncas, Inc.
Correspondence Address	JESUS SANCHELIMA, ESQ. SANCHELIMA & ASSOCIATES, P.A. 235 S.W. LE JEUNE ROAD MIAMI, FL 33134-1762 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Jesus Sanchelima
Filer's e-mail	legalassist@sanchelima.com
Signature	/js/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL
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CORPORACION HABANOS, S.A.,)

Opposer,)

v.)

Opp. No. 91165519)

ANNCAS, INC.,)

Applicant.)

APPLICANT ANNCAS, INC.'S
STATEMENT OF EVIDENTIARY OBJECTIONS

Applicant, ANNCAS, Inc. (hereinafter "Applicant") files herewith its objections to certain statements of Mr. Richard B. Perelman (Opposer's expert witness), as being outside his area of expertise, particularly, those relating to consumer perception. Mr. Perelman's expertise is limited to the current and past cigar products manufactured and/or distributed by the different entities that he has included in his publications.

Applicant preserved its objection to Mr. Perelman's testimony beyond his areas of purported expertise. Perelman's Test. Depo. Tr. pp. 25; 31 (and additionally based on hearsay for any documents not authored by Mr. Perelman); 32; 34-38 (speculative outside the witness' area of expertise); 40-41; 45; 49; 52 (standing objection as to testimony outside area of purported expertise); 54 (improper foundation as to lack of expertise in tobacco growing¹).

In essence, Applicant objects to any testimony based on speculative or hypothetical questions that include subject matter outside the witness' expertise, hearsay evidence that Opposer attempts to introduce through this witness and other irrelevant testimony.

Mr. Perelman's *curriculum vitae* shows his participation in a number of publications relating to cigar products manufactured and/or distributed in the U.S. and elsewhere. Mr. Perelman shares his time with other unrelated activities in the sports field. See Perelman's Depo. Tr. p. 9. Mr. Perelman's education includes a law degree, without having practiced law. See Perelman's Test. Depo. Tr. p. 8. Mr. Perelman's education background does not include any degrees in marketing or consumer related studies. See Perelman's Test. Depo. Tr. Exhibit 1². Nor is Mr. Perelman a grower of tobacco. See Perelman's

¹ Mr. Perelman admitted not being a tobacco grower. Perelman's Test. Cross- Exam. Depo. Tr. p. 68.

² Opposer's counsel referenced Mr. Perelman's CV as Exhibit 1 in Perelman's Test. Depo. Tr. p. 29.

Depo. Tr. p. 68. This is the first time that Mr. Perelman's has been retained as an expert. Perelman's Test. Depo. Tr. Exhibit 22.

Mr. Perelman's company, Perelman Pioneer, is involved in the management of special events and in publishing. Perelman's Test. Depo. Tr. p. 9. Mr. Perelman's part-time activities in the cigar business involves compiling information for his publications by attending two trade shows, contacting manufacturers to include in its publications, and, receives voluntary submissions from cigar manufacturers. Perelman's Test. Depo. Tr. p. 14. Mr. Perelman sells advertising in his cigar publications. Perelman's Test. Depo. Tr. p.11. Mr. Perelman testified that he (or his company) in talking to people about cigars, are primarily interested in the name of the brands, where it is produced, the sizes and shapes they make, packaging, wrapper color and where it is grown. Perelman's Test. Depo. Tr. p. 16.

Mr. Perelman's company also has a web site that includes information about brands, cigar events, legislation, regulation, oddities, auctions. Perelman's Test. Depo. Tr. p. 11.

There is nothing in the record showing that Mr. Perelman is involved in ascertaining consumer perception. Neither Mr. Perelman, nor his company, have "ever" conducted a consumer survey. Perelman's Cross-Exam Test. Depo. Tr. p. 63. In fact, Mr. Perelman himself does not consider his knowledge to be that of an expert on cigar consumption. Perelman's Test. Depo. Tr. p. 12-13.

Rule 702 of the Federal Rules of Evidence states, in pertinent part:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

However, "Designation as an "expert" is not a license to unconstrained testimony on all scientific, technical, and other specialized matters." See Fed. R. Evid. 702 Commentary. Courts have shown an increasing interest in keeping expert testimony within the area of the witness' expertise. See *Eagleston v. Guido*, 41 F.3d 865 (2d Cir. 1994). In *Eagleston*, a sociologist was called to testify that a police department had failed to provide sufficient training to officers concerning domestic violence cases. The Court held that this testimony was properly excluded; the witness' doctorate in sociology was "a credential that does not in itself describe any specific body of scientific or technical expertise pertinent to this case." *Id.* at 874. The plaintiff had failed to establish the witness' expertise in either criminology or domestic violence.

Similarly, while Mr. Perelman may be qualified to testify on current cigar brands, the history of different cigar brands, and possibly some appreciation of market shares by brands, as he collects

and compiles information about those goods. There is nothing that would qualify him as an expert on either consumer perception or growing tobacco or Applicant's registration effect of his client's marketing plans. His legal education background is of little help. As such, his testimony on matters outside his area of expertise should be excluded from the record.

For the foregoing reasons, Applicant requests that Mr. Perelman's testimony be limited to the subject matter he has published and researched in the cigar field.

SANCHELIMA & ASSOCIATES, P.A.

Attorneys for Applicant

235 S.W. Le Jeune Road

Miami, FL 33134-1762

Telephone: (305) 447-1617

Telecopier: (305) 445-8484

jesus@sanchelima.com

By: /js/
Jesus Sanchelima, Esq.

CERTIFICATE OF MAILING

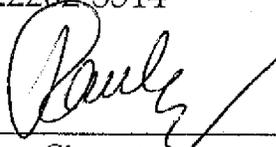
I HEREBY CERTIFY that *Applicant Anncas, Inc.'s Statement Of Evidentiary Objections* is being sent by electronic mail and deposited with the United States Postal Service with sufficient postage as First-class mail in an envelope addressed to:

David B. Goldstein and Michael Krinsky
Rabinowitz, Boudin, Standard,
Krinsky & Lieberman, P.C.
111 Broadway, 11th Floor
New York, New York 10006
dgoldstein@rbskl.com

Counsel for Opposer

and by electronic filing to:

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

On 4/14/08 
Date Signature

Pablo Perez
Typed or printed name of person
signing certificate