



TTAB



June 22, 2006

Honorable Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

ATTORNEYS AT LAW
JORDAN S. WEINSTEIN
(703) 412-6442
JWEINSTEIN@OBLON.COM

Re: *J.C. Newman Cigar Company v. Gael De Courtivron*
Opposition No.: New
Class(es): 34
Atty Dkt. No.: 278246US56

Dear Commissioner:

We enclose the following for filing in the U.S. Patent and Trademark Office:

Notice of Opposition to Serial No. 78/646,490

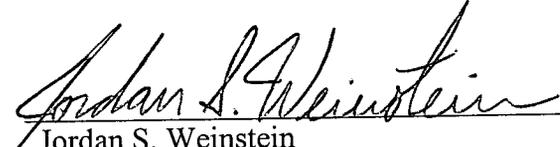
Also enclosed is the credit card payment form for the required filing fee in the amount of \$300.00.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 50-2014.

Please note: All electronic correspondence relating to this matter should be sent to tmducket@oblton.com.

Respectfully submitted,

OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, P.C.


Jordan S. Weinstein

JSW/dlb



06-22-2006

U.S. Patent & TMO/TM Mail Root Dt. #:

The grounds of Opposition are as follows:

1. The Opposer, J.C. Newman Cigar Company, is a corporation duly organized and existing under the laws of the State of Florida, having its principal offices at 2701-03 Sixteenth Street, Tampa, Florida 33605, and has a corporate address of 2701-03 Sixteenth Street, Tampa, Florida 33605.

2. Commencing long prior to Applicant's filing date, Opposer has engaged, and is now engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of cigars.

3. Commencing long prior to Applicant's filing date, Opposer has used, and is now using Opposer's LA UNICA trademark in connection with cigars distributed and sold by Opposer in commerce.

4. Opposer is the owner of, and will rely herein, upon the following registration (hereinafter sometimes referred to as Opposer's Mark):

<u>MARK</u>	<u>REGISTRATION NO.</u>	<u>ISSUED</u>
LA UNICA	972,743	November 13, 1973

Opposer's Registration No. 972,743 identifies the goods as "cigars". Said registration of Opposer's Mark is valid, subsisting and incontestible, and is *prima facie* evidence of Opposer's exclusive right to use Opposer's Mark in commerce on the goods specified in said registration.

A printout from the PTO's database for this registration is attached hereto as Opposer's Exhibit 1.

5. Upon information and belief, notwithstanding Opposer's rights in and to its mark, on June 8, 2005, Applicant filed an application for registration of the alleged LA LUNA trademark for "tobacco, namely cigars". Said application was assigned Serial No. 78/646,490,

and was published for Opposition in the *Official Gazette* of February 28, 2006, Vol. 1303, No. 4, at Page TM 590.

6. Applicant's LA LUNA mark is a simulation and colorable imitation of, and so resembles Opposer's trademark as to be likely, when applied to the proposed goods of Applicant, to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation.

7. Upon information and belief, Opposer's and Applicant's goods will be sold in close proximity and purchased and consumed by the same general classes of purchasers.

8. Opposer, upon information and belief, avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's proposed goods to be marketed under Applicant's alleged LA LUNA trademark and misled into believing that such goods are produced by, emanate from, or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

9. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the alleged LA LUNA trademark, as set forth in Applicant's Trademark Application Serial No. 78/646,490, in that the mark is substantially similar to Opposer's trademark and common law rights and will be used in connection with goods substantially related to the goods offered to the public by Opposer.

WHEREFORE, this Opposer, J.C. Newman Cigar Company, believes and avers that it is being and will continue to be damaged by registration of the LA LUNA trademark as aforesaid, and prays that said Application Serial No. 78/646,490 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer has appointed JORDAN S. WEINSTEIN, a member of the law firm of OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C., a member of the Bar of the Commonwealth of Virginia, to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

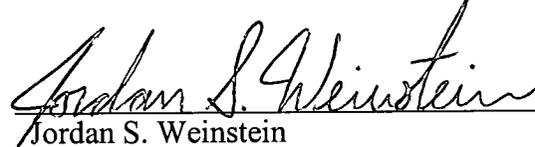
Jordan S. Weinstein, Esquire
OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT,P.C.
1940 Duke Street
Alexandria, Virginia 22314

We enclose our credit card payment form for the required filing fee for this Opposition. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 50-2014.

Respectfully submitted,

J.C. NEWMAN CIGAR COMPANY

By:



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Date: June 22, 2006

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EXHIBIT 1

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-06-21 10:10:47 ET

Serial Number: 72432992 Assignment Information

Registration Number: 972743 Assignment Information

Mark (words only): LA UNICA

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2003-12-15

Filing Date: 1972-08-30

Transformed into a National Application: No

Registration Date: 1973-11-13

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2003-12-16

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. J.C. NEWMAN CIGAR CO.

Address:

J.C. NEWMAN CIGAR CO.
2701-03 SIXTEENTH STREET
TAMPA, FL 33601
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Florida

GOODS AND/OR SERVICES

U.S. Class: 017 (International Class 034)

Class Status: Active

CIGARS

Basis: 1(a)

First Use Date: 1896-04-30

First Use in Commerce Date: 1896-04-30

ADDITIONAL INFORMATION

Translation: "LA UNICA" IS SPANISH AND MAY BE TRANSLATED AS "THE ONE."

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2003-12-15 - Second renewal 10 year

2003-12-15 - Section 8 (10-year) accepted/ Section 9 granted

2003-09-26 - Combined Section 8 (10-year)/Section 9 filed

1993-08-30 - First renewal 10 year

1993-07-20 - Section 9 filed/check record for Section 8

1979-05-21 - Section 8 (6-year) accepted & Section 15 acknowledged

CORRESPONDENCE INFORMATION

Correspondent

JORDAN S. WEINSTEIN (Attorney of record)

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