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

Proceeding	91178943
Party	Plaintiff Corporacion Cimex S.A.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CORPORACION CIMEX, S.A.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91178943
)	Serial No. 75/697908
DM ENTERPRISES & DISTRIBUTORS, INC.,)	
)	
Applicant.)	

OPPOSER CORPORACION CIMEX, S.A.’S MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF LAW IN SUPPORT THEREOF

PLEASE TAKE NOTICE THAT Opposer CORPORACION CIMEX, S.A. (“Opposer” or “CIMEX”), pursuant to 37 C.F.R. § 2.127 and Rule 56 of the Federal Rules of Civil Procedure, moves the Trademark Trial and Appeal Board to grant summary judgment sustaining the Opposition and refusing registration of Application Serial No. 76/256068. In support of this motion, Opposer submits the following Memorandum of Law, and further relies upon the Declarations and Exhibits thereto of Juan Antonio Gonzalez Alvarez (“Gonzalez Decl.”), Gonzalo Manuel Bernaza Mayor (“Bernaza Decl.”), Ada Acosta Marinez (“Acosta Decl.”), Reynol Sampedro Vazquez (“Sampedro Decl.”) and David B. Goldstein (“Goldstein Decl.”); and the Application File of Serial No. 76/256068 (“Application File”), pursuant to 37 C.F.R. ¶ 2.122(b).

INTRODUCTION

This case arises from Applicant DM Enterprises & Distributors, Inc.’s (“DM” or “Applicant”) deliberate, knowing selection of a mark that is identical in word, appearance and design, for identical goods, to Opposer’s Cuban mark, which has been registered in Cuba since

1991, and has been in continuous use in Cuba since late 1991, and for export beginning in 1993. Applicant's mark is interfering with Opposer's attempt to register its CUBITA mark for coffee in the USPTO.

Before Applicant applied to register the CUBITA mark for coffee in May 1999, or began to use the mark in July 1999 (or obtained any prior rights by alleged assignment), Applicant knew of the prior use in Cuba of the identical CUBITA coffee mark, including as proved by DM's attorney's correspondence to attorneys in Cuba and by its alleged assignors' correspondence to Cuban officials. In such circumstances, Article 7 of the General Inter-American Convention for Trade Mark and Commercial Protection, 46 Stat. 2907 ("IAC", also known as the "Pan American Convention"), to which both the United States and Cuba are parties, entitles Opposer to prevent the registration of Applicant's interfering mark. The TTAB recently reaffirmed its jurisdiction to apply Article 7 of the IAC to determine the registerability of a mark in Opposition proceedings. *See Diaz v. Servicios de Franquicia Pardo's S.A.C.*, 83 U.S.P.Q.2d 1320, 1323-24 (T.T.A.B. 2007).

STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Opposer's CUBITA Coffee Mark

Opposer CIMEX, a Cuban corporation with its principal place of business in Havana, Cuba, owns the following registration in Cuba for the mark CUBITA & DESIGN in International Class ("IC") 30 for "roasted coffee" ("café tostado"):



Goldstein Decl. ¶¶ 3-4, Ex. 1 (Certification of General Director of the Cuban Office of Industrial Property); Ex. 2 (Cuban Trademark Office registration documents). As detailed in the Certification, the CUBITA mark for coffee was applied for in Cuba on September 4, 1991, and registered in Cuba on October 15, 1991, to Kave Coffee, S.A. Kave Coffee transferred and assigned the mark to Distribuidora CIMEX, S.A. in 1996, and in 2002, Distribuidora CIMEX transferred and assigned the mark to Opposer CIMEX. Each of these transfers took place in Cuba and was executed and registered according to Cuban law in the Cuban Industrial Property Office (“OCPI”), or its predecessor, the National Office of Inventions, Information Technology and Trademarks, in Cuba. The registration was renewed by Opposer CIMEX, S.A. for an additional 10 years in accordance with Cuban law on December 16, 2002. Goldstein Decl. Ex. 1-2; *see also* Gonzalez Decl. ¶ 20; Ex. 8.

As discussed below, CIMEX, and its predecessors before it, have sold coffee under the CUBITA mark in Cuba continuously since late 1991. Bernaza Decl. ¶¶ 4, 14-21; Exs. 4-9; Gonzalez Decl. ¶¶ 4-13, 15, 18; Exs. 6, 7, 9. Prior to the introduction of CUBITA, coffee had long been one of Cuba’s most important agricultural products, both for domestic consumption and for export, primarily as raw unprocessed coffee beans, but not as processed, packaged and branded coffee; Cuban coffee has long been renowned for its unique flavor and style of coffee,

which typically sold at higher than average prices on the world market. Bernaza Decl. ¶¶ 11, 18; Ex. 4; Goldstein Decl. Ex. 11.

In 1990, Kave Coffee determined to create and to market a high quality processed and packaged Cuban coffee product for sale to tourists in Cuba, and potentially for export from Cuba, that would promote and protect the image of Cuba and Cuban coffee. Bernaza Decl. ¶¶ 13-14. Sr. Bernaza, the President of Kave Coffee, came up with the name CUBITA, precisely to identify it with Cuba. *Id.* ¶ 14. “Cubita” is a folk name of a particular type of coffee plant grown in Cuba. *Id.* The name was also chosen because “Cubita” obviously refers to “Cuba,” using the common Spanish diminutive form (“ita”). *Id.*

Sr. Bernaza also participated in the design of the CUBITA mark and packaging in 1991, including the map of Cuba using coffee beans, and to have the colors of the Cuban flag running through the word “Cubita” on the package. *Id.* ¶¶ 5, 14; Ex. 1. CIMEX (and its predecessors) have used that design since the mark’s inception (the oval is orange and the three lines through “Cubita” are, in order, red, white and blue). Bernaza Decl. ¶ 5; Gonzalez Decl. ¶ 4; Ex. 1.

The CUBITA coffee brand was officially launched in Cuba in 1991 and sales commenced in late 1991, to hotels throughout Cuba, both for service to guests, and for sale in packages in hotel stores, and at airport duty free shops in 1992. Bernaza Decl. ¶¶ 15-16; Ex. 2. Sales rose from US\$25,000 in January 1992, to US\$150,000 by December 1992. Bernaza Decl. ¶ 18; Ex. 4. Kave Coffee issued internal quality control standards for CUBITA coffee in a document dated July 2, 1992. Bernaza Decl. ¶ 17; Ex. 2. CUBITA coffee was honored for its quality at trade fairs in Cuba in November 1993 and July 1994, and in connection with the 250th anniversary of Cuban coffee in 1998. Bernaza Decl. ¶ 21; Exs. 7-9.

Since late 1991, CUBITA coffee has been sold continuously throughout Cuba to hotels for use in restaurants within the hotels; to hotel stores for sale to retail customers; in duty free shops in airports in Cuba, including in Terminal 2 of Havana's airport, where charter flights from Miami to Cuba arrive and depart; and in hard currency stores, and has been by far Cuba's best selling processed coffee, both domestically and for export. Bernaza Decl. ¶¶ 4, 16, 21; Gonzalez Decl. ¶¶ 4, 8, 13, 15, 18, 22; Ex. 6, 7, 9. Annual sales in Cuba and abroad have increased from approximately 370 tons in 1995 to over 650 tons today. Gonzalez Decl. ¶ 15.

In approximately 1993, Kave Coffee also began to export CUBITA coffee to Canada, then to Germany, Belgium and Mexico, among others by the mid-1990's. Although not as extensive as domestic sales, today CUBITA coffee is exported to many other countries in Europe and Asia, including Ireland, the United Kingdom, Spain, Japan, Switzerland, Norway, and Caribbean nations, and is sold over the internet by CIMEX's overseas distributors, including in Canada, the UK, and Ireland. Bernaza Decl. ¶ 19, Ex. 5; Gonzalez Decl. ¶¶ 16-17, Ex. 2-5. Neither Opposer nor its predecessors have sold CUBITA-labeled coffee in the United States because of the United States embargo against goods from Cuba.

On August 10, 2007, CIMEX filed an application with the USPTO for the mark CUBITA & DESIGN, Serial No. 77252382, based on its Cuban registration, pursuant to section 44(e) of the Lanham Act, 15 U.S.C. § 1126(e). Goldstein Decl. ¶ 4, Ex. 2.¹ In a November 17, 2007, Office Action, the USPTO cited Applicant's pending application against CIMEX's application,

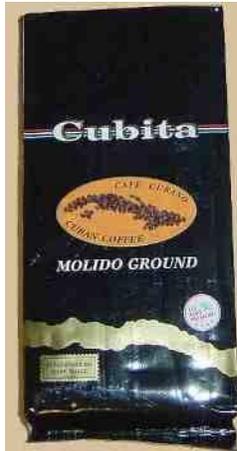
¹ The United States Treasury Department's Cuban Assets Control Regulations, 31 C.F.R. Part 515 ("CACR"), permit Cuban nationals to file trademark applications in the USPTO and to obtain and to maintain trademark registrations, and to file oppositions and cancellation petitions in connection therewith. See 31 C.F.R. § 515.527; Goldstein Decl. Ex. 3; *Corporacion Habanos, S.A. v. Guantanamera Cigars Co.*, Opp. No. 91152248, at 5 (T.T.A.B. Feb. 29, 2008) (precedential decision) (finding standing of Cuban corporation in identical circumstances to bring opposition proceeding under Section 2(e)(3)).

pursuant to section 2(d) of the Act, stating that “there may be a likelihood of confusion” between the two marks. *Id.* On February 13, 2008, CIMEX requested that action on its application be suspended pending the outcome of the instant Opposition proceeding, and the PTO issued a Notice of Suspension on March 12, 2008. *Id.* Opposer has intended, and continues to intend, to sell its CUBITA coffee in the United States as soon as U.S. law allows. Gonzalez Decl. ¶¶ 21-23; Bernaza Decl. ¶ 23.

B. Applicant’s CUBITA Coffee Mark

Applicant is a Florida corporation located in Miami, Florida, whose principal, Raul Diaz, is Cuban-American. On or about May 4, 1999, Applicant filed Application Serial No. 75/697908 for registration of the mark CUBITA in IC 30 for “coffee,” on the basis of section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a), in a stylized form *identical* to the stylized “CUBITA” of Opposer’s CUBITA mark. *See* Application File. Applicant claimed a first use date and a first use in interstate commerce date of February 13, 1994, although as discussed below, Applicant’s first use of the mark was no earlier than July 1999. DM’s attorney who filed the PTO application, Jesus Sanchelima, had full knowledge of the Cuban CUBITA coffee mark before he filed DM’s application, as discussed below.

Applicant submitted with its Application a specimen of the mark as claimed to be used in commerce, which is *identical* in design to Opposer’s CUBITA mark, including the stylized “Cubita,” with the red, white and blue lines through “Cubita” in the same order, and the coffee bean island of Cuba inside an orange oval. Applicant also included on its specimen label, in English and Spanish, “A Taste of Cuba”/“El Sabor de Cuba,” “Cuban Style,” and a description of the 200-plus year history of Cuban coffee. A side-by-side comparison of CIMEX’s CUBITA packaging and Applicant’s specimen is shown below on the following page:



See also Bernaza Decl. Ex. 1; Gonzalez Decl. Ex. 1, 9; Goldstein Decl. Ex. 4.

Both Applicant and the Examining Attorney recognized that “Cubita” expressly referred to Cuba. Application File (August 18, 1999 Office Action: “After researching, it is believed the mark means “LITTLE CUBA;” September 27, 1999 Response, accepting proposed translation; December 11, 2006 Response, stating CUBITA “means or signifies LITTLE CUBA”).

After an initial refusal based on section 2(d), DM commenced a cancellation petition against a prior registrant of the CUBITA mark in IC 30 for coffee, Registration No. 2252228. The Board denied the petition to cancel in *DM Enters. & Distributors, Inc. v. Ruta Maya Royalty, Ltd*, Canc. No. 92029327 (T.T.A.B. May 28, 2004) (“DM Op.”). Mr. Sanchelima represented DM in the proceeding. DM Op. at 1. In the cancellation proceeding, DM asserted priority over the Registrant based on DM’s representation to the Board that it had acquired its rights to the mark and had first used the mark in commerce on February 14, 1994, through a purchase and assignment in *February 1999* from “Ms. Leni Alonzo and Mr. Michael (Miguel) Angel (husband and wife) to purchase their purported rights to the mark Cubita for coffee.” DM

Op. at 4;² *see id.* at 2, 4 n.5, 13. The Board, however, found “there is no documentary evidence of use by Ms. Alonzo of the mark CUBITA for coffee *at any time.*” *Id.* at 16 (emphasis added).³

Applicant claimed that the *Registrant’s* prior use of the mark inured to its benefit because: 1) the Registrant – through its principal, Timothy Sheehan – had entered into a license agreement on March 21, 1995 with Alonzo to use the CUBITA mark for coffee (which Sheehan claimed Alonzo and Angel had procured by fraud, *id.* at 6-9, and which expired in any event on May 31, 1996, *id.* at 10-12); and 2) Alonzo had assigned all its rights in the mark to Applicant in 1999. *Id.* at 4-5, 10, 12. While questioning DM’s theory, the Board assumed, without deciding, that Registrant’s use inured to DM’s benefit based on the license, but held that Applicant’s rights could not have begun earlier than the March 21, 1995 license date, and Registrant’s use only inured to Alonzo (and DM) until the license terminated on May 31, 1996, *three* years before DM’s application and first use. *Id.* at 12-13, 16.

The Board expressly rejected Applicant’s claimed February 1994 use date, stating, “we find petitioner’s assertion of February 14, 1994 as its first use is not supported in the record.” *Id.* at 13. Rather, “petitioner itself first used the mark in July 1999.” *Id.* at 12; *see id.* at 16 (“Petitioner’s direct first use of the mark occurred in July 1999.”).⁴

After prevailing before the Board, Registrant did not file a Section 8 affidavit, and on February 7, 2007, the USPTO cancelled that registration. Goldstein Decl. Ex. 5. Following that

² Applicant continues to claim rights based on an alleged 1999 assignment from Alonzo. Goldstein Decl. Ex. 6 (Applicant’s Response to Document Request No. 1 (mark “was assigned to DM by Leni Alonzo in 1999”); Interrogatory Response No. 8).

³ Conveniently, and not so coincidentally, this unsupported first use date was two (2) days before the Registrant’s application date of February 16, 1994. DM Op. at 2 n.2.

⁴ The Board cited Raul Diaz’s testimony (not documents), that DM had minor sales of the CUBITA mark in 1999 and 2000. DM Op. at 5. DM has failed to produce *any* documents showing *any* use by DM of the mark, in response to Opposer’s specific document requests, served on March 26, 2008. Goldstein Decl. Ex. 6. In the event Opposer’s motion for summary judgment is denied, and Applicant fails to produce evidence of use, Opposer will move to amend its Opposition to allege abandonment.

cancellation, DM's Application was then published for opposition on April 17, 2007. Despite the Board's May 28, 2004 decision, Applicant did not amend its claimed first use date and claimed first use in commerce date of February 13, 1994. On May 14, 2007, the Board granted CIMEX's timely request for a 90-day extension of time to oppose the Application. On August 14, 2007, CIMEX filed its Notice of Opposition, asserting claims under Article 7 of the IAC and Sections 2(a) and 2(e)(3), 15 U.S. C. § 1052(a), (e)(3).

C. Applicant's Prior Knowledge of the Use of the Cuban CUBITA Mark For Coffee

The undisputed evidence establishes that Applicant knew of the existence and use of CIMEX's Cuban Cubita coffee mark prior to its May 1999 application and its July 1999 first use of the mark, through its own knowledge, through its attorney's knowledge, acting on its behalf, and to the extent it acquired any rights in 1995, through its purported assignors' knowledge.

As shown, *supra*, Applicant chose the identical word with the identical design used by Opposer when it filed its specimen of use in 1999. It is not possible that Applicant was unaware of the Cuban CUBITA mark, and yet somehow randomly and coincidentally chose the identical word, "Cubita," in the identical stylized form including identical lines in identical colors, in identical order, and the identical image of the island of Cuba made from coffee beans, set against the identical orange oval background.

DM is located in Miami, Florida, its CUBITA packaging is in Spanish and English, and its principal consumer base is Cuban-Americans in Miami. *See* Sampedro Decl. Ex. 1 (Sanchelima Nov. 23, 1998 letter: DM interested in marketing CUBITA coffee brand to Cuban ethnic markets; DM Op. at 5 (Diaz claimed he promoted DM's CUBITA coffee with Sedanos Supermarkets, a Miami area supermarket chain with a largely Latino, including Cuban-American clientele, *see* Goldstein Decl. Ex. 7); Goldstein Decl. Ex. 4 (DM's packaging describes Cuban

coffee, and then claims its product “*reminds us* of the delicious and aromatic taste of Cuba.” (emphasis added). Diaz traveled to Cuba from Miami, in at least 1996 and June 1999, and almost certainly through Terminal 2 of Jose Marti Airport in Havana where CUBITA coffee was on prominent display. Goldstein Decl. Ex. 6 (Interrogatory Response No. 13); Gonzalez Decl. ¶ 22; Ex. 9.

Rather than create its own coffee mark from the almost infinite universe of available names and designs, Applicant instead chose: 1) to pay \$7,000 to Alonzo and Angel in 1999 for “their purported rights to the mark CUBITA for coffee,” DM Op. at 4; 2), to introduce its own product into the market, despite the risk of being held an infringer of an already registered mark; and 3) to pursue a cancellation proceeding through trial against Sheehan/Ruta Maya. Yet Alonzo and Angel had never used the mark, which plainly had no goodwill, particularly in South Florida, and Sheehan had sold negligible quantities of CUBITA-labeled coffee in 1997 and 1998 (\$7,000 in total) in markets remote from South Florida (Texas, Colorado, North and South Dakota, Illinois), so his mark likewise had no goodwill in South Florida. *Id.* at Op. 6, 9. Nothing other than DM’s knowledge of the Cuban CUBITA can explain DM’s actions, including the expenses it chose to incur, to attempt to obtain rights to the CUBITA coffee mark, instead of creating its own mark.

DM’s attorney also clearly knew of the Cuban CUBITA while acting on DM’s behalf, and as discussed below, the attorney’s knowledge is imputed to DM. On November 23, 1998, Jesus Sanchelima, DM’s attorney, wrote to an attorney at a law firm in Havana, Cuba, Consultoria Juridica Internacional (“CJI”), stating that “we have a client interested in marketing various coffee brands, some for ethnic markets (Cuban, Haitian, etc.) in the U.S. One of those

marks is Cubita.” Sampedro Decl. ¶ 6; Ex. 1.⁵ In the letter, Mr. Sanchelima made clear that he knew of the CUBITA mark in Cuba at least since 1994, including purported efforts by Angel and Alonzo, and Sheehan to obtain U.S. rights to the mark from Kave Coffee. The letter stated that Sanchelima “must issue an opinion as full as possible concerning the actual situation of the mark in the U.S.” to his client concerning any relationship between the Cuban side and Angel.⁶

On December 21, 1998, Sanchelima wrote again to CJI “re: Cubita,” identifying “his client” as “DM Enterprise and Distributors”, the Applicant herein, and attaching information about DM, including identifying Raul Diaz as President, and supplying CJI with DM’s banking and commercial references. Sampedro Decl. ¶ 7; Ex. 2. In March 2000, Sanchelima again wrote to CJI, regarding “CUBITA mark in the U.S.,” stating, “Our firm represents DM Enterprises,” and that DM had commenced a cancellation proceeding against Sheehan. *Id.* ¶ 8; Ex. 3.

Assuming, as did the Board, that DM acquired rights in the CUBITA mark by assignment from Alonzo and Angel in 1999 (despite their lack of use of the mark, and their apparent fraud on Sheehan), and those rights accrued in March 1995 (and were not lost when the license expired in May 1996), then DM is also charged with Angel’s and Alonzo’s knowledge in 1995. Undisputed evidence proves that Alonzo and Angel knew of the Cuban CUBITA mark prior to March 1995. On July 1, 1994, Angel sent a fax to the Cuban Minister of Foreign Commerce,

⁵ When Mr. Sanchelima wrote the letter, he was CJI’s trademark attorney in the United States. On CJI’s behalf, he had applied in the USPTO for the mark CONSULTORIA JURIDICA INTERNACIONAL for legal services in March 1997, and the mark was registered in September 1998, two months before he wrote to CJI concerning his client DM’s interest in obtaining rights to the CUBITA mark in the U.S. *See* Goldstein Decl. Ex. 8.

⁶ Mr. Sanchelima’s self-serving assumptions regarding a supposed relationship between Kave Coffee and Angel or Sheehan concerning the CUBITA mark have no basis in fact, Bernaza Decl. ¶ 22, and any agreements granting U.S. rights to the CUBITA mark would have been criminal acts by Angel or Sheehan under U.S. law unless licensed by the U.S. Treasury Department’s Office of Foreign Assets Control.

enclosing a document dated June 29, 1994, from “Michael Angel Gonzalez, Managing Director, Cuba Yankee Trading Company,” and addressed to other Cuban government officials, proposing “a joint venture arrangement with the Republic of Cuba in connection with tourism and exports to the United States of America.” Acosta Decl. ¶¶ 5-6; Ex. 1.

Angel enclosed a list of “91 service and trade marks,” including CUBITA for coffee, that he falsely claimed “are owned by Leni A. Alonzo and have been actually used in interstate commerce in the [U.S.],” and “have been accepted and are either approved or pending final approval” from the USPTO. *Id.*; *see also* Ex. 2 (July 22, 1994, fax from Angel to the Minister of Foreign Commerce, proposing terms of a joint venture agreement with the Republic of Cuba and Angel and Alonzo, whereby Cuba would supply the products under the marks, including coffee). No agreements were ever entered into between Kave Coffee and Angel or Alonzo concerning the CUBITA mark, and to Opposer’s knowledge, no response was ever made to Angel’s proposals. *Id.* ¶ 5; Bernaza Decl. ¶ 22.

As Sheehan had surmised, *see* DM Op. at 6-9, Angel and Alonzo were plainly operating a trademark scam concerning Cuban marks and other associations with Cuba, including CUBITA. Between October 19, 1993 and September 1, 1994, Alonzo filed 119 intent-to use applications, including five for CUBITA, consisting of places in Cuba, popular Cuban brands, including cigar and rum marks, Cuban entities, and Cuban-associated names, *all* of which were abandoned. Goldstein Decl. Ex. 10. Alonzo had filed an intent-to-use application for CUBITA for coffee on October 19, 1993, which was abandoned in August 1995 for failure to respond to an office action. *Id.* Ex. 9. On June 24, 1994, Alonzo filed four intent-to-use applications for CUBITA for other goods, all of which were abandoned in May 1995. *Id.* Alonzo filed a sixth intent-to-use application for CUBITA for coffee in March 1996, and abandoned in April 1997. *Id.* DM

plainly knew, including through its attorney, of Angel's and Alonzo's activities when it entered into the purported 1999 assignment as part of its failed effort to assert priority over Sheehan.

ARGUMENT

SUMMARY JUDGMENT STANDARD

Summary judgment shall be granted to the moving party if the movant establishes “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Sweats Fashions, Inc. v. Pannill Knitting Co., Inc.*, 833 F.2d 1560, 1562 (Fed. Cir. 1987); TBMP § 528.01; *Diaz v. Servicios de Franquicia Pardo's S.A.C.*, 83 U.S.P.Q.2d 1320, 1326-27 (2007) (precedential decision) (granting summary judgment to party asserting rights under Article 7 of the IAC). Here, the undisputed, and indisputable, evidence demonstrates that, as in *Diaz*, Opposer is entitled to summary judgment on its IAC claim.

I. OPPOSER IS ENTITLED TO SUMMARY JUDGMENT ON ITS IAC CLAIM

A. Article 7 of the IAC is Enforceable in an Opposition Proceeding

In *Diaz*, the Board held that it has jurisdiction and authority to consider and to apply Article 7 in opposition proceedings to determine the registerability of a mark. *See Diaz*, 83 U.S.P.Q.2d at 1324-26. The IAC is a treaty in force between the United States and several countries in Latin America, including Cuba. *Id.* at 1322 & n.5; *see Treaties in Force*, at 440 (U.S. Dept. of State, Nov. 1, 2007). Thus, Opposer CIMEX is entitled to prohibit the registration of Applicant's mark upon a showing that Applicant's mark is an “interfering mark” and that Applicant was aware of the use of the CUBITA mark in Cuba for the same goods at the time it applied for and began to use the mark in mid-1999.

Article 7 of the IAC provides in full:

Any owner of a mark protected in one of the contracting states in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the contracting states, shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its registration or deposit is being sought, and upon proof that the person who is using such mark or applying to register or deposit it, had knowledge of the existence and continuous use in any of the Contracting States of the mark on which opposition is based upon goods of the same class, the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

46 Stat. 2907; *see Diaz*, 83 U.S.P.Q. 2d at 1324 (quoting Article 7 in full).

As the Board stated in *Diaz*, at 1325:

According to its plain meaning, an owner of a mark protected in a contracting state has the right to challenge the use and registration of an interfering mark in another contracting state, upon proof that the interfering party had knowledge of the existence and continuous use of the mark and upon compliance with the domestic requirements in that contracting state. The aggrieved owner may assert the preferential right to use and register the mark in the country where the claim is being asserted. Thus, the text of Article 7, when read in conjunction with the stated purpose of the treaty, clearly confers to eligible trademark owners a "preferential" or prior right where the requirements of the article have been satisfied.

Previously, the Board had held that it had jurisdiction to consider and to apply the very similar Article 8 of the IAC, which authorizes the cancellation of a registration in like circumstances. *British-American Tobacco Co. v. Phillip Morris, Inc.*, 55 U.S.P.Q.2d 1585, 1587-89 (T.T.A.B. 2000). In both *Diaz* and *British-American*, the Board found, "Consistent with the Supreme Court's decision in *Bacardi Corporation v. Domenech*, 311 U.S. 150, 161, 47 USPQ 350, 355 (1940) ('Bacardi') ... the Pan-American Convention is self-executing, and therefore became U.S. law upon ratification, requiring no special implementing legislation. As such, ... the Convention has the same force as a federal statute and provides remedies independent of the Lanham Act." *Diaz*, 83 U.S.P.Q.2d at 1323. "[T]he clear purpose of the [Pan

American Convention] is to protect the foreign trademarks which fall within the treaty's purview." *Id.* at 1325 (quoting both *Bacardi* and *British-American Tobacco*).

The Board also held in *British-American*, and reiterated in *Diaz*, "that a finding of jurisdiction did not violate the doctrine of territoriality but rather constituted an exception to the doctrine explicitly created by the Convention." *Diaz*, 83 U.S.P.Q.2d at 1323; *see British-American Tobacco Co. v. Phillip Morris, Inc.*, Canc. No. 26,549, 2001 WL 256142 (T.T.A.B. Feb. 27, 2001) (denying reconsideration of 55 U.S.P.Q.2d 1585). In *Diaz*, the Board explicitly rejected the argument that Section 44 of the Act abrogates the rights created under Article 7 of the IAC. *Diaz*, 83 U.S.P.Q.2d at 1325-26. "Thus, the text of Article 7, when read in conjunction with the stated purpose of the treaty, clearly confers to eligible trademark owners a 'preferential' or prior right where the requirements of the article have been satisfied." *Id.* at 1325.

The Board also stated that it saw "no reason to apply the logic" from two cases in the Second Circuit addressing the IAC, because "those cases pertain to rights derived from the [IAC] within the context of statutory provisions and regulations implementing the U.S. embargo against Cuba." *Id.* at 1326 (citing *Havana Club Holding, S.A. v. Galleon, S.A.*, 203 F.3d 116 (2d Cir. 2000) ("*Havana Club*") and *Empresa Cubana Del Tabaco v. Culbro Corporation* ("*Empresa*"), 213 F. Supp.2d 247 (S.D.N.Y. 2002)). However, although both cases involved Cuban parties and the embargo was relevant to parts of those courts' holdings, neither of those cases addressed the IAC issue in connection with the embargo. Rather, those cases disagree with the Board on the *a priori* question of whether the IAC is still self-executing, as the Supreme Court held in *Bacardi*, after enactment of the Lanham Act, wholly unrelated to the Cuban embargo.

Havana Club did not address Articles 7 or 8 of the IAC. After finding, contrary to the Board, that the IAC was no longer self-executing (unrelated to the Cuban embargo), 203 F.3d at

128-29, the court determined that the terms of the IAC *were* enforceable under sections 44(b) and (h) of the Act, 15 U.S.C. § 1127(b), (h), but only to the extent the provisions were related to the repression of unfair competition, and found that Article 23 (false indications of geographic origin) was not so related, but that other rights addressed in the IAC were enforceable, such as protection of trade names (Art. 18), and specified acts of unfair competition under Art. 21(c) (“unless effectively dealt with” under domestic law) (again, unrelated to the Cuban embargo). 203 F.3d at 134-35 & n.19.⁷

Both the district court and the Second Circuit in *Empresa* addressed Articles 7 and 8 of the IAC, bound by *Havana Club*'s (erroneous, in the Board's and Opposer's view) holding that the IAC is not self-executing, and concluded that Articles 7 and 8 were unenforceable because they did not involve the repression of unfair competition under section 44(h) of the Act, 15 U.S.C. § 1127(h) (again, unrelated to any issue concerning the embargo). *Empresa*, 213 F.Supp.2d. at 278-84, *aff'd in relevant part*, 399 F.3d 462, 482-83 (2d Cir. 2005). Although not directly relevant here, given the Board's position that Articles 7 and 8 are self-executing, the Second Circuit's holding that IAC Art. 7, concerning the protection of trademark rights, a core subspecies of unfair competition, is not concerned with the “repression of unfair competition,” appears plainly wrong.

Because nothing in the decisions in the Second Circuit addressing the IAC turn on the Cuban embargo, and nothing in the Cuban embargo otherwise affects rights under the IAC,

⁷ The only discussion of the embargo in connection with the IAC issue was the court's conclusion that the plaintiff could not assert IAC trade name rights through section 44 in connection with “HAVANA CLUB,” because a later-enacted statute (known as “section 211”) deprived Cuban parties of rights in marks existing in Cuba that had been confiscated after the Cuban Revolution in 1959. 203 F.3d at 127-29. Because CUBITA is not a pre-Revolution confiscated mark, section 211 has no application here.

CIMEX is entitled to the same rights and protections available to any other national whose country is a signatory to the IAC.

B. CIMEX is Entitled to Prevail Under Article 7 of the IAC

To prevail on its Article 7 claim on summary judgment, CIMEX:

must establish that there is no genuine dispute (1) that it is the owner of a [CUBITA] mark protected in [Cuba]; (2) that [CIMEX] may have known that [DM] is using or applying to register an interfering mark in the United States; (3) that [DM] had knowledge of the existence and continuous use in [Cuba] of the [CUBITA] mark in connection with [goods] in the same class prior to his use of the [CUBITA] mark in the United States; and (4) that [opposer] has complied with the requirements set forth in the domestic legislation in the United States and the requirements of the Pan American Convention -- that is, filing for protection of its mark under Section 44 of the Lanham Act.

Diaz, 83 U.S.P.Q.2d at 1328. Each of these four elements are easily met here. First, Opposer is the “the owner of a [CUBITA] mark protected in [Cuba],” as the CUBITA mark is properly registered in Cuba in Opposer’s name, the registration has been renewed and is in effect, and the mark is in use in Cuba. *See pp. 2-5, supra*, and evidence cited therein.

Second, Applicant has “applied to register an ‘interfering mark’ in the United States.” *Diaz*, 83 U.S.P.Q.2d at 1328. Applicant’s pending application for CUBITA uses the identical word mark, for the identical goods -- coffee -- as Opposer’s Cuban registration and its USPTO application. Further, as in *Diaz*, “[t]he stylization [of Cubita] is identical to [CIMEX’s] registered mark in [Cuba].” *Id.* The PTO has cited Applicant’s pending application against Opposer’s application, and has suspended Opposer’s application pending resolution of this Opposition against that application. Goldstein Decl. Ex. 2; *see also* DM Op. at 10 & n.8 (finding likelihood of confusion between identical CUBITA word marks used on identical goods (coffee), despite design feature in one mark).

Taking the fourth element next, CIMEX, “by virtue of filing its application under Section 44(e) of the Lanham Act has complied with the requirements set forth in the domestic legislation in the United States,” including that CIMEX has a *bona fide* intent to use its mark in commerce in the United States as soon as United States law allows. *Diaz*, 83 U.S.P.Q.2d at 1330; *see* Gonzalez Declaration ¶¶ 21-23. CIMEX has otherwise satisfied all requirements for registration. Goldstein Decl. Ex. 2 (Notice of Suspension).

Finally, as to the third factor, there is no genuine issue of material fact “that [DM] had knowledge of the existence and continuous use in [Cuba] of the [CUBITA] mark in connection with [goods] in the same class prior to [its] use of the [CUBITA] mark in the United States.” *Diaz*, 83 U.S.P.Q.2d at 1328. Applicant, Applicant’s attorney and Applicant’s alleged assignor, both of whose knowledge is chargeable to DM, *all* knew of the CUBITA mark for coffee in Cuba prior to Applicant’s first use or application for the mark, regardless whether that first use is treated as 1995 or 1999.

First, and dispositively, Applicant’s counsel, Jesus Sanchelima, who filed DM’s application, and who prosecuted the cancellation petition against Ruta Maya, plainly knew of the existence and use of the CUBITA coffee mark in Cuba, as shown in his 1998 letters to the Cuban attorneys, on behalf of his client DM. Not only is counsel’s knowledge imputed to DM as a matter of law, *even if* the knowledge was not communicated, but the letters are explicit that the *purpose* of Mr. Sanchelima’s inquiries were to provide DM with a “full opinion” on rights to the CUBITA mark in the U.S. in connection with any alleged relationship between the Cuban mark and either Angel or Sheehan in the United States. Sampedro Decl. Ex. 1 (after discussing Cuban CUBITA mark and possible relationship with Angel or Sheehan, stating “Our client is interested in selling the brand and I must issue as complete an opinion as possible about the current

situation of said mark in the US.”). Sanchelima’s knowledge is dispositive, and the Board need look no further.

“The relationship between an attorney and the client he or she represents in a lawsuit is one of agent and principal.” *Veal v. Geraci*, 23 F.3d 722, 725 (2d Cir. 1994). It has long been settled, black letter law that

each party is deemed bound by the acts of his lawyer-agent and is considered to have ‘notice of all facts, notice of which can be charged upon the attorney.’ [*Link v. Wabash Railroad Co.*, 370 U.S. 626, 634, 82 S.Ct. 1386, 1390 (1962)] (citation and footnote omitted). The best test for determining whether notice to or knowledge of an agent, such as an attorney, is imputed to his or her principal or client is whether the condition and facts known by the agent were within the sphere of authority of that particular agent. *See* 3 Fletcher, *Fletcher Cylopedia* at § 807 and 807.10.

Gutter v. E.I. Dupont De Nemours, 124 F.Supp.2d 1291, 1309-10 (S.D.Fla. 2000); *Bertram Yacht Yard, Inc. v. Florida Wire & Rigging Works, Inc.*, 177 So.2d 365, 366 (Fla. App. 1965) (“general rule is well settled that a principal is chargeable with notice or knowledge received by his agent while acting within the scope of his authority”) (internal quotations omitted). Plainly, Sanchelima’s knowledge concerning the Cuban CUBITA mark was “within the sphere of [his] authority,” as Sanchelima expressly stated in his November 23, 1998 letter.

When acting within the scope of the agency, “the agent’s knowledge is imputed to the principal.... ‘A person has notice of a fact if his agent has knowledge of the fact.’” *Veal*, 23 F.3d at 725 (quoting *Restatement (Second) of Agency* § 9(3); citing *id.* §§ 268, 272, 275). Thus, “whether or not Veal himself heard Geraci’s testimony, Veal’s attorney plainly had knowledge of the conduct giving rise to Veal’s present claim, and under traditional principles of agency the attorney’s knowledge must be imputed to Veal.” *Id.*; *see Immunocept, LLC v. Fulbright & Jaworski, LLP*, 504 F.3d 1281, 1287, (Fed. Cir. 2007) (attorney’s knowledge imputed to client; “Noticeably absent from the imputation rule is a requirement that the attorney have a duty to

disclose information to the client.”); *Belton Ind., Inc. v. United States*, 6 F.3d 756, 761 (Fed Cir. 1993) (“Notice to counsel is notice to the client”).

Thus, whether or not Sanchelima “issued as complete an opinion as possible” to DM concerning the CUBITA mark, as he insisted to the Cuban attorneys he “must,” Sampedro Decl., Ex. 1, Mr. Sanchelima’s knowledge, must, as a matter of law, be imputed to DM.

Second, the evidence is overwhelming that Applicant in fact had prior knowledge of the Cuban CUBITA mark. As in *Diaz*, the Board is not required to turn a blind eye to reality, even if an applicant refuses to admit the plain truth. DM’s application and specimen is a virtually identical copy of the complex and elaborate multi-colored, multi-element design that Opposer uses for its CUBITA mark. It is impossible that DM could have independently created this identical packaging without knowledge of the use in Cuba of the CUBITA mark. DM has not produced any documents or made any claim that it created the mark.

Third, there is no plausible explanation for Applicant’s decision to pay \$7,000 for an assignment of purported rights from Alonzo and Angel, and then to fight Sheehan through trial and judgment, concerning rights in a mark with no goodwill in Florida, unless DM was aware of the Cuban CUBITA mark, and of that mark’s reputation and goodwill among Cuban-Americans, which DM believed it could exploit successfully in South Florida, and in the event the embargo was lifted or relaxed. Indeed, in the absence of knowledge of the Cuban CUBITA mark, it would have been nonsensical for Applicant to incur the assignment and litigation expenses, and the risk of infringement of Sheehan’s purported rights, rather than creating its own mark from the available universe.

Fourth, Applicant’s specimen promoted its CUBITA-labeled coffee as “Cuban style” and “Taste of Cuba/El Sabor de Cuba.” Applicant’s principal, who is Cuban-American, traveled to

Cuba at least in 1996 and June 1999, prior to his first use, DM is located in Miami, Florida, its CUBITA packaging is in Spanish and English, and its principal consumer base is Cuban-Americans in Miami. (As noted, DM, in fact, has not produced in discovery *any* documentary evidence of *any* use of the mark at *any* time.). These facts, especially when taken together, demonstrate that Applicant directly knew of Cuba’s best selling coffee product sold throughout Cuba – including duty free shops in the Havana airport, through which Diaz necessarily passed – and exported throughout the world, when DM adopted the mark in mid-1999.

Fifth, there is no dispute that Applicant’s alleged assignors, Angel and Alonzo, had knowledge of the Cuban CUBITA mark prior to March 1995, the earliest DM could have acquired any rights by assignment. Thus, if DM continues to claim rights by assignment, and assuming a lawful assignment, and assuming without deciding, as did the Board, that the assignment gave DM rights based on Sheehan’s use of the mark as of March 1995, Angel and Alonzo’s undisputed knowledge of the use of the CUBITA mark in Cuba for coffee in 1995 must be imputed to DM, as their assignee, as a matter of law.

“As in a principal/agent relationship, the knowledge of an assignor *must* be attributed to its assignee....Plaintiff as assignee stands in the shoes of his assignors and their knowledge is his.” *Hyosung America, Inc. v. Sumagh Textile Co., Ltd*, 934 F. Supp. 570, 576-77 (emphasis added) (internal citations and quotations omitted), *aff’d in relevant part*, 137 F.3d 75 (2d Cir.1998); *id.* at 574 (reciting “familiar principle that the knowledge of both agents and assignors are imputed, as a matter of law, to their principals and assignees, respectively”). In *FDIC v. Shrader & York*, 991 F.2d 216 (5th Cir. 1993), the Court refused to treat the FDIC “differently than any other assignee”; “[b]ecause the FDIC could only recover those damages potentially available to [its assignor], we held that the bank officer’s knowledge, which would have been

imputed to the bank [as principal/agent], was imputable to the FDIC” as the bank’s assignee. *Id.* at 222-23 (internal quotations omitted); *R.L. Polk & Co. v. INFOUSA, Inc.*, 230 F.Supp. 2d 780, 794 (involving trademark assignment, “noting that ‘the knowledge of an assignor must be attributed to its assignee’”) (quoting *Hyosung America, supra*); J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 18:15 (4th ed. 2002) (noting that “an assignee, by following in the footsteps of the assignor, acquires not only all the rights and priorities of the assignor, but also any burdens and limitations on use that were incumbent on the assignor”); *Marshak v. Treadwell*, 58 F.Supp.2d 551, 557 (D.N.J. 1999) (“There has been no dispute that Marshak stands in the shoes of his assignors and that Marshak can have no greater trademark rights than they had.... Therefore, fraud may be established by evidence that [assignors] knowingly made material misrepresentations in connection with their trademark application.”).

DM stands in the shoes of Angel and Alonzo as to both their rights and their liabilities in the mark, including liabilities under Article 7 of the IAC. Thus, DM cannot claim *rights* accruing in 1995 based on the assignment, yet escape the assignors’ knowledge of the CUBITA mark in Cuba at that time, which “must be attributed to” DM as a matter of law. *Hyosung America*, 934 F.Supp at 576-77.

CONCLUSION

For the reasons stated herein, and on the papers submitted herewith, Opposer’s motion for summary judgment sustaining the Opposition and refusing registration of Applicant’s mark, CUBITA, Serial No. 75/697908, should be granted.

Dated: New York, New York
June 9, 2008

Respectfully submitted,

/David B. Goldstein/
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RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
111 Broadway, 11th Floor
New York, New York 10006-1901
Tel: (212) 254-1111
Fax: (212) 674-4614
dgoldstein@rbskl.com

Attorneys for Opposer Corporation CIMEX, S.A.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Motion for Summary Judgment and Memorandum of Law in Support was served by electronic mail by agreement of the parties on June 9, 2008; and further that said document and the Declarations and Exhibits thereto of Juan Antonio Gonzalez Alvarez, Gonzalo Manuel Bernaza Mayor, Ada Acosta Marinez, Reynol Sampedro Vazquez and David B. Goldstein were served by Express Mail, postage prepaid, on June 9, 2008, upon:

Mitchell Mandler
Becker & Poliakoff, P.A.
121 Alhambra Plaza, 10th Floor
Coral Gables, FL 33134
MMandler@becker-poliakoff.com
Attorneys for Applicant DM Enterprises & Distributors, Inc.

/David B. Goldstein/
DAVID B. GOLDSTEIN

**Declaration of Translation
of
The Declaration of Ada Acosta Martinez**

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 Ada Acosta Martinez from Spanish into English. I attach hereto a copy of the original documents in Spanish and the translation thereof which is a true and correct translation into English.

Signed this 4th day of June 2008


DEBRA EVENSON

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

CORPORACION CIMEX, S.A.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91178943
)	
DM ENTERPRISES & DISTRIBUTORS, INC.,)	
)	
Applicant.)	
)	

DECLARACIÓN DE ADA ACOSTA MARTINEZ

Yo, Ada Acosta Martínez declaro lo siguiente:

1. Soy mayor de 18 años, en pleno goce de mis facultades mentales y con capacidad de brindar el siguiente testimonio. Hago esta Declaración basada en el conocimiento personal de los hechos que aquí se mencionan.
2. Resido en la calle Carmen No.360, Víbora, La Habana, Cuba.
3. Hablo con fluidez y tengo perfecto conocimiento del idioma español, mi idioma natal. También tengo conocimientos para leer y hablar el idioma Inglés, pero no me considero capaz de escribir en Inglés, por lo tanto hago esta Declaración en español.
4. Estoy retirada actualmente. Estudié dos años Ciencias Sociales en la Universidad de La Habana desde 1968. Me gradué del Instituto del Comercio Exterior en 1972. De 1963 a 1980 trabajé como especialista de marcas y patentes en la Cámara de Comercio de la República de Cuba, La Habana. De 1980 a 1995 fui Directora del Departamento de Marcas y Patentes de la Cámara de Comercio de la República de Cuba.

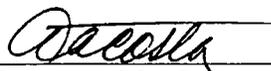
5. Como funcionaria de la Cámara de Comercio, alrededor de Agosto de 1994, recibí dos documentos enviados por fax de Michael Angel Gonzalez dirigidos a funcionarios del Gobierno Cubano, adjuntos a la presente e identificados abajo como Anexos 1 y 2. Envié estos dos documentos a los abogados norteamericanos Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. en Nueva York. No tengo conocimiento que se haya respondido al Sr. Michael Angel González en relación con el asunto tratado en estos dos documentos.

6. Se adjunta al presente como Anexo 1 una copia verdadera y fiel del documento de seis páginas enviado por fax por Michael Angel González con portada de fax fechada en julio 1, 1994, enviado a Ricardo Cabrisas Ruiz, Ministro de Comercio Exterior y con un segundo portada de fax de Michael Angel González de fecha junio 29, 1994 dirigida a varios funcionarios del Gobierno Cubano (C00274-279). Este documento es una copia de uno de los dos documentos que yo revisé y envié a los abogados norteamericanos, como se menciona en el párrafo 5 arriba.

7. Se adjunta a la presente como Anexo 2 una copia fiel y correcta del documento de seis páginas mandado por fax por Michael Angel González con una portada de fax de fecha Julio 22, 1994 dirigida al Licenciado Ricardo Cabrisas Ruiz, Ministro, Ministerio de Comercio Exterior (C00280-285). Este documento es una copia de uno de los dos documentos que revisé y envié a los abogados norteamericanos como se describe en el párrafo 5 arriba.

Yo declaro bajo pena de perjurio ante las leyes de los Estados Unidos que a mi leal saber y entender lo anterior es verdadero y fiel.

Fechado este 3 de junio de 2008



Ada Acosta Martinez

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

CORPORACION CIMEX, S.A.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91178943
)	
DM ENTERPRISES & DISTRIBUTORS, INC.,)	
)	
Applicant.)	
)	

DECLARATION OF ADA ACOSTA MARTINEZ

I, ADA ACOSTA MARTINEZ, declare as follows:

1. I am over the age of 18, of sound mind, and capable of giving the following testimony. I make this Declaration based on my own personal knowledge of the facts that are stated herein.

2. I reside at Calle Carmen No. 360, Vibora, City of Havana, Cuba.

3. I am fluent and perfectly literate in Spanish, my native language. I also have a reading and speaking knowledge of English, but do not consider myself capable of writing in English, and therefore I make this Declaration in Spanish.

4. I am currently retired. I studied Social Sciences for two years at the University of Havana from 1968-1970. I received a diploma from the Institute of Foreign Commerce in 1972. From 1963 to 1980 I was employed as a specialist in trademarks and patents at the Chamber of Commerce of the Republic of Cuba, in Havana. From 1980 to 1995, I was the Director of the Department of Trademarks and Patents of the Chamber of Commerce of the Republic of Cuba.

5. In my capacity as an official at the Chamber of Commerce, in or about August 1994, I received two documents sent by Michael Angel Gonzalez by facsimile, addressed to

officials in the Government of Cuba, attached hereto and identified as Exhibits 1 and 2. I sent these two documents to United States counsel, Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., in New York. I have no knowledge whether any response was ever made to Mr. Angel Gonzalez regarding the matters addressed in the two documents.

6. Annexed hereto as Exhibit 1 is a true and correct copy of a six-page document sent by fax from Michael Angel Gonzalez, with a fax cover sheet dated July 1, 1994, addressed to Lic. Ricardo Cabrisas Ruíz, Minister, Ministry of Foreign Commerce, and with a second fax cover page from Michael Gonzalez Angel, dated June 29, 1994, and addressed to several officials in the Cuban government (C00274-279). This document is a copy of one of the two documents I reviewed and forwarded to U.S. counsel, as stated in paragraph 5 above.

7. Annexed hereto as Exhibit 2 is a true and correct copy of a six-page facsimile document from Michael Angel Gonzalez, with a "fax cover sheet" dated July 22, 1994, addressed to Lic. Ricardo Cabrisas Ruíz, Minister, Ministry of Foreign Commerce (C00280-285). This document is a copy of one of the two documents I reviewed and forwarded to U.S. counsel, as described in paragraph 5 above.

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 3rd day of June, 2008
Havana, Cuba

ADA ACOSTA MARTINEZ

**Declaration of Translation
of
Pages from Exhibits 1 and 2 of the
The Declaration of Ada Acosta Martinez**

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 following documents from Spanish into English:

a) Exhibit 1, pages 1 and 2, attached to the Declaration of Ada Acosta Martinez

b) Exhibit 2, page 1, attached to the Declaration of Ada Acosta Martinez

I attach hereto a copy of the original documents in Spanish and the translation thereof which is a true and correct translation into English.

Signed this 4th day of June 2008

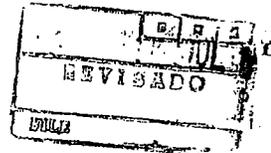


DEBRA EVENSON

ACOSTA DECLARATION EXHIBIT 1



TELEVISION
de MEXICO



FAX COVER SHEET

PARA: LIC. RICARDO CABRISAS RUIZ
MINISTRO
MINISTERIO DE COMERCIO EXTERIOR.

FAX NO. 98-537-8-62-24- - - - -

DE: MICHAEL ANGEL GONZALEZ
PRESIDENTE DE VIRGIN TELEVISION DE MEXICO

FECHA: 1 JULIO 1994

A handwritten signature in black ink, appearing to be "M. Gonzalez", written over the recipient's name.

NO. DE PAGINAS INCLUYENDO PORTADA: ____6____
NO. OF PAGES INCLUDING COVER:
NUESTRO NO. DE FAX: (525) 546-7416, (525) 546-3053
OUR FAX NO:
NUESTRO NO. DE TEL: (525) 546-6513, 546-9889
OUR TELEPHONE NO.: 546-3686, 705-3371

....

FAX: 98 (537)33-5260 LA HABANA, CUBA

ATENCION: ISAIAS DIAZ CAMPOS, JEFE DESPACHO

PRIVATE AND CONFIDENTIAL 5 PAGES

DATE: JUNE 29, 1994

**TO: CARLOS LAGE DAVILA, VICE PRESIDENTE
COMITE EJECUTIVO DEL CONSEJO DE MINISTROS
LA HABANA, REPUBLICA DE CUBA**

**FROM: MICHAEL GONZALEZ ANGEL
MANAGING DIRECTOR
CUBA YANKEE TRADING COMPANY
11807 THUNDERBIRD AVENUE
NORTHRIDGE, CA 91326
U.S.A.
TEL: (818)360-4297
FAX: (818)349-0403**

**CC: ERNESTO MELENDEZ BACHS, MINISTRO
MINISTERIO DE INVERSIONES EXTRANJEROS
Y COLABORACION ECONOMICA
FAX: 98 (537) 33-3496**

**MARGARITA SOLANA VALDES
CONSEJERA COMERCIAL
EMBAJADA DE CUBA, EN MEXICO**

**GUILLERMO GARCIA
REPRESENTANTE DE EMPRESAS
EMBAJADA DE CUBA, EN MEXICO**

**RE: PLEASE CONTACT ME AT YOUR EARLIEST
CONVIENENCE TO ARRANGE A MEETING IN LA
HABANA, CUBA OR IN MEXICO CITY, MEXICO.
CUBA YANKEE TRADING COMPANY IS INTERESTED IN
A JOINT VENTURE ARRANGEMENT WITH THE REPUBLIC
OF CUBA IN CONNECTION WITH TOURISM AND
EXPORTS TO THE UNITED STATES OF AMERICA.**

①

FAX 90

VIRGIN TV MEXICO

P03

I LIVE AND WORK IN MEXICO CITY, MEXICO. YOU CAN REACH ME AT THE FOLLOWING ADDRESS AND TELEPHONES:

MIGUEL ANGEL GONZALEZ
PRESIDENTE
VIRGIN TELEVISION DE MEXICO
LIVERPOOL NO. 17
COLONIA JUAREZ
CIUDAD DE MEXICO
06600 MEXICO, D.F.

TEL: 546-9889
FAX: 546-9414

THE FOLLOWING SERVICE AND TRADE MARKS ARE OWNED BY LENI A. ALONZO AND HAVE BEEN ACTUALLY USED IN INTERSTATE COMMERCE IN THE UNITED STATES OF AMERICA AS REQUIRED BY LAW. ALL THE MARKS HAVE BEEN DULY FILED IN THE PATENT AND TRADEMARK OFFICES OF BOTH THE STATE OF FLORIDA AND THE UNITED STATES OF AMERICA (FEDERAL) IN WASHINGTON, D.C. ALL APPLICATIONS HAVE BEEN ACCEPTED AND ARE EITHER APPROVED OR PENDING FINAL APPROVAL AT THIS TIME. THERE IS A TOTAL OF 91 SERVICE AND TRADE MARKS. IT IS ANTICIPATED THAT THESE MARKS WILL BE IMPORTANT WHEN TRADE BETWEEN THE UNITED STATES OF AMERICA, (PARTICULARLY FLORIDA), AND CUBA IS NO LONGER PROHIBITED BY LAW.

SERVICE MARKS

IMPORT/EXPORT 1
CUBA YANKEE TRADING COMPANY

AIR TRAVEL 1
CUBAir

TOURIST SERVICES 10

CUBANACAN
GAVIOTA
INTUR
CUBATUR
HAVANATUR
CUBAMAR
ECOCUBA
CUBA BEACH CLUB
CUBA TRAVEL NETWORK
THE CUBA VACATION EXPERT.

(slogan)

TRADE MARKS**CIGARS 22**

CUBANO
CUBA!
HAVANA CLASSICO
CUBATABACO
HABANERA
CRISTOBAL COLON
J. CANO
LINEA 1492
HARVARD AND HAVANA
HABANO
LA HABANA
CUBANA
VARADERO
HABANERO
CUBANITA
CUBANITO
CUBITA
HAVANA PURO
VUELTA ABAJO
PINAR DEL RIO
THE TASTE OF CUBA
THE TASTE OF HAVANA

(slogan)

(slogan)

SUGAR 15

HAVANA
CUBAZUCAR
CUBA!
HABANERA
HABANO
LA HABANA
CUBANO
CUBANA
VARADERO
HABANERO
CUBANITA
CUBANITO
CUBITA

(slogan)

THE TASTE OF CUBA

(slogan)

THE TASTE OF HAVANA

RUM 16

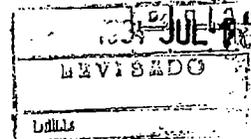
CUBA!
ARECHABALA
CANEY
HABANERA
HABANO
LA HABANA
CUBANO
CUBANA
VARADERO
HABANERO
CUBANITA
CUBANITO
CUBITA

(slogan)

HAVANA BAY
THE TASTE OF CUBA

(slogan)

THE TASTE OF HAVANA

**PERFUME 11**

SUCHEL
MARIPOSA
CUBA!
ALICIA ALONSO
CUBANO
CUBANA
VARADERO
CUBANITA
CUBANITO
CUBITA
THE SCENT OF CUBA

(slogan)

COFFEE 14

HAVANA
CUBA!
CUBITA
HABANERA
HABANO
LA HABANA
CUBANO
CUBANA
VARADERO
HABANERO
CUBANITA
CUBANITO
THE TASTE OF CUBA
THE TASTE OF HAVANA

(slogan)

(slogan)

SPORTING GOODS 1

BATOS

**ACOSTA DECLARATION EXHIBIT 1
TRANSLATION**

FAX: 98 (537) 33-5260 HAVANA, CUBA

ATTENTION: ISAIAS DIAZ CAMPOSE, CHIEF OF STAFF

PRIVATE AND CONFIDENTIAL 5 PAGES

DATE: JUNE 29, 1994

TO: CARLOS LAGE DAVILA, VICE PRESIDENT
EXECUTIVE COMMITTEE OF THE COUNCIL OF MINISTERS
HAVANA, REPUBLIC OF CUBA

FROM: MICHAEL GONZALEZ ANGEL
MANAGING DIRECTOR
CUBA YANKEE TRADING COMPANY
11807 THUNDERBIRD AVENUE
NORTHRIDGE, CA 91326
U.S.A.
TEL: (818) 360-4197
FAX: (818) 349-0403

CC: ERNESTO MELENDEZ BACHS, MINISTER
MINISTER OF FOREIGN INVESTMENT
AND ECONOMIC COLABORATION
FAX: 98 (527) 33-3496

MARGARITA SOLANA VALDES
COMMERCIAL CONSULTANT
EMBASSY OF CUBA, IN MEXICO

GUILLERMO GARCIA
REPRESENTATIVE OF ENTERPRISES
EMBASSY OF CUBA, IN MEXICO

RE: PLEASE CONTACT ME AT YOUR EARLIEST
CONVENIENCE TO ARRANGE A MEETING IN HAVANA,
CUBA OR IN MEXICO CITY, MEXICO.
CUBA YANKEE TRADING COMPANY IS INTERESTED IIN
A JOINT VENTURE ARRANGEMENT WITH THE REPUBLIC
OF CUBA IN CONNECTION WITH TOURISM AND
EXPORTS TO THE UNITED STATES OF AMERICA.

Virgin
[LOGO]

TELEVISION
OF MEXICO

FAX COVER SHEET

**TO: LIC. RICARDO CABRISAS RUIZ
MINISTER
MINISTRY OF FOREIGN COMMERCE**

FAX NO. 98-537-8-62-24

**FROM: MICHAEL ANGEL GONZALEZ
PRESIDENT OF VIRGIN TELEVISION OF MEXICO**

DATE: JULY 1, 1994

NO. OF PAGES INCLUDING COVER: 6

NO. OF PAGES INCLUDING COVER:

OUR FAX NO.: (525) 548-7418, (525) 546-3053

OUR FAX NO:

OUR TELEPHONE NO: (525) 546-6513, 548-9889

OUR TELEPHONE NO: 546-3696, 705-3371

• * * *

ACOSTA DECLARATION EXHIBIT 2



TELEVISION
de MEXICO

FAX COVER SHEET

FECHA: 22 JULIO 1994

PARA: LIC. RICARDO CABRISAS RUIZ.
MINISTRO
MINISTERIO DE COMERCIO EXTERIOR

FAX NO: 98 (537) 78-62-34

DE: MICHAEL ANGEL GONZALEZ
PRESIDENTE
VIRGIN TELEVISION DE MEXICO

A handwritten signature in black ink, appearing to be "Michael Angel Gonzalez", written over the typed name.

NO. DE PAGINAS INCLUYENDO PORTADA: 6

NO. OF PAGES INCLUDING COVER:

NUESTRO NO. DE FAX: (525) 546-7416, (525) 546-9414

OUR FAX NO:

NUESTRO NO. DE TEL: (525) 546-6513, 546-9889

OUR TELEPHONE NO.: 546-3686, 705-3371

....

JULY 22, 1994

CUBA YANKEE TRADING COMPANY

JOINT VENTURE PROPOSAL TO THE REPUBLIC OF CUBA

I. JOINT VENTURE LEGAL FORM

1. CUBA YANKEE TRADING COMPANY IS A LEGALLY FORMED CORPORATION INCORPORATED UNDER THE LAWS OF GRAND CAYMAN, WITH OFFICES IN GEORGETOWN

2. MICHAEL GONZALEZ ANGEL IS THE PRESIDENT AND SOLE STOCKHOLDER (100%)

3. MICHAEL GONZALEZ ANGEL IS THE MANAGING DIRECTOR AND SOLE INVESTOR (WITH WIFE: LENI ALCANTARA ALONZO)

4. ADDRESS IN UNITED STATES OF AMERICA:

**MICHAEL GONZALEZ ANGEL
MANAGING DIRECTOR
CUBA YANKEE TRADING COMPANY
11807 THUNDERBIRD AVENUE
NORTHRIDGE, CALIFORNIA 91326
U.S.A.**

**TEL: (818)368-4297
FAX: (818)349-0403**

PAGE 1

6. CORPORATE LEGAL REPRESENTATION:

**JAMES D. WHISENAND, ESQUIRE
ATTORNEY AT LAW
WHISENAND AND TURNER
SUITE 200
501 BRICKELL KEY DRIVE
MIAMI, FLORIDA 33131**

**TEL: (305)375-8484
FAX: (305)374-2919
INT'L. TELEX: 441207**

**II. WHAT CUBA YANKEE TRADING COMPANY IS
OFFERING THE REPUBLIC OF CUBA.**

- 1. OWNERSHIP OF COMMON STOCK/EQUITY
51% MICHAEL GONZALEZ ANGEL
49% REPUBLIC OF CUBA**
- 2. TRANSFER OF ALL TRADE AND SERVICE MARKS
FILED IN THE UNITED STATES OF AMERICA AND
THE STATE OF FLORIDA IN CONNECTION WITH
CUBA\USA TRADE TO CUBA YANKEE TRADING
COMPANY IN GRAND CAYMAN**

PAGE 2

3. ESTABLISHMENT IN MIAMI AND U.S.A. OF IMPORTERS\DISTRIBUTORS FOR ALL PRODUCT AND SERVICE CATEGORIES IN WHICH SERVICE AND TRADE MARKS ARE REGISTERED:

**AIR TRAVEL
TOURIST SERVICES
CIGARS
SUGAR
RUM
PERFUME
COFFEE
SPORTING GOODS**

4. NEGOTIATION WITH OTHER COMPANIES THAT HAVE TRADE OR SERVICE MARKS REGISTERED IN THE U.S.A. RELATED TO CUBA\U.S.A. TRADE, IN THE ABOVE MENTIONED PRODUCT AND SERVICE CATEGORIES;

**I.E. H. UPPMAN, POR LARRANGA,
MONTECRISTO, HAVANA CLUB, ETC.**

5. FINANCE THE MODERNIZATION AND IMPROVEMENT OF FACTORIES, FARMS AND INFRASTRUCTURE IN CUBA TO SUPPORT THE EXPORT OF PRODUCTS AND SERVICES TO THE U.S.A. OF THE ABOVE MENTIONED PRODUCT AND SERVICE CATEGORIES

6. FINANCE THE ADVERTISING, PUBLIC RELATIONS, PROMOTION AND PUBLICITY TO SUPPORT THE DISTRIBUTION AND SALE OF THE ABOVE MENTIONED PRODUCTS AND SERVICES FROM CUBA IN THE UNITED STATES OF AMERICA

7. FINANCE THE INVESTMENT REQUIRED TO RESEARCH AND DEVELOP OTHER NON-TRADITIONAL INDUSTRIES (PRODUCTS AND SERVICES) IN CUBA FOR EXPORT TO THE U.S.A., INCLUDING THE MARKET RESEARCH, EXPORT AND DISTRIBUTION IN THE U.S.A.

THIS FINANCING CAN TAKE THE FORM OF JOINT VENTURE EQUITY OWNERSHIP BY CUBA YANKEE TRADING COMPANY

III. WHAT THE REPUBLIC OF CUBA WILL PROVIDE IN EXCHANGE FOR THIS PARTICIPATION IN CUBA YANKEE TRADING COMPANY.

1. IN EXCHANGE FOR 49% STOCK OWNERSHIP IN CUBA YANKEE TRADING COMPANY, THE REPUBLIC OF CUBA WILL PROVIDE EXCLUSIVE EXPORT TRADING RIGHTS (TO THE U.S.A. ONLY) FOR THE ABOVE MENTIONED PRODUCT AND SERVICE CATEGORIES TO CUBA YANKEE TRADING COMPANY

- 2. CUBA YANKEE TRADING COMPANY SHALL BE PAID A 10% (TEN PERCENT) ROYALTY ON ALL GOODS EXPORTED OR SERVICES SOLD TO THE U.S.A. THAT ARE SPECIFIED IN THE ABOVE MENTIONED PRODUCT AND SERVICE CATEGORIES BY THE IMPORTER OF SAID GOODS AND PURCHASER OF SERVICES. THIS WILL BE ENFORCED BY THE REPUBLIC OF CUBA BY PROPER CONTROL AND ADMINISTRATION OF APPROVALS AND PERMITS THAT SHALL BE REQUIRED FOR THE EXPORT OF GOODS AND SALE OF SERVICES. THIS ROYALTY SHALL BE PAID FOR THE USE OF SERVICE AND TRADE MARKS OWNED BY CUBA YANKEE TRADING COMPANY AND WILL ALSO BE APPLIED TO THE ALL PRODUCTS AND SERVICES IN THE ABOVE SPECIFIED CATEGORIES EXPORTED OR SOLD TO THE U.S.A. FROM CUBA, WHETHER OR NOT THEY ARE SOLD UNDER A CUBA YANKEE TRADING COMPANY OWNED TRADE OR SERVICE MARK.**
- 3. IF FOR ANY REASON THE REPUBLIC OF CUBA CAN NOT OR WILL NOT HONOR THE OBLIGATIONS MADE UNDER THIS JOINT VENTURE AGREEMENT, THEN THE AGREEMENT CAN BE CANCELED WITH PROPER NOTICE AND TIME FOR COMPLIANCE AT THE OPTION OF MICHAEL GONZALEZ ANGEL AND ALL SHARES (49%) OWNED BY THE REPUBLIC OF CUBA WILL REVERT TO MICHAEL GONZALEZ ANGEL.**

**ACOSTA DECLARATION EXHIBIT 2
TRANSLATION**

Virgin
[LOGO]

TELEVISION
OF MEXICO

FAX COVER SHEET

DATE: JULY 22, 1994

**TO: LIC. RICARDO CABRISAS RUIZ
MINISTER
MINISTRY OF FOREIGN COMMERCE**

FAX NO. 98 (537) 78-62-24

**FROM: MICHAEL ANGEL GONZALEZ
PRESIDENT
VIRGIN TELEVISION OF MEXICO**

NO. OF PAGES INCLUDING COVER: -6-

NO. OF PAGES INCLUDING COVER:

OUR FAX NO.: (525) 548-7416, (525) 546-9414

OUR FAX NO:

OUR TELEPHONE NO: (525) 546-6513, 548-9889

OUR TELEPHONE NO: 546-3696, 705-3371

*** * * ***

CIMEX's February 13, 2008 Reponse to Office Action; and 4) the USPTO's March 12, 2008 Notice of Suspension.

5. Annexed hereto as Exhibit 3 is a true and correct copy of a letter from E. Richard Newcomb, Director, Office of Foreign Assets Control, U.S. Department of the Treasury, to Michael Krinsky, Esq, of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. (attorneys for Opposer herein), dated August 19, 1996.

6. Annexed hereto as Exhibit 4 are true and correct copies of photocopies of the front and back of a package of Applicant's CUBITA-labeled coffee product.

7. Annexed hereto as Exhibit 5 is a true and correct copy of the TARR Report from the USPTO database, printed on June 5, 2008, showing the status of Registration No. 2252228 for the mark CUBITA in IC 30.

8. Annexed hereto as Exhibit 6 are true and correct copies of Opposer's Request for Production of Documents and Opposer's Interrogatories, served on March 26, 2008; Applicant's Response to Document Requests, served on May 16, 2008; and Applicant's unverified and undated Responses to Opposer's Interrogatory Requests, emailed on May 21, 2008.

9. Annexed hereto as Exhibit 7 are true and correct copies of excerpts from the website for Sedano's Supermarkets, <http://www.sedanos.com/> , printed on May 27, 2008.

10. Annexed hereto as Exhibit 8 is a true and correct copy of the TARR Report from the USPTO database, printed on June 5, 2008, showing the status of Registration No. 2185528 for the mark CONSULTORIA JURIDICA INTERNACIONAL in IC 42 for legal services.

11. Annexed hereto as Exhibit 9 are true and correct copies of TARR Reports from the USPTO database, printed on May 27, 2008, showing the status of six (6) different abandoned

intent-to-use applications for the mark CUBITA for coffee and other classes, filed by Leni Alonzo.

12. Annexed hereto as Exhibit 10 is a true and correct copy of a TESS Report from the USPTO database, printed on February 13, 2008, based on a search of "Leni Alonzo" in the "Owner" field, showing a total of 125 marks. All but the first six marks on the list were filed between October 19, 2003 and September 1, 2004 as intent-to-use applications and were abandoned.

13. Annexed hereto as Exhibit 11 are true and correct copies of excerpts of entries for "Cuba" and for "Guantanamo," describing coffee as a principle crop of Cuba, from *The Encyclopedia Britannica Online*, <http://www.britannica.com>, printed on August 7, 2007, and an excerpt of an entry for "Cuba" from *The Columbia Gazetteer of North America* (Saul B. Cohen ed. 2000), as republished at www.bartleby.com/69 , printed on August 8, 2007.

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 6th day of June, 2008
New York, New York


DAVID B. GOLDSTEIN, ESQ.

GOLDSTEIN DECLARATION EXHIBIT 1



REPÚBLICA DE CUBA

M. Sc. María de los Angeles Sánchez Torres, Directora General de la Oficina Cubana de la Propiedad Industrial.



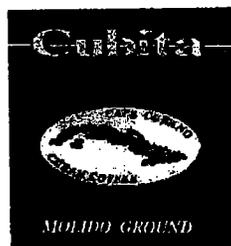
CERTIFICO

Que en fecha cuatro de septiembre del año mil novecientos noventa y uno y por un período de diez años se presentó ante la Oficina Nacional de Invenções Información Técnica y Marcas, la solicitud de registro de marca anotada al número **trescientos veintiún mil guión noventa y uno** del Registro de Entrada, en virtud del Decreto-Ley sesenta y ocho "DE INVENCIONES, DESCUBRIMIENTOS CIENTÍFICOS, MODELOS INDUSTRIALES, MARCAS Y DENOMINACIONES DE ORIGEN" de catorce de mayo del año mil novecientos ochenta y tres, promovida por **Rebeca García Monroy**, Agente Oficial, a nombre y en representación de **KAVE COFFEE, S.A** domiciliada en Calle A, número trescientos diez, entre tercera y quinta, Municipio Playa, Ciudad de La Habana, República de Cuba, otorgándose con fecha quince de octubre del año mil novecientos noventa y uno el correspondiente Certificado de Registro número **ciento dieciocho mil ochocientos sesenta y siete** que ampara la marca **CUBITA** y **diseño** para distinguir: café tostado, en la clase **treinta** de la Clasificación Internacional de Productos y Servicios.

ASIMISMO CERTIFICO: Que el veintisiete de diciembre de mil novecientos noventa y cinco, la Agente Oficial Cynthia Ayala Alcorta a nombre y en representación de **DISTRIBUIDORA CIMEX S.A** solicitó se tomara razón del traspaso de la marca **CUBITA** y **diseño**, con Certificado número **ciento dieciocho mil ochocientos sesenta y siete** propiedad de la entidad **KAVE COFFEE S.A.**, a favor de su representada con registro de entrada trescientos veintiuno diagonal noventa y uno a lo que acompañó Escritura de protocolización número cuatro mil ciento cincuenta y cuatro, a tales efectos la Oficina emitió resolución cero cuatro diagonal noventa y seis con fecha dos de enero de mil novecientos noventa y seis anotando el traspaso a favor de **DISTRIBUIDORA CIMEX S.A.**

ASIMISMO CERTIFICO: Que estando en vigor el Decreto Ley doscientos tres "DE MARCAS Y OTROS SIGNOS DISTINTIVOS" de veinticuatro de diciembre de mil novecientos noventa y nueve, puesto en vigor el dos de mayo de dos mil, se presentó por Roberto Vizcaino Martínez, Agente Oficial, a nombre y en representación de **CORPORACIÓN CIMEX, S.A.** la solicitud de anotación número ciento cinco diagonal dos mil dos relativa al cambio de la persona del Titular de la marca **CUBITA** y **diseño** con Certificado número **ciento dieciocho mil ochocientos sesenta y siete** según consta en la Escritura de protocolización número mil setenta y uno de fecha treinta de abril de dos mil uno; quedando a favor de su representada mediante Resolución mil novecientos sesenta y seis del año dos mil dos de fecha dieciséis de diciembre del año dos mil dos.

TAMBIEN CERTIFICO: Que con fecha once de marzo de dos mil dos, se presentó ante la Oficina Cubana de la Propiedad Industrial, por el Agente Oficial Roberto Vizcaíno Martínez quien representa a la CORPORACIÓN CIMEX, S.A., la solicitud de Renovación de la marca de referencia, número ciento cuarenta y dos diagonal dos mil dos por un período de diez años, quedando anotada mediante Resolución número mil novecientos sesenta y siete de dos mil dos, encontrándose en pleno vigor y efectos hasta el cuatro de septiembre del año dos mil once y siendo la reproducción que se fija a continuación exactamente igual a la que obra en el expediente.



Y a petición de Carlos A. Tejeiros Morcate, se expide la presente, previo el pago de los derechos correspondientes, en La Habana, República de Cuba, a los tres días del mes de junio del año dos mil ocho.


M. Sc. María de los Angeles Sánchez Torres
Directora General



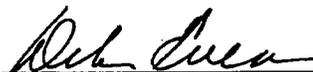
**Declaration of Translation
of
Certificate of the Cuban Office of Industrial Property**

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 Certificate of the Cuban Office of Industrial Property from Spanish into English. I attach hereto a copy of the original document in Spanish and the translation thereof which is a true and correct translation into English.

Signed this 5th day of June 2008



DEBRA EVENSON

[SEAL]

REPUBLIC OF CUBA

M.Sc. Maria de los Angeles Sanchez Torres, General Director of the Cuban Office of Industrial Property

I CERTIFY

That on September 4, 1991 an application for the registration was presented to the National Office of Inventions, Technical Information and Trademarks, for a period of ten years, for the mark noted at number 321000-91 of the Registry of Entry, by virtue of Decree Law 68 "ON INVENTIONS, SCIENTIFIC DISCOVERIES, INDUSTRIAL MODELS, TRADEMARKS AND DENOMINATIONS OF ORIGIN" of May 14, 1983, presented by Rebeca Garcia Monroy, Official Agent, on behalf and in representation of KAVE COFFEE, S.A., domiciled at Calle A, number 310, between third and fifth, Municipality of Playa, City of Havana, Republic of Cuba, the corresponding Certificate of Registration number 118,867 being granted on October 15, 1991 which protects the mark CUBITA and design for roasted coffee, in class thirty of the International Classification of Products and Services.

I FURTHER CERTIFY: That on December 27, 1995, the Official Agent Cynthia Ayala Alcorta, on behalf and in representation of DISTRIBUIDORA CIMEX S.A. requested the transfer of the mark CUBITA and design, with Certificate number 118,867, property of KAVE COFFEE S.A., in favor of the represented party with registry of entrance 321/91 to which was attached Document of registration number 4154, for which effect the Office issued resolution 04/96 dated January 2, 1996 noting the transfer in favor of DISTRIBUIDORA CIMEX S.A.

I FURTHER CERTIFY: That Decree Law 203 "ON TRADEMARKS AND OTHER DISTINCTIVE SIGNS" of December 24, 1999, being in force effective May 2, 2000, Robert Viscaino Martinez, Official Agent, on behalf and in representation of COPORACION CIMEX S.A., presented a request of notation number 105/2002 related to the change of ownership of the mark CUBITA and Design with Certificate number 118,867, as stated in the Document of registration number 1071, dated April 30, 2001; being put in favor of his represented party by Resolution 1966 of the year 2002, dated December 16, 2002.

I ALSO CERTIFY: That on March 11, 2002, application number 1402/2002 for the renewal for a period of ten years of the referenced mark, was presented before the Cuban Office of Industrial Property by Roberto Vizcaino Martinez who represents the CORPORACION CIMEX, S.A., being noted by Resolution number 1967, being in full validity and effect until September 4, 2011 and being the reproduction that is set out below exactly as it is found in the files.

Image of mark

And at the request of Carlos A. Tejeiros Morcate, the present certificate is issued, upon prior payment of the corresponding fee, in Havana, Republic of Cuba, on June 3, 2008.

[signature]

M. Sc. Maria de los Angeles Sanchez Torres
General Director

GOLDSTEIN DECLARATION EXHIBIT 2

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 77252382

Filing Date: 08/10/2007

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

TEAS Plus		YES
MARK INFORMATION		
*MARK	\\TICRS2\EXPORT13\772\523\77252382\xml1\FTK0002.JP G	
*SPECIAL FORM	YES	
USPTO-GENERATED IMAGE	NO	
LITERAL ELEMENT	Cubita Cafe Cubano Cuban Coffee Molido Ground	
*COLOR MARK	NO	
*COLOR(S) CLAIMED (If applicable)		
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a black background, the stylized word Cubita with lines through it near the top of the background, an oval in the center with the words CAFE CUBANO above an image of the island of Cuba made from coffee beans, and the words CUBAN COFFEE below the island image, and the words MOLIDO GROUND near the bottom of the black background .	
PIXEL COUNT ACCEPTABLE	YES	
PIXEL COUNT	900 x 923	
APPLICANT INFORMATION		
*OWNER OF MARK	Corporacion CIMEX, S.A.	
*STREET	First Ave. corner of 0 Street	
INTERNAL ADDRESS	Edificio Sierra Maestra	
*CITY	Miramar, Havana	
*COUNTRY	Cuba	
EMAIL ADDRESS	dgoldstein@rbskl.com	
LEGAL ENTITY INFORMATION		
*TYPE	CORPORATION	

* STATE/COUNTRY OF INCORPORATION	Cuba
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	030
*DESCRIPTION	Coffee
*FILING BASIS	SECTION 44(e)
*FOREIGN REGISTRATION COUNTRY	Cuba
*FOREIGN REGISTRATION NUMBER	118867
*FOREIGN REGISTRATION DATE	10/15/1991
FOREIGN REGISTRATION EXPIRATION DATE	09/04/2011
DATE FOREIGN REGISTRATION RENEWED (if applicable)	12/16/2002
FOREIGN REGISTRATION FILE NAME(S)	
ORIGINAL PDF FILE	reg-71249234210-125246794 _ _ CUBITA_Registration_with_translation.pdf
CONVERTED PDF FILE(S) (17 pages)	\\TICRS2\EXPORT13\772\523\77252382\xml1\FTK0003.JPG
	\\TICRS2\EXPORT13\772\523\77252382\xml1\FTK0004.JPG
	\\TICRS2\EXPORT13\772\523\77252382\xml1\FTK0005.JPG
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	\\TICRS2\EXPORT13\772\523\77252382\xml1\FTK0018.JPG
	\\TICRS2\EXPORT13\772\523\77252382\xml1\FTK0019.JPG
ADDITIONAL STATEMENTS SECTION	

*TRANSLATION (if applicable)	The foreign wording in the mark translates into English as Cuban coffee and ground.
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
DISCLAIMER	No claim is made to the exclusive right to use Cafe Cubano, Cuban Coffee, Molido or Ground apart from the mark as shown.

ATTORNEY INFORMATION

NAME	David B. Goldstein
FIRM NAME	Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.
STREET	111 Broadway
INTERNAL ADDRESS	Suite 1102
CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10006-1901
PHONE	212-254-1111
FAX	212-674-4614
EMAIL ADDRESS	dgoldstein@rbskl.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Michael Krinsky, Christopher Klatell

DOMESTIC REPRESENTATIVE INFORMATION

NAME	David B. Goldstein
FIRM NAME	Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.
STREET	111 Broadway
INTERNAL ADDRESS	Suite 1102
CITY	New York
STATE	New York
COUNTRY	United States
ZIP CODE	10006-1901

PHONE	212-254-1111
FAX	212-674-4614
EMAIL ADDRESS	dgoldstein@rbskl.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
*NAME	David B. Goldstein
FIRM NAME	Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.
*STREET	111 Broadway
INTERNAL ADDRESS	Suite 1102
*CITY	New York
*STATE (Required for U.S. applicants)	New York
*COUNTRY	United States
*ZIP/POSTAL CODE	10006-1901
PHONE	212-254-1111
FAX	212-674-4614
*EMAIL ADDRESS	dgoldstein@rbskl.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE DUE	275
SIGNATURE INFORMATION	
* SIGNATURE	/Antonio Jose Baez Acosta/
* SIGNATORY'S NAME	Antonio Jose Baez Acosta
* SIGNATORY'S POSITION	General Manager
* DATE SIGNED	08/10/2007

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 77252382

Filing Date: 08/10/2007

To the Commissioner for Trademarks:

MARK: Cubita Cafe Cubano Cuban Coffee Molido Ground (stylized and/or with design, see mark)

The literal element of the mark consists of Cubita Cafe Cubano Cuban Coffee Molido Ground. The mark consists of a black background, the stylized word Cubita with lines through it near the top of the background, an oval in the center with the words CAFE CUBANO above an image of the island of Cuba made from coffee beans, and the words CUBAN COFFEE below the island image, and the words MOLIDO GROUND near the bottom of the black background.

The applicant, Corporacion CIMEX, S.A., a corporation of Cuba, having an address of Edificio Sierra Maestra, First Ave. corner of O Street, Miramar, Havana, Cuba, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 030: Coffee

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U.S.C. Section 1126(e), as amended.

The foreign wording in the mark translates into English as Cuban coffee and ground.

No claim is made to the exclusive right to use Cafe Cubano, Cuban Coffee, Molido or Ground apart from the mark as shown.

The applicant hereby appoints David B. Goldstein and Michael Krinsky, Christopher Klatell of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., Suite 1102, 111 Broadway, New York, New York, United States, 10006-1901 to submit this application on behalf of the applicant. The applicant hereby appoints David B. Goldstein of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., Suite 1102, 111 Broadway, New York, New York, United States, 10006-1901 as applicant's representative upon whom notice or process in the proceedings affecting the mark may be served.

Correspondence Information: David B. Goldstein
Suite 1102
111 Broadway
New York, New York 10006-1901
212-254-1111(phone)
212-674-4614(fax)
dgoldstein@rbskl.com (authorized)

A fee payment in the amount of \$275 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Antonio Jose Baez Acosta/ Date Signed: 08/10/2007

Signatory's Name: Antonio Jose Baez Acosta

Signatory's Position: General Manager

RAM Sale Number: 7333

RAM Accounting Date: 08/10/2007

Serial Number: 77252382

Internet Transmission Date: Fri Aug 10 14:30:32 EDT 2007

FEAS Stamp: USPTO/FTK-71.249.234.210-200708101430321

8227-77252382-380d24318d04ba69fd4c8f95

349fdbb399-CC-7333-20070809125246794087

Cubita



MOLIDO GROUND



REPUBLICA DE CUBA

*El Director de la Oficina Nacional de
Invenciones, Información Técnica y Marcas
en uso de sus facultades y de acuerdo con lo establecido en las
disposiciones legales vigentes, concede el presente*

CERTIFICADO
DE
REGISTRO DE MARCAS

*a favor de KAVE COFFEE S.A. (entidad de nacionalidad panameña,
domiciliada en calle A No. 310 entre 3ra y 5ta, Municipio
Playa, Ciudad de La Habana.*

*CERTIFICADO Nro. 118 867 válido hasta el 4 de septiembre del
2001.*

*Dado en la Ciudad de La Habana, a 15 de octubre
de 1991*

*Ing. Mario Fernández Finalé
Director*

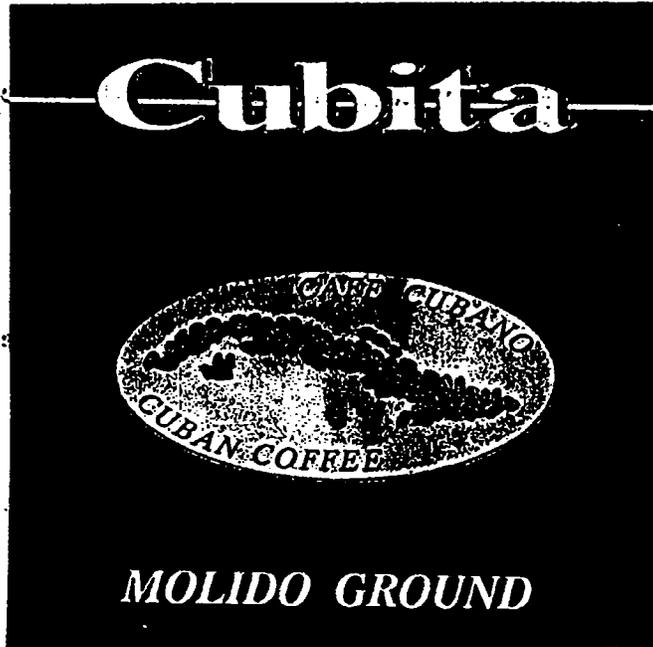
Solicitud No.: 321/91

Clasificación Internacional: 30

Productos o Servicios: Café tostado.

CERTIFICADO

Sin reivindicar ninguno de los elementos que aparecen en el diseño.



Ink. Mario Fernández

[seal]

REPUBLIC OF CUBA

*The Director of the National Office of
Inventions, Information Technology, and Trademarks
in exercise of his authority and in accordance with
current legal provisions grants this*

CERTIFICATE
OF
TRADEMARK REGISTRATION

To KAVE COFFEE S.A. (a Panamanian company domiciled at calle A No. 310, between 3rd and 5th [Avenues], Municipality Playa, City of Havana.

CERTIFICATE NO. 118 867 valid through September 4, 2001.

Given in the City of Havana on October 15, 1991

Ing. Mario Fernandez Finale
Director

Application No.: 321/91

International Classification: 30

Products or Services: Roasted coffee.

No claim for the elements that appear in the design.

[image]

Cubita

Café Cubano
Cuban Coffee

Molido Ground

RESOLUCION No. 04/96

POR CUANTO: El Decreto-Ley No.68 del 14 de mayo de 1983, denominado Decreto-Ley de Invenciones, Descubrimientos Científicos, Modelos Industriales, Marcas y Denominaciones de Origen, establece que la Oficina Nacional de Invenciones, Información Técnica y Marcas es la institución encargada de realizar las actividades que en el mismo se disponen.

POR CUANTO: El referido Decreto-Ley faculta al Director de la Oficina Nacional de Invenciones, Información Técnica y Marcas a dictar las resoluciones correspondientes para cumplimentar lo expresado en el **POR CUANTO** anterior.

POR CUANTO: Visto el escrito presentado el 27 de diciembre de 1995, por Lic. Cynthia Ayala Alcorta, a nombre y en representación de Distribuidora Cimex, S.A., domiciliada en Calle 8 # 314 entre Tercera y Quinta Avenidas, Miramar, municipio Playa, Ciudad de La Habana, República de Cuba., solicitando se tome razón del **TRASPASO** de la marca **CUBITA** y diseño, propiedad de la entidad **KAVE COFFEE**, S.A. a favor de su representada con Certificado No. 118 867, registro de entrada 321/91, a esos efectos acompaña Escritura de protocolización, debidamente legalizada, y del examen de dicha documentación aparece justificado el **TRASPASO** solicitado.

POR CUANTO: En uso de las facultades que me estan conferidas.

RESURLVO

PRIMERO: Que se hagan las anotaciones pertinentes según lo dispuesto en el artículo 9 del Decreto-Ley vigente, así como en la copia del Certificado que obra en el expediente, de los particulares siguientes:**TRASPASO** de la marca **CUBITA** y diseño, propiedad de la entidad **KAVE COFFEE**, S.A., a favor de Distribuidora Cimex, S.A..

SEGUNDO:**NOTIFIQUESE** la presente Resolución a las partes, para su conocimiento y efectos pertinentes.

DADA en la Ciudad de La Habana, en la Oficina Nacional de Invenciones, Información Técnica y Marcas, a los dos días del mes de enero de mil novecientos noventa y seis..


Lic. América N. Santos Riveras
DIRECTORA

Con esta fecha me doy por notificado a
la anterior Resolución, con copia
íntegra de la misma.

La Habana 22 de Enero de 1996

Notificado a: Roberto Cruz

[Signature]
Nombre

F. [Signature]

RESOLUTION NO. 04/96

WHEREAS: Decree-Law No. 68, dated May 14, 1983, entitled the Decree-Law on Inventions, Scientific Discoveries, Industrial Models, Trademarks and Denominations of Origin, establishes that the National Office of Inventions, Information Technology and Trademarks is the institution responsible for performing the activities addressed in the same.

WHEREAS: The referenced Decree-Law authorizes the Director of the National Office of Inventions, Information Technology and Trademarks to issue corresponding resolutions necessary to comply with the preceding WHEREAS CLAUSE.

WHEREAS: Having considered the petition filed on December 27, 1995, by Lic. Cynthia Ayala Alcorta, in the name and on behalf of Distribuidora Cimex, S.A., domiciled at Calle 8 # 314 between 3rd and 5th Avenues, Miramar, Municipality Playa, City of Havana, Republic of Cuba, requesting registration of the TRANSFER of the CUBITA trademark and design, which belong to KAVE COFFEE, S.A., to her principal through Certificate No. 118 867, record entry no. 321/91; for this purpose, she attaches the duly legalized notarial instrument and after examining the documentation, the requested TRANSFER appears to be justified.

WHEREAS: In exercise of the powers vested in me.

I RESOLVE

ONE: That the following notation be made, in accordance with the provisions of Article 9 of the current Decree-Law, as well as in the copy of the Certificate contained in the file: TRANSFER of the CUBITA trademark and design, property of KAVE COFFEE, S.A., to Distribuidora Cimex, S.A.

TWO: INFORM the parties of this resolution for their information and the relevant purposes.

GIVEN in the City of Havana, in the National Office of Inventions, Information Technology and Trademarks, on January 2, 1996.

[signature]
Lic. America N. Santos Riveras
DIRECTOR

[Stamp]

On this date, I acknowledge being notified of and receiving a complete copy of the preceding Resolution.

Havana, January 22, 1996.

Notice given to: [signature]
Name

Signature: [signature]

RESOLUCIÓN No. 1966/2002

POR CUANTO: El Decreto-Ley No. 203 de 29 de diciembre de 1999, denominado De Marcas y Otros Signos Distintivos, establece que la **OFICINA CUBANA DE LA PROPIEDAD INDUSTRIAL (OCPI)** es la institución estatal encargada de realizar las actividades relativas al registro de marcas y otros signos distintivos y faculta al Director General de ésta para dictar las resoluciones correspondientes en esta materia.

POR CUANTO: En fecha 11 de marzo de 2002, fue presentada ante la Oficina Cubana de la Propiedad Industrial, la solicitud de anotación No. 105/2002 relativa al **CAMBIO EN LA PERSONA DEL TITULAR** por Roberto Vizcaino Martínez, Agente Oficial con oficinas en Consultoría Jurídica Internacional, a nombre y en representación de **CORPORACIÓN CIMEX, S.A.** domiciliado en Edificio Sierra Maestra, Avenida Primera, esquina a calle Cero, Miramar, Playa, Ciudad de La Habana, República de Cuba.

POR CUANTO: Vista la solicitud de anotación presentada a razón de la cesión de la marca **CUBITA** y diseño, con No. de registro 118867 para distinguir productos comprendidos en la clase 30 de la Clasificación Internacional de Productos y Servicios para el Registro de las Marcas, propiedad de **DISTRIBUIDORA CIMEX, S.A.**, a favor de **CORPORACIÓN CIMEX S.A.**, domiciliado en Edificio Sierra Maestra, Avenida Primera, esquina a calle Cero, Miramar, Playa, Ciudad de La Habana, República de Cuba, lo cual consta en los documentos que se acompañan los que fueron debidamente examinados.

POR CUANTO: El Artículo 77 del mencionado Decreto-Ley establece que la Oficina anotará los cambios en la persona del solicitante o titular.

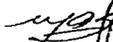
POR TANTO: En uso de las facultades que me están conferidas:

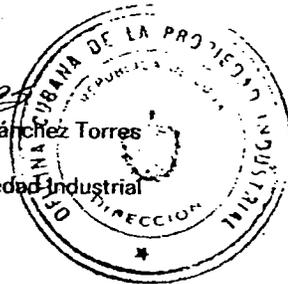
RESUELVO

PRIMERO: Que se hagan las anotaciones correspondientes al **CAMBIO EN LA PERSONA DEL TITULAR** de la marca **CUBITA** y diseño, registro no. 118867, a favor de **CORPORACIÓN CIMEX S.A.**, surtiendo efectos ante terceros a partir de la fecha de la presente Resolución.

SEGUNDO: NOTIFIQUESE la presente Resolución a las partes, haciéndoseles saber que contra la misma pueden establecer demanda en proceso administrativo ante el Tribunal Provincial Popular de Ciudad de La Habana dentro de los treinta días siguientes a su notificación.

DADA en Ciudad de La Habana, a los dieciséis días del mes de diciembre del año dos mil dos.


Ing. María de los Angeles Sánchez Torres
Directora General
Oficina Cubana de la Propiedad Industrial



Con esta fecha me doy por notificado
a la anterior resolución, con copia ínte-
gra de la misma

La Habana 13 de 1 de 03

Notario *Manuel de la Cruz*

Firma: *[Handwritten Signature]*

RESOLUTION NO. 1966/2002

WHEREAS: Decree-Law No. 203, dated December 29, 1999, entitled On Trademarks and Other Distinctive Signs, establishes that the CUBAN INDUSTRIAL PROPERTY OFFICE (OCPI) is the government institution responsible for performing the activities associated with the registration of marks and other distinctive signs and authorizes the Director General of this institution to issue resolutions on the subject.

WHEREAS: On March 11, 2002, Roberto Vizcaino Martinez, Official Agent working for Consultoria Juridica Internacional [International Legal Consulting] in the name and on behalf of CORPORACION CIMEX, S.A., domiciled at Sierra Maestra Building, Avenida Primera, corner of Calle Cero, Miramar, Playa, City of Havana, Republic of Cuba, filed application No. 105/2002 for CHANGE OF OWNERSHIP at the Cuban Industrial Property Office.

WHEREAS: Having considered the application filed with respect to the transfer of the CUBITA trademark and design, registration No. 118867, to distinguish products in International Products and Services Classification for Trademark Registration Class 30, from DISTRIBUIDORA CIMEX, S.A., to CORPORACION CIMEX, S.A., domiciled at Sierra Maestra Building, Avenida Primera, corner of Calle Cero, Miramar, Playa, City of Havana, Republic of Cuba, which is included with the enclosed documents that were duly examined.

WHEREAS: Article 77 of the aforementioned Decree-Law establishes that the Office must note the changes in the applicant or owner.

WHEREAS: In exercise of the powers vested in me.

I RESOLVE

ONE: That the notation be made reflecting the CHANGE OF OWNER of the CUBITA trademark and design, registration No. 118867, to CORPORACION CIMEX S.A., a change that will take effect starting on the date of this Resolution.

TWO: INFORM the parties of this Resolution and advise them that they may bring an administrative action against it at the City of Havana Provincial Court within thirty days following receipt of notice.

GIVEN in the City of Havana on December 16, 2002.

[signature]

Ing. Maria de los Angeles Sanchez Torres
General Director
Cuban Industrial Property Office

[stamp] Cuban Industrial Property Office
Republic of Cuba

[Stamp]

On this date, I acknowledge being notified of and receiving a complete copy of the preceding Resolution.

City of Havana, January 13, 2003.

Notice given to: [signature]

Signature: _____ [signature]



REPÚBLICA DE CUBA

El Director de la Oficina Cubana de la Propiedad Industrial,
en uso de sus facultades y de acuerdo con lo establecido
en las disposiciones legales vigentes,
otorga el presente:



Certificado de Renovación de Marca.

A favor de: CORPORACIÓN CIMEX S.A.

Con domicilio en: Edificio Sierra Maestra, Avenida Primera, esquina a cero, Miramar, Playa,
Ciudad de La Habana. República de Cuba.

CERTIFICADO No.: 118867

Concedido por RESOLUCIÓN: 1967/2002

Válido por diez años y vigente hasta el: 4 de septiembre de 2011
Consistente en: la denominación CUBITA con grafismo especial y atravesada por una línea o
franja continua.

Para distinguir productos solicitados en la clase: 30
de la Clasificación Internacional de Productos y Servicios para el Registro de las Marcas.

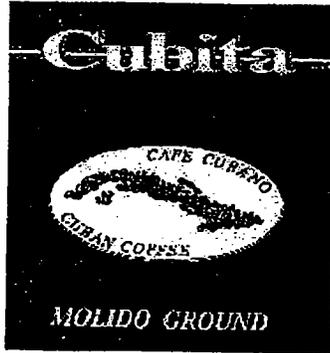
Dado en la Ciudad de La Habana, a 16 de diciembre del año 2002.


Ing. María de los Angeles Sánchez Torres
Directora General
Oficina Cubana de la Propiedad Industrial

Solicitud No.: 142/2002

Clasificación de Elementos Figurativos: 27.05.01; 26.11.01

Reivindicación de colores:



Prioridad:

Representante Legal o Agente Oficial: Roberto Vizcaino Martínez

Lista de productos o servicios a distinguir: Café tostado.

[Letterhead] Cuban Industrial Property Office

REPUBLIC OF CUBA

The Director of the Cuban Industrial Property Office,
in exercise of her authority and in accordance
with current legal provisions grants this:

CERTIFICATE
OF
TRADEMARK RENEWAL

To: CORPORACION CIMEX, S.A.

Domiciled at: Sierra Maestra Building, Avenida Primera, corner of Cero, Miramar, Playa,
City of Havana, Republic of Cuba.

CERTIFICATE NO.: 118867

Granted by RESOLUTION: 1967/2002

Valid for 10 years, until: September 4, 2011

Consisting of: the denomination CUBITA, with a special logo crossed by a solid line or
strip.

To distinguish products in class: 30
of the International Products and Services Classification for Trademark Registration.

GIVEN in the City of Havana on December 16, 2002.

[signature]
Ing. Maria de los Angeles Sanchez Torres
General Director
Cuban Industrial Property Office

[Letterhead] Cuban Industrial Property Office

Application No.: 142/2002

Classification of Figurative Elements: 27.05.01; 26.11.01

Claim for colors:

[image]

Priority:

Legal Representative or Official Agent: Roberto Vizcaino Martinez

List of products or services to distinguish: Roasted coffee.

Document Description: **Offc Action Outgoing** Mail / Create Date: 17-Nov-2007[Previous Page](#)[Next Page](#)

You are currently on page 1 of 4



To: Corporacion CIMEX, S.A. (dgoldstein@rbskl.com)
Subject: TRADEMARK APPLICATION NO. 77252382 - CUBITA CAFE CUBANO C - N/A
Sent: 11/17/2007 9:19:11 PM
Sent As: ECOM107@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

UNITED STATES PATENT AND TRADEMARK OFFICE**SERIAL NO:** 77/252382**MARK:** CUBITA CAFE CUBANO C***77252382*****CORRESPONDENT ADDRESS:**

DAVID B. GOLDSTEIN
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY &
111 BROADWAY
SUITE 1102
NEW YORK, NY 10006-1901

RESPOND TO THIS ACTION:<http://www.uspto.gov/teas/eTEASpageD.htm>**GENERAL TRADEMARK INFORMATION:**<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Corporacion CIMEX,
S.A.

**CORRESPONDENT'S
REFERENCE/DOCKET NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:dgoldstein@rbskl.com**OFFICE ACTION**

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 11/17/2007

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.html>: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's

address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on paper, they must be accompanied by a \$50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee.

NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

The assigned trademark examining attorney has reviewed the referenced application filed on August 10, 2007 and has determined the following:

PRIOR PENDING APPLICATION

Information is enclosed concerning pending Application Serial No. 75697908. Although the Office records have been searched and no similar *registered* mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), there may be a likelihood of confusion under Section 2(d) of the Act between applicant's mark and the mark in the above noted application. The filing date of the referenced application precedes applicant's filing date. If the earlier-filed application registers, registration may be refused under Section 2(d). 37 C.F.R. §2.83. Therefore, upon entry of a response to the Office action, action on this case may be suspended pending final disposition of the earlier-filed application.

If applicant believes that there is no potential conflict between this application and the earlier-filed application, then applicant may present arguments relevant to the issue in a request to remove the application from suspension. The election to file or not to file such a request at this time in no way limits applicant's right to address this issue at a later point.

Upon entry of a response to the following, action on this case will be suspended pending final disposition of the earlier-filed application.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following.

DISCLAIMER

The applicant must disclaim the descriptive wording "CAFE CUBANO" "CUBAN COFFEE" "MOLIDO" "GROUND" apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §§1213 and 1213.03(a). The wording merely describes the nature or subject matter of the applicant's goods.

Applicant provided a voluntary disclaimer of the wording cited above in the initial application. However, clarification is required as to the designation of terms. In addition, the term "OR" is not acceptable in a disclaimer statement.

The Office can require an applicant to disclaim exclusive rights to an unregistrable part of a mark, rather than refuse registration of the entire mark. Trademark Act Section 6(a), 15 U.S.C. §1056(a). Under Trademark Act Section 2(e), 15 U.S.C. §1052(e), the Office can refuse registration of the entire mark where it is determined that the entire mark is merely descriptive, deceptively misdescriptive, or primarily geographically descriptive of the goods. Thus, the Office may require the disclaimer of a portion of a mark which, when used in connection with the goods or services, is merely descriptive,

deceptively misdescriptive, primarily geographically descriptive, or otherwise unregistrable (e.g., generic). TMEP §1213.03(a). If an applicant does not comply with a disclaimer requirement, the Office may refuse registration of the entire mark. TMEP §1213.01(b).

A “disclaimer” is thus a written statement that an applicant adds to the application record that states that applicant does not have exclusive rights, separate and apart from the entire mark, to particular wording and/or to a design aspect. The appearance of the applied-for mark does not change.

The computerized printing format for the Office’s *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

No claim is made to the exclusive right to use “CAFE CUBANO” “CUBAN COFFEE” “MOLIDO” and “GROUND” apart from the mark as shown.

See In re Owatonna Tool Co., 231 USPQ 493 (Comm’r Pats. 1983).

DRAWING DESCRIPTION

Color is not claimed as a feature of the mark. Therefore, applicant must submit a concise description of the mark absent the provision of color claim statements. 37 C.F.R. §2.37; TMEP §§808 *et seq.* The following is suggested:

The mark consists of a shaded rectangular background with the stylized word Cubita with horizontal lines through it near the top, an oval in the center with the words CAFE CUBANO above an image of the island of Cuba made from coffee beans, and the words CUBAN COFFEE below the island image, and the words MOLIDO GROUND near the bottom of the rectangle.

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

To expedite prosecution of this application, applicant is encouraged to file its response to this Office action through the Trademark Electronic Application System (TEAS), available at <http://www.uspto.gov/teas/index.html>.

/Kelly McCoy/
Trademark Examining Attorney
Law Office 107
Phone - (571) 272-8976
Fax - (571) 273-8976

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not**

attempt to respond by e-mail as the USPTO does not accept e-mailed responses.

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

[TDR Home](#)

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[FAQ: Are you seeing only the first page of this PDF document?](#)

If you need help:

- **General trademark information:** Please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone either 571-272-9250 or 1-800-786-9199.
- **Technical help:** For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail [Electronic Business Support](#), or call 1-800-786-9199.
- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](#).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

Print: Nov 17, 2007

75697908

DESIGN MARK

Serial Number

75697908

Status

OPPOSITION PENDING

Word Mark

CUBITA

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

DM Enterprises & Distributors, Inc. CORPORATION FLORIDA 8300 We
Flagler, Suite 116 Miami FLORIDA 33144

Goods/Services

Class Status -- ACTIVE. IC 030. US 046. G & S: coffee. Fir
1994/02/13. First Use In Commerce: 1994/02/13.

Filing Date

1999/05/04

Examining Attorney

ERVIN, INGA

Attorney of Record

Albert Bordas, Esq.

Cubita

Document Description: **Off Action Outgoing** Mail / Create Date: 17-Nov-2007[Previous Page](#)[Next Page](#)

You are currently on page 4 of 4



To: Corporacion CIMEX, S.A. (dgoldstein@rbskl.com)
Subject: TRADEMARK APPLICATION NO. 77252382 - CUBITA CAFE CUBANO C - N/A
Sent: 11/17/2007 9:19:12 PM
Sent As: ECOM107@USPTO.GOV
Attachments:

IMPORTANT NOTICE
USPTO OFFICE ACTION HAS ISSUED ON 11/17/2007 FOR
APPLICATION SERIAL NO. 77252382

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link http://portal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77252382&doc_type=OOA&mail_date=20071117 (or copy and paste this URL into the address field of your browser), or visit <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to **access** the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable **response time period**. Your response deadline will be calculated from 11/17/2007.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.**

TDR Home

This document may be displayed as a PDF file containing images without text. You may view online or save the entire document by clicking on the file download icon in the upper right corner of this page.

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FAQ: Are you seeing only the first page of this PDF document?

If you need help:

- **General trademark information:** Please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone either 571-272-9250 or 1-800-786-9199.
- **Technical help:** For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail **Electronic Business Support**, or call 1-800-786-9199.
- **Questions about USPTO programs:** Please e-mail **USPTO Contact Center (UCC)**.

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

Document Description: **Response to Office Action** Mail / Create Date: **13-Feb-2008**



PTO Form 1957 (Rev 9/2005)
 OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77252382
LAW OFFICE ASSIGNED	LAW OFFICE 107
MARK SECTION (no change)	
ARGUMENT(S)	
<p>The Examiner has cited previously filed and pending Application Serial No. 75697908, stating that "there may be a likelihood of confusion under Section 2(d) of the Act between applicant's mark and the mark in the above noted application," and further stating that this case may be suspended pending final disposition of the pending application. Applicant notes that Applicant filed a Notice of Opposition to Serial No. 75697908 on August 14, 2007, Opp. No. 91178943, which Opposition remains pending. Applicant, therefore, requests that further action on its application be suspended pending resolution of the pending Opposition proceeding. Applicant reserves all its rights with respect to this Application and the challenged prior pending application. Applicant further responds to the other matters raised by the Examiner in its Office Action.</p>	
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	"No claim is made to the exclusive right to use "CAFE CUBANO" "CUBAN COFFEE" "MOLIDO" and "GROUND" apart from the mark as shown."
MISCELLANEOUS STATEMENT	The mark consists of a shaded rectangular background with the stylized word Cubita with horizontal lines through it near the top, an oval in the center with the words CAFE CUBANO above an image of the island of Cuba made from coffee beans, and the words CUBAN COFFEE below the island image, and the words MOLIDO GROUND near the bottom of the rectangle.
SIGNATURE SECTION	
DECLARATION SIGNATURE	The filing Attorney has elected not to submit the signed declaration, believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .

RESPONSE SIGNATURE	/David B. Goldstein/
SIGNATORY'S NAME	David B. Goldstein
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	02/13/2008
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Feb 13 11:48:26 EST 2008
TEAS STAMP	USPTO/ROA-71.249.234.214- 20080213114826506550-7725 2382-41046936b0c8a493e95c a7481478d68159-N/A-N/A-20 080213112023364694

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **77252382** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

The Examiner has cited previously filed and pending Application Serial No. 75697908, stating that "there may be a likelihood of confusion under Section 2(d) of the Act between applicant's mark and the mark in the above noted application," and further stating that this case may be suspended pending final disposition of the pending application. Applicant notes that Applicant filed a Notice of Opposition to Serial No. 75697908 on August 14, 2007, Opp. No. 91178943, which Opposition remains pending. Applicant, therefore, requests that further action on its application be suspended pending resolution of the pending Opposition proceeding. Applicant reserves all its rights with respect to this Application and the challenged prior pending application. Applicant further responds to the other matters raised by the Examiner in its Office Action.

ADDITIONAL STATEMENTS

Disclaimer

"No claim is made to the exclusive right to use "CAFE CUBANO" "CUBAN COFFEE" "MOLIDO" and "GROUND" apart from the mark as shown."

Miscellaneous statement

The mark consists of a shaded rectangular background with the stylized word Cubita with horizontal

lines through it near the top, an oval in the center with the words CAFE CUBANO above an image of the island of Cuba made from coffee beans, and the words CUBAN COFFEE below the island image, and the words MOLIDO GROUND near the bottom of the rectangle.

SIGNATURE(S)**Declaration Signature**

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review, require a signed declaration.

Response Signature

Signature: /David B. Goldstein/ Date: 02/13/2008

Signatory's Name: David B. Goldstein

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 77252382

Internet Transmission Date: Wed Feb 13 11:48:26 EST 2008

TEAS Stamp: USPTO/ROA-71.249.234.214-200802131148265

06550-77252382-41046936b0c8a493e95ca7481

478d68159-N/A-N/A-20080213112023364694

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- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](#).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

To: Corporacion CIMEX, S.A. (dgoldstein@rbskl.com)
Subject: TRADEMARK APPLICATION NO. 77252382 - CUBITA CAFE CUBANO C - N/A
Sent: 3/12/2008 2:20:40 PM
Sent As: ECOM107@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/252382

MARK: CUBITA CAFE CUBANO C

77252382

CORRESPONDENT ADDRESS:

DAVID B. GOLDSTEIN
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY &
111 BROADWAY
SUITE 1102
NEW YORK, NY 10006-1901

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Corporacion CIMEX, S.A.

CORRESPONDENT'S REFERENCE/DOCKET

NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

dgoldstein@rbskl.com

NOTICE OF SUSPENSION

ISSUE/MAILING DATE: 3/12/2008

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason specified below. No response is needed. However, if you wish to respond to this notice, you should use the "Response to Letter of Suspension" form found at <http://teasroa.uspto.gov/rsi/rsi>. The Office will conduct periodic status checks to determine if suspension remains appropriate.

This letter responds to the applicant's communication filed on February 13, 2008.

The amendments to the application regarding the disclaimer and description of the mark are accepted.

SUSPENSION ACTION

Action on this application is suspended pending the disposition of:

- Opposition No. **91178943**

The proceeding above pertains to one or more of the following: (1) a registration cited as a bar to applicant's registration under Section 2(d) of the Trademark Act, (2) a pending application(s) that could present a future bar to registration under Section 2(d) if it matured into a registration, and/or (3) the registrability of applicant's mark. 15 U.S.C. §1052. Therefore, action is suspended pending the final disposition of this proceeding. See 37 C.F.R. §2.83; TMEP §§716.02(a), (c) and (d), 1208 et seq. Any refusal(s) made under Section 2 is herein maintained.

/Kelly McCoy/

Trademark Examining Attorney

Law Office 107

Phone - (571) 272-8976

Fax - (571) 273-8976

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

To: Corporacion CIMEX, S.A. (dgoldstein@rbskl.com)
Subject: TRADEMARK APPLICATION NO. 77252382 - CUBITA CAFE CUBANO C - N/A
Sent: 3/12/2008 2:20:41 PM
Sent As: ECOM107@USPTO.GOV
Attachments:

IMPORTANT NOTICE
USPTO OFFICE ACTION HAS ISSUED ON 3/12/2008 FOR
APPLICATION SERIAL NO. 77252382

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link
http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77252382&doc_type=SUL&mail_date=20080312
(or copy and paste this URL into the address field of your browser), or visit
<http://tportal.uspto.gov/external/portal/tow> and enter the application serial number to **access** the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable **response time period**. Your response deadline will be calculated from 3/12/2008.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

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- 2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.**

GOLDSTEIN DECLARATION EXHIBIT 3

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

AUG 19 1996

FAC Nos. C-152409, C-152468

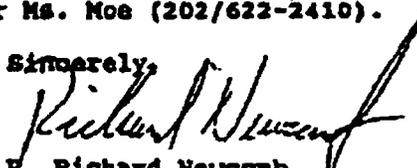
Dear Mr. Krinsky:

This is in response to your letters of July 3 and July 22, 1996, addressed to Serena Moe, Deputy Chief Counsel of the Office of Foreign Assets Control. In your letters you ask two questions concerning the authorization contained in § 515.527 of the Cuban Assets Control Regulations, 31 C.F.R. Part 515 (the "Regulations"). First, you ask whether this section authorizes Cuba to file an opposition to the registration of a new trademark on the grounds that the new trademark interferes with Cuba's right in its registered trademark based on likely consumer confusion. Second, you ask whether Cuba may bring a petition to cancel the prior registration of a trademark related to its efforts to register a trademark.

The authorization contained in § 515.527 and the parallel provisions of § 515.528 are intended to provide reciprocal protection for the intellectual property of Cuba and the United States. Both of the processes you describe in your correspondence concern available legal means to protect trademarks in the United States. For this reason, the authorization contained in § 515.527 may be relied on to file an opposition to the registration of a new trademark or to petition to cancel a prior registration of a trademark where these actions relate to the protection of a trademark in which Cuba or a Cuban national general license has an interest.

If you have any further questions concerning this matter, please call me (202/622-2510) or Ms. Moe (202/622-2410).

Sincerely,


E. Richard Newcomb
Director
Office of Foreign Assets Control

Michael Krinsky, Esq.
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.
740 Broadway at Astor Place
New York, New York 10003-9518

GOLDSTEIN DECLARATION EXHIBIT 4

Cubita
CUBAN STYLE

Cubita



EL SABOR DE CUBA
TASTE OF CUBA

Taste of Cuba

Premium

100% PURE COFFEE

EL SABOR DE CUBA

NET WT. 8.8 OZ. (250g)

Cubita
CUBAN STYLE

C00598

For more than 200 years, the demanding palate of the Cuban farmer selected an exclusive variety of coffee for their own consumption. Today, Café CUBITA[™] offers the opportunity to savor a coffee with the precise and ideal dryness, roast and grind that reminds us of the delicious and aromatic TASTE OF CUBA[®].

Por más de 200 años el exigente paladar del campesino cubano selecciono una variedad exclusiva de café para su consumo. Hoy CUBITA[™] nos brinda la oportunidad de saborear un café con un secado preciso, tueste y molido ideal que nos recuerda ese delicioso y aromático SABOR DE CUBA[®].

GOLDSTEIN DECLARATION EXHIBIT 5

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

This page was generated by the TARR system on 2008-06-05 18:24:58 ET

Serial Number: 74490595 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2252228

Mark (words only): CUBITA

Standard Character claim: No

Current Status: Registration canceled under Section 8.

Date of Status: 2007-02-07

Filing Date: 1994-02-16

Transformed into a National Application: No

Registration Date: 1999-06-15

Register: Principal

Law Office Assigned: LAW OFFICE 107

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: 830 -Post Registration

Date In Location: 2007-02-07

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

1. SHEEHAN, TIMOTHY J.

Address:

SHEEHAN, TIMOTHY J.
6001 Shepherd Mountain Cove, No. 156
Austin, TX 78730
United States

Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 030

Class Status: Section 8 - Cancelled

coffee

Basis: 1(a)

First Use Date: 1994-03-01

First Use in Commerce Date: 1994-03-01

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-02-07 - Canceled Section 8 (6-year)

2005-12-05 - Cancellation terminated for Proceeding

2004-05-28 - Cancellation dismissed for Proceeding

2002-06-24 - PAPER RECEIVED

1999-10-14 - Cancellation Instituted No. 999999

1999-06-15 - Registered - Principal Register

1998-12-31 - Extension Of Time To Oppose Received

1998-12-01 - Published for opposition

1998-10-30 - Notice of publication

1998-09-16 - Approved for Pub - Principal Register (Initial exam)

1998-09-10 - Ex parte appeal - Refusal reversed

1997-08-29 - Examiner's statement mailed

1997-06-10 - Ex parte appeal - Instituted

1996-11-19 - Continuation of final refusal mailed

1996-11-14 - Ex parte appeal - Instituted

1996-09-27 - Communication received from applicant

1996-04-01 - Final refusal mailed
1996-02-26 - Communication received from applicant
1995-09-11 - Unresponsive/Duplicate Paper Received
1995-11-30 - Non-final action mailed
1995-11-30 - Amendment to Use approved
1995-11-22 - Amendment to use processing complete
1995-09-15 - Amendment to Use filed
1994-12-14 - Assigned To Examiner
1994-12-13 - Assigned To Examiner
1994-11-08 - Assigned To Examiner
1994-08-09 - Letter of suspension mailed
1994-08-02 - Examiner's amendment mailed
1994-07-26 - Assigned To Examiner
1994-07-19 - Assigned To Examiner
1994-07-19 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
MERRILY S. PORTER

Correspondent
MERRILY S. PORTER
LAW OFFICES OF JAMES O. HOUCHINS
P.O. BOX 6366
AUSTIN, TX 78762-6366

GOLDSTEIN DECLARATION EXHIBIT 6

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

CORPORACION CIMEX, S.A.,)	
Opposer,)	
v.)	Opposition No. 91178943
DM ENTERPRISES & DISTRIBUTORS, INC.,)	
Applicant.)	

OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Title 37 of the Code of Federal Regulations Section 2.120, Opposer CORPORACION CIMEX, S.A. (hereinafter "CIMEX" or "Opposer"), by and through its undersigned attorneys, hereby requests that Applicant DM ENTERPRISES & DISTRIBUTORS, INC. ("DM" or "Applicant") respond to the written document requests and produce all documents and things called for herein at the offices of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., 111 Broadway, Suite 1102, New York, NY 10006-1901, within 30 days of the date hereof. The responses to each of the following Requests for Production of Documents are to be supplemented in accordance with Rule 26(e) of the Federal Rules of Civil Procedure and Title 37 of the Code of Federal Regulations Section 2.120.

DEFINITIONS

1. "Opposer" means CORPORACION CIMEX, S.A., its current and former affiliates, subsidiaries, parents, predecessors and successors in interest, and each of their present and former principals, partners, officers, directors, executives, employees, agents, attorneys and licensees, and all other persons acting or purporting to act on its behalf.

2. "Applicant" or "you" means DM ENTERPRISES & DISTRIBUTORS, INC., its current and former affiliates, subsidiaries, parents, predecessors and successors in interest, and each of their present and former principals, partners, officers, directors, executives, employees, agents, attorneys and licensees, and all other persons acting or purporting to act on its behalf.

3. The term "communication" means the transmittal of information in the form of facts, ideas, inquiries or otherwise.

4. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic, digital, or computerized data compilations, emails, voicemails, phone records, drafts, translations, and non-identical copies.

5. The term "including" means "including, but not limited to;" the term "concerning" means relating to, referring to, describing, evidencing, or constituting; the terms "all" and "each" shall be construed as "all and each;" the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all documents that might otherwise be construed to be outside of its scope; and the use of the singular form of a word shall include the plural and vica versa.

6. "Application" means Applicant's application to the USPTO for registration of the mark CUBITA and Design, App. No. 75/697908, including all documents or statements provided by Applicant to the USPTO in connection with that Application.

7. The term "use" means "use" or "intent to use."

GENERAL INSTRUCTIONS

The following General Instructions apply to each of the document production requests (hereinafter "Request(s)") set forth herein:

1. In responding to the following Requests, you are required to furnish all documents that are available to you, *including documents in the possession, custody or control of your attorneys, accountants, agents, advertising agencies, design firms, employees, principals, representatives, or any other persons directly or indirectly employed or connected with you or your attorneys, or anyone else subject to your control.*

2. Unless otherwise specified in a particular Request, the time period covered by each Request is January 1, 1992 to the present.

3. If any document requested is withheld because you claim that such document is privileged or trial preparation materials, provide the information for such document required by Rule 26(b)(5) of the Federal Rules of Civil Procedure and Title 37 of the Code of Federal Regulations Section 2.120, including the following: a. The general subject matter of the document; b. The date on which it was created; c. The identity of the author(s) and all recipient(s); and d. The nature of the privilege being claimed.

4. If you object to any Request on grounds other than privilege, state the precise grounds upon which your objection is based.

5. Each Request is to be answered separately and in order.

6. If any documents responsive to the following Requests have been lost, destroyed, transferred voluntarily or involuntarily to others not subject to the control of Applicant, or otherwise disposed of, or if any documents responsive to the following Requests exist but are not available, furnish a list identifying each such document, and setting forth the following information with respect to each document: its date, author(s), sender(s), addressee(s) and recipient(s), and the subject matter of the document. In each instance, explain the circumstances surrounding each disposition or why such document is unavailable, including, in the event of

such a disposition, the authorization therefor and the date thereof.

7. If a document is produced in redacted form, state with particularity the reason(s) it was not produced in full, and describe generally those portions of the document that are not being produced in a manner sufficient to identify the document for purposes of a motion to compel discovery.

8. If production of any requested document is objected to on the ground that it is burdensome and oppressive, identify: (i) the precise reason why production poses a special burden; (ii) the approximate number of documents/pages that have been called for; and (iii) the location(s) of the document(s) that have been called for.

9. Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, the documents produced shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond to the specific paragraph(s) of this Request to which they are responsive.

10. If, after providing the requested information, you obtain or become aware of any further information or documents responsive to these Requests, you are required to produce to Opposer such additional information or documents as required by Fed R. Civ. P. 26(e).

REQUESTS FOR PRODUCTION

1. All documents concerning Applicant's adoption or selection of the mark CUBITA, including the design, for use in connection with coffee or any other product that Applicant sells or intends to sell.

2. All documents concerning any trademark search, domestic or international, conducted by or on behalf of Applicant in connection with the mark CUBITA, including for any associated design, for any class or any goods and services.

3. All documents concerning the Application, including all documents submitted to the USPTO, and all documents concerning any communications with the USPTO.

4. All documents concerning Applicant's statement to the USPTO in connection with its Application that "Cubita" "means or signifies LITTLE CUBA," and its statement to the USPTO in connection with Reg. No. 2886904, translating "CUBITA" as "small Cuba."

5. All documents concerning Applicant's representation to the USPTO in its Application of a first use date and a first use in interstate commerce date of February 13, 1994.

6. Documents sufficient to identify all countries in which the coffee used in Applicant's CUBITA-labeled coffee is or has at any time been grown, processed or packaged.

7. All documents concerning Leni Alonzo or Miguel Angel, including communications with either of them, and any assignments, transfers, licenses, agreements, or payments between you and either of them in connection with the mark CUBITA, any design or label used by DM in connection with CUBITA, or concerning any other mark.

8. All documents concerning any use, or use in commerce at any time, of the mark CUBITA by Leni Alonzo or Miguel Angel, including all documents concerning any effort or attempt by DM to determine the existence or extent of any such use.

9. All documents concerning the cancellation proceeding, *DM Enters. & Distributors, Inc. v. Ruta Maya Royalty, Ltd*, Canc. No. 92029327 (T.T.A.B.), concerning Reg. No. 2252228, including all documents filed in the TTAB, all documents produced or received by DM in connection with discovery, and any other documents provided by DM to Ruta Maya Royalty, Ltd ("Ruta Maya"), or received by DM from Ruta Maya, and all transcripts of discovery depositions or trial testimony, and any exhibits thereto.

10. All documents concerning Ruta Maya or Timothy Sheehan, including any

communications or agreements with either of them, in addition to documents produced in response to para. 9, *supra*.

11. All communications at any time between any person in the United States, including DM, or any person acting on behalf of DM, Leni Alonzo, Miguel Angel, or Timothy Sheehan, on the one hand, and any person in Cuba, including CIMEX, on the other, concerning the CUBITA mark, and all documents concerning said communications.

12. All documents concerning the CUBITA mark for coffee in Cuba or anywhere in the world outside the United States.

13. Documents sufficient to show when Raul Diaz, any immediate family member, or any other officers, directors, employees or agents of DM have traveled between the United States and Cuba.

14. Documents sufficient to show the extent on an annual basis, by sales volume and dollar value of sales, of Applicant's use in commerce in the United States and use in interstate commerce of the mark CUBITA for coffee, if any, including the date that Applicant itself first used the mark CUBITA in commerce in the United States and in interstate commerce.

15. Documents sufficient to show the channels of trade through which Applicant has sold or currently sells goods bearing the mark CUBITA, including documents sufficient to identify the persons, including retail entities, and the geographic areas, to which any of Applicant's goods bearing the mark CUBITA have been or are distributed, or through which such products have been or are sold.

16. All documents concerning any design, lettering, label, packaging, trade dress, or designation of origin, including development or creation of same, used by Applicant in connection with the mark CUBITA, including in connection with its Application, and including

all documents concerning Applicant's use and adoption of the terms "Cuban style," "Taste of Cuba," and "El Sabor de Cuba" on its packaging for CUBITA-labeled coffee.

17. One sample of each of Applicant's packages, labels, boxes, trade dress, shipping materials, or other containers used in connection with the sale or promotion of Applicant's CUBITA-labeled coffee, from January 1, 1994 to the present.

18. All documents, including marketing reports, business plans, and internal memoranda, concerning Applicant's actual or intended market, customers, and users for coffee bearing the mark CUBITA.

19. All documents concerning Applicant's or any third parties' -- including advertising agencies, publishers, investors, sellers and vendors -- marketing, promotion or advertisement of coffee bearing the mark CUBITA, including examples or copies of each and every advertisement, display and item of promotional material, including on the Internet, and any and all drafts of same, whether used or not.

20. All reviews, reports and mentions in any publication, including on the Internet, or by any third party, of either Applicant's, Opposer's, or any third party's CUBITA-labeled coffee.

21. All documents concerning the "Affirmative Defenses" alleged in Applicant's Answer to Notice of Opposition.

22. All documents concerning whether coffee is grown or produced in Cuba, whether Cuba is known in the United States for the growth or production of coffee, and Cuba's renown or reputation for coffee in the United States.

23. All documents concerning "Cuban style coffee."

24. All documents concerning the perceived country of origin of Applicant's CUBITA-labeled coffee; any perceived geographic association or connection with Applicant's

CUBITA-labeled coffee; and any perceived association or connection between Applicant's CUBITA-labeled coffee and Cuba, among consumers or potential consumers in the United States, including any actual or planned survey, study, test, market research, or analysis concerning same.

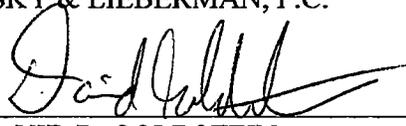
25. Documents sufficient to identify each mark or brand that Applicant has used at any time, or currently uses, that are the same as or similar to any marks or brands used in Cuba, including for goods or services exported from Cuba, and for each such mark or brand, documents sufficient to identify the goods or services used, and when Applicant first used that mark or brand in the United States.

26. Documents sufficient to disclose the organizational and corporate structure of Applicant, including organizational charts, investor materials, officers and directors, numbers of employees, years in business, and location of offices and facilities.

27. All documents identified by Applicant in its Responses to Opposers' First Set of Interrogatories to Applicant, dated March 26, 2008, or otherwise referenced or relied upon by Applicant to respond to any of said Interrogatories.

Dated: New York, New York
March 26, 2008

RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.

By: 

DAVID B. GOLDSTEIN
111 Broadway, Suite 1102
New York, New York 10006-1901
(212) 254-1111
dgoldstein@rbskl.com

*Attorneys for Opposer Corporacion CIMEX,
S.A.*

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served by email and by U.S. first class mail, postage prepaid, on March 26, 2008 upon:

Mitchell W. Mandler
Becker & Poliakoff, P.A.
121 Alhambra Plaza, 10th Floor
Coral Gables, FL 33134
mmandler@becker-poliakoff.com
Attorneys for Applicant DM Enterprises & Distributors, Inc.



DAVID B. GOLDSTEIN

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

CORPORACION CIMEX, S.A.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91178943
)	
DM ENTERPRISES & DISTRIBUTORS, INC.,)	
)	
Applicant.)	

OPPOSERS' FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Title 37 of the Code of Federal Regulations Section 2.120, Opposer CORPORACION CIMEX, S.A. ("Opposer") hereby requests that applicant DM ENTERPRISES & DISTRIBUTORS, INC. ("DM" or "Applicant") serve written answers, in accordance with the definitions and instructions contained herein, upon Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., 111 Broadway, Suite 1102, New York, NY 10006-1901, within 30 days of the date hereof. The responses to each of the following Interrogatories are to be supplemented in accordance with Rule 26(e) of the Federal Rules of Civil Procedure and Title 37 of the Code of Federal Regulations Section 2.120.

DEFINITIONS

1. "Opposer" means CORPORACION CIMEX, S.A., its current and former affiliates, subsidiaries, parents, predecessors and successors in interest, and each of their present and former principals, partners, officers, directors, executives, employees, agents, attorneys and licensees, and all other persons acting or purporting to act on its behalf.

2. "Applicant" or "you" means DM ENTERPRISES & DISTRIBUTORS, INC., its current and former affiliates, subsidiaries, parents, predecessors and successors in interest, and

each of their present and former principals, partners, officers, directors, executives, employees, agents, attorneys and licensees, and all other persons acting or purporting to act on its behalf.

3. The term “communication” means the transmittal of information in the form of facts, ideas, inquiries or otherwise.

4. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic, digital, or computerized data compilations, emails, voicemails, phone records, drafts, translations, and non-identical copies.

5. When referring to a person, to “identify” means to give, to the extent known, the person’s full name, present or last known address, and telephone number, and when referring to a natural person, additionally, the present or last known place of employment.

6. When referring to documents, to “identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

7. The word “including” means “including, but not limited to;” the term “concerning” means relating to, referring to, describing, evidencing, or constituting; the terms “all” and “each” shall be construed as “all and each;” the use of the singular form of a word shall include the plural and vice versa; and the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatory all information that might otherwise be construed to be outside of its scope.

8. “Application” means Applicant’s application to the USPTO for registration of the mark CUBITA and Design, App. No. 75/697908, including all documents or statements provided by Applicant to the USPTO in connection with that Application.

9. The term "use" means "use" or "intended to be used."

GENERAL INSTRUCTIONS

The following General Instructions apply to each of the Interrogatories set forth herein:

1. Each Interrogatory is to be answered separately and in order.
2. Unless otherwise specified in a particular Interrogatory, the time period covered by each Request is January 1, 1992 to the present.
3. These Interrogatories are continuing in character so as to require further and supplemental production if additional responsive information is obtained between the time of initial response and the close of briefing, and Applicant is reminded of the duty to supplement and/or correct any disclosures or responses as required by Rule 26(e) of the Federal Rules of Civil Procedure and Title 37 of the Code of Federal Regulations Section 2.120.
4. If an Interrogatory cannot be answered in full after exercising due diligence to secure the necessary information to do so, please so state and answer the Interrogatory to the extent possible, specifying and stating whatever information or knowledge is presently available concerning the unanswered portion of said interrogatory.
5. If an Interrogatory is objected to, the reason for the objection must be stated with specificity in lieu of an answer. If any part of an Interrogatory is objected to, any unobjectionable portion must be answered.
6. If you contend that any requested information is subject to any privilege (such as attorney/client) or protection (such as attorney work-product) and you intend to assert such privilege or protection, provide the information required by Rule 26(b)(5) of the Federal Rules of Civil Procedure and Title 37 of the Code of Federal Regulations Section 2.120, including (i) the general subject matter of the information you claim to be privileged or protected; (ii) the nature

of the privilege or protection being claimed; and (iii) the date, author and recipient of any allegedly privileged or protected communications or documents

INTERROGATORIES

1. Identify each person who prepared or assisted in the preparation of any response to these Interrogatories. Indicate which Interrogatories each person participated in preparing or answering.

2. Identify each person who provided or collected documents in response to Opposers' First Request for Production of Documents and Things. State the responsibilities of each person.

3. Identify each person who prepared or assisted in the preparation of Applicant's Answer to Notice of Opposition ("Answer").

4. Identify each person who prepared, or assisted in the preparation of, Applicant's Application, including its Response to Office Action, dated December 11, 2006.

5. Identify each person who you believe has knowledge about the allegations in Opposer's Notice of Opposition or in Applicant's Answer to Notice of Opposition. Please summarize their knowledge about the allegations in the Notice of Opposition and/or the Answer.

6. Identify all officers and directors of Applicant, and the locations of Applicant's offices and other facilities.

7. Identify each person with knowledge concerning the denials in Paragraphs 16, 22-26, 33, 36-39, 46, and the Affirmative Defenses of Applicant's Answer, and state with particularity their knowledge concerning said denials and Affirmative Defenses.

8. Identify each person with information concerning Applicant's adoption or selection of, or the Application for, the mark CUBITA, and state with particularity the reason(s) for adopting or selecting the mark CUBITA for coffee.

9. Identify each person with information concerning any design, lettering or trade dress, including the development or creation of same, used by Applicant in connection with the mark CUBITA, including Applicant's use of the terms "Cuban style," "Taste of Cuba," and "El Sabor de Cuba" on its packaging for CUBITA-labeled coffee, and state with particularity the reason(s) for adopting or selecting the design, lettering and trade dress used by Applicant in connection with the mark CUBITA for coffee.

10. Identify each person with information concerning Applicant's representation to the USPTO in its Application of a first use date and a first use in interstate commerce date of February 13, 1994, and state with particularity the facts supporting that representation to the PTO, including any facts concerning any use of the CUBITA mark for coffee by Leni Alonzo or Michael Angel Gonzalez (a/k/a Miguel Angel Gonzalez, a/k/a Michael Gonzalez Angel) (hereinafter "Miguel Angel") or any entity affiliated with either of them, and any investigation by DM concerning same.

11. On an annual basis, provide the sales volume and dollar value of Applicant's sales of CUBITA-labeled coffee, if any, including the date that Applicant itself first sold CUBITA-

labeled coffee in the United States; and identify the retailers, including internet retailers, including by city and State, in which Applicant has sold CUBITA-labeled coffee.

12. Identify with particularity all communications between DM, on the one hand, and any of Leni Alonzo, Miguel Angel, Ruta Maya Royalty, Ltd, Timothy Sheehan, or any persons in Cuba, on the other hand, concerning the mark CUBITA, or any design used in connection with said mark, for coffee or any other goods or services, and identify all agreements, licenses, assignments or transfers discussed, proposed, negotiated, or entered into with any of them.

13. State whether Raul Diaz or any immediate family members were born in Cuba; if so, when they were born, where they lived in Cuba, where they worked in Cuba, the nature of their employment in Cuba, and when they left Cuba; and whether and when, at any time, Raul Diaz, any immediate family member, or any other officers, directors, employees or agents of DM have traveled between the United States and Cuba.

14. State whether Raul Diaz, any immediate family member, or any other officers or directors of DM are in communication with relatives or acquaintances in Cuba, and if so, where those relatives or acquaintances reside and the nature of their employment. This Interrogatory does not ask that Applicant identify said relatives or family members.

15. Identify each person with knowledge of any actual or planned survey, study, test, market research, or analysis concerning the perceived country of origin of Applicant's CUBITA-labeled coffee; any perceived geographic association with Applicant's CUBITA-labeled coffee; any association by consumers or potential consumers between Applicant's CUBITA-labeled coffee and Cuba; or any confusion between Applicant's and Opposer's CUBITA marks for coffee, and state with particularity the findings of any such survey, study, test, market research or analysis.

16. State with particularity any information of which Applicant is aware among consumers or potential consumers concerning the perceived country of origin of Applicant's CUBITA-labeled coffee; any perceived geographic association with Applicant's CUBITA-labeled coffee; any association by consumers between Applicant's CUBITA-labeled coffee and Cuba; or any confusion between Applicant's and Opposer's CUBITA marks for coffee.

17. Identify all goods and services, in addition to coffee, that Applicant has sold at any time, or currently sells, using the mark CUBITA, and for each such good or service, state when Applicant first used the mark CUBITA in commerce.

18. Identify all marks or brands that Applicant has used at any time, or currently uses, that are the same as or similar to any marks or brands used in Cuba, including for goods or services exported from Cuba, and for each such mark or brand, identify the goods or services used, and when Applicant first used that mark or brand in the United States.

19. If Applicant, or any person acting for or on behalf of Applicant, has consulted with or retained the services of any expert or consultant with respect to any matter concerning this proceeding, identify each such expert or consultant and describe the subject matter on which he or she has been or is being consulted or retained; provide the financial terms of such consultation or retention; state in detail the substance of the expert's or consultant's information or opinions upon which Applicant intends to or may rely, and the reasons and evidentiary support therefore; and identify all documents provided to such expert or consultant, and all documents upon which such expert or consultant intends to or may rely.

Dated: New York, New York
March 26, 2008

RABINOWITZ, BOUDIN, STANDARD, KRINSKY &
LIEBERMAN, P.C.

By: 

DAVID B. GOLDSTEIN
111 Broadway, Suite 1102
New York, New York 10006-1901
(212) 254-1111
dgoldstein@rbskl.com
Attorneys for Opposer Corporacion CIMEX, S.A.

VERIFICATION

I declare under penalty of perjury of the laws of the United States that the foregoing answers to OPPOSERS' FIRST SET OF INTERROGATORIES TO APPLICANT. are true and correct to the best of my knowledge, information, and belief.

Executed this the ____
day of _____, 2008.

Print Name

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing OPPOSERS' FIRST SET OF INTERROGATORIES TO APPLICANT was served by email and by U.S. first class mail, postage prepaid, on March 26, 2008 upon:

Mitchell W. Mandler
Becker & Poliakoff, P.A.
121 Alhambra Plaza, 10th Floor
Coral Gables, FL 33134
mmandler@becker-poliakoff.com
Attorneys for Applicant DM Enterprises & Distributors, Inc.



DAVID B. GOLDSTEIN

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

In re: Application Ser. No. 75697908
Mark: Cubita
Published: April 17, 2007

Corporacion Cimex S.A.,

Opposition No. 91178943

Opposer,

v.

DM Enterprises & Distributors, Inc.

Applicant.

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS AND THINGS**

Applicant, DM ENTERPRISES & DISTRIBUTORS, INC.,(hereinafter DM), by and through its undersigned counsel, Becker & Poliakoff, P.A., responds to Opposer CORPORACION CIMEX S.A. (hereinafter Opposer) first set of requests for production of documents and things. In support, DM states as follows:

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each and every Request for Production of Documents set forth below and are not waived with respect to any response. Applicant provides the following responses only as DM Enterprises & Distributors, Inc. The following responses are based upon information and writing presently available to DM.

- A. DM objects to Opposer's First set of Requests for Production of Documents and Things to the extent they seek production of information, documents or things protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege, immunity, or other limitation on discovery. DM has stated its privilege objections expressly in its response to each request that would, in its view, reasonably be interpreted to encompass privileged information, documents, or things. Should any other Request encompass privileged information, documents, or things, however, DM hereby asserts this general objection. Moreover, should any such response by DM occur, it was inadvertent and shall not constitute a waiver of privilege or of DM's right to object during this Opposition proceeding or otherwise to the use of any such information, documents, or things.
- B. DM objects to the Requests to the extent that they seek information, documents or things that are not relevant to this Opposition proceeding, or are not reasonably calculated to lead to the discovery of admissible evidence.
- C. DM objects to the requests to the extent that they seek information, documents or things not in DM's possession, custody or control.
- D. DM objects to the Requests to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents or things sought with a reasonable degree of specificity. DM will attempt to construe the terms and phrases a meaning that will result in the production of relevant information, documents and things designed to lead to the discovery of admissible evidence.

- E. DM objects to the Requests to the extent they seek private, privileged, and confidential commercial, financial, trade secret and/or proprietary business information.
- F. DM objects to the "Instructions" to the extent they exceed the requirements of, or purport to create obligations greater than, those imposed by the Federal Rules of Civil Procedure and the TBMP. DM can produce documents, which are kept in a certain way in the normal course of business.
- G. DM will make, or has made, a good faith, reasonable effort to search for such information, documents and things responsive to these Requests and, subject to its objections, will identify or produce at an appropriate time, or has identified or produced such information, documents and things within its possession, custody or control. The term "non-privileged information, documents or things" refers to information, documents, or things that are not protected by the attorney client privilege, the work product doctrine, or any other privilege or immunity precluding discovery.
- H. Should DM, pursuant to a claim of privilege, withhold information, documents or things that reasonably fall within the scope of one or more of Opposer's requests, DM will comply with its obligations under Rule 26(b)(5) of the Federal Rules of Civil Procedure.
- I. DM objects to each request to the extent that it calls for production or identification of attorney client privilege and/or work product documents generated by DM's Counsel or its agents for internal use and/or privileged communications between or among DM and its counsel since the commencement of this action. The applicability

of the attorney client privilege and/or work product doctrine to such documents is so clear and the burden of identifying each such document is so great that requiring DM to do so would be so burdensome as to result in injustice and would be oppressive in that the burden imposed thereby would be incommensurate with the result sought by Opposer.

J. DM has performed a diligent search for information, documents and things responsive to these requests. However, discovery is ongoing, and DM's investigation is continuing. Therefore, DM reserves the right to supplement its responses herein and its production with any responsive, non-privileged information, documents, or things that may be subsequently discovered.

K. As used herein, the phrase "DM will produce responsive, non-privileged information, documents or things to the extent such documents exist and are within DM's possession, custody and control," does not constitute a representation that such information, documents, or things exist, but only that DM will make, or has made, a good faith reasonable effort to search for such information, documents or things and, subject to its objections, will produce at an appropriate time, or has produced such information, documents, or things within its possession, custody or control. The term "non-privileged documents" refers to documents, which are not protected by the attorney client privilege, the work product doctrine or any other privileges or immunity precluding discovery.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1:

DM did not adopt or select the mark originally; it was assigned to DM by Leni Alonzo in 1999. To the extent that this Request contemplates a request for documents evidencing DM's desire to acquire the assignment from Leni Alonzo, such documents are attached.

REQUEST NO. 2:

DM objects to this request to the extent it seeks privileged document(s) protected by the attorney-client privilege.

REQUEST NO. 3:

To the extent that this Request requires DM to produce documents in the public domain, DM objects to this request as it seeks documents that are either already in the possession of Opposer, or which are publicly available through the "trademark document retrieval" system of the United State Patent and Trademark Office ("USPTO").

Other than the public documents on file with the USPTO (described above), no other documents exist relevant to this Request.

REQUEST NO. 4:

DM objects to this request to the extent it seeks documents already in the possession of Opposer or that are publicly available.

Responsive to this Request, DM is producing Applicant's predecessor's appeal to the USPTO, and the US Trial and Trademark Appeal Board's decision in such appeal.

No other documents responsive to this Request exist.

REQUEST NO. 5:

DM objects to this request to the extent it seeks documents already in the possession of Opposer or that are publicly available.

Specifically, all such documents are attached to the Plaintiff's brief, which was filed in a Cancellation Proceeding before the USPTO (USPTO # 92029327), and are available for viewing or download, at no charge, through the USPTO's website. For ease of reference, the Plaintiff's brief referenced herein is entry 31, filed 10/14/2003.

REQUEST NO. 6:

Documents responsive to this request are in the process of being collected, and will be produced when they are made available to DM.

REQUEST NO. 7:

Attached.

REQUEST NO. 8:

DM does not have any documents in its possession responsive to this Request.

REQUEST NO. 9:

DM objects to this request to the extent it seeks documents already in the possession of Opposer or that are publicly available. Virtually all such documents are available for viewing or download, at no charge, through the USPTO's website.

The only document DM possesses that is both relevant to this Request and not available through the USPTO's website, is attached. For ease of reference, the document produced is a letter between DM Enterprises and Distributors, Inc., and Ruta Maya Management, L.C., dated June 30, 2000.

REQUEST NO. 10:

DM does not have any documents in its possession responsive to this Request.

REQUEST NO. 11:

DM objects to this Request to the extent that it seeks documents that are not in its possession. DM further objects to this request as it seeks documents that are protected by the attorneyclient privilege, specifically, the work product of DM's attorneys. Subject to and without waiving its objections, DM will produce non-privileged documents in its possession.

REQUEST NO. 12:

DM objects to this request as it is overbroad, unduly burdensome, and fails to describe the information, documents or things sought with a reasonable degree of specificity. Subject to and without waiving its objections, DM does not have documents demonstrating the use of the CUBITA mark outside of the United States.

REQUEST NO. 13:

DM Enterprises objects to this request to the extent that it seeks information, documents or things that are not relevant to this Opposition proceeding, not reasonably calculated to lead to the discovery of admissible evidence, and not in Applicant's possession. Subject to and without waiving its objections, DM will produce limited documents responsive to Raul Diaz' travel to CUBA; to wit: a copy of the relevant pages of Mr. Diaz' passport.

REQUEST NO. 14:

Documents responsive to this request will be produced at an agreed to place and time.

REQUEST NO. 15:

Documents responsive to this request will be produced at an agreed to place and time.

REQUEST NO. 16:

Attached.

REQUEST NO. 17:

Documents responsive to this request will be produced which are in DM's possession. Any specimens prior to 1999 are not DM's possession.

REQUEST NO. 18:

DM will produce relevant, responsive, non-privileged documents at an agreed to date and time.

REQUEST NO. 19:

DM will produce relevant, responsive, non-privileged documents at an agreed to date and time.

REQUEST NO. 20:

DM will produce relevant, responsive, non-privileged documents at an agreed to date and time.

REQUEST NO. 21:

DM will produce relevant, responsive, non-privileged documents at an agreed to date and time.

REQUEST NO. 22:

DM does not have any documents in its possession responsive to this request.

REQUEST NO. 23:

DM does not have any documents in its possession responsive to this request.

REQUEST NO. 24:

DM does not have any documents in its possession responsive to this request.

REQUEST NO. 25:

DM owns a U.S. registered trademark in the name "Cubita" with regard to non-alcoholic malt beverages, (USPTO Reg. # 2886904). DM does not have any documents in its possession responsive to this request, other than those referenced in this response and the prior responses above.

REQUEST NO. 26:

DM does not have any documents in its possession responsive to this request. As a point of reference, all publicly filed business documents are available through Florida's Secretary of State website, at www.sunbiz.org.

REQUEST NO. 27:

DM will produce relevant, responsive, non-privileged documents at an agreed to date and time.

Dated: May 16, 2008

Respectfully submitted,

BECKER & POLIAKOFF, P.A.

By

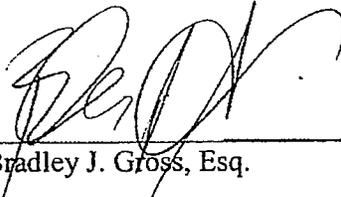


Mitchell W. Mandler
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121 Alhambra Plaza, 10th Floor
Coral Gables, Florida 33134
305-262-4433 (Telephone)
305-442-2232 (Facsimile)

Attorneys for Applicant DM Enterprises and
Distributors, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2008, a copy of the foregoing was served by electronic mail and U.S. Mail, postage prepaid, on David B. Goldstein, Esq., of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., 111 Broadway, 11th Floor, New York, New York 10006-1901.



Bradley J. Gross, Esq.

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

In the Matter of Application No. 75/697,908
Publication date: April 17, 2007
For the Mark: CUBITA

CORPORACION CIMEX S.A.,)	
)	
Opposer,)	
)	Opposition No. 91178943
v.)	
)	
DM ENTERPRISES & DISTRIBUTORS, INC.,)	
)	
Applicant.)	
)	

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES

Applicant, DM Enterprises & Distributors, Inc., (hereinafter Applicant), by and through its undersigned counsel Becker & Poliakoff, P.A., responds to Corporacion Cimex's (hereinafter Opposer) first set of interrogatories. In support, Applicant states as follows:

RESERVATION OF RIGHTS

As to all matters referred to in these responses to Applicant's first set of interrogatories, investigation and discovery continues. Accordingly, Applicant reserves the right to modify these responses and to present in any proceedings and at trial any further information and documents obtained during discovery and preparation for trial.

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each and every Interrogatory set forth below and are not waived with respect to any response.

APPLICANT provides the following responses only as to APPLICANT. The following responses are based upon information and writings presently available to APPLICANT.

- A. APPLICANT objects to Applicant's "Definitions and Instructions" to the extent they exceed the requirements of, or purport to create obligations greater than, those imposed by the Federal Rules of Civil Procedure and the TBMP.
- B. APPLICANT objects to the Interrogatories to the extent that they call for production of information, documents, or things protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or other limitation on discovery. APPLICANT has stated its privilege objections expressly in its response to each Interrogatory that would, in its view, reasonably be interpreted to encompass privileged information, documents, or things. Should any other Interrogatory encompass privileged information, documents, or things, however, APPLICANT hereby asserts this general objection. Moreover, should any such response by APPLICANT occur, it was inadvertent and shall not constitute a waiver of privilege or of APPLICANT's right to object during this opposition proceeding or otherwise to the use of any such information, documents or things.
- C. APPLICANT objects to the Interrogatories to the extent that they seek information, documents or things that are not relevant to this opposition

proceeding, or are not reasonably calculated to lead to the discovery of admissible evidence.

- D. APPLICANT objects to the Interrogatories to the extent that they seek information, documents or things not in OPPOSER's possession, custody or control.
- E. APPLICANT objects to the Interrogatories to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents or things sought with a reasonable degree of specificity. APPLICANT will attempt to construe the terms and phrases used by OPPOSER in a way to give those terms and phrases a meaning that will result in the production of relevant information, documents and things designed to lead to the discovery of admissible evidence.
- F. APPLICANT objects to the Interrogatories to the extent that they seek private, privileged and confidential commercial, financial, trade secret and /or proprietary business information.
- G. APPLICANT will make, or has made, a good faith, reasonable effort to search for such information, documents and things responsive to these Interrogatories and, subject to its objections, will identify or product at an appropriate time, or has identified or produced such information, documents and things within its possession custody or control. The term "non-privileged information, documents, of things" refers to information, documents, or things that are not protected by the attorney-client privilege, the work-product doctrine, or any other privilege or immunity precluding discovery.

- H. Should APPLICANT, pursuant to a claim of privilege, withhold information, documents or things that reasonably fall within the scope of one or more of OPPOSER's Interrogatories, APPLICANT will comply with its obligations under Rule 26(b)(5) of the Federal Rules of Procedure.
- I. APPLICANT has performed a diligent search for information, documents and things responsive to these Interrogatories. However, discovery is ongoing, and APPLICANT'S investigation is continuing. Therefore, OPPOSER reserves its right to supplement its responses herein and its production with any responsive, non-privileged information, documents or things that may be subsequently discovered.

APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES

INTERROGATORIES

1. Identify each person who prepared or assisted in the preparation of any response to these Interrogatories. Indicate which Interrogatories each person participated in preparing or answering.

Arecely and Raul Diaz participated in the preparation of all responses to Opposer's First Set of Interrogatories. Brad Gross, Esq., of Becker & Poliakoff P.A. assisted Arecely and Raul Diaz in preparing responses.

2. Identify each person who provided or collected documents in response to Opposer's First Request for Production of Documents and Things. State the responsibilities of each person.

Arecely and Raul Diaz provided documents in response to Opposer's First Request for Production of Documents and Things. Brad Gross, Esq., of Becker & Poliakoff P.A. collected documents from Arecely and Raul Diaz.

3. Identify each person who prepared or assisted in the preparation of Applicant's Answer to Notice of Opposition ("Answer").

Manjit S. Gill, Esq.

4. Identify Each person who prepared or assisted in the preparation of, Applicant's Application, including its Response to Office Action, dated December 11, 2006.

Albert Bordas, Esq.

5. Identify each person who has knowledge about the allegations in Opposer's Notice of Opposition or in Applicant's Answer to Notice of Opposition. Please summarize their knowledge about the allegations in the Notice of Opposition and/or the answer.

Raul Diaz, President of DM Enterprises & Distributors, Inc., 53 S. Royle Poinciana Blvd., Miami, Florida 33166 has knowledge concerning the allegations in the Opposition about the introduction, design, existence and continuous use of Applicant's mark "CUBITA" for coffee in the United States commerce, and the transfer and assignment of the "CUBITA" mark from Leni Alonzo to DM Enterprises & Distributors, Inc.

Jesus Sanchelima, Sanchelima & associates, P.A., 235 S.W. Le Jeune Road, Miami, Florida 33134, has knowledge concerning the allegations in the Opposition about Applicant's predecessors' assignment of the "CUBITA" mark and goodwill in the United States; the application proceedings for Applicant's applications for the "CUBITA" mark in IC 30 and 32 and proceedings before the Trademark Trial and Appeal Board regarding the "CUBITA" mark.

Albert Bordas of Albert Bordas, P.A. 5975 Sunset Drive, Suite 607 Miami, Florida 33143 has knowledge concerning the allegations in the Opposition about Applicant's predecessors' assignment of the "CUBITA" mark and goodwill in the United States; the application proceedings for Applicant's applications for the "CUBITA" mark in IC 30 and 32 and proceedings before the Trademark Trial and Appeal Board regarding the "CUBITA" mark.

Leni A. Alonzo, 11807 Thunderbird Avenue, Northridge, CA 91326, is the prior owner of the trademark "Cubita" in connection with coffee and tea and related beverage items; has knowledge of the assignment of the trademark and has information on the use of the mark in commerce and assignment of the mark and good will to DM Enterprises & Distributors, Inc.

Miguel Angel Gonzalez, 11807 Thunderbird Avenue, Northridge, CA 91326, has knowledge regarding the use of the mark "CUBITA" in commerce and assignment of the mark and good will to DM Enterprises & Distributors, Inc.

6. Identify all officers and directors of Applicant, and the locations of Applicant's offices and other facilities.

Raul Diaz-53 S. Royle Poinciana Blvd., Miami, Florida 33166

7. Identify each person with knowledge concerning the denials in paragraphs 16, 22-26, 33, 36-39, 46 and the Affirmative Defenses of Applicant's Answer, and state with particularity their knowledge concerning said denials and Affirmative Defenses.

Applicant objects to this Interrogatory to the extent Opposer seeks disclosure of information that is protected by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege or is otherwise protected from disclosure under applicable privileges, laws, or rules. Applicant further objects to providing any information concerning privileged matters that would, in effect, reveal privileged information. Applicant further objects to this Interrogatory to the extent it asks for Applicant's legal analysis or argument, or for Applicant to explain the legal significance of the facts. Subject to and without waiving the specific and general objections, Applicant states as follows:

Raul Diaz, Jesus Sanchelima, Leni Alonzo, Albert Bordas, Miguel Gonzalez. Each of these persons has knowledge as indicated in response to Question 6, above.

8. Identify each person with information concerning Applicant's adoption or selection of, or the Application for, the mark CUBITA, and state with particularity the reason(s) for adopting or selecting the mark CUBITA for coffee.

Leni Alonzo adopted the mark CUBITA, and assigned rights in the mark to Applicants. Applicants cannot speculate as to why Alonzo originally adopted the mark. Applicants acquired rights in the mark to promote and sell coffee.

9. Identify each person with information concerning any design, lettering or trade dress, including the development or creation of same, used by Applicant in connection with the mark CUBITA, including Applicant's use of the terms "Cuban style," "Taste of Cuba," and "El Sabor de Cuba" on its packaging for CUBITA-labeled coffee, and state with particularity the reason(s) for adopting or selecting the design, lettering and trade dress used by Applicant in connection with the mark CUBITA for coffee.

Leni Alonzo.

10. Identify each person with information concerning Applicant's representation to the USPTO in its Application of a first use date and a first use in interstate commerce date of February 13, 1994, and state with particularity the facts supporting that representation to the PTO, including any facts concerning any use of the CUBITA mark for coffee by Leni Alonzo or Michael Angel Gonzalez (a/k/a Miguel Angel Gonzalez, a/k/a Michael Gonzalez Angel)(hereinafter "Miguel Angel") or any entity affiliated with either of them, and any investigation by DM concerning Same.

Jesus Sanchelima, Albert Bordas, Leni Alonzo, Miguel Angel Gonzalez. Leni Alonzo assigned the mark "CUBITA" to DM Enterprises & Distributors, Inc., including the good will of the mark. Prior to the assignment, Applicant does not have enough information to formulate a response. Leni Alonzo has sufficient knowledge of the use of the mark prior to 1999.

11. On an annual basis, provide the sales volume and dollar value of applicant's sales of CUBITA-Labeled coffee, if any, including the date that Applicant itself sold CUBITA-labeled coffee in the United States and identify the retailers, including internet retailers, including by city and state, in which Applicant has sold CUBITA-Labeled coffee.

Exact numbers not known. In lieu of a speculative response, Applicant will make documents available which will identify the dollar value of Applicant's sales of CUBITA coffee and retailers throughout the United States.

12. Identify with particularity all communications between DM, on the one hand, and any of Leni Alonzo, Miguel Angel, Ruta Maya Royalty, Ltd, Timothy Sheehan, or any persons in CUBA, on the other hand, concerning the mark CUBITA, or any design used in connection with said mark for coffee or any other goods or services, and identify all agreements, licenses, assignments or transfers discussed, proposed, negotiated, or entered into with any of them.

Leni Alonzo assigned the mark and good will of CUBITA to DM Enterprises & Distributors, Inc. All written documents that are in Applicant's possession concerning any communication with Leni Alonzo have been provided in response to Opposer's document request. All verbal conversations related to the assignment and transfer of Leni Alonzo's rights in the mark to DM Enterprises & Distributors, Inc. They resulted in the creation of the documents produced in this matter.

Timothy Sheehan verbally agreed to co-exist with DM Enterprises & Distributors, Inc. Similarly, All written documents that are in Applicant's possession concerning any communication with Timothy Sheehan have been provided in response to Opposer's document request. All verbal conversations related to the assignment and transfer of Timothy Sheehan's rights in the mark resulted in the creation of the documents produced in this matter.

13. State whether Raul Diaz or any immediate family members were born in Cuba; if so, when they were born, where they lived in Cuba, where they worked in Cuba, the nature of their employment in Cuba, and when they left Cuba; and whether and when, at any time, Raul Diaz, any immediate family member, or any other officers, directors, employees or agents of DM have traveled between the United States and Cuba.

Applicant objects to this Interrogatory to the extent that it seeks information, documents or things that are not relevant to this opposition proceeding, or are not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said general and specific objections, Raul Diaz has traveled to Mariano, Cuba in September of 1991, August of 1996 and June of 1999.

14. State whether Raul Diaz, any immediate family member, or any other officers or directors of DM are in communication with relatives or acquaintances in Cuba, and if so where those relatives or acquaintances reside and the nature of their employment. This Interrogatory does not ask that Applicant identify said relatives of Family members.

Applicant objects to this Interrogatory to the extent that it seeks information, documents or things that are not relevant to this opposition proceeding, or are not reasonably calculated to lead to the discovery of admissible evidence.

15. Identify each person with knowledge of any actual or planned survey, study, test, market research, or analysis concerning the perceived country of origin of Applicant's CUBITA-labeled coffee; any perceived geographic association with Applicant's CUBITA-labeled coffee; any association by consumers or potential consumers between Applicant's CUBITA-labeled coffee and Cuba; or any confusion between Applicant's and Opposer's CUBITA marks for coffee, and state with particularity the findings of any such survey, study, test, market research or analysis.

No responsive documents exist.

16. State with particularity any information of which Applicant is aware among consumers or potential consumers concerning the perceived country of origin of Applicant's labeled coffee; any association by consumers between Applicant's CUBITA-labeled coffee and CUBA; or any confusion between Applicant's and Opposer's CUBITA marks for coffee.

No responsive information is available or exists.

17. Identify all goods and services, in addition to coffee, that Applicant has sold at any time, or currently sells, using the mark CUBITA, and for each such good or service, state when Applicant first used the mark CUBITA in commerce.

Malta (non-alcoholic beverage)—May 15, 2004.

18. Identify all marks or brands that Applicant has used at any time, or currently uses, that are the same as or similar to any marks or brands used in Cuba, including for goods or

services exported from CUBA, and for each such mark or brand identify the goods or services used, and when Applicant first used that mark or brand in the United States.

Applicant has no first-hand knowledge of its use of any marks that are similar to any designations or brands used in Cuba.

19. If Applicant, or any person acting for or on behalf of Applicant, has consulted with or retained the services of any expert or consultant with respect to any matter concerning this proceeding, identify each such expert or consultant and describe the subject matter on which he or she has been or is being consulted or retained; provide the financial terms of such consultation or retention; state in detail the substance of the expert's or consultant's information or opinions upon which Applicant intends to or may rely, and the reasons and evidentiary support therefore; and identify all documents provided to such expert or consultant, and all documents upon which such expert or consultant intends to or may rely.

Applicant has not retained an expert witness at this time.

STATE OF FLORIDA :
 : ss
COUNTY OF MIAMI-DADE :

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Raul Diaz, as the President of DM Enterprises & Distributors, Inc., a Florida corporation. He is personally known to me, or produced _____ as identification, and _____ take an oath. If no type of identification is indicated, the above-named person(s) is/are personally known by me.

Notary Public

My Commission Expires

GOLDSTEIN DECLARATION EXHIBIT 7



MA'

HOME

HISTORY

STORES

JOB'S

SPECIALS

CONTACTS

SEDANO'S SUPERMARKET

OUR COMMUNITY

PRODUCTS & SERVICES

WEEKLY SPECIALS



Sedano's Supermarkets

-Sedano's is an important part of Florida's Hispanic Community. Since the sixties, it has grown substantially from its first 4000 square foot grocery store in Hialeah.

-Founded in 1962, Sedano's Supermarket is the largest Hispanic supermarket chain in the USA. It employs over 2,000 people in 28 stores covering the Miami-Dade, Broward and Palm Beach counties. And it continues to grow, with two new store openings for 2007 and with expansion plans to Central Florida.

-The company strives to know its customers well. About 90% are Hispanics that have come from Cuba, the Caribbean, and other countries from Central and South America, as well as a growing number of customers whose first language is English. Knowing its consumers, as seen through its variety of merchandise, bilingual personnel, advertising and the services offered, is the base of the company's success.

-This market know-how is reflected in 2004 revenues in excess of \$380 million, which ranked the company 14th in the Hispanic Business 500.

-Sedano's makes significant contributions to the community it serves, with donations and support to programs like the American Red Cross Vendor Program, the Leukemia & Lymphoma Society, the Liga Contra el Cancer, the American Cancer Society and March of Dimes. It also helps with donations to local community events. It is Sedano's way of giving back to the community of which it has been integral part since the last four decades.



MA'

HOME

HISTORY

STORES

JOB'S

SPECIALS

CONTACTS

SEDANO'S SUPERMARKET

OUR COMMUNITY

PRODUCTS & SERVICES

WEEKLY SPECIALS



History

Sedano's supermarket was founded in Hialeah, Florida in 1962. It has grown to become the # 1 Hispanic retailer in the United States. The founder, Armando Guerra was a well-established business man in Cuba. While in Cuba Mr. Guerra gained the experience he would need upon reaching the United States in 1961. In 1971 Mr. Guerra brought Manuel Herran into the then small business to help in the daily operations.

Manuel Herran was born on 1937 in Santander, Spain. In 1951, he left to Cuba with his family to meet his father which had previously left. In 1966 Mr. Herran, his wife Nyria and two year old daughter moved to Atlanta, Georgia. Finally in 1967, Mr. Herran and family moved to Miami, Florida where he worked as a salesman until 1971. Armando Guerra passed away in 1979 and control of the company passed to Manuel Herran, the current President and Chairman of the board, and Armando Guerra Jr., currently the President of Sedano's Pharmacies and discount.

This year Sedano's Celebrates it's 45th year of operations. The Chain has grown to include 28 Supermarkets and 13 Pharmacies. Sedano's has become the largest member of Associated Grocer's of Florida. With their help, Sedano's has conquered the Hispanic market in Miami, Florida. The company's plans for the future have been set as they strive to broaden their customer base. These plans include the opening of 3 new locations in 2007.

Bi
W
to
of



MA'

HOME

HISTORY

STORES

JOBS

SPECIALS

CONTACTS

SEDANO'S SUPERMARKET

OUR COMMUNITY

PRODUCTS & SERVICES

WEEKLY SPECIALS



Locations

Listing of our stores and its locations ordered alphabetically

SEDANO'S MANAGEMENT

3140 West 76 Street, Miami FL 33018
 Tel: 305-824-1034 Fax: 305-556-6981
 Hours: Monday-Friday 8:00AM-5:00PM
[+ View Map](#)

Hialeah - Store# 1

840 East 41st street, Hialeah FL 33013
 Tel: 305-696-0928 Fax: 305-696-0949
 Hours: Monday-Saturday 8:00AM-9:00PM, Sunday 8:00AM-6:00PM
[+ View Map](#)

Hialeah - Store# 8

3950 West 12th Ave, Hialeah FL 33012
 Tel: 305-556-6477 Fax: 305-556-6479
 Hours: Monday-Sunday 7:00AM-10:00PM
[+ View Map](#)

Hialeah - Store# 9

4040 East 4th Ave., Hialeah FL 33013
 Tel: 305-825-1725 Fax: 305-825-1746
 Hours: Monday-Sunday 7:00AM-10:00PM
[+ View Map](#)

Hialeah - Store# 10

1690 West 68th Street Hialeah FL 33014



GOLDSTEIN DECLARATION EXHIBIT 8

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

This page was generated by the TARR system on 2008-06-05 18:56:41 ET

Serial Number: 75264322 Assignment Information Trademark Document Retrieval

Registration Number: 2185528

Mark



Consultoria Juridica Internacional
ABOGADOS - LAWYERS

(words only): CONSULTORIA JURIDICA INTERNACIONAL ABOGADOS-LAWYERS

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2004-07-20

Filing Date: 1997-03-14

Transformed into a National Application: No

Registration Date: 1998-09-01

Register: Principal

Law Office Assigned: LAW OFFICE 105

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: 40S -Scanning On Demand

Date In Location: 2007-08-03

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

1. Consultoria Juridica Internacional

Address:

Consultoria Juridica Internacional
Calle 16 No. 314, e/ 3ra. y 5ta. Avenida

Miramar, Playa Ciudad de la Habana
Cuba
Legal Entity Type: Corporation
State or Country of Incorporation: Cuba

GOODS AND/OR SERVICES

International Class: 042
Class Status: Active
legal services
Basis: 1(a), 44(e)
First Use Date: 1986-05-14
First Use in Commerce Date: 1993-05-00

ADDITIONAL INFORMATION

Disclaimer: "CONSULTORIA JURIDICA INTERNACIONAL" and "ABOGADOS-LAWYERS"

Translation: The English translation for "CONSULTORIA" is "Consulting firm", for "Juridica" is "Legal", for "Internacional" is "International", and for "Abogados" is "Lawyers".

Foreign Registration Number: 123,856
Foreign Registration Date: 1996-05-23
Country: Cuba
Foreign Expiration Date: 2005-09-12

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-08-03 - Case File In TICRS
2004-07-20 - Section 8 (6-year) accepted & Section 15 acknowledged
2004-06-10 - Section 8 (6-year) and Section 15 Filed
1998-09-01 - Registered - Principal Register
1998-06-09 - Published for opposition
1998-05-08 - Notice of publication
1998-04-06 - Approved for Pub - Principal Register (Initial exam)

1997-12-01 - Communication received from applicant

1997-11-21 - Non-final action mailed

1997-11-05 - Assigned To Examiner

1997-09-30 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

JAY SANCHELIMA

Correspondent

JAY SANCHELIMA
SANCHELIMA & ASSOCIATES PA
235 SW LE JEUNE RD
MIAMI FL 33134

Domestic Representative

SANCHELIMA & ASSOCIATES P.A.

GOLDSTEIN DECLARATION EXHIBIT 9

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

This page was generated by the TARR system on 2008-05-27 14:47:49 ET

Serial Number: 74448582 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark (words only): CUBITA

Standard Character claim: No

Current Status: Abandoned-Failure To Respond Or Late Response

Date of Status: 1995-08-17

Filing Date: 1993-10-19

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 12

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: 1995-08-21

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

1. ALONZO, LENI A.

Address:

ALONZO, LENI A.
11807 Thunderbird Avenue
Northridge, CA 91326
United States

Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 030

Class Status: Abandoned

coffee

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

1995-08-17 - Abandonment - Failure To Respond Or Late Response

1995-01-09 - Non-final action mailed

1995-01-09 - Assigned To Examiner

1995-01-05 - Assigned To Examiner

1994-12-22 - Previous allowance count withdrawn

1994-12-16 - Notice of publication

1994-10-20 - Approved for Pub - Principal Register (Initial exam)

1994-09-06 - Communication received from applicant

1994-03-11 - Non-final action mailed

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Robert J. Schaap

Correspondent

Robert J. Schaap

21241 Ventura Boulevard

Suite 188

Woodland Hills, CA 91364-2108

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

This page was generated by the TARR system on 2008-05-27 14:49:21 ET

Serial Number: 74542031 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark (words only): CUBITA

Standard Character claim: No

Current Status: Abandoned-Failure To Respond Or Late Response

Date of Status: 1995-08-01

Filing Date: 1994-06-24

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 12

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: 1995-08-03

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

1. ALONZO, LENI A.

Address:

ALONZO, LENI A.
11807 Thunderbird Avenue
Northridge, CA 91326
United States

Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 030

Class Status: Abandoned

sugar

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

1995-08-01 - Abandonment - Failure To Respond Or Late Response

1994-12-14 - Non-final action mailed

1994-12-14 - Assigned To Examiner

1994-12-14 - Previous allowance count withdrawn

1994-12-14 - Assigned To Examiner

1994-12-14 - Assigned To Examiner

1994-12-13 - Assigned To Examiner

1994-11-30 - Approved for Pub - Principal Register (Initial exam)

1994-11-23 - Examiner's amendment mailed

1994-11-15 - Assigned To Examiner

1994-11-11 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Robert J. Schaap

Correspondent

Robert J. Schaap

21241 Ventura Boulevard, Suite 188

Woodland Hills, CA 91364

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

This page was generated by the TARR system on 2008-05-27 14:49:43 ET

Serial Number: 74545085 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark (words only): CUBITA

Standard Character claim: No

Current Status: Abandoned-Failure To Respond Or Late Response

Date of Status: 1995-08-01

Filing Date: 1994-06-24

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 12

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: 1995-08-03

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

1. ALONZO, LENI A.

Address:

ALONZO, LENI A.
11807 Thunderbird Avenue
Northridge, CA 91326
United States

Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 003

Class Status: Abandoned

perfume, cologne, toilet water, fragrances and oils therefor

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

1995-08-01 - Abandonment - Failure To Respond Or Late Response

1994-11-16 - Non-final action mailed

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Robert J. Schaap

Correspondent

Robert J. Schaap

21241 Ventura Boulevard, Suite 188

Woodland Hills, CA 91364

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

This page was generated by the TARR system on 2008-05-27 14:48:19 ET

Serial Number: 74541733 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark (words only): CUBITA

Standard Character claim: No

Current Status: Abandoned-Failure To Respond Or Late Response

Date of Status: 1995-08-01

Filing Date: 1994-06-24

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 12

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: 1995-08-03

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

1. ALONZO, LENI A.

Address:

ALONZO, LENI A.
11807 Thunderbird Avenue
Northridge, CA 91326
United States

Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 034

Class Status: Abandoned

cigars and raw and processed tobacco products

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

1995-08-01 - Abandonment - Failure To Respond Or Late Response

1994-11-30 - Non-final action mailed

1994-11-30 - Assigned To Examiner

1994-11-22 - Assigned To Examiner

1994-11-17 - Letter of Protest accepted

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Robert J. Schaap

Correspondent

Robert J. Schaap

21241 Ventura Boulevard, Suite 188

Woodland Hills, CA 91364

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

This page was generated by the TARR system on 2008-05-27 14:48:57 ET

Serial Number: 74541740 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark (words only): CUBITA

Standard Character claim: No

Current Status: Abandoned-Failure To Respond Or Late Response

Date of Status: 1995-08-01

Filing Date: 1994-06-24

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 12

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: 1995-08-03

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

1. ALONZO, LENI A.

Address:

ALONZO, LENI A.
11807 Thunderbird Avenue
Northridge, CA 91326
United States

Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 033

Class Status: Abandoned

rum

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

1995-08-01 - Abandonment - Failure To Respond Or Late Response

1994-12-14 - Non-final action mailed

1994-12-14 - Assigned To Examiner

1994-12-14 - Previous allowance count withdrawn

1994-12-14 - Assigned To Examiner

1994-12-14 - Assigned To Examiner

1994-12-14 - Assigned To Examiner

1994-12-13 - Assigned To Examiner

1994-11-30 - Approved for Pub - Principal Register (Initial exam)

1994-11-23 - Examiner's amendment mailed

1994-11-16 - Assigned To Examiner

1994-11-10 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Robert J. Schaap

Correspondent

Robert J. Schaap
21241 Ventura Boulevard, Suite 188
Woodland Hills, CA 91364

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

This page was generated by the TARR system on 2008-05-27 14:50:08 ET

Serial Number: 75069707 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark



(words only): CUBITA

Standard Character claim: No

Current Status: Abandoned-Failure To Respond Or Late Response

Date of Status: 1997-06-12

Filing Date: 1996-03-08

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 107

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: 1997-06-23

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

1. Alonzo, Leni A.

Address:

Alonzo, Leni A.
11807 Thunderbird Avenue

Northridge, CA 91326
United States
Legal Entity Type: Individual
Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 030
Class Status: Abandoned
coffee
Basis: 1(a)
First Use Date: 1994-02-13
First Use in Commerce Date: 1994-02-13

ADDITIONAL INFORMATION

Design Search Code(s):
26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)

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- 1996-10-04 - Assigned To Examiner
- 1996-09-23 - Assigned To Examiner

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GOLDSTEIN DECLARATION EXHIBIT 10



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[| SITE INDEX](#)
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[| SITE INDEX](#)
[| SEARCH](#)
[| eBUSINESS](#)
[| HELP](#)
[| PRIVACY POLICY](#)



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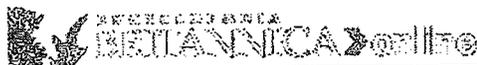
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[SUBJECTS](#) | [A-Z](#) | [THE INDEX](#)

Content Related to this Topic

Main Article	
Maps & Flags	5
Images	14
Tables	19
Media	1
Related Articles	48
Internet Guide	

This Article's Table of Contents

Expand all

- [Introduction](#)
- [Land](#)
 - [Relief](#)
 - [Drainage](#)
 - [Soils](#)
 - [Climate](#)
 - [Plant and animal life](#)
- [People](#)
 - [Ethnic groups](#)
 - [Languages](#)
 - [Religion](#)
 - [Settlement patterns](#)
 - [Demographic trends](#)
- [Economy](#)
 - [Agriculture, forestry, and fishing](#)
 - [Resources and power](#)
 - [Manufacturing](#)
 - [Finance](#)
 - [Trade](#)
 - [Services](#)
 - [Labour and taxation](#)
 - [Transportation and telecommunications](#)
- [Government and society](#)
 - [Constitutional framework](#)
 - [Local government](#)
 - [Justice](#)
 - [Security](#)
 - [Political process](#)
 - [Health and welfare](#)
 - [Housing](#)
 - [Education](#)
- [Cultural life](#)
 - [Daily life and social customs](#)
 - [The arts](#)
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 - [Sports and recreation](#)
 - [Media and publishing](#)
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 - [Early period](#)

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Cuba

Agriculture, forestry, and fishing

Page 13 of 50

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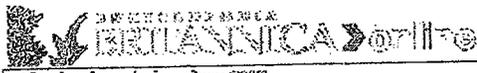
Economy > Agriculture, forestry, and fishing

Arable land covers nearly one-third of Cuba. The soil is highly fertile, allowing up to two crops a year, but the highly variable nature of annual precipitation has historically plagued agriculture. Subterranean waters are important for irrigation. A small but increasing share of crops is produced on private land or by cooperatives that are not owned by the state.

The Cuban economy has depended heavily on the **sugarcane** crop since the 18th century. Vast areas have been leveled, irrigated, and planted in sugarcane, and yields per acre have increased with the application of fertilizers. Sugar output, except in years of drought or sugarcane blight, increased after the introduction of mechanized harvesters in the early 1970s but plunged after the breakup of the Soviet Union in 1991.

Apart from sugarcane, the chief crops are rice (the main source of calories in the traditional diet), citrus fruits (which are also an important export), potatoes, plantains and bananas, cassava, tomatoes, and corn (maize). Fruit trees include such citrus varieties as lemon, orange, and grapefruit; some species of the genus *Annona*, including the *guanábana* (**soursop**) and *anón* (**sweetsop**); and avocados and papayas. **Tobacco**, traditionally the country's second most important export crop, is grown mainly in the Pinar del Río area in the west and also in the centre of the main island. Coffee grows mainly in the east, where Guantánamo city is known as the "coffee capital" of Cuba. Other products include cacao and beans. Cuba imports large amounts of rice and other foodstuffs, oilseeds, and cotton.

Cattle, pigs, and chickens are the main livestock. The number of cattle increased in the 1960s, as veterinary



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A TO Z

THE INDEX

Content Related to this Topic

Main Article	
Maps & Flags	5
Images	14
Tables	19
Media	1
Related Articles	48
Internet Guide	

This Article's Table of Contents

Expand all

- [Introduction](#)
- [Land](#)
 - [Relief](#)
 - [Drainage](#)
 - [Soils](#)
 - [Climate](#)
 - ▶ [Plant and animal life](#)
- [People](#)
 - [Ethnic groups](#)
 - [Languages](#)
 - [Religion](#)
 - [Settlement patterns](#)
 - [Demographic trends](#)
- [Economy](#)
 - [Agriculture, forestry, and fishing](#)
 - [Resources and power](#)
 - [Manufacturing](#)
 - [Finance](#)
 - [Trade](#)
 - [Services](#)
 - [Labour and taxation](#)
 - [Transportation and telecommunications](#)
- [Government and society](#)
 - [Constitutional framework](#)
 - [Local government](#)
 - [Justice](#)
 - [Security](#)
 - [Political process](#)
 - [Health and welfare](#)
 - [Housing](#)
 - [Education](#)
- [Cultural life](#)
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Cuba

Plant and animal life

Page 6 of 50

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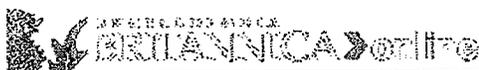
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Land >

Plant and animal life

Cuba's lush tropical plant life includes thousands of flowering plant species, half of which may be endemic to the archipelago. Much of the original vegetation has been replaced by sugarcane, coffee, and rice plantations, made possible by the wide-scale and indiscriminate destruction of forests. However, the government has replanted many areas since the 1960s, and **forests** now cover about one-fourth of the surface area. The most extensive forests in Cuba are in the Sagua-Baracoa highlands, which adjoin the easternmost portion of the Cauto River valley. Among the native trees is the ceiba (kapok) tree, which plays a role in many local legends. The extremely rare **cork palms** (*Microcycas calocoma*) of the western regions are "living fossils"—representatives of a genus of **cycads** thought to have existed for more than 100 million years. The abundant **royal palm**, reaching heights of 50 to 75 feet (15 to 23 metres), is the national tree and a characteristic element of the rural landscape. Mangrove swamps cover the lower coasts and shoals of the archipelago. Cuba's national flower is the *mariposa* ("butterfly"; *Hedychium coronarium Koenig*), whose long, green stems can grow higher than 5 feet (1.5 metres) and produce fragrant, white, butterfly-like petals.

Animal life is abundant and varied in Cuba, which is the habitat of numerous small mammals and reptiles, more than 7,000 insect species, and 4,000 species of land, river, and sea mollusks. Sponges are found off the southwestern coast, and crustaceans abound. Tarantulas, scorpions, and other arachnids are similarly profuse. There are more than 500 fish species and numerous types of sharks. Freshwater fishes are less abundant. About 300 bird species are found on the island, some two-thirds of which are migratory; notable indigenous birds include flamingos, royal thrushes, and



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This Article's Table of Contents

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Guantánamo

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Page 1 of 1

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city, capital of Guantánamo province, eastern Cuba, lying in the mountains, 21 miles (34 km) north of strategic Guantánamo Bay. Founded in 1819, the settlement was called Santa Catalina del Saltadero del Guaso until 1843. French refugees from Haiti aided in the colonization of the area, and many cultural characteristics, such as the architecture, show their influence. Catalans were also among the early settlers.

Guantánamo is the centre of an agricultural region producing mainly sugarcane and coffee. The city's chief industrial activities are coffee roasting, sugar milling, and the processing of chocolate, liqueurs, and salt. Railroads and highways link it with Santiago de Cuba and with Caimanera, a port on Guantánamo Bay. Because of the difficulty of land communications in the mountainous region, air traffic in Guantánamo is heavy. Pop. (1994 est.) 207,769.

Page 1 of 1

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Back to top

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< Cub Run Cuba >

CONTENTS · ENTRY INDEX · BIBLIOGRAPHIC RECORD

The Columbia Gazetteer of North America. 2000.

Cuba

Cuba, republic (42,804 sq mi/110,922 sq km; 1991 est. pop. 10,705,000, including Isla de Juventud), consisting of the isl. of Cuba and numerous adjacent isls.; ☉ Havana (Span. *La Habana*). Cuba is the largest of the Greater Antilles and westernmost country in the West Indies and lies strategically at the entrance of the Gulf of Mexico, with the W sect. only 90 mi/145 km S of Key West, Fla. The S coast is washed by the Caribbean Sea, the N coast by the Atlantic Ocean, the Fla. Straits, and the Gulf of Mexico, and in the E the Windward Passage separates Cuba from Haiti. The shores are often marshy and are fringed by coral reefs and keys. There are many fine seaports—Havana (the chief import point), Cienfuegos, Matanzas, Cárdenas, Nuevitas, Santiago de Cuba, and Guantánamo (a U.S. naval base since 1903). Cuba has 3 mt. regions: the Sierra Maestra in the E, rising to 6,560 ft/2,000 m in the Pico Turquino; a lower range, the scenic Sierra de los Órganos, in the W; and the Sierra de Trinidad, or Escambray, a picturesque mass of hills amid the plains and rolling country of central Cuba, a region of vast sugar plantations. The rest of the isl. is level or rolling terrain. The topography, the semitropical and generally uniform climate, and the soil are suitable for various crops, but sugarcane has been dominant since the early 19th cent.; it is grown on about 2/3 of all cropland. Some attempts at diversification have been made, but the program of agr. reform established by the Castro govt. did not lessen the continued dominance of sugar. Sugar and its derivatives account for bet. 65% and 75% of the value of all exports. Other important exports include nickel, fish, citrus fruits, and cigars. High-quality tobacco is grown, especially in the Vuelta Abajo region of Pinar del Río prov., and coffee, rice, corn, citrus fruits, and sweet potatoes are important. However, the emphasis on export crops (sugar and, to a lesser degree, tobacco) necessitates the importation of much food. Petroleum was also a major import when the USSR was supporting the Cuban economy and, in the mid-1990s, Cuba continued to trade sugar for Rus. oil. Large-scale fishing operations have been encouraged in recent decades, and that industry is now one of the largest in Lat. Amer. Livestock raising has also been highly developed. Mfg. is centered chiefly in the processing of agr. prods.; sugar milling has long been the largest industry. Some consumer goods (e.g., textiles, fertilizer, cement) are also manufactured, as well as chemicals and steel. Mining has never been of major importance, although Cuba's nickel deposits are among the largest in the world and are gaining in importance. Extraction is difficult because of the presence of

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**Declaration of Translation
of
The Declaration of Reynol Sampedro Vazquez and Exhibits 1-3 Attached Thereto**

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 following documents from Spanish into English:

a) Declaration of Reynol Sampedro Vazquez, dated June 3, 2008

b) Exhibit 1 (Letter from Jesus Sanchelima, dated November 23, 1998), Exhibit 2 (Letter from Jesus Sanchelima, dated December 21, 1998); and Exhibit 3 (Email from Jesus Sanchelima, dated March 23, 2000).

I attach hereto a copy of the original documents in Spanish and the translation thereof which is a true and correct translation into English.

Signed this 4th day of June 2008



DEBRA EVENSON

de los documentos identificados más adelante obran en los archivos de la CJI, que están bajo mi cargo y responsabilidad.

6. Se adjunta a la presente como Anexo 1 una copia fiel y correcta de una carta de Jesús Sanchelima, del bufete Sanchelima & Associates, P.A., Miami, Florida, de fecha 23 de noviembre de 1998, dirigida a Magaly Rodriguez, Abogada de CJI, en aquel entonces, relacionada con la marca CUBITA (C00349-350), con una traducción al inglés.

7. Se adjunta a la presente como Anexo 2 una copia fiel y correcto de una carta de Jesus Sanchelima, de fecha 21 de diciembre de 1998, con un adjunto, dirigida a Roberto Vizcaíno Martinez, Abogado de la CJI en aquel entonces, relacionada con la marca CUBITA (C00351-356), con una traducción al inglés.

8. Se adjunto a la presente como Anexo 3 una copia fiel y correcta de una carta de Jesus Sanchelima, mandada por el email, de fecha 23 de marzo de 2000, dirigida a Roberto Vizcaíno Martinez, con relación a la marca CUBITA (C00357), con una traducción al inglés.

Declaro bajo pena de perjurio bajo las leyes de los Estados Unidos que lo anterior es la verdad y correcto hasta que sepa y creo.

Firmado el día 3 de junio de 2008
La Habana, Cuba


REYNOL SAMPEDRO VÁZQUEZ

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

CORPORACION CIMEX, S.A.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91178943
)	
DM ENTERPRISES & DISTRIBUTORS, INC.,)	
)	
Applicant.)	
)	

DECLARATION OF REYNOL SAMPEDRO VÁZQUEZ

I, REYNOL SAMPEDRO VÁZQUEZ, declare as follows:

1. I am over the age of 18, of sound mind, and capable of giving testimony herein. I make this Declaration based on my own personal knowledge of the facts that are stated herein.
2. I reside at Calle Este Edif 809-811, apt. 2b, between Conill and Santa Ana, Nuevo Vedado, Plaza, City of Havana, Cuba.
3. I am fluent and literate in Spanish. I have some knowledge of spoken and written English but I do not consider myself capable of speaking or writing English fluently and therefore I make this Declaration in Spanish.
4. I am an attorney employed at the Consultoría Jurídica Internacional, S.A. ("CJI") since 2002. I received my Masters in Law from the University of Barcelona, Spain, in 2001.
5. I have reviewed the files of CJI in connection with the above-captioned proceeding in the United States Patent and Trademark Office, and attest that the originals of the documents identified below are located in the files of CJI, which are under my charge and responsibility.

6. Annexed hereto as Exhibit 1 is a true and correct copy of a letter from Jesus Sanchelima, of the firm Sanchelima & Associates, P.A., Miami, Florida, dated November 23, 1998, addressed to Magaly Rodriguez, an attorney at that time with CJI, concerning the mark CUBITA (C00349-350), with English translation.

7. Annexed hereto as Exhibit 2 is a true and correct copy of a letter from Jesus Sanchelima, dated December 21, 1998, with an attachment, addressed to Roberto Vizcaino Martinez, an attorney at that time with CJI, concerning the mark CUBITA (C00351-356), with English translation.

8. Annexed hereto as Exhibit 3 is a true and correct copy of a letter from Jesus Sanchelima, sent by email, dated March 23, 2000, addressed to Roberto Vizcaino Martinez, concerning the mark CUBITA (C00357), with English translation.

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 the 3rd day of June, 2008
Havana, Cuba

REYNOL SAMPEDRO VÁZQUEZ

SAMPEDRO DECLARATION EXHIBIT 1

SANCHELIMA & ASSOCIATES, P.A.

PATENTS, TRADEMARKS & COPYRIGHTS

J. Sanchelima, RFG PAT. ATTY.

*Attorneys At Law*235 S.W. 1 E JEUNE ROAD
MIAMI, FL 33134-1762
(305) 447-1817
FAX: (305) 445-8484

23 de noviembre de 1998

Consultoria Juridica Internacional
Dra. Magali Rodriguez
Calle 16 No. 314, e/ 3ra. y 5ta. Ave.
Miramar Playa, La Habana, Cuba

MAGALY

Vesino.
23/11/98

via fax 011-537-242303

Re: Cubita & Design

Estimada Dra. Rodriguez:

Gracias por su tiempo para discutir el asunto arriba mencionado. Como le indique, tenemos un cliente interesado en mercadear varias marcas para cafe, algunas de mercados etnicos (cubano, haitiano, etc.) en los EEUU. Una de esas marcas es Cubita.

En el año 1994, se me encomendo hacer un estudio de disponibilidad marcaria en el cual nos dimos cuenta que existia una solicitud presentada por un tal Timothy Sheehan (S/N 74/490,595 presentada el 16 de febrero de 1994). Entendemos que el Sr. Sheehan entro en negocios con Miguel Angel (ahora no me acuerdo del apellido), de San Diego y posteriormente puso el registro de marca que resulto a nombre d esu esposa, la Sra. Alonzo. Tambien entiendo que Miguel Angel visito Cuba y hablo con funcionarios de Kave Coffee, S.A. De acuerdo con lo que entendi en aquel momento, habia un acuerdo para que Miguel Angel o Sheehan distribuyeran el cafe en los EEUU y se quedarán con la marca. Pero, puedo estar equivocado.

Hace un par de años el INTA se reunio en San Diego y yo puse en contacto a Miguel Angel con Ileana (tambien estaban presentes Ada Acosta, la Dra. Maria Antonia Carrillo de Albornoz y la Ing. Dania Galvez) pues el primero queria conocer la "bella" delegacion cubana. La prepotencia de Miguel Angel se destaco por encima de lo que esperaba. De ahí nos fuimos sin haber podido avanzar mucho, pero todavia yo quede con la impresion que habia cierta autorizacion por Kave Coffee, S.A.

23 de noviembre de 1998
Dra. Magali Rodriguez
Pagina Dos

De todas formas, lo que necesito esclarecer es la relacion marcaria (no me interesa la relacion comercial) que hay entre Kave Coffee, S.A. y Miguel Angel o sus entidades. Nuestro cliente esta interesado en comercializar la marca y debo de emitir una opinion tan completa como sea posible sobre la situacion actual de dicha marca en los EEUU.

Sin mas por el momento y esperando vuestros comentarios, queda de Uds.

Atentamente,


Jesus Sanchelima, Esq.

file
#3

SANCHELIMA & ASSOCIATES, P.A.
ATTORNEYS AT LAW

**SAMPEDRO DECLARATION EXHIBIT 1
TRANSLATION**

SANCHELIMA & ASSOCIATES, P.A.
PATENTS, TRADEMARKS & COPYRIGHTS
J. Sanchelima, REG. PAT. ATTY>

Attorneys At Law
235 S.W. LE JEUNE ROAD
MIAMI, FL. 33134-1762
(305) 447-1617
Fax: (305) 445-8484

November 23, 1998

Consultoria Juridica Internacional
Dr. Magali Rodriguez
Calle 16 No. 314, e/ 3rd and 5th Ave.
Miramar Playa, Havana, Cuba

via fax 011-537-242303

Re: Cubita and Design

Dear Dr. Rodriguez:

Thank you for your time to discuss the above mentioned subject. As I indicated, we have a client interested in marketing various coffee brands, some for ethnic markets (Cuban, Haitian, etc) in the US. One of those brands is Cubita.

In 1994, I was asked to research the availability of the mark in which we became aware that there existed an application submitted by Timothy Sheehan (S/N 74/490,595, filed on February 16, 1994). We understand that Mr. Sheehan entered into negotiations with Miguel Angel (I don't remember the last name now), of San Diego and later put the resulting registration of the mark in his wife's name, Mrs. Alonzo. I also understand that Miguel Angle visited Cuba and spoke with officials of Kave Coffee, S.A. In accord with what I understood at that time, there was an agreement that Migel Angel or Sheehan would distribute coffee in the US and would keep the mark. But, I could be wrong.

A couple of years ago, INTA met in San Diego, and I put Miguel Angel in touch with Ileana (also present were Ada Costa, Dra. Maria Antonia Carrillo de Albornoz and Ing. Dania Galvez) sine he wanted to meet the "beautiful" Cuban delegation. The arrogance of Miguel Angel was beyond anything expected. We left without having advanced much, but still I had the impression that there was a certain authorization by Kave Coffee, S.A.

November 23, 1998
Dr. Magali Rodriguez
Page two

In any event, what I need to clarify is the trademark relationship (I am not interested in the commercial relationship) between Kave Coffee, S.A. and Miguel Angel or his entities. Our client is interested in selling the brand and I must issue as complete an opinion as possible about the current situation of said mark in the US.

Without more for the moment and awaiting your comments, I remain

Sincerely,

[signature]

Jesus Sanchelima, Esq.

File
#3

SANCHELIMA & ASSOCIATES, P.Q.
ATTORNEYS AT LAW

SAMPEDRO DECLARATION EXHIBIT 2

ORGANIZACION

LA EMPRESA FUÉ ESTABLECIDA EN EL ESTADO DE LA

SANCHELIMA & ASSOCIATES, P.A.

PATENTS, TRADEMARKS & COPYRIGHTS

J. Sanchelima, REG PAT ATTY.

Attorneys At Law

235 S.W. LE JEUNE ROAD
MIAMI, FL 33134-1782
(305) 447-1817
FAX: (305) 445-8484

21 de diciembre de 1998

Consultoria Juridica Internacional
Lic. Viscalno
Calle 16 No. 314, e/ 3ra. y 5ta. Ave.
Miramar Playa
La Habana, Cuba

Re: Cubita

Estimado Lic. Viscalno:

Adjunto encontrara la informacion que le prometí. Colgando con Ud. nos llamo Sheehan. Vamos a enfocar el asunto de otra forma.

Independientemente de todo esto, considero que deben Uds. de registrar vuestra marca para prevenir que terceros menos escrupulosos entorpezcan sus derechos, especialmente si este tema despega.

Atentamente,


Jesus Sanchelima, Esq.

file
#3
Encl

PD Feliz Navidad y Prospero Año Nuevo

PERFIL DE LA EMPRESA

V. Zeman
08/12/98

DM ENTERPRISE & DISTRIBUTORS
D.B.A. UNIVERSAL BRANDS, INC.

DIRECTORIO
RAUL DIAZ - Presidente
DAVID MEZA - Director

2470 West 3rd AVE. - Hialeah, FL - 33010
PHONE: (305) 863-0267 FAX: (305) 553-7496
EMAIL: IMROYAL@BELL.SOUTH.NET

LA EMPRESA DISTRIBUYE ACTUALMENTE EN LA FLORIDA LOS SIGUIENTES PRODUCTOS:

NESTLÉ

Quick - powder
Nestum
Nido
Cerelac
Nescafe
La Lechera. condensed milk

PROCTER & GAMBLE

Ariel
Downy
Crest
Camay

ROMA

Actualmente la empresa vende un 95% de todo el detergente Ariel que se vende en el Sur de la Florida.

COLGATE PALMOLIVE

Suavitel
Colgate
Palmolive

MARCAS PROPIAS DE CAFE

Rico Rico
Regil
Caracolillo - Regular y Descafeinado
Cafe Universal
Cafe La Paloma
Cafe Super Roast - americano
Cafe CCM - americano

Las marcas de cafe son distribuidas en toda la Florida y también en Chicago, New York, Atlanta y New Orleans.

2470 West 3rd AVE. - Hialeah, FL - 33010
PHONE: (305) 863-4267 FAX: (305) 553-7496
EMAIL: IMROYAL@BELL.SOUTH.NET

SPRING RAIN INTERNATIONAL
Spring Rain - Agua Natural de Manatiales Importada de Canada

LINEA GOURMET ITALIANA
Paesana - pastas

PICADELLY GALLETAS (16 SABORES)

BATERIAS FUJITSU

REFERENCIAS BANCARIAS

REPUBLIC NATIONAL BANK
Banking Officer - Sr. Ricardo Vasquez
4440 West 16 Ave.
Hialeah, Fl 33012
Tel: (305) 825-3030

REFERENCIAS COMERCIALES

CARACOLILLO COFFEE MILL
SR. TITO FAEDO
TEL:(813) 876-0302

LILY BAKERY
SR. ISRAEL GUEDES
TEL:(305) 633-0885

TRADE POWER
SR. MARTI DOPNER
TEL:(305) 388-4220

2470 West 3rd AVE. - Hialeah, FL - 33010
PHONE: (305) 863-0267 FAX: (305) 553-7496
EMAIL: IMROYAL@BELLSOUTH.NET

International Bottled Water Association



Certificate of Excellence in Manufacturing

This is to certify that Santitas Spring Rain - Antigua, Aca, Sofia, Guata
a bottler member of IBWA, has successfully met the esteemed IBWA requirement for Excellence in
Manufacturing by having no critical item violations and achieving a score of at least ninety-seven
percent on the Good Manufacturing Practice plant inspection conducted for the year 1997.

In witness whereof, we have duly affixed our signatures.

J. de Lila

President

International Bottled Water Association

December 31, 1997

Date

Sylvia E. Swanton

Executive Vice President

International Bottled Water Association

Sugarloaf Spring Bain International Ltd.

is authorized to display the mark



*on products which have demonstrated compliance
with FDA regulations for drinking water quality, and
are bottled in containers and produced in plants
found to meet applicable FDA requirements.*

Michael P. Mullen
General Manager, Bottled Water, NSF International

1997

**SAMPEDRO DECLARATION EXHIBIT 2
TRANSLATION**

ORGANIZATION

THE ENTERPRISE WAS ESTABLISHED IN THE STATE OF THE

SANCHELIMA & ASSOCIATES, P.A.
PATENTS, TRADEMARKS & COPYRIGHTS
J. Sanchelima, REG. PAT. ATTY>

Attorneys At Law
235 S.W. LE JEUNE ROAD
MIAMI, FL. 33134-1762
(305) 447-1617
Fax: (305) 445-8484

December 21, 1998

Consultoria Juridica Internacional
Lic. Viscaino
Calle 16 No. 314 c/3rd and 5th Ave.
Miramar Playa
Havana, Cuba

Re: Cubita

Dear Lic. Viscaino:

Attached you should find the information that I promised. Hanging up with you, Sheehan called us. We are going to focus the matter a different way.

Independently of all that, I think that you should register your mark to prevent less scrupulous third parties from interfering with your rights, especially if this subject takes off.

Sincerely,

[signature]
Jesus Sanchelima, Esq.

file
#3
Encl.

PD Merry Christmas and a Prosperous New Year

PROFILE OF THE ENTERPRISE

[Handwritten name and date 28/12/98]

DM ENTERPRISE AND DISTRIBUTORS D.B.A UNIVERSAL BRANDS, INC.

**DIRECTORS
RAUL DIAZ – PRESIDENT
DAVID MEZA – DIRECTOR**

**2470 West 3rd Ave. – Hialeah, FL 33010
PHONE: (305) 863-0267 FAX: (305) 553-7496
EMAIL – IMROYAL@BELLSOUTH.NET**

THE ENTERPRISE CURRENTLY DISTRIBUTES IN FLORIDA THE FOLLOWING PRODUCTS:

NESTLE

Quick -powder

Nestum

Nido

Cerelac

Nescafe

La Lechera. Condensed milk

PROCTER & GAMBLE

Ariel

Downy

Crest

Camay

ROMA

Currently, the company sells 95% of all the detergent that Ariel sells in South Florida

COLGATE PALMOLIVE

Suavital

Colgate

Palmolive

ITS OWN BRANDS OF COFFEE

Rico Rico

Regil

Caracolillo - Regular and Decaffeinated

Café Universal

Café La Paloma

Café Super Roast - American

Café CCM - American

The coffee Brands are distributed in all of Florida and also in Chicago, New York, Atlanta and New Orleans.

**2470 West 3rd Ave. - Hialeah, FL 33010
PHONE: (305) 863-0267 FAX: (305) 553-7496
EMAIL - IMROYAL@BELLSOUTH.NET**

SPRING RAIN INTERNATIONAL

Spring Rain – Natural Spring Water Imported from Canada

LINEA BOURMET ITALIANA

Pasesana – pastas

PICADELLY GALLETAS (16 FLAVORS)

FUJITSU BATERIES

BANK REFERENCES

REPUBLIC NATIONAL BANK

Banking Officer – Mr. Ricardo Vazquez

4440 West 16 Ave.

Hialeah, FL 33012

Tel: (305) 825-3030

COMMERCIAL REFERENCES

CARACOLILLO COFFEE MILL

MR. TITO FAEDO

TEL: (813) 876-0302

LILY BAKERY

MR. ISRAEL GUEDES

TEL: (305) 633-0885

TRADE POWER

MR. MARTI DOPNER

TEL: (305) 388-4220

2470 West 3rd Ave. – Hialeah, FL 33010
PHONE: (305) 863-0267 FAX: (305) 553-7496
EMAIL – IMROYAL@BELLSOUTH.NET

SAMPEDRO DECLARATION EXHIBIT 3

From: Gabriela Cortes <foreign@sanchelima.com>
To: cji@cji.get.cma.net <cji@cji.get.cma.net>
Cc: jay@sanchelima.com <jay@sanchelima.com>
Date: Thursday, March 23, 2000 7:09 PM
Subject: MARCA CUBITA EN ESTADOS UNIDOS

U. ALONZO

Marzo 23, 2000

Estimado Lic. Martinez:

Acuso recibo de su reciente comunicacion con respecto al asunto arriba detallado.

Estoy seguro que tiene conocimiento sobre el procedimiento de la cancelacion del registro marcario que iniciamos en contra del Sr. Timothy Sheehan, quien ha registrado la marca en Estados Unidos. Nuestro bufete representa a DM Enterprises & Distributors, Inc, entidad que adquirio los derechos marcarios de la Sra Leni Alonzo.

Nosotros en su momento hicimos las investigaciones pertinentes, incluyendo haberlos contactado a ustedes en su momento. En base a esto determinamos que los derechos consuetudinarios de la Sra Leni Alonzo eran superiores a los del Sr. Sheehan debido a la relacion contractual que existe entre ellos.

Con respecto a vuestro cliente, entendemos que nunca tuvo interes de proteger sus derechos marcarios en los Estados Unidos y que los que pudo haber tenido se inyectaron hace tiempo en el dominio publico por no haber tomado las medidas adecuadas.

Espero haberle traído al dia con estos asuntos.

Atentamente,

Jesus Sanchelima, Esq.

JS/gc

**SAMPEDRO DECLARATION EXHIBIT 3
TRANSLATION**

From: Gabriela Cortes [foreign@sanchelima.com]
To: cji@cji.get.cma.net [cji@cji.get.cma.net]
Cc: jay@sanchelima.com [jay@sanchelima.com]
Date: Thursday, March 23, 2000 7:09 PM
Subject: CUBITA MARK IN THE UNITED STATES

March 23, 2000

Dear Lic. Martinez:

I confirm receipt of your recent communication with respect to the above cited matter.

I am sure that you are aware of the procedure to cancel the trademark registration that we initiated against Mr. Timothy Sheehan, who had registered the mark in the United States. Our firm represents DM Enterprises & Distributors, Inc., the entity that acquired the trademark rights from Mrs. Leni Alonzo.

At the time, we did the pertinent research, including having contacted you at the time. Based on this, we determine that common law rights of Mrs. Leni Alonzo were superior to those of Mr. Sheehan due to the contractual relation that exists between them.

With respect to your client, we understand that it never had an interest in protecting its trademark rights in the United States and that those that it could have had fell into the public domain some time ago for not having taken appropriate measures.

I hope I have brought you up to date on these matters.

Sincerely,

Jesus Sanchelima, Esq.

JS/gc