

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.,

Opposer,

Opposition No. 91178943

v.

APPLICANT'S ANSWER TO NOTICE
OF OPPOSITION

DM Enterprises & Distributors, Inc.

Applicant.

_____ /

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

The Applicant, DM ENTERPRISES & DISTRIBUTORS, INC. ("DM Enterprises"), by and through undersigned counsel, hereby responds to the Notice of Opposition ("Opposition") filed in this matter by CORPORACION CIMEX S.A. ("Cimex"), and submits as follows:

THE MARK AND PARTIES

1. DM Enterprises admits the allegations in paragraph 1 of the Opposition.
2. DM Enterprises admits that it submitted specimens of the mark and that color copies of these specimens are available on the USPTO's TDR database. DM Enterprises further admits that the black and white image included in the Opposition appears to be a true and correct copy of one of the submitted specimens. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 2 of

the Opposition and therefore denies the same and demands strict proof thereof.

3. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 3 of the Opposition and therefore denies the same and demands strict proof thereof.

4. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 4 of the Opposition and therefore denies the same and demands strict proof thereof.

5. DM Enterprises admits there is an Exhibit A to the Opposition, and this exhibit speaks for itself. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 5 of the Opposition and therefore denies the same and demands strict proof thereof.

6. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 6 of the Opposition and therefore denies the same and demands strict proof thereof.

7. DM Enterprises admits that based upon a review of the records of the USPTO, it appears that Cimex filed an application for the mark CUBITA & DESIGN, Serial No. 77252382, on or about August 10, 2007. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 7 of the Opposition and therefore denies the same and demands strict proof thereof.

8. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 8 of the Opposition and therefore denies the same and demands strict proof thereof.

9. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 9 of the Opposition and therefore denies the same and demands strict proof thereof.

10. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 10 of the Opposition and therefore denies the same and demands strict proof thereof.

11. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 11 of the Opposition and therefore denies the same and demands strict proof thereof.

12. To the extent paragraph 12 of the Opposition accurately restates the language from the referenced documents, DM Enterprises admits the allegations of paragraph 12 of the Opposition. Otherwise, DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 12 of the Opposition and therefore denies the same and demands strict proof thereof.

13. DM Enterprises admits that in connection with its application for registration of the mark Cubita in connection with application Serial Number 76178388, DM Enterprises filed a Response to an Office Action on or about July 9, 2003, stating that “The foreign wording in the mark translates into English as small Cuba.”

14. DM Enterprises admits that it commenced a cancellation petition against a prior registrant of CUBITA in T.T.A.B. Proceeding No. 92029327. DM Enterprises further admits that in the Board’s decision of May 28, 2004 in that proceeding, the Board stated that DM Enterprises’ “direct first use of the mark occurred in July 1999.” DM Enterprises has insufficient

knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 14 of the Opposition and therefore denies the same and demands strict proof thereof.

15. DM Enterprises admits that it has not amended the claimed first use date and claimed first use in commerce date in its application.

16. DM Enterprises denies the allegation in paragraph 16 of the Opposition.

17. DM Enterprises admits that based upon its review of the records of the USPTO, Registration Number 2252228 was cancelled by the USPTO on or about February 7, 2007.

18. DM Enterprises admits the allegation in paragraph 18 of the Opposition.

19. DM Enterprises admits that a request for an Extension of Time to Oppose DM Enterprises's Application was filed by CIMEX on or about May 14, 2007, and that the Board granted the request for an extension until August 15, 2007.

20. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 20 of the Opposition and therefore denies the same and demands strict proof thereof.

21. To the extent paragraph 21 of the Opposition accurately restates the language from the referenced document, DM Enterprises admits the allegations of paragraph 21 of the Opposition. Otherwise DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 21 of the Opposition and therefore denies the same and demands strict proof thereof.

22. DM Enterprises denies the allegations in paragraph 22 of the Opposition.

23. DM Enterprises denies the allegations in paragraph 23 of the Opposition.

24. DM Enterprises denies the allegations in paragraph 24 of the Opposition.

25. DM Enterprises admits that the mark for which it is applying for registration includes the term "Cubita". DM Enterprises denies the remaining allegations in paragraph 25 of the Opposition.

26. DM Enterprises denies the allegations in paragraph 26 of the Opposition.

27. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 27 of the Opposition and therefore denies the same and demands strict proof thereof.

28. DM Enterprises admits the allegations in paragraph 28 of the Opposition.

29. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 29 of the Opposition and therefore denies the same and demands strict proof thereof.

30. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 30 of the Opposition and therefore denies the same and demands strict proof thereof.

31. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 31 of the Opposition and therefore denies the same and demands strict proof thereof.

32. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 32 of the Opposition and therefore denies the same and demands strict proof thereof.

33. DM Enterprises denies the allegations in paragraph 33 of the Opposition.

34. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 34 of the Opposition and therefore denies the same and demands strict proof thereof.

35. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 35 of the Opposition and therefore denies the same and demands strict proof thereof.

36. DM Enterprises denies the allegations in paragraph 36 of the Opposition.

37. DM Enterprises denies the allegations in paragraph 37 of the Opposition.

38. DM Enterprises denies the allegations in paragraph 38 of the Opposition.

39. DM Enterprises denies the allegations in paragraph 39 of the Opposition.

40. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 40 of the Opposition and therefore denies the same and demands strict proof thereof.

41. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 41 of the Opposition and therefore denies the same and demands strict proof thereof.

42. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 42 of the Opposition and therefore denies the same and demands strict proof thereof.

FIRST GROUND FOR OPPOSITION

43. DM Enterprises repeats and realleges its responses to Paragraphs 1 through 42 of the Opposition as if set forth herein.

44. DM Enterprises has insufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 44 of the Opposition and therefore denies the same and demands strict proof thereof.

45. DM Enterprises denies the allegations in paragraph 45 of the Opposition.

46. DM Enterprises denies the allegations in paragraph 46 of the Opposition.

47. DM Enterprises denies the allegations in paragraph 47 of the Opposition.

SECOND GROUND FOR OPPOSITION

48. DM Enterprises repeats and realleges its responses to Paragraphs 1 through 42 of the Opposition as if set forth herein.

49. DM Enterprises denies the allegations in paragraph 49 of the Opposition.

50. DM Enterprises denies the allegations in paragraph 50 of the Opposition.

AFFIRMATIVE DEFENSES

1. Cimex has failed to state a claim upon which relief may be granted.

2. Cimex has not asserted sufficient grounds in support of its allegations that it is, or will be, damaged by DM Enterprises's use or registration of the CUBITA & Design mark for the goods identified in DM Enterprises's application.

3. DM Enterprises reserves the right to supplement and amend its affirmative defenses as further information is revealed during discovery.

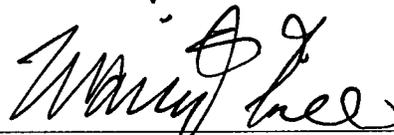
WHEREFORE, DM Enterprises requests that the Notice of Opposition be dismissed with prejudice on the merits.

Dated: October 31, 2007

Respectfully submitted,

BECKER & POLIAKOFF, P.A.

By:



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Attorneys for Applicant DM Enterprises and
Distributors, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 31st, 2007, a copy of the foregoing was served by 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.



Manjit S. Gill

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