

ESTTA Tracking number: **ESTTA530364**

Filing date: **04/03/2013**

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

Proceeding	91185261
Party	Defendant N.V. Sumatra Tobacco Trading Company
Correspondence Address	TARA M VOLD FULBRIGHT & JAWORSKI LLP 801 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004 UNITED STATES tvold@fulbright.com, wotrademark@fulbright.com
Submission	Other Motions/Papers
Filer's Name	Juliet Alcoba
Filer's e-mail	jalcoba@miamipatents.com, alcoba@miamipatents.com
Signature	/Juliet Alcoba/
Date	04/03/2013
Attachments	Declaration by Juliet Alcoba.PDF ( 3 pages )(98328 bytes ) Exhibit A.PDF ( 2 pages )(28840 bytes ) Exhibit B.PDF ( 5 pages )(165897 bytes ) Exhibit C.PDF ( 3 pages )(80072 bytes ) Exhibit D.PDF ( 3 pages )(70608 bytes ) Exhibit E.PDF ( 2 pages )(53104 bytes ) Exhibit F.PDF ( 2 pages )(55000 bytes ) Exhibit G.PDF ( 2 pages )(34400 bytes ) Exhibit H.PDF ( 5 pages )(163289 bytes ) Memorandum of Law in Support of Combined Motions.PDF ( 12 pages )(606168 bytes ) Motions.pdf ( 5 pages )(260238 bytes ) Notice of Appearance on behalf of Heritage Tobacco, LLC and accept power of attorney.pdf ( 6 pages )(175474 bytes )

N.V. Sumatra Tobacco Trading Company )  
Petitioner/ Applicant )  
)  
)  
v. )  
)  
Heritage Tobacco, LLC )

Cancellation No. 92052621  
Opposition Nos. 91185261  
91186841  
For the Mark UNION  
Registration Number: 2,972,594  
Registration Date: July 19, 2005

Honorable Commissioner for Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

**DECLARATION BY JULIET ALCOBA**

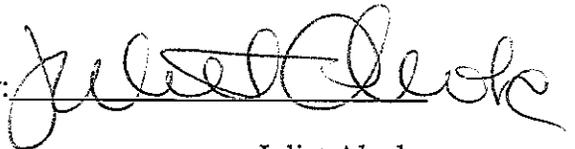
Dear Sirs:

I, Juliet Alcoba, pursuant to 28 USC § 1746, and upon my personal knowledge, hereby declare under penalty of perjury:

1. I am an attorney at the law firm Alcoba Law Group, P.A. which is counsel to Heritage Tobacco, LLC (hereinafter referred to as “Heritage”), the current owner of former U.S. Trademark Registration No. 2,972,594, “UNION” dated July 19, 2005 which includes its common law rights and any associated goodwill under and with respect to trademark.
2. Exhibit “A” is a true and correct copy of the former U.S. Trademark Registration for “UNION” covered “cigarettes” in International Class 34.
3. Exhibit “B” is a true and correct copy of the recorded Assignment of the cancelled trademark registration including any associated goodwill under and with respect to the mark.
4. Exhibit “C” is a signed declaration by Jose Espinosa.
5. Exhibit “D” is a signed declaration by Lazara Arcila.

6. Exhibit "E" is a signed declaration by Karen Kamperman.
7. Exhibit "F" is a copy of the Annual Report submitted on behalf of Heritage Tobacco, LLC in May 2012 identifying Jose Espinosa as managing member of the limited liability company.
8. Exhibit "G" E-mail of Wire Transfer
9. Exhibit "H" Prosecution history of Consolidated Cancellation/Opposition Proceedings
10. Enclosed is a Memorandum of Law in support of Heritage's combined motions for relief from a judgment; 45 day extension of time; and to reopen proceedings and reset trial dates.
11. The undersigned further states that all information made herein is made of her own knowledge, is true, and that all statements made on information and belief are believed to be true and that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

Date: April 3, 2013

By: 

Juliet Alcoba

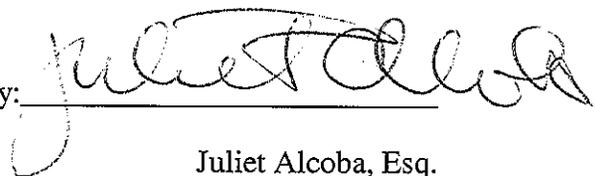
Attorney for Heritage Tobacco, LLC

Florida Bar No. 95502

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing is being electronically transmitted via the Electronic System for Trademark Trials and Appeals, ("ESTTA") on April 3, 2013 and have been duly served by e-mail, to the following:

J. Paul Williamson, Esq.  
Tara Vold  
Fulbright & Jaworski L.L.P  
801 Pennsylvania, Avenue, N.W.  
Washington, D.C. 20004-2623  
Tel: (202) 662-0200  
Fax: (202) 662-4643

By: 

Juliet Alcoba, Esq.  
Alcoba Law Group, P.A.  
3399 NW 72 Avenue, Ste. 211  
Miami, FL 33122  
Tel: (305) 362-8118  
Facsimile: (305) 436-7429

Attorney for Heritage Tobacco, LLC  
Florida Bar No. 95502

# EXHIBIT A

Int. Cl.: 34

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

**United States Patent and Trademark Office**

Reg. No. 2,972,594

Registered July 19, 2005

**TRADEMARK  
PRINCIPAL REGISTER**

**UNION**

MARYJANE CIGARETTE CO., INC. (FLORIDA  
CORPORATION)  
2315 N.W. 107TH AVENUE, B-15, BOX 66  
MIAMI, FL 33172

FIRST USE 2-4-2004; IN COMMERCE 2-4-2004.

SN 78-066,805, FILED 6-1-2001.

FOR: CIGARETTES, IN CLASS 34 (U.S. CLS. 2, 8, 9  
AND 17).

JOHN SCHUYLER YARD, EXAMINING ATTOR-  
NEY

# EXHIBIT B

TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Smoker's Best Group, LLC		03/05/2013	LIMITED LIABILITY COMPANY: MISSISSIPPI

**RECEIVING PARTY DATA**

<b>Name:</b>	Heritage Tobacco, LLC
<b>Street Address:</b>	8455 N. West 74 Street
<b>City:</b>	Miami
<b>State/Country:</b>	FLORIDA
<b>Postal Code:</b>	33166
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: FLORIDA

**PROPERTY NUMBERS Total: 1**

Property Type	Number	Word Mark
Registration Number:	2972594	UNION

**CORRESPONDENCE DATA**

Fax Number: 3054367429  
*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.*

Phone: 305.362.8118  
 Email: jalcoba@miamipatents.com  
 Correspondent Name: Juliet Alcoba  
 Address Line 1: 3399 NW 72 Avenue  
 Address Line 2: 2ll  
 Address Line 4: Miami, FLORIDA 33122

<b>ATTORNEY DOCKET NUMBER:</b>	ASSIGNMENT UNION
<b>NAME OF SUBMITTER:</b>	Juliet Alcoba
<b>Signature:</b>	/Juliet Alcoba/

OP \$40.00 2972594

Date:

03/13/2013

Total Attachments: 3

source=78066805 tm exhibit a#page1.tif

source=executed assignment union#page1.tif

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ASSIGNMENT OF UNION TRADEMARK

THIS ASSIGNMENT OF TRADEMARK (the "Assignment") is made and entered into as of this 5 day of March, 2013, by and between SMOKER'S BEST GROUP, LLC, a Mississippi Limited Liability Company, and Heritage Tobacco, LLC, a Florida Limited Liability Company (the "Assignee").

RECITALS

WHEREAS, Assignor, as owner of trademark "UNION" recorded in the U.S. Patent and Trademark Office in the United States of America under registration number 2,972,594 dated July 19, 2005 a true copy of which is attached hereto as Composite Exhibit "A", (hereafter collectively "Trademark") desires transfer, and assigns in fee simple all of Assignors rights and interest in and to the Trademark to Assignee, including any common law rights, for \$20,000.00 U.S. dollars.

WHEREAS, Assignor is desirous of assigning of all of its right, title, interest and goodwill in the Trademark in favor of the Assignee, and the Assignee is desirous of succeeding to all of Assignor's right, title, interest and any associated goodwill under and with respect to the Trademark.

NOW THEREFORE, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Assignor hereby expressly assigns, transfers, and sets over unto Assignee all of Assignor's right, title, and interest, in the Trademark.
3. Assignor further remises, releases, and quitclaims unto Assignee all of his right, title, and interest in and to the Trademark.
4. Assignor specifically waives any right or claim to entitlement or ownership in the Trademark based in common law.
5. The parties acknowledge and agree that this Assignment may be executed in multiple counterparts, and transmitted via telecopy each such counterpart (where transmitted via telecopy or otherwise), when executed, shall constitute an integral part of the one and the same agreement between the parties.
6. This assignment is contingent upon the execution of the Heritage Tobacco Litigation Support Agreement which is attached hereto as Composite Exhibit "B".

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the date first above written.

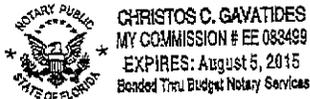
ASSIGNOR:

1  initials  
 initials

Signature [Handwritten Signature]  
Print Name KAREN KAMPERMAN  
STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

Sworn to or affirmed and signed before me on 5 day of March 2013 by  
KAREN KAMPERMAN

This person is  personally known to me or  has produced identification. Type of identification produced: \_\_\_\_\_



[Handwritten Signature]  
SIGNATURE NOTARY PUBLIC  
CHRISTOS C. GAVATIDES

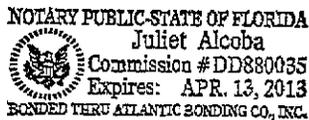
Print, type, or stamp commissioned name of notary or clerk

ASSIGNEE:  
Signature [Handwritten Signature]  
Print Name JOSE ESPINOSA

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

Sworn to or affirmed and signed before me on 12 day of March 2013 by  
JOSE ESPINOSA

This person is  personally known to me or  has produced identification. Type of identification produced: \_\_\_\_\_



[Handwritten Signature]  
SIGNATURE NOTARY PUBLIC  
JULIET ALCOBA

Print, type, or stamp commissioned name of notary or clerk

2 [Handwritten Initials] initials  
[Handwritten Initials] initials

# EXHIBIT C

N.V. Sumatra Tobacco Trading Company )  
Petitioner/ Applicant )

v. )

Heritage Tobacco, LLC )

Cancellation No. 92052621

Opposition Nos. 91185261

91186841

For the Mark UNION

Registration Number: 2,972,594

Registration Date: July 19, 2005

Honorable Commissioner for Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

**DECLARATION BY JOSE ESPINOSA**

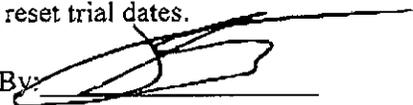
Dear Sirs:

I, Jose Espinosa, pursuant to 28 USC § 1746, and upon my personal knowledge, hereby declare under penalty of perjury:

1. I am the Vice President of Heritage Tobacco, LLC. I submit this declaration in support of Heritage Tobacco, LLC's combined motions for relief from judgment, an extension of time to respond to Petitioner/Applicant's, and to reopen proceedings.
2. I have been a managing member of Heritage Tobacco, LLC since at least as early as May 1, 2012. *See Exhibit Managing Member.*
3. I have been active in the Tobacco industry as a manufacturer/distributor/seller since at least as early as 2011 and have over 5 years' experience.
4. I went on a business trip Thursday, March 22, 2013 and returned to the office Monday, March 25, 2013.
5. Heritage Tobacco, LLC began discussing the possible assignment of the UNION trademark and all of its associated good will in late January 2013.

6. The Tobacco Tax and Trade Bureau (hereinafter "TTB") has been auditing Smoker's Best Group, LLC and American Cigarette Company, Inc. since at least as early as January 2013. The delay in closing for the UNION trademark is the result of Smoker's Best Group, LLC and American Cigarette Company, Inc.'s delay in obtaining clearance from the federal government that assets like the trademark at issue may be sold.
7. Upon my knowledge that the federal government did not impose a lien or bar the sale of the trademark, I authorized the closing could take place between Smoker's Best Group, LLC and Heritage Tobacco, LLC in March provided all documents pertaining to the UNION trademark in their possession were produced and made available for my agents' inspection. See Exhibit Wire Transfer and Confirmation Number.
8. Upon my return to the office March 25, 2013, I authorized retained counsel to take immediate steps to set aside the order cancelling the Union trademark, request an extension of time to respond to Petitioner/Applicant's submitted motions for summary judgment, and submit this motion to reopen proceedings and reset trial dates.

Date: April 2, 2013

By: 

Jose Espinosa

Vice President

Heritage Tobacco, LLC

# EXHIBIT D



6. The Tobacco Tax and Trade Bureau (hereinafter "TTB") has been auditing Smoker's Best Group, LLC and American Cigarette Company, Inc. since at least as early as January 2013. The delay in closing for the UNION trademark is the result of Smoker's Best Group, LLC and American Cigarette Company, Inc.'s delay in obtaining clearance from the federal government that assets like the trademark at issue may be sold.
7. Pursuant to Vice President Jose Espinosa's authorization to proceed with the closing of the trademark, I transferred the sum of \$20,000.00 via wire transfer to Karen Kamperman. *See Exhibit Wire Confirmation for union trademark.*

Date: April 2, 2013

By: \_\_\_\_\_



Lazara Arcila

Assistant to President

Heritage Tobacco, LLC

# EXHIBIT E

**DECLARATION OF KAREN KAMPERMAN REGARDING THE ACQUISITION OF  
THE UNION TRADEMARK REGISTRATION CERTIFICATE NO. 2,972,594**

I, Karen Kamperman, pursuant to 28 USC §1746, and upon my personal knowledge, information and belief, hereby declare under penalty of perjury:

1. I am the President of American Cigarette Co., Inc., (hereinafter "ACC") and have been the president of ACC since July 21, 2011.
2. I am the Vice President of Smoker's Best Group, LLC, (hereinafter "SB") and have been the Vice President of SB since March 21, 2011.
3. Smoker's Best Group, LLC was assigned U.S. Trademark Registration No. 2,972,594 for the mark "UNION" in July 21, 2011 from American Cigarette Co., Inc. for cigarettes.
4. SB provided ACC good and valuable consideration in exchange for the assignment of the mark in July 21, 2011.
5. SB has used the UNION trademark for cigarettes since July 21, 2011.
6. Since July 21, 2011, I have never had an instance of confusion, nor have I ever received an errant phone call looking for N.V. Sumatra's UNION products.
7. While Vice President of SB, sales for cigarettes under the UNION trademark have totaled 54,134 cartons, from July 21, 2011 through January 31, 2013.

Executed this 4 day of March, 2013.



Karen Kamperman  
Vice President, Smoker's Best Group, LLC

# EXHIBIT F

# 2012 LIMITED LIABILITY COMPANY ANNUAL REPORT

FILED  
May 01, 2012  
Secretary of State

DOCUMENT# L10000083084

Entity Name: HERITAGE TOBACCO, LLC

**Current Principal Place of Business:**

8981 GREYHAWK POINTE  
ORLANDO, FL 32836

**New Principal Place of Business:**

8455 N. WEST 74 STREET  
MIAMI, FL 33166

**Current Mailing Address:**

8981 GREYHAWK POINTE  
ORLANDO, FL 32836

**New Mailing Address:**

8455 N. WEST 74 STREET  
MIAMI, FL 33166

FEI Number: 27-3226268      FEI Number Applied For ( )      FEI Number Not Applicable ( )      Certificate of Status Desired ( )

**Name and Address of Current Registered Agent:**

MERCHANT, ASIF H  
8981 GREYHAWK POINTE  
ORLANDO, FL 32836 US

**Name and Address of New Registered Agent:**

ANDERSON, RHONDA A  
2655 LEJEUNE ROAD, SUITE 540  
CORAL GABLES, FL 33134 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: RHONDA A. ANDERSON

05/01/2012

Electronic Signature of Registered Agent

Date

**MANAGING MEMBERS/MANAGERS:**

Title: MGRM  
Name: MERCHANT, ASIF H  
Address: 8981 GREYHAWK POINTE  
City-St-Zip: ORLANDO, FL 32836

Title: MGRM  
Name: VARGAS, EMILIO A  
Address: 8455 N. WEST 74 STREET  
City-St-Zip: MIAMI, FL 33166

Title: MGRM  
Name: ESPINOSA, JOSE  
Address: 8455 N. WEST 74 STREET  
City-St-Zip: MIAMI, FL 33166

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: JOSE ESPINOSA

MGRM

05/01/2012

Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

# EXHIBIT G

## Juliet Alcoba

---

**From:** karen kamperman <karenkamperman@msn.com>  
**Sent:** Tuesday, March 12, 2013 11:02 AM  
**To:** Lazara Arcilla Heritage  
**Cc:** Juliet Alcoba MP  
**Subject:** RE: wire confirmation for union trademark

most welcome.  
do you need anything else? or is all okay?

Karen Kamperman

---

**From:** [laz@heritagetobacco.net](mailto:laz@heritagetobacco.net)  
**To:** [karenkamperman@msn.com](mailto:karenkamperman@msn.com)  
**CC:** [jalcoba@miamipatents.com](mailto:jalcoba@miamipatents.com)  
**Subject:** wire confirmation for union trademark  
**Date:** Tue, 12 Mar 2013 10:43:41 -0400

Good Morning Karen,

Just wired to bb&t 20,000 for the trademark , chris came by and dropped of the papers thanks you very much.

Confirmation 0710055054

Thanks

Laz

# EXHIBIT H

## Opposition

**Number:** 91186841

**Filing Date:** 10/07/2008

**Status:** Terminated

**Status Date:** 04/01/2013

**Interlocutory Attorney:** ANDREW P BAXLEY

### Defendant

**Name:** N.V. Sumarta Tobacco Trading Company

**Correspondence:** VALYNIA SIMMONS

FULBRIGHT & JAWORSKI LLP  
801 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004  
UNITED STATES  
tvold@fulbright.com

**Serial #:** 76415305

Application File

**Application Status:** Opposition Pending

**Mark:** U UNION

### Plaintiff

**Name:** American Cigarette Company, Inc. and Smoker's Best Group, LLC

**Correspondence:**

SMOKER'S BEST GROUP LLC  
645 WESTMORELAND DRIVE  
TUPELO, MS 38801  
UNITED STATES

**Serial #:** 78066805      Application File

**Registration #:** 2972594

**Application Status:** Section 8 - Accepted

**Mark:** UNION

### Prosecution History

#	Date	History Text	Due Date
31	04/01/2013	TERMINATED	
<u>30</u>	<u>03/29/2013</u>	<u>BD DECISION: DISMISSED W/ PREJ</u>	
<u>29</u>	<u>03/29/2013</u>	<u>BD DECISION: DISMISSED W/ PREJ</u>	
<u>28</u>	<u>04/02/2012</u>	<u>APPEARANCE</u>	
<u>27</u>	<u>02/23/2012</u>	<u>P'S REQUEST TO WITHDRAW AS ATTORNEY</u>	
<u>26</u>	<u>02/14/2012</u>	<u>P'S REQUEST TO WITHDRAW AS ATTORNEY</u>	
<u>25</u>	<u>02/14/2012</u>	<u>P'S REQUEST TO WITHDRAW AS ATTORNEY</u>	
<u>24</u>	<u>10/05/2011</u>	<u>P'S NOTICE ON NON-AVAILABILITY</u>	
<u>23</u>	<u>06/29/2010</u>	<u>EXTENSION OF TIME GRANTED</u>	
<u>22</u>	<u>06/29/2010</u>	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>21</u>	<u>05/07/2010</u>	<u>EXTENSION OF TIME GRANTED</u>	
<u>20</u>	<u>05/07/2010</u>	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>19</u>	<u>02/09/2010</u>	<u>EXTENSION OF TIME GRANTED</u>	
<u>18</u>	<u>02/09/2010</u>	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>17</u>	<u>11/13/2009</u>	<u>EXTENSION OF TIME GRANTED</u>	
<u>16</u>	<u>11/13/2009</u>	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>15</u>	<u>10/09/2009</u>	<u>EXTENSION OF TIME GRANTED</u>	
<u>14</u>	<u>10/09/2009</u>	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	

<u>13</u>	09/10/2009	<u>EXTENSION OF TIME GRANTED</u>	
<u>12</u>	09/10/2009	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>11</u>	07/13/2009	<u>EXTENSION OF TIME GRANTED</u>	
<u>10</u>	07/13/2009	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>9</u>	01/15/2009	<u>ANSWER</u>	
<u>8</u>	12/05/2008	<u>EXTENSION OF TIME GRANTED</u>	
<u>7</u>	12/05/2008	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>6</u>	11/14/2008	<u>EXTENSION OF TIME GRANTED</u>	
<u>5</u>	11/14/2008	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>4</u>	11/04/2008	<u>MOTION TO CONSOLIDATED IS GRANTED</u>	
<u>3</u>	10/07/2008	PENDING, INSTITUTED	
<u>2</u>	10/07/2008	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	11/16/2008
<u>1</u>	10/07/2008	<u>FILED AND FEE</u>	



Search:

## Cancellation

Number: 92052621

Filing Date: 06/24/2010

Status: Awaiting Expiration of Appeal Period

Status Date: 06/24/2010

Interlocutory Attorney: ANDREW P BAXLEY

### Defendant

Name: American Cigarette Company, Inc. and Smoker's Best Group, LLC

#### Correspondence:

SMOKER'S BEST GROUP, LLC  
645 WESTMORELAND DRIVE  
TUPELO, MS 38801  
UNITED STATES

Serial #: 78066805      Application FileRegistration #: 2972594

Application Status: Section 8 - Accepted

Mark: UNION

### Plaintiff

Name: N.V. Sumatra Tobacco Trading Company

#### Correspondence: J PAUL WILLIAMSON

FULBRIGHT & JAWORSKI LLP  
801 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004-2623  
UNITED STATES  
wotrademark@fulbright.com, pwilliamson@fulbright.com,  
tvold@fulbright.com

### Prosecution History

#	Date	History Text	Due Date
<u>22</u>	01/07/2013	<u>BD DECISION: GRANTED</u>	
<u>21</u>	04/02/2012	<u>D'S MOTION FOR AN EXTENSION OF TIME</u>	
<u>20</u>	04/02/2012	<u>D'S APPEARANCE OF COUNSEL/POWER OF ATTORNEY</u>	
<u>19</u>	02/23/2012	<u>D'S REQUEST TO WITHDRAW AS ATTORNEY</u>	
<u>18</u>	02/14/2012	<u>D'S REQUEST TO WITHDRAW AS ATTORNEY</u>	
<u>17</u>	02/07/2012	<u>P'S OPPOSITION/RESPONSE TO MOTION</u>	
<u>16</u>	01/30/2012	<u>D'S MOTION FOR AN EXTENSION OF TIME</u>	
<u>15</u>	12/28/2011	<u>D'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
<u>14</u>	12/01/2011	<u>P'S MOTION FOR SUMMARY JUDGMENT</u>	
<u>13</u>	12/01/2011	<u>P'S MOTION FOR SUMMARY JUDGMENT</u>	
<u>12</u>	09/02/2011	<u>EXTENSION OF TIME GRANTED</u>	
<u>11</u>	09/02/2011	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>10</u>	06/02/2011	<u>EXTENSION OF TIME GRANTED</u>	
<u>9</u>	06/02/2011	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>8</u>	03/07/2011	<u>EXTENSION OF TIME GRANTED</u>	
<u>7</u>	03/07/2011	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>6</u>	09/09/2010	<u>ANSWER</u>	
<u>5</u>	08/12/2010	<u>CONSOLIDATED WITH 91185261; TRIAL DATES RESET</u>	
<u>4</u>	08/03/2010	<u>MOTION TO CONSOLIDATE</u>	

**Prosecution History**

#	Date	History Text	Due Date
3	06/24/2010	PENDING, INSTITUTED	
<u>2</u>	06/24/2010	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	08/03/2010
<u>1</u>	06/24/2010	<u>FILED AND FEE</u>	

Search:

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

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Registration Date: July 19, 2005

Honorable Commissioner for Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

**MEMORANDUM OF LAW IN SUPPORT OF RELIEF FROM JUDGMENT  
PURSUANT TO RULE 60(b) FOR CONSOLIDATED CANCELLATION AND  
OPPOSITION PROCEEDINGS; A 45 DAY EXTENSION OF TIME TO SUBMIT  
OPPOSITIONS TO THE SUBMITTED SUMMARY JUDGMENTS; AND REOPENING  
PROCEEDINGS AND RESETTING TRIAL DATES ACCORDINGLY.**

Heritage Tobacco, LLC (“Heritage”) files this Memorandum in support of its combined motion to set aside the Board’s order granting N.V. Sumatra Tobacco Trading Company’s (“Petitioner” or “Applicant”) motions for summary judgment, motion for a 45 day extension of time to submit oppositions to the submitted summary judgments, and motion to reopen proceedings and reset trial dates accordingly.

**FACTS**

Since at least as early as January 2013, former Registrant Smoker’s Best Group, LLC and American Cigarette Company, Inc. (hereinafter “Registrant” or “Respondent”) have been being audited by the Tobacco Tax and Trade Bureau (hereinafter “TTB”). In an order dated January

17, 2013, Registrant Smoker's Best Group, LLC and American Cigarette Company, Inc. (hereinafter "Registrant" or "Respondent") received Notice that the motion for summary judgment submitted by N.V. Sumatra Tobacco Trading Company (hereinafter "Petitioner" or "Applicant") was granted as conceded for its failure to file a brief in response to that motion. Subsequently, on January 22, 2013, Applicant submitted a motion and memorandum of law in support of Applicant's motion for summary judgment in the opposition proceedings via first class mail to Registrant's principal addresses as well as the listed address for its counsel of record, Paul Nunes.

Around this time, January 22, 2013 Registrant and Heritage began discussing the possible assignment of the UNION trademark. A major concern during this time period by Heritage was that assets like the trademark at issue could be sold because Smoker's Best Group, LLC was being audited by the TTB. Heritage retained undersigned counsel in February to draft a litigation support agreement between Heritage and Registrant. Heritage and Registrant's counsel began exchanging drafts of this agreement February 21, 2013 and Registrant finally came to an agreement which was executed Monday, March 11, 2013. Upon Registrant's alleviation of Heritage's concern that the transfer would not be contested and the production of all documents in its possession regarding the Union trademark, the transfer of the assignment was authorized by Heritage to take place.

Former registrant assigned the Union trademark and all of its associated goodwill to Heritage March 5, 2013 for good and valuable consideration which was accepted by Heritage on Tuesday, March 12, 2013. The undersigned recorded the assignment on Wednesday, March 13, 2013 before going out of town that following day, Thursday, March 14, 2013. The undersigned

returned to the office Tuesday, March 19, 2013. The undersigned certifies that upon her return to the office, she spoke with Interlocutory Attorney by telephone.

Shortly thereafter, undersigned counsel contacted Heritage March 22, 2013 and was informed its vice president would not be available to discuss this motion for relief from judgment until Monday, March 25, 2013. Monday afternoon, the undersigned received authorization to proceed with the filing of these motions. In an order dated March 29, 2013, former owner Smoker's Best Group, LLC received Notice that the motion for summary judgment submitted by N.V. Sumatra Tobacco Trading Company pertaining to the oppositions to N.V. Sumatra's applications for UNION GOLD (App. No. 76/415,303) and UNION and Design (App. No. 76/415,305) were granted and dismissed with prejudice. The undersigned became aware that the oppositions were granted and dismissed with prejudice April 1, 2013.

### **ARGUMENT**

The Board should reopen the time to respond to the submitted motions for summary judgment and set aside the judgments rendered by the Board because Heritage could not respond to N.V. Sumatra Tobacco Trading Company's submitted motions for summary judgment until just recently. Heritage having recently acquired all of Smoker's Best Group, LLC's right, title, interest, and associated good will of the UNION trademark should be permitted to submit oppositions to the submitted summary judgments because responding within the time frame allotted was impossible until the trademark was recognized as having been validly assigned to it; and the minor delay in transfer was caused by predecessor in interest waiting to obtain clearance from the Tobacco Tax and Trade Bureau (hereinafter "TTB") that assets like the trademark at issue could be sold because it was being audited; which in turn affected predecessor in interest's

ability to transfer any and all records related to the Union trademark in its possession which prolonged Heritage's good faith investigation regarding the usage of the mark in commerce.

- I. **The Board should grant Heritage Tobacco, LLC's request to reopen the time for responding to Petitioner/Applicant's motions for summary judgment and its motion to set aside the judgments 1) cancelling the Union trademark and 2) dismissing the oppositions with prejudice because the reasons for the delay were not within Heritage Tobacco, LLC's reasonable control and movant has acted entirely in good faith which supports a finding of excusable neglect.**

Where the time for taking required action, as originally set or as previously reset, has expired, a party desiring to take the required action must file a motion to reopen the time for taking that action. *See* TBMP § 509.01(b)(1). The movant must show that its failure to act during the time previously allotted therefor was the result of excusable neglect. *See* Fed. R. Civ. P. 6(b). When determining whether a party has shown excusable neglect, the Board takes into account the following factors: (1) the danger of prejudice to the nonmovant, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith. *See Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993), adopted by the Board in *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997). *See* TBMP § 509.01(b)(1); *see also S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1296 (TTAB 1997) (emphasizing several courts find that the reason for the delay and whether it was within the reasonable control of the movant to be the most important consideration when determining excusable neglect).

Like motions to reopen, motions to set aside a final judgment rendered by the Board are governed by Fed. R. Civ. P. 60(b). *See* TBMP § 544, (stating relief based upon a finding of excusable neglect requires the motion be submitted not more than one year after the judgment is

entered). Thus, upon such terms as are just, the Board, on motion, may relieve a party from a final judgment for one of the reasons specified in Fed. R. Civ. P. 60(b). *Id.* Because both determinations involve the same legal determination arising out of the same facts Heritage shall address each of the aforementioned factors in the following order: (1), (3), (4), and (2).

**A. No danger of prejudice to Petitioner if the Board were to grant Heritage's combined motions.**

The mere passage of time is generally not considered prejudicial absent the presence of other facts. *See Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.*, 65 USPQ2d 1701, 1703. Danger of prejudice becomes credible when an applicant's ability to defend against opposer's claims has been prejudiced by opposer's failure to adhere to the trial schedule. *See Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1586 (TTAB 1997). For example, measurable prejudice exists when evidence has been lost and or when witnesses have become unavailable to participate in proceedings. *Id.* Prejudice is more than the nonmovant's loss of any tactical advantage which it otherwise would enjoy as a result of the movant's delay or omission. *See Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1587 (TTAB 1997), *citing Pratt v. Philbrook*, 109 F.3d 18 (1st Cir. 1997); *Paolo's Associates Ltd. Partnership v. Bodo*, 21 USPQ2d 1899, 1904 (Comm'r 1990); see TMBP § 509.01(b)(1). In *HKG Industries Inc. v. Perma-Pipe Inc.*, the Board did not find there to be any measurable prejudice to respondent should the Board reopen the proceeding. 49 USPQ2d 1156, 1158 (TTAB 1998). The Board reasoned that Respondent made no showing of lost evidence or unavailable witnesses. *Id.* For this reason, the Board concluded that this factor did not weigh against establishing excusable neglect.

The lack of measurable prejudice to Petitioner is glaring. Like the nonmovant in *HKG Industries Inc. v. Perma-Pipe Inc.*, there is no indication that any of Petitioner's witnesses or

evidence has become unavailable as a result of the delay in proceedings. More importantly, nowhere in the record does it appear that applicant's ability to defend itself has been hindered or adversely affected by the many changes in the consolidated proceedings as a consequence of former predecessor in interests retained counsel pattern of behavior of seeking withdrawal. *See* Exhibit H Prosecution History of Cancellation and Opposition Proceedings. The only prejudice to Applicant, albeit insignificant, is that if these motions are granted, its motions for summary judgment would face testing on the merits. Because there is no showing of measurable prejudice to Applicant, this factor does not weigh against a finding of excusable neglect by Heritage and its predecessor in interest.

**B. Smoker's Best Group, LLC had to wait to obtain clearance from the TTB that assets like the trademark at issue could be sold because it was being audited, which in turn affected predecessor in interest's ability to transfer any and all records related to the Union trademark in its possession.**

The reason for the delay and whether it was within the reasonable control of the movant is often deemed the most important consideration when determining excusable neglect. *See S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1296 (TTAB 1997). When the movant's counsel is not solely responsible for the delay and there are acts which significantly contribute to the counsel's confusion, the delay will weigh in favor of finding excusable neglect. *Id.* In *HKG Industries Inc. v. Perma-Pipe Inc.*, the court found that the movant's failure to provide evidence linking the reason for the delay with the expiration of movant's testimony period did not support a finding of excusable neglect. 49 USPQ2d 1156, 1158 (TTAB 1998). While in *S. Industries Inc. v. Lamb-Weston Inc.*, respondent's counsel failed to notice that some of the papers received by him pertained to a second cancellation proceeding. The Board determined that petitioner significantly contributed to respondent's confusion by serving communications which prominently referenced both registration numbers, but which failed to reference any cancellation

proceeding number or only referenced one of the cancellation proceedings ongoing. The Board held that those unusual circumstances weighed this factor in establishing excusable neglect.

Heritage provides declarations and a copy of the recorded assignment explaining the circumstances surrounding the delay in appearing before the Board. Unlike the movant's failure to provide evidence linking the reason for the delay with the expiration of movant's testimony period in *HKG Industries Inc. v. Perma-Pipe Inc.*, Heritage provides the Board with documentation to support its inability to appear sooner. Heritage has only recently obtained control over the trademark to be able to make these combined motions for relief. Before the assignment took place, Heritage could not have sought an extension of time or submitted a motion under Rule 60(b). The assignment was stalled as a result of the TTB audit of Smoker's Best Group, LLC. The duration of an audit depends upon the documents and products available at the time of inspection. Heritage can only guess as to why its predecessor in interest did not inform the Board or opposing counsel of the reasons behind its inability to comply with the time frame to respond to the motions for summary judgment. Heritage can only assert that it is an innocent victim and would like the opportunity to have this proceeding decided on the merits. Although Heritage and Smoker's Best Group, LLC were negotiating the terms of the assignment, if it were not for the audit, the transfer could have taken place more quickly. The delay being beyond Heritage's reasonable control, Heritage respectfully requests the Board weigh this factor in support of a finding of excusable neglect.

**C. By requiring Smoker's Best Group, LLC to transfer any and all records related to the Union trademark Heritage has been acting in good faith and not to delay the resolution of the consolidated cancellation and opposition proceedings.**

Evidence is required to establish that a movant seeking relief under 60(b) has acted in bad faith. *See Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.*, 65 USPQ2d 1701, 1703.

Heritage exercised due care when negotiating to purchase the Union trademark and entering these proceedings. At the time negotiations began, Smoker's Best Group, LLC was being audited by the TTB. To ensure the validity of the transfer, Heritage sought to obtain approval that the transfer would not be contested. Upon Smoker's Best Group, LLC's receipt of this approval, Jose Espinosa authorized the closing of the assignment of the trademark. *See* Exhibits C, D, E, F. In addition to this approval, Heritage required all documents pertaining to the Union trademark in Smoker's Best Group, LLC's custody be transferred prior to closing. These precautions were all taken in good faith and with the intention of being able to adequately defend Heritage's newly acquired interest in the trademark. For this reason, because there has been no showing of bad faith by Heritage, this factor weighs in favor of a finding of excusable neglect.

**D. The length of the delay in submitting these motions is minor when taking into account Heritage seeks to ensure the resolution of these proceedings on the merits.**

A motion for relief from judgment based upon excusable neglect must be made within a reasonable time and must not be filed more than one year after the judgment is entered. *See* TBMP 544; *but see Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991) stating when seeking relief under 60(b)(4-6) the one year maximum limitation is not applicable. If movant explains the reasons for its delay this factor may be deemed to support a finding of excusable neglect. *See Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.*, 65 USPQ2d 1701, 1703 (denying Opposer's motion to reopen when Opposer waited more than four months after testimony period closed to file); *see also Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000) (ruling against counsel's motion to reopen when counsel knew of the unavailability of witness a month before, yet delayed until last day to seek an agreement on an extension of time). In *Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.*, the Board determined that notwithstanding settlement negotiations were ongoing between

Opposer and Applicant, because Opposer did not provide an explanation for the four month delay in submitting its motion to reopen, this factor did not support a finding of excusable neglect by Opposer. 65 USPQ2d 1701, 1703.

Heritage acknowledges there has been a minor delay. However, unlike Opposer in *Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.*, Heritage was unable to take steps to reverse the order of summary judgment in the consolidated proceeding because it did not have a recognized interest in the trademark until approximately March 12, 2013. *See* Exhibits A, G, B. Unlike Opposer in *Old Nutfield Brewing Co.*, Heritage goes to extraordinary lengths to explain the circumstances surrounding the delay in bringing these motions. *See* Exhibits “ B, C, D, E, and G. Days after the closing of the assignment, steps were taken by Heritage’s counsel to obtain authorization to file the instant combined motions. The undersigned counsel contacted the assigned interlocutory attorney and relayed the mark had been assigned to Heritage. In hindsight, the undersigned should have introduced herself to opposing counsel for Petitioner. However the two week delay in bringing this motion is minor and Petitioner is not unduly prejudiced. For these reasons, the Board should support weighing this factor in Heritage’s favor.

Once the Board takes into account the totality of circumstances surrounding the delay, Heritage’s good faith and intentions to resolve these proceeding on the merits, the Board should grant these motions based upon a finding of excusable neglect. Factors (1), (3), and (4) strongly weigh in favor of granting Heritage’s combined motions. Petitioner has not been unduly prejudiced by the delay and these circumstances warrant a finding that these motions be granted based upon excusable neglect.

**II. Even if the Board determines that excusable neglect has not been established; relief from judgment should be granted because equity justifies relief pursuant to Fed. R. Civ. P. 60(b)(6).**

Rule 60(b)(6) permits relief from judgments for any other reason justifying relief from the operation of the judgment. *See* Fed. R. Civ. Pro. 60(b)(6). Relief cannot be had under this provision if relief is available under any other 60(b) provision. *See* Wright, Miller, & Kane, Federal Practice and Procedure: Civil 2d Section 2864 (2002). For this reason, Heritage asserts in the alternative that these motions should be granted applying Rule 60(b)(6) because there are valid defenses to the petition to cancel and it would be extremely inequitable and prejudicial to Heritage if judgment were not set aside. These proceedings should be decided on the merits because the Union mark has been in continuous use since at least February 4, 2005. Notwithstanding the transfers in ownership, this mark has not been abandoned or discontinued.

The mark has built up substantial goodwill. Heritage, a good faith purchaser, should not be penalized for Smoker's Best Group, LLC's conduct which called for the TTB audit in the first place. The reason for the delay not being attributable to Heritage, relief from judgment along with these motions to reopen and the requested extension of time should be granted, because equity abhors forfeiture. The audit further complicated matters by delaying the production and transfer of all documents related and pertaining to the mark which was a condition of the assignment. The Board should grant Heritage's combined motions because penalizing Heritage for acts outside of its reasonable control when it has taken steps to put the world on notice of its rights to the mark by recording on the PTO website, does not serve the interests of justice. Furthermore, Heritage investigated and required the production of all documents pertaining to the mark in Smoker's Best Group, LLC possession in good faith, and took extraordinary steps to

ensure the transfer is valid. These extraordinary circumstances support granting the requested relief under Rule 60(b)(6).

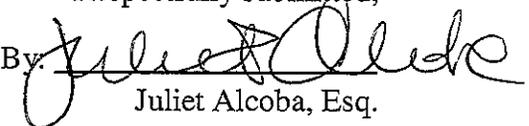
**III. Even if the Board determines that the excusable neglect standard is not met; these combined motions should be granted because meritorious defenses exist, and the law favors deciding cases on the merits.**

The showing of a meritorious defense is accomplished when allegations of a party's answer, if established to be true, would constitute a complete defense to the action. *See Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991). The voluminous records produced during discovery demonstrate that the mark has been used continuously in commerce. *See Exhibit E.* The fact that Petitioner does not approve of predecessor in interest's record office destruction policy does not dispel that the mark has been used in conjunction with cigarettes since at least February 4, 2005. Even if the Board does not find arguments I and II persuasive, these combined motions should be granted because meritorious defenses exist, and the law favors deciding cases on the merits.

**CONCLUSION**

For all the foregoing reasons, the Board should set aside the judgments rendered 1) cancelling the Union trademark registration and 2) dismissing the oppositions with prejudice; reopen the time for responding to the submitted motions for summary judgment; and grant the requested extension of time to respond to N.V. Sumatra's submitted summary judgments.

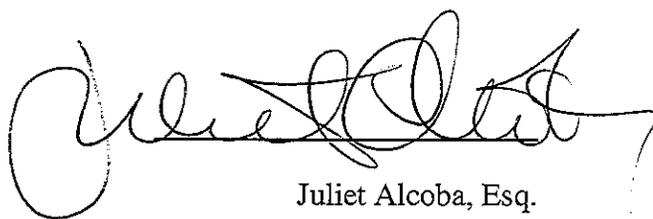
Date: April 3, 2013

Respectfully submitted,  
By:   
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Miami, FL 33122  
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Attorney for Heritage Tobacco, LLC  
Florida Bar No. 95502

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing memorandum has been duly served by e-mail to the following:

J. Paul Williamson, Esq.  
Tara Vold  
Fulbright & Jaworski L.L.P  
801 Pennsylvania, Avenue, N.W.  
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A handwritten signature in black ink, appearing to read 'Juliet Alcoba', written in a cursive style.

Juliet Alcoba, Esq.  
Attorney for Heritage Tobacco, LLC  
Florida Bar No. 95502

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

N.V. Sumatra Tobacco Trading Company	)	
Petitioner/ Applicant	)	
	)	
	) v.	
	)	
	)	
Heritage Tobacco, LLC	)	Cancellation No. 92052621
	)	Opposition Nos. 91185261
	)	91186841
	)	For the Mark UNION
	)	Registration Number: 2,972,594
	)	Registration Date: July 19, 2005
	)	

Honorable Commissioner for Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

**COMBINED MOTION TO SET ASIDE THE BOARD’S ORDERS GRANTING  
PETITIONER’S MOTIONS FOR SUMMARY JUDGMENT; MOTION FOR A 45 DAY  
EXTENSION OF TIME TO SUBMIT OPPOSITIONS TO THE SUBMITTED  
SUMMARY JUDGMENTS; MOTION TO REOPEN PROCEEDINGS AND RESET  
TRIAL DATES ACCORDINGLY.**

Heritage Tobacco, LLC ( hereinafter “Heritage”) submits and moves that the Board grant these motions for the following reasons:

- a) Since at least as early as January 2013, Registrant Smoker’s Best Group, LLC and American Cigarette Company, Inc. (hereinafter “Registrant” or “Respondent”) have been being audited by the Tobacco Tax and Trade Bureau (hereinafter “TTB”).
  
- b) In an order dated January 17, 2013, Registrant Smoker’s Best Group, LLC and American

Cigarette Company, Inc. (hereinafter “Registrant” or “Respondent”) received Notice that the motion for summary judgment submitted by N.V. Sumatra Tobacco Trading Company (hereinafter “Petitioner” or “Applicant”) was granted as conceded for its failure to file a brief in response to that motion.

- c) On January 22, 2013, Applicant submitted a motion and memorandum of law in support of Applicant’s motion for summary judgment in the opposition proceedings via first class mail to Registrant’s principal addresses as well as the listed address for its counsel of record, Paul Nunes.
- d) Around this time, January 22, 2013 Registrant and Heritage began discussing the possible assignment of the UNION trademark.
- e) A major concern during this time period by Heritage was that assets like the trademark at issue could be sold because Smoker’s Best Group, LLC was being audited by the TTB.
- f) Heritage retained undersigned counsel in February to draft a litigation support agreement between Heritage and Registrant. Heritage and Registrant’s counsel began exchanging drafts of this agreement February 21, 2013 and Registrant finally came to an agreement which was executed Monday, March 11, 2013. Upon Registrant’s alleviation of Heritage’s concern that the transfer would not be contested and the production of all documents in its possession regarding the Union trademark, the transfer of the assignment was authorized by Heritage to take place.

- g) Registrant assigned the UNION trademark and all of its associated goodwill to Heritage March 5, 2013 for good and valuable consideration which was accepted by Heritage on Tuesday, March 12, 2013.
- h) The undersigned recorded the assignment on Wednesday, March 13, 2013 before going out of town that following day, Thursday, March 14, 2013.
- i) The undersigned returned to the office Tuesday, March 19, 2013.
- j) The undersigned certifies that upon her return to the office, she spoke with Interlocutory Attorney by telephone.
- k) Undersigned counsel contacted Heritage March 22, 2013 and was informed its vice president would not be available to discuss this motion for relief from judgment until Monday, March 25, 2013.
- l) In an order dated March 29, 2013, former owner Smoker's Best Group, LLC received Notice that the motion for summary judgment submitted by N.V. Sumatra Tobacco Trading Company pertaining to the oppositions to N.V. Sumatra's applications for UNION GOLD (App. No. 76/415,303) and UNION and Design (App. No. 76/415,305) were granted and dismissed with prejudice.
- m) The undersigned became aware that the oppositions were granted and dismissed with prejudice April 1, 2013.
- n) These motions are made in good faith and not for purposes of delay.
- o) These motions should be granted because Heritage's failure to respond to the motions for summary judgment resulted from excusable neglect; or in the alternative these motions should be granted applying Rule 60(b)(6); and because Heritage has meritorious defenses.

WHEREFORE, Heritage Tobacco, LLC respectfully requests that the 1) order granting Petitioner's cancellation and opposition motions for summary judgment be set aside, 2) Heritage be granted a 45 day extension of time to respond to both motions because they are based on the same facts and circumstances, and 3) this motion to reopen proceedings and reset trial dates be granted accordingly.

Date: April 3, 2013

By: /Juliet Alcoba/

Respectfully submitted,

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Attorney for Heritage Tobacco, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing combined motion to set aside the Board's order granting Petitioner's summary judgments; motion for a 45 day extension of time; and this motion to reopen proceedings and reset trial dates have been duly served by e-mail to the following:

J. Paul Williamson, Esq.  
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/Juliet Alcoba/

Juliet Alcoba, Esq.  
Attorney for Heritage Tobacco, LLC  
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**THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

N.V. Sumatra Tobacco Trading Company	)	
Applicant	)	
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v.	)	
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Heritage Tobacco, LLC	)	Cancellation No. 92052621
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	)	Registration Number: 2,972,594
	)	Registration Date: July 19, 2005
	)	

Honorable Commissioner for Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF APPEARANCE ON BEHALF OF HERITAGE TOBACCO, LLC AS A  
RESULT OF THE ASSIGNMENT OF THE UNION TRADEMARK**

Heritage Tobacco, LLC submits this request and hereby appoints ALCOBA LAW GROUP, P.A., 3399 NW 72 Avenue, Suite 211, Miami, Florida 33122, and Ruben Alcoba, and Juliet Alcoba, as my attorneys to prosecute the consolidated cancellation and opposition proceeding identified above, and to transact all business in the United States Patent and Trademark Office (“USPTO”) connected therewith. Heritage Tobacco, LLC authorizes the USPTO to communicate with its attorneys via e-mail.

Please address all correspondence and telephone calls to:

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Dated: April 2, 2013

By: Jose Espinosa  
Vice President  
Heritage Tobacco, LLC



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Notice of Appearance and Acceptance of the Power of Attorney has been duly served by e-mail to the following:

J. Paul Williamson, Esq.  
Tara Vold  
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/Ruben Alcoba/  
Ruben Alcoba, Esq.  
Attorney for Heritage Tobacco, LLC



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/Juliet Alcoba/

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Attorney for Heritage Tobacco, LLC