

ESTTA Tracking number: **ESTTA341161**

Filing date: **04/07/2010**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Finck Cigar Company
Granted to Date of previous extension	04/07/2010
Address	P.O. Box 831007 San Antonio, TX 78283 UNITED STATES

Attorney information	Elizabeth Pasquine Novak Druce + Quigg LLP 1300 I Street, NW1000 West Tower Washington, DC 20005 UNITED STATES trademark@novakdruce.com Phone:202.659.0100
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Applicant Information

Application No	77382135	Publication date	12/08/2009
Opposition Filing Date	04/07/2010	Opposition Period Ends	04/07/2010
Applicant	Cuban Cigar Brands, N.V. 5900 North Andrews Avenue Fort Lauderdale, FL 33309 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 2003/04/00 First Use In Commerce: 2003/04/00
All goods and services in the class are opposed, namely: Cigars

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2281389	Application Date	07/27/1998
Registration Date	09/28/1999	Foreign Priority Date	NONE
Word Mark	CASINO CLUB		

Design Mark	CASINO CLUB
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 1998/01/00 First Use In Commerce: 1998/01/00 CIGARS

Attachments	75526256#TMSN.gif (1 page)(bytes) CASINO Notice of Opposition Signed.pdf (5 pages)(178348 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/EP/
Name	Elizabeth Pasquine
Date	04/07/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Finck Cigar Company)	
)	
Opposer,)	
)	Serial No.: 77/382,135
)	
v.)	Mark: CASINO
)	
Cuban Cigar Brands, N.V.)	Opposition No. _____
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, Finck Cigar Company (“Finck”), headquartered in San Antonio, Texas, believes it will be damaged by registration of the mark CASINO (the “Opposed Mark”) claimed in Application Serial No. 77/382,135 (the “Application”) for “cigars” filed by Cuban Cigar Brands, N.V. (“Applicant”) on January 28, 2008, and published for opposition on December 8, 2009. Finck timely filed a request for extension of time to oppose the Application, which was granted through April 7, 2010.

As grounds for opposition, Finck alleges as follows:

1. For over 12 years, long prior to the filing date of the Application, Finck has been in the business of producing, selling and/or offering cigars under the mark CASINO CLUB in U.S. commerce.
2. Finck owns U.S. trademark registration number 2,281,389 for the CASINO CLUB Mark for “cigars.”
3. Finck’s Registration No. 2,281,389 is incontestable pursuant to 15 U.S.C. § 1065 and provides conclusive evidence of Finck’s ownership of the mark therein, of the validity of the mark therein, and of Finck’s exclusive right to use the mark in commerce

in connection with the goods identified in the registration.

4. Finck began actual and constructive use of its CASINO CLUB Mark in commerce at least as early as January 1998, long prior to Applicant's claimed April 2003 date of first use of its CASINO mark, and the January 28, 2008 filing date of its use-based application. Through its long use, Finck has established valuable goodwill in the CASINO CLUB Mark, and the relevant public has come to recognize the CASINO CLUB Mark as an indication of quality products that emanate from Finck.

5. Finck is the owner of all right, title, and interest in and to the mark CASINO CLUB in connection with its goods.

6. As a result of the same, the CASINO CLUB Mark has acquired a highly favorable reputation among members of the purchasing public and the trade and has become a valuable symbol of Finck's goodwill.

7. By virtue of the high degree of inherent and acquired distinctiveness of the CASINO CLUB Mark, the long duration and extensive use of the CASINO CLUB Mark, the expansive trading area in which the CASINO CLUB Mark has been used and the high degree of recognition of the CASINO CLUB Mark, the CASINO CLUB Mark had become well-known as a distinctive indicator of the origin of Finck's goods before the date of first use of the Opposed Mark and/or the filing date of the Application.

8. Notwithstanding Finck's prior rights in the CASINO CLUB Mark, on January 28, 2008, Applicant filed the Application in the United States Patent and Trademark Office for registration of the mark CASINO for "cigars" in Class 34. On information and belief, Applicant knew or had reason to know of Finck's prior rights in the CASINO CLUB Mark when Applicant filed the Application.

9. Finck's Registration No. 2,281,389 issued on September 28, 1999, well prior to the filing date of the Application and any use by Applicant of the Opposed Mark in the United States.

10. The CASINO CLUB Mark and the Opposed Mark are confusingly similar in sight, sound, and meaning, each containing the common term "CASINO." Applicant has appropriated the first part of Finck's CASINO CLUB mark.

11. Moreover, the goods identified in the applications are identical. Based on the similarities between the marks and the identity of the goods, the relevant consumers are likely to be confused, to be deceived, and to assume erroneously that Applicant and the Opposed Goods are in some way connected with, sponsored by, or affiliated with Finck, all to Finck's substantial detriment.

12. The Opposed Goods identified in the Application are not limited in any way as to prospective customers or channels of trade. Therefore, Applicant's goods and Finck's goods are presumed be targeted, offered, and sold to the same classes of prospective consumers and to flow in all channels of trade.

13. Registration of the Opposed Mark will support and assist Applicant in the confusing and misleading use of the Opposed Mark, will give color of exclusive statutory right to Applicant in violation and in derogation of the pre-existing and superior rights of Finck, and will cause Finck to lose control over the good and valuable reputation represented by and derived from the CASINO CLUB Mark, all causing irreparable harm and injury to Finck.

WHEREFORE, Finck respectfully prays that Application Serial No. 77/382,135 for CASINO be refused and that no registration issue thereon to Applicant, and, further

that this Opposition be sustained in favor of Finck.

Respectfully submitted,

A handwritten signature in cursive script, reading "Elizabeth Pasquine". The signature is written in black ink and is positioned above a horizontal line.

Elizabeth Pasquine
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Attorney for Opposer
Finck Cigar Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was sent by U.S. First Class Mail, postage prepaid, to the following on this 7th day of April, 2010:

CHARLES W. GRIMES
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