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

Proceeding	91229892
Party	Defendant Yuri Gagarin LLC
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Submission	Answer
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Date	09/14/2016
Attachments	Answer to Notice of Opposition.pdf(102139 bytes )

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

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SCANDINAVIAN TOBACCO GROUP ASSENS A/S,

Opposer,

v.

Opposition No. 91229892

YURI GAGARIN LLC,

Applicant.

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**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

In response to the Notice of Opposition (hereafter “Notice”) filed by SCANDINAVIAN TOBACCO GROUP ASSENS A/S (hereafter “Opposer”) on September 6, 2016, the Applicant, YURI GAGARIN LLC (hereafter “Applicant”), answers the Notice identified above as follows:

1. In response to the allegations of paragraph 1 of the Notice, the Applicant is without knowledge.
2. Applicant denies the allegations of paragraph 2 of the Notice.
3. In response to the allegations of paragraph 3 of the Notice, the Applicant is without knowledge.
4. In response to the allegations of paragraph 4 of the Notice, the Applicant is without knowledge.
5. In response to the allegations of paragraph 5 of the Notice, the Applicant is without knowledge.
6. Applicant denies the allegations of paragraph 6 of the Notice.
7. Applicant denies the allegations of paragraph 7 of the Notice.

8. Applicant denies the allegations of paragraph 8 of the Notice.
9. Applicant denies the allegations of paragraph 9 of the Notice.
10. In response to the allegations of paragraph 10 of the Notice, the Applicant is without knowledge.
11. Applicant admits that the Application for LA CUBANA (Serial No. 87/027,656) was filed for use with “Ashtrays; Cigar boxes; Cigar cases; Cigar cutters; Cigar holders; Cigar humidifiers; Cigar tubes; Humidors; Lighters for smokers; Cigar lighters; Holders for cigars and cigarettes; Smokers' articles, namely, cigar storage tubes; Smoking pipes.” Any and all remaining allegations contained within paragraph 11 of the Notice are denied.
12. Applicant admits that the Application for LA CUBANA (Serial No. 87/027,656) was filed on May 6, 2016. Any and all remaining allegations contained within paragraph 12 of the Notice are denied.
13. Applicant admits that the Application for LA CUBANA (Serial No. 87/027,656) claims a date of first use of at least as early as March 13, 2016. Any and all remaining allegations contained within paragraph 13 of the Notice are denied.
14. In response to the allegations of paragraph 14 of the Notice, the Applicant is without knowledge.
15. In response to the allegations of paragraph 15 of the Notice, the Applicant is without knowledge.
16. In response to the allegations of paragraph 16 of the Notice, the Applicant is without knowledge.

17. In response to the allegations of paragraph 17 of the Notice, the Applicant is without knowledge.
18. In response to the allegations of paragraph 18 of the Notice, the Applicant is without knowledge.
19. In response to the allegations of paragraph 19 of the Notice, the Applicant is without knowledge.
20. In response to the allegations of paragraph 20 of the Notice, the Applicant is without knowledge.
21. In response to the allegations of paragraph 21 of the Notice, the Applicant is without knowledge.
22. In response to the allegations of paragraph 22 of the Notice, the Applicant is without knowledge.
23. In response to the allegations of paragraph 23 of the Notice, the Applicant is without knowledge.
24. In response to the allegations of paragraph 24 of the Notice, the Applicant is without knowledge.
25. In response to the allegations of paragraph 25 of the Notice, the Applicant is without knowledge.
26. In response to the allegations of paragraph 26 of the Notice, the Applicant is without knowledge.
27. In response to the allegations of paragraph 27 of the Notice, the Applicant is without knowledge.
28. Applicant denies the allegations of paragraph 28 of the Notice.

29. Applicant denies the allegations of paragraph 29 of the Notice.
30. Applicant denies the allegations of paragraph 30 of the Notice.
31. Applicant denies the allegations of paragraph 31 of the Notice.
32. Applicant denies the allegations of paragraph 32 of the Notice.

**Affirmative Defenses**

In further answer to the Notice, the Applicant asserts that:

**First Affirmative Defense**

33. Opposer's Notice fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

**Second Affirmative Defense**

34. Upon information and belief, Opposer has no priority of use to the LA CUBANA mark

**Third Affirmative Defense**

35. Opposer's claims are barred, in whole or in part, by the doctrines of estoppel, acquiescence and waiver.

**Fourth Affirmative Defense**

36. Opposer's claims are barred, in whole or in part, by the doctrine of laches.

**Fifth Affirmative Defense**

37. There is no similarity between Applicant's mark and Opposer's marks. Specifically, the Opposer's marks as cited in the Notice are for the phrase LA GLORIA CUBANA (with and without design). With respect to the two registrations containing design elements, the literal elements for LA GLORIA CUBANA are incredibly small and difficult to read; therefore, the design elements of the respective marks are the dominant features of the marks. And with respect to all three registrations cited by the Opposer, each mark

contains additional and different wording, namely GLORIA. This, in addition to the Applicant's distinctive design elements, makes confusion incredibly unlikely.

Sixth Affirmative Defense

38. In all of Opposer's cited marks, the Opposer has disclaimed the word CUBANA, meaning that it makes no claim to the word CUBANA apart from the respective marks as shown. Therefore, the Applicant's and Opposer's marks are more appropriately compared as LA CUBANA (with design) to LA GLORIA, eliminating any likelihood of confusion in commerce.

Seventh Affirmative Defense

39. Marks other than those belonging to the Applicant and Opposer use the word CUBANA for goods and services within International Class 034. Because the field is heavily crowded with such marks for use within International Class 034, any likelihood of confusion between Opposer's marks and Applicant's mark is unlikely.

Eighth Affirmative Defense

40. Purchasers of goods sold along with the relevant marks are careful and sophisticated, thus making any confusion or mistake amongst potential overlapping consumers highly unlikely.

Ninth Affirmative Defense

41. The respective trademarks, as appears on each party's respective goods and services, do not create the same or overall commercial impression when viewed separately by the ordinary consumer.

Tenth Affirmative Defense

42. Ordinary Consumers would not confuse or conclude that the parties' products share a common source or affiliation or connection.

Eleventh Affirmative Defense

43. On information and belief, Opposer's goods are more expensive than that of the Applicant; thus, Consumers are unlikely to purchase Opposer's goods supposing they derive from Applicant or vice versa.

Twelfth Affirmative Defense

44. Opposer has no examples of any actual confusion amongst consumers with regards to Applicant's and Opposer's respective marks.

Applicant reserves the right to amend this Answer to assert any additional affirmative defenses arising from any applicable facts or law that may be revealed during discovery.

**Relief Requested**

**WHEREFORE**, the Applicant asks that this Opposition proceeding be dismissed forthwith.

By:           /Francis John Ciaramella/            
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By:           /Rick Ruz/            
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Dated: September 14, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on the following via first class mail:

Scott Greenberg  
Locke Lord LLP  
Brookfield Place, 200 Vesey St  
New York, NY 10281  
Attorney for Opposer

By:           /Francis John Ciaramella/            
Francis John Ciaramella, Esq.  
Florida Bar No. 111927

By:           /Rick Ruz/            
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Florida Bar No. 42090

Dated: September 14, 2016