TTAB

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February 11, 2003

VIA FACSIMILE
& EXPRESS MAIL

Albert Zervas, Esq.
Trademark Trial and Appeal Board
South Tower Building
2900 Crystal Drive
Arlington, VA 22202

Re: Galleon S.A. v. Havana Club Holding, S.A. Cancellation No. 24,108

Dear Mr. Zervas:

This is in response to Mr. Leroy's February 10th letter and Mr. Sims' earlier letter. While Mr. Leroy has asked for a ninety-day extension of the deadline for Empresa Cubana Exportada De Alimentos y Productos Varios S.A. ("Cubaexport") to respond to the Board's Order, he studiously disregards the ineluctable fact that he has not satisfied the Board's threshold requirements to act as Cubaexport's representative. The Board's rules explicitly provide that:

> An attorney . . . will be accepted as a representative of a party in a proceeding before the Board if the attorney (1) makes an appearance in the proceeding (as, for example, by filing a paper) on behalf of the party and satisfactorily identifies himself or herself as an attorney, *see Djeredjian v. Kashi Co.*, 21 U.S.P.Q.2d 1613 (TTAB 1991), or (2) files a written power of attorney signed by the party the attorney represents.

See TBMP § 114.03. Neither requirement has been met and instead, Mr. Leroy has acknowledged that Fish & Neave is not prepared at this time to make a formal appearance for

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Cubaexport.[1] Accordingly, neither Mr. Leroy nor any other attorney at Fish & Neave is empowered under the TTAB Rules of Practice to act on Cubaexport's behalf for the purpose of seeking an extension or any other purpose. Even more incongruously, Mr. Leroy refused our request that Mr. Krinsky and all other attorneys of record be joined in any telephonic conferences with the Board. The Board's Order requires that all papers be served on Mr. Krinsky and recognizes him as Cubaexport's attorney in this matter. Mr. Krinsky apparently would prefer to stay in the background but that is not his prerogative in view of the Board's decision.

This failure to have an attorney formally appear on its behalf is a calculated strategy on behalf of Cubaexport; albeit, Fish & Neave may well not be apprised of this plan. In fact, there is no basis to conclude that Fish & Neave has ever been in direct contact with any officer or managing director of Cubaexport (as opposed to HCH's attorneys or Mr. Krinsky). Since the order striking its abortive assignment of the HAVANA CLUB registration, Cubaexport, itself, has never taken steps to appoint a domestic representative in accordance with the Lanham Act's requirements with respect to the HAVANA CLUB registration. Mr. Krinsky, although the January 21st Order of the Board recognizes him as Cubaexport's domestic representative and attorney, has orally denied that role.[2] To grant an extension without requiring the appearance of an authorized representative for Cubaexport would not only be an abuse of discretion but would also cast a pall over the Board's Order by, in effect, relieving Mr. Krinsky of his role as attorney for Cubaexport without any direction from Cubaexport itself to that effect. The result would be that Cubaexport would have no attorney upon whom process could be served as required by the Lanham Act.

Mr. Sim's screed is similar to his other strident and unfounded assertions. Suffice it to say his client, Havana Club Holding, S.A. ("HCH") has litigated and lost at every level of the federal court system any claim to rights in the HAVANA CLUB mark or registration in the United States. HCH is a nominal party in this proceeding for purposes of discovery and has been adjudicated as having no substantive rights at issue here. HCH has, in the past, acknowledged its

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1 The license from OFAC sought by Fish & Neave for payment of legal services in conjunction with a U.S. trademark proceeding is perfunctory and is raised as a red herring. Fish & Neave has spent far more time trying to get an extension without binding Cubaexport than it would have taken to prepare a simple notice of appearance.

2 The Board has the discretion to refuse to allow an attorney to withdraw from representation of a party in the event the withdrawal will cause inordinate delay.

in direct conflict with Cubaexport regarding the U.S. HAVANA CLUB mark and also cannot speak for Cubaexport.

Very truly yours,

KELLEY DRYE & WARREN LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the LETTER ADDRESSED TO ALBERT ZERVAS, ESQ. was served by Facsimile and Express Mail at the following addresses:

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Dated: February 11, 2003

By: Kathryn Gravina
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