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

GALLEON S.A., BACARDI-MARTINI U.S.A., INC. and BACARDI & COMPANY LIMITED, *Petitioners,* v. HAVANA CLUB HOLDING, S.A. and EMPRESA CUBANA EXPORTADORA DE ALIMENTOS Y PRODUCTOS VARIOS, S.A., d.b.a. CUBAEXPORT, *Respondents.*	Cancellation No. 24,108

RESPONDENT CUBAEXPORT'S MOTION FOR AN ORDER (1) DISMISSING BACARDI'S AMENDED PETITION TO CANCEL; (2) IN THE ALTERNATIVE, DIRECTING BACARDI TO SHOW CAUSE WHY ITS AMENDED PETITION SHOULD NOT BE DISMISSED AND COMPELLING DISCLOSURE OF ALL *EX PARTE* COMMUNICATIONS; AND (3) SUSPENDING ALL PROCEEDINGS PENDING RESOLUTION OF THIS DISPOSITIVE MOTION

Pursuant to 37 C.F.R. § 2.127, Respondent Empresa Cubana Exportadora de Alimentos y Productos Varios, S.A.[1] ("Cubaexport") hereby moves the Trademark Trial and Appeal Board ("the Board") for an order: (1) dismissing in its entirety and with prejudice the amended petition to cancel filed by petitioners Galleon S.A., Bacardi-Martini U.S.A., Inc., and Bacardi & Company Ltd. (collectively "Bacardi"), by which they seek to cancel the U.S. registration for the HAVANA CLUB mark and design ("HAVANA CLUB registration"); (2) in the alternative, directing Bacardi to show cause

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[1] Cubaexport was joined by the Board as a respondent on January 21, 2003.

why its amended petition should not be dismissed and directing Bacardi to disclose fully all *ex parte* communications made between Bacardi (and/or its representatives) and U.S. Patent and Trademark Office ("PTO") officials concerning this proceeding;[2] and (3) suspending all other proceedings in this matter pending resolution of this dispositive motion.

Bacardi has improperly communicated *ex parte* with senior members of the PTO to obtain a favorable result in this proceeding. These *ex parte* communications include e-mails, telephone calls and meetings between Bacardi, Florida Governor Jeb Bush's staff and PTO officials and a letter from Governor Bush to PTO Director James Rogan demanding cancellation of the HAVANA CLUB registration.[3]

Bacardi's concerted effort to use its politically connected representatives to pressure the PTO to force a particular outcome is unfair and improper. Having tainted this proceeding, Bacardi should not be allowed to maintain this action, and the amended petition should be dismissed. Such a ruling would place the Board on record as condemning the kind of conduct in which Bacardi has engaged and would affirm the impartiality of the Board's decision making process, which should not be called into

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[2] On September 10, 2002, a similar motion was made by Respondent Havana Club Holding, S.A. ("HCH") in this action. That original HCH motion, however, did not contain many facts presented herein because such facts were not previously known to respondents. On January 21, 2003, the Board denied HCH's original motion. HCH filed a motion for reconsideration of that decision on February 19, 2003. This present motion is Cubaexport's first opportunity to address this matter. To the extent not presented herein, Cubaexport adopts and incorporates by reference the arguments made by HCH in its original September 2002 motion and February 2003 motion for reconsideration.

[3] Cubaexport has filed herewith the Declaration of Eric Huang, which contains true and correct copies of the Declarations of Gregg Reed and Charles Sims on which Cubaexport relies. The Reed and Sims Declarations contain true and correct copies of the e-mails and other correspondence reflecting Bacardi's effort to pressure the PTO.

question by parties such as Bacardi seeking influence by improper means. In the alternative, the Board should order Bacardi to show cause why its amended petition should not be dismissed and to disclose the full extent of its attempt to influence the outcome of this proceeding. This proceeding should be suspended until this motion is decided.

I. BACARDI USED GOVERNOR BUSH'S OFFICE TO PRESSURE THE PTO TO CANCEL THE *HAVANA CLUB* REGISTRATION

On July 12, 1995, Bacardi filed a petition with the Board to cancel the HAVANA CLUB registration. Bacardi filed an amended petition on August 19, 1996. Frustrated with the Board's handling of this action, Bacardi sought and obtained the assistance of Florida Governor Jeb Bush in January 2002 to pressure the PTO to cancel the HAVANA CLUB registration. (FOIA 12-13.)[4]

From January 2002 through at least September 2002, Governor Bush's office and Bacardi acted in concert and in secret to persuade the PTO to act in Bacardi's favor. They began their campaign with a series of *ex parte* contacts in February and March 2002.

- Two of Governor Bush's aides, on February 20, 2002, met in secret with PTO attorney Eleanor Meltzer to discuss Bacardi's cancellation petition. (FOIA 34, 121-28.)
- On February 25, 2002, Bacardi Vice President Jorge Rodriguez-Marquez met secretly with PTO officials, including Deputy Director Jon Dudas and Ms. Meltzer, to discuss the cancellation and press Bacardi's case. (FOIA 72-73, 42, 44, 146.) That second meeting focused specifically on

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[4] "FOIA ____" refers to the page numbering of documents obtained from the PTO and Governor Bush's office by request. These documents appear in the Sims Declaration, which is contained in the Huang Declaration filed herewith.

Bacardi's arguments as to why the HAVANA CLUB registration should be cancelled.[5]

- Bacardi later complained that, in the February 25 meeting, Ms. Meltzer revealed "personal negative feelings about [Bacardi's] case." (FOIA 42-43.)

- On March 19, 2002, Governor Bush's office informed Deputy Director Dudas of a summary judgment motion that Bacardi filed. (FOIA 69.)

- On March 20, 2002, Bacardi's vice president sent to Travis Thomas, Director of the Commerce Department's Office of Business Liaison, an e-mail with copies of Bacardi's summary judgment motion, along with Bacardi's arguments as to why Cubaexport is not entitled to the HAVANA CLUB registration. In his e-mail, Bacardi's vice president discussed "Bacardi's rights under the law" and argued (incorrectly) that Cubaexport allowed the registration to lapse. (FOIA 145-46.) He argued that "Cubaexport willingly gave up all their rights in 1993 when they transferred them to HCH" and that "Cubaexport's 20 year registration ended in 1996 and they chose not to renew it . . ." (FOIA 146.)

- On March 21, 2002, after speaking with Bacardi's vice president, Thomas forwarded to Deputy Director Dudas the March 20 e-mail. (FOIA 145.)

After the Board granted a "request to extend the comment period for cancellation" on April 1, 2002, and seemingly frustrated with the progress of its *ex parte* efforts, Bacardi decided to up the ante.

- Bacardi's vice president requested that Governor Bush help put more pressure on the PTO "where possible." (FOIA 70.) From April through the beginning of June 2002, Bacardi and the Governor's staff prepared a letter from Governor Bush himself to "get this resolved." (FOIA 75-91; 102-09.) The decision was made by the Governor's staff to "move up the food chain" to the PTO Director James Rogan, a member of the Board. (FOIA 78.)

- On June 13, 2002, Governor Bush personally demanded that the registration be cancelled in a letter to Director Rogan. (FOIA 9-10.)

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[5] During that meeting, Ms. Meltzer stated that if Pernod obtained a special State Department license, it could be "the winning card in Pernod's game." (FOIA 42.) "Pernod" is Pernod Ricard S.A., a French company that owns 50 percent of respondent HCH.

- On September 3, 2002, Deputy Director Dudas met with Bacardi representatives to discuss the cancellation proceeding. (FOIA 132.) There is no information now available to respondents as to what was specifically discussed.

In the June 13 letter, Governor Bush demanded immediate action to cancel the registration and cited the alleged lapse of the registration as a ground for cancellation:

> I am writing on behalf of Florida-based Bacardi-Martini, USA, Inc. to ask that the Patent and Trademark Office take a quick and decisive action on a pending application to expunge the registration of the trademark HAVANA CLUB. The ***out-dated registration*** belongs to a company owned by Fidel Castro called Cubaexport and ***should be cancelled immediately***. . . . A swift resolution to this matter is imperative. (FOIA 9-10 (emphasis added).)

Respondents were not copied on any of these letters and e-mails, nor were they informed of, or invited to attend, the meetings involving Bacardi, its representatives, and the PTO.

II. BACARDI'S *EX PARTE* CONTACTS WITH THE PTO ARE UNFAIR AND IMPROPER

A. Bacardi's *Ex Parte* Communications With The PTO Are Unfair

Bacardi's concerted effort to force a particular outcome in this action through secret meetings and correspondence with PTO officers violates the most basic concepts of fairness in adversary proceedings:

> Of course, one of the fundamental premises inherent in the concept of an adversary hearing, particularly if it is of the evidentiary type is that neither adversary be permitted to engage in an *ex parte* communication concerning the merits of the case with those responsible for the decision.[6]

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[6] The PTO recognizes this "fundamental premise" in its own rules. *See* 37 C.F.R.§ 10.93(b) (2002). Section 10.93(b), which governs the conduct of practitioners in adversary or *inter partes* proceedings, prohibits unauthorized *ex parte* communications with a "judge, official or Office employee before whom the proceeding is pending." *Id.*

(Continued...)

Camero v. *United States*, 375 F.2d 777, 780 (Ct. Cl. 1967) (*en banc*) (*citing* Canon 17, ABA Canons of Judicial Ethics; 5 U.S.C. § 1004(c) (1964); and *Sangamon Valley Television Corp.* v. *United States*, 269 F.2d 221 (D.C. Cir. 1959)). *See also Sullivan* v. *Department of the Navy*, 720 F.2d 1266, 1272 n.8 (Fed. Cir. 1983) (following "*Camero* principle").

In *Camero*, a government employee sued for back pay because of an allegedly wrongful termination. During the review of his termination by the agency grievance committee, an agency lawyer who presented evidence on behalf of the agency against the employee assisted, without the employee's knowledge, in preparing a legal opinion used by the decision maker to ultimately affirm the decision to terminate. The U.S. Court of Claims, sitting *en banc*, held that the termination decision was invalid because the lawyer's involvement amounted to improper *ex parte* communications that violated fairness and due process:

> It is difficult to imagine a more serious incursion on fairness than to permit the representative of one of the parties to privately communicate his recommendations to the decision makers. To allow such activity would render the hearing virtually meaningless. We are of the opinion that due process forbids it.

Camero, 375 F.2d at 781; *see also Professional Air Traffic Controllers Org.* v. *Federal Labor Relations Auth.*, 685 F.2d 547, 570 (D.C. Cir. 1982) (*PATCO II*).

The Court so held despite the fact that it did not find that the decision itself was in fact influenced by the involvement of the agency lawyer:

(...Continued)
A cancellation proceeding before the Board is an *inter partes* proceeding. *See* 37 C.F.R. § 2.116 (2002).

> We have no doubt that Wolverton [the agency general counsel] formed his own opinion on what recommendations he should make to General Anderson [the decision maker], just as we have no doubt that General Anderson made up his own mind when he decided to sustain plaintiff's removal. The problem is, however, that both decisions were made, at least in part, on the basis of the *ex parte* communication of the opinion of Kostos [the agency prosecuting attorney], who certainly, albeit perhaps not consciously, had as an adversary more than a neutral stake in the final outcome of plaintiff's case. (*Camero*, 375 F.2d at 780.)

The same (if not greater) threat to the fairness of an adversary proceeding exists here as in *Camero*. Bacardi's *ex parte* contacts with the PTO, to the extent already known, are more egregious than the *ex parte* communications in *Camero*. As set forth in Section I, Bacardi actively pressed its case, directly and through political pressure by Governor Bush and his office, to the PTO without any notice to respondents. Bacardi attempted to influence the Board by repeatedly contacting *ex parte* senior members of the PTO, who have influence over the Board.[7] PTO Director Rogan and Deputy Director Dudas are statutory members of the Board, *see* 15 U.S.C. § 1067(b), and have the power to cancel a registration in a cancellation proceeding,[8] *see* 15 U.S.C. § 1068, 35 U.S.C. § 3. The Director also appoints the administrative judges that serve on the Board. *See* 15 U.S.C. § 1067(b). In cancellation actions, the Board convenes at his direction and with his authority. *See* 15 U.S.C. §§ 1067, 1068. As the top appointees in the PTO, Director Rogan and Deputy Director Dudas have substantial influence over the Board members' work and careers. *See* 35 U.S.C. § 3.

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[7] These secret discussions also involved representatives of the PTO acting on behalf of the Director and Deputy Director. Eleanor Meltzer, who attended two meetings with Bacardi and who involved the Deputy Director, is an attorney-advisor for the PTO's Office of Legislative and International Affairs.

[8] The Deputy Director is authorized to act in the capacity of the Director when the Director is absent. *See* 35 U.S.C. § 3.

The merits of this cancellation proceeding were the reason for these *ex parte* contacts. Bacardi demanded cancellation of the HAVANA CLUB registration and provided specific grounds for reaching that result. First, Bacardi and Governor Bush communicated to the PTO their desire for the Board to reach a specific favorable outcome. (*E.g.*, FOIA 9-10, 145-146.) Where the "very purpose of the alleged improper communications was to persuade" a decision maker to reach a specific favorable result, that communication "clearly would be relevant to the merits of the proceeding." *See Portland Audubon Soc'y* v. *Endangered Species Committee*, 984 F.2d 1534, 1546 n.25 (9th Cir. 1993) (discussing Government In The Sunshine Act). Second, Bacardi and Governor Bush, in their improper communications with the PTO, specifically recited the ground of alleged failure to renew to support cancellation (*e.g.*, FOIA 145-46; FOIA 9-10)—the same ground raised by Bacardi in its pending summary judgment motion. Common sense dictates that discussion of the grounds for a claim is a discussion of the merits of that claim.

B. Bacardi's *Ex Parte* Communications Are Improper

Bacardi's secret meetings and correspondence with PTO officers and representatives, including the Director and Deputy Director, also constitute improper *ex parte* communication[9] under the Government In The Sunshine Act (the "Act"):

> [N]o interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be

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[9] The Act defines *ex parte* communication as "an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter." 5 U.S.C. § 551(14).

> expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding . . . . (5 U.S.C. § 557(d)(1)(A).)

The Act applies to *inter partes* adjudicatory proceedings before the Board.[10]

As described above, Bacardi contacted *ex parte* Director Rogan and Deputy Director Dudas, the top two PTO officers, who are members of the Board, *see* 35 U.S.C. § 3; 15 U.S.C. § 1067(b). Director Rogan and Deputy Director Dudas are charged with appointing the administrative judges that serve on the Board. *See* 15 U.S.C. § 1067; 35 U.S.C. § 3. They have the power to cancel a registration, *see* 15 U.S.C. § 1068. *See also supra* note 8.

At no point did Bacardi inform respondents that discussions were taking place, let alone the substance of the discussions. Respondents were never invited to attend meetings and were never copied on correspondence.

As discussed above, these contacts concerned the merits of this proceeding, *i.e.*, the outcome that Bacardi desired and its arguments for canceling the HAVANA CLUB registration. Bacardi's representatives discussed *ex parte* the grounds for its claim with members of the Board to persuade them to reach a particular desired result.

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[10] 5 U.S.C. § 554 exempts matters "subject to a subsequent trial of the law and the facts *de novo* in a court" from the Act. An *inter partes* proceeding before the Board, such as a cancellation, however, is not exempt because, although Board decisions are reviewable by the district court *de novo*, the court's review is not a true *de novo* proceeding. *Cf. Material Supply Int'l Inc.* v. *Sunmatch Indus. Co.*, 47 U.S.P.Q.2d 1341, 1345 (D.C. Cir. 1998) (quoting 3 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION § 21:20, at 21-24 (4th ed. 1997)). *See also* 3 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION § 21:21, at 21-28 (4th ed. 2003). The Board's findings of fact are "given great weight" and are not upset unless new evidence is introduced which "carries thorough conviction." *Id.*

The repeated *ex parte* contacts by Bacardi, acting on its own and through Governor Bush and his office, cannot be characterized or ignored as requests for status reports. Bacardi and its counsel plainly knew the status of the proceeding in which it was involved as petitioner. Moreover, the nature and extent of the contacts belie any suggestion that they were requests for status reports.

Even if, however, these contacts could be considered requests for status reports, the requests were relevant to the merits, because a request for status may amount to an effort to influence the substantive outcome of a proceeding. *See PATCO II*, 685 F.2d at 563. At the minimum, Bacardi's contacts were such requests, and should be treated as *ex parte* communications on the merits under the Act. *See id.*

For these reasons, Bacardi has violated the Act's proscription against *ex parte* communications by communicating with PTO officers *ex parte* concerning the merits of its cancellation petition.

III. BACARDI'S AMENDED PETITION TO CANCEL THE *HAVANA CLUB* REGISTRATION SHOULD BE DISMISSED IN LIGHT OF BACARDI'S ATTEMPT TO INFLUENCE THE BOARD

A. Bacardi's Amended Petition To Cancel The HAVANA CLUB Registration Should Be Dismissed

Secret communications between one party and a decision making body in an adversarial proceeding damage the integrity of the adversarial process. "To allow such activity would render the hearing virtually meaningless." *Camero*, 375 F.2d at 781. The Act (and fairness) contemplate that, in certain cases, dismissal of an action or claim is warranted when the prohibition against improper *ex parte* communications is violated. *See* 5 U.S.C. § 557(d)(1)(D).

Dismissal does not and should not require a showing of actual influence on the part of Bacardi. The shadow that Bacardi's sustained and secret effort to influence the Board has cast on the impartiality of the Board's decision making process is enough to warrant dismissal. *Cf. Camero*, 375 F.2d at 780.

The record as it now stands justifies dismissal. Bacardi's conduct here was egregious, and it has only itself to blame for the improper contacts it decided to make. By repeatedly and intentionally contacting PTO officials, Bacardi has tainted this proceeding and placed the Board in the untenable position of rendering a decision against the backdrop of Bacardi's attempts to influence its outcome. In order to discourage such contacts and affirm the impartiality of the Board's decision making process, the Board should dismiss Bacardi's amended petition. Anything short of that would be construed as an endorsement of Bacardi's course of conduct.

B. In The Alternative, Bacardi Should Be Directed To Show Cause Why Its Amended Petition Should Not Be Dismissed And Compelled To Reveal All *Ex Parte* Communications With The PTO Concerning This Action

If this proceeding is not dismissed outright on the current record, at a minimum and as a necessary first step, Bacardi should be directed to show cause why its amended petition to cancel should not be dismissed and compelled to disclose fully the amount, context and impact of *ex parte* communications.

When improper *ex parte* communications take place, disclosure ensures both fairness and the integrity of the process. Congress recognized this policy in the Act:

> The disclosure of *ex parte* communications serves two distinct interests. Disclosure is important in its own right to prevent the appearance of impropriety from secret communications in a proceeding that is required to be decided on the record. Disclosure is also important as an instrument of fair decisionmaking; only if a party knows the arguments presented to a decisionmaker can the party respond effectively and ensure that its

> position is fairly considered. When these interests of openness and opportunity for response are threatened by an *ex parte* communication, the communication must be disclosed. (*PATCO II,* 685 F.2d at 563.)

Although the extent and nature of *ex parte* contacts known to date supports dismissal, it is clear that the record is not complete. As shown in the Sims Declaration, the concerted effort by Bacardi to influence the Board *ex parte* took place over eight months. Despite efforts to secure information about this concerted effort through specific requests to the PTO and the Florida Governor's office, information about this concerted effort remains undiscovered. For example, the full extent of Bacardi's contacts with Deputy Director Dudas is not known. Deputy Director Dudas met with Bacardi on September 3, 2002 to discuss the cancellation proceeding. (FOIA 132.) We have no record of what was discussed or who else participated.

To date, Bacardi has not disclosed any information about *ex parte* communications with the PTO concerning the HAVANA CLUB registration. Bacardi has access to the full extent of the intentional *ex parte* contacts undertaken by it and its representatives. Full disclosure is important in its own right. Moreover, it will afford the Board a more complete picture of exactly what transpired than even the current record, and will allow respondent to respond fully to the arguments presented *ex parte* to the PTO.

If the petition to cancel is not dismissed outright, Bacardi should be directed to show cause why its amended petition should not be dismissed and compelled to disclose information about all *ex parte* communications with the PTO regarding this cancellation proceeding, including the substance of oral communications.

C. This Proceeding Should Be Suspended, Pending Resolution Of This Motion

The Board has the power to suspend cancellation proceedings. *See* 37 C.F.R. § 2.117. When the Board is presented with a dispositive motion, a cancellation proceeding is suspended by the Board with respect to all matters not germane to the motion. *See* 37 C.F.R. § 2.127(d); TBMP § 510.03(a). Where the spectre of improper *ex parte* contacts are at issue, the courts have suspended consideration of the merits of an action to resolve the extent and effect of such *ex parte* communications. *See Professional Air Traffic Controllers Org.* v. *Federal Labor Relations Auth.*, 672 F.2d 109, 113 (D.C. Cir. 1982) (*PATCO I).*

The parties have motions for summary judgment pending, including Bacardi's motion for summary judgment, which has not yet been fully briefed. This motion should be considered before considering the merits of summary judgment because (1) resolving this motion may well dispose of this cancellation proceeding and render briefing on summary judgment unnecessary; and (2) considering the merits of Bacardi's motion before resolving the serious question of Bacardi's attempt to influence the Board endangers the perception of impartiality of the Board.

In the interest of efficiency, and to ensure that the Board does not act under the shadow of Bacardi's improper attempts to influence the Board, this motion should be resolved prior to going forward on the merits in this proceeding.

IV. CONCLUSION

For the foregoing reasons, the Board should: (1) dismiss Bacardi's amended petition to cancel; (2) in the alternative, direct Bacardi to show cause why its amended petition to cancel should not be dismissed and order Bacardi to disclose fully all

ex parte communications made between Bacardi (and/or its representatives) and PTO officials, including Director Rogan and Deputy Director Dudas; and (3) order the suspension of all other proceedings in this matter, pending the resolution of this motion.

Dated: April 25, 2003

Respectfully submitted,

Herbert F. Schwartz
Vincent N. Palladino
Susan Progoff
FISH & NEAVE
1251 Avenue of the Americas
New York, New York 10020
(212) 596-9000

Attorneys for Respondent,
Empresa Cubana Exportadora de Alimentos y Productos Varios, S.A.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA [illegible] on the date which appears below:

Tania C. Ramos
Name

April 25, 2003
Date of its Signature and Deposit

TTAB

FISH & NEAVE

ERIC HUANG
DIRECT DIAL 212.596.9024
DIRECT FAX 646.728.2548
E-MAIL EHUANG@FISHNEAVE.COM

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April 25, 2003

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

Dear Sirs:

I enclose for filing in the above proceeding *Respondent Cubaexport's Motion For An Order (1) Dismissing Bacardi's Amended Petition To Cancel; (2) In The Alternative, Directing Bacardi To Show Cause Why Its Amended Petition Should Not Be Dismissed And Compelling Disclosure Of All Ex Parte Communications; And (3) Suspending All Proceedings Pending Resolution Of This Dispositive Motion*; and the accompanying *Declaration of Eric Huang*. I also enclose a Certificate Of Service for these filings.

The enclosed submission replaces Cubaexport's submission made on April 21, 2003, which was submitted inadvertently in bound form. Other than the date signed, the content of this submission is identical to that of the April 21 submission. This submission is made pursuant to the Board's April 15, 2003 order allowing respondent Cubaexport to respond to the motion for reconsideration filed by Havana Club Holdings, S.A.

Respectfully submitted,

Eric Huang

EH:eh
Enclosures

cc: William R. Golden, Jr., Esq. (by hand w/ enclosures)
Charles S. Sims, Esq. (by hand w/ enclosures)

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2003, I caused

1. *Respondent Cubaexport's Motion For An Order (1) Dismissing Bacardi's Amended Petition To Cancel; (2) In The Alternative, Directing Bacardi To Show Cause Why Its Amended Petition Should Not Be Dismissed And Compelling Disclosure Of All Ex Parte Communications; And (3) Suspending All Proceedings Pending Resolution Of This Dispositive Motion*; and

2. *Declaration of Eric Huang*

to be served on petitioners and respondent Havana Club Holding by causing a true and correct copy thereof to be delivered by hand to:

Counsel of Record for Petitioners:

William Golden, Jr.
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178

Counsel of Record for Respondent Havana Club Holding, S.A.

Charles Sims
Proskauer Rose LLP
1585 Broadway
New York, New York 10036

Eric Huang

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on the date which appears below:

Tania C. Ramos
Name

April 25, 2003
Date of the Signature and Deposit