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Filing date: **12/17/2009**

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

Petition for Cancellation

Notice is hereby given that the following parties request to cancel indicated registration.

Petitioner Information

Name	Corporacion Habanos, S.A.		
Entity	Corporation	Citizenship	Cuba
Address	Avenida 3ra #2006 e/20 y 22 Miramar, Havana, CUBA		

Name	Empresa Cubana del Tabaco, d.b.a. Cubatabaco		
Entity	Corporation	Citizenship	Cuba
Address	OReilly No. 104 Havana, CUBA		

Attorney information	David B. Goldstein Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. 111 Broadway Suite 1102 New York, NY 10006-1901 UNITED STATES dgoldstein@rbskl.com Phone:212-254-1111		
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Registration Subject to Cancellation

Registration No	2912374	Registration date	12/21/2004
Registrant	LEVY CAFE, INC. 524 S. 3RD STREET PHILADELPHIA, PA 19147 UNITED STATES		

Goods/Services Subject to Cancellation

Class 034. First Use: 2003/09/00 First Use In Commerce: 2003/09/00 All goods and services in the class are cancelled, namely: cigars made from Cuban seed tobacco
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Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)
The mark is primarily geographically deceptively misdescriptive	Trademark Act section 2(e)(3)
Other	Articles 23-28 of the General Inter-American Convention for Trade Mark and Commercial Protection, 46 Stat. 2907

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2177837	Application Date	08/16/1996
Registration Date	08/04/1998	Foreign Priority Date	NONE
Word Mark	HABANOS UNICOS DESDE 1492		
Design Mark			
Description of Mark	The mark consists of a black rectangle with the design of a tobacco leaf and the wording "HABANOS UNICOS DESDE 1492."		
Goods/Services	Class 034. First use: raw tobacco, cigars, cigarettes, cut tobacco rappee, matches, tobacco, tobacco pipes, pipe-holders, ashtrays, match boxes, cigar cases, and humidors		

U.S. Registration No.	1970911	Application Date	09/22/1994
Registration Date	04/30/1996	Foreign Priority Date	NONE
Word Mark	LA CASA DEL HABANO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: raw tobacco; cigars; cigarettes; cut tobacco; rappee; manufactured tobacco of all kinds; matches; tobacco; smoking pipes; pipe-holders, not of precious metal; ashtrays, not of precious metal; match boxes, cigar cases and humidors, not of precious metal		

Attachments	75151320#TMSN.gif (1 page)(bytes) 74576950#TMSN.gif (1 page)(bytes) Joya de Havana Cancellation Petition.pdf (15 pages)(62668 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	/David B. Goldstein/
Name	David B. Goldstein
Date	12/17/2009

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

In the matter of trademark Registration No. 2,912,374
Registered: December 21, 2004
Mark: H JOYA DE HAVANA HAND MADE & DESIGN

CORPORACION HABANOS, S.A., and EMPRESA)	
CUBANA DEL TABACO, d.b.a. CUBATABACO,)	
)	
Petitioners,)	
)	
v.)	Cancellation No. _____
)	
LEVY CAFE, INC.,)	
)	
Registrant.)	
)	

PETITION TO CANCEL

Petitioners CORPORACION HABANOS, S.A. (“Habanos, S.A.”) and EMPRESA CUBANA DEL TABACO (“Cubatabaco”) (together “Petitioners”) believe that they will be and have been damaged by registration on the principal register of the mark H JOYA DE HAVANA HAND MADE & DESIGN, Registration No. 2,912,374 (“JOYA DE HAVANA”), for “cigars made from Cuban seed tobacco,” registered on December 21, 2004, and, by and through their undersigned attorneys, hereby petition to cancel said registration, and aver as follows:

THE PARTIES

1. Petitioner Habanos, S.A. is a corporation organized under the laws of Cuba, with its principal place of business located at Avenida 3ra #2006 e/20 y 22, Miramar, Havana, Cuba.
2. Petitioner Cubatabaco is a state corporation with independent juridical personality and independent property established by law No. 1191, dated April 25, 1966, of the Republic of Cuba, with its principal place of business located at O’Reilly No. 104, Havana, Cuba.

3. Upon information and belief, Registrant Levy Cafe, Inc. (“Registrant”) is a corporation incorporated in Pennsylvania and located in Philadelphia, Pennsylvania.

4. Petitioner Habanos, S.A. currently owns, among other registrations, the federal registration of the mark HABANOS UNICOS DESDE 1492, U.S. Reg. No. 2,177,837, applied for on August 16, 1996, in the United States for cigars and related products in International Class 34. Habanos, S.A. uses this mark, translated as "unique Havana cigars since 1492," throughout the world exclusively for cigars that are of 100% Cuban origin.

5. The mark HABANOS UNICOS DESDE 1492 has appeared in advertisements for Habanos, S.A.'s 100% Cuban origin cigars in international and United States publications. This mark is used in such advertisements both in Spanish and in English translation as “Habanos Unique since 1492” and “Havanas Unique since 1492.”

6. Petitioner Habanos, S.A. is engaged, *inter alia*, in the trade, marketing, and advertising of Cuban cigars throughout the world, including in Cuba, and the export of Cuban cigars throughout the world (with the exception of the United States due to the United States trade embargo). Habanos, S.A. emphasizes that its cigars are made in Cuba from 100% Cuban-grown tobacco in its promotion, marketing and advertising, including in advertisements in the United States.

7. Petitioner Cubatabaco currently owns, among other registrations, the federal registrations in the United States of the mark LA CASA DEL HABANO, U.S. Reg. No. 1,970,911, applied for on September 22, 1994, translated as "the house of the Cuban cigar," for cigars and related products in International Class 34, and of LA CASA DEL HABANO, U.S. Registration No. 2,212,119, applied for on August 16, 1996, as a service mark in International Class 35 for “retail store services featuring tobacco and smokers’ accessories” and in

International Class 42 for “social club services, bar services, and restaurant services.”

8. Petitioner Cubatabaco’s LA CASA DEL HABANO Marks have appeared in advertisements in the United States in connection with cigars that are of 100% Cuban origin.

9. Petitioner Cubatabaco currently owns the application in the USPTO for the certification mark HABANOS, Application Serial No. 77157193, in IC A for “cigars,” filed April 16, 2007. The mark certifies “that the cigars have their geographical origin in Cuba and are made from Cuban grown tobacco, ‘Cuba’ meaning the entire national territory of the Republic of Cuba.”

10. “HABANA,” the Spanish (and French) word for Havana, is an appellation of origin (also known as a denomination or indication of geographical origin) for Cuban-origin tobacco and tobacco products, registered by Petitioner Cubatabaco in 1967 both domestically in Cuba and in accordance with the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as revised and amended.

11. “HABANOS” is the appellation of origin for cigars originating in the entire national territory of the Republic of Cuba, registered by Petitioner Cubatabaco in 1967 both domestically in Cuba and pursuant to the Lisbon Agreement. Under Petitioner Cubatabaco’s authority, Petitioner Habanos, S.A. uses the “Habanos” geographical denomination of origin on all packages of its 100% Cuban origin cigars.

12. On September 26, 2008, the Board, in a precedential decision, refused registration of the mark HAVANA CLUB for “cigars made from Cuban seed tobacco,” on the ground that the mark was “primarily geographically deceptively misdescriptive” under section 2(e)(3) of the Lanham Act. *Corporacion Habanos, S.A. v. Anncas, Inc.*, 88 U.S.P.Q.2d 1785 (TTAB 2008). That decision became final and non-appealable on November 26, 2008.

13. Pursuant to 31 C.F.R. § 515.527, and a 1996 letter ruling of the Office of Foreign Assets Control of the Department of Treasury (“OFAC”), Petitioners are authorized to engage in transactions related to the registration of trademarks in the USPTO in which Petitioners have an interest, including, as stated in the 1996 OFAC letter, the authority “to petition to cancel a prior registration of a trademark.” *See Anncas*, 88 U.S.P.Q.2d at 1790.

THE APPLICATION PROCEEDINGS

14. On October 6, 2003, Registrant filed an application pursuant to section 1(a) in the USPTO to register the mark “JOYA DE HAVANA,” with design, for “cigars,” which application was assigned Serial No. 75753734 (“Application”). The application claimed first use in commerce of “September 2003,” and included a design with the words “Hand Made” and the letter “H,” in addition to “Joya De Havana.”

15. In a May 24, 2004 Office Action, the USPTO Examiner, David C. Reihner, initially refused registration, stating:

Registration is refused because the proposed mark consists of or comprises geographically deceptively misdescriptive matter in relation to the identified goods. Trademark Act Section 2(e)(3), 15 U.S.C. §1052(e)(3)....

The primary significance of the term “Havana” is geographic. The public is likely to believe that applicant’s goods come from this place because Havana, Cuba, is a place where cigars are produced. Furthermore, this belief would materially influence consumers to purchase the goods because Havana, Cuba, is renown for the production of cigars and purchasers would purchase applicant’s goods based upon the mistaken belief that the goods have their origin in Havana, Cuba.

If, however, the cigars are composed of Cuban seed tobacco and the recitation of goods is amended to so indicate, the disclaimer of the word “Havana” would be acceptable (along with the designation “Hand Made”) and the refusal to register withdrawn.

16. The Examiner’s statement that “[i]f, however, the cigars are composed of Cuban seed tobacco and the recitation of goods is amended to so indicate, ... the refusal to register [will

be] withdrawn,” immediately after finding the goods geographically deceptive because the cigars do not “have their origin in Havana, Cuba,” plainly demonstrated that the Examiner mistakenly believed that cigars “composed of Cuban seed tobacco” “have their origin in Havana, Cuba.”

17. In a response dated May 30, 2004, the Applicant stated: “The cigar, ‘HOJA [*sic*] DE HAVANA’ is made from Cuban seed tobacco, which is grown in the Dominican Republic.”

18. In response to an Office Action dated June 22, 2004, Applicant accurately translated JOYA DE HAVANA as “Jewel of Havana,” disclaimed “HAVANA” and “HAND MADE” and asserted, “These cigars are made from Cuban seed tobacco.”

19. The goods were then amended from “cigars” to “cigars made from Cuban seed tobacco.”

20. Upon information and belief, Registrant amended its identification of goods from “cigars” to “cigars made from Cuban seed tobacco” for the specific purpose of obtaining the applied-for registration, and to avoid having its registration refused under 15 U.S.C. § 1052(e)(3), although Registrant knew at the time that “Cuban seed tobacco” has no relevant connection or association with Cuba, Havana, Cuba, or Cuban-origin tobacco or cigars; that Registrant’s cigars do not have their origin in Havana, Cuba; and that the Examiner was plainly and obviously confused and mistaken in believing that “cigars made from Cuban seed tobacco” have their “origin” in Havana, Cuba or anywhere else in Cuba.

21. Following the amendment from “cigars” to “cigars made from Cuban seed tobacco,” the Application was published for opposition on September 28, 2004, and the registration issued on December 21, 2004.

22. In the May 24, 2003 Office Action, the PTO Examiner identified the mark as H JOYA DE HAVANNA [*sic*] HAND MADE. The misspelling of HAVANA was never corrected

and is repeated in the Notice of Publication, on the USPTO's TARR and TESS databases and in documents prepared by the Examiner that are in the PTO file, including in the TDR database.

Petitioners use the correct spelling of the mark herein, as shown on the Registration Certificate.

23. Registrant's mark is, *inter alia*, primarily geographically deceptively misdescriptive, deceptive, and deceptively misdescriptive of the identified goods, confusingly similar to Petitioners' above-identified registered marks for the same goods, and the registration was obtained through misrepresentations to the USPTO.

THE MEANING OF THE WORD "HAVANA" IN CONNECTION WITH CIGARS

24. The word "Havana" primarily refers to the largest city and the capital of Cuba.

25. The primary significance of JOYA DE HAVANA ("Jewel of Havana") is a generally known geographic location – Havana, Cuba.

26. The addition of the generic Spanish term "Joya de" ("Jewel of"), the letter "H," or the generic term "Hand Made" does not alter the mark's primary geographic significance.

27. In addition to denoting the city of Havana, Cuba, "Havana" is used, recognized, and understood throughout the world, including in the United States, by both cigar consumers and within the cigar industry, to denote Havana's most famous export – cigars that are of 100% Cuban origin, made exclusively from tobacco grown in Cuba and manufactured in Cuba, primarily in or near the city and province of Havana, Cuba.

28. Likewise, the Spanish word "Habano" (and its plural, "Habanos") is recognized among cigar consumers and in the cigar industry throughout the world and in the United States to denote cigars that are of 100% Cuban origin.

29. Numerous English language dictionaries and encyclopedias, including those published in the United States, define the word "Havana" to mean a cigar made in Cuba and/or

from Cuban tobacco, in addition to denoting the largest and capital city of Cuba.

30. Spanish language dictionaries define "Habano" as relating to, or from, "La Habana" (Spanish for Havana, Cuba), or by extension the island of Cuba, or as a cigar made in Cuba from Cuban tobacco.

31. The leading English-language cigar books, including in book titles, consumer guides, and cigar magazines sold in the United States, and news and feature stories appearing in general circulation magazines, newspapers, and other publications directed to the general public in the U.S use the terms "Habano(s)" and "Havana(s)" to denote a 100% Cuban-origin cigar.

32. "Habana" (Havana) was the term historically used internationally, including in the United States, to identify cigars made in Cuba, and derived from the name of the port from which the cigars were shipped. The term "Habanos" began to be used in Spanish speaking countries at the beginning of the 20th century to denote all Cuban cigars.

33. For decades prior to Registrant's October 10, 2003 filing date (or its claimed first use date of September 2003), the term "Havana" has been used to mean a Cuban-origin cigar.

34. United States and international publications directed to the cigar-consuming public and to the trade, including the United States cigar-consuming public and trade, refer to "Havanas" or "Habanos," that is, 100% Cuban-origin cigars, as a different type of cigar from those cigars that are not of Cuban origin.

35. Cuba is internationally recognized, including in the United States, as the most renowned country in the world for the growth of tobacco for cigars, and for the production and manufacture of cigars, including cigars of the highest quality, and Havana is internationally recognized, including in the United States, as the city and province most renowned for the manufacture and export of the highest quality cigars.

36. No other country is as renowned as Cuba for cigars, and no geographic location is as renowned for cigars as Havana, Cuba.

37. Cuban-origin cigars are desired by cigar smokers throughout the world, including in the United States, because of their Cuban origin.

38. Consumers in the United States and elsewhere in the world associate cigars with Cuba and particularly with Havana, Cuba. This association is one of the strongest goods/place associations of any consumer product with a particular geographic region in the world.

39. Registrant's mark, JOYA DE HAVANA (Jewel of Havana), specifically recognizes and seeks to exploit this extraordinary goods-place association and renown of Havana cigars, that is, 100% Cuban-origin cigars.

40. Registrant's mark denotes, is, and will be understood by United States consumers as denoting, that cigars bearing that mark are manufactured in Cuba, or are made from tobacco grown in Cuba and manufactured elsewhere.

41. Registrant's goods do not come from, or otherwise originate in, Havana, Cuba or elsewhere in Cuba, and are not "Havanas," that is, cigars from Cuba.

42. Registrant, a Pennsylvania corporation located in Pennsylvania, has no lawful means of obtaining or selling Cuban-origin cigars or Cuban-origin tobacco, nor any lawful means of obtaining or selling cigars or other tobacco products that are made anywhere in the world if they are made or derived in whole or in part of any article which is the growth, produce or manufacture of Cuba. Without limitation, the United States' Cuban Assets Control Regulations, including specifically 31 C.F.R. § 515.201, 515.204, prohibit any such activity.

43. The cigar-consuming public is likely to believe that the place identified by Registrant's mark – Havana, Cuba – describes Registrant's goods, and their geographic origin, or

the geographic origin of the good's main ingredients, when neither the goods nor the ingredients in fact come from Havana or Cuba.

44. Consumers' mistaken belief that Registrant's cigars come from Havana or Cuba, or are comprised in whole or in part of tobacco grown in Cuba, would be a material factor in such consumers' purchasing decision.

45. By use of the word "Havana," Registrant's mark misdescribes a quality, characteristic, or feature of the goods, *i.e.*, Cuban cigars (or cigars made from tobacco from Cuba), because the goods are not cigars from Cuba, or made from Cuban tobacco.

46. Consumers are likely to believe, mistakenly, that Registrant's goods share the same characteristics, such as taste, aroma, quality, and construction, as cigars made in Cuba from genuine Cuban tobacco.

47. By use of the word "Havana," which is widely used and understood in the United States to refer to cigars from Cuba, cigar consumers in the United States are likely to believe Registrant's misdescription of the goods.

**REGISTRANT'S MEANINGLESS CLAIM THAT ITS GOODS ARE
"MADE FROM CUBAN SEED TOBACCO"**

48. Upon information and belief, Registrant represented to the USPTO that its cigars are "made from Cuban seed tobacco" solely to avoid having the USPTO refuse registration on the ground that the use of "Havana" is primarily geographically deceptively misdescriptive, as determined by the Examiner, although Registrant in fact knew that its goods do not come from Havana or Cuba, do not have their origin in Cuba, and have no connection or association with Havana or Cuba, with Cuban cigars or tobacco, or with Petitioners.

49. When used in the United States to refer to tobacco grown outside of Cuba,

“Cuban seed tobacco” is merely a name given to a type of tobacco that is grown outside of Cuba from seeds that do not themselves come from Cuba, but are claimed, without any means of verification, to be distant descendants of seeds of tobacco plants grown in Cuba many generations ago.

50. Upon information and belief, the type of non-Cuban tobacco that Registrant refers to as “Cuban seed tobacco” either: 1) is a very distant descendant from plants or seeds that were taken from Cuba sometime over 45 years ago, but not more recently than that; *or* 2) is not even a distant descendant from seeds or plants that were taken from Cuba many decades ago, but is merely a type of tobacco, grown outside of Cuba, and generically referred to as “Cuban seed tobacco”; *or* 3) is not even the type of tobacco generically referred to as “Cuban seed,” but Registrant, through its predecessor, may have made such misrepresentation to the USPTO solely to obtain registration of the mark through such misrepresentation.

51. It is not possible to verify whether Registrant’s cigars are made from tobacco grown from seeds that are descendants of tobacco seeds that came from Cuba.

52. Cigars allegedly made from tobacco grown from seeds that are descendants of seeds that came from Cuba are different from cigars made from Cuban-origin tobacco in terms of quality, characteristics, taste and aroma.

53. The change in identification of the goods from “cigars” to “cigars made from Cuban seed tobacco” does not, and cannot, change the primarily geographically deceptively misdescriptive, deceptive, and deceptively misdescriptive nature of Registrant’s mark.

54. The use of the term “Cuban seed tobacco” cannot overcome the above statutory bars to registration of JOYA DE HAVANA.

55. Upon information and belief, the USPTO would not have registered the mark had

it known that neither “Cuban seed tobacco,” nor the seeds generating the plants that yield the tobacco, come from Havana, Cuba, or anywhere else in Cuba; and that “Cuban seed tobacco” does not have any connection or association with Cuba, Havana, or Cuban-origin cigars, other than the unverifiable possibility of a distant genetic descent.

56. Registrant’s meaningless “Cuban seed tobacco” claim is exemplified by the fact that Registrant advertises to the public that its JOYA DE HAVANA cigars are made from “100% Nicaraguan tobacco,” whereas it represented to the USPTO that its cigars are “made from Cuban seed tobacco, which is grown in the Dominican Republic.”

INJURY TO PETITIONERS

57. Petitioners believe that they will be and have been damaged by the registration of Registrant’s mark upon the Principal Register, including by Registrant’s use of that mark on cigars of non-Cuban origin, which will damage and have damaged the reputation that Havana cigars, that is, genuine Cuban-origin cigars, have in the United States. Such registration and use also will deceive and have deceived consumers into believing that Cuban-origin cigars, or cigars made from Cuban tobacco, are presently available for purchase in the United States.

58. Petitioners’ success in marketing 100% Cuban-origin cigars to U.S. consumers as soon as U.S. law permits, including through use of the registered marks HABANOS UNICOS DESDE 1492 & DESIGN and LA CASA DEL HABANO; the applied-for certification mark HABANOS; and “Havana” as a geographic indication, will be and has been damaged and diminished by the registration of Registrant’s mark that includes the term “Havana,” which deceptively suggests that Registrant’s cigars and other tobacco products are of Cuban origin.

59. Petitioners’ current ability to use the above-identified registered trademarks and “Habanos” as a geographic indication and certification mark in advertisements it currently places

in the United States in connection with 100% Cuban-origin cigars will be and has been damaged by the registration of Registrant's mark.

60. Registrant's mark, when used on or in connection with Registrant's cigars, is likely to cause confusion, or to cause mistake, or to deceive, with respect to Petitioner's registered marks HABANOS UNICOS DESDE 1492 & DESIGN and LA CASA DEL HABANO.

FIRST GROUND FOR CANCELLATION

61. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 60 of this Petition to Cancel as if fully set forth herein.

62. The mark, as used on or in connection with Registrant's identified goods, is deceptive and primarily geographically deceptively misdescriptive within the meaning of Section 2(a), (e)(3) of the Lanham Act, 15 U.S.C. § 1052(a), (e)(3), for lack of the requisite nexus with Havana, Cuba or Cuba, and, therefore, the registration of the mark should be cancelled.

SECOND GROUND FOR CANCELLATION

63. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 60 of this Petition to Cancel as if fully set forth herein.

64. Registrant's mark, as used on or in connection with Registrant's identified goods, is deceptive and deceptively misdescriptive within the meaning of Section 2(a), (e)(1) of the Lanham Act, 15 U.S.C. § 1052(a), (e)(1), and, therefore, the registration of the mark should be cancelled.

THIRD GROUND FOR CANCELLATION

65. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 60 of this Petition to Cancel as if fully set forth herein.

66. “Havana” is an indication of geographical origin or source within the meaning of Articles 23-28 of the General Inter-American Convention for Trade Mark and Commercial Protection, 46 Stat. 2907 (“IAC”), to which both Cuba and the United States are parties, and which treaty is in force between the United States and Cuba.

67. “Havana” does not correspond to the place in which Registrant’s identified goods are, will be, or lawfully could be, fabricated, manufactured, produced or harvested.

68. “Havana” has not through constant, general and reputable use in commerce come to form the name or designation itself of Registrant’s identified goods.

69. To the consuming public, the quality and reputation of cigars depend on the place of production or origin.

70. Articles 23-28 of the IAC prohibit Registrant’s use and registration in the United States of the term “Havana” in connection with non-Cuban origin cigars.

71. Under the aforesaid provisions of the IAC and also pursuant to Section 44(b), (h) of the Lanham Act, 15 U.S.C. § 1126(b), (h), the registration of the mark should be cancelled.

FOURTH GROUND FOR CANCELLATION

72. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 60 of this Petition to Cancel as if fully set forth herein.

73. Registrant’s mark so resembles Petitioners’ registered marks in IC 34 for the identical goods (cigars) – HABANOS UNICOS DESDE 1492 & DESIGN, Reg. No. 2,177,837, and LA CASA DEL HABANO, Reg. Nos. 1,970,911 – and used by Petitioners in the U.S. in advertising, as to be likely, when used on or in connection with Registrant’s goods, to cause confusion, or to cause mistake, or to deceive, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and, therefore, the registration of the mark should be cancelled.

FIFTH GROUND FOR CANCELLATION

74. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 60 of this Petition to Cancel as if fully set forth herein.

75. Registrant made a material misrepresentation of fact and material omissions of fact when it identified its cigars as “made from Cuban seed tobacco,” without informing the USPTO that such identification does not mean that the origin or source of its cigars, or the main ingredients of its cigars, is Havana or Cuba, and that the term “Cuban seed tobacco,” does not mean that the cigars or tobacco come from, or have their origin or source in Havana or Cuba.

76. When Registrant made this misrepresentation to the USPTO, Registrant was aware, based on the May 24, 2004 Office Action, that the Examiner mistakenly believed that cigars claimed to be “made from Cuban seed tobacco” somehow have their “origin in Havana, Cuba,” so that, in the Examiner’s misunderstanding, cigar marks with the term “Havana” were not primarily geographically deceptively misdescriptive.

77. Rather than correcting the Examiner’s misunderstanding, Registrant exploited it, and made its material misrepresentations and omissions with the specific intent and purpose of deceiving the USPTO in order to obtain registration of the mark.

78. But for Registrant’s aforesaid material misrepresentations and omissions, the USPTO would have refused registration of the mark.

79. Because of Registrant’s aforesaid material misrepresentations and omissions to the USPTO, the registration of the mark should be cancelled.

WHEREFORE, Petitioners pray that Registration No. 2,912,374 for H JOYA DE HAVANA HAND MADE be cancelled pursuant to 15 U.S.C. § 1064, and that this Petition be granted in favor of the Petitioners.

Dated: December 17, 2009

Respectfully submitted,

/David B. Goldstein/
DAVID B. GOLDSTEIN
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
111 Broadway – Suite 1102
New York, New York 10006-1901
212-254-1111
dgoldstein@rbskl.com
*Attorneys for Petitioners Corporacion Habanos,
S.A. and Empresa Cubana del Tabaco*

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Petition to Cancel Registration No. 2,912,374 for H JOYA DE HAVANA HAND MADE, is being filed electronically today, December 17, 2009, on the Electronic System for Trademark Trials and Appeals for the USPTO.

/David B. Goldstein/
David B. Goldstein

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Petition to Cancel Registration No. 2,912,374 for H JOYA DE HAVANA HAND MADE was served on Registrant by mailing, postage prepaid, said copy on December 17, 2009 via U.S. Certified Mail, return receipt requested, to the Correspondent's (and Registrant's) address of record listed for Registration No. 2,912,374 on the USPTO's TARR database:

LEVY CAFÉ, INC.
524 S. 3rd Street
Philadelphia, PA 19147

/David B. Goldstein/
David B. Goldstein