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

Proceeding	92052146
Party	Plaintiff Corporacion Habanos, S.A. and Empresa Cubana del Tabaco, d.b.a. Cubatabaco
Correspondence Address	DAVID B GOLDSTEIN RABINOWITZ BOUDIN STANDARD ET AL 111 BROADWAY , SUITE 1102 NEW YORK, NY 10006-1901 UNITED STATES dgoldstein@rbskl.com
Submission	Opposition/Response to Motion
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Date	06/24/2010
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark Registration No. 3542236
Registered (Supplemental): December 2, 2008
Mark: PINAR DEL RIO

CORPORACION HABANOS, S.A., and EMPRESA)	
CUBANA DEL TABACO, d.b.a. CUBATABACO,)	
)	
Petitioners,)	
)	
v.)	Cancellation No.92052146
)	
RODRIGUEZ, JUAN E.,)	
)	
Registrant.)	
)	

PETITIONERS' OPPOSITION TO MOTION TO DISMISS

Petitioners CORPORACION HABANOS, S.A. ("Habanos, S.A.") and EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, respectfully submit this Opposition to the motion of Registrant, dated May 21, 2010, to dismiss this Petition to Cancel pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

Statement of the Case

1. Registrant, an individual residing in Louisiana, has moved for dismissal on the ground that prosecution of the instant cancellation petition violates the United States Treasury Department's Cuban Assets Control Regulations, 31 C.F.R. Part 515 ("CACR"), which are promulgated and administered by the Treasury Department's Office of Foreign Assets Control ("OFAC"). Registrant concedes that OFAC's issuance of a specific license authorizing Petitioners to file and prosecute the instant Petition would avoid any asserted violation of the CACR, and would require denial of his motion. *See* Registrant's Motion and Memorandum ("R. Mem.") at 3-4, 8-9.

Registrant argues that the specific license issued by OFAC on February 23, 2010, appended to the Petition herein, does not provide such authorization. Frivolous to begin with, Registrant's contention is now moot because of OFAC's issuance of an amended license, dated June 23, 2010, "to avoid any confusion on this point." The amended license, License No. CU-78926-b, together with OFAC's accompanying letter of explanation, is submitted as Exhibit A to the Declaration of David B. Goldstein, Esq., dated June 24, 2010, filed herewith.

The amended OFAC license authorizes Habanos, S.A. and Cubatabaco in the clearest terms:

to file and prosecute a cancellation petition in the Trademark Trial and Appeal Board of the United States Patent and Trademark Office to the registration "PINAR DEL RIO" for cigars filed by or registered to Juan E. Rodriguez, Gretna, Louisiana, Reg. No. 3542236.

Registrant's motion is thus without merit, and must be denied.

2. Petitioners are two Cuban corporations engaged in the cigar business. In promoting and marketing Cuban cigars throughout the world, they emphasize that their cigars are made in Cuba from 100% Cuban-origin tobacco. Although they cannot currently sell cigars in the United States because of the embargo, they advertise in U.S. publications, where they similarly emphasize that their products are 100% Cuban-origin. Petition ¶¶ 1-7.

Each petitioner owns numerous registrations in the United States for cigars and related products. Petition ¶ 4. Petitioner Cubatabaco also currently owns the application in the USPTO for the certification mark HABANOS, Application Serial No. 77157193, in IC A to certify that "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." Petition ¶¶ 4-6.

The subject registration is PINAR DEL RIO, for cigars and other cigar and tobacco related products and accessories. Pinar del Rio is a province in Cuba. Petitioners allege that the

province is renowned throughout the world, including the United States, as the finest tobacco growing region in Cuba and the world, and as the main source of tobacco for the famed Cuban-origin premium hand-made cigars exported throughout the world. Petition ¶¶ 22-32. They further allege that encyclopedias, leading cigar books, consumer guides and cigar magazines published in the United States, as well as elsewhere, describe Pinar del Rio as Cuba's most important tobacco-growing region, the source of the finest cigar tobacco in Cuba and the world and the main source of tobacco for the premium Cuban-origin cigars. Petition ¶ 25. They further allege that Cuba is recognized in the United States as the most renowned country in the world for cigars. Petition ¶ 26.

Registrant's own website refers to Pinar del Rio as "the mecca of tobacco cultivation and production. Pinar Del Rio is a jewel of a region in the cigar world...the hallowed history of this famed tobacco-growing province of Cuba..." Petition ¶ 27.

Citing two precedential decisions of the Board in favor of Petitioner Habanos, S.A., Petition ¶¶ 10-11, Petitioners seek cancellation of Registrant's PINAR DEL RIO registration on the ground that, as used on or in connection with Registrant's identified goods, it is deceptive and primarily geographically deceptively misdescriptive within the meaning of Section 2(a) and (e)(3) of the Lanham Act, 15 U.S.C. § 1052(a), (e)(3). Petition ¶¶ 50-51. Petitioners additionally seek cancellation under Article 23-28 of the General Inter-American Convention for Trade Mark and Commercial Protection, 46 Stat. 2907, and Section 44(b), (h) of the Lanham Act, 15 U.S.C. § 1126(b),(h), because "Pinar del Rio" is an indication of geographical origin or source, and it does not correspond to the place in which Registrant's identified goods are or will be produced or harvested. Petition ¶¶ 52-58. Finally, Petitioners seek cancellation on the

ground that Registrant made a material misrepresentation of fact to the USPTO when he claimed “Our tobacco seeds come from Pinar del Rio Cuba.” Petition ¶¶ 59-64.

Petitioners allege that they will be and have been damaged by registration of Registrant’s PINAR DEL RIO mark upon the Supplemental Register, including by Registrant’s use of that mark on cigars of non-Cuban origin, which will damage and has damaged the reputation that genuine Cuba-origin cigars have in the United States. Further, they allege damage in that such registration and use will deceive and have deceived consumers into believing that Cuban-origin cigars made with tobacco from Pinar del Rio, Cuba are presently available in the United States, when they are not. Petitioners allege that their success in marketing and selling 100% Cuba-origin cigars made with tobacco from Pinar del Rio to U.S. consumers as soon as U.S. law permits will be and has been damaged by the registration of Registrant’s PINAR DEL RIO mark. Petition ¶¶ 47-49.

On July 21, 2008, the USPTO Examiner issued a non-final Office Action refusing registration of PINAR DEL RIO under Section 2(a), (e)(3) of the Lanham Act. In his August 21, 2008 Response to Office Action, Registrant simply asserted that “Our tobacco seeds come from Pinar del Rio Cuba.” His application was then approved for registration for “cigars” on the Supplemental Register and a registration issued on December 2, 2008. Petition ¶¶ 13-20. .

In the two precedential decisions cited by Petitioners in their Petition here, *Corporacion Habanos, S.A. v. Anncas, Inc.*, 88 U.S.P.Q.2d 1785 (T.T.A.B. 2008) and *Corporacion Habanos, S.A. v. Guantanamera Cigars Company*, 86 U.S. P.Q. 2d 1473 (T.T.A.B 2008), the Board sustained the opposition of Habanos, S.A under Section 2(a), 2(e)(3) to the registration of HAVANA CLUB and GUANTANAMERA, respectively, by non-Cuban applicants. Like Registrant, the applicant for HAVANA CLUB asserted, to no avail, that its cigars were to be

made from tobacco grown outside of Cuba from “Cuban seed.” The claim under Section 2(e)(3) presented by the instant Petition is even stronger than the Section 2(e)(3) claim in *Guantanamera*, for, as the Board recognized there, “Cuba’s finest tobacco-growing area is the legendary Vuelta Abajo, part of the Pinar del Rio region in western Cuba.” *Id.* at 1479 (quoting M. Shanken, *Shanken’s Cigar Handbook (Cigar Aficionado), A Connoisseur’s Guide to Smoking Pleasure* (1997)).

ARGUMENT

1. Registrant seeks dismissal exclusively on the ground that OFAC has not authorized Petitioners to prosecute the instant cancellation petition and that, without OFAC authorization, the CACR, which are promulgated and administered by OFAC, bar the petition.

Registrant concedes that OFAC’s issuance of a specific license authorizing Petitioners to file and prosecute the instant Petition would avoid any asserted violation of the CACR, and would require denial of his motion. *See* R. Mem. at 3-4, 8-9. Registrant argues that the specific license issued by OFAC on February 23, 2010 (appended to the Petition herein) does not provide such authorization. Frivolous to begin with, Registrant’s contention is now moot because of OFAC’s issuance of an amended license, dated June 23, 2010, “to avoid any confusion on this point.” Letter of Chief, TWEA Licensing Section, Office of Foreign Assets Control, dated June 23, 2010; Goldstein Decl., Ex. A. The amended license, License No. CU-78926-b, Goldstein Decl., Ex. A, authorizes Habanos, S.A. and Cubatabaco in the clearest terms:

to file and prosecute a cancellation petition in the Trademark Trial and Appeal Board of the United States Patent and Trademark Office to the registration “PINAR DEL RIO” for cigars filed by or registered to Juan E. Rodriguez, Gretna, Louisiana, Reg. No. 3542236.

OFAC’s June 23, 2010 amended specific license moots Registrant’s motion to dismiss, and requires its denial.

2. Although the amended OFAC license is fully dispositive, it should be noted, to keep the record clear, that OFAC has expressly confirmed in its June 23, 2010 letter that, by its prior February 23, 2010 specific license, it authorized, just as Petitioners had alleged, Petition ¶ 12, the filing and prosecution of the instant petition.

As OFAC recites, Habanos, S.A. and Cubatabaco filed an application with OFAC on July 7, 2009 requesting a specific license pursuant to the CACR authorizing, in pertinent part:

- (a) Habanos and Cubatabaco to file and prosecute a petition in the Trademark Trial and Appeal Board (“TTAB”) of the United States Patent and Trademark Office (“USPTO”) to cancel a registration on the Supplemental Register for PINAR DEL RIO for cigars, registered to Juan E. Rodriguez, Gretna, Louisiana, Reg. No. 3542236, issued on December 12, 2008, ...

OFAC Letter, June 23, 2010, Goldstein Decl., Ex. A; Petitioners’ July 7, 2009 application to OFAC is provided in full as Exhibit B to the Goldstein Declaration.

In its June 23, 2010 letter, OFAC writes, with respect to its issuance of the February 23, 2010 specific license, that “We hereby confirm that our intent was to authorize, and that we did authorize, the transactions requested in your application.” OFAC further advises in its June 23, 2010 letter that, “[t]o avoid any future confusion on this point, we have determined to issue an amended license to clarify the scope of the authorization.”¹

As OFAC explains in its June 23, 2010 letter, any “confusion” that might arise would be occasioned by the discrepancy in wording between the authorization requested by Petitioners in their July 7, 2009 application to OFAC and the OFAC license issued February 23, 2010. The

¹ As Registrant asserts lack of subject matter jurisdiction pursuant to Rule 12(b)(1), the TTAB may consider materials outside the pleadings. *See* Wright and Miller, 5B Fed. Prac. & Proc. Civ. § 1350 (3d ed.), text at n. 47 & n. 47 (citing plethora of authority). Similarly, in considering Registrant’s motion to dismiss for failure to state a claim upon which relief may be granted, made pursuant to Rule 12(b)(6), the TTAB may consider matters that are incorporated by reference or integral to the claim, as well as, for example, items subject to judicial notice and matters of public record. *See* Wright & Miller, § 1357, text at n.1 and n.1 (citing plethora of authority).

February 23, 2010 OFAC license, “based on your application dated July 7, 2009,” authorized Cubatabaco and Habanos, S.A. “to file and prosecute a cancellation petition in the Trademark Trial and Appeal Board of the United States Patent and Trademark Office *to an application to register* the trademarks ‘PINAR DEL RIO’ and ‘PINAR’ for cigars filed by Juan E. Rodriguez, Grenta, Louisiana, Reg. No. 34542236, as described in the Application...” (emphasis supplied).

As OFAC explains in its June 23, 2010 letter, and is apparent, the OFAC licensing officer used this phraseology because Habanos, S.A. and Cubatabaco, in the same application by which they requested authorization to prosecute a petition to cancel Registrant’s *registration* of PINAR DEL RIO, also requested authorization to file and prosecute an additional and different cancellation petition “in the event that a registration issues on the Supplemental Register for PINAR for cigars, applied for by Juan Rodriguez,” the same party that holds the subject registration on the Supplemental Register for PINAR DEL RIO.

Plainly, and as OFAC confirms, OFAC granted both parts of Cubatabaco and Habanos, S.A.’s application, and authorized, as requested, their filing and prosecution of the instant Cancellation Petition, to cancel Juan E. Rodriguez’s registration of PINAR DEL RIO on the Supplemental Register, *and* their filing and prosecution of a petition to cancel the registration of PINAR on the Supplemental Register in the event that, as put in their application to OFAC, the latter registration, “applied for” by Rodriguez, issues.

In seeking dismissal, Registrant’s whole argument is that the February 23, 2010 OFAC license only authorizes Cubatabaco and Habanos to file and prosecute a cancellation petition to an *application* to register PINAR DEL RIO, not to the *registration* of PINAR DEL RIO. But, as OFAC confirms and is apparent, OFAC clearly intended to and did grant the authorization that had been expressly requested in the application – for Cubatabaco and Habanos, S.A. to seek

cancellation of the PINAR DEL RIO *registration*, not an authorization that would be meaningless and nonsensical, as well as never requested, a “cancellation petition” to “an application to register the trademark[] ‘PINAR DEL RIO.’”

Indeed, there is no such thing as a petition to cancel an application, and, at the time application was made to OFAC and OFAC issued the specific license, there was no longer an “application” to register PINAR DEL RIO. There are, however, petitions to cancel registrations; there is a PINAR DEL RIO registration; Cubatabaco and Habanos requested authorization to prosecute a petition to cancel that registration; and that is the authorization that OFAC granted. Further, OFAC in its specific license twice expressly referenced and incorporated Cubatabaco and Habanos, S.A.’s application to OFAC: “Based on your application dated July 7, 2009,” and “Section 1 – Authorization: (a) ...to file and prosecute a cancellation petition ...as described in the Application.” The referenced and incorporated application expressly sought authorization to cancel Registrant’s *registration* of PINAR DEL RIO.

It also bears noting that Cubatabaco and Habanos, S.A. stated in their application that they would seek cancellation of the registration on precisely the grounds upon which the instant Petition is grounded. They explained to OFAC that they “will petition to cancel the PINAR DEL RIO registration ...primarily on the grounds that the mark[] [is] deceptive, deceptively misdescriptive, and primarily geographically deceptively misdescriptive when used by the registration for his cigars and that, for those reasons, the registration[] should be cancelled under Sections 2(a),(e)(1) and (e)(3) of the Lanham Act ... and under Articles 23-28 of the General Inter-American Convention for Trade Mark and Commercial Protection. Habanos and Cubatabaco will also petition on the ground that the registrant misrepresented to the PTO that there is an association between its non-Cuban cigars and Cuba.” OFAC Application at 2.

Any reasonable construction of the OFAC specific license would lead to the conclusion that OFAC authorized the instant cancellation petition by its issuance of the February 23, 2010 specific license. The Board need not address that question, however, as OFAC has now confirmed that it intended to and did authorize the instant Petition by issuance of that license, *and* has issued an amended license providing that authorization in unmistakable terms to avoid any confusion.²

3. The only argument advanced by Registrant in addition to his argument that the February 23, 2010 OFAC specific license did not authorize the instant cancellation Petition is that a provision in the CACR, 31 C.F.R. § 515.527, which is a general license authorizing certain transactions related to the registration of trademarks, does not authorize the instant cancellation petition. However, Cubatabaco and Habanos, S.A. do not rely on this provision, and never have. Rather, they rely exclusively upon OFAC's issuance of a specific license authorizing them to prosecute the instant cancellation petition. *See* Petition ¶ 12, and above.

Indeed, Cubatabaco and Habanos, S.A. explained to OFAC in their application that they were seeking a specific license precisely because of their understanding that the CACR provision, § 515.527, is inapplicable to the instant petition. OFAC Application at 2, Goldstein Decl., Ex. B. OFAC issued a ruling in 1996, which Cubatabaco and Habanos, S.A. appended to their application, that § 515.527 authorized Cuban parties to prosecute oppositions to applications for registration of a mark, and to file petitions to cancel registrations, when the proceedings “relate to the protection of a trademark in which Cuba or a Cuban national has an

² It is also to be noted that Registrant is wrong in suggesting that lack of an OFAC license to prosecute this action would have deprived this tribunal of subject matter jurisdiction. *See, e.g., Comet Enterprise Ltd. v. Air-A-Plane Corp.*, 128 F.3d 855, 860 (4th Cir. 1997); *Dean Witter Reynolds v. Fernandez*, 741 F.2d 355, 359-60 (11th Cir. 1984); *National Oil Corp. v. Libyan Sun Oil, Co.*, 733 F. Supp. 800 (D. Del. 1990).

interest.” Cubatabaco and Habanos explained to OFAC that it was seeking a specific license, rather than relying on § 515.527, because their “proposed cancellation petitions are *not* related to the registration or renewal by Habanos or Cubatabaco of the trademark PINAR DEL RIO or PINAR, or any other trademark in the USPTO, and are *not* related to the protection of a trademark in which Cuba or a Cuban national has an interest.” OFAC Application at 2.

4. As shown, OFAC was fully and expressly informed of the basis upon which Cubatabaco and Habanos, S.A. seek cancellation of the PINAR DEL RIO registration – Section 2(a),(e)(1) and (e)(3) of the Lanham Act, Articles 23-28 of the General Inter-American Convention for Trade Mark and Commercial Protection, and material misrepresentation to the PTO – *and* was fully and expressly informed that the cancellation petition was neither related to the registration by Cubatabaco or Habanos, S.A. of PINAR DEL RIO or any other trademark in the PTO, nor related to the protection of a trademark in which Cuba or a Cuban national has an interest. Further, OFAC was fully and expressly informed that cancellation would be sought on the ground that the registration is “deceptive as to the cigars’ geographic origins, thereby damaging Habanos and Cubatabaco.” OFAC Application at 2.

Registrant does not contend, and could not contend, that it was beyond OFAC’s authority to grant a specific license authorizing Cubatabaco and Habanos, S.A. to obtain cancellation of the PINAR DEL RIO registration on the stated basis and in the stated circumstances. Registrant only argues that OFAC did not exercise that authority, but, as shown, the Registrant is mistaken.

CONCLUSION

For the reasons stated herein, and on all the prior papers and proceedings had herein, Registrant's motion to dismiss should be denied.

Dated: June 24, 2010

Respectfully submitted,

/David B. Goldstein/
DAVID B. GOLDSTEIN
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212-254-1111
dgoldstein@rbskl.com
*Attorneys for Petitioners Corporacion Habanos,
S.A. and Empresa Cubana del Tabaco*

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Petitioners' Opposition to Motion to Dismiss was served on Registrant by U.S. first class mail, postage prepaid, on June 24, 2010 upon:

Taylor M. Norton
LEBLANC BLAND, P.L.L.C.
909 Poydras Street, Suite 1860
New Orleans, LA 70112
Attorneys for Registrant

/David B. Goldstein/
David B. Goldstein

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

In the matter of trademark Registration No. 3542236
Registered (Supplemental): December 2, 2008
Mark: PINAR DEL RIO

CORPORACION HABANOS, S.A., and EMPRESA)	
CUBANA DEL TABACO, d.b.a. CUBATABACO,)	
)	
Petitioners,)	
)	
v.)	
)	
RODRIGUEZ, JUAN E.,)	
)	
Registrant.)	

Cancellation No.92052146

DECLARATION OF DAVID B. GOLDSTEIN, ESQ.

David B. Goldstein declares under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am an attorney duly admitted to practice before the courts of the State of New York and before this Board. I am a member of the firm of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., and counsel for the above-referenced Petitioners.

2. In support of Petitioners' Opposition to Registrant's motion to dismiss the Petition, I attach hereto true and correct copies of the following:
 - (a) Exhibit A: Letter of the Office of Foreign Assets Control, United States Department of the Treasury, dated June 23, 2010, and Amended License, License No. CU-78926-b, issued on June 23, 2010 by the Office of Foreign Assets Control; and

(b) Exhibit B: Application to Office of Foreign Assets Control, dated July 7, 2009.

Executed this 24th day of June, 2010 in New York, New York.

/David B. Goldstein/

EXHIBIT A



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

License No. CU-78926-b

David B. Goldstein, Esq.
Rabinowitz, Boudin, Standard, Krinsky
& Lieberman, P.C.
111 Broadway, Eleventh Floor
New York, NY 10006-1901

Dear Mr. Goldstein:

This is in response to your letter dated June 18, 2010, to the Office of Foreign Assets Control ("OFAC") concerning License No. CU-78926-a issued February 23, 2010, in which you call our attention to a discrepancy between the authorization you requested in your application dated July 7, 2009, and the authorization that was granted in the license. Your July 7, 2009 application requested a specific license authorizing, in pertinent part:

"(a) Habanos and Cubatabaco to file and to prosecute a petition in the Trademark Trial and Appeal Board ("TTAB") of the United States Patent and Trademark Office ("USPTO") to cancel a registration on the Supplemental Register for PINAR DEL RIO for cigars, registered to Juan E. Rodriguez, Gretna, Louisiana, Reg. No. 3542236, issued on December 12, 2008, and to pay all necessary filing and other fees in connection therewith."

The application also sought authorization to petition to cancel a registration for PINAR, if issued.

License CU-78926-a issued by OFAC contained the following authorization:

"All necessary transactions are authorized to enable the Cuban entities Corporacion Habanos S.A. ("Habanos") and Empresa Cubana del Tabaco ("Cubatabaco") to file and prosecute a cancellation petition in the Trademark Trial and Appeal Board of the United State Patent and Trademark Office to an application to register the trademarks "PINAR DEL RIO" and "PINAR" for cigars filed by Juan E. Rodriguez, Gretna, Louisiana, Reg. No. 3542236, as described in the Application, and to pay all necessary filing and other fees in connection therewith."

Your June 18, 2010 letter seeks OFAC's confirmation that License No. CU-78926-a authorized Habanos and Cubatabaco to file and to prosecute a petition at the TTAB to cancel Registration No. 3542236 (PINAR DEL RIO) as requested in your July 7, 2009 application. We hereby confirm that our intent was to authorize, and we did authorize, the transactions requested in your application. To avoid any future confusion on this point, we have determined to issue an amended license to clarify the scope of the authorization. Enclosed please find License No. CU-78926-b.

We further note that you have informed us that you no longer need the authorization for PINAR that was requested in paragraph (b) of your July 7, 2009 application. Accordingly, we have removed from the authorization in the enclosed license the reference to PINAR. This is without prejudice to your ability to apply for that authorization at a future date if necessary.

I hope you will find this helpful. Thank you for calling the matter to our attention.

Sincerely,

Clara David 6/23/10

Clara Y. David
Chief, TWEA Licensing Section
Office of Foreign Assets Control

Enclosure



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Cuban Assets Control Regulations

License No. CU-78926-b

AMENDED LICENSE

(Granted under the authority of 50 U.S.C. App. 5(b), 22 U.S.C. 2370(a),
22 U.S.C. 6001 et seq., Proclamation 3447, and 31 CFR Parts 501 and 515)

To: **Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. (the "Licensee")**
111 Broadway, Eleventh Floor
New York, NY 10006-1901
Attn: David B. Goldstein, Esq.

1. Based on your application dated July 7, 2009 (the "Application"), and letter dated June 18, 2010, and information otherwise available to the Office of Foreign Assets Control, License No. CU-78926 dated October 8 2009, and License No. CU-78926-a dated February 23, 2010, are hereby revoked and replaced by this License which authorizes the transactions delineated herein. SEE PAGE 2.
2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and is subject to the conditions, among others, that you comply in all respects with all regulations, rulings, orders and instructions issued by the Secretary of the Treasury under the authority cited above and the terms of this license.
3. The Licensee shall furnish and make available for inspection any relevant information, records or reports requested by the Secretary of the Treasury or any duly authorized officer or agency.
4. This license expires on February 28, 2012, is not transferable, is subject to the provisions of Title 31, Parts 501 and 515 of the Code of Federal Regulations and any regulations and rulings issued pursuant thereto, and may be revoked or modified at any time at the discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as a result of willful misrepresentation on the part of the applicant or his duly authorized agent, it may, in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.
5. This license does not excuse compliance with any law or regulation administered by the Office of Foreign Assets Control or any other agency (including reporting requirements) applicable to the transactions(s) herein licensed, nor does it release Licensee(s) or third parties from civil or criminal liability for violation of any law or regulation.

Issued on behalf of the Secretary of the Treasury:

OFFICE OF FOREIGN ASSETS CONTROL

By Clara David
Clara Y. David
Chief, TWEA Licensing Section

6/23/10
Date

[Attention is directed to 18 U.S.C. 1001, 50 U.S.C. App. 16,
31 CFR 501.701 et seq., and 31 CFR 515.701 et seq. for provisions relating to penalties.]

Licensees: Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.

SECTION 1 - AUTHORIZATIONS: (a) All necessary transactions are authorized to enable the Cuban entities Corporacion Habanos, S.A. ("Habanos") and Empresa Cubana del Tabaco ("Cubatabaco") to file and prosecute a cancellation petition in the Trademark Trial and Appeal Board of the United States Patent and Trademark Office to the registration "PINAR DEL RIO" for cigars filed by or registered to Juan E. Rodriguez, Gretna, Louisiana, Reg. No 3542236, as described in the Application, and to pay all necessary filing and other fees in connection therewith.

(b) The law firm **Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.** is authorized to provide legal services to Habanos and Cubatabaco in said cancellation petition, to receive payment for such services and reimbursement for expenses related to such services from Cuban nationals through banking channels, provided the funds are routed from Cuba to the United States via a third-country bank.

(c) The law firm **Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.** is authorized to open and maintain an escrow account in a United States financial institution for funds to be used to cover fees and expenses to be incurred in connection with the legal representation authorized by this license. Any unused portion of said advances held in the escrow account may be returned to the source outside the United States.

Authority: 31 CFR § 515.512.

SECTION 2 – CONDITION: It is a condition of this license that payments of fees or retainers pursuant to paragraph (b) above are made exclusively from fresh funds originating from a source not currently within the United States or within the possession or control of a United States person, including its overseas branches, and that such payments are not made from a blocked account or from other blocked property.

SECTION 3 – RECORDKEEPING REQUIREMENT: The Licensee shall keep a record of the transactions under this license. Such records shall be made available for examination upon demand for at least five years from the date of each transaction.

SECTION 4 – WARNINGS: (a) Except as explicitly authorized in Section 1 above, nothing in this license authorizes any person subject to the jurisdiction of the United States to engage in any transaction or activity prohibited by the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

(b) Nothing in this license authorizes the transfer of funds through methods which involve debits or credits to blocked accounts subject to the jurisdiction of the United States.

SECTION 5 – PRECEDENTIAL EFFECT: The authorization contained in this license is limited to the facts and circumstances specific to the application.

EXHIBIT B

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.

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COUNSEL

LEONARD I WEINGLASS
DEBRA EVENSON
TERRY GROSS
CRAIG KAPLAN

July 7, 2009

By Facsimile (202-622-1657) and U.S. Mail

Clara David
Licensing Division
Office of Foreign Assets Control
United States Department of the Treasury
ANNEX
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

Re: *Application for Specific License for Corporacion Habanos, S.A.
and Empresa Cubana del Tabaco to Petition to Cancel USPTO
Registrations for PINAR DEL RIO and for PINAR*

Dear Ms. David:

On behalf of Corporacion Habanos, S.A. ("Habanos") and Empresa Cubana del Tabaco ("Cubatabaco"), legal entities organized under Cuban law with their offices in Havana, Cuba, we hereby apply pursuant to 31 C.F.R. §515.801(b) of the Cuban Assets Control Regulations for a specific license authorizing:

(a) Habanos and Cubatabaco to file and to prosecute a petition in the Trademark Trial and Appeal Board ("TTAB") of the United States Patent and Trademark Office ("USPTO") to cancel a registration on the Supplemental Register for PINAR DEL RIO for cigars, registered to Juan E. Rodriguez, Gretna, Louisiana, Reg. No. 3542236, issued on December 12, 2008, and to pay all necessary filing and other fees in connection therewith;

(b) Habanos and Cubatabaco to file and to prosecute a cancellation petition in the TTAB in the event that a registration issues on the Supplemental Register for PINAR for cigars, applied for by Juan Rodriguez, Gretna, Louisiana, Application No. 77467488 (based on the PTO file, it appears that the registration on the Supplemental Register may issue in the next few months), and to pay all necessary filing and other fees in connection therewith; and

(c) Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. to represent Habanos

and Cubatabaco in said cancellation petition(s), and for it to solicit and receive legal fees from Habanos and Cubatabaco for said representation and be reimbursed by Habanos and Cubatabaco for any expenses incurred in connection with that representation.

Habanos and Cubatabaco are involved in the production and export of Cuban-origin cigars throughout the world, own numerous cigar trademarks in the United States, and intend to export Cuban-origin cigars to the United States when permitted by United States law.

Habanos and Cubatabaco will petition to cancel the PINAR DEL RIO registration, and PINAR registration if issued, primarily on the grounds that the marks are deceptive, deceptively misdescriptive, and primarily geographically deceptively misdescriptive when used by the registrant for his cigars, which are not of Cuban origin, and that, for those reasons, the registrations should be cancelled under Sections 2(a), (e)(1), and (e)(3) of the Lanham Act, 15 U.S.C. § 1052(a), (e)(1), (3), and under Articles 23-28 of the General Inter-American Convention for Trade Mark and Commercial Protection. Habanos and Cubatabaco will also petition on the ground that the registrant misrepresented to the PTO that there is an association between its non-Cuban cigars and Cuba.

31 C.F.R. § 515.527, the general license authorizing Cuban nationals to pursue certain proceedings in the USPTO, is, in our understanding, inapplicable here. By its terms, section 515.527 concerns transactions by Cuban nationals “related” to the “registration or renewal” of trademarks in the USPTO in which the Government of Cuba or a Cuban national has an interest. By letter dated August 19, 1996, a copy of which is enclosed for your convenience, OFAC Director Newcomb advised that section 515.527 applies to proceedings in the TTAB when the proceeding “relate[s] to the protection of a trademark in which Cuba or Cuban national has an interest.”

The proposed cancellation petition(s) are *not* related to the registration or renewal by Habanos or Cubatabaco of the trademark PINAR DEL RIO or PINAR, or any other trademark in the USPTO, and is *not* related to the protection of a trademark in which Cuba or a Cuban national has an interest. (We note that Cubatabaco has owned since 2003 the registration of the Appellation of Origin, PINAR DEL RIO, pursuant to the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as revised and amended, and as to which the United States is not a party). Rather, the cancellation petition(s) will be based on the assertion that registrant’s marks cannot be registered because they are deceptive as to the cigars’ geographic origins, thereby damaging Habanos and Cubatabaco.

We note that OFAC previously issued specific licenses in 2008 in similar situations, authorizing Cubatabaco and Habanos to oppose the registrations of the cigar marks CUBAN COFFEE, CU-77839; GOT CUBANS, CU-77855; and JOYA CUBANA, CU-77877, and in 2005 authorizing Habanos to oppose the registration of the cigar mark HAVANA CLUB, CU-74550 (for your convenience, a copy of one of the licenses, CU-77877, is attached).

More specifically, we request a specific license authorizing all transactions incident to the following:

1. Habanos and Cubatabaco's filing and prosecuting a petition in the TTAB to cancel a registration on the Supplemental Register of the trademark PINAR DEL RIO in international class 34 for cigars, registered to Juan E. Rodriguez, Gretna, Louisiana, Reg. No. 3542236, and to pay all necessary filing and other fees in connection therewith
2. Habanos and Cubatabaco's filing and prosecuting a cancellation petition in the TTAB in the event that a registration issues on the Supplemental Register to the trademark PINAR in international class 34 for cigars, applied for by Juan Rodriguez, Gretna, Louisiana, Application No. 77467488, and to pay all necessary filing and other fees in connection therewith;
3. Rabinowitz, Boudin, Standard, Krinsky and Lieberman, P.C. representing Habanos and Cubatabaco in said cancellation proceedings, and its soliciting and receiving legal fees from Habanos and Cubatabaco for said representation and its being reimbursed by Habanos and Cubatabaco for any expenses incurred in connection with that representation; and
4. Rabinowitz, Boudin, Standard, Krinsky and Lieberman, P.C.'s opening and maintaining an escrow account in a United States financial institution for funds to be used to cover fees and expenses to be incurred in connection with the legal representation authorized by the requested specific license, and returning to its source outside the United States any unused portion of said advances held in said escrow account.

Because this matter concerns legal proceedings, we are taking the liberty of forwarding a copy of this application to the Legal Counsel's Office of OFAC.

Thank you for your attention to this matter.

Very truly yours,



David B. Goldstein

cc: Matthew Tuchband, Esq., Deputy Chief Counsel, OFAC (by email and U.S. Mail)
Jennifer Hershfang, Esq., Office of Legal Counsel, OFAC (by email and U.S. Mail)

enc.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

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FAC Nos. C-152409, C-152468

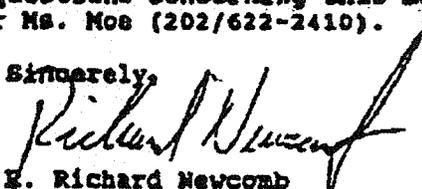
Dear Mr. Krinsky:

This is in response to your letters of July 3 and July 22, 1996, addressed to Serena Mos, Deputy Chief Counsel of the Office of Foreign Assets Control. In your letters you ask two questions concerning the authorization contained in § 515.527 of the Cuban Assets Control Regulations, 31 C.F.R. Part 515 (the "Regulations"). First, you ask whether this section authorizes Cuba to file an opposition to the registration of a new trademark on the grounds that the new trademark interferes with Cuba's right in its registered trademark based on likely consumer confusion. Second, you ask whether Cuba may bring a petition to cancel the prior registration of a trademark related to its efforts to register a trademark.

The authorization contained in § 515.527 and the parallel provisions of § 515.518 are intended to provide reciprocal protection for the intellectual property of Cuba and the United States. Both of the processes you describe in your correspondence concern available legal means to protect trademarks in the United States. For this reason, the authorization contained in § 515.527 may be relied on to file an opposition to the registration of a new trademark or to petition to cancel a prior registration of a trademark where these actions relate to the protection of a trademark in which Cuba or a Cuban national general license has an interest.

If you have any further questions concerning this matter, please call me (202/622-2510) or Ms. Mos (202/622-2410).

Sincerely,


E. Richard Newcomb
Director
Office of Foreign Assets Control

Michael Krinsky, Esq.
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