



RTA13



09-25-2002

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #39

TRADEMARK

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

BOLLORÉ	)	
	)	
	)	
v.	)	Opposition No: 124,073
	)	Serial No: 76/042,035
	)	Mark: ZIGARETTES
	)	
THE HAVANA GROUP, INC.	)	
	)	
Applicant	)	

TRADEMARK TRIAL AND APPEAL BOARD  
02 OCT 16 PM 9:30

**APPLICANT'S NOTICE OF RELIANCE**

Applicant, The Havana Group, Inc., hereby gives notice of its reliance on the following documents:

1. Opposer's Amended Supplemental Responses to Applicant's First Set of Interrogatories, served on July 24, 2002. [Filed Under Seal Pursuant to Protective Order Executed by Parties]
2. Opposer's Amended Supplemental Responses to Applicant's First Set of Interrogatories served on July 23, 2002. [Filed Under Seal Pursuant to Protective Order Executed by Parties]
3. Opposer's Responses to Applicant's First Set of Requests for Production of Documents served on April 15, 2002.
4. Opposer's Responses to Applicant's First Set of Requests for Admission served on April 15, 2002.
5. Page 45, line 15 through page 130, line 20 of transcript of Rule 30(b)(6) deposition of Thomas Helms, III on behalf of North Atlantic Trading Company and North Atlantic Operating Company taken on July 26, 2002. Pursuant to 37 C.F.R. § 2.120(j), Applicant states that the identified portion of the deposition transcript is the cross examination of the Rule 30(b)(6) deponent, Mr. Helms, by Applicant's attorney. North


Atlantic Operating Company is the distributor of all ZIG-ZAG trademarked products in the United States and is the purported owner of several ZIG-ZAG U.S. trademark registrations. The identified portion of the Rule 30(b)(6) deposition includes testimony admitting that North Atlantic's distributors, its distributors' customers and retail customers do not associate the ZIG-ZAG trademark with either Opposer Bollore or with North Atlantic, owner of several ZIG-ZAG trademark registrations. See, for example, page 126, line 17 through page 127, line 20 and page 128, line 20 through page 130, line 20. This testimony contradicts Bollore's assertion that its ZIG-ZAG trademark is famous. The remaining testimony identified above relates to the ownership of the ZIG-ZAG trademarks and trademark registrations by both Bollore and North Atlantic. This testimony is relevant to the issue of who owns the ZIG-ZAG trademarks in the United States and whether Bollore has standing to assert rights in the ZIG-ZAG trademarks and trademark registrations since all marketing of the trademarked goods in the United States is done by North Atlantic, not Bollore.

5. Page 11, line 12 through page 47, line 4 of transcript of Rule 30(b)(6) deposition of Stephen Dickman on behalf of North Atlantic Trading Company and North Atlantic Operating Company taken on July 26, 2002. Pursuant to 37 C.F.R. § 2.120(j), Applicant states that the identified portion of the deposition transcript is the cross examination of the Rule 30(b)(6) deponent, Mr. Dickman, by Applicant's attorney. North Atlantic Operating Company is the distributor of all ZIG-ZAG trademark products in the United States and is the purported owner of several ZIG-ZAG U.S. trademark registrations. The identified portion of the Rule 30(b)(6) deposition includes testimony relating to the ownership of the ZIG-ZAG trademarks and trademark registrations by both Bollore and North Atlantic. This testimony is relevant to the issue of who owns the ZIG-ZAG trademarks in the United States and whether Bollore has standing to assert rights in the ZIG-ZAG trademarks and trademark registrations since all marketing of the trademarked goods in the United States is done by North Atlantic, not Bollore. For example, at page 25, line 1 through page 26, line 14, North Atlantic claims that it, not Bollore, owns the ZIG-ZAG trademark rights for all the trademarked products sold by the North Atlantic in the United States.

Copies of each of the aforesaid documents are attached hereto.

Respectfully submitted,

Date: 9/25/02

  
George L. Pinchak (Reg. No. 37,697)  
Stephen J. Schultz (Reg. No. 29,108)  
William A. Johnston (Reg. No. 47,687)

Watts, Hoffmann, Fisher & Heinke Co., L.P.A.  
1100 Superior Avenue, Suite 1750  
Cleveland, OH 44114-2518  
Telephone: (216) 241-6700  
Facsimile: (216) 241-8151  
Email: iplaw@wattshoff.com

ATTORNEYS FOR APPLICANT


#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of September, 2002 a copy of the foregoing NOTICE OF RELIANCE was served on counsel for Opposer by overnight DHL courier addressed as follows:

Jenifer deWolf Paine, Esq.  
Proskauer Rose LLP  
1585 Broadway  
New York, NY 10036  
(212) 969-3000 - telephone  
(212) 969-2900 - facsimile

The undersigned hereby certifies that on this 25<sup>th</sup> day of September, 2002 a copy of the foregoing NOTICE OF RELIANCE was served on the TTAB by Express Mail Label No. EA86076017BUS addressed as follows:

U.S. Assistant Commissioner for Trademarks  
Box TTAB  
2900 Crystal Drive  
Arlington, VA 22202-3513

  
George L. Pinchak  
Attorney for Applicant