Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA221795**

Filing date: **07/02/2008**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Menendez Amerino & Cia Ltda
Granted to Date of previous extension	07/23/2008
Address	Rua do Corredor D, 714 - Centro Salvador Bahia, BRAZIL

Attorney information	Julie B. Seyler ABELMAN FRAYNE & SCHWAB 666 Third Avenue New York, NY 10017 UNITED STATES jbseyler@lawabel.com, Rdahl@lawabel.com Phone:212-949-9022

Applicant Information

Application No	76651967	Publication date	03/25/2008
Opposition Filing Date	07/02/2008	Opposition Period Ends	07/23/2008
Applicant	Brazil Cigars & Tobacco, LLC 4370 SW 74th Avenue Miami, FL 331140938 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 2005/11/01 First Use In Commerce: 2005/11/01 All goods and services in the class are opposed, namely: Cigars

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Torres v. Cantine Torresella S.r.l.Fraud	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Applicant is not the owner under Section 1 of the Trademark Act.

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77392580	Application Date	02/08/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DONA FLOR		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: Tobacco, cigars and cigarettes; Lighters for smokers

Attachments	77392580#TMSN.jpeg (1 page)(bytes) DONA FLOR V DONA FLOR SELECAO - NOTICE OF OPPOSITION.pdf (4 pages)(233027 bytes)

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	/Julie B. Seyler/
Name	Julie B. Seyler
Date	07/02/2008

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

In re Application No. 76/651967
Published March 25, 2008

Menendez Amerino & Cia Ltda Opposer, v. Brazil Cigars & Tobacco, LLC Applicant.	Opposition No.

NOTICE OF OPPOSITION

Menendez Amerino & Cia Ltda., a corporation organized and existing under the law of Brazil, with an office at Rua do Corredor D, 714, Centro, Salvador, Brazil, believes that it will be damaged by registration of the mark shown in Application Serial No. 76/651967 and hereby opposes the same.

As grounds for opposition, it is alleged that:

I. Applicant is not the owner under Section 1 of the Trademark Act.

1. Applicant is seeking to register the mark for cigars.

2. Applicant has no ownership rights in the trademark DONA FLOR or the trademark .

3. Applicant was merely an importer and distributor of goods bearing Opposer's trademark DONA FLOR.

4. Applicant does not manufacture cigars or select the trademarks to be applied to the goods.

5. Opposer is the owner of all right and title and interest in and to the trademark DONA FLOR.

6. Opposer has long prior rights in and use of the trademark DONA FLOR.

7. Wherefore, Application No. 76/651967 should be refused under 15 U.S.C. § 1051.

II. Likelihood of Confusion

Opposer incorporates Paragraphs 1-7 in their entirety and further alleges that:

8. Opposer has filed Application No. 77/392580 for the trademark DONA FLOR for tobacco, cigars and cigarettes; lighters for smokers.

9. In light of Opposer's prior rights in DONA FLOR, Opposer's application has wrongfully been refused in view of Application No. 76/651967.

10. Applicant's mark is substantially similar to Opposer's mark.

11. Applicant's goods are identical to or otherwise commercially related to Opposer's goods.

12. In view of the substantial similarity between the respective marks, the commercial relationship between the goods, registration of Applicant's mark is likely to cause confusion, mistake or deception to purchasers as to the source of Applicant's goods, and therefore it is requested that registration to Applicant be refused under Section 2(d) of the Trademark Act.

III. Fraud

Opposer incorporates Paragraphs 1-12 in their entirety and further alleges that:

14. Applicant committed fraud upon the Trademark Office because it stated, under 18 U.S.C. 1001, that it knew of no other person, firm, corporation, or association that had the right to use the mark DONA FLOR when in fact it had actual knowledge of Opposer's long prior rights in the trademark.

15. Opposer will be damaged by the registration of Application Serial No. 76/651967 and respectfully requests that registration be refused and this opposition be sustained.

Respectfully submitted,

Date: July 2, 2008

LAWRENCE E. ABELMAN
JULIE B. SEYLER

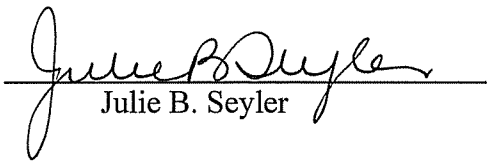
Attorneys for Opposer

ABELMAN FRAYNE & SCHWAB
666 Third Avenue
New York, New York 10017
212-949-9022

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served by first class mail, postage prepaid this 2nd day of July, 2008 upon the following:

Brazil Cigars & Tobacco, LLC
4370 SW 74th Avenue
Miami, Florida 33114-0938



Julie B. Seyler