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

Proceeding	91184987
Party	Defendant Brazil Cigars & Tobacco, LLC
Correspondence Address	Brazil Cigars & Tobacco, LLC. 4370 SW 74th Avenue Miami, FL 33114-0938 patty@donaflorcigar.com
Submission	Answer
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Signature	/Gustavo Sardina/
Date	08/11/2008
Attachments	Answer.pdf (4 pages)(16235 bytes)

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

In The Matter of Trademark Application No. 76/651,967

Menendez Amerino & Cia Ltda,	)	
	)	
Opposer,	)	
	)	
vs.	)	Opposition No. 91184987
	)	
Brazil Cigars & Tobacco, LLC,	)	
	)	
Applicant.	)	
	)	

ANSWER AND AFFIRMATIVE DEFENSES

Applicant, Brazil Cigars & Tobacco, LLC, (hereinafter "Applicant" or "Brazil Cigars"), by and through undersigned counsel, hereby files its Answer to Opposer, Menendez Amerino & Cia Ltda's (hereinafter "Opposer" or "Amerino") Notice of Opposition.

Applicant denies statement "I" of the Notice of Opposition.

1. Applicant admits the allegations of Paragraph 1 of the Notice of Opposition.
2. Applicant denies the allegations of Paragraph 2 of the Notice of Opposition.
3. Applicant denies the allegations of Paragraph 3 of the Notice of Opposition.
4. Applicant denies the allegation that it does not select the trademarks to be applied to the goods. Applicant is without sufficient knowledge as to the meaning of "manufacture" as used in paragraph 4 of the Notice of Opposition and therefore denies allegations related thereto.
5. Applicant denies the allegations of Paragraph 5 of the Notice of Opposition.
6. Applicant denies the allegations of Paragraph 6 of the Notice of Opposition.
7. Applicant denies the allegations of Paragraph 7 of the Notice of Opposition.

8. Applicant lacks sufficient knowledge of the allegations of Paragraph 8 of the Notice of Opposition and therefore denies the same.
9. Applicant denies the allegations of Paragraph 9 of the Notice of Opposition.
10. Applicant admits the allegations of Paragraph 10 of the Notice of Opposition.
11. Applicant admits the allegations of Paragraph 11 of the Notice of Opposition.
12. Applicant denies the allegations of Paragraph 12 of the Notice of Opposition.
13. Opposer did not include a numbered paragraph 13.
14. Paragraph 14 of the Notice of Opposition calls for a legal conclusion. Applicant denies the allegations of Paragraph 14 of the Notice of Opposition.
15. Applicant denies the allegations of Paragraph 15 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. Applicant has prior use of the mark in commerce.
2. Opposer has not made any use of the disputed mark in the United States.
3. To the extent that Opposer has made any use of the disputed mark, such use is subsequent to Applicant's use.
4. Applicant is more than a mere distributor.
    a. Applicant was the sole and exclusive distributor for the goods in the United States to the exclusion of Opposer;
    b. Applicant's name and contact information appear on packaging for the goods bearing the mark;
    c. Applicant exercised control over the nature and quality of the goods on which the mark appears;
    d. Customers looked to Applicant as standing behind the goods.

e. Applicant received comments and complaints about the goods bearing the mark and made appropriate replacement and took other corrective actions.

f. Applicant paid for advertising and promotion of the trademarked product in the United States.

5. Applicant has a contractual relationship with Opposer which Opposer has breached.

6. Opposer is guilty of unclean hands.

Respectfully submitted,

ROTHSTEIN ROSENFELDT ADLER

By: s/GUSTAVO SARDIÑA

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on

Lawrence E. Abelman, Esq.
Julie B. Selyer, Esq.
ABELMAN FRAYNE & SCHWAB
666 Third Avenue
New York, New York 10017

by electronic mail as well as by United States FIRST CLASS U.S. MAIL, postage pre-paid this 11th day of August, 2008.

By: s/GUSTAVO SARDIÑA
Frank Herrera, Esq.
Florida Bar No. 494801
Gustavo Sardiña
Florida Bar No. 31162

CERTIFICATE OF ELECTRONIC FILING USING ETTSA

I HEREBY CERTIFY that on August 11, 2008 a true and correct copy of the foregoing was filed electronically using the TTAB's ETTSA filing system.

By: s/GUSTAVO SARDIÑA
Frank Herrera, Esq.
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Gustavo Sardiña
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