

ESTTA Tracking number: **ESTTA232732**

Filing date: **08/26/2008**

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 parties oppose registration of the indicated application.

**Opposers Information**

Name	Corporacion Habanos, S.A.
Granted to Date of previous extension	08/27/2008
Address	Avenida 3ra #2006e/20 y 22, Miramar Havana, CUBA

Name	Empresa Cubana del Tabaco, dba Cubatabaco
Granted to Date of previous extension	08/27/2008
Address	O'Reilly 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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**Applicant Information**

Application No	78768016	Publication date	04/29/2008
Opposition Filing Date	08/26/2008	Opposition Period Ends	08/27/2008
Applicant	rodriguez, lazaro tejera 1717 e. 7th. ave. ste.2 tampa, FL 33605 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 034. All goods and services in the class are opposed, namely: Cigars
Class 035. All goods and services in the class are opposed, namely: Arranging and conducting trade show exhibitions in the field of cigar rolling

**Grounds for Opposition**

Deceptiveness	Trademark Act section 2(a)
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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)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	General Inter-American Convention for Trade Mark and Commercial Protection, 46 Stat. 2907, Art. 23-28 (false indication of geographic origin)

### Marks Cited by Opposer as Basis for Opposition

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		

U.S. Registration No.	2212119	Application Date	08/16/1996
Registration Date	12/22/1998	Foreign Priority Date	NONE
Word Mark	LA CASA DEL HABANO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: retail store services featuring tobacco and smokers' accessories Class 042. First use: social club services, bar services, and restaurant services		

Attachments	75151320#TMSN.gif ( 1 page )( bytes ) 74576950#TMSN.gif ( 1 page )( bytes ) 75151529#TMSN.gif ( 1 page )( bytes ) Not.Opp.78768016.pdf ( 14 pages )(59904 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	08/26/2008

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

In the matter of trademark application  
Serial No. 78768016  
Filed December 6, 2005  
For the mark HAVANA DREAMS CIGAR FACTORY  
Published in the *Official Gazette* on April 29, 2008

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CORPORACION HABANOS, S.A., and EMPRESA	)	
CUBANA DEL TABACO, d.b.a. CUBATABACO	)	
	)	
Opposers,	)	
	)	
v.	)	Opposition No. _____
	)	
RODRIGUEZ, LAZARO TEJERA,	)	
	)	
Applicant.	)	

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NOTICE OF OPPOSITION

Opposers CORPORACION HABANOS, S.A. (“Habanos, S.A.”) and EMPRESA CUBANA DEL TABACO (“Cubatabaco”) (together “Opposers”) believe that they will be damaged by registration on the principal register of the mark HAVANA DREAMS CIGAR FACTORY, Application Serial No. 78768016, (hereinafter “Application”), published for opposition on April 29, 2008, and, by and through their undersigned attorneys, hereby oppose the registration of said Application, and aver as follows:

THE PARTIES

1. Applicant Rodriguez, Lazaro Tejera (“Applicant”) is identified in the Application as a corporation incorporated in the State of Florida, with a Tampa, Florida address. No such corporation appears in the electronic database of the Florida Secretary of State. Upon information and belief, Applicant is in fact an individual residing in Tampa, Florida.

2. Opposer Habanos, S.A. is a corporation organized under the laws of Cuba, with its principal place of business in Havana, Cuba.

3. Opposer 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 in Havana, Cuba.

4. Opposer Habanos, S.A. currently owns, among others, 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 appears regularly 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. Opposer 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 U.S. 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 U.S.

7. Opposer Cubatabaco currently owns, among others, 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 for 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. Opposer Cubatabaco’s LA CASA DEL HABANO Marks regularly appear in advertisements in the United States in connection with cigars that are of 100% Cuban origin.

9. Opposer 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. The term “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 Opposer Cubatabaco in 1967 in accordance with the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as revised and amended.

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

#### THE APPLICATION PROCEEDINGS

12. On December 6, 2005, Applicant filed an application in the USPTO under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), to register the mark HAVANA DREAMS CIGAR

FACTORY, in International Class 34 for “Cigars,” and in International Class 35 for “Arranging and conducting trade show exhibitions in the field of cigar rolling.” The Application was assigned Serial No. 78768016.

13. On June 8, 2006, the PTO Examiner issued an Office Action (the “Office Action”), finding a likelihood of confusion, pursuant to section 2(d), 15 U.S.C. § 1052(d), with a prior pending application, Application Serial No. 78551150 for the mark CUBAN DREAMS, and advising that upon Applicant’s response, action on the Application would be suspended pending disposition of the prior pending application.

14. In the Office Action, the PTO Examiner also stated:

The applicant must disclaim the descriptive wording “HAVANA” and “CIGAR FACTORY” apart from the mark as shown *because it merely describes the applicant’s Havana cigars*. Applicant is a CIGAR FACTORY and *they make HAVANAs....* See evidence attached.

A term is merely descriptive under Trademark Act § 2(e)(1), 15 U.S.C. § 1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods/services.

(emphasis added, citations omitted).

15. The “evidence attached” addressing “Havana” was a definition of “Havana” from the *American Heritage Dictionary of the English Language* (4<sup>th</sup> ed. 2000): “A cigar made in Cuba, especially one of fine quality.” (Emphasis added).

16. Applicant in fact does *not* “make HAVANAs,” as its proposed cigars are *not* made in Cuba. Likewise, the cigar rolling in Applicant’s proposed exhibitions will *not* involve “Havanas,” that is, cigars made in Cuba.

17. “Havana” does not “describe[] an ingredient, quality, characteristic, function, feature, purpose or use of” Applicant’s goods or services within the meaning of § 2(e)(1), 15 U.S.C. § 1052(e)(1), because Applicant’s cigars are not made in Cuba.

18. On June 12, 2006, the PTO Examiner issued an Examiner's Amendment based on a communication on that date with a representative of Applicant, authorizing the Examiner's proposed disclaimer. The PTO file does not contain a written response from Applicant.

19. The Examiner's Amendment stated: "The following disclaimer statement is added to the record: No claim is made to the exclusive right to use 'HAVANA' and 'CIGAR FACTORY' apart from the mark as shown."

20. Based on the information in the PTO file, Applicant failed to disclose to the PTO Examiner, contrary to the Examiner's explicitly stated understanding, that: Applicant's cigars are not and will not be "made in Cuba"; Applicant does not "make HAVANAs"; and Applicant does not have or make "Havana cigars."

21. At no time during the Application process did Applicant make any disclosure to the USPTO to correct the Examiner's incorrect understandings that Applicant's cigars are "HAVANAs," "Havana cigars," or are "made in Cuba," although Applicant knew at all times that the Examiner's understandings were incorrect.

22. At no time during the Application process did Applicant claim that the Examiner was incorrect that the term "Havana" meant a "cigar made in Cuba," or present any other response or argument to the proposed disclaimer, other than to accept it.

23. Upon information and belief, Applicant disclaimed "Havana" for the specific purpose of obtaining the applied-for registration, and to avoid having its registration refused, despite the fact that Applicant knew that its cigars are not "made in Cuba," are not "HAVANAs," and are not "Havana cigars."

24. On June 12, 2008, the PTO Examiner also issued a Notice of Suspension based on the prior pending Application Serial No. 78551150 for CUBAN DREAMS.

25. On December 20, 2007, Application Serial No. 78551150 for CUBAN DREAMS was abandoned for failure to file a timely statement of use.

26. On March 21, 2008, the Application was approved for publication, and Applicant's mark was published for opposition on April 29, 2008.

27. On May 23, 2008, the Board granted Opposers' timely filed requests for an extension of time until August 27, 2008, to file a notice of opposition to the Application.

28. Applicant has made no claim of use or use in commerce of the applied-for mark, and the Application remains based on section 1(b) of the Lanham Act.

29. Applicant's mark is, *inter alia*, primarily geographically deceptively misdescriptive, deceptive and deceptively misdescriptive of the identified goods and services, and confusingly similar to Opposers' above-identified registered marks for the same goods and the same or similar services.

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

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

31. The primary significance of the mark, HAVANA DREAMS CIGAR FACTORY, is a generally known geographic location – Havana, Cuba.

32. The addition of the common word "DREAMS" and the descriptive words "CIGAR FACTORY" does not alter the mark's primary geographic significance.

33. As the Examiner explicitly recognized, 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.

34. 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.

35. Numerous English language dictionaries, including the dictionary cited by the Examiner, 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.

36. 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.

37. 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 “Havana(s)” and “Habano(s)” to denote a 100% Cuban-origin cigar.

38. “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.

39. For decades prior to Applicant’s December 6, 2005 Application, the term “Havana” has been used to mean a Cuban-origin cigar.

40. 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.

41. 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.

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

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

44. 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 and services/place associations of any consumer product or consumer-oriented services with a particular geographic region in the world.

45. The applied-for mark denotes, is, and will be understood by United States consumers, as it was by the Examiner, as denoting, that cigars bearing that mark, or in connection with related cigar rolling services, are manufactured in Cuba, or are made from tobacco grown in Cuba and manufactured elsewhere.

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

47. Applicant, a Florida corporation or resident, has no lawful means of obtaining, selling, or exhibiting Cuban-origin cigars, nor any lawful means of obtaining, selling, or exhibiting cigars 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, this is so because the United States' Cuban Assets Control Regulations, including specifically 31 C.F.R. § 515.201, 515.204, prohibit any such activity.

48. The cigar-consuming public, like the Examiner, is likely to believe that the place identified by the applied-for mark – Havana, Cuba – describes Applicant's cigars, and their geographic origin, or the geographic origin of the good's ingredients, when neither the cigars nor the ingredients in fact come from Havana or Cuba.

49. The cigar-consuming public, like the Examiner, is likely to believe that the place identified by the applied-for mark – Havana, Cuba – indicates the origin of the services bearing the applied for mark, and/or the goods provided in connection with the services (cigars), when neither the services nor the associated goods come from that place.

50. United States consumers are likely to make a very strong services/place association between Applicant's cigar rolling exhibition services and Havana, Cuba and Cuba.

51. Consumers' mistaken belief that Applicant'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' decision to purchase Applicants' cigars or cigar-related services.

52. By use of the word "Havana," the applied-for mark misdescribes an ingredient, quality, characteristic, or feature of the goods and services, *i.e.*, cigars made in Cuba, because the cigars are not from Cuba and the services do not involve rolling of tobacco products from Cuba.

53. By use of the word "Havana," which is widely used and understood in the United States, including by the Examiner, to refer to cigars from Cuba, cigar consumers in the United States are likely to believe this misrepresentation of the goods and services.

#### INJURY TO OPPOSERS

54. Opposers believe that they will be damaged by the registration of the applied-for mark upon the Principal Register, including by Applicant's use of that mark on cigars of non-Cuban origin and in cigar rolling exhibitions, which will damage the reputation that Havana cigars, that is, genuine Cuban-origin cigars, have in the United States. Such registration and use will also deceive consumers into believing that Cuban cigars, or cigars made from Cuban tobacco, are presently available for purchase in the United States.

55. Opposers' 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 "Habanos" as a geographic indication, will be damaged and diminished if Applicant is permitted to register a mark including the term "Havana," which deceptively suggests that Applicant's cigars and related cigar services are of Cuban origin.

56. Opposers' 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 damaged if Applicant is permitted to register the applied-for mark.

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

#### FIRST GROUND FOR OPPOSITION

58. Opposers repeat and reallege each and every allegation set forth in paragraphs 1 through 57 of this Notice of Opposition as if fully set forth herein.

59. The applied-for mark, as used on or in connection with Applicant's identified goods and services, 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, registration of the mark must be refused.

#### SECOND GROUND FOR OPPOSITION

60. Opposers repeat and reallege each and every allegation set forth in paragraphs 1 through 57 of this Notice of Opposition as if fully set forth herein.

61. The applied-for mark, as used on or in connection with Applicant's identified goods and services, 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, registration of the mark must be refused.

#### THIRD GROUND FOR OPPOSITION

62. Opposers repeat and reallege each and every allegation set forth in paragraphs 1 through 57 of this Notice of Opposition as if fully set forth herein.

63. Applicant's mark so resembles Opposers' registered marks in IC 34 and IC 35 for the identical goods and similar services – HABANOS UNICOS DESDE 1492 & DESIGN, Reg. No. 2,177,837, and LA CASA DEL HABANO, Reg. Nos. 1,970,911 and 2,212,119 – and used by Opposers in the U.S. in advertising, as to be likely, when used on or in connection with Applicant's goods and services, 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, registration of the mark must be refused.

#### FOURTH GROUND FOR OPPOSITION

64. Opposers repeat and reallege each and every allegation set forth in paragraphs 1

through 57 of this Notice of Opposition as if fully set forth herein.

65. “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.

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

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

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

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

70. 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), registration of the mark must be refused.

#### FIFTH GROUND FOR OPPOSITION

71. Opposers repeat and reallege each and every allegation set forth in paragraphs 1 through 57 of this Notice of Opposition as if fully set forth herein.

72. Applicant made material omissions of fact when, in response to the Office Action, it disclaimed “HAVANA,” but failed to disclose to the PTO Examiner, contrary to the Examiner’s explicitly stated understandings, what Applicant knew at the time to be true: Applicant’s cigars are not and will not be “made in Cuba”; Applicant does not “make HAVANAs”; and Applicant does not have or make “Havana cigars.”

73. When Applicant made these material omissions in response to the Office Action, it knew that the Examiner understood that Applicant's cigars were made in Cuba, that they were Havana cigars, and that Applicant makes Havanas, and Applicant further knew that each of these understandings was incorrect.

74. These material omissions were made with the specific intent and purpose that the PTO would continue to rely on its misunderstanding that Applicant "make[s] HAVANAs," *i.e.*, "cigar[s] made in Cuba," in order to obtain registration of the mark.

75. But for Applicant's aforesaid material omissions, the PTO would have, and should have, refused registration of the mark.

76. Because of Applicant's aforesaid material omissions to the PTO, registration of the mark must be refused.

WHEREFORE, Opposers Corporacion Habanos, S.A. and Empresa Cubana del Tabaco pray that registration of the mark in Application Serial No. 78768016 be refused, and that this Opposition be sustained in favor of the Opposers.

Dated: August 26, 2008

Respectfully submitted,

By:           /David B. Goldstein/            
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Notice of Opposition to the registration of the mark in Application Serial No. 78768016 is being filed electronically today, August 26, 2008, on the Electronic System for Trademark Trials and Appeals for the United States Patent Office.

/David B. Goldstein/  
DAVID B. GOLDSTEIN

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Notice of Opposition was served on Applicant, the correspondent listed for Application No. 78768016, by mailing, postage prepaid, said copy on August 26, 2008, via U.S. Certified Mail, return receipt requested, to the address of record, and that a copy of the foregoing Notice of Opposition was also sent by electronic mail to Applicant at the email address listed on the Application and in the USPTO file:

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/David B. Goldstein/  
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