

ESTTA Tracking number: **ESTTA238112**

Filing date: **09/22/2008**

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	09/24/2008
Address	Avenida 3ra #2006e/20 y 22, Miramar Havana, CUBA

Name	Empresa Cubana del Tabaco, dba Cubatabaco
Granted to Date of previous extension	09/24/2008
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	76673201	Publication date	05/27/2008
Opposition Filing Date	09/22/2008	Opposition Period Ends	09/24/2008
Applicant	Garofalo, David 16 Lantern Lane Londonderry, NH 03053 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 1995/04/01 First Use In Commerce: 1995/05/01 All goods and services in the class are opposed, namely: Cigars made with Cuban seed tobacco
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
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		

Attachments	75151320#TMSN.gif (1 page)(bytes) 74576950#TMSN.gif (1 page)(bytes) la gianna havana Not.Opp.76673201.pdf (16 pages)(66737 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	09/22/2008

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

In the matter of trademark application
Serial No. 76673201
Filed February 26, 2007
For the mark LA GIANNA HAVANA
Published in the *Official Gazette* on May 27, 2008

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

NOTICE OF OPPOSITION

Opposers CORPORACION HABANOS, S.A. (hereinafter "Habanos, S.A.") and EMPRESA CUBANA DEL TABACO (hereinafter "Cubatabaco) (together "Opposers") believe that they will be damaged by registration on the principal register of the mark LA GIANNA HAVANA, Application Serial No. 76673201 (hereinafter "Application"), which was published for opposition on May 27, 2008, and, by and through their undersigned attorneys, hereby oppose the registration of said Application, and aver as follows:

THE PARTIES

1. Applicant David Garofalo is an individual residing in Londonderry, New Hampshire.
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 February 26, 2007, Applicant filed an application in the PTO under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a), to register the mark LA GIANNA HAVANA, in IC 34 for “Cigars.” The Application claimed a first use date of April 1, 1995 and a first use in commerce date of May 1, 1995.

13. Applicant submitted a specimen with the Application that described the goods as made from “Connecticut Shade Wrapper” and “Honduran and Dominican long leaf fillers.”

14. On May 24, 2007, the PTO Examiner issued an Office Action initially refusing registration of the mark under section 2(a) and 2(e)(3) of the Act, stating:

Registration is refused because the proposed mark consists of or comprises geographically deceptive and primarily geographically deceptively misdescriptive matter in relation to the identified goods and/or services. 15 U.S.C. §§ 1052(a) and (e)(3)....

The primary significance of the term “Havana” is geographic. The goods do not originate in this geographic location. The public is likely to believe that applicant’s goods come from this place because cigars are produced in Havana, Cuba. Furthermore, this belief would materially influence consumers to purchase the goods and/or services because Havana, Cuba is renown for the production of cigars.

(citations omitted).

15. On November 21, 2007, Applicant submitted its Response to Office Action. In its Response, “Applicant acknowledge[d] that the product is not made in Havana, and that Havana is known throughout the world as a producer of cigars,” and “‘Cuban cigars’ are well known and highly desirable commodity [*sic*] to cigar smokers.” Without providing evidence, Applicant claimed that the mark nevertheless is not geographically deceptive or primarily geographically deceptively misdescriptive, based on Applicant’s claim that the use of Havana would not be material to consumers’ purchasing decision.

16. Applicant made no claim that its cigars were made from “Cuban seed tobacco,” and no claim that its cigars have their origin in Cuba.

17. On January 7, 2008, the PTO Examiner issued a second Office Action maintaining the refusal under section 2(a) and 2(e)(3) of the Act, stating:

Registration has been refused because it is geographically deceptive and primarily geographically deceptively misdescriptive. The word “Havana” identifies a geographical area that is renowned for cigars and applicant’s goods are not produced in that area. The use of the geographically misdescriptive word “Havana” would

materially influence consumers to purchase the goods. Correspondingly, the mark containing the word “Havana” is unregistrable.

18. Nevertheless, and despite the prior Response, the specimen submitted with the Application, and the absence of any “Cuban seed tobacco” claim, the Examiner explicitly solicited the Applicant to alter its identification of the goods:

It is called to applicant’s attention, however, that if the goods are amended to be “cigars made with Cuban seed tobacco” and the word “Havana” is disclaimed, the refusal to register will be withdrawn. The reason is that the origin of the goods would be identified *honestly as having their origin in Cuba*. The mark would then *be geographically descriptive*, a refusal that could be cured with a disclaimer of the word.

(Emphasis added).

19. The Examiner did not require that the goods in fact be made from something called “Cuban seed tobacco,” and did not explain how adding those words would result in Applicant’s goods being “identified honestly as having their origin in Cuba.”

20. On April 14, 2008, Applicant submitted its Response to the second Office Action, and parroted the Examiner’s proposals, amending its goods from “Cigars” to “Cigars made with Cuban seed tobacco,” and disclaiming “Havana.”

21. Contrary to the Examiner’s mistaken belief, amending the identification of the goods from “Cigars” to “Cigars made with Cuban seed tobacco” does not render “the mark ... geographically descriptive,” instead of “geographically deceptive” and “primarily geographically deceptively misdescriptive,” as more fully explained, *infra*.

22. As Applicant admitted, Applicant’s goods are not manufactured in Cuba; nor are they made from tobacco grown in Cuba, or from tobacco grown from seeds that themselves came from Cuba, as more fully explained, *infra*.

23. Applicant’s goods no more come from, or “hav[e] their origin in,” Havana, Cuba, or Cuba, whether they are identified as “Cigars” or “Cigars made with Cuban seed tobacco.”

24. Upon information and belief, Applicant, who has been in the United States cigar industry for many years, amended its goods from “Cigars” to “Cigars made with Cuban seed tobacco” for the specific purpose of obtaining the applied-for registration, and to overcome the refusal to register under sections 2(a), (e)(3), although Applicant knew, or should have known, when it amended its identification of goods that “Cuban seed tobacco” has no relevant connection or association with Cuba, Havana, or Cuban-origin tobacco or cigars, and that Applicant’s cigars do not come from or “hav[e] their origins in” Havana or Cuba.

25. Upon information and belief, Applicant’s claimed first use and first use in commerce dates in its Application are prior to Applicant’s actual first use and first use in commerce dates.

26. Upon information and belief, if Applicant ever previously used the mark in commerce, the mark was abandoned during many years of non-use, continuing until recently.

27. On May 27, 2008, the Application was published for opposition.

28. On June 24, 2008, the Board granted Opposers’ timely filed requests for an extension of time until September 24, 2008, to file a Notice of Opposition to the Application.

29. Applicant’s mark is, *inter alia*, primarily geographically deceptively misdescriptive, deceptive and deceptively misdescriptive of the identified goods, and is confusingly similar to Opposers’ above-identified registered marks in IC 34 for the same goods.

THE MEANING OF "HAVANA" AND THE ASSOCIATION OF CIGARS WITH
HAVANA AND CUBA

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

31. The primary significance of the mark, LA GIANNA HAVANA, is a generally known geographic location – Havana, Cuba.

32. The addition of the common name “Gianna” (“Jane,” the translation Applicant

provided to the PTO) or the definite article “La” (“the”) does not alter the mark’s primary geographic significance.

33. 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 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 February 26, 2007 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 associations of any consumer product with a particular geographic region in the world.

45. The applied-for mark denotes, is, and will be understood by United States consumers as denoting, that cigars bearing that mark are manufactured in Cuba, or are made from tobacco grown in Cuba and manufactured elsewhere.

46. Applicant's goods do not come from, or otherwise originate in, or "hav[e] their

47. Applicant, an individual residing in New Hampshire, has no lawful means of obtaining or selling Cuban-origin cigars or Cuban-origin tobacco, nor any lawful means of obtaining or selling cigars or other tobacco products 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 prohibit any such activity.

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

49. 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' purchasing decision.

50. By use of the word "Havana," the applied-for mark misdescribes a quality, characteristic, or feature of the goods, *i.e.*, Cuban cigars (or cigars made from tobacco from Cuba), because the goods are not cigars from Cuba, or made from Cuban tobacco.

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

APPLICANT'S MEANINGLESS CLAIM THAT ITS GOODS ARE
"MADE WITH CUBAN SEED TOBACCO"

52. Although Applicant knew that its goods do not come from Havana or Cuba, do not "hav[e] their origin in Cuba," and have no connection or association with Havana or Cuba, or

with Opposers, Applicant nevertheless represented to the PTO that its cigars are “made with Cuban seed tobacco” with the purpose and intent of obtaining registration of the mark, and to overcome the PTO’s refusal to register on the ground that the use of “Havana” for Applicant’s non-Cuban origin cigars is, *inter alia*, primarily geographically deceptively misdescriptive.

53. When used in the United States to refer to tobacco grown outside of Cuba, “Cuban seed tobacco” is merely a name given to a type of tobacco that is grown outside of Cuba from seeds that do not themselves come from Cuba, but are claimed, without any means of verification, to be distant descendants of seeds of tobacco plants grown in Cuba many generations ago.

54. Upon information and belief, the type of non-Cuban tobacco that Applicant refers to as “Cuban seed tobacco” either: 1) is a very distant descendant from plants or seeds that were taken from Cuba sometime between 45 and almost 100 years ago, but not more recently than that; *or* 2) is not even a distant descendant from seeds or plants that were taken from Cuba many decades ago, but is merely a type of tobacco, grown outside of Cuba, and generically referred to as “Cuban seed tobacco”; *or* 3) is not the type of tobacco generically referred to as “Cuban seed,” but Applicant may have made such material misrepresentation to the PTO solely to obtain registration of its mark.

55. It is not possible to verify whether Applicant’s LA GIANNA HAVANA cigars are made from tobacco grown from seeds descended from tobacco seeds that came from Cuba, which Applicant knew or should have known when it made its representation to the PTO.

56. Whether or not Applicant’s cigars are made from tobacco grown from seeds that are descendants of seeds from plants once grown in Cuba (which is itself unverifiable), amending the identification of the goods from “cigars” to “cigars made with Cuban seed

tobacco” does not, and cannot, alter the fact that, as the Examiner correctly found for “cigars,” the mark is, *inter alia*, primarily geographically deceptively misdescriptive.

57. Applicant’s mark is not “geographically descriptive,” whether the goods are identified as “cigars” or “cigars made with Cuban seed tobacco.

58. Because the term “made with Cuban seed tobacco” in the identification of goods cannot support the registration of a mark using the word “Havana” in connection with cigars made from non-Cuban tobacco, the use of that term cannot overcome the statutory bars to registration under sections 2(a), (e)(1), (3).

59. Cigars allegedly made from tobacco grown from seeds that are descendants of seeds that came from Cuba are different from cigars made from Cuban-origin tobacco in terms of quality, characteristics, taste and aroma.

60. Upon information and belief, the PTO would not have published the mark for opposition had it known that neither “Cuban seed tobacco,” nor the seeds generating the plants that yield the tobacco, come from Havana, Cuba, or anywhere else in Cuba, nor do they “hav[e] their origin in Cuba,” nor any connection or association with Cuba, Havana, or Cuban-origin cigars, other than the unverifiable possibility of a distant genetic descent.

INJURY TO OPPOSERS

61. 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, which will damage the reputation that 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 U.S.

62. Applicant’s mark, when used on or in connection with Applicant’s cigars, is likely

to cause confusion, or to cause mistake, or to deceive, with respect to Opposers' registered marks in IC 34 – HABANOS UNICOS DESDE 1492 & DESIGN and LA CASA DEL HABANO.

63. 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 cigar marks HABANOS UNICOS DESDE 1492 & DESIGN, 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 are of Cuban origin.

64. Opposers' current ability to use the above-identified registered trademarks and "Habanos" as a geographic indication and certification mark in advertisements currently placed in the United States in connection with 100% Cuban-origin cigars will be damaged if Applicant is permitted to register the applied-for mark.

FIRST GROUND FOR OPPOSITION

65. Opposers repeat and reallege each and every allegation set forth in paragraphs 1 through 64 of this Notice of Opposition as if fully set forth herein.

66. The applied-for mark, as used on or in connection with Applicant's identified goods, is geographically deceptive and primarily geographically deceptively misdescriptive under 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

67. Opposers repeat and reallege each and every allegation set forth in paragraphs 1 through 64 of this Notice of Opposition as if fully set forth herein.

68. The applied-for mark, as used on or in connection with Applicant's identified goods, is deceptive and deceptively misdescriptive under 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

69. Opposers repeat and reallege each and every allegation set forth in paragraphs 1 through 64 of this Notice of Opposition as if fully set forth herein.

70. Applicant's mark so resembles Opposers' registered marks in IC 34 for the identical goods (cigars) – HABANOS UNICOS DESDE 1492 & DESIGN, Reg. No. 2,177,837, and LA CASA DEL HABANO, Reg. Nos. 1,970,911 – and used by Opposers in the U.S. in advertising, as to be likely, when used on or in connection with Applicant's goods, 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

71. Opposers repeat and reallege each and every allegation set forth in paragraphs 1 through 64 of this Notice of Opposition as if fully set forth herein.

72. "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.

73. "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.

74. "Havana" has not through constant, general and reputable use in commerce come to form the name or designation itself of Applicant's identified goods.

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

76. 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.

77. 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

78. Opposers repeat and reallege each and every allegation set forth in paragraphs 1 through 64 of this Notice of Opposition as if fully set forth herein.

79. Applicant made material misrepresentations of fact, and material omissions of fact when it amended its identification of goods from "cigars" to "cigars made with Cuban seed tobacco," without disclosing to the PTO that "cigars made with Cuban seed tobacco" do not come from Havana or Cuba, do not "hav[e] their origin in" Cuba, have no connection or association with Havana or Cuba, or with Opposers, and that the "Cuban seed tobacco" claim is unverifiable.

80. Upon information and belief, Applicant made a material misrepresentation of fact when it claimed first use of the mark on April 1, 1995 and first use of the mark in commerce on May 1, 1995.

81. These material misrepresentations and omissions were made with the specific intent and purpose of having the PTO rely on them in order to obtain registration of the mark.

82. Upon information and belief, but for Applicant's aforesaid material misrepresentations and omissions, the PTO would have refused registration of the mark.

83. Because of Applicant's aforesaid material misrepresentations and 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. 76673201 be refused, and that this Opposition be sustained in favor of the Opposers.

Dated: September 22, 2008

Respectfully submitted,

By: /David B. Goldstein/

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and Empresa Cubana del Tabaco*

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Notice of Opposition to registration of the mark in Application Serial No. 76673201 is being filed electronically today, September 22, 2008, on the Electronic System for Trademark Trials and Appeals for the United States Patent and Trademark 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 by mailing, postage prepaid, said copy on September 22, 2008 via U.S. Certified Mail, return receipt requested, to the address of record and to the attorney and correspondent listed for Application No. 76673201.

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