ESTTA Tracking number: **ESTTA343568**

Filing date: **04/22/2010**

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	Thompson & Co. of Tampa, Inc.		
Entity	Corporation	Citizenship	Florida
Address	5401 Hangar Court Tampa, FL 33634 UNITED STATES		

Attorney information	Arthur W. Fisher, III A W Fisher, III PA 5555 W Waters Ave., Ste 609 Tampa, FL 33634 UNITED STATES mail@tampaiplaw.com Phone:(813) 885-2006

Applicant Information

Application No	77887110	Publication date	04/13/2010
Opposition Filing Date	04/22/2010	Opposition Period Ends	05/13/2010
Applicant	CAO International, Inc. 6172 Cockrill Bend Circle Nashville, TN 37209 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Cigars; Humidors; Pipe tobacco

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2334215	Application Date	10/22/1997
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	LA FAVORITA		

Design Mark	LA FAVORITA
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 1994/08/00 First Use In Commerce: 1994/08/00 tobacco products, namely cigars

Attachments	75377476#TMSN.gif (1 page)(bytes) FAV NotOpposition.pdf (9 pages)(64426 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	/Arthur W. Fisher, III 26453/
Name	Arthur W. Fisher, III
Date	04/22/2010

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

In the matter of Trademark Application Serial No. 77/887110
Filed: December 6, 2009
Mark: **FAVORITO**

THOMPSON & CO. OF TAMPA, INC.

Opposer,

v. **Opposition No.: _____**

CAO INTERNATIONAL, INC.

Applicant.

NOTICE OF OPPOSITION

Opposer Thompson & Co. of Tampa, Inc. (Opposer), a Florida corporation having its principal place of business at 5401 Hangar Court, Tampa, Florida 33634, believes that Opposer will be damaged by registration of the mark shown in application Serial No. 77/887110, and hereby opposes that application, alleging as grounds for Opposer's opposition that:

1. As is evidenced by the publication of **FAVORITO** in the Official Gazette on page 997 of the April 13, 2010 issue (copy of page 997 attached as Exhibit 1), Applicant CAO International, Inc. seeks to register the mark **FAVORITO** in International Class 034 for *cigars; humidors; pipe tobacco.* The **FAVORITO** application, filed December 12, 2009, is based upon Applicant's alleged intent to use the mark in commerce.

2. Opposer is the owner of incontestable **LA FAVORITA**, U.S. Trademark Registration No. 2,334,215, Registration Date March 28, 2000 in International Class 034 (copies of Notice of Acceptance of §8 and §15 and Notice of Acceptance of §8 and §9 Renewal attached hereto as Exhibit(s) 2A and 2B respectively).

3. Opposer's mark was registered on the Principal Register prior to the date of filing of Applicant's application. A copy of the Certificate of Registration for Opposer's mark is attached hereto as Exhibit 3. Opposer's registration is valid and subsisting and conclusive evidence of Opposer's exclusive right to use **LA FAVORITA** in commerce on and in connection with the goods specified in Opposer's registration.

4. The English translation of both the registered mark **LA FAVORITA** and Applicant's mark **FAVORITO** is "The Favorite" and "Favorite" respectively.

5. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, Opposer alleges that Applicant's mark so resembles Opposer's registered mark as to be likely to cause confusion, or to cause mistake, or to deceive and to dilute the value and source identification power of Opposer's mark thereby causing loss, damage and injury to Opposer and the purchasing public.

6. Significantly prior to Applicant's filing of its application for **FAVORITO**, Opposer began selling *cigars* in interstate commerce under **LA FAVORITA** in 1994. Such

use of **LA FAVORITA** by Opposer has been valid and continuous since the date of first use and has not been abandoned.

7. Opposer's **LA FAVORITA** is symbolic of extensive goodwill and customer recognition created by Opposer through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, Opposer alleges that Applicant's mark so resembles Opposer's mark as to be likely to cause confusion, or to cause mistake, or to deceive and to dilute the value and source identification power of Opposer's mark, thereby causing loss, damage and injury to Opposer and the purchasing public.

8. As a consequence of Opposer's extensive sales, advertising, and marketing activity in interstate commerce, the above registered mark has become well known to identify Opposer and Opposer's products, including *cigars*. As a result, Opposer's **LA FAVORITA** has become a valuable asset of Opposer and a principal symbol of Opposer's goodwill. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's mark as to be likely to cause confusion, or to cause mistake, or to deceive, and to dilute the value and source identification power of Opposer's mark, thereby causing loss, damage, and injury to Opposer and the purchasing public.

9. If Applicant is granted the registration herein opposed, Applicant would thereby obtain at least a *prima facie* exclusive right to the use of Applicant's mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that this Notice of Opposition be sustained, that Applicant's Trademark Application Serial No. 77/887110 be rejected, and that Applicant be denied registration of **FAVORITO** as a mark for the goods specified in that application.

Respectfully submitted,

ARTHUR W. FISHER, III
Registration No. 26,453
Suite 609 5555 W Waters Avenue
Tampa, Florida 33634
Phone: (813) 885-2006
Fax: (813) 888-6275
mail@tampaiplaw.com
Attorney for:
Thompson & Co. of Tampa, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of **Notice of Opposition** was forwarded via eMail and regular first class US Mail on April 22, 2010 to:

Douglas W. Schelling
WYATT, TARRANT & COMBS
1715 Aaron Brenner Drive, Ste 800
Memphis, TN 38120-1445
dschelling@wyattfirm.com

I FURTHER CERTIFY that on April 22, 2010, **Notice of Opposition** was forwarded to the USPTO Trademark Trial and Appeal Board via the USPTO Electronic Filing System.

/Arthur W. Fisher, III/

CLASS 34—(Continued).

SN 77-887,109. CAO INTERNATIONAL, INC., NASHVILLE, TN. FILED 12-6-2009.

NINFAS

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.
THE ENGLISH TRANSLATION OF "NINFAS" IN THE MARK IS "NYMPHS".
FOR CIGARS; HUMIDORS; PIPE TOBACCO (U.S. CLS. 2, 8, 9 AND 17).
WON TEAK OH, EXAMINING ATTORNEY

SN 77-887,110. CAO INTERNATIONAL, INC., NASHVILLE, TN. FILED 12-6-2009

FAVORITO

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.
THE ENGLISH TRANSLATION OF "FAVORITO" IN THE MARK IS "FAVORITE".
FOR CIGARS; HUMIDORS; PIPE TOBACCO (U.S. CLS. 2, 8, 9 AND 17).
WON TEAK OH, EXAMINING ATTORNEY

SN 77-910,066. MAX ROHR, INC., WILMINGTON, DE. FILED 1-12-2010.

INX

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.
FOR CIGARS (U.S. CLS. 2, 8, 9 AND 17).
ARETHA SOMERVILLE, EXAMINING ATTORNEY

CLASS 35—(Continued).

SERVICE MARKS

CLASS 35—ADVERTISING AND BUSINESS

SN 76-667,191. HEALTHYWAY CAFÉ, LLC, PONTE VEDRA BEACH, FL. FILED 10-10-2006.

HEALTHY café

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CAFE" AND "ORGANIC FAST FOOD", APART FROM THE MARK AS SHOWN.
FOR RESTAURANT FRANCHISING SERVICES IN THE FIELD OF RESTAURANTS THAT FEATURE ORGANICALLY GROWN PRODUCTS (U.S. CLS. 100, 101 AND 102).
KIMBERLY FRYE, EXAMINING ATTORNEY

SN 76-697,602. MOVIEBOOTY, INC., NEW YORK, NY FILED 5-27-2009.

MOVIEBOOTY

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.
FOR ADVERTISING, MARKETING AND PROMOTING THE GOODS AND SERVICES OF OTHERS USING KIOSKS IN MOVIE THEATERS FEATURING WEARING APPAREL AND OTHER MERCHANDISE TO PROMOTE MOVIES (U.S. CLS. 100, 101 AND 102).
FIRST USE 5-0-2008; IN COMMERCE 5-0-2008.
STEVEN JACKSON, EXAMINING ATTORNEY

Exhibit 1

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

REGISTRATION NO: 2334215 SERIAL NO: 75/377476 MAILING DATE: 03/01/2006
REGISTRATION DATE: 03/28/2000
MARK: LA FAVORITA
REGISTRATION OWNER: THOMPSON & CO. OF TAMPA, INC.

CORRESPONDENCE ADDRESS:

DAVIS W. PETTIS, JR.
DAVID W. PETTIS, JR., P.A.
1210 MILLENNIUM PARKWAY
SUITE 2010
BRANDON, FL 33511-0833

NOTICE OF ACCEPTANCE

15 U.S.C. Sec. 1058(a)(1)

THE COMBINED AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.**ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.**

****

NOTICE OF ACKNOWLEDGEMENT

15 U.S.C. Sec. 1065

THE AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 15 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1065.**ACCORDINGLY, THE SECTION 15 AFFIDAVIT IS ACKNOWLEDGED.**

****

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
034.

HARPER, BARBARA A
PARALEGAL SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION

ORIGINAL

Exhibit 2A

Side - 1

NOTICE OF ACCEPTANCE OF §8 DECLARATION AND §9 RENEWAL
MAILING DATE: Jan 25, 2010

The declaration and renewal application filed in connection with the registration identified below meets the requirements of Sections 8 and 9 of the Trademark Act, 15 U.S.C. §§1058 and 1059. The declaration is accepted and renewal is granted. The registration remains in force.For further information about this notice, visit our website at: http://www.uspto.gov. To review information regarding the referenced registration, go to http://tarr.uspto.gov.

REG NUMBER: **2334215**
MARK: **LA FAVORITA**
OWNER: **THOMPSON & CO. OF TAMPA, INC.**

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS
MAIL
U.S POSTAGE
PAID

Arthur W. Fisher, III
Arthur W. Fisher III PA
5553 W Waters Ave., Ste 316
Tampa, FL 33634

Exhibit 2B

Int. Cl.: 34

Prior U.S. Cls.: 2, 8, 9 and 17

Reg. No. 2,334,215

United States Patent and Trademark Office

Registered Mar. 28, 2000

TRADEMARK
PRINCIPAL REGISTER

LA FAVORITA

CIGARS OF HONDURAS, INC. (VIRGINIA CORPORATION)
2385 SOUTH DOVE STREET
ALEXANDRIA, VA 22314

FOR: TOBACCO PRODUCTS, NAMELY CIGARS, IN CLASS 34 (U.S. CLS. 2, 8, 9 AND 17).

FIRST USE 8-0-1994; IN COMMERCE 8-0-1994.

THE ENGLISH TRANSLATION FOR "LA FAVORITA" IS "THE FAVORITE".

SEC. 2(F).

SER. NO. 75-377,476, FILED 10-22-1997.

JENNIFER CHICOSKI, EXAMINING ATTORNEY

Exhibit 3