

ESTTA Tracking number: **ESTTA411334**

Filing date: **05/26/2011**

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	Drew Estate Holding Company LLC		
Entity	Corporation	Citizenship	Delaware
Address	12415 SW 136th Avenue Suite 7 Miami, FL 33186 UNITED STATES		

Attorney information	Roberta Jacobs-Meadway Eckert Seamans Cherin & Mellott, LLC Two Liberty Place 50 South 16th Street 22d floor philadelphia, PA 19102 UNITED STATES rjacobsmeadway@eckertseamans.com, dwilfong@eckertseamans.com Phone:215-851-8522
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### Applicant Information

Application No	85206113	Publication date	05/03/2011
Opposition Filing Date	05/26/2011	Opposition Period Ends	06/02/2011
Applicant	Fantasia Distribution, Inc. 1556 W. Embassy St. Anaheim, CA 92802 UNITED STATES		

### Goods/Services Affected by Opposition

Class 034. First Use: 2009/11/24 First Use In Commerce: 2009/11/24 All goods and services in the class are opposed, namely: Hookah tobacco; Molasses tobacco; Smoking tobacco; Tobacco
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2440808	Application Date	03/13/2000
Registration Date	04/03/2001	Foreign Priority Date	NONE
Word Mark	ACID		

Design Mark	<b>ACID</b>
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 1999/07/15 First Use In Commerce: 1999/07/15 Cigars

U.S. Registration No.	3687647	Application Date	08/15/2006
Registration Date	09/22/2009	Foreign Priority Date	NONE
Word Mark	ACID CIGARS		
Design Mark			
Description of Mark	The mark consists of a silhouette of a man smoking a cigar while leaning on a motorcycle underneath tree branches. Beneath this design is the term "ACID" and beneath that is the term "CIGARS".		
Goods/Services	Class 034. First use: First Use: 2000/08/00 First Use In Commerce: 2000/08/00 CIGARS, TOBACCO AND RELATED PRODUCTS, NAMELY, CIGAR BOXES, CIGAR AND CIGARETTE LIGHTERS, CIGAR AND CIGARETTE HOLDERS, ASHTRAYS, CIGAR BANDS, CIGAR CUTTERS, HUMIDORS, AND CIGAR TUBES		

Attachments	75942912#TMSN.gif ( 1 page )( bytes ) 78981191#TMSN.jpeg ( 1 page )( bytes ) NOTICE OF OPPOSITION SN 85206113.PDF ( 17 pages )(706509 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	/Roberta Jacobs-Meadway/
Name	Roberta Jacobs-Meadway
Date	05/26/2011



1. Fantasia Distribution, Inc. (“Fantasia” or “Applicant”) seeks to register SURFER ON ACID as a mark for hookah tobacco, molasses tobacco, smoking tobacco, and tobacco, as evidenced by the publication of the mark in the *Official Gazette* of May 3, 2011.

2. The application herein opposed was filed December 27, 2010 on the basis of “use in commerce.” Applicant claims no date earlier than November 24, 2009 for the purpose of priority in the United States.

3. Drew Estate is and has been engaged in the development, manufacture, and sale of tobacco products and has built a successful business in connection therewith.

4. Since at least as early as 1999, under exclusive license from Morfiya, Inc., Drew Estate has continuously used “ACID”, the subject of Registration No. 2,440,808, as a mark and as the dominant element of marks for tobacco products.

5. Since at least as early as 2000, under exclusive license from Morfiya, Inc., Drew Estate has continuously used “ACID CIGARS”, the subject of Registration No. 3,687,647, as a mark for tobacco products.

6. The nature and extent of Drew Estate’s use of the ACID marks can be seen at its website, [www.drewestate.com](http://www.drewestate.com) and a printout of the relevant information from the Patent and Trademark Office website about each of the above-cited registrations, showing title and status, is attached as Exhibit A.

7. Drew Estate has developed a line of shisha tobacco products in conjunction with Starbuzz Tobacco, Inc., pursuant to its exclusive license from Morfiya, Inc., which products have been sold under the mark ACID SHISHA BY STARBUZZ. The nature and extent of the ACID shisha tobacco line can be seen at the website, [www.acidshisha.com](http://www.acidshisha.com).

8. Drew Estate is authorized by its exclusive license to protect the ACID marks.

9. The “ACID” and “ACID CIGARS” marks are inherently distinctive.

10. The “ACID” and “ACID CIGARS” marks have achieved commercial strength by virtue of continuous and substantially exclusive use and extensive use on tobacco products.

11. Drew Estate has built extensive goodwill in connection with the ACID marks for tobacco products.

12. Prior to November 24, 2009, a representative from Fantasia met with Joseph Reichenbach, Drew Estate’s creative director. The ACID brand and the possibility of a line of ACID shisha products were discussed during this meeting. The Fantasia representative left Mr. Reichenbach with samples of Fantasia hookah products.

13. In the application herein opposed, Fantasia claims use of SURFER ON ACID since November 24, 2009 for *Hookah tobacco; Molasses tobacco; Smoking tobacco; Tobacco*. Fantasia has adopted and used the mark which is the subject of this opposition in bad faith.

14. Applicant’s mark is confusingly similar to the ACID and ACID CIGARS marks in sound and appearance and in commercial impression.

15. Applicant has merely appended to the ACID mark the words “SURFER ON.” The addition of “SURFER ON” does nothing to obviate the close similarity between the parties’ marks.

16. The goods of Fantasia are closely related to the goods of Drew Estate sold under the ACID marks, in that the goods of both are tobacco products.

17. Cigar products and shisha and other tobacco products are customarily sold and marketed through overlapping trade channels and purchased by the same and overlapping classes of purchasers.

18. Customers would expect shisha and other forms of tobacco, including cigars, to come from the same and related sources.

19. Shisha tobacco is within Drew Estate's expected zone of expansion, and Drew Estate has expanded its tobacco offerings to include shisha tobacco.

20. Applicant's use of SURFER ON ACID as applied to the goods set forth in the application herein opposed is likely to cause confusion, or to cause mistake, or to deceive as to its affiliation or association with the ACID products and as to the origin, sponsorship, and approval of Fantasia's product.

21. Applicant's goods are such that members of the relevant public and trade on seeing Applicant's SURFER ON ACID mark would reasonably assume in error that there is a relationship between the source of ACID products and Applicant.

22. If Applicant is permitted to register SURFER ON ACID for the goods set forth in the application herein opposed, confusion of the relevant trade and public is likely to result, which is likely to damage and injure Drew Estate as the exclusive licensee of the ACID marks for tobacco products.

23. Any defect, objection to or fault found with Applicant's goods offered under the mark SURFER ON ACID would necessarily reflect on and seriously injure the reputation that Drew Estate has established for the ACID tobacco products.

24. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Drew Estate.

WHEREFORE, Drew Estate prays that registration of the mark of Application Serial No. 85/206,113 for the goods identified therein be refused and that this Opposition be sustained.

Respectfully submitted,

Dated: 5/26/11

By: Roberta Jacobs-Meadway  
Roberta Jacobs-Meadway  
Desiree L. Wilfong  
ECKERT SEAMANS CHERIN & MELLOTT  
50 South 16<sup>th</sup> Street, 22<sup>nd</sup> Floor  
Philadelphia, PA 19102  
215-851-8400  
rjacobsmeadway@eckertseamans.com

ATTORNEYS FOR OPPOSER



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the attached Notice of Opposition was served on counsel for Applicant on the dated listed below via U.S.

Mail:

David Oskin  
Caliber IP, LLC  
150 N Michigan Ave Ste 2800  
Chicago, IL 60601-7586

Dated: 5-26-11

By: Mary J. Boesenhofer  
Mary J. Boesenhofer

# **EXHIBIT A**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-05-26 12:33:22 ET**

**Serial Number:** 75942912 [Assignment Information](#)      [Trademark Document Retrieval](#)

**Registration Number:** 2440808

**Mark (words only):** ACID

**Standard Character claim:** No

**Current Status:** The registration has been renewed.

**Date of Status:** 2011-04-15

**Filing Date:** 2000-03-13

**Transformed into a National Application:** No

**Registration Date:** 2001-04-03

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 105

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** (NOT AVAILABLE)

**Date In Location:** 2011-04-15

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. MORFIYA INCORPORATED

**Address:**

MORFIYA INCORPORATED  
140 PLYMOUTH ST  
BROOKLYN, NY 11201  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** New York

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**GOODS AND/OR SERVICES**

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**International Class:** 034

**Class Status:** Active

Cigars

**Basis:** 1(a)

**First Use Date:** 1999-07-15

**First Use in Commerce Date:** 1999-07-15

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#### ADDITIONAL INFORMATION

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(NOT AVAILABLE)

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#### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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#### PROSECUTION HISTORY

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-04-15 - First renewal 10 year

2011-04-15 - Section 8 (10-year) accepted/ Section 9 granted

2011-04-04 - TEAS Section 8 & 9 Received

2008-06-11 - Assignment Of Ownership Not Updated Automatically

2007-05-10 - Section 8 (6-year) accepted & Section 15 acknowledged

2007-05-04 - Assigned To Paralegal

2007-04-04 - Section 8 (6-year) and Section 15 Filed

2007-04-04 - TEAS Section 8 & 15 Received

2006-11-21 - Case File In TICRS

2006-04-03 - TEAS Change Of Correspondence Received

2006-04-03 - Applicant/Correspondence Changes (Non-Responsive) Entered

2006-04-03 - TEAS Change Of Owner Address Received

2006-02-14 - Attorney Revoked And/Or Appointed

2006-02-14 - TEAS Revoke/Appoint Attorney Received

2001-04-03 - Registered - Principal Register

2001-01-09 - Published for opposition

2000-12-08 - Notice of publication

2000-08-22 - Approved for Pub - Principal Register (Initial exam)

2000-08-21 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Elliot L. Schaeffer, Esq.

**Correspondent**

Elliot L. Schaeffer, Esq.

SCHAEFFER & ASSOCIATES LLP

450 SEVENTH AVE.

NEW YORK NY 10123

Phone Number: (212) 279-3467

Fax Number: (212) 695-3575

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Filing Dt: 03/13/2000

Reg #: [2440808](#)

Reg. Dt: 04/03/2001

Registrant: Jonathan Drew Inc.

Mark: ACID

**Assignment: 1**Reel/Frame: [2521/0766](#)

Received: 06/10/2002

Recorded: 06/10/2002

Pages: 28

Conveyance: SECURITY INTEREST

Assignor: [JONATHAN DREW, INC.](#)

Exec Dt: 03/01/2002

Entity Type: CORPORATION

Citizenship: NONE

Entity Type: CORPORATION

Citizenship: NEW YORK

Assignee: [GERBER TRADE FINANCE, INC.](#)110 EAST 55TH STREET, 7TH FLOOR  
NEW YORK, NEW YORK 10022

Correspondent: GERBER TRADE FINANCE INC.

VADIM TOYBERMAN  
110 EAST 55TH STREET  
7TH FLOOR  
NEW YORK, NY 10022**Assignment: 2**Reel/Frame: [2647/0149](#)

Received: 01/13/2003

Recorded: 01/06/2003

Pages: 3

Conveyance: RELEASE OF SECURITY AGREEMENT

Assignor: [GERBER TRADE FINANCE, INC.](#)

Exec Dt: 12/20/2002

Entity Type: CORPORATION

Citizenship: NEW YORK

Entity Type: CORPORATION

Citizenship: NEW YORK

Assignee: [JONATHAN DREW INC.](#)68 JAY STREET  
SUITE 512A  
BROOKLYN, NEW YORK 11201

Correspondent: LATHAM &amp; WATKINS

NICHOLAS G. MEHLER  
885 THIRD AVENUE  
NEW YORK, NY 10022**Assignment: 3**Reel/Frame: [2869/0460](#)

Received: 12/04/2003

Recorded: 05/29/2003

Pages: 6

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: [JONATHAN DREW, INC.](#)

Exec Dt: 04/07/2003

Entity Type: CORPORATION

Citizenship: NONE

Entity Type: CORPORATION

Citizenship: NEW YORK

Assignee: [MORFIYA INCORPORATED](#)61 PEARLY STREET  
BROOKLYN, NEW YORK 11201

Correspondent: SCHAEFFER &amp; KRONGOLD LLP

JEFFREY B. KRONGOLD, ESQ.  
450 SEVENTH AVE.  
STE. 1400  
NEW YORK, NY 10123

**Assignment: 4****Reel/Frame:** [3753/0653](#) **Received:** 04/04/2008**Recorded:** 04/01/2008**Pages:** 41**Conveyance:** SECURITY INTEREST**Assignor:** [JONATHAN DREW, INC. DBA DREW ESTATE](#)**Exec Dt:** 09/24/2004**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** [GERBER FINANCE](#)110 EAST 55TH STREET  
7TH FLOOR  
NEW YORK, NEW YORK 10022**Correspondent:** JENNIFER MCGUINNESS7TH FLOOR  
110 EAST 55TH ST.  
NEW YORK, NY 10022**Assignment: 5****Reel/Frame:** [3792/0657](#) **Received:** 06/09/2008**Recorded:** 06/09/2008**Pages:** 41**Conveyance:** CORRECTIVE SECURITY TO REMOVE THE SECURITY AGREEMENT REG. 2440808 REEL/FRAE 0037531/0653**Assignor:** [GERBER FINANCE, INC](#)**Exec Dt:** 06/09/2008**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** [MORFIYA INCORPORATED](#)140 PLYMOUTH ST.  
BROOKLYN, NEW YORK 11201**Correspondent:** JENNIFER MCGUINNESS110 EAST 55TH ST.  
7TH FLOOR  
NEW YORK, NY 10022**Assignment: 6****Reel/Frame:** [4241/0782](#) **Received:** 07/14/2010**Recorded:** 07/14/2010**Pages:** 17**Conveyance:** SECURITY INTEREST**Assignor:** [DREW ESTATE HOLDING COMPANY, LLC](#)**Exec Dt:** 04/23/2010**Entity Type:** LIMITED LIABILITY  
COMPANY**Citizenship:** DELAWARE**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** [GERBER FINANCE INC.](#)488 MADISON AVENUE  
SUITE 800  
NEW YORK, NEW YORK 10022**Correspondent:** CORPORATION SERVICE COMPANY1090 VERMONT AVENUE NW, SUITE 430  
WASHINGTON, DC 20005

Search Results as of: 05/26/2011 12:33 PM

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Web interface last modified: Apr 30, 2009 v.2.1[| .HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

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**Serial Number:** 78981191 Assignment Information      Trademark Document Retrieval

**Registration Number:** 3687647

**Mark**



**(words only):** ACID CIGARS

**Standard Character claim:** No

**Current Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.

**Date of Status:** 2009-09-22

**Filing Date:** 2006-08-15

**Transformed into a National Application:** No

**Registration Date:** 2009-09-22

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 101

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2009-08-17

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. MORFIYA INCORPORATED



**Address:**

MORFIYA INCORPORATED  
140 PLYMOUTH STREET  
BROOKLYN, NY 11201  
United States

**Legal Entity Type:** Corporation**State or Country of Incorporation:** New York

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**GOODS AND/OR SERVICES**

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**International Class:** 034**Class Status:** Active

CIGARS, TOBACCO AND RELATED PRODUCTS, NAMELY, CIGAR BOXES, CIGAR AND CIGARETTE LIGHTERS, CIGAR AND CIGARETTE HOLDERS, ASHTRAYS, CIGAR BANDS, CIGAR CUTTERS, HUMIDORS, AND CIGAR TUBES

**Basis:** 1(a)**First Use Date:** 2000-08-00**First Use in Commerce Date:** 2000-08-00

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**ADDITIONAL INFORMATION**

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**Color(s) Claimed:** Color is not claimed as a feature of the mark.**Disclaimer:** "CIGARS"**Description of Mark:** The mark consists of a silhouette of a man smoking a cigar while leaning on a motorcycle underneath tree branches. Beneath this design is the term "ACID" and beneath that is the term "CIGARS".**Design Search Code(s):****02.01.02** - Men depicted as shadows or silhouettes of men; Silhouettes of men**05.01.05** - Leafless trees and bushes**10.01.02** - Cigarettes; Holders, cigarette and cigar**18.05.02** - Mopeds; Motor cycles and motor scooters**26.11.01** - Rectangles as carriers or rectangles as single or multiple line borders

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-10-22 - Attorney Revoked And/Or Appointed

2009-10-22 - TEAS Revoke/Appoint Attorney Received  
2009-10-07 - Automatic Update Of Assignment Of Ownership  
2009-09-30 - Automatic Update Of Assignment Of Ownership  
2009-09-22 - Registered - Principal Register  
2009-08-17 - Law Office Registration Review Completed  
2009-08-13 - Allowed for Registration - Principal Register (SOU accepted)  
2009-08-12 - Notice Of Design Search Code Mailed  
2009-08-11 - Statement Of Use Processing Complete  
2009-07-22 - Use Amendment Filed  
2009-08-11 - Divisional processing completed  
2009-07-22 - Divisional request received  
2009-08-06 - Response To ITU Office Action Entered  
2009-08-06 - TEAS Post Publication Amendment Received  
2009-07-27 - ITU Office Action Issued For Divisional Request  
2009-07-22 - TEAS Statement of Use Received  
2009-07-22 - TEAS Request To Divide Received  
2009-02-21 - Extension 2 granted  
2009-02-19 - Extension 2 filed  
2009-02-19 - TEAS Extension Received  
2008-09-09 - Extension 1 granted  
2008-08-19 - Extension 1 filed  
2008-09-09 - Case Assigned To Intent To Use Paralegal  
2008-08-21 - Extension Received With TEAS Petition  
2008-08-21 - Petition To Revive-Granted  
2008-08-21 - TEAS Petition To Revive Received  
2008-02-19 - NOA Mailed - SOU Required From Applicant

2007-11-27 - Published for opposition  
2007-11-07 - Notice of publication  
2007-10-23 - Law Office Publication Review Completed  
2007-08-30 - Approved For Pub - Principal Register  
2007-08-16 - Examiner's amendment mailed  
2007-08-15 - Examiner's Amendment Entered  
2007-08-15 - Examiners Amendment -Written  
2007-07-31 - Amendment From Applicant Entered  
2007-07-12 - Communication received from applicant  
2007-07-31 - Assigned To LIE  
2007-07-12 - PAPER RECEIVED  
2007-01-10 - Examiner's Amendment/Priority Action Mailed  
2007-01-10 - Examiners Amendment And/Or Priority Action - Completed  
2007-01-09 - Assigned To Examiner  
2006-08-19 - Notice Of Design Search Code Mailed  
2006-08-18 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Elliot L. Schaeffer

**Correspondent**

Elliot L. Schaeffer

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450 Seventh Avenue

New York NY 10123

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Fax Number: (212)695-3575

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## Trademark Assignment Abstract of Title

**Total Assignments: 1****Serial #:** [78981191](#)**Filing Dt:** 08/15/2006**Reg #:** [3687647](#)**Reg. Dt:** 09/22/2009**Registrant:** Jonathan Drew, Inc.**Mark:** ACID CIGARS**Assignment: 1****Reel/Frame:** [4068/0329](#)**Received:** 09/25/2009**Recorded:** 09/25/2009**Pages:** 3**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** [JONATHAN DREW, INC., D/B/A DREW ESTATE](#)**Exec Dt:** 09/24/2009**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** [MORFIYA INCORPORATED](#)140 PLYMOUTH STREET  
BROOKLYN, NEW YORK 11201**Correspondent:** PHILIP J. FORET1500 MARKET STREET  
SUITE 3500E  
PHILADELPHIA, PA 19102

Search Results as of: 05/26/2011 12:33 PM

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Web interface last modified: Apr 30, 2009 v.2.1[HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)