

ESTTA Tracking number: **ESTTA856823**

Filing date: **11/07/2017**

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	La Aurora, S.A.
Granted to Date of previous extension	11/08/2017
Address	Parque Industrial Tamboril , Carretera Santiago Tamboril KM 5 Santiago, 0 DOMINICAN REPUBLIC

Attorney information	Frank Herrera H New Media Law 809 North Dixie Highway Suite 202 West Palm Beach, FL 33401 UNITED STATES Email: FHerrera@hnewmedia.com, g.ruiz-arthur@hnewmedia.com, c.cassi@hnewmedia.com Phone: 561-841-6380
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Applicant Information

Application No	87364095	Publication date	07/11/2017
Opposition Filing Date	11/07/2017	Opposition Period Ends	11/08/2017
Applicant	Wenjie Hu Room 402, No. 104, Lane 1288, PuShen Rd, PuJiang Town, Min Hang District Shanghai CHINA		

Goods/Services Affected by Opposition

Class 034. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cartomizers, namely, combination electronic cigarette refill cartridges sold empty and atomizers, sold as a component of electronic cigarettes; Cigarette holders; Cigarettes; Electronic cigarette lighters; Liquid nicotine solutions for use in electronic cigarettes; Tobacco pipes; Electric cigarettes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application	86644482	Application Date	05/28/2015
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BIGFOOT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 0 First Use In Commerce: 0 Cigars		

Attachments	86644482#TMSN.png(bytes) LA AURORA Notice of Opposition BIGFOOT 86644482 v BIGFOG 87364095 1107 2017gra.pdf(138160 bytes) Exhibit A BIGFOOT v BIGFOG - Opposition.pdf(106429 bytes) BIGFOOT Serial No. 86644482 in the US use since 07-08 2017.pdf(256939 bytes) LA_AURORA_-BIGFOOT_cigars_evidence_-_U.S._Serial_No._86644482 (1).PDF(38209 bytes)
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Signature	/Frank Herrera/
Name	Frank Herrera
Date	11/07/2017

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

LA AURORA, S.A.

Opposer,

Opposition No.: TBA

v.

Wenjie HU,

Applicant.

_____ /

NOTICE OF OPPOSITION

COMES NOW Opposer, LA AURORA, S.A. ("Opposer" or "LA AURORA") and files this Notice of Opposition against Application Serial No. 87/364095 filed by Wenjie Hu ("Applicant" or "Wenjie") for the following factual and legal reasons:

1. Opposer has priority filing date as of May 28, 2015 for the mark BIGFOOT under Serial No. 86644482 long before filing date of Applicant's BIGFOG date of Mar. 08, 2017 for subject intent-to-use application. See Exhibit A.

2. Since that time, Opposer has traveled the United States promoting the goods bearing the mark and has now started to use the mark since at least as early as July 13, 2017. See Exhibit B.

3. These travels have included annual attendance to the industry trade show known as International Premium Cigar & Pipe Retailers Convention ("IPCPR") promoting Opposer's BIGFOOT mark. Id.

4. These travels have also included attendance at special promotional events at select cigar retailers promoting LA AURORA's BIGFOOT mark.

5. Long before the application date of the subject mark, Opposer has actively promoted its goods via a website

www.laaurora.com.do and social media such as Facebook, Twitter, Instagram, and the like in anticipation of their commercial sales in the United States. Id.

6. Opposer has spent a considerable amount of resources on brand development and promotion of the mark BIGFOOT and accompanying design and trade dress.

7. Opposer is widely known among cigar consumers and retailers as the only authorized owner and manufacturer of BIGFOOT and accompanying design and trade dress as used in connection with cigars.

8. Since at least as early as July 2017, Opposer has developed an exceptional reputation among cigar consumers and retailers for providing quality premium cigars under the mark BIGFOOT and accompanying design and trade dress.

9. Opposer will be harmed if the Application matures to registration since there is a strong likelihood of confusion between Applicant's applied-for-mark and Opposer's mark BIGFOOT as used in connection with cigars since the main part of its mark is the prefix including the first five letters which are totally included in Applicant's proposed mark.

10. The application must be refused registration based upon a likelihood of confusion with Opposer's prior and long-standing rights in the mark BIGFOOT and accompanying design and trade dress as used in connection cigars and cigar related goods.

11. The marks are visually confusingly similar.

12. The marks are phonetically similar.

13. The commercial impression is confusingly similar.

14. The channels of trade are identical.

15. The goods offered under the marks are related.

16. The conditions under which and buyers to whom the goods are

sold are identical.

17. There are no other similar marks in commerce for use in connection with cigars and cigar related products which may dilute Opposer's mark if allowed.

18. Applicant does not have Opposer's consent to use or apply for registration of the mark.

19. Applicant knew or should have known at the time of application that it did not have any rights to the applied-for mark, likely a trademark search result would have shown Opposer's mark as previously filed. As such, the mark was applied for in bad faith.

20. Opposer has contacted Applicant directly regarding the fraudulent trademark application, but Applicant has failed to withdraw the application. This evidences further bad faith on the part of Applicant.

21. The mark should be refused registration on the basis of likelihood of confusion and false association which may exist between Opposer and Applicant.

WHEREFORE, Opposer respectfully requests that the Opposition be sustained and Application Serial No. 87/364095 be denied registration.

Dated this 7th day of November 2017

s/FRANK HERRERA
Frank Herrera
Florida Bar No. 494801
H NEW MEDIA LAW
809 North Dixie Highway,
Suite 202
West Palm Beach, Florida 33401
561-841-6380
fherrera@hnewmedia.com

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of this Notice of Opposition was served on Applicant via US First Class Mail and via E-mail this 7th day of November 2017 to the address below:

NIHAT DENIZ BAYRAMOGLU
BAYRAMOGLU LAW OFFICES LLC
2520 SAINT ROSE PARKWAY SUITE 309
HENDERSON, NEVADA UNITED STATES 89074
Email: in@bayramoglu-legal.com,deniz@bayramoglu-legal.com

s/FRANK HERRERA

TSDR now includes a Post Registration Maintenance Tab. When viewing a Registered mark, users will now find a new 3rd tab providing Post Registration information next to the "Status" and "Document" tabs, below the search text box. The tab will not appear if the mark is not registered.

STATUS **DOCUMENTS**

[Back to Search](#)

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Mark: BIGFOOT

BIGFOOT

US Serial Number: 86644482

Application Filing Date: May 28, 2015

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status

Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (minimum filing requirements) and that this application has been accepted by the examiner.

Status: A third request for extension of time to file a Statement of Use has been granted.

Status Date: Sep. 25, 2017

Publication Date: Aug. 25, 2015

Notice of Allowance Date: Mar. 29, 2016

Mark Information

Mark Literal Elements: BIGFOOT

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Cigars

International Class(es): 034 - Primary Class

U.S Class(es): 002, 008, 009, 017

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Current Owner(s) Information

Owner Name: La Aurora, S.A.

Owner Address: Parque Industrial Tamboril
Carretera Santiago Tamboril KM 5
Santiago DOMINICAN REPUBLIC

Legal Entity Type: CORPORATION

State or Country Where Organized: DOMINICAN REPUBLIC

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Frank Herrera

Attorney Primary Email Address: fherrera@hnewmedia.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: FRANK HERRERA

H NEW MEDIA LAW
809 North Dixie Highway
SUITE 202
WEST PALM BEACH, FLORIDA UNITED STATES 33401

Phone: 561-841-6380

Correspondent e-mail: fherrera@hnewmedia.com g.ruiz-arthur@hnewmedia.com
c.cassi@hnewmedia.com

Correspondent e-mail Authorized: Yes


Domestic Representative - Not Found

Prosecution History

TM Staff and Location Information

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

Shipper's Name and Address LA AURORA, S.A. CARR. SANTIAGO-TAMBORIL KM 5, TAMBORIL SANTIAGO REP. DOM.		Shipper's Account Number LAAURO		Not Negotiable Air Waybill		 2800 S. ANDREWS AVENUE FT. LAUDERDALE, FL 33316 USA	
Consignee's Name and Address PH: 3055999332 FAMILY TOBACCO TRADERS LL 5100 N.W. 72ND AVE. MIAMI, FL 33166		Consignee's Account Number FAMTOB		Issued by			
Issuing Carrier's Agent Name and City SANTANA SERVICES FREIGHT LAS AMERICAS INTL AIRPORT 809-549-0517		Accounting Information RES #: 29261411 OPER: JGUZMAN FLT #: 870 07/16/17		Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity.			
Agent's IATA Code SANSTI		Account No. SANSTI		It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER. AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.			
Airport of Departure (Addr. of First Carrier) and Requested Routing SANTIAGO DOMINICAN				Reference Number		Optional Shipping Information	
To	By First Carrier	Routing and Destination	to	by	to	by	
MIA	M6						
Airport of Destination MIAMI, FL U.S.A.		Flight / Date 850 07/14		Currency USD CP		Declared Value for Carriage NVD	
				WT/VAL X		Declared Value for Customs NCV	
				Other X			
				Amount of Insurance		INSURANCE - If carrier offers insurance, and such insurance is requested in accordance with conditions on reverse hereof indicate amount to be insured in figures in box marked Amount of Insurance.	
Handling Information NOTIFY TO: RALPH DE LA ROSA IMPERIAL FREIGHT // PHONE: 305-592-6910							
These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Ultimate destination						Diversion contrary to U.S. law prohibited	
						SCI	
No. of Pieces RCP	Gross Weight	kg lb	Rate Class Commodity Item No.	Chargeable Weight	Rate Charge	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)
19	224K 494L		GSA9	224	.90	201.60	HAND MADE CIGARS
19	224					201.60	
Prepaid		Weight Charge		Collect		Other Charges	
				201.60		DRXR 11.20; IMP 30.00; PBA 20.00;	
		Valuation Charge					
		Tax		11.20			
		Total Other Charges Due Agent		130.00		Shipper certifies that the particulars on the face hereof are correct and that insofar as any part of the consignment contains dangerous goods such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations.	
		Total Other Charges Due Carrier		61.20			
		Total Prepaid		Total Collect			
				404.00		Signature of Shipper or his Agent	
Currency Conversion Rates		CC Charges in Dest. Currency		07/14/17		Executed on (date) at (place) Signature of Issuing Carrier or its Agent	
For Carriers Use only at Destination		Charges at Destination		Total Collect Charges			



LA AURORA
FIRST DOMINICAN CIGAR FACTORY
ESTABLISHED 1903

LA AURORA, S. A.
Carret Santiago - Tamboril, Km5 (809)575-1903
R.N.C: 102330794

INVOICE

Licencia de Exportación
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Vendido A / Sales To: FAMILY TOBACCO TRADERS, LLC (400082) 5100 NORTHWEST 72ND AVENUE MIAMI FL 00000 Tel: 305-992-8628 ... Fax: 305-461-0261	Número / Number 4001755719		Fecha / Date 13/07/2017
	Condiciones / Conditions FCA Credit 50days		
Puerto de Carga / Port of Loading Aeropuerto Int. Las Americas	Naviera / Shipping Line La Aurora C por A Fax:N/D		
Puerto de Descarga / Port of Discharge Aeropuerto Int. Miami	Agente / Broker Tel: Fax:		
Destino A / Destination To FAMILY TOBACCO TRADERS, LLC	Ciudad / City MIAMI	P/O	

Código Code	Descripción Description	Cantidad Quantity	Unidades Units	Precio Price	Total USD
202136000	BIG FOOT 8 X 5	320	12,800	9.2	2,944.00 USD
202030200	LA AURORA ESCOGIDO ROBUSTO / 20	84	1,680	24.8	2,083.20 USD
202060300	PRINCIPE CHICO BLOND DISPLAY / 6 x 5	180	5,400	4.5	810.00 USD
202055200	PRINCIPE CHICO BROWN DISPLAY / 6 x 5	180	5,400	4.5	810.00 USD
202074000	PRINCIPE CHICO NATURAL DISPLAY / 6 x 5	180	5,400	4.5	810.00 USD
202055100	PRINCIPE CHICO RED DISPLAY / 6 x 5	180	5,400	4.5	810.00 USD

Total	1,124	36,080.00	8,267.20
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Product Made in Dominican Republic

Note:

1. "Upon reception of merchandise, please verify that all packages are completely sealed. If any of them is found opened. You must claim to the shipping company and contact us, as soon as possible."
2. "The solid wood packaging materials used in this shipment are totally free from bark and apparently free from live plant pests."

Use

B/L VAN BELLOW DECK IN - HOLD



CERTIFICADO FITOSANITARIO • PHYTOSANITARY CERTIFICATE

No. **482571**

A: Organización (es) Nacional (es) de Protección Fitosanitaria de
To: Plant Protection Organization of: **USA**

I.- DESCRIPCION DEL ENVIO. DESCRIPTION OF CONSIGNMENT

Nombre y dirección del exportador. Name and Address of exporter LA AURORA, S.A. CARRET. SANTIAGO-TAMPORIL, KMS SANTIAGO, REP. DOMINICANA		
Nombre y dirección declarados del destinatario. Declared Name and Address of consignee FAMILY TOBACCO TRADERS, LLC (406032) 5100 NORTHWEST 72ND AVENUE MIAMI FL 33060 USA		
Número y descripción de los bultos. Declared and Description of packages 19 BULTOS		Marcas distintivas. Marks distintives AWB-810-85997425
Lugar de origen. Place of origin REPUBLICA DOMINICANA	Medios de Transporte. Means of conveyance AEREO	Punto de Entrada declarado. Point Entry USA
Cantidad y nombre del producto. Nombre Botánico Name of Products and Quantity. Botanic Name 19 CAJAS - 231 Kgs - CIGARROS - NICOTIANA Tabacum - FIN DEL TEXTO -		

* Por la presente se certifica que las plantas, productos vegetales u otros artículos reglamentados descritos aquí, se han inspeccionado y/o sometidos a ensayo de acuerdo con los procedimientos oficiales adecuados y se consideran que están libres de las plagas cuarentenarias especificadas por la parte contratante importadora, y que cumplen los requisitos fitosanitarios vigentes de la parte contratante importadora. Incluidos los relativos a las plagas no cuarentenarias reglamentadas. *Se consideran que están sustancialmente libres de otras plagas.

* This is to Certify that plants or plant products described above have been inspected according to appropriate and are considered to be free from quarantine pests, and practically free from other injurious pest and that they are considered to conform with the current Phytosanitary actions of the importing country.

The products are considered to be free other pests.

II.-DECLARACION ADICIONAL. ADDITIONAL DECLARATION

- NINGUNA -

III.- TRATAMIENTO DE DESINFESTACION O DESINFECCION. DESINFESTATION OR DISFECTION TREATMENT

Fecha - Date	Tratamiento - Treatment	
Producto (ingrediente activo) Chemical	Duración y Temperatura Duration and Temperature	Concentración/Dosis Concentration /Dosage
INFORMACION ADICIONAL ADDITIONAL INFORMATION		

	Lugar de Expedición Place of Issue AEROPUERTO INTERNACIONAL DEL CIBAO
	Nombre del Funcionario Autorizado Name of Authorized Officer RADION YGNACIO BATISTA
	Fecha - Date JULIO-14-2017 Firma. Signature

Handmade

BIGFOOT



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**SWEET AROMATIC CIGARETTES
ALL NATURAL TOBACCO**

WARNING:
Tobacco Smoking May Cause Heart Disease