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

Proceeding	92025859
Party	Plaintiff Empresa Cubana Del Tabaco d.b.a Cubatabaco
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Date	06/07/2021
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner,	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC. Respondent.	:	

PARTY DESIGNATIONS*: Petitioner's Designations During Its Trial Period—Yellow or Pink
Respondent's Designations During Its Trial Period—Green
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

Designated Federal Action Discovery Deposition
Transcript of Norman Sharp, dated April 26, 2001

* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONFIDENTIAL
"For Attorney Eyes Only"

- - - - - - - - - - - - - - - - X

EMPRESA CUBANA DEL TABACA :

d.b.a. CUBATABACO, :

Plaintiff, :

vs. : 97 Civ. 8399 (RWS)

CULBRO CORPORATION, and :

GENERAL CIGAR CO., INC., :

Defendants. :

- - - - - - - - - - - - - - - - X Pages 1-151

ORIGINAL

CONFIDENTIAL TRANSCRIPT - FOR ATTORNEYS' EYES ONLY

Deposition of NORMAN SHARP

District of Columbia

Thursday, April 26, 2001

Reported by:
Marilyn Feldman, RPR
Job No. 120631

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DEPOSITION SERVICES
216 East 45th Street, 8th Floor
New York, NY 10017-3304
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Fax 212.557.5972

DIS. C. 37

1

2

3 April 26, 2001

4 10:35 a.m.

5

6 Confidential Transcript - For Attorneys' Eyes Only

7 Deposition of NORMAN SHARP held at the offices of:

8

9

10 McKenna & Cuneo

11 1900 K Street, NW

12 Washington, D.C. 20006-1108

13

14

15

16

17 Pursuant to notice, before Marilyn Feldman,

18 Registered Professional Reporter, a Notary Public in

19 and for the District of Columbia.

20

21

22

1 APPEARANCES:

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21 By: Peter Buck Feller, Esq.

22 William T. O'Brien, Esq.

1 C O N T E N T S

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22 * Exhibits attached to court copy of deposition.

1 Thereupon,

2 NORMAN SHARP

3 after having been duly sworn or affirmed by the

4 notary, was examined and testified as follows:

5 EXAMINATION BY COUNSEL FOR PLAINTIFF

6 BY MR. KRINSKY:

7 Q. Would you please state your full name for

8 the record?

9 MR. FELLER: Could I interrupt?

10 MR. KRINSKY: Sure.

11 MR. FELLER: I have something to get out

12 of the way first. I want both of you to know that

13 yesterday we discovered there are two pieces of

14 paper that should have been sent to you in response

15 to the subpoenas that related to the subject matter

16 and I want to present them to you now.

17 MR. KRINSKY: Thank you. I appreciate

18 that.

19 MR. FELLER: It was a matter of

20 inadvertence.

21 MR. KRINSKY: Thank you.

22 BY MR. KRINSKY:

1 Q. Could you please state your name for the
2 record?
3 A. Norman F. Sharp.
4 Q. Mr. Sharp, my name is Michael Krinsky.
5 I'm with the firm of Rabinowitz, Boudin, Standard,
6 Krinsky & Lieberman, PC. We represent the plaintiff
7 in this action commonly known as Cuba Tobacco. To
8 my left is Mr. Downing with the law firm of Morgan &
9 Finnegan that represents the defendants in the
10 action. I'll be asking you some questions. If at
11 any time you would like to take a break, let me know
12 and we'll accommodate you of course.
13 A. Okay.
14 (CAA Exhibit no. 1 was marked
15 for identification.)
16 BY MR. KRINSKY:
17 Q. We have marked as CAA Exhibit no. 1 the
18 notice of deposition subpoena and subpoena attached.
19 I would like for you to take a look at that, and I
20 have given it to counsel. You are appearing here
21 today pursuant to this subpoena; is that correct?
22 A. Yes.

1 Q. This is a Rule 30(b)(6) subpoena to the
2 Cigar Association of America. I would like to
3 address this question to your counsel, and that is
4 whether Mr. Sharp has been designated for all of the
5 items specified in the Rule 30(b)(6) subpoena.
6 MR. FELLER: As custodian of the records
7 you mean?
8 MR. KRINSKY: To testify as to his
9 knowledge as custodian of the records.
10 MR. FELLER: Yes.
11 BY MR. KRINSKY:
12 Q. By whom are you employed?
13 A. The Cigar Association of America, Inc.
14 Q. What is your position?
15 A. I'm the president.
16 Q. How long have you held that position?
17 A. It will be 20 years in August.
18 Q. Prior to your assuming that position, did
19 you have any relationship with the Cigar Association
20 of America?
21 A. I did not.
22 Q. Could you give us a brief employment

1 history prior to your assuming that position?
2 A. When I left the Army in 1969, I came to
3 Washington and I was employed by the Electronic
4 Industries Association. I was with them for a
5 number of years, and then I went with a firm called
6 the International Management and Development
7 Institute. I was with them for just a couple of
8 years. I went back to the Electronic Industries
9 Association. I left them in 1977 and went to work
10 for another trade organization called the Outdoor
11 Power Equipment Institute. Then in August of 1981 I
12 joined the Cigar Association of America.
13 Q. You joined the organization in the
14 position as president?
15 A. As president, yes.
16 Q. Prior to joining this association, did
17 you have any professional or occupational experience
18 in the cigar industry?
19 A. I did not.
20 Q. What is the Cigar Association of America,
21 Inc.?
22 A. It's the national trade organization of

1 cigar manufacturers and importers and major
2 suppliers to the industry.
3 Q. Is it a membership organization?
4 A. It is membership by company, as opposed
5 to membership by individual.
6 Q. Currently, how many companies are
7 members?
8 A. I don't have a specific number. It's
9 approximately 66 member companies.
10 Q. How many of these are manufacturers
11 approximately?
12 A. Are you talking about domestic
13 manufacturers or foreign manufacturers?
14 Q. Domestic manufacturers.
15 A. Domestic manufacturers, I believe the
16 number is nine.
17 Q. Can you identify them, please?
18 A. Identify them?
19 Q. Yes.
20 A. Altities USA, General Cigar Company,
21 Swedish Match North America, Swisher International,
22 R.G. Dunn, John Middleton, Inc., M. Marsh & Son,

1 Tobacco Exporters International.

2 MR. FELLER: How many is that?

3 THE WITNESS: That's eight. With

4 mergers, it could be there's eight. I don't recall

5 the ninth one at this time.

6 BY MR. KRINSKY:

7 Q. Are there other trade associations in the

8 cigar industry for manufacturers and importers?

9 A. Not to my knowledge.

10 Q. How long has the Cigar Association of

11 America been in existence?

12 A. As the Cigar Association of America or

13 its predecessor?

14 Q. Starting with Cigar Association of

15 America.

16 A. As Cigar Association of America, since

17 1974.

18 Q. Did it have any predecessor

19 organizations?

20 A. The predecessor organization was the

21 Cigar Manufacturers Association.

22 Q. That became the Cigar Association of

1 America in 1974?

2 A. That's right.

3 Q. Were there any other institutions,

4 organizations, merged into the new company?

5 MR. FELLER: Merged into the Cigar

6 Association?

7 MR. KRINSKY: Yes.

8 THE WITNESS: Merged into the Cigar

9 Association was just the Cigar Manufacturers

10 Association.

11 BY MR. KRINSKY:

12 Q. At its formation --

13 A. Excuse me. The name of the Cigar

14 Manufacturers Association was changed in 1974 to

15 Cigar Association of America.

16 Q. How long had the Cigar Manufacturers

17 Association existed, to your knowledge?

18 A. Since January 1937.

19 Q. In 1974, approximately how many domestic

20 manufacturers were members of the Cigar Association?

21 A. I have no idea, I do not know.

22 Q. In 1974, to your knowledge, was the Cigar

1 Association of America the only industry association
2 of cigar manufacturers?
3 A. To the best of my knowledge, it was.
4 Q. In 1974, was General Cigar a member of
5 the association?
6 A. Yes, it was.
7 Q. Was Consolidated Cigars a member in 1974?
8 A. Yes, it was.
9 Q. Were most of the domestic manufacturers
10 members in 1974?
11 A. I don't know.
12 Q. If I can, I'll refer to the Cigar
13 Association of America as CAA.
14 A. Okay.
15 Q. Where are CAA's office currently?
16 A. CAA's offices are currently here in
17 Washington, D.C.
18 Q. Did it ever have offices elsewhere?
19 A. Yes. From 1974 to sometime in 1976, it
20 was based in New York City.
21 Q. What does the CAA do?
22 A. The Cigar Association of America does

1 government relations services for its member
2 companies at the federal and state level. It gets
3 involved in international trade issues as they
4 emerge. We do statistical reporting for our member
5 companies in addition to conveying government data
6 to them. We do public relations for the industry
7 and act as an information clearinghouse for the
8 industry.
9 Q. When you say government relations
10 services for its members, what do you mean by that?
11 A. Currently the types of things we get
12 involved in are issues pertaining to federal excise
13 tax increases -- at the federal level, federal
14 excise tax increases, any kind of proposals
15 affecting regulation of cigars or tobacco products
16 in general. At the state level, it would be excise
17 taxes at the state level, bans on self-service
18 displays, ingredient reporting, this type of thing,
19 labeling -- labeling is another issue at the federal
20 and state level.
21 Q. It's CAA's job to present the industry's
22 view, its members' view, to the government agencies

1 on these issues?

2 A. That's right.

3 Q. Since you became president, were these

4 the same functions that CAA carried out?

5 A. Yes. The emphasis may have varied at

6 times, but yes, the functions essentially remained

7 the same.

8 Q. To your knowledge, were these essentially

9 the same functions since 1974?

10 A. Yes.

11 Q. Currently how are the positions of CAA

12 that it would convey to government agencies

13 determined?

14 A. All policy flows through the board of

15 directors. The board may decide on policy and ask

16 staff for options. If there is a pertinent

17 committee, something may emerge through the

18 committee and be forwarded to the board for

19 consideration. But in general, all policy comes

20 from the board of directors.

21 Q. Are all members represented on the board?

22 A. Currently the board consists of members

1 MR. FELLER: Are you talking about
2 individuals or company members?
3 MR. KRINSKY: Company members.
4 THE WITNESS: Oh, company. If there are
5 in fact eight regular company members because there
6 are 8 domestic manufacturers, then each of the
7 companies is represented on the board. If there are
8 nine companies, then each of those nine companies
9 would be represented on the board. Sorry I can't
10 tell you exactly; I just don't recollect at this
11 time.
12 BY MR. KRINSKY:
13 Q. Since you were president, has General
14 Cigar or Culbro always been a member of the CAA?
15 A. No, it has not.
16 Q. Was it a member in 1981?
17 A. Yes, it was.
18 Q. When did it cease being a member?
19 A. It resigned I believe it was effective
20 1990.
21 Q. At some point it rejoined the CAA?
22 A. It rejoined the association in -- sorry,

1 I don't remember the precise time. I think it was
2 '96 or '97.
3 Q. During the period of time that it was a
4 member, it was always considered a regular member
5 with a representation on the board of directors; is
6 that correct?
7 A. That's correct.
8 Q. Is it your understanding that General
9 Cigar was a member from 1974 to 1981?
10 A. Yes.
11 Q. And it was considered a regular member
12 with representation on the board?
13 A. Yes, to the best of my knowledge, yes.
14 Q. In preparation for this deposition, did
15 you examine any documents?
16 A. Yes.
17 Q. What were those documents?
18 A. I reviewed again the documents that had
19 been forwarded that had been subpoenaed through the
20 discovery process, I reviewed those.
21 Q. Did you speak to any individuals other
22 than counsel?

1 THE WITNESS: Yes.

2 BY MR. KRINSKY:

3 Q. Are there other documents in your files

4 during the period of '74 to '81 which are similarly

5 headed "bulletin"?

6 A. In what files? In any files, all files?

7 Q. Yes.

8 A. I don't know. I cannot say for sure.

9 Q. Are there other documents that have the

10 same appearance as this, that are headed bold, in

11 the CAA files?

12 A. The only place I have seen such

13 documents -- I have not reviewed all the files we

14 have got -- for example, are statistical records.

15 At one time they would have the word bulletin up

16 there, they would have a number and the date, and to

17 some extent we may have still carried that forward

18 but not using the word bulletin and changing the

19 format. I may have seen it with regard to our

20 statistical record book which kind of keeps

21 historical data on exports, imports, tax rates, etc.

22 Q. On this document you'll see the name

1 Michael J. Kowalsky, associate executive director.
2 Who is Mr. Kowalsky?
3 A. Michael Kowalsky, at the time I came on
4 board in 1981, was president of the Cigar
5 Association of America. I took his place.
6 Q. How long had he been with the
7 association, with the CAA?
8 A. I do not know exactly.
9 Q. When he left CAA, do you know where he
10 went to work?
11 A. He left the Cigar Association of America
12 and went with General Cigar.
13 Q. Do you how long he stayed with General
14 Cigar?
15 A. I do not know exactly. If I was pinned
16 down, I would say 4 or 5 years I guess.
17 Q. After he left CAA, did Mr. Kowalsky have
18 any contact with CAA?
19 A. Yes, he did, he served on our board of
20 directors as one of the representatives from General
21 Cigar.
22 Q. During what period of time would that

1 have been?

2 A. To the best of my knowledge, it happened

3 shortly after he joined General Cigar and would have

4 gone up to the point where he departed General

5 Cigar. May I clarify an answer?

6 Q. Sure.

7 A. I was asked how many companies I said

8 nine and there were nine. The name I left off was

9 J.C. Newman Cigar Company.

10 Q. Thank you.

11 A. It was bugging me.

12 (CAA Exhibit no. 4 was marked

13 for identification.)

14 BY MR. KRINSKY:

15 Q. This document, as are all the other

16 documents we will be looking at today, are documents

17 that were produced by CAA in response to the

18 subpoena. I would appreciate if you would take a

19 look at this document, exhibit 4. This is a

20 document that comes from the files of CAA, does it

21 not?

22 A. Yes, it does.

1 because we had long had a history or we had long had
2 a position on resumption of trade with Cuba, and my
3 proposal was for the board to periodically review
4 its historical positions to find out if they are
5 still relevant in the context of current
6 developments.
7 Q. The position that the CAA long had that
8 you referenced, is that the position which is set
9 forth on pages CAA 029 through 33?
10 A. That was the position in 1975. There
11 were modifications that took place after that.
12 Q. That was the position of the CAA as
13 adopted by the board of directors in '75; is that
14 correct?
15 A. To the best of my knowledge, yes.
16 Q. It's the type of policy that, in your
17 understanding of CAA's bylaws and practices, would
18 have been adopted by the board of directors?
19 A. It is my belief that yes, that is
20 correct.
21 Q. Between '75 and your preparation of this
22 action sheet, has there been any modification of

1 CAA's position as set forth in the statement of
2 position that begins on CAA 029?
3 A. I believe there was. I cannot be
4 specific as to dates, but I believe in the late
5 1980s that the board decided to get away from the
6 specifics embodied in the 1975 statement of position
7 and went to a more general statement of principles.
8 Q. Between the time of the statement of
9 position in 1975 that's shown as CAA 029 here and
10 1981, when you became president, was there any
11 change in the position of the CAA, to your
12 knowledge?
13 A. Not to my knowledge.
14 Q. When you became president in 1981, you
15 understood that the document that begins at CAA 029,
16 the 1975 statement of position, was the position of
17 the CAA?
18 A. When I became president in 1981, I was
19 not aware that the Cigar Association had a position
20 on trade with Cuba. I was educated in general about
21 the concern about having access to Cuban tobacco,
22 but it was not one of the items that was at the

1 forefront of my concern because there was no
2 indication to me that the embargo and the trade with
3 Cuba would be lifted any time soon.
4 Q. When was your attention first drawn to
5 the issue of Cuba in your work as president?
6 A. I cannot state with certainty, but I
7 believe it was when there were reports of a lot of
8 Cuban cigars -- or a number of Cuban cigars coming
9 into the United States that were coming in
10 illegally.
11 Q. Approximately when was that?
12 A. It was -- again, not having recollection
13 as to the specific dates, it was sometime, I would
14 guess, in the mid 1980s. We had a public relations
15 program to try to promote the image of the cigar and
16 the issue arose at that time in that context.
17 Q. How was your attention drawn to Cuban
18 cigars coming into the country illegally at that
19 time?
20 A. I believe it was brought up at a board
21 meeting that as industry sales continued to decline
22 in the United States, that there were incidents of

1 restaurants in various cities in the United States
2 and salespeople in other parts of the United States
3 selling Cuban cigars openly.
4 Q. Who brought that up at a board meeting?
5 A. I don't know who initiated that.
6 Q. When your attention was drawn to Cuba in
7 the context of your work at that time in that way,
8 did you then find out about the 1975 statement of
9 position?
10 A. I believe so.
11 Q. At that point, did you have the
12 understanding that the 1975 statement of position
13 continued to be CAA's position on Cuba?
14 A. Yes, to the best of my recollection, yes.
15 I was more impressed with the fact that here's an
16 industry that had suffered greatly as a result of
17 losing raw material from Cuba and was living within
18 the terms of the embargo, and yet was being
19 penalized by the fact that so many things were
20 coming in illegally under the embargo, so many Cuban
21 cigars.
22 Q. When your attention was drawn to the Cuba

1 correct?

2 A. That's right.

3 Q. Turning your attention back to the

4 exhibit and page CAA 024, the top page, when to the

5 best of your recollection was this document prepared

6 by you?

7 A. To the best of my recollection, it would

8 have been in the late 1980s. December would have

9 referred to a previous board meeting. It was going

10 to be circulated to the Foreign Trade Committee.

11 The Foreign Trade Committee, I don't know if they

12 met -- they met in the late 1980s, so I'm guessing

13 that this document would have been prepared --

14 MR. FELLER: You are guessing.

15 THE WITNESS: Yes. I don't remember the

16 specific year that the Foreign Trade Committee met

17 to discuss this.

18 BY MR. KRINSKY:

19 Q. What is the Foreign Trade Committee?

20 A. At that time we had a Foreign Trade

21 Committee which consisted of, as it turned out,

22 mainly tobacco people either from member companies

1 Q. Did General Cigar have representation on
2 the Foreign Trade Committee?
3 A. Yes, it did.
4 Q. Was that the case for the whole period of
5 time in which it was a member of the organization?
6 A. I could only speak after the period 1981.
7 Q. For that period?
8 A. Yes.
9 (Brief recess.)
10 (CAA Exhibit no. 5 was marked
11 for identification.)
12 BY MR. KRINSKY:
13 Q. We have marked CAA 133 as exhibit no. 5
14 to this deposition and I have provided copies to
15 counsel. I would like you to take a look at this
16 document.
17 MR. FELLER: Are you finished with 4?
18 MR. KRINSKY: No, we will come back to
19 it. I would like the witness to take a look at this
20 document first.
21 BY MR. KRINSKY:
22 Q. Can you identify this document?

1 A. This is a letter I wrote to Peter Feller
2 as our general counsel.
3 Q. It's dated October 30, 1985. If you
4 could take a moment to take a look at this document
5 and then I'm going to ask you whether this document
6 helps you date exhibit no. 4 which we have been
7 discussing.
8 A. What was your comment about exhibit 4?
9 Q. After looking at exhibit 5, does that
10 document help you date when you prepared CAA 024?
11 A. Yes. I would assume that the exhibit no.
12 4 where it says, "last December the board
13 requested," I would assume that would have been the
14 December 1985 board meeting, based on this.
15 Q. Let's look at exhibit no. 5. The date of
16 that document is October 30, 1985. The document
17 begins "Dear Peter, At Michael Kowalsky's
18 suggestion, I have scheduled for discussion at the
19 December 6 board meeting the following topic:
20 review of CAA position regarding trade with Cuba."
21 Mike Kowalsky at that time, was he with General
22 Cigar?

1 A. Yes, he was.
2 Q. What is the suggestion that he made to
3 you?
4 A. I have no specific recollection of the
5 conversation with Mike.
6 Q. You scheduled a discussion on the topic
7 for the December 6, 1985 board meeting, I assume; is
8 that correct?
9 A. Yes.
10 Q. Exhibit no. 4, which is Bates stamped CAA
11 024, was that prepared by you for the December 6,
12 1985 board meeting?
13 A. I would assume it was, yes.
14 Q. Turning back to exhibit no. 4, did you
15 consult with anyone in preparing this action -- what
16 was the phrase, action sheet, the phrase you used?
17 A. Sometimes I consulted with Peter on board
18 sheets when I considered them to be sensitive
19 matters, but in this case it was more or less a
20 recap of the existing position paper, an
21 acknowledgment that there are new developments
22 within the industry since it was adopted, and just a

1 adopted by the board?

2 A. Would you give me a minute to review it?

3 Q. Sure.

4 A. I would agree that it seems to accurately

5 express the concerns that the member companies, that

6 the industry has.

7 Q. Was that draft position paper discussed

8 at the board meeting?

9 A. My recollection is that there wasn't time

10 to discuss it in detail and that it was sent back to

11 the Foreign Trade Committee. That's to the best of

12 my recollection right now, because my recollection

13 is that when the Foreign Trade Committee finally

14 acted, they agreed that there should not be a

15 specific position paper but there should be general

16 principles recognized.

17 Q. Do you recall General Cigar's

18 representatives at the board meeting taking any

19 position on this draft statement?

20 A. I don't recall General Cigar being more

21 or less involved in the discussion than any other

22 company. I don't recall any company pushing for a

1 resolution at that particular meeting.

2 (CAA Exhibit no. 6 was marked

3 for identification.)

4 BY MR. KRINSKY:

5 Q. I would ask you to take a look at what we

6 have marked deposition exhibit 6, CAA 169 through

7 171. Can you identify this document, please?

8 Before you do that, this document comes from the

9 files of CAA, does it not?

10 A. Yes, it does.

11 Q. Is there a file contained at CAA on the

12 topic Cuba?

13 A. That's correct.

14 Q. Is that how the files are denominated,

15 there's a file drawer for the documents on Cuba?

16 How is that organized?

17 A. It would be alphabetic and Cuba would

18 come in with the Cs. It would depend on how much

19 information, a couple of accordion files.

20 Q. This document comes from those files?

21 A. Yes.

22 Q. Can you identify this document for us,

1 please?

2 A. It's a letter and memo received from

3 Alfons Mayer of Culbro Corporation, General Cigar,

4 dated March 12, 1986.

5 Q. The second paragraph says, "you will note

6 that we approve the proposed CAA position paper with

7 the changes I made in my memo to Mr. Burgh." What

8 proposed CAA position paper is he referring to, as

9 far as you understand?

10 A. It is my assumption that the draft which

11 appeared in the board book of December 1985 was sent

12 to the Foreign Trade Committee at the request of the

13 board. That's what I would assume it is.

14 Q. Did you have any discussions with Mr.

15 Mayer about this letter and the enclosure?

16 A. I do not recall.

17 Q. Do you recall having any discussions with

18 Mr. Mayer about Cuba?

19 A. During what period of time?

20 Q. Let us say from the time you became

21 president up until the date of this letter, 1986.

22 A. I don't recall specifically, but I could

1 have, I wouldn't be surprised if I did. He may have
2 called me and said this was on its way. I just
3 don't know.
4 Q. Let me broaden the time period. From the
5 time you became president in 1981 through the end of
6 the 1980s, do you recall any conversations with Mr.
7 Mayer about Cuba?
8 A. I don't recall.
9 Q. Do you recall forming any understanding
10 as to Mr. Mayer's views on what position CAA should
11 take on the subject of Cuba and the embargo?
12 A. Yes, I formed views on that.
13 Q. What was that?
14 A. My view was that General Cigar was very
15 much a staunch supporter of the 1975 position.
16 Q. Your views were based upon discussions
17 with Mr. Mayer?
18 A. Discussions with Mr. Mayer, the Foreign
19 Trade Committee, communications I received from them
20 like this, the March 10 document.
21 Q. Did you discuss the Cuba issue during the
22 1980s with anyone else from General Cigar besides

1 Mr. Mayer?

2 A. Based on the communication of October 30,

3 I apparently discussed the overall concept of the

4 Cuba position paper with Michael Kowalsky and that

5 probably sent me back to the files to determine what

6 that position was in detail. But that -- David

7 Burgh, I may have discussed it with David Burgh, I

8 don't recall. Alfons Mayer was a member of the

9 Foreign Trade Committee so it was normal that I

10 would discuss it with him, but I just don't recall

11 the specifics of any conversation.

12 Q. Do you recall any conversations you were

13 party to or were present at with Mr. Cullman, Sr.

14 concerning the Cuba issue?

15 A. During what period of time?

16 Q. During the 1980s.

17 A. I don't recall any occasions where I

18 talked with him on an individual basis.

19 Q. Do you recall being present at any

20 meetings at which he expressed any views on the Cuba

21 issue?

22 A. My most vivid recollection is just

1 talking at the time about the number of Cuban cigars
2 that were coming into the United States illegally.
3 Q. What did he indicate at that point?
4 A. He indicated that Cuban cigars were
5 readily available in a number of restaurants in New
6 York City openly.
7 Q. Did he express any concern about that?
8 A. Yes. I believe it's fair to say that the
9 entire board was concerned about the fact that not
10 just in New York City but elsewhere across the
11 country Cuban cigars were readily available.
12 Q. What was the concern expressed by the
13 board on that subject?
14 A. Well, to the best of my recollection, the
15 companies were putting money into a public relations
16 program to promote the image of the cigar and the
17 cigar smoker, and in spite of that, in spite of that
18 money being put in there and the program itself and
19 some of its success, cigar sales in the United
20 States kept declining. And the concern was, again,
21 that here's an industry that had abided by the terms
22 of the embargo, that perhaps more than any other

1 Q. Looking at item no. 8, were those two
2 different topics in fact, legal imports of Cuban
3 cigars and update position re trade with Cuba?
4 A. I don't think so. I would generally have
5 separated them. It would be my style to say Cuba
6 and then no. A would be illegal updates of Cuban
7 cigars, and then update position re trade with Cuba.
8 Q. Did you make a recommendation to the
9 board at that board meeting about agenda item no. 8?
10 A. If there is an asterisk indicating an
11 action item, generally a recommended course of
12 action is made. It may be something specific, it
13 may be something more general -- as general as the
14 board should discuss this and come to a conclusion.
15 So sometimes it's that general and sometimes more
16 specific.
17 Q. During this period of time and 1986, did
18 you have a view as to whether the CAA should do
19 anything about the topic of illegal imports of Cuban
20 cigars?
21 A. Did I personally have a view?
22 Q. Yes.

1 A. Yes, I did.
2 Q. What was that view?
3 A. My view is that it was something that was
4 negatively affecting the industry I worked for and I
5 agreed that something needed to be done.
6 Q. Did you have any views of what should be
7 done?
8 A. On the illegal imports of Cuban cigars?
9 Q. Yes.
10 MR. FELLER: Let me interject, Mr.
11 Krinsky, I just want to understand. This deposition
12 is to determine what, his personal views on things?
13 MR. KRINSKY: Well, no. I'm really
14 exploring whether he communicated his views on this
15 subject to the board or to members of the
16 association.
17 MR. FELLER: You want to know what he
18 said or communicated to others?
19 MR. KRINSKY: Yes.
20 THE WITNESS: I don't know whether to
21 respond to that statement you just made or to the
22 question.

1 BY MR. KRINSKY:

2 Q. Well, respond to the statement I just

3 made.

4 A. Generally I believe that the staff

5 follows the lead of the board and the board sets the

6 policy of the staff and unless asked, doesn't make

7 any input into that. So that's the way I generally

8 do things.

9 (CAA Exhibit no. 8 was marked

10 for identification.)

11 BY MR. KRINSKY:

12 Q. We have marked as no. 8 a document and

13 enclosure which bears Bates stamp number CAA 164

14 through 168. I would ask you to take a look at

15 this. Can you identify this document, please?

16 A. Yes, this is a document that I would have

17 prepared the cover letter for. Looks like it was

18 prepared for a December 1988 board of directors

19 meeting.

20 Q. Sorry?

21 A. Looks like it was prepared for a December

22 1988 board of directors meeting.

1 Q. When you say the cover letter, you mean
2 the first sheet?
3 A. The first sheet, yes, the blue sheet, the
4 action sheet, yes.
5 Q. There is attached to it a document headed
6 "Discussion Draft CAA Position on Resumption of
7 Trade Relations with Cuba." That is a document
8 that's referenced in the cover memo; is that
9 correct?
10 A. Yes.
11 Q. Turning then to the discussion draft,
12 attached discussion draft, who prepared that
13 document?
14 A. Our general counsel, Peter Feller.
15 Q. When was that document prepared?
16 A. November of 1985.
17 Q. Is that the same document we have
18 previously seen as one of the exhibits?
19 A. It appears to be. I haven't looked at it
20 word for word, but it appears to be the same
21 document.
22 Q. Did you have input into Mr. Feller's

1 preparation of this draft in 1985?
2 A. I don't recall. I would have seen it
3 before it went into the board book; I don't recall
4 if I discussed the essence of it with him or not.
5 Q. Did you believe that it accurately
6 reflected the concerns and the views of the members
7 of CAA?
8 A. Yes, I believe it did.
9 Q. Was there a discussion of this draft at
10 the 1988, December 1988 board meeting?
11 A. I believe there was.
12 Q. Was any action taken by the board at that
13 time?
14 A. It is my recollection, as best as I can
15 recall, it was again sent to the Foreign Trade
16 Committee, and I base that on the fact that
17 eventually it came before the board and the board
18 adopted the general principles rather than a
19 specific position paper.
20 Q. Do you recall any representative of
21 General Cigar commenting on the discussions had at
22 the December 1988 meeting?

1 MR. FELLER: That's okay with Mr. Downing
2 as well?
3 MR. DOWNING: Sure.
4 (CAA Exhibits 9-13 were marked
5 for identification.)
6 MR. KRINSKY: We have marked as exhibit 9
7 documents bearing Bates no. CAA 143 through 145; we
8 have marked as exhibit 10 documents bearing Bates
9 numbers CAA 146 through 151; as exhibit 11 a
10 document bearing Bates numbers CAA 152 through 155;
11 as 12 a document bearing Bates numbers 175 through
12 177; and 13 is Bates no. 178.
13 BY MR. KRINSKY:
14 Q. If you will look at exhibit no. 9, can
15 you identify this document? This is a document that
16 came from your file, CAA's files on Cuba; is that
17 correct?
18 A. That's right.
19 Q. Can you identify this document?
20 A. It's a General Cigar memorandum, February
21 13, 1989, from Alfons Mayer to David Burgh.
22 Q. This was sent to CAA, correct?

1 A. This was what?
2 Q. A copy of this document was sent to CAA?
3 A. Yes, in our file.
4 Q. On the top it bears what appears to be a
5 fax indication, is that correct, of March 17, 1989?
6 A. March 17, 1989, yes.
7 Q. Does that indicate that it was received
8 by you on March 17, 1989?
9 A. Yes.
10 Q. The document begins "re: meeting in
11 Washington CAA (I) January 26, '89." What does CAA
12 Roman I in parenthesis refer to?
13 A. I have no idea. There were three or four
14 agenda items. I was looking to see whether it was
15 an agenda item. I don't know.
16 Q. It refers to a meeting in Washington on
17 January 26, 1989 with certain people in attendance.
18 A. Yes.
19 Q. Was that the Foreign Trade Committee?
20 A. Yes, it was.
21 Q. You were present at that meeting; is that
22 correct?

1 A. Yes, I was.
2 Q. The issue of trade with Cuba was
3 discussed at that meeting; is that correct?
4 A. That's right, among the issues discussed.
5 Q. Under that heading on this document, CAA
6 143, the paragraph reads, "ignoring all previous
7 submittals, years ago, I presented at the meeting
8 with a 3-year waiting period to import Cuban cigars
9 made in Cuba. In order to protect the domestic
10 manufacturers which gives them just about enough
11 time to buy, to provide inventory for themselves and
12 to learn and experiment with the domestic U.S.
13 market." Do you recall Mr. Mayer making a
14 presentation on that position?
15 A. I recall Mr. Mayer being present at the
16 meeting and talking; I don't remember the specifics.
17 Q. Was the position set forth in this
18 paragraph what you would call Mr. Mayer's position
19 to be generally on the issue?
20 A. Yes.
21 Q. Do you recall whether the Foreign Trade
22 Committee took any action at that meeting?

1 A. To the best of my recollection, it was at
2 this meeting that the Foreign Trade Committee came
3 up with some general principles rather than having a
4 document as specific as the 1975 document. Their
5 idea was to come up with general principles.
6 Q. Let's go back to the first paragraph of
7 CAA 143. Is it fair to say that the people listed
8 at the beginning of the document are people who
9 attended that meeting?
10 A. Yes.
11 Q. Who is Mr. Tomenga?
12 A. Michael Tomenga was one of Peter Feller's
13 partners. Peter was not able to be at that meeting
14 and so Michael sat in as counsel.
15 Q. And Larry Palombo?
16 A. Yes, Larry -- go ahead and ask the
17 question.
18 Q. Who is he?
19 A. Larry Palombo at that time was with
20 General Cigar.
21 Q. And Robert de Bruyn, B-r-u-y-n?
22 A. de Bruyn. Lancaster Leaf Tobacco

1 Q. At the meeting, Mr. Mayer had, according
2 to the memorandum, presented a position which had
3 several points which are laid out by him in his
4 memorandum. Do you recall his presenting a position
5 of that nature?
6 A. I do. Alfons is and was one of the
7 experts on Cuba, Cuban tobacco.
8 Q. Would you look at exhibit no. 11. Would
9 you identify that document?
10 A. Yes, item no. 11 was the agenda for the
11 March 30 meeting of the CAA board of directors.
12 Q. Was one of the agenda items the attached
13 recommendation regarding the CAA position on trade
14 with Cuba?
15 A. It was.
16 Q. The attachment is Bates no. CAA 144-145;
17 is that correct?
18 A. That is correct.
19 Q. Who prepared that document which is
20 entitled "CAA Position Re: Trade with Cuba"?
21 A. I would have prepared it.
22 Q. I draw your attention to the paragraph

1 that begins under "recent developments."
2 A. Yes.
3 Q. That states, "the Foreign Trade Committee
4 met on January 26 and the consensus is that the CAA
5 should not have a formal position paper. However,
6 the association should be prepared to educate the
7 appropriate personnel in the U.S. government (on a
8 quick reaction basis, if necessary) on some basic
9 facts which hopefully would enable the government in
10 dealing with Cuba to act in the best interests of
11 the U.S. cigar industry." Does that actually recite
12 the deliberations of the Foreign Trade Committee?
13 A. Yes, to the best of my recollection it
14 does.
15 Q. Going further on in the next paragraph --
16 you can read it yourself -- and through the next
17 three paragraphs, the last three paragraphs of CAA
18 154, directing your attention to page CAA 154 and
19 the last three paragraphs on that page, do those
20 paragraphs in substance reflect the concerns that
21 Mr. Mayer was raising?
22 A. They do.

1 same, that of a transitional period, and the
2 realization that in modern times you have to adjust
3 your approach accordingly. And what this did, this
4 particular document and position allowed the modern
5 one, more up to date one, allowed -- in effect, it
6 really put off a decision on detail because there
7 certainly was no expectation that the embargo was
8 going to be eased --
9 MR. FELLER: What is your specific answer
10 to the question?
11 THE WITNESS: Could you repeat the
12 question?
13 (Record read.)
14 THE WITNESS: Yes, I would agree.
15 BY MR. KRINSKY:
16 Q. If you look at exhibit no. 10, could you
17 identify that document for us, please?
18 A. A memorandum that I wrote to Peter Feller
19 on April 18, 1989.
20 Q. What was the purpose of this memorandum?
21 A. The purpose was to ask Peter to draft a
22 letter that we could circulate to appropriate people

1 in the U.S. government regarding the industry's
2 posture and trade with Cuba if and when the timing
3 was appropriate.
4 Q. On the first page of this memorandum and
5 going over to the second page, there are four
6 points. Do those actually reflect the
7 recommendations of the Foreign Trade Committee
8 meeting on January 26?
9 A. They do.
10 Q. First, I direct your attention to exhibit
11 no. 12, if you would take a look at that. Then I
12 will ask you if you can identify it. Are you able
13 to identify this document?
14 A. Yes, it's a draft document Peter prepared
15 in response to my request, a document that would be
16 sent to various key people in the U.S. government at
17 an appropriate time, dated November 8, 1989.
18 Q. Did this document accurately reflect the
19 views of the Foreign Trade Committee?
20 A. I believe it does, yes.
21 Q. Going back to exhibit 12, was this draft
22 letter ever distributed to members of the Foreign

1 in response to the document request; is that
2 correct?
3 A. I did.
4 Q. And you didn't find any indication of the
5 board wanting any changes to this letter?
6 A. I did not see that.
7 Q. Exhibit no. 13, I would direct your
8 attention to that. Could you identify this
9 document?
10 A. It appeared behind tab no. 4 in the board
11 books that went out in preparation for our November
12 10, 1989 board meeting.
13 Q. By tab no. 4, did that correspond to an
14 agenda item on the agenda?
15 A. No, not necessarily. It might be a
16 different agenda item, but there might be a
17 different tab number, on the assumption that every
18 agenda item doesn't have backup material.
19 Q. This was a document that was prepared for
20 consideration at a board meeting by the board; is
21 that correct?
22 A. Yes.

1 Q. Who prepared this document?
2 A. I prepared the document.
3 Q. There's a reference in the first
4 sentence, "as the attached documents point out, the
5 CAA has initiated a campaign against imports of
6 Cuban cigars. The first phase publicizing the
7 problem was launched in June." To what activities
8 does that refer?
9 A. I believe it referred to our sending a
10 letter out to the trade, to smoke shops -- I believe
11 that was the form that it took initially -- and to
12 trade publications.
13 Q. What did this letter say?
14 A. I think it just pointed out -- I think
15 there may have been an estimate -- I'm not exactly
16 sure -- I think there may have been an estimate of
17 the number of Cuban cigars that were being imported
18 into the United States and the damage that was done
19 by the importation of these and the fact that these
20 products -- the fact that the importing of these
21 products was illegal.
22 Q. Approximately how many copies of this

1 letter were sent out by CAA during that time?
2 A. I have no recollection.
3 Q. In rough terms, more than 10?
4 A. I don't recall specifically. I think we
5 sent a letter to retail tobacco sellers of America
6 and they in turn sent it out to the media.
7 Q. When you say media, do you mean the trade
8 press?
9 A. The trade press, yes.
10 Q. What publications comprise the trade
11 press?
12 A. There have been changes in the trade
13 press now so I'm not sure that the names would still
14 be correct, but Smoke Shop magazine may have been
15 one, Tobacconist or Retail Tobacconist, whatever it
16 was called at that time, may have been another.
17 Q. Any others?
18 A. No. Because I think the major emphasis
19 was to get to the smoke shops because it was a lot
20 of the -- I think it was felt that various smoke
21 shops were selling Cuban cigars under the counter.
22 Q. Did any of the trade press publish

1 anything as a result of your letter?

2 A. If we sent it out to the trade press, I

3 don't recall whether they ran it or not.

4 Q. Did RTDA do anything with regard to your

5 letter?

6 A. To the best of my knowledge, yes, they

7 helped us publicize it.

8 Q. What is the RTDA?

9 A. Stands for Retail Tobacco Dealers of

10 America.

11 Q. What is the nature of that organization?

12 A. That is a national trade organization

13 consisting of primarily smoke shops across the

14 country. I believe they have an associate category

15 for various manufacturers or importers who may want

16 to contribute to the organization.

17 Q. Was it the principal industry

18 organization for retailers?

19 A. Sorry?

20 Q. Was it the principal industry association

21 for retailers at that time?

22 A. For smoke shops. Not all retailers. For

1 example, convenience stores would probably not be
2 members of the Retail Tobacco Dealers of America.
3 Tobacconists, smoke shops.
4 Q. For tobacconists and smoke shops, it was
5 the principal association at that time?
6 A. Right.
7 Q. Does it continue to be the principal
8 association for those categories?
9 A. Yes, it does.
10 Q. Do you know approximately how many
11 members it had in 1989?
12 A. I do not.
13 Q. Do you recall how they helped you
14 publicize it?
15 A. The best of my recollection is that the
16 executive director of that organization sent out a
17 communication that may have included our letter as
18 an attachment. That's my recollection.
19 Q. What was that individual's name?
20 A. Bill Fader, F-a-d-e-r.
21 Q. Is he still with RTDA?
22 A. He is, yes.

1 Q. What is his position? Is he still the
2 executive director?
3 A. I don't know if his title is executive
4 director or president.
5 Q. In addition to possibly the media and
6 your contact with RTDA, did you take any other steps
7 in this campaign against imports of Cuban cigars?
8 MR. FELLER: Are you talking about the
9 publicizing? Is that what you mean?
10 MR. KRINSKY: Yes. Sorry, I was not
11 clear.
12 BY MR. KRINSKY:
13 Q. You reference in this exhibit a phase of
14 a campaign about publicizing the problem. Did you
15 take any steps to publicize the problem in addition
16 to any steps you described?
17 A. I don't recall.
18 Q. Were you authorized by the board of CAA
19 to initiate the campaign that you refer to in this
20 memorandum?
21 A. Yes.
22 Q. In that same paragraph, the next sentence

1 A. Well, General Cigar was firmly in favor
2 of adopting the recommendations of the subcommittee.
3 Q. Did it explain why, why it was in favor?
4 A. (Conferring with counsel.) General Cigar
5 wanted a level playing field. That was essentially
6 it.
7 (Recess 2:35-2:50 p.m.)
8 BY MR. KRINSKY:
9 Q. Does the CAA put out something called
10 Report to the Cigar Industry?
11 A. That's right.
12 Q. To whom does that go?
13 A. That goes to our members companies, to
14 all of our member companies.
15 (CAA Exhibit no. 16 was marked
16 for identification.)
17 BY MR. KRINSKY:
18 Q. I have marked as no. 16 a document
19 bearing Bates numbers CAA 091 through 095. Is this
20 one issue of the Report to the Cigar Industry you
21 just described?
22 A. Yes. We may have changed the format a

1 little bit, but yes, this is essentially what it
2 does, items of information are sent out to the
3 industry.
4 Q. And this document was sent to members of
5 the CAA?
6 A. Yes.
7 Q. In 1982, was this a monthly?
8 A. No. To the best of my knowledge, we
9 tried to keep this a quarterly report, not very
10 successfully.
11 Q. I show you a document you produced to
12 us -- I won't put it into evidence -- which is a
13 Report to the Cigar Industry and it's identified as
14 volume 1, no. 3, with a date December 10, 1982.
15 Does that refresh your recollection as to how
16 frequently this publication was issued during 1982?
17 A. What were the dates of those again? The
18 September 22 one was the first one?
19 Q. Right. Then you produced to us volume 1,
20 no. 3, dated December 10, the same year, 1982.
21 A. Yes, I didn't see any rhythm to that.
22 Maybe it was our intent to come up with a monthly

1 but that's no longer the case. Also what we do in
2 the current ones now is we show attribution. Where
3 we got something out of a trade publication or a
4 report, we go ahead and in parentheses indicate the
5 name of the magazine and the date.
6 Q. Were matters concerning Cuban cigars or
7 the Cuban cigar industry a regular topic for this
8 publication?
9 A. Yes, from time to time. It was very
10 subjective.
11 Q. Were you responsible for putting this
12 out?
13 A. Yes, my assistant and I would. My
14 administrative assistant at times would clip
15 magazine articles and put them in the file and I'd
16 say, well, it's time to do a report and she puts
17 together some of the items, and I work on items we
18 are currently working on in the association. She
19 would more or less look at the clippings and I would
20 decide which ones go in.
21 Q. When you began as president in 1981 and
22 1982, what trade publications were you receiving at

1 CAA?

2 A. We get the Tobacco Situation and Outlook

3 Report from the Department of Agriculture. We get

4 World Tobacco from the Department of Agriculture.

5 The rest of it is primarily trade publications.

6 Q. Which ones, do you recall?

7 A. Tobacco International, Tobacco Reporter,

8 World Tobacco, Smoke Shop magazine, Tobacconist.

9 Q. Were these the principal trade

10 publications at that time?

11 A. Yes.

12 Q. In your response to the duces tecum

13 subpoena, you produced many documents which purport

14 on their face to be minutes of board meetings or

15 partial minutes. If you could tell us where you

16 obtained those documents from.

17 MR. FELLER: The board minutes you are

18 talking about?

19 MR. KRINSKY: Yes.

20 THE WITNESS: We have a book, a bound

21 volume that contains minutes of meetings, out of

22 that, or sometimes they appear in board books. A

1 A. Yes, I did.

2 Q. Did you consult with anyone in that

3 research?

4 A. No. This was information that we had in

5 our records at the association.

6 Q. This was distributed to the ad hoc

7 committee; is that correct?

8 A. Yes.

9 (CAA Exhibit no. 19 was marked

10 for identification.)

11 BY MR. KRINSKY:

12 Q. No. 19 has handwritten on the top

13 "minutes of meeting CAA board of directors 9/18/86."

14 These are the minutes of the board of directors

15 meeting of September 18, 1986; is that correct?

16 A. Yes.

17 Q. Turning your attention to the second

18 page, first paragraph under item D, "tightening of

19 the trade embargo with Cuba" is how it begins.

20 "Although no reliable statistics are available,

21 illegal sales of contraband Cuban cigars are

22 estimated to total 5 to 10 percent of total premium

1 cigars. CAA staff was asked to explore options for
2 dealing with this problem." Was this information
3 about illegal sales reported to the board at that
4 meeting?
5 A. Yes, it was.
6 Q. Who made that presentation?
7 A. I don't know.
8 Q. Is that information that your office
9 developed to report to the board?
10 A. (Conferring with counsel.) There was an
11 interview in Cigar Aficionado magazine with the head
12 of Cuba Tobacco and I believe he stated it was 5 to
13 10 percent of cigar consumption in the United
14 States, but I really don't know. Nobody knows
15 exactly, everybody has an estimate, and I'm not sure
16 where this estimate came from unless it was from
17 that article.
18 Q. Let me point out that Cigar Aficionado
19 began publication well after this meeting, it began
20 publication in 1992.
21 A. Sorry, you are right. So I don't know
22 where this came out.

1 Q. Do you recall anyone at the meeting
2 disagreeing with that estimate?
3 A. I don't remember it being controversial.
4 Nobody seemed to have a handle on it. Everybody
5 felt that Cuban cigars were widespread, the
6 availability was widespread, but nobody had any
7 concrete numbers.
8 MR. KRINSKY: We'll mark the minutes of
9 board meeting 12/5/1986 as exhibit 20.
10 (CAA Exhibit no. 20 was marked
11 for identification.)
12 BY MR. KRINSKY:
13 Q. Again, these are board minutes; is that
14 correct?
15 A. Yes, they are.
16 Q. On the bottom of the first page, there is
17 a heading "illegal imports of Cuban cigars." That
18 was information that was reported to the board; is
19 that correct?
20 A. That's right.
21 Q. What was the source of that information?
22 A. The source of the information about where

1 Cuban cigars were coming from?
2 Q. The source of the information that was
3 reported to the board as reflected in that
4 paragraph.
5 A. Sorry. You have one paragraph which is
6 an opening paragraph and then you have four
7 recommendations.
8 Q. Yes.
9 A. The four recommendations were developed
10 by myself and Peter Feller.
11 Q. Did the board approve this 4-point
12 program that's laid out here?
13 A. Point 2 was. I think the general concept
14 was adopted, but the specifics were that the
15 companies would start to furnish counsel with
16 restaurants and other outlets selling Cuban cigars,
17 and that the Customs Service or Customs office would
18 be approached. So I think by -- yes, I think it was
19 adopted.
20 Q. Did member companies in fact furnish
21 counsel with names of restaurants and other outlets
22 selling Cuban cigars after this?

1 A. I seem to recall that after this was
2 adopted, that in a subsequent meeting it was
3 indicated that we had gotten very few responses from
4 the member companies.
5 MR. KRINSKY: I'll mark as 21 the board
6 minutes for 11/10/89.
7 (CAA Exhibit no. 21 was marked
8 for identification.)
9 BY MR. KRINSKY:
10 Q. These are the board minutes for November
11 10, 1989; is that correct?
12 A. They are.
13 MR. FELLER: It's an excerpt.
14 THE WITNESS: An excerpt from the board
15 minutes.
16 BY MR. KRINSKY:
17 Q. Under the item Cuba, second paragraph,
18 there is a reference to Porter/Novelli. Who are
19 they?
20 A. Porter/Novelli was a public relations
21 firm in New York.
22 Q. In '89, did this public relations firm

1 work for CAA generally?
2 A. It may have done this just on a project
3 basis, because we had our public relations campaign
4 to promote cigar smoking and the image of the cigar
5 smoker, and that concluded in about 1988. So I
6 assume this was someone we had do it on a project
7 basis.
8 Q. CAA retained this public relations firm
9 for that project?
10 A. To the best of my knowledge and
11 recollection.
12 Q. What did this public relations firm do?
13 A. I would have to -- I don't know at this
14 time.
15 Q. Do you have records concerning its
16 activity?
17 A. I don't know. I would have to look. I
18 know what it says down here, but I don't know
19 specifically what was done.
20 MR. FELLER: Can I point out that it says
21 counterfeit Cuban cigars.
22 MR. KRINSKY: Well, the paragraph I'm

1 referring to says, "Mr. Sharp reported that through
2 Porter/Novelli the association has begun an
3 aggressive campaign to halt the illegal importation
4 of Cuban cigars and to warn consumers and retailers
5 about the increasing sales of counterfeit Cuban
6 cigars in the United States."
7 BY MR. KRINSKY:
8 Q. Was it CAA's view in 1989 that there were
9 increasing sales of counterfeit Cuban cigars in the
10 United States?
11 A. I think there was a growing realization
12 that there were counterfeit cigars coming into the
13 United States.
14 Q. Was it CAA's belief that the number of
15 those counterfeit Cuban cigars was increasing, was
16 on the rise?
17 MR. DOWNING: Objection.
18 THE WITNESS: I don't know.
19 BY MR. KRINSKY:
20 Q. As the document as written, you
21 understand it to indicate a belief by CAA that the
22 sales of counterfeit Cuban cigars was increasing?

1 A. It would seem to indicate that, yes. We
2 were becoming aware it was a 2-prong program,
3 illegal imports of authentic cigars, and then sales
4 of imported Cuban cigars that in fact were
5 counterfeit.
6 MR. KRINSKY: We'll mark the next exhibit
7 CAA no. 22, which has in the right-hand margin the
8 identification CAA board of directors, tab no. 7,
9 12/5/86, I think it probably says "CAA board of
10 directors minutes" but the last word is not entirely
11 clear.
12 (CAA Exhibit no. 22 was marked
13 for identification.)
14 BY MR. KRINSKY:
15 Q. Could you identify this document, please?
16 A. It looks like it was the contents behind
17 tab no. 7 of the CAA board of directors book for the
18 December 5, 1986 meeting.
19 Q. This was material presented to the board
20 of directors at that meeting?
21 A. That's right.
22 Q. The first sentence reads, "background, at

1 the September 18 board meeting, the CAA staff was
2 asked to formulate a proposal for dealing with what
3 are perceived to be substantial quantities of Cuban
4 cigars being sold illegally in the United States."
5 Was it the board that perceived there to be
6 substantial quantities of Cuban cigars?
7 A. I think it was a perception among the
8 members of the board that nobody questioned,
9 everybody seemed to be in agreement that it was a
10 problem, that it was a substantial number.
11 Q. The next paragraph says, "although the
12 only person who commented did not believe the
13 problem to be particularly big." Do you recall who
14 that person was?
15 A. I do not.
16 Q. Was it someone from General Cigar?
17 A. I don't know. Only one person commented.
18 Q. How many people attended the board
19 meeting approximately?
20 A. It would have been September. I have no
21 idea. I don't know.
22 Q. How many people attend board meetings

1 typically?

2 A. The December one was always the better

3 one attended. We only do have one a year now. In

4 '86, I would guess total attendance would be between

5 25 and 30 people.

6 Q. The next page of the document is dated

7 October 2, 1986, from Mr. Feller to you. It begins,

8 "several of the domestic cigar manufacturers believe

9 that Cuban cigars are being sold in the U.S. market

10 in substantial quantities." Do you know which

11 domestic cigar manufacturers that reference was to?

12 A. Other than Consolidated Cigar and General

13 Cigar, I am not sure who the others were. There

14 were others; I'm just not sure who they were.

15 Q. Both Consolidated and General were those

16 who believed that Cuban cigars were being sold in

17 the United States market in substantial quantities?

18 A. Yes.

19 MR. KRINSKY: The next document we'll

20 mark as 23. It is dated October 23, 1989, on the

21 letterhead of CAA, from Mr. Sharp to the board of

22 directors. I would just say for the record --

1 correct me if I am wrong -- before the recent
2 photocopying, this was produced as document CAA
3 board of directors tab no. 4, 11/10/89, on top of
4 that exhibit, but I had only marked this portion for
5 copying.
6 (CAA Exhibit no. 23 was marked
7 for identification.)
8 MR. KRINSKY: The way it was produced to
9 Mr. Downing and then made available to me today,
10 there were stapled together apparently as a single
11 document several pages that began "CAA board of
12 directors tab no. 4, 11/10/89," with the title "Cuba
13 -- Campaign Against Imports of Cuban Cigars" and
14 then on another line "Trade with Cuba." That page I
15 believe which was previously marked began
16 "background, as the attached documents point out,
17 the CAA has initiated a campaign against imports of
18 Cuban cigars." The attached documents to which
19 reference is made is what we have now marked as no.
20 23.
21 MR. O'BRIEN: What was the top document
22 marked?

1 MR. KRINSKY: That I don't know off the
2 top of my head. You will be able to spot it.
3 MR. O'BRIEN: It's previously CAA 13.
4 BY MR. KRINSKY:
5 Q. Can you identify this document?
6 A. Memorandum dated October 23, 1989, to the
7 CAA board of directors, and it describes our
8 initiative against imports of Cuban cigars into the
9 United States. It contains a media release put out
10 by Porter/Novelli which answers one of the questions
11 you had before.
12 Q. Thank you. The media release is attached
13 to this document, right?
14 A. That's correct.
15 Q. Did you approve its contents before its
16 release?
17 A. Yes.
18 Q. In this document you are quoted as
19 stating that "illegal sales have been a problem
20 since the Cuban trade embargo became effective in
21 1962, but violations are becoming increasingly
22 common and flagrant. Our members will do all in

1 their power to bring these illegal acts to an end."
2 What was the source of your belief that violations
3 were becoming increasingly common and flagrant?
4 A. It was a general perception among the
5 members of the board, the companies in the industry,
6 in the association.
7 Q. In the preceding paragraph you say,
8 "illicit imports of Cuban cigars into the United
9 States are costing the American cigar industry $28
10 million annually." What was the source of your
11 estimation of that figure?
12 A. I think it was a consensus figure arrived
13 at by various industry personnel. It was felt that
14 it wasn't pessimistic and it wasn't optimistic, it
15 was somewhere in the middle.
16 Q. Later on in the fourth paragraph, there's
17 reference to counterfeit Cuban cigars. By that you
18 meant a different problem than the illegal
19 importation of genuine Cuban cigars; is that
20 correct?
21 A. Yes. I think what we are alluding to,
22 and it's picked up on the last page of the release

1 here, is there were people who were purporting to
2 sell Cuban cigars but were in fact selling
3 counterfeit Cuban cigars. They may have the brand
4 names of some of the famous brands, but in fact they
5 may be cigars that came from other countries.
6 Q. On the next page there is a reference to
7 the Tobacconists Association of America. Did that
8 association take any action with respect to this
9 problem?
10 A. No, not to my recollection. Members of
11 the Tobacconists Association are also members of the
12 Retail Tobacco Dealers of America. The Retail
13 Tobacco Dealers of America is much more all-
14 encompassing. The TAA, Tobacconists Association of
15 America, generally consists of key retailers from
16 certain geographical areas of the country, but they
17 all are members of the RTDA.
18 Q. The third paragraph down reads,
19 "according to Cigar Association estimates, as much
20 as 10 percent of the 56 million premium cigars
21 smoked in the United States are of Cuban origin and
22 have been smuggled into the United States from third

1 countries." Were these estimates that you provided
2 for inclusion in this press release?
3 A. Were these --
4 Q. Was the estimate recounted there provided
5 by you?
6 MR. O'BRIEN: Objection to form.
7 MR. KRINSKY: Sorry.
8 BY MR. KRINSKY:
9 Q. It states here, "according to Cigar
10 Association estimates, as much as 10 percent of the
11 56 million premium cigars smoked in the United
12 States are of Cuban origin." Did you provide that
13 estimate?
14 A. I did. It was kind of a consensus
15 estimate that came out from various figures
16 consulted separately at different times.
17 Q. Again, in the last paragraph on that
18 page, there's an estimate, CAA estimates 5.6 million
19 Cuban cigars are being sold illegally in this
20 country. That's an estimate you provided on the
21 basis of --
22 A. Again, on the basis of consensus

1 estimates.

2 Q. That estimate of 5.6 million Cuban cigars

3 did not include counterfeit Cuban cigars; is that

4 correct?

5 A. That's my recollection.

6 Q. The next page, page 3, next paragraph, it

7 says, "adding to the problem is the increase of

8 sales of counterfeit Cuban cigars." So the

9 preceding estimates did not involve counterfeit

10 Cuban cigars; is that correct?

11 A. That's my recollection.

12 (CAA Exhibit no. 24 was marked

13 for identification.)

14 BY MR. KRINSKY:

15 Q. This document is dated May 23, 1989.

16 It's on CAA letterhead. It reads from Mr. Sharp to

17 CAA board of directors. Its subject is proposal for

18 CAA initiative against sales of Cuban cigars in the

19 U.S. You prepared this document; is that correct?

20 A. I did.

21 Q. In the fourth paragraph down, you wrote,

22 "Cuban cigars are coming into the United States

1 through the mail from Canada, Switzerland, the U.K.,
2 Hong Kong. In addition, the mystique of the Cuban
3 cigar has also given rise to the sale of counterfeit
4 Cuban cigars." What was the source of your belief
5 that in addition the mystique of the Cuban cigar has
6 also given rise to the sale of counterfeit Cuban
7 cigars?
8 A. It was indicated in the press release, in
9 the preceding exhibit no. 23. It quoted a customs
10 official saying he thought there might be more
11 counterfeit Cuban cigars coming into the United
12 States than actual Cuban cigars. So it was a
13 situation where at the beginning of this exercise I
14 had little knowledge of until it became clear that
15 this was a problem out in the trade. That's where.
16 Q. What did you mean by the mystique of the
17 Cuban cigar?
18 A. The mystique of the Cuban cigar is that
19 it is the finest cigar in the world, that it's a
20 mystique, a cachet, attractiveness that makes it
21 sought after, whether factual or not.
22 Q. Turn to the next page, "recommended

1 action." Was the program outlined here implemented?
2 A. Yes, it was. Porter/Novelli helped us
3 with the correspondence to the RTDA and did put out
4 a media release to the national trade media, and we
5 did in fact delay for a while and then start to ask
6 for companies to report incidents where Cuban cigars
7 were being sold illegally.
8 Q. The next document in the package is dated
9 December 22, 1988. It is a copy of a letter --
10 A. I don't have it here.
11 (CAA Exhibit no. 25 was marked
12 for identification.)
13 BY MR. KRINSKY:
14 Q. Can you identify this document?
15 A. This is a letter that I wrote on December
16 22, 1988 to the United States trade representative,
17 with copies going to the Speaker of the House of
18 Representatives and the President Pro Tem of the
19 United States Senate. The letter deals with the
20 Cuban trade report to the Congress under section
21 1911, Omnibus Trade and Competitiveness Act of 1988.
22 Q. Turning to the second page, you state,

1 "according to industry executives, it is not unusual
2 for the board rooms of large corporations and
3 financial institutions to be stocked with fresh
4 Cuban cigars, for various tobacconists to provide
5 Cuban cigars upon request, and for exclusive
6 restaurants to carry Cuban cigars for their
7 customers who might wish an after dinner smoke."
8 You are referring here when you say, "according to
9 industry executives," you mean cigar industry
10 executives?
11 A. That's right.
12 Q. Do they include General Cigar?
13 MR. DOWNING: Objection.
14 THE WITNESS: They would, they would
15 include members of the board and General Cigar is
16 one of the board members.
17 BY MR. KRINSKY:
18 Q. According to industry executives, can you
19 list, to the extent you can, who you were referring
20 to there by company anyway?
21 A. I could not be too specific about that
22 because it's a situation where the board members are

1 sitting at a table there discussing it and one
2 person is saying yes, you can get them at this
3 place, and another board member is saying I heard it
4 there and I understand it's there, and it goes
5 around the room and it's difficult to identify all
6 of them.
7 Q. Was General Cigar represented as among
8 those who made the comment or not among those who
9 made the comment?
10 A. They were among those who made the
11 comment.
12 Q. I think it might be helpful to try to
13 make the record clear that what we have identified
14 as CAA deposition exhibits 24 and 25 were attached
15 and provided to me, stapled together, with CAA no.
16 13. That's 23, 24, and 25. These are all documents
17 that are referenced.
18 I would ask you to examine no. 13. At
19 the beginning where it states, "as the attached
20 documents point out," exhibits 23, 24, and 25 are
21 the attached documents to which reference is made;
22 is that correct?

1 ACKNOWLEDGMENT OF DEPONENT

2 I, NORMAN SHARP, do hereby acknowledge I have read
3 and examined the foregoing pages of testimony, and
4 the same is a true, correct and complete
5 transcription of the testimony given by me, and any
6 changes or corrections, if any, appear in the
7 attached errata sheet signed by me.
8
9 _____ _____
10 Date NORMAN SHARP
11
12
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22

1 CERTIFICATE OF NOTARY PUBLIC

2 I, Marilyn Feldman, the officer before
3 whom the foregoing deposition was taken, do hereby
4 certify that the witness whose testimony appears in
5 the foregoing deposition was duly sworn by me; that
6 the testimony of said witness was taken by me in
7 shorthand and thereafter reduced to computerized
8 transcription under my direction; that said
9 deposition is a true record of the testimony given
10 by said witness; that I am neither counsel for,
11 related to, nor employed by any of the parties to
12 the action in which this deposition was taken; and
13 further, that I am not a relative or employee of any
14 attorney or counsel employed by the parties hereto,
15 nor financially or otherwise interested in the
16 outcome of the action.
17
18 Marilyn Feldman
19 Notary Public in and for
the District of Columbia
20
21
My commission expires:
22 December 14, 2001.

1 William T. O'Brien, Esq.
McKenna & Cuneo, LLP
2 1900 K Street, NW
Washington, D.C. 20006-1108
3

4 IN RE: Empresa Cubana Del Tabaca v.
Culbro and General Cigar
5

6 Dear Mr. O'Brien:

7 Enclosed please find your copy of the deposition of
NORMAN SHARP along with the original signature page.
8 As agreed, you will be responsible for contacting
the witness regarding reading and signing the
9 transcript.

10 Within 30 days of receipt, please forward errata
sheet and original signature page signed to counsel
11 for plaintiff, Michael Krinsky.

12 If you would like to change this procedure or if you
have any questions, please do not hesitate to call.
13
Thank you.
14
Yours,
15

16 Marilyn Feldman
17
Marilyn Feldman
18 Reporter/Notary

19

20

21

22 cc: Michael Krinsky, Esq.

1 Esquire Deposition Services
216 East 45th Street, 8th Floor
2 New York, New York 10017

3 ERRATA SHEET

4 Case Name: Empresa Cubana v. Culbro
Witness Name: NORMAN SHARP
5 Deposition Date: April 26, 2001

6 Page no. Line No. Change

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21 _____ _____

22 Signature Date

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EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner,	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC. Respondent.	:	

PARTY DESIGNATIONS*: Petitioner's Designations During Its Trial Period—Yellow or Pink
Respondent's Designations During Its Trial Period—Green
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

Designated Federal Action Discovery Deposition Transcript of Norman Sherman, designated under Fed. R. Civ. P. 30(b)(6) and 45, dated November 14, 2001

* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

COPY

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 ----------X
4 EMPRESA CUBANA DEL TABACO, d.b.a.
5 CUBATABACO,
6 Plaintiff, 97 Civ. 8399 (RWS)
7 vs.
8 CULBRO CORPORATION and GENERAL
9 CIGAR CO., INC.,
10 Defendants.
11 ----------X
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17 DEPOSITION OF NORMAN SHERMAN
18 New York, New York
19 Wednesday, November 14, 2001
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23
24
Reported by:
25 ANNETTE ARLEQUIN
CSR NO. 1450

1

2 November 14, 2001

3 2:05 p.m.

4

5 Rule 30(B)(6) and 45 deposition of

6 NORMAN SHERMAN, held at the offices of

7 MORGAN & FINNEGAN, LLP, 345 Park Avenue, New

8 York, New York, pursuant to Subpoena, before

9 ANNETTE ARLEQUIN, a Certified Shorthand

10 Reporter and a Notary Public of the State of

11 New York.

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2 A P P E A R A N C E S:

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5 RABINOWITZ, BOUDIN, STANDARD, KRINSKY &

6 LIEBERMAN, P.C.

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10 BY: MICHAEL KRINSKY, ESQ.

11 (Telephonically)

12

13

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15 Attorneys for Defendants

16 345 Park Avenue

17 New York, New York 10154-0053

18 BY: DICKERSON M. DOWNING, ESQ.

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

1

2 MR. KRINSKY: For the record, we're
3 representing Mr. Sherman at this deposition
4 and I have advised him that if he feels
5 there is any need to consult with me during
6 the course of the deposition, we'll try to
7 work out the logistics of that by calling
8 him on another line at his house. Hopefully
9 that will work if it becomes necessary.
10 MR. DOWNING: Fine.
11 N O R M A N S H E R M A N, called as a
12 witness, having been duly sworn by a Notary
13 Public, was examined and testified as
14 follows:
15 EXAMINATION BY
16 MR. DOWNING:
17 Q. Please state your full name and
18 address for the record.
19 A. My name is Norman Sherman,
20 S-h-e-r-m-a-n. I live at 11540 East Camino Del
21 Desirto in Tucson, Arizona. The zip code here
22 is 85747.
23 Q. Mr. Sherman, my name is Dick Downing.
24 I'm with the law firm of Morgan & Finnegan and
25 we're one of the attorneys for the defendants in

Sherman

A. Okay.

Q. If you ever want to take a break, let me know, and when we come to a convenient point we shall.

A. All right.

Q. Are you ready to proceed?

A. Sure.

Q. Do you have a current position of employment?

A. I'm retired.

Q. How long have you been retired?

A. Since the 1st of October of this year.

Q. Can you give me a brief summary of your employment background starting with your first significant position of employment, and when you give this summary, can you do it in chronological order?

A. How far back do you want me to go?

Q. Well, let me start with this: What's your highest level of education?

A. My highest level of what?

Q. Education.

A. I have just a bachelor's degree and

1 Sherman

2 some graduate credits.

3 Q. All right. When did you get your

4 bachelor's degree?

5 A. 1950, '51. Something like that.

6 Q. And what school did you get the

7 bachelor's degree in?

8 A. University of Minnesota.

9 Q. And then did you go directly into

10 your graduate studies?

11 A. Yes.

12 Q. What graduate school did you attend?

13 A. I was at graduate school at the

14 University of Minnesota and I took some graduate

15 courses at the University of Connecticut.

16 Q. All right. When did you take the

17 graduate courses at the University of Minnesota?

18 A. Early '50s.

19 Q. And when did you take the graduate

20 courses at the University of Connecticut?

21 A. I was employed there by the election

22 board as a technical writer in 1957, and I took

23 a couple of courses at Connecticut in '57, '58.

24 Q. All right. Prior to taking the job

25 in Connecticut, did you have any positions of

1 Sherman

2 employment?

3 A. I worked at -- I was an instructor at

4 the University of Minnesota, and then I was a

5 technical writer at Honeywell in '53, '54, and

6 then I had a variety of campaign jobs with

7 different employers during the rest of the '50s

8 with democratic candidates of Minnesota and in

9 Connecticut.

10 Q. All right. What type of campaign

11 jobs did you have? And by that, what

12 politicians did you work for?

13 A. I worked for Hubert Humphrey in

14 Minnesota.

15 I worked for Orville Friedman, who

16 was the governor.

17 I worked for the lieutenant governor

18 whose name was Karl K-a-r-l, Rolelle, R-o-l-e

19 double L-e.

20 I worked in Connecticut for Chester

21 Bowles, who has been governor and then

22 ambassador in India, and was running first for

23 the senate and then for Congress.

24 I worked in the presidential

25 primaries for Hubert Humphrey against John

Sherman

Kennedy in '59 and '60.

I managed the campaign for Congress in '62 for a guy named Donald Fraiser, F-r-a-i-s-e-r, who served in Congress for I think about 16 years and then was Mayor of Minneapolis.

I rejoined Humphrey's office in June of 1963. I was his press secretary for most of the time while he was vice president of the United States. I edited his autobiography off and on from 1969 to 1976 when it was published.

I worked in the '70s as a ghost writer of pieces for corporate executives, government officials, senators, congressmen and executive branch people and foundations.

Do you want more than that?

Q. Well, was there ever a period of time where you were employed by a company called Alamar?

A. I worked with Alamar and I was paid during the '70s for two or three years by Alamar. I had other employment at the time, but they were a prime employer.

Q. All right. During what time period

1 were you employed by Alamar?
2 A. I would say '76, '77. Maybe into
3 '78.
4 Q. What was your position at Alamar?
5 A. I had no title. Kirby Jones, who
6 created Alamar, was a friend. He asked me to
7 assist him when he was putting it together. I
8 got him a company in Minnesota to retain him and
9 I just shared in the income then and in the
10 subsequent years. I had no ownership role in
11 Alamar.
12 Q. No title I believe you said.
13 A. I may have had a title. I may have,
14 but since it was only the two of us, secretary
15 titles did not seem essentially important.
16 Q. What was the business of Alamar as
17 you understood it?
18 A. Alamar took American businessmen who
19 paid us, we took them to Cuba in the expectation
20 that the embargo would lift, and that they would
21 do business there and we would benefit in some
22 ways from some of their business.
23 Q. Do you know when Alamar was formed?
24 A. When it was formed?
25

1 Sherman

2 at the start of the deposition. Let me do it

3 now.

4 Is there anyone with you at the

5 current time?

6 A. Here?

7 Q. Yes.

8 A. My wife is upstairs playing on the

9 computer.

10 Q. Anyone other than that?

11 A. Nope.

12 Q. Okay. I believe you said that Alamar

13 was involved in taking U.S. businessmen to Cuba.

14 A. That is correct.

15 Q. Did you have any participation in

16 taking any U.S. businessmen to Cuba?

17 A. As part of Alamar, yes.

18 Q. What was the nature of your

19 involvement?

20 A. Well, I had, through my political

21 years, worked with a lot of businessmen so that

22 I was able, for example, to find Kirby's first

23 client. And while I don't recall who came up

24 with the idea of this group trip, I knew a lot

25 of Minnesota businessmen and was able to talk to

the Minneapolis Chamber of Commerce and to get them to be co-sponsors. I just had a network among the business community that Kirby did not have.

Q. Was that business community nationwide or was it limited to Minneapolis or -- can you describe --

A. Well, I knew businessmen everywhere, but most of them were in Minnesota because that's where most of my political activity had been, but I had worked with many in New York, Florida, the West Coast. I did not have an elaborate network, but I had contacts in lots of places.

Q. You mentioned Kirby's first client.

A. Yes.

Q. What was the name of Kirby's first client?

A. The I.S. Joseph Company.

Q. I'm sorry. I-F?

A. S for Sam.

Q. I.S. Joseph Company.

And where is The I.S. Joseph Company located?

date, but Ford was still president, so it would have been, I assume, in late 1976.

Q. When you say "the Minnesota trip," why do you refer to it as "the Minnesota trip"?

A. Well, it was a trip I organized with the Minneapolis Chamber of Commerce, and all of the businesses were based in Minnesota.

Q. And you went on that trip with the Minneapolis Chamber of Commerce?

A. That is correct.

Q. Do you recall what representatives of the Minneapolis Chamber of Commerce went on that trip?

A. The president that year was a guy named Bower Hawthorne, B-o-w-e-r, H-a-w-t-h-o-r-n-e, who was an executive at the Minneapolis Star Tribune, and I had known him since the mid-'50s when I was a janitor at the Star Tribune, took credit for hiring me as a janitor.

Q. He gave you your start.

A. Yes. And the executive director, I think. I don't really recall his name. It may have been Jerry something, but I don't recall

his name.

Q. What was the purpose of the Minnesota trip?

A. From my point of view or their point of view?

Q. From your point of you.

A. I was doing it to earn money. They charged each businessman a fee, I think, I don't recall how much, but a substantial fee, and I shared in it, and it was probably the major part of my income that year or a good share of it.

Q. Do you have any understanding as to what the purpose of the trip was from the prospective of the Minneapolis Chamber of Commerce?

A. Well, the Chamber was just a vehicle for businessmen and they went -- they varied from major American corporations, who would have interest in Cuba after the embargo, to guys who were doing it because they could afford it and it was something special and historic and exciting.

As a matter of fact, one of the businessmen represented the Billy Graham

1 Sherman

2 Evangelical Association. Some guys sold pork

3 bellies, and there were lots of bankers there

4 and the Radisson Hotel went down.

5 Q. Do you know the total number of

6 people that went on this Minnesota trip?

7 A. I think there were close to 50 paying

8 customers and I think there were a total of

9 about 100 people. There were reporters from the

10 Minneapolis Tribune, photographers, some other

11 Minnesota media and I think there were close to

12 100 of them.

13 MR. DOWNING: Mr. Krinsky, does

14 Mr. Sherman have a copy of Defendants'

15 Exhibit No. 151?

16 MR. KRINSKY: I don't believe so.

17 A. I don't have anything.

18 Q. Okay. Mr. Sherman, at an earlier

19 deposition, I believe it was Kirby Jones'

20 deposition, we introduced four letters which

21 were marked as Defendants' Exhibit 151 and the

22 letters are dated April 25, 1977 is from Bower

23 Hawthorne to George McGovern, then a second

24 letter from Mr. Hawthorne to James Abourezk

25 dated April 25th, '77, a third letter from

1 Sherman

2 Mr. Hawthorne to Hubert Humphrey dated April 25,

3 '77, and a fourth letter from Mr. Hawthorne to

4 Fidel Castro dated June 2, '77.

5 Are you aware of any other --

6 withdrawn.

7 You indicated that you believe the

8 trip took place in '76. Is it possible that it

9 took place in '77?

10 A. Sure.

11 Q. Okay. Do you have any firm

12 recollection one way or the other?

13 A. No, not really. I thought it was

14 still when Gerry Ford was president, but it

15 obviously was not.

16 Q. All I'm saying is these are the only

17 letters we have reflecting the trip.

18 A. That's the trip. Bower was on only

19 one trip as far as I know.

20 Q. Do you have any documents in your

21 possession relating to this trip?

22 A. I have no documents relating to

23 Alamar, that trip or any other. I don't have

24 any.

25 Q. Okay. Now, are you aware that this

1 Sherman

2 lawsuit involves a dispute over the Cohiba

3 trademark?

4 A. Yes.

5 Q. Have you ever heard of the Cohiba

6 trademark used in any context?

7 A. Repeat the question. You broke up.

8 Q. I'm sorry.

9 Have you ever heard of the word

10 "Cohiba" used as a trademark in any context?

11 A. Yes.

12 Q. When was the first time you heard the

13 word "Cohiba" used as a trademark?

14 A. I would guess during the course of

15 the trip to Cuba with the Minnesota delegation.

16 Q. How did you first hear the word

17 "Cohiba" used?

18 A. Well, I can't give you a precise

19 answer. I do know that at the airport when we

20 departed, we went into a room and there were

21 gifts for all of us. Some of the things were

22 the same. I got a little black box that I kept

23 for years that had three bottles of Havana Rum

24 in it, and I think everybody got that. I got

25 some records of Cuban music from the guy that

1 Sherman

2 had looked out for me. I got some marble

3 things, a pencil holder, a cigarette thing, and

4 there were presents from Castro for Humphrey and

5 Mondale that I was aware of.

6 I was not aware of anything for

7 Abourezk or George McGovern, but there were two

8 humidors of what was described to me first as

9 Castro's favorite cigar and then as a Cohiba.

10 That was the time that the trademark Cohiba was

11 brought to my consciousness as a unique and

12 special item.

13 Q. Prior to that time, had you heard of

14 the word "Cohiba" used in connection with a

15 cigar?

16 A. I don't think so, but I don't know.

17 I can't recall. I have no recollection of it.

18 I don't smoke cigars. There would be no

19 particular reason for me to know it before then.

20 Q. And I believe you said this was at

21 the time of departure of the Minnesota

22 delegation?

23 A. That is correct.

24 Q. Did you actually see the humidors?

25 A. Yes.

Sherman

Q. Can you describe them for me?

A. Brownish wood, rounded on the sides, probably that hold 50 cigars. I really don't remember if there were 50 cigars, 100 cigars. I would guess 50, but not fewer. And I don't remember anything other than that they looked like cigar humidors.

Q. Did they have a name on them?

A. I don't recall that.

Q. Did they have a design on them?

A. I don't recall that.

Q. Do you recall who used the word "Cohiba"?

A. I think it was first used by my Cuban -- I assume he was a Cuban intelligence officer, because he was forever running off to report to Fidel, and his name was Alberto Ballestar and I believe he was the one who told me the significance of the cigar.

Q. Alberto Ballestar was the fella's name?

A. Yes.

Q. Did Mr. Ballestar tell you anything about the cigars other than the names?

1 Sherman

2 A. Well, there was -- yeah, I think he

3 told me they were Fidel's personal gift to the

4 American politicians who had been helpful.

5 Humphrey particularly had been helpful. Mondale

6 was an old friend of mine and he had talked

7 about that, and I think that it was with some

8 pride that they gave them to us and made a fuss

9 about it.

10 Q. Did Mr. Ballestar tell you anything

11 else about the history of the Cohiba cigar other

12 than what you just described?

13 A. Let me spell his name. B for boy,

14 a-l-l-e-s-t-a-r. I don't remember.

15 He was an enthusiast with whom I

16 spent a lot of time in some subsequent trips,

17 but I don't remember anything other than the

18 focus on the gift to Humphrey. Humphrey and

19 Castro had met and to some extent bonded on an

20 early trip of Castro's to the United States, and

21 they knew it and Castro had remembered that, so

22 it was kind of a giddiness about the whole

23 exchange.

24 Q. How did you know these cigars were

25 intended for Mr. Humphrey and Mr. Mondale?

A. How do I know?

Q. Yes.

A. Because I talked to both of them about them later on.

Q. Were you told at the airport that they were intended for Mr. Humphrey and Mondale?

A. Yes. I mean in Cuba?

Q. Yes.

A. Yes, of course.

Q. And who told you that?

A. I assume Alberto. It could have been one of the other Cubans.

There was a ceremony and it is possible that one of the more senior Cubans talked about it. There was great excitement in the room. The Minnesota businessmen were all visibly, I think, delighted by having been there and thought of themselves as special.

Anyway, I can't tell you anything more than that. It is possible that other people talked about it, but Alberto certainly did.

Q. Did anyone else receive cigars of any type?

Sherman

A. I don't recall any other presents from Fidel to the businessmen. I am sure that the businessmen who smoked cigars found a way to get them, but I was not involved in any transfer of cigars or any discussion of Cohibas specifically with any of them.

Q. Okay. Do you know who took possession of these two humidors that you talked about?

A. I assume Bower did, but I don't recall his carrying them out, loaded up with the boxes, but I assume it was he.

Q. By the way, Mr. Sherman, when you have said "humidors," do you mean boxes?

A. Well, I don't know what the distinction is. They were wooden boxes that contained them and I thought they absorbed moisture or something, but I'm not a cigar aficionado so I don't really know. They were boxes that looked fancier than a cigar box.

Q. But am I correct that you did not receive any cigars as a gift?

A. I did not receive any cigars as a gift.

1 Sherman

2 Q. Am I also correct that no one else in
3 the delegation, to your knowledge, received
4 cigars as a gift?
5 A. I am not -- I can't tell you one way
6 or another. I don't know who got what
7 precisely.
8 Q. Am I correct then, that you have no
9 awareness of anyone else in the delegation
10 receiving cigars as a gift?
11 A. I have no reason to believe one way
12 or another. They might have. I doubt it, but
13 it is possible that Bower himself got some. It
14 is possible that there was a gesture towards
15 someone, but I am not aware of it.
16 Q. Do you know what happened to the two
17 boxes of cigars that you described?
18 A. I subsequently talked to Mondale and
19 one of his assistants about his cigars. He
20 would only take five cigars at a time because he
21 said the box exceeded the acceptable limit, but
22 if he took them five at a time when they came
23 in, they were under the limit of gifts to the
24 senators. And when the box was empty, it wasn't
25 worth anything, I think it was within the $50

limit, that he could then accept the box, and to my knowledge he did so. He and I have talked about the Cohiba and about their being Castro's -- the cigars he liked, he smoked them.

My recollection was Humphrey, whom I no longer was working for but saw frequently because we were then friends as well as my being the editor of his memoirs, we talked about it, and it is my recollection that we talked about which one of his friends deserved Castro's cigars, but I can't give you any specifics and I can't remember for certain who got the cigars. He did not smoke.

Q. Did Mr. Humphrey use the word "Cohibas" in any communications with you?

MR. KRINSKY: Objection.

Are you including all communications?

MR. DOWNING: Well, okay.

BY MR. DOWNING:

Q. Did Mr. Humphrey use the word "Cohibas" in discussing these cigars with you?

A. I can't -- I don't recall. I would think that he would have, but I don't have a clear recollection that he did, no.

1 Sherman

2 Q. Do you have any recollection as to
3 Mr. Humphrey using the word "Cohiba" in any
4 communication with you?
5 A. Well, I don't remember talking cigars
6 with Humphrey after that, so if there was -- I
7 don't know that we could have gotten through a
8 conversation at that point without his using the
9 word "Cohiba," but I don't have a specific
10 recollection and there would be no reason for us
11 to discuss it later.
12 Q. Do you have any recollections of any
13 communications with Mr. Mondale in which he used
14 the word "Cohiba"?
15 A. I have talked to Mondale even
16 recently about the word "Cohiba," and he
17 remembers smoking Cohiba cigars.
18 Q. When did you have this conversation
19 with Mr. Mondale?
20 MR. KRINSKY: Objection.
21 He indicated, I believe, that there
22 was more than one conversation.
23 BY MR. DOWNING:
24 Q. When was the most recent conversation
25 with Mr. Mondale about this?

a time.

A. Yup.

Q. How did you obtain that understanding?

A. From his assistant, whose name is Mike, who was then his administrative assistant. A guy named Mike Berman, B-e-r-m-a-n.

Q. When did you have these communications with Mr. Berman?

A. At the time.

Q. At the time, this 1977?

A. I would assume so, yes.

Q. And what did Mr. Berman tell you?

A. Mr. Berman was kind of a gatekeeper and he'd get everything -- he watched the law on gifts and he told me he would give them to Mondale five at a time. I think he was the repository of the box and that they went five at a time to Mondale, but I don't -- Bower and he may have made other arrangements.

Q. Do you recall what Mr. Mondale's position was at this time?

A. He was the United States Senator for Minnesota.

1 Sherman

2 Q. He was not vice president?

3 A. Excuse me? He was vice president,

4 but now he's a lawyer in Minneapolis.

5 Q. At the time he received the cigars,

6 do you recall if he was vice president or a

7 senator?

8 A. No, he was in the senate. He was the

9 United States Senator for Minnesota.

10 Q. Did you have any other

11 communications --

12 A. Wait a minute. Wait a minute. If

13 it's '77, Jimmy Carter was elected in '76.

14 Mondale would have been vice president.

15 Q. Did you have any other communications

16 with Mr. Berman about the cigars given to

17 Mr. Mondale?

18 A. No. Just oral ones. I used to see

19 him frequently too.

20 Q. Do you recall any communications

21 other than the ones you just described?

22 A. No.

23 Q. Did Mr. Berman indicate that he was

24 aware of Cohiba cigars prior to the time these

25 gifts were made?

think that it's come up, yes.

Q. But you have no specific recollections?

A. Hum?

Q. You have no specification recollections?

A. I have no specific recollections.

Q. Did you have any communications with any other person regarding the trip -- withdrawn.

Did you have any communications with any other person regarding the gift of cigars made to the Minnesota delegation?

A. I am not really sure. I would assume that the reporters who were on the plane were aware of them, but I don't recall any other specific conversation about Cohibas and that specific gift, no.

I did have further conversations about Cohiba, but it was in the context of other Alamar activities.

Q. When did those conversations occur?

A. When did they occur?

Q. Yes.

Sherman

A. There was a woman on the city council in Washington, D.C. by the name of Polly Shackelton, who was a democratic leader and who knew both Kirby and me. Her brother ran a cigar store in Boston, and I don't remember his name or the store, but Polly called and said that her brother wanted to talk about Cohiba cigars and would we talk to him.

I think by that point it was clear that the embargo was not going to lift quickly, but we said as a courtesy to her that we would talk to him, and he came down to Washington, I assume to visit her, but to talk to us and we did talk about Cohiba.

Q. When did that --

A. Well, I don't know, but I would think maybe as late as '78. I really am not clear on that, but it had to be in that period of '77 to '78.

Q. Do you recall the name of the individual who came down?

A. No. The only one I recall is Polly, whom I knew, and I didn't pay much attention to her brother.

Sherman

Q. Am I correct that he wanted to discuss the possible importation of these cigars?

A. He wanted to discuss his being able to import them whenever they became available. I don't think he was as insistent on their being available to him immediately as so much that he wanted to be in the line that got them, and I suppose what he wanted was to get them exclusively in the Boston area but I don't really recall. He had a retail establishment and he wanted to get them as soon as they were available.

Q. Who was present at the meeting with the brother, with Polly Shackelton's brother?

A. I assume that Kirby and I were the only people there. I don't think Polly came in.

Q. Was any action taken by Alamar after the meeting?

A. Excuse me?

Q. Did Alamar take any action after the meeting?

A. No, because it was a courtesy. Most of the guys we dealt with paid us to take them

to Cuba to arrange meetings. In this instance the guy wanted to come in, there was no financial interest on our part and I think we gave him the courtesy of the discussion. I do not remember any follow-up.

Q. Do you remember what anyone said at the meeting specifically?

A. Except I'm sure we assured him that there was no way that we could get them at the time.

Q. Now you mentioned several other trips to Cuba that you were involved in.

You mentioned --

A. Yes.

Q. -- I believe a Boston, Chicago and California trip.

A. Yes.

Q. Were those separate trips?

A. Yes.

Q. What was the Boston trip?

A. I don't have any date on that, and after that I took a group of Washington lawyers and journalists and friends of mine and we went on a trip to Cuba.

1 Sherman

2 Q. When was that?

3 A. Well, it was in that same period.

4 Before, during the Carter years --

5 Q. Did the --

6 A. -- sometime between '77 and '80.

7 Q. Did the Boston trip take place

8 approximately that same time?

9 A. Yes.

10 Q. Do you remember who attended from the

11 Boston trip?

12 A. Yes. A guy named Hiatt, H-i-a-t-t.

13 I don't remember it. Tip O'Neal's son, who was

14 lieutenant governor of Massachusetts at the time

15 came, but we called him derisively Tipplet and I

16 don't even know what his first name was. Lloyd

17 Zuckerman signed up but then cancelled at the

18 last minute. I don't remember the others.

19 Q. Were any gifts of Cohiba cigars made

20 to any representatives that attended the Boston

21 trip?

22 A. Not to the best of my knowledge.

23 Q. Were any gifts of cigars made to any

24 representatives from the Chicago trip?

25 A. To the best of my knowledge, there

1 members of the delegation.
2 Q. So the only time you saw Cohiba
3 cigars being given away was the trip made by the
4 Minnesota delegation that you have described?
5 A. Yes.
6 Q. During the course of any of these
7 trips, and I would include all of the trips that
8 you have made to Cuba, did you ever see Cohiba
9 cigars for sale?
10 A. Yes.
11 Q. When did that take place?
12 A. There were tourist stores that were
13 eager for the American dollar, and to the best
14 of my recollection, on every occasion where we
15 had American businessmen in Cuba, they went to
16 the tourist stores and purchased cigars, and it
17 is my recollection that among the cigars were
18 Cohibas.
19 Q. Did you ever visit those tourist
20 stores yourself?
21 A. Yes.
22 Q. When did you first visit a tourist
23 store?
24 A. I would have gone during the
25

Sherman

Minnesota trip.

Q. Where were those stores located, or where was the store located that you visited during the Minnesota trip?

A. My recollection is that they were connected to -- well, no, I can't say that. We were at a -- I think they were connected to the hotels, but I am not really certain of that. But we went all over Havana, so I don't know.

Q. Did you ever see a Cohiba cigar for sale in any tourist store at any time?

MR. KRINSKY: Objection. Asked and answered.

MR. DOWNING: I don't know that he said whether or not he saw them.

A. Yes. My recollection is that in the tourist stores, Cohiba cigars were for sale and that American businessmen in our trip purchased them.

Q. Did you ever purchase a Cohiba cigar in Cuba?

A. No.

Q. Have you ever purchased a Cohiba cigar anywhere?

Sherman

A. I've never purchased a cigar, as best I can tell, as best I can recollect.

Q. Did you ever see any businessman purchase a Cohiba cigar in Cuba?

A. I cannot tell you that I went to the cash register with anybody as kind of a buddy system. I did my business, I cheered other people on, we departed.

Q. Okay. Am I correct that you do not recall seeing an American businessman purchase Cohiba cigars in Cuba?

A. That is correct.

Q. Did you ever have any discussions with any American businessman in which he or she indicated that he or she had purchased a Cohiba cigar in Cuba?

A. I am unable to answer that. I don't -- I don't want to push the truth here. I talked to the businessmen constantly and we talked frequently about everything that went on in their trip, and I know that they took pleasure in a variety of things, bringing back Havana Club Rum. I am sure that in there was conversations, there was talk of Cohibas, but I

1 Sherman

2 cannot testify under oath that I recall any of

3 those conversations.

4 Q. Do you recall the names of any people

5 with whom you may have had those conversations?

6 A. I would have to go down a list of

7 Minnesota businessmen. I could probably choose

8 among them, but I really don't know.

9 Q. The question wasn't limited to just

10 Minnesota businessmen, it would be any

11 businessmen that you accompanied to Cuba.

12 A. I'm sorry. You're going to have to

13 repeat that.

14 Q. My question was not intended to be

15 limited just to Minnesota businessmen. It would

16 include any of the businessmen that you

17 accompanied to Cuba.

18 A. I am not able to recollect a specific

19 conversation. I can only say that in every

20 case, flying back to the United States I would

21 work the aisle of the airplane like a politician

22 and I would talk to them about the high points

23 of their visit. For some of them that meant

24 going to schools, some of them going to

25 hospitals or many of them it was just what they

Sherman

any point in time?

A. No.

Q. Did you ever see any advertising for Cohiba sales while you were in Cuba?

A. Advertising?

Q. Yes.

MR. KRINSKY: Objection to form.

You mean in print media or point of sale or --

MR. DOWNING: Any form of advertising for Cohiba cigars.

MR. KRINSKY: Objection to form.

A. I can't recall any advertising in Cuba.

Q. Have you ever seen any advertising for Cohiba cigars anywhere in the world?

A. No.

Q. Do you have any knowledge as to how the Cohiba name was selected?

A. No. I assume it may have been an Indian tribe, but I don't know.

Q. Do you have any knowledge as to who selected the Cohiba name?

A. No.

Sherman

Q. Do you have any knowledge as to when Cuban cigars were first manufactured under the Cohiba name?

A. No.

Q. Did you ever meet Fidel Castro?

A. Did I ever meet Fidel Castro?

Q. Yes.

A. Yes.

Q. Did you ever discuss Cohiba cigars with Mr. Castro?

A. I have some pictures with him and where he is smoking a cigar and while I do not recall specific conversations, I am by -- genetically irreverent and I probably told him he ought to stop smoking, but I don't recall any specifics, but I do recall being in his presence when he was smoking.

Q. Did he ever mention the word "Cohiba" to you?

A. No. Not that I recall, no.

Q. Did he ever tell you about the origin of Cohiba cigars?

A. That would have been a good trip without mentioning them. No. No, he did not.

Sherman

Q. Did you ever see Mr. Castro give any gifts of Cohiba cigars to anyone?

MR. KRINSKY: Objection.

You're excluding whatever he's testified to previously?

MR. DOWNING: Well --

A. Other than the boxes in the airport, I was not aware of any gifts from Fidel Castro of cigars to anybody.

Q. Just so I'm clear, was Fidel Castro at the airport when the Minnesota delegation departed?

A. No.

Q. How do you know those cigars given to the Minnesota delegation came from Mr. Castro?

MR. KRINSKY: Objection. Asked and answered.

BY MR. DOWNING:

Q. You can answer.

A. I was told by the people who I had worked with on the trip that the gifts were from Mr. Castro. And I believe in fact there was a card that had Fidel Castro, Ruiz, Ruz, something. I am not sure about the card, but

Sherman

I'm almost positive that it was there, and since they didn't lie to me about anything else, I was inclined to believe that the cigars had come with Mr. Castro's blessing.

Q. Did anyone other than Mr. Ballestar speak to you about the origin of these cigars?

MR. KRINSKY: Objection. Asked and answered already.

BY MR. DOWNING:

Q. You can answer.

A. I know I can answer, but I said before that I talked to a variety of people and the one specific name that I recall was Alberto, and whether it came up with other people, it may very well have.

Q. Do you know whether the cigars Mr. Castro smoked in your presence were Cohiba cigars?

A. No, I do not know for sure.

Q. Do you know whether or not Cuban cigars -- withdrawn.

Do you know whether or not Cuban Cohiba cigars have ever been available for purchase in the United States?

Sherman

A. No.

Q. Do you know whether or not Cuban Cohiba cigars have ever been advertised in the United States?

A. I do not, no. No.

Q. Do you know whether or not Cuban Cohiba cigars have ever been mentioned in any press reports in the United States, in the United States press?

A. In a press report?

Q. Yes. Newspaper stories, magazine articles, television, radio. That type of thing.

A. I don't know either way. My guess is that they may well have been mentioned in the Minneapolis Tribune reports of the Cuban trip, yes, but I don't know for sure.

Q. Do you recall any possible press coverage of Cuban Cohiba cigars other than possibly the Minneapolis press reports you just referred to?

MR. KRINSKY: Objection to the form of the question.

Could you read it back again, please?

1 Sherman

2 (Question was read back as follows:

3 "QUESTION: Do you recall any possible

4 press coverage of Cuban Cohiba cigars other

5 than possibly the Minneapolis press reports

6 you just referred to?")

7 MR. KRINSKY: Objection to the form of

8 the question.

9 MR. DOWNING: I'll rephrase it.

10 BY MR. DOWNING:

11 Q. Am I correct that you indicated that

12 the Minnesota press may have mentioned Cohiba

13 cigars but you don't recall specific references;

14 is that correct?

15 A. Yes. I'm trying to formulate an

16 answer that is accurate.

17 There were -- the Minnesota trip was

18 the first group of American businessmen to go to

19 Cuba after the revolution. There were a number

20 of articles written about that trip. There were

21 more articles written in the Minneapolis paper

22 and they did two Sunday features in their Sunday

23 magazine on the Cuban trip, but there were

24 articles in the Chicago Sun Times, there were

25 articles in the Los Angeles Times.

1 Sherman

2 I did not read all of the press

3 coverage of the other trips, and the only place

4 where I had immediate and continual kinds of

5 interest in reading was in Minnesota.

6 If there was reference to Cohibas, it

7 could have occurred in any newspaper account in

8 any of the trips. I simply don't have any

9 evidence in hand or in memory on those things.

10 Q. All right. Have you ever seen any

11 press report at any time in the United States in

12 which Cuban Cohiba cigars were referred to?

13 MR. KRINSKY: You've not limiting

14 yourself to the Minneapolis trip?

15 MR. DOWNING: No.

16 A. I have no recollection of any

17 specific references to Cohiba cigars in the

18 American press.

19 Q. Okay. Have you ever seen any

20 references to Cuban Cohiba cigars in any press

21 report outside of the United States?

22 A. I think I said that I have not seen

23 any references of Cohiba cigars anywhere.

24 Q. Are you aware of any facts that would

25 suggest that the Cuban Cohiba cigar is or is not

Sherman

that would suggest that the Cuban Cohiba cigar is or is not famous in the United States at the current time?")

THE WITNESS: I have a problem hearing you. You've got to get closer, my dear.

(Question was read back as follows:

"QUESTION: Are you aware of any facts that would suggest that the Cuban Cohiba cigar is or is not famous in the United States at the current time?")

A. I really have no knowledge of Cohiba cigars. I leave the room when people smoke cigars. I don't read cigar advertisements. I am not a resource for knowledge of Cuban Cohiba cigars, the discussion of them, written material about them or conversations with cigar smokers.

Q. So am I correct that you have no opinion as to whether or not the Cuban Cohiba cigar is or is not famous in the United States?

A. Please get closer to the microphone.

Q. Sure.

So am I correct that you have no opinion as to whether or not the Cuban Cohiba cigar is famous in the United States?

1 Sherman

2 MR. KRINSKY: Objection as to form

3 and competence as to his opinion.

4 A. I don't know whether they're famous or

5 not.

6 Q. Have you had any communications with

7 any United States citizen regarding Cuban Cohiba

8 cigars other than the communications you

9 described?

10 A. Not to the best of my knowledge.

11 Q. Have you ever performed any services

12 for a corporation by the name of Cubatabaco?

13 A. No.

14 Q. Have you ever heard of Cubatabaco

15 before this deposition?

16 A. No.

17 Q. Have you ever performed any services

18 for a corporation known as Habanos, S.A.?

19 A. No.

20 Q. Have you ever heard of Habanos, S.A.

21 before there deposition?

22 A. No.

23 Q. Have you ever performed any services

24 for a corporation known as Altadis, A-l-t-a-d-i-s?

25 A. No.

1 Sherman

2 Q. Have you ever heard of Altadis before

3 this deposition?

4 A. No.

5 Q. Are you receiving any consideration

6 for your testimony in this case?

7 A. No.

8 Q. All right.

9 MR. DOWNING: Give me just two or

10 three minutes. I may have some more

11 questions. If you can just...

12 MR. KRINSKY: All right.

13 (Pause.)

14 BY MR. DOWNING:

15 Q. Are you aware of this lawsuit in

16 which we're involved now regarding rights to

17 ownership of the Cohiba name?

18 A. I am not aware of any -- I know there

19 is a lawsuit otherwise you wouldn't be calling

20 me, but no, I have no detail and no knowledge of

21 it.

22 Q. How did you become aware of the

23 lawsuit?

24 A. Say it again.

25 Q. How did you become aware of the

Sherman

questions.

THE WITNESS: Okay. Am I free to go have lunch?

MR. DOWNING: Well, as far as I'm concerned you are.

Thank you very much for your time, Mr. Sherman.

(Time noted: 3:37 p.m.)

_____

NORMAN SHERMAN

Subscribed and sworn to before me this ____ day of _____, 2001.

_____

1

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK)

5 : ss.

6 COUNTY OF NEW YORK)

7

8 I, ANNETTE ARLEQUIN, a Shorthand

9 Reporter and Notary Public within and for

10 the State of New York, do hereby certify:

11 That NORMAN SHERMAN, the witness

12 whose deposition is hereinbefore set forth,

13 was duly sworn by me and that such

14 deposition is a true record of the

15 testimony given by the witness.

16 I further certify that I am not

17 related to any of the parties to this

18 action by blood or marriage, and that I am

19 in no way interested in the outcome of this

20 matter.

21 IN WITNESS WHEREOF, I have hereunto

22 set my hand this 24th day of November, 2001.

23

24 Annette Arlequin

ANNETTE ARLEQUIN, CSR, RPR

25 My commission expires:

6/30/02

1

2 ---------- I N D E X ----------

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	MR. KRINSKY	77

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*** ERRATA SHEET ***

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4

NAME OF CASE: CUBATABACO VS. CULBRO

5 DATE OF DEPOSITION: NOVEMBER 14, 2001

WITNESS: NORMAN SHERMAN

6

PAGE	LINE	FROM	TO

19

_____

NORMAN SHERMAN

20

Subscribed and sworn to before me

21 this ____ day of _____, 2001.

22

_____ _____

(Notary Public) My Commission Expires:

23

24

25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMPRESA CUBANA DEL TABACO d.b.a. CUBATABACO, Plaintiff, - against - CULBRO CORPORATION, and GENERAL CIGAR CO., INC. Defendants.	:	97 Civ. 8399 (RWS)

DECLARATION PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 30(e)

I, Norman Sherman, declare that I wish to make the following changes to the transcript of my deposition in the above-captioned action under penalty of perjury under the laws of the United States. I make these changes so that the transcript may more accurately reflect my testimony and intended meaning.

Deposition Date: November 14, 2001

Page	Line	Text to Change	Change to:
5	21	Desirto	Desierto
8	21-22	election board	Electric Boat
9	16	Friedman	Freeman
9	18-19	Rolelle	Rolvaag
9	21	has	had
10	4-5	Frasier	Fraser
11	15		**should read** "and a secretary"
15	8	"tickers" **is wrong**	**probably said** "futures"

15	24	Teri	Geri
16	5	**(date wrong)**	**I obviously have the wrong date. Corrected on page 20.**
17	20		**should read** "he took credit"
18	8	("I think")	"We charged." **Delete** "I think"
21	22	Black **is wrong.**	**Possibly "plank." It had three narrow planks on each side and one on each end.**
24	6	he	we
27	24		**I was wrong, I guess. He was vice president in 1977 unless we went before inauguration day.**
32	24		**Wrong again. Corrected on next page.**
34	3	request **is wrong word**	**I can't remember what I meant.**
34	16	Chris	Fritz
45	16	Lloyd	Mort
60	13		**Overstatement. I obviously didn't leave the room every time someone smoked a cigar.**
61	13		**It is possible that I heard a Cuban talk about Cubatobaco since they often talked about some buying agency or another. But I don't speak Spanish and don't recall.**
64	6		**I do remember talking to Kirby. Should read** "I am not even sure when I talked to Kirby."
66	17	and the expenses	and the expensive ones

69	7	Kirby and I have testified, I think, that ...	**I think I garbled my thought. Delete** "Kirby and I have testified, I think, that ..."

Executed this 16 day of July, 2002 in Tucson, Arizona

Norman Sherman

NORMAN SHERMAN

G:\COHIBA\Discovery\sherman errata.wpd

questions.

THE WITNESS: Okay. Am I free to go have lunch?

MR. DOWNING: Well, as far as I'm concerned you are.

Thank you very much for your time, Mr. Sherman.

(Time noted: 3:37 p.m.)

Norman Sherman

NORMAN SHERMAN

Subscribed and sworn to before me this 17 day of July, 2002.

_____

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

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner,	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC. Respondent.	:	

PARTY DESIGNATIONS*: Petitioner's Designations During Its Trial Period—Yellow or Pink
Respondent's Designations During Its Trial Period—Green
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

Designated Federal Action Discovery Deposition Transcript of Charles H. Sparkes, designated under Fed. R. Civ. P. 30(b)(6), dated July 14, 2000

* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

----------X

EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

ORIGINAL

Plaintiff,

vs. 97 Civ. 8399 (RWS)

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

Defendants.

----------X

DEPOSITION OF CHARLES H. SPARKES

Lakewood, New Jersey

Friday, July 14, 2000

Reported by:
ANNETTE ARLEQUIN
CSR NO. 1450
JOB NO. 110678

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DIS C. 11

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4 July 14, 2000

5 11:00 a.m.

6

7 Rule 30(B)(6) deposition of CHARLES H.

8 SPARKES, held at the offices of ROTHSTEIN,

9 MANDELL, STROHM, MUST & GERTNER, 150 Airport

10 Road, Lakewood, New Jersey, pursuant to

11 Subpoena, before ANNETTE ARLEQUIN, a Certified

12 Shorthand Reporter and a Notary Public of

13 the State of New Jersey.

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2 A P P E A R A N C E S:

3

4 RABINOWITZ, BOUDIN, STANDARD, KRINSKY &

5 LIEBERMAN, P.C.

6 Attorneys for Plaintiff

7 740 Broadway at Astoria Place, 5th Floor

8 New York, New York 10003-9518

9 BY: DAVID B. GOLDSTEIN, ESQ.

10

11

12 MORGAN & FINNEGAN, LLP

13 Attorneys for Defendants

14 345 Park Avenue

15 New York, New York 10154-0053

16 BY: JANET DORE, ESQ.

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

1

2 C H A R L E S H E N R Y S P A R K E S,

3 called as a witness, having been duly sworn

4 by a Notary Public, was examined and

5 testified as follows:

6 EXAMINATION BY

7 MR. GOLDSTEIN:

8 Q. Mr. Sparkes, would you please state

9 your name and address for the record.

10 A. All right. My name is Charles, H for

11 Henry, Sparkes, S-p-a-r-k-e-s. My address is

12 1204-B for Baker, Shetland Drive, Lakewood, New

13 Jersey, 08701-6879.

14 Q. I wanted to thank you for coming here

15 today. I realize you haven't been involved with

16 General Cigar's matters for several years.

17 A. A good 12 years at least.

18 Q. And I understand the questions we are

19 going to be asking you are from the 1970s and

20 1980s and I do appreciate your time.

21 Have you ever been deposed before?

22 A. Yes, I have.

23 Q. In business related matters for

24 General Cigar?

25 A. For General Cigar.

Q. Uh-huh.

A. Or Culbro. When I speak of General Cigar, I'm referring to both General Cigar Co., Inc. and Culbro Corporation, which was by change of name for a while.

Q. Okay. I understand that.

So you're generally familiar with the deposition process that we have here?

A. Yes.

Q. Just briefly, and I'm sure you've discussed this with your counsel, you understand you're under oath?

A. Yes, I do.

Q. And everything we say and what we say, unless we say off the record, is being recorded by the court reporter?

A. Yes, I do.

Q. If you don't understand a question I've asked, please ask for clarification.

If you don't think you heard me correctly or whatever, ask me and I'll repeat it.

If you feel like you need a break, let your counsel know and we'll take a break at a

anything?

A. I have nothing, no. That was the only thing I had regarding the Cohiba.

Q. Okay. And I take it that Morgan & Finnegan, Ms. Dore from Morgan & Finnegan is representing you here today?

A. Yes, they are.

Q. And while you were at General Cigar, they were your attorneys?

A. Yes. They were our attorneys for trademark matters concerning cigars, and also any licensing of that there were. We had other -- we had another firm that handled a different section of our trademarks.

Q. But Morgan & Finnegan handled your trademark --

A. They handled our cigar trademarks.

Q. What years were you employed at General Cigar/Culbro?

A. All right. I started in, I believe it was April 1959 to April 1st, 1988. 29 years total.

Q. Did you attend college?

A. Yes, I did.

Q. And where did you go?

A. Rutgers.

Q. And did you graduate from there?

A. Yes, I did.

Q. What year?

A. 1952. Oh, 1951, 1952, 1959.

Q. 1959.

What degree did you get?

A. Ph.D.

Q. Ph.D.?

A. Yes.

Q. In what?

A. Agricultural research was my major all the way through.

Oh, I'm sorry. My master's was in plant ecology, but the other two were agricultural research, BS and the Ph.D.

Q. And you are not an attorney, am I correct?

A. No.

MS. DORE: Wait a second. Are you saying no, he's not correct or no, you're not an attorney?

MR. GOLDSTEIN: You're right.

BY MR. GOLDSTEIN:

Q. You're not an attorney?

A. No, I am not an attorney.

Q. And when you left General Cigar, did you retire at that time?

A. Yes, I did.

Q. Were you ever an officer of --

A. No.

Q. -- Culbro or General Cigar?

A. No, I wasn't.

Q. And were you ever a director of Culbro or General Cigar?

A. No, I wasn't.

Q. What were your -- very briefly, leading up to, say, the mid 1970s, what were your positions at General Cigar?

A. From 1959 to 1963 I worked on research and culture of shade tobacco and the curing of shade tobacco.

In 1963 I was transferred to the New York office as a staff assistant to the vice president in charge of research and development, and I remained there until I retired.

Q. So from 1963 to 1988?

A. '88, yes.

Q. At some point did you begin to take on responsibilities related to General Cigar trademarks?

A. The gentleman I worked for, that was part of his responsibilities, and I worked into it through him.

Q. And who was that person?

A. That was Mr. Paul Garbo.

Q. What's the last name?

A. Paul W. Garbo, G-a-r-b-o.

Q. So in addition to research and development, he had responsibilities for, at the business side, maintaining the marks?

A. Yes. Sort of a liaison between our management and the law firm. And I only did that under Mr. Garbo, but I worked for him for nine years in that capacity, and then by that time we had a legal department, general counsel and up to three assistant counsels, and they had oversight, various ones had oversight of what I was doing under the general counsel.

Q. And who --

A. Mr. Garbo was still a consultant for

about nine more years, but he wasn't an officer of the company.

Q. During the period from, say, the late 1970s through the mid 1980s, did you have primary responsibility for trademark work other than what the attorneys were doing?

A. Well, I did the routine work.

Q. Meaning?

A. Meaning if shipments had to be made to establish the use of the mark and interstate commerce, I arranged that.

I arranged for the preparation of the affidavits under 12C, and 8 and 15.

Q. And you also had contact with the -- you also dealt with the lawyers at Morgan & Finnegan in this capacity?

A. Yes.

Q. And the in-house counsel at General Cigar?

A. Well, they had oversight. The general counsel and he designated one of the younger lawyers had oversight for what I was doing.

Q. Who was the general counsel in the late 1970s?

A. It was always Ross Wollen, A. Ross Wollen.

Q. Do you know when he started?

A. Do I know -- excuse me?

Q. Do you know what year he started or about when he started?

A. I don't know the exact year, but I was there in '63 and he wasn't there yet, and he was there I would say before the '60s.

Q. Okay. So he was there by 1970?

A. Oh, yes.

Q. How much of your job or your responsibilities were related to trademark matters in the '60s, '70s and '80s.

A. When I first started out?

Q. Well, let's say '70s and '80s.

A. It increased. It was about 20 percent in the '60s, and then we acquired other companies. They expanded in the tobacco line, snack food line, proprietary drug line. And by the '70s they were starting to sell off some of these businesses so... I'm sorry. I missed your question.

Q. So my question was about how much of

your time was spent in the trademark matters.

A. So I'd say 20 percent when I started off.

That probably increased somewhat as we acquired the other companies. I would estimate about 30, maybe even 35 percent.

Q. Okay. And after Mr. Garbo was no longer over you, were you reporting to Mr. Wollen?

A. That's right, or someone he designated.

Q. Do you recall how you became aware of General Cigar's Cohiba?

A. Yes. Mr. Lilienfield.

MS. DORE: Listen to the question. Repeat the question.

(Question was read back as follows: "QUESTION: Do you recall how you became aware of General Cigar's Cohiba?")

MS. DORE: General Cigar's Cohiba.

A. Oh. I don't understand what you mean by became aware of General Cigar's Cohiba.

Q. Well, when did you first learn that General Cigar was interested in registering the

name Cohiba or was thinking about registering the name Cohiba or was talking about doing that?

A. All right.

MS. DORE: Objection. Multiple question.

BY MR. GOLDSTEIN:

Q. You can answer.

A. I received a memo from Mr. Lilienfield asking me to check the mark Cohiba.

Q. Do you recall when this was?

A. No. I can't -- I can't remember the exact date of the memo.

Q. The application was in March of 1978, the application for the trademark Cohiba.

A. So it must have been just -- it was prior to that by I don't know just how many -- how long a period, but it was reasonably close to that.

Q. And what did he mean by check the mark Cohiba?

A. Well, we had a system when marks were proposed, that we would primarily check them through the Trademark Renewal Register, the Official Gazette trademarks, different almanacs

for cigar marks and tobacco marks. The Retail Tobacco Dealers Almanac was a good source.

Q. And did you do that? Did you check for the mark Cohiba with those sources?

A. Yes, yes. Yes, I did.

Q. Who is Mr. Lilienfield?

A. The gentleman was a vice president and he was in charge of domestic sales of the higher priced cigar line.

Q. And do you know how the name Cohiba came to the attention of General Cigar?

A. When we registered it, I didn't know how it came.

Not when we registered it, but when I was searching it, I didn't know how it came.

Q. You were just asked to search for --

A. Just asked to search and I searched.

Q. Did you subsequently learn how it came to the attention of General Cigar?

A. I understood that it came from -- well, there was evidently was some kind of a convention or something in Florida and it arose somewhere out of that convention.

Q. And what do you know about that?

A. That was it, that that was a -- at that time somebody said that they thought it was a cigar that Fidel Castro used to hand out to his friends and dignitaries.

Q. Do you know when you learned this?

A. It was somewhere after the search. That would have been -- I can't give you an exact date, but it was sometime after that.

Q. Okay. Do you have any information about -- do you know who Oscar Boruchin is?

A. I've heard the name. I've never met the gentleman.

Q. Do you have any information about Oscar Boruchin bringing the cigar to the attention of the Cullmans?

A. Officially I wasn't informed where it came from.

Q. Unofficially do you have any information?

A. Nothing that -- no, nothing. It was just part of a rumor that went around. There was nothing official.

Q. What was the rumor?

A. Well, the rumor was that it had come out of this convention in Florida and maybe he was involved with it. That's all I know.

Q. Is Bob -- if I see a memo with Bob in 1977, is that Lilienfield?

A. Yes, Robert Lilienfield. He's that gentleman I was mentioning.

Q. Did you review any documents prior to coming to your deposition, either on your own or with counsel?

A. Yes.

Q. And were these various memos and other types of correspondence that you had either prepared or had had in your files?

A. Yes.

Q. And did you recall those documents when you saw them or was it like an oh, I don't remember this kind of a thing?

A. Some of them I recalled. Others after 12 years is a little hazy.

Q. I'm going to go through some documents that I have in my files that were produced to us by General Cigar. Most, but not all of them indicate they're either from or to you or some

other way, and we'll go through them and I'll be asking you questions about some of the documents. One of the things I may ask you is whether you have seen the document in preparation for the deposition or not.

Why don't we start with this one.

(Plaintiff's Exhibit 135, Memo dated 12-12-77 from Sparkes to Lilienfield, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Mr. Sparkes, I'm showing you what we marked for this deposition as Plaintiff's Exhibit 135. On the bottom it has some numbers, including GC, a series of zeros and then the number one, and it has a date of 12-12-77 and the initials CHS.

Those are your initials?

A. Those are my initials.

Q. Okay. And did you prepare this memo?

A. Do you mind if I get my glasses?

Q. Sure. Of course.

A. Yes, I wrote this memo.

Q. And is this the memo you were referring to you, you said Bob had -- was there

an initial memo from Bob?

A. I believe there was. I believe there was.

Q. And then this is responding to his request that you do certain things?

A. Yes.

Q. Regarding Cohiba?

A. Uh-huh.

Q. Okay. And there are some other marks here that have been cut out based on what it says in the memo?

A. Yes.

Q. After Cohiba you wrote "Presently used in Cuba."

What is the source for that information?

A. The statement I heard that Fidel Castro used to hand this to friends and dignitaries that came. That was my source.

Q. And did that information come from Mr. Lilienfield?

A. I can't... I can't recall whether it was Mr. Lilienfield.

Q. This is information --

A. I can't recall whether it was Mr. Lilienfield or some other person.

Q. But this is information given to you by someone at General Cigar?

A. Yes.

Q. There's handwriting next to it, "Castro's cigar brand."

Is that your handwriting?

A. Yes, that appears to be my handwriting.

Q. And the basis for that information is?

A. The same.

Q. Either Mr. Lilienfield or somebody else at General Cigar?

A. Yes.

Q. Do you recall reading any articles about Cohiba at about this time?

A. No.

Q. Do you recall an article in Forbes magazine just prior to this December 12th, '77 date?

A. No, I don't. I'm not familiar with that article.

Q. Nobody brought that article to your

attention?

A. No, nobody brought it to my attention.

Q. Where you say -- in the next line you wrote, "Told him that first three seem clear as of March of this year but we would need an outside search to update same," do you see that?

A. Yes.

Q. "Told him," is that telling Bob or is that telling Mr. Cullman junior?

A. That was more likely Mr. Cullman junior.

Q. Did you deal directly with him?

A. No. I used -- I was on the same floor with him and I used to see him in passing.

Q. Okay. So you believe the "him" refers to Mr. Cullman?

A. Excuse me?

Q. You believe the "him" refers to Mr. Cullman?

A. Yes, I do.

Q. In the bottom -- in the middle of the page it says "Redacted" and there's a big empty space.

Generally do you know what was there?

A. No, I don't. From this I have no idea what was there originally.

Q. Now, in that second paragraph you say, "The first three seem clear as of March of this year according to Trademark Renewal Register for 1977, but we would need an outside search to update same."

What would the outside search do?

A. Well, the TMA kept an old register of tobacco marks that went back quite a ways, and the CMA also produced bulletins that they put out with marks, but these were essentially marks, information that they had obtained from the Official Gazette trademarks.

Q. The TMA, that stands for?

A. Tobacco Merchants Association.

Q. Okay. And what would the outside search consist of?

A. The outside search we would have to go through our attorneys for.

Q. And do you know what they would do, what they would search?

A. I know they were quite elaborate, but

they would probably have other sources than what I had used for my preliminary search.

Q. They probably would search the Patent and Trademark Office data or register?

A. Yes, they would have.

Q. If you look at the bottom of the page, it says, "Edgar Cullman, Jr. does not particularly want a TMA search."

A. Right.

Q. Did he tell you that?

A. Yes. I believe I had a memo that I was going -- passing to the people who were interested in the mark, there might have been three or four of them, and I left off a copy of the memo with Mr. Cullman's secretary.

And then I was called on some other matter, and when I came out of there, Edgar Cullman, Jr. was just coming out of his office, and he stopped me and he asked me about the TMA search, and he said he was more interested in getting an immediate filing date than going through.

And he asked me what the TMA search would turn up, and I said it's essentially quite

old information and it would just be a check, but I didn't expect that we would find much from it.

He said -- I told him that -- he asked me what the risks were, I believe, and I told him probably the cost of -- if we didn't make the search. And I told him that it would probably be the cost for filing the mark.

Q. Was any trademark search done for Cohiba prior to filing the application?

A. No. Well, just the internal one, yes.

Q. Did you ask Morgan & Finnegan to do a trademark search?

A. No, I didn't.

Q. Did you ask any other attorneys to do a trademark search?

A. No.

Q. Was that unusual in your experience?

A. Not really. The only time -- with the information that we could glean from the Trademark Renewal Register, that brought us up to December 31st of the previous year, and then we were going through the Official Gazette trademarks week by week. We had updated just

about all of the information that we would need for the patent office to find out whether it was registered.

Q. So for this Cohiba mark you did an internal search, people at General Cigar looked at the TMA or did not look at TMA?

A. No, we didn't have TMA.

Q. Okay. Did you look at anything -- I know you didn't ask outside lawyers to look for it. Did anybody in-house look at anything, inside General Cigar?

MS. DORE: He just answered that.

A. I believe I explained how it was done.

Q. You looked at the Official Gazette of the PTO?

A. And the sheets that came from TMA --

Q. Oh.

A. -- and CMA.

Q. What is CMA?

A. Cigar Manufacturers Association.

Q. You were aware that the cigar existed, not the cigar, but the name Cohiba existed for a cigar in Cuba at this time?

A. Yes.

Q. Was any search done to see if that cigar had been registered in any other countries other than the United States?

A. No. My instructions were to make the search domestically, United States, so I didn't bother with any others.

Q. Do you know if any search was conducted at that time outside of the United States?

A. Not at the time that we were filing, no.

Q. Do you have any knowledge of General Cigar, for any brand whatsoever, ever searching to see if a brand was registered in Cuba?

A. I can't recall of any, no.

Q. Before I mark this, let me ask you if that -- I'm showing you a document, GC 2003. It's a handwritten document, in the upper corner the date of 12-14-77.

Is this your handwriting?

A. The "Castro's brand cigar" and "From Ed Lilienfield for registration" and the date are mine, but I don't recognize the "Sold in Cuba," "Brand in Cuba."

Q. And the word "Cohiba"?

A. And "Cohiba." I don't recall that that would be my writing. Let me check.

Q. Well, it looks --

A. No, I don't recognize that as my handwriting.

Q. Now, E. Lilienfield, is that also Robert or is that another Lilienfield?

A. There were two brothers.

Q. Oh, okay. I'm sorry.

A. Ed Lilienfield was in charge of packaging.

Bob was, as I said, in charge of sales of the higher priced line of cigars.

Q. Now, where this says, "From E. Lilienfield for registration," is that referring to the Cohiba?

A. Yes.

Q. So --

A. Now, I don't know... I don't know why it says "...E. Lilienfield for registration," because I was under the impression it was Bob who wrote me the letter.

Q. And the other memo refers to Bob?

A. Yes.

Q. Okay. And you don't know whose handwriting the Cohiba --

A. No, I have no idea what the Cohiba and that phrase above it is.

Q. Do you have any information about General Cigar's knowledge regarding the Cohiba being sold in Cuba in 1977?

A. No, I don't have any knowledge of that.

Q. And you don't recall who you got -- you received this memo from?

A. No. Ed Lilienfield died fairly early, and I'm not sure whether that's a mistake on my part because I dealt with both of them. I don't know that Ed Lilienfield was alive in 1977. It could have been a mistake on my part and it should have been Bob.

Q. You don't recognize whether that's Bob Lilienfield's handwriting or somebody else's --

A. No.

Q. -- sitting here today?

But you're the one who wrote "Castro's brand cigars"?

A. I wrote "Castro's brand cigars," yes.

Q. And?

A. And the date and "From Ed -- E. Lilienfield for registration."

Q. Do you have any idea what was redacted from this page?

A. No, I don't.

MR. GOLDSTEIN: Why don't we mark this Plaintiff's Exhibit 136.

(Plaintiff's Exhibit 136, Handwritten document dated 12-14-77, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'd like to show you a document with the label GC 000003. It's a letter dated December 14, 1977 from you to the Tobacco Merchants Association of the U.S.

A. Yes.

Q. The handwriting on the top that says "Not mailed," is that your handwriting?

A. Yes, that appears to be my handwriting.

Q. And the letter says, "We would appreciate a search of your files for the

following marks for cigars." It says "Cohiba" and then it's redacted.

Was this letter never sent?

A. This was never sent.

Q. Okay. And the reason was because Mr. Cullman asked that a search not be done?

A. He didn't ask -- he said that he would rather have an early filing than to wait another week or ten days, whatever it took for the search.

Q. The actual filing, however, didn't take place for another three months after this.

Do you know why this filing didn't take place until March 9th, 1978?

A. The actual filing didn't take place until March 1978?

Q. Well --

A. Can you show me something?

Q. Yes.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 137, Trademark application from Whitehill to Commissioner of Patents and Trademarks, marked for

identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you Plaintiff's Exhibit 137, which is a document to the Commissioner of Patents and Trademarks from Culbro, signed by Henry D. Whitehill, vice president and secretary, dated March 9th, 1978.

Taking a look at that document, can you tell me what that document is?

A. This is the application for a filing for the trademark Cohiba in the United States.

Q. And who was Mr. Whitehill?

A. Mr. Whitehill was the secretary at that time.

Q. Secretary of Culbro Corporation?

A. Culbro Corporation.

Q. An officer of the corporation?

A. Yes.

Q. And my question, going back to what I was asking earlier, is do you have any recollection of the reason that the application wasn't filed for three months or almost three months after the December 14th date?

A. No, I can't think of any reason for

1 the filing being so much different than this
2 letter.
3 Q. The TMA search would have taken about
4 a week to ten days?
5 A. Just about. Something like that.
6 MR. GOLDSTEIN: Why don't we mark that
7 letter, GC 00003, and that will be
8 Plaintiff's 138.
9 (Plaintiff's Exhibit 138, Letter dated
10 12-14-77 from Sparkes to Tobacco Merchants
11 Association of the U.S., marked for
12 identification, as of this date.)
13 BY MR. GOLDSTEIN:
14 Q. Do you recall any effort to determine
15 what the word "Cohiba" meant?
16 A. Yes. When I made the internal search,
17 I looked up in a Spanish dictionary the word
18 "Cohiba," and the nearest thing I found was
19 Cohibir, a verb.
20 Q. You didn't find the word "Cohiba,"
21 though?
22 A. No, that wasn't in the dictionary.
23 Q. You found the --
24 A. I --
25

Q. You were the one who searched and found the word "Cohibir"?

A. Yes.

Q. Do you speak Spanish?

A. I've had two years in high school and two years in college. I don't speak the language because I've never been immersed in it.

Q. Have you ever traveled in Latin America?

A. The nearest thing, I was in Puerto Rico for two or three days when we closed on a sales of a trademark for our proprietary drug division. I was there not more than three days.

Q. But you didn't like travel in Latin America --

A. No.

Q. -- and speak Spanish while you were down there?

A. No.

Q. Have you ever -- did you ask anybody whether the word "Cohiba" is a possible form of the word "Cohibir"?

A. Well, I looked in a grammar book, I had a grammar book, and I believe I found that it

was in the subjunctive mood that the verb endings would come -- result in the word "Cohiba." I think that was present indicative or something like that of subjunctive.

Q. Did you ask anybody who spoke Spanish about the word "Cohiba"?

A. No.

Q. Did you ever learn of another meaning of the word "Cohiba"?

A. No, I didn't.

Q. Have you ever heard that the word "Cohiba" means or has an association with tobacco?

A. No, I was not aware of that.

Q. You're not aware of that?

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 139, Handwritten notes dated 12-15-77, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you a handwritten document dated 12-15-77, Plaintiff's Exhibit 139, GC 200004.

Are those your initials under the date?

A. Yes, those are my initials. That's my writing.

Q. And that's your writing on the page.

And is this notes you took regarding the attempt to --

A. Yes.

Q. -- determine the definition --

MS. DORE: Let him finish the question.

BY MR. GOLDSTEIN:

Q. Sometimes I need to struggle with the question because -- make it up as we go along.

Does this document reflect your efforts that you just discussed to determine a definition for the word "Cohiba"?

A. Yes, in part.

Q. This phrase "No me Cohiba," Do not restrain me?

A. Yes.

Q. Did you see that used in a book or a document?

A. I may have. When I was looking in the

grammar, I believe the English translation of Cohiba was that I may restrain or I may cohibit [sic]. That was the meaning that I took Cohiba to mean from.

Q. Do you recall actually seeing the word "Cohiba"?

A. Well, no. That was from the verb ending. Now, where this "No me Cohiba" came, I can't recall; do not restrain me. I can't recall where I picked that up.

Q. Okay. And then this Coiba Island, was that from an almanac or encyclopedia?

A. I was looking for something else and a map of Central America, and I came across these islands off the southern coast of Panama with the spelling without the H.

Q. And you said this was -- when I said this document reflects the work you did, you said in part.

A. Well, I meant that was part of this Coiba Island was...

Q. The other part?

A. The other part.

Q. Oh, I see. Okay.

Now, did you bring this definition to -- do you recall bringing this definition to the attention of anybody else?

A. I may have shown it to somebody, but I can't recall who it was or how many it was at the time. It wouldn't have been more than one or two.

Q. Do you recall telling Harry Marcus at Morgan & Finnegan?

A. No, I don't think -- believe this went to Harry.

Q. Do you know another Harry related to trademark work you did other than Harry Marcus?

A. No, I can't think of another Harry.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 140, Handwritten document dated 1-2-78, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you what we've marked as Plaintiff's 140. It's a handwritten document from January 2nd, 1978.

Is that your handwriting?

A. That's my handwriting, yes.

Q. Okay. In the first line it says, "Cohibir (VA) to prohibit, prohibit, restrain," and that was the definition you had come up with from the dictionary?

A. Excuse me. What was that a question?

Q. I mean this is your handwriting?

A. This is my handwriting, yes.

Q. And then you wrote, "For pending action on Cohiba, gave this definition to Harry for response as to nearest meaning of Cohiba."

A. That would have been Harry Marcus.

Q. Okay. Does that refresh your recollection --

A. That refreshes it.

Q. -- of providing this information to Mr. Marcus?

A. Yes.

Q. And why did you give this to him?

A. I think he had an action coming up and I wanted him to at least be aware of what we found.

Q. When you say "an action," what do you mean? Preparing the application?

A. Yes. That would have been their -- the date is right for preparing the application.

Q. Now, you wrote here, "No such word. May be a part of the verb form"?

A. Oh, I was just indicating that I didn't find the word "Cohiba" as it's spelled, but I found a verb form of it and it's quite possible that that was what it meant.

Q. Did you make any effort to try to determine why the Cubans chose the word "Cohiba" for Castro's cigar?

A. Do you mean my personal opinion or what I've learned from anybody else?

Q. Did you yourself make any effort.

MS. DORE: At what point in time?

MR. GOLDSTEIN: At this time when he's trying to figure out what the word "Cohiba" might mean.

A. Well, I thought it was a very -- after reading about the Castro administration down there, I thought it was kind of ironic that he would pick a name, when we learned what was going on in Cuba, that he would pick that as his favorite cigar, to restrain or cohibit [sic].

I didn't pass that around to anyone, it was just a passing thought of mine when I saw it.

Q. And you never became aware of this ancient Indian word "Cohiba" meaning tobacco?

A. No, I wasn't aware of that.

Q. And you're still not aware of it. This is the first time --

A. I'm not aware. This is the first time I am hearing it.

Q. Are you aware if anybody else at General Cigar made any effort to determine the meaning or the source of the word "Cohiba"?

A. No one -- if they did, they didn't come to me and tell me.

Q. Before I mark this, let me just ask you -- show you a document GC 2004 dated 12-22-77.

Is that your handwriting?

A. No, it's not my handwriting.

Q. Do you know whose it is?

A. I can't be sure, no.

Q. I'm not asking you to simply guess, but do you have an educated guess as to whose it

quick look at it and ask you if that refreshes your recollection or not as to whether or not you ever saw this article.

A. No, I don't recall ever seeing this article.

Q. You worked in the New York City office?

A. Yes, I did.

Q. And you were on the same floor as the Cullmans?

A. Right.

Q. All right. I'm not going to mark that either.

The article I was referring to was "Help from Havana" from Forbes magazine, November 15th, 1977, page 69.

A. Would you check that date again? I heard you say a date.

Q. November 15th, 1977. What did I say?

A. I think you said '69.

MS. DORE: He said page 69.

Q. Date 1977, page 69.

A. Oh, I'm sorry.

Q. That's okay.

source of the word "Cohiba"?

A. No, I wasn't involved with that.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 141, Memo dated 1-9-78 from Sparkes to Forrester, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Do you recall any discussion at General Cigar regarding whether the name Cohiba was registered in Cuba?

A. No.

Q. Do you recall any discussions as to whether or not it would be appropriate for General Cigar to register the name Cohiba in the United States?

A. No, I don't recall anything like that.

Q. Are you aware of General Cigar registering the names of any other cigars that they knew existed in another country where they had not purchased the rights to that name?

A. Where they had not purchased the --

Q. Purchased the rights to that name.

A. To my knowledge, no.

Q. So to your knowledge, Cohiba is the only name where General Cigar was aware that the cigar was in use in another country and they registered it in the United States?

MS. DORE: Can I hear the question, please?

(Question was read back as follows: "QUESTION: So to your knowledge, Cohiba is the only name where General Cigar was aware that the cigar was in use in another country and they registered it in the United States?")

BY MR. GOLDSTEIN:

Q. Where the name for that cigar was in use in another country.

A. The Cifuentes family had three trademarks that Culbro acquired; Partagas, Cifuentes and Ramon Allones, and they did that through an agreement with the family.

Q. They purchased the Cifuentes' rights to those names?

A. Can I speak with my counsel for a moment?

1 Sparkes

2 Q. If it's a question of privilege, yes.

3 MS. DORE: Is it something that you've

4 learned through counsel? Is that the

5 problem?

6 BY MR. GOLDSTEIN:

7 Q. Maybe I can simplify this.

8 You know it was by agreement, but

9 you're not sure if it was by a purchase?

10 A. It wasn't an outright purchase, it was

11 by agreement, if that answers your question.

12 Q. Yes, it does.

13 Are you aware of any agreement between

14 General Cigar and Cubatabaco to use the name --

15 to register or apply to register the name in the

16 United States?

17 A. No.

18 Q. Are you aware of any effort by General

19 Cigar to seek an agreement with Cubatabaco to

20 register or apply to register the name Cohiba in

21 the United States?

22 MS. DORE: Can you repeat it?

23 (Question was read back as follows:

24 "QUESTION: Are you aware of any

25 effort by General Cigar to seek an agreement

Q. In the period 1977 through 1988.

A. No.

Q. Whatever knowledge you have is subsequent to -- knowledge subsequent to 1988?

A. Yes.

Q. Other than the three trademarks from the Cifuentes family which General Cigar obtained by agreement with the Cifuentes family, are you aware of any other cigar brand name that General Cigar registered in the United States with the knowledge that that cigar brand was being used in another country?

A. We had a -- we owned -- we acquired a brand Garcia y Vega.

Q. Again, that's a name that you acquired?

A. Yes.

Q. Maybe I can cut through this a little bit.

Are you aware of any cigar brand that General Cigar registered or applied to register in the United States that was in use in another country and which General Cigar did not acquire by agreement or purchase other than Cohiba?

A. I truly can't remember any other mark.

Q. Do you recall any discussions as to why they wanted to register the name Cohiba, General Cigar?

A. No. I wasn't a party to those types of discussions.

Q. Did you have any discussions outside of the decision-making itself as to why General Cigar wanted to register the name Cohiba?

A. No. Not that I can recall.

Q. Let's look at Plaintiff's 141, which is a memo of January 9, '78 from you, Mr. Sparkes, to James Forrester.

My first question is, who is Mr. Forrester?

A. Mr. Forrester, as I recall, was the gentleman who arranged for shipments of cigars for when we had new trademark or we wanted to keep a mark active for some reason or other.

Q. And he was located in New Jersey?

A. Well, as we expanded, we ran short of space in New York at 605 Third Avenue, and the administrative section of General Cigar was moved

from New York to New Jersey.

Q. Now, in the first sentence where you say, "Re use of two new trademarks," and in it it says "Cohiba and" and something is redacted, it says, "Attached are four labels for establishing the use of the two new trademarks Cohiba."

Are those labels the same as the last page of the trademark application, if you recall, Plaintiff's 137?

A. Could you show me that?

Q. Yeah, I could.

MS. DORE: It's in the pile here.

137.

BY MR. GOLDSTEIN:

Q. The last page, it looks like a label?

A. Yes. Yes, Cohiba with the small TM was a type of label we would use to initiate.

Q. And this would just be taped on, you know, like slapped on kind of a thing?

A. Yes. We had usually grain-covered boxes, and the label was grain colored and the label was printed for the name of the cigar.

Q. I'm going to show you GC 6226.

Is that a photocopy of a grain box

that you're referring to?

A. Yes.

Q. Now, was this cardboard or wood?

A. These would be covered cardboard boxes.

Q. And then you would just put the label of whatever brand you were talking about on top of that?

A. On top of that, yes.

Q. And these are 50 cigars grain boxes?

A. Right.

Q. And so when you talk about grain paper in this document, that's what you're referring to?

A. Yes.

MR. GOLDSTEIN: Just for clarity then, why don't we mark this grain box, 6226.

(Plaintiff's Exhibit 142, Photocopy of grain box, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Now, it makes a reference to the Philipsburg factory.

Is that in Pennsylvania?

A. Yes.

Q. Where do these -- so the idea here is that you would be making up -- you take one of these grain boxes, you put the label Cohiba on it and you put 50 cigars in it?

A. Yes.

Q. Where did the cigars come from?

A. At that time Philipsburg was making small cigars. Depending on the size of the box, they might be miniatures or they might be cigarillos, something like that from the size of the box.

Q. Were these machine cigars?

A. Yes, they were regular production cigars.

Q. And they were not from the Dominican Republic?

A. No. At this time we had factories in the United States. I believe that Philipsburg and Garcia y Vega in Dolthan, Alabama, were the two factories that were extant.

Q. Was General Cigar making cigars in the Dominican Republic at this time?

A. Yes, they were making cigars -- let me

1 think back. We were making cigars I know in
2 Utuado, Puerto Rico.
3 I can't honestly say that I knew that
4 they were making cigars in the Dominican Republic
5 at that time.
6 Q. But this grain box of 50's that you
7 ordered was in Philipsburg?
8 A. Yes.
9 Q. Okay. Now who decided what was -- was
10 it just stock cigars just put in and called
11 Cohibas?
12 A. Yes.
13 Q. If you go down to the third paragraph
14 it says, "Two 50's boxes with each of the two
15 trademarks should be sent forthwith to the usual
16 two customers, Rubovits Cigars, Inc. in Chicago
17 and JNR Grocery Corporation in New York."
18 Who are --
19 A. The customer --
20 Q. Why are they the usual two customers?
21 A. Well, when we were making shipments,
22 that should be -- customers might be misleading.
23 They were wholesalers and they would put these
24 shipments on sale at discount prices in a retail
25

trade.

Q. I was focusing on the word "usual," "the usual two customers."

Did you have other customers?

A. Well, we tried to -- at different times we tried to cover the country; east coast, north central, west coast, and I believe at a few times south central, a wholesaler in those three general regions.

Q. But when you say "the usual two customers," do you mean Rubovits and JNR were the usual customers you would send these trademark boxes to?

A. In this -- yes. These two names ring a bell that these would be the ones that we sent the boxes to.

Q. And what you did is you sent two boxes of each trademark to each of these two stores?

A. To establish the use of the name, yeah.

Q. Now, it says here in the last paragraph, "After the initial shipment is made, these two new trademarks should be added to the list of trademarks protected with quarterly

shipments of cigars."

What do you mean by trademarks protected with quarterly shipments?

A. Well, originally we had several factories, and in a manufacturer's cigars you get a certain amount of cigars that are not first line that you want to put under the trademark for that cigar. They might have a bruised leaf, the leaf might not be a uniform brownness to it, and these cigars were put out as what we refer to as second cigars. Actually they were first line cigars, but they didn't meet the criteria to go out under the label of the original trademark label and they were sold at discount through a retail outlet.

Now, depending on the factory's inventory of these type of things, the shipments would be irregularly spaced out. Sometimes, some months they might have them, another month they might not, but I say they were irregularly type shipments.

Q. Now where it says, "...trademarks protected with quarterly shipments of cigars," what do you mean by protected? What was your

1 understanding of how these quarterly shipments
2 protected the trademark?
3 A. They were sent in interstate commerce
4 and sold at retail.
5 Q. Do you know how many were supposed to
6 be sent?
7 A. It would be a few 50's. Whether it
8 was two or four I'm not quite sure, but it was...
9 Q. Let's look at --
10 MS. DORE: Before you mark the next
11 document, off the record.
12 (Discussion off the record.)
13 (Recess is taken.)
14 (Plaintiff's Exhibit 143, Handwritten
15 note dated 2-15-78 with attached invoice
16 dated 2-13-78 from General Cigar to
17 Rubovits, marked for identification, as of
18 this date.)
19 BY MR. GOLDSTEIN:
20 Q. I'm showing you a document that we've
21 marked as Plaintiff's Exhibit 143. It's a
22 handwritten memo or handwritten note dated
23 February 15th, '78 from Mr. Endholz in South
24 Brunswick.
25

SB is South Brunswick?

A. Excuse me?

Q. SB is South Brunswick?

A. I would -- the name Endholz is not familiar to me, but that would have -- from what he said, it would have been the administration office down there in South Brunswick.

Q. Okay. This is document GC 18, GC 19, and it says, "Attached per your request..." and attached is an invoice dated February 13th, '78 to Rubovits from General Cigar.

Is this an invoice of what you were requesting in the document we were looking at, Plaintiff's 141, your January 9th memo?

A. Yes.

Q. And what this shows is that 100 cigars are being -- 100 Cohibas are being shipped from General Cigar to Rubovits?

A. Is that a question to me?

Q. Yes. Is that correct?

A. Yes.

Q. Yes.

Now on the amount, you charged 10 percent of the price or $3.45 instead of $34.50?

A. That's what it would seem, yes.

Q. Do you know why ten percent -- you were charging ten percent of the price?

A. No, I really don't know why they would do it. I wasn't involved with this.

Q. And these cigars were shipped from the Philipsburg factory. Am I correct with that?

A. Yes.

Q. Okay. Were these cigars actually sold by Rubovits?

A. Yes. It's my understanding that they were put in retail sale.

Q. And did you have any discussion with Rubovits before sending them a new, a new name, a new brand?

A. It wasn't done individually for each time it was made, no.

Q. They would just open a box and there would be something that they'd never seen before?

A. Oh, I see what you mean.

I don't know what arrangements were made between the administrative branch of General Cigar and Rubovits. Alls I know is that the

shipments were being made.

Q. Now, you have a record of this document in your files or you had a record of this document in your files?

A. I can't say that we had a record in my -- in our files.

Q. Well, what I'm saying is there's a memo from somebody at the shipping end to you --

A. Oh.

Q. -- saying --

A. Oh, right.

Q. -- here's a trademark --

MS. DORE: Let him finish Let him finish the question.

BY MR. GOLDSTEIN:

Q. Here's the trademark invoice. In other words, somebody is sending this to you, right?

A. Yes.

Q. Okay. And they're sending it to you so you'll have a record that you shipped --

A. Right.

Q. -- this in interstate commerce; is that right?

A. That is so.

Q. And the purpose of that is to protect the trademark; is that correct?

A. Yes. That's to keep the use continuous.

Q. Okay. And so the request for quarterly shipments, the idea was also to have continuous use?

A. Yes.

Q. To show continuous use at some later date that you had the quarterly shipments, you would need to keep records of those quarterly shipments; is that correct?

A. Yes.

Q. And were those records kept by you?

A. Up to a certain point I kept copies of the invoices with the file of the trademark.

Q. Of all the shipments of the Cohibas.

A. Of Cohibas? No.

At some point in time the administrator that was making these shipments in General Cigar told me it was getting burdensome to keep pulling invoices.

By that time we were on the computer

have to go through my files and find out what invoices were in those files.

Q. You recall someone telling you that instead of you receiving the periodic invoices, the invoices would be kept on the computers?

A. Yes.

Q. Okay. Do you recall who told you that?

A. Richard Silvie.

Q. And do you recall when he told you that?

A. No. The exact date I can't recall.

Q. Do you know the approximate date?

A. No. I have no idea. It's just too far back.

Q. Let me ask you this, though: The purpose of the periodic shipments of these 50's grain boxes of Cohiba was to show what?

A. Was to show that the mark was used in interstate commerce.

Q. And the only way to be able to establish that if you ever were challenged was to produce the documents showing that it was used in interstate commerce?

A. Right.

Q. So those documents would have been preserved somewhere; is that correct?

A. They would either have been preserved as invoices or maybe on a computer floppy disk, whatever.

Q. Was there any point in periodic shipments to establish use in commerce if you weren't going to keep the records of those shipments?

A. As far as I know, the records are there.

Q. So whatever shipments were made, there should be records of that?

A. Somewhere is -- in what form, I don't know. Certainly in a form of an invoice. If after that date, after we stopped collecting the invoices, they should be somewhere in a backup of a computer, on a computer disk somewhere.

Q. Okay.

MR. GOLDSTEIN: Let's mark this.

(Plaintiff's Exhibit 144, Handwritten note dated 3-15-78 from Endholz to Sparkes with attached invoice, marked for

1 Sparkes

2 identification, as of this date.)

3 BY MR. GOLDSTEIN:

4 Q. I'm showing you what's been marked as

5 Plaintiff's 144. It's a March 15th, '78

6 handwritten note from that same individual,

7 Endholz, to you. It's a cover note, handwritten

8 note and then an invoice attached, and it's GC 22

9 and GC 23.

10 The note says, "These are the correct

11 copies for JNR on the two sent to Mike

12 Senario. Any questions, call me. Rob." Bob, I

13 guess.

14 Do you recall receiving this memo

15 from -- regarding the sending of the Cohibas?

16 A. I remember -- let me see the date.

17 3-78.

18 I don't remember receiving it, but if

19 it was in the file, we can conclude that I

20 received it.

21 Q. Now, this says these are for JNR, but

22 it's to Cigar Santa Clara.

23 Is Cigar Santa Clara the same as JNR?

24 Do you recall if that's one of the JNR

25 companies?

A. I have a hazy recollection that this might be the same company. I can't be exactly sure, but there were certain times --

Q. You don't recall whether or not this is a JNR company?

A. No.

Q. Okay. Because I just wanted -- I'm trying to confirm whether they're -- it says it refers to JNR, but the attached invoice is to Cigar Santa Clara. Just to clarify that.

A. That would be something that the administration down from General Cigar would know.

Q. And this is showing 50 Cohibas, 50 Cohiba cigars shipped to Cigar Santa Clara and a bill for $1.73 for those 50?

A. I see that.

Q. Am I reading that correctly?

A. You're reading it correctly, yes.

Q. And do you have any knowledge that Cigar Santa Clara sold these cigars or put these cigars up for sale?

A. Personally I have no knowledge. I know that I asked that it be done.

1 Sparkes

2 MR. GOLDSTEIN: Let's mark this.

3 (Plaintiff's Exhibit 145, General

4 Cigar invoice dated 4-5-78 to Cigar Santa

5 Clara and General Cigar invoice dated 4-5-78

6 to Rubovits, marked for identification, as

7 of this date.)

8 BY MR. GOLDSTEIN:

9 Q. I'm showing you what's been marked as

10 Plaintiff's 145. It's been produced to us as GC

11 24. It's what looks to me like two separate

12 invoices that got essentially copied one on top

13 of another.

14 A. They were the -- yes, I see that.

15 Q. One to Cigar Santa Clara and one to

16 Rubovits, both with a 4-5-78 date?

17 A. Uh-huh.

18 Q. And it shows, it's unclear to whom,

19 but I assume it's the Rubovits one on the bottom,

20 there's a shipment of 100 Cohiba cigars? Do you

21 see that towards the bottom? It's the only one

22 that's not redacted.

23 A. Yes.

24 Q. The only name on this document.

25 Do you see that?

A. Are you asking me --

Q. I'm asking if you see where it says "Cohiba 100 cigars."

A. Yes, I see it.

Q. Okay. And, again, it's for an amount of $3.45?

A. Yes, I see that.

Q. Do you have any knowledge of this shipment on April 5th, 1978 other than what you're looking at there?

A. Personally, no.

Q. Other than the three invoices we looked at, do you have any knowledge of any Cohiba cigars shipped by General Cigar in 1978, 1979, 1980 or 1981?

A. I don't have direct knowledge. It's possible that they're in the records, but I don't have -- I haven't anything in the files like this that I believe.

Q. Okay. And you're not aware of any periodic shipments or shipments during that time period of '78 to '81 other than the three invoices we looked at?

A. There should have been. I asked for

A. I don't know who in General Cigar would have been responsible for making shipments.

Q. Was Mr. Forrester?

A. If it was a standing order from me to make the shipments, they would have -- it would have still been made. They should have been made in those years.

Q. I mean who would have done it, Mr. Forrester?

A. Well, whoever was -- I don't know whether it would be Mr. Forrester or Mr. Endholz. It would have been somebody who was doing that job for General Cigar.

Q. Without marking this, let me show you, we cut off one number, but it's GC 4812 and GC 4813 and also marked -- well, those are the old numbers.

I just ask you if you've seen either of these two documents before.

(Witness reviewing documents.)

A. I've never seen these documents.

Q. Okay. Do you recall that soon after General Cigar's trademark application for Cohiba, it learned that another company had also applied

for the trademark Cohiba for cigars?

MS. DORE: Soon as what about the application?

MR. GOLDSTEIN: Soon after General Cigar made its application.

MS. DORE: Okay.

MR. GOLDSTEIN: On March 9th, 1998.

MS. DORE: Soon after it filed.

MR. GOLDSTEIN: What's that?

MS. DORE: Soon after it filed the application?

MR. GOLDSTEIN: Yes.

MS. DORE: Okay.

MR. GOLDSTEIN: Made its application. Filed its application.

BY MR. GOLDSTEIN:

Q. Learning that another company had also filed for --

A. I believe so, yes.

MS. DORE: Let him finish his question.

BY MR. GOLDSTEIN:

Q. -- the Cohiba cigar name?

A. Yes.

Sparkes

Q. Okay. Do you recall learning about Beneficial Capital Corp.? Do you recall that name?

A. Yes.

Q. Do you recall how that came to your attention?

A. I'm not sure whether that came from inside the company or from outside from something I saw in the action files.

I do remember inside the company, Mr. Alfons Mayer, M-a-y-e-r, first name A-l-o-f-n-s, he sent me a bulletin from, I believe it was from CAA and they had listed filed marks. It may have been from him that I...

Q. I don't want to confuse you. There are documents showing he sent you something from CAA --

A. Yes.

Q. -- relating to Quakenbush in 1982.

A. Oh. Oh.

Q. And I'm going to focus first on information in 1978 regarding Beneficial.

Again, I'm not trying to make this into a memory test, so let's -- let me just show

1 Sparkes
2 you this.
3 MR. GOLDSTEIN: Why don't we mark
4 this.
5 (Plaintiff's Exhibit 146, Cigar
6 Association of America document dated
7 3-20-78, marked for identification, as of
8 this date.)
9 BY MR. GOLDSTEIN:
10 Q. I'm showing you what's been marked as
11 Plaintiff's 146. We did a bad copying job
12 yesterday. On the bottom it has GC 5987. The
13 date on the top, you can barely make it out, it's
14 March 20th, 1978, and it's a document from Cigar
15 Association of America.
16 Do you recall now receiving this or
17 seeing this document?
18 It has "Cohiba design, 1-16-78,
19 cigars, Beneficial Capital Corp., New York, New
20 York."
21 A. Yes, I believe I saw this.
22 Q. Okay. Now the date March 20th, that's
23 11 days after your trademark application; is that
24 correct?
25 A. Right.

1 Sparkes

2 Q. And the Beneficial application, the

3 filing date is prior to yours; is that correct,

4 January 16th? Where it says --

5 A. Show me something with our filing date

6 on it.

7 Q. Plaintiff's 137 I believe it was.

8 A. 137.

9 Q. It had the March 9th date.

10 MS. DORE: That's not the filing date.

11 MR. GOLDSTEIN: The application date.

12 BY MR. GOLDSTEIN:

13 Q. That's the day you signed the --

14 that's the date the application was signed. The

15 file date would be sometime after March 9th,

16 1978.

17 It would be after January 16th, 1978;

18 is that correct?

19 (Witness reviewing document.)

20 A. It would appear that the filing date

21 by Beneficial was prior to ours.

22 Q. The handwriting at the bottom, is that

23 yours?

24 A. It appears to be, yes.

25 Q. And it shows that you sent a copy to

Edgar Cullman, Jr. and to Harry Marcus?

A. Yes.

Q. Okay. And you also did a D&B, a Dun & Bradstreet search of Beneficial Capital Corp.?

A. I don't know whether I asked for the D&B. It might have been someone else.

Q. But a D&B search was done, to your knowledge?

A. To my knowledge, it was done.

Q. The Beneficial Capital Corp. application was first in time; is that correct?

A. Yes.

Q. But General Cigar got the registration for Cohiba?

A. Right.

Q. Do you know what happened to the Beneficial Capital Corp. application?

A. It comes to my mind that they dropped their application.

Q. Do you know if General Cigar entered into an agreement with them?

A. Not to my knowledge. I think it was -- I'm not sure whether this was one of the actions that was reported in the file that the

1 Sparkes

2 Q. Do you recall any discussions at
3 General Cigar regarding the Beneficial Capital
4 application?
5 A. I can't recall any discussions.
6 Certainly if this were listed on one of those
7 trademark bulletins that are put out by CMA, TMA,
8 CAA, it would have been noted. Someone would
9 have noted, sent it around. That's all I would
10 know about it.
11 Q. But you don't have any other
12 recollection?
13 A. No.
14 MR. GOLDSTEIN: Why don't we just mark
15 this document, GC 44 and 45.
16 (Plaintiff's Exhibit 147, Trademark
17 PTO Action, marked for identification, as of
18 this date.)
19 MR. GOLDSTEIN: I think I just want to
20 have these marked for the record.
21 (Plaintiff's Exhibit 148, Dun &
22 Bradstreet report printed 3-28-78, marked
23 for identification, as of this date.)
24 (Plaintiff's Exhibit 149, Handwritten
25 document dated 3-24-78, 5981 with a date

3-24-78, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you first 149, which is a handwritten document, 5981 with a date 3-24-78.

I apologize. This is my only copy because I forgot to copy, and I may need to just come over around past you.

That is your initials?

A. My initials and my writing, yes.

Q. And it makes reference to doing this Dun & Bradstreet search on Beneficial?

A. Yes.

Q. And you brought this information to the attention of Mr. Cullman?

A. Just let me read it, please.

Q. Sure.

(Witness reviewing document.)

A. I'm ready.

Q. Okay. So that document reflects you doing a Dun & Bradstreet search of this Beneficial company?

A. It says it was ordered, but whether I ordered it personally or not I can't be sure.

Q. Well, General Cigar did a Dun & Bradstreet search.

A. Right.

Q. And you provided Mr. Cullman with some information from the search.

A. Right.

Q. And at the end of the sentence, again I apologize, I need to come around, he, meaning Edgar Cullman, asked if we could question their use date?

A. Yes.

Q. Do you recall anything about their use date?

A. I can't recall doing anything about it, no.

Q. Do you recall any discussions about how come this financial company was selling cigars?

A. The question arises were they selling cigars. I don't know whether they were or not. Certainly they -- on their application they show the word and the design for cigars, but I have no knowledge of whether they ever put it on the market.

Q. Do you know why Mr. Marcus didn't provide the information regarding the Cohibir definition that you had provided him earlier?

A. No. I have no knowledge of why, no.

Q. Do you recall any discussions as to whether or not to provide that definition to the trademark PTO, to the Patent and Trademark Office?

A. I don't know whether it was ever submitted or not, no.

Q. And it also says the term Cohiba has no meaning or significance in the relevant trade or industry.

Do you know why there was no disclosure that this was also a Cuban cigar?

A. When you talk about relevance in the trade or industry, are you talking about domestic or are you talking about foreign or international?

Q. I'm asking you whether you recall whether there was any discussion regarding whether or not to disclose that this cigar was also a brand name used in Cuba.

A. I don't believe there was any

discussion, no.

Q. Do you know if there was any obligation on the part of the applicant to disclose that information?

MS. DORE: Are you talking about a legal obligation?

MR. GOLDSTEIN: What's that?

MS. DORE: Are you talking about a legal obligation?

MR. GOLDSTEIN: What his understanding was or whether there was any obligation for the applicant to provide that information.

MS. DORE: Object to the extent it calls for him to give a legal conclusion.

A. I can't recall that he was informed that it was a Cuban trademark, no.

Q. Whether who was informed?

A. Harry Marcus.

Q. But the applicant knew it was?

A. We weren't aware that it was a registered trademark.

What I was aware, if that's what you're talking about, was that Fidel Castro had a brand called Cohiba, but whether it was

1 Sparkes

2 registered or not...

3 Q. It was something General Cigar didn't

4 know?

5 A. Yes.

6 Q. And it hadn't bothered to look and

7 find out either; isn't that correct?

8 MS. DORE: Objection to the

9 characterization.

10 BY MR. GOLDSTEIN:

11 Q. It had not looked to find out whether

12 or not it was registered?

13 A. We had no searches made, that I am

14 aware of, of the Cuban trademarks, no.

15 There is one thing, though. Whether

16 it was a trademark, there was a section of the

17 RTDA almanac that listed the Cuban trademarks.

18 Not the Cuban trademarks, but advertising Cuban

19 cigars. From my earliest recollection it would

20 be about the 1950s, 1952 or 1953, until 1964

21 where they had a separate section of the RTDA

22 that listed all the Cuban companies, and the

23 types of cigars and prices and everything in

24 them.

25 Q. But that stopped in 1964.

A. Excuse me?

Q. Your recollection is that that stopped in the 1960s?

A. Well, it should have stopped in '63 but there was a fall-over to '64 because the almanac was in publication, I guess.

Q. But General Cigar made no effort to determine whether or not that Cohiba, Cuban Cohiba, was registered in Cuba --

A. No.

Q. -- at this time?

A. We didn't find it in the almanacs, no, and we didn't --

Q. But the almanac stopped in '64.

A. The Cuban registry -- yes. The Cuban listing stopped in 1964, yes.

Q. Let me show you this first before we mark it. GC 46. It's a January 18, '79 memorandum. Most of it is redacted. The only word that's not redacted is -- the only typed word that is not redacted is the word "Cohiba," and then under that is handwritten notes.

Do you know what this document is or --

A. Yes, I -- it's my writing, my initials.

Q. Do you know what was redacted? Was it other marks or discussion of other marks?

A. Yes, there were other marks beside Cohiba.

Q. Now this says -- what's the first word? Can you tell what that is?

A. "Spoke."

Q. So it's "Spoke with Cullman junior..."

A. Yes.

Q. "...and he is not ready to drop any of the BB marks used --

A. Thirty-three marks.

Q. Oh, 33 marks. I'm Sorry.

A. "...used on temporary labels at this time."

Q. So --

A. "Still -- my writing is...

Q. Does that say "Still will keep"?

A. "Still will keep all above listed...

Q. Applications?

A. Application is the wrong word but...

Q. "...except secondary interest in

asterisk marks," is that what that last line says?

A. Yes.

Q. Now, were 33 names listed here, was that your understanding?

A. Yes.

Q. And these were all being used with temporary labels?

A. Yes.

Q. And do you recall, were most of them asterisks or any of them asterisks?

A. I don't recall which ones. It says...

Q. Do you recall why you had this discussion with him about whether or not he was ready to drop any of the temporary labels?

A. I was trying to clear out some of the trademarks that we had on temporary labels.

As I said, the number of factories by 1979 had been reduced from approximately seven or so down to one in the United States. I'm not sure whether the factory in Puerto Rico was still extant, but Dominican Republic, Jamaica were the other manufacturing plants.

And the need -- these marks I referred

to earlier as second marks, a great many of them would be those, and with the condensation of the production, I thought we could abandon or let die those marks, not use them. And --

Q. Who asterisked them, you or Mr. --

A. I initiated this.

Q. Who indicated which ones were asterisked as secondary, you or Mr. Cullman?

A. It was probably mine. This was mine. It was mine, the asterisk. And from the sound of it, it appears to be that I was trying to get them to drop some of these marks that had been built up over the years for shipments of cigars that weren't first line that we were selling in the trade.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 151, Patent and Trademark Office response to Culbro's 1-3-79 response, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you what's been marked as Plaintiff's 151, and this is the PTO's response

recall anything independent of the actual written response.

A. No.

Q. Do you recall working with Morgan & Finnegan on preparing a response?

A. No.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 152, Culbro's 9-14-79 response to 3-14-79 Patent and Trademark Office notice, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I show you Plaintiff's 152, and this is a September 14th, 1979 response of Culbro to that March 14th note or notice from the PTO from September 14th, 1979, and signed by Janet Dore of Morgan & Finnegan.

MS. DORE: It was inevitable.

MR. GOLDSTEIN: Sorry to date you but...

MS. DORE: That's okay.

BY MR. GOLDSTEIN:

Q. Looking at that document, let me first

ask you if you recall helping to prepare the Morgan & Finnegan response.

A. No, I can't recall that.

Q. In response to the question from the PTO about Cohiba being a geographical tobacco growing region of Cuba, there's a fairly lengthy response regarding that matter.

A. I'm sorry. I just saw another page.

While I wasn't involved, certainly from the file, Janet would pick up on page -- let me see. I can't read the number.

MS. DORE: You can use this number.

THE WITNESS: THE GC number? Oh.

Oh.

A. GC 001898. The business of to restrain or repress, to inhibit, Cohibir, was probably something that came from us. That was in their files from us.

Q. Do you have any knowledge as to why this was put into this response but not in the January 3rd response?

A. Excuse me. May you repeat that?

Q. Do you have any knowledge as to why this definition of Cohibir was put into this

1 response but not into the January 3rd response
2 that we looked at earlier?
3 A. I'm not familiar with the reference to
4 the University of Chicago Spanish-English,
5 English-Spanish dictionary, Washington Square, so
6 evidently this was picked up independently of the
7 earlier definition.
8 Q. But you don't know if it was picked up
9 independently or whether somebody might have
10 confirmed the definition?
11 A. Well, certainly it didn't come from
12 me.
13 Q. Well, the original information, the
14 Cohibir information, was provided to Harry
15 Marcus?
16 A. Right.
17 Q. So you don't know whether they came up
18 with this independently or simply went to
19 resources to verify what you had written?
20 A. I don't know.
21 Q. Okay. That's what I'm asking.
22 A. Yes.
23 Q. You had no involvement with the
24 decision --
25

1 Sparkes

2 A. No, no.

3 MS. DORE: Let him finish. Let him

4 finish the sentence.

5 BY MR. GOLDSTEIN:

6 Q. You had no participation or

7 involvement with the decision to place this

8 definition of Cohibir in this application, in

9 this response?

10 A. No.

11 Q. In the course of the discussion about

12 geographic origin, there's no reference to --

13 there's discussion about a geographical place

14 called Cohiba in Cuba, but there's no reference

15 or discussion of the existence of a Cohiba cigar

16 in Cuba.

17 Do you recall participating in any

18 discussion or decision regarding whether or not

19 to disclose the Cuban Cohiba in this response?

20 A. No, I don't recall that.

21 Q. And your understanding is that this is

22 a true statement, that the cigars to which the

23 mark is affixed are produced in the United

24 States?

25 That's on top of page 1895.

refreshes your memory of what finally happened with Beneficial other than what you've told me?

A. No.

Q. Now, at some point in 1981 the Patent and Trademark Office did, in fact, grant the registration of Cohiba to General Cigar?

A. Yes.

Q. And as far as you know, there was no formal contest between General Cigar and Beneficial?

A. No.

Q. You mentioned earlier about Alfons Mayer bringing to your attention another Cohiba trademark application, and we were talking about Beneficial and I said do you recall if that really involved Quakenbush.

A. Quakenbush, yes.

Q. I have some documents about that and I'll show them to you, but before I do, I just want to ask you if you recall what happened with the Quakenbush Cohiba application?

A. No, I can't recall that.

Q. Let me just -- I'll show you some documents and we can talk about that a little

bit.

This was marked at Mr. Mayer's deposition as Plaintiff's Exhibit 125, and it's a CAA publication listing trademark names.

A. Uh-huh.

Q. And if you look down towards the bottom, the circle is Cohiba with a file date of January 11th, 1982 and a claimed first use date of December 17, 1981 for cigars of Quakenbush Trading Company and with a February 12th, 1982 date for the document, the CAA document.

Now, this was brought to your attention by Mr. Mayer?

A. Yes, I received this.

Q. Okay. And do you recall what you did in response?

A. I may have indicated that the Patent and Trademark Office would cite our application against theirs.

Q. Was this document, this document I just showed you, is this one of the documents that you reviewed before your deposition, this Plaintiff's 125, the same document in your hand?

A. Yeah.

Q. Was this one of the documents you reviewed prior to your deposition, do you recall?

A. What deposition are you talking about?

Q. This one right here now. You told me you had seen some documents prior to the deposition that you reviewed with counsel or you reviewed on your own.

A. I don't understand what you're getting at.

Q. Prior to your deposition, prior to coming here today --

A. Oh, all right.

Q. -- did you review any documents?

A. Yes.

Q. Okay. And these documents were provided to you by counsel?

A. Yes.

Q. And I'm asking you if this is one of the documents that you reviewed.

A. Yes, I think it is.

Q. Let me show you what was marked previously as Plaintiff's Exhibit 124. It's a

February 18th, 1982 memo from you to Mr. Mayer, and am I correct that it's in response to the previous document we just looked at?

A. Yes.

Q. Then in the first paragraph you're informing Mr. Mayer that the Quakenbush mark has only been filed but not published for opposition; is that correct?

A. Yes.

Q. Okay. And in the second paragraph you inform him that your mark, the General Cigar Cohiba mark, was issued on February 17th, 1981; is that correct?

A. Yes.

Q. In the next phrase you say, "We have a registration for the mark issued February 17, '81, but as yet, no commercial use of product."

A. By commercial use it would mean that the packaging, the final packaging, probably hasn't been developed for it, but we were making use with -- by other means.

Q. Well, here you say, "...but as yet no commercial use of product.". You're saying to me that what you mean by no commercial use is the

packaging hadn't been finalized?

A. That's what it would indicate to me, that they were still working on the final, what the final packaging was going to be for the cigar when it was in general use.

Q. At this point on February 18th, 1982, are you aware of any use of this product whatsoever other than the three invoices that we looked at for 1978?

A. Except for the shipments that I asked to be made, no. I can't -- I don't know if there was any other use.

Q. The shipments that you asked to be made for which there appear to be no records. I mean I have not --

A. I can't accept that, that there appears no records. They haven't turned up yet, but there probably is a record.

Q. You believe that if there was a shipment there would be a record?

A. Yes.

Q. But if there was no shipment there wouldn't be a record?

A. Yes, I would go along with that.

Q. In the last paragraph -- let me ask you, who's Tom Westle?

A. Tom Westle was assistant general counsel under A. Ross Wollen.

Q. He was an attorney?

A. He was an attorney.

Q. And he worked in-house for Culbro?

A. In-house, yes.

Q. Did you ever see the General Cigar Cohiba in a store prior to February 18th, 1982?

A. No.

Q. Are you aware of any advertising or promotion --

A. Give me that date again, please?

Q. This date, February 18th, 1982.

A. Oh, all right.

Q. Are you aware of any promotion or advertising for the Cuban -- excuse me, for the General Cigar Cohiba prior to this date?

A. I wouldn't have been involved with that.

Q. So you're not aware of any?

A. I'm not aware of it.

Q. In the next paragraph you tell

Mr. Mayer that, "Normally the PTO would reject the new application..." meaning the Quakenbush application, "...on the basis of the Cohiba registration." And then you add that, "The lack of a registration does not preclude use of a mark."

You're basically giving Mr. Mayer some information on the trademark process?

A. Yes.

Q. In the last sentence you say -- well, in next sentence you say, "So some decision will have to be made as to contacting the applicant," because the applicant may actually sell the Cohibas.

MS. DORE: Can you please distinguish between what you're quoting and what you're editing in?

MR. GOLDSTEIN: You're correct.

BY MR. GOLDSTEIN:

Q. You write, "So some decision will have to be made as to contacting the applicant."

Am I correct that the reason for that is that the applicant could still sell the Cohiba even though it doesn't have the trademark or

doesn't have the registration?

A. Once more. Repeat that.

Q. Would it be accurate to paraphrase those first three sentences as you informing Mr. Mayer, we would expect the PTO to reject the application. However, even though they don't have the registration, they could still sell the product; therefore, we need to make a decision about contacting Quakenbush?

A. Right.

Q. Okay. That's correct?

A. That's correct.

Q. Okay. Then in the last sentence you say, "This is a little tricky because of our nonuse of the registration on a commercial scale."

A. Again, that commercial use meaning that the -- as of this date, the final packaging hadn't been concluded and it had -- as far as I know, it hadn't -- no product had been shipped with the packaging that would go out into the trade. The finished packaging, let me put it, finished.

Q. And in addition, at the most, the only

shipments of the Cohiba were these periodic 50 box --

A. Yes.

Q. Fifty cigars in a box shipments?

A. Yes.

Q. So at most there was maybe 50 here and 50 there and quarterly shipments to one or another of these two stores?

A. Yes. There may -- two stores definitely, yes. I don't know about any --

Q. And by that shipment, you would not consider that shipment to be on a commercial scale?

A. Well, commercial, it is commercial because they're in the trade and they're being sold at retail in the trade.

By commercial, I meant by that that there wasn't any large scale distribution in the final packaging.

Q. Do you have any knowledge of these cigars being sold at the retail stores prior to this date?

A. Did I ever go to a retail store?

Q. No. Do you have any knowledge of the

General Cigar Cohiba being sold in any retail store prior to this date?

A. Not personally, no.

Q. Why is contacting the applicant a little tricky? I mean why does your nonuse of the registration on a commercial scale make dealing with Quakenbush a little tricky?

A. Well, he would probably want to come back and say well, show me invoices.

MS. DORE: Don't speculate as to what somebody else meant.

BY MR. GOLDSTEIN:

Q. You can answer the question. I'm asking you why you felt that this is a little tricky, and if your belief was what you were going to describe to me, that's not speculation, that's why you were describing it as a little tricky.

A. The fact that the cigar was being used in these shipments and not in general use with the final packaging would weaken our position if we had contacted him. He'd say well, how many -- what are you shipping and how many. Show us invoices.

documents other than three that were located for purposes of this litigation 20 years later.

MR. GOLDSTEIN: No.

BY MR. GOLDSTEIN:

Q. I'm asking in 1982, as part of deciding what to do about Quakenbush, are you aware whether General Cigar located any invoices for sales of Cohibas.

A. I'm not aware of it, no.

Q. If you knew there were no sales, you wouldn't have bothered to look for them; isn't that correct, you wouldn't have bothered to look for the invoices?

A. I assume there were sales. Where they were, where the invoices were, I didn't know.

Q. And you didn't look for them?

MS. DORE: When?

MR. GOLDSTEIN: In 1982.

A. Personally I didn't look for them.

Q. And you're not aware of anybody at General Cigar looking for them?

A. No, I don't whether they did or not.

Q. If, in fact, there were quarterly

shipments of 100 cigars each to Rubovits and Cigar Santa Clara from 1978 to 1982, why would there have been any problem? Why would it have been a little tricky to contact Quakenbush?

A. I'm sure that I put "a little tricky" because the acceptance by Quakenbush of these invoices that we were making in that period wasn't the same as a -- while it was a legitimate use, it wasn't the same as if this cigar had finalized their packaging and was in general distribution.

Q. And why is that?

A. I don't know why that was.

Q. Okay. Do you know who Rafael Jacobs is, other than that he's someone connected to Quakenbush?

A. No.

Q. Did you ever have any dealings with Quakenbush?

A. No, personally I didn't.

Q. Do you have any knowledge of dealings that General Cigar had with Quakenbush?

A. I can't recall, no.

Q. Let me just show you this.

Q. Okay. In the context of the Quakenbush matter, do you recall having any discussions with anybody regarding this potential issue, this little trickiness of lack of commercial use or lack of use on what you would call a commercial scale?

A. No. No, I don't recall any except what was in the memo.

Q. This is a memo, Plaintiff's Exhibit 126, GC 94, a May 12th, 1982 memo from M.J. Kowalsky to you, re Cohiba.

Who was Mr. Kowalsky?

A. Mr. Kowalsky, I think he may have come to the company roughly about 1982, and he was there, as I recall, when we left and he was marketing.

Q. And in the first sentence he says, "We plan to introduce Cohiba September 1982."

Was Cohiba introduced in September of 1982?

A. I think he's talking about finished packaging, but I'm not sure.

Q. Was something done with Cohiba in 1982, in September of 1982?

Q. A man by the name of John Webber may have been there.

I'm just asking -- I'm asking you if, in other words, if you recall for purposes of this litigation, whether you were asked to look for Cohiba or any other litigation, whether you were specifically asked to look for Cohiba related documents.

A. No.

Q. Okay. There were other marks, there was this indication that there were other temporary marks that were protected with these periodic shipments of small amounts of the cigar?

MS. DORE: Before you go any further, I'm not sure that the indication was that they were temporary marks. They were marks with temporary labels.

MR. GOLDSTEIN: You're correct.

BY MR. GOLDSTEIN:

Q. There were other marks that General Cigar was sending out in these grain boxes in small quantities at periodic intervals.

A. Sure.

5-12-82 from Sparkes to Kowalsky, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you a document marked Plaintiff's 154. It's a memo from you to Kowalsky, the same date as his memo, apparently in response, regarding the Cohiba trademark. It refers to a memo sent to Mr. Cullman, and that's the 2-19 memo that we already looked at.

And you inform Mr. Kowalsky that if he wants to try to stop the use of the mark, "...this would have to be accomplished by personal contact or by court action. This course of action would have to be requested by Ron -- Ross and Tom Westle..."

Do you recall --

MS. DORE: You said "by Ross and Tom Westle" and it says "requested of Ross and Tom..."

BY MR. GOLDSTEIN:

Q. "This course of action would have to be requested of Ross and Tom Westle who were informed of the earlier findings."

Do you recall this exchange with

Mr. Kowalsky?

A. I recall sending a memo, yes.

Q. Now the following day, according to the documents I have which I'll show you in a minute, Mr. Westle in fact writes to Mr. Jacobs of Quakenbush, and my question is, did you have any participation in the decision to contact Quakenbush or was it, to your knowledge -- well, let me ask it that way.

A. That was taken after this. I wasn't involved.

Q. Okay. So you told Mr. Kowalsky if something was needed to be done, he was going to need to contact Mr. Wollen?

A. Or Tom, yes. And as I believe, yes, that was the way it went; he contacted Tom Westle.

Q. Okay. And do you recall yourself having any participation in that?

A. No, I was not -- I didn't have any participation in it.

Q. Do you have any knowledge of what Quakenbush did, what their response was?

A. No.

not aware of just who Hunters & Frankau is?

Q. Do you know who Norman Buck is?

A. Yes.

Q. Who is that?

A. Norman Buck was the international -- he was head of international sales for about ten years active in the company, and then toward the end he opened his own firm in Great Britain, in London. Not London. I've forgotten the town, but in England, and he handled not only our marks, but others for other companies.

Q. He distributes General Cigar brand cigars as well as other companies' cigars?

A. Yes. I believe that was part of when he left, that he was going to expand his operation from just our cigars to others.

Q. Let me show you this -- why don't we mark this. Let me show you this memo.

(Plaintiff's Exhibit 155, Memo dated 10-4-82 from Kowalsky to Burgh, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you a document marked Plaintiff's 155, an October 4th, 1982 memo from

Kowalsky to David Burgh.

And David Burgh was the president at that time?

A. I believe he was.

Q. Of General Cigar.

A. I can't recall whether he was the president or Edgar junior was the president of General Cigar Co. at the time.

Q. Okay. But he was a high ranking officer?

A. He was if not first, he was second.

Q. It's CC'd to several people and you're included on the CC's there.

A. I see that.

Q. Do you recall this memo?

A. I remember that it was in the files. That much I can tell you.

Q. Do you know anything about the sale of Cohiba cigars through the Pan American Cigar Company other than what's in this memo?

A. No, I can't recall any.

Q. You don't have any knowledge independent of what you were looking at in the piece of paper?

A. No.

Q. Do you recall at some point conducting an international -- a search outside the United States for Cohiba?

A. I never initiated any such search.

Q. Do you have any knowledge of anybody at General Cigar conducting such a search?

A. I've seen what I think is a partial search, but it was -- I would think it was -- to my mind, it was fairly recent.

Q. When you say you saw it, in reviewing documents for preparation?

A. Yes.

Q. Let me just show you what's marked -- what's labeled GC 5982 through 5986. And, again, this is my only copy since I forgot to bring it with me.

And ask if -- the first, is that the search you're referring to, the documents that you're referring to?

A. Yes. This is what I was -- the documents that I've seen.

Q. Do you know who conducted this search?

A. No, I don't.

Q. Do you know when it was conducted?

A. No.

Q. Is your only knowledge of this from having recently seen this in preparation for the deposition?

A. Yes.

Q. Other than the outside attorneys and you in the early '80s, who would have done trademark searches at General Cigar, if anyone?

A. It would have usually have come from the legal department or from me or contacting Morgan & Finnegan. I don't know who initiated that or why.

Q. But you don't have any recollection of asking Morgan & Finnegan to do that?

A. No.

Q. And you don't have any recollection of Morgan & Finnegan providing you with the documents that we just looked at, 5982 through 5986?

A. I don't recall -- I recall -- I don't recall if it was Morgan & Finnegan who supplied that.

Q. But I mean at that time, you don't

have any recollection of being supplied with the document at all?

A. No.

Q. Okay. You don't know that this -- do you know whether this document was in your files?

MS. DORE: By "your files," you mean his personal files or General Cigar's?

MR. GOLDSTEIN: His General Cigar's files while he was at General Cigar.

BY MR. GOLDSTEIN:

Q. In other words, I guess my question is, is this -- the first time you became aware of these documents, was that in the last few days in preparation for the deposition?

A. Yes.

MR. GOLDSTEIN: Why don't we mark this document.

(Plaintiff's Exhibit 156, Document dated 9-7-82 from Kowalsky, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you what we've marked as Plaintiff's 156. And, again, it's my only copy.

1 It's a September 7th, '82 document with a re
2 Cohiba from M. Kowalsky, and I take it that's
3 your initials and your handwriting?
4 A. My initials, my handwriting, yes.
5 Q. And what is it? Could you read what
6 it says?
7 A. "Cubatabaco is using Cohiba in Spain
8 according to MK."
9 Q. And MK would be M. Kowalsky?
10 A. Yes.
11 Q. And do you have any recollection of
12 this document?
13 A. No.
14 Q. This is the same month as the planned
15 launch of the Cohiba, the General Cigar Cohiba?
16 A. Oh, I don't have -- I had no knowledge
17 of it except of what I see here.
18 Q. Do you recall why you made the note or
19 what Mr. Kowalsky told you?
20 A. I don't know the initials MK -- oh,
21 Michael Kowalsky. It was just a file note
22 evidently that I got, that I got the information
23 from him.
24 Q. That document has a GC number at the
25

cigars ready for interstate shipment?

A. No. I had no...

MR. GOLDSTEIN: Let's mark this.

(Plaintiff's Exhibit 157, Memo dated 2-2-81 from Sparkes to Cullman, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you what's been marked as Plaintiff's 157. It's a February 2, 1981 memo from you to Mr. Cullman junior regarding the trademark application for Cohiba for cigars.

In the first paragraph you inform him that the Cohiba has matured, the Cohiba trademark has matured into a registration.

Do you recall providing him with this memo and this --

A. Yes, I do.

Q. -- document at the bottom showing the official trademark?

A. Yes. That was the way I usually wrote these letters when a trademark had matured into a registration, and I gave him a copy from the Official Gazette.

Q. Now, in the last paragraph you say

that, "This trademark is being used in conjunction with periodic shipments..."

That's what we've been discussing?

A. That's what we've been discussing.

Q. Do you have any other knowledge of this statement other than what we've been discussing?

A. No.

Q. Now, then you say, "...but to gain full protection against use by others, shipment of cigars in interstate commerce should be made with the permanent type of packaging as early as practical."

A. Yes.

Q. What additional protection is given, to your knowledge, by using the permanent type packaging?

A. If any third party comes in about the mark and you show them your finished package, it has more effect than whether you show them a grain paper box shipment, and that's what I was referring to here. The sooner they got this permanent packaging on the market, the better off they would be in case anyone challenged any third

party.

Q. You were referring to a practical effect rather than to a legal effect, or was it your understanding --

A. Yeah, practical effect.

Q. Of the CC's here, who is the Dashefsky?

A. Harvey Dashefsky was an assistant to Edgar Cullman, Jr.

Q. And was Hollinger in the law office with Mr. Wollen?

A. Hollinger, Geri Hollinger, she was one of the assistant counsel.

Q. Let me show you what was previously marked as Plaintiff's Exhibit 84. It's the Section 8 and 15 application for Cohiba.

A. Uh-huh.

Q. It's dated June 23rd, 1986 and it's signed by Henry White...

A. Henry Whitehill?

Q. Whitehill.

Do you recall helping to prepare this document?

A. I supplied the information to Morgan &

Finnegan.

Q. If you look at the -- do you recall what information you supplied to them?

A. I'm sure I supplied the samples for the packaging and the fact that it was in use, and that was it, yes.

Q. Did you provide them with invoices or documents showing sales of the cigar?

A. I think I did because I asked them, I asked General Cigar to make a shipment of the cigar.

They told me that there had been shipments -- no shipments -- they were making shipments out of inventory but they weren't producing them, so they couldn't give me an invoice of recent date.

Q. In 1986 they told you that they were not producing the cigar anymore?

A. They said that they weren't in production, yes.

Q. And what they were selling was what was left in inventory?

A. Right.

Q. Do you recall providing Morgan &

Finnegan with invoices for the period of years prior to 1986?

A. No, I don't recall that.

Q. The registration date was February 17th, 1981, and as part of the Section 8 and 15 declaration, if you look on the first page, Mr. Whitehill declares that, "The mark shown therein has been in continuous use in interstate commerce for five consecutive years from February 17, 1981 to the present on the items recited in the registration."

For the period from February 17th, 1981 until the introduction of the Cohiba in the fall of 1982, the only use you're aware of is these periodic shipments that were supposed to have been made?

A. Yes.

Q. Did you provide to Morgan & Finnegan, documents showing sales from February 1981 up to September of 1982?

A. No, I didn't supply those. It was in commerce, it was in the inventory. It takes -- they can be in the trade for an extended period of time, a year or two years perhaps.

1 Sparkes

2 Q. I'm not talking about the '86 period.
3 You said that in '86 they had stopped producing
4 and were selling what was left in inventory.
5 A. Uh-huh.
6 Q. I'm asking you from the period
7 February '81 to September '82, did you provide to
8 Morgan & Finnegan, documentation showing sales in
9 that time period?
10 A. I don't believe I gave them the
11 actual...
12 Q. Do you recall having any discussions
13 with anybody at General Cigar over whether there
14 was any evidence of sales from February 17, 1981
15 until September of 1982?
16 MS. DORE: Define what you mean by
17 evidence.
18 MR. GOLDSTEIN: I'm asking him if he
19 recalls having any discussions with anybody.
20 MS. DORE: Using the word "evidence"?
21 MR. GOLDSTEIN: We can start with
22 using the word "evidence."
23 MS. DORE: Okay. Do you understand
24 what the question is now?
25 BY MR. GOLDSTEIN:

1 Sparkes

2 Q. In preparation for the Section 8 and
3 15 filing in 1986, did you have any discussions
4 with anybody at General Cigar as to whether there
5 was any evidence of sales between February of
6 1981 and September of 1982?
7 MS. DORE: If you know what he means
8 by the word "evidence."
9 A. These were -- I'm sure these would be
10 the invoices you're talking about that are on
11 somewhere on a computer disk.
12 Q. Do you recall discussing this with
13 anyone, the existence of invoices on computer
14 disks covering that time period?
15 A. No.
16 Q. Do you recall searching for any
17 documents showing use in interstate commerce for
18 the period from September '81 to September of
19 '82?
20 A. No, I don't recall that.
21 Q. Do you recall having any discussions
22 with anybody about whether anybody had knowledge,
23 even if not documents, about use in interstate
24 commerce of the Cohiba mark for that period
25 February of '81 to September of '82?

A. I can't -- no, I can't recall a specific person.

Q. Do you recall any discussions with Mr. Whitehill before he signed this document regarding whether there was use in interstate commerce from February '81 to September of '82?

A. No, I didn't discuss that with him.

Q. Do you recall if anybody from Morgan & Finnegan asked you for information, documents, anything else, substantiating use in interstate commerce for that time period?

A. No, I can't recall that either.

Q. Did you review the Section 8 and 15 declaration before it was filed with the PTO?

A. Yes.

Q. Let me just show you this document, 5995 and 96, and ask you if that's your handwriting.

(Witness reviewing document.)

A. This doesn't look like my handwriting.

(Witness reviewing document.)

A. I don't know who this L-a-g-a-n is.

Q. I'm actually asking you, the first

A. I can't recall that, no.

Q. Did General Cigar have any trademarks, cigar trademarks, in Latin America?

A. Yes, we did.

Q. Do you know what countries? Mexico?

A. Mexico definitely.

Q. Dominican Republic?

A. Dominican Republic I'm not sure. I don't think so.

Q. Chile? Chile?

A. Chile we had trademarks, yes.

Q. Venezuela?

A. Venezuela, yes.

Q. Cuba?

A. Cuba, I don't recall we had any.

Q. Do you know if General Cigar ever sought, while you were there, sought to enforce any of its trademark rights in Latin America?

A. Excuse me. Will you --

Q. Ever sought to enforce any of its trademark rights in Latin America.

A. Not that I can recall, no.

Q. Have you ever heard of the Inter-American Convention for Trademark and

Commercial Protection?

A. No.

Q. So you would have no knowledge if General Cigar's ever invoked it in Latin America?

A. Not to knowledge.

Q. Have you ever heard of the Paris Convention for the Protection of Industrial Property?

A. Yes.

Q. Do you know if General Cigar has ever invoked that in protection of any of its marks?

A. Not to my knowledge.

Q. Outside of the United States I mean.

A. Not to my knowledge.

Q. You don't know one way or the other, or while you were there you don't believe they ever invoked it?

A. If they invoked it, I didn't know about it.

Q. Do you know who Magee and Zimmerman are, J. Magee and D. Zimmerman?

Well, Janet is laughing.

A. No, I can't recall who they would be.

Q. On page 29 of the privilege log

questions. I thank you for your time.

MS. DORE: I do.

MR. GOLDSTEIN: Okay.

EXAMINATION BY

MS. DORE:

Q. During the time period when you were first asked to search for the availability of the Cohiba mark, up through the time period when the mark was registered by General Cigar, were you aware of any sales by any Cuban entity of a Cohiba cigar anywhere?

A. No.

Q. During that same time period, were you aware of any distribution to stores or to the general public of a Cohiba cigar by a Cuban entity anywhere?

A. No.

Q. During your tenure with General Cigar when you had responsibility for obtaining trademark registrations and maintaining those registrations, was it General Cigar's practice to order outside searches from their outside trademark counsel for cigar brands?

A. We did order searches for cigar

brands, but I can't say just how many. I don't think there -- there weren't so many outside searches made for cigar brands as there were for, say, snack foods.

Q. And was that because you had inside sources that you could look at to clear a trademark for cigars that you didn't have for other products?

A. Yes. We were much more confident with the information that was on hand for clearing the cigars than we were for the snack foods.

Q. Under what circumstances would you ask outside counsel to obtain an outside search for a new cigar brand?

A. If there were -- if the proposed name was close to something else that was registered, it would certainly flag our interest that we should have a further search made.

Q. When you did your internal search for the Cohiba mark, was there anything that you came across that suggested you ought to consult with outside counsel for a further search?

A. No. It seemed fairly clear to us that it was free to be used in the United States or to

be registered or to attempt to be registered.

Q. During your -- strike that.

During the period, let's say in the late '70s through the mid '80s, when General Cigar adopted a new mark or wanted to adopt a new mark for a cigar, was it the practice to search the availability of the mark in countries outside the United States?

A. No.

Q. During your tenure with General Cigar -- strike that.

Do you know what an intent to use trademark application is?

A. I believe in Europe you don't have to have actual use in some of the countries but you intend to use the mark, and then you have a specified time period in which you have to use the mark.

Q. During your --

A. To keep it.

Q. -- tenure with General Cigar, was it possible to file intent to use applications for trademarks in the United States?

A. No.

Q. In order to file a trademark application in the United States during that time period, did you have to have use in interstate commerce first?

A. Did I have --

Q. Did you have to have use of the mark in interstate commerce first?

A. Yes.

MR. GOLDSTEIN: Objection to the form to the extent it calls for a legal conclusion.

BY MS. DORE:

Q. Was it your practice at General Cigar when you wanted to get trademark protection for a new mark to make shipments in interstate commerce as a prelude to filing a trademark application?

A. Yes.

Q. Did you do that with all your cigar marks?

A. Yes, all of them.

Q. And when you refer in documents to the grain packaging, is that the packaging you used for establishing those first shipments?

A. Yes.

Q. The documents that Mr. Goldstein showed you talked about making periodic quarterly shipments.

Do you recall those documents?

A. Yes.

Q. You recall the discussions with Mr. Goldstein?

A. Yes.

Q. Was this a practice that was followed with all new trademarks that General Cigar was seeking protection for?

A. Yes, that was standard.

Q. And were you responsible for advising the shipping people to add new marks to that program?

A. Yes.

Q. Once you added a mark to that program, were you ever given any reason to think your instructions were not followed?

A. No.

Q. Were you ever given any reason to think that your instructions -- strike that.

Did you give similar instructions with respect to Cohiba?

A. Yes.

Q. Do you have any reason to think your instructions were not followed with respect to Cohiba?

A. No.

Q. At what point in time would the shipping people cease making the periodic quarterly shipments, if at all?

A. When the final packaging had been designed and ordered and it was being put in use, then we instructed them that they could stop making those shipments, those quarterly shipments.

Q. And when you say the final packaging put in use, you mean product shipped into the trade?

A. Right.

Q. In the new packaging?

A. In the new packaging.

Q. Do you have any reason to believe that the quarterly shipments of Cohiba cigars stopped in advance of the shipment of the final packaging of Cohiba?

MR. GOLDSTEIN: Objection to the form.

A. No, I don't believe that would have.

Q. Once the registration issued for a trademark, what further involvement did you have with that product?

A. Nothing. Really not much, if anything, until the affidavits came to.

Q. By "the affidavits," you're referring to the Section 8 and 15 affidavits?

A. Yes.

Q. And was that also the case with Cohiba?

A. Yes.

Q. Was it your practice to monitor the sales or any other activity with respect to any of the brands that you had obtained the registration for once the registration issued?

A. No.

Q. Would you have authorized Morgan & Finnegan to prepare and file the Section 8 and 15 declaration for Cohiba if you didn't have the use that was sufficient to meet the requirements of those declarations?

A. The eight, we did have -- we did have a shipment made for the Section 8.

The Section 15, I wouldn't have done it. I would have waited.

Q. So the fact that you authorized it to be filed indicates to you that you had the use that you required?

A. To the best of my knowledge, I would still think it would be out there in the trade.

Q. You testified in response to some of Mr. Goldstein's questions that two things that you did not do when searching the availability of the Cohiba mark in the United States was to contact the TMA and to look through the CMA listings; is that correct?

A. Yes.

Q. Were the CMA listings based on the trademark Official Gazette?

A. Yes, they were.

Q. The trademark Official Gazette was something that you looked at on your own anyhow; is that correct?

A. Well, as part of my responsibilities I went through the Official Gazette patents, the official Gazette trademarks weekly as they came in.

Q. So looking at the CMA bulletins would have duplicated something you'd already done?

A. Almost all of it, yes.

Q. And the marks that the TMA had listed, those were old marks?

A. For the most part, yes. They were marks that were -- I believe that TMA was the agency where cigar manufacturers, when there was a lot smaller of them around, would go and register their mark with the TMA and most of their files went back quite a ways. It was a -- from what I could see of the photocopies, it was like a card index that they had.

Q. Was that domestic or did it include foreign as well?

A. Certainly it was domestic, but if you go back, I don't know just whether there were any foreign marks. I can't recall whether there were or not.

Q. During the period from 1977 to 1988, were the wholesalers to whom General Cigar shipped its cigars, companies independent of General Cigar?

A. Yes.

application came up, and you said you hadn't looked for them.

Were you asked to look for them?

A. No.

Q. Mr. Goldstein also asked you if you had provided Morgan & Finnegan with invoices in support of the Section 8 and 15 declaration.

Do you recall that testimony?

A. Regarding Cohiba?

Q. Yes.

A. Yes.

Q. Was it your practice to provide invoices to Morgan & Finnegan every time a Section 8 and 15 or renewal application had to be filed?

A. No. I had to satisfy myself of that.

Q. And if you satisfied yourself, then you would instruct them to prepare and file the papers?

A. That's correct.

Q. And if you satisfied yourself, then you would instruct them to prepare and file the papers?

A. That's correct.

Q. During the late 1970s until the time you retired, about how many trademarks did General Cigar own?

A. Excuse me. The first date again?

Q. Starting the late '70s until you retired.

A. Do you want to just say General Cigar or the corporation?

Q. The corporation.

MR. GOLDSTEIN: Meaning Culbro?

THE WITNESS: Yes.

MS. DORE: Yes.

A. Culbro had the independent companies or the wholly-owned companies.

I think there was as many as, domestic and foreign, before we started selling off the various companies, about 400, 350 to 400 trademarks.

Q. And were you responsible for the clearance, registration and maintenance of those marks?

A. Yes. They decided earlier on that they would all go through the corporate and not be independent.

Q. And so you had a pretty substantial docket that you were responsible for?

A. Yes. At times, yes.

MS. DORE: Okay. No further questions.

MR. GOLDSTEIN: I just have a few follow-up questions.

FURTHER EXAMINATION

BY MR. GOLDSTEIN:

Q. Ms. Dore asked you if you were aware of any sales of the Cuban Cohiba in the period prior to 1981, and you said no, you were not.

In fact, you're aware that we looked at a document which somebody from General Cigar gave to you saying Cohiba sold in Cuba, a brand in Cuba.

Do you recall looking at that document earlier?

A. Yes.

Q. Plaintiff's 136?

A. 136?

Q. You can even look at mine.

A. 126...

Q. Just for purposes of this, you can

look at mine, plaintiff's 136.

Do you recognize some handwriting on it?

But at least someone at General Cigar thought the cigar was sold in Cuba; isn't that correct?

A. Yes, from this.

Q. Had you been to Cuba prior to 1981?

A. No.

Q. So you wouldn't know if it was sold in Cuba or not?

A. No.

Q. You were talking, when Ms. Dore asked you some questions, about doing an in-house search, whether that search would be adequate or not for the needs regarding Cohiba.

In fact, as it turned out, someone had, in fact, applied for the mark before General Cigar; isn't that correct?

A. Yes.

Q. And you weren't aware of that at the time you applied; is that correct?

A. That's correct.

Q. And she also asked you if you would

normally do searches outside of the United States for a mark that you were interested in registering, and you said no, you wouldn't; is that correct?

A. After an international registration, usually that wasn't the case.

Q. Was this also true when you were aware of a known use of the same brand name in another country?

MS. DORE: Objection. No foundation.

BY MR. GOLDSTEIN:

Q. General Cigar was aware of the brand Cohiba, correct, at the time that it filed the registration?

I have a document here two months earlier, three months earlier. It says, "Brand in Cuba, Castro's brand." One is in your handwriting and one is in somebody else's handwriting.

So General Cigar was aware that there was a brand in Cuba under the name of Cohiba?

A. Yes.

Q. So was it General Cigar's practice not to search outside the United States for a brand

registration when it knew about a brand in use in another country?

A. I can't recall. That would be the criteria for having a foreign search made.

Q. Even under those circumstances, it's your belief that General Cigar wouldn't do a search outside the United States?

A. Not for a domestic trademark, no.

Q. If I went into your files in 1988 before you left General Cigar, would I find the invoices for the periodic shipments of all the temporary labeled cigar marks up until the time the computer took that over from you?

A. You should, yes. They were fairly thick files on some of them.

Q. Now, I thought it was clear and now I'm confused, in 1964 the RTDA almanac -- after 1964 it no longer lists Cuban brands; is that correct?

A. That's correct. After the embargo.

Q. The embargo went into effect in '61 and '62, but it carried over until '64, but after that --

A. The embargo was in '63.

MS. DORE: Asked and answered.

A. Yes. I think, I believe I've answered that.

Q. Since April of 1978 -- you're assuming that there were shipments of Cohiba between April of '78 and the fall of 1982; isn't that correct?

MS. DORE: Asked and answered.

BY MR. GOLDSTEIN:

Q. You can answer.

A. I can't say that it was entirely an assumption, because in the past when I've asked these shipments to be made, they have been made, so I think it's more than just an assumption. I think that the confidence I had that they were doing it was a little stronger than an assumption.

MR. GOLDSTEIN: I have no further questions.

MS. DORE: I do.

FURTHER EXAMINATION

BY MS. DORE:

Q. During your tenure with General Cigar, you searched for quite a few trademarks, didn't you?

send them out. So I would say it would be a fairly short time period; weeks or a month.

Q. But you don't know?

A. I don't know.

MR. GOLDSTEIN: No questions.

MS. DORE: Okay. None. Read and sign.

(Time noted: 3:30 p.m.)

Charles Henry Sparkes

CHARLES HENRY SPARKES

Subscribed and sworn to before me this 18 day of AUGUST, 2000.

Janet Dore

JANET DORE
Notary Public, State of New York
No. 31-4907227
Qualified in New York County
Commission Expires ~~March 30, 1986~~
8/31/02

1

2 C E R T I F I C A T E

3

4 STATE OF NEW JERSEY)

5 : ss.

6 COUNTY OF MIDDLESEX)

7

8 I, ANNETTE ARLEQUIN, a Certified

9 Shorthand Reporter and Notary Public within

10 and for the State of New Jersey, do hereby

11 certify:

12 That CHARLES H. SPARKES, the

13 witness whose deposition is hereinbefore set

14 forth, was duly sworn by me and that such

15 deposition is a true record of the testimony

16 given by the witness.

17 I further certify that I am not

18 related to any of the parties to this action

19 by blood or marriage, and that I am in no

20 way interested in the outcome of this

21 matter.

22 IN WITNESS WHEREOF, I have hereunto

23 set my hand this 31st day of July, 2000.

24 _____

25 ANNETTE ARLEQUIN, CSR, RPR

1

2 ---------- I N D E X ----------

WITNESS	EXAMINATION BY	PAGE
3 CHARLES H. SPARKES	MR. GOLDSTEIN	5,174,180
	MS. DORE	162,179

4

---------- EXHIBITS ----------

PLAINTIFF'S	FOR ID.
5 Plaintiff's Exhibit 135, Memo dated 12-12-77 from Sparkes to Lilienfield	19
7 Plaintiff's Exhibit 136, Handwritten 8 document dated 12-14-77	30
9 Plaintiff's Exhibit 137, Trademark application from Whitehill to Commissioner 10 of Patents and Trademarks	31
11 Plaintiff's Exhibit 138, Letter dated 12-14-77 from Sparkes to Tobacco Merchants 12 Association of the U.S.	33
13 Plaintiff's Exhibit 139, Handwritten notes dated 12-15-77	35
14 Plaintiff's Exhibit 140, Handwritten 15 document dated 1-2-78	38
16 Plaintiff's Exhibit 141, Memo dated 1-9-78 from Sparkes to Forrester	45
17 Plaintiff's Exhibit 142, Photocopy of 18 grain box	53
19 Plaintiff's Exhibit 143, Handwritten note dated 2-15-78 with attached invoice dated 20 2-13-78 from General Cigar to Rubovits	58
21 Plaintiff's Exhibit 144, Handwritten note dated 3-15-78 from Endholz to Sparkes with 22 attached invoice	66
23 Plaintiff's Exhibit 145, General Cigar invoice dated 4-5-78 to Cigar Santa Clara 24 and General Cigar invoice dated 4-5-78 to Rubovits	69

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2 ---------- EXHIBITS (Cont'd.) ----------

PLAINTIFF'S	FOR ID.
Plaintiff's Exhibit 146, Cigar Association of America document dated 3-20-78	75
Plaintiff's Exhibit 147, Trademark PTO Action	80
Plaintiff's Exhibit 148, Dun & Bradstreet report printed 3-28-78	80
Plaintiff's Exhibit 149, Handwritten document dated 3-24-78, 5981 with a date 3-24-78	80
Plaintiff's Exhibit 150, General Cigar's 1-3-79 response to Patent and Trademark Office action	83
Plaintiff's Exhibit 151, Patent and Trademark Office response to Culbro's 1-3-79 response	92
Plaintiff's Exhibit 152, Culbro's 9-14-79 response to 3-14-79 Patent and Trademark Office notice	94
Plaintiff's Exhibit 153, Memo dated 2-19-82 from Sparkes to Cullman	115
Plaintiff's Exhibit 154, Memo dated 5-12-82 from Sparkes to Kowalsky	131
Plaintiff's Exhibit 155, Memo dated 10-4-82 from Kowalsky to Burgh	136
Plaintiff's Exhibit 156, Document dated 9-7-82 from Kowalsky	140
Plaintiff's Exhibit 157, Memo dated 2-2-81 from Sparkes to Cullman	147

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ERRATA SHEET
ESQUIRE DEPOSITION SERVICES
216 EAST 45TH STREET
NEW YORK, NEW YORK 10017
(212) 687 - 8010

NAME OF CASE: CUBATABACO V. CULBRO
DATE OF CASE: JULY 14, 2000
NAME OF WITNESS: CHARLES H. SPARKES

PAGE	LINE	FROM	TO
13	10	BEFORE THE	IN THE LATE
28	13	PACKAGING	PURCHASING
34	13	A TRADEMARK	TRADEMARKS
37	5	MEAN FROM	BE
37	9	CAME,	CAME FROM,
37	14	AND	ON
38	11	THINK --	(DELETION ONLY)
40	2	THAT WOULD HAVE BEEN THEIR	(DELETION ONLY)
42	12	THOSE	THOSE WORDS
52	18	INITIATE	INITIATE SHIPMENTS
63	7	MYSELF	ME
64	25	RECALL BACK	RECALL THAT FAR BACK
92	3	CONDENSATION	REDUCTION
70	20	THAT I BELIEVE	(DELETION ONLY)

Charles H Sparkes
CHARLES H. SPARKES

Subscribed and sworn to before me.
this 18 day of AUGUST, 2000.

Janet Dore
(Notary Public)

My Commission Expires:
JANET DORE
Notary Public, State of New York
No. 31-4897227
Qualified in New York County
Commission Expires ~~March 30, 1999~~
8/31/02

015 C.11

ERRATA SHEET
ESQUIRE DEPOSITION SERVICES
216 EAST 45TH STREET
NEW YORK, NEW YORK 10017
(212) 687 - 8010

NAME OF CASE: CUBATABACO V. CULBRO
DATE OF CASE: JULY 14, 2000
NAME OF WITNESS: CHARLES H. SPARKES

PAGE	LINE	FROM	TO
92	10	THIS WAS MINE.	(DELETION ONLY)
121	17	MARKETING	IN MARKETING
170	10	LOT	LOT OF
170	10	OF THEM	CIGAR COMPANIES
170	10	GO AND	(DELETION ONLY)
170	11	TMA	TMA;
170	12	IT WAS	IT WAS, (DELET A--)
170	14	LIKE	MORE OR LESS
173	24	CORPORATE	CORPORATION
173	25	INDEPENDENT	INDEPENDENTLY LISTED

Charles H. Sparkes
CHARLES H. SPARKES

Subscribed and sworn to before me.
this 18 day of AUGUST, 2000.

(Notary Public)

My Commission Expires:
Notary Public, State of New York
No. 31-4807227
Qualified in New York County
Commission Expires ~~March 30, 1986~~
8/31/02

DIS C. 11

A

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

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner,	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC. Respondent.	:	

PARTY DESIGNATIONS*: Petitioner's Designations During Its Trial Period—Yellow or Pink
Respondent's Designations During Its Trial Period—Green
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

Designated Federal Action Discovery Deposition Transcript of Charles H. Sparkes, designated under Fed. R. Civ. P. 30(b)(6) and 45, dated August 7, 2001

* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

----------X

EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

Plaintiff,

vs. 97 Civ. 8399 (RWS)

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

Defendants.

----------X

ORIGINAL

VOLUME II

Rule 30(B)(6) and 45 DEPOSITION OF CHARLES SPARKES

Lakewood, New Jersey

Tuesday, August 7, 2001

Reported by:
ANNETTE ARLEQUIN
CSR NO. 1450
JOB NO. 124594

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DEPOSITION SERVICES

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Dis C, 50

1

2 August 7, 2001

3 10:05 a.m.

4

5 Rule 30(B)(6) and 45 deposition of

6 CHARLES SPARKES, held at the offices of

7 Rothstein, Mandell, Strohm & Must P.C., 150

8 Airport Road, Lakewood, New Jersey, pursuant

9 to Notice and Subpoena, before Annette

10 Arlequin, a Certified Shorthand Reporter and

11 a Notary Public of the State of New Jersey.

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1

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3

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10

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15 BY: JANET DORE, ESQ.

16 -and-

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20 BY: ELENA C. NORMAN, ESQ.

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1

2 C H A R L E S S P A R K E S, called as a

3 witness, having been duly sworn by a Notary

4 Public, was examined and testified as

5 follows:

6 EXAMINATION BY

7 MR. GOLDSTEIN:

8 (Plaintiff's Exhibit 442, Notice of

9 Deposition and Subpoena, marked for

10 identification, as of this date.)

11 BY MR. GOLDSTEIN:

12 Q. Mr. Sparkes, thank you for coming

13 again.

14 You understand that you're being

15 deposed a second time and that since your prior

16 deposition, that General Cigar has produced

17 certain documents and I'll be questioning you

18 primarily about those subsequently produced

19 documents?

20 A. Yes.

21 Q. And you understand -- let me show you

22 what we marked as Plaintiff's 442. It's a

23 Notice of Deposition and subpoena. I don't know

24 if you've actually seen the document, but you

25 understand you're here pursuant to a notice and

a subpoena?

A. Yes. I saw your original subpoena.

Q. Okay. You read your prior deposition, the transcript?

A. Yes, I went over it.

Q. And you made certain corrections to it.

Do you recall doing that?

A. Yes. I turned them in to Janet. I imagine you have copies.

Q. Yes, I do.

Have you read the transcripts of any other depositions?

A. No, I haven't.

Q. Have you talked to anyone in preparation for this deposition other than counsel?

A. No. These two ladies are the only two that spoke to me about it.

Q. Did you review any documents in preparation for this deposition?

A. Yes, I did.

Q. And were some of those documents including communications between you and your

1 counsel at that time?
2 A. Yes.
3 Q. You recall from looking at these
4 documents that the trademark application for
5 Cohiba was filed in March of 1978?
6 A. Yes.
7 Q. Okay. Let me show you three
8 documents that were previously marked as
9 Plaintiff's Exhibit 390, 391 and 392.
10 The first document, Plaintiff's
11 Exhibit 390, GCP 0001 is a letter from you to
12 Mr. Marcus dated February 16, 1978.
13 Do you see that?
14 A. Yes, I see it.
15 Q. And in it you ask him to prepare
16 trademark applications for cigars for Cohiba and
17 Cienfuegos.
18 Do you see that?
19 A. Yes, I see it.
20 Q. Do you recall asking him to do that?
21 A. Yes, I do.
22 Q. Do you recall if you had any phone
23 conversations with him about preparing the
24 Cohiba application?
25

1 Sparkes

2 A. Not that I recall, no.

3 Q. Do you recall any in-person

4 conversations with him?

5 A. No. He wasn't at the office. When

6 this letter was written, I don't recall that

7 Harry was down visiting our office or I was up

8 in his office where I had personal contact.

9 Q. Is it your recollection that your

10 request for him to file the Cohiba application

11 was based strictly on the letter?

12 A. Just a moment, please.

13 Yes, I would think strictly the

14 letter.

15 Q. Following the letter but prior to the

16 application being filed, do you recall speaking

17 with Mr. Marcus about the Cohiba application?

18 A. No, I have no specific knowledge that

19 we spoke before he prepared the application,

20 between the letter and the application.

21 Q. Do you have any recollection of him

22 asking why you wanted to file these two marks?

23 A. No. I don't think -- I can't recall

24 Harry ever asked us why do you want to file the

25 marks. Any of the marks where we asked, we sent

1 letters asking him to prepare an application.
2 Q. Prior to him filing the application,
3 do you have any recollection of informing him
4 that the name Cohiba was in some way associated
5 with the cigar or Fidel Castro?
6 A. No, I don't recall that I ever
7 mentioned that to him.
8 Q. Do you have any knowledge of
9 Mr. Marcus speaking to anyone else at General
10 Cigar about the Cohiba application prior to the
11 application?
12 A. No. Usually Harry would come to me.
13 I was his contact to the management and vice
14 versa, from management to him, so usually it
15 came through me. If there were questions, they
16 were filtered through me or whatever you want to
17 call it.
18 Q. I actually don't have any questions
19 about the other two documents.
20 Do you recall that subsequent to
21 filing the application, very soon after filing
22 the application, learning that another company
23 had already applied for the Cohiba mark just
24 prior to General Cigar?
25

1 Sparkes

2 A. If you'll just give me a minute,

3 please.

4 Q. Sure.

5 (Witness reviewing document.)

6 A. Yes.

7 Q. And this is the Beneficial Capital

8 application we were referring to?

9 A. Yes.

10 Q. You spoke with Mr. Marcus, prior to

11 sending him the letter, about the Beneficial

12 Capital application?

13 A. I can't recall prior to this letter

14 that I spoke to him about it.

15 Q. Well, again, my goal is not really a

16 memory test here. Let me show you Plaintiff's

17 393, and it's a handwritten document that's GCP

18 0005 and 443 is 0004.

19 Plaintiff's 393, that's your

20 handwriting; is that correct?

21 A. That's my handwriting, yes.

22 Q. And if you look at the bottom, the

23 part that's circled, this document had been

24 provided to us previously without the part at

25 the bottom that's inside the circle and

1 subsequently this part was produced.
2 And on the date of March 24, '78,
3 this says, "Called Harry to get copy of
4 application as filed. Sent him CAA Bulletin 503
5 showing filing information." And your note is
6 the 24th, the letter is the 23rd.
7 A. Right.
8 Q. Do you recall speaking to him,
9 whether it was before or after you sent him the
10 letter about the Beneficial Capital application?
11 A. No, I can't recall any phone call to
12 Harry prior to the 24th here.
13 Q. Or on the 24th?
14 It says "Called Harry," but that
15 doesn't mean you recall it. I'm just asking if
16 you recall having a phone conversation with him.
17 I mean your notes say "Called Harry."
18 A. Yes. Certainly it's my writing and I
19 said I called him, but it was probably on this
20 date.
21 Q. But you don't have any recollection
22 of the phone call?
23 A. No, I don't have any recollection.
24 Q. Do you know if at the time that you
25

1 were informing him about the Beneficial
2 application, that Mr. Marcus at that time had
3 any knowledge of the Cohiba cigar being a cigar
4 in Cuba or a cigar of Fidel Castro?
5 MS. NORMAN: Objection.
6 You're asking him to testify as to
7 Mr. Marcus' knowledge. There's no basis
8 that he would have...
9 BY MR. GOLDSTEIN:
10 Q. My question really was had you
11 provided him at that point with any information
12 about the Cohiba being a Cuban cigar.
13 A. I don't believe I had.
14 Q. Do you recall if in response to
15 informing him about the Beneficial application,
16 if Mr. Marcus said anything to you along the
17 lines of, gee, I wonder where they got the name
18 from or that's surprising that somebody else
19 also has that name?
20 MS. NORMAN: Objection to the
21 question. It's argumentative.
22 A. Would you repeat it, please?
23 Q. I guess the question I have is did
24 Mr. Marcus in any way react to the fact that
25

there was two Cohiba applications close in time?

A. I don't recall that he did.

Q. Do you recall him asking you anything about Cohiba in the connection of there being two applications close in time?

A. Nothing comes to my mind that he did.

Q. Do you remember him asking you if there were any news articles about Cohiba or -- I'll leave it at that.

A. I don't recall him doing that either.

Q. I'm showing you two documents that have been previously marked. The first one is Plaintiff's Exhibit 365, a March 27, 1978 letter from you to Mr. Marcus dated March 27, 1978, GCP 6 and the second is marked as Plaintiff's Exhibit 429, GC 10 through GC 16, a news article from Tropic dated March 19, 1978.

Do you recall bringing to Mr. Marcus' attention the Tropic article?

A. No, I don't recall that at all.

Q. Did you review this letter, Plaintiff's 365, prior to your deposition?

A. The deposition a year ago?

Q. No, before today is this one of the

1 documents that you looked at.
2 MS. NORMAN: You mean in connection
3 with his preparation for this deposition?
4 MR. GOLDSTEIN: Yes.
5 A. Oh. Did I review this article?
6 Q. Well, actually I'm right now asking
7 about the letter.
8 MS. NORMAN: Do you need to take a
9 minute to take a look at it?
10 THE WITNESS: Yes, please.
11 (Witness reviewing document.)
12 A. My letter of the 27th I think is
13 really -- I was passing information on to Harry.
14 I had nothing to do -- I had read the article or
15 it had been handed to me. Mr. Garbo probably
16 asked me to send that on to Harry.
17 Q. Your recollection is that Mr. Garbo
18 found the article and brought it to your
19 attention?
20 A. I don't know whether Mr. Garbo found
21 it or somebody gave it to him.
22 Q. Your recollection is that Mr. Garbo
23 brought it to your attention?
24 A. He must have, because in my letter I
25

1 say "which Mr. Garbo informed you in his
2 telephone call today" so...
3 Q. In the letter, as you say, you refer
4 to a phone call between Mr. Garbo and
5 Mr. Marcus.
6 Were you part of that phone call?
7 A. No, I wouldn't have been part of
8 that.
9 Q. Do you recall talking to Mr. Marcus
10 about the article?
11 A. No. If Mr. Garbo were talking to
12 him, I would have been informed by Mr. Garbo at
13 some point in time I would imagine.
14 Q. Do you have any recollection of
15 asking Mr. Marcus to do anything with respect to
16 the article?
17 A. No. I was not involved in any of
18 that.
19 Q. Do you have any knowledge of whether
20 Mr. Garbo asked him to do anything with respect
21 to that?
22 A. I have no knowledge that he did or
23 didn't.
24 Q. Did you provide any other documents
25

at that time to Mr. Marcus concerning Cohiba?

A. No, I have no recollection of providing him with anything else right now.

Q. At that time did it come to your attention that the article in Tropic was the same article in terms of text as in New York Magazine from approximately a month earlier, February 6th, 1978?

MS. NORMAN: Objection. Lack of foundation.

MR. GOLDSTEIN: This is a copy.

MS. NORMAN: You can show him that and ask him if he's seen it.

BY MR. GOLDSTEIN:

Q. The text, there's different illustrations but the text of the article is the same.

My only question is, do you have any recollection sitting here today of learning at about this time, you know, that time, that the article had earlier appeared in New York Magazine?

A. No.

Q. Okay. Let me grab this back from

1 Sparkes

2 you.

3 At your prior deposition we had

4 looked at these three documents in a redacted

5 form. I didn't have any in this form,

6 Plaintiff's 302, 303 and 304. GC 1A is 302,

7 GC 2003A is 303 and GC 2004 is 304.

8 My question is, do you recall

9 bringing any of these three documents to

10 Mr. Marcus' attention at about this time, March

11 or April of 1978?

12 (Witness reviewing document.)

13 MS. NORMAN: Do you want him to repeat

14 the question?

15 THE WITNESS: Yes, please, but just a

16 moment.

17 MR. GOLDSTEIN: Sure.

18 (Witness reviewing document.)

19 A. All right. Will you repeat the

20 question?

21 Q. Did you provide these documents to

22 Mr. Marcus at this time, March or April of 1978?

23 A. I don't recall sending him -- these

24 look like internal pieces of paper.

25 Q. Do you recall if subsequent to

1 sending him the Tropic article, that time period
2 March or April, if Mr. Marcus asked you if
3 General Cigar had other information concerning
4 the Cohiba cigar in Cuba?
5 A. No, I don't recall.
6 Q. And you don't recall providing him
7 with any other information about the Cuban
8 Cohiba?
9 A. No.
10 MS. NORMAN: Objection.
11 When you say "the Cuban Cohiba," can
12 you clarify what you're referring to?
13 MR. GOLDSTEIN: I'm referring to the
14 Cohiba cigar that's referenced in these
15 documents as well as in the Tropic article.
16 When I say "these documents," 302, 303 and
17 304.
18 Can we mark this?
19 (Plaintiff's Exhibit 444, Handwritten
20 memo dated 3-9-78 with attachments, marked
21 for identification, as of this date.)
22 BY MR. GOLDSTEIN:
23 Q. I'm showing you what we've marked as
24 Plaintiff's 444, GC 4812 through 4814, and the
25

1 Sparkes

2 first page is a memo with a Cohiba band, a

3 handwritten memo dated March 19, 1978, and then

4 the second is a copy of that with some other

5 handwriting on it, and the third page is a memo

6 from Mr. Cullman, Jr. to you in handwriting.

7 A. Could you read the line?

8 Q. Let me read it for you and see if you

9 agree with me.

10 It says, "C. Sparkes," the letter C,

11 Charles Sparkes. "Please find the cigar band

12 for Cohiba. We now have the design. Should we

13 make up a band like this for cigars to be

14 shipped interstate? EMC Junior."

15 Do you recall receiving that memo

16 from Mr. Cullman?

17 A. No, I don't recall.

18 Q. Okay. Do you recall the image of the

19 Cohiba band being sent to you with -- either by

20 itself or with a memo?

21 A. No, I don't.

22 MS. NORMAN: Which document are you

23 referring to?

24 MR. GOLDSTEIN: Either the first page

25 or the second page, 4812 or 4813.

1 Sparkes

2 MS. NORMAN: So the question -- so

3 your question?

4 MR. GOLDSTEIN: Does he recall seeing

5 either the memo itself or the band. Does he

6 recall having the band sent to him by

7 Mr. Cullman, Jr.

8 A. No, I don't recall.

9 Q. And the question from Mr. Cullman,

10 "Should we make up a band like this for cigars

11 to be shipped interstate," do you have any

12 recollection of asking Mr. Marcus for advice on

13 that matter?

14 A. No.

15 Q. Do you have any recollection of

16 providing to Mr. Marcus a Cohiba band that had

17 come from the Cuban Cohiba?

18 MS. NORMAN: In this time frame?

19 MR. GOLDSTEIN: Yes, at this time.

20 A. No, I don't recall that either.

21 Q. And I take it from your answers so

22 far, you don't have a recollection of giving a

23 response to Mr. Cullman regarding making up a

24 band like this for cigars to be shipped

25 interstate?

A. No, I don't recall that.

Q. Do you have any recollection of seeing at this time the design of the Cuban Cohiba?

A. No.

MS. NORMAN: Same objection. When you say Cuban Cohiba throughout --

MR. GOLDSTEIN: I'm referring to the Cuban Cohiba cigar.

MS. NORMAN: -- to the extent it was referenced -- as that phrase would have been understood by Mr. Sparkes at the time in his references in the internal memorandum?

MR. GOLDSTEIN: Well, whatever his understanding was at the time, I'm referring to he was aware that there was a Cuban Cohiba cigar. His handwriting is on those documents, as well as other people's handwriting in documents in his possession.

I'm referring to the cigar in Cuba with the name Cohiba. We can dispute about what it was used for and whether it was used at all, but I'm talking about a Cuban Cohiba cigar and I think it's clear what I'm

referring to.

MS. NORMAN: Okay. To the extent -- so you're referring to the extent that he had an understanding that there was some cigar named Cohiba in Cuba. That's what you're --

BY MR. GOLDSTEIN:

Q. And you did have some knowledge of that?

A. Yes. It was primarily the name. I don't think I ever heard that there was a design with it at the time.

Q. You're not aware of a design. You don't recall a design being brought to your attention?

A. No.

Q. And this doesn't refresh any recollection about that?

MS. NORMAN: You're pointing to?

MR. GOLDSTEIN: I'm pointing to 4814, as well as the two pages before it.

A. I don't recall anything about that, no.

Q. Let me show you what we've marked as

Plaintiff's 366. It's an April 17, 1978 letter from Mr. Marcus to you, GCP 7, GCP 8, and attached is a page from the Beneficial Capital trademark application for Cohiba with a Cohiba design.

Did you review this document in preparation for this deposition today?

A. Just a moment, please.

(Witness reviewing document.)

A. Now can I have your question again, please?

Q. My question was, do you recall reviewing this document, this letter prior to your deposition, in preparation for this deposition.

A. This deposition?

Q. Yes.

A. Yes, I believe it was one of the documents that I had seen.

Q. Okay. And looking at the document recently, did you recall receiving that document, that letter from Mr. Marcus in 1978?

A. Yes, I recall that I received this letter from Harry on that date.

Q. Do you recall whether between March 27, 1978 when you sent him the Tropic article and when Mr. Marcus provided you with this letter, discussing the Cohiba mark with him?

A. No, I don't recall -- other people were getting involved in this, and while Harry addressed it to me as I addressed all my correspondence to him, other people may have been involved in the inquiry or something on that order.

Q. Do you have knowledge that other people were involved?

A. No, I don't, but I'm just saying my own knowledge, I remember receiving the letter, I remember noting it, I remember -- but I don't remember any follow-up on it.

Q. Do you have any knowledge of any -- strike the question.

Do you have any recollection of anyone else at the General Cigar end being involved in what resulted in this letter?

MS. NORMAN: Can you clarify the question? When you say "what resulted in this letter"...

A. No, I don't recall that. He mentioned in the letter that, let me see, that he would keep a close watch on the official visit and we had the opportunity to oppose the Beneficial registration. That required a follow-up.

Q. In the article, the Tropic article which talks about a 1974 visit by the author to the island --

A. Excuse me. Who to the island?

Q. By the author of the article, Mr. Mankiewicz, Frank Mankiewicz.

In Mr. Marcus' letter he says, "As pointed out in the article, the Cohiba cigars made in Cuba are Castro's private brand. They are not in general distribution." That's the paragraph labeled second.

Do you recall if General Cigar did anything to determine whether there was anything different in the use of the Cuban Cohiba cigar between 1974 and 1978?

A. No, I don't recall anything to that.

Q. In paragraph third he says, Mr. Marcus writes, "There is no evidence that

1 Sparkes

2 A. No, I have no knowledge of that.

3 Q. Upon receipt of this letter, do you

4 have any recollection of any discussions at

5 General Cigar whether to provide Mr. Marcus with

6 those internal documents we had looked at,

7 Plaintiff's Exhibit 302, 303 and 304, those 1977

8 documents?

9 MS. NORMAN: Do you want to look at

10 those documents?

11 You said 302 and --

12 MR. GOLDSTEIN: Yes. One of them

13 doesn't actually have the exhibit number on

14 it.

15 MS. NORMAN: So these would be

16 Plaintiff's Exhibit 303, 302 --

17 MR. GOLDSTEIN: The one that doesn't

18 have a number is 303, I believe.

19 MS. NORMAN: And that would be GC

20 2003A.

21 BY MR. GOLDSTEIN:

22 Q. The question was do you recall having

23 any discussions at General Cigar as to whether

24 to provide Mr. Marcus with that information

25 following receipt of his letter, either with the

documents or with the information in the documents?

A. No, I don't recall that.

Q. Do you recall showing the April 17th letter to anyone at General Cigar?

A. No, I don't. I don't see any copies that I would put on a letter to show that I forwarded it to anyone else.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 445, Memo dated 5-8-78 from Sparkes to Cullman, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. This has been marked as Plaintiff's 445. It's a May 8th, 1978 memo from you to Mr. Cullman, CC to Mr. Garbo with GCP 10.

A. Mr. Garbo?

Q. At the bottom, Mr. P.W. Garbo?

A. Oh, I see, yes.

Q. And it's "Re" there's a blank and "Current Status of Cohiba."

And the first paragraph is redacted, and then the second paragraph refers to "The

1 Sparkes

2 current status of Cohiba is contained in the

3 attached letters. Our application was filed as

4 per the letter of 4-25-78 from Harry Marcus, our

5 trademark attorney for the cigar brands.

6 Harry's letter of 4-17-78 was in answer to the

7 article Tropic, the Miami Sunday Supplement

8 Magazine."

9 Does this in any way refresh your

10 recollection of providing Mr. Cullman, Jr. with

11 the letter from Mr. Marcus?

12 A. Yes, it indicates that I had.

13 Q. Do you recall having any discussions

14 with Mr. Cullman about that letter as it relates

15 to the Cuban Cohiba cigar?

16 A. No, I don't recall that.

17 MS. NORMAN: When you say "that

18 letter," you mean the 4-17?

19 MR. GOLDSTEIN: The April 17 letter.

20 MS. NORMAN: Okay.

21 BY MR. GOLDSTEIN:

22 Q. And do you recall discussing that

23 letter with anyone else at General Cigar, that

24 letter meaning the April 17th letter?

25 A. No, I can't recall anybody except

Q. And you don't recall the discussion, you just recall providing it to him based on this memo?

In other words, you don't recall discussing it with Mr. Cullman, Jr. either; is that correct?

A. No. I forwarded it to him.

Q. And you have no recollection of discussing it with him?

A. No.

Q. Let me show you what was marked as 431, Plaintiff's Exhibit 431, GCP 216. It's a June 14, 1978 memo within the office at Morgan & Finnegan from J. McGee to D. Zimmerman, and the memo says, "Mr. Marcus informed me today that Culbro advised him they do not wish to file their marks Cohiba..." and then some numbering, "Cienfuegos" and numbering "...in any foreign countries at the present time."

Do you see that?

A. Yes, I see that.

Q. Do you have any recollection of you advising Mr. Marcus that Culbro is not

Evidently it would be somebody in authority.

Q. And at that time was there a particular person that would be, like Mr. Wollen or Mr. Cullman, Jr., Mr. Burgh?

A. Well, someone in authority. It could have either have been Mr. Burgh, Edgar Cullman, Jr., but I doubt whether it would have been anybody else.

Q. Do you have any knowledge as to why there was no wish to make foreign filings for Cohiba?

A. When we filed the application, it was a national application, and at that point in time there was no indication that they wanted to take advantage and make foreign filings based on the application that we filed in the United States.

Q. And had you not advised Morgan & Finnegan, would they have made foreign filings?

MS. NORMAN: Objection to the hypothetical and speculative nature of the question.

MR. GOLDSTEIN: Well, he can answer. It's not speculative.

1 Sparkes

2 Plaintiff's 430. It's a May 15, 1978 letter

3 from you to Mr. Marcus re Culbro Cohiba, GCP

4 217.

5 My first question is, did you read

6 this letter in preparation for this deposition

7 today?

8 A. Yes, I remember reading this in

9 preparation for this.

10 Q. And it talks about the Beneficial

11 Capital Corp. and a reference to Mr. Cullman's

12 secretary calling Beneficial to state that she

13 was interested in purchasing Cohiba brand cigars

14 for her husband. Their reply was that the cigar

15 was a house brand of cigar which was passed out

16 free to their customers.

17 Do you have a recollection of that?

18 A. Yes. I wasn't involved with her

19 making the telephone call, but I'm aware that

20 one was made.

21 Q. And you learned --

22 A. That was my extent or my knowledge.

23 Q. And based on that phone call, you

24 learned that Beneficial was giving the cigars

25 away to customers?

A. I don't know whether -- I guess this was the first instance where I was aware that they were using it that way, yes.

Q. And then it states that "We tentatively informed Mr. Cullman that it was our understanding that use in interstate commerce and not sales was the criterion for establishing a trademark."

Do you recall informing Mr. Cullman of that?

A. Certainly it's my letter and sales -- the thing that bothers me right away, the "use in interstate commerce" doesn't bother me but the "and not sales," are we talking -- I can't recall what that phrase means there. If it was passed out free, it wasn't a sale.

Q. And so what you're informing Mr. Cullman tentatively is that use in interstate commerce and not sales was the criterion for establishing a trademark?

A. Yes.

Q. The "we" refers to you and Mr. Garbo; is that correct, because you refer to Mr. Garbo in the next sentence?

A. Yes.

Q. Do you recall what the basis for this understanding that you gave to Mr. Cullman?

A. Once more with that question, please.

Q. You say "We tentatively informed Mr. Cullman that it was our understanding," and I'm asking you what the basis for your understanding was, if you recall.

A. It was probably Harry's letter of -- what was that?

Q. There was a letter that we looked at from April 17th.

A. Yes. Yes, I don't know, but I would assume that it was that letter that was the basis.

Q. In response to this letter to Mr. Marcus, did Mr. Marcus ever state that he agreed with your understanding regarding use and not sales being the criterion for establishing a trademark?

A. No, I don't recall that.

Q. Do you recall him ever telling you either in a letter or orally that he disagreed with your interpretation?

A. I can't recall any call to me.

Q. Or any documents to that effect.

MS. NORMAN: Is that right? He's asking you a question.

BY MR. GOLDSTEIN:

Q. I guess I'm asking you do you recall Mr. Marcus ever telling you either in writing or orally that your understanding is either right or wrong?

A. No, I don't.

Q. Let me show you what we've marked as Plaintiff's 367. It's a January 19, 1979 memorandum from you to Mr. Wollen with GCP 13, and let me ask you first, did you read this document in preparation for your deposition today?

A. Yes, I recall seeing this letter.

Q. And did that refresh your recollection about the substance of the memorandum?

A. Once more on your question, please.

Q. Did that refresh your recollection about the substance of the content of the memorandum?

1 Sparkes

2 MS. NORMAN: Of this memorandum

3 (indicating).

4 A. Yes.

5 Q. And in the memorandum, the last half

6 of the memorandum, it talks about possibly

7 negotiating with Beneficial to purchase the

8 Cohiba mark.

9 A. Yes.

10 Q. Do you recall having that idea raised

11 at General Cigar?

12 A. Again, this is one area where I

13 believe the information is from the file, and it

14 was probably one of Mr. Wollen's assistants that

15 was involved with this.

16 Q. Well, I'm not interested in

17 contradicting you, I'm just asking do you recall

18 certain things.

19 In the fourth paragraph it says,

20 "Mr. -- EMC Junior raised the question about

21 trying to purchase the Beneficial mark," and

22 then the memo is a communication from you to

23 Mr. Wollen.

24 Do you have a recollection of

25 Mr. Cullman raising it with you?

A. I don't recall that, no.

Q. Do you have any recollection of whether any negotiations took place with Beneficial?

A. I am aware that there was contact. I wasn't involved in the contact. If the contact was made, it was made with one of the lawyers and maybe perhaps the marketing person in General Cigar.

Q. Do you have any knowledge of, I don't want to confine it with the word negotiation, any knowledge of an attempt by General Cigar to purchase the mark from Beneficial? In other words, going beyond these internal discussions.

A. I am aware that there was talk of it, but whether the actual contact was made, I can't recall and by whom.

Q. You don't have any knowledge, then, of whether General Cigar did, in fact, purchase the mark from Beneficial?

A. From later documents I would say no, they didn't.

Q. But you yourself don't have any knowledge one way or the other?

1 Sparkes

2 MS. NORMAN: Independent of the

3 document? Is that what you're asking?

4 MR. GOLDSTEIN: Well, I'll ask him

5 if -- I'll show him a document and ask him

6 if that's what he's relying on, but I'm not

7 aware of any documents that say we did buy

8 or didn't buy the mark from them.

9 A. Well, I'm not aware of any either.

10 Q. In the second paragraph at the last

11 line, the last sentence of the second paragraph,

12 it says, "As near as we can determine,

13 Beneficial deals in small loans and does not

14 manufacture or distribute cigars but uses them

15 as a promotion."

16 The part about not manufacturing or

17 distributing but using them as a promotion, is

18 that based on anything in addition to the

19 secretary's phone call that you recall?

20 A. It may have. Certainly the

21 secretary's phone call might have initiated some

22 other investigation, but I can't recall any of

23 it.

24 Q. And then you write, "They have prior

25 use and filing which would make our opposition

dependent on other grounds."

Do you recall if that came from anybody to you?

I'm sorry. It's in the bottom of the third paragraph. Let me rephrase my question.

Well, why don't you look at the sentence first.

A. This is probably my thoughts and it wouldn't have involved anybody else.

Q. Do you recall discussing that with anybody else?

A. No.

Q. Why don't we just take a look at this, Plaintiff's 368A, GCP 14, a July 6, 1979, memorandum from CHS to the Cohiba file.

And that's you, correct?

A. Yes.

Q. And it's CC'd to Mr. Cullman, Jr. and Mr. Wollen?

A. Yes.

Q. Did you read this memorandum in preparation for your deposition today?

A. Yes, I think this was one of them that was reviewed.

1 Sparkes

2 Q. Do you recall this idea about selling

3 cigars, several hundred thousand cigars in the

4 Miami market?

5 MS. NORMAN: The one referenced in

6 the second paragraph of the letter? Is that

7 what you're asking?

8 MR. GOLDSTEIN: Yes. "Mr. Cullman

9 asked what effect our making limited use of

10 the trademark in the Miami market of, say,

11 several hundred thousand cigars would have

12 on the trademark situation," referring back

13 to the Beneficial Capital application.

14 A. Yes. Evidently he asked me the

15 question. Of course we couldn't give him an

16 answer internally, so we contacted our law firm.

17 Q. Do you recall doing that? Do you

18 recall asking Janet Dore?

19 A. Yes, I recall.

20 Q. And do you recall the conversation?

21 A. I just probably posed the question in

22 the second paragraph and asked her for an

23 opinion.

24 Q. And do you recall if she gave you an

25 opinion?

A. It says right here, "She will let me know whether such use will be advantageous because it showed our interest in using the mark or whether it would pose a risk because of any proprietary rights that Beneficial may have acquired in the use of the mark."

Q. It suggests that she will give you an opinion.

Do you recall if she did?

A. That is a suggestion. I'm sure she gave us an opinion. I'm not -- at this point in time I just don't know when that was.

Q. Do you know what it was?

A. I don't know what it was or when it was offhand.

Q. Do you have -- well, I'm not interested in the time right now, but the substance or content of what she told you.

Do you have any recollection of that?

MS. NORMAN: He already -- he just answered the same question.

MR. GOLDSTEIN: I thought he said when.

MS. NORMAN: He said when or what.

1 Sparkes

2 MR. GOLDSTEIN: Okay.

3 BY MR. GOLDSTEIN:

4 Q. You don't recall what she said

5 either?

6 A. No, no.

7 Q. You do recall, though, that General

8 Cigar did not sell several hundred thousand

9 cigars in the Miami market at this time?

10 A. At this time I wasn't aware that they

11 had. I wasn't informed by anyone that they had.

12 Q. And you don't recall any conversation

13 with Mr. Cullman, Jr. in response to his

14 inquiry?

15 A. No. I don't think he would have come

16 back to me about this.

17 Q. But you would have -- if you had

18 received an opinion from Ms. Dore, it would have

19 come back to him?

20 A. Yes.

21 Q. You don't have any recollection of

22 that?

23 A. I have no recollection of that.

24 Q. Let's just take a look at this. This

25 is Plaintiff's 432 from Janet Dore, a letter

1 Sparkes

2 from Janet Dore to you dated January 30th, 1980,

3 GCP 19.

4 And the point I want to take a look

5 at is a reference to the "PTO has disclosed..."

6 in sort of the middle bottom of the first

7 paragraph, Patent & Trademark Office disclosed

8 "...that Application No. 155,418, which had been

9 cited against our application, was abandoned

10 effective October 31, 1979." That's the

11 Beneficial application.

12 A. Right.

13 Q. And Ms. Dore is informing you of that

14 fact.

15 And I take it from your prior answers

16 that you don't know why -- you have no knowledge

17 as to why it was abandoned?

18 A. No, I don't.

19 Q. You have no knowledge whether it was

20 abandoned because General Cigar purchased their

21 application?

22 MS. NORMAN: He already testified.

23 MR. GOLDSTEIN: I know, but I'm

24 pointing to another document. I can ask

25 him.

1 Sparkes

2 A. If they had purchased the

3 application, I think I would have known it. And

4 I was never informed that they had, so I would

5 say that they hadn't.

6 Q. You have no knowledge as to why it

7 was abandoned?

8 A. No, I don't. Of course we were one

9 of the two or three big cigar companies in the

10 United States and maybe they thought it just

11 wasn't worth their efforts.

12 Q. That's speculation on your part?

13 A. That's speculation, yes.

14 Q. It's not from anything you were

15 informed of at the time?

16 A. No.

17 Q. You want to take a couple minutes or

18 you want to keep going?

19 A. I'm fine. Keep going.

20 Q. Let me show you a document that was

21 previously marked as Plaintiff's 157. It's a

22 March 2nd, 1981 document and GC 90, and it's a

23 memorandum from you and the only -- I'm just

24 showing it to you for the purpose of the date.

25 You're reporting that the Cohiba

1 Sparkes

2 trademark matured into a registration on

3 February 17, 1981, and you recall about that

4 time the Cohiba maturing into a registration?

5 A. Once more.

6 Q. You recall about that time, February

7 1981, that Cohiba matured into a registration?

8 A. Yes.

9 Q. I'm just pointing it out to you for

10 date reference. That's the only thing I want to

11 show you about that document.

12 MR. GOLDSTEIN: Can we mark this?

13 (Plaintiff's Exhibit 446, General

14 Cigar invoices for shipments to Rubovits and

15 Cigar Santa Clara from 3-79 to 4-82, marked

16 for identification, as of this date.)

17 BY MR. GOLDSTEIN:

18 Q. I'm showing you what we marked as

19 Plaintiff's 446, which are invoices of General

20 Cigar shipments of cigars to Rubovits in Chicago

21 and Cigar Santa Clara in New York City from

22 March 1979 to April of 1982, and it runs from

23 pages GC 12466 through GC 12489.

24 You recall at your prior deposition I

25 had asked you some questions about what I

1 Sparkes

2 believe were called periodic shipments of the

3 Cohiba and you recall that?

4 A. Yes, I recall that.

5 Q. And we were talking about cardboard

6 grain boxes of fifties that were shipped

7 periodically to Cigar Santa Clara and Rubovits?

8 A. Yes.

9 Q. And at that time I had documents from

10 1978 showing that kind of shipment for Cohiba

11 but I didn't have anything later, and I asked

12 you questions about that.

13 Subsequent to your deposition,

14 General Cigar produced these documents showing

15 shipments of Cohiba as well as other cigars for

16 that -- in the period 1979 to up to April of

17 1982.

18 And my first question is, if you

19 would take a look at what I produced to you and

20 if you recall these as the invoices for these

21 periodic shipments of 100 cigars at a time to

22 these two stores.

23 MS. NORMAN: And you're talking about

24 GC 12466 through GC --

25 MR. GOLDSTEIN: Yes. What we've

1 Sparkes

2 marked as Plaintiff's 446.

3 A. Yes, these were the shipments or

4 would you repeat the question, please?

5 Q. Taking at look at these invoices, do

6 you recall these as the invoices for those

7 periodic shipments?

8 A. Yes, I do.

9 Q. And when I had shown you documents

10 from 1978, the only thing in the documents was

11 Cohiba, everything else had been redacted, and

12 this is showing other marks included with the

13 Cohiba.

14 A. Yes.

15 Q. Do you recall that the cigars when

16 they were shipped, groups of cigars were shipped

17 together?

18 In other words, different boxes with

19 different marks were shipped together as part of

20 these periodic shipments?

21 MS. NORMAN: Are you asking him if

22 that was the practice?

23 MR. GOLDSTEIN: Yes.

24 MS. NORMAN: Okay.

25 A. That would be the practice. It would

depend on the factory making the shipment, whether they all went out at the same time or not. But if they were on the same dated invoice, I would imagine they did.

Q. And I may be wrong about all of them, but I believe all of them are from the Philipsburg factory.

A. Yes.

Q. And that was a factory in Pennsylvania?

A. Yes, central Pennsylvania.

Q. And in the first one I've counted, and you can check, there's 33 marks on the first invoice, March 13th, 1979, GC 12466.

MS. NORMAN: He's talking about this page (indicating).

THE WITNESS: Uh-huh.

BY MR. GOLDSTEIN:

Q. When I say you can count, you can count them if you want.

A. Yes.

Q. And the shipment of these 33 marks in these cardboard boxes, that was part of an overall program to maintain General Cigar's

trademarks in these cigars?

A. It was used to show continuity in the use of the mark in interstate commerce.

Q. And was there a name for this program or project at General Cigar? Did you refer to it as trademark maintenance program or...

A. That would cover trademark maintenance, yes.

Q. And you were in charge of managing that; is that correct?

A. I gave the instructions that the shipments were to be made quarterly. I had the labels ordered and sent to the proper factory. If that's being in charge, yes.

Q. Did you give the instruction quarterly or did you have a standing instruction to make the shipments quarterly?

A. I used the more generic term quarterly. There was no specific dates that they had to be shipped as long as it was four times a year, but not everything at once of course.

Q. And that was not -- you didn't call them up and say okay, ship now.

A. No.

Q. That was a standing instruction.

A. That was a standing instruction.

Q. Were there other cigar marks in these periodic shipments in addition to what's on this list?

In other words, were there other trademark shipments as well?

MS. NORMAN: Do you mean for the dates set forth on this?

BY MR. GOLDSTEIN:

Q. Well, let's say in 1979, am I looking at the entire book of marks that were in periodic shipments or were there -- if I had access to all the invoices, would I find other invoices showing other marks in periodic shipments?

MS. NORMAN: If you know the answer.

A. These 33 marks that came out of Philipsburg, these would be all of the marks that were maintained there.

I can't recall at this point in time, at this point in time in '79 through '82, that we were shipping other brands of cigars in a

similar program from any other factory.

By this time there was only one or two factories left in the United States, Philipsburg and Dothan, Alabama. That was the Garcia y Vega factory. And I don't think -- I have no recollection that any were shipped out of the Caribbean manufacturing centers either.

Q. And do you have any recollection of any being shipped out of Dothan, different marks being shipped out of Dothan?

MS. NORMAN: And when you say any marks being shipped, can you --

MR. GOLDSTEIN: Cigars with labels of other trademarks in this time period of '79 to '82.

MS. NORMAN: As part of a periodic shipment?

MR. GOLDSTEIN: Yes, periodic shipments as opposed to Garcia y Vegas by the thousands.

MS. NORMAN: So basically you're asking the kind of information that was shown on these invoices.

MR. GOLDSTEIN: Yes, 100 cigars a

quarter to particular stores from Dothan.

A. I don't recall that there were any shipped -- Dothan was the only factory we had left. At the date -- the date that Dothan was the sole remaining factory in Continental United States was I think later than this date here. There were two factories, and I can't recall that any were shipped out of Dothan to my knowledge.

Q. Now these cigars for all these different brands, they were all the same cigar; is that correct?

A. There they were either miniatures -- by the size of the box, they were either miniature cigars, that's like a White Owl miniature is typical of that, or a Robert Burns Cigarillo.

At an earlier time when we had more factories, there were more shapes and different factories made different types of cigars, and a maintenance program with that factory would have been a different shape cigar. Essentially the same type of box, but a different shape size.

Q. If I was at Cigar Santa Clara and I

1 opened up the box that you had shipped, one box
2 would have a label Windmill, if you see the
3 first one, one would have a label Stiletto, and
4 if I looked at the cigars, they would be the
5 same cigar; is that correct?
6 MS. NORMAN: You're talking about
7 this time period?
8 MR. GOLDSTEIN: 12466, yes.
9 A. Yes.
10 Q. They would be the same cigar?
11 A. Yes. They would be -- I'm not sure
12 whether they mixed either the miniature or the
13 Cigarillo, you know, but essentially I would
14 think they would have sent all miniatures or all
15 Cigarillos.
16 Q. Do you know what the two stores
17 Rubovits and Cigar Santa Clara did with the
18 cigars upon receipt?
19 MS. NORMAN: I think he already
20 testified to that in his previous
21 deposition.
22 MR. GOLDSTEIN: Well, I didn't have
23 these documents and I'm allowed to ask him
24 about it. We went around and around over
25

the fact that I didn't have any other documents. These came much later and I'm going to ask him these questions.

BY MR. GOLDSTEIN:

Q. Do you have any knowledge of what, in 1979 to 1981 or '82, what Rubovits or Cigar Santa Clara did with these cigars that came in these periodic shipments?

A. Yes. They put them on retail sale.

Q. And what's your basis for saying that?

A. We had -- for one thing, I got -- now and then I would get a letter from people who purchased these cigars from either Santa Clara or Rubovits and they claimed that they only saw them periodically on sale.

Q. Do you know if those letters were preserved?

A. No, I don't think so. It was for more my information. I don't recall that any of them were preserved as such.

Q. Did the stores, to your knowledge, pay General Cigar for these cigars?

A. Yes, they were invoiced a certain

1 amount for them.

2 Q. Do you know if they paid? They were

3 invoiced, but do you know if they paid?

4 MS. NORMAN: I have the same

5 objection. I think that to the extent

6 you're asking additional questions referring

7 to these documents, that's appropriate, but

8 again, to the extent you're not referring to

9 these documents, you're asking the same

10 questions you asked before.

11 BY MR. GOLDSTEIN:

12 Q. Do you have any knowledge whether

13 General Cigar actually paid for the cigars after

14 they invoiced?

15 MS. DORE: David, did General Cigar

16 pay for the cigars after being invoiced?

17 BY MR. GOLDSTEIN:

18 Q. Do you have any knowledge of whether

19 Rubovits or Cigar Santa Clara paid for the

20 cigars after being invoiced for them?

21 A. I have no knowledge of that.

22 Q. Do you have any knowledge of General

23 Cigar giving the stores Rubovits or Cigar Santa

24 Clara a credit for any payments they may have

25

1 made to General Cigar in this time period 1979
2 to 1982 for these periodic shipments?
3 A. I can't recall if they were given any
4 kind of a credit. They might have been -- they
5 were certainly given a discount, but I don't --
6 I have no knowledge that they were given credit.
7 I wasn't involved.
8 Q. You weren't involved in that?
9 A. No.
10 MS. NORMAN: If it happened.
11 THE WITNESS: If it happened, yes.
12 BY MR. GOLDSTEIN:
13 Q. Do you know who set up the trademark
14 program, this trademark maintenance program?
15 A. Well, this program was set up
16 originally for what we called second cigars,
17 cigars that had passed the appearance of
18 being -- that the rest of the production that
19 they were packaging at that time showed, and
20 each factory at that time sold these cigars in
21 this type of box, this grain box, and they were
22 put out into the retail trade at a discount, and
23 we used that same type of format to sell regular
24 production cigars when we were establishing the
25

use of the mark or trying to keep the continuity of the mark in interstate commerce.

Q. And do you know who set up the program?

In other words, do you know if Morgan & Finnegan told you how to do it or --

A. No, that was internal.

Q. It was done internally?

A. Yes.

Q. And did you inherit an existing program or did you participate in setting it up?

A. I actually -- of the shipment with grain boxes, yes.

At one time we used to have a two-by-three tag, label, when we were first making a shipment of cigars for getting our first use date. They would take that label and paste it on any box of cigars that was appropriate for the size and shape, and then they would send that out in retail trade and make regular sales.

A person -- every now and then we would get complaints from people who purchased the box and say, hey, look, I purchased a box of

1 Tiparillos and here I got a label with so and
2 so, so and so trademark of the General Cigar
3 Company on it.
4 So after a few of those types of
5 letters, it was primarily my concern that we
6 went to making the shipments in the grain boxes.
7 Q. And do you recall when you began
8 periodic quarterly shipments of certain marks?
9 A. I was transferred to New York in
10 1963, and these shipments with the small white
11 labels went for several years. I would say late
12 '60s, perhaps like that, or '70s.
13 Q. When you went to the grain label box?
14 A. When we went to the grain label.
15 Q. And prior to that, in the different
16 labels there were these periodic quarterly
17 shipments; is that correct?
18 A. Once more with that question.
19 Q. Prior to using the grain label boxes
20 or the grain boxes with the other kind of labels
21 you were describing --
22 A. Yes.
23 Q. -- those were also in these periodic
24 shipments?
25

1 Sparkes

2 MS. NORMAN: When you say those --

3 BY MR. GOLDSTEIN:

4 Q. You described a different kind of

5 label and box.

6 A. Yes.

7 Q. But those were also sent out in

8 periodic shipments?

9 MS. NORMAN: Were those also sent out

10 in periodic shipments.

11 A. Yes. I believe they were, yes.

12 Q. Do you have any knowledge of Morgan &

13 Finnegan providing any legal advice in setting

14 up or carrying out this trademark program?

15 A. Not during my time, no.

16 Q. Do you have any knowledge of a

17 different law firm than Morgan & Finnegan

18 providing advice to Culbro or General Cigar in

19 setting up or carrying out this trademark

20 program?

21 A. No.

22 Q. What was the source or basis of your

23 understanding of what protections would be

24 provided to General Cigar by this program?

25 A. Well, it certainly showed continuity

in the mark in interstate commerce.

The period between getting a trademark registration and getting a finished product in general distribution, it can be fairly extensive because it depends on the packaging, the type of product it is, testing of the product, is that what they want to put out under that type of label, ordering the packaging or designing the packaging can take a year or two, maybe even more depending on what is happening with the design of the mark. But what this was supposed to do was to fill in that time between the registration of the trademark and the time that the final packaging, cigars with the final packaging got in general distribution and to show some continuity between those two dates.

Q. Is this something you sort of gathered by experience or did someone provide you with this information?

A. This was just through experience.

Q. Do you have any knowledge of, putting aside sort of the setting up here, during the carrying out period, during the time that you

1 were, you know, the person in charge of the
2 management of the trademark program, do you
3 recall receiving any memos or letters from
4 Morgan & Finnegan as to legal issues concerning
5 the program?
6 A. No, I don't.
7 Q. Do you have any recollection of
8 asking them for particular advice as to how long
9 we can continue to keep the mark in periodic
10 shipment?
11 A. No, no, I don't recall that.
12 Q. Do you recall being provided with any
13 legal advice as to the effect of the quarterly
14 shipments prior to an application maturing into
15 a registration and after the registration?
16 MS. NORMAN: Can you break that down?
17 MR. GOLDSTEIN: Yes.
18 BY MR. GOLDSTEIN:
19 Q. In other words, do you recall ever
20 being told by counsel the legal effect of
21 periodic shipments -- strike the question.
22 Do you recall being told by counsel
23 of any difference in the legal effect of the
24 periodic shipments prior to the registration and
25

after the registration?

A. The only provision that I can remember that we made, we had a TM as a notice when we had the application filed up until it issued, and then we ordered more labels with the R in the circle notice once the trademark issued as a registration.

Q. Do you recall ever being advised that there was a limit to how long you can keep a cigar in periodic shipment and still claim protection for the mark?

A. I don't recall anything.

Q. Did you yourself have any understanding of that?

A. Well, with any trademark, if you are being challenged by a third party, your strongest evidence is that the amount of sales to how much you spent on advertising, how much you spent on promotion and the number of cigars you make are probably the most telling evidence to anybody who's adjudicating the mark between the parties.

Q. Do you have knowledge that -- looking at the 33 marks on the GC 12466, do you have

1 Sparkes

2 knowledge that most of these marks never went to

3 full commerce use?

4 MS. NORMAN: Can you restate that as a

5 nonleading question?

6 MR. GOLDSTEIN: I could.

7 MS. NORMAN: Will you, please?

8 I object to the leading nature of it

9 and I would ask you to rephrase it.

10 MR. GOLDSTEIN: Well, I think the

11 objection is remarkably unfounded, but I'm

12 willing to rephrase it.

13 MS. NORMAN: Just ask him whether he

14 knows.

15 MR. GOLDSTEIN: I know how to ask

16 questions.

17 MS. NORMAN: Okay.

18 MR. GOLDSTEIN: I think I'm certainly

19 entitled to ask a witness leading questions

20 that's a General Cigar witness but...

21 BY MR. GOLDSTEIN:

22 Q. Do you have knowledge of whether most

23 of these marks did not go to full commercial

24 use?

25 A. No. There are a mixture of marks

here.

Some of them did have commercial use and probably the sales were disappointing and they were not in full use again.

Others are marks that are at that stage between the application and the finished packaging.

Some of these were older marks that they didn't want to let go at that point in time.

Q. Are you aware, can you --

A. So there are a few of those marks in here that probably didn't get to full distribution, yes.

Q. Can you point to any mark here that had been in full commercial use and then went into the periodic shipment program?

A. Aurelia, that's on GC 12467.

Q. If we can stay on the first page because it's on there as well.

A. All right.

MS. NORMAN: It's here.

A. All right. On the first page it would be the last listed mark, all right?

Sparkes

Q. I see it.

A. These are marks that were in use or marks that never got to distribution?

Q. Right now I'm asking you for marks that you're aware that had been in, you know, with packaging and broader distribution.

A. All right. Aurelia, Ole, Viva, Escort perhaps. I'm not sure of Escort. Laramie, I'm pretty sure that that was at one time. Certainly Vista. I'm not sure of Owlet. Stiletto. Those are marks that I would say were in full distribution and then were shipped on maintenance.

Q. And how did that come about? Did you receive an instruction to put them into the trademark periodic shipments?

A. It came about because once the general distribution stopped, I probably inquired as to whether they wanted to just let the mark go to abandonment or for some reason they thought it might be used again on a different cigar, and depending on -- some of them, of course, 33 of them all told, that people didn't want to let go to abandonment or

1 expressly abandon at that point in time.
2 Q. So if they were not prepared to
3 expressly abandon, they would return it to the
4 periodic shipments?
5 A. Yes.
6 Q. Or put it into periodic shipments; is
7 that correct?
8 A. That's right.
9 Q. And do you recall who at this time
10 would have been making that decision?
11 A. With the General Cigar brands, it
12 would have been probably Dave Burgh that would
13 make a decision of whether we should abandon it
14 or try and keep it for a while until they
15 decided whether they were going to reuse it or
16 not.
17 Q. And if they didn't return it, tell
18 you to return it to the periodic shipment
19 program, that's because they were abandoning it?
20 MS. NORMAN: If you know.
21 A. Or if the registration ran out, the
22 date of registration ran out and we never
23 renewed it.
24 Q. So either the date of registration
25

ran out and you didn't renew it or there was a decision made to abandon it and not put it back into the periodic shipments; is that correct?

A. Yes, I believe so.

Q. Do you know if at this time, 1979, looking at the first page, if General Cigar had marketing plans for all 33 of these marks?

A. At one time they did. I don't know just how strong that would have been.

Q. When you say "at one time"...

A. Well, when we put them on the list of maintenance marks, they certainly went on that list because someone made a decision that they didn't want to abandon them or let them go through -- or whether they didn't want them just to be not renewed again.

Q. So there may have been plans for them, but they would have been general at that time that they were not prepared to abandon them?

A. Yes. That would be a fair statement.

MS. NORMAN: Would this be a good point to take a break?

MR. GOLDSTEIN: This would be fine.

1 Sparkes

2 (Recess is taken.)

3 BY MR. GOLDSTEIN:

4 Q. Am I correct that when a mark that

5 was on the periodic shipment list went into full

6 commercial use, it then came off of this list?

7 A. The general rule is yes. I wasn't

8 always advised that it was in general

9 distribution. There was no provision that they

10 would automatically notify me when it was in

11 general distribution. I usually found that out

12 for myself somewhere and then I would take it

13 off.

14 Q. And so an example might be -- would

15 an example be, if you look at 12466 in the first

16 column near the bottom, Canaria D'Oro is on the

17 periodic shipments on March of 1979, which is

18 the first page here?

19 A. March?

20 Q. March 13th.

21 A. Oh, I'm sorry. Yes.

22 Q. And then if you look on, I think it's

23 12472, so that would be January 7, 1980, about

24 ten months later, Canaria D'Oro is no longer on

25 the list?

A. Yes.

Q. And that would be a consequence of it going into full commercial use? Do you know particularly for Canaria D'Oro if that was the case?

A. Offhand I can't tell you whether it went in full commercial use or whether they decided to let it go.

Q. So as to that mark you don't know?

A. No, I don't know that.

Q. I was trying to use that as an example.

A. But I say it's a mark that I'm not sure about.

Q. But generally when you learned that a mark had gone to full commercial use, you took it off this list?

A. Yes.

Q. Did you ever have any discussions with attorneys about whether General Cigar needed to have plans for the marks in periodic shipment in order to provide protection for those marks?

A. There was no formal plans. Every so

often when I saw that the list was getting unwieldy, I would really try and pressure the person who had proposed the mark and get them to make a decision on whether they really had any more use for it.

Every once in a while you could get a couple of them to admit that what plans they had had changed, and we would either drop the use and let it go to abandonment at the end of the term or else -- I don't recall that there were too many expressly abandoned. There were a few, but most of them would just run their course.

Q. Do you recall ever discussing --

MS. NORMAN: Just a minute.

(Counsel and witness confer.

BY MR. GOLDSTEIN:

Q. Do you recall having any discussions with counsel, with attorneys, as to whether or not General Cigar needed to have marketing plans for the marks it had these periodic shipments?

A. No.

Q. We had looked at this memorandum at your prior deposition. I don't know if it's a memorandum or not. It was marked -- this is not

the exhibit copy, but it was marked as Plaintiff's 347 at one point. It's GC 46 and it has a date of January 18, 1979 and, a typed date of 1-18-79, and at the bottom a handwritten date of 1-18-79 and then your initials; is that correct?

A. Yes, those are my initials.

Q. And it says, "Spoke with EMC Junior and he is not ready to drop any of the 33 marks used on temporary labels at this time. Still will keep all above listed applications except secondary interest in asterisks marks."

Now on the list, the only name I have is Cohiba and I have a '79 date, January '79 date.

Is it your understanding that the 33 marks being referred to with temporary labels are the 33 marks that are in the periodic shipment?

A. That's my understanding, yes.

Q. And if I were to get an unredacted copy, I would line up either identically or close to identically with the 33 marks?

A. I would think you would, yes.

1 Sparkes

2 Q. On page 12466?

3 A. Yes.

4 Q. Do you recall at the prior deposition

5 I had asked you some questions about the

6 Quakenbush application?

7 A. Yes, I think you did. I can recall

8 you did ask questions about it.

9 Q. And subsequent to that I received

10 some documents that either I didn't have before

11 or the redacted portions have now been

12 disclosed. I'm going to ask you some questions

13 about that.

14 Let me show you Plaintiff's 369A.

15 This is a memorandum from you to Mr. Cullman,

16 Jr. dated February 19, 1982, GCP 23 and GCP 24,

17 and it's CC'd to Mr. Wollen and Mr. Westle, and

18 I had shown you this document before. Basically

19 I had the first half of the first page, and the

20 circled parts on the first and second page I

21 didn't have at that time.

22 My first question is, do you recall

23 reading this document in preparation for your

24 deposition here today?

25 A. Yes, I saw a copy of this document.

Q. And in the bottom part of the first page in the circled part it refers to, "We checked with our trademark counsel concerning some of the aspects presented to us before we made any approach to the owner of the Cohiba application," referring to the Quakenbush application?

A. Yes.

Q. Do you recall speaking to Mr. Marcus about the Quakenbush application?

A. Offhand I can't recall. The "we" in there might have been a Linberg type of "we," because Tom Westle was more involved in this than I was and I may be, I may be -- my memo to Edgar Cullman, Jr. might be summarizing something that Tom Westle told me or he spoke to the counsel about it.

Q. You're not sure whether you're relaying what Mr. Marcus told you or you're relaying what Mr. Marcus told Mr. Westle?

A. Right.

Q. In your memo you state that "He confirmed..." meaning Mr. Marcus confirmed, "...that the application would normally be

1 Sparkes

2 rejected on our present registration. However,

3 he also pointed out two additional facts."

4 I want to focus on No. 2. You have a

5 one and a two. It says, "Our -- do you see

6 that?

7 A. Yes, I see.

8 Q. "Our token use of the Cohiba

9 trademark, since it was filed in 1978 and issued

10 in 1981, would not present a strong case for our

11 objection to Jacobs."

12 By the term "token use," were you

13 referring to your periodic shipments?

14 A. Periodic shipments.

15 Q. And what was your understanding of

16 why your token use would not present a strong

17 case for an objection to Jacobs?

18 A. I think this refers back to that,

19 Harry's letter, I've forgotten the date of it,

20 where he enumerated three or four --

21 MS. NORMAN: Should we show him the

22 letter he's talking about? It may be --

23 MR. GOLDSTEIN: That letter is

24 referring to Beneficial Capital and the

25 Cuban Cohiba.

Sparkes

THE WITNESS: All right.

MS. NORMAN: This is in '82.

THE WITNESS: Oh, I see.

BY MS. NORMAN:

Q. In other words, we're done with Beneficial.

A. All right.

Q. They abandoned and you were unable to enlighten me on why, and there was a subsequent application that you became aware of through Quakenbush according to these documents.

MS. NORMAN: Do you want to take a second and read this and the next page? Maybe that will help.

BY MR. GOLDSTEIN:

Q. The question that I have, so you will read it with the question in mind, is whether at that time you had an understanding of why your token use did not present a strong case for an objection to Jacobs, the Quakenbush application for Cohiba.

MS. NORMAN: So you're asking what he meant by this No. 2?

THE WITNESS: This No. 2, yes.

1 Sparkes

2 A. What I would recall from this is that

3 it wasn't in general distribution, it was in a

4 maintenance type of 100 cigars or so four times

5 a year, and I didn't think evidently that that

6 would be strong enough to have Mr. Jacobs want

7 to negotiate on that basis. Like if he asked

8 for our sales or our shipments or anything like

9 that, that wouldn't impress him that we were

10 using it at the way we were.

11 Q. And that was the advice of Mr. Marcus

12 as well. "However, he also pointed out two

13 additional facts," and then one and two.

14 MS. NORMAN: I'm sorry. I don't

15 understand.

16 BY MR. GOLDSTEIN:

17 Q. You recall that that was Mr. Marcus'

18 opinion to you, No. 2?

19 A. I don't know whether in this case it

20 was his opinion or not.

21 Q. Well, it says here, "However, he also

22 pointed out two additional facts," one and two.

23 A. Oh, yes. Then it was Harry. Sorry.

24 Q. And you yourself don't recall

25 discussing this with Mr. Marcus?

1 Sparkes

2 A. No.

3 Q. Do you recall discussing it with

4 Mr. Westle?

5 MS. NORMAN: When you say "it," do

6 you mean --

7 MR. GOLDSTEIN: These two additional

8 points.

9 A. I don't recall any discussion with Tom

10 Westle those two points that you indicated.

11 Q. And do you recall discussing it with

12 Mr. Cullman, Jr.?

13 When I say "it," the points that are

14 being made about the Quakenbush application

15 here.

16 MS. NORMAN: When you say "discussing

17 it," you mean other than --

18 MR. GOLDSTEIN: Beyond sending the

19 memo.

20 MS. NORMAN: Right.

21 A. I don't recall any discussion. I

22 think it was just a memo.

23 Q. On page 2 in the second paragraph it

24 states, "As indicated in past memos, our token

25 use of the trademark does not allow us much room

to maneuver and even leaves our registration open to cancellation if a formal proceeding were lodged by Jacobs."

Do you recall if that's something that came from you or whether it came from Mr. Westle or from Mr. Marcus?

A. I'm sure that came from someone else. I don't know who it came from, but it could have either have been Mr. Marcus or Mr. Westle.

Q. It came from an attorney?

A. Yes, from an attorney.

Q. Now it says, "As indicated in past memos..."

Sitting here today, do you know what those memos refer to?

A. No, I have no recollection of what it they refer to.

Q. Do you know if it refers to past memos concerning Cohiba or whether this issue had come up with other marks, since referring to past memos, regarding token use and protection of the mark with other marks?

A. Yes, I think it was general, that it wasn't specifically for Cohiba. It was -- it

concerned other marks in the past.

Q. You recall this issue had come up with other marks?

A. I recall it came up. Just what the marks were, I can't recall right now, but it did come up about the use and how much value the token use had when you were negotiating with another party who had advice.

Q. Do you recall if any of those memos came from outside counsel?

A. No, I can't recall that.

Q. In the last paragraph it says, "You should also decide how important the Cohiba trademark is to us..." this is you to Mr. Cullman, "...if preliminary moves to enjoin Jacobs prove fruitless."

Do you recall any response from Mr. Cullman regarding the importance of the Cohiba mark?

A. No, I didn't receive any response from him.

Q. In response to the memo, whether from Mr. Cullman or otherwise, do you recall a decision being made at that time as to what to

do about Quakenbush?

A. No. I wasn't involved with any of that discussion that indicated that there was any kind of solution with Quakenbush.

Q. Let's look at Plaintiff's 370A. It's a memo from you to Mr. Kowalsky dated May 12th, 1982, and we had looked at this document at your prior deposition. I had as far as the CC's, the typed part, and then this very light handwritten circled part was added. And attached to the document, the second page, is a typed up of what the handwriting, I think best guess, not guess, but my understanding is typed up what the handwriting appears to state.

Did you review this document in preparation for your deposition?

A. Yes, we did review this.

Q. Is that handwriting, the very light handwriting, is that yours?

A. No, that's not my handwriting.

Q. Do you know whose it is?

A. No. I don't recognize it.

Q. The check, the CC check is to Tom Westle.

1 Sparkes

2 about that either.

3 Q. Looking at these notes as typed up,

4 you don't know what they refer to; is that

5 correct?

6 A. I have no idea.

7 MR. GOLDSTEIN: Why don't we mark this

8 together.

9 (Plaintiff's Exhibit 447, Memo from

10 Sparkes to Dore with attachment, marked for

11 identification, as of this date.)

12 BY MR. GOLDSTEIN:

13 Q. I'm showing you what we've marked as

14 Plaintiff's 447, and it's a May 13 note, memo,

15 from you to Janet Dore, GCP 28, and attached to

16 it is a letter from Mr. Westle to Mr. Jacobs

17 regarding the Quakenbush Cohiba application, and

18 that's GC 96 through GC 98.

19 In the letter it says, "As per our

20 conversation this date with Tom Westle, we are

21 enclosing a copy of the letter which resulted

22 from Tom's telephone conversation with

23 Mr. Jacobs," and I'm asking if you recall a

24 conversation with Ms. Dore and Mr. Westle at or

25 about the time of writing a letter to Jacobs

1 regarding the Quakenbush application.
2 A. No, I don't recall that they had any
3 communication at that time.
4 Q. You don't recall speaking with
5 Ms. Dore at that time?
6 A. Yes.
7 Q. Okay. It states, "...we are
8 enclosing a copy of the letter which resulted
9 from Tom's telephone conversation with
10 Mr. Jacobs," and then what I've attached is a
11 May 13th letter, copy, blind copy, to
12 Mr. Kowalsky and Ms. Dore, Janet Dore.
13 And do you have any knowledge of
14 Mr. Westle's communication with Mr. Jacobs?
15 A. No. That didn't come through me. He
16 made it on his own terms. I wasn't informed.
17 Q. Well, you were informed of the fact
18 of the communication, you were informed of the
19 letter.
20 A. Yes.
21 Q. But you're not aware of the contents
22 of the communication.
23 A. No.
24 Q. Do you have any knowledge of whether
25

the use issue came up with Quakenbush?

A. No, I don't have any knowledge of that.

Q. I had asked you some questions at your prior deposition regarding international searches for Cohiba in 1982, and I had shown you the results of a search involving France and perhaps a couple of other jurisdictions.

A. I recall that.

Q. And your recollection at that time was that you didn't recall being involved in those searches. I have some subsequent documents and I just want to ask you some questions about that.

A. All right.

Q. Do you recall reviewing documents regarding either searches, searches in France, U.K. and West Germany?

A. Yes. We reviewed such documents, yes.

Q. And did that refresh your recollection of your involvement in those searches?

A. It did, yes.

Q. Let me show you first what's marked as Plaintiff's 433. And this is a document I believe I showed you at your prior deposition, and what I had was everything that's not circled at the time we looked at it. So when we looked at it, it had "Re: Cohiba," from M. Kowalsky, 9-7-82 "CHS," and then "Cubatabaco is using Cohiba in Spain according to MK." That's what we looked at.

And this is your handwriting; is that correct?

A. Yes, this is my handwriting.

Q. Is all of it, the bottom part as well, the lighter handwriting?

A. No, it doesn't appear to be mine.

You're speaking of the section "9-29-82"?

Q. It says "9-29-82." The first word is "Germany" and then towards the bottom "France."

A. I don't think that's my handwriting from "9-29-82" to the bottom of the page.

Q. Do you recognize whose handwriting it might be?

A. No, offhand I can't -- I can't say

1 Sparkes

2 who it would be.

3 Q. Do you know if this memo was provided

4 to other people; in other words, your

5 handwritten memo?

6 A. No, I don't think it was.

7 MS. NORMAN: When you say his

8 handwritten memo, you're --

9 MR. GOLDSTEIN: The document GCP 34.

10 BY MR. GOLDSTEIN:

11 Q. In other words, the top half was

12 written by you and the bottom half was written

13 by somebody else? And my question is, do you

14 recall providing your memo to somebody?

15 A. No, I can't recall that.

16 Q. In the memo at the top it says,

17 "Asked HC Marcus for estimate for search on

18 Geneva register or individually in West Germany,

19 France and England."

20 Do you see that?

21 A. Yes, I see that.

22 Q. Do you recall why you were conducting

23 a search of those three countries?

24 MS. NORMAN: You mean --

25 A. Certainly Mr. Kowalsky was involved

and Mr. Norman Buck was probably involved. He was in charge of international sales for the company and then he became semi-independent. He still handled ours, but he handled other marks. I would think it was on behalf of either, probably Mr. Kowalsky, that this was done.

Q. Do you know why there was an interest in doing these searches at that time?

A. No, I don't.

Q. Did you ask? Did you ask?

A. Whether they were --

Q. Why they were interested in doing these searches.

A. No. It wasn't up to me to ask. I just passed the information on to Harry, but I wasn't -- when they made a request of the counsel and it came through me, I made the request to him. I didn't question whether it should be or shouldn't be done.

Q. Do you recall if Mr. Marcus asked you why you were interested in doing the international searches at this time?

A. No, I don't recall that he did.

Q. Do you recall if you -- Mr. Kowalsky

learned that the Cohiba was in Spain, that Cubatabaco was using Cohiba in Spain prior to the decision to do the international searches?

MS. NORMAN: Objection to the extent you're testifying as to something that -- your question is without foundation, stating that Mr. Kowalsky learned certain things.

BY MR. GOLDSTEIN:

Q. "Cubatabaco was using Cohiba in Spain according to MK," that's Mr. Kowalsky, correct? Is that correct?

A. That's my writing. Yes, according to Mike Kowalsky, right.

Q. And do you have knowledge whether the request to do international searches came after Mr. Kowalsky learned that Cubatabaco was using Cohiba in Spain?

A. Well, my guess was that the question about the Geneva register was a result of him finding out that Cohiba was registered in Spain by Cubatabaco.

Q. Do you know why this search, the search was limited to just West Germany, France and England?

A. No, I don't.

Q. Do you know if General Cigar had plans to apply in those countries if there was not a prior registration?

A. I have no -- I was not approached about any, filing any foreign registrations at all. It just seemed to me there was just an interest in it, but there was no specific indication that they wanted to file it or going to file if they could.

Q. In reviewing documents in preparation for your deposition, did that refresh your recollection that, in fact, searches were conducted of those three countries?

A. Yes.

Q. And did you also see documents showing that Cubatabaco had already registered Cohiba in both France and the United Kingdom?

A. I remember the United Kingdom.

France, I can't recall whether France was involved too, but it's possible, yes.

Q. And you also recall from the documents that you looked at, that General Cigar applied for the Cohiba mark in West Germany?

1 Sparkes

2 MS. NORMAN: Would it help you to see

3 the documents?

4 MR. GOLDSTEIN: Yeah, I could show

5 him.

6 A. I do know -- I recall a document in

7 reviewing the documents that they did apply for

8 it, but my recollection it was withdrawn.

9 Q. Okay.

10 MR. GOLDSTEIN: Why don't we mark

11 this.

12 (Plaintiff's Exhibit 448, Letter, not

13 identified on record, with Bates No. GCP

14 581, marked for identification, as of this

15 date.)

16 BY MR. GOLDSTEIN:

17 Q. I'm showing you what we've just

18 marked as Plaintiff's 448 and also what we

19 marked previously as Plaintiff's 306. 448 is

20 GCP 581, and 306 is GC 5982 through 5986. And

21 we had looked at 306 at your prior deposition

22 and you stated you didn't recall that.

23 Based on the privilege documents that

24 have been produced, 448 is the cover letter to

25 what's now marked as Plaintiff's 306, and

1 looking at that, that shows that there was a
2 search done for General Cigar's behalf in France
3 and it discloses that there was a registration
4 by Cubatabaco of Cohiba; is that correct?
5 A. Yes.
6 Q. And you were informed of that fact by
7 attorneys from Morgan & Finnegan?
8 MS. NORMAN: Which fact?
9 MR. GOLDSTEIN: That there was a
10 French registration for Cubatabaco of the
11 mark Cohiba.
12 A. I don't see anything with my name
13 addressed to me. Certainly the results of
14 searches came in, but I'm not sure whether they
15 came to me or not.
16 Q. Let me show you GCP 580, October
17 20th, 1982, a letter from Mr. Atkinson to you
18 noting that, "We have learned that Empresa
19 Cubana del Tabaco..." Cubatabaco, "...has
20 registered Cohiba in France in Class 34. This
21 registration is a complete bar against
22 registration of Culbro's Cohiba mark."
23 A. Uh-huh.
24 Q. Do you have any recollection of
25

1 receiving that information?
2 A. Yes. Certainly after seeing the
3 letter, it came to me, yes.
4 Q. And does that refresh your
5 recollection that what General Cigar was
6 interested in was applying the mark in those
7 three countries?
8 A. Again, I may have asked for the
9 searches to be made, but that was just passing
10 somebody else's request to the law firm Morgan &
11 Finnegan.
12 Q. And you yourself have no knowledge of
13 the decision-making process.
14 A. No. I wasn't involved in the
15 decision, no, whether to try and register them
16 or not.
17 MS. NORMAN: Are you marking this?
18 MR. GOLDSTEIN: Yeah, why don't we
19 mark it.
20 (Plaintiff's Exhibit 449, Letter dated
21 10-20-82 from Atkinson to Sparkes, marked
22 for identification, as of this date.)
23 BY MR. GOLDSTEIN:
24 Q. You stated that you recall that
25

1 General Cigar had made or Culbro had made an
2 application for the Cohiba mark in West Germany
3 and that that application was eventually
4 withdrawn.
5 A. Was it Culbro or General Cigar? I
6 can't recall.
7 Q. Well, the document says on behalf of
8 Culbro but...
9 A. I remember seeing a letter indicating
10 that there was an application filed and later it
11 was abandoned.
12 Q. Do you have any recollection of that
13 or is it based on documents?
14 A. Just on documents.
15 MR. GOLDSTEIN: Why don't we mark this
16 as one exhibit.
17 (Plaintiff's Exhibit 450, Letter dated
18 7-24-87 from German attorneys to Atkinson,
19 memo to file, letter dated 8-3-87 from
20 Downing to von Kreisler and letter dated
21 8-11-97 from Kreisler's office to Downing,
22 marked for identification, as of this date.)
23 BY MR. GOLDSTEIN:
24 Q. Let me show you what we've marked as
25

1 Sparkes

2 withdrawn the application.

3 MS. NORMAN: Is there a question?

4 BY MR. GOLDSTEIN:

5 Q. Do you recall that that was the end

6 of it?

7 A. As far as I know, it was the end of

8 it, yes.

9 Q. And you don't recall any internal

10 discussions at General Cigar as to why not

11 proceed to the --

12 A. Not while I was involved, no.

13 Q. And do you recall who made -- I mean

14 not who would have communicated it to you, but

15 whether the communication would have been made

16 to that?

17 A. No. I don't know where it would have

18 been made. It was just passed on to me that

19 that was the course they wanted to take.

20 Q. And you don't recall who passed it on

21 to you?

22 A. No, I can't recall.

23 Q. Let me show you what was marked as

24 Plaintiff's 411.

25 MR. GOLDSTEIN: And he gets the good

1 Sparkes

2 copy. You and I get the one stapled on the

3 bottom right-hand corner.

4 BY MR. GOLDSTEIN:

5 Q. Do you recall at your prior

6 deposition I asked you a few questions about the

7 Section 8 and 15 declaration --

8 A. Yes.

9 Q. -- for General Cigar's Cohiba?

10 A. Yes.

11 Q. I just wanted to ask you a couple of

12 other questions.

13 Going through the privilege log,

14 Plaintiff's Deposition Exhibit 411 contains the

15 documents in the privilege that were produced to

16 us regarding correspondence between you and

17 Morgan & Finnegan for the Section 8 and 15

18 application for Cohiba.

19 If we look at the first document,

20 January 13, 1986, GCP 204, it states, it's a

21 letter from you to Ms. Dore stating that "The

22 above listed trademark Cohiba is due for the

23 combined Section 8 and 15 declaration of use.

24 Please prepare same after this date of February

25 17, 1986," and then you attach the specimen of

the use of the mark.

Do you recall requesting Morgan & Finnegan to do this?

A. Yes, I recall it.

Q. Do you recall providing anything to Ms. Dore or Morgan & Finnegan other than the letter and the enclosure?

A. No. Not at this time, no.

Q. Do you recall having any phone conversations with Ms. Dore regarding this matter?

A. No.

You're talking about the January 13th letter, right?

Q. Yeah, well, I'm talking about the Section 8 and 15 declaration, the filing.

A. No.

MS. NORMAN: In January of 1996?

MR. GOLDSTEIN: Well, the letter is January, and as we look through it, the filing I believe takes place several months later, June or July.

MS. NORMAN: Okay. In connection with the 1986 filing.

1 Sparkes

2 MR. GOLDSTEIN: Right. There's only

3 one Section 8 and 15 filing.

4 BY MR. GOLDSTEIN:

5 Q. Do you recall having any discussions

6 with Ms. Dore about this Section 8, Section 15

7 filing for Cohiba?

8 A. No, I don't believe we had any

9 discussion about it.

10 Q. The next letter that I have or the

11 next document that I have in my files concerning

12 this matter is a June 12th, 1986 letter from

13 Mr. Downing to you stating that, "I have

14 enclosed herein the declaration. Please review.

15 If found suitable, have it executed, dated and

16 returned."

17 Between January and June, do you have

18 any recollection of any correspondence or

19 exchange of documents between General Cigar and

20 Morgan & Finnegan concerning the Cohiba

21 application?

22 MS. NORMAN: When you say

23 "application," you mean the declaration?

24 MR. GOLDSTEIN: The declaration. I'm

25 sorry.

1 Sparkes

2 A. No, I don't think there was.

3 Q. And then after the June 12th, there

4 is a June 23rd letter saying, "Dear Dick, We are

5 returning the signed declarations under Sections

6 8 and 15 for the above listed United States

7 trademark registrations Cohiba, Canaria D'Oro."

8 And then the last letter is a letter

9 from Mr. Downing stating, "I'm enclosing the

10 copies that we filed with the Patent & Trademark

11 Office."

12 Do you see that?

13 A. Right.

14 Q. My question is, would this have been

15 the normal course of dealing for a Section 8 and

16 15 declaration, you would notify them to do --

17 to prepare it, give them a date and the mark?

18 MS. NORMAN: And when you say

19 "them" --

20 MR. GOLDSTEIN: Morgan & Finnegan.

21 MS. NORMAN: -- you mean Morgan &

22 Finnegan?

23 MR. GOLDSTEIN: Yes.

24 BY MR. GOLDSTEIN:

25 Q. And then they would prepare a draft,

you would sign it, your office would sign it, and then they would file it?

A. Yes.

Q. Did you ask Morgan & Finnegan to do anything else with respect to the Cohiba Section 8 and 15 declaration other than what's reflected in the correspondence?

A. No, I didn't ask them to do anything else.

Q. Whose responsibility was it to determine the accuracy of the Section 15 continuous use statement?

A. It would be mine.

Q. Did you ever have any discussions with Morgan & Finnegan as to whether periodic shipments could count for the continuous use period for a Section 15 declaration?

A. Not that I can recall, no.

Q. Do you recall General Cigar ever receiving legal advice from Morgan & Finnegan concerning whether or not period or periodic shipments can count for the five years of continuous use?

A. Not that I can recall.

1 Sparkes

2 Q. Do you recall any discussions within
3 General Cigar as to whether the periodic
4 shipment period can count for any part, can
5 count for part of the five years of continuous
6 use?
7 A. No, I don't think there were any
8 internal discussions.
9 Q. Do you have any knowledge of, with
10 respect to Cohiba, do you have any knowledge of
11 what Morgan & Finnegan's knowledge was as to
12 whether any part of the five-year period were
13 periodic shipments?
14 MS. NORMAN: Objection insofar as
15 you're asking him what Morgan & Finnegan's
16 knowledge is.
17 MR. GOLDSTEIN: I'm not asking him
18 that. I'm asking him did he have knowledge.
19 MS. NORMAN: Based on communications
20 with Morgan & Finnegan?
21 MR. GOLDSTEIN: Well, if he says no,
22 then I don't have to follow it up. If he
23 says yes, I do.
24 A. No.
25 Q. Thank you. I thought it was a pretty

1 Sparkes

2 MS. NORMAN: Objection.

3 BY MR. GOLDSTEIN:

4 Q. -- between April and September,

5 October, to your understanding?

6 MS. NORMAN: Objection.

7 Do you want to show him the document

8 you're referring to?

9 MR. GOLDSTEIN: If you want me to.

10 MS. DORE: Yes.

11 Can I have that repeated?

12 MR. GOLDSTEIN: GC 12488, it shows a

13 shipment of Cohiba to Cigar Santa Clara on

14 April 15, 1982, and I'm not aware of any

15 other invoices of periodic shipments after

16 that date for Cohiba.

17 MS. NORMAN: And the commercial use

18 evidence?

19 MR. GOLDSTEIN: There's quite a few

20 documents and testimony referring to late

21 September, possibly October.

22 BY MR. GOLDSTEIN:

23 A. As to commercial use?

24 Q. As to with the cigars from the

25 Dominican Republic. Remember we looked at that

band, the plastic cylinder with the wrapper around it?

A. Right.

Q. And my question to you is, if there was a shipment in April and a shipment in September, is that continuous use?

A. I can't answer your question because I don't know if there were other shipments in between those two dates.

The invoices here, there might have been another invoice in between those two dates.

Q. So based on your understanding at that time, if what we see is what there is, April and September, based on your understanding at that time, would that have constituted a continuous use period?

A. I don't see why not.

Q. So there could be a shipment every five months --

A. Are we talking about daily use, weekly use, monthly use?

Q. I'm asking you for your understanding at that time.

A. I would say it was continuous use.

Q. And that was based on the information that you had been exposed to?

A. That's right.

Q. Did you ask outside counsel for their opinion on that?

A. No, I don't believe I ever asked or received counsel on that point.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 451, Section 8 declaration for Cienfuegos and letter dated 5-14-86 Downing to Sparkes and draft Section 8 declaration, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you what we've marked as Plaintiff's 451, and this is the Section 8 declaration for Cienfuegos?

A. Right.

Q. And a cover letter from Downing to you, May 14, 1986, and then a draft of the Section 8 declaration, GCP 362 to 364.

Do you know why for Cienfuegos there was a Section 8 declaration but not a Section 15

A. No, I don't have any recall of that.

Q. Are you aware of any -- did you have an understanding at that time that if a mark had remained only in periodic shipments, you could not file a 15 declaration?

A. No. There was nothing as far as I know, no. I didn't have any rule or anything like that, no.

Q. And you don't recall any attorney advice on that?

A. No, I don't.

MR. GOLDSTEIN: Why don't we take a break.

(Discussion off the record.)

(Recess is taken.)

(Plaintiff's Exhibit 452, 1-13-87 Culbro assignment of marks to General Cigar, marked for identification, as of this date.)

(Plaintiff's Exhibit 453, Letter from Sparkes to Downing, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me give you one document that had been previously marked as Plaintiff's 301 and

what we've just marked as Plaintiff's 452 and 453.

MR. GOLDSTEIN: Let me give a copy to counsel.

MS. NORMAN: Thank you.

BY MR. GOLDSTEIN:

Q. As I understand, Plaintiff's 301 is the assignment by Culbro of certain of its Cigar marks to General Cigar; is that correct?

A. Just let me look at a date here.

Q. All right.

A. 11-12-97? No, that's...

Q. That's just an exhibit number.

A. Oh. Is there a date on here somewhere?

Q. Yeah. On the last page it says, "On this 13th day of January 1987, before me appeared Henry D. Whitehill," and he signed the foregoing instrument for Culbro Corporation?

A. Uh-huh.

Q. And then in between the assignment page and the signature page or the notary page is the three pages in which the registration numbers and dates are in place, but the

trademarks are all redacted except for Cohiba on the third page.

A. Uh-huh.

Q. And my understanding is this is a list of all the cigar marks that were, in fact, reassigned.

MS. NORMAN: And your question is?

Q. Is that correct?

A. Okay. They're reassigning all these trademarks in Culbro's name to General Cigar again.

Q. And were you aware of that when it occurred?

A. I'm not as familiar as I should be because this was within my time. I retired in '88, March of '88, so I should be...

Q. Do you have a recollection that Culbro transferred --

A. I know we went back and all the marks were put in Culbro's name because the marks were originally in General Cigar Co., Inc.

Q. That's prior to 1978.

A. By change of name -- right. By change of name, General Cigar Co., Inc. became

1 Culbro Corporation, as I recall. And all the
2 marks were in Culbro's name, and I see that
3 they're reassigning them back to General Cigar
4 Co., Inc. now.
5 Q. Did you participate in that
6 reassignment process?
7 A. I was probably involved, but I
8 truthfully can't remember what the reason was,
9 you know, how it came to be, but certainly that
10 is -- that's what it is; it's a reassignment
11 back to General Cigar of the trademark.
12 Q. If you look at what we marked as the
13 last one, 453. I gave you three documents. The
14 third one, the one that has the March 20th date.
15 MS. NORMAN: 453?
16 MR. GOLDSTEIN: Yes, 453.
17 MS. NORMAN: That's GCP 333.
18 MR. GOLDSTEIN: Through GCP 334.
19 BY MR. GOLDSTEIN:
20 Q. It's a letter from you to
21 Mr. Downing.
22 A. Yes.
23 Q. And referring to a conversation
24 concerning trademarks which were not reassigned
25

1 Sparkes

2 A. Evidently someone has made a decision
3 that it's not worth transferring the
4 registrations back to General Cigar because no
5 one has any real interest in pursuing the marks
6 after they expire. That would be my take.
7 Q. Now some of the marks on the not
8 reassigned list on Plaintiff's 453 were on the
9 list of periodic shipments from '79 to '82.
10 A. Uh-huh.
11 Q. A couple of examples are Ole and New
12 Breed and Stiletto and Viva that are on both
13 periodic shipment invoices of Plaintiff's 446
14 and they're also on this list of not reassigned
15 marks.
16 Do you know if those marks remained
17 in periodic shipment up through this time?
18 MS. NORMAN: So to clarify, you're
19 not talking about -- you're only talking
20 about -- for the purposes of this question,
21 you're referring to the marks on GC 02466
22 which shows the periodic shipments from
23 3-13-79, as of 3-13-79?
24 MR. GOLDSTEIN: I can also represent
25 that those are on the other invoices as well

filing the Section 15.

Q. Right. Although the Section 8 declaration was filed in May of 1986, the reassignment was in January of 1987.

Do you recall if at that time there had already been a decision made, when I say at that time, the time of filing the Section 8 declaration, do you know if there had already been a decision made not to transfer Cienfuegos or reassign Cienfuegos?

A. I can't recall whether there was or there wasn't.

Q. And my understanding is you were not aware of the criteria as to which ones went to reassignment and which ones went to not reassignment?

A. No. Offhand I would say no.

Q. Do you know who in the company would have made that decision or did make that decision?

A. Well, most of the marks are General Cigar. I would imagine it would have been someone like Dave Burgh. I don't think anybody less than he in position would have made a

decision to drop the -- not to reassign.

Q. Plaintiff's 452 is the same document as Plaintiff's 301. It's a different numbered version of the same document. In other words, it was produced with different GC numbers. The difference is that, other than the GC numbers, 2114 through 2118, is that we added that handwriting that you see on the document.

A. Glad to hear that.

Q. And let me state what that is for the record, but before I do that, on the side of this it has this Reel, R-e-e-l, and then some numbers, trademark.

Is it your understanding that this was filed? Do you have an understanding that this was filed with the trademark office?

A. Evidently it was, yes.

Q. And do you understand that this is a public document?

A. Yes.

MR. GOLDSTEIN: For the record, what the handwriting represents is a computer search of Cohiba, Culbro or General Cigar marks and then a match of that with the

registration numbers based on what -- the printout done by a paralegal in my office.

For a few of them, what the printout says is "Design Only," and so what we've written is "Design Only" and without stating in that particular printout what the design was referencing.

MS. NORMAN: Can you explain that again?

MR. GOLDSTEIN: Okay. For example, five up from the bottom, "Design Only."

MS. NORMAN: Right.

MR. GOLDSTEIN: If you look at the print, the computer print run, it has the registration number, the registration dates and it has "Design Only" --

MS. NORMAN: I see.

MR. GOLDSTEIN: -- as opposed to Shakespeare design only.

MS. NORMAN: Right.

MR. GOLDSTEIN: So the paralegal simply wrote in the word "Design Only" and we didn't go behind that because we weren't interested in that.

Sparkes

BY MR. GOLDSTEIN:

Q. There were two numbers that we couldn't match up, and I'll just tell you what those are.

In the middle of the second page, they're in numerical order, 887357.

A. Yes, that's the third page.

Q. There is a mark 887375, which is La Femme, which shows up on a lot of the documents as well as in the computer run. I wrote in La Femme question mark because we couldn't find the 357, but we did find a 375.

And on the third page near the top, one million, I believe it's 60,457, we didn't find a match so we left it blank. That's what this document is.

Looking over the marks that we handwrote in, other than "Design Only," are these all cigar marks, to your knowledge?

A. Can I just run down the list?

Q. Yeah.

(Witness reviewing list.)

A. Yes, I would say that they are all cigar marks.

Q. And am I correct that several of these marks remained at this time in periodic shipment?

A. Yes, especially if something like Golden Crown, the first mark there, they were trying to preserve the design of Golden Crown on cigars. That was one of our seconds marks and it went way back and it continued -- it goes back before my time, but I would say that it was used for those marks that I told you about where they -- they were what we called seconds marks. They weren't first line color of the cigar wrapper. I do remember seeing that on the grain box.

Q. And on the second page there's several that were on the periodic shipment lists from that exhibit we've been looking at, Plaintiff's 446, including, if you --

MS. NORMAN: Do you want -- can we show it to him?

MR. GOLDSTEIN: Yes.

BY MR. GOLDSTEIN:

Q. For example, Vista, Rillo, Escapade, Owlet, Tee Jays, Laramie.

1 Sparkes

2 Do you recall that those remained in

3 periodic shipment?

4 MS. NORMAN: At what time period?

5 A. In what time period, from '82?

6 Q. Well, the reassignment was in 1987.

7 MS. NORMAN: So you mean until 1987?

8 BY MR. GOLDSTEIN:

9 Q. Well, do you have a recollection that

10 these particular marks never -- had not gone to

11 full commercial use at this time?

12 A. Some of them may have been just

13 running out their period of registration. I

14 don't know. I couldn't say that all of them

15 were in periodic use, you know?

16 No, I don't think I can make a

17 statement that they were all in periodic use.

18 Q. I'm not saying all of them because I

19 obviously see Macanudo on the list and Temple

20 Hall.

21 A. Right, because you have first line

22 trademarks here.

23 Q. What I'm asking is, some of the marks

24 that were reassigned remained in periodic

25 shipments; is that correct?

A. Some?

Q. Some of the marks that were reassigned remained in periodic shipments.

A. Yes, I would say some of them.

Q. Were any of these marks not in any shipment at all; in other words, neither in full commercial use nor in periodic shipment?

MS. NORMAN: At what time period?

MR. GOLDSTEIN: At the time, to his knowledge, at the time of the reassignment.

In other words, there's a lot of marks here, and I have lists of what was in periodic shipment both before and after and I have marks that I personally recognize, and I'm asking him if there's any that he recognizes as neither in periodic shipment nor in commercial use.

MS. NORMAN: As of 1987?

MR. GOLDSTEIN: At the time of the reassignment.

A. I can't answer your question at this point just by looking at the list.

Q. For example, Bravados, Rancheros, Dino, Bravura.

MS. NORMAN: He testified that he can't answer your question.

MR. GOLDSTEIN: And I'm focusing on specific marks. I can ask him that.

A. I see one mark here, Corina, that's the last mark on the list, one for something like blank 1492. I don't know whether that -- I don't know whether that was used -- I don't think that was used at this point in time in regular shipments, and I don't recall that we were using that Corina mark on token shipments. This was in '79.

Q. Corina is not on that list.

A. Yes.

Q. Do you see any other names that you don't recognize as being in one or the other?

MS. NORMAN: When you say "one or the other," can you state --

BY MR. GOLDSTEIN:

Q. Commercial use or in periodic shipments?

A. Empire State, I don't recognize that as being in either of those categories.

Q. Do you have -- let me just give you a

couple more minutes to look and then I'll...

(Witness reviewing document.)

Q. Do you have any knowledge of whether the company had plans at the time of the reassignment to bring each one of these marks to full commerce use?

A. I have no knowledge of that.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 454, Memo dated 7-13-87 from Sparkes to Cleveland and memo dated 10-13-87 from Sparkes to Cleveland, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. In 1987, do you know approximately how many marks General Cigar had in, cigar marks that it had in full commercial use?

A. No, I couldn't answer that question. I didn't know. I did summaries from time to time of all the marks General Cigar owned, but I didn't have any breakdown of which were in full commercial use and which weren't.

Q. Do you know why it had so many marks?

MS. NORMAN: Objection to the

1 Sparkes
2 characterization.
3 You can answer.
4 A. Well, it's just that they wouldn't --
5 there were some of the old designs, some of the
6 old marks and designs that they wanted to
7 perpetuate if they could, but I can't answer for
8 the rest of the -- why some of these marks
9 stayed on the register. It was always...
10 Q. You're done?
11 A. I was just going to say it was always
12 my aim that any mark that wasn't in full use and
13 didn't have any special plan for being reused
14 would be allowed to expire or not file
15 affidavits, you know.
16 Q. And --
17 A. You're just carrying names, you're
18 not -- you're not able to give your full
19 attention to the names that you are using when
20 you have other names that are in different
21 stages, you know, whether it be use or nonuse.
22 Q. And your goal or aim was sometimes
23 adhered to and sometimes not.
24 A. My goal was what?
25 Q. Sometimes you achieved that with some

1 marks and no with other marks?
2 A. Right. It's very difficult to have
3 people make decisions that they are actually
4 finished with a mark completely.
5 Q. Exhibit 454, it's two documents. One
6 is dated 7-13-87 and one is dated 10-13-87,
7 produced as GC 13642 and GC 13643, and they're
8 both memos from you to Paul Cleveland regarding
9 trademark shipments and they both list 25
10 trademarks, and the documents speak for
11 themselves, but I'll represent that they are the
12 same 25 trademarks.
13 MS. NORMAN: Do you want to give him
14 a second to look at these before asking him
15 questions?
16 MR. GOLDSTEIN: Sure.
17 (Witness reviewing document.)
18 BY MR. GOLDSTEIN:
19 Q. Did you review these documents in
20 preparation for your deposition?
21 A. I recall seeing this one
22 (indicating).
23 Q. And you're giving an instruction to
24 call Paul Cleveland regarding preparation of
25

boxes for the periodic shipments?

A. Yes.

Q. Similar to what we were talking about when we were talking about '79 and '80, that time period; is that correct?

A. Yes.

Q. And who is Paul Cleveland?

A. In 1987 he was probably down in Dothan, Alabama. He was in charge of -- he probably had -- he was the one who scheduled production of different things and shipment of them. I would think that's who he was.

Q. And by this time, Philipsburg had closed and Dothan was your last American factory?

A. Yes. That's why I say '87. I think Philipsburg closed a little before that.

Q. And what you're asking him is, each of these 25 marks, to prepare two boxes for each of Rubovits and Cigar Santa Clara using either the White Owl Miniature or the William Penn Braves; is that correct?

A. Yes.

Q. Now of these 25 marks, I've gone

1 Sparkes

2 through them and 14 are the same as GC 12466,

3 the March 13th, 1979 document.

4 Do you have that? That's this one

5 (indicating).

6 14 of those marks are also among the

7 33 marks listed on page 12466, and again, the

8 record will speak for itself, but Don Domingo,

9 Escapade, Escort, Finnese, others, La Femme,

10 Tranquillo, Value Line, Vinales are all on both

11 lists as well as several others.

12 My question is, if you look at the

13 '79 list and if you look at some of the marks

14 that I mentioned, do you have a recollection of

15 whether those marks remained in continuous or

16 remained in periodic quarterly shipments or

17 periodic shipments from '79 through this time

18 period?

19 A. No. Unless I saw the invoices, I

20 couldn't determine that now.

21 Q. In July 13th of '87 you give this

22 instruction to Mr. Cleveland, and then three

23 months later you give him essentially an

24 identical set of instructions.

25 My question is, were you giving these

1 instructions every quarter or was this a result
2 of the reassignment and certain marks not being
3 reassigned and revamping the list?
4 MS. NORMAN: Objection insofar as
5 the question assumes that they might be
6 drafts and that they --
7 BY MR. GOLDSTEIN:
8 Q. Were these types of instructions
9 given every quarter or is this memo a
10 consequence of the reassignment?
11 A. The memo wouldn't be given every
12 quarter. Once the memo was filed, it would stay
13 until it was cancelled or amended or something
14 like that.
15 Q. Do you recall your writing the memo
16 now because after the reassignment, some marks
17 were dropped and other marks were reassigned?
18 A. That's a distinct possibility, yes.
19 Q. But you don't recall whether this
20 memo was a consequence --
21 A. No.
22 Q. -- of the reassignment?
23 A. No, I --
24 MS. NORMAN: When you say "this
25

strike the question.

Let me show you what we've marked as Plaintiff's 309.

To your knowledge, do the periodic shipments of these cigars that are on the July memo, did they continue until the time you left the company, the periodic shipments?

A. On the July -- oh, July 13th?

Q. Yeah, the 25 marks.

A. Yes. I would think they would have, yes.

Q. Do you know who took over that responsibility from you when you left?

A. At that time Ron Milstein, he had oversight. I would -- I don't know how involved he had been with the rest of this. I don't know who would do it or who wouldn't.

Q. So you don't know who had sort of the day-to-day responsibility that you had?

MS. NORMAN: With respect to this?

MR. GOLDSTEIN: The trademark, maintaining the marks, quarterly shipments, whatever other trademark filing work he did.

A. No, I don't.

Q. On 309, Plaintiff's Deposition Exhibit 309, General Cigar Company trademark docket list as of July 22, '87, have you seen this document before?

A. Yes, I have.

Q. Do you know if this was something that you created?

A. It appears to be. From what I recall of my printer and the PC, it looks like the same type.

Q. Is that your handwriting?

A. Excuse me?

Q. There's a little bit of handwriting. Is that yours?

A. It's not really handwriting, it's printing.

Q. Well...

A. I can't say yes or no whether it's my printing.

Q. Okay. If you go down, it's in numerical order, you go down to 130, Cohiba, "See Culbro 3"?

A. Yes. That's the docket number I would imagine.

Q. That Culbro 3 refers to?

A. Excuse me?

Q. The Culbro 3 refers to?

A. The docket number for Morgan & Finnegan I would believe.

Q. That they kept it under.

A. Yes.

Q. And then there's a couple of marks on here on the list, this is as of July 22, '87, that were not reassigned from Culbro to General Cigar in six months earlier, January of 1987. For example, Cienfuegos, which we've talked about, is 131.

Do you have any knowledge of why certain of those marks are on this list? Do you have any knowledge about that?

MS. NORMAN: Do you need to look at any documents to refresh your recollection?

MR. GOLDSTEIN: Well, I mean we could look at 453. Cienfuegos is listed as one of the non -- it's the last one, and right above it is Curtain Call. Both of them are on the list, that's the only reason I'm asking.

A. I would imagine they were going to run out their term.

Q. You don't have a recollection of why they were listed on the General Cigar Co. list if they hadn't been reassigned to General Cigar?

A. If they had been reassigned?

Q. If they had not been reassigned.

A. No, I don't have any recollection of that.

MR. GOLDSTEIN: Can we mark this?

(Plaintiff's Exhibit 455, Document entitled "Registered Cigar Trademarks Not In Commercial Use as of 5-14-88" marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you what we've marked as Plaintiff's 455, and it's a document GC 879 through GC 8802 and --

MS. NORMAN: Actually --

MS. DORE: What's the first number?

MR. GOLDSTEIN: 8799.

MS. NORMAN: I think it goes to 8803.

MR. GOLDSTEIN: Okay. 8803. Sorry.

BY MR. GOLDSTEIN:

Q. Have you seen this document before?

A. Yes, I think I've seen it.

Q. In the right-hand corner where it says "Drops approved --

A. That's my initials and "Drops approved by Dave Burgh, 11-19-86."

Q. And those are your initials?

A. Those are my initials, yes.

Q. And it has a date of -- it says "Registered Cigar Trademarks Not In Commercial Use as of 5-14-88," and then it has some numbers.

A. Uh-huh.

Q. Is this a document you prepared before you left the company, do you recall?

A. Oh, that's a tough one.

MS. NORMAN: It's also two questions.

BY MR. GOLDSTEIN:

Q. Let me ask you this: Do you recall if it's a document that you prepared?

A. I left March 31st of '88. Of course in the previous November is when Dave Burgh made his decision that we could drop those trademarks. It looks like it came out of my

computer.

Q. And you wrote on the document.

A. And I wrote on the document, yes.

Q. Is that your handwriting, "drop," "drop," "drop," "drop"?

A. I don't know whether it's -- yes, it looks -- it's similar to this one, yes. I would say that I wrote the individually drops after the renewal date.

Q. And in the second line along the top it says "Quarterly Shipments," and then the next it has "No Shipments" and then it has the same categories for whether it's quarterly shipments or no shipments; "Affidavits Due," "Affidavits Filed" and "Renewal Due."

Do you see that?

A. Yes.

Q. Where it has "No Shipments" and then it has like "Affidavits Due," "Affidavits Filed" or "Renewal Due," those marks, is my understanding correct that those marks, there were no shipments of cigars for those marks?

A. So it would seem, yes.

Q. Viva, Casino Royale, Bravados,

Rancheros?

A. Yes. Maple City. These are not all cigar marks of course.

Q. Well, when you say "of course," I don't know one way or the other.

A. Maple City doesn't sound like it. It sounds like it might have been a tobacco mark. I don't recognize that one.

Q. Empire State was one you had mentioned before.

A. Yes.

Q. And then the ones that are under "Quarterly Shipments," these are the ones that, at least at this time, were still in quarterly shipment?

A. Yes. So it would seem, yes.

Q. Do you know how it was determined which marks would have quarterly shipments and which ones would have no shipments?

A. I imagine -- no, I don't know. Certainly Dave Burgh made the -- must have made the decision.

Q. But you yourself don't know?

A. I don't know.

Q. After the Cohiba mark went into the plastic cylinder, you know, the plastic container that we talked about --

A. Yes.

Q. -- that was made in the Dominican Republic, were you ever given any instructions with respect to the Cohiba after it went into commercial use and prior to the time that you left the company?

MS. NORMAN: When you say "instructions" --

BY MR. GOLDSTEIN:

Q. Putting aside the trademark, the foreign trademark things that we looked at, the foreign trademark documents as to Cohiba in the United States, after 1982, were you ever given any instructions to do anything with respect to Cohiba?

A. No. Not that I recall.

Q. Did you have any knowledge when you left the company whether Cohiba was still being -- the Dominican Republic Cohiba was still being sold by General Cigar?

A. About a year after I left the

identification, as of this date.)

BY MS. NORMAN:

Q. Mr. Sparkes, have you seen this before, and specifically did you see this in connection with the preparation for this deposition?

MS. NORMAN: And let the record reflect --

A. Yes.

Q. I'm sorry. Excuse me. Before you answer that.

MS. NORMAN: Let the record reflect that what we're marking as Sparkes Exhibit 1 is a chart. At the top it says "Culbro Corporation - Domestic Trademarks By Cigar Products," and the pages, it's several pages marked GC 008224, 8225, 8226, 8227, 8228, 29, 30, 31 through 008233.

BY MS. NORMAN:

Q. So you have seen this before?

A. Yes, I have.

Q. And can you tell us if you know what this document is? What is this?

A. Oh. This is part of my summary of

trademarks for the various divisions of Culbro Corporation.

Q. Did you --

A. Yes, this covers the cigar marks. There were other similar ones for tobacco products, proprietary drugs, snack food, licenses, patents, copyrights.

Q. And what does this date refer to? If you look in the upper right-hand corner, first it says "ORT Number" and then underneath that it looks like --

A. 3-2-88, that was probably the last update.

Q. And if you look at the previous page, it has a different date that says --

A. Well, it would indicate that the particular page was updated as of that date.

Q. Okay. And so going back to the first one we have, which is GC 008233, which is the last page of this exhibit, the date appears as 10-16-85.

A. '85.

Q. And so that would be -- what would that represent?

A. That the last update of the marks on that particular page was made as of that date, October 16th, 1985.

Q. Okay. Now if you go through, looking at the first page, GC 8224, can you find where it says "Cohiba"?

A. Yes.

Q. And if you go over one, two, three, four, five, six columns, what does this tell you?

MR. GOLDSTEIN: Which column are you pointing to?

MS. NORMAN: I'm sorry. It's the column that says "Company" at the top.

A. That it was -- the ownership was General Cigar.

Q. And because the word you see there --

A. Is "General."

Q. Okay. Then going over to the next column, do you see a letter there?

A. Yes.

Q. And what letter is that?

A. C.

Q. Okay. And if you look at the top of

1 this column, it has a "U."

2 Do you remember what that "U" stood

3 for?

4 A. That was usage.

5 Q. So "U" at the top was usage?

6 A. Yes.

7 Q. You said that there's a C next to

8 "General" for General Cigar and that the C would

9 correspond to the Cohiba.

10 Do you remember what the C would have

11 indicated?

12 A. It was in commercial use. Commercial

13 meaning the final packaging had been -- and

14 packaging and distribution, it was in general

15 use within the country.

16 Q. And what would T have meant in this

17 column?

18 A. That it was temporary, that it was on

19 temporary shipment.

20 Q. So if you look for some brands other

21 than Cohiba, you would find that under the "U"

22 column it had the letter T.

23 A. Yes.

24 Q. Is that right?

25

A. Yes.

Q. And so would that mean that those brands at the time that this was updated would be in temporary shipment?

A. Yes.

Q. As opposed to commercial use?

A. Yes. According to my record, yes.

Q. Okay. And you would have looked at some type of record to determine --

A. Yes.

Q. Okay. Now, if you look at the next page, which is GC 8225, there's a different date that's a 10-27-87 date.

A. Yes.

Q. The columns appear to be the same as the columns we looked at on the previous page.

Do you see there's the column "U" here just like there was on the previous page?

A. UG.

MR. GOLDSTEIN: Are you looking at 8255?

MS. NORMAN: 8255.

A. I don't recognize the G on this. There was no G on this list.

Q. Would it have referred to the same thing?

A. Yes, that was usage.

Q. And underneath the U, there's C's and T's.

Would those mean the same?

A. Yes.

Q. And, again, what did those mean?

A. That it was in commercial use or general distribution or temporary use.

Q. And the T would be for temporary.

A. Right.

Q. And, again, if we look at Cohiba on this chart and you trace it to the "Use" column, what do you find?

A. Commercial.

Q. Okay. And I will represent to you, although the record of course will speak for itself, that on each of these pages, on each of the dates that this was run, that there's a C in the "Use" column corresponding to the Cohiba brand and mark.

Would that, would that -- therefore, your testimony would be that on each of the

dates that these reports were updated, that Cohiba would have been in commercial use?

A. Yes.

MR. GOLDSTEIN: Objection. Leading your own witness.

MS. NORMAN: Okay.

MR. GOLDSTEIN: I think I'm allowed to lead, but I don't think you are.

BY MS. NORMAN:

Q. Okay. So what -- again, on each of these pages, what do those letters tell you?

Assuming that there's a C next to Cohiba.

MR. GOLDSTEIN: Object to the form.

BY MS. NORMAN:

Q. You're examining the documents yourself.

(Witness reviewing document.)

Q. Is that Cohiba?

A. Yes, that's Cohiba.

Okay. Yes. It's commercial as of the date of that sheet.

Q. The record should reflect that you're looking at each one of these pages of the

exhibit; is that right?

A. Yes.

(Witness reviewing document.)

A. Yes. They're all commercial on all the dates that are indicated on each of these pages.

Q. Okay. When did you first come to General Cigar?

A. 1959. I was associated with the growing operation up in Connecticut for four years, and I was transferred in the spring of 1963 to New York.

Q. And did you have the opportunity to -- when did you begin to work with Morgan & Finnegan as outside counsel to General Cigar?

A. Shortly thereafter 1963. I don't know just how long. I came in the spring, but it was within a month or two that I was contacting Morgan & Finnegan.

Q. And how would you describe the nature of your relationship with Morgan & Finnegan?

MR. GOLDSTEIN: Objection to the line of questioning.

This could have been asked in the

Q. And you don't have any knowledge one way or the other in March 1988 what was happening with the Cohiba; is that correct?

A. No.

MR. GOLDSTEIN: I have no further questions.

MS. NORMAN: Okay. That's it.

(Time noted: 2:30 p.m.)

Charles Sparkes

CHARLES SPARKES

Subscribed and sworn to before me this 19th day of September, 2001.

Marilyn Worman

MARILYN WORMAN
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/13/2002

1

2 C E R T I F I C A T E

3 STATE OF NEW JERSEY)

4 : ss.

5 COUNTY OF BERGEN)

6

7 I, ANNETTE ARLEQUIN, a Shorthand

8 Reporter and Notary Public within and for

9 the State of New Jersey, do hereby certify:

10 That CHARLES SPARKES, the witness

11 whose deposition is hereinbefore set forth,

12 was duly sworn by me and that such

13 deposition is a true record of the

14 testimony given by the witness.

15 I further certify that I am not

16 related to any of the parties to this

17 action by blood or marriage, and that I am

18 in no way interested in the outcome of this

19 matter.

20 IN WITNESS WHEREOF, I have hereunto

21 set my hand this 30th day of August, 2001.

22

23 ----------

ANNETTE ARLEQUIN, CSR, RPR

24 My commission expires:
6/30/02

25

1

2 ---------- I N D E X ----------

3 WITNESS	EXAMINATION BY	PAGE
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	MS. NORMAN	336
6		

7 ---------- EXHIBITS ----------

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1

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DEFENDANTS'	PAGE
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ERRATA SHEET
ESQUIRE DEPOSITION SERVICES
216 EAST 45TH STREET
NEW YORK, NEW YORK 10017
(212) 687-8010

NAME OF CASE: CUBATABACO VS. GENERAL CIGAR
DATE OF DEPOSITION: AUGUST 7, 2001
NAME OF WITNESS: CHARLES SPARKES

PAGE	LINES	FROM	TO
210	23	AFTER "THAT" INSERT	"EFFECT"
219	9	AFTER "THIS" INSERT	"DEPOSITION"
243	18	AFTER "HAD" INSERT	"NOT"
	19	AFTER "--" INSERT	"EQUAL TO"
260	13	"LINBERG"	"LINDBERG"
276	5	AFTER "OTHER" INSERT	"BRAND"
279	8	AFTER "RECOLLECTION" INSERT	"IS THAT"
281	16	AFTER "DECISION" DELETE	"COMMA NO COMMA"
299	4	DELETE "THERE WAS -- THAT"	
	4-5	DELETE "WAS PROBABLY NOT"	
304	12	CHANGE "TRADEMARK"	"TRADEMARKS"
306	6	CHANGE "THEY EXPIRE"	"THE EXPIRATION DATE"
310	2	AFTER "REASSIGN" INSERT	"THE TRADEMARKS"

Charles Sparkes
CHARLES SPARKES

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 19th DAY OF September, 2001.

Marilyn Worman
(NOTARY PUBLIC)

2/13/2002
MY COMMISSION EXPIRES:

MARILYN WORMAN
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/13/2002

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DATE OF DEPOSITION: AUGUST 7, 2001
NAME OF WITNESS: CHARLES SPARKES

PAGE	LINES	FROM	TO
320	9	AFTER "WAS" INSERT	"SITED"
320	12	AFTER "DIFFERENT" INSERT	"MATERIAL
325	15	AFTER "MILSTEIN" DELETE	"COMMA HE"
335	2	CHANGE "STATE"	"DATE"
335	8	CHANGE "ONE"	"SHIPMENT"
339	14	AFTER "BEEN" INSERT	"COMPLETED"
347	10	DELETE "IN THAT"	

Charles Sparkes
CHARLES SPARKES

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 19th DAY OF September, 2001.

Marilyn Worman
(NOTARY PUBLIC)

2/13/02
MY COMMISSION EXPIRES:

MARILYN WORMAN
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/13/2002

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9-29-82 274:18,19 274:22
9-7-82 274:8
90 231:22
96 271:18
97 185:8
98 271:18

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

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner,	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC. Respondent.	:	

PARTY DESIGNATIONS*: Petitioner's Designations During Its Trial Period—Yellow or Pink
Respondent's Designations During Its Trial Period—Green
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

Designated Federal Action Discovery Deposition Transcript of Charles H. Sparkes, designated under Fed. R. Civ. P. 30(b)(6) and 45, dated December 7, 2001

* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

COPY

1

2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 ----------X

5 EMPRESA CUBANA DEL TABACO, d.b.a.

6 CUBATABACO,

7 Plaintiff, 97 Civ. 8399 (RWS)

8 vs.

9 CULBRO CORPORATION and GENERAL

10 CIGAR CO., INC.,

11 Defendants.

12 ----------X

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14

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16

17 VOLUME III

18 DEPOSITION OF CHARLES SPARKES

19 New York, New York

20 Friday, December 7, 2001

21

22

23

Reported by:

24 ANNETTE ARLEQUIN

CSR NO. 1450

25

1

2 December 7, 2001

3 11:95 a.m.

4

5 Continued Rule 30(B)(6) and 45

6 deposition of CHARLES SPARKES, held at the

7 offices of ROTHSTEIN, MANDELL, STROM & MUST,

8 150 Airport Road, Lakewood, New Jersey,

9 pursuant to Subpoena, before ANNETTE

10 ARLEQUIN, a Certified Shorthand Reporter and

11 a Notary Public of the State of New York.

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2 A P P E A R A N C E S:

3

4

5 RABINOWITZ, BOUDIN, STANDARD, KRINSKY &

6 LIEBERMAN, P.C.

7 Attorneys for Plaintiff

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9 New York, New York 10003-9518

10 BY: DAVID B. GOLDSTEIN, ESQ.

11

12

13 LATHAM & WATKINS

14 Attorneys for Defendants and Charles Sparkes

15 885 Third Avenue

16 New York, New York 10022-4802

17 BY: ELENA C. NORMAN, ESQ.

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1

2 IT IS HEREBY STIPULATED AND AGREED,
3 by and between the attorneys for the
4 respective parties herein, that filing and
5 sealing be and the same are hereby waived.
6 IT IS FURTHER STIPULATED AND AGREED
7 that all objections, except as to the form
8 of the question, shall be reserved to the
9 time of the trial.
10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be sworn to
12 and signed before any officer authorized to
13 administer an oath, with the same force and
14 effect as if signed and sworn to before the
15 Court.
16
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21
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23
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25

1

2 C H A R L E S S P A R K E S, called as a

3 witness, having been duly sworn by a Notary

4 Public, was examined and testified as

5 follows:

6 EXAMINATION BY

7 MR. GOLDSTEIN:

8 Q. Mr. Sparkes, before I begin, I just

9 do want to say I do apologize for bringing you

10 here a third time. There are either some new

11 documents or documents that were produced in a

12 different place so we were not aware they were

13 part of this file, so I'm going to be asking you

14 questions about the file that's in front of you.

15 And again, I do regret having to bring you here

16 a third time.

17 You understand that you were

18 subpoenaed for this deposition?

19 A. Yes, I do.

20 Q. Okay.

21 MR. GOLDSTEIN: And if I can just mark

22 for the record the notice and subpoena.

23 (Plaintiff's Exhibit 458, Notice of

24 Deposition and Subpoena, marked for

25 identification, as of this date.)

1 Sparkes

2 MR. GOLDSTEIN: And I don't really

3 have any questions, I just wanted to note

4 for the record that the deposition was

5 pursuant to a subpoena.

6 BY MR. GOLDSTEIN:

7 Q. And you are being represented by

8 Ms. Norman who's --

9 A. Yes.

10 Q. And you understand she's also the

11 attorney for General Cigar.

12 A. Um-hmm.

13 Q. Okay.

14 A. For whom?

15 Q. For General Cigar.

16 A. Yes.

17 Q. If you could take a look at this, the

18 file folder that's in front of you, and first

19 thing I want to do is ask you about the folder

20 cover itself.

21 MR. GOLDSTEIN: And if we could mark

22 my copies of that, my copy of that.

23 (Plaintiff's Exhibit 459, Copy of

24 outside cover and inside flap of file

25 folder, marked for identification, as of

this date.)

BY MR. GOLDSTEIN:

Q. Mr. Sparkes you're looking at the actual file itself. It's an 8-by-11 manila folder.

A. Yes.

Q. Okay. And what I've put in front of you as Plaintiff's 459 is a copy, a Xerox, I guess, for want of a better term, of the outside cover and the inside back flap.

A. All right.

Q. And on the front of the file that you're looking at it says, "Drawer C-3."

A. Yes.

Q. And then on the inside back flap it says, "Culbro-TM-3/130 Cohiba U.S."?

A. Yes, I see that.

Q. Okay. Do you know whose handwriting that is?

A. Yes. I printed Culbro TM -- now three, the three slant 130 looks like it has been a docket change, but certainly the Cohiba and the U.S., I kind of think there might have been a different docket number to begin with.

Q. The docket number is an internal Culbro docket number?

A. I think that's a Morgan & Finnegan, they assigned the numbers.

Q. Okay.

A. I think that's their docket really.

Q. Okay, but that's your handwriting.

A. All except the slant 130. I'm not so sure that that is mine.

Q. Because the two threes look a little different?

A. The three, up to three looks to be mine, Cohiba is mine, U.S. appears it is mine.

Q. And what is that file that we're looking at?

A. This would be a file I made up for each of the trademarks that were filed.

Q. When you say "each of the trademarks," each of the Culbro trademark applications?

A. The application and all the working material that went with it.

Q. Okay. Including the registration and any proceedings?

A. Yes. It would be a complete file; everything that had to do with the Culbro trademark.

Q. And you were responsible for maintaining that file?

A. Yes. I had them in my office.

Q. And your office is in New York City?

A. Yes. This was when I was -- up until -- I should say up until 1988 when I retired and from roughly 1963, I had the files on the trademarks in my office.

Q. I'm just going to ask you to put it down. This is so old I just don't -- we need to be careful with that.

(Witness complies.)

Q. And you had file drawers in your office where you kept these?

A. Yes. It wasn't -- it was more of a cubicle at the end, but yes, I had -- I believe there were two files. I had two, four-drawer files; one for trademarks, one for patents and licenses, things like that.

Q. And the Cohiba file that we're looking at was maintained and kept the same way

1 you kept the other Culbro trademark files?
2 A. That's right.
3 Q. And was it you who placed the
4 material in the file?
5 A. I placed the material in the files
6 that was given to me to put it in, or it came to
7 me through the mail from Morgan & Finnegan or
8 for that matter, anyone else connected that sent
9 me information on it would go in the file.
10 Q. So when you received documents from
11 other people related to the trademark, you would
12 put that in the file?
13 A. Right.
14 Q. Did anybody else put documents in the
15 file?
16 MS. NORMAN: Objection.
17 What time frame are you talking about?
18 BY MR. GOLDSTEIN:
19 Q. Well, we can do it either
20 specifically or generally, but specifically do
21 you have any recollection of anybody else
22 putting material in the Cohiba file?
23 A. Not while I was there.
24 Q. And generally your practice was that
25

as to the Culbro trademark files, you were the one who put the material in the files, not other people?

A. Yes. During my tenure there, I was the one, and I didn't hand them out readily. You know, I kept them -- they were fairly secure.

Q. To your knowledge, did people at General Cigar have access to the files to take documents out of the files?

A. No. I can't -- the files were locked. Anyone who wanted something, to look at something from the file I think would have had to come through me to tell me what they wanted, and I didn't want anybody just going through them and upsetting anything that was in there.

Q. And do you have any knowledge of anybody taking documents out of the Cohiba file during the time period that you were there?

A. No, I can't recall anybody doing that during my tenure there.

Q. And as part of your job responsibilities, it was your responsibility to maintain these trademark files, keeping the

1 files complete and accurate?
2 A. Yes.
3 Q. Was it your practice to keep the
4 trademark files in chronological order?
5 A. Yes. They were kept in docket order,
6 not chronological order. They were kept by
7 the -- whatever law firm, it had to be their
8 docket number was usually on the file.
9 Q. So the different trademark files were
10 kept in docket order, like for the different
11 trademarks.
12 A. Yes.
13 Q. Okay. But as to the contents in a
14 particular file, like, for example, the Cohiba
15 file, did you keep those documents in
16 chronological order?
17 A. Essentially, yes, I did.
18 Q. When you say essentially, what do you
19 mean? The documents may have been out of order
20 by a month or a few days?
21 A. A few days. It might have been --
22 something might be I would say within a day or
23 two, but it would have been put back in order.
24 If I had been going through the file and I
25

1 noticed it, it would have put it back in date
2 and chronological order.
3 Q. Okay. And to your recollection, you
4 followed that practice with the Cohiba file?
5 A. With all the trademark files, all the
6 patent files, all the licenses.
7 Q. Do you recall what you did with the
8 files, if anything, when you left in 1988?
9 A. When I left, the files were still in
10 my cubbyhole. I went back, I would say maybe a
11 year or so later and they had them stored in a
12 secure place in the basement, in a locked area
13 in the basement, and all the file -- the file
14 cases that I had in my office were just
15 transported down to this storage area in a
16 locked area, as far as I know, because when I
17 went downstairs for something, they showed me
18 where the files were.
19 Q. And had you arranged for that before
20 you left or that happened --
21 A. No.
22 Q. -- after you left?
23 A. After I left.
24 Q. And did you do anything with respect
25

to the files before you left?

A. Well, before I left, one of the young lawyers that was assisting Ross Wollen, I had him come in and showed him generally what was in the files, where it was, and I believe I had distributed to a few people, a summary of what was in certain file drawers, because each of the -- I'd say these files were about four or five feet wide and about five feet high and there was at least four or maybe five pull-out drawers to all of the these, and I would just indicate where trademark files were, where patent files were, licenses were.

Q. Do you recall who that attorney was?

A. That was Ron Milstein.

Q. If you open the file up to the first page that you see there --

A. By the way, that's not my writing on the front.

Q. The Drawer C-3 is not yours.

A. No.

Q. The first page you see is a typed memo with a date of 12-12-77 and then your initials CHS.

Do you see that?

A. I see that, yes.

Q. Okay. And that document was previously marked as Plaintiff's 302.

In the original file, there's a line to "Cohiba" from the words "presently used in Cuba"?

A. Yes, I see that.

Q. And that line is in blue ink?

A. Yes.

Q. Do you recall if you're the one who drew that connecting line?

A. No, I didn't draw the connecting line. There are three brackets to indicate all three of these marks.

Q. Which say "EMC, Junior suggestions"?

A. Yes.

Q. And then there's a blue line from "Cohiba" to "presently used in Cuba"?

A. No, that's not mine.

MS. NORMAN: I object to this line of questioning insofar as you're asking questions about documents that were produced a long time that could have been asked at

other depositions, and we're here today to talk about documents that have been produced since the time of Mr. Sparkes' first two depositions.

BY MR. GOLDSTEIN:

Q. If you look at the bottom of the document where it says "Edgar Cullman, Jr. does not particularly want a TMA search."

A. Yes.

Q. Okay.

MS. NORMAN: Same objection.

BY MR. GOLDSTEIN:

Q. Do you see that the type there is in a darker or different type than the rest of the document?

A. It seems to be lighter, yes.

Q. In other words, it looks like it was typed -- would you agree with me it looks like it was typed separately from the rest of the document?

A. Yes. The rest of the document looks like a photocopy. That looks like a typed --

Q. Typed on to the photocopy.

A. Typed on to the photocopy.

1 Sparkes

2 Q. Do you have any recollection of

3 typing the Edgar Cullman, Jr. part, the last

4 paragraph, at a different time than the rest of

5 the document?

6 MS. NORMAN: Same objection.

7 A. Give me a moment just to look through

8 it.

9 Q. Sure.

10 MS. NORMAN: And I also object lack of

11 foundation. The question assumes that he

12 typed that and I don't think he testified

13 that he typed it.

14 MR. GOLDSTEIN: He's already testified

15 that he created that document.

16 (Witness reviewing document.)

17 A. It looks like I may have typed that.

18 I can't be sure, but it looks -- as far as the

19 search made, I was making these searches and it

20 seems like something I may have typed, yes.

21 Q. Let me show you from your prior

22 deposition, I had asked you a question and you

23 had given an answer at page 24, which is in the

24 top corner there on the right, and I had asked

25 you, if you look at the bottom of the page it

1 Sparkes

2 says, "Edgar Cullman, Jr. does not particularly

3 want a TMA search."

4 "ANSWER: Right.

5 "QUESTION: Did he tell you that?"

6 And then in your answer you say:

7 "Yes, I believe I had a memo that I

8 was going -- passing through the people who were

9 interested in the mark, there might have been

10 three or four of them, and I left off a copy of

11 the memo with Mr. Cullman's secretary.

12 "And then I was called on some other

13 matter, and when I came out of there, Edgar

14 Cullman, Jr. was just coming out of his office

15 and he stopped me and he asked me about the TMA

16 search, and he said he was more interested in

17 getting an immediate filing date than going

18 through and he asked me what the TMA search

19 would turn up, and I said, 'It's essentially

20 quite old information'," et cetera.

21 Do you recall that?

22 A. I recall that.

23 Q. Do you recall if after that

24 conversation you then added that information at

25 a later time to that memo?

1 Sparkes

2 A. I don't recall typing it in, but it

3 certainly fits into the time period.

4 MS. NORMAN: Objection. David, I'd

5 like to just state on the record a general

6 objection.

7 You can't sit here and ask him

8 questions about documents you had at the

9 time of his previous deposition, look at

10 those documents again and then follow up on

11 his testimony. You could have done that

12 before.

13 Now I understand to a limited extent

14 now that you've seen the originals of these,

15 which, by the way, you could have asked to

16 see before, but now that you've seen them,

17 you have a few extra questions. We said,

18 you know, that we'll cooperate and indulge

19 you in that, but if you're going to go

20 through this folder and ask him follow-up

21 questions about every question you asked him

22 before, I'm going to object and we're not

23 going to sit here for several hours while

24 you do that.

25 MR. GOLDSTEIN: It's not going to take

typing the last paragraph in after you had spoken to Mr. Cullman about the question of the TMA search?

MS. NORMAN: Objection.

He answered that --

MR. GOLDSTEIN: Okay.

MS. NORMAN: -- two minutes ago.

A. I said I can't be positive, but it does look like something I would have done.

Q. If you look at the next page. This document was previously produced and marked as Plaintiff's deposition Exhibit 303. The document has a date of 12-14-77 on the top.

Do you see that?

A. Yes, I see the date.

Q. And it's a yellow legal pad, about half of the page. In other words, it's torn off about halfway down?

A. Yes, I see that.

Q. And then on the side there's "Cohiba, Cienfuegos, Vinales, Flor de Cano" in pencil.

A. Yes, I see those.

Q. And then on the top, "Sold in Cuba, brand in Cuba" also in pencil?

A. Yes.

Q. And then there is the other, the date, "From E. Lilienfield for registration," "EMC suggestions."

And that's your handwriting?

A. Yes. I would say that "12-14-77 from E. Lilienfield for registration" is mine.

MS. NORMAN: Same objection as before.

BY MR. GOLDSTEIN:

Q. Would you agree with me that underneath the 4 and the 14 is a 2?

A. There appears to be a number under it, yes.

Q. And looking at that, can you tell that that number was a two?

MS. NORMAN: Same objection.

The photocopy is exactly a reproduction of the original. There's no reason to ask these questions now.

MR. GOLDSTEIN: You couldn't tell this from the photocopy. It's very clear, very clear on the yellow pad.

MS. NORMAN: Stop testifying.

A. So where are we?

1 Sparkes

2 MS. NORMAN: You're testifying that

3 it's very clear, which I don't believe

4 Mr. Sparkes has testified.

5 MR. GOLDSTEIN: The document speaks

6 for itself.

7 MS. NORMAN: Exactly.

8 BY MR. GOLDSTEIN:

9 Q. Do you have any recollection of

10 originally writing 12-12-77 on that document and

11 then changing it to 12-14-77?

12 A. No, I have no recollection of that.

13 Q. In your original testimony you

14 testified that prior to preparing the document

15 that we previously looked at, the first page,

16 the one that had -- the typed document,

17 12-12-77, that you recall receiving an initial

18 memo from Bob Lilienfield.

19 My question is, looking at the piece

20 of yellow paper, do you recall now looking at

21 that and the four written over another number,

22 whether that document, the yellow paper, is the

23 document that you initially received from Bob

24 Lilienfield?

25 A. From the writing up above, I'd say

1 yes, this was the original document I received
2 from Bob Lilienfield.
3 Q. When you say "from the writing up
4 above," what are you referring to?
5 A. "12-14-77 from Bob Lilienfield for
6 registration."
7 Q. Okay. And if you look at the -- turn
8 the document over, if you just turn the yellow
9 pad over.
10 (Witness complies.)
11 Q. On the top, something that's not been
12 produced in the case is the word "Cifuentes."
13 A. I don't recall what that reference
14 was made to.
15 Q. Do you have any recollection of that,
16 on the same document, that word "Cifuentes" on
17 the back of that document?
18 A. No. I don't recall ever looking at
19 that to see if there was anything on the back.
20 Q. Do you know -- have any -- looking at
21 the document at the word "Cifuentes," do you
22 know who wrote that?
23 A. No, I don't. It doesn't appear to be
24 my writing, but I -- it might have been a note
25

from -- on a page before this was written, and they tore it off and it just so happened to get there.

Q. If you turn it back to the other side, to the front side with the date.

(Witness complies.)

Q. Do you have any recollection looking at the document now of you adding the words in your handwriting and changing the date at that time?

MS. NORMAN: At which time?

MR. GOLDSTEIN: At the time that he added what he wrote.

A. I don't recall changing any date like that, no.

Q. But the 12-14-77 is your handwriting.

A. The 14th, yes. 12-14-77 seems to be my handwriting.

Q. Do you know if anybody in particular at that time had a practice of writing in pencil on yellow pad and then tearing off sheets as sort of -- I mean someone who that's kind of the way they wrote their memos or their communications?

A. It could have been from Ed Lilienfield, yes.

Q. Well, Ed Lilienfield was dead in 1969 --

A. I'm sorry.

Q. -- according to his brother.

A. Yes.

Q. In your prior testimony you had testified that you wrote E. Lilienfield, but you believed it was from R. Lilienfield.

A. I'm sorry.

Q. Ed Lilienfield was deceased.

A. Robert Lilienfield was in charge of sales for the higher priced cigars.

Ed was in charge of purchasing. So the E is -- I had more contact with Ed Lilienfield than I did with Robert, so that should have been R. Lilienfield.

Q. The record reflects that Ed Lilienfield had already been dead for several years prior to that time so...

A. Yes. He would have had a hard time giving me this memo.

Q. If you then turn several pages into

the file, you'll come to a magazine or a newspaper, newsprint.

A. This one (indicating)?

Q. Yeah.

And what you're holding in your hand is the entire magazine. If you open it up to the front cover. I think it's where that green borderline is.

A. Tropic. I see it, yes.

Q. And what you have in your hand is the actual magazine Tropic from the Miami Herald?

A. Yes, March 19th, 1978.

Q. And on the cover is -- what's the cover story?

A. "Kidnapped: The Nightmare of an Overseas Executive." Executives, "...of Overseas Executives."

Q. And what you have is the magazine itself, not just an article in the magazine; is that correct?

A. Yes, a complete -- it seems to be the complete magazine.

Q. In the file, what was produced was the cover, the masthead and an article called

"Plain Brown Wrapper," which is what it was open to in front of -- when you open the file.

You see that?

A. Yes, I see that.

Q. If you continue past the magazine, the next document in the file, you see this memo written in red ink from Oscar Boruchin to Edgar?

A. Yes.

Q. Dated March 19th, 1978?

A. I see that.

MR. GOLDSTEIN: Why don't we mark both the memo and the Tropic excerpt.

(Plaintiff's Exhibit 460, Memo in red dated 3-9-78 from Boruchin to Cullman, marked for identification, as of this date.)

(Plaintiff's Exhibit 461, Excerpt from Miami Herald Tropic entitled "Plain Brown Wrapper," marked for identification, as of this date.)

MS. NORMAN: This is 460?

MR. GOLDSTEIN: The memo is 460 and the Tropic excerpt is 461.

Let me just note that the memo in red from Oscar Boruchin to Edgar dated March 19,

1 Sparkes

2 1978 has been marked as Plaintiff's 460.

3 That has a Bates number of GC 000016, the

4 letter A.1.

5 And marked as Plaintiff's 461 is the

6 excerpt from the Tropic that was marked

7 "Plain Brown Wrapper," which is GC 10

8 through GC 16.

9 MS. NORMAN: Do you have a copy of

10 that for me?

11 (Counsel handing.)

12 MS. NORMAN: Thank you.

13 MR. GOLDSTEIN: Let me note for the

14 record that GC 16A.1, the memo in red, was

15 not produced in this litigation until

16 October 29, 2001, after I had reviewed the

17 files that Mr. Sparkes is looking at.

18 MS. NORMAN: Let me note for the

19 record that exhibit, Plaintiff's Exhibit 460

20 is a very small piece of thin paper that was

21 inadvertently not produced because of the

22 way it was stuck together with various other

23 papers in the folder. The whole folder

24 should have been copied.

25 BY MR. GOLDSTEIN:

Q. The memo from Mr. Boruchin to Edgar states, "This article about cigars that was published on last Sunday's Herald is interesting, but I think it's very poorly written. No expertise at all. But it's interesting how Fidel Castro is doing the marketing for us on the 'Cohiba label.' Kind regards, Oscar."

Do you see that in that?

A. Yes, I see that.

Q. And in the article that you have, the Tropic article, "Plain Brown Wrapper," the original that's in the file, it's highlighted in red.

A. All right.

Q. There's highlighted -- parts of the article are highlighted.

MS. NORMAN: Are underlined.

A. I see that.

Q. And they're underlined in red ink.

Do you see that?

A. Yes, I see that.

Q. From our prior deposition, you provided a copy of this article to Harry Marcus.

1 Sparkes

2 Do you recall that, testifying about

3 that?

4 MS. NORMAN: Can you show the witness

5 or read him --

6 MR. GOLDSTEIN: Sure.

7 MS. NORMAN: -- the part of his

8 deposition you're referring to?

9 BY MR. GOLDSTEIN:

10 Q. It was previously marked 365 and you

11 were questioned about this in your prior

12 deposition.

13 And in the letter dated March 27,

14 1978 you said, "Dear Harry, enclosed is a

15 photocopy of the article from the Miami Herald

16 supplement Tropic of March 1978 about which

17 Mr. Garbo informed you in his telephone call

18 today."

19 Do you recall doing that?

20 A. I recall I sent a letter to Harry

21 enclosing the article, yes.

22 Q. Okay. Do you recall receiving the

23 article, the magazine and the Boruchin memo from

24 Mr. Cullman?

25 A. According to my letter, it would seem

1 Sparkes

2 that I did send him a copy of the article.

3 Q. And the memo is from Mr. Boruchin to

4 Edgar.

5 A. Yes.

6 Q. And then you sent Mr. Marcus a copy

7 of that article.

8 A. Yes.

9 Q. Okay. And I'm asking, do you recall

10 whether -- do you recall receiving the memo, the

11 March 19 memo from Boruchin to Edgar and the

12 magazine itself from Edgar?

13 A. No, I didn't receive that.

14 Q. Okay. The memo and the magazine is

15 in the file, correct?

16 A. It is now, yes.

17 Q. Okay. And do you recall receiving

18 that from -- do you recall how you got the

19 magazine?

20 MS. NORMAN: Your question is just

21 about the magazine now?

22 MR. GOLDSTEIN: Yes.

23 A. I would imagine I got it from

24 Mr. Garbo. Mr. Garbo was active in the company

25 in 1978 and I was his assistant, so it was

1 Sparkes

2 probably I sent the article but it came through

3 Mr. Garbo.

4 Q. If you go a little farther into the

5 file, there's another copy of the article.

6 (Witness complies.)

7 MS. NORMAN: How many pages?

8 MR. GOLDSTEIN: Fifteen or so. The

9 article itself. I think it's --

10 MS. NORMAN: Okay.

11 BY MR. GOLDSTEIN:

12 Q. There's a copy of the article that

13 runs from GC 30 through GC 36.

14 Do you see that?

15 A. There are four pages to the article.

16 Q. Right.

17 MS. NORMAN: But this one --

18 MR. GOLDSTEIN: You don't have the

19 numbers, but it runs from GC 30, excuse me,

20 to GC 34 in our files. It's five pages.

21 MS. NORMAN: And you're referring to

22 the one where "Miami Herald March 19th" is

23 handwritten in cursive?

24 MR. GOLDSTEIN: Right.

25 MS. NORMAN: Okay.

1 Sparkes

2 MR. GOLDSTEIN: And why don't we mark

3 this as Plaintiff's 462.

4 (Plaintiff's Exhibit 462, Excerpt from

5 Miami Herald Tropic entitled "Plain Brown

6 Wrapper" with red markings, marked for

7 identification, as of this date.)

8 BY MS. NORMAN:

9 Q. Do you see that in the file with the

10 blue ink?

11 A. I see the blue ink.

12 Q. And the blue ink, if you compare it

13 back to the 461 from the magazine itself, from

14 the original magazine?

15 MS. NORMAN: And you're referring to

16 the article we were looking at a minute ago?

17 MR. GOLDSTEIN: Yeah.

18 BY MR. GOLDSTEIN:

19 Q. If you go to the cover of the

20 article, what's written in blue ink is the

21 headline of the article, "Plain Brown Wrapper,"

22 "All over this country, cigar smokers are

23 sending checks to Switzerland."

24 A. I don't see any blue ink.

25 Q. On the magazine itself.

1 Sparkes

2 A. Oh, on the magazine?

3 Q. Yeah. Just turn to the front story.

4 If you look at the article "Plain

5 Brown Wrapper," what's written in blue ink later

6 in the file in the Xerox copy?

7 A. Oh, I see what you mean.

8 Q. Is the title that didn't get copied.

9 "Plain Brown Wrapper," "All over this country,

10 cigar smokers are sending checks to Switzerland

11 for a smoke worth smuggling Havana cigars, By

12 Frank Mankiewicz," and then at the bottom, the

13 "Miami Herald, March 19, 1978"?

14 A. Right.

15 Q. Do you know who wrote the blue pen?

16 A. It appears to be Mr. Garbo's writing.

17 Q. Now if you look into the next page of

18 the one with the blue ink, you'll see on that

19 page that there's underlining?

20 A. Yes, I see that.

21 Q. If you look at the original magazine

22 with the red underlining.

23 A. Yes.

24 Q. Would you agree that the copy was

25 made from that magazine article?

A. I would say it was.

Q. Where was Mr. Garbo at the time?

MS. NORMAN: Objection.

At which time?

BY MS. NORMAN:

Q. In March of '78 was he still with General Cigar?

A. He was with General Cigar.

Q. And he was in New York?

A. He was in New York.

Q. Do you have any recollection looking at these documents of Mr. Cullman providing the magazine that he received from Mr. Boruchin to either you or to Mr. Garbo?

A. If Mr. Garbo were still there, it would have gone to Mr. Garbo.

Q. And do you have any recollection of Mr. Garbo then giving you the magazine itself and the memo?

MS. NORMAN: Objection. Compound.

BY MS. NORMAN:

Q. Do you have any recollection of Mr. Garbo giving you the magazine?

A. No, I don't.

1 Sparkes

2 Q. Do you have any recollection of

3 discussing the Tropic article with Mr. Garbo?

4 A. I can't recall that I ever did, no.

5 Q. Do you have any recollection of

6 discussing the Tropic article with Mr. Cullman?

7 A. No.

8 Q. Based on the memo from Boruchin to

9 Edgar, do you know whether that was to Edgar

10 junior or Edgar senior?

11 I guess the question would be, would

12 Mr. -- someone like Mr. Boruchin refer to Edgar

13 senior in a different way or Edgar junior in a

14 different way?

15 MS. NORMAN: Objection.

16 A. I can't answer that question. I

17 wouldn't know.

18 Q. Okay. You don't know if it's -- you

19 yourself don't know if by the reference to

20 Edgar, whether that would mean Cullman junior or

21 Cullman senior?

22 A. No, I don't know which one.

23 Q. In the memo from Boruchin to Edgar,

24 the last part where it says, "But it's

25 interesting how Fidel Castro is doing the

marketing for us on the Cohiba label, Kind regards, Oscar."

MS. NORMAN: And you're referring to Plaintiff's Exhibit 460.

MR. GOLDSTEIN: 460.

BY MS. NORMAN:

Q. Do you have any recollection of discussing that point with anybody?

A. No.

Q. And sitting here today, you don't have a recollection one way or the other? I mean you don't have a recollection of seeing this particular memo.

A. No.

Q. If you go back into the original file, just in front of the copy of the Tropic article, the one with the blue handwriting, the documents that are immediately in front of it?

That page and then the two pages in front of that.

A. This page (indicating)?

MS. NORMAN: I think he means this (indicating).

You mean this (indicating)?

1 Sparkes

2 MR. GOLDSTEIN: Right.

3 A. All right.

4 Q. The three pages in front of it, one

5 is a memo in blue ink, also with a date of March

6 1978, from Oscar Boruchin to Edgar with the --

7 taped onto it is a band of the Cuban Cohiba, the

8 cigar band.

9 Do you see that?

10 A. I see that.

11 Q. Okay. And then the next document is

12 a copy of that document.

13 A. I'll agree to that.

14 Q. And there is some writing --

15 A. Just a minute. Yes, the colors were

16 written in.

17 Q. The colors were written in because

18 it's a black and white copy.

19 A. All right.

20 Q. And then the third page is a pink

21 routing slip?

22 A. I see that.

23 Q. Those documents were produced as,

24 originally produced as GC 004812 through GC

25 4814. Subsequently the first page, which is in

1 Sparkes

2 color, was produced as GC 4812A, so I want to --

3 MS. NORMAN: When you say

4 "subsequently" when was that?

5 MR. GOLDSTEIN: After I looked at the

6 file on October 25th, I asked for a color

7 copy of 4812 and received that a few days

8 later.

9 Why don't we mark three documents,

10 4812A, 4813 and 4814 as the next exhibit.

11 (Plaintiff's Exhibit 463, Memo dated

12 3-19-78 from Boruchin to Cullman with Cuban

13 Cohiba cigar band, copy of memo with colors

14 written in, and pink routing slip, marked

15 for identification, as of this date.)

16 MR. GOLDSTEIN: And we're marking that

17 as Plaintiff's Exhibit 463.

18 BY MR. GOLDSTEIN:

19 Q. If you just put that down for a

20 second, I want to go through the...you can keep

21 it on the side. I just want to put that to the

22 side and I want to -- if you go back through the

23 file again, the document immediately preceding

24 the March 19, 1978 document?

25 A. Yes.

1 Sparkes

2 Q. The next document in the file in

3 front of that.

4 (Witness complies.)

5 Q. And that's a four-page document

6 that's stapled together?

7 A. Right.

8 Q. And it's an excerpt from a treatise

9 called "Tobacco: Its History, Varieties,

10 Culture, Manufacture and Commerce," by E.R.

11 Billings with a date of 1875.

12 Do you see that?

13 A. I see that.

14 MR. GOLDSTEIN: Why don't we mark this

15 one as whatever. 464?

16 (Plaintiff's Exhibit 464, Excerpt from

17 treatise called "Tobacco: Its History,

18 Varieties, Culture, Manufacture and

19 Commerce," by E.R. Billings dated 1875,

20 marked for identification, as of this date.)

21 MR. GOLDSTEIN: Plaintiff's Exhibit

22 464 is GC 26 through 29.

23 BY MR. GOLDSTEIN:

24 Q. If you look at this treatise --

25 A. Um-hmm, yes.

Sparkes

Q. -- is that your -- there's some handwriting at the top?

MS. NORMAN: Objection.

When you say "at the top" --

MR. GOLDSTEIN: Way at the top.

BY MR. GOLDSTEIN:

Q. It's page 347, "Reference Cohiba" "From JMCL"?

A. I see that, yes.

Q. "A. Mayer's collection." And then the next part you can't read on the Xerox, but on the original I think it says "page" something? It says "Page 33"?

A. "Page 33," "Reference Cohiba."

Q. Cohoba?

A. Cohoba. Cohoba, yes. Sorry.

Q. And the one page 347, "Reference Cohiba," is that your handwriting?

A. I don't recall seeing this document before. The writing, page 347, appears to be my writing.

The "A. Mayer's collection," I'm not sure about.

Q. The "reference Cohiba" and the

"Reference Cohoba," is that your handwriting?

A. It appears to be, yes.

Q. "From JMCL," is that John McLoughlin?

A. That's John McLoughlin.

Q. And A. Mayer is Alfons Mayer?

A. A. Mayer is Alfons, yes.

Q. Okay. Did Mr. Mayer have a collection of tobacco books at General Cigar?

A. He had quite a collection of material in his office. He never threw anything away, so whether he had this at General Cigar, but he did have a large collection, but I never consulted or went through any of his material.

Q. If you look at the second page.

(Witness complies.)

Q. On the bottom of the -- it's a double page. On the bottom of the page it has a 33 on the top?

A. Yes, I see that.

Q. And then there's a paragraph towards the bottom, "Of the early accounts of the plant and its use, Beckman, a German writer says" and then "In 1496, Romanus Pane, a Spanish monk, whom Columbus, on his second departure from

1 America, had left in that country, published the
2 first account of tobacco with which he became
3 acquainted in Santo Domingo. He gave it the
4 name of Cohoba Cohobba, Gioia."
5 And it C-o-h-o-b-a, C-o-h-o-b-b-a,
6 G-i-o-i-a.
7 MS. NORMAN: Again, I object to this
8 line of questioning.
9 You had these documents before.
10 Insofar as the original is an original and
11 this is a copy, I think that's irrelevant
12 insofar as the same pages were attached and
13 you can read what was made out, so I'd ask
14 you to please make this brief.
15 MR. GOLDSTEIN: The questions, the
16 documents immediately following in the file
17 were produced as 4812 and the documents
18 preceding were not produced at all in this
19 litigation until very recently. I think I'm
20 allowed to ask him about the document
21 between the two of them.
22 MS. NORMAN: When you say the
23 documents preceding --
24 MR. GOLDSTEIN: The Tropic magazine
25

article before and the Tropic -- and then the bands. There's no way to tell that these were all part of one file based on the way that you produced them in violation of Rule 34, and if you want to take that up when the deposition is over, that's fine.

BY MR. GOLDSTEIN:

Q. If you turn to the next page. It's 346, 347.

A. I have that, yes.

Q. In the middle of 346 it says, you go down, it says "Hazard, in his work on Cuba..."

A. Yes.

Q. "...describes the celebrated vegas of tobacco plantations of the island as follows," and then what follows is a long quote from Hazard, and at the very bottom of page 347 -- do you see that?

A. Yes, I see that.

Q. "The plant, whose original name was Cohiba, seems to have been cultivated first by Europeans on the island in the vicinity of Havana." And Cohiba is italicized in the original.

1 Sparkes

2 Do you recall receiving this, this

3 excerpt from Mr. McLoughlin?

4 A. No, I don't.

5 Q. Do you have any recollection of

6 Mr. McLoughlin uncovering or discovering this

7 origin of the word Cohiba or Cohoba at this

8 time?

9 A. No, I don't.

10 Q. Do you have any recollection of any

11 discussions at this time concerning the meaning

12 of Cohiba or Cohoba in relation to tobacco?

13 A. No, I never had that.

14 Q. Do you recall any discussions at

15 General Cigar at this time, meaning in March of

16 1978 or thereabouts, of discussing the use of

17 the -- applying for the name Cohoba instead of

18 Cohiba?

19 A. That was never proposed to me, no.

20 MR. GOLDSTEIN: Why don't we mark

21 this.

22 (Plaintiff's Exhibit 465, Letter dated

23 8-1-78 from Marcus to Sparkes with attached

24 U.S. PTO Office Action dated 7-25-78, marked

25 for identification, as of this date.)

1 Sparkes

2 This is a letter from Mr. Greenberg

3 dated October 29th, 2001, subsequent to my

4 review of the files, in which I requested

5 particular documents.

6 MS. NORMAN: I see.

7 MR. GOLDSTEIN: As to GCP 12, he

8 provided me with a copy with no commentary.

9 MS. NORMAN: I see.

10 MR. GOLDSTEIN: As to GCP 55, which I

11 did not recall seeing, he pointed out that

12 it had previously been produced, which he

13 did not produce GCP 12. We have no record

14 of receiving it and apparently you do not

15 either, so I think I'm free to ask him about

16 that.

17 BY MR. GOLDSTEIN:

18 Q. We just marked as Plaintiff's Exhibit

19 465, a letter from Mr. Marcus to you dated

20 August 1, 1978 and attaching an Office Action

21 from the U.S. PTO concerning Cohiba of July 25,

22 1978, as well as a picture, which I think is

23 part of the office action, of the Cohiba design

24 application of Beneficial Capital Corp., and

25 that's GCP 12, GC 44 and GC 45.

1 Sparkes

2 Do you see that?

3 A. All right. I have that.

4 Q. Yes?

5 A. Yes.

6 Q. In the letter from Mr. Marcus to you,

7 do you recall receiving this letter from him?

8 A. Yes. If that was addressed to me, I

9 had received it. I don't recall.

10 Q. And in it he says he's enclosing the

11 Office Action dated July 25, 1978 regarding

12 Cohiba, and then the last paragraph he says, "In

13 order that we may respond to the formal

14 objections noted in the action, please advise

15 whether the term Cohiba has any meaning or

16 significance in the cigar industry and let me

17 know whether the term has any English

18 translation."

19 Do you see that?

20 A. I see that paragraph.

21 Q. Do you have any recollection of

22 providing Mr. Marcus with the treatise

23 definitions of Cohiba or Cohoba that's in the

24 file there that we just went over?

25 MS. NORMAN: And you're referring now

Sparkes

to?

MR. GOLDSTEIN: Plaintiff's Exhibit 464.

BY MR. GOLDSTEIN:

Q. The document that's in your hand. This document (indicating), the 1875 treatise that had a definition of -- for Cohoba and Cohiba.

A. I don't recall sending this to Harry, no.

Q. Do you recall any -- asking at the company whether anybody had any understanding of the meaning of the word "Cohiba"?

A. No, not at this time.

Q. You had provided him with the definition of cohibir based on the Spanish verb?

A. Right.

Q. But you did not provide him with a definition of Cohiba related to tobacco either from the Dominican Republic or Cuba?

MS. NORMAN: Objection. You're characterizing his testimony. He said he didn't recall.

A. This letter is dated August 1st, 1978,

1 Sparkes

2 and I don't know who was -- I may have passed

3 the letter on to someone else. I don't know. I

4 had people over me at this time in 1978.

5 Q. But you yourself have no --

6 A. I myself don't recall passing on any

7 information in reference to the last paragraph

8 on the August 1st, 1978 letter.

9 Q. But you had already passed on to him

10 the Cohibir information.

11 A. Yes.

12 Q. If we go to Plaintiff's Exhibit 463,

13 which is the document in the file that follows

14 the treatise, it's a March 19, 1978 memo from

15 Oscar Boruchin, again to Edgar, this time in

16 blue ink and it has that Cuban Cohiba band with

17 the actual band itself taped onto that document.

18 And it says, "Edgar, this is famous Cohiba. I

19 could not get the empty box, but it's a box

20 similar to our 898 in wood, but shape is a

21 regular Rothschild box. Kind regards, Oscar."

22 Looking at the original, do you

23 recall receiving from Mr. Cullman or someone

24 else at General Cigar, that memo with the band

25 taped on?

1 Sparkes

2 A. If you'll note the routing slip,

3 "C. Sparkes one from EMC junior."

4 Q. And it says, "Please find the cigar

5 band for Cohiba. We now have the design.

6 Should we make up a band with this for cigars to

7 be shipped interstate? EMC junior."

8 A. I see that, yes.

9 Q. Do you recall receiving the band with

10 that instruction or request from Mr. Cullman?

11 A. I remember receiving a band, yes.

12 Q. And do you recall that it was taped

13 onto the memo or do you recall that that's

14 something you did?

15 A. No, I didn't tape -- it was taped

16 onto the memo.

17 Q. And do you recall if you're the one

18 who made the black and white copy that follows?

19 A. No, I didn't make that.

20 Q. And then the instruction on the pink

21 routing slip for the request, do you have any

22 recollection of what was done in response to

23 that?

24 A. No, I don't.

25 Q. Do you recall any discussions about

making up a similar band?

A. No. I have no recollection of ever discussing anything about the band, no.

Q. Do you have any knowledge of passing this request on to someone else?

A. As I stated before, in 1978, other people were involved, and whether they made that kind of a decision or not, I don't know. I was passing through information that I received, more or less.

Q. Cullman junior asked you, should we make up a band for cigars to be shipped interstate, and you yourself don't recall making any response to that.

A. No. I wouldn't have given him that kind of an opinion at that point in time.

Q. And you don't recall requesting someone else to give that opinion.

A. I don't recall how much further it went, but I don't recall that I ever gave him an opinion about it.

Q. Do you recall that it went further at all? Do you have any recollection of that?

A. I have no knowledge.

1 Sparkes

2 Q. Did you have knowledge that General

3 Cigar was looking for the Cuban Cohiba design at

4 that time?

5 A. No, I didn't have any knowledge of

6 that.

7 Q. Do you have any knowledge of what

8 else Boruchin sent him when he said, "This is

9 famous Cohiba"?

10 A. No, I don't.

11 Q. Do you have a recollection of

12 receiving the memo and the band with the Tropic

13 magazine article, the Tropic magazine?

14 A. Are we talking about 465?

15 Q. Actually I'm talking about the

16 magazine itself; the whole magazine, the

17 original magazine.

18 A. No, I don't.

19 (Plaintiff's Exhibit 466, Memorandum

20 without a to and from dated 1-18-79, marked

21 for identification, as of this date.)

22 BY MR. GOLDSTEIN:

23 Q. I'm showing you what's been marked as

24 Plaintiff's 466. It's GC 46A dated 1-18-79.

25 This was previously produced to us with the

1 Sparkes

2 handwriting on the bottom, and the word "Cohiba"

3 and the other marks --

4 A. I see that.

5 Q. -- redacted in the original version,

6 and recently this version was produced and I

7 just have a couple of clarification questions.

8 In your --

9 MS. NORMAN: You want him to look at

10 the original?

11 MR. GOLDSTEIN: Yeah.

12 BY MR. GOLDSTEIN:

13 Q. Yeah, you can look at the original.

14 It might be easier to read.

15 (Witness reviewing document.)

16 Q. In the original file and also on the

17 copy, it's a memorandum without a to and from,

18 there's no identity, dated January 18, '79, and

19 a list of 11 names, including Cohiba, and then

20 at the bottom, "1-19-79 CHS."

21 And that, the handwriting at the

22 bottom, that's yours?

23 A. That's mine.

24 Q. The handwriting where it says, "Spoke

25 with EMC junior and he is not ready to drop any

of the 33 marks used on temporary labels at this time," do you see that?

A. Yes, I see that.

Q. And then it says, "Still will keep all above listed applications except secondary interest in..." asterisked "...marks"?

A. Yes, I see that.

Q. It refers to 33 marks and what's listed are 11 marks, and then in your memo or in your notes it says, "All above listed applications."

Do you see that?

A. Yes, I see that.

Q. My question is, are these 11 all marks that are in the application process but haven't been registered?

A. It would seem so to me. I don't recall that we had any registrations for any of these marks at this time.

Q. And the other -- the remaining of the 33, I guess 22, those had already been registered?

A. You mean the three at the bottom?

Q. No. The memo refers to 33 marks --

A. Oh.

Q. -- but you only list 11, and you say the "above listed applications."

A. Yes. They were -- I don't know -- I'm not certain whether they were registrations, but certainly these were more than likely applications.

Q. And many of the marks that were with temporary labels at that time already had their registrations?

A. We used temporary labels from the time we filed the application until the time the registration matured and then the finished packaging was made.

Anything that was into finished packaging, we wouldn't use temporary labels on. We would keep samples of all the finished packaging and use them if we had to.

Q. When you say "finished packaging," when it was put out into the market in full commercial use?

A. Yeah, the fully designed box, wrapped, set, whatever it might be.

Q. And I think this is the last document

1 Sparkes

2 I have a question on. We weren't able to read

3 it from what was produced, and I just had a

4 couple of questions.

5 MR. GOLDSTEIN: If you could mark

6 this.

7 (Plaintiff's Exhibit 467, Letter dated

8 10-1-82 from Atkinson to Sparkes, marked for

9 identification, as of this date.)

10 BY MR. GOLDSTEIN:

11 Q. I'm showing you what we've marked as

12 Plaintiff's 467, which is an October 1, 1982

13 letter from Gregory Atkinson of Morgan &

14 Finnegan to you regarding registrations, or

15 rather registration search results in Western

16 Europe for Cohiba. I believe Great Britain and

17 West Germany and France.

18 If you go into the original file,

19 it's pretty far towards the back.

20 A. October 1st, '82?

21 Q. When you get to the latter part of

22 '82.

23 A. I'm getting there.

24 Q. There it is.

25 A. Okay.

1 Sparkes

2 Q. The page before that. It's a

3 two-page letter.

4 A. Oh, I see it.

5 Q. I see you're looking at the original

6 letter in the file, the October 1 letter. The

7 handwriting is actually readable in the

8 original, though not in the copy.

9 Can you read that on the right-hand

10 margin?

11 A. Yes, I can.

12 It appears to be my handwriting, my

13 initials and the date 10-7-82.

14 Q. And can you read what's written above

15 that?

16 A. "Greg reminded us of rectification

17 procedure. Reminded Kowalsky lack of use not

18 likely."

19 Q. And then your initials.

20 A. My initials and the date.

21 Q. 10-7-82. Is that the date?

22 A. Yes.

23 Q. Do you have any recollection of --

24 strike the question.

25 Do you know what that refers to?

1 Sparkes

2 There's an arrow pointing --

3 A. Yes. It points to the fourth

4 paragraph.

5 Q. And that paragraph says, "Cohiba has

6 been registered in Great Britain under

7 registration number..." there's a number, "...by

8 Empresa Cubana del Tabaco of Havana. Because of

9 this registration, Culbro could not register

10 Cohiba in Great Britain."

11 A. Yes.

12 Q. What you read, there's an arrow

13 pointing to that paragraph.

14 A. Yes. You're referring to the

15 "Reminded Kowalsky, lack of use not likely"?

16 Q. Yes. "Greg..." meaning Greg

17 Atkinson, I assume, who wrote the letter,

18 "...reminded us of rectification procedure.

19 Reminded Kowalsky lack of use not likely."

20 I'm asking if you recall speaking to

21 Mr. Kowalsky about this.

22 A. I don't recall whether that refers to

23 the lack of use by Empresa Cubana del Tabaco of

24 Havana or not.

25 Q. Do you know why you were discussing

1 Sparkes

2 this with Mike Kowalsky at that time?

3 MS. NORMAN: Objection. Lack of

4 foundation.

5 I don't think the witness testified

6 that he discussed this with Kowalsky.

7 You're interpreting what he wrote. It's

8 possible that --

9 BY MR. GOLDSTEIN:

10 Q. Do you understand that that refers to

11 you reminding Kowalsky lack of use not likely?

12 A. That would seem to be -- from what is

13 written in the margin, it would seem to be that

14 he was informed.

15 Q. And do you know why Mr. Kowalsky was

16 being informed about this, the question of lack

17 of use?

18 A. No, I can't recall that. He was the

19 one who instigated, I'm pretty -- who instigated

20 searches to be made. That's all I would be

21 aware of.

22 Q. Are you aware of any -- strike the

23 question.

24 MR. GOLDSTEIN: Give me just a minute.

25 I'm probably done.

writing, it's simply describing where the notice is currently placed and where, you know, it should continue to be placed?

A. Yes, that's what it appears to be.

MR. GOLDSTEIN: All right. I have no other questions.

MS. NORMAN: No questions.

(Time noted: 12:40 p.m.)

_____

CHARLES SPARKES

Subscribed and sworn to before me this ____ day of _____, 2001.

_____

1

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK)

5 : ss.

6 COUNTY OF NEW YORK)

7

8 I, ANNETTE ARLEQUIN, a Shorthand

9 Reporter and Notary Public within and for

10 the State of New York, do hereby certify:

11 That CHARLES SPARKES, the witness

12 whose deposition is hereinbefore set forth,

13 was duly sworn by me and that such

14 deposition is a true record of the

15 testimony given by the witness.

16 I further certify that I am not

17 related to any of the parties to this

18 action by blood or marriage, and that I am

19 in no way interested in the outcome of this

20 matter.

21 IN WITNESS WHEREOF, I have hereunto

22 set my hand this 22nd day of December, 2001.

23

24 Annette Arlequin

ANNETTE ARLEQUIN, CSR, RPR

25 My commission expires:

6/30/02

1

2 ---------- I N D E X ----------

3 WITNESS EXAMINATION BY PAGE

4

5 CHARLES SPARKES MR. GOLDSTEIN 359

6

7

8 ---------- EXHIBITS ----------

PLAINTIFF'S PAGE

9

Plaintiff's Exhibit 458, Notice of 359
10 Deposition and Subpoena
11 Plaintiff's Exhibit 459, Copy of outside 360
cover and inside flap of file folder
12
Plaintiff's Exhibit 460, Memo in red 382
13 dated 3-9-78 from Boruchin to Cullman
14 Plaintiff's Exhibit 461, Excerpt from 382
Miami Herald Tropic entitled "Plain Brown
15 Wrapper"
16 Plaintiff's Exhibit 462, Excerpt from 388
Miami Herald Tropic entitled "Plain Brown
17 Wrapper" with red markings
18 Plaintiff's Exhibit 463, Memo dated 394
3--19-78 from Boruchin to Cullman with Cuban
19 Cohiba cigar band, copy of memo with
colors written in, and pink routing slip
20
Plaintiff's Exhibit 464, Excerpt from 395
21 treatise called "Tobacco: Its History,
Varieties, Culture, Manufacture and
22 Commerce," by E.R. Billings dated 1875
23 Plaintiff's Exhibit 465, Letter dated 400
8-1-78 from Marcus to Sparkes with
24 attached U.S. PTO Office Action dated
7-25-78

25

1

---------- EXHIBITS (Cont'd.)----------

2 PLAINTIFF'S PAGE

3

Plaintiff's Exhibit 466, Memorandum 408

4 without a to and from dated 1-18-79

5 Plaintiff's Exhibit 467, Letter dated 412

10-1-82 from Atkinson to Sparkes

6

Plaintiff's Exhibit 468, Memo dated 418

7 1-27-83 from Sparkes to Westle

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*** ERRATA SHEET ***

ALL STAR REPORTERS, INC.
50 CARNATION AVENUE
FLORAL PARK, NY 11001
(800) 329-9222

NAME OF CASE: CUBATABACO v. GENERAL CIGAR
DATE OF DEPOSITION: DECEMBER 7, 2001
WITNESS: CHARLES SPARKES

PAGE	LINE	FROM	TO

____
CHARLES SPARKES

Subscribed and sworn to before me
this _____ day of _______________, 2001.

____
(Notary Public)

____
My Commission Expires:

1

*** ERRATA SHEET ***

2 ALL STAR REPORTERS, INC.

50 CARNATION AVENUE

3 FLORAL PARK, NY 11001

(800) 329-9222

4 NAME OF CASE: CUBATABACO v. GENERAL CIGAR

DATE OF DEPOSITION: DECEMBER 7, 2001

5 WITNESS: CHARLES SPARKES

6

PAGE	LINE	FROM	TO
356	3	11:95 A.M.	11:05 AM
387	2	probably	probable.
411	24	wrapped, set,	wrapped-set,

7

8

9

10

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15

16

17

18

Charles Sparkes

19 CHARLES SPARKES

20 Subscribed and sworn to before me

this 17th day of January, 2002.

21

22 Marilyn Worman

(Notary Public)

MARILYN WORMAN
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/13/2002

My Commission Expires:

23

24

25

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

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner,	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC. Respondent.	:	

PARTY DESIGNATIONS*: Petitioner's Designations During Its Trial Period—Yellow or Pink
Respondent's Designations During Its Trial Period—Green
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

Designated Federal Action Discovery Deposition
Transcript of Jose Manuel Valdes Martinez, dated January 9, 2001

* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

C O N F I D E N T I A L

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

----------X

EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

Plaintiff,

vs.

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

Defendants.

----------X

COPY

97 Civ. 8
399 (RWS)

CONFIDENTIAL

DEPOSITION OF JOSE MANUEL VALDES MARTINEZ

New York, New York

Tuesday, January 9, 2001

Reported by:

ANNETTE ARLEQUIN

CSR NO. 1450

JOB NO. 116837b

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1

2 January 9, 2001

3 2:00 p.m.

4

5 Deposition of JOSE MANUEL VALDES

6 MARTINEZ, held at the offices of Morgan &

7 Finnegan, LLP, 345 Park Avenue, New York,

8 New York, pursuant to Notice, before Annette

9 Arlequin, a Certified Shorthand Reporter and

10 a Notary Public of the State of New York.

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2 A P P E A R A N C E S:

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4

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15 345 Park Avenue

16 New York, New York 10154-0053

17 BY: DICKERSON M. DOWNING. ESQ.

18 ERICKA K. DEWEY, ESQ.

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25

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

1

2 L A R R Y G O D O Y L E N Z, an

3 interpreter, having been duly sworn by the

4 Notary Public, translated as follows:

5

6 J O S E M A N U E L V A L D E S M A R T I N E Z,

7 called as a witness, having been duly sworn

8 by a Notary Public, was examined and

9 testified as follows:

10 EXAMINATION BY

11 MS. DEWEY:

12 MS. EVENSON: As this morning, we

13 designate this deposition as confidential

14 under the protective order, subject to any

15 modifications that we may make in the

16 future.

17 BY MS. DEWEY:

18 Q. Can you please state your name for

19 the record.

20 A. Jose Manuel Valdes Martinez.

21 Q. And please state where you work.

22 A. The company is called Marina,

23 Compania Marina Hemingway.

24 Q. And what is your position at Compania

25 Marina Hemingway?

A. I am the attorney in the company.

Q. Do you have a business card with you?

A. I didn't bring it here, no.

Q. As my colleague introduced before, my name is Ericka Dewey. This is Dick Downing (indicating). We're with law firm of Morgan & Finnegan. We represent the defendant in this lawsuit.

Have you ever been deposed before?

A. You mean something like this?

Q. Yes.

A. I gave testimony with Deborah.

Q. So you are familiar with the proceedings?

A. With these proceedings like this? Since I have been an attorney for Compania Marina Hemingway, no, no, I am not familiarized.

Q. To familiarize you with the process, I'm going to ask a series of questions and the interpreter will interpret them into Spanish, you will give your answer and the interpreter will bring it back into English, and it will all be transcribed on a written record by the court reporter, so you must give all your answers

attorney for Compania Marina Hemingway S.A.; is that correct?

A. Attorney.

Q. How long have you held that position?

A. Since 1994 to the present.

Q. As the acting attorney for this company, what do your duties entail?

A. In general terms, all the legal problems of the company; contracts, problems of labor type, civil, administrative and also at the courts, at the trials at the court, penal code cases.

Q. Prior to 1994, where did you work?

A. At Corporacion Cubanacan.

Q. Could you spell that for us?

A. C-u-b-a-n-a-c-a-n, S.A.

THE INTERPRETER: S.A. is the, you know, the next two words.

BY MS. DEWEY:

Q. What type of business does Cuba --

MS. DEWEY: Could you say that again?

THE INTERPRETER: Cubanacan.

BY MS. DEWEY:

Q. Cubanacan conduct?

A. It's a corporation for tourism and international business.

Q. What was your position at this company?

A. Inspector.

Q. What did you inspect?

A. The hotels of the corporation, the stores, the restaurants, offices of the --

THE INTERPRETER: Give me one second.

MS. EVENSON: Casa matriz would be like the main office.

A. Head office or main office.

Q. Going back to your current job, what type of business is Marina Hemingway?

A. Renting of places.

THE INTERPRETER: Interpreter speaking. The word he used could be used in several different ways. The word "locales" in Spanish could mean stores, could mean any type of office, anything.

BY MS. DEWEY:

Q. Could you give us an example of what type of place was recently rented or...

A. Well, our company owns two hotels,

four restaurants, a cabaret, and these companies are rented to other companies within the Cubanacan corporation.

Q. Are any of the companies rented out to Cubatabaco?

A. No, never. No, no.

Q. Are any of these --

MS. DEWEY: Off the record for a second.

(Discussion off the record.)

BY MS. DEWEY:

Q. Are any of these locations rented to Habanos S.A.?

A. No, it has nothing to do with it. Only to companies that belong to the corporation Cubanacan.

Q. How long were you an inspector at Cubanacan?

A. Since 1989 until 1994. That's when I switched to the Compania Marina Hemingway.

Q. Prior to 1989, where did you work?

A. At Fiscalia Generale of the Republic of Cuba.

MS. DEWEY: Could you repeat that for

me?

THE INTERPRETER: Fiscalia, F-i-s-c-a-l-i-a, Generale, general, of the Republic of Cuba.

BY MS. DEWEY:

Q. And how long did you work there?

A. From 1981 till 1989.

Q. And what was your position at this company?

A. Which company? It's not a company, this is a Fiscalia.

MS. EVENSON: Fiscalia is the attorney general's office.

MS. DEWEY: Okay.

MS. EVENSON: Or equivalent thereof.

THE INTERPRETER: That's why the interpreter just in Spanish --

MS. EVENSON: We call that procreator general.

THE INTERPRETER: Procreator general.

BY MS. DEWEY:

Q. What was your position at this job?

A. General attorney.

THE INTERPRETER: Give me one second.

Fiscal could be interpreted into -- one second. I'm trying to get the correct --

MS. EVENSON: I would say prosecutor.

THE INTERPRETER: Prosecutor, right? Okay.

A. Chief prosecutor and municipal chief.

Q. What kind of cases did you work on?

A. Penal cases. Mostly in general terms, penal cases.

Q. Could you give us an example of one for penal?

A. One very frequent example that we work as prosecutors, the general sacrifice of cattle, of large amounts of cattle.

Another case, robbery with violence.

Q. Prior to this position as the prosecuting attorney, did you work anywhere else?

A. At Cubalse.

Q. And how long did you work at Cubalse?

A. From 1975 until 1981.

Q. And what was your position?

A. I was a buyer and a planner.

2 Q. What kind of responsibilities did you
3 have as a buyer?
4 A. I would buy food products in general,
5 drinks in general, tobacco and cigars.
6 Q. Who did you purchase the tobacco from
7 and cigars?
8 A. At that time it used to be Cubatabaco
9 where I would buy it.
10 Q. And what business is Cubalse?
11 A. Cubalse is the company that gives
12 services to foreigners.
13 Q. What did Cubalse do with the tobacco
14 once you purchased it?
15 A. They would sell them to the customers
16 from the diplomatic stores and diplomatic
17 markets.
18 Q. Did Cubalse sell it directly to the
19 stores?
20 A. No. Cubalse would sell it directly
21 to the diplomatic market and the diplomatic
22 stores.
23 Q. The stores were owned by Cubalse?
24 A. Cubalse was the owner of the stores.
25 Q. Were you directly responsible for the

buying of cigars and tobacco?

A. Yes. Everything that had to do with food products, tobacco, cigars, drinks. Food products in general.

Q. Were you the sole purchaser, person in charge of purchasing?

A. These type of purchases, yes, at Cubalse.

Q. Did you report to anybody?

A. From my boss, the boss of the buying section or purchasing section.

Q. And who was that?

A. Martiniano Calderon.

Q. And what were his duties?

A. To control and to check all the four buyers that we had there from Cubalse.

MS. DEWEY: Did you say four?

THE INTERPRETER: Four, yes.

BY MS. DEWEY:

Q. Who were the other four buyers?

A. Another buyer would buy material for construction. He was another buyer.

Another buyer would buy, for example, material or shoes for the stores.

And another buyer would buy all sorts of products that had to do with office products.

And I was in charge of food products, tobacco, cigars.

Q. You indicated that you started in 1975 as a buyer; is that correct?

A. Yes. Yes, March 3, 1975.

Q. How many stores did Cubalse have in 1975?

A. Diplomatic markets and diplomatic stores.

Q. Were there multiple diplomatic markets and diplomatic stores or just one of each?

A. Only one of each only.

Q. Could you explain the difference between the market and the store?

A. The market had to do with foods in general, food products and hardware, hardware products, tobacco, cigars, rum, and that's the diplomatic market.

Then the diplomatic store, they would sell jars or material in general, clothing in general, shoes. They would also have tobacco,

cigars, rum, drinks in general, but in smaller scale. It's a smaller place.

Q. Where was the diplomatic market located in 1975?

A. At that time in '75, at Nautico. Fifth Avenue, or Quinta Avenida, and Nautico.

Q. Were you responsible for buying Cohiba cigars?

A. Of course.

Q. Did you buy Cohiba cigars in 1975?

A. Of course. When I began at Cubalse, they were already selling Cohiba cigars at both the diplomatic market and the diplomatic store.

MS. DEWEY: Just to backtrack a moment, he gave the address of the diplomatic market.

MR. DOWNING: The store.

BY MS. DEWEY:

Q. Is that correct? Or was it the store?

A. No. That was the diplomatic market. They're located on Quinta Avenida and the department is the Nautico area.

Q. And where was the store located at?

A. Quinta Avenida and Calle 42.

MR. DOWNING: 42nd Street.

THE INTERPRETER: Exactly.

MS. DEWEY: 42nd Street. Fifth and 42nd.

BY MS. DEWEY:

Q. For clarification, this is in Havana?

A. The area is called Miramar.

THE WITNESS: (In English) Today, Playa.

A. At that time it used to be called Miramar. Today, nowadays it's called Playa.

Q. What kind of individuals could shop at the market?

A. At the market, well, diplomats can purchase there. Foreign companies can buy there and workers of those companies and the diplomats.

Except for certain occasions, some foreigners would buy their under the permission of Cubalse.

Q. Would these be tourists that came in?

A. People invited by the government, and for some they were gifts.

Q. Typically a tourist could not enter in one these -- this market and buy anything?

A. No.

Q. Where could they buy things?

A. At the hotels.

Q. In 1975, were Cohiba cigars sold in hotels?

A. Yes, they were sold at the hotels.

Q. Which hotels?

A. Specifically at that time in four hotels.

Q. Could you name them for us?

A. Of course. Hotel Havana Libre, Hotel Riviera, Hotel Nacional and Hotel Capri.

Q. Did you purchase the cigars to be sold in those hotels?

A. I would buy them in general so that they could be sold at the diplomatic market and the diplomatic store.

Q. But what about the hotels? Did you buy for the hotels?

A. No. I would buy for the diplomatic market. It was the market that would sell it to the hotels.

Q. Were there other stores like the Diplomercado Nautico or was this the only store?

A. At that time from what I understand, that all that was there was diplomatic market and diplomatic store and the stores of the hotels.

MS. DEWEY: I'm going to mark the declaration of Mr. Valdes dated November 11, 1997 as Defendant's Exhibit 97.

(Defendants' Exhibit 97, declaration of Valdes dated 11-11-97, marked for identification, as of this date.)

MS. DEWEY: I ask witness to review this.

BY MS. DEWEY:

Q. Take a few minutes to look at it.

A. I need to find my glasses.

(Witness reviewing document.)

Q. Do you recall making this declaration?

A. Yes, of course.

Q. Do you know why this declaration was made?

A. Yes, of course. I was told that the

brand Cohiba was in...

MS. EVENSON: Litigation.

THE INTERPRETER: In litigation. Right.

BY MS. DEWEY:

Q. No. 4 you state, "...I became aware that sales of the Cohiba cigars at Diplomercado Nautico had gone on for some time previously."

THE INTERPRETER: You said No. 4?

MS. DEWEY: Yes, No. 4.

THE INTERPRETER: Could you repeat that again? I'm sorry.

BY MS. DEWEY:

Q. "Upon my arrival at Cubalse, I became aware that the sale of the Cohiba cigars at the Diplomercado Nautico had gone on for some time previously."

Could you explain how you knew they were going on some time previously?

A. Yes, of course. Because there was another buyer. I took the place of this other buyer, so he explained everything to me. He gave me a general overview of the articles and all the products that were being sold both at

diplomatic market and the diplomatic store, how is it that the movement of these products went on and how is it that I was supposed to do my work.

In other words, I was supposed to go every Monday or Thursdays to verify if whether they needed any of the products or whether they didn't have them on their stocks.

THE INTERPRETER: On their stock. I'm sorry.

BY MS. DEWEY:

Q. Did you personally go to each store and hotel to inquire whether they needed restocking?

A. I would do that personally. That was my responsibility. They would ask me to do this. It was our responsibility.

Q. Did you keep records of your inquiries with each store?

A. No, just a notebook where I would take my -- where I would write down my notes. That's a function that I would do.

Q. Where did you keep this notebook?

A. Well, I would use my case, my

briefcase.

Q. Did you keep these records?

A. Yes, of course.

Q. Do you still have these records?

A. I don't remember. These things were thrown away or ripped. It was a notebook.

Q. In 1975, per month, how many cigars did each store slash hotel order?

MS. EVENSON: I object to the form.

MS. DEWEY: I'll split them up for him.

BY MS. DEWEY:

Q. First, is there only one store that sells cigars in 1975?

A. The diplomatic market and the diplomatic store.

Q. They both sold cigars?

A. Both of them would sell cigars.

Q. Per month, how many cigars did the store order in 1975?

A. When I began in 1975, I remember that there were three types of cigars.

Lancero is approximately about 50 boxes.

Another that was a special type I don't remember, but more or less it was about 40 boxes.

And another one, a smaller one, that was the one that sold the least, and that was approximately about 5 boxes, approximately speaking. It's been many years.

Q. I understand.

Approximately how many boxes were sold to the market each month?

A. Each month?

Q. Yes.

A. I would go every Monday, I would look at them on the floor, because these type of tobacco, they had to be under the correct weather. So my responsibility was that the floor would not be empty, and generally in this type of tobacco, they would sell approximately half of what they had on the floor, approximately, or a little bit more than half.

Every Monday I would go to the diplomatic market and the diplomatic store. The diplomatic market they would sell a little bit more because their floor, the floor itself is a

that the popular opinion at the time, people were talking about this, that there was a cigar, the Cohiba cigar.

BY MS. DEWEY:

Q. When you say "people," do you recall who specifically was talking about it?

A. My coworkers, they wanted to smoke this cigar, the Cohiba cigar, but they didn't have the money to buy it, to purchase it. The reason was because that they only sold it at the diplomatic market and the diplomatic store and the hotels, specifically those four hotels.

Q. In 1975, who could buy from the diplomatic stores and the market?

A. The diplomats, the foreign companies and the workers or employees of the diplomats or the foreign companies. And some foreigners invited by the government, exceptions, they would come to the diplomatic market with a special permit from Cubalse to purchase some of these cigars for gifts.

Q. Do you have knowledge as to how many people this would be at approximately 1975?

THE INTERPRETER: I'm sorry?

Q. When the sales of Cohiba increased in 1975, you said they approximately went up 50 percent; is that correct?

A. Maybe a little bit more. Approximately.

Q. Were the Davidoffs also going up in sales?

A. No, they remained the same, although they went down a little bit.

Q. And what about the Partagas; did they increase?

A. No. The only one that increased was Cohiba and especially Lanceros.

Q. Did the other cigar sales drop?

A. A little bit.

Q. Did they drop by 50 percent in total?

A. No, less than that.

Q. Was there an increase of people coming into the store?

A. The only stores that I know about were the diplomatic market, the diplomatic store and the hotels, and the reason is because I studied very close to that, to those places, my university that is.

Q. In 1975, did they sell the Cohiba cigar in places other than the hotels, the market and the store?

A. I don't have knowledge. The knowledge that I have of sales of cigars is only the diplomatic market, the diplomatic store, Hotel Nacional, Hotel Capri, Hotel Riviera, Hotel Havana Libre.

Q. Approximately how many cigars did you sell to the hotels each week?

A. I couldn't tell you exactly.

Why do I know that the sales increased? Because one of my obligations, functional obligations as a buyer would be that on the floor where they would keep the cigar, it was kept with the correct weather, it would be fully furnished.

Why is it that I know that it increased? Because I would go there generally on Mondays and Thursdays. Sometimes they would even call me on Wednesdays and sometimes they would call my on Fridays because they would tell me that they were running out of them. They would let me know that I should come over and

bring them more because they were running out of them.

Q. This was for the stores or the hotels?

A. No, we're talking about the diplomatic market and diplomatic stores.

The stores in the hotels, they would be furnished by the diplomatic market and the diplomatic store. They would sell to the stores directly.

Q. So the cigars that you brought to the market were actually then transferred to the hotels?

A. I would bring it to them. That was my obligation. They would take care of their deals.

Q. So you're the buyer for the market; is that correct?

A. For the market and the diplomatic store, and those belonged to Cubalse, but the hotels did not belong to Cubalse.

Q. So the hotels came in to your market and purchased cigars?

A. Cigars.

the 50 or the 60, I could only give you half of that because I don't have enough.

Therefore, I would go nearby or behind Capitolio, the capitol building, right next to the factory H.Upmann. There was a store called Amistad, and I would go there and they would give me quantities, but this was an exception when they would do that.

MS. DEWEY: He would go to the Armistad? Is that what --

THE INTERPRETER: Amistad.

BY MS. DEWEY:

Q. What is Amistad?

A. I called it Amistad, but this is a place where they also sold cigars and cigarettes and they had tobacco there.

Q. Did you buy Cohiba cigars from Amistad?

A. Sometimes they had them there. When I didn't have, I would go there or I would go to El Laguito.

Q. Is Amistad a factory that produces cigars?

A. No, it is not a factory. It's a

selling point. It's a store where they sell, a salon where they sell this.

Q. Who owns Amistad?

A. At that time it belonged to the head company of Cubatabaco.

Q. So in 1975, the market and the store were not the only places that sold Cohiba; is that correct?

A. It seems to me that that place where I would go, it was not a place where they would sell retail. In other words, it was wholesale.

Q. Who could buy from Amistad?

A. Well, I know that I would go there to buy mainly because I would come from Cubalse. This was an exception. That's when they would not have anything at El Laguito. This would only happen once or twice in a year. They would have stock in there so that I could complete my order.

Q. Going back to the records, are you aware of any documents that would reflect the number of Cohibas sold from 1975 to 1981?

THE INTERPRETER: I'm losing you. I need to stop. I'm sorry.

MS. DEWEY: Sure.

THE INTERPRETER: I'm getting tired, that's why.

MR. DOWNING: Answer that question and then we'll take a break.

THE INTERPRETER: I'll try.

MS. DEWEY: That's all right. I can pick right up where I left off before. She'll read it back.

You have it on the record, right?

(Recess is taken.)

MS. DEWEY: We're going to start with you. Could you read back the last question for me, please?

(Question was read back as follows:

"QUESTION: Going back to the records, are you aware of any documents that would reflect the number of Cohibas sold from 1975 to 1981?")

A. If it exists, I have no knowledge. But if they do exist, they must be at El Laguito or at the diplomatic market or at the head office of Cubalse, because I would write it down in my diary and I would throw away my diary at

the end of each year.

MS. DEWEY: To the extent that these records may exist that he just mentioned, either at Cubalse or the other two places, the head office of Cubalse and El Laguito, we ask that these be produced.

BY MS. DEWEY:

Q. Have you seen any records which reflect the sales of Cohibas other than your notebook?

A. Well, not except for those bills that I would sign at El Laguito, or on certain occasions when I would go behind Capitolio at that place called Amistad, I would go there once or twice a year and I would sign a bill.

Q. When was the last time you saw these records?

A. It is not that I see these documents. Only at the moment when I would go over there and I would ask them give me a certain amount of boxes of these or that, and I would sign for them. I would sign one of the bills for the manufacturing company of El Laguito and the other for the truck driver so that he could go

and pick them up. That's the reason why I say that they must be at the manufacturing place at El Laguito, either that or at the store, at the diplomatic market or the diplomatic store.

Q. So the last time you saw these records are when you signed off on them; is that correct?

A. I would sign them and then I would keep one of the copies, and since it was nearby, I would just go over to the place and I would go to the persons or the truck drivers. I would tell them, "Here is the bill. Go and get them."

Q. So the last --

MS. DEWEY: Let me rephrase because I think he's not understanding.

BY MS. DEWEY:

Q. The last time that you saw these documents that you're referring to was back when they were created in 1970 through '81; is that correct?

A. That's correct. After that, I don't know.

Q. Okay.

MS. DEWEY: And to correct the record,

Q. I'm going to refer to Defendants' Exhibit 97 and ask that you open that up, please, to page 1.

(Witness complies.)

Q. Did you prepare this document?

A. No. Deborah came with another attorney from Habanos. They asked me to remember certain things and they said, "Oh, yes, you worked at Cubalse."

And I did say to them, "Well, yes, I did work at Cubalse about 1975 when I was just beginning my career."

Q. Did you read the statement?

A. Yes, of course. I am an attorney. Without reading, I would not sign it.

Q. Was everything in here accurate to the best of your knowledge? I mean was it accurate?

A. Here No. 3 where it says -- it says here that diplomatic market Nautico is one of the installations of Cubalse and the only, and the only one in the years '73 to '81 that they were selling cigars in Havana city.

What I wanted to say was as a market,

as a market it was the only one, but they were also selling them at the diplomatic store at the same time that they were selling the cigars from the diplomatic market towards the hotels; Hotel Nacional, Riviera, Capri and Havana Libre.

So now that I am looking at this carefully, I can see it and it's not the only one.

What I meant to say was that as a market, it was the only one.

Q. Turn to the next page, please.

(Witness complies.)

Q. Just verify, is that your signature?

A. Yes, of course.

Q. And did you read this document before you signed it?

A. Yes, of course. At that time in 1997, yes, I did.

Q. Why didn't you point out the problem that you just pointed out now, that that should have been market, it should have been specified to market?

A. It's because they came to see me and they started making me remember things,

diplomatic market. I didn't even remember. It had been so many years.

I remember at that time I was working with these contracts, contracts that I had with Marina Hemingway, and I didn't want to make them wait. I felt bad to make them wait. They had already waited for me. It had been so many years since I had been disconnected with this.

MR. DOWNING: Can you read that back, please?

(Record was read back as follows:

"QUESTION: Why didn't you point out the problem that you just pointed out now, that that should have been market, it should have been specified to market?

"ANSWER: It's because they came to see me and they started making me remember things, diplomatic market. I didn't even remember. It had been so many years.

I remember at that time I was working with these contracts, contracts that I had with Marina Hemingway, and I didn't want to make them wait. I felt bad to make them wait. They had already waited for me. It

had been so many years since I had been disconnected with this.")

MS. DEWEY: Should we just read back that portion?

MR. DOWNING: No, it's been read back.

MS. DEWEY: But I mean to be translated.

MR. DOWNING: No, it's fresh.

BY MS. DEWEY:

Q. You indicated that you didn't even remember the markets.

Did you remember the numbers of cigars?

MS. EVENSON: I'm sorry. I object. I think that's a mischaracterization of what he said.

BY MS. DEWEY:

Q. You indicated that you didn't recall the names of the markets that were selling the Cohiba when they came to you; is that correct?

A. What I did I say that I didn't remember?

MS. DEWEY: Could you read back that one portion?

MR. DOWNING: And have it translated, please.

THE INTERPRETER: Question and answer?

MS. DEWEY: The whole thing.

THE INTERPRETER: I'm confused. Tell me what you want me to translate.

MS. DEWEY: She's going to read back the portion about what he didn't remember. He said, "What don't I remember?"

THE INTERPRETER: Okay.

(Record was read back as follows:

"QUESTION: Why didn't you point out the problem that you just pointed out now, that that should have been market, it should have been specified to market?

"ANSWER: It's because they came to see me and they started making me remember things, diplomatic market. I didn't even remember. It had been so many years.

I remember at that time I was working with these contracts, contracts that I had with Marina Hemingway, and I didn't want to make them wait. I felt bad to make them wait. They had already waited for me. It

had been so many years since I had been disconnected with this.")

(Interpreter translated.)

BY MS. DEWEY:

Q. So hearing that, what did you mean when you said, "I didn't remember"?

A. When they came there, when they came to talk to me, that is Deborah and Garrido, the attorney, they asked me, they asked me, "Are you Jose Manuel Valdes, the one that worked at Cubalse" at such and such a date, and I said, "Yes, that's me."

They asked me, "What do you remember? What do you remember about the Cohiba cigars?"

Therefore, it had been so many years, so it took me about five minutes. I started remembering things. I wanted to remember things. I remembered about the Indian very well. I didn't remember about this, but the Indian I remember very well. But I couldn't remember the names. I remember that there were three types. Later on I started remembering names.

Q. Did you remember the name of the

store that you sold Cohibas in?

A. Yes. To be able to go to Marina Hemingway, first of all, I live on Malecon near El Paseo, so when I go to Marina Hemingway --

THE WITNESS: In my car (In English).

A. In my car, sorry, I take Malecon all the way down to Fifth Avenue, Quinta Avenida. I pass right by diplomatic store, which is Fifth, or Quinta, and 42.

I pass by also the diplomatic market, the old diplomatic market, the Nautico. That's the old one because now they moved. And I have stopped by there, the diplomatic market, to buy, because now I can buy there and that's because the dollar is being -- is not penalized anymore. At that time the dollar was penalized. In other words, the dollar was not circulating in Cuba. Now the dollar is circulating in Cuba. In other words, both the national coin and the dollar are circulated in Cuba now.

Q. Going back to the records, what you recalled, when Debra and Mr. Garrido, when Ms. Evenson and Mr. Garrido came in and asked you to recall things, did you recall the number

of cigars that were produced, the number of Cohibas?

A. You mean the ones that I would buy?

Q. Yes.

A. At that very moment, no, I couldn't, but then I started remembering things. But what I am clear about, and I was always clear about this, in the very beginning I began with very small amounts, and then after the Indian came out towards the end of 1975, the sales increased a lot. That, I am very clear about that.

Q. Okay. Did you remember in paragraph six where you stated --

MS. DEWEY: And I'm reading from his declaration.

BY MS. DEWEY:

Q. -- quote, "I estimate that 300 to 400 boxes, each containing 25 cigars of Cohiba cigars were sold by the Diplomercado Nautico each month in the years 1975 through '81."

Did you recall that?

THE INTERPRETER: Interpreter speaking. I'll tell you why I got confused with your question, because what you just

mentioned, a couple of those words don't appear here. That's why I got confused.

MS. DEWEY: Which words don't appear?

THE INTERPRETER: Twenty-five. When you say "each containing"?

MS. DEWEY: Yes.

THE INTERPRETER: It doesn't say that. You're looking at No. 6, right?

MS. DEWEY: Yup.

THE INTERPRETER: That's why I got confused, because it doesn't say that. It doesn't mention the 25 in each box there.

MS. DEWEY: It does say the 300 to 400 boxes.

THE INTERPRETER: Yes, that it does, but not the 25.

MS. DEWEY: Okay. With that on the record, there is a translation difference.

THE INTERPRETER: I thought it would make a difference to you so that's why I mentioned it.

MS. DEWEY: Did he remember in 1970 -- I'm sorry. Strike that.

BY MS. DEWEY:

Q. Do you remember in 1997 when you signed this, whether this was a correct estimate, 300 to 400 boxes?

A. Approximately, yes, because of the size of the selling floor, on the floor. I started remembering the size of the floor.

Q. And you testified today that the boxes had 25 cigars in them; is that correct?

A. Yes.

Q. You also testified today that the sales were almost double what is in paragraph six?

THE INTERPRETER: I missed something in that question. I'm sorry.

BY MS. DEWEY:

Q. You also testified that the sales of Cohiba cigars are almost double as to what is put down in paragraph six?

MS. EVENSON: Objection. I think that's a mischaracterization of his testimony.

BY MS. DEWEY:

Q. You testified that sales of Cohibas in 1975 twice a week were approximately 50

boxes, 40 boxes for a second type and 5 boxes.

A. Mondays and Fridays.

THE INTERPRETER: I'm sorry. Thursdays.

BY MS. DEWEY:

Q. That number is very different from the 3 to 400 boxes.

Was your memory better when you wrote this and when you signed your name to it or is it better now? Which one --

MS. EVENSON: I'm sorry. The paragraph says '75 to '81.

MS. DEWEY: '75 to '81. That's what we were talking about.

A. The same. The same.

Q. The numbers are the same?

A. More or less. Right now I'm not clear about this, because at that time I was surprised by the visit. So I started thinking about this. So many years. I started thinking about the size of the floor. I started remembering names.

What I am very sure, very clear and I will repeat it again here, that in the beginning, the amounts were small amounts, and

then later towards the end of '75, later when the prime minister was seen smoking with that new seal or ring different from this one here, there was a change, there was an increase, a boom. Of that I am clear, very clear.

Q. Okay.

A. Since I am here.

Q. Why didn't you refer to the boom in your declaration and to the increase?

A. Well, I don't know. I don't know. Aside from that, they did not ask me about it, so I don't know.

Q. So the numbers 300 to 400 boxes in paragraph six, is that an accurate estimate?

A. It's an approximation. Maybe it's a little bit more or maybe a little bit less. If I say exact, it would be a lie, but it's within that range.

Q. At the time you made this declaration, did you remember about the boom and the increase?

A. I didn't remember it, no.

Q. Why not?

A. Because to me, the most important

thing was that I was buying Cohiba cigars in 1975. I didn't give too much importance whether it was more or less the quantity, but the important thing was that I did buy.

Q. When did you remember about the boom and the increase?

A. When we would talk with friends, with friends from Cubalse, coworkers, such as Mariano Rojas. It had been many years since I had not seen him. I passed by just to say hello. I said, "How are you doing. It's been so many years I have not seen you." So both of us started talking and we started making comments about those years.

Q. Was this recently?

A. No. This was in the beginning when I found out that possibly I might have to come to testify. Towards the end of 1997 or '98 when I started.

Q. But after you made this statement, after you made this declaration?

A. After I made this statement I saw him, because sometimes I would pass by there. I would see other workers that used to work there

at the time. I even saw a female worker that worked there, I don't remember her name, and she told me that Mariano is at 70 and Third right now.

Q. Who is -- what does Mariano Rojas do? What is his business?

A. Do you mean what he used to do or what does he do now?

Q. What does he do now?

A. Now he's at the new diplomatic market on 70th and Third or First. Around there.

MS. DEWEY: Could you clarify that? Because I understand that as he is a market. Is he a director there or a buyer?

THE INTERPRETER: You mean Rojas?

MS. DEWEY: Yes.

THE INTERPRETER: I'm confused now.

MS. EVENSON: Why don't you ask him to clarify what was Mariano Rojas.

BY MS. DEWEY:

Q. Could you state first again who Mariano Rojas is?

A. Mariano Rojas at that time when I used to buy the cigars, he was the head of the

floor, the one that would ask me for the cigars, him and Socarras. He was his helper when he was not around, when he would not come around or when he was ill. Those two persons.

Q. At this time what does Mariano Rojas do? What is his position?

A. After this I only saw him once there on 70th. I don't know if he's still doing the same thing. He keeps on working at the diplomatic market. I don't know if he's there, but I stopped by for a little while to say hello.

Q. And at that time when you stopped by, you discussed the boom in cigars -- strike that.

At that time when you stopped by and spoke with him, did you discuss the cigar boom of 1997 relating to Cohiba?

A. We talked about everything, just reminiscing the old days. I told him that he was getting a little bit fat. That's when I was thinner.

Q. In paragraph three you stated that the Diplomercado Nautico was among the establishments of Cubalse and it was the only

one which sold tobacco in the years 1975 to 1991 in the City of Havana.

A. I'll repeat it again. I think I said it about 15 minutes ago or so. What I wanted to say was that it was the only market.

I will repeat it again. It was a diplomatic market and a diplomatic store and the four hotels; Havana Libre, Hotel Rivera, Hotel Nacional and Capri.

Q. When you read this over before signing it, did it occur to you that there were other places that the Cohibas were sold at?

A. No, I didn't think because it had been so many years. I just stuck to this, the truth of what's being written here.

Q. Did you prepare this document or did someone prepare it for you?

A. No. Debra, the other attorney, Garrido, they were asking me questions and they were taking notes, and then later on before signing, of course I had to read it first. Because it had been so many years, I don't remember all of that.

Q. What didn't you remember?

A. But now throughout all of this, I didn't remember that there was an increase.

What I do remember and I was certain to this, that in the very beginning when I started, in 1975, I did buy Cohiba cigars.

Q. What made you remember about the cigar boom in 1975?

A. Well, one of the things, first of all, once you get home, when you're home, days later you start thinking and you start remembering, and I started thinking what happened at the time. I started remembering this happened, such and such a thing happened.

Then also when I saw Mariano, when we started remembering those old times from so many years ago, he would laugh, because sometimes when I would go there on Mondays and Thursdays, sometimes I was not around so he would just leave me a message over the phone. He would call me and he would say, "This is an emergency. We are out of this. Come over. We need this," and we would laugh about it.

Q. How often did you place orders for the Cohiba cigar?

extraordinary visitors and he would call me before Mondays and before Thursdays. He would call because he would not have enough for such dates.

Q. You are indicated the floor was 50 percent of something. I just want to be clear.

Was that 50 percent was devoted towards tobacco and cigar sales or just cigar sales?

A. No. That was my point of view. In other words, my starting point, my own starting point.

Q. Did Rojas place orders with you?

A. He would ask me, sometimes he had these special visits. For example, people from the hotels aside from what I would see myself. I couldn't tell from what the hotels were asking him. That was his business. So I would tell him it's about 50 Lancero boxes.

So he would say to me "No, because they called me from Hotel Rivera" or some other hotel, so he would tell me, "No. Bring more."

Q. How many times a week did he call you and ask for cigars?

A. These were exceptional things, on certain occasions when he would get calls from the hotels, but I had nothing to do with that. He would deal with those business. The hotels were his business.

Socarras would call me more than Mariano would.

Q. Was it one time a month, two times a month?

A. You can't judge it by that. Sometimes he would call me once in a week, sometimes twice in a week.

MS. EVENSON: At the end he said something else. "Sometimes not at all."

THE INTERPRETER: Okay. I'm sorry.

A. Sometimes not at all.

Q. So Rojas would call you once or twice a week if he needed cigars for the hotels?

A. I would only see what I would see on the floor, whatever need ed for the floor, but he wanted more for the hotels.

Q. But he would call you?

A. Yes, he would call me there to Old Havana.

(Recess is taken.)

BY MS. DEWEY:

Q. When did the store at Fifth and 42nd open?

A. When I began working, I heard that it had been for years. I don't know how many years.

Q. When did they start selling Cohiba cigars?

A. When I began in March of '75, the other buyer, Rolando, the one that I took over for, he was already selling when we did that exchange of our positions. He told me that it had been a long time, I don't know how many years since he had been buying them.

(Witness complies.)

BY MS. DEWEY:

Q. Paragraph four Mr. Rojas stated that, "In the decade of 1970, the Diplomercado Nautico was the only supermarket in the City of Havana which served diplomatic personnel."

A. It was the only market, yes.

Q. When you spoke with Mr. Rojas, did he mention why he didn't refer to the other entities that sold Cohiba?

A. No. Other entities, we did not talk about that. We talked about the times, we did not talk about other entities.

Q. Thinking about it now, do you recall why you didn't mention the other entities in your declaration?

A. The other ones? You mean such as the diplomatic store, like that?

Q. Correct.

A. Because most of the sales of the Cohiba cigars was at the diplomatic market, at the market at Nautico, in that area. At the diplomatic store on Fifth and 42nd there were small amounts. It was not that significant.

The reason why they were small amounts and they were not significant? Because you buy shoes and clothing only once in a while, but the food you buy at the diplomatic market, that's every day.

Q. In your declaration, why did you say it was the only establishment that --

MS. EVENSON: Sorry. You asked that question twice and he answered that question twice.

MS. DEWEY: I don't recall an answer to that specific question.

MS. EVENSON: If you read the record...

MR. DOWNING: Can you read the last answer back?

(Answer was read back as follows:

"ANSWER: Because most of the sales of the Cohiba cigars was at the diplomatic market, at the market at Nautico, in that area. At the diplomatic store on Fifth and 42nd there were small amounts. It was not that significant.

The reason why they were small amounts

and they were not significant? Because you buy shoes and clothing only once in a while, but the food you buy at the diplomatic market, that's every day.")

BY MS. DEWEY:

Q. At the time you signed the declaration, did you have any memory of the sales at the 42nd Street store?

And I'm referring to sales of Cohibas.

A. I remember the very first thing that came to my mind was diplomatic market because the sales were more significant.

THE INTERPRETER: I'm having problems concentrating. I'm getting tired.

MS. DEWEY: We'll wrap it up in the next couple minutes.

BY MS. DEWEY:

Q. What was the time frame of the preparation of this declaration to the time when you signed it?

THE INTERPRETER: I lost it. I'm trying hard, believe me.

MS. DEWEY: Let me rephrase it. Maybe

it will make it easier.

BY MS. DEWEY:

Q. When Ms. Evenson and Mr. Garrido came to you and asked you to sign a declaration, what was the time frame between you talking to them and them preparing this document which you signed?

A. I don't remember. Yes. In a week, maybe less.

Q. So they talked to you --

A. Just a few days.

Q. Did you have a chance to review the declaration before you signed it?

A. It happened like this: "Take a look to see what she said is correct here" and things like this, and I signed it.

Q. So the time frame is a week had gone by before you actually signed the document?

A. More or less. Maybe two days less or maybe two or three days more. I don't know. It's more or less. I don't remember. I didn't think any more about this because my desk was filled with papers and contracts that I had to deal with. At Marina there is only one

attorney; therefore, I have a lot of work.

Q. Did you recall anything over the week that was different or that you wanted to add into the declaration?

A. No, because I signed it and then I just got rid of it from my mind. I did not think that it was going to go all the way to this.

Q. How did you remember the other entities that sold Cohiba cigars? Did someone help you remember how many, you know, entities were out there that sold cigars?

A. No. You know that memory is the same as a muscle. You exercise it and you start thinking. You start thinking, you start thinking at home carefully and then you start remembering things.

Q. Look at paragraph six of your declaration, please.

(Witness complies.)

Q. Did anyone help you remember the figures that you have written down in paragraph six?

A. No, not at any moment did anyone help

me to remember. With honesty and I will repeat again the way that I sweared here, I don't even remember how I swore. They just told me think and remember and I started remembering. More or less at that moment what I remember is what's here. If it would have been any different or the contrary, I would have told you right here. There is no problems with that.

Q. And what you remember today is different.

Can you explain why it's different?

MS. EVENSON: Excuse me I think that's a mischaracterization. I don't know whether he's remembering different.

BY MS. DEWEY:

Q. The numbers that you gave us today are different than the numbers that you wrote down in 1997.

Can you just explain to us why?

MS. EVENSON: I object.

Would you explain why they're different?

MS. DEWEY: Well, if you do the math, 25 boxes or 50 boxes, it doesn't come out to

300 per month.

MS. EVENSON: 50 of Lanceros and 40 of Especiales and 5 of the others comes to approximately between 3 and 400 a month.

MS. DEWEY: Right, but then it increases 50 percent. This number stays the same.

MR. DOWNING: Off the record.

(Discussion off the record.)

BY MS. DEWEY:

Q. The numbers that you have written down on the declaration in 1997, is this the same as the numbers that you told us today that you sold?

A. I suppose that they are the same. I haven't stopped to think precisely about this.

Q. Well, look at paragraph six and tell me if those numbers are accurate.

(Witness complies.)

A. I cannot tell you whether they are accurate. I always did say that it's possible that they could be a little bit less or a little bit more. It's only an approximation after so many years.

Q. At the time you gave it, was that approximation accurate and correct, what you believed?

A. Well, I never think that approximations could be exact or accurate, but what I can remember is that when I began with this design, the Cohiba cigar was not known. The sales were just routine sales. In other words, I would go there on Mondays and Thursdays. In other words, Mariano or Socarras never did call me.

But then towards the end of '75 when the design changed and then Fidel's photograph appears on television and in the magazine and all of that, yes, that's when there was a boom, there was that notable change.

Q. Do you agree with what you wrote in paragraph six today?

A. I think so. I'm not calculating amounts, whether it's 4 to 5 weeks, 40 or 60. I don't know if this would be the total amount. I don't know. More or less. I'm saying maybe a little bit less, maybe a little bit more.

Q. You indicated that under exceptional

"QUESTION: Did you give out any authorizations or permits to individuals to buy Cohibas?

"ANSWER: Are you asking me if I saw them personally? No. That had to do with Mariano and Socarras only, because I would ask them, "Why did this finish so quickly?" In those conversations that we had on Mondays and Thursdays, I would ask, "What happened?"

That's when they would tell me, "Well, we received authorizations from the embassies," such as the French embassy or this other embassy, X type of authorizations, et cetera, et cetera.")

BY MS. DEWEY:

Q. Hearing that, my question to you is --

A. I already know. It's not that they were diplomats, it was foreigners from those countries such as France or so, but it's not that they were diplomats. What would happen is that all these embassies have their events, like their national events that they celebrate, and

even though they may not be diplomats, they wanted to celebrate them just the same.

Q. So these were nondiplomatic tourists that were coming in with permits?

A. They were personalities invited by the government, and then they would go to the head office of Cubalse so that they could get some sort of authorization or papers.

Q. Did there ever come a time when tourists could buy from the market and the store?

A. At that time, no.

Q. When could they start buying? I want to finish. Strike that.

When could tourists start buying Cohiba cigars at the market and the store?

A. At the time when I was a buyer of Cubalse, from '75 to '81, when I left, when I graduated and then I went to the attorney general's office in 1981, up to that time they were not able to do it.

After that time I don't know. But I repeat it, during that time, the diplomatic corps, the foreign companies, the embassy

workers and the workers from those foreign companies and the special authorizations.

Q. Did any U.S. citizens purchase Cohiba cigars in the time frame of 1975 to 1981 in Cuba?

A. I couldn't tell you. It seems to me that no, they couldn't. I couldn't affirm this, but I don't think they could, because there were foreigners there. I couldn't tell who were they. For instance, they would speak English, not necessarily American foreigners.

MS. DEWEY: Thank you very much for your time.

MS. EVENSON: Before we stop, I have two or three questions.

THE WITNESS: It is my obligation --

MS. EVENSON: Wait. I'm not finished.

EXAMINATION BY

MS. EVENSON:

Q. Mr. Valdes, could tourists buy cigars in Cuba in 1975?

A. No. I repeat it again, tourists could not buy. The tourists could buy at the hotel.

Q. Okay. So you're saying tourists could buy cigars at the hotels?

A. That's what I understand, because the hotels would buy from Mariano and Socarras for the hotels, and tourists would go to those hotels. I could not affirm this, but I suppose this.

Q. Did you ever personally see Cohiba cigars on sale in the hotels?

A. Only at Havana Libre Hotel.

Q. Did you enter the Havana Libre Hotel and see the cigars on sale, the Cohiba cigars on sale?

A. During that time from '75 to '81, I worked and I also studied law at the university. Havana Libre Hotel is very close to the university, it's approximately four blocks away from it, and I would pass by and you can enter, anybody can enter, and that's where I saw them, in the store at the Havana Libre. And tourists were buying them there not just Cohiba, but other brands, other products.

Q. Were the Cohiba cigars displayed at the diplomercado and the diplotienda?

A. They had these window displays. They would open the boxes and they would display them in those windows.

MS. EVENSON: Thank you very much.

MS. DEWEY: One more question.

FURTHER EXAMINATION

BY MS. DEWEY:

Q. Do you know how many tourists purchased Cohiba cigars at the hotels?

A. I have no idea. I have no idea. I know that they would buy. I don't know the amount.

Q. Are there any photographs of the displays that were at the mercado or the store?

A. I don't know. It would be interesting to see whether they have some at the hotels or at the diplomatic market or the store. I suppose that there might be.

Q. Would these be photographs of the displays now or back then that you are referring to?

MS. EVENSON: I object to the form.

A. No. I suppose in reference to those times.

Why is it that I suppose? I will repeat it again. Towards the end of '75, September to December, there was a boom, a very significant boom, and the person that would smoke a Cohiba cigar would be significant or an important person. It was in everybody's mouth. Everybody was talking about it. The personalities were talking about it. They would ask you what did you smoke.

Q. This is my last question. You have to answer in ten words or less.

Do you know of any photographs of the displays back from 1975-'76, through 1981 that are still in existence today?

A. It seems to me that there must be.

Q. I have to ask another question.

A. Because the boom was very significant.

Q. Where would these photographs be?

A. At the hotels that I mentioned before. I'm not being exact about this. I'm supposing that they must be around.

Q. Have you seen any of these photographs?

A. I have not seen them, but I'm supposing that since this was such a significant thing.

Q. You mentioned personalities talking about Cohibas.

Do you remember which personalities specifically?

A. Well, I don't know. I remember some of the embassies, such as Algiers. I'm remembering at that time, from '75 to '81, both personalities and nonpersonalities, big or medium or not big. There were these personalities that would come to Cuba. They wanted to get or smoke Cohibas.

Q. Specifically could you name one of the personalities that you're referring to?

A. No, because the big personalities or dignitaries or head of states of other countries, I suppose that the gifts were done through governmental offices or the government of the republic I suppose.

Q. Did you recognize any of these personalities, like President Kennedy --

MS. EVENSON: I don't think he was in

Cuba.

MS. DEWEY: I know. Strike that.

BY MS. DEWEY:

Q. Do you have any independent knowledge --

MS. DEWEY: Could you read that back?

(Question was read back as follows:

"QUESTION: Did you recognize any of these personalities, like President Kennedy -- ")

BY MS. DEWEY:

Q. Did you recognize any of these personalities?

A. In which way? Do you mean smoking the cigars?

Q. Yes.

A. In some magazine, but I couldn't tell you a lie because I don't remember.

The one that I do remember is Fidel Castro.

Q. Do you have any independent knowledge about the gifts that you referenced in your last answer?

A. Sometimes I would go to purchase

cigars. For example, I would go to the diplomatic market on Mondays. I would go to the diplomatic market and diplomatic stores on Mondays and Thursdays. Sometimes I would purchase a small amount, but then sometimes I would notice that they had sold much less than half, and then through conversations with Rojas and Socarras, I would ask them, "Why have you sold so much?

They would tell me, well, employees from such and such an embassy came here. I don't remember who, because ministers of heads of state came to have interviews with the government of Cuba and some X embassy had come to purchase, I don't remember which embassy, and they would tell me amounts; exceptional amounts, not the normal amounts. That's what I could remember.

Q. Were these amounts gifts?

I'm trying to tie together your knowledge about the gifts and I'm not sure I'm understanding your answer, so let me rephrase my question.

Do you know of any gifts that were

given in Cohiba cigars?

MS. EVENSON: Excuse me. I object. You want to ask him does he have personal knowledge?

MS. DEWEY: Exactly.

MS. EVENSON: And are you asking him about personal knowledge? Because if you're asking him of his knowledge, you're going to keep getting the same answer.

BY MS. DEWEY:

Q. Do you have any personal knowledge of gifts of Cohibas that were given to foreign dignitaries?

A. Yes, through conversations with some of the employees from the embassies that I would see there. I remember two cases that I remember very quickly right now; Salvador Allende in his visit and Hovari Boumediem. That's what I can remember right now, the president of Algiers and the president of Chile.

Q. Were you present when these gifts were given?

A. No, no. I just overheard it.

Q. When did Salvador Allende visit Cuba?

A. I am very clear of what you're asking. I think he was in '71, but this is what I overheard in conversations and this was before I started in 1975. These were conversations that I heard, I overheard.

Q. And these conversations were in 1975?

A. Talking with them, when I would arrive there at the diplomatic market, I would talk there with Mariano or Socarras or other employees there. We would just start talking.

Q. Am I correct when I say you don't have any personal knowledge of the gifts that were given out, you only have knowledge of what people have spoken to you?

A. Correct.

MS. DEWEY: Thank you very much.

THE WITNESS: Thank you.

(Time noted: 6:15 p.m.)

_____

JOSE MANUEL VALDES MARTINEZ

Subscribed and sworn to before me this ___ day of _____, 2001.

_____

1

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK)

5 : ss.

6 COUNTY OF NEW YORK)

7

8 I, ANNETTE ARLEQUIN, a Shorthand

9 Reporter and Notary Public within and for

10 the State of New York, do hereby certify:

11 That JOSE MANUEL VALDES MARTINEZ, the

12 witness whose deposition is hereinbefore

13 set forth, was duly sworn by me and that

14 such deposition is a true record of the

15 testimony given by the witness.

16 I further certify that I am not

17 related to any of the parties to this

18 action by blood or marriage, and that I am

19 in no way interested in the outcome of this

20 matter.

21 IN WITNESS WHEREOF, I have hereunto

22 set my hand this 23rd day of January, 2001.

23

24 ----------

ANNETTE ARLEQUIN, CSR, RPR

25 My commission expires:6/30/02

1

2 ---------- I N D E X ----------

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	MS. EVENSON	115

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8

9 ---------- DOCUMENT REQUEST ----------

PAGE 69	Documents that would reflect the number of Cohibas sold from 1975 to 1981
PAGE 70	Records

13 ---------- EXHIBITS ----------

DEFENDANTS'	PAGE
Defendants' Exhibit 97, declaration of Valdes dated 11-11-97	20
Defendants' Exhibit 98, Declaration of Rojas	98

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

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner,	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC. Respondent.	:	

PARTY DESIGNATIONS*: Petitioner's Designations During Its Trial Period—Yellow or Pink
Respondent's Designations During Its Trial Period—Green
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

Designated Federal Action Discovery Deposition
Transcript of Michael E. Withey, dated May 22, 2001

* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMPRESA CUBANA DEL TABACO
d.b.a. CUBATABACO,

Plaintiff,

vs.

CIVIL ACTION NO.
97 Civ. 8399 (RWS)

CULBRO CORPORATION, and
GENERAL CIGAR CO., INC.,

Defendants.

COPY

DEPOSITION OF MICHAEL E. WITHEY

Taken of behalf of the Defendants

May 22, 2001

BE IT REMEMBERED THAT, pursuant to the Washington Rules of Civil Procedure, the deposition of Michael E. Withey was taken before Cassandra E. Ellis, a Certified Shorthand Reporter, and a Notary Public for the State of Washington, on May 22, 2001, commencing at the hour of 11:30 a.m., the proceedings being reported at the Law Offices of Stritmatter Kessler, 200 Second Avenue West, Seattle, Washington.

Job No 121953

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DIS C.38

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17 .

18 .

19 .

20 .

21 .

22 .

23 .

24 .

25 .

1 Seattle, Washington;
2 Tuesday May 22, 2001
3 11:30 a.m.
4 MICHAEL E. WITHEY
5 having first been duly sworn, was examined and testified
6 as follows:
7 EXAMINATION
8 BY-MR.DOWNING:
9 Q. State your name and business address?
10 A. Mike Withey, 200 2nd Avenue West, Seattle,
11 Washington 98119.
12 Q. What's your current occupation and position?
13 A. Attorney.
14 Q. How long have you been an attorney?
15 A. Twenty-nine, thirty years.
16 Q. Trial attorney?
17 A. Yes.
18 Q. And you understand a deposition, so I won't
19 take the time to explain it. I'm going to mark your
20 subpoena as defendant's -- I'm going to mark your
21 subpoena as defendant's Exhibit 161, I'm going to mark
22 your business card as defendant's Exhibit 162, and I'm
23 going to mark some biographical information that I got
24 off you -- got about you -- off the internet as 163.
25 Are you appearing here today pursuant

1 regarding use of the COHIBA mark, which is why I'm here.
2 They have indicated that you may be a trial witness in
3 this action.
4 When was the first time you heard the
5 word COHIBA used in connection with a cigar product?
6 A. 1974.
7 Q. In what connection did you hear that word first
8 used?
9 A. In what connection? I heard the word used in
10 reference to a cigar.
11 Q. All right. Where?
12 A. In Havana, Cuba.
13 Q. How did you first hear it used?
14 A. First heard it used by a Cuban.
15 Q. Why were you in Havana, Cuba, in 1974?
16 A. I was there with state department clearance to
17 study the Cuban legal system.
18 Q. Okay. What Cuban did you -- what Cuban first
19 used the word COHIBA?
20 A. I guess you would call him a concierge in the
21 hotel.
22 Q. Okay. Do you recall what he said or she said?
23 A. It was a gentleman, and I asked about where I
24 could get some Cuban cigars, and he said, well, there's
25 a place down the street. And I couldn't remember where.

1 I didn't buy any at that time, and I said what's the
2 best brand, and he said COHIBA.
3 Q. What hotel is this?
4 A. Hotel Nationale.
5 Q. Is that the first time you heard the word
6 COHIBA?
7 A. I think so.
8 Q. Did you have any knowledge about the COHIBA
9 cigar at that time?
10 A. Not other than what I just said.
11 Q. Okay. Did you purchase a COHIBA on that
12 visit?
13 A. I smoked a COHIBA on that visit, but I don't
14 recall purchasing a COHIBA on that visit.
15 Q. Do you recall if you saw a COHIBA for sale on
16 that visit?
17 A. I believe so, but I can't recall.
18 Q. How did you come to smoke a COHIBA on that
19 visit?
20 A. I smoked a COHIBA after I found out about this
21 -- this brand. I was in the hotel and either the
22 concierge or one of the hotel people gave me -- gave me
23 a COHIBA, and I smoked it.
24 Q. How did you know it was a COHIBA?
25 A. There was a -- there was a label on the cigar.

1 Q. Can you describe the label?
2 A. Not really. I don't recall the coloration.
3 Q. Do you recall what words, if any, were on the
4 label?
5 A. C-o-h-i-b-a.
6 Q. Other than the fact that the word COHIBA was
7 on the label you don't have any recollection of what the
8 label looked like?
9 A. Correct.
10 Q. Okay. Do you recall the size of the cigar?
11 A. Well, it was -- I guess -- I don't know, it
12 was a normal sized cigar, it wasn't bigger or smaller
13 than other cigars I've smoked.
14 Q. Okay. When you say normal size do you have a
15 point of reference?
16 A. I don't. I've never measured a cigar. I
17 don't know, this was about ten inches, maybe eight
18 inches, I'm not sure.
19 Q. Do you recall the next time you heard the
20 words COHIBA used or saw a COHIBA cigar?
21 A. Well, I had heard it when I was in Cuba on
22 that -- on that visit. I mean, later in that visit I
23 heard the word COHIBA cigar.
24 Q. Okay. Can you tell me about the next time you
25 heard the name COHIBA cigar on that visit?

1 A. Not specifically, it was just discussion,
2 talking with people.
3 Q. Do you recall who was involved in that
4 discussion?
5 A. I don't.
6 Q. And do you recall how many people were involved
7 in that discussion?
8 A. A small number, couple, two or three.
9 Q. Do you recall where that discussion occurred?
10 A. It was probably at the Hotel Nationale.
11 Q. Do you recall --
12 A. Around the hotel.
13 Q. Sorry. Do you recall what was said at that
14 discussion?
15 A. Just that Cubans made great cigars and COHIBA's
16 the best of the Cubans, something like that, that was
17 the general discussion.
18 Q. Do you recall who said that?
19 A. No. Well, I had mentioned that this is what I
20 was told by the concierge or the desk person at the
21 hotel.
22 Q. Were these, the people involved in this
23 discussion to the extent you remember, were they Cuban
24 nationals?
25 A. The hotel people were, I assume.

1 Q. But in this discussion you just talked about?
2 A. Yeah.
3 Q. Okay. That you believe they were Cuban
4 nationals?
5 A. I think so. I guess so. They were Cubans.
6 Q. What time of year was this first visit or was
7 this --
8 A. It was in June and July.
9 Q. Okay.
10 A. June and July, 1974.
11 Q. On that visit did you, after you had had the
12 opportunity to smoke a COHIBA, did you see COHIBA cigars
13 at any other time during that visit?
14 A. I don't recall seeing any.
15 Q. When was the next time you heard the word
16 COHIBA used?
17 A. Well, I could have heard it, the word used in
18 the interim, but the next time I had -- well, the next
19 time I had smoked a COHIBA was in 1977.
20 Q. Where did you smoke a COHIBA?
21 A. I smoked a COHIBA in Havana, Cuba, and a beach
22 outside of Havana.
23 Q. What were you doing in Havana, Cuba, in 1977?
24 A. I was -- I gave a paper for the American
25 Association of Jurist's conference.

1 Q. What was the paper on?

2 A. The paper was on the right, under international

3 law and the treaty of Spain for the Puerto Rico -- for

4 Puerto Rico to own and control the submerged resources

5 up to 12 miles of their -- on their coastal areas.

6 Q. Was it a law of the sea conference?

7 A. No.

8 Q. How did you come to smoke a COHIBA in 1977?

9 A. Well, I smoked five of them.

10 Q. Okay. How did you come to smoke five COHIBA's

11 in 1977?

12 A. Well, the first COHIBA I smoked with the head

13 of the Cuban delegation.

14 Q. Who was he or she?

15 A. Duque de Estrada, D-u-q-u-e, then a small d and

16 an e, de, Estrada, E-s-t-r-a-d-a.

17 Q. How did you come to smoke a COHIBA with Mr. de

18 Estrada?

19 A. He gave it to me.

20 Q. Okay. Do you recall what it looked like?

21 A. Yeah, it looked like a cigar.

22 Q. About the same size as the one you described

23 earlier?

24 A. Yes.

25 Q. Do you recall if it had any labeling on it?

1 A. It had a band on it.
2 Q. Did the band say COHIBA?
3 A. As a matter of fact, it did.
4 Q. Okay. Now, you also smoked four other COHIBA's
5 during this visit?
6 A. Yes.
7 Q. Now, do you recall when and where?
8 A. Well, after I -- when, was in October of 1977,
9 where, included -- well, four different locations. I
10 remember three of them.
11 Q. Okay. Can you tell me three of them?
12 A. Sure. One was at the Havana Libra Hotel
13 (phonetic), where I was staying, one was at a bar called
14 Floridita (phonetic), which was in old Havana, and the
15 third was at a -- we went to a concert with Afro-Cuban
16 musicians, and the fourth I smoked somewhere in Havana,
17 but I just don't recall the location, probably to or
18 from one of those sites.
19 Q. Okay. Were all the cigars the same size and
20 same appearance?
21 A. Yes.
22 Q. Okay. Did you see any COHIBA's for sale
23 during this visit?
24 A. Yes.
25 Q. Where did you see them for sale?

1 A. Havana Libra.
2 Q. That's the hotel you're talking about?
3 A. Yes.
4 Q. Where were they on sale at Havana Libra?
5 A. Well, they had a little store Tobacco store
6 that was there. They had other things, newspapers and
7 drinks and stuff, but they had it in the -- in the
8 lower level of Havana Libra as you're going in towards
9 the lobby.
10 Q. Did you purchase COHIBA cigars during that
11 visit?
12 A. Yes.
13 Q. Did you purchase the other four COHIBA cigars
14 that you smoked?
15 A. Yes.
16 Q. Can you describe the display in the Havana
17 Libra?
18 A. Well, it was inside a store. They had, I
19 recall, open boxes of cigars, including COHIBA's, and
20 then they just had them laying out there, and I asked
21 the sales person for four of the COHIBA's.
22 Q. Have you purchased any COHIBA cigars since
23 1977?
24 A. No.
25 Q. Have you seen any COHIBA cigars since 1977?

1 A. I don't think so.
2 Q. Do you have any knowledge about the history of
3 COHIBA cigars?
4 A. No. I mean -- no. I mean, its production
5 facilities or how it came about, I have no knowledge.
6 Q. Do you have any knowledge about the origin of
7 the COHIBA mark?
8 A. No.
9 Q. Do you have any knowledge as to whether or not
10 this is the cigar that Fidel Castro allegedly smokes?
11 A. That's what Duque said.
12 Q. That's Duque de Estrada?
13 A. Duque de Estrada, yes.
14 Q. What did Mr. de Estrada tell you about that?
15 A. He told me that this is the brand that Fidel
16 smoked.
17 Q. Did -- do you have any knowledge about -- did
18 he tell you anything more than this is the brand Fidel
19 smoked?
20 A. It's the brand he smoked.
21 Q. Mr. De Estrada?
22 A. Yes. He said this is a very, very fine cigar.
23 Q. Have you ever met Fidel Castro?
24 A. No.
25 Q. Have you ever seen Fidel Castro smoke COHIBA

1 cigars?

2 A. Well, I haven't seen him, in person, smoke a

3 COHIBA cigar. I've seen pictures of him smoking cigars.

4 Q. Do you know whether or not in those pictures

5 the cigar he was smoking was a COHIBA?

6 A. Well, I didn't see the band on the cigar when

7 he was smoking it, so I didn't have any direct knowledge

8 of it. And based on my conversation with Duque de

9 Estrada I believed it was a COHIBA cigar, but I can't

10 testify to that, myself.

11 Q. Do you have any knowledge regarding this issue

12 other than what Duque de Estrada told you?

13 MR. GROSS: And what else he's

14 testified to from his visit in `74?

15 MR. DOWNING: Well, I'm talking mainly

16 about whether or not this is Fidel Castro's cigar.

17 Q. (By Mr. Downing) Do you have any knowledge

18 about whether or not this is Fidel Castro's cigar, other

19 than what Mr. De Estrada told you?

20 A. Yes.

21 Q. Okay. And what knowledge, what's the extent of

22 that knowledge?

23 A. Well, the first time I went to Cuba, in 1974,

24 it's probably the first time I heard COHIBA and Fidel

25 Castro put together, because it was -- and it was -- it

1 was probably by, again, the same gentleman in the Hotel
2 Nationale.
3 I also, when I was smoking the cigars
4 in 1977, mentioned to other people that I understand
5 this is Fidel -- this is the cigar that Fidel likes to
6 smoke, and I mentioned that to a number of people that
7 were there, and there was general assent, yeah, that's
8 our understanding.
9 Q. Okay. Do you recall who else was there at the
10 time you mentioned that?
11 A. Yes.
12 Q. Who?
13 A. There's a professor of law, Alberto Lopez, and
14 he was at the University of Havana Law School, and there
15 was a gentleman named Orestes, O-r-e-s-t-e-s, Orestes, I
16 don't remember his last name.
17 Q. O-r-s-t --
18 A. O-r-e-s-t-e-s, Orestes or maybe
19 O-e-r-e-s-t-e-s.
20 THE WITNESS: What time is it?
21 MR. DOWNING: Off the record.
22 (Whereupon, a recess was held off the
23 record.)
24 MR. DOWNING: All right, back on.
25 Q. (By Mr. Downing) How many times have you

1 traveled to Cuba?

2 A. Twice.

3 Q. Those are the two times you've talked about?

4 A. Yes.

5 Q. Have you ever seen any advertising for COHIBA

6 cigars?

7 A. I think there was a display, I'm not -- in the

8 -- in the Havana Libra (phonetic), the -- the shop that

9 had COHIBA advertisement. I suppose you would call it a

10 display.

11 Q. Do you recall what it looked like?

12 A. I really don't. I know it had a cigar on it,

13 but I don't know it had a cigar, a picture of a cigar,

14 a box of cigars.

15 Q. Was it a stand up ad or a poster or do you

16 recall?

17 A. I don't. One of those two, probably.

18 Q. Do you recall what it said?

19 A. Other than COHIBA, I don't.

20 Q. Okay. Other than that one time --

21 A. Wait a minute, wait a minute, the word I'm

22 coming -- no, something about a splendido comes to mind,

23 just came to mind, like splendid or something. I --

24 I'm not positive about that, but it seems to link those

25 two.

1 Q. Have you ever done any -- have you ever been
2 employed by Cubatobaco?
3 A. No.
4 Q. Have you ever received any consideration from
5 Cubatobaco?
6 A. No.
7 Q. Have you ever been employed by a company called
8 Havana SA?
9 A. No.
10 Q. Have you ever received any consideration from
11 Havana SA?
12 A. No.
13 Q. Ever been employed by a company called Altadis,
14 A-l-t-a-d-i-s?
15 A. No.
16 Q. Ever receive any consideration from Altadis?
17 A. No.
18 Q. Have you ever been employed by the Cuban
19 government?
20 A. No.
21 Q. Have you ever received any consideration by the
22 Cuban government?
23 A. No.
24 Q. When was the first time you heard about this
25 lawsuit?

1 A. A couple months ago.
2 Q. Okay. How did you hear about it?
3 A. Michael Krinsky called me.
4 Q. Did you know Mr. Krinsky prior to that call?
5 A. Yes.
6 Q. How did you know Mr. Krinsky?
7 A. I've been to the offices of Boudin Rabinowitz.
8 Q. How many times have you been to the office of
9 Boudin Rabinowitz?
10 A. Once.
11 Q. When was that?
12 A. 1970s.
13 Q. Do you recall the purpose for your visit?
14 A. Probably just to say hello to the lawyers
15 there, just to -- a visit with some of the lawyers, one
16 of which was from Seattle.
17 Q. Okay. Do you recall the name of the lawyer
18 from Seattle?
19 A. Elizabeth.
20 Q. Last name?
21 A. Saint Clair, I think it was.
22 Q. Do you know how Mr. Krinsky knew that you had
23 been to Havana and smoked COHIBA cigars there?
24 A. Probably because I told him.
25 Q. Do you recall how that conversation came up?

1 A. Yeah.
2 Q. Can you describe how it came up?
3 A. Well, do you mean how the topic of cigars and
4 Cuba came up?
5 Q. Yes. I guess to maybe short cut it a little,
6 I'm curious as to how Mr. Krinsky came to name you as a
7 potential witness in this case.
8 A. Oh, well, he asked me. He says, "You've been
9 to Cuba, right?" And, I says, "Yeah." And, he said,
10 "Have you ever smoked any cigars there?" And, I said,
11 "Yeah, as a matter of fact, I did." He asked me what
12 brand, I said COHIBA. He asked me the circumstances,
13 and I told him.
14 Q. When did this conversation take place?
15 A. A couple months ago, maybe.
16 Q. And this was in his offices?
17 A. No, this was -- I was in Seattle and he was in
18 New York. He called me on the phone.
19 Q. Do you know how Mr. Krinsky knew that you had
20 been in Cuba?
21 A. I don't know, exactly, how he knew that. It
22 wasn't a secret that I was on the American Association
23 of Jurist's delegation.
24 Q. And that was in 1977?
25 A. Yes.

1 their annual meetings throughout the hemisphere prior to
2 this one.
3 Q. Do you recall if Mr. Krinsky gave a paper?
4 A. I don't know. I don't recall. I just now
5 remembered he was there, so --
6 Q. Had you heard about this dispute prior to
7 talking to Mr. Krinsky about it?
8 A. No.
9 Q. Have you ever done any work for the defendant's
10 General Cigar or Culbro?
11 A. No.
12 Q. Do you have any knowledge regarding the
13 defendant's use of the COHIBA mark?
14 A. No.
15 Q. Are you being paid for your appearance here
16 today?
17 A. Well, not unless you want to pay me something.
18 Q. No. You have to talk to Mr. Krinsky about
19 that.
20 A. No, I'm not being paid. If you don't pay me
21 I'm not being paid.
22 Q. Have you ever seen -- did you ever see any
23 other Americans smoke COHIBA while in Cuba?
24 A. Well, North Americans, I believe one of the
25 people in the delegation came with me to La Floridita

1 (phonetic) and was smoking a COHIBA with me, but I don't
2 remember who it was.
3 Q. Oh, I'm sorry --
4 A. And I believe that some of the Puerto Rican
5 delegates also were smoking COHIBA cigars at the same
6 time.
7 Q. Do you recall their names?
8 A. I recall the names of the Puerto Rican
9 delegation. I don't recall who was smoking.
10 Q. Do you recall how many were smoking COHIBA
11 cigars at the time?
12 A. Oh, I would say probably two or three had
13 been. Who was counting? Yeah, two or three.
14 Q. Was the other individual, the North American,
15 do you know what nationality he or she was?
16 A. He was a citizen of the US.
17 Q. Okay. Do you recall his name?
18 A. I thought it might be Jim Larsen, but I just
19 don't know.
20 Q. Did you --
21 A. Yeah --
22 Q. I'm sorry?
23 A. That's it.
24 Q. Did you ever see any Americans purchase COHIBA
25 cigars in Cuba?

1 with American citizens about COHIBA cigars?

2 A. No.

3 Q. Do you have any opinions as to whether or not

4 Cuban COHIBA cigars are famous in the United States?

5 A. Do I have any opinions?

6 Q. Yes.

7 A. Well, it depends on how you define famous. If

8 you define famous as people who know and smoke cigars

9 they're very famous. If you talk to someone who's, you

10 know, a guy who's never smoked cigars before he probably

11 doesn't know what you're talking about.

12 Yeah, if you went up to someone who's

13 a cigar aficionado, or whatever you want to call him,

14 and say, yeah, I smoke COHIBA cigars, and he will say,

15 yeah, it's a great cigar. It's not -- yeah.

16 Q. On what did you base that statement, what

17 facts?

18 A. Well, I remember more recently, last couple of

19 years, when I went into that smoke -- that place --

20 what you do is you go in there and it's like a room you

21 can smoke cigars in. They sell good cigars. And I

22 remember asking if they had any COHIBA cigars, you know,

23 not expecting them to have it, and they said, oh, no,

24 we don't have any of those. We will give you some

25 Dominicans or we'll give you this. So, yeah, for that

1 group of people that smoke cigars they know COHIBA
2 brand, the Cuban COHIBA brand.
3 Q. Other than that one incident have you had any
4 other experiences which lead you to make that statement?
5 A. Well, I vaguely remember a couple times when I
6 maybe would go to a conference or meet people that were
7 smoking cigars, and I would mention, you know, an
8 experience.
9 I can't remember any specific
10 circumstances. You know, you go to places, conferences,
11 and people smoke cigars. And, I say, yeah, you know,
12 when I was in Cuba, COHIBA, people would say, yeah,
13 that's cool.
14 Q. Do you recall how many times that occurred?
15 A. Couple, two or three, maybe.
16 Q. Am I correct that you don't recall when they
17 occurred or who was involved?
18 A. I remember -- I remember a couple
19 circumstances. Are you interested in that?
20 Q. Sure.
21 A. There was a benefit that I'm on the committee
22 for, it's called the Seattle Emergency Housing Service,
23 and one year we had a benefit that had a theme where
24 there was people smoking cigars and there was, you know,
25 kind of the high class thing.

1 And I think at that event, I don't
2 remember who I mentioned it to, I mentioned it, you
3 know, kind of maybe bragging that I had smoked a COHIBA.
4 And I remember there was some sort of
5 -- the other context would have been 10 to, well, 15
6 years ago, at some sort of trial lawyers meeting. I
7 just remember smoking a cigar with a couple other people
8 and -- and then having some discussion about it,
9 something like that, that would be my best recollection.
10 Q. Okay. And the first event you talked about,
11 the emergency housing event, when did that occur?
12 A. Oh, about four -- four or five years ago.
13 Q. Okay. Other than those, I believe, three
14 instances you talked about do you recall any specific
15 instances where you had discussions about COHIBA?
16 A. I think I did, but I can't recall any specific
17 instances.
18 Q. Did you bring any COHIBA cigars back into the
19 United States?
20 A. No.
21 Q. Have you read any books about COHIBA cigars?
22 A. Books?
23 Q. Yes.
24 A. No.
25 Q. Have you gained any knowledge about the origin

1 of COHIBA cigars since 1977?
2 A. No.
3 Q. In other words, do you know anymore about
4 COHIBA's now then you did in `77?
5 A. No, just that apparently they may be involved
6 in a lawsuit, but other than that.
7 Q. Other than that, they are involved in a
8 lawsuit, I can confirm that.
9 A. Okay.
10 Q. Other than that?
11 A. No, I have not researched the topic.
12 Q. What was your position in 1974 when you made
13 your first trip to -- to Cuba?
14 A. I was a partner in my law firm.
15 Q. This law firm?
16 A. No.
17 Q. What was the law firm at the time?
18 A. It was Smith, Caplin and Withey.
19 Q. That was here in Seattle?
20 A. Yes.
21 Q. And what was your position in `77?
22 A. Well, I was -- I was still a partner in the
23 law firm.
24 Q. Same law firm?
25 A. Yes.

1 Q. Okay. Can you give me a brief summary of your
2 educational and employment background, starting with law
3 school?
4 A. I went to University of San Francisco,
5 graduated in 1971. What is being handed you is a
6 current resume.
7 MR. DOWNING: I would like to mark
8 this resume as DX164. We can mark it later.
9 (Whereupon, Mr. Withey's resume was
10 marked Exhibit-164 for identification.)
11 Q. (By Mr. Downing) Is the information contained
12 in this resume accurate?
13 A. Yes.
14 Q. Does it omit material information?
15 A. No. I mean, not material to a resume. It
16 doesn't list all my cases.
17 Q. Do you know Saul Landau (phonetic)?
18 A. Yes.
19 Q. How do you know Mr. Landau?
20 A. He was at the Institute for Policies Studies in
21 1980, in the early `80s.
22 Q. How do you know he was at the Institute for
23 Policy Studies in the early `80s?
24 A. We had contacted the IPS through Isabelle
25 Luteriar (phonetic) to speak at an event that we were

1 discussed today?

2 A. No. I mean, if you ask a specific question I

3 might think of something, but no, not anything I can

4 think of.

5 Q. I think we've covered every instance in which

6 you've actually seen a COHIBA cigar; is that correct?

7 A. Yeah, I think so.

8 MR. DOWNING: That's all I have.

9 Thank you.

10 MR. GROSS: Okay. I have a few

11 questions.

12 EXAMINATION

13 BY-MR.GROSS:

14 Q. My name is Terry Gross, I represent the

15 plaintiffs in this action, Empresa Cubana Del Tabaco.

16 Mr. Withey, you're a lawyer here in Seattle?

17 A. Yes.

18 Q. How long have you been a lawyer?

19 A. In Washington, since 1972.

20 Q. And where did you first become a lawyer?

21 A. In California.

22 Q. And what year was that?

23 A. 1971.

24 Q. So you've been a lawyer for 30 years, now?

25 A. As a matter of fact, I have.

1 Q. Is the information, you know, on that accurate?
2 A. It's accurate, but it's not -- it's not quite
3 complete in terms of verdicts. We received a verdict
4 last year in a class-action lawsuit that will estimate a
5 total probably close to 50 million dollar.
6 Q. And what was that case?
7 A. It was a class-action brought against the Bayer
8 Process Corporation for two products that they
9 manufactured and distributed that caused mildew and
10 didn't prevent or resist mildew. And we brought an
11 action that was certified as a class on behalf of home
12 owners who applied the product to their natural wood
13 finish and who were shocked and dismayed to find that
14 their home was turning black with mildew.
15 Q. And have you received any awards or other --
16 or other, you know, professional --
17 MR. DOWNING: Honors?
18 Q. -- honors for your work?
19 MR. GROSS: Thank you.
20 A. Well, I mean in the fundamental sense the
21 greatest honor I've had is -- is the honor of
22 representing the clients that I have for cases that were
23 difficult on behalf of very courageous women in the
24 Domingo Varness case. So my greatest honor is having
25 represented very courageous clients that were successful

1 in holding responsible parties accountable.
2 I've received some peer awards. I
3 was awarded the Washington State Trial Lawyers
4 Association Trial Lawyer of the Year award, principally
5 for my work in the Domingo Varness case, but in the
6 other cases that had occurred by then.
7 I was selected -- I was also awarded
8 finalist in the Trial Lawyer of the Year awards for two
9 years, and by the Trial Lawyers for Public Justice. An
10 organization that's a public interest law firm, and that
11 I assumed the presidency in 1995 and 1996.
12 So, those have been some of my
13 professional and career honors.
14 Q. Okay. Have you been in an officer or a
15 director of any associations or other legal groups?
16 A. Well, with the Trial Lawyers for Public Justice
17 I was a -- I was a secretary-treasurer or vice
18 president, president elect and president. I was on the
19 board of governors of the Trial Lawyers of the Trial
20 Lawyers for Public Justice. I was on the board of
21 governors of the Washington State Trial Lawyers
22 Association.
23 Q. Okay. And you've testified that you've been to
24 Cuba twice --
25 A. Right.

1 And, I said, well, you know, I have heard of it. And I
2 told him I had been there in 1974.
3 And, you know, he spoke about it with
4 a certain, I don't know, kind of pride and reverence,
5 this was like a very fine thing to have after having
6 been going diving, it was like a luxury to be able to
7 smoke a good cigar after having had a good experience
8 together.
9 Q. Okay. So then --
10 A. It was a sign of friendship, too.
11 Q. Yeah.
12 A. To me, I considered it a connection.
13 Q. Mm-hmm.
14 A. He was very gracious, a very gracious man.
15 Q. So this was -- sounds like it was a very
16 memorable moment?
17 A. Yeah. Yeah, sure.
18 Q. And so later in your trip I believe you
19 testified that you went looking for COHIBA's to purchase
20 at the hotel?
21 A. Yeah, it was the next day, I think, after the
22 sessions. I went to the hotel and -- and found that
23 they had a shop there and that's where I purchased them,
24 four COHIBA cigars.
25 Q. When you say there was a shop there is that

1 like a typical hotel shop that we're familiar with?
2 A. Yeah. It wasn't quite all -- didn't have all
3 the advertising, the glitter and displays, but it did
4 have a COHIBA, again, a box that would have been set
5 out or some poster or something or a display.
6 And I remember what it was because I
7 remember walking, I could -- I could actually diagram
8 where the lobby was and where this thing was and where
9 the pool was and where the room was because I remember
10 it so well, but it was right there, kind of off the
11 lobby area.
12 Q. It was where there were a number of stores,
13 different type of clothing stores or other stores there?
14 A. Yeah, there was a few, not a lot, not like a
15 US hotel.
16 Q. And this store sold predominantly tobacco
17 products?
18 A. Yes, they had -- it was -- it was other sundry
19 items, but it had tobacco products featured, that's the
20 reason I went in there.
21 Q. So there were a variety of different tobacco
22 products on display there?
23 A. Yes.
24 Q. And so can you describe what the COHIBA display
25 was or what COHIBA cigars displayed?

1 A. Well, there was a glass case and they had a
2 bunch of COHIBA cigars. They were like in the first
3 case. And they were in boxes and the box tops were
4 open. And then they had some sort of display elsewhere
5 and I asked, you know, do I have to buy a whole box or
6 can I just buy a few. And, he says, well, you can buy
7 a few.
8 Q. Okay. And you purchased how many cigars, then?
9 A. Four.
10 Q. And did you smoke them in Havana?
11 A. Yes.
12 Q. And the times that you smoked these did those
13 feel like memorable occasions to you, as well?
14 MR. DOWNING: Objection.
15 A. Well, yeah, I mean it was memorable to be in
16 Havana and memorable to be in La Floridita, and this
17 great Afro-Cuban concert that we heard, great music. And
18 then at the hotel. I don't remember the fourth one,
19 but it was probably somewhere walking up and down the
20 streets, but yeah, I remember -- I remember each of
21 those locations.
22 Q. And is there any identification, identifying
23 mark on the four cigars that you purchased?
24 A. Oh, just the band and it came out of a box, a
25 COHIBA box.

1 question.

2 EXAMINATION

3 BY-MR.GROSS:

4 Q. And at the store in Havana store that's a

5 store that was opened to any travelers who wanted to

6 shop there?

7 A. Sure.

8 MR. DOWNING: Objection, objection.

9 Q. (By Mr. Gross) To your knowledge?

10 A. Yeah. I mean, anybody could go in there that

11 wanted to go in there.

12 MR. GROSS: Okay. No further

13 questions. Are we off the record?

14 MR. DOWNING: Sure.

15 THE REPORTER: Sir, will you be

16 ordering this?

17 MR. DOWNING: Yes.

18 THE REPORTER: And do you want a

19 copy?

20 MR. GROSS: Yes. Send the transcript

21 to Mr. Krinsky. And we will reserve.

22 (Whereupon, signature was reserved.)

23 (Whereupon, the deposition was

24 adjourned at 2:30 p.m.)

25

CERTIFICATE

I, Cassandra E. Ellis , do hereby certify that pursuant to the Rules of Civil Procedure, the witness named herein appeared before me at the time and place set forth in the caption herein; that at the said time and place, I reported in stenotype all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 6th day of June ,2001.

Cassandra E. Ellis

Signature

Expiration Date

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2

3 Subpoena was marked
4 Exhibit-161 for identification 4
5 Business card was marked
6 Exhibit-162 for identification 4
7 Internet information regarding
8 Mr. Withey was marked Exhibit-163
9 for identification 4
10 Mr. Withey's resume was
11 marked Exhibit-164 for identification 32

12

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Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner,	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC. Respondent.	:	

PARTY DESIGNATIONS*: Petitioner's Designations During Its Trial Period—Yellow or Pink
Respondent's Designations During Its Trial Period—Green
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

Designated Federal Action Discovery Deposition Transcript of A. Ross Wollen, designated under Fed. R. Civ. P. 30(b)(6), dated November 29, 2000

* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

----------X

EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

Plaintiff, 97 Civ. 8399 (RWS)

vs.

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

Defendants.

----------X

COPY

VOLUME I

Rule 30(B)(6)

DEPOSITION OF A. ROSS WOLLEN

New York, New York

Wednesday, November 29, 2000

Reported by:
ANNETTE ARLEQUIN
CSR NO. 1450
JOB NO. 115771

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DIS. C.33

1

2 November 29, 2000

3 9:40 a.m.

4 Rule 30(B)(6) and individual

5 deposition of A. ROSS WOLLEN, held at the

6 offices of Rabinowitz, Boudin, Standard,

7 Krinsky & Lieberman, P.C., 740 Broadway at

8 Astoria Place, 5th Floor, New York, New

9 York, pursuant to Notice, before Annette

10 Arlequin, a Notary Public of the State of

11 New York.

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2 A P P E A R A N C E S:

3

4 RABINOWITZ, BOUDIN, STANDARD, KRINSKY &

5 LIEBERMAN, P.C.

6 Attorneys for Plaintiff

7 740 Broadway at Astoria Place, 5th Floor

8 New York, New York 10003-9518

9 BY: DAVID B. GOLDSTEIN, ESQ.

10 CHRISTINE KIM, ESQ.

11

12

13 MORGAN & FINNEGAN, LLP

14 Attorneys for Defendants

15 345 Park Avenue

16 New York, New York 10154-0053

17 BY: JANET DORE, ESQ.

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

1

2 A. R O S S W O L L E N, called as a

3 witness, having been duly sworn by a Notary

4 Public, was examined and testified as

5 follows:

6 EXAMINATION BY

7 MR. GOLDSTEIN:

8 Q. Mr. Wollen, would you please state

9 your full name and address for the record.

10 A. I have a first initial A, middle name

11 Ross, R-o-s-s, last name Wollen, W-o-l-l-e-n,

12 and I live at 531 Main Street, New York, New

13 York, 10044. That is Roosevelt Island. And

14 I've been challenged as to that Main Street in

15 depositions before.

16 MR. GOLDSTEIN: Off the record.

17 (Discussion off the record.)

18 BY MR. GOLDSTEIN:

19 Q. Mr. Wollen, you are an attorney?

20 A. Yes, I am.

21 Q. And you're admitted to practice in

22 what states?

23 A. Only in New York.

24 Q. And are you currently in good

25 standing in the bar?

1 Wollen

2 A. Yes.

3 Q. And you're currently licensed to

4 practice law?

5 A. Yes, I am.

6 Q. In New York.

7 And my understanding is you have been

8 deposed before; is that correct?

9 A. Several times, yes.

10 Q. And you were deposed in a case

11 entitled General Cigar versus GDM?

12 A. Yes, I was.

13 Q. And that concerned a dispute over the

14 use of the Cohiba mark?

15 A. Yes, it did.

16 Q. You also testified in court in that

17 case?

18 A. Yes, I did.

19 Q. And you also provided the court with

20 a sworn declaration in that case.

21 Do you recall that?

22 A. Yes. I believe I did, yes.

23 Q. Have you been deposed before in other

24 cigar business related matters?

25 A. I've given several depositions. I

1 Wollen

2 A. Yes, I did.

3 Q. And you attended several depositions

4 of Cubatabaco witnesses as well?

5 A. Yes, I did.

6 MR. GOLDSTEIN: We have a problem --

7 off the record.

8 (Discussion off the record.)

9 MR. GOLDSTEIN: What we're going to

10 do, we're going to mark this as Plaintiff's

11 Exhibit 300, and that is because we're not

12 sure what the last number was at the last

13 deposition. There will be a gap of some

14 numbers.

15 (Plaintiff's Exhibit 300, Notice of

16 Deposition, marked for identification, as of

17 this date.)

18 BY MR. GOLDSTEIN:

19 Q. Mr. Wollen, I'm showing you a copy of

20 Plaintiff's deposition Exhibit 300. It's a

21 Notice of Deposition directed to you.

22 And I'm also showing you a copy of

23 what was previously marked as Plaintiff's

24 Exhibit 211 --

25 MS. DORE: Oh, okay.

1 Wollen

2 Q. -- which is the original 30(b)(6)

3 notice served by the plaintiff in this case in

4 1997.

5 Do you recall seeing the Notice of

6 Deposition, Plaintiff's 300 directed to you?

7 A. I actually don't, but it was

8 certainly described to me by Ms. Dore.

9 Q. In that notice it states that you

10 will be examined individually and also as

11 defendants' Rule 30(b)(6) witness concerning

12 certain topics, particularly topics 5 and 10 of

13 plaintiff's Rule 30(b)(6) deposition notice of

14 November 25, 1997.

15 Do you see that?

16 A. Yes, I do.

17 Q. If you'd look at Plaintiff's 211, the

18 30(b)(6) notice, and look at topic No. 5.

19 (Witness complies.)

20 Q. General Cigar's knowledge of the use

21 of the Cohiba mark by Cubatabaco, Fidel Castro

22 or any other person or entity.

23 MS. DORE: Go ahead.

24 BY MR. GOLDSTEIN:

25 Q. Is it my understanding that you're

1 Wollen

2 here today as the corporate witness for General

3 Cigar on part of that topic?

4 A. My understanding is that I was here

5 to testify about the use of Cohiba by other

6 parties other than General Cigar.

7 I did not understand that I was here

8 to testify about the use of Cohiba by Fidel

9 Castro.

10 Q. Okay. My understanding from

11 communication with Ms. Dore is that you were

12 designated as the corporate witness to testify

13 about the Cohiba mark by any other person or

14 entity other than Fidel Castro or Cubatabaco; is

15 that correct?

16 MS. DORE: That's correct. That's

17 correct.

18 MR. GOLDSTEIN: And Mr. Cullman, Jr.

19 is the 30(b)(6) on the other part,

20 Cubatabaco and Fidel Castro; is that

21 correct?

22 MS. DORE: That's correct.

23 BY MR. GOLDSTEIN:

24 Q. You understand what it means by the

25 Rule 30(b)(6) witness?

1 Wollen

2 A. I believe I do.

3 Q. You understand that you will be

4 testifying on behalf of the corporation?

5 A. That's correct.

6 Q. And that your testimony would be, in

7 essence, the corporation's on that particular

8 topic?

9 A. I understand that.

10 Q. And then if we can turn to topic 10,

11 any instances of actual confusion between any of

12 General Cigar's products and Cubatabaco's Cohiba

13 brand cigars.

14 It's my understanding also that you

15 are the corporate designated witness of that

16 topic?

17 A. That's correct.

18 Q. And you've agreed to testify on

19 behalf of the corporation on that behalf?

20 A. I have so agreed.

21 Q. In addition, in the notice to you it

22 states that you will also be the corporate, this

23 is Plaintiff's 300, that you will also be

24 defendants' 30(b)(6) witness on the sixth

25 affirmative defense in the answer and

1 Wollen

2 counterclaim of defendants dated December 5,

3 1997?

4 A. I understand that to be correct, yes.

5 Q. And you've agreed to testify as to

6 that matter?

7 A. I have.

8 Q. And I believe I don't need to mark

9 this, but let me show you what I have as the

10 answer and counterclaim of defendants.

11 And if you take a look at that, this

12 was filed in court dated December 5, 1997 and

13 signed by Harry Marcus.

14 If you look on page 9, it has the

15 heading "Affirmative Defense."

16 Is this the complaint?

17 A. Yes, I see that.

18 Q. And then you turn to page 10,

19 No. 6 --

20 MS. DORE: David, I think you gave

21 the witness the marked copy, which would

22 explain why you were struggling with the

23 page, because his is flagged.

24 MR. GOLDSTEIN: His is what?

25 MS. DORE: His is flagged.

1 Wollen

2 BY MR. GOLDSTEIN:

3 Q. If you look at No. 6, "Plaintiff's

4 claims --

5 A. Sorry. This is page what?

6 Q. Page 10.

7 It says, "Plaintiff's claims are

8 barred by the doctrine of unclean hands."

9 It's your understanding that that is

10 the affirmative defense that you've been

11 designated to give corporate testimony on?

12 A. Yes, I understand it.

13 Q. By agreement with counsel, what we're

14 going to do, we're going to do a deposition of

15 you in your individual capacity basically asking

16 you for what knowledge you have, and then when

17 that deposition is concluded, we will do the

18 30(b)(6) deposition of these three topics that

19 we just discussed.

20 It's possible, as we discussed off

21 the record, that there will be some overlap and

22 if there's any confusion as to whether you're

23 being asked your knowledge or your corporate

24 knowledge, you should certainly ask for

25 clarification and we'll try to do that as

cleanly as we can.

Where are you currently employed?

A. I'm currently retired.

I was employed for more than 20 years by General Cigar Company and retired, I believe July 1st of 2000.

Q. Do you currently have any consulting role with General Cigar?

A. I have a legal retainer consulting role with General Cigar.

Q. And you continue to perform legal services for General Cigar?

A. I perform legal services specifically in this litigation.

Q. By "this" you mean the dispute between Cubatabaco and General Cigar?

A. Yes, the litigation of which this deposition is connected.

Q. Are you retained to provide any other services to General Cigar on any other matters?

A. I have a consulting aspect to my arrangement whereby I have to do certain things, like clean out my office and generally to wind down any matters that I was involved in prior to

directly when it deals with General Cigar?

A. Yes, principally they deal with me.

Q. What year did you start with General Cigar or Culbro Corporation?

A. July of 1977.

Q. And was that a position with Culbro Corp.?

A. Actually it was General Cigar to -- no. Excuse me. It had just changed from General Cigar to Culbro Corporation. The name had been changed from General Cigar Co., Inc. to Culbro Corporation, I believe in 1976. So technically it was Culbro Corporation when I joined it.

Q. And at that time General Cigar was then just a division or a department within Culbro?

A. It was a division.

Q. Not a separate legal corporation?

A. Not at that time.

Q. And prior to joining Culbro, what did you do?

A. I was an attorney with Mudge, Rose, Guthrie & Alexander for approximately four

1 years.

2 Q. And while there, did you represent

3 General Cigar or Culbro?

4 A. General Cigar was a long-term client

5 of Mudge, Rose and I did do some General Cigar

6 work.

7 Q. And were you a partner at Mudge,

8 Rose?

9 A. No, I was not. I was an associate.

10 Q. And prior to Mudge, Rose, what did

11 you do?

12 A. I attended and graduated from law

13 school.

14 Q. When did you graduate from law

15 school?

16 A. 1973.

17 Q. Did you have a life between college

18 and law school?

19 A. I commanded American troops in the

20 United States, Germany and Vietnam for five

21 years.

22 Q. What was your position in the

23 military, what branch?

24 A. I was Air Defense until I arrived in

1 Wollen

2 Vietnam. Then I became field artillery. I

3 resigned my commission as a captain in 1960 -- I

4 guess '70. 1970.

5 Q. And then you went to law school?

6 A. Yes.

7 Q. And where did you graduate from law

8 school?

9 A. University of Virginia.

10 Q. And you had gone into the military

11 after graduation from college?

12 A. The best military college, West

13 Point.

14 Q. While you were at Mudge, Rose, did

15 you have an area of specialization?

16 A. I was in the corporate department.

17 Q. So you were not a litigator there?

18 A. I was not a litigator.

19 Q. And were you involved in intellectual

20 property matters there?

21 A. No.

22 Q. When you went to General Cigar in mid

23 1977, what was your position there?

24 It's Culbro Corp. I'll try to keep

25 it straight.

1 Wollen

2 A. I started as assistant general

3 counsel and I think assistant vice president.

4 Q. And who was the general counsel at

5 that time?

6 A. For a year or so, a Frederick M.

7 Danziger, who was a partner at Mudge, Rose at

8 that time, took the somewhat nominal position as

9 general counsel of the company.

10 Q. So he was both at Mudge, Rose and

11 serving as general counsel?

12 A. That's correct.

13 Q. Prior to your arrival -- at the time

14 you arrived, was Mr. Danziger in that position?

15 Did you arrive together?

16 A. No. That arrangement was put

17 together to satisfy my request that I did not

18 want to report to the then secretary of the

19 company.

20 Q. Who was the then secretary?

21 A. Henry D. Whitehill.

22 Q. Why didn't you want to report to him?

23 A. Since I saw myself as founding the

24 legal department at the company, I did not want

25 to report to anyone other than the chief

1 Wollen

2 executive officer.

3 Q. So when you started there, there had

4 not been a legal department prior to that time?

5 A. There really had not been a legal

6 department. There was an attorney, a Ms. Jeri

7 Hollinger, who did report to Mr. Whitehill, but

8 it was clear at the time that I was founding the

9 legal department of the company.

10 Q. When did Ms. Hollinger leave the

11 company, if you know.

12 A. In the early '80s.

13 Q. When you arrived, were you the only

14 other attorney, you know, in-house at General

15 Cigar?

16 A. When I arrived, I was, yes.

17 Q. You said Mr. Danziger served for one

18 year in this position?

19 A. I suppose I should correct that last

20 answer. Mr. Danziger was nominally general

21 counsel.

22 Q. And he served in that position for

23 approximately a year?

24 A. A year or more.

25 Q. And then what happened after that?

A. Then I was made general counsel and senior legal officer of the company.

Q. Sometime in 1978?

A. Around 1980.

Q. Around 1980.

A. Earlier than 1980, but approximately.

Q. Were you an officer of the company as well?

A. As assistant vice president, yes, I presume I would be considered an officer.

Q. And you remained general counsel of the company until July of 2000?

A. That is correct.

Q. Did your position, other titles or positions change?

A. Yes. I went from assistant vice president to vice president, and eventually senior vice president.

Q. Do you have dates on that or approximate dates?

A. I would say the vice president was in the '80s and the senior vice president, late '80s or early '90s.

Q. Were you ever the secretary of Culbro

Corp.?

A. Let me answer it that way. Culbro stayed in existence until, quite frankly, 1997, so obviously the answer is yes.

I'm only hesitating because we did a restructuring of the corporations in the late '80s, but yes, I was secretary of Culbro Corporation from when I was elevated to that position until Culbro basically disappeared in 1997.

Q. And do you remember when you became secretary?

A. Mid 1980s.

Q. You mentioned that there was some corporate restructuring in the 1980s.

Did a General Cigar company as a legal entity -- strike the question.

Sometime in the 1980s, was a legal corporate entity, General Cigar Co., Inc., created?

A. Yes. In approximately 1987, the General Cigar business as well as a number of other businesses that Culbro operated at that time were separately incorporated, so Culbro

1 Wollen
2 became the parent company of a number of
3 wholly-owned subsidiaries.
4 Q. So General Cigar Company, Inc. was
5 100 percent owned by Culbro?
6 A. That is correct.
7 Q. And was Culbro publicly traded in the
8 1980s?
9 A. Culbro and its predecessor were
10 publicly traded from 1906 until 1997.
11 Q. And did you have positions with
12 General Cigar Co., Inc. that was created in
13 1987?
14 A. Yes. It's changed over time, but for
15 the most part the positions -- it's very
16 difficult to answer that because there's such a
17 period of time involved.
18 I would have positions certainly as
19 secretary in all of the subsidiaries, probably
20 vice president and secretary, but these were
21 wholly-owned subsidiaries and the positions were
22 not very relevant until such time very recently
23 where General Cigar itself went public.
24 Q. I'll get to that. I want to go
25 through some of these corporate changes.

1 Wollen

2 Did you also serve as general counsel

3 of General Cigar Co., Inc.?

4 A. It would not be necessary to have a

5 general counsel. I certainly performed the

6 function as general counsel. I don't think I

7 would ever have been listed as general counsel

8 for General Cigar Co., Inc. or any of the other

9 six or eight subsidiaries.

10 Q. Functionally you served as their

11 general counsel; is that correct?

12 A. That's correct.

13 Q. Were there any -- during the 1980s,

14 were there -- well, after the creation of

15 General Cigar Co., Inc. in 1987, was there any

16 in-house attorney or attorneys dedicated to

17 General Cigar Co., Inc., or were they all in the

18 corporate legal office?

19 A. There was no separately designated

20 attorney for General Cigar Co., Inc., although

21 Mr. Ron Milstein, during his tenure as assistant

22 general counsel to me, worked more closely than

23 I did with General Cigar Co., Inc.

24 There was discussion at some time

25 that he might be designated as general counsel

1 Wollen

2 of a couple of the subsidiaries and I would be

3 of a couple of the other subsidiaries,

4 principally as a promotion to him, but I can't

5 recall right now whether that ever happened.

6 The attorneys throughout this period

7 were basically at the corporate headquarters.

8 Q. And that was in New York City?

9 A. Yes, it's always been in New York

10 City.

11 Q. Was there a subsequent corporate

12 restructuring of Culbro or any of its

13 subsidiaries after 1987?

14 There was an event in '97. I want to

15 know of anything between '87 and '97.

16 A. There are an awful lot of

17 acquisitions and dispositions, but to answer

18 your question, no. Culbro remained until 1997

19 when Culbro sold approximately 15 percent of

20 General Cigar to the public.

21 Culbro subsequently spun off its

22 remaining assets into a separately traded

23 company, and then Culbro and the newly public

24 General Cigar merged in September of 1997, and

25 Culbro essentially disappeared because General

1 Wollen

2 Cigar was the survivor of that merger.

3 Q. The surviving corporation, General

4 Cigar Holdings, Inc.?

5 A. Its proper name is General Cigar

6 Holdings, Inc.

7 Q. And that was at that time a

8 publicly-traded company?

9 A. Yes.

10 Q. And the subsidiary General Cigar Co.,

11 Inc. remained in existence?

12 A. Yes.

13 Q. And your titles and positions

14 basically remained the same but went from Culbro

15 to General Cigar Holdings, Inc.; is that

16 correct?

17 A. That's correct.

18 Q. At some time this year did General

19 Cigar Holdings, Inc. sell a majority of its

20 shares to Swedish Match?

21 A. Yes. In the spring there was a,

22 technically a merger, pursuant to which Swedish

23 Match acquired approximately the 64 percent of

24 General Cigar Holdings that was owned by public

25 shareholders.

Q. Does General Cigar Holdings, Inc. continue to exist?

A. Yes, it does, as a private company.

Q. And the other 36 percent, is that owned by the Cullmans?

A. The Cullman family retained approximately 30 percent -- 36 percent of their interest in General Cigar.

Q. Swedish Match owns the other 64 percent?

A. That's correct.

Q. And General Cigar Co., Inc. does that continue to exist?

A. I believe it does as a subsidiary of General Cigar Holdings, yes.

Q. What is Swedish Match?

A. I'm not that familiar with them. I've never visited there. They are a major tobacco company based in Sweden. They have other operations here in the United States, like a smokeless tobacco company based in Richmond, Virginia. I know they market snuff and cigars throughout the world.

Q. Do you know what Altadis is?

1 Wollen

2 question in this area.

3 MS. DORE: Just yes or no.

4 A. Would you repeat the question?

5 MR. GOLDSTEIN: Can you read it?

6 (Question was read back as follows:

7 "QUESTION: Are Altadis and Swedish

8 Match, either directly or through their

9 subsidiaries, competitors in the U.S.

10 premium cigar market?")

11 A. Yes.

12 Q. Which entity claims ownership of the

13 mark Cohiba in the United States?

14 A. I'm quite certain that now rests in

15 General Cigar Co., Inc.

16 Q. And the original registration is it

17 your understanding was by Culbro Corp.?

18 A. Yes. The name had just been changed

19 from General Cigar Co., Inc. to Culbro. The

20 original registrant was Culbro Corporation.

21 Q. And do you know how it came about

22 that that claim to ownership transferred from

23 Culbro to General Cigar Co., Inc.?

24 A. Yes. The reorganization to which I

25 referred in the late '80s which created the

separate subsidiaries under the parent company Culbro, also led to our assigning the various trademarks that had been owned by the parent company to the various subsidiaries.

Q. Is it your understanding that all of the cigar trademarks owned by Culbro were transferred to General Cigar Co., Inc. at that time?

A. That is my understanding.

Q. Were any other trademarks in addition to cigar trademarks transferred?

A. Yes.

Q. To General Cigar Co., Inc.

A. No. Not to my knowledge. Not to General Cigar Co., Inc. Other subsidiaries got other trademarks.

MR. GOLDSTEIN: Why don't we mark this. I guess this would be 301.

(Plaintiff's Exhibit 301, Confirmatory Assignment, marked for identification, as of this date.)

Q. Let me show you what we've just marked as Plaintiff's Deposition Exhibit 301. Do you know what this document is?

1 Wollen

2 A. This appears to be the document that
3 would have effected the assignment that we were
4 just discussing from the parent corporation to
5 the new wholly-owned subsidiary.
6 Q. And attached are the trademarks
7 transferred? Everything is redacted. I mean
8 all the names are redacted except Cohiba on page
9 6623.
10 A. Yes, that certainly is what it
11 appears to be.
12 Q. And do you recall this document, I
13 mean do you recall this document from that time?
14 A. It was signed by Mr. Whitehill. I do
15 not recall it specifically.
16 Q. Were you involved in the preparation
17 of the document?
18 A. I'm sure the document would have been
19 prepared by Morgan & Finnegan. I do not recall
20 participating.
21 Q. Do you know -- did you participate in
22 the decision to transfer the cigar trademarks
23 from the parent to the newly formed subsidiary?
24 A. I participated in the execution, not
25 the decision.

1 Wollen

2 Q. Do you know why the marks were

3 transferred from Culbro to General Cigar Co.,

4 Inc.?

5 A. It was part of an overall corporate

6 reorganization.

7 Q. Do you know not necessarily the

8 reason for the reorganization, but the reason

9 that the cigar marks were transferred from the

10 parent to the sub?

11 A. It was part and parcel of a

12 reorganization where all of the trademarks went

13 to the new subsidiaries. Like the snack food

14 trademarks went to the snack food company.

15 Q. I understand from your prior

16 testimony that that's what happened.

17 Was there a reason to do that other

18 than -- was there a reason to do that?

19 A. I think it was a trend at that time

20 to have holding companies and separate

21 subsidiaries for banking reasons, for

22 acquisition reasons, for disposition reasons,

23 for many reasons.

24 Q. In the third paragraph, the "Now,

25 therefore" paragraph on the first page, it says,

where we marked Plaintiff's Deposition Exhibit 301, it also has Defendants' Exhibit N, and my understanding is that that mark is from the GDM litigation, not from this case.

BY MR. GOLDSTEIN:

Q. After you arrived at General Cigar, putting aside Ms. Hollinger and Mr. Danziger, when is the next attorney who -- who is the next attorney who came to General Cigar or Culbro?

A. A Mr. Tom Westle, W-e-s-t-l-e, joined us in the early '80s.

Q. And do you know how long he was there?

A. Till the late '80s.

Q. And who was the next attorney to arrive that you recall?

A. Mr. Ron Milstein.

Q. And he was there from the late '80s to --

A. I would say late '80s to mid '90s.

Q. And the next attorney?

A. And current attorney is Mr. John Webber, who joined in 1996.

Q. And is there any new general, you

know, any new assistant counsel?

A. No.

Q. Those people that you mentioned, are they all the attorneys that you can recall who worked in-house for General Cigar?

A. Yes.

Q. When you arrived in '77, was Morgan & Finnegan already the trademark counsel for General Cigar, Culbro?

A. For the cigar business, yes, and for many years.

Q. And since that time, continuously has Morgan & Finnegan been the outside cigar trademark counsel?

A. Yes.

Q. Okay. Have you used other trademark counsel for cigars other than Morgan & Finnegan?

A. I don't believe so.

Q. And more specifically, do you have any recollection of using anyone, any outside counsel, for any matters concerning Cohiba, including matters other than trademark other than Morgan & Finnegan?

A. And other than Altadis?

Wollen

Q. Does the Altadis litigation concern Cohiba?

A. I thought you said cigar trademarks.

Q. And I said specifically focusing solely on Cohiba, have you used any counsel other than Morgan & Finnegan, including for matters other than trademarks?

A. No.

Q. After Mr. Danziger played this, I guess it's fair to call it a transitional role?

A. Yes.

Q. And you became general counsel, who did you directly report to?

A. I reported to either the chairman of the board or the president. I was never absolutely totally clear. I reported to the chief executive officer.

Q. And that was Mr. --

A. That was Mr. Cullman, Sr.

Q. And the not exactly clear, that was Mr. Cullman, Jr.?

A. That was subsequent when Mr. Cullman, Jr. became chief executive officer, I considered myself reporting to both.

1 Wollen

2 Q. After becoming general counsel, was

3 there ever a time when you reported to somebody

4 below the Cullmans, or was your direct report

5 always Mr. Cullman, Sr. and Mr. Cullman, Jr.

6 A. It was always one of the Cullmans.

7 Q. Was your office as general counsel

8 always on the same floor as theirs?

9 A. Yes.

10 Q. Just down the hall?

11 A. Yes.

12 Q. Would you say you had a day-to-day

13 working relationship with them?

14 A. Yes.

15 Q. I meant to ask you this earlier and I

16 forgot.

17 Were you ever a director of any of

18 the corporate subsidiaries?

19 A. I would be a director of almost all

20 of them, but it was a nominal role.

21 Q. Do you recall specifically that you

22 were a director of General Cigar Co., Inc.?

23 A. It was my practice to be secretary

24 and a director just for the ease of doing annual

25 meeting minutes.

1 Wollen

2 Q. Were you ever a director of the

3 parent?

4 A. No.

5 Q. Either Culbro or Holdings, Inc.

6 A. No.

7 Q. Do you continue to have any kind of

8 title or position with General Cigar Holdings,

9 Inc. or any of the subsidiaries since your

10 resignation?

11 A. No.

12 Q. Do you continue to own shares in the

13 corporation?

14 A. No, I do not.

15 Q. Were you given -- were you provided

16 shares in Swedish Match as part of the merger or

17 the purchase by Swedish Match?

18 A. No, I was not.

19 Q. At the time you arrived and in that

20 period between arrival and becoming general

21 counsel, what types of matters were you

22 responsible for?

23 A. Would you just repeat the time period

24 again?

25 Q. When you arrived, up to the time you

1 Wollen

2 became general counsel, what types of matters

3 were you responsible for?

4 A. I was principally responsible for

5 securities matters relating to public reporting,

6 advising the board of directors, filings with

7 the Securities and Exchange Commission. Those

8 type of matters were my principal duties.

9 Q. Were you involved in labor matters?

10 A. Two of the areas I've always avoided

11 are labor and trademarks.

12 Q. So I take it at that time you were

13 not involved in trademark matters?

14 A. At that time Ms. Hollinger and

15 Charlie Sparkes handled the trademark matters

16 and they reported to Mr. Whitehill, so that was

17 an area that I was not much involved in.

18 Q. The reason I'm focusing on this

19 particular period, sometime between late '77

20 and the spring of '78 was the time where the

21 Cohiba name came to the attention of Culbro and

22 the decision was made to apply to register it.

23 At that time Mr. Sparkes did not

24 report to you?

25 A. No, he did not.

1 Wollen

2 Q. And when you became general counsel,

3 did Ms. Hollinger then report directly to you?

4 A. I don't think so. I believe as long

5 as Mr. Whitehill was there, she reported to

6 Mr. Whitehill, but we certainly worked very

7 closely together.

8 Q. Is Mr. Whitehill, is he deceased?

9 A. He is deceased.

10 Q. And Ms. Hollinger? Do you have any

11 idea?

12 A. Alive and well and practicing law in

13 New York.

14 Q. Were you involved in the decision by

15 General Cigar to apply to register the Cohiba

16 mark in 1977 or 1978?

17 A. I have no recollection of any

18 involvement.

19 Q. Do you recall when you first learned

20 that General Cigar either had, you know, had

21 registered the mark or had applied to register

22 the mark?

23 A. It's a very difficult question to

24 answer because I've read so many materials.

25 My best recollection is around 1990

1 Wollen

2 was the first, in that general area, is the

3 first I knew, the first I would have learned.

4 I subsequently learned more.

5 Q. You said 1990 as opposed to 1980.

6 A. Yes.

7 Q. Do you recall when you first --

8 you're a cigar smoker?

9 A. I am.

10 Q. Were you a cigar smoker when you

11 arrived at General Cigar?

12 A. I was a pipe smoker when I arrived.

13 Q. Were you converted at that time?

14 A. It came with the job.

15 Q. Do you have a brand of choice or did

16 you have a brand of choice at the time?

17 A. My brands of choice are Macanudo and

18 Partagas.

19 Q. At the time that you arrived at

20 General Cigar, did you take steps to familiarize

21 yourself with the cigar industry?

22 A. Certainly with my own company, and in

23 connection with that, with the industry, yes.

24 Q. Do you recall when you first became

25 aware of the Cuban Cohiba?

1 Wollen

2 MS. DORE: That alleged they used.

3 MR. GOLDSTEIN: Well --

4 MS. DORE: That's alleged.

5 BY MR. GOLDSTEIN:

6 Q. There are two companies that we're

7 aware of that made application to the trademark

8 board for use of the name Cohiba. One is

9 Beneficial Capital Corp. and the other one is, I

10 believe, Quakenbush Trading Company.

11 At that time in 1978, '79, did you

12 have any knowledge or involvement with an

13 application by Beneficial Capital Corp.?

14 A. I have no specific recollection of

15 that.

16 Q. In, I believe it was 1981 or '82, a

17 company called Quakenbush also applied for the

18 mark Cohiba.

19 Do you have any knowledge from that

20 time, did you have any knowledge at that time of

21 that?

22 A. I have no specific recollection of

23 any knowledge at that time.

24 Q. As the corporate 30(b)(6) witness, if

25 I ask questions about Beneficial or Quakenbush,

1 Wollen

2 you're referring to is research that

3 Mr. McLoughlin, John McLoughlin, did?

4 A. Correct.

5 Q. And to your knowledge, when did he do

6 that?

7 A. It was sometime in the 1980 time

8 frame.

9 Q. You yourself don't know?

10 A. I have no specific recollection.

11 MR. GOLDSTEIN: Let me do this: We

12 subsequently got an unredacted version of

13 that document and I'd like to mark that as a

14 deposition exhibit.

15 (Plaintiff's Exhibit 302, One page of

16 typewritten notes dated 2-12-77, marked for

17 identification, as of this date.)

18 MR. GOLDSTEIN: I just want to put on

19 the record that we've marked as Plaintiff's

20 Exhibit 302, GC 1A, which is an unredacted

21 version of Plaintiff's Exhibit 135, GC 1.

22 BY MR. GOLDSTEIN:

23 Q. I take it you did not see this

24 document at that time in '77, but subsequently

25 you saw a copy of this document in relation to

either this or the GDM litigation?

A. I believe so. Certainly some version of the same document.

Q. Okay. Let me show you what was previously marked as Plaintiff's Exhibit 136, and also a later produced, unredacted version of the same document.

And I take it you did not -- am I correct you did not see that document at that time in 1977?

A. I have no recollection of seeing this document in 1977.

Q. Do you have any knowledge of the source of the information "Cohiba" "sold in Cuba," "brand in Cuba"?

A. No.

Q. Do you have -- looking at the unredacted version, 2003A, it has two other names; Cienfuegos and Vin`ales, and it says, "EMC suggestions."

EMC I take it is Edgar Cullman?

A. It could be either of the two.

Q. EMC doesn't suggest whether it's senior or junior; is that correct, or does it?

1 Wollen

2 A. To me, today, I would always add a J

3 for junior, so I do not know which of the two.

4 It is clearly intended to be one of the two.

5 Q. Do you know what the "Cienfuegos"

6 "Vin`ales" "EMC suggestions" refers to?

7 A. Two other cigar brands.

8 Q. Do you have any knowledge at that

9 time, late '77, of any decision to apply to

10 register the marks of either Cienfuegos or

11 Vin`ales?

12 A. No.

13 MR. GOLDSTEIN: And, again, why don't

14 we mark the unredacted version. Plaintiff's

15 136 is a redacted version and we're going to

16 mark GC 2003A, unredacted same document, as

17 Plaintiff's 303.

18 (Plaintiff's Exhibit 303, One page of

19 handwritten notes dated 2-22-77, marked for

20 identification, as of this date.)

21 BY MR. GOLDSTEIN:

22 Q. On the document we were looking at,

23 302, which refers to --

24 MR. GOLDSTEIN: Did I give you a copy

25 of that?

1 Wollen

2 was -- had left the company before you arrived?

3 A. He may have had some consulting role,

4 but it would have been with Mr. Whitehill or

5 Mr. Sparkes, not with me.

6 Q. And I take it you wouldn't recognize

7 his handwriting?

8 A. Never.

9 Q. I'm trying to identify a document.

10 MR. GOLDSTEIN: Let me mark this.

11 (Plaintiff's Exhibit 304, One page of

12 handwritten notes dated 12-22-77, marked for

13 identification, as of this date.)

14 BY MR. GOLDSTEIN:

15 Q. Let me show you what we've marked as

16 Plaintiff's 304, GC 2004 dated 12-22-77 on top.

17 Have you ever seen this document

18 before?

19 A. I don't think I've ever seen this

20 document.

21 Q. Do you have any knowledge of what --

22 it lists five names under "U.S. TM regs with

23 Cuba for cigars."

24 Do you have any knowledge of any

25 activity at General Cigar in the '77, '78 time

period regarding gathering names of trademark registrations with Cuba for cigars?

A. No, I do not.

Q. And do you know what these names refer to, Estrella de Cuba? I mean where these name came from?

Other than looking at the document. In other words, do you recall any discussions about these names?

A. In this time frame?

Q. Yes.

A. Absolutely not.

MR. GOLDSTEIN: Again, my understanding is that DAAG on the side refers to the GDM litigation; is that correct? Do you recall?

MS. DORE: Definitely recall that.

MR. GOLDSTEIN: Off the record.

(Discussion off the record.)

BY MR. GOLDSTEIN:

Q. Let me show you what was previously marked as Plaintiff's Exhibit 141, GC 2000, and it's a January 9, '78 memorandum from --

MS. DORE: I don't see that number.

1 Wollen

2 GC 2000?

3 MR. GOLDSTEIN: What did I do, copy

4 two different documents?

5 MS. DORE: We have 17.

6 MR. GOLDSTEIN: Yeah. It's the same

7 document I have. I have 2000.

8 Okay. The one that's marked, I might

9 have DAAC on it. **YOU HAD A NOTE THAT SAID

10 IT'S DAAC, NOT G, BUT HE SAID DAAG ABOVE AND

11 NOW DAAC. EXHIBIT LOOKS LIKE A G.

12 MS. DORE: No.

13 BY MR. GOLDSTEIN:

14 Q. Okay. Plaintiff's Exhibit 141 is GC

15 17 and it has date of January 9, '78, and it's

16 from Mr. Sparkes to a Mr. Forrester.

17 Do you see that?

18 A. Yes, I do.

19 Q. And am I correct that you did not

20 review this document at that time, '78?

21 A. I have no recollection of reviewing

22 it at that time.

23 Q. But you may have seen it in the

24 course of this litigation, either this or GDM?

25 A. I have seen it during the course of

the litigation.

Q. If you look at the last paragraph, Mr. Sparkes writes, "After the initial shipment is made, these two new trademarks..." which is Cohiba and blank "...should be added to the list of trademarks protected with quarterly shipments of cigars."

Do you know -- at that time -- strike the question.

Do you know what that statement refers to based on knowledge you had at that time?

A. At that time, no.

Q. Did you subsequently learn what you understood Mr. Sparkes to be referring to?

A. Yes, subsequently.

Q. And when was that, in the course of the litigation?

A. Yes.

Q. So at that time, did you have any knowledge of what Mr. Sparkes was doing regarding quarterly shipments of cigars?

A. Of these cigars or any cigars?

Q. Well, I'm really referring to the

Wollen

general practice that he refers to, "...these two new trademarks should be added to the list of trademarks protected with quarterly shipments of cigars."

So my question is, at that time did you have any knowledge of a practice or an operation regarding protecting trademarks with shipments of cigars?

A. I understood that to be Mr. Sparkes' duty.

Q. And did you have any knowledge of what he was doing?

A. Not specific knowledge. I just knew that he was doing that program.

Q. And at that time did you have any understanding of why General Cigar was doing that?

A. I had a general understanding of the need to have a program to protect your trademarks.

Q. Did you have any understanding of what was being done to protect the trademarks?

A. No specific understanding at that time.

1 Wollen

2 Q. Any general understanding?

3 A. Yes. The general understanding that

4 you have a program of this nature as part of a

5 registration process.

6 Q. And a program of this nature, did you

7 have an understanding of what this nature was at

8 that time?

9 A. I can't answer that with any

10 specificity at that time.

11 All I know is Mr. Sparkes was in

12 charge of the protection of trademarks.

13 Q. Do you have any knowledge as opposed

14 to -- do you have any knowledge of shipments of

15 Cohiba cigars to -- from General Cigar to

16 customers in the period 1978 through August

17 1982?

18 A. At that time?

19 Q. Yes.

20 A. No, I have no recollection of Cohiba

21 shipments at that time.

22 Q. Okay. Any knowledge -- do you have

23 any knowledge of that that you've gathered or

24 gained in the course of the litigation?

25 A. Yes.

time period for Cohiba?

A. Not to my recollection.

Q. Any knowledge that you have, then, would be gathered during the course of the litigation?

A. Yes.

Q. When I say "the," I mean either this or the GDM litigation.

A. It could have been earlier, but it was in the 1990s, yes.

Q. In 1978, did you ever see any Cohiba cigar or Cohiba -- Cuban Cohiba cigar or Cuban Cohiba cigar brand provided to General Cigar by Mr. Boruchin?

A. No.

MR. GOLDSTEIN: Let's take a few minutes.

(Recess is taken.)

BY MR. GOLDSTEIN:

Q. Prior to applying to register the trademark Cohiba, did General Cigar conduct a search of the Cuban trademark office?

A. I don't know.

Q. Prior to registering the mark, did

1 Wollen

2 General Cigar conduct -- prior to applying to

3 register the mark, did General Cigar conduct a

4 search in other countries?

5 A. I don't know.

6 Q. Do you know when General Cigar first

7 conducted a search outside the United States of

8 the mark Cohiba?

9 A. I have seen some documentation that

10 indicates it occurred in the mid 1980s.

11 Q. You were not aware of it at the time?

12 A. No.

13 Q. Do you know why General Cigar

14 conducted the search when it did?

15 A. No, I do not.

16 Q. At some point did you become aware

17 that Cohiba was registered in Cuba prior to

18 1978?

19 A. I believe that was claimed in the

20 papers filed in either the GDM case or in this

21 litigation.

22 Q. Have you seen, other than claims and

23 papers, have you seen any documents to that

24 effect?

25 A. I believe there was a document as an

exhibit, but it was in Spanish so...

Q. Did you subsequently become aware -- did you become aware that Cubatabaco had registered the mark Cohiba in several countries around the world prior to 1978?

A. Prior to 1978? No, I don't know that.

Q. Did General Cigar, to your knowledge, ever conduct a search of the Cuban trademark office for any brands or any matters?

A. Of the Cuban trademark office.

Q. Yeah.

A. Not a search, no. Not to my knowledge.

Q. Did General Cigar, to your knowledge, ever apply to register a brand in Cuba after 1959, after the revolution?

A. Yes. I believe we have a registration pending for our Macanudo.

Q. Do you know when that application was made?

A. Sometime in the 1990s.

Q. Are you aware of any change in law, either Cuban or U.S., that enabled you to do

that in the 1990s as opposed to earlier?

A. No.

Q. Do you have any knowledge of whether it was possible in 19 -- late 1970s, early 1980s to apply to register a mark, a U.S. company to apply to register a mark in Cuba?

A. I really don't know the specific reason. It's very possible that that's true, but I don't recall it.

Q. Do you know if any impediments or any legal obstacles that would have prohibited General Cigar from seeking to register any marks in Cuba in the 1970s or '80s?

A. It's basically the same question and I simply don't recall.

Q. Are you aware of any legal or other reason that General Cigar could not have conducted a trademark search for Cohiba in Cuba in 1977 or '78?

A. I am not aware of any.

Q. Are you aware of any U.S. companies registering trademarks in Cuba in the late '70s or early '80s?

A. Not in that time frame I am not

1 Wollen

2 aware, no.

3 Q. Are you aware of U.S. companies

4 registering or applying to register any marks in

5 Cuba at a later time?

6 A. I am generally familiar that

7 Coca-Cola and other top, well-known American

8 brand names are registered in Cuba.

9 Q. And are you aware that -- do you have

10 any knowledge that American companies have

11 applied to register marks in Cuba subsequent to

12 the revolution?

13 MS. DORE: Can I hear the question

14 again?

15 BY MR. GOLDSTEIN:

16 Q. Do you know if Coca-Cola applied

17 after the revolution or whether it was

18 pre-revolution?

19 A. I do not know.

20 I know they either have a current

21 registration or they've had one in recent years.

22 Q. You yourself don't have knowledge of

23 other American companies applying to register

24 marks in the 1970s or 1980s in Cuba?

25 A. No, I do not.

1 Wollen

2 Q. Did you, without disclosing any

3 contents, did you ever receive a legal opinion,

4 written or oral, from outside counsel as to

5 whether or not you could do a trademark search

6 in Cuba?

7 MS. DORE: Just yes or no.

8 A. Not to my recollection.

9 Q. Did you ever receive a legal opinion,

10 legal advice from outside counsel as to whether

11 or not you could, you General Cigar, could apply

12 to register a mark in Cuba?

13 A. Only in conjunction with the

14 application for Macanudo, which I do recall.

15 Q. And do you recall from that, thinking

16 about that, does that in any way refresh your

17 recollection one way or the other as to whether

18 or not there was some change in the law that

19 prevented you from doing this earlier but you

20 could do it now?

21 A. No. I'll answer that the same way I

22 did before. I don't recall how that was caused.

23 Q. Okay. Have you ever had any

24 discussions with anybody at General Cigar as to

25 why no search was done of the Cuban trademark

office prior to the application to register the Cohiba?

A. No.

Q. Have you ever had any conversations or discussions as to why no trademark search outside of the United States was done for Cohiba?

A. Not to my recollection.

Q. Whether you learned it at the time or subsequently, did General Cigar do anything, to your knowledge, between, say, late '77 and 1980 to learn anything about the use of Cohiba in Cuba?

A. Not to my recollection.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 305, Reply Declaration of A. Ross Wollen dated 10-29-97, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you what we've marked as Plaintiff's Deposition Exhibit 305. It's the Reply Declaration of A. Ross Wollen in the

1 Wollen
2 General Cigar Co. versus GDM case that was in
3 the Southern District of New York in 1997.
4 If you look on the last page,
5 "Executed on October 29, 1997, A. Ross Wollen,"
6 is that your signature?
7 A. Yes, absolutely.
8 Q. And do you recall preparing this
9 declaration?
10 A. Yes.
11 Q. And this declaration was filed in
12 federal court; is that correct?
13 A. Yes.
14 Q. If you turn to paragraph 7, which is
15 on page 6, it references the Oscar Boruchin
16 interview that was in Cigar Aficionado?
17 A. Correct.
18 Q. And you recall that, that interview,
19 the article?
20 A. Yes.
21 Q. In it you refer to the article and
22 you say, "As defendants' quotation of
23 Mr. Boruchin confirms, at the time of General
24 Cigar's adoption of the Cohiba trademark in the
25 United States, the Cuban Cohiba cigars were only

1 Wollen

2 A. I was referring to the, what we call

3 the canister.

4 Q. Let me show you Plaintiff's Exhibit

5 13.

6 Is this what you're referring to?

7 A. Yes.

8 Q. The band that wraps around the

9 canister?

10 A. Yes, that's what I was referring to.

11 Q. And based on your subsequent

12 involvement in the case, is it your

13 understanding that canister was not created

14 until sometime in 1982?

15 A. It was, I believe, after the

16 registration was issued.

17 Q. And the registration was issued in

18 February of 1981?

19 A. I think that's correct. 1981, yes.

20 Q. Do you know where you got the

21 information in 1978 that's in your declaration?

22 A. Apparently it's the registration

23 application and it should have been the

24 registration issuance.

25 Q. In the first paragraph of the

1 Wollen

2 declaration, on page 1, you write in the second

3 sentence, "My areas of responsibility include

4 advising and representing the company in

5 connection with all legal matters affecting the

6 company, including protection of its

7 trademarks."

8 Did there come a time when it became

9 your responsibility to represent and advise the

10 company regarding protection of its trademarks?

11 A. Yes. Upon the departure of

12 Mr. Milstein in the early '90s, I was the only

13 attorney in-house.

14 Q. And so that responsibility

15 essentially devolved on you sometime in the mid

16 to early 1990s?

17 A. That's correct. I relied very

18 heavily on our intellectual property counsel,

19 but in-house, that and many other

20 responsibilities devolved upon me.

21 Q. While Mr. Milstein was there, was he

22 the attorney in-house chiefly responsible for

23 protection of trademarks?

24 A. Yes, he was.

25 Q. And prior to Mr. Milstein, was it --

1 Wollen

2 did Mr. Westle and Mr. Milstein sort of overlap

3 or did one replace the other?

4 A. One replaced the other.

5 Q. Okay. Was Mr. Westle in charge of

6 that or was that Mr. Sparke's responsibility

7 until he left the company?

8 A. Mr. Westle was the attorney in charge

9 of trademarks. Mr. Sparkes was still the, I

10 would call him trademark administrator until

11 such time as he retired.

12 Q. After he retired, did some

13 nonattorney sort of take over the trademark

14 administrator duties or did that fall on the

15 attorneys?

16 A. That principally fell upon the

17 attorneys, and their secretaries perhaps.

18 Q. Are you familiar with a company

19 called Beneficial Capital Corp.?

20 A. I've seen the name recently in

21 preparing for this deposition and I'm sure, I

22 believe I've also in connection with the GDM

23 litigation.

24 Q. Did you have any knowledge of their,

25 Beneficial Capital Corp., application to

Wollen

Q. And do you have any knowledge of what this document is referencing?

A. I mean I can read it to you.

Q. I was going to ask you, do you have any knowledge other than, you know, the words that are on this piece of paper?

A. I have nothing other than the words on this piece of paper.

Q. Okay.

MR. GOLDSTEIN: Why don't we mark that.

(Plaintiff's Exhibit 306, Priority Search "Cohiba", marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you what we've marked as Plaintiff's Exhibit 306, and it's labeled "Priority Search 'Cohiba,'" GC 5982 through 86.

I'd ask you if you can take a look at that and tell me if you've seen that document before.

(Witness reviewing document.)

A. I don't believe I've ever seen this document before.

1 Wollen

2 Q. If you look on the, again, on the

3 first page, the search is a Class 34 search.

4 Do you understand that to be the

5 international class that includes cigars?

6 A. Yes.

7 Q. And it says that what was searched

8 was the French registrations in force, the

9 Italian registrations with extension to France

10 from '60 -- 1961 to June 1968 and the

11 international registrations published up to May

12 1982.

13 These are probably going to be some

14 futile questions, but do you know when this

15 search was done?

16 A. I have no idea.

17 Q. And you have no idea who did the

18 search?

19 A. You're not asking me to just --

20 there are dates in here.

21 Q. Well, there aren't any dates on that

22 cover page other than the dates of registration.

23 A. No. I have no idea.

24 Q. Looking at this, can you tell what

25 search services were used?

Wollen

Q. Do you recall when, approximately?

A. No, that would be impossible to remember.

Q. Was it like a couple years or was it something like in the '90s that you needed to learn about something?

A. It was probably not until an acquisition that we did in the late '80s, maybe even '90s, which would occasion doing some research into trademarks.

Q. Was it a specific acquisition, you're not sure when it took place?

A. It was some acquisition. I can't remember either the acquisition or the time it took place.

Q. You don't recall what acquisition it was?

A. No, I do not.

Q. You're aware that as a result of this series of litigations, the U.S. courts found that the pre-revolutionary owners owned the trademarks or had the trademark rights here in the United States?

A. Yes.

1 Wollen

2 Q. And you're familiar that that series

3 of litigations basically resolved itself by the

4 mid 1970s?

5 A. Yes.

6 Q. As a result of those litigations, if

7 the embargo were to come to an end, Cubans,

8 Cubatabaco as trademark owners of a brand like

9 Partagas, it's your understanding would not be

10 able to simply sell Partagas in the United

11 States; is that correct?

12 MS. DORE: Objection. Calls for

13 speculation, it's hypothetical and it's

14 asking him to testify as a legal expert when

15 he's here as a fact witness.

16 BY MR. GOLDSTEIN:

17 Q. You can answer the question.

18 A. That is absolutely my understanding,

19 yes.

20 Q. After the litigation, at the time, in

21 1975, am I correct that General Cigar did not

22 own any of the pre-revolutionary Cuban marks,

23 Cuban -- am I correct that in 1975 General Cigar

24 did not own any of the pre-revolutionary Cuban

25 marks for premium cigars?

Wollen

A. I really don't know. 1975.

Q. Are you aware that in 1975 or 1976 General Cigar acquired the rights to Partagas?

A. It was approximately at that time.

Q. And Ramon Allones?

A. Yes.

Q. And you're aware that it was approximately in 1975?

A. Mid 1970s. It was before I arrived.

Q. And are you aware that in 1976, the year before you arrived, General Cigar reintroduced or began to sell the Partagas?

A. I have no recollection of the specific date.

Q. But it was before you arrived?

A. I'm not even sure of that.

Q. And do you know that in late -- do you recall that in late 1977 or '78 General Cigar began to sell Ramon Allones?

A. I certainly could not put a date on when those sales began.

Q. Are you familiar with a strategy of General Cigar to obtain rights to Cuban brand names, Cuban origin brand names?

1 Wollen

2 A. I know of no such strategy.

3 Q. Are you aware of any discussions or

4 planning to obtain, for General Cigar to obtain,

5 either by acquisition or otherwise, Cuban origin

6 brand names, Cuban origin cigar brand names?

7 A. No, with the exception of when we

8 acquired Villazon, it had some Cuban traditional

9 brand names, but that was not -- the strategy

10 was not to acquire Cuban brand names, it was to

11 acquire Villazon.

12 Q. That was in 1997?

13 A. Closed January of 1997.

14 Q. Are you familiar with any requests by

15 Mr. Cullman to employees to keep their eye out

16 for available or potential Cuban brand names for

17 General Cigar to register?

18 A. No, I am not.

19 Q. Have you ever seen any documents at

20 General Cigar regarding plans or, when I use the

21 term "plans," I mean it broadly, to acquire

22 Cuban origin cigar brand names?

23 A. No, other than the document you

24 showed me this morning that had three names and

25 said Cuban brands. Beyond that, no, I am not

1 familiar with any such document.
2 Q. Are you familiar with any discussions
3 at General Cigar to acquire Cuban origin brand
4 names for the purpose of blocking sales of Cuban
5 cigars in the United States should the embargo
6 come to an end?
7 A. No.
8 Q. Are you aware of any discussions at
9 General Cigar regarding using ownership of Cuban
10 brand names to leverage a position with the
11 Cubans should the embargo end?
12 A. I am not familiar with any
13 discussions at General Cigar on that subject.
14 Q. Are you familiar with any discussions
15 at General Cigar regarding potential negotiation
16 strategies or positions with the Cubans should
17 the embargo come to an end?
18 MS. DORE: Just yes or no.
19 A. Yes.
20 Q. When did -- when do you first recall
21 participating in such discussions?
22 A. In Mexico City in conjunction with
23 settlement discussions for this litigation.
24 Q. And do you recall what year that was?
25

1 Wollen

2 Q. Putting aside the, you know, other

3 than as it relates to this litigation.

4 MS. DORE: Just yes or no.

5 BY MR. GOLDSTEIN:

6 Q. I'm not really looking for anything

7 that took place in the '80s, '90s, you know,

8 prior to this litigation.

9 A. Not that I can recall.

10 Q. So is it your testimony that at least

11 to your knowledge, and I understand there's

12 privileged conversations, we'll get to that, but

13 is it my understanding that to your knowledge

14 you are not aware of any planning or

15 strategizing or discussions at General Cigar

16 regarding what it might do vis-a-vis the Cubans

17 concerning the brands that it owns should the

18 embargo come to an end?

19 MS. DORE: Just yes or no.

20 A. I need the question again if it's yes

21 or no. Was I aware of any, no.

22 Q. Are you aware of any discussions

23 between General Cigar and United States

24 Government officials in the 1970s or 1980s

25 regarding the potential lifting of the embargo

Wollen

A. That's what your papers say.

Q. And to your knowledge, it was not a mark that was adjudicated in these cases involving the rights to various brand names?

A. To my knowledge it was not.

Q. And then General Cigar registered that name here in the United States; is that correct?

A. That is correct.

Q. But it did not acquire or purchase that name the way it acquired the Partagas name or the Ramon Allones name, from another company; is that correct?

A. That is correct.

Q. It simply took the name and applied to register it?

MS. DORE: I object to the characterization.

Q. The word took, it --

A. It applied to --

Q. It simply applied to register the name Cohiba. General Cigar applied to register the name Cohiba?

A. That is correct.

1 Wollen

2 Q. It did not attempt to negotiate any

3 rights with Cubatabaco regarding that name; is

4 that correct?

5 A. That is correct.

6 Q. It did not attempt to negotiate the

7 rights to that name with any other Cuban entity;

8 is that correct?

9 A. That is correct.

10 Q. Are you aware of whether or not

11 General Cigar registered any other Cuban origin

12 brand other than Cohiba that it did not -- where

13 it did not purchase or obtain the rights to that

14 name by assignment or otherwise?

15 A. I believe the two other brands that

16 were listed on that memo this morning.

17 Q. Cienfuegos and Vin`ales?

18 A. Correct.

19 Q. Those are places in Cuba. They're

20 not cigar brands.

21 MS. DORE: Are you testifying or are

22 you asking him a question?

23 MR. GOLDSTEIN: Well, I guess I could

24 ask him that question.

25 BY MR. GOLDSTEIN:

Wollen

Q. Do you know whether Cienfuegos and Vin`ales are Cuban origin cigar brands?

A. I thought they were brands.

Q. Assuming those two are not brands, or whether we assume that or not, are you aware of any other Cuban origin cigar brands which General Cigar registered the names without otherwise acquiring the rights to those names from some other entity?

A. Not as I sit here today.

Q. Did Culbro or General Cigar ever apply to register marks in any of certain countries I'm going to list, to your knowledge?

A. Any marks?

MS. DORE: Any marks at all?

MR. GOLDSTEIN: Yeah.

MS. DORE: I think you're way outside the scope of the lawsuit.

MR. GOLDSTEIN: I'm not going to ask for the names of the marks. I'm just going to ask --

MS. DORE: I think you're still outside of the scope of the lawsuit.

MR. GOLDSTEIN: This is one of the --

1 Wollen

2 cigar brand.

3 MS. DORE: It's really outside the

4 scope of this lawsuit.

5 MR. GOLDSTEIN: Well, it's not. We

6 can fight about it later.

7 A. If I know there is a registration in

8 one of these countries, is the answer yes?

9 Q. The answer would be yes.

10 A. All right. What country?

11 Q. We're on Nicaragua.

12 A. I don't know.

13 Q. Panama?

14 A. I don't know.

15 Q. Paraguay?

16 A. I don't know.

17 Q. Peru?

18 A. I don't know.

19 Q. Are you familiar with the

20 Inter-American Convention regarding the

21 protection of trademarks, also sometimes called

22 the Pan-American Convention?

23 A. Only from the papers in this

24 litigation.

25 Q. Do you have any knowledge of whether

Wollen

register its Cohiba?

A. No.

Q. Outside of the context of this lawsuit, have you ever discussed the applicability of the Inter-American Convention to any marks of General Cigar?

A. Not that I recollect.

Q. Do you know if in General Cigar's offices during the 1980s it received any of the following newspapers or magazines:

The New York Times?

A. Yes.

Q. The Financial Times?

A. I don't recall seeing The Financial Times.

Q. The Washington Post?

A. I don't recall seeing the Washington Post.

Q. The Economist?

A. I'm focusing on our headquarters office in New York.

Q. Yeah. Where you work, where the Cullmans worked?

MS. DORE: In the '80s you're asking

1 Wollen

2 about?

3 MR. GOLDSTEIN: I said at that time

4 period.

5 A. I don't recall seeing The Economist.

6 Q. Forbes?

7 A. Yes, I'm sure somebody gets a copy of

8 Forbes. I'm sure I did.

9 Q. Time or Newsweek?

10 A. I don't specifically recall it in the

11 office.

12 Q. Do you recall yourself seeing

13 articles about the Cuban Cohiba in the 1980s?

14 A. In the 1980s? No, I do not.

15 Q. Do you recall if General Cigar had

16 any practice where, say, a secretary or some

17 person in the office would review general media

18 for articles about the cigar industry and clip

19 and circulate?

20 A. No, I do not recall any such policy.

21 Q. Do you recall, if it was not a

22 policy, do you recall it happening, a practice,

23 where there was periodic clippings of cigar

24 industry news from general interest

25 publications?

A. I have never seen that as a practice within the company.

I believe the Cigar Association had a clipping service for quite some time.

Q. Do you recall if General Cigar subscribed or received its clipping service?

A. We received the Cigar Association service, but I don't think that was in the '80s. I think that was subsequent.

Q. Do you recall about when it started?

A. I believe it was in the early '90s.

Q. Do you recall whether General Cigar in the late '70s, after you arrived, through the '80s, received a publication called Cigar World?

A. You asked me that this morning.

Q. I asked World Tobacco, that's why I'm saying. I have two different lists.

A. I'm really not familiar with that name either.

Q. Do you recall a publication called The International Tobacco Journal?

A. That sounds familiar and I mentioned that this morning.

Q. Right.

1 Wollen

2 Do you recall that General Cigar

3 received that in the 1980s?

4 A. I have no specific recollection, but

5 it is certainly the type of publication that

6 somebody would receive.

7 Q. Do you recall if you, General Cigar,

8 received a Cubatabaco publication that I believe

9 was called Cubatabaco?

10 A. No.

11 Q. I believe you testified this morning

12 that the first time you recall hearing of the

13 General Cigar Cohiba and the Cuban Cohiba is in

14 conjunction with the trip to Cuba by

15 Mr. Milstein and Mr. Mayer; is that correct?

16 A. Or earlier, but it was in that

17 general time frame of '92, '91 is what I can

18 recall now.

19 Q. Do you have any recollection sitting

20 here of any time earlier than their plan for

21 their trip to Cuba?

22 MS. DORE: He just told you.

23 MR. GOLDSTEIN: Well, I'm asking him

24 does he -- I mean he's --

25 BY MR. GOLDSTEIN:

1 Wollen

2 A. I have no such knowledge.

3 Q. Have you ever seen the document

4 that's being referred to there in GCP 393, this

5 internal memo?

6 A. Not to my recollection.

7 Q. Do you know if General Cigar

8 requested that Morgan & Finnegan do a trademark

9 search for Cohiba in 1978 outside of the United

10 States?

11 A. I do not know.

12 MR. GOLDSTEIN: Ms. Dore, do you know,

13 I mean you don't have to answer because

14 you're not being deposed, but do you know if

15 either of those two people are former or

16 current Morgan & Finnegan attorneys?

17 MS. DORE: I know who they are.

18 MR. GOLDSTEIN: And are they attorneys

19 at Morgan & Finnegan?

20 MS. DORE: I'm not being deposed.

21 MR. GOLDSTEIN: Okay. You don't have

22 to answer. I'm just asking.

23 Why don't we mark this.

24 (Plaintiff's Exhibit 308, Q & A Cohiba

25 cigars Fact Sheet, marked for

1 Wollen

2 identification, as of this date.)

3 BY MR. GOLDSTEIN:

4 Q. I'm showing you what's been marked as

5 Plaintiff's Deposition Exhibit 308, GC 8903

6 through 8911. It states that it's -- it's

7 undated and there's no author on it, but it

8 states at the top "Attorney Work Product

9 Privileged and Confidential." It was produced

10 by Morgan & Finnegan with a letter saying that

11 Morgan & Finnegan was not asserting that the

12 document was work product or privileged and

13 confidential, so that's why I have it, I guess.

14 Do you know who the author of the

15 document is?

16 A. I was the principal author of the

17 document.

18 Q. Do you know when it was prepared?

19 A. It was sometime subsequent to the

20 petition being filed by Cubatabaco in 1997.

21 Q. The petition was filed in January.

22 Do you recall when this was filed,

23 created?

24 A. I don't have a specific time. It was

25 subsequent and also, it was a continuing

1 Wollen

2 document that I recall adding questions. I

3 think some of the information toward the rear,

4 in fact, there's a reference to July of 1997, so

5 I would say this was created in the spring

6 through approximately July or August of 1997,

7 and perhaps later.

8 Q. What was the purpose of the document?

9 Why was it created?

10 A. At the time, we knew we were

11 preparing to come out with the relaunch of the

12 Cohiba, and the petition filed by Cubatabaco at

13 the Patent and Trademark Office had generated

14 some publicity and certainly a lot of questions

15 about what was happening. It was prepared for

16 the use of company officials and eventually our

17 sales staff and anyone preparing for the

18 relaunch so that it could answer the type of

19 questions that people were getting.

20 Q. Do you know who it was distributed to

21 in particular?

22 A. Eventually it got wide distribution.

23 Q. Within the company?

24 A. Within the company.

25 Q. Do you know who it was distributed to

1 Wollen

2 that led Morgan & Finnegan to conclude that

3 there was no privilege to the document?

4 A. Well, I know like an advertising

5 agency had it.

6 Q. McCaffery, Ratner?

7 A. Yes, McCaffery, Ratner.

8 Which was the purpose of the fact

9 sheet because they would be preparing

10 advertising copy, and more particularly, this

11 was because people were getting a lot of

12 questions about what they considered litigation.

13 Q. Who were they getting questions from?

14 A. From their customers. This was in

15 anticipation of those questions, and there were

16 questions in the cigar industry without

17 question.

18 Q. And what was the source of the

19 information in the memo or the document?

20 I mean did you gather it? Did you

21 have someone in your office gather it, an

22 associate of Morgan & Finnegan gather it?

23 A. No. I was the principal and

24 gatherer, and I consulted with Morgan &

25 Finnegan.

1 Wollen

2 Q. Who at Morgan & Finnegan?

3 A. I think principally Scott Greenberg,

4 but it could also have been Ms. Dore.

5 Q. If you turn to page 2, or it's

6 actually the second page, 8904.

7 A. Uh-huh.

8 Q. You say "What -- the last question

9 is, "What is the significance of the above

10 quote?"

11 And then the last sentence says, "The

12 name, however, traces to the Dominican Republic

13 where General Cigar has always has made its

14 Cohibas and continues to do so today."

15 Is it your understanding that that is

16 a true statement?

17 A. Well, there could be an exception for

18 the quarterly I shipments that we discussed

19 earlier today.

20 Q. Is it your understanding now that the

21 Dominican Cohiba began in 1982?

22 A. I believe that's correct, yes.

23 Q. And if you look to the next Q and A

24 on page 8905, "What happened -- the question

25 "What happened when Mr. Boruchin recommended the

Wollen

A. He is a consultant who comes in sporadically.

Q. Does he reside, do you know, in Connecticut, New Jersey or New York?

A. I believe New Jersey.

Q. If you look at page 8906, the question is "Did General Cigar seek legal advice before it registered its Cohiba brand?"

Do you see that?

A. I do.

Q. And the answer, "Yes. General Cigar's longtime trademark counsel wrote in 1978 with reference to a 1974 newspaper article about the author bringing some Cuban Cohibas into the U.S."

Do you know who the author is?

A. I can't recall the name. I certainly --

Q. Oh, I don't mean the author. That's my fault.

The longtime trademark counsel, the author of the memo.

A. I believe that's Harry Marcus.

Q. And do you know what 1974 newspaper

Wollen

article he's referring to?

A. Let me correct that. Apparently that is a typo. It should be 1978. That was just brought to my attention.

Q. And it was also brought to my attention in a letter, but I don't have the document, the memo that Mr. Marcus prepared, so I don't know whether it refers to a 1974 newspaper article or not.

Do you yourself know sitting here today whether it refers to a 1974 or a 1978 newspaper article?

A. I have not reviewed the document.

Q. Mr. Marcus' document?

A. Right. Since.

Q. And it refers to an occurrence in 1974, Mr. Marcus' memo.

A. It refers to a newspaper --

Q. "At the time of this occurrence in 1974."

You see that, right?

A. Right.

Q. Okay. So reading that, you don't know if it's referring to a 1974 newspaper

1 Wollen
2 article like you wrote, or a 1978 newspaper
3 article like Mr. Greenberg wrote?
4 Mr. Greenberg wrote me a letter
5 saying it refers to a 1974 newspaper article.
6 A. Right.
7 Q. You wrote that it refers to a 1974
8 newspaper article. The article itself, the
9 document by Mr. Marcus itself refers to a 1974
10 event.
11 A. Uh-huh.
12 Q. Mr. Greenberg wrote to me that it
13 refers to a 1978 newspaper article, but he won't
14 provide me with the document from Mr. Marcus.
15 So what I'm asking you is, do you
16 have any knowledge sitting here today that the
17 newspaper article is a 1974 newspaper article or
18 a 1978 newspaper article?
19 A. I have no information other than the
20 letter from Mr. Greenberg to you yesterday.
21 Q. Were you relatively careful in
22 preparing this document?
23 A. Apparently not.
24 Q. Well, how do you know?
25 A. If I am in error about the 1974

1 Wollen

2 newspaper article.

3 Q. And that's my question, you don't

4 know if you're in error?

5 A. I have not personally reread the

6 letter.

7 Q. Do you know why Mr. Marcus wrote the

8 memo that's being quoted here?

9 A. I assume it was in conjunction with

10 the registration or the application for

11 registration of the Cohiba brand.

12 Q. Do you know the date of Mr. Marcus'

13 memo?

14 A. I say here it is 1978. That's all I

15 know.

16 Q. Mr. Greenberg writes to me that it

17 is, the memo is dated April 17th, 1978.

18 Do you have any reason to know

19 whether that's true or not?

20 A. I have no reason to disagree with

21 that.

22 Q. You're aware that that's subsequent

23 to the filing of the trademark application?

24 A. I was not.

25 Q. Well, the record will speak for

1 Wollen

2 itself, but can we assume for our purposes that

3 it is since the documents are in evidence, or if

4 not in evidence, they've been marked and are

5 your documents?

6 Do you know why after the trademark

7 application Mr. Marcus would have been writing

8 this document?

9 A. No, I do not.

10 Q. Do you know what General Cigar asked

11 him to do?

12 A. No.

13 Q. In the second paragraph, referring to

14 this article, it says that, "...the Cohiba

15 cigars made in Cuba are Castro's private brand;

16 they are not in general distribution."

17 Do you know what Mr. Marcus used for

18 that statement other than the article itself?

19 A. I do not.

20 Q. Do you have any knowledge yourself

21 whether his statement is a true statement?

22 A. I have certainly heard that repeated

23 many, many times.

24 Q. He refers to an occurrence in 1974,

25 referring to the article, the event the article

1 Wollen

2 is talking about, and then it says, "...they are

3 not in general distribution," referring to April

4 17, 1978.

5 Do you know if General Cigar or

6 Morgan & Finnegan did anything from 1974 to 1978

7 to determine, did anything to determine whether

8 there had been any change in the distribution of

9 the Cohiba between '74 and '78?

10 A. I do not.

11 Q. In the third paragraph he writes,

12 "There is no evidence that any Cuban Cohiba

13 cigars have been brought into this country since

14 1977..."

15 Do you know the basis for that

16 statement?

17 A. I do not.

18 Q. Do you know if anybody at General

19 Cigar or at Morgan & Finnegan did anything to

20 verify the truth of that statement?

21 A. I personally do not.

22 Q. Do you know -- did you review the

23 letter at the time that you prepared this

24 document, Mr. Mr. Marcus' letter?

25 A. Yes, I did.

1 Wollen

2 questions on this particular topic.

3 MS. DORE: Can you add that to what

4 has to be expedited?

5 Thank you.

6 (Time noted: 5:00 p.m.)

7 _____

8 A. ROSS WOLLEN

9

10 Subscribed and sworn to before me

11 this ___ day of _____, 2000.

12

13 _____

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1 C E R T I F I C A T E

2

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6

7 I, ANNETTE ARLEQUIN, a Certified Shorthand

8 Reporter and Notary Public within and for

9 the State of New York, do hereby certify:

10 That A. ROSS WOLLEN, the witness

11 whose deposition is hereinbefore set forth,

12 was duly sworn by me and that such

13 deposition is a true record of the

14 testimony given by the witness.

15 I further certify that I am not

16 related to any of the parties to this

17 action by blood or marriage, and that I am

18 in no way interested in the outcome of this

19 matter.

20 IN WITNESS WHEREOF, I have hereunto

21 set my hand this 18th day of December, 2000.

22

23 ----------

ANNETTE ARLEQUIN, CSR, RPR

24 My commission expires:
6/30/02

25

1

---------- I N D E X ----------

2 WITNESS	EXAMINATION BY	PAGE
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner,	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC. Respondent.	:	

PARTY DESIGNATIONS*: Petitioner's Designations During Its Trial Period—Yellow or Pink
Respondent's Designations During Its Trial Period—Green
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

Designated Federal Action Discovery Deposition Transcript of A. Ross Wollen, designated under Fed. R. Civ. P. 30(b)(6), dated November 30, 2000

* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

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EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

Plaintiff, 97 Civ. 8399 (RWS)

vs.

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

Defendants.

----------X

COPY

VOLUME II

CONTINUED RULE 30(B)(6)

DEPOSITION OF A. ROSS WOLLEN

New York, New York

Thursday, November 30, 2000

Reported by:
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2 November 30, 2000

3 9:40 a.m.

4

5 Continued Rule 30(B)(6) and individual

6 deposition of A. ROSS WOLLEN, held at the

7 offices of Rabinowitz, Boudin, Standard,

8 Krinsky & Lieberman, P.C., 740 Broadway at

9 Astoria Place, 5th Floor, New York, New

10 York, pursuant to Subpoena, before Annette

11 Arlequin, a Certified Shorthand Reporter and

12 a Notary Public of the State of New York.

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2 A P P E A R A N C E S:

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4 RABINOWITZ, BOUDIN, STANDARD, KRINSKY &

5 LIEBERMAN, P.C.

6 Attorneys for Plaintiff

7 740 Broadway at Astoria Place, 5th Floor

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9 BY: DAVID B. GOLDSTEIN, ESQ.

10

11

12 MORGAN & FINNEGAN, LLP

13 Attorneys for Defendants

14 345 Park Avenue

15 New York, New York 10154-0053

16 BY: JANET DORE, ESQ.

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2 A. R O S S W O L L E N, called as a

3 witness, having been previously sworn by a

4 Notary Public, was examined and testified as

5 follows:

6 CONTINUED EXAMINATION BY

7 MR. GOLDSTEIN:

8 Q. You understand you're still,

9 Mr. Wollen, you're still under oath from

10 yesterday?

11 A. I do.

12 Q. Yesterday when we finished, we were

13 talking about the '92, '93 period when General

14 Cigar began to sell its Cohiba through Alfred

15 Dunhill.

16 Do you recall that?

17 A. Yes, I do.

18 Q. At about that time, did you review

19 any trade dress or packaging proposals or ideas

20 for the General Cigar Cohiba?

21 A. I do not recall reviewing any

22 packaging at that time.

23 Q. Let me just show you a couple of

24 photographs or photocopies and ask you if you

25 recall seeing any of these.

Wollen

I'm showing you what was previously marked at the deposition of cliff Bachner, Clifford Bachner. I show you a couple of samples of exhibits. One is Exhibit 119. And again, I'm talking about the '92, '93 period.

A. I have seen these recently in connection with this litigation.

Q. But not at that time?

A. I have no recollection of seeing it at that time.

Q. Okay. You're looking at Exhibit 119?

A. Yes, Plaintiff's Exhibit 119.

Q. Let me show you, I think one or two other things also from that deposition, some color photographs, Exhibit 114.

MS. DORE: Could you identify for the witness what Mr. Bachner testified these were?

BY MR. GOLDSTEIN:

Q. I think Mr. Bachner testified these were mock-ups that he prepared based on information provided to him by Mr. Rano.

A. I do not recall seeing them in that time frame.

Wollen

Q. Okay. Do you recall having any discussions in that time frame, '92, '93, regarding packaging or trade dress for the General Cigar Cohiba?

A. No, I do not.

Q. Do you have any knowledge of discussions between Mr. Rano and Mr. Milstein regarding that topic?

A. No, I do not. Mr. Milstein would have been involved.

Q. But you don't know what was talked about secondhand or third hand from that time period?

A. No, I do not.

Q. I know I addressed this subject yesterday, but I basically have one other question.

Are you aware of any discussions between General Cigar and representatives from Cuba in this time period regarding trade dress or packaging?

When I say "in this time period," after Milstein and Mayer came back from Cuba, are you aware of any subsequent discussions with

the Cubans, '92, '93, regarding trade dress or packaging?

A. I don't know if it's a discussion. The only thing I have seen, and I saw it subsequently, was the letter from Edgar Cullman, Jr. to Mr. Freeman which did address, mention, packaging.

Q. Okay. I may be wrong, but I thought from your testimony yesterday you reviewed the letter before it went to Mr. Freeman.

A. No, that's not my recollection.

Q. Your recollection is that the letter that I showed you yesterday from Cullman to Freeman asking him to bring information to Padron, that you were not aware of it at the time?

A. I don't think I was aware of it at the time. If I testified otherwise, I misspoke.

Q. Again, my recollection is you said you reviewed it, and I understood that you reviewed it before it went.

A. That's not my recollection today.

Q. Your recollection is that you learned of that correspondence during the course of this

1 Wollen

2 or the GDM litigation?

3 A. That is correct.

4 Q. Are you aware of any contacts on any

5 subject between General Cigar and Cuban

6 representatives after Mayer and Milstein came

7 back from Cuba and before we filed or Cubatabaco

8 filed its TTAB proceeding on Cohiba, which was

9 in January of 1997?

10 We're basically talking about all of

11 '92, '93, '94, '95, '96.

12 A. And excluding the letter we just

13 discussed?

14 Q. Right.

15 A. No, I do not.

16 Q. Are you -- just to follow up, in that

17 time period are you aware of any contacts with

18 Senor Linares?

19 Again, this is before we filed our

20 petition.

21 MS. DORE: And after the trip to

22 Cuba.

23 MR. GOLDSTEIN: Yeah.

24 A. No.

25 Q. And Senor Padron, Francisco Padron.

1 Wollen

2 review.

3 Q. Do you have any knowledge of any

4 other type of editorial type of control or

5 review exercised by General Cigar?

6 A. I have no knowledge of any such

7 control or review.

8 Q. Did you have involvement in the

9 launch of the General Cigar Cohiba in September

10 of 1997?

11 A. Yes, which we called the red dot

12 Cohiba.

13 Q. What's that?

14 A. The red dot Cohiba.

15 Q. The red dot Cohiba.

16 A. It has gotten that name in the

17 marketplace.

18 Q. Generally what was the nature of your

19 activities regarding the launch?

20 A. Well, because of the filing in the

21 trademark office, I was very interested in how

22 the red dot Cohiba was introduced.

23 As a result of that, as we discussed

24 yesterday, I was the principal author of the

25 question and

1 Wollen

2 BY MR. GOLDSTEIN:

3 Q. Do you recall when the decision was

4 made to launch the Cohiba that became known as

5 the red dot Cohiba?

6 A. It's a very difficult question. It

7 had been in the works for years as they tried to

8 perfect the type of blend and the type of cigar

9 they wanted.

10 I mean the final decision was

11 sometime in the spring of 1997.

12 Q. Are you aware of when there was a

13 decision made to have the launch, you know, at

14 the TTA -- RTDA in the summer of 1997, when that

15 goal was set?

16 A. It would have been in the spring of

17 that year.

18 Q. Did you have any role in developing

19 or testing the blend that became the Cohiba?

20 A. No, I did not.

21 Q. I think in an earlier deposition one

22 of the witnesses mentioned that you might have

23 had some participation.

24 A. Let me amend that. I mean they do

25 bring cigars around every once in a while, and

Wollen

Q. Let me show you a document. The single page was, I believe was marked Plaintiff's Exhibit 278, that's what my notation said, which would have been at Mr. Farrington's deposition in Florida last week, and I don't have the documents back. Apparently they're recounting the pages.

MS. DORE: What number did --

MR. GOLDSTEIN: I have Plaintiff's 278. This is what I believe it is, but I just don't have the originals back. I think they're recounting the number of pages.

MS. DORE: Just checking for chads?

MR. GOLDSTEIN: Well, I was looking because there are some color copies which I don't have, they have.

BY MR. GOLDSTEIN:

Q. What I'm showing you is a memorandum from Dickson Farrington to you, Ross Wollen, dated June 23, 1997 re Cohiba brand, graphics artwork.

Do you recall seeing this document?

A. Yes, I do.

Q. In the document it says, "Enclosed

Wollen

please find proposed graphics artwork for Cohiba brand. Please note the center of the 'o' in Cohiba is Pantone #130. Please review."

And then it says, "I believe this should be an acceptable solution to the trademark issue," and then a couple of other sentences.

First is, do you recall what was attached?

A. Well, I remember there was some artwork and the color in the middle of the O was yellow.

Q. Down in Florida is some color copies that we received from, I believe it was Brent Marmo. They're still down in Florida, but do you recall if what was attached was a graphic of multiple sized Cohibas with the dot in yellow or do you recall something else, if you recall anything?

A. I don't recall that specific display.

I do recall seeing the name Cohiba with a yellow circle.

MR. GOLDSTEIN: The specific display that I showed Mr. Wollen was GC 4579, which

Wollen

has the word "Cohiba" in descending size.

BY MR. GOLDSTEIN:

Q. Do you recall if it was multiple pages or one thing with Cohiba in yellow?

A. I really don't recall now.

Q. And did you have an understanding that the Pantone 130 was referring to this yellow color?

A. Yes.

Q. And then he says, he asked you for your review and he says, "I believe this should be an acceptable solution to the trademark issue."

What trademark issue?

A. Well, the artwork was being submitted to me for my opinion as to its suitability under trademark laws or regulations.

Q. The memo refers to "an acceptable solution to the trademark issue," suggesting that there was some issue Mr. Farrington was proposing a solution to.

Was there a specific issue other than the general law of trademark?

A. Yes.

Wollen

Q. And what was that?

A. It had been our position for quite some time, as it is stated in the question and answer sheet, that we did not want to use the trade dress used by the Cuban Cohiba. This obviously raises the issue of whether using a yellow dot would transgress that concern.

Q. Why did you not want to use the Cuban Cohiba trade dress?

A. Management had made a decision that we wanted what was to become the Cohiba red dot to be totally different from the Cuban Cohiba so as not to confuse any of our customers that they might be buying a Cuban Cohiba rather than a General Cigar Dominican Cohiba.

Q. Why was that a concern?

A. We did not want any confusion in the marketplace between our red dot Cohiba, as it was to become, and the Cuban version, period.

Q. The trade dress, was there a concern that if the trade dress of the General Cigar Cohiba was not sufficiently distinctive, there would be the potential for confusion in the marketplace?

Wollen

A. Yes. If we had something that looked like or replicated the Cuban Cohiba, there would be confusion by at least those customers who were familiar with the Cuban trade dress.

Q. Was a decision made by General Cigar -- strike the question.

Mr. Farrington's proposal of a yellow dot as a solution to the trademark issue, was that an acceptable solution?

A. Not to me.

Q. And what about to General Cigar?

A. Not to General Cigar.

Q. And why is that?

A. Senior management agreed with me that to obviate any possibility of any confusion, we should not use the color yellow, which is a color used in the Cuban trade dress.

Q. Upon receipt of the memo from Mr. Farrington, do you recall what transpired in terms of addressing this proposal issue?

A. Fairly promptly thereafter we did have a meeting to discuss the issue.

Q. And who attended that meeting?

A. The Cullmans, myself, Scott Greenberg

Wollen

from Morgan & Finnegan, several senior officers from General Cigar Co., Inc., including Austin McNamara and John Rano are the only two I'm certain of. I think there may have been a third or a fourth.

Q. Do you remember at this meeting Bill McCaffery and Ira Levy?

A. I believe they were there. I don't recall them being active participants. I believe they were there. I am not certain of that.

Q. And do you recall the discussions at that meeting?

MS. DORE: Just yes or no.

A. Yes.

Q. Did you -- and did you discuss the proposed Cohiba yellow?

MS. DORE: Yes or no.

A. Yes.

Q. And what was determined? What was discussed about that? Or put it this way: What decision was made -- was a decision made about the Cohiba yellow at that meeting?

A. Yes. To the best of my recollection,

1 Wollen

2 yes.

3 Q. And the decision that was made was to

4 not use the Cohiba yellow; is that correct?

5 A. That is correct.

6 Q. And were the reasons discussed at

7 that meeting, the reasons you gave me earlier?

8 MS. DORE: I think he gave you his

9 conclusions, not his reasons.

10 BY MR. GOLDSTEIN:

11 Q. Were reasons discussed as to why not

12 to use the Cohiba yellow?

13 MS. DORE: Yes or no.

14 A. Yes.

15 Q. And what were the reasons not to use

16 the company Cohiba yellow?

17 MS. DORE: Don't discuss any legal

18 advice that was given at the meeting.

19 A. It was all legal advice.

20 Q. Well, what reasons did other people

21 give?

22 MS. DORE: If they gave any reasons

23 apart from legal information that you had

24 passed on to them or that they had gotten

25 from any counsel.

1 Wollen

2 A. I recall none other than the two of

3 them made the final decision not to use the

4 color yellow.

5 Q. Did they make that decision as a

6 business reason or aesthetic reason, a legal

7 reason?

8 A. Their decision, I believe I said this

9 before, was based upon their goal to produce

10 what would become our red dot Cohiba in such a

11 manner as to totally distinguish it from the

12 Cuban Cohiba.

13 Q. Was it General Cigar's view that the

14 box that was eventually in the marketplace,

15 actually put in the marketplace in September of

16 1997, if the dot had been yellow, same box,

17 yellow dot, that would have raised the

18 possibility of confusion among consumers with

19 the General Cigar and the Cuban Cohiba?

20 MS. DORE: Objection. Calls for

21 privileged information.

22 A. Would you repeat it?

23 MR. GOLDSTEIN: Could you ask the

24 question.

25 (Question was read back as follows:

1 Wollen

2 Q. Were there discussions at General

3 Cigar as to whether or not producing the box as

4 produced, as ultimately marketed, with the

5 yellow dot, with the O with a yellow dot, would

6 that have raised the possibility of confusion

7 between the General cigar and the Cuban Cohiba?

8 MS. DORE: Yes or no --

9 A. Yes.

10 MS. DORE: -- as to whether there were

11 discussions.

12 A. Yes, there were discussions.

13 Q. And was the -- in the course of those

14 discussions, did representatives of General

15 Cigar express the opinion that yes, that would

16 cause or possibly cause some confusion?

17 MS. DORE: Objection on the ground

18 that it calls for privileged communication

19 between the client and his attorney, and

20 instruct the witness not to answer.

21 BY MR. GOLDSTEIN:

22 Q. As a result of those communications

23 that you participated in, a decision was made

24 not to use the yellow dot; is that correct?

25 A. That is correct.

Wollen

Q. And at that meeting was the decision made to use the red dot instead of the yellow dot?

A. Not to my recollection.

Q. Did you attend a meeting in which a decision was made to use the red dot instead of the yellow dot?

A. Not to my recollection.

Q. Do you know why the color red was chosen?

A. I was told it was the next best aesthetically pleasing color.

Q. Just so I'm clear, it's your understanding that the reason that the yellow dot was not used was a legal reason and not a business reason?

A. I think it was a business decision based upon legal advice.

Q. Is it your understanding that if there were no legal considerations or concerns from an aesthetic point of view, General Cigar would have used the yellow?

MS. DORE: Can I hear the question again?

1 people, including Mr. Marmo.

2 Have you ever seen this document

3 before?

4 A. I don't believe I have.

5 Q. In the first paragraph it says, "As

6 per discussion with the legal department,

7 changes must be made to the Cohiba packaging

8 presentation."

9 This is dated four days after your --

10 his memo to you suggesting a solution, so based

11 on that and your prior testimony, the meeting

12 you recall was quite soon after the June 23rd

13 meeting.

14 A. This is very consistent.

15 Q. With your understanding?

16 A. With my understanding.

17 Q. And he says, "Color yellow is out.

18 Box is approved."

19 Is that also consistent with your

20 understanding of what took place between the

21 23rd and the 27th?

22 A. Yes.

23 Q. And then further down in that

24 paragraph, "New color scheme under consideration

1 Wollen

2 discussions began.

3 Q. With Cubatabaco?

4 A. Yes.

5 Q. And that was after the litigation?

6 A. That was after the litigation.

7 Q. Did you play any role in the decision

8 to place the word "Cohiba" in the center of the

9 box?

10 A. No, I did not.

11 Q. Did you play any role in the decision

12 of where to place origin country or city of

13 origin?

14 A. I don't recall, but I know there are

15 BATF regulations as to size and clarity, so I

16 may have had some input from that respect, but I

17 don't recall.

18 Q. You don't recall any discussions

19 about top of the box, inside the box, bottom of

20 the box?

21 A. I certainly can't recall that now.

22 Q. Let me show you two exhibits; one is

23 Plaintiff's Exhibit 103 and one is Plaintiff's

24 Exhibit 104.

25 MS. DORE: Do you have an extra of 103

1 Wollen

2 by any chance?

3 MR. GOLDSTEIN: No. The only other

4 one I have, I think, is the box.

5 BY MR. GOLDSTEIN:

6 Q. In Plaintiff's Exhibit 103, the way

7 it was copied you can read the words over

8 Cohiba.

9 A. Right.

10 Q. But in the other one it doesn't, and

11 I'm going to ask you some questions and we can

12 struggle through it or if you can remember one

13 way or the other.

14 In the one, Exhibit 103, where you

15 can read the words over the mark Cohiba, in the

16 middle where the words are, it says, "The

17 exclusive Cohiba blend..."

18 Do you see that?

19 A. Yes.

20 Q. "The exclusive Cohiba blend of rich

21 Dominican filler tobaccos that we use today took

22 over six painstaking years to develop."

23 Do you see that?

24 A. I do.

25 Q. Do you recall that in an earlier of

1 Wollen

2 the original fly leaf, instead of referring to

3 Dominican filler tobaccos, it referred to six

4 varieties of Cuban seed?

5 A. Three varieties.

6 Q. I said six. I apologize.

7 Three varieties of Cuban seed?

8 A. Yes, I do.

9 Q. In 104, the reason I gave it to you

10 is where in the other exhibit, 104, the one

11 that's kind of blacked out, if you look at the

12 bottom line that runs through Cohiba, it's hard

13 to read because it's blacked out, but is it --

14 are you able to testify, either looking at it or

15 from memory, that under "after painstaking year"

16 or years, what's blacked out includes "three

17 varieties of Cuban seeds" or would that just

18 be -- are you able to do that?

19 A. I can tell you from memory that the

20 initial film, I think, I call it at least, did

21 have three varieties of Cuban seeds.

22 Q. And then sometime later that was

23 replaced with "blend of rich Dominican filler

24 tobaccos"?

25 A. From memory I couldn't tell you what

it was replaced with, but I can tell you that we did delete the three Cuban seeds.

Q. I was just reading from 103 when I said "blend of rich Dominican filler tobaccos."

A. Then that must have been what replaced it.

Q. Do you know why that change was made?

A. I believe it was part of our settlement discussions with your client and they had complained about it, and when we looked into it, quite frankly, there was disagreement as to whether there was one, two, three or even more Cuban seeds.

Q. In the Cohiba?

A. In the Cohiba.

The Cuban seeds are used in most premium cigars and most advertisements include some reference to Cuban seed, but under the circumstances of the settlement discussions and the fact that it didn't add much and was internally confusing as to whether it's two or three seeds, we deleted it.

Q. Do you know why you originally used the phrase "three varieties of Cuban seed"?

1 Wollen

2 A. I presume the marketing people

3 thought it had some cache.

4 Q. During your approval of the ad,the

5 Gateway ad which makes reference to the three

6 varieties of Cuban seed, do you recall

7 discussing with the ad people the use of that

8 phrase?

9 A. I did not. I was not troubled by it

10 for the reason I mentioned; and that is, that

11 most advertising for premium cigars has a

12 reference to Cuban seeds.

13 Q. Did you have any discussions with

14 people at General Cigar, either the operating

15 arm, you know, McNamara, Rano or the Cullmans,

16 regarding whether or not the ad should say three

17 varieties of Cuban seed?

18 A. Not at that time.

19 Q. Let me show you what's been marked as

20 Plaintiff's Exhibit 24 and Plaintiff's Exhibit

21 56. They are two documents slightly different

22 or somewhat different entitled "About Cohiba."

23 One comes from the McCaffery files, McCaffery

24 reference MC 590 and one comes from the

25 Rubenstein files, RA 15. RA 15 is Plaintiff's

1 Wollen

2 A. I've seen the word "exploit" in

3 preparation or in connection with this

4 litigation. I didn't like it so I remembered

5 it.

6 I did not see it, to the best of my

7 recollection, prior to the litigation.

8 Q. And you didn't like the reference to

9 "Exploit the Cohiba name"?

10 A. No, I did not like that reference,

11 and I don't like the word "exploit" in any

12 context.

13 MR. GOLDSTEIN: Can we mark this.

14 (Plaintiff's Exhibit 312, Excerpts

15 from Culbro Notice of Annual Meeting of

16 Shareholders to be held on June 2, 997,

17 marked for identification, as of this date.)

18 BY MR. GOLDSTEIN:

19 Q. Let me show you what we just marked

20 as Plaintiff's Deposition Exhibit 312, and it's

21 excerpts, not a complete document, from a

22 "Culbro Corporation Notice of Annual Meeting of

23 Shareholders to be held on June 2, 1997."

24 And I take it you're familiar with

25 the whole document?

1 Wollen

2 A. Yes, I am. This is the principal

3 author of this type of document.

4 Q. And this particular document is a

5 publicly filed document?

6 A. Yes.

7 Q. Pursuant to SEC regulations?

8 A. Yes.

9 Q. And this was part of or this was the

10 notice for the merger that we talked about

11 earlier between Culbro and General Cigar

12 Holdings, Inc?

13 A. Yes, it's the notice of the annual

14 meetings where the shareholders would vote on

15 the merger.

16 Q. If you turn to page 5.

17 (Witness complies.)

18 Q. It says in the middle of the first

19 paragraph, "General Cigar, after giving effect

20 to the Villazon acquisition, owns the U.S.

21 trademark rights to seven of the top ten

22 traditional premium Cuban brand names ranked

23 according to 1995 worldwide sales by all cigar

24 marketers."

25 What does that refer to?

Wollen

In other words -- I guess let me break it down a little bit.

1995 worldwide sales by all marketers, is that referring to by name?

In other words, would that include all Partagas, Cuban Partagas sales plus all General Cigar Partagas sales? Is that what your understanding of that is?

A. Let me just read it.

Q. All right. Sorry.

(Witness reviewing document.)

A. All right. Would you ask the question?

Q. My question is, what are 1995 worldwide sales by all cigar marketers of the ten traditional premium Cuban brand names? What does that include? Does that include both U.S. sales of the American brand owner plus the worldwide sales of the Cuban cigar of the same name?

A. I believe it does because it's talking about worldwide sales.

And let me just qualify, this language essentially comes from our Initial

Public Offering, a document which I took part in but had a great deal of help because we had underwriters, counsel underwriters, General Cigar counsel. So I'm not the author of this and should not be treated as the author.

Q. But your understanding is that the information is accurate, what it's describing?

A. I believe it was accurate at the time, yes.

Q. Is there significance to the fact that General Cigar owns the U.S. trademark rights to seven of the top ten traditional premium Cuban brand names?

A. I think a shareholder of General Cigar would be interested in that information and find it important, if not significant.

Q. A little farther down it says, "In 1996, Robb Report chose eight best cigars..." and then you list some of the cigars and the last one is Cohiba.

Are you familiar with the Robb Report for '96?

A. I'm familiar with the Robb Report and I'm sure we had a copy of a '96 report.

1 Wollen

2 Aficionado and then responding or corresponding

3 with someone regarding that?

4 A. Not our own advertisements.

5 Q. No, other advertisements.

6 Do you recall --

7 A. My confusion is when you ask review,

8 that to me that connotes before publication.

9 Q. I'm sorry.

10 Did you read or see advertisements in

11 the premier issue of Cigar Aficionado that led

12 you to complain about certain of the ads?

13 A. I've done that many, many times. I

14 cannot tell you now whether I did it for the

15 premier issue.

16 Q. If you turn inside there's, on both

17 of these there's purple tabs and they tab the

18 identical advertisements.

19 A. Yes.

20 Q. And then there's another one.

21 Do you recall seeing these two

22 advertisements, the one that says "Cohiba the

23 first name in cigars," "Habanos unique since

24 1492," and other one, "Cohiba Cigar Divan," "The

25 Lobby The Mandarin Oriental Hotel Hong Kong"?

1 Wollen

2 A. I have certainly seen these ads

3 before. I assume I saw them in the first and

4 the premier edition.

5 Q. And do you recall writing to David

6 Baxter at Hunters & Frankau about these ads in

7 the premier issue?

8 A. As I stated, I've sent numerous

9 letters of that sort. I think I did send one to

10 David Baxter which I have reviewed recently.

11 MR. GOLDSTEIN: Why don't we mark

12 this.

13 (Plaintiff's Exhibit 314, Letter dated

14 11-5-92 from Wollen to Baxter and

15 attachments, marked for identification, as

16 of this date.)

17 BY MR. GOLDSTEIN:

18 Q. I show you what we've marked as

19 Plaintiff's 314, Deposition Exhibit 314, and

20 it's actually a letter from you to Mr. Baxter,

21 there's a letter from Mr. Baxter to you and a

22 communication from Mr. Baxter to Marvin Shanken.

23 You can go through them. I believe they're all

24 on the same topic.

25 The letter from you to Mr. Baxter is

dated November 5, 1992?

A. That's correct.

Q. And reviewing this now or reviewing it earlier, do you recall writing to Mr. Baxter concerning ads, an ad or ads in the premier issue of Cigar Aficionado?

A. Yes, I do.

Q. Do you know what it's -- if it's referring to either of these two ads or is there another ad in here, do you recall?

A. I believe if these were the only two ads that dealt with Cohiba, the one I would have objected to is the one with the Indian head and the Habanos, but I can't be sure of that.

Q. Do you recall how you determined that that ad was run by Hunters & Frankau? Do you have any recollection of that?

A. No. I believe Mr. Cullman junior complained about the ad and told me that Hunters & Frankau were involved.

Q. That is Nicholas Freeman's company or was Nicholas Freeman's company?

A. Yes.

Q. Now, in the second paragraph you

1 Wollen

2 state that, "This will serve as our formal

3 notice to you..." to Mr. Baxter, "...that

4 General Cigar Co....as the owner of the

5 trademark registration for Cohiba in the United

6 States, objects to your unauthorized use of our

7 valuable mark. Continued unauthorized use may

8 result in damage to our rights in this mark and

9 will not be tolerated."

10 What in the ad, the Cohiba Habanos

11 ad, constitutes an unauthorized use of General

12 Cigar's mark?

13 A. The fact that the word mark Cohiba in

14 conjunction with cigars is advertising cigars in

15 the United States where we own the registered

16 trademark and no one else does.

17 I remember thinking and discussing at

18 the time that the predominant reader of Cigar

19 Aficionado were American consumers, and that's

20 why the letter discusses the United States or in

21 any magazine which may appear in the United

22 States.

23 Q. What makes the use unauthorized?

24 In other words, what is the right

25 that is being harmed?

1 Wollen

2 A. Someone is using the word mark Cohiba

3 which General Cigar owns in the United States.

4 They're using it in connection with cigars,

5 which is the category of our registered

6 ownership of the word mark Cohiba and they are

7 obviously selling cigars.

8 Q. And in the next sentence you say

9 "Continued unauthorized use may result in damage

10 to our rights in this mark and will not be

11 tolerated."

12 What damage to your rights are you

13 referring to?

14 A. An American consumer reading this

15 magazine and a customer of Dunhill might be

16 confused that this is the General Cigar Cohiba

17 sold in Dunhill, and it isn't.

18 Q. So your concern was the possibility

19 of confusion?

20 A. I think that's a principal concern.

21 Q. And to have any damage or any claim

22 you would need to show confusion, is that not

23 correct?

24 In other words, you can't be harming

25 your trademark if there's no confusion.

A. That's a legal principle that I'm not prepared to address.

Q. When you wrote the letter, you wrote the letter, I take it, in good faith that you believed there was damage to your rights, potential for damage to your rights; is that correct?

A. Yes.

Q. And the damage that you were concerned about is what you just described to me about a potential consumer of Dunhill?

A. That's the first thing that pops into my mind.

Q. Any other considerations at that time when you were concerned about damage to your rights?

A. I cannot now recall whether I had some other considerations and I may well think of some.

Q. If you do --

A. But at the moment this is the one that comes to mind first.

Q. If you do, let me know if you think of others.

1 Wollen

2 You had that concern even though it

3 identified the mark as Habanos?

4 A. Yes.

5 Q. Were consumers of premium cigars

6 basically aware that Habanos referred to Cuban

7 cigars, if you know?

8 MS. DORE: Objection.

9 Don't speculate as to what they mean

10 by that.

11 MR. GOLDSTEIN: If you know.

12 A. Would you repeat the question?

13 Q. The question was, at that time were

14 American consumers of premium cigars generally

15 aware that Habanos referred to Cuba, Cuban

16 cigars?

17 A. In my experience, very few.

18 Q. Is the trade dress, the Indian head,

19 is that something that is part of the Cuban

20 Cohiba trade dress look?

21 A. You showed me a picture yesterday

22 that looked like that. It's not the traditional

23 trade dress which has the yellow and black polka

24 dots and it's far more colorful.

25 Q. And the leaf, are you aware that

that's associated with habanos?

A. I've seen that next to the word "Habanos."

Q. At the time that you wrote the letter, though, in good faith you believed that this ad could damage General Cigar's mark?

A. Yes.

Q. Because of the possibility of confusion in the U.S. marketplace?

A. Confusion and as we discussed a moment ago, maybe some other reasons that I cannot recall right now.

Q. And the problem that you see in the ad is the word "Cohiba," or is there anything else in the ad?

A. Cohiba in association with cigars which we own in the United States.

Q. If you turn to the third page of what I marked as Plaintiff's 314, there is a letter from Mr. Baxter to you dated November 16th --

A. Yeah, I see.

Q. -- in which he acknowledges receipt and encloses a communication to Cigar Aficionado.

Wollen

A. It's referred to in the letter.

Q. That it may be too late to pull it from the second issue.

A. Correct.

Q. And also in that next half page is the, I believe an identical ad for the Cohiba Cigar Divan?

A. Yes.

Q. Do you recall complaining about that advertisement?

A. I don't think so. There was discussion, we were not happy with it, but my best recollection is that since it was specific to a hotel in Hong Kong, we would not be on the very solid grounds that we were on to complain about the other advertisement.

MR. GOLDSTEIN: Let me mark this.

(Plaintiff's Exhibit 315, Letter dated 12-1-92 unsigned to Shanken, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. If you could -- I'm showing you what we just marked as Plaintiff's Exhibit 315.

A. Uh-huh.

1 Wollen

2 Q. And it's a letter dated December 1,

3 1992 with your letterhead to Mr. Shanken, and it

4 addresses itself to the Cohiba Cigar Divan

5 advertisement in the second issue, in the issue

6 we just looked at, and the letter is not signed.

7 Do you recall if the letter was sent

8 to Mr. Shanken?

9 A. I'm sure it was.

10 Q. And in that letter you say that

11 you're "...concerned about the Cohiba Cigar

12 Divan advertisement which ran on page 89 of your

13 winter 1992/93, Volume 1 No. 2 edition of Cigar

14 Aficionado.

15 You say, "...we have no right to say

16 what can or cannot be advertised or sold in Hong

17 Kong's Mandarin Hotel..." "But any Cohiba ad

18 that runs in the United States that is not

19 sponsored or licensed by General Cigar threatens

20 our trademark."

21 "Would it be possible to run these

22 Cohiba ads only overseas? Failing that we must

23 object to the Cigar Aficionado running any

24 further Cohiba advertisements without our

25 express written consent."

1 Wollen

2 Is it your recollection that that

3 letter was sent to Mr. Shanken?

4 A. I have no reason to think it was not

5 sent. It certainly is on my letterhead.

6 Q. You say "...we must object to the

7 Cigar Aficionado running any further Cohiba

8 advertisements without our express written

9 consent."

10 Why? In other words, we can't be

11 isolated to overseas advertising.

12 A. Because we own the Cohiba trademark

13 in the United States and Cigar Aficionado's

14 subscribers or readership base was something

15 well over 90 percent American. At least that

16 was my understanding at this time.

17 Q. To have any damage to your rights,

18 there had to be some confusion; is that correct?

19 A. That's the same legal principle I am

20 not familiar with.

21 Q. What was your basis for writing the

22 letter asking that that ad not run in the United

23 States?

24 A. That this ad would infringe upon the

25 registered Cohiba trademark which General Cigar

1 Wollen

2 owned in the United States.

3 Q. And what was your understanding of

4 the meaning of the term "to infringe upon" at

5 the time you wrote that letter?

6 A. Violate our trademark rights.

7 Q. And what rights was it your

8 understanding the use of the Cohiba Cigar Divan

9 would violate here in the United States?

10 MS. DORE: Asked and answered.

11 You can answer again.

12 A. Our right to the registered Cohiba

13 trademark in the United States.

14 Q. Was it your understanding at that

15 time that nobody could use the word "Cohiba" in

16 connection with cigars in the United States

17 other than General Cigar.

18 A. In connection with the sale of

19 cigars.

20 Q. Because that would infringe on

21 General Cigar's trademark rights?

22 A. That is my understanding.

23 Q. But you don't have an understanding

24 as to whether infringement requires a likelihood

25 of confusion?

1 Wollen

2 but you did object on the second issue?

3 A. I guess I took them one at a time.

4 Q. Do you know if it had anything to do

5 with the fact that at the time the premier issue

6 ran, General Cigar did not have a Cohiba in the

7 marketplace; at the time the second issue ad

8 ran, it was about to put its Cohiba into the

9 marketplace?

10 A. Absolutely not.

11 Q. Let me show you autumn 1993 Cigar

12 Aficionado with a fabulous picture of Winston

13 Churchill.

14 MS. DORE: Which issue is it?

15 MR. GOLDSTEIN: Cigar Man's Cigar Man.

16 BY MR. GOLDSTEIN:

17 Q. If you turn to, I guess where the

18 second tab probably.

19 (Witness complies.)

20 Q. Is there another tab? I guess the

21 tab before that one.

22 A. Okay.

23 Q. And that's page 123 or after page

24 No. 122.

25 A. It's actually, yes, it is. It's 123.

Wollen

Q. There is an advertisement Cohiba Cigar Divan. Again, the lobby at the Mandarin Hotel, Hong Kong. A slightly different -- a different look to the ad but the same words.

A. Yes.

Q. I'm just identifying it.

Do you recall complaining -- not complaining.

Do you recall writing a complaint about that advertisement?

A. No, I don't.

MR. GOLDSTEIN: Can you remark this.

(Plaintiff's Exhibit 316, Letter dated 8-2-4-93 from Wollen to Shanken, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you what we marked as Plaintiff's Deposition Exhibit 316. It's a letter signed by you dated August 24, 1993 to Mr. Shanken, Marvin Shanken.

Do you see that?

A. Yes.

Q. Looking at the letter, do you recall that letter?

A. I still don't recall it, but it certainly is my letter and my signature.

Q. It refers to this particular ad that we're looking at; is that correct?

A. Yes, it does because it mentions page 123.

Q. In that letter, after identifying the particular advertisement you state, "We must and do protest this misuse of our brand name by someone not licensed by us in a publication distributed in the United States as continued use in this fashion could impair our trademark."

When you wrote the letter, what misuse of the brand name are you identifying in that advertisement?

A. The use of the word "Cohiba" in clearly a cigar context.

Q. Was it your understanding at the time that the Cohiba Cigar Divan was a store?

A. Yes.

Q. And the store was in a hotel in Hong Kong?

A. That's what it says, yes.

Q. The Mandarin Hotel, the Mandarin

Oriental?

A. Yes.

Q. That's a pretty classy hotel.

A. I spent a week there.

Q. And it has a -- does it have a reputation among world business travelers as a high-class hotel, to your knowledge?

A. Certainly recently, yes. I would say in the '90s, yes.

Q. Do you know when it became named the Cohiba -- when the store the Cohiba Cigar Divan opened there?

A. I've read some stories about it. I think it's a Mr. Tang who has the exclusive franchise in Hong Kong, but I have no idea of the timing.

Q. Have you ever been in the shop, the Cohiba Cigar Divan?

A. I don't think it was there when I was there and I have not been back.

Q. I was going to ask you, have you been back as part of your business work with General Cigar?

A. I have not been to Hong Kong since

1969.

Q. And then you say further down in the sentence after "...misuse of our brand name by someone not licensed by us," it's the same quote, at the end of the sentence, "...continued use in this fashion could impair our trademark."

What was your understanding of how your trademark could be impaired by the running of this advertisement in a U.S. publication?

A. I believe that it would be infringing upon our registered Cohiba trademark in the United States to have someone else using the word "Cohiba" in conjunction with cigars in a magazine, the great majority of whose subscribers and readers are Americans.

Q. And your understanding is that you had a legal basis to make that objection?

A. Yes.

Q. In the second paragraph you address to Mr. Shanken, "If the ads are not eliminated entirely, we would like to discuss with you the use of a footnote-type warning/notice stating that the mark is owned by General Cigar in the United States."

1 Wollen

2 Q. Do you have any knowledge of any

3 other ads for Cohiba?

4 A. I have no knowledge.

5 MR. GOLDSTEIN: Can you mark this.

6 (Plaintiff's Exhibit 317, Letter

7 dated 9-2-93 unsigned to Havana House Cigar

8 & Tobacco Merchants Ltd., marked for

9 identification, as of this date.)

10 BY MR. GOLDSTEIN:

11 Q. Let me show you what we marked as

12 Plaintiff's Exhibit 317 dated September 21,

13 1993, a letter to Havana House, and then it's

14 "Very truly yours" and it's unsigned.

15 If you take a look at that, my first

16 question is, do you recall that letter?

17 A. I do recall writing to Havana House

18 at some time, and while it's not signed, this

19 certainly looks like a letter that I would

20 prepare and send.

21 Q. Do you recall sending this letter?

22 A. I think so, yes.

23 Q. If you look on the top, there's some

24 handwriting dated April 26, '94.

25 A. Uh-huh.

Q. And it says "Fax" and that refers to Cullman senior, Cullman junior and you; is that correct, those initials?

A. Yes.

Q. And ATM or AJM, is that Mr. McNamara?

A. Yes.

Q. Is that T or J?

A. It's a T.

Q. It says, "Thanks Ross. We should revise and send him and Marvin another letter"?

A. That's what it says.

Q. Okay. I'll get to that.

In the letter it says, "It has come to our attention that you intend to advertise Cohiba brand cigars manufactured by Cubatabaco and bearing the trademark Cohiba registered by Empresa Cubana Del Tobaco in Canada in the forthcoming issue of Cigar Aficionado magazine."

Do you recall how you knew that?

A. May I just make a point that the letter is dated September 21 of '93. The hand note is April of '94.

Q. Right. It says we should send him and Marvin another letter.

A. Right. Let me read it, please.

(Witness reviewing document.)

A. Okay. I've read the first paragraph.

Q. Do you know how you learned that Havana House was intending to advertise Cohiba brand cigars in Cigar Aficionado?

A. No, I don't recall.

Q. Do you know if Cigar Aficionado informed General Cigar of that fact?

A. I don't recall. I do not know.

Q. Did General Cigar receive advance copies of, when I say "advance copies," like galleys or prints, to your knowledge?

A. Not to my knowledge.

Q. Did Cigar Aficionado, as a practice, ask for General Cigar's comments on advertising it planned to run?

A. No.

Q. Did it do that for parallel brand names? When I say "parallel," names that are used by the Cubans outside the United States, used by U.S. companies here in the United States, to your knowledge?

A. Not to my knowledge.

recall whether you saw the advertisement that you're referring to here, the intended advertisement?

A. I can't tell you that sitting here now.

Q. Can you describe it in any way, what it looked like or what it said?

A. Not this particular ad, no.

Q. This letter, I take it, was sent in a good faith belief that you had a legal basis for the statements you make in the letter?

A. Yes.

Q. Did you consult with Morgan & Finnegan on the contents of the substance of the letter?

A. I think it's very likely I did because of the citation contained at the end of the second paragraph.

Q. The reference to 15 U.S.C. Section 1114.

A. Because of that citation which could have been used in a preceding letter that Morgan & Finnegan helped me with and I copied it for this letter, or I could have gotten their help

1 Wollen

2 on this letter, but certainly that notion and

3 that wording I would have gotten assistance on

4 from Morgan & Finnegan.

5 Q. Do you recall -- we looked at, I

6 believe, three other letters; one to Havana

7 House and two to Mr. Shanken.

8 Do you recall whether you consulted

9 with Morgan & Finnegan concerning your legal

10 rights prior to sending those letters?

11 A. I'm not sure, and I thought of that

12 when I was reading it. I'm not sure.

13 Q. If you knew that Havana House

14 intended to advertise its Cohiba brand cigars in

15 a publication in the United States but you

16 didn't know what the ad looked like, what would

17 you have based your, what would you have based

18 your legal objection on?

19 A. That if it's an ad that includes the

20 name Cohiba in relationship to cigars,

21 advertising the sale of cigars in a publication

22 that is predominantly distributed and purchased

23 by American citizens, that it infringes upon our

24 registered Cohiba trademark in the United

25 States.

1 Wollen

2 coming into the country.

3 I was thinking of it in terms of

4 knowledge of any claim to rights that

5 Cubatabaco had or knowledge of what

6 Cubatabaco was doing with the mark at the

7 time they were applying for it, and when we

8 designated Mr. Cullman junior for that,

9 that's what I had in mind.

10 MR. GOLDSTEIN: And that's what I

11 understand also.

12 MS. DORE: Okay, because I wouldn't

13 designate him as the person knowledgeable or

14 who would testify with respect to any

15 customs enforcement that might include

16 Cubans.

17 MR. GOLDSTEIN: Right. That's why I'm

18 asking Mr. Wollen, because I understand he

19 was involved in the Customs actions which I

20 understand involved both Dominican and

21 perhaps Cuban cigars coming in.

22 MS. DORE: Okay.

23 MR. GOLDSTEIN: And that's --

24 MS. DORE: That's okay. So we have

25 the same understanding.

1 Wollen

2 MR. GOLDSTEIN: Yeah. My

3 understanding with Mr. Cullman is what did

4 you know about the use of the Cohiba --

5 MS. DORE: Exactly.

6 MR. GOLDSTEIN: -- in '77, '82, '92,

7 those kinds of questions.

8 MS. DORE: That's what I understood

9 that to mean and that's what I designated

10 Mr. Cullman for.

11 MR. GOLDSTEIN: Okay.

12 BY MR. GOLDSTEIN:

13 Q. So back on the original question, and

14 these questions would include anything regarding

15 the real Cubatabaco Cohibas as well as any other

16 Cohiba cigars, did General Cigar take any action

17 with respect to United States Customs regarding

18 seizure or interdiction of non-General Cigar

19 Cohiba cigars?

20 A. Yes.

21 Q. And do you recall when General Cigar

22 did that, first dealt with Customs on this

23 issue?

24 A. We've actually for many years dealt

25 with Customs at their request with respect to

Q. Do you have any knowledge of whether Customs was doing this pursuant to trademark protection or embargo related?

A. At that time I believe it was embargo related.

Q. Did there come a time when General Cigar asked Customs to assist it in enforcing its trademark rights to Cohiba?

A. Yes.

Q. And do you recall about when that was?

A. I was very much involved in that and I believe it began about 1995, perhaps a little bit earlier.

We registered the Cohiba brand with U.S. Customs.

We also initiated a program of educating Customs officials in various places, principally Miami because that was historically a major entry point for cigars into the United States, and assisting Customs inspectors as to the quality of the cigars, the nature of the labeling, the box, to assist them to discern the origin of the product.

1 Wollen

2 Q. When you say register with U.S.

3 Customs, that was pursuant to a legal procedure

4 that permitted you to register your trademark

5 with U.S. Customs?

6 A. Yes.

7 Q. Now, did you do this originally in

8 1995 or a little earlier, did you do this,

9 General Cigar on your own, or was this in

10 conjunction with Consolidated, the claimed

11 United States owner to the mark Montecristo?

12 A. I think the registration we did on

13 our own, but many of the activities that we

14 undertook were in conjunction with Consolidated

15 Cigar.

16 We shared expenses, I believe, for a

17 law firm in Washington.

18 I don't think I ever shared expenses,

19 but they had a law firm in Connecticut which

20 assisted them.

21 And throughout the period of '95

22 forward, in variably when dealing with

23 counterfeit cigars whose principal origin was

24 the Dominican Republic, the two principal brands

25 counterfeited, there were numerous, but the two

1 Wollen

2 principal brands counterfeited and interdicted

3 were Montecristo, the Consolidated brand, and

4 Cohiba, our brand in the United States.

5 Q. Were the Cohibas that were of

6 Dominican origin, not yours and not

7 Cubatabaco's, imitate the trade dress of the

8 Cubans?

9 A. Yes. Until the first -- in 1998 or

10 so we started seeing the first counterfeits of

11 the red dot Cohiba, but predominantly and

12 certainly in 1995, in 1996, 1997, the trade

13 dress of the Cuban Cohiba was being

14 counterfeited or replicated by the

15 counterfeiters.

16 Q. What was the -- who was the

17 Washington law firm?

18 Was it Baker & Mackenzie?

19 A. Baker & Mackenzie. Thank you.

20 Q. Do you know if Baker and Mackenzie's

21 files have been searched in response to

22 document requests in this case?

23 A. I have not made that request or

24 search, no.

25 Q. Did you have any dealings directly

Consolidated law firm in the Dominican Republic in a lawsuit filed by Consolidated in the Dominican Republic against the major, what I call renegade manufacturer by the name of Monti Cristi. I think both with I's.

Q. That particular manufacturer is the same source of the GDM Cohiba cigars?

A. It was the principal source and, in fact, GDM claimed to be the exclusive distributor for Monti Cristi.

Q. And the GDM cigars for Monti Cristi, they used the imitation of the Cuban trade dress?

A. Yes.

Q. And most or all of the Monti Cristi factory Cohibas that you're familiar with, at least up through '98, used the Cuban Cohiba, imitation of the Cuban Cohiba dress.

A. Yes.

Q. You said that you did some, you, General Cigar, did some education programs for Customs officials?

A. Yes.

Q. Were you directly personally involved

1 Wollen

2 Cigar, ever specifically told Customs that you

3 did not claim any trademark rights vis-a-vis the

4 Cuban, Cuban tobacco Cohibas?

5 A. No, we would never say that.

6 Q. It's your position that Cuban,

7 Cubatabaco Cohibas brought into the United

8 States for sale, in addition to being illegal

9 under the embargo, infringe your rights here in

10 the United States?

11 A. Absolutely.

12 Q. And why is that? Why would they

13 infringe your rights here in the United States?

14 A. Because they contain the word mark

15 Cohiba on a box of cigars coming into the United

16 States where we are the registered owner of the

17 Cohiba trademark for cigars.

18 Q. And it doesn't matter to your

19 position that they're on the boxes clearly

20 designated La Habana Cuba?

21 A. That does not change our position,

22 no.

23 Q. And it doesn't change your position

24 that these cigars would be infringing if they

25 had came in with the Cuban trade dress of the

1 Wollen

2 Q. Is it your understanding that the

3 largest number of counterfeit cigars coming into

4 the United States in the mid '90s, '95 through

5 the '97, were Cohibas and Montecristos?

6 A. Yes.

7 Q. When Customs seized Cohibas, they

8 would notify you or at least they would notify

9 at least Morgan & Finnegan; is that correct?

10 A. Actually, I think the process was to

11 go to the Baker & Mackenzie firm, then I think

12 they kept a running total because they were

13 pretty much the clearinghouse for that

14 operation.

15 Q. I have a few letters from, and these

16 aren't all of them, but I have a few from

17 Customs in 1997 directed to Mr. Greenberg at

18 Morgan & Finnegan. I guess one is from '98.

19 Do you have any recollection of that

20 process starting at this particular time or them

21 stepping in for Baker?

22 A. No. There were different -- very

23 often Customs would initiate something

24 themselves. Over the years I have had contact

25 with U.S. Customs in New York, Chicago, Houston,

1 Wollen

2 A. I don't know which one.

3 Q. Do you have any recollection, at

4 least as to Cohibas, how many times this kind of

5 an occurrence took place?

6 A. It was fairly infrequent that they

7 would actually deliver or send us the cigars.

8 It was more frequent that we would

9 get a phone call that could be responded to by

10 telephone or by fax.

11 Q. But you don't have a recollection of

12 how many times you tested for Cohiba

13 authenticity?

14 A. No, I don't.

15 MR. GOLDSTEIN: Why don't we mark

16 this.

17 (Plaintiff's Exhibit 325, Fax from

18 Wollen to Conte and attached Cigar

19 Aficionado web pages, Chronological Summary

20 of Counterfeit and Infringing Montecristo

21 and Cohiba Cigars and three letters from

22 Dillmann to Greenberg, marked for

23 identification, as of this date.)

24 BY MR. GOLDSTEIN:

25 Q. Let me show you what we marked as

Wollen

Plaintiff's Deposition Exhibit 325, GC 2759 through 76, and it's a fax from you to Mr. Conte, the same Customs agent we just looked at.

A. Yes.

Q. And it says, "Happy to help."

This is your handwriting?

A. Yes.

Q. "Happy to help. Why not start with this from Cigar Aficionado's website," and then "Also sending U.S. Customs reports of Cohiba seizures."

Is this a follow-up to that prior or is this something unrelated to that?

I couldn't figure out the dates.

A. I think this is an example of the telephonic inquiry to which I just referred.

Q. And the counterfeit gallery that you sent, that's from Cigar Aficionado's website?

A. That is correct.

Q. And on the website that's in color?

A. Yes, it is.

Q. And all the -- what they're showing, the counterfeit of unknown origin and the

1 Wollen

2 counterfeit purchased in Cuba, are similar to

3 the general -- similar to the Cubatabaco trade

4 dress; is that correct?

5 A. That is correct.

6 Q. And they also have an image of the

7 General Cigar band as well?

8 A. The Cohiba red dot, yes.

9 Q. And you sent this to Customs as part

10 of your ongoing work with them?

11 A. At his request.

12 Q. And then -- can you tell when this

13 was sent? 7-8-98, is that the date under start

14 time on the first page? The 7-7-98 is the run

15 date off of the website, and the fax cover sheet

16 is 7-8-'98; is that correct?

17 Turn it upside down.

18 A. The fax confirmation apparently is

19 7-8-98.

20 Q. And then attached was some

21 information you had received from Customs,

22 "Total Cigars Seized by Customs," after the

23 website, or is that someone that Baker &

24 Mackenzie or somebody else prepared for you?.

25 That's G GC 7773.

Wollen

A. GC 7773 is the format of the chronological summary that Baker & Mackenzie prepares.

Q. Are they still performing that service?

A. I have not seen one for some time, but they are still retained by us.

Q. Do you, do you know when you first learned of a counterfeit Cohiba using the General Cigar red dot band or box?

A. I believe it was sometime in late 1998, possibly early '99. There is a reference to it in Cigar Insider somewhere.

MR. GOLDSTEIN: Can you mark this.

(Plaintiff's Exhibit 326, Letter dated 8-28-97 from Wollen to Ellis, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you what we marked as Plaintiff's Exhibit 326. It's a letter from you to Wendy Ellis of Tinderbox International Limited, August 28th, 1997 regarding videotape, "Smoke - In Your Eyes - Cigar Lovers Adventure in Cuba."

Do you know what that refers to?

A. It was a videotape.

Q. Did you see the videotape?

A. I'm sure I did.

Q. Do you recall that it's about the 30th anniversary of the Cohiba celebration in Cuba?

A. I have seen a video -- I've seen the videotape that you're describing. I am not sure it's this one. I think I have seen two similar ones, so I qualify my answer by that. I think I have seen two videotapes.

Q. Involving Cohiba filmed in Cuba?

You refer to it in the first sentence as "the Cohiba videotape."

A. I suppose this is it, so yes, this is about Cohiba.

Q. Now, in the second paragraph you say, "While I cannot say the tape or its jacket is technically a trademark infringement as it does not display our registered word mark Cohiba, we believe its advertisement in your catalog at this time would lead to confusion on the part of your subscribers, many of whom are our

consumers."

To what are you referring?

A. I'm referring to the fact that the jacket and the actual videotape, the plastic tape, neither of them had the word "Cohiba" on it, but the jacket did have what I would call either a similar look to the Cohiba trade dress of yellow and polka dots, et cetera.

Q. So on the videotape jacket, the box cover, you don't see the word "Cohiba," but you see the Cuban trade dress?

A. Correct.

Q. The Cuban Cohiba trade dress.

A. Yes. Something similar to the trade dress. The colors. It evokes the trade dress.

Q. Now, and is that why you're saying you don't believe -- you cannot say it's technically a trademark infringement? Is that because it doesn't have the word "Cohiba" but has the Cuban trade dress?

A. That is what I meant.

Q. Okay. You then go on to say, "We believe its advertisement in your catalog at this time would lead to confusion on the part of

1 Wollen

2 your subscribers, many of whom are our

3 consumers."

4 So we would be referring to American

5 consumers?

6 A. Yes.

7 Q. And what would the confusion be?

8 A. Because the coloration evoked or

9 replicated the Cuban trademark, people may put

10 that together with Cohiba and confuse it with

11 our Cohiba.

12 Q. You would agree that American premium

13 cigar smokers at this time would recognize that

14 yellow, black and white check as the trade dress

15 of the Cuban Cohiba?

16 A. Some could.

17 Q. And you were concerned that that

18 would lead to confusion on the part of Tinderbox

19 subscribers, many of whom are General Cigar

20 customers?

21 A. Yes, in particular because I assumed

22 the text describing the videotape would contain

23 the word "Cohiba."

24 Q. Is that addressed in your letter?

25 Did you make any reference to that? Did you ask

1 Wollen

2 her not to use the word "Cohiba," for example,

3 in any of the advertising?

4 MS. DORE: Can I hear that question?

5 (Question was read back as follows:

6 "QUESTION: Is that addressed in your

7 letter? Did you make any reference to that?

8 Did you ask her not to use the word

9 "Cohiba," for example, in any of the

10 advertising?")

11 MS. DORE: I object on the grounds

12 it's a compound question.

13 BY MR. GOLDSTEIN:

14 Q. You can answer. It doesn't matter.

15 MS. DORE: If you can. If you know

16 which question to answer.

17 BY MR. GOLDSTEIN:

18 Q. Did you ask -- in the letter you did

19 not ask her to do -- not to use the word

20 "Cohiba"; is that correct?

21 A. That is correct, although I asked her

22 not to advertise or promote the tape in any way.

23 Q. All right. Did you, in your letter,

24 specify that your objection included your

25 presumed -- presumption that she would have to

1 Wollen

2 documents and your own knowledge?

3 A. My own knowledge.

4 Q. That's pretty much --

5 A. And the general review of documents.

6 MS. DORE: Can I make a comment? Am I

7 the only one who spells smoke?

8 (Discussion off the record.)

9 (Recess is taken.)

10 MR. GOLDSTEIN: Let me mark this.

11 (Plaintiff's Exhibit 327, Letter

12 dated 7-31-97 from Webber to Cohiba De

13 Deominicana with attachments, marked for

14 identification, as of this date.)

15 BY MR. GOLDSTEIN:

16 Q. Let me show you what we've marked as

17 Plaintiff's 327, and it's a letter with an

18 attachment from Mr. Webber to Cohiba De, looks

19 like Deominicana, D-e-o minicana instead of

20 Dominicana, July 31, 1997, and attaches the

21 trademark registration for your Cohiba, two

22 registrations.

23 Are you familiar with this letter?

24 A. Yes. I think I was asked about it in

25 the GDM case.

Q. Do you agree with that statement?

A. Yes, I do.

Q. Do you know that this product used a trade dress similar to the Cuban trade dress?

A. Not unless it's described in the letter or in an exhibit, no, I do not.

Q. Is it your understanding or is it General Cigar's position that the use of the mark Cohiba on the sale of cigars or other of the goods identified, in other words, other of the goods that you sought trademark registration for and received trademark registration for, the use of the word "Cohiba" with -- in combination with the Cuban style trade dress is an infringement of General Cigar's rights?

A. Yes, as set forth in the second paragraph.

Q. Okay. And is it further your under -- is it further General Cigar's position that "Such use is likely to cause confusion, mistake or deception in that purchasers of such goods will be led, by reason of the identity of the marks and the related nature of the goods, to believe that the Cohiba products emanate from or

are otherwise sponsored or licensed or affiliated with General Cigar"?

A. Did you just read that from the letter?

Q. I used that except for the words "you or your."

A. Just give me a minute to look at the sentence.

(Witness reviewing document.)

A. I agree with that sentence.

Q. As written?

A. As written.

Q. And you would agree that that's generally applicable, not just to this particular company?

A. Yes.

Q. Do you recall a dispute with a Florida based company that was selling a Cohiba cigar, a company by the name of Flor Cubana Enterprises, and they had actually registered with the State of Florida, Cohiba?

A. Yes, I do recall a Florida state registration problem.

Q. And do you recall how that was

connection between the two.

Q. Did you ever get a ruling from Customs or the trademark office concerning a mark Caoba, C-a-o-b-a?

A. I remember the mark. I cannot, without reviewing something, tell you whether we had a ruling or not.

Q. I have a letter from you to Mr. Messer dated May 1997 making reference to believing that "...we will shortly get a ruling from Customs or the Trademark Office that Caoba is confusingly similar to our Cohiba and thus also illegal."

Do you have any recollection of a resolution of that?

A. I cannot recall.

Q. Attached to your letter -- let's do it this way. This is confusing.

(Plaintiff's Exhibit 328, Letter dated 5-6-97 from Wollen to Messer with attachments, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you Plaintiff's Exhibit

1 Wollen

2 328. It's that letter that I was referring to

3 from Mr. Messer dated May 6, 1997.

4 Do you recall a communication with

5 Mr. Messer regarding Caoba?

6 A. May I have just a minute?

7 Q. Sure. Please.

8 (Witness reviewing document.)

9 A. Yes, I'm familiar with the letter.

10 Q. And you attached a cigar -- a June

11 1996 Cigar Insider article on counterfeiting to

12 the letter?

13 A. Yes.

14 Q. And in the second page of the article

15 in the far right corner about halfway down, it

16 says, "For the moment, Cohiba is the preferred

17 brand for counterfeiters"?

18 A. Yes, I see that.

19 Q. Do you agree with that statement as

20 of that time, mid 1996?

21 A. My own experience is that Montecristo

22 and Cohiba were neck and neck for preferred

23 brand.

24 Q. For counterfeiting?

25 A. For counterfeiting.

1 Wollen

2 Q. Using the Cuban style trade dress?

3 A. For Montecristo. And oh, and for

4 Cohiba, yes.

5 MR. GOLDSTEIN: Mark this.

6 (Plaintiff's Exhibit 329, Letter

7 dated 4-9-98 from Wollen to The Wine

8 Enthusiast with attachments, marked for

9 identification, as of this date.)

10 BY MR. GOLDSTEIN:

11 Q. Let me show you what we've marked as

12 Plaintiff's Exhibit 329. It's a letter from you

13 to The Wine Enthusiast.

14 Do you recall sending that letter?

15 A. Yes, I do.

16 Q. Let me just represent that the

17 exhibit that we just marked as 329 is your

18 letter plus the three pages from The Wine

19 Enthusiast that are referenced in your letter of

20 22, 23 and 55 from a different volume.

21 In other words, we found those and we

22 attached those things even though they're not

23 sequential.

24 In other words, I don't know if they

25 are were attached to your letter, but we

attached them to your letter.

Do you recall sending this letter to The Wine Enthusiast?

A. Yes, I do.

Q. And what's being advertised on page 23, 22 and 23 of the magazine of that issue and page 55 of another issue were not cigars; is that correct?

A. They're humidors.

Q. Hats, cups, T-shirts.

A. Accessories. Well, Dominican Cohiba Cuban cigars.

Q. Where do you see that?

A. Right at the bottom of page 55.

Q. Right. You're correct.

And the last entry, in addition to brand accessories, they're also selling Dominican Cohiba cigars and I apologize.

Was your objection in the letter to the accessories and the cigars or just to the cigars?

A. Let me just take a minute.

Our objection would be both as to the cigars and to the accessories.

Wollen

Q. So your position, in the letter on page 2 in the end of the second paragraph you say, "...I again demand that you cease and desist from this infringing use of our Cohiba brand trademark."

Is your position, for example, that the use of the word "Cohiba" --

A. I don't see that.

Q. I'm sorry. The second page of your letter.

A. Right.

Q. In the middle of the paragraph at the end of the second paragraph, "If first answer is yes..."?

A. Oh. "...I again demand that you cease and desist from this infringing use of our Cohiba brand trademark."

Q. If I would direct your attention to page 23, the magazine article 23, 7894?

A. Yes?

Q. If you look at the cup, it has "Cohiba," and then underneath that the word "Habanos"?

A. Yes.

Wollen

Q. With the Cuban checkerboard. I don't know if it's black and white, but I believe the colors look a lot like the Cuban from my recollection.

General Cigar's position was that such a cup, Cuban style trade dress, the word "Cohiba," the word "Habana," infringed on General Cigar's rights to the Cohiba brand trademark?

A. I believe that they would infringe, but I don't know whether a cup is within the other categories of goods to which we were extending our registrations.

Q. What about the T-shirt that's a little bit above it and the hat?

A. Clothing and cigar accessories I believe we were pursuing.

Q. Does the fact that the word "Habana" is on the cup, assuming cup was in the area of the matters for which you have sought registration, would the fact of the word "Cohiba" -- the fact of the word "Habana" change your position?

A. No.

Wollen

Q. And the fact of the Cuban style trade dress colors, that also would not change your position?

A. No.

Q. Do you recall a few entities cropping up with the name Cohiba, as like Club Cohiba, Cafe Cohiba?

A. Yes.

Q. And do you recall if this occurred prior to your red dot launch in September 1997? Club Pacific Cohiba?

A. Yes. I think you're referring to the one in Hawaii and I think that goes back a few years, which would have put it before the red dot Cohiba.

Q. And I have a letter December 6, 1996 referring to Cafe Cohiba in Brooklyn.

A. Yes, I recall that one.

Q. Do you recall any other Cohiba places, you know, settings?

A. Yes, in Chicago.

Q. And what was that? Was that a cigar bar?

A. It was, according to the proprietor,

a restaurant.

According to my salespeople, a cigar bar.

Q. Did you object to the use of the name Cohiba in connection with these establishments?

A. Vociferously.

Q. And do you agree that that infringed General Cigar's rights under the United States trademark law?

A. Absolutely.

Q. Do you know whether those establishments used a Cuban Cohiba style trade dress in their logos or advertising?

A. I believe they did.

Q. Were you successful in getting these places to either change their names or they closed down? Do you have knowledge of that?

A. Each was very time consuming and difficult.

The Hawaii club was the least difficult and changed their name fairly promptly.

Long Island took quite some time, but I believe they also either shut down or changed

their name.

In Chicago, I think the proprietor sufficiently changed the nature of the premise that it was a Latin restaurant rather than a cigar bar, and we ceased our prosecution.

Q. It continued with the name Cohiba?

A. He had bought a very expensive awning and I believe he has continued with the name Cohiba. It could well be out of business by now.

Q. Do you recall a Jesus Sanchelima from Miami, Florida?

A. Yes.

Q. What -- did you have any conversations with him, do you recall?

A. I really don't recall. Can I see the letter?

Q. Yeah, it's a letter but my...

My question is, have you ever had conversations with Mr. Sanchelima?

A. No, I don't believe I have. This is Scott Greenberg's letter and I think Scott dealt with him.

Q. But you yourself don't recall any

dealings with him?

A. I do not recall any dealings now.

Q. In the letter from Mr. Greenberg, who is an attorney at Morgan & Finnegan, he makes reference in the second paragraph to "our client's well-known Cohiba trademark."

Do you know to what Mr. Greenberg was referring by use of the term "well-known"?

A. I believe that within the cigar industry aficionados, our Cohiba had a reputation.

Q. And this is prior to the red dot launch and the red dot advertising?

A. Yes.

Q. Do you have any understanding of the legal meaning of the term "well-known" in trademark law?

A. I have no specific knowledge of it.

Q. Or general knowledge?

A. If it has any meaning other than English, I don't know it.

Q. Was it your position that the Cohiba trademark was well-known at this time prior to the mid '97, prior to the advertising and prior

1 Wollen

2 to the launch?

3 A. Among premium cigar smokers who are

4 likely to visit a retail operation like Mike's

5 in Miami or Dunhill in any of their 12 shops, I

6 believe Cohiba would be well-known to those

7 consumers.

8 Q. Do you recall any discussions with

9 Morgan & Finnegan regarding whether to assert in

10 correspondence that your cigar was well-known?

11 MS. DORE: Just answer --

12 BY MR. GOLDSTEIN:

13 Q. Correspondence to -- against

14 infringers.

15 MS. DORE: Just yes or no.

16 A. No.

17 Q. Are you familiar --

18 MS. DORE: Excuse me for a second.

19 Did you mark this?

20 MR. GOLDSTEIN: Oh, yeah, I want to.

21 Did I mark it?

22 THE REPORTER: No.

23 MR. GOLDSTEIN: We'll mark it as

24 Plaintiff's 330.

25 (Plaintiff's Exhibit 330, Letter dated

7-3-97 from Greenberg to Sanchelima, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Are you familiar, either personally or through preparation for the deposition or through the litigation, of a mark for cigars or the name for cigars of Cibao, C-i-b-a-o?

A. I can't recall that right now.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 331, United States Patent and Trademark Office Trademark Principal Register for Cohiba with attachments, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you what I've marked as Plaintiff's Deposition Exhibit 331, which is two pages, or it's three pages all together. The first two pages are GC 5995, 5996, and the third page is 5988, which I believe in the text is identical to the -- the second and third pages are identical in text.

A. You're actually saying more than I --

I mean identical, not --

Q. Not identical in -- they look like copies?

A. Copies?

Q. Yeah, that's what they look like, but different settings or formats.

In other words, they're two different files. One is a little easier to read. That's all.

A. But it does look like a copy, not just the text.

Q. Right.

Do you recognize any of the handwriting on the document.

A. It's certainly not mine, and no, I do not recognize it.

Q. Do you know anything about this just looking at this now?

A. No more than just reading it, no.

Q. Do you know if it has anything to do with the mark General Cigar was interested in acquiring, or whether General Cigar had applied for the mark or whether it was a mark that General Cigar was investigating or any

Dunhill's file. AD indicates that it was produced to us by Alfred Dunhill.

Are you familiar with this letter, if it went to legal before it went out to retailers?

MS. DORE: Objection. Compound question. They are two very different questions.

MR. GOLDSTEIN: Yeah, they are. You're right.

(Witness reviewing document.)

A. I believe I saw a draft of this, but I think it was principally authored by Mr. Webber, who is co-located with Mr. Currier.

Q. When Mr. Milstein was at General Cigar, he was the primary in-house attorney for trademark matters?

A. Correct.

Q. When Mr. Webber came in, was he experienced or knowledgeable in trademark matters?

A. He has no special knowledge in trademark matters and because I had a couple of years without an assistant, become more and more

1 Wollen

2 my duties, I would -- I am sure that he would

3 have consulted with Morgan & Finnegan in the

4 preparation of this letter.

5 Q. Okay. Do you see in the second

6 paragraph, second sentence it says,

7 "Unfortunately, we have recently received

8 numerous complaints about product which has been

9 purchased by unwary customers who think they are

10 buying a high quality General Cigar or Cuban

11 made Cohiba. Instead, what they have found they

12 have purchased are low grade, inferior quality

13 cigars manufactured in the Dominican Republic

14 and banded to deceive the uneducated buyer"?

15 MS. DORE: I object that the quote is

16 slightly off.

17 MR. GOLDSTEIN: "...inferior quality

18 cigars manufactured for the most part in the

19 Dominican Republic and banded to deceive the

20 uneducated buyer."

21 MS. DORE: Also, you used customers

22 instead of consumers.

23 MR. GOLDSTEIN: Oh. Unwary consumers.

24 Okay.

25 BY MR. GOLDSTEIN:

1 Wollen

2 Q. Do you know to what he's referring,

3 what complaints are being referred to?

4 A. I assume this is the huge increase in

5 counterfeit cigars that was experienced in the

6 '96, '97 time frame.

7 Q. In the cigar that General Cigar had

8 through Dunhill and Mike's prior to the red dot,

9 that was an unbanded cigar; is that correct?

10 A. That's correct.

11 Q. So the reference to "banded to

12 deceive the uneducated buyer," do you know what

13 that's referring to?

14 A. Certainly some of those would have

15 been banded like a Cuban Cohiba.

16 Q. Could cigars have been banded to

17 deceive an uneducated buyer regarding the

18 General Cigar Cohiba if the General Cigar didn't

19 have a band?

20 A. I think this was probably done in

21 anticipation of the red dot Cohiba, which was in

22 final stages at that time.

23 Q. When you say "this," you mean the

24 letter or you mean the banding?

25 A. The letter.

1 Wollen

2 Q. With your knowledge and experience,

3 or General Cigar's, was it General Cigar's

4 opinion that people buying banded Dominican

5 Republic Cohibas were being deceived into

6 thinking they were buying a General Cigar

7 Cohiba?

8 A. At what time?

9 Q. Prior to July 1997, July 21, 1997.

10 A. Probably not.

11 Q. Let me turn to the 30(b)(6) topic of

12 General Cigar's Sixth Affirmative Defense, which

13 we briefly touched on yesterday when we were

14 starting the deposition, and that, just to

15 refresh your recollection, that referred to --

16 it's my copy. Let me just read from it.

17 "Plaintiff's claims are barred by the doctrine

18 of unclean hands."

19 A. Yes.

20 Q. What is General Cigar's claim that

21 Cubatabaco's claim in this litigation is barred

22 by the doctrine of unclean hands?

23 And I don't mean what the doctrine of

24 unclean hands is, but what are the facts

25 underlying the assertion.

1 THE WITNESS: Thank you for your time.

2 (Time noted: 4:40 p.m.)

3 _____

4 A. ROSS WOLLEN

5

6 Subscribed and sworn to before me

7 this ___ day of _____, 2000.

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1 C E R T I F I C A T E

2

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6

7 I, ANNETTE ARLEQUIN, a Certified Shorthand

8 Reporter and Notary Public within and for

9 the State of New York, do hereby certify:

10 That A. ROSS WOLLEN, the witness

11 whose deposition is hereinbefore set forth,

12 was duly sworn by me and that such

13 deposition is a true record of the

14 testimony given by the witness.

15 I further certify that I am not

16 related to any of the parties to this

17 action by blood or marriage, and that I am

18 in no way interested in the outcome of this

19 matter.

20 IN WITNESS WHEREOF, I have hereunto

21 set my hand this 18th day of December, 2000.

22

23 ----------

ANNETTE ARLEQUIN, CSR, RPR

24 My commission expires:
6/30/02

25

1

2 ---------- I N D E X ----------

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997 290:16 453:14

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

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner,	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC. Respondent.	:	

PARTY DESIGNATIONS*: Petitioner's Designations During Its Trial Period—Yellow or Pink
Respondent's Designations During Its Trial Period—Green
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

Designated Federal Action Discovery Deposition Transcript of A. Ross Wollen, designated under Fed. R. Civ. P. 30(b)(6) and 45, dated June 26, 2001

* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

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EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

Plaintiff,

vs. 97 Civ. 8399 (RWS)

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

Defendants.

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COPY

VOLUME III Rule 30(B)(6) and 45

DEPOSITION OF A. ROSS WOLLEN

New York, New York

Tuesday, June 26, 2001

Reported by:
ANNETTE ARLEQUIN
CSR NO. 1450
JOB NO. 122663

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4 June 26, 2001

5 9:30 a.m.

6

7 Volume III Rule 30(B)(6) and 45

8 deposition of A. ROSS WOLLEN, held at the

9 offices of Rabinowitz, Boudin, Standard,

10 Krinsky & Lieberman, P.C., 740 Broadway,

11 5th Floor, New York, New York, pursuant to

12 Subpoena, before Annette Arlequin, a

13 Certified Shorthand Reporter and a Notary

14 Public of the State of New York.

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1

2 A P P E A R A N C E S:

3

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17

18 - and -

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21 Attorneys for Defendants

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23 New York, New York 10022-4802

24 BY: ELENA C. NORMAN, ESQ.

25

1

2 A. R O S S W O L L E N, called as a

3 witness, having been sworn by a Notary

4 Public, was examined and testified as

5 follows:

6 CONTINUED EXAMINATION

7 BY MR. GOLDSTEIN:

8 Q. Good morning, Mr. Wollen.

9 You recall being deposed in this case

10 in November of the year 2000?

11 A. Yes, I do.

12 Q. And you were deposed over a period of

13 two days?

14 A. That's correct.

15 Q. At that time you testified that you

16 were on an hourly retainer with General Cigar

17 for your work in this case.

18 Do you recall that?

19 A. Yes, I do.

20 Q. And are you still on an hourly

21 retainer with General Cigar for your work in

22 this case?

23 A. Yes, I am.

24 Q. Did that include -- did you bill for

25 the hours that you attended for your deposition?

A. Yes, I did.

Q. Were you paid for those hours?

A. Yes, I was.

Q. And do you intend to bill for the time that you're deposed here today?

A. Yes.

Q. And what is your hourly billing rate?

A. $300 per hour.

Q. Are you aware that defendants, that is, General Cigar, generically I'm calling them General Cigar, produced documents at the end of March and the beginning of April that had been previously withheld in this litigation on a claim of privilege?

A. Yes, I am aware of that.

Q. Did you participate in the decision to produce those documents?

A. Yes, I did.

Q. Did you review the documents that were produced, when I say the documents, the previously withheld documents, did you review them prior to their production to us as part of your participation in the process of deciding whether to produce them?

A. I reviewed a large group of documents. I was not party to which of those documents were actually produced.

Q. Do you know if you reviewed any documents that a decision was made not to produce them?

A. I have no specific instance other than I've read correspondence from you to our counsel indicating that there were some documents that were not produced. I don't know what those documents are.

Q. You're aware that not all the documents in the privilege log were produced?

A. I'm relying upon the letter that you sent indicating that not all were produced.

Q. Prior to that time you were not aware of that?

A. Not really. I did not take part in the actual selection of which documents were produced. That was done by the two law firms representing us.

Q. Did you know at the time, however, that some documents were being produced and some were being withheld?

executive officer, Mr. Cullman, Jr. and by the chairman, Mr. Cullman, Sr., and John Webber, our general counsel, also participated.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 365, Letter dated 3-27-78 from Sparkes to Marcus, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. At your prior deposition I had asked you some questions about the application and registration process, application for the Cohiba mark by General Cigar in the 1978 to early '80s time period, and I have a few additional questions based on documents that were produced subsequent to your deposition that were previously on the privilege log.

I'm showing you a document that was marked Plaintiff's Exhibit -- that we just marked as Plaintiff's 365. It's a March 27, 1978 letter from Sparkes to Mr. Marcus regarding the Cohiba application, and it makes reference to a photocopy of an article from the Miami Herald supplement Tropic of March 19, 1978.

A. I would be guessing.

Q. Did Sparkes replace him? Did Sparkes take his position?

A. In a sense, yes. Garbo had a more senior position and Mr. Sparkes worked for Garbo. I think it would be accurate to say that when Mr. Garbo retired, Mr. Sparkes took over that area, you know, subject to supervision.

Q. Is Mr. Garbo deceased?

A. I don't know. He was not in good health the last time I saw him, which was, I believe, maybe ten years ago.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 366, Letter dated 4-17-78 from Mr. Marcus to Mr. Sparkes, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you a document, three-page document, that we just marked as Plaintiff's 366 with the identifiers GCP 0007 through and then GCP 0008, and then the third page is GC 0045.

Let me just identify the other one

by -- Plaintiff's 365 was GCP 6.

Plaintiff's 366 is a letter dated April 17, 1978 from Mr. Marcus to Mr. Sparkes.

Do you recall seeing that document before?

MS. DORE: Before when?

MR. GOLDSTEIN: Before today, before five minutes ago.

MS. DORE: Okay.

A. Yes. I believe the first time I saw this was in 1997.

Q. And in what connection do you recall seeing it?

A. As a result of Cubatabaco making its filing with reference to Cohiba with the Patent and Trademark Office in early 1997, I researched the Cohiba trademark file at General Cigar, and I believe it was at that time that I found this letter.

Q. You don't recall seeing it earlier?

A. I do not recall seeing it earlier.

Q. In the letter, starting on the first page continuing to the second, there is a first, second, third, fourth.

Do you see that?

A. On page 2 I see second, third, fourth.

Q. And on the bottom of page 1 you see first.

A. Right.

Q. Okay. You prepared this document that we looked at at your prior deposition, Plaintiff's Deposition Exhibit 308, "Q and A Cohiba Cigars Fact Sheet"?

A. Yes, I did, in conjunction with counsel.

Q. When you say counsel, with?

A. I believe Scott Greenberg assisted me in this preparation of this document.

Q. And it's Plaintiff's 308?

A. Right.

Q. And that was part of the work that you did in 1997 after learning more about the Cohiba mark; is that correct?

A. Yes. This was prepared in conjunction with our relaunch of Cohiba in 1997.

Q. And if you turn about four or five pages into that document.

1 Wollen

2 (Witness complies.)

3 Q. Page GC 8906, the first, second,

4 third, fourth in there from General Cigar's

5 longtime trademark counsel, that was taken

6 verbatim from this 1978 letter; is that correct?

7 A. It was intended to be. I'd have to

8 read it word for word.

9 Q. But the intent was to capsule that

10 out and put that into -- take the Marcus letter

11 and put that into your Q and A.

12 A. Absolutely.

13 Q. Did you do anything in 1997 to verify

14 the truth or accuracy of those statements from

15 the Marcus letter in 1978?

16 A. Not that I recall.

17 Q. Do you know what was done either by

18 Mr. Marcus or by his firm to verify the truth or

19 accuracy of the statements in his 1978 letter,

20 the first, second, third, fourth?

21 MS. NORMAN: What time frame are you

22 talking about?

23 MR. GOLDSTEIN: When he did this

24 letter, 1997.

25 MS. DORE: Well, let me hear the

1 today.

2 Q. Okay. I'm not asking you to

3 speculate or guess, but if there had been a

4 contact with Beneficial, would it have been

5 someone specific in the company who would have

6 handled that?

7 A. Obviously someone in the company

8 would have been involved. It depends upon the

9 time frame as to who that person would be.

10 Clearly Mr. Sparkes was there in

11 1979. He would have been the principal liaison

12 with Morgan & Finnegan.

13 Q. Would Sparkes have been the person --

14 would Sparkes have been tasked to contact

15 Beneficial?

16 A. I can't answer that.

17 Q. Okay.

18 MR. GOLDSTEIN: Mark this.

19 (Plaintiff's Exhibit 368, Memorandum

20 dated 7-6-79 from Sparkes to the Cohiba

21 file, marked for identification, as of this

22 date.)

23 BY MR. GOLDSTEIN:

24 Q. I'm showing you what we marked as

25

Plaintiff's 368. It's a memorandum dated July 6, 1979 from Charles Sparkes to the Cohiba file, CC to Mr. Cullman, Jr. and to you, A.R. Wollen.

Do you see that?

A. Yes, I do.

Q. Do you recall reviewing this document prior to it being produced to us in this litigation?

A. I don't.

Q. Did you review this prior to your deposition? Do you recall seeing it yesterday or --

A. I do not believe so.

Q. I take it, then, that you have no idea what's redacted still even after it's been produced to us?

A. No, I have no idea.

Q. And you have no idea if the redaction is based on privilege or relevance or some other objection?

A. I have no idea. The redaction was handled by counsel.

Q. Prior to the production of these documents to us, when I say these documents, the

is, do you know if all of those redactions were based on claims of privilege or not?

A. No, I do not know.

Q. And if you would just take a minute to read through the document, unless you already have.

A. I'll take a minute.

(Witness reviewing document.)

A. Okay. I read the page.

Q. Does this in any way refresh your recollection of any involvement with Beneficial or any acts by General Cigar regarding the Beneficial application for Cohiba?

A. No, it does not.

MR. GOLDSTEIN: Mark this.

(Plaintiff's Exhibit 369, Memo dated 2-19-82 from Sparkes to Cullman junior, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you a document that's we've identified as Plaintiff's Exhibit 369 with the numbers, it's a two-page document, GCP 23 and GCP 24. It's a memo from Sparkes to Mr. Cullman, Jr. dated February 19, 1982 and

there's two CC's, one to you, A.R. Wollen, and one to T. Westle.

Do you see that?

A. Yes.

Q. On the second page there is the CC's.

A. Yes, I see that.

Q. Who is T. Westle?

A. Thomas Westle was, in this time frame of 1982, assistant general counsel. He worked for me.

Q. And did he have greater responsibility for trademark issues than you did at the time?

A. Yes. I believe I previously testified that each of my assistant general counsels over the years have had principal responsibility for trademarks and other matters. It's simply the way we divided the work in the legal department.

Q. Do you have any knowledge of where Mr. Westle is today?

A. Yes. I believe he is a partner in a law firm in New York City.

Q. If you look at document 153 -- sorry.

1 Wollen

2 A. I have seen some handwritten remarks

3 from Mr. Sparkes on other documents.

4 I have no specific recollection of

5 seeing any handwritten remarks on this document.

6 Q. And you have no knowledge of the

7 basis for the claims of redaction about these

8 handwritten, assuming those handwritten notes?

9 A. I have not discussed it with counsel.

10 The decision was made by counsel.

11 Q. Do you have any knowledge of -- I

12 mean it's probably a futile question, but it

13 refers to past memos. Do you have any knowledge

14 of those past memos?

15 A. No, I do not.

16 Q. Do you know if those past memos are

17 being withheld?

18 A. No, I do not.

19 MR. GOLDSTEIN: Why don't we mark

20 this.

21 (Plaintiff's Exhibit 370, Memo dated

22 5-12-82 from Sparkes to Kowalsky, marked for

23 identification, as of this date.)

24 MS. DORE: I have to say something

25 about the document, though. The handwritten

information on the bottom, not the bottom, opposite the word "redacted," do you see that, David?

MR. GOLDSTEIN: Uh-huh.

MS. DORE: The handwriting when it was copied, was completely illegible from the copying. I copied it off the original. That's my handwriting.

MR. GOLDSTEIN: You wrote over the illegible --

MS. DORE: Right, because it did not show up in any copies.

MR. GOLDSTEIN: Was it handwriting or was it typed that you wrote over?

MS. DORE: I believe it was -- you know, I can't say.

MR. GOLDSTEIN: Would there be a way to go back and find out?

MS. DORE: Yes, absolutely. And, in fact, during a break I'll have somebody pull the original.

MR. GOLDSTEIN: But from the original you couldn't read the words?

MS. DORE: It was very, very hard and

that's why I did this.

MR. GOLDSTEIN: Okay. So what we identified as your handwriting now would be useless because it's your handwriting from a couple months ago as opposed to your handwriting from --

MS. DORE: Oh, absolutely.

MR. GOLDSTEIN: From --

MS. DORE: It does not date back to 1982.

MR. GOLDSTEIN: Okay. Because the privilege entry says "reflecting legal advice of counsel Janet Dore." That's why I'm asking.

BY MR. GOLDSTEIN:

Q. We're referring to Plaintiff's Exhibit 370, which is GCP 26. It's a May 12, 1982 memo from Charles Sparkes to M. Kowalsky.

That's Mike Kowalsky?

A. Correct.

Q. And it's CC'd to Mr. Wollen, Tom Westle and J.R. Hollinger.

J.R. Hollinger was the other attorney in your office?

A. Jeri Hollinger was an attorney who did not report to me at that time, I believe, but she was an attorney and she did help on the trademark matters.

Q. And it references the Cohiba trademark, and if you look at Plaintiff's Exhibit 154, GC 95, it's the same document with different material -- with some of the redacted material unredacted.

A. It has a different redacted stamp. That's the only thing I noticed.

Q. Right, but it's the same memo?

A. It appears to be the same memo, yes.

Q. What's different about it is over in the right-hand corner about halfway down the page is handwriting which we now know is Ms. Dore's, and we'll find out whether it was handwritten or typed before, "Avoid use issue, token use, quarterly shipment."

Do you see that?

A. I see that.

Q. Okay. Do you recall seeing this memo prior to it being produced to us?

A. I believe I did, and I also saw it

yesterday.

Q. When you saw it yesterday, what version did you see?

A. I don't believe the handwriting was on the version that I saw.

Q. Do you recall seeing the document in unredacted form prior to its production to us?

A. No.

Q. Do you have any idea what's redacted?

A. No, I do not.

Q. Do you know why the words "Avoid use issue, token use, quarterly shipment" were withheld as privileged?

A. No, I do not.

Q. Is it your understanding that that reflects the advice of counsel?

A. I believe it was done by counsel, yes.

Q. What was done by counsel?

A. The redaction.

Q. No, I meant the -- this document had the words on it "Avoid use issue, token use, quarterly shipment." The document was then produced to us earlier in this litigation with

1 those words removed, redacted on the claim of
2 privilege.
3 Do you have any knowledge of what the
4 basis for that claim of privilege was?
5 A. It must have been on the advice of
6 counsel, but I don't have any specific knowledge
7 of that.
8 Q. Do you know if the words "Avoid use
9 issue, token use, quarterly shipment" reflect
10 the advice of counsel?
11 A. The same answer that I gave before;
12 and that is, I have no specific knowledge of
13 that, although I do not believe Mr. Sparkes
14 would author something like that but on the
15 advice of counsel.
16 Q. And the privilege entry reads,
17 "Handwritten notes of Charles Sparkes on
18 production document GC 5994, confidential
19 communication reflecting legal advice of counsel
20 Janet Dore, asked for a Cohiba trademark
21 application of Quakenbush Trading Company."
22 Do you have any knowledge if anything
23 was done with Quakenbush subsequent to this
24 document, the date of this document?
25

A. I know the problem went away, but I have no specific recollection of how it went away.

Q. Did you know at the time that the problem went away, or is this something that you learned about, you know, subsequent to in 1997 or after?

A. I have no recollection now of the Quakenbush problem when it existed. I subsequently learned that the problem went away.

Q. Let me show you a document that was previously produced as Plaintiff's Exhibit 156.

Mr. Wollen, I'm showing you what was previously marked as Plaintiff's Exhibit 156, which is a handwritten document dated September 7th, 1982 and it has Charles Sparkes' initials, re Cohiba from M. Kowalsky, and in handwriting it says, "Cubatabaco is using Cohiba in Spain according to MK," and then it's redacted.

Do you recall learning in, sometime in 1982, whenever it was, do you recall learning that Cubatabaco was using Cohiba in Spain?

A. I have no recollection of that at that time.

a New York based company?

A. Yes. A bank or a savings and loan in New Jersey, I believe.

MR. GOLDSTEIN: I only have one copy for some reason.

Why don't we mark this.

(Plaintiff's Exhibit 371, Letter dated 4-4-89 from Milstein to Greenberg, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Let me show you what we marked as Plaintiff's Exhibit 371.

MS. NORMAN: What's the Bates number?

MR. GOLDSTEIN: What's that?

MS. DORE: Do you have the number?

THE WITNESS: GCP 0269.

MR. GOLDSTEIN: That's the first page, and the second page is GC 13642 and GC 13643.

BY MR. GOLDSTEIN:

Q. It's a letter from Mr. Milstein of Culbro to Scott Greenberg of Morgan & Finnegan. It's dated April 4, 1989.

Do you see that?

A. Yes, I do.

Q. And it has a stamp that it was received at Morgan & Finnegan?

A. Yes, I see that.

Q. Do you recall seeing this document at that time?

A. No, I do not.

Q. Do you recall seeing this document sometime during this litigation?

A. Yes.

Q. Do you recall reviewing this document prior to it being produced to us?

A. I think I did, and I certainly reviewed it yesterday.

Q. Did you see this document as part of your investigation into Cohiba after Cubatabaco filed its petition in January of 1997?

A. I can't be that specific. I've seen it I think much more recently for the first time.

Q. Do you recall if you saw this document during the time you were preparing that Q and A?

A. No, I cannot recall.

Q. In it Mr. Milstein says, "Dear Scott, as we discussed, I enclose a copy of the proposed designs for trademark registration to accompany our Cohiba word mark."

Do you see that?

A. Yes, I see it.

Q. And then he encloses two pages of a proposed design.

Do you see that?

A. Yes.

Q. And that proposed design is, in fact, a photocopy of the Cuban Cohiba; is that correct, of the design of the Cuban Cohiba?

A. It certainly appears to be. It says "Hecho en Cuba." I believe it says Cubatabaco. That's their logo, so I would say it appears to be, yes.

Q. It's not something that General Cigar created of its own?

A. I can't answer that other than as I just testified, that it appears to be the label that the Cuban Cohiba was using on certain of its products.

Q. Well, General Cigar wouldn't have

created a label for registration that says "Hecho en Cuba," would it?

MS. DORE: Objection. Calls for speculation.

A. It should not have.

Q. Or "Tabaco habano"?

A. It should not have.

Q. Or with the Cuba tobacco word and logo?

A. Well, the word "Cohiba" --

Q. No, Cuba tobacco.

A. It should not have.

Q. And it's your understanding looking at this document, that the General Cigar design came from, its proposed design to register with the U.S. trademark office came from the Cuban design; isn't that correct?

MS. DORE: Before you answer, can I...

THE WITNESS: Yes.

A. Mr. Milstein's letter says, "These designs and the name Cohiba are being used throughout the world but not in the United States by the Cuban tobacco monopoly,

A. It did not and does not.

MR. GOLDSTEIN: Why don't we mark this.

(Plaintiff's Exhibit 372, Letter from Milstein to Cullman, Cullman junior and Burgh, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm going to show you a document just identified as Plaintiff's 372. It has numbers GCP 555 to 557. It's from Mr. Milstein to Mr. Cullman, Mr. Cullman, Jr. and David Burgh, and on the last page it says "CF, A. Ross Wollen and John Rano."

Do you see that?

A. Yes, I do.

Q. Is this one of the documents that you recall reviewing prior to its production to us?

A. I believe so, yes.

Q. This document was not on the privilege log.

Do you know why?

A. No, I do not.

Q. Do you know where it was found?

should be January the 14th, '93? 1-14-92.

A. I've heard that mentioned with respect to one of these memos and there's an internal contradiction which would indicate that, I forget, either this should be '93 or it should be December or something. I'd have to read it carefully, but I know one of the documents that we have, apparently has a mistake in the date.

Q. But that's not based on any external knowledge, it's something that becomes apparent as you read through these documents and match them up?

A. That's my understanding, yes.

Q. And you don't know sitting here whether it's this document or a different one?

A. I'd have to read it carefully.

Q. It has you as a CF, and let me just ask you this. I've never seen a CF as opposed to a CC.

Do you have any knowledge as to whether that refers to anything differently?

A. Yes, I do. That's my personal -- it refers to copy furnished, which I think is far

superior to carbon copy, since nobody has carbon copies.

Q. And this says a copy was furnished to you.

Do you have any recollection of receiving this document?

A. Not at this time I cannot recall.

Q. And do you have any recollection of discussions about Milstein's proposal or his proposed negotiations with Cuba re Cohiba?

A. I have no current recollection of any such discussions at that time.

Q. And I don't want to limit it in any way as to either Milstein's proposal or Cullman's proposal, but just general topics. Looking at these documents before and today, no recollection being refreshed as to any knowledge or participation in this question of approaching the Cubans regarding the Cohiba package?

A. I have no recollection of any specific instance or discussion or negotiation at this period of time.

Q. If not at that period of time, did you learn at any time of the source of the

consulting with Mr. Greenberg and others at Morgan & Finnegan with respect to matters like this.

Q. On the top of 556, the second page, under heading two, "Future Benefits to Cuba," it says here, "Once we can legally sell Cuban cigars in the U.S., Cubatabaco will need to strike some deal with GC in order to sell its Cohiba brand in the U.S."

Putting aside this particular document, this particular issue, do you recall discussions at General Cigar regarding the fact that in the event the embargo was lifted, Cubatabaco would need to strike a deal with General Cigar in order to sell its Cohiba in the United States?

A. It's been my general understanding that that is the case for many, many years, but I have no specific recollection of any discussion.

Q. And to your knowledge, that was a general understanding of senior management of General Cigar; is that correct?

A. Absolutely.

Q. And if you look down that page to "Benefits to GC in the Joint Venture" where it says, "The obvious immediate benefit for GC of such an arrangement is to promote its relaunch of Cohiba and exploit the brand recognition and image of its Cuban cousin," do you see that?

A. Yes, I do.

Q. Do you know what Milstein is referring to? I don't mean mind reading him, but do you know what he would be referring to by the term "Cuban cousin"?

A. I have to assume that that is the Cuban Cohiba.

Q. I mean why is it referred to as a cousin?

A. I think it's a colorful and appropriate phrase.

Q. Why is it appropriate?

A. This assumes that the embargo has been lifted, relations between the United States and Cuba would be normalized, the Cubans have a brand name Cohiba outside of the United States, we have the brand name Cohiba in the United States. I think cousin is an appropriate

colorful term.

Q. But this refers to the obvious immediate benefit for General Cigar is to promote its relaunch of Cohiba and exploit the brand recognition image of its Cuban cousin. In other words, in the context of prior to the embargo being lifted and prior to the normalization of relations he's talking about it as the Cuban cousin.

A. I can't go any further than to say it's a colorful and appropriate reference to the Cuban Cohiba.

Q. One of the documents that -- I'll just show you. I don't need to mark it if you have no recollection. It's a similar but not identical draft of what we just looked at, "Proposed Negotiations With -- let me give you that copy. "Proposed Negotiations With Cubatabaco Re Cohiba," GCP 558 and 559. It's similar to the other document.

Have you seen this document before?

It doesn't say who it's from or who it's to. It what appears to be a draft.

I gave you my copy. Can we switch?

statement refers only to 1997?

A. This was prepared to answer questions asked in conjunction with the relaunch of our Cohiba in 1997.

Q. When you wrote this, did you consider the interest expressed by General Cigar in the Cuban Cohiba trade dress from an earlier time period? In other words, did you take that into consideration in writing this?

When I say you, I mean General Cigar.

A. I can't recall everything that went into my construction of these words.

I knew that we could not duplicate the trade dress, and I think it was therefore fair for us to simply take the position that we're not going to, nor are we interested in it.

Q. If you look at the same document, 8903, the first page, the second question is, "How was the name chosen" and then it tells the story of Oscar Boruchin and what he told Cigar Aficionado.

A. Correct.

Q. Do you have any other knowledge of how General Cigar got the name Cohiba, came up

with the name Cohiba? Do you have any knowledge inconsistent with this statement about Oscar Boruchin?

A. No.

Q. Have you inquired of anyone at General Cigar whether they have any knowledge different than the knowledge that is reflected in this reference to Mr. Boruchin in the Cigar Aficionado interview?

A. Yes.

Q. And have you learned anything that's inconsistent with this?

A. No. My best understanding, and it has not been refuted by anyone I have spoken with, was that our first exposure to the name Cohiba that triggered activity on our part was the Oscar Boruchin reference to Mr. Cullman, Jr.

MR. GOLDSTEIN: Why don't we mark this one.

(Plaintiff's Exhibit 374, Draft No. 1, Q and A Cuba Cigars Fact Sheet, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you what's been marked at

Plaintiff's Exhibit 374, and it says, "Draft No. 1, Q and A Cuba Cigars Fact Sheet."

Can you identify this document?

A. I assume it's an earlier draft of 308.

Q. That was the Q and A Cohiba Cigars Fact Sheet?

A. That is correct.

Q. And it reflects it went through at least one earlier draft before Plaintiff's 308?

A. I would say probably more. Some of the question and answers were added certainly from the first draft.

Q. Do you know if any of the other drafts exist between draft one and Plaintiff's 308?

A. I have turned over everything I had to counsel.

Q. If you turn it upside down, there's a fax line on the bottom of the page. It's "May 13, '97 from Culbro legal to Morgan & Finnegan."

Do you see that?

A. I see it.

Q. Did you send Morgan drafts of these

Q. You don't know what time this is from or anything like that?

A. Well, 560 talks about the relaunch. That could be anywhere from '92 to '97.

Q. I'm asking you if you have any knowledge about these documents other than the words that are on there.

A. No, I do not.

MR. GOLDSTEIN: Okay. Since we talked about them, let's just make them. Easier. Let's mark 324 as Plaintiff's 375 and 560 as Plaintiff's 376.

(Plaintiff's Exhibit 375, Handwritten note with Bates GCP No. 324, marked for identification, as of this date.)

(Plaintiff's Exhibit 376, Handwritten notes with Bates No. GCP 560, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. Friday evening March 2nd, the Friday before Mr. Cullman, Jr.'s deposition on Monday, General Cigar produced about 1,000 pages of foreign trademark application documents to us in many foreign languages, and I just want to ask

A. No.

Q. Why did General Cigar file a trademark application for Cohiba in late December of 1992?

A. It did so on the advice of counsel.

Q. Were you aware at the time of counsel providing advice to file that application, or is that something that you learned in 1997?

A. I learned that subsequently.

Q. Who was the counsel who provided that advice?

A. I believe it was Harry Marcus.

Q. And do you know what the basis of his advice was? Was it simply register or was it register because?

A. I know nothing beyond the letter that he wrote General Cigar that discussed that issue.

Q. Did you get the letter at that time? In other words, the letter is from December of '92 just a few weeks before the application?

A. I do not recall seeing it in that time frame.

Q. I'm going to show a document. This

1 particular document was not marked but it was
2 previously marked as Plaintiff's Deposition
3 Exhibit 360. It's a December 4 memo. Cover
4 page is a December 4 memo from Mr. Milstein to
5 Mr. Cullman, Jr., David Burgh and John Rano.
6 You're not CC'd or CF'd on it. It's from
7 December 4, '92, and attached is a 20-page
8 letter from Mr. Marcus and Mr. Greenberg to
9 Mr. Milstein in draft form or it says "Draft,"
10 December blank, 1992.
11 Is this the letter you're referring
12 to when you say I know nothing beyond the
13 letter?
14 A. Yes.
15 Q. Do you know if there is a final
16 version of the letter, like a signed version or
17 a dated version?
18 A. I've never seen one.
19 Q. And did you review this letter --
20 or -- did you review this letter prior to it
21 being produced to us?
22 A. Yes.
23 Q. And did you review it in preparation
24 for your deposition?
25

A. No.

MR. GOLDSTEIN: Why don't we mark this whatever we're up to.

(Plaintiff's Exhibit 378, Memorandum dated 3-7-97 from Wollen to Cullman, Cullman junior, McNamara, Rano and Danziger with attachment, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. 378. I'm showing you what we've just marked as Plaintiff's 378. It's a memorandum from you dated March 7, 1997, A. Ross Wollen, to Mr. Cullman, Cullman, Jr., Mr. McNamara, Mr. Rano and Mr. Danziger, and it refers to the draft Cohiba opinion Morgan & Finnegan prepared for us in 1992.

Do you recognize this memo?

A. Yes.

Q. Attached to it is a letter from Mr. Greenberg to Mr. Milstein dated December 2, 1992.

Do you see that?

A. Yes, I do.

Q. And attached to that is what at least

to me looks like the same draft letter that was marked as Plaintiff's 360, December of 1992, but this one has some handwriting on it.

A. It appears to be the same. I would have to read the two together to be certain.

Q. So would I, but it appears to be the same document.

Were you given this document in around March of 1997?

A. I found it myself in our Cohiba files at General Cigar.

Q. Is it your understanding that that's the -- is it your recollection that's the first time that you saw this, the 20-page draft letter?

A. It was my feeling at the time that I had not seen it previously or I certainly did not recall having seen it previously.

Q. Do you recall whether you, even if you didn't see it then in late 1992, discussing at General Cigar this letter from Mr. Marcus?

A. I have no recollection of discussing that letter back in that time frame.

Q. With either at General Cigar or with

not involved in the discussions.

Q. Did you use this document, when I say "this document," I'm referring to the Marcus Greenberg draft letter, in preparing your question and answer?

A. I certainly had it and had read it. I don't think -- I'd have to look at the question and answer to see whether I made reference to it or not.

Q. You don't recall, though, today whether you used it or not?

A. I don't recall using it, no.

Q. In the Plaintiff's 378, the version of the letter that's attached to your cover memo from 1977, there is some underlining and there is some handwriting.

Do you know whose handwriting that is?

A. That's mine.

Q. That's yours.

And were you editing or just making comments, do you recall?

A. I was making comments to myself and asking questions to myself. I do this very

1 Wollen

2 Do you have any knowledge of an

3 attempt to obtain written confirmation from

4 Cubatabaco of General Cigar's exclusive rights

5 to use the Cohiba mark in the U.S.?

6 A. I think those would have been the

7 efforts with Nick Freeman that would have been

8 part of that approach to the Cubans.

9 Q. Other than that approach, are you

10 aware of any effort to obtain written

11 confirmation from Cubatabaco of General Cigar's

12 exclusive right to use the Cohiba mark in the

13 U.S.?

14 A. I think the visit to Havana certainly

15 could have led to that.

16 Q. Well, that was before this memo was

17 written. There's a recommended plan of action.

18 A. Uh-huh.

19 Other than the efforts through Nick

20 Freeman, I'm not familiar with any other

21 attempts up to 1997.

22 Q. If you look on the bottom of page 18,

23 Mr. Marcus and Mr. Greenberg write: "On the

24 other hand, an acquiescence defense may be

25 difficult to prove based on oral remarks. If

1 possible, you should obtain a similar written
2 recognition by Cubatabaco of General Cigar's
3 U.S. rights to the Cohiba word mark."
4 I'm not talking about trade dress,
5 but word mark.
6 Are you aware of any efforts to
7 obtain written recognition by Cubatabaco of
8 General Cigar's rights to the Cohiba word mark?
9 A. No.
10 Q. Are you aware of any discussions as
11 to whether to follow counsel's advice on this
12 topic, whether at the time or subsequently?
13 A. Not that I can recall.
14 I know in this time frame was
15 Mr. Padron's interview with Cigar Aficionado.
16 Q. Do you know why General Cigar didn't
17 attempt to obtain written confirmation from
18 Cubatabaco?
19 A. I believe Mr. Padron's statements
20 about Cohiba in Cigar Aficionado, in my view,
21 made it unnecessary.
22 Q. And you recall discussions about that
23 at that time?
24 A. Not at that time.
25

1 Wollen

2 Q. When do you recall discussions about

3 that?

4 A. I don't recall specific discussions.

5 Q. When do you recall you concluding

6 that there was no need to seek written

7 confirmation of Cubatabaco, from Cubatabaco of

8 General Cigar's exclusive right to use the

9 Cohiba mark in the U.S. such that it was no

10 longer necessary to follow counsel's

11 recommendation?

12 A. I don't recall any specific

13 discussions now.

14 I do recall, and I may have

15 misspoken, I do recall the interview generally

16 in the time frame of when it was published.

17 Q. And it's your testimony that that

18 obviated the need to seek written confirmation

19 from Cubatabaco?

20 A. It's my opinion, yes.

21 Q. Do you recall any discussions at the

22 time, 1992, of possible abandonment of the Cuban

23 Cohiba, I mean possible abandonment of the

24 Cubatabaco mark by General Cigar?

25 A. Not in that time frame, no.

MR. GOLDSTEIN: Well, this isn't the place to argue about it. If you're asserting the privilege as to those questions, then they'll have to be addressed if we choose to address it.

Having said that, I have no further questions for this witness, subject to our privilege disputes, and anything else you might give me and anything you might tell me about unclean hands.

I thank you for your time again.

THE WITNESS: You're welcome again.

(Time noted: 1:10 p.m.)

_____

A. ROSS WOLLEN

Subscribed and sworn to before me this ___ day of _____, 2001.

_____

1

2 C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6

7 I, ANNETTE ARLEQUIN, a Shorthand

8 Reporter and Notary Public within and for

9 the State of New York, do hereby certify:

10 That A. ROSS WOLLEN, the witness

11 whose deposition is hereinbefore set forth,

12 was duly sworn by me and that such

13 deposition is a true record of the

14 testimony given by the witness.

15 I further certify that I am not

16 related to any of the parties to this

17 action by blood or marriage, and that I am

18 in no way interested in the outcome of this

19 matter.

20 IN WITNESS WHEREOF, I have hereunto

21 set my hand this 11th day of July, 2001.

22

23 ----------

ANNETTE ARLEQUIN, CSR, RPR

24 My commission expires:
6/30/02

25

1

---------- I N D E X ----------

2 WITNESS EXAMINATION BY PAGE

3 A. ROSS WOLLEN MR. GOLDSTEIN 459

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6 ---------- EXHIBITS ----------

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Plaintiff's Exhibit 365, Letter dated 467
8 3-27-78 from Sparkes to Marcus

9 Plaintiff's Exhibit 366, Letter dated 470
4-17-78 from Mr. Marcus to Mr. Sparkes

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Plaintiff's Exhibit 367, Memo dated 478
11 1-19-79 from Sparkes to Wollen

12 Plaintiff's Exhibit 368, Memorandum dated 481
7-6-79 from Sparkes to the Cohiba file

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Plaintiff's Exhibit 369, Memo dated 484
14 2-19-82 from Sparkes to Cullman junior

15 Plaintiff's Exhibit 370, Memo dated 491
5-12-82 from Sparkes to Kowalsky

16

Plaintiff's Exhibit 371, Letter dated 506
17 4-4-89 from Milstein to Greenberg

18 Plaintiff's Exhibit 372, Letter from 520
Milstein to Cullman, Cullman junior and
19 Burgh

20 Plaintiff's Exhibit 373, Memo dated 528
2-3-93 from Milstein to Burgh, Cullman
21 and Cullman junior

22 Plaintiff's Exhibit 374, Draft No. 1, Q 540
and A Cuba Cigars Fact Sheet

23

Plaintiff's Exhibit 375, Handwritten 544
24 note with Bates GCP No. 324

25 Plaintiff's Exhibit 376, Handwritten notes 544

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2 PLAINTIFF'S PAGE

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Plaintiff's Exhibit 377, Letter dated 5-19-93 from Greenberg to Beans-Clark 545

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5 Plaintiff's Exhibit 378, Memorandum dated 3-7-97 from Wollen to Cullman, 559

6 Cullman junior, McNamara, Rano and Danziger with attachment

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