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

Proceeding	92051238
Party	Plaintiff Guantanamera Cigars Company
Correspondence Address	Frank Herrera QUINTAIROS PRIETO WOOD & BOYER, P.A. 9300 S. Dadeland Blvd. Fourth Floor Miami, FL 33156 UNITED STATES fherrera@qpwbllaw.com, statham@qpwbllaw.com
Submission	Motion to Compel Discovery
Filer's Name	Frank Herrera
Filer's e-mail	fherrera@qpwbllaw.com
Signature	/FH/
Date	06/08/2010
Attachments	Motion to Compel Deposition of Lopez.pdf (5 pages)(30856 bytes) Ntc Depo of AUGUSTO LOPEZ on 6-18-10 (6-3-10).pdf (2 pages)(17090 bytes) Discovery to Eva Maria Served 5-28-10.pdf (11 pages)(368196 bytes) Discovery to Augusto Served 5-28-10.pdf (11 pages)(363444 bytes) 90 days expiry FILED.pdf (4 pages)(22948 bytes) RE_ Guantanamera Cigars Cancellation Proceeding 2.pdf (4 pages)(159239 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

CANCELLATION NO. 92051238
REGISTRATION NO. 3377574

GUANTANAMERA CIGARS COMPANY,
Petitioner,

vs.

AUGUSTO RAMON LOPEZ LORENZO and
EVA MARIA LOPEZ LORENZO,
Registrants.

PETITIONER'S MOTION TO COMPEL DEPOSITION

COMES NOW, Guantanamera Cigars Company, and pursuant to TBMP §523.01 and 37 C.F.R. §2.120(e), hereby moves for an order compelling the deposition of Registrant Lopez for the properly noticed date of June 18, 2010.

HISTORY BETWEEN THE PARTIES

Registrants were subpoenaed by counsel for Petitioners as third-party witnesses in a matter styled Guantanamera Cigars Company v. Corporacion Habanos, S.A., pending in the United States District Court for the District of Columbia CASE NO: 08-cv-00721-RCL. Since Registrants failed to comply with the duly served subpoena counsel for Petitioner filed a motion to compel compliance with the subpoena in the United States District Court for the Southern District of Florida CASE NO: 2009mc21676, styled In Re: Subpoena of Augusto Lopez, Eva Maria Lopez, Pedro Lopez, and Oliver Imports Spirits & Liquers, Inc. The Court in that matter compelled Mr. Lopez to sit for deposition and invited counsel for Petitioner to provide support for Attorneys' Fees award. See Composite Exhibit A.

In this matter, the parties have discussed settlement during the suspension period, but have been unable to settle the matter. Pursuant to the Board's Order, this case was due to resume on May 23, 2010 (90 days after action was suspended). Thus, in anticipation of the expiration of the suspension period, counsel for Petitioner sent email correspondence to Registrant Lopez on June 2, 2010 requesting dates for deposition. Since discovery is set to close on June 25, 2010, it was necessary to move quickly with the deposition. Recently, counsel for Petitioner also served written discovery requests which are due in the next couple of weeks. See Composite Exhibit A.

Since the undersigned counsel has significant experience of Registrants' refusal to sit for deposition (in the other matters), it was highly anticipated that the Registrant would not appear for deposition before the close of discovery. True to the undersigned's expectation, on June 8, 2010, Petitioner Lopez informed the undersigned that he would not be available for deposition in June. Rather, he recommend that the parties

- May 19, 2010 – The undersigned sends an email to Registrant Lopez inquiring whether an additional suspension of this matter would be agreeable;
- May 24, 2010 – Registrant Lopez, in an email to the undersigned, states: “[i]t does not seem that there is any point in delaying this matter. Let us move forward unless you have a compelling reason to delay;”
- June 2, 2010 – The undersigned responded by requesting Registrant Lopez's availability within the next 3 weeks for deposition;
- June 3, 2010 – The undersigned sent another email to Mr. Lopez stating that the deposition would be set unilaterally. This decision was made in part upon Registrant Lopez's silence in response to the undersigned earlier email. However, the decision was made in large part (as explained in that email) based upon the

Mr. Lopez's unwillingness to sit for deposition in the other Federal cases which in turn required the undersigned to file a motion to compel the subpoena which was granted by the Court in the United States District Court for the Southern District of Florida, but to date has not been complied with. In that same June 3, 2010 email, the undersigned requested that Registrant Lopez confirm whether he intended to appear for the June 18, 2010 deposition. The undersigned warned Registrant Lopez that his failure to confirm attendance at the deposition would result in a motion to compel attendance.

See Composite Exhibit A.

At this time, Registrant Lopez has refused to sit for the properly noticed deposition, and has indicated that he would not make himself available prior to the close of discovery. The Board's intervention is requested.

MEMORANDUM OF LAW

Pursuant to TBMP 523.01 and 37 C.F.R. §2.120(e), Petitioner hereby moves for an order compelling the deposition of Registrant Lopez for the properly noticed date of June 18, 2010. 37 C.F.R. §2.120(e) sets forth:

(1) If a party fails to designate a person pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, or if a party, or such designated person, or an officer, director or managing agent of a party fails to attend a deposition or fails to answer any question propounded in a discovery deposition, or any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion before the Trademark Trial and Appeal Board for an order to compel a designation, or attendance at a deposition, or an answer, or production and an opportunity to inspect and copy.

Id.

In accordance with 37 CFR §2.120(e)(2), when a party files a motion to compel discovery, the Board will issue an order suspending the proceeding with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the discovery dispute, except

as otherwise specified in the Board's suspension order. However, neither the filing of a motion to compel nor the Board's resulting suspension order tolls the time for parties to respond to any outstanding discovery requests which had been served prior to the filing of the motion to compel, nor does it excuse a party's appearance at any discovery deposition which had been duly noticed prior to the filing of the motion to compel.

On May 28, 2010 Petitioner served Request for Production of Documents, Interrogatories, and Requests or Admissions. See Composite Exhibits A. Registrants' responses to the written discovery request are due June 28, 2010. Thus, the filing of this motion, and the Board's automatic stay of this action pending resolution of the motion to compel will not excuse the Registrants from responding to the written discovery requests due on June 28, 2010.

Pursuant to 37 CFR §2.120(e)(2), Petitioner herewith includes a copy of the duly noticed and delivered Notice of Taking Deposition. See Composite Exhibit A. The Notice of Deposition was served on June 3, 2010 which was 15 days (over two weeks) before the deposition date. It is only now, upon a threat of the filing of a motion to compel, has Registrant Lopez claims that he is not available for deposition in June (before the close of discovery).

Based upon Registrant Lopez's clear indication that he does not intend to sit for deposition, and upon the past attempts of Petitioner to compel depositions in a federal case, the Board must compel the deposition. Registrant's blatant disregard to take part in discovery is in clear violation of the federal rules and the rules of the Board. Petitioner requests that the Board's order compelling this deposition be heavy handed. For instance, if Registrant fails to appear for the ordered deposition, the Board should enter judgment in favor of Petitioner as a sanction against Registrants. See MHW Ltd. V. Simex, Aussenhandelsgesellschaft Savelsberg KG, 59 U.S.P.Q. 2d. 1477 (T.T.A.B. 2000); and T.B.M.P. §527.01(a).

WHEREFORE, it is respectfully requested that Petitioner be granted the opportunity to orally depose Registrant Augusto Ramon Lopez Lorenzo in order to garner testimony.

Dated: June 8, 2010

s/FRANK HERRERA
Frank Herrera
Florida Bar No. 484801
QUINTAIROS, PRIETO, WOOD & BOYER, P.A.
9300 South Dadeland Boulevard, 4th Floor
Miami, Florida 33156
Tel.: (305) 670-1101
Fax.: (305) 670-1164
FHerrera@qpwblaw.com

CERTIFICATE OF GOOD FAITH

As noted in this motion, the undersigned has made several good faith attempts to resolve this matter with Mr. Lopez but has been unable to reach agreement.

BY /s/ FRANK HERRERA
FRANK HERRERA
Florida Bar No. 494801

CERTIFICATE OF MAILING

WE HEREBY CERTIFY that a true copy hereof has been mailed this 8th day of June, 2010, to: **Augusto Ramon Lopez Lorenzo**, 6210 SW 34 Street, Miami, FL 33155-4923; and **Eva Maria Lopez Lorenzo**, 1517 Lakeview Drive, Keller, Texas 76248.

BY /s/ FRANK HERRERA
FRANK HERRERA
Florida Bar No. 494801

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

CANCELLATION NO. 92051238
REGISTRATION NO. 3377574

GUANTANAMERA CIGARS COMPANY,

vs.

AUGUSTO RAMON LOPEZ LORENZO and
EVA MARIA LOPEZ LORENZO

NOTICE OF TAKING DEPOSITION

PLEASE TAKE NOTICE that the undersigned will take the deposition of the below-named person, at the offices of undersigned counsel, on the date and at the time indicated below:

Deponent	Date and Time	Location
AUGUSTO RAMON LOPEZ LORENZO	Friday, June 18, 2010 @ 10:00 a.m.	9300 S. Dadeland Blvd. Fourth Floor Miami FL 33156

upon oral examination before U.S. Legal Support/Klein Bury Court Reporters, Notary Public, or before some other officer authorized by law to administer oaths in the State of Florida. The deposition will be taken for the purpose of discovery or use as evidence in this action, or for such other purposes as authorized under applicable statutes or rules of the Court. The deposition will continue from day to day until completed.

CERTIFICATE OF MAILING

WE HEREBY CERTIFY that a true copy hereof has been emailed and mailed by U.S. Mail this 3rd day of June, 2010, to: **Augusto Ramon Lopez Lorenzo**, 6210 SW 34 Street,

Miami, FL 33155-4923; and mailed by U.S. mail to **Eva Maria Lopez Lorenzo**, 1517 Lakeview Drive, Keller, Texas 76248.

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FRANK HERRERA
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CANCELLATION NO. 92051238
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GUANTANAMERA CIGARS COMPANY,

vs.

AUGUSTO RAMON LOPEZ LORENZO and
EVA MARIA LOPEZ LORENZO

FIRST INTERROGATORIES TO APPLICANT

COMES NOW, Opposer, GUANTANAMERA Cigars Company, and pursuant to TBMP 405, requests that Applicant, EVA MARIA LOPEZ LORENZO, answer the following Interrogatories within thirty (30) days of service hereof:

INTERROGATORIES

1. State the full name, present address, telephone number, and position of all persons having knowledge of the relevant facts relating to this cancellation proceeding.
2. Identify the person who conceived of using the mark GUANTANAMERA in connection with rum or alcohol products.
3. Identify the person who researched the availability of the GUANTANAMERA trademark for registration by your company and the steps that were taken to conduct such research and the results of the research.
4. Describe in detail your selection and adoption of your GUANTANAMERA trademark.
5. Identify all persons who were involved in or participated in any way with the decisions to adopt, register, and/or use your GUANTANAMERA trademark.

6. Describe with specificity each good or service in connection with which you have used or intend to use the GUANTANAMERA trademark, state the date on which said mark was first used in connection with each good or service, the date for which such use is intended, describe such use in detail, and identify those individuals with knowledge regarding such use.
7. Identify each form of media through which you have used, advertised, or promoted the GUANTANAMERA trademark, including without limitation the names or domain names of television stations, radio stations, internet websites, newspapers, magazines, trade journals, periodicals, and/or retail establishments in which you have advertised your goods and services under the GUANTANAMERA trademark. Also identify documents sufficient to support your response to this interrogatory, including samples of each use, advertisement, and promotion.
8. Describe in detail any incident reflecting third-party belief, confusion, or mistake or any inquiries concerning whether you, the GUANTANAMERA trademarks, or the goods or services sold, offer for sale, or plan to be offered for sale under the GUANTANAMERA trademarks are associated with, sponsored by, licensed by, endorsed by, or in any manner connected with Petitioner and/or any goods or services offered by you; and identify each person involved in the incident or making each such inquiry, state the date of each such event.
9. Identify those persons who had a role in the answering of the foregoing Interrogatories or Requests for Admissions, or in any search for documents in connection with said Interrogatories or the foregoing Request for Production.

CERTIFICATE OF MAILING

WE HEREBY CERTIFY that a true copy hereof has been mailed this 28th day of May, 2010, to: **Augusto Ramon Lopez Lorenzo**, 6210 SW 34 Street, Miami, FL 33155-4923; and **Eva Maria Lopez Lorenzo**, 1517 Lakeview Drive, Keller, Texas 76248.

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CANCELLATION NO. 92051238
REGISTRATION NO. 3377574

GUANTANAMERA CIGARS COMPANY,

vs.

AUGUSTO RAMON LOPEZ LORENZO and
EVA MARIA LOPEZ LORENZO

REQUEST FOR ADMISSIONS

COMES NOW, Opposer, GUANTANAMERA CIGARS COMPANY, and pursuant to TBMP 407, requests that Applicant, EVA MARIA LOPEZ LORENZO, admit the following within thirty (30) days of service hereof:

1. Admit that you were aware of Petitioner's trademark, GUANTANAMERA, as used in connection with cigars, prior to your adoption and use of GUANTANAMERA for rum.
2. Admit that you intend to benefit from Petitioner's goodwill in the trademark GUANTANAMERA.
3. Admit that rum and cigars are sold in bars.
4. Admit that rum and cigars are sold in the same commercial venues.
5. Admit that liquor stores sell cigars and rum.
6. Admit that you intend to advertise GUANTANAMERA rum in cigar magazines.
7. Admit that you intend to sell GUANTANAMERA rum with tobacco products.
8. Admit that you have no use of GUANTANAMERA as used in connection with rum in the United States.

9. Admit that you have no wholesalers in the United States apart from anyone affiliated with you for GUANTANAMERA rum.
10. Admit that no retailers in the United States carry your GUANTANAMERA rum.
11. Admit that no retailers have ever carried your GUANTANAMERA rum in the United States.
12. Admit that from 2000 to 2005 that less than five retailers in the United States carried your GUANTANAMERA rum.
13. Admit that since 2005 to the present day that less than ten retailers have carried GUANTANAMERA rum in the United States.

CERTIFICATE OF MAILING

WE HEREBY CERTIFY that a true copy hereof has been mailed this 28th day of May, 2010, to: **Augusto Ramon Lopez Lorenzo**, 6210 SW 34 Street, Miami, FL 33155-4923; and **Eva Maria Lopez Lorenzo**, 1517 Lakeview Drive, Keller, Texas 76248.

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BY /s/ FRANK HERRERA
FRANK HERRERA
Florida Bar No. 494801

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CANCELLATION NO. 92051238
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GUANTANAMERA CIGARS COMPANY,

vs.

AUGUSTO RAMON LOPEZ LORENZO and
EVA MARIA LOPEZ LORENZO

REQUEST FOR PRODUCTION OF DOCUMENTS

COMES NOW, Opposer, GUANTANAMERA CIGARS COMPANY, and pursuant to TBMP 406, requests that Applicant, EVA MARIA LOPEZ LORENZO, produce the following requested documents and things within thirty (30) days of service hereof:

1. Please produce the complete file history of Federal Registration 3377574.
2. Please produce all documents reflecting internal communications regarding your decision to re-register your trademark GUANTANAMERA for use in connection with rum.
3. Please produce the complete file history of your previously registered mark, namely Registration No. 2233445, which was canceled on December 31, 2005.
4. Please produce all internal communications regarding when you first learned that Registration 2233445 was canceled.
5. Please produce all internal communications regarding the joint ownership of your GUANTANAMERA mark for rum; namely, please produce all correspondence between Augusto Ramon Lopez Lorenzo and Pedro Ramon Oliver or any other owner.

6. Please produce all internal communications which reflect any change of ownership interest in the GUANTANAMERA trademark as used in connection with rum since the beginning of such use of trademark on such goods.
7. Please produce all invoices, bills of lading, or other business documents reflecting any sales of GUANTANAMERA rum to any person or entity anywhere in the world
8. Please produce all invoices, bills of lading, or other business documents reflecting any sales of GUANTANAMERA rum to any person or entity in the United States.
9. Please produce any internal communications about marketing plans for GUANTANAMERA rum in the United States.
10. Please produce all communications with the Alcohol and Tobacco Tax & Trade Bureau Division of the United States Department of Treasury wherein anyone affiliated with you submitted any GUANTANAMERA labels for approval by that organization.
11. Please produce all documentation reflecting taxes paid and/or owed to the Alcohol and Tobacco Tax & Trade Bureau directly relating to United States sales of GUANTANAMERA rum.
12. Please produce any documentation reflecting any correspondence between you and any other person reflecting or discussing this trademark dispute.
13. Please produce at least one sample of each version of your GUANTANAMERA branded rum. Photos are not acceptable. The specimen or sample may be empty, but an actual specimen of the product with the GUANTANAMERA label is required.
14. Please produce a complete list of all United States wholesalers that distribute or otherwise carry your GUANTANAMERA rum in the United States.

15. Please produce a complete list which discloses all United States retailers that carry and sell your GUANTANAMERA rum in the United States.
16. Please produce a summary of annual sales in units and dollar amount of your GUANTANAMERA rum in the United States dating back to 2000.
17. Please produce any internal communications reflecting your knowledge of Petitioner's trademark rights in GUANTANAMERA for cigars in the United States.
18. Please produce any and all documents reflecting any offers to purchase your alleged trademark rights in GUANTANAMERA for rum by any person anywhere in the world.
19. Please produce all internal communications reflecting the reason you decided to adopt the name GUANTANAMERA for use in connection for rum.
20. Please produce any and all documents reflecting any co-marketing that you have done between rum and cigars in the United States. For instance, this request seeks documents which would reflect any joint ventures or co-marketing agreements or co-marketing events wherein you have joined with a cigar company not affiliated with you in order to promote your GUANTANAMERA rum.
21. Please provide all documents which reflect any periods of discontinued use of GUANTANAMERA for rum since you began using the mark on rum.
22. Please produce any and all documents which reflect any instances of actual confusion between your GUANTANAMERA rum and Petitioner's GUANTANAMERA for cigars.
23. Please produce any and all documents which reflect when you first became aware of the existence of the GUANTANAMERA Cigar Company or its principal, Jose Montagne.
24. Please produce a representative sampling of invoices for each and every rum brand manufactured, distributed, and/or sold by you or anyone or company affiliated with you.

25. Please produce all documents that reflect any actual or proposed licenses, assignments, agreements, contracts, or any other arrangements with any third parties regarding the use or intended use of GUANTANAMERA for rum.
26. Please produce all documents that refer or relate to the ownership of the GUANTANAMERA trademark for any category of good or service in the United States or anywhere in the world.
27. Please produce all documents that support any defense that you might have in this action.
28. Please produce any documentation that might reflect your intended packaging or advertising of products bearing your GUANTANAMERA mark.
29. Please produce all documents that refer or relate to any investigation regarding the availability for adoption and/or registration, licensing, use, intended use, exploitation and/or intended exploitation of the GUANTANAMERA mark.
30. Please produce all documents that refer or relate to the adoption, creation, design, selection and/or consideration of the GUANTANAMERA trademark.
31. Please produce all documents that refer or relate to any financial resources that you have invested in developing, preparing to use, or using the GUANTANAMERA trademark.
32. Please produce all agreements that you have entered into with any individual or entity concerning the use and/or intended use of the GUANTANAMERA trademark.
33. Please produce all reports and drafts of reports authorized by any expert concerning the subject matter of this proceeding.
34. Please produce all documents relating to all trademark oppositions, cancellations, or other legal proceedings relating to any trademark owned or otherwise controlled by you or anyone affiliated with you.

CERTIFICATE OF MAILING

WE HEREBY CERTIFY that a true copy hereof has been mailed this 28th day of May, 2010, to: **Augusto Ramon Lopez Lorenzo**, 6210 SW 34 Street, Miami, FL 33155-4923; and **Eva Maria Lopez Lorenzo**, 1517 Lakeview Drive, Keller, Texas 76248.

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FIRST INTERROGATORIES TO APPLICANT

COMES NOW, Opposer, GUANTANAMERA Cigars Company, and pursuant to TBMP 405, requests that Applicant, AUGUSTO RAMON LOPEZ LORENZO, answer the following Interrogatories within thirty (30) days of service hereof:

INTERROGATORIES

1. State the full name, present address, telephone number, and position of all persons having knowledge of the relevant facts relating to this cancellation proceeding.
2. Identify the person who conceived of using the mark GUANTANAMERA in connection with rum or alcohol products.
3. Identify the person who researched the availability of the GUANTANAMERA trademark for registration by your company and the steps that were taken to conduct such research and the results of the research.
4. Describe in detail your selection and adoption of your GUANTANAMERA trademark.
5. Identify all persons who were involved in or participated in any way with the decisions to adopt, register, and/or use your GUANTANAMERA trademark.

6. Describe with specificity each good or service in connection with which you have used or intend to use the GUANTANAMERA trademark, state the date on which said mark was first used in connection with each good or service, the date for which such use is intended, describe such use in detail, and identify those individuals with knowledge regarding such use.
7. Identify each form of media through which you have used, advertised, or promoted the GUANTANAMERA trademark, including without limitation the names or domain names of television stations, radio stations, internet websites, newspapers, magazines, trade journals, periodicals, and/or retail establishments in which you have advertised your goods and services under the GUANTANAMERA trademark. Also identify documents sufficient to support your response to this interrogatory, including samples of each use, advertisement, and promotion.
8. Describe in detail any incident reflecting third-party belief, confusion, or mistake or any inquiries concerning whether you, the GUANTANAMERA trademarks, or the goods or services sold, offer for sale, or plan to be offered for sale under the GUANTANAMERA trademarks are associated with, sponsored by, licensed by, endorsed by, or in any manner connected with Petitioner and/or any goods or services offered by you; and identify each person involved in the incident or making each such inquiry, state the date of each such event.
9. Identify those persons who had a role in the answering of the foregoing Interrogatories or Requests for Admissions, or in any search for documents in connection with said Interrogatories or the foregoing Request for Production.

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REQUEST FOR PRODUCTION OF DOCUMENTS

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1. Please produce the complete file history of Federal Registration 3377574.
2. Please produce all documents reflecting internal communications regarding your decision to re-register your trademark GUANTANAMERA for use in connection with rum.
3. Please produce the complete file history of your previously registered mark, namely Registration No. 2233445, which was canceled on December 31, 2005.
4. Please produce all internal communications regarding when you first learned that Registration 2233445 was canceled.
5. Please produce all internal communications regarding the joint ownership of your GUANTANAMERA mark for rum; namely, please produce all correspondence between Augusto Ramon Lopez Lorenzo and Pedro Ramon Oliver or any other owner.

6. Please produce all internal communications which reflect any change of ownership interest in the GUANTANAMERA trademark as used in connection with rum since the beginning of such use of trademark on such goods.
7. Please produce all invoices, bills of lading, or other business documents reflecting any sales of GUANTANAMERA rum to any person or entity anywhere in the world
8. Please produce all invoices, bills of lading, or other business documents reflecting any sales of GUANTANAMERA rum to any person or entity in the United States.
9. Please produce any internal communications about marketing plans for GUANTANAMERA rum in the United States.
10. Please produce all communications with the Alcohol and Tobacco Tax & Trade Bureau Division of the United States Department of Treasury wherein anyone affiliated with you submitted any GUANTANAMERA labels for approval by that organization.
11. Please produce all documentation reflecting taxes paid and/or owed to the Alcohol and Tobacco Tax & Trade Bureau directly relating to United States sales of GUANTANAMERA rum.
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13. Please produce at least one sample of each version of your GUANTANAMERA branded rum. Photos are not acceptable. The specimen or sample may be empty, but an actual specimen of the product with the GUANTANAMERA label is required.
14. Please produce a complete list of all United States wholesalers that distribute or otherwise carry your GUANTANAMERA rum in the United States.

15. Please produce a complete list which discloses all United States retailers that carry and sell your GUANTANAMERA rum in the United States.
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19. Please produce all internal communications reflecting the reason you decided to adopt the name GUANTANAMERA for use in connection for rum.
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28. Please produce any documentation that might reflect your intended packaging or advertising of products bearing your GUANTANAMERA mark.
29. Please produce all documents that refer or relate to any investigation regarding the availability for adoption and/or registration, licensing, use, intended use, exploitation and/or intended exploitation of the GUANTANAMERA mark.
30. Please produce all documents that refer or relate to the adoption, creation, design, selection and/or consideration of the GUANTANAMERA trademark.
31. Please produce all documents that refer or relate to any financial resources that you have invested in developing, preparing to use, or using the GUANTANAMERA trademark.
32. Please produce all agreements that you have entered into with any individual or entity concerning the use and/or intended use of the GUANTANAMERA trademark.
33. Please produce all reports and drafts of reports authorized by any expert concerning the subject matter of this proceeding.
34. Please produce all documents relating to all trademark oppositions, cancellations, or other legal proceedings relating to any trademark owned or otherwise controlled by you or anyone affiliated with you.

CERTIFICATE OF MAILING

WE HEREBY CERTIFY that a true copy hereof has been mailed this 28th day of May, 2010, to: **Augusto Ramon Lopez Lorenzo**, 6210 SW 34 Street, Miami, FL 33155-4923; and **Eva Maria Lopez Lorenzo**, 1517 Lakeview Drive, Keller, Texas 76248.

QUINTAIROS, PRIETO, WOOD & BOYER, P.A.
9300 South Dadeland Boulevard, 4th Floor
Miami, Florida 33156
Tel.: (305) 670-1101
Fax.: (305) 670-1164
FHerrera@qpwbllaw.com

BY /s/FRANK HERRERA
FRANK HERRERA
Florida Bar No. 494801

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

CANCELLATION NO. 92051238
REGISTRATION NO. 3377574

GUANTANAMERA CIGARS COMPANY,

vs.

AUGUSTO RAMON LOPEZ LORENZO and
EVA MARIA LOPEZ LORENZO

REQUEST FOR ADMISSIONS

COMES NOW, Opposer, GUANTANAMERA CIGARS COMPANY, and pursuant to TBMP 407, requests that Applicant, AUGUSTO RAMON LOPEZ LORENZO, admit the following within thirty (30) days of service hereof:

1. Admit that you were aware of Petitioner's trademark, GUANTANAMERA, as used in connection with cigars, prior to your adoption and use of GUANTANAMERA for rum.
2. Admit that you intend to benefit from Petitioner's goodwill in the trademark GUANTANAMERA.
3. Admit that rum and cigars are sold in bars.
4. Admit that rum and cigars are sold in the same commercial venues.
5. Admit that liquor stores sell cigars and rum.
6. Admit that you intend to advertise GUANTANAMERA rum in cigar magazines.
7. Admit that you intend to sell GUANTANAMERA rum with tobacco products.
8. Admit that you have no use of GUANTANAMERA as used in connection with rum in the United States.

9. Admit that you have no wholesalers in the United States apart from anyone affiliated with you for GUANTANAMERA rum.
10. Admit that no retailers in the United States carry your GUANTANAMERA rum.
11. Admit that no retailers have ever carried your GUANTANAMERA rum in the United States.
12. Admit that from 2000 to 2005 that less than five retailers in the United States carried your GUANTANAMERA rum.
13. Admit that since 2005 to the present day that less than ten retailers have carried GUANTANAMERA rum in the United States.

CERTIFICATE OF MAILING

WE HEREBY CERTIFY that a true copy hereof has been mailed this 28th day of May, 2010, to: **Augusto Ramon Lopez Lorenzo**, 6210 SW 34 Street, Miami, FL 33155-4923; and **Eva Maria Lopez Lorenzo**, 1517 Lakeview Drive, Keller, Texas 76248.

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FHerrera@qpwblaw.com

BY /s/ FRANK HERRERA
FRANK HERRERA
Florida Bar No. 494801

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No.: 1:2009mc21676

IN RE: SUBPOENA OF AUGUSTO LOPEZ,
EVA MARIA LOPEZ, PEDRO LOPEZ, AND
OLIVER IMPORTS SPIRITS & LIQUEURS, INC.

GUANTANAMERA CIGAR CO.,

Plaintiff,

v.

CORPORACION HABANOS, S.A.,

Defendant.

NOTIFICATION OF 90 DAYS EXPIRING AND RIPENESS FOR HEARING

Counsel for Plaintiff, Guantanamera Cigar Co. (hereinafter “Guantanamera” or “Plaintiff”), pursuant to Local Rule 7.1.B.3 provides notice of 90 days expiring.

This action to enforce compliance with a subpoena was filed on June 16, 2009. Since that time, Plaintiff has sought to compel the depositions of Augusto Lopez, Eva Maria Lopez, Pedro Lopez, and a representative of Oliver Imports Spirits & Liqueurs, Inc.

On July 14, 2009, this Court entered an Order granting in part and denying in part Plaintiff’s Motion to Compel. [D.E. 14]. In that Order most of the Defendants were ordered to sit for deposition and produce documents by a date certain. However, rather than comply, on July 17, 2009, the subpoenaed parties filed a Motion for Reconsideration of that Order. [D.E. 5]. Related motions and briefing occurred shortly thereafter. [D.E.s 6-9, and 11]. At this time, none of the subpoenaed Defendants have agreed to sit for

depositions, nor have they otherwise complied with this Court's Order to produce relevant documents. It has been more than 90 days since the briefing on these issues has ended, and the Plaintiff is without: (1) the relief requested and Ordered; and (2) an Order from this Court on the follow-up motions.

The filing of the Motion for Reconsideration by the Defendants does not relieve them of compliance with this Court's unambiguous Order. Thus, Defendants are in clear violation of this Court's Order and should be sanctioned accordingly.

By way of background, Plaintiff subpoenaed these parties for testimony in a case styled Guantanamera Cigar Co. v. Corporacion Habanos, S.A., Case No. 08-0721 (RCL). In that case, the Honorable Judge Royce C. Lamberth Ordered that the depositions of Augusto Lopez, Pedro Lopez, Eva Maria Lopez, and Oliver Imports Spirits & Liqueurs, inc. would be permitted. See Id. [D.E. 70].

Moreover, this testimony is relevant in an action filed by Plaintiff against two of the subpoenaed Defendants before the United States Patent and Trademark Office's Trademark Trial and Appeal Board ("TTAB"). See Guantanamera Cigar Co. v. Augusto Ramon and Eva Maria Lopez Lorenzo, Cancellation No. 92051238.

The subpoenaed Defendants have willfully failed to comply with this Court's Order. Time is of the essence for Plaintiff to obtain such discovery so that the same can be used in the action pending in the United States District Court for the District of Columbia (Guantanamera Cigar Co. v. Corporacion Habanos, S.A., Case No. 08-0721 (RCL), as well as in the action pending before the T.T.A.B. (Guantanamera Cigar Co. v. Augusto Ramon and Eva Maria Lopez Lorenzo, Cancellation No. 92051238). Specifically, dispositive motions deadlines are quickly approaching in the District Court

case, and discovery is ongoing in the TTAB case.

Now, eight months after the filing of the action to enforce compliance with the subpoenas Defendants have still not produced discovery or sat for deposition. This blatant disregard for the rules and this Court's Order should not be tolerated.

Plaintiff's cases pending in the United States District Court for the District of Columbia and the T.T.A.B. are being prejudiced without this discovery.

WHEREFORE, the Plaintiff respectfully requests that the Court take some action in this matter, namely, the entry of an order that Defendants be compelled to produce requested discovery and sit for deposition by a date certain, payment of attorneys' fees, and sanctioned in a manner that is appropriate for their behavior.

Dated: February 18th, 2010

Respectfully submitted,

By: s/FRANK HERRERA
Frank Herrera
Florida Bar No. 494801
QUINTAIROS, PRIETO, WOOD &
BOYER, P.A.
9300 South Dadeland Boulevard,
Fourth Floor
Miami, Florida 33156
Tel: (305) 670-1101
Fax.: (305) 670-1164
fherrera@qpwblaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing is being served this 18th day of
February, 2010 upon:

Augusto Ramon Lopez, Esq.
SANCHEZ-MEDINA GONZALEZ & QUESADA LLP
2333 Ponce De Leon Blvd Ste 302
Coral Gables, Florida 331345418
Counsel for Deponents

via U.S. Mail and email per previous agreement.

By: s/FRANK HERRERA
Frank Herrera

From: [Frank Herrera](#)
To: "[Augusto R. López](#)"; auglopez@bellsouth.net
Cc: [Gustavo Sardiña](#); [Suzanne M. Tatham](#)
Subject: RE: Guantanamo Cigars Cancellation Proceeding
Date: Tuesday, June 08, 2010 10:40:49 AM
Attachments: [RE Guantanamo Cigars Cancellation Proceeding.msg](#)

Augusto:

In your May 24, 2010 email to me (attached), you stated “[i]t does not seem that there is any point in delaying this matter. Let us move forward ...”

Discovery closes June 25, 2010. I have, with plenty of time, requested your availability for deposition.

Now, you claim that you are not available in June.

A motion to compel your deposition will be filed immediately.

As for settlement. Make an offer.

Frank Herrera
Partner
Intellectual Property and Internet Law
QUINTAIROS, PRIETO, WOOD & BOYER, P.A.
9300 South Dadeland Boulevard,
Fourth Floor
Miami, Florida 33156
Tel: (305) 670-1101
www.qpwblaw.com
Miami + Ft. Lauderdale + Tampa + Orlando + Jacksonville + Tallahassee + Ft. Myers

From: Augusto R. López [<mailto:ALopez@smgqlaw.com>]
Sent: Tuesday, June 08, 2010 10:18 AM
To: Frank Herrera; auglopez@bellsouth.net
Cc: Gustavo Sardiña; Suzanne M. Tatham
Subject: RE: Guantanamo Cigars Cancellation Proceeding

Frank,

It is curious that you responded to my May 24th email with an email 4 work days later on May 28th, but somehow I am “silent” for failing to respond within 24 hours to your email dated June 2nd. Double-standards are weird like that.

I am unavailable any day in June so the 18th is out, and am in the process of possibly retaining counsel so any deposition date will depend on his/her schedule as well. I

will keep you posted.

Finally, please communicate to your client that we remain, as always, open to the possibility of a reasonable settlement among the parties.

From: Frank Herrera [mailto:fherrera@qpwbllaw.com]
Sent: Monday, June 07, 2010 12:41 PM
To: Frank Herrera; Augusto R. López; auglopez@bellsouth.net
Cc: Gustavo Sardiña; Suzanne M. Tatham
Subject: RE: Guantanamo Cigars Cancellation Proceeding

Based upon your silence and to avoid delay in this matter (as we have experienced in times past with you), we will move to compel your deposition immediately.

Please contact me any time if you reconsider your availability for deposition.

Frank Herrera
Partner
Intellectual Property and Internet Law
QUINTAIROS, PRIETO, WOOD & BOYER, P.A.
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Miami + Ft. Lauderdale + Tampa + Orlando + Jacksonville + Tallahassee + Ft. Myers

From: Frank Herrera
Sent: Thursday, June 03, 2010 11:13 AM
To: Frank Herrera; 'Augusto R. López'; 'auglopez@bellsouth.net'
Cc: Gustavo Sardiña; Suzanne M. Tatham
Subject: RE: Guantanamo Cigars Cancellation Proceeding

Based upon your silence we will set your deposition unilaterally for Friday, June 18, 2010. Also, based upon your unwillingness to sit for deposition in the SDFLA matter, we will also presume that you have no intention on appearing for your deposition on June 18, 2010. In order to avoid delay, please let us know now whether you will appear for deposition on June 18, 2010. If you do not intend to appear, we will move to compel immediately.

Frank Herrera
Partner
Intellectual Property and Internet Law
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From: Frank Herrera

Sent: Wednesday, June 02, 2010 4:26 PM

To: 'Augusto R. López'; auglopez@bellsouth.net

Cc: Gustavo Sardiña; Suzanne M. Tatham

Subject: RE: Guantanamo Cigars Cancellation Proceeding

Mr. Lopez:

Please provide me with your dates of availability within the next 3 weeks for a deposition here at my office.

Frank Herrera

Partner

Intellectual Property and Internet Law

QUINTAIROS, PRIETO, WOOD & BOYER, P.A.

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Miami, Florida 33156

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From: Augusto R. López [<mailto:ALopez@smgqlaw.com>]

Sent: Monday, May 24, 2010 2:36 PM

To: Frank Herrera; auglopez@bellsouth.net

Cc: Gustavo Sardiña; Suzanne M. Tatham

Subject: RE: Guantanamo Cigars Cancellation Proceeding

Mr. Herrera,

It does not seem that there is any point in delaying this matter. Let us move forward unless you have a compelling reason to delay. I look forward to hearing from you. Moreover, please communicate to your client that we remain, as always, open to the possibility of a reasonable settlement among the parties.

AUGUSTO R. LÓPEZ

 SANCHEZ-MEDINA, GONZALEZ, QUESADA,
LAGE, CRESPO, GOMEZ & MACHADO LLP

The Colonnade, Suite 302

2333 Ponce de Leon Boulevard

Coral Gables, Florida 33134

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E-Mail: alopez@smgqlaw.com

Website: www.smgqlaw.com

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From: Frank Herrera [mailto:fherrera@qpwbllaw.com]
Sent: Wednesday, May 19, 2010 2:31 PM
To: Augusto R. López; auglopez@bellsouth.net
Cc: Gustavo Sardiña; Suzanne M. Tatham
Subject: Guantanamo Cigars Cancellation Proceeding

Mr. Lopez:

Cancellation No. 92051238 is scheduled to resume in the next few days. Thus, the new deadlines set forth in the Board's February 22, 2010 Order will be operative.

Based upon the pending Federal dispute, we suggest that we continue to suspend the TTAB action for another 6 months, or such other mutually agreeable time period.

Thoughts on the matter?

Frank Herrera

Partner

Intellectual Property and Internet Law

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