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

Proceeding	92052053
Party	Plaintiff Corporacion Habanos, S.A. and Empresa Cubana del Tabaco, d.b.a. Cubatabaco
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Submission	Motion for Default Judgment
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Date	03/29/2010
Attachments	Purohabano notice default.pdf (6 pages)(130398 bytes)

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

In the matter of trademark Registration No. 3,420,623
Registered: April 29, 2008
Mark: PUROHABANO ESTOBAR & DESIGN

CORPORACION HABANOS, S.A., and EMPRESA)	
CUBANA DEL TABACO, d.b.a. CUBATABACO,)	
)	
Petitioners,)	
)	
v.)	Cancellation No. 92052053
)	
ESTOBAR, REINALDO,)	
)	
Registrant.)	
)	

PETITIONERS' MOTION FOR DEFAULT JUDGMENT

Petitioners CORPORACION HABANOS, S.A. and EMPRESA CUBANA DEL TABACO (together "Petitioners"), by and through their undersigned counsel, hereby move for a default judgment against ESTOBAR, REINALDO ("Registrant") in the above-captioned matter, pursuant to Fed. R. Civ. P. 55(c); 37 C.F.R. § 2.114(a); and TBMP §§ 312.01, 508, on the ground that Registrant has failed to file an Answer to Petitioners' Petition to Cancel, which Answer was due on March 22, 2010, and in support thereof state as follows:

1. On April 29, 2008, the USPTO issued Registration No. 3,420,623 on the principal register to Registrant for the mark PUROHABANO ESTOBAR & DESIGN ("PUROHABANO"), for "Cigars; Cigarillos; Tobacco; Smoking Tobacco; Smokeless Tobacco; Smokeless Tobacco [*sic*]; Chewing Tobacco; Cigarettes" (the "Registration").

2. On February 8, 2010, Petitioners filed a Petition to Cancel the Registration. Petitioners, through undersigned counsel, served that Petition to Cancel on Registrant on February 8, 2010 via U.S. Certified Mail, postage prepaid, return receipt requested, to the

address of record and correspondent listed with the USPTO on the TARR database for Registrant, as shown on the certificate of service filed with the Petition to Cancel. On February 16, 2010, the Certified Mail Return Receipt was signed, and returned to undersigned counsel, a copy of which is annexed hereto as Exhibit A.

3. On February 9, 2010, the Board issued a scheduling order stating that Registrant's Answer was due by March 21, 2010, addressed to Registrant's address of record, as shown on the TARR database. Because March 21, 2010 was a Sunday, Registrant's Answer was due no later than March 22, 2010.

4. Registrant did not file an Answer on or before March 22, 2010, and has not filed an Answer or any other document in this proceeding, as of the date of this filing, March 29, 2010.

5. Registrant has not filed a motion requesting an extension of time to Answer. Registrant has not contacted Petitioners or their counsel to request an extension of time to file the Answer, or otherwise.

6. In light of the signed and returned Certified Mail Return Receipt, Registrant has clearly received notice of the Petition to Cancel. Registrant has not made, and cannot make, any showing that good cause excuses his failure to file a timely Answer, or his failure to file an Answer or otherwise respond at all to the Petition to Cancel. *See* Fed.R.Civ.P. 55(c); 37 C.F.R. § 2.106(a); TBMP §§ 312.01, 508; *DeLorme Pub'g Co. v. Eartha's Inc.*, 60 U.S.P.Q.2d 1222 (T.T.A.B. 2000).

7. Registrant's mark, by use of the term PUROHABANO for cigars that do not come from Cuba, and which plainly refers to cigars from Cuba, is, *inter alia*, primarily geographically deceptively misdescriptive under section 2(e)(3) of the Lanham Act, as more

fully pleaded in the Petition to Cancel. *See also Corporacion Habanos, S.A. v. Anncas, Inc.*, Opp. No. 91165519 (T.T.A.B. Sept. 26, 2008) (refusing registration of mark HAVANA CLUB for cigars under section 2(e)(3)).

8. Registrant has effectively abandoned his Registration by his failure to file an Answer or otherwise respond to the Petition to Cancel.

WHEREFORE, Petitioners request that: the Motion for Default Judgment be granted; a default judgment be entered against Registrant; Registration No. 3,420,623 on the principal register for the mark PUROHABANO ESTOBAR & DESIGN be cancelled; and this Petition to Cancel be sustained in favor of the Petitioners.

Dated: March 29, 2010

Respectfully submitted,

By: /David B. Goldstein/

DAVID B. GOLDSTEIN
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KRINSKY & LIEBERMAN, P.C.

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*Attorneys for Petitioners Corporacion Habanos,
S.A. and Empresa Cubana del Tabaco*

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Motion for Default Judgment was served on Registrant by mailing, postage prepaid, said copy on March 29, 2010, via U.S. First-Class Mail, to the Correspondent's (and Registrant's) address of record listed for Registration No. 3,420,623 on the USPTO's TARR database:

ESTOBAR, REINALDO
Apt 101
10903 W. Okeechobee Road
Hialeah Gardens, FL 33018-8102

/David B. Goldstein/
David B. Goldstein

EXHIBIT A

UNITED STATES POSTAL SERVICE

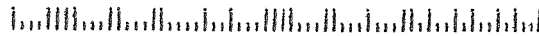


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David B. Goldstein
Rabinowitz, Boudin, Standard,
Kinsky & Lieberman, P.C.
111 Broadway, Suite #1102
NYC, NY 10006-1901

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33018-8102

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