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

Proceeding	92058950
Party	Defendant Variety House Dist. LLC
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(total 8 pages)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
THE TRADEMARK TRIAL AND APPEAL BOARD
REG.NO. 3,973,382
FOR THE MARK FLOR DE FLOREZ
REGISTERED ON THE OFFICIAL REGISTRY JUNE 7, 2011

PDR CIGARS USA, INC. PETITIONER
VARIETY HOUSE DIST. LLC REGISTRANT

CANCELLATION NO. 92058950

REGISTRANT'S TRIAL BRIEF

KIM MARIE ULLRICH FLORES
REGISTRANT REPRESENTATIVE
KIMMARIEFLORES@OUTLOOK.COM

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THE TRADEMARK TIRAL AND APPEAL BOARD
REGISTERED NO.3,973,382
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PDR CIGARS USA, INC. (PETITIONER) V. VARIETY HOUSE DIST. LLC. (REGISTRANT)

REGISTRANT, VARIETY HOUSE DIST. LLC, BY AND THROUGH IT'S REPRESENTATIVE KIM MARIE ULLRICH-FLORES REQUESTS THAT THE PETITIONER PDR CIGARS USA REQUESTING THE CANCELLATION (92058920) OF THE TRADEMARK FLOR DE FLOREZ BE DENIED.

VARIETY HOUSE DIST. LLC. IS A LEGALLY REGISTERED LLC REGISTERED IN FLORIDA. IT WAS REGISTERED 12/08 AND IS CURRENTLY ACTIVE.

ON 9/8/2010 VARIETY HOUSE DIST. LLC FILED AN APLPLICATION WITH THE TRADEMARK OFFICE FOR THE MARK FLOR DE FLOREZ. THE MARK WAS:

PUBLISHED FOR OPPOSITION ON 3/22/11. THE TRADEMARK WAS REGISTERED ON 6/7/11.

THE FOLLOWING ADDRESSES THE ISSUES BROUGHT FORTH BY THE PETITIONER'S BRIEF.

1-ABANDONMENT OF MARK

THE MARK HAS BEEN USED IN COMMERCE CONTINUOUSLY SINCE 1991. THE MARK WAS USED FOR CIGARS AND CIGAR ACCESSORIES.

THE MARK WAS PRIMARILY USED IN OUR HOBOKEN, NJ LOCATION-THE SMOKE SHOP FROM 1991-2016 THIS LOCATION WAS CLOSED AND A NEW LOCATION IN WEST PALM BEACH, FL WAS ESTABLISHED IN 2017 AND HAS NOW BECOME THE PRIMARY LOCATION FOR THE FLOR DE FLOREZ MARK. (GOOGLE SEARCH FOR HAVANA QUEST CIGARS WILL PROVIDE PROOF OF THE STORE AND ITS FEATURED BRAND FLOR DE FLOREZ.) THE SMOKE SHOP HAD THE AUTHORITY TO DISTRIBUTE, SELL AND MAKE DECISIONS REGARDING THE USE OF THE MARK. A WRITTEN AGREEMENT WAS EXECUTED. IT WAS INCLUDED IN DISCOVERY MATERIAL.

VARIETY HOUSE DIST. LLC IS OWNED BY THE SAME PARTIES THAT OWNED THE SMOKE SHOP AND CURRENTLY OWN HAVANA QUESTS CIGARS. ACCORDING TO (15 U.S.C. 1055) WHICH STATES THAT A REGISTERED MARK IS OR MAY BE USED LEGITIMATELY BY RELATED COMPANIES. THE MARK AT THESE COMPANIES HAS NEVER BEEN USED TO DECEIVE THE PUBLIC.

THE SMOKE SHOP LOCATED IN HOBOKEN WAS THE DISTRIBUTION POINT FOR THE MARK FROM 1991-2016. IT HELD BOTH A WHOLESALE AND RETAIL TOBACCO LICENSE. THIS WAS INCLUDED IN DOCUMENTATION ALREADY SUBMITTED. AS A FAMILY BUSINESS, THE MARK USED ON OUR CIGAR AND ACCESSORIES COULD BE SOLD IN THEIR SHOPS.

THE SMOKE SHOP (1991-2016) OWNED BY CARLOS FLORES, FLOREZ TOBACCONIST (1994 -TO PRESENT) OWNED BY CARLOS FLORES AND SOLD IN 2012 TO ABEL FLORES, THE CIGAR ROOM (1993-TO PRESENT) OWNED BY WILLIAM FLORES AND PARTNERS, HAVANA ON THE HUDSON (2007-2016) OWNED BY GILBERT FLORES.

ALL THESE RETAIL OUTLETS WERE AND OR STILL OWNED BY THE BROTHERS OF CARLOS FLORES. THERE WERE NO NAKED LICENSEES.

QUALITY OF THE PRODUCTS AND PRICING WERE ALL ARRANGED BY MUTUAL ORAL AGREEMENT THROUGH THE BROTHERS. THE MARK WAS NEVER IGNORED AND THE SMOKE SHOP ALWAYS HAD THE RIGHT TO CANCEL THE AGREEMENT WITH ANY OF THE STORES THAT DID NOT FOLLOW THE AGREED TO TERMS.

THE SMOKE SHOP DID CANCEL THE AGREEMENT WITH THE BROTHERS IN 2016. VARIETY HOUSE DIST. LLC OWNED BY KIM AND CARLOS FLORES HAVE A PLAN TO HAVE THE MARK AND ITS PRODUCTS , GO IN ANOTHER DIRECTION GOING FORWARD. INCLUDING A JOINT MARKETING CAMPAIGN WITH HAVANA QUEST CIGARS.

THE STATEMENT THAT THE MARK HAS NOT BEEN IN USE FOR THE LAST THREE YEARS IS NOT A FACT.

OUR MARK IS USED FOR OUR LINE OF BOUTIQUE BRAND CIGAR AND OTHER ACCESSORIES. IT WAS RATED BY THE STOGIE PRESS AS ONE OF THE TOP 25 BOUTIQUE CIGARS. (GOOGLE STOGIE PRESS RELEASED 1/1/17.

OTHER COMMENTS PERTAINING TO OUR MARK CAN BE SEEN ON FLOREZ CIGARS 92 (INSTAGRAM)

I BELIEVE THAT THE PETITIONER HAS NOT MET THE BURDEN OF PROOF IN ESTABLISHING A CASE FOR ABANDONMENT.

2-FRAUD

THE PETITIONER MAKES A CLAIM OF FRAUD AGAINST VARIETY HOUSE DIST, LLC. REGARDING THE GOODS LISTED ON THE TRADEMARK APPLICATION AND THE MAINTENANCE AND RENEWAL FILING.

USING THE TERM OF FRAUD IS A SERIOUS ALLEGATION.

WHEN FILING THE APPLICATION AND THE MAINTENANCE/RENEWAL THERE WAS ABSOLUTELY NO INTENTION TO DECEIVE OR TO COMMIT FRAUD.

CLASS 34-

CLASS 34 REFERS TO: TOBACCO, SMOKER'S ARTICLES, MATCHES THIS WAS INTERPRETTED AS:

TOBACCO REFERS TO OUR CIGAR LINE. FLOR DE FLOREZ CIGARS. (OUR PRIMARY PRODUCT)

SMOKER'S ARTICLES REFER TO THE ITEMS USED BY (IN OUR CASE) CIGAR SMOKERS OR ITEMS NEEDED FOR OUR LINE OF CIGARS

CIGAR BOXES- USED TO BOX OUR LINE (MARK) CIGARS (PICTURES OF BOXES WERE PREVIOUSLY SUPPLIED.)

CIGAR WRAPPERS- USED TO PROTECT EACH CIGAR WITH CELLOPHANE WRAPPERS WITH FLOR DE FLOREZ STICKERS.

CIGAR CUTTERS AND LIGHTERS WERE EMBOSSED WITH SMOKE SHOP INFO WHICH WOULD LEAD TO SELLING OUR LINE OF CIGARS

CIGAR CASES, CHALK STICK HUMIDIFIERS THE MARK WAS PLACED ON THE BOXES WITH EMBOSSED STICKERS.

THESE ITEMS WERE NOT PURCHASED OR DISTRIBUTED DIRECTLY BY VARIETY HOUSE DIST. LLC. BUT PRIMARILY USED AND SOLD IN THE SMOKE SHOP. DECISIONS REGARDING SUPPLIES AND PURCHASES OF GOODS AND SERVICES WERE MADE AT THE RETAIL LEVEL.

MATCHES USED IN OUR RETAIL SHOP FOR LIGHTING CIGARS

I BELIEVE THAT WITH THE EXPLANATIONS PROVIDED PREVIOUSLY, THE COURT WILL SEE THAT THERE WAS NEVER ANY INTENTION TO DECEIVE OR COMMIT FRAUD. THE ITEMS LISTED I BELIEVE SHOW THAT THE INTENTION WAS TO COVER THE ITEMS THAT WOULD BE USED IN THE REGULAR COURSE OF BUSINESS.

3-CAUSE HARM TO PETITIONER'S BRAND

THE PETITIONER CLAIMS THAT OUR BOUTIQUE BRAND OF CIGARS WILL DAMAGE THEIR WORLD CLASS CIGARS. I BELIEVE IT HAS NO MERIT NOR HAS THE PETITIONER PROVIDED ANY PROOF. IF OUR SMALLER LABEL (MARK) CAN CAUSE SUCH A CONCERN TO A LARGER COMPANY, DOES THAT MEAN THAT BECAUSE WE ARE A SMALLER COMPANY WE SHOULD BE CANCELLED AT THE REQUEST OF THE LARGER COMPANY? WHEN IN FACT THERE IS NO EVIDENCE OF THAT CLAIM.

THE OTHER CLAIM THAT A. FLORES AND FLORES Y RODRIGUEZ ARE PHONETICALLY SIMILAR TO FLOR DE FLOREZ I JUST DON'T HEAR IT. IF I TYPE IN TO GOOGLE FLOR DE FLOREZ CIGARS, I DON'T GET A. FLORES OR FLORES Y RODRIGUEZ. I GET FLOR DE FLOREZ CIGARS.

SUMMARY

QUESTIONS AND ANSWERS AT THE DEPOSITION WERE ANSWERED AS ASKED. THE DIRECTION OF THE QUESTIONING WAS ARRANGED TO PLACE THE PETITIONER IN THE BEST LIGHT FOR THEIR CLAIM. THIS IS WHAT PETITIONERS DO. I ANSWERED ALL THE QUESTIONS AS A REPRESENTATIVE FOR VARIETY HOUSE DIST. LLC. THE SMOKE SHOP HANDLED THE DAY TO DAY OPERATIONS OF THE MARK. THIS WAS EXPLAINED IN PRIOR DISCOVERY.

MOST OF WHAT HAS BEEN STATED HERE WAS INCLUDED IN DOCUMENTATION PRVIOUSLY SUBMITTED FOR THE LAST FIVE YEARS.

THIS CANCELLATION MOTION HAS CREATED A GREAT HARDSHIP FOR OUR MARK. ESPECIALLY HINDERING OUR EFFORTS TO GROW OUR MARK AND I HOPE THAT THE COURT WILL SEE THAT THIS MOTION IS UNFOUNDED AND IF ANY MARK WAS HURT BY THIS IT WAS FLOR DE FLOREZ

SUMMARY

TO THE COURT I APOLOGIZE AND ASK FOR YOUR UNDERSTANDING IN THAT, MY BRIEF IS NOT IN THE USUAL LEGAL FORMAT THAT YOU ARE USED TO RECEIVING. I DON'T HAVE A LAW LIBRARY TO REFER TO FOR CASE LAW, BUT I HAVE GIVEN THIS BRIEF MY BEST EFFORT.

- 1- THE MARK HAS NEVER BEEN ABANDONED. IT HAS AND IS USED TO THIS DATE.
- 2- VARIETY HOUSE DIST. LLC NEVER KNOWINGLY OR WITH INTENT, TRY TO DECEIVE THE COURT
- 3- OUR BOUTIQUE BRAND OF CIGAR IS NO THREAT TO THE WORLD CLASS PREMIUM CIGAR BRANDS OF PDR. THIS CLAIM IS WITHOUT MERIT.

RESPECTFULLY SUBMITTED,

KIM MARIE ULLRICH FLORES

RESPONDENT FOR VARIETY HOUSE DIST. LLC

FLOR DE FLOREZ MARK #

