

AO 120 (Rev. 2/99)

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| TO: Commissioner of Patents and Trademarks Washington, DC 20231 | REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK |
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Central District of California on the following Patents or Trademarks:

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| DOCKET NO. CV07-08319-ABC (JTLx) | DATE FILED 12/26/07 | U.S. DISTRICT COURT Central District of California, Western Division |
| PLAINTIFF Amaru Entertainment, Inc., et al. | | DEFENDANT XO Jeans, Inc., et al. |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 12,948,736 | 5/10/05 | Amaru Entertainment, Inc. |
| 22,864,230 | 7/20/04 | Amaru Entertainment, Inc. |
| 32,859,602 | 4/13/04 | Amaru Entertainment, Inc. |
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 U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 2007 DEC 28 PM 3:59

FILED

In the above—entitled case, the following patent(s) have been included:

| DATE INCLUDED | INCLUDED BY | |
|----------------------------|--|-------------------------------|
| | <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading | |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
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In the above—entitled case, the following decision has been rendered or judgement issued:

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| DECISION/JUDGEMENT |
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| CLERK | (BY) DEPUTY CLERK | DATE |
|-------|-------------------|------|

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

BY FAX

AO 120 (Rev. 3/04)

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| TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 | REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK |
|---|--|

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Middle District of Florida, Tampa on the following Patents or Trademarks:

| | | |
|------------------------------------|-----------------------------|--|
| DOCKET NO. 8:08-cv-2279-T-33TGW | DATE FILED 11/17/08 | U.S. DISTRICT COURT Middle District of Florida - Tampa Division |
| PLAINTIFF | | DEFENDANT |
| THE PERFECT CIGAR, INC. | | CIGARS INTERNATIONAL, INC. |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 1 | 3,518,244 | SEE ATTACHED COMPLAINT |
| 2 | | |
| 3 | | |
| 4 | | |
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In the above—entitled case, the following patent(s)/ trademark(s) have been included:

| | | |
|-------------------------|-----------------------------|--|
| DATE INCLUDED | INCLUDED BY | <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 1 | | |
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| 3 | | |
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In the above—entitled case, the following decision has been rendered or judgement issued:

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| DECISION/JUDGEMENT |
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|---------------------------|------------------------------------|------------------|
| CLERK Sheryl L. Loesch | (BY) DEPUTY CLERK ERIC CALDERON | DATE 11/17/08 |
|---------------------------|------------------------------------|------------------|

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

THE PERFECT CIGAR, INC.,

Plaintiff,

vs.

Case No.:

8:08. CV. 02279-T. 33 TGV

CIGARS INTERNATIONAL, INC.,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL
(INJUNCTIVE RELIEF REQUESTED)

COMES NOW, the plaintiff and sues defendant and alleges:

1. Plaintiff is a corporation incorporated under the laws of the State of Florida having its principal place of business in the State of Florida and defendant is a corporation incorporated under the laws of a State other than the State of Florida having its principal place of business in a State other than the State of Florida. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C §1332.

2. The is an action for unfair competition and cancellation of trademark registration arising under the Lanham Act, as hereinafter more fully appears.

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3. Plaintiff resides in the Ybor City district of Tampa, Florida, and is the manufacturer of hand-made premium cigars of national and international acclaim bearing the label and trademark of "La Herencia de Cuba." The cigars are manufactured by one of the world's most respected and foremost *torcedors*, Roberto Ramirez, who has been nationally featured in such publications as U.S.A. Today. Mr. Ramirez and the Perfect Cigar have been manufacturing cigars for national and international distribution under the trademark, "La Herencia de Cuba," continuously in Ybor City since at least 1997. The cigar manufactured by the plaintiff is sold nationwide as well as internationally to great public acclaim.

4. Plaintiff's trademark, "La Herencia de Cuba," is a "famous" mark.

5. Defendant is a corporation that distributes cigars nationally and internationally and beginning, on or about August 2007, began selling a cigar bearing the mark "La Herencia Cubana." The defendant is associated with mass-marketed, bundled cigars at a price point much different than the plaintiff's price point and quality.

6. Plaintiff has made written request to defendant to acknowledge and attribute its use of the plaintiff's mark to plaintiff and to cease use of plaintiff's mark, because of actual consumer confusion. Defendant refused,

and has continued wholesale appropriation of the plaintiff's mark, despite defendant's knowledge that such use infringes on the plaintiff's rights in its trademark. Defendant continues to use the plaintiff's mark in interstate commerce in willful violation of the plaintiff's statutory and common law rights.

7. In doing so, Defendant seeks to trade off the good will and worldwide recognition of the plaintiff's mark as well as palm off their cigars as cigars manufactured by the plaintiff. This conduct has resulted in actual confusion in the relevant market and dilution of a famous mark.

8. Defendant's use in commerce of the plaintiff's mark is likely to cause confusion, to cause mistake, or to deceive members of the public into believing that the defendant's cigars are actually manufactured by the plaintiff. These aforementioned acts constitute trademark infringement and unfair competition under the Lanham Act, including false designation of origin, passing off, false advertising in interstate commerce, and dilution of a famous mark causing plaintiff lost sales as well as irreparable damage to goodwill and reputation.

9. In October 2008, defendant obtained federal trademark registration of the mark, "LA HERENCIA CUBANA" (U.S. PTO Reg. No.

3,518,244 (the "Trademark"). A true and correct copy of the defendant's Trademark Registration is attached as Exhibit 1.

10. It is apparent from the face of Defendant's Trademark Registration that defendant's first use of the mark LA HERENCIA CUBANA in commerce was on February 1, 2008, which postdates plaintiff's acquisition of nationwide common law rights to the nearly identical mark by more than ten (10) years.

11. This Court has the authority to order the cancellation of the registration at issue in this case pursuant to 15 U.S.C. §1119, which allows the Court in "any action involving a registered mark" to "order the cancellation of registrations, in whole or in part, and otherwise rectify the register with respect to the registration of any party to the action."

12. *Inter alia*, defendant lacks rights to the claimed trademark because plaintiff's pre-existing common law acquired rights to the mark are nationwide in scope, as defendant has a customer base that is inclusive of every state in the United States.

13. Plaintiff has suffered actual harm by virtue of defendant's registration and is likely to be damaged by continued registration of the mark "LA HERENCIA CUBANA," U.S. Trademark Registration No. 3,518,244, and the inevitable ensuing confusion in the marketplace that the

defendant's registration causes. Such harm will continue unless and until the registration is cancelled so that it is clear that defendant has no exclusive rights to the use of the Trademark.

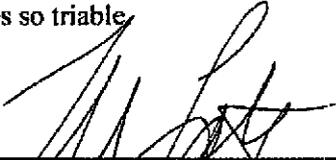
WHEREFORE, plaintiff demands:

- (1) That defendant's registration of the trademark "LA HERENCIA CUBANA" be cancelled in its entirety;
- (2) That defendant, his agents, and servants be enjoined during the pendency of this action and permanently from infringing said trademark of plaintiff in any manner, and from publishing, selling, marketing or otherwise disposing of any cigars bearing the label, "La Herencia Cubana."
- (3) That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said trademark and said unfair trade practices and competition and to account for
 - a. All gains, profits and advantages derived by defendant as a consequence of defendant's acts of unfair competition in an amount to be determined at trial pursuant to the provisions of the Lanham Act, but not less than \$75,000.00.

- (4) That, in view of defendant's willful misconduct, plaintiff be afforded the remedies set forth in 15 U.S.C. §1117(a) and 1118, including reasonable attorneys' fees;
- (5) That defendant pay to plaintiff the costs of this action; and
- (6) That plaintiff have such other and further relief as is just.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38, Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury on all issues so triable.



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