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## UNITED STATES: Cigar Importer's Lack-of-Standing Argument Goes Up in Smoke

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The Trademark Trial and Appeal Board (TTAB) held that two Cuban corporations had standing to pursue cancellation of a U.S. trademark registration for PINAR DEL RÍO for cigars. *Corporacion Habanos, S.A. & Empresa Cubana del Tabaco, d.b.a. Cubatabaco v. Juan E. Rodriguez*, Cancellation No. 92052146 (T.T.A.B. Aug. 1, 2011) (precedential).

The petitioners initiated the proceeding to cancel the Supplemental Register registration for the trademark PINAR DEL RÍO on grounds of descriptiveness, geographically deceptive descriptiveness, violation of the Pan American Convention of 1929 and fraud. They alleged that PINAR DEL RÍO was an indicator of origin for tobacco goods made in Pinar del Rio Province, Cuba. To file and prosecute the cancellation proceeding, conduct that would normally be prohibited by U.S. embargo regulations, the petitioners obtained a special license from the U.S. Office of Foreign Assets Control (OFAC).

Instead of filing an answer, the respondent, Juan E. Rodriguez, filed a motion to dismiss the proceeding for lack of standing, arguing that the petitioners were not entitled to pursue cancellation of the registration because they did not assert rights in a similar competing mark in the United States. In determining whether to grant the respondent's motion, the TTAB evaluated both whether the petitioners had standing to bring the proceeding and whether a valid statutory ground for cancellation existed.

With regard to the standing issue, the TTAB noted that a property interest is not an element for standing to cancel a registration under Sections 2(a) and 2(e) of the Trademark Act. Rather, where a mark sought to be cancelled is deceptive or primarily geographically deceptively misdescriptive, a petitioner challenging the registration need not, to establish standing, own a pending application for the mark or be using the term as a mark or otherwise.

Thus, the petitioners' allegation of damage based on the respondent's use of the mark PINAR DEL RÍO on cigars of non-Cuban origin was sufficient to establish a real interest in the case such that standing was appropriate. In addition, the petitioners' procurement of an OFAC license to pursue the claim, although irrelevant to the standing analysis, was sufficient to establish the TTAB's subject matter jurisdiction over the claims.

The TTAB also found that the petitioners adequately pleaded that the respondent's mark was primarily geographically deceptively misdescriptive. Because they established standing on at least one properly pleaded ground, the petitioners were entitled to move forward with their claims. Accordingly, the TTAB denied the respondent's motion to dismiss.

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