

Federal Court



Cour fédérale

**Date: 20131004**

**Docket: T-1867-08**

**Citation: 2013 FC 1010**

**Ottawa, Ontario, October 4, 2013**

**PRESENT: The Honourable Madam Justice Snider**

**BETWEEN:**

**EMPRESA CUBANA DEL TABACO,  
TRADING ALSO AS CUBATABACO AND  
CORPORATION HABANOS S.A.**

**Applicants**

**and**

**TEQUILA CUERVO, S.A. DEC. V.**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Background**

[1] On February 16, 1996, Tequila Cuervo, S.A. Dec. V (Cuervo or the Respondent) filed a trade-mark application in the Canadian Intellectual Property Office (CIPO), with application no. 804,663 (the '663 Application). In the '663 Application, Cuervo applied for registration of the trade-mark LAZARO COHIBA based on proposed use in Canada with “alcoholic beverages,

namely rum”. The '663 Application was subsequently amended to include a disclaimer to the word LAZARO and was advertised for opposition purposes on August 26, 1998. The Respondent has not used the LAZARO COHIBA mark in Canada.

[2] By amended Statement of Opposition dated January 19, 2007, Empresa Cubana Del Tabaco, trading also as Cubatabaco, and Corporation Habanos S.A. (collectively referred to as Habanos or the Applicants) opposed the proposed registration of the LAZARO COHIBA trademark on various grounds. The most relevant ground to the matter before me was that the mark was not registrable based on likelihood of confusion with Habanos’s COHIBA registered trademarks.

[3] The Habanos marks are as follows:

Trade-Mark	Registration No.	Wares
COHIBA	277,250 (the '250 Mark)	Leaf tobacco, manufactured tobacco for smoking and chewing, snuff and cigarettes
	373,446 (the '446 Mark)	Raw tobacco, cigars, cigarillos, cigarettes, cut tobacco, rappee, manufactured tobacco of all kinds, matches, tobacco pipes, pipe holders, ashtrays, match boxes, cigar cases and humidors

[4] Cuervo responded to these grounds of opposition. Both parties filed evidence and made arguments before the Trade-marks Opposition Board (the Board). In a decision dated

September 30, 2008 (the Decision), the Board rejected all of Habanos's grounds of opposition.

As of this date, the '663 Application is still pending.

[5] As permitted by s. 56 of the *Trade-marks Act*, RSC 1985, c T-13 [*Trade-marks Act* or the Act], Habanos appeals the Board's Decisions in the present proceeding. Rule 300(d) of the *Federal Courts Rules*, SOR/98-106 [the Rules] directs that appeals under the *Trade-marks Act* are to be brought by way of and considered as "applications" under the Rules.

## II. Issues

[6] The overarching issue in this appeal is whether the Decision should stand. Subsidiary to this question are the following sub-issues:

1. What is the appropriate standard of review?
2. Would the "new" evidence presented for this appeal have a material effect on the Decision?
3. If the new evidence would have a material effect, would the applied-for mark likely be confusing with either the '250 Mark or the '446 Mark?

### III. The Statutory Framework

[7] The registration of a trade-mark in respect of any wares or services gives to the owner the exclusive right to the use of that mark throughout Canada (Act, s. 19). There are a number of requirements set out in the Act for the registration. For purposes of this proceeding, the critical requirement is that a trade-mark is not registrable if it is confusing with a registered trade-mark (Act, s. 12(d)). As provided in s. 2 of the Act:

<p>“confusing” , when applied as an adjective to a trade-mark . . . means a trade-mark or trade-name the use of which would cause confusion in the manner and circumstances described in section 6;</p>	<p>« créant de la confusion » Relativement à une marque de commerce ou un nom commercial, s’entend au sens de l’article 6.</p>
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[8] Parliament chose to give the Board (and, now, this Court) further guidance on the question of confusion:

<p>6. (1) For the purposes of this Act, a trade-mark or trade-name is confusing with another trade-mark or trade-name if the use of the first mentioned trade-mark or trade-name would cause confusion with the last mentioned trade-mark or trade-name in the manner and circumstances described in this section.</p> <p>(2) The use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the wares or services associated with those</p>	<p>6. (1) Pour l’application de la présente loi, une marque de commerce ou un nom commercial crée de la confusion avec une autre marque de commerce ou un autre nom commercial si l’emploi de la marque de commerce ou du nom commercial en premier lieu mentionnés cause de la confusion avec la marque de commerce ou le nom commercial en dernier lieu mentionnés, de la manière et dans les circonstances décrites au présent article.</p>
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trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

(3) The use of a trade-mark causes confusion with a trade-name if the use of both the trade-mark and trade-name in the same area would be likely to lead to the inference that the wares or services associated with the trade-mark and those associated with the business carried on under the trade-name are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

(4) The use of a trade-name causes confusion with a trade-mark if the use of both the trade-name and trade-mark in the same area would be likely to lead to the inference that the wares or services associated with the business carried on under the trade-name and those associated with the trade-mark are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

(5) In determining whether trade-marks or trade-names are confusing, the court or the Registrar, as the case may be, shall have regard to all the

(2) L'emploi d'une marque de commerce crée de la confusion avec une autre marque de commerce lorsque l'emploi des deux marques de commerce dans la même région serait susceptible de faire conclure que les marchandises liées à ces marques de commerce sont fabriquées, vendues, données à bail ou louées, ou que les services liés à ces marques sont loués ou exécutés, par la même personne, que ces marchandises ou ces services soient ou non de la même catégorie générale.

(3) L'emploi d'une marque de commerce crée de la confusion avec un nom commercial, lorsque l'emploi des deux dans la même région serait susceptible de faire conclure que les marchandises liées à cette marque et les marchandises liées à l'entreprise poursuivie sous ce nom sont fabriquées, vendues, données à bail ou louées, ou que les services liés à cette marque et les services liés à l'entreprise poursuivie sous ce nom sont loués ou exécutés, par la même personne, que ces marchandises ou services soient ou non de la même catégorie générale.

(4) L'emploi d'un nom commercial crée de la confusion avec une marque de commerce, lorsque l'emploi des deux dans la même région serait susceptible de faire

surrounding circumstances including

- (a) the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known;
- (b) the length of time the trade-marks or trade-names have been in use;
- (c) the nature of the wares, services or business;
- (d) the nature of the trade; and
- (e) the degree of resemblance between the trade-marks or trade-names in appearance or sound or in the ideas suggested by them.

conclure que les marchandises liées à l'entreprise poursuivie sous ce nom et les marchandises liées à cette marque sont fabriquées, vendues, données à bail ou louées, ou que les services liés à l'entreprise poursuivie sous ce nom et les services liés à cette marque sont loués ou exécutés, par la même personne, que ces marchandises ou services soient ou non de la même catégorie générale.

(5) En décidant si des marques de commerce ou des noms commerciaux créent de la confusion, le tribunal ou le registraire, selon le cas, tient compte de toutes les circonstances de l'espèce, y compris :

- a) le caractère distinctif inhérent des marques de commerce ou noms commerciaux, et la mesure dans laquelle ils sont devenus connus;
- b) la période pendant laquelle les marques de commerce ou noms commerciaux ont été en usage;
- c) le genre de marchandises, services ou entreprises;
- d) la nature du commerce;

e) le degré de ressemblance entre les marques de commerce ou les noms commerciaux dans la présentation ou le son, ou dans les idées qu'ils suggèrent.

#### IV. The Decision

[9] In the Decision, the Board placed its main focus on the Applicants' allegation that the applied-for mark was not registrable because it was confusing with the '250 Mark and the '446 Mark. The Board reviewed all of the factors set out in s. 6(5) of the Act, making the following findings or observations:

- Both marks are “inherently distinctive”;
- Since “LAZARO” is not a common surname in Canada, “even the first portion of the applicant’s mark is not particularly weak”;
- Because Cuervo’s mark has not been used in Canada, it “has not become known at all in Canada”;
- Although the Habanos marks have been used in Canada for a number of years with “steady and not insubstantial” sales for the period 1994-99, there is a relatively small group of purchasers of COHIBA cigars;

- “In the absence of additional evidence pointing to a Canadian reputation for [Habanos’s] marks”, the Board was “only able to conclude that they have become known to some extent in Canada”;
- The length of time the Habanos marks were used in Canada favours Habanos;
- The wares and trades of the parties are different; “at most the evidence shows a tenuous connection in that some people may smoke and drink at the same time”; and
- Although there is a “fair degree of resemblance between the marks . . . The initial portion of [Cuervo’s] mark “is not without some inherent distinctiveness and does help to distinguish the marks of the parties”.

[10] In its summary on the test for confusion, the Board highlighted the two areas which were accorded considerable weight:

In view of my conclusions above, and particularly in view of the differences between the wares and trades of the parties and the fact that the opponents have not established an extensive reputation for their marks, I find that [Cuervo] has satisfied the onus to show, on a balance of probabilities, that its mark is not confusing with the two registered marks relied on by the opponents. [Emphasis added.]

[11] Overall, after considering all other grounds of opposition, the Board rejected Habanos’s opposition.

V. **Standard of Review**

[12] A preliminary step in the analysis of the issues is the determination of the applicable standard of review. The standard of review depends on the issue and the materiality of evidence that has been put before me in this application.

[13] Section 56 of the Act provides for a right of appeal from a decision of the Board to the Federal Court. On appeal, evidence in addition to that before the Board may be adduced and the Federal Court may exercise any discretion vested in the Board (Act, s. 56(5)). When an applicant supplements the record in this manner, the standard of review will depend on the materiality of any of the "new" evidence.

[14] Evidence which would have a material effect on the Board's decision has a probative significance extending beyond the material before the Board (*Guido Berlucci & C. S.r.l. v Brouillette Kosie Prince*, 2007 FC 245, 56 CPR (4th) 401 at paras 23-41). Where such evidence would have "materially affected" the Board's finding of fact or its exercise of discretion, the Court must reach its "own conclusion as to the correctness of the Registrar's decision" (*Molson Breweries v John Labatt Ltd*, [2000] 3 FC 145 at para 51, 5 CPR (4th) 180 (FCA)).

[15] If the new evidence is repetitive and adds nothing of significance, the standard of review is reasonableness (*Telus Corp v Orange Personal Communications Services Ltd*, 2005 FC 590 at para 33, 39 CPR (4th) 389). Otherwise, the Court will come to its own determination on the issue (*Telus Corp v Orange Personal Communications Services Ltd*, 2005 FC 590, (MacTavish J))

aff'd 2006 FCA 6 (FCA), explaining *Garbo Group Inc v Harriet Brown & Co* (1999), 3 CPR (4th) 224, [1999] FCJ No 1763 (Evans J)). The test is one of quality, not quantity.

[16] Before me, Habanos submitted substantial evidence which it characterizes as “new”. It follows that the standard of review may only be ascertained after a careful analysis of the evidence in the context of the opposition and the Board’s decision.

## **VI. New Evidence**

### *A. A Summary of the New Evidence*

[17] For purposes of this appeal, the Applicant submitted the following new evidence:

- Expert testimony on brand identity, pop culture and COHIBA’s status as an iconic brand (the Kindra Affidavit). This affidavit also introduces some television shows, movies and other media evidence where COHIBA cigars are either the subject or appear in the media content;
- An expert affidavit stating that users of tobacco and alcohol often consume both products, or use of one product causes use of the other (the Pihl Affidavit);

- An affidavit of an articling student, listing Société des alcools du Québec (SAQ) and Liquor Control Board of Ontario (LCBO) agency stores, as of the relevant date of 2008, which sold tobacco and hard alcohol (the Michaud Affidavit);
- An affidavit of the executive vice president, Audit Services, of the Audit Bureau of Circulations, setting out magazine circulation numbers of Cigar Aficionado. Among others, it shows May/June 1998 issue circulation numbers of 3,515 Canadian subscribers and 12,544 Canadian single-issue sales (the Moran Affidavit);
- Two affidavits of a trade-mark agent who had: (a) carried out a survey of SAQ and LCBO agency stores, showing sales of alcohol and tobacco at such stores, as well as the purchase of tobacco and alcohol at such stores, though after the relevant date of the decision; and (b) obtained confirmation from both SAQ and LCBO that their agency stores were in operation prior to the relevant date—216 LCBO stores, and 422 SAQ agency stores (the Whissell Affidavits);
- Two affidavits of an articling student referring to collections of website information, as well as the purchase of various media featuring COHIBA and the transcription of its appearances (the Oliver Affidavits);
- An affidavit of an articling student who had carried out a telephone survey of 15 restaurants or clubs demonstrating that these institutions served both tobacco

products and alcohol, and the opinion of staff explaining why the products are paired together (the Hansen Affidavit).

[18] With the exception of the Hansen Affidavit, I am prepared to admit all of the evidence into these proceedings. In my view, the Hansen Affidavit is simply too unreliable to be admitted. The information contained in other affidavits prepared by the other affiants is very fact based and relevant to the matter before me. The affiants were not required to conduct complex surveys or design survey questions; as a result, their information is reliable, even though some of it may consist of information that is technically hearsay. Finally, these affidavits assisted me by providing confirmation of certain matters set out in the Pihl Affidavit and the Kindra Affidavit.

[19] The expert opinion affidavits of Dr. Pihl and Dr. Kindra are admissible. I am satisfied, on a balance of probabilities, that the *Mohan* criteria for admission of expert evidence have been met (*R. v Mohan*, [1994] 2 SCR 9 at para 17, 29 CR (4th) 243). Further, in my gate-keeping function, I determine the evidence is sufficiently beneficial to the process to warrant admission.

B. *New Evidence and Material Impact*

[20] The Respondent submits that the new evidence would not have materially affected the Board's decision. I must disagree. As noted above, the Board placed significant weight on two factors in its conclusion on confusion: the difference in the nature of the wares and the lack of fame of the COHIBA mark. For both these findings, the Board highlighted the lack of evidence submitted. The information before the Board had gaps, particularly in establishing notoriety of

the mark among members of the public, and whether or not cigars, cigarillos and tobacco products are sold along with hard alcohol.

[21] The new evidence is directed at the gaps identified by the Board and thus impacts the Board's findings relating to the fame of the mark and the channels of trade. This evidence is, therefore, directly addressed to the likelihood of confusion. The new evidence is probative. It is not more of the same. It affects the Board's factual findings and exercise of discretion.

C. *Affect of the New Evidence*

[22] The new evidence demonstrates that the COHIBA mark is better known than was considered by the Board. COHIBA is a widely known brand across Canada, and is known to more than "some extent", as the Board concluded. The new evidence establishes that COHIBA, as a brand, has been referenced widely in film, television, music and other media, such as print magazines distributed in the United States and Canada.

[23] This use demonstrates knowledge of the product outside the sphere of regular purchasers (Kindra Affidavit). This is a broader cultural sphere than that considered at the initial hearing, and this knowledge would have affected the Board's decision.

[24] COHIBA carries with it an iconography of social status, wealth, power or intrigue which is in the minds of not just purchasers, but in the general public. COHIBA has been deliberately used in various media to cause viewers to imbue its qualities into a character or situation, to

create a connection between status and the character (the Kindra Affidavit). The ability of the brand to evoke an instant association in the audience's mind is evidence of the fame of the mark (Kindra Affidavit). This new knowledge would have impacted the decision.

[25] With respect to the channels of trade, the new evidence demonstrates that tobacco, including cigars, and hard alcohol can be bought from the same stores in Ontario and Quebec (Whissel and Michaud Affidavits). COHIBA is in use with not only high-end cigars, but also with cigarillos, and is registered for use with leaf tobacco and other such products. SAQ and LCBO agency stores sell tobacco and alcohol. Further, SAQ and LCBO agency stores sold tobacco and hard alcohol at the relevant date (Whissel and Michaud Affidavits).

[26] The Decision was based on evidence that hard liquor and cigars were not sold in the same locations in Quebec and Ontario, but for the Terry Affidavit, which shows the purchase in 2001 of hard alcohol and tobacco at several Ottawa establishments. This undermines the pillars of the Board's decision making, particularly with respect to channels of trade.

D. *Conclusion on the "new" evidence*

[27] In sum, I am persuaded that the new evidence, viewed in its entirety, would have "materially affected" the Board's finding of fact or its exercise of discretion. It follows that this Court may exercise any discretion vested in the Registrar (Act, s. 56(5)). In other words, I may determine whether, on the evidence now before me, the '663 Application should be refused on the basis that it is confusing with the '250 and '446 Marks.

## VII. Analysis of Confusion

[28] A trade-mark can be registered if it is not confusing with a registered trade-mark (Act, s. 12(1)(d)). Confusion is defined (Act, s. 2), and the manner and circumstances in which confusion is likely are set out at ss. 6(1), 6(2), 6(5) of the Act. In *Mattel Inc v 3894207 Canada Inc*, 2006 SCC 22, [2006] 1 SCR 772 at para 51, the Supreme Court of Canada explained that:

Trade-mark confusion is a term defined in s. 6(2) and arises if it is likely in all the surrounding circumstances (6(5)) that the prospective purchaser will be led to the mistaken inference

... that the wares or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.  
[Emphasis in original]

[29] The test is not one of actual confusion. Instead, it is the first impression in the mind of the casual consumer, somewhat in a hurry, with an imperfect recollection of the original product, viewing the mark on the new product, who does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks (*Veuve Clicquot Ponsardin v Coutiques Cliquot Ltee*, 2006 SCC 23, [2006] 1 SCR 824 at para 20).

[30] The onus is on the person applying for registration, in this case, the owners of LAZARO COHIBA, to demonstrate that on a balance of probabilities that there is no likelihood of confusion with either the '250 or '446 Marks.

[31] Guided by these principles, I turn to the s. 6(5) factors to be considered:

- (a) inherent distinctiveness and the extent to which they have become known;
- (b) the length of time in use;
- (c) the nature of the wares;
- (d) the nature of the trade; and
- (e) the degree of resemblance.

[32] There is no dispute between the parties as to the length of time that the COHIBA marks have been in use. The main areas of disagreement relate to: (a) the extent to which the Applicants' marks have become known; (b) the nature of the wares and their trade; and (c) the effect of the inclusion of the word "LAZARO" to the applied-for mark.

A. *Extent Known*

[33] In my view, the evidence before this Court establishes that the brand COHIBA, particularly in association with cigars, is very well known.

[34] In its decision, the Board found that:

In the absence of additional evidence pointing to a Canadian reputation for the opponents' marks, I am only able to conclude that they have become known to some extent.

[35] Before me, I have evidence of COHIBA's notoriety through two means. First, I have some sales figures. As reflected in the Ortega affidavit (which was before the Board and now before this Court), the Applicants' sales figures from 1994 to 1999 show sales of roughly a dozen products in different forms under the '250 and '446 Marks (Ortego Affidavit, p.919). In my view, total sales of COHIBA-branded products have not been insignificant.

[36] Second, the fame of the COHIBA mark extends beyond direct consumers of COHIBA products. The additional evidence is directed at the fame of the COHIBA Mark. I begin by observing that, for some iconic brands, personal ownership or use of the product is not essential to the awareness or knowledge of a trade-mark. For example, one does not need to own or drive a Jaguar to be aware of that brand of car. In my view, the evidence supports a finding that the Cuban cigar known as COHIBA is in that category.

[37] In the opinion of Dr. Kindra, the COHIBA mark is iconic. The use of the COHIBA cigars in media, including film, television, music and print evokes a sense of legitimacy or status on either a character or a singer. It is a round-about way of showing public notoriety of the brand. I conclude COHIBA is well known—to the point of being iconic—outside its sphere of users, and in the general knowledge of the public.

[38] Dr. Kindra's opinion is well reasoned and persuasive. I was concerned that counsel for the Applicants provided Dr. Kindra with the examples of the use of COHIBA in films, television shows and musical lyrics. It would have certainly added to the value and reliability of his expert opinion if Dr. Kindra had carried out the research to unearth the COHIBA references himself. However, there is no question that these examples are factually accurate. Other affidavits before me attest to the source of the examples. All that could possibly have been added by Dr. Kindra carrying out his own search of media sources would be additional references to the COHIBA brand. Moreover, the thrust of Dr. Kindra's expert opinion is not the number of media references to COHIBA. Rather, Dr. Kindra was telling the Court that the inclusion of the COHIBA references in these media sources is a demonstration of the fame of the brand.

[39] The Applicants could have done more to establish direct knowledge of the COHIBA brand; they could have carried out a survey of Canadian consumers. However, the strength of the references and of the opinion of Dr. Kindra satisfies me that the COHIBA brand is well known in Canada. There is no doubt in my mind that television shows such as "Sex and the City" and "The Simpsons"; the magazine "Cigar Aficionado"; and the movie "Hotel Rwanda" were widely seen by Canadians. Similarly, Canadians have listened to the music available in the United States. Surveys to establish the fame of the COHIBA brand in Canada, in this case and in view of the strength of the evidence before me, are not necessary.

B. *Nature of the wares and their trade*

[40] In essence, the Board concluded that cigars and hard spirits operated in two different channels of trade. It is true that tobacco products and alcohol are two different products.

[41] In this appeal, I have considerable evidence that tobacco and hard liquor are sold at the same (or adjacent) premises in many locations. This physical evidence is not particularly persuasive on its own. Many products are sold at these stores beyond tobacco and alcohol. Common sense tells me that a consumer entering one of these enterprises would not likely confuse a COHIBA cigar or cigarillo with a bottle of milk or a box of disposable diapers with the COHIBA name on it. The reason why the proximity of cigars and alcohol is important for the analysis only becomes apparent upon examination of the relationship between smoking and alcohol. This is where the evidence of Dr. Pihl is very helpful.

[42] According to Dr. Pihl, a person who smokes is more likely a consumer of alcohol products. There is a relationship in the mind of a smoker between alcohol and tobacco. In effect, there is a predisposition for confusion. Thus, a smoker who sees a bottle of hard liquor with a name that is the same as a brand of cigars or cigarettes that he smokes would be more likely to associate the alcohol brand with his cigarette brand.

[43] The interplay between cigars and hard spirits is enhanced through the media. Where permitted, advertising often shows a male (almost never female) with a cigar in one hand a glass of spirits in the other. As reflected in the media references that form part of the record before me,

cigars and alcohol are consistently paired. While smoking a COHIBA cigar, Mr. Big was holding a glass of hard liquor. This separates alcohol from other wares such as milk and disposable diapers.

C. *Degree of Resemblance*

[44] The '663 Application is for registration of the LAZARO COHIBA mark while the '250 and '446 Marks include only the word COHIBA. While I agree that this may lessen the possibility of confusion, it is not a factor to which I would give much weight. It is a reasonable conclusion that the dominant word in both marks is “COHIBA”; this provides the content and punch of the trade-mark (*Masterpiece Inc. v Alavida Lifestyles Inc.*, 2011 SCC 27, [2011] 2 SCR 387 at paras 64, 83-84, 92 [*Masterpiece*]). Further, given the fame of the COHIBA brand, I would expect the casual consumer somewhat in a hurry to focus his eye almost completely on the COHIBA portion of the applied-for mark, essentially ignoring the word “LAZARO”.

D. *Conclusion on Confusion*

[45] Taking into consideration all of the evidence before the Board and before me, and the factors set out in s. 6(5) of the Act, I am satisfied that, on a balance of probabilities, the test for confusion is met. The casual consumer, somewhat in a hurry, seeing the applied-for mark on a bottle of rum, would be likely to think that that the rum was from the same source as COHIBA-brand tobacco products.

## **VIII. Conclusion**

[46] In spite of some weaknesses in the evidence produced for this appeal, I am persuaded that the appeal should succeed. COHIBA is an iconic brand of cigar, associated with wealth and status. The fame of the brand extends beyond cigar smokers to the general population. The association of cigars and alcohol – specifically hard liquor – is notorious. As a result, I am satisfied that the first impression of a casual consumer seeing a bottle of rum with the label LAZARA COHIBA would believe that the rum was related to COHIBA products. In other words, there is a likelihood of confusion.

[47] On this basis the appeal will succeed.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. the appeal is allowed and the Decision is set aside;
2. the Registrar of Trade-marks is directed to refuse the '663 Application for the trade-mark LAZARO COHIBA; and
3. costs of the appeal are awarded to the Applicants.

"Judith A. Snider"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1867-08

**STYLE OF CAUSE:** EMPRESA CUBANA DEL TABACO, TRADING ALSO  
AS CUBATABACO AND CORPORATION HABANOS  
S.A. v TEQUILA CUERVO, S.A. DEC.V.

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** SEPTEMBER 3, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SNIDER J.

**DATED:** OCTOBER 4, 2013

**APPEARANCES:**

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