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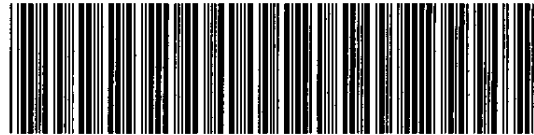
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W08-36175

FILED
08 OCT 24 AM 8 29
SECRETARY OF STATE
TALLAHASSEE, FLORIDA
3033342
3400420
after date of 1st use for
for Fla. mark.
KB/ylt

N. CAUSSEAU

OCT 24 2008

EXAMINER

COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: Cuba Libre

(Mark to be registered)

The enclosed Trademark/Service Mark Application, specimens and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Jo-Anne Yau

(Name of Person)

Wood, Atter & Wolf, P.A.

(Firm/Company)

333-1 East Monroe Street

(Address)

Jacksonville, FL 32202

(City/State and Zip Code)

For further information concerning this matter, please call:

Jo-Anne Yau

(Name of Person)

at (904) 355-8888

(Area Code & Daytime Telephone Number)

MAILING ADDRESS:

Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

STREET/COURIER ADDRESS:

Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

(NOTE: The information contained in this cover letter will be included in the permanent record and will be available to the general public.)



FLORIDA DEPARTMENT OF STATE
Division of Corporations

August 1, 2008

JO-ANNE YAU, ESQUIRE
WOOD, ATTER & WOLF, P.A.
333-1 EAST MONROE STREET
JACKSONVILLE, FL 32202

SUBJECT: CUBA LIBRE BAR
Ref. Number: W08000036175

We have received your document for CUBA LIBRE BAR and your check(s) totaling \$87.50. However, the enclosed document has not been filed and is being returned for the following correction(s):

We must deny registration pursuant to sections 495.021(1)(f) and 495.181, Florida Statutes. There is a federal registration on file with the U.S. Patent and Trademark Office for "CUBALIBRE", Registration Number (3033342 & 3400420), for the same or similar name and class(es).

Pursuant to s. 495.035(5), F.S., this application will be considered abandoned if the applicant fails to reply or resubmit the corrected/amended application within three months from date of this letter.

If you have any questions concerning the filing of your document, please call (850) 245-6918.

Nanette Causseaux
Document Specialist Supervisor

Letter Number: 208A00044054

IN AND FOR THE FLORIDA
DEPARTMENT OF STATE,
DIVISION OF CORPORATIONS

SUBJECT: Cuba Libre Bar
REF NO.: W08000036175
DATE: September 23, 2008

RESPONSE TO OFFICE ACTION

Dear Ms. Causseaux:

Comes now the Applicant, by and through his undersigned attorney, in response to the Office Action mailed on August 1, 2008, regarding the "Cuba Libre Bar" mark, and submits the following:

I. Proposed Mark Is Senior To Mark Claimed in U.S. Registration Nos. 3033342 & 3400420

Pursuant to Fla. Stat. §495.011(14)(b), "use" of a mark to identify the source of a service occurs when the mark is used or displayed in the sale or advertising of services, and the services are rendered in this state in the ordinary course of trade, and not used merely for the purpose of reserving a right in the mark. Furthermore, trademark ownership priority is awarded to the party to first use a mark in commerce in a particular geographic market. Tally-Ho, Inc. v. Coast Community College District, 889 F.2d 1018, 1023 (11th Cir. 1989); Fla. Stat. § 495.161. Even the owner of an unregistered mark is granted trademark ownership rights at common law, provided that the mark was acquired and used in commerce in good faith. The Florida Trademark Act explicitly preserves such common law rights. Tally-Ho, at 1023. As such, even if a junior mark was the first to register, whether on the Florida or federal registry, it is erroneous to argue that, by virtue of registration, that the junior mark is the rightful owner of the trademark.

The Applicant's "Cuba Libre Bar" mark is senior to the marks registered with the U.S. Trademark Office to Thursday Enterprise, LLC ("Thursday"). Registration Nos. 3033342 and 3400420 have been in use since September 1999. As stated in the application, the Applicant has used "Cuba Libre Bar" continuously in Jacksonville, Florida, to identify a Latin-themed bar and nightclub since January 1, 1994. Use is evidenced by the specimens provided with the

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

application. As such, the Applicant has had common law rights to the words, “Cuba Libre Bar” since January 1, 1994. On the other hand, according to Thursday’s website, www.cubalibrerestaurant.com, they have not even used the name, “Cuba Libre” in Florida, as their new restaurant is scheduled to open in Orlando in Fall 2008.

While registrations of Thursday’s marks are evidence of prima facie validity, Thursday’s rights are limited by the bona fide rights of common law users—in this case, the ownership rights of the Applicant. *Id.*, at 1023-24. The Applicant has been using “Cuba Libre Bar” in connection with a Latin-themed bar and nightclub for over 14 years. This use in Florida, and specifically in Jacksonville, clearly establishes seniority over Thursday, who has not even opened their Orlando nightclub. The Applicant’s seniority therefore makes them eligible to register “Cuba Libre Bar” with the Florida Department of State.

II. Applicant’s “Cuba Libre Bar” as a Distinct Mark Through Continuous Use in Excess of 5 Years

Florida Statutes §495.021(1)(e) addresses the registrability of trademarks (*i.e.*, a mark’s eligibility for registration). Specifically, it states that the department may accept proof that an applicant has continuously used the trademark in this state for 5 years as prima facie evidence that the mark has become distinct. As stated in the application, the Applicant has been using “Cuba Libre Bar” since January 1, 1994. In addition, the Applicant has filed “Cuba Libre Bar” as a fictitious name since April 29, 2003, (Exhibit A). This filing occurred over 5 years from the present date.

Thus, pursuant to Florida Statute, the Applicant submits to the Florida Department of State that “Cuba Libre Bar” has been in continuous use for over 5 years, and thus has become distinct in Florida, and such distinctness serves as the basis for registrability with the State.

III. Applicant’s Registration of “Cuba Libre Bar” Does Not Fall Within the Limitations Set Forth in Fla. Stat. §495.021(1)

Florida Statute §495.021(1) specifically sets forth instances where trademark registrations should be denied. These limitations are that a mark shall not be registered if it consists of:

- (a) Immoral, deceptive, or scandalous matter;

- (b) Matter which may falsely suggest a connection with persons, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;
- (c) The flag or coat of arms of the United States, a state or municipality, or a foreign nation;
- (d) A name, signature, or portrait identifying a living individual without his consent;
- (e) A mark which is:
 - 1. Descriptive or deceptively misdescriptive;
 - 2. Primarily geographically descriptive;
 - 3. Primarily geographically deceptively misdescriptive;
 - 4. Primarily a surname; or
 - 5. Comprising any matter that, as a whole, is functional
- (f) A mark resembling another mark registered or used in this state, as to be likely to cause confusion or mistake or to deceive.

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TALLAHASSEE, FLORIDA

The Applicant's trademark does not fall within any of these limitations, and thus is eligible for registration.

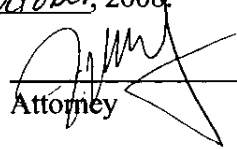
WHEREFORE, the Applicant respectfully submits that the responses stated herein are true and correct to the best of its knowledge, and prays that the Florida Department of State, Division of Corporations, registers the trademarks presented.

WOOD, ATTER & WOLF, P.A.

By: 
JO-ANNE YAU, ESQUIRE
Attorney for Applicant
333-1 East Monroe Street
Jacksonville, FL 32202
(904)355-8888

Certificate of Service

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to Nanette Causseaux at the Florida Department of State, Division of Corporations, P.O. Box 6327, Tallahassee, FL, 32314, by U.S. Mail, this 15th day of October, 2008.


Attorney

APPLICATION FOR REGISTRATION OF FICTITIOUS NAME

Note: Acknowledgements/certificates will be sent to the address in Section 1 only.

FILED
Apr 29, 2003 8:00 am
Secretary of State04-29-2003 90002 017 *****80.00
G031197000171. CUBA LIBRE BAR.
Fictitious Name to be Registered (see instructions if name includes "Corp" or "Inc")
2578 ATLANTIC BLVD.
JAX FL. 32207.
Mailing Address of Business

City State Zip Code

3. Florida County of principal place of business: DUVAL

(see instructions if more than one county)

4. FEI Number: 59-3217580 UNDER HAVANA JAX INC.

506169

This space for office use only

A. Owner(s) of Fictitious Name If Individual(s): (Use an attachment if necessary):1. PULIDO SILVIA M.
Last First M.I.
2578 ATLANTIC BLVD
Address
JAX FL. 32207.
City State Zip Code2. _____
Last First M.I.

Address

City State Zip Code**B. Owner(s) of Fictitious Name If other than an individual: (Use attachment if necessary):**1. _____
Entity Name

Address

City State Zip Code
Florida Registration Number _____
FEI Number: _____
☐ Applied for ☐ Not Applicable2. _____
Entity Name

Address

City State Zip Code
Florida Registration Number _____
FEI Number: _____
☐ Applied for ☐ Not Applicable

I (we) the undersigned, being the sole (all the) party(ies) owning interest in the above fictitious name, certify that the information indicated on this form is true and accurate. In accordance with Section 805.09, F.S., I (we) understand that the signature(s) below shall have the same legal effect as if made under oath. (At Least One Signature Required)

[Signature] 4-28-03
Signature of Owner Date_____
Signature of Owner DatePhone Number: (904) 399-0609

Phone Number: _____

**FOR CANCELLATION COMPLETE SECTION 4 ONLY:
FOR FICTITIOUS NAME OR OWNERSHIP CHANGE COMPLETE SECTIONS 1 THROUGH 4:**I (we) the undersigned, hereby cancel the fictitious name _____
_____, which was registered on _____ and was assigned
registration number _____

Signature of Owner Date

Signature of Owner Date

Mark the applicable boxes

☐ Certificate of Status — \$10☒ Certified Copy — \$30

FILING FEE: \$50

Exhibit A

CR4E001 (5/02)

APPLICATION FOR THE REGISTRATION OF A TRADEMARK OR SERVICE MARK
PURSUANT TO CHAPTER 495, FLORIDA STATUTES.

FILED
OCT 24 AM 8 29
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

TO: Division of Corporations
Post Office Box 6327
Tallahassee, FL 32314

PART I

1. OWNER/APPLICANT: Enter the name and address of the individual or the business entity to be listed as the owner of the Trademark and/or Service Mark on the records of the Florida Department of State.

(a) Owner's/Applicant's name: Havana-Jax Inc.

(b) Owner's/Applicant's business address: 2578 Atlantic Boulevard

Jacksonville, FL 32202

City/State/Zip

If different, Owner's/Applicant's mailing address: _____

City/State/Zip

(c) Owner's/Applicant's telephone number: (904) 398-0101

Check the appropriate box to indicate the Owner/Applicant is a(n):

☐ Individual ☒ Corporation ☐ Joint Venture ☐ Limited Liability Company
☐ General Partnership ☐ Limited Partnership ☐ Union ☐ Other: _____

If the Owner/Applicant is a business entity, the business entity must have an active filing or registration on file with the Florida Department of State. If the Owner/Applicant is not an individual, enter the business entity's Florida registration/document number in #1, the state or country under the laws of which the business entity is currently formed, organized or incorporated under in #2, and the entity's federal employer identification number (EIN) in #3.

(1) Florida registration/document number: P93000040337 ✓

(2) Domicile State or Country: Florida

(3) Federal Employer Identification Number: 59-3217580

2. (a) **SERVICE MARK:** If the owner/applicant is using the name, logo, design and/or slogan being registered in connection with a type of service, the mark is a service mark. If the mark is a service mark, the applicant/owner must list the specific service(s) the mark is being used in connection with. For example: furniture moving services, diaper services, house painting services, wholesale and retail sales of tractor equipment, etc. If the owner/applicant is using the mark to identify services available in the market place, enter the specific service(s) being rendered here:

(Note: List only those services currently being rendered by the owner/applicant. Do not include future services.)

Bar and nightclub services

2. (b) TRADEMARK: If the owner/applicant is using the name, logo, design and/or slogan being registered in connection with an actual product manufactured by the owner/applicant or on the owner/applicant's behalf, the mark is a trademark. If the mark is a trademark, the applicant/owner must list the specific product(s) the name, logo, design and/or slogan is being used to identify. For example: ladies sportswear, cat food, barbecue grills, shoe laces, etc. If the owner/applicant is using the name, logo, design and/or slogan to identify goods available in the market place, enter the specific product(s) the name, logo, design and/or slogan is being used to identify:

(Note: List only those product(s) currently available. Do not include future products.)

2. (c) HOW IS THE NAME, LOGO, DESIGN AND/OR SLOGAN CURRENTLY USED:

SERVICE MARKS: If the name, logo, design and/or slogan are/is being used in connection with a type of service, you must specify the form(s)/mean(s) of advertisement the applicant/owner is using to advertise the services to the general public. For example: newspaper advertisements, business cards, brochures, flyers, pamphlets, menus, etc. If the mark is being used in connection with a type of service, state how the name, logo, design and/or slogan are/is being used in advertising here:

Name and logo used in magazine and newspaper advertisements, menus, brochures, flyers, internet advertising.

TRADEMARKS: If the name, logo, design and/or slogan are/is being used to identify a product manufactured by or for the applicant/owner, you must specify how the mark is applied or affixed to the actual product or its packaging. For example: a tag, label, imprinted or engraved on the actual product, etc. If the mark is being used in connection with a specific product, state how the name, logo, design and/or slogan is applied or affixed to the actual product(s) or the packaging:

2. (d) FEE(S) AND CLASS(ES): There are a total of 45 classes or categories in which all products or services must be categorized. The fee to register a mark is \$87.50 per class. Make check payable to Florida Department of State.

List the class(es) which apply to the product(s) and/or service(s) listed in 2(a) and/or 2(b) above:

Class 43

PART II

1. You must state the date the name, logo, design and/or slogan was first used in the state of Florida, and, if it was used in another state or country, the date you first used the name, logo, design and/or slogan in the other state or country. Enter the month, day, and year the name, logo, design and/or slogan was first used by the applicant/owner, the predecessor, or a related company in Florida. If the name, logo, design and/or slogan has been used in another state or country, then you must also enter the month, day, and year the name, logo, design and/or slogan was/were used in another state or country, when applicable.

Note: The Florida Statutes require a mark to be in use prior to registration.

(a) Date first used in other state or country, if applicable: N/A

(b) Date first used in Florida: January 1, 1994

PART III

ENTER NAME, LOGO, DESIGN AND/OR SLOGAN BEING REGISTERED:

1. Enter the name, a brief description of the logo or design, and/or the slogan you are registering. The description of the logo and/or design must be 25 words or less. List the exact name, slogan, and/or description of the logo/design here: (NOTE: The name, logo, design and/or slogan listed in this section must match the exact name, logo, design and/or slogan listed on your specimens or examples.)

The name, "Cuba Libre Bar"

Provide the English translation of any and all terms listed #1 above, when applicable: Libre is Spanish for "Free"

2. DISCLAIMER STATEMENT (if applicable):

Your mark may include a word or design that is commonly used by others. Commonly used terms or designs must be disclaimed. When you disclaim a specific term or design, you are acknowledging this term is commonly used by others and that you do not claim the exclusive right to use the disclaimed term or design. All geographical terms and representations of cities, states or countries must be disclaimed (i.e., Miami, Orlando, Florida, the design of the state of Florida, the design of the United States of America, etc.). Corporate suffixes and terms readily associated with the specific product(s) and/or(s) service being provided must also be disclaimed.

Enter all terms listed in #1 above which require a disclaimer in the space provided below:

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE THE TERM(S) Bar
" APART FROM THE MARK AS SHOWN.

3. ATTACH OR INCLUDE THREE SPECIMENS OR EXAMPLES OF THE TRADEMARK OR SERVICE MARK BEING REGISTERED

Chapter 495, F.S., requires you to submit three specimens (samples or examples) of the mark in use. You must submit three specimens FOR EACH CLASS listed in Part I #2(d). The name, logo, design and/or slogan on the specimens must be identical to the name, logo, design and/or slogan being registered. You may provide three identical specimens or three different specimens. For each service mark class (classes 35-45), you may provide three newspaper advertisements, business cards, brochures, flyers, or any combination thereof. For each trademark class (classes 1-34), you may provide three tags, labels, boxes, etc. or any combination thereof. Photographs of bulky specimens are acceptable if the mark being registered and the good(s) or product(s) are clearly legible.

SIGNATURE OF APPLICANT/OWNER AND NOTARIZATION:

I, Jo-Anne Yau, being sworn, depose and say that I am the owner and the applicant herein, or that I am authorized to sign on behalf of the owner and applicant herein, and to the best of my knowledge no other person except a related company has registered this mark in this state or has the right to use such mark in Florida either in the identical form thereof or in such near resemblance as to be likely, when applied to the goods or services of such other person to cause confusion, to cause mistake or to deceive. I make this affidavit and verification on my/the applicant's behalf. I further acknowledge that I have read the application and know the contents thereof and that the facts stated herein are true and correct.

Jo-Anne Yau

Typed or printed name of applicant

[Signature] Attorney for Applicant
Applicant's signature
(List name and title)

FILED
08 OCT 24 AM 8:29
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

STATE OF Florida

COUNTY OF Duval

On this 25th day of July, 2008, Jo-Anne Yau personally appeared before me,

☒ who is personally known to me ☐ whose identity I proved on the basis of _____



Sarah Louise Lambert
Notary Public Signature

Sarah Louise Lambert
Notary's Printed Name

My Commission Expires: 10/08/2011

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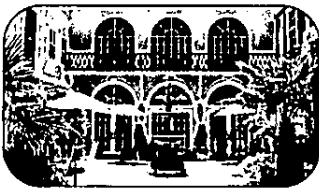


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B/W, TO, X, \$\$\$, ALL.

JJ's Bistro de Paris/JJ's Liberty Bistro 330
A1A N., #209, Ponte Vedra Beach (273-7980);
7693 Gate Pkwy., Southside (996-7557).
French bistro atmosphere featuring crab,
salmon, duck confit, bouillabaisse, steaks and
four daily specials. Casual. L, D, FB, Y, RA, RS,
O, BR, TO, X, \$\$\$, ALL.

Pastiche 4260 Herschel St., Riverside (387-
6213). Serving roasted sea bass fillet Provencal,
calamari en escabeche, stuffed roasted dates
with foie gras and bacon. Covered garden patio.
Full service catering. Casual. L, D, B/W, Y, RS,
O, BR, TO, X, \$\$\$, ALL.

FUSION

95 Cordova 95 Cordova St., Casa Monica Hotel,
St. Augustine (827-1888). Serving Chilean sea
bass and cilantro truffle oil and olive and blue
cheese crusted Omaha filet mignon. Elegant and
exotic atmosphere in a Four Diamond historic
hotel. B, L, D, SB, FB, Y, RA, RS, O, BR, VP,
TO, X, \$\$\$, ALL.

Blue Bamboo 3820 Southside Blvd., Southside
(646-1478). Innovative menu features miso mar-
inated salmon, lemongrass crabcakes, Cantonese
orange duck, ahi tuna salad and Mandarin orange
cake. Wine lounge. Patio dining. Casual. L, D,
B/W, Y, RA, O, BR, TO, X, \$\$\$, ALL.

Bonito Grill and Sushi 614 Centre St.,
Fernandina Beach (261-0508). Featuring a
fusion of American and Asian cuisine. Serving
broiled Chilean sea bass with red miso rub, soba
noodles with sautéed seafood, and Long Island
duck with wasabi teriyaki. L, D, FB, Y, RA, RS,
TO, X, \$\$\$, AX, MC, V.

Roy's 2400-101 S. 3rd St., Jacksonville Beach
(241-7697). Roy Yamaguchi's Hawaiian fusion
cuisine blends seafood with European sauces
and bold Asian spices creating innovative dishes
such as yellow-fin ahi poketini, hibachi-style
grilled salmon and slow braised short ribs.
Upscale. D, BR, VP, FB, Y, RS, X, \$\$\$, ALL.

GREEK

Athens Café 6271 St. Augustine Rd., Suite 7,
Southside (733-1199). Menu features authentic
Greek dishes, rack of lamb, rack of veal, whole
snapper, chicken and seafood entrées. À la carte
food and wine menu. Family. L, D, B/W, RA, BR,
TO, X, \$\$\$, ALL.

ITALIAN

Al's Pizza 303 Atlantic Blvd., Atlantic Beach
(249-0002) plus three other area locations.
Serving eight- to sixteen-inch pizzas, calzones,
hot and cold sandwiches, lasagna, ziti and
sausage and pepper parmigiana. Casual. L, D,
B/W, O, TO, X, \$, ALL.

Brucel's Pizzeria 880-8 Highway A1A, Ponte
Vedra Beach (280-7677). Serving Italian clas-
sics like baked ziti, stromboli, Italiano panini,
chicken Caesar wrap and pizza by-the-slice. L,
D, B/W, TO, X, \$, AX, MC, V. (106)



APERITIVOS

CHURRASCO.....18.95

Broiled Flap Steak with Chimichurri Served with French Fries.

HAVANA-JAX PLATTER (FOR TWO).....19.95

Tamal, Tostones, Yuca Frits and Chicharrones.

HAVANA-JAX CARIBBEAN SALAD.....10.95

Mixed Greens Tossed with Carrots, Pineapple, Mandarin Orange,
Blackened Chicken, Croutons, and Our Own Caribbean Dressing.

TOSTONES CON CHICHARRONES10.95

Fried Pork Chunks and Green Plantains with our Authentic Mojo Sauce.

YUCA FRITA CON CHICHARRONES10.95

Fried Yuca Strip & Pork Chicharrones.

CUBAN SANDWICH10.95

EMPANADAS (2).....10.95

Meat Turnovers.