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

Proceeding	91230351
Party	Defendant Cigar Bella
Correspondence Address	MICHAEL B LEE MICHAEL B LEE PC 1820 E SAHARA AVE STE 110 LAS VEGAS, NV 89104 UNITED STATES Email: mike@mblnv.com
Submission	Motion for Summary Judgment  <b>Yes</b> , the Filer previously made its initial disclosures pursuant to Trademark Rule 2.120(a); OR the motion for summary judgment is based on claim or issue preclusion, or lack of jurisdiction.  The deadline for pretrial disclosures for the first testimony period as originally set or reset: <b>10/13/2017</b>
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Date	06/27/2017
Attachments	Motion for Summary Judgment - CIGAR BELLA Ser. No. 86861405.pdf(97512 bytes ) Exhibit 1 - Cigar Bella LLC NV SOS.pdf(76968 bytes ) Exhibit 2 OR- DR_Order_Vacating_Plaintiff_s_Application_For_Temporary_Restraining_Order__Denying__In.pdf(139799 bytes ) Exhibit A - Declaration of K. Kelley - CIGAR BELLA.PDF(151418 bytes ) Exhibit B - Translation of CIGAR BELLA.pdf(85022 bytes ) Exhibit C - Beautiful Define Beautiful at Dictionarycom.pdf(239712 bytes ) Exhibit E - History of the Cigar Girl.pdf(233586 bytes ) Exhibit F - CIGAR Marks.pdf(4527118 bytes ) Exhibit D - Girl Synonyms Girl Antonyms Thesauruscom.pdf(280966 bytes )

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

CF Dominicana Cigars, Inc.; Royal Flush  
Events, Inc., dba CIGAR DOLLS,

Opposer,

v.

Cigar Bella LLC,

Applicant.

Opposition No. 91230351  
Application Serial No.: 86861405  
Mark: CIGAR BELLA (Stylized)

Filed Pursuant to FRCP 56

**APPLICANT’S MOTION FOR SUMMARY JUDGMENT,  
AND SUPPORTING MEMORANDUM OF LAW**

Pursuant to 37 C.F.R. §§ 2.127 and 2.116 and the Federal Rules of Civil Procedure and 56, Applicant, Cigar Bella LLC (“Applicant”), through Counsel Michael B. Lee, PC, hereby moves for final summary judgment of the Notice of Opposition filed by CF Dominicana Cigars, Inc. (“Opposer”) because, as a matter of law and fact, there is no likelihood of confusion between the Applicant’s mark and the Opposer’s mark.

This Motion for Summary Judgment (“Motion”) is based on (1) the attached Memorandum of Points and Authorities, (2) the Declaration of Katrina Kelley, and all exhibits attached thereto, (2) all pleadings and papers on file herein and (6) upon any other evidence that the Board may consider.

Dated: June 26, 2017

MICHAEL B. LEE, PC

/Michael B. Lee/

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## FACTUAL AND PROCEDURAL BACKGROUND

### I. The Parties

Applicant Cigar Bella, LLC is a small, entrepreneurial company organized under the laws of the State of Nevada on November 29, 2015. *See* Declaration of Katrina Kelley ¶ 1 (hereinafter, “Kelley Decl.”), attached hereto as **Exhibit A**. Applicant provides live cigar rolling services throughout the United States, including, but not limited to, live cigar demonstrations, live cigar rolling for weddings and special events, hand-rolled cigars, and custom cigar and wine/food pairings. Kelley Decl. ¶ 2. Applicant’s principal and employees are professionally trained cigar rollers, which have been practicing their craft for more than fifteen years. *Id.* ¶ 3.

On or around April 27, 2012, over three years before Applicant’s incorporation, Applicant’s principal, Katrina Kelley, entered into an Independent Contractor Agreement (“Agreement”) with Opposer. *Id.* ¶ 4. In the Agreement, Ms. Kelley agreed to provide Opposer with cigar rolling services in exchange for compensation. Due to Opposer’s abusive behavior towards Ms. Kelley, Ms. Kelley ended her professional relationship under the Agreement on or around spring 2014. *Id.* ¶ 5. In retaliation for Ms. Kelley’s termination of the Agreement, on September 24, 2015, Opposer filed a Complaint against Ms. Kelley in the District Court of Nevada. *Id.* ¶ 6. On or about March 24, 2015, the Complaint was dismissed in its entirety. *Id.* ¶ 7. Contrary to Opposer’s false statements to the contrary, at no time has any court action been filed against Applicant Cigar Bella, LLC. *Id.* ¶ 8.

On December 30, 2015, Applicant, after due diligence and in good faith, filed an application for registration of the unique mark CIGAR BELLA (Ser. No. 86861405) in Class 41 for “[a]rranging and conducting special events for social entertainment purposes; [c]onducting entertainment exhibitions in the nature of live cigar rolling demonstrations held at special

events” in the stylized text as shown below:



## **II. Opposer’s Notice of Opposition and False Statements of Fact**

On September 28, 2016, Opposer filed a Notice of Opposition (“Notice”) to the registration of the CIGAR BELLA Mark. The Notice claims Applicant’s mark CIGAR BELLA “is confusingly similar to Opposer’s CIGAR DOLLS Marks and CIGAR CHICAS Mark.” However, Opposer’s opposition does not allege how or why Applicant’s use of its CIGAR BELLA mark creates a likelihood of confusion. As demonstrated below, there is no genuine dispute as to any material fact because the Applicant’s CIGAR BELLA mark is not confusingly similar to Opponent’s CIGAR DOLLS and CIGAR CHICAS marks. As such, Applicant is entitled to judgement as matter of law.

As a preliminary matter, it is important to bring to the Board’s attention the false statements of fact presented by Opposer in its Notice. First, Opposer asserts that Applicant entered into an Independent Contractor Agreement with Opposer. (Doc. 1 ¶ 29.) As evidence, Opposer attaches the Independent Contractor Agreement, which is dated May 27, 2012. (Doc. 1 ¶ 30.) Applicant did not exist in 2012 and, in fact, was not incorporated until September 2015—over three years after the Independent Contractor Agreement was signed. Therefore, Applicant and could not have legally entered into any agreement with Opposer. Kelley Decl. ¶ 1. Additionally, all allegations contained in Opposer’s Notice related to any relationship between the Applicant and Opposer are false as evidenced by Opposer’s own Exhibits attached thereto, which do not name Applicant. Applicant was not a party to the Independent Contract

Agreement. (Doc. 1, Ex. B.) Applicant was not a party to the Complaint Opposer attached to its Notice. (Doc. 1, Ex. E.) Moreover, Ms. Kelly ended her professional relationship with Opposer in the Spring of 2014, over a year before Applicant was incorporated. Kelley Dec. ¶ 5.

Opposer also blatantly attempts to mislead the Board by misquoting the vacated preliminary injunction. Opposer falsely states that it had been granted a preliminary injunction against Applicant. (Doc. 1 ¶ 37.) The preliminary injunction attached to Opposer's Notice dated April 5, 2016 does not name Applicant. (Doc. 1, Ex. F.) Opposer falsely inserted Applicant's name, knowing full well that Applicant's name did not appear in the order and that Applicant was not even a party to that lawsuit. (Doc. 1 ¶ 38.) Moreover, at the time Opposer filed its Notice on September 28, 2016, the preliminary injunction described in and attached to Opposer's Notice had been vacated for over four months. Kelley Decl. ¶ 7.

## ARGUMENT

### I. Summary Judgment Standard

Under Fed.R.Civ.P. 56(a), “[t]he Board shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The Federal Circuit has stated that, “[t]he basic purpose of summary judgment procedure is...to save the time and expense of a full trial when it is unnecessary because the essential facts necessary to decision of the issue can be adequately developed by less costly procedures...” See *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 222 USPQ 741, 743 (Fed. Cir. 1984). In the context of an opposition proceeding, the determination of likelihood of confusion is “unquestionably” appropriate issues for summary judgment. See *Sweats Fashions Inc. v. Pannill Knitting Co.*, 4 USPQ2d 1973 (Fed. Cir. 1987). To dispute a material fact, the non-moving party must offer more than a “mere scintilla” of evidence; the

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