



For Immediate Release:

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Kretek International, Inc. Defeats Key Motions in Trademark Proceeding

The American-based company is awarded its day in court to argue the Cuban government has forfeited trademark rights as a result of the 55-year embargo.

(July 2019) Kretek International, Inc., America's largest importer, marketer, and distributor of specialty tobacco products, is announcing that the United States Trademark Office's Trademark Trial and Appeal Board denied motions made by two Cuban state tobacco companies to dismiss Kretek's claims for cancellation of 10 trademark registrations. The Board now determines whether the Cuban companies can own U.S. trademark registrations for brands the Cuban companies are legally prohibited from using in the U.S. under the embargo.

Kretek seeks to register its Cuban Rounds brand with the United States Trademark Office. The Cuban Rounds cigar brand has been sold in the United States for over 14 years. The cigars utilize Cuban seed tobacco and are rolled and bunched using Cuban methods, but their tobacco filler and wrapper are from other countries, including Nicaragua and the Dominican Republic. The brand represents a significant product line for domestic tobacconists, convenience stores and food/drug mass retailers, with approximately 8 million cigars sold in these channels.

In November 2017, two Cuban state tobacco companies opposed Kretek's Cuban Rounds applications, citing their ownership of several trademark registrations as one basis for the Trademark Board to reject the applications. Those same Cuban companies filed a similar action asking the Trademark Board to revoke a previously-issued registration for Kretek's Havana Bay brand. In response to these actions, and to protect consumers from confusion regarding the source of Cuban Rounds and Havana Bay cigars and accessories in the U.S., Kretek challenged the validity of the Cuban companies' registrations for various words and designs. The validity of the Cuban companies' registration has taken center stage early in the Trademark Board proceedings.

Despite the effectively-permanent 55-year embargo against the sale of Cuban goods in the U.S., which has been strengthened in recent years under the Trump administration, the Cuban government, through its alter egos, has warehoused numerous United States trademark registrations, primarily for cigars, cigar accessories, cigar stores, and lounges. Because the United States Trademark Office generally

requires the use of a trademark as condition for renewal, and because the Cuban companies do not use their registered trademarks in the United States, Kretek petitioned the Trademark Board to cancel the registrations and make the brands available to anyone, including U.S. companies.

The Cuban companies asked the Trademark Board to dismiss Kretek's claims before any trial could take place, citing a provision that non-use may be excused by the Trademark Office when a trademark registrant is willing and able to use a trademark in the U.S., but is unable to do so because of a trade embargo outside of the trademark registrant's control. Kretek argued that a trial is necessary to determine whether the Cuban state tobacco companies are entitled to take advantage of the "excusable non-use provision," because the provision was intended to protect common people with no control over the embargo, rather than the oppressive Cuban government, for whom the embargo was designed to punish. Kretek pointed out that the Cuban government and associated entities shouldn't receive greater trademark rights than everyone else, including American companies, whose trademark registrations would be canceled if their marks weren't used in the U.S.

After considering the parties' arguments for over six months, the Trademark Board denied the Cuban companies' motions to dismiss. With this ruling, Kretek is now able to take the case to court and prove that Cuban state tobacco companies are not entitled to warehouse trademark registrations without use.

"This is just the beginning," says Mark Cassar, CEO of Kretek International, Inc. "United States law was put into place to protect and propagate capitalism. We respect the people of Cuba, and the craftsmanship and history behind the Cuban cigar, but our American-based company and its employees have worked hard to establish the Cuban Rounds brand and its Cuban-style cigars in the United States. Cuban Rounds is a success under Kretek International's watch, and a foreign government should not be able to act as a bully and take that away from us. Our battle for trademark rights may be lengthy and could go all the way to the United States Supreme Court, but we are confident that we will prevail and continue to contribute to the net worth of the United States' Gross Domestic Product."

In winning this initial motion, Kretek has succeeded where other companies have not. This opens the door to other cases, meaning that additional old Cuban trademarks may be called into question as well. A trial is currently scheduled to happen in late 2020.

Kretek is represented by Joel Feldman and Sabina Vayner of Am Law 100 law firm Greenberg Traurig. Corporacion Habanos, SA and Empresa Cubana del Tabaco are represented by David Goldstein of New York-based law firm Rabinowitz Boudin Standard Krinsky & Lieberman.

For information about Kretek International, Inc. visit kretek.com.

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About Kretek International, Inc.

Kretek International, Inc. parent company to Phillips & King and Ventura Cigar Company, is America's number one importer, marketer, and distributor of specialty tobacco products to convenience, mass, and national retailers. For over 30 years, Kretek has enjoyed a strong reputation for providing exceptional customer relationships and top-quality goods. The company continues to offer standout brands like Djarum, Cuban Rounds, and Djeep Lighters to distribution channels across the United States and Canada, bringing value, high-margins, and growth to retailers and distributors.