

NATIONAL FOREIGN TRADE COUNCIL, INC.

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February 20, 2004

Secretary of State Colin Powell,
Chairman of the Commission for Assistance to a Free Cuba
(Cubacommission@state.gov)

Submission of the National Foreign Trade Council concerning U.S. trademark protection

Dear Secretary Powell,

I am writing on behalf of the National Foreign Trade Council, an organization comprised of over 300 U.S. companies advocating an open, rule-based global trading system. We commend the Commission's goal to hasten the transition in Cuba to a democratic, free market economic system with respect for the human rights of Cuban citizens.

Integral to any successful open market economy is protection of intellectual property rights. Despite the over four decade long embargo on trade with Cuba, both countries have reciprocally recognized trademark rights since 1929 as signatories to the General Inter-American Convention for Trademarks and Commercial Protection. The continuation of this essential policy paves the way for future U.S. commercial engagement, and guards against exploitation of intellectual property rights in the interim. Currently, under the Trade Sanctions Reform and Export Enhancement Act of 2000, many American companies are legally exporting branded humanitarian goods to the island for the first time since the adoption of the embargo, making these protections all the more urgent.

The experience of American companies following the end of the apartheid regime in South Africa should be a cautionary tale. A number of internationally recognized U.S. companies, including Burger King and Victoria's Secret, discovered that their trademarks had been appropriated by South African companies during the apartheid era. Recovering the rights to their trademarks necessitated either lengthy and expensive litigation or buying out the South African registrant. Efforts to secure trademark status before the political transition would have saved many companies from undue exploitation and would have facilitated market reform.

The NFTC urges your Commission to endorse H.R. 2494/S. 2002, the U.S. Cuba Trademark Protection Act, as a component of your policy recommendations to the President. The bill seeks to gain assurances from the Cuban government that it will continue to uphold its obligations under international intellectual property agreements. In addition, the legislation:

- establishes a shadow registry in the United States of currently registered U.S. marks in Cuba, enabling US nationals to search established marks for potential conflicts without paying a fee to Cuba;
- establishes a registry of "well known" marks established in Cuba prior to the revolution, giving US nationals the ability to identify efforts to infringe on their marks in the interim;
- repeals Section 211 of the 1999 Department of Commerce and Related Agencies Appropriations Act, remedying the U.S. breach of obligations under the General Inter-American Convention for Trademarks and Commercial Protection and removing any pretext for retaliation against U.S. marks;
- promotes the rule of law in Cuba by providing Cuba with incentives to adopt internationally recognized standards for resolving disputes over Internet domain rights; and
- grants US nationals a general license to pursue all means of maintenance and enforcement of trademark holders' rights against Cuban infringement.

The United States has long been a leader in securing intellectual property rights globally. The Madrid Protocol's creation of a universal registry is clearly another step in promoting the rule of law the world over. The U.S. Cuba Trademark Protection Act seeks to further this cause, seeking assurances that American marks and websites will be protected now, and following the removal of the embargo. Thank you for your consideration of this matter.

Sincerely,



William A. Reinsch
President, NFTC