

Testimony of  
**Mr. Ramon Arechabala**

July 13, 2004

Mr. Chairman, good afternoon, my name is Ramón Arechabala. I am here today to testify in support of S. 2373. My life was changed forever on New Year's Day 1960 when the Castro government took over the rum business that my family founded in 1878. The revolutionary regime called it intervention. They promised us we would eventually be paid, but we never got a red cent. The simple truth is our property was stolen.

I am a Cuban American and U.S. citizen. My family moved to Cuba from Spain when I was a boy. My father went to work for our family company, Jose Arechabala, S.A. (JASA), in Cardenas, Cuba, which made fine rums sold under the ARECHABALA and HAVANA CLUB brands. We exported HAVANA CLUB rum that was made by JASA according to a secret family formula to the U.S. and elsewhere. JASA began selling HAVANA CLUB rum in the U.S. in the early 1930's. I believe that the HAVANA CLUB mark, at one time, was registered in the United States, Spain, Cuba and other countries. My cousin, Javier Arechabala, the company's lawyer, took care of those things. After the Bay of Pigs, Javier was thrown in jail on trumped up charges and did not get out for many years.

I worked as a sales manager at JASA after I got out of school. Special forces led by Calixto Lopez broke into JASA's offices and seized the company on December 31, 1959. Calixto pointed a machine gun at me and said from now on he was "Pepe." Pepe is my uncle who has since moved to Spain. He was JASA's President then. Calixto meant he was now the boss. All JASA's books and records were seized. My brother, Jose Miguel, who also worked at JASA, and I were searched when we left to make sure we did not sneak out any important papers. As soon as I could, I telephoned my uncle and other family members who were in the U.S. and Spain for the Christmas holidays to let them know what had happened and to tell them not to return to Cuba. I was afraid that if they returned, they would be tossed in jail.

The next day I went back to work. Lopez and his cronies knew nothing about making rum. He even gave away the oak barrels used to age the rum. For several months I stayed at JASA without pay, but Lopez didn't want me there. I had to leave.

The company's business was booming when Castro took it over. My uncle, who was responsible for selling HAVANA CLUB rum in the U.S., had gotten HAVANA CLUB on the shelves at the Stork Club and other famous restaurants in U.S. I later learned that in October 1960, the Cuban government issued Law No. 890, to try to legitimize the confiscations of the assets of JASA and dozens of other private companies. Law No. 890 promised that my family and I would be paid a fair price for the property that was taken but that promise was false. No one in my family was ever paid anything.

My family never gave up hope of getting our rum business back. The rule of law, we felt sure, would be restored to Cuba and with it, our stolen property. In the meantime, I worked at odd jobs in Cuba. But every time my business showed signs of getting off the ground, the government closed me down. My background made me unreliable, particularly after the Bay of Pigs. Eventually, I was thrown in jail by the Castro government after I organized a party for foreign embassy employees. My jailer then gave me a choice, leave Cuba or face the prospect of staying in jail indefinitely on some phony charge.

I left Cuba with my wife and infant son, Miguel. By then I had lost everything, including my home and Cuban bank account. The clothes on our backs were the only things we were allowed to take. The guards at the airport even took Miguel's diaper bag because it looked expensive. What the guards couldn't take was my knowledge of the secret formula for making HAVANA CLUB rum. My brother and I had committed this secret formula to memory when Lopez took over our company and I was determined to put it to good use.

My family and I first went to Madrid and then left for the United States. After a brief stay in Philadelphia with my brother we moved in 1967 to Miami where I still live. I kept trying to put enough money together to make HAVANA CLUB rum, but I was penniless when I arrived in the United States. I worked hard to build a car dealership, but when my franchise was canceled, I was forced into bankruptcy in 1974. Throughout this period, I kept looking for a partner for a joint venture to make HAVANA CLUB rum. In 1974, I flew to Nassau to meet with Orfilio Peláez of Bacardi, to discuss the possibility of Bacardi making HAVANA CLUB rum for us. When I toured Bacardi's distillery, I broke down in tears as it was the first time I had seen a rum distillery since I left JASA. I discussed this meeting with my brother, José Miguel, but we never heard back from Mr. Peláez. I later found out that after our meeting he had fallen ill and died.

Also in 1974, I discussed with a lawyer, whose name I have forgotten, whether JASA's U.S. registration of our HAVANA CLUB label could be renewed. Javier, my cousin and the company's lawyer, was still in a Cuban prison and I knew nothing about the corporate law. I was told I could not file a renewal statement under oath because we had no means of making HAVANA CLUB rum at the time.

While trying to get the family rum business going again, I worked as an auto repairman and in sales. In the late 1980's I set up a freight forwarding company. But I had to retire in 1997 after I suffered a major stroke. In 1993, a Miami newspaper article said that Pernod-Ricard was negotiating a joint venture with the Cuban government to make and sell HAVANA CLUB rum. I was furious. I wrote a letter to Mr. Patrick Ricard, the head of Pernod, to let him know my family owned JASA and the HAVANA CLUB mark. Pernod could never make real HAVANA CLUB rum without the family's secret recipe. Mr. Ricard did answer my letter, but he basically told me that he would not let the injustice done to my family interfere with the bargain Pernod was getting from Castro. However, Pernod was worried about us taking legal action. In 1993, a lawyer for Pernod, Emilio Cuatrecasas, approached the Arechabalas in Spain about buying the worldwide rights to the HAVANA CLUB mark. The family turned down Pernod's offer as it was ridiculously low.

Before hearing about Pernod's deal, I had met with Mr. Juan Prado of Bacardi to pick up on my earlier talks with Mr. Peláez. My discussions with Mr. Prado eventually led to an agreement in

principle in 1995 between the members of my family, who owned JASA, and Bacardi, giving Bacardi the right to make and sell HAVANA CLUB rum. As part of that deal, JASA assigned to Bacardi our rights to the HAVANA CLUB mark, the related goodwill of the business and other remaining JASA assets, including the family's secret HAVANA CLUB recipe. With our permission, Bacardi began selling HAVANA CLUB rum in the U.S. in mid-1995. A formal agreement was signed with Bacardi in 1997.

The Pernod-Cuban joint venture sued Bacardi in federal court in New York. I testified at the trial on February 3, 1999. I basically said then what I am telling you today. The court ruled in Bacardi's favor partly because of Section 211. Section 211 prohibits recognition in the U.S. of claims to own rights in a trademark or commercial name like HAVANA CLUB that had been confiscated by the Castro government unless the one claiming the trademark had gotten the consent of the original owner of that mark in the U.S. which in the case of HAVANA CLUB was the Arechabala family. In other words, rights to the U.S. trademark JASA owned cannot be transferred by Cuba, which confiscated JASA's Cuban assets, to the Cuban-Pernod joint venture or anyone else without JASA's consent as the original owner of the related U.S. trademark. This seems fair. I am told that paintings discovered in the U.S. that had been seized by the Nazis in World War II, are returned to their true owners. While the Castro regime has denied us our rights in Cuba, Section 211 has protected our U.S. trademark and shows that in the United States, at least, private property cannot be taken away at the whim of a foreign tyrant. This is why I am so proud to live in America.

Pernod says we abandoned the HAVANA CLUB trademark when we failed to file the renewal papers with the U.S. government. I am not a lawyer and I did not have the money to have a lawyer research the law for me. I was told that unless JASA was making and selling HAVANA CLUB rum in the U.S. the registration could not be renewed. I believed this and was not going to make a false statement to the U.S. government, which had given me and my family refuge. I do know, however, that Pernod was aware that the Arechabala distillery and the HAVANA CLUB trademark was seized at gun point. Pernod's attempt to buy the mark from us also shows Pernod knew that we never abandoned our trademarks and that we were trying to get our business back. Why else would Pernod have tried to buy our rights in 1993? What Pernod apparently concluded was that we did not have the means to fight them in court. Pernod is a huge company and I and my brother and cousins only made modest livings. But Bacardi, which also was victimized by Law No. 890, knew we were morally and legally the rightful owners of the HAVANA CLUB mark. Bacardi paid us fairly for our HAVANA CLUB rights and took up the court fight.

What happened to my family was wrong. We wanted to keep selling HAVANA CLUB rum but were prevented from doing this because of the confiscation of our distillery. Castro's wrong to me and my family continues today because the Cuban/Pernod venture continues to trade off HAVANA CLUB's reputation with a product that can never be the true HAVANA CLUB rum. Castro's government stole my assets, my family heritage, and much of my children's future. Section 211 prevents that wrong from spreading into the United States. Its protection should not be denied because of veiled threats made by Pernod on behalf of its partner, Cuba.