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Filing date: **11/13/2013**

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

Proceeding	76649149
Applicant	I.O.B. Realty, Inc.
Applied for Mark	PATSY'S PIZZERIA
Correspondence Address	PAUL GRANDINETTI LEVY & GRANDINETTI P.O. Box 18385 WASHINGTON, DC 20036-8385 UNITED STATES mail@levygrandinetti.com
Submission	Applicant's Motion to Suspend
Attachments	01US.Appeal.Suspension.Request.111313.pdf(11489 bytes) 01US.Appeal.Suspension.Request.Ex.1.Contempt.Reyes.Ltr.102813.pdf(186318 bytes) 01US.Appeal.Suspension.Request.Ex.2.EDNY Order.pdf(42737 bytes)
Filer's Name	Rebecca J Stempien Coyle
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Signature	/Rebecca J Stempien Coyle/
Date	11/13/2013

Attorney Docket No. PAT001US

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

Applicant: I.O.B. Realty, Inc.

Date: November 13, 2013

Appl. No.: 76/649,149

Examining Attorney: Mizelle-Howard, D.

Filed: October 25, 2005

Law Office: 110

Mark: PATSY'S PIZZERIA

REQUEST FOR SUSPENSION

Box TTAB - No Fee
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Pursuant to TBMP § 1213 the Applicant, I.O.B. Realty, Inc., respectfully requests the instant ex parte appeal be suspended for good cause. The Applicant is involved in a civil action that may be dispositive of the issue involved in the appeal.

Specifically, the Applicant's pending application has received a final refusal based on an asserted likelihood of confusion with Registration No. 3,090,551. On November 7, 2013, the United States District Court for the Eastern District of New York granted the Applicant permission to file a motion for contempt for violation of its Final Judgment from an earlier civil action involving the Applicant and the owner of Registration No. 3,090,551. The Applicant's motion for contempt is based, in part, on the maintenance of Registration No. 3,090,551.

The Eastern District of New York has ordered that briefing on the motion must be completed by January 31, 2014. Copies of the Applicant's request for permission to file a motion for contempt and the Eastern District of New York's Order granting permission for the motion are attached.

Therefore, since the Eastern District of New York will be considering the propriety of Registration No. 3,090,551, the Applicant requests that the Board suspend this appeal pending final determination of the civil action. The Applicant's request for suspension of the proceedings is being filed prior to the issuance of the Board's final decision in the case.

Respectfully submitted,

/ Rebecca J. Stempien Coyle /
Paul Grandinetti
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EXHIBIT 1

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October 28, 2013

VIA ECF SYSTEM AND FIRST CLASS MAIL

Hon. Ramon E. Reyes, Jr.
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Patsy's Italian Restaurant, Inc. et al. v. Banas et al.*
Civil Action Nos. 00729/05857

Dear Judge Reyes:

We represent the Defendants I.O.B. Realty, Inc., and Patsy's Inc. (collectively, "I.O.B. Realty"), in this action. I.O.B. Realty discovered that the Plaintiffs are violating the Opinion and Order ("Order") entered by this Court in the above matter and are encouraging confusion between the marks of the Parties. I.O.B. Realty respectfully requests permission to file a motion for contempt and further relief.

I.O.B. Realty's counsel twice attempted to resolve the ongoing violations of the Court's Order with the Plaintiffs' counsel, Mr. Zivin. Mr. Zivin's position is that the Court's subsequent Final Judgment of September 10, 2008, uses different language from the Court's Order and, therefore, negates the Court's Order or renders the Order merely hopeful but non-binding guidance to the Parties.

This Court's Order mandates that:

[T]he Plaintiffs are *required* to refer to their restaurant services using the mark PATSY'S ITALIAN RESTAURANT.

(See Dkt. 167, Court's Order of September 9, 2008, p. 68 (emphasis added).) This "injunction applies to any advertising, signs, menus or anything similarly associated with their establishments." *Id.*

Despite the clear language of this Order, the Plaintiffs continue to use and seek registrations for the mark PATSY'S without the words ITALIAN RESTAURANT for their restaurant services. Actual confusion of the public has occurred by these acts.

The Plaintiffs or their agents are further harming the Defendants through repeated retaliatory actions against the Defendants, their employees, and their franchisees.

The Plaintiffs violate the Court's Order through at least the following actions:

- (1) Applying, and maintaining, for federal registrations for the marks THE ORIGINAL PATSY'S, THE REAL PATSY'S, THE FAMOUS PATSY'S, THE ONE AND ONLY PATSY'S, PATSY'S TRATTORIA, and PATSY'S RESTAURANT (all of these applications were filed after the Court's Final Opinion and Order were issued);
- (2) Maintaining the federal trademark registration PATSY'S OF NEW YORK;
- (3) Maintaining a website using the URL address www.patsys.com despite the availability of nonviolative domain names such as www.patsysitalianrestaurant.com;
- (4) Engaging in numerous uses of just the mark PATSY'S and other marks without ITALIAN RESTAURANT in violation of the Court's Order;
- (5) Publishing numerous references on the Plaintiffs' website to their Atlantic City and other location using the one-word mark PATSY'S and other marks using the mark PATSY'S without the words ITALIAN RESTAURANT in violation of the Court Order;
- (6) Using signs at both of the Plaintiffs' locations bearing the mark PATSY'S in violation of the Court Order; and
- (7) Maintaining a Twitter account with the name twitter.com/patsysnyc, which also contains content referring to the Plaintiffs' establishment as "Patsy's Restaurant."

Actual confusion of the public by the Parties' respective marks has occurred as a result of these activities of the Plaintiffs.

After issuance of the Court's Order and the Second Circuit's affirmation, I.O.B. Realty voluntarily abandoned its suspended applications for any mark bearing the word PATSY'S wherein the word PIZZERIA did not immediately follow. However, the Plaintiffs continue to seek registration for the violative mark PATSY'S OF NEW YORK and use this application impermissibly to block the registration of I.O.B. Realty's mark PATSY'S PIZZERIA.

The Plaintiffs' ongoing actions in contradiction of this Order continue and will continue to cause confusion in the mind of the public over the respective marks. Additionally, the Plaintiffs and Mr. Zivin's firm will continue to interfere and harass I.O.B. Realty and its franchisees.

The Plaintiffs have a repeated history of interfering with I.O.B. Realty's business, and franchisee. After the second Circuit's opinion issued affirming this Court's decision, Mr. Zivin

Hon. Ramon E. Reyes, Jr.
Civil Action Nos. 00729/05857
October 28, 2013
Page 3

contacted a franchisee, Mr. Nick Tsoulos, through Mr. Tsoulos' counsel and asserted that he was not permitted to use the mark PATSY'S PIZZERIA with the sale of certain food items. Mr. Tsoulos subsequently ceased paying royalties to I.O.B. Realty. This disruption was resolved only after I.O.B. Realty incurred additional legal expenses.

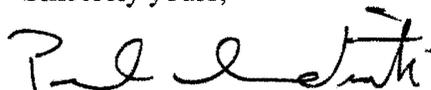
The timing of the interference with Mr. Tsoulos occurred after a period when I.O.B. Realty's owner, Mr. Brija, was engaged in a separate legal matter with a fellow senior partner of Mr. Zivin's law firm. An investment Mr. Brija made with the member of the firm went bad. The senior partner of the firm started repayment of the investment to Mr. Brija with two checks for very large amounts, both of which bounced. Mr. Brija attempted to resolve the matter through quiet patience and with his corporate counsel. At one point, an individual appeared at Mr. Brija's place of business and attempted physically to intimidate Mr. Brija into abandoning his efforts to collect this valid debt. This act of threatened violence may be unrelated to the Plaintiffs or Mr. Zivin, but the fact that a senior partner of Mr. Zivin's firm both knows and resorts to the use of such individuals causes Mr. Brija substantial apprehension that such acts will be repeated in this pursuit of the Plaintiffs' ongoing violations of the Court's Order.

I.O.B. Realty renews its previous request that the Court order the Plaintiffs to cease their use of violative marks and abandon the applications and registration for violative marks. I.O.B. Realty further requests that the Plaintiffs and their counsel be admonished for their contemptuous behavior and provided with specific directions forbidding the Plaintiffs, Mr. Zivin's firm, and their agents from any contact with the places of business of I.O.B. Realty or its franchisees except for the quiet and peaceful purchase of food and drink in a civil manner.

The repeated past acts of aggression by the Plaintiffs and Mr. Zivin's firm cause the owners and management of I.O.B. Realty to fear further retaliation from the Plaintiffs and Mr. Zivin's firm. The owners of I.O.B. Realty are in apprehension of physical violence.

Accordingly, the Defendants seek permission to file a motion for contempt and request a pre-motion conference regarding the same, pursuant to Your Honor's Individual Rule III(B).

Sincerely yours,



Paul Grandinetti

PG:elb

cc: Mr. N. Zivin

EXHIBIT 2

Mail

From: ecf_bounces@nyed.uscourts.gov
Sent: Thursday, November 07, 2013 12:04 PM
To: nobody@nyed.uscourts.gov
Subject: Activity in Case 1:06-cv-00729-RER Patsy's Italian Restaurant, Inc. et al v. Banas et al Order on Motion for Contempt

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 11/7/2013 at 12:04 PM EST and filed on 11/7/2013

Case Name: Patsy's Italian Restaurant, Inc. et al v. Banas et al

Case Number: [1:06-cv-00729-RER](#)

Filer:

WARNING: CASE CLOSED on 09/10/2008

Document Number: No document attached

Docket Text:

ORDER granting (184) Motion for Premotion Conference in Anticipation of Filing A Contempt Motion in case 1:06-cv-00729-RER. Defendants' request to file a motion for contempt for violation of the September 10, 2008 Final Judgment is granted; No premotion conference is necessary. Defendants must SERVE their motion by December 13, 2013. Opposition must be SERVED by January 17, 2014. Reply must be SERVED and the motion FILED as fully briefed by January 31, 2014. NO EXTENSIONS WILL BE PERMITTED. Ordered by Magistrate Judge Ramon E. Reyes, Jr on 11/7/2013. Associated Cases: 1:06-cv-00729-RER, 1:06-cv-05857-RER (Reyes, Ramon)

Case Name: Patsy's Italian Restaurant, Inc. v. Banas et al

Case Number: [1:06-cv-05857-RER](#)

Filer:

WARNING: CASE CLOSED on 09/10/2008

Document Number: No document attached

Docket Text:

ORDER granting (184) Motion for Premotion Conference in Anticipation of Filing A Contempt Motion in case 1:06-cv-00729-RER. Defendants' request to file a motion for contempt for

violation of the September 10, 2008 Final Judgment is granted; No premotion conference is necessary. Defendants must SERVE their motion by December 13, 2013. Opposition must be SERVED by January 17, 2014. Reply must be SERVED and the motion FILED as fully briefed by January 31, 2014. NO EXTENSIONS WILL BE PERMITTED. Ordered by Magistrate Judge Ramon E. Reyes, Jr on 11/7/2013. Associated Cases: 1:06-cv-00729-RER, 1:06-cv-05857-RER (Reyes, Ramon)

1:06-cv-00729-RER Notice has been electronically mailed to:

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Kieran X Bastible (Terminated) kbastible@msek.com

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Version: 2013.0.3426 / Virus Database: 3222/6816 - Release Date: 11/07/13