Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA672432**

Filing date: **05/14/2015**

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

Proceeding	86040656
Applicant	Mr. Recipe, LLC
Applied for Mark	JAWS DEVOUR YOUR HUNGER
Correspondence Address	ANNE MARIE BOSSART CADWALADER WICKERSHAM & TAFT LLP 1 WORLD FINANCIAL CTR NEW YORK, NY 10281-1003 UNITED STATES annemarie.bossart@cwt.com,docketing@cwt.com,jennifer.chick@cwt.com
Submission	Reply Brief
Attachments	JAWS and JAWS DEVOUR YOUR HUNGER Reply Brief.pdf(470194 bytes)
Filer's Name	Anne Marie Bossart
Filer's e-mail	annemarie.bossart@cwt.com,docketing@cwt.com,jennifer.chick@cwt.com
Signature	/Anne Marie Bossart/
Date	05/14/2015

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

Serial No.	86/040,643 86/040,656	Ex Parte Appeal
Mark:	JAWS JAWS DEVOUR YOUR HUNGER	
Applicant:	Mr. Recipe, LLC	
Applications Filed:	August 16, 2013	
Examining Attorney:	Sara Nicole Benjamin Law Office 110	

Reply Brief

TABLE OF AUTHORITIES

PAGE(S)

CASES:

ABC Rug & Carpet Cleaning Serv. v. ABC Rug Cleaners, Inc.
No. 08 Civ. 5737, 2010 WL 10091076 (S.D.N.Y. Feb. 10, 2010).....3

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

Serial No.	86/040,643 86/040,656	Ex Parte Appeal
Marks:	JAWS JAWS DEVOUR YOUR HUNGER	
Applicant:	Mr. Recipe, LLC	
Applications Filed:	August 16, 2013	
Examining Attorney:	Sara Nicole Benjamin Law Office 110	

REPLY BRIEF FOR APPLICANT

Applicant continues to object to the Examining Attorney's refusal to permit the above-referenced marks to proceed to publication, as further described in the Examining Attorney's Appeal Brief, for the reasons identified in Applicant's Brief on Appeal previously submitted in these matters. Without waiver of those arguments, Applicant submits this further brief to clarify two issues raised by the Examining Attorney's Appeal Brief.

I. The Record Is Clear That Multiple JAW Marks Exist For Audio-Visual Materials

The Examining Attorney has asserted that Applicant had cited "two earlier-filed pending applications" in support of its contention that consumers have not been confused by pre-existing marks containing the term "JAW" for use in connection with various audio-visual materials and that there is "no evidence" that any mark cited by Applicant has ever been registered. *See* Examining Attorney's Appeal Brief at 4. Contrary to the Examining Attorney's assertion, the mark JAW BRANDING, for use in connection with audio-visual materials including, *inter alia*, "production of DVDs, videotapes and television programs featuring marketing and branding"

had been registered at the time of initial Office Action issued in these applications. *See* Ser. No. 86/040,643 JAWS Office Action at 12, *citing* JAW BRANDING, Reg. No. 3,911,508. The Examining Attorney's assertion otherwise is particularly strange in light of the Examining Attorney's initial refusal of Applicant's marks on the basis of potential confusion with Registrant No. 3,911,508's "JAW BRANDING" trademark. *See* Ser. No. 86/040,643 JAWS Office Action at 4-7. As such, Applicant reiterates that consumers have not yet been confused by the existence of multiple marks containing the "JAW" term for different audio-visual materials, and that the Applicant's marks at issue here should be permitted to proceed to registration.

II. The Examining Attorney's Evidence Fails To Demonstrate Even Moderate Fame For The Cited Registered Mark

To establish that a mark is famous, factors generally include the present advertising budgets associated with the mark, annual sales, and near-universal recognition of the mark by the public. *See ABC Rug & Carpet Cleaning Serv. v. ABC Rug Cleaners, Inc.*, 2010 WL 10091076, *21 (S.D.N.Y. Feb. 10, 2010). The Examining Attorney has produced no evidence at all with regard to the first two factors and at best mediocre evidence regarding the third. Indeed, the Examining Attorney's evidence demonstrates that the bulk of profits earned by the JAWS film were earned close to its initial publication date forty years ago. *Compare* Examining Attorney's Appeal Brief at 5 (observing that Jaws had "all-time USA box office sales [of] $260,000,000.") *with* Final Office Action at 13 ("[D]uring the summer of 1975, [Jaws] was also the first motion picture to break the $100,000,000 record in box office rentals.") *citing* www.tcm.com. While this suggests that the registered mark may at one time have been famous, it provides no indication of current fame. Similarly, that "the film Jaws has been heralded [as] one of the "top movies of all time" and "the greatest film of all time" establishes that some people are aware of

the film, but is a far cry from demonstrating the near-universal recognition needed to establish fame. *See* Examining Attorney's Appeal Brief at 5, *citing* FilmCrave.com excerpt from www.filmcrave.com and What Culture excerpt from http://whatculture.com. Moreover, contrary to the Examining Attorney's assertion that the cited materials were created in 2014, there is no date of creation associated with the FilmCrave.com excerpt and it is clear that the article from What Culture was written more than four years ago. *Compare id. with* Final Office Action at 22, What Culture excerpt from http://www.whatculture.com (observing that "[i]t's 35 years since Jaws hit multiplexes") *and* Final Office Action at 27, comments to What Culture excerpt, dated from January 30, 2011. To the extent that such references show fame at all, it is fame for a single creative work, not more general fame as a purveyor of audio-visual materials. The Examining Attorney has established that the mark is, at best, weakly or formerly famous for relevant purposes, and registration of Applicant's marks should not be refused on this basis.

CONCLUSION

The relevant factors strongly favor a finding that Applicant's "JAWS" and "JAWS DEVOUR YOUR HUNGER" marks are not likely to cause confusion with the cited registration for "JAWS." Applicant therefore respectfully requests that the Board grant this Ex Parte Appeal and allow for the registration of the "JAWS" and "JAWS DEVOUR YOUR HUNGER" marks.

Respectfully submitted,

Anne Marie Bossart

Dated: May 14, 2015

Anne Marie Bossart
Attorney for Applicant
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
212-504-6000