

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

House of Blues Brands Corp.,	§	
	§	Serial No.: 75/342,413
Opposer,	§	
	§	
v.	§	Mark: HOUSE OF SOUL
	§	
Sylvia Woods, Inc.	§	
	§	Opposition No. 117,309
Applicant	§	

OPPOSER'S REPLY BRIEF

Opposer, House of Blues Brands Corp., submits this Reply Brief in response to Applicant's pro se "Brief" filed on February 10, 2003.

Even though Applicant is proceeding *pro se*, its brief should be completely regarded because it has nothing to say that even touches on the merits of the case. Moreover, the factual allegations in the Brief (even if they were relevant) have to be disregarded because they are not supported by any evidence properly made of record, nor have they even been submitted as a sworn statement. Although the Board has some discretion not to strictly enforce all evidentiary and procedural rules against a *pro se* litigant, surely the Board ought not entertain unverified factual allegations in a meandering letter brief filled with spiteful and irrelevant slights against Opposer.

Applicant focuses on the long existence and fame of its "Sylvia's" restaurant in Harlem. This has never been disputed, nor is it relevant to this proceeding. The issue is whether Applicant's proposed HOUSE OF SOUL mark can be considered confusingly similar to Opposer's world famous HOUSE OF BLUES mark for essentially the same services, with any doubt being resolved in favor of Opposer as the prior registrant. Of course, Applicant is free to revert to its long-standing use of Sylvia's, rather than "HOUSE OF SOUL." Opposer has no

complaint about Applicant's long-standing "SYLVIA'S" service mark apart from "HOUSE OF SOUL."

The author of Opposer's "Brief," Mr. Woods, states that he "know[s] the difference between House of Blues, House of Soul, House of Ill repute, House of Prayer and House of Worship." However, there is nothing in the statement to indicate that Mr. Woods is using any of those phrases other than in their common descriptive or generic sense. As shown in Opposer's Brief and the evidence relied on therein, "HOUSE OF BLUES" is highly distinctive of Opposer's restaurant services and related services by virtue of Opposer's lengthy, continuous, extensive and high-profile use and promotion of HOUSE OF BLUES, which is widely recognized by the American public as being one of the three major "themed restaurant" chains in the United States, alongside Hard Rock Café and Planet Hollywood. Mr. Woods' statement has no bearing on any issue in this proceeding.

Mr. Woods states that Opposer is attempting to "highjack" an aspect of African American culture in the United States. This is demonstrably untrue. Opposer claims strong service mark and trademark rights in HOUSE OF BLUES, and contends that the use of "HOUSE OF SOUL" as a service mark for restaurant-related services would be confusingly similar to Opposer's mark, thereby injuring and damaging Opposer. Opposer does not contend that no one else can use "HOUSE OF SOUL" in its purely descriptive or generic sense, just as the public continues to have the right to use "house of ill repute," in its purely generic sense.

The record in this case is very clear. Mr. Woods himself admitted in signing the Applicant's answers to Opposer's interrogatories, that he got the idea to use "HOUSE OF SOUL" for a new restaurant after a visit to Opposer's world famous "HOUSE OF BLUES" restaurant and night club chain. There is absolutely no doubt that Applicant's mark represents an

attempt to trade on the substantial good will that Opposer has built up in the famous name “HOUSE OF BLUES” over the last decade. Moreover, there is no evidence in the record that any third party is currently using, or has used in the past, “HOUSE OF ROCK,” “HOUSE OF JAZZ,” or any other “HOUSE OF [musical genre]” as a service mark for a restaurant or a chain of restaurants. In other words, Opposer’s HOUSE OF BLUES mark is strong, not weak. Moreover, there is no evidence that the public needs to be able to use “HOUSE OF [musical genre]” as any type of service mark for restaurant-related services.

Opposer submits that this case is beyond doubt—Opposer’s mark is famous, and Applicant’s proposed use of HOUSE OF SOUL is likely to cause confusion. But even if there is any doubt after consideration of all the evidence relied on by Opposer, in view of the Office’s venerable rule (long embraced by the Courts) that all doubts are to be resolved in favor of the registrant, there is only one way to decide this case—in favor of Opposer.

Respectfully submitted,

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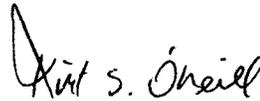
ATTORNEYS FOR OPPOSER,
HOUSE OF BLUES BRANDS CORP.

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing was sent via certified mail, return receipt requested, to:

Van D. Woods
SYLVIA WOODS, INC.
512 Alane St.
Lake City, SC 29560
United States

on this 27th day of February, 2003.



KIRT S. O'NEILL

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class mail in an envelope addressed to: Box TTAB NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Name of Person Signing Certificate: Kyra M. Lloyd

Signature: *Kyra M. Lloyd*

Date of Mailing: February 27, 2003



03-03-2003

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Respectfully submitted,

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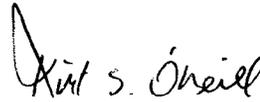
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Signature: Kyra M. Lloyd

Date of Mailing: February 27, 2003

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February 27, 2003

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Re: House of Blues Brands Corp. v. Sylvia Woods, Inc.
Opposition No. 117,309
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U.S. Trademark Application Serial No. 75/342,413
Our Reference No. 064163.0044

Dear Madam:

Enclosed please find the following for filing in the above identified matter:

1. Opposer's Reply Brief (Original and 2 copies); and
2. An Acknowledgment Postcard.

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment in any fees to Deposit Account No. 01-0477.

Sincerely,

Kirt S. O'Neill

Enclosures

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