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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as EXPRESS MAIL # EL 900473212US in an Express Mail envelope addressed to: **Assistant Commissioner for Trademarks, BOX T.T.A.B. FEE, 2900 Crystal Drive, Arlington, VA 22202-3513**, on March 22, 2002, by:

June B. Swann

In the matter of Application Serial No. 76/036,463, published on November 27, 2001, in the Official Gazette at TM 93

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

H-D MICHIGAN, INC.,)
)
Opposers,)
)
vs.)
)
DENNIS JAMES MODICA,)
)
Applicant.)

Opposition No. _____

Mark: HOG WILD HOGS

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NOTICE OF OPPOSITION

Opposer H-D Michigan, Inc., a Michigan Corporation having a principal place of business in Ann Arbor, Michigan, believing that they will be damaged by Applicant's registration of the trademark "HOG WILD HOGS" for use in connection with "electronic publications, namely, magazines featuring world-class custom, vintage and classic motorcycles; electronic publications, namely, magazines featuring world-class builders, designers and collectors" in International Class 9; "computerized on-line retail services in the field of motorcycles, parts, and services, apparel; dissemination of advertising in the form of classified ads for others via a global computerized network" in International Class 35; and "providing a

web site featuring articles on various topics relating to custom, vintage and classic motorcycles” in International Class 39, shown in U.S. Trademark App. Ser. No. 76/036,463, published in the Official Gazette, Vol. 1252, No. 4, dated November 27, 2001 (TM 93), hereby opposes same.

As grounds for this opposition, Opposers allege the following:

1. Opposer H-D Michigan, Inc., together with its predecessors-in-interest, successors-in-interest, and affiliated entities (collectively referred to hereinafter as “Harley-Davidson”) have for many years been engaged, in interstate commerce, in the business of manufacturing, distributing, and selling its famous line of HARLEY-DAVIDSON motorcycles, as well as motorcycle parts and accessories, apparel, and other motorcycle-related products and services, including but not limited to the publication of newsletters relating to motorcycling.

2. For many years, and since long before Applicant commenced use of the mark herein opposed, Harley-Davidson has used, and continues to use, various trademarks incorporating the word “HOG,” together with other word and design elements, in interstate commerce throughout the United States in connection with the sale of a wide variety of goods and services, including but not limited to newsletters, books, and magazines relating to motorcycling.

3. Harley-Davidson owns the following registrations for marks incorporating the word “HOG” (collectively the “HOG Marks”) on the Principal Register of the United States Patent and Trademark Office; all right, title and interest in the marks shown therein; and all of the business and goodwill represented thereby:

Mark	Registration No.	Goods and Services
HOG HARLEY OWNERS GROUPS (and design)	Registration No. 1,455,826, issued September 1, 1987	Motorcycle club services in International Class 42.
HOG TALES	Registration No. 1,477,667, issued February 23, 1988	Newsletter relating to motorcycling in International Class 16.
HOG (and design)	Registration No. 1,483,313, issued April 5, 1988	Motorcycle parts, namely, timer covers, derby covers, and gas cap medallions in International Class 12.
HOG (and design)	Registration No. 1,534,200, issued April 11, 1989	Clocks, watches, pins, necklaces, rings, bracelets, charms and tie tacks in International Class 14; Pens, mechanical pencils, paper banners and road atlases in International Class 16; Wall plaques in International Class 20; T-shirts, caps, sweatshirts, jackets, sweatpants and shirts in International Class 25; Embroidered patches and belt buckles in International Class 26.
HOG	Registration No. 1,599,492, issued June 5, 1990	Motorcycle parts, namely, timer covers, derby covers and medallions in International Class 12.
HOG LADIES OF HARLEY (and design)	Registration No. 1,710,643, issued August 25, 1992	Paper banners relating to motorcycling in International Class 16; Shirts, sweatshirts, t-shirts, caps, and vests in International Class 25; and

<u>Mark</u>	<u>Registration No.</u>	<u>Goods and Services</u>
		Embroidered patches in International Class 26.
HOG HARLEY OWNERS GROUP (and design)	Registration No. 1,710,653, issued August 25, 1991	<p>Folding knives and knife cases in International Class 8;</p> <p>Greeting cards, road atlases, posters, calendars, paper banners relating to motorcycling, playing cards, decals, note paper, pens, pencils, and checkbook covers and holders, newsletters, books, and magazines relating to motorcycling in International Class 16;</p> <p>Drinking steins, beverage glassware, mugs, cups, insulated can holders, leather can, glass and mug holders, commemorative plates, non-electric toothbrushes, quencher cups, and figurines made of ceramic, porcelain and glass in International Class 21;</p> <p>Flags and banners not of paper in International Class 24;</p> <p>Clothing; namely, shirts, sweatshirts, T-shirts, caps, hats, jackets, vests, socks, shoes, boots, scarves, belts, sweat pants, pants, bandanas, gloves, suspenders, chaps, rainsuits, and mittens in International Class 25;</p> <p>Belt buckles not of precious metal, ornamental lapel badges not of precious metal and embroidered patches in International Class 26; and</p> <p>Cigarette lighters, cigarette cases not of precious metal, and holders for cigarette lighters not of precious metal in International Class 34.</p>

<u>Mark</u>	<u>Registration No.</u>	<u>Goods and Services</u>
HOG	Registration No. 1,716,992, issued September 15, 1992	<p>Metal badges, figurines made of metal in International Class 6;</p> <p>Folding knives, sport knives, and knife cases in International Class 8;</p> <p>Clocks, watches, jewelry of precious and non-precious metal, namely, pins, charms, earrings, bracelets, necklaces, and rings; ornamental lapel pins; ashtrays, cigarette cases and holds of cigarette lighters of precious metals; belt buckles of precious metal in International Class 14;</p> <p>Greeting cards, road atlas, posters, calendars, newsletters, books and magazines relating to motorcycling, paper banners relating to motorcycling, playing cards, decals, note paper, pens and pencils, checkbook clutches in International Class 16;</p> <p>Drinking steins; glassware, namely, plates, cup saucers, glasses and other containers for food and beverage; mugs, cups, insulated can holders, commemorative plates, toothbrushes, quencher cups and figurines made of ceramic, porcelain and glass; leather can, glass and mug holders in International Class 21;</p> <p>Flags and banners not of paper in International Class 24;</p> <p>Clothing, namely, shirts, sweatshirts, t-shirts, caps, hats, jackets, vests, socks, shoes, boots, scarves, belts, sweatpants, pants, bandanas, gloves, suspenders, chaps, rainsuits, and mittens in International Class 25;</p>

<u>Mark</u>	<u>Registration No.</u>	<u>Goods and Services</u>
		<p>Belt buckles not of precious metals, ornamental pins and embroidered patches for clothing in International Class 26;</p> <p>Ashtrays, cigarette cases and holders of cigarette lighters not of precious metal; cigarette lighters in International Class 34.</p>
HOG (and design)	Registration No. 1,810,475, issued December 14, 1993	<p>Sport knives and knife cases in International Class 8;</p> <p>Mugs, cups, insulated can holders in International Class 21;</p> <p>Flags and banners not of paper in International Class 24; and</p> <p>Cigarette lighters not made of precious metal in International Class 34.</p>
HOG CLUB	Registration No. 1,958,775, issued February 27, 1996	Sandwiches in International Class 30.
HOG LADIES OF HARLEY (and design)	Registration No. 2,084,703, issued July 29, 1997	Clocks, watches, jewelry of precious and non-precious metal, namely, ornamental lapel and hat pins, charms, earrings, bracelets, necklaces and rings in International Class 14.
HARLEY HOG	Registration No. 2,118,685, issued December 9, 1997	Sandwiches in International Class 30.
HOG HARLEY OWNERS GROUP (and design)	Registration 2,305,867, January 4, 2000	Jewelry in International Class 14.
HOG TIES	Registration No. 2,386,246, issued September 12, 2000	Tie down straps for motorcycles in International Class 22.

4. These registrations for the HOG Marks remain valid, subsisting and uncancelled, and Registration Nos. 1,455,826; 1,477,667; 1,483,313; 1,534,200; 1,599,492; 1,710,643; and 1,716,992 have become incontestable by virtue of long and continuous use.

5. Ever since its adoption and use of the HOG Marks, Harley-Davidson has extensively advertised, distributed and sold goods bearing the HOG Marks. As a consequence, the consuming public and the trade have come to recognize, and do recognize, the HOG Marks as being used by Harley-Davidson or by a single source, and to associate and identify goods sold under the HOG Marks with Harley-Davidson or with a single source. Harley-Davidson derives substantial goodwill and value from this identification by the consuming public and the trade.

6. By the application herein opposed, Applicant Dennis James Modica (“Applicant”) seeks to register the mark “HOG WILD HOGS” on the Principal Register for use in connection “electronic publications, namely, magazines featuring world-class custom, vintage and classic motorcycles; electronic publications, namely, magazines featuring world-class builders, designers and collectors” in International Class 9; “computerized on-line retail services in the field of motorcycles, parts, and services, apparel; dissemination of advertising in the form of classified ads for others via a global computerized network” in International Class 35; and “providing a web site featuring articles on various topics relating to custom, vintage and classic motorcycles” in International Class 39 (“HOG WILD HOGS Mark”).

7. Applicant’s HOG WILD HOGS Mark is confusingly similar in sight, sound, meaning and commercial impression to Harley-Davidson’s HOG Marks, and the goods and

services identified in the subject application for the HOG WILD HOGS Mark are closely related to the goods and services sold under Harley-Davidson's registered HOG Marks.

7. The HOG WILD HOGS Mark, when used in connection with Applicant's goods and services as identified in the subject application, so resembles Harley-Davidson's previously registered and used HOG Marks as to be likely to cause confusion, to cause mistake, and/or to deceive, with consequent injury to Harley-Davidson, the public, and the trade.

8. Upon information and belief, Applicant's adoption and use of its HOG WILD HOGS Mark on or in connection with the sale of goods and services highly similar to the goods and services Harley-Davidson sells under its HOG Marks, as heretofore alleged, was intentionally done with a view and purpose of trading on and pirating away the substantial reputation and goodwill associated with Harley-Davidson's HOG Marks. Upon information and belief, Applicant adopted the confusingly similar designation "HOG WILD HOGS" in order to give his goods and services purchaser appeal and salability that such products would not otherwise possess.

9. Opposer will be damaged by registration of Applicants' HOG WILD HOGS Mark in that a substantial portion of the purchasing public and/or the trade is likely to be confused or mistaken that Applicant's goods and services offered under the HOG WILD HOGS Mark originate from Harley-Davidson, or from the same source as goods and services sold under Harley-Davidson's HOG Marks, or that such products are sponsored by, endorsed by, or affiliated with the source of goods sold under Harley-Davidson's HOG Marks. Such likelihood of confusion results both in lost sales to Harley-Davidson and in damage to the goodwill among purchasers and the trade that the HOG Marks symbolize. Registration of Applicant's HOG

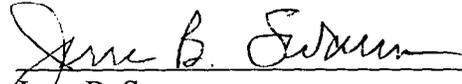
WILD HOGS Mark will support and assist Applicant in the confusing and misleading use of Applicant's Mark, and, in addition, will give color and exclusive statutory right to Applicant in violation and derogation of prior and superior rights of Harley-Davidson.

WHEREFORE, Harley-Davidson prays that registration of Application Serial No. 76/036,463 not be allowed.

A duplicate copy of this Notice of Opposition and the required fee are enclosed herewith. Please charge any deficiency or refund in the filing fee to Deposit Account No. 11-0860.

Please recognize as attorneys for Opposer, Jerre B. Swann, William M. Bryner, and the law firm of Kilpatrick Stockton LLP. Please address all correspondence to Jerre B. Swann at Kilpatrick Stockton LLP, 1100 Peachtree Street, Suite 2800, Atlanta, GA 30309-4530.

This the 22 day of March, 2002.



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