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March 21, 2005

VIA FEDERAL EXPRESS

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: **SBO Pictures, Inc. v. Wicked Corporation,**
Serial No. 76259784; Opposition No. 91160237

To Whom It May Concern:

Enclosed please find the original and one copy of the Declaration of Stephen R. Pappas in Support of Cause as to Why Default Judgment Should Not Be Entered in the above-referenced matter. Please return a filed-stamped copy of this document to us in the enclosed self addressed, stamped envelope. If you have any questions, please do not hesitate to contact my office.

Thank you for your assistance in this matter.

Very truly yours,



Stephen R. Pappas

SRP/nsm
Enclosures



04-12-2005

1 Stephen R. Pappas, Esq.
2 550 South California Avenue, Suite 320
3 Palo Alto, California 94306-1441
4 650/858-8400 - Telephone
5 650/858-8508 - Facsimile
6 California State Bar No. 158560

7 Attorney for Applicant
8 Wicked Corporation

9
10 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
11 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

12 SBO PICTURES, INC., d/b/a)
13 WICKED PICTURES, INC., a)
14 California corporation,)

15 Opposer,)

16 vs.)

17 WICKED CORPORATION, a)
18 California corporation,)

19 Applicant.)

Serial No. 76259784
Mark: WICKED
Opp. No. 91160237

DECLARATION OF STEPHEN R.
PAPPAS IN SUPPORT OF CAUSE AS
TO WHY DEFAULT JUDGMENT
SHOULD NOT BE ENTERED

20 I, Stephen R. Pappas, Esq., hereby declares as follows:

21 1. I am attorney for applicant Wicked Corporation in the
22 above-captioned matter.

23 2. An answer was due in the above-captioned matter on
24 December 31, 2004. At that time, a settlement agreement had been
25 agreed to in principle between opposer SBO Pictures, Inc. d/b/a
26 Wicked Pictures and applicant Wicked Corporation, in relation to
27 this matter and related matters. Opposer's counsel of record,
28 Leigh Ann Lindquist of Sughrue Mion, PLLC, on behalf of applicant
had prepared a proposed Settlement Agreement and forwarded it to
me. Applicant had executed the Agreement as of Defendant 30,
2004. All that remained to complete the Settlement Agreement was

1 obtaining the signature of Opposer.

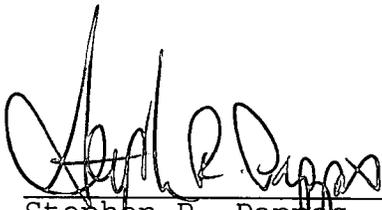
2 3. Opposer has now executed the Settlement Agreement. A
3 true and correct copy of the Settlement Agreement, known as a
4 "Coexistence Agreement," is attached hereto as Exhibit "A."

5 4. Pursuant to the Coexistence Agreement, this matter is
6 to be dismissed upon applicant's filing of an amendment to its
7 Trademark Application related to this matter. On March 17, 2005,
8 I mailed to the Commissioner of Trademarks the Amendment called
9 for in the Coexistence Agreement. A true and correct of this
10 Amendment and its Certificate of Mailing is attached hereto as
11 Exhibit "B."

12 5. Therefore, pursuant to the Coexistence Agreement,
13 rather than default judgment being entered against Wicked
14 Corporation, this matter should be dismissed.

15 I swear and affirm the foregoing is true and correct under
16 penalty of perjury pursuant to the laws of the United States and
17 the State of California.

18 Dated: March 21, 2005

19
20 By: 

21 Stephen R. Pappas, Esq.

22 Attorney For Applicant Wicked
23 Corporation
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COEXISTENCE AGREEMENT

This Agreement made this 30 day of December, 2004, by and between SBO PICTURES, INC., a California corporation, D/B/A WICKED PICTURES, and dba WICKED ("Wicked Pictures"), a California corporation with a business address of 9040 Eton Avenue, Canoga Park, California 91304 and Wicked Corporation ("Wicked Corporation") a California corporation with a business address of 530 Marina View, Belmont, California 94002.

WITNESSETH:

WHEREAS Wicked Pictures has adopted, used and registered various trademarks which comprise or include the term WICKED for various adult entertainment goods and services, and is the owner of many valid and subsisting United States Principal Register trademark registrations for various marks which comprise or include the term WICKED, which, among others, include the following:

Mark	Reg. No.	Goods/Services	Issue Date
WICKED PICTURES & design	2,322,871	Prerecorded videocassette tapes, compact disc-read only memory (cd-rom), digital video disc (dvd), featuring adult entertainment	Feb. 29, 2000
WICKED PICTURES	2,322,872	Magazines in the field of adult entertainment	Feb. 29, 2000
WICKED PICTURES & design	2,322,873	Motion picture studio	Feb. 29, 2000
WICKED PICTURES & design	2,322,874	On-line ordering services featuring adult novelties and entertainment products Computer services, namely, providing on-line via a global computer network magazine articles in adult entertainment providing an on-line global computer website featuring adult entertainment graphics, pictures, and photos	Feb. 29, 2000
WICKED	2,473,950	Gels for use as personal lubricant Personal vibrators; sexual aids, namely, devices for massaging and stimulating the genitals, anus and other parts of the body; devices for aiding in copulation and masturbation, namely, reproductions of the parts of the male and female anatomy; pumps; stimulators; body prostheses Adult sexual novelties, namely, dolls,	July 31, 2001

Mark	Reg. No.	Goods/Services	Issue Date
WICKED PICTURES & design	2,428,693	Clothing, namely shirts, t-shirts, hats, caps, jackets, coats	Feb. 13, 2001
WICKED RECORDINGS	1,952,667	Audio recording and production	Jan. 30, 1996
WICKED COOL MALL	2,076,923	Computerized on-line retail services in the field of adult novelty items	July 8, 1997
WICKED	2,378,785	Audio-visual and motion picture goods featuring adult entertainment, namely, prerecorded video cassette tapes, compact disc-read only memory (CD- ROM), and digital video disc (DVD)	Aug. 22, 2000
WICKED	2,551,490	On-line ordering services featuring adult entertainment goods and services Providing an on-line global computer website featuring adult entertainment graphics, pictures, photos, and audio- visual works Computer services, namely, providing on-line via a global computer network magazine articles in adult entertainment	March 26, 2002

WHEREAS, Wicked Corporation has filed the following pending trademark

applications:

Mark	Serial No.	Goods/Services	Filing Date
WICKED (stylized)	76/259,781	Tattoo and body piercing services	May 21, 2001
"WICKED" (stylized)	76/259,782	Retail outlets featuring clothing	May 21, 2001
WICKED	76/259,784	Tobacco accessories, namely, smoking rolling papers, smoking pipes, tobacco Grinders, Hookahs, paper dispenser and tobacco holders and lighters not of precious metal	May 21, 2001

Mark	Reg. No.	Goods/Services	Issue Date
		genital replica toy figures, and promotional game cards	
WICKED NEWS	2,274,335	Newspaper, journal or newsletter with articles and graphics in the field of adult entertainment	Aug. 31, 1999
WICKED PICTURES	2,459,144	Motion picture film production	June 12, 2001
WICKED PICTURES	2,475,020	Electronic publications downloadable from an online computer website, namely, magazine articles, pictures, photographs, and graphic images in the field of adult entertainment	Aug. 7, 2001
		On-line ordering services featuring adult novelties and entertainment products	
		Entertainment services, namely, providing an on-line computer website featuring adult entertainment graphics, pictures and photos	
WICKED PICTURES	2,408,286	Prerecorded videocassette tapes, compact disc-read only memory (cd-rom), digital video disc (dvd), featuring adult entertainment	Nov. 28, 2000
WICKEDWEB	2,551,470	On-line ordering services featuring adult novelties and entertainment goods and services	March 26, 2002
		Providing an on-line global computer website featuring adult entertainment graphics, pictures, photos, and audio-visual works	
		Computer services, namely, providing on-line via a global computer network magazine articles in adult entertainment	

and,

WHEREAS, Wicked Pictures has filed oppositions against the registration of the marks in Serial Nos. 76/259,781, 76/259,784, and 76/259,782, and,

WHEREAS, the parties wish to avoid the possibility of conflict and resolve the issues without the need for opposition proceedings,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

- (1) Wicked Corporation agrees that its use of the WICKED mark for the above-identified goods/services does not include any use in connection with adult entertainment goods and/or services. Wicked Corporation, within twenty days from the date of the last signature to this agreement, or as soon thereafter is reasonably practicable, will file amendments in the United States Patent and Trademark Office, requesting that its applications for registration of its WICKED marks, Serial Nos. 76/259,781; 76/259,784; and 76/259,782, be amended to read as follows, respectively: "Tattoo and body piercing services not offered in retail stores or at trade shows featuring goods or services in the field of adult entertainment" and "Tobacco accessories, namely, smoking rolling papers, smoking pipes, tobacco Grinders, Hookahs, paper dispenser and tobacco holders and lighters not of precious metal, not offered in retail stores or at trade shows featuring goods or services in the field of adult entertainment" and "Retail outlets featuring clothing, excluding retail stores and trade shows featuring goods or services in the field of adult entertainment". As filed copies of the amendments will be forwarded to Wicked Pictures.
- (2) The parties to this Agreement agree that, if the United States Patent and Trademark Office declines to accept any of the amendments detailed in paragraph (1), the parties will work with one another to find an acceptable amendment to the identification of goods and/or recitation of services.
- (3) Wicked Corporation agrees not to exhibit, market or sell any of its goods and/or services, as identified in US Trademark Application Nos. 76/259,782; 76/259,784; and 76/259,281, in the adult entertainment market and/or through adult entertainment channels of trade and distribution. "Adult entertainment market" and "adult entertainment channels of trade and distribution" shall include any publication (both online and print), convention, wholesaler, distributor or retail store that features goods and/or services such as any media depicting full and/or partial nudity, and/or sex acts,

actual or simulated, intended for adults only; erotic art; vibrators; dildos; personal lubricants; sexual aids; erotic clothing; condoms; adult cabarets and night clubs; in an amount equal to or greater than 25% of all materials depicted in such publication, or in an amount equal to or greater than 25% of the total square footage of the display space at such convention, by such wholesaler or distributor, or in such retail store.

- (4) Wicked Corporation agrees that it will not adopt any mark which includes or comprises WICKED or variations thereof for goods and/or services in the field of adult entertainment. "Adult entertainment" shall be defined as any publication (both online and print), convention, wholesaler, distributor or retail store that features goods and/or services such as any media depicting full and/or partial nudity, and/or sex acts, actual or simulated, intended for adults only; erotic art; vibrators; dildos; personal lubricants; sexual aids; erotic clothing; condoms; adult cabarets and night clubs; in an amount equal to or greater than 25% of all materials depicted in such publication, or in an amount equal to or greater than 25% of the total square footage of the display space at such convention, by such wholesaler or distributor, or in such retail store.
- (5) Wicked Corporation further agrees not to object to Wicked Pictures' use and/or registration of the mark WICKED or WICKED PICTURES or any WICKED variant for any goods and/or services other than in the areas of tattoo and body piercing services (not including the sale of temporary tattoos), retail smoking supplies outlets, and tobacco accessories (not including cigars).
- (6) Wicked Corporation agrees that it will not object to Wicked Pictures' use of the Wicked Pictures logo, as depicted in Exhibit A, on or in connection with cigars.
- (7) Wicked Pictures agrees that it will not object to or otherwise challenge any use or registration of the WICKED mark for tattoo services; smoking articles; or retail store services so long as the use is limited as stated in the preceding paragraphs and so long as Wicked Corporation's descriptions of goods/services in its WICKED applications are amended to exclude goods and/or services in the field of adult entertainment and related trade shows as indicated in numbered paragraph (1) of this Agreement.
- (8) In the event of any perceived conflict or likelihood of conflict between the parties concerning Wicked Corporation's WICKED marks or Wicked Pictures' WICKED marks, the party so perceiving shall notify the other party, and each of the parties shall make a good faith effort to resolve such conflict through negotiation.

The parties agree that this Agreement shall be effective worldwide and shall be binding, valid and enforceable against, and the benefits thereof shall inure to, their successors, licensees, assigns, and parties in privity with them now and in the future, as well as other parties under their control validly exploiting the trademarks and designated as such. Such designations shall be made as required by circumstances.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first set forth above

SBO PICTURES, INC., a California corporation, D/B/A WICKED PICTURES, and dba WICKED

By: Steve Orenstein
Name: [Signature]
Title: President
Date: 2-25-05

WICKED CORPORATION

By: Nasser Zahrin
Name: [Signature]
Title: President
Date: 12.30.04

EXHIBIT A



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Applicant: Wicked Corporation
Mark: WICKED
Serial No.: 76/259784

TM Law Office 115
Examining Attorney Curtis French

Amendment to Description of Goods

Commissioner of Patents and Trademarks
Washington, D.C. 20231

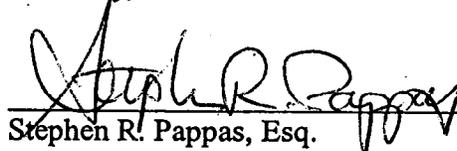
Dear Examining Attorney:

Applicant respectfully requests that the Commissioner amend applicant's description of goods provided under the WICKED mark. The current description is "Tobacco accessories, namely, smoking rolling papers, smoking pipes, tobacco Grinders, Hookahs, paper dispenser and tobacco holders and lighters not of precious metal." Applicant amends this description to "Tobacco accessories, namely, smoking rolling papers, smoking pipes, tobacco Grinders, Hookahs, paper dispenser and tobacco holders and lighters not of precious metal, *not offered in retail stores or at trade shows featuring goods or services in the field of adult entertainment.*" For clarity, the amendment is italicized.

Applicant limits this amendment according to 37 C.F.R. §2.173(b), which provides that amendments may be made to the identification of services to restrict its identification. By making this amendment, no services are added and the mark remains unchanged.

If I can assist further in any way, please do not hesitate to contact me.

Sincerely,



Stephen R. Pappas, Esq.
(650) 858-8400 TEL; (650) 858-8410 FAX
sportlaw1@aol.com

SP/

cc: Leigh Ann Lindquist, Esq., Sughrue Mion PLLC

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with postage prepaid in an envelope addressed to:
Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on the date shown below:

Stephen R. Pappas
(Signature)

Stephen R. Pappas
(Printed Name of Person Signing Certificate)

3/17/05
(Date)

PROOF OF SERVICE

1 I am employed in the County of Santa Clara, State of
2 California. I am over the age of eighteen years and not a party
3 to the within action; my business address is 550 South California
4 Avenue, Suite 320, Palo Alto, California 94306-1441. On March
5 21, 2005, I served the foregoing documents described as

6 **DECLARATION OF STEPHEN R. PAPPAS IN SUPPORT OF CAUSE AS TO WHY
7 DEFAULT JUDGMENT SHOULD NOT BE ENTERED**

8 on the following interested party(s) in said cause:

9 Leigh Ann Lindquist, Esq.
10 SUGHRUE MION, PLLC
11 2100 Pennsylvania Avenue, N.W.
12 Washington, D.C. 20037-3213

13 **[X] VIA MAIL -- CCP §§1013(a), 2015.5:**

14 By placing a true copy thereof enclosed in a sealed
15 envelope(s), addressed as above, and placing each for
16 collection and mailing on that date following ordinary
17 business practices. I am readily familiar with my firm's
18 business practice of collection and processing of corres-
19 pondence for mailing with the United States Postal Service
20 and correspondence placed for collection and mailing would
21 be deposited with the United States Postal Service at Palo
22 Alto, California, with postage thereon fully prepaid, that
23 same day in the ordinary course of business.

24 **[] VIA FACSIMILE -- CCP §§1013(e), 2015.5, CRC 2008:**

25 By arranging for facsimile transmission from facsimile
26 number 650/858-8508 to the above-listed facsimile number(s)
27 prior to 5:00 p.m. I am readily familiar with my firm's
28 business practice of collection and processing of corres-
pondence via facsimile transmission(s) and any such corres-
pondence would be transmitted in the ordinary course of
business. The facsimile transmission(s) was reported as
complete and without error, and a copy of the transmission
report is attached.

I declare under penalty of perjury under the laws of the
State of California that the foregoing is true and correct, and
that this declaration was executed on March 21, 2005, at Palo
Alto, California.



Nancy Sue MacDonald