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

Proceeding	91177036
Party	Defendant Mujahid Ahmad
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1 AHMAD

2 everything. You take them to qualify them and everything
3 and you find out they cannot get the loan. So that's how
4 everything stops and you can't do anything after that.
5 You almost did everything.

6 Q. Do you have any other examples?

7 A. Well, the examples are so many, but, I mean, this
8 is one example. The second example, again, they want to
9 take equity from the house and they thought the house
10 value more than what it is at the moment.

11 So when we run the comparable market analysis, we
12 tell them what the value is, when they pay to appraisal,
13 the value comes out to be low and they cannot get the
14 money. So once again, they cannot buy a house to put a
15 down payment on another house or buy another property.

16 Q. Do you have any specific recollection of what
17 services you provided to Mr. Danish?

18 A. Well, I cannot remember all of them, but some of
19 them, yes. I would say I helped them to refinance the
20 house. They want to take out the equity from the house
21 and use that money, I mean, to, let's say, I believe pay
22 off credit cards or do some other stuff with their money.
23 So I don't go usually in details what they want to do with
24 the money. My job is to ask them how much money they need
25 if they can get the money.

AHMAD

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2 Q. When you say that, you're referring to Mr. Danish
3 and his family?

4 A. I believe so, yeah.

5 Q. Do you recall when you provided these services to
6 Mr. Danish?

7 A. No, sir; I don't.

8 Q. Do you have any recollection of what services you
9 provided to Mr. Ahmed U. Sayed?

10 A. Once again, I can't tell you exactly what I did
11 for him. But, yes, I help him to search for the houses.
12 He wanted to buy a house and I took him to multiple
13 locations in Washington, D.C., Virginia and Maryland to
14 show him different listings and everything. And then
15 somehow later on either he change his mind or he was not
16 qualified. I don't know.

17 Q. Do you remember when you provided these services
18 to Mr. Sayed?

19 A. No, sir; I don't.

20 Q. Can you please tell me what services you provided
21 to Shafiq Ahmad?

22 A. Once again, I cannot recall everything that I did
23 for him, but I also helped him to buy a house,
24 prequalified him and bought him the house. And then after
25 that, I also helped him to rent that property.

1 AHMAD

2 Q. When you say "you helped him to rent the
3 property," what specifically are you referring to?

4 A. Yeah, because the house that I brought to him, he
5 didn't want to live there. It was investment property and
6 I rented that for him while he was in another house.

7 Q. Do you recall when you provided these services to
8 Mr. Ahmad?

9 A. No, sir. I have to double check the dates and
10 everything. I'm not sure about that.

11 Q. Do you recall what services you provided to Abid
12 Hussain?

13 A. Once again, I don't know everything that I did
14 for him. But yes, he contacted me and I met with him and
15 I ask him what his needs were and what he wanted, I mean,
16 in a real estate. So he was having condominium that he
17 wanted to sell and one occasion I help him with his
18 condominium.

19 And also I helped him buy a house. I
20 prequalified him. I check his credit scores and
21 everything. I also manage the property for him after
22 that. So whatever was wrong with the house, I fix it at
23 the moment. He was having some kind of internal problems
24 after he bought the property.

25 Q. Did he pay you for these services?

AHMAD

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2 A. No, sir.

3 Q. Do you recall when you provided these services to
4 Mr. Hussain?

5 A. No, sir. I have to check the document to see
6 when I provided.

7 Q. Do you recall what services you provided to Abdul
8 Haq?

9 A. Once again, I cannot recall everything, but I
10 will tell you what I can recall. He was interested to buy
11 a property too. At the moment he was living in apartment
12 and I helped him and his wife to show them different
13 properties, condominium, single family house, townhouse,
14 but somehow later on either they change their mind or they
15 were not qualified.

16 Q. When was this?

17 A. I don't recall the exact dates.

18 Q. What services did you provide Zulkihar Shariefff
19 using the NationStar mark?

20 A. Okay. Once again, I mean, he came to me -- all
21 of these clients that I discussed earlier with you that I
22 told you what I did for them, I mean, it's not hundred
23 percent what I did for them. I did more than whatever I
24 told you. I'm just telling you what I remember. All
25 these clients came to me under the name of NationStar

AHMAD

1 Mortgage.

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3 In case of Mr. Sharieff, he came to me and he
4 wanted to sell his property, so I help him, I mean, to
5 sell his property for him. And also before selling the
6 property, I told him what contractor would be best to fix
7 up the house, remodel his kitchen, change his window,
8 repaint the house, fix the basement, change all the
9 appliance and everything, dryer, washer, everything, and
10 then I was able to sell that house.

11 Q. Was there a sign in the front yard of the house
12 that had your name on it when you were the selling agent?

13 A. I'm not sure, sir.

14 Q. Do you know if there was a sign in the front of
15 the house that had NationStar on it when you were the
16 selling agent?

17 A. I'm not sure, sir.

18 Q. Do you know if you ever put a sign in front of
19 any house that you were selling agent for that had
20 NationStar on it prior to the filing of your application?

21 A. I believe so, yeah.

22 Q. Which house, do you know?

23 A. No, I don't know which house. So many houses, I
24 mean, I cannot remember.

25 Q. Do you remember what services you provided to

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2 Maria Leon?

3 A. Once again, I don't remember everything, but she
4 was the one that she wanted to buy a house on one occasion
5 and she also wanted to sell her house and I helped her,
6 prequalified her, tell her what the payment option would
7 be, how much the payment would be, how much insurance
8 would be.

9 I showed her different houses in Washington, D.C.
10 and also in Maryland and somehow at that moment when she
11 was trying to buy the house, it was not a good deal for
12 her because I told her that she should stay in the house
13 because her payment is low. If she buy the house, I mean,
14 it would be too expensive for her to afford that house.

15 Q. Do you recall when this was?

16 A. No, sir; I don't.

17 Q. Do you remember what services you provided Samer
18 Ramadan?

19 A. Yeah. Once again, I don't know everything, but I
20 will tell you what I remember. And that client, I
21 believe, he came to me from time to time. He wanted to
22 buy a house on one occasion, then he change his mind, and
23 I helped him to qualify, I mean, for the loan.

24 And I also helped him, showed him multiple
25 houses. I took him around multiple times to show

AHMAD

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2 different houses and at last he chose one, and I helped
3 him to buy that house. And I also, I mean, once I bought
4 the house after that, then I helped him to remodel the
5 whose house and changing the ceiling, changing the walls,
6 interiors everything, changing the kitchen and everything.

7 Q. Do you know when this was?

8 A. No, sir; I don't.

9 Q. Do you know what services you provided Muhammad
10 Shah?

11 A. Once again, I mean, I don't know the whole
12 services that I provide to him, but, I mean, he was also
13 interested to buy a house and wanted house or condominium
14 to see what was the best choice for him, and I showed him
15 multiple houses. I tried to buy him a house in his name
16 or his wife name, but somehow the deal did not go through
17 because he either change his mind or he was not qualified.

18 Q. Do you know when this was?

19 A. No, sir; I don't.

20 Q. Do you know what services you provided Hameed
21 Khan?

22 A. Once again, that's a client that I helped him to
23 buy a house and also prequalify him, told him what was the
24 best place to buy based on his needs, and he wanted to buy
25 a single family house for his kids and everything and

1 AHMAD

2 that's what I helped him to prequalify him and get
3 insurance for him and hazard insurance and try to save him
4 PMI, which is Private Mortgage Insurance. And I was able
5 to buy that house for him.

6 Q. Do you know when this was?

7 A. No, sir; I don't.

8 Q. Did you act as the insurance broker on the
9 transaction?

10 A. Once you do a real estate transaction, you don't
11 have to act as an insurance broker or insurance agent.
12 You provide insurance services in conjunction with real
13 estate transaction.

14 Q. Do you have any specific knowledge as to how the
15 people we just discussed may have encountered the
16 NationStar mark?

17 A. Through word of mouth, I mean, through referrals,
18 through business cards, someone told them that I'm in the
19 business of real estate.

20 Q. Someone told them that Mr. Ahmad was in the
21 business of real estate?

22 A. That I was the guy if they wanted to buy a house,
23 that house, or do anything associated with real estate
24 business. Because some of these people they don't have
25 any clue, nothing, how to buy a house, sell a house, how

1 AHMAD

2 to rent a house, so they came to me and I did whatever I
3 could for them.

4 Q. Do you have any other knowledge of how they would
5 have encountered your NationStar mark?

6 A. No, sir; I don't.

7 Q. Do you typically bring your clients to your home
8 office?

9 A. Sometime I do. Sometime I call them and I go to
10 their place of house or place of business, whatever they
11 are, because my service is I want to go talk to them in a
12 place where they feel comfortable.

13 Q. Is there any signage at your house that promotes
14 NationStar?

15 A. No, sir.

16 Q. Do you ever meet with your client at First
17 American?

18 A. No, sir.

19 Q. What exactly is your relationship with First
20 American as an agent?

21 A. I'm an independent contractor with them.

22 Q. What specific services does First American
23 provide to you as an agent for them?

24 A. They do not provide any services.

25 Q. Do they provide you with advertising on their

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website?

A. No, sir.

Q. Do they provide you with any kind of advertisement materials?

A. No, sir.

Q. Why do you need to be associated with First American?

A. It's Commonwealth law, you can ask them. It's Commonwealth of Virginia law to be associated with brokerage.

Q. What function does the real estate broker First American serve in your transactions?

A. Most of the time I did my closing there because they have a title company, settlement company.

Q. A separate settlement company that's separate from the brokerage operation?

A. It's a part of First American Real Estate.

Q. So you would do your settlements in their offices?

A. I tell my client if he has his own settlement company, they do it there. If not, then I give them a choice if they would like to use this one. So whatever they choose, it's up to them, my clients.

Q. Does First American serve any other function?

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2 A. I'm not sure.

3 Q. Does being an agent of First American entitle you
4 to use of the MRIS system?

5 A. No, sir. I have to pay my own MLS fees and
6 everything.

7 Q. Does being an agent of First American Real Estate
8 entitle you to be a member of the Northern Virginia Real
9 Estate Association?

10 A. As long as I'm a real estate agent, I can join
11 any -- if I have a license in any state, I can join any
12 state; let's say, NVAR, or if I'm in D.C. or Maryland, I
13 can join GCAR, which is Greater Capital Area of Realtors.
14 And if I don't want to join, I don't have to join.

15 Q. So you have a choice?

16 A. That's right. I have a choice. All realtors are
17 not member of any associations. Most of them are but not
18 all of them.

19 Q. Have you ever been contacted by any entity other
20 than my client concerning your use of the NationStar mark?

21 A. In what sense?

22 Q. Has anyone ever asked you to cease and desist use
23 of the mark?

24 A. The NationStar mark?

25 Q. Yes.

AHMAD

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2 A. No, sir.

3 Q. Has anyone ever --

4 A. I never received any letter to cease and desist,
5 no; not even from your client. The only time I, I mean,
6 receive document was from your office saying that you are
7 representing the opposer.

8 Q. And does that include the domain names as well?

9 A. Your office sent me a letter to sell the domain
10 names to you guys, to your client.

11 Q. Has anyone ever contacted you concerning the
12 domain names other than our client?

13 A. No, sir. I mean, your client never contacted me.
14 I mean, your office contacted me.

15 Q. Other than the email accounts we discussed
16 earlier, do you have any other email accounts you used for
17 business?

18 A. I have mak25@mrisc.com.

19 Q. So you have the mak25 account and you have mak35
20 as well?

21 A. That's right.

22 Q. Does the 25 or 35 stand for anything?

23 A. No, nothing; just a number that was available.

24 Q. You have the Yahoo account?

25 A. Yeah.

AHMAD

1 Q. And you have the NationStar Mortgage account?

2 A. That's right.

3 Q. Do you have any specific recollection as to how
4 long you've been using the mak25 account?

5 A. I'm not sure but long time. Probably maybe --
6 I'm not sure. Since 2004. I don't know exact date.

7 Q. Do you have any recollection how long you've been
8 using the mak35@mris.com?

9 A. No, sir, but it's been a long time that I've
10 using that one too.

11 Q. Is there a reason for having mak25 and
12 mak35@mris.com?

13 A. You can have as many accounts you want with MRIS.

14 Q. Do you know how long you've had the Yahoo
15 account?

16 A. For a long time, but I don't know specifically
17 how long.

18 Q. Have you been operating the NationStar Mortgage
19 email account since you signed up for the website?

20 A. I believe so, yes.

21 Q. Have you been continuously using all of these
22 email accounts?

23 A. That's right.

24 Q. Since you began using NationStar name?
25

1 AHMAD

2 A. Since they were opened.

3 Q. Is there any specific reason for having multiple
4 email accounts?

5 A. People have more than one email accounts. There
6 is no law that says that you have only one account, you
7 cannot have more than one.

8 Q. Did you review the objections to document
9 requests that your attorney prepared before she served
10 them on us?

11 A. Most of the time, yes.

12 Q. Did you charge your clients for all of the
13 services that you provided?

14 A. No, sir.

15 Q. Sitting here today, do you believe that you've
16 conducted a thorough search of all of your files for
17 documents responsive to the request that you received in
18 this action?

19 A. From you guys?

20 Q. Yes.

21 A. I believe so, yes.

22 Q. Are you aware of any documents that we've asked
23 for that you have not produced to us?

24 A. I don't think so.

25 MR. SMITH: Can we go off the record?

1 AHMAD

2 (Whereupon, a recess was held.)

3 MR. SMITH: Mr. Ahmad, I have no further
4 questions.

5 MR. REA: No questions.

6 (Deposition concluded at 12:50 p.m.)
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A C K N O W L E D G M E N T

STATE OF)
) ss.:
COUNTY OF)

I, MUJAHID AHMAD, hereby
certify that I have read the transcript of my
testimony taken under oath in my deposition;
that the transcript is a true, complete and
correct record of my testimony, and that the
answers on the record as given by me are true
and correct.

MUJAHID AHMAD

Signed and subscribed to before
me, this day of ,
20__.

Notary Public, State of _____

C E R T I F I C A T E

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EXHIBIT D

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

Application Serial No. 78/866,376
Published in the Official Gazette on

_____)
NATIONSTAR MORTGAGE LLC,)
)
Opposer,)
)
v.)
)
MUJAHID AHMAD,)
)
Applicant,)
_____)

Opposition No. 91177036

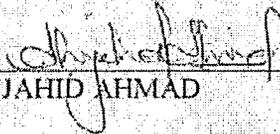
**DECLARATION UNDER 37 C.F.R. § 2.34(a)(2) IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

I, Mujahid Ahmad, hereby declare:

1. I am the owner of Application Serial No. 78/866,376 for the mark NATIONSTAR filed in the United States Patent and Trademark Office on April 20, 2006.
2. Attached as Ex. A are copies of advertisements of my services promoted under the NATIONSTAR mark that I distributed and posted prior to April 20, 2006.
3. Prior to April 20, 2006, I advised clients regarding real estate brokerage, rental of real estate, real estate management, real estate investment, residential and commercial property, insurance brokerage, mortgage brokerage and business finance procurement.
4. In the application, I stated in good faith that the NATIONSTAR mark was in use for all of the identified goods and services since as early as April 4, 2005.

EXHIBIT
Ahmad
 5-27-09 CB

I declare under penalty of perjury that the above facts are true to the best of my knowledge. Executed JAN 31, 2008.



MUJAHID AHMAD

EXHIBIT A

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Mujahid Ahmad
Mortgage Broker

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MakRealtor@yahoo.com

2001 North Daniel Street, # 102, Arlington, VA 22201

NationStar Mortgage, Inc.

March 25, 2005

Mr. Ikram U. Danish
1444 Cottonwood Court
Woodbridge, VA 22191

Dear Sir/Madam:

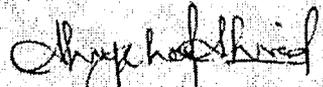
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Thanks for your time and looking forward to hear from you at your earliest convenience.

Sincerely,



Mujahid Ahmad
President
NationStar Mortgage, Inc.
(703) 732-9899

NationStar Mortgage, Inc.

April 02, 2005

Mr. Ahmed U Sayed
222 North Thomas Street, # 103
Arlington, VA 22203

Dear Sir/Madam:

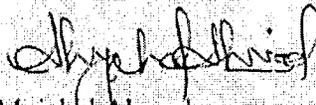
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Sincerely,



Mujahid Ahmad
President
NationStar Mortgage, Inc.
(703) 732-9899

NationStar Mortgage, Inc.

April 03, 2005

Mr. Shafiq Ahmad
830 S. Greenbrier Street # 3
Arlington, VA 22204

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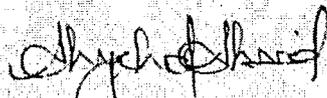
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Sincerely,



Mujahid Ahmad
President
NationStar Mortgage, Inc.
(703) 732-9899

NationStar Mortgage, Inc.

April 16, 2005

Mr. Abdul Haq
1205 South Thomas Street, # 3
Arlington, VA 22204

Dear Sir/Madam:

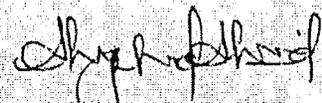
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Sincerely,



Mujahid Ahmad
President
NationStar Mortgage, Inc.
(703) 732-9899

NationStar Mortgage, Inc.

July 17, 2005

Mr. Rahat Mushtaq
6135 Leesburg Pike, # 404
Falls Church, VA 22041

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Sincerely,



Mujahid Ahmad
President
NationStar Mortgage, Inc.
(703) 732-9899

NationStar Mortgage, Inc.

October 14, 2005

Mr. Abid Hussain
6143 Leesburg Pike, # 308
Falls Church, VA 22041

Dear Sir/Madam:

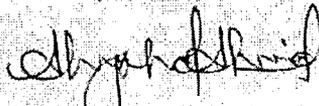
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Sincerely,



Mujahid Ahmad
President
NationStar Mortgage, Inc.
(703) 732-9899

NationStar Mortgage, Inc.

February 05, 2006

Mr. Tahir Majeed
6143 Leesburg Pike, # 501
Falls Church, VA 22041

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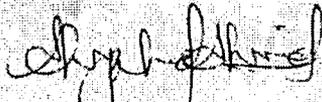
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Thanks for your time and looking forward to hear from you at your earliest convenience.

Sincerely,



Mujahid Ahmad
President
NationStar Mortgage, Inc.
(703) 732-9899

EXHIBIT C

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

_____)	
NATIONSTAR MORTGAGE LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91177036
)	
MUJAHID AHMAD,)	
)	
Applicant.)	
_____)	

**APPLICANT'S RESPONSES TO OPPOSER'S
FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant Mujahid Ahmed ("Applicant"), responds and objects to the First Set of Interrogatories (the "Interrogatories") served by Opposer, Nationstar Mortgage LLC, dated July 23, 2007, as follows.

Applicant makes the objections and responses herein (collectively, the "Responses") based solely on its current knowledge, understanding, and belief as to the facts and the information available to it as of the date of the Responses. The Responses are given without prejudice to Applicant's right to produce subsequently discovered information and to introduce such subsequently discovered information at the time of any trial in this action.

Applicant does not waive any objection made in these Responses. Applicant does not waive any claim of privilege, whether expressly asserted or not, by providing any information or identifying any document or thing in response to the Interrogatories. The inadvertent disclosure of such information or the inadvertent identification or production of any document shall not

constitute a waiver of any applicable privilege as to that document or any other document identified or produced by Applicant.

GENERAL OBJECTIONS

The following General Objections apply to, and are incorporated by reference in, the Response to each and every Interrogatory. In addition to these General Objections, Applicant has stated specific objections to Interrogatories where appropriate, including objections that are not generally applicable to all Interrogatories. Applicant's specific objections to any of the Interrogatories do not preclude, supersede, or withdraw any of the general Objections to that Interrogatory.

Applicant objects to the Interrogatories to the extent that they call for information protected by: (i) the attorney-client privilege; (ii) the work-product doctrine; or (iii) any other privilege, immunity, or protection afforded by state or federal law. Applicant will provide only responsive information that is not subject to any such privilege or protection.

Fed. R. Civ. P. 26(b)(1) and the Trademark Rules preclude discovery beyond matters relevant to the claims or defenses of the parties. Accordingly, Applicant objects to the Interrogatories to the extent that they are overbroad and unduly burdensome and seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Applicant objects to the Interrogatories to the extent that they seek information that is a matter of public record or is equally available or readily ascertainable by Opposer from some other source.

Applicant objects to the Interrogatories to the extent that they call for information that is not known by or reasonably available to Applicant.

Applicant objects to each Interrogatory to the extent that they purport to impose obligations on Applicant beyond those imposed by the Federal Rule of Civil Procedure and the Trademark Rules.

Applicant objects to each Interrogatory to the extent that it is vague, ambiguous, overbroad, unduly burdensome, and/or fails to reasonably identify the information sought, or prematurely calls for a legal conclusion.

Applicant reserves the right to assert additional and further objections to the Interrogatories to the extent that Applicant's production of documents or information in this action reveals that such additional and further objections are appropriate.

In responding to the Interrogatories, Applicant does not concede that any of the information sought or provided is relevant, material, admissible in evidence, or reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY RESPONSES

INTERROGATORY NO. 1:

With respect to Applicant, identify each person employed by and/or in business with Applicant and each of said entities holding the following positions or titles (or their equivalent, if different titles are used):

- A. President;
- B. Owners;
- C. Partners (of any type);
- D. Investors;
- E. Mortgage Brokers;
- F. Sales Brokers;
- G. Real Estate Brokers; and
- H. Realtors.

RESPONSE TO INTERROGATORY NO. 1:

- A. President: Mujahid Ahmad
2001 North Daniel St.

Apartment #101
Arlington, VA 22201

- B. Owners: Mujahid Ahmad
- C. Partners (of any type): n/a
- D. Investors: n/a
- E. Mortgage Brokers: Mujahid Ahmad
- F. Sales Brokers: Mujahid Ahmad
- G. Real Estate Brokers: n/a
- H. Realtors: Mujahid Ahmad

INTERROGATORY NO. 2:

Set forth fully all facts, circumstances, dates and events concerning the origination, development, selection, and adoption, including but not limited to the persons involved therein, of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 2:

Applicant objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome as it requests "all facts, circumstances, dates and events" and on the ground that it is vague and incapable of precise determination to the extent it requests information on the "origination" and "development" of Applicant's Mark.

Subject to and without waiving the foregoing objections, during or before December 2004, Applicant personally searched the Network Solutions website for available domain names. Applicant personally entered his own ideas for domain names, all of which were not available. The Network Solutions website provided "Recommended Available Domain Names," two of which were nationstarmortgage.com and nationstarmortgate.net. Based upon this, Applicant chose the mark NATIONSTAR and the tradename Nationstar Mortgage and began to advertise and promote Applicant's Services under this mark and tradename. No other

persons were involved in the origination, development, selection or adoption of the NATIONSTAR mark.

INTERROGATORY NO. 3:

Set forth fully all facts, circumstances and events concerning the first use in the United States, including but not limited to the persons involved therein, of Applicant's Mark for Applicant's Services as well as for any other product or service in connection with which Applicant has used and/or intends to use any or all of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 3:

Applicant objects to this Interrogatory on the grounds that it is vague and unclear as to the facts it seeks. Subject to and without waiving the foregoing objections, during or before December 2004, Applicant personally began to use the mark NATIONSTAR to advertise and promote Applicant's Services. Applicant sent written correspondence to potential clients, distributed and posted flyers and business cards and verbally promoted Applicant's Services under the NATIONSTAR mark. In response to Applicant's promotion and advertising under the NATIONSTAR mark, Applicant assisted clients in all aspects of the purchase of real estate and obtaining loans and related insurance. For example, in February 2005, Applicant assisted Abid Hussain in purchasing a home located at 7724 Camp Alger Ave., Falls Church, VA 22042. Working with a licensed real estate broker and mortgage broker, Applicant served as Mr. Hussain's real estate agent, prescreened and prequalified his financial situation, assisted him in securing a mortgage loan with World Savings through SAI Mortgage, Inc., and assisted and advised him in obtaining title and hazard insurance. The settlement for this sale was completed on March 24, 2005. Applicant has continued to advise and consult with Mr. Abid and has performed comparative market analysis for his current residence and investment property.

INTERROGATORY NO. 4:

Identify and describe each distinct product and service that is being, has been, or is intended to be marketed, offered, shipped, sold, or rendered in connection with any or all of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 4:

Applicant objects to this Interrogatory on the ground that it is not relevant or reasonably calculated to lead to the discovery of admissible evidence to the extent it requests information on products and services "intended" to be sold or marketed.

Subject to and without waiving the foregoing objections, Applicant provides and will provide services related to the real estate industry in connection with his mark NATIONSTAR. Such services include consulting, advising and assisting with the purchase and sale of real estate, securing mortgage loans, refinancing loans, and managing rental property.

INTERROGATORY NO. 5:

Identify all current and former licensees of Applicant concerning Applicant's Mark, and for each specify the products and/or services in connection with which the licensee was granted the right to use Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 5:

1. Mortgage Broker License (VA)
2. Mortgage Broker License (MD)
3. Mortgage Broker License (DC)
4. Real Estate License (VA)
5. Real Estate License (MD)
6. Real Estate License (DC)

INTERROGATORY NO. 6:

State the total volume of annual sales (in units and equivalent dollar value) of all of Applicant's Services from the claimed date of first use to the present.

RESPONSE TO INTERROGATORY NO. 6:

Between January and December 2005, Applicant served as the real estate agent and otherwise assisted and advised with the sale of approximately \$4,164,900 worth of real estate. Such sales resulted in payment of \$72,433.37 to Applicant. Between January and December 2006, Applicant served as the real estate agent and otherwise assisted and advised with the sale of approximately \$872,000 worth of real estate. Such sales resulted in payment of \$22,928 to Applicant. Between January 2007 and the present, Applicant served as the real estate agent and otherwise assisted and advised with the sale of approximately \$1,050,000 worth of real estate.

INTERROGATORY NO. 7:

Describe the manner and extent of past, current and intended advertising, promoting, and offering for sale of each of Applicant's Services in association with Applicant's Mark, including but not limited to the media used and the class(es) of customers to whom advertising and promotional materials are or will be directed.

RESPONSE TO INTERROGATORY NO. 7:

Applicant objects to this Interrogatory on the ground that it is irrelevant and unlikely to lead to the discovery of admissible evidence to the extent it requests information about "intended advertising" and classes of customers to whom advertising and promotions "will be directed." Applicant further objects to this Request on the ground that it is vague as it requests information on "class(es)" of customers.

Subject to and without waiving the foregoing objections, advertising and promotion are conducted through word of mouth, referrals, written communications to potential clients, flyers, business cards and Applicant's website. Applicant's advertising and promotional materials are directed to everyone interested in real estate services in Virginia, Maryland and Washington, DC.

INTERROGATORY NO. 8:

Identify all advertising agencies, public relations firms, and other businesses or persons whom Applicant has at any time employed, hired or retained in connection with the advertising and/or promotion of Applicant's Services associated with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 8:

Applicant has not employed, hired or retained any advertising agencies, public relation firms or other business or persons.

INTERROGATORY NO. 9:

Specify, by year as well as by location, the dollar amounts spent by Applicant to advertise and promote Applicant's Services associated with Applicant's Mark.

RESPONSE TO INTERROGATORY 9:

In 2005, Applicant spent approximately \$280 printing business cards bearing the NATIONSTAR mark to promote Applicant's Services. In addition, between December 2004 and the present, Applicant has spent approximately \$50 copying flyers bearing the NATIONSTAR mark to promote Applicant's Services. Applicant spent \$149.94 to register the domain names www.nationstarmortgage.com and www.nationstarmortgage.net for a three year term. All other promotional work was conducted by Applicant personally and cannot accurately be valued in dollar amounts.

INTERROGATORY NO. 10:

A. Describe all the trade channels, including but not limited to licensees, franchisors, and retail outlets, and, if applicable, the departments therein, in which each of Applicant's Services are or have been offered, marketed, sold and/or rendered in association with Applicant's Mark.

B. Indicate the geographical areas, by individual state, in which Applicant's Services are or have been offered and sold and the dates of such sales.

RESPONSE TO INTERROGATORY NO. 10:

A. Applicant's services have been advertised and promoted generally to everyone interested in real estate services in Virginia, Maryland and Washington, D.C.

B. Applicant's Services have been advertised and promoted in Virginia, Maryland and Washington, D.C. Applicant has continuously provided Applicant's Services, including consulting and advising under the NATIONSTAR mark since December 2004 to the present in Virginia, Maryland and Washington, D.C. Settlements resulting from Applicant's Services were completed on March 24, 2005, February 10, 2005, April 7, 2005, April 11, 2005, July 12, 2005, July 25, 2005, August 9, 2005, August 15, 2005, September 27, 2005, August 16, 2006, September 15, 2006 and February 23, 2007.

INTERROGATORY NO. 11:

Identify and describe the class(es) of purchasers, users, and ultimate customers to whom each of Applicant's Services are promoted, sold and distributed in association with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 11:

Applicant objects to this Interrogatory on the ground that it is vague as it asks for "class(es)" of purchasers, users and "ultimate" customers.

Subject to and without waiving the foregoing objections, Applicant has promoted and sold his services to individuals interested in real estate services in Virginia, Maryland and Washington, D.C.

INTERROGATORY NO. 12:

Identify all present, former and prospective sales representatives, agents, associates, and licenses of Applicant's Services offered in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 12:

Applicant objects to this Interrogatory on the ground that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information concerning "prospective sales."

Subject to and without waiving the foregoing objections, there are no other present, former or known prospective sales representatives, agents, associates or licensees of Applicant's services offered in connection with Applicant's Mark other than the Applicant.

INTERROGATORY NO. 13:

Describe Applicant's current or former business relationship with and knowledge of each of the following persons and entities: First American Real Estate, Metropolitan Regional Information Systems, Inc., National Association of Mortgage Brokers, National Association of Realtors, or any of their current or former employees or contractors.

RESPONSE TO INTERROGATORY NO. 13:

Applicant worked for First American Real Estate as an independent contractor. Applicant is a member of the Metropolitan Regional Information Systems, Inc. and the National Association of Realtors. Applicant has knowledge of but no relationship with the National Association of Mortgage Brokers.

INTERROGATORY NO. 14:

Identify all litigation, arbitration, United States Patent and Trademark Office proceedings, or other adversary proceedings involving the Applicant, whether past or present, concerning Applicant's Mark or Applicant's ownership, title, right to use or right to register Applicant's Mark in the United States.

RESPONSE TO INTERROGATORY NO. 14:

Applicant objects to this Interrogatory on the ground that it is not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Applicant is not aware of any litigation, arbitration, United States Patent and Trademark office proceeding, or other adversary proceeding, other than this proceeding, concerning Applicant's Mark or Applicant's ownership, title, right to use or right to register Applicant's Mark in the United States.

INTERROGATORY NO. 15:

Identify each person or entity against which Applicant has asserted a claim or which has asserted a claim against Applicant pertaining in any way to Applicant's Mark and identify the mark or name used by that person or entity, and the goods, services or business in connection with which the mark or name was used. For purposes of this Interrogatory, a claim shall be defined as a demand that a person or entity cease its use, or modify its use, or a mark or name alleged to be confusingly similar to Applicant's Mark in the United States, and which has not resulted in litigation or other adversary proceeding.

RESPONSE TO INTERROGATORY NO. 15:

Applicant has not asserted a claim and a claim has not been asserted against Applicant pertaining in any way to Applicant's Mark, other than the proceeding at issue.

INTERROGATORY NO. 16:

If Applicant has ever received an opinion concerning its right to adopt, use or register Applicant's Mark in the United States, or to prevent third parties from adopting, using or registering in the United States any name or mark alleged to be confusingly similar to Applicant's Mark identify:

A. All persons with knowledge of facts connected therewith, describing their respective areas of knowledge; and

B. All third parties and/or names referred to or involved therein.

RESPONSE TO INTERROGATORY NO. 16:

Applicant has never received an opinion concerning its rights to adopt, use or register Applicant's Mark in the United States, or to prevent third parties from adopting, using or registering in the United States any name or mark alleged to be confusingly similar to Applicant's Mark.

INTERROGATORY NO. 17:

If Applicant has contacted, been contacted by, spoken with or otherwise communicated with any third parties concerning the subject matter of this proceeding, identify said third parties and describe the nature of same communications.

RESPONSE TO INTERROGATORY NO. 17:

Applicant has only contacted and spoken with his attorneys regarding this proceeding. Such discussions are subject to attorney-client privilege.

INTERROGATORY NO. 18:

State all facts and identify all documents and tangible things which support Applicant's denial of any of the allegations of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 18:

Applicant objects to this Interrogatory to the extent that it requests information that is publicly available and as easily accessible to Opposer as it is to Applicant.

Subject to and without waiving the foregoing objections, as described herein, Applicant began advertising and promoting Applicant's Services under the mark NATIONSTAR and provided Applicant's Services prior to April 4, 2005. Applicant is producing in response to Opposer's First Set of Document Requests, documents to support this claim, including copies of letters to potential customers, copies of flyers and business cards and documents reflecting real estate sales for which Applicant services as the real estate agent. In addition, Applicant is producing copies of all relevant licenses evidencing that he is currently a licensed real estate agent and mortgage broker. All other relevant facts and documents are a matter of public record.

INTERROGATORY NO. 19:

State all facts and identify all documents and tangible things which support Applicant's Answer and Applicant's stated Affirmative Defenses within its Answer.

RESPONSE TO INTERROGATORY NO. 19:

Applicant objects to this Interrogatory to the extent that it requests information that is publicly available and as easily accessible to Opposer as it is to Applicant.

Subject to and without waiving the foregoing objections, all relevant facts are stated hereto or are a matter of public record. All relevant documents have been produced in response to Opposer's First Set of Document Requests or are a matter of public record.

INTERROGATORY NO. 20:

Describe when and how Applicant first became aware of Opposer, Opposer's NATIONSTAR MORTGAGE Marks, and/or the services offered by Opposer.

RESPONSE TO INTERROGATORY NO. 20:

Applicant first became aware of Opposer and Opposer's Marks and Opposer's Services upon receipt of the Notice of Opposition for this proceeding.

INTERROGATORY NO. 21:

Identify and describe each of the services offered by Applicant under Applicant's Mark from Applicant's claimed date of first use through the present.

RESPONSE TO INTERROGATORY NO. 21:

Applicant objects to this Interrogatory on the ground that it is duplicative of Interrogatory No. 4.

Subject to and without waiving the foregoing objections, Applicant consulted with and advised clients in every aspect of the real estate industry. Each specific service cannot be identified. Many of these services take place over a long period of time.

In February 2005, Applicant assisted Abid Hussain purchase a home located at 7724 Camp Alger Ave., Falls Church, VA 22042. Working with a licensed real estate broker and mortgage broker, Applicant served as Mr. Hussain's real estate agent, prescreened and

prequalified his financial situation, assisted him in securing a mortgage loan with World Savings through SAI Mortgage, Inc., and assisted and advised him in obtaining title and hazard insurance. The settlement for this sale was completed on March 24, 2005. Applicant has continued to advise and consult with Mr. Abid and has performed comparative market analysis for his current residence and investment property.

In June 2005, Applicant listed for sale the house of Mr. Zulkihar Sharieff and the property was sold on August 15, 2005. The property is located at 7220 Roosevelt Ave., Falls Church, VA 22042. Applicant advised Mr. Sharieff regarding home repairs and hiring of contractors. After that time, Applicant performed comparative market analysis for Mr. Sharieff and his family members and showed them multiple residential and commercial properties.

In June 2005, Applicant performed multiple market analyses for Mr. Abdul Haq and advised him regarding the home buying process. Applicant showed Mr. Haq multiple homes and prequalified him for a loan.

Applicant assisted and advised Mr. Ikram U. Danish with the refinancing of his home in June 2005. Applicant assisted and advised Mr. Danish with obtaining title and hazard insurance. Applicant continues to manage his property and consult regarding the hiring of contractors.

Applicant assisted and advised Mr. Shafiq Ahmad with the purchase of a home in July and August 2005. The property address is 6518 Sharps Drive, Centreville, VA 20121. Applicant performed multiple comparative market analysis and assisted and advised Mr. Ahmad in obtaining a mortgage and title and hazard insurance. Applicant continues to advise Mr. Ahmad regarding the hiring of contractors.

In November 2005, Applicant performed comparative market analysis for Ms. Marina Leon (of Brentwood, Maryland) and advised her regarding the home selling and buying process as well as her mortgage options. Applicant showed Ms. Leon multiple homes.

In February 2006, Applicant assisted and advised Mr. Samer Ramadan of Washington, D.C. in finding rental properties, including performing comparative market analysis for residential and commercial properties in Washington, D.C.

In March 2006, Applicant assisted and advised Mr. Ahmed U. Sayed in finding residential and commercial properties.

In March 2006, Applicant assisted and advised Mr. Muhammed Shoaib Shah of North Potomac, Maryland with finding residential and commercial properties.

In August and September 2006, Applicant assisted and advised Mr. Hameed Khan with the purchase of a residential property. The property is located at 7402 Ellwood Place, Springfield, Virginia 22150. Applicant assisted and advised Mr. Khan in obtaining a mortgage loan and hazard insurance. Applicant advised Mr. Khan in hiring contractors for his property.

Applicant assisted Pak-American Corporation to buy a commercial warehouse building. The property is located at 2800 10th Street, N.W., Washington, D.C. 20017. Applicant assisted and advised Pak-American in obtaining a mortgage loan, commercial hazard insurance, title insurance and property insurance. The settlement for this sale took place on February 23, 2007.

INTERROGATORY NO. 22:

Identify all other entities that have provided, are providing or that Applicant believes may provide in the future, Applicant's Services.

RESPONSE TO INTERROGATORY NO. 22:

Applicant objects to this Interrogatory on the grounds that it is vague and unclear as to the information it seeks. Applicant is not aware of any other entity that has or will provide Applicant's Services under Applicant's NATIONSTAR mark.

INTERROGATORY NO. 23:

State the bases for Applicant's following statements made in the application document and subsequent documents that Applicant filed with the U.S. Patent and Trademark Office to register Applicant's Mark:

- A. "Applicant is using the mark [NATIONSTAR] in commerce on or in connection with the above-identified goods/services" (statement in the initial application);
- B. "...he/she believes applicant to be entitled to use such mark [NATIONSTAR] in commerce..." (initial application);
- C. "...to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified [NATIONSTAR] mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive..." (initial application);
- D. "...[Mr. Ahmad] believes [himself] to be the owner of [Applicant's NATIONSTAR Mark] sought to be registered..." (initial application);
- E. "The substitute specimens were in use in commerce at least as early as the filing date of the application." (in the declaration dated October 16, 2006);
- F. "The mark was first used at least as early as April 4, 2005 and first used in commerce as least as early as April 4, 2005, and is now in such use in such commerce." (in the Application filed with signed declaration dated April 20, 2006).

RESPONSE TO INTERROGATORY NO. 23:

A. Applicant advertised and promoted Applicant's Services under the NATIONSTAR mark and provided Applicant's Services prior to the filing date of Applicant's application as described hereto.

B. Applicant was not and is not aware of any reason he is not entitled to use Applicant's NATIONSTAR mark.

C. Applicant was not and is not aware of any person or entity with prior rights in Application's NATIONSTAR mark.

D. Based upon Applicant's use of the NATIONSTAR mark and the fact that no one else had prior right in the name mark or confusingly similar mark, Applicant believed himself to be the owner of Applicant's NATIONSTAR Mark.

E. The substitute specimens were examples of flyers and business cards posted and distributed before the filing date of the application.

F. Applicant advertised and provided Applicant's Services prior to April 4, 2005 under Applicant's NATIONSTAR Mark.

INTERROGATORY NO. 24:

Since the claimed date of first use of Applicant's Mark to the present, describe Applicant's involvement with the business development of Applicant's Services offered by Applicant under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 24:

Applicant objects to this Interrogatory on the grounds that it is vague and unclear. Applicant is solely responsible for the business development of Applicant's Services offer by Applicant under Applicant's Mark.

INTERROGATORY NO. 25:

Since the claimed date of first use of Applicant's Marks to the present, describe the process by which Applicant completes sales of Applicant's Services offered by Applicant under any or all of Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 25:

Applicant objects to this Interrogatory on the grounds that it is vague and unclear and duplicative of Interrogatory No. 21. The process by which Applicant completed sales depends upon what services are at issue. In addition, Applicant provides many services related to the real estate industry for which a "completed sale" does not take place. In general, potential clients would contact Applicant in response to his advertising under the NATIONSTAR mark and seek his advice regarding the sale or purchase of real estate and/or the acquisition of a mortgage loan. Applicant, as a licensed real estate agent, would perform comparative market analysis and show properties to his clients. He would explain and advise clients regarding the sale process. Applicant would work with First American Real Estate, Inc., a licensed real estate broker to complete these transactions. As a loan officer and a mortgage broker, Applicant would advise them about their loan options and assist them to find the best mortgage loan to meet their needs. Applicant would also assist his client's in obtaining hazard and title insurance. Applicant also would advise and assist client's regarding managing property and making renovations and improvements.

INTERROGATORY NO. 26:

Identify all periods of non-use of each of Applicant's Marks, including the length of each period and the reasons therefore. For purposes of this Interrogatory, "non-use" shall refer to the absence of sales in the normal course of trade to *bona fide* customers of Applicant's Services in connection with Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 26:

Since Applicant's date of first use, there have been no periods of non-use of Applicant's Mark. Applicant has continuously promoted and provided Applicant's Services.

INTERROGATORY NO. 27:

Describe the extent and nature of advertising of Applicant's services under any and all of Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 27:

Applicant objects to this Interrogatory on the ground that it is duplicative of Interrogatory No. 7.

Subject to and without waiving the foregoing objections, Applicant advertises Applicant's Services under Applicant's Mark through word of mouth, referrals, written communications to potential clients, printed flyers, business cards and his website.

INTERROGATORY NO. 28:

Identify all information regarding Applicant's application for and registration of the domain names www.nationstrarmortgage.com and www.nationstarmortgage.net.

RESPONSE TO INTERROGATORY NO. 28:

Applicant personally registered the domain names www.nationstarmortgage.com and www.nationstarmortgage.net on April 4, 2005 using Network Solutions' on-line registration process.

INTERROGATORY NO. 29:

Concerning each document or tangible thing otherwise responsive to any interrogatory or document request which has been lost or destroyed since its preparation or receipt, identify for each document or tangible thing the following:

- A. The interrogatory or request to which it would be responsive;
- B. The circumstances whereby the document or tangible thing was lost or destroyed; and
- C. The identity of all persons having knowledge of such loss or destruction.

RESPONSE TO INTERROGATORY NO. 29:

Applicant is not aware of any document or tangible thing otherwise responsive to any interrogatory or document request which has been lost or destroyed since its preparation or receipt.

INTERROGATORY NO. 30:

Identify all persons who prepared, assisted in the preparation of or provided information or documents for the answers to Opposer's interrogatories, indicating for each such person, each separate answer which he or she prepared, assisted in the preparation of or otherwise provided the information for.

RESPONSE TO INTERROGATORY NO. 30:

The Answers to Opposer's interrogatories were prepared by Applicant with the assistance and consultation of his attorneys.

As to the objections and legal contentions:

STEPTOE & JOHNSON LLP

By: Rachel M. Marmer
Stephanie Morris Carmody
Rachel M. Marmer
1330 Connecticut Avenue, N.W.
Washington, DC 20036-1795
(202) 429-8135

Attorneys for Applicant, Mujahid Ahmad

Dated: August 24, 2007

VERIFICATION

I, Mujahid Ahmad, am the Applicant in this Opposition proceeding. I have read APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES ("Responses"). The answers set forth in the Responses are true to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Verification was executed on _____, 2007.

Mujahid Ahmad

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES was served this 24th day of August, 2007 by first-class mail, postage prepaid, on:

Bryce J. Maynard
BUCHANAN INGERSOLL & ROONEY, PC
1737 King Street
Alexandria, VA 22314-2727
Telephone: 703-836-6620
Facsimile: 703-836-2021

Rachel M. Manner

EXHIBIT D

United States Court of Appeals for the Federal Circuit

2008-1448
(Opposition No. 91/157,315)

IN RE BOSE CORPORATION,

Appellant.

Charles Hieken, Fish & Richardson P.C., of Boston, Massachusetts, argued for appellant. With him on the brief was Amy L. Brosius.

Raymond T. Chen, Solicitor, Office of the Solicitor, United States Patent and Trademark Office, of Arlington, Virginia, argued for the Director of the United States Patent and Trademark Office. With him on the brief were Thomas V. Shaw and Christina J. Hieber, Associate Solicitors.

Susan J. Hightower, Pirkey Barber LLP, of Austin, Texas, argued for amicus curiae, American Intellectual Property Law Association. With her on the brief was William G. Barber. Of counsel on the brief was James H. Pooley, American Intellectual Property Law Association, of Arlington, Virginia.

Appealed from: United States Patent and Trademark Office
Trademark Trial and Appeal Board

United States Court of Appeals for the Federal Circuit

2008-1448
(Opposition No. 91/157,315)

IN RE BOSE CORPORATION,

Appellant.

Appeal from the United States Patent and Trademark Office, Trademark Trial and Appeal Board.

DECIDED: August 31, 2009

Before MICHEL, Chief Judge, DYK, and MOORE, Circuit Judges.

MICHEL, Chief Judge.

The Trademark Trial and Appeal Board (“Board”) found that Bose Corporation (“Bose”) committed fraud on the United States Patent and Trademark Office (“PTO”) in renewing Registration No. 1,633,789 for the trademark WAVE. Bose Corp. v. Hexawave, Inc., 88 USPQ2d 1332, 1338 (T.T.A.B. 2007). Bose appeals the Board’s order cancelling the registration in its entirety. Because there is no substantial evidence that Bose intended to deceive the PTO in the renewal process, we reverse and remand.

I. BACKGROUND

Bose initiated an opposition against the HEXAWAVE trademark application by Hexawave, Inc. (“Hexawave”), alleging, inter alia, likelihood of confusion with Bose’s prior registered trademarks, including WAVE. Bose, 88 USPQ2d at 1333. Hexawave

counterclaimed for cancellation of Bose's WAVE mark, asserting that Bose committed fraud in its registration renewal application when it claimed use on all goods in the registration while knowing that it had stopped manufacturing and selling certain goods. Id.

The fraud alleged by Hexawave involves Bose's combined Section 8 affidavit of continued use and Section 9 renewal application ("Section 8/9 renewal"),¹ signed by Bose's general counsel, Mark E. Sullivan, and filed on January 8, 2001. Bose, 88 USPQ2d at 1335. In the renewal, Bose stated that the WAVE mark was still in use in commerce on various goods, including audio tape recorders and players. Id. at 1333. The Board found that (1) Bose stopped manufacturing and selling audio tape recorders and players sometime between 1996 and 1997; and (2) Mr. Sullivan knew that Bose discontinued those products when he signed the Section 8/9 renewal. Id. at 1334-35.

At the time Mr. Sullivan signed the Section 8/9 renewal, Bose continued to repair previously sold audio tape recorders and players, some of which were still under warranty. Bose, 88 USPQ2d at 1335. Mr. Sullivan testified that in his belief, the WAVE mark was used in commerce because "in the process of repairs, the product was being transported back to customers." Id. The Board concluded that the repairing and shipping back did not constitute sufficient use to maintain a trademark registration for goods. Id. at 1337. It further found Mr. Sullivan's belief that transporting repaired goods

¹ Federal trademark registrations issued on or after November 16, 1989, remain in force for ten years, and may be renewed for ten-year periods. To renew a registration, the owner must file an Application for Renewal under Section 9. In addition, at the end of the sixth year after the date of registration and at the end of each successive ten-year period after the date of registration, the owner must file a Section 8 Declaration of Continued Use, "an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce. . . ." 15 U.S.C. § 1058(b)(1); see also, id. §§ 1058, 1059.

constituted use was not reasonable. Id. at 1338. Finally, the Board found that the use statement in the Section 8/9 renewal was material. Id. As a result, the Board ruled that Bose committed fraud on the PTO in maintaining the WAVE mark registration and ordered the cancellation of Bose's WAVE mark registration in its entirety. Id. Later, the same panel denied Bose's Request for Reconsideration. Bose Corp. v. Hexawave, Inc., Opposition No. 91157315, 2008 WL 1741913 (T.T.A.B. Apr. 9, 2008).

Bose appealed. Because the original appellee Hexawave did not appear, the PTO moved, and the court granted leave to the Director, to participate as the appellee. We have jurisdiction pursuant to 15 U.S.C. § 1071(a) and 28 U.S.C § 1295(a)(4)(B).

II. DISCUSSION

This court reviews the Board's legal conclusions de novo. In re Int'l Flavors & Fragrances Inc., 183 F.3d 1361, 1365 (Fed. Cir. 1999). We review the Board's factual findings for substantial evidence. Recot, Inc. v. Becton, 214 F.3d 1322, 1327 (Fed. Cir. 2000).

A third party may petition to cancel a registered trademark on the ground that the "registration was obtained fraudulently." 15 U.S.C. § 1064(3). "Fraud in procuring a trademark registration or renewal occurs when an applicant knowingly makes false, material representations of fact in connection with his application." Torres v. Cantine Torresella S.r.l., 808 F.2d 46, 48 (Fed. Cir. 1986). A party seeking cancellation of a trademark registration for fraudulent procurement bears a heavy burden of proof. W.D. Byron & Sons, Inc. v. Stein Bros. Mfg. Co., 377 F.2d 1001, 1004 (CCPA 1967). Indeed, "the very nature of the charge of fraud requires that it be proven 'to the hilt' with clear and convincing evidence. There is no room for speculation, inference or surmise and,

obviously, any doubt must be resolved against the charging party.” Smith Int’l, Inc. v. Olin Corp., 209 USPQ 1033, 1044 (T.T.A.B. 1981).

The Court of Customs and Patent Appeals (“CCPA”), our predecessor whose decisions are binding on this court, explained that, before the PTO, “[a]ny ‘duty’ owed by an applicant for trademark registration must arise out of the statutory requirements of the Lanham Act,” which prohibit an applicant from making “knowingly inaccurate or knowingly misleading statements.” Bart Schwartz Int’l Textiles, Ltd. v. Fed. Trade Comm’n, 289 F.2d 665, 669 (CCPA 1961). Therefore, the court stated that, absent the requisite intent to mislead the PTO, even a material misrepresentation would not qualify as fraud under the Lanham Act warranting cancellation. King Auto., Inc. v. Speedy Muffler King, Inc., 667 F.2d 1008, 1011 n.4 (CCPA 1981).

Mandated by the statute and caselaw, the Board had consistently and correctly acknowledged that there is “a material legal distinction between a ‘false’ representation and a ‘fraudulent’ one, the latter involving an intent to deceive, whereas the former may be occasioned by a misunderstanding, an inadvertence, a mere negligent omission, or the like.” Kemin Indus., Inc. v. Watkins Prods., Inc., 192 USPQ 327, 329 (T.T.A.B. 1976). In other words, deception must be willful to constitute fraud. Smith Int’l, 209 USPQ at 1043; see also Woodstock’s Enters. Inc. (Cal.) v. Woodstock’s Enters. Inc. (Or.), 43 USPQ2d 1440, 1443 (T.T.A.B. 1997); First Int’l Servs. Corp. v. Chuckles, Inc., 5 USPQ2d 1628, 1634 (T.T.A.B. 1988); Giant Food, Inc. v. Standard Terry Mills, Inc., 229 USPQ 955, 962 (T.T.A.B. 1986).

Several of our sister circuits have also required proof of intent to deceive before cancelling a trademark registration. See, e.g., Far Out Prods., Inc. v. Oskar, 247 F.3d

986, 996 (9th Cir. 2001) (stating that an affidavit was fraudulent only if the affiant acted with scienter); Aromatique, Inc. v. Gold Seal, Inc., 28 F.3d 863, 877-78 (8th Cir. 1994) (per curiam) (“In order to show that an applicant defrauded the PTO the party seeking to invalidate a mark must show that the applicant intended to mislead the PTO.”); Meineke Discount Muffler v. Jaynes, 999 F.2d 120, 126 (5th Cir. 1993) (“To succeed on a claim of fraudulent registration, the challenging party must prove by clear and convincing evidence that the applicant made false statements with the intent to deceive [the PTO.]”); San Juan Prods., Inc. v. San Juan Pools of Kan., Inc., 849 F.2d 468, 472 (10th Cir. 1988) (stating that in determining whether a statement is fraudulent, courts must focus on the “declarant’s subjective, honestly held, good faith belief” (internal quotation marks and emphasis omitted)); Money Store v. Harriscorp Fin., Inc., 689 F.2d 666, 670 (7th Cir. 1982) (“Fraud will be deemed to exist only when there is a deliberate attempt to mislead the Patent Office into registering the mark.”).

The Board stated in Medinol v. Neuro Vasx, Inc. that to determine whether a trademark registration was obtained fraudulently, “[t]he appropriate inquiry is . . . not into the registrant’s subjective intent, but rather into the objective manifestations of that intent.” 67 USPQ2d 1205, 1209 (T.T.A.B. 2003). We understand the Board’s emphasis on the “objective manifestations” to mean that “intent must often be inferred from the circumstances and related statement made.” Id. (internal quotation marks omitted) (quoting First Int’l Serv., 5 USPQ2d at 1636). We agree. However, despite the long line of precedents from the Board itself, from this court, and from other circuit courts, the Board went on to hold that “[a] trademark applicant commits fraud in procuring a registration when it makes material representations of fact in its declaration which it

knows or should know to be false or misleading.” Id. (emphasis added). The Board has since followed this standard in several cancellation proceedings on the basis of fraud, including the one presently on appeal. See Bose, 88 USPQ2d at 1334.

By equating “should have known” of the falsity with a subjective intent, the Board erroneously lowered the fraud standard to a simple negligence standard. See Iletto v. Glock, Inc., 565 F.3d 1126, 1155 (9th Cir. 2009) (“Knowing conduct thus stands in contrast to negligent conduct, which typically requires only that the defendant knew or should have known each of the facts that made his act or omission unlawful. . . .”); see also Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 642 (1999) (explaining that in Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998), the Court “declined the invitation to impose liability under what amounted to a negligence standard—holding the district liable for its failure to react to teacher-student harassment of which it knew or should have known. Rather, [the Court] concluded that the district could be liable for damages only where the district itself intentionally acted in clear violation of Title IX by remaining deliberately indifferent to acts of teacher-student harassment of which it had actual knowledge.”).

We have previously stated that “[m]ere negligence is not sufficient to infer fraud or dishonesty.” Symbol Techs., Inc. v. Opticon, Inc., 935 F.2d 1569, 1582 (Fed. Cir. 1991). We even held that “a finding that particular conduct amounts to ‘gross negligence’ does not of itself justify an inference of intent to deceive.” Kingsdown Med. Consultants, Ltd. v. Hollister Inc., 863 F.2d 867, 876 (Fed. Cir. 1988) (en banc). The principle that the standard for finding intent to deceive is stricter than the standard for negligence or gross negligence, even though announced in patent inequitable conduct

cases, applies with equal force to trademark fraud cases. After all, an allegation of fraud in a trademark case, as in any other case, should not be taken lightly. San Juan Prods., 849 F.2d at 474 (quoting Anheuser-Busch, Inc. v. Bavarian Brewing Co., 264 F.2d 88, 92 (6th Cir. 1959)). Thus, we hold that a trademark is obtained fraudulently under the Lanham Act only if the applicant or registrant knowingly makes a false, material representation with the intent to deceive the PTO.

Subjective intent to deceive, however difficult it may be to prove, is an indispensable element in the analysis. Of course, “because direct evidence of deceptive intent is rarely available, such intent can be inferred from indirect and circumstantial evidence. But such evidence must still be clear and convincing, and inferences drawn from lesser evidence cannot satisfy the deceptive intent requirement.” Star Scientific, Inc. v. R.J. Reynolds Tobacco Co., 537 F.3d 1357, 1366 (Fed. Cir. 2008). When drawing an inference of intent, “the involved conduct, viewed in light of all the evidence . . . must indicate sufficient culpability to require a finding of intent to deceive.” Kingsdown, 863 F.2d at 876.

The Board in Medinol purportedly relied on this court’s holding in Torres to justify a “should have known” standard. The Board read Torres too broadly. In that case, Torres obtained the trademark registration for “Las Torres” below a tower design. Torres, 808 F.2d at 47. The trademark was registered for use on wine, vermouth, and champagne. Id. In the renewal application, Torres submitted an affidavit stating that the mark as registered was still in use in commerce for each of the goods specified in the registration. Id. He even attached a specimen label with the registered mark displayed. Id. In fact, Torres was not using the mark as registered. Id. Instead, five

years prior to the renewal application, Torres had admittedly altered the mark to “Torres” in conjunction with a different tower design. Id. In addition, Torres knew that even the altered mark was in use only on wine. Id. In other words, the registrant knowingly made false statements about the trademark and its usage when he filed his renewal application. Id.

True, the court concluded that

If a registrant files a verified renewal application stating that his registered mark is currently in use in interstate commerce and that the label attached to the application shows the mark as currently used when, in fact, he knows or should know that he is not using the mark as registered and that the label attached to the registration is not currently in use, he has knowingly attempted to mislead the PTO.

Id. at 49. However, one should not unduly focus on the phrase “should know” and ignore the facts of the case, i.e., the registrant “knows.” Doing so would undermine the legal framework the court set out in Torres. Indeed, in Torres, the court cited various precedents—some persuasive, others binding on the court—and reemphasized several times that (1) fraud in trademark cases “occurs when an applicant knowingly makes false, material representations,” (2) the Lanham Act imposes on an applicant the obligation not to “make knowingly inaccurate or knowingly misleading statements,” and (3) a registrant must also “refrain from knowingly making false, material statements.” Id. at 48. The “should know” language, if it signifies a simple negligence or a gross negligence standard, is not only inconsistent with the framework set out elsewhere in Torres, but would also have no precedential force as it would have conflicted with the precedents from CCPA. See Newell Cos. v. Kenney Mfg. Co., 864 F.2d 757, 765 (Fed. Cir. 1988). Certainly, the prior CCPA decisions cited in the Torres opinion were precedents binding on the Torres court. See S. Corp. v. United States, 690 F.2d 1368,

1369 (Fed. Cir. 1982). In fact, they still bind us because they have never been overturned en banc.²

Metro Traffic Control, Inc. v. Shadow Network Inc., 104 F.3d 336 (Fed. Cir. 1997) further supports our reading that the Torres holding does not deviate from the established rule that intent to deceive is required to find fraud. In Metro Traffic Control, the court cited Torres and reaffirmed that fraud can only be found if there is “a willful intent to deceive.” 104 F.3d at 340. As a result, the court agreed with the Board that the applicant’s statements, “though false, were not uttered with the intent to mislead the PTO.” Id. at 340-41. Because the applicant’s “misstatements did not represent a ‘conscious effort to obtain for his business a registration to which he knew it was not entitled,’” the court affirmed the Board’s ruling of no fraud. Id. at 341; see also L.D. Kichler Co. v. Davoil, Inc., 192 F.3d 1349, 1352 (Fed. Cir. 1999) (remanding the case so the district court may determine whether the trademark applicant “knowingly submitted a false declaration with an intent to deceive”).

Applying the law to the present case, Mr. Sullivan, who signed the application, knew that Bose had stopped manufacturing and selling audio tape recorders and players at the time the Section 8/9 renewal was filed. Therefore, the statement in the renewal application that the WAVE mark was in use in commerce on all the goods, including audio tape recorders and players, was false. Because Bose does not

² The PTO argues that under Torres, making a submission to the PTO with reckless disregard of its truth or falsity satisfies the intent to deceive requirement. We need not resolve this issue here. Before Sullivan submitted his declaration in 2001, neither the PTO nor any court had interpreted “use in commerce” to exclude the repairing and shipping repaired goods. Thus, even if we were to assume that reckless disregard qualifies, there is no basis for finding Sullivan’s conduct reckless.

challenge the Board's conclusion that such a statement was material, we conclude that Bose made a material misrepresentation to the PTO.

However, Mr. Sullivan explained that in his belief, Bose's repairing of the damaged, previously-sold WAVE audio tape recorders and players and returning the repaired goods to the customers met the "use in commerce" requirement for the renewal of the trademark. The Board decided that Bose's activities did not constitute sufficient use to maintain a trademark registration. See Bose, 88 USPQ2d at 1335-37. It also found Sullivan's belief not reasonable. Id. at 1338. We do not need to resolve the issue of the reasonableness as it is not part of the analysis. There is no fraud if a false misrepresentation is occasioned by an honest misunderstanding or inadvertence without a willful intent to deceive. Smith Int'l, 209 USPQ at 1043. Sullivan testified under oath that he believed the statement was true at the time he signed the renewal application. Unless the challenger can point to evidence to support an inference of deceptive intent, it has failed to satisfy the clear and convincing evidence standard required to establish a fraud claim.

We hold that Bose did not commit fraud in renewing its WAVE mark and the Board erred in canceling the mark in its entirety. Indeed, the purpose of the Section 8/9 renewal is "to remove from the register automatically marks which are no longer in use." Torres, 808 F.2d at 48 (quoting Morehouse Mfg. Corp. v. J. Strickland & Co., 407 F.2d 881, 887 (CCPA 1969)). When a trademark registrant fulfills the obligation to refrain from knowingly making material misrepresentations, "[i]t is in the public interest to maintain registrations of technically good trademarks on the register so long as they are still in use." Morehouse, 407 F.2d at 888. Because "practically all of the user's

substantive trademark rights derive” from continuing use, when a trademark is still in use, “nothing is to be gained from and no public purpose is served by cancelling the registration of” the trademark.³ Id.

We agree with the Board, however, that because the WAVE mark is no longer in use on audio tape recorders and players, the registration needs to be restricted to reflect commercial reality. See Bose, 88 USPQ2d at 1338. We thus remand the case to the Board for appropriate proceedings.

III. CONCLUSION

For these reasons, the Board’s decision is reversed and remanded.

IV. COSTS

Each party shall bear its own costs.

REVERSED and REMANDED

³ Indeed, even though the Board cancelled the registration of the WAVE trademark, it continued to analyze Bose’s common law right in the mark. Eventually, the Board found likelihood of confusion and rejected Hexawave’s application to register trademark HEXAWAVE. Bose, 88 USPQ2d at 1342-43.