ESTTA Tracking number: **ESTTA220582**
Filing date: **06/26/2008**

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

Proceeding	91177156
Party	Plaintiff H-D Michigan, Inc.
Correspondence Address	LINDA K. MCLEOD FINNEGAN, HENDERSON, FARABOW GARRETT & DUNNER LLP, 901 NEW YORK AVENUE NW WASHINGTON, DC 20001-4413 UNITED STATES
Submission	Plaintiff's Notice of Reliance
Filer's Name	Linda K. McLeod
Filer's e-mail	docketing@finnegan.com, linda.mcleod@finnegan.com, susannah.klank@finnegan.com
Signature	/Linda K. McLeod/
Date	06/26/2008
Attachments	Signed Not of Rel. No. 4 with Exhibits.pdf (23 pages)(2441379 bytes)

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

H-D MICHIGAN, INC., Opposer v. BRYAN BROEHM, Applicant.	Opposition No.: 91177156 Mark: Serial No.: 78896325 Filed: May 30, 2006

OPPOSER'S NOTICE OF RELIANCE NO. 4
UNDER 37 CFR § 2.120(j)(3)(i), (j)(5), and (j)(8)

H-D Michigan, Inc. ("Opposer") submits of record in connection with this opposition proceeding a copy of the Definitions and Instructions set forth in Opposer's First Set of Interrogatories (attached as Exhibit A), certain of Bryan Broehm ("Applicant's") Responses to Opposer's First Set of Interrogatories (attached as Exhibit B) and Supplemental Responses to Interrogatories (attached Exhibit C). Specifically, Opposer submits and relies on Applicant's Responses to Opposer's First Set of Interrogatory Nos. 1-3, 5, 7, and 8, Supplemental Response to Interrogatory Nos. 1, 2, and 3 (including images set forth in response), and signatures after each of the responses.

This evidence is relevant to the Board's likelihood-of-confusion and likelihood-of-dilution analyses. Among other things, it shows the manner in which Applicant has used or intends to use his mark in connection with clothing and motorcycle products; the nature of Applicant's goods offered or intended to be offered under his mark; the similarities between Opposer's marks and Applicant's mark; and Applicant's

knowledge of Opposer (by and through its related companies) and knowledge of Opposer's products and services.

Dated: June 26, 2008

Respectfully submitted,

David M. Kelly
Linda K. McLeod
Jonathan M. Gelchinsky

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue N.W.
Washington, DC 20001
(202) 408-4000

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing OPPOSER'S NOTICE OF RELIANCE NO. 4 UNDER 37 CFR § 2.120(j)(3)(i), (j)(5), and (j)(8) was served by first class mail, postage prepaid, on this 26th day of June 2008, upon Bryan Broehm at the following address:

Bryan Broehm
331 Gazetta Way
West Palm Beach, FL 33413-1053

Susannah Klank

U.S. Trademark Opposition No. 91177156
H-D Michigan, Inc. v. Bryan Broehm
Serial No. 78896325

Mark:

Exhibit A

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

H-D MICHIGAN, INC., Opposer v. BRYAN BROEHM, Applicant.	Opposition No.: 91177156 Mark: Serial No.: 78896325 Filed: May 30, 2006

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, H-D Michigan Inc. ("Opposer" or "H-D") requests that Bryan Broehm ("Applicant") serve upon Opposer sworn answers to the interrogatories set forth below within thirty (30) days after service. These interrogatories are continuing in nature and any information that may be discovered subsequent to the service and filing of any answer should be brought to Opposer's attention through supplemental answers within a reasonable time following such discovery.

DEFINITIONS AND INSTRUCTIONS

A. The following definitions apply to all of Opposer's discovery requests:

(1) "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

(2) "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), and shall mean any and all information in tangible or other form, whether printed, typed, recorded, computerized, filmed, reproduced by any process, or written or produced by hand, and

whether an original, draft, master, duplicate or copy, or notated version thereof, that is in Applicant's possession, custody, or control. A draft or non-identical copy is a separate document within the meaning of this term.

(3) "Person" is defined as any natural person or any business, legal, or governmental entity or association.

(4) In reference to a person, "to identify" means to state, to the extent known, the person's full name, present or last known business address, and when referring to a natural person, additionally, the present or last known home address, and present or last-known title, position, and business affiliation. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(5) In reference to documents, "to identify" means to state, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), address(ees), and recipient(s).

(6) The term "state" or "state all facts" means to state all facts discoverable under Fed. R. Civ. P. 26(b), that are known to Applicant. When used in reference to a contention, "state" or "state all facts" shall include all facts, documents, and communications negating as well as supporting the contention.

(7) The terms "Opposer" and "Applicant" as well as a party's full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, and affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(8) "Referring" or "relating to" means constituting, comprising, concerning, regarding, mentioning, containing, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, discussing, either directly or indirectly, in whole or in part, and should be given the broadest possible scope consistent with the Federal Rules of Civil Procedure.

(9) "Commerce" signifies commerce that the U.S. Congress may lawfully regulate. The phrase "use in commerce" is defined in Section 45 of the Trademark Act, 15 U.S.C. §1127, to mean that a mark shall be deemed to be in use in commerce "(1) on goods when - (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (B) the goods are sold or transported in commerce, and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services."

(10) "Applicant's Mark" means the mark shown in Application Serial No. 78896325, and any similar service marks, trademarks, or trade names comprised of or containing HOLY and HOLY-DIVINESON marks and BAR & SHIELD Logo used or intended to be used by Applicant.

(11) "Opposer's Marks" and "Opposer's Mark" mean any or all of the names and marks set forth in Paragraphs 3-6 and Exhibit A of the Notice of Opposition,

including but not limited to the marks HARLEY, HARLEY-DAVIDSON, and the BAR & SHIELD Logo.

(12) "Opposer's Products and Services" mean the products and services set forth in Paragraphs 3-6 and Exhibit A of the Notice of Opposition, unless stated otherwise.

(13) "Applicant's Products and Services" mean the services identified in Application Serial No. 78896325 and all other products and services offered or intended to be offered by Applicant in connection with Applicant's Mark, unless otherwise stated.

B. The following rules of construction shall apply to all of Opposer's discovery requests:

(1) The terms "all" and "each" shall be constructed as all and each.

(2) The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

(3) The use of the singular form of any word shall include within its meaning the plural form of the word, and vice versa.

(4) The use of the masculine form of a pronoun shall include also within its meaning the feminine form of the pronoun so used, and vice versa.

(5) The use of any tense of any verb shall include also within its meaning all other tenses of the verb so used.

C. Whenever the interrogatories call for the identification of a document, Applicant may, in lieu of such identification, produce such document, marked with the

number of the interrogatory to which it is responsive, at the time Applicant serves its answers to these interrogatories.

D. No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

E. Where an objection is made to any interrogatory or any document request, or sub-part thereof, under Fed. R. Civ. P. 34, state with specificity all grounds for the objection. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived.

F. Where a claim of privilege or work product is asserted in objecting to an interrogatory or document request, or sub-part thereof, and an answer is not provided on the basis of such assertion, the attorney or party asserting the privilege shall in the objection to the interrogatory or document request, or sub-part thereof, identify the nature of the privilege being claimed; and provide the following information, unless divulgence of the information would cause disclosure of the allegedly privileged information:

(1) For documents:

(a) the type of document;

(b) general subject matter of the document;

(c) the date of the document; and

(d) such other information as is sufficient to identify the document for a subpoena duces tecum, including the author of the document, each addressee of the document, and the relationship of the author to the addressee.

(2) For oral communications:

(a) the name of the person making the communication, the names of persons present while the communication was made, and the relationship of these persons;

(b) the date and place of communication; and

(c) the general subject matter of the communication.

G. If any requested document is asserted to contain confidential business information, so designate and produce such document, and, that done, Opposer agrees it will limit the disclosure of such document to its outside counsel working on this matter, until such time as an appropriate protective order is entered or the Board rules that the document is not entitled to confidential treatment.

H. The scope of the Interrogatories is the United States.

REDACTED

REDACTED

REDACTED

REDACTED

Dated: October 11, 2007

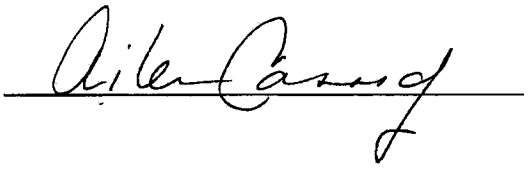
Respectfully submitted,

David M. Kelly
Linda K. McLeod
Jonathan M. Gelchinsky
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue N.W.
Washington, DC 20001
(202) 408-4000

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES was served via U.S. Mail, postage prepaid, the 11th day of October, upon Bryan Broehm at the following address:

Bryan Broehm
331 Gazetta Way
West Palm Beach, FL 33413-1053



U.S. Trademark Opposition No. 91177156
H-D Michigan, Inc. v. Bryan Broehm
Serial No. 78896325

Mark:

Exhibit B

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

H-D MICHIGAN, INC., OPPOSER, V. BRYAN BROEHM, APPLICANT
OPPOSITION NO. 91177156

RESPONSE TO INTERROGATORIES

1. Identify all trademarks, service marks, and trade names comprised of or containing HOLY, HOLY-DIVINESON, HOLY DIVINESON, HOLY and DIVINESON, HARLEY, HARLEY-DAVIDSON, and the BAR & SHIELD Logo shown in Applicant's Mark ever used by Applicant.

RESPONSE:

None have actually ever been used in any public format, other than in display on my personal website used for the purpose of showcasing my designs to persons I may provide that information to, on a small decal that I printed on my personal computer printer and then affixed to the rear of my motorcycle helmet, and on a t-shirt that I applied it to with an iron-on decal that I also printed with my personal computer printer. It is in no other way actively promoted at this time as I am waiting for this Trademark application process to come to fruition before doing so.

I do not have a bar & shield logo in my mark as this Interrogatory suggests. My proposed mark is a cross with a banner, as illustrated below.

(JESUS CHRIST) Holy-DivineSon, www.holy-divineson.com, www.holydivineson.com

2. Identify all domain names comprised of or containing HOLY-DIVINESON, HOLY DIVINESON, or HOLY and DIVINESON, ever registered or used by Applicant.

RESPONSE:

www.holy-divineson.com and www.holydivineson.com

3. (a) Identify and describe in detail all of Applicant's Products and services that are now or have ever been advertised, promoted, sold, or used in connection with motorcycles, motorcycle clothing, motorcycle helmets, motorcycle parts, and motorcycle accessories. (b) Identify and describe in detail all such motorcycle clothing, motorcycle helmets, parts, and accessories.

RESPONSE:

At this time, no such items exist. The intent is to use the applied for Trademark and Service Mark as a design for and in connection with Christian clothing, decals, and eventually auto accessories (i.e. window decals, auto emblems, etc.). Such products are not necessarily or directly a product of any motorcycle industry related products, but rather to be marketed as a means of ministering the Christian religion through products that may also be purchased by persons who may or may not be associated in any way with motorcycles.

REDACTED

5. Identify and describe in detail all of Opposer's Products and Services purchased, owned, or used by Applicant, and state the dates of such purchases, ownership, or use.

RESPONSE:

This request is extremely difficult and nearly impossible for me to fulfill in factual, honest entirety. I own a 2007 Road King Custom that I purchased on March 6, 2007. Since then I have purchased a number of parts and accessories for that motorcycle as well as services at Harley-Davidson dealerships on numerous different dates. I am certain that if that information becomes overtly relevant and necessary that the Opposer can readily obtain that information from their own sources which would be much more accurate and complete than my estimations.

Furthermore, prior to the purchase of that motorcycle, I have for years purchased Harley-Davidson t-shirts, clothing, and accessories. At present, I can account for approximately fifteen to twenty Harley-Davidson t-shirts that I and/or my immediate family members own. It would not be possible for me to produce the dates of any such purchases as they have transpired over the course of many years. I have also purchased Harley-Davidson motorcycle parts and accessories that I have modified and used with my previous motorcycle. Again, the details of those items and the dates purchased are not accurately available for me to provide.

REDACTED

7. State the date of and describe the reasons for the selection of each of the Applicant's names and marks identified in response to Interrogatory No. 1, and identify the person(s) with the most knowledge of the selection thereof.

RESPONSE:

I am a Christian motorcycle rider and I attend a number of motorcycle functions. As a Christian, I have found it disappointing that much of the media and paraphernalia associated with the motorcycle riding culture is very dark and evil in nature. When I have attempted to find motorcycle related clothing that is not of that undesirable nature, I have had a hard time finding t-shirts with suitable or acceptable designs, especially any with Christian related designs or themes. I started putting my graphic design talents to use and for my personal use I began creating Christian designs that I thought would make desirable motorcycle t-shirts.

At a rally I had attended, I had seen a patch being sold that was shaped in the exact design of the Harley-Davidson bar and shield logo and had the words Jesus Christ, Lord and Savior embroidered on it. Being creative, I decided to modify that and came up with my parody of the

Harley-Davidson name crafted to be suitable for my Christian designs and hence Jesus Christ, Holy-DivineSon. I did not want to copy the bar and shield logo exactly because I did not want to associate my religious message with it. I wanted to design an individual logo that was spiritually significant and therefore I came up with the cross and banner design. It combined the Christian element of the cross, using a Maltese Cross design which is frequently used in motorcycle clothing and paraphernalia, as well as a banner that contained the Holy-DivineSon wording. The Harley-Davidson bar and shield logo were used as inspiration for my design; however, I made deliberate efforts to make my cross and banner design its own, and clearly distinguishable from the other.

This approximately transpired over the course of several months from March to July or August 2005. My wife Christina Broehm would be the person with the most knowledge of my selection thereof.

8. State the date of first use anywhere and date of first use in commerce of each of Applicant's names and marks identified in response to interrogatory No. 1.

RESPONSE:

The date of first use anywhere public would be on June 22, 2005 when I registered the listed website addresses. No use in commerce at any time.

REDACTED

Respectfully Submitted,

Bryan C. Broehm

Bryan C. Broehm

Bryan C. Broehm
11. 11. 07

U.S. Trademark Opposition No. 91177156
H-D Michigan, Inc. v. Bryan Broehm
Serial No. 78896325

Mark:

Exhibit C

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

H-D MICHIGAN, INC., OPPOSER, V. BRYAN BROEHM, APPLICANT
OPPOSITION NO. 91177156

SUPPLEMENTAL RESPONSE TO INTERROGATORIES

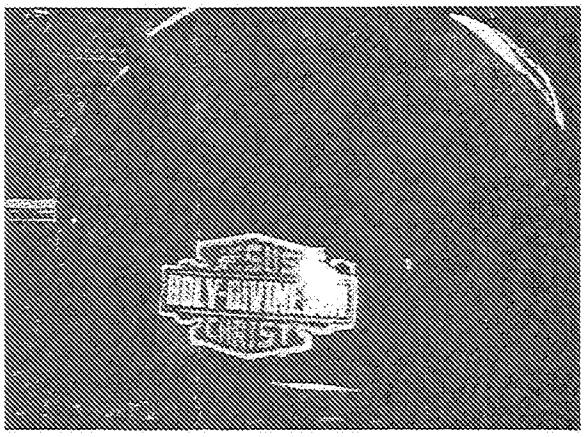
In response to your request for supplemental responses and additional information, I have provided a copy of your requests and have numbered them individually and answered correspondingly below:

1. I am signing and returning the Verification of Interrogatory Responses form. I apologize for any potential oversight in not doing so initially; however, no such form was originally provided for me to sign and submit, prior to this request.

2. Yes, I confirm that I intended my answers to represent that I was responding to the Opposer's design logos as they appeared in Opposer's First Set of Requests for Admissions.

3. Firstly, none of my applied for names or marks, or other designs, contain HARLEY, HARLEY-DAVIDSON, or the Opposer's BAR & SHIELD logo. In my response(s), I thought that I had clearly explained that the designs I provided have not been used other than as displayed on my personal website and on the described decal and t-shirt. I did not realize that there was a request, or relevant need, for you to see a photograph of the decal on my helmet or of the shirt. Below is a photograph of that decal on my helmet. The shirt(s) (several failed attempts) with my proposed logo were disposed of long ago since that iron-on transfer never applied properly and the quality was not very good. I cannot provide a photo of the t-shirt(s) I disposed of. A photo of a different t-shirt, with a different design than my proposed trademark design, but which does

have the name Holy-DivineSon, is below:

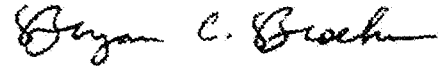


REDACTED

REDACTED

REDACTED

Respectfully Submitted,



Bryan C. Broehm