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

Proceeding	91177156
Party	Defendant Bryan Broehm
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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

APPLICANT'S TRIAL BRIEF

Bryan C. Broehm

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Bryan C. Broehm



I am a Christian motorcycle rider and I attend a number of motorcycle rider 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, such as the ones displayed in **Exhibit B** of the document submitted and titled **“APPLICANT’S SUBMISSION OF EVIDENCE TO BE REFERENCED IN FINAL PLEADING.”**

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 (like) 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 (just as many other trademarked designs were inspired, though not copied, by previously existing trademarks); 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 intent is to someday use my requested trademark design to use as a platform for the purpose of Christian ministry, and through the sale of products utilizing that design, and others, evangelize to others about Jesus Christ.



It is the Opposer's claim that my propose trademark will result in dilution of their trademark. It is my position that under the defense of Parody, that while similar, my mark and logo are distinguishable from the Opposer's mark and logos to such a degree that any rational person observing my mark and logo would unmistakably recognize that it is not the Opposer's mark and logo. A case in point would be the number of comments made to me about my mark and logo design that I have affixed as a decal to my motorcycle helmet. Instead of being said to me that they thought it was the Opposer's mark and logo, many have recognized its unique character and commented as to my intent in displaying the mark and logo as a means of evangelizing to others of my belief in Jesus Christ as the holy, divine Son of God.

In response to the Opposer's claim that my wording of Holy-DivineSon is an infringement of their trademark because it imitates the sound and appearance of the Harley-Davidson wording on their mark, I ask then if all trademarks of any similar manner were presented for consideration, would they then be opposed too? Holy-DivineSon is no more an infringement of the Opposer's trademark nor any more similar than if a person named Henry Dickinson wanted to trademark his name inside a logo that consisted of a rectangle positioned mid-way between the top and bottom of a square, or any polygonal shape, behind the rectangle. Noteworthy also is the Opposer's reference to the use of a similar font, which to best of my knowledge and understanding is not an element which can be trademarked. Furthermore, the positioning of the words Jesus and Christ above and below the banner shape in my logo is no different than hundreds of other similar trademarked logos, using different words. Additionally, the words Jesus and Christ are of no similarity in either sound, meaning, or connotation to the words Motor and Cycles, which would clearly lend to a rational person *(even if "not sophisticated", as the Opposer has disrespectfully and ridiculously, without qualifying evidence, characterized that the average Harley-Davidson product purchaser as being and therefore incapable of distinguishing between the Opposer's and mine. A characterization that I feel would surely cause them more harm, in the form of lost sales, than my design being trademarked, if the general public and Harley-Davidson customer were to be made aware of*



that perception by the motor company themselves.) being able to distinguish between my proposed mark and logo, and that of the Opposer.

My proposed logo design is distinguishable and different from the Opposer's in that my design is clearly the shape of a Maltese (like) Cross (which design is used in hundreds of other motorcycle related trademarks and designs) with a banner across the horizontal bar of the cross, and not a shield with a bar in front of it. The banner is representative of the banner that was placed on the cross where Jesus was crucified that in that it read "King of the Jews", and thereby He was the holy and divine Son of God: hence, Holy-DivineSon. My placement of the "Banner" is similar to the Opposer's placement of the "Bar" element on their logo, just as many other trademark logos resemble. Such placement and its similarity should not be grounds for legitimate opposition. Moreover, I have designed my proposed logo with rounded corners and edges which differs from the Opposer's sharp, pointed corners and edges. Such rounded corners actually make my logo a Maltese (like) Cross, polygonal shape, with a rounded banner, almost oval in shape, which again differs from the Opposer's logo. All of these described elements of my proposed mark and design make the two designs clearly distinguishable from one another and eliminates any likelihood of confusion.

My proposed trademark, design, and logo are meant to be a means of Christians displaying their faith. While they may well be displayed by motorcycle riders, the trademark will no more dilute the distinctive quality of the Opposer's marks than any other trademark design that has been parodied for the means of evangelizing in some manner or another. I highly contest that any meager financial gain I may have from the sale of any products utilizing my proposed trademark and logo will dilute the Opposer's multi-million dollar annual profits, and refute their claim that they are being and will be damaged by the registration of my proposed trademark and logo.



In **Exhibit A** of the document submitted and titled “**APPLICANT’S SUBMISSION OF EVIDENCE TO BE REFERENCED IN FINAL PLEADING**” I have shown a number of t-shirt designs that are printed on t-shirts and sold by Kerusso, a Christian clothing company, and sold on their website at <http://www.kerusso.com>. A review of their shirt designs and of the images I submitted reveals that they have many t-shirts that utilize and almost exactly copy previously existing, famous and very recognizable trademark designs, with alterations made to convey a Christian message for the purpose of evangelizing. The various trademark designs that they have copied are as famous and recognizable as the Opposer’s trademark: some even more so and are longer standing than the Opposer’s trademark. They all share all of the various attributes and legal standings that the Opposer’s trademark does, as described in the Opposer’s Trial Brief.

My lack of experience and knowledge of all of the legal details and rules applicable to trademark laws prevents me from knowing and understanding the reasons that the Kerusso company is allowed to create such designs utilizing such famous and recognizable trademarks, and sell products with those designs on them. However, even as an “unsophisticated” Harley-Davidson owner and customer, I can reasonably ascertain that there must exist some legal precept that applies to the use and sale of such very similar designs; otherwise, Kerusso certainly would not be able to do so and would have themselves faced similar opposition, and would not be able to continue their business of selling the clothing with those designs on them. Though I am not able to explain that applicable legal precept, certainly the Trademark Trial and Appeal Board is more than proficient and aware of what that exception may be. I am respectfully requesting that the same legal precept that allows Kerusso to create artistic designs that copy famous and recognizable trademarks and sell clothing products with those designs on them, be applied to your consideration of my request to trademark my similar design, created for the same type of use as Kerusso’s products.

Additionally, in **Exhibit C** of the document submitted and titled “**APPLICANT’S SUBMISSION OF EVIDENCE TO BE REFERENCED IN FINAL PLEADING**” I have submitted numerous designs that I was able to locate on various Internet websites by doing a simple Google search, from various advertising I have seen, and from photographs I have taken from



viewing the designs at numerous different locations. Many of the designs directly copy the Opposer's bar and shield trademark logo, and replace the wording of the Opposer's trademark with alternative text. Others, utilize different designs that are even more similar to the Opposer's trademark logo than mine is, and are often used directly for commercial purposes for merchandise and service similar to the Opposer's in the motorcycle industry. I have conducted as much of a search as I could of the previously or currently existing trademark oppositions from the Opposer against those persons utilizing those designs; yet, I have been unable to find one instance where the Opposer has pursued them.

It is my position that the Opposer has instead chosen to pursue opposition of my proposed trademark design because of the religious nature of my design, as contrasted with the secular or non-religious nature of the other designs I have mentioned. Furthermore, it is my contention that the Opposer's opposition of my proposed trademark is an attempt to violate my Constitutional Right, per the First Amendment, to freedom of religion and religious expression. For that reason in itself, I feel that their Opposition is illegal in its intent and efforts, and thereby invalid.

Finally, I will briefly address the Opposer's argument claiming that my submitted testimony should not be considered, without entirely recapitulating my previously submitted **"REBUTTAL TO THE OPPOSER'S MOTION TO STRIKE APPLICANT'S EVIDENCE AS UNTIMELY AND IMPROPER FOR SUBMISSION UNDER NOTICE OF RELIANCE."** I do, however, respectfully request that the TTAB refer to that document for a detailed explanation of my counter-argument. On August 26th, just prior to midnight, I began my attempt to submit the testimonial evidence I had collected during my designated Testimony Period, as proof that none of it was collected past the allowable date. Unfortunately, I experienced a very uncharacteristic and abnormal interruption in my Internet Service, and as a result, the transmission was not completed until shortly after 12am on August 27th. Due to the fact that the TTAB rules require that a Certificate of Service accompany any final submissions, in addition to the fact that the rules state that I had thirty days past the deadline for my Testimony Period to serve the same upon the Opposer, I logically presumed that I also had thirty days to formally and finally submit my testimony to the TTAB. That, in conjunction with the Opposer's submission of their own



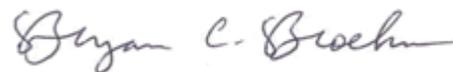
collected testimony on dates that were past their deadline for their Testimony Period, lead me to believe that I was allowed to do so as well. Furthermore, they argue that my type of submission of Testimonial evidence is incorrect since I did not notify them of a deposition to obtain that testimony. I collected all of the testimonial evidence myself, and would have had no one to depose, other than myself. For rational reasons, that I am certain the TTAB can understand, that is not practically applicable to my particular circumstances. Because of these reasons, and those further detailed in the mentioned documentation previously submitted to discuss these arguments, I am respectfully requesting that the TTAB consider all of the testimonial evidence I have referenced in this pleading.

Based upon all of the aforementioned:

WHEREFORE, Applicant respectfully requests that the opposition be denied, and that the registration of the mark in Application Serial No. 78896325 be approved registration.

Dated: January 8, 2009

Respectfully Submitted,



Bryan C. Broehm



CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing **APPLICANT'S TRIAL BRIEF** is served by Priority Mail, postage prepaid, on the 9th day of January 2009 upon the Attorneys for the Opposer, at the following address:

Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.

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