

ESTTA Tracking number: **ESTTA268955**

Filing date: **02/26/2009**

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

Proceeding	91181448
Party	Plaintiff Jeff Brown
Correspondence Address	Courtney Bru Doerner Saunders Daniel & Anderson 320 S. Boston Avenue, Suite 500 Tulsa, OK 74103 UNITED STATES rblue@dsla.com, cbru@dsla.com
Submission	Opposition/Response to Motion
Filer's Name	Courtney Bru
Filer's e-mail	cbru@dsla.com, rachel.blue@mcafeetaft.com
Signature	/Courtney Bru/
Date	02/26/2009
Attachments	Evidence Submitted with Resp to PGR MSJ.PDF (39 pages)(1867450 bytes)

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

JEFF BROWN,	)	OPPOSITION NO.: 91181448
)	
Opposer,	)	TRADEMARK: PATRIOT GUARD
	)	RIDERS AND DESIGN
v.)	
	)	APPLICATION NO.: 77/040379
PATRIOT GUARD RIDERS, INC.,)	
	)	DATE FILED: NOVEMBER 9, 2006
Applicant.)	

SUPPLEMENTAL DECLARATION OF COURTNEY BRU
IN SUPPORT OF OPPOSER'S RESPONSE IN OPPOSITION TO
APPLICANT'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM

Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

I, Courtney Bru, pursuant to 37 C.F.R. § 2.20, hereby declare as follows:

1. I am an attorney with the law firm of Doerner, Saunders, Daniel & Anderson, L.L.P., counsel for Opposer Jeff Brown in the above-captioned proceeding. As such, I have personal knowledge of the facts set forth below. If called upon and sworn as a witness, I could and would competently testify to the facts set forth below.
2. Exhibit 41 is a true and correct copy of the Supplemental Declaration of Opposer Jeff Brown, executed on February 26, 2009.
3. Exhibit A thereto is a true and correct copy of document Bates labeled BROWN010367-BROWN010368, produced by Opposer.
4. Exhibit B thereto is a true and correct copy of document Bates labeled BROWN010363-BROWN010364, produced by Opposer.

5. Exhibit C thereto is a true and correct copy of document Bates labeled PGR002170-PGR002171, produced by Applicant.

6. Exhibit 42 is a true and correct copy of an August 15, 2008 letter from Rachel Blue to David J. Marr transmitting the "Notice of Deposition of Corporate Witness" and list of deposition topics pursuant to Federal Rule of Civil Procedure 30(b)(6)

7. Exhibit 43 is a true and correct copy of the an October 3, 2008 letter from David J. Marr to Tom Ferguson and Rachel Blue requesting amendment and/or supplementation of certain discovery responses. *See* page 3

8. Exhibit 44 is a true and correct copy of additional portions of the deposition of Ronny Roy Awtry, held on October 28, 2008.

9. Exhibit 45 is a true and correct copy of a document Bates labeled PGR003043-PGR003050, produced by Applicant.

10. Exhibit 46 is a true and correct copy of additional portions of the deposition of corporate representative William Harold Richart, held on October 13, 2008.

I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

DATED: 2/26/09

BY: Courtney Bru
Courtney Bru

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

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

)
) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)
)

EXHIBIT 41

of

“Opposer’s Response in Opposition to Applicant’s Motion for Summary Judgment”

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

JEFF BROWN,	)	OPPOSITION NO.: 91181448
)	
Opposer,	)	TRADEMARK: PATRIOT GUARD
	)	RIDERS AND DESIGN
v.)	
	)	APPLICATION NO.: 77/040379
PATRIOT GUARD RIDERS, INC.,)	
	)	DATE FILED: NOVEMBER 9, 2006
Applicant.)	
)	

SUPPLEMENTAL DECLARATION OF OPPOSER JEFF BROWN
IN SUPPORT OF OPPOSER'S RESPONSE IN OPPOSITION TO
APPLICANT'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM

Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

I, Jeff Brown, pursuant to 37 C.F.R. § 2.20, hereby declare as follows:

1. I am the Opposer in this proceeding assigned Opposition No. 91181448.
2. I am the owner of Application Serial No. 77/041,061.
3. Although I attended the funeral of United States Army Sgt. Evan S. Parker in South Haven, Kansas on November 2, 2005, I did not discuss any matters related to the PGR organization I founded with any other attendees. At the time of the funeral, I had not yet decided to found the organization.
4. Exhibit A is a true and correct copy of emails dated November 10, 2005 that I sent to and/or received from Jason Wallin.
5. Exhibit B is a true and correct copy of emails dated November 10, 2005 that I sent to and/or received from Jason Wallin.

6. Exhibit C is a true and correct copy of a forum posting by Bill "Snap" Lines, obtained from the website patriotguard.org. This forum posting accurately describes portions of an initial offer I made to PGR, Inc. in an attempt to settle this Opposition.

I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

DATED:

2-26-09

BY:


Jeff Brown

From: Wallin Jason D. [jasonw@geoveritas.com]
Sent: Thursday, November 10, 2005 5:19 PM
To: Jeff Brown
Subject: RE: PGR Logo

Yellow text on black?

Jason Wallin, CISSP
John Deere Agri Services
Fort Collins, CO

970-266-4625
jasonw@geoveritas.com

-----Original Message-----
From: Jeff Brown [mailto:jeffbrown@valornet.com]
Sent: Thursday, November 10, 2005 4:10 PM
To: Wallin Jason D.
Subject: RE: PGR Logo

Jason,
Here's a cleaner logo...the first was a draft. Could you put something like...COMING SOON...on the website too?
Thanks,
Jeff

-----Original Message-----
From: Wallin Jason D. [mailto:jasonw@geoveritas.com]
Sent: Thursday, November 10, 2005 4:21 PM
To: Jeff Brown
Subject: RE: PGR Logo

FYI I threw up a placeholder @ www.patriotguard.org

Jason Wallin, CISSP
John Deere Agri Services
Fort Collins, CO

970-266-4625
jasonw@geoveritas.com

-----Original Message-----
From: Jeff Brown [mailto:jeffbrown@valornet.com]
Sent: Thursday, November 10, 2005 1:53 PM
To: William H. Sloan; Phil Mansker; Tom Connelly; Terry (Darkhorse) Houck; Richard Keller; Eric C. Gagomiros; Preacher; Ralph and Susan; LAnnMullins; Kay Guynes; Keith Calloway; Wallin Jason D.; Knaus Hugh; Chuck Thompson; Wayne Worthington; David Olsen (STP); Craig Winkler; Everett Freel; Combat Veterans Motorcycle Association; CREGG HANSEN; Bill Carr; Bill Law; Bill Bradley
Subject: PGR Logo



Several people have asked about a Patriot Guard Riders patches, decals, arm bands flags, etc. I like the idea and believe it will enhance our presence at any service without taking anything from the other organizations you may belong to.
I have designed a logo that I think works very well for us. I am working with a company to produce the stuff and will send out more information as it becomes available.
Also, Jason Wallin from Colorado has graciously donated web hosting for us and I hope to have a website up soon. The domain name reserved is:
patriotguard.org

I've attached the logo.

Thanks,
Jeff Brown "Twister"
Broken Arrow, OK

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 269.24.1/1470 - Release Date: 5/28/2008 7:20 AM

From: Wallin Jason D. [jasonw@geoveritas.com]
Sent: Thursday, November 10, 2005 2:50 PM
To: Jeff Brown
Subject: RE: PGR

No problem just trying to help. If I ever get too pushy please tell me to pound sand

Jason Wallin, CISSP
John Deere Agri Services
Fort Collins, CO

970-266-4625
jasonw@geoveritas.com

-----Original Message-----

From: Jeff Brown [mailto:jeffbrown@valornet.com]
Sent: Thursday, November 10, 2005 1:41 PM
To: Wallin Jason D.
Subject: RE: PGR

Jason,
I already have a logo that I did...I used to be in that business also.
I
also already have a company working on patches, armbands and flags.
Thank
the guys for me, I'm sure we can avail ourselves of their offer down the road.
Thanks,
Jeff Brown "Twister"
Broken Arrow, OK

-----Original Message-----

From: Wallin Jason D. [mailto:jasonw@geoveritas.com]
Sent: Thursday, November 10, 2005 2:16 PM
To: Jeff Brown
Subject: RE: PGR

Hey I have a graphic artis friend that is sympathetic to our cause and has offered to design some logos for a website and patches should I explore that with him and if so what type of elements would you like to see in it?

Jason Wallin, CISSP
John Deere Agri Services
Fort Collins, CO

970-266-4625
jasonw@geoveritas.com

-----Original Message-----

From: Jeff Brown [mailto:jeffbrown@valornet.com]
Sent: Thursday, November 10, 2005 1:03 PM
To: Wallin Jason D.
Subject: RE: PGR

Excellent...thank you sir!
Jeff Brown "Twister"
Broken Arrow, OK

-----Original Message-----

From: Wallin Jason D. [mailto:jasonw@geoveritas.com]
Sent: Thursday, November 10, 2005 1:46 PM
To: Jeff Brown
Subject: RE: PGR

I would be Honored....

Jason Wallin, CISSP
John Deere Agri Services
Fort Collins, CO

970-266-4625
jasonw@geoveritas.com

-----Original Message-----

From: Jeff Brown [mailto:jeffbrown@valornet.com]
Sent: Thursday, November 10, 2005 12:07 PM
To: Wallin Jason D.
Subject: PGR

Jason,
I think it would be beneficial to set up state captains to coordinate the rides in their area (help determine meeting places, act as a liason between local law enforcement, families, and riders, etc.). What's your opinion, and would you be willing to act as Colorado State Captain?

Jeff Brown "Twister"
Broken Arrow, OK

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 269.24.1/1470 - Release Date: 5/28/2008 7:20 AM



Wednesday, June 18, 2008

Patriot Guard Riders

Standing For Those Who Stood For US

...: ALL Forums ...



jomalley Logout

Code Amber Alert

This is the Code Amber Amber Alert Ticker: -- CodeAmber.org neec

Navigation

- [Home](#)
- [About Us](#)
- [Leadership Contacts](#)
- [Letters of Appreciation](#)
- [Fallen Warrior Scholarship](#)
- [ALL Forums](#)
- [Help on the HomeFront](#)
- [Most Recent Posts](#)
- [Photo Gallery](#)
- [Media/Press](#)
- [Fallen Members](#)
- [Events](#)
- [Troop Support Partners](#)
- [PGR FAQ](#)
- [PGR Gear](#)

Patriot Guard Riders Forum

[Unanswered](#) [Not Read](#) [My Forums](#) [Active Topics](#)

[Forums](#) [My Profile](#) [Search](#) [Members](#)

Forums > Patriot Guard Riders - National > Letters from the PGR President

Subject: To the PGR

Email me when someone replies to this thread.

Topic is locked

Author

snap67 ●
 Posts: 567
 AL and Ga Ride
 Capt/National
 Executive Director

Messages

Oldest First

18 Nov 2006 12:04 PM

Alert

Well, I have some good news for everybody. Jeff and I have put our heads together and come up with, what we believe to be, a great solution to this controversy.

First, let me make clear that there has never been an issue with the use of the name or logo for PGR identification purposes. Jeff has always given his assurance to that issue. The issue has been the store and that's been beaten to death.

PGR 002170



Dialup Homepage

Directory

Click to send an email to the departments below:

- User Support**
- Moderators**
- Photos**
- Media**
- Media Sightings**
- Submit Picture of Day**
- Web Site Administrator**
- Communications Officer**
- Letters Of Appreciation**
- Help On The Homefront**



Mission Request

Click on the link below to make initial contact with us regarding honor mission requests:

Contact Us

Contact Arlington National Cemetery



[Send Email](#)

[Message](#)

Here's the plan. There will be two stores, the new "PGR Store" and "Twister's Place"

Jeff will license the PGR, Inc. and the new PGR Store to use the name and logo, free of charge, to produce new PGR products designed to raise funds for the PGR, Inc. 100% of the proceeds will go directly to the PGR Inc. The PGR Store will be owned, managed and operated by the PGR, Inc. Due to the specialized manpower required, the store may well need to be outsourced. Jeff has even offered to assist with any design work.

Twister's Store will continue to provide PGR products different from those offered in the PGR Store. Twister's Store will still continue to provide donations to the PGR Inc. as it has always done. This will give the PGR two sources of revenue.

Both sites will be linked to each other in an effort to provide maximum exposure and a non-competitive relationship for the betterment of the PGR.

On a personal note, I truly believe we have allowed a few critics to have an undue influence in this matter. I have worked with Jeff for a year and know that his heart has always been with the PGR; he has continued to remain true to the PGR and his vision. This plan should be a testament to that dedication and a true demonstration of how like minds can come together to solve almost any problem.

Now is the time for us to unite, all shake hands, and focus on the mission.

Thanks,
Snap
ICVMC for PGR

You just don't know when an old vet will Snap

Topic is locked

[Forums](#) > [Patriot Guard Riders - National](#) > [Letters from the PGR President](#) > [To the PGR](#)

ActiveForums 3.6



PGR 002171

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

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 42

of

“Opposer’s Response in Opposition to Applicant’s Motion for Summary Judgment”

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

ATTORNEYS AT LAW

SAM P. DANIEL
WILLIAM C. ANDERSON
G. MICHAEL LEWIS
LAWRENCE T. CHAMBERS, JR.
DALLAS E. FERGUSON
SAM C. BRATTON II
GARY M. McDONALD
H. WAYNE COOPER
KEVIN C. COUTANT
RICHARD P. HIX
WILLIAM F. RIGGS
LEWIS N. CARTER
LINDA C. MARTIN
JAMES P. McCANN
RICHARD H. POSTER
S. DOUGLAS DODD
ELISE DUNITZ BRENNAN
JON E. BRIGHTMIRE
TOM Q. FERGUSON
REBECCA M. POWLER
KRISTEN L. BRIGHTMIRE
MICHAEL C. REDMAN
STEVEN K. METCALF
RUSSELL W. KROLL
RACHEL BLUE
JAMES C. MILTON
DAVID McCULLOUGH

320 SOUTH BOSTON AVENUE, SUITE 500
TULSA, OKLAHOMA 74103-3725
TELEPHONE (918) 582-1211
FACSIMILE (918) 591-5360
www.dsda.com

201 ROBERT S. KERR AVENUE, SUITE 700
OKLAHOMA CITY, OKLAHOMA 73102-4208
TELEPHONE (405) 319-3500
FACSIMILE (405) 319-3509

WRITER'S DIRECT:
(918) 591-5324 (telephone)
(918) 925-5324 (facsimile)
rbtuc@dsda.com

WILLIAM H. SPYTLER
N. LANCE BRYAN
CHAD J. KUTMAS
HEATHER FLYNN BARNHART
MCLAINE DEWITT HERNDON
COURTNEY BRU
SHAROLYN C. WHITTING
MATTHEW L. CHRISTENSEN
BRYAN J. NOWLIN
ALICIA J. EDWARDS
KASSANDRA M. BENTLEY
HILARY L. VELANDIA
AMANDA L. THRASH

Of Counsel:
VARLEY H. TAYLOR, JR.
LEONARD I. PATAKI
MICHAEL MINNIS
HARRY V. ROUSE, P.C.
JAMES F. HARVEY, III
CYNTHIA J. BECKER
ANITA K. CHANCEY (admitted in Missouri & Kansas only)
LAURA F. BACHIMAN (admitted in Massachusetts & Texas only)
CHAD D. BURRIS

E. J. DOERNER (1897-1980)
DICKSON M. SAUNDERS (1920-2001)

August 15, 2008

VIA FACSIMILE (312) 704-8023 AND FIRST CLASS MAIL

David J. Marr
Trexler, Bushnell, Giangiorgi, Blackstone & Marr, Ltd.
The Clark Adams Building
105 W. Adams Street, Suite 3600
Chicago, IL 60603

Re: *Jeff Brown Opposition*

Dear David:

We are in the process of reviewing our responses to earlier discovery requests, and will supplement those requests accordingly in light of the parties' agreement to waive respective claims of attorney-client privilege as regards John Jacobs. We do anticipate that any supplemental responses will be made available to you prior to any discovery deposition in this matter. We ask for confirmation, in writing, from Patriot Guard Riders, Inc. that it will do the same.

Regarding Mr. Jacobs' deposition, I ask that you avoid, if at all possible, September 12-14 and 17-21 due to scheduling conflicts.

I have enclosed a Notice of Deposition of Corporate Witness pursuant to Federal Rule 30(b)(6). Please let me know whether the scheduled date of August 22, 2008 works for you. In the alternative, we are willing to conduct the 30(b)(6) deposition on the morning of August 26, 2008, prior to taking the deposition of Jeff Brown, in order to help you facilitate the taking of both depositions during one trip to Oklahoma.

In addition, we have reviewed the Applicant's responses to Opposer's First Set of Interrogatories, First Requests for Production of Documents, and First Requests for Admission.

August 15, 2008

Page 2

We feel strongly that many of your client's objections lack merit. Specifically, your client has objected, on the grounds of relevance, to Interrogatories regarding publicity of the marks in question (Interrogatory No. 17), the types of goods produced and/or distributed by your client, (Interrogatory No. 26), and sales and profits of such goods (Interrogatories Nos. 18, 21), including information regarding the geographic market (Interrogatory No. 20) and distribution by third parties (Interrogatory No. 22). Each of these Interrogatories are directly relevant to issues of selection and/or adoption of the marks in question, first use of the marks in question, and your client's awareness of others' use of identical or similar marks. As you know, this type of information is discoverable. See Trademark Board Manual of Procedure, Chapter 300, Section 414 and cases cited therein.

Your client has also objected, again on the grounds of relevance, to inquiries regarding the classes of purchasers consuming the goods in question (Interrogatories Nos. 19, 27-28). Again, this type of information is discoverable pursuant to the Trademark Board Manual of Procedure and cases cited therein. See TBMP, Chapter 300, Section 414.

Further, your client has objected, on the grounds of relevance, to Interrogatory No. 30 regarding the reasons for Wallin's removal, which is directly relevant to his credibility, an issue that is directly relevant to his purported authorization to file the initial application.

Your client has also objected, on the grounds of relevance, to Requests for Production of Documents regarding directions from the organization to its members to cease communications with Jeff Brown and contracts with third-parties or vendors to manufacture and/or distribute goods containing the marks in question. This information is directly relevant to the conduct of your client throughout this dispute and thus the credibility of your client, and is therefore discoverable. Information regarding third-party use of marks is equally discoverable. See TBMP, Chapter 300, Section 414.

We have previously discussed your client's responses to Requests for Admissions Nos. 8 through 12, and continue to seek supplementation and/or amendment thereof.

I hope that your reconsideration of these responses will bring you to conclude that the responses are inadequate. I look forward to future correspondence from you regarding this topic and hope we can avoid the necessity of a motion to compel these responses in the event that your client decides not to supplement and/or amend the same.

We look forward to receiving Applicant's responses to Opposer's Second Requests for Admission, served on Applicant via first class mail on July 9, 2008.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rachel Blue". The signature is written in black ink and is positioned above the typed name.

Rachel Blue of

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

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

JEFF BROWN,	)	CANCELLATION NO.:	91181448
)		
Petitioner	)	TRADEMARK:	PATRIOT
	)	GUARD RIDERS AND DESIGN	
v.)		
	)	APPLICATION NO.	77/040379
PATRIOT GUARD RIDERS, INC.,)		
	)	DATE FILED:	NOVEMBER 9,
Applicant	)	2006	

NOTICE OF DEPOSITION OF CORPORATE WITNESS

Please take notice that on the 22nd day of August, 2008, at 9:00 a.m. at the offices of Doerner, Saunders, Daniel and Anderson, L.L.P., 320 S. Boston Ave., Suite 500, Tulsa, Oklahoma, 74103, Petitioner Jeff Brown, by and through his counsel, will take the discovery deposition of a party representative of Applicant Patriot Guard Riders, Inc., upon oral examination, before a person qualified to administer oaths and to make stenographic recordings, transcripts and videotapes of the testimony, pursuant to Federal Rule of Civil Procedure 30(b)(6) and Chapter 37, Section 2.120 of the Code of Federal Regulations.

The matters on which the representative will be required to testify are as follows:

1. Facts relating to the Applicant's defense to the Opposition.
2. The existence and activities of the PGR organization prior to incorporation, including, without limitation, identification of any incorporators, a description of activities of any incorporators, and the current role of any incorporators within PGR, Inc.
3. The incorporation of Applicant PGR, Inc., including, without limitation, compliance with corporate formalities, dates and/or timelines of activities relating to corporate formation, including not-for-profit formation, and a description of the activities of PGR, Inc. since the date of its incorporation.

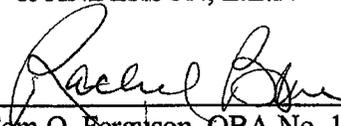
4. The Applicant's claimed right of ownership in or use of each of the following marks: (1) Patriot Guard Riders "Riding with Respect," (2) Patriot Guard Rider, including, without limitation, Applicant's first use and first commercial use of such marks, and any knowledge of the use of similar and/or identical marks by Opposer Jeff Brown.
5. Facts relating to the goods and/or services that Applicant maintains are included within the scope of its claimed marks, including specimens depicting such marks, the sale and/or distribution of goods depicting such marks, and the provision of association services.
6. Facts relating to the Applicant's use of the phrase "Patriot Guard Riders Standing for Those Who Stood for Us," including, without limitation, material facts relating to the development of the phrase, first use and continued use of the phrase in commerce.
7. Facts relating to any stores operated by Applicant or any stores that Applicant maintains were operated on its behalf, including, without limitation, (1) PGR Store, and (2) Twister's.
8. Facts relating to communications with Opposer Jeff Brown, before and after his resignation from the Applicant's Board of Directors.

The Applicant shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf. The Applicant will specify the individual(s) to testify and designate those matters on which they will provide testimony, in accordance with Federal Rule of Procedure 30(b)(6).

The deposition shall continue day to day until completed.

DOERNER, SAUNDERS, DANIEL
& ANDERSON, L.L.P.

By:

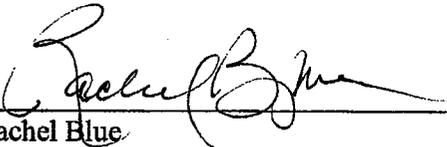


Tom Q. Ferguson, OBA No. 12288
Rachel Blue, OBA No. 16789
320 South Boston Avenue, Suite 500
Tulsa, Oklahoma 74103-3725
Telephone (918) 582-1211
Facsimile (918) 591-5360
tferguson@dsla.com
rblue@dsla.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of August, 2008, a true and correct copy of the above and foregoing Petitioner's Response to Applicant's Request for Admissions was sent via electronic delivery to DMarr@trexlaw.com and mailed, with proper postage thereon, to :

David J. Marr
James R. Foley
James A. O'Malley
TREXLER, BUSHNELL, GIANGIORGI,
BLACKSTONE & MARR, LTD.
105 West Adams Street, 36th Floor
Chicago, IL 60603



Rachel Blue

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

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)
)

EXHIBIT 43

of

“Opposer’s Response in Opposition to Applicant’s Motion for Summary Judgment”

TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD.
COUNSELORS AT LAW

RICHARD R. TREXLER (1906-1995)
RICHARD BUSHNELL (1926-2004)
RICHARD A. GIANGIORGI
RAIFORD A. BLACKSTONE, JR.
DAVID J. MARR
LINDA L. PALOMAR
JAMES R. FOLEY
JAMES A. O'MALLEY
TIMOTHY M. MCCARTHY
PAIGE A. KITZINGER

THE CLARK ADAMS BUILDING
105 WEST ADAMS STREET, SUITE 3600
CHICAGO, ILLINOIS 60603-6210
(312) 704-1890

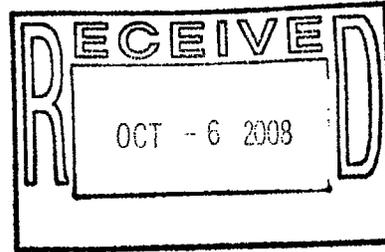
FOUNDED 1890

PATENT, TRADEMARK, COPYRIGHT
AND RELATED MATTERS; ALL PHASES
INCLUDING LICENSING AND LITIGATION

FAX: (312) 704-8023
www.trexlaw.com

October 3, 2008

Mr. Tom Q. Ferguson
Ms. Rachel Blue
Doerner, Saunders, Daniel & Anderson, L.L.P.
320 South Boston Avenue
Suite 500
Tulsa, Oklahoma 74103-3725



Re: Opposition No. 91181448
Your Ref: BR0300.01
Our Ref: 2569/47137

Dear Tom and Rachel,

In accordance with the parties agreement to provide supplemental discovery answers, including document production, at least one week before the taking of any of the depositions, please find enclosed herewith the following:

1. *"Applicant's Amended/Supplemental Responses to Certain Requests for Admissions"*;
2. *"Applicant's Amended/Supplemental Responses to Certain Interrogatories"*; and
3. Document Nos. PGR 002271 - PGR 003068.

The Amended/Supplemental Responses to Certain Requests for Admissions have been prepared in view of your comments provided to us in your e-mail of August 7, 2008. The Amended/Supplemental Responses to Certain Interrogatories have been prepared in view of your comments provided to us in your letter dated August 15, 2008.

Please be advised that we have not provided Amended/Supplemental Responses to Requests for Production of Documents as requested in your letter dated August 15, 2008 because you have not identified any specific Requests that you wanted us to reconsider. Regardless, we are maintaining our position with regard to each of our original Responses to Brown's Requests for Production of Documents. Further, to the extent applicable, we note the

TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD.

Ms. Rachel Blue
Doerner, Saunders, Daniel & Anderson, L.L.P.
October 3, 2008
Page 2

following:

1. that the Trademark Application at issue, namely United States Trademark Application No. 77/040,379 for the mark "PATRIOT GUARD RIDERS RIDING WITH RESPECT" does not allege use of the mark in connection with any goods or products;
2. that, to the extent that any of Brown's Requests appear to seek information as they relate to a likelihood of confusion, we note that Brown did not plead likelihood of confusion as one of his bases as to why PGR should be refused registration of the mark "PATRIOT GUARD RIDERS RIDING WITH RESPECT";
3. that from the inception of the Patriot Guard Riders organization until Brown's removal/resignation from the Board of Directors for Patriot Guard Riders, Inc., that all of Brown's actions that in any way refer or relate to the use of the marks was done on behalf of PGR, rather than on Brown's individual behalf, and, therefore, such use inured to the benefit of PGR.

With regard to Brown providing amended/supplemental responses to PGR's discovery requests, we specifically await Brown's amended/supplemental responses to PGR's discovery requests that relate either directly or indirectly to Mr. Jacobs and/or to Mr. Jacobs representation of Brown and/or PGR as discussed in our e-mail letter to you dated August 11, 2008. More specifically, it is our opinion that such requests include at least:

1. Brown's Answer to Interrogatory No. 6;
2. Brown's Answer to Interrogatory No. 7;
3. Brown's Answer to Interrogatory No. 23; and
4. Brown's Responses to Request for Admission Nos. 167-177.

We further note that Brown's Responses to Request for Admission Nos. 167-177 should be made in view of PGR's Document Production PGR 000701 - PGR 000702 and PGR 000713 - PGR 000716, and in view of our letter to you dated August 1, 2008 regarding what the "head shed" was.

TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD.

Ms. Rachel Blue
Doerner, Saunders, Daniel & Anderson, L.L.P.
October 3, 2008
Page 3

We would also like for Brown to amend/supplement the following two discovery responses at his earliest convenience (we understand that such amendment/supplementation need not be completed at the one week deadline prior to the depositions taking place as we are just bringing same to your attention today):

1. Brown's Answer to Interrogatory No. 10

While Brown's Answer appears to state that he had orally licensed PGR's use of the Marks in a non-commercial manner, Brown's Answer is non-responsive with regard to the portion of this Interrogatory which states "identify all persons having knowledge of the license and/or acquiescence and the circumstances surrounding same, such as the date and terms of the license and/or acquiescence, and all documents relating to same"; and

2. Brown's Response to Request for Admission No. 17a

Brown's Response discusses a license that he gave to the "organization", but Request for Admission No. 17a requests information relating to the PGR "corporation", and not to the "organization".

We look forward to receiving Brown's supplemental and/or amended discovery responses.

Sincerely,

TREXLER, BUSHNELL, GIANGIORGI,
BLACKSTONE & MARR, LTD.

By: 
David J. Marr

DJM/JAO:A57749
Encl.

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

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

)
) OPPOSITION NO.: 91181448
)
) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN
)
) APPLICATION NO.: 77/040379
)
) DATE FILED: NOVEMBER 9, 2006
)
)

EXHIBIT 44

of

“Opposer’s Response in Opposition to Applicant’s Motion for Summary Judgment”

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

JEFF BROWN,)
Opposer and)
Petitioner,)
vs.) Opposition No. 91181448
PATRIOT GUARD RIDERS, INC.,) Serial No. 77/040,379
Applicant and)
Respondent.)

TELEPHONIC DEPOSITION OF RONNY ROY AWTRY,

produced as a witness on behalf of the Opposer and
Petitioner, in the above-styled and numbered cause,
taken on the 28th day of October 2008, in the City of
Tulsa, County of Tulsa, State of Oklahoma, before me,
Marlene Percefull, Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the State
of Oklahoma.

I N D E X

W I T N E S S P A G E

Ronny Roy Awtry
Direct Examination by Ms. Bru 4
Cross Examination by Mr. Marr 77
Redirect Examination by Ms. Blue 89
Signature Page 91
Reporter's Certificate 92

EXHIBITS

PETITIONER'S
Number Identified Offered
1 12-11-06 forum post 15
2 12-7-06 forum post 25
3 9-18-07 forum post 46
4 12-6-06 e-mail 48
5 12-27-06 e-mail 52
6 7-8-08 e-mail 68

A P P E A R A N C E S

FOR THE OPPOSER: Ms. Courtney L. Bru
Ms. Rachel Blue
Attorneys at Law
320 S. Boston
Suite 500
Tulsa, OK 74103
FOR THE APPLICANT: Mr. David J. Marr
Mr. James A. O'Malley
Attorneys at Law
105 W. Adams St.
Suite 3600
Chicago, IL 60603
(By Telephone)
ALSO PRESENT: Mr. Jeff Brown
Mr. Bill Richart
(By Telephone)

(whereupon, the deposition began
at 9:02 a.m.)
RONNY ROY AWTRY,
having first been duly sworn to testify to the truth,
the whole truth and nothing but the truth, testified as
follows:

DIRECT EXAMINATION

BY MS. BRU:
Q Could you state and spell your name for the
record.
A My name is Ronny Roy Awtry, R-O-N-N-Y, R-O-Y,
A-W-T-R-Y.
Q And what is your business address?
A My business address is Speedy Services, 1050 KCK
Way, Suite 2, Cedar Hill, Texas 75104.
Q Okay. what is your e-mail address?
A My e-mail address is Rrawtry@yahoo.com.
Q Have you ever used any other e-mail addresses?
A Yes, I have used Bear@Patriotguard.org.
Q Okay.
A And there was an SBC Global years ago, but I don't
even remember it.
Q Have you ever been deposed before?
A Yes.
Q Okay. So you understand that we're just going to

9:02 AM
9:02 AM
9:03 AM
9:03 AM

1 go through a series of questions and answers and I'm
 2 going to need you to respond vocally, okay?
 3 A Yeah.
 4 Q And if you don't understand the question, be sure
 5 and let me know and I'll rephrase it before you try to
 6 answer it.
 7 A Okay.
 8 Q If you need a break, let us know. I'm just going
 9 to ask you not to ask for a break right in the middle
 10 of an answer. Let's go ahead and finish up the
 11 question that we're on, then we'll go ahead and take a
 12 break, okay?
 13 A Okay.
 14 Q Are you under any medication or drugs that would
 15 make it difficult for you to understand or answer a
 16 question today?
 17 A No, I'm not.
 18 Q Are you under a doctor's care for any illness?
 19 A Psoriasis treatment. I mean, nothing that would
 20 prevent me from answering or having comprehension of
 21 what's happening.
 22 Q Okay. And you understand that you're under oath
 23 right now, the same as you would be in a court of law?
 24 A Yes, I do.
 25 Q Is there anyone there with you right now?

9:03AM Patriot Guard Riders. 9:05AM
 2 Q Have you ever given Dave any documents?
 3 A No, I have not.
 4 Q Okay, great. Are you currently a member of PGR?
 9:03AM 5 A Yes, I am. 9:05AM
 6 Q How long have you been a member?
 7 A I've been a member since January of 2006.
 8 Q How did you get involved in the organization?
 9 A Word of mouth. I was told of a web site with
 9:03AM 10 Patriot Guard Riders and I logged on and joined. And 9:05AM
 11 it became something that was near and dear to my heart
 12 and I participated probably thousands of hours in the
 13 last several years.
 14 Q Okay. What is your current position in PGR?
 9:03AM 15 A I currently believe I'm the assistant to the HOTH 9:06AM
 16 coordinator. Other than that, I have no official title
 17 other than past board of directors, past treasurer.
 18 Q And what is HOTH?
 19 A Tom Hoffman is the HOTH coordinator, the HOTH
 9:03AM 20 administrator, Help On The Homefront. 9:06AM
 21 Q Help On The Homefront. What does that group do?
 22 A Help on the Homefront is a facet of the PGR that
 23 helps support veterans or current soldiers having
 24 disabilities related to their service to the country.
 9:04AM 25 Q Okay. And I think you said you previously were a 9:06AM

1 A No, there is not.
 2 Q Okay. Do you have any documents in front of you,
 3 other than the exhibits that I sent you by e-mail last
 4 week?
 5 A No, I do not.
 6 Q Okay. Have you ever talked to me before?
 7 A Yes, I have. Um --
 8 Q Go ahead.
 9 A It's been some period of time. I think I deal
 10 with your secretary most.
 11 Q Okay. Sorry about that. Have you ever given me
 12 any documents?
 13 A No, I have not.
 14 Q Have you ever talked with Rachel Blue before?
 15 A I don't remember. I think I have, but I don't
 16 remember.
 17 Q Do you remember what you guys talked about?
 18 A Just general topics in regards to the trademark
 19 issue of the Patriot Guard Riders.
 20 Q Okay. Have you ever given her any documents?
 21 A No.
 22 Q Have you ever talked to Dave Marr?
 23 A Yes, I have.
 24 Q And what did you guys talk about?
 25 A General issues regarding the trademark of the

9:04AM board of directors member? 9:06AM
 2 A Yes, I was.
 3 Q When were you on the board of directors?
 4 A I was on the board of directors from approximately
 9:04AM 5 June of 2006 until -- June of 2006 until late December 9:06AM
 6 of 2007 or early January 2008. I don't remember
 7 exactly.
 8 Q Were you ever on the board of directors with Jeff
 9 Brown?
 9:04AM 10 A Yes, I was. 9:07AM
 11 Q Okay. And were you -- what were your past
 12 positions on the board?
 13 A Well, I was past -- I was the director of the Help
 14 On The Homefront program. And initially there was a
 9:04AM 15 three-man board that was instituted into a five-man 9:07AM
 16 board in June of 2006.
 17 Q Okay.
 18 A And at the time I was a -- kind of a board member
 19 at large, I guess. I was not the secretary or the
 9:04AM 20 treasurer or the president, of course, but I was the 9:07AM
 21 Help On The Homefront director. And upon Jeff's
 22 removal and the removal of Jason from the treasury
 23 position, I stepped into the treasury position.
 24 Q So you became treasurer immediately after Jason
 9:05AM 25 Wallin? 9:08AM

SIGNATURE PAGE

I, Ronny Roy Awtry, do hereby certify that the foregoing deposition was presented to me by Marlene Percefull as a true and correct transcript of the proceedings in the above-styled and numbered cause, and I now sign the same as true and correct.

witness my hand this 25th day of

November, 2008.

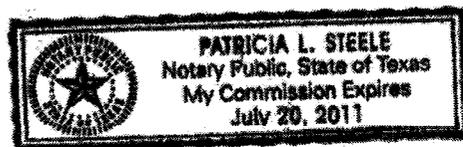
[Handwritten Signature]
Ronny Roy Awtry

SUBSCRIBED AND SWORN TO before me

this 25th day of November, 2008.

[Handwritten Signature]
Notary Public

My Commission Expires:



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

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448

) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN

) APPLICATION NO.: 77/040379

) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 45

of

“Opposer’s Response in Opposition to Applicant’s Motion for Summary Judgment”

James O'Malley

From: Bill Richart
Sent: Thursday, October 04, 2007 9:10 AM
To: Ronny Awtry; Ed Mueller; exec
Subject: RE: FW: Your Position on a matter

My thoughts would be covered in the questions that Ronny added. From the attorney's remarks, it would seem that he is unaware of the overlap in events.

One additional question for the attorney; would Jeff have violated the fiduciary responsibility of his position as Director by removing that financial support of the organization and denying us use of the established logo when he stepped down, depriving the organization of our primary means of funding now that he was no longer Director?

The old, if I can't be the boss I'll take my money and go home tantrum....

Bill "Whirlwind" Richart
Missouri State Captain
Director of National Operations
Patriot Guard Riders

From: Ronny Awtry
Sent: Wednesday, October 03, 2007 12:44 PM
To: wescoot2; exec
Subject: RE: FW: Your Position on a matter

Ed,

My thoughts would be that we were told this a long time ago and that Jeff weaved a helluva web. That said, I would point out some very specific questions and not generalizations that may be pertinent and easier for the accountant, attorney to digest. It is very well known you want Jeff's head on a platter, no problems here with that. A better set of facts and questions would serve us all better.

Such as,

1. The logo for the PGR was designed and first used by the PGR on the PGR website. Jeff created it while an officer of the company. Is this a conflict of interest?
2. Jeff stated that the funds from the PGR store supported the PGR and expressed no delineation between the two. Is that legal? IRS Acceptable?
3. Jeff directly linked his store to the Navigation bar of the official website with no delineation. Is that legal? IRS acceptable?
4. Jeff advertised the PGR as a not-for profit the whole time to all parties who would listen. We gained our Oklahoma NFP status in 2-27-2006 through Tom Winters office. If he stated we were a NFP or 501c3 after that date was he illegal or violating IRS rules?
5. If the above happened while Jeff's store was specifically linked in the PGR, Inc. website navigation bar at that time giving appearance that the PGR store and the PGR were one in the same, was it unlawful and against IRS rules?

Serving You,

Ronny "BEAR" Awtry
Patriot Guard Riders
National Treasurer
Director - Help On The Home Front
www.patriotguard.org
bear@patriotguard.org

Confidentiality Notice: The information contained in this e-mail and any attachments may be legally privileged and confidential. If you are not an intended recipient, you are hereby notified that any dissemination, distribution, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender and permanently delete the e-mail and any attachments immediately. You should not retain, copy or use this e-mail or any attachment for any purpose, nor disclose all or any part of the contents to any other person. --

From: Ed Mueller [mailto:wescot2@yahoo.com]
Sent: Wednesday, October 03, 2007 11:58 AM
To: exec
Subject: Fwd: FW: Your Position on a matter

Hello everyone,

Here is a chain of e-mails between myself, our accountant, and lawyer. Sorry, but it will be necessary to read from the bottom up. I have read the opinion of our attorney, and personally feel he is not only way off base, but trying to cover for Jeff Brown. I'm not easy with his position, and would like your thoughts.

Respects,
Ed

Jon Tatum <jon@tatumassociates.cc> wrote:

From: "Jon Tatum" <jon@tatumassociates.cc>
To: "Ed Mueller" <wescot2@yahoo.com>
Subject: FW: Your Position on a matter
Date: Wed, 3 Oct 2007 11:38:22 -0500

Ed:

Good morning. Below, please find the opinion of the PGR, Inc's attorney concerning Jeff Brown selling products. If there are other questions you need clarified let me know.

Thanks,

Jon Tatum

From: Dan Beirute [mailto:dbeirute@wintersking.com]
Sent: Wednesday, October 03, 2007 11:19 AM
To: 'Jon Tatum'
Subject: RE: Your Position on a matter

Jon,

It is my understanding that Jeff's store existed before the non-profit corporation was formed and that the store sold PGR products before the non-profit was formed. Presuming that this is correct, the issue should be considered from two perspectives: (1) IRS rules, and (2) trademark law.

IRS rules prohibit a non-profit organization from funneling business to an officer or director of the organization. In this case, the non-profit should not have been used as a vehicle for attracting business and sales for Jeff's store. It is not clear to me that the non-profit was ever used for this purpose. The store sold PGR merchandise after the non-profit was formed, but this does not necessarily indicate that the non-profit was used to generate business or sales for the store. After all, there was apparently a market for the merchandise before the non-profit existed.

Trademark law provides that the originator of a name owns the name unless the owner conveys the rights to someone else or abandons use of the name. In this case, the non-profit did not originate the name. Presuming that Jeff originated the name or received rights in the name from the originator, he was the owner of the trademark rights. In such case, and unless the above IRS rules were violated, he was legally entitled as the trademark owner to sell PGR products.

9/30/2008

PGR 003044

I hope this helps. Please let me know if you have other questions.

Thanks,
Dan

From: Jon Tatum [mailto:jon@tatumassociates.cc]
Sent: Tuesday, October 02, 2007 10:35 AM
To: dbeirute@wintersking.com
Subject: FW: Your Position on a matter

Dan:

Call me and let's discuss this question regarding the Patriot Guard Riders, Inc.

Jon Tatum

--
Tatum & Associates, Inc.
2000 Mallory Ln, Ste 130-140
Franklin, TN 37067

--
Mail to: jon@tatumassociates.cc
(615) 300-1549 Voice
(615) 599-1560 Fax

From: Ed Mueller [mailto:wescoot2@yahoo.com]
Sent: Monday, October 01, 2007 10:27 AM
To: Jon Tatum
Subject: RE: Your Position on a matter

Hi Jon,

Have you addressed this issue with our Attorney, and has he rendered an opinion?

Respects,
Ed

Jon Tatum <jon@tatumassociates.cc> wrote:

Ed:

I'll contact the attorney as you requested.

Jon Tatum

--
Tatum & Associates, Inc.
2000 Mallory Ln, Ste 130-140
Franklin, TN 37067

--
Mail to: jon@tatumassociates.cc
(615) 300-1549 Voice
(615) 599-1560 Fax

From: Ed Mueller [mailto:wescoot2@yahoo.com]
Sent: Tuesday, September 25, 2007 8:28 PM
To: Jon Tatum
Subject: RE: Your Position on a matter

Hi Jon,

Yes I would like you to pursue this with our Attorney and clarify one additional point.

Since our 501c3 has been granted and goes back today one 21 Feb 06, did Jeff Brown break the law, not criminal, but IRS rulings, as he was running a for profit store as outlined in the other Attorney's case study of.....

Church of Scientology v Commissioner case to be extremely similar to your situation (highlighted below). In this case, the founder of the Church of Scientology held copyrights to books he and others wrote. The funds from books sales were paid through a for-profit company to the founder. He advertised the books in writings and speeches about Scientology.

Members of the Church of Scientology purchased the books from the for-profit company. The court found the earnings from the book sales constituted self-dealing and stripped the Church of its exempt status and fined it for failure to file income tax returns. Based on current IRS regulations and case law on this issue, I would recommend that the organization keep its leadership separate from the PGR Store. Your organization should be sure all members are paying a fair price for goods purchased from the store. You may also wish to challenge the ownership of the trademarks used by the PGR Store since both organizations were tied together at the time the marks were registered.

Thank-you,
Ed

Jon Tatum <jon@tatumassociates.cc> wrote:

Ed:

They may apply. The questions that would have to be cleared up here would be: Was the store part of the non-profit? Did the non-profit own the rights to the products being sold? Did Jeff's business sell product to the non-profit for resale? These are some questions that come to mind but there may be more. Your corporate attorney would have a better handle on this than I would most likely. I would be happy to contact Winter's King and ask about this on your behalf if you would like for me too.

Jon Tatum

—
Tatum & Associates, Inc.
2000 Mallory Ln, Ste 130-140
Franklin, TN 37067

—
Mail to: jon@tatumassociates.cc
(615) 300-1549 Voice
(615) 599-1560 Fax

From: Ed Mueller [<mailto:wescoot2@yahoo.com>]
Sent: Tuesday, September 25, 2007 11:41 AM
To: Jon Tatum
Subject: RE: Your Position on a matter

Hi Jon,

Thanks for the quick reply, and I understand your point about us being a 501c3, and the timing of that. My question is, since we were incorporated in the State of Oklahoma on 21 Feb 06, and Jeff Brown was running the store as a for profit business during the period of Feb 06 thru his departure of Nov 06, doesn't these same laws apply ??

Thanks,
Ed

9/30/2008

PGR 003046

Jon Tatum <jon@tatumassociates.cc> wrote:

Ed:

Jeff's store had nothing to do with the non-profit corporation. The non-profit didn't even exist for most of the time that Jeff had the store. There may have been a short period that Jeff was selling product while the non-profit was in existence but I'm not sure what those dates would have been. He operated the store as a Sole Proprietor for tax purposes. I never prepared Jeff's tax returns so I can't say how that was handled. The attorney is correct with the assumptions below however the timing is what would hold up in court and with the IRS. Hope this helps.

Let me know if you have any other questions. I'm always glad to help.

Jon Tatum

Tatum & Associates, Inc.
2000 Mallory Ln, Ste 130-140
Franklin, TN 37067

Mail to: jon@tatumassociates.cc
(615) 300-1549 Voice
(615) 599-1560 Fax

From: Ed Mueller [mailto:wescot2@yahoo.com]
Sent: Tuesday, September 25, 2007 9:09 AM
To: Jon Tatum
Subject: Your Position on a matter

Hi Jon,

I have spoke to Ronny Awtry about how Jeff ran his store, and he assured me that both you, and our Attorney stated, that Jeff's way was preferable, and that the IRS would have no problem with it.

Below is a communication which I have received from another member, who sought the opinion of another lawyer (I have removed the lawyers name) Please read what she opines, and let me know your thoughts on this.

Letter follows

Patriot Guard Riders, Inc.

In Re: Non-Profit Self Dealing Rules

Dear Board of Directors:

I have been asked to provide your organization with my opinion concerning possible matters of self-dealing in your organization which could jeopardize PGR's tax exempt status with the IRS. I provide this opinion based on my past experience with nonprofit organizations and knowledge of the IRS rules and regulations concerning tax exempt entities.

I have been provided information about the Patriot Guard Riders, Inc. (PGR) and its connection to a for-profit entity, PGR Store, LLC (store). According to my information PGR was only permitted to obtain merchandise from the store. Members were linked to the store from the PGR web-site to purchase PGR gear, patches and supplies. It is my further understanding that the owner of the store was a board member of PGR. I understand that he has since been removed from that position.

The IRS does not tolerate self-dealing in nonprofit organizations. This premise is central to the tax-exempt statute which specifically states that "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable . . . no part of the net earnings

of which inures to the benefit of any private shareholder or individual.”26 USCS § 501. If an individual or group is reaping all the rewards of an organization then the IRS can and will take the organizations tax exempt status away.

I have enclosed a summary list of court rulings where the IRS has revoked an organization's 501(c)(3) status for self-dealing. I find the *Church of Scientology v Commissioner* case to be extremely similar to your situation (highlighted below). In this case, the founder of the Church of Scientology held copyrights to books he and others wrote. The funds from books sales were paid through a for-profit company to the founder. He advertised the books in writings and speeches about Scientology.

Members of the Church of Scientology purchased the books from the for-profit company. The court found the earnings from the book sales constituted self-dealing and stripped the Church of its exempt status and fined it for failure to file income tax returns.

Based on current IRS regulations and case law on this issue, I would recommend that the organization keep its leadership separate from the PGR Store. Your organization should be sure all members are paying a fair price for goods purchased from the store. You may also wish to challenge the ownership of the trademarks used by the PGR Store since both organizations were tied together at the time the marks were registered. Please feel free to contact me if you have any questions.

Sincerely,

Enclosure

U.S. Treasury Circular 230 Notice: Any tax advice contained in this communication (including any enclosures) was not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties that may be imposed under the Internal Revenue Code or by any other applicable tax authority; or (b) promoting, marketing or recommending to another party any tax-related matter addressed herein. We provide this disclosure on written communication to assure compliance with new standards of professional practice, pursuant to which certain tax advice must satisfy extensive new requirements as to form and substance if it is to be used by the taxpayer as a defense to the attempt to impose penalties by the IRS.

SUMMARY OF SELF-DEALING CASES

When non-profit organization forms partnership with for-profit entity, non-profit should lose its tax-exempt status under 26 USCS § 501(c)(3) if it cedes control to for-profit entity. *St. David's Health Care Sys. v United States* (2003, CA5 Tex) 349 F3d 232, 2003-2 USTC P 50713, 92 AFTR 2d 6865. Payments by church to its founder support finding of inurement where founder used church to generate copyrighted literature and market his products, books were copyrighted in founder's name, publications copyrighted in founder's name were actually written by church employees, and church encouraged its staff members to aggressively market founder's products. *Church of Scientology v Comm'r* (1987, CA9) 823 F2d 1310, 87-2 USTC P 9446, 60 AFTR 2d 5386, 92 ALR Fed 231, cert den (1988) 486 US 1015, 100 L Ed 2d 214, 108 S Ct 1752.

Fundraising organization's tax-exempt status is retroactively revoked where part of organization's income inured to benefit of insiders; however, embezzlement or conversion by insiders does not constitute inurement.

Variety Club Tent No. 6 Charities v Commissioner (1997) TC Memo 1997-575, RIA TC Memo P 97575, 74 CCH TCM 1485.

Charitable corporation may operate business as substantial part of its

activities as long as it does so in furtherance of its charitable purpose; focus in deciding whether corporation qualifies for tax exempt status is on manner of operation of its business, not just whether it is organized under not for profit corporate statutes; corporation was not entitled to charitable purpose exemption although its stated purpose was to provide assistance to senior citizens, where proceeds from a second hand retail sales operations were diverted almost entirely to perpetuation of business, where less than half of its employees were over age of 55, their training was restricted to needs of business, corporation provided no housing facilities or health care, 10 percent or less of donated items were distributed directly to needy senior citizens, incomplete records were kept of such distributions, and corporation conducted no advertising to let senior citizens know of availability of such items. Senior Citizens Stores, Inc. v United States (1979, CA5 Tex) 602 F2d 711, 79-2 USTC P 9592, 44 AFTR 2d 5665.

Ed Mueller
National Director
Patriot Guard Riders Inc.
www.patriotguard.org

No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.30/1029 - Release Date: 9/24/2007 7:09 PM

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.30/1029 - Release Date: 9/24/2007 7:09 PM

Ed Mueller
National Director
Patriot Guard Riders Inc.
www.patriotguard.org

No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.30/1029 - Release Date: 9/24/2007 7:09 PM

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.30/1029 - Release Date: 9/24/2007 7:09 PM

Ed Mueller
National Director
Patriot Guard Riders Inc.
www.patriotguard.org

No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.30/1029 - Release Date: 9/24/2007 7:09 PM

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.30/1029 - Release Date: 9/24/2007 7:09 PM

Ed Mueller
National Director
Patriot Guard Riders Inc.
www.patriotguard.org

No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.36/1041 - Release Date: 10/1/2007 10:20 AM

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.39/1044 - Release Date: 10/2/2007 11:10 AM

No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.39/1045 - Release Date: 10/2/2007 6:43 PM

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.39/1045 - Release Date: 10/2/2007 6:43 PM

Ed Mueller
National Director
Patriot Guard Riders Inc.
www.patriotguard.org

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

JEFF BROWN,

Opposer,

v.

PATRIOT GUARD RIDERS, INC.,

Applicant.

) OPPOSITION NO.: 91181448

) TRADEMARK: PATRIOT GUARD
) RIDERS AND DESIGN

) APPLICATION NO.: 77/040379

) DATE FILED: NOVEMBER 9, 2006
)

EXHIBIT 46

of

“Opposer’s Response in Opposition to Applicant’s Motion for Summary Judgment”

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

JEFF BROWN,)
Opposer and)
Petitioner,)
vs.) Opposition No. 91181448
Patriot Guard Riders, Inc.,) Serial No. 77/040,379
Applicant and)
Respondent.)

THE DEPOSITION OF WILLIAM HAROLD RICHART,

produced as a witness on behalf of the Opposer and
Petitioner, in the above-styled and numbered cause,
taken on the 13th day of October 2008, in the City of
Tulsa, County of Tulsa, State of Oklahoma, before me,
Marlene Percefull, Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the State
of Oklahoma.

I N D E X

3	<u>WITNESS</u>	<u>PAGE</u>
5	Bill Richart	
6	Direct Examination by Ms. Bru	4
7	Cross Examination by Mr. Marr	109
8	Redirect Examination by Ms. Bru	111
10	Signature Page	114
10	Reporter's Certificate	115

EXHIBITS

PETITIONER'S

14	Number	Identified	Offered
15	5 Terms of Use	20	
16	6 E-mail 4-28-08	21	
16	7 E-mail 8-13-07	34	
17	8 Zippy posting	35	
17	9 E-mail 1-6-08	42	
18	10 E-mail 5-22-08	68	
18	11 Wescoot 2 posting	69	
19	12 E-mail 1-6-08	73	
19	13 FJB web site	76	
20	14 Trademark app	87	
20	15 Trademark app	88	
21	16 Trademark app	--	
21	17 Notice of Oppos.	91	
22	18 Applicant's Answer	93	
22	19 E-mail 5-12-08	95	

A P P E A R A N C E S

FOR THE OPPOSER
AND PETITIONER: Ms. Courtney L. Bru
Ms. Rachel Blue
Attorneys at Law
320 S. Boston
Suite 500
Tulsa, OK 74103

FOR THE APPLICANT
AND RESPONDENT: Mr. David J. Marr
Mr. James A. O'Malley
Attorneys at Law
105 W. Adams St.
36th Floor
Chicago, IL 60603

ALSO PRESENT: Mr. Jeff Brown

(whereupon, the deposition began
at 2:19 p.m.)

WILLIAM HAROLD RICHART,

having first been duly sworn to testify to the truth,
the whole truth and nothing but the truth, testified as
follows:

DIRECT EXAMINATION

BY MS. BRU:

Q Could you please state your name and spell your
name.

2:19 PM

A William -- full name?

Q Sure.

A -- Harold Richart, II. Spell all that?

Q Just the last name for us.

A R-I-C-H-A-R-T.

2:19 PM

Q It's Richart?

A (Nods head.)

Q We've had like a money bet going on how you
pronounce that.

A You're like four or five behind.

2:19 PM

Q What's your address?

A 218 East Boonville, B-O-O-N-V-I-L-L-E, in Sedalia,
Missouri.

Q What's your current position with PGR,
Incorporated?

2:19 PM

1 were sold to benefit.
 2 Q Okay. Let me get you to go back and look at
 3 Exhibit 11.
 4 A Okay.
 5 Q The forum posted by Wescoot talked about in
 6 September of 2007 the board was aware that there were
 7 potential issues with missing money and that those
 8 potential issues indicated Jason Wallin. And on
 9 Exhibit 10 it refers to November of 2006, that monies
 10 had be removed by November of 2006. If you can answer,
 11 do you know whether or not the board had knowledge of
 12 those activities as of the date that this application
 13 was filed on November 9, 2006?
 14 A I'm sorry, could you --
 15 Q Did the board have knowledge of the missing PayPal
 16 money on November 9, 2006?
 17 A No, the board didn't have knowledge of any missing
 18 money until the audit was completed.
 19 Q Okay. But you must have known that money was
 20 missing in order to request an audit or have an audit
 21 performed?
 22 A We were aware there are accusations that money was
 23 missing.
 24 Q Okay. Were you aware that there were accusations
 25 of money missing on November 9, 2006?

4:24PM A I believe so. 4:42PM
 2 Q Was this document filed while you were on the
 3 board of directors for PGR? It's got a date on the top
 4 of 1-29-2008.
 4:24PM A Yes. 4:42PM
 6 Q Okay.
 7 A I was trying to find that.
 8 Q Did you help or provide any information for the
 9 filing of this application?
 10 A You'll have to give me a second to look through
 11 it. 4:42PM
 12 Q Yeah.
 13 A Okay. Ask the question again, please.
 14 Q Did you provide any information to assist with the
 15 filing of this application? 4:43PM
 16 A I don't believe I particularly did, no.
 17 Q Do you recall any board of director meetings to
 18 discuss the filing of this application?
 19 A Yes, but not with any specificity. Again, I mean,
 20 discuss the filing and the difference in the terms and
 21 all that. Nothing comes to -- yes, I was aware of it. 4:43PM
 22 Q Okay. You were president at this time?
 23 A No, ma'am.
 24 Q What were you at this time?
 4:25PM A Vice president. 4:43PM

1 A I believe what you're asking is if the board knew
 2 that and I was not a board member at that time.
 3 Q You were on head shed?
 4 A At which date?
 5 Q November 9th, 2006.
 6 A I believe so. Yes, yes, I would have been.
 7 Q Was there any head shed discussion about missing
 8 money, maybe linking that missing money to Jason Wallin
 9 on November 9, 2006?
 10 A I believe at some point and again, I can't give
 11 you a date, so I can't address that question
 12 accurately, that someone had sent a letter being
 13 concerned about money missing from a gathering and I
 14 believe that money was identified as not being missing.
 15 MS. BRU: Can we take a break?
 16 MR. MARR: Sure.
 17 (Following a short recess at 4:26 p.m.,
 18 proceedings continued on the record at 4:41 p.m.)
 19 MS. BRU: I'm going to take you up on the
 20 offer to talk to Bonnie.
 21 MR. MARR: Now?
 22 MS. BRU: We can come back and do it.
 23 We'll just skip as much as we can.
 24 Q Take a look at that one. You've seen this
 25 document before?

4:26PM Q Okay. Who was president? 4:43PM
 2 A Ed Mueller.
 3 Q Okay. Go ahead and get Exhibit 14 and get it in
 4 front of you, too.
 4:26PM A Okay. 4:43PM
 6 Q If you'll notice under applicant information,
 7 Exhibit 14 has the Colorado address that we just
 8 discussed and Exhibit 15 has a Tulsa, Oklahoma,
 9 address. Can you explain to me why those addresses are
 10 different? 4:44PM
 11 A As I didn't fill out the applications, not really.
 12 I believe that the address on the second is, I'm going
 13 to guess, to Winters King, who is our registrant
 14 attorney.
 15 Q And you're referring to Exhibit 15?
 16 A Yes, 15.
 17 Q Okay. Let me ask you about -- if you go down, it
 18 says goods and/or services. It will have a class and a
 19 description. I won't refer to the class, I'm just
 20 going to call them what they are. So the very first
 21 one is metal license plates. And it says, "First use
 22 anywhere date, at least as early as 12-9-2005." Would
 23 you agree with me that metal license plates existed as
 24 of the time that Exhibit 14 was filed?
 4:26PM A I'm not sure I ever bought one. 4:44PM

SIGNATURE PAGE

I, William Harold Richart, do hereby certify that the foregoing deposition was presented to me by Marlene Percefull as a true and correct transcript of the proceedings in the above-styled and numbered cause, and I now sign the same as true and correct.

Witness my hand this 19th day of

November, 2008.

William Harold Richart
William Harold Richart

SUBSCRIBED AND SWORN TO before me

this 19 day of NOVEMBER, 2008.

Mark A. Thomason
Notary Public

My Commission Expires: 10-28-2011

MARK A. THOMASON
Notary Public - Notary Seal
State of Missouri
Commissioned for Pettis County
My Commission Expires: October 28, 2011
Commission Number: 07332269