

services offered for commercial sale under marks comprising the Borghese name. Paragraph 6 of the 2nd Apicella Declaration identifies two third-party registrations (Exhibit D) for marks that include the name Borghese.

As regards Exhibit C, the law is clear that documents may be admissible as evidence in connection with a summary-judgment motion, if properly authenticated by declaration. *See* TBMP §528.05(e) (2d ed. rev. 2004); *Raccioppi v. Apogee, Inc.*, 47 USPQ2d 1368 (TTAB 1998). The 2nd Apicella Declaration asserted personal knowledge of the source as is required by the applicable case law:

“It is not mandatory ... that any or all exhibits submitted in connection with a motion for summary judgment be self-authenticating and thus qualify as being admissible under Trademark Rule 2.122(e). Rather, documents and other exhibits which are not self-authenticating may be submitted in connection with a summary judgment motion, pursuant to the provisions of Rule 56(e). To be admissible under Rule 56(e), such documents and/or exhibits must be authenticated by and attached to an affidavit (or declaration in a Board proceeding) complying with the requirements of Rule 56(e) and the affiant . . . [or] declarant [must have] personal knowledge of the source thereof ...” *Raccioppi v. Apogee Inc.*, at 1369-1370.

Here, the source of the information is within the personal knowledge of the declarant and therefore Applicant has met its burden of showing that the exhibits are what they purport to be for purposes of summary judgment. *See id.* at 1370. (“We find this sufficient to hold the proffered printouts admissible as evidence in support of opposer’s motion for summary judgment. The declarant is not required to have personal knowledge of the information set forth in these printouts. He obviously does not have personal knowledge of these matters. Instead, the reliability of the information becomes a matter of weight or probative value to be given to the proffered evidence”).

With regard to Exhibit D, a party may make third-party registrations of record for purposes of summary judgment by filing a copy thereof with its brief on the summary- judgment motion. *See* TBMP § 528.05(d); *Bongrain International (American) Corp. v. Moquet Ltd.*, 230 USPQ 626 n.3 (TTAB 1986); *see also* 37 CFR §2.122(e); TBMP §704.03(b)(1)(B). Official records of this nature are essentially self-authenticating. The rules governing practice before the Trademark Trial and Appeal Board (“Board”) plainly state that a third-party registration may be made of record in a Board proceeding by submitting a printout of the registration from the electronic records of the United States Patent and Trademark Office’s

automated database. 37 CFR §2.122(e); TBMP §704.03(b)(1)(B). Applicant has done just that with the official records that comprise Exhibit D.

Exhibits C & D should not be stricken on hearsay grounds because they do not constitute hearsay. The documents in Exhibit C are not being presented for the truth of the matters therein, but merely for what they show on their face: the existence of the product and/or service. Likewise, the documents in Exhibit D, copies of third-party trademark registrations for CASTELLO DI BORGHESE and BORGHESE for wine, are also proper to show the existence of various official PTO records.

Finally, the Board takes a more lenient stance to admissibility of evidence during the summary-judgment phase. *See, e.g., CRS Holdings, Inc. v. Waldemar Link*, No. 91124558, 2002 WL 31056719, at *6, n. 10 (TTAB, Sep. 11, 2002) (denying motions to strike evidence made with summary-judgment motions and finding “when we deal with the question of whether entry of summary judgment is appropriate we consider exhibits that bear on the question, even if they would need more formal introduction at trial”).

WHEREFORE, Applicant respectfully requests that the Board deny Opposer’s Motion to Strike Exhibits C & D of the 2nd Apicella Declaration.

Dated: New York, New York
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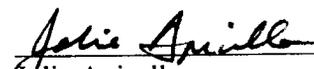
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CERTIFICATE OF EXPRESS MAILING

I, Jolie Apicella, certify that on April 15, 2010, a copy of Applicant's Opposition to Applicant's Motion to Strike Exhibits C & D of Second Apicella Declaration in *Borghese Trademarks, Inc. v. MultiMedia Exposure, Inc.* (No. 91189629) was filed with the Trademark Trial and Appeal Board by U.S. Express Mail to:

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA
22313-1451



Jolie Apicella

CERTIFICATE OF SERVICE

I, Jolie Apicella, certify that on April 15, 2010, a copy of Applicant's Opposition to Applicant's Motion to Strike Exhibits C & D of Second Apicella Declaration in *Borghese Trademarks, Inc. v. MultiMedia Exposure, Inc.* (No. 91189629) was served on counsel by First Class U.S. mail to:

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