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

Proceeding	91191698
Party	Defendant Kaufman, Lance R.
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Opposition No. 91191698

Mark: MPhone

Regarding McDonald's allegations:

1. We are seeking the registration for "MPhone" and not "McPhone" so McDonald's first assumption is incorrect. "MPhone" is an abbreviation for the product we call a Money Card Phone with each element, Money, Card and Phone of equal importance. There is no intent to call the product a Money card Phone and thus as McDonalds implies "McPhone". That reduces the emphasis on the word card to less value than to Money and Phone. In our product Money Card and Phone are of equal value. Further, "Mc" changes the meaning of our entire product. We have not created a "McPhone" and have no idea as to what that would be other than some sort of toy. Our product is a "MPhone" it's a professional product and not a McDonald's "McPhone". Further, searching the USPTO data base MC or Mc reveals 608 live names of which MPhone does not appear clearly separating our application based on the standards of the English language and that of the USPTO.
2. Any extension of time should not be granted based on numerous incorrect assumptions of the opposing party.
3. Other businesses than McDonald's with registered trademarks as McDonalds Est. 1856 and McDonald operate independently without any cross confusion.
4. The name MPhone is directed as defined in the application towards a product that is not in any way associated with restaurants, food or franchising. Although McDonald's presents 18 registered marks other issued marks to other concerns include Mc and MC, and marks as Mc Sweet, Mc Lady, Mc Grath's, Mc Entertainment, Kitchen MC, Mc Razor, Mc Consultants, Mc Plus, Mc Donald Est. 1856, Mc Multichange, Mc Lite, Mc Call, Mc Cracken, Mc Happy's, Mc Call's , McDonald and many more names.
5. There is no intent to use "Mc" as it would diminish our product. McDonalds' uses the argument of *prima facie* evidence but their evidence is incorrect as they falsely claim our registration mark is "McPHONE" rather than "MPhone". McDonald's again incorrectly states our application is for "McPhone". It's for "MPhone" and not "McPhone". With regard to their argument of time, clearly other concerns with direct reference to McDonald name were issued that same registration name prior to the opposition's McDonald. Evidently, the opposition, McDonald's Corporation, plays by differing rules than the USPTO.
6. McDonald's argument centers on "Mc" and as stated that is not used in our Trademark application or used in any copyrighted literature, advertisements or promotions. Other non registered marks using "Mc" relate to specific copyright rules that are coupled to contextual text. It's not known if McDonald's tried to obtain a registration on these names and was refused.
7. McDonald's again states we are filling for use as the mark relates to "Mc". Evidently they have not seen the mark or have seen the mark and / or claim it to

- have a meaning beyond our intent as “MCPhone” or the understanding of the USPTO and are making assumptions that are not logical and have no basis.
8. We again submit their incorrect reference to “McPhone” and relation to “Mc”. The over extension claim of “Mc” worldwide by McDonald’s Corporation has caused the Trademark Office in Kuala Lumpur to award the McCurry restaurant the right to use the “Mc” prefix over the objections to McDonald’s Corporation. Many other restaurants McCormick & Schmick’s, McKinley’s Restaurant, McClark Restaurant, McNiche House Restaurant, McGillicuddy’s Restaurant, McFaddens Restaurant and Bar and others based in the USA use “Mc”. Many of McCurry, McCormick & Schmick’s and other restaurant patrons both in Kuala Lumpur and in the USA respectively go to McDonald’s without confusion to other restaurants using “Mc”. Clearly the human intellect knows the difference not only between restaurants but also between products and services that are different.
 9. Our product and service is not at all related to anything that McDonald’s offers. Using the word similar or identical is not true. Again we are not using “Mc” as a prefix to create “McPhone” as stated so any arguments in their claim are to be disregarded. Debit or stored value cards, electronic communication products and services and Wi-Fi are products that McDonald’s offers are in fact offered at most every other restaurant in the world and thousands of merchants offer similar services and products. Those services are not unique but simple everyday accommodations.
 10. McDonald’s incorrectly states that we intend to offer the same kind of goods. Numerous general categories are offered by the USPTO office as a means to select a group of services. That general definition does not cover specific differences between each product. Details are left to patent claims.
 11. On January 15, 2009 we registered “MCPhone” and not “McPhone”
 12. Again “McPhone” is referenced incorrectly as our name is “MCPhone”. As to how that connection is made to “Mc” appears only to be to one who’s reading skill set has diminished to such a point that their ability to read the English language would be seriously hampered and thus that relationship might imply that they simply don’t know the English language. Clearly the dictionary defines “Mc” as a prefix and even the relationship “MC” has other meanings as Marine Corps, Medical Corps and Military Cross.
 13. Since we are not using “McPhone” but rather MCPhone the assumption that our product is sponsored by or approved by McDonald’s and is likely to cause confusion, mistake or deception or any violation of U.S.C. is as nonsensical as assuming that there is a relationship to Marine Corps, Medical Corps and Military Cross by our use of “MC” in “MCPhone” or a relationship that we have to hundreds of other companies that were issued “Mc” as a stand alone mark or as part of a “Mc” prefix.
 14. Continually the writer for McDonald’s falsely references our mark as “McPhone” vs. “MCPhone”. Based on other research on the Internet there is predominately a reference to a “McPhone” answering machine software product that we do not want to be associated with our mark “MCPhone” as the name Money Card Phone has nothing to do with an answering machine. Further, on the Internet in the

Urban Dictionary reference is made to “McPhone” as follows: (“The main phone used in a McDonald's restaurant. It is usually half-dead, coated in grease, and lost. Therefore, every McDonald's employee must have their own cell phone.”) There are 46,000 references that come up on the Internet with reference to “McPhone”. Where has McDonald’s been with respect to enforcing action against the historical users of “McPhone”? We don’t want “MCPhone” to be associated with “McPhone” based on negative comments towards “McPhone” and unrelated services.

15. Again our application is MCPhone and not “McPhone” so there is no damage potential.

In summary, McDonald’s reference to our mark as “McPhone” rather than “MCPhone” is totally incorrect. Further it’s apparent from the number of companies using “McPhone” without a registered mark and with references to McDonald’s in a derogatory connotation has further been neglected by McDonald’s for a good many years to protect what they view as the “Mc” prefix and McDonald’s in general. Based on those factors it is my opinion and that of the initial review of the USPTO that the name abbreviation “MCPhone” for Money Card Phone is in no way related to McDonald’s allegations and should be awarded to ourselves as indicated in our application for the trademark.

Lance R. Kaufman