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

Proceeding	91194375
Party	Plaintiff MarkRice
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Submission	Motion to Suspend for Civil Action
Filer's Name	Mark Rice
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Signature	/Mark Rice/
Date	04/07/2010
Attachments	USPTO Motion To Suspend.pdf (2 pages)(55846 bytes) Zoo Mania Amended Complaint.pdf (28 pages)(138642 bytes)

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

In the matter of trademark application Serial No. 77-893,539

For the mark: ZOO MANIA

Published in the Official Gazette on March 30, 2010.

MARK RICE

Opposer

v.

Desert Sky Graphics, Inc.

Applicant

MOTION TO SUSPEND

Pursuant to 37 CFR 2.117 and TBMP §510.02(a), Opposer Mark Rice (“Rice” or “Opposer”) hereby motions the Court to suspend and stay the above referenced Opposition and proceedings to follow pending the outcome of the civil action cited in the Notice Of Opposition, File No. 09-CV-3254 in the United States District Court For The Northern District of Georgia Atlanta Division.

Attached to Opposer's Motion is a copy of the pleadings from the civil action. Wherefore, Opposer Mark Rice respectfully request that this Motion be granted.

This 7th day of April, 2010.

/Mark Rice/
Mark Rice, Opposer
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Alpharetta, GA. 30022
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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MARK RICE d/b/a)	
GAMES TO REMEMBER)	
)	
Plaintiff,)	
)	CIVIL ACTION
)	
v.)	FILE NO.
)	1-09-CV-3254-JOF
)	
BRAND IMPORTS, L.L.C.,)	DEMAND FOR JURY
DESERT SKY GRAPHICS, INC.,)	TRIAL
DAX LOGUE and LAURI S. LOGUE)	
)	
)	
Defendants.)	

PLAINTIFF’S FIRST AMENDED COMPLAINT

Mark Rice, d/b/a Games To Remember (“Rice“), Plaintiff, hereby files this Amended Complaint against Defendants Brand Imports L.L.C. (“Brand Imports”), Desert Sky Graphics Inc (“Desert Sky”), Dax Logue, and Lauri S. Logue and respectfully shows the Court as follows:

JURISDICTION

1.

This action is founded on diversity of citizenship jurisdiction, 28 U.S.C. 1332, 1392 (c) . The amount in controversy exceeds \$100,000.00, exclusive of interest and costs.

2.

This is an action for infringement of rights granted under the Federal Trademark Act of 1946 (15 USC 1051 et seq.). Specifically, the action arises under Section 32(1) of the Act (15 USC 1114 (1)), and seeks relief under the Section and under Sections 34 and 35 of the Act (15 USC 1116, 1117).

3.

This Court has jurisdiction pursuant to Section 39 of the Act (15 USC 1121) and pursuant to 28 USC 1338 (a)(b).

PARTIES

4.

Plaintiff Mark Rice d/b/a Games To Remember resides at 785 Olde Clubs Drive, Alpharetta, Georgia 30022.

board games, card games, and accessories with the “ZOO” theme, one such product being “ZOO MANIA®”, and such manufacture and sale has extended throughout the United States and foreign countries.

8.

Since 1996, Rice has manufactured board games, card games and accessories with both “ZOO MANIA®” and “ZOO®” as part of his product line. Rice is also introducing an additional series of card games, board games, and accessories with the heading “ZOO MANIA®” and “ZOO®” as the dominant theme.

9.

Rice filed an application with the United States Patent and Trademark Office (“USPTO”) for the mark “ZOO MANIA®” on September 26, 1996 for classification 028, and on November 18, 1997, Rice was granted Registration No. 2,113,925 for the trademark “ZOO MANIA®”. This registration is valid, subsisting and un-canceled. A copy of the certificate of registration is attached, marked Exhibit “1”, and incorporated by reference.

10.

In accordance with the provisions of 15 USC 1111, Rice’s trademark,

as displayed on Rice's board games, card games and accessories, is accompanied by the letter ® enclosed within a circle to provide notice that the trademark has been registered.

11.

Rice has built his image and product line on the foundation of board games, card games, and accessories with the "ZOO MANIA®" and "ZOO®" theme.

12.

Rice has sold playthings to over 100 Zoo gift shops nationwide, in addition to thousands of specialty stores and a variety of mass market retailers, one such being Barnes & Noble.

13.

Since June 1, 1996 Rice has been the manufacturer of "ZOO MANIA®" products. Since, on or about June 1, 1996, the products have been sold under the trademark "ZOO MANIA®". The goodwill associated with it are of considerable value to Plaintiff.

14.

Rice was the first person to use the trademark "ZOO MANIA®" or any trademark similar to it, in association with board games, card games,

and accessories under the classification 028, otherwise known as “games and playthings”. As a result of the continued sale by Rice of products under the trademark “ZOO MANIA®” since on or about June 1, 1996, the trademark has become widely known and Rice has become identified in the public mind as the manufacturer of the products to which it is applied.

15.

As a result of the long experience, care and skill of Rice in producing products under the trademark “ZOO MANIA®”, it has not only become widely known, but has also acquired a reputation for excellence.

16.

Plaintiff has built up and now has valuable good will connected with its business, and this good will is symbolized by Rice’s trademark.

17.

Rice has widely advertised and promoted in interstate commerce its products, identified by the above-mentioned trademark, expending substantial sums in such advertising and promotion. Among other things, Plaintiff uses the Zoo Mania® Mark to advertise and market its product over the internet.

18.

On or about June 12, 2006, the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue began selling a product “ZOO MANIA” to vendors nationwide.

19.

In 2009, and possibly as early as June 12, 2006, long after the adoption and widespread use of the trademarks by Rice, and long after the trademarks had been registered in the United States Patent and Trademark Office, the defendants Brand Imports, Desert Sky, Dax Logue, and Lauri Logue with intentional disregard of plaintiff’s rights, began the manufacture, distribution and sale in interstate commerce of playthings under the name that is exact to that of Rice, namely, “ZOO MANIA”. A representation of the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue product named “ZOO MANIA” is attached, marked Exhibit 2, and incorporated by reference.

20.

For many years prior to the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue activities complained of herein, the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue have known of the

use of Rice's trademarks to identify Rice's marketing of games and playthings, and the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue have had constructive notice under 15 USC 1072 of Rice's claim of ownership of Rice's trademarks for the products specified in the United States registrations.

21.

By the use of the name "ZOO MANIA", the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue are misleading the public into believing that Defendant's product is manufactured by Rice, thereby depriving Rice of the benefit of the good will attached to Rice's product.

22.

The use of the mark "ZOO MANIA" by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue is likely to induce persons to buy, use and recommend the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue products when instead they intend to buy, use, and recommend Rice's products. Such deception and mistake will cause great damage to Rice and erode the good will that Rice has developed.

23.

In selecting and using the word "ZOO MANIA" in connection with

the sale, offering for sale, distribution, advertising, and promotion of playthings, the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue have acted and are acting with the purposes of taking the benefit of the favorable reputation and valuable good will which Rice has established in its trademarks, and causing the products and business of the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue to be palmed off as made, authorized, sponsored, or endorsed by or otherwise connected with Rice.

24.

Rice is informed and believes, and based on such information and belief alleges, that the use by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue of Rice's trademark was, and is, deliberate, and that the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue have used and continue to use Rice's trademark for the purpose of giving the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue products consumer appeal and salability, by usurping Rice's own reputation and good will, which the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue playthings otherwise would not have.

25.

The defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue use of the above name “ZOO MANIA” on its products is likely to deceive purchasers as to the source of the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue goods, in that the trade and the public are likely to believe that the goods sold by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue originate with Rice or with a business which has a legitimate connection with Rice.

26.

The defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue use of “ZOO MANIA” on playthings constitutes infringement of Rice’s trademark.

27.

As a result of the infringement of Rice’s trademark, Rice has been damaged in the amount of the profits realized by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue from the sale of the playthings under the name “ZOO MANIA”.

28.

Defendants filed a Federal Application with the United States Patent

and Trademark Office for the Mark “Zoo Mania” bearing application serial number 77736395 on May 13, 2009 under the classification 028/playthings identifying said Mark as “Toy Figures”. On December 15, 2009, Defendants abandoned said application.

29.

Subsequently, Defendants’ filed a second Federal Application with the United States Patent and Trademark Office for the Mark “DSG Zoo Mania” bearing application serial number 77840473 on October 2, 2009 under the classification 028/playthings identifying said Mark as “Toy Figures”. On December 30, 2009, the United States Patent and Trademark Office refused the registration of the applied-for mark citing “because of a likelihood of confusion with the mark in U.S. Registration No. 2113925” (Plaintiff’s registered trademark Zoo Mania®).

30.

On November 10, 2009, Rice notified the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue in writing that the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue were infringing on Rice’s trademark, and demanded that the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue cease using the trademark “ZOO

MANIA” in association with playthings. Despite Rice’s written demand that the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue discontinue use of the imitation of Rice’s trademark “ZOO MANIA”, the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue have refused to comply with this request; at present, the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue continues to use the imitation of Rice’s trademark in the marketing of playthings.

31.

Defendants’ ignored the letter and instead, on December 15, 2009, Defendants’ filed a third Federal Application with the United States Patent and Trademark Office for the Mark “Zoo Mania” bearing application serial number 77893539 under the classification 028/playthings identifying and changing said Mark as “Three-dimensional plastic molded characters prepackaged in translucent plastic acorn capsules for sale from non-electric bulk capsule vending machines upon the rotation of a coin slot handle”. On December 30, 2009, the United States Patent and Trademark Office refused the registration of the applied-for mark citing “because of a likelihood of confusion with the mark in U.S. Registration No. 2113925” (Plaintiff’s registered trademark Zoo Mania®).

32.

In filing its third application for “Zoo Mania”, Defendants falsely certified that Defendants’ “believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”

33.

Defendants knew the statements made to the United States Patent and Trademark Office were false at the time made. As evidenced by its fraudulent statements made to obtain a Federal Trademark registration for “Zoo Mania” in the immediate aftermath of receiving Plaintiff’s cease and desist letter, Defendants’ have used and continue to use the Plaintiffs’ “Zoo Mania” Mark with the specific intent of exploiting the good will associated with Plaintiff’s “Zoo Mania” Mark.

34.

Defendants have engaged in the unauthorized licensing of the Mark “Zoo Mania” to third parties with false and misleading statements that suggest they own the rights to the “Zoo Mania” Mark. Said licensing agreements involve a variety of products; plush animals, clothing, and other products not yet identified. As evidenced by its licensing agreements with third parties for the use of “Zoo Mania”, Defendants’ have used and continue to use the Plaintiff’s “Zoo Mania” Mark with the specific intent of exploiting the good will associated with Plaintiff’s “Zoo Mania” Mark.

35.

Defendants’ continues to manufacture, sell, and market related toy figures to benefit from the unauthorized use of Plaintiff’s “Zoo Mania” Mark. Related toy figures use “Mania” in connection with goods bearing the name “Jungle Mania” and “Sea Mania” with the offering of toy figures which are likely to confuse, mislead, and deceive the public, resulting in direct injury to Plaintiff’s reputation and goodwill.

36.

Defendants’ unauthorized use of Plaintiff’s “Zoo Mania” Mark in connection with the development and marketing of “Jungle Mania” and

“Sea Mania” is a misappropriation of the good will associated with Plaintiff’s “Zoo Mania” Mark.

37.

In selecting and using the word “JUNGLE MANIA” and “SEA MANIA” in connection with the sale, offering for sale, distribution, advertising, and promotion of playthings, the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue have acted and are acting with the purposes of taking the benefit of the favorable reputation and valuable good will which Rice has established in its trademarks, and causing the products and business of the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue to be palmed off as made, authorized, sponsored, or endorsed by or otherwise connected with Rice.

38.

Rice is informed and believes, and based on such information and belief alleges, that the use by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue of “MANIA” as part of Rice’s trademark was, and is, deliberate, and that the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue have used and continue to use Rice’s trademark for the purpose of giving the defendants Brand Imports, Desert Sky, Dax Logue

and Lauri Logue products consumer appeal and salability, by usurping Rice's own reputation and good will, which the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue playthings otherwise would not have.

39.

The defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue use of "MANIA" on its products is likely to deceive purchasers as to the source of the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue goods, in that the trade and the public are likely to believe that the goods sold by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue originate with Rice or with a business which has a legitimate connection with Rice.

40.

The defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue use of "MANIA" on playthings constitutes infringement of Rice's trademark.

41.

As a result of the infringement of Rice's trademark, Rice has been damaged in the amount of the profits realized by the defendants Brand

Imports, Desert Sky, Dax Logue and Lauri Logue from the sale of the playthings under the name “JUNGLE MANIA” and “SEA MANIA”.

42.

This action arises under the Trademark Act of 1946 (15 USC 1051 et seq.), and particularly under Sections 32, 34, and 35 of the Act (15 USC 1114, 1116, 1117), as more fully appears in this complaint.

43.

The acts of the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue constitute unfair competition and an infringement of Rice’s common-law rights in the mark “ZOO MANIA”.

44.

The exact amount of profits made by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue as a result of Defendant’s infringement of Rice’s trademark is unknown to Rice and cannot be ascertained without an accounting.

45.

The infringement by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue of Rice’s trademark, as described above, is causing irreparable injury to Rice’s trade, business reputation and good will. The

infringement by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue of Rice's trademark will continue to cause injury and expense to Rice unless the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue is restrained by order of this Court from further infringement of Rice's trademark.

46.

On information and belief, Rice alleges that the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue intend to continue and expand the uses of the name "ZOO MANIA" and derivative names using "MANIA" in the United States.

47.

Rice has been seriously damaged by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue activities complained of herein, and unless the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue activities complained of herein are preliminarily and permanently enjoined, Rice and its good will and reputation will suffer irreparable injury of an insidious and continuing sort that cannot be adequately calculated or compensated in money damages.

48.

Unless the injunction sought in this action is granted, the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue will continue to infringe on Rice's trademark and cause irreparable injury to Rice from loss of profits and deprivation of the benefit of the good will that is attached to Rice's trademark.

49.

Rice has no plain, speedy or adequate remedy at law.

COUNT I

TRADEMARK INFRINGEMENT

Paragraphs 1 through 49 are incorporated herein by reference as though fully set forth here.

50.

Upon information and belief, Defendants' have unlawfully used marks that are confusingly similar and identical to the "ZOO MANIA" Mark and such use constitutes trademark infringement in violation of the Federal Trademark Act of 1946, specifically 15 USC 1114 (1) and of Plaintiff's trademark rights at the common laws of Georgia.

51.

As a result of Defendants' wrongful acts, Plaintiff is entitled to injunctive relief and other remedies under Federal law.

COUNT II

UNFAIR COMPETITION

Paragraphs 1 through 51 are incorporated herein by reference as though fully set forth here.

52.

Plaintiff, by virtue of its prior adoption and use in interstate commerce of the "ZOO MANIA" Mark in this judicial district, has acquired, established, and owns common law trademark and service mark rights in the "ZOO MANIA" Mark, which serve to identify to the public certain goods and services that are offered by Plaintiff alone, and the goods and services offered in connection with the Mark are regarded by the public as being offered by, sponsored by, approved by, authorized by, associated with, or affiliated with Plaintiff.

53.

Defendants' have intentionally and unlawfully copied and used the "ZOO MANIA" Mark, without authorization, for the calculated purpose of

passing off their goods and services as those of Plaintiff, or trading upon the significant goodwill and reputation of Plaintiff, and of deceiving the public as to the true nature and characteristics of Defendants' production, all to Defendants' profit and to the damage and detriment of Plaintiff.

54.

Defendants' past and continued use of the "ZOO MANIA" Mark constitutes copying and imitation of the "ZOO MANIA" Mark, falsely designates the origin of Defendants' goods and services, and is likely to cause consumer confusion, mistake or deception.

55.

Defendant's aforesaid acts constitute unfair competition with Plaintiff in violation of Plaintiff's rights at common law.

COUNT III

VIOLATIONS OF 15 USC 1125(a)

Paragraphs 1 through 55 are incorporated herein by reference as though fully set forth here.

56.

The unauthorized use of Plaintiff's "Zoo Mania" Mark by Defendants' in conjunction with its goods is a deliberate attempt to imitate

unlawfully Plaintiff's Mark and brand name, but also an attempt to imply falsely Plaintiff's sponsorship of Defendants' goods. Accordingly, the false, misleading and infringing activities of Defendants' are likely to cause confusion among the general public and in the trade as to the origin or sponsorship of Defendants' infringing goods.

57.

Defendant's aforesaid acts constitute a false designation of origin and false representation of goods introduced into interstate commerce, in violation of the Federal Trademark Act of 1946, specifically 15 USC 1125(a).

58.

Defendants' wrongful actions constitute unfair competition and are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. 1125(a).

59.

By virtue of Defendants' violation of 15 U.S.C. 1125(a), Plaintiff is entitled to an award of Defendants' profits, three times actual damages sustained by Plaintiff, and the costs of this action, 15 U.S.C. 1117(a).

60.

By virtue of the allegations set forth above, Plaintiff is entitled to

injunctive relief pursuant to 15 U.S.C. 1116 and attorney's fees as provided by 15 U.S.C. 1117(a).

COUNT IV

DILUTION

Paragraphs 1 through 60 are incorporated herein by reference as though fully set forth here.

61.

The Defendant's aforesaid acts are likely to cause injury to the business reputation of Rice and to dilute the distinctive quality of Plaintiff's trademark and trade name in violation of the anti-dilution statute, 10-1-451 (b), of the State of Georgia.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

a. The defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue be required, pursuant to 15 USC 1117, to account to Rice for all profits realized by it as a result of the above-described trademark infringement;

b. The defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue pay over to Rice all the profits realized by the defendants

Brand Imports, Desert Sky, Dax Logue and Lauri Logue from sales of the playthings under the name “ZOO MANIA” or any imitation of Rice’s trademark, including but not limited to “JUNGLE MANIA“ and “SEA MANIA“;

c. Rice receives from the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue all damages sustained by Rice as a result of the infringement by the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue of Rice’s trademark, as provided by 15 USC 1117;

d. The defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue , and Defendant’s servants and agents, be enjoined during the pendency of this action, and permanently thereafter, from selling, or offering for sale, in the United States or foreign countries, playthings bearing the trademark “ZOO MANIA®” or any imitation of Rice’s trademark, including but not limited to “JUNGLE MANIA“ and “SEA MANIA“;

e. The defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue be required to deliver to Rice, or to such person as the Court may designate, all playthings, sales flyers, packages, and advertisements in the possession of the defendants Brand Imports, Desert Sky, Dax Logue and Lauri Logue , bearing the mark “ZOO MANIA” or any imitation of the

mark “ZOO MANIA”, including “JUNGLE MANIA” and “SEA MANIA”
for destruction;

f. Rice have and recover from the defendants Brand Imports,
Desert Sky, Dax Logue and Lauri Logue treble the damages sustained by
Rice, as provided by 15 USC 1117.

g. Rice receive his costs incurred in this action;

h. Rice receive such other and further relief as may be just and
proper; and

i. Demand for a jury trial.

DATED this 7th day of January, 2010.

MARK RICE, Pro Se Plaintiff
d/b/a Games To Remember
785 Olde Clubs Drive
Alpharetta, Georgia 30022
(770) 645-5545

COMPLIANCE CERTIFICATE PURSUANT TO LR 7.1

Pursuant to LR 7.1D, this is to certify that the foregoing
PLAINTIFF'S FIRST AMENDED COMPLAINT complies with the font
and point selections approved by the Court in LR 5.1C. Undersigned further
certifies that this document was prepared using Times New Roman font, 14
point.

This 7th day of January, 2010.

Mark Rice, Pro Se
785 Olde Clubs Drive
Alpharetta, Georgia 30022
(770) 645-5545

CERTIFICATE OF SERVICE

I hereby certify that I have made due and legal service of the foregoing PLAINTIFF'S FIRST AMENDED COMPLAINT upon all parties by hand delivering said copies to Defendants' counsel, L. Clint Crosby.

This 7th day of January, 2010.

Mark Rice, Pro Se
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