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

Proceeding	91196299
Party	Plaintiff Connect Public Relations, Inc.
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**Opposed Mark: CONNECT**  
**U.S. Trademark Application Serial Number: 77/714,693**  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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CONNECT PUBLIC RELATIONS, INC., a Utah corporation,	)	
	)	
Opposer	)	
	)	
v.	)	
	)	
DIGITALMOJO, INC., a California corporation,	)	
	)	
Applicant.	)	

**OPPOSER'S REPLY IN SUPPORT  
OF ITS MOTION FOR SUMMARY  
JUDGMENT**

Opposition No. 91196299

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**REPLY**

Opposer Connect Public Relations, Inc. ("ConnectPR") files this Reply in response to Applicant's Response to Opposer's Motion For Partial Summary Judgement ("Response Brief") filed by Applicant Digitalmojo, Inc. ("Digitalmojo").

## ARGUMENT

Digitalmojo has failed to identify a genuine issue of material fact that would preclude entry of ConnectPR's Corrected Motion for Partial Summary Judgment ("SJ Motion").

As an initial matter, ConnectPR notes that it filed contemporaneously with this Reply a Motion to Strike asking the Board to strike (i) Digitalmojo's Response Brief because it exceeds the twenty-five (25) page limitation by a staggering ten (10) full pages; (ii) Paragraphs 3 and 8 of the Declaration of Thomas Cook in Support of Applicant's Response to Opposer's Motion for Partial Summary Judgment ("Cook Declaration") because, as counsel for Applicant Digitalmojo, Inc., he is precluded from providing the expert testimony given therein; and (iii) Any and all references to the third-party registrations relied upon by Digitalmojo because they were not properly made of record.

Since ConnectPR is anticipating that the Board will strike, and will give no consideration to, items (i), (ii), and (iii), above, ConnectPR will not address all of the arguments raised in the Response Brief and the Cook Declaration in this Reply. Instead, ConnectPR will briefly address the most pertinent issues.

**I. The Co-Pending Cancellation Proceedings Should not Preclude Entry of Partial Summary Judgement in Favor of ConnectPR Because They were Instigated by Digitalmojo to Harass, Cause Unnecessary Delay, and to Needlessly Increase the Cost of Litigation**

In its Response Brief and the Cook Declaration, Digitalmojo chose not to inform the Board that its Petitions to Cancel ("Cancellation Proceedings") are currently subject to Motions to Dismiss. In particular, ConnectPR has filed Motions to Dismiss in both Cancellation Proceedings on several grounds, including that the claims asserted in the Petitions to Cancel are barred because they constitute compulsory counterclaims that were not timely filed, and because none of Digitalmojo's

multiple claims of fraud even remotely satisfies the strict pleading requirement set forth in Fed. R. Civ. P. 9(b). For example, despite alleging multiple instances of fraud in the Cancellation Proceedings, Digitalmojo failed to identify a single fact to support its fraud allegations as required by Fed. R. Civ. P. 9(b). Even the most deferential readings of the Petitions to Cancel expose that Digitalmojo's sole purpose in instigating the Cancellation Proceedings was to harass, cause unnecessary delay, and to needlessly increase the cost of litigation. The Board should not reward Digitalmojo's abusive tactics with a delay in determining ConnectPR's SJ Motion in this matter.

**II. The Third-Party Registrations and the TESS Printout Relied Upon by Digitalmojo Do Not Generate a Genuine Issue of Material Fact Regarding ConnectPR's Incontestable Registrations**

Digitalmojo cited multiple third-party registrations in the Cook Declaration for the apparent purpose of demonstrating that there exists a genuine issue of material fact on the issue of likelihood of confusion. However, the third-party registrations do not create a genuine issue of material fact on the issue of likelihood of confusion for several reasons. First, it is well established that third-party registrations are of little probative value in deciding likelihood of confusion because they do not prove that the marks are in use or that the public is familiar with them. *The Conde Naste Publications, Inc. v. Miss Quality, Inc.*, 507 F.2d 1404, 184 USPQ 422, 424-25, (CCPA 1975); *see also Kellogg Co. v. Pack'Em Enterprises Inc.*, 14 USPQ2d 1545, 1548 (TTAB 1990) (“[I]t is axiomatic that third-party registrations are entitled to little probative value in the absence of evidence of actual use.”); *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973) (the purchasing public is not aware of registrations reposing in the U.S. Patent and Trademark Office). In the present case, Digitalmojo has provided no evidence of actual use of the marks identified in the third-party registrations.

Second, the respective goods and services of the cited third-party registrations are so far removed from the services recited in ConnectPR's incontestable registrations that the cited third-party registrations have little probative regarding the strength of ConnectPR's incontestable registrations. For example, one of the identified third-party registrations (Reg. No. 3,133,515) is for the mark CONNECT for use in "Providing on-line medical oncology information for use by patients to enhance cancer treatment decisions." There can be no genuine issue of material fact that this third-party CONNECT mark has no bearing on the strength of ConnectPR's incontestable registrations because its recited services are completely unrelated to the services of ConnectPR incontestable registrations. The same is true of the goods and services of the other identified third-party registrations, which include such unrelated goods and services as "water refrigerators," "cigarettes," "air passenger and baggage transfer services," "body lotions," and "wireless two way radios." Clearly, these third-party registrations do not create a genuine issue of material fact on the issue of likelihood of confusion, because their respective goods and services are completely and totally unrelated to the goods and services in ConnectPR's incontestable registrations.

Likewise, the TESS printout attached to the Cook Declaration does not create a genuine issue of material fact. In particular, the TESS printout, which only includes the first page of the alleged search, indicates that the search parameters only included a search for the term "connect." Critically, the search parameters did not place any restriction on the goods or services in the search results. For this reason, the TESS search results relied upon by Digitalmojo are essentially meaningless, because it is impossible to gauge whether the goods or services for the "connect" marks found in the search results are related to the relevant goods or services of the ConnectPR Marks. Thus, the TESS search results do not, and cannot, create a genuine issue of material fact on the issue of likelihood of confusion.

**III. Digitalmojo's Dissatisfaction With ConnectPR's Discovery Responses Cannot Be a Basis for Postponing a Decision on ConnectPR's SJ Motion**

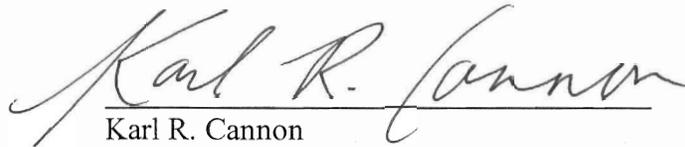
In Paragraph 6 of the Cook Declaration, Digitalmojo's counsel seems to indicate that Digitalmojo cannot respond to the SJ Motion because it is not satisfied with ConnectPR's discovery responses, which is ironic in view of Digitalmojo's history of evasive discovery responses in this very case. However, by choosing to file its Response Brief instead of filing a motion to complete discovery, Digitalmojo has waived any right for a continuance in order to complete discovery. First, if Digitalmojo wanted additional time to seek completion of discovery, it should have filed an appropriate motion under Fed. R. Civ. P. 56(f). However, Trademark Rule 2.127(e)(1) is clear that "[f] no motion under Rule 56(f) is filed, a brief in response to the motion for summary judgment shall be filed within thirty days from the date of service of the motion . . . ." Thus, Digitalmojo waived its right to seek additional time to complete discovery, and waived its right to request a delay in or postponement of ConnectPR's SJ Motion, by not filing an appropriate motion under Trademark Rule 2.127(e)(1) before it filed its Response Brief.

Further, Trademark Rule § 2.127(a) is clear that the only papers that will be considered in support of or in opposition to a motion are the brief in support of the motion, a brief in opposition to the motion, and a reply brief. As Digitalmojo has filed its Reply Brief, although that brief should be stricken for the reasons set forth in the Motion to Strike, there is no other allowed paper by which Digitalmojo can submit additional arguments, even if the Board were to grant additional time to complete discovery. Thus, Digitalmojo has waived its right to seek completion of discovery prior to the determination of ConnectPR's SJ Motion.

**IV. Conclusion**

ConnectPR is entitled to partial summary judgment on the issues raised in its SJ Motion as Digitalmojo has not demonstrated that there exists a genuine issue of material fact.

Respectfully submitted this 9 day of January, 2012.



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Connect Public Relations, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **OPPOSER'S**  
**REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** to be served, via  
first class mail, postage prepaid, on this 9 day of January, 2012, to:

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Karl R. Cannon