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

Opposition No. 91196299 (Parent))

CONNECT PUBLIC RELATIONS, INC.,)
Opposer,)

v.)

DIGITALMOJO, INC., Applicant.)

Cancellation No. 92054395)

Cancellation No. 92054427)

DIGITALMOJO, INC., Petitioner,)

v.)

CONNECT PUBLIC RELATIONS, INC.,)
Respondent.)

**REPLY BRIEF IN SUPPORT OF
MOTIONS FOR
RECONSIDERATION**

REPLY

I. INTRODUCTION

On April 18, 2013, Connect Public Relations, Inc. (“ConnectPR”) filed separate motions for reconsideration in cancellation nos. 92054395 and 92054427 in conjunction with filing its Answers in those proceedings. In particular, in its reconsideration motions, ConnectPR asked the Board to reconsider its March 21, 2013 decision that found that Digitalmojo, Inc.’s (“Digitalmojo”) Second Amended Petitions to Cancel (“Second Amended Petitions”) filed in the cancellation proceedings set forth claims upon which relief can be granted. On May 7, 2013, Digitalmojo, Inc. (“Digitalmojo”) filed a single response to ConnectPR’s motions for reconsideration in the parent file, Opposition No. 91196299. In order to maintain this consistency, ConnectPR now files this single reply brief in support of its motions for reconsideration¹ filed in the cancellation proceedings in this, the parent opposition file.

II. ARGUMENT

The Board’s March 21st decision erred in finding that “Digitalmojo has adequately pleaded claims of abandonment in paragraphs 8-9 of the second amended petitions to cancel by alleging facts that show nonuse less [sic] coupled with an intent not to resume use.” To the contrary, the alleged facts of the Second Amended Petitions, even when construed in Digitalmojo’s favor, fail to demonstrate a plausible claim of abandonment even under the low-threshold required to survive a Rule 12(b)(6) motion as will be explained below.

¹ ConnectPR notes that each of its motions for reconsideration contain distinct facts and arguments because of the challenged registrations are for different marks, namely CONNECT PUBLIC RELATIONS and CONNECTPR (“ConnectPR Marks”).

First, in its Reponse, Digitalmojo erroneously focuses on the “no set of facts” pleading standard enunciated in the 1957 case of *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99 (1957). In particular, Digitalmojo argues that under *Conley*, “[a] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Response, p. 5. However, *Conley’s* “no set of facts” pleading standard relied upon by Digitalmojo has been widely criticized by multiple courts and was expressly overruled in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007), which stated that *Conley’s* “no set of facts” pleading standard “is best forgotten as an incomplete, negative gloss on an accepted pleading standard.” *Id.* at 563, 127 S. Ct. 1955. ConnectPR submits that the correct legal standard requires a plaintiff to set forth a claim to relief that is plausible on its face, and that the plaintiff must allege enough factual matter to raise a right to relief above the speculative level. *Id.* at 555, 127 S. Ct. 1955.

Second, Digitalmojo further contends that it is improper for ConnectPR to ask the Board to “follow” its interpretation of the alleged facts because it is “not appropriate at, or part of, the pleading stage of an action.” This contention, however, is at odds with the well-established authority for analyzing a 12(b)(6) motion. In particular, in evaluating a motion under 12(b)(6), the Board is required to “construe” the facts alleged in the complaint, albeit in the light most favorable to the plaintiff. *See, e.g., Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-338 (9th Cir. 1996). Thus, it is entirely appropriate for ConnectPR to provide arguments to the Board regarding how it should construe the alleged facts in the Second Amended Petitions. Likewise, it is entirely appropriate for Digitalmojo to provide arguments to the Board regarding how it should construe the alleged facts in the Second Amended Petitions. Notably, Digitalmojo fails to do so in its Response.

Third, because of the different marks and registrations involved, ConnectPR will further address the sufficiency of each of the Second Amended Petitions filed in cancellation nos. 92054395 and 92054427 separately below.

A. CONNECT PUBLIC RELATIONS (Reg. No. 2,373,504; Cancellation No. 92054427)

As its factual basis for cancellation, Digitalmojo specifically relies on printouts of selected webpages taken from ConnectPR's website. However, the selected webpages, even when construed in a light most favorable to Digitalmojo, are insufficient to support a plausible claim of abandonment of the CONNECT PUBLIC RELATIONS mark as will be explained below.

First, although the selected webpages attached to the Second Amended Petition include a statement that ConnectPR is changing its corporate identity from Connect Public Relations, Inc. to Connect Marketing, Inc., these same webpages also provide a detailed explanation regarding the corporate identity change that disproves any plausible claim that the CONNECT PUBLIC RELATIONS mark is being abandoned. For example, the same webpages attached to the Second Amended Petition include the following statement under the "What Happened to Connect Public Relations®?" heading: "We are expanding our brand. Today, Connect Public Relations® becomes Connect Marketing SM. Don't think of this as a 'switch,' but rather as an 'expansion.'" These same webpages also specifically state that ConnectPR will continue to use its CONNECT PUBLIC RELATIONS mark as the continuation of the traditional public relations activities that it has pursued for 22 years. These same webpages also provide the following graphic of the CONNECT PUBLIC RELATIONS mark, in conjunction with the other marks that form part of ConnectPR's new brand:



In light of the above, the alleged facts in the Second Amended Petition cannot support a plausible claim of abandonment because, even when construed in a light most favorable to Digitalmojo, the alleged facts do not show nonuse coupled with an intent not to resume use. To the contrary, the alleged facts demonstrate that ConnectPR will continue to use its CONNECT PUBLIC RELATIONS mark as specifically demonstrated by the logo for the CONNECT PUBLIC RELATIONS mark adjacent the logo for the CONNECT MARKETING mark. In fact, ConnectPR could provide no better evidence regarding the non-abandonment of its mark than the very webpages cited and relied upon by Digitalmojo in support of its Second Amended Petition. Digitalmojo's factual allegations cannot form a plausible claim of abandonment where the very evidence relied upon, and attached to the Second Amended Petition, actually disproves abandonment as explained above.

Thus, even when construed in a light most favorable to Digitalmojo, the facts alleged in support of the Second Amended Petition do not form a plausible claim of abandonment of the CONNECT PUBLIC RELATIONS mark, because they actually demonstrate ConnectPR's ongoing use of its mark.

B. CONNECTPR (Reg. No. 2,366,850; Cancellation No. 92054395)

Digitalmojo's primary factual allegation identified in its Second Amended Petition to support its claim that the CONNECTPR mark has been abandoned is the alleged change in ConnectPR's corporate identity from Connect Public Relations, Inc. to Connect Marketing, Inc. However, even accepting this factual allegation as true, it does not entitle Digitalmojo to the relief sought. In particular, ConnectPR's former corporate identity, i.e., Connect Public Relations, Inc., does not involve the mark CONNECTPR. Further, in its Response, Digitalmojo fails to explain how the alleged change in ConnectPR's corporate identity can be construed to support its claim that the CONNECTPR mark has been abandoned. ConnectPR submits that its change in corporate identity as alleged in the Second Amended Petition, even if accepted as true, is completely irrelevant to, and has no bearing on, the abandonment claim regarding the CONNECTPR mark. It would be merely speculative to conclude that the alleged change in ConnectPR's corporate identity would show abandonment because the former corporate identity did not include the CONNECTPR mark.

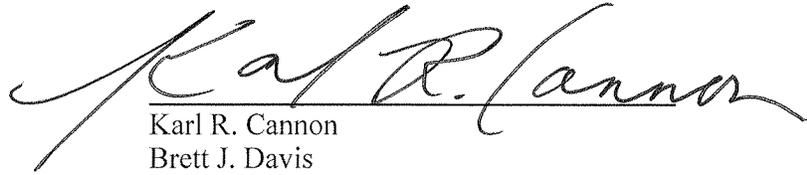
Thus, even when construed in a light most favorable to Digitalmojo, the facts alleged in support of the Second Amended Petition do not form a plausible claim of abandonment because the change in corporate identity has no bearing on the nonuse of the CONNECTPR mark.

III. CONCLUSION

For the above reasons, ConnectPR respectfully submits that the Board's previous decision was in error and requests the Board to dismiss Digitalmojo's Second Amended Petitions to Cancel under Rule 12(b)(6).

Respectfully submitted this 28 day of May, 2013.

Respectfully submitted,



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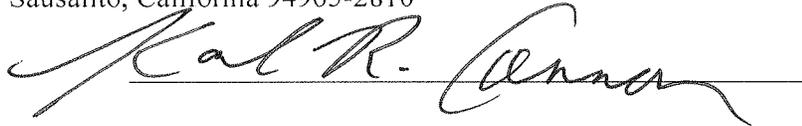
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **REPLY BRIEF IN SUPPORT OF MOTIONS FOR RECONSIDERATION** to be served, via first class mail, postage prepaid, on this 28 day of May, 2013, to:

Thomas W. Cook, Esq.
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Sausalito, California 94965-2810

A handwritten signature in cursive script, reading "Kal R. Anna", is written over a horizontal line.