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

Proceeding	91197393
Party	Plaintiff SandraEllis
Correspondence Address	D. ARI SHERWIN CURATOLO SIDOTI CO LPA 24500 CENTER RIDGE ROAD, SUITE 280 CLEVELAND, OH 44145 UNITED STATES docket@patentandtm.com
Submission	Opposition/Response to Motion
Filer's Name	D. Ari Sherwin
Filer's e-mail	docket@patentandtm.com
Signature	/D. Ari Sherwin/
Date	07/07/2011
Attachments	FLGC2200393.pdf ( 19 pages )(1040649 bytes )

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

In the matter of Application Serial No. 77/900,545

Filed on December 23, 2009

For the mark FIGHT LIKE A CAROLINA GIRL

Published in the *Official Gazette* (Trademarks) on May 18, 2010

TSDC, LLC	)	
	)	
	)	
and	)	
	)	
	)	
Sandra Ellis	)	
	)	
Opposers,	)	<u>Opposition No.: 91/197,393</u>
	)	
	)	
v.	)	
	)	
	)	
Beyond The Box, Inc.,	)	
	)	
Applicant.	)	
	)	
	)	

**UNITED STATES PATENT AND TRADEMARK OFFICE  
ATTN: TRADEMARK TRIAL AND APPEAL BOARD  
P.O. BOX 1451  
ALEXANDRIA, VA. 22313-1451**

**OPPOSERS' SUPPLEMENTAL RESPONSE TO  
APPLICANT'S MOTION FOR JUDGMENT ON THE PLEADINGS,  
OR IN THE ALTERNATIVE, OPPOSERS' MOTION FOR  
JUDGMENT ON THE PLEADINGS**

TSDC, LLC (hereinafter referred to as "TSDC") and Sandra Ellis (hereinafter referred to as "ELLIS") (TSDC and ELLIS are hereinafter collectively referred to as "OPPOSERS"), through their undersigned attorney, hereby submit their Supplemental Response to Applicant's Motion for Judgment on the Pleadings.

In the alternative, and pursuant to Rule 12(c) of the Federal Rules of Civil Procedure and the TTAB Manual of Procedure (TBMP) §504, OPPOSERS hereby move the Honorable Trademark Trial and Appeal Board (hereinafter referred to as "the Board") for judgment on the pleadings in Opposition No. 91/197,393 filed on November 15, 2010 ("Opposition") by OPPOSERS. This motion is supported by the following Brief. OPPOSERS' motion is being filed prior to the opening of testimony in this case and is therefore, timely and not made so as to delay the trial. OPPOSERS are aware that the instant opposition proceeding has been suspended pending disposition of Applicant's Motion for Judgment on the Pleadings filed on February 15, 2011. OPPOSERS' motion is relevant to Applicant's Motion for Judgment on the Pleadings, as the Board cannot permit a void application to proceed to allowance. Therefore, the present paper should be given consideration by the Board. OPPOSERS note that no Suspension Notice has been entered in the corresponding proceeding (Opposition No. 91/197,395).

Applicant's subject application is *void ab initio* and cannot be corrected by amendment. The Applicant was not the owner of the mark when the application was filed. If the application is void, it should be unnecessary for the parties and the Board to spend time and resources deciding any other grounds presented in the Notice of Opposition.

## **LEGAL STANDARD FOR MOTION FOR JUDGMENT ON THE PLEADINGS**

“A judgment on the pleadings may be granted only where, on the facts as deemed admitted, there is no genuine issue of material fact to be resolved, and the moving party is entitled to judgment, on the substantive merits of the controversy, as a matter of law.” TBMP § 504.02. “For purposes of the motion, all well pleaded factual allegations of the nonmoving party must be accepted as true, while those allegations of the moving party which have been denied ... are deemed false.” *Id.* “A judgment on the pleadings may be granted only where, on the facts as deemed admitted, there is no genuine issue of material fact to be resolved, and the moving party is entitled to judgment, on the substantive merits of the controversy, as a matter of law.” *Id.*

## **THE PLEADINGS**

The Notice of Opposition was filed November 15, 2010, and it was accepted as the operative pleading by Order dated November 15, 2010. In the Notice of Opposition, OPPOSERS asserted that the alleged Applicant filed its mark in the subject application to register FIGHT LIKE A CAROLINA GIRL on the Principal Register of the United States Patent and Trademark Office for athletic apparel, namely, shirts, pants, jackets, hats and caps, athletic uniforms excluding footwear in International Class 025. *See Notice of Opposition* at ¶ 15. OPPOSERS asserted that the alleged Applicant had not filed an Allegation of Use in the application, and OPPOSERS have not found any evidence of use of the mark FIGHT LIKE A CAROLINA GIRL by Applicant in commerce. *Id.* at ¶ 18.

In its Answer, Applicant has admitted – **no less than three (3) times** – that it was **acting as the agent of END THE FIGHT, INC.**, a non-profit corporation based in Charlotte, North Carolina. *See Answer* at Pg. 2, Pg. 4; ¶ 4 in “Counterclaims” section; and Pg. 5. By its Answer filed on December 27, 2010, the Applicant admits that it is not the actual owner of the subject mark.

Under the Federal Trademark Act of 1946 (*i.e.*, the Lanham Act), the terms "applicant" and "registrant" embrace the legal **representatives**, predecessors, successors and assigns of such applicant or registrant. *See* §45 (15 U.S.C.A. 1127) (emphasis added). The commonly accepted definition of an “agent” is that of a *representative*, one who is authorized to act for or in the place of another, a person who manages business, financial, contractual matters for another. *See Merriam-Webster Dictionary* on-line definitions, attached hereto as EXHIBIT 1. *Black’s Law Dictionary* defines “agent” as a “person authorized by another (principal) to act for or in place of him; one instructed with another’s business. *See Black’s Law Dictionary*, 6th ed., p. 63, attached hereto as EXHIBIT 2. “Agency” is a consensual relationship created by contract or by law where one party, the principal, grants authority for another party, the agent, to act on behalf of and under the control of the principal to deal with a third party. An agent is one authorized to transact all business of principal, or all of principal’s business of some particular kind, or all business at some particular place. *Farm Bureau Mut. Ins. Co. v. Coffee*, 136 Ind. App. 12, 186 N.E.2d 180, 182. One of the most important elements of a principal-agent relationship is the concept of control: the agent agrees to act under the control or direction of the principal. *See Law Dictionary* on-line definition, attached hereto as EXHIBIT 3. Therefore, Applicant, by its own admission, is a representative of END THE FIGHT, INC., has been authorized to act for or in the place of END THE FIGHT, INC., and has been instructed with END THE FIGHT, INC.’s business matters. However, an agent or a representative cannot be named in a trademark application instead of the true trademark owner, or the entity that has the *bona fide* intent-to-use the mark. For these reasons, Applicant is incorrectly and unlawfully listed as the owner of the subject trademark application. Accordingly, the mark should be denied registration.

## BACKGROUND OF OPPOSITION

On December 23, 2009, Beyond The Box, Inc., a North Carolina corporation, filed an application to register the mark FIGHT LIKE A CAROLINA GIRL for “athletic apparel, namely, shirts, pants, jackets, hats and caps, athletic uniforms excluding footwear.” Mr. Michael Todd Tucker, a U.S. individual citizen, signed the application as owner of this trademark. This application is identified by Serial No. 77/900,545 and is the subject of this opposition proceeding.

On May 18, 2010, the subject application was published in the Official Gazette with Beyond The Box, Inc. listed as the applicant.

The only issue in this case is whether the party applying to register the mark is in fact the owner of the mark. If the party applying to register the mark is in fact the owner of the mark, but there is a mistake in the manner in which the name of the applicant is set out in the application, the mistake may be corrected by amendment. *U.S. Pioneer Electronics Corp. v. Evans Marketing, Inc.*, 183 USPQ 613 (Comm'r Pats. 1974). However, the application may not be amended to designate another entity as the applicant. *37 C.F.R. §2.71(D); TMEP §803.06*. An application filed in the name of the wrong party is void and cannot be corrected by amendment. *In re Tong Yang Cement*, 19 USPQ2d 1689 (TTAB 1991).

In an intent to use-based application under Trademark Act Section 1(b), only the owner of the mark may file the application for registration of the mark; if the entity filing the application is not the owner of the mark, as of the filing date, the application is *void ab initio*. See *Trademark Act Section 1(b)*, 15 U.S.C. § 1051(a); *Trademark Rule 2.71(d)*, 37 CFR §2.71(d). This statutory requirement cannot be waived. *Huang v. Tzu Wei Chen Food Co., Ltd.*, 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988).

The undisputed facts in this case clearly establish that the owner of the trademark was incorrectly identified as Beyond The Box, Inc. when the application was filed. Applicant admitted in the pleadings that it was the agent for END THE FIGHT, INC., which is the true owner of the mark.

There is no question that the subject application is *void ab initio* and should not have been approved. This is squarely a non-correctable mistake in naming the wrong applicant.

### CONCLUSION

Applicant has admitted it was merely acting as an agent of END THE FIGHT, INC. END THE FIGHT, INC., not applicant, is the true owner of the subject trademark used in connection with the goods outlined in the application on December 23, 2009, the filing date of this application. Because Beyond The Box, Inc. was not the owner of the mark as of the filing date, the application should be deemed *void ab initio*.

Accordingly, OPPOSERS respectfully request the Board to sustain the Notice of Opposition and to refuse registration of the subject trademark application.

Respectfully submitted,

Date: July 7, 2011

/D. Ari Sherwin/  
D. Ari Sherwin, Esq.  
Curatolo Sidoti Co., LPA  
24500 Center Ridge Road, Suite 280  
Cleveland, Ohio 44145  
T: 440.808.0011  
F: 440.808.0657  
Attorney for Opposers

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing OPPOSERS' SUPPLEMENTAL RESPONSE TO APPLICANT'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, OPPOSERS' MOTION FOR JUDGMENT ON THE PLEADINGS has been served upon the Applicant on this 7<sup>th</sup> day of July, 2011 by depositing the same in the United States First Class Mail, postage pre-paid, in an envelope addressed as follows:

Beyond The Box, Inc.  
c/o Michael Todd Tucker, Manager of Beyond The Box, Inc.  
116 Lowes Food Drive, #132  
Lewisville, NC 27023

/D. Ari Sherwin/  
D. Ari Sherwin

# EXHIBIT 1



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Popularity



agent **noun** \ə-jeɪnt\

Definition of AGENT

- 1 : one that acts or exerts power
- 2 **a** : something that produces or is capable of producing an effect : an active or efficient cause
  - b** : a chemically, physically, or biologically active principle
- 3 : a means or instrument by which a guiding intelligence achieves a result
- 4 : one who is authorized to act for or in the place of another: as
  - a** : a representative, emissary, or official of a government <crowns agent> <federal agent>
  - b** : one engaged in undercover activities (as espionage) : SPY <secret agent>
  - c** : a business representative (as of an athlete or entertainer) <a theatrical agent>
- 5 : a computer application designed to automate certain tasks (as gathering information online)
  - See agent defined for English-language learners »
  - See agent defined for kids »

Examples of AGENT

They worked with a travel agent to plan their vacation.  
<the whitening agent in the detergent is chlorine bleach>

Origin of AGENT

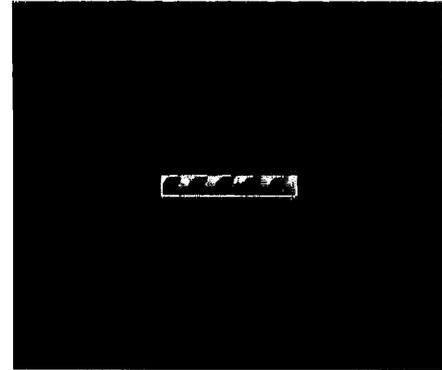
Middle English, from Medieval Latin *agent-*, *agens*, from Latin, present participle of *agere* to drive, lead, act, do; akin to Old Norse *aka* to travel in a vehicle, Greek *agein* to drive, lead

First Known Use: 15th century

Related to AGENT

**Synonyms:** agency, instrument, instrumentality, machinery, means, medium, ministry, organ, vehicle

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- agency shop (noun)
- agency tariff (noun)

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agen·cy *noun* yā-jən(t)-sē;

plural agen·cies

Definition of AGENCY

- a : the office or function of an agent  
b : the relationship between a principal and that person's agent
- : the capacity, condition, or state of acting or of exerting power : OPERATION
- : a person or thing through which power is exerted or an end is achieved : INSTRUMENTALITY <communicated through the agency of the ambassador>
- : an establishment engaged in doing business for another <an advertising agency>
- : an administrative division (as of a government) <the agency for consumer protection>

See agency defined for English-language learners » See agency defined for kids »

Examples of AGENCY

the federal agency in charge of printing money  
<the federal agency charged with enforcing laws and regulations regarding the use of firearms>

First Known Use of AGENCY

1640

Related to AGENCY

Synonyms: division, arm, branch, bureau, department, desk, office, service

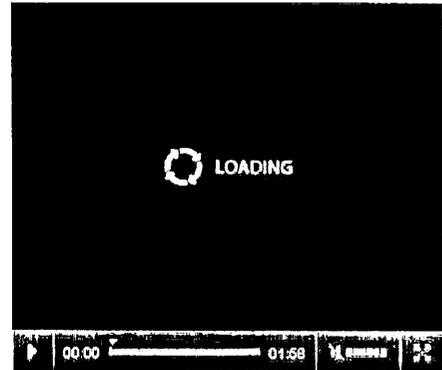
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# EXHIBIT 2

## **“Agent”**

Black's Law Dictionary, 6th ed., p. 63.

Agent:

A person authorized by another (principal) to act for or in place of him; one instructed with another's business. *Humphries v. Going*, D.C.N.C., 59 F.R.D. 583, 587. One who represents and acts for another under the contract or relation of agency (*q.v.*). A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third persons. One who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the latter, and to render an account of it. One who acts for or in place of another by authority from him; a substitute, a deputy, appointed by principal with power to do the things which principal may do. One who deals not only with things, as does a servant, but with persons, using his own discretion as to means, and frequently establishing contractual relations between his principal and third persons.

One authorized to transact all business of principal, or all of principal's business of some particular kind, or all business at some particular place. *Farm Bureau Mut. Ins. Co. v. Coffee*, 136 Ind. App. 12, 186 N.E.2d 180, 182.

# EXHIBIT 3

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*A consensual relationship created by contract or by law where one party, the principal, grants authority for another party, the agent, to act on behalf of and under the control of the principal to deal with a third party. An agency relationship is fiduciary in nature, and the actions and words of an agent exchanged with a third party bind the principal.*

An agreement creating an agency relationship may be express or implied, and both the agent and principal may be either an individual or an entity, such as a corporation or partnership.

Under the law of agency, if a person is injured in a traffic accident with a delivery truck, the truck driver's employer may be liable to the injured person even if the employer was not directly responsible for the accident. That is because the employer and the driver are in a relationship known as principal-agent, in which the driver, as the agent, is authorized to act on behalf of the employer, who is the principal.

The law of agency allows one person to employ another to do her or his work, sell her or his goods, and acquire property on her or his behalf as if the employer were present and acting in person. The principal may authorize the agent to perform a variety of tasks or may restrict the agent to specific functions, but regardless of the amount, or scope, of authority given to the agent, the agent represents the principal and is subject to the principal's control. More important, the principal is liable for the consequences of acts that the agent has been directed to perform.

A voluntary, Good Faith relationship of trust, known as a fiduciary relationship, exists between a principal and an agent for the benefit of the principal. This relationship requires the agent to exercise a duty of loyalty to the principal and to use reasonable care to serve and protect the interests of the principal. An agent who acts in his or her own interest violates the fiduciary duty and will be financially liable to the principal for any losses the principal incurs because of that breach of the fiduciary duty. For example, an agent who accepts a bribe to purchase only the goods from a particular seller breaches his fiduciary duty by taking the money, since it is the agent's duty to work only for the best interests of the principal.

An agency relationship is created by the consent of both the agent and the principal; no one can unwittingly become an agent for another. Although a principal-agent relationship can be created by a contract between the parties, a contract is not necessary if it is clear that the parties intend to act as principal and agent. The intent of the parties can be expressed by their words or implied by their conduct.

Perhaps the most important element of a principal-agent relationship is the concept of control: the agent agrees to act under the control or direction of the principal. The extent of the principal's control over the agent distinguishes an agent from an Independent Contractor, over whom control and supervision by the principal may be relatively remote. An independent contractor is subject to the control of an employer only to the extent that she or he must produce the final work product that she or he has agreed to provide. Independent contractors have the freedom to use whatever means they choose to achieve that final product. When the employer provides more specific directions, or exerts more control, as to the means and methods of doing the job—by providing specific instructions as to how goods are to be sold or marketed, for example—then an agency relationship may exist.

The agent's authority may be actual or apparent. If the principal intentionally confers express and implied powers to the agent to act for him or her, the agent possesses *actual authority*. When the agent exercises actual authority, it is as if the principal is acting, and the principal is bound by the agent's acts and is liable for them. For example, if an owner of an apartment building names a person as agent to lease apartments and collect rents, those functions are express powers, since they are specifically stated. To perform these functions, the agent must also be able to issue receipts for rent collected and to show apartments to prospective tenants. These powers, since they are a necessary part of the express duties of the agent, are implied powers. When the agent performs any or all of these duties, whether express or implied, it is as if the owner has done so.

A more complicated situation arises when the agent possesses *apparent authority*. In this case, the principal, either knowingly or even mistakenly, permits the agent or others to assume that the agent possesses authority to carry out certain actions when such authority does not, in fact, exist. If other persons believe in good faith that such authority exists, the principal remains liable for the agent's actions and cannot rely on the defense that no actual authority was granted. For instance, suppose the owner of a building offers it for sale and tells prospective buyers to talk to the rental agent. If a buyer enters into a purchase agreement with the agent, the owner may be liable for breaching that contract if she later agrees to sell the building to someone else. The first purchaser relied on the apparent authority of the agent and will not be penalized even if the owner maintains that no authority was ever given to the agent to enter into the contract. The owner remains responsible for acts done by an agent who was exercising apparent authority.

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The scope of an agent's authority, whether apparent or actual, is considered in determining an agent's liability for her or his actions. An agent is not personally liable to a third party for a contract the agent has entered into as a representative of the principal so long as the agent acted within the scope of her or his authority and signed the contract as agent for the principal. If the agent exceeded her or his authority by entering into the contract, however, the agent is financially responsible to the principal for violating her or his fiduciary duty. In addition, the agent may also be sued by the other party to the contract for **Fraud**. The principal is generally not bound if the agent was not actually or apparently authorized to enter into the contract.

With respect to liability in **TORT** (i.e., liability for a civil wrong, such as driving a car in a negligent manner and causing an accident), the principal is responsible for an act committed by an agent while acting within his or her authority during the course of the agent's employment. This legal rule is based on *respondeat superior*, which is Latin for "let the master answer." The doctrine of *Respondeat Superior*, first developed in England in the late 1600s and adopted in the United States during the 1840s, was founded on the theory that a master must respond to third persons for losses negligently caused by the master's servants. In more modern terms, the employer is said to be *vicariously liable* for injuries caused by the actions of an employee or agent; in other words, liability for an employee's actions is imputed to the employer. The agent can also be liable to the injured party, but because the principal may be better able financially to pay any judgment rendered against him or her (according to the "deep-pocket" theory), the principal is almost always sued in addition to the agent.

A principal may also be liable for an agent's criminal acts if the principal either authorized or consented to those acts; if the principal directed the commission of a crime, she or he can be prosecuted as an **Accessory** to the crime. Some state and federal laws provide that a corporation may be held criminally liable for the acts of its agents or officers committed in the transaction of corporate business, since by law a corporation can only act through its officers.

An agent's authority can be terminated only in accordance with the agency contract that first created the principal-agent relationship. A principal can revoke an agent's authority at any time but may be liable for damages if the termination violates the contract. Other events—such as the death, insanity, or **Bankruptcy** of the principal—end the principal-agent relationship by operation of law. (Operation of law refers to rights granted or taken away without the party's action or cooperation, but instead by the application of law to a specific set of facts.) The rule that death or insanity terminates an agent's authority is based on the policy that the principal's estate should be protected from potential fraudulent activity on the part of the agent. Some states have modified these common-law rules, allowing some acts of the agent to be binding upon other parties who were not aware of the termination.

#### Further readings

Gregory, William A. 2001. *The Law of Agency and Partnership*. 3d ed. St. Paul, Minn.: West Group.

Hynes, J. Dennis. 2001. *Agency, Partnership, and the LLC in a Nutshell*. 2d ed. St. Paul, Minn.: West Group.

#### Cross-references

[Contracts](#); [Fiduciary](#); [Good Faith](#); [Imputed](#); [Liability](#); [Master and Servant](#); [Respondeat Superior](#); [Vicarious Liability](#).

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**agency** n. the relationship of a person (called the agent) who acts on behalf of another person, company, or government, known as the principal. "Agency" may arise when an employer (principal) and employee (agent), asks someone to make a delivery or names someone as an agent in a contract. The basic rule is that the principal becomes responsible for the acts of the agent, and the agent's acts are like those of the principal (Latin: *respondeat superior*). Factual questions arise such as: was the agent in the scope of employment when he/she ran down the little child, got drunk and punched someone, or sold impure wheat? There is also the problem of whether the principal acted in such a way as to make others believe someone was his agent--this is known as "apparent" or "ostensible" authority. When someone who is or is not an employee uses company business cards, finance documents, or a truck with the company logo, such use gives apparent authority as an agent. (See: [authority](#), [agent](#), [scope of employment](#), [respondeat superior](#))

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**agency** (Commission), *noun* [administration](#), [authority](#), [bureau](#), [charge](#), [command](#), [committee](#), [control](#), [delegation](#), [department](#), [office](#)

**Associated concepts:** [administrative agency](#), governmental agency

**agency** (Legal relationship), *noun* [activity](#), [assignment](#), [authority](#), [care](#), [charge](#), [command](#), [commission](#), [conduct](#), [conduct of affairs](#), [control](#), [delegation](#), [deputation](#), [derivative authority](#), [direction](#), [dominion](#), [duty](#), [employ](#), [employment](#), [function](#), [governance](#), [handling](#), [intermediation](#), [intervention](#), [jurisdiction](#), [management](#), [mandate](#), [mission](#), [procuracy](#), [procurator](#), [proxy](#), [quest](#), [representation](#), [responsibility](#), [role](#), [service](#), [services](#), [superintendence](#), [supervision](#), [task](#), [trust](#)

**Associated concepts:** actual agency, agency by estoppel, agency coupled with an interest, agency of necessity, deed of agency, [exclusive agency](#), express agency, general agency, implied agency, scope of the agency, undisclosed agency, [vicarious liability](#)

**Foreign phrases:** *Actus me invito factus non est meus actus*. An act done against my will is not my act. *Qui facit per alium facit per se*. He who acts through another acts himself. *Qui mandat ipse feciss videtur*. He who orders or commands is deemed to have done the thing himself. *Quod per me non possum, nec per alium*. What I cannot do myself, I cannot do through the agency of another. *Vicarius*

*non habet vicarium.* A vicar has no deputy.

See also: [assignment](#), [bureau](#), [bureaucracy](#), [channel](#), [committee](#), [conduit](#), [delegation](#), [department](#), [expedient](#), [facility](#), [forum](#), [institution](#), [instrument](#), [instrumentality](#), [medium](#), [organ](#), [proxy](#), [representation](#), [tool](#)

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AGENCY, contracts. An agreement, express, or implied, by which one of the parties, called the principal, confides to the other, denominated the agent, the management of some business; to be transacted in his name, or on his account, and by which the agent assumes to do the business and to render an account of it. As a general rule, whatever a man do by himself, except in virtue of a delegated authority, he may do by an agent. Combee's Case, 9 Co. 75. Hence the maxim *qui facit per alium facit per se*.

2. When the agency express, it is created either by deed, or in writing not by deed, or verbally without writing. 3 Chit. Com. Law 104; 9 Ves. 250; 11 Mass. Rep. 27; lb. 97, 288; 1 Binn. R. 450. When the agency is not express, it may be inferred from the relation of the parties and the nature of the employment, without any proof of any express appointment. 1 Wash. R. 19; 16 East, R. 400; 5 Day's R. 556.

3. The agency must be antecedently given, or subsequently adopted; and in the latter case there must be an act of recognition, or an acquiescence in the act of the agent, from which a recognition may be fairly implied. 9 Cranch, 153, 161; 26 Wend. 193, 226; 6 Man. & Gr. 236, 242; 1 Hare & Wall. Sel. Dec. 420; 2 Kent, Com. 478; Paley on Agency; Livermore on Agency.

4. An agency may be dissolved in two ways - 1, by the act of the principal or the agent; 2, by operation of law.

5.-1. The agency may be dissolved by the act of one of the parties. 1st. As a general rule, it may be laid down that the principal has a right to revoke the powers which he has given; but this is subject to some exception, of which the following are examples. When the principal has expressly stipulated that the authority shall be irrevocable, and the agent has an interest in its execution; it is to be observed, however, that although there may be an express agreement not to revoke, yet if the agent has no interest in its execution, and there is no consideration for the agreement, it will be considered a nude pact, and the authority may be revoked. But when an authority or power is coupled with an interest, or when it is given for a valuable consideration, or when it is a part of a security, then, unless there is an express stipulation that it shall be revocable, it cannot be revoked, whether it be expressed on the face of the instrument giving the authority, that it be so, or not. Story on Ag. 477; Smith on Merc. L. 71; 2 Liv. on Ag. 308; Paley on Ag. by Lloyd, 184; 3 Chit. Com. f. 223; 2 Mason's R. 244; Id. 342; 8 Wheat. R. 170; 1 Pet. R. 1; 2 Kent, Com. 643, 3d edit.; Story on Bailm. Sec. 209; 2 Esp. R. 665; 3 Barnw. & Cressw. 842; 10 Barnw. & Cressw. 731; 2 Story, Eq. Jur. Sec. 1041, 1042, 1043

6.-2. The agency may be determined by the renunciation of the agent. If the renunciation be made after it has been partly executed, the agent by renouncing it, becomes liable for the damages which may thereby be sustained by his principal. Story on Ag. Sec. 478; Story on Bailm. Sec. 436; Jones on Bailm. 101; 4 John r. 84.

7.-2 The agency is revoked by operation of law in the following cases: 1st. When the agency terminates by the expiration of the period, during which it was to exist, and to have effect; as, if an agency be created to endure a year, or till the happening of a contingency, it becomes extinct at the end or on the happening of the contingency.

8.-2. When a change of condition, or of state, produces an incapacity in either party; as, if the principal, being a woman, marry, this would be a revocation, because the power of creating an agent is founded on the right of the principal to do the business himself, and a married woman has no such power. For the same reason, when the principal becomes insane, the agency is ipso facto revoked. 8 Wheat. R. 174, 201 to 204; Story on Ag. Sec. 481; Story on Bailm. Sec. 206. 2 Liv. on Ag. 307. The incapacity of the agent also amounts to a revocation in law, as in case of insanity, and the like, which renders an agent altogether incompetent, but the rule does not reciprocally apply in its full extent. For instance, an infant or a married woman may in some cases be agents, although they cannot act for themselves. Co. Litt. 52a.

9.-3. The death of either principal or agent revokes the agency, unless in cases where the agent has an interest in the thing actually vested in the agent. 8 Wheat. R. 174; Story on Ag. Sec. 486 to 499; 2 Greenl. R. 14, 18; but see 4 W. & S. 282; 1 Hare & Wall. Sel. Dec. 415.

10.-4. The agency is revoked in law, by the extinction of the subject-matter of the agency, or of the principal's power over it, or by the complete execution of the trust. Story on Bailm. Sec. 207, Vide generally, 1 Hare & Wall. Sel. Dec. 384, 422; Pal. on Ag.; Story on Ag.; Liv. on Ag.; 2 Bouv. Inst. n. 1269-1382.

A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

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