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

Proceeding	91198552
Party	Defendant Fifty-Six Hope Road Music Limited
Correspondence Address	JILL M PIETRINI MANATT PHELPS & PHILLIPS LLP 11355 W OLYMPIC BLVD LOS ANGELES, CA 90064-1631 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Jill M. Pietrini
Filer's e-mail	jpietrini@manatt.com, ppost@manatt.com, eembray@manatt.com
Signature	/s/ Jill M. Pietrini
Date	10/26/2011
Attachments	56HR Motion to File Sur-Reply.PDF ( 70 pages )(1665903 bytes )

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

<p><i>In re Matter of Serial No. 77/549,263 for the mark: ONE LOVE</i></p> <p>RAISING CANE'S USA, LLC,</p> <p align="center">Opposer,</p> <p align="center">vs.</p> <p>FIFTY-SIX HOPE ROAD MUSIC, LTD.,</p> <p align="center">Applicant.</p>	<p>Opposition No. 91-198552</p> <p><b>APPLICANT AND PETITIONER FIFTY-SIX HOPE ROAD MUSIC LIMITED'S MOTION TO FILE A SUR-REPLY BRIEF IN SUPPORT OF ITS OPPOSITION TO OPPOSER AND REGISTRANT RAISING CANE'S USA, LLC'S MOTION FOR SUMMARY JUDGMENT</b></p>
<p><i>In re Matter of Registration No. 3,033,511 for the mark: ONE LOVE</i></p> <p>FIFTY-SIX HOPE ROAD MUSIC LIMITED,</p> <p align="center">Petitioner,</p> <p align="center">vs.</p> <p>RAISING CANE'S USA, LLC,</p> <p align="center">Registrant.</p>	<p>Cancellation No. 92-053461</p>

Applicant and Petitioner Fifty-Six Hope Road ("Petitioner") respectfully requests leave to file this sur-reply brief in support of its opposition to Opposer and Registrant Raising Cane's USA, LLC's ("Registrant") motion for summary judgment. The proposed sur-reply brief is filed concurrently herewith, and in the event this request is granted, Petitioner respectfully requests that the accompanying sur-reply brief be deemed filed and served on the date on which the reply brief is electronically filed by Petitioner's counsel.

While the rules do not provide for the filing of a sur-reply brief or a reply brief for

that matter, a sur-reply brief is warranted and necessary under these circumstances to address an erroneous claim made by Registrant in its reply brief, namely, that Petitioner did not allege a claim under 15 U.S.C. § 1052(a) in its Petition for Cancellation. *See Zirco Corp. v. American Telephone and Telegraph Co.*, 21 U.S.P.Q.2d 1542 (TTAB 1992) (Board will consider reply briefs, even if not provided for the rules, where “the opposing party has raised new issues in its response or the Board feels the reply will clarify the issues and aid the Board in arriving at a just decision on the motion.”)

In all fairness to Petitioner, and to present an accurate record before the Board, Petitioner respectfully requests leave to file the accompanying sur-reply brief.

Respectfully submitted,

Date: October 26, 2011

/Jill M. Pietrini/  
Jill M. Pietrini  
MANATT, PHELPS & PHILLIPS LLP  
11355 W. Olympic Blvd.  
Los Angeles, California 90064  
(310) 312-4000

*Attorneys for Petitioner*  
Fifty-Six Hope Road Music Limited

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

<p><i>In re Matter of Serial No. 77/549,263 for the mark: ONE LOVE</i></p> <p>RAISING CANE'S USA, LLC,</p> <p align="center">Opposer,</p> <p align="center">vs.</p> <p>FIFTY-SIX HOPE ROAD MUSIC, LTD.,</p> <p align="center">Applicant.</p>	<p>Opposition No. 91-198552</p> <p><b>APPLICANT AND PETITIONER FIFTY-SIX HOPE ROAD MUSIC LIMITED'S SUR-REPLY BRIEF IN SUPPORT OF ITS OPPOSITION TO OPPOSER AND REGISTRANT RAISING CANE'S USA, LLC'S MOTION FOR SUMMARY JUDGMENT; SUPPLEMENTAL DECLARATION OF PAUL A. BOST</b></p>
<p><i>In re Matter of Registration No. 3,033,511 for the mark: ONE LOVE</i></p> <p>FIFTY-SIX HOPE ROAD MUSIC LIMITED,</p> <p align="center">Petitioner,</p> <p align="center">vs.</p> <p>RAISING CANE'S USA, LLC,</p> <p align="center">Registrant.</p>	<p>Cancellation No. 92-053461</p>

Applicant and Petitioner Fifty-Six Hope Road Music Limited ("Petitioner") hereby submits a sur-reply brief in further support of its opposition to Opposer and Registrant Raising Cane's USA, LLC's ("Registrant") motion for summary judgment. Petitioner's sur-reply brief is narrowly tailored to address Registrant's erroneous claim that Petitioner did not allege a claim or failed to state a legally cognizable claim under 15 U.S.C. § 1052(a) ("Section 2(a)"). This is not true and is belied by the plain language of Petitioner's Petition

for Cancellation, as well as Petitioner's prior filings in this matter and the content of the parties' discovery thus far.

**I. PETITIONER'S PETITION FOR CANCELLATION ALLEGES A CLAIM UNDER SECTION 2(a)**

Petitioner, pursuant to Section 2(a), has petitioned to cancel Registrant's ONE LOVE registration on the grounds that it consists of or comprises matter which may falsely suggest a connection with Bob Marley. According to Section 2(a), a mark may be refused registration if it "falsely suggest[s] a connection with persons, living or dead." In this case, the term "One Love" is so associated with Bob Marley due to Bob Marley's famous song of the same name, that when Petitioner uses ONE LOVE in connection with its services, a connection with Bob Marley would be assumed.

In its Petition for Cancellation, Petitioner specifically alleges the following:

In 1965, Bob Marley recorded the song "One Love," an anthem for peace and unity. The song was released in 1977 and went on to become one of Bob Marley's biggest hits and one of the most influential reggae songs of all time. One of Bob Marley's most famous songs is entitled "One Love." The term ONE LOVE has become widely associated with Bob Marley by consumers throughout the U.S. and has acquired secondary meaning and trademark rights.

(Petition for Cancellation ¶ 3.) (emphasis added) Further, Petitioner alleges that "the continued registration of the mark ONE LOVE by Registrant would cause a likelihood of confusion, mistake, or deception as to the source, association, origin, affiliation, endorsement, or sponsorship of Registrant's ONE LOVE services with Petitioner and Petitioner's ONE LOVE Mark." (Petition for Cancellation ¶ 10.) (emphasis added) These underlined terms – all synonyms of "connection" – put Registrant on notice of the nature of Petitioner's claim, which was not limited to confusion as to the source or origin of Registrant's ONE LOVE services, but the services' association or affiliation with, or endorsement or sponsorship by, Bob Marley.

The parties' correspondence and Petitioner's other filings in this matter corroborate the content and intent of Petitioner's pleading, and expose the disingenuousness of Registrant's allegation in its reply brief that Petitioner is only now for the first time alleging a claim under Section 2(a). In its motion to strike of March 23, 2011, Petitioner specifically stated that one of its grounds for cancellation was "false suggestion of a connection with Bob Marley and/or Petitioner." (Docket No. 5 of Proceeding No. 92053461, page 3, ¶ 1.) Similarly, in Petitioner's answer to Registrant's notice of opposition, Petitioner repeatedly claimed that Registrant's "use of ONE LOVE draws a false association or connection with Bob Marley or [Petitioner]." (Docket No. 5, ¶¶ 10-12.)<sup>1</sup>

Moreover, the parties' discovery reflects the parties' litigation of Petitioner's claim under Section 2(a). The parties' specifically discussed Petitioner's Section 2(a) claim at their discovery conference held on March 2, 2011. (Supp. Bost Decl. ¶ 2.) Also, Petitioner propounded numerous discovery requests seeking information related to its Section 2(a) claim, including interrogatories requesting Registrant to state all facts regarding how Registrant's ONE LOVE mark does or does not draw an association with Bob Marley or his song "One Love," interrogatories requesting Registrant to state all facts supporting its denial that the term ONE LOVE has become widely associated with Bob Marley by consumers throughout the U.S., and requests for admission seeking Registrant's admissions of facts supportive of Petitioner's Section 2(a) claims. (Supp. Bost Decl. ¶ 3, Exs. A and B.) Likewise, in its responses to Registrant's interrogatories, Petitioner referred to its Section 2(a) claim. (Supp. Bost Decl. ¶ 4, Ex. C.)

## **II. PETITIONER SHOULD BE GRANTED LEAVE TO AMEND ITS PETITION FOR CANCELLATION**

In the event the Board determines that Petitioner failed to adequately plead a claim under Section 2(a) in its Petition for Cancellation, the Board should grant Petitioner leave

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<sup>1</sup> In its answer, Petitioner erroneously referred to Registrant at times as "Registrant/Petitioner," a typographical error that is clear on its face.

to amend its Petition to set forth a Section 2(a) claim in accordance with the parties' litigation of Petitioner's claims thus far.

**III. CONCLUSION**

The Board should deny Registrant's motion for summary judgment specifically as relates to Petitioner's Section 2(a) claim or, at least, grant Petitioner leave to amend its Petition for Cancellation to set forth a claim under Section 2(a).

Respectfully submitted,

Date: October 26, 2011

/Jill M. Pietrini/  
Jill M. Pietrini  
MANATT, PHELPS & PHILLIPS LLP  
11355 W. Olympic Blvd.  
Los Angeles, California 90064  
(310) 312-4000

*Attorneys for Petitioner*  
Fifty-Six Hope Road Music Limited

## DECLARATION OF PAUL A. BOST

1. My name is Paul Bost. I am an associate at Manatt, Phelps & Phillips, LLP, counsel for Petitioner in the instant matter. I have personal knowledge of the matters set forth in this declaration, and if called upon to testify, I could and would testify competently thereto.

2. On or around March 2, 2011, I participated in a telephonic discovery conference with counsel for Registrant. Pursuant to our obligations under FRCP 26, opposing counsel and I addressed the nature and basis of Petitioner's grounds for cancellation of Registrant's ONE LOVE registration. We specifically discussed Petitioner's claim under Section 2(a), namely, that Registrant's ONE LOVE mark falsely suggested a connection with Bob Marley. I took notes during our conference that reflect this specific discussion.

3. On or around August 1, 2011, Petitioner propounded its first sets of interrogatories and requests for admission on Registrant. These discovery requests seek information relevant to Petitioner's Section 2(a) claim, including, but not limited to, Interrogatory Nos. 25, 26, and 46 and Request for Admission Nos. 1-20, 38-46. True and correct copies of Petitioner's first sets of interrogatories and requests for admission are attached hereto as **Exhibit A** and **B**, respectively.

4. On or around June 10, 2011, Petitioner responded to Registrant's first set of interrogatories. In response to Interrogatory No. 26, Petitioner stated that "Registrant's Mark falsely suggests a connection or association with Bob Marley." A true and correct copy of Petitioner's responses to Registrant's first set of interrogatories are attached hereto as **Exhibit C**.

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I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Executed this 26th day of October, 2011 at Los Angeles, California.

/s/Paul A. Bost  
Paul A. Bost

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 26th day of October, 2011.

/Erica Embray/  
Erica Embray

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

S. Lloyd Smith, Esq.  
BUCHANAN INGERSOLL & ROONEY PC  
PO BOX 1404  
Alexandria, VA 22314

on this 26th day of October 2011.

/Erica Embray/  
Erica Embray

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# **EXHIBIT A**

**IN SUPPORT OF THE SUPPLEMENTAL DECLARATION OF PAUL A. BOST IN SUPPORT  
OF APPLICANT AND PETITIONER FIFTY-SIX HOPE ROAD MUSIC LIMITED'S SUR-  
REPLY BRIEF IN SUPPORT OF ITS OPPOSITION TO OPPOSER AND REGISTRANT  
RAISING CANE'S USA, LLC'S MOTION FOR SUMMARY JUDGMENT**

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

<p>In re Matter of Serial No. 77/549,263 <i>for the mark:</i> ONE LOVE</p> <p>RAISING CANE'S USA, LLC,</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">vs.</p> <p>FIFTY-SIX HOPE ROAD MUSIC, LTD.,</p> <p style="text-align: center;">Registrant.</p>	<p>Opposition No. 91-198552</p> <p><b>REGISTRANT AND PETITIONER FIFTY-SIX HOPE ROAD MUSIC LIMITED'S FIRST SET OF INTERROGATORIES TO OPPOSER AND REGISTRANT RAISING CANE'S USA, LLC</b></p>
<p><i>In re Matter of Registration No. 3,033,511</i> <i>for the mark:</i> ONE LOVE</p> <p>FIFTY-SIX HOPE ROAD MUSIC LIMITED,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>RAISING CANE'S USA, LLC,</p> <p style="text-align: center;">Registrant.</p>	<p>Cancellation No. 92-053461</p>

Pursuant to Fed.R.Civ.P. 33 and 37 C.F.R. § 2.120(a)(1), Registrant and Petitioner Fifty-Six Hope Road Music Limited ("Fifty-Six Hope Road") hereby requests that Opposer and Registrant Raising Cane's USA, LLC ("Registrant") answer, separately and fully in writing, under oath and within 30 days from service hereof, the Interrogatories set forth below. Pursuant to Fed.R.Civ.P. 26(e), the responses to these Interrogatories are to be supplemented promptly upon acquisition of further additional information.

## **I. INSTRUCTIONS**

If any one or more of these Interrogatories is or are objected to on the grounds of privilege, overbreadth, vagueness or similar ground, Registrant is instructed for each such Interrogatory to answer the Interrogatory within the 30-day period as narrowed to conform with the objection. Where Registrant lacks knowledge of exact information responsive to an Interrogatory, Registrant is instructed to say so and to answer the Interrogatory to the best of his present knowledge, to supply the best available estimate of the requested information, and to explain the basis of the estimate.

Unless otherwise stated, the relevant time period for the requests below is January 1, 2000 to the present.

These Interrogatories are continuing and Registrant is hereby requested to supplement its responses immediately whenever it acquires additional information pertinent thereto.

## **II. DEFINITIONS**

The following definitions are applicable to terms employed in these Interrogatories, in the Instructions accompanying these Interrogatories, and in these Definitions.

A. "Fifty-Six Hope Road" shall mean and refer to Fifty-Six Hope Road Music Limited and includes any and all of its predecessors and successors in interest, employees, licensees, agents and representatives of the foregoing, and any other person acting or purporting to act on behalf of any of the foregoing.

B. "Registrant" shall mean and refer to Raising Cane's USA, LLC, and includes any and all of its predecessors and successors in interest, any and all of its subsidiaries, affiliates and affiliated entities, and its partners, employees, agents,

officers, directors, licensees, and representatives of the foregoing, and any other person acting or purporting to act on behalf of any of the foregoing.

C. The term "Registrant's Mark" shall mean and refer to the ONE LOVE mark, as shown in Reg. No. 3,033,511.

D. The term "Registrant's Goods and Services" shall mean and refer to the goods and services on which or in conjunction with Registrant uses Registrant's Mark.

E. The "Registration" shall mean and refer to the federal registration owned by Registrant for ONE LOVE, Reg. No. 3,033,511.

F. The term "Bob Marley Marks" shall mean and refer to Fifty-Six Hope Road's BOB MARLEY, BOB MARLEY AND THE WAILERS, MARLEY RESORT & SPA, MARLEY, HOUSE OF MARLEY, and MARLEY COFFEE marks.

G. The term "Marley Song Marks" shall mean and refer to Fifty-Six Hope Road's CATCH A FIRE, ROOTS ROCK REGGAE, THREE LITTLE BIRDS, NICE TIME, and BURNIN' marks.

H. The term "person" refers to natural persons, organizations, associations, partnerships, joint ventures, corporations and other legal entities (including Registrant), and the actions taken by a person include the actions of directors, officers, owners, members, partners, joint venturers, employees or agents acting on the person's behalf.

I. The singular includes the plural and *vice versa*; the words "and" and "or" shall be construed in both the conjunctive and disjunctive; the word "all" means "any and all;" the word "any" means "any and all."

J. The terms "relates" and "refers" mean directly or indirectly mentioning, discussing, describing, pertaining to or connected with, a stated subject matter.

K. The term "document" is used in its customary broad sense and encompasses, without limitation, all handwritten, typed, printed or otherwise visually or aurally reproduced materials, whether copies, drafts or originals, emails, electronically stored, created or transmitted documents, and regardless of whether they are privileged against discovery on any ground, or within the possession, custody or control of Registrant, or his directors, officers, employees, agents, attorneys, consultants or representatives, including but not limited to: letters, correspondence, cables, wires, telegrams, notes, memoranda, diaries, notes or records of telephone conversations, notes or records of personal conversations or interviews, interoffice and intraoffice communications of all types, drawings, plans, sketches, charts, notebooks, data, operating and maintenance manuals, operating and product specifications, photographs, movies and recordings, books, catalogs, labels, packaging, containers, tags, advertisements, promotional materials, storyboards, press releases, reports, studies, questionnaires, assignments, agreements and other official papers and legal instruments, annual reports, management reports, project reports, reports to shareholders and minutes and reports of meetings (including meetings of directors, officers, executive boards and committees), lists of persons attending meetings, bills, invoices, orders, books, records, files, published material of any kind, and microfilms of documents that may have been destroyed. Any original or copy of a document containing or having attached to it any alterations, notes, comments or other material not included in the first document shall be deemed a separate document.

L. As used herein, the term "identify" means:

- (1) as to documents, give their dates, a detailed description of the

document, the author thereof, the signee thereof, and specify the person having custody or control thereof;

(2) as to natural persons, give their full name, business address (or, if not available, home address) and telephone number, employer, job title and, if employed by Registrant, their dates and regular places of employment and general duties;

(3) as to corporations, give the full name and present or last known address of the principal place of business of the corporation, identify the officers and directors of the corporation, and the state of incorporation of the corporation;

(4) as to partnerships, state whether the partnership is a general or limited partnership, identify the limited and general partners of the partnership, and state the principal place of business of the partnership; and

(5) as to joint ventures or other associations, identify all joint venturers or members of the association and state the principal place of business of the joint venture or association.

### **III. INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Identify and describe in detail all products or services of Registrant's bearing, or sold or offered under or intended to be sold or offered under, Registrant's Mark.

#### **INTERROGATORY NO. 2:**

State the date that Registrant first used Registrant's Mark at any of its restaurant locations on signs, menus, or in any other manner, and describe in detail what Registrant's Mark was first used on.

INTERROGATORY NO. 3:

For each of Registrant's Goods and Services, describe in detail the channels of trade and distribution in which such products or services are sold, or intended to be sold, including without limitation, the type of restaurant, retailer, or outlet in which each such product or service is sold or is distributed from or is intended to be sold.

INTERROGATORY NO. 4:

For each of Registrant's Goods and Services, describe in detail the demographic market to which those products or services are sold or intended to be sold. Such description shall include the age, location, and mean household income of those purchasers who buy and use or Registrant expects and/or intends to buy and use such products or services.

INTERROGATORY NO. 5:

For each of Registrant's Goods and Services, describe in detail how Registrant's Mark appears, or is intended to appear, on each such product or service, including without limitation, the location and size of said Mark, and how it is used in connection with the sale, distribution, or manufacture of each such product or service.

INTERROGATORY NO. 6:

State the date that Registrant selected and/or adopted Registrant's Mark for use with the services listed in the Registration.

INTERROGATORY NO. 7:

Identify all persons who were involved in, participated in, decided upon, or offered suggestions for, the selection and/or adoption of Registrant's Mark by Registrant.

INTERROGATORY NO. 8:

State why Registrant selected Registrant's Mark for association or use with Registrant's Goods and Services, and state the meaning of Registrant's Mark and/or what it was intended to connote, suggest, imply or associate.

INTERROGATORY NO. 9:

(a) State whether Registrant was aware or had knowledge of Fifty-Six Hope Road's use of ONE LOVE, the Bob Marley Marks, the Marley Song Marks, or of Opposer's registrations or pending registrations of any of the Bob Marley Marks or the Marley Song Marks, or of Bob Marley's song "One Love," at the time that Registrant selected and/or adopted or filed the application to register Registrant's Mark.

(b) If the answer to Interrogatory 9(a) is yes, describe in detail what Registrant knew about Fifty-Six Hope Road's use of ONE LOVE, the Bob Marley Marks, the Marley Song Marks, or of Opposer's registrations or pending registrations of any of the Bob Marley Marks, the Marley Song Marks, or of Bob Marley's song "One Love."

INTERROGATORY NO. 10:

State whether Registrant has ever conducted a trademark search of any kind (on-line, full search, or manual search of records of the U.S. Patent and Trademark Office or any other registrar of trademarks) relating to Registrant's Mark or the name "One Love" or any other trademark containing ONE LOVE. If the answer to this Interrogatory is yes, identify each such search report by providing the date on which the search was conducted, and stating whether Fifty-Six Hope Road's use of ONE LOVE, the Bob Marley Marks, the Marley Song Marks, or Opposer's registrations or pending registrations of any of the Bob Marley Marks, the Marley Song Marks, or Bob Marley's

song "One Love," were uncovered or disclosed in any such search.

INTERROGATORY NO. 11:

Describe in detail the method of marketing and advertising of each of Registrant's Goods and Services.

INTERROGATORY NO. 12:

State the retail price of each of Registrant's Goods and Services and/or the intended retail price for each such product or service or products offered in conjunction with each such service.

INTERROGATORY NO. 13:

Identify the name and location of each restaurant, retailer, store, or retail outlet that offers, markets, promotes, advertises, provides or sells, or intends in the future to offer, market, promote, advertise, provide or sell any of Registrant's Goods and Services.

INTERROGATORY NO. 14:

Identify the most knowledgeable person(s) of the marketing and sale of Registrant's Goods and Services.

INTERROGATORY NO. 15:

State separately the total annual, and monthly amount spent by or on behalf of Registrant for advertising, promoting, or marketing Registrant's Goods and Services. If Registrant does not maintain records of the amounts spent on the advertisement and promotion of Registrant's Goods and Services, state the total annual, and monthly amount spent by or on behalf of Registrant for the advertisement and promotion of all of Registrant's products or services regardless of the mark or name applied to such

products or services from the date of first use of Registrant's Mark.

INTERROGATORY NO. 16:

State whether Registrant has any marketing or advertising plans or programs directed toward or targeted to any consumer group, demographic, or particular type of person for Registrant's Goods and Services. If so, identify and describe in detail each such consumer group, demographic, or type of person.

INTERROGATORY NO. 17:

Identify all persons who provided information for Registrant's responses to these Interrogatories, and for Registrant's responses to Fifty-Six Hope Road's First Set of Requests for Admission, and Registrant's responses to Fifty-Six Hope Road's First Request for Production of Documents served concurrently herewith.

INTERROGATORY NO. 18:

If Registrant has ever received any unfavorable comments, evaluations or information, or any criticism or complaints about the quality of Registrant's Goods and Services, identify and describe in detail all communications which refer, relate or pertain to all such comments, evaluations, information, criticism, and complaints, the date of each such communication and the persons who made and received such communication.

INTERROGATORY NO. 19:

Identify and describe in detail all instances in which Registrant received any requests, inquiries, or statements from any person relating to whether there is or was some relationship, association, affiliation, or license between Fifty-Six Hope Road and Registrant, between the family or children of Bob Marley and Registrant, between Bob

Marley and Registrant, between Bob Marley's song "One Love" and Registrant, between the Bob Marley Marks and Registrant or Registrant's Goods and Services, between the Marley Song Marks and Registrant or Registrant's Goods or Services, or between Fifty-Six Hope Road's ONE LOVE mark and Registrant or Registrant's Goods or Services, and for each instance, identify all individuals who have knowledge of the facts thereof, the context of each instance, and the date of each instance.

INTERROGATORY NO. 20:

Separately state the total amount of sales, in units and dollars, of each product, bearing or sold or offered under Registrant's Mark, and the total revenue earned, received, or obtained for all services offered under Registrant's Mark.

INTERROGATORY NO. 21:

Identify all surveys, public opinion polls or any other forms of consumer research known to Registrant which refer, relate or pertain in any way to Registrant's Mark, the Bob Marley Marks, the Marley Song Marks, Fifty-Six Hope Road's ONE LOVE mark, and/or Bob Marley's song "One Love."

INTERROGATORY NO. 22:

Identify all types of media used to run or publish any advertisements bearing or featuring Registrant's Mark or Registrant's Goods and Services. For each media identified, state the following information:

- (a) The number of times each such advertisement was run or published;
- (b) If a radio or television advertisement, the time of day or night each such advertisement was run;
- (c) If a website advertisement, promotion or link, the url for each such domain

name and how long such advertisement appeared on each such website;

(d) If the advertisement was accompanied by music, the title, author, and publisher of any such accompanying music;

(e) If a print advertisement, the location and size of each such advertisement in each publication or medium identified; and

(f) Whether each such advertisement is currently being run or published.

INTERROGATORY NO. 23:

Identify and describe in detail all licensing agreements, manufacture agreements, or distribution agreements between Registrant and any third-party relating to any of Registrant's Goods and Services.

INTERROGATORY NO. 24:

Identify and describe in detail all cross-marketing or promotion agreements, website linking agreements, or other marketing or advertising arrangements between Registrant and any third party relating to any of Registrant's Goods and Services, including but not limited to, stating the date of each such agreement or arrangement, the term of each such agreement or arrangement, a description of the rights licensed or granted or the nature of the marketing or promotion arrangement, and the types of goods or services relating to each such agreement.

INTERROGATORY NO. 25:

State all facts regarding how Registrant's Mark does or does not draw an association with Bob Marley's song "One Love."

INTERROGATORY NO. 26:

State all facts regarding how Registrant's Mark does or does not draw an

association with Bob Marley.

INTERROGATORY NO. 27:

Identify all legal proceedings to which Registrant has been a party relating to Registrant's Mark or any other mark including the term "One Love," including, but not limited to, proceedings in federal court, the Trademark Trial and Appeal Board, or any trademark office in any country.

INTERROGATORY NO. 28:

Identify all legal proceedings to which Registrant has been a party relating to intellectual property rights not identified in response to Interrogatory No. 29, including, but not limited to, proceedings in federal court, or the Trademark Trial and Appeal Board, or any trademark office in any country.

INTERROGATORY NO. 29:

State whether Registrant plays any music in its restaurants or establishments, and, if so, describe the type of music played, all the policies relating to playing such music, and the length of time that Registrant has been playing such music in its restaurants or establishments.

INTERROGATORY NO. 30:

State all facts that relate to, support or negate Registrant's affirmative defense set forth in Paragraph 12 of Registrant's Answer.

INTERROGATORY NO. 31:

State all facts that relate to, support or negate Registrant's affirmative defense set forth in Paragraph 13 of Registrant's Answer.

INTERROGATORY NO. 32:

State all facts that relate to, support or negate Registrant's affirmative defense set forth in Paragraph 14 of Registrant's Answer.

INTERROGATORY NO. 33:

State all facts that relate to, support or negate Registrant's affirmative defense set forth in Paragraph 15 of Registrant's Answer.

INTERROGATORY NO. 34:

State all facts that relate to, support or negate Registrant's affirmative defense set forth in Paragraph 16 of Registrant's Answer.

INTERROGATORY NO. 35:

State all facts that relate to, support or negate Registrant's affirmative defense set forth in Paragraph 17 of Registrant's Answer.

INTERROGATORY NO. 36:

State all facts that relate to, support or negate Registrant's affirmative defense set forth in Paragraph 18 of Registrant's Answer.

INTERROGATORY NO. 37:

State all facts that relate to, support or negate Registrant's affirmative defense set forth in Paragraph 19 of Registrant's Answer.

INTERROGATORY NO. 38:

Identify all "education institutions" mentioned on page 4 of Registrant's Answer and the nature of Registrant's "support" thereof, and whether Registrant's Mark is used in connection with such activities.

INTERROGATORY NO. 39:

Identify all "food banks" mentioned on page 4 of Registrant's Answer and the nature of Registrant's "support" thereof, and whether Registrant's Mark is used in connection with such activities.

INTERROGATORY NO. 40:

Identify all "pet welfare societies" mentioned on page 4 of Registrant's Answer and the nature of Registrant's "support" thereof, and whether Registrant's Mark is used in connection with such activities.

INTERROGATORY NO. 41:

Identify all "active lifestyle opportunities" mentioned on page 4 of Registrant's Answer and the nature of Registrant's "support" thereof, and whether Registrant's Mark is used in connection with such activities.

INTERROGATORY NO. 42:

Identify all "professional organizations" mentioned on page 4 of Registrant's Answer and the nature of Registrant's "support" thereof, and whether Registrant's Mark is used in connection with such activities.

INTERROGATORY NO. 43:

Identify and describe in detail all communications Registrant has had with third parties regarding Fifty-Six Hope Road, Bob Marley, Fifty-Six Hope Road's ONE LOVE mark, the Bob Marley Marks, the Marley Song Marks, or Bob Marley's song "One Love."

INTERROGATORY NO. 44:

Identify and describe in detail any mentions or photographs of Bob Marley, any family or children of Bob Marley, Cedella Marley, or any member of Fifty-Six Hope Road

that appear or have appeared on Registrant's website, Facebook page, or Twitter account.

INTERROGATORY NO. 45:

State whether Registrant has sought to register, purchase, bid, or use Registrant's Mark or any other term including the words "One Love" as a search term or meta tag in any website or in any search engine on the internet, or as an "AdWord", Keyword, or the like for Google, Yahoo or any other search engine on the internet.

INTERROGATORY NO. 46:

State all facts that relate to, support or negate Registrant's allegation in Paragraph 3 of Registrant's Answer denying that the term ONE LOVE has become widely associated with Bob Marley by consumers throughout the U.S. and has acquired secondary meaning and trademark rights.

INTERROGATORY NO. 47:

State all facts that relate to, support or negate Registrant's allegation in Paragraph 4 of Registrant's Answer denying that Fifty-Six Hope Road has made trademark use of ONE LOVE in connection with any goods or services prior to Registrant's first use and registration of ONE LOVE.

INTERROGATORY NO. 48:

State all facts that relate to, support or negate Registrant's allegation in Paragraph 7 of Registrant's Answer denying that Registrant's Mark is similar in sound, appearance and meaning and is confusingly similar to Fifty-Six Hope Road's ONE LOVE mark.

INTERROGATORY NO. 49:

State all facts that relate to, support or negate Registrant's allegation in Paragraph 7 of Registrant's Answer denying that the services offered by Registrant are similar and related to those offered under Fifty-Six Hope Road's ONE LOVE mark directly or through Fifty-Six Hope Road's licensees.

INTERROGATORY NO. 50:

State all facts that relate to, support or negate Registrant's allegation in Paragraph 8 of Registrant's Answer denying that Fifty-Six Hope Road's ONE LOVE mark is inherently distinctive and has acquired secondary meaning by extensive, continuous, and substantially exclusive use by Fifty-Six Hope Road, and is associated with Fifty-Six Hope Road and Bob Marley.

INTERROGATORY NO. 51:

State all facts that relate to, support or negate Registrant's allegation in Paragraph 8 of Registrant's Answer denying that the Bob Marley Marks and Fifty-Six Hope Road's ONE LOVE mark are famous and distinctive within the meaning of the Federal Trademark Dilution Act.

INTERROGATORY NO. 52:

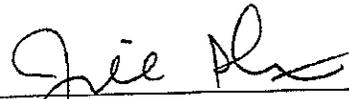
State all facts that relate to, support or negate Registrant's allegation in Paragraph 8 of Registrant's Answer denying that Registrant filed the Registration after Fifty-Six Hope Road's ONE LOVE mark had become famous and that Registrant is commercially using the ONE LOVE mark in the United States.

INTERROGATORY NO. 53:

State all facts that that relate to, support or negate Registrant's allegation in

Paragraph 7 of Registrant's Notice of Opposition that Registrant's Mark has become well known and famous as designating Registrant's services within the United States.

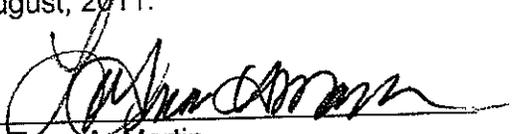
Dated: August 1, 2011.

By:   
Jill M. Pietrini  
Paul A. Bost  
MANATT, PHELPS & PHILLIPS, LLP  
11355 W. Olympic Boulevard  
Los Angeles, California 90064  
(310) 312-4000

Attorney for Registrant/Petitioner  
*Fifty-Six Hope Road Music Limited*

CERTIFICATE OF SERVICE

I hereby certify that these REGISTRANT AND PETITIONER FIFTY-SIX HOPE ROAD MUSIC LIMITED'S FIRST SET OF INTERROGATORIES TO OPPOSER AND REGISTRANT RAISING CANE'S USA, LLC are being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to: S. Lloyd Smith, Esq., BUCHANAN INGERSOLL & ROONEY, PC, 1737 King Street, Suite 500, Alexandria, VA 22314-2727, on this 1st day of August, 2011.

  
LaTrina A. Martin

300257853.1

# **EXHIBIT B**

**IN SUPPORT OF THE SUPPLEMENTAL DECLARATION OF PAUL A. BOST IN SUPPORT  
OF APPLICANT AND PETITIONER FIFTY-SIX HOPE ROAD MUSIC LIMITED'S SUR-  
REPLY BRIEF IN SUPPORT OF ITS OPPOSITION TO OPPOSER AND REGISTRANT  
RAISING CANE'S USA, LLC'S MOTION FOR SUMMARY JUDGMENT**

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

<p>In re Matter of Serial No. 77/549,263 for the mark: ONE LOVE</p> <p>RAISING CANE'S USA, LLC,</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">vs.</p> <p>FIFTY-SIX HOPE ROAD MUSIC, LTD.,</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No. 91-198552</p> <p><b>APPLICANT AND PETITIONER FIFTY-SIX HOPE ROAD MUSIC LIMITED'S FIRST SET OF REQUESTS FOR ADMISSION TO OPPOSER AND REGISTRANT RAISING CANE'S USA, LLC</b></p>
<p><i>In re Matter of Registration No. 3,033,511</i> for the mark: ONE LOVE</p> <p>FIFTY-SIX HOPE ROAD MUSIC LIMITED,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>RAISING CANE'S USA, LLC,</p> <p style="text-align: center;">Registrant.</p>	<p>Cancellation No. 92-053461</p>

Pursuant to Fed.R.Civ.P. 36 and 37 C.F.R. § 2.120(a)(1), Applicant and Petitioner Fifty-Six Hope Road Music Limited ("Fifty-Six Hope Road") hereby requests that Opposer and Registrant Raising Cane's USA, LLC ("Registrant") admit, within thirty days from the date of service hereof, the truth of the facts set forth herein.

Unless otherwise stated, the relevant time period for the requests for admission ("RFAs") below is January 1, 2000 to the present.

**I. DEFINITIONS**

Fifty-Six Hope Road incorporates the definitions from Fifty-Six Hope Road's First Set of Interrogatories to Registrant served concurrently herewith.

## II. REQUESTS FOR ADMISSION

### REQUEST FOR ADMISSION NO. 1:

"One Love" is the name of a song written by Bob Marley.

### REQUEST FOR ADMISSION NO. 2:

Bob Marley's song "One Love" is famous.

### REQUEST FOR ADMISSION NO. 3:

The term "One Love" is commonly associated with Bob Marley.

### REQUEST FOR ADMISSION NO. 4:

The term "One Love" is commonly associated with Bob Marley's song "One Love."

### REQUEST FOR ADMISSION NO. 5:

The song "One Love/People Get Ready" appeared on Bob Marley & the Wailer's album entitled *Exodus*.

### REQUEST FOR ADMISSION NO. 6:

The song "One Love/People Get Ready" appeared on Bob Marley & the Wailer's collection entitled *Legend*.

### REQUEST FOR ADMISSION NO. 7:

Registrant was aware of Bob Marley at the time it selected Registrant's Mark.

### REQUEST FOR ADMISSION NO. 8:

Registrant was aware of Bob Marley's song "One Love" at the time it selected Registrant's Mark.

### REQUEST FOR ADMISSION NO. 9:

Registrant was aware of Bob Marley's song "One Love" at the time it first used

Registrant's Mark.

REQUEST FOR ADMISSION NO. 10:

Registrant was aware of Bob Marley's song "One Love" at the time it filed its application to register Registrant's Mark.

REQUEST FOR ADMISSION NO. 11:

*Exodus* was released prior to Registrant's selection of Registrant's Mark.

REQUEST FOR ADMISSION NO. 12:

*Legend* was released prior to Registrant's selection of Registrant's Mark.

REQUEST FOR ADMISSION NO. 13:

*Exodus* was released prior to Registrant's first use of Registrant's Mark.

REQUEST FOR ADMISSION NO. 14:

*Legend* was released prior to Registrant's first use of Registrant's Mark.

REQUEST FOR ADMISSION NO. 15:

*Exodus* was released prior to Registrant's filing of its application to register Registrant's Mark.

REQUEST FOR ADMISSION NO. 16:

*Legend* was released prior to Registrant's filing of its application to register Registrant's Mark.

REQUEST FOR ADMISSION NO. 17:

Bob Marley is famous.

REQUEST FOR ADMISSION NO. 18:

Bob Marley became famous prior to Registrant's selection of Registrant's Mark.

REQUEST FOR ADMISSION NO. 19:

Bob Marley became famous prior to Registrant's first use of Registrant's Mark.

REQUEST FOR ADMISSION NO. 20:

Bob Marley became famous prior to Registrant's filing of its application to register Registrant's Mark.

REQUEST FOR ADMISSION NO. 21:

Registrant's Mark and Bob Marley's song title "One Love" are identical in sound.

REQUEST FOR ADMISSION NO. 22:

Registrant's Mark and Bob Marley's song title "One Love" are identical in appearance.

REQUEST FOR ADMISSION NO. 23:

Registrant's Mark and Bob Marley's song title "One Love" are identical in meaning.

REQUEST FOR ADMISSION NO. 24:

Registrant's Mark and Bob Marley's song title "One Love" are identical in connotation.

REQUEST FOR ADMISSION NO. 25:

Fifty-Six Hope Road's ONE LOVE mark and Registrant's Mark are identical in sound.

REQUEST FOR ADMISSION NO. 26:

Fifty-Six Hope Road's ONE LOVE mark and Registrant's Mark are identical in appearance.

REQUEST FOR ADMISSION NO. 27:

Fifty-Six Hope Road's ONE LOVE mark and Registrant's Mark are identical in meaning.

REQUEST FOR ADMISSION NO. 28:

Fifty-Six Hope Road's ONE LOVE mark and Registrant's Mark are identical in connotation.

REQUEST FOR ADMISSION NO. 29:

Registrant was aware of Fifty-Six Hope Road's use of the ONE LOVE mark at the time it selected Registrant's Mark.

REQUEST FOR ADMISSION NO. 30:

Registrant was aware of Fifty-Six Hope Road's use of the ONE LOVE mark at the time it first used Registrant's Mark.

REQUEST FOR ADMISSION NO. 31:

Registrant was aware of Fifty-Six Hope Road's use of the ONE LOVE mark at the time it filed its application to register Registrant's Mark.

REQUEST FOR ADMISSION NO. 32:

Fifty-Six Hope Road's ONE LOVE mark is famous.

REQUEST FOR ADMISSION NO. 33:

Fifty-Six Hope Road's ONE LOVE mark was famous at the time Registrant selected Registrant's Mark.

REQUEST FOR ADMISSION NO. 34:

Fifty-Six Hope Road's ONE LOVE mark was famous at the time Registrant first used Registrant's Mark.

REQUEST FOR ADMISSION NO. 35:

Fifty-Six Hope Road's ONE LOVE mark was famous at the time Registrant filed its application to register Registrant's Mark.

REQUEST FOR ADMISSION NO. 36:

Attached hereto as **Exhibit A** is a true and correct copy of the Partial Monetary Judgment and Permanent Injunction entered in the matter entitled *Fifty-Six Hope Road Music Limited v. A.V.E.L.A., Inc.*, Case No. 2:08-CV-00105-PMP-PAL.

REQUEST FOR ADMISSION NO. 37:

The Court recites the Jury's finding that "Fifty-Six Hope Road owns a valid right in Bob Marley's identity and persona" on page 2, line 8 of Exhibit A.

REQUEST FOR ADMISSION NO. 38:

Fifty-Six Hope Road owns Bob Marley's rights of publicity.

REQUEST FOR ADMISSION NO. 39:

Fifty-Six Hope Road owns trademark rights in Bob Marley's identity and persona.

REQUEST FOR ADMISSION NO. 40:

Bob Marley is popularly known as a musician.

REQUEST FOR ADMISSION NO. 41:

Bob Marley is popularly known as a songwriter.

REQUEST FOR ADMISSION NO. 42:

Bob Marley is popularly known as an activist.

REQUEST FOR ADMISSION NO. 43:

Attached hereto as **Exhibit B** is a true and correct copy of results for the query

"one love" searched on google.com dated June 22, 2011.

REQUEST FOR ADMISSION NO. 44:

The first website identified on Exhibit B is <<www.bobmarley.com>>.

REQUEST FOR ADMISSION NO. 45:

The first video identified on Exhibit B is entitled "Bob Marley – One Love."

REQUEST FOR ADMISSION NO. 46:

No websites affiliated with Registrant are displayed in the links identified on Exhibit B.

REQUEST FOR ADMISSION NO. 47:

Attached hereto as **Exhibit C** is a true and correct printout of Registrant's website located at <<www.raisingcanes.com>> as it existed on August 1, 2011.

REQUEST FOR ADMISSION NO. 48:

Registrant's website located at <<www.raisingcanes.com>> is a business record of Registrant.

REQUEST FOR ADMISSION NO. 49:

Attached hereto as **Exhibit D** is a true and correct printout of Registrant's Facebook page located at <<www.facebook.com/RaisingCanesChickenFingers>>, as it existed on June 22, 2011.

REQUEST FOR ADMISSION NO. 50:

Registrant's facebook page located at <<www.facebook.com/RaisingCanesChickenFingers>> is a business record of Registrant's.

REQUEST FOR ADMISSION NO. 51:

Attached hereto as **Exhibit E** is a true and correct printout of Registrant's Twitter page located at <<www.twitter.com/Raising\_Canes>>.

REQUEST FOR ADMISSION NO. 52:

Registrant's Twitter page located at <<www.twitter.com/Raising\_Canes>> is a business record of Registrant's.

REQUEST FOR ADMISSION NO. 53:

Bob Marley is from Jamaica.

REQUEST FOR ADMISSION NO. 54:

It is well known that Bob Marley is from Jamaica.

REQUEST FOR ADMISSION NO. 55:

There is a tourist destination in Jamaica named Cane River Falls.

REQUEST FOR ADMISSION NO. 56:

Registrant was aware of Bob Marley prior to Registrant's selection of Registrant's Mark.

REQUEST FOR ADMISSION NO. 57:

Registrant was aware of Bob Marley prior to Registrant's first use of Registrant's Mark.

REQUEST FOR ADMISSION NO. 58:

Registrant was aware of Bob Marley prior to Registrant's filing of its application to register Registrant's Mark.

REQUEST FOR ADMISSION NO. 59:

Bob Marley's song "One Love" is used by the Jamaican Tourist Board in

advertisements.

REQUEST FOR ADMISSION NO. 60:

Bob Marley's song "One Love" is used by the Jamaican Tourist Board in television commercials.

REQUEST FOR ADMISSION NO. 61:

Bob Marley's song "One Love" is used by the Jamaican Tourist Board to promote tourism in Jamaica.

REQUEST FOR ADMISSION NO. 62:

Fifty-Six Hope Road did not authorize Registrant to use Registrant's Mark.

REQUEST FOR ADMISSION NO. 63:

Fifty-Six Hope Road did not authorize Registrant to register Registrant's Mark.

REQUEST FOR ADMISSION NO. 64:

Registrant sells clothing bearing Registrant's Mark.

REQUEST FOR ADMISSION NO. 65:

Registrant sells clothing bearing the phrase "One Love."

REQUEST FOR ADMISSION NO. 66:

Registrant plays pre-recorded music in its restaurants.

REQUEST FOR ADMISSION NO. 67:

Bob Marley and the Wailers released an album named *Burnin'*.

REQUEST FOR ADMISSION NO. 68:

Bob Marley and the Wailers released an album named *Catch a Fire*.

REQUEST FOR ADMISSION NO. 69:

Bob Marley wrote a song entitled "Three Little Birds."

REQUEST FOR ADMISSION NO. 70:

Bob Marley's song "Three Little Birds" was included on Bob Marley & the Wailers' album named *Exodus*.

REQUEST FOR ADMISSION NO. 71:

A song entitled "Roots, Rock, Reggae" was included on Bob Marley & the Wailers' album named *Rastaman Vibration*.

REQUEST FOR ADMISSION NO. 72:

Bob Marley wrote a song entitled "Nice Time."

REQUEST FOR ADMISSION NO. 73:

Fifty-Six Hope Road is the registered owner of Registration No. 3,757,894 for BURNIN'.

REQUEST FOR ADMISSION NO. 74:

Fifty-Six Hope Road is the registered owner of Registration No. 3,757,895 for NICE TIME.

REQUEST FOR ADMISSION NO. 75:

Fifty-Six Hope Road is the registered owner of Registration No. 3,456,082 for ROOTS ROCK REGGAE.

REQUEST FOR ADMISSION NO. 76:

Fifty-Six Hope Road is the registered owner of Application No. 76/664,939 for ROOTS ROCK REGGAE.

REQUEST FOR ADMISSION NO. 77:

Fifty-Six Hope Road is the registered owner of Application No. 77/754,919 for THREE LITTLE BIRDS.

REQUEST FOR ADMISSION NO. 78:

Fifty-Six Hope Road is the owner of Application No. 77/754,918 for THREE LITTLE BIRDS.

REQUEST FOR ADMISSION NO. 79:

Catch A Fire Clothing, LLC is the registered owner of Registration No. 2,850,611 for CATCH A FIRE.

REQUEST FOR ADMISSION NO. 80:

Catch A Fire Clothing, LLC is the registered owner of Registration No. 3,746,162 for CATCH A FIRE.

REQUEST FOR ADMISSION NO. 81:

Catch A Fire Clothing, LLC is the registered owner of Registration No. 3,751,455 for CATCH A FIRE.

REQUEST FOR ADMISSION NO. 82:

Catch A Fire Clothing, LLC is the registered owner of Application No. 77/701,737 for CATCH A FIRE.

REQUEST FOR ADMISSION NO. 83:

Catch A Fire Clothing, LLC is the registered owner of Registration No. 3,692,515 for CATCH A FIRE.

REQUEST FOR ADMISSION NO. 84:

Registrant was aware that Fifty-Six Hope Road used certain of Bob Marley's song titles as trademarks at the time it selected Registrant's Mark.

REQUEST FOR ADMISSION NO. 85:

Registrant was aware that Fifty-Six Hope Road used certain of Bob Marley's

album titles as trademarks at the time it selected Registrant's Mark.

REQUEST FOR ADMISSION NO. 86:

Registrant was aware that Fifty-Six Hope Road used certain of Bob Marley's song titles as trademarks at the time it first used Registrant's Mark.

REQUEST FOR ADMISSION NO. 87:

Registrant was aware that Fifty-Six Hope Road used certain of Bob Marley's album titles as trademarks at the time it first used Registrant's Mark.

REQUEST FOR ADMISSION NO. 88:

Registrant was aware that Fifty-Six Hope Road used certain of Bob Marley's song titles as trademarks at the time it filed its application to register Registrant's Mark.

REQUEST FOR ADMISSION NO. 89:

Registrant was aware that Fifty-Six Hope Road used certain of Bob Marley's album titles as trademarks at the time it filed its application to register Registrant's Mark.

Dated: August 1, 2011

By:



Jill M. Pietrini

Paul A. Bost

MANATT, PHELPS & PHILLIPS, LLP

11355 W. Olympic Boulevard

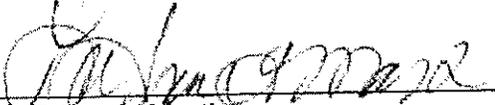
Los Angeles, California 90064

(310) 312-4000

Attorney for Applicant/Petitioner  
*Fifty-Six Hope Road Music Limited*

CERTIFICATE OF SERVICE

I hereby certify that these APPLICANT AND PETITIONER FIFTY-SIX HOPE ROAD MUSIC LIMITED'S FIRST SET OF REQUESTS FOR ADMISSION TO OPPOSER AND REGISTRANT RAISING CANE'S USA, LLC are being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to: S. Lloyd Smith, Esq., BUCHANAN INGERSOLL & ROONEY, PC, 1737 King Street, Suite 500, Alexandria, VA 22314-2727, on this 1st day of August, 2011.

  
LaTrina A. Martin

300284652.1

# **EXHIBIT C**

**IN SUPPORT OF THE SUPPLEMENTAL DECLARATION OF PAUL A. BOST IN SUPPORT  
OF APPLICANT AND PETITIONER FIFTY-SIX HOPE ROAD MUSIC LIMITED'S SUR-  
REPLY BRIEF IN SUPPORT OF ITS OPPOSITION TO OPPOSER AND REGISTRANT  
RAISING CANE'S USA, LLC'S MOTION FOR SUMMARY JUDGMENT**

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

<p><i>In re Matter of Serial No. 77/549,263 for the mark: ONE LOVE</i></p> <p>RAISING CANE'S USA, LLC,  Opposer,  vs.  FIFTY-SIX HOPE ROAD MUSIC, LTD.,  Applicant.</p>	<p>Opposition No. 91-198552</p> <p><b>FIFTY-SIX HOPE ROAD MUSIC LIMITED'S RESPONSES TO RAISING CANE'S USA, LLC'S FIRST SET OF INTERROGATORIES</b></p>
<p><i>In re Matter of Registration No. 3,033,511 for the mark: ONE LOVE</i></p> <p>FIFTY-SIX HOPE ROAD MUSIC LIMITED,  Petitioner,  vs.  RAISING CANE'S USA, LLC,  Registrant.</p>	<p>Cancellation No. 92-053461</p>

**I. PRELIMINARY STATEMENT**

Applicant and Petitioner Fifty-Six Hope Road Music Limited ("Fifty-Six Hope Road") provides the following responses and objections to Opposer and Registrant Raising Cane's USA, LLC's ("Registrant") First Set of Interrogatories. These responses are made solely for the purposes of this action. Any information supplied in response to any particular interrogatory is or will be supplied by Fifty-Six Hope Road subject to all objections as to competence, relevance, materiality, propriety, admissibility, and any and all other objections on any grounds that would require the exclusion of the information or portion thereof if such information were offered into evidence, all of which

objections and grounds are hereby expressly reserved and may be interposed at the time of trial.

No incidental or implied admissions are intended by the responses herein. The fact that Fifty-Six Hope Road has supplied, or hereafter supplies, information in response to any particular interrogatory should not be taken as an admission that Fifty-Six Hope Road accepts or admits the existence of any fact set forth or assumed by such interrogatory or that such information constitutes admissible evidence. The fact that Fifty-Six Hope Road has supplied or hereafter supplies information in response to any interrogatory is not intended, and shall not be construed, as a waiver by Fifty-Six Hope Road of any part of any objection to any such interrogatory. The fact that Fifty-Six Hope Road makes a response and/or objection to any interrogatory is not intended, and shall not be construed, as an admission that information responsive to that interrogatory exists.

Fifty-Six Hope Road reserves the right to make any changes in these responses if it appears that omissions or errors have been made therein, or that future or more accurate information is available. Fifty-Six Hope Road has not completed its own investigation and discovery. Therefore, the following responses state Fifty-Six Hope Road's knowledge, information, and belief as of the date of such responses, and Fifty-Six Hope Road expressly reserves the right to rely upon and/or introduce into evidence at trial such additional evidence and documents as Applicant may discover.

## **II. GENERAL OBJECTIONS**

Fifty-Six Hope Road objects to all of the interrogatories on the following grounds and the general objections are incorporated by reference to each response contained herein as though fully restated therein.

1. Fifty-Six Hope Road objects to the definitions of "Fifty-Six Hope's Marks" and "Fifty-Six Hopes Goods and Services" set forth in the Interrogatories on the grounds that they are overbroad, burdensome, unduly oppressive, and requires more information than what is permitted under Fed.R.Civ.P. 33, and invade the right of privacy of Fifty-Six

Hope Road, its licensees, and the customers of Fifty-Six Hope Road's goods and services.

2. Fifty-Six Hope Road objects to the interrogatories on the grounds that they call for confidential information of Fifty-Six Hope Road and its licensees.

Without waiving the objections asserted herein and reserving the rights stated above, Fifty-Six Hope Road provides the following responses:

**FIFTY-SIX HOPE ROAD'S RESPONSE TO REGISTRANT'S FIRST SET OF INTERROGATORIES**

**INTERROGATORY NO. 1:**

Identify all products and services on or in connection with which Fifty-Six Hope or any predecessor in interest use or have used: (1) the mark ONE LOVE or (2) any mark that you contend is confusingly similar to Raising Cane's Mark.

**RESPONSE TO INTERROGATORY NO. 1:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the work product doctrine.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road has used the ONE LOVE mark on or in connection with cloth bibs, infant and toddler one piece clothing, hats, shirts, sweat shirts, and tank-tops, and has licensed ONE LOVE and the One Love song to the Jamaica Board of Tourism. Fifty-Six Hope Road has used ONE LOVE for musical sound recordings. Fifty-Six Hope Road has used the 1LOVE mark and the design mark depicted below ("the 1LOVE Design Mark") in connection with a charitable organization and a website related thereto.



**INTERROGATORY NO. 2:**

For each product or service identified in response to Interrogatory No. 1, state:

- (a) a description thereof;
- (b) the number of units sold each year since the product or service was first sold;
- (c) the dollar amount of sales by product for each year since the product or service was first sold;
- (d) the geographic scope of sales for each product or service;
- (e) identify the channels of trade through which the product or service is being and has been sold;
- (f) identify the distribution outlets through which the product or service is being and has been sold;
- (g) the date on which each product or service was first sold.

**RESPONSE TO INTERROGATORY NO. 2:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is compound and contains numerous subparts and causes the number of interrogatories propounded by Registrant to exceed the number allowed under 37 C.F.R. § 2.120(d). Fifty-Six Hope Road also objects to this

interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees. Fifty-Six Hope Road also objects to this interrogatory to the extent the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing Fifty-Six Hope Road's business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party. Pursuant to FRCP 33(d), Fifty-Six Hope Road directs Registrant to the documents produced by Fifty-Six Hope Road in response to Registrant's First Set Of Document Requests. Fifty-Six Hope Road will supplement this response upon the Board's entrance of a suitable protective order.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road first sold clothing bearing the ONE LOVE mark at least as early as 1991. Fifty-Six Hope Road sells clothing bearing the ONE LOVE mark throughout the United States. Fifty-Six Hope Road sells clothing bearing the ONE LOVE mark through mass market retailers, specialty retailers, boutiques, and the internet.

Fifty-Six Hope Road uses the 1LOVE and 1LOVE Design Mark for charitable services. Fifty-Six Hope Road offers its charitable services under these marks throughout the United States. Fifty-Six Hope Road offers its charitable services under these marks through the internet and in partnership with the United Nations Environment Programme, charity: water, African Leadership Academy, Playing for Change Foundation, Marley Beverages, Marley Coffee, and The House of Marley.

**INTERROGATORY NO. 3:**

State whether Fifty-Six Hope has ever advertised or promoted goods or services

bearing Fifty-Six Hope's Marks, and if so, provide a breakdown including:

- (a) the form of media promotion or advertisement and its identity;
- (b) the inclusive dates and areas of promotion or advertisement;
- (c) the total annual advertising, marketing and promotional expenditures; and
- (d) the name and address of each and every advertising agency used at any

time by Fifty-Six Hope which did any work with regard to Fifty-Six Hope's Marks.

**RESPONSE TO INTERROGATORY NO. 3:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is compound and contains numerous subparts and causes the number of interrogatories propounded by Registrant to exceed the number allowed under 37 C.F.R. § 2.120(d). Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees. Fifty-Six Hope Road also objects to this interrogatory to the extent the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing Fifty-Six Hope Road's business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party. Pursuant to FRCP 33(d), Fifty-Six Hope Road directs Registrant to the documents produced by Fifty-Six Hope Road in response to Registrant's First Set Of Document Requests. Fifty-Six Hope Road will supplement this response upon the Board's entrance of a suitable protective order.

Subject to the above objections and to the extent Fifty-Six Hope Road

understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road has advertised or promoted services bearing its marks.

**INTERROGATORY NO. 4:**

Identify all agreements relating to Fifty-Six Hope's Marks, including, without limitation, agreements relating to the distribution or licensing of goods or services under Fifty-Six Hope's Marks.

**RESPONSE TO INTERROGATORY NO. 4:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees. Fifty-Six Hope Road also objects to this interrogatory to the extent the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing Fifty-Six Hope Road's business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party. Pursuant to FRCP 33(d), Fifty-Six Hope Road directs Registrant to the documents produced by Fifty-Six Hope Road in response to Registrant's First Set Of Document Requests.

**INTERROGATORY NO. 5:**

Identify each period of time during which Fifty-Six Hope wholly or partially failed to use any of Fifty-Six Hope's Marks in connection with any of the service or products identified in response to Interrogatory No. 1, and state:

- (a) the dates of non-use;

- (b) the reasons for non-use;
- (c) the reasons for resumed use; if applicable; and
- (d) the products in connection with which use of Fifty-Six Hope's Marks were

not continuous.

**RESPONSE TO INTERROGATORY NO. 5:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous and unintelligible. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is compound and contains numerous subparts and causes the number of interrogatories propounded by Registrant to exceed the number allowed under 37 C.F.R. § 2.120(d). Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road has continually used its marks in connection with the services and products identified in its response to Interrogatory No. 1 since their respective dates of first use.

**INTERROGATORY NO. 6:**

Identify any prior owner of Fifty-Six Hope's Marks through which Fifty-Six Hope claims title and describe in detail the relationship between Fifty-Six Hope and the prior owner as well as the nature of the transfer of rights from the prior owner to Fifty-Six Hope.

**RESPONSE TO INTERROGATORY NO. 6:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Bob Marley died in 1981, intestate, as a domiciliary and legal resident of Jamaica. Initially, Bob Marley's estate and all of its assets, including all of Marley's intellectual property rights and rights to Bob Marley's name and likeness ("the Marley Rights"), succeeded to Rita Marley, Bob Marley's wife, and nine of his eleven children (collectively, "the Marley Beneficiaries") and were administered by Mutual Security Merchant Bank and Trust Co. Ltd. ("the Bank"). The Marley Rights were subsequently purchased by Island Logic, Inc., a New York corporation, in 1988. The circumstances of the sale were disputed by certain of the Marley children before the Jamaican Court of Appeals, such that the Bank was made to re-advertise the Marley Rights for sale, resulting in Island Logic, Inc.'s assignment of the Marley Rights to Island Logic Ltd., a Bahamas company in December 1989. In December 1989, the Bank assigned all name, likeness, and biographical rights to Island Logic Ltd. The sale and subsequent assignment were confirmed by the Supreme Court of Jamaica in December 1991.

In 1990, the Marley Rights were gifted from Island Logic Ltd. to Stichting Bob Marley ("Stichting"), a Netherlands charitable foundation. During the time it owned the Marley Rights, Stichting licensed to Bob Marley Music, Inc., a California corporation, the rights to Bob Marley's name and likeness. Bob Marley Music entered several licenses

for the use of the Marley Intellectual Property, beginning at least as early as 1986. Stichting thereafter reconveyed the Marley Rights to Island Logic Ltd. in 1994, who, in 1995, conveyed the Marley Rights to Fifty-Six Hope Road. Fifty-Six Hope Road has owned the Marley Rights, including all rights to Bob Marley's name, image, and likeness, since 1995, and has since licensed those rights through its affiliated entities, Hope Road Merchandising LLC and The Robert Marley Foundation, Ltd.

**INTERROGATORY NO. 7:**

For Fifty-Six Hope's company:

- (a) State the full complete name of the company and any changes in such name, with the date of each change; and,
- (b) State the state and date of incorporation and the present status of the corporation.

**RESPONSE TO INTERROGATORY NO. 7:**

Fifty-Six Hope Road's full complete name is Fifty-Six Hope Road Music Limited. Fifty-Six Hope Road is an International Business Company in Bahamas. Fifty-Six Hope Road was constituted as an International Business Company in 1995.

**INTERROGATORY NO. 8:**

Describe in detail the circumstances surrounding and the reasons for the selection of Fifty-Six Hope's Marks.

**RESPONSE TO INTERROGATORY NO. 8:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous and overbroad. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road's Marks are derived from the identity, persona and musical legacy of Bob Marley. BOB MARLEY and other marks using the terms BOB MARLEY or MARLEY are derived from Bob Marley's name. BOB MARLEY & THE WAILERS is the name of Bob Marley's band. ONE LOVE, CATCH A FIRE, ROOTS ROCK REGGAE, THREE LITTLE BIRDS, NICE TIME, and BURNIN' are derived from names of Bob Marley's famous songs.

**INTERROGATORY NO. 9:**

State whether Fifty-Six Hope has licensed or granted authority to furnish goods or services under Fifty-Six Hope's Marks and if so, identify all such persons to whom Fifty-Six Hope has licensed the Marks and the goods covered by each license and identify all documents evidencing or relating to each such license agreement, including, without limitation, any rules, directions or guidelines intended for licensees or distributors of Fifty-Six Hope covering decoration, layout, signage and background music which may accompany or be part of the display or presentation of Fifty-Six Hope's Goods and Services.

**RESPONSE TO INTERROGATORY NO. 9:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous and duplicative of other interrogatories herein. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive and beyond what is discoverable under the Trademark Rules of Practice. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees. Fifty-Six Hope Road also objects

to this interrogatory to the extent the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing Fifty-Six Hope Road's business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party. Pursuant to FRCP 33(d), Fifty-Six Hope Road directs Registrant to the documents produced by Fifty-Six Hope Road in response to Registrant's First Set Of Document Requests.

**INTERROGATORY NO. 10:**

State the date and circumstances under which Fifty-Six Hope first learned of Raising Cane's Mark and identify the person or persons who initially obtained this information.

**RESPONSE TO INTERROGATORY NO. 10:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road first learned of Registrant's alleged rights in the ONE LOVE mark when it was cited by the PTO in an office action dated March 24, 2008 as a bar to Fifty-Six Hope Road's application to register ONE LOVE in Class 43, Ser. No. 77/344,663.

**INTERROGATORY NO. 11:**

Identify all instances of actual confusion that have arisen between Raising

Cane's Mark and Fifty-Six Hope's Marks. For each such instance state:

(a) the name, or other means of identification, address, and occupation of the persons who were confused, mistaken or deceived;

(b) the date and place the instance occurred;

(c) a description of the circumstance that led to the person being confused, mistaken

(d) the means by which Fifty-Six Hope received notice thereof;

(e) the name, address and occupation of the person from whom such notice was received;

(f) whether any record was made of the instance, and if so, the name and address of the person who has custody of the records; and

(g) the persons at Fifty-Six Hope most knowledgeable about the subject matter in Subparagraphs (a) through (f) hereof.

**RESPONSE TO INTERROGATORY NO. 11:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is compound and contains numerous subparts and causes the number of interrogatories propounded by Registrant to exceed the number allowed under 37 C.F.R. § 2.120(d). Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product

doctrine.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road is currently unaware of any instances of actual confusion aside from that mentioned in response to Interrogatory No. 10. Discovery is continuing.

**INTERROGATORY NO. 12:**

Identify all third party uses of any trademark, service mark, business name, trade name, or title consisting of or comprising (1) the marks ONE LOVE; or (2) any mark that you contend is confusingly similar to Raising Cane's Mark, as a component of a mark or as an entire mark.

**RESPONSE TO INTERROGATORY NO. 12:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Fifty-Six Hope Road also objects to this interrogatory to the extent it is irrelevant to the parties' claims and defenses, is an improper contention interrogatory, and seeks a legal conclusion. Fifty-Six Hope Road also objects to this interrogatory to the extent the information sought is equally available to Registrant. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

**INTERROGATORY NO. 13:**

Identify each legal proceeding, other than the current proceeding, involving Fifty-Six Hope's Marks and state the outcome of the proceeding.

**RESPONSE TO INTERROGATORY NO. 13:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Fifty-Six Hope Road also objects to this interrogatory to the extent the information sought is equally available to Registrant. Fifty-Six Hope Road also objects to this interrogatory on the grounds that it is irrelevant to the parties' claims and defenses. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road's Marks have been the subject of following legal proceedings:

- Fifty-Six Hope Road Music Limited v. Marley's Sliders, LLC, TTAB, 91-199257
- Fifty-Six Hope Road Music Limited v. One Love, LLC, TTAB, 92-053814
- Fifty-Six Hope Road Music Limited v. Fred E. Goldstein, TTAB, 92-053816
- Fifty-Six Hope Road Music Limited v. The Marly Group, TTAB, 92-052462
- Fifty-Six Hope Road Music Limited v. The Agency Group USA Limited, TTAB, 92-051997
- Fifty-Six Hope Road Music Limited v. Bamboula 8, LLC, TTAB, 91-191431
- Fifty-Six Hope Road Music Limited v. Three Little Birds Music, LLC, TTAB, 91-191071
- Fifty-Six Hope Road Music Limited v. Cynthia Wong, TTAB, 91-190112

- Fifty-Six Hope Road Music Limited v. MMB Marley's LLC, TTAB, 92-050736
- Fifty-Six Hope Road Music Limited v. Fred E. Goldstein, TTAB, 91-187516
- Fifty-Six Hope Road Music Limited v. Jaques Pradiou, TTAB, 91187549
- Fifty-Six Hope Road Music Limited v. Cedella Marley Booker, TTAB, 91-186104
- Bob's Store Corp. v Fifty-Six Hope Road Music Limited , TTAB, 91-176155
- Big Boy Restaurants International, LLC v. Fifty-Six Hope Road Music Limited, TTAB, 91-174367
- Fifty-Six Hope Road Music Limited, et al. v. A.V.E.L.A., Inc., et al, United States District Court of Nevada, Case No. 2:08-cv-00105-PMP-GWF.

**INTERROGATORY NO. 14:**

State whether Fifty-Six Hope has ever objected to the use of any mark or name comprising or consisting of ONE LOVE by any third party or opposed any U.S. federal or state trademark application or sought to cancel any existing U.S. federal or trademark registration based on any or all Fifty-Six Hope's Marks, and state the outcome of such objections.

**RESPONSE TO INTERROGATORY NO. 14:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Fifty-Six Hope Road also objects to this interrogatory to the extent the information sought is equally available to

Registrant. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Fifty-Six Hope Road also objects to this interrogatory to the extent the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing Fifty-Six Hope Road's business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party. Pursuant to FRCP 33(d), Fifty-Six Hope Road directs Registrant to cease and desist letters produced by Fifty-Six Hope Road in response to Registrant's First Set Of Document Requests.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road has filed the following notices of opposition and petitions to cancel regarding ONE LOVE or marks similar thereto:

- Fifty-Six Hope Road Music Limited v. Fred E. Goldstein, TTAB, 92-053816
- Fifty-Six Hope Road Music Limited v. The Agency Group USA Limited, TTAB, 92-051997
- Fifty-Six Hope Road Music Limited v. Fred E. Goldstein, TTAB, 91-187516

**INTERROGATORY NO. 15:**

Identify all consumer and/or purchaser surveys, studies or market research that Fifty-Six Hope has conducted or has had others conduct on its behalf relating to Fifty-Six Hope's Marks and/or Raising Cane's Mark.

**RESPONSE TO INTERROGATORY NO. 15:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague

and ambiguous. Fifty-Six Hope Road also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine and seeks premature expert discovery

**INTERROGATORY NO. 16:**

Identify each person employed by or associated with Fifty-Six Hope who has had primary responsibility, from the year 2000 through the present, in connection with Fifty-Six Hope's Goods and Services, for:

- (a) Sales;
- (b) Marketing;
- (c) Advertising;
- (d) Customer relations;
- (e) Manufacturing;
- (f) Service;
- (g) Product or service names and marks;
- (h) Financial records, including sales and profits; and
- (i) New product planning.

**RESPONSE TO INTERROGATORY NO. 16:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous, particularly the term "associated with." Fifty-Six Hope Road also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Fifty-Six Hope Road objects to this interrogatory on the grounds that it

is compound and contains numerous subparts and causes the number of interrogatories propounded by Registrant to exceed the number allowed under 37 C.F.R. § 2.120(d). Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road does not have any employees; its business is operated through its principals, licensees, and House of Marley, LLC. The persons responsible in the last five years for these categories are:

- a) Sales: Michael Conley, Zion Rootswear, LLC
- (b) Marketing: Michael Conley, Zion Rootswear, LLC
- (c) Advertising: Michael Conley, Zion Rootswear, LLC
- (d) Customer relations: There is no person with primary responsibility for this category.
- (e) Manufacturing: There is no person with primary responsibility for this category, as Fifty-Six Hope Road does not manufacture products.
- (f) Service: This category is unintelligible, overbroad, vague and ambiguous.
- (g) Product or service names and marks: One Love, which is the mark at issue, was selected by Bob Marley, now deceased.
- (h) Financial records, including sales and profits: Michael Mitnick, CPA
- (i) New product planning: Michael Conley, Zion Rootswear, LLC; Courtney White, House of Marley, LLC.

**INTERROGATORY NO. 17:**

Identify the principal competitors in each business in which Fifty-Six Hope uses Fifty-Six Hope's Marks or in which Fifty-Six Hope intends to use Fifty-Six Hope's Marks.

**RESPONSE TO INTERROGATORY NO. 17:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous, specifically, the term "business." Fifty-Six Hope Road also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Fifty-Six Hope Road also objects to this interrogatory to the extent it is irrelevant to the parties' claims and defenses, and beyond the discovery permitted under the Trademark Rules of Practice. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information outside of its personal knowledge.

**INTERROGATORY NO. 18:**

Identify the class(es) of current customers and prospective purchasers for Fifty-Six Hope's Goods and Services.

**RESPONSE TO INTERROGATORY NO. 18:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous, specifically, the term "class(es)." Fifty-Six Hope Road also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information outside of its personal

knowledge. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information regarding the consumers and purchasers of Fifty-Six Hope Road's goods and services under its registered marks which are presumed to be offered to all consumers and purchasers identified in their respective registrations.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road's goods and services are purchased and used by consumers of all demographics.

**INTERROGATORY NO. 19:**

Identify the channels of trade through which Fifty-Six Hope currently sells or offers for sale Fifty-Six Hope's Goods and Services or through which Fifty-Six Hope intends to sell or offer for sale Fifty-Six Hope's Goods and Services.

**RESPONSE TO INTERROGATORY NO. 19:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks confidential information of Fifty-Six Hope Road and its licensees. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information regarding the channels of trade through which Fifty-Six Hope Road sells or offers for sale goods and services under its registered marks which are presumed to be offered in all typical channels of trade identified in their respective registrations.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road's

licensees offer clothing bearing the ONE LOVE mark in mass retailers, specialty shops, boutiques, and mid-tier retailers, and over the internet. Fifty-Six Hope Road promotes charitable services under the 1LOVE and 1LOVE & Design marks over the internet. Fifty-Six Hope Road offers musical sound recordings in mass retailers, specialty music retailers, and internet and digital retailers.

**INTERROGATORY NO. 20:**

Identify all forms and formats in which Fifty-Six Hope's Marks have been depicted on labels, cartons, product containers, packaging, advertising, promotional materials, product descriptions, price sheets, order forms and the like including all stylized letters, logos and designs.

**RESPONSE TO INTERROGATORY NO. 20:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive. Fifty-Six Hope Road also objects to this interrogatory to the extent the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing Fifty-Six Hope Road's business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party. Pursuant to FRCP 33(d), Fifty-Six Hope Road directs Registrant to the documents produced by Fifty-Six Hope Road in response to Registrant's First Set Of Document Requests.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Fifty-Six Hope Road claims rights in its marks in standard character format and, thus, is not limited to using

its marks in any particular form or format.

**INTERROGATORY NO. 21:**

State whether Fifty-Six Hope has employed, or intends to employ, an expert to act on its behalf in this matter, and if so, for each such expert state:

- (a) His or her identity;
- (b) His or her field of specialization and background as an expert; and
- (c) Whether Fifty-Six Hope proposes to call him or her as a witness, and if so,

the substance of the proposed testimony.

**RESPONSE TO INTERROGATORY NO. 21:**

Fifty-Six Hope Road objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is premature of the expert disclosure deadline set by the Board.

**INTERROGATORY NO. 22:**

State whether Fifty-Six Hope has conducted, or intends to conduct, any survey with regard to:

- (a) Likelihood of confusion, or
- (b) Public recognition of the Fifty-Six Hope's Marks.

**RESPONSE TO INTERROGATORY NO. 22:**

Fifty-Six Hope Road objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is premature of the expert disclosure deadline set by the Board.

**INTERROGATORY NO. 23:**

Identify and describe the bases, including but not limited to identifying specific facts, for Fifty-Six Hope's allegation in the Petition for Cancellation that Fifty-Six Hope's ONE LOVE Mark is famous.

**RESPONSE TO INTERROGATORY NO. 23:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive. Fifty-Six Hope Road objects to this interrogatory as an improper contention interrogatory. Fifty-Six Hope Road also objects to this interrogatory to the extent the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing Fifty-Six Hope Road's business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party. Pursuant to FRCP 33(d), Fifty-Six Hope Road directs Registrant to the documents produced by Fifty-Six Hope Road in response to Registrant's First Set Of Document Requests.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Bob Marley wrote the song "One Love" and first recorded it in 1965. It was popularized by Bob Marley based on its inclusion on Bob Marley & the Wailers' 1977 album *Exodus*. It has since been included on numerous compilations featuring the works of Bob Marley, including the compilation album *Legend*, which has sold more than 13.5 million albums in the United States. "One Love" has also been licensed from Fifty-Six Hope Road by the Jamaica Tourist Board as the official theme song of Jamaican tourism. An authorized cover version of the song continues to be featured on the Jamaica Tourist Board's website

<visitjamaica.com> . Fifty-Six Hope Road has parlayed the fame of Bob Marley's "One Love" song into a brand of the same name. Fifty-Six Hope Road has offered clothing bearing the ONE LOVE mark since at least as early as 1991. Fifty-Six Hope Road also offers charitable services under the 1LOVE and 1LOVE & Design marks. Bob Marley was inducted into the Grammy Hall of Fame in 2007. The British Broadcasting Company recognized One Love as the song and *Exodus* as the album of the millennium in 2009. Fifty-Six Hope Road has licensed Universal Studios the right to use Bob Marley's name and likeness for a restaurant, which restaurant opened in 1999 and uses One Love and other Bob Marley song titles on menus and in other ways in its restaurant. One Love is also a famous song based on its record sales, publicity, licensing requests, awards and recognitions.

**INTERROGATORY NO. 24:**

State the basis of Fifty-Six Hope's allegation that Fifty-Six Hope's ONE LOVE Mark has priority over Raising Cane's Mark.

**RESPONSE TO INTERROGATORY NO. 24:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Bob Marley first used One Love for a song title in 1965, and that song title has acquired secondary meaning. In 1999, Universal Studios opened its Bob Marley licensed themed restaurant, at which its uses One Love on menus and in other ways related to its restaurant. Fifty-Six Hope Road first used the ONE LOVE mark on clothing in interstate commerce at least as

early as 1991.

**INTERROGATORY NO. 25:**

State the factual basis for each affirmative defense in the Answer to the Notice of Opposition.

**RESPONSE TO INTERROGATORY NO. 25:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is compound and contains numerous subparts and causes the number of interrogatories propounded by Registrant to exceed the number allowed under 37 C.F.R. § 2.120(d). Fifty-Six Hope Road objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: See response to Interrogatory No. 24. Further, Fifty-Six Hope Road is of information and belief that Registrant has waived any rights it had to protest Fifty-Six Hope Road's use or registration of the ONE LOVE mark. Fifty-Six Hope Road is of information and belief that Registrant has acquiesced to Fifty-Six Hope Road's use or registration of the ONE LOVE mark. Discovery is ongoing.

**INTERROGATORY NO. 26:**

State whether Fifty-Six Hope contends that Raising Cane's Mark is likely to cause confusion and/or dilution of Fifty-Six Hope's MARLEY Marks, and if yes, state the basis for such contentions in detail.

**RESPONSE TO INTERROGATORY NO. 26:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague

and ambiguous. Fifty-Six Hope Road also objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Fifty-Six Hope Road objects to this interrogatory as an improper contention interrogatory.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Registrant's Mark falsely suggests a connection or association with Bob Marley and, by extension, Fifty-Six Hope Road's ONE LOVE trademark. Fifty-Six Hope Road contends that Registrant's Mark is likely to dilute its ONE LOVE trademark. The mark ONE LOVE is famous and is associated with Bob Marley. See responses to Interrogatories Nos. 1, 2, 3, 9, 10, 13, 14, 20, 23 and 24.

**INTERROGATORY NO. 27:**

Identify each person who participated in formulating Fifty-Six Hope's Answers to these interrogatories, stating specifically the number of each Interrogatory to which such person contributed information.

**RESPONSE TO INTERROGATORY NO. 27:**

Fifty-Six Hope Road objects to this interrogatory on the grounds that it is vague and ambiguous. Fifty-Six Hope Road objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive. Fifty-Six Hope Road also objects to this interrogatory to the extent the interrogatory seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the above objections and to the extent Fifty-Six Hope Road understands the interrogatory, Fifty-Six Hope Road responds: Doreen Crujeiras

provided information previously, which was used to formulate Fifty-Six Hope Road's answers to these interrogatories.

Dated: June 10, 2011

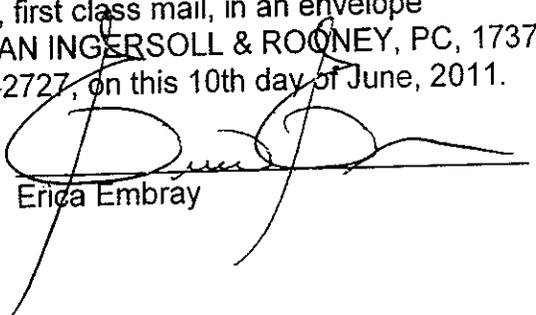
By: 

Jill M. Pietrini  
Paul A. Bost  
MANATT, PHELPS & PHILLIPS, LLP  
11355 W. Olympic Boulevard  
Los Angeles, California 90064  
(310) 312-4000

Attorney for Applicant/Petitioner  
*Fifty-Six Hope Road Music Limited*

CERTIFICATE OF SERVICE

I hereby certify that these Fifty-Six Hope Road Music Limited's Responses to Raising Cane's USA, LLC's First Set of Interrogatories are being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to: S. Lloyd Smith, Esq., BUCHANAN INGERSOLL & ROONEY, PC, 1737 King Street, Suite 500, Alexandria, VA 22314-2727, on this 10th day of June, 2011.

  
Erica Embray

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