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

Proceeding	91200183
Party	Defendant Miss G-String International LLC
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Date	10/13/2011
Attachments	Applicant's Response in Opposition to Motion to Strike.pdf (29 pages)(852673 bytes)

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

THE WORLD'S PAGEANTS, LLC

Index No.: ESTTA412971

Opposer,

Opposition No.91,200,183

-against-

For "MISS G-STRING
INTERNATIONAL"

Serial No. 77/753,000

MISS G-STRING INTERNATIONAL LLC,

Published December 07, 2010

Applicant.

October 13, 2011

**APPLICANT'S RESPONSE IN OPPOSITION TO OPPOSER'S MOTION TO
STRIKE MATTER FROM APPLICANT'S ANSWER**

Pursuant to Sec. 2.127(a), Miss G-String International LLC ("Applicant"), by and through its Attorney, Luke Lirot, hereby submits this Response in Opposition The World's Pageants, LLC's ("Opposer") Motion to Strike Matter from Applicant's Answers to Notice of Opposition. Opposer's Motion to Strike Matters from Applicant's Answers is predicated upon Applicant's Answers to Notice of Opposition. Accordingly, Applicant's answers to this motion will refer to, and are supported by, (1) Opposer's Notice of Opposition, dated June 6, 2011, (2) Applicant's Answers to Notice of Opposition, dated July 19, 2011, and (3) Applicant's Initial Disclosures, dated September 16, 2011, and the Exhibits attached thereto. Applicant's answers are further supported by the records of the United States Patent and Trademark Office, the records of the State of Florida Department of State, Division of Corporations, the records of the

New Hampshire Bar Association and the letter from Opposer's Attorney to Applicant's Attorney, dated May 13, 2009.

Critically, the core of Opposer's Motion is that Applicant is trying to "collaterally attack Opposer's asserted Registration No. 2,037,202." The truth is that there is no "collateral attack," and Applicant has simply shown that Opposer's motion is based on the same inaccurate facts consistently asserted by Opposer, since Opposer, World's Pageants LLC, simply *never owned the mark in question*, not when the matter was first initiated, and not now. As such, there is no basis to assert that Applicant has missed any "compulsory counterclaim," and there is no basis to strike any component of Applicant's submissions.

APPLICANT'S RESPONSE TO OPPOSER'S "FACTS"

In order to effectively respond to the Opposer's statement of "facts," it would be helpful to articulate which facts are agreed to and which are disputed, with a special focus on the capacity of which *entity* is asserting ownership of any mark, which entity or individual is accused of what, and, once that is clear, urging this tribunal to give strict scrutiny to whether a claim is made by the proper party, as stressed above, Opposer, World's Pageants LLC, simply *never owned the mark in question*. More importantly, since the alleged "bad faith" acquisition of marks accomplished by William Eadie, an *individual*, is not and can not be attributable to Applicant, Miss G-String International, LLC, a separate entity of which Mr. Eadie (EADIE) is simply the managing member of a multi-member LLC, there is really no basis to strike any component of Applicant's submittals. With that as a foundation, responding sequentially to Opposer's facts, Applicant would state as follows:

1.1 Admitted.

- 1.2 Admitted.
- 1.3 Denied. Applicant makes no “collateral attack on the registration,” only an assertion that Opposer was never the owner of the registration for any period of time relevant to this matter.
- 1.4 Denied. There was never any reason to file any petition or counterclaim, Again, because Opposer was never the owner of the registration for any period of time relevant to this matter.
- 1.5 Denied. Opposer’s claim that Applicant is an “alter ego” is false and without merit. The records of the State of Florida Department of State, Divisions of Corporations for Applicant clearly identifies EADIE as a member, but not the only member (See APPLICANT’S ANSWER, EXHIBIT B). Applicant disclosed in its Initial Disclosures, dated September 16, 2011, EADIE, as a witness in “Individuals With Discoverable Information” and attached the Final Judgment (INITIAL DISCLOSURES-EXHIBIT M), the Assignment of Final Judgment (INITIAL DISCLOSURES-EXHIBIT N), the Judgment against R&D Promotions, Inc. (INITIAL DISCLOSURES-EXHIBIT O) and Judgment against the principal of R&D, Gracinda Cardoso (INITIAL DISCLOSURES EXHIBIT P). Applicant also disclosed the use of any and all records in the state court case resulting in the judgment that EADIE, as an *individual*, received an assignment, for recognized consideration, of a valid and final state court Judgment against R&D and Cardoso. Indeed, it is Opposer who seeks to avoid the lawful execution of a valid judgment that EADIE, as an individual, fortuitously obtained because of the knowledge in certain circles of the “business practices” of Cardoso and R&D which resulted in the entry of a state court judgment for unpaid debts.

1.6 Denied. Applicant, Miss G-String International, LLC, *is not William Eadie*, the individual, nor can an LLC with other members be remotely considered any type of “alter ego.”

1.7 Denied. Applicant, Miss G-String International, LLC, *is not William Eadie*, the individual, nor can an LLC with other members be remotely considered any type of “alter ego,” and EADIE, the individual, obtained the disputed mark as a result of lawful assignment of a valid and enforceable state court judgment, subject to the full faith and credit of this tribunal.

1.8 Denied. Applicant is an LLC, not William Eadie, the individual who owns, lawfully, the subject mark.

ARGUMENT

I. THERE IS NO LOGICAL OR LEGAL BASIS TO SUPPORT OPPOSER’S MOTION

A. APPLICANT’S SUBMITTALS ARE NOT ANY TYPE OF COLLATERAL ATTACK AND SIMPLY REVEAL FACTS THAT SHOW THE NULL AND VOID NATURE OF THE OPPOSITION FILED, NOT THE SANCTITY OF THE MARK

Applicant responds in opposition and refutes Opposer’s request to strike Applicant’s Second Affirmative Defense, and would reference the matters of record already established in this matter Applicant provided in its Answers to Notice of Opposition the document (ANSWERS-EXHIBIT “A”) which is a Trademark Electronic Search System (TESS) search for marks using MISS and INTERNATIONAL. Seventy-Three (73) marks using those qualifying terms, over half of which are LIVE, were identified. Opposer’s allegation that it owns the mark

is not supported. The records of the USPTO identify R&D Promotions, Inc. ("R&D") as the owner of record on July 19, 2011, (ANSWERS EXHIBIT "G") and further affirms that "No assignments have been recorded at the USPTO for Assignee, THE WORLDS PAGEANTS, LLC" (attached hereto, and numbered sequentially from earlier submissions, as EXHIBIT "Q").

From the outset, Opposer's claim that Applicant's response can be deemed as an attack on Opposer's asserted Registration Number U.S Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark is false and without merit, and this affirmative defense is not any type of "collateral attack" on the sanctity of the mark.

Applicant refutes Opposer's request to strike Applicant's Third Affirmative Defenses as Applicant has clearly identified that the concept of a "G-STRING" and being "NUDE" are mutually exclusive and irreconcilable. Furthermore, the general public would clearly recognize that Applicant's mark does not derive from the same source as Opposer's mark, as clearly as it would recognize that these marks are as different from each other as they would be different from the MISS HAWAIIAN TROPIC INTERNATIONAL mark. Opposer's claim that Applicant's response can be deemed as an attack on Opposer's asserted Registration Number U.S Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark is false and without merit, and this affirmative defense is not any type of "collateral attack" on the sanctity of the mark.

Applicant refutes Opposer's request to strike Applicant's Fourth Affirmative Defenses as Applicant has clearly detailed the distinction between the MISS NUDE INTERNATIONAL mark, described as "typed drawing" while the description of MISS G-STRING INTERNATIONAL mark, described as "the color(s) white, yellow gold, pink and black is/are claimed as a feature of the mark. The mark consists of the stylized wording 'MISS G-STRING

INTERNATIONAL' with the word 'G-STRING' in yellow gold. The word 'MISS' in white is above the word 'G-STRING' in gold and the word 'INTERNATIONAL' in white is below the word 'G-STRING.' All of the wording is outlined in black. All of the words are superimposed upon a woman's pink undergarment."

This is sufficiently and distinctively different to avoid confusion, deception or mistake as to the source of sponsorship or association of Applicant's goods. Opposer's claim that Applicant's response can be deemed as an attack on Opposer's asserted. Registration Number U.S Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark is false and without merit, and this affirmative defense is not any type of "collateral attack" on the sanctity of the mark.

Applicant refutes Opposer's request to strike Applicant's Fifth Affirmative Defense as Applicant has presented that there is no plausibly conceivable relationship between "NUDE" and "G-STRING," the terms being mutually exclusive. Opposer's claim that Applicant's response can be deemed as an attack on Opposer's asserted Registration Number U.S Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark is false and without merit.

Applicant refutes Opposer's request to strike Applicant's Sixth Affirmative Defense as Applicant affirms that the information contained in Applicant's Answer is true and accurate as of the date of filing on July 19, 2011. Opposer's claim that Applicant's response can be deemed as an attack on Opposer's asserted Registration Number U.S Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark is false and without merit.

To emphasize the contents of the Applicant's submittals, it is clear that the Opposer is trying to mischaracterize them as something they are not, to try and fashion some type of "counterclaim" that simply does not exist. Applicant affirms its answer and

provides the following supportive facts to contradict Opposer's claims that it has used the MISS NUDE INTERNATIONAL mark in interstate commerce prior to Applicant's filing date.

1. The records of the State of Florida Department of State, Division of Corporations identify that on April 23, 2009, Applicant was formed as a State of Florida Limited Liability Company, having its principal place of business at 1420 Sunningdale Lane, Ormond Beach, FL 32174. (APPLICANT'S ANSWER- EXHIBIT "B").
2. The records of the USPTO identify that Applicant first used the mark "MISS G-STRING INTERNATIONAL in commerce on April 29, 2009. (APPLICANT'S ANSWER EXHIBIT "C").
3. The records of the State of Florida Department of State, Division of Corporations identify that on May 5, 2009, Opposer was formed as a State of Florida Limited Liability Company, having its principal place of business at 1005 Mabbette Street, Kissimmee, FL 34741. (APPLICANT'S ANSWER EXHIBIT "D").
4. Opposer first used the mark "MISS NUDE INTERNATIONAL" in commerce not earlier than May 5, 2009, the date that Opposer registered with the State of Florida Department of State, Division of Corporations. (APPLICANT'S ANSWER EXHIBIT "D").
5. The records of the USPTO affirm that "*No assignments have been recorded at the USPTO for Assignee, THE WORLDS PAGEANTS, LLC prior to September 27, 2011.*" (EXHIBIT "Q," attached hereto and incorporated herein).
6. The records of the State of Florida Department of State, Division of Corporations indicate that on September 24, 2010, Opposer was Administratively Dissolved. (APPLICANT'S ANSWER EXHIBIT "D").

7. Opposer was not an entity lawfully authorized to conduct business at the time it filed the First Request for Extension of Time to Oppose Applicant's Trademark Application on January 6, 2011, the Second Request for Extension of Time to Oppose Applicant's Trademark Application on February 3, 2011, the Third Request for Extension of Time to Oppose Applicant's Trademark Application on April 4, 2011, the Notice of Opposition on June 6, 2011, the Initial Disclosures on September 19, 2011, the First Set of Interrogatories on September 19, 2011, the First Set of Requests for Admissions on September 21, 2011, or the First Set of Requests for Production of Documents and Things on September 24, 2011.

8. On July 19, 2011, Opposer received written notification from Applicant that it was not an entity lawfully authorized to conduct business when Applicant filed its Applicant's Answer to Notice of Opposition. There was no "administrative oversight"! (APPLICANT'S ANSWER EXHIBIT "E").

9. Thomas Aquilla ("AQUILLA") is the Attorney of Record for Opposer. AQUILLA's address of record is 221 Coe Hill Road, Center Harbor, New Hampshire 03226.

10. AQUILLA was suspended from the practice of law in New Hampshire on January 6, 2011, and not reinstated until April 26, 2011 (APPLICANT'S ANSWER EXHIBIT "K").

11. AQUILLA was not lawfully authorized or licensed by the New Hampshire Bar Association to act as an attorney when he filed the First Request for Extension of Time to Oppose Applicant's Trademark Application on January 6, 2011, the Second Request for

Extension of Time to Oppose Applicant's Trademark Application on February 3, 2011 nor the Third Request for Extension of Time to Oppose Applicant's Trademark Application on April 4, 2011 (APPLICANT'S ANSWER EXHIBIT "H", "I", and "J").

12. Opposer's First Request for Extension of Time to Oppose Applicant's Trademark Application on January 6, 2011, the Second Request for Extension of Time to Oppose Applicant's Trademark Application on February 3, 2011 and the Third Request for Extension of Time to Oppose Applicant's Trademark Application on April 4, 2011, were required to have been filed by an Attorney legally permitted to practice law, and were not.

13. Opposer was not reinstated by the State of Florida Department of State, Division of Corporations until September 26, 2011. (EXHIBIT "R," attached hereto and incorporated herein) Opposer's claim is not supported as Opposer was an entity not lawfully authorized to conduct business, its claim that it is the assignee of the mark is not supported, and that identified filings made on behalf of Opposer were performed by an Attorney not legally permitted to practice law. Opposer's claim that Applicant's response can be deemed as an attack on Opposer's asserted Registration Number U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark is false and without merit.

B. THE DESPERATE EFFORTS TO ACOMPLISH ANY TYPE OF NUNC PRIO TUNC ASSIGNMENT ARE DESIGNED TO FRAUDULANTLY AVOID THE APPLICATION OF FULL FAITH AND CREDIT TO A VALID STATE COURT JUDGMENT AND ITS LAWFUL USE TO OBTAIN ASSETS OF THE JUDGMENT CREDITORS- R&D AND CARDOSO

The Applicant affirms its answer and provides the following facts relative to Opposer's claim that it is the assignee of U.S. Registration No. 2,037,202 for the MISS NUDE INTERNATIONAL Mark.

1. AQUILLA attests in Opposer's NOTICE OF OPPOSITION that "Opposer is the assignee of U.S. Registration No. 2,037, 202 issued February 11, 1997 for the mark MISS NUDE INTERNATIONAL..."
2. *The records of the USPTO identify R&D Promotions, Inc. ("R&D") as the owner of record for U.S. Registration No. 2,037,202 for the MISS NUDE INTERNATIONAL Mark during the time period of January 6, 2011 through September 23, 2011.*
3. Gracinda Cardoso ("CARDOSO") is a principal of both R&D and Opposer.
4. AQUILLA is the Attorney of Record for both R&D and Opposer.
5. The records of the USPTO identify that R&D is/was the owner of record for:
 - A. U.S. Registration Number 2,709,433 for the MISS EXOTIC GULF COAST mark with the Registration Date of April 22, 2003;
 - B. USPTO Serial Number 78113009 for the MISS EXOTIC DANCER mark with the Abandonment Date of June 2, 2003;
 - C. U.S. Registration Number 2,724,191 for the AMERICAN CENTERFOLD SEARCH mark with the Registration Date of June 10, 2003;
 - D. USPTO Serial Number 78109630 for the MISS NUDE USA mark with the Abandonment Date of January 17, 2003;
 - E. U.S. Registration Number 2,733,781 for the MISS NUDE UNIVERSE mark with the Registration Date of July 8, 2003 and as the

Assignor of Record to Assignee, Donald Trump's Miss Universe L.P.,
LLLP on September 28, 2004;

F. U.S. Registration Number 2,947,086 for the NORTH AMERICAN
CENTERFOLD SEARCH mark with the Registration Date of August 31,
2004;

G. USPTO Serial Number 78113024 for the MISS EXOTIC
DANCER USA mark with the Abandonment Date of December 6, 2004;

H. USPTO Serial Number 78109627 for the MISS NUDE EXOTIC
mark with the abandonment date of August 11, 2005.

I. U.S. Registration Number 2,947,611 for the MISS NUDE
SOUTHERN USA mark with the Registration Date of May 10, 2005;

J. U.S. Registration Number 3,039,826 for the MISS NUDE
WORLD mark with the Registration Date of July 10, 2006;

K. U.S. Registration Number 2,037,202 for the MISS NUDE
INTERNATIONAL mark with the Registration Date of February 11, 1997 and
the first renewal date of April 16, 2007;

L. U.S. Registration Number, 2,096,819 for the MISS EXOTIC mark
with the First Renewal Date of September 28, 2007;

M. USPTO Serial Number 78109630 for the MISS NUDE USA mark

with the abandonment date of January 17, 2003 .

6. On April 1, 2005, The Circuit Court For The Sixth Judicial Circuit In And For Pinellas County, Florida issued a Final Judgment in favor of Brian Bell, an Individual (“BELL”), against Defendants R&D and CARDOSO, an Individual. (INITIAL DISCLOSURES EXHIBIT “M”).
7. On August 22, 2011, the Assignment of Final Judgment Agreement was executed between Assignor, BELL and Assignee, William Eadie, an Individual, (“EADIE”). BELL and EADIE executed the Assignment of Final Judgment Agreement in the presence of a State of Florida authorized Notary Public. (INITIAL DISCLOSURES EXHIBIT “N”).
8. Defendant R&D’s principal place of business is located in the city of Kissimmee in Osceola County, Florida.
9. Defendant CARDOSO’s residence is in the city of Kissimmee in Osceola County, Florida.
10. On August 26, 2011, EADIE (as an individual, not THE Applicant) registered his interest by recording a Certified Copy of the Final Judgment (File #2011118634/Book 04169/Pages 1325-1326) and the original Assignment of Final Judgment Agreement (File #2011118635/Book 04169/Pages 1327-1331) with the Clerk of the Court for Osceola County, Florida. (INITIAL DISCLOSURES EXHIBIT “M” and “N”)
11. On September 1, 2011, EADIE (as an individual, not THE Applicant) filed a Judgment Lien (J11000564745) with the State of Florida which identifies Defendant R&D as the Judgment Debtor and EADIE as the Judgment Creditor. (INITIAL

DISCLOSURES EXHIBIT "O").

12. On September 2, 2011, EADIE (as an individual, not THE Applicant) filed a Judgment Lien (J11000565239) with the State of Florida which identifies Defendant CARDOSO as the Judgment Debtor and EADIE (as an individual, not THE Applicant) as the Judgment Creditor. (INITIAL DISCLOSURES EXHIBIT "P").

13. On September 22, 2011, the records of the USPTO identified "R&D" as the Owner of Record for U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark (EXHIBIT "S").

14. On September 22, 2011, EADIE (as an individual, not THE Applicant) filed a Trademark Assignment for U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark, as authorized by the court order identified above. EADIE included with the Trademark Assignment filing a:

- A. Copy of the USPTO TESS document last updated on "Saturday, September 10 04:35:46 EDT 2011" which identifies Defendant R&D as the Owner of Record for U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark, with the first renewal date of April 16, 2007 (EXHIBIT "S," attached hereto and incorporated herein);
- B. Copy of the Final Judgment ordered In The Circuit Court For The Sixth Judicial Circuit In And For Pinellas County, Florida dated April 1, 2005 (INITIAL DISCLOSURES EXHIBIT "M");
- C. Copy of the Assignment Of Final Judgment Agreement dated August 22, 2011 (INITIAL DISCLOSURES EXHIBIT "N");

- D. Copy of the Judgment Lien (J11000564745) which identifies Defendant R&D as the Judgment Debtor and EADIE as the Judgment Creditor (INITIAL DISCLOSURES EXHIBIT "O"); and
- E. Copy of the Judgment Lien (J11000565239) which identifies Defendant CARDOSO as the Judgment Debtor and EADIE as the Judgment Creditor (INITIAL DISCLOSURES EXHIBIT "P").
15. On September 22, 2011 at 11:07 AM, EADIE (as an individual, not THE Applicant) received confirmation of his Trademark Assignment filing from the USPTO, titled "Assignment confirmation Receipt ID: TM214272" which included the attachment "EASTM214272".
16. On September 23, 2011 at 06:38 AM, EADIE (as an individual, not THE Applicant) received Notification of Recordation from the USPTO, titled "Assignment Notice of Recordation (WUID: 900202715)" which included the attachments "Notice" and "Cover Sheet".
17. On September 23, 2011, EADIE (as an individual, not THE Applicant) filed a Section 7 Request for U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark.
18. On September 23, 2011 at 12:23 PM, EADIE (as an individual, not THE Applicant) received confirmation of his Section 7 Request from the USPTO, titled "RDP-CDZ6 Registration number 2037202: Received Your Section 7 Request".
19. Opposer was not reinstated by the State of Florida Department of State, Division

of Corporations until three (3) days AFTER EADIE received his Notice of Recordation on September 23 for U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL Mark from the USPTO, which identified R&D as Assignor and EADIE (as an individual, not THE Applicant) as Assignee.

20. Nunc pro tunc or “now for then” refers to changing back to an earlier date the filing of an order, judgment or filing of a document. Such a retroactive re-dating requires a court order which can be obtained by a showing that the earlier date would have been legal, and there was an error, accidental omission or neglect which has caused a problem or inconvenience which can be cured and is granted to answer the purposes of justice, but never to do injustice.

21. AQUILLA filed his first nunc pro tunc Trademark Assignment stating both the execution date and filing date of September 27, 2011, and an alleged effective date of March 31, 2003, identifying R&D as the Assignor and CARDOSO as the Assignee, which includes U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark. This filing occurred one (1) day after Opposer was reinstated by the State of Florida Department of State, Division of Corporations.

22. AQUILLA contemporaneously filed his second nunc pro tunc Trademark Assignment stating both the execution date and filing date of September 27, 2011, and an alleged effective date of May 6, 2009, this time identifying CARDOSO as the Assignor, and Opposer as the Assignee, which includes U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark. This filing also occurred one (1) day after Opposer was reinstated by the State of Florida Department of State, Division of Corporations.

23. AQILLA's filing of both nunc pro tunc Trademark Assignments stating the same execution date and filing date of September 27, 2011, is an admission of fact that Opposer's statement which AQUILLA attested to in Paragraph Two (1) of the Notice of Opposition is false. *This action clearly identifies that no previous assignment existed which granted Opposer the rights to U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark existed prior to September 27, 2011.*

This admission of fact affirms that the owner of record on September 23, 2011 was R&D; therefore, EADIE's Trademark Assignment Notice of Recordation and Section 7 Request are valid and enforceable. (APPLICANT'S ANSWER EXHIBIT "E")

24. Both nunc pro tunc Trademark Assignments stating both the execution date and filing Date as September 27, 2011, occur five (5) days after EADIE (as an individual, not THE Applicant) received his Notice of Recordation from the USPTO for U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL Mark, which identifies R&D as Assignor and EADIE as Assignee.

25. AQUILLA is claiming that he, as Attorney of Record for both R&D and Opposer, made an error, accidental omission or neglect not once, but twice, in two separate Trademark Assignments which includes the MISS NUDE INTERNATIONAL mark, involving the same principal, with alleged effective dates greater than six (6) years apart.

26. AQUILLA is further alleging that, as the Attorney of Record for R&D during this six (6) year period of time, not a single incident of any nature occurred for any of its thirteen (13) Marks listed in PARAGRAPH NUMBER TWO (5) that would have alerted AQUILLA to the fact that the registered owner of record, R&D, was incorrect.

27. A strategy of some limited protection involves preparing an affidavit on an early

date in an effort to antedate the application of any interfering application for a trademark on the same subject matter. A review of the nunc pro tunc Trademark Assignments filed by AQUILLA on September 27, 2011, reveal numerous areas of conflict or omissions:

- A. AQUILLA failed to petition for, obtain and provide the requisite court order mandated to grant permission to file the FIRST nunc pro tunc Trademark Assignment on September 27, 2011. Therefore, the FIRST nunc pro tunc Trademark Assignment is invalid.
- B. The FIRST nunc pro tunc Trademark Assignment filed on September 27, 2011, is predicated upon the Trademark Assignment document with the effective date of March 31, 2003. The validity of this document requires a notary to attest to or authenticate each signature. The document contains only the notary's signature, hand written date and ink stamp. The notarization of the document is invalid as the notary failed to:
 1. identify in writing or typing each signer to be the person whose name is signed to the document.
 2. state in writing or typing that the identity of the signers was made through personal knowledge or through appropriate credentials, such as a driver's license.
 3. state in writing or typing the certificate of acknowledgment on the document with the appropriate phrase "The foregoing was sworn to and acknowledged before me by _____"; and
 4. include the printed name of the notary followed by the written or typed commission expiration date.

As the Trademark Assignment document is invalid, the First nunc pro tunc Trademark Assignment is invalid.

- C. The FIRST nunc pro tunc Trademark Assignment filed on September 27,

2011, is predicated upon the Trademark Assignment document with the effective date of March 31, 2003. This document includes a list of marks conveyed from Assignor, R&D to Assignee, CARDOSO. On March 31, 2003, the records of the USPTO identify that R&D was not the owner of record for two (2) marks included in that list and therefore the document is invalid. They are: (1) U.S. Registration Number 2,282,958 for the MISS NUDE WORLD INTERNATIONAL mark with the Registration Date of October 5, 1999; and (2) U.S. Registration Number 2,666,658 for the MISS EROTIC mark with the Registration Date of December 24, 2002.

As the Trademark Assignment document is invalid, the FIRST nunc pro tunc Trademark Assignment is invalid.

D. The FIRST nunc pro tunc Trademark Assignment filed on September 27, 2011, is predicated upon the Trademark Assignment document with the effective date of March 31, 2003. This document includes a list of marks conveyed from Assignor, R&D to Assignee, CARDOSO. This list includes USPTO Serial Number 78113024 for the MISS EXOTIC DANCER USA Mark and U.S. Registration Number 2,733,781 for the MISS NUDE UNIVERSE mark. The Records of the USPTO identify R&D as the owner of record for each of the marks on the date of assignment, vSeptember 28, 2004. This date is nearly sixteen (16) months after the alleged effective date of March 31, 2003.

Specifically:

1. R&D attested that it was, in fact, the registered owner of USPTO

Serial Number 78113024 for the MISS EXOTIC DANCER USA mark and the Assignor of Record which “assigns the entire interest” to Assignee, Donald Trump’s Miss Universe L.P., LLLP on September 28, 2004; and

2. R&D attested that it was in fact the registered owner of U.S. Registration Number 2,733,781 for the MISS NUDE UNIVERSE mark with the Registration Date of July 8, 2003 and the Assignor of Record which “assigns the entire interest” to Assignee, Donald Trump’s Miss Universe L.P., LLLP on September 28, 2004.

As the Trademark Assignment document is invalid, the FIRST nunc pro tunc Trademark Assignment is invalid.

E. AQUILLA failed to petition for, obtain and provide the requisite court order mandated to grant permission to file the SECOND nunc pro tunc Trademark Assignment on September 27, 2011. Therefore, the SECOND nunc pro tunc Trademark Assignment is invalid.

F. The SECOND nunc pro tunc Trademark Assignment filed on September 27, 2011, is predicated upon the Assignment of Registered Marks document with the effective date of May 6, 2009. The validity of this document requires a notary to attest to or authenticate each signature. The document contains only the notary’s signature, hand written date and ink stamp. The notarization of the document is invalid as the notary failed to:

1. identify in writing or typing each signer to be the person whose

name is signed to the document.

2. state in writing or typing that the identity of the signers was made through personal knowledge or through appropriate credentials, such as a driver's license.
3. state in writing or typing the certificate of acknowledgment on the document with the appropriate phrase "The foregoing was sworn to and acknowledged before me by _____"; and
4. include the printed name of the notary followed by the written or typed commission expiration date.

As the Trademark Assignment document is invalid, the Second nunc pro tunc Trademark Assignment is invalid.

G. The SECOND nunc pro tunc Trademark Assignment filed on September 27, 2011, is predicated upon the Assignment of Registered Marks document with the effective date of May 6, 2009. This document includes a list of marks conveyed from Assignor, CARDOSO to Assignee, Opposer. On May 6, 2009, the records of the USPTO identify that CARDOSO was not the owner of record for two (2) marks included in the list and therefore the document is invalid. They are:

1. U.S. Registration Number, 2,037,202 for the MISS NUDE INTERNATIONAL mark with the First Renewal Dated April 16, 2007.
2. U.S. Registration Number 2,282958 for the MISS NUDE WORLD INTERNATIONAL mark with the Registration Date of October 5, 1999;

As the Assignment of Registered Marks document is invalid, the SECOND nunc pro tunc Trademark Assignment is invalid.

H. The SECOND nunc pro tunc Trademark Assignment filed on September 27, 2011, is predicated upon the "Assignment of Registered Marks" document

with the effective date of May 6, 2009. This document includes a list of Marks conveyed from Assignor, CARDOSO to Assignee, Opposer. This list includes U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark.

On May 13, 2009 Opposer's Attorney of Record, AQUILLA, affirms in writing that Opposer was not the owner of Record. AQUILLA, acting as Attorney of Record for R&D, affirmed in his cease and desist letter to Applicant's Attorney that R&D, not Opposer, is the owner of Record for the U.S. Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark (INITIAL DISCLOSURES EXHIBIT "L").

This admission of fact affirms that the owner of record on September 23, 2011 was R&D; therefore, EADIE's Trademark Assignment Notice of Recordation and Section 7 Request are valid and enforceable.

This letter is dated exactly one week after the alleged effective date of May 6, 2009, as identified in the Assignment of Registered Marks document.

AQUILLA's letter is supported by the records of the USPTO which identify R&D as the Owner of Record U.S. Registration Number, 2,037,202 for the MISS NUDE INTERNATIONAL Mark and at the time of its First Renewal Dated April 16, 2007. As the Assignment of Registered Marks document is invalid, the SECOND nunc pro tunc Trademark Assignment is invalid.

Applicant affirms its claim questioning the legal deficiencies in the assignment and

deficiencies in the legal existence of Opposer's corporate entities by reference to PARAGRAPH NUMBER ONE. Opposer's claim that Applicant's response can be deemed as an attack on Opposer's asserted Registration Number U.S Registration Number 2,037,202 for the MISS NUDE INTERNATIONAL mark is false and without merit.

Memorandum of Law

There is no argument that Motions to strike are authorized by Rule 12(f) of the Federal Rules of Civil Procedure and TBMP § 506. Rule 12(f) certainly allows a court to "strike" defenses, but the Opposer "strikes out" in trying to bootstrap reasons to strike any aspect of the Applicant's submissions.

It is also agreed that TBMP § 506.01 further states that "The Board also has the authority to strike an impermissible or insufficient claim or portion of a claim from a pleading." Citing *Western Worldwide Enterprises Group Inc. v. Qingdao Brewer*)), 17 USPQ2d 1137, 1139 (TTAB 1990) (ground for cancellation not available for registration over five years old, *not sought by Applicant*); *American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992) (insufficient affirmative defenses stricken, *not applicable to Applicant*); *Continental Gummi-Werke AG v. Continental Seal Corp.*, 222 USPQ 822, 825 (TTAB 1984) (affirmative defense stricken because identical to counterclaim, *no counterclaim sought by Applicant*), these "boilerplate" citations have no applicability to the defenses raised by Applicant.

The reference to TBMP § 506.02 also states the obvious, but there is simply no basis to strike any component of the Applicant's submissions, so this is simply not applicable. Opposer's argument that Counterclaims for cancellation of pleaded registrations in Board proceedings are governed by 37 CFR § 2.106(b)(2)(i), which states:

"A defense attacking the validity of any one or more of the registrations pleaded in the opposition shall be a compulsory counterclaim [and] if grounds for a counterclaim are known to the applicant when the answer to the opposition is filed, the counterclaim shall be pleaded with or as part of the answer."

37 CFR § 2.106(b)(2)(ii) further states:

"An attack on the validity of a registration pleaded by an opposer will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration."

It is agreed that the Board cannot entertain an applicant's attack upon the validity of a registration pleaded by an opposer, unless the applicant timely files a counterclaim, but in the instant action, Applicant is not seeking cancellation of any mark, simply exposing flaws that undermine any lawful basis for opposition to the mark applied for, and revealing the plain fact that it is the ownership of the mark that is at issue, thus manifesting more of an attack on standing than seeking any cancellation of any mark!

Equally unavailing is the Opposer's argument that Applicant is seeking to "amend" the application. Applicant agrees, the amendment of any Application or Registration involved in an *inter partes* proceeding before the Board is governed by 37 CFR §2.133(a), which states:

"An application involved in a proceeding may not be amended in substance nor may a registration be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion."

As has been repeatedly explained, Applicant is not asserting any defense that attacks the validity of any registration, thus there is no compulsory counterclaim that must be pleaded as part of the answer. 37 CFR § 2.106(b)(2)(i). Furthermore, there is simply no attack on the validity of the pleaded registration, so there is nothing waived by either party. The Opposer's authority simply has no applicability to the instant action: *Williamson-Dickie Manufacturing Co.*

v. Mann Overall Company, 359 F.2d 450, 149 USPQ 518, 520 (CCPA 1966) (payment of fee is necessary to give Board jurisdiction, but Applicant needs no petition or counterclaim to assert the subject affirmative defenses). Therefore, Applicant never forfeits the second through sixth Affirmative Defenses, or the Denials pleaded in numbered paragraphs 1-3 in the Answer, because they do not collaterally attack the validity of Opposer's "incontestable Registration." It is the capacity of the Opposer, not the sanctity of the mark at issue. Applicant's Answer includes several Affirmative Defenses and Denials that assert valid arguments, none of which collaterally attack the validity of Opposer's Reg. No. 2,037,20. The denial of likelihood of confusion is not a collateral attack (see Answer, ¶ 5-8). Additionally, the second through sixth Affirmative Defenses in the Answer do not collaterally attack the validity of Opposer's Reg. No. 2,037,202. See Answer, p. 3-8.

Finally, the argument that "*Applicant's* Section 7 Declaration Demonstrates Inequitable Conduct," is totally unsupported. Indeed, it is the desperate effort on the part of the Opposer to accomplish some "nunc pro tunc" assignment to achieve an unjust and inequitable result. While this Opposition was pending, on September 23, 2011, *Applicant* did nothing to change anything. There was no "proposed Amendment" (Section 7 Declaration), and any effort to mischaracterize the proper and lawful assignment of a valid state court judgment should be rejected out of hand. Opposer's "consent or authorization" was not needed by an *individual who is not a party to this proceeding*. The reference to the Eadie Dec., attached as Ex. E and TWP Dec. ¶ 5-8, attached as Ex. D, fails to reflect the difference between an LLC and an individual, and is simply not supportable. Nunc pro tunc or "now for then" refers to changing back to an earlier date the filing of an order, judgment or filing of a document. Such a retroactive re-dating requires a court order which can be obtained by a showing that the earlier date would have been

legal, and there was an error, accidental omission or neglect which has caused a problem or inconvenience which can be cured and is granted to answer the purposes of justice, *but* never to do injustice.

CONCLUSION

There is simply nothing cognizable under Rule 12(f) raised by Opposer. Timely or not, the inequitable and inapplicable arguments raised by the Opposer do not support the striking of any component of the Applicant's submissions, affirmative defenses, or any other fact raised by the Applicant. The acquisition of a mark through the full faith and credit of a state court judgment, utilized by an individual who is not a party to this proceeding should not be mischaracterized in an effort to do an injustice. Clearly, the Opposer has acted in an inequitable fashion by trying to avoid justice through the filing of "nunc pro tunc" assignments. Such a retroactive re-dating can *never be used to accomplish an to do injustice*. The Opposer's requested relief should be denied.

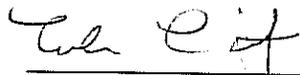
Respectfully Submitted:

By: 
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Florida Bar Number 714836
LUKE CHARLES LIROT, P.A.
2240 Belleair Road, Suite 190
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Facsimile: (727) 536-2110
Attorney for the Applicant

Dated: October 13, 2011

CERTIFICATION OF ELECTRONIC FILING

I hereby certify that the attached APPLICANT'S ANSWER TO OPPOSER'S NOTICE OF OPPOSITION was filed electronically with the Trademark Trial and Appeal Board on October 13, 2011.



Attorney for Applicant
Signed October 13, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S ANSWER TO OPPOSER'S NOTICE OF OPPOSITION has been served on Thomas T. Aquilla, Esq., domestic representative of THE WORLDS PAGEANTS LLC as Registrant's Attorney of Record and Correspondence as listed in the TARR system as of this date by mailing said copy on October 13, 2011, via First Class Mail, postage prepaid to:

Thomas T. Aquilla, Esq.
221 Coe Hill Road
Center Harbor, New Hampshire, 03226



Attorney for Applicant
Signed October 13, 2011



Assignments on the Web > Trademark Query

No assignment has been recorded at the USPTO

For Assignee: THE WORLDS PAGEANTS, LLC

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.2
Web Interface last modified: July 25, 2011 v.2.2

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Florida Limited Liability Company

THE WORLDS PAGEANTS, LLC

Filing Information

Document Number L09000043609
FEI/EIN Number N/A
Date Filed 05/05/2009
State FL
Status ACTIVE
Last Event REINSTATEMENT
Event Date Filed 09/26/2011
Event Effective Date NONE

Principal Address

1005 MABBETTE STREET
KISSIMMEE FL 34741 US

Mailing Address

1005 MABBETTE STREET
KISSIMMEE FL 34741 US

Registered Agent Name & Address

CARDOSO, GRACINDA
1005 MABBETTE STREET
KISSIMMEE FL 34741 US

Name Changed: 09/26/2011

Address Changed: 09/26/2011

Manager/Member Detail

Name & Address

Title MGRM

WITGES, JOHN
1005 MABBETTE STREET
KISSIMMEE FL 34741 US

Title MGR

CARDOSO, GRACINDA
1005 MABBETTE STREET
KISSIMMEE FL 34741 US

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Typed Drawing

Word Mark MISS NUDE INTERNATIONAL
Goods and Services IC 041. US 100 101 107. G & S: entertainment services in the nature of promoting and conducting beauty pageants. FIRST USE: 19910600. FIRST USE IN COMMERCE: 19910600
Mark Drawing Code (1) TYPED DRAWING
Serial Number 75079154
Filing Date March 27, 1996
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition November 19, 1996
Registration Number 2037202
Registration Date February 11, 1997
Owner (REGISTRANT) Huggy Bear Productions, Inc. CORPORATION NEW YORK 5923 South Street, Suite 1 P.O. Box 158 Auburn NEW YORK 13021
 (LAST LISTED OWNER) R&D PROMOTIONS, INC. CORPORATION FLORIDA 1005 MABETTE STREET KISSIMMEE FLORIDA 34741
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record THOMAS T. AQUILLA
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