

ESTTA Tracking number: **ESTTA696711**

Filing date: **09/17/2015**

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

Proceeding	91203660
Party	Defendant Rare Breed
Correspondence Address	GEORGE L STEELE LAW OFFICES OF GEORGE L STEELE 127 N MADISON AVE STE 24 PASADENA, CA 91101 UNITED STATES gsteele@glslaw.net, nmcgrue@glslaw.net, miarusso@glslaw.net, ca-postol@glslaw.net
Submission	Motion for Summary Judgment
Filer's Name	George L. Steele
Filer's e-mail	gsteele@glslaw.net
Signature	/George L. Steele/
Date	09/17/2015
Attachments	RARE BREED TTAB MOT.pdf(90698 bytes) Declaration of George L Steele TTAB.pdf(81245 bytes) Rare Breed Final Order.pdf(85090 bytes)

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5 Attorney for Defendant
RARE BREED

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8 **UNITED STATES PATENT AND TRADEMARK OFFICE**
9 **Trademark Trial and Appeal Board**

10 Rare Breed M.C. Inc.,) Opposition No. 91203660
11)
12 Plaintiff,) **DEFENDANT RARE BREED'S**
13 v.) **MOTION FOR RESUMPTION**
14 Rare Breed,) **AND SUMMARY JUDGMENT;**
15 Defendant.) **EXHIBIT; DECLARATION**
16)

17 Defendant, Rare Breed, by and through his attorney of record, George L.
18 Steele, hereby moves for resumption of this proceeding pursuant to TBMP
19 §510.02(b) (2015) and summary judgment pursuant to TBMP §528(2015). This
20 motion is based upon the fact that this proceeding was suspended on May 7, 2012
21 pending the outcome of a state civil action in California that would be dispositive of
22 the issues in this proceeding. The California action was resolved in favor of
23 Defendant Rare Breed and is attached herewith. As a result, there is no genuine
24 dispute as to any material fact and Defendant Rare Breed is entitled to judgment as a
25 matter of law.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. Factual Summary**

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4 In February 2011, Defendant Rare Breed submitted an application to this
5 office. Review of the application was completed in October 2011, and the subject
6 mark was published for opposition in December 2011. In February 2012, Plaintiff
7 filed an opposition, contesting ownership of the mark. At the same time, the parties
8 had filed cross-actions in California state court contesting ownership of the mark. In
9 May 2012, this office suspended the opposition pending the outcome of the state
10 court action. On October 7, 2014 final judgment was entered in favor of Defendant
11 Rare Breed. Exhibit A.

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13 **B. TBMP §528 Requires That Summary Judgment Be Granted In Favor of**
14 **Defendant Rare Breed**

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16 Summary Judgment is appropriate when there is no genuine dispute as
17 to any material fact. TBMP §528 (2015). Here, the mark was approved and
18 the only issue was ownership of the mark. Ownership of the mark has been
19 resolved at trial, where Defendant Rare Breed prevailed as reflected in the
20 order attached as Exhibit A. Accordingly, Defendant Rare Breed respectfully
21 requests that judgment be entered in their favor.

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26 Dated: September 16, 2015

/s/ George L. Steele
George L. Steele
Attorney for Defendant
RARE BREED

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Declaration of George L. Steele

1. My name is George L. Steele. I am an attorney licensed to practice law in the state of California, and before the United States Patent and Trademark office. I have firsthand knowledge of the facts set forth below, and if called as a witness, could and would competently testify thereto. I make this declaration in support Defendant Rare Breed's Motion for Resumption and Summary Judgment.
2. Attached hereto is a true and correct copy of the final order from the trial Rare Breed, Inc. v. Rare Breed M.C., Inc. et al, And All Related Cross Actions. The court found that Rare Breed, Inc., known in this case as Defendant Rare Breed, is entitled to exclusive use of the trademark.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: September 16, 2015

/s/ George L. Steele
George L. Steele

CONFIRMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 07 2014

Sherri R. Carter, Executive Officer/Clerk
By Ingrid Flores, Deputy

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Attorney for Plaintiff and Cross-Defendants
Rare Breed, Inc.
Kenny Williams
Preston Harris
James Lovett
Lanny Thomas

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

RARE BREED, INC. a California Corporation,

Plaintiff,

v.

RARE BREED M. C., INC., a California Corporation; NATHANIEL PERKINS, an individual; FLOYD TRAMM, an individual; DEREK DRISCOLL, an individual; and DOES 1 through 50, inclusive,

Defendants.

AND ALL RELATED CROSS ACTIONS

Plaintiff and Cross-Defendants Rare Breed, Inc., Kenny Williams, Preston Harris, James Lovett and Lanny Thomas hereby submit this [Proposed] Judgment:

The dispute in this lawsuit was between Plaintiffs, the original members of Rare Breed Motorcycle Club, who control the corporate form Rare Breed, Inc., and Defendants, the

JUDGMENT SUBMITTED BY PLAINTIFF AND CROSS-DEFENDANTS

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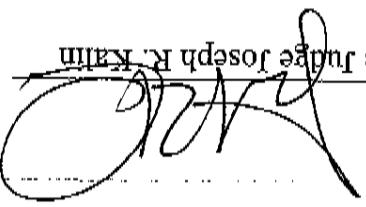
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DEFENDANTS
JUDGMENT SUBMITTED BY PLAINTIFF AND CROSS-

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breakaway members, Rare Breed MC, Inc. Each claimed ownership of the trademark. The Court finds as follows: Plaintiffs, the original founding fathers of the Rare Breed Motorcycle Club, an unincorporated association including Kenny Williams, Preston Harris James Lovett and Lanny Thomas, which has continued to exist since its inception are entitled to exclusive use of the trademark by the association. None of the litigants are entitled to any monetary damages. All other parties involved in this litigation, specifically Defendants, the breakaway members, Rare Breed MC, Inc., including but not limited to Nathaniel Perkins, Floyd Trammil and Derek Driscoll are enjoined from directly or indirectly using the trademark herein or a similar designation alone or with other components described as California Registration Number 105776 further described as "Rare Breed" in yellow letters with the design of an eagle head which is likely to cause confusion, mistake or deceit.

By:  Honorable Judge Joseph R. Kain

Dated: 10-7-14

JUDGMENT SUBMITTED BY PLAINTIFF AND CROSS-DEFENDANTS

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

My name is George L. Steele. I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2222 Foothill Blvd., Suite 301, La Canada, CA 91011.

On September 17, 2014, I served the foregoing document described as **[PROPOSED] JUDGMENT SUBMITTED BY PLAINTIFF AND CROSS-DEFENDANTS** on the parties in this action by placing a true copy(ies) or the original(s) thereof enclosed in a sealed envelope(s) addressed as follows:

Allan E. Perry, Esq.
Jasmine H. Ng, Esq.
Law Offices of Allan E. Perry
242 S. Orange Avenue
Brea, CA 92821

(BY MAIL)

I placed said document in an envelope addressed as shown on the service list. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, said correspondence will be deposited with the United States Postal Service the same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on the date stated below to the address stated on the attached service list, following the firm's ordinary business practices.

(STATE)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 17, 2014, at Pasadena, California.



George L. Steele