

ESTTA Tracking number: **ESTTA565480**

Filing date: **10/16/2013**

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

Proceeding	91205076
Party	Plaintiff Mr. Winston A. Rosa
Correspondence Address	MR WINSTON A ROSA 2190 BOSTON ROAD, APT 3 J BRONX, NY 10462 UNITED STATES fulanito@fulanitoreal.com
Submission	Opposition/Response to Motion
Filer's Name	Winston A. Rosa
Filer's e-mail	fulanito@fulanitoreal.com, info@fulanito.net, manager@fulanito.net
Signature	/Winston A. Rosa/
Date	10/16/2013
Attachments	Reply Motion to Re-Open Discovery.pdf(655775 bytes) Cert of Serv.pdf(926133 bytes)

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

-----X

WINSTON ROSA,

Plaintiff,

<against>

Opposition No. 91205706

Serial No: 85480930

Filed: Nov. 25, 2011

Published: May 8, 2012

RAFAEL ROBERT VARGAS,

Defendant

RESPONSE TO MOTION

-----X

In response to the motion to re-open discovery on opposition # 91205076 of trademark serial # 85480930 presented by the defendant Mr. Vargas's attorney Jon Jekielek on Sept. 27, 2013, I ask the court to deny the motion to re-open discovery and also consider my time and effort already invested in this case and bring closure to this matter.

The TTAB should deny the motion to re-open discovery and not strike Mr. Rosa Caba's testimony from record based on these facts ;

1. The notice of taking testimony was filed after the due date June 9, 2013, this date fell on a Sunday and offices were closed. Therefore the only option was to file the following day Monday, June 10, 2013. Also an e-mail was sent to defendant on Thursday, Apr. 25, 2013 (see Exhibit A) on the date discovery closed showing that I was vigilant of the dates set fourth by the USPTO and contrary to the defense's case of negligence on the part of plaintiff. Confirmation that this email was received was the action taken by defendant of hiring legal council after the sent date of this email.
2. Evidence and testimony show that the defendant and I have communicated through friends and family and even the defendant Rafael "DOSE" Vargas himself has sent me Winston

"BIGWIN" Rosa, messages (see Exhibit B) asking that the parties agree to suspend proceedings for the purpose of settlement due to an ex-member of the group Jose Rafael Fuentes a.k.a. "PICKLES" usurping the trademark.

3. The testimony that the defendant's attorney want stricken from record is from my father Mr. Rosa Caba, a 73 year old man that does not find himself in the best of health. It would prove difficult to bring him in again and have him go through the rigorous tasks of a new deposition. I believe that defendant knows my father (who is also defendant's ex-father in-law) is an ill man and is attempting to use the excuse of re-opening discovery based on time factor in the hope that he (Mr. Rosa Caba) might not be able to testify a second time.
4. Being that Mr. Rosa Caba is a key witness and one of only three founding members of the trademark (the other two being the plaintiff and the defendant) it is obvious that the defendant and his attorney don't want the judge to read the testimony of Mr. Rosa Caba due to it's truthfulness and that said testimony will clearly help determine the correct outcome of this case.
5. Also the defendant's attorney claims that defendant "was confused" and did not know how to respond to the depositions brought forth by me. Let it be known that defendant did on his own submit various documents and that this shows he did know what he was doing and that it should not be an excuse for him for missing the majority of his dates to respond.
6. I would like the court to know that I too like Mr. Vargas, have in recent times been in financial hardship partly due to an unjust campaign against me by Mr. Vargas and his associates. I've been blocked from using the trademark that I helped build as 50% owner and legal partner at WinDose International (See Exhibit C) and that neither his nor my financial state should be an excuse to abandon the proceedings on so many occasions like the defendant has done.

In conclusion, the court should deny the defendant's motion to re-open discovery because of these reasons and that because the defendant "did not know" how to proceed properly or that he did not have the "financial means" to pay an attorney, are not sufficient enough cause to disregard the time and effort my witnesses' and I have spent on this case. As you can see in the beginning months of this proceeding the defendant was representing himself just fine without any legal representation and at least he is now able to afford legal council while I on the other hand am still without legal representation due to financial hardship.

The court should deny the motion to re-open discovery and not permit this case to go on another 8 months and waste any more of the court's time.

Dated October 16, 2013



Winston A. Rosa
Plaintiff on Opposition # 91205076

EXHIBIT A

The screenshot shows a webmail interface in a Safari browser window. The browser's address bar displays the URL: `Special Domain Services, Inc. email10.secureserver.net/webmail.php?folder=INBOX.Sent_Items&firstMessage=1`. The page title is "Workspace Webmail :: Mail Index :: Sent Items".

The email header information is as follows:

- Subject:** PDF FILE OF EXHIBITS FOR OPPOSITION # 91205076
- From:** fulanito@fulanitoreal.com (Click as Preferred Sender)
- Date:** Thu, Apr 25, 2013 11:51 pm
- To:** dosearock@gmail.com
- Cc:** verdugo27@gmail.com, fulanito@fulanitoreal.com, bjwin749@gmail.com

The main body of the email contains the following text:

PDF FILE OF EXHIBITS FOR :

Opposition

Number: 91205076	Filing Date: 05/09/2012
Status: Pending	Status Date: 05/09/2012

Interlocutory Attorney: ELIZABETH WINTER

Defendant

Name: Rafael Robert Vargas
Correspondence: RAFAEL ROBERT VARGAS
 4965 SW 165TH AVE
 MIRAMAR, FL 33027 4901
 UNITED STATES
dosearock@gmail.com, verdugo27@gmail.com

Serial #: 85480930 [Application File](#)
Application Status: Opposition Pending
Mark: FULANITO

Plaintiff

Name: Mr. Winston A. Rosa
Correspondence: MR. WINSTON A ROSA
 2190 BOSTON ROAD, APT 3 J
 BRONX, NY 10462
 UNITED STATES
fulanito@fulanitoreal.com

At the bottom of the email, there is a download table:

Download	Size	Action(s)	Send To
<input checked="" type="checkbox"/> Attachments			
<input type="checkbox"/> Exhibits for Opposition # 91205076.pdf	737 k	Download	

Copyright © 2003-2013. All rights reserved.

EXHIBIT B

The screenshot shows a web browser window displaying a Facebook message. The browser's address bar shows the URL: http://www.facebook.com/SCIENTIFICO?ajaxpipe_token=AXgmRyiAQFr2vhy3. The browser's search bar contains the text "Bing". The browser's tabs include "http://www.crackle.com/", "Freshwap", "nene ranch", "VIRTUAL DJ ...d The World", "RADIO740.net", "Coast 2 Coa...nd", "Top 50", "relativo.tv", and "Parradox : U".

The Facebook interface shows the user's profile name "Winston Rosa" in the top right corner. The message is from "Rafael Dose Vargas" and is dated "June 3, 2010". The message content is as follows:

Rafael Dose Vargas
Dose
Dimelo Big Win...

When you get a chancehollar @ me when u can and let us both come up with a resolution to this problem I tried registering the name a year and change ago once I heard Pickles was going around claiming he was Fulanito..... I never denied your involvement in Fulanito in its inception and never will. I am aware that you filed for trademark just as we did. I hope you know that just by doing so it doesn't seal the deal. Lets talk about it and see if we can put an end to the animosity between us and avoid a useless, and expensive legal battle. call me @ 973-417-4458 or text me your # and I'll call you.

Take Care,
DOSE

The message is displayed in a conversation window with a search bar at the top containing "Search Results" and "Search This Conversation". Below the message is a reply box with the text "Write a reply..." and a "Reply" button. The left sidebar shows the user's profile "Winston Rosa" and a list of favorites, groups, apps, and lists. The right sidebar shows "People You May Know" with suggestions for "Carla Acosta" and "Daneida Polanco", and "Sponsored Stories" with ads for "Castigo Ropa likes Deadline!", "Deadline!", and "Joe Teklas likes miPepsi.".

EXHIBIT C

N.J. Department of Treasury – Division of Revenue, On-Line Inquiry

https://www1.state.nj.us/TYTR_BRC/servlet/common/BRCLogin

Tiempo USPTO Marca Fulanito Colombia Alcaldía de ... on Twitter My Fulanito USPTO 740USPTO vipmusicrd.net/v-3 Fulanitoreal Email :: Descargala...r la musica.

Article 2 – O... Prueba De D... Business Reg... NJBGS – Serv... NJBGS On–li... Copies of Bu... Enterprise Se... N.J. Departm... Enterprise Se...

	STATE OF NEW JERSEY BUSINESS REGISTRATION CERTIFICATE
Taxpayer Name:	VARGAS RAFAEL AND WINSTON ROSA
Trade Name:	WINDOSE INTERNATIONAL
Address:	18 RICHMOND AVENUE PATERSON, NJ 07502
Certificate Number:	0218879
Effective Date:	January 01, 1998
Date of Issuance:	March 26, 2013
For Office Use Only:	20130326151422637

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

-----X
WINSTON ROSA,

Plaintiff,

<against>

Opposition No. 91205706

Serial No: 85480930

Filed: Nov. 25, 2011

Published: May 8, 2012

RAFAEL ROBERT VARGAS,

Defendant
-----X

CERTIFICATE OF SERVICE

On October 14, 2013, I served a true copy of the annexed Reply To Motion to Re-Open Discovery with all exhibits to Jon Jekielek, attorney for Rafael Robert Vargas, defendant in the opposition case # 91205706 in the TTAB, through first class certified mail deposited in the United States Postal Service addressed to the defendant as indicated :

Rafael Robert Vargas % Jon Jekielek
Jekielek & Janis LLP
153 W. 27th Street
Suite 204
NY, NY 10001

Dated: October 16, 2013



Winston Rosa

Plaintiff for TTAB Opposition No. 91205706

7012 0470 0000 2097 9316

U.S. Postal Service™		
CERTIFIED MAIL™ RECEIPT		
(Domestic Mail Only; No Insurance Coverage Provided)		
For delivery information visit our website at www.usps.com ®		
NEW YORK NY 10001		
OFFICIAL USE		
Postage	\$ 1.12	0136
Certified Fee	\$ 3.10	04
Return Receipt Fee (Endorsement Required)	\$ 0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 4.22	10/16/2013

Sent To Jon Jekielek Suite 204
Street, Apt. No.,
or PO Box No. 153 W. 27th Street
City, State, ZIP+4 NY NY 10001

PS Form 3800, August 2006 See Reverse for Instructions