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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	Brief on Merits for Plaintiff
Filer's Name	Winston A. Rosa
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Signature	/Winston A. Rosa/
Date	02/03/2014
Attachments	Plaintiff Brief.pdf(1463151 bytes) Certificate Of Service P Brief.pdf(709021 bytes)

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

- X

WINSTON ROSA,	Opposition No.: 91205076
Plaintiff,	Application No.: 85480930
	Mark : FULANITO
- against -	Filed : November 25, 2011
	Published : May 8, 2012
RAFAEL ROBERT VARGAS,	
Defendant	**PLAINTIFF'S BRIEF**

- X

Mr. Vargas does not have the ability to register.

I would like to state that if the defendant is awarded the trademark, the defendant Mr. Vargas will deceive the public by diluting the value of the trademark and it's reputation. His intention is to use the mark fraudulently for his solo act (see EXHIBIT G) disregarding the undeniable fact that it was a group that he was invited to be part of that achieved world-wide notoriety using the trademark FULANITO and not just one individual (himself) as he would like you to believe. I can prove that the defendant is not the owner of the trademark as is his claim in the application he submitted to the USPTO and also that the mark FULANITO was never his creation to begin with. I too claim my rights to the same trademark and hope that justice will prevail and allow me to continue using the trademark. A mark that was created and handed to me by my father Jose Arsenio Rosa Caba a.k.a. Arsenio De La Rosa "El Maestro".

Brief History of the name FULANITO (trademark) :

The name FULANITO is a slang used by latinos to describe an unknown person, similar to JOHN DOE. The first known use of the trademark in the U.S.A. was for a musical band in August 27, 1996 and was comprised of mostly my family members (father, brother, cousins, myself and even the defendant was married to my sister for 18 years). The band was originally called FULANO DE TAL. My father and founding member Jose Arsenio Rosa Caba (witness a.k.a. Arsenio El Maestro De La Rosa) is credited with first suggesting we change the band's name to FULANITO.

After 15 years with the band, the defendant decides to leave the group to start his solo career trying to take the trademark with him. We never had any issues with the trademark ownership until unbeknownst to us the defendant submitted an application for it. Our lawyer (which was his as well) alerted me that in the United States, Canada and other countries, I had common law trademark rights, which means action can be taken to protect an unregistered trademark if it is in use which it was.

In the application submitted to the USPTO by Mr. Vargas, he is not able to distinguish his goods and services from the original trademark used by our legal registered partnership Win-Dose International (see EXHIBIT L) where as stated in our first recording contract (see EXHIBIT J) both he and I were considered to be the artist FULANITO. His sole ownership of the trademark will confuse consumers about the relationship between one party and another, and will otherwise deceive consumers with respect to the original brand (five individuals) they are accustomed to seeing in live stage performances, concerts, t.v. programs, CD album covers etc &

Mr. Vargas was trying to acquire this registration fraudulently. He did not seek my permission to register the trademark by himself knowing and admitting it in a message he sent me via Facebook. (see EXHIBIT I)

He has no evidence nor any witnesses to collaborate his sole claim to the trademark. That is why he ran out of time and desperately hired Jon D. Jekielek as his attorney to try and salvage his application.

Registration of a trademark gives the registrant a monopoly right over the use of that mark in relation to the goods and services for which it is registered. The term monopoly right means what it sounds like. It s a right to do something to the exclusion of all others. Two parties thus cannot trade in the same goods and services using the same trademark without one infringing the rights of the other.

In conclusion,

I would like to thank the court for allowing me to speak the truth and also in allowing me to present the evidence, witnesses and testimony that prove my actions to oppose this application are within my legal rights.

My family and I feel the purpose of this case will go far beyond just opposition of a mark. The correct decision will also serve to maintain our musical heritage through continued use of the trademark as we have been doing so for many years. Although the trademark has been tarnished somewhat in the media by an ex-member's selfish act, I am confident that the court will end this with the correct decision and deny the defendant's application to apply for the trademark Fulanito, a family owned property the defendant selfishly tried to obtain when he was invited to be a part of our cultural heritage.

Truly Yours,

_____ February 3, 2014

Winston A. Rosa
Plaintiff

STATE OF NEW YORK
COUNTY OF NEW YORK
Subscribed and sworn to
before me this 3rd
day of February 2014

MARIA HERNANDEZ
Notary Public, State of New York
No. 01HE6060932
Qualified in New York County
Commission Expires July 2 2015

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

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WINSTON ROSA,

Plaintiff,

- against -

RAFAEL ROBERT VARGAS,

Defendant

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CERTIFICATE OF SERVICE

- X

I Winston A. Rosa, do swear that on Febuary 3, 2014, I sent a notarized copy of my final brief to the defendant's Rafael Robert Vargas' appointed attorney Jon Jekielek to this address :

Jon D. Jekielek Esq.
153 West 27 Street, Suite 204
New York, NY 10001

And also an email containing the same document attached was sent to the defendant's email on file jon@jj-lawyers.com.

Signed and dated Febuary 3, 2014

WINSTON A. ROSA
Plaintiff

STATE OF NEW YORK
COUNTY OF NEW YORK
Subscribed and sworn to
before me this 3rd
day of February 2014

MARIA HERNANDEZ
Notary Public, State of New York
No. 01HE6060932
Qualified in New York County
Commission Expires July 2 2015

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