

ESTTA Tracking number: **ESTTA536282**

Filing date: **05/04/2013**

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

Proceeding	91205814
Party	Defendant Jason Giomboni
Correspondence Address	JASON J GIOMBONI 508 N MAIN ST PLAINS, PA 18705-1448 UNITED STATES jgiomboni@yahoo.com
Submission	Withdrawal Of Application
Filer's Name	Jason Giomboni
Filer's e-mail	jgiomboni@yahoo.com
Signature	/Jason Giomboni/
Date	05/04/2013
Attachments	2013 4-19 Settlement Agreement.pdf (6 pages)(314003 bytes)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), effective as of April 19, 2013 (the “Effective Date”), is by and between H. Lee Moffitt Cancer Center and Research Institute, Inc. (“Moffitt”), a Florida non-profit corporation with a principal place of business at 12902 Magnolia Drive, Tampa, Florida 33612 and Jason J. Giomboni (“Giomboni”), with a principal place of business at 508 N. Main Street, Plains, PA 18705. Moffitt and Giomboni are each referred to herein as a “Party,” and collectively as the “Parties.”

Whereas, Moffitt uses the design mark “M” as set forth in U.S. Registration No. 2,487,525 and uses the “M” circle mark as an element of U.S. Registration No. 3,671,302 and U.S. Registration No. 4,304,518, all in connection with goods and services related to cancer prevention, detection and treatment (collectively “Moffitt’s M Circle Mark”);

Whereas, on September 11, 2011, Giomboni filed in the United States Patent and Trademark Office (“USPTO”) Application Serial No. 85/419,745 for the design mark of an “M” in a partial circle outline (the “Giomboni M Circle Mark”) for use in connection with “Business consultation; Business consulting services relating to the integration of the areas of business process technology, organizational learning, change management and operational sustainability” in International Class 35 (the “Application”);

Whereas, on August 8, 2012, Moffitt filed Opposition No. 91205814 in the United States Trademark Trial and Appeal Board (“TTAB”) opposing the registration of the Giomboni M Circle Mark (the “Opposition”);

Whereas, without any admission of liability, the Parties desire to resolve the dispute between them concerning the Opposition and Moffitt's M Circle Mark and Giomboni M Circle Mark;

NOW, THEREFORE, in consideration of the mutual undertakings herein, and other good and valuable consideration the receipt of which is hereby acknowledged by each of the Parties, and intending to be legally bound, the Parties agree as follows:

1. Consent to Express Abandonment.

- (a) Within five (5) days of the Effective Date of this Agreement, Moffitt shall sign and deliver to Giomboni the Consent to Express Abandonment in the form shown at Exhibit A hereto.
- (b) Promptly after receipt of the signed Consent to Express Abandonment from Moffitt, Giomboni shall file the Consent in the TTAB with a signed Request for Express Abandonment of Application Serial No. 85/419,745.
- (c) In the event the Request for Express Abandonment is not approved by the USPTO, the Opposition shall continue as scheduled.

2. Consents.

Provided that Giomboni is in compliance with the other terms of this Agreement and the USPTO approves the above-referenced Request for Express Abandonment, and provided Giomboni is using or has a bona fide intent to use the Giomboni M Circle Mark amended to include the company name, Megason, Moffitt consents to and will not oppose the registration and use of the so amended Giomboni M Circle Mark if filed with the USPTO and allowed by the USPTO for the identification of goods and services in the current Application.

3. Reservation of Rights.

All rights, claims and objections of a Party not expressly addressed herein are reserved to such Party.

4. General Provisions.

(a) This Agreement shall be binding upon, and inure to the benefit of, the Parties, their parent corporations, affiliates, subsidiaries, successors, licensees and assignees.

(b) The geographic scope of this Agreement is the United States.

(c) This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and can only be modified by a subsequent written document signed by both Parties and expressly referencing this Agreement. Neither Party shall be deemed the drafter of this Agreement.

(d) The failure of a Party to seek redress for any breach of this Agreement will not constitute a waiver of its rights with respect to any other breach.

(e) The headings herein are included solely for convenience and do not form a substantive part of this Agreement.

(f) Each Party shall bear its own respective attorney fees and costs in connection with this Agreement.

5. Counterparts.

This Agreement may be executed in one or more counterparts, which together shall form a single binding agreement. Facsimile or emailed copies bearing signatures shall have the same legal force and effect as originals.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives,
have acknowledged their agreement to and acceptance of the foregoing terms.

UNDERSTOOD AND AGREED:

JASON GIOMBONI

By: 

Authorized signatory

Print Name: Jason Giomboni

Title: Owner

Date: 4/23/13

H. LEE MOFFITT CANCER CENTER
AND RESEARCH INSTITUTE, INC.

By: _____

Authorized signatory

Print Name: _____

Title: _____

Date: _____

EXHIBIT A

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

In the Matter of Application Serial No. 85/419,745
Mark: M Design

H. LEE MOFFITT CANCER CENTER
AND RESEARCH INSTITUTE, INC.,

Opposer,

-against-

JASON GIOMBONI

Applicant.

Opposition No. 91205814

CONSENT TO EXPRESS ABANDONMENT WITH PREJUDICE

Opposer H. Lee Moffitt Cancer Center and Research Institute, Inc. (“Opposer”) hereby agrees and consents to the express abandonment with prejudice by Jason Giomboni of the application made for trademark registration of the mark M & Design, identified by Serial Number 85/419,745.

Date: April 19, 2013

H. Lee Moffitt Cancer Center and Research Institute, Inc.

By: _____
Ruth E. Freeburg, Assistant General Counsel

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