

ESTTA Tracking number: **ESTTA603475**

Filing date: **05/09/2014**

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

Proceeding	91210863
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Attachments	Motion to Dismiss Second Amended Notice of Opposition+Gray Dec+Exhs.140509 (00042619xA1ADA).pdf(1333320 bytes)

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10 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
11 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**
12

13 _____)
14 CHRIS ECONOMIDES III,)
an individual,)

15 Opposer,)

16 v.)

17)
18 THANCO PRODUCTS & IMPORTS, INC.)
a Texas corporation,)

19 Applicant.)
20 _____)
21

**MOTION AND MEMORANDUM
IN SUPPORT OF APPLICANT'S
MOTION TO DISMISS OPPOSER'S
SECOND AMENDED NOTICE OF
OPPOSITION**

Opposition No. 91210863

22 Applicant Thanco Products & Imports, Inc. ("Thanco") respectfully requests dismissal, with
23 prejudice, of the second Amended Notice of Opposition (the "SAO") filed by Opposer Chris
24 Economides III ("Economides" or "Opposer") on April 19, 2014 because (1) Opposer lacks standing to
25 bring the Amended Opposition pursuant to 15 U.S.C. § 1064 and T.B.M.P. § 309.03(b); and (2) the
26 second Amended Notice of Opposition fails to state a claim for relief under Rule 12(b)(6) of the Federal
27 Rules of Civil Procedure. As discussed in detail below, Opposer's second Amended Notice of
28 Opposition is legally deficient because he has no real interest in these proceedings or a reasonable belief

1 of damage, and he fails to properly allege facts sufficient to support any of the claims set forth in his
2 second Amended Notice of Opposition, specifically, fraud. Because Opposer has now had three
3 opportunities to plead standing and a proper cause of action, and his pleading is still deficient, Applicant
4 requests that the SAO be dismissed with prejudice.

5 **BACKGROUND**

6 On May 29, 2013, Opposer filed a Notice of Opposition (the “Opposition”) opposing
7 registration of Application Nos. 77378572 and 77369646 (the “Applications”) for the mark GOT
8 OUZO? in connection with “coffee cups, tea cups and mugs” in International Class 021 and “t-shirts,
9 sweat shirts, and caps” in International Class 025, respectively. The Opposition alleged as grounds
10 deceptiveness, false suggestion of a connection, geographic indication, descriptiveness, geographic
11 descriptiveness, “Torres v. Cantine Torresella S.r.l. fraud,” improper prosecution, failure to show
12 secondary meaning, Papa Ads, LLC v. Gatehouse Media, Inc., and “mark interferes with foreign
13 owner’s mark.” Opposer claimed to be injured by the Applications because “he makes and sells
14 clothing for numerous customers including Greek Orthodox Churches and Festivals and would be
15 harmed by the registration of the mark as applied for.” (D.N. 1 at ¶ 1.)

16 Thanco moved to dismiss on the grounds that Opposer had no standing under 15 U.S.C. § 1063,
17 and that the Opposition otherwise did not state a cause of action. On November 3, 2013, the Board
18 granted Thanco’s motion to dismiss in its entirety. (D.N. 16 at 13.) The order granting the motion (the
19 “Order”) permitted Opposer to amend the opposition to allege standing, as well as certain other claims.
20 (Id.) The Order specifically prohibited Opposer from “re-asserting claims of improper prosecution.”
21 (Id.)

22 On November 22, 2013, Opposer filed the Amended Opposition, purporting to allege standing,
23 and purporting to state claims for (1) improper prosecution (under the heading “Failure to Prove
24 Secondary Meaning”); (2) fraud; and (3) false suggestion of a connection with a national symbol. The
25 Amended Opposition repeated many of the shortcomings of the Opposition. Thanco moved to dismiss
26 the Amended Opposition for lack of standing and failure to state a claim. On March 31, 2014, the
27 Board granted the motion for failure to state a claim, but afforded Opposer another opportunity to
28

1 amend the fraud claim. (D.N. 21.) Opposer then filed the SAO, though he did not serve it on Thanco
2 by email as required by the Order.

3 ARGUMENT

4 “A party opposing a registration pursuant to Section 13 of the Lanham Act must show (1) that
5 he has standing and (2) a statutory ground which negates the applicant’s entitlement to registration.
6 Moreover, an opposer must at the pleading stage allege facts in support of both, a conclusion that is
7 fully consistent with the PTO’s rules.” *Young v. AGB Corp.*, 152 F.3d 1377, 1380 (Fed. Cir. 1998).

8 The Board reviews a Motion to Dismiss by assuming that all well-pleaded allegations in the
9 opposition are true, and construing those allegations in the light most favorable to the opposer.
10 *Consolidated Foods Corp. v. Big Red, Inc.*, 226 U.S.P.Q. 829, 831 (T.T.A.B. 1985). Under the
11 heightened pleading standard announced by the Supreme Court in *Bell Atlantic Corp. v. Twombly*, and
12 confirmed in *Ashcroft v. Iqbal*, these allegations must consist of “a short and plain statement of the
13 claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of what the
14 ... claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555
15 (2007); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 677-678 (2009). The grounds of the complaint must
16 include “more than labels and conclusions, and a formulaic recitation of the elements of a cause of
17 action will not do”; the “[f]actual allegations must be enough to raise a right to relief above the
18 speculative level.” *Twombly*, 550 U.S. at 555; see also *Iqbal*, 556 U.S. at 677-678 (finding that “[a]
19 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the
20 reasonable inference that the defendant is liable for the misconduct alleged.”).

21 Even under this deferential standard, Opposer fails to state a claim upon which relief can be
22 granted because the SAO contains no facts that reasonably support standing or the pleaded grounds.
23 Thanco’s Motion to Dismiss should be granted because “it is clear that no relief could be granted under
24 any set of facts that could be proved consistent with the allegations.” *Young*, 152 F.3d at 1379.

25 **I. OPPOSER LACKS STANDING.**

26 “Any person who believes that he would be damaged by the registration of a mark upon the
27 principal register” may file an opposition. 15 U.S.C.A. § 1063; see also *Ritchie v. Simpson*, 170 F.3d
28 1092, 1095 (Fed. Cir. 1999). However, an opposer’s allegations alone do not establish standing. *Lipton*

1 Industries, Inc. v. Ralston Purina Co., 670 F.2d 1024, 1028 (C.C.P.A. 1982). “In addition to meeting
2 the broad requirements of § 13, an opposer must meet two judicially-created requirements in order to
3 have standing:” the opposer must have (1) a “real interest” in the proceeding; and (2) a “reasonable
4 basis” for his belief of damage. Ritchie, 170 F.3d at 1095. These standing requirements have been
5 established in order to “prevent litigation where there is no real controversy between the parties, where
6 a plaintiff, petitioner or opposer, is no more than an intermeddler.” Lipton Industries, 670 F.2d at 1028-
7 29.

8 An opposer has a real interest if he alleges a direct and personal stake in the outcome of the
9 proceeding. T.B.M.P. § 309.03(b). Though there is no requirement that actual damage be pleaded in
10 order to establish a real interest in the proceeding, the opposer must show that he has a personal interest
11 in the outcome of the proceeding that is different than or beyond that of the general public. T.B.M.P. §
12 309.03(b); see also Int’l Order of Job’s Daughters v. Lindeburg & Co., 727 F.2d 1087, 1092 (Fed. Cir.
13 1984). For instance, in *Doyle v. Al Johnson’s Swedish Restaurant & Butik, Inc.*, the petitioner sought to
14 cancel the registrant’s mark featuring goats positioned on a grass roof, claiming he was damaged by
15 registration of the mark because he was not able to “satisfy his desire to take photographs of goats on
16 grass roofs.” *Doyle v. Al Johnson’s Swedish Restaurant & Butik, Inc.*, 2012 TTAB LEXIS 30, 1-2
17 (T.T.A.B. 2012). The Board found that the petitioner did not have a real interest in the proceedings
18 because he did not allege that the registered mark “somehow prevents petitioner himself from placing
19 goats on a grass roof and taking their picture, or taking pictures of goats on a sod roof found elsewhere.”
20 *Id.* at 5-8.

21 In his initial Notice of Opposition, Opposer “fail[ed] to allege sufficient facts that demonstrate
22 he has a real interest, that is, a personal stake, in opposing registration of applicant’s marks.
23 Specifically, opposer [did] not affirmatively allege that he sells his clothing items under the mark GOT
24 OUZO? or any other similar mark.” (D.N. 16 at 5.) In the SAO, Opposer repeats the allegation that he
25 “has sold items” of an unidentified nature under the GOT OUZO? mark, but nowhere alleges that he is
26 currently doing so. (D.N. 22 at 2.) Moreover, although Opposer alleges that he sells shirts and other
27 unspecified items, he does not allege that he has sold either shirts or other items under the GOT OUZO?
28 mark, nor does he allege that he sells any of the goods covered by Application No. 77378572 – coffee

1 cups, tea cups, and mugs. Instead, Opposer seeks to base standing on the facts that he allegedly (1) is a
2 “direct competitor” of Thanco; (2) shares actual and/or potential customers with Thanco; and (3)
3 received a letter from Thanco regarding the use of GOT OUZO? (D.N. 22 at 2-3.)

4 The allegations that Opposer and Thanco are direct competitors and share the same potential
5 customer base, without more, are insufficient to establish standing. (D.N. 17 at 1.) Where an opposer
6 bases his opposition on the allegation that the mark sought to be registered is merely descriptive, the
7 opposer may establish standing by pleading and proving that he is manufacturing or selling goods that
8 are similar to those of the applicant, of which the mark is equally descriptive. See, e.g., Consolidated
9 Foods Corp. v. Big Red, Inc., 226 U.S.P.Q. 829, 831 (T.T.A.B. 1985); Federal Glass Co. v. Corning
10 Glass Works., 162 U.S.P.Q. 279, 282-83 (T.T.A.B. 1969); McCarthy on Trademarks and Unfair
11 Competition, § 20:11 (4th ed. 2013); D.N. 16 at 5. Here, however, Opposer does not allege in the SAO
12 that GOT OUZO? is merely descriptive of the goods sought to be registered (T-shirts, sweatshirts, caps,
13 coffee cups, tea cups, or mugs). Nor can he do so: as Thanco demonstrated in its motion to dismiss the
14 Opposition, and as the Board has already held in the Order, GOT OUZO? is not descriptive of those
15 goods. (D.N. 6 at 8-9; D.N. 16 at 9-10.) Consequently, the allegation that the parties are competitors is
16 not sufficient to establish standing.

17 Opposer also alleges that Thanco sent him a letter regarding the use of the GOT OUZO? mark.¹
18 (D.N. 22 at 2.) The letter informed Opposer of litigation by Thanco against a third-party infringer,
19 George Kontos, that resulted in judgment against Kontos; an injunction restraining Kontos and his
20 agents and affiliates from continued use of the mark; cancellation of Kontos’s registration for the GOT
21 OUZO? mark; and substantial money damages in Thanco’s favor. (Declaration of Naomi Jane Gray in
22 Support of Motion to Dismiss Second Amended Notice of Opposition (“Gray Decl.”) Exh. A.) The
23 letter further noted that Opposer’s “company may be manufacturing and/or offering clothing under the

24
25 ¹ The doctrine of incorporation by reference permits a court to consider, on a motion to dismiss,
26 documents that were referenced in the complaint and are accepted by all parties as authentic. See,
27 e.g., Van Buskirk v. Cable News Network, Inc., 284 F.3d 977, 980 (9th Cir. 2002); Chambers v. Time
28 Warner, Inc., 282 F.3d 147, 153 and n.1 thereto (citing cases) (2d Cir. 2002). Accordingly, the Board
may consider the letter from Thanco to Opposer, which Opposer incorporated by reference in his
amended Notice of Opposition, without converting this Motion to Dismiss into one for summary
judgment.

1 GOT OUZO? trademark,” and stated, “insofar as you are acting in concert with Mr. Kontos, your
2 conduct would be in direct contravention of the enclosed judgment.” (Id.) On its face, this letter is
3 directed at Opposer’s activities undertaken in concert with an adjudged infringer, and not any conduct
4 that would give Opposer independent standing. Opposer has not alleged that he is currently selling
5 GOT OUZO? merchandise, or has made any such sales apart from his apparent relationship with the
6 adjudged infringer Kontos. Accordingly, Thanco’s letter cannot provide a basis for Opposer’s standing
7 independent of any conduct undertaken in concert with Kontos, which is subject to the injunction
8 entered by the Southern District of Texas.²

9 Opposer has also failed to establish a reasonable basis for his belief of damage. To have
10 standing, “[t]he allegations in support of [opposer’s] belief of damage must have a reasonable basis ‘in
11 fact.’” T.B.M.P. § 309.03(b). An opposer need not prove his case on the merits for standing purposes,
12 but must allege facts “sufficient to show that [he] is not alone in his belief of damage, i.e., the belief is
13 not simply the opposer’s subjective view.” Ritchie, 170 F.3d at 1098. For example, the opposer in
14 Ritchie v. Simpson had a reasonable basis for his belief that he would be damaged by registration of O.J.
15 SIMPSON, O.J, and THE JUICE in connection with a broad range of goods where he alleged that he
16 had obtained petitions signed by people from all over the United States who agreed that the marks were
17 immoral and scandalous. Id. at 1098. The Board held these that petitions established that the opposer
18 had objective proof that he was not alone in his belief that he would be damaged by registration of the
19 marks. Id.

20 Unlike in Ritchie, Opposer does not allege any facts that support his belief that he will be
21 harmed by registration of Thanco’s marks. At most, Opposer has alleged that he previously sold GOT
22 OUZO? merchandise in concert with an adjudged infringer. This conduct, if continued, would be
23 prohibited by the injunction entered by the Southern District of Texas, and cannot form the basis of a
24 belief that he will be harmed by registration of Thanco’s marks. The same holds true for the letter:
25 Opposer cannot base standing on a letter that demands that he cease engaging in conduct that has
26 _____

27 ² Indeed, Opposer’s reliance on the letter, his apparent connection to Kontos, and his familiarity with
28 the litigation between Thanco and Kontos raise the question whether this opposition proceeding
constitutes an improper attempt to avoid the consequences of that injunction.

1 already been enjoined by a federal court. Based on Opposer’s allegations, it is entirely unreasonable to
2 believe that registration of Thanco’s marks will harm his ability to make and sell other clothing, and
3 Opposer therefore lacks standing to bring the SAO.

4 Because Opposer has failed to allege (1) that he is currently selling goods under the mark GOT
5 OUZO? or confusingly similar marks, or has done so in the past independent of his apparent
6 relationship with the adjudged infringer Kontos; and (2) any facts supporting his purported belief that he
7 will be harmed by registration of the marks at issue, Opposer has failed to establish standing.

8 **II. OPPOSER FAILS TO STATE A CLAIM FOR RELIEF.**

9 Opposer must also allege facts which would, if proved, establish that there is a valid ground for
10 opposing Thanco’s applications. Young, 152 F.3d at 1380. Pursuant to Rule 8(a)(2) of the Federal
11 Rules of Civil Procedure, made applicable to trademark proceedings by Trademark Rule 2.116(a), the
12 SAO must “set forth a short and plain statement showing why [he] believes [he] would be damaged by
13 the registration of the opposed mark[s] and state the ground[s] for opposition.” McDonnell Douglas
14 Corp. v. Nat’l Data Corp., 1985 TTAB LEXIS 144, 7-8 (T.T.A.B. 1985). In determining whether an
15 opposer has stated a plausible claim for relief, the Board will examine whether “the pleading gives fair
16 notice and states the elements of the claim plainly and succinctly. Sufficient detail must be given so that
17 the [applicant] may obtain a fair idea of the [opposer’s] complaint and of the legal basis for recovery.”
18 Id. at 8; see also Iqbal, 556 U.S. at 677-678 (finding that the pleading standard “does not require
19 ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-
20 harmed-me accusation.”).

21 Opposer purports to allege a claim for fraud in the SAO. As discussed in detail below, Opposer
22 fails to allege sufficient facts to support this claim, and has not successfully pleaded a claim for which
23 relief may be granted.

24 A. Opposer Fails to State a Claim for Fraud.

25 Fraud in procuring a trademark registration occurs when an applicant “knowingly makes false,
26 material representation with the intent to deceive the PTO.” In re Bose Corp., 580 F.3d 1240, 1245
27 (Fed. Cir. 2009).

28

1 1. Materiality.

2 A fact is “material” if it would have constituted grounds for denial of the registration had the
3 truth been known.” Citibank, N.A. v. Citibanc Group, Inc., 724 F.2d 1540, 1544 (11th Cir. 1984) (citing
4 Giant Food, Inc. v. Malone & Hyde, Inc., 5222 F.2d 1386 (C.C.P.A. 1975); Hollowform, Inc. v. AEH,
5 515 F.2d 1174 (C.C.P.A. 1975)); see also Morehouse Mfg Corp. v. J. Strickland and Co., 407 F.2d 881
6 (C.C.P.A. 1969); The Ritz Hotel, Ltd. v. Shen Mfg. Co., Inc., No. 05-4730, 2009 U.S. Dist. LEXIS
7 22194, at *11 (E.D. Pa. Mar. 18, 2009); Pennwalt Corp. v. Sentry Chemical Co., 219 U.S.P.Q. (BNA)
8 542, at *38-39 (T.T.A.B. 1983); McCarthy on Trademarks § 31:67.

9 In Morehouse, the petitioner sought cancellation of the registrant’s incontestable trademark
10 registration for the mark BLUE MAGIC for “hair dressing” due to, inter alia, alleged fraud.
11 Morehouse, 407 F.2d at 883. In response to an office action rejecting the application because “the
12 descriptive word ‘blue’ is not disclaimed apart from the mark,” the registrant filed a response stating,
13 “The word ‘blue’ is not descriptive in any sense of applicant’s goods ...” Id. at 885-86. In fact, the
14 product, when viewed in its packaging, appeared to be pale blue, although small quantities of the
15 product, when removed from the packaging, appeared colorless. Id. The Board found, and the
16 appellate court affirmed, that the statement regarding color was “untrue, at least in part.” Id. at 886.
17 Nonetheless, the Board “did not consider the misrepresentation of the color of the product (seen only
18 when it is viewed in a certain way) to be a material misrepresentation or one vital to overcoming the
19 ground of rejection and hence insufficient to constitute a fraud on the Patent Office.” Id. Accordingly,
20 the appellate court affirmed that although the statement was “in part untrue, [it] was not in this case a
21 material matter and hence not a basis for a holding of fraud.” Id.

22 2. Knowledge of falsity.

23 The applicant must know that the statement is false. If the applicant “has a reasonable or
24 legitimate basis for the representations, ... then [it] has not committed fraud.” Maids to Order of Ohio,
25 Inc. v. Maid-to-Order, Inc., 78 U.S.P.Q.2d (BNA) 1899, at *20 (T.T.A.B. 2006). In Maids to Order, the
26 opposer alleged that the registrant’s representation that it was using its mark in interstate commerce was
27 fraudulent. Id. at *2. Without deciding the issue whether “the activities relied on by [the registrant]
28 were sufficient to establish” the truth of that representation, the Board held that it need only decide

1 whether the registrant had knowingly made a false statement. Id. at *19. The Board found that the
2 registrant “had a reasonable basis for her belief” that she was using the mark in interstate commerce,
3 and this belief was “sufficient to negate an inference of fraud upon the USPTO in obtaining and
4 maintaining the registration.” Id. at *25.

5 3. Intent to deceive.

6 The applicant must make the misrepresentation with the intent to deceive the U.S. Patent and
7 Trademark Office. Although both knowledge and intent may be averred generally, the pleadings must
8 “allege sufficient underlying facts from which a court may reasonably infer that a party acted with the
9 requisite state of mind.” Exergen Corp. v. Wal-Mart Stores, Inc., 575 F.3d 1312, 1327 (Fed. Cir. 2009).
10 In Bose, for example, where the challenger could not point to evidence to support an inference of
11 deceptive intent, it failed to establish a fraud claim and the applicant’s false misrepresentation was
12 found to be an honest misunderstanding without a willful intent to deceive. Bose, 580 F.3d at 1246.

13 4. Pleading with particularity.

14 Rule 9(b) of the Federal Rules of Civil Procedure, made applicable to Board proceedings by
15 Trademark Rule 2.116(a), requires that “[i]n alleging fraud or mistake, a party must state with
16 particularity the circumstances constituting fraud or mistake ...” Exergen, 575 F.3d at 1327. “[T]his
17 means the who, what, when where, and how of the alleged fraud.” Id. (citing and quoting DiLeo v.
18 Ernst & Young, 901 F.2d 624, 627 (9th Cir. 1990)). “The very nature of the charge of fraud requires that
19 it be proven ‘to the hilt’ with clear and convincing evidence. There is no room for speculation,
20 inference or surmise and, obviously, any doubt must be resolved against the charging party.” Smith
21 Int’l, Inc. v. Olin Corp., 209 U.S.P.Q. 1033, 1044 (T.T.A.B. 1981). A party alleging fraud “bears a
22 heavy burden of proof.” In re Bose Corp., 580 F.3d 1240, 1243 (Fed. Cir. 2009).

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1 5. Opposer fails to state a claim for fraud with respect to any of the statements at issue.

2 Opposer purports to identify several fraudulent statements submitted in connection with
3 Thanco’s Response to Office Action dated November 29, 2012 (the “Response”).³ Opposer fails to
4 state a claim for fraud with respect to any of these statements.

5 a) Distribution of Thanco catalogue.

6 In support of the Applications, Thanco stated:

7 Every year, Thanco mails copies of its catalogue to every single Greek Orthodox
8 Church in the United States, and to the sponsors of every single Greek festival
9 across the country. In total, Thanco’s annual “hard copy” catalogue reaches
10 approximately 250-300 targeted recipients each year. These targeted recipients
11 are located in virtually every state in the United States.

12 (Declaration of Thanos Drimalas dated November 23, 2012, filed in connection with the Response on
13 November 29, 2012 (“Drimalas Decl.”) ¶ 4.)⁴

14 Opposer asserts that these statements are fraudulent because (1) there is an alleged discrepancy
15 between the number of targeted recipients who received Thanco’s catalogue and the total number of
16 Greek Orthodox churches and Greek festivals in the United States; (2) there are festivals in “every state
17 in the country,” not “virtually every state”; and (3) on its face, Thanco could not have mailed its
18 catalogue annually, because Thanco did not submit the most recent copy of the catalogue in connection
19 with the Applications. (D.N. 22 at 4-5.)

20 In connection with the Applications, Thanco represented that it mailed its catalogue to all of the
21 Greek Orthodox churches in the United States, and that its catalogue reached 250-300 targeted

22 ³ Thanco filed essentially identical responses, on the same date, to essentially identical office actions
23 in connection with both Applications. For ease of reference, Thanco cites herein to the respective
24 Responses and supporting declarations and other materials as one.

25 ⁴ Pursuant to Trademark Rule 2.122(b), the file of “the application against which a notice of
26 opposition is filed ... forms part of the record of the proceeding without any action by the parties and
27 reference may be made to the file for any relevant and competent purpose.” Moreover, Opposer
28 incorporated the Drimalas Declaration by reference in the SAO. Accordingly, the Board may
consider the Drimalas declaration and supporting exhibits without converting this Motion to Dismiss
into one for summary judgment. See, e.g., Van Buskirk v. Cable News Network, Inc., 284 F.3d 977,
980 (9th Cir. 2002); Chambers v. Time Warner, Inc., 282 F.3d 147, 153 and n.1 thereto (citing cases)
(2d Cir. 2002).

1 recipients. (Drimalas Decl. ¶ 4.) Opposer asserts that there are “nearly 550 Greek Orthodox Churches
2 in the United States” today, relying on the website of the Greek Orthodox Archdiocese of America,
3 www.goarch.org. (D.N. 22 at 4.) Opposer has not properly alleged facts supporting falsity because
4 there may be more Greek Orthodox churches today than there were in 2012, when Thanco made the
5 statement in question.

6 In any event, whether Thanco mailed its catalogue to every single church and festival in the
7 country, as opposed to a substantial majority of them, in every state or nearly every state, it is clear that
8 Thanco distributed its catalogue widely to the relevant potential customer base. Moreover, as Opposer
9 himself acknowledges, the distribution of the catalogue was but one piece of evidence relating to
10 distinctiveness that Thanco submitted. (Drimalas Decl. and Exhs. A-F thereto.) Indeed, Thanco also
11 submitted customer declarations, sales invoices, revenue information, and a declaration from the
12 President of Thanco, all substantiating Thanco’s long history of continuous use and promotion of the
13 mark. (Id.) The insignificant alleged difference in the number of Greek churches and festivals would
14 not have occasioned rejection of the application, especially where, as here, Thanco submitted ample
15 additional evidence supporting distinctiveness. Thus, the alleged misrepresentation was not material,
16 and cannot support a fraud claim. Citibank, 724 F.2d at 1544; Morehouse, 407 F.2d 881; Pennwalt, 219
17 U.S.P.Q. 542, at *38-39.

18 Opposer has also failed to plead facts supporting falsity with respect to Thanco’s statement that
19 it mailed its catalogue annually. Opposer asserts that the catalogue cannot have been mailed annually
20 because the excerpts submitted in connection with the Applications reflect a business address of
21 Stafford, Texas, while invoice exemplars show that the business was located in Alvin, Texas, after 2001.
22 He does not allege that the information in the catalogue or invoice exemplars is false. Instead, Opposer
23 states “it would be only natural to presume” that the copy of the catalogue that was submitted in support
24 of the application was the most recent catalogue, and therefore the catalogue was not mailed after 2001.
25 (D.N. 22 at 5.)

26 This dubious logic simply does not follow. Thanco submitted excerpts of its catalogues in
27 support of the application, and clearly identified them as excerpts. (Drimalas Decl. ¶ 4.) Thanco never
28 purported to submit, or stated that it was submitting, a current version of its catalogue. Opposer simply

1 makes that assumption, devoid of any supporting facts. “There is no room for speculation, inference or
2 surmise, and obviously, any doubt must be resolved against the charging party” in stating a fraud claim.
3 In re Bose, 580 F.3d at 1243 (internal quotations and citation omitted). Opposer’s presumption is
4 tantamount to an allegation on information and belief. Such allegations “fail to meet the Fed. R. Civ. P.
5 9(b) requirements as they are unsupported by any statement of facts providing the information upon
6 which petitioner relies or the belief upon which the allegation is founded.” Asian and Western Classics
7 B.V. v. Selkow, 92 U.S.P.Q.2d (BNA) 1478, at *4 (T.T.A.B. 2009).

8 Because Opposer has failed to allege materiality or falsity, he has not stated a claim for fraud
9 with respect to these statements.

10 b) Sales invoices.

11 In support of the Applications, Thanco submitted invoice exemplars showing sales of GOT
12 OUZO? merchandise. (Drimalas Decl. ¶ 7 and Exh. D thereto.) These exemplars plainly reflect a line
13 item for OUZO merchandise (e.g., “Adult T-shirt Black 100% Cotton (OUZO)”), and Thanco’s
14 President attested to the authenticity and accuracy of these invoices in a sworn declaration. (Drimalas
15 Decl. ¶ 7 and Exh. D thereto.) The catalogue and website excerpts submitted at the same time plainly
16 reflect corresponding GOT OUZO? merchandise available for purchase. (Drimalas Decl. Exhs. A, B.)

17 Significantly, the item numbers associated with GOT OUZO? merchandise reflected in
18 Thanco’s catalogue excerpts match the item numbers of OUZO merchandise in Thanco’s invoices. For
19 example, the catalogue excerpts depict a black GOT OUZO? T-shirt with the item number TDA-27, and
20 a white GOT OUZO? T-shirt with the item number TWA-27. (Drimalas Decl. Exh. A.) Every single
21 invoice that Thanco submitted reflects sales of OUZO merchandise consisting of either a black T-shirt
22 with item number TDA-27 or a white T-shirt with item number TWA-27. (Drimalas Decl. Exh. D.)

23 Opposer speculates that the invoices do not reflect sales of the merchandise in question, because
24 the relevant line items are include a reference to “OUZO” rather than “GOT OUZO?” (D.N. 17 at 15.)
25 This speculation is contradicted by documents themselves, which plainly reflect corresponding item
26 numbers between the catalogue and the invoices. Moreover, Opposer’s allegations do not dispute that
27 Thanco sold, and continues to sell, GOT OUZO? merchandise, or the quantities of merchandise and
28 resulting revenues reflected in the Drimalas Declaration and supporting exhibits. Opposer’s

1 speculation, like allegations on information and belief, is insufficient to plead falsity in connection with
2 a fraud claim. See *In re Bose*, 580 F.3d at 1243; *Asian and Western Classics*, 92 U.S.P.Q.2d 1478, at *4.

3 Finally, whether the line items listed in the invoices identify the full mark, or merely refer to the
4 mark in abbreviated fashion (as is common in an invoice), does not affect registrability of the mark, and
5 is not material – particularly where the item numbers of the merchandise indisputably link it to the
6 mark. Because Opposer fails to allege facts supporting falsity or materiality, he has failed to state a
7 claim for fraud based on Thanco’s invoices.

8 c) Third-party declarations.

9 In connection with the Applications, Thanco submitted third-party declarations attesting to its
10 lengthy and continuous use of the GOT OUZO? mark, and associated distinctiveness. (Drimalas Decl.
11 Exh. C.) In declarations signed in October, 2012, declarants Spirithula Kostakis (“Kostakis”), Thanasis
12 Vergos (“Vergos”), and Nikolaos Renesis (“Renesis”) each stated, “I am not aware of any other
13 individual or entity [other than Thanco] offering merchandise under the GOT OUZO? trademark.”
14 (Drimalas Decl. Exh. C, Declaration of Spirithula Kostakis ¶4; Declaration of Thanasis Vergos ¶ 4;
15 Declaration of Nikolaos Renesis ¶ 4.)

16 Opposer alleges that these statements are false, because (1) Kostakis sold her own GOT OUZO?
17 merchandise “until at least 2008 or possibly later,” (D.N. 22 at 7); and (2) Vergos and Renesis were
18 aware of Kostakis’s sales “during the period 2001 until 2008.” (D.N. 22 at 8.) Opposer does not allege,
19 however, that the statements were untrue as of October, 2012, when the declarations were signed.
20 Indeed, his pleading acknowledges that these sales had ceased by 2008. Thus, on its face, his pleading
21 alleges no facts contradicting the truth of these statements. Therefore, he has failed properly to allege
22 falsity.

23 Opposer alleges that Thanco knew the statements were false because interrogatory responses
24 provided to Thanco in a separate proceeding informed Thanco that Kostakis received a cease and desist
25 letter from a third party “with an interest” in the GOT OUZO? mark. (D.N. 22 at 7.)⁵ In fact, the
26 _____

27 ⁵ The interrogatories were incorporated by reference in the SAO, and are accepted by all parties as
28 authentic. (D.N. 22 at 7.) Accordingly, the Board may consider them without converting this Motion
to Dismiss into one for summary judgment. See, e.g., *Van Buskirk v. Cable News Network, Inc.*, 284

1 responses in question underscore Opposer’s failure to allege falsity.⁶ Those interrogatory responses
2 were provided by the adjudged infringer, Kontos. (Gray Decl. Exh. B.) In response to an interrogatory
3 seeking identification of all instances in which Kontos attempted to challenge another party’s use of the
4 mark GOT OUZO?, Kontos asserted that he had sent a cease and desist letter to Kostakis’s business,
5 Hellinis Imports, in May 2007, and that the business “[a]greed to stop.” (Id.) Thus, the facts that
6 Opposer alleges in support of falsity actually state that Kostakis ceased using the GOT OUZO? mark in
7 or around 2007, five full years before her 2012 declaration stating that, as of 2012, she was unaware of
8 anyone other than Thanco selling GOT OUZO? merchandise.

9 Consequently, Opposer fails to “allege sufficient underlying facts from which a court may
10 reasonably infer that [Thanco] acted with the requisite state of mind.” *Exergen*, 575 F.3d at 1327; see
11 also *Bose*, 580 F.3d at 1246. Because Opposer has failed to allege facts sufficient to support falsity or
12 knowledge of falsity by Thanco, he has not stated a claim for fraud with respect to the declarations.

13 **III. THE BOARD SHOULD DISMISS THE SAO WITH PREJUDICE.**

14 “[I]n appropriate cases, that is, where justice does not require that leave to amend be given, the
15 Board, in its discretion, may refuse to allow an opportunity, or a further opportunity, for amendment” of
16 a complaint. TBMP 503.03; see also *Bayer Consumer Care AG v. Belmora, LLC*, 90 U.S.P.Q.2d
17 1587, 1590-91 (T.T.A.B. 2009) (dismissing claim with prejudice where petitioner twice failed to
18 properly allege prior use); *McDonnell Douglas*, 1986 TTAB LEXIS 144.

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22
23 F.3d 977, 980 (9th Cir. 2002); *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 and n.1 thereto
(citing cases) (2d Cir. 2002).

24 ⁶ The interrogatories were not produced in the civil action cited by Opposer, *Thanco Products and*
25 *Imports, Inc. v. Kontos*, S.D. Tex. Case No. 08-cv-3046 (filed Oct. 13, 2008), the case referenced
26 above at p. 5 in which Thanco sued Kontos, a third-party infringer, for infringing the GOT OUZO?
27 mark. Rather, they were produced in a parallel cancellation action by Thanco against Kontos,
28 seeking cancellation of the Kontos’s GOT OUZO? registration based on Thanco’s superior rights in
the mark. *Thanco Products and Imports, Inc. v. Kontos*, U.S.P.T.O. Cancellation No. 92048746
(filed Jan. 11, 2008). These proceedings resulted in the judgment and injunction against Kontos
described more fully at p. 5-6 above, and cancellation of Kontos’s registration.

1 Opposer has now had three opportunities to plead standing and a proper cause of action. He
2 has still failed to do so.⁷ Accordingly, the Board should dismiss the SAO with prejudice.

3 **CONCLUSION**

4 For the reasons set forth above, the SAO is fundamentally legally deficient and accordingly fails
5 to state a claim on which relief may be granted because (1) Opposer lacks standing to maintain this
6 proceeding and (2) Opposer fails to plead any valid grounds for opposition and allege sufficient facts in
7 support thereof. For all of the reasons set forth above, the second Amended Notice of Opposition
8 should be dismissed with prejudice.

9
10 Dated: May 9, 2014

Respectfully submitted,

HARVEY SISKIND LLP

/Naomi Jane Gray/

By: Naomi Jane Gray

14 Four Embarcadero Center, 39th Floor
15 San Francisco, CA 94111
16 Telephone: (415) 354-0100
Facsimile: (415) 391-7124

17 Attorneys for Applicant,
18 Thanco Products & Imports, Inc.

19
20
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22
23
24 _____
25 ⁷ Additionally, Opposer violated the Board's Order by failing to serve the SAO on Thanco's counsel
26 by email, as required by the Board's earlier order. (D.N. 16 at 16.) Thanco discovered the SAO by
27 diligent monitoring of the docket. The Board should not tolerate this flouting of its Order.
28 "Although it is appropriate to show patience toward an unrepresented party, lack of representation is
not a license to disregard the applicable rules or statutory requirements." *Pepsico, Inc. v. Pirincci*,
Opposition No. 91187023 (April 14, 2014) (non-precedential).

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CERTIFICATE OF TRANSMISSION

I hereby certify that true and correct copies of the attached MOTION AND MEMORANDUM IN SUPPORT OF APPLICANT’S MOTION TO DISMISS OPPOSER’S SECOND AMENDED NOTICE OF OPPOSITION and DECLARATION OF NAOMI JANE GRAY IN SUPPORT OF MOTION TO DISMISS OPPOSER’S SECOND AMENDED NOTICE OF OPPOSITION (Opposition No. 91210863) are being electronically transmitted to the Trademark Trial and Appeal Board on May 9, 2014.

/Naomi Jane Gray/
Naomi Jane Gray

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8 Attorneys for Applicant,
9 Thanco Products & Imports, Inc.

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

13	_____)	
14	CHRIS ECONOMIDES III,)	
15	an individual,)	DECLARATION OF NAOMI JANE GRAY
16	Opposer,)	IN SUPPORT OF MOTION
17	v.)	TO DISMISS OPPOSER'S
18	THANCO PRODUCTS & IMPORTS, INC.)	SECOND AMENDED NOTICE
19	a Texas corporation,)	OF OPPOSITION
20	Applicant.)	
21	_____)	Opposition No. 91210863

22 I, Naomi Jane Gray, declare as follows:

23 1. I am a partner in the law firm Harvey Siskind LLP ("Harvey Siskind"), counsel of
24 record for Applicant Thanco Products & Imports, Inc. ("Thanco") in the above-captioned action. I
25 make this declaration on personal knowledge except where otherwise indicated. If called upon to do so,
26 I could and would testify as to the matters set forth herein.

**Exhibit A to
Declaration of Naomi Jane Gray
in Support of Motion to Dismiss
Opposer's Second Amended Notice of Opposition**

**Offered by Applicant
Thanco Products & Imports, Inc.**

**Chris Economides III v.
Thanco Products & Imports, Inc.**

Opposition No. 91210863

HARVEY ■ SISKIND LLP

Seth I. Appel

March 11, 2011

**VIA U.S. MAIL
AND EMAIL TO apollogm@carolina.rr.com**

Chris Economides III
Apollo Graphics & Marketing
4510 Springside Lane
Charlotte, NC 28226

Re: Thanco Products & Imports, Inc.'s Intellectual Property Rights

Dear Mr. Economides:

This firm represents Thanco Products & Imports, Inc. ("Thanco") with respect to the enforcement of its intellectual property rights.

Thanco is the owner of longstanding rights in the GOT OUZO? trademark. It has been offering clothing under this trademark for more than a decade. Over many years, and at substantial cost, Thanco has built up invaluable good will in its GOT OUZO? trademark. Any infringement of this trademark causes irreparable injury to Thanco's good will.

As you may know, as part of its trademark enforcement efforts, Thanco brought a lawsuit in the U.S. District Court for the Southern District of Texas against George Vlasios Kontos concerning his use and registration of the GOT OUZO? trademark. The court entered judgment in Thanco's favor and enjoined Mr. Kontos "and his affiliates, agents, and representatives, and all other persons or entities in active concert or participation with them ... from using in any manner the GOT OUZO? trademark." The court also ordered the cancellation of Mr. Kontos's trademark registration. Finally, the court issued a substantial monetary award in Thanco's favor. I am enclosing a copy of the court's judgment for your reference. This judgment was recently affirmed by the U.S. Court of Appeals for the Fifth Circuit.

Chris Economides III
March 11, 2011
Page 2

It has come to our attention that your company may be manufacturing and/or offering clothing under the GOT OUZO? trademark without Thanco's authorization. Such use of the GOT OUZO? trademark would be likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of your company with Thanco, or as to the origin, sponsorship, or approval of your company's products. Therefore, such use would constitute trademark infringement under the Federal Lanham Act, 15 U.S.C. §1051, *et seq.*, and state law.¹

Moreover, insofar as you are acting in concert with Mr. Kontos, your conduct would be in direct contravention of the enclosed judgment.

In view of the foregoing, Thanco demands that you and your company immediately cease all use of the GOT OUZO? trademark, if any, and refrain from using this trademark in the future.

This letter is written without prejudice, and Thanco specifically reserves all rights and remedies.

Sincerely,



Seth I. Appel

SIA:cl
Enclosure

¹ Under the Lanham Act, remedies for willful trademark infringement include (i) injunctive relief, (ii) treble damages, (iii) defendants' profits, (iv) costs of the action, and (v) attorneys' fees.

The above monetary award is in addition to the other remedies previously awarded to Thanco in the Court's November 5 order, namely:

1. That Kontos and his affiliates, agents, and representatives, and all other persons or entities in active concert or participation with them, including but not limited to Martha Kontos, Peter Kontos, BuyGreekArt and buygreekart.com, are permanently enjoined from using in any manner the GOT OUZO? trademark, or any mark that wholly incorporates or is confusingly similar to this trademark.

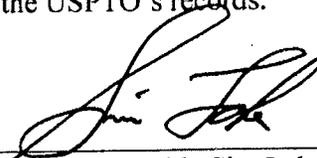
2. That Kontos and his affiliates, agents, and representatives, and all other persons or entities in active concert or participation with them, including but not limited to Martha Kontos, Peter Kontos, BuyGreekArt and buygreekart.com, are permanently enjoined from doing any act or thing likely to cause confusion or mistake in the minds of consumers as to the source or sponsorship of the parties' products, or as to Thanco's affiliation with Kontos or his products.

3. That Kontos and his affiliates, agents, and representatives, and all other persons or entities in active concert or participation with them, including but not limited to Martha Kontos, Peter Kontos, BuyGreekArt and buygreekart.com, are permanently enjoined from doing any act or thing likely to dilute the distinctive quality of Thanco's GOT OUZO? trademark.

4. That U.S. Trademark Registration No. 3246800 shall be cancelled, and that pursuant to Section 37 of the Lanham Act, 15 U.S.C. § 1119, the Director of the U.S. Patent & Trademark Office ("USPTO") shall make appropriate entry upon the USPTO's records.

This is a Final Judgment.

DATED: 12/2/09



The Honorable Sim Lake
United States District Judge

**Exhibit B to
Declaration of Naomi Jane Gray
in Support of Motion to Dismiss
Opposer's Second Amended Notice of Opposition**

**Offered by Applicant
Thanco Products & Imports, Inc.**

**Chris Economides III v.
Thanco Products & Imports, Inc.**

Opposition No. 91210863

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

Registration No. 3246800

JUL 10 2008

Mark: GOT OUZO?

THANCO PRODUCTS AND
IMPORTS, INC.,

Petitioner,

v.

GEORGE VLASIOS KONTOS, an individual

Registrant.

REGISTRANT'S RESPONSE
TO FIRST SET OF
INTERROGATORIES

Cancellation No. 92048746

REGISTRANT'S RESPONSE TO FIRST SET OF INTERROGATORIES

Registrant, by and through his undersigned counsel, hereby submits his response to Petitioner Thanco Products and Imports, Inc.'s Interrogatories No. 1-21 pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. §2.120.

OBJECTIONS

1. Plaintiff objects to the instruction regarding privileged information and documents to the extent that they request a privilege log concurrently with responses to document requests. The privilege log will be prepared after the documents have been reviewed.

INTERROGATORIES

Interrogatory No. 1: Identify each variation of GOT OUZO? you have used in connection with the sale or promotion of your goods and services.

ANSWER: The mark used in the registration is the only style that has been used in connection with the sale of promotion of goods or services. It was selected to resemble the font used in the got milk? marketing campaign.

Interrogatory No. 2: Identify the geographic scope of your use of the mark GOT OUZO?

ANSWER: The mark has been advertised and marketed to every Greek Orthodox Church in the United States.

Interrogatory No. 3: Identify each person who participated in the creation and/or selection of the mark GOT OUZO?

ANSWER: George Kontos created the design.

Interrogatory No. 4: Identify your reasons for selecting the mark GOT OUZO?

ANSWER: got ouzo?® (lower case letters) was created as a parody mark of the ongoing got milk? marketing campaign.

Interrogatory No. 5: Identify each good or service you offer or have offered under the mark GOT OUZO?

ANSWER: got ouzo?® has been offered in the following categories: Balloon pants; Baseball Caps, Bibs for Children, Camp shirts; Capri pants; Denims ; Diapers, Dress shirts; Golf

shirts; Jogging pants; Knit shirts; Leather pants; Mock turtle-neck sweaters; Night shirts; Nurse pants; Open-necked shirts; Pajamas; Pants; Piquet shirts; Polo shirts; Shirt fronts; Shirts; Shirts for suits; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Ski pants; Sleep shirts; Snow pants; Snowboard pants; Sport shirts; Sports shirts; Sports shirts with short sleeves; Sweat pants; Sweat shirts; Sweaters; T-shirts; Tap pants; Toboggan hats, pants and caps; Track pants; Turtleneck sweaters; Underwear for men, Underwear for women, V-neck sweaters; Waterproof jackets and pants; Wind shirts.

Interrogatory No. 6: With regard to each good or service you offer or have offered under the mark GOT OUZO?, state the dates that you offered such good or service.

ANSWER: Registrant does not have records of when each good or service was first offered. Registrant estimates that all of the goods listed in the response to Interrogatory 5 were offered within the first year following the introduction of the mark on or about July 1, 2003.

Interrogatory No. 7: With regard to each good or service you offer or have offered under the mark GOT OUZO?, identify each of the means you have used to promote such good or service.

ANSWER: Sales contacts are primarily made by telephone. A website, www.buygreekart.com, displays the mark as used on t-shirts.

Interrogatory No. 8: With regard to each good or service you offer or have offered under the mark GOT OUZO?, identify the amount you have spent promoting such good or service.

ANSWER: Registrant does not have records showing promotion figures for separate products. Registrant's approximate marketing expenditures will be produced under an appropriate protective order, per TBMP 414(18).

Interrogatory No. 9: With regard to each good or service you offer or have offered under the mark GOT OUZO?, state the number of items such good you have sold.

ANSWER: Records of all sales of each good or service are not available. However, all available records will be produced under an appropriate protective order.

Interrogatory No. 10. With regard to each good or service you offer or have offered under the mark GOT OUZO?, identify the channels of trade used to offer such good or service.

ANSWER: The goods have been offered through in-person contacts, telephone calls, trade shows, emails, and direct mailings with representatives of Greek Orthodox Churches in the United States.

Interrogatory No. 11: Identify each location (e.g., festivals, stores) at which you or someone affiliated with you offers or has offered goods or services under the mark GOT OUZO?

ANSWER: Registrant objects to this interrogatory as vague because it is unclear whether Petitioner seeks the locations that have been offered the goods or the locations where Mr. Kontos or someone affiliated with him has been physically present offering the goods. Without waiving this objection, Registrant states that the goods have been offered to every Greek Orthodox Church in the United States. See www.goarch.org for a current listing of churches. If

a listing of each festival attended by Registrant is sought, available information will be produced subject to an appropriate protective order.

Interrogatory No. 12: Identify each instance in which a third party has challenged your use of the mark GOT OUZO?, including the basis for such challenge and its outcome.

ANSWER: This cancellation is the only instance.

Interrogatory No. 13: Identify each instance in which you have challenged a third party's use of the mark GOT OUZO?, including the basis for such challenge and its outcome.

ANSWER: Letters have been sent to the following stores who offered got ouzo?

products:

Company	Date of Notice	Basis	Outcome
Hellinis Imports 6822 Henderson Road Jamesville, NY 13078	5/16/07	Offering t-shirts with got ouzo?	Agreed to stop
GreekBoston.com P.O. Box 1847 Somerville, MA 02144	6/13/07	Offering t-shirts with got ouzo?	Agreed to stop
Zazzle.com	6/13/07	Offering t-shirts with got ouzo?	No response; webpage was taken down
Greek Music and Video Superstore 25-50 31st Street Astoria, NY 11102	6/13/07	Offering t-shirts with got ouzo?	Agreed to stop
Zomma, Inc. 3664 Clairmont Rd. Atlanta, GA 30341	6/15/07	Offering t-shirts with got ouzo?	No response; product was taken off website
Thanco Products and Imports	6/15/07	Offering t-shirts with got ouzo?	Refused to stop; this cancellation
Hellinis Imports 6822 Henderson Road Jamesville, NY 13078	10/12/07	Offering t-shirts with Greek translation of got ouzo?	No response; product was taken off website

Holy Trinity Church 24411 Rampart Blvd. Port Charlotte, FL 33980	2/18/08	Offering t-shirts with got ouzo?	Agreed to stop; refunded fees paid to festival plus attorney's fees
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Interrogatory No. 14: Identify each person who has or may have become confused as a result of use of the mark GOT OUZO?, by you or others, and describe any such instance of confusion.

ANSWER: No specific instances are known.

Interrogatory No. 15: Identify each third party that you have licensed to offer goods or services under the mark GOT OUZO.

ANSWER: None

Interrogatory No. 16: Identify all trademark searches conducted by you, or on your behalf, prior to your adoption of the mark GOT OUZO?

ANSWER: Registrant researched and filed the mark. No record was kept of the search.

Interrogatory No. 17: Identify all investigations conducted by you, or on your behalf, concerning the use of the mark GOT OUZO?

ANSWER: Respondent objects to Interrogatory 17 as vague. Without waiving this objection, the only investigations other than the pre-adoption search have been monitoring whether other companies are offering got ouzo? products. No records exist other than the correspondence with those companies.

Interrogatory No. 18: State the date on which you first became aware of Petitioner.

ANSWER: Early May 2007.

Interrogatory No. 19: Identify all third parties that offer goods or services under the mark's GOT OUZO?

ANSWER: The companies that have come to Registrant's attention are listed in the response to Interrogatory 13.

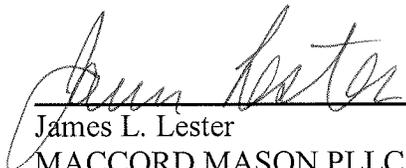
Interrogatory No. 20: Identify all websites on which you offer or have offered products under the mark GOT OUZO?

ANSWER: www.BuyGreekArt.com.

Interrogatory No. 21: State the reason that no goods bearing the mark GOT OUZO?, other than shirts, are offered on the website www.buygreekart.com.

ANSWER: www.BuyGreekArt.com is merely a display website showing designs. Only one style of each design is shown for each mark. The website does not show the various colors available, nor does it list all the available products. Once Registrant makes contact with an interested client, available options for their needs are discussed, including additional products.

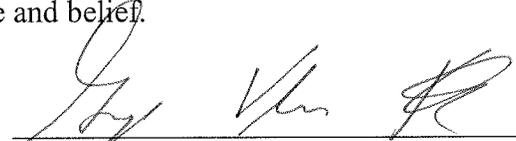
This the 7th day of July, 2008.



James L. Lester
MACCORD MASON PLLC
1600 Wachovia Tower
300 N. Greene St.
P.O. Box 2974
Greensboro, NC 27402
(336) 273-4422
jlester@maccordmason.com
Counsel for Registrant

VERIFICATION OF INTERROGATORY RESPONSES

BEFORE ME, the undersigned authority, personally appeared George Vlasios Kontos, who was sworn and says that the answers in the foregoing First Set of Interrogatories are true and correct to the best of his knowledge and belief.



George Vlasios Kontos

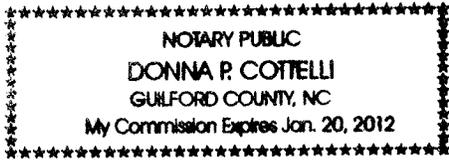
SWORN TO and subscribed before me this

7th day of July, 2008



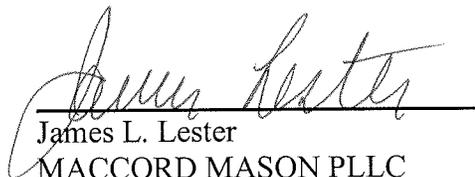
NOTARY PUBLIC

Commission/Expiration: 01/20/2012



CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2008, I mailed the foregoing to Harvey Siskind LLP, D. Peter Harvey, Seth I. Appel, attorneys representing Petitioner, at Four Embarcadero Center, 39th Floor, San Francisco, CA 94111

A handwritten signature in cursive script, appearing to read "James L. Lester", is written over a horizontal line.

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