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

Proceeding	91211312
Party	Defendant So Within Reach, LLC
Correspondence Address	SO WITHIN REACH, LLC SO WITHIN REACH, LLC 1743 EASTERN VALLEY RD BESSEMER, AL 35022-5359 robby.reach@gmail.com
Submission	Motion to Dismiss - Rule 12(b)
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Date	07/29/2013
Attachments	Motion to Dismiss.pdf(157547 bytes)

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GRUBHUB, INC.,)	
a Delaware corporation,)	
)	
Opposer,)	Opposition No. 91211312
)	Serial No. 85/820,352
v.)	
)	
SO WITHIN REACH, LLC,)	
an Alabama limited liability company,)	
)	
Applicant.)	

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Applicant So Within Reach, LLC hereby moves the Board to dismiss, with prejudice, the Notice of Opposition filed by grubHub, Inc. because the Notice fails to state a claim for which relief can be granted as required by FRCP 12(b)(6). There is no legal basis to refuse or delay the present application.

Opposer seeks to deny Applicant’s registration for the trademark GURUHUB. Opposer does not object to Applicant’s use of the word “Guru” in its name *per se* – instead, Opposer’s sole objection is to the combination of the word “Guru” with the word “Hub,” which is a generic term indicating a collection or aggregation comprised of its preceding descriptor. Opposer claims that Applicant’s use of this combination of words on or in connection with the Applicant’s goods and services is likely to cause confusion, or to cause mistake, or to deceive. Opposer’s Notice, which seeks to block registration on this ground, fails to state a claim for which relief can be granted because there is no legal basis to refuse registration based on the use of a remarkably dissimilar mark on or in connection with goods and services that are not related in any way to the line of business pursued by the Opposer. Not only does Opposer’s line of

business differ substantially from that of the Applicant, but their respective target markets do not overlap. Opposer is also seeking to claim rights to seemingly all marks suffixed in “hub” regardless of line of business, target market, or differentiating sound and appearance – a protection not afforded to it by the legal protection granted any of its alleged marks.

Opposer markets services intended primarily for food delivery, order tracking, and menu aggregation. Applicant seeks to provide a social networking medium through which small business owners and professionals can freely share advice among themselves which they would not typically be able to afford by hiring consultants. Applicant is not and will never intend to be in the same line of business as Opposer. There is no likelihood of confusion and there is a clear distinction between these marks. No member of Applicant's target market is likely to identify "GRUB," which is a synonym for "food," as a reasonable descriptor of a source of business advice. Additionally, no person seeking to order food online is likely to identify "GURU," which is a synonym for "expert," as a reasonable descriptor of a food ordering service.

Opposer is not entitled to waste Board and party resources with an inadequate claim that fails to justify a sound reasoning for the remotest possibility of likelihood of confusion. A motion to dismiss for failure to state a claim under FRCP 12(b)(6) challenges the legal theory of the complaint and allows the Board “to eliminate actions that are fatally flawed in their legal premises and destined to fail ...” *Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.*, 988 F.2d 1157, 1160 (Fed. Cir. 1993), 26 USPQ 2d 1038, 1041. Dismissal should be granted when the allegations in the Notice of Opposition, taken as true for the purposes of the motion, fail to establish that there is a valid ground why the applicant is not entitled under law to secure a registration. *Id.*, *Young v. AGB Corporation*, 152 F.3d 1377, 1380 (Fed. Cir. 1998), 47 USPQ 2d

1752, 1755 (Opposer must plead a valid ground to deny registration in order to state a claim under FRCP 12(b)(6)).

Here, So Within Reach, LLC's application has met all the requirements for registration. Opposer's Notice presents no legal recognized basis to refuse or delay it. Thus, the Notice fails to state a claim and should be dismissed under FRCP 12(b)(6) and the cases cited above.

Applicant So Within Reach, LLC prays this Honorable Board dismiss the present Opposition and requests advancement of the application and receipt of a Notice of Allowance without further delay.

Dated this 29th day of July, 2013.

Respectfully submitted,

So Within Reach, LLC

/Robert B. Reach/

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Chief Executive Officer
So Within Reach, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2013, the foregoing Motion to Dismiss for Failure to State a Claim was served upon Opposer's attorneys of record by depositing same with the U.S. Postal Service, first-class postage prepaid, addressed as follows:

Steven L. Baron
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