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

Proceeding	91212694
Party	Defendant Xiamen Hwaart Composite Material Co.,Ltd
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Attachments	HWAART REPLY MOTION.pdf(506210 bytes) HWAART REPLY MOTION EXHIBIT.pdf(493026 bytes)

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

BOND MANUFACTURING CO., *Opposer*, - against -. XIAMEN HWAART COMPOSITE MATERIAL CO. LTD., *Applicant.*	Opposition No. 91212694 Serial No. 85/834,200

APPLICANT'S REPLY IN SUPPORT OF MOTION TO DISMISS

The Applicant, Xiamen Hwaart Composite Material Co. Ltd. ("Applicant" or "Hwaart"), hereby submits this Reply to "Bond's Opposition to Applicant's Motion to Dismiss Opposition", filed November 25th, 2013 (hereinafter "Bond's Memorandum in Opposition").

The mark that is the subject of Hwaart's application is the design mark illustrated below, for various goods in Int'l Class 11 for numerous goods including electric patio heaters, *et al.*

HWAart

Opposer's purported support for these proceedings is based upon registrations of the "BOND" Mark, one of which is illustrated below for goods, none of which are in Class 11.

bond

I. INTRODUCTION

The Opposer's response seeks to impermissibly add factual assertions to the Notice of Opposition. These assertions further demonstrate both the insufficiency of the Notice of Opposition and that the operative facts are identical to those asserted in a currently pending action before the United States District court for the District of Nevada captioned *Bond Manufacturing Co. v. Xiamen Hwaart Composte Material Co. Ltd., et al.* Case No. 2:13-cv-00812-ADG-NJK ("Federal Action"), (copy of the Complaint attached as Exhibit 1).

If the Opposition is not, as it should be, dismissed, it should be stayed. Although Opposer has failed to assert the likelihood of confusion claim in the Federal Action (potentially to avoid Rule 11 sanctions for a frivolous pleading) nonetheless, the Federal Action will resolve the issue of likelihood of confusion, either under principles of collateral estoppel for failure to plead a cause of action arising out of the same operative facts or, if Opposer can amend its claims in the Federal Action, it will be decided on the merits in that proceeding.

II. OPPOSER LACKS STANDING

Standing requires that the Opposer allege facts sufficient to show:

(i) real interest, and

(ii) a reasonable basis for its belief of damage and the allegation must support that the alleged "reasonable basis" exists "in fact". (TPMP 309.03 (b))

Here Opposer alleges competitive activity and therefore at least facially satisfies the first requirement.

However, Opposer's pleading is fatally deficient on the issue of pleading a cognizable reasonable basis that the granting of the HWAart design registration will cause the Opposer to be damaged in fact.

The issue of standing and the nature of the necessary showing of consequential damage require an evaluation of the basis of the claim. Here two bases are alleged. Opposer alleges injury firstly upon traditional likelihood of confusion grounds, requiring an assessment of the allegedly conflicting marks and secondly upon a purported claim of fraud arising out of the deposit of the specimens of use in the application.

III. THERE IS NO BASIS FOR A LIKELIHOOD OF CONFUSION CLAIM

Opposer relies upon Section 2(d) of the Act, 15 U.S.C. (§ 1052(d)). (*See* ¶ 18 and 19 of the Notice of Opposition.) Therefore Opposer must plead a facially factually supportable position that the Applicant's mark so resembles a mark registered in the Office by the Opposer or a mark or name previously used in the United States by the Opposer as to be likely, when used in the United States by the Applicant with goods and services of the Applicant to cause a likelihood of confusion. Where, as here, the goods are different and the allegedly conflicting marks have no commonality a factual prima facie case cannot be supported. The respective marks do not look or sound alike. They have no common suggestive link. Indeed, the assertion of a likelihood of confusion is facially baseless.

None of Opposer's registrations are for competitive goods. Applicant's goods are all in International Class 11 and include, *inter alia*:

Electric patio heaters;

Fire table;

Fireplace hearths'

Fireplaces;

Fireplaces; domestic

Folding portable charcoal, propane and

gas fired barbeques, stoves and grills;

Gas patio heaters.

The "Bond" registrations are for:

Bond in Design for lawn and garden sprinkler… (without any claim of color). (Reg. No. 3,207,983).

Bond in Design for hand held garden tools... (without claim of color) Reg. No. 3,261,213.

Bond for garden tools and garden supplies (with no claim of font, style, size or color) Reg. No. 3,392,004.

Bond for garden supplies (metal stakes) (with no claim of font, style, size or color) Reg. No. 3,684,493.

Bond (in design) for garden supplies (with the word "Bond" in black, lower case letters, with the stem of the letter "D" bisecting the letter "O" (Reg. No. 3,741,198-emphasis added).

One additional registration is relied upon. It is a registration for the mark EvirOStone (in design with the "O" and "S" combined) for "General Purpose Building and Landscaping Material" namely reclaimed stone combined with resin for use in fire pits, fire bowls, fountains, umbrella bases and household or garden objects—None are in class 11. To the extent color is an element of the mark it includes certain green and white elements (Reg. No. 3,652,019). No registration alleges rights which include the color red.

Bond simply ignores the fact that there is no Bond registration which includes similar goods to that of Applicant. Given the criteria established by cases such as *Interstate Brands Corp. v. McKee Foods Corporation*, 53 USPQ 2d 1910 (TTAB 2000) this proceeding looks

solely to the marks and the definition of goods in assessing likelihood of confusion. On that basis alone the Opposition is fatally flawed.

Although not altogether clear, Opposer seems to suggest that it is also basing the Opposition on the basis of a trade dress violation based upon packaging and other materials that allegedly Applicant has used as part of a "packaging scheme", (Opposer's Memorandum in Opposition at page 13). Opposer asserts that Applicant has used packaging in which both the Bond trademark and the HWAart trademark are present. Opposer suggests that notwithstanding the total lack of similarity between "Bond" and "HWAart", the use of a red flame in the HWAART design on materials which also include the "Bond" trademarks supports a colorable likelihood of a confusion assertion because Bond, although never claiming trademark rights incorporating the color red, has used the color in its advertising and promotional materials.

Whatever issues may exist with respect to an assertion of the consequences of the use of two dissimilar trademarks on a package and the color red, it is not relevant to these proceedings. The issue in this proceeding is whether Opposer has plead sufficient facts that there is a conflict between the goods set forth in the application that creates a reasonable basis to create an issue of likelihood of confusion with the goods covered by Opposer's registration (or use). The Notice of Opposition makes it clear that if only a visual comparison of the marks is considered, there is no likelihood of confusion.

As averred by the Opposer in the Notice of Opposition ¶ 9:

> "But for the fact that letters on their signage was different,
> a person passing by would likely mistake Hwaart for Bond,
> which Bond is informed and believes was Hwaart's intent."

Stated differently, "but for" the trade dress (assuming it even exists) when the marks (*i.e.*, the letters) are compared, no likelihood of confusion exists.

On the basis of the only comparisons and criteria that are relevant to these proceedings, no reasonable trier of the facts could rule in favor of Opposer.

The lack of merit is all the more apparent when the so-called factual predicates relied upon are assessed.

As Opposer admits, "...Applicant has not used a word that is close to Bond's mark in standard characters..." (Opposer's Memorandum in Opposition at page 13.) However, undeterred, Opposer then states there are sufficient similarities between the marks to constitute "substantial confusion" in light of the Applicant's **entire packaging scheme**. (Opposer's Memorandum in Opposition at page 13, emphasis added.)

Opposer then seeks to define similarities as a predicate to applying them to the packaging scheme. Opposer relies heavily upon the assertion, albeit without factual support, that both marks consist of single syllable words (Opposer's Memorandum in Opposition page 13). "Bond" is a common English language word and a single syllable word. However, there is no support for the proposition that at the Applicant's mark "HWAart" which consists of a capitalized "HWA" followed by lower case "art" will be pronounced as a single syllable. Given the common sense interpretation that "HWAart" (which visualizes as two words) would not be pronounced as a single syllable is self-evident. Therefore the absence of an affirmative showing by Opposer in support of the single syllable proposition is not surprising. Indeed, it is hornbook law that there simply is no correct or proper pronunciation of trademarks, *In re Belgrade Shoe*, 411 F.2d. 1352, 162 USPQ 227 (CCPA 1967). If Opposer intended to rely upon a single syllable argument—particularly as a foundational position, at a minimum it is required to plead a factual predicate to the position.

Undeterred by its falsely premised single syllable position, Opposer seeks to graft onto it an alleged "color scheme, marketing and packaging" resemblance—which according to Opposer somehow is associated with the Opposer's marks. Color (other than green) is not part of any of Opposer's registrations. Although the Opposer's Memorandum seeks to shift the emphasis, the Opposition is based upon Opposer's registered marks, (*see* Notice of Opposition ¶ 4), none of which relate to the color red. To the extent the Notice of Opposition makes any mention of color (Notice of Opposition ¶ 9), it is in the context of an alleged unsupported, trade dress assertion relating to "Hwaart's making (sic) materials and booth" and an allegation that Applicant copied Opposer's marketing materials. Indeed, Opposer's pleading acknowledges that on the basis of a purely trademark-to-trademark analysis, there is no likelihood of confusion. (Notice of Opposition ¶ 9)

Any reliance Opposer places on the so-called use of Opposer's "packaging scheme" (Bond's Memorandum in Opposition at pg. 13), is misplaced because it relates to issues of use beyond the scope of these proceedings. (*See Interstate Brands supra, Thomas McCarty Trademarks and Unfair Competition* § 2415 (2013)).

In the circumstances, Opposer's analysis of traditional *DuPont* analysis to establish a facially supportable likelihood of confusion position (*In re E.I. DuPont de Nemouris & Co.*, 476 F2d. 1357, 177 USPQ 563 (CCPA 1973)) is based upon legally wanting assumptions.

The issue is whether Opposer has adequately established "injury" if the HWAart mark for the goods enumerated, is granted. No reasonable fact finder could find in favor of Opposer on the basis of the marks and/or the purported claim of injury.

IV. THERE IS NO ADEQUATE FRAUD PLEADING

Opposer argues that it has standing based upon its allegations of fraud (Opposition Memorandum at page 17).

Although Opposer cites *In re Bose Corp.*, 91 USPQ 2d, 1938 (Fed. Cir. 2009), Opposer fails to consider *Enbridge Inc. v. Excelerate Energy Ltd. Partnership*, 92, USPQ 2d 1537 (TTAB 2009) in which the TTAB following *Bose* reiterated that fraud requires a knowingly false, material misrepresentation with the intent to deceive the USPTO, *Id* at 1540, and reiterated that the *Bose* clear and convincing standard requires direct and unequivocal evidence of intent to deceive, which requires a party alleging fraud to, at a minimum, point to clear and convincing evidence that supports drawing an inference of deceptive intent, *Id* at 1540.

Importantly, Opposer similarly ignores the TTAB decision in *Asian & Western Classics B.V. v. Selkow*, 92 USPQ 2d 1478 (TTAB 2009) which clarified the pleading standards to be applied to a fraud claim. *Asian & Western* is particularly instructive because the allegations related to purportedly false statements by the Applicant about use in commerce. The Board held that two elements must be satisfied for the pleading to be sufficient, namely:

1. factual support of the allegation; and
2. an assertion of specific intent.

As held in *Asian & Western*, the mere recitation of the fraud standard and a claim "on information and belief" is insufficient. Nonetheless, that is exactly what Opposer has done in this case.

The Notice of Opposition, in salient part reads as follows:

> "20. **On information and belief**, at the time Applicant filed the Application, Applicant did not have actual use of Applicant's Mark as a trademark on each of Applicant's purported Goods" (emphasis added).
>
> 21. Applicant's Application should not be granted because it was not filed based upon Applicant's actual use of Applicant's Mark as a trademark with each and every one of Applicant's purported Goods and **on information and belief**, Applicant failed to satisfy the requirement of Trademark Act § 1(a) and related Trademark Rules and Regulations" (emphasis added).

The only "factual" allegation that arguably has any connection to the issue is Notice of Opposition, ¶ 14 which relates to a 2013 deposit of two photographs bearing the HWAart design on a box containing what Opposer alleges to be "one of Bond's products."[1]

Bond alleges that the relationship between the parties ended in July, 2012 (Notice of Opposition ¶ 6). The specimens were deposited in January of 2013. Opposer takes the position that certain product designs were exclusive to Bond during the existence of the alleged July, 2009 Agreement and therefore the use is somehow tainted. Although the allegation that the use is improper is false, even if adopted as true for purposes of the Notice of Opposition, all that is being alleged is that the specimens relate to products sold in violation of a contract right. This is not a sufficient predicate for an assertion that there was no lawful use in commerce under the Trademark Act.

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[1] Although this motion is not the appropriate time to respond to the assertion, as will be demonstrated in the co-pending Federal Action, Opposer's claim to the designs arise out of a license that ended in 2012 and it is Applicant, not Opposer that has the right to these designs in 2013 when the evidence of use was filed.

A civil dispute between the parties about the appropriateness of the product sold does not give rise to a claim that the use for purposes of a trademark filing is not a lawful use in commerce that can be regulated by Congress.

As set forth in 37 CFR § 2.69, the issue of lawful use permits the Office to inquire about compliance with federal laws. (See also TMEP § 907). It is irrelevant to registration whether, for example, the goods violate third party patent, copyright, trademark or contract rights. Indeed, in 1988 the Board announced in the *New Generation* case that the use of a mark will be held "unlawful" only if (i) non-compliance with a law (such as the Food, Drug and Cosmetic Act) has been determined by a court or appropriate governmental agency or (2) there is a clear *per se* violation. *See Kellogg Co. v. New Generation Foods, Inc.*, 6 USPQ 2d 2045, 1988, WL 252503 (TTAB 1988).

Not only has Opposer failed to establish a legally cognizable wrong, it has failed to satisfactorily plead how that activity leads to a colorable claim of fraud.

V. THE REQUEST TO RE-PLEAD SHOULD BE DENIED

Opposer requests that it be permitted to amend the pleading should the Board find it filing deficient. The request should be denied notwithstanding the generally liberal approach of the TTAB to such requests.

Here, the underlying premise that there is likelihood of confusion is frivolous. Moreover, the same operative facts involved in this proceeding are presently in the Federal Action and the interests of justice will be served by having the dispute between the parties adjudicated in that forum, where appropriate sanctions can be applied to frivolous pleading.

VI. CONCLUSION

For the reasons stated in Applicant's moving papers and herein the Opposition should be dismissed without leave to review.

Dated: December 14, 2013
New York, NY

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by first class mail this 14th day of December, 2013, upon the following:

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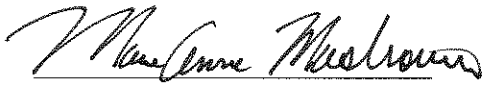

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

BOND MANUFACTURING CO., a California corporation , Plaintiff, vs. XIAMEN HWAART COMPOSITE MATERIAL CO., LTD.; a Chinese entity; JIMMY CHEN, an individual and TINA WU, an individual, Defendants.	CASE NO. **COMPLAINT**

Plaintiff Bond Manufacturing Co., a California corporation ("Bond"), by and through its attorneys of the law firm of Kolesar & Leatham, hereby alleges and complains against Defendants Xiamen Hwaart Composite Material Co., Ltd. ("HWA"), Jimmy Chen ("Chen") and Tina Wu ("Wu") (collectively HWA, Chen and Wu are referred to herein as "Defendants") as follows:

NATURE OF THE CASE

1. This is an action for trademark infringement, and unfair competition, with pendent common law claims for trade dress and trademark infringement. Plaintiff seeks damages, attorneys' fees, costs, and preliminary and permanent injunctive relief.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this case pursuant to 28 U.S. C

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§§1331, 1338(a) and 1338(b). This Court has supplemental jurisdiction over Plaintiffs' common law claims pursuant to 28 U.S.C. § 1367(a).

3. This Court has personal jurisdiction over Defendants based upon the following: (a) Defendants are currently present in the State of Nevada and (b) have committed tortious acts targeting Bond knowing that such acts would cause injury to Bond in the State of Nevada.

4. Venue is proper in the United States District Court for the District of Nevada under 28 U.S.C. §§ 1391(b) and (c). Venue lies in the unofficial Southern Division of this Court.

PARTIES

5. Bond is a California corporation.

6. Upon information and belief, HWA is a Chinese entity.

7. Upon information and belief, Chen is a resident of China.

8. Upon information and belief, Wu is a resident of China.

ALLEGATIONS COMMON TO ALL CLAIMS

The Bond Marks

9. Bond was founded in 1946 and is a well-established family owned and operated business in the lawn, garden, and hardware industry. Bond is a premier manufacturer and supplier to the industry's top-tier retailers with over 650 active customers, including, Lowes, Home Depot, Tractor Supply, Canadian Tire, Menards, Walmart, and Sears.

10. Bond has over 60 employees at its home office in Antioch, California and 40 employees in our office in China.

11. Bond is a major exhibitor at the National Hardware Show in Las Vegas, Nevada every year.

12. The National Hardware Show is the single largest and most important exhibit for Bond during the year.

13. Bond hosts a 1500 square foot space to exhibit Bond products and meets with customers and prospective clients.

14. The National Hardware Show is essential to Bond's annual and semi-annual contracts with major retailers throughout the United States and Internationally.

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15. Among Bond's portfolio of products, Bond is a premier designer, manufacturer and supplier of outdoor heating products (patio heaters, fireplaces, fire-bowls, fire pits, etc.).

16. Bond's 2013 catalogue offers approximately 280 different heating products.

17. Bond offers these heating products under our federally registered BOND and ENVIROSTONE trademarks, as well as our product collection marks, DONATO, NEW CASTLE, PALMILLA, and our Lowe's co-branded CANYON RIDGE, and SOMERSVILLE marks exclusively for sale at Lowe's (collectively BOND, ENVIROSTONE, DONATO, NEW CASTLE, PALMILLA, CANYON RIDGE AND SOMERSVILLE are referred to herein as the "Bond Marks").

18. Bond also manufactures these products to be private labeled by its clients, and shipped directly from its original equipment manufacturer ("OEM") to Bond's clients in packaging bearing the client's marks as well as our marks and product identification.

19. The National Hardware Show opened on May 7, 2013, and continues through May 9, 2013.

Defendants' Infringing Activities

20. While setting up Bond's exhibit on May 5, 2013, Bond President, Cam Jenkins, discovered that at Booth 10009 there were several pallets of large boxes displaying the BOND, ENVIROSTONE, DONATO, NEW CASTLE, and PAMILLA marks, as well as, the CANYON RIDGE and SOMERSVILLE marks under the ALLEN & ROTH brand, and at least one box displaying the SEARS brand of Bond's client in addition to Bond marks and Bond's product identifications.

21. Bond discovered that Booth 10009 was registered to HWA, a former Chinese OEM for Bond.

22. Bond terminated its relationship with HWA in July of 2012, after discovering they had attempted to circumvent Bond to sell our proprietary products directly to Bond client Lowe's in violation of Bond's rights and agreements with them.

23. Not surprisingly, the Bond branded boxes stacked at the HWA booth were clearly labeled with descriptions and pictures of products exactly matching Bond outdoor heating

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products offered under the marks listed above.

24. The boxes further identified the products with Bond "Item" and "SKU" numbers.

25. These products are unauthorized, and appear to be exact knock-offs of Bond products in every detail, because they are unlawfully made by Bond's former manufacturer to Bond's specific, proprietary designs.

26. Bond also noted that HWA was displaying large prints of photos of Bond products.

27. These images are of Bond products and were taken in the back yard of the home of Bond's Chairman of the Board, Ron Merritt.

28. These images are used by Bond in its packaging and marketing materials.

29. HWA's acquisition, retention, and use of these images in its packaging and marketing materials are wholly unauthorized.

30. In addition to using actual images of Bond products and displaying exact counterfeits of Bond products, HWA also copied the look and feel—the trade dress—of Bond's marketing materials and exhibit.

31. HWA marketing materials and booth copy the distinctive and ubiquitous red color and fire flame design used by Bond in its catalogue, marketing materials, and exhibit.

32. But for the fact that letters on their signage are different, a person passing by would likely mistake them for us, as the product is an exact copy of our product, the marketing materials are actual photos of our product, and the booth design slavishly copies our color scheme and trade dress.

33. After the shock of discovering that Bond's former manufacturer was attempting to palm off their products as Bond authorized products, Bond promptly retained counsel and served Defendants with a demand ("Demand Letter") that they immediately remove the infringing products from The National Hardware Show, cease using Bond trademarks and trade dress, and covenant not to do so in the future.

34. That Demand Letter, dated May 6, 2013, was served by a process server on Defendants at The National Hardware Show on May 7, 2013.

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35. Each and every item on display in Defendants' booth appears to be a copy of a Bond product that can be found in the 2013 Bond product catalogue, "Outdoor Heating."

36. After their relationship ended on July 1, 2012, Bond has not given permission to Defendants to use the Bond Marks or any other indicium of origin with Bond, to hold her, him or itself out as associated in any way with Bond, or to hold her, him or itself out as endorsed in any way by Bond.

FIRST CLAIM FOR RELIEF

(Trademark Infringement under the Lanham Act, 15 U.S.C. §1114)

37. Bond incorporates the allegations in the preceding paragraphs as if fully set forth herein.

38. Defendants have used and/or are using in commerce the following federally registered Bond trademarks: BOND (stylized), Reg. No. 3261213 (International Class 20 for outdoor furniture); BOND, Reg. No. 3392004 (International Class 20 for outdoor furniture); ENVIROSTONE, Reg. No. 3652019 (International Class 19 for general purpose building and landscaping material, namely, reclaimed stone combined with resin for use in fire pits, firebowls, fountains, umbrella bases and household or garden objects.)

39. Both marks are registered with the United States Patent and Trademark office and have been used in commerce for over five years. Use in commerce of a mark identical or confusingly similar to Bond's registered marks by Defendants constitutes a reproduction, copying, counterfeiting, and colorable imitation of Bond's trademarks in a manner that is likely to cause confusion or mistake or is likely to deceive consumers.

40. By using a mark identical or confusingly similar to Bond's registered marks with the knowledge that Bond owns and has used and continues to use, its trademark across the United States and around the World, Defendants intended to cause confusion, mistake or to deceive consumers.

41. Defendants use of a mark identical and/or confusingly similar to Bond's registered trademarks in connection with the sale, offering for sale or advertising of services in a manner that is likely to cause confusion or mistake, or to deceive consumers as to affiliation,

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connection, or association with Bond or as to the origin, sponsorship, or approval of services or commercial activities offered by Defendants by Bond.

42. Use of marks identical and/or confusingly similar to Bond's trademarks by Defendants have created a likelihood of confusion among consumers who may falsely believe that Defendants are associated with Bond or that Bond sponsors or approves of Defendants.

43. As a direct and proximate result of infringement by Defendants, and each of them, Bond has suffered and will continue to suffer, monetary loss and irreparable injury to its business, reputation and goodwill.

44. Defendants use of the registered Bond marks is an intentional and malicious case involving use of a counterfeit mark or designation, such that judgment should enter for three times Defendants profits or Bond's damages, whichever amount is greater, together with all costs and reasonable attorney's fees incurred by Bond.

SECOND CLAIM FOR RELIEF

(Unfair Competition under the Lanham Act, 15 U.S.C. §1125(a)

45. Bond incorporates the allegations in the preceding paragraphs as if fully set forth herein.

46. Defendants use in commerce of a mark that is the same and/or confusingly similar to the Bond Marks in connection with Defendants business constitutes a false designation of origin and/or a false or misleading description or representation of fact, which is likely to cause confusion, cause mistake, or deceive as to affiliation, connection, or association with Bond, or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by Bond.

47. Defendant's use in commerce of the Bond Marks and/or a mark confusingly similar thereto with the knowledge that Bond owns and has used, and continues to use, its trademark, constitutes intentional conduct by Defendants to make false designations of origin and false descriptions about Defendants' activities.

48. As a direct and proximate result of such unfair competition, Bond has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

49. Defendants use of the Bond Marks is willful, such that Bond should be awarded defendants profits, all damages sustained by Bond, all costs and reasonable attorney's fees incurred by Bond.

THIRD CLAIM FOR RELIEF

(Common Law Trademark Infringement)

50. Bond incorporates the allegations in the preceding paragraphs as if fully set forth herein.

51. By virtue of having used and continuing to use the Bond Marks, Bond has acquired common law trademark rights in the Bond Marks.

52. Defendants' use of a mark or marks that are the same and/or confusingly similar to the Bond Marks infringes Bond's common law trademark rights in its Bond Marks and is likely to cause confusion, mistake, or deception among consumers, who will believe that Defendants' activities and/or Internet domain name originate from, or are affiliated with, or are endorsed by Bond, when, in fact, they are not.

53. As the direct and proximate result of Defendant's infringement of the Bond's common law trademark rights under Nevada and other common law, Bond has suffered, and will continue to suffer, monetary damages and irreparable injury to its business, reputation, and goodwill.

PRAYER FOR RELIEF

WHEREFORE, Bond respectfully prays that the Court grant the following relief:

A. A preliminary and permanent injunction prohibiting Defendants, Defendants' agents, servants, employees and/or all persons acting in concert or participation with Defendants, from using the Bond Marks or confusingly similar variations thereof, alone or in combination with any other letters, words, letter strings, phrases or designs, in commerce or in connection with any business or for any purpose whatsoever;

B. A preliminary and permanent injunction requiring;

C. An award of compensatory, consequential, statutory, exemplary, and/or punitive damages to Bond in an amount to be determined at trial;

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D. An award of interest, costs and attorneys' fees incurred by Bond in prosecuting this action; and

E. All other relief to which Bond is entitled.

DATED this 8th day of May, 2013.

KOLESAR & LEATHAM

By _____

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