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

Proceeding	91214649
Party	Defendant Benny Hodge
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Attachments	Benny Hunna MOTION OF RECONSIDERATION.pdf(543095 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: BENNY HUNNA

Serial No: 85/920,599

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NOODLE TIME, INC. vs. BENNY HODGE

Opposition No. 91214649

APPLICANT'S MOTION OF RECONSIDERATION OF DECISION ON MOTION

Pursuant to 37 CFR Section 2.120(c) and TBMP Section 518, Applicant, BENNY HODGE respectfully submits the following Motion of Reconsideration of Decision on Motion with attached Exhibits, all of which are incorporated herein. For the reason set forth below, Benny Hodge respectfully request the Board to reconsider the decision of granting the Motion to Compel the responses to the Opposer's First Set of Interrogatories and First Request for Production of Documents, respectfully.

INTERROGATORIES, ANSWERS, AND REASON TO RECONSIDER

1. Identify with particularity each specific product of service (not just the general description as set forth by Applicant in its federal application) which Applicant's Subject Mark is used, intended to be used, associated with or alluded to be associated with or alluded to be associated with.

Answer: The Applicant's Subject Mark is intended to be used for Entertainment services in the nature of live musical performances, International Class Code: 041, US Class Code: 100, 101, and 107, Primary Class: Education; providing of training; entertainment; sporting and cultural activities.

Reason to Reconsider: Subject Mark was filed as intent to use and is intended to be used for the goods and services in application. Subject Mark is not being used in "actual use" because "actual use" would mean services were provided or goods were sold. Though Subject Mark has an intent to be used it has not been actually used. Therefore Opposer's Interrogatory was answered accurately.

2. State the date Applicant claims the date of first use of the Subject Mark for each product or service identified in Interrogatory No. 1.

Answer: Applicant has not made first use of Subject Mark in commerce.

Reason to Reconsider: The date of first use anywhere is the date on which the goods were first sold or transported or the services were first provided under the mark even if that use was only local. The date of first use in commerce is the date on which the goods were first sold or transported or the service were first provided under the mark between more than one state. As Applicant state in answer Subject Mark has not made first use. Therefore Opposer's Interrogatory was answered accurately.

3. Describe in full and complete detail what efforts, if any, Applicant, or anyone connected to Applicant, has made use of the Subject Mark.

Answer: Applicant has made no efforts to use the Subject Mark in commerce.

Reason to Reconsider: "Actual use" has not been made as explain in Interrogatory 1 "Reason to Reconsider" the Answer for Interrogatory 1.

5. State Applicant's yearly dollar volume of sales for every year since first use of each product of service identified in Interrogatory No. 1.

Answer: Applicant has not made first use of Subject Mark in commerce. Applicant yearly volume of sales is zero dollars.

Reason to Reconsider: There can be no and there is no yearly volume of sales because there is no "actual use" or first use as stated in answer.

6. State Applicant's yearly expenditures for every year within the last five years with respect to the advertising and marketing of products and services identified in Interrogatory No. 1.

Answer: Applicant's yearly expenditures with respect to the advertising and marketing of products and services identified in interrogatory No. 1 is zero dollars.

Reason to Reconsider: "With respect to the advertising and marketing of products and services identified in Interrogatory No. 1", There is no yearly expenditure . Applicant "advertises" by simply sharing videos on social media websites that Benny Hodge/Applicant shoots with his personal camera and edits the footage on his personal computer. No money is spent therefore there are no expenditures.

7. Identify all types of media (including, but not limited to, newspapers, magazines, trade journals, direct mail advertising, radio, television, and the Internet) in which Applicant has advertised and intends to advertise each product and service offered or to be offered in connection with the Subject Mark.

Answer: Applicant as of now advertised and intends to advertise each product and services offered or to be offered in connection with the Subject Mark via internet, and is subject to change and or add more media after the opposition is over. Opposer will be notified if more media is used during the discovery period.

Reason to Reconsider: Applicant "advertises" as said in "Reason to Reconsider" Answer to Interrogatory No. 6 by simply sharing videos shot and edited by Benny Hodge/Applicant.

8. Identify each person who has, claims to have, or whom you claim or believe may have knowledge, documents, or information pertaining to any fact alleged in the pleadings filed in this matter or any fact

underlying the subject matter of this dispute and state the specific nature and substance of the knowledge, documents, or information you believe that each person identified in response to this request has or may have and identify all documents responsive to this interrogatory to this request.

Answer: All persons where identified in Application's Rule 21(a)(1) Initial Disclosures and was served on Opposer dated May 7, 2014.

Reason to Reconsider: All persons were identified as stated. I control all aspect of the Subject Mark in every way. Benny Hodge/Applicant has all knowledge of Subject Mark and Opposer is believed to have all knowledge of Opposer's Mark. All other persons with knowledge which are not specific individuals are named with addresses, phone numbers and subject of information which is readily available to the Opposer.

11. Identify each geographic area and location in the United States in which Applicant, or others under the authority of applicant has advertised or promoted the products and services connected with the Subject Mark. With respect to each advertisement or promotion identify:

(a) The date of the advertisement;

(b) If a printed advertisement, the name of the publication in which the advertisement appeared;

(c) If a billboard, the street address at which the billboard appeared;

(d) If a broadcast television or radio advertisement, the name of the station, whether radio or television, upon which the advertisement was broadcast, and

(e) Identify all documents relating to such advertising or promotion.

Answer: Applicant has advertised and promoted the product and service connected with the Subject Mark via the internet and social media daily.

Reason to Reconsider: As stated in "Reason to Reconsider" Answer to Interrogatory No.6 Applicant "advertises" by sharing videos to social media websites. Websites are on Answer to No. 4 on Document Request .

DOCUMENT REQUESTS ANSWERS AND REASON TO RECONSIDER

1. All documents referring to or evidencing the date you first used the Subject Mark.

ANSWER: The Subject Mark has not been used in commerce.

Reason to Reconsider: There is no "actual use" or first use anywhere or in commerce therefore there are no documents.

2. All document referring to or evidencing the date of your first sale of any items containing the Subject Mark.

ANSWER: The Subject Mark has no sales.

Reason to Reconsider: There is no "actual use" and no use in commerce therefore there are no sales.

3. All documents sufficient to identify all products and/or services using the Subject Mark.

ANSWERS: The Subject Mark is intended to be used for Entertainment services in the nature of live musical performance.

Reason to Reconsider: Opposer has access to these documents.

4. All documents sufficient to identify all trade channels through which you sell, advertise, promote or offer to sell, advertise or promote any products and/or services using the Subject Mark.

ANSWERS: The Subject Mark has no sales. The Subject Mark is promoted at URL

<https://www.youtube.com/channel/UCrTqkOarqZoEXYzwomfJ3dA>

<https://www.facebook.com/benny.hunna1>

<https://www.twitter.com/H2HUNNA>

https://www.linkedin.com/profile/view?id=347046776&trk=nav_responsive_tab_profile

Reason to Reconsider: Applicant “advertises” on these social media websites by sharing videos on the sites as stated.

9. All documents evidencing or relating to any communication between you and ABC News.

ANSWER: All documents were given to Opposer in the Applicant’s Initial Disclosures.

Reason to Reconsider: Documents relating to ABC News are available in URL in the Initial Disclosure served to Opposer by Applicant.

10. All documents evidencing or relating to any communication between you and Interscope Records.

ANSWER: All documents were given to Opposer in the Applicant’s Initial Disclosures.

Reason to Reconsider: Documents relating to Interscope Records are available in URL in the Initial Disclosure served to Opposer by Applicant.

11. All documents evidencing or relating to any communication between you and “Chief Keef”.

ANSWER: All documents were given to Opposer in the Applicant’s Initial Disclosures.

Reason to Reconsider: Documents relating to “Chief Keef” are available in URL in the Initial Disclosure served to Opposer by Applicant.

12. All documents evidencing or relating to the copyright registration of “3Hunna by Chief Keef of Interscope Records.”

ANSWER: All documents were given to Opposer in the Applicant’s Initial Disclosures.

Reason to Reconsider: Documents are available in a URL in the Initial Disclosure served on Opposer by Applicant.

14. All documents sufficient to identify all persons with knowledge of information and/or document supporting or contradicting the factual allegations of the Opposition.

ANSWER: Applicant is unaware of any factual allegations made by the Opposer.

Reason to Reconsider: The only allegations I am aware of is the likelihood of confusion and dilution claim and Applicant does not consider these allegations true or factual.

15. All documents referring or relating to Opposer and/or Opposer’s Marks.

ANSWER: To the best of Applicant’s knowledge Opposer is in possession of all document’s referring or relating to Opposer’s Mark and Applicant only possesses documents Opposer has made available in the foregoing Opposition.

Reason to Reconsider: Applicant only has documents Opposer has given to Applicant.

CONCLUSION

In view of foregoing, Benny Hodge/Applicant respectfully requests that the Board grant its Motion to Reconsideration of Decision.

Date: November 19, 2014

11/19/2014

X BENNY HODGE

Benny Hodge
Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Applicant's Motion of Reconsideration of Decision has been served on Opposer in the following manner:

By E-Mail

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