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

Proceeding	91215087
Party	Plaintiff U.S. Marine Corps
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	04/30/2015
Attachments	Opposers Motion for Leave to Amend.pdf(51518 bytes) Opposers Brief in Support of Motion for Leave to Amend.pdf(459609 bytes) First Amended Notice of Opposition.pdf(418442 bytes) Exhibit A.pdf(422944 bytes) Exhibit B.pdf(48213 bytes) Exhibit C.pdf(48334 bytes) Exhibit D.pdf(181101 bytes) Exhibit E.pdf(112684 bytes) Exhibit F.pdf(565191 bytes) Exhibit G.pdf(526523 bytes) Exhibit H.pdf(219704 bytes)

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

In the matter of trademark application Serial No. 85936128

In the matter of Trademark Opposition No. 91215087

For the mark: MARINE ONE DOWN

**UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
ROOM 4B548
WASHINGTON, DC 20350-3000**

v.

**PETER J. HEALY (“APPLICANT”)
P.O. BOX 1523
MORRO BAY, CA 93443**

**OPPOSER’S MOTION FOR LEAVE TO AMEND THE PLEADINGS;
LEAVE TO FILE A FIRST AMENDED NOTICE OF OPPOSITION**

PLEASE TAKE NOTICE that pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the Opposer, the U.S. Marine Corps, hereby moves the Trademark Trial and Appeal Board for orders granting Opposer leave to file a First Amended Notice of Opposition, in the form attached hereto as Exhibit A, to plead a new and separate ground for opposition, namely, that the Applicant lacks a bona fide intention to use the mark in commerce on the identified goods, and therefore the application should be considered void *ab initio*, and therefore refused registration. The Opposer has also amended Claim No. 2 of its original Opposition to correct clerical errors (Claim 2 referred to “various retail-based financial services” when it should have referred to “goods”).

This Motion will be based upon this Notice, the Proposed First Amended Notice of Opposition attached hereto as Exhibit A, the accompanying Opposition discovery responses of the Applicant, Peter Healy, evidence supporting this proposed new ground for Opposition, and the attached brief in support of this motion, and such other arguments and evidence as may be requested by and/or presented to the Board on this motion.

UNITED STATES MARINE CORPS

Opposer

By: 
Philip Greene
Attorney for Opposer

Date: 4-30-2015

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Certificate of Service

I hereby certify that a true and complete copy of the foregoing has been served on Peter Healy by mailing said copy on the date shown below, via postage pre-paid, first-class mail to the following address:

Peter J. Healy (Applicant)
P.O. Box 1523
Morro Bay, CA 93443-1523

Respectfully submitted,

By: 
Philip Greene
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Date: 4-30-2015

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

In the matter of trademark application Serial No. 85936128

In the matter of Trademark Opposition No. 91215087

For the mark: MARINE ONE DOWN

Published in the Official Gazette on 29 October 2013

UNITED STATES MARINE CORPS (OPPOSER)
3000 MARINE CORPS PENTAGON
ROOM 4B548
WASHINGTON, DC 20350-3000

v.

PETER J. HEALY (“APPLICANT”)
P.O. BOX 1523
MORRO BAY, CA 93443

**OPPOSER’S BRIEF IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE A
FIRST AMENDED NOTICE OF OPPOSITION**

The Opposer respectfully moves the Board for orders granting Opposer leave to amend the pleadings, to file a First Amended Notice of Opposition, in the form attached hereto as Exhibit A, to correct clerical errors in the original Opposition, and to add a claim that the Applicant lacks a bona fide intention to use the mark in commerce. In support of this Motion the Opposer offers this Brief.

PROCEDURAL BACKGROUND

Opposer’s original Notice of Opposition was based on a number of claims, mainly focusing on the Opposer’s trademark rights in the mark MARINE ONE®, and its trademark rights in marks based on the trademark MARINE®. Opposer refers to the original Notice of Opposition for more detail.

In December of 2014, as part of the Discovery portion of these proceedings, Opposer tendered Interrogatories and Request for Production of Documents (offered herein as Exhibits B and C, respectfully). On January 5, 2015, the Applicant tendered responses to both (offered herein as Exhibits D and E, respectively).

The Plaintiff respectfully asserts that the Applicant does not have a bona fide intention to use the mark in commerce, as evidenced by not only its activities (or lack thereof) since the time of its filing of the Opposition, but based on its responses to the Plaintiff's Interrogatories and Request for Production of Documents. As set forth in detail immediately below, the Opposer respectfully asserts that Applicant's responses to both the Opposer's Interrogatories and Request for Production of Documents, relevant to and reflective of the Applicant's state of mind and the Applicant's activities concerning the applied-for mark, MARINE ONE DOWN, establish that there is a new ground for opposition, namely, that the Applicant lacks a bona fide intention to use the mark in commerce. This assertion is supported by evidence gleaned from online research into any use, or non-use, by Applicant of the applied-for mark.

SUMMARY OF FACTS RELEVANT TO THE MOTION

The facts recited below are taken from the Applicant's discovery responses. Further evidence and inferences by the Opposer are gleaned from evidence gathered online. The Opposer respectfully asserts that they are undisputed and conclusively establish that Opposer is entitled to amend its Notice of Opposition to add this additional ground, that the Applicant lacks a bona fide intent to use the mark in commerce.

The Opposer respectfully asserts that the Applicant lacks a bona fide intention to use the mark in commerce on the identified goods, and therefore the application should be considered void *ab initio*, and therefore refused. In support of this assertion, Opposer cites recent U.S. Trademark Trial and Appeal Board ("TTAB") decisions that have held that an oppose may defeat a trademark application for lack of bona fide intent by showing that the applicant did not actually intend to use the mark, and/or that circumstances at the time of filing did not demonstrate that intent.

Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), states that:

A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director.

In the instant case, the Applicant has filed to register MARINE ONE DOWN in Class 9, for use on "Computer game software for personal computers and home video game consoles; Computer game software for use with personal computers, home video game consoles used with televisions and arcade-based video game consoles; Downloadable multimedia file containing artwork, text, audio, video, games, and Internet Web links relating to fictional adventure entertainment; Interactive video game programs; Video game cartridges; Video game cartridges and discs; Video game discs; Video game software."

The Opposer, based on the Applicant's activities (or lack thereof), statements, and other evidence, respectfully asserts that the Applicant does not have a bona fide intention to use the mark in commerce. What follows are facts taken from the Applicant's responses to the Opposer's Interrogatories and Request for Production of Documents

1. Opposer's Interrogatory No. 1 asked the Applicant, "Will you use any USMC names, emblems, initials, logos, slogans, terms, insignia, or other identifiers (hereinafter "USMC Marks"), or marks associated with the U.S. Government (such as the Presidential Seal, or the terms "PRESIDENT" or "UNITED STATES OF AMERICA" (hereinafter "U.S Marks") in the packaging, marketing, advertising, slogans, taglines, branding or trade dress of the goods? This would include, but is not limited to, packaging, print and online advertising, and social media (Facebook, Twitter, Pinterest, Instagram and Tumblr, et al.)"

In response, Applicant replied: "No definitive decisions have been made yet about content or design of packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the goods. ... Given that the immediate appeal (actually, he means "Opposition") has thus far succeeded in suppressing the substantial creative investment necessary to authorship and design of packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the subject product, at this time it would be highly speculative, and premature even to guess, whether or not the packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the subject product, may or may not include reference to any branch, unit, department, elected official, appointed official, or personnel category, of the United States government."

2. Opposer's Interrogatory No. 2 asked the Applicant, "Will you use any USMC or U.S. Marks within the actual video game? For example, will the trademarked terms MARINE ONE®, USMC®, MARINE®, MARINES®, MARINE CORPS®, or other USMC or U.S. marks appear on the Marine One® helicopter? Will U.S. Marines in uniform appear in the game, including rank and/or other insignia (including the Eagle, Globe & Anchor emblem)?"

In response, Applicant replied: "No definitive decisions have been made yet about content or design with 'the actual video game.' ... The level of detail and particularity with which vehicle, aircraft, equipment, and personnel of the United States government are yet to be made editorial and artistic decisions incident to engineering, authorship and design that has yet to occur."

3. Opposer's Interrogatory No. 6 asked the Applicant, "When do you envision this product coming to market?"

In response, Applicant replied: "The multitude of as yet unquantifiable variables prevent estimating when the product might be 'coming to market.'"

4. Opposer's Interrogatory No. 7 asked the Applicant, "In what market(s) and distribution channel(s) do you envision this product being introduced, e.g., online, GameStop, Walmart, etc.?"

In response, Applicant replied: "Online is most likely. As for other potential distribution channels, the channels and licensing models utilized by game producers to reach and transact with retail consumers are evolving so rapidly that any speculation as to possible brick-and-mortar retail point of sale, for example, would be just that, highly speculative."

5. Opposer's Interrogatory No. 9 asked the Applicant: "Will the product be rated for any particular age group, or will it be for all audiences?"

In response, Applicant replied: "Unknown, but least likely to be a game appreciated or well played by small children."

6. Opposer's Interrogatory No. 9 asked the Applicant: "Will your packaging, web site, or other public-facing presences (such as social media) carry a notice such as, 'MARINE ONE® is a registered trademark of the U.S. Marine Corps (USMC). Neither the USMC nor any other component of the Department of Defense has approved, endorsed, or authorized this product.'?"

In response, Applicant replied: "Unknown."

7. Opposer's Request for Production of Documents No. 1 requested that the Applicant produce: "All documents and things relating to Mr. Healy's proposed use of any USMC trademark, including but not limited to the trademarks USMC, MARINE, MARINES, MARINE CORPS, U.S. MARINES, U.S. MARINE CORPS, SEMPER FIDELIS, SEMPER FI, the Eagle, Globe and Anchor emblem, MARINE ONE, the U.S. Marine Corps uniform(s) and rank insignia, and any other USMC trademark."

In response, Applicant replied: "No documents are responsive. Trademark acquisition was to be predicate to any video game business development or creative development activities."

8. Opposer's Request for Production of Documents No. 2 requested that the Applicant produce: "All documents and things relating to the creation, use, licensing, offer for sale, or sale of any matter that is the subject of this Opposition, including but not limited to the proposed video game MARINE ONE DOWN."

In response, Applicant replied: "No documents are responsive. Trademark acquisition was to be predicate to any video game business development or creative development activities."

RESEARCH INTO APPLICANT'S NON-USE OF THE APPLIED-FOR MARK

1. The Opposer has independently determined that the Applicant has registered the following domain names: MARINEONEDOWN.COM, MARINEONEDOWN.NET, MARINEONEDOWN.ORG, MARINEONEDOWN.INFO, MARINE1DOWN.COM, MARINE1DOWN.NET, MARINE1DOWN.ORG, and MARINE1DOWN.INFO. Please see the WHOIS search information (Exhibit F) confirming that the Applicant, Peter

Healy, is the registrant of these domain names. Please also see the screen shots taken from representative visits to most of these domain names (Exhibit G). As of April 22, 2015, the Opposer asserts that these screen shots of these web sites for these domain names indicate that zero substantive activity is taking place with respect to the Applicant's use of the mark MARINE ONE DOWN in commerce, and that zero substantive activity exists that might evidence any bona fide intention on the part of the Applicant to use the mark MARINE ONE DOWN in commerce. Each domain name is merely "parked," with "pay per click" advertising being the only thing being offered to the visitor, and no actual use of the term MARINE ONE DOWN, or any evidence of a bona fide intention to use the mark in commerce.

2. In APPLICANT'S RESPONSE TO INTERROGATORY NO. 6, Applicant admitted to having registered the Twitter usernames @MARINEONEDOWN and @MARINE1DOWN. On April 22, 2015, Opposer visited Twitter.com to see if any activity is taking or has taken place relevant to either Twitter username. Please see the screenshots taken from Twitter.com (Exhibit H), showing that as of April 22, 2015, neither @MARINEONEDOWN nor @MARINE1DOWN had any "tweets" or other activity whatsoever. As with the Applicant's domain names, there is zero substantive activity taking place on Twitter with respect to the Applicant's use of the mark MARINE ONE DOWN in commerce, or anything that might be construed as evidence of any bona fide intention on the part of the Applicant to use the mark MARINE ONE DOWN in commerce.

**Relevant Trademark Trial and Appeal Board Jurisprudence Supportive of
Opposer's Motion**

As the TTAB has consistently held in prior cases, the "determination whether an applicant has a bona fide intention to use the mark in commerce is an objective determination, based on all the circumstances." *Boston Red Sox Baseball Club L.P. v. Sherman*, 88 USPQ2d 1581, 1587 (TTAB 2008); *see also Aktieselskabet AF 21 November 2001 v. Fame Jeans Inc.*, 525 F.3d 8, 381 U.S. App. D.C. 76, 86 USPQ2d 1527, 1537-38 (D.C. Cir. 2008) ("Here, Congress made clear that a 'bona fide intent to use' also involves an objective standard by specifying there must be 'circumstances showing ... good faith.' Thus, an opposer may defeat a trademark application for lack of bona fide intent by proving the applicant did not actually intend to use the mark in commerce or by proving the circumstances at the time of filing did not demonstrate that intent."). *Swatch AG v. M.Z. Berger*, 108 U.S.P.Q.2d 1463 (T.T.A.B. 2013), at 25-26.

The *Swatch* case concerned an intent-to-use application filed by the M.Z. Berger Co. to register the mark IWATCH in Class 9, for use on watches, clocks, accessories, and related items. The application made its way through examination, and was eventually published for opposition. Swatch AG filed to oppose.

Relying on the *Swatch* line of reasoning, Opposer asserts that the Applicant has similarly “ceased any work on developing” any of the goods cited in its application. Opposer cites the following excerpts from the Applicant’s Discovery responses, referenced above, to as evidence of this assertion:

1. As noted above, when the Opposer requested that the Applicant provide all documents and things relating to its proposed use of any USMC trademark, the Applicant replied: “No documents are responsive. Trademark acquisition was to be predicate to any video game business development or creative development activities.” Opposer asserts that this is hardly a strong showing of a bona fide intent to use a trademark in commerce, and asserts that this is strong evidence that the Applicant has “ceased any work on developing” goods to be offered in commerce in association with the mark.
2. As noted above, when the Opposer requested that the Applicant provide all documents and things relating to “the creation, use, licensing, offer for sale, or sale of any matter that is the subject of this Opposition, including but not limited to the proposed video game MARINE ONE DOWN,” the Applicant replied: “No documents are responsive. Trademark acquisition was to be predicate to any video game business development or creative development activities.” Opposer asserts that this is hardly a strong showing of a bona fide intent to use a trademark in commerce, and asserts that this is strong evidence that the Applicant has “ceased any work on developing” goods to be offered in commerce in association with the mark.
3. As noted above, when the Opposer asked the Applicant about its plans for “packaging, marketing, advertising, slogans, taglines, branding or trade dress of the goods,” including “packaging, print and online advertising, and social media (Facebook, Twitter, Pinterest, Instagram and Tumblr, et al.,” the Applicant merely said that “[n]o definitive decisions have been made yet about content or design of packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the goods,” and acknowledged and admitted that “the immediate appeal,” i.e. the Opposer’s Notice of Opposition, had “thus far succeeded in suppressing the substantial creative investment necessary to authorship and design of packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the subject product,” and further admitted that “at this time it would be highly speculative, and premature even to guess, whether or not the packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the subject product, may or may not include reference to any branch, unit, department, elected official, appointed official, or personnel category, of the United States government.” Opposer asserts that this is hardly a strong showing of a bona fide intent to use a trademark in commerce, and asserts that this is strong evidence that the Applicant has “ceased any work on developing” goods to be offered in commerce in association with the mark.

4. As noted above, when the Opposer asked the Applicant, “When do you envision this product coming to market?,” the Applicant replied: “The multitude of as yet unquantifiable variables prevent estimating when the product might be ‘coming to market.’” Opposer asserts that this is hardly a strong showing of a bona fide intent to use a trademark in commerce, and asserts that this is strong evidence that the Applicant has “ceased any work on developing” goods to be offered in commerce in association with the mark.
5. As noted above, when the Opposer asked the Applicant “what market(s) and distribution channel(s) do you envision this product being introduced, e.g., online, GameStop, Walmart, etc.?,” the Applicant’s response was very vague and non-specific, as if this topic had not at all been thought through. In the Applicant’s words, such things would at this point be “highly speculative.” Opposer asserts that this is hardly a strong showing of a bona fide intent to use a trademark in commerce, and asserts that this is strong evidence that the Applicant has “ceased any work on developing” goods to be offered in commerce in association with the mark.
6. As noted above, when the Opposer asked the Applicant about the expected age group or audience of the goods, the Applicant merely replied “Unknown,” offering only that the proposed game would not be likely to “be a game appreciated or well played by small children.” Opposer asserts that this is hardly a strong showing of a bona fide intent to use a trademark in commerce, and asserts that this is strong evidence that the Applicant has “ceased any work on developing” goods to be offered in commerce in association with the mark.
7. As noted above, when the Opposer asked the Applicant if its “packaging, web site, or other public-facing presences” might carry disclaimers, the Applicant merely said “Unknown.” Opposer asserts that this is hardly a strong showing of a bona fide intent to use a trademark in commerce, and asserts that this is strong evidence that the Applicant has “ceased any work on developing” goods to be offered in commerce in association with the mark.

The *Swatch* case, cited above, further held that “[o]ne way an opposer can establish its prima facie case of no bona fide intent is by proving that applicant has no documentary evidence to support its allegation in the application of its claimed bona fide intent to use the mark in commerce as of the application filing date. *Saul Zaentz Co. v. Bumb*, 95 USPQ2d 1723, 1727 (TTAB 2010). The absence of any documentary evidence regarding an applicant's bona fide intention to use a mark in commerce is sufficient to prove that an applicant lacks the intention required by Section 1(b) of the Trademark Act, unless other facts are presented which adequately explain or outweigh applicant's failure to provide such documentary evidence. *See Honda Motor Co. v. Winkelmann*, 90 USPQ2d 1660, 1662 (TTAB 2009); *L.C. Licensing Inc. v. Berman*, 86 USPQ2d 1883, 1891 (TTAB 2008). If opposer satisfies its initial burden of showing the absence

of documentary evidence regarding applicant's bona fide intention to use the mark, the burden of production shifts to applicant to come forward with evidence adequately explaining or outweighing the failure to provide such documentary evidence. *See Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1507 n. 11 (TTAB 1993).” *See Swatch*, supra, at 26-26.

It is important to note that in the *Swatch* case, “Applicant acknowledged through its testimony that *it ceased any work on developing a watch in association with the IWATCH mark when the opposition proceeding began* on October 22, 2008, fifteen months after the application was filed. It appears that no documents relating to the IWATCH mark other than those just listed ever existed. In its brief, applicant stated that its witnesses “testified that no records or other types of documents were created. At most, that leaves just emails which may have been exchanged.” *See Swatch*, supra, at 29. (emphasis added).

Further, in the *Swatch* case, the TTAB considered evidence relating to the “creation of mockups and renderings” as possibly being evidence of a bona fide intention to use the mark in commerce. However, such “mockups and renderings” had been created prior to the filing of the Opposition. The TTAB determined, “Although creation of mockups and renderings is a normal part of applicant's product development process, there is no physical or documentary evidence (on the record) relating to any IWATCH mockups or renderings other than the ‘samples of promotional materials’ submitted to the (Trademark) Office, which apparently were used only in support of the (trademark) application and not for any promotional or other purpose.” *See Swatch*, supra, at 33. In other words, the Applications cessation of activities toward actually *using* the mark in commerce were deemed to be evidence showing a lack of a bona fide intention to use the mark in commerce. Any evidence that was likely created only in furtherance of the trademark application was not considered as substantive or dispositive toward showing the requisite bona fide intention.

In the *Swatch* decision, the Board reasoned: “We note at the outset that our inquiry is not into applicant’s subjective state of mind alone. Rather, evidence of circumstances bearing on intent is ‘objective’ in the sense that it is evidence in the form of real life facts and by the actions of the applicant, not by the applicant’s testimony as to its subjective state of mind. That is, Congress did not intend the issue to be resolved simply by an officer of applicant later testifying, ‘Yes, indeed, at the time we file that application, I did truly intend to use the mark at some time in the future.’” *See Swatch*, supra, at 24-25.

In a similar case, *Lincoln National Corporation v. Kent G. Anderson*, 110 U.S.P.Q. 2d 1271, (T.T.A.B. 2014) (made precedential March 26, 2014), the TTAB held that an intent-to-use applicant had to do more than “merely attempting to reserve a general right in the mark for potential use on some undetermined goods or services at some indefinite time in the future.” *Lincoln*, supra, at 1177, citing *Saul Zaentz v. Bumb*, 95 USPQ2d 1723, 1728 (TTAB 2010). Indeed, in *Lincoln*, the TTAB determined that the “testimony from applicant regarding his efforts

in activities with respect to his ... mark is too nonspecific, both as to the actual nature and results of the efforts and activities as to their timing relative to the application filing date, to provide any significant support for a finding that applicant possessed the requisite bona fide intent to use the mark in connection with the identified ... services.” *Lincoln*, supra, at 1280.

The TTAB in the *Lincoln* case also focused on the Applicant’s web site, which apparently set “forth his general intentions and hopes for his ... project.” After reviewing the applicant’s web site, the TTAB determined that “the content ... provides little or no support for a finding of bona fide intent. Indeed, ... it actually tends to support the opposite conclusion, i.e., that at the time applicant filed his application, he was attempting merely to reserve a general right in the mark for future use.” *Lincoln*, supra, at 1180.

The Opposer raises one additional TTAB decision for consideration herein, that being the 2010 case, *SmithKline Beecham Corp. v. Omnisource DDS, LLC*, 97 U.S.P.Q. 2d 1300. In the *SmithKline* case, the applicant’s bona fide intention to use the mark in commerce was also determined by the TTAB to be lacking. This case dealt with the applicant’s attempt to register the mark AQUAJETT in commerce, for use on “dental instruments, namely oral irrigators.” *SmithKline*, supra, at 1301. During discovery, the Opposer extensively inquired as to the activities of the applicant toward actually using the mark in commerce. In ruling in favor of the opposer, the TTAB determined that:

“Applicant has neither used nor licensed the AQUAJETT mark either on the goods identified in the subject application or any other goods or services; ...

Applicant’s principal prepared a single prototype for the above-noted patent applications but its whereabouts currently are unknown; ...

Applicant has not sold nor attempted to sell any oral irrigators under the AQUAJETT mark, nor does applicant have any inventory of such goods; ...

Applicant has neither identified nor considered the possible users of its goods under the AQUAJETT mark nor considered when such products would be sold; ...

Applicant has neither given thought to where its goods under the AQUAJETT mark would be manufactured, nor identified or contracted with third parties who might manufacture such goods, nor identify materials needed therefore, nor prepared any schematics therefore, nor prepared instructional manuals therefore; ...

Applicant possesses no business or marketing plans, nor has applicant identified or contracted with third parties to create a business plan; ...

In response to opposer’s discovery requests, applicant indicated it possesses no documents relevant to what selection, adoption or use of the AQUAJETT mark; ...

Applicant has neither planned nor created labels, tags, or packaging for its products under the AQUAJETT mark, nor identified or contracted with third parties to do so; ...

Applicant has neither plan nor created marketing, advertising or promotional materials for the goods under the AQUAJETT mark, nor identified or hired third parties to do so; ...” *SmithKline*, at 1302.

After reviewing this and other testimony and evidence, the TTAB issued its decision:

“In this case, we find that opposer has met its burden of demonstrating applicant’s lack of a bona fide intent to use the mark by showing that the applicant has no documentary evidence regarding such intent. ... In sum, applicant has no documentation to demonstrate that it had the requisite bona fide intent to use the mark AQUAJETT in commerce when it filed the present application. As evidenced by its responses to discovery requests, applicant has no plans related to manufacture, licensing, marketing or use of the mark. So as to be clear, the record is devoid of any evidence such as manufacturing efforts, licensing efforts, test marketing, correspondence with prospective licensees, preparation of marketing plans or business plans, creation of labels, marketing or promotional materials, and the like.” *SmithKline*, at 1304.

Applicability and Relevance of Recent TTAB Decisions

In the instant case, the Applicant has filed to register MARINE ONE DOWN in Class 9, for use on “Computer game software for personal computers and home video game consoles; Computer game software for use with personal computers, home video game consoles used with televisions and arcade-based video game consoles; Downloadable multimedia file containing artwork, text, audio, video, games, and Internet Web links relating to fictional adventure entertainment; Interactive video game programs; Video game cartridges; Video game cartridges and discs; Video game discs; Video game software.”

The Opposer, based on the Applicant’s activities (or lack thereof), statements, and other evidence, respectfully asserts that the Applicant does not have a bona fide intention to use the mark in commerce. In reviewing the facts before us (the evidence of the Applicant’s activities, statements, and his sworn responses during discovery), in conjunction with the facts presented in the *Swatch*, *Lincoln* and *SmithKline* cases, we see some remarkable parallels. As with the applicant in the *Swatch* case, the Applicant has apparently discontinued all work ever since he received notice of the USMC’s opposition to his application. In his own words, “[t]rademark acquisition was to be predicate to any video game business development or creative development activities.” In accordance to the precedent set by the *Swatch* decision, the Opposer asserts that this is clear proof that the bona fide intention to use the mark in commerce is lacking.

Similar to the *Lincoln* case, the Applicant’s online presence, which is limited to mere registration of at least eight domain names and two Twitter usernames, but nothing beyond that,

the Opposer's lack of activity strongly suggests anything but a bona fide intention to use the mark MARINE ONE DOWN in commerce. At least in the *Lincoln* case, the applicant had an active web site, however it lacked any significant evidence of bona fide intent. Here, the Applicant has made zero substantive use of the domain names he has registered – there is no actual, substantive web site – and the same is true with his Twitter feeds.

And finally, in comparison to the *SmithKline* case, based on the Applicant's discovery responses, Opposer asserts that the Applicant has not developed a clear business plan (see his response to Interrogatory No. 7), nor has the Applicant "planned nor created marketing, advertising or promotional materials for the goods..." (see the Applicant's response to Interrogatory No. 1. Further, judging by his response to Interrogatory Nos. 6-8, the Applicant "has neither identified nor considered the possible users of its goods under the ... mark nor considered when such products would be sold." Indeed, the Applicant had no idea as to the "particular age group" of his user community, nor would he speculate as to when the product "might be coming to market."

Further, in his responses to Interrogatory Nos. 1 & 2, the Applicant firmly stated that "[n]o definitive decisions have been made yet about content or design of packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the goods. ... Given that the immediate appeal (actually, he means "Opposition") has thus far succeeded in suppressing the substantial creative investment necessary to authorship and design of packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the subject product, at this time it would be highly speculative, and premature even to guess, whether or not the packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the subject product, may or may not include reference to any branch, unit, department, elected official, appointed official, or personnel category, of the United States government," and that "[n]o definitive decisions have been made yet about content or design with 'the actual video game.' ... The level of detail and particularity with which vehicle, aircraft, equipment, and personnel of the United States government are yet to be made editorial and artistic decisions incident to engineering, authorship and design that has yet to occur."

Summation

The Opposer respectfully asserts that the facts and inferences referenced above, and in the Exhibits, offer compelling reason for the Board to grant the Opposer leave to amend its Opposition to add the additional ground, referenced above.

The Board's Granting of Leave to Amend the Opposition is Proper, and Will Not Cause Prejudice

The Plaintiff acknowledges the delay in its filing, however it asserts that its decision to amend the pleadings is based on information it received during Discovery. The Plaintiff asserts

that under Fed. R. Civ. P. 15(a), leave to amend pleadings shall be freely given when justice so requires. Consistent therewith, the Board liberally grants leave to amend pleadings at any stage of the proceeding when justice requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties. See, e.g., *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993); *United States Olympic Committee v. O-M Bread Inc.*, 26 USPQ2d 1221 (TTAB 1993).

The Plaintiff respectfully asserts that this motion for leave to amend is being filed as soon as grounds for such amendment became apparent, namely, a close examination of Applicant's responses during Discovery, as well as investigation into Applicant's activities (or lack thereof) toward actually using the mark in commerce. In the interest of avoiding any prejudice toward the Applicant, the Plaintiff is more than willing to reopen and extend the discovery period to allow the Applicant the opportunity to conduct further discovery pertaining to the new issues raised by the proposed amendment to the Opposition, as was allowed in *Anheuser-Busch, Inc. v. Martinez*, 185 USPQ 434, 435 (TTAB 1975).

The Plaintiff asserts that it is proper and not prejudicial to the Applicant for the Board to grant leave to amend the Plaintiff's pleading, and respectfully relies on the following cases:

Space Base Inc. v. Stadis Corp., 17 USPQ2d 1216 (TTAB 1990) (where opposer filed motion to amend its pleading during its testimony period, motion nevertheless granted since the interests of justice and judicial economy would best be served thereby, and since any prejudice suffered by applicant could be mitigated by reopening discovery solely for applicant);

Buffett v. Chi-Chi's, Inc., 226 USPQ 428 (TTAB 1985) (no substantial prejudice to applicant by allowance of amendment--proceeding remained in a fairly early stage);

Caron Corp. v. Helena Rubenstein, Inc., 193 USPQ 113 (TTAB 1976) (neither party had as yet taken testimony);

Anheuser-Busch, Inc. v. Martinez, 185 USPQ 434 (TTAB 1975) (since proceeding was still in the pre-trial stage, amendment of the pleadings could not prejudice opposer);

Cool-Ray, Inc. v. Eye Care, Inc., 183 USPQ 618 (TTAB 1974) (since, inter alia, the trial period had not yet commenced, no prejudice to applicant);

Mack Trucks, Inc. v. Monroe Auto Equipment Co., 182 USPQ 511 (TTAB 1974) (applicant would not be unduly prejudiced by entry of the proposed amendment since no testimony had as yet been taken); and,

American Optical Corp. v. American Olean Tile Co., 168 USPQ 471 (TTAB 1971) (where applicant filed motion to amend its pleading after the close of opposer's testimony period, but before the opening of applicant's testimony period, Board found that opposer

would not be prejudiced by entry of the amendment if, inter alia, *opposer was allowed to take discovery thereon*). (emphasis added).

Conclusion

For the foregoing reasons, Opposer respectfully asserts that its Motion should be granted in its entirety.

Respectfully Submitted,

By: 
Philip Greene

Date: 4-30-15

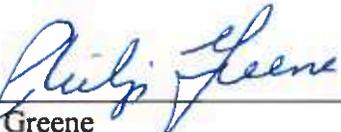
Attorney for Opposer
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703-614-2173, Fax: 703-697-53

Certificate of Service

I hereby certify that a true and complete copy of the foregoing has been served on Peter Healy by mailing said copy on the date shown below, via postage pre-paid, first-class mail to the following address:

Peter J. Healy (Applicant)
P.O. Box 1523
Morro Bay, CA 93443-1523

Respectfully submitted,

By: 
Philip Greene

Date: 4-30-15

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

In the matter of trademark application: Serial No. 85936128

In the matter of Trademark Opposition No. 91215087

For the mark: MARINE ONE DOWN

Published in the Official Gazette on 29 October 2013

UNITED STATES MARINE CORPS (OPPOSER)
3000 MARINE CORPS PENTAGON
ROOM 4B548
WASHINGTON, DC 20350-3000

v.

PETER J. HEALY ("APPLICANT")
P.O. BOX 1523
MORRO BAY, CA 93443

FIRST AMENDED NOTICE OF OPPOSITION

The above-identified Opposer (also "Marine Corps") believes that it/he/she will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. The mark to be opposed ("Opposed Mark") consists of or comprises a mark which so resembles a mark registered in the U.S. Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the services of the Applicant, to cause confusion, or to cause mistake, or to deceive, in violation of Trademark Act section 2(d). See, 15 U.S.C. 1052(d).

The Opposed Mark is intended to represent these Class 9 goods:

Computer game software for personal computers and home video game consoles;
Computer game software for use with personal computers, home video game
consoles used with televisions and arcade-based video game consoles;

Downloadable multimedia file containing artwork, text, audio, video, games, and Internet Web links relating to fictional adventure entertainment; Interactive video game programs; Video game cartridges; Video game cartridges and discs; Video game discs; Video game software.

The Opposer owns common law trademark rights in the mark MARINE ONE, and many other marks containing the term MARINE. The Opposer operates a world-renowned helicopter squadron (HMX-1) which, when the President of the United States is on board as a passenger, is known worldwide as "Marine One." Similarly, when on board his U.S. Air Force airplane, that plane is referred to as "Air Force One." For several decades, the Opposer's Presidential function, as well as the helicopter on which it is performed, has been known as "MARINE ONE."

In addition to the transportation services referenced above, the Opposer licenses a variety of products bearing the name MARINE ONE, including clothing, toys, coffee mugs, stationery, gifts, and other merchandise. The Opposer has filed trademark applications on the mark MARINE ONE®, found at Serial Nos. 86/117737, 86/117750, and 86/117795. These applications have matured to become U.S. registrations, namely:

Serial No. 86/117,795 is now U.S. Registration 4,698,140, in Class 25, covering "Neckwear, shirts;"

Serial No. 86/117750 is now U.S. Registration 4,612,650, in Class 21, covering "Cups and mugs;" and,

Serial No. 86/117737 is now U.S. Registration 4,619,908, in Class 16, covering "Occasion cards; Picture cards; Postage stamps; Postcards and greeting cards; Posters."

Further, Opposer asserts rights in 49 registered U.S. trademarks, as shown in the list found at Attachment A. These registrations, and other common law marks based on and/or containing the term MARINE, are herein referred to as the "Marine Corps Marks." Opposer respectfully asserts that the Opposed Mark, MARINE ONE DOWN, so resembles the Marine Corps Marks as to be likely, when used on or in connection with the Applicant's use of the Opposed Mark, to cause confusion, or to cause mistake, or to deceive, particularly when such mark is used by Applicant on goods sold in the retail arena.

2. The mark consists of or comprises matter that is deceptive, in violation of Trademark Act section 2(a). See, 15 U.S.C. 1052(a). The mark is to be used by Applicant on various goods, referenced above. The mark is deceptive in that it creates the impression among consumers and the general public at large that the Applicant's goods are either offered by the Opposer, or licensed by the Opposer, and/or are otherwise authorized by or affiliated with the Opposer. The Opposer respectfully asserts that the Opposed Mark is deceptive in that it is misdescriptive of the character, quality, function, composition or use of the goods, to the extent to which it deceives the public into believing that the goods on which the mark is used, are either the official such goods of the Marine Corps, or licensed by the Marine Corps.

Further, Opposer asserts that prospective purchasers are likely to believe that the misdescription actually describes the goods as being the official such goods of the Marine Corps. The Opposer also asserts that this misdescription is likely to affect the public's decision to purchase such goods.

3. The mark consists of or comprises matter which falsely suggests a connection to the Marine Corps, in violation of Trademark Act section 2(a). See, 15 U.S.C. 1052(a). The Opposer respectfully asserts that (1) the mark is the same as, or a close approximation of, the name or identity previously (and continuously) used by the Opposer, the Marine Corps, for several decades; (2) the mark would be recognized as such, in that it points uniquely and unmistakably to the Opposer, the Marine Corps; (3) the person or institution named by the mark, namely, the Opposer, the Marine Corps, is not connected with the goods offered by the Applicant under the mark; and (4) the fame or reputation of the Opposer, the Marine Corps and its world-renowned HMX-1/Marine One helicopter squadron, is such that, when the mark is used with the Applicant's goods, a connection with the person or institution (USMC/HMX-1) would be presumed. Opposer asserts, and intends to show, that consumers would view, and do in fact view, the mark MARINE ONE as pointing uniquely to Opposer, the Marine Corps.
4. The mark consists of or comprises matter that is deceptively misdescriptive, in violation of Trademark Act Section 2(e)(1). See, 15 U.S.C. §1052(e)(1). Opposer asserts that the term MARINE ONE within the Opposed Mark conveys that the goods offered thereunder are the official goods of the Marine Corps, and/or is authorized by or approved by the Marine Corps. However, Opposer asserts that the ideas immediately conveyed are false, and are deceptively misdescriptive, and that the mark is therefore unregistrable under §2(e)(1). Opposer asserts that the Opposed Mark MARINE ONE DOWN misdescribes the services in a deceptive manner, and that members of the public are likely to believe the misrepresentation; in other words, members of the public are likely to believe that the goods offered under the Opposed Mark are the official such goods of the Marine Corps. Further, Opposer asserts that this misrepresentation materially affects the decision to purchase the goods, i.e., many purchasers of goods bearing the Marine Corps Marks do so under the belief that the services are the official goods of the Marine Corps and/or USMC trademark licensees.
5. The Opposed Mark dilutes the Opposer's Marine Corps Marks, referenced above, particularly MARINE ONE, in violation of Trademark Act section 43(c). See, 15 U.S.C. 1125(c). Opposer asserts that the terms MARINE and MARINE ONE have become famous marks, and points to the goods and services provided by the United States Marine Corps and its licensees, particularly the illustrious HMX-1 helicopter squadron, known as MARINE ONE. This squadron has been in existence and known by that name at least as early as 1972, and the term MCX has become synonymous with the Marine Corps. The Marine Corps has a thriving trademark licensing program, through which it grants to private entities the right to use various USMC trademarks. As such, when consumers see the term MARINE and MARINE ONE on consumer-oriented products, such as those to be offered by the Applicant, consumers may come to believe that the Applicant's goods rendered under the Opposed Mark are officially licensed by the Marine Corps, or

somehow affiliated with or endorsed by the Marine Corps, the Opposer's trademark rights in the term MARINE and MARINE ONE become diluted.

6. The Opposed Mark is being used by, or with the permission of, the Applicant so as to misrepresent the source of the goods on or in connection with which the mark is used, in violation of Trademark Act section 14. The Opposer asserts that the Applicant's use of the mark MARINE ONE, on the goods referenced above, misrepresents the source of the goods as being from the Marine Corps, or one of its authorized licensees, and not from the Applicant.
7. The mark was registered and is used in violation of 32 Code of Federal Regulations 765.14 (hereinafter "32 CFR 765.14"). The Opposer notes that 32 CFR 765.14 was promulgated to implement 10 U.S.C. 7881, and sets forth guidelines with respect to the circumstances under which the Marine Corps may allow third parties to use its seal, emblem, *names* or initials of the Marine Corps, and the requirements for such use by third parties without such permission. In particular, 32 CFR 765.14(c)(2) reads as follows:

"(2) Requests from civilian enterprises to use or imitate the Marine Corps emblem, names, or initials will ordinarily be approved where use or imitation merely provides a Marine Corps accent or flavor to otherwise fungible services. Disapproval, however, usually may be expected where such use or imitation reasonably would:

(i) Imply any official or unofficial connection between the Marine Corps and the user;

(ii) Tend to create the impression that the Marine Corps or the United States is in any way responsible for any financial or legal obligation of the user;

(iii) Give the impression that the Marine Corps selectively benefits the particular manufacturer, commercial entity, or other user, as in displaying the Marine Corps emblem, names, or initials on musical instruments, weapons, or the like, and in using the emblem, names, or initials in connection with advertising, naming, or describing services and services such as insurance, real estate, or financial services; or

(iv) Tend to subject the Marine Corps to discredit or would be inimical to the health, safety, welfare, or morale of the members of the Marine Corps."

The Opposer asserts that Applicant's use of the name MARINE ONE is contrary to the guidelines of 32 CFR 765.14(c)(2), and is conducted in such a way as to imply an official or unofficial connection between the Marine Corps and the consumer goods to be offered by the Applicant, gives the impression that the Marine Corps selectively benefits the goods of the Applicant, and would be inimical to the health, safety, welfare, or morale of the members of the Marine Corps, to the extent to which it compromises the strength and effectiveness of the Marine Corps' trademark licensing program, and harmful to its Marine Corps' brand. Therefore, the Opposed Mark should not become registered.

8. The proposed use of the Opposed Mark by would be in violation of SECNAV Instruction 5030.7. The Applicant notes that SECNAV Instruction 5030.7 is virtually identical to 32 CFR 765.14. For the reasons stated above, Opposer asserts that Applicant's Opposed Mark and use of the mark is contrary to SECNAV Instruction 5030.7. Accordingly, Opposer asserts that the Opposed Mark should not become registered.
9. The Applicant lacks a bona fide intention to use the mark in commerce on the identified goods, and therefore the application should be considered void *ab initio*, and therefore refused registration. Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), states that: "A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director." The Plaintiff respectfully asserts that the Applicant does not have a bona fide intention to use the mark in commerce, and that its application to register the opposed mark is invalid.

WHEREFORE, Opposer believes that it has been, is, and/or will be damaged by said application, and prays that the mark not be allowed to become registered.

Respectfully submitted,

By: Philip Greene
Philip Greene
Attorney for Opposer

Date: 4-30-2015

Associate Counsel (Trademark)
U.S. Marine Corps
Office of the Counsel for the Commandant
Room 4B548, The Pentagon
Washington, D.C. 20350-3000
703-614-2173
Fax: 703-697-5362

Certificate of Service

I hereby certify that a true and complete copy of the foregoing has been served on Peter Healy by mailing said copy on the date shown below, via postage pre-paid, first-class mail to the following address:

Peter J. Healy (Applicant)
P.O. Box 1523
Morro Bay, CA 93443-1523

Respectfully submitted,

By: Philip Greene
Philip Greene
Attorney for Opposer

Date: 4-30-2015

Associate Counsel (Trademark)
U.S. Marine Corps
Office of the Counsel for the Commandant
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**APPENDIX A
OPPOSER'S TRADEMARK REGISTRATIONS
BASED ON THE MARK "MARINE"**

Marine Corps Marathon®

2565057

14: Jewelry, namely rings, pendants and ornamental pins.

16: Souvenir program books concerning marathons.

21: Small domestic utensils and containers, namely, cups, drinking glasses and mugs

25: Clothing, namely, shirts, T-shirts, jackets, shorts, hats, pants, sweatshirts and tights.

26: Embroidered emblems.

41: Education and entertainment services, namely, staging, organizing, and conducting foot racing events.

Marine For Life®

3399387

35: Providing referrals in the fields of employment counseling, outplacement and career networking services; providing referrals in the fields of primary, secondary and postsecondary education including vocational/technical education; providing referrals in the field of childcare; providing referrals in the field of military veteran's benefits; providing on-line directory services featuring the services of others in the fields of employment counseling, outplacement and career networking, primary, secondary and postsecondary education including vocational/technical education, childcare, and military veteran's benefits.

IMISSMYMARINE®

3540938

25: clothing, namely, t-shirts

NATIONAL MUSEUM OF THE MARINE CORPS (and design)

3547529

41: museums; guided tours of museums

Marine®

3,808,260

013. Airsoft guns

Marines®

3,844,601

16: Magazines featuring news and features relevant to the U.S. Marine Corps and U.S. military; Magazines in the field of news and features relevant to the U.S. Marine Corps and U.S. military

Marines The Few. The Proud®

3,844,788

35: Charitable services, Consulting services; Employment counseling and recruiting; Providing networking opportunities for individuals seeking employment. Charitable services, namely, coordination of the procurement and distribution of holiday gift donations from the general public to orphaned children; Charitable services, namely, organizing and conducting volunteer programs and community service projects; Charitable services, namely, organizing and conducting volunteer programs and community service projects aimed at increasing support and morale of families of deceased war veterans, war veterans, current members and future members of the U.S. military; Charitable services, namely, organizing and conducting volunteer programs and community service projects aimed at increasing support and morale of members of the U.S. military; Charitable services, namely, organizing and developing projects that aim to improve the lives of underprivileged and impoverished people; Consulting services in the field of human resources development, namely, for the promotion of employee retention, career growth, and increased productivity for employees and employers; Developing and coordinating volunteer projects for charitable organizations; Employment counseling and recruiting; Employment hiring, recruiting, placement, staffing and career networking services; Employment recruiting and staffing services provided via text messaging; Employment recruiting consultation; Information in the field of government affairs; Promoting the charitable services of others, namely, providing individuals with information for the purpose of making donations to charities; Providing employment counseling information on how to successfully transition jobs; Providing employment counseling information on how to successfully transition jobs for mature workers; Providing employment counseling information on how to successfully transition jobs for past or present military personnel; Providing employment information; Providing information in the field of foreign policy; Providing networking opportunities for individuals seeking employment.

MARINE CORPS WAR COLLEGE®

4,018,904

41: Conducting workshops and seminars in military science, tactics, strategy, and warfare; Educating at university or colleges; Education services in the nature of courses at the university level; Education services, namely, providing classes, seminars, and workshops in the field of military science, tactics, strategy, and warfare; Educational services, namely, providing courses of instruction at the college level and distribution of course material in connection therewith.

UNITED STATES MARINE BAND®

4059445

41: Entertainment in the nature of orchestra performances; Entertainment, namely, live performances by musical bands; Live performances by a musical group; Presentation of live show performances; Presentation of musical performance; Provision of information relating to live entertainment; Provision of information relating to music.

UNITED STATES MARINE BAND®

4059443

9: Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Digital music downloadable from the Internet; Downloadable MP3 files and MP3 recordings featuring music

U.S. MARINE BAND®

4059442

41: Entertainment in the nature of orchestra performances; Entertainment services in the nature of live musical performances; Entertainment services, namely, providing a website at which the general public can receive advice from an individual concerning relationships, such advice being for entertainment purposes only; Provision of information relating to live entertainment; Provision of information relating to live performances, road shows, live stage events, theatrical performances, live music concerts and audience participation in such events; Provision of information relating to music

U.S. MARINE BAND®

4059441

9: Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Digital music downloadable from the Internet; Downloadable MP3 files and MP3 recordings featuring music

MARINE BAND®

4059440

41: Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band; Providing a website featuring entertainment information; Providing a website featuring information in the field of music and entertainment; Provision of information relating to live entertainment; Provision of information relating to live performances, road shows, live stage events, theatrical performances, live music concerts and audience participation in such events; Provision of information relating to music.

MARINE BAND®

4059439

9: Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Digital media, namely, CDs, DVDs, and downloadable files featuring music; Digital music downloadable from the Internet.

U.S. MARINE CORPS®

4,070,242

25: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Baseball caps and hats; Caps; Golf caps; Jackets; Jerseys; Tops; Wearable garments and clothing, namely, shirts.

UNITED STATES MARINE CORPS®

4,070,241

18: Beach bags; Book bags; Canvas shopping bags; Drawstring bags; Duffel bags; Gym bags; Reusable shopping bags; School bags; Sport bags; Tote bags; Wash bags for carrying toiletries

MARINE WEEK®

4,084,030

Serial number 85375791

32: non-alcoholic beverages, namely, carbonated beverages

MARINE WEEK®

4,084,081

25: Baseball caps and hats; Shirts; T-shirts.

MARINES®

4087562

41: Providing a website featuring resources, namely, non-downloadable publications in the nature of magazines in the field of military topics, military history, and military life; Providing information, news and commentary in the field of current events relating to military topics, military history, and military life.

ONCE A MARINE, ALWAYS A MARINE®

4131975

16: General feature magazine in the field of matters relating to the United States Marine Corps, issues relating to veterans, issues relating to employment, military history, and matters of interest to U.S. Marines and veterans; General feature magazines; Newsletters in the field of matters relating to the United States Marine Corps, issues relating to veterans, issues relating to employment, military history, and matters of interest to U.S. Marines and veterans.

MARINE WEEK®

4141468

41: Arranging, organizing, conducting, and hosting social entertainment events; Conducting educational exhibitions in the nature of air shows, musical performances, precision marching exhibitions, demonstrations of military equipment and weaponry, military museum exhibits, and military history; Conducting entertainment exhibitions in the nature of air shows, musical performances, precision marching exhibitions, demonstrations of military equipment and weaponry, military museum exhibits, and military history; Entertainment services, namely, providing video podcasts in the field of military topics; Organization of events for cultural purposes; Organizing and hosting of events for cultural purposes; Organizing, arranging, and conducting military-themed events; Presentation of mixed martial arts (MMA) events; Providing an Internet website portal in the field of entertainment, cultural and sporting events.

MARINE WEEK®

4145973

9: Decorative magnets; Decorative refrigerator magnets.

MARINE CORPS HISTORIC HALF (and design)®

4150294

025: Shirts; T-shirts; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits

MARINE CORPS HISTORIC HALF ®

4150292

41: Organizing, arranging, and conducting running events; Providing a website featuring information relating to the sport of running

MARINE CORPS CONNECTION®

4150280

41: On-line electronic newsletters delivered by e-mail in the field of news, features and information relating to the U.S. military; Providing information, news and commentary in the field of Current events relating to the U.S. military; Providing newsletters in the field of news, features and information relating to the U.S. military via e-mail; Providing on-line newsletters in the field of news, features and information relating to the U.S. military

MARINE CORPS CONNECTION®

4150279

9: Downloadable electronic newsletters delivered by e-mail in the field of news, features and information relating to the U.S. military; Downloadable electronic newsletters in the field of news, features and information relating to the U.S. military

MCM 26.2 MARINE CORPS MARATHON (and design)

4161385

41: Athletic and sports event services, namely, arranging, organizing, operating and conducting marathon races; Entertainment in the nature of competitions in the field of athletic events; Organizing, arranging, and conducting running and athletic events; Providing a website featuring information relating to the sport of running

MARINES ARE EARTH FRIENDLY BECAUSE ... MARINES HAVE BEEN SAVING THE PLANET FOR OVER 200 YEARS! MARINES ARE LEAN, GREEN FIGHTING MACHINES! IN BATTLE, MARINES ALWAYS CLEAN UP! MARINES CONSERVE ... THEY HIT THEIR TARGET WITH THE FIRST ROUND! WITHOUT NATURE, MARINES WOULD BE VISIBLE!

4173261

018: Textile shopping bags; Tote bags

UNITED STATES MARINE CORPS (and design)

4193304

41: Entertainment in the nature of live performances by color guards, rifle teams, orchestras and marching bands; Entertainment in the nature of orchestra performances; Entertainment services in the nature of musical, marching and synchronized rifle team performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band; Entertainment, namely, live performances by musical bands; Presentation of live show performances; Presentation of musical performance; Theatrical and musical floor shows provided at performance venues.

eMarine®

4210027

041: Providing a web site that features informal instruction on military life and military affairs; Providing a website featuring blogs and non-downloadable publications in the nature of articles, primers and announcements in the field(s) of military life and military affairs; Providing a website featuring resources, namely, non-downloadable publications in the nature of articles, primers and announcements in the field of military life and military affairs; Providing advice and information in the field of educational and entertainment activities and events for children; Providing current event news and information via a global computer network; Providing information in the field of exercise training; Providing information on-line relating to educational opportunities; Providing information relating to education services for children; Providing information relating to educational services; Providing information relating to the organizing of educational, cultural, sporting, or entertainment exhibitions; Providing information, news and commentary in the field of current events relating to military life and military affairs

MARINES®

4337439

028: Action target games; Airsoft guns for recreational purposes; Equipment sold as a unit for playing action type target games; Firearm targets; Targets

MARINES AIRSOFT®

4337441

028: Action target games; Airsoft guns for recreational purposes; Equipment sold as a unit for playing action type target games; Firearm targets; Targets

MARINES THE FEW. THE PROUD.®

4337440

028: Action target games; Airsoft guns for recreational purposes; Equipment sold as a unit for playing action type target games; Firearm targets; Targets

MARINE EXPEDITIONARY FORCE AIR GROUND TEAM (and design)

4396186

041: Providing a web site that features informal instruction on military life and military affairs; Providing a website featuring resources, namely, non-downloadable publications in the nature of news releases and booklets in the field of military life and military affairs; Providing educational information in the academic field of the military for the purpose of academic study; Providing information on-line relating to educational opportunities; Providing information, news and commentary in the field of current events relating to the military

SPECIAL OPERATIONS COMMAND UNITED STATES MARINE CORPS FORCES (and design)

4396033

041: Arranging and conducting athletic competitions; Entertainment in the nature of competitions in the field of athletic events; Providing a web site featuring information on exercise and fitness; Providing a web site featuring sporting information; Providing an interactive website featuring information and links relating to fitness; Providing educational information in the academic field of military affairs, military tactics, military history and military science for the purpose of academic study for the purpose of academic study; Providing information relating to sports and sporting events; Providing information, news and commentary in the field of current events relating to Providing information, news and commentary in the field of current events relating to military affairs, military tactics, military history and military science

AIR GROUND TEAM MARINE EXPEDITIONARY FORCE III (and design)

4403369

41: Entertainment, namely, live performances by a musical band; Providing a web site that features informal instruction on military life and military affairs; Providing a website featuring resources, namely, non-downloadable publications in the nature of news releases and booklets in the field of military life and military affairs; Providing a website for entertainment purposes featuring news, photographs and information about the military, band performances, the U.S. Marine Corps, and military life.; Providing educational information in the academic field of the military for the purpose of academic study; Providing information on-line relating to educational opportunities; Providing information, news and commentary in the field of current events relating to the military.

AIR GROUND LOGISTICS TEAM MARINE EXPEDITIONARY FORCE II (and design)

4403346

41: Providing a web site that features informal instruction on military life and military affairs; Providing a website featuring resources, namely, non-downloadable publications in the nature of news releases and booklets in the field of military life and military affairs; Providing educational information in the academic field of the military for the purpose of academic study; Providing information on-line relating to educational opportunities; Providing information, news and commentary in the field of current events relating to the military.

SEMPER FI UNITED STATES MARINES (and design)

4407151

16: Decals; Decorative decals for vehicle windows; Stickers.

MARINE DAD®

4430338

012: License plate frames; License plate holders

MARINE DAD®

4430339

025: Baseball caps; Hats; Shirts; T-shirts

MARINE MOM®

4430340

012: License plate frames; License plate holders

MARINE RETIRED®

4430341

006: Metal license plates; Metal novelty license plates

MARINE CORPS®

4466469

014: Lapel pins; Ornamental pins

UNITED STATES MARINES®

4466476

014: Lapel pins; Ornamental lapel pins

UNITED STATES MARINE®

4466473

006: Metal license plates; Metal novelty license plates

U.S. MARINE®

4466474

006: Metal license plates; Metal novelty license plates

U.S. MARINE CORPS PARRIS ISLAND®

4466475

025: Baseball caps and hats; Hats

EXHIBIT A

OPPOSER'S FIRST AMENDED NOTICE OF OPPOSITION

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

In the matter of trademark application: Serial No. 85936128

In the matter of Trademark Opposition No. 91215087

For the mark: MARINE ONE DOWN

Published in the Official Gazette on 29 October 2013

UNITED STATES MARINE CORPS (OPPOSER)
3000 MARINE CORPS PENTAGON
ROOM 4B548
WASHINGTON, DC 20350-3000

v.

PETER J. HEALY ("APPLICANT")
P.O. BOX 1523
MORRO BAY, CA 93443

FIRST AMENDED NOTICE OF OPPOSITION

The above-identified Opposer (also "Marine Corps") believes that it/he/she will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. The mark to be opposed ("Opposed Mark") consists of or comprises a mark which so resembles a mark registered in the U.S. Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the services of the Applicant, to cause confusion, or to cause mistake, or to deceive, in violation of Trademark Act section 2(d). See, 15 U.S.C. 1052(d).

The Opposed Mark is intended to represent these Class 9 goods:

Computer game software for personal computers and home video game consoles;
Computer game software for use with personal computers, home video game
consoles used with televisions and arcade-based video game consoles;

Downloadable multimedia file containing artwork, text, audio, video, games, and Internet Web links relating to fictional adventure entertainment; Interactive video game programs; Video game cartridges; Video game cartridges and discs; Video game discs; Video game software.

The Opposer owns common law trademark rights in the mark MARINE ONE, and many other marks containing the term MARINE. The Opposer operates a world-renowned helicopter squadron (HMX-1) which, when the President of the United States is on board as a passenger, is known worldwide as "Marine One." Similarly, when on board his U.S. Air Force airplane, that plane is referred to as "Air Force One." For several decades, the Opposer's Presidential function, as well as the helicopter on which it is performed, has been known as "MARINE ONE."

In addition to the transportation services referenced above, the Opposer licenses a variety of products bearing the name MARINE ONE, including clothing, toys, coffee mugs, stationery, gifts, and other merchandise. The Opposer has filed trademark applications on the mark MARINE ONE®, found at Serial Nos. 86/117737, 86/117750, and 86/117795. These applications have matured to become U.S. registrations, namely:

Serial No. 86/117,795 is now U.S. Registration 4,698,140, in Class 25, covering "Neckwear, shirts;"

Serial No. 86/117750 is now U.S. Registration 4,612,650, in Class 21, covering "Cups and mugs;" and,

Serial No. 86/117737 is now U.S. Registration 4,619,908, in Class 16, covering "Occasion cards; Picture cards; Postage stamps; Postcards and greeting cards; Posters."

Further, Opposer asserts rights in 49 registered U.S. trademarks, as shown in the list found at Attachment A. These registrations, and other common law marks based on and/or containing the term MARINE, are herein referred to as the "Marine Corps Marks." Opposer respectfully asserts that the Opposed Mark, MARINE ONE DOWN, so resembles the Marine Corps Marks as to be likely, when used on or in connection with the Applicant's use of the Opposed Mark, to cause confusion, or to cause mistake, or to deceive, particularly when such mark is used by Applicant on goods sold in the retail arena.

2. The mark consists of or comprises matter that is deceptive, in violation of Trademark Act section 2(a). See, 15 U.S.C. 1052(a). The mark is to be used by Applicant on various goods, referenced above. The mark is deceptive in that it creates the impression among consumers and the general public at large that the Applicant's goods are either offered by the Opposer, or licensed by the Opposer, and/or are otherwise authorized by or affiliated with the Opposer. The Opposer respectfully asserts that the Opposed Mark is deceptive in that it is misdescriptive of the character, quality, function, composition or use of the goods, to the extent to which it deceives the public into believing that the goods on which the mark is used, are either the official such goods of the Marine Corps, or licensed by the Marine Corps.

Further, Opposer asserts that prospective purchasers are likely to believe that the misdescription actually describes the goods as being the official such goods of the Marine Corps. The Opposer also asserts that this misdescription is likely to affect the public's decision to purchase such goods.

3. The mark consists of or comprises matter which falsely suggests a connection to the Marine Corps, in violation of Trademark Act section 2(a). See, 15 U.S.C. 1052(a). The Opposer respectfully asserts that (1) the mark is the same as, or a close approximation of, the name or identity previously (and continuously) used by the Opposer, the Marine Corps, for several decades; (2) the mark would be recognized as such, in that it points uniquely and unmistakably to the Opposer, the Marine Corps; (3) the person or institution named by the mark, namely, the Opposer, the Marine Corps, is not connected with the goods offered by the Applicant under the mark; and (4) the fame or reputation of the Opposer, the Marine Corps and its world-renowned HMX-1/Marine One helicopter squadron, is such that, when the mark is used with the Applicant's goods, a connection with the person or institution (USMC/HMX-1) would be presumed. Opposer asserts, and intends to show, that consumers would view, and do in fact view, the mark MARINE ONE as pointing uniquely to Opposer, the Marine Corps.
4. The mark consists of or comprises matter that is deceptively misdescriptive, in violation of Trademark Act Section 2(e)(1). See, 15 U.S.C. §1052(e)(1). Opposer asserts that the term MARINE ONE within the Opposed Mark conveys that the goods offered thereunder are the official goods of the Marine Corps, and/or is authorized by or approved by the Marine Corps. However, Opposer asserts that the ideas immediately conveyed are false, and are deceptively misdescriptive, and that the mark is therefore unregistrable under §2(e)(1). Opposer asserts that the Opposed Mark MARINE ONE DOWN misdescribes the services in a deceptive manner, and that members of the public are likely to believe the misrepresentation; in other words, members of the public are likely to believe that the goods offered under the Opposed Mark are the official such goods of the Marine Corps. Further, Opposer asserts that this misrepresentation materially affects the decision to purchase the goods, i.e., many purchasers of goods bearing the Marine Corps Marks do so under the belief that the services are the official goods of the Marine Corps and/or USMC trademark licensees.
5. The Opposed Mark dilutes the Opposer's Marine Corps Marks, referenced above, particularly MARINE ONE, in violation of Trademark Act section 43(c). See, 15 U.S.C. 1125(c). Opposer asserts that the terms MARINE and MARINE ONE have become famous marks, and points to the goods and services provided by the United States Marine Corps and its licensees, particularly the illustrious HMX-1 helicopter squadron, known as MARINE ONE. This squadron has been in existence and known by that name at least as early as 1972, and the term MCX has become synonymous with the Marine Corps. The Marine Corps has a thriving trademark licensing program, through which it grants to private entities the right to use various USMC trademarks. As such, when consumers see the term MARINE and MARINE ONE on consumer-oriented products, such as those to be offered by the Applicant, consumers may come to believe that the Applicant's goods rendered under the Opposed Mark are officially licensed by the Marine Corps, or

somehow affiliated with or endorsed by the Marine Corps, the Opposer's trademark rights in the term MARINE and MARINE ONE become diluted.

6. The Opposed Mark is being used by, or with the permission of, the Applicant so as to misrepresent the source of the goods on or in connection with which the mark is used, in violation of Trademark Act section 14. The Opposer asserts that the Applicant's use of the mark MARINE ONE, on the goods referenced above, misrepresents the source of the goods as being from the Marine Corps, or one of its authorized licensees, and not from the Applicant.
7. The mark was registered and is used in violation of 32 Code of Federal Regulations 765.14 (hereinafter "32 CFR 765.14"). The Opposer notes that 32 CFR 765.14 was promulgated to implement 10 U.S.C. 7881, and sets forth guidelines with respect to the circumstances under which the Marine Corps may allow third parties to use its seal, emblem, *names* or initials of the Marine Corps, and the requirements for such use by third parties without such permission. In particular, 32 CFR 765.14(c)(2) reads as follows:

"(2) Requests from civilian enterprises to use or imitate the Marine Corps emblem, names, or initials will ordinarily be approved where use or imitation merely provides a Marine Corps accent or flavor to otherwise fungible services. Disapproval, however, usually may be expected where such use or imitation reasonably would:

- (i) Imply any official or unofficial connection between the Marine Corps and the user;
- (ii) Tend to create the impression that the Marine Corps or the United States is in any way responsible for any financial or legal obligation of the user;
- (iii) Give the impression that the Marine Corps selectively benefits the particular manufacturer, commercial entity, or other user, as in displaying the Marine Corps emblem, names, or initials on musical instruments, weapons, or the like, and in using the emblem, names, or initials in connection with advertising, naming, or describing services and services such as insurance, real estate, or financial services; or
- (iv) Tend to subject the Marine Corps to discredit or would be inimical to the health, safety, welfare, or morale of the members of the Marine Corps."

The Opposer asserts that Applicant's use of the name MARINE ONE is contrary to the guidelines of 32 CFR 765.14(c)(2), and is conducted in such a way as to imply an official or unofficial connection between the Marine Corps and the consumer goods to be offered by the Applicant, gives the impression that the Marine Corps selectively benefits the goods of the Applicant, and would be inimical to the health, safety, welfare, or morale of the members of the Marine Corps, to the extent to which it compromises the strength and effectiveness of the Marine Corps' trademark licensing program, and harmful to its Marine Corps' brand. Therefore, the Opposed Mark should not become registered.

8. The proposed use of the Opposed Mark by would be in violation of SECNAV Instruction 5030.7. The Applicant notes that SECNAV Instruction 5030.7 is virtually identical to 32 CFR 765.14. For the reasons stated above, Opposer asserts that Applicant's Opposed Mark and use of the mark is contrary to SECNAV Instruction 5030.7. Accordingly, Opposer asserts that the Opposed Mark should not become registered.
9. The Applicant lacks a bona fide intention to use the mark in commerce on the identified goods, and therefore the application should be considered void *ab initio*, and therefore refused registration. Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), states that: "A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director." The Plaintiff respectfully asserts that the Applicant does not have a bona fide intention to use the mark in commerce, and that its application to register the opposed mark is invalid.

WHEREFORE, Opposer believes that it has been, is, and/or will be damaged by said application, and prays that the mark not be allowed to become registered.

Respectfully submitted,

By: Philip Greene
Philip Greene
Attorney for Opposer

Date: 4-30-2015

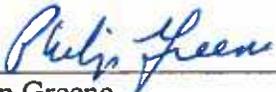
Associate Counsel (Trademark)
U.S. Marine Corps
Office of the Counsel for the Commandant
Room 4B548, The Pentagon
Washington, D.C. 20350-3000
703-614-2173
Fax: 703-697-5362

Certificate of Service

I hereby certify that a true and complete copy of the foregoing has been served on Peter Healy by mailing said copy on the date shown below, via postage pre-paid, first-class mail to the following address:

Peter J. Healy (Applicant)
P.O. Box 1523
Morro Bay, CA 93443-1523

Respectfully submitted,

By: 
Philip Greene
Attorney for Opposer

Date: 4-30-2015

Associate Counsel (Trademark)
U.S. Marine Corps
Office of the Counsel for the Commandant
Room 4B548, The Pentagon
Washington, D.C. 20350-3000
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Fax: 703-697-5362

**APPENDIX A
OPPOSER'S TRADEMARK REGISTRATIONS
BASED ON THE MARK "MARINE"**

Marine Corps Marathon®

2565057

14: Jewelry, namely rings, pendants and ornamental pins.

16: Souvenir program books concerning marathons.

21: Small domestic utensils and containers, namely, cups, drinking glasses and mugs

25: Clothing, namely, shirts, T-shirts, jackets, shorts, hats, pants, sweatshirts and tights.

26: Embroidered emblems.

41: Education and entertainment services, namely, staging, organizing, and conducting foot racing events.

Marine For Life®

3399387

35: Providing referrals in the fields of employment counseling, outplacement and career networking services; providing referrals in the fields of primary, secondary and postsecondary education including vocational/technical education; providing referrals in the field of childcare; providing referrals in the field of military veteran's benefits; providing on-line directory services featuring the services of others in the fields of employment counseling, outplacement and career networking, primary, secondary and postsecondary education including vocational/technical education, childcare, and military veteran's benefits.

IMISSMYMARINE®

3540938

25: clothing, namely, t-shirts

NATIONAL MUSEUM OF THE MARINE CORPS (and design)

3547529

41: museums; guided tours of museums

Marine®

3,808,260

013. Airsoft guns

Marines®

3,844,601

16: Magazines featuring news and features relevant to the U.S. Marine Corps and U.S. military; Magazines in the field of news and features relevant to the U.S. Marine Corps and U.S. military

Marines The Few. The Proud®

3,844,788

35: Charitable services, Consulting services; Employment counseling and recruiting; Providing networking opportunities for individuals seeking employment. Charitable services, namely, coordination of the procurement and distribution of holiday gift donations from the general public to orphaned children; Charitable services, namely, organizing and conducting volunteer programs and community service projects; Charitable services, namely, organizing and conducting volunteer programs and community service projects aimed at increasing support and morale of families of deceased war veterans, war veterans, current members and future members of the U.S. military; Charitable services, namely, organizing and conducting volunteer programs and community service projects aimed at increasing support and morale of members of the U.S. military; Charitable services, namely, organizing and developing projects that aim to improve the lives of underprivileged and impoverished people; Consulting services in the field of human resources development, namely, for the promotion of employee retention, career growth, and increased productivity for employees and employers; Developing and coordinating volunteer projects for charitable organizations; Employment counseling and recruiting; Employment hiring, recruiting, placement, staffing and career networking services; Employment recruiting and staffing services provided via text messaging; Employment recruiting consultation; Information in the field of government affairs; Promoting the charitable services of others, namely, providing individuals with information for the purpose of making donations to charities; Providing employment counseling information on how to successfully transition jobs; Providing employment counseling information on how to successfully transition jobs for mature workers; Providing employment counseling information on how to successfully transition jobs for past or present military personnel; Providing employment information; Providing information in the field of foreign policy; Providing networking opportunities for individuals seeking employment.

MARINE CORPS WAR COLLEGE®

4,018,904

41: Conducting workshops and seminars in military science, tactics, strategy, and warfare; Educating at university or colleges; Education services in the nature of courses at the university level; Education services, namely, providing classes, seminars, and workshops in the field of military science, tactics, strategy, and warfare; Educational services, namely, providing courses of instruction at the college level and distribution of course material in connection therewith.

UNITED STATES MARINE BAND®

4059445

41: Entertainment in the nature of orchestra performances; Entertainment, namely, live performances by musical bands; Live performances by a musical group; Presentation of live show performances; Presentation of musical performance; Provision of information relating to live entertainment; Provision of information relating to music.

UNITED STATES MARINE BAND®

4059443

9: Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Digital music downloadable from the Internet; Downloadable MP3 files and MP3 recordings featuring music

U.S. MARINE BAND®

4059442

41: Entertainment in the nature of orchestra performances; Entertainment services in the nature of live musical performances; Entertainment services, namely, providing a website at which the general public can receive advice from an individual concerning relationships, such advice being for entertainment purposes only; Provision of information relating to live entertainment; Provision of information relating to live performances, road shows, live stage events, theatrical performances, live music concerts and audience participation in such events; Provision of information relating to music

U.S. MARINE BAND®

4059441

9: Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Digital music downloadable from the Internet; Downloadable MP3 files and MP3 recordings featuring music

MARINE BAND®

4059440

41: Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band; Providing a website featuring entertainment information; Providing a website featuring information in the field of music and entertainment; Provision of information relating to live entertainment; Provision of information relating to live performances, road shows, live stage events, theatrical performances, live music concerts and audience participation in such events; Provision of information relating to music.

MARINE BAND®

4059439

9: Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Digital media, namely, CDs, DVDs, and downloadable files featuring music; Digital music downloadable from the Internet.

U.S. MARINE CORPS®

4,070,242

25: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Baseball caps and hats; Caps; Golf caps; Jackets; Jerseys; Tops; Wearable garments and clothing, namely, shirts.

UNITED STATES MARINE CORPS®

4,070,241

18: Beach bags; Book bags; Canvas shopping bags; Drawstring bags; Duffel bags; Gym bags; Reusable shopping bags; School bags; Sport bags; Tote bags; Wash bags for carrying toiletries

MARINE WEEK®

4,084,030

Serial number 85375791

32: non-alcoholic beverages, namely, carbonated beverages

MARINE WEEK®

4,084,081

25: Baseball caps and hats; Shirts; T-shirts.

MARINES®

4087562

41: Providing a website featuring resources, namely, non-downloadable publications in the nature of magazines in the field of military topics, military history, and military life; Providing information, news and commentary in the field of current events relating to military topics, military history, and military life.

ONCE A MARINE, ALWAYS A MARINE®

4131975

16: General feature magazine in the field of matters relating to the United States Marine Corps, issues relating to veterans, issues relating to employment, military history, and matters of interest to U.S. Marines and veterans; General feature magazines; Newsletters in the field of matters relating to the United States Marine Corps, issues relating to veterans, issues relating to employment, military history, and matters of interest to U.S. Marines and veterans.

MARINE WEEK®

4141468

41: Arranging, organizing, conducting, and hosting social entertainment events; Conducting educational exhibitions in the nature of air shows, musical performances, precision marching exhibitions, demonstrations of military equipment and weaponry, military museum exhibits, and military history; Conducting entertainment exhibitions in the nature of air shows, musical performances, precision marching exhibitions, demonstrations of military equipment and weaponry, military museum exhibits, and military history; Entertainment services, namely, providing video podcasts in the field of military topics; Organization of events for cultural purposes; Organizing and hosting of events for cultural purposes; Organizing, arranging, and conducting military-themed events; Presentation of mixed martial arts (MMA) events; Providing an Internet website portal in the field of entertainment, cultural and sporting events.

MARINE WEEK®

4145973

9: Decorative magnets; Decorative refrigerator magnets.

MARINE CORPS HISTORIC HALF (and design)®

4150294

025: Shirts; T-shirts; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits

MARINE CORPS HISTORIC HALF ®

4150292

41: Organizing, arranging, and conducting running events; Providing a website featuring information relating to the sport of running

MARINE CORPS CONNECTION®

4150280

41: On-line electronic newsletters delivered by e-mail in the field of news, features and information relating to the U.S. military; Providing information, news and commentary in the field of Current events relating to the U.S. military; Providing newsletters in the field of news, features and information relating to the U.S. military via e-mail; Providing on-line newsletters in the field of news, features and information relating to the U.S. military

MARINE CORPS CONNECTION®

4150279

9: Downloadable electronic newsletters delivered by e-mail in the field of news, features and information relating to the U.S. military; Downloadable electronic newsletters in the field of news, features and information relating to the U.S. military

MCM 26.2 MARINE CORPS MARATHON (and design)

4161385

41: Athletic and sports event services, namely, arranging, organizing, operating and conducting marathon races; Entertainment in the nature of competitions in the field of athletic events; Organizing, arranging, and conducting running and athletic events; Providing a website featuring information relating to the sport of running

MARINES ARE EARTH FRIENDLY BECAUSE ... MARINES HAVE BEEN SAVING THE PLANET FOR OVER 200 YEARS! MARINES ARE LEAN, GREEN FIGHTING MACHINES! IN BATTLE, MARINES ALWAYS CLEAN UP! MARINES CONSERVE ... THEY HIT THEIR TARGET WITH THE FIRST ROUND! WITHOUT NATURE, MARINES WOULD BE VISIBLE!

4173261

018: Textile shopping bags; Tote bags

UNITED STATES MARINE CORPS (and design)

4193304

41: Entertainment in the nature of live performances by color guards, rifle teams, orchestras and marching bands; Entertainment in the nature of orchestra performances; Entertainment services in the nature of musical, marching and synchronized rifle team performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band; Entertainment, namely, live performances by musical bands; Presentation of live show performances; Presentation of musical performance; Theatrical and musical floor shows provided at performance venues.

eMarine®

4210027

041: Providing a web site that features informal instruction on military life and military affairs; Providing a website featuring blogs and non-downloadable publications in the nature of articles, primers and announcements in the field(s) of military life and military affairs; Providing a website featuring resources, namely, non-downloadable publications in the nature of articles, primers and announcements in the field of military life and military affairs; Providing advice and information in the field of educational and entertainment activities and events for children; Providing current event news and information via a global computer network; Providing information in the field of exercise training; Providing information on-line relating to educational opportunities; Providing information relating to education services for children; Providing information relating to educational services; Providing information relating to the organizing of educational, cultural, sporting, or entertainment exhibitions; Providing information, news and commentary in the field of current events relating to military life and military affairs

MARINES®

4337439

028: Action target games; Airsoft guns for recreational purposes; Equipment sold as a unit for playing action type target games; Firearm targets; Targets

MARINES AIRSOFT®

4337441

028: Action target games; Airsoft guns for recreational purposes; Equipment sold as a unit for playing action type target games; Firearm targets; Targets

MARINES THE FEW. THE PROUD.®

4337440

028: Action target games; Airsoft guns for recreational purposes; Equipment sold as a unit for playing action type target games; Firearm targets; Targets

MARINE EXPEDITIONARY FORCE AIR GROUND TEAM (and design)

4396186

041: Providing a web site that features informal instruction on military life and military affairs; Providing a website featuring resources, namely, non-downloadable publications in the nature of news releases and booklets in the field of military life and military affairs; Providing educational information in the academic field of the military for the purpose of academic study; Providing information on-line relating to educational opportunities; Providing information, news and commentary in the field of current events relating to the military

SPECIAL OPERATIONS COMMAND UNITED STATES MARINE CORPS FORCES (and design)

4396033

041: Arranging and conducting athletic competitions; Entertainment in the nature of competitions in the field of athletic events; Providing a web site featuring information on exercise and fitness; Providing a web site featuring sporting information; Providing an interactive website featuring information and links relating to fitness; Providing educational information in the academic field of military affairs, military tactics, military history and military science for the purpose of academic study for the purpose of academic study; Providing information relating to sports and sporting events; Providing information, news and commentary in the field of current events relating to Providing information, news and commentary in the field of current events relating to military affairs, military tactics, military history and military science

AIR GROUND TEAM MARINE EXPEDITIONARY FORCE III (and design)

4403369

41: Entertainment, namely, live performances by a musical band; Providing a web site that features informal instruction on military life and military affairs; Providing a website featuring resources, namely, non-downloadable publications in the nature of news releases and booklets in the field of military life and military affairs; Providing a website for entertainment purposes featuring news, photographs and information about the military, band performances, the U.S. Marine Corps, and military life.; Providing educational information in the academic field of the military for the purpose of academic study; Providing information on-line relating to educational opportunities; Providing information, news and commentary in the field of current events relating to the military.

AIR GROUND LOGISTICS TEAM MARINE EXPEDITIONARY FORCE II (and design)

4403346

41: Providing a web site that features informal instruction on military life and military affairs; Providing a website featuring resources, namely, non-downloadable publications in the nature of news releases and booklets in the field of military life and military affairs; Providing educational information in the academic field of the military for the purpose of academic study; Providing information on-line relating to educational opportunities; Providing information, news and commentary in the field of current events relating to the military.

SEMPER FI UNITED STATES MARINES (and design)

4407151

16: Decals; Decorative decals for vehicle windows; Stickers.

MARINE DAD®

4430338

012: License plate frames; License plate holders

MARINE DAD®

4430339

025: Baseball caps; Hats; Shirts; T-shirts

MARINE MOM®

4430340

012: License plate frames; License plate holders

MARINE RETIRED®

4430341

006: Metal license plates; Metal novelty license plates

MARINE CORPS®

4466469

014: Lapel pins; Ornamental pins

UNITED STATES MARINES®

4466476

014: Lapel pins; Ornamental lapel pins

UNITED STATES MARINE®

4466473

006: Metal license plates; Metal novelty license plates

U.S. MARINE®

4466474

006: Metal license plates; Metal novelty license plates

U.S. MARINE CORPS PARRIS ISLAND®

4466475

025: Baseball caps and hats; Hats

EXHIBIT B
OPPOSER'S INTERROGATORIES

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

In the matter of trademark application: Serial No. 85936128

For the mark: MARINE ONE DOWN

Published in the Official Gazette on 29 October 2013

**UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
ROOM 4B548
WASHINGTON, DC 20350-3000**

v.

**PETER J. HEALY (“APPLICANT”)
P.O. BOX 1523
MORRO BAY, CA 93443**

INTERROGATORIES

Opposer, the United States Marine Corps (hereinafter “USMC”), hereby submits the following Interrogatories to the Defendant, Peter J. Healy.

- 1. Will you use any USMC names, emblems, initials, logos, slogans, terms, insignia, or other identifiers (hereinafter “USMC Marks”), or marks associated with the U.S. Government (such as the Presidential Seal, or the terms “PRESIDENT” or “UNITED STATES OF AMERICA” (hereinafter “U.S. Marks”) in the packaging, marketing, advertising, slogans, taglines, branding or trade dress of the goods? This would include, but is not limited to, packaging, print and online advertising, and social media (Facebook, Twitter, Pinterest, Instagram, Tumblr, et al.).**
- 2. Will you use any USMC or U.S. Marks within the actual video game? For example, will the trademarked terms MARINE ONE®, USMC®, MARINE®, MARINES®, MARINE CORPS®, or other USMC or U.S. Marks appear on the Marine One® helicopter? Will U.S. Marines in uniform appear in the game, including rank and/or other insignia (including the Eagle, Globe & Anchor emblem)?**

Certificate of Service

The undersigned hereby certifies that on this date, a copy of this paper has been served upon all parties, at their address record by email (peterhealysesq@gmail.com), and by postage pre-paid, first-class mail to the following:

Applicant (last listed owner):

Peter J. Healy
P.O. Box 1523
Morro Bay, CA 93443-1523

Correspondent:

Peter J. Healy
P.O. Box 1523
Morro Bay, CA 93443-1523

Respectfully submitted,

By:


Philip Greene
Attorney for Opposer

Date:

12-2-14

Associate Counsel (Trademark)
U.S. Marine Corps
Office of the Counsel for the Commandant
Room 4B548, The Pentagon
Washington, D.C. 20350-3000
703-614-2173
Fax: 703-697-5362

EXHIBIT C

OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS

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

In the matter of trademark application: Serial No. 85936128

For the mark: MARINE ONE DOWN

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UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
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WASHINGTON, DC 20350-3000

v.

PETER J. HEALY ("APPLICANT")
P.O. BOX 1523
MORRO BAY, CA 93443

**PLAINTIFF'S FIRST SET OF REQUESTS TO DEFENDANT FOR PRODUCTION OF
DOCUMENTS AND THINGS**

Opposer, the United States Marine Corps (hereinafter "USMC"), hereby submits the following Interrogatories to the Defendant, Peter J. Healy. The documents and things requested are to be produced within thirty (30) days after receipt by Mr. Haley, and sent to the USMC at Room 4B548 Pentagon, or such other time and place as may be agreed upon by the parties:

Instructions

1. For the convenience of counsel and the court, it is requested that each numbered request be answered by repeating the request in its entirety and then providing the corresponding response.
2. These requests shall be deemed to be continuing within the meaning of Fed. R. Civ. P. 26(e)(1) and (2) so as to require supplemental production of documents or things if Mr. Healy discovers responsive documents or things after the date for response hereto despite a diligent effort to produce all responsive documents or things within the time specified under Fed. R. Civ. P. 34.
3. In the event Mr. Healy contends that any document that is requested for production is privileged or otherwise excludable from discovery, Mr. Healy is requested

Certificate of Service

The undersigned hereby certifies that on this date, a copy of this paper has been served upon all parties, at their address record by email (peterhealvesq@gmail.com), and by postage pre-paid, first-class mail to the following:

Applicant (last listed owner):

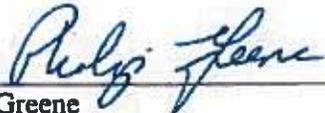
Peter J. Healy
P.O. Box 1523
Morro Bay, CA 93443-1523

Correspondent:

Peter J. Healy
P.O. Box 1523
Morro Bay, CA 93443-1523

Respectfully submitted,

By:


Philip Greene
Attorney for Opposer

Date:

12-2-2014

Associate Counsel (Trademark)
U.S. Marine Corps
Office of the Counsel for the Commandant
Room 4B548, The Pentagon
Washington, D.C. 20350-3000
703-614-2173
Fax: 703-697-5362

EXHIBIT D
APPLICANT'S RESPONSES TO
OPPOSER'S INTERROGATORIES

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

<p>UNITED STATES MARINE CORPS</p> <p>v.</p> <p>PETER J. HEALY</p>	<p>Opposition No. 91215087</p> <p>Serial No. 85936128</p>
---	---

**APPLICANT'S RESPONSES AND OBJECTIONS
TO OPPOSER'S FIRST SET OF INTERROGATORIES**

Applicant Peter J. Healy, pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and the Local Rules of this Court, responds and objects to Opposer United States Marine Corp's Interrogatories, Set One, as follows:

PRELIMINARY STATEMENT

1. Applicant's investigation and development of all facts and circumstances relating to this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, Applicant's right to rely on other facts or documents at trial.
2. By making the accompanying responses and objections to Opposer's requests for documents and interrogatory, Applicant does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, and privilege. Further, Applicant makes the responses and objections herein without in any way implying that it considers the requests and interrogatory, and responses to the requests and interrogatory, to be relevant or material to the subject matter of this action.

3. A response to a document request or interrogatory stating that objections and/or indicating that documents will be produced shall not be deemed or construed that there are, in fact, responsive documents, that Applicant performed, or intends to perform, any of the acts described in the document request, interrogatory, or definitions and/or instructions applicable to the document request or interrogatory, or that Applicant acquiesces in the characterization, or suggested occurrence, of the conduct or activities described or referenced in the document request, interrogatory, or definitions and/or instructions applicable to the document request or interrogatory.

4. Applicant expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response.

APPLICANT RESPONSES TO INTERROGATORIES

APPLICANT OBJECTIONS TO INTERROGATORY NO. 1: Applicant objects to Interrogatory No. 1, as vague and ambiguous, and over broad, in that “other identifiers” is impracticably imprecise and by orders of magnitude potentially over inclusive, which also requires Applicant object that it is not reasonably calculated to lead to the discovery of admissible evidence, and that its purpose to vex and burden. The Interrogatory ask whether the product might include any “identifiers” for anything a part of the largest and most complex entity within the largest economy in the world, and the largest employer in that economy by a margin of millions.

APPLICANT RESPONSE TO INTERROGATORY NO. 1: No definitive decisions have been made yet about content or design of packaging, marketing, advertising, slogans,

taglines, branding, or trade dress of the goods. The term "Marine One" is hoped to appear as an integral part of the product name "Marine One Down." The word "President" the terms "United States of America," and "Marine One," are more likely than not to appear in one or more of the packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the goods. Given that the immediate appeal has thus far succeeded in suppressing the substantial creative investment necessary to authorship and design of packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the subject product, at this time it would be highly speculative, and premature even to guess, whether or not the packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the subject product, may or may not include reference to any branch, unit, department, elected official, appointed official, or personnel category, of the United States Government.

APPLICANT OBJECTIONS TO INTERROGATORY NO. 2: Applicant objects to Interrogatory No. 2, as vague and ambiguous, and over broad, in that "other identifiers" is impracticably imprecise and by orders of magnitude potentially over inclusive, which also requires Applicant object that it is not reasonably calculated to lead to the discovery of admissible evidence, and that its purpose to vex and burden. The Interrogatory ask whether the product might include any "identifiers" for anything a part of the largest and most complex entity within the largest economy in the world, and the largest employer in that economy by a margin of millions. The interrogatory is also impermissibly compound.

APPLICANT RESPONSE TO INTERROGATORY NO. 2: No definitive decisions have been made yet about content or design with “the actual video game.” The term “Marine One” is hoped to appear as an integral part of the product name “Marine One Down.” The word “President” the terms “United States of America,” and “Marine One,” are more likely than not to appear in one or more of the packaging, marketing, advertising, slogans, taglines, branding, or trade dress of the goods. The level of detail and particularity with which vehicle, aircraft, equipment, and personnel of the United States Government are yet to be made editorial and artistic decisions incident to engineering, authorship and design that has yet to occur.

APPLICANT OBJECTIONS TO INTERROGATORY NO. 3: Applicant objects to Interrogatory No. 3, as vague and ambiguous, calls for speculation, and calls for disclosure of confidential business information.

APPLICANT RESPONSE TO INTERROGATORY NO. 3: Applicant has only applied to the USPTO for one trademark including the word Marine, the one under immediate appeal, and has made no decision to file any future application for a trademark inclusive of the term “Marine.”

APPLICANT OBJECTIONS TO INTERROGATORY NO. 4: Applicant objects to Interrogatory No. 4, as vague and ambiguous, calls for speculation, and calls for disclosure of confidential business information. What “identifiers” might conceivably fall within the category of “USMC Marks,” as ill-defined by Appellant, is beyond the comprehension or knowledge of Applicant.

APPLICANT RESPONSE TO INTERROGATORY NO. 4: Applicant has registered domain names incorporating the Applicant's pending trademark phrase "Marine One Down."

APPLICANT OBJECTIONS TO INTERROGATORY NO. 5: Applicant objects to Interrogatory No. 5, as vague and ambiguous, calls for speculation, and calls for disclosure of confidential business information. "Social Media" is a vague term and ambiguous term, with certain internet website generally recognized to be with the definition, such as "Facebook" and perhaps "Twitter," but beyond the obvious, Applicant has no basis for distinguishing the distinction between "Social Media" and other internet sites and activities not being "Social Media" What "identifiers" might conceivably fall within the category of "USMC Marks," as ill-defined by Appellant, is beyond the comprehension or knowledge of Applicant.

APPLICANT RESPONSE TO INTERROGATORY NO. 5: Applicant has registered the following two Twitter usernames incorporating the Applicant's pending trademark phrase "Marine One Down" or close variation. They are: "marineonedown" and "marine1down"

APPLICANT OBJECTIONS TO INTERROGATORY NO. 6: Applicant objects to Interrogatory No. 6, as in it calls for speculation, especially given Appellants effort to suppress development of the subject creative arts product, by way of the immediate appeal, has added an uncertainty multiplying variable to the calculus as to when the product might reach the market.

APPLICANT RESPONSE TO INTERROGATORY NO. 6: The multitude of as yet unquantifiable variables prevent estimating when the product might be “coming to market.”

APPLICANT OBJECTIONS TO INTERROGATORY NO. 7: Applicant objects to Interrogatory No. 7, as vague and ambiguous, compound, calls for speculation, and calls for disclosure of confidential business information. It is unclear from the interrogative whether the phrase “market(s) and distribution channel(s)” is intended as a clarifying redundancy, or in the alternative what a “market” might be as distinct from a “distribution channel.

APPLICANT RESPONSE TO INTERROGATORY NO. 7: Online is most likely. As for other potential distribution channels, the channels and licensing models utilized by game producers to reach and transact with retail consumers are evolving so rapidly that any speculation as to possible brick-and-mortar retail points of sale, for example, would be just that, highly speculative.

APPLICANT OBJECTIONS TO INTERROGATORY NO. 8: Applicant objects to Interrogatory No. 8, as vague and ambiguous, calls for speculation, and calls for disclosure of confidential business information.

APPLICANT RESPONSE TO INTERROGATORY NO. 8: Unknown, but least likely to be a game appreciated or well played by small children.

APPLICANT OBJECTIONS TO INTERROGATORY NO. 9: Applicant objects to Interrogatory No. 9, as speculative, and argumentative.

APPLICANT RESPONSE TO INTERROGATORY NO. 9: Unknown.

Respectfully submitted

January 5, 2015



Peter J. Healy, Applicant and Defendant
PO Box 1523, Morro Bay, CA 93443

CERTIFICATE OF SERVICE

I hereby certify that the foregoing ANSWER TO NOTICE OF OPPOSITION was served on this 5th day of January, 2015, by postage prepaid first-class mail, from Morro Bay, California, to the following:

Counsel for Opposer and Plaintiff:

Mr. Philip Greene
Associate Counsel (Trademark)
U.S. Marine Corps
3000 Marine Corps Pentagon
Office of the Counsel for the Commandant
Room 4B548, The Pentagon
Washington, DC 20350-3000

January 5, 2015



Peter J. Healy, Applicant and Defendant
PO Box 1523, Morro Bay, CA 93443

EXHIBIT E
APPLICANT'S RESPONSES TO
OPPOSER'S REQUEST FOR PRODUCTION
OF DOCUMENTS

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

UNITED STATES MARINE CORPS v. PETER J. HEALY	Opposition No. 91215087 Serial No. 85936128
--	--

APPLICANT'S RESPONSES AND OBJECTIONS
TO OPPOSER'S REQUEST FOR PRODUCTION, SET ONE

Applicant Peter J. Healy, pursuant to Rules 33 and 34, of the Federal Rules of Civil Procedure, and Local Rules of this Court, responds and objects to Opposer United States Marine Corp's Request for Production, Set One, as follows:

PRELIMINARY STATEMENT

1. Applicant's investigation and development of all facts and circumstances relating to this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, Applicant's right to rely on other facts or documents at trial.
2. By making the accompanying responses and objections to Opposer's requests for documents, Applicant does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, and privilege. Further, Applicant makes the responses and objections herein without in any way implying that Applicant considers the requests, of responses to the requests, to be relevant or material to the subject matter of this action.

3. A response to a document request or interrogatory stating that objections and/or indicating that documents will be produced shall not be deemed or construed that there are, in fact, responsive documents, that Applicant performed, or intends to perform, any of the acts described in the document request, interrogatory, or definitions and/or instructions applicable to the document request or interrogatory, or that Applicant acquiesces in the characterization, or suggested occurrence, of the conduct or activities described or referenced in the document request, interrogatory, or definitions and/or instructions applicable to the document request or interrogatory.

4. Applicant expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response.

APPLICANT RESPONSES TO REQUESTS FOR PRODUCTION

APPLICANT OBJECTIONS TO REQUEST FOR PRODUCTION NO. 1: Applicant objects to Request for Production No. 1, as vague and ambiguous, calls for production of public documents or documents otherwise equally available to Opposer.

APPLICANT RESPONSE TO REQUEST FOR PRODUCTION NO. 1: No documents are responsive. Trademark acquisition was to be predicate to any video game business development or creative development activities.

APPLICANT OBJECTIONS TO REQUEST FOR PRODUCTION NO. 2: Applicant objects to Request for Production No. 2, as vague and ambiguous, overbroad, compound, calling for speculation as to what "subject of this Opposition" Opposer may be referring, or have in mind, other than the immediate trademark application or "MARINE ONE DOWN" relating to "the proposed video game,"

APPLICANT RESPONSE TO REQUEST FOR PRODUCTION NO. 2: No documents are responsive. Trademark acquisition was to be predicate to any video game business development or creative development activities.

Respectfully submitted

January 5, 2015


Peter J. Healy, Applicant and Defendant
PO Box 1523, Morro Bay, CA 93443

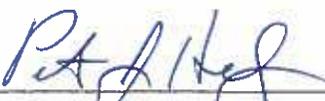
CERTIFICATE OF SERVICE

I hereby certify that the foregoing ANSWER TO NOTICE OF OPPOSITION was served on this 5th day of January, 2015, by postage prepaid first-class mail, from Morro Bay, California, to the following:

Counsel for Opposer and Plaintiff:

Mr. Philip Greene
Associate Counsel (Trademark)
U.S. Marine Corps
3000 Marine Corps Pentagon
Office of the Counsel for the Commandant
Room 4B548, The Pentagon
Washington, DC 20350-3000

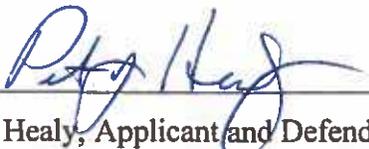
January 5, 2015


Peter J. Healy, Applicant and Defendant
PO Box 1523, Morro Bay, CA 93443

APPLICANT RESPONSE TO REQUEST FOR PRODUCTION NO. 2: No documents are responsive. Trademark acquisition was to be predicate to any video game business development or creative development activities.

Respectfully submitted

January 5, 2015



Peter J. Healy, Applicant and Defendant
PO Box 1523, Morro Bay, CA 93443

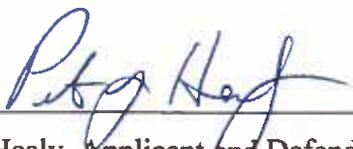
CERTIFICATE OF SERVICE

I hereby certify that the foregoing ANSWER TO NOTICE OF OPPOSITION was served on this 5th day of January, 2015, by postage prepaid first-class mail, from Morro Bay, California, to the following:

Counsel for Opposer and Plaintiff:

Mr. Philip Greene
Associate Counsel (Trademark)
U.S. Marine Corps
3000 Marine Corps Pentagon
Office of the Counsel for the Commandant
Room 4B548, The Pentagon
Washington, DC 20350-3000

January 5, 2015



Peter J. Healy, Applicant and Defendant
PO Box 1523, Morro Bay, CA 93443

EXHIBIT F
INFORMATION CONCERNING APPLICANT'S
DOMAIN NAME REGISTRATIONS

WHOIS search results for:
MARINE1DOWN.COM

Domain Name: MARINE1DOWN.COM
 Registry Domain ID: 1799196355_DOMAIN_COM-VRSN
 Registrar: WHOIS Server: whois.godaddy.com
 Registrar URL: http://www.godaddy.com
 Update Date: 2014-04-16T18:20:12Z
 Creation Date: 2013-05-06T00:46:53Z
 Registrar Registration Expiration Date: 2015-05-06T00:46:53Z
 Registrar: GoDaddy.com, LLC
 Registrar IANA ID: 146
 Registrar Abuse Contact Email: abuse@godaddy.com
 Registrar Abuse Contact Phone: +1-480-624-2505
 Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
 Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
 Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
 Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
 Registry Registrant ID:
 Registrant Name: PJ Healy
 Registrant Organization:
 Registrant Street: P.O. Box 1523
 Registrant City: Morro Bay
 Registrant State/Province: California
 Registrant Postal Code: 93443
 Registrant Country: United States
 Registrant Phone: 3235540005
 Registrant Phone Ext:
 Registrant Fax:
 Registrant Fax Ext:
 Registrant Email: pjh.office@gmail.com
 Registry Admin ID:
 Admin Name: PJ Healy
 Admin Organization:
 Admin Street: P.O. Box 1523
 Admin City: Morro Bay
 Admin State/Province: California
 Admin Postal Code: 93443
 Admin Country: United States

Is this your domain?
Add hosting, email and more.

GO

Want to buy this domain?
Get it with our Domain Buy service.

GO

Domain already taken?

Enter Domain Name

Search



NameMatch Recommendations

GoDaddy.com NameMatch has found similar domain names related to your search. Registering multiple domain names may help protect your online brand and enable you to capture more Web traffic, which you can then direct to your primary domain.

Domains available for new registration:

Alternate TLDs			
<input type="checkbox"/>	marine1down.mobi	SAVE!	\$6.99*/yr
<input type="checkbox"/>	marine1down.ca	SAVE!	\$9.99/yr
<input type="checkbox"/>	marine1down.me	SAVE!	\$9.99/yr
<input type="checkbox"/>	marine1down.ws	SAVE!	\$9.99/yr
<input type="checkbox"/>	marine1down.tv		\$39.99/yr
<input type="checkbox"/>	marine1down.ec		\$19.99/yr
<input type="checkbox"/>	marine1down.asia	SAVE!	\$4.99*/yr
<input checked="" type="checkbox"/>	Shiller Premium Domains ?		
<input type="checkbox"/>	MarineSponge.com		\$1,149.00*
<input type="checkbox"/>	MarineBarometer.com		\$600.00*
<input type="checkbox"/>	MarineSticker.com		\$500.00*

ADD TO CART

Domain Name: MAINNEONEDOWN.COM
 Registry Domain ID: 1799196332_DOMAIN_COM-VRS1
 Registrar WHOIS Server: whois.godaddy.com
 Registrar URL: http://www.godaddy.com
 Update Date: 2014-04-16T18:20:11Z
 Creation Date: 2013-05-06T00:46:52Z
 Registrar Registration Expiration Date: 2015-05-06T00:46:52Z
 Registrar: Godaddy.com, LLC
 Registrar IANA ID: 146
 Registrar Abuse Contact Email: abuse@godaddy.com
 Registrar Abuse Contact Phone: +1-480-624-2505
 Domain Status: clientTransferProhibited http://www.icann.org/epp/clientTransferProhibited
 Domain Status: clientRenewProhibited http://www.icann.org/epp/clientRenewProhibited
 Domain Status: clientDeleteProhibited http://www.icann.org/epp/clientDeleteProhibited
 Registry Registrar ID:
 Registrant Name: PJ Healy
 Registrant Organization:
 Registrant Street: P.O. Box 1523
 Registrant City: Horro Bay
 Registrant State/Province: California
 Registrant Postal Code: 93443
 Registrant Country: United States
 Registrant Phone Ext:
 Registrant Fax:
 Registrant Fax Ext:
 Registrant Email: pjh.office@gmail.com
 Registry Admin ID:
 Admin Name: PJ Healy
 Admin Organization:
 Admin Street: P.O. Box 1523
 Admin City: Horro Bay
 Admin State/Province: California
 Admin Postal Code: 93443
 Admin Country: United States
 Admin Phone: 3235540005
 Admin Phone Ext:
 Admin Fax:
 Admin Fax Ext:



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WHOIS search results for
MARINE1DOWN.NET

Domain Name: MARINE1DOWN.NET
 Registry Domain ID: 1802667333_DOMAIN_NET-VRSN
 Registrar WHOIS Server: whois.godaddy.com
 Registrar URL: http://www.godaddy.com
 Update Date: 2014-04-16T18:20:32Z
 Creation Date: 2013-05-20T17:51:19Z
 Registrar Registration Expiration Date: 2015-05-20T17:51:19Z
 Registrar: GoDaddy.com, LLC
 Registrar IANA ID: 146
 Registrar Abuse Contact Email: abuse@godaddy.com
 Registrar Abuse Contact Phone: +1-480-624-2505
 Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
 Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
 Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
 Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
 Registry Registrant ID:
 Registrant Name: PJ Healy
 Registrant Organization:
 Registrant Street: P.O. Box 1523
 Registrant City: Morro Bay
 Registrant State/Province: California
 Registrant Postal Code: 93443
 Registrant Country: United States
 Registrant Phone: (323) 554-0005
 Registrant Phone Ext:
 Registrant Fax:
 Registrant Fax Ext:
 Registrant Email: pjh.office@gmail.com
 Registry Admin ID:
 Admin Name: PJ Healy
 Admin Organization:
 Admin Street: P.O. Box 1523
 Admin City: Morro Bay
 Admin State/Province: California
 Admin Postal Code: 93443
 Admin Country: United States
 Admin Phone: (323) 554-0005
 Admin Phone Ext:

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Want to buy this domain?
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Domain already taken?

Enter Domain Name

Search



NameMatch Recommendations

GoDaddy.com NameMatch has found similar domain names related to your search. Registering multiple domain names may help protect your online brand and enable you to capture more Web traffic, which you can then direct to your primary domain.

Domains available for new registration:

Alternative TLDs			
<input type="checkbox"/>	marine1down.mobi	SAVE!	\$6.99*/yr
<input type="checkbox"/>	marine1down.ca	SAVE!	\$9.99/yr
<input type="checkbox"/>	marine1down.me	SAVE!	\$9.99/yr
<input type="checkbox"/>	marine1down.ws	SAVE!	\$9.99/yr
<input type="checkbox"/>	marine1down.tv		\$39.99/yr
<input type="checkbox"/>	marine1down.cc		\$19.99/yr
<input type="checkbox"/>	marine1down.asia	SAVE!	\$4.99*/yr
<input checked="" type="checkbox"/>	Similar Premium Domains ?		
<input type="checkbox"/>	MarineSponge.com		\$1,149.00*
<input type="checkbox"/>	MarineBarometer.com		\$600.00*
<input type="checkbox"/>	MarineSticker.com		\$500.00*

ADD TO CART

Domains available at Go Daddy Auctions®:

Domain Name: PARINEGEBOMI.NET
Registry Domain ID: 1802729734_DOMAIN_NET-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Update Date: 2014-04-16T16:20:32Z
Creation Date: 2013-05-20T21:58:12Z
Registrar Registration Expiration Date: 2015-05-20T21:58:12Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1-480-624-2505
Domain Status: clientTransferProhibited http://www.icann.org/epp/clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp/clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp/clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp/clientDeleteProhibited
Registry Registrar ID:
Registry Name: PJ Healy
Registrant Organization:
Registrant Street: P.O. Box 1523
Registrant City: Horro Bay
Registrant State/Province: California
Registrant Postal Code: 93443
Registrant Country: United States
Registrant Phone: 3135540005
Registrant Fax:
Registrant Fax Ext:
Registrant Email: pjh.office@gmail.com
Registry Admin ID:
Admin Name: PJ Healy
Admin Organization:
Admin Street: P.O. Box 1523
Admin City: Horro Bay
Admin State/Province: California
Admin Postal Code: 93443
Admin Country: United States
Admin Phone: 3135540005
Admin Fax:
Admin Fax Ext:
Admin Email: pjh.office@gmail.com

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Make an instant, anonymous offer to

WHOIS search results for:
MARINE1DOWN.ORG
(Registered)

Domain Name: MARINE1DOWN.ORG
 Registry Domain ID: D168737346-LROR
 Registrar WHOIS Server: whois.godaddy.com
 Registrar URL: http://www.godaddy.com
 Update Date: 2013-07-20T03:45:59Z
 Creation Date: 2013-05-20T17:50:41Z
 Registrar Registration Expiration Date: 2015-05-20T17:50:41Z
 Registrar: GoDaddy.com, LLC
 Registrar IANA ID: 146

Registrar Abuse Contact Email: abuse@godaddy.com
 Registrar Abuse Contact Phone: +1 480-624-2505
 Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
 Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
 Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
 Registry Registrar ID: CR143642874
 Registrant Name: PJ Healy
 Registrant Organization:
 Registrant Street: P.O. Box 1523
 Registrant City: Morro Bay
 Registrant State/Province: California
 Registrant Postal Code: 93443
 Registrant Country: United States
 Registrant Phone: +1.3235540005
 Registrant Phone Ext:
 Registrant Fax:
 Registrant Fax Ext:
 Registrant Email: pjh.office@gmail.com
 Registry Admin ID: CR143642876
 Admin Name: PJ Healy
 Admin Organization:
 Admin Street: P.O. Box 1523
 Admin City: Morro Bay
 Admin State/Province: California
 Admin Postal Code: 93443
 Admin Country: United States

Is this your domain?
 Add hosting, email and more. **GO**

Want to buy this domain?
 Get it with our Domain Buy service. **GO**

Domain already taken?

Enter Domain Name

Search



NameMatch Recommendations

GoDaddy.com NameMatch has found similar domain names related to your search. Registering multiple domain names may help protect your online brand and enable you to capture more Web traffic, which you can then direct to your primary domain.

Domains available for new registration:

Alternate TLDs	Price	Save
<input type="checkbox"/> marine1down.mobi	\$6.99*/yr	SAVE!
<input type="checkbox"/> marine1down.ca	\$9.99/yr	SAVE!
<input type="checkbox"/> marine1down.me	\$9.99/yr	SAVE!
<input type="checkbox"/> marine1down.ws	\$9.99/yr	SAVE!
<input type="checkbox"/> marine1down.tv	\$39.99/yr	
<input type="checkbox"/> marine1down.cc	\$19.99/yr	
<input type="checkbox"/> marine1down.za	\$4.99*/yr	SAVE!
<input checked="" type="checkbox"/> Similar Premium Domains ?		
<input type="checkbox"/> MarineSponge.com	\$1,149.00*	
<input type="checkbox"/> MarineBarometer.com	\$600.00*	
<input type="checkbox"/> MarineSticker.com	\$500.00*	

ADD TO CART

Domain already taken?

Enter Domain Name

Search

NameMatch Recommendations

GoDaddy.com NameMatch has found similar domain names related to your search. Registering multiple domain names may help protect your online brand and enable you to capture more Web traffic, which you can then direct to your primary domain.

Domains available for new registrations:

<input checked="" type="checkbox"/>	Alternate TLDs		
<input type="checkbox"/>	mar-reonedown:mobi	SAVE	\$6.99*/yr
<input type="checkbox"/>	mar-reonedown:ca	SAVE	\$9.99/yr
<input type="checkbox"/>	mar-reonedown:me	SAVE	\$9.99/yr
<input type="checkbox"/>	mar-reonedown:ws	SAVE	\$9.99/yr
<input type="checkbox"/>	mar-reonedown:tv		\$39.99/yr
<input type="checkbox"/>	mar-reonedown:cc		\$19.99/yr
<input type="checkbox"/>	mar-reonedown:asia	SAVE	\$4.99*/yr
<input checked="" type="checkbox"/>	Similar Premium Domains		
<input type="checkbox"/>	MarreSponge.com		\$1,149.00*
<input type="checkbox"/>	MarreBarometer.com		\$692.00*

Domain Name: MARINEONEDOWN.ORG
Registry Domain ID: D168737347-LROR
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Update Date: 2013-07-20T03:45:59Z
Creation Date: 2013-05-20T17:50:42Z
Registrar Registration Expiration Date: 2015-05-20T17:50:42Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1480-624-2505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registry Registrant ID: CR143642894
Registrant Name: PJ Healy
Registrant Organization:
Registrant Street: P.O. Box 1523
Registrant City: Morro Bay
Registrant State/Province: California
Registrant Postal Code: 93443
Registrant Country: United States
Registrant Phone: +13235540005
Registrant Phone Ext:
Registrant Fax:
Registrant Fax Ext:
Registrant Email: pjloffice@gmail.com
Registry Admin ID: CR143642896
Admin Name: PJ Healy
Admin Organization:

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Domain Name: MARINEONEDOWN.INFO

Registry Domain ID: D49938494-LRMS

Registrar WHOIS Server: whois.godaddy.com

Registrar URL: http://www.godaddy.com

Update Date: 2014-04-16T18:20:19Z

Creation Date: 2013-05-20T17:50:52Z

Registrar Registration Expiration Date: 2015-05-20T17:50:52Z

Registrar: GoDaddy.com, LLC

Registrar IANA ID: 146

Registrar Abuse Contact Email: abuse@godaddy.com

Registrar Abuse Contact Phone: +1.480.624.2505

Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited

Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited

Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited

Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited

Registry Registrar ID: CR143642890

Registrant Name: PJ Healy

Registrant Organization:

Registrant Street: P.O. Box 1523

Registrant City: Morro Bay

Registrant State/Province: California

Registrant Postal Code: 93443

Registrant Country: United States

Registrant Phone: +1.3235400005

Registrant Phone Ext:

Registrant Fax:

Registrant Fax Ext:

Registrant Email: pjh.office@gmail.com

Registry Admin ID: CR143642892

Admin Name: PJ Healy

Admin Organization:

Admin Street: P.O. Box 1523

Admin City: Morro Bay

Admin State/Province: California

Admin Postal Code: 93443

Admin Country: United States

Admin Domain: 13734560Name

Domain already taken?

Enter Domain Name

Search



NameMatch Recommendations

GoDaddy.com NameMatch has found similar domain names related to your search. Registering multiple domain names may help protect your online brand and enable you to capture more Web traffic, which you can then direct to your primary domain.

Domains available for new registration:

Alternative TLDs	Price
<input type="checkbox"/> marneonedown.mobi	SAVE \$6.99/yr
<input type="checkbox"/> marneonedown.ca	SAVE \$9.99/yr
<input type="checkbox"/> marneonedown.me	SAVE \$9.99/yr
<input type="checkbox"/> marneonedown.ws	SAVE \$9.99/yr
<input type="checkbox"/> marneonedown.tv	\$39.99/yr
<input type="checkbox"/> marneonedown.cc	\$19.99/yr
<input type="checkbox"/> marneonedown.asia	SAVE \$4.99/yr
Similar Premium Domains	
<input type="checkbox"/> MarineSponge.com	\$1,149.00*
<input type="checkbox"/> MarineBallometer.com	\$690.00*
<input type="checkbox"/> MarineSifter.com	\$500.00*

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WHOIS search results for:
MARINE1DOWN.INFO

Domain Name: MARINE1DOWN.INFO
 Registry Domain ID: D49938495-LRMS
 Registrar WHOIS Server: whois.godaddy.com
 Registrar URL: http://www.godaddy.com
 Update Date: 2014-04-16T18:20:20Z
 Creation Date: 2013-05-20T17:56:52Z
 Registrar Registration Expiration Date: 2015-05-20T17:56:52Z
 Registrar: GoDaddy.com, LLC
 Registrar IANA ID: 146
 Registrar Abuse Contact Email: abuse@godaddy.com
 Registrar Abuse Contact Phone: +1-480-624-2505

Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
 Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
 Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
 Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
 Registry Registrar ID: CR143642866
 Registrant Name: PJ Healy
 Registrant Organization:
 Registrant Street: P.O. Box 1523
 Registrant City: Morro Bay
 Registrant State/Province: California
 Registrant Postal Code: 92443
 Registrant Country: United States
 Registrant Phone: +13235540005
 Registrant Phone Ext:
 Registrant Fax:
 Registrant Fax Ext:
 Registrant Email: pjh.office@gmail.com
 Registry Admin ID: CR143642868
 Admin Name: PJ Healy
 Admin Organization:
 Admin Street: B.N. Bwy. 1523

Domain already taken?

Enter Domain Name

 NameMatch Recommendations

GoDaddy.com NameMatch has found similar domain names related to your search. Registering multiple domain names may help protect your online brand and enable you to capture more Web traffic, which you can then direct to your primary domain.

Domains available for new registration:

Domain	Price	Original Price	Save
<input type="checkbox"/> Alternate TLDs			
<input type="checkbox"/> marre1down.mobi	\$6.99/yr	\$9.99/yr	SAVE
<input type="checkbox"/> marre1down.ca	\$9.99/yr	\$9.99/yr	SAVE
<input type="checkbox"/> marre1down.me	\$9.99/yr	\$9.99/yr	SAVE
<input type="checkbox"/> marre1down.ws	\$38.99/yr	\$38.99/yr	SAVE
<input type="checkbox"/> marre1down.tv	\$19.99/yr	\$19.99/yr	SAVE
<input type="checkbox"/> marre1down.cc	\$4.99/yr	\$4.99/yr	SAVE
<input type="checkbox"/> marre1down.asia	\$19.99/yr	\$19.99/yr	SAVE
<input checked="" type="checkbox"/> Similar Premium Domains	\$1,149.00*	\$1,149.00*	
<input type="checkbox"/> Marre1down.sponge.com	\$500.00*	\$500.00*	
<input type="checkbox"/> Marre1down.barometer.com	\$500.00*	\$500.00*	

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EXHIBIT G
INFORMATION CONCERNING APPLICANT'S
USE OR NON-USE OF ITS
DOMAIN NAME REGISTRATIONS



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EXHIBIT H
INFORMATION CONCERNING APPLICANT'S
USE OR NON-USE OF ITS
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Everywhere

Near you

Trends Change

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- #TumpDay
- #HilishPieAwards
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People you follow

Everywhere

Near you

Trends

- Change
- #EarthDay
- #HumpDay
- #BritishPleAwards
- #CincDeMayo
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