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

Proceeding	91216932
Party	Plaintiff Rapid Funding LLC
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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. 86111998
For the mark Rapid Capital Funding
Published in the Official Gazette on June 10, 2014

Rapid Funding LLC,
a Colorado limited liability company,

Opposer,

v.

Opposition No. 91216932

Rapid Capital Funding LLC,
a Florida limited liability company,

Applicant.

RAPID FUNDING LLC'S MOTION FOR RECONSIDERATION

Opposer, Rapid Funding, LLC, a Colorado limited liability company ("RF"), pursuant to 37 C.F.R. § 2.129(c) and Fed. R. Civ. P. 60, by and through its undersigned attorneys, hereby files the following Motion for Reconsideration of the Court's February 13, 2015 Order dismissing the Opposition, with prejudice.

1. **INTRODUCTION AND BACKGROUND**

RF filed a trademark application with the United States Patent and Trademark Office for the mark "Rapid Funding" on February 6, 2002, and the mark was registered on December 3, 2002 at Serial Number 76368321 (the "RF Mark"). However, RF inadvertently failed to renew the RF Mark, and it was canceled on July 5, 2013. On June 10, 2014, RCF filed an application for the mark "Rapid Capital Funding" (the "RCF Mark"). On June 18, 2014, RF filed its Notice of Opposition and Opposition to the

registration sought by the RCF for the RCF Mark. Subsequently, RF and RCF determined that their marks were sufficiently different in sound and appearance and utilized different business models. On February 3, 2015, a Joint Consent Agreement was filed in this matter.

2. **THE CONSIDERATION FOR THE JOINT CONSENT AGREEMENT IS BOTH PARTIES' ABILITY TO REGISTER THEIR RESPECTIVE MARKS**

The consideration for the Joint Consent Agreement is: (a) each party's consent to the other party's use of its mark, and (b) the simultaneous ability for RF and RCF to register their respective marks. Thus, if RF is barred from registering the RF Mark, there is no consideration for the Consent Agreement, and the Joint Consent Agreement must fail. See Restatement (Second) of Contracts § 76(c) (“A party may make an aleatory promise, under which his duty to perform is conditional on the occurrence of a fortuitous event. Such a promise may be consideration for a return promise”).

Here, Paragraph 4 of the Joint Consent Agreement provides:

By way of this Agreement, RCF and RF agree that no consumer confusion would or will result from the Parties' use of their respective Marks in commerce because the RCF Mark is sufficiently different in sound and appearance from the RF Mark. RF consents to the use of, and the United States Patent and Trademark Office registration of the RCF Mark and commercial use of the RCF Mark by RCF, and **likewise, RCF consents to the United States Patent and Trademark Office registration of the RF Mark and the commercial use of the RF Mark by RF.** (emphasis added).

Paragraph 5 and 6 of the Joint Consent Agreement state:

RCF Agrees and consents to the simultaneous use and registration of the RF Mark without any restrictions on the use of the RF Mark, other than those restrictions set forth herein.

RF agrees and consents to the simultaneous use and registration of the RCF Mark without any restrictions on the use of the RCF Mark, other than those restrictions set forth herein.

Paragraph 10 of the Joint Consent Agreement adds:

RCF agrees that it will not challenge the use of or registration of the RF Mark, Rapid Funding, and shall request and allow that the RF Mark proceed to registration, with no opposition by RCF.

While it appears likely that the examining attorney will approve publication of the RF Mark, it is critical that the Opposition remain open through the date of the examining attorney's final review and decision. In that way, the parties will not be denied the opportunity to pursue their claims and defenses should RF be denied the benefit its bargain described in the Joint Consent Agreement.

3. **THE EXAMINING ATTORNEY HAS NOT YET PERFORMED A FINAL REVIEW OF THE RF MARK OR APPROVED THE RF MARK FOR PUBLICATION**

On July 9, 2014, RF filed a new application to register the RF Mark, and it was assigned US Serial Number 86332570. During the pendency of the Opposition, the examining attorney stayed a decision on whether to publish the RF Mark pending the Opposition's resolution.

The Joint Consent Agreement has been filed with the examining officer. On March 5, 2015, the examining officer entered the following status report: "Approved by the examining attorney for publication but has not yet published for opposition.

Although rare, withdrawal of approval prior to publication may occur after final review. The opposition period begins on the date of publication." (emphasis added).

RF is hopeful that the examining officer will agree to publish the RF Mark after her final review. However, should the examining attorney withdraw her approval to allow the RF to go forward for publication based on a perceived conflict between the RF Mark and the RCF Mark, RF will have lost its ability to pursue relief through the

CERTIFICATE OF MAILING

I hereby certify that on this 13th day of March, 2014, a true copy of the foregoing **OPPOSER'S MOTION FOR RECONSIDERATION** was served in the following manner, per the prior written agreement of counsel:

VIA EMAIL

WILLIAM D. WEYROWSKI
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By: /Jill M. Jacobs/
Jill M. Jacobs

CERTIFICATE OF ELECTRONIC FILING

The undersigned certifies that this submission is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 13th day of March, 2015.

/Laura R. Satterfield/
Laura R. Satterfield,
Paralegal