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Filing date: **04/26/2016**

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

Proceeding	91217630
Party	Plaintiff Sturgis Motorcycle Rally, Inc.
Correspondence Address	JASON M SNEED SNEED PLLC 610 JETTON ST, STE 120-107 DAVIDSON, NC 28036 UNITED STATES JSneed@SneedLegal.com, sarah@sneedlegal.com, msorokes@sneedlegal.com, clandrum@sneedlegal.com, litigation@SneedLegal.com, admin@sneedlegal.com
Submission	Opposition/Response to Motion
Filer's Name	Sarah C. Hsia
Filer's e-mail	sarahhsia@gmail.com, jsneed@sneedlegal.com, clandrum@sneedlegal.com, msorokes@sneedlegal.com
Signature	/sch/
Date	04/26/2016
Attachments	2016-04-26 Opposition to Motion to Strike.pdf(146587 bytes) Exhibit A - final.pdf(206456 bytes) Exhibit B - final.pdf(306317 bytes) Exhibit C - final.pdf(364287 bytes) Exhibit D.pdf(175943 bytes)

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

In the matter of Trademark Application Serial No. 86/112,261
Trademark: IT'S A BLACK HILLS THING! YOU WOULDN'T UNDERSTAND,
'TILL YOU BEEN HERE!
Filed: November 6, 2013
Published: April 1, 2014

Sturgis Motorcycle Rally, Inc.,)	
)	
Opposer,)	
)	Opposition No. 91217630
v.)	
)	
Gary St. Martin St. Martin Hansen,)	
)	
Applicant.)	

OPPOSITION TO APPLICANT'S MOTION TO STRIKE

Opposer Sturgis Motorcycle Rally, Inc. ("SMRi" or "Opposer") opposes Applicant's Motion to Strike (TTABVUE 28). Opposer duly noticed the depositions of its witnesses for April 6, 2016 and properly served the deposition notices in accordance with 37 C.F.R. § 2.119. Moreover, Applicant was on *actual* notice of the testimonial depositions by April 4, 2016, and failed to object thereto until more than a week *after* they took place. Applicant failed to retain counsel to represent him during the time that was allotted to him to do so, failed to request a further period of time to retain counsel before proceedings resumed, and should not now be allowed to unwind the effort and expense that Opposer has already made in adducing testimony from its own witnesses.

I. Factual Background

On March 17, 2016, Opposer served its Pretrial Disclosures and a Notice of Deposition for Gary St. Martin Hansen, by first-class mail, postage prepaid to the address on file for Applicant. Exhibit A. In a second envelope, on that same day, Opposer served Amended Pretrial Disclosures and Notices of Deposition for Dean Kinney, Clint Brengle and Karen Simmons. Exhibit B. Mr. St. Martin Hansen's deposition was noticed for April 4, 2016 in Johnson, VT; the depositions of Mr. Kinney, Mr. Brengle and Ms. Simmons were noticed for April 6, 2016 in Rapid City, SD.

Having heard nothing from Mr. St. Martin Hansen as to whether he had retained counsel during the suspension period, on April 1, 2016, Counsel for Opposer telephoned him to ascertain whether he had retained counsel, and whether he would willingly appear for his deposition. However, Mr. St. Martin Hansen would not clearly state whether he was represented by counsel, or provide the name or contact information for the attorney who was "looking at the file." Exhibit C, ¶ 4. Opposer thus wrote to Mr. St. Martin Hansen to postpone his duly noticed deposition until such time as it was clear whether he was represented by counsel.¹ Exhibit C1.

In response, Mr. St. Martin Hansen wrote Counsel for Opposer at 10:54 p.m. on April 1, 2016, and then filed a Motion to Suspend on Saturday, April 2, 2016 (TTABVUE 27) in which he claimed for the first time not to have received his deposition notice, despite the fact that it was duly served on him by first-class mail, postage prepaid, at the address he has provided to be used in this proceeding, more than two weeks earlier.

¹ As for the depositions of Mr. Kinney, Mr. Brengle and Ms. Simmons, there were no potential ethical issues with Counsel for Opposer deposing these witnesses that Opposer had designated to testify on its behalf. Accordingly, Counsel for Opposer did not seek to postpone these duly-noticed depositions.

Exhibits A, B. Late in the day on Monday, April 4, 2016, Counsel for Opposer received the envelope enclosing the Pretrial Disclosures and Mr. St. Martin Hansen's deposition notice, marked "return to sender, attempted – not known, unable to forward." Exhibit D. Counsel promptly sent an email to Mr. St. Martin Hansen attaching copies of all of the documents that had been mailed to him on March 17, 2016, including the Amended Pretrial Disclosures and deposition notices for Mr. Kinney, Mr. Brengle and Ms. Simmons on April 6, 2016 in Rapid City, SD. *See* Exhibit C3. However, to date, the second envelope containing the Amended Pretrial Disclosures and Deposition Notices for Mr. Kinney, Mr. Brengle and Ms. Simmons has not been returned to sender. Contrary to Mr. St. Martin Hansen's representation in his motion, neither Mr. Landrum or Mr. Sneed spoke to Applicant via telephone subsequent to April 1, 2016. Exhibit C, ¶ 4.

That same day, April 4, 2016, Mr. St. Martin Hansen responded to Counsel for Opposer by email, acknowledging receipt of the deposition notices by approximately 10:00 p.m. on April 4, 2016. Exhibit C3. Mr. St. Martin Hansen emailed Counsel for Opposer not less than four times between April 4-5, 2016, and not once did he object to the testimonial depositions going forward in Rapid City on April 6, 2016. Exhibit C, ¶ 4; Exhibits C3-C6. On April 7, 2016, *after* the depositions had taken place, Mr. St. Martin Hansen emailed Counsel for Opposer two more times, and still failed to make any objection. Exhibits C7-C8. Indeed, it was not until the filing of the instant motion on April 14, 2016—more than a week after the depositions took place—that Mr. St. Martin Hansen asserted any objection at all.

II. ARGUMENT

A. Applicant Failed to Make Timely Objections to the Testimonial Depositions

Trademark Rule 2.123(j) incorporates by reference Fed. R. Civ. P. 32(d)(1), which states that “[a]n objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.” 37 C.F.R. §2.123(j). TBMP 707.03(a) similarly provides that “an objection to a testimony deposition must be raised promptly if the defect is one that can be obviated or removed, failing which it is deemed waived.” Here, Mr. St. Martin Hansen was clearly on notice of the testimonial depositions as of April 4, 2016. He did not provide any objection—written or otherwise—to the deposition notice until 10 days later, well after the time that any defect in the notice period could have been cured.^{2,3} Exhibit C, ¶ 4; Exhibits C1-8. He did nothing—no objection, no motion to quash, no cross examination under protest—to preserve his rights.

The Trademark Rules further provide that if a party believes a notice of examination to be improper or inadequate, that the party may cross-examine the witness under protest while reserving the right to object to receipt of the testimony in evidence. 37 C.F.R. 2.123(e)(3). The TBMP further provides that “objections to a testimony deposition based on improper or inadequate notice may also be raised by a motion to

² Counsel for Opposer notes that while the instant Motion was filed on April 14, 2016, the certificate of service is not signed, and as of the date of this paper, Counsel for Opposer still has not received a copy by mail. Opposer only became aware of the Motion to Strike upon receipt of the Order suspending the proceeding from the Board.

³ Not only did Hansen not object to the depositions, the only concern he expressed was being able to read the transcripts: “Will I be able to read the depositions taken of Kinney etc, and mine will be available to whoever wishes , or not?” Exhibit C6.

quash,” noting that the parties are “encouraged” to ask for a telephonic conference with the Board attorney given the time sensitivity of such a motion. TBMP §533.02(a). Here, Applicant did neither: he did not appear telephonically or in person to cross-examine the witnesses under protest, and he did not make a motion to quash or seek a telephonic conference with the Board attorney. Simply put, Mr. St. Martin Hansen did not voice any objection whatsoever to the April 6, 2016 depositions until 10 days after he received actual notice thereof.

Moreover, to preserve an objection to a testimonial deposition, the adverse party must move promptly to strike the testimony from the record. 37 C.F.R. 2.123(e)(3). Here, Applicant waited until April 14, 2016—more than a week after the depositions took place—to raise any objection whatsoever. Because Applicant failed to object in a timely manner to the testimonial depositions, Applicant’s Motion to Strike should be denied.

B. Opposer provided Applicant with Adequate and Reasonable Notice under the Circumstances

Trademark Rule 2.123(c) requires that due notice of a testimonial deposition be given to the other parties; here, every effort was made to provide Applicant with adequate and reasonable notice under the circumstances. The content of the notices is not at issue; Applicant merely complains that he was not provided with sufficient notice. The determination of what is reasonable notice is made by the Board on a case-by-case basis, and depends on the circumstances. *See Duke University v. Haggard Clothing, Inc.*, 54 U.S.P.Q.2d 1443 (TTAB 2000). The Board has found that a period of two days can constitute adequate notice in certain circumstances. *See, e.g., Hamilton Burr Publishing*

Co. v. E.W. Communications, Inc., 216 U.S.P.Q. 802, at n. 6 (TTAB 1982) (two business days notice reasonable under the circumstances and noting applicant's failure to identify any specific prejudice it sustained as a result of the short notice); *see also Penguin Books Ltd. v. Eberhard*, 48 U.S.P.Q.2d 1280 (TTAB 1998) (one day notice found reasonable); *The Sunrider Corp. v. Raats*, 83 U.S.P.Q.2d 1648 (TTAB 2007) (three business days notice found reasonable). Here, Opposer duly served the deposition notices more than three weeks before the depositions were to take place, which is unquestionably reasonable, and upon learning that Applicant claimed not to have received them, Opposer acted promptly to provide him with substitute service and actual notice. Exhibit C3.

i. Service Was Made in Accordance with the Trademark Rules

Service of papers in *inter partes* cases may be made by first-class mail addressed to the party being served, if he is unrepresented by counsel. 37 C.F.R. § 2.119(b)(4). There is no requirement that the papers be sent by certified or registered mail, or by any means that provides a receipt. *Id.* And when service is made by first-class mail, the date of mailing is considered the date of service. 37 C.F.R. § 2.119(c). A certificate of service which clearly states the date and manner in which service was made is *prima facie* proof of service. 37 C.F.R. § 2.119(a).

Counsel for Opposer mailed the deposition notices by first-class mail, postage prepaid, on March 17, 2016, so service was properly effected. Although one of the envelopes sent to Mr. St. Martin Hansen was returned, the envelope containing the deposition notices for April 6, 2016 in Rapid City was not returned, so Counsel for Opposer has no reason to believe that it was not delivered to Mr. St. Martin Hansen.

Moreover, the date of service is properly considered to be March 17, 2016, which was almost three weeks before the depositions were to take place. 37 C.F.R. § 2.119(c). Mr. St. Martin Hansen alleges that he did not receive the deposition notices by mail; however, if true, this is the fault of the U.S. Postal Service, not Opposer, and does not affect Opposer's compliance with the service requirements of the Trademark Rules. *See Musical Directions v. Norman McHugh*, Opp. No. 91205312, 2012 WL 4763148, at *3 (TTAB Sept. 21, 2012) (noting a party had complied with service requirements of Rule 2.119 even where a service copy was returned as undeliverable by the USPS).

C. Applicant has not Alleged any Substantial Injury

While Applicant's motion cursorily states that he "could not have been present for or there to cross-examine etc at the depositions with less than 48 hours notice," and alleges that he was "denied his right to be present and cross examine," he simply has not alleged a "substantial injury" sufficient to cause Opposer's testimony to be stricken. *See Hamilton Burr*, 216 U.S.P.Q. 802, at n. 6 (TTAB 1982) (denying motion to strike and noting applicant's failure to identify any specific prejudice it sustained as a result of the short notice). Even accepting as true Applicant's contention that he could not have physically been present in Rapid City, SD on 48 hours notice⁴, Applicant could have participated in the depositions by telephone, but chose not to. Moreover, if Applicant has questions to ask, he may do so during his own testimonial period. Because Applicant has not shown any specific prejudice or substantial injury suffered due to the short notice period, his motion should be denied.

⁴ Applicant has not identified any personal or business obligations which would have interfered with his travel to South Dakota, nor has he alleged that he would, in fact, have physically traveled to South Dakota to attend the depositions if he had had more notice.

D. Opposer Should Not Be Unfairly Punished for Service Issues outside its Control

Applicant's request that the Board strike the three testimonial depositions taken by Opposer would unfairly punish Opposer for the failures of the U.S. Postal Service, and perhaps of Applicant himself.⁵ Opposer duly served properly formatted notices of deposition on Mr. St. Martin Hansen on March 17, 2016 by first class mail, postage prepaid. The deposition notices for the South Dakota depositions have not been returned to sender. Upon learning that Applicant contended that he never received notice of the depositions, Opposer promptly served the documents by email. There can be no contention that Opposer has somehow acted improperly, and the fact that a service issue arose with an address provided by Applicant himself should not result in a waste of Opposer's time, money and resources.⁶

E. Opposer Should Not Be Unfairly Punished for Applicant's Failure to Timely Retain Counsel

That Applicant is not represented by counsel is irrelevant. Applicant had thirty days to retain counsel, and failed to do so. TTABVUE 26, 31. After proceedings had resumed, and Opposer's testimony period began, he moved for another suspension to afford himself yet another opportunity to retain counsel. TTABVUE 27. During a call with the Interlocutory Attorney Mr. St. Martin Hansen could not articulate specific steps he had taken to find and retain counsel other than that he had left voicemails for one

⁵ Opposer notes that this is not the first time it has experienced issues with service, and the Interlocutory Attorney has previously asked Mr. St. Martin Hansen to confirm his mailing address.

⁶ Applicant's repeated changes in position as to whether he will appear voluntarily for a deposition have already resulted in additional costs to Opposer's counsel in the form of cancellation fees, travel change penalties, etc.

particular attorney who wasn't returning his calls. Applicant has chosen to proceed *pro se*, and his failure to heed the warning of the Board that "practices and procedures in proceedings before the Board are quite technical and highly specialized, [and] it is strongly recommended that an attorney familiar with trademark law represent a party," is not an excuse. TBMP § 114.01. Opposer has already had to bear unnecessary costs and waste time and resources trying to take Applicant's testimonial deposition; to further penalize Opposer for Applicant's failure to abide by Board practices and procedures when Applicant has chosen to proceed *pro se*, and has failed to retain counsel despite ample time provided to him to do so, would be manifestly unfair.

III. CONCLUSION

In view of the foregoing, Opposer respectfully requests that Applicant's Motion to Strike be denied in its entirety.

Dated: April 26, 2016

Respectfully Submitted,

/s/ Sarah Hsia

Jason M. Sneed, Esq.

Charles Landrum, Esq.

Sarah C. Hsia, Esq.

SNEED PLLC

610 Jetton St., Suite 120-107

Davidson, North Carolina 28036

Tel: 704-779-3611

JSneed@SneedLegal.com

CLandrum@SneedLegal.com

Sarah@SneedLegal.com

Attorneys for Opposer, Sturgis

Motorcycle Rally, Inc.

Certificate of Service

In accordance with the Board's Order dated April 20, 2016 (TTABVUE 31), the undersigned counsel of record hereby certifies that a copy of the foregoing *Opposition to Applicant's Second Motion to Suspend for Applicant to Retain Counsel* was served by email to stdrumr@gmail.com on April 26, 2016.

/s/ Sarah Hsia
An Attorney for Opposer

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

_____)	
Sturgis Motorcycle Rally, Inc.,)	
)	
Opposer,)	
)	Opposition No. 91217630
v.)	
)	
Gary St. Martin Hansen,)	
)	
Applicant.)	
_____)	

OPPOSER’S PRETRIAL DISCLOSURES

Pursuant to 37 C.F.R. § 2.121(e) and Fed. R. Civ. P. 26(a)(3), Opposer, Sturgis Motorcycle Rally, Inc. (“SMRi”) hereby makes the following pretrial disclosures to Applicant, Gary Hansen, of the witnesses from whom Opposer may take testimony during its testimony period, of the likely testimony of such witnesses, and of the likely evidence that may be introduced as exhibits during the testimony of such witnesses. Opposer’s disclosures represent a good faith effort to identify information reasonably believed to be required by the applicable rules. Accordingly, Opposer reserves the right to supplement these disclosures.

1. Names of Potential Witnesses and Subjects of Information

- a. Dean Kinney, Chairperson, Sturgis Motorcycle Rally, Inc., 1612 Junction Ave., Suite #4, Sturgis, South Dakota 57785, and President, HomeSlice Corporation, Licensing Agent of SMRI, 1612 Junction Ave., Suite #4, Sturgis, South Dakota 57785. Mr. Kinney should be contacted only through counsel for Opposer. Mr. Kinney is expected to testify regarding: (i) the claims and defenses of Plaintiff; (ii) the background of the Sturgis Motorcycle Rally and activities; (iii) the

licensing and trademark enforcement activities of Opposer; and (iv) the strength of Opposer's asserted marks.

- b. Jerome Berkowitz, President, Good Sports, Inc., 349 Progress Dr., Manchester, CT 06045. Mr. Berkowitz should be contacted only through counsel for Opposer. Mr. Berkowitz is expected to testify regarding: (i) the licensing and trademark enforcement activities of Opposer; and (ii) the use of Opposer's mark on goods and services that are identical or similar to those claimed in Applicant's application.
- c. Karen Simmons, Treasurer, Sturgis Motorcycle Rally, Inc., 1612 Junction Ave., Suite #4, Sturgis, South Dakota 57785. Ms. Simmons should be contacted only through counsel for Opposer. Ms. Simmons is expected to testify regarding Opposer's expenditures and revenues.
- d. Gary St. Martin Hansen, Applicant, 399 Lower Main West, Johnson, Vermont 98110. Mr. Hansen is expected to testify regarding: (i) the conception, adoption and selection of the opposed mark; (ii) the filing and prosecution of U.S. Appl. Serial No. 86/112,261, including the materials and statements submitted to the U.S. PTO in connection therewith; (iii) any activities and intended activities pertaining to the opposed mark; (iv) Applicant's awareness and knowledge of Opposer and its asserted marks; and (v) materials and statements submitted to the U.S. PTO in connection with this proceeding.

2. Evidence

Certain documents and things may be introduced as exhibits during the testimony of the above witnesses, including:

- a. U.S. Trademark Reg. No. 3,955,170 (BLACK HILLS)
- b. U.S. Trademark Reg. No. 4,301,562 (BLACK HILLS)
- c. Documents pertaining to the strength of Opposer's asserted marks;
- d. Documents pertaining to the licensing of Opposer's asserted marks;
- e. Documents pertaining to the enforcement of Opposer's asserted marks;
- f. Documents pertaining to the use of Opposer's asserted marks;
- g. Documents pertaining to the activities of Applicant;
- h. Documents pertaining to the activities of certain third-parties in concert with Applicant;
- i. Materials and statements submitted to the U.S. PTO in connection with this proceeding;
- j. The file history of U.S. Trademark Application Ser. No. 86/112,261;
- k. Email communications with Applicant.

Dated: March 15, 2016

Respectfully Submitted,

/s/ Jason M. Sneed

Jason M. Sneed, Esq.
SNEED PLLC
610 Jetton St., Suite 120-107
Davidson, North Carolina 28036
Tel: 704-779-3611
JSneed@SneedLegal.com
*Attorneys for Opposer, Sturgis
Motorcycle Rally, Inc.*

Certificate of Service

The undersigned counsel of record hereby certifies that a copy of the foregoing *Opposer's Pretrial Disclosures* was served by placing a copy in U.S. Mail, postage prepaid, this 17th day of March, 2016, and addressed to the following:

Gary St. Martin Hansen
399 Lower Main West
Johnson, Vermont 05656

/s/ Sarah Hsia
An Attorney for Opposer

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

Sturgis Motorcycle Rally, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91217630
)	
Gary St. Martin Hansen,)	
)	
Applicant.)	

**NOTICE OF TESTIMONIAL DEPOSITION OF
GARY HANSEN UPON ORAL EXAMINATION**

YOU ARE HEREBY NOTIFIED THAT pursuant to 37 C.F.R. § 2.123 and TBMP 703.01, Opposer Sturgis Motorcycle Rally, Inc. (“SMRi” or “Opposer”), by and through its counsel, will take the testimonial deposition upon oral examination of Gary Hansen, Applicant, 399 Lower Main West, Johnson, VT 98110. The examination will take place at Johnson State College, 337 College Hill Rd., Johnson, VT 05656 on April 4, 2016 at 10:00 a.m. The examination shall take place before a certified court reporter, shall be recorded by stenographic and/or video means, and shall continue from day to day until completed. Should Applicant retain counsel, counsel is invited to attend and cross-examine.

Dated: March 15, 2016

Respectfully Submitted,

/s/ Jason M. Sneed
Jason M. Sneed, Esq.
SNEED PLLC
610 Jetton St., Suite 120-107
Davidson, North Carolina 28036
Tel: 704-779-3611
JSneed@SneedLegal.com
*Attorneys for Opposer, Sturgis
Motorcycle Rally, Inc.*

Certificate of Service

The undersigned counsel of record hereby certifies that a copy of the foregoing *Notice of Testimonial Deposition on Oral Examination* was served by placing a copy in U.S. Mail, postage prepaid, this 17th day of March, 2015, and addressed to the following:

Gary St. Martin Hansen
399 Lower Main West
Johnson, Vermont 05656

/s/ Sarah Hsia
An Attorney for Opposer

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

_____)	
Sturgis Motorcycle Rally, Inc.,)	
)	
Opposer,)	
)	Opposition No. 91217630
v.)	
)	
Gary St. Martin Hansen,)	
)	
Applicant.)	
_____)	

OPPOSER’S AMENDED PRETRIAL DISCLOSURES

Pursuant to 37 C.F.R. § 2.121(e) and Fed. R. Civ. P. 26(a)(3), Opposer, Sturgis Motorcycle Rally, Inc. (“SMRi”) hereby makes the following pretrial disclosures to Applicant, Gary Hansen, of the witnesses from whom Opposer may take testimony during its testimony period, of the likely testimony of such witnesses, and of the likely evidence that may be introduced as exhibits during the testimony of such witnesses. Opposer’s disclosures represent a good faith effort to identify information reasonably believed to be required by the applicable rules. Accordingly, Opposer reserves the right to supplement these disclosures.

1. Names of Potential Witnesses and Subjects of Information

- a. Dean Kinney, Chairperson, Sturgis Motorcycle Rally, Inc., 1612 Junction Ave., Suite #4, Sturgis, South Dakota 57785, and President, HomeSlice Corporation, Licensing Agent of SMRI, 1612 Junction Ave., Suite #4, Sturgis, South Dakota 57785. Mr. Kinney should be contacted only through counsel for Opposer. Mr. Kinney is expected to testify regarding: (i) the claims and defenses of Plaintiff; (ii) the background of the Sturgis Motorcycle Rally and activities; (iii) the

licensing and trademark enforcement activities of Opposer; and (iv) the strength of Opposer's asserted marks.

- b. Clint Brengle, HomeSlice Corporation, Licensing Agent of SMRI, 1612 Junction Ave., Suite #4, Sturgis, South Dakota 57785. Mr. Brengle should be contacted only through counsel for Opposer. Mr. Brengle is expected to testify regarding: (i) the claims and defenses of Plaintiff; (ii) the background of the Sturgis Motorcycle Rally and activities; (iii) the licensing and trademark enforcement activities of Opposer; and (iv) the strength of Opposer's asserted marks.
- c. Jerome Berkowitz, President, Good Sports, Inc., 349 Progress Dr., Manchester, CT 06045. Mr. Berkowitz should be contacted only through counsel for Opposer. Mr. Berkowitz is expected to testify regarding: (i) the licensing and trademark enforcement activities of Opposer; and (ii) the use of Opposer's mark on goods and services that are identical or similar to those claimed in Applicant's application.
- d. Karen Simmons, Treasurer, Sturgis Motorcycle Rally, Inc., 1612 Junction Ave., Suite #4, Sturgis, South Dakota 57785. Ms. Simmons should be contacted only through counsel for Opposer. Ms. Simmons is expected to testify regarding Opposer's expenditures and revenues.
- e. Gary St. Martin Hansen, Applicant, 399 Lower Main West, Johnson, Vermont 98110. Mr. Hansen is expected to testify regarding: (i) the conception, adoption and selection of the opposed mark; (ii) the filing and prosecution of U.S. Appl. Serial No. 86/112,261, including the materials and statements submitted to the U.S. PTO in connection therewith; (iii) any activities and intended activities

pertaining to the opposed mark; (iv) Applicant's awareness and knowledge of Opposer and its asserted marks; and (v) materials and statements submitted to the U.S. PTO in connection with this proceeding.

2. Evidence

Certain documents and things may be introduced as exhibits during the testimony of the above witnesses, including:

- a. U.S. Trademark Reg. No. 3,955,170 (BLACK HILLS)
- b. U.S. Trademark Reg. No. 4,301,562 (BLACK HILLS)
- c. Documents pertaining to the strength of Opposer's asserted marks;
- d. Documents pertaining to the licensing of Opposer's asserted marks;
- e. Documents pertaining to the enforcement of Opposer's asserted marks;
- f. Documents pertaining to the use of Opposer's asserted marks;
- g. Documents pertaining to the activities of Applicant;
- h. Documents pertaining to the activities of certain third-parties in concert with Applicant;
- i. Materials and statements submitted to the U.S. PTO in connection with this proceeding;
- j. The file history of U.S. Trademark Application Ser. No. 86/112,261;
- k. Email communications with Applicant.

Dated: March 17, 2016

Respectfully Submitted,

/s/ Jason M. Sneed

Jason M. Sneed, Esq.
SNEED PLLC
610 Jetton St., Suite 120-107
Davidson, North Carolina 28036
Tel: 704-779-3611

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

Sturgis Motorcycle Rally, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91217630
)	
Gary St. Martin Hansen,)	
)	
Applicant.)	

**NOTICE OF TESTIMONIAL DEPOSITION OF
DEAN KINNEY UPON ORAL EXAMINATION**

YOU ARE HEREBY NOTIFIED THAT pursuant to 37 C.F.R. § 2.124, Opposer Sturgis Motorcycle Rally, Inc. (“SMRi” or “Opposer”), by and through its counsel, will take the testimonial deposition upon oral testimony of Dean Kinney, Chairperson, Sturgis Motorcycle Rally, Inc., 1612 Junction Ave., Suite #4, Sturgis, SD 57785. The examination will take place at the offices of Clayborne, Loos & Sabers LLP, 2834 Jackson Blvd., Suite 201, Rapid City, SD 57709-9129 on April 6, 2016 at 9:00 a.m. The examination shall take place before a certified court reporter, shall be recorded by stenographic and/or video means, and shall continue from day to day until completed. You are invited to attend and cross-examine.

Dated: March 17, 2016

Respectfully Submitted,

/s/Jason M. Sneed
Jason M. Sneed, Esq.
SNEED PLLC
610 Jetton St., Suite 120-107
Davidson, North Carolina 28036
Tel: 704-779-3611
JSneed@SneedLegal.com

*Attorneys for Opposer, Sturgis
Motorcycle Rally, Inc.*

Certificate of Service

The undersigned counsel of record hereby certifies that a copy of the foregoing *Notice of Testimonial Deposition on Oral Examination* was served by placing a copy in U.S. Mail, postage prepaid, this 17th day of March, 2016, and addressed to the following:

Gary St. Martin Hansen
399 Lower Main West
Johnson, Vermont 05656

/s/Sarah Hsia
An Attorney for Opposer

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

Sturgis Motorcycle Rally, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91217630
)	
Gary St. Martin Hansen,)	
)	
Applicant.)	

**NOTICE OF TESTIMONIAL DEPOSITION OF
KAREN SIMMONS UPON ORAL EXAMINATION**

YOU ARE HEREBY NOTIFIED THAT pursuant to 37 C.F.R. § 2.124, Opposer Sturgis Motorcycle Rally, Inc. ("SMRi" or "Opposer"), by and through its counsel, will take the testimonial deposition upon oral examination of Karen Simons, Treasurer, Sturgis Motorcycle Rally, Inc., 1612 Junction Ave., Suite #4, Sturgis, SD 57785. The examination will take place at the offices of Clayborne, Loos & Sabers LLP, 2834 Jackson Blvd., Suite 201, Rapid City, SD 57709-9129 on April 6, 2016 at 11:00 a.m. The examination shall take place before a certified court reporter, shall be recorded by stenographic and/or video means, and shall continue from day to day until completed. You are invited to attend and cross-examine.

Dated: March 17, 2016

Respectfully Submitted,

/s/Jason M. Sneed
Jason M. Sneed, Esq.
SNEED PLLC
610 Jetton St., Suite 120-107
Davidson, North Carolina 28036
Tel: 704-779-3611
JSneed@SneedLegal.com

*Attorneys for Opposer, Sturgis
Motorcycle Rally, Inc.*

Certificate of Service

The undersigned counsel of record hereby certifies that a copy of the foregoing *Notice of Testimonial Deposition on Written Questions* was served by placing a copy in U.S. Mail, postage prepaid, this 17th day of March, 2016, and addressed to the following:

Gary St. Martin Hansen
399 Lower Main West
Johnson, Vermont 05656

/s/Sarah Hsia
An Attorney for Opposer

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

In the matter of Trademark Application Serial No. 86/112,261

Trademark: IT’S A BLACK HILLS THING! YOU WOULDN’T UNDERSTAND, ‘TILL YOU BEEN HERE!

Filed: November 6, 2013

Published: April 1, 2014

_____)	
Sturgis Motorcycle Rally, Inc.,)	
)	
Opposer,)	
)	Opposition No. 91217630
v.)	
)	
Gary St. Martin Hansen,)	
)	
Applicant.)	
_____)	

I, Charles Landrum, declare and state as follows:

1. I am over the age of 21 and suffer from no legal disability that would prevent me from making the statements set forth herein.

2. I am an Attorney at Law, licensed to practice in the highest courts of the State of Georgia and numerous federal courts of the United States, and I am Of Counsel to the law firm SNEED PLLC, with an address of 610 Jetton St., Suite 120-107, Davidson, North Carolina 28036. SNEED PLLC represents Opposer, Sturgis Motorcycle Rally, Inc. (“SMRi” or “Opposer”).

3. This declaration is submitted in support of Opposer’s Opposition to Applicant’s Motion to Strike.

4. On April 1, 2016 I called Mr. St. Martin Hansen, Applicant in this Opposition, to ascertain whether he had, in fact, retained counsel within the period allotted to him to do so.

Mr. St. Martin Hansen refused to directly answer, and said only that an attorney was “looking at

the file.” Since this phone call, which lasted approximately four minutes, I have not spoken to Mr. St. Martin Hansen. On April 5, 2016, Mr. St. Martin Hansen left a voicemail message on my phone stating that he had checked with the post office and did not understand why he was not receiving mail and that he was disappointed to miss his deposition. In the message, Mr. St. Martin Hansen made no objection to the depositions of Mr. Kinney, Mr. Brengle or Ms. Simmons.

5. Attached as Exhibit C1 is a true and correct copy of an email I sent to Mr. St. Martin Hansen at 4:36 pm on April 1, 2016.

6. Attached as Exhibit C2 is a true and correct copy of an email I received from Mr. St. Martin Hansen at 10:54 pm on April 1, 2016.

7. Attached as Exhibit C3 is a true and correct copy of an email string between myself and Mr. St. Martin Hansen, including an email I received from Mr. St. Martin Hansen at 10:03 pm on April 4, 2016.

8. Attached as Exhibit C4 is a true and correct copy of an email I received from Mr. St. Martin Hansen at 10:42 pm on April 4, 2016.

9. Attached as Exhibit C5 is a true and correct copy of an email I received from Mr. St. Martin Hansen at 10:38 am on April 5, 2016.

10. Attached as Exhibit C6 is a true and correct copy of an email I received from Mr. St. Martin Hansen at 12:51 pm on April 5, 2016.

11. Attached as Exhibit C7 is a true and correct copy of an email I received from Mr. St. Martin Hansen at 2:06 pm on April 7, 2016.

12. Attached as Exhibit C8 is a true and correct copy of an email string between myself and Mr. St. Martin Hansen, including an email I received from Mr. St. Martin Hansen at

Subject: SMRI v. Hansen [S0244]
Date: Friday, April 1, 2016 at 4:36:47 PM Eastern Daylight Time
From: Charles Landrum
To: Gary St Martin
CC: Jason M. Sneed, Sarah Hsia, Megan E. Sorokes
Priority: High

Gary,

You and I spoke this morning on the telephone regarding the resumption of proceedings before the Trademark Trial & Appeal Board.

I asked whether you had retained an attorney. You responded that an attorney was "looking at the file," but you would not state clearly whether you were represented by counsel. When I requested the name of that attorney, you refused to provide it. I also asked whether you would consent to a further extension of time. You gave your consent. Our conversation lasted approximately two minutes.

In view of the fact that we cannot get a clear answer as to whether you are represented by counsel with respect to this matter, we are postponing your deposition, which we had noticed for Monday, April 4, 2016.

Are you represented by counsel with respect to this matter? If so, what is the name and contact information for the attorney? If you are not represented by counsel, are you willing to appear voluntarily for a deposition?

Sincerely,

Charles M. Landrum III

SNEED PLLC, *of counsel*
610 Jetton St., Suite 120-107
Davidson, North Carolina 28036
Tel.: 404-993-3363
Email: CLandrum@SneedLegal.com

Subject: Re: SMRI v. Hansen [S0244]

Date: Friday, April 1, 2016 at 10:54:42 PM Eastern Daylight Time

From: Gary St Martin

To: Charles Landrum

Charles, what I said was that there is an attorney reviewing the motions etc I have filed over the past years. I further explained that as of yet, the attorney has not committed to take the case, and because the attorney has had previous dealings with Jason Sneed and SMRI, it is this attorney's desire to remain **Anonymous** until the decision has been made to represent me.

Furthermore, when was I notified about a deposition on the 4th of April ? **we are postponing your deposition, which we had noticed for Monday, April 4, 2016. ???** And if this Attorney wishes to remain anonymous until the decision is made to go forward, why am I compelled to disclose this information ... ??

I believe I will file a motion for an extension of time until I am satisfied that I am prepared and represented by counsel for the remainder of this ...

On Fri, Apr 1, 2016 at 4:36 PM, Charles Landrum <CLandrum@sneedlegal.com> wrote:

Gary,

You and I spoke this morning on the telephone regarding the resumption of proceedings before the Trademark Trial & Appeal Board.

I asked whether you had retained an attorney. You responded that an attorney was "looking at the file," but you would not state clearly whether you were represented by counsel. When I requested the name of that attorney, you refused to provide it. I also asked whether you would consent to a further extension of time. You gave your consent. Our conversation lasted approximately two minutes.

In view of the fact that we cannot get a clear answer as to whether you are represented by counsel with respect to this matter, we are postponing your deposition, which we had noticed for Monday, April 4, 2016.

Are you represented by counsel with respect to this matter? If so, what is the name and contact information for the attorney? If you are not represented by counsel, are you willing to appear voluntarily for a deposition?

Sincerely,

Charles M. Landrum III

SNEED PLLC, *of counsel*
610 Jetton St., Suite 120-107
Davidson, North Carolina 28036
Tel.: [404-993-3363](tel:404-993-3363)
Email: CLandrum@SneedLegal.com

Subject: Re: SMRI v. Hansen [S0244]

Date: Monday, April 4, 2016 at 10:03:31 PM Eastern Standard Time

From: Gary St Martin

To: Charles Landrum

No Charles, I received nothing, and you know already that I'm not the type to Not respond to a motion etc, I haven't had time yet as i just opened this email , but these are depositions that have been taken, or are they to be taken, and because I received nothing delivered here since Gina sent a letter with a lot of questions about silk screening " admitt that you ... " statements , and are these depositions taken over the phone ??? or ??

And mostly, being that I've received these downloads quite LATE obviously not had these documents, I must be somewhat behind you all I'd guess, if I had known where they could be read online ???

Anyway I hope you will be somewhat helpful as it is as always my intention to cooperate , but of course, get my trademark , as this" It's a Black Hills Thing" thing my book and my music is all I really have as a legacy and possible annuity for my family, that's what surprises me so, I own nothing, no property, houses, businesses I used to, owned a house in Deadwood up on the hill above the #10 Saloon ... and I don't intend on making any Sturges type goods and services etc ... but I've explained all this a hundred times to Jason, and Gina, I must be making you guys a Hell of a lot of money from that SMRI non profit organization ...

but it doesn't seem right ... Let me know what I'm supposed to do Gary

On Mon, Apr 4, 2016 at 10:33 PM, Charles Landrum <CLandrum@sneedlegal.com> wrote:

Gary,

In your April 2, 2016 filing with the Board, you indicate that you did not receive the notice of your deposition. A copy of that document is attached, along with the following other documents that we served weeks ago in this proceeding:

- Opposer's Pre-Trial Disclosures
- Opposer's Amended Pre-Trial Disclosures
- Notice of Deposition of Dean Kinney
- Notice of Deposition of Clint Brengle
- Notice of Deposition of Karen Simmons

Each of these documents was served to your address on file with the Trademark Trial & Appeal Board, as noted in the certificate of service accompanying each document, which you also used in your April 2, 2016 filing:

GARY ST MARTIN HANSEN
399 LOWER MAIN WEST
JOHNSON, VT 05656

To ensure that there are no issues with the service of documents, please confirm that this address is current and that you will receive mail sent to this address. If this address is not current, please provide the address at which you currently will receive mail.

Sincerely,

Charles M. Landrum III

SNEED PLLC, *of counsel*
610 Jetton St., Suite 120-107
Davidson, North Carolina 28036
Tel.: [404-993-3363](tel:404-993-3363)
Email: CLandrum@SneedLegal.com

Subject: Okay ...

Date: Monday, April 4, 2016 at 10:42:14 PM Eastern Standard Time

From: Gary St Martin

To: Charles Landrum

Charles,

I had NO idea about Johnson State College etc why didn't you at least send me an email about this?

And I have no qualms about sitting for a deposition at Johnson State ... when and if you reschedule it, just make sure I am aware of what is going on ...

I'm going to the PO tomorrow morning and see why I never received one of these documents, and although I don't believe I am at fault for not knowing about the deposition I am sorry I missed it, and as I said, anytime up at the College is good ... Sincerely , Gary St. Martin

Subject: My motion to Suspend

Date: Tuesday, April 5, 2016 at 10:38:05 AM Eastern Standard Time

From: Gary St Martin

To: Charles Landrum

Hey Charles,

I lived in Charlotte NC bitd I loved it ...

Post Office wants a tracking # for all these documents that you posted to the 399 lower Main wst Johnson, Vt 05656 address talking with carrier

Last thing I received from Sneed was from Gina a disclosure thing "admitt" etc which was late arriving, but I did fill it out and return it to your offices I have the copies of the answers and the documents ...

But never heard a word about a deposition at Johnson State 4/4/16 until I read the file about a deposition scheduled for which at that moment you said you were compelled to cancel the deposition, of which I had NO idea was going to take place at Johnson State April 4, 2016 10 am .

Well let me know a little ahead of time when you do reschedule the deposition , I'm a mile away JSC and live in the Village . Thanks,

Gary

Subject: Confirming address

Date: Tuesday, April 5, 2016 at 12:51:57 PM Eastern Standard Time

From: Gary St Martin

To: Charles Landrum

GARY ST MARTIN HANSEN

399 LOWER MAIN WEST

JOHNSON, VT 05656

It has been so for the last two plus years, nothing was served here
your email today said

("Each of these documents was served to your address on file with the Trademark Trial & Appeal Board, as noted in
the certificate of service accompanying each document" ...)

The document I used was your Motion to Suspend, that I retrieved from the case viewer online ... and read the
manual ...

I never received by mail, email or any other mail delivery service any of the documents you sent me of the
depositions etc.

Will I be able to read the depositions taken of Kinney etc, and mine will be available to whoever wishes , or not?

I do so wish I had been served with those documents ... do you think I could get an explanation as to what became
of all those documents that were NOT served, or why they were served to everyone else and not me? Crazy Charles

...

Anyway Address confirmed ,

Sincerely,

Gary St. Martin

Subject: Are you Being Served ?

Date: Thursday, April 7, 2016 at 2:06:27 PM Eastern Standard Time

From: Gary St Martin

To: Charles Landrum

Charles,

You never served me, not by mail, nor by server(that would be Lamoille County Sheriff's Dept) and, as of yesterday noon, 4/6/16.

Nothing has ever been served to me at this address and there is nothing in the Sheriff's computer's records ever, from any SNEED, NC . This is a small village, and the postman knows me going on several years now, and he says he would have remembered those documents sent to Gary St.Martin Hansen 399 Lower Main West Johnson VT. 05656 and had they been sent at around March 16 with all those documents, and not certified?

So Charles, being that the day before I received these documents by your email, this being the first time I'd ever seen them that April 3, 2016 afternoon .. so in addition to documents of depositions scheduled for yesterday in Rapid City, there was another document for me to sit for a deposition at Johnson State College scheduled April 2, another April 4, of which I saw nothing of, heard nothing of until after I received your Email about me being served back in March planned for 10 am April 4, 2016 at Johnson State College, but was cancelled on the 2nd or 3rd by you (SNEED) before I ever knew they existed??

When you called me Charles about whether I was represented yet or not, it is evident by the documents you sent me, that you knew that the deposition was the next day was at Johnson State , and you only asked for my attorney's name, and nothing about a scheduled deposition for me the following morning here in Johnson Vt. you never mentioned a word ???

Then Monday, April 6, everyone and their brother from SMRI is being deposed in Rapid City, 2 days after what would have been my deposition at Johnson State College ... and, OH WELL, Gary, you missed your deposition because we cancelled it before you ever knew it existed ??? ...

Let me know what is going on, let me know about documents that bind me to be present etc like a deposition ... , which I DAMN SURE INVITE ...

I'm speaking with an attorney tomorrow morning, about what I have asked you about here in, Sincerely Gary St.Martin Hansen

Subject: Re: Are you Being Served ? [S0244]
Date: Thursday, April 7, 2016 at 7:43:32 PM Eastern Standard Time
From: Gary St Martin
To: Charles Landrum

Thank you Charles, If I don't have an attorney by then I'll do it anyway, I keep saying, I'm not hiding anything, or trying to get a gig in Sturgis ... Gary.

On Thu, Apr 7, 2016 at 7:17 PM, Charles Landrum <CLandrum@sneedlegal.com> wrote:

Gary,

We have not served any additional documents after those that were attached to my email of April 4, 2016. As for your deposition, we cancelled it because it was unclear whether you were represented by counsel in this matter. Only after we sent you the email cancelling the deposition did we learn that you did not receive the notice in the first place.

We would like to take your deposition at 10:00 am on April 22nd at Johnson State College. Please advise as to whether you will appear voluntarily for that deposition. While you have talked to one or more attorneys, we understand that you continue not to be represented by counsel in this matter. If you have retained an attorney, please forward this message to them and have them contact me immediately.

Sincerely,

Charles M. Landrum III

SNEED PLLC, of counsel
610 Jetton St., Suite 120-107
Davidson, North Carolina 28036
Tel.: [404-993-3363](tel:404-993-3363)
Email: CLandrum@SneedLegal.com

From: Gary St Martin <stdrumr@gmail.com>
Date: Thursday, April 7, 2016 at 3:06 PM
To: Charles Landrum <CLandrum@SneedLegal.com>
Subject: Are you Being Served ?

Charles,

You never served me, not by mail, nor by server(that would be Lamoille County Sheriff's Dept) and, as of yesterday noon, 4/6/16.

Nothing has ever been served to me at this address and there is nothing in the Sheriff's computer's records ever, from any SNEED, NC . This is a small village, and the postman knows me going on several years now, and he says he would have remembered those documents sent to Gary St.Martin Hansen 399 Lower Main West Johnson VT. 05656 and had they been sent at around March 16 with all those documents, and not certified?

So Charles, being that the day before I received these documents by your email, this being the first time I'd ever seen them that April 3, 2016 afternoon .. so in addition to documents of depositions scheduled for yesterday in Rapid City, there was another document for me to sit for a deposition at Johnson State College scheduled April 2, another April 4, of which I saw nothing of, heard nothing of until after I received your Email about me being served back in March planned for 10 am April 4, 2016 at Johnson State College, but was cancelled on the 2nd or 3rd by you (SNEED) before I ever knew they existed??

When you called me Charles about whether I was represented yet or not, it is evident by the documents you sent me, that you knew that the deposition was the next day was at Johnson State , and you only asked for my attorney's name, and nothing about a scheduled deposition for me the following morning here in Johnson Vt. you never mentioned a word ???

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Exhibit D



610 Jetton St., Suite 120-107, Davidson, NC 28036
www.SneedLegal.com

CHARLOTTE NC 282

17 MAR 2016 PM 3 L



Gary St. Martin Hansen
399 Lower Main West
Johnson, Vermont 05656

NIXIE 015 7E 1 0003/30/16

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

BC: 28036931899 *2248-02485-17-34

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