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Filing date: **05/20/2016**

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	Reply in Support of Motion
Filer's Name	Sarah C Hsia
Filer's e-mail	sarah@sneedlegal.com, jsneed@sneedlegal.com, msorokes@sneedlegal.com, clandrum@sneedlegal.com
Signature	/sch/
Date	05/20/2016
Attachments	2016-05-20 Reply Brief on Motion for Order to Show Cause.pdf(118295 bytes) 2016-05-20 Hsia Declaration and Exhibits.pdf(247624 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 Hansen,)	
)	
Applicant.)	

**REPLY TO APPLICANT'S "ANSWER" TO
MOTION FOR ORDER TO SHOW CAUSE**

On May 6, 2016, Applicant filed a paper in response to Opposer's Motion for an Order to Show Cause, in which he claimed that a statements made in a filing on April 27, 2016 [TTABVUE 34] satisfied the Board's Order requiring him to "inform the Board whether he wishes to represent himself *in these proceedings* or has retained counsel" prior to May 2, 2016. [TTABVUE 31, emphasis added]. This is nonsense. The two statements cited by Applicant are wholly unrelated to the question of whether he intends to represent himself in these proceedings or retain counsel. Opposer is seriously hampered in its efforts to move forward with this proceeding by Applicant's pattern of obstinate, dilatory behavior. Opposer thus requests that the Board grant its motion for an Order to Show Cause.

Applicant points to two statements made in his April 27, 2016 filing: (1) “The Applicant is willing, pro se or otherwise to be deposed...” and (2) “The Applicant will agree to a deposition at Johnson State College...” that he claims discharges his burden pursuant to the Board’s Order. However, it is plainly apparent that neither of these statements addresses the issue of whether he will be representing himself *in these proceedings* as a whole pro se or whether he has retained counsel, and Applicant thus failed to comply with the Board’s Order. In a belated attempt to comply with the Board’s Order, Applicant subsequently filed a statement that he had retained counsel; however, as discussed below, this statement is false.

Importantly, Applicant’s ever-changing positions have already caused Opposer to bear unnecessary costs and delay, and more importantly, Opposer is prevented from litigating this matter by Applicant’s behavior. For example, Applicant has changed his position on whether he is willing to appear for a deposition not less than *four* times. Most recently, during the April 20, 2016 conference with the Interlocutory Attorney, Applicant stated that he would *not* be willing to appear for a deposition the following day, and the Interlocutory Attorney cancelled the testimonial deposition—causing Opposer to incur costs for cancellation and change fees for arrangements that had already been made—to allow him one last chance to retain counsel. Yet in his April 27, 2016 filing he now claims to be willing to appear for deposition “pro se or otherwise.”

Similarly, Applicant failed to make any objection to testimonial depositions which were duly noticed on him, at his correspondence address of record in this proceeding, and then waited for a week after the depositions took place to file a motion to strike. *See, generally*, TTABVUE 33.

Most recently, a few days after filing his “answer” to Opposer’s Motion for an Order to Show Cause, Mr. St. Martin Hansen filed a second document, titled “Answer to Motion for Order to Show Cause No. 2.” TTABVUE 37. In this document, Applicant states that he “has retained counsel through the law firm of McClanahan Powers PLLC and will be represented by attorney Robert Powers.” *Id.* Curiously, Mr. Powers did not file a notice of appearance, and this filing was made by Applicant himself.¹

On May 13, 2016, Sarah Hsia, counsel for Opposer, sent an email to Robert Powers of McClanahan Powers PLLC inquiring whether he was representing Applicant. Hsia Decl., ¶ 6 and Exhibit A. Shortly thereafter, Mr. Powers called Ms. Hsia and stated that he had spoken to Mr. St. Martin Hansen, but had not been retained. Hsia Decl., ¶ 7. When Ms. Hsia noted that Applicant had made a filing with the Board unequivocally stating that Mr. Powers had been retained, Mr. Powers requested a copy, and said that he would call Mr. St. Martin Hansen immediately to rectify the misinformation. Hsia Decl. ¶ 7, Exhibit B. Mr. Powers further stated that were he to be retained by Applicant, he would let Ms. Hsia know. Hsia Decl. ¶ 8, Exhibit B.

Later in the evening of May 13, 2016, Mr. St. Martin Hansen forwarded an email he had sent to Mr. Powers to Ms. Hsia. Hsia Decl. ¶ 9, Exhibit C. In this email Mr. St. Martin Hansen promised Mr. Powers that he would “file a motion [sic] to correct [his] error” concerning the fact that he had misrepresented to the Board that Mr. Powers had been retained. As of the date of this filing, seven days later, Mr. St. Martin Hansen has still not corrected his misrepresentation to the Board that he had retained counsel.

¹ Despite the Certificate of Service, this filing was also not served on Counsel for Opposer by email, as agreed between the Parties during the April 20, 2016 conference with the Board. *See* TTABVUE 31; Hsia Decl. ¶ 4.

Furthermore, Counsel for Opposer has not received any indication from Mr. Powers that he has been retained. Hsia Decl. ¶ 10.

Time and time again, Applicant has shown that he has no interest in participating in these proceedings in a meaningful and straightforward way, or in accordance with the Trademark Rules. Opposer thus respectfully requests that the Board grant its motion for an Order to Show Cause.

Dated: May 20, 2016

Respectfully Submitted,

/s/ Sarah Hsia

Jason M. Sneed, Esq.
Charles Landrum, Esq.
Sarah C. Hsia, Esq.
SNEED PLLC
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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 *Motion for Order to Show Cause* was served by email to stdrumr@gmail.com on May 20, 2016.

/s/ Sarah Hsia

An Attorney for Opposer

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v.)	Opposition No. 91217630
)	
Gary St. Martin Hansen,)	
)	
Applicant.)	

I, Sarah C. Hsia, 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 New York 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 Reply to Applicant's Answer to Motion for Order to Show Cause.

4. On or about May 12, 2016, I discovered that Mr. St. Martin Hansen had filed a second "Answer" to Opposer's Motion for Order to Show Cause. I did not receive the document by email from Mr. St. Martin Hansen despite the fact that the Certificate of Service purported to

show that it had been served on me.

5. On review of this second “Answer,” I discovered that Mr. St. Martin Hansen claimed to have retained counsel by the name of Robert Powers with the firm of McClanahan Powers PLLC. However, the document was filed by Mr. St. Martin Hansen himself, and no notice of appearance had been filed. Nor was any contact information provided for Mr. Powers. TTABVUE 37.

6. I called Mr. Powers on May 13, 2016. When he didn’t answer, I sent an email inquiring whether he represented Applicant. A true and correct copy of this email is attached hereto as Exhibit A.

7. Mr. Powers called me a short time later. He unequivocally confirmed that he had not been retained by Applicant. When I informed him that Mr. St. Martin Hansen had filed a paper with the Board stating that he had, in fact, been retained, Mr. Powers was understandably upset. He requested a copy of the filing and said he would call Applicant immediately to rectify the situation. I sent him a copy of the filing immediately after our call. A true and correct copy of the email confirming our conversation is attached as Exhibit B.

8. Mr. Powers further stated that if he were to be retained by Applicant, he would let me know. *See* Exhibit B. As of the date of this document, I have not received any call from Mr. Powers stating that he has been retained.

9. Late that evening, Mr. St. Martin Hansen forwarded an email to me that he had sent to Mr. Powers. In the email, Mr. St. Martin Hansen promised to correct his “error.” A true and correct copy of that email is attached as Exhibit C.

10. As of the date of this filing, Mr. St. Martin Hansen has not filed any paper with the TTAB correcting his misrepresentation.

Subject: Trademark Opposition No. 91217630: IT'S A BLACK HILLS THING! YOU WOULDN'T UNDERSTAND, 'TILL YOU BEEN HERE!

Date: Friday, May 13, 2016 at 9:15:50 AM Eastern Standard Time

From: Sarah Hsia

To: rpowers@mcplegal.com

CC: Jason M. Sneed, Charles Landrum, Megan E. Sorokes

Dear Robert:

We represent Sturgis Motorcycle Rally Inc. in various matters, including the referenced TTAB opposition proceeding.

Are you representing Gary St. Martin Hansen in the captioned proceeding? Please let me know.

Sincerely,

Sarah C. Hsia, Esq.

SNEED PLLC, Of Counsel

610 Jetton St., Suite 120-107A

Davidson, North Carolina 28036

Tel.: 212-481-0004

Email: sarah@sneedlegal.com

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Subject: Re: Trademark Opposition No. 91217630: IT'S A BLACK HILLS THING! YOU WOULDN'T UNDERSTAND, 'TILL YOU BEEN HERE!

Date: Friday, May 13, 2016 at 9:48:32 AM Eastern Standard Time

From: Sarah Hsia

To: rpowers@mcplegal.com

CC: Jason M. Sneed, Charles Landrum, Megan E. Sorokes

Dear Robert:

Thanks for your call just now.

This email confirms our conversation of a minute ago that you have not yet been retained by Mr. St. Martin Hansen, but that you will let us know when and if you are retained.

As discussed, I am attaching the filing Mr. St. Martin Hansen made yesterday with the TTAB in which he represents to the Board that you had in fact been retained.

Best regards,

Sarah C. Hsia, Esq.

SNEED PLLC, Of Counsel

610 Jetton St., Suite 120-107A

Davidson, North Carolina 28036

Tel.: 212-481-0004

Email: sarah@sneedlegal.com

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From: "Sarah C. Hsia" <sarah@sneedlegal.com>

Date: Friday, May 13, 2016 at 9:15 AM

To: "rpowers@mcplegal.com" <rpowers@mcplegal.com>

Cc: "Jason M. Sneed" <jsneed@SneedLegal.com>, Charles Landrum <CLandrum@SneedLegal.com>, "Megan E. Sorokes" <MSorokes@SneedLegal.com>

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Sincerely,

Sarah C. Hsia, Esq.

SNEED PLLC, Of Counsel

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Email: sarah@sneedlegal.com

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Subject: Fwd: FW: Trademark Opposition No. 91217630: IT'S A BLACK HILLS THING! YOU WOULDN'T UNDERSTAND, 'TILL YOU BEEN HERE!

Date: Friday, May 13, 2016 at 7:49:50 PM Eastern Standard Time

From: Gary St Martin

To: Sarah Hsia

----- Forwarded message -----

From: **Gary St Martin** <stdrumr@gmail.com>

Date: Fri, May 13, 2016 at 8:48 PM

Subject: Re: FW: Trademark Opposition No. 91217630: IT'S A BLACK HILLS THING! YOU WOULDN'T UNDERSTAND, 'TILL YOU BEEN HERE!

To: Robert Powers <rpowers@mcplegal.com>

Hi Robert,

I'm Sorry, I thought that with the Tuesday conference I would thus have you retained and begin paying you as we proceeded .. I will file a motion to correct my error. And I'm sure you are right, Sneed would not mis this opportunity. Again I'm sorry I didn't understand that fully, but I do wish to retain you as soon as possible, and I will send a copy of this to Sarah, I'm so weary of fighting Sneed Legal I really need your help, Sincerely, Gary St. Martin