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

Proceeding	91217941
Party	Defendant Phillip Theodorou and Anna Theodorou
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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Robert Kirkman, LLC, (Plaintiff)

v.

Steven Theodorou, (Defendant)

and

Jeffrey Heller, (Defendant)

STEVEN THEODOROU
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Ewing, NJ 08638
609-352-9474
WePrintTheWorld@gmail.com

March 16, 2015

Re: Opposition No. 91217941(Parent)
Opposition No. 91217992
Opposition No. 91218267
Opposition No. 91218669

MOTION TO DISMISS PLAINTIFF'S OPPOSITION DUE TO UNCLEAN HANDS

Pursuant to the doctrine of unclean hands, “a plaintiff [must] act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim.” (*Kendall-Jackson Winery, Ltd*, supra, 76 Cal. App.4th at 979.) The doctrine of unclean hands also applies to bad faith conduct by the plaintiff in connection with the matter in controversy. (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 56.) The Plaintiff has proven to use unethical, and unfair tactics in bad faith during the normal course of business, in connection to this matter in controversy, and is attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the Plaintiff. Therefore, the Defendant moves to dismiss the Plaintiff's opposition to register the Defendant's trademark due to unclean hands.

There is contradictory evidence in the record that is beyond informality. On December 17, 2013, and in accordance with Section 1 of the U.S. Trademark (Lanham) Act, 15 U.S.C. §1051(b) the Plaintiff filed the application serial no. 86/145,914 with an “intention to use the mark” in commerce for The Walking Dead trademark in Classes 16, 20, 25 and 28. The foregoing application was signed under the declaration warning the signer that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or any resulting registration. Then, on August 20, 2014 the Plaintiff filed an amendment to allege use in commerce under Section 1 of the U.S. Trademark (Lanham) Act, 15 U.S.C. §1051(a) as a basis, and fraudulently alleged first use in commerce by predating the Amendment to Allege Use indicating that goods were used in commerce prior to the Application's filing date. An applicant who adds or substitutes use in commerce under §1(a) as a basis must verify that the mark is in use in commerce on or in connection with the goods/services covered by the §1(a) basis, and that the mark was in use in commerce on or in connection with these goods/services “as of the filing date of the application.” 37 C.F.R. §2.34(a)(1)(i.)

The Plaintiff has recklessly backdated and alleged first use in commerce for all amended goods with the intent to deceive the public to believe that all of the goods have somehow entered into commerce prior to the filing date of the application, and has acquired precedence over the Defendant's application serial no. 86/133,235. The applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application. 37CFR 2.2.86(a)(3) (2012.) The Plaintiff's misconduct of bad faith is fraudulent, and is connected with Opposition No. 91217941(Parent). The doctrine of unclean hands applies to bad faith conduct by the plaintiff in connection with the matter in controversy. (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 56.)

Federal regulations govern the use of the designations "TM" or "SM" or the "®" symbol. Applicants may only use the federal registration symbol "®" after the United States Patent & Trademark Office actually registers a mark, not while an application is pending, and it may only be used on or in connection with the goods/services listed in the federal trademark registration and while the registration is still alive. The Plaintiff has and is currently using unethical tactics in commerce. The plaintiff currently has a suspended application with the United States Patent & Trademark Office for the use of The Walking Dead trademark on lottery tickets, t-shirts and other goods. The Plaintiff is actively selling these goods bearing The Walking Dead mark and displaying the "®" symbol, and indicating to the public that The United States Patent & Trademark Office has registered the Plaintiff's application serial no. 86/145,914 when the application has been suspended.

In an attempt to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted, AMC sent a letter dated April 7, 2014 to the Defendant claiming to own ALL rights to ALL products and services bearing the mark "The Walking Dead" and wrote in connection with the Defendant's application to register the mark "The Walking Dead" in classes unrelated to AMC's registered trademark. The letter also indicated that if the defendant did not expressly abandon ownership, promptly discontinue and permanently refrain from using the Defendant's Mark or assign the Defendant's Mark over to AMC

within (7) days this issue would no longer be resolved amicably, and notwithstanding the U.S. Trademark (Lanham) Act, AMC's Representatives will take any steps necessary to force the Defendant to comply.

In an article published September 11th titled, "The Walking Dead Started Due To Robert Kirkman's HUGE Lie," the author [Adam Carlson](#) refers to the statement made by the Plaintiff during an interview that [Robert Kirkman, LLC did with IGN](#), when the Plaintiff described himself as "shady." This statement publically described the Plaintiff's view of himself, and the unethical, illegal and unfair tactics used by the Plaintiff that threatens to plague this opposition if allowed to continue.

For the reasons stated herein, the Defendants respectfully request that the Board dismiss the Plaintiffs' case.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any resulting registration declares that all statements made of his own knowledge are true, and all statements made on information and belief are believed to be true.

The Defendants hereby certify that a true and complete copy of the foregoing Motion to Dismiss Opposition No. 91217941 (Parent) has been served on Plaintiff's counsel, Elise Tenen-Aoki by mailing said copy on March 16, 2015 via Certified Mail, postage prepaid to: 14271 Jeffrey Road, Suite 313, Irvine, Ca. 92620.


STEVEN THEODOROU


JEFFREY HELLER