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

Proceeding	91219616
Party	Defendant Bank, Daryl
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PRUDENTIAL INSURANCE COMPANY
OF AMERICA

Plaintiff-Opposer,

vs.

DARYL BANK

Defendant-Applicant

Opposition No. 91219616
Serial No. 86184144

RESPONSE TO OPPOSER’S REPLY SUPPORTING ITS MOTION FOR SANCTION

DARYL BANK, the Applicant of Serial No. 86184144, hereby responds to Opposer’s Reply Supporting its Motion for Sanctions, as follows:

First, Applicant responds to Opposer’s newly added claim that Applicant has not submitted any evidence to support his story. In fact, Opposer has submitted the best type of evidence of all – raw unedited photographs of the incident (*see* Defendant’s Opposition to Motion for Sanctions) that is the basis for Opposer’s Motion for Sanctions. Photographs and video are the gold standard for evidence because they do not lend themselves to be easily altered without detection. Thus, Applicant has, in fact, submitted substantial evidence to support his story.

Opposer, on the other hand, has only submitted evidence that stems from testimony of the accuser (the process server) of Mr. Bank. Obviously, this type of evidence can be biased, since Applicant has himself accused the process server of a crime – namely, trespassing and battery upon a child (*see* Defendant’s Opposition to Motion for Sanctions, hereafter the “Opposition”).

Thus, it is logical to ask whether the process server would have a motivation to lie about the alleged incident. The Board must take these dueling accusations into account when deciding upon the credibility and veracity of the process server.

Second, Applicant responds to Opposer's newly added claim that Prudential's well established history of committing crimes is inadmissible and irrelevant. Opposer claims that under rule 404(b)(1) applies to Prudential's well known history of running afoul of the law, in that it is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Rule 404(b)(2), however, allows the use of other crimes, wrongs, or acts to show matters such as "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." And this is precisely how the Defendant has presented Prudential's voluminous rap sheet in the Opposition, which defined a plethora of instances where Prudential unlawfully took money from individual citizens. Specifically, Defendant asserts that Prudential's long and sordid history of breaking the law goes to Prudential's motive in the performance of acts that led to the crimes committed upon Mr. Bank – trespassing and battery on a child. Prudential's motives in this case are the same as the multitude of crimes that Applicant cited in its Opposition – to deprive an individual of his property, which in this case, is his trademark for ROCK SOLID INVESTMENT. Prudential's crimes detailed in the Opposition depict a longstanding plan of flouting the insurance laws with the motive of unlawfully taking the money of its customers. This history cannot be ignored when Prudential is exhibiting the same motive in the instant case.

It is also worth noting that Opposer is asking the Board to take note of the alleged crime of which the Applicant is accused (and which Applicant denies) and *ignore* the crimes of which

Opposer has admitted in writing¹. Clearly, Opposer wishes to apply a separate standard to itself, which is not surprising because it fits Prudential's well-established pattern of self-dealing.

Third, Applicant responds to Opposer's newly added claim that granting judgement against Applicant is in line with precedent. Opposer cites 5 cases in support of this theory. But all 5 cases are distinguishable because 4 of the cases involved a party ignoring an order of the Board (which has not happened in this case), and the last case involved a party filing numerous unnecessary motions (Applicant has filed no motions in this case). Thus, the cases cited by Applicant do not apply here. It should also be noted, however, that the Trademark Trial and Appeal Board is an administrative tribunal of the United States Patent and Trademark Office. The Board is empowered to determine only the right to register. See T.B.M.P. section 102.01. Further, the Board does not have the authority to determine whether a crime has occurred. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1216 (TTAB 2006) (“[T]he Board's jurisdiction is limited to determining whether trademark registrations should issue or whether registrations should be maintained; it does not have authority to determine whether a party has engaged in criminal or civil wrongdoings.”), *aff'd unpub'd*, 240 Fed. Appx. 865 (Fed. Cir. July 11, 2007), *cert. den'd*, 552 U.S. 1109 (2008). Thus, by finding that Applicant has engaged in a crime in deciding the Motion for Sanctions, the Board may be entering into territory for which it has no authority.

This problem for the Board is compounded by the fact that Applicant has not been found guilty of any crime at this time. For the Board to find an individual guilty of a crime before a court of law has a chance to hear this case, is unprecedented and runs contrary to the

¹ See, for example, Exhibit 3 of the Opposition, which comprises a Consent Order, executed by Prudential, detailing Prudential's wrongdoing.

presumption of innocence. *Coffin v. United States*, 156 U.S. 432 (1895) (“The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law...”).

For these additional reasons above, the Motion for Sanctions should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Oct. 5, 2015 I served this document via U.S. mail to counsel of record for Opposer’s attorney, David Barnard, Lathrop & Gage LLP, 2345 Grand Blvd., Suite 2200, Kansas City, MO 64108.



Mark Terry, Esq.