

ESTTA Tracking number: **ESTTA655722**

Filing date: **02/12/2015**

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

Proceeding	91220386
Party	Plaintiff Dr.Linda S.Restrepo
Correspondence Address	Dr.Linda S.Restrepo P.O. Box 12066 El Paso, TX 79913 UNITED STATES rdilsr@zianet.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Dr. Linda S. Restrepo
Filer's e-mail	rdilsr@zianet.com
Signature	/Linda S. Restrepo/
Date	02/12/2015
Attachments	MOTIONTODISMISS.pdf(195425 bytes ) EXHIBITS1.pdf(220176 bytes ) EXHIBIT5.pdf(169385 bytes )

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

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	§	
	§	
DR. LINDA S. RESTREPO,	§	
	§	
Opposer	§	
v.	§	Opposition No. 91220386
	§	
ALLIANCE RIGGERS & CONSTRUCTORS,	§	
LTD., CORDOVA ALLIANCE, LLC.	§	
	§	
Applicant,	§	
	§	

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**OPPOSERS CONTEST TO, RESPONSE AND MOTION TO STRIKE  
APPLICANT’S RULE 12b(6) MOTION TO DISMISS AND BRIEF IN  
SUPPORT THEREOF**

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes, Linda S. Restrepo, Opposer herein and files This Opposers  
Objection To, Response And Motion To Strike Applicant’s Rule 12B(6) Motion  
To Dismiss And Brief In Support Thereof:

**I.  
Background**

Because the Board is an administrative tribunal, its rules and  
procedures, and hence the motions available in proceedings before it,  
necessarily differ in some respects from those prevailing in the Federal  
district courts. See TBMP §§102.03 and 702.

First of all the Opposer denies and objects to all of the unsubstantiated  
statements made in the Applicants Motion to Dismiss. The Applicants Rule

12B(6) Motion To Dismiss is defective in that it is not based on applicable statutes but nothing more than personal ad hominem attacks on the Opposer as its purported basis to dismiss the Opposers opposition to the Applicants trademark application. The Opposer's trademark opposition is based on statutory grounds and legal defects or deficiency in the application which negate the applicants alleged right to the subject matter registration. The Applicants in its Motion to Dismiss does not deny any of the statutory grounds which negate its alleged right to subject matter registration, legal defects or deficiencies in their application which negate as a matter of law any right to the subject matter of the registration and therefore said statutory defects in the application should be deemed admitted based on the Applicants failure to respond.

A trademark application cannot be applied for based on the fraudulent misrepresentation of utilizing one company — Alliance Riggers & Constructors, Ltd., as a subterfuge of another — Cordova Alliance LLC. which is what has transpired in this case (Exhibit 1). This trademark opposition is based on statutory grounds such as legal defects or deficiency in the application which negate the applicants alleged right to the subject matter registration.

The first misrepresentation made to the Trademark Trial and Appeals Board by the Applicant (Applicant is a serial filer of 10 breach of contract lawsuits in El Paso County-Exhibit 5) in their Motion to Dismiss is that they

sued the Opposer in El Paso County Court at Law #5, El Paso Texas on June 20,2012 over the domain name "allianceriggersandconstructors.com" when in fact the Court record submitted herein documents that on June 20, 2012 Alliance Riggers & Constructors, Ltd. filed a law suit in El Paso County Court at Law #5, El Paso, Texas Case Number 2012-DCV04523 against Linda S. Restrepo and Carlos E. Restrepo over the domain name "**alliancereggers andconstructors.com**" (Exhibit 2). There appears to be a calculated confusion on the part of the applicant as what their alleged common law trademark is. For thirty one months (31) the Applicants have viciously pursued the Opposer in State Court making racial slurs against her and claiming "damages in excess of the jurisdictional limits of state Court" based on the allegation that the Opposer violated the Applicants common law trademark by purchasing and using the domain name "alliancereggers andconstructors.com". After two years of pursuing damages in excess of the jurisdictional limits of the Court, the Applicant faced with a "Motion to Dismiss" and a "No-evidence Summary Judgment Motion" against them non-suited their Original Petition, and again sued the Opposer over the alleged use without their permission or authority of an entirely different domain name "allianceriggersandconstructors.com" The Applicants modus operandi consists of presenting perjured statements, misrepresentations and unsubstantiated facts to the Courts and the Trademark Trial and Appeals Board which are not facts at all.

Some two years after the Opposer grandfathered the domain name "allianceriggersandconstructors.com" the Applicants claimed it had a common law interest in said domain name filing a new lawsuit in County Court at Law #5 on **June 20, 2014**. As a matter of law the applicants have waived any right they may have had to said alleged common law trademark name for failure to use it, failure to claim it, and failure to protect it.

Because El Paso County Court has no "jurisdictional limits" the alleged damages claimed by the Applicant in State Court could be infinite and as the "grandfather" owner of the domain name "allianceriggersandconstructors.com" with prior legal rights in the mark, opposer will be damaged by registration of the mark. Thus as a matter of law the Opposer has standing before the Trademark Trial And Appeal Board. Opposer has a standing based on commercial interest in the mark. Opposer claims that the mark at issue falsely suggests a connection with opposers grandfathered domain name "allianceriggersandconstructors.com".

Thrown behind the applicants "Motion to Dismiss" is a stack of unverified and undocumented pages, which are not referred to as attachments or exhibits in Applicants Motion to Dismiss. Undocumented pages which the Applicant does not cite any basis in law or in equity why said undocumented pages are relevant or have any function in the opposition against their trademark application, as such the Opposer requests that all said undocumented, uncertified pages thrown in after page -5- of the

Applicants Motion to dismiss be stricken from the record. 37 CFR § 2.122(c) Exhibits to pleadings. Except as provided in paragraph (d)(1) of this section, an exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached unless identified and introduced in evidence as an exhibit during the period for the taking of testimony.

Upon motion, or upon its own initiative, the Board may order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. See FRCP 12(f). The unsubstantiated, unverified pages of voluminous paper thrown behind the Applicants five page Motion clearly have no bearing upon the issues in the case, and/or are attempts by Applicant to re-litigate the pending state court case in the USPTO administrative tribunal which is not a court of law. See *Harsco Corp. v. Electrical Sciences Inc.*, 9 USPQ2d 1570 (TTAB 1988); *Leon Shaffer Golnick Advertising, Inc. v. William G. Pendill Marketing Co.*, 177 USPQ 401 (TTAB 1973); *2A Moore's Federal Practice* ¶12.21[2] (2d ed. 1985); and Wright & Miller, *Federal Practice and Procedure: Civil 2d* §1380 (1990).

## **II. Reply Brief**

The Opposers response to the Applicants Motion to Dismiss is necessary to permit the Opposer to respond to new issues raised in, or new materials submitted with Applicants Motion to Dismiss. Opposers brief is submitted in opposition to Applicants Motion to Dismiss; or the issue to be

determined is complex or needs to be further clarified; or certain arguments against the motion should be answered so as to assist the Board in arriving at a just conclusion on the motion. See *Zirco Corp. v. American Telephone and Telegraph Co.*, 21 USPQ2d 1542 (TTAB 1991); *DataNational Corp. v. BellSouth Corp.*, 18 USPQ2d 1862 (TTAB 1991); *Flatley v. Trump*, 11 USPQ2d 1284 (TTAB 1989); *Avon Products, Inc. v. MarCon, Ltd.*, 225 USPQ 977 (TTAB 1985); *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852 (TTAB 1981); *Cool-Ray, Inc. v. Eye Care, Inc.*, 183 USPQ 618 (TTAB 1974); *Johnson & Johnson v. Diamond Medical, Inc.*, 183 USPQ 615 (TTAB 1974); and *Goodyear Tire & Rubber Co. V. Uniroyal, Inc.*, 183 USPQ 372 (TTAB 1974).

### **III. Court Proceedings**

The United States Patent and Trademark Office has previously stated that Court proceedings are not considered an appropriate basis for granting a letter of protest unless: (1) the protestor is alleging a likelihood of confusion between a federally registered mark or prior-pending application and the mark in the application that is the subject matter of the letter of protest, and (2) the remedy requested in the proceeding is cancellations, abandonment, or amendment of the protested application, TMEP §§716.02(d), 1715.01. Because the applicant's Motion to Dismiss clearly alleges that there is no confusion between the alleged crane and erector

services they offer, the applicant has failed to meet the requirement for utilizing Court proceedings in the opposition to their trademark application.

**IV.  
Different Arguments in Different Proceedings**

While the Applicants has in sworn court documents and under penalty of perjury to the Courts stated that the Opposers utilization of the domain name has caused them "damages in excess of the jurisdictional limits of the court" Applicants for the first time some 31 one months after filing their State Court Lawsuit now with intent to deceive, claim to the Trademark Trial and Appeals Board that the Opposer has no standing to oppose the pending trademark application.

**V.  
Foreign Entity**

In Applicants first trademark application filed on May 22, 2012 application Serial Number 76711574 which they "abandoned" for the alleged trademark name alliance riggers & constructors, the USPTO required that the Applicant make an "Entity Clarification as to the names and citizenship of the partners"; rather than comply with such information the applicant abandoned its trademark application.

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Entity Clarification

Applicant indicated it is a Limited Partnership. However, applicant has not indicated the names and citizenship of the partners. After setting forth the applicant's name and entity, the application of a partnership should specify the state or country under whose laws the partnership or joint venture is organized. 37 C.F.R. §2.32(a)(3)(ii). In addition, domestic partnerships must set forth the names, legal entities, and national citizenship (for individuals), or state or country of organization (for businesses), of all general partners or active members that compose the partnership or joint venture. 37 C.F.R. §§2.32(a)(3)(iii) and (iv). These requirements apply to both general and limited partnerships. They also apply to a partnership that is a general partner in a larger partnership. Limited partners or silent or inactive partners need not be listed. The following format should be used:

In the Applicants "second" attempt to obtain a trademark on the same name alliance riggers & constructors they throw in the true name of the Corporation for

which the trademark application is sought which is Cordova Alliance, LLC. but in yet another attempt to deceive, Applicant knowingly, wantonly and with malice refuses to indicate the names and citizenships of the partners of Cordova Alliance, LLC.

TMEP §803.03(b).

The Applicant's Motion to Dismiss is defective in that it knowingly and in an attempt to deceive the Trial and Appeal Board does not comply with 37CR§2.127(a) which requires that the name and number of the inter partes proceeding in connection with which it is being filed be included in all Motions before the Board. Applicant's Motion knowingly and wantonly left out Cordova Alliance, LLC. which is the true applicant for the proposed trademark application, hoping to have the Opposition against it dismissed so that they will not be required to comply with TMEP §803.03(b) or 37CR§2.127(a). Neither is said Motion to Dismiss filed by the alleged Applicant signed by any authorized representative of Cordova Alliance, LLC. as required by 37 CFR §2.119(e), and TBMP §106.02.

## **VI. Use of Mark**

There is not one scintilla of information presented to the USPTO or to the Trademark Trial and Appeals Board that Cordova Alliance, LLC. has ever used, claimed or plans to utilize the trademark for which they now apply. Neither is there one scintilla of information or documentation to define the goods and services for which Cordova Alliance, LLC. claims the trademark application for. The attached Certificate of Fact from the Texas Secretary of

State (Exhibit 3) documents that neither Cordova Alliance, LLC. or Alliance Riggers & Constructors, have filed an application for a trademark in the State of Texas, yet they falsely allege to the Trademark Trial and Appeals Board that they began use of the alleged name as their trademark 15 years ago.

The Opposer herein challenges the authority of R. Wayne Pritchard to act on behalf of Cordova Alliance, LLC in the Motion to Dismiss or in the application for a Trademark to the USPTO. State Bar Disciplinary Rules are explicit: an attorney cannot represent two Corporations in the same proceeding. As a matter of law the Applicant's trademark application and their Motion should be dismissed and the pleadings stricken if "no person who is authorized to prosecute or defend the case on behalf of Cordova Alliance, LLC appears."

See *Gravitt*, 371 S.W.3d at 471 (citing Tex.R. Civ. P. 12).

#### TRCP 12 - RULE 12 MOTION

Rule 12 provides that a party may file a sworn motion stating that the party believes the suit or proceeding is being prosecuted or defended without authority and cause the challenged attorney to appear before the court to show his authority to act on behalf of the other party. Tex. R. Civ. P. 12; *Boudreau v. Fed. Trust Bank*, 115 S.W.3d 740, 741 (Tex. App.-Dallas 2003, pet. denied). At the hearing on the motion, the burden of proof is on the challenged attorney to show his authority to prosecute or defend the suit. Tex. R. Civ. P. 12; *Boudreau*, 115 S.W.3d at 741. The primary purpose of rule 12 is to enforce a party's right to know who authorized the suit. See *Angelina Cnty. v. McFarland*, 374 S.W.2d 417, 422-23 (Tex. 1964); *Boudreau*, 115 S.W.3d at 742.

### **VII. Applicant has No Standing**

Cordova Alliance, LLC. as the secret and silent partner applicant for the trademark application has shown no standing to file the Motion to Dismiss and in fact if Cordova Alliance, LLC. are not representing themselves pro se

they are not even represented by an attorney in this matter. Standing is a threshold issue that must be proved in every inter partes case. *Lipton industries, Inc. v. Ralston Purina Co.*, 670 F.2d, 1024, 213 USPQ 185, (CCPA 1982). Cordova Alliance, LLC. has not shown any utilization of the trademark applied for, nor has Cordova Alliance, LLC. presented any statements as to their services as a crane & rigging company. In fact State of Texas records show that Cordova Alliance, LLC. is a “straw” corporation operating without assets or business.

As a matter of law Cordova Alliance, LLC. has not stated or shown that it is acting in privity (TBMP § 206.02) in the trademark application and failing to claim or make a satisfactory showing of privity cannot have claim to the alleged trademark application. Neither have either Alliance Riggers & Constructors nor Cordova Alliance, LLC. transferred any assignment of the alleged mark and as such the alleged mark subject of this trademark application cannot be shared between two Corporations, or secret partners of unknown citizenship. See Fed. R. Civ. P. 17(a); 37 CFR § 2.116. See also *Argo & Co. v. Springer*, 189 USPQ 581, 582 (TTAB 1976) (three individuals who owned mark as tenants in common substituted for corporation initially named as owner of mark where, after opposition instituted, court in related civil proceeding determined that attempted incorporation of applicant was legally defective). *Cf. In re Tong Yang Cement Corp.*, 19 USPQ2d 1689, 1690. (TTAB 1991). (application filed by corporation which was not the

owner of the mark void ab initio). Therefore in accordance with legal case precedent and as a matter of law a trademark application filed by Alliance Riggers & Constructors for and on behalf of Cordova Alliance, LLC is void ab initio. Neither has Cordova Alliance, LLC. filed a trademark application fee.

**VIII.**  
**Opposer Invokes Her Constitutional Right to File an Opposition to the Trademark Applications**

**303.01 In General**

**309.03(b) Standing**

15 U.S.C. § 1063(a) [Trademark Act § 13(a)] Any person who believes that he would be damaged by the registration of a mark upon the principal register, including the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnish under section 1125(c) of this title, may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 1062 of this title of the mark sought to be registered.

*37 CFR § 2.2(b) Entity as used in this part includes both natural and juristic persons.*

*37 CFR § 2.101(b) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file an opposition addressed to the Trademark Trial and Appeal Board ....*

There is no requirement that actual damage be pleaded or proved in order to establish standing or to prevail in an opposition or cancellation proceeding. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d

1842, 1844 (Fed. Cir. 2000); *Books on Tape Inc. v. Booktape Corp.*, 836 F.2d 519, 5 USPQ2d 1301, 1302 (Fed. Cir. 1987); *Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987), *on remand*, 5 USPQ2d 1622 (TTAB 1987), *rev'd*, 853 F.2d 888, 7 USPQ2d 1628 (Fed. Cir. 1988).

The opposer has plead statutory ground or grounds for opposition or cancellation in compliance with 309.03(c) Grounds.

### **IX. MOTION TO DISMISS**

The Applicant's Motion to Dismiss is not based on any statutory, valid reason or basis but rather is submitted only as a fast and dirty method to avoid disclosing the true names and foreign investment of the entities who made the trademark application.

The Opposer has alleged facts as would, when proved, establishes that the Opposer is entitled to the relief sought, that is, that (1) the opposer has standing to maintain the proceeding, and (2) a valid ground exists for denying the registration sought (in the case of an opposition), See *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); *Kelly Services Inc. v. Greene's Temporaries Inc.*, 25 USPQ2d 1460 (TTAB 1992); *Hartwell Co. v. Shane*, 17 USPQ2d 1569 (TTAB 1990); *Consolidated Natural Gas Co. v. CNG Fuel Systems, Ltd.*, 228 USPQ 752 (TTAB 1985); *Intersat Corp. v. International Telecommunications Satellite*

*Organization*, 226 USPQ 154 (TTAB 1985); and *Springs Industries, Inc. v. Bumblebee Di Stefano Ottina & C.S.A.S.*, 222 USPQ 512 (TTAB 1984).

For purposes of determining a motion to dismiss for failure to state a claim upon which relief can be granted, all of the opposer (plaintiff Linda S. Restrepo's) well pleaded allegations must be accepted as true, and the complaint must be construed in the light most favorable to the opposer (plaintiff). See *Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, 988 F.2d 1157, 26 USPQ2d 1038 (Fed. Cir. 1993); *Stanspec Co. v. American Chain & Cable Co.*, 531 F.2d 563, 189 USPQ 420 (CCPA 1976); *Kelly Services Inc. v. Greene's Temporaries Inc.*, 25 USPQ2d 1460 (TTAB 1992); *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216 (TTAB 1990); and *No Nonsense Fashions, Inc. v. Consolidated Foods Corp.*, 226 USPQ 502 (TTAB 1985).

Dismissal for insufficiency is appropriate only if it appears certain that the plaintiff is entitled to no relief under any set of facts which could be proved in support of its claim. See *Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, *supra*; *Scotch Whiskey Ass'n v. United States Distilled Products Co.*, 952 F.2d 1317, 21 USPQ2d 1145 (Fed. Cir. 1991); *Stanspec Co. v. American Chain & Cable Co.*, *supra*; *Kelly Services Inc. v. Greene's Temporaries Inc.*, *supra*; *Space Base Inc. v. Stadis Corp.*, *supra*; *Stabilisierungsfonds fur Wein v. Zimmermann-Graeff KG*, 199 USPQ 488 (TTAB 1978); and *National Ass'n of Blue Shield Plans v. Standard Mattress Co.*, 176 USPQ 29 (TTAB 1972).

Plaintiffs has shown a real interest the outcome of the proceeding and has both a direct and personal stake in the outcome of the opposition.

The fact that the Applicant filed a lawsuit against the Plaintiff/Opposer Linda S. Restrepo for using the alleged domain [allianceregggersandconstructors.com](http://allianceregggersandconstructors.com)

verifies that the Applicant recognizes and accepts the ownership interest of the Opposer of the alleged trademark name. The fact that the Applicants has aggressively pursued a lawsuit for 31 months against the Opposer also documents the Applicant's "position" that there is a confusion between Opposer and the Applicants utilization of said name.

Further, Opposer is the Domain Name Administrator which validates her interest and ownership in the domain name. By virtue of the State of Texas being a community property state, Opposer has a legal ownership right over the domain name.

Under the mandates 15 U.S.C. §1125(d)(c)(3) the ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register shall be a complete bar to an action against that person, with respect to that mark, that is brought by another person under the common-law or a statute of a State and that seeks to prevent dilution of the distinctiveness of a mark, label, or form of advertisement. As such the Opposer as legal grandfathered register of the mark is protected under 15 U.S.C. §1125(d)(c)(3) which bars the Applicant from making any claims

The documents presented by the Applicant itself document that they waived and transferred any rights they may have had to the alleged trademark to the Opposer and furthermore that the Opposer has complete intellectual property and copyrights to said alleged trademark name (Exhibit 4). The Documents show that the Applicant has acknowledged, concurred with and accepted opposers ownership, copyright and usage in commerce of the name.

The Trademark Applicant has abandoned and "TWICE" given up any right to said alleged trademark name by refusing to claim, utilize or protect it and has

"TWICE" officially disclaimed any rights to said alleged trademark name in both 2012 and 2014 to the USPTO:

Applicant must disclaim the descriptive wording "RIGGERS & CONSTRUCTORS" apart from the mark as shown because it merely describes a feature or purpose of applicant's services. See 15 U.S.C. §§1052(e)(1), 1056(a); In re Steelbuilding.com, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); In re Gyulay, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); TMEP §§1213, 1213.03(a).

Finally there is no "two for one" specials within the USPTO in which both Alliance Riggers & Constructors, Cordova Alliance, LLC. and alleged unknown foreign investors can file a trademark application base on ONE SINGLE FEE.

WHEREFORE, PREMISES, CONSIDERED Opposer requests that the Applicants Motion to Dismiss be stricken in its entirety or in the alternative denied and that the Trademark application of both Alliance Riggers & Constructors and Cordova Alliance, LLC. neither of whom are owners of the mark be declared void ab initio.

Respectfully Submitted,

/s/ Linda S. Restrepo

P.O. Box 12066  
El Paso, Texas 79913  
(915) 581-2732  
rd-intl@zianet.com

#### CERTIFICATE OF SERVICE

I certify that on the 12th day of February 2015, a true and correct copy of the foregoing document was delivered as required by the Federal Rules of civil Procedure by mailing a copy of the same via first class mail, postage pre-paid to R.Wayne Pritchard at: 300 East Main, Suite 1240, El Paso, Texas 79901, wpritchard@pritchlaw.com, attorney for Appellee.

/s/ Linda S. Restrepo

Linda S. Restrepo – Opposer

EXHIBITS 1-5 are attached herein as supporting evidence and part of this Motion

EXHIBITS 1-5 SUBMITTED AS SEPARATE ATTACHMENT

**Opposers Objection To, Response And Motion To Strike  
Applicant's Rule 12B(6) Motion To Dismiss And Brief In  
Support**

**EXHIBITS 1-2 TO OPPOSITION #91220386**

Respectfully Submitted,

/s/ Linda S. Restrepo

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El Paso, Texas 79913  
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CERTIFICATE OF SERVICE

I certify that on the 12th day of February 2015, a true and correct copy of the foregoing document was delivered as required by the Federal Rules of civil Procedure by mailing a copy of the same via first class mail, postage pre-paid to R.Wayne Pritchard at: 300 East Main, Suite 1240, El Paso, Texas 79901, wpritchard@pritchlaw.com, attorney for Appellee.

/s/ Linda S. Restrepo

Linda S. Restrepo – Opposer

EXHIBITS 1-5 are attached herein as supporting evidence and part of this Motion

# USPTO EXHIBIT 1

## Trademark Snap Shot Publication & Issue Review Stylesheet

(Table presents the data on Publication & Issue Review Complete)

### OVERVIEW

SERIAL NUMBER	76716209	FILING DATE	04/21/2014
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	SERVICE MARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	GOODSAID, IRA J	L.O. ASSIGNED	101

### PUB INFORMATION

RUN DATE	08/29/2014		
PUB DATE	09/30/2014		
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE		
STATUS DATE	08/28/2014		
LITERAL MARK ELEMENT	ALLIANCE RIGGERS & CONSTRUCTORS		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

### FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	YES	1 (b)	YES	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

### MARK DATA

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	ALLIANCE RIGGERS & CONSTRUCTORS

MARK DRAWING CODE	3-AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/LETTER(S)/NUMBER(S)
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Alliance Riggers & Constructors, Ltd
ADDRESS	1200 Kastrin Street El Paso, TX 79907
ENTITY	13-LIMITED PARTNERSHIP
CITIZENSHIP	Texas
COMPOSED OF	Cordova Alliance, LLC, a Texas limited liability company

### GOODS AND SERVICES

INTERNATIONAL CLASS	037
DESCRIPTION TEXT	Crane and erector services, namely, structural steel erection

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	037	FIRST USE DATE	07/01/1997	FIRST USE IN COMMERCE DATE	07/01/1997	CLASS STATUS	6-ACTIVE
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### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
COLORS CLAIMED STATEMENT	Color is not claimed as a feature of the mark.
DISCLAIMER W/PREDETER TXT	"RIGGERS & CONSTRUCTORS"
DESCRIPTION OF MARK	The mark consists of a representation of the end of a three-pronged architectural ruler superimposed across a circle. The wording "ALLIANCE RIGGERS & CONSTRUCTORS" appears below the three-pronged design with a solid triangle between "ALLIANCE" and the rest of the wording.
PSEUDO MARK	ALLIANCE RIGGERS AND CONSTRUCTORS, LTD

### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
08/28/2014	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	021
08/26/2014	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	020
08/18/2014	DMCC	I	DATA MODIFICATION COMPLETED	019



3. CARLOS E. RESTREPO is an individual residing in El Paso County, Texas who may be served with process at his principal place of residence located at 804 Pintada Place, El Paso, Texas 79912.

4. LINDA S. RESTREPO is an individual residing in El Paso County, Texas, who may be served with process at her principal place of residence located at 804 Pintada Place, El Paso, Texas 79912.

### III.

#### TRADEMARK INFRINGEMENT/UNFAIR COMPETITION

5. Plaintiff is the owner of the well known common law trademark, ALLIANCE RIGGERS & CONSTRUCTORS.

6. Defendants have, without permission or authority from Plaintiff, registered the domain name "www.alliancereggersandconstructors.com", and have in fact, launched a web page at such address in which they make multiple use of Plaintiff's trademark.

7. The use by Defendants of Plaintiff's trademark without permission or authority constitutes trademark infringement and unfair competition under the laws of the State of Texas.

8. As a direct and proximate result of the actions complained of above, Plaintiff has suffered damages in excess of the minimum jurisdictional limits of this court.

### IV.

#### BREACH OF CONTRACT

9. On or about March 2011, Plaintiff and Defendants entered into a contract ("Contract"), the primary purpose of which was to design for Plaintiff a web page. Defendants have breached the Contract by failing to design for Plaintiff the web page as

agreed. As a direct and proximate result of the conduct of Defendants described above, Plaintiff has suffered damages in excess of the minimum jurisdictional limits of this court.

**V.  
DECLARATORY JUDGMENT REQUEST**

10. By letter dated June 12, 2012, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated by reference for all purposes, Defendant alleged that Plaintiff had breached the Contract and made demand that Plaintiff pay Defendants \$3,500.00.

11. As shown above, Plaintiff has not breached the Contract as alleged by Defendants and furthermore, does not owe Defendants any sum of money.

12. Plaintiff requests that pursuant to Section 37.001 et seq., of the Texas Civil Practice and Remedies Code, commonly referred to as the Texas Declaratory Judgment Act, this Court declare that Plaintiff is not in breach of the Contract and does not owe Defendants any amounts of money.

13. Plaintiff is entitled to recover from Defendants, jointly and severally, pursuant to Section 37.009 of the Texas Declaratory Judgment Act, its reasonable and necessary attorneys' fees incurred in this action.

**VI.  
VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

14. In connection with the their agreement to design for Plaintiff a web page, Defendants:

- A. Represented that services had characteristics, uses or benefits which they did not have in violation of Section 17.46(b)(5) of the Texas Deceptive Trade Practices Act ("TDPA");

- B. Represented that services were of a particular standard, quality or grade when they were of another in violation of Section 17.46(b)(7) of the TDPA;
- C. Represented that an agreement conferred or involved rights, remedies or obligations which it did not have or involve in violation of Section 17.46(b)(12) of the TDPA;
- D. Failed to disclose information concerning services which was known at the time of the transaction, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of Section 17.46(b)(24) of the TDPA;
- E. Engaged in unconscionable actions or course of actions in violation of Section 17.50(a)(3) of the TDPA;

15. The actions of Defendants complained of in paragraph 10, were a producing cause of damages to Plaintiff and are therefore actionable under Section 17.50(a) of the TDPA.

16. The conduct of Defendants as described above was committed knowingly entitling Plaintiff to recover three times its economic damages as provided in Section 17.50(b)(1) of the TDPA.

**VII.  
ATTORNEYS' FEES**

17. Plaintiff is entitled to recover its reasonable attorneys' fees incurred in this action pursuant to Sections 37.009 and 38.001 et seq. of the Texas Civil Practice and Remedies Code as well as under the Texas Deceptive Trade Practices Act.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays that upon final hearing in this matter, after proper notice to Defendants, that it recover from Defendants, jointly and severally, its actual damages, its economic damages, three times its economic damages, as well as court costs and reasonable attorneys' fees together with prejudgment and post-judgment interest as allowed by law, and such other and further relief to which it is entitled.

Respectfully submitted,

**R. WAYNE PRITCHARD, P.C.**  
300 East Main, Suite 1240  
El Paso, Texas 79901  
Tel. (915) 533-0080  
Fax (915) 533-0081

By:



**R. WAYNE PRITCHARD**  
State Bar No. 16340150

**ATTORNEYS FOR PLAINTIFF**

**Opposers Objection To, Response And Motion To Strike  
Applicant's Rule 12B(6) Motion To Dismiss And Brief In  
Support**

**EXHIBIT 5 TO OPPOSITION #91220386**

Respectfully Submitted,

/s/ Linda S. Restrepo

P.O. Box 12066  
El Paso, Texas 79913  
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rd-intl@zianet.com

CERTIFICATE OF SERVICE

I certify that on the 12th day of February 2015, a true and correct copy of the foregoing document was delivered as required by the Federal Rules of civil Procedure by mailing a copy of the same via first class mail, postage pre-paid to R.Wayne Pritchard at: 300 East Main, Suite 1240, El Paso, Texas 79901, wpritchard@pritchlaw.com, attorney for Appellee.

/s/ Linda S. Restrepo

Linda S. Restrepo – Opposer

EXHIBITS 1-5 are attached herein as supporting evidence and part of this Motion

## USPTO EXHIBIT 5

## Civil, Family &amp; Probate Case Records Search Results

Skip to Main Content Logout My Account Search Menu New Civil Search Refine Search

Location : All Courts Help

Record Count: 10

Search By: Party Party Search Mode: Business Name Last Name: Alliance riggers &amp; Constructors, Ltd. Sort By: Filed Date

Case Number	Style	Filed/Location	Type/Status
<a href="#">2006-4518</a>	ALLIANCE RIGGERS AND CONSTRUCTORS vs. AUSTIN TRAFFIC SIGNAL CONSTRUCTION CO	10/13/2006 County Court at Law 5	Breach of Contract Closed
<a href="#">S108-0120</a>	ALLIANCE RIGGERS & CONSTRUCTORS, LTD vs. ARMANDO AYALA	07/31/2008 JP 1	Small Claims Filed
<a href="#">2009-2963</a>	TEXAS MUTUAL INSURANCE COMPANY vs. ALLIANCE RIGGERS & CONSTRUCTORS, LTD.	06/25/2009 210th District Court	Other Injury or Damage Closed
<a href="#">2010-067</a>	ALLIANCE RIGGERS & CONSTRUCTORS, LTD. vs. G.E. HEALTHCARE, INC.	01/08/2010 County Court at Law 6	Breach of Contract Disposed
<a href="#">2010-2219</a>	ALLIANCE RIGGERS & CONTRACTORS, LTD. vs. MANN CONTRACTORS, LTD.	06/14/2010 327th District Court	Breach of Contract Closed
<a href="#">2011-2317</a>	ALLIANCE RIGGERS & CONSTRUCTORS, LTD. vs. R.E.R.O. CORPORATION	06/08/2011 243rd District Court	Breach of Contract Closed
<a href="#">111-00043-CV</a>	Alliance Riggers & Constructors, LTD. vs. Cincinnati Crane & Hoist, L.L.C.	12/01/2011 JP 1	Justice Civil Judgment Rendered
<a href="#">111-00088-CV</a>	Alliance Riggers & Constructors, LTD. vs. DS Mechanical Contractors, Inc.	12/13/2011 JP 1	Justice Civil Writ Issued
<a href="#">2012-DCV01242</a>	ALLIANCE RIGGERS & CONSTRUCTORS, LTD. VS. DANTEX CONSTRUCTION COMPANY	01/17/2012 County Court at Law 6	Contract - Consumer/Comm Dismissed
<a href="#">2012DCV04523</a>	ALLIANCE RIGGERS & CONSTRUCTORS, LTD. VS. LINDA RESTREPO,CARLOS RESTREPO	06/20/2012 County Court at Law 5	Breach of Contract Filed