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

Proceeding	91222005
Party	Defendant Theodorou Steve, Theodorou Phillip
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Date	06/28/2015
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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.

Theodorou Steven, Theodorou Phillip,
(defendants)

STEVEN THEODOROU
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June 28, 2015

Opposition No. 91222005
Serial No. 86418856

ANSWER TO NOTICE OF OPPOSITION

The defendants are the owners of THE WALKING DEAD trademark Serial No. 86418856.

The Plaintiff's mark is weak, descriptive and has not acquired sufficient secondary meaning. After an inquiry of the plaintiff's allegations, the defendants have concluded that the plaintiff has again misrepresented itself by alleging exclusive use of the Defendant's trademark on products while owning a service mark for less than five years, 15 U.S. Code § 1052(f), and the plaintiff's trademark as used in connection with its series of comic books, and television series is merely descriptive of its storyline, and, including, but not limited to, descriptive of historical events, religious references, U.S. military groups, comic books (other than the Plaintiff's) and a movie, and does not have secondary meaning. The plaintiff's descriptive mark has not attained secondary meaning. The plaintiff has failed to effectively market any products or services with The Walking Dead mark that purchasers come to immediately associate with only the plaintiff, and the General Public does not indicate that the source of any goods or services bearing THE WALKING DEAD originates from the plaintiff.

There is also contradictory evidence in the Trademark Status and Document Retrieval records 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 for Classes 16, 20, 25 and 28 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.*” 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 act of bad faith is fraudulent, and is connected with Opposition No. 91222005. 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, and in connection to this matter in controversy.

Since the Defendant's application filing date in international class 25, the plaintiff knowingly began using the federal "®" fraudulently and deceptively next to merely ornamental images on the Defendant's classes of products and services. 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 and 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 without the issuance of a Notice of Allowance, and while the application has been suspended.

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 describes the Plaintiff's view of himself, and the unethical, illegal and unfair tactics that threaten to plague this opposition if allowed to continue.

For the reasons stated herein, the Defendants respectfully request that the Board dismiss the Plaintiff's opposition due to unclean hands, and with prejudice.

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 answer to opposition No. 91222005 has been served on plaintiff's counsel, James D. Weinberger by mailing said copy on June 29, 2015 via First Class Mail, postage prepaid to: Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza 6th Floor New York, NY 10017.



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