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

Proceeding	91223243
Party	Plaintiff DCS Investment Holdings, LLC
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Date	09/23/2015
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DCS INVESTMENT HOLDINGS, LLC,
Opposer,

v.

BELLA COLLINA EVENTS, LLC

Applicant.

Opposition No.: 91223243
Serial No.: 86362378
Mark: BELLA COLLINA EVENTS
Filing Date: August 11, 2014
Publication Date: July 14, 2015

**RESPONSE IN OPPOSITION TO MOTION TO
SUSPEND PROCEEDINGS PENDING OUTCOME OF PENDING CIVIL ACTION**

Opposer DCS Investment Holdings, LLC (“DCS”), through undersigned counsel, hereby opposes Applicant Bella Collina Events, LLC’s (“BCE”) Motion to Suspend Proceeding Pending Outcome of Pending Civil Action (the “Motion”) as the district court litigation at issue is not the same as the instant Opposition and there are substantial differences between the instant Opposition and the pending district court litigation.

DCS generally does not disagree with the recitation of facts contained within the “Relevant Facts” section of the Motion. Nor does DCS disagree with the position that the Board *may* suspend a proceeding before it pending the termination of a civil action. However, DCS disagrees with BCE’s characterization of DCS’s Opposition, the allegations contained therein, and the basis thereof, and with BCE’s characterization of the pending civil action and its impact on this Opposition.

While BCE is correct that DCS is asserting prior rights and likelihood of confusion as grounds for its Opposition, DCS is also asserting fraud as a basis for the Opposition. Specifically, BCE never attempted to register the Mark until after its counsel – the same attorneys who filed the application for the Mark and are representing BCE in this Opposition as

well as in the pending district court litigation – had been notified by DCS’ counsel of DCS’ claims to prior use of the ‘BELLA COLLINA’ mark for weddings and related goods and services. Fraud is not an issue in the pending district court litigation and will therefore not be resolved by the pending district court litigation.

BCE’s conduct in this matter is extreme. On August 1, 2014, counsel for DCS wrote counsel for BCE regarding BCE’s infringement of DCS’s trademark rights. A copy of that letter is annexed hereto as Exhibit 1. A week later, August 8, 2014, counsel for BCE responded via email to the August 1 letter, stating “. . . I am out of town currently . . . With my client, we are assessing the issues raised in your letter and we anticipate responding to you within the next three weeks.” A copy of the response email is annexed hereto as Exhibit 2. Three days later, August 11, 2015, BCE filed the application that gave rise to this Opposition. The application includes a declaration signed by Joseph Destafino on August 9, 2014. Despite counsel allegedly being out of town, BCE was able to prepare and sign a declaration for a trademark application (which, presumably, had been prepared prior to the declaration, otherwise there would have been nothing to declare) the day after it was unable to respond to DCS and a week after being put on notice that DCS claimed prior rights to the BELLA COLLINA mark. None of this conduct is addressed in the pending district court litigation and will not be resolved by that action.

Therefore, the current Opposition should not be suspended and the Motion should be denied.

Moreover, BCE’s application differs substantially from the issues pending in the civil action. The application filed by BCE seeks nationwide registration of ‘BELLA COLLINA EVENTS.’ However, throughout the pending district court litigation, BCE has repeatedly relied on its status as a regional operation limited in geographic scope as a basis for seeking relief. *See, e.g.,* Motion, Exhibit B, ¶ 34(b) (“In BCE’s geographic territory, BCE’s trademark rights in

BELLA COLLINA EVENTS for wedding related services have priority over trademark rights claimed by DCS in BELLA COLLINA for wedding related services”); *id.* at ¶25 (“... DCS’s alleged BELLA COLLINA wedding services were not provided in BCE’s geographic territory until after BCE had established its own trademark rights in such territory.”). BCE continually relies on its status as a regional operator of limited geographic scope while litigating the district court litigation while simultaneously seeking nationwide registration of BELLA COLLINA EVENTS in the present application. Therefore, the district court litigation and the current Opposition are substantially different – one seeks a declaration regarding BCE’s use of BELLA COLLINA EVENTS within a limited geographic territory (and potentially a declaration as to concurrent use) while the other addresses BCE’s alleged nationwide rights in BELLA COLLINA EVENTS. Therefore, the district court litigation will not resolve the issues present in this Opposition and the Motion should be denied.

DCS suffers harm by the delay of this Opposition. The application giving rise to this Opposition has prevented DCS from prosecuting its own co-pending trademark application. *See* U.S. Serial Number 8,6431,330. Delaying DCS’s trademark application delays DCS’s ability to obtain federally registered trademark rights, including the additional rights and remedies that provides DCS against the infringers of its BELLA COLLINA mark. Given BCE’s actions in filing the instant trademark application, and the differences between that application and what it alleges in the pending district court litigation, it would be inequitable to continue to delay DCS’s trademark application and the granting to DCS of the trademark rights it deserves.

WHEREFORE, because the current Opposition is different from the underlying district court litigation, and because delay of this proceeding would be inequitable given Applicant’s conduct and will continue to harm DCS, the Motion should be denied.

Dated: West Palm Beach, Florida
September 23, 2015

Respectfully submitted,

SHUTTS & BOWEN LLP

Counsel for DCS

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/s/ Daniel J. Barsky

DANIEL J. BARSKY, ESQ.

Florida Bar No. 0025713

Email: dbarsky@shutts.com

Secondary Email: jtillman@shutts.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on the following via first class mail on September 23, 2015 to:

David W. Sar, Esq.

Kimberly M. Marston, Esq.

Brooks Pierce McLendon Humphrey & Leonard LLP

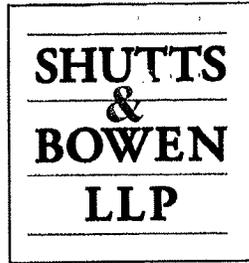
PO Box 26000

Greensboro, North Carolina 27420-6000

/s/ Daniel J. Barsky

Daniel J. Barsky

EXHIBIT 1



Founded 1910

MICHAEL D. CROSBIE
PARTNER
(407) 835-6796 Direct Telephone
(407) 425-8316 Direct Facsimile

E-MAIL ADDRESS:
mccrosbie@shutts.com

August 1, 2014

VIA ELECTRONIC MAIL(bellacollinamansion.com)
and CERTIFIED MAIL,R.R.R.

Bella Collina Events LLC
c/o Leon L. Rives, II, Registered Agent
212 West Center Street
Lexington, North Carolina 27292

Dear Mr. Rives:

This firm represents DCS Real Estate Investments, LLC ("DCS"). DCS acquired various assets, including the clubhouse and golf course, at the Bella Collina development in Lake County, Florida. DCS also acquired the federally-registered service mark BELLA COLLINA (the "Mark"). The Mark was registered in 2005 and has become incontestable. BELLA COLLINA is known for, among other things, its wedding and event venues at the clubhouse.

It has come to my client's attention that you operate a business known as "Bella Collina Mansion," but often referred to as "Bella Collina." Your company also appears to own and operate a website located at www.bellacollinamansion.com. The URL incorporates our client's Mark. In fact, the website uses variations of BELLA COLLINA throughout its content. My client is aware of clients who have actually been confused as a result of your use of BELLA COLLINA.

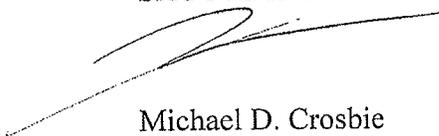
Accordingly, my client respectfully requests that you or your attorney contact me on or before August 12, 2014, to discuss this matter. My client remains keenly interested in preventing consumer confusion, and I'm sure you share that desire.

August 1, 2014
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If you have any questions, please do not hesitate to contact me, or have your attorney contact me.

Very truly yours,

SHUTTS & BOWEN LLP



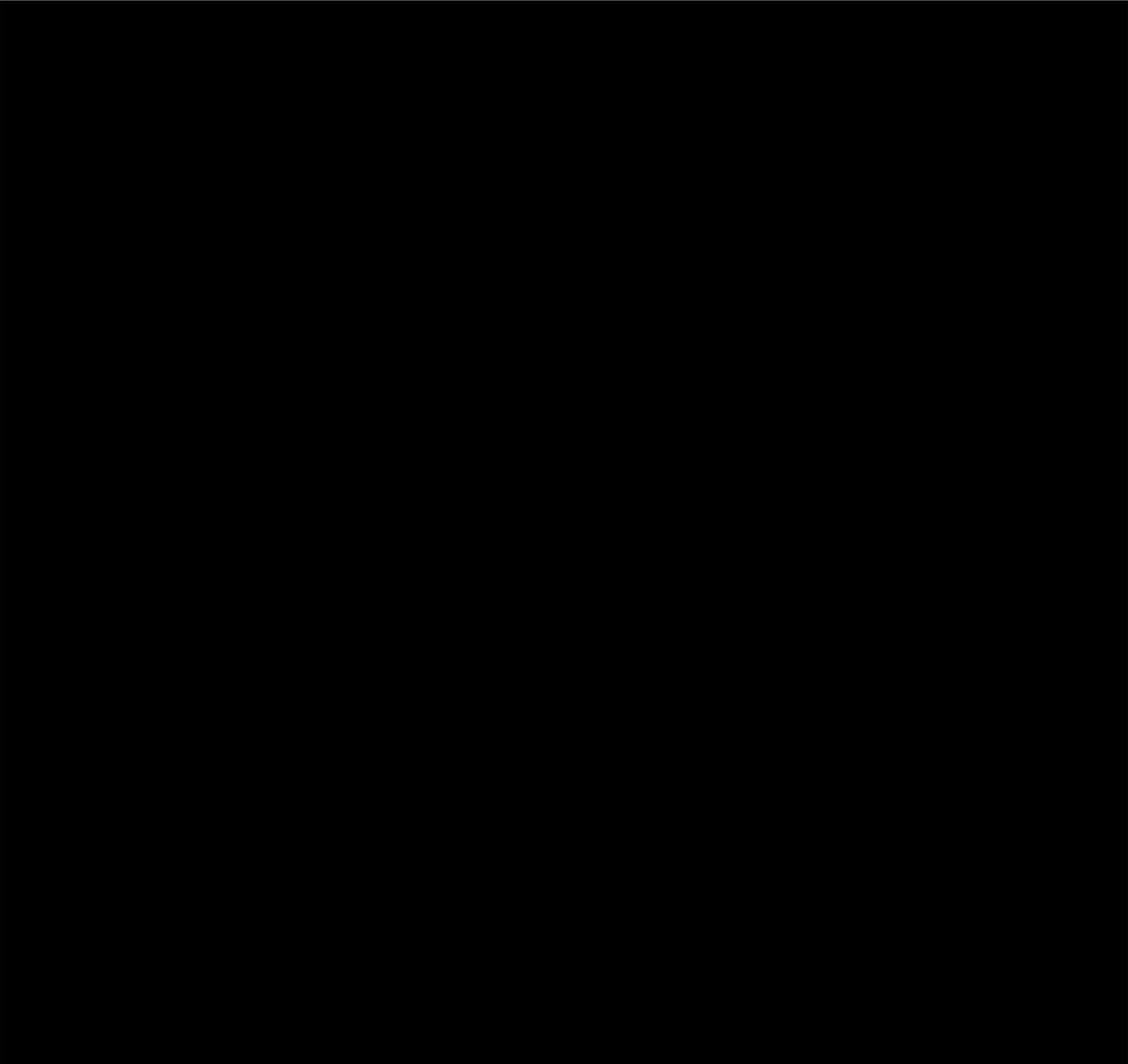
Michael D. Crosbie

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EXHIBIT 2



From: David Sar [<mailto:DSAR@brookspierce.com>]

Sent: Friday, August 08, 2014 4:13 PM

To: Michael D. Crosbie

Subject: Your letter

Dear Michael,

I represent Bella Collina Events, LLC. I am out of town currently. Your letter on behalf of DCS Real Estate Investments, LLC has been passed to me.

With my client, we are assessing the issues raised in your letter and we anticipate responding to you within the next three weeks.

Sincerely,

--David Sar

--David

David W. Sar

dsar@brookspierce.com

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