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Filing date: **05/11/2018**

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

| | |
|------------------------|---|
| Proceeding | 91225576 |
| Party | Defendant Vampire Squid Cards, LLC |
| Correspondence Address | THOMAS E MOORE III ROYSE LAW FIRM PC 149 COMMONWEALTH DR STE 1001 MENLO PARK, CA 94025 UNITED STATES Email: tmoore@rroyselaw.com, hklein@rroyselaw.com |
| Submission | Testimony For Defendant |
| Filer's Name | Leanne Castleberry |
| Filer's email | lcastleberry@rroyselaw.com, tmoore@rroyselaw.com |
| Signature | /Leanne Castleberry/ |
| Date | 05/11/2018 |
| Attachments | 00154875.PDF(797023 bytes) |

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

In the Matter of Application Serial No. 86/620,191
For the Mark: CRABS ADJUST HUMIDITY
Filed on May 5, 2015
Published in the *Official Gazette* on November 3, 2015

In the Matter of Application Serial No. 86/622,129
For the Mark: CRABS ADJUST HUMIDITY
Filed on May 7, 2015
Published in the *Official Gazette* on November 3, 2015

CARDS AGAINST HUMANITY, LLC,

Opposer,

- against -

VAMPIRE SQUID CARDS, LLC,

Applicant.

Opposition No.: 91225576

NOTICE OF FILING OF TRANSCRIPT OF TRIAL TESTIMONY DEPOSITION OF

SHARI SPIRO

PLEASE TAKE NOTICE THAT, pursuant to 37 C.F.R. §§ 2.123(h), 2.125, applicant Vampire Squid Cards, LLC, by its undersigned counsel, hereby files the certified transcript of the January 18, 2018 trial testimony deposition of Shari Spiro and the accompanying

///

testimony deposition exhibits.

Dated: Menlo Park, California
May 11, 2018

ROYSE LAW FIRM, PC

By: /Thomas E. Moore III/
Thomas E. Moore III
149 Commonwealth Drive, Suite 1001
Menlo Park, California 94025
Tel: (650) 813-9700
Fax: (650) 813-9777
tmoore@rroyselaw.com
*Attorneys for Applicant,
Vampire Squid Cards, LLC*

CERTIFICATE OF SERVICE

I, Leanne Castleberry, hereby certify that a true and complete copy of the foregoing Notice of Filing of Transcript of Trial Testimony Deposition of Shari Spiro by emailing said copy on May 11, 2018 to:

Eleanor M. Lackman (elackman@cdas.com)
Marissa B. Lewis (mlewis@cdas.com)
Cowan, DeBaets, Abrahams & Sheppard, LLP
41 Madison Avenue, 34th Floor
New York, NY 10010

By: /Leanne Castleberry/
Leanne Castleberry

ORIGINAL

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

-----X
CARDS AGAINST HUMANITY, LLC

OPPOSER,

-against-

Opposition No.:
91225576

VAMPIRE SQUID CARDS, LLC,

APPLICANT.

-----X

DATE: January 18, 2018

TIME: 10:05 A.M.

DEPOSITION of a Non-Party Witness,
SHARI SPIRO, taken by the respective
parties, pursuant to a Notice and to the
Federal Rules of Civil Procedure, held at
the offices of Cowan, Debaets, Abrahams &
Sheppard, LLP, 41 Madison Avenue, 38th
Floor, New York, New York 10010 before
Enrique Alvarado, a Notary Public of the
State of New York.

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A P P E A R A N C E S:

COWAN, DeBAETS, ABRAHAMS & SHEPPARD, LLP
Attorneys for the Opposer
CARDS AGAINST HUMANITY, LLC
41 Madison Avenue, 38th Floor
New York, New York 10010
BY: MARISSA B. LEWIS, ESQ.

ROYSE LAW FIRM P.C.
Attorneys for the Applicant
VAMPIRE SQUID CARDS, LLC
149 Commonwealth Drive, Suite 1001
Menlo Park, California 94025
BY: THOMAS E. MOORE III, ESQ.

ALSO PRESENT:

ELEANOR M. LACKMAN, Esq.
COWAN & DEBAETS, Abrahams & Sheppard LLP

* * *

1 S. SPIRO

2 S H A R I S P I R O, called as a witness,
3 having been first duly sworn by a Notary
4 Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. MOORE:

8 Q. Please state your name for the
9 record.

10 A. Shari Spiro.

11 Q. What is your address?

12 A. 125 Main Street, Netcong, New
13 Jersey 07857.

14 (Whereupon, Copy of e-mail
15 Chain was marked as Applicant's
16 Exhibit 10 for identification as of
17 this date by the Reporter.)

18 Q. Would you state your name and
19 business address for the record please.

20 A. Shari Spiro Diglioni
21 (phonetic), 125 Main Street, Netcong, New
22 Jersey 07857.

23 Q. Ms. Spiro, I'm going to start
24 with a couple of quick admonitions. The
25 first is that oath that you just took means

1 S. SPIRO

2 that all your answers are under penalty of
3 perjury. So you are to answer my questions
4 as seriously and truthfully as you would as
5 if we were in trial, notwithstanding the
6 relatively casual location in which we're
7 presently sitting. Is that clear?

8 A. Yes, sir.

9 Q. And also if you do not
10 understand one of my questions, please let
11 me know and I will try and rephrase so that
12 you can understand it. Otherwise, if you
13 answer a question, we will assume that you
14 understood it. Is that clear as well?

15 A. Yes.

16 Q. One other thing and that is
17 that everything that we are saying is being
18 transcribed and so you need to answer with
19 real English words such as "yes" and "no".
20 In other words, nods and shakes of the
21 heads or expressions like "a-ha" or "ah ah"
22 do not translate well. All right?

23 A. Yes, sir.

24 Q. Are you currently employed?

25 A. Yes, I am.

1 S. SPIRO

2 Q. By whom?

3 A. Ad Magic Incorporated.

4 Q. And what is your position at Ad
5 Magic?

6 A. Founder and CEO.

7 Q. What kind of business is Ad
8 Magic in?

9 A. Ad Magic manufactures custom
10 printed products.

11 Q. Is one of your customers, or
12 clients, the Opposer in this case, Cards
13 Against Humanity? _____

14 A. Yes.

15 Q. How long have they been a
16 customer?

17 A. 2011. I believe 2011 was the
18 first order that they placed.

19 Q. First of all, does Ad Magic
20 have a web page?

21 A. Yes.

22 Q. And is the Cards Against
23 Humanity game featured on Ad Magic's web
24 page?

25 A. Define "featured". It exists

1 S. SPIRO

2 on the web page.

3 Q. Is it displayed on the web
4 page?

5 A. Yes.

6 Q. On home page?

7 A. I actually -- I'm not sure.

8 Q. Okay. Ms. Spiro, just prior to
9 this deposition we marked an Exhibit 10 and
10 it's in front of you. Would you take a
11 couple of moments and read through it
12 please. I will represent that it is an
13 e-mail chain. Some people like to read
14 those from the bottom up and it's indicated
15 by VSC 000534 through 536.

16 MS. LACKMAN: Shouldn't she be
17 looking at the one that's marked?

18 MR. MOORE: This one (handing.)

19 A. Okay.

20 Q. At some point was Ad Magic
21 contacted by the Applicants in this case,
22 Vampire Squid Cards, LLC?

23 A. Yes.

24 Q. If you would look at the third
25 page, there appears to be an e-mail from

1 S. SPIRO

2 Michael Kohler. Was that the first contact
3 made by Vampire Squid to Ad Magic?

4 A. It appears that Michael Kohler
5 filled out our form on August 27, 2013.

6 Q. When you referred to "our
7 form," what do you mean?

8 A. Quote inquiry form from the
9 website so this would be a first contact.

10 Q. And up above there appears to
11 be an e-mail from you dated August 27,
12 2013. Did you write that e-mail?

13 A. I did.

14 Q. And did you send it on or about
15 August 27, 2013?

16 A. I did.

17 Q. Actually let me just cut
18 through some of this. With respect to the
19 e-mails level reflected on Exhibit 10, did
20 you write the ones that indicate that they
21 are from you?

22 A. I did.

23 Q. And did you receive the e-mails
24 that indicate that they were from
25 Mr. Kohler?

1 S. SPIRO

2 A. Yes, I did.

3 Q. If you go to page 2, towards
4 the top, there is an e-mail dated
5 September 12, 2013, from you to Mr. Kohler.
6 Do you see it? It starts with "Yes, sorry
7 for the delay..."

8 A. "Yes, sorry for the delay. I
9 really had to clear it all with the guys."

10 Q. Okay. What delay was that?

11 A. Apparently there was delay in
12 my answering because I generally answer
13 faster.

14 Q. "I really had to clear it up
15 with the guys." What does that mean?

16 A. Mr. Kohler had indicated that
17 he had gotten permission to print something
18 and I don't go by someone's word, I double
19 check. So I had apparently researched it a
20 little further to see if what he was saying
21 was true.

22 Q. When you refer to "the guys,"
23 who were the guys?

24 A. The guys from Cards Against
25 Humanity.

1 S. SPIRO

2 Q. And was there a particular
3 person that you checked with?

4 A. No, not in particular. I sent
5 it to a couple of the guys that I dealt
6 with on a regular basis.

7 Q. When you say you sent it to --

8 A. Or I spoke with them on the
9 phone. Let's see, I probably called Ben
10 and Max. You know I honestly don't recall
11 exactly what this particular communication
12 is referencing because this is five years
13 ago. But it does appear that I said I
14 needed to clear it with the guys, which
15 would've meant that at some point I
16 contacted someone in Cards Against Humanity
17 and spoken with them about it and my --
18 that's what I'm gaining from this.
19 Remembering exact conversations, being very
20 honest, I don't recall.

21 Q. Fair enough. You mentioned
22 "Ben". Is that Ben Hantoot?

23 A. Ben Hantoot.

24 Q. And you mentioned "Max". And
25 who is Max?

1 S. SPIRO

2 A. Max Temkin.

3 Q. And do you believe that the
4 person you contacted was one of those two
5 individuals?

6 A. It would have been one of those
7 two or both of them probably. Yeah, I'm
8 assuming at this point because it's so many
9 years ago but yes, that's my assumption.

10 Q. And did they confirm that
11 permission?

12 A. So my understanding is that the
13 guys from Cards Against Humanity were
14 giving Michael permission to sell this game
15 on his website in a specific channel of
16 trade, for lack of a better definition.
17 That was my understanding. He had approval
18 to run this run and sell the cards in the
19 Crabs Adjust Humidity website. That was my
20 understanding.

21 Q. And that was your understanding
22 at the time of these e-mails?

23 A. Yes.

24 Q. And did Ad Magic undertake the
25 project for Vampire Squid Cards?

1— S. SPIRO

2 A. Ad Magic did.

3 Q. I will show you a document
4 previously marked as Opposer's Exhibit 3.

5 MS. LACKMAN: You wanted the
6 version that's stamped or should we
7 remark it? Just so we know what this
8 is.

9 MR. MOORE: We can remark it.

10 (Whereupon, Ad Magic Inc.
11 Invoice was marked as Applicant's
12 Exhibit 11 for identification as of
13 this date by the Reporter.)

14 Q. Ms. Spiro, I am showing you
15 Applicant's Exhibit 11. Please take a
16 moment to look at it.

17 A. Okay.

18 Q. Do you recognize this document?

19 A. This is an invoice from Ad
20 Magic. I recognize it.

21 Q. If you would look under the
22 column "Description," you will see
23 something there that says "Special finish
24 to match CAH." First question: Does CAH
25 reference Cards Against Humanity?

1 S. SPIRO

2 A. It does.

3 Q. And then it says "We have CAH
4 permission. " Did you cause that statement
5 to be on this invoice?

6 A. I did.

7 Q. Why did you do that?

8 A. The cards looked so similar to
9 Cards Against Humanity that we would need
10 to make sure there was an agreement in
11 place between the owner of the look, the
12 mark, of Cards Against Humanity and anyone
13 who wanted to replicate something similar.

14 MR. MOORE: And I have nothing
15 further.

16 EXAMINATION BY

17 MS. LEWIS:

18 Q. So I just want to ask you a
19 question about something you testified
20 about earlier. You mentioned that at one
21 point, I believe it was around the time of
22 this invoice, this invoice that was marked
23 as Applicant's Exhibit 11, that your
24 understanding regarding the permission was
25 that Vampire Squid Cards, the applicant,

1 S. SPIRO

2 had permission to sell the game on its
3 website; is that accurate?

4 A. That was my understanding.

5 Q. And you mentioned that was your
6 understanding at this time?

7 A. Correct.

8 Q. The date on the invoice is
9 September, 23, 2013, correct?

10 A. Correct.

11 Q. Did your understanding every
12 ever change?

13 A. No.

14 Q. Okay.

15 MS. LEWIS: No further
16 questions.

17 MR. MOORE: I have a quick
18 question.

19 EXAMINATION BY

20 MR. MOORE:

21 Q. Ms. Spiro, were your
22 communications with Mr. Kohler in this time
23 frame, August and you September of 2013,
24 about your understanding of Cards Against
25 Humanity's permission, are they reflected

1 S. SPIRO

2 on these two exhibits, Exhibit 10 and
3 Exhibit 11?

4 A. Can you rephrase?

5 Q. Can I rephrase? Maybe. We'll
6 do it in little pieces. So this time
7 frame, August and September 2013, were your
8 communications with Mr. Kohler about Cards
9 Against Humanity's permission entirely
10 reflected on these two documents,
11 Exhibit 10 and Exhibit 11?

12 MS. LEWIS: Objection. Its
13 vague. If you can understand what
14 he's saying.

15 A. I'm sorry. I'm not really
16 clear what the question is.

17 Q. Then let me ask you a different
18 question. Did you have any telephone
19 communications with Mr. Kohler, that you
20 recall today, regarding Cards Against
21 Humanity's permission, your understanding
22 of Cards Against Humanity's permission, in
23 the August and September 2013 time frame?

24 A. No, I did not. No, I would not
25 have discussed his permission. He would've

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S. SPIRO

discussed that with Cards Against Humanity.

MR. MOORE: Then I'm done as
well. And we are done today. Thank
you so very much for coming out.

(Whereupon, at 10:30 A.M., the
Examination of this witness was
concluded.)

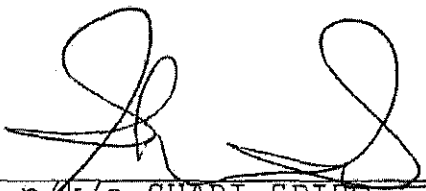
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S. SPIRO
D E C L A R A T I O N

I HEREBY CERTIFY that having been first duly sworn to testify to the truth, I gave the above testimony.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by me at the time and place specified hereinbefore.


p/k/a SHARI SPIRO

Subscribed and sworn to before me
this 8th day of May 2018.


NOTARY PUBLIC

Lora Downey
Notary Public
New Jersey
My Commission Expires 12-12-2020
No. 22408

*** ERRATA SHEET ***

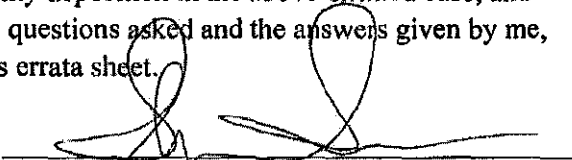
DIAMOND REPORTING

(877) 624-3287

Cards Against Humanity, LLC v. Vampire Squid Cards, LLC, Opp. No. 9122576 (T.T.A.B.)
Testimony Deposition of Shari Spiro dated January 18, 2018


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I certify that I have read the transcript of my deposition in the above-entitled case, and that the foregoing transcript accurately states the questions asked and the answers given by me, along with any corrections made as shown in this errata sheet.



p/k/a SHARI SPIRO

Subscribed and sworn before me
this 8 day of May, 2018



NOTARY PUBLIC
Lora Downey
Notary Public
New Jersey
My Commission Expires 12-12-2020
No. 22408

1 S. SPIRO
 2 E X H I B I T S

3

4 APPLICANT'S EXHIBITS

| 5 EXHIBIT | EXHIBIT | PAGE |
|-----------|----------------------|------|
| 6 NUMBER | DESCRIPTION | |
| 7 10 | Copy of e-mail chain | 3 |
| 8 11 | Ad Magic Inc. | 11 |
| 9 | Invoice | |

10

11 (Exhibits retained by the Reporter.)

12

13

I N D E X

14

| 15 EXAMINATION BY | PAGE |
|-------------------|-------|
| 16 MR. MOORE | 3, 13 |
| 17 MS. LEWIS | 12 |

18

19 INFORMATION AND/OR DOCUMENTS REQUESTED

| 20 INFORMATION AND/OR DOCUMENTS | PAGE |
|---------------------------------|------|
| 21 (None) | |

22

23

QUESTIONS MARKED FOR RULINGS

| 24 PAGE LINE QUESTION |
|-----------------------|
| 25 (None) |

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S. SPIRO
C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

I, ENRIQUE ALVARADO, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not
related to any of the parties to this
action by blood or by marriage and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of February 2018.



ENRIQUE ALVARADO

| | | | |
|--|---|---|--|
| <p>0</p> | <p>actually [2] - 6:7, 7:17</p> | <p>assumption [1] - 10:9</p> | <p>case [2] - 5:12, 6:21</p> |
| <p>000534 [1] - 6:15 07857 [2] - 3:13, 3:22</p> | <p>ad [2] - 5:3, 5:9</p> | <p>at [13] - 1:17, 5:4, 6:17, 6:20, 6:24, 9:15, 10:8, 10:22, 11:16, 12:20, 13:6, 15:8, 16:10</p> | <p>casual [1] - 4:6</p> |
| <p>1</p> | <p>Ad [11] - 5:4, 5:7, 5:19, 5:23, 6:20, 7:3, 10:24, 11:2, 11:10, 11:19, 17:8</p> | <p>Attorneys [2] - 2:4, 2:9</p> | <p>cause [1] - 12:4</p> |
| <p>10 [1] - 17:7 1001 [1] - 2:10 10010 [2] - 1:20, 2:6 10:05 [1] - 1:12 10:30 [1] - 15:6 11 [2] - 17:8 12 [2] - 8:5, 17:17 125 [2] - 3:12, 3:21 13 [1] - 17:16 149 [1] - 2:10 18 [1] - 1:11</p> | <p>address [2] - 3:11, 3:19</p> <p>Adjust [1] - 10:19</p> <p>admonitions [1] - 3:24</p> <p>AGAINST [2] - 1:3, 2:5</p> <p>Against [19] - 5:13, 5:22, 6:24, 9:16, 10:13, 11:25, 12:9, 12:12, 13:24, 14:9, 14:20, 14:22, 15:2</p> <p>against [1] - 1:6</p> <p>ago [2] - 9:13, 10:9</p> <p>agreement [1] - 12:10</p> <p>ah [2] - 4:21</p> <p>all [4] - 4:2, 4:22, 5:19, 8:9</p> | <p>August [8] - 7:5, 7:11, 7:15, 13:23, 14:7, 14:23</p> <p>Avenue [2] - 1:19, 2:5</p> | <p>CEO [1] - 5:6</p> <p>certify [2] - 18:9, 18:14</p> <p>CERTIFY [2] - 16:4, 16:8</p> |
| <p>2</p> | <p>ALSO [1] - 2:13</p> | <p>B</p> | <p>chain [1] - 3:15</p> |
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Diamond Errata Sheet

Plaintiff(s): _____

Defendant(s): _____

| Page | Line | Correction | Reason for Correction |
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Date: _____
Name of Witness: _____
Signature: _____

Subscribed and sworn to before me
 This _____ of _____ 20____.

 Notary Public

From: Customer Service <crabsadjusthumidity@gmail.com>
Subject: Re: Ad Magic Quick Quote Request [#2135]
Date: September 13, 2013 at 6:29 PM
To: Shari shari@admagic.com

112 cards, Shari.

On Sep 13, 2013, at 6:15 PM, Shari <shari@admagic.com> wrote:

How many per pack?

Best Regards
Shari Spiro
President
Ad Magic Inc
Admagic.com
973-448-1766 office
973-713-5155 cell
Sent from my iPhone

On Sep 13, 2013, at 2:24 PM, Vampire Squid Cards LLC <crabsadjusthumidity@gmail.com> wrote:

Thank you Shari, it's totally appreciated. If it makes any difference with the quote, I'm looking at 5k each of volume 1 and volume 2, so 10k total.

On Sep 13, 2013, at 11:22 AM, Shari Spiro <shari@admagic.com> wrote:

OK . as long as he is happy that works for me. Just making a suggestion ;)
Shari

On Sep 13, 2013, at 12:42 PM, Vampire Squid Cards LLC <crabsadjusthumidity@gmail.com> wrote:

Hi Shari.

We're in Seaside, California. Zip code 93955. They would ship here.

I'm a little thrown for a loop here. Here's the email I got from Max a month ago after sending him the redesign:

From: "Max Temkin" <max.temkin@gmail.com>
Subject: Re: Crabs Adjust Humidity and doing the right thing
Date: August 14, 2013 4:22:10 PM PDT
To: "Vampire Squid Cards LLC" <crabsadjusthumidity@gmail.com>

Hey Michael,

Thanks for sending it over, this design works for us.

Max

Sent from Mailbox for iPhone

So, has he changed his mind on this, or where are we at? I want everyone to be as happy as humanly possible, but I'm really afraid of making these cards unplayable if we change them too much.

Just to clarify, do you mean adding more red just to the faces (with the questions and answers), and not the backs (that just say CAH)? We could probably change the fronts somewhat if we have to, but I'm afraid that changing the backs would kill the game.

Thanks again for your time,
Michael

On Sep 13, 2013, at 9:11 AM, Shari Spiro <shari@admagic.com> wrote:

OK will have tonight.

Sorry for the delay - Where are you located?

Where would they ship to?

Between you and I - I can make these feel and the same material as CAH.

Can you add red to the faces and make them a little more different so I can be a heroine here with the guys?

The more different the better - but remember they will essentially be the same material if I am making them so it would basically work as you imagine it. Just make everyone really really happy and friendly and did I mention happy :)

Shari



On Sep 12, 2013, at 5:00 PM, Vampire Squid Cards LLC <crabsadjusthumidity@gmail.com> wrote:

Hi Shari, I totally get that.

5k and 10k will work I think.

Thank you,
- Michael

On Sep 12, 2013, at 2:10 PM, Shari Spiro <shari@admagic.com> wrote:

Yes sorry for the delay - I really had to clear it all with the guys.
What quantity am I quoting again?
Shari

On Sep 12, 2013, at 3:09 PM, Vampire Squid Cards LLC <crabsadjusthumidity@gmail.com> wrote:

Hi Shari,

Is there any chance I'll be able to get that quote from you this week?

Thank you,
- Michael

On Sep 9, 2013, at 12:21 PM, Shari Spiro <shari@admagic.com> wrote:

Yes I have and I am working on this for you.
Shari

On Sep 9, 2013, at 2:35 PM, Vampire Squid Cards LLC <crabsadjusthumidity@gmail.com> wrote:

Hi Shari,

Have you had time to take a look at our project?

- MK

On Sep 4, 2013, at 3:38 PM, Shari Spiro <shari@admagic.com> wrote:

I returned from PAX today and was swamped - I will review and advise in the am.
Shari

On Sep 4, 2013, at 6:05 PM, Vampire Squid Cards LLC <crabsadjusthumidity@gmail.com> wrote:

Hi Shari,

I would love to move this project forward.

My cell is 831-320-8384, anytime that's convenient for you.

Thanks,
- Michael Kohler

On Aug 29, 2013, at 5:12 AM, Shari From Ad Magic <shari@admagic.com> wrote:

Who was printing them in China?
Why do you want the job moved?
Just want to understand the details.
The new design is much better.

Best Regards,

Shari Spiro
President
Ad Magic, Inc. & The Poker Consultants
e. shari@admagic.com
c. 973-713-5155
tf. 888-423-6244

125 Main Street, Netcong, NJ 07857

Manufacturing Custom Playing Cards and
Promotional Products for over 20

On Aug 26, 2013, at 3:35 PM, Vampire Squid Cards LLC <crabsadjusthumidity@gmail.com> wrote:

Thanks Shari, looking forward to your call. Attached is a PDF of the design, so we're on the same page. Afraid I misspoke, the cards are only 1c/2c, not 1c/3c.

- MK

<[CrabsAdjust_Redesign.pdf](#)>

On Aug 27, 2013, at 2:17 PM, Shari Spiro <shari@admagic.com> wrote:

Dear Mike
I am going to call you.
Shari

On Aug 27, 2013, at 5:01 PM, "Ad Magic" <no-reply@wufoo.com> wrote:

Name: Michael Kohler
of decks needed: 10000
Phone: (831) 320-8334
Email: crabsadjusthumidity@gmail.com
What kind of item are you looking for? Check as many as you want:
A custom game
When do you need the item?: 1 October 2013
Please describe the item you want and tell us the zip code it will ship to so we can estimate freight for you.: I'm doing a third-party expansion to Cards Against Humanity (Max Temkin has reviewed our new design and signed off.) I've previously had them printed in China, and would like to move production inside the US if possible.

Here are the specs:

B&W on the back/3 spot colors on the front.

108 card deck.

Same stock and size as Cards Against Humanity.

2 different backs, 108 different fronts.

Custom printed tuckbox.

I'm out of stock, so sooner is better. Let me know what you can do. If I could get prices on 5k and 10k units, that would be great.
What keyword did you use to find us or were you referred by one of our other clients?:
Since you print Cards Against Humanity, you were an obvious choice.

Ad Magic, Inc.
 125 Main Street
 Netcong, NJ 07857

Invoice

| DATE | INVOICE NO. |
|-----------|-------------|
| 9/23/2013 | 8752 |

| |
|--|
| BILL TO |
| Vampire Squid Cards LLC 1310 Hillsdale St. Seaside, CA 93955 |

| |
|--|
| SHIP TO |
| Vampire Squid Cards LLC 1310 Hillsdale St. Seaside, CA 93955 |

| S.O. No. | P.O. NO. | DUE DATE |
|----------|----------|-----------|
| | | 9/20/2013 |

| ITEM | DESCRIPTION | QTY | RATE | AMOUNT |
|----------|--|--------|--------|-----------|
| Item | 10 thousand total decks 112 cards per deck \$2.25 per deck 5000 decks of each design, two designs Special finish - to match CAH - we have CAH permission 3 color / bw 112 cards per box | 10,000 | 2.25 | 22,500.00 |
| Rush Fee | expedited | 1 | 200.00 | 200.00 |

| | |
|--|-------------|
| Pay online at: https://ipn.intuit.com/chwpz5f6 | \$22,700.00 |
| (0.0%) | \$0.00 |
| Total | \$22,700.00 |
| | \$0.00 |
| Balance Due | \$22,700.00 |



| | | | |
|--------------|--------------|-----------------|--|
| 973-448-1766 | 973-448-1795 | admagic@aol.com | |
|--------------|--------------|-----------------|--|



EXPERT REPORT OF JON G. RYGH

I. QUALIFICATIONS

I am the Chief Creative Officer of Velocidi LLC. A copy of my CV is attached as Exhibit 1. I have not previously served as an expert or testified as an expert at trial or by deposition in any case.

I have a Masters of Business Administration Degree in Marketing from Syracuse University and over twenty years of experience in the branding and marketing industry. I have been responsible for delivering marketing strategy and creative output for Velocidi's clients since its inception in 2009. During that time, dozens of companies have come to us with branding challenges ranging from messaging, logo identity to overall look and feel. Prior to Velocidi I was responsible for numerous publishing and branding projects for prominent clients including the US Open Championships for multiple years. I also served as Chief Operating Officer for Assouline, Inc., a French publishing company specializing in art and fashion.

II. COMPENSATION

I am being compensated for my work on this case.

III. ASSIGNMENT

The law firm of Cowan DeBaets Abrahams & Sheppard LLP retained me as an independent expert in this case on behalf of the plaintiff, the owners of Cards Against Humanity ("CAH"). The opinions contained in this report are based on my knowledge, education, and experience and on materials that I have considered, which include both companies websites and social media presence.

CAH counsel informed me of the following: Cards Against Humanity is seeking to stop Crabs Adjust Humidity by Vampire Squid Cards ("VSC") from registering the name "Crabs Adjust Humidity" as a trademark, as CAH are the originator of the concept of a similarly played game, a similar name, graphic representation, and a product format, which is being imitated and merchandised by VSC. I am informed that one of CAH's concerns is dilution of the brand in the marketplace and their inability to stop others from encroaching on their IP, and that allowing VSC to register their own trademark would be unfair as it is a direct derivative of CAH concept, product and trademark.

IV. SUMMARY OF OPINIONS

My review of the CAH product, messaging and brand shows that the design and the overall appearance, look and feel, messaging and name of the CAH game and the design and overall appearance, look and feel, messaging and name of the VSC game is sufficiently similar to leave no doubt that VSC is seeking unfair trademark protection based on work that is imitating the original. I understand that at times, VSC has claimed that the trade mark "Crabs Adjust Humidity" is a parody on "Cards Against Humanity," but I do not see how VSC's name contains any comment or parody of CAH's name. VSC's name merely looks and sounds similar.

V. COMPARISON OF THE CAH AND VSC PRESENTATION

A. Name

The VSC name is intentionally similar in structure, sound and initials. Although the name is deliberately and humorously different, the Crabs game is built on the same irreverent tone as the original and is capitalizing on prior market success and marketing that CAH has invested in. The name is essentially an onomatopoeia of Cards Against Humanity and in today's digital era, most purchases are made by word of mouth, which leads people to search engines. Today, 60% of searches are on mobile platforms. From these searches 20%- 25% are voice recognition searches, while only 80% of these are accurate. (Industry reference:

<http://searchengineland.com/voice-search-explosion-will-change-local-search-251776>)

Therefore I conclude that, although the words and their meaning are different from each other, due to the structure and sound of the name, combined with the format, context and content of the game pieces, it would be likely that customers for one game could end up purchasing the other, or vice versa.

B. Graphic representation

The fonts are similar in weight and both are sans serif. The layouts of both the packaging and cards are very similar. The use of high contrast colors is very similar. The main graphic differences are the use of an illustration of the claw and meter as well as the use of color red. This leads me to conclude that the products and trademarks can reasonably be confused with each other as being the same, which may lead to a reduction in distinctiveness and strength of the registered trademark rights of CAH should both companies be able to register trademarks.

In my view, it would damage the value of CAH's brand if anyone with similar branding were allowed to enter the market and compete with CAH on the back of the brand recognition that CAH has already established through their unusual and recognizable name and look.

C. Intention

In their online marketing, VSC are very deliberate in stating that their game is a parody, yet it appears that the company is primarily focused on merchandising their product, and that their web properties are concentrating on e-commerce and lead generation rather than editorial parody.

D. Brand consequence

In my experience, brands have to invest great efforts to maintain a unique position within their industry and avoid being commoditized. Once their unique position is encroached upon, the consequence is often loss of margins, demand and leadership status. The strength of a mark is often determined by its unique and stand-out qualities and the stronger it is, the more it deserves protection. The case of CAH is similar to other companies who make a special effort to stand out, such as T-Mobile who uses the color Magenta to represent their unique value proposition in the cellular market. Should other cellular providers use various shades of pink, it would certainly dilute

T-Mobile's ability to stand out and thus weaken their brand in the eyes of the public.
(Industry ref: <http://business.time.com/2014/02/10/t-mobile-pink-federal-att-alo/>)

In my view, should VSC be able to protect their derivative name, it would dilute the strength of CAH's trademark and weaken their ability to expand and protect future product developments. More importantly, it would not sufficiently allow CAH to protect themselves against new companies infringing on their trademark with similar names based on the sound and initials.

VI. CONCLUSION

Based on my examination and comparison of the CAH and VSC trademarks, it is my opinion that the VSC marks are sufficiently similar to the CAH marks to indicate a trademark registration and enforcement would cause damage to existing intellectual property rights and marketing ability of CAH, and possibly undermine their ability to protect their registered trademark against future similar imitations.

Date: September 6, 2016



Jon G. Rygh