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

Proceeding	91227888
Party	Defendant Terrell T. Rhodes
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Submission	Motion to Dismiss - Rule 12(b)
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Date	09/15/2016
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Cackalacky, Inc,

Opposer,

v.

Terrell Rhodes,

Applicant.

Opposition No. 91227888

MOTION TO DISMISS NOTICE OF OPPOSITION

The Applicant, Terrell Rhodes (“Applicant”) moves to dismiss all claims of the Notice of Opposition on the grounds of constructive notice. The Applicant filed a prior application that precedes the application of the Opposer in trademark Class 025. The Applicant is the also owner of the previous registration Serial No. 2906949 for the “CACKALAK” mark in Class 025. The Applicant is owner of the domain name and website Cackalak.com that sells apparel under the “CACKALAK” trademark and has been online since 2002.

ARGUMENT

Due to a missed renewal deadline, the Applicant had to submit a new application for the “CACKALAK” mark. The Applicant filed application Serial No. 86748917 on September 06, 2015 for the “CACKALAK” mark in Class 025. The Opposer filed application with Serial No. 8682189 in Class 025 for “CACKALACKY” on November 16, 2015. The Applicant’s application was submitted over two months before the Opposer’s in Class 025.

By filing this application with knowledge of the Applicant's prior application and apparel business, the Opposer knowingly has already accepted the fact that there are no similarities and no likelihood of confusion between the two marks. If not, this application should not have been allowed to proceed to registration due to the Applicant's prior application.

The Opposer has previous knowledge of the "CACKALAK" mark as noted in the history of Serial No. 2906949 as the Opposer filed several requests for an extension of time to oppose this registration. The Opposer has also contacted the Applicant in the past in regards to Serial No. 2906949 to attempt discuss licensing agreements.

Due to constructive notice, the Opposer has no grounds to support an opposition. The Opposer has submitted application Serial No. 8682189 and Opposition 91227888 in bad faith and under fraudulent pretenses to the United States Patent and Trademark Office and the Trademark Trial and Appeal Board. Application with Serial No. 86918384 can be noted as precedent as this mark was denied registration based on the Applicant's prior application for Serial No. 86748917 and the geographical nature of the Opposer's marks.

The Applicant requests a motion that the Trademark Trial and Appeal Board dismiss the Notice of Opposition and grant all other appropriate relief to Applicant as it deems just. In addition, the Applicant requests that the Trademark Trial and Appeal Board suspend proceedings pending disposition of this motion.

September 14, 2016

Respectfully submitted,

/Terrell Rhodes/
Terrell Rhodes
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing ANSWER was served on Counsel
for Opposer by first class mail at the address below:

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Dated: September 14, 2016

/Terrell Rhodes/