

ESTTA Tracking number: **ESTTA833650**

Filing date: **07/17/2017**

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

Proceeding	91229486
Party	Plaintiff Cybernet Entertainment LLC
Correspondence Address	JULIEN SWANSON AUSTIN LAW GROUP 799 CASTRO STREET SAN FRANCISCO, CA 94114 UNITED STATES Email: swanson@austinlawgroup.com
Submission	Testimony For Plaintiff
Filer's Name	Julien Swanson
Filer's email	swanson@austinlawgroup.com
Signature	/Julien Swanson/
Date	07/17/2017
Attachments	2017.7.14 Dec of Meagher FINAL to file.pdf(1574692 bytes )



Cybernet Entertainment LLC ("Opposer") hereby submits the following testimony in the form of

### **DECLARATION OF MARK MEAGHER**

I, Mark Meagher, hereby declare as follows:

1. I have personal knowledge of all the facts set forth herein, and if called as a witness would competently testify to those facts.
2. I have served as the Chief Operating Officer of Cybernet Entertainment LLC from September 2010, and as such, have been directly involved with the marketing and branding decisions of the company, as well as the expansion of our reach into the community that we serve.
3. Cybernet Entertainment LLC, the highest grossing provider of online BDSM content in the industry, and worldwide, is and has been commonly known as KINK by the press, by our competitors, by our customers and by the community at large since 2006.
4. It has been a priority for us to brand ourselves in a manner that separates our products from our competitors, and to this end, we have made a substantial financial commitment to create, secure and defend our intellectual property rights, specifically including Kink and Kink.com, to promote and market our products in order to strengthen those rights and marks, and to build notoriety and a reputation for using high quality products.
5. In 2012, Kink was offering adult sex-related products for sale at [www.bondagegear.kink.com](http://www.bondagegear.kink.com).
6. Attached hereto, as **Exhibit A**,<sup>1</sup> is an accurate archive of that website as it was available to the public, on the internet, on May 13, 2012. As this exhibit and archived screenshot illustrates, Cybernet Entertainment LLC was selling bondage gear, including sex toys and lubes and creams, to our customers under the Kink branding as early as May 2012.
7. We have continued to sell adult-sexuality related products, including bondage gear, sex toys, lubricants and creams, which are now available through the Kink.com store located at

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<sup>1</sup> and available through the waybackmachine, the most reliable and prolific internet archiving service, at <https://web.archive.org/web/20120513220600/http://bondagegear.kink.com:80/home.html>

[www.store.kink.com](http://www.store.kink.com).

8. Selling products was a natural progression for our business model, and once KINK developed notoriety as the preeminent provider of alternative, adult entertainment and education, we began selling products (as other well-known companies in the adult industry have done before us, like Playboy and Penthouse built their name selling magazines and calendars, then began selling products.)

9. Competitors that look to capitalize on our reputation and notoriety by using confusingly similar marks and branding, threaten what we have built.

10. The community we target practices or is interested in BDSM and other alternative sexual practices. This community looks to our company for entertainment, information and products. Allowing the registration of a similar mark, one that encompasses the mark KINK, the dominant and most important aspect of our branding, as Master Kink does, will mislead our customers into believing this site and its products are endorsed by or a part of us, and will damage and dilute our investment, mark, branding and reputation.

I declare under the penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 13<sup>th</sup> day of July 2017, at San Francisco, California.

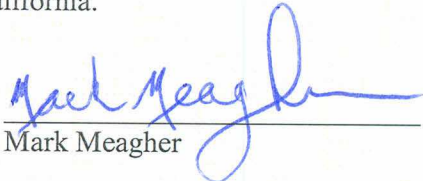
  
Mark Meagher

EXHIBIT A  
TO THE DECLARATION OF MARK MEAGHER

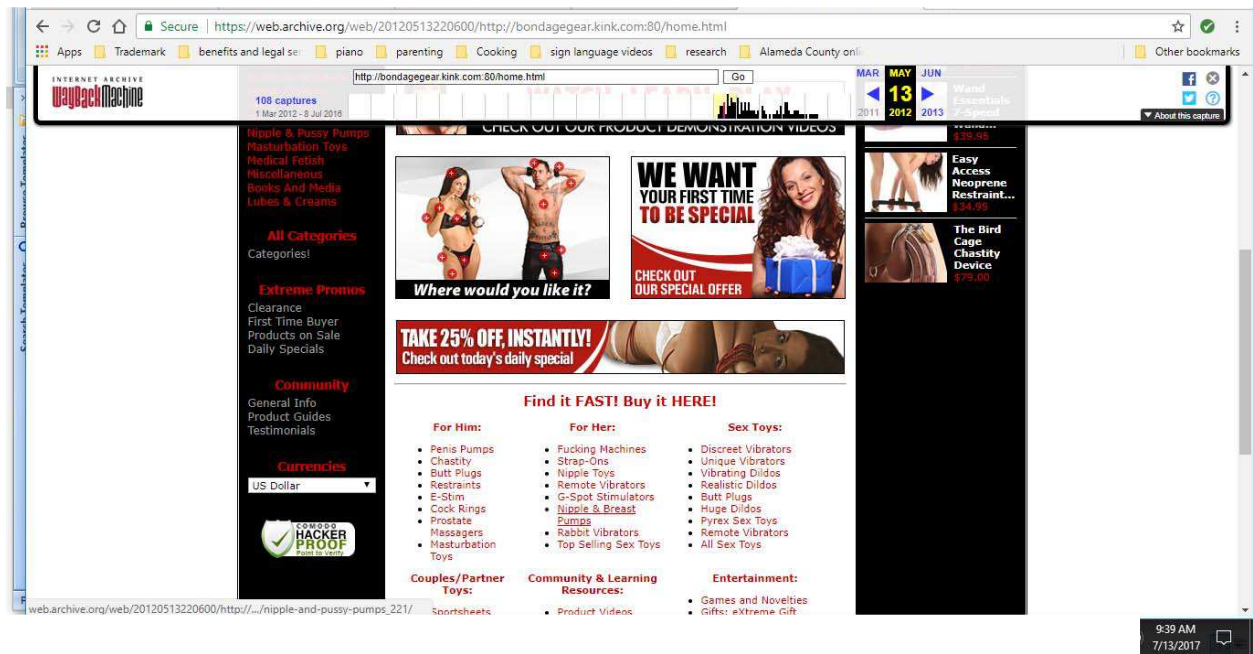
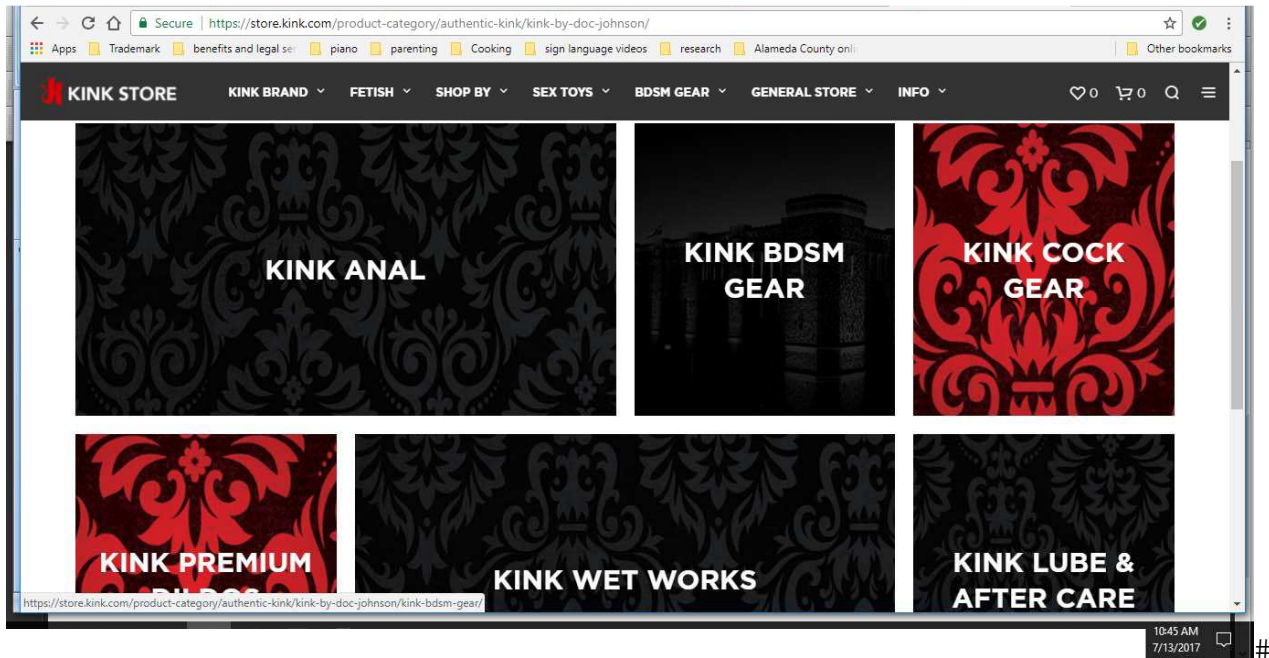


EXHIBIT B  
TO THE DECLARATION OF MARK MEAGHER





## **CERTIFICATE OF SERVICE**

I hereby certify that, on this 14<sup>th</sup> day of July 2017, I caused a true and correct copy of the foregoing Declaration of Meagher to be served via email to Applicant's attorney of record, at the following address:

Brendan Shortell, shortell@lambertpatentlaw.com

I also caused a hard copy of the above to be mailed via United States mail to the following address:

Brendan M. Shortell, Esq.  
92 State Street, Boston, MA 02109  
159 Main Street, Nashua, NH 03064

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14<sup>th</sup> day of July 2017, in San Francisco, CA.



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Julien Swanson