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

Proceeding	92050920
Party	Defendant Milena Soni
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Attachments	Respondents Trial Brief - Intellect v Soni (92050920).pdf (28 pages)(119060 bytes)

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

In re Registration No.3,009,990

Trademark: ENTELLECT
Registered: November 1, 2005

INTELLECT TECHNICAL)	
SOLUTIONS, INC.)	
)	CANCELLATION NO.: 92050920
Petitioner,)	
v.)	
)	INTERLOCUTORY ATTORNEY:
MILENA SONI)	JENNIFER CRISP
)	
Respondent.)	
_____)	

RESPONDENT’S TRIAL BRIEF

Respondent Milena Soni (“Respondent”) hereby files its Trial Brief.

Petitioner Intellect Technical Solutions, Inc. (“Petitioner”) filed a Trial Brief on July 15, 2011. Pursuant to the Board’s order dated September 1, 2011, Respondent’s Trial Brief is timely filed.

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237 F. 125 (S.D.N.Y. 1916)

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Transgo, Inc. v. Ajac Transmission Parts Corp.,
768 F.2d 1001 (9th Cir. 1985)

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15 U.S.C. § 1057(b) (1988)

15 U.S.C. § 1065

Fed. R. Evidence 402, 403

I. FACTUAL RECORD

A. Petitioner's Evidence

- Trial Testimony of James Barge on January 19, 2011 and exhibits thereto (“Barge Depo”).¹
- Trial Testimony of Rhonda Dabney dated January 20, 2011 and exhibits thereto (“Dabney Depo”).
- Trial Testimony of Surjit Soni dated March 28, 2011 and exhibits thereto (“S. Soni Depo”).
- Application file wrapper for subject trademark registration No. 3,009,990 referenced in Petitioner’s First Notice of Reliance dated January 27, 2011 (the “`990 File Wrapper”).
- Respondent’s answers to the initial petition and the first amended petition referenced in Petitioner’s First Notice of Reliance dated January 27, 2011.
- Alleged Articles of Incorporation, Annual Reports from 2000-2009 and Amended Annual Report from 2007, introduced in the Barge Depo as Petitioner’s Exhibits 1-12.
- Alleged examples of business cards and proof copies for business cards and letterhead and invoices for the same, introduced in the Barge Depo as Petitioner’s Exhibits 13-14, 16-20.
- Alleged invoices for the printing of letterhead, envelopes and

¹ Objections to the Barge Depo, the Dabney Depo and exhibits are contained in *RESPONDENT'S OBJECTIONS TO PETITIONER'S EVIDENCE* attached hereto as Appendix A. Respondent objects to each of Petitioner’s testimony citations and exhibits as irrelevant to any issue in this case because they: (1) relate to uses made on dates after Respondent’s first use of the ENTELLECT trademark, i.e., not relevant to whether Petitioner made use of the INTELLECT mark prior to May 1, 2002, and/or (2) do not show Respondent abandoned the ENTELLECT trademark in any of the registered international classes. Fed. R. Evidence 402, 403.

business cards, introduced in the Dabney Depo as Petitioner's Exhibits 26, 27, 29, 32, 37-42, 47 and 49.

- A purported copy of the Petitioner's former website at www.intellectstaffing.com as allegedly retrieved from Petitioner's server, introduced in the Barge Depo and the Dabney Depo as Petitioner's Exhibit 53.
- A purported copy of a more recent version of Petitioner's website, copyright dated 2006, introduced in the Barge Depo as Petitioner's Exhibit 54.
- A purported copy of a more recent version of Petitioner's website, copyright dated 2010, introduced in the Barge Depo as Petitioner's Exhibit 55.
- A purported copy of a file listing on Petitioner's server of files in a business development folder, introduced in the Barge Depo as Petitioner's Exhibits 57.
- Alleged copies of PowerPoint presentations to prospective clients from Petitioner's server in a business development folder, introduced in the Barge Depo and the Dabney Depo as Petitioner's Exhibits 58-68.
- Alleged copies of marketing holiday cards, introduced in the Trial Testimony of James Barge on January 19, 2011, as Petitioner's Exhibits 69-73.
- A purported press release dated November 2005, introduced in the Barge Depo as Petitioner's Exhibit 78.
- A purported press release dated August 2006, introduced in the Barge Depo as Petitioner's Exhibit 79.
- An article allegedly created for America Online career section, introduced in the Barge Depo as Petitioner's Exhibit 81.
- A purported Order Confirmation of the purchase of the domain name intellectstaffing.com, introduced in the Barge Depo and the Dabney

Depo as Petitioner's Exhibit 82.

- A purported photograph of a mouse pad, allegedly used as marketing material, bearing a logo, and introduced in the Barge Depo as Petitioner's Exhibit 94.
- A purported 'client tip sheet' regarding resume fraud, introduced in the Barge Depo as Petitioner's Exhibit 102.
- A purported application for membership of Jim Barge, Vice President of Petitioner, to the Society of Human Resource Management, introduced in the Barge Depo as Petitioner's Exhibit 103.
- Alleged invoices from job posting websites introduced in the Barge Depo as Petitioner's Exhibits 104-111.
- Alleged letters of recommendation from clients introduced in the Barge Depo as Petitioner's Exhibits 112-115.
- A purported Full time Placement and Consulting Service Agreement introduced in the Barge Depo as Petitioner's Exhibit 116.
- A purported client letter regarding agreement introduced in the Barge Depo as Petitioner's Exhibit 117.
- A purported candidate "Exclusive Right to Represent" agreement introduced in the Barge Depo as Petitioner's Exhibit 118.
- Purported copies of Petitioner's invoices to clients for placement services rendered, introduced in the Dabney Depo and/or the Barge Depo as Petitioner's Exhibits 119-124.
- Petitioner's confidential exhibits, introduced in the Barge Depo as Petitioner's Exhibits 126-137.
- A purported copy of Petitioner's client list, introduced in the Dabney Depo and the Barge Depo as Petitioner's Exhibit 138.
- A purported dated printout of the web page allegedly available at www.InternetArchive.org for the website www.Intellect Staffing.com

(Intellect's Exhibit 139), filed with the Board via Petitioner's Eleventh Notice of Reliance dated January 27, 2011, and introduced in the Dabney Depo.

- Printed copy of the intellectstaffing.com website, introduced in the Dabney Depo as Petitioner's Exhibit 140.
- Application file wrapper for Petitioner's trademark application Serial No. 77/363,060 (Petitioner's Exhibit 141), filed with the Board via Petitioner's First Notice of Reliance dated January 27, 2011.²
- Application file wrapper for Respondent's Registration No. 3,546,885 (Intellect's Exhibit 142), filed with the Board via Petitioner's Second Notice of Reliance dated January 27, 2011.
- Petitioner's discovery requests and Respondent's initial and supplemental responses thereto, (Petitioner's Exhibits 143-147), filed with the Board via Notices of Reliance dated January 27, 2011.
- Random House Webster's Unabridged Dictionary definition of "recruit" (Petitioner's Exhibits 148), filed with the Board via Petitioner's Eighth Notice of Reliance dated January 27, 2011.
- The deposition testimony of Milena Soni on February 9, 2010 (Petitioner's Exhibit 149), filed with the Board via Petitioner's Ninth Notice of Reliance dated January 27, 2011 ("M. Soni Depo").
- Petitioner's alleged corporate records (Petitioner's Exhibit 150), filed with the Board via Petitioner's Tenth Notice of Reliance dated January 27, 2011.
- Dated printout of a web page available at www.potentialsdevelopment.org/pdicoaching.htm (Petitioner's Exhibit 151), filed with the Board via Petitioner's Twelfth Notice of Reliance dated January 27, 2011.

² Objections to Petitioner's Exhibits are contained in *RESPONDENT'S OBJECTIONS TO PETITIONER'S EVIDENCE* attached hereto as Appendix A.

- Dated printout of the web page available at www.potentialsdevelopment.org/pdinchome.htm (Petitioner's Exhibit 152), filed with the Board via Petitioner's Thirteenth Notice of Reliance dated January 27, 2011.
- Dated printout of the web page allegedly available at <http://web.archive.org/web/2002033061802/http://intellectstaffing.com/> (Petitioner's Exhibit 153), filed with the Board via Petitioner's Fourteenth Notice of Reliance dated January 27, 2011.
- Network Solutions Whois search of the domain name entellect.com (Petitioner's Exhibit 154) filed with the Board via Petitioner's Notice of Reliance dated May 16, 2011.
- Copy of the published website located at <http://www.sonilaw.com> (Petitioner's Exhibit 155) filed with the Board via Petitioner's Notice of Reliance dated May 16, 2011.

B. Respondent's Evidence

- Trial Testimony of Surjit P. Soni on March 28, 2011 and exhibits thereto ("S. Soni Depo").
- The deposition testimony of Milena Soni on February 9, 2010 (Petitioner's Exhibit 149), filed with the Board via Petitioner's Ninth Notice of Reliance dated January 27, 2011 ("M. Soni Depo").
- Certificate of Registration for Trademark Registration No. 3,009,990, introduced as SONI Exhibit 1 to the S. Soni Depo.
- Filing Receipt for trademark application Serial No. 76/539/434, introduced as SONI Exhibit 2 to the S. Soni Depo.
- A copy of a business card for Entellect, introduced as SONI Exhibit 3 to the S. Soni Depo.
- A copy of letterhead for Entellect, introduced as SONI Exhibit 4 to the S. Soni Depo..

- A Purpose Statement, introduced as SONI Exhibit 5 to the S. Soni Depo.
- A Mission Statement used to promote the services under the ENTELLECT trademark, introduced as SONI Exhibit 6 to the S. Soni Depo.
- Respondent's First Set of Request for Admission to Petitioner and Petitioner's response thereto, filed with the Board via Respondent's First Notice of Reliance dated March 31, 2011.
- Respondent's First Set of Interrogatories to Petitioner and Petitioner's response thereto, filed with the Board via Respondent's Second Notice of Reliance dated March 31, 2011.
- Respondent's First Set of Request for Production to Petitioner and Petitioner's response thereto, filed with the Board via Respondent's Third Notice of Reliance dated March 31, 2011.

III. STATEMENT OF ISSUES

- A. Whether Petitioner's first use of the INTELLECT mark preceded Respondent's first use of the ENTELLECT mark.
- B. Whether Respondent has abandoned the ENTELLECT mark through non-use.

IV. FACTUAL BACKGROUND

Petitioner, Milena Soni, founded her business and began using the ENTELLECT trademark no later than May 1, 2002. Milena Soni has continuously used the ENTELLECT trademark from the date of first use until present. The

ENTELLECT trademark was never abandoned by Registrant. Registrant's use of the ENTELLECT trademark has been substantial, not merely a "token use" as erroneously alleged by Petitioner.

The services conducted by Milena Soni under the ENTELLECT trademark include, *inter alia*, employment counseling and personnel management consultation. For example, Milena Soni used the ENTELLECT trademark for recruiting and career counseling. In addition, Surjit Soni assisted Milena Soni's business and performed services under the ENTELLECT trademark including, but not limited to, business consultation, business management and consultation, business management consultation. Furthermore, Jagdish Soni used the ENTELLECT trademark in connection with psychological testing for the selection of personnel.

Milena Soni, Surjit Soni and Jagdish Soni enlisted the services of third parties under their direction to provide and administer motivational and personality tests and evaluation of those tests in connection with psychological counseling, psychological consultation, psychological testing services, psychological testing in connection with the ENTELLECT trademark and Milena Soni's business.

Petitioner was incorporated before the dates of first use by Milena Soni but there is no credible evidence of any use by Petitioner of the INTELLECT mark for

services prior to Milena Soni's first use dates.

ARGUMENT

IV. SUMMARY OF ARGUMENT

Petitioner seeks to cancel respondent's trademark registration claiming a prior first use date and abandonment by Respondent. The evidence of record supports neither of Petitioner's contentions. The bulk of Petitioner's evidence relates to uses made long after Respondent's first use and is therefore irrelevant. Petitioner's only evidence of earlier use of the INTELLECT mark is self-serving and unsupported by documentary evidence which must have existed if Petitioner's testimonial claims were true.

Petitioner has presented no evidence in support of its claim that Respondent has abandoned the mark by failure to use. Arguments of counsel are not evidence.

In view of Petitioner's utter failure to carry its burden of proof, the petition should be dismissed.

V. BURDEN'S OF PROOF

Respondent obtained her U.S. Trademark Registration No. 3,009,990 for the ENTELLECT trademark on November 1, 2005 (SONI Exhibit 1). But for this cancellation proceeding, Registrant's mark would be incontestible, having been in

continuous use for over five years. 15 U.S.C. § 1065. Because a trademark owner's certificate of registration is “prima facie evidence of the validity of the registration” and continued use of the registered mark, the Petitioner has the burden of proof. 15 U.S.C. § 1057(b) (1988); *J.C. Hall Co. v. Hallmark Cards, Inc.*, 340 F.2d 960, 962-63 (CCPA 1965). The burden is upon Petitioner to prove by a preponderance of the evidence either abandonment of the trademark by Respondent or an earlier priority by Respondent. See *Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.*, 892 F.2d 1021, 1023-24 (Fed. Cir. 1989). Petitioner must establish a *prima facie* case of abandonment or non use to shift the burden of proof to Respondent. See *Quality Candy Shoppes/Buddy Squirrel of Wisconsin, Inc. v. Grande Foods*, 90 USPQ.2d 1389, 1393 (TTAB 2007). Moreover, Respondent’s evidence of initial and continued use is more than sufficient to maintain its registration.

**VI. Respondent’s Evidence Demonstrates
Actual Use for Each Registered Class**

Respondent’s evidence of use is sufficient to maintain her registration in each class. Respondent’s application USSN 76/539,434 (SONI Exhibit 2) and resulting registration (SONI Exhibit 1) for ENTELLECT included three International Classes of service (“IC”), namely:

International Class: 035

Employment counseling and recruiting, Business Consultation, Business management and consultation, Business management consultation, Personnel management consultation, Psychological testing for the selection of personnel

International Class: 041
Career counseling

International Class: 044
Psychological counseling, Psychological consultation, Psychological testing services, Psychological testing

Contrary to Petitioner's assertion, Respondent has demonstrated and provided evidence of more than "token" use in each of these classes. Respondent has entered into evidence documents demonstrating her use of the ENTELLECT mark, including Milena Soni's business cards imprinted with ENTELLECT in large, bold font (SONI Exhibit 3), the company letterhead having ENTELLECT prominently played at the top and example services at the bottom, specifically:

*Employment Counseling & Recruiting, Business Management Coaching
Career & Psychological Counseling & Testing Services*
(SONI Exhibit 4).

Also in evidence is the testimony of Milena Soni and Surjit Soni regarding her continuous use of the mark for the services indicated.

Regarding the first use of the ENTELLECT trademark, Milena Soni testified that she and Surjit Soni started the business using the ENTELLECT trademark in 2002. M. Soni Depo at 7-8, 17-18, 22, 24. Similarly, Surjit Soni testified that the first use of the ENTELLECT trademark occurred on or before

May 1, 2002. S. Soni Depo at pp. 12-14, 16, 19. The services offered by Milena Soni and her company included each of the services listed in the ENTELLECT registration for IC 35, 41 and 44. A single instance of use and activities of intention to continue use is sufficient to maintain a trademark registration. See *Ritz Cycle Car Co. v. Driggs-Seabury Ordnance Corp.*, 237 F. 125 (S.D.N.Y. 1916).

Respondent's documentary evidence of continued use of the ENTELLECT trademark includes a "Purpose Statement" (SONI Exhibit 5) and a "Mission Statement" (SONI Exhibit 6). Milena Soni, Surjit Soni and Jagdish Soni used the Purpose Statement and Mission Statement to further the services used under the ENTELLECT trademark. Such use and the evidence of record is not merely token and sufficient to maintain the ENTELLECT trademark registration. See *Societe de Developments, et al. v. International Yogurt Co., Inc., et al.*, 662 F. Supp. 839, 847-48 (D. Or. 1987)(activity that would tend to establish a continuing effort or intent to continue use of the trademark are sufficient to maintain a registration).

Petitioner's reliance upon *General Motors Corp. v. Aristide & Co.* is misplaced, since the holding in that case was directed to the lack of evidence of sales of "items bearing the subject mark," whereas Respondent's registration is directed to services that have no equivalent indicia of quantity or sales. 87 USPQ.2d 1179, 1185 (TTAB 2008). As Petitioner admits (Brief p. 22),

Respondent has provided evidence in the form of both testimony and documents that are evidence of Respondent's continued use to date of the ENTELLECT trademark.

Regarding the services listed in International Class 035, Milena Soni testified that the services her business offers and provides includes each of those listed in the ENTELLECT trademark registration listed for IC 35. See M. Soni Depo at pp. 58, 66-67, 70, 97-100 and 111-112. Similarly, Surjit Soni testified that he participates in all aspects of Milena Soni's business and with the support of consultants and assistants promotes and arranges for the services listed for IC 35. See S. Soni Depo at pp. 5, 9-11 and 22-25. In addition, the "Purpose Statement" (Soni Exhibit 5) states lists employee recruitment as one of the services conducted by M. Soni's business includes. Furthermore, the ENTELLECT Mission Statement states that business services includes consultation and consulting. Such use is substantial and sufficient to obviate any allegation of abandonment of the registered trademark. See *Allard Enterprises Inc. v. Advanced Programming Resources Inc.*, 146 F.3d 350, 359-60 (6th Cir. 1998)("word-of-mouth" marketing that targets "personal friends" is sufficiently commercial and public and is sufficient use of a service mark).

Respondent and her agents continuously provided the services listed in IC 041, Milena Soni testified that her business provides career counseling under the

ENTELLECT trademark. M Soni Depo at pp. 33-34, 57, 60, 126-27. S. Soni Depo at pp. 10,11, 15-18, 26-28. Such use is substantial and sufficient to obviate any allegation of abandonment of the registered trademark.

Respondent and her agents continuously provided the services listed in IC 044, Milena Soni testified that she has personal knowledge that the services therein were performed prior to May 1, 2002. M Soni Depo at p. 125. In addition, Surjit Soni testified that such services were performed by consultants and associates. S. Soni Depo at pp. 29-31.

Accordingly, Petitioner is just wrong in its allegation that Respondent, herself, does not use the e trademark in commerce. Further, because Milena Soni enlists others, such as Surjit Soni and Jagdish Soni, to use the mark to clients innures to her benefit and is *bona fide* use of the mark. Petitioner's statement that since Respondent has used the services of others, e.g., Patrick Neils, to administer and analyze the tests to Respondent's clients implies abandonment of the trademark is absurd (Brief p. 25).³ Petitioner has provided no evidence that Mr. Neils uses the trademark at issue. Petitioner's own evidence establishes that Mr.

³ Petitioner makes an incomprehensible argument that because a written agreement with Mr. Neils has not been produced, Respondent has not exercised proper control. Milena Soni need not have such an agreement, written or otherwise, because Mr. Neils does not use the ENTELLECT trademark. Moreover, a license to use a mark need not be in writing to be valid or binding. *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1017-18 (9th Cir. 1985)(an oral license of a trademark is enforceable).

Neils does not use the ENTELLECT trademark and “nowhere on the website ... is the ENTELLECT mark used...” (Brief p. 23; Intellect’s Exhibits 151 and 152).

There has been no abandonment of the ENTELLECT trademark by Milena Soni since she began using the mark in 2002.

B. Petitioner Has No Evidence to Refute Respondent’s Bona Fide Use of Her Trademark

Petitioner has proffered no evidence that refutes Respondent’s documents and trial testimony that supports continued use of the ENTELLECT trademark in each of the registered classes. Petitioner merely provides unsupported attorney argument that Respondent has not made sufficient use of the services in the ENTELLECT trademark registration.

Milena Soni trial testimony does not support Petitioner’s claim of non-use or abandonment, and indeed refutes Petitioner’s arguments and alleged supporting evidence.

Surjit Soni unequivocally testified that the ENTELLECT trademark has been in continuous use since 2002. Petitioner failed to cite the portions of Surjit Soni’s deposition that corroborated and expanded on Milena Soni deposition testimony. Where Milena Soni could not recall specific facts or deferred to Surjit Soni, he clarified the facts. Petitioner offers no facts to the contrary.

**C. Respondent's Evidence Demonstrates
Priority of Use for Each Registered Class**

The application (SONI Exhibit 2) and resulting registration (SONI Exhibit 1) of the ENTELLECT trademark are prima facie evidence of first use of the trademark in commerce and in interstate commerce. The specimens included with Registrant's Statement of Use included Milena Soni's business card (SONI Exhibit 3) and the company letterhead (SONI Exhibit 4). See also the specimens filed with the ENTELLECT trademark application USSN 76/539,434.

Milena Soni testified that each of the services claimed in the ENTELLECT trademark registration were performed before May 1, 2002. M. Soni Depo at 82-83, 86-88. Surjit Soni corroborated Milena Soni testimony of the use of the services of Milena Soni business were before May 1, 2002 and were performed in many states in the U.S. S. Soni Depo at pp. 5, 19-21.

**D. Petitioner's Evidence Is Insufficient to Prove
Priority of Use for Respondent's Registered Classes**

Respondent offers no credible evidence of use of "Intellect" as a service mark or trademark earlier than Respondent's uncontested dates of first use and first use in commerce of not later than May 1, 2002. Petitioner only provides the self serving and uncorroborated deposition trial testimony of its president James Barge and employee Rhonda Dabney. See also RESPONDENT'S OBJECTIONS

TO PETITIONER’S TRIAL TESTIMONY filed concurrently herewith. Likewise, Petitioner’s attorney arguments attacking Respondent’s uncontroverted documents and testimony is insufficient to carry Petitioner’s burden of proving an earlier priority date.

Petitioner relies on the trial testimony of its employees to allege that Petitioner’s company was formed in 1997 “to engage in providing both recruiting and consulting services; however, Petitioner offers no documents that corroborate that the mark INTELLECT was used with such service at the formation of the company. Furthermore, the regarding testimony does not specifically state that “recruiting and consulting services” was the intended business of the Florida company formed in 1997. See Barge Depo at 163 and Dabney Depo at 43.

Petitioner relies on the State of Florida incorporation documents to show use of the INTELLECT mark. Petitioner’s Exhibits 1-2 and 150. The incorporation documents, however, do not list the claimed services in Respondent’s ENTELLECT trademark registration. The Florida 1997 incorporation papers list no service whatsoever, and therefore, are not relevant to this proceeding.

Petitioner’s Exhibits 13, 14 16-20, 58-73, 85-87, 94, 102, 116-124 containing business cards, letterheads, Power Point slides, holiday cards, and mouse pads do not include these services in listed in ENTELLECT trademark registration. The trial testimony of Mr. Barge and Ms. Dabney add nothing to

prove that Respondent used the INTELLECT mark for Respondent's claimed services prior to May 1, 2002. Likewise, Respondent's Exhibits 53-55, 81, 82, 139, 140, purported to be screen shots of several versions of Respondent's websites are not evidence that Respondent offered Respondent's claimed services prior to May 1, 2002. Furthermore, the cited trial testimony of Mr. Barge and Ms. Dabney regarding the website content says nothing about the services at issue in this case. Indeed, Respondent's argument only says "the mark INTELLECT ... has been prominently displayed, with clear descriptions of the services being offered." Brief at 18. Nothing, absolutely no evidence or even attorney argument, is provided by Respondent to prove its use of the INTELLECT mark prior to the date of first use by Respondent.

Of course, Petitioner's financial statements and sales records are irrelevant since none of the documents in evidence mention any of the services listed in Respondent's trademark registration. The financial statements described in Petitioner's trial testimony by Mr. Barge and Respondent's Exhibits 103-125 are directed to "recruiting and consulting services", not the services at issue in this proceeding Brief at 20.

Accordingly, Petitioner has failed to carry its burden of proof by a preponderance of the evidence of proving an earlier priority date than in Respondent's ENTELLECT trademark reference, namely May 1, 2002.

E. PETITIONER'S INTELLECT MARK IS CONFUSINGLY SIMILAR TO RESPONDENT'S ENTELLECT TRADEMARK

Petitioner admits its INTELLECT mark is confusingly similar in sight, sound and meaning to Respondent's registered ENTELLECT trademark. That is the very basis of Petitioner's claim. In the face of that admission, and Petitioner's failure to establish either an earlier first date of use or abandonment or non-use by Respondent, this petition must be denied.

V. SUMMARY

The petition should be dismissed in view of Petitioner's failure to establish its earlier first use of the disputed mark and its failure to prove abandonment by Respondent.

Dated: September 8, 2011

By: /Ronald E. Perez/
Surjit P. Soni
Ronald E. Perez
Attorneys for Respondent,
Milena Soni

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

In re Registration No.3,009,990

Trademark: ENTELLECT
Registered: November 1, 2005

INTELLECT TECHNICAL)	
SOLUTIONS, INC.)	
)	CANCELLATION NO.: 92050920
Petitioner,)	
v.)	
)	INTERLOCUTORY ATTORNEY:
MILENA SONI)	JENNIFER CRISP
)	
Respondent.)	
_____)	

RESPONDENT’S OBJECTIONS TO PETITIONER’S EVIDENCE

Trial Testimony of James Barge on January 19, 2011.

OBJECTIONS

Fed. R. Evidence 402, 403: The pages referenced in Petitioner’s Trial Brief are not relevant because the testimony is directed to matters that are not included in the services claimed by Respondent’s ENTELLECT registration

or

Fed. R. Evidence 402, 403: The pages referenced in Petitioner’s Trial Brief are not relevant because the testimony is directed to dates after the first use claimed in Respondent’s ENTELLECT registration, namely May 1, 2002

Trial Testimony of Rhonda Dabney dated January 20, 2011.

OBJECTIONS

Fed. R. Evidence 402, 403: The pages referenced in Petitioner's Trial Brief are not relevant because the testimony is directed to matters that are not included in the services claimed by Respondent's ENTELLECT registration

or

Fed. R. Evidence 402, 403: The pages referenced in Petitioner's Trial Brief are not relevant because the testimony is directed to dates after the first use claimed in Respondent's ENTELLECT registration, namely May 1, 2002

Exhibits 1-12:

Articles of Incorporation, Annual Reports from 2000-2009 and Amended Annual Report from 2007

OBJECTION

Fed. R. Evidence 402, 403: exhibits are directed to matters that are not relevant to the services in Respondent's ENTELLECT registration

Exhibits 13-14, 16-20:

Examples of business cards and proof copies for business cards and letterhead and invoices for the same

OBJECTION

Fed. R. Evidence 402, 403: content of the exhibits do not reference or promote the services in Respondent's ENTELLECT registration

Exhibits 26, 27, 29, 32, 37-42, 47 and 49:

Invoices for the printing of letterhead, envelopes and business cards

OBJECTIONS

Fed. R. Evidence 402, 403: content of the exhibits do not reference or promote the services in Respondent's ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 53:

A copy of the Petitioner's former website at www.intellectstaffing.com from Petitioner's server

OBJECTIONS

Fed. R. Evidence 402, 403: content of the exhibit does not reference or promote the services in Respondent's ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 54:

A copy of Petitioner's website, copyright dated 2006

OBJECTIONS

Fed. R. Evidence 402, 403:content of the exhibit does not reference or promote the services in Respondent's ENTELLECT registration

Fed. R. Evidence 402, 403: the date of the exhibit is after the date of first use claimed in Respondent's ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 55:

A copy of Petitioner's website, copyright dated 2010

OBJECTIONS

Fed. R. Evidence 402, 403:content of the exhibit does not reference or promote the services in Respondent's ENTELLECT registration

Fed. R. Evidence 402, 403: the date of the exhibit is after the date of first use claimed in Respondent's ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 57:

A copy of a file listing on Petitioner's server of files in a business development folder

OBJECTIONS

Fed. R. Evidence 402, 403:content of the exhibit does not reference or promote the services in Respondent's ENTELLECT registration

Fed. R. Evidence 402, 403: the dates of some of the files in the exhibit are after the date of first use claimed in Respondent's ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibits 58-68:

- PowerPoint presentations to prospective clients from Petitioner's server in a business development folder

Fed. R. Evidence 402, 403:content of the exhibits do not reference or promote the services in Respondent's ENTELLECT registration

Fed. R. Evidence 402, 403: the dates of each slide in the exhibits are after the date of first use claimed in Respondent's ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibits 69-73:

Copies of marketing holiday cards

OBJECTIONS

Fed. R. Evidence 402, 403: content of the exhibits do not reference or promote the services in Respondent's ENTELLECT registration

Fed. R. Evidence 402, 403: the date of each exhibit is missing and assumed to be after the date of first use claimed in Respondent's ENTELLECT registration

Exhibit 78:

A press release dated November 2005

OBJECTIONS

Fed. R. Evidence 402, 403: content of the exhibit does not reference or promote the services in Respondent's ENTELLECT registration

Fed. R. Evidence 402, 403: the date of the exhibit is after the date of first use claimed in Respondent's ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 79:

A press release dated August 2006

OBJECTIONS

Fed. R. Evidence 402, 403: content of the exhibit does not reference or promote the services in Respondent's ENTELLECT registration

Fed. R. Evidence 402, 403: the date of the exhibit is after the date of first use claimed in Respondent's ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 81:

An article created for America Online career section

OBJECTIONS

Fed. R. Evidence 402, 403: content of the exhibit does not reference or promote the services in Respondent's ENTELLECT registration

Fed. R. Evidence 402, 403: the date of the exhibit is missing and assumed to be after the date of first use claimed in Respondent's ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 82:

An Order Confirmation of the purchase of the domain name
intellectstaffing.com

OBJECTION

*Fed. R. Evidence 402, 403:*content of the exhibit does not reference or promote the services in Respondent’s ENTELLECT registration

Exhibit 94:

A photograph of a mouse pad, used as marketing material, bearing a logo

OBJECTIONS

*Fed. R. Evidence 402, 403:*content of the exhibit does not reference or promote the services in Respondent’s ENTELLECT registration

Fed. R. Evidence 402, 403: the date of the exhibit is missing and assumed to be after the date of first use claimed in Respondent’s ENTELLECT registration

Exhibit 102:

A ‘client tip sheet’ regarding resume fraud

OBJECTIONS

*Fed. R. Evidence 402, 403:*content of the exhibit does not reference or promote the services in Respondent’s ENTELLECT registration

Fed. R. Evidence 402, 403: the date of the exhibit is missing and assumed to be after the date of first use claimed in Respondent’s ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 103:

An application for membership of Jim Barge, Vice President of Petitioner, to the Society of Human Resource Management

OBJECTIONS

*Fed. R. Evidence 402, 403:*content of the exhibit does not reference or promote the services in Respondent’s ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibits 104-111:

Invoices from job posting websites

OBJECTIONS

*Fed. R. Evidence 402, 403:*content of the exhibits do not reference or promote the services in Respondent’s ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibits 112-115:

Letters of recommendation from clients

OBJECTIONS

*Fed. R. Evidence 402, 403:*content of the exhibits do not reference or promote the services in Respondent’s ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 116:

Full time Placement and Consulting Service Agreement

OBJECTIONS

*Fed. R. Evidence 402, 403:*content of the exhibit does not include the services in Respondent’s ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 117:

A client letter regarding agreement

OBJECTIONS

*Fed. R. Evidence 402, 403:*content of the exhibit does not include the services in Respondent’s ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibit 118:

A candidate “Exclusive Right to Represent” agreement

OBJECTIONS

*Fed. R. Evidence 402, 403:*content of the exhibit does not include the services in Respondent’s ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Exhibits 119-124:

Copies of Petitioner’s invoices to clients for placement services rendered

OBJECTIONS

*Fed. R. Evidence 402, 403:*content of the exhibits do not include the services in Respondent’s ENTELLECT registration

Fed. R. Evidence 802: hearsay without an exception

Dated: September 8, 2011

By: /Ronald E. Perez/
Surjit P. Soni
Ronald E. Perez
Attorneys for Respondent,
Milena Soni

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing document entitled **RESPONDENT’S TRIAL BRIEF with APPENDIX A (RESPONDENT'S OBJECTIONS TO PETITIONER'S EVIDENCE)** was served upon the Petitioner via email transmission and USPS First Class Mail on this 8th day of September 2011, as follows:

William Giltinan
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Ronald E. Perez
Ronald E. Perez