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Filing date: **08/28/2013**

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

Proceeding	92053298
Party	Plaintiff Tyler Perry Studios, LLC
Correspondence Address	VICTOR K SAPPHIRE CONNOLLY BOVE LODGE & HUTZ LLP 333 S GRAND AVENUE, SUITE 2300 LOS ANGELES, CA 90071 UNITED STATES
Submission	Opposition/Response to Motion
Filer's Name	Victor K. Sapphire, Esq.
Filer's e-mail	trademarks@novakdruce.com, vsapphire@novakdruce.com, czukowski@novakdruce.com
Signature	/victorsapphire/
Date	08/28/2013
Attachments	WWJD Sapphire Decl.pdf(364661 bytes ) WWJD Exh A Sapphire Decl.pdf(900015 bytes ) WWJD Exh B Sapphire Decl.pdf(109702 bytes )

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

In the matter of Trademark Registration No. 3,748,123  
Mark: WHAT WOULD JESUS DO  
Registration date: February 16, 2010

Tyler Perry Studios, LLC	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92053298
	:	
Kimberly Kearney	:	
	:	
Respondent.	:	

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**DECLARATION OF VICTOR K. SAPHIRE IN SUPPORT OF PETITIONER'S  
OPPOSITION TO MOTION FOR EXTENSION OF TIME**

1. I, Victor Sapphire, am a Canadian citizen and intellectual property counsel to Petitioner Tyler Perry Studios, LLC ("TPS"). I am responsible for oversight and administration of TPS' trademark and intellectual property matters, including the instant Cancellation proceeding, and I have direct knowledge of the matters discussed herein.
2. A true and correct copy of my responsive correspondence to Registrant's email message is attached hereto as Exhibit "A".
3. Registrant and Petitioner do not have a stipulation for service via email.
4. Registrant claims to have sent an email to me on July 19, 2013. However, when I asked her for a copy, she provided me with a jpeg image file of a purported screenshot of the

outgoing message, rather than just forwarding the message so I could review and confirm the header information. Reviewing the image content, which appears in Registrant's Exhibit to her Motion, it was apparent that she addressed the email not to my correct address which is of record in these proceedings but rather to an "@novakkdruce.com" address, which contains an additional "k".

5. Upon receipt of the copy of her purported July 19 message on August 9, I transmitted a "ping" message to the address in her message, thinking that if no error was returned, that would explain Registrant's vehemence with which she maintained having sent the message. To my surprise, an error message was returned <sup>moments</sup> ~~two days~~ later as undeliverable. Thus, if Registrant had sent her email on July 19, then as of July 21 -- the beginning of her Testimony Period -- Registrant would have learned that Petitioner did not receive the email she purportedly sent. A copy of the returned "ping" message is attached hereto as Exhibit "B".
6. I did not receive any email correspondence from Registrant before August 7, nearly three weeks into her Testimony Period, in which she informally explored the potential availability of Mr. Perry for deposition. At the time she first contacted me, there was barely a week remaining in the Testimony Period, including two weekends. She made no mention of time, place or subject matter so I did not interpret the message as service of a request for deposition of my client or Mr. Perry. She never served a subpoena on my client or Mr. Perry.
7. The Registrant has not filed any Notices of Reliance nor any Testimony during her Testimony Period.

The undersigned hereby declares and states that the facts set forth in this Declaration are true; that all statements made herein of the undersigned's own knowledge are true; that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

Dated August 27, 2013

  
\_\_\_\_\_/s/\_\_\_\_\_  
Victor K. Sapphire  
Novak Druce Connolly Bove + Quigg LLP  
333 S Grand Avenue Suite 2300  
Los Angeles CA 90071  
213 787 2523

## Victor Sapphire

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**From:** Victor Sapphire  
**Sent:** Friday, August 09, 2013 1:30 PM  
**To:** 'kimk@hollywoodsouthproductions.com'  
**Subject:** RE: DEPOSITION SCHEDULING REQUEST FOR TYLER PERRY- RE: CANCELLATION PROCEEDING -#92053298

Dear Ms. Kearney:

Thank you for your message. I have confirmed with my firm's docketing and IT departments that we have not received any "previous" messages from you, including the message purportedly sent July 19, 2013. There is no header information indicating the "previous email" identified below was actually transmitted on July 19 or any other time before August 7. Therefore, we consider it a "first" and not second request. Please be reminded that there is no agreement between the parties concerning service via email, nor have we consented to such service.

This cancellation proceeding has not "delayed and prevented [your show] from going forward." On the contrary, you alleged use and your registration was issued years before this cancellation proceeding was initiated. Your statement that the show has not "gone forward" is a further admission that the show does not exist except perhaps as an undeveloped idea or concept, and that your Statement of Use was thus fraudulent. This proceeding is about the validity of your federal trademark registration. It is clear the registration is not valid.

You will appreciate that the Petitioner in this action is Tyler Perry Studios, LLC, not Mr. Perry individually. Your intention to depose Mr. Perry, who does not possess knowledge relevant to the issues in this proceeding, is merely for the purpose of harassment. He is not an appropriate witness.

With regard to your settlement offer, it is our understanding that you are proposing a form of coexistence with Tyler Perry Studios with regard to use of the subject mark. Your offer is being considered.

Cordially,

Victor Sapphire

**Victor K. Sapphire**

*Legal Solutions for Strategic Brand Protection*

**Novak Druce Connolly Bove + Quigg LLP**  
333 South Grand Avenue | Twenty-Third Floor  
Los Angeles, CA 90071  
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c: 323.449.7872  
f: 213.687.0498  
e: [vsapphire@novakdruce.com](mailto:vsapphire@novakdruce.com)

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**From:** [kimk@hollywoodsouthproductions.com](mailto:kimk@hollywoodsouthproductions.com) [<mailto:kimk@hollywoodsouthproductions.com>]  
**Sent:** Wednesday, August 07, 2013 1:19 PM  
**To:** Victor Sapphire; Trademarks Email; Victor Sapphire; Ellen I. Pritsker  
**Subject:** DEPOSITION SCHEDULING REQUEST FOR TYLER PERRY- RE: CANCELLATION PROCEEDING -#92053298

Dear Mr. Sapphire,

I am hereby making a 2nd request, for you to please provide available dates for your client Tyler Perry to be deposed in regards to the CANCELLATION PROCEEDING -#92053298 for "WHAT WOULD JESUS DO".

A previous email proposing a resolution was sent to you on July 19, 2013, which also included a request for available dates for deposition of your client, should he not accept or be willing to consider the settlement offer.

You can see a copy of that email pasted below.

Time is of the essence here since there is only a short window of time, only 2 weeks left for my testimony period, so I would like to schedule this deposition no later than August 16th.

I await your reply on or before this coming Friday, August 9th, 2013. I would appreciate your client's voluntary cooperation, so we can finally resolve this matter. We would hope it is not his or your intention to delay, or to obstruct my right to take testimony per the trademark rules, in an effort to defend my position in this proceeding.

Sincerely,

/Kim Kearney/

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COPY OF PREVIOUS EMAIL PROPOSING SETTLEMENT & REQUEST AVAILABLE DATES FOR DEPOSITION

Dear Mr. Sapphire,

I am writing you to propose that we arrive at an amenable solution regarding this ongoing cancellation proceeding regarding my trademark for "What Would Jesus Do".

I maintain my resolve to keep this trademark registration, since it is a critical component of my television show.

Though you and/or your client Tyler Perry may see this as just another business coup if you were able to take my mark from me. I must implore you to ask your client to look at this situation a little differently.

This show bearing this mark is not about money, ego, career or anything else for me. If it were only that, I would have walked away from this nightmare battling him through this proceeding long ago.

But this show is about my calling, to spread God's word, and to help bring people to Christ. This is my mission and my duty as a Christian. Your client professes to be a Christian man as well. That is why I cannot understand why he would even attempt to secure this mark after I presented my television show bearing this mark to him in good faith. It is not only unethical, but it is also un-Christianlike. I admired him, looked up to him and trusted that he would be as excited as I was to use this show as platform to save souls, and bring people to Christ.

Additionally, I cannot believe that with all the success he has had and fortune he has made, that he would be more concerned with using this mark for profitable purposes than to try to find a way that we could either work together on this project or agree to some form of sharing the use of the mark for God's purposes not our own.

For me this is not about money or success, only my purpose to use this show for the glory of God as a Christian should. And I am willing to prove that by proposing that either we come together and compromise on a restricted use of the name which I am willing to do. I am will to use the name only for my show, and the shows marketing purposes, and even concede on any uses that would prevent Mr. Perry from using the name for his purposes. I'm not proposing this because I think he will win this action, I am proposing this because I care more about moving forward with God's purpose for the show than having it continue to be legal entangled in this proceeding which has delayed and prevented it from going forward.

There are hundreds of movies with the same titles, songs with the same titles, there is no reason that we cannot find a resolution to share use this mark if we both have pure intentions. To use this type of mark for any other reason than for the glory of God would be hypocritical, go against any level of true Christian values, and would only show that the intent is to exploit a Christian title only for personal gain and this is just blasphemist!

My research tells me, that according to the trademark guidelines, there is a way to have my mark registration amended w/restricted use, and I'm ok with that as long as it allows me to do God's will.

I am also willing to consider any proposals you or Mr. Perry may have as to how we can resolve this situation amicably, outside of relinquishing my use of the name for my show. Everything in my application was honest, my intentions were honest, and the grounds upon which you are attempting to cancel the mark are unfounded, and I still feel can be defended with God's help.

And even though you may feel you will win this case because my admissions were deemed accepted, only due to a technicality, my lack of understanding about the due date, I have more than enough evidence to show they are invalid and that your client trying to take the name is unethical, a breach of trust, and the board will have to consider that during trial.

Also, I am prepared to depose every witness that I have listed for you in my pre-trial disclosures, provide plenty of evidence to support my position, and any witness who refuses to cooperate I will have subpoenaed, including Mr. Perry. I will also have the remainder of this trial covered by several national media outlets, believe me they would be very interested. But I have avoided that though advised by others to go that route, because I don't want to create mess or confusion around God's work, or problems for myself or your client. But at this point if we can't work this out, I don't have any choice but have it also considered by the court of public opinion.

We all know that all this information will be public record, and I don't think it will be very good if Mr. Perry who professes to be a Christian, is then seen as someone who would try to prevent the production of Christian tv show, which was presented to him in good faith, and then he tried to take the name, and then in lieu of a resolution, not of any monetary exchange, because that IS NOT what I am asking, he still refused and prevented this show from serving God's purposes.

Again, I'm not asking for any money, I just am begging him to please leave me alone, leave my mark alone, and let this show serve God's purpose to bring people to Christ.

I feel like Daniel vs. Goliath, but I will not give up. I know my heart is pure, this is God's show, and if Mr. Perry, cannot find the kindness, nor conviction in his heart to let it go or work out a compromise, he will face God's wrath, and no amount of fame, or fortune will protect him from that.

I know my only intention w/this project is what I know God put on my heart to do, the world is a mess, people are dying daily and don't know Christ, and this show can reach them, and bring people to Christ.

I leave you with this, the bible says, "what good is it for a man to gain the world, if he loses his soul". And it also says, "it would be easier for a camel to go through the eye of a needle than for a wealthy man to enter heaven". So if your client blocks this show, truly inspired by God, and created for his purpose, and only his purpose, he will be judged accordingly.

The only thing I fear, is God being disappointed in me, so though this has been one of the most stressful and horrific experiences of my life, have caused me to feel physically ill, mentally distressed, and at the point of just giving up on believing in any goodness in mankind.

This project is bigger than you, than me, and Tyler Perry, so we can either come together and do what's right or continue to fight God's will, and face his judgement.

I'm committed to pleasing God, I am tired of crying over it, worrying about, stressing over it, having anxiety of over it, I release this and Tyler Perry to God in his son Jesus' name. And I rest on my faith that

God will handle this situation for his good. I can only pray that your client will consider my proposal and do the same.

Please discuss this with him immediately, and let me know your/his decision by July 24, at 12pm PST. If I do not receive a written response from you by then, I will assume you do not want to resolve this matter.

If you do not want to work out a resolution, then please consider this my request to know when your client will be available for his deposition, which I would like to have conducted no later than August 5th, since the trial is ongoing.

Sincerely,

/Kim Kearney/  
Owner, What Would Jesus Do

## Victor Sapphire

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→ **From:** Mail Delivery System <MAILER-DAEMON@p02c12o142.mxlogic.net>  
**Sent:** Friday, August 09, 2013 7:53 PM  
**To:** Victor Sapphire  
**Subject:** Mail delivery failed  
**Attachments:** ATT00001.txt

This message was created automatically by mail delivery software.

A message that you have sent could not be delivered to one or more recipients. This is a permanent error. The following address failed:

<[vsapphire@novakkdruce.com](mailto:vsapphire@novakkdruce.com)>: 553 Cannot find OUTBOUND MX Records for domain (novakkdruce.com)

## Victor Sapphire

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**From:** Victor Sapphire  
→ **Sent:** Friday, August 09, 2013 7:53 PM  
→ **To:** 'vsapphire@novakkdruce.com'  
**Subject:** test ping

Test ping