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

Proceeding	92054069
Party	Defendant Skydive Arizona, Inc.
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Submission	Other Motions/Papers
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Date	09/06/2011
Attachments	Hogue v Skydive Reply ISO RJN.pdf (4 pages)(14905 bytes)

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

In the matter of Registration No. 3,099,847 (Application Serial No. 76/641,146)

MARK: **SKYDIVE ARIZONA**

Registered on the Principal Register on June 6, 2006

Marc Hogue, <p style="text-align:right">Petitioner,</p> <p style="text-align:center">vs.</p> Skydive Arizona, Inc., <p style="text-align:right">Respondent.</p>	Cancellation No.: 92/054,069 RESPONDENT'S REPLY IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE
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Respondent presented Exhibits A-F with its Motion for Summary Judgment¹ (Dkt. #6), supported by its Request for Judicial Notice (Dkt. #7). In his Response to the Request for Judicial Notice (Dkt. #12), Petitioner objected to Exhibits E and F.² In support of its request for judicial notice, Respondent submits this reply and additional Exhibits G-I attached to Respondent's concurrently-filed Reply in Support of Motion for Summary Judgment.

Exhibit D to the Motion for Summary Judgment is a Settlement Agreement between Petitioner and Respondent. This Settlement Agreement was made of record in an action between Petitioner and Respondent, captioned *Skydive Arizona, Inc. v. Marc Hogue et al.*, Case No. CV 2006-015563, in the Superior Court of the State of Arizona in and for the County of Maricopa ("First Prior Action"). Exhibit G, attached to Respondent's Reply in Support of Motion for Summary Judgment, is a copy of an official court record in the First Prior Action (the electronic

¹ Respondent's Motion to Dismiss was converted to a Motion for Summary Judgment pursuant to the parties' stipulation (Dkt. #9) and the Board's order (Dkt. #10).

² Petitioner did not object to Exhibits A-D, though he did assert "that Respondent has failed to establish that judicial notice is appropriate" for Exhibit D. Petitioner's Response at 1. For at least the reasons set forth herein, Respondent respectfully submits that judicial notice is appropriate for Exhibit D.

filing receipt is appended to the end of Exhibit G), entitled, “Amended Separate Statement of Undisputed Facts in Support of Plaintiff Skydive Arizona, Inc.’s Renewed Motion for Summary Judgment” (“Amended SOF”). Respondent respectfully requests that the Board take judicial notice of Exhibit G under 37 C.F.R. § 2.122(e). Exhibit D attached to the Motion for Summary judgment was an exhibit to the Amended SOF. *See* Amended SOF ¶ 10 and Exh. E attached thereto. Therefore, Respondent respectfully requests that the Board take judicial notice of Exhibit D under 37 C.F.R. § 2.122(e).

Exhibit F to the Motion for Summary Judgment is a deposition transcript from the deposition of Petitioner in *Skydive Arizona, Inc. vs. Mike Mullins d/b/a Arizona Skydiving*, Civil Action No. CIV 01-1854 PHX SMM, in the United States District Court for the District of Arizona (the “Second Prior Action”). *See* Motion for Summary Judgment, Exhs. A-C. Petitioner did not contest the authenticity of this transcript. Respondent respectfully requests that the Board take judicial notice of Exhibits H and I attached to Respondent’s Reply in Support of Motion for Summary Judgment. Exhibit H is a Statement of Facts (“SOF”) filed by Respondent in the Second Prior Action. Exhibit I is a Declaration of Sid Leach filed by Respondent in the Prior Action. Respondent respectfully requests that the Board take judicial notice of these exhibits under 37 C.F.R. § 2.122(e). Both Exhibits H and I cite to the Deposition of Marc Hogue (filed as Exhibit F to the Motion for Summary Judgment), establishing that the cited portions were made part of the official court record. Respondent therefore respectfully requests that the Board take judicial notice of at least the portions of Exhibit F, cited in Exhibits H and I, under 37 C.F.R. § 2.122(e).

Furthermore, Exhibit B attached to the Amended SOF included additional portions of Exhibit F attached to the Motion for Summary Judgment. *See* Amended SOF ¶ 4 and Exh. B attached thereto. Respondent therefore respectfully requests that the Board take judicial notice

of these additional portions of Exhibit F under 37 C.F.R. § 2.122(e).

In any event, Exhibit F is a deposition transcript of Petitioner, Marc Hogue, and Exhibit E is a deposition transcript of defendant Mullins. Both depositions were in the Second Prior Action where Marc Hogue was in privity with the defendant Mullins, as argued in the concurrently filed Reply in Support of Motion for Summary Judgment. Therefore, under 37 C.F.R. § 2.122(f), Respondent respectfully requests that the Board take judicial notice of the entirety of Exhibits E and F.

Furthermore, in connection with the Reply in Support of Motion for Summary Judgment that is being filed concurrently, Respondent submits Exhibit J which is a Declaration of Sid Leach that authenticates Exhibits D-F, making Exhibits D-F of record for purposes of the Motion for Summary judgment under 37 C.F.R. 2.20 and T.B.M.P. § 528.05(b).

Respectfully submitted, this 6th day of September, 2011:

SNELL & WILMER L.L.P.

By David G. Barker
Sid Leach
David G. Barker
Attorneys for Respondent
Skydive Arizona, Inc.

Certificate of Service

I hereby certify that on this 6th day of September, 2011, I caused a copy of the foregoing RESPONDENT'S REPLY IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE to be served by mailing a copy via the United States Post Office, postage prepaid, in an envelope addressed to:

Jimmie Pursell
Jennings, Strouss & Salmon, PLC
One East Washington Street, Suite 1900
Phoenix, AZ 85004

By: /David G. Barker/
David G. Barker