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

Proceeding	92054462
Party	Plaintiff Round Hill Cellars
Correspondence Address	PAUL W REIDL LAW OFFICE OF PAUL W REIDL 3300 WYCLIFFE DRIVE MODESTO, CA 95355 UNITED STATES paul@reidllaw.com
Submission	Opposition/Response to Motion
Filer's Name	Paul W. Reidl
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Date	01/11/2012
Attachments	Response to Lolonis Motion.pdf (10 pages)(127975 bytes) Reidl Declaration.pdf (5 pages)(92271 bytes)

UNITED STATE PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Registration No. 2,761,544 (Cancelled)

Trademark: Ladybug Design

ROUND HILL CELLARS,)	
)	
Petitioner,	)	Cancellation No. 92054462
v.)	
LOLONIS WINERY	)	PETITIONER’S OPPOSITION TO
	)	RESPONDENT’S MOTION FOR
Respondent.	)	VACATUR OF JUDGMENT

Petitioner, Round Hill Cellars (“Petitioner”) hereby opposes Respondent’s motion for vacatur. Judgment was entered on November 28, 2011 and the registration was cancelled on December 9, 2011. The principles of finality require that the judgment stand unless the Respondent can establish that it is entitled to relief. The motion should be denied because Respondent does not even attempt to make the showing required by Rules 55 (c) and 60 (b) and applicable case law.

FACTS

The recitation of facts in Respondent’s memorandum can charitably be described as selective, incomplete and misleading. When all the facts are considered, it should be clear that there is no proper basis for granting the motion.

Respondent Lolonis Winery was (and is) owned by the Lolonis family. The winemaking and storage facility is located on Road D in Redwood Valley, California. This is Respondent’s address of record. There is no assignment in the record and no security interest has ever been recorded. Declaration of Paul W. Reidl ¶ 2 (“Reidl Decl.”).

1 The parties are involved in a trademark dispute over Petitioner’s PREDATOR brand of wine.
2 The dispute started in February 2011 when Respondent sent a demand letter to Petitioner which
3 claimed that its use of a “ladybug” design on the PREDATOR wine label infringed and diluted
4 Respondent’s trademark rights. Respondent demanded immediate cessation of use and an accounting
5 of Petitioner’s profits. Petitioner refused to accede to the demand and filed a declaratory judgment
6 action in Federal Court in San Francisco. The cancelled registration in this proceeding was one of the
7 registrations cited in the demand letter. (Reidl Decl. ¶¶ 1, 3).

8 After it started the dispute, Respondent filed for bankruptcy under Chapter 11 of the
9 Bankruptcy Code. This triggered an automatic stay of all legal proceedings and meant that any
10 settlement would require the support of Respondent’s principal creditor(s) and the approval of the
11 Bankruptcy Judge. (Reidl Decl. ¶ 4).

12 In response to the bankruptcy petition, Counsel for Petitioner did two things. First, he
13 discussed settlement with Respondent’s attorney who had filed the bankruptcy petition. The attorney
14 referred Petitioner to the principal creditor, the First National Bank of California (“Bank”) and the
15 Lolonis family. Second, he retained a bankruptcy expert, Iain MacDonald, to assist in navigating the
16 bankruptcy procedures. Mr. MacDonald knew the Bank’s outside counsel in the bankruptcy
17 proceeding, Mr. Miller (who provided a declaration on this motion) and he contacted him to
18 determine whether the Bank would support a settlement whereunder Petitioner would purchase
19 certain trademarks (including the registration at issue in this proceeding) from Respondent. Mr.
20 Miller told him that the Bank planned to oppose the petition because it believed that Respondent
21 could not be reorganized successfully. Despite several follow-up conversations, Mr. MacDonald was

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1 | unable to get confirmation from Mr. Miller that the Bank would support the proposed deal with the
2 | Lolonis family. (Reidl Decl. ¶¶ 5-6).¹

3 | The Bank moved to dismiss the bankruptcy petition and the Bankruptcy Judge granted the
4 | motion. This lifted the automatic stay and allowed the trademark litigation to resume. During the
5 | pendency of this motion, Petitioner learned that Respondent was being operated and managed by a
6 | Receiver appointed by the Superior Court of the County of Mendocino, California, Mr. James
7 | Baron,² and that the bankruptcy petition had been an attempt by the Lolonis family to wrest
8 | operational control of the business from Mr. Baron. (Reidl Decl. ¶ 7).

9 | Once the automatic stay was lifted, Petitioner resumed the litigation that had been prompted
10 | by Respondent's demand letter. Petitioner made a written settlement proposal to Mr. Baron. He was
11 | told that although Petitioner believed that the registration was invalid (for the reasons stated in the
12 | Petition for Cancellation), Petitioner was nonetheless willing to resolve the dispute by purchasing it
13 | and several other trademarks. Mr. Baron did not respond to this letter.

14 | Counsel for the Petitioner eventually telephoned Mr. Baron to determine his intentions with
15 | respect to the trademark dispute. He acknowledged receipt of the letter but explained that he
16 | preferred to sell Respondent as an ongoing concern. He said that the Lolonis family had offered to do
17 | a deal with the Bank so that they could regain operational control of their family winery. He said that
18 | he was aware of the trademark dispute, that he did not agree with Lolonis' claims and that he had not
19 | retained trademark counsel. He was told that Petitioner could not tolerate being left in limbo and that
20 | he had to deal with the legal matters now even though the Lolonis family had started the dispute. If

21 | ¹ Mr. Miller's claim that the Bank could not settle the dispute due to the automatic stay is
22 | misleading. A petitioner in bankruptcy can settle disputes, including transferring assets, but any such
23 | sale must be approved (or not opposed) by the principal creditor(s) and approved by the Bankruptcy
24 | Judge.

24 | ² Exhibit A to Respondent's Memorandum makes it very clear that the Receiver was
responsible for operating and managing the winery. (Exhibit A, ¶¶ 7-8).

1 he did not, then Petitioner would take Respondent's default and cancel the registration. Mr. Baron
2 acknowledged that the Lolonis family was still involved in the winery and he said that they had urged
3 him to vigorously contest the litigation because they thought they could make over \$1,000,000 on it.
4 He said that he did not want to invest in litigation and lawyers and was inclined to do nothing and let
5 the chips fall where they may. He said he would think about the conversation and call Petitioner's
6 counsel if he changed his mind. He never called. (Reidl Decl. ¶¶ 8-10).

7 All pleadings and orders in this case were served on Respondent which was being operated
8 and managed by Mr. Baron. (Reidl Decl. ¶ 11). The Lolonis family repurchased the winery on
9 October 9, 2011 (Exhibit C to Respondent's Memorandum) and the Motion for Default was filed and
10 served on October 21, 2011 (Docket No. 4). The new owner is a Lolonis family company, Lolonis
11 Vineyards, that was a Defendant in the receivership action because they were one of the guarantors of
12 the loan. (See caption of Respondent's Memorandum, Exh. A and Exh. B, p. 1).

13 Respondent did not defend the Federal case and no lawyer entered an appearance on its
14 behalf. (Reidl Decl. ¶ 14).

15 **THE STANDARD FOR VACATUR**

16 Vacatur of a Default Judgment is governed by Federal Rules of Civil Procedure 55 (c) and 60
17 (b). TBMP § 544. A party against whom judgment has been entered must satisfy the Board that it
18 meets at least one of the criteria for vacatur set forth in Rule 60 (b). Where a default judgment is
19 involved, the moving party must show three things the first of which corresponds to Rule 60 (b)(1);

- 20 (1) that the default was not the result of willful conduct or gross negligence; and
- 21 (2) that there is a meritorious defense; and
- 22 (3) that there is no prejudice to the non-moving party.

23 *Waifersong, Ltd v. Classic Music Vending*, 976 F2d 290, 292 (6th Cir. 1992). The Board's ability to

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1 grant relief must be circumscribed by the public policy favoring finality and the termination of
2 litigation. *Blue Diamond Coal Co. v. UMWA*, 249 F.3d 519, 524 (6th Cir. 2001).

3 **VACATUR SHOULD NOT BE GRANTED**

4 Respondent's motion does not even attempt to satisfy Rules 55 (c) and 60 (b): the rules are
5 not even cited in the moving papers. There is no attempt to explain why any of the reasons set forth
6 in Rule 60 (b) apply to this case.³ Respondent does not attempt to explain why there would be no
7 prejudice to Petitioner,⁴ or why it believes it has a meritorious defense to the cancellation petition.
8 *United States v. \$55,518.05 in US Currency*, 728 F.2d 192, 195-196 (3d Cir. 1984)(a party seeking
9 vacatur must set forth specific facts demonstrating that it has a meritorious defense; otherwise, setting
10 aside a default judgment is pointless); *see Harad v. Aetna Cas. & Surety Co.*, 839 F.2d 979, 982 (3d
11 Cir. 1988). Having failed to make a showing on two of the three elements of the *Waiferson* test, the
12 motion must fail.

13 Respondent's motion seems to address only the first element of the *Waiferson* test.
14 Although its precise argument is unclear, Respondent seems to argue that its failure to respond was
15 not the result of willful conduct or gross negligence because the Bank was not made a party and its
16 outside counsel in the bankruptcy and receivership proceedings, Mr. Miller, was not served with the
17 pleadings.

18 ³ The general catch-all provision of Rule 60 (b)(6) is meant to be used sparingly for only
19 situations of "manifest injustice." *Lehman v. United States*, 154 F.3d 1010, 1017 (9th Cir. 1998); *see*
20 *Gonzalez v. Crosby*, 545 U.S. 524, 535-536 (2005). Otherwise, the strict requirements of Rule 60 (b)
21 would be undermined. Respondent has not attempted to show that manifest injustice has resulted
22 from the entry of judgment here nor can they because they still have whatever common law
23 trademark rights they may have in the mark; they simply no longer have a Federal registration for it.

24 ⁴ Petitioner has filed its own application for a ladybug design based on its use on the
25 PREDATOR label that gave rise to the initial demand letter. It did so in the good faith belief that the
26 claimed rights of Lolonis are invalid as pleaded in the cancellation petition. (Reidl Decl. ¶ 12).
27 Permitting vacatur would prejudice Petitioner because it has taken the time and trouble to file its own
28 application and deal with the potential conflict from the cancelled registration, all of which would
29 now have been for naught.

1 This argument is a red herring for the following reasons.

2 1. The Board's rules require service on the record owner of the registration (or its
3 attorney of record or other authorized representative) at its address of record. 37 C.F.R. § 2.119.
4 That was done here: the pleadings were served on Respondent at its address of record. The Bank
5 never recorded an assignment of or security interest in the registration and Mr. Miller never made an
6 appearance as counsel for Registrant. Petitioner is not required to serve outside counsel of a non-
7 party in unrelated proceedings.⁵ That is especially true where, as here, the person responsible for
8 managing and operating Respondent (Mr. Baron) said he had not retained anyone to handle the
9 trademark dispute and no one made an appearance in the Federal case. (*See* Respondent's
10 Memorandum, Exh. A, ¶ 11)(authorizing the Receiver to retain counsel on application to the Court to
11 protect the estate).

12 2. Respondent's record address is the location of its winery operations. There is no
13 allegation that the pleadings were not received. The mailings were presumed to have been received
14 and they were: in fact the mailing envelope for the Board's default notice was attached to the
15 motion! As such, the people who were managing the winery including Mr. Baron were presumed to
16 have had actual knowledge of the proceeding.

17 3. The Board should read Mr. Miller's Declaration carefully: *he never states that he did*
18 *not know about the legal proceedings between the parties including this one.* In fact he knew about
19 the dispute: he discussed it with Mr. MacDonald.⁶ In any event, the Receiver knew, the Lolonis
20 family knew and the people operating the winery knew; the fact that they may have elected not to

21 ⁵ Registrant claims that Petitioner had an obligation to notify the Board of the Receivership.
22 (Memorandum at 3:4-8). Registrant has it backwards: it was the responsibility of the Receiver to
23 record the Bank's security interest in the registered mark (if any) or to designate Mr. Miller as the
attorney of record.

24 ⁶ Mr. Miller's claim that he understood from one of the Lolonis family members that the legal
action had been settled is not credible. He states that he overheard her say this on April 25, yet he
also states that Mr. MacDonald spoke with him about settlement on May 24.

1 share that information with the Bank's outside counsel for unrelated proceedings does not establish
2 **Respondent's** lack of actual knowledge – which is the only relevant knowledge for the purposes of a
3 vacatur motion.

4 4. The Board should read Mr. Miller's Declaration carefully for a second reason: **he**
5 **never states that he was retained in this case or the Federal Court litigation.** He did not send the
6 original demand letter. (Reidl Decl. ¶ 3). During his conversations with Mr. MacDonald, Mr. Miller
7 did not tell Mr. MacDonald that he was also representing Respondent in trademark matters, he did
8 not request that the pleadings in the Federal Court litigation be served on him nor did he enter an
9 appearance. Given the failure to appear in the Federal case and Mr. Baron's statement that he had no
10 intention of retaining trademark counsel, there was no reason for Petitioner to have believed that Mr.
11 Baron had changed his mind and had retained Mr. Miller as trademark counsel. And if Mr. Miller
12 had been retained as trademark counsel, why didn't he enter an appearance? (Reidl Decl. ¶ 13).

13 5. The person legally responsible for managing and operating Respondent at the time
14 knew about the legal proceedings between the parties: Petitioner's counsel told him and made a
15 written settlement proposal. The Lolonis family knew about the legal proceedings: they urged Mr.
16 Baron to defend them. The Receiver was told that Petitioner would take Respondent's default and
17 cancel the registration. He decided not to defend. That was his decision to make: it was not the
18 Bank's as the creditor, it was not Mr. Miller's as the Bank's outside counsel for unrelated
19 proceedings and it was not the Lolonis family's as the debtor. Stated somewhat differently, even if
20 Mr. Miller had been mailed courtesy copies of the pleadings, he had no authority to do anything with
21 them unless and until Mr. Baron decided to defend the case, decided to retain Mr. Miller to defend it,
22 and had that approved by the Superior Court in Mendocino County. (See Respondent's
23 Memorandum, Exh. A, ¶ 11).

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1 6. Throughout this entire period of time Respondent’s winery was at the same address,
2 the Lolonis family was involved with it, and all that has changed here is that a different Lolonis
3 family company (which was also a defendant in the receivership proceeding) has repaid the bank and
4 is now back in operational control of the winery. These are the people who picked the fight with
5 Petitioner and who unsuccessfully urged the Receiver to pursue it. For them to now claim ignorance
6 of it is simply not credible.

7 7. At bottom, Respondent’s argument is grounded in the premise that Petitioner was
8 engaging in improper “opportunism” by not naming the Bank as a party to this action.
9 (Memorandum at 2-3). Putting aside the fact that Petitioner was under no legal obligation to serve
10 anyone other than the record owner of the registration – which is Lolonis Winery -- the premise of
11 the argument is incorrect. The business known as Lolonis Winery was in existence before, during and
12 after this proceeding. The only thing that has changed was the management and ownership. The
13 Receiver was operating the winery as an ongoing concern at the address of record with full legal
14 authority to act in its name until he could sell it. That’s the whole point of a receivership. (See
15 Respondent’s Memorandum, Exh. A, ¶¶ 7-8, 11)(granting Mr. Baron the authority to act “in the name
16 of [Lolonis Winery]”, to “manage the Property”, and to retain counsel with the approval of the
17 Court). Petitioner did not need to implead the Bank, the Receiver or anyone else because the
18 Receiver and the Respondent were legally one and the same with full legal authority to defend the
19 case. (*Id.* ¶ 7).

20 In short, the request for vacatur is nothing more than a request by the Lolonis family for a “do
21 over.” Their demand letter triggered a foreseeable response by Petitioner: it defended itself. Due to
22 its business decisions, however, the Lolonis family lost operational control of the business during the
23 pendency of the dispute *that they started*, and despite their urgings the Receiver declined to fight
24 their battle for them. By law he was the decision maker for Respondent: not the Bank, not its outside

1 counsel Mr. Miller and not the Lolonis family.⁷ Petitioner acted diligently to deal with the threats
2 made against it by the Lolonis family and it did so successfully. It would be manifestly unfair for the
3 Board to over-rule the Receiver's decision, ignore the reality that the Lolonis family lost control of
4 the family business and allow them back in the game.

5 CONCLUSION

6 Business decisions have consequences and Rule 60 (b) does not permit "do-overs." The
7 Bankruptcy Judge refused to let the Lolonis family off the hook for the consequences of their
8 financial decisions and the Board should refuse to do so as well. Respondent has not shown that
9 their failure to respond was not the result of willful conduct or gross negligence. While there is no
10 doubt that the Lolonis family feels strongly about the matter – that's why they sent the demand letter
11 in the first place – the person legally responsible for managing and operating the business during the
12 pendency of the dispute disagreed with them. That decision must stand. The fact that the Bank's
13 outside counsel on bankruptcy matters was not served with the pleadings is irrelevant. Accordingly,
14 the motion should be denied.

15 Respectfully submitted,

16 Dated: January 11, 2012

17 **LAW OFFICE OF PAUL W. REIDL**

18 

19 _____
20 Paul W. Reidl
21 3300 Wycliffe Drive
22 Modesto, CA 95355
23 (209) 526-1586
24 paul@reidllaw.com

Attorney for Petitioner, Round Hill Cellars

7 The repurchase agreement was signed on October 12, 2011. The Motion for Default Judgment was filed and served on October 21. The Lolonis family could have answered this motion prior to the entry of Default Judgment on November 28, 2011. Instead they did nothing.

PROOF OF SERVICE

On January 11, 2012, I caused to be served the foregoing document described as follows:

PETITIONER’S OPPOSITION TO RESPONDENT’S MOTION FOR VACATUR OF JUDGMENT on Respondent in this action by placing a true copy thereof enclosed in an envelope, postage prepaid, addressed as follows:

C. Todd Kennedy
1315 33rd Avenue
San Francisco, CA 94122

Executed on January 11, 2012, at Modesto, California.



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UNITED STATE PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Registration No. 2,761,544 (Cancelled)

Trademark: Ladybug Design

ROUND HILL CELLARS,)	
Petitioner,	)	Cancellation No. 92054462
v.	)	DECLARATION OF PAUL W. REIDL
LOLONIS WINERY	)	IN SUPPORT OF
Respondent.	)	PETITIONER’S OPPOSITION TO
	)	RESPONDENT’S MOTION FOR
	)	VACATUR OF JUDGMENT

I, Paul W. Reidl, being duly advised of the penalty of perjury, hereby declare as follows.

1. My name is Paul W. Reidl. I am a member of the State Bar of California and counsel of record in this case and the case of *Round Hill Cellars v. Lolonis Winery*, No. C-11-00757 JSW (N.D. CA). If called as a witness I could testify competently to the contents of this Declaration.

2. Respondent Lolonis Winery was (and is) owned by the Lolonis family. The winemaking and storage facility is located on Road D in Redwood Valley, California. This is Respondent’s address of record. There is no assignment in the record and no security interest has ever been recorded.

3. The parties in this proceeding were involved in a trademark dispute over Petitioner’s PREDATOR brand of wine. The dispute began in February 2011 when Respondent had Bob Burlingame of the Pillsbury firm in San Francisco send a demand letter to Petitioner which claimed that its use of a “ladybug” design on a wine label infringed and diluted Lolonis’ trademark rights.

1 Lolonis demanded immediate cessation of use and an accounting of Petitioner’s profits. Petitioner
2 refused to accede to the demand and filed a declaratory judgment action in Federal Court in San
3 Francisco. The cancelled registration in this proceeding was one of the registrations cited in the
4 demand letter.

5 4. After it started the dispute, Lolonis filed for bankruptcy under Chapter 11 of the
6 Bankruptcy Code. This triggered an automatic stay of all legal proceedings and meant that any
7 settlement would require the support of Lolonis’ principal creditor(s) and the approval of the
8 Bankruptcy Judge.

9 5. In response to the bankruptcy petition, I did two things. First, I discussed settlement
10 with the Lolonis attorney who had filed the bankruptcy petition. The attorney referred me to the
11 principal creditor, the First National Bank of California (“Bank”) and the Lolonis family who had
12 sent the demand letter. Second, I retained a bankruptcy expert, Iain MacDonald, to assist in
13 navigating the bankruptcy procedures. Mr. MacDonald told me that he knew the Bank’s outside
14 counsel in the bankruptcy proceeding, Mr. Miller (who provided a declaration on this motion). I
15 instructed him to contact Mr. Miller and explore whether the Bank would support the sale by
16 Respondent of certain trademarks to Petitioner as a way to resolve the trademark dispute. I viewed
17 this as a necessary predicate for any deal with Respondent; if the Bank as the principal creditor would
18 not support it then there was no chance that the Bankruptcy Judge would approve it.

19 6. Mr. MacDonald reported that he had this conversation with Mr. Miller. He was told
20 that the Bank planned to oppose the bankruptcy petition because it believed that Respondent could
21 not be reorganized successfully. Despite several follow-up communications with Mr. Miller, Mr.
22 MacDonald was unable to get a response to the settlement proposal.

23 7. The Bank eventually moved to dismiss the bankruptcy petition and the Bankruptcy
24 Judge granted the motion. This lifted the automatic stay and allowed the trademark litigation to

1 resume. During the pendency of this motion, I learned that Respondent was being operated and
2 managed by a Receiver appointed by the Superior Court of the County of Mendocino, California, Mr.
3 James Baron, and that the bankruptcy petition had been an attempt by the Lolonis family to wrest
4 operational control of the business from Mr. Baron.

5 8. Once the automatic stay was lifted, Petitioner resumed the litigation that had been
6 prompted by Respondent's demand letter. I made a written settlement proposal to Mr. Baron who
7 was operating and managing Respondent. I told him that although Petitioner believed that the
8 registration was invalid (for the reasons stated in the Petition for Cancellation), Petitioner was
9 nonetheless willing to resolve the dispute by purchasing the registered mark and several others. Mr.
10 Baron did not respond to the letter.

11 9. I eventually telephoned him to determine his intentions with respect to the trademark
12 dispute. I began the conversation by asking whether he was represented by counsel in the trademark
13 litigation. He said he had not retained anyone. He acknowledged receipt of the settlement proposal
14 but explained that he preferred to sell Respondent as an ongoing concern. He said that the Lolonis
15 family had offered to repay the Bank so that they could regain operational control of their family
16 winery.

17 10. Mr. Baron told me that he was aware of the trademark dispute that had been initiated
18 by Respondent and that he disagreed with Lolonis' claims. I told him that Petitioner could not
19 tolerate being left in limbo while he and the Lolonis family negotiated a deal that would transfer
20 operational control back to them; as the person responsible for managing and operating the winery he
21 had to deal with the legal matters now. If he did not, then I would take Respondent's default and
22 cancel the registration. Mr. Baron acknowledged that the Lolonis family was still involved in the
23 winery and he said that they had urged him to follow-through on their demand letter and vigorously
24 contest the litigation because they thought they could make over \$1,000,000 on it. He told me that

1 they felt very strongly about this. He said that he did not want to invest in litigation and lawyers and
2 was inclined to do nothing and let the chips fall where they may. He said he would think about the
3 conversation and call me if he changed his mind. He never called and he never entered an
4 appearance in the Federal case.

5 11. All pleadings and orders in this case were served on Respondent at the address of the
6 winery, which is its address of record. The new "owner" is a Lolonis family company, Lolonis
7 Vineyards, that was a Defendant in the receivership action against Respondent because they were a
8 guarantor of the loan.

9 12. Petitioner filed its own application to register a ladybug design for wine. SN
10 85/445,858. This was filed in the good faith belief that Respondent's registration is invalid for the
11 reasons stated in the Petition for Cancellation.

12 13. During his conversations with Mr. MacDonald, Mr. Miller did not request that the
13 pleadings in the litigation be served on him nor did he enter an appearance. He did not tell him that
14 he was also representing the Bank or Respondent in the trademark dispute. Mr. Baron did not tell me
15 that Mr. Miller was acting as trademark litigation counsel; he said he had not retained anyone.

16 14. Respondent did not defend the Federal case and no lawyer entered an appearance on
17 their behalf.

18 FURTHER DECLARANT SAYETH NOT.

19
20 Dated: January 11, 2012

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1 **PROOF OF SERVICE**

2 On January 11, 2012, I caused to be served the foregoing document described as follows:

3 **DECLARATION OF PAUL W. REIDL IN SUPPORT OF PETITIONER’S OPPOSITION**
4 **TO RESPONDENT’S MOTION FOR VACATUR OF JUDGMENT** on Respondent in this

5 action by placing a true copy thereof enclosed in an envelope, postage prepaid, addressed as follows:

6 C. Todd Kennedy
7 1315 33rd Avenue
8 San Francisco, CA 94122

8 Executed on January 11, 2012, at Modesto, California.

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