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

Proceeding	92054959
Party	Plaintiff Multi Access Limited
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Submission	Opposition/Response to Motion
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Date	06/03/2013
Attachments	2N70959.PDF(594552 bytes)

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

MULTI ACCESS LIMITED, Petitioner, v. WANG LAO JI FOOD & BEVERAGE SUBSIDIARY, Registrant.	Cancellation No. 92054959 U.S. Trademark Reg. No. 2,153,322 for the mark WANG LAO JI Registration Date: April 28, 1998

MULTI ACCESS LIMITED'S CONSOLIDATED OPPOSITION TO REGISTRANT'S MOTION TO STRIKE PORTIONS OF PETITIONER'S NOTICE OF RELIANCE, REGISTRANT'S MOTION FOR ENTRY OF ITS SECOND SUPPLEMENTAL NOTICE OF RELIANCE AND BRIEF IN SUPPORT

Pursuant to Rules 2.127(a) and 2.122(e) of the Trademark Rules of Practice and Trademark Trial and Appeal Board Manual of Procedure (TBMP), §§ 532 & 704.08(b) and 707.02(b)(2), Petitioner, Multi Access Limited ("Multi Access") respectfully requests that the Board deny Registrant's Motion to Strike Paragraph F of its Notice of Reliance and the documents referenced therein and attached thereto filed by Multi Access with the Board on March 25, 2013. (Petitioner's Notice of Reliance)(See TTAB 18). Additionally, Multi Access respectfully moves that the Board enter its Second Supplemental Notice of Reliance filed herewith as Exhibit B.

Registrant alleges that Multi Access's Notice of Reliance did not comply with the procedural requirements of Trademark Rule 1.122(e). In particular, Registrant alleges that the Notice of Reliance failed to indicate the relevance of the material being offered

and requests that the evidence referenced in Multi Access's Notice of Reliance not be admitted into evidence in this proceeding. For the reasons stated herein, Multi Access respectfully requests that Registrant's Motion to Strike be denied, and that its Motion to Enter its Second Supplemental Notice of Reliance be granted.

I. The Board Should Deny Registrant's Motion to Strike

Generally, Registrant seeks to strike from Multi Access's Notice of Reliance, Paragraph F and its related internet articles because Paragraph F allegedly did not state the relevance of those articles with specific particularity pursuant to Rule 2.122(e). In response, Multi Access avers that Registrant did not seek clarification of the relevance of the articles prior to filing its Motion to Strike, that the articles are largely directed to the background of the mark and the history between the parties and not to the sole count of this proceeding, that curable motions to strike are disfavored by the Board and that Registrant's objections will be cured by the Board granting Multi Access's motion to enter it Second Supplemental Notice of Reliance submitted herewith.

A. Registrant's First Objection to Paragraph F of its Notice of Reliance was its Motion to Strike

Registrants only objection to Multi Access's Notice of Reliance is directed to the statement of relevance concerning Paragraph F thereof. (See TTAB 18). Paragraph F includes reference to only seven short internet publications, the longest of which is six pages in total. Id. at F 11-16 (TTAB 18, pp. 161-66). There is no "meet and confer" requirement for practice before the Board. Nonetheless, Registrant did not communicate its objections to Multi Access's Notice of Reliance until it filed its Motion to Strike on May 17, 2013. (See Pritchard Declaration attached hereto as Exhibit A). Multi Access

suggests that the entire issue could have been easily resolved in a few brief emails between the representatives of the parties and consistent with the underlying spirit of cooperation of the Federal Rules of Civil Procedure.

B. The Information Found in Paragraph F is Largely Directed to a Background of the Parties and a History of the Disputes Between Them Concerning the Mark that is the Subject of this Proceeding

Registrant objects to Paragraph F of Multi Access's Notice of Reliance and the articles related thereto allegedly because the Notice failed to state the relevance of those related articles. Those articles were described in Multi Access's Notice of Reliance as "Digital images of various publically available websites." The first article is directed to the website of a Chinese law firm, with whom the Registrant's Sections 8 & 9 Declarant was once purportedly associated. The remaining six articles are directed to the general history and background of the mark or a history of disputes between the parties concerning the mark in other jurisdictions. The longest article is six pages (screen shots) in length. Accordingly, the original statement of relevance offered by Multi Access was sufficient to comply with the requirements of Rule 2.122(e) and Trademark Board Manual of Procedure § 704.08(b).

C. The Board Disfavors Motions to Strike Evidence Offered in Support of a Notice of Reliance that are Curable

It is well settled that the Board disfavors motions to strike wherein the underlying procedural defect can be cured. See TMBP §§ 532 and 707.02(b)(2). Section 532 of the TMBP specifically states:

> If, upon motion to strike a notice of reliance on the ground that it does not meet the procedural requirements of the rule under which it was filed, the Board finds that the notice is defective, but that the defect is curable, the Board may allow he party which filed the notice of reliance time within which to cure the defect, failing which the notice will stand stricken.

In *Weyerhaeuser*, a twenty (20) day period was grant to submit a substitute notice of reliance to remedy certain defects. See *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1233, (TTAB 1992). An identical period was granted to correct deficiencies in *M-Tek.* See *M-Tek Inc. v. CVP Systems Inc.*, 17 USPQ2d 1070 (TTAB 1990).

Multi Access avers that the statement of relevance associated with Paragraph F of its Notice of Reliance was sufficient. In any event, the alleged defect is of the type that can be easily corrected. As such, the Board should accept Multi Access's original statement of relevance associated with Paragraph F of its Notice of Reliance. In the alternative, the Board should enter Multi Access's Second Supplemental Notice of Reliance, which amplifies the statement of relevance associated with Paragraph F of its Notice of Reliance.

D. Registrant's Objections have been Cured

In an effort to clarify the relevance of the articles associated with Paragraph F of its Notice of Reliance, Multi Access has filed herewith a Second Supplemental Notice of Reliance. See Exhibit B. In the Second Supplement Notice of Reliance, Multi Access has amplified the statement of relevance for the sake of clarity and specificity. Multi Access has also supplemented Paragraph D of its Notice of Reliance, not currently a subject to Registrant's May 17, 2013 Motion to Strike, by including an image of its

Registration No. 2,005,908 prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration.

In view of the forgoing, even if the Board finds that the original statement of relevance associated with Paragraph F of Multi Access's Notice of Reliance was not sufficient to comport with the requirements of Rule 2.122(e), those objections are rendered moot if the Board enters Multi Access's Second Supplemental Notice of Reliance into the record.

Multi Access avers that its original Notice of Reliance complied with the requirements of Rule 2.122(e). Nonetheless, even if the Board agrees with this position and denies Registrant's Motion to Strike, Multi Access would still move for entry of its Second Supplemental Notice of Reliance to clarify the relevance of the articles associated with Paragraph F and make the additional documents associated with Paragraph D of its Notice of Reliance of record in this proceeding.

II. Conclusion

Wherefore, Multi Access Limited respectfully requests that the Board **DENY** Registrant's Motion to Strike Paragraph F of Petitioner's Notice of Reliance, admit the documents referenced therein and attached thereto into evidence in this proceeding. Additionally, Multi Access also respectfully moves for the entry of its Second Supplemental Notice of reliance and the documents included therewith into the record.

Respectfully Submitted,

Dated: June 3, 2013

J. Matthew Pritchard, Registration No. 46,228

THE WEBB LAW FIRM, P.C.
One Gateway Center
420 Ft. Duquesne Blvd., Suite 1200
Pittsburgh, PA 15222
Telephone: (412) 471-8815
Facsimile: (412) 471-4094

Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and correct copy of **MULTI ACCESS LIMITED'S CONSOLIDATED OPPOSITION TO REGISTRANT'S MOTION TO QUASH TESTIMONIAL DEPOSITION UPON WRITTEN QUESTIONS AND REGISTRANT'S MOTION TO SUSPEND PROCEEDINGS PENDING DISPOSTION THEREOF AND BRIEF IN SUPPORT** was served this 3rd day of June, 2013, upon the following by via electronic mail:

Trina A. Longo, Esq.
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8201 Greensboro Drive
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Allen Xue, Esq.
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Attorney for Petitioners

EXHIBIT A

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

MULTI ACCESS LIMITED, Petitioner, v. WANG LAO JI FOOD & BEVERAGE SUBSIDIARY, Registrant.	Cancellation No. 92054959 U.S. Trademark Reg. No. 2,153,322 for the mark WANG LAO JI Registration Date: April 28, 1998

DECLARATION OF J. MATTHEW PRITCHARD IN SUPPORT OF MULTI ACCESS LIMITED'S CONSOLIDATED OPPOSITION TO REGISTRANT'S MOTION TO STRIKE PORTIONS OF PETITIONER'S NOTICE OF RELIANCE, REGISTRANT'S MOTION FOR ENTRY OF ITS SECOND SUPPLEMENTAL NOTICE OF RELIANCE AND BRIEF IN SUPPORT OPPOSITION TO REGISTRANT'S MOTION

I, J. Matthew Pritchard, make the following declaration:

1. I am an attorney at The Webb Law Firm, P.C., and am one of the attorneys representing Multi Access Limited (Petitioner) hereinafter "MAL," in this proceeding. I am over the age of twenty-one, I am competent to make this declaration, and the facts set forth in this Declaration are based on my personal knowledge.

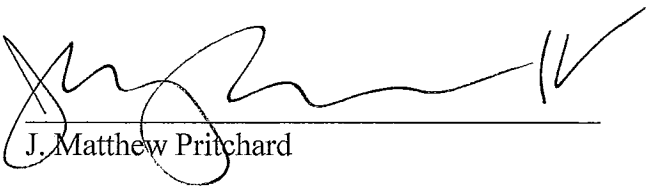
2. Registrant did not communicate, in any form or manner, its objections to Paragraph F of MAL's Notice of Reliance from March 25, 2013 (Notice of Reliance –

See TTAB 18) and March 26, 2013 (Supplemental Notice of Reliance – *See* TTAB 19) until Registrant filed it Motion to Strike on May 17, 2013.

3. Further, Declarant sayeth naught.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: June 3, 2013



J. Matthew Pritchard

THE WEBB LAW FIRM, P.C.
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Facsimile: (412) 471-4094

Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and correct copy of **DECLARATION OF J. MATTHEW PRITCHARD IN SUPPORT OF MULTI ACCESS LIMITED'S CONSOLIDATED OPPOSITION TO REGISTRANT'S MOTION TO STRIKE PORTIONS OF PETITIONER'S NOTICE OF RELIANCE, REGISTRANT'S MOTION FOR ENTRY OF ITS SECOND SUPPLEMENTAL NOTICE OF RELIANCE AND BRIEF IN SUPPORT OPPOSITION TO REGISTRANT'S MOTION** was served this 3rd day of June, 2013, upon the following by via electronic mail:

Trina A. Longo, Esq.
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Allen Xue, Esq.
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Attorney for Petitioners

EXHIBIT B

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

MULTI ACCESS LIMITED, Petitioner, v. WANG LAO JI FOOD & BEVERAGE SUBSIDIARY, Registrant.	Cancellation No. 92054959 U.S. Trademark Reg. No. 2,153,322 for the mark WANG LAO JI Registration Date: April 28, 1998

MULTI ACCESS LIMITED'S SECOND SUPPLEMENTAL NOTICE OF RELIANCE

Pursuant to Rule 2.120 of the Trademark Rules of Practice, Petitioner Multi Access Limited, hereby provides its Second Supplemental Notice of Reliance and identifies the following exhibit for its Second Supplemental Notice of Reliance. This document and exhibits are filed in response to Registrant's Motion to Strike Portions of Petitioner's Notice of Reliance filed May 17, 2013.

D. An ordinary image of Petitioners' Registration No. 2,005,908 prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration. See TTAB 18 (to be added as Appendix D, pages 45.1 and 45.2 (pages 50.1 and 50.2 of TTAB 18))

F. Digital images of various publicly available websites. Pursuant to Trademark Rule 2.122(e) and TBMP § 704.08(b), Petitioners indicates the following additional statements of relevance in support thereof:

Appendix F, page 1 (see TTAB 18, p. 151) – Page 1 of Appendix F is offered to show that Kevin Zhang no longer appears on the roster of Hon.Ban (China) Patent & Trademark firm.

Appendix F, pages 2-5 (see TTAB 18, pgs. 152-155) – Pages 2-5 of Appendix F is offered as a background and history on the mark that is the subject of the Cancellation and the history of various disputes between the parties. Specifically, the publication is offered for the origin of the mark, the privatization of the mark around 1949, the use of the mark in China by the parties, the Trademark License Agreement and dispute between the parties, and the various products produced by the parties.

Appendix F, pages 6-7 (see TTAB 18, pgs. 156-157) – Pages 6 and 7 of Appendix F are offered as a background and history of the Registrant, including all of the facts recorded therein.

Appendix F, pages 8-10 (see TTAB 18, pgs. 158-160) – Pages 8-10 of Appendix F is a printed publication discussing the development of the brand associated with the mark that is the subject of this Cancellation, including the use of social media to promote the brand within China.

Appendix F, pages 11-16 (see TTAB 18, pgs. 161-166) – Pages 11-16 of Appendix F is an article discussing the history of the dispute between the parties over the mark in China, and is offered as a background and history between the parties. Specifically, the article is offered for the purposes of documenting the history of that

dispute in the various advertisements that have been run by the parties as a result of the ongoing litigation between them in China.

Appendix F, pages 17-19 (see TTAB 18, pgs. 167-169) – Pages 17-19 of Appendix F is an article discussing the history of the dispute between the parties over the mark in China, and is offered as a background and history between the parties. Specifically, the article is offered for the purposes of documenting the history of that dispute and ongoing litigation between them in China.

Appendix F, pages 20-22 (see TTAB 18, pgs. 170-172) – Pages 20-22 of Appendix F is a printed publication discussing the JDB Group, a Hong Kong-based, large scale enterprise that focuses its business on specialized beverages. Specifically, JDB Group and Petitioner are related entities.

Petitioners reserve the right to supplement this Second Supplemental Notice of Reliance as necessary.

Respectfully Submitted,

Dated: June 3, 2013

J. Matthew Pritchard, Registration No. 46,228

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Telephone: (412) 471-8815
Facsimile: (412) 471-4094

Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and correct copy of **MULTI ACCESS LIMITED'S SECOND SUPPLEMENTAL NOTICE OF RELIANCE** was served this 3rd day of June 2013, upon the following by via electronic mail:

Trina A. Longo, Esq.
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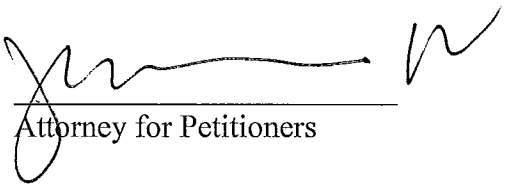

Attorney for Petitioners

Appendix D – Pages 45.1 and 45.2

1921123

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

May 29, 2013

THE ATTACHED U.S. TRADEMARK REGISTRATION *2,005,908* IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF *10* YEARS FROM *October 08, 1996*
1st RENEWAL FOR A TERM OF *10* YEARS FROM *October 08, 2006*
SECTION 8
SAID RECORDS SHOW TITLE TO BE IN:
MULTI ACCESS LIMITED
A BRITISH VIRGIN ISLANDS, COMPANY

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office

P. R. GRANT
Certifying Officer

UNITED STATES PATENT AND TRADEMARK OFFICE
DEPARTMENT OF COMMERCE

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,005,908

United States Patent and Trademark Office

Registered Oct. 8, 1996

TRADEMARK
PRINCIPAL REGISTER

WONG LO KAT (INTERNATIONAL) LTD
(HONG KONG LIMITED COMPANY)
ROOM 607-8, HING WAI CENTRE
7 TIN WAN PRAYA ROAD
ABERDEEN, HONG KONG

FOR: HERBAL TEA FOR FOOD PURPOSES; MIXTURE OF TEA AND HERBAL TEA FOR FOOD PURPOSES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1897; IN COMMERCE 1-0-1993.

THE TRANSLITERATION OF THE CHINESE CHARACTERS IN THE MARK IS "WONG LO KAT", MEANING "KING OLD LUCKY".

SER. NO. 74-717,231, FILED 8-18-1995.

DARLENE BULLOCK, EXAMINING ATTORNEY