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

Proceeding	92054966
Party	Defendant Cook Collection Attorneys, P.L.C.
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Date	02/29/2012
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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 SCOTT R. SMITH, an individual,)

4 Petitioner,)

5 vs.)

6 COOK COLLECTION ATTORNEYS,)
7 P.L.C., a California corporation,)

8 Respondent.)

Cancellation No. 92054966
Registration No. 3257604

9 MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO PETITIONER
10 SCOTT SMITH'S RESPONSE TO COOK COLLECTION ATTORNEYS, P.L.C.'S
11 MOTION FOR ENTRY OF PREFILING ORDER

12 I. CONCESSIONS.

13 SCOTT R. SMITH ("SMITH"), in the face of the motion brought by Cook Collection
14 Attorneys, P.L.C., Serial No. 77020236, Registration No. 3257604, for the Trademark
15 SqueezeBloodFromTurnip.com, appearing on T-shirts herein ("SqueezeBlood Trademark") to
16 dismiss the Petition, filed a statement of withdrawal. This is the equivalent of a dismissal under
17 FRCP 41(a)(1). As stated in the motion for prefiling order, the filing of a request for dismissal (the
18 functional equivalent of a withdrawal) is a concession that the motion is well-taken and would be
19 granted.

20 Moreover, this court can conclude that the motion to dismiss in this matter and the motion
21 to dismiss in the companion matter (Cook Collection Attorneys, P.L.C., Serial No. 77244334,
22 Registration No. 3414311, for the Trademark COOK, as International Class 045 for legal service
23 ("COOK Trademark"), were both well taken, and that they were both filed, when a response would
24 otherwise be due.

25 SMITH has not provided this court with any rational which itself would justify the filings
26 of the dismissals, when in fact the motions themselves were well taken. SMITH did have the
27 option of opposing the motions, but declined to do so. The court therefore can conclude that
28 SMITH waived any such defense to the motion to dismiss for both Petitions, by the fact that he
filed the withdrawals. This is more than just common sense, but an act of judicial estoppel, that a

1 party should be barred from attempting to defend a complaint or motion, when in the face of
2 spirited opposition, the complaint or motion is dismissed. Any other position would permit a party
3 to essentially recycle a complaint or motion, when in fact they sought to escape from the rigors of
4 defending it in the first place.

5 These two Petitions, the motions to dismiss, and the withdrawals, should be viewed in the
6 context of the Petitions filed against EMI and their outcome. SMITH does not seek to justify the
7 fact that as of this date he has prosecuted four unsuccessful Petitions to Cancel the trademarks
8 registrations of a party holding a judgment against him and the party's lawyer. SMITH cannot and
9 does not demonstrate the slightest modicum of good faith, common sense, or even mistaken
10 justification. Respondent aptly describes SMITH as an extortionist in demanding payment of
11 money in an administrative proceeding, when no money could ever have been awarded, a
12 characterization that SMITH does not challenge. Respondent likewise characterizes SMITH's
13 motives in all four Petitions as an act of irrational vengeance and retribution, and moreover, acts of
14 intimidation, likewise characterizations which SMITH does not challenge.

15 A prefiling order protects the integrity of the judicial system in prohibiting SMITH from
16 continuing to engage in vindictive conduct, all for the purpose of attempting to burden, if not
17 effectively destroy, any reasonable recourse that EMI might have against SMITH in the collection
18 of its judgment. Without a prefiling order, SMITH could continue to file frivolous Petitions, all of
19 which would run up EMI's and Respondent's expenses in which, even if these expenses were
20 turned into a sanction award, would be as difficult to collect as the underlying judgment itself.

21 This Respondent, engaged in the practice of the enforcement and judgments and collection
22 of debts, has over the years come into contact with judgment debtors who perceive themselves to
23 be aggrieved of the outcome of their own cases, even though they are personally responsible for
24 the consequences of their action. Instead of ameliorating the loss by settlement or resolving the
25 case at the earliest opportunity, some judgment debtors becomes extremely combative, aggressive,
26 and irrational. Without the court's aggressive intervention to restrain a judgment debtor from
27 conduct beyond the pale of rationality, the judgment debtor's conduct only escalates and, in effect,
28 becomes unrequited rage. A prefiling order, if issued, would provide at least some level of

1 protection due this Respondent and avoid the risk of repetitive Petitions, none of which would
2 have any merit, and with a prefiling order in hand, would be approved only by a judge before
3 filing.

4 **II. STATUS AND HISTORY OF CASE IS UNDISPUTED.**

5 SMITH does not dispute any of the claims or accusations that SMITH undertook in the
6 prefiling order, including the email trail, and most important, that SMITH engaged in extortion.
7 SMITH does not seek to defend, and therefore concedes, that the sole purpose of the filing of the
8 Petitions was an act to dissuade COOK from defending EMI, an act of coercion, and ultimately, an
9 act of extortion.

10 SMITH likewise does not dispute, and therefore concedes, the authenticity of all of the
11 emails, and the fact that he demanded money to settle the case, when in fact he did not have a
12 viable claim for money, one way or another.

13 This is more than an act of sloppy draftsmanship. SMITH, by the fact that he has not
14 factually disputed any of the claims, is deemed to have admitted and conceded the same.
15 Accordingly, this is not a case in which the conduct of SMITH is in dispute, but rather, whether
16 this court should issue a prefiling order, or other more substantial sanctions, when SMITH has
17 now admitted that he engaged in the act of extortion.

18 **III. SMITH CONTINUES WITH MISINFORMATION, LIES AND FRAUD.**

19 SMITH continues with his campaign of misinformation, as he states at page 3, lines 23-25,
20 page 4, lines 1-7, as follows:

21 “As the Board will be able to determine upon reviewing Smith’s petitions for
22 cancellation against Cook’s marks, Smith’s petitions were not only meritorious,
23 they were well pled and contained a significant amount of evidence to support
24 Smith’s allegations. This is why despite filing such unreasonable and burdensome
25 motions against Smith’s petitions, Cook was unable to credibly deny (if at all) the
26 majority of Smith’s claims. Instead, Cook sought to avoid a ruling on the merits of
27 Smith’s claims by overburdening Smith, a pro se party, by filing an unreasonable
28 and burdensome motion for improper purpose. Cook’s motion is based on claims
not grounded in fact, but were made for abusive purposes, to delay, to harass, and to
increase the costs of litigation.”

SMITH makes the incredible claim, “Cook was unable to credibly deny (if at all) the
majority of Smith’s claims.” SMITH misses the point. SMITH did not have any right or

1 entitlement by which to file these Petitions and, accordingly, a dismissal was in "high order."
2 SMITH cannot manipulate the setting by claiming that "Cook sought to avoid a ruling," when in
3 fact SMITH had no claim at all.

4 This is again a claim of manipulation, which this court should not tolerate.

5 SMITH continues with misinformation, when he states:

6 "In fact, Smith has shared and discussed his petitions to cancel Cook's marks with
7 numerous attorneys throughout the United States. None of these attorneys have
8 even mentioned the possibility that Smith's petitions were meritless."
(Page 4, lines 11-14)

9 What, if anything, other lawyers have told SMITH is not only hearsay, but preposterous. SMITH
10 cannot use unnamed sources (anonymous) to support a claim, which itself is engaging in rumor,
11 hearsay and innuendo.

12 SMITH states as follows:

13 "Actually, several attorneys have told Smith that his petitions to cancel Cook's
14 marks were well pled and very persuasive. In fact, several attorneys have felt so
15 strongly about the merits and strength of Smith petitions, that they have expressed
16 interest in assisting Smith with his petitions to cancel Cook's marks."
(Page 4, lines 14-17.)

17 Needless to say, SMITH rejected their advice, if such advice existed, (or a fabrication), when he
18 dismissed these Petitions.

19 SMITH engages Steele Lanphier in the filing of a declaration, in which Mr. Lanphier
20 makes various claims and accusations. He states at paragraphs 9, 10 & 11, as follows:

21 "9. Common collection activities include the mailing of demands for payment. If a
22 debtor is sent a demand letter with the trademark SqueezeBloodFromTurnip.com
23 on the letter (I understand a common practice of Mr. Cook's firm), Mr. Cook has
24 made the public aware impliedly that the recipient is a deadbeat. At the very least
25 the letter carrier sees the collection letter from Mr. Cook. Such branding goes
26 beyond the pale as the collection letter with such a mark on it implies that the
27 recipient is guilty and loathsome; first impressions cannot be unmade.

28 10. I believe that Cook intentionally selected and is using the
SqueezeBloodFromTurnip.com trademark to threaten and intimidate individuals
and businesses that Cook is trying to seize assets from, and also to attract clients
that desire a collection attorney who will go beyond what is reasonable or ethical to
seize assets from individuals and businesses.

11. I believe that a substantial percentage of the general public, particularly anyone
Cook is trying to seize assets from, would agree that Cook's ownership and use of
the SqueezeBloodFromTurnip.com trademark to be highly insensitive, threatening,
intimidating, offensive, shocking to the sense of decency or propriety, and immoral

1 or scandalous.”

2 Mr. Lanphier’s opinions are solely “his opinions.” Mr. Lanphier is a debtor’s lawyer,
3 running a bankruptcy practice in Sacramento, and whether or not he likes or dislikes collection
4 attorneys is certainly his purview. What Mr. Lanphier’s views are or are not have nothing to do
5 with the fact that SMITH withdrew these Petitions in the face of motions to dismiss. Mr. Lanphier
6 fails to address this fact, an omission which suggests Mr. Lanphier necessarily understands that the
7 withdrawal is a concession that the motions were well-founded.

8 Mr. Lanphier himself is guilty of a gross misrepresentation itself, based upon his own
9 website (attached to the Declaration of David J. Cook), when he states as follows:

10 “4. Who knows about my personal bankruptcy case?

11 The only parties that receive notice of the bankruptcy are your creditors, the
12 bankruptcy court and the IRS. Generally, the bankruptcy will have no effect
13 whatsoever on your taxes. Your employer will not be notified of the bankruptcy
14 unless your employer is also a creditor. The bankruptcy is public record, so anyone
15 who wants to find out could determine that you had filed. *Generally, however, only
16 you, your creditors and the IRS will know about the bankruptcy.*” (Emphasis
17 added)

18 This is an out and outright misrepresentation. The filing of a bankruptcy is readily
19 accessible through PACER, and moreover, (as indicated by the Declaration of David J. Cook)
20 through credit reports and searches through LexisNexis, Westlaw, and Accurint, among others. In
21 fact, the filing of a bankruptcy is readily accessible through various services provided by the
22 Bankruptcy Court. Individuals who file bankruptcy necessarily are burdened by debt and their
23 classic concern, post-bankruptcy, would be restoring their credit. A bankruptcy necessarily
24 appears in the debtor’s credit file and available to anybody who could run a credit report, including
25 every bank, credit card company, department store, and more importantly, landlords who demand
26 and receive credit reports. Bankruptcies are not kept secret.

27 Therefore, the claim of “privacy” is a knowing and fraudulent statement. This is important
28 in that SMITH’s expert himself engages in fraudulent conduct, all for the purpose of inducing
members of the general public to file bankruptcies, on the belief that such bankruptcy proceedings
are “private.” This is the furthest thing from the truth, and Mr. Lanphier, obviously expert in
debtor/creditor matters, would absolutely know that. The court therefore should not only reject

1 Mr. Lanphier's declaration on the basis that he lacks any expertise, knowledge or skill by which to
2 render an opinion, but likewise on the basis that he himself is engaging in serious misconduct in
3 making false statements to the general public.

4 **IV. CONCLUSION.**

5 SMITH has not disputed any of the factual claims. SMITH has not disputed any of the
6 facts, allegations, or claims. SMITH has not disputed the authenticity of any of the documents.
7 SMITH, most importantly, has not disputed that he demanded money, when in fact no money
8 would be due SMITH, even if he was victorious.

9 SMITH continues his course and campaign of insult and invective, and seeks to engage in a
10 continuing campaign to inflict as much grief, pain and harm upon collection counsel, representing
11 a creditor, in which SMITH is now indebted in the amount of in excess of \$1.5M.

12 The court, therefore, has a factual record before it, in which the facts are not in dispute.

13 SMITH likewise does not provide this court with any rational alternatives. He does not
14 suggest or offer an apology, or any concessions, or any statement or remorse. SMITH likewise
15 does not offer this court any explanation why or why not he did this, or blaming anybody else,
16 such as an attorney.

17 The stage is now set. SMITH has literally invited this court to grant this motion for
18 prefiling order, and declare SMITH a vexatious litigant.

19 DATED: February 29, 2012

COOK COLLECTION ATTORNEYS

20 By: _____
21 DAVID J. COOK, Respondent

22 F:\USERS\DJCNEW\cook trademark.reply response
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26
27
28

1 **CERTIFICATE OF SERVICE**

2 SCOTT R. SMITH
3 5714 Folsom Blvd., Suite 140
4 Sacramento, CA 95819

5 I declare:

6 I am employed in the County of San Francisco, California. I am over the age of eighteen
7 (18) years and not a party to the within cause. My business address is 165 Fell Street, San
8 Francisco, CA 94102. On the date set forth below, I served the attached:

9 **MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO PETITIONER
10 SCOTT SMITH'S RESPONSE TO COOK COLLECTION ATTORNEYS, P.L.C.'S
11 MOTION FOR ENTRY OF PREFILING ORDER**

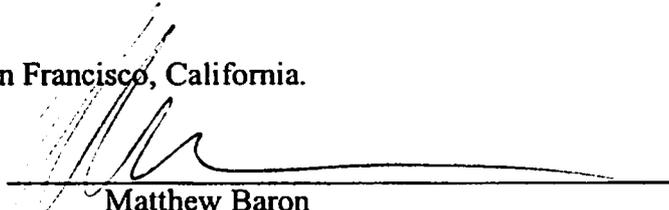
12 **DECLARATION OF DAVID J. COOK, ESQ. IN SUPPORT OF REPLY TO
13 PETITIONER SCOTT SMITH'S RESPONSE TO COOK COLLECTION
14 ATTORNEYS, P.L.C.'S MOTION FOR ENTRY OF PREFILING ORDER**

15 on the above-named person(s) by:

16 XXX (BY MAIL) Placing a true copy thereof, enclosed in a sealed envelope with postage
17 thereon fully prepaid, in the United States mail at San Francisco, California, addressed to the
18 person(s) served above.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

21 Executed on February 29, 2012 at San Francisco, California.

22 
23 _____
24 Matthew Baron
25
26
27
28