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

Proceeding	92054966
Party	Plaintiff Scott R. Smith
Correspondence Address	SCOTT R SMITH 5714 FOLSOM BLVD, SUITE 140 SACRAMENTO, CA 95819 UNITED STATES scott@bizstarz.com
Submission	Opposition/Response to Motion
Filer's Name	Scott R. Smith
Filer's e-mail	scott@bizstarz.com
Signature	/Scott R. Smith/
Date	02/21/2012
Attachments	Opposition to Motion for Sanctions-FINAL-ALL.pdf (10 pages)(660136 bytes)

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**
3
4

5 _____)
6 Scott R. Smith,)
7 an individual,)

8) Mark: SqueezeBloodFromTurnip.com
9) Reg. No.: 3257604
10 Petitioner,) Issued: July 3, 2007
11) Cancellation No. 92054966
12)

13 v.)
14)

15 _____)
16 Cook Collection Attorneys, P.L.C.,)
17 a California corporation,)
18)

19 Respondent.)
20)

21
22 **PETITIONER SCOTT SMITH’S RESPONSE TO COOK COLLECTION**
23 **ATTORNEYS, P.L.C.’S MOTION FOR ENTRY OF PREFILING ORDER**
24
25

26 Petitioner Scott Smith (“Smith”) hereby responds to and opposes Cook
27 Collection Attorneys, P.L.C.’s (“COOK”) Motion For Entry Of Prefiling Order
28 (“Cook Motion”). Since Cook’s motion was served by mail, and because Monday,
29 February 20th fell on a Federal holiday, this response is timely under 37 CFR §
30 2.119(c) and 37 CFR § 2.196.

 Cook’s motion contains an egregious number of unfounded and
inflammatory allegations, including grossly exaggerated and baseless claims that
are far outside the scope of this proceeding. Ironically, Cook whines about having
to defend his improper and fraudulent marks against Smith’s well pled petitions to

1 cancel, while filing knowingly baseless motions that force Smith and the Board to
2 waste significant amounts of their limited time and resources. However, to help
3 keep Cook's improper and unreasonable motion(s) from hijacking and wasting
4 even more of the Board's and Smith's limited time and resources, Smith has done
5 his best to file an opposition that is as succinct as possible.

6 The basis of Cook's rambling motion appears to be that Smith's petitions to
7 cancel must have been meritless simply because Smith voluntarily withdrew his
8 petitions to cancel, petitions that Smith filed to have improper and fraudulent
9 marks removed from the register. Cook (who is obviously extremely upset and
10 feels it is unfair that he would have to defend his blatantly improper marks), goes
11 as far as to argue that even though Cook never filed answers to either of Smith's
12 petitions, the Board must consider Smith's withdrawal of his petition(s) pursuant to
13 Trademark Rule 2.114(c) and 37 CFR § 2.106(c), as a concession by Smith that his
14 petition(s) were meritless ("These withdrawals constitute an admission that the
15 Petitions are meritless...", Cook Motion, page 4, line 28 to page 5, lines 1-2). This
16 of course is a preposterous allegation, which is why Cook could only cite cases that
17 support Smith and were not TTAB cases.

18 The wording and meaning of Trademark Rule 2.114(c) and 37 CFR §
19 2.106(c) are arguably as short and clear as court rules can get:

20 The petition for cancellation may be withdrawn without prejudice
21 before the answer is filed. After the answer is filed, the petition may

1 not be withdrawn without prejudice except with the written consent of
2 the registrant or the registrant's attorney or other authorized
3 representative.
4

5 As stated in the Trademark Manual of Board Procedure, this means that:

6
7 A petitioner may withdraw its petition for cancellation without
8 prejudice at *any time before* the registrant's answer is filed. ...by
9 filing with the Board a written withdrawal signed by the petitioner or
10 the petitioner's attorney. (Emphasis added)
11

12 The cases that Cook cites only state that a voluntary dismissal *may* (not *must*
13 or *shall*) be a concession by the plaintiff that their case was meritless. Of course,
14 the word *may* includes a limitless number of possibilities. Plaintiffs dismiss cases
15 all the time for a wide variety of valid reasons. For example, a plaintiff may decide
16 to withdraw a case as a result of unforeseen circumstances, such as the emergence
17 of more significant and pressing matters (which is why Smith decided to withdraw
18 his petitions; and he intends to refile his petitions when he is able to). The cases
19 cited by Cook also state that when a case is voluntarily withdrawn and not
20 terminated on the merits, that the case cannot be considered meritless merely based
21 on the defendant's allegations; it must be determined by the court's (or dismissing
22 plaintiff's) opinion.

23 As the Board will be able to determine upon reviewing Smith's petitions for
24 cancellation against Cook's marks, Smith's petitions were not only meritorious,
25 they were well pled and contained a significant amount of evidence to support

1 Smith's allegations. This is why despite filing such unreasonable and burdensome
2 motions against Smith's petitions, Cook was unable to credibly deny (if at all) the
3 majority of Smith's claims. Instead, Cook sought to avoid a ruling on the merits of
4 Smith's claims by overburdening Smith, a pro se party, by filing an unreasonable
5 and burdensome motion for improper purpose. Cook's motion is based on claims
6 not grounded in fact, but were made for abusive purposes, to delay, to harass, and
7 to increase the costs of litigation.

8 Whether the Board (or Cook) agrees with Smith's legal arguments for
9 standing is immaterial when deciding on Cook's motion. The proper question is
10 whether existing law supports Smith's petition, and Smith's petitions are clearly
11 supported by existing law. In fact, Smith has shared and discussed his petitions to
12 cancel Cook's marks with numerous attorneys throughout the United States. None
13 of these attorneys have even mentioned the possibility that Smith's petitions were
14 meritless. Actually, several attorneys have told Smith that his petitions to cancel
15 Cook's marks are well pled and very persuasive. In fact, several attorneys have felt
16 so strongly about the merits and strength of Smith's petitions, that they have
17 expressed interest in assisting Smith with his petitions to cancel Cook's marks. As
18 an example, attached to this response is a Declaration that an attorney provided
19 Smith in support of his petitions to cancel Cook's marks (Exhibit A, Lanphier
20 Declaration). After reviewing Smith's petitions and Cook's marks, an attorney also

1 suggested that Smith should file an ethics complaint against Cook with the State
2 Bar of California (which Smith intends to do), and also offered to assist.

3 Additionally, since Cook never provided Smith with proper notice and a
4 reasonable opportunity to respond to Cook's Rule 11 claims, the Board should
5 enter sanctions against Cook, including denying or striking Cook's motion(s) and
6 referring Cook's conduct to the Director of Enrollment and Discipline for
7 appropriate action. According to the Trademark Manual of Board Procedure:

8 Fed. R. Civ. P. 11(c)(2) provides a "safe harbor" provision allowing
9 the party or attorney an opportunity to withdraw or correct a
10 challenged submission. This provision delays filing of a motion for
11 sanctions before the Board for twenty-one days after service of the
12 challenged submission and allows the motion to be filed only if the
13 challenged submission is not withdrawn or appropriately corrected.
14 The Board will deny motions for Fed. R. Civ. P. 11 sanctions which
15 fail to comply with this requirement.
16

17 In summary, not only is Cook's motion unwarranted and should be denied,
18 Cook's motion(s) are disingenuous and are part of calculated strategy by someone
19 who is desperate to avoid answering directly well-pled allegations against their
20 improper and fraudulent marks by instead attempting to shift the focus onto the
21 petitioner.

22 I declare under penalty of perjury under the laws of the United States that the
23 foregoing is true and correct and that this motion was executed on February 21,
24 2012, at Sacramento, California.

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing:

**PETITIONER SCOTT SMITH'S RESPONSE TO COOK COLLECTION
ATTORNEYS, P.L.C.'S MOTION FOR ENTRY OF PREFILING ORDER**

has been served on David J. Cook by mailing said copy on **February 21, 2012** via
Federal Express, postage prepaid to:

David J. Cook
Cook Collection Attorneys, P.L.C.
165 Fell Street
San Francisco, CA 94102

Executed on **February 21, 2012**, at Sacramento, California

/Scott R. Smith/
Scott R. Smith

I, Steele Lanphier, hereby declare as follows:

1. I am a consumer bankruptcy attorney, and I reside in Sacramento County, California. Except as stated herein, the following declaration is based upon my personal knowledge. If called as a witness, I could and would competently testify to the facts set forth herein.
2. I have been licensed to practice law in California since 1990 and I am currently the principal of Lanphier & Associates, one of the largest consumer bankruptcy law firms in Northern California, with offices located in Sacramento, California. I founded Lanphier & Associates in 1990 but since 2000 Lanphier & Associates has specialized in Chapter 7 and Chapter 13 bankruptcy. Chapter 7 is a liquidation or complete bankruptcy while Chapter 13 is a reorganization bankruptcy. Our mission is to provide excellent service with highly experienced bankruptcy attorneys, at an affordable fee.
3. Bankruptcy law is complex and becoming more so as time goes on. Lanphier & Associates has helped thousands of financially distressed clients, first to determine whether they qualify for a Chapter 7 bankruptcy or need to consider filing a Chapter 13 bankruptcy, then whether a bankruptcy is in their best interest. Assuming that a determination is made that they qualify and it is in their best interests we proceed to prepare the documents needed so that their case goes forward as smoothly as possible.
4. I graduated from: California State University, Chico in 1973 with a Bachelor of Science Degree in Computer Science and a Minor in Business; California State University, Chico in 1978 with a Masters Degree in Business Administration (accent in Finance); San Francisco Law School in 1985 with a Doctorate in Jurisprudence.
5. Prior to going to Law School and starting Lanphier & Associates I worked for a variety of corporations as a Systems Analyst. While I was in Law School and shortly after finishing Law School I was employed as the Copyright & Trademark associate for the University of California Patent Office, a position I held for five years. As part of that job I created the University Copyright policy for all U.C. campuses and drafted the first trademark license "UCLA" re: UCLA vs. Champion Sporting goods.
6. I have reviewed and am familiar with two cases entrepreneur Scott Smith filed in December 2011 with the U.S. Patent and Trademark Office against trademarks owned by collections attorney David J. Cook of Cook Collection Attorneys of San Francisco, California. One case pertains to Mr. Cook's trademark on the "Cook" surname for "legal services". The other case is against Cook's trademark on SqueezeBloodFromTurnip.com.
7. I believe that Cook's SqueezeBloodFromTurnip.com trademark is improper and should be canceled because its ownership and use by a collections attorney is immoral or scandalous.
8. Collection attorneys often receive a percentage of the assets they are able to seize, and Cook's ownership and use of the SqueezeBloodFromTurnip.com trademark suggests that

in order to maximize his law firm's profits, Cook will go beyond what is reasonable or possibly ethical to seize assets from individuals and businesses, including what amounts to threatening to squeeze the life out of anyone unfortunate enough to fall behind on their financial obligations and be doggedly pursued by Cook (note: people are forced to file bankruptcy for a variety of reasons, but most do so due to factors outside of their control, such as sudden and overwhelming medical expenses, or a job loss due to poor economic conditions).

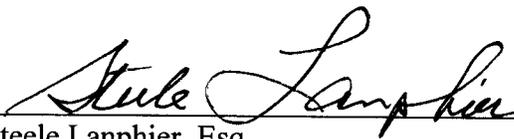
9. Common collection activities include the mailing of demands for payment. If a debtor is sent a demand letter with the trademark SqueezeBloodFromTurnip.com on the letter (I understand a common practice of Mr. Cook's firm), Mr. Cook has made the public aware impliedly that the recipient is a deadbeat. At the very least the letter carrier sees the collection letter from Mr. Cook. Such branding goes beyond the pale as the collection letter with such a mark on it implies that the recipient is guilty and loathsome; first impressions cannot be unmade.
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 collections 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 SqueeseBloodFromTurnip.com trademark to be highly insensitive, threatening, intimidating, offensive, shocking to the sense of decency or propriety, and immoral or scandalous.
12. I believe that an overwhelming number of bankruptcy attorneys, bankruptcy judges, consumer bankruptcy advocates, and bankruptcy trustees would find Cook's ownership and use of SqueeseBloodFromTurnip.com trademark to be highly insensitive, threatening, intimidating, offensive, shocking to the sense of decency or propriety, and immoral or scandalous.
13. I believe that Cook's trademark on the "Cook" surname is improper and should be canceled. Cook is a common surname shared by multiple individuals in many states and cities, all of whom may have an interest in using the Cook surname for "legal services". Any attorney whose name happens to be Cook would be and legally is precluded from using their name in the name of their firm.
14. From what I have read concerning Mr. Cook's application for the "Cook" trademark I believe that Mr. Cook made willful false statements intended to deceive the trademark office when he filed a personally signed Declaration with the trademark office claiming that he was entitled to exclusive rights to the Cook surname for legal services. I find it unreasonable to believe that to the best of Mr. Cook's knowledge and belief, that "no other person, firm, corporation, or association had the right to use the mark in commerce,

either in the identical form thereof or in such near resemblance thereto to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or cause mistake, or to deceive ...”.

15. I believe that when Mr. Cook filed his Declaration for the Cook trademark with the trademark office, Mr. Cook HAD knowledge and belief that Cook is a surname shared by multiple individuals, attorneys, law firms and businesses in multiple U.S. states and cities, all of whom may have an interest in using the Cook surname for “legal services”.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true to the best of my knowledge.

January 26, 2012

A handwritten signature in black ink that reads "Steele Lanphier". The signature is written in a cursive style and is positioned above a horizontal line.

Steele Lanphier, Esq.
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