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

Proceeding	92055269
Party	Plaintiff Mango's Tropical Cafe, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MANGO'S TROPICAL CAFÉ, LLC,  
f/k/a MANGO'S TROPICAL CAFÉ, INC.

Petitioner,

v.

TANGO MANGO, LLC

Registrant.

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Cancellation No. 92055269

Reg. 3,328,822

Mark: TANGO MANGO

Reg. Date: November 6, 2007

**PETITIONER'S SUPPLEMENTAL REPLY BRIEF**

Pursuant to the Board's June 12, 2014 ACR Order (Doc. No. 36), Petitioner Mango's Tropical Café, LLC, (hereinafter "Petitioner"), hereby submits its Supplemental Reply Brief in support of its position that a likelihood of confusion exists between Petitioner's family of **MANGO'S** trademarks (hereinafter the "**MANGO'S** Marks"), on the one hand, and Registrant Tango Mango, LLC's (hereinafter "Registrant") **TANGO MANGO** mark (hereinafter the "TM Mark"), on the other. Registrant's supplemental brief largely rehashes its legal argument previously made in this proceeding.<sup>1</sup> Petitioner has fully addressed those arguments in its Motion for Summary Judgment filed October 22, 2013 (unredacted)(Doc. No. 24), and November 21, 2013 (redacted)(Doc. No. 29) (the "Motion"), and the Reply Memorandum of Law in Support of Its Motion for Summary Judgment and in Opposition to Registrant's Cross-Motion for Summary Judgment (the "Reply"), filed December 16, 2013 (Doc. No. 32). Other arguments made by Registrant in its supplemental brief, i.e., alleged third party use, were anticipated and covered in Petitioner's Supplemental Brief (Doc. 42). Petitioner maintains its arguments previously of record,

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<sup>1</sup>Petitioner objects to Registrant's attempt to introduce new evidence, Doc. 43, Exs. 14-16, Supp. Brief, p. 10 n.6, into the record as hearsay and without foundation.

but briefly addresses three matters.

First, Petitioner and Registrant use their respective marks in connection with services that are legally identical, and where this is the case, the similarity between the marks necessary to support a determination that confusion is likely declines. *See Bridgestone Am. Tire Operations, LLC v. Fed. Corp.*, 673 F.3d 1330, 1337, 102 USPQ2d 1061, 1064 (Fed. Cir. 2012); *In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992). The Board agreed that the parties' services are legally identical when it held that "petitioner and respondent use their marks in connection with services that are legally identical and that where this is the case, the similarity between the marks necessary to support a determination that confusion is likely declines." Doc. 34, p. 11.

Second, Registrant argues, under the authority of *Calypso Tech., Inc. v. Calypso Capital Mgmt., LP*, 100 U.S.P.Q. 2d 1213, 2011 TTAB LEXIS 259 (T.T.A.B Aug. 29, 2011), that Petitioner has not proven priority first use of its **MANGO'S** Marks. However, a review of *Calypso* establishes that that case is factually inapposite to the record evidence here. Specifically, the *Calypso* Board found the evidence to establish commencement of services, but not commencement of services under the mark. *Id.* at 1220. Here, Petitioner has presented un rebutted, sworn testimony of Mr. Wallack, Doc. 29, Ex. A, ¶¶3-15, that proves commencement of the services in question under the **MANGO'S** Marks. Specifically, at Paragraph 5 of Exhibit A to Document 29, Mr. Wallack testifies as follows:

Mango's displays the MANGO'S Marks prominently on all business signage, menus, clothing items, pre-packaged food products, music and other memorabilia products, a practice Mango's has followed since commencing operation of MANGO'S

TROPICAL CAFE in 1991.

*Id.* Because Registrant, by admission, relies on a first use date of February 23, 2007, Registrant Supp. Brief, p. 3, Petitioner clearly has established priority of use.

Third, Petitioner reiterates its hearsay objection to Registrant's attempted introduction of alleged third party use by means of paper printouts of third-party applications and registrations, and internet web sites. Moreover, even if such evidence is admissible, it carries little to no probative weight. Similar evidence was rejected recently by the Board:

This evidence is entitled to little probative weight because it does not establish that consumers have grown so accustomed to seeing the term MANGO'S in association with restaurant services that they can distinguish between such marks on the basis of minor differences. The evidence does not prove how long the marks have been in use, the volume of sales under those marks, their number of customers or trading areas, or the level of exposure to the relevant purchasing public. See *Coach/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1476 (TTAB 2014).

*Mango's Tropical Café, LLC v. Paradise Restaurant Group, Inc. Of St Augustine*, Cancellation No. 92055268 \*16 (July 13, 2014).<sup>2</sup> Likewise, Registrant's evidence is similarly unavailing.

For all of the foregoing reasons, as well as the reasons set forth in Petitioner's Motion, Reply, and Supplemental Brief, Petitioner respectfully submits Registrant's TM Mark is confusingly similar to the MANGO'S Marks and should be cancelled and removed from the Register.

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<sup>2</sup>Registrant's reliance on *Lloyd's Food Products Inc. v. Eli Inc.*, 987 F. 2d 766 (Fed. Cir. 1993), is misplaced. The *Lloyd's* decision concerned summary judgment, which this Board considered by cross motions here, and denied. Moreover, there is no indication in the *Lloyd's* case that any hearsay objection was raised or considered.

Respectfully submitted,

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**CERTIFICATE OF ELECTRONIC SERVICE**

I HEREBY CERTIFY that on December 4, 2014, I electronically filed the foregoing document with the United States Patent and Trademark, Trademark Trial and Appeal Board, using ESTTA. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified below via electronic mail pursuant to the consent of the parties.

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