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

In the matter of Trademark Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL, registered on February 11, 1997 and Registration No. 3,039,826 for the mark MISS NUDE WORLD, registered on January10, 2006.

Opposition No. 91,200,183

The Worlds Pageants, LLC

Opposer

V.

Miss G-String International LLC

Applicant

Cancellation No. 92,055,838

William Eadie

Petitioner

V.

The Worlds Pageants, LLC

Registrant

September 4, 2012

_____/

COMMISSIONER OF TRADEMARKS
UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER'S AMENDED RESPONSE TO ALLEGED REGISTRANT'S MOTION TO DISMISS AND AMENDED MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION TO CANCEL

1. Petitioner William Eadie, hereby responds to alleged Registrant's Motion To Dismiss and moves the Board for an Order permitting him to file an Amended Petition to Cancel to correct a scrivener's error.

09-10-2012

I. INTRODUCTION

2. On July 10, 2012 Petitioner filed his Petition to Cancel R&D PROMOTIONS, INC.'s U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD.

3. On August 21, 2012, the alleged Registrant, THE WORLDS PAGEANTS, LLC (ALLEGED REGISTRANT) filed a Motion to Dismiss.

4. In the Petition to Cancel, Petitioner disputes that alleged Registrant is now, or has ever been, the lawful assignee of U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD. Further the alleged Registrant's claim to the marks is based solely upon the fraudulent conveyance of assets conceived to defraud the United States Patent and Trademark (USPTO) with intend to avoid the execution of a valid and enforceable court order, thereby circumventing the proper and lawful ownership of the trademarks by Petitioner.

5. Upon reviewing the alleged Registrant's Motion to Dismiss, Petitioner became aware that the requested relief is in the form of cancellation of Registrant's mark. This was an inadvertent error by Petitioner as Petitioner only seeks to have the ownership of U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD transferred from Registrant to Petitioner and does not seek to cancel the registrations.

6. Petitioner hereby requests that the Petition to Cancel to be amended and the Board rule that the Owner of Record be changed from REGISTRANT to PETITIONER based upon the facts alleged in the Amended Petition to Cancel and the additional matters raised herein.

II. ARGUMENT

7. Pursuant to Fed.R.Civ.P. 15(a), leave to amend shall be freely given when justice so requires. The Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. TMP § 507.02, See, For example Polaris Industries v. D.C. Comics, 59 USPQ 2d 1789 (TTAB 2001); Boral Ltd. v. FMC Corp., 59 USPQ 2d 1701 (TTAB 2000).

8. Petitioner submits that permitting it to amend its Petition to Cancel will not prejudice the alleged Registrant and that this motion is timely insofar as the issue is a mere scrivener's error.

9. Since the Cancellation Proceeding is still in the pre-trial stage, prior to any testimony having been taken, Leave to Amend should be allowed. See, e.g., Space Base, Inc. v. Stadis Corp., 17 USPQ 2d 1216 (TTAB 1990). By allowing Petitioner to amend his Petition to Cancel, the Board is permitting full adjudication of the merits of the dispute. See, Beth A. Chapman, TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff, 81 Trademark Rep. 306 (1991)

("The fact that the adverse party may be prejudiced as a result of the delay to the proceedings is generally outweighed by the principle that there should be full adjudication.").

RELIEF REQUESTED

10. Petitioner, attaches hereto as Exhibit 1 a copy of the proposed Amended Petition to Cancel pursuant to TBMP § 507.01.

11. WHEREFORE, Petitioner respectfully requests that the Board grant this Amended Motion for Leave to File the attached Second Amended Petition to Cancel.

Respectfully Submitted,

Miss G-String International

By: _____ Dated: 9.4.12

Luke Lirot, Esquire
Florida Bar Number 714836
LUKE CHARLES LIROT, P.A.
2240 Belleair Road, Suite 190
Clearwater, Florida 33764
Telephone: (727) 536-2100
Facsimile: (727) 536-2110
Attorneys for the Applicant/Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITIONER'S AMENDED RESPONSE TO ALLEGED REGISTRANT'S MOTION TO DISMISS AND AMENDED MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION TO CANCEL, has been served on Gracinda Cardoso, Registered Agent for THE WORLDS PAGEANTS, LLC, 1473 Heather Way, Kissimmee, Florida, 34744, and Thomas T. Aquilla, Esquire, Domestic Representative for THE WORLDS PAGEANTS, LLC, 221 Coe Hill Road, Center Harbor, New Hampshire, 03226, by mailing said copy on September 4, 2012, via First Class Mail, postage prepaid.

_____
Attorney for Applicant/Petitioner
Signed September 4 , 2012

Designation of Domestic Representative

Attorney Luke Lirot, Esq., whose postal address is 2240 Belleair Rd., Suite 190, Clearwater, FL 33764, is hereby, designated WILLIAM EADIE'S representative upon whom notice or process in this proceeding may be served.

Attorney for Applicant/Petitioner
Signed September 4, 2012

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

In the matter of Trademarks U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL, registered on February 11, 1997 and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD, registered on January10, 2006.

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SECOND AMENDED PETITION TO CANCEL

1. William Eadie, an individual, located at 1420 Sunningdale Lane, Ormond Beach, FL 32174 (PETITIONER) by his attorney, Luke Lirot, Esquire, of LUKE CHARLES LIROT, P.A., hereby files this Amended Petition to Cancel The Worlds Pageants, LLC, (REGISTRANT) as the Owner of Record for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD.

2. PETITIONER hereby petitions to correct the registrations of these marks to identify PETITIONER as the Owner thereof, as instructed by the Board's Order in the matter of

Opposition No. 91,200,183, pursuant to Trademark Act Section 18, 15 U.S.C. Section 1068, Federal Rules of Civil Procedure.

3. PETITIONER disputes that alleged REGISTRANT has standing to oppose, as PETITIONER disputes alleged REGISTRANT'S claim that it is now, or has ever been, the lawful assignee of U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD.

4. Alleged REGISTRANT'S claim to the marks is based solely upon the fraudulent conveyance of assets conceived with intent to defraud the United States Patent and Trademark Office (USPTO) and with intent to avoid the execution of a valid and enforceable court order, thereby circumventing the proper and lawful possession of the trademarks by PETITIONER.

5. Further, alleged REGISTRANT fails to establish its requisite burden of ownership necessary for standing under 37 C.F.R. 3.73(b).

ALLEGED REGISTRANT DOES NOT HAVE STANDING TO OPPOSE

6. On May 5, 2009, alleged REGISTRANT was created as a State of Florida Limited Liability Company, listing Gracinda Cardoso, also known as Rio Rivers (CARDOSO), as its Managing Member with Attorney Thomas Tracy Aquilla (AQUILLA) as its Attorney of Record. CARDOSO is also listed as President of The Worlds Pageants, LLC (R&D) a State of Florida corporation, with AQUILLA as its Attorney of Record.

7. On May 13, 2009, AQUILLA, as Attorney of Record and representing R&D, not alleged REGISTRANT, as the Owner of Record for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL, sent a Cease and Desist letter to the attorney representing Miss G-String International LLC (APPLICANT) in the matter of Opposition No. 91,200,183 (see APPLICANT'S Initial Disclosures, Exhibit L).

8. On June 6. 2011, in the matter of Opposition No. 91,200,183, alleged REGISTRANT, not R&D, filed its Notice of Opposition against APPLICANT to oppose the registration for the mark MISS G-STRING INTERNATIONAL. The records of the United States Patent and Trademark Office (USPTO) identifies R&D, not alleged REGISTRANT, as the Owner of Record on June 6, 2011.

9. Alleged REGISTRANT failed to establish its ownership of U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL at the time of filling its Notice of Opposition as mandated by 37 C.F.R. 3.73 (b) which requires the following in establishing right of assignee to take action:

> (a) The inventor is presumed to be the owner of a patent application, and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the owner of a trademark application or registration, unless there is an assignment.

(b) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that request or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:

(i) Documentary evidence of a chain of title from the original owner to the assignee is recorded (e.g., copy of an executed assignment). For trademark matters only the documents submitted to establish ownership may be required to be recorded pursuant to 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office; or

(ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

10. On September 22, 2011, the Records of the USPTO identified R&D, not alleged REGISTRANT, as the Owner of Record for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL.

11. On September 22, 2011, Judgment Creditor PETITIONER asserted his ownership interest by filing a Trademark Assignment for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL as authorized by his valid and enforceable court order.

12. On September 23, 2011, the records of the USPTO identified R&D, not alleged REGISTRANT, as the Owner of Record for U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD.

13. On September 23, 2011, Judgment Creditor PETITIONER asserted his ownership interest by filing a Trademark Assignment for U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD as authorized by his valid and enforceable court order.

14. On September 27, 2011, AQUILLA, while collectively representing R&D, CARDOSO, and alleged REGISTRANT, conspired with malicious intent to defraud the USPTO by conceiving, composing and executing two (2) fraudulent nunc pro tunc Trademark Assignments, the first from R&D to CARDOSO, and contemporaneously the second, from CARDOSO to alleged REGISTRANT. Both fraudulent nunc pro tunc Trademark Assignments were executed and filed on September 27, 2011, mere days after PETITIONER asserted his ownership interest in the marks.

15. The automatic assignments to alleged REGISTRANT on September 27, 2011, were improper because the Assignors did not own U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD. Further, they were ineffective because the actions constitute a fraudulent conveyance of assets intended to avoid the execution of a valid and enforceable court order, thereby

circumventing the proper and lawful possession of the trademarks by PETITIONER through the full faith and credit of a court order.

16. On June 21, 2012, in the matter of Opposition No. 91,200,183, the Board ordered APPLICANT to file its Amended Answers.

17. On July 10, 2012, in the matter of Opposition No. 91,200,183, APPLICANT filed its Amended Answers which includes the previously noted failure by alleged REGISTRANT to establish its ownership of the mark MISS NUDE INTERNATIONAL as required by 37 C.F.R. 3.73 (b) as its for and as a sixth affirmative defense.

18. APPLICANT states in its RELIEF REQUESTED that it "respectfully requests that this opposition proceeding be dismissed, with prejudice."

FRAUDULENT CONVEYANCE OF TRADEMARKS TO ALLEGED REGISTRANT

19. AQUILLA and alleged REGISTRANT conspired with malicious intent to defraud the USPTO by conceiving, composing and executing two fraudulent nunc pro tunc Trademark Assignments to avoid execution of a valid and enforceable court order by a third party, PETITIONER.

20. Nunc pro tunc or "now for then" refers to changing to an earlier date the filing of an order, judgment or filing of a document. Such a retroactive re-dating requires a court order which can be obtained by a showing that the earlier date would have been legal, and there was an error, accidental omission or neglect which has caused a problem or inconvenience which can be cured and is granted to answer the purposes of justice, but never to do injustice.

21. On October 28, 2011, in the matter of Opposition No. 91,200,183, APPLICANT filed its Motion to Strike nunc pro tunc Trademark Assignments (see APPLICANT'S Motion To Strike nunc pro tunc Trademark Assignments).

22. Described below are the most obvious deficiencies made by AQUILLA on behalf of alleged REGISTRANT, any one of which is sufficient basis to render the nunc pro tunc Trademark Assignments invalid.

23. First, AQUILLA, on behalf of alleged REGISTRANT, knowingly failed to petition for, obtain and provide the requisite court order mandated to grant permission to file the fraudulent nunc pro tunc trademark assignments, thereby rendering them invalid. AQUILLA intentionally neglected this mandate, as no court would grant such a petition when provided with full disclosure of the facts.

24. Second, alleged REGISTRANT'S nunc pro tunc Trademark Assignments are predicated upon the validity of the Trademark Assignment Documents, which require a notary to attest to or authenticate each signature. The Trademark Assignment Documents failed to (i) identify in writing or typing each signer to be the person whose name is signed to the document, (ii) state in

writing or typing that the identity of the signers was made through personal knowledge or through appropriate credentials, such as a driver's license, (iii) state in writing or typing the Certificate of Acknowledgment on the document with the appropriate phrase "The foregoing was sworn to and acknowledged before me by (name of notary)" and (iv) include the printed name of the notary followed by the written or typed "Commission Expiration Date" thereby rendering them invalid.

25. Third, the Trademark Assignment Documents falsely claimed ownership of trademarks not owned by the assignors, thereby rendering them invalid.

26. AQUILLA knowingly contradicts his own written affirmations as to which entity, R&D or alleged REGISTRANT, is the lawful owner of the marks, not once, but twice.

27. AQUILLA falsely attests in writing, the validity of the first nunc pro tunc Trademark Assignment, dated and filed on September 27, 2011, by identifying R&D as the Assignor and CARDOSO as the assignee, with the alleged effective date of March 31, 2003.

28. AQUILLA falsely attests in writing, the validity of the second nunc pro tunc Trademark Assignment, also dated and filed on September 27, 2011, by identifying CARDOSO as the Assignor and THE WORLDS PAGEANTS, LLC as the assignee, with the alleged effective date of May 6, 2009.

29. On May 13, 2009, exactly one week after the second fraudulent nunc pro tunc Trademark Assignment's alleged effective date of May 6, 2009, AQUILLA now attests, in writing, that R&D, not alleged REGISTRANT, is indeed the Owner of Record for the mark MISS NUDE INTERNATIONAL in the aforementioned Cease and Desist Letter to the attorney for APPLICANT.

30. The records of the USPTO identify R&D, not alleged REGISTRANT, as the Owner of Record for the mark MISS NUDE INTERNATIONAL on May 13, 2009.

31. AQUILLA'S own letter to another officer of the court dated May 13, 2009, one week after the alleged effective date of the second fraudulent nunc pro tunc Trademark Assignment and the records of the USPTO provide irrefutable and conclusive proof that alleged registrant has no lawful claim to the ownership of the mark MISS NUDE INTERNATIONAL.

32. Next, on October 6, 2011, AQUILLA contradicts himself for the second time by attesting, in writing, the validity of R&D, not alleged REGISTRANT, as Owner of Record for the mark MISS NUDE INTERNATIONAL.

33. AQUILLA sent a letter to the New Hampshire Attorney Discipline Office in which he reaffirms, in writing, that R&D, not alleged REGISTRANT, is the Owner of Record for the mark MISS NUDE INTERNATIONAL.

34. AQUILLA states "The statements made in my letter to Mr. Eadie dated May13, 2009, are true and correct..." (see APPLICANT'S MOTION TO STRIKE nunc pro tunc TRADEMARK ASSIGNMENTS Exhibit "O" in the matter of Opposition No. 91,200,183).

35. Notably, AQUILLA'S second letter of October 6, 2011, was written exactly nine (9) days after AQUILLA attested to the validity of and filed the fraudulent nunc pro tunc Trademark Assignments with intent to defraud the USPTO.

36. For the second time, AQUILLA HIMSELF provides irrefutable and conclusive proof that the alleged registrant has no lawful claim to the ownership of the mark MISS NUDE INTERNATIONAL.

37. Both letters written by AQUILLA as Attorney of Record for and representing R&D, are dated more than two (2) years apart and each identify R&D, not alleged REGISTRANT, as the Owner of Record for mark MISS NUDE INTERNATIONAL.

38. AQUILLA, as Attorney of Record for R&D, CARDOSO and alleged REGISTRANT offers the following fictional account;

(i) that he made an error, accidental omission or neglect
(ii) not once, but twice
(iii)for two totally separate trademark assignments,
(iv)each with the same principal, CARDOSO,
(v) with alleged effective dates greater than six (6) year apart
(vi)which conveniently include, and were filed mere days after PETITIONER received from the USPTO, both Notice of Recordation of Trademark Assignments for each of the aforementioned marks, and
(vii) never during this six year period of time did a single incident of any nature occur related to any of R&D's thirteen (13) trademarks that would have alerted AQUILLA as its Attorney of Record to the fact that R&D was incorrectly identified as the Owner of Record,
(viii) including AQUILLA'S OWN RENEWAL of the mark MISS NUDE INTERNATIONAL as Attorney of Record and on behalf of R&D in 2007.

39. AQUILLA correctly identifies on behalf of alleged REGISTRANT in its Motion to Dismiss that "to constitute fraud on the United States Patent and Trademark Office (USPTO), a statement must be (1) false, (2) knowingly made, and (3) a material representation. Moreover, the charge of fraud upon the USPTO must be established by clear and convincing evidence."

40. PETITIONER has proffered incontestable proof of fraud by AQUILLA, CARDOSO, and alleged REGISTRANT.

41. In the matter of Opposition No. 91,200,183, the Board's order of June 21, 2012, states the following reference to the Applicant's Motion to Strike nunc pro tunc Trademark Assignments, dated October 27, 2011:

"Applicant's motion to strike is granted to the limited extent that copies of opposer's assignment documents that opposer filed with the Board on September 27, 2011, will receive no consideration."

42. On June 21, 2012, in the matter of Opposition No. 91,200,183, the Board ordered "Eadie (PETITIONER) must assert his ownership of Registration No. 2,037,202 by filing a petition under Trademark Act Section 18, 15 U.S.C. Section 1068, along with the appropriate filing fee, wherein he seeks to correct that registration to identify himself as the owner thereof."

43. Alleged REGISTRANT states that PETITIONER is required to a "showing that it has a "real interest" in the case, that is a legitimate personal interest in the outcome of the proceedings and a reasonable basis for its belief in damage."

44. PETITIONER is the Judgment Creditor of a valid and enforceable court order.

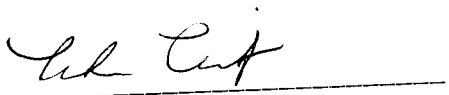
RELIEF REQUESTED

45. PETITIONER files this Second Amended Petition for Cancellation to assert his ownership for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and for U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD, including the appropriate fees, as instructed by the Board in Cancellation No. 92,055,838.

46. WHEREFORE, PETITIONER respectfully requests that the Board identifies WILLIAM EADIE as the Owner of Record for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and for U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD.

Respectfully Submitted:

Dated: September 4, 2012



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Attorneys for the Applicant/Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing SECOND AMENDED PETITION TO CANCEL, has been served on Gracinda Cardoso, Registered Agent for The Worlds Pageants, LLC, 1473 Heather Way, Kissimmee, Florida, 34744, and Thomas T. Aquilla, Esquire, Domestic Representative for The Worlds Pageants, LLC, 221 Coe Hill Road, Center Harbor, New Hampshire, 03226, by mailing said copy on September 4, 2012, via First Class Mail, postage prepaid.

Luke Lirot, Esquire
Florida Bar Number 714836
Attorney for Applicant/Petitioner
Signed September 4, 2012

Designation of Domestic Representative

Attorney Luke Lirot, Esq., whose postal address is 2240 Belleair Rd., Suite 190, Clearwater, FL 33764, is hereby, designated WILLIAM EADIE'S representative upon whom notice or process in this proceeding may be served.

Attorney for Applicant/Petitioner
Signed September 4, 2012