

ESTTA Tracking number: **ESTTA507733**

Filing date: **11/27/2012**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Republic of Texas Biker Rally, Inc.		
Entity	Corporation	Citizenship	Texas
Address	2316 Saratoga Drive Austin, TX 78733 UNITED STATES		

Attorney information	Carl F. Schwenker Law Offices of Carl F. Schwenker 706 Guadalupe Street Austin, TX 78701 UNITED STATES cfslaw@swbell.net Phone:512-480-8427		
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Registration Subject to Cancellation

Registration No	4164790	Registration date	06/26/2012
Registrant	Ogudo, Peter P.O. BOX 2574 CULVER CITY, CA 90231 UNITED STATES		

Goods/Services Subject to Cancellation

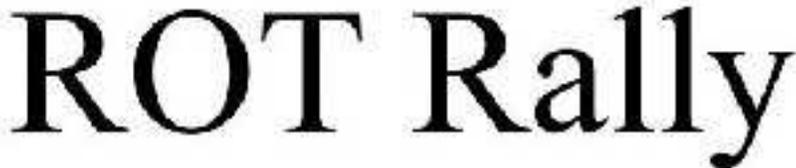
Class 018. First Use: 2008/08/28 First Use In Commerce: 2008/08/28 All goods and services in the class are cancelled, namely: Handbags, Back packs, purses, wallets, tote bags, travel bags, Carry-on bags
Class 025. First Use: 2008/08/28 First Use In Commerce: 2008/08/28 All goods and services in the class are cancelled, namely: Clothing, namely, t-shirts, vests, slacks, hooded sweatshirts, jackets, hats, footwear, shoes, sneakers, sandals, caprices, socks, slippers, jeans, undergarments, blouses, dresses, blazers, suits, pant suits, shirts, hooded sweatshirts, coats, pants, belts

Grounds for Cancellation

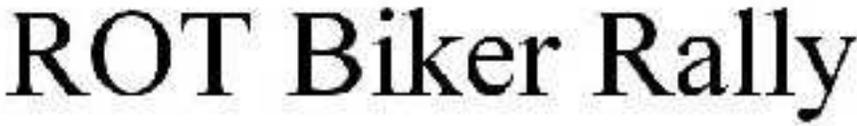
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3678565	Application Date	07/23/2008
Registration Date	09/08/2009	Foreign Priority Date	NONE

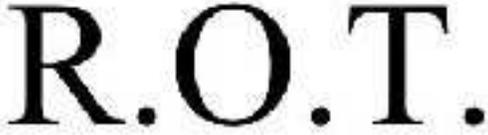
Word Mark	ROT RALLY
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 025. First use: First Use: 2005/12/01 First Use In Commerce: 2005/12/01 Clothing and clothing accessories, namely, t-shirts, knit shirts, tank tops, halter tops, shorts, skirts, hats, caps, beanies, do rags, bandanas, sweatshirts, jackets and vests</p> <p>Class 035. First use: First Use: 1998/06/08 First Use In Commerce: 1998/06/08 Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium</p> <p>Class 041. First use: First Use: 1998/06/08 First Use In Commerce: 1998/06/08 Publishing, publication and editing of electronic multimedia publications and productions featuring motorcycle rallies and conferences, events, festivals and seminars related to motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles</p>

U.S. Registration No.	3671828	Application Date	07/23/2008
Registration Date	08/25/2009	Foreign Priority Date	NONE

Word Mark	ROT BIKER RALLY
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 025. First use: First Use: 1999/01/10 First Use In Commerce: 1999/01/10 Clothing and clothing accessories, namely, t-shirts, knit shirts, tank tops, halter tops, shorts, skirts, hats, caps, beanies, do rags, bandanas, sweatshirts, jackets and vests</p> <p>Class 035. First use: First Use: 1999/01/10 First Use In Commerce: 1999/01/10 Advertising and publicity services, namely, promoting the goods, services, brand</p>

	<p>identity and commercial information and news of third parties through print, audio, video, digital and on-line medium and promoting motorcycle rallies and conferences, events, festivals and seminars related to motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles</p> <p>Class 041. First use: First Use: 1999/01/10 First Use In Commerce: 1999/01/10 Publishing, publication and editing of electronic and multimedia publications in the field of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, motorcycle lifestyles and motorcycle rallies, conferences, events, festivals and seminars</p>
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U.S. Application No.	85419354	Application Date	09/09/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ROT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 1999/06/10 First Use In Commerce: 1999/06/10 Clothing and clothing accessories, namely, t-shirts, knit shirts, tank tops, halter tops, shorts, skirts, hats, caps, beanies, do rags, bandanas, sweatshirts, jackets and vests</p> <p>Class 026. First use: First Use: 2009/06/11 First Use In Commerce: 2009/06/11 Clothing accessories, namely, cloth patches for clothing, ornamental novelty pins and pin hangers, and belt buckles</p> <p>Class 035. First use: First Use: 2005/12/01 First Use In Commerce: 2005/12/01 Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium and promoting motorcycle rallies and conferences, events, festivals and seminars related to motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles</p> <p>Class 041. First use: First Use: 1999/01/10 First Use In Commerce: 1999/01/10 Publishing, publication and editing of electronic and multimedia publications in the field of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, motorcycle lifestyles and motorcycle rallies, conferences, events, festivals and seminars; Entertainment and educational services, namely, organizing, arranging and conducting motorcycle rallies and conferences, events, festivals and seminars in the fields of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles</p> <p>Class 043. First use: First Use: 2007/05/31 First Use In Commerce: 2007/05/31</p>		

	Restaurant, bar and catering services		
U.S. Application No.	85418830	Application Date	09/09/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	R.O.T.		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 1998/06/01 First Use In Commerce: 1998/06/01 Clothing and clothing accessories, namely, t-shirts, knit shirts, tank tops, halter tops, shorts, skirts, hats, caps, beanies, do rags, bandanas, sweatshirts, jackets and vests</p> <p>Class 026. First use: First Use: 1999/06/01 First Use In Commerce: 1999/06/01 Clothing accessories, namely, cloth patches for clothing, ornamental novelty pins and pin hangers, and belt buckles</p> <p>Class 035. First use: First Use: 2003/05/30 First Use In Commerce: 2003/05/30 Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium and promoting motorcycle rallies and conferences, events, festivals and seminars related to motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles</p> <p>Class 041. First use: First Use: 1998/01/10 First Use In Commerce: 1998/01/10 Entertainment and educational services, namely, organizing, arranging and conducting motorcycle rallies and conferences, events, festivals and seminars in the fields of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles; Publishing, publication and editing of electronic and multimedia publications in the field of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, motorcycle lifestyles and motorcycle rallies, conferences, events, festivals and seminars</p>		
U.S. Registration No.	3704194	Application Date	07/24/2008
Registration Date	11/03/2009	Foreign Priority Date	NONE
Word Mark	R.O.T. RALLY		

Design Mark	<h1>R.O.T. Rally</h1>
Description of Mark	NONE
Goods/Services	<p>Class 026. First use: First Use: 1999/06/01 First Use In Commerce: 1999/06/01 Clothing accessories, namely, cloth patches for clothing, ornamental novelty pins and pin hangers, and belt buckles</p> <p>Class 035. First use: First Use: 2003/05/30 First Use In Commerce: 2003/05/30 Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium and promoting motorcycle rallies and conferences, events, festivals and seminars related to motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles</p> <p>Class 041. First use: First Use: 2003/05/30 First Use In Commerce: 2003/05/30 Publishing, publication and editing of electronic and multimedia publications in the field of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, motorcycle lifestyles and motorcycle rallies, conferences, events, festivals and seminars</p>

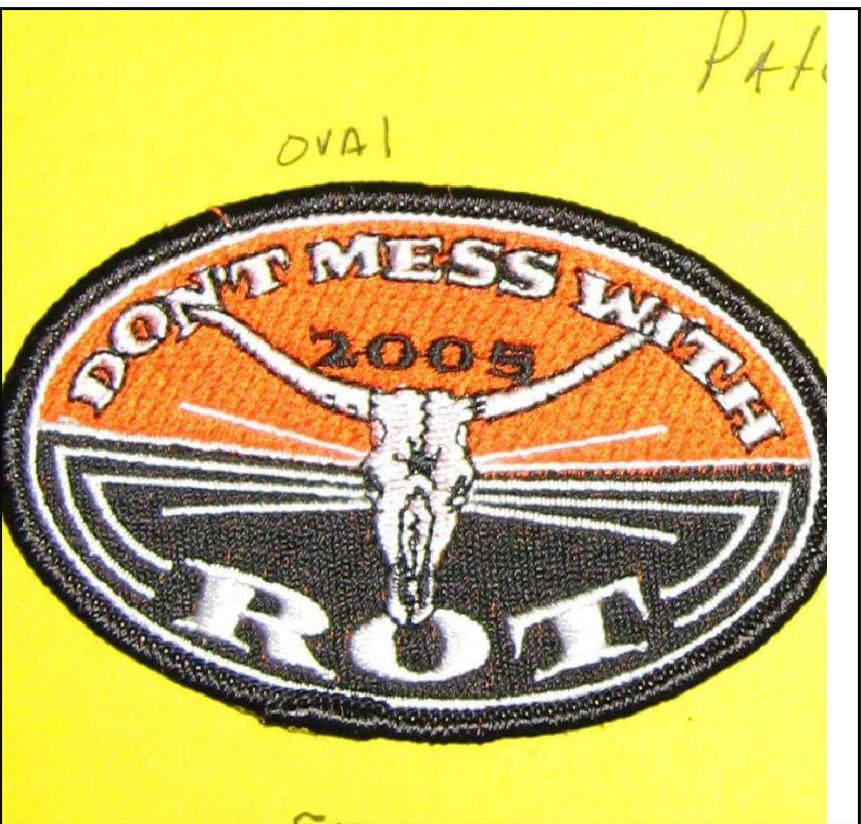
U.S. Registration No.	3713983	Application Date	07/23/2008
Registration Date	11/24/2009	Foreign Priority Date	NONE
Word Mark	R.O.T. BIKER RALLY		
Design Mark	<h1>R.O.T. Biker Rally</h1>		
Description of Mark	NONE		
Goods/Services	<p>Class 026. First use: First Use: 1998/01/10 First Use In Commerce: 1998/01/10 Clothing accessories, namely, cloth patches for clothing, ornamental novelty pins and pin hangers, and belt buckles</p> <p>Class 041. First use: First Use: 1998/01/10 First Use In Commerce: 1998/01/10 Entertainment and educational services, namely, organizing, arranging and</p>		

	conducting motorcycle rallies and conferences, events, festivals and seminars in the fields of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ROT		
Goods/Services	Wallets, purses, hand bags		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark			
Goods/Services	Wallets		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	Clothing accessories, patches

Attachments	77530017#TMSN.jpeg (1 page)(bytes) 77529960#TMSN.jpeg (1 page)(bytes) 85419354#TMSN.jpeg (1 page)(bytes) 85418830#TMSN.jpeg (1 page)(bytes) 77530486#TMSN.jpeg (1 page)(bytes) 77529921#TMSN.jpeg (1 page)(bytes) ROT Wallet.jpg 2005 ROT Patch 3.jpg Republic Petition to Cancel Ogudo Mark - Statement (11.27.12).pdf (11 pages) (221712 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/
Name	Carl F. Schwenker
Date	11/27/2012

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

In re Registration of:

Registrant : Ogudo, Peter C.
Reg. No. : 4,164,790
Mark : ADAM LOOPHOLE PRESENTS ROT APPAREL
Registration Date : June 26, 2012

REPUBLIC OF TEXAS BIKER RALLY, INC., :
Petitioner :
 :
 :
v. : Cancellation No. _____
 :
PETER C. OGUDO, :
Registrant/Respondent :

Via Electronic Filing
Commissioner for Trademarks
Box TTAB, FEE
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION TO CANCEL

1. Petitioner Republic of Texas Biker Rally, Inc. ("Petitioner"), a Texas corporation having a principal place of business at 2316 Saratoga Drive, Austin, Texas 78733 believes that it will be and is being damaged by Registration No. 4,164,790 for the mark ADAM LOOPHOLE PRESENTS ROT APPAREL (the "LOOPHOLE Registration") and hereby petitions, in accordance with 37 C.F.R. § 2.111(b), to cancel said registration.

2. To the best of Petitioner's knowledge, the name and address of the current registrant of the LOOPHOLE Registration is Peter C. Ogudo ("Respondent"), an individual with a mailing address of P.O. Box 2574, Culver City, California 90231.

3. On March 5, 2010, Respondent filed an intent-to-use application, Serial No. 76/701,933, to register the mark ADAM LOOPHOLE PRESENTS ROT APPAREL (the "LOOPHOLE Mark") for use with "clothing, namely, t-shirts, vests, slacks, hooded sweatshirts, jackets, hats, footwear, shoes, sneakers, sandals, caprices, socks, slippers, jeans, undergarments, blouses, dresses, blazers, suits, pant suits, shirts, hooded sweatshirts, coats, pants, belts" in International Class 25 and for "handbags, back packs, purses, wallets, tote bags, travel bags, and carry-on bags" in International Class 18 ("Respondent's Application").

4. On March 15, 2012, Respondent filed a Statement of Use to allege a date of first use of the mark of August 28, 2008 and a date of first use of the mark in interstate commerce of August 28, 2008. Attached to Respondent's Statement of Use were specimens of use consisting of a t-shirt, a tote bag and two labels. On May 25, 2012, the United States Patent and Trademark Office ("USPTO") issued a notice of acceptance of Respondent's statement to allege use.

5. The LOOPHOLE Mark registered on June 26, 2012.

6. Upon information and belief, prior to June 26, 2012, Respondent produced and sold only modest amount of goods, if any, under the LOOPHOLE Mark in a geographically limited area.

7. Upon information and belief, Respondent's sales of its goods which bear the LOOPHOLE Mark was, at most, in limited or minimal quantities.

8. Petitioner is the owner of the following U.S. trademark registrations in the USPTO (the "ROT Registrations"):

Word Mark	Categories of Registered Goods & Services
<p>ROT RALLY</p> <p>U.S. Reg. No. 3,678,565</p> <p>Dated: September 8, 2009</p> <p>Filed: July 23, 2008</p>	<p>IC 025. US 022 039. G & S: Clothing and clothing accessories, namely, t-shirts, knit shirts, tank tops, halter tops, shorts, skirts, hats, caps, beanies, do rags, bandanas, sweatshirts, jackets and vests. FIRST USE: 20051201. FIRST USE IN COMMERCE: 20051201</p> <p>IC 035. US 100 101 102. G & S: Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium. FIRST USE: 19980608. FIRST USE IN COMMERCE: 19980608</p> <p>IC 041. US 100 101 107. G & S: Publishing, publication and editing of electronic multimedia publications and productions featuring motorcycle rallies and conferences, events, festivals and seminars related to motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles. FIRST USE: 19980608. FIRST USE IN COMMERCE: 19980608</p>
<p>ROT BIKER RALLY</p> <p>U.S. Reg. No. 3,671,828</p> <p>Dated: August 25, 2009</p> <p>Filed: July 23, 2008</p>	<p>IC 025. US 022 039. G & S: Clothing and clothing accessories, namely, t-shirts, knit shirts, tank tops, halter tops, shorts, skirts, hats, caps, beanies, do rags, bandanas, sweatshirts, jackets and vests. FIRST USE: 19990110. FIRST USE IN COMMERCE: 19990110</p> <p>IC 035. US 100 101 102. G & S: Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium and promoting motorcycle rallies and conferences, events, festivals and seminars related to motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles. FIRST USE: 19990110. FIRST USE IN COMMERCE: 19990110</p> <p>IC 041. US 100 101 107. G & S: Publishing, publication and editing of electronic and multimedia publications in the field of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, motorcycle lifestyles and motorcycle rallies, conferences, events, festivals and seminars. FIRST USE: 19990110. FIRST USE IN COMMERCE: 19990110</p>
<p>R.O.T. RALLY</p> <p>U.S. Reg. No. 3,704,194</p> <p>Dated: November 3, 2009</p> <p>Filed: July 24, 2008</p>	<p>IC 026. US 037 039 040 042 050. G & S: Clothing accessories, namely, cloth patches for clothing, ornamental novelty pins and pin hangers, and belt buckles. FIRST USE: 19990601. FIRST USE IN COMMERCE: 19990601</p> <p>IC 035. US 100 101 102. G & S: Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium and promoting motorcycle rallies and conferences, events, festivals and seminars related to motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles. FIRST USE: 20030530. FIRST USE IN COMMERCE: 20030530</p> <p>IC 041. US 100 101 107. G & S: Publishing, publication and editing of electronic and multimedia publications in the field of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, motorcycle lifestyles and motorcycle rallies, conferences, events, festivals and seminars. FIRST USE: 20030530. FIRST USE IN COMMERCE: 20030530</p>

<p>R.O.T. BIKER RALLY</p> <p>U.S. Reg. No. 3,713,983</p> <p>Dated: November 24, 2009</p> <p>Filed: July 24, 2008</p>	<p>IC 026. US 037 039 040 042 050. G & S: Clothing accessories, namely, cloth patches for clothing, ornamental novelty pins and pin hangers, and belt buckles. FIRST USE: 19980110. FIRST USE IN COMMERCE: 19980110</p> <p>IC 041. US 100 101 107. G & S: Entertainment and educational services, namely, organizing, arranging and conducting motorcycle rallies and conferences, events, festivals and seminars in the fields of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles. FIRST USE: 19980110. FIRST USE IN COMMERCE: 19980110</p>
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9. Petitioner filed each of its ROT Registrations prior to Respondent's filing and alleged date of first use of the LOOPHOLE Mark. Petitioner's use of each of the Marks identified in the ROT Registrations began several years prior to Respondent's filing and alleged date of first use of the LOOPHOLE Mark.

10. Petitioner is also the owner of the following pending U.S. trademark applications in the USPTO (the "ROT Applications"):

Word Mark	Categories of Registered Goods & Services
<p>ROT</p> <p>U.S. Ser. No. 85/419,354</p> <p>Filed: September 9, 2011</p>	<p>IC 025. US 022 039. G & S: Clothing and clothing accessories, namely, t-shirts, knit shirts, tank tops, halter tops, shorts, skirts, hats, caps, beanies, do rags, bandanas, sweatshirts, jackets and vests. FIRST USE: 19990610. FIRST USE IN COMMERCE: 19990610</p> <p>IC 026. US 037 039 040 042 050. G & S: Clothing accessories, namely, cloth patches for clothing, ornamental novelty pins and pin hangers, and belt buckles. FIRST USE: 20090611. FIRST USE IN COMMERCE: 20090611</p> <p>IC 035. US 100 101 102. G & S: Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium and promoting motorcycle rallies and conferences, events, festivals and seminars related to motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles. FIRST USE: 20051201. FIRST USE IN COMMERCE: 20051201</p> <p>IC 041. US 100 101 107. G & S: Publishing, publication and editing of electronic and multimedia publications in the field of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, motorcycle lifestyles and motorcycle rallies, conferences, events, festivals and seminars; Entertainment and educational services, namely, organizing, arranging and conducting motorcycle rallies and conferences, events, festivals and seminars in the fields of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles. FIRST USE: 19990110. FIRST USE IN COMMERCE: 19990110</p> <p>IC 043. US 100 101. G & S: Restaurant, bar and catering services. FIRST USE: 20070531. FIRST USE IN COMMERCE: 20070531</p>

<p>R.O.T.</p> <p>U.S. Ser. No. 85/418,830</p> <p>Filed: September 9, 2011</p>	<p>IC 025. US 022 039. G & S: Clothing and clothing accessories, namely, t-shirts, knit shirts, tank tops, halter tops, shorts, skirts, hats, caps, beanies, do rags, bandanas, sweatshirts, jackets and vests. FIRST USE: 19980601. FIRST USE IN COMMERCE: 19980601</p> <p>IC 026. US 037 039 040 042 050. G & S: Clothing accessories, namely, cloth patches for clothing, ornamental novelty pins and pin hangers, and belt buckles. FIRST USE: 19990601. FIRST USE IN COMMERCE: 19990601</p> <p>IC 035. US 100 101 102. G & S: Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium and promoting motorcycle rallies and conferences, events, festivals and seminars related to motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles. FIRST USE: 20030530. FIRST USE IN COMMERCE: 20030530</p> <p>IC 041. US 100 101 107. G & S: Entertainment and educational services, namely, organizing, arranging and conducting motorcycle rallies and conferences, events, festivals and seminars in the fields of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, and motorcycle lifestyles; Publishing, publication and editing of electronic and multimedia publications in the field of motorcycles, motorcycle riding, motorcycle construction, maintenance and repair, motorcycle lifestyles and motorcycle rallies, conferences, events, festivals and seminars. FIRST USE: 19980110. FIRST USE IN COMMERCE: 19980110</p>
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11. Petitioner's use of each of the Marks identified in the ROT

Applications began several years prior to Respondent's filing and alleged date of first use of its LOOPHOLE Mark.

12. Collectively, the marks which are the subject of the ROT Registrations and ROT Applications are referred to as the ROT Marks.

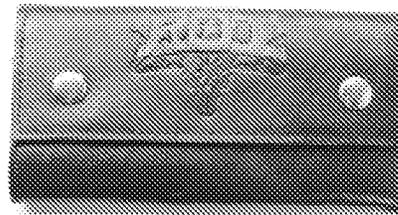
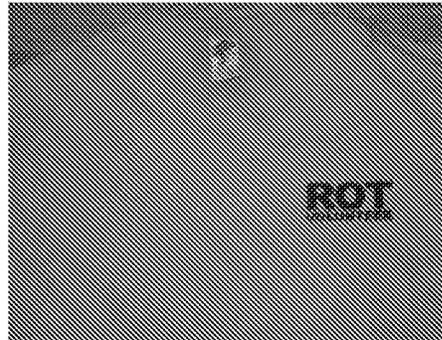
13. Since at least as early as 1999, Petitioner has been, and is now, using the ROT Marks in connection with clothing (e.g., shirts, t-shirts, vests, caps, hats, etc.) and clothing accessories (e.g., wallets, bandanas, pins, patches, bags, etc.), as well as in connection with other goods and services.

14. Petitioner's use of the ROT Marks has been valid and continuous since their date of first use.

15. Petitioner's use of its ROT Marks and Petitioner's filing of its applications for the ROT Registrations pre-date both Respondent's first use of,

and application for registration of, the LOOPHOLE Mark, and establishes the priority of Petitioner's ROT Marks.

16. Representative examples of Petitioner's use of its ROT Mark (Serial No. 85/419,354) that pre-date Respondent's mid-2008 first use of, and early-2010 application for registration of, the LOOPHOLE Mark, include the following:



17. Petitioner's ROT Marks are symbolic of extensive goodwill established by Petitioner, have acquired a high degree of recognition through continued use and expenditures of time, effort and money in advertising and promotion, and serves as a unique identifier of the goods and services offered by Petitioner since at least 1998.

18. Respondent's LOOPHOLE Mark is similar to Petitioner's ROT Mark in that all marks prominently incorporate the "ROT" element (or the substantially and phonetically similar "R.O.T." element).

19. The goods which bear Respondent's and Petitioner's marks, namely, clothing and clothing accessories, are identical.

20. Upon information and belief, Respondent's goods with which it uses the LOOPHOLE Mark, as claimed in Respondent's Application, and the products with which Petitioner uses its ROT Marks are offered for sale and are sold through the same channels of trade and offered and sold to the same class of purchasers.

COUNT I LIKELIHOOD OF CONFUSION

21. Petitioner hereby incorporates by reference the preceding allegations.

22. Petitioner's dates of use of each of its ROT Marks are prior to the date of filing of Respondent's Application and the date of Respondent's claimed date of first use of his LOOPHOLE Mark.

23. Petitioner's ROT Registrations are valid and subsisting and are *prima facie* evidence of Petitioner's exclusive right to use the ROT Marks in commerce on the goods specified in such registrations.

24. On July 11, 2011, the United States District Court for the Western District of Texas (Austin Division) signed and entered final judgment finding and determining that Petitioner had established and owns trademarks rights (along with all associated goodwill) in the marks “ROT” and “R.O.T.” and in the marks contained in Petitioner’s four (4) federally registered ROT Registrations Reg. nos. 3,678,565 (ROT RALLY), 3,671,828 (R.O.T. RALLY), 3,704,194 (ROT BIKER RALLY) and 3,713,983 (R.O.T. BIKER RALLY) and that each of these marks are valid, enforceable and “famous within the meaning of 15 U.S.C. 1125(c) and have become distinctive of [Petitioner’s] goods and services.”

25. Though Petitioner’s use of its ROT Marks, including its “ROT” Mark (Serial No. 85/419,354), predate Respondent’s use of its LOOPHOLE Mark, the USPTO issued an Office Action dated September 6, 2012 stating that a likelihood of confusion existed in Class 25 and 26 between Petitioner’s “ROT” Mark and Respondent’s LOOPHOLE Mark, as follows:

“Registrant is using ADAM LOOPHOLE PRESENTS ROT APPAREL. The impression created by registrant’s mark is the presentation of an apparel line called ROT. Applicant is using ROT. The mere deletion of wording from a registered mark may not be sufficient to overcome a likelihood of confusion. See *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010); *In re Optica Int’l*, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii). Applicant’s mark does not create a distinct commercial impression because it contains the same common wording as registrant’s mark, and there is no other wording to distinguish it from registrant’s mark. The marks, therefore, are highly similar.”

26. Though Petitioner’s use of its “R.O.T.” Mark (Serial No. 85/418,830) also predates Respondent’s use of its LOOPHOLE Mark, the USPTO issued an Office Action dated September 28, 2012 stating that a likelihood of confusion

existed in Class 25 and 26 between Petitioner's "R.O.T." Mark and Respondent's LOOPHOLE Mark, as follows:

"Registrant is using ADAM LOOPHOLE PRESENTS ROT APPAREL. The impression created by registrant's mark is the presentation of an apparel line called ROT. Applicant is using R.O.T. ROT and R.O.T. are essentially phonetic equivalents and thus sound similar. Similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar.

27. Accordingly, Petitioner's prior use of its "ROT" and "R.O.T." Marks and Respondent's subsequent adoption of the LOOPHOLE Mark in categories of goods and services virtually identical to those covered by Petitioner's ROT Applications, which both prominently incorporate the terms "ROT" and "R.O.T.", creates a likelihood of confusion with Petitioner's ROT Applications and Marks and establishes a *prima facie* case for cancelation of Respondent's LOOPHOLE Mark.

28. Each of Petitioner's ROT Registrations issued in 2009 and all predate Respondent's March 5, 2010 filing date of his application for the LOOPHOLE Mark. Petitioner's ROT RALLY and ROT BIKER RALLY registered marks (U.S. Reg. nos. 3,678,565 and 3,704,194) cover, in part, International class 025 for apparel such as t-shirts, tank tops, jackets and vests and the R.O.T. RALLY and R.O.T. BIKER RALLY registered marks (U.S. Reg. nos. 3,671,828 and 3,713,983) cover, in part, International class 026 for accessories including patches, pins and belt buckles.

29. Accordingly, Respondent's subsequently-filed application for the LOOPHOLE Mark in categories of goods and services virtually identical to those covered by Petitioner's four pre-existing ROT Registrations already prominently

incorporating the terms “ROT” and “R.O.T.” creates a likelihood of confusion with Petitioner’s ROT Registrations and establishes a *prima facie* case for cancelation of Respondent’s LOOPHOLE Mark.

30. In view of the similarity of the respective marks, identical channels of trade and the identical goods offered for sale by the respective parties, Respondent’s LOOPHOLE Mark so resembles Petitioner’s ROT Marks, previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Respondent’s goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Petitioner.

COUNT II DILUTION

31. Petitioner hereby incorporates by reference the preceding allegations.

32. Respondent’s first began use of the LOOPHOLE Mark in commerce after Petitioner’s ROT Marks were already famous.

33. In view of the similarity of the respective marks, similar channels of trade and the goods and services offered for sale by the respective parties, Respondent’s LOOPHOLE Mark so resembles Petitioner’s ROT Marks (including its “ROT” Mark (Serial No. 85/419,354) and its “R.O.T.” Mark (Serial No. 85/418,830), previously used in the United States, and not abandoned, as to be likely to dilute, including by blurring or by tarnishment, the exclusive rights that Petitioner enjoys and is entitled to exclusively enjoy in its ROT Marks.

WHEREFORE, Respondent Peter C. Ogudo's ADAM LOOPHOLE PRESENTS ROT APPAREL Mark, Registration No. 4,164,790 is damaging to Petitioner Republic of Texas Biker Rally, Inc., which, accordingly, requests that the instant Petition to Cancel be granted and that the aforesaid registration be cancelled.

The fee required by §2.6(a)(16) is electronically submitted herewith.

Respectfully submitted,

LAW OFFICES OF CARL F. SCHWENKER

By: _____ /s/

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Dated: November 27, 2012