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Filing date: **03/25/2013**

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

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|------------------------|---|
| Proceeding | 92056510 |
| Party | Plaintiff Republic of Texas Biker Rally, Inc. |
| Correspondence Address | CARL F SCHWENKER LAW OFFICES OF CARL F SCHWENKER 706 GUADALUPE STREET AUSTIN, TX 78701 UNITED STATES cfslaw@swbell.net |
| Submission | Opposition/Response to Motion |
| Filer's Name | Carl F. Schwenker |
| Filer's e-mail | cfslaw@swbell.net |
| Signature | /cfs/ |
| Date | 03/25/2013 |
| Attachments | Republic's Objection to Ogudo's Misc Filing (3.25.13).pdf (4 pages)(87026 bytes) |

**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. 92056510
 :
 :
PETER C. OGUDO, :
Registrant/Respondent :

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

PETITIONER’S OBJECTION TO RESPONDENT’S MARCH 11th FILING

On March 5, 2013, the TTAB suspended this action pending its determination on Petitioner Republic of Texas Biker Rally, Inc.’s (“Petitioner”) *Motion to Strike Respondent’s Purported “Answer” and for Default Judgment or, alternatively, for Judgment on the Pleadings* dated January 23, 2013 (“Petitioner’s Motion”). Subsequent to suspension, on March 11, 2013, a disjointed, rambling document filed by registrant Peter C. Ogudo (“Respondent”) entitled *Registrant/Respondent’s Answer to Petitioner’s Motion and Registrant/Respondent’s Motion for Summary Judgment* (“Respondent’s MSJ”) that appears to be dated “2/28/13” and that visibly fails to comply with applicable Federal Rules was logged into TTAB’s online electronic filing system.

Like Respondent's other filings in this matter, Respondent's MSJ is befuddling and facially non-compliant with applicable rules. Despite the TTAB's previous suspension of proceedings to consider Petitioner's Motion, Respondent's MSJ nevertheless variously asks in scattershot fashion for "summary judgment," contends that "Registrant/Respondent is entitled to judgment as a matter of law," and asserts that that the TTAB should "dismiss Petitioner's frivolous pleadings for cancellation." Respondent's MSJ at pp. 1-2. Respondent's MSJ provides no basis for any such relief—not that it would be appropriate at this time anyway, *see, e.g.*, Fed. R. Civ. P. 12(c) and 56 —and Respondent clearly is not entitled to even seek such relief since Respondent still has not yet properly answered Petitioner's Petition for Cancellation. *See generally*, Petitioner's Motion. Accordingly, Petitioner hereby objects to Respondent's recently-filed Respondent's MSJ, which wholly fails to comply with either the Federal Rules or with the TTAB's suspension order.

Importantly, Respondent, in Respondent's MSJ, also now specifically concedes that Petitioner Republic's use of its ROT mark pre-dates Respondents' use of its "Adam Loophole Presents ROT Apparel" mark in the LOOPHOLE Registration at issue in this cancellation proceeding (U.S. Registration No. 4,164,790). *See* Respondent's MSJ at p. 1 ("Granted, **petitioner's so called common law ROT usage predates Registrant/Respondent's.**") (emphasis added). Respondents' present admission that Petitioner was using the ROT mark first—coupled with Petitioner's four cited prior U.S. Registrations incorporating its ROT and R.O.T. marks and the previously submitted federal

court judgment ruling that Petitioner owns the ROT mark, which the court deemed famous—establishes another reason that the TTAB must grant Petitioner’s request in its prior motion for judgment on the pleadings and cancel Respondent’s U.S. Registration No. 4,164,790.¹

Accordingly, in view of these and the previous grounds cited in Petitioner’s Motion and Petitioner’s Petition, the Board should GRANT Petitioner’s motion(s) and, whether by a judgment on the pleadings or a default judgment, immediately cancel Respondent’s LOOPHOLE Registration (U.S. Registration No. 4,164,790).

Respectfully submitted,

LAW OFFICES OF CARL F. SCHWENKER

By: _____ /s/

Carl F. Schwenker
706 Guadalupe Street
Austin, Texas 78701
Tel. (512) 480-8427
Fax (512) 857-1294
cfslaw@swbell.net

Attorneys for Petitioner
Republic of Texas Biker Rally, Inc.

Dated: March 25, 2013

¹ To the extent the TTAB treats Respondent’s MSJ as an answer (as Respondent attempts to entitle it, see Respondent’s MSJ at p. 1), the document once again fails to comply with Fed. R. Civ. P. Rule 8’s paragraph-by-paragraph admission/denial pleading requirement and thus is an improper answer, wholly fails to challenge Petitioner’s claim for dilution, and facially concedes prior use of the ROT mark by Petitioner. Accordingly, Petitioner once again would be entitled to both default judgment (as Respondent has failed to properly answer) and to judgment on the pleadings (as Respondent concedes it subsequently adopted Petitioner’s famous prior mark).

