

In The United States Patent And Trademark Office. Before the Trademark Trial and Appeal Board

In re registration of

Registration #: 4164,790

Mark: Adam Loophole Presents Rot Apparel

Registration Date: June 26 2012

Republic of Texas Biker Rally, Inc: Petitioner

Vs

Peter C. Ogudo, Registrant/ Respondent

Cancellation # 92056510

# 76701933

Registrant/Respondent's Answer To Petitioner's Motion for A More Definite statement

1. Registrant/Respondent, Adam Loophole Presents Rot Apparel, registration # 4164,790 denies damaging petitioners mark, known as Republic of Texas Biker Rally.
2. Registrant/Respondent admits that its current address remains at Po box 2574 Culver City, CA 90231
3. Registrant/Respondent admits to allegations made in paragraph three.
4. Registrant/Respondent admits to allegations made in paragraph four.
5. Registrant/Respondent admits to allegations made in paragraph five.
6. Registrant/Respondent also admits to production of & merchandizing of Loophole Products prior to 6/26/12, but not "modest amount of goods," and/or in a geographically limited area.
7. Registrant/ Respondent deny its sale of goods in limited quantities.
8. Registrant/Respondent admits Petitioner's duly registered ROT – prefaced marks as mentioned in paragraph eight, bearing appropriately assigned registration numbers, but denies sufficient knowledge of exclusive use of the word "ROT".
9. Registration/Respondent denies sufficient knowledge of petitioner's alleged prior fillings of its Rot registrations and also denies knowledge of Rot registration prior use.
10. Registrant/Respondent denies sufficient knowledge of petitioner's pending ROT marks applications prior to respondent's filings of the Loophole mark.
11. Registrant/Respondent denies sufficient knowledge of petitioner's alleged prior use of ROT marks up until this case was file.
12. Registrant/Respondent admits to conglomeration of ROT marks for purposes of convenience in this case.
13. Registrant/Respondent denies sufficient knowledge of petitioner's alleged use of Rot marks since 1999.
14. Registrant/Respondent denies sufficient knowledge of petitioner's alleged valid and continuous prior use of Rot marks since their date of first use.



\*12-20-2013\*

15. Registrant/Respondent denies sufficient knowledge of petitioner's representative products allegedly existing prior to Registrant/Respondent's products and services; and also denies any priority of use of such unrelated marks.
16. Registrant/Respondent denies any knowledge of petitioner's allegations in paragraph sixteen.
17. Registrant/Respondent is without knowledge and information as regards allegation in paragraph seventeen.
18. Registrant/Respondent denies similarity of both marks, even if there is a mere ROT-related element that does not phonetically alter the elemental differentiation of both marks.
19. Registrant/Respondent admits allegation made in paragraph nineteen.
20. Registrant/Respondent admits both goods and services are offered through same channel, but both goods and services are sold to different purchasers; viz urban hip hop consumers and motorcycle biker aficionados respectively.

Count 1- Denial to likelihood of confusion

21. Registrant/Respondent hereby incorporates by reference the preceding denials and admissions.
22. Registrant/Respondent, upon reasonable belief, denies knowledge of petitioner's alleged use of Rot marks prior to date of filing for and first use of Loophole marks.
23. Registrant/Respondent denies petitioners allegation in paragraph 23.
24. Registrant/Respondent admits knowledge of petitioner's alleged July 11<sup>th</sup>, 2011 final consent judgment of United District Court for the Western District of Texas (Austin Division) vs. Bikini Bar & Grill, as it relates to Petitioner's federally registered marks against Bikini Bar & Grill passing off petitioner's product line, a passing off case unrelated to this one.
25. Registrant/Respondent admits knowledge of USPTO's office action dated September 6<sup>th</sup>, 2012 which Petitioner read out of context. Office action acknowledged likelihood of confusion while still refusing Petitioner's mark, but however advised petitioner could respond to refusal by submitting evidence and arguments in support of registration.
26. Registrant/Respondent again admits knowledge of USPTO's office action dated September 28<sup>th</sup>, 2012, as alleged by petitioner stating, " that a likelihood of confusion existed in class 25 and 26 between petitioner's Rot marks and Registrant/Respondent's Loophole marks. Same denials as in paragraphs 25 apply.
27. Registrant/Respondent therefore accordingly denies any identity of goods and services both of petitioners and respondents; and also denies any likelihood of confusion of both marks and their goods and services.
28. Registrant/Respondent denies prior knowledge of petitioners alleged 2009 Rot filings and registration for goods and services in class 25 and 26 and any conflict therewith as alleged.
29. Registrant/Respondent therefore denies petitioners alleged claim of likelihood of confusion between petitioners and respondents products and services and/or identity.
30. In conclusion, Registrant/Respondent denies any similarity or resemblance or likelihood of confusion or mistake or deception or passing off of both goods and services, but admits to channels of trade in commerce.

Count 11: Denial to Petitioner's Claim of Dilution

31. Registrant/Respondent hereby incorporates by reference the preceding denials and admissions to petitioner's allegations.
32. Registrant/Respondent admits first use in commerce starting 8/28/2008, but denies knowledge of Petitioner's alleged fame in paragraph 32.
33. In light of Registrant/Respondent's denials of claim of similarity, resemblance, dilution, blurring, or tarnishment as alleged by petitioner, Petitioner therefore has no exclusive right to the common wording "ROT". Each of petitioner's USPTO issued certificates specifically said, for example, "No claim is made to exclusive right to use RALLY apart from the mark as shown". Same caveat appeared in each of petitioner's certificates of registration of various marks, meaning Petitioner cannot detach the wording "ROT" from other words.

Affirmative Defenses

The Petition for cancellation although crafted to appear valid is based on statements taken out of context and references rights that don't exist in law and fact.

1. Petitioner has not and will not be damaged by Registrant/Respondent's mark and hence lacks standing to petition for cancellation. Petitioner assumed its own risks and has no rights to generic word "ROT", and any claim to damage is of petitioner's own doing. Petitioner has already identified its own interest in the generic descriptive term "ROT" by affixing words "RALLY", "BIKERS", "R.O.T.", and the like.
2. Petitioner is barred from seeking cancellation of Registrant/Respondent's trademark under doctrine of laches, estoppels, waiver and unclean hands.

Count 1- Defenses to likelihood of confusion

1. Registrant/Respondent hereby incorporates by reference the preceding denials to petitioner's allegations; together with the following defenses to likelihood of confusion.
2. Lack of relatedness of goods and services for both marks S. 1207. 01 (a)
3. Lack of identity of both marks 1207. 01
4. Both marks serve different clientele; viz Bikers for petitioner and Hip-Hop clientele for respondent.
5. Dissimilarity of both competing marks in the stream of commerce 1207. 01 (b)
6. Differentiation of contextual word marks for both marks 1207. 01 (b) (i)
7. Dissimilarity of both marks in appearance 1207. 01 (b)(ii)
8. Dissimilarity in sound for both marks 1207. 01 (b)(iv)
9. Dissimilarity in meaning for both marks 1207. 01 (b)(v)
10. Dissimilarity of both marks in multiple wordings associated with respective marks 1207. 01 (b)(viii)
11. Dissimilarity of designs for both marks 1207. 01 (c)
12. Resolution of doubts as to similarity should be resolved in respondent's favor 1207. 01 (d)(i)

13. Petitioner's failure to prove actual confusion, not just likelihood of confusion 1207. 01 (d)(ii)
14. Prior decisions of examining attorneys have approved other "ROT" related trademarks 1207. 01 (d)(vi)

Count 2- Defenses to Dilution

1. Registrant/Respondent hereby incorporates by reference the preceding denials to petitioners allegation of dilution; together with the following defenses to dilution
2. No protection for distinctiveness

Dilution does not protect descriptive marks since they possess no inherent distinctive quality, ROT is inherently deficient in distinctiveness and is not compensated by fact mark is known by just riders and bikers. "ROT biker" or "ROT Rally", merely describe a rally or gathering of like minded motorcycle aficionados.

3. Non commercial use

Registrant/Respondent has never at any time in the past or presently projected or produced goods or services bearing petitioners "ROT Biker" or "ROT rally" logos. Respondent, instead has used its legitimately approved trademark name on its goods and services; to wit: "Adam Loophole Presents Rot Appare!"

4. Requirement of both fame and distinctiveness

Some famous marks with common names as American, National, federated, ROT, first, federated, merit or the like are not allowed by statute to exclude all new entrants. Therefore, petitioner has not proved separate distinctiveness to obtain relief.

5. Lack of showing of actual dilution

Petitioner has failed to show "actual, consummated harm. Petitioner has just relied on merely likelihood of dilution without going any further than that. See Moseley v. v. Secret Catalogue 537 US 418 2003

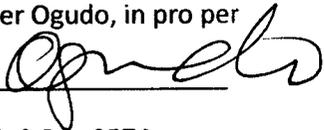
Therefore, Registrant/Respondent denies that its goods and services are in any manner or form damaging to petitioners and accordingly prays this board to dismiss the petition to cancel.

Each clientele of the parties are material and should be able to distinguish both products from each other. Both marks are visually and phonetically distinguishable and create divergent impressions. A reasonable person would not consider the marks confusingly similar. Respondent has also established due diligence search prior to being granted registration by examining attorneys of USPTO. One mark is "Republic of Texas" the other is "Rule of thumb". In view of the foregoing, the petitioner has not met the burden of proof of similarity and dilution and passing off as erroneously alleged in the pleadings.

WHEREFORE, Registrant/Respondent prays that this cancellation proceeding be dismissed with prejudice.

Respectfully submitted.

Peter Ogudo, in pro per

By 

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Dated 12/15/13

Certificate of service

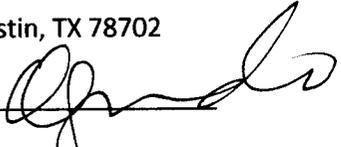
I hereby certify that on 12/15/13 2013, I served this answer to petition for cancellation by mailing a copy thereof by registered mail, return receipt registered, addressed to petitioner's attorney's office of record as follows:

Carl f. Schwenker

Law offices of Carl Schwenker

1101 east 11<sup>th</sup> Str.

Austin, TX 78702

By 

Peter Ogudo