

IN THE UNITED STATES PATENT AND TRADE MARK OFFICEBEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

76, 701, 933

PETITIONER: REPUBLIC OF TEXAS BIKER RALLY, INC.: 2316 SARATOGA DRIVE, AUSTIN, TX 78733 USAATTORNEY INFO: CARL F. SCHWENKER, LAWS OFFICES OF CARL F. SCHWENKER, 706 GUADALUPE STREET AUSTIN, TX 78701, USAESTA507733RESPONDENT/REGISTRANT: PETER OGUDO, P.O. BOX 2574, CULVER CITY CALIFORNIA 90231REGISTRATION #: 4164790 REGISTRATION DATE: 06/26/2012 Cancellation #92056570RE: PETITION FOR CANCELLATION FOR CLASSES 018 AND 025 / MARK: ADAM LOOPHOLE PRESENTS ROT APPARELANSWER TO DISMISS PETITION

1. Respondent/Registrant Peter C. Ogudo, owner Adam Loophole Presents Rot Apparel, an individual having a business address @ Box 2574, Culver City, California 90231 do hereby continue to claim legal ownership of Adam Loophole Presents Rot Apparel (registration #: 4164790), and hereby answers , to dismiss this arbitrarily frivolous & preposterous petition by petitioner to cancel Respondent/Registrant's legally registered mark.
2. On March 5<sup>th</sup>, 2010 Respondent/Registrant filed with the USPTO, an intent to use application, serial #: 76/701,933 to register Adam Loophole Presents Rot Apparel for use with classes 018 & 025.
3. On March 15<sup>th</sup>, 2012 Respondent/Registrant filed with the USPTO, a statement of use with 1<sup>st</sup> use of mark in interstate commerce being August 28<sup>th</sup> 2008.
4. The Adam Loophole Presents Rot Apparel, after due diligence search for availability and conflict purposes, by esteemed USPTO attorneys; and subsequent clearance thereto, was registered on June 26<sup>th</sup>, 2012.
5. Petitioner falsely and illegally claims ownership and exclusive sole proprietary rights to the phrase "ROT REGISTRATIONS", and/or anything ROT RELATED, even if such bogus claim usurps others right to the use of the common word "rot" as it exists in the dictionary and also general English usage. Respondent /Registrant respectfully avers that both Petitioner and Respondent can co-exist using ROT related names that have different prefixes and suffixes attached to the organic moniker.
6. Conversely, Respondent/ Registrant in hypothetically probable scenario, does not and will not in any manner, make a claim against Petitioner for sole use of, for example, Adam Loophole Presents Rot Rally or Adam Loophole Presents Rot Bikers or Adam Loophole Presents Biker Rally or the amusing like. For to make such bogus and arbitrary claims would amount to overreaching and sole personal colonizing of English language and usage. Truth and logic be told! Respondent/ Registrant , however lays legitimate legal claims to only Adam Loophole Presents Rot Apparel, a name based phrased mark that absolutely differs from and has no relationship to

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Petitioners names; such as Rot Rally, Rot Biker Rally R.O.T., R.O.T Rally and R.O.T Biker Rally.

7. For starters and general perspective, let it be known that Petitioner's pending US trademark application for ROT Applications filed September 2011 is a follow up action or subsequent filing to the legally registered Adam Loophole Presents ROT Apparel. Respondent/Registrant avers that such pending application by Petitioner, if at all subsequently granted, has no bearing to the life and legal registration of Adam Loophole Presents ROT Apparel that preceded it.
8. Petitioners "mightily" dangling use of ROT registration and ROT application or "ROT marks" confuses the issues at stake. Petitioner continues to erroneously assume that third parties usage of anything ROT related is an infringement of petitioner's trademark. Such wrong assumption is at best preposterous; and at worst arbitrary and also has no legal basis and foundation in the general stream of commerce. It only portrays tyranny, dictatorship and colonizing of words in the dictionary and Basic English usage. It is also counter to free enterprise system.
9. Petitioner, for special effects and brownie points purposes, dubiously truncated Respondent/Registrant's trademark by reading "ROT" aside and separate from the original legal meaning intended by Respondent/Registrant. For clarifications, Respondent/Registrant's full mark is and has been, "Adam Loophole Presents ROT Apparel. Petitioner's conduct is out of context, confuses the issues and also assumes extraneous facts to original issues at hand. The issues here are whether names such as Rot Rally or Rot Bikers or the like, are likely to be confused with Adam Loophole Presents Rot Apparel? Like comparing apples and oranges, the answer is No!
10. Respondent/Registrant's mark, named Adam Loophole Presents ROT Apparel, therefore has no relationship to petitioner's ROT marks.
11. Respondent/Registrant's use of Adam Loophole Presents ROT Apparel has been valid and continuous since the date of first use in the stream of commerce.
12. Petitioner's reference to Loophole mark and ROT marks pretty much distinguishes the fact that petitioner has no basis both in fact and law to cancel Loophole mark. Loophole mark and ROT mark are two separate names.
13. Petitioner's representative examples of tee shirts bearing ROT mark differs from Respondent/Registrant's logo. Respondent/Registrant's mark highlights the wordings "Adam Loophole Presents ROT Apparel" with two birds at top facing each other, plus other artistic markers uniquely distinguishing it like no other.
14. Petitioners mark is Rot specific, i.e. Rot Rally or Rot Bikers while Respondent/Registrant's mark is name specific i.e. Adam Loophole Presents Rot Apparel. So both of Petitioner's mark and Respondent/Registrant's mark can co-exist alongside each other without any likelihood of confusion in the stream of commerce. Unless of course the Petitioner can show an outright family inheritance of the word "rot", this action should be dismissed.
15. Respondent's Loophole mark is neither similar to or phonetically imitates petitioner's element. ROT is at the suffix of respondent's name tag ,while ROT

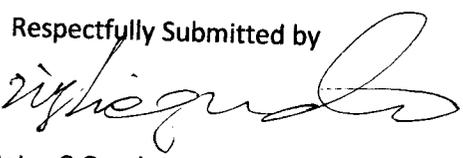
- prefixes petitioner's name tag. ROT is not a prominent mark of Loophole mark. Petitioner actually uses Loophole mark to factually delineate Loophole mark. And that's exactly the point here. Respondent's mark is prominently Adam Loophole specific with ROT Apparel ending the moniker; not ROT Rally or ROT Bikers.
16. The goods which separately bear both Petitioner's and Respondent/Registrant's marks may be identical but both marks are completely different.
  17. Likewise, goods that separately bear both petitioner's and Respondent/Registrant's marks may pass through same channel of trade and commerce but Petitioner's goods, however cater to only motorcycle riders and the like. In contrast, Respondent/Registrant's goods cater to a wider audience of mainstream buyers. Respondent/Registrant's audience, unfortunately are not referred to as Bikers or Rally. They are part of the mainstream buying public, here referred to as "buyers". Both products therefore are geared towards different audience and with different names, different marks, and different logos and have nothing in common.

#### Likelihood of Deception

18. Deception or confusion has to be considered as per persons whose states of mind are material. Do ROT Rally consumers not be able to distinguish between ROT Rally and Adam Loophole Presents Rot Apparel? Are there any implications of incorrect belief or mental impression? Petitioner's basis for filing a cancellation is rooted in hypothetical business possibilities instead of practical business probabilities. The onus is on Petitioner to discharge a balance of probabilities. And Petitioner has not done that whatsoever. Respondent/Registrant believes that both parties consumers are neither morons nor idiots and none should have issues distinguishing a product they really want to buy in the market place from the other. It is like apples and oranges!
19. Both marks are visually and phonetically distinguishable and create significant divergent impressions. In this case the visual dissimilarities in name and phonetics predominate. Petitioner places more emphasis on ROT while Respondent/Registrant places more emphasis on name. Likewise, it is like apples and oranges!
20. Would a reasonable person or observer believe the trademarks are related? Would a casual observer consider marks confusingly similar? The answer to both questions is NO.
21. Is there any likelihood of confusion as to the source of both Petitioner's and Respondent/Registrant's products? The answer to the question is NO.
22. Respondent/Registrant's recent search of the phrase, "ROT Apparel" on the USPTO TESS database returns only Adam Loophole Presents ROT Apparel, no more no less. There was no indication of ROT Rally or ROT Bikers or ROT whatever. Even the electronic technology search bears a credible corroboration to Respondent/Registrant's argument to dismiss this baseless and frivolous petition.

- 23. Likewise, another of Respondent/Registrant's follow up search of "ROT Rally" on TESS also returns only the following entries: ROT Rally or ROT Biker marks. And then again, the electronic technology search contradicts Petitioner's position.
- 24. Correspondingly, a simple search of "American Apparel" on TESS database also returns about 46 different entry records bearing different names incorporating the phrase "American Apparel". These names are owned by separate entities that co-exist with one another and yet share "American Apparel "name phrase as part of their larger trademark names.
- 25. Likewise, a mere search of "Coca Drink" on TESS also returns 5 different entries bearing Coca Drinks owned by different entities aside from Coca-Cola. A similar search of "Cola Drinks" also returns 16 different entries incorporating the word "cola" in their names and owned by different entities aside from Coca-Cola.
- 26. In conclusion, above searches by Respondent/Registrant on USPTO TESS database pretty much defines the issues at hand. That ROT Rally is different from Adam Loophole Presents ROT Apparel and also that both names can co-exist alongside each other because they are different and dissimilar products.

**WHEREOF**, petitioner's claim is frivolous, arbitrary and preposterous. Peter Ogudo, owner of Adam Loophole Presents ROT Apparel, hereby requests that this baseless and unfounded petition be dismissed.

Respectfully Submitted by  


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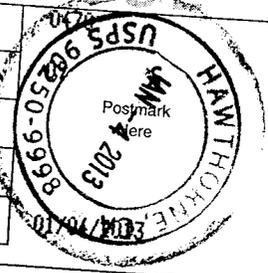
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