

IN THE USPTO

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the registration of:

Registrant: Peter C. Ogudo

Registration number: 4164790

Mark: Adam Loophole Presents ROT Apparel

Registration Date: June 26<sup>th</sup> 2012

Republic of Texas Biker Rally, INC (petitioner)

VS

Peter C. Ogudo (registrant/respondent)

Cancellation number 92056510

Registrant/Respondents answer to petitioner's motion.

Registrant/Respondent Peter C.Ogudo hereby asks this administrative panel to dismiss petitioner, Republic of Texas Biker Rally, Inc's motion to strike & or default judgment, or alternatively judgment on the pleadings. Registrant/Respondent denies any non-compliance with the applicable rules for forms of submission under 2.126, especially the timelines for dispositions, discovery, disclosure and other timelines for this administrative case. Registrant/Respondent avers that the 40day timeline to answer was achieved before 1/9/2013 and therefore asks this board to dismiss this frivolous, harassing and preposterous motion whose aim is nothing but to jump the gun and unilaterally dictate the course of the issues before this board.

Registrant/Respondent's motion to dismiss petitioner's motion to strike.

Registrant/Respondent denies any immateriality, impertinence and/or scandalousity of answers as alluded to by petitioner. Registrant/Respondent raised various material issues in answer relating to differentiation of parties trademarks and/or trade names. There are dissimilarities between the two competing marks, unlikelihood of confusion and other given factual examples, such as Coca-cola and American apparel, two well known companies that share either prefix or suffix name tags with other entities that they co-exist with in stream of commerce. Some of those 3<sup>rd</sup> party companies apart from Coca Cola & American Apparel have "Coca" or "Cola" or "American" or "Apparel", tagged to their names and yet still co-exists with Coca-cola and American Apparel respectively in the normal stream of commerce. And neither Coca Cola nor American Apparel ever pleaded for sole unilateral possession of any of the tagged words or wordings from those other 3<sup>rd</sup> party entities that happened to share tagged

wordings with them. Apparently, both Coca Cola and American Apparel all found it fit to co-exist with those 3<sup>rd</sup> party companies in the normal stream of commerce.

Registrant/Respondent's supporting evidence to dismiss Petitioner's motion.

Registrant/Respondent denies petitioner's claim of redundancy, immateriality or scandalosity in answer to pleadings filed before this board and therefore asks this board to dismiss petitioner's motion. Registrant/Respondent filed an answer to petitioner's pleadings within the USPTO trial and appeal board's 40day timeline. Registrant/Respondent whose duly registered mark met all the criteria for registration of the trademark under USPTO and which bonafide mark, after due diligence search by both Respondent/Registrant and USPTO trademark attorneys, was registered on 6/26/2012. Registrant/Respondent in his answer to Petitioner's pleadings, also wrote down legal and factual evidence supporting a claim of dissimilarity and lack of confusion between petitioner's mark and registrant/respondent's mark and went as far as giving evidence of other entities that co-exist with each other along the lines of similar prefixed or suffixed word names, yet completely different as per overall meanings in minds of their respective customers. Registrant/Respondent avers that the above mentioned factual and legal evidence are relevant to and supportive of the grounds that both petitioners and registrant/respondents respective marks are completely different and also can co-exist with each other in the normal stream of commerce without confusion.

1. Registrant/Respondent denies any lack of admission or denial to petitioner's pleading. A denial must fairly respond to substance of the allegation. A clear statement of denial will suffice such as contradictory statement, disclaimers and negative prepositions etc, that are contrary to or alternative to the petitioner's argument. It is simply a question of understanding the effect in substance of a plea. See N. Goodwin design (pty)Ltd vMoscak 1992(1)SA154(c)@162-3. See also Rule 8-1. Rule 8 general rules of pleadings. FRCP 8(E)(2) expressly permits the pleading of alternative or hypothetical claims and defenses and as many claims or defenses as a party has "regardless of consistency".

The petitioner has an obligation to assist this board in arriving at the truth and not to place undue obstacles in the path of Registrant/Respondent and must be construed to do justice. Therefore, petitioner's prayer to be stricken must be dismissed. Petitioner has not yet proved or focused on showing that ROT Biker Rally is similar to Adam Loophole Presents ROT Apparel.

Apart from the mere coincidence of "ROT" wording that appears on both Petitioner and Registrant/Respondent's names, it is Registrant/Respondent's pleasure to bring to this board's attention the fact that Petitioner's "ROT" stands for "Republic Of Texas", whereas Registrant/Respondent's "ROT" stands for "Rule Of Thumb". It is almost like night and day or the proverbial apples and oranges! Petitioner instead has focused on arm twisting both the registrant/respondent and this Board into meaningless horse playing. Petitioner unfortunately also has resorted to using bullying tactics and chest thumping to prove its frivolous claim.

2. Registrant/Respondent denies any fallacy of non compliance of forms alleged by petitioner. Please see registrant/respondent denial and argument under number 1 above.

Registrant/respondent continues to aver that petitioner needs to focus on grounds of similarity and confusion etc between the two marks and petitioner has not yet fulfilled that obligation and responsibility. Petitioner 's failure to recognize that ROT marks and Adam Loophole Presents ROT Apparel are completely different marks continues to becloud petitioner's direction and argument in this case before this esteemed Board. Registrant/Respondent therefore asks this Board to not only deny this motion but also dismiss this case before it as a waste of this Board's precious time and resources.

Registrant/Respondents Answer To Dismiss Petitioner's Motion For Judgment On The Pleadings.

Registrant/Respondent denies any admission of petitioner's baseless and unsubstantiated allegation in petitioner's petition.

Answer in support of Registrant/Respondents prayer to dismiss petitioner's motion for judgment on the pleadings.

Registrant/respondent in its answer to petitioner's earlier pleadings enumerated grounds upon lack of similarity between petitioner's and registrant/respondent's mark. For example: ROT Bikers Rally is totally different from Adam Loophole presents ROT apparel.

Registrant/Respondent also refers this Board to fact that a USPTO TESS search of plaintiff and defendant's marks turn up different results and also made reference to another fact, using the very popular and well heeled Coca-Cola and American Apparel examples; that both marks can co-exist with each other in the normal stream of commerce without any likelihood of confusion.

Petitioner continues to build his case like one who almost relies on "building something on nothing" by using predates, timelines etc. Petitioner, however ignores the fact that the 2marks are completely different in meanings, and with different prefixes and suffixes tagged to each respective mark, all for purposes of differentiation.

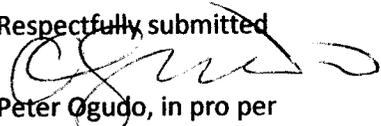
A motion for judgment on the pleadings has been characterized or granted only where no issue of material fact exists or movant entitled to judgment as a matter of law. Here non movant has pleaded facts supporting his denials and has proved success and bonafide ownership under reasonable interpretation of the facts alleged in petitioner's claim. All facts alleged by Registrant/respondent are within the gist of petitioner's complaint. See Wallace ex rel Cencom Cable Partners 2 Inc. v Wood 752 A 2<sup>nd</sup> 1175, 1179-80(Del ch.1999) or Desert Equities, Inc. v Morgan Stanley leveraged Equity fund, 624 A 2D 1199, 1205(Del 1993).

Accordingly, there's no dilution, or likelihood of confusion etc, the Board should dismiss petitioner's baseless and bully-like claim. Registrant/respondent appeals to and prays this Board ignores petitioner's condescending or "Goliath-like" attitude in this matter; and try this case on merit, equity and justice. Petitioner has continually resorted to name calling (use of word "rant", in its motion) and condescending riff or parody of registrant/respondent's answer (use of word

"scatological")thereby confusing this Board and also abusing this Board's precious time and resources.

Wherefore, this registrant/respondent Peter C.Ogudo requests that petitioner's meritless, baseless and preposterous motion and/or complaint be dismissed.

Respectfully submitted



Peter Ogudo, in pro per

P.O. Box 2574

Culver City CA90231

Dated: 2/5/13