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Filing date: **02/16/2013**

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

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	Reply in Support of Motion
Filer's Name	Carl F. Schwenker
Filer's e-mail	cfslaw@swbell.net
Signature	/cfs/
Date	02/16/2013
Attachments	Republic's Reply on Motion for Judgment and to Strike (2.16.13).pdf (14 pages) (2204725 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 REPLY ON ITS MOTION TO STRIKE RESPONDENT’S
PURPORTED “ANSWER” AND FOR DEFAULT JUDGMENT
OR, ALTERNATIVELY, FOR JUDGMENT ON THE PLEADINGS**

In view of registrant Peter C. Ogudo’s (“Respondent’s”) wholly-inadequate Response to Petitioner Republic of Texas Biker Rally, Inc.’s (“Petitioner’s”) pending Motion, Petitioner’s Motion should be granted, Respondent’s purported “Answer” should be stricken, default judgment or a judgment on the pleadings should be entered in favor of Petitioner, and Respondent’s Registration No. 4,164,790 for the mark ADAM LOOPHOLE PRESENTS ROT APPAREL (the “LOOPHOLE Registration”) should be cancelled.

In its Motion, Petitioner Republic asked that Respondent’s purported “Answer” to Petitioner’s Petition to cancel Registration No. 4,164,790 for the

LOOPHOLE Registration be stricken for non-compliance with the applicable rules and that default judgment be entered against Respondent, or, alternatively, that Petitioner be granted judgment on the pleadings and that Respondent's LOOPHOLE Registration be cancelled.

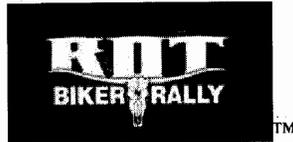
Respondent since filed a rambling, spurious response equally deficient to Respondent's purported "Answer" that fails to refute Petitioner's grounds for its entitlement to the relief sought in Petitioner's Motion. For example, Respondent did not cure any defects that Petitioner's Motion identifies with Respondent's facially deficient purported "Answer." Thus, the purported "Answer" must be stricken and default judgment entered cancelling the LOOPHOLE Registration.

Moreover, Respondent's purported "Answer" wholly fails to respond to numerous contentions in Petitioner's Petition. Indeed, though Petitioner's Petition had 33 paragraphs of allegations, Respondent's purported "Answer" has only 26 responsive paragraphs. Notably, Respondent's purported "Answer" entirely fails to contain paragraphs to contest the last seven paragraphs of Petitioner's Petition, including:

- paragraphs 27 – paragraph 30s' statements that Petitioner's adoption and use of its ROT Marks, including "ROT" and "R.O.T.", pre-date Respondent's filing for the LOOPHOLE Registration and purported adoption and use of the LOOPHOLE Mark in the identical categories of goods and services, which results in a likelihood of confusion; and,
- The entire dilution claim set forth in paragraphs 31 – 33.

Indeed, Respondent's purported "Answer" and its Response wholly fail to acknowledge, discuss or contest in the least Petitioner Republic's contention that Respondent's LOOPHOLE Registration dilutes Petitioner Republic's famous ROT Marks, including Petitioner's marks "ROT" and "R.O.T." Notably, as shown in the following excerpted judgment, a federal court has already decided that each of Petitioner's ROT Marks is distinctive, valid, famous and owned by Petitioner Republic:

(2) Plaintiff Republic of Texas Biker Rally, Inc. ("Republic") is the owner of the trademarks and service marks *ROT RALLY*®; *R.O.T. BIKER RALLY*®; *ROT BIKER RALLY*®; *R.O.T. BIKER RALLY*®; and *REPUBLIC OF TEXAS BIKER RALLY*®) and the federal trademark registrations thereon (collectively, "Republic's Registered Marks") and all associated goodwill. Republic is also the owner of the common law trademarks and service marks R.O.T.™, ROT™, and the ROT Cow Skull Logo & Design (pictured immediately below) and all associated goodwill.



(3) By virtue of Republic's long, continuous and exclusive use of Republic's Registered Marks and of the R.O.T.™, ROT™, and the ROT Cow Skull Logo & Design marks and by virtue of Republic's extensive marketing efforts associated therewith, each of Republic's Registered Marks and the R.O.T.™, ROT™, and ROT Cow Skull Logo & Design marks are famous within the meaning of 15 U.S.C. 1125(c) and have become distinctive of Republic's goods and services

(4) Each of Republic's Registered Marks and each of Republic's Common Law Marks is distinctive, valid and enforceable and all of such marks are protectable as trademarks of Republic.

See Republic of Texas Biker Rally, Inc. v. Bikinis Bar & Grill, LLC., No. 10-CV-00697, Judgment [Dkt. No. 55], (W.D. Tex. July, 11, 2011) (Sparks, J.)

(attached); *see also* Petition at ¶ 24. Because Respondent has not contested Petitioner's allegations that Respondent's LOOPHOLE Mark dilutes Petitioner's earlier ROT Marks (which a federal judgment cites as famous) or that Petitioner owns the ROT Marks and adopted each of them well before Respondent, those allegations are deemed admitted and Petitioner is entitled to a judgment in its favor on the pleadings on its dilution claim.

Moreover, Respondent has never contested the fact that an Examiner has already found a likelihood of confusion to exist between Respondent's LOOPHOLE Registration and Petitioner's pending "ROT" and "R.O.T." applications for registration, Serial Nos. 85/419,354 and 85/418,830. *Compare* Petition at ¶¶ 25-26 *with* Respondent's purported "Answer." Accordingly, Petitioner is also entitled to a judgment on the pleadings on its likelihood of confusion claim.

Accordingly, 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.

Respectfully submitted,

LAW OFFICES OF CARL F. SCHWENKER

By: _____ /s/

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Tel. (512) 480-8427
Fax (512) 857-1294
cflaw@swbell.net

Attorneys for Petitioner
Republic of Texas Biker Rally, Inc.

Dated: February 16, 2012

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2013, I served this **PETITIONER'S REPLY ON ITS MOTION TO STRIKE RESPONDENT'S PURPORTED "ANSWER" AND FOR DEFAULT JUDGMENT OR, ALTERNATIVELY, FOR JUDGMENT ON THE PLEADINGS** by mailing a copy thereof by First Class Mail, postage prepaid, addressed to Respondent's correspondence address of record as follows:

Peter C. Ogudo
P.O. Box 2574
Culver City, California 90231

By: _____ /s/

Carl F. Schwenker

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2011 JUL 11 AM 10:50

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____ 01
DEPUTY

REPUBLIC OF TEXAS BIKER
RALLY, INC.,

Plaintiff,

VS.

BIKINIS BAR & GRILL, LLC,
ET AL.,

Defendants.

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CIVIL NO. 1:10-cv-00697

**FINAL CONSENT JUDGMENT
AND STIPULATED PERMANENT INJUNCTION**

The parties have entered into a Settlement Agreement and Release in which, among other things, Plaintiff Republic of Texas Biker Rally, Inc. ("Republic"), on the one hand, and the Defendants identified below, on the other, have resolved and mutually released claims for monetary remedies, but have agreed to the entry of this Final Consent Judgment and Stipulated Permanent Injunction ("Final Judgment"), including the injunctive relief against the Defendants as set forth below.

In accordance with the stipulations of the parties and for the purposes of settlement and the entry and enforcement of this Judgment, the Defendants (without admission of liability) do not contest the Court's entry of the following findings.

Accordingly, it is FOUND that:

- (1) This Court has jurisdiction over the parties and the subject matter of this action and venue is proper in this District.



(2) Plaintiff Republic of Texas Biker Rally, Inc. ("Republic") is the owner of the trademarks and service marks *ROT RALLY*®; *R.O.T. BIKER RALLY*®; *ROT BIKER RALLY*®; *R.O.T. BIKER RALLY*®; and *REPUBLIC OF TEXAS BIKER RALLY*®) and the federal trademark registrations thereon (collectively, "Republic's Registered Marks") and all associated goodwill. Republic is also the owner of the common law trademarks and service marks R.O.T.™, ROT™, and the ROT Cow Skull Logo & Design (pictured immediately below) and all associated goodwill.



(3) By virtue of Republic's long, continuous and exclusive use of Republic's Registered Marks and of the R.O.T.™, ROT™, and the ROT Cow Skull Logo & Design marks and by virtue of Republic's extensive marketing efforts associated therewith, each of Republic's Registered Marks and the R.O.T.™, ROT™, and ROT Cow Skull Logo & Design marks are famous within the meaning of 15 U.S.C. 1125(c) and have become distinctive of Republic's goods and services

(4) Each of Republic's Registered Marks and each of Republic's Common Law Marks is distinctive, valid and enforceable and all of such marks are protectable as trademarks of Republic.

(5) Republic has not authorized any Defendant's use of Republic's Marks identified in Republic's Second Amended Complaint, which results in a likelihood of confusion and the risk of irreparable injury to Republic.

Accordingly, it is ORDERED that the Defendants are PERMANENTLY ENJOINED AND RESTRAINED from:

(1) using (or holding themselves out as having rights to use), displaying or referring to any of Republic's Marks (as defined herein) in connection with the manufacture, sale or distribution of products or goods of any kind, or in connection with the advertising, promotion, marketing or delivery of services (including via e-commerce on the Internet) of any kind or assisting any others with such acts;

(2) claiming or representing that any products or services marketed or sold by Defendants are made directly by Republic or its authorized licensees or that Republic has authorized, approved or licensed the use by Defendants of any of Republic's Marks for or in association with any of Defendants' products or services;

"Republic's Marks," as used herein, refers to: (a) Republic's federally registered trademarks or service marks (*ROT RALLY*®; *R.O.T. BIKER RALLY*®; *ROT BIKER RALLY*®, *R.O.T. BIKER RALLY*®, and *REPUBLIC OF TEXAS BIKER RALLY*®) ("Republic's Registered Marks") in any typographic or stylistic font or format; (b) the unregistered common law marks and logos Republic uses in connection with its motorcycle rally and related business and merchandising operations, copies of which are attached hereto as Exhibit 1 and shown on Page 23 of Republic's Second Amended Complaint ("Republic's Common Law Marks"); and (c) any simulation or colorable imitation of Republic's Registered Marks or Republic's Common Law Marks.

"Defendants," as used herein, refers to the following entities and individuals (and all of their authorized agents): Bikinis Bar & Grill, LLC (now known as BSBG, LLC);

Bikinis Bar & Grill—Austin, LLC (now known as Bikinis Sports Bar & Grill—Austin, LLC); Bikinis Sports Bar & Grill 6th Street, LLC; Bikinis Sports Bar & Grill Franchising, LLC; Bikinis Promotions, LLC; Bikinis Real Estate, LLC; Bikinis Sports Bar & Grill—Arlington, LLC; Bikinis Sports Bar & Grill—Live Oak, LLC; Bikinis Sports Bar & Grill—San Antonio, LLC; Bikinis Sports Bar & Grill—San Marcos, LLC; The Parish—6th Street, LLC; Bikinis Sports Bar & Grill—Charlotte, LLC; Doug Guller; Kevin Pearson; David Voorhees; Paul Manfre; Dizzy Tee Designs, Inc.; Tom Marek dba Minuteman Press of Austin; and Brenda Manning Alvarez dba Soul to Soul Promotions or Soul to Soul Entertainment.

This Final Judgment is not intended to prohibit conduct (a) that is subsequently permitted or authorized pursuant to any valid license Republic may grant to any Defendant after the entry hereof, or (b) that is expressly permitted by the terms of the parties' Settlement Agreement and Release.

The Court retains exclusive and continuing jurisdiction over the parties for the purpose of enforcement of the terms of the Settlement Agreement and Release and this Final Judgment.

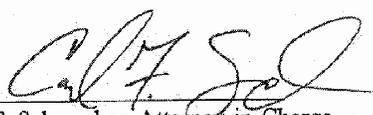
All relief not granted herein is denied; and each party shall bear its own costs, disbursements and attorneys' fees.

SIGNED this 8th day of July 2011.


SAM SPARKS
UNITED STATES DISTRICT JUDGE

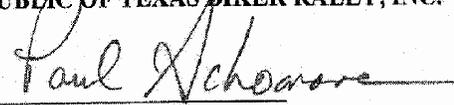
CONSENT TO ENTRY

The parties hereby consent to the terms of this Final Consent Judgment and Permanent Injunction as set forth herein and consent to entry hereof.

By: 

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¹ Defendants Bikinis Bar & Grill, LLC (now known as BSBG, LLC); Bikinis Bar & Grill—Austin, LLC (now known as Bikinis Sports Bar & Grill—Austin, LLC); Bikinis Sports Bar & Grill 6th Street, LLC; Bikinis Sports Bar & Grill Franchising, LLC; Bikinis Promotions, LLC; Bikinis Real Estate, LLC; Bikinis Sports Bar & Grill—Arlington, LLC; Bikinis Sports Bar & Grill—Live Oak, LLC; Bikinis Sports Bar & Grill—San Antonio, LLC; Bikinis Sports Bar & Grill—San Marcos, LLC; The Parish—6th Street, LLC; Bikinis Sports Bar & Grill—Charlotte, LLC; Doug Guller, Kevin Pearson; David Voorhees; and Paul Manfre.

CONSENT TO ENTRY (continued)

By: Tom Marek, President
Tom Marek (d/b/a Minuteman Press of Austin), *pro se*

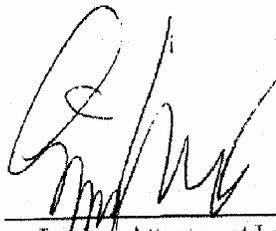
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ATTORNEY FOR DIZZY TEE DESIGNS, INC.

By: _____
Brenda Manning Alvarez, *pro se*

CONSENT TO ENTRY (continued)

By: _____
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ATTORNEY FOR DIZZY TEE DESIGNS, INC.

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Brenda Manning Alvarez, *pro se*

CONSENT TO ENTRY (continued)

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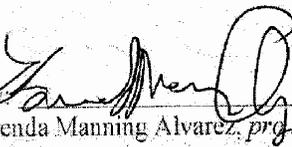
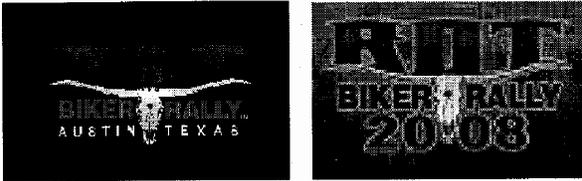
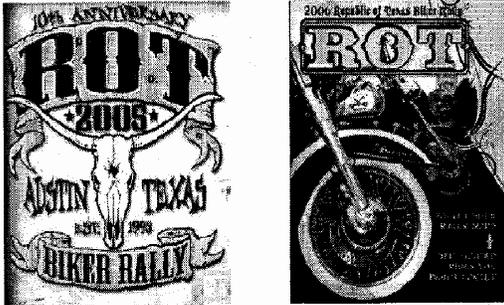
By: 
Brenda Manning Alvarez, *pro se*

Exhibit 1

Logo Name	Graphic or Word Mark for REPUBLIC'S COMMON LAW MARKS
ROT Cow Skull Logo w/"ROT Biker Rally" (examples 1 and 2)	
ROT Cow Skull Logo w/"ROT Biker Rally" (examples 3 and 4)	
Winged Skull Motor Logo (example 1) w/ "ROT" (example 1)	
"ROT" (examples 2 and 3) "ROT Biker Rally" (example 5)	
"R.O.T." (examples 1 - 3)	