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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE 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 26th, 2012, **Cancellation Number:** 92056510.

REPUBLIC OF TEXAS BIKER RALLY, INC (Petitioner)

76701933

Vs

PETER C. OGUDO (Registrant/Respondent)

REGISTRANT/RESPONDENT'S ANSWER TO PETITIONER'S MOTION AND REGISTRANT/RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT.

Registrant/Respondent prays this Board to dismiss Petitioner's frivolous pleadings for cancellation and/or order petitioner to minimize their series of repetitious and dubious claims that are wholly founded upon lack of proof of similarity and likelihood of confusion or dilution.

Registrant/Respondent, in earlier pleadings, has furnished this board with adequate and sufficient evidence of lack of similarity and likelihood of confusion or dilution. Included in evidence are examples of "ROT" - related business name entities (see exhibit 1); and also companies with "Coca" or "Cola" - related business names (see exhibit 2). Also included are companies with "American Apparel" - related business names, who shared one-name prefix or suffix tags with other entities in addition to other words; and yet they all tend to co-exist together, with one another, in the normal stream of interstate commerce.

Petitioner instead has taken on a course of demeaning and condescending language to define Registrant/Respondent's honest attempt at proving legality and bonafide ownership of ADAM LOOPHOLE PRESENTS ROT APPAREL. Registrant/Respondent, however in his answer and subsequent follow up pleadings has continually proffered enough claim of right; and yet petitioner has not proven that material issues of fact exist or proffered evidence to the contrary.

Granted, petitioner's so called common law ROT usage predates Registrant/Respondent's. Yet petitioner, out of context, ignores that it cannot lay claim to use of word "ROT" when it stands in conjunction with other words. Petitioner's mark is ROT BIKER RALLY, while Registrant/Respondent's mark is ADAM LOOPHOLE PRESENTS ROT APPAREL- two wholly different marks and entities. Petitioner therefore can only lay claim to ROT BIKER RALLY, but not ADAM LOOPHOLE PRESENTS ROT APPAREL.

Petitioner's so called common law marks were reasonably expected by petitioner to cover areas of Texas and its environs for purposes of its BIKER RALLY festivities; and by extension some out of state biker rally or motorcycle enthusiasts who gather in Texas to strut their machines and gears. Simply put, Federal registration is preferred if one seeks a nationwide protection for a trademark (as opposed to



03-08-2013

common law marks) because it will put the entire nation on notice of petitioner's claim of trademark rights in the mark. (See Traverse Legal – Attorneys & Advisers- What are common Law rights? 6/25/2008, paragraph 3). Petitioner's federally registered ROT BIKER RALLY and /or ROT RALLY are completely different from ADAM LOOPHOLE PRESENTS ROT APPAREL. And both entities, apart from being wholly different in meanings, logos, and context, can co-exist with each other in the normal stream of interstate commerce. (Please see exhibit 1). Additionally, Petitioner's ROT Biker RALLY &/or ROT RALLY are the only ones with assigned federal registration numbers. Just because Petitioner suddenly realized they should have registered "ROT APPAREL" earlier before Registrant/ Respondent legally did, does not translate into "private taking" of vested intellectual property rights. There're better ways of doing that, such as assignments, contracts etc. Arm twisting and bulldozing is not a good option, and will be defended to the full extent of the law.

Registrant/Respondent's bonafide legitimate office action only pertains to an earlier grant of registration of ADAM LOOPHOLE PRESENTS ROT APPAREL with Registration number: 4164790. Registrant/Respondent obviously has satisfied all prior requirements of registration by responding to original office actions prior to grant of registration of ADAM LOOPHOLE PRESENTS ROT APPAREL. Registrant/Respondent therefore has complied with all possible elements of office action prior to registration; and there has nothing else to prove; or alternatively has cured any potential defects in the mark that the examining attorney would have requested or discovered.

The undisputed material facts of bonafide registration of ADAM LOOPHOLE PRESENTS ROT APPAREL require that judgment be entered on behalf of Registrant/ Respondent. Material issues of fact do not exist in this case and Registrant/Respondent is entitled to a judgment as a matter of law. Petitioner has exhausted his series of repetitious motions &/or pleadings that have not proffered evidence of similarity and likelihood of confusion or dilution. Based on Petitioner's lack of proof as to why ADAM LOOPHOLE PRESENTS ROT APPAREL conflicts with ROT BIKERS RALLY or ROT RALLY, Registrant/Respondent therefore asks this Board to summarily dismiss Petitioner's pleadings and/or repetitious motions.

Registrant/Respondent has always maintained there is no confusion between ROT BIKERS RALLY and /or ROT RALLY and ADAM LOOPHOLE PRESENTS ROT APPAREL. Petitioner instead, serially has not shown traditional trademark infringement or unfair competition. The source of origin of both Petitioner's and Registrant/Respondent's products are not in question. Moreover, many things can serve as source identifiers and trademarks are not confined to words, phrases, pictures, logos, symbols and other merely literary elements. The look and feel of any product, its color or sound or aroma may serve as source identifiers. Would a reasonable consumer confuse the two marks when put side by side? The answer is an emphatic "NO". Petitioner's consumers obviously are Bikers, while Registrant/Respondent's clientele are hip fashion conscious urban consumers who know and believe that the "ROT" in ADAM LOOPHOLE PRESENTS ROT APPAREL, stands for "RULE OF THUMB". So each clientele base knows the source of their respective products.

Petitioner therefore has not proffered enough evidence of dilution because none has existed from the outset. Both marks, instead are different in looks, meanings, wordings, prefixes, suffixes, phrases, pictures, logos, symbols and other come what mays. Registrant/Respondents therefore prays and asks

this board to dismiss Petitioner's frivolous, unsubstantiated and dubious pleadings and claims and allow ADAM LOOPHOLE PRESENTS ROT APPAREL to continue its quest for social welfare, jobs and commercial competition in the normal stream of commerce. Evidence in Republic of Texas Biker Rally INC VS Bikini Bar and Grill shows that Austin Based Bikinis promoted itself as ROT RALLY Headquarters on outdoor events and created T-shirts for sale with ROT RALLY marks. Registrant/Respondent has never engaged in any of (a) held itself out as ROT RALLY BIKERS or the sort whatsoever or (b) Claimed or misrepresented any products or services marketed by ROT Rally or ROT Biker Rally.

Registrant/Respondent therefore holds the above cited case as unrelated, irrelevant and outside of the main gist of this case: a biker company that craves what it does not have; and instead employs bullying tactics to "privately take" it without compensation. This present case therefore is frivolous and unsubstantiated; and Registrant/Respondent prays this honorable Trial and Appeal Board to dismiss it and throw it out forthwith.

Accordingly, this Board should dismiss Petitioner's prior and present motions by summary judgment.

Respectfully submitted, 2/28/13



Peter C. Ogudo, in pro per

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exhibit 1: USPTO TESS search Back to messages | of the word "ROT" showing co-existence of "ROT" related names

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emeka ogudo To emeka

2/21/13 Reply

Trademarks > Trademark Electronic Search System (TESS)

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Exhibit 1

Start List At: OR Jump to record:

Rot-related names

97 Reco (s) four (This page ~ 50)

Refine (rot)[COMB] Search Submit

Current Search: S1: (rot) docs: 97 [COMB] occ: 231

	Serial Number	Reg. Number	Word Mark	Check Status	Live/D
1	85707110	4293727	SCHWARZ UND ROT GERMAN SHEPHERDS	TSDR	LIVE
			SCHWARZ UND ROT		

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Exhibit 1 Cont'd

2	85690070	4293707	SCHWARZ UND ROT GERMAN SHEPHERDS	TSDR	LIVE
3	85611620		ROT	TSDR	LIVE
4	85643460	4282331	RAWT	TSDR	LIVE
5	85028608		GOT ROT?	TSDR	LIVE
6	85732343		WEED-ROT	TSDR	LIVE
7	85809736		ROTBLOC	TSDR	LIVE
8	85609517	4267640	ROTBLOCKER JAMB INSERT	TSDR	LIVE
9	85458737		ROT-NOT	TSDR	LIVE
10	85331970		ROT-NOT	TSDR	DEAD
11	85288339		STALK ROT	TSDR	DEAD
12	85347599		GOT ROT?	TSDR	DEAD
13	85329388		ROTVILLE	TSDR	DEAD
14	85418830		R.O.T.	TSDR	LIVE
15	85419354		ROT	TSDR	LIVE
16	85220934	4068589	BURN AND ROT IN HELL!	TSDR	LIVE
17	85009013		A ROTT N PIG ADVENTURE	TSDR	DEAD
18	79104103		LINROT	TSDR	LIVE
19	79069608	3835213	ROTASSIST	TSDR	LIVE
20	79092215		EWM SLR GMBH	TSDR	LIVE
21	79110677			TSDR	LIVE
22	79035990	3468071	KOGA	TSDR	LIVE
23	79021144	3265300	POT POHT	TSDR	LIVE
24	78608153	3952354	FISH ROT FROM THE HEAD DOWN	TSDR	LIVE
25	78923516		R.O.T. BIKER RALLY, ROT RALLY, REPUBLIC OF TEXAS BIKER RALLY	TSDR	DEAD
26	78919364		ROT RAGGS	TSDR	DEAD
27	78918309		ROT BIKER RALLY, REPUBLIC OF TEXAS BIKER RALLY, INC.	TSDR	DEAD
28	78709480		COWBOY MAGIC RAINROT SHAMPOO	TSDR	DEAD
29	78533072		ROT PROOF SOLUTIONS FOR YOUR HOME	TSDR	DEAD
30	78413420	3074537	RETURN ON TIME (ROT)	TSDR	DEAD
31	78123555	2683866	ROT-GARD	TSDR	LIVE
32	78219508	2800520	ROT FRONT	TSDR	LIVE
33	78356984	3012981	HOTROT	TSDR	LIVE

Exhibit 1 Cont'd

34	78413409		ROT (RETURN ON TIME)	TSDR	DEAD
35	78358664		ROTZ	TSDR	DEAD
36	77962174		SUPERCROSSSTEELROOTS	TSDR	DEAD
37	77703967	3698504	STOP THAT ROT!	TSDR	LIVE
38	77598474		NEVER ROT OUTDOOR CABINETRY	TSDR	DEAD
39	77530017	3678565	ROT RALLY	TSDR	LIVE
40	77529960	3671828	ROT BIKER RALLY	TSDR	LIVE
41	77387346		CANDYROT	TSDR	DEAD
42	77480739		NOBLE ROT INDUSTRIES	TSDR	DEAD
43	77342021	3471340	THE ROTS	TSDR	LIVE
44	77278911	3403861	WEAR IT 'TIL IT ROTS	TSDR	LIVE
45	77239421	3719079	ROT N' ROCKERS	TSDR	LIVE
46	77104146	3410029	NOBLE ROT	TSDR	LIVE
47	77065153		BOTPROOF	TSDR	DEAD
48	76701933	4164790	ADAM LOOPHOLE PRESENTS ROT APPAREL	TSDR	LIVE
49	76629231	3099787	NO ROT	TSDR	LIVE
50	76601244		ROT GUT	TSDR	DEAD

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exhibit 2:A USPTO TESS [Back to messages](#)
search of word "cola", indicating co-existence in
stream of commerce

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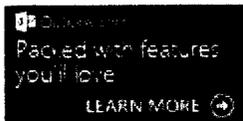
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Exhibit Z

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List At: OR **to record:**

Coca-Cola related names

Refine **coca**
Search

Current Search: **S4: coca** docs: 2113 occ: 6521

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	85851081		PERFECT HARMONY	TSDR	DEAD
2	85848317		COCA COLA	TSDR	LIVE
3	85756565		COCA-LISCIOUS	TSDR	LIVE
4	85256581		MAKE IT POSSIBLE	TSDR	LIVE
5	85758314		WOD DESIGNS	TSDR	LIVE

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6	85682860		SQUARES BOWL	TSDR	LIVE
7	85659214	4291750	PAINFUL PLEASURES	TSDR	LIVE
8	85524158	4293330		TSDR	LIVE
9	85848827		KEEP SPARKLING	TSDR	LIVE
10	85801834		PERFECT HARMONY	TSDR	LIVE
11	85756528		COCA	TSDR	LIVE
12	85680480		HOME BREWED TASTE GOLD PEAK	TSDR	LIVE
13	85652656		TODAY AWAITS	TSDR	LIVE
14	85357330		THE GEORGIA COFFEE COMPANY	TSDR	LIVE
15	85260047		CHAQWA	TSDR	LIVE
16	85258010		NURISHA	TSDR	LIVE
17	85634457	4290305	JERICHO	TSDR	LIVE
18	85255458		POWERADE	TSDR	LIVE
19	85226816	4289548	PLANTBOTTLE	TSDR	LIVE
20	85539949		MANGO TREE	TSDR	LIVE
21	85760006		WE'VE RAISED OUR GAME WITH BETTER TASTING FLAVOR	TSDR	LIVE
22	85733546			TSDR	LIVE
23	85727473			TSDR	LIVE
24	85831733		SPRITE TWISTED BEATS	TSDR	LIVE
25	85831634			TSDR	LIVE
26	85831623		MAKE BORING BRILLIANT	TSDR	LIVE
27	85746124		ELEVATED FLAVOR	TSDR	LIVE
28	85503146	4281657	EVERGREEN	TSDR	LIVE
29	85226870	4283473		TSDR	LIVE
30	85717533		SPRITE FILMS	TSDR	LIVE
31	85097514		COCALEAF	TSDR	LIVE
32	85352763		FANTA FRUITIZZ	TSDR	DEAD
33	85094775	3943595	RHEE CHUN RICE	TSDR	LIVE
34	85818883		EFFORTLESS MEALS	TSDR	LIVE
35	85813590		UR COCA COLA	TSDR	LIVE
36	85705069	4275908	CMPLX6	TSDR	LIVE
37	85670286	4275821	SPRITE Developers	TSDR	LIVE

Exhibit 2 Cont'd

38	85814964		SURFING'S EVOLUTION EXPERIENCE	TSDR	LIVE
39	85813443		NEVER JUST ONE THING	TSDR	LIVE
40	85742540		COCA-COLA PLACELISTS	TSDR	LIVE
41	85095398		COCA LEAF WATER	TSDR	LIVE
42	85803105		TROOPS FOR FITNESS	TSDR	LIVE
43	85502106		IT'S GOOD TO BE YOU	TSDR	LIVE
44	85562455		GRAND SLAM FOR YOUTH BASEBALL	TSDR	LIVE
45	85469079	4265589	MINUTE MAID JUST 15	TSDR	LIVE
46	85403880	4265366	BARQ'S HAS BITE!	TSDR	LIVE
47	85391682	4259407	COCALEAF	TSDR	LIVE
48	85512735		GUSHIN' GREEN APPLE	TSDR	LIVE
49	85357225		BE UNCONTAINABLE	TSDR	LIVE
50	85202524	4123991	MITSUBISHI	TSDR	LIVE

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exhibit 3: USPTO search of phrase. "American Apparel" indicating co-existence in stream of commerce

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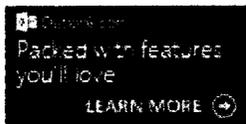
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Exhibit 3

Start List At: OR Jump to record:

American Apparel related names

46
Reco
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page
~ 46

Refine (american apparel)[COMB]

Search Submit

Current (american docs:
Search: S6: apparel) 46 occ:
[COMB] 219

	Serial Number	Reg. Number	Word Mark	Check Status	Live
1	85698503		LE CLUB AMERICAN APPAREL	TSDR	LIVE
2	85178360		AMERICAN GIRLS APPAREL	TSDR	DEA
3	85100457		U UNLEASHED AMERICAN MADE APPAREL	TSDR	DEA
4	85064189		AMERICAN IRON 8070	TSDR	DFA

GRO
POV

- Multi disco
- Safe disco
- Repla cost

DON'T M

Exhibit 3 Cont'd

			APPAREL COMING SOON		
5	78935887	3379663	AAA HANGERS	TSDR	LIVE
6	78912301		AMERICAN VINTAGE APPAREL	TSDR	DEA
7	78706583	3410517	A.V.A. AMERICAN VERSION APPAREL	TSDR	LIVE
8	78388783		AFFORDABLE AMERICAN APPAREL & ACCESSORIES	TSDR	DEA
9	77889057		BRANDED AMERICAN APPAREL BAA	TSDR	DEA
10	77440836	3516373	AMERICAN APPAREL	TSDR	LIVE
11	77465712	3543574	AAFA	TSDR	LIVE
12	77457411		AAFA AMERICAN APPAREL & FOOTWEAR ASSOCIATION MEMBER	TSDR	DEA
13	77457366	3637681	AAFA AMERICAN APPAREL & FOOTWEAR ASSOCIATION	TSDR	LIVE
14	77373283		AMERICAN APPAREL VINTAGE	TSDR	DEA
15	77336110		AMERICAN LUXURY APPAREL MADE IN DOWNTOWN NY VERTICALLY INTEGRATED MANUFACTURING	TSDR	DEA
16	77332263		WORLD APPAREL WORLD APPAREL - AN AMERICAN FITNESS BRAND	TSDR	DEA
17	77110030		AETA AMERICAN EQUESTRIAN TACK AND APPAREL EXPO	TSDR	DEA
18	76376754	2677491	AAFA AMERICAN APPAREL & FOOTWEAR ASSOCIATION	TSDR	LIVE
19	76624848	3578314	AMERICAN APPAREL	TSDR	LIVE
20	76624847	3574355	AA	TSDR	LIVE
21	76624846	3048206	AMERICAN APPAREL	TSDR	LIVE
22	76544549	2954280	AMERICAN APPAREL	TSDR	LIVE
23	76344990	2960071	THE AMERICAN PATRIOT APPAREL COMPANY	TSDR	LIVE
24	76339612		AMERICAN CLOTHING ENTERPRISES A.C.E. APPAREL FOR THE FREE	TSDR	DEA
25	76306418	2642428	AUTHENTIC APPAREL OF THE AMERICAN WEST COWS CLASSIC OLD WEST	TSDR	DEA

Exhibit 3 Cont'd

26	76273433		AAFA AMERICAN APPAREL & FOOTWEAR ASSOCIATION THE FASHION ASSOCIATION	TSDR	DEA
27	76238626		AMERICAN APPAREL	TSDR	DEA
28	76078306		THE AMERICAN APPAREL AND FOOTWEAR ASSOCIATION THE FASHION ASSOCIATION	TSDR	DEA
29	76078303		THE AMERICAN APPAREL AND FOOTWEAR ASSOCIATION THE FASHION ASSOCIATION	TSDR	DEA
30	76078302		THE AMERICAN APPAREL AND FOOTWEAR ASSOCIATION	TSDR	DEA
31	76078301		THE AMERICAN APPAREL AND FOOTWEAR ASSOCIATION	TSDR	DEA
32	75559981	2359401	ALL AMERICAN APPAREL	TSDR	LIVE
33	75797631		QA ALL AMERICAN ATHLETIC APPAREL	TSDR	DEA
34	75089606	2063013	ALL AMERICAN APPAREL	TSDR	DEA
35	75163090		AMERICAN APPAREL ALLIANCE	TSDR	DEA
36	74699891	2076217	AMERICAN SPORTS APPAREL	TSDR	DEA
37	74657616		CALL OF THE WILD AMERICAN MOTORCYCLES, ACCESSORIES & APPAREL	TSDR	DEA
38	74547977		AMERICAN PEOPLE POWER APPAREL	TSDR	DEA
39	74511172		THUNDERPANTS AMERICAN MADE RIDING APPAREL 100% ALL BEEF	TSDR	DEA
40	74452777	1949992	AAMA AMERICAN APPAREL MANUFACTURERS ASSOCIATION	TSDR	DEA
41	74403277	1822931	LUCKY'S AMERICAN APPAREL BUILDERS	TSDR	DEA
42	74379423		AFRICAN AMERICAN COLLEGIATE APPAREL	TSDR	DEA
43	74299831	1880093	AMERICAN STANDARD APPAREL CORP.	TSDR	DEA
44	74294367		AMERICAN OUTBACK APPAREL	TSDR	DEA

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Exhibit 3 Cont'd

45	74182410		GREAT AMERICAN APPAREL GROUP	TSDR	DEA
46	74048687	1747899	SAAS SOUTH AMERICAN APPAREL SOURCES	TSDR	DEA

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