

ESTTA Tracking number: **ESTTA602016**

Filing date: **05/02/2014**

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

Proceeding	92057058
Party	Defendant Island Food & Fun, Inc.
Correspondence Address	ELIZABETH T RUSSELL LAW OFFICE 6907 University Ave.#227 Middleton, WI 53562 UNITED STATES beth@erklaw.com
Submission	Motion for Summary Judgment
Filer's Name	Elizabeth T Russell
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Signature	/elizabeth russell/
Date	05/02/2014
Attachments	92057058 Motion for Summary Judgment.pdf(2816130 bytes )

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

Fifty-Six Hope Road Music Limited,  Petitioner,  v.  Island Food & Fun, Inc.,  Registrant.	Cancellation No.: 92057058  Registration No.: 3225517
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Commissioner for Trademarks  
ATTN: Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**REGISTRANT’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56 and Rule 2.127(e) of the Trademark Rules of Practice, Registrant hereby moves for summary judgment on each of the three grounds set forth in the Petition to Cancel. This Motion is supported by: the USPTO file of the challenged registration (No. 3225517); the declaration of Jeff Morris and supporting exhibits; the declaration of Elizabeth T Russell and supporting exhibits; the confidential declaration of Jeff Morris; Registrant’s Memorandum in Support of this Motion for Summary Judgment; and the pleadings herein. Based upon these materials and applicable law, Registrant respectfully submits that there is no genuine dispute as to any material fact and that Registrant is entitled to judgment as a matter of law.

Specifically:

1. **Fraud.** Registrant's alleged dates of first use were not material to registrability of the intent-to-use application that eventually matured into the challenged registration.
2. **Ownership of the Mark.** Non-ownership of a mark cannot be asserted against a registration more than five years old.
3. **False "Association."** The Petition to Cancel fails properly to plead false suggestion of a connection.
4. **Laches and Estoppel.** All claims in the Petition are barred on grounds of laches and estoppel.

Accordingly, Registrant respectfully requests that the Board grant Registrant's Motion for Summary Judgment, dismiss the Petition to Cancel in its entirety, and leave Registration No. 3225517 undisturbed.

In the event the Board grants summary judgment as to some, but not all, of Petitioner's claims, Registrant further requests that the Board restrict discovery in this proceeding to such issue(s) as to which the Board finds there remain genuine issues of material fact.

Respectfully submitted,

/elizabeth t russell/

Attorney for Island Food & Fun, Inc.

Dated: May 2, 2014

The above is my electronic signature, personally entered by me in accordance with the requirements of 37 C.F.R. §2.193(c)

Elizabeth T Russell  
6907 University Ave., #227  
Middleton, WI 53562  
Telephone: 608-826-5007

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing REGISTRANT'S MOTION FOR SUMMARY JUDGMENT was served on Petitioner by mailing a copy by First Class Mail, postage prepaid, to Petitioner's counsel at the following address on this 2nd day of May, 2014:

Jill M. Pietrini  
SHEPPARD MULLEN RICHTER & HAMPTON LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017

/elizabeth t russell/

The above is my electronic signature, personally entered by me in accordance with the requirements of 37 C.F.R. §2.193(c)

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Telephone: 608-826-5007

Attorney Docket No.: 90656-001

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

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**MEMORANDUM IN SUPPORT OF REGISTRANT’S MOTION  
FOR SUMMARY JUDGMENT**

INTRODUCTION

Petitioner commenced this proceeding on April 8, 2013 seeking cancellation of Registrant’s incontestable trademark Registration No. 3225517. The parties have made their initial disclosures. Petitioner asserts three alleged bases for cancellation: Fraud on the Trademark Office; Non-ownership of the challenged Registration; and False “Association” with Bob Marley. Registrant submits that each of Petitioner’s claims should be resolved as a matter of law, as there is no genuine dispute as to any material fact that would affect the outcome of the

proceeding. Accordingly, Registrant respectfully submits that it is entitled to judgment as a matter of law.

#### THE LAW RELATING TO SUMMARY JUDGMENT

A motion for summary judgment may be filed before the commencement of discovery. *Paris Glove of Canada, Ltd. v. SBC/Sporto Corp.*, 84 USPQ2d 1856 (TTAB 2007).

The purpose of a summary judgment motion is judicial economy, that is, to avoid an unnecessary trial where there is no genuine dispute of material fact and more evidence than is already available in connection with the summary judgment motion could not reasonably be expected to change the result in the case. *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 221 USPQ 151 (TTAB 1983), affd 739 F2d 624 (Fed Cir 1984).

In a motion for summary judgment, the moving party has the burden of establishing the absence of any genuine issue of material fact and that it is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56. A genuine dispute with respect to a material fact exists if sufficient evidence is presented that a reasonable fact finder could decide the question in favor of the non-moving party. See *Opryland USA Inc. v. Great American Music Show, Inc.*, 970 F2d 847 (Fed Cir 1992). Thus, all doubts as to whether any particular factual issues are genuinely in dispute must be resolved in the light most favorable to the non-moving party. See *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F2d 200 (Fed Cir 1992).

If the moving party has supported its motion with affidavits or other evidence which if unopposed would establish its right to judgment, the nonmoving party may not rest on mere denials or conclusory assertions, but rather must proffer countering evidence, showing that there is a genuine factual dispute for trial. Fed. R. Civ. P. 56(c)(1); see also *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F2d 937 (Fed Cir 1990). A dispute over a fact that would not alter the Board's decision on the legal issue will not prevent entry of summary judgment. See, e.g., *Kellogg Co. v. Pack'Em Enterprises Inc.*, 14 USPQ2d 1545 (TTAB 1990), aff'd 951 F2d 330 (Fed Cir 1991).

The evidentiary record in a cancellation proceeding includes, without action by any party, the file of the registration which is the subject of the proceeding. Trademark Rule 2.122(b); *Klise Manufacturing Company v. Braided Accents, L.L.C.*, 2008 WL 2675076 (TTAB 2008); *Paris Glove of Canada, Ltd. v. SBC/Sporto Corp.*, 84 USPQ2d 1856 (TTAB 2007).

When appropriate, the Board does not hesitate to dispose of cases on summary judgment. *Milliken & Company v. Image Indus., Inc.*, 39 USPQ2d 1192, 1196 (TTAB 1996); see *Paris Glove of Canada, Ltd. v. SBC/Sporto Corp.*, supra; *Enterprise Rent-A-Car Company v. Advantage Rent-A-Car, Inc.*, 62 USPQ2d 1857 (TTAB 2002).

THE CHALLENGED REGISTRATION WAS NOT OBTAINED BY FRAUD ON THE  
TRADEMARK OFFICE

**Undisputed Facts:**

- Registrant's application for registration (Serial Number 78322137; the "Application") was filed on November 3, 2003.

- The Application’s filing basis was **intent to use**, Section 1(b).
- A notice of allowance issued on September 26, 2006.
- Registrant’s statement of use (the “SOU”) was filed in the Office on November 6, 2006.
- The SOU states: “Applicant is using the mark in commerce in connection with all of the services identified in the Notice of Allowance mailed on September 26, 2006....”
- Notice of acceptance of the SOU issued on February 27, 2007.
- The challenged registration (Registration Number 3225517; the “Registration”) registered on April 3, 2007.
- The Notice of Allowance, SOU, Notice of Acceptance, and Registration are of record pursuant to Trademark Rule 2.122(b).

Petitioner alleges that Registrant committed fraud on the Trademark Office by, in the SOU, misstating its date of first use. Registrant denies that it made any such misstatement. However, even if Registrant had misstated the date, such misstatement is immaterial so long as Registrant made actual use and established a Section 1 basis for registration prior to submitting the SOU.

The Board has held, in the context of *inter partes* proceedings, that a plaintiff does not state a claim for opposition or cancellation merely by pleading that the dates of use claimed by a registrant were incorrect. A plaintiff must, instead, plead and prove that there was no Section 1 basis for registration. See, *In Re W.R. Case & Sons Cutlery Company*, 12 USPQ2d 1544 (TTAB 1989). The Board has also held, in the context of *ex parte* examination, that so long as there is a Section 1 basis for registration, an incorrect date of first use is not a ground for refusal to

register. *Id.*; see, *Kathleen Hiraga v. Sylvester J. Arena*, 90 USPQ2d 1102 (TTAB 2009); see also, *McCarthy on Trademarks and Unfair Competition, Fourth Edition*, §§31:67, 31:74.

In this matter there can be no dispute that Registrant made actual use of the mark prior to submitting the SOU and, thus, that there was a Section 1 basis for registration when the SOU was submitted. (See the attached Declaration of Jeff Morris and Exhibits A, B and C.) Accordingly, Registrant's claimed date of first use, even if erroneous, is immaterial because it could not possibly have resulted in the allowance of a registration which would not otherwise have been allowed. See, *McCarthy on Trademarks and Unfair Competition, Fourth Edition*, §31:74.

Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with intent to deceive the Office. *In re Bose Corp.*, 580 F3d 1240, 91 USPQ2d 1938, 1941 (Fed Cir 2009); see, *Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc. dba Watermark Cruises*, 2013 WL 5407315 (TTAB 2013). Registrant expressly reserves all rights to argue and establish that its representation to the Office, in connection with the claimed dates of first use, was neither false nor made with intent to deceive. For purposes of this motion, however, Registrant respectfully asserts that Petitioner's claim must fail because the first use date was not material to the Office's decision to accept the SOU and issue the Registration.

NON-OWNERSHIP OF A MARK CANNOT BE ASSERTED AGAINST A REGISTRATION  
MORE THAN FIVE YEARS OLD

**Undisputed Facts:**

- The Registration issued on April 3, 2007.
- Notice of acceptance and acknowledgment under sections 8 and 15, for the Registration, issued on April 22, 2012.
- Petitioner commenced this cancellation proceeding on April 8, 2013.
- The Registration was more than five years old when Petitioner commenced this cancellation proceeding.

If a challenged registration is more than five years old, the Lanham Act narrows the grounds upon which a petition to cancel can be based (15 U.S.C. §1064; see *McCarthy on Trademarks and Unfair Competition, Fourth Edition*, §20:55). The permissible grounds for cancellation of a registration more than five years old are set forth in subsection 3 of section 14 of the Lanham Act (15 U.S.C. §1064[3]). Non-ownership of the mark is not a ground listed in the statute, and thus cannot be asserted against a registration more than five years old:

“Under Section 14 of the [Lanham] Act, which governs cancellation proceedings in the Patent and Trademark Office, and in particular under subsection [3] thereof, a registration extant for a period of five years may be cancelled only on the specific grounds enumerated therein, none of which involves ownership of the registered mark....” *Kemin Industries, Inc. v. Watkins Products, Inc.*, 192 USPQ 327 (TTAB 1976).

Registrant respectfully submits, therefore, that Petitioner is barred as a matter of law from advancing its claim that Registrant is not the owner of the mark.

PETITIONER'S CLAIM OF FALSE "ASSOCIATION" FAILS TO STATE A CLAIM; ALL CLAIMS IN THE PETITION ARE BARRED ON GROUNDS OF LACHES AND ESTOPPEL BY ACQUIESCENCE

**Undisputed Facts:**

- The Application was published for opposition on January 31, 2006.
- Petitioner did not bring an opposition proceeding during prosecution of the Application.
- Between the Application's publication date (January 31, 2006) and the date Petitioner commenced this cancellation proceeding (April 8, 2013), Petitioner filed no fewer than 23 new applications for federal trademark registration, all including the word MARLEY.
- On August 11, 2011 Petitioner brought an opposition proceeding against a different application Registrant had submitted for federal registration (Serial Number 85177921: THE REEF AT MARLEY'S; Opposition Number 91201188).
- Petitioner commenced this cancellation proceeding on April 8, 2013.
- The period of delay between publication for opposition and the commencement of this proceeding (the "Delay Period") was seven years, two months and eight days.

One of the permissible grounds for cancellation of a registration more than five years old is that the registration was obtained contrary to the provisions of subsection (a) of section 2 of the Lanham Act (15 U.S.C. §1064[3]). The applicable provision states that no mark shall be refused registration unless it "falsely suggest[s] a connection with persons, living or dead...." (15 U.S.C. §1052[a]). Petitioner has failed properly to plead a claim for false suggestion of a connection;

instead the petition frames this claim as “false association” with Bob Marley. Registrant thus makes a veiled attempt to advance a claim of likelihood of confusion, which is not a permissible ground for cancellation of a registration more than five years old. *Otto International, Inc. v. Otto Kern GMBH*, 83 USPQ2d 1861 (TTAB 2007).

Assuming without conceding that Petitioner’s claim arises under the “false suggestion of a connection” provision of subsection (a), the claim must fail in any event (along with all other claims in the Petition) because it is barred on grounds of laches and estoppel.

“In all *inter partes* proceedings equitable principles of laches, estoppel, and acquiescence, where applicable may be considered and applied.” 15 U.S.C. §1069; see *Bridgestone/Firestone Research, Inc. v. Automobile Club De L’Ouest De La France*, 245 F3d 1359, 1361 (Fed Cir 2001).

**The Board has made clear that the equitable defenses of laches and estoppel are available against claims of “false suggestion of a connection.”** *Treadwell’s Drifter’s, Inc. v. Marshak*, 18 USPQ2d 1318 (TTAB 1991); see *Terri Yenko Gould v. General Marketing Capital, Inc. and Supercar Collectibles Limited*, 2013 WL 3168097 (TTAB 2013, not precedential). As the Board stated, there is no overriding public policy interest (to prohibit equitable defenses) in cases involving false suggestion of a connection, because the claim is predominantly an assertion of “commercial or personal rights which, if not seasonably asserted, may be deemed waived or diminished if fairness demands.” *Treadwell’s Drifters*, supra.

**Laches.** The elements of laches are (1) unreasonable delay in the assertion of one's rights against another; and (2) prejudice to another attributable to that delay. *Bridgestone/Firestone Research, Inc. v. Automobile Club De L'Ouest De La France*, supra, at 1361; see, *Lincoln Logs Ltd. v. Lincoln Pre-Cut Log Homes Inc.*, 971 F2d 732 (Fed Cir 1992); *Klise Manufacturing Company v. Braided Accents, L.L.C.*, supra.

Delay. In the context of a cancellation proceeding, laches begins to run from the time action could be taken against the involved mark. *National Cable Television Assn., Inc. v. American Cinema Editors, Inc.*, 937 F2d 1572, 1581 (Fed Cir 1991); *Klise Manufacturing Company v. Braided Accents, L.L.C.*, supra. A plaintiff's actual notice of the defendant's use of the mark in question is a factor when considering a laches defense (*id.*). Thus, in a cancellation proceeding where the petitioner had actual prior notice of the registrant's use of the mark, laches begins to run from the date the involved mark was published for opposition. *National Cable Television Assn., Inc. v. American Cinema Editors, Inc.*, supra, at 1582; *Klise*, supra.

The Application was published for opposition on January 31, 2006. Petitioner had actual knowledge of Registrant's adoption and use of the mark, at least as early as August 10, 2005 (see attached Declaration of Jeff Morris and Exhibit D.) Petitioner filed the instant petition for cancellation on April 8, 2013, creating a Delay Period (measured from the date of publication) of seven years, two months and eight days. It is well established that a delay period of such duration is "unusually long by any standard." *Pro-Football, Inc. v. Harjo*, 567 F Supp 2d 46, 54, *affd* 565 F3d 880, *cert denied* 558 US 1025, 130 S Ct 631, 175 L Ed 2d 480 [2009]).

Registrant respectfully submits that the length of the Delay Period itself compels the conclusion that no reasonable fact finder could decide otherwise than that Petitioner's claims should be barred by laches. Nonetheless, Registrant observes that Petitioner's correspondence with Registrant is not the only basis for finding unreasonable delay.

Between the Application's publication date (January 31, 2006) and the date Petitioner commenced this cancellation proceeding (April 8, 2013), Petitioner filed no fewer than 23 new applications for federal trademark registration, all featuring the word MARLEY (see attached Declaration of Elizabeth T Russell and Exhibit E.) Even if one were to ignore altogether that laches in this matter began to run on the publication date, responsible search and clearance procedures in connection with many of these 23 applications would have revealed the existence of the challenged Registration. Petitioner had every opportunity, beginning with its first such application on March 9, 2006, to take action against the challenged Registration. Petitioner did nothing.

(Notably, the earliest of these applications was the one most likely to have revealed the challenged Registration: Registration No. 3692924, BOB MARLEY, for restaurant services; see Exhibit E.)

That Petitioner was well aware of Registrant and its activities, is further evidenced by the fact that, on August 11, 2011, Petitioner commenced an opposition proceeding against a different application Registrant had submitted for federal registration (the "Reef Application," Serial Number 85177921: THE REEF AT MARLEY'S; Opposition Number 91201188; see attached

Declaration of Jeff Morris and Exhibits F and G.) The Reef Application specifically stated that Registrant claimed ownership of the challenged Registration (see attached Declaration of Jeff Morris and Exhibit F). As to the challenged Registration, however, Petitioner (still) took no action.

Petitioner is a sophisticated corporate entity represented by large, international law firms (see attached Declaration of Elizabeth T Russell and Exhibits H, I and J.) There is no reasonable excuse for Petitioner's delay.

Prejudice. The second element of laches is prejudice attributable to the delay. *Bridgestone/Firestone Research, Inc. v. Automobile Club De L'Ouest De La France*, 245 F3d 1359, 1362 (Fed Cir 2001); *Teledyne Technologies, Inc. v. Western Skyways, Inc.*, 78 USPQ2d 1203 (TTAB 2006).

When there has been an unreasonable period of delay by a plaintiff, economic prejudice to the defendant may ensue whether or not the plaintiff overtly lulled the defendant into believing that the plaintiff would not act, or whether or not the defendant believed that the plaintiff would have grounds for action. *Bridgestone/Firestone Research, Inc.*, supra, at 1363; *Teledyne Technologies, Inc. v. Western Skyways, Inc.*, supra.

As the Federal Circuit stated in *Bridgestone/Firestone Research, Inc.*: "Economic prejudice arises from investment in and development of the trademark, and the continued commercial use and economic promotion of a mark over a prolonged period adds weight to the evidence of

prejudice. See *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 821 (7th Cir.1999) (the longer the use and the lengthier the period of delay, the lighter the burden of showing economic prejudice in support of the defense of laches)” *Bridgestone/Firestone Research, Inc.*, supra, at 1363.

The District of Columbia Circuit has held similarly: “[I]n contrast to the defense of estoppel—which requires evidence of specific reliance on a particular plaintiff’s silence—laches requires only general evidence of prejudice, which may arise from mere proof of continued investment in the late-attacked mark alone....We have thus described as sufficient ‘a reliance interest resulting from the defendant’s continued development of good-will during th[e] period of delay,’ and treated evidence of continued investment as proof of prejudice.” *Pro Football, Inc. v. Harjo*, 565 F3d 880, 884, supra.

Prejudice may be as simple as the development of goodwill built around a mark during petitioner’s delay. *Alfacell Corp. v. Anticancer Inc.*, 71 USPQ2d 1301, 1307 (TTAB 2004).

Registrant submits that simple evidence of goodwill built around the challenged mark during the Delay Period is sufficient to establish the requisite degree of prejudice. The attached Declaration of Jeff Morris, along with the Confidential Declaration of Jeff Morris (to be protected as confidential under the Board’s Standard Protective Order) provides more than enough evidence for this purpose, establishing that Registrant continued the use, economic promotion, growth and development of its business under the mark, during the Delay Period.

This case presents an exceedingly long Delay Period during which Petitioner remained silent, despite numerous opportunities to take action; there is also ample and legally sufficient evidence of significant resulting prejudice. In light of the foregoing, Registrant respectfully submits that no reasonable fact finder could decide the question of laches in Petitioner's favor, and that more evidence than is already of record could not reasonably be expected to change the result.

**Estoppel (Acquiescence).** Acquiescence is a type of estoppel that is based upon the plaintiff's conduct that expressly or by clear implication consents to, encourages, or furthers the activities of the defendant, that is not objected to. *The Christian Broadcasting Network, Inc. v. ABS-CBN International*, 84 USPQ2d 1560 (TTAB 2007). A plaintiff will not be permitted to stop conduct that it fostered or tolerated, where the result would be prejudicial to the defendant. *Id.*

Overt Act #1: the draft complaint. Petitioner's counsel engaged in extensive communication with Registrant's counsel, prior to and following the Application's publication date. Notably, during these exchanges (on December 8, 2005) counsel for Petitioner supplied Registrant with a draft complaint alleging trademark infringement based upon Respondent's adoption and use of the challenged mark (Exhibit D). By letter dated March 21, 2006 (see Exhibit D), Registrant's counsel thoroughly outlined Registrant's position, denying Petitioner's allegations and supporting Registrant's claims in and to the challenged mark. Available records suggest that one or two cursory exchanges followed. By June 2006, however, communications ceased entirely; the complaint was never filed; and Petitioner took no action. Given this chronology, it was entirely reasonable for Registrant to take Petitioner's silence and inaction as implicit consent, and to assume that Petitioner had abandoned its claims in connection with the challenged mark.

Overt Act #2: the 2011 opposition proceeding. When Registrant attempted to register THE REEF AT MARLEY'S, also for restaurant services, Petitioner timely commenced an opposition proceeding. Petitioner once again took no action, however, in connection with the challenged Registration. Timely commencing an opposition proceeding in connection with the "Reef Application," which specifically referenced the challenged Registration (see Exhibit F), is yet another overt act of implicit consent.

As to all claims in the Petition, Registrant respectfully submits that it is entitled to judgment as a matter of law on both defenses: laches and estoppel by acquiescence.

### **CONCLUSION**

In view of the foregoing, Registrant submits that it is entitled to summary judgment on all claims, as a matter of law, and that the Petition to Cancel should be dismissed in its entirety, with prejudice.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF REGISTRANT'S MOTION FOR SUMMARY JUDGMENT was served on Petitioner by mailing a copy by First Class Mail, postage prepaid, to Petitioner's counsel at the following address on this 2nd day of May, 2014:

Jill M. Pietrini  
SHEPPARD MULLEN RICHTER & HAMPTON LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017

/elizabeth t russell/

The above is my electronic signature, personally entered by me in accordance with the requirements of 37 C.F.R. §2.193(c)

Elizabeth T Russell  
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Middleton, WI 53562  
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Attorney Docket No.: 90656-001

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**DECLARATION OF JEFF MORRIS**

I, Jeff Morris, declare and state as follows:

1. I own and have served as Secretary of Mormax, Inc. since December 2, 2002.
2. My wife, Marci Morris, is the only other owner of Mormax, Inc.
3. Mormax, Inc. (“Mormax”) assigned the challenged registration to Registrant, Island Food & Fun, Inc., on April 25, 2012.
4. I own and have served as President of Island Food & Fun, Inc., since May 12, 2010.

5. My wife, Marci Morris, is the only other owner of Island Food & Fun, Inc.
6. By virtue of my positions with both companies, and having reviewed the business records of both companies, I have personal knowledge of the matters set forth herein.
7. Mormax made actual use in commerce of the challenged Registration, well before the November, 2006 statement of use that was filed and accepted in this matter.
8. The attached Exhibits A, B and C are accurate depictions of Mormax's website as it appeared publicly on, respectively, June 3, 2002; February 6, 2003; and December 4, 2003.
9. Petitioner, through its then-counsel, Timothy J. Ervin, Esq., contacted me by letter dated August 10, 2005, informing me that Petitioner considered use of the word MARLEY, in connection with restaurant services, to constitute trademark infringement.
10. The attached Exhibit D includes a copy of Mr. Ervin's August 10, 2005 letter.
11. I referred Mr. Ervin's August 10, 2005 letter to our then-counsel, Atty. Paul D. Polacek.  
(Unless otherwise indicated or required by the context, references to "us" and "our" are to my wife and me, and to those of our businesses involved in this matter.)
12. Atty. Polacek represented us in this matter through at least December, 2005.
13. Early in 2006, we retained Atty. Peter J. Manghera, of Reinhart, Boerner, Van Dueren (Madison and Milwaukee, WI) to represent us in what was becoming an ongoing dispute with Petitioner.
14. At some point after we retained Atty. Manghera, it became apparent that Petitioner had also secured new representation, as evidenced by correspondence to Mr. Manghera dated May 17, 2006 from Jeffrey M. Smith, Esq., of Greenberg Traurig, LLP (Atlanta, GA).
15. The attached Exhibit D includes a copy of Mr. Smith's May 17, 2006 letter.

16. It is my understanding that Mr. Smith and Mr. Manghera had one or two exchanges of communication following Mr. Smith's May 17, 2006 letter, including a letter from Mr. Smith dated June 10, 2006.
17. The attached Exhibit D includes a copy of Mr. Smith's June 10, 2006 letter.
18. I am not aware of any further correspondence or communication from Petitioner or its representatives, after Mr. Smith's June 10, 2006 letter.
19. When it became apparent that communication had ceased, I believed Petitioner had abandoned its claims regarding our use of the challenged mark and/or the word MARLEY.
20. In October, 2010 we retained Attorney Elizabeth T Russell (then of Madison, WI) to represent us in connection with a new trademark application for bar and restaurant services: THE REEF AT MARLEY'S (the "Reef Application").
21. I signed the Reef Application on November 16, 2010, and it was submitted that same day (Exhibit F).
22. The Reef Application specifically stated that we claimed ownership of the challenged Registration 3225517 (Exhibit F).
23. Petitioner commenced an opposition proceeding against the Reef Application on August 11, 2011 (Exhibit G).
24. At no time during Petitioner's opposition proceeding against the Reef Application did we receive any correspondence or communication, of any kind, in connection with the challenged Registration.

25. Under the challenged Registration, our business and related goodwill grew significantly between the date the Application was published for opposition, and Petitioner's commencement of the instant cancellation proceeding.
26. Our business would suffer significant economic prejudice if the challenged Registration were to be cancelled at this late date.
27. In support of the instant motion for summary judgment, on the issue of laches and prejudice, I submit a separate Confidential Declaration with more detailed business growth and expenditure information, to be treated as Confidential pursuant to the Board's Standard Protective Order.
28. Other than standard accommodations for growth, the business model for operating our restaurant under the challenged Registration has not changed since Petitioner's counsel first approached us in 2005.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

  
Jeff Morris

Dated:

Attorney Docket No.: 90656-001

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Commissioner for Trademarks  
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**DECLARATION OF ELIZABETH T RUSSELL**

I, Elizabeth T Russell, declare and state as follows:

1. I have represented Mormax, Inc., Island Food and Fun, Inc., and their owners (Jeff and Marci Morris) in trademark matters since October, 2010.
2. For convenience, I shall refer to Mormax, Inc., Island Food and Fun, Inc., and their owners, Jeff and Marci Morris, collectively, as the “Morris Entities” unless otherwise noted or required by the context.
3. By virtue of such representation, and based upon my review of the files in this matter, I have personal knowledge of the matters set forth herein.
4. The parties to this cancellation proceeding have made initial disclosures.

5. The parties to this cancellation proceeding have not agreed to any modifications of the Board's Standard Protective Order.
6. By letter dated January 28, 2014 I advised Petitioner's counsel of Registrant's intent to seek summary judgment on each of the grounds set forth in the within motion. In that letter, I inquired regarding Petitioner's willingness to engage in settlement negotiations.
7. On February 12, 2014 Petitioner's counsel responded to my January 28, 2014 letter, by email, asking for a more specific settlement proposal.
8. By letter dated February 19, 2014 I provided Petitioner's counsel with a specific proposal for settlement. In that letter I also requested Petitioner's consent to a motion to suspend the cancellation proceeding for purposes of settlement negotiation.
9. Petitioner's counsel simply did not respond to my request for consent to suspension. By email on March 27, 2014, however, Petitioner's counsel did provide a counterproposal for settlement.
10. Because Petitioner's counsel had not refused my request for consent to suspension, I believed Petitioner was in the process of considering the request.
11. Petitioner has served certain discovery requests to which Registrant (believing that suspension remained on the table) has not yet responded. In the event the within motion does not result in the dismissal of all claims, Registrant will comply with such discovery requests as the Board ultimately permits.
12. I have in my possession files from two of the Morris Entities' previous trademark attorneys: Atty. Paul D. Polacek and Atty. Peter J. Manghera.

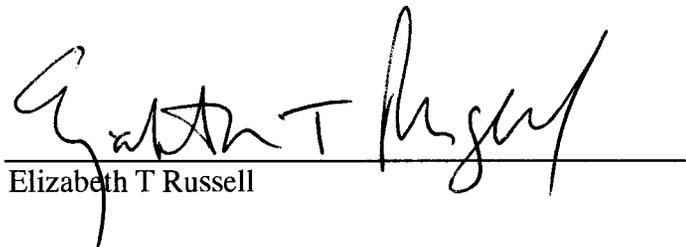
13. The files in my possession indicate that, in connection with the challenged Registration, there was no communication or correspondence between Petitioner and Registrant between June, 2006 and the date Petitioner commenced this cancellation proceeding.
14. Petitioner attached numerous United States trademark registrations to the Petition to Cancel in this proceeding. Of those attached, at least 23 were filed between the Application's publication date (January 31, 2006) and the date Petitioner commenced this cancellation proceeding (April 8, 2013). Exhibit E contains screen captures from the USPTO website, showing the filing dates of all such registrations.
15. I personally captured each of the screen captures in Exhibit E, on April 29, 2014.
16. No registration of Petitioner's was cited against the challenged Registration or against the Reef Application, during examination.
17. Petitioner has been, and continues to be, represented by large international law firms.
  - a. GrenbergTraurig represented Petitioner in discussions with Registrant, at least in May and June 2006 (Exhibit D).
  - b. I captured the attached Exhibit H from the GreenbergTraurig website (<http://www.gtlaw.com/About-Us/GT-At-a-Glance>) on April 25, 2014.
  - c. Manatt, Phelps & Phillips, LLP represented Petitioner at least in 2011, in connection with Petitioner's opposition proceeding against the Reef Application. (Exhibit G).
  - d. I captured the attached Exhibit I from the Manatt website (<http://www.manatt.com/AboutUs.aspx>) on April 25, 2014.
  - e. Petitioner is currently represented by Sheppard Mullen Richter & Hampton LLP.

f. I captured the attached Exhibit J from the Sheppard Mullen website (<https://www.sheppardmullin.com/about.html>) on April 25, 2014.

18. I represented Registrant in connection with Petitioner's opposition proceeding against the Reef Application. Consequently, I have personal knowledge of that matter and of the content of Exhibits F and G.

19. At no time during Petitioner's opposition proceeding against the Reef Application did I receive any correspondence or communication from Petitioner, of any kind, in connection with the challenged Registration.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

  
Elizabeth T Russell

Dated: 5-1-14

# EXHIBIT A

(one page)



# Marley's

A TASTE OF THE  
CARIBBEAN



[Menu](#) [Calendar](#) [Area Restaurants](#) [Entertainment](#) [Specials](#) [Tour](#) [Contact Us](#)

[Recipes Straight From a Caribbean Chef](#)



Enjoy Family and Group dining.

Enjoy a Caribbean style drink and Entertainment in our lounge.

# EXHIBIT B

(one page)



# Marley's

A TASTE OF THE  
CARIBBEAN



[Menu](#) [Calendar](#) [Area Restaurants](#) [Entertainment](#) [Specials](#) [Tour](#) [Contact Us](#)

Caribbean Style Restaurant and Lounge



Enjoy Family and Group dining.

Enjoy a Caribbean style drink and Entertainment in our lounge.

# EXHIBIT C

(one page)



# Marley's

A TASTE OF THE  
CARIBBEAN



[Menu](#) [Calendar](#) [Area Restaurants](#) [Entertainment](#) [Specials](#) [Tour](#) [Contact Us](#)

[Recipes Straight From a Caribbean Chef](#)

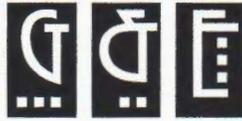


[Enjoy Family and Group dining.](#)

[Enjoy a Caribbean style drink and Entertainment in our lounge.](#)

# EXHIBIT D

(17 pages)



## Gallant & Ervin

August 10, 2005

Proprietor  
Marley's  
1470 Wisconsin Dells Pkwy  
P.O. Box 68  
Lake Delton, WI 53940

**Re: Protection of Bob Marley Trademark**

Dear Sir or Madam:

Please be advised that this firm is counsel for Fifty-Six Hope Road Music Limited ("Hope Road"). This letter is directed to Marley's, and their parent corporations, affiliates, subsidiaries and their respective officers, directors, shareholders and employees (hereinafter collectively "Marley's").

Hope Road is an entity founded by the surviving children of the late great reggae performer, Bob Marley, and is the rightful holder of a federal trademark registration No. 2,349,361 (copy enclosed), listed on the Principal Register of the United States Patent & Trademark Office in and to the name Bob Marley (hereinafter "Marley Rights"). Hope Road is the sole and exclusive entity that can authorize or license the use of the Marley Rights in commerce.

Marley was a singer and performer who gained worldwide renown for his image, name, likeness, music and performances. For many years before his death, Marley worked diligently to become and became an extremely successful songwriter, vocalist, musician, and recording artist. As a consequence of his abilities and efforts, Marley created a general acceptance and good will for his name and likeness, the effect of which was to create an absolute, incorporeal, and transferable property right with a substantial commercial value in the eyes of the public.

Hope Road has learned that your company is operating a "Caribbean" themed restaurant under the name "Marley's", is maintaining a website under the name "Marleysclub.com" and is offering for sale merchandise containing the name "Marley" and the phrase "we be jamming." First, "Jammin" is the title to one of Bob Marley's most famous recordings and is inextricably tied and associated with Marley. Moreover, Hope Road has entered into agreements licensing establishments to use the name "Bob Marley Café" which locations are operated in the United States. Hope Road has further actively marketed and sold products throughout the United States and the world under its Marley Trademark.

Gallant & Ervin, LLC □ Attorneys at Law

One Olde North Road □ Suite 103 □ Chelmsford, MA 01824 □ tel (978) 256-6041 □ fax (978) 256-7977 □ www.gallant-ervin.com



Letter Marley's  
August 10, 2005  
Page 2

Accordingly, the use by your company of the name "Marley's", the website "Marley's club" and the name "Marley" and "we be jamming" on merchandise as part of a reggae themed restaurant constitutes an infringement of the Marley Rights as the public is being misled that your establishment is sponsored by, affiliated with or sanctioned by Hope Road, which it is not. Hope Road, as the owner of the Marley rights, has actively advertised and promoted the celebrity of Marley in commerce and has developed enormous good will in the Marley Rights. These rights are exclusive to Hope Road.

In addition, the use of the "Marley" registered trademark in conjunction with phrase "we be jamming" is causing confusion and mistake and deception of purchasers as to the source of origin of the goods, which falsely suggest that the disputed products are sponsored by, licensed by or otherwise affiliated with Hope Road. Such manufacture, advertising and sale, as I am certain you are aware, without Hope Road's authorization constitutes an infringement of its exclusive rights.

It is critical that Hope Road protect its rights and interests, particularly its exclusive and valuable trademark rights. Accordingly, this correspondence constitutes a formal demand that Marley's immediately cease and desist from any further utilization of the Marley Rights in the name of the establishment, on its website and on any merchandise and immediately cease selling, supplying, manufacturing or advertising for sale any Marley merchandise. Now that Marley's has been placed on notice of Hope Road's exclusive rights, any further use of the Marley Rights will unquestionably constitute intentional infringement.

In order to resolve this matter, Hope Road requires that your company provide a written response to this letter no later than ten (10) days from its receipt, detailing its intentions now that it has been made aware of this situation. If adequate assurance is not received that your company will comply with Hope Road's demands, my client will have no choice other than to pursue the full range of legal remedies available to it under applicable law. It is hoped that this will not prove necessary.

This formal demand letter is written without prejudice to any of Hope Road's rights and remedies, all of which are hereby expressly reserved. I look forward to speaking with you in due course to resolve this matter.

Sincerely,



Timothy J. Ervin, Esquire

TJE/cml  
cc: Client

---

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**POLACEK & FIELD, S.C.**  
Attorneys and Counselors

631 CEDAR STREET, FIRST FLOOR  
P.O. BOX 328  
WISCONSIN DELLS, WI 53965-0328

PAUL D. POLACEK  
GEORGE C. FIELD II

TELEPHONE: (608) 254-1823  
FACSIMILE: (608) 254-1824

ADAM JUNE  
of counsel

---

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September 1, 2005

**Attorney Timothy J. Ervin**  
**GALLANT & ERVIN, LLC**  
One Olde North Road, Suite 103  
Chelmsford, MA 01824

In re: Marley's / The Estate of Bob Marley

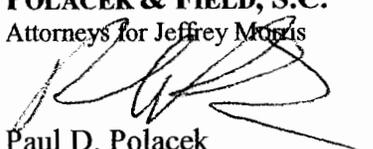
Dear Attorney Ervin:

This letter is to touch base with respect to your August 10, 2005 letter to the Proprietor of Marley's Caribbean Restaurant in Lake Delton, Wisconsin. Be advised that I am in the process of consulting with others in preparing a response to your allegations.

As you are aware, I have attempted to make contact via telephone. I appreciate your response. Unfortunately our schedules have not allowed a conversation on this topic. It is my understanding that you are out of the office until Tuesday, September 6, 2005. I expect that I will be in court, I have a trial that should conclude on Wednesday, September 7, 2005. Noting that the following day appears fairly open with the exception for returning phone calls from the previous days. I look forward to speaking with you on this issue.

I would like to discuss with you the basis of your claims. Specifically, what the nature and basis of the claims you are making with respect to infringement. You have claimed certain rights, however do not identify the nature of those rights. You have claimed infringement supported by confusion yet fail to support the claim of confusion with demonstrative facts. To conclude, I will remain on the course of defending against your claim and look forward to learning more about your position and exploring amiable resolve. Please call when you return to the office.

Very truly yours,  
**POLACEK & FIELD, S.C.**  
Attorneys for Jeffrey Morris

  
Paul D. Polacek

**COPY**



Gallant & Ervin

September 22, 2005

**BY: FACSIMILE (608) 254-1824**

Mr. Paul D. Polacek  
Polacek & Field, S.C.  
631 Cedar Street, 1<sup>st</sup> Floor  
P.O. Box 328  
Wisconsin Dells, WI 53965

**Re: Protection of Bob Marley Trademark**

Dear Mr. Polacek:

As you are aware, this firm is counsel for Fifty-Six Hope Road Music Limited ("Hope Road") relative to the protection of its intellectual property rights.

In furtherance to our previous conversations concerning this matter request is made to obtain a status update on a response to the issues raised in the cease and desist letter sent on August 10, 2005 and subsequent issues discussed with you thereafter.

My client would like to move forward to resolve this matter. Kindly let me know if successor counsel has been retained or if a proposal to resolve the issues is forthcoming.

I appreciate your attention to this matter.

Sincerely,

Timothy J. Ervin

TJE/cml  
cc: Client

---

**POLACEK & FIELD, S.C.**  
Attorneys and Counselors

631 CEDAR STREET, FIRST FLOOR  
P.O. BOX 328  
WISCONSIN DELLS, WI 53965-0328

PAUL D. POLACEK  
GEORGE C. FIELD II

TELEPHONE: (608) 254-1823  
FACSIMILE: (608) 254-1824

ADAM JUNE  
of counsel

---

October 21, 2005

Attorney Timothy J. Ervin  
Gallant & Ervin, LLC  
One Olde North Road, Suite 103  
Chelmsford, MA 01824

**Re: Marley's Caribbean Restaurant**

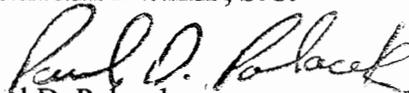
Dear Attorney Ervin:

In an effort to keep this moving toward resolve as quickly as possible, I wanted to touch base with you regarding potential solutions. I have spoke with the management of Marley's Caribbean Restaurant to address your concerns.

If I understand you objection correctly, you are objectionable to the use of the word "Jammin" with respect to the menu item "Jammin Fries" and sales of apparel or souvenirs that contain the image of the musician Bob Marley. My client advises that the menu item has been discontinued by the supplier and is no longer available. Be advised that they have recently extended considerable outlays on new menus. Any souvenirs that would have been sold or offered at this business would have been licensed product that would have provided revenue to your client. I assume that your argument for objection is that such an offering might imply endorsement or affiliation.

I believe that this may be a simple agreement to resolve the issues and conclude this matter. I would like to speak to you and discuss any ideas that you may have or that I might suggest. Please contact my office to schedule a time that would be convenient for you to discuss this matter.

Very truly yours,  
POLACEK & FIELD, S.C.

  
Paul D. Polacek

cc: Jeffrey Morris

**COPY**

**Gallant & Ervin**

October 26, 2005

**BY: FACSIMILE (608) 254-1824**

Mr. Paul D. Polacek  
Polacek & Field, S.C.  
631 Cedar Street, 1<sup>st</sup> Floor  
P.O. Box 328  
Wisconsin Dells, WI 53965

**Re: Protection of Bob Marley Trademark**

Dear Mr. Polacek:

As you are aware, this firm is counsel for Fifty-Six Hope Road Music Limited ("Hope Road") relative to the protection of its intellectual property rights. I am in receipt of your letter dated October 21, 2005 on behalf of Marley's Caribbean Restaurant purporting to propose a settlement of the issues raised by my client.

I would note that several months have passed since the initial cease and desist letter was provided. I am dismayed that after several months all that we have received from you is a letter that completely ignores the issues raised in the cease and desist letter.

Specifically, your letter mischaracterizes the issues concerning the use by your clients of the name "Marley" as well as the phrase "we be jammin." The cease and desist letter we forwarded on August 10, 2005 sets forth in detail the claimed infringement, which does not involve any menu items as your letter suggests. The pertinent paragraphs of the August 10, 2005 cease and desist letter are reprinted here for your review:

Hope Road has learned that your company is operating a "Caribbean" themed restaurant under the name "Marley's", is maintaining a website under the name "Marleysclub.com" and is offering for sale merchandise containing the name "Marley" and the phrase "we be jammin." First, "Jammin" is the title to one of Bob Marley's most famous recordings and is inextricably tied and associated with Marley. Moreover, Hope Road has entered into agreements licensing establishments to use the name "Bob Marley Café" which locations are operated in the United States. Hope Road has further actively marketed and sold products throughout the United States and the world under its Marley Trademark.

Gallant & Ervin, LLC □ Attorneys at Law

One Olde North Road □ Suite 103 □ Chelmsford, MA 01824 □ tel (978) 256-6041 □ fax (978) 256-7977 □ www.gallant-ervin.com



Accordingly, the use by your company of the name "Marley's", the website "Marley's club" and the name "Marley" and "we be jammin" on merchandise as part of a reggae themed restaurant constitutes an infringement of the Marley Rights as the public is being misled that your establishment is sponsored by, affiliated with or sanctioned by Hope Road, which it is not. Hope Road, as the owner of the Marley rights, has actively advertised and promoted the celebrity of Marley in commerce and has developed enormous good will in the Marley Rights. These rights are exclusive to Hope Road.

In addition, the use of the "Marley" registered trademark in conjunction with phrase "we be jammin" is causing confusion and mistake and deception of purchasers as to the source of origin of the goods, which falsely suggest that the disputed products are sponsored by, licensed by or otherwise affiliated with Hope Road. Such manufacture, advertising and sale, as I am certain you are aware, without Hope Road's authorization constitutes an infringement of its exclusive rights.

We even provided a copy of the disputed t-shirt being offered for sale by your client to highlight our concerns. It is these unauthorized uses of the Marley rights which precipitated the cease and desist letter.

Moreover I am confused and do not understand the significance of the fact that your clients have recently spent money on new menus, nor do I understand what you are attempting to convey when you write: "Any souvenirs that would have been offered at this business would have been licensed product that would have provided revenue to your client. I assume that your argument for objection is that such an offering might imply endorsement or affiliation." Our objection is that they are currently offering items for sale which are not licensed products which mislead the public into believing that the goods are sponsored by or affiliated with Hope Road, which they are not. All your letter does is admit that your clients fully intended to use and have used the name "Marley's" to create the impression of an affiliation without their having obtained an appropriate license to do so.

My clients have been more than patient in waiting for a response to the issues outlined in the initial cease and desist letter. Your most recent letter has done nothing to address the concerns raised therein. Accordingly please be advised that in order to resolve this matter my clients seek the following:

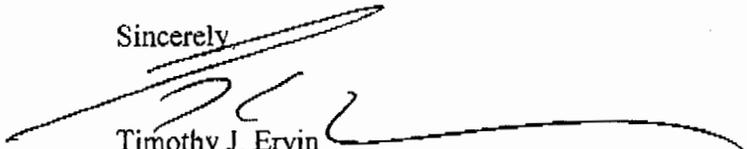
- That your clients immediately cease and desist from using the name "Marley's" in conjunction with their restaurant;
- That your clients immediately cease and desist from using the name "Marley's" on any merchandise and immediately cease and desist from using the phrase "we be jammin" on any merchandise or promotional materials, including menus;



- That your clients immediately cease and desist the use of the domain: "marleysclub.com" and execute a document of assignment transferring the domain to Hope Road;
- That your clients covenant and agree that they will not use the name "Marley's" and any other confusingly similar variation thereof in the name of any restaurant so as to suggest an affiliation with Hope Road;
- That your clients make remuneration to Hope Road in the amount of \$20,000.00 for the past illicit use of the Marley rights.

I believe the foregoing is more than equitable in light of the past conduct of your clients in specifically trading off of the name and goodwill associated with Bob Marley and the Marley trademark. This offer shall remain open for five (5) days after which it will be deemed rejected and my clients will be free to pursue all available legal remedies.

Sincerely



Timothy J. Ervin

TJE/cml

cc: Client



Gallant & Ervin

November 8, 2005

**BY: FACSIMILE (608) 254-1824**

Mr. Paul D. Polacek  
Polacek & Field, S.C.  
631 Cedar Street, 1<sup>st</sup> Floor  
P.O. Box 328  
Wisconsin Dells, WI 53965

**Re: Protection of Bob Marley Trademark**

Dear Mr. Polacek:

As you are aware, this firm is counsel for Fifty-Six Hope Road Music Limited ("Hope Road") relative to the protection of its intellectual property rights.

I have not received any response from you concerning my client's demand for settlement sent on October 26, 2005. That settlement proposal has expired by its terms. It appears that your client is not interested in resolving this matter amicably and that further legal action is necessary.

Accordingly, kindly indicate whether your office will agree to accept service of the Complaint in this action in accordance with the Federal Rules of Civil Procedure or whether formal service will be required.

It is unfortunate that a resolution to these issues could not be effectuated.

Sincerely,

Timothy J. Ervin

TJE/cml  
cc: Client



Gallant & Ervin

December 8, 2005

**BY: FACSIMILE (608) 254-1824**

Mr. Paul D. Polacek  
Polacek & Field, S.C.  
631 Cedar Street, 1<sup>st</sup> Floor  
P.O. Box 328  
Wisconsin Dells, WI 53965

**Re: Protection of Bob Marley Trademark**

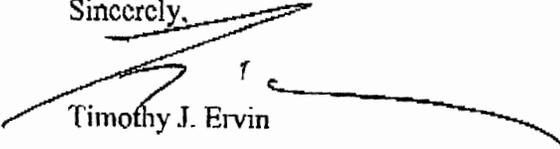
Dear Mr. Polacek:

As you are aware, this firm is counsel for Fifty-Six Hope Road Music Limited ("Hope Road") relative to the protection of its intellectual property rights.

I enclose herein a courtesy copy of the Complaint that we intend to file with the United States District Court, Eastern District of Wisconsin against your clients Marley's LLC and its managers and members both individually and in their capacity as members and managers of the LLC.

If arrangements are not made within five (5) days of the date of this correspondence to resolve the issues of your clients' use of the protected intellectual property of Hope Road, we will commence the within action.

Sincerely,



Timothy J. Ervin

TJE/cml  
cc: Client



March 21, 2006

VIA FACSIMILE  
ORIGINAL VIA FIRST CLASS MAIL

Timothy J. Ervin  
Gallant & Ervin, LLC  
One Olde North Road  
Suite 103  
Chelmsford, MA 01824

Dear Mr. Ervin:

Re: U.S. Trademark Registration 2,349,361  
for "Bob Marley"

As you are aware, this firm has taken on the role as counsel for the owners and operators of Marley's A Taste of the Caribbean restaurant in Wisconsin Dells, Wisconsin, in relation to your client's concerns regarding the above-referenced trademark registration. We are taking over representation in this matter from Attorney Paul Polacek, and all further correspondence and communication regarding this matter should be directed to me rather than to Attorney Polacek.

We have reviewed all of the correspondence between you and Mr. Polacek, including your client's claims and concerns regarding the above-referenced trademark registration. We have also reviewed your latest correspondence of March 2, 2006, and our client's use of trademarks in relation to their restaurant operation. In this letter we would like to present our current view of the situation along with a proposal which, we hope, will resolve this issue in a manner that is satisfactory to both parties and at minimal expense to each of our clients.

Marley's A Taste of the Caribbean is a family oriented restaurant and lounge featuring Caribbean décor, menu, and entertainment. The restaurant is located in Wisconsin Dells, Wisconsin, and has been in operation since July 2000. Over the years, Marley's A Taste of the Caribbean has met with significant success. We believe this success is due to the hard work of the owners in providing excellent food, service, and entertainment to residents in the Wisconsin Dells area and returning visitors to the area.

FILE COPY

Timothy J. Ervin

March 21, 2006

Page 2

Marley's A Taste of the Caribbean has used, and is currently using, a distinctive trademark design for the restaurant services provided. This trademark is the subject of an application for federal trademark registration, Serial Number 78322137, of which you are aware. This distinctive design consists of stylized letters spelling "Marley's A Taste of the Caribbean" with a stick figure family on top of the words consisting of the left figure in a skirt, the middle figure representing a child, and the right figure representing a father. There is no doubt that there is good will established in the minds of the residents of and visitors to the Wisconsin Dells in this design. However, this good will is a result of the outstanding experiences that families have had at Marley's A Taste of the Caribbean restaurant and is not due, in any part, to association of the restaurant with the famous singer and performer Bob Marley or your client.

The owners and operators of Marley's A Taste of the Caribbean recognize and respect the rights of your client, Fifty-Six Hope Road Music Limited ("Hope Road") in the name Bob Marley as represented in U.S. Trademark Registration 2,349,361. However, we do not believe that the use of the Marley's A Taste of the Caribbean trademark for a family oriented restaurant and lounge infringes Hope Road's rights as represented by this trademark registration.

We first note that the Marley's A Taste of the Caribbean design mark does not contain the term "Bob Marley" nor does it contain an image, likeness, or other indicia of Bob Marley. Marley's A Taste of the Caribbean design mark is thus different from the mark as registered by Hope Road. Since there is such limited similarity between the Marley's A Taste of the Caribbean design trademark and your client's registered Bob Marley trademark, we believe that the marks themselves are not confusingly similar so as to create a likelihood of confusion, mistake, and/or deception with the consuming public.

More importantly, we note that there is no similarity between the various goods for which the Bob Marley trademark has been registered and the family oriented restaurant services provided under the Marley's A Taste of the Caribbean trademark design. Although we recognize Hope Road's rights in the name Bob Marley as used in association with the goods listed in U.S. Trademark Registration 2,349,361, we do not believe that these rights can be extended beyond such goods as listed to include a family oriented restaurant and lounge.

Timothy J. Ervin  
March 21, 2006  
Page 3

We further note that our client's application for registration of the Marley's A Taste of the Caribbean trademark has been allowed by the U.S. Patent and Trademark Office without reference to U.S. Trademark Registration 2,349,361. Thus, it appears that the Trademark Office also does not believe that there is a likelihood of confusion between the two marks.

In summary, we do not believe that Hope Road has exclusive trademark rights in the word "Marley", which is the only similarity between Hope Road's registered trademark and the Marley's A Taste of the Caribbean design trademark, that would preclude the use of the latter mark for a family oriented restaurant and lounge by our client. (We note that others, apparently, also are using the word "Marleys" in association with Caribbean themed restaurants. Apparently there is a restaurant operating under the name Marleys Island Grill in Hilton Head Isle, South Carolina. See U.S. Trademark Registration No. 2758619.)

Nevertheless, our client does recognize the rights of Hope Road as represented by U.S. Trademark Registration 2,349,361 and does not wish to infringe any of those rights. Since our client believes that the good will associated with the Marley's A Taste of the Caribbean design trademark is based on the quality food, service, and entertainment provided under that trademark, rather than on any association with Bob Marley, our client is willing to take the action necessary to make it clear that there is no connection between the restaurant operating under the name Marley's A Taste of the Caribbean and Bob Marley or your client.

In view of the discussion above, I am attaching hereto a proposed outline of an agreement between our clients which, I hope and believe, will resolve the issue between them. In briefest summary, your client would agree that our client's continued use of Marley's A Taste of the Caribbean design trademark for a family oriented restaurant and lounge does not infringe your client's trademark rights and your client will take no action against use of this design mark, and trademarks having nearly similar design elements, for restaurant services. In exchange, our client will agree to remove any reference to or suggestion of association with Bob Marley from the restaurant and any goods that may be sold in or in association with the restaurant.

Timothy J. Ervin  
March 21, 2006  
Page 4

Please take the enclosed proposal under consideration with your client and contact me at your convenience to finalize the terms of an agreement if you believe the general concepts outlined in the proposal are acceptable.

Very truly yours,

A handwritten signature in black ink that reads "Peter J. Manghera". The signature is written in a cursive style with a large initial "P" and a distinct "J" and "M".

Peter J. Manghera

Madison\158873PJM:LW

Encs.

cc Jeffrey Morris

# Greenberg Traurig

Jeffrey M. Smith  
Direct Dial: (678)553-2333  
E-mail: smithj@gtlaw.com

May 17, 2006

Via E-mail: pmangher@reinhardt.com

Mr. Peter Manghera  
Reinhart Boerner Van Deuren S.C.  
22 East Mifflin Street  
P.O. Box 2018  
Madison, WI 53701-2018

**Re: Hope Road Merchandising / Bob Marley Cafe**

Dear Peter:

Thank you for calling me yesterday to further discuss the possibility of settling the trademark dispute between our clients. I conveyed to my client the concept of entering into a licensing agreement based on your client paying a royalty to use the name "Marley's" for restaurant services. As I predicted would occur, my client has authorized me to reject that offer.

We respect your forceful advocacy on behalf of your client, specifically with a view towards convincing us that your client will litigate rather than change the name. However, that would not be a rational decision on your client's part and we therefore remain optimistic that an amicable resolution can be reached. The resolution must include your client's agreement not to use the word "Marley's" or any variation of it, except as authorized in the settlement agreement. That cannot include the name of the restaurant itself.

Your client previously took the position that the use of the word "Marley's" was not a trademark violation because, at least primarily, it was part of a longer name that included the words "A Taste of the Caribbean". Now, your client is apparently taking the position that, without using the word "Marley's" in the name of the restaurant, it will lose significant business. This is clearly a contradictory pair of positions. The most current position reinforces our view that the public is being misled into believing that the restaurant is associated with Bob Marley, Bob Marley's family, as well as his history and his music.

We remain willing to explore a number of unusual and creative ways to make the transition to a revised name relatively easy for your client. These include the following:

1. permitting your client to permanently use the name "A Taste of the Caribbean", even though that name has value based on its association with the illegal use of the word "Marley's";
2. permitting your client to temporarily use the word "Marley's" until a commercially reasonable point next Fall, which avoids any impairment of name recognition this season and permits significant time to re-identify the restaurant for the 2007 season;
3. permitting your client to sell T-shirts and other merchandise which contain trademarks involving Bob Marley and his music;

ALBANY  
AMSTERDAM  
ATLANTA  
BOCA RATON  
BOSTON  
CHICAGO  
DALLAS  
DELAWARE  
DENVER  
FORT LAUDERDALE  
HOUSTON  
LAS VEGAS  
LOS ANGELES  
MIAMI  
MILAN\*  
NEW JERSEY  
NEW YORK  
ORANGE COUNTY, CA  
ORLANDO  
PHILADELPHIA  
PHOENIX  
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ZURICH

\*Strategic Alliances  
Tokyo-Office/Strategic Alliance

Mr. Peter Manghera  
Reinhart Boerner Van Deuren S.C.  
May 17, 2006  
Page 2

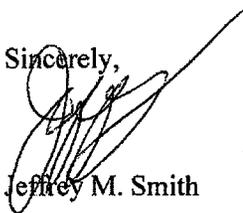
4. permitting your client to sell such merchandise on, at least to some extent, a relatively advantageous economic basis, such as having access to volume discounts despite not actually achieving the volume level;
5. permitting the use of the name and likeness of Bob Marley in agreed upon ways, such as in connection with one or two menu items, as well as a few aspects of the design or interior decoration in the restaurant;
6. permitting your client to use music performed by Bob Marley in connection with agreed upon events or merchandising promotions; and
7. permitting your client to link to authorized Bob Marley websites, with appropriate disclosures of course regarding your client's own website.

If this matter is litigated, I am sure your client understands that none of these advantages will be available to your client. Although you may hold out some hope to your client that it will prevail, I am confident you have not and will not hold out significant hope to your client that it will prevail. When your client does lose, I am sure you have informed it that the remedy will include:

1. an injunction prohibiting your client from engaging in a number of activities which have violated the law;
2. a significant expenditure along the way of legal fees and expenses;
3. an award of damages to my client;
4. an award of attorneys' fees and expenses to my client; and
5. as reflected above, the end of any opportunity to work cooperatively as generally outlined above.

I look forward to hearing from you and hopefully reaching an amicable settlement in this matter.

Sincerely,



Jeffrey M. Smith

JMS:ym  
Recipient Enclosure(s) (0)

cc: Ms. Doreen Crujeiras - Enclosure(s) (0) via e-mail: doreen@bobmarley.com  
Mr. Timothy Ervin - - Enclosure(s) (0) via e-mail: tim@gallant-ervin.com

atl-fs1\570178v01

# Greenberg Traurig

Jeffrey M. Smith  
Direct Dial: (678)553-2333  
E-mail: smithj@gtlaw.com

June 10, 2006

Via E-mail: pmangher@reinhardtllp.com

Mr. Peter Manghera  
Reinhart Boerner Van Deuren S.C.  
22 East Mifflin Street  
P.O. Box 2018  
Madison, WI 53701-2018

**Re: Hope Road Merchandising / Bob Marley Cafe**

Dear Peter:

When I called you to discuss this matter last week, you informed me that you would be sending a letter explaining your client's decision not to resolve this matter amicably. I have not received your letter, but I assume your client's decision is that it wants to litigate this matter. We will therefore move forward in that direction, especially since your client has apparently instructed you not to send us the letter you described.

We continue to believe this matter could have and should have been resolved in a way which would be beneficial both to your client and my client. The fact that your client will not agree to a resolution which removes the name "Marley's" from the name of the restaurant confirms the fact that your client is illegally generating profits by misleading consumers into believing that the restaurant is associated with various aspects of Bob Marley's life, music and intellectual property.

Sincerely,

  
Jeffrey M. Smith

JMS:lln

Recipient Enclosure(s) (0)

cc: Ms. Doreen Crujeiras - w/o encl. (0) via e-mail: doreen@bobmarley.com  
Mr. Timothy Ervin - w/o encl. (0) via e-mail: tim@gallant-ervin.com

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NEW YORK  
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# BOB MARLEY

<b>Word Mark</b>	BOB MARLEY
<b>Goods and Services</b>	IC 043. US 100 101. G & S: <b>restaurant services</b> , namely, preparation and service of food and beverages for consumption. FIRST USE: 19990206. FIRST USE IN COMMERCE: 19990206
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	76656675
<b>Filing Date</b>	<b>March 9, 2006</b>
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	<b>1B</b>
<b>Published for Opposition</b>	November 7, 2006
<b>Registration Number</b>	<b>3692924</b>
<b>Registration Date</b>	October 6, 2009
<b>Owner</b>	(REGISTRANT) Fifty Six Hope Road Music, Limited INTERNATIONAL BUSINESS COMPANY BAHAMAS Aquamarine House Cable Beach Nassau BAHAMAS
<b>Attorney of Record</b>	Jill M. Pietrini
<b>Prior Registrations</b>	2349361;2820741
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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# MARLEY RESORT & SPA

<b>Word Mark</b>	MARLEY RESORT & SPA
<b>Goods and Services</b>	IC 043. US 100 101. G & S: Hotel services, namely, <b>servicing food and drinks</b> and providing temporary accommodations and lodging. FIRST USE: 20080704. FIRST USE IN COMMERCE: 20080704
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Trademark Search Facility Classification Code</b>	SHAPES-MISC Miscellaneous shaped designs
<b>Serial Number</b>	76664835
<b>Filing Date</b>	<b>August 18, 2006</b>
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	<b>1B</b>
<b>Published for Opposition</b>	December 25, 2007
<b>Change In Registration</b>	CHANGE IN REGISTRATION HAS OCCURRED
<b>Registration Number</b>	<b>3612800</b>
<b>Registration Date</b>	April 28, 2009
<b>Owner</b>	(REGISTRANT) Fifty-Six Hope Road Music Limited INTERNATIONAL BUSINESS COMPANY BAHAMAS Aquamarine House Cable Beach Nassau BAHAMAS
<b>Attorney of Record</b>	Jill M. Pietrini, Esq.
<b>Prior Registrations</b>	2349361

<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RESORT & SPA" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL-2(F)
<b>Live/Dead Indicator</b>	LIVE

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# MARLEY COFFEE

<b>Word Mark</b>	MARLEY COFFEE
<b>Goods and Services</b>	IC 016. US 002 005 022 023 029 037 038 050. G & S: greeting cards, blank journals, bumper stickers, calendars, and stickers. FIRST USE: 20111221. FIRST USE IN COMMERCE: 20111221
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77465753
<b>Filing Date</b>	May 5, 2008
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	May 5, 2009
<b>Registration Number</b>	4150381
<b>Registration Date</b>	May 29, 2012
<b>Owner</b>	(REGISTRANT) Fifty-Six Hope Road Music Limited A Bahamas International Business Company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS
<b>Attorney of Record</b>	Jill M. Pietrini, Esq.
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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# MARLEY COFFEE

<b>Word Mark</b>	MARLEY COFFEE
<b>Goods and Services</b>	IC 021. US 002 013 023 029 030 033 040 050. G & S: Coffee cups, coffee mugs, travel mugs and beverageware. FIRST USE: 20111221. FIRST USE IN COMMERCE: 20111221
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77465923
<b>Filing Date</b>	May 5, 2008
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	March 31, 2009
<b>Registration Number</b>	<b>4242186</b>
<b>Registration Date</b>	November 13, 2012
<b>Owner</b>	(REGISTRANT) Fifty-Six Hope Road Music Limited c/o Bob Marley Music A Bahamas International Business Company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS
<b>Attorney of Record</b>	Jill M. Pietrini
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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# MARLEY COFFEE

**Word Mark** MARLEY COFFEE

**Goods and Services** IC 025. US 022 039. G & S: Clothing, namely, T-shirts and zippered pull-over jackets. FIRST USE: 20090528. FIRST USE IN COMMERCE: 20090528

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 77978626

**Filing Date** May 5, 2008

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** September 30, 2008

**Registration Number** **3871574**

**Registration Date** November 2, 2010

**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited A Bahamas International Business Company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS

**Attorney of Record** Jill M. Pietrini, Esq.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# MARLEY COFFEE

<b>Word Mark</b>	MARLEY COFFEE
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Clothing, namely, shirts, aprons, sweatshirts, underwear, infant wear; sleepwear; footwear; headwear. FIRST USE: 20111221. FIRST USE IN COMMERCE: 20111221
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77465974
<b>Filing Date</b>	May 5, 2008
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	September 30, 2008
<b>Registration Number</b>	4158045
<b>Registration Date</b>	June 12, 2012
<b>Owner</b>	(REGISTRANT) Fifty-Six Hope Road Music Limited A Bahamas International Business Company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS
<b>Attorney of Record</b>	Jill M. Pietrini, Esq.
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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# MARLEY COFFEE

<b>Word Mark</b>	MARLEY COFFEE
<b>Goods and Services</b>	IC 030. US 046. G & S: Coffee, coffee-based beverages, espresso, tea, coffee beans, unroasted coffee. FIRST USE: 20090422. FIRST USE IN COMMERCE: 20090422
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77466002
<b>Filing Date</b>	May 5, 2008
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	November 23, 2010
<b>Registration Number</b>	4254177
<b>Registration Date</b>	December 4, 2012
<b>Owner</b>	(REGISTRANT) Fifty-Six Hope Road Music Limited A Bahamas International Business Company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS
<b>Attorney of Record</b>	Jill M. Pietrini
<b>Prior Registrations</b>	3778736
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COFFEE" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL-2(F)
<b>Live/Dead Indicator</b>	LIVE

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# MARLEY COFFEE

<b>Word Mark</b>	MARLEY COFFEE
<b>Goods and Services</b>	IC 035. US 100 101 102. G & S: Retail store services featuring coffee, tea, beverage ware, coffee makers, coffee grinders, and espresso makers, and beans. FIRST USE: 20090422. FIRST USE IN COMMERCE: 20090422
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77466142
<b>Filing Date</b>	May 5, 2008
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	April 7, 2009
<b>Registration Number</b>	4187013
<b>Registration Date</b>	August 7, 2012
<b>Owner</b>	(REGISTRANT) Fifty-Six Hope Road Music Limited A Bahamas International Business Company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS
<b>Attorney of Record</b>	Jill M. Pietrini
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COFFEE" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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# MARLEY COFFEE

**Word Mark** MARLEY COFFEE

**Goods and Services** IC 040. US 100 103 106. G & S: Coffee roasting and processing. FIRST USE: 20090422. FIRST USE IN COMMERCE: 20090422

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 77466174

**Filing Date** May 5, 2008

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** April 7, 2009

**Registration Number** **3778736**

**Registration Date** April 20, 2010

**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited A Bahamas International Business Company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS

**Attorney of Record** Jill M. Pietrini, Esq.

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COFFEE" APART FROM THE MARK AS SHOWN

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**Word Mark** BOB MARLEY AND THE WAILERS

**Goods and Services** IC 018. US 001 002 003 022 041. G & S: All purpose carrying bags. FIRST USE: 20090100. FIRST USE IN COMMERCE: 20090100

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 77738863

**Filing Date** May 17, 2009

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** July 6, 2010

**Registration Number** **3849342**

**Registration Date** September 21, 2010

**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS

**Attorney of Record** Jill M. Pietrini, Esq.

**Prior Registrations** 2349361;2820741;3612800

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Other Data** The name "BOB MARLEY" does not identify a living individual.

**Live/Dead Indicator** LIVE

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# BOB MARLEY

**Word Mark** BOB MARLEY

**Goods and Services** IC 009. US 021 023 026 036 038. G & S: Audio/visual recordings featuring music; downloadable ring tones for cell phones, musical sound recordings; digital music downloadable from the Internet. FIRST USE: 19700000. FIRST USE IN COMMERCE: 19700000

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 85050981

**Filing Date** May 30, 2010

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** January 4, 2011

**Registration Number** 3934085

**Registration Date** March 22, 2011

**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS

**Attorney of Record** Jill M. Pietrini, Esq.

**Prior** 2349361;2820741;3692924

**Registrations**

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Other Data** The name "BOB MARLEY" does not identify a living individual.

**Live/Dead Indicator** LIVE

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24.09.07 - Advertising, banners; Banners  
24.11.02 - Crowns open at the top**Serial Number** 85230791**Filing Date** February 1, 2011**Current Basis** 1A**Original Filing Basis** 1A**Published for Opposition** August 9, 2011**Registration Number** 4044256**Registration Date** October 25, 2011**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS**Attorney of Record** Jill M. Pietrini, Esq.

**Prior Registrations** 2349361;2820741;3692924;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a crest design of two heraldic lions facing forward, one of which is resting its paw on a foil, while both are holding an ornate shield depicting a star and cross design between them, having a bejeweled crown above the shield, a ribbon and additional ornamentation below the shield with the words "MARETT TSEHAI DAM" inside the ribbon, and the words "HOUSE OF MARLEY" centered at the bottom of the design.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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24.09.07 - Advertising, banners; Banners  
24.11.02 - Crowns open at the top**Serial Number** 85230792**Filing Date** February 1, 2011**Current Basis** 1A**Original Filing Basis** 1A**Published for Opposition** August 9, 2011**Registration Number** 4044257**Registration Date** October 25, 2011**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS**Attorney of Record** Jill M. Pietrini, Esq.

**Prior Registrations** 2349361;2820741;3692924;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a crest design of two heraldic lions facing forward, one of which is resting its paw on a foil, while both are holding an ornate shield depicting a star and cross design between them, having a bejeweled crown above the shield, a ribbon and additional ornamentation below the shield with the words "MARETT TSEHAI DAM" inside the ribbon, and the words "HOUSE OF MARLEY" centered at the bottom of the design.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**Word Mark** HOUSE OF MARLEY MARETT TSEHAI DAM

**Translations** The English translation of "MARETT TSEHAI DAM" in the mark is "Land Sun Blood".

**Goods and Services** IC 016. US 002 005 022 023 029 037 038 050. G & S: Posters, calendars, blank journals, notebooks, folders, pencil pouches, stickers, and iron-on transfers. FIRST USE: 20100100. FIRST USE IN COMMERCE: 20100100

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design** 03.01.02 - Lion insignia (heraldic lion)

**Search Code** 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon  
24.09.07 - Advertising, banners; Banners  
24.11.02 - Crowns open at the top

**Serial Number** 85230794

**Filing Date** February 1, 2011

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** August 9, 2011

**Registration Number** 4044258

**Registration Date** October 25, 2011

**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS

**Attorney of Record** Jill M. Pietrini, Esq.

**Prior Registrations** 2349361;2820741;3692924;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a crest design of two heraldic lions facing forward, one of which is resting its paw on a foil, while both are holding an ornate shield depicting a star and cross design between them, having a bejeweled crown above the shield, a ribbon and additional ornamentation below the shield with the words "MARETT TSEHAI DAM" inside the ribbon, and the words "HOUSE OF MARLEY" centered at the bottom of the design.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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24.09.07 - Advertising, banners; Banners  
24.11.02 - Crowns open at the top**Serial Number** 85230795**Filing Date** February 1, 2011**Current Basis** 1A**Original Filing Basis** 1A**Published for Opposition** August 9, 2011**Registration Number** 4044259**Registration Date** October 25, 2011**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited International business company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS**Attorney of Record** Jill M. Pietrini, Esq.

**Prior Registrations** 2349361;2820741;3692924;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a crest design of two heraldic lions facing forward, one of which is resting its paw on a foil, while both are holding an ornate shield depicting a star and cross design between them, having a bejeweled crown above the shield, a ribbon and additional ornamentation below the shield with the words "MARETT TSEHAI DAM" inside the ribbon, and the words "HOUSE OF MARLEY" centered at the bottom of the design.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**Word Mark** HOUSE OF MARLEY MARETT TSEHAI DAM

**Translations** The English translation of "MARETT TSEHAI DAM" in the mark is "Land Sun Blood".

**Goods and Services** IC 020. US 002 013 022 025 032 050. G & S: Plastic key chains; mirrors. FIRST USE: 20091100. FIRST USE IN COMMERCE: 20091100

IC 021. US 002 013 023 029 030 033 040 050. G & S: Beverage glassware; beverage mugs. FIRST USE: 20091100. FIRST USE IN COMMERCE: 20091100

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 03.01.02 - Lion insignia (heraldic lion)  
24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon  
24.09.07 - Advertising, banners; Banners  
24.11.02 - Crowns open at the top

**Serial Number** 85230796

**Filing Date** February 1, 2011

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** August 9, 2011

**Registration Number** 4044260

**Registration Date** October 25, 2011

**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS

**Attorney of Record** Jill M. Pietrini, Esq.

**Prior Registrations** 2349361;2820741;3692924;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a crest design of two heraldic lions facing forward, one of which is resting its paw on a foil, while both are holding an ornate shield depicting a star and cross design between them, having a bejeweled crown above the shield, a ribbon and additional ornamentation below the shield with the words "MARETT TSEHAI DAM" inside the ribbon, and the words "HOUSE OF MARLEY" centered at the bottom of the design.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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24.09.07 - Advertising, banners; Banners  
24.11.02 - Crowns open at the top**Serial Number** 85230799**Filing Date** February 1, 2011**Current Basis** 1A**Original Filing Basis** 1A**Published for Opposition** August 9, 2011**Registration Number** 4044261**Registration Date** October 25, 2011**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS**Attorney of Record** Jill M. Pietrini, Esq.

**Prior Registrations** 2349361;2820741;3692924;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a crest design of two heraldic lions facing forward, one of which is resting its paw on a foil, while both are holding an ornate shield depicting a star and cross design between them, having a bejeweled crown above the shield, a ribbon and additional ornamentation below the shield with the words "MARETT TSEHAI DAM" inside the ribbon, and the words "HOUSE OF MARLEY" centered at the bottom of the design.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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23.01.01 - Epees; Foils; Rapiers; Sabers; Swords  
24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon  
24.09.07 - Advertising, banners; Banners  
24.11.01 - Crowns closed at the top  
24.13.25 - Cross, ankh; Cross, Maltese; Other crosses, including ankh, Maltese  
25.01.25 - Borders, ornamental; Other framework and ornamental borders**Serial Number** 85230800**Filing Date** February 1, 2011**Current Basis** 1A**Original Filing Basis** 1A**Published for Opposition** August 9, 2011**Registration Number** 4044262**Registration Date** October 25, 2011**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited International Business Company BAHAMAS Aquamarine House,

Cable Beach Nassau BAHAMAS

**Attorney of Record**

Jill M. Pietrini, Esq.

**Prior Registrations**

2349361;2820741;3692924;AND OTHERS

**Description of Mark**

Color is not claimed as a feature of the mark. The mark consists of a crest design of two heraldic lions facing forward, one of which is resting its paw on a foil, while both are holding an ornate shield depicting a star and cross design between them, having a bejeweled crown above the shield, a ribbon and additional ornamentation below the shield with the words "MARETT TSEHAI DAM" inside the ribbon, and the words "HOUSE OF MARLEY" centered at the bottom of the design.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**Word Mark** HOUSE OF MARLEY MARETT TSEHAI DAM

**Translations** The English translation of "MARETT TSEHAI DAM" in the mark is "Land Sun Blood".

**Goods and Services** IC 026. US 037 039 040 042 050. G & S: Ornamental novelty buttons. FIRST USE: 20100800. FIRST USE IN COMMERCE: 20100800

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 03.01.02 - Lion insignia (heraldic lion)  
 09.01.04 - Bows, decorative; Ribbons, giftwrap (gift wrap); Ribbons, hair  
 23.01.01 - Epees; Foils; Rapiers; Sabers; Swords  
 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon  
 24.09.07 - Advertising, banners; Banners  
 24.11.01 - Crowns closed at the top  
 24.13.25 - Cross, ankh; Cross, Maltese; Other crosses, including ankh, Maltese  
 25.01.25 - Borders, ornamental; Other framework and ornamental borders

**Serial Number** 85230801

**Filing Date** February 1, 2011

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** August 9, 2011

**Registration Number** 4044263

**Registration Date** October 25, 2011

**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House,

Cable Beach Nassau BAHAMAS

**Attorney of Record**

Jill M. Pietrini, Esq.

**Prior Registrations**

2349361;2820741;3692924;AND OTHERS

**Description of Mark**

Color is not claimed as a feature of the mark. The mark consists of a crest design of two heraldic lions facing forward, one of which is resting its paw on a foil, while both are holding an ornate shield depicting a star and cross design between them, having a bejeweled crown above the shield, a ribbon and additional ornamentation below the shield with the words "MARETT TSEHAI DAM" inside the ribbon, and the words "HOUSE OF MARLEY" centered at the bottom of the design.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**Word Mark** HOUSE OF MARLEY MARETT TSEHAI DAM

**Translations** The English translation of "MARETT TSEHAI DAM" in the mark is "Land Sun Blood".

**Goods and Services** IC 028. US 022 023 038 050. G & S: Jigsaw puzzles, puzzle cubes, and snowboards. FIRST USE: 20091000. FIRST USE IN COMMERCE: 20091000

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 03.01.02 - Lion insignia (heraldic lion)  
 09.01.04 - Bows, decorative; Ribbons, giftwrap (gift wrap); Ribbons, hair  
 23.01.01 - Epees; Foils; Rapiers; Sabers; Swords  
 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon  
 24.09.07 - Advertising, banners; Banners  
 24.11.01 - Crowns closed at the top  
 24.13.25 - Cross, ankh; Cross, Maltese; Other crosses, including ankh, Maltese  
 25.01.25 - Borders, ornamental; Other framework and ornamental borders

**Serial Number** 85230802

**Filing Date** February 1, 2011

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** August 9, 2011

**Registration Number** 4044264

**Registration Date** October 25, 2011

**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House,

Cable Beach Nassau BAHAMAS

**Attorney of Record**

Jill M. Pietrini, Esq.

**Prior Registrations**

2349361;2820741;3692924;AND OTHERS

**Description of Mark**

Color is not claimed as a feature of the mark. The mark consists of a crest design of two heraldic lions facing forward, one of which is resting its paw on a foil, while both are holding an ornate shield depicting a star and cross design between them, having a bejeweled crown above the shield, a ribbon and additional ornamentation below the shield with the words "MARETT TSEHAI DAM" inside the ribbon, and the words "HOUSE OF MARLEY" centered at the bottom of the design.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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23.01.01 - Epees; Foils; Rapiers; Sabers; Swords  
24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon  
24.09.07 - Advertising, banners; Banners  
24.11.01 - Crowns closed at the top  
24.13.25 - Cross, ankh; Cross, Maltese; Other crosses, including ankh, Maltese  
25.01.25 - Borders, ornamental; Other framework and ornamental borders**Serial Number** 85230803**Filing Date** February 1, 2011**Current Basis** 1A**Original Filing Basis** 1A**Published for Opposition** August 9, 2011**Registration Number** 4044265**Registration Date** October 25, 2011**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House,

Cable Beach Nassau BAHAMAS

**Attorney of Record**

Jill M. Pietrini, Esq.

**Prior Registrations**

2349361;2820741;3692924;AND OTHERS

**Description of Mark**

Color is not claimed as a feature of the mark. The mark consists of a crest design of two heraldic lions facing forward, one of which is resting its paw on a foil, while both are holding an ornate shield depicting a star and cross design between them, having a bejeweled crown above the shield, a ribbon and additional ornamentation below the shield with the words "MARETT TSEHAI DAM" inside the ribbon, and the words "HOUSE OF MARLEY" centered at the bottom of the design.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# MARLEY

**Word Mark** MARLEY

**Goods and Services** IC 009. US 021 023 026 036 038. G & S: Headphones; ear buds; audio speakers; electronic docking stations; boom boxes; downloadable video recordings featuring music, artistic performances, and information about audio equipment; downloadable electronic newsletters in the field of entertainment and audio equipment. FIRST USE: 20110727. FIRST USE IN COMMERCE: 20110727

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 85615215

**Filing Date** May 3, 2012

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** July 24, 2012

**Registration Number** 4222036

**Registration Date** October 9, 2012

**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS 0

**Attorney of Record** Jill M. Pietrini

**Prior Registrations** 2349361;3934085;4044256;AND OTHERS

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**Word Mark** M M A R L E Y

**Goods and Services** IC 009. US 021 023 026 036 038. G & S: Headphones; ear buds; audio speakers; electronic docking stations; boom boxes; downloadable video recordings featuring music, artistic performances, and information about audio equipment. FIRST USE: 20110727. FIRST USE IN COMMERCE: 20110727

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 26.17.12 - Angles (geometric); Chevrons

**Serial Number** 85615212

**Filing Date** **May 3, 2012**

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** July 24, 2012

**Registration Number** **4222035**

**Registration Date** October 9, 2012

**Owner** (REGISTRANT) Fifty-Six Hope Road Music Limited international business company BAHAMAS Aquamarine House, Cable Beach Nassau BAHAMAS 0

**Attorney of Record** Jill M. Pietrini

**Prior Registrations** 2349361;3934085;4044256;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a caret centered between the peaks of a stylized capital "M" all centered above the word "MARLEY".

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# EXHIBIT F

(3 pages)

## Trademark Electronic Application System (TEAS) filing receipt

**MARK:** THE REEF AT MARLEY'S (Standard Characters, mark.jpg)

The literal element of the mark consists of THE REEF AT MARLEY'S.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

We have received your application and assigned serial number '85177921' to your submission. The summary of the application data, *bottom below*, serves as your official filing receipt.

In approximately 3 months, an assigned examining attorney will review your application to determine if all legal requirements are met. Currently, your mark is **not** registered and is considered a "pending" application. The overall process from the time of initial filing to registration or final refusal can take 13-18 months or even longer, depending on many factors; *e.g.*, the correctness of the original filing and the type of application filed. It is **CRITICAL** that you check the status of your application **at least every 3 - 4 months** and promptly contact the Office if a letter (an "Office action") or notice has issued for your application that you did not receive or do not understand. To check the status, please use <http://tarr.uspto.gov>. Do **not** submit status requests to [TEAS@uspto.gov](mailto:TEAS@uspto.gov). Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.

Please view all incoming and outgoing correspondence at <http://portal.uspto.gov/external/portal/tow>. If your status check reveals an issued Office action or notice that you did not receive, immediately view the action/notice through the USPTO website. The USPTO does not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must ensure that you update your record if your mail and/or e-mail address changes, using the form available at <http://www.uspto.gov/teas/eTEASpageE.htm>.

If you discover an error in the application data, you may file a Voluntary Amendment, at <http://www.uspto.gov/teas/eTEASpageB2.htm>. Do **not** submit any proposed amendment to [TEAS@uspto.gov](mailto:TEAS@uspto.gov), because the technical support team may not make any data changes. **NOTE:** You must wait approximately 7-10 days to submit any Voluntary Amendment, to permit initial upload of your serial number into the USPTO database. The acceptability of any Voluntary Amendment will only be determined once regular examination begins, since the assigned examining attorney must decide whether the change proposed in the amendment is permissible. **Not all errors may be corrected;** *e.g.*, if you submitted the wrong mark, if the proposed correction would be considered a material alteration to your original filing, it will not be accepted, and your only recourse would be to file a new application (with **no** refund for your original filing).

Since your application filing has already been assigned a serial number, please do **not** contact [TEAS@uspto.gov](mailto:TEAS@uspto.gov) to request cancellation. The USPTO will only cancel the filing and refund your fee if upon review we determine that the application did not meet minimum filing requirements. **The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration.** **NOTE:** The only "exception" to the above is if you inadvertently file duplicate applications specifically because of a *technical glitch* and not merely a misunderstanding or mistake; *i.e.*, if you believe that the first filing did not go through because no confirmation was received and

then immediately file again, only to discover later that both filings were successful, then the technical support team at [TEAS@uspto.gov](mailto:TEAS@uspto.gov) can mis-assign and refund one of the filings.

**WARNING:** You may receive unsolicited communications from companies requesting fees for trademark related services, such as monitoring and document filing. Although solicitations from these companies frequently display customer-specific information, including USPTO serial number or registration number and owner name, companies who offer these services are not affiliated or associated with the USPTO or any other federal agency. The USPTO does not provide trademark monitoring or any similar services. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult the USPTO website.

**APPLICATION DATA: Trademark/Service Mark Application, Principal Register TEAS Plus Application**

The applicant, Island Food & Fun, Inc., a corporation of Wisconsin, having an address of  
PO Box 68  
Lake Delton, Wisconsin 53940  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 043: Bar and restaurant services

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

**The applicant claims ownership of U.S. Registration Number(s) 3225517.**

Ownership of applicant, and of the registrant for 3225517 consists entirely of the same individuals.

The applicant hereby appoints Elizabeth T Russell of Law Office of Elizabeth T Russell, LLC  
Suite 200  
49 Kessel Court  
Madison, Wisconsin 53711  
United States

to submit this application on behalf of the applicant. The attorney docket/reference number is 90656-001.

The docket/reference number is 90656-001.

Correspondence Information: Elizabeth T Russell  
Suite 200  
49 Kessel Court  
Madison, Wisconsin 53711

608-285-5007(phone)  
beth@erklaw.com (authorized)

A fee payment in the amount of \$275 will be submitted with the application, representing payment for 1 class(es).

### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

### **Declaration Signature**

Signature: /Jeff Morris/jm/ Date: 11/16/2010  
Signatory's Name: Jeff Morris  
Signatory's Position: President

---

Thank you,

The TEAS support team  
Tue Nov 16 15:03:19 EST 2010  
STAMP: USPTO/FTK-96.42.32.77-20101116150319914543-85177921-  
470c6c7c807550f12e6d4bc7abbe19bf7-CC-1311-20101116111913834744

# EXHIBIT G

(16 pages)

# TTAB

Docket No. 41271-030

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

<p><i>In re Matter of Application No. 85/177,921 for the mark: <b>REEF AT THE MARLEY'S</b></i></p> <p>Fifty-Six Hope Road Music Limited,</p> <p>Opposer,</p> <p>v.</p> <p>Island Food &amp; Fun, Inc.</p> <p>Applicant.</p>	<p>Opposition No. _____</p> <p><b>NOTICE OF OPPOSITION</b></p>
---	--

Commissioner for Trademarks  
ATTN: Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Dear Commissioner:

Opposer, Fifty-Six Hope Road Music Limited, a Bahamas International Business Company ("Opposer"), having its principal place of business at Aquamarine House, Cable Beach, Nassau, Bahamas, believes that it will be damaged by the registration of the mark **REEF AT THE MARLEY'S**, as shown in U.S. Application Serial No. 85/177,921 (the "Application"), and hereby opposes its registration on the following grounds:

1. Opposer owns the trademarks BOB MARLEY (Reg. No. 2,349,361) for various goods in Classes 3, 6, 9, 14, 16, 18, 21, 24, 25 and 26; BOB MARLEY AND THE WAILERS (Reg. No. 2,820,741) for various goods in Classes 9 and 25; BOB MARLEY (Reg. No. 3,692,924) in Class 43 for restaurant services, namely, preparation and service of food and beverages for consumption; MARLEY RESORT (Reg. No. 3,612,800) in Class 43 for hotel services, namely, serving food and drinks and providing temporary accommodations and lodging; MARLEY

08/15/2011 HPHAM1 00000028 85177921  
01 FC:6402 300.00 OP



08-11-2011

COFFEE for coffee roasting and processing (Reg. No. 3,778,736); MARLEY COFFEE for t-shirts and zippered pull-over jackets (Reg. No. 3,871,574); BOB MARLEY for audio/visual recordings featuring music; downloadable ringtones for cell phones, musical sound recordings; digital music downloadable from the internet (Reg. No. 3,934,085) and BOB MARLEY AND THE WAILERS for all purpose carrying bags (Reg. No. 3,849,342) (hereinafter collectively referred to as "the MARLEY Marks"), and all other rights associated with goods and services offered under the MARLEY Marks (the "Marley Goods and Services"). True and correct copies of the registrations of the MARLEY MARKS are attached hereto as **Exhibit A**.

2. On November 16, 2010, Applicant Island Food & Fun, Inc. ("Applicant"), having a place of business at P.O. Box 68, Lake Delton, WI 53940, filed the Application seeking registration, on an intent to use basis, of REEF AT THE MARLEY'S for the provision of bar and restaurant services in Class 43.

3. The Application was published for opposition in the Official Gazette on April 5, 2011. Opposer was granted extensions of time to oppose the Application.

4. Opposer first used the mark BOB MARLEY at least as early as 1990 for greeting cards, stickers, portfolios, postcards, postcard books, songbooks, decals, trading cards, calendars, novels and bookmarks in Class 16; for textile wall hangings in Class 24; for t-shirts, thermal shirts, jackets, hats, caps, sweatshirts, ties and bandannas in Class 25; and for ornamental cloth patches in Class 26. Such date of first use precedes Applicant's filing date of the Application.

5. Opposer first used the mark BOB MARLEY at least as early as 1992 for backpacks, fanny packs, wallets and tote bags in Class 18. Such date of first use precedes Applicant's filing date of the Application.

6. Opposer first used the mark BOB MARLEY at least as early as 1994 for jewelry, watches and medallions in Class 14. Such date of first use precedes Applicant's filing date of the Application.

7. Opposer first used the mark BOB MARLEY at least as early as 1995 for novelty license plates in Class 6 and for mugs in Class 21. Such date of first use precedes Applicant's filing date of the Application.

8. Opposer first used the mark BOB MARLEY at least as early as 1996 for incense in Class 3, and for plastic cases for beepers and magnets in Class 9. Such date of first use precedes Applicant's filing date of the Application.

9. Opposer first used the mark BOB MARLEY AND THE WAILERS at least as early as 1973 for sound and video recordings in Class 9, and for t-shirts, thermal shirts, jackets, hats, caps, sweatshirts, ties, and bandannas in Class 25. Such date of first use precedes Applicant's filing date of the Application.

10. Opposer first used the mark BOB MARLEY for restaurant services, namely, preparation and service of food and beverages for consumption, at least as early as February 6, 1999. Such date of first use precedes Applicant's filing date of the Application.

11. Opposer first used the mark MARLEY RESORT for hotel services, namely, serving food and drinks and providing temporary accommodations and lodging, at least as early as July 4, 2008. Opposer's priority rights for the MARLEY RESORT mark date back to the filing date of August 18, 2006, which predates Applicant's filing date of the Application.

12. Opposer's priority rights for its MARLEY COFFEE registrations relate back to their filing dates of May 5, 2008, which predate Applicant's filing date of the Application.

13. Opposer is owned and operated by the majority of the children and widow of the world-renowned reggae artist, Bob Marley, and is the owner of all intellectual property rights in the name and likeness of Bob Marley, as well as those derived from the musical legacy of Bob Marley. The Marley Goods and Services have been favorably received and are otherwise recognized by the consuming public and are associated with Opposer and the late musical legend, Bob Marley.

14. Bob Marley is well known for his musical and cultural contributions to the field of arts and entertainment.

15. Applicant's proposed mark is similar in sound, appearance and meaning and is confusingly similar to Opposer's MARLEY Marks. Further, the services to be offered by Applicant are identical in some instances and similar and related in other instances to those offered under Opposer's MARLEY Marks.

16. The MARLEY Marks are inherently distinctive and have acquired secondary meaning and are associated with Opposer and Bob Marley. The MARLEY Marks are famous and distinctive within the meaning of the Federal Trademark Dilution Act. Applicant filed the Application after the MARLEY Marks had become famous, and Applicant seeks to commercially use the applied-for mark REEF AT THE MARLEY'S.

17. The mark shown in the Application is associated with Bob Marley and Opposer, and, thus, falsely suggests a connection with Bob Marley and Opposer.

18. As a result of all of the foregoing, the maturation of the Application into a registration would cause a likelihood of confusion, mistake, or deception as to the source or origin of Opposer's MARLEY Goods and Services and Applicant's REEF AT THE MARLEY'S services, cause a likelihood of dilution of the MARLEY Marks, and falsely suggest a connection with Bob Marley and Opposer.

19. Opposer would be damaged by the registration of the mark shown in the Application, in that such registration would give Applicant a *prima facie* exclusive right to the use of REEF AT THE MARLEY'S, despite the likelihood of confusion, mistake, or deception, likelihood of dilution, and false connection or association with Bob Marley described above, and will allow Applicant to trade on Opposer's existing goodwill in the MARLEY Marks.

20. The \$300 opposition filing fee is enclosed. Any additional charges or credits should be taken from or credited to Petitioner's counsel's Deposit Account No. 131241

WHEREFORE, Opposer prays that this Opposition be sustained in favor of Opposer, that the Application be rejected, and that registration of the Application be refused.

Respectfully submitted,

Dated: August 3, 2011



Jill M. Pietrini  
Paul A. Bost  
MANATT, PHELPS & PHILLIPS, LLP  
11355 W. Olympic Boulevard  
Los Angeles, California 90064  
Telephone: (310) 312-4000  
Facsimile: (310) 312-4224

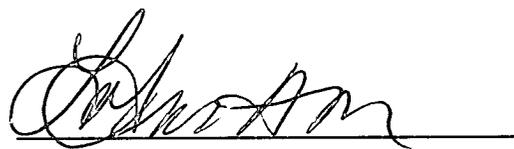
*Attorneys for Opposer  
Fifty-Six Hope Road Music Limited*

**CERTIFICATE OF SERVICE**

I hereby certify that this Notice of Opposition is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Elizabeth T Russell  
LAW OFFICE OF ELIZABETH T RUSSELL, LLC  
49 Kessel Court, Suite 200  
Madison, WI 53711-6275

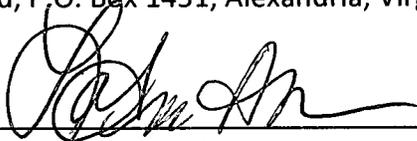
on this 3rd day of August, 2011.



LaTrina A. Martin

**CERTIFICATE OF MAILING**

I hereby certify that this Notice of Opposition is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to: Commissioner for Trademarks, Attn: Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451, on this 3rd day of August, 2011.



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LaTrina A. Martin

300363173.1

(EXHIBIT A)

**EXHIBIT A**

Int. Cls.: 3, 6, 9, 14, 16, 18, 21, 24, 25, 26 and 34

Prior U.S. Cls.: 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 14, 17,  
21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 36, 37, 38, 39,  
40, 41, 42, 50, 51 and 52

Reg. No. 2,349,361

**United States Patent and Trademark Office**

Registered May 16, 2000

**TRADEMARK  
PRINCIPAL REGISTER**

**BOB MARLEY**

FIFTY-SIX HOPE ROAD MUSIC LIMITED (BA-  
HAMAS INTERNATIONAL BUSINESS COM-  
PANY)

AQUAMARINE HOUSE  
CABLE BEACH  
NASSAU, BAHAMAS

FOR: INCENSE, IN CLASS 3 (U.S. CLS. 1, 4, 6,  
50, 51 AND 52).

FIRST USE 0-0-1996; IN COMMERCE  
0-0-1996.

FOR: NOVELTY LICENSE PLATE OF NON-  
PRECIOUS METAL, IN CLASS 6 (U.S. CLS. 2,  
12, 13, 14, 23, 25 AND 50).

FIRST USE 0-0-1995; IN COMMERCE  
0-0-1995.

FOR: PLASTIC CASES FOR BEEPERS; MAG-  
NETS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND  
38).

FIRST USE 0-0-1996; IN COMMERCE  
0-0-1996.

FOR: JEWELRY; WATCHES; MEDALLIONS,  
IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 0-0-1994; IN COMMERCE  
0-0-1994.

FOR: GREETING CARDS; STICKERS; STA-  
TIONERY TYPE PORTFOLIOS; POSTERS;  
POSTCARDS; POSTCARD BOOKS; SONG-  
BOOKS; DECALS; TRADING CARDS; CALEN-  
DARS; NOVELS; BOOKMARKS, IN CLASS 16  
(U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 0-0-1990; IN COMMERCE  
0-0-1990.

FOR: BACKPACKS; FANNY PACKS; WAL-  
LETS; TOTE BAGS, IN CLASS 18 (U.S. CLS. 1, 2,  
3, 22 AND 41).

FIRST USE 0-0-1992; IN COMMERCE  
0-0-1992.

FOR: MUGS, IN CLASS 21 (U.S. CLS. 2, 13, 23  
29, 30, 33, 40 AND 50).

FIRST USE 0-0-1995; IN COMMERCE  
0-0-1995.

FOR: TEXTILE WALL HANGINGS, IN  
CLASS 24 (U.S. CLS. 42 AND 50).

FIRST USE 0-0-1990; IN COMMERCE  
0-0-1990.

FOR: T-SHIRTS; THERMAL SHIRTS; JACK  
ETS; HATS; CAPS; SWEATSHIRTS; TIES; BAN-  
DANNAS, IN CLASS 25 (U.S. CLS. 22 AND 39)

FIRST USE 0-0-1990; IN COMMERCE  
0-0-1990.

FOR: ORNAMENTAL CLOTH PATCHES, IN  
CLASS 26 (U.S. CLS. 37, 39, 40, 42 AND 50).

FIRST USE 0-0-1990; IN COMMERCE  
0-0-1990.

FOR: SMOKING PIPES, IN CLASS 34 (U.S.  
CLS. 2, 8, 9 AND 17).

FIRST USE 0-0-1996; IN COMMERCE  
0-0-1996.

BOB MARLEY IS THE NAME OF AN INDI-  
VIDUAL WHO IS NOW DECEASED.

SER. NO. 75-489,475, FILED 5-21-1998.

SHANNA BLAUSTEIN, EXAMINING ATTOR-  
NEY

**Int. Cls.: 9 and 25**

**Prior U.S. Cls.: 21, 22, 23, 26, 36, 38 and 39**

**United States Patent and Trademark Office**

**Reg. No. 2,820,741**

**Registered Mar. 9, 2004**

**TRADEMARK  
PRINCIPAL REGISTER**

**BOB MARLEY AND THE WAILERS**

FIFTY SIX HOPE ROAD MUSIC, LIMITED (BAHAMAS INTERNATIONAL BUSINESS COMPANY)

AQUAMARINE HOUSE CABLE BEACH  
NASSAU, BAHAMAS

FOR: SERIES OF SOUND AND VIDEO RECORDINGS FEATURING MUSIC AND DOWNLOADABLE SOUND AND VIDEO RECORDINGS FEATURING MUSIC, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 0-0-1973; IN COMMERCE 0-0-1973.

FOR: T-SHIRTS, THERMAL SHIRTS, JACKETS, HATS, CAPS, SWEATSHIRTS, TIES, BANDANAS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 0-0-1973; IN COMMERCE 0-0-1973.

OWNER OF U.S. REG. NO. 2,349,361.

THE NAME "BOB MARLEY" REFERS TO THE DECEASED, WORLD-RENOWNED MUSICIAN, WRITER AND COMPOSER.

SER. NO. 76-441,329, FILED 8-19-2002.

WENDY GOODMAN, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office

## BOB MARLEY

**Reg. No. 3,692,924** FIFTY SIX HOPE ROAD MUSIC, LIMITED (BAHAMAS INTERNATIONAL BUSINESS  
Registered Oct. 6, 2009 COMPANY)

AQUAMARINE HOUSE CABLE BEACH  
NASSAU, BAHAMAS

**Int. Cl.: 43**

FOR: RESTAURANT SERVICES, NAMELY, PREPARATION AND SERVICE OF FOOD AND  
BEVERAGES FOR CONSUMPTION, IN CLASS 43 (U.S. CLS. 100 AND 101).

**SERVICE MARK**

**PRINCIPAL REGISTER** FIRST USE 2-6-1999; IN COMMERCE 2-6-1999.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,349,361 AND 2,820,741.

SN 76-656,675, FILED 3-9-2006.

HOWARD SMIGA, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

Reg. No. 3,612,800

United States Patent and Trademark Office

Registered Apr. 28, 2009

Corrected

OG Date Sep. 15, 2009

**SERVICE MARK  
PRINCIPAL REGISTER**

**MARLEY RESORT & SPA**

FIFTY-SIX HOPE ROAD MUSIC LIM-  
ITED (BAHAMAS INTERNATIONAL  
BUSINESS COMPANY),  
AQUAMARINE HOUSE CABLE BEACH  
NASSAU, BAHAMAS

THE MARK CONSISTS OF STAN-  
DARD CHARACTERS WITHOUT CLAIM  
TO ANY PARTICULAR FONT, STYLE,  
SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,349,361.  
NO CLAIM IS MADE TO THE EXCLU-  
SIVE RIGHT TO USE "RESORT & SPA",  
APART FROM THE MARK AS SHOWN.

SEC. 2(F).

FOR: HOTEL SERVICES, NAMELY,  
SERVING FOOD AND DRINKS AND  
PROVIDING TEMPORARY ACCOMMO-  
DATIONS AND LODGING, IN CLASS 43  
(U.S. CLS. 100 AND 101).

FIRST USE 7-4-2008; IN COMMERCE  
7-4-2008.

SER. NO. 76-664,835, FILED 8-18-2006.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on Sep. 15, 2009.*

# United States of America

United States Patent and Trademark Office

## MARLEY COFFEE

**Reg. No. 3,778,736**

**Registered Apr. 20, 2010**

**Int. Cl.: 40**

**SERVICE MARK**

**PRINCIPAL REGISTER**

FIFTY-SIX HOPE ROAD MUSIC LIMITED (BAHAMAS A BAHAMAS INTERNATIONAL BUSINESS COMPANY)

AQUAMARINE HOUSE, CABLE BEACH  
NASSAU, BAHAMAS

FOR: COFFEE ROASTING AND PROCESSING, IN CLASS 40 (U.S. CLS. 100, 103 AND 106).

FIRST USE 4-22-2009; IN COMMERCE 4-22-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COFFEE", APART FROM THE MARK AS SHOWN.

SN 77-466,174, FILED 5-5-2008.

INGA ERVIN, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

# United States of America

United States Patent and Trademark Office

## MARLEY COFFEE

**Reg. No. 3,871,574**

**Registered Nov. 2, 2010**

**Int. Cl.: 25**

**TRADEMARK**

**PRINCIPAL REGISTER**

FIFTY-SIX HOPE ROAD MUSIC LIMITED (BAHAMAS A BAHAMAS INTERNATIONAL  
BUSINESS COMPANY)  
AQUAMARINE HOUSE, CABLE BEACH  
NASSAU, BAHAMAS

FOR: CLOTHING, NAMELY, T-SHIRTS AND ZIPPERED PULL-OVER JACKETS, IN CLASS  
25 (U.S. CLS. 22 AND 39).

FIRST USE 5-28-2009; IN COMMERCE 5-28-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-978,626, FILED 5-5-2008.

INGA ERVIN, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

# United States of America

United States Patent and Trademark Office

## BOB MARLEY

**Reg. No. 3,934,085**

**Registered Mar. 22, 2011**

**Int. Cl.: 9**

**TRADEMARK**

**PRINCIPAL REGISTER**

FIFTY-SIX HOPE ROAD MUSIC LIMITED (BAHAMAS INTERNATIONAL BUSINESS COMPANY)

AQUAMARINE HOUSE, CABLE BEACH  
NASSAU, BAHAMAS

FOR: AUDIO/VISUAL RECORDINGS FEATURING MUSIC; DOWNLOADABLE RING TONES FOR CELL PHONES, MUSICAL SOUND RECORDINGS; DIGITAL MUSIC DOWNLOADABLE FROM THE INTERNET, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 0-0-1970; IN COMMERCE 0-0-1970.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,349,361, 2,820,741, AND 3,692,924.

THE NAME "BOB MARLEY" DOES NOT IDENTIFY A LIVING INDIVIDUAL.

SER. NO. 85-050.981, FILED 5-30-2010.

SANJEEV VOHRA, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

# United States of America

United States Patent and Trademark Office

BOB MARLEY AND THE WAILERS

**Reg. No. 3,849,342**

**Registered Sep. 21, 2010**

**Int. Cl.: 18**

FIFTY-SIX HOPE ROAD MUSIC LIMITED (BAHAMAS INTERNATIONAL BUSINESS COMPANY)

AQUAMARINE HOUSE, CABLE BEACH  
NASSAU, BAHAMAS

FOR: ALL PURPOSE CARRYING BAGS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

**TRADEMARK**

FIRST USE 1-0-2009; IN COMMERCE 1-0-2009.

**PRINCIPAL REGISTER**

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,349,361, 2,820,741, AND 3,612,800.

THE NAME "BOB MARLEY" DOES NOT IDENTIFY A LIVING INDIVIDUAL.

SER. NO. 77-738,863, FILED 5-17-2009.

SUZANNE BLANE, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 3,535,883

Registered Nov. 25, 2008

**SERVICE MARK  
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FOR: ENTERTAINMENT, NAMELY, LIVE PERFORMANCES BY A MUSICAL BAND, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 8-7-2004; IN COMMERCE 8-7-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SEC. 2(F).

SER. NO. 77-113,202, FILED 2-22-2007.

HEATHER THOMPSON, EXAMINING ATTORNEY

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- Most attorneys listed, *The Best Lawyers in America*, 2008-2013

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- Founded: 1927
- Number of Attorneys: 640
- Offices:
  - California: Century City, Del Mar, Los Angeles, Orange County, Palo Alto, San Diego, San Francisco
  - Chicago
  - East Coast: New York, Washington, D.C.
  - International: Beijing, Brussels, London, Seoul, Shanghai