

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

PAUL WARNER and	)	
BROTHERS OF THE WHEEL M.C.	)	
EXECUTIVE COUNCIL, INC.	)	Cancellation No.: <b>92059164</b>
Petitioner,	)	
	)	
v.	)	Mark: <b>BROTHERS OF THE WHEEL</b>
	)	
GERALD R. MOLLOHAN and	)	Registration No.: <b>4299480</b>
BROTHERS OF THE WHEEL	)	Date Registered: March 05, 2013
Respondent	)	

**RESPONDENT’S MOTION TO DISMISS THE PETITION FOR CANCELLATION  
AND DECLARATION BY GERALD R. MOLLOHAN**

COMES NOW the Respondent’s, Gerald R. Mollohan, Pro Se *et al* owner of Trademark Registration Number 4299480 for “BROTHERS OF THE WHEEL” Classification 026, to hereby notify the Board (TTAB) of his “**MOTION TO DISMISS THE PETITION FOR CANCELLATION AND DECLARATION BY GERALD R. MOLLOHAN**” Pursuant to Trademark Rule 2.126 and other Trademark Manual of Board Procedures (“TBMP”) and applicable authorities.

Petitioner Paul Warner is a disgruntled business competitor and active member of numerous criminal enterprises he has “created” as out-lined in Respondents’ civil action number 11-C-457 (Honorable Judge Jennifer F. Bailey) in Kanawha County West Virginia Circuit Court filed on March 21, 2011 (**EXHIBIT “A”**) and Respondents’ civil action number 2:13-CV-32251 (Honorable Judge Thomas E. Johnston) filed on December 16, 2013 (**EXHIBIT “B”**) in U.S. District Court for Southern West Virginia at Charleston. Additional counts Petitioner Warner is defending in Civil Action 2:13-CV-32251 includes “Violent Crimes in Aide of Racketeering Activity (VICAR Statute)”. At this time the Court is considering a default judgment in favor of this Respondent. Should that occur, it is believed that any and all Intellectual Property, including

including Trademarks registered to petitioner Warner, would be awarded this Respondent. That is what Respondent has requested.

Respondent Mollohan has been made aware of illegal business activities of Petitioner Warner through activities in his Motorcycle Club based in West Virginia, but now operating in other states for approximately thirty years. Petitioner Paul Warner has failed to allege sufficient **facts** that would establish his standing, and fails to state a claim on which relief can be granted. The Petitioner in this case has used frivolous arguments against Gerald R. Mollohan (Respondent,) to begin this process that are not based on **facts or law**. The petitioner fails to mention the physical threats, attempted intimidation and other “strong arm tactics” he has used over the years and at times directed personally at Respondent Mollohan, as detailed in Kanawha County West Virginia Circuit Court and U.S. District Court Records. Further, Petitioner Warner has failed to properly serve the Respondent.

On December 16, 2013 Respondent GERALD R. MOLLOHAN, filed Civil Action Number 2:13-CV-32251 (**EXHIBIT “B”**) naming the Petitioner, PAUL WARNER, all his “so called” branch chapters and associates of his numerous Criminal Enterprises as defendants and charging PAUL WARNER and the Brothers of the Wheel M.C., Executive Council, Inc. (Petitioner) with “DEFAMATION, FRAUD, TRADEMARK AND COPYRIGHT INFRINGEMENT, RICO VIOLATIONS, CONSPIRACY TO DEFAME GERALD R. MOLLOHAN AND BROTHERS OF THE WHEEL MOTORCYCLE CLUB NOMADS, FREEDOMS, BASIC HUMAN RIGHTS, ACTIVITIES IN THE AREAS OF RECRUITING, MEMBERSHIP GROWTH, MEMBERSHIP RETENTION, FUND RAISING, AND OTHER ACTIVITIES AS GUARENTEED TO ALL UNITED STATES CITIZENS IN THE U.S. CONSTITUTION,

INCLUDING AMENDMENTS, AND THE BILL OF RIGHTS OF THE UNITED STATES OF AMERICA” **(EXHIBIT “B”).**

“BROTHERS OF THE WHEEL MOTORCYCLE CLUB NOMADS, INC.” is a legitimate non-profit Business Corporation and a Motorcycle Club founded by and belonging to Respondent Gerald R. Mollohan. This Motorcycle Club (BOTWN) was started in 1999 in Richland, Washington by Mr. Mollohan and other motorcycle enthusiasts, many years prior to Petitioner’s purchasing his trademark application from another party and making application for that purchased trademark application (believed to have cost the petitioners \$1,000 and attorney fees according to records on file with USPTO) and using the Respondents legitimate business name. Respondents feel that the Petitioners are attempting to take advantage of Respondents good nature qualities. Respondents legitimate business corporations and LLC’s and Motorcycle Club is a federally and state registered charity Corporation, organized within the laws of both the United States Department of Revenue (IRS) and Washington Secretary of State. The Petitioners are not. Respondent is a former active member, officer and generous contributor to the Petitioners. Respondent owns Copyrights to both the Petitioners Club By-Laws (TX 7-800-119 for BROTHERS OF THE WHEEL M.C. BY-LAWS) and the Respondents By-Laws (TXu 7-800-119.) Therefore Petitioner’s cannot and should not be allowed to exist, function or own a trademark without permission to use the Respondents Intellectual Property **(EXHIBIT “C”).** Petitioner’s petition for Cancellation should be dismissed immediately.

The Petitioner in this case has used frivolous arguments, committed Fraud and infringement. Further, Petitioners hold a grudge against the Respondent personally and are disgruntled. The Petitioners have been uncooperative in all legal matters before the courts, offering to produce no records what so ever, financial or otherwise, and no answers to any interrogatories of the

Respondents. Particularly uncooperative, and at times “in contempt” has been Petitioner Paul Warner.

In Civil Action 2:11-CV-00104 U.S. District for Southern West Virginia, as mentioned by the Petitioner, the Court has yet to rule on numerous “Post Trial Motions” FILED BY THE RESPONDENT, GERALD R. MOLLOHAN. Petitioner Warner has filed an appeal in the U.S. Court of Appeals for the Fourth Circuit that has yet to be acted upon by that Court. The Appeals Court has conveyed a letter to all parties that they “WILL TREAT THE NOTICE OF APPEAL AS FILED AS OF THE DATE THE DISTRICT COURT DISPOSES OF THESE (Post-Trial) MOTIONS” (**EXHIBIT “D”**). Further, the Petitioner Paul Warner states numerous untruths regarding case (2:11-CV-00104) in his Petition Number **92059164**, which respondents’ claim is “frivolous.” Petitioner Warner committed fraud in his original Trademark application, in his petition for cancellation and the matter of Civil Action 2:11-CV-00104.

In Civil Action 2:11-CV-00104 the Court noted in Court records one of Petitioners fraudulent Affidavits, which Respondents have brought to the Courts attention.

On April 30, 2014, FRANK J. VISCONI, filed Civil Action Number 2:14-CV-15592 (**EXHIBIT “E”**) naming these same Petitioners, PAUL WARNER and his Enterprise, as Defendants in Violation of Section 45 of 15 U.S.C. 1051- the Lanham Act – Abandonment of Trademark. **Included in Exhibit “E” is Mr. Visconi’s MOTION TO THE HONORABLE COURT TO EXERCISE ITS JUDICIAL POWERS AND CANCEL PETITIONERS TRADEMARK (See Plaintiff’s Motion For Leave to File Supplementary Pleading/Information).** If Petitioners have no trademark, they have nothing. Petitioners have never used a Licensing or Quality Control Agreement and therefore are in violation of the

“Naked Licensing Doctrine” of the Lanham Act, thus Petitioners Trademark should be cancelled immediately for involuntary abandonment of their mark.

Petitioners trademark 2926222 STATUS: “CANCELLATION PENDING” TTAB #92056674 **(EXHIBIT “F”)**. Further Petitioners have caused the Respondents to be bombarded and cluttered with unwanted advertising by filing this frivolous and fraudulent petition.

The Classification for the Petitioners Goods and Services Class in Trademark Number 2926222 is in Classification Number 200, different than that of the Respondents Goods and Services Classification Number 026.

Petitioners were furnished a “cease and desist” notification by the Respondents. However, Petitioners continue to commit violations of Respondents’ Intellectual Property. Thus Respondents have filed legal actions naming the Petitioners as defendants in at least three Civil Actions. Additional legal actions naming the Petitioners as defendants will be filed in order to stop Petitioner’s crimes and infringements of Respondents Federally Protected Intellectual Properties. This most Honorable Court should grand Respondent’s motion to dismiss this petition for cancellation and immediately cancel the Petitioners’ Trademark or transfer ownership to Petitioners Trademark to the Respondents.

Upon information and belief, Respondents’ state that Petitioner Paul Warner, having no qualifications or certification before this honorable Trial Board, is not qualified according to the rules, to represent a corporation in these proceedings and Respondents motion to dismiss this petition for cancellation. Warner’s own motion to allow him to represent a corporation points out that a corporation is a separate person in the eyes of the law. To do so is a clear violation of West Virginia law, Federal Rules of Civil Procedure and all rules of this most honorable Court

[See, *State Bar v. Early*, 109 S.E.2d 420 (W.Va. 1959) and *Advisory Opinion 93-002*].

Respondent motions to strike the Petitioners unrepresentative corporation from this action.

As a result of Respondent's research he has discovered and included **EXHIBIT "G"**.

Respondent observes that this could be the very first use of the term "the Brothers of the Wheel" and believe that it was not a Registered Trademark or Copyright at the time.

Respondent owns Copyright Number TXu 1-857-219 Title of Work: Brothers of the Wheel.

Respondent owns Trademark Number 4,299,480 to BROTHERS OF THE WHEEL International Classification 26 For: Embroidered Patches For Clothing, In Class 26 (U.S. Class. 37, 39, 40, 42 and 50.) Respondent owns Copyright Number TX 7-800-119 Title of Work: BROTHERS OF THE WHEEL M.C. BY-LAWS.

Respectfully submitted,



MAY 14, 2014

Gerald R. Mollohan, Pro Se *et al*

**RESPONDANT**

P.O. Box 507

St.Albans, West Virginia 25177-0507

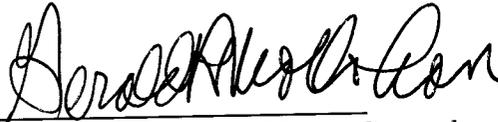
United States of America

**CERTIFICATE OF SERVICE**  
**AND**  
**DECLARATION BY GERALD R. MOLLOHAN**

I, Gerald R. Mollohan hereby certify that on May 14, 2014, a copy of the foregoing

**“RESPONDENT’S MOTION TO DISMISS THE PETITION FOR CANCELLATION**  
**AND**  
**DECLARATION BY GERALD R. MOLLOHAN”**

Was sent by U.S. Mail, postage prepaid to:  
PAUL D. WARNER and  
BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.  
PO BOX 782  
MADISON, WEST VIRGINIA 25130-0782  
UNITED STATES



GERALD R. MOLLOHAN, Pro Se et al  
**RESPONDANT**

**OWNER “BROTHERS OF THE WHEEL” TRADEMARKS & COPYRIGHTS**

**And Founder (1999)**

**BROTHERS OF THE WHEEL MOTORCYCLE CLUB NOMADS®**  
**PO BOX 507**  
**ST.ALBANS, WEST VIRGINIA 25177-0507**  
**PO BOX 1840**  
**RICHLAND, WASHINGTON 99352-1840**  
**BROTHERS OF THE WHEEL NOMADS LLC**  
**BOTWMCN CORPORATION & BROTHERS OF THE WHEEL NOMADS LLC**  
**REGISTERED WITH THE UNITED STATES OF AMERICA**  
**DEPARTMENT OF TREASURY AS CHARITY AND NON-PROFIT ORGANIZATIONS**  
**ORGANIZED UNDER SECTION 501(c)(4)**  
**OF THE INTERNAL REVENUE CODE BEGINNING IN 2002**

**INDEX OF EXHIBITS PROVIDED BY: GERALD R. MOLLOHAN**

**OWNER: BROTHERS OF THE WHEEL™©**

**TTAB Cancellation No. 92059164**

**“A” ..... Civil Action Number 11-CV-457 (Petitioner Paul Warner - Defendant)**

**“B” ..... Civil Action Number 2:13-CV-32251**

**(Motion by Respondent/Plaintiff Mollohan for default judgment because Petitioner/Defendant Warner failed to file answers. Numerous additional motions filed by Mollohan due to inactivity by both Warner or his Counsel of Record.)**

**“C” ..... Respondent Mollohan Intellectual Property of Registered Trademark & Copyrights.**

**“D” ..... Fourth Circuit Court of Appeals Richmond, Virginia**

**Letter to U.S. District Court Southern West Virginia Civil Action**

**Number 2:11-CV-00104 (Numerous “Post Trial Motions” Pending)**

**“E” ..... Civil Action Number 2:14-CV-15592 (Petitioner Warner is Defendant)**

**Plaintiff Frank J. Visconi has requested that the Court Cancel Petitioner**

**Paul Warner’s Trademark Number 2926222 due to “Naked Licensing.”**

**Paul Warner and his Brothers of the Wheel M.C. Executive Council, Inc. have**

**never had a Licensing or Quality Control Agreement for Trademark Number 2926222.**

**“F” ..... TTAB Cancellation Number 92056674(Petitioner Paul Warner is Respondent)**

**Filed: 01/15/2013**

**“G” ..... “Who Killed John Clayton” 1884 appears to be the year when first time**

**In American History that “the Brothers Of The Wheel” was first used.**

**“H” ..... TTAB Cancellation Number 92056674 – Motion to Cancel Registration No.: 2926222**

**Filed: 12/30/2013**

# **EXHIBIT “A”**

**PRESENTED BY:**

**GERALD R. MOLLOHAN**

**Mark: BROTHERS OF THE WHEEL**

**Cancellation No.: 92059164**

IN THE CIRCUIT COURT OF KANAWHA COUNTY

GERALD R. MOLLOHAN	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BROTHERS OF THE WHEEL M.C.	)	
EXECUTIVE COUNCIL, INC.,	)	CASE NUMBER: 11 – C - 457
	)	Judge Bailey
PAUL WARNER, President,	)	
	)	
RAY CAREY, Vice President,	)	
	)	
ALL MEMBERS AND ASSOCIATES	)	
OF THE CLUBM and,	)	
	)	
ALL “CHAPTERS” OF BROTHERS	)	
OF THE WHEEL M.C., EXECUTIVE	)	
COUNCIL, INC.	)	
	)	
Defendant(s).	)	

PLAINTIFF’S MOTION TO FILE AN AMENDED  
AND SUPPLEMENTAL PLEADING

Plaintiff, Gerald R. Mollohan, respectfully submits this brief with additional “exhibits”/evidence as supplemental information (pleadings) to his original complaint filed on March 21, 2011, in the Circuit Court of Kanawha County, West Virginia, reference Case Number 11-C-457.

The exhibits included in this supplemental brief are presented to shed light on two issues specifically. The first issue is that members of the Plaintiff’s motorcycle club are being “threatened” by members of the Defendant’s motorcycle club and that this is a continuing method of operation of the Defendant’s club. The second issue is that Plaintiff has located “incorporation” documents showing that the Defendant’s motorcycle club is incorporated as a “FOR PROFIT” corporation, Tax Identification Number: 73-169-2403 and is in the “business” of making a profit through various activities sponsored by and performed by the Brothers of the Wheel MC, Executive Council.

EXHIBIT “A” – In Plaintiff’s original complaint he indicated that members of his (Plaintiff’s) club were being harassed and “threatened” with bodily harm over the “differences” held between

the two clubs, to wit: Defendant's complaint filed in the Federal District Court for "Trademark Infringement." This exhibit is a statement by the father of one of the members of Plaintiff's motorcycle club who was approached by more than one member of the Defendant's motorcycle club and threatened with bodily harm because of the ongoing feud between the two clubs. The individual, Mark Haynes, told Plaintiff that the threats he received caused him to discontinue his membership in the Plaintiff's club because he was fearful of harmful retaliation against himself and his family. The threats to Mr. Haynes were so real that he was unwilling to even file a police report for threats made against him. The written statement shown as Exhibit "A" was made by Mark Haynes' father instead of Mark himself because said threats caused him "mental anguish" and fear of grave bodily harm because the threatening parties "alluded" to the harmful results if Mark even so much as mentioned what had occurred.

EXHIBIT "B" – As noted above, Plaintiff has included as co-defendants in this complaint, ALL CHAPTERS of Brothers of the Wheel MC, Executive Council. Exhibit "B" includes a list of those chapters and their location in the states of West Virginia, Ohio, and Kentucky. The purpose for adding the chapters of the Defendant's club as co-defendants to this complaint is that the Plaintiff's club has members in all of these same states as well as other states, and since the officers and members of the Defendant's club have the propensity to make threats against members of the Plaintiff's club, Plaintiff felt their (chapters of Defendant's club) inclusion in his complaint would serve to protect all members of his club from threats of bodily harm to them and their families.

EXHIBIT "C" – This exhibit is a snapshot of the front page of the Defendant's motorcycle club web page showing the location of the various chapters of that club and their location in support of above Exhibit "B".

EXHIBITS "D" through "J" – All of these exhibits are presented to inform the court that the Brothers of the Wheel MC, Executive Council motorcycle club is incorporated in the State of West Virginia as a corporation, and that corporation is a FOR PROFIT corporation which is capable of (and has) on various occasions raised large sums of money through various activities. NOTE: Plaintiff has documentation showing that the Defendant's club has made a single charitable donation of one hundred and fifty thousand dollars (\$150,000) which is proof of the treasury of Defendant's club is likely to contain a very large balance at any time. These exhibits also show that at one time, the officers of the Defendant's club allowed their incorporation documents to expire, causing them to make "application for reinstatement of a revoked or administratively dissolved corporation". Exhibit "G" in particular is provided as proof that Brothers of the Wheel MC Executive Council, Defendant's motorcycle club, is in fact a For Profit Organization with an issued tax identification number.

EXHIBIT "K" (four pages) – As noted in Plaintiff's original complaint and restated in this amendment to that complaint, a feud, started by the Defendant, exists between the Defendant's club and the Plaintiff's club over the Defendant's claim of trademark infringement by copying the "name" and the "logo" of the Defendant's club (Defendant initiated a law suit in the Federal District Court of West Virginia against the Plaintiff). As an aside from the facts of

the complaint before the Circuit Court, Plaintiff desires that the Court be made aware that the Plaintiff's club has filed for its own trademark in the U.S. Patent and Trademark Office (USPTO) and in that application has shown that the similarities in the two club logos, the basis for Defendant's suit, are non-existent according to the rules of the USPTO (application accepted and disposition still pending). This trademark matter is, in fact, the cause for the dispute between the two clubs. Exhibit "K" is proof of the existence of another Brothers of the Wheel Motorcycle Club located in Anderson, Indiana. Plaintiff has cause to wonder why the Defendant not filed any complaint against the Brothers of the Wheel Motorcycle Club in Indiana, and further, why have none of the members of that club been threatened with bodily harm by members of the Defendant's club? It appears that the Defendant is fixated on the Plaintiff's club and Plaintiff Mollohan in particular because the Plaintiff was once a member of the Defendant's club and decided to retire from that club and start his own club.

WHEREFORE, the Plaintiff has filed this amended brief to the original complaint to provide additional exhibits and evidence of Defendant's (all defendants mentioned) status as a "for profit" corporation; that members of the Defendant's club have made threats of bodily harm toward members of the Plaintiff's club; and that Defendant's club likely maintains a large treasury shown by the club's ability to disperse extraordinarily large sums of money as charitable donations, the Plaintiff, based on the above, asks the Court to include this supplemental information to the original complaint. Plaintiff feels that because of the proven threats that have caused members of his motorcycle club be fearful of bodily harm toward themselves as well as their family, inflicting mental anguish upon said members, and the fact that Defendant's club has the ability to maintain large sums of money in its treasury, his (Plaintiff's) request for damages in the amount of Five Million Dollars (\$5,000,000) is a feasible request and should stand.

Dated this 12<sup>th</sup> day of April, 2011

Copy forwarded to Defendant via U.S. Mail (Registered)

Defendant: Paul Warner  
DBA Brothers of the Wheel MC, Executive Council  
1287 Pond Fork Road  
Madison, WV 25130

# **EXHIBIT “B”**

**PRESENTED BY:**

**GERALD R. MOLLOHAN**

**Mark: BROTHERS OF THE WHEEL**

**Cancellation No.: 92059164**

JS 44 (Rev. 12/12)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>(b) County of Residence of First Listed Plaintiff <u>Kanawha</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p>	<p><b>DEFENDANTS</b></p> <p>County of Residence of First Listed Defendant <u>Boone</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <p><i>(For Diversity Cases Only)</i></p> <p>Citizen of This State: PTF <input checked="" type="checkbox"/> 1 DEF <input checked="" type="checkbox"/> 1</p> <p>Citizen of Another State: <input type="checkbox"/> 2 <input type="checkbox"/> 2</p> <p>Citizen or Subject of a Foreign Country: <input type="checkbox"/> 3 <input type="checkbox"/> 3</p> <p>Incorporated or Principal Place of Business In This State: <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4</p> <p>Incorporated and Principal Place of Business In Another State: <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</p> <p>Foreign Nation: <input type="checkbox"/> 6 <input type="checkbox"/> 6</p>
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**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input checked="" type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p>	<p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input checked="" type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input checked="" type="checkbox"/> 840 Trademark</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p><b>CIVIL RIGHTS</b></p> <p><input checked="" type="checkbox"/> 440 Other Civil Rights</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 448 Education</p>	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <p><input type="checkbox"/> 463 Alien Detainee</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><b>Other:</b></p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p>	<p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p>	<p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p>	<p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*: CIVIL RACKETEERING & CORRUPT ORGANIZATION (RICO) ACT (18 U.S.C. § 1962(c)) TRADEMARK & COPYRIGHT INFRINGEMENT

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

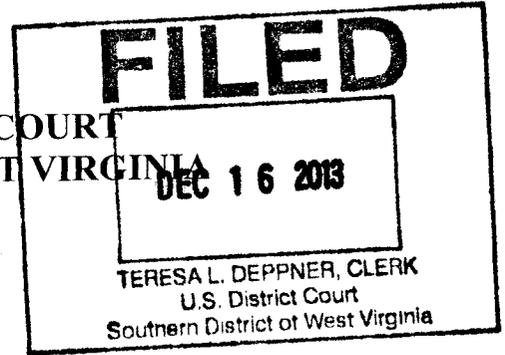
**VIII. RELATED CASE(S) IF ANY** *(See instructions):* JUDGE Johnston DOCKET NUMBER 2:11-cv-00104

DATE 12/16/2013 SIGNATURE OF ATTORNEY OF RECORD Derek M. Johnson Pro Se

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON



**GERALD R. MOLLOHAN and  
BROTHERS OF THE WHEEL  
MOTORCYCLE CLUB NOMADS, INC.,**

Plaintiff,

-against-

*DONALD PRICE and*  
**PAUL D. WARNER and  
RAY EDWIN CAREY and  
BROTHERS OF THE WHEEL M.C.  
EXECUTIVE COUNCIL, INC. and  
JOHN DOES 1-50**

Defendants.

*#CHARCO6807*

*2:13-32251*

**COMPLAINT**

Plaintiff Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads, Inc. (Brothers of the Wheel Motorcycle Club Nomads is a non-profit organization organized under section 501(c)(4) of the Internal Revenue Code.) (“Plaintiff”), alleges for its Complaint against Defendants Paul D. Warner aka “Tall Paul”, Ray Edwin Carey aka “Precious” and Brothers of the Wheel M.C. Executive Council, Inc., (collectively, “Brothers of the Wheel M.C. Executive Council, Inc.”), Seeking Brothers of the Wheel M.C. Executive Council, Inc., and John Does 1-50(collectively, “Defendants”) as follows:

## **SUMMARY OF THE ACTION**

1. This is an action by Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads Inc., a Washington Corporation and privately held corporation, for defamation, fraud, trademark and copyright infringement and RICO violations against Defendants for damages caused by defendants' conspiracy to defame Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads Inc. as part of defendants' scheme to severely decrease Gerald R. Mollohan's and Brothers of the Wheel Motorcycle Club Nomads freedoms, basic human rights, activities in the areas of recruiting, membership growth, membership retention, fund raising, and other activities as guaranteed to all United States Citizens in the U.S. Constitution, including amendments, and the Bill of Rights of the United States of America. Defendants did all this to reap massive illicit gains at the expense of Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads Inc.
  
2. On or about April 7, 2004(date that the defendants purchased a website hosting service from "HOSTMONSTER.COM" of Orem, Utah) in furtherance of their conspiratorial scheme Defendants published on their website "Anyone claiming to be in a nomad chapter is just using our name and playing biker." There have been several additional false and defamatory

statements, as the defendants cannot deny, nor should they. Both the plaintiffs and defendants should have hard drive copies, since all this was and is related to the Internet and posted on various web sites over an extended period of time by the defendants.

3. Now, recognizing the negative publicity, adverse litigation and unwanted attention generated by their schemes and acts of a criminal enterprise, the defendants, under the direction and control of Paul D. Warner and Ray Edwin Carey, have attempted to conceal their fraudulent misconduct through greater anonymity and under the seemingly innocent – albeit false – pretext of acting as members of the American Motorcycle Association. In reality, the defendants are engaged in an ongoing fraudulent scheme to willfully defame the plaintiffs. These Defendants have now distinguished themselves from the isolated garden-variety criminal acts to persistent and organized criminal activity deserving of RICO treatment.

### **PARTIES**

4. Brothers of the Wheel Motorcycle Club Nomads, Inc. is a corporation organized under the laws of the State of Washington with it's principal place of business located in the City of Richland, County of Benton, State of Washington in The United States of America. Brothers of the Wheel

Motorcycle Club Nomads, Inc. are a non-profit organization organized under section 501(c)(4) of the Internal Revenue Code.

5. Paul D. Warner-President, Ray Edwin Carey-Vice-President are the executive officers of Brothers of the Wheel M.C. Executive Council, Inc., operating under Paul D. Warner and Ray Edwin Careys' directions and through numerous front companies and aliases. According to documents filed at the West Virginia Secretary of State Office in Charleston West Virginia, Brothers of the Wheel M.C. Executive Council Inc. is incorporated as a "for profit" business. Both the signatures of Paul D. Warner and Ray E. Carey and at least one (1) of the John Does 1-50 appear on those documents; DONALD PRICE Please refer to attached "West Virginia Secretary of State – Business Organization Detail (3-Pages.)
6. Upon information and belief, Paul D. Warner, an individual, is an American Citizen presently residing in Madison, West Virginia. U.S.A.
7. Upon information and belief, Ray Edwin Carey, an individual, is an American Citizen presently residing in Huntington, West Virginia. U.S.A.
8. John Doe Defendants 1-50 are individuals and/or entities currently unknown and known who, upon information and belief work with, for, and/or through Paul Warner and Ray Edwin Carey. Residences are various locations. Some

of the John Does Defendants 1-50 signatures appear on documents of record at the West Virginia Secretary of State Office in Charleston.

9. Paul Warner and Ray Edwin Carey appear to be in complete charge and own the responsibility for the day-to-day activities and operations of Brothers of the Wheel M.C. Executive Council, Inc. and other front companies and aliases organizations.
10. The Defendants web site owners, according to the Legal and Compliance Manager at Bluehost, Inc. 560 E Timpanogos Pkwy Orem, UT 84097 is Brothers of the Wheel M.C. Executive Council, Inc. Address: HC 78 Box 984 Madison, WV 25130 Telephone Number: 304-369-3384 Email Address: paulorlor@suddenlink.net

### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because there is complete diversity amongst parties and the amount in controversy exceeds \$75,000.
12. This Court has personal jurisdiction over the Defendants because they are involved in litigation in another matter within this court.

13. This Court is a proper venue pursuant to 28 U.S.C. § 1391 because, upon information and belief, a substantial part of the events or omissions giving rise to this claim occurred within this District.

## **FACTS**

### **BACKGROUND**

14. Defendants web site contains false and defamatory statements. Specifically “Anyone claiming to be in a nomad chapter is just using our name and playing biker.”

15. Defendants have a history of attempting to restrict the freedom of assembly and freedom of association by the plaintiffs. These are individual rights and should not be restricted by anyone. Freedom of assembly, sometimes used interchangeably with the freedom of association, is the individual right to come together and collectively express, promote, pursue and defend common interests. The right to freedom of association is recognized as a human right, political right and civil liberty.

16. Defendants have a history of soliciting cash across state lines, then moving cash to another state in a fraudulent scheme to avoid paying taxes and avoiding accountability and any required record keeping.

17. Defendants have a history of “Stashing” cash collected from various sources as a fraudulent scheme to avoid “leaving a paper trail.”
18. Defendants have a history of selling raffle tickets, both locally and across state lines. According to the Internal Revenue Service, all organizations must report the names of all prizewinners and withhold the correct tax on the prize. Defendants have never complied with this law. Plaintiffs should be ordered to produce records of all raffle ticket sales.
19. Defendants have a history of not paying taxes of any kind per local, state, and federal laws through various fraudulent schemes.
20. Donald Price is one of the ‘John Does’ that should be ordered to produce all historical and financial business records of the defendants. Those records should be certified as accurate.

**AS AND FOR A FIRST CLAIM**

Defamation

**(As Against All Defendants)**

21. The false and defamatory statements authored and published by Defendants directly impugn Plaintiff’s business reputation and constitute libel per se.

22. Accordingly, Plaintiff's have suffered damages in an amount to be determined at trial including, but not limited to, the loss of approximately \$5 million in market capitalization, the ceasing of some of it's operations, litigation costs, and other damages stemming from loss of various business relationships, including membership recruitment and retention.
23. Plaintiffs knowingly authored and provided the American Motorcycle Association with false statements.
24. Plaintiffs knowingly authored and provided United States District Court in Charleston, West Virginia false and misleading statements and numbers included in affidavits.

**AS AND FOR A SECOND CLAIM**

Fraud

**(As Against All Defendants)**

25. Plaintiffs repeats and re-alleges each and every allegation contained in the above paragraphs as if set forth fully herein.
26. Plaintiffs knowingly submitted a Fraudulent Drawing of a trademark to the United States District Court at Charleston, West Virginia (Exhibit "A")

Exhibit “A” was presented to the court, but is not what is on record at the USPTO.

**AS AND FOR A THIRD CLAIM**

Trademark and Copyright Infringement

**(As Against All Defendants)**

27. Plaintiffs repeats and re-alleges each and every allegation contained in the above paragraphs as if set forth fully herein.

28. Plaintiffs request that the court issue an order against the defendants to cease and desist” in continuing to use the Plaintiff’s Registered Trademark and Copyright “BROTHERS OF THE WHEEL” on any and all of its back Patches, other embroidered patches, T-Shirts, publications, at any club events Including meetings, on motorcycles, on posters and flyers and any and all Promotional items, business cards, and all other items including the Internet, As it is “owned” by the Plaintiffs.

**AS AND FOR A FOURTH CLAIM**

Civil Racketeering Influenced and Corrupt Organization (RICO)  
Act (18 U.S.C. § 1962(c) Violations Due to Conduct and Participation in a RICO  
Enterprise through a Pattern of Racketeering Activity

**(As Against Paul D. Warner, Ray Edwin Carey and Brothers of the Wheel  
M.C. Executive Council, Inc. and John Does 1-50)**

29. Plaintiffs repeats and re-alleges each and every allegation contained in the  
above paragraphs as if set forth fully herein.

30. Defendants Paul D. Warner, Ray Edwin Carey, and John Does 1 –50 are  
“persons” within the meaning of the civil Racketeering Influenced and  
Corrupt Organizations Act, 18 U.S.C. § 1961, et seq.’’

31. Racketeer Influenced and Corrupt Organizations Act, commonly referred to  
as the RICO Act or simply RICO, is a United States federal law that provides  
for extended criminal penalties and a civil cause of action for acts performed  
as part of an ongoing criminal organization. The RICO Act focuses  
specifically on racketeering, and it allows the leaders of a syndicate to be tried  
for the crimes that they ordered others to do or assisted them.

32. Acts are related because they share a connection to the affairs of the  
enterprise, and not necessarily because the acts themselves are inherently  
similar. United States v. Abed, No. 98-4637, 2000 WL 14190 U.S. App.  
App. LEXIS 261, at \*27&28 (4th Cir. Jan. 10, 2000) (unpublished); see also

H.J. Inc., 492 U.S. at 238 (“It is not the number of predicates but the relationship that they bear to each other or to some external organizing principle that renders them ‘ordered’ or ‘arranged.’”)

**AS AND FOR A FIFTH CLAIM**

Tortious Interference with Existing and/or Prospective Business Relations  
**(As Against Paul Warner, Ray Edwin Carey and Brothers of the Wheel Executive Council Inc. and John Does 1-50)**

33. Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads, Inc. repeats and re-alleges each and every allegation contained in the above paragraphs as if set forth fully herein.

34. Paul D. Warner and Ray Edwin Carey knew Brothers of the Wheel Motorcycle Club Nomads, Inc. was a growing enterprise.

35. As described above, Paul D. Warner and Ray Edwin Carey engaged in a scheme to defame and intimidate, which efforts contained various false and defamatory statements, so that the Brothers of the Wheel Executive Council, Inc. could garner significant profits by simultaneously defaming and intimidating Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads, Inc.

36. As a direct result of Paul D. Warner, Ray Edwin Carey and their Brothers of the wheel Executive Council, Inc. tortuous conduct described herein, Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads, Inc. has suffered damages in an amount to be determined at trial including, but not limited to, the loss of approximately \$5 million in market capitalization, litigation costs resulting from legal actions against it, and other damages steaming from the loss of various business relationships.

**WHEREFORE**, Plaintiff Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads, Inc. demands that this court enter judgment against Defendants as follows:

- a. An award of compensatory money damages in an amount to be determined at trial;
- b. An award of punitive damages in an amount to be determined at trial;
- c. An award of treble damages in an amount to be determined at trial;
- d. An Order requiring Defendants and all John Doe Defendants who have participated in any manipulation scheme to disgorge to Gerald R.

Mollohan and Brothers of the Wheel Motorcycle Club Nomads, Inc. all illicit profits received by Defendants and all John Doe Defendants in connection with such manipulation scheme, which may be as much as

\$10 million based on the artificial loss in Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads, Inc. Capitalization that occurred between December 16, 1999 and December 16, 2013;

- e. An Order requiring Paul D. Warner, Ray Edwin Carey and their Brothers of the Wheel M.C. Executive Council, Inc. to remove all false and defamatory reports concerning Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads Inc. from their websites and permanently enjoining Defendants from further publishing any false and defamatory reports regarding Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads, Inc.
- f. An Order and permanent injunction ordering Bluehost, Inc., the site domain name registrar, to disable the Defendants domain name(s.)
- g. An Order permanently enjoining Defendants from distributing any false and defamatory reports concerning Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads, Inc.
- h. An Order requiring Defendants to disclose and pay over to the plaintiff all sums plaintiffs received for the sale of the “BROTHERS OF THE

WHEEL” embroidered patch and all dues and other monies received as a result of the defendants control of those individuals who purchased each patch as it is the trademark and copyright of the Plaintiff.

- i. An Order requiring Defendants to post a bond of \$100,000 to assure compliance with the order.
- j. An award of costs and expenses incurred in connection with this action, including reasonable attorneys’ fees to the extent available under law; and
- k. For such other, further, and different relief as the Court shall deem just, equitable, and proper.

Dated: December 16, 2013



Gerald R. Mollohan

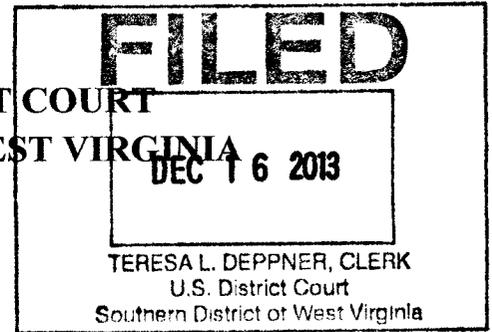
and

BROTHERS OF THE WHEEL MOTORCYCLE CLUB NOMADS, INC.

PO Box 1840

Richland, Washington 99352-1840

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON



BROTHERS OF THE WHEEL M.C.  
EXECUTIVE COUNCIL, INC.

Plaintiff,

CIVIL ACTION NO.: 2:11-cv-00104  
The Honorable Judge  
Thomas E. Johnston  
United States District

v.

GERALD R. MOLLOHAN, et al

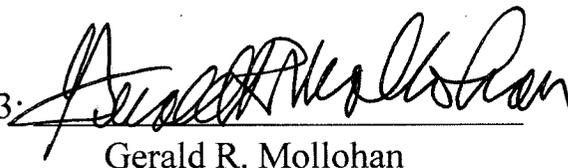
Defendants.

**DECLARATION**

This declaration is to notify this most honorable Court and all parties involved that I, Defendant in this case Gerald R. Mollohan have filed the attached **COMPLAINT.**

I, Gerald R. Mollohan, the undersigned, do confirm that the statements above are true and accurate to the best of my knowledge and made by me under possible penalty of perjury.

This 16th day of December 2013:

  
Gerald R. Mollohan

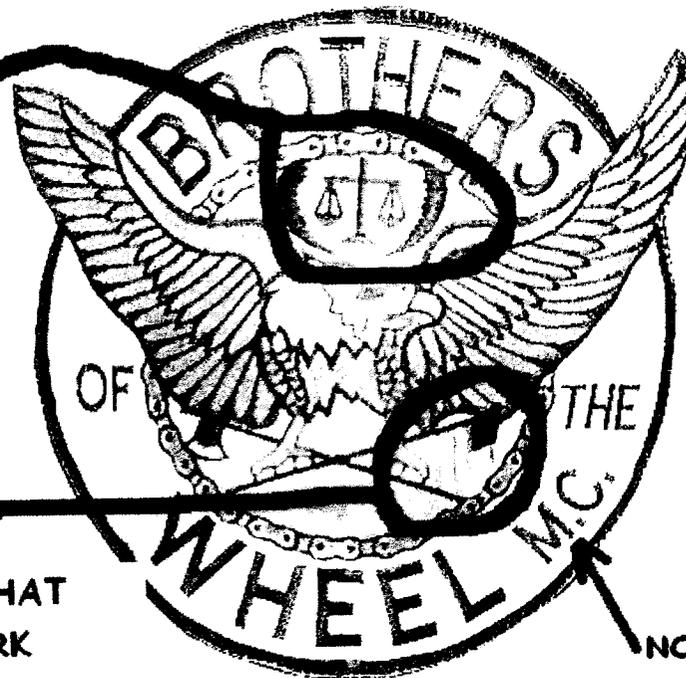
*Exhibit A*

GENERIC

NOT ALLOWED

NO INDICATION THAT  
THIS IS TRADEMARK

COLORS AND FONT NOT  
CLAIMED AS A FEATURE OF  
THE MARK



NOT CLAIMED  
AS A FEATURE  
OF THE MARK  
"M.C."

*Presented to the court, but is not  
What is on file at the USPTO.*

## West Virginia Secretary of State — Online Data Services

### Business and Licensing

Online Data Services Help

### Business Organization Detail

*NOTICE: The West Virginia Secretary of State's Office makes every reasonable effort to ensure the accuracy of information. However, we make no representation or warranty as to the correctness or completeness of the information. If information is missing from this page, it is not in the The West Virginia Secretary of State's database.*

### BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.

#### Organization Information

Org Type	Effective Date	Filing Date	Charter	Class	Sec Type	Termination Date	Termination Reason
C   Corporation	1/20/2004	1/20/2004	Domestic	Profit			

#### Organization Information

<b>Business Purpose</b>		<b>Capital Stock</b>	5000.0000
<b>Charter County</b>	Boone	<b>Control Number</b>	63021
<b>Charter State</b>	WV	<b>Excess Acres</b>	
<b>At Will Term</b>		<b>Member Managed</b>	
<b>At Will Term Years</b>		<b>Par Value</b>	25.0000
<b>Authorized Shares</b>	200		

#### Addresses

Type	Address
------	---------

<b>Mailing Address</b>	PO BOX 782 MADISON, WV, 25130 USA
<b>Notice of Process Address</b>	RAY CAREY 4414 OHIO RIVER RD HUNTINGTON, WV, 25702
<b>Principal Office Address</b>	PO BOX 782 MADISON, WV, 25130 USA
<b>Type</b>	<b>Address</b>

<b>Officers</b>	
<b>Type</b>	<b>Name/Address</b>
<b>Incorporator</b>	PAUL WARNER HC 78 BOX 984 MADISON, WV, 25130 USA
<b>Incorporator</b>	RAY E. CAREY + 1 OTHER 399 YOUNG ROAD SISSONVILLE, WV, 25320 USA
<b>President</b>	PAUL WARNER 1287 POND FORK ROAD MADISON, WV, 25130
<b>Treasurer</b>	DONALD PRICE 6683 MUD RIVER RD BARBOURSVILLE, WV, 25504
<b>Vice-President</b>	RAY CAREY 4414 OHIO RIVER ROAD HUNTINGTON, WV, 25702
<b>Type</b>	<b>Name/Address</b>

<b>Annual Reports</b>	
<b>Date</b>	<b>Filed For</b>
<b>1/6/2013</b>	2014
<b>3/5/2012</b>	2013
	2012
<b>6/24/2010</b>	2011
<b>11/13/2009</b>	2008
<b>Date</b>	<b>Filed For</b>

**Images**

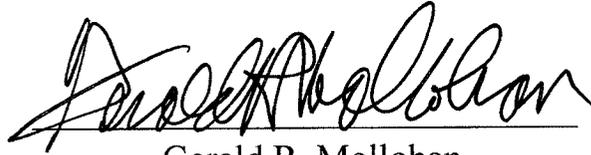
<b>View</b>	<b>Name</b>	<b>Date Added</b>	<b>Date Effective</b>	<b>Type</b>
View	BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.	11/16/2009	1/20/2004	O - Other Filings
View	BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.	2/23/2005	1/20/2004	C - Officer Changes
View	BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.	1/27/2004	1/20/2004	S - Company Formation
<b>View</b>	<b>Name</b>	<b>Date Added</b>	<b>Date Effective</b>	<b>Type</b>

Sunday, December 15, 2013 — 3:49 PM

© 2013 State of West Virginia

CERTIFICATE OF SERVICE

I certify that I have served a true and exact copy of the foregoing Declaration to the Court on Plaintiff's Attorney, Richard J. Lindroth, WVST ID 2215, 4614 Kanawha Avenue, South Charleston, WV 25309 on this 16th day of December, 2013, depositing same in the United States mails, first class postage prepaid, addressed as stated.

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan", is written over a horizontal line. The signature is cursive and somewhat stylized.

Gerald R. Mollohan

# **EXHIBIT “C”**

**PRESENTED BY:**

**GERALD R. MOLLOHAN**

**Mark: BROTHERS OF THE WHEEL**

**Cancellation No.: 92059164**

# United States of America

United States Patent and Trademark Office

## BROTHERS OF THE WHEEL

**Reg. No. 4,299,480**

**Registered Mar. 5, 2013**

**Int. Cl.: 26**

**TRADEMARK**

**SUPPLEMENTAL REGISTER**

MOLLOHAN, GERALD R. (UNITED STATES INDIVIDUAL), AKA BROTHERS OF THE WHEEL,  
P.O. BOX 507  
ST. ALBANS, WV 25177

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

FIRST USE 0-0-1987; IN COMMERCE 0-0-1987.

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

SER. NO. 85-509,063, FILED P.R. 1-5-2012; AM. S.R. 1-25-2013.

BRIDGETT SMITH, EXAMINING ATTORNEY



*Lisa Street Kim*  
Acting Director of the United States Patent and Trademark Office

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

Registration Number  
**TX 7-800-119**

Effective date of  
registration:  
November 7, 2013

## Title

Title of Work: BROTHERS OF THE WHEEL M.C. BY-LAWS

## Completion/Publication

Year of Completion: 2000

Date of 1st Publication: June 30, 2000

Nation of 1st Publication: United States

## Author

▪ Author: Gerald Roscoe Mollohan

Author Created: text

Citizen of: United States

Year Born: 1943

## Copyright claimant

Copyright Claimant: Gerald Roscoe Mollohan

PO Box 507, 2305-100 Kanawha Terrace, St. Albans, WV, 25177, United States

## Certification

Name: Gerald Roscoe Mollohan

Date: November 7, 2013

**Registration #:** TX0007800119  
**Service Request #:** 1-1018236811



Brothers of the Wheel  
Gerald Roscoe Mollohan  
PO Box 507  
2305-100 Kanawha Terrace  
St. Albans, WV 25177 United States

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

Registration Number  
**TXu 1-857-219**

Effective date of  
registration:

September 6, 2012

**Title** \_\_\_\_\_

Title of Work: Brothers of the Wheel

**Completion/Publication** \_\_\_\_\_

Year of Completion: 2012

**Author** \_\_\_\_\_

▪ Author: Gerald R. Mollohan

Author Created: text

Citizen of: United States

**Copyright claimant** \_\_\_\_\_

Copyright Claimant: Gerald R. Mollohan

PO Box 507, St. Albans, WV, 25177

**Limitation of copyright claim** \_\_\_\_\_

Material excluded from this claim: previously published material

New material included in claim: text

**Certification** \_\_\_\_\_

Name: Gerald R. Mollohan

Correspondence: Yes

**Registration #:** TXU001857219

**Service Request #:** 1-824135420



Gerald R. Mollohan  
PO Box 507  
St. Albans, WV 25177

# **EXHIBIT “D”**

**PRESENTED BY:**

**GERALD R. MOLLOHAN**

**Mark: BROTHERS OF THE WHEEL**

**Cancellation No.: 92059164**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE ANNEX  
1100 EAST MAIN STREET, SUITE 501  
RICHMOND, VIRGINIA 23219-3517  
WWW.CA4.USCOURTS.GOV

PATRICIA S. CONNOR  
CLERK

TELEPHONE  
(804) 916-2700

March 26, 2014

Teresa L. Deppner, Clerk  
U.S. District Court  
Southern District of West Virginia  
300 Virginia Street East  
Charleston, WV 25301

Re: Brothers of the Wheel M.C. Executive Council, Inc. v. Gerald R. Mollohan, et al.  
2:11-cv-00104

Dear Ms. Deppner:

Review of the district court docket discloses that the district court is considering multiple motions under Fed. R. Civ. P. 50(b)(for judgment), 52(b)(to amend or make additional findings), 59(to alter or amend judgment or for new trial), or 60 (to vacate) filed within 28 days of entry of judgment. Under Fed. R. App. P. 4(a)(4), a notice of appeal filed after entry of judgment but before disposition of such motions becomes effective upon entry of an order(s) disposing of the last such motion.

Review of the district court docket also discloses that a motion to extend the appeal period was filed within 30 days of expiration of the appeal period and is pending in the district court under Fed. R. App. P. 4(a)(5).

This court will treat the notice of appeal as filed as of the date the district court disposes of these motions, and will docket the appeal following disposition of the motions. Please notify this court upon entry of an order(s) disposing of the motions.

If a party wishes to appeal the district court's disposition of the motions, a notice of appeal or amended notice of appeal must be filed within the time prescribed for appeal, measured from entry of the order(s) disposing of the last such motion.

Yours truly,

*/s/ Ashley B. Webb*

Ashley B. Webb

cc: Gerald R. Mollohan  
Ralph C. Buss, Esq.  
Richard J. Lindroth, Esq.

# **EXHIBIT “E”**

**PRESENTED BY:**

**GERALD R. MOLLOHAN**

**Mark: BROTHERS OF THE WHEEL**

**Cancellation No.: 92059164**

AO 440 (Rev. 06/12) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

Southern District of West Virginia

Frank J. Visconi )

)

)

)

\_\_\_\_\_  
*Plaintiff(s)*

)

v.

)

Civil Action No. 2:14-15592

Paul D. Warner and Brothers of the Wheel M.C.  
Executive Council, Inc., et al.

)

)

)

)

\_\_\_\_\_  
*Defendant(s)*

)

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* Paul D. Warner  
1287 Pond Fork Road  
Madison, WV 25130

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Frank J. Visconi  
434 Hickman Shores Road  
Dover, TN 37058

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 05/02/2014

  
\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*



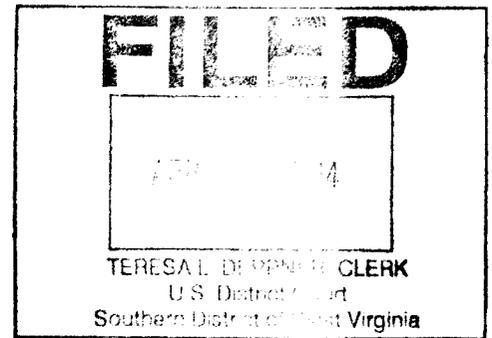
**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON**

**FRANK J. VISCONI** )  
)  
Plaintiff, )  
)  
v. )  
)  
**PAUL D. WARNER and** )  
**BROTHERS OF THE WHEEL** )  
**M.C. EXECUTIVE COUNCIL, INC.** )  
and )  
**JOHN DOES 1-50** )  
**JANE DOES 1-50** )

Original COMPLAINT  
Docket/Case No. 2:14-15592  
Judge \_\_\_\_\_

Defendants.

**INTRODUCTION**



#CHARC00493

Plaintiff *Pro Se* Frank J. Visconi hereby states that Paul D. Warner, President of BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC. and JOHN DOES 1-50 and JANE DOES 1-50 collectively herein referred to as “Defendants BOTWMC” are in violation of Section 45 of 15 U.S.C.1051 the Lanham Act - Abandonment of Trademark.

**COMPLAINT**

The Lanham Act, section 45 refers to “losing a Trademark under the NAKED LICENSING LAW (or Doctrine). It specifically states that a Trademark licensor (i.e. the owner of Trademark/the Registrant) is required to control the quality of the goods or services offered by a licensee under the trademark. It goes on to state, “If quality is not monitored or enforced, the license may be considered a NAKED LICENSE, the mark may lose its significance and become

involuntarily abandoned. In such circumstances, a Trademark licensor's assertion of an infringement claim against a third party may risk a counterclaim for cancellation of the mark on the grounds that the license is naked." Put another way, a NAKED LICENSE of a trademark occurs when the licensor "fails to exercise adequate quality control over the licensee. When a licensor is found to have failed to exercise such control, a court may find that the Trademark owner has abandoned the Trademark, in which case the owner would be stopped from asserting rights to the trademark." Thus, it is incumbent upon the Trademark owner to enforce its mark against misuse and if the owner fails to do so, it risks being deemed to have abandoned the mark and thus may lose its right to the mark. If that is the case, the Trademark owner no longer has a valid Trademark and it cannot be infringed upon (see EXHIBIT "A").

It is the intent of the Plaintiff to show that the Defendant, 1) did not retain express contractual control over the licensee's quality control measures, and 2) did not have actual control over the licensee's quality control measures thereby allowing Naked Licensing of its Trademark, and therefore unintentionally abandoned all rights of enforcement of the Trademark.

### **JURISDICTION AND VENUE**

1. This Court has personal jurisdiction over the Defendants because they are involved in litigation in another matter within this court.
2. This Court is the proper venue pursuant to 28 U.S.C. § 1391 because, upon information and belief, a substantial part of the events or omissions giving rise to this claim occurred within the court's district.

**FACTS**

1. Defendant's U.S. Registration Number: 2926222 Mark: "Brothers of the Wheel M.C." is currently being reviewed by the Trademark Trial and Appeal Board (TTAB) for cancellation (Number 92056674).
2. As defined by the court, "Naked Licensing occurs when a licensor does not exercise adequate quality control over its licensee's use of a licensed trademark such that the trademark may no longer represent the quality of the product or service the consumer has come to expect".
3. Paul D. Warner purports to be in complete charge of and owner of the responsibility of the day-to-day activities and operations of the Brothers of the Wheel M.C. Executive Council, Inc. and other front companies and alias organizations.
4. According to documents filed in Charleston, West Virginia Secretary of State Office, the BOTWMC (Defendants) organization is incorporated as a "for profit" business while the President (Warner) and its members have claimed on many occasions that it is a non-profit enterprise.
5. Others have been allowed "free reign" use the Defendant's mark without any written agreement.
6. Any geographical territory agreement is lacking.
7. There is no quality control whatsoever of the Defendant's mark
8. Defendant does not have nor has it ever drafted a written licensing agreement per requirements for allowing use of its Trademark.

9. There is absolutely no quality control of the Defendant's mark.
10. Defendants have always let it been known that their enterprise is non-territorial because they are required by the 1% Outlaw Motorcycle Clubs to obtain permission to exist and Defendants are made to wear an American Motorcycle Association (AMA) patch near their logo clearly indicating that they are "AMA". Further, the Defendant's mark is cluttered with other text on patches also near the logo.
11. Defendant, President Warner, has abandoned the enterprise's Trademark mark rights.
12. According to the Defendant's organization "by-laws", "Any member who has been active for a period of five (5) years or more shall have the option of retiring and may be permitted to keep his/her colors in their possession forever". This, in and of itself, makes "quality control" of their Trademark impracticable.

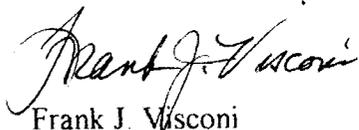
In addition to above related FACTS, Plaintiff calls to the court's attention "*Freecycle Sunnyvale v. Freecycle Network*, 08-16382, 2010 WL 4749044, 9<sup>th</sup> Cir., 2010", a case with similar circumstances and facts that led to cancellation of a Trademark due to Naked Licensing. Plaintiff further cites Appeals Court decision "289 F.3d 589 (2002), *Barcamerica International USA Trust, a California Trust, Plaintiff-counter-defendant-Appellant v. Tyfield Importers, Inc., a corporation; Cantine Leonardo Da Vinci Soc. Coop., a.r.l., an entity of Italy, Defendant-counter-claimants Appellees v. George Gino Barca, Third Party Defendant* (No. 01-15973), U.S. Court of Appeals for the Ninth District (Argued April 10, 2002, Filed May 6, 2002)". In this case, the court concluded that Barcamerica's naked licensing of the mark is a sufficient ground to support the district court's grant of summary judgment to Tyfield and Cantine on Barcamerica's claims,

and the district court's cancellation of Barcamerica's registration we need not consider the district court's alternative holding that Barcamerica's claims are barred by the doctrine of laches.

**CONCLUSION**

WHEREFOR, Plaintiff submits the above facts in support of his complaint against the Defendant(s) Paul D. Warner and the Brothers of the Wheel M.C. Executive Council, Inc. and as evidence of Defendant's violation of the Naked Licensing Doctrine of the Lanham Act. Further, Defendant, by virtue of its lack of quality control over its Trademark has committed involuntary abandonment of its mark thus allowing the court to exercise "judicial cancellation" of Defendant's registered mark.

Respectfully submitted,



Frank J. Visconi  
434 Hickman Shores Rd.  
Dover, TN 37058  
Plaintiff, *Pro Se*  
April 28, 2014

EXHIBIT "A"  
4 Pages

# What is a Trademark License Agreement

By: Janice Alberta

Published: March 26, 2008

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A trademark license is an agreement between a trademark owner (the "licensor") and another person or business entity (the "licensee") in which the licensor gives permission to the licensee to use its trademark or trademarks in commerce.

If you are a trademark owner, a formal written trademark license agreement is recommendable if you intend to allow another person or business entity to use your trademark or trademarks. If you do not have a formal written trademark license agreement in place, you are putting your trademark rights at risk. If you allow others to use your trademarks without a formal written license agreement, a third party or the intended licensee may be able to successfully argue that you have abandoned your trademark rights and that others have "free reign" to use the trademarks once claimed as yours.

If you are a person or entity intending to use the trademark owned by another, a formal written trademark license agreement and your adherence thereby is recommendable to protect yourself from trademark infringement liability.

## How To Patent Your Idea

Conventionname.com

3 Easy Steps To Patent & Make Money Get A Free Patent & Invention Kit

Provisions that are essential to a formal written trademark license agreement include (1) identification of the trademark or trademarks that are the subject of the agreement, (2) the name of the licensor and licensee, (3) the specific trademark right or rights to be licensed, including the geographic territory in which the marks are being licensed, and (4) the nature and quality of the goods and/or services with which the licensee may use the trademark, also known as a "quality control provision."

Quality control provisions are necessary to a trademark agreement because a trademark represents the trademark owner's reputation for goods and/or services of a certain level of quality. Consumers rely on this reputation in making purchasing decisions. If a licensor does not exercise sufficient control over the quality of goods and/or services offered by the licensee, the trademark may, in some countries (including the United Kingdom and Canada), become vulnerable to attack by the licensee or a third party. In other countries, including the United States, the trademark may be deemed abandoned. So, in order to protect its trademark rights, a licensor should not only include a quality control provision in its license agreement, it should also take steps to ensure that the quality control described in the agreement is enforced. A licensor should also make sure that it is choosing a licensee that has the ability to adhere to its quality standards.

A quality control provision should contain a subprovision specifying "trademark usage," as well as another subprovision specifying "quality control monitoring." A "trademark usage" subprovision specifies

the manner in which the trademark will be used on or in connection with the goods and services of the licensee and on advertising and promotional materials. The licensee may be required to obtain the licensor's permission before using any new presentation of the trademark. A "quality control" monitoring subprovision may require access to the licensee's facilities, raw materials, finished products, personnel and records to monitor the licensee's adherence to the licensor's quality standards.

Other provisions that are commonly included in a license agreement include the following:

**Royalty** - Licensors may grant a trademark license in exchange for royalty payments from the licensee. It is recommendable that the royalty amount is stated explicitly in the license. You can opt for a flat fee or a percentage of the sales depending upon the mutual agreement.

**Time Period of Use, Renewal, and Termination** - A trademark license agreement usually sets a fixed term or time period of use for the trademark or trademarks and the conditions under which the license may be renewed or terminated, including for breach of the license conditions.

**Exclusivity** - A trademark may be licensed exclusively to a single licensee or licensed non-exclusively to more than one licensee. In a non-exclusive licensing arrangement, the licensor retains rights to use the trademark itself, to license it to others, or both. In an exclusive or "sole" licensing agreement, only the licensee has the right to use the trademark.

**Geographic Scope** A trademark license agreement usually specifies the geographic area within in which the trademark or trademarks may be used by the licensee.

A trademark license agreement with a geographic scope that covers only the US (or an area within the US) does not need to be recorded with the US Patent and Trademark Office to have effect. The trademark owner nonetheless has the option of recording the license if the trademark or trademarks covered thereby are registered with the US Patent and Trademark Office. In certain other countries, however, a license must be recorded with the trademark office in order to protect the owner's rights against third-party challenges.

An attorney familiar with trademark licensing may provide significant assistance in drafting and negotiating a trademark license. The attorney can advise about local requirements regarding trademark licensing requirements, including possible anti-competition laws and laws regarding recordation of the license. An attorney can anticipate possible challenges to your trademark rights in the future, and include provisions in the license that protect against such challenges. Your investment in an attorney for drafting and negotiating the terms of a trademark license agreement can save you significant sums of money in the long term by helping prevent avoidable legal challenges.

RS  
SC

Ryan, Swanson Cleveland, PLLC

## NAKED TRADEMARK LICENSE FORFEITS TRADEMARK

If you license your trademark without specifying the quality of the goods to be sold, such is called "naked licensing" and your trademark would be deemed abandoned. This was confirmed when the Ninth Circuit held "that Barcamerica engaged in naked licensing of its "Leonardo Da Vinci" mark -- and that by so doing, Barcamerica forfeited its rights in the mark." *Barcamerica International USA Trust v. Tyfield Imports, Inc.*, 289 F.3d 589-598 (9th Cir. 2002).

In this case, Barcamerica entered into trademark license agreements with Renaissance Vineyards ("Renaissance") to produce wines under the DA VINCI mark. Evidence showed that not only did the licenses not contain any quality standards but that Barcamerica never actually "had any involvement whatsoever regarding the quality of the wine and maintaining it at any level." Barcamerica commenced an infringement action against Tyfield Imports, Inc. ("Tyfield") the producer and importer of "Leonardo Da Vinci" wines from Vinci, Italy. Tyfield countered that Barcamerica previously abandoned the mark through "naked licensing." The Ninth Circuit affirmed the lower courts summary judgment holding that since there was no quality control standard for DA VINCI wine, it was a naked license and the court ordered cancellation of Barcamerica's trademark registration.

### Background on the Law

Trademark rights in the U.S. are created through actual use of a distinctive mark which indicates the origin of the goods or services. Thus, if anything occurs to stop usage or to stop the mark from being distinctive in the marketplace, to stop the indication of a particular origin (provider), these may not be protectable trademark rights.

1. "Intentional Abandonment." "Intentional abandonment" of the mark generally occurs when the owner ceases actual use of the mark and does not intend to resume use.

If abandoned, a mark is in the public domain and, in most instances, could be claimed by the next user.

2. "Unintentional Abandonment." This occurs when the owner causes or permits the mark to lose its significance as an indicator of the origin of the goods or services. This can occur through a number of means as outlined below.

A. Naked Licenses. Generally, the licensing of a mark without reserving any rights of "quality control" is a naked license. If a company permits anyone to use its name for just any product, there would be no value left to the name. It would not signify anything. A naked license may result in the mark losing its identity as a symbol of equal quality since there are no restrictions over the products or services that bear the mark. Hence it is deemed an absolute assignment and the mark is abandoned by the assignor.

The rationale is that a trademark stands for goods originating from some source which are of some consistent quality. If there is no consistent quality then the name does not signify anything.

B. Assignment Without Goodwill. If a mark is assigned and the goodwill of the business (i.e. the specific goods and services) connected with the mark is not assigned, the mark no longer identifies the nature and quality of certain goods and is, therefore, just the trafficking in a name. Therefore all sales, assignments or grants of a security interest in marks should include the phrase "together with the goodwill of the business associated with the trademark" or it is deemed an assignment in gross and is invalid.

The rationale here is that, if there is no business of a particular type transferred with the mark, there is nothing the mark signifies. One cannot merely traffic in names in the U.S.

C. Widespread Usage. If an owner permits others to use the mark with similar goods, then there is nothing to protect because it no longer signifies anything. A mark needs to be distinctive.

D. Generic Term. If a mark becomes a generic term then it will be deemed abandoned since the mark no longer identifies a single source of goods or services. You cannot own a generic term like hamburger for the sale of hamburgers, fish for the sale of fish, and the like. A mark can become generic due to widespread usage such as elevator, aspirin, etc.

3. Intent to Use. Even though trademark ownership arises upon actual use, U. S. law permits one to file for a trademark on an "intent to use basis" and then to prove actual use later. However, an intent to use trademark application cannot be assigned since a mark does not become a true mark in the U.S. until after actual use commences. Still, the application can be assigned if it is assigned in connection with the sale of the whole business associated with the mark. This rule is to avoid trafficking in marks which have no real existence but allows inclusion with the sale of a total business' assets.

Conclusion. The Barcamerica case reconfirms the need to protect one's trademark through proper usage, registration, and assignment. For further information, see The Proper Selection, Use and Protection of Trademarks, Corporate Names, and Trade Names in the U.S. at <http://www.ryanlaw.com>.

AO 120 (Rev. 08/10)

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of West Virginia on the following

Trademarks or  Patents. (  the patent action involves 35 U.S.C. § 292.);

DOCKET NO. 2:14-cv-15592	DATE FILED 4/30/2014	U.S. DISTRICT COURT Southern District of West Virginia
PLAINTIFF Frank J. Visconi		DEFENDANT Paul D. Warner, et al.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		See copy of Complaint and Exhibits Attached
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

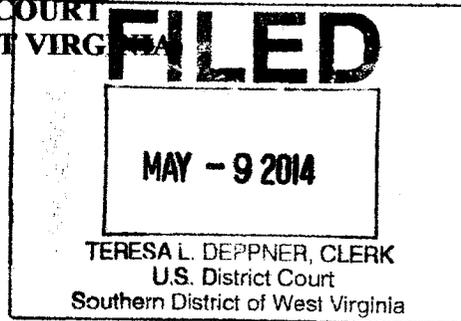
In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
--------------------

CLERK TERESA L. DEPPNYER	(BY) DEPUTY CLERK s/Teresa A. Quigley	DATE 5/5/2014
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON



**FRANK J. VISCONI** )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 **PAUL D. WARNER and** )  
 **BROTHERS OF THE WHEEL** )  
 **M.C. EXECUTIVE COUNCIL, INC.** )  
 and )  
 **JOHN DOES 1-50** )  
 **JANE DOES 1-50** )

Docket/Case No. 2:14-15592  
The Honorable Thomas E. Johnston

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO FILE SUPPLEMENTARY  
PLEADING/INFORMATION**

Pursuant to Federal Rules of Civil Procedure (FRCP) Rule 15 – Motions and Local Rules of Civil Procedure (LRCP) – Rule 15, Plaintiff files additional and supplementary information in support of his original complaint filed in this Court on April 30, 2014.

**ARGUMENT**

Plaintiff's complaint and request to have the Defendant's Trademark "judicially cancelled" is based on the fact that the Defendant's mark does not and has not since its inception, maintained the "quality control" required by the Naked Licensing Doctrine of the Lanham Act which constitutes the Defendant's mark as involuntarily abandoned and not subject to infringement. Nowhere in any of the Defendant's organization documents is there any reference to quality control of their mark nor is there any reference to any licensing agreements which are required whenever the mark registrant allows "others", including branch chapters of their club to utilize

their mark. By virtue of the fact that the Defendant's mark is utilized by several branch chapters according to Defendant's own admission, without any licensing agreement quality control is all but non-existent.

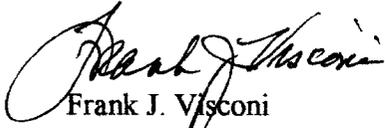
Plaintiff has in his possession a copy of the Defendant's By-Laws believed to have been in effect at the time of their Trademark application and notes that there is absolutely NOTHING contained in that document that mentions or even refers to "control" of the mark. Further, these branch chapters appear to be functioning as "franchisees" of the Defendant's Executive Council (mother chapter) which are "kicking back" untold dollar amounts to the Executive Council for purposes spelled out in their By-Laws.

According to the Defendant(s) current By-Laws, any member who has been active for a period of five (5) years or more shall have the option of retiring and may be permitted to keep his/her colors in their possession forever, again making quality control of the mark impracticable.

## CONCLUSION

WHEREFOR, given the additional information and facts cited above and the criteria for "quality control" of a mark as noted in the Section 45 of the Lanham Act (15 U.S.C. 1051), unless the Defendant(s) can immediately produce written and documented evidence/proof of any qualified (as spelled out in the Naked Licensing section of the Lanham Act) method of "quality control" over their mark covering the present and the entire period of time of the existence of the Defendant's organization and Registered Trademark back to its beginning, the Plaintiff asks this honorable Court to exercise its judicial powers to CANCEL the Defendant's registered mark.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank J. Visconi". The signature is written in a cursive style with a large initial "F".

Frank J. Visconi  
434 Hickman Shores Rd.  
Dover, TN 37058  
Plaintiff, *Pro Se*  
May 7, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on May 7, 2014, a copy of the foregoing "Plaintiffs Motion for Leave to File Supplementary Pleading/Information" was sent via First Class U.S. Mail, postage pre-paid to Paul D. Warner at 1287 Pond Fork Road, Madison, WV 25130.

  
Frank J. Visconi

# **EXHIBIT “F”**

**PRESENTED BY:**

**GERALD R. MOLLOHAN**

**Mark: BROTHERS OF THE WHEEL**

**Cancellation No.: 92059164**

TTAB

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

In the matter of trademark Registration No. 2926222  
For the mark Brothers of the Wheel M.C.  
Date registered: February 15, 2005

# 76 538199

Gerald R. Mollohan  
Brothers of the Wheel Motorcycle Corporation Nomads International  
4291 North Verrado Way - Unit #231  
Buckeye, Arizona 85396

Petitioner,

V.

Brothers of the Wheel M.C. Executive Council, Inc.  
HC 78 Box 984  
Madison, West Virginia 25119

Respondent,

01/15/2013 SWILSON1 00000003 2926222

01 FC:6401

300.00 OP

PETITION TO CANCEL

Gerald R. Mollohan has been and the BROTHERS OF THE WHEEL MOTORCYCLE CORPORATION NOMADS INTERNATIONAL believes it will continue to be damaged by the continued registration of the mark shown in United States Trademark Registration 2926222 and hereby seeks cancellation of this registration. As grounds for the cancellation, Gerald R. Mollohan and BROTHERS OF THE WHEEL MOTORCYCLE CORPORATION NOMADS, alleges:

1. Threat of harm to our non-profit organizations.
2. Fraud by Brothers of the Wheel M.C. Executive Council Inc.
3. Bad Faith
4. Defamation



\*01-14-2013\*

5. On several occasions Brothers of the Wheel M.C. Executive Council, Inc. has contacted members of Brothers of the Wheel Motorcycle Corporation Nomads with threats of lawsuits and physical violence.
6. American Flag
7. Lack of disclosure that an American Motorcyclist(AMA) Logo and Trademark is required in commerce with Trademark No. 2926222
8. Party to attempted solicitation of a U.S. District Judge.
9. Genericness
10. Disparaging

It is my opinion that the United States Trademark Registration No. 2926222 for BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC. is extremely detrimental to me, my organization, family, supporters, friends and associates everywhere. \$300 Filing Fee Enclosed.

Sincerely,



Gerald R. Mollohan

BROTHERS OF THE WHEEL MOTORCYCLE CORPORATION NOMADS INTERNATIONAL  
9241 North Verrado Way - Unit #231  
Buckeye, Arizona 85396

CC: Paul Warner  
Brothers of the Wheel M.C., Executive Council, Inc.  
HC78 Box 984  
Madison, West Virginia 25119

Ray E. Carey  
PO Box 275  
Apple Grove, West Virginia 25502

## CERTIFICATE OF MAILING

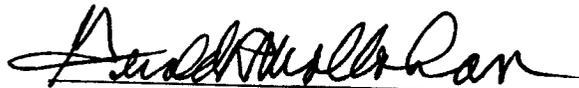
I HERE BY CERTIFY THAT ON DECEMBER 11, 2013, I FILED THIS PETITION TO  
CANCEL WITH THE:

U.S. PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD  
(U.S. PATENT AND TRADEMARK OFFICE)  
P.O. BOX 1451  
ALEXANDRIA, VIRGINIA 22313-1451

WITH COPIES VIA FIRST CLASS MAIL, POSTAGE PREPAID TO:

Paul Warner  
National President  
Brothers of the Wheel M.C., Executive Council, Inc.  
HC78 Box 984  
Madison, West Virginia 25119

Ray E. Carey  
National Vice President  
Brothers of the Wheel M.C., Executive Council, Inc.  
PO Box 275  
Apple Grove, West Virginia 25502



GERALD R. MOLLOHAN  
PRESIDENT & FOUNDER  
BROTHERS OF THE WHEEL LLC ARIZONA  
BROTHERS OF THE WHEEL MOTORCYCLE CORPORATION  
NOMADS INTERNATIONAL  
BROTHERS OF THE WHEEL MOTORCYCLE CLUB GERMANY  
4291 NORTH VERRADO WAY - UNIT #231  
BUCKEYE, ARIZONA 85396  
Ph: (623)748-9791  
[botwnomads@aol.com](mailto:botwnomads@aol.com)

# **EXHIBIT “G”**

**PRESENTED BY:**

**GERALD R. MOLLOHAN**

**Mark: BROTHERS OF THE WHEEL**

**Cancellation No.: 92059164**

**“Brothers of the Wheel”**

**As mentioned on Page 52**

**In the Book**

**“Who Killed John Clayton”**

**By Kenneth C. Barnes**

**Note:**

**“the Brothers of the Wheel”**

**Appears to have first been used in the year  
1884.**

Windows Internet Explorer browser interface showing address bar, menu bar (File, Edit, View, Favorites, Tools, Help), and toolbar with various icons.

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Books

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Who Killed John Clayton?: Political Violence and the Emergence of the New ...
By Kenneth C. Barnes

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Arkansas legislature in 1883 had passed a revenue act that gave tax exemptions to the railroads but taxed farmers' stocks for home consumption. The Pope County Brothers of Freedom, in their 1884 election platform, called for an ad valorem tax on the railroads and all capital, but which would exempt farmers' supplies of less than \$100. In general, the Brothers and the Wheel picked up the Greenback agenda for expansion of the money supply and government regulation to favor farm interests.

In the September 1884 election, the agrarians fielded tickets in most of the counties of north-central Arkansas. Agrarian views found a willing audience, for the Brothers of Freedom candidates swept the county offices in Van Buren County and won several of the offices in Pope County and Perry County.<sup>42</sup>

In Conway County, the agrarians had ample fuel to arouse small farmers, for more than one thousand mortgages were executed there in the first nine months of 1884. One can only speculate because of the scarcity of evidence, but many of the white Republicans on small farms in the northern townships probably joined the agrarian lodges, for they symbolized neither a distinct Democratic business and planter elite. Re-

Navigation and utility icons including back, forward, search, and settings.

# **EXHIBIT “H”**

**PRESENTED BY:**

**GERALD R. MOLLOHAN**

**Mark: BROTHERS OF THE WHEEL**

**Cancellation No.: 92059164**

**Of Petitioner Warner's Mark 2926222**

**TTAB**

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

**In the matter of trademark Registration No. 2926222  
For the mark Brothers of the Wheel M.C.  
Date registered: February 15, 2005**

**Gerald R. Mollohan and  
Brothers of the Wheel Motorcycle Club Nomads, Inc.  
P.O. Box 1840  
Richland, Washington 99352-1840**

Petitioner,

v

**Paul Warner, Ray Carey, Donald Price and  
Brothers of the Wheel M.C. Executive Council Inc. Corporation  
HC 78 Box 984  
Madison, West Virginia 25130**

12/30/2013 06N111 00000003 2926222 Respondent,  
01 F014902 3300.00 DP

**PETITION TO CANCEL**

Gerald R. Mollohan and Brothers of the Wheel Motorcycle Club Nomads, Inc.  
(Brothers of the Wheel Motorcycle Club Nomads is a non-profit organization  
organized under section 501(c)(4) of the Internal Revenue Code.)  
("Petitioner"), believes it will continue to be damaged by the continued



registration of the mark shown in United States Trademark Registration 2926222 and hereby seeks cancellation of this registration. As grounds for the cancellation, Gerald R. Mollohan and BROTHERS OF THE WHEEL MOTORCYCLE CLUB NOMADS, INC. alleges:

1. Threat of harm to our non-profit and charity fund raising organization.
2. Fraud by Brothers of the Wheel M.C. Executive Council Inc. Corporation.
3. Bad Faith - Evidence of Bad Faith. Fraudulent, Bogus and Contemporaneous Affidavits authored by Respondent Ray Edwin Carey, which he filed in U.S. District Court at Charleston, West Virginia Case 2:11-cv-00104 – See Exhibit "A" Document 83 (7 pages Filed 06/06/13.)
4. Defamation
5. Genericness
6. Disparaging
7. RICO (Complaint on file in U.S. District Court at Charleston, West Virginia December 16, 2013 - Assigned Case No. 2:13-cv-32251)

8. Corrupt Organization Act (18 U.S.C. §1962(c))

9. Is in violation of United States Code Title 15 Chapter 22 Subchapter 1064: At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or is functional, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsection (a), (b), or (c) of section 1052 of this title for a registration under this chapter, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the

registered mark has become the generic name of goods or services on or in connection with which it has been used.

10. The mark may be cancelled at any time in the case of a certification mark on the ground that the registrant does not control, or is not able legitimately to exercise control over, the use of such mark. This is the case here because respondent requires permission from others to use it's mark. Namely from the American Motorcycle Association and any Prevailing Area Outlaw Motorcycle Club.

It is our opinion that the United states Trademark Registration

No. 2926222

for

**BROTHERS OF THE WHEEL M.C.**

**EXECUTIVE COUNCIL, INC.**

is extremely detrimental to us and our organization and we therefore took

Legal Action in the form of a complaint filed December 16<sup>th</sup>, 2013 in

United States District Court For The Southern District Of West Virginia  
Charleston Division. The case has been assigned No.2: 13-cv-32251.

Bank Check in the sum of the \$300 covering the government-filing fee for  
this petition is enclosed.

Respectfully submitted,

By:  December 27, 2013

Gerald R. Mollohan and  
Brothers of the Wheel Motorcycle Club Nomads, Inc.  
P.O. Box 1840  
Richland, Washington 99352-1840

CC:

Paul D. Warner – President  
Ray Edwin Carey – Vice President  
Donald C. Price – Secretary/Treasurer

Brothers of the Wheel M.C. Executive Council Inc. Corporation  
HC 78 Box 984  
Madison, West Virginia 25130

**CERTIFICATE OF MAILING**

**I HERE BY CERTIFY THAT ON DECEMBER 27, 2013,  
I FILED THIS PETITION TO CANCEL WITH THE:**

**U.S. PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD  
(U.S. PATENT AND TRADEMARK OFFICE)  
P.O. BOX 1451  
ALEXANDRIA, VIRGINIA 22313-1451**

**WITH COPY VIA FIRST CLASS MAIL, POSTAGE PREPAID TO:**

Paul D. Warner – President

Ray Edwin Carey – Vice President

Donald C. Price – Secretary/Treasurer

Brothers of the Wheel M.C. Executive Council Inc. Corporation

HC 78 Box 984

Madison, West Virginia 25130



**GERALD R. MOLLOHAN**

**BROTHERS OF THE WHEEL MOTORCYCLE CLUB NOMADS, INC.**

**P.O. BOX 1840**

**RICHLAND, WASHINGTON 99352-1840**

**botwnomads@aol.com**

EXHIBIT "A"

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

BROTHERS OF THE WHEEL  
M.C. EXECUTIVE COUNCIL, INC.,

Plaintiff,

v.

CIVIL ACTION NO. 2:11-cv-00104

GERALD R. MOLLOHAN, et al.

Defendants.

**MEMORANDUM OPINION AND ORDER**

Pending before the Court are the following motions, all filed by Defendant Gerald R. Mollohan: Motions to File a Stay of Judgment Pending Appeal [ECF 61 and 70], Request for Final Judgment [ECF 79], Motion for Stay on Proceedings Pending Judgment [ECF 80], and Motion for Leave to File Supplementar [sic] Pleading/Information [ECF 82].

Also before the Court is the affidavit of Mr. Ray E. Carey, National Vice President of Plaintiff Brothers of the Wheel M.C. Executive Council, Inc., filed in response to this Court's November 14, 2012 Memorandum Opinion and Order. The affidavit sets forth an accounting of Defendant Mollohan's profits as well as Plaintiff's claim for damages and attorney's fees.

*I. PROCEDURAL HISTORY*

These matters warrant a brief summary of the status of this litigation. The Court's November 14, 2012 Memorandum Opinion and Order adopted Magistrate Judge Mary E. Stanley's Proposed Findings and Recommendation (PF&R), finding that Defendant Mollohan as a matter of law had willfully and in bad faith infringed upon Plaintiff's registered trademark and falsely designated the origin of Plaintiff's mark in violation of Sections 32(1)(a) and 43(a) of the

Lanham Act, 15 U.S.C. §§ 1114(1)(a) and 1125(a). The Court granted Plaintiff's motion for permanent injunctive relief against Defendant Mollohan. It also adopted Magistrate Judge Stanley's recommendation of an award of both treble damages and attorney's fees, but postponed entry of a damages award to allow the parties 30 days to submit an accounting of Defendant Mollohan's profits resulting from the infringement, any damages sustained by Plaintiff as a result of the infringement, and the costs of the action, including attorney's fees. The Court implemented its rulings by Judgment Order also entered on November 14, 2012.

## *II. DEFENDANT MOLLOHAN'S PENDING MOTIONS*

While the Court awaited the parties' submissions on the issue of damages, Defendant Mollohan filed a notice of appeal. This notice was followed shortly thereafter by two identical motions requesting a stay of judgment pending the outcome of the appeal. (ECF 61 and 70.) The motions cite Federal Rule of Civil Procedure 62(b) as authority, which permits a district court to stay the execution of a judgment pending disposition of motions for judgment as a matter of law, to amend the court's findings or for additional findings, for a new trial or to alter or amend a judgment, or for relief from a judgment or order. As none of these motions are pending, Rule 62(b) is inapplicable and Defendant Mollohan's motions are **DENIED**.

On April 18, 2013, the Fourth Circuit Court of Appeals dismissed Defendant Mollohan's appeal for lack of jurisdiction. Since this Court's November 14, 2012 Judgment Order expressly postponed a ruling on damages, Defendant Mollohan had attempted to appeal a non-final order. Defendant Mollohan promptly filed a "Request for Final Judgment" in this Court, asking the Court to enter a "final, appealable judgment" to facilitate his appeal to the Fourth Circuit. (ECF 79). A final judgment will enter in this case when the Court issues its ruling on Plaintiff's damages award. This motion is therefore **DENIED WITHOUT PREJUDICE**. Defendant

Mollohan also filed another motion to stay these proceedings under Rule 62(b) after his appeal was rejected. For the same reasons stated previously, Rule 62(b) does not entitle Defendant Mollohan to a stay of these proceedings and this motion is also **DENIED**.

On May 29, 2013, Defendant Mollohan filed a motion for leave to file a supplemental pleading. In this motion, Defendant Mollohan informs the Court that he has filed an ethics complaint against Mr. Richard J. Lindroth, counsel for Plaintiff in this case. Defendant Mollohan does not explain the premise for his ethics complaint, but attaches as an exhibit a letter addressed to Mr. Lindroth from the West Virginia Office of Disciplinary Counsel dated May 22, 2013. The letter requests a response to Defendant Mollohan's complaint within 30 days. Defendant Mollohan asks the Court "to take this action by the Office of Disciplinary Action into consideration as this complaint continues through the adjudication process." (ECF 82 at 2.) The Office of Disciplinary Counsel appears to have taken no action on Defendant Mollohan's ethics complaint other than to request a response, and the complaint otherwise bears no apparent relevance to this proceeding. The Court **DENIES** the motion and will not consider this ethics complaint in its resolution of the limited issues that remain pending in this action.

*III. PLAINTIFF'S CLAIM FOR DAMAGES*

Under Section 1117(a) of Title 15, a successful plaintiff is entitled, "subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action." These damages are to constitute compensation, not a penalty. 15 U.S.C. § 1117(a). Attorney's fees may also be awarded in exceptional situations. *Id.* This statute further provides that assessing damages in a case involving the use of a counterfeit mark, the district court shall, subject to a finding of extenuating circumstances:

enter judgment for three times such profits or damages, whichever amount is greater, together with a reasonable attorney's fee, if the violation consists of

(1) intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark . . . in connection with the sale, offering for sale, or distribution of goods or services[.]

*Id.* § 1117(b).

Proof and measure of damages in a trademark action is governed by the law of damages in tort actions. *Lindy Pen Co. v. Bic Pen Corp.*, 982 F.2d 1400, 1407 (9th Cir. 1993); *Broan Mfg. Co., Inc. v. Associated Distribs., Inc.*, 923 F.2d 1232, 1235 (6th Cir. 1991). The plaintiff bears the burden of proving damages with reasonable certainty. Restatement (Third) of Unfair Competition § 37 (1995). Damages which are speculative in nature are not permitted. *ALPO Petfoods, Inc. v. Ralston Purina Co.*, 913 F.2d 958, 969 (D.C. Cir. 1990) (“[T]he court must ensure that the record adequately supports all items of damages claimed and establishes a causal link between the damages and the defendant’s conduct, lest the award become speculative or violate [the Lanham Act’s] prohibition against punishment.” (citing *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 264 (1946))); *Caesars World, Inc. v. Venus Lounge, Inc.*, 520 F.2d 269, 274 (3d Cir. 1975) (“If the record in the district court contains no evidence of actual damage or actual profit in dollars and cents no monetary award may be made . . . and the trademark owner must be content with injunctive relief.”).

In this case, Plaintiff is not entitled to actual damages or Defendant Mollohan’s profits because it has provided nothing more than sheer speculation that it has suffered any financial loss as a result of Defendant Mollohan’s use of its “Brothers of the Wheel” trademark. In support of its claim for damages, Plaintiff has submitted a three-page affidavit from its vice president, Mr. Carey, accompanied by a brief letter from its counsel, Mr. Lindroth, and a one-page print-out from the Brothers of the Wheel MC Nomads company profile page at manta.com. Plaintiff’s affidavit estimates its actual damages at \$340,000, representing \$100,000 in lost

member initiation fees and \$240,000 in lost monthly membership dues over twenty-four months. The affidavit bases these figures off of a “recent,” yet unnamed, website attributed to Defendant Mollohan. (ECF 71 at 2.) According to this unidentified website (presumably manta.com), Defendant Mollohan’s motorcycle club has over 1,000 members. Apparently by reasoning that the 1,000 members of Defendant Mollohan’s club would have sought and maintained membership with Plaintiff if not for Defendant Mollohan’s conduct, Plaintiff calculates its damages based on its initiation fee of \$100 per member and \$10 per month dues.

The evidence that Plaintiff has put forward is insufficient to establish its damages with sufficient certainty. The manta.com print-out that supposedly reports business information for Brothers of the Wheel MC Nomads, Defendant Mollohan’s motorcycle club, is inherently suspect and contradicts the information provided in Plaintiff’s own affidavit. Manta.com reports the club’s annual revenue as “Over \$1 billion” and its employees as “Over 10,000.”<sup>1</sup> (ECF 71 at 5.) These are impressive figures for an obscure motorcycle club and the Court suspects that they are grossly over-inflated. The source of this information is unclear. The print-out indicates that “Chewy botw” updated this profile on October 7, 2011.<sup>2</sup> Even if this information can be attributed to Defendant Mollohan, there is absolutely no assurance of its accuracy. This manta.com company profile does not provide credible evidence of Plaintiff’s losses or Defendant Mollohan’s profits.

The same applies to Plaintiff’s asserted loss of goodwill. As to proof of a loss of goodwill, Plaintiff’s affidavit states that it “routinely gets telephone calls complaining of

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<sup>1</sup> The Court assumes that Plaintiff has used this reported number of employees to estimate the membership numbers of Defendant Mollohan’s club, yet Plaintiff’s affidavit states that the club has only 1,000 members. Either Plaintiff has committed a typographical error (listing 1,000 members in its affidavit rather than 10,000) or the website on which Plaintiff relies is not manta.com—in which case the Court is at a loss to guess how Plaintiff has estimated its damages. If Plaintiff intended to base its damages claim on 10,000 members, its calculation would increase from \$340,000 to \$3,400,000.

<sup>2</sup> As noted by the PF&R, Defendant Mollohan apparently uses the nickname “Chewy.” (ECF 31 at 7.)

harassment and rude conduct by persons wearing the Brothers of the Wheel-Nomads name.” (ECF 71 at 3.) These telephone calls “impair[] Plaintiff’s ability to raise funds for charity.” (*Id.*) Plaintiff quantifies this loss as follows: “Plaintiff’s organization has been in operation since 1977 and estimates the loss in goodwill to be valued at \$15,000 per year, for a total of \$525,000.” (*Id.*) Plaintiff proffers no further information to explain how it arrived at this estimate. Particularly since Defendant Mollohan’s motorcycle club was formed in 2000, crediting him with a loss of goodwill dating back to 1977 is nonsensical. Plaintiff has offered no evidence from which the Court can determine the diminution in value, if any, of Plaintiff’s goodwill as a result of Defendant’s trademark infringement. Having failed to meet its burden to prove its damages in this case, this Court awards Plaintiff nominal treble damages in the amount of \$3.00.

Attorney’s fees may be awarded to a prevailing party in a trademark infringement action even without a substantial damages award. *See Montgomery v. Noga*, 168 F.3d 1282, 1304 (11th Cir. 1999). In *Montgomery*, a jury awarded \$30 in damages and \$14,000 in attorney’s fees to a plaintiff in a trademark infringement suit. On appeal, the defendant argued that the plaintiff was not a prevailing party entitled to attorney’s fees because it had been awarded only nominal damages. The Eleventh Circuit upheld the award of attorney’s fees, finding that the district court’s issuance of a permanent injunction combined with the nominal damages award was sufficient to confer prevailing party status on the plaintiff. *Id.* at 1304-05.

Plaintiff’s prior attainment of permanent injunctive relief similarly warrants an award of attorney’s fees in this case. Plaintiff’s submission in support of its fee request, however, is inadequate. Mr. Lindroth has submitted a summary of his past invoices reflecting a total fee of \$16,500. He itemizes this fee only insofar as to reflect 52.7 hours of research, 24 hours of legal drafting, and 16.5 hours of telephone conferences and client meetings at an hourly rate of \$165

per hour. Mr. Lindroth also adds a charge for paralegal and copy fees in the amount of \$1,112. Without further detail, the Court is unable to ascertain the reasonableness of Mr. Lindroth's fee. If Plaintiff wishes to recover its attorney's fees, it must produce a detailed itemization of Mr. Lindroth's fees and costs within 30 days of the entry of this Memorandum Opinion and Order. This itemization should include contemporaneous billing records and evidence that Mr. Lindroth's hourly fees are reasonable for an attorney of his skill and experience.

*IV. CONCLUSION*

For the reasons set forth above, the Court **DENIES** Defendant Mollohan's Motions to File a Stay of Judgment Pending Appeal [ECF 61 and 70], **DENIES WITHOUT PREJUDICE** his Request for Final Judgment [ECF 79], **DENIES** his Motion for Stay on Proceedings Pending Judgment [ECF 80], and **DENIES** his Motion for Leave to File Supplementar [sic] Pleading/Information [ECF 82].

The Court awards Plaintiff monetary damages in the amount of \$3.00. Attorney's fees will be awarded, if at all, upon Plaintiff's submission of a detailed itemization of hours billed and costs charged within 30 days of the entry of this Memorandum Opinion and Order.

**IT IS SO ORDERED.**

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: June 6, 2013



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THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE

**TTAB**

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: May 7, 2014

Cancellation No. 92059164  
Registration No. 4299480

GERALD R MOLLOHAN  
AKA BROTHERS OF THE WHEEL  
PO BOX 507  
ST. ALBANS, WV 25177-0507  
UNITED STATES

Brothers of the Wheel MC Executive  
Council, Inc.

v.

Gerald R. Mollohan aka Brothers of  
the Wheel

PAUL WARNER  
BROTHERS OF THE WHEEL MC EXECUTIVE COUNCIL INC  
PO BOX 782  
MADISON, WV 25130  
UNITED STATES

Nicole Thier, Paralegal Specialist:

A petition to cancel the above-identified registration has been filed. A service copy of the petition for cancellation was forwarded to registrant (defendant) by the petitioner (plaintiff). An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system:  
<http://ttabvue.uspto.gov/ttabvue/>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's



05-21-2014

whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

**Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order.** (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.**

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	6/16/2014
Deadline for Discovery Conference	7/16/2014
Discovery Opens	7/16/2014
Initial Disclosures Due	8/15/2014
Expert Disclosures Due	12/13/2014
Discovery Closes	1/12/2015
Plaintiff's Pretrial Disclosures	2/26/2015
Plaintiff's 30-day Trial Period Ends	4/12/2015
Defendant's Pretrial Disclosures	4/27/2015
Defendant's 30-day Trial Period Ends	6/11/2015
Plaintiff's Rebuttal Disclosures	6/26/2015
Plaintiff's 15-day Rebuttal Period Ends	7/26/2015

**As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case.** See Trademark Rule 2.120(a)(2). Discussion of the first two of these

three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stdagmnt.jsp>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

Cancellation No. 92059164

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

**ESTTA NOTE:** For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

TTAB

Cancellation # 92059164 "  
"BROTHERS OF THE WHEEL"  
owned by: Gerald R. Molloy  
Registration # 4299480

Gerald R. Molloy  
PO Box 507  
St. Albans, WV 25177-0507