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

Proceeding	92059305
Party	Plaintiff MWR Holdings, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MWR HOLDINGS, LLC,

Petitioner,

v.

THEODORE A. STONER,

Registrant.

Cancellation No. 92059305

Mark: BONGO BI-LINGO BUDDY

Reg. No.: 3,700,403

Registered: October 20, 2009

SECOND AMENDED PETITION TO CANCEL

Petitioner MWR Holdings, LLC (“Petitioner”) believes that it is being harmed and damaged by the continued existence of U.S. Trademark Reg. No. 3,700,403 of October 20, 2009 for the mark “BONGO BI-LINGO BUDDY” for “Entertainment in the nature of live theatrical performances by mixed media of live characters, puppetry and animation for children; Organizing cultural events for children; Education services, namely, providing professional training in the field of bilingual learning”, in Class 41. Petitioner accordingly petitions for the cancellation thereof, and pleads as follows:

1. Petitioner is a limited liability company organized under the laws of Delaware having a business address of 4855 Technology Way, Suite 700, Boca Raton, Florida 33431.

2. Upon information and belief, Theodore A. Stoner (“Respondent”) is an individual having an address of 127 West Fairbanks Ave., #492, Winter Park, FL 32789.

3. Respondent is the registrant of record for Reg. No. 3,700,403 of October 20, 2009 for the mark “BONGO BI-LINGO BUDDY” for “Entertainment in the nature of live theatrical performances by mixed media of live characters, puppetry and animation for children;

Organizing cultural events for children; Education services, namely, providing professional training in the field of bilingual learning”, in Class 41 (the “‘403 Registration”). The application which matured into the ‘403 Registration was filed on February 10, 2006 based on an intent to use under Section 1(b). Respondent asserted an actual first date of use in commerce of June 8, 2004. Respondent asserted a date of constructive use of the mark of June 18, 2008.

4. Petitioner is the owner of the mark “BONGO BEAR” for “Entertainment services, namely live theatrical performances featuring electronically animated characters for use in child development and personal appearances by a costumed character” in Class 041 (the “Petitioner’s Services”). Petitioner has continuously used its “BONGO BEAR” mark in commerce for Petitioner’s Services since March 1, 2003. Petitioner’s Services were first used in commerce before Respondent’s constructive or actual usage of the mark in the ‘403 Registration.

5. Petitioner has filed Application Serial No. 86/146,757 for registration of its BONGO BEAR mark for the Petitioner’s Services (the “Petitioner’s Application”).

6. The U.S. Patent and Trademark Office has issued a Section 2(d) rejection of Petitioner’s Application based upon a likelihood of confusion with the Respondent’s mark in the ‘403 Registration.

7. The mark in the ‘403 Registration “BONGO BI-LINGO BUDDY” is confusingly similar to the mark “BONGO BEAR” in Petitioner’s Application, and is for services that are identical or closely related to Petitioner’s Services.

8. Petitioner has continuously used and is using its mark BONGO BEAR for Petitioner’s Services from a time prior to Respondent’s constructive and actual first date of use of the mark in the ‘403 Registration.

9. The continued existence of the '403 Registration is likely to cause harm and damage to Petitioner in that it falsely represents to the public that Respondent has rights in and to the mark in the '403 Registration inconsistent with those of Petitioner as a prior user, and in that there is a false presumption of rights in the Respondent associated with the '403 Registration, which is inconsistent with Petitioner's superior rights. In addition, the existence of the '403 Registration falsely suggests to the public that, by virtue of the registration, there is an association between Petitioner and Respondent, or that services marketed by Respondent under the mark "BONGO BI-LINGO BUDDY" are in some manner associated with Petitioner, when they are not.

10. The continued existence of the '403 Registration is likely to cause further harm and damage to Petitioner in that Petitioner will be wrongfully prevented from registering the mark in Petitioner's Application, all to the detriment of Petitioner.

11. As a further grounds for cancellation, Petitioner asserts, upon information and belief, that Respondent has abandoned the mark by discontinuing its use of the mark with an intent not to resume such use.

12. As a further grounds for cancellation, Petitioner asserts that Respondent has not ever made actual use in commerce of the mark in the '403 Registration in connection with the services listed in the '403 Registration.

13. The application for the '403 Registration was filed February 10, 2006 as an intent-to-use application.

14. On September 1, 2009, Stoner filed a Statement of Use in which he made the declaration that "[t]he mark is in use in commerce on or in connection with the following goods or services listed in either the application or Notice of Allowance or as subsequently modified

for this specific class: Entertainment in the nature of live theatrical performances by mixed media of live characters, puppetry and animation for children; Organizing cultural events for children; Education services, namely, providing professional training in the field of bilingual learning.” Stoner further alleged in the Statement of Use that the mark in the ‘403 Registration had been first used in commerce at least as early as June 18, 2008.

15. Respondent has not provided Entertainment in the nature of live theatrical performances by mixed media of live characters, puppetry and animation for children, organizing cultural events for children, or education services, namely, providing professional training in the field of bilingual learning under the BONGO BI-LINGO BUDDY mark. The services listed in the ‘403 Registration are not rendered by Respondent under the BONGO BI-LINGO BUDDY mark, nor had they been rendered at the time the Statement of Use in the ‘403 Registration was filed. The Statement of Use was therefore false.

16. Respondent is not engaged in commerce in connection with the services listed in the ‘403 Registration under the BONGO BI-LINGO BUDDY mark, nor was Respondent so engaged at the time the Statement of Use in the ‘403 Registration was filed. The ‘403 Registration is therefore void ab initio. The Statement of Use was therefore false.

17. Had Stoner not filed a Statement of Use, the USPTO would not have issued the ‘403 Registration.

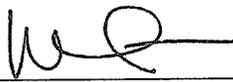
18. Upon information and belief, in making and submitting his Statement of Use, Stoner knowingly and intentionally made the misrepresentation to the USPTO that he was using the services listed in the ‘403 Registration in commerce, even though he was not.

19. As Stoner is an individual owner of the BONGO BI-LINGO BUDDY trademark, he was necessarily aware that the above misrepresentations were false at the time they were made.

20. Upon information and belief, Stoner made the statements in his Statement of Use with the intention that the USPTO would accept and rely on them and register the BONGO BI-LINGO BUDDY mark in connection with the services listed in the '403 Registration.

Dated: April 4, 2016

GREENBERG TRAURIG, LLP

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing SECOND AMENDED PETITION TO CANCEL has been served on Theodore A. Stoner by mailing said copy on April 4, 2016, via First Class Mail, postage prepaid to:

Matthew H. Swyers
The Trademark Company PLLC
344 Maple Ave. W, Suite 151
Vienna, VA 22180



William W. Stroever