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

Proceeding	92059944
Party	Plaintiff Peoples Club of Nigeria International Princeton Junction, NJ Branch, Inc., Peoples Club of Nigeria International-Miami Branch and Peoples Club of Nigeria International-Chicago Branch
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 4,591,874 (Peoples Club of Nigeria International)
Registered on August 26, 2014

**PEOPLES CLUB OF NIGERIA
INTERNATIONAL (PCNI)
PRINCETON JUNCTION BRANCH,
PCNI CHICAGO BRANCH, PCNI
MIAMI BRANCH,**

Petitioners,

v.

**PEOPLES CLUB OF NIGERIA
INTERNATIONAL, INC., A New Jersey
Corporation,**

Applicant/Registrant.

Cancellation No. 92059944

**TRIAL BRIEF FOR PETITIONERS PEOPLES CLUB OF NIGERIA INTERNATIONAL
(PCNI) PRINCETON JUNCTION BRANCH, PCNI CHICAGO BRANCH, AND PCNI
MIAMI BRANCH**

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Pursuant to TBMP ¶ 801, Petitioners PCNI Princeton Junction Branch, PCNI Chicago Branch, and PCNI Miami Branch, hereby submit their Main Brief for this Cancellation Proceeding. As set forth below, the evidence adduced at trial demonstrates that Registration No. 4,591,874 for the service mark “PEOPLES CLUB OF NIGERIA INTERNATIONAL” (the “Mark”) should be cancelled, both because of Petitioners’ prior use of the Mark, which was knowingly not disclosed to the USPTO by the Registrant, and because the Registration was fraudulently obtained.

I. BRIEF OVERVIEW

This matter stems from dissension and infighting between members of a cultural organization known as the “Peoples Club of Nigeria International” (“PCNI”), the United States counterpart to the “Peoples Club of Nigeria” (“PCN”), first established in Onitsha, Nigeria in 1971. Starting as early as 1989, local chapters or branches of the club started forming in the United States under the PCNI name, such as “Peoples Club of Nigeria International Princeton Junction, NJ Branch Inc.” All of the PCNI branches were organized under the laws of their respective states, and for the most part were independent, self-functioning branches. Upon creation and inauguration, the PCNI branches in the United States received a “charter” from PCN in Nigeria.

For many years, the local branches operated within their respective geographic locations to hold functions and social events, but also participated in national events or conferences organized by cooperation of the collective branches. All branches thought themselves to be members of “Peoples Club of Nigeria International,” even though no such organization existed until 2010, and each used the recognized insignia of PCNI, which included the three interlocking ring design and the “Unity, Love, Service” motto:

PEOPLES CLUB OF NIGERIA INTERNATIONAL



[*Motto : Unity, Love, Service*
A Social Club]

MOTTO: UNITY, LOVE & SERVICE

While independent, the local branches nevertheless worked together through joint committees to organize nationwide events, purchase insurance, address concerns of the club, and maintain a relationship with PCN in Nigeria. In August 2010, PCNI, Inc. was incorporated in the State of New Jersey “to provide and promote recreational and social facilities for its members and the public in general.” The Certificate of Incorporation lists Dr. Iddi Ambrose Mgbako as the “registered agent.” Dr. Mgbako was then provided \$5,000 by Chief Sam C. Iwuchukwu, the then universally recognized President of PCN in Nigeria, to register the “PCNI” trademark in the United States.

Dr. Mgbako hired an attorney to file the trademark application. For one reason or another, the attorney never filed the application. Several years later, during a meeting of the leadership of the local branches, the issue of trademark registration came up and it was decided that a new attorney be hired to complete the registration. In 2013, Matthew Swyers, Esq. was retained to file for a trademark registration on behalf of PCNI. On November 12, 2013, an application to register the PCNI trade name and mark was filed with the USPTO. At the time of filing, contrary to the affirmative representations and statements made in the application, PCNI was not a registered corporate entity in Nigeria, had only been in existence in the United States

for three (3) years, and had not used the mark in trade or commerce since 1994. Moreover, Dr. Mgbako, who filed the application, was keenly aware that other entities and corporations, including the Petitioners – PCNI Miami Branch, PCNI Chicago Branch, and PCNI Princeton Junction Branch – were using the mark. None of these critical facts was disclosed to the USPTO.

During this time, internal disagreement over elections and interpretation of PCN's (Nigeria) Constitution led to a division of the membership into two groups – the Pentagons and the Progressives. This split reverberated throughout the PCNI branches in the United States with individual members and branches affiliating with one group or the other. This division resulted in two distinct leadership hierarchies and perceived sources of authority – the Progressives continued to recognize Chief Sam C. Iwuchukwu as the President of PCN, while the Pentagons appointed Chief Joe Ilonze as President. Both groups continued to operate under their respective leadership structures and both claimed to be the only legitimate, “official” leaders. As a result, litigation in Nigeria and in the United States ensued over both groups’ claims to the “throne” and each other’s “unauthorized” actions and legal threats against the other.

The specimen submitted with PCNI's trademark application shows the PCNI name and mark on a letterhead containing the names of all active branches, including Petitioners Miami, Chicago, and Princeton Junction. At the time the application was submitted, each of the USA branches listed on the letterhead had been using the PCNI name and mark for many years. By that time, however, the club had split into two factions, with Dr. Mgbako siding with the Pentagon group. When the Petitioner branches sided with the Progressive group, the Pentagon group purported to “expel” and “dissolve” the Miami, Chicago, and Princeton Junction branches under the auspices of their self-proclaimed authority to act on behalf of PCN. The Progressive

group, however, claimed the same purported right to act on behalf of PCN, albeit under different leadership, and therefore did not recognize the “expulsions” as legitimate or effective.

Despite the purported “dissolution” of the Miami, Chicago, and Princeton Junction branches by the Pentagon leadership, those branches remained legally intact and continued operations, including the same use of the PCNI mark they had used for decades. In fact, at the time the trademark application was filed, there were pending lawsuits in Nigeria challenging the validity of the “dissolutions” and the Pentagons’ ability to act on behalf of PCN and PCNI.

On February 27, 2014, the USPTO issued an Office Action requiring the submission of a more detailed specimen. Since Dr. Mgbako was spearheading the efforts to obtain trademark protection for PCNI, the specimen submitted to the USPTO in response to the Office Action was on the Pentagons’ PCNI letterhead, which only listed the Pentagon branches and excluded the Progressive PCNI branches of Miami, Chicago, and Princeton Junction. This exclusion was not explained to the USPTO.

After the trademark registration was issued by the USPTO, the Pentagon group began to use the registration as a sword to demand the Petitioner branches disband and cease operations or otherwise face legal action for trademark infringement. This cancellation proceeding followed.

II. DESCRIPTION OF THE RECORD

The evidentiary record in this case consists of the following:

1. Registrant’s Application and Registration File;
2. Deposition Testimony of Ambrose Mgbako dated December 2, 2015, and Exhibits P-1 through P-3 thereto;
3. Deposition Testimony of Gordian Ndubizu dated December 8, 2015, and Exhibits PP-1, PP-5, PP-7, and PP-9 through PP-15, thereto;

4. Deposition Testimony of Dr. Anayo Ukeje dated December 11, 2015, and Exhibits PC-1 through PC-7, thereto;
5. Plaintiff's Exhibits A-Q and Exhibits S-T attached to Petitioners' Notice of Reliance submitted on December 21, 2015;
6. Petitioners 0451-473 attached to Petitioners' Supplemental Notice of Reliance submitted on January 20, 2016;
7. Exhibit U attached to Petitioners' Second Supplemental Notice of Reliance submitted on June 1, 2016.

In addition to the deposition transcripts identified above, the most relevant and probative documents in support of cancellation are:

DOCUMENT NAME	BATES IDENTIFICATION	EXHIBIT NUMBER	RELEVANCE
PCNI Miami Branch Online Non Profit Corporation Detail Sheet	Petitioners 0162-163	Exhibit F	Illustrates that the Princeton Club of Nigeria International, Miami Branch was incorporated in the State of Florida on September 3, 2002
PCN Instrument Establishing Miami Branch	Petitioners 0161	Exhibit E	Illustrates that the Miami Branch was a recognized branch of the Club
Letter from the Office of the Secretary of State, State of Illinois Issuing Articles of Incorporation for PCNI Chicago Branch	Petitioners 0167-169	Exhibit G	Illustrates that the Princeton Club of Nigeria International, Chicago Branch was incorporated in the State of Illinois on January 20, 2006
PCN Instrument Establishing Chicago Branch	Petitioners 0165	PC-3	Illustrates that the Chicago Branch was a recognized branch of

			the Club
PCNI Princeton Junction Branch Filing Certificate in State of New Jersey	Petitioners 0009	Exhibit A	Illustrates that the Princeton Club of Nigeria International, Princeton Junction Branch was incorporated in the State of New Jersey on December 4, 2006
PCNI Princeton Branch Letter to the Public Regarding Officer Elections	Petitioners 0160	Exhibit U	Illustrates the use of the PCNI name and mark (three rings and motto) by local branches as far back as June 2005
People's Club of Nigeria International, Inc. ("PCNI") Certificate of Incorporation in the State of New Jersey	Petitioners 0048-49	Exhibit E	Indicates that PCNI was incorporated on August 18, 2010 in the State of New Jersey
Complaint filed in the Federal High Court of Nigeria Against Members of the Pentagon Leadership of PCN dated July 30, 2013	Petitioners 0307-0341	PP-15	Illustrates Petitioners' challenge to the purported dissolution and expulsion actions taken by the Pentagon group on behalf of PCN
USPTO Trademark/Service Mark Application, TEAS Plus Application dated November 12, 2013	N/A	Exhibit I	Trademark registration application representing to the USPTO that PCNI was a Nigerian entity, that the PCNI name and mark had been used by PCNI in commerce as early as 1994, that PCNI was the owner of the mark, and that no other corporation or association had the right to use the mark in commerce.
Response to Office Action filed April 9,	N/A	Exhibit K	New specimen submitted on PCNI

2014			letterhead does not include Miami, Princeton Junction, or Chicago as USA Branches
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III. STATEMENT OF THE ISSUES

The issues presented to the Board for decision are:

1. Whether Registrant People’s Club of Nigeria International, Inc.’s registration of the word mark “PEOPLES CLUB OF NIGERIA INTERNATIONAL” (the “Mark”), Registration No. 4,591,874, should be cancelled on the grounds of Petitioners’ undeniable prior use in commerce and non-abandonment of the Mark; and
2. Whether the registration of the Mark should be cancelled on the ground that Registrant committed fraud on the USPTO by knowingly making false statements of material fact – specifically, that the Registrant was a Nigerian corporation, that the Mark was first used by Registrant as early as 1994, that the Mark was being used in commerce by the Registrant, and that no other corporation or association had the right to use the Mark in commerce – knowing them to be false and with intent to deceive the USPTO.

IV. RECITATION OF FACTS

A. PCN and PCNI

Peoples Club of Nigeria (“PCN”) is a Nigerian association, first established in Onitsha, Nigeria in 1971, to organize social gatherings, host cultural events, and promote socialization of like-minded members. *See Deposition Testimony of Dr. Anayo Ukeje dated December 11, 2015 (the “Ukeje Dep”), 8:4-8; see also Deposition Testimony of Gordian Ndubizu dated December 8, 2015 (the “Ndubizu Dep”), 22:5 to 23:5 and Ex. PP-15.* Starting as early as 1989, international affiliate chapters or branches of the club started forming and operating outside of Nigeria. *Ukeje Dep, 13:3-18.* These international branches became known as “People’s Club of Nigeria International,” even though no formal entity by that name existed at the time. While affiliated with PCN in Nigeria through “branch charters,” the United States branches were nevertheless independent legal entities, each having their own respective set of rules and by-laws. *Ndubizu Dep, 18:23 to 19:8; Ukeje Dep, 11:9 to 12:9.*

People’s Club of Nigeria International (“PCNI”) is not a registered corporate entity in Nigeria. *Ndubizu Dep, 23:5.* People’s Club of Nigeria International, Inc., however, was incorporated in New Jersey in August 2010. *See Petitioners’ Notice of Reliance dated December 21, 2015 (“NOR”), Exhibit E.* The relationship between PCNI and PCN is one of affiliation and alliance, with neither being a subsidiary or an extension of the other. *Ukeje Dep, 11:9 to 12:1.*

The two organizations have different structures, with PCNI being a separate and distinct entity from the PCNI branches that carry its name, whereas the branches of PCN are all part of PCN and subject to the PCN Constitution. *Ukeje Dep, 45:1-16; Ndubizu Dep, 71:3-18.* Members of the PCNI branches do not pay dues to PCN and PCN does not have the authority to dissolve PCNI branches or to expel PCNI members. *Ukeje Dep, 12:7-9, 22:15-25.*

There is no constitution for PCNI and the PCNI branches operate independently of PCNI. The PCNI branches are self-governed through their own respective by-laws and governing documents. *Ukeje Dep*, 22:23-25. In fact, PCNI does not even have the authority or power to direct the activities of the PCNI branches.

B. The Parties

Petitioners are active, lawfully formed non-profit corporations organized under the laws of New Jersey (PCNI Princeton Junction Branch), Florida (PCNI Miami Branch), and Illinois (PCNI Chicago Branch) (the “Petitioner Branches”). *NOR*, Exs. A, F, G. Petitioners are all independent branches of a social club designed to promote social activities and events among individuals of Nigerian heritage.

Registrant-Defendant People’s Club of Nigeria International, Inc. is a non-profit corporation, incorporated in New Jersey in August 2010. *NOR*, Ex. E.

C. Use of the Mark by Local Branches

As soon as the PCNI branches were incorporated in the United States, they started using the PCNI name and mark, consisting of an interlocking three-ring logo and the motto “Unity, Love, and Service,” in soliciting new members, advertising events, corresponding with members, and in general. *Ukeje Dep*, 13:3-11; *see also Deposition Testimony of Dr. Ambrose Mgbako dated December 10, 2015 (the “Mgbako Dep”)*, 31:20 to 33:15. The first PCNI branch in the United States started using the mark as far back as 1989. *Ukeje Dep*, 13:22-24.

Petitioner PCNI Chicago Branch started using the Mark in 2005 and has since then continued to use the Mark to conduct its social club activities. *Ukeje Dep*, 14:7 to 15:1; *Ndubizu Dep*, 24:17 to 25:1. Similarly, Petitioners PCNI Princeton Junction Branch and Miami Branch have been using the Mark since 1996 for conducting social activities, organizing events, and

communicating with members and the general public. *Ndubizu Dep*, 24:4 to 25:12; *see also Second Supplemental Notice of Reliance dated June 1, 2016* (“SS-NOR”), Ex. U.

As of August 2010, when Dr. Mgbako incorporated Registrant PCNI, Inc., all of the established branches in the United States, including the Petitioner Branches, were using the PCNI name and mark in the course of their respective branch activities. *Mgbako Dep*, 43:9 to 45:21; *Ndubizu Dep*, 23:6 to 25:18.

D. Trademark Registration

Shortly after PCNI was incorporated in New Jersey on August 18, 2010, Dr. Mgbako accepted money from the then-recognized President of PCN to register the PCNI name and mark with the USPTO. *Ndubizu Dep*, 34:10-12. Dr. Mgbako engaged counsel to file the trademark application on behalf of PCNI, but for reasons still unknown, that initial application was never filed. *Mgbako Dep*, 49:10 to 50:2, 53:22 to 54:18.

The issue of trademark registration was raised at a leadership meeting of the chairmen of the United States branches in 2013, when the decision to re-apply for the trademark registration was made. *Mgbako Dep*, 55:5 to 57:23. As a result of that decision, Mr. Matthew Swyers, Esq. was engaged to file a trademark application on behalf of PCNI, Inc. *Mgbako Dep*, 59:23 to 60:16. The trademark application was filed on November 12, 2013. *NOR*, Ex. I. Dr. Mgbako reviewed and approved the application before it was filed. *Mgbako Dep*, 62:21 to 63:4.

According to Registrant’s agent, Dr. Mgbako, at the time of filing, all of the existing United States branches, including the Petitioner Branches, had the right to use the PCNI name and mark being registered. *Mgbako Dep*, 68:20 to 69:15. In fact, the specimen submitted with the application showed the mark being used on PCNI letterhead, which included a list of all “legitimate” branches, including the Petitioner Branches (Miami, Princeton Junction, Chicago).

Mgbako Dep, 69:16 to 71:1; *NOR*, Ex. I.

In response to an Office Action issued by the USPTO, Registrant submitted a new specimen on updated PCNI letterhead, which did not include the Petitioner Branches among the listed USA Branches. *NOR*, Ex. K. According to Dr. Mgbako, by the time the new specimen was submitted the Petitioner Branches had been dissolved and were no longer recognized branches of the club. *Mgbako Dep*, 80:6 to 84:21). The purported dissolution, however, was not recognized by Petitioners, members of the disfavored Progressives Group, who had already instituted an action in Nigeria challenging the Pentagon group's ability to take action, including the aforementioned dissolution of the Petitioner Branches, on behalf of PCN. *Ukeje Dep*, 37:17 to 39:17. The Petitioner Branches nevertheless remained active, legal corporate entities and continued to function in accordance with their respective branch rules and bylaws.

Petitioner Branches continued to use the PCNI name and mark, just as they had since the date of their incorporation, to conduct social activities and organize events.

After the trademark registration was issued on August 26, 2014, the Pentagon group began using the registration to demand the Petitioner branches cease and desist from using the protected mark. This cancellation proceeding followed.

V. ARGUMENT

The Registration should be cancelled on two grounds. First, the Mark has been primarily (indeed, exclusively before 2010) used by Petitioners and other respective PCNI branches since 1989. Such use of the Mark gave rise to ownership of the Mark by the PCNI branches, including Petitioners, not by PCNI. Petitioners own the Mark through prior use and have not abandoned the Mark. Any use by PCNI of the Mark was as a result of consent and authorization from the local branches. Now, Registrant seeks to use the Mark in connection with services identical to

Petitioners’, i.e. for “social club services, namely, arranging, organizing, and hosting social events, get-togethers, and parties,” which presents an undeniable likelihood of confusion. *Brookfield Communications, Inc. v. W. Coast Entm’t Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999) (“In light of the virtual identity of marks, if they were used with identical products or services, likelihood of confusion would follow as a matter of course.”).

Second, the registration of the Mark was obtained through fraud. In stating that (1) PCNI was a Nigerian corporation, (2) PCNI was the owner of the Mark, (3) PCNI had used the Mark in commerce as early as 1994, and (4) no other corporation or association had the right to use the Mark in commerce, PCNI knowingly made false statements of material fact, with intent to deceive the USPTO. The Registration must, therefore, be cancelled.

A. Prior Use: The Mark is Owned by Petitioners, Not By Registrant

As early as 1989, the Mark has been used by local PCNI branches in the operation and performance of their respective social activities and organizing of events. *Ukeje Dep*, 13:22-24; *Mgbako Dep*, 31:20 to 33:15. The Mark has been used by Petitioners since 1996 (Miami and Princeton Junction Branches) and 2005 (Chicago Branch), many years before PCNI was incorporated. *Ukeje Dep*, 14:7 to 15:1, *Ndubizu Dep*, 23:6 to 25:18; *Mgbako Dep*, 43:9 to 45:21; *SS-NOR*, Ex. U. A party claiming prior use of a registered mark may petition to cancel the registration on the basis of such prior use pursuant to section 14 of the Lanham Act. 15 U.S.C. § 1064. Since the issue concerns ownership of the Mark, Petitioners carry the burden of establishing prior ownership by a preponderance of the evidence. *See Metro Traffic Control, Inc. v. Shadow Network Inc.*, 104 F.3d 336, 41 USPQ2d 1369, 1372 (Fed. Cir. 1997); *see also West Florida Seafood Inc. v. Jet Restaurants Inc.*, 31 F.3d 1122, 31 USPQ2d 1660, 1662 (Fed. Cir. 1994) (“a presumption of validity attaches to a service mark registration, and the party

seeking cancellation must rebut this presumption by a preponderance of the evidence”).

“The owner of a trademark used in commerce may request registration of its trademark... .” Section 1 of the Trademark Act, 15 U.S.C. § 1051. *See In re Wella A.G.*, 787 F.2d 1549, 229 USPQ 274, 277 (Fed. Cir. 1986) (C.J. Nies concurring) (“Under section 1 of the Lanham Act, only the *owner* of a mark is entitled to apply for registration.”) (emphasis in original); *Great Seats Ltd. v. Great Seats Inc.*, 84 USPQ2d 1235, 1239 (TTAB 2007). The first person or entity to use a trademark in commerce is the rightful owner of the mark. *Société Civile v. SA Consortium Vinicole*, 6 U.S.P.Q.2d 1205 (TTAB 1988).

“It is fundamental that ownership of a mark is acquired by use, not by registration.” *Holiday Inn v. Holiday Inns, Inc.*, 534 F.2d 312, 189 USPQ 630, 635 n.6 (CCPA 1976). *See also Huang v. Tzu Wei Chen Food*, 849 F.2d 1458, 7 USPQ2d 1335, 1336 (Fed. Cir. 1988). Therefore, “an application filed by one who is not the owner of the mark sought to be registered is a void application.” *In re Tong Yang Cement Corp.*, 19 USPQ2d 1689, 1690 (TTAB 1991) (citing *In re Techsonic Industries, Inc.*, 216 USPQ 619 (TTAB 1982)). *See also*, 15 U.S.C. § 1051(a); *Huang*, 7 USPQ2d 1335; *Holiday Inn*, 189 USPQ at 635 n.6 (“One must be the owner of a mark before it can be registered.”); *Great Seats*, 84 USPQ2d at 1239 (“In a use-based application under Trademark Act Section 1(a), only the owner of the mark may file the application for registration of the mark; if the entity filing the application is not the owner of the mark as of the filing date, the application is void *ab initio*.”); Trademark Rule 2.71(d).

Here, Registrant has admitted that the Mark has been used by the respective PCNI branches as soon as they were incorporated in the United States, and long before any use by the Registrant. *Mgbako Dep*, 31:20 to 33:15; *see also Ukeje Dep*, 13:3-11. In fact, the first PCNI branch in the United States started using the mark as far back as 1989. *Ukeje Dep*, 13:22-24.

Petitioner Branches used the Mark in commerce long before PCNI was incorporated and, therefore, acquired ownership of the Mark through prior use. *Ukeje Dep*, 14:7 to 15:1, *Ndubizu Dep*, 23:6 to 25:18; *Mgbako Dep*, 43:9 to 45:21; *SS-NOR*, Ex. U.

To the extent Registrant argues it acquired ownership of the Mark through continued use in commerce, Petitioners have priority to use the Mark and Registrant's use of the same Mark creates an impermissible likelihood of confusion.

To establish priority, the petitioner must show proprietary rights in the mark that produce a likelihood of confusion. These proprietary rights may arise from a prior registration, prior trademark or service mark use, prior use as a trade name, prior use analogous to trademark or service mark use, or any other use sufficient to establish proprietary rights.

[*Herbko International Inc. v. Kappa Books Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1378 (Fed. Cir. 2002) (citation omitted).]

The evidence illustrates the Petitioner Branches and other PCNI branches owned the Mark by virtue of having used it in commerce for many years before PCNI even existed. As such, at the time of application, PCNI did not own the Mark it sought to register and thus its application is void *ab initio*. Petitioners are, therefore, entitled to cancellation of the Registration.

B. Registrant Committed Fraud on the USPTO

Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with its application with the intent to deceive the USPTO. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009); *see also Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 48, 1 USPQ2d 1483, 1484 (Fed. Cir. 1986) (A trademark is obtained fraudulently under the Lanham Act only if the applicant or registrant knowingly makes a false, material representation with the intent to deceive the USPTO). The

standard for finding intent to deceive is stricter than the standard for negligence or gross negligence, and evidence of deceptive intent must be clear and convincing. *Id.* (Deceptive intent may be established by direct evidence or may be inferred from indirect or circumstantial evidence, but no matter the type of evidence, it must be clear and convincing).

The relevant standard for proving fraud set forth in *In re Bose Corp.*, requires a showing of the following four elements:

- (1) applicant/registrant made a false representation to the USPTO;
- (2) the false representation is material to the registrability of a mark;
- (3) applicant/registrant had knowledge of the falsity of the representation; and
- (4) applicant/registrant made the representation with intent to deceive the USPTO.

[91 USPQ2d at 1941.]

If fraud can be shown in the procurement of a registration, the entire resulting registration is void. *General Car and Truck Leasing Systems, Inc. v. General Rent-A-Car Inc.*, 17 USPQ2d 1398, 1401 (S.D. Fla. 1990), *aff'g* *General Rent-A-Car Inc. v. General Leaseways, Inc.*, Canc. No. 14,870 (TTAB May 2, 1998). Here, Registrant made several false representations to the USPTO:

- (1) *Registrant-PCNI is a Nigerian corporation.*

This is false. PCNI is not, and has never been, registered as a corporate entity in Nigeria. *Ndubizu Dep*, 23:5. PCN, on the other hand, is a registered Nigerian corporation; however, PCN did not apply to register the Mark – PCNI did. As evidenced by the incorporation certificate, PCNI was incorporated in the State of New Jersey on August 18, 2010. *NOR*, Ex. E.

(2) *Registrant-PCNI has used the Mark in commerce since 1994.*

This is false. PCNI did not exist in 1994. *NOR*, Ex. E. Rather, the Mark has been used by local branches since as early as 1989. *Mgbako Dep*, 31:20 to 33:15; *see also Ukeje Dep*, 13:3-24; *Ndubizu Dep*, 43:20-24. PCNI did not begin to use the Mark until after it was incorporated in 2010. *Mgbako Dep*, 69:17 to 70:7.

(3) *Registrant-PCNI is the owner of the Mark to be registered.*

That is false. PCNI did not exist in 1994. *NOR*, Ex. E. Rather, the Mark was owned by the respective branches that had used the Mark in commerce for many years prior to PCNI's existence. *Ukeje Dep*, 14:7 to 15:1, *Ndubizu Dep*, 23:6 to 25:18; *Mgbako Dep*, 43:9 to 45:21; *SS-NOR*, Ex. U.

(4) *No other person, firm, corporation, or association had the right to use the Mark in commerce.*

This is patently false. Registrant's agent, Dr. Mgbako, testified that the PCNI branches, including Petitioners, had used the Mark since becoming incorporated, and at the time of registration, had the right to use the Mark in commerce:

Q: As of that date [November 12, 2013], did you believe that all of the existing branches in the Unites States had the authority to use the trademark [the Mark] which we just looked at, second-to-last page?

A: **Yes.**

Q: Okay. Including the Princeton Junction branch?

A: **Yes.**

Q: Chicago branch?

A: **Yes.**

Q: Miami branch?

A: Yes.

[*Mgbako Dep*, 69:2-13 (emphasis added); *see also Mgbako Dep*, 43:9 to 44:16.]

Clearly, Registrant had knowledge of the falsity of these statements. Dr. Mgbako testified that he was asked to form PCNI in 2010. *Mgbako Dep*, 14:20 to 15:18. Having filed the application to incorporate PCNI in New Jersey in August 2010, Dr. Mgbako certainly knew that PCNI was not a Nigerian corporation. *Mgbako Dep*, 28:3-18; *NOR*, Ex. E. Dr. Mgbako knew that the Mark had been used by branches in the United States well before PCNI was incorporated. *Mgbako Dep*, 32:16 to 33:15; 43:9 to 44:16. Dr. Mgbako further admitted that at the time the trademark registration was filed in November 2013, all of the independent branches, including Petitioners, had the right to use the Mark. *Mgbako Dep*, 68:20 to 69:13.

These false representations were material to the registrability of the Mark. Had the Registrant disclosed that is was not the sole owner of the Mark and that other corporations had the right to use the Mark and, in fact, had been using the Mark for decades, the USPTO would have likely refused to issue the certificate of registration. An applicant for a registration has a duty of “uncompromising candor” to the USPTO. *Orient Express Trading Co., Ltd. v. Federated Dept. Stores, Inc.*, 842 F.2d 650, 653, 6 U.S.P.Q.2d 1308 (2d Cir. 1988); *see also Aromatique, Inc. v. Gold Seal, Inc.*, 28 F.3d 363, 877, 31 U.S.P.Q.2d 1481 (8th Cir. 1994) (applicant owes duty of candor). “Consequently, there is no presumption of validity attached to a PTO registration where pertinent information is not presented to the PTO.” *East West, LLC v. Rahman*, 896 F.Supp.2d 488, 508 (E.D. Va. 2012).

Furthermore, the totality of the circumstances indicates that the Registrant intended to deceive the USPTO in knowingly making those false statements and representations. The appropriate inquiry is not into the registrant’s subjective intent, but rather into the objective

manifestations of that intent. *Medinol Ltd. v. Neuro Vasx, Inc.*, 67 USPQ2d 1205 (TTAB 2003). “We recognize that it is difficult, if not impossible, to prove what occurs in a person's mind, and that intent must often be inferred from the circumstances and related statement made by that person.” *First Int’l Serv. Corp. v. Chuckles Inc.*, 5 USPQ2d 1628, 1636 (TTAB 1988). *See, Torres*, 1 USPQ2d at 1484-85; *General Car and Truck*, 17 USPQ2d at 1400 (“proof of specific intent to commit fraud is not required, rather, fraud occurs when an applicant or registrant makes a false material representation that the applicant or registrant knew or should have known was false”); *Western Farmers Ass’n v. Loblaw Inc.*, 180 USPQ 345, 347 (TTAB 1973). “[B]ecause direct evidence of deceptive intent is rarely available, such intent can be inferred from indirect and circumstantial evidence.” *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 537 F.3d 1357, 1366 (Fed. Cir. 2008).

At the time the application was filed, dissension and infighting between members of the collective “club” had ensued. *Ukeje Dep* at 18:2-22, 24:6-13. The club broke into two factions – Pentagons and Progressives. *Id.*, 19:11 to 20:1. Dr. Mgbako is a member of the Pentagon group. *Id.*, 20:15-16. Petitioners belong to the Progressives group. *Id.*, 20:18-20. Around the time Registrant filed the application, the Pentagon group was attempting to restructure, and eventually dissolve, the Petitioner Branches. *Id.*, 22:7-9; *see also Mgbako Dep*, 80:1 to 83:25. Members of the Progressives group, including Petitioners, did not recognize or accede to the purported authority of the Pentagons to act on behalf of PCN or PCNI. As a result, they filed suit in a Nigerian court to declare the Pentagons’ actions invalid. *Ukeje Dep*, 37:17 to 39:17; *see also Ex. PC-7 to the Ukeje Dep*; *Ex. PP-15 to the Ndubizu Dep*.

Amidst all the tension and controversy between the two groups, Dr. Mgbako proceeded with the trademark application and sought to obtain the registration in order to use it on behalf of

the Pentagons to defeat and suppress the activities of the Progressives. *Ndubizu Dep*, 94:5 to 97:4. The undisputed facts in this case clearly establish that Registrant knew at the time it submitted its trademark application that the statements it was making were materially incorrect. Registrant knew it was not the sole owner of the Mark and that other entities had priority rights to the Mark. *Medinol*, 67 USPQ2d 1205 (“Respondent’s knowledge that its mark was not in use on stents - or its reckless disregard for the truth - is all that is required to establish intent to commit fraud in the procurement of a registration.”).

An applicant’s failure to disclose ongoing use of a mark by another party is often compelling evidence of fraud. *Marshak v. Treadwell*, 58 F. Supp. 2d 551, 559 (D.N.J. 1999) (applicants’ failure to disclose ongoing use of mark by another party at the time of application “is strong evidence of fraudulent registration”). For example, the district court in *East West*, 896 F.Supp.2d at 508-09, held that a statement that the applicant had exclusive or substantially exclusive use of trade name in a particular geographical area was a material misrepresentation intended to deceive where the registrant had “substantial direct contact and extensive business dealings with plaintiff” that gave rise to actual knowledge that the plaintiff was using the mark. The failure to disclose another party’s use of the mark will be found fraudulent where the petitioner is known to possess a “superior or clearly established right” to use the mark. *Intellimedia Sports v. Intellimendia Corp.*, 43 U.S.P.Q.2d 1203, *4 (TTAB 1997).

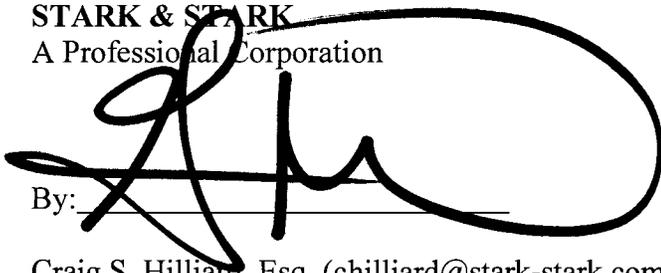
The evidence presented, along with all available inferences therefrom, demonstrate that Registrant knowingly made false sworn statements in procuring the Registration at issue with intent to deceive the USPTO. Petitioners are, therefore, entitled to cancellation of the Registration on grounds of fraud.

VI. CONCLUSION

For the foregoing reasons, the Board should cancel Registration No. 4591874 (People’s Club of Nigeria International). Registrant is not the priority owner of the Mark – Petitioners are. Moreover, Registrant knowingly and intentionally made false statements to the USPTO in order to obtain registration and then used the ill-gotten registration of the Mark to threaten and disparage Petitioners. As such, the Registration should be cancelled.

Dated:

STARK & STARK
A Professional Corporation

A large, bold, handwritten signature in black ink, appearing to read 'CHILLIARD', is written over a horizontal line. The signature is highly stylized and loops back to the start.

By: _____
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