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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

**PETITIONERS PEOPLES CLUB OF NIGERIA INTERNATIONAL (PCNI)
PRINCETON JUNCTION BRANCH, PCNI CHICAGO BRANCH, AND PCNI MIAMI
BRANCH'S REPLY BRIEF ON THE MERITS**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	2
I. RESPONSE TO REGISTRANT’S OBJECTIONS TO EVIDENCE	4
A. Petitioners’ Supplemental Notice of Reliance	4
B. Petitioners’ Second Supplemental Notice of Reliance	5
C. Exhibits P-10, P-19, P-20, P-21, and P-23 of Dr. Mgbako’s Deposition	5
II. PETITIONERS’ OBJECTION TO REGISTRANT’S EVIDENCE	5
III. PCNI BRANCHES ARE NOT “SUBSIDIARIES” OF PCN OR PCNI	6
IV. MGBAKO DID NOT FILE THE APPLICATION ON BEHALF OF THE ACTUAL OWNERS OF THE MARK	9
V. MGBAKO DID NOT HAVE STANDING TO FILE THE REGISTRATION ON BEHALF OF PCNI	10
VI. REGISTRANT IS NOT THE SOLE OWNER OF THE MARK AND, THEREFORE, ITS REGISTRATION IS VOID	11
VII. CONCLUSION	13

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Chien Ming Huang v. Tzu Wei Chen Food Co.</i> , 849 F.2d 1458, 7 U.S.P.Q.2d (BNA) 1335 (Fed. Cir. 1988)	11
<i>Great Seats, Ltd. v. Great Seats, Inc.</i> , 84 U.S.P.Q.2d (BNA) 1235 (TTAB June 14, 2007) ...	8, 11
<i>Holiday Inn v. Holiday Inns, Inc.</i> , 534 F.2d 312, 189 U.S.P.Q. (BNA) 630 (May 6, 1976)	11
<i>Huang v. Tzu Wei Chen Food Co., Ltd.</i> , 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988).....	11
<i>In re Techsonic Industries, Inc.</i> , 216 USPQ 619 (TTAB 1982)	11
<i>In re Tong Yang Cement Corp.</i> , 19 U.S.P.Q.2d (BNA) 1689 (TTAB Jan. 23, 1991)	11
<i>Medinol Ltd. v. Neuro Vasx, Inc.</i> , 67 U.S.P.Q.2d (BNA) 1205 (TTAB May 13, 2003)	12
<i>Society Civile v. SA Consortium Vinicole</i> , 6 U.S.P.Q.2d (BNA) 1205 (TTAB Jan. 25, 1988)	8
 Rules	
Trademark Rule 2.71(d)	11
 Statutes	
15 U.S.C. § 1051(a)	11
15 U.S.C. § 1060	8
N.J. Stat. Ann. § 15A:6-1	10
N.J. Stat. Ann. § 15A:6-1(a)	10
N.J. Stat. Ann. § 15A:6-1(b)	10

Registrant's arguments are premised on a fatal misapprehension of the legal relationship between Registrant, Petitioners, and the Nigerian based People's Club of Nigeria ("PCN"). Registrant attempts to paint a picture of a global social organization, headquartered in Nigeria, with local and international branches, similar to an international bank or retailer with offices/branches in various countries operating under one corporate roof. That is not the reality of the matter. Instead, PCNI's entire registration is infirm because it is founded on a series of incorrect assumptions.

First, the relationship between PCN and Registrant People's Club of Nigeria International, Inc. ("PCNI") is one of mere affiliation and voluntary association. It is not akin to that of a parent-subsidary or other relationship which would permit PCNI to rely on any extraterritorial use by PCN of the trademark PCNI registered here in the United States. In Nigeria, branches of PCN are extensions of PCN and have no independent corporate structure; similar to, for example, Target retail stores that are all "branches" of Target Corporation operating under one corporate roof. The PCNI branches in the United States, on the other hand, are all stand-alone corporations, operating under separate roofs albeit with a common interest and a shared social purpose. Most importantly, neither PCN nor PCNI has the legal power or ability to control the actions, operations, or activities of the independent PCNI branches.

Second, a PCN "branch charter" is simply a recognition of the affiliation between a PCNI branch and PCN, not an instrument creating a relationship between PCN and PCNI recognized under any U.S. laws. Despite being labeled a "branch charter," the piece of paper containing the charter neither establishes nor alters the independent legal corporate status of an already incorporated PCNI branch. It merely establishes the existence of a voluntary association between the PCNI branch and PCN, similar to the affiliations various universities and colleges

share with international institutions for purposes of study abroad programs and other common interest initiatives. Registrant has presented no evidence establishing that a “branch charter” from PCN converts the PCNI branch entity into a subsidiary of PCN or in any way subjects it to the PCN Constitution. And actually the benefit of the affiliation unquestionably militates in favor of PCN, who receives financial support and resources from the PCNI branches.

Third, while the Central Executive Committee (“CEC”) is made up of the leadership of the Nigerian PCN branches and the independent American PCNI branches, its ability to dictate rules and affect the operations of the PCNI branches is subject to the discretion of the leaders of the PCNI branches who can choose whether to adopt any rules and decisions promulgated by the CEC. There are no binding governing documents or agreements, and none have been presented to the Board, that obligate the PCNI branches to follow the PCN Constitution, the decisions of the CEC, or directives of the President of PCN.

To the extent the Board determines an obligation on the part of the PCNI branches to be bound by the decisions and actions of PCN, however, the question then becomes which PCN? Because internal dissension split PCN into two factions and created two leadership regimes, with the Progressive Group recognizing Chief Sam C. Iwuchukwu as the President and the Pentagon Group recognizing only Chief Joe Ilonze, there is bitter dispute and pending litigation over one side’s ability to control and direct the other side. The decision to “dissolve” the Petitioner Progressive Branches came from the Pentagon-established President and was not recognized by the Progressive Petitioners. Aside from self-serving testimony, Registrant has not come forward with even a modicum of evidence to suggest that Chief Joe Ilonze has any power or authority to direct or affect the operations of Petitioners or any of the other U.S. branch organizations, let alone dictate how and when they can use the Mark.

Finally, in conceding Petitioners' prior use of the service mark at issue, Registrant attempts to claim that prior use for itself by-and-through its flawed "branch subsidiary" theory. The argument goes like this: the PCNI branches are subsidiary extensions of the Nigerian-based PCN subject to PCN's governance and control; the use of the PCNI name and logo by the PCNI branches derives solely from PCN as the "corporate parent"; PCN charged Registrant with registering the Mark in the United States based upon its "prior use" of the Mark by-and-through the PCNI branches; and therefore, PCNI did not commit fraud on the USPTO by representing it "used" the Mark as early as the incorporation of the first PCNI branch in the United States. The glaring flaw in this argument is the inconvenient legal reality that PCNI branches are not subsidiaries of PCN or PCNI, and as such, their prior use of the Mark cannot be claimed by PCN or PCNI.

The truth remains, at the time of its trademark application in 2014, Registrant had only been in existence for four years and had not used the subject Mark since 1994 as it represented to the USPTO. It neither received a written assignment of trademark rights from the independent PCNI branches nor a written waiver from the branches foregoing their respective rights to the Mark from prior use. If Registrant believed there were circumstances that established its prior use of the Mark, it should have explained those to the USPTO. Instead, it left those important details out knowing that their inclusion would result in uncomfortable inquiries, and ultimately, a denial of its application. Registrant's unscrupulous registration of the Mark must, therefore, be cancelled.

I. RESPONSE TO REGISTRANT'S OBJECTIONS TO EVIDENCE

A. Petitioners' Supplemental Notice of Reliance

As a result of the divide within PCN and the ensuing power struggle between Progressives and Pentagons, the Progressives filed a lawsuit in Nigeria against the Pentagons seeking a judicial determination of the rights and responsibilities of the parties with respect to holding elections, following the PCN Constitution, and having a claim to the PCN presidency. Having "expelled" certain Progressive members who were also plaintiffs in the suit, the Pentagon defendants filed a motion to dismiss the action based on standing and lack of jurisdiction. The Nigerian Court denied the motion finding instead that the Progressive plaintiffs had standing to bring suit and to have their complaints heard by the court.

On January 20, 2016, Petitioners filed a Supplemental Notice of Reliance enclosing the decision from the Federal High Court of Nigeria rejecting the Pentagon defendants' standing arguments. While technically submitted beyond Petitioners' testimony period, the Nigerian Court decision is not in any way prejudicial to Registrant. It was bates-stamped and provided to Registrant back in July 2015 during discovery. Furthermore, Dr. Anayo Ukeje testified about the Nigerian lawsuit and the court's decision regarding standing. *Ukeje Dep*, 37:5 to 40:9. Registrant's counsel had the opportunity to cross-examine Dr. Ukeje and to inquire about the legal proceedings in Nigeria.

In any event, the proceedings in Nigeria are not dispositive of the issues before the Board, but merely add color and background to the circumstances surrounding the divide within PCN and its effect on the PCNI branches. As such, Petitioners' Supplemental Notice of Reliance should not be stricken.

B. Petitioners' Second Supplemental Notice of Reliance

On June 1, 2016, Petitioners submitted a Second Supplemental Notice of Reliance enclosing a June 2005 letter to the public from the PCNI Princeton Branch regarding officer elections. The letter indicates the use of the Mark in commerce by local branches prior to Registrant's existence. This is not a new document, but rather one that was produced in discovery to Registrant. Since Registrant has conceded, and actually premises its arguments on, the prior use of the Mark by PCNI branches, it cannot claim any prejudice from the late submission of this letter. Moreover, all of the witnesses testified to the local branches' prior use of the Mark.

As such, Petitioners' Second Supplemental Notice of Reliance should not be stricken.

C. Exhibits P-10, P-19, P-20, P-21, and P-23 of Dr. Mgbako's Deposition

Petitioners have neither submitted nor relied upon any of the challenged exhibits. Moreover, none of the exhibits were presented to Dr. Ambrose Mgbako and his testimony at the pages cited by Registrant has nothing to do with the content or substance of any of the challenged exhibits.

As such, Registrant's objections are unfounded and should not be considered by the Board.

II. PETITIONERS' OBJECTION TO REGISTRANT'S EVIDENCE

It should be noted that Registrant submitted no evidence during its testimony period. Yet, Registrant attempts to rely on Exhibits that were marked, but never used during any of the witnesses' depositions, and thus not submitted by Petitioners along with the deposition transcripts. As such, Registrant has relied upon and referenced exhibits that are not before the

Board and should not be considered.

III. PCNI BRANCHES ARE NOT “SUBSIDIARIES” OF PCN OR PCNI

The crux of Registrant’s argument is that PCNI was to be a subsidiary of PCN holding all U.S. rights to the Mark, which had been used by U.S. branches of PCN since 1990 when the PCNI Houston Branch began using the Mark. The evidence presented, however, demonstrates that neither PCNI nor the PCNI branches are subsidiaries of PCN.

The only evidence advanced by Registrant to support the proposition that it is a subsidiary of PCN is a self-serving letter from the Progressive-recognized President of PCN, Dr. Joseph Ilonze, wherein he proclaims that “Peoples Club of Nigeria International New Jersey is a subsidiary of Peoples Club of Nigeria International registered in Nigeria.” *Exhibit 4*. First, there is no registered Peoples Club of Nigeria International in Nigeria, only Peoples Club of Nigeria (PCN). Second, this letter contains Mr. Ilonze’s opinions and illustrates a misunderstanding of the actual legal relationship between the two entities, which is defined and described in their respective governing documents.

The Certificate of Incorporation for Registrant indicates that PCNI was to have members and a set of bylaws. *NOR*, Exhibit E. A set of bylaws outlining the rights and limitations of members, however, was never adopted and none have been presented by Registrant. It remains a mystery whether any members of PCNI ever existed and what their roles and responsibilities are. Nevertheless, nothing in the Certificate of Incorporation suggests PCNI was to be a “subsidiary” of PCN. Rather, the stated purpose of organization was “to provide and promote recreational and social facilities for its members and the public in general.” *Ibid*. While PCN and its branches have a governing Constitution, PCNI and the PCNI branches do not. *Ukeje Dep*, 45:1-

16. Notably, Registrant has not submitted to the Board either the PCN Constitution or any other legal document purporting to illustrate the existence of a subsidiary relationship between PCN and PCNI/PCNI branches.

As explained by Mr. Ndubizu, the structure of the club in the United States is much different than that in Nigeria:

US branches, they all have separate incorporation as a separate entity. That's what incorporation means. In Nigeria all the 22 branches have one incorporation. So they're under one umbrella.

So you can – that one umbrella can control them. They can now say you're no longer a part of this umbrella, throw them out. In US you couldn't do that because these are all separate entity. And we accommodate the structure dealing with US because each branch is autonomous. And that's really what makes that an important feature of the club that makes it unique.

[*Ndubizu Dep*, 71:6-18 (emphasis added).]

As such, PCN does not have authority over PCNI or the PCNI branches:

Q: As far as you know, does PCN have the authority to expel the PCNI organization that's operating in the United States?

A: They do not. Number one, they are not members of PCNI; number two, they are not American citizens; number three, they don't have any rights as they are not part of the local branch who are registered to issue any directives.

The ultimate authority to discipline, expel, suspend, dissolve lies with the local branch board and the membership, not foreign visitors.

[*Ukeje Dep*, 22:15-25 (emphasis added).]

Accordingly, Registrant cannot establish the independent PCNI branches, which started using the Mark decades before Registrant came into existence, are subsidiaries of PCN such that their use of the Mark inures to PCN. Thus, at the time Dr. Mgbako was given "authority" to file

for the registration on behalf of PCNI, PCN and the Central Executive Committee did not have that “authority” to give. Only the respective PCNI branches, as owners and users of the Mark, had the authority and standing to register the Mark in the United States.

As such, neither PCN nor PCNI can lay claim to the independent PCNI branches’ use of the Mark in commerce dating back to 1990. Legally and practically speaking, each of the U.S. branches and Registrant are separate and distinct non-profit businesses sharing a common interest in socializing and promoting cultural development under the People’s Club of Nigeria International name. Trademark rights to the name, however, inure to the person or entity that first uses the name in commerce. *Society Civile v. SA Consortium Vinicole*, 6 U.S.P.Q.2d 1205 (TTAB 1988) (The first person or entity to use a trademark in commerce is the rightful owner of the mark).

Here, Petitioners and the other U.S. branches first used the name in commerce as early as 1990, and upon such use, each respective branch gained the right to register the Mark. *Ukeje Dep*, 13:3 to 15:1; *Ndubizu Dep*, 24:4 to 25:18; *Mgbako Dep*, 31:20 to 33:15, 43:9 to 45:21; *see also Great Seats Ltd. v. Great Seats Inc.*, 84 USPQ2d 1235, 1239 (TTAB 2007) (only the owner of a mark can register it). Since the U.S. branches do not share a corporate nexus or subsidiary-parent relationship with PCN, PCN has no legal right to their use of the Mark. Moreover, no evidence exists, and none has been presented, to suggest that the U.S. branches ever assigned their common law trademark rights in the Mark to PCN. *See 15 U.S.C. § 1060* (indicating that trademark assignments must be in writing).

As such, PCN had no rights in the Mark and, therefore, could not legally “authorize” Dr. Mgbako and PCNI to register the Mark.

IV. MGBAKO DID NOT FILE THE APPLICATION ON BEHALF OF THE ACTUAL OWNERS OF THE MARK

At the time Dr. Mgbako was tasked with incorporating Registrant and filing for registration of the Mark, the independent PCNI branches, as owners of the Mark, agreed to have Dr. Mgbako file for the registration on their behalf. *Ukeje Dep*, 42:1 to 43:2, 49:6-14. Instead, Dr. Mgbako sought registration on behalf of an unrelated entity, which did not possess priority rights to the Mark. *NOR*, Ex. I.

While the idea at the time was that the local branches would retain ownership of the Mark by and through PCNI, there was never any legal instrument created to memorialize and effectuate that idea. Most importantly, however, Dr. Mgbako did not attempt to make this clear to the USPTO. In fact, it should be inferred that he omitted this information for the precise purpose of using the registered Mark to advance the agenda of the Pentagons to the detriment of the Progressives. That is exactly what happened; after the registration was issued, Dr. Mgbako and the Pentagons began using the registration to interfere with the activities of Progressive members and branches by threatening them with “trademark infringement” lawsuits.

Had Dr. Mgbako disclosed to the USPTO that he was filing the registration on behalf of all the PCNI branches, including Petitioners, the Pentagons would not have been able to turn around and use the registration to suppress the legitimate activities of the Progressive members. Furthermore, had the USPTO been informed of the organizational structure of the club in the United States and of the absence of any legal relationship between Registrant and the true owners of the Mark (the PCNI branches including Petitioners), it likely would have required additional information, documentation, and explanation before issuing the registration.

As such, the Board should cancel the registration and not countenance the subterfuge that transpired.

V. MGBAKO DID NOT HAVE STANDING TO FILE THE REGISTRATION ON BEHALF OF PCNI

Even if PCNI had the necessary rights in the Mark to substantiate the filing of the trademark application, which Petitioners contend it did not for the reasons expressed above, Dr. Mgbako was nevertheless not authorized to sign the trademark application on behalf of Registrant.

Despite being identified as the Registered Agent on the Certificate of Incorporation, Dr. Mgbako is not a Board of Trustee member and cannot act on behalf of PCNI without express authorization from the Board. As a New Jersey non-profit corporation, PCNI can only act by and through its Board of Trustees. *N.J.S.A.* § 15A:6-1. For the Registrant to transact business or perform a corporate act, such as filing the subject trademark application, the decision must be made by a quorum of board members. *N.J.S.A.* § 15A:6-1(b). Only a “majority of the entire board, or of any committee thereof, shall constitute quorum for the transaction of business.” *N.J.S.A.* § 15A:6-1(a) (emphasis added).

The governing board of the Registrant consists of four individuals: Eze Desmond Ogugua (“Eze”), Ignatius Ojukwu-Ike (“Ignatius”), Uchegbulem Aloysius Eze (“Uchegbulem”), and Prof. Innocent T. Aluka (“Innocent”). *NOR*, Ex. E. Dr. Mgbako is not a Board member and needed approval and direction from the majority of the Board in order to act on behalf of the entity. It matters not that Dr. Mgbako was given “authorization” and funds by Chief Sam C. Iwuchukwu, the President of PCN, as Mr. Iwuchukwu is not a recognized Board member. No documents or testimony exists, and none have been presented by Registrant, illustrating that any

of the named Board members gave Dr. Mgbako authority to file the registration on behalf of PCNI.

Therefore, at the time the trademark application was signed and filed, Dr. Mgbako was not authorized to sign the application, and by doing so, committed fraud on the USPTO.

VI. REGISTRANT IS NOT THE SOLE OWNER OF THE MARK AND, THEREFORE, ITS REGISTRATION IS VOID

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 v. Tzu Wei Chen Food Co., Ltd.*, 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988); *Holiday Inn v. Holiday Inns, Inc.*, 534 F.2d 312, 189 USPQ 630, 635 n.6 (CCPA 1976) (“One must be the owner of a mark before it can be registered.”); *Great Seats, Ltd. v. Great Seats, Inc.*, 84 USPQ2d 1235, 1239 (TTAB 2007) (“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, the record makes clear that the involved application is *void ab initio* because Registrant is not the sole owner of the Mark. Even though Registrant may have used the Mark in commerce after its incorporation in 2010, it was not the first to use the Mark and Registrant’s representative, Dr. Mgbako, freely admitted that the PCNI branches had been using the Mark since 1990. *Mgbako Dep.*, 31:20 to 33:15, 43:9 to 45:21, 69:2-13. Registrant, however, takes the unsubstantiated position that it was entitled to claim the independent branches’ use of the Mark as its own because it received “authority” from PCN. Yet as discussed above, the local branches are not subsidiaries of PCN and PCN had no legal right to rely on the branches’ use of the Mark,

let alone assign rights to that use.

In any event, even if that is what Registrant believed, it was incumbent upon it to disclose those tricky “facts” and “circumstances” to the USPTO. By not doing so, Registrant failed to provide the Office with pertinent, material information that would have impacted its decision to issue the registration. Rather, Registrant submitted an application representing that it, versus the local branches or even PCN, had used the Mark in commerce since 1994; with no mention of the branches’ independent use of the Mark, no mention of the “authority” it obtained from PCN, and no mention of the relationship between the branches, itself, and PCN. Registrant’s representations were knowingly false and reasonably calculated to mislead the USPTO in issuing the registration to PCNI.

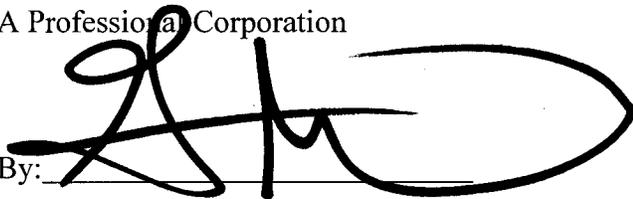
As such, Registrant’s reckless disregard for truth and candor before the USPTO establishes intent to commit fraud. *Medinol Ltd. v. Neuro Vasx, Inc.*, 67 USPQ2d 1205 (TTAB 2003) (Respondent’s reckless disregard for the truth is all that is required to establish intent to commit fraud in the procurement of a registration).

VII. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Board cancel Registration No. 4591874 (People’s Club of Nigeria International) on grounds of priority, prior use, and fraud.

Dated: July 15, 2016

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

In the Matter of Trademark Registration No. 4,591,874
For the Mark: Peoples Club of Nigeria International Service Mark
Date registered: 08-26-2014

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

Petitioners,

v.

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

Registrant.

PROCEEDING NO. 92059944

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the 15th day of July 2016, I caused to be delivered a true and accurate copy of Petitioners' Reply Brief, via electronic and regular mail to:

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