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

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| Proceeding | 92060018 |
| Party | Defendant Gary L. Pifer and Joe Faustine |
| Correspondence Address | JOE FAUSTINE 4345 WAHA PLACE HAIKU, HI 96708 UNITED STATES garypifer@hotmail.com, Joe@MauiRippers.com |
| Submission | Motion to Dismiss - Rule 12(b) |
| Filer's Name | Gary L. Pifer |
| Filer's e-mail | garypifer@hotmail.com |
| Signature | /GARYPIFER/ |
| Date | 10/31/2015 |
| Attachments | Motion to dismiss 1.pdf(108026 bytes) |

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

Todd Sean White
Petitioner

Cancellation No. 92060018

Mark: **Ripper**

V.

Gary L. Pifer
Respondent

MOTION TO DISMISS

Respondent Gary L. Pifer hear-by submits a motion to Dismiss with prejudice due to Fraud on the Court, Attorney misconduct, Failure to investigate under Rule 11

It has come to my attention that Petitioner Todd Sean White had entered into negotiations with co-respondent Joe Faustine, without my knowledge or attendance. During October of 2015 Petitioner White, arrange a meeting with Co-Respondent Joe Faustine, without Counsel present, in the Petitioner's retail shop in Hawaii. For aprox 30 minutes they discussed Cancellation No. 92060018 and other and separate legal matters apart from Cancellation No. 92060018, pertaining to Hawaiian Trademark issues. and how Petitioners mark conflicted with Co-Respondent's Faustine's mark **Maui Rippers and Hawaiian Rippers**. During the meeting Petitioner White offered to dismiss Cancellation No. 92060018 unilaterally without Respondent Pifer's knowledge, if Co-Respondent Faustine would agree and allowed the Petitioner to embellish his garments with the text Maui and Hawaii and for the Petitioner to not produce board shorts under the Surf Ripper Branding. This has lead me to believe that Todd White Petitioner, had filed the Cancellation 92060018 in bad faith, and that he really has no desire or interest in proceeding with the case, and violated court rules by appointing Counsel and then taking the matter into his own hands without notifying the Court or Respondent and, failing to disclose all relevant facts

It has also come to my attention within the last 60 days Co-Respondent Faustine's attorney, not of

record, had written a cease and desist letter to Partitioner's White's Attorney regarding violation of Co-respondent's Hawaiian and Federal Mark of **Maui Rippers**, and they entered into written and or verbal settlement negotiations managed by Counsel Bren Law LLC without the knowledge or presence of the Respondent. I have been informed that a part of the Negotiations, was that Cancellation No. 92060018 was put on the table for dismissal in return for considerations given to Petitioner White, regarding marking and embellishments of T-shirts and and the branding of **Surf Ripper** on board shorts. I was informed that the negotiations were stalled and and may still be ongoing with counter offers. At the same time Bren Law LLC was objecting to the Motion for substitution of a (New) Respondent, while engaging in litigation settlement communication without the knowledge or participation of the Respondent. No Letters, Emails, official or like wise were delivered to Respondent. This violates Court Rules, Oregon Bar Rules and common sense Law **Practice failing to disclose all relevant facts. The basic standard governing fraud on the court are reasonably straightforward. As set forth in *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998):** **The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense."** *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989) . .

I also learned that Petitioner Todd White admitted to Co-Respondent Faustine that he decided to file the Cancellation No. 92060018 on the advice of his attorney, because Petitioner White did not see any information about the Trademark Ripper in Commerce, on the internet ie Google.com or other search engines. At no time did Bren Law LLC or Petitioner Todd White contact Respondent by any forms of communication via any physical or email address and or telephone number that were posted on USPTO.gov.. The Petitioner Todd White and Bren Law LLC failed to conduct due diligence or reasonable inquiry and are in violation of Rule 11.

I Pray that all sanctions, penalties and dismissal of Cancellation will be granted, based of Fraud of

the Court, Attorney and Petitioner misconduct, Violation of Rule 11 failure to investigate. And any other violations of Court, Federal or Trademark Rules or Law, with extreme prejudice.

I also requests that my Court ordered initial disclosures regarding submission of documents and things only, be halted until the motion is ruled on. As I don't want to waste my time and money, searching for evidence that spans 10 years, if the other parties are engaged in settlement talks that I am not a part of and they are in counter offer mode.

Perhaps the most common form of sanctions imposed against opposing counsel occurs under Rule 11, a federal rule that enables judges to penalize lawyers who violate the provisions contained therein. For example, Rule 11 requires the attorney signing pleadings to certify that the signer's knowledge, information, and belief were "formed after reasonable inquiry," that the pleading or motion is "well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose." Thus, under Rule 11 an attorney is required to engage in additional investigation before signing the pleading. And Rule 11 sanctions are not the most potent arrow in corporate defense counsel's quiver. While those sanctions may deter the filing of claims and result in a dismissal, they do not represent adjudication on the merits when granted.

Sanctions are also appropriately imposed against lawyers under federal law -- title, 28, section 1927 -- for conduct that, viewed objectively, manifests either intentional or reckless disregard of the attorney's duties as officers of the court. In such situations, the court often examines whether plaintiffs' counsel's conduct, when viewed objectively, imposed unreasonable and unwarranted burdens on the court and opposing parties, and whether plaintiffs' counsel acted recklessly or with indifference to the law.

Attorney misconduct encompasses a variety of issues related to unethical or illegal conduct by an attorney. Attorney Misconduct may include: conflict of interest, over billing, refusing to represent a client for political or professional motives, false or misleading statements, hiding evidence, abandoning a client, failing to disclose all relevant facts, arguing a position while neglecting to disclose prior law which might counter the argument.

October 30, 2015

Respectfully submitted,

/GARYPIFER/
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Pro-Per

Cancellation No 92060018: Motion to Dismiss.

Certificate of Service

This is to certify that a copy for this MOTION TO Dismiss with Precedence is being deposited with the U.S. Postal Service October 31, 2015 At 2200 by first class mail, postage prepaid to the counsel of record in an envelope addressed as follows:

BrenLaw LLC
POB 4120
ECM# 72065
Portland, OR. 97208

