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

Proceeding	92061236
Party	Plaintiff FWHG IP Holdings LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FWHG IP HOLDINGS LLC,)	
	)	Cancellation No. 92061236
Petitioner,)	
	)	Mark: MAGO CAFÉ
v.)	
	)	Registration No. 3,810,357
BR CONSULTING, INC.)	
	)	Date of Issue: June 29, 2010
Registrant-Respondent.)	

**PETITIONER’S RESPONSE IN OPPOSITION TO
RESPONDENT’S MOTION FOR SUMMARY JUDGMENT**

Petitioner FWHG IP Holdings LLC (“Petitioner” or “FWHG”) hereby responds to BR Consulting, Inc.’s (“Respondent” or “BR”) Motion for Summary Judgment (“Motion”) and respectfully moves the Board for an order pursuant to Fed. R. Civ. P. 56 and 37 C.F.R. § 2.127 denying same.¹ Genuine issues of material fact exist making improper summary adjudication of this case at this early stage of the proceeding.

I. INTRODUCTION

This is a cancellation action based on abandonment where Respondent admits it discontinued use of the subject mark “on August 31, 2012” and alleges the reason behind this cessation of use as “the chef returned to Korea.” (See Motion at ¶4 and Exhibit B to the

¹ FWHG notes that Respondent’s Motion includes a Certificate of Service indicating the means of service as “email.” Counsel for FWHG received a copy of the Motion by e-mail as well as a copy some days later by USPS Priority Mail. Attached as Exhibit A to the accompanying Umansky Decl., ¶ 3 is a copy of e-mail correspondence between counsel for both parties indicating that there was never agreement between the parties to accept service of papers by electronic transmission, which agreement is required under 37 CFR § 2.119(b)(6). Indeed, according to Respondent’s counsel’s January 21, 2016 e-mail, the intent was apparently to serve the Motion by regular mail with a courtesy copy to be e-mailed as well. As such, FWHG’s Response to the Motion is being timely filed. See 37 CFR § 2.119(c) and TBMP § 113.05. Incidentally, and as reflected in Exhibit A, counsel for FWHG never received service of Respondent’s Opposition to its Motion to Extend Discovery Period, which paper was apparently filed on December 31, 2015. It was only by chance that the undersigned counsel came across this filing while reviewing on January 20, 2016 the records for this proceeding on the Board’s TTABVue online system. The Board has indicated (Dkt 12) that it will address FWHG’s Motion to Extend at the same time as Respondent’s Motion for Summary Judgment.

accompanying Umansky Decl., ¶ 4.)² Respondent further admits that its “customers are the general public and other businesses in the Sedona area for catering” and that the “Mago Café operates at a single retail location at 340 Jordan Road, Sedona, Arizona.”³ Curiously, Respondent also alleges that the “MAGO CAFÉ reopened on August 1, 2015 (exactly two years and eleven months after the prior location closed).

In support of its claim that it never intended to abandon use of the subject mark and its allegation that a restaurant or café using the mark MAGO CAFÉ in commerce reopened on August 1, 2015, Respondent has sought to make of record the following purported evidence:

- (1) a TESS database summary list of active and cancelled/abandoned trademark applications and registrations triggered by the search query “(br consulting)[OW]” (BRC000396-104) – this document was neither properly made of record nor is it relevant to the current proceeding;
- (2) an alleged License Agreement dated August 1, 2010 between Respondent and STI Network, Inc. (BRC000385-395) – a document with an alleged date more than two years earlier than the date Respondent admits it ceased use of the subject mark and whose signatories are both officers of Respondent;
- (3) an alleged Lease Agreement dated April 1, 2015 between Healing Family Center of Sedona, LLC and STI Network, Inc. (BRC000006-10) – a document curiously dated April 1, 2015, exactly one week prior to Petitioner’s filing of the instant Petition for Cancellation, that makes no reference to the subject mark or any mark for that matter, and whose signatories are identical to those on the 2010 License Agreement (both being officers of Respondent)⁴;
- (4) an alleged 2012 menu for the single location MAGO CAFÉ that closed on August 31, 2012 (BRC000380-384) – a simple, undated PDF document which bears no relevance to the current proceeding;
- (5) a photograph of alleged signage on the side of a building for the single location MAGO CAFÉ that closed on August 31, 2012 (BRC000402) – another undated document which is irrelevant to the current proceeding;

² Exhibit B to the accompanying Umansky Decl., ¶ 4 consists of Respondent’s Answers to Petitioner’s First Set of Interrogatories – Petitioner FWHG references in particular Interrogatory response Nos. 1 and 5.

³ See Exhibit B, response Nos. 1 and 2.

⁴ Respondent’s Motion at numbered paragraph 4 indicates that “STI NETWORK, INC. previously operated MAGO CAFÉ under” this lease agreement and that MAGO CAFÉ closed on August 31, 2012. However, it is unclear if this is an error as the subject lease agreement is dated April 1, 2015.

- (6) a one-page document claimed as the current menu for MAGO CAFÉ (BRC000379) – another one-page, undated PDF document which lists primarily tea and other beverage products;
- (7) a photograph of alleged signage for the current MAGO CAFÉ location (BRC000403) – which photo is undated and the composition of the underlying signage and whether it is of a sufficiently permanent nature is unclear;
- (8) a document purporting to be a record of lease payments from April to August 2015 (BRC000378), a business license from the City of Sedona dated July 16, 2015 (BRC000376), and a Certificate of Occupancy from the City of Sedona dated July 31, 2015 (BRC000377) certifying “that at the time of final inspection [the property] was in compliance with” certain ordinances, which document indicates that the subject property is “600 sq ft” with a maximum occupancy of “15” – none of which show or support an inference that Respondent had a bona fide intent to resume use of the mark MAGO CAFÉ in commerce in connection with all the services covered by the subject registration; and
- (9) photographs of what appear to be a nondescript refrigerator, sink and other equipment (BRC000001-3) with no visible markings or other evidence that these were used in the MAGO CAFÉ location that closed on August 31, 2012, that they had been warehoused for approximately three (3) years, that the intent had been to use them at a future MAGO CAFÉ location, or that such equipment is indeed currently in use at the “600 sq ft” tea house that allegedly opened for business on August 1, 2015.

None of these documents taken separately or in combination support Respondent’s position that no genuine issue of material fact exists. Respondent has submitted no affidavits or declarations of any of its employees, of the alleged prior chef, of any current employees or agents of STI Network, Inc., the supposed licensee and tenant, or any other individuals that could conceivably support a showing of intent. At this stage, the only circumstantial evidence that could possibly have a bearing on the threshold issue of Respondent’s intent consists of a few highly questionable documents and allegations. Respondent’s suspect showing of use or intent to resume use within the relevant three-year period is a flawed and inadequate attempt to escape the three-year statutory presumption of abandonment under 15 U.S.C. § 1127. Consequently, summary judgment should be denied.

II. ARGUMENT

A. Evidentiary Objections

As a preliminary matter, FWHG objects, pursuant to Fed. R. Civ. P. 56(c)(2) and TBMP § 528.05(a)(1), to Respondent's attempts at introducing into evidence Respondent's alleged trademark registrations not pleaded and not at issue in this proceeding and its purported ownership thereof.⁵ First, in support of such unpleaded registrations, Respondent attached search summary pages from the USPTO's TESS database apparently triggered by the search query "(br consulting)[OW]". However, in order to properly make any such registrations of record, Respondent must provide sufficient information from the USPTO's electronic database records showing the status and title thereof, which at the very least requires a printout of the referenced registration from the USPTO's TSDR or TESS database. *See* TBMP § 528.05(d). Respondent has not provided any such documentation. Second, FWHG notes that the TESS summary page submitted with the Motion includes references not only to a number of unregistered marks, but also shows numerous uses of the term "DEAD," indicating that those applications and registrations have lapsed. Moreover, FWHG fails to see the relevance of any such unpleaded applications and registrations (many of which have lapsed), which have no bearing on the current cancellation proceeding or Respondent's Motion.

Similarly, FWHG objects based on lack of relevance to (1) the alleged August 1, 2010 License Agreement (BRC000385-395); (2) the alleged 2012 menu (BRC000380-384); (3) the photograph of alleged signage for the MAGO CAFÉ location that closed August 31, 2012 (BRC000402); and (4) photographs of nondescript equipment allegedly used at the old MAGO CAFÉ location and retained to at some unknown point in the future "permit the restaurant to

⁵ See numbered paragraph 2 under the heading "Recitation of Facts" to the Motion and Exhibit B thereto, BRC000396-401.

reopen” (BRC000001-3).⁶ At most, such documents suggest that a MAGO CAFÉ food establishment existed in the past. However, none of these documents bear any relevance on the threshold issue of whether Respondent had any intent to resume use of the mark MAGO CAFÉ in commerce in connection with all the services covered by the subject registration.

As such, FWHG respectfully requests that the Board strike and give no consideration to alleged Fact Nos. 2, 3 and 7 in Respondent’s Motion and the corresponding exhibits thereto. FWHG also requests that the Board not consider the additional exhibits referenced above – i.e. BRC000385-395, BRC000380-384, BRC000402 and BRC000001-3.

B. Background and Facts

On April 8, 2015, the last date for FWHG to file a Request for Reconsideration and/or Notice of Appeal in connection with its pending Federal trademark applications for MAGO GRILL & CANTINA (Serial No. 86/155,443) and MAGO GRILL & CANTINA and Design (Serial No. 86/155,419), and after having conducted both an internal and external investigation concerning the lack of use by Respondent of its subject mark MAGO CAFÉ for close to three (3) years, FWHG filed the current proceeding alleging non-use and abandonment. The discovery period in this matter commenced on July 18, 2015 and in August 2015 the parties exchanged written discovery requests, with each party’s responses being served in September 2015, and Respondent producing over 400 pages of documents.⁷ In November 2015, Respondent produced another roughly 3,300 pages of documents. In December 2015, FWHG produced close to 300 pages of documents.

At the current stage of the proceedings, with initial discovery having taken place and

⁶ Respondent’s Motion at numbered paragraph 7.

⁷ FWHG responded to Respondent’s interrogatories, two sets of requests for production of documents, and requests for admission, and Respondent responded to FWHG’s interrogatories and requests for production of documents.

additional discovery being necessary and sought by FWHG, at the very least the following questions create genuine issues of material fact in this case⁸:

1. What were the circumstances and timing surrounding the preparation and signing of the Lease Agreement dated April 1, 2015 between Healing Family Center of Sedona, LLC and STI Network, Inc. (BRC000006-10), and the relationship between those various entities and Respondent BR Consulting, Inc.? As indicated above, this document is dated exactly one week prior to Petitioner's filing of the current proceeding, which, on its face is suspect. Additionally, the document makes no reference to the subject mark or any mark for that matter, and although the tenant is listed as STI Network, Inc. and the landlord as Healing Family Center of Sedona, LLC, it is noted that the individual, Michael McCann, who signed on behalf of the landlord as President is also listed as President of BR Consulting, Inc.⁹ Moreover, the individual who signed on behalf of the tenant as President, Jiyong Kong, is also listed as Secretary, Treasurer, and Director of Respondent.¹⁰ This document is suspicious in a number of respects, and at the very least creates a question of fact requiring additional discovery. Where evidence of continued sales consists of "suspicious documents" and testimony is "disingenuous" and "intentionally vague or unclear" adverse inferences will be made and abandonment found (*see Cervceria Modelo, S.A. de C.V. v. R.B. Marco & Sons, Inc.*, 55 USPQ2d 1298 (TTAB 2000)).

2. What were the circumstances surrounding the preparation, use, and timing of the basic one-page, undated document claimed by Respondent as the current menu for MAGO CAFÉ (BRC000379), which lists primarily tea and other beverage products allegedly for sale?

⁸ On December 17, 2015, almost a month before Respondent filed the current Motion, FWHG filed its Motion to Extend discovery, pre-trial and trial dates by ninety (90) days.

⁹ See Exhibit C to the accompanying Umansky Decl., ¶ 5 consisting of Respondent's 2015 Annual Report, which document was produced by Respondent in this proceeding (BRC000404-BRC000409).

¹⁰ See Exhibit C to the accompanying Umansky Decl., ¶ 5.

3. The circumstances surrounding the taking and timing of the photograph of alleged signage for the current MAGO CAFÉ location (BRC000403), its creation, material composition, and erection are all unknown. This photograph is undated and whether the purported signage is of a sufficiently permanent nature is unclear.

4. Respondent claims the prior restaurant “closed on August 31, 2012 when the chef returned to Korea” (see Motion, Exhibit E, Response No. 1). Yet the MAGO CAFÉ which Respondent claims opened on August 1, 2015 is apparently not a restaurant but rather a tea house and there is no evidence that a chef or cook is needed or employed there.¹¹ If it had intended to do so, Respondent could have just as easily opened such a business a year or two earlier rather than waiting until after FWHG filed its cancellation proceeding. FWHG’s filing forced Respondent to take action in an attempt to maintain its trademark registration. However, opening a restaurant requires sufficient planning in terms of obtaining the necessary permits, hiring the necessary personnel, etc. It is highly suspect that Respondent claims to have opened a small tea house rather than a restaurant like the one that had been in operation three years earlier at another location. No doubt after FWHG filed its Petition for Cancellation Respondent hurried to open some type of establishment that could conceivably support its trademark registration before the onset of the three-year statutory presumption, which would have shifted the burden of production to Respondent. It claims to have done so two years and eleven months after closing its prior MAGO CAFÉ restaurant, but many questions remain, not least of which include (1) whether Respondent’s alleged current offerings cover “Restaurant and cafe services; catering services” (the services identified in subject Reg. No. 3,810,357); (2) whether very minimal alleged sales activity in August 2015 would serve as *bona fide* use of a mark in the ordinary course of trade, and not made

¹¹ Motion, Exhibit H, BRC000379 – menu; Exhibit D to Umansky Decl., ¶ 6 (Respondent’s production BRC000410 – a nondescript press release or article of some kind).

merely to reserve a right in a mark (15 U.S.C. § 1127 – “Use in commerce”); and (3) whether such alleged use by Respondent at a very small, single-site location in Arizona claiming to service “the general public and other businesses in the Sedona area”¹² is of a sufficient nature as to affect commerce which may lawfully be regulated by Congress (15 U.S.C. § 1127 – “Commerce”).

5. The document purporting to be a record of lease payments from April to August 2015 (BRC000378) between STI Network, Inc. and Healing Family Center of Sedona has not been supported by any underlying payment documents or cancelled checks, and, moreover, in light of the questions concerning the relationship between these entities and Respondent, among other reasons, does not suffice to demonstrate actual use or intent to resume use of the mark MAGO CAFÉ in commerce in connection with the services covered by the trademark registration.

6. Similarly, the business license from the City of Sedona dated July 16, 2015 with an expiration date of December 31, 2015 (Motion, Exhibit K, BRC000376) and Certificate of Occupancy from the City of Sedona dated July 31, 2015 (Motion, Exhibit L, BRC000377) do not indicate the nature of the underlying business or that such business was open on a date certain and was of a continuous nature. Additionally, the Certificate of Occupancy indicates that the subject property is “600 sq ft” with a maximum occupancy of “15” – hardly a sufficient size for a restaurant.

7. The photographs of what appear to be a nondescript refrigerator, sink and other equipment (Motion, Exhibit M, BRC000001-3) have no visible markings or other evidence that these were used in the MAGO CAFÉ location that closed on August 31, 2012, that they had been warehoused for approximately three (3) years, that the intent had been to use them at a future MAGO CAFÉ location, or that such equipment is indeed currently in use at the “600 sq ft” MAGO CAFÉ location that has allegedly been open for business since August 1, 2015.

¹² See Motion, Exhibit E, Response No. 1.

C. Summary Judgment Standard

Summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(c). A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to summary judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The Board may not resolve issues of material fact, but can only ascertain whether genuine disputes exist regarding such issues. The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party. *See Opryland USA, Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992).

Although cases involving questions of intent are not necessarily inappropriate for summary judgment, it is “seldom appropriate in cases where the parties’ intentions or states of mind are crucial elements of the claim because of the likelihood of self-serving testimony and the necessity for the factfinder’s credibility determination.” *60 Ivy Street v. Alexander*, 822 F.2d 1432, 1437 (6th Cir.1987); *see, ITC Ltd. v. Punchgini, Inc.*, 482 F.3d 135, 150 (2d Cir. 2007). As a general rule, the factual question of intent is particularly unsuited to disposition on summary judgment. *See Copelands’ Enterprises, Inc. v. CNV, Inc.*, 945 F.2d 1563 (Fed. Cir. 1991); *KangaROOS U.S.A., Inc. v. Caldor, Inc.*, 778 F.2d 1571, 1575 (Fed.Cir.1985) (*citing Pfizer, Inc. v. International Rectifier Corp.*, 538 F.2d 180, 185 (8th Cir.1976), *cert. denied*, 429 U.S. 1040 (1977) (“summary judgment is inappropriate where issues of fact, intent [and] good faith ... predominate”)); *Albert v. Kevex Corp.*, 729 F.2d 757, 763 (Fed. Cir. 1984) (“Intent is a factual matter which is rarely free from dispute.”).

D. The Abandonment Standard

A registration may be cancelled at any time if the registered mark has been abandoned. 15 U.S.C. § 1064(3). Under Section 45 of the Trademark Act, a mark is deemed abandoned if its use has been discontinued without intent to resume use, and non-use in the United States for a period of three consecutive years establishes a *prima facie* case of abandonment. *See* 15 U.S.C. § 1127. Thus, in order to prevail on a claim for cancellation on the ground of abandonment, FWHG will have to allege and prove by the “preponderance of the evidence,” in addition to its standing, that Respondent’s use of the mark has been discontinued for at least three consecutive years, or that Respondent has discontinued use of the mark without an intent to resume use.¹³ *Id.*; *see also, On-Line Careline, Inc. v. America Online, Inc.*, 229 F.3d 1080, 1087 (Fed. Cir. 2000); *Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.*, 892 F.2d 1021 (Fed. Cir. 1989); *Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352 (Fed. Cir. 2009). Conversely, Respondent, as the party moving for summary judgment dismissing the claims of abandonment, must establish continuous use of its marks for all of the goods and services named in the registration, or specific activities undertaken during the period of non-use or special circumstances which excuse non-use. *See Cerveceria India Inc. v. Cerveceria Centroamericana, S.A.*, 10 USPQ2d 1064 (TTAB 1989), *aff’d*, 892 F.2d 1021. Merely because a party used a mark a long time ago and it could use the mark in the future is not enough to avoid abandonment. *See Silverman v. CBS Inc.*, 870 F.2d 40 (2d Cir. 1989). Abandonment of a registered mark cannot be reversed by subsequent re-adoption of a mark. *Parfums Nautee Ltd. v. American International*

¹³ Respondent has not challenged FWHG’s standing in this proceeding, and FWHG notes that its standing is established by the Petition for Cancellation and Response thereto at ¶¶ 1-2, as well as copies of Office Actions showing that FWHG’s applications were refused registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based on Respondent’s involved registration. (See combined Exhibit E to the accompanying Umansky Decl., ¶ 7). In light of these refusals to register FWHG’s pleaded pending applications, there is no genuine dispute that FWHG has standing to bring the current proceeding. *See Weatherford/Lamb Inc. v. C&J Energy Services Inc.*, 96 USPQ2d 1834 (TTAB 2010).

Industries, 22 USPQ2d 1306, 1310 (TTAB 1992), and cases cited therein.

E. Various Facts are in Dispute and the Three-Year Statutory Presumption Applies in this Case

As explained above, while Respondent has, during the course of this proceeding, produced numerous documents and has sought to introduce what it presumably views as the most pertinent documents in support of its Motion, there is virtually nothing of substance that might tend to support Respondent's claim that no genuine issues of material fact exist and that it should be granted summary judgment in this case.

If all a party had to do to avoid a holding of abandonment was to testify that it never had any intent to abandon a mark, or never had any intent not to resume use, then no mark would ever be held abandoned. *See Natural Answers, Inc. v. SmithKline Beecham Corp.*, 529 F.3d 1325 (11th Cir. 2008); *Rivard v. Linville*, 133 F.3d 1446, 1449 (Fed. Cir. 1998) (“A registrant’s proclamations of his intent to resume or commence use in United States commerce during the period of nonuse are awarded little, if any, weight”); *Imperial Tobacco Ltd., Assignee of Imperial Group PLC v. Philip Morris, Inc.*, 899 F.2d 1575, 1581 (Fed. Cir. 1990) (“In every contested abandonment case, the respondent denies an intention to abandon its mark; otherwise there would be no contest.”); 3 J. Thomas McCarthy, *McCarthy on Trademark and Unfair Competition*, § 17:13 (4th ed. 2014).

Respondent's contention that its prior MAGO CAFÉ restaurant closed due to the departure of the chef and that it never intended to abandon use of the mark is disingenuous in light of the facts and documents that have been produced by Respondent in this case. In particular, the type of establishment Respondent alleges to have opened through a licensee on August 1, 2015 is a far cry from the restaurant that had been in operation and closed approximately three years earlier. Why could Respondent not have opened such a small tea house much earlier, but rather waited until after FWHG's filing of the current proceeding to trigger this process? The simple answer is

that there was no intent until Respondent realized that it was in jeopardy of losing its trademark registration, at which time it hurried to take whatever action it could in an effort to claim that there had always been an intent to resume use (albeit apparently use in a different format – a small tea house). Respondent made no continuing efforts to resume sales after the earlier restaurant closed in 2012, allegedly due to the departure of a chef, and no evidence has been presented indicating that any goodwill remained in connection with the mark MAGO CAFÉ as previously used.

Furthermore, as part of its document production, Respondent produced a General Journal Transaction for “STI Network, Inc. dba Mago Cafe” with a purported date of August 31, 2015 reflecting a total amount of \$157.20 during the month of August 2015.¹⁴ “Invoices” dated August 1, 2015, August 15, 2015, and August 25, 2015 in the total amount of \$185.03, inclusive of sales tax were all addressed to “Body and Brain Foundation Sedona Meditation Center.”¹⁵ Respondent also produced a document entitled “STI Network, Inc. dba Mago Cafe Profit & Loss” for the month of August 2015 indicating Gross Profit in the amount of \$311.39.¹⁶ Aside from some similar types of documents produced for September, also showing relatively miniscule dollar figures, no further documents have been produced by Respondent reflecting sales and other financial figures for subsequent periods, nor any other evidence asserting continued use of MAGO CAFÉ as a mark in commerce in connection with the services identified in the registration at issue in this proceeding.¹⁷

¹⁴ Exhibit F to the accompanying Umansky, Decl., ¶ 8 (Respondent’s production, BRC003706).

¹⁵ Exhibit G to the accompanying Umansky, Decl., ¶ 9 (Respondent’s production BRC003707-09).

¹⁶ Exhibit H to the accompanying Umansky, Decl., ¶ 10 (Respondent’s production BRC000437). This P&L statement does not appear to account for any deductions for operating costs or business expenses and indicates that the Total Income, Gross Profit, and Net Income were all the same. Further, aside from the three invoices to “Body and Brain Foundation Sedona Meditation Center” referenced above, no supporting documentation as to the types of goods/services sold, the dates, and the customers has been provided by Respondent.

¹⁷ Respondent is reminded of its continuing obligation under Fed. R. Civ. P. 26(e) to supplement discovery responses and production of requested documents during the course of this proceeding.

Most courts are not willing to allow a low level of sales to save a party from a finding of abandonment, holding that merely sporadic or contrived low level sales do not prevent abandonment. *See Block Drug Co. v. Morton-Norwich Products, Inc.*, 202 USPQ 157 (TTAB 1979) (miniscule sales; abandonment found – “To prove bona fide usage, respondent must demonstrate that its use of the mark has been deliberate and continuous with an intention to create a commercial impact on the mark, and not sporadic, casual or transitory.”); *Continental Grain Co. v. Strongheart Prods., Inc.*, 9 USPQ2d 1238 (TTAB 1988) (14 years of annual token shipments of product for purpose of maintaining trademark rights was not sufficient to rebut prima facie case of abandonment); *Exxon Corp. v. Humble Exploration Co.*, 695 F.2d 96 (5th Cir. 1983) (“arranged sales” held insufficient use). Although abandonment generally does not result from a temporary forced withdrawal from the market due to causes such as war, bankruptcy, a labor strike or other involuntary actions, Respondent has simply alleged closure of the prior MAGO CAFÉ location due to the chef’s departure, hardly a sufficient reason to explain the significant delay in any further alleged activities that could have been taken in an effort to reopen the business. Standing alone, this creates a genuine issue of material fact as to Respondent’s true intent and motives. Moreover, at a minimum, genuine issues of material fact remain concerning Respondent’s efforts or sales prior to August 31, 2015 – the date on which the three-year statutory presumption of abandonment under 15 U.S.C. § 1127 commenced – and whether such efforts were adequate to avoid application of the statutory presumption remain to be seen. *See Emergency One, Inc. v. American FireEagle, Ltd.*, 228 F.3d 531, 536 (4th Cir. 2000) (“Thus, neither promotional use of the mark on goods in a different course of trade nor mere token use constitute ‘use’ under the Lanham Act.”). Simply put, whether any such actions gave rise to an unequivocal finding of use and/or intent to resume use of the mark MAGO CAFÉ “in the reasonably foreseeable future” in connection with the services covered by the subject registration cannot be determined at the

summary judgment stage. *Id.*

Respondent has also failed to meet its burden on summary judgment of showing that no genuine issues of fact exist concerning whether its alleged current use of MAGO CAFÉ and any use during the three-year period ending on August 31, 2015 is a *bona fide* use in commerce under 15 U.S.C § 1127. In order to meet the threshold, there needs to be true use rather than token use made in an attempt to reserve rights to the mark and preserve its registration.¹⁸ The only document submitted by Respondent in support of its Motion that shows alleged current use of MAGO CAFÉ as a mark is an undated photograph of a sign above a door. Additionally, MAGO CAFÉ, as alleged by Respondent, “operates at a single retail location at 340 Jordan Road, Sedona, Arizona” and its “customers are the general public and other businesses in the Sedona area for catering.”¹⁹ Further, as indicated above, Respondent’s produced financial documents show virtually no revenue in August 2015, the only month that could have preceded the onset of the three-year statutory presumption period. A rush to obtain a business license and to create signage months after FWHG’s filing of the Petition for Cancellation is questionable at best. Registrant’s efforts before August 31, 2015, if anything, were contrived and forced by virtue of FWHG’s filing, and, based on the relevant record, cannot support Respondent’s claim that no genuine issues of material fact exist and that the Board should find for Respondent as a matter of law.

¹⁸ “Use in commerce” as defined in 15 U.S.C. § 1127 requires “the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark.” Further, “a mark shall be deemed to be in use in commerce— . . . (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.” *Id.*

¹⁹ See Motion, Exhibit E, Response Nos. 1 and 2, and Respondent’s consistent references throughout its Motion and written discovery responses to “the MAGO CAFÉ” and “the previous MAGO CAFÉ,” further signifying any use as being limited to a single location. Additionally, Respondent has produced no documents supporting its allegation that the services being rendered are in the nature of catering. On the contrary, the purported 2015 menu, BRC000379, and the apparent press release or article attached as Exhibit D to the Umansky Decl., BRC000410, indicate that the location serves as a tea house. However, if indeed catering is the sole service being provided, this could not support maintenance of Respondent’s subject trademark registration (Reg. No. 3,810,357), which covers “Restaurant and cafe services; catering services”.

The referenced activities, their timing, and Respondent's given reasons therefor, as well as the type of establishment allegedly opened in August 2015 vis-à-vis the restaurant in operation until August 2012, all raise doubt as to whether Respondent can in good-faith claim that the three-year statutory presumption does not apply in this case. If the presumption does apply, then Respondent must put forth sufficient rebuttal evidence of its activities from which an intent to resume use during the non-use period may be inferred. *Imperial Tobacco Ltd., Assignee of Imperial Group PLC*, 899 F.2d at 1581 (To rebut the presumption there must be evidence of actions from which an intent to resume use during the non-use period can be inferred.); *ITC Ltd.*, 482 F.3d at 149 (Triggering the presumption shifts the burden on the trademark claimant to prove that during the period of non-use it "maintained an intent to resume use of its registered mark in the reasonably foreseeable future."). Proof of intent not to abandon is not enough. Instead, Respondent must show an intent to resume commercial use within a reasonable time. See *Silverman v. CBS, Inc.*, 870 F.2d 40 (2d Cir. 1989). Additionally, subsequent use does not necessarily prove intent to resume use. *AmBrit, Inc. v. Kraft, Inc.*, 812 F.2d 1531, 1550 (11th Cir. 1986) (Although the defendant's mark was being used "extensively" at the time the cancellation action was filed, such use "does not retroactively cure its past abandonment").

F. Even Without the Statutory Presumption, Genuine Issues of Material Fact Exist

Granted, FWHG would have the burden of production should the Board ultimately decide that Respondent's actions or inactions do not trigger the three-year statutory presumption of abandonment. However, there can be no doubt that FWHG's Petition for Cancellation prompted and hastened Respondent to take certain questionable actions to try to avoid the statutory presumption in an effort to maintain its trademark registration. As discussed above, at the very least genuine issues of material fact exist at this stage of the proceeding as to the underlying intent and actions of Respondent and their timing, making summary judgment improper. Among other

things, questions remain as to (1) the circumstances and timing surrounding the preparation and signing of the Lease Agreement dated April 1, 2015; (2) the circumstances surrounding the preparation, use, and timing of the single-page, undated document allegedly serving as the current menu for the MAGO CAFÉ location; (3) the circumstances surrounding the creation and timing of the claimed signage, and its material composition, shown in the undated photograph for the alleged current MAGO CAFÉ location; (4) whether Respondent's alleged current offerings cover "Restaurant and cafe services; catering services" (the services identified in subject Reg. No. 3,810,357); (5) whether very minimal alleged sales activity in August 2015 would serve as *bona fide* use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark; and (6) whether such alleged use by Respondent at a very small, single-site location in Arizona claiming to service "the general public and other businesses in the Sedona area" is of a sufficient nature as to affect commerce which may lawfully be regulated by Congress.²⁰ Moreover, the courts routinely hold that the factual question of intent is rarely amenable to summary judgment. *ITC Ltd.*, 482 F.3d at 150; *see also, Copelands' Enterprises, Inc.*, 945 F.2d 1563; *KanguROOS U.S.A., Inc.*, 778 F.2d at 1575; *Albert*, 729 F.2d at 763.

²⁰ These and other remaining questions are precisely the reason why on December 17, 2015 FWHG filed a Motion to Extend discovery, pre-trial and trial dates by ninety (90) days.

III. CONCLUSION

Respondent's Motion for Summary Judgment leaves genuine issues of material fact that can only be resolved at trial and after additional discovery. For all the foregoing reasons, the Motion should be denied.

Respectfully submitted,

By:



One of Petitioner's attorneys

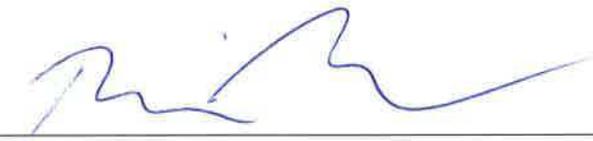
Boris Umansky
Ladas & Parry LLP
224 S. Michigan Avenue
Suite 1600
Chicago, IL 60604
(312) 427-1300

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of **PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT** has been served via First Class Mail, postage pre-paid, to:

Ray K. Harris, Esq.
FENNEMORE CRAIG
2394 East Camelback Road
Suite 600
Phoenix, AZ 85012

On this 16th day of February, 2016.

By 
Boris Umansky

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

FWHG IP HOLDINGS LLC,)	
	)	Cancellation No. 92061236
Petitioner,)	
	)	Mark: MAGO CAFÉ
v.)	
	)	Registration No. 3,810,357
BR CONSULTING, INC.)	
	)	Date of Issue: June 29, 2010
Registrant-Respondent.)	

DECLARATION OF BORIS UMANSKY

I, Boris Umansky, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am over the age of 18 and am employed as an attorney with the law firm of Ladas & Parry LLP in Chicago, Illinois, counsel for Petitioner, FWHG IP Holdings LLC. Except as otherwise stated, the facts set forth in this Declaration are based upon my personal knowledge and/or upon information and documents obtained during this proceeding.

2. I am familiar with the facts and claims in the present action, including certain written communications between the parties, the pleadings, initial disclosures and information and documents obtained by the parties through the discovery process.

3. Attached hereto as Exhibit A is a true and correct copy of e-mail correspondence between counsel for both parties relating to issues concerning the service and filing of certain papers in this proceeding.

4. Attached hereto as Exhibit B is a true and correct copy of Respondent's Answers to Petitioner's First Set of Interrogatories.

5. Attached hereto as Exhibit C is a true and correct copy of a document produced by Respondent in this proceeding, which appears to be a 2015 Annual Report for Respondent issued by the State of Arizona (BRC000404-409).

6. Attached hereto as Exhibit D is a true and correct copy of a document produced by Respondent in this proceeding, which appears to be a press release or article of some kind from an unnamed (BRC000410).

7. Attached hereto as combined Exhibit E are true and correct copies of the Petition for Cancellation and Response to Petition for Cancellation in this proceeding, as well as copies of USPTO Office Actions (minus exhibits) dated October 8, 2014 in connection with Petitioner's pending Federal trademark applications for MAGO GRILL & CANTINA (Serial No. 86/155,443) and MAGO GRILL & CANTINA and Design (Serial No. 86/155,419).

8. Attached hereto as Exhibit F is a true and correct copy of a document produced by Respondent in this proceeding titled "STI Network, Inc. dba Mago Café General Journal Transaction August 31, 2015" (BRC003706).

9. Attached hereto as Exhibit G are true and correct copies of documents produced by Respondent in this proceeding titled "Invoice" and dated August 1, 2015, August 15, 2015, and August 25, 2015 (BRC003707-09).

10. Attached hereto as Exhibit H is a true and correct copy of a document produced by Respondent in this proceeding titled "STI Network, Inc. dba Mago Café Profit & Loss August 2015" (BRC000437).

Date: 2/16/16

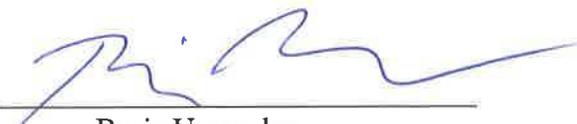

Boris Umansky

EXHIBIT A

Umansky, Boris

From: Umansky, Boris
Sent: Thursday, January 21, 2016 4:15 PM
To: 'RHARRIS@FCLAW.com'
Cc: BATKINSO@FCLAW.com; Robbins, Carolyn
Subject: RE: FWHG IP Holdings LLC v. BR Consulting, Inc. [FC-Email.FID1970246]

Follow Up Flag: Follow up
Flag Status: Flagged

Ray,

We have searched our office and have no record of ever receiving your Response to our Motion to Extend. You acknowledged it was never e-mailed (which is the type of service indicated on your Certificate of Service). If you mailed it in the same fashion as your MSJ (i.e. via trackable Priority Mail), perhaps someone in your office could track that mailing to determine if perhaps it was lost or delivered to the wrong address. It is possible that it was misplaced by our mailroom staff. However, in my experience that is a rarity. Moreover, I have received all of your previous letters and documents in the mail as well as the subsequent MSJ you filed, but not your Response to the Motion to Extend. That was the reason I was surprised yesterday when I saw on the TTABVUE website that you had filed that Response on December 31st.

Boris



Boris Umansky

Ladas & Parry LLP | T 312.408.2541 | F 312.427.6663 | bumansky@ladas.net | www.ladas.com
224 S. Michigan Avenue, Chicago, IL 60604 USA

This e-mail message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee. If you have received this message in error, please notify the sender immediately by telephone at 312.408.2541 or by electronic mail to bumansky@ladas.net, and delete this message and all copies and backups thereof. Thank you.

From: RHARRIS@FCLAW.com [mailto:RHARRIS@FCLAW.com]
Sent: Thursday, January 21, 2016 10:37 AM
To: Umansky, Boris <BUmansky@ladas.net>
Cc: BATKINSO@FCLAW.com
Subject: FW: FWHG IP Holdings LLC v. BR Consulting, Inc. [FC-Email.FID1970246]
Importance: High

Boris,

My intent and understanding was that we served both the MSJ and the Response to Motion to Extend by regular mail and provided them by email as well. I have now been told the Response did not go out by email, but only regular mail. The MSJ was sent both ways.

In any event, I have no objection to allowing you additional time to file a reply regarding the Motion to Extend.

Ray K. Harris | Director | **Fennemore Craig, P.C.**
2394 East Camelback Road, Suite 600 | Phoenix, AZ 85016-3429
Tel: 602.916.5414 | Fax: 602.916.5614
[View Bio](#) | [Download V-Card](#)
Admitted in Arizona

From: Umansky, Boris [<mailto:BUmansky@ladas.net>]
Sent: Wednesday, January 20, 2016 4:40 PM
To: WALKER, KIM
Cc: HARRIS, RAY; ATKINSON, BLAKE; Robbins, Carolyn
Subject: RE: FWHG IP Holdings LLC v. BR Consulting, Inc. [FC-Email.FID1970246]
Importance: High

Ray,

While I confirm that I have received a mailed copy of your client's Motion for Summary Judgment, I would like to bring a few matters to your attention.

1. While the Certificate of Service for that filing indicates that the MSJ was "served via email," I do not recall ever agreeing to e-mail service in this proceeding. Of course either party could, in its discretion, serve courtesy copies by e-mail. However, without the express agreement of all parties to the proceeding, service of any papers by electronic transmission will be treated as courtesy copies. As such, we will consider the mailed copy of your client's MSJ as the official service copy.
2. More disturbing is the fact that I just found out for the first time today after reviewing the Board's online TTABVUE system that on December 31, 2015 you filed a response in opposition to our Motion to Extend Discovery Period. While the Certificate of Service for that filing indicates that it was served via e-mail on December 31, 2015 and lists my e-mail address, we have no record of receiving such an electronic service copy, nor any paper copy served via mail. If you have confirmation that you indeed served this paper on December 31, 2015, please send that along immediately. Had we received proper service of your response filing, our client might have decided to file a reply brief, which, as you know, must be filed within 15 days of a response.

I look forward to your prompt response regarding these matters.

Regards,

Boris



Boris Umansky

Ladas & Parry LLP | T 312.408.2541 | F 312.427.6663 | bumansky@ladas.net | www.ladas.com
224 S. Michigan Avenue, Chicago, IL 60604 USA

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From: KWALKER@FCLAW.com [<mailto:KWALKER@FCLAW.com>]
Sent: Monday, January 11, 2016 5:43 PM
To: Umansky, Boris <BUmansky@ladas.net>
Cc: RHARRIS@FCLAW.com; BATKINSO@FCLAW.com
Subject: FWHG IP Holdings LLC v. BR Consulting, Inc. [FC-Email.FID1970246]

Mr. Umansky,

Attached is a copy of the Motion for Summary Judgment which was filed today. The original will be sent to you via regular mail.

Thank you.

Kim Walker | Temp. Legal Secretary | Fennemore Craig, P.C.
2394 East Camelback Road, Suite 600 | Phoenix, AZ 85016

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EXHIBIT B

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

FWHG IP HOLDINGS LLC,

Petitioner,

v.

BR CONSULTING, INC.

Registrant-Respondent

Cancellation No. 92061236

Mark: MAGO CAFÉ

Registration No. 3,810,357

Date of Issue: June 29, 2010

ANSWERS TO PETITIONER'S

FIRST SET OF INTERROGATORIES TO RESPONDENT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120(a), Petitioner, FWHG IP Holdings LLC ("Petitioner" or "FWHG"), by its attorneys, requests that Respondent, BR Consulting, Inc. ("Respondent" or "BR"), answer the following interrogatories under oath within thirty (30) days hereof, subject to the following instructions and definitions.

INSTRUCTIONS AND DEFINITIONS

A. Pursuant to Fed. R. Civ. P. 26(e), these interrogatories shall be deemed to be continuing so that any additional information relating in any way to these interrogatories which Respondent acquires or which becomes known to Respondent, up to and including the time of trial, shall be furnished to Petitioner promptly after such information is acquired or becomes known.

B. Reference to the term "Petitioner" refers to FWHG IP Holdings LLC, its employees and agents, and all other persons acting on its behalf or under its direction or control, including its representatives or any person acting on their behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor, and the requested interrogatories shall be answered in conformance with such construction.

C. Reference to the term "Respondent," "You" or "Your" shall be construed as referring to the Respondent BR Consulting, Inc. in the manner which will provide a full response by Respondent, its employees and agents, and any and all other persons acting on their behalf or under their direction or control, including their representatives or any person acting on their behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor, and the requested interrogatories shall be answered in conformance with such construction.

D. In all interrogatories requesting identification of documents and things, Respondent should state whether it will make such document or thing available to Petitioner for inspection and copying by stating "available"; if Respondent is unwilling or unable to produce such document or thing for inspection and copying, Respondent should so indicate by stating "not available" and giving all reasons therefor.

E. The term "document" as used herein utilizes the full meaning of that term as defined in the Federal Rules of Civil Procedure Rule 34 and includes all original writings and all non-identical copies and, without limitations, minutes of meetings, correspondence, memoranda, agreements, licenses, sketches, diagrams, schematics, handwritten or stenographic notes, periodicals or other publications, purchase orders, sales invoices, bills of sales, advertising or sales literature, pamphlets, reports, records, studies, service manuals, operator manuals, instruction sheets, log sheets, data sheets, diaries, drawings, blueprints, photographs, charts, papers, graphs, indexes, labels, tapes, computer printouts, documents stored in a computer or on a computer disk, electronic mail ("e-mail") and other materials which are written, printed, typewritten, reproduced or recorded, and from which information can be obtained. Where originals or non-identical copies are not available, "document" also means copies of such originals or non-identical copies.

F. The term "Communication(s)" includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.

G. The terms "specify," "identify" or "give the identification of with respect to a document or thing is defined to mean a demand for a detailed description of each specific item identification of which is requested, whether or not it may be privileged or subject to an immunity and whether or not it is in Respondent's possession, custody or control, by setting forth:

- (a) a description of its type and nature,
- (b) its date,
- (c) the present location and custodian for the original and all copies,
- (d) the names of the writer and recipients of the original and all copies and
- (e) the title or subject matter.

For any individual named as a writer or a recipient of such an item, the individual's full name and address should be stated, together with his present or last position and business affiliation; for any firm or corporation named, its full address should be stated, together with the name, address, and title of the official responsible for preparing or having custody of any such item. A copy of a document may be provided in lieu of identification to the extent the information called for is clearly available from the face of the copy.

H. The term "identify" or "give the identification of" with respect to a person requires Respondent to state:

(a) in the case of a natural person, that person's (i) full name; (ii) last known home and business address; (iii) responsibilities with respect to the subject matter of the interrogatory and the periods of time that person had such responsibilities; and (iv) relevant knowledge or participation; or

(h) in the case of corporations, partnerships, proprietorships, unincorporated associations and the like, the (i) full name, including any additional name it does business under; (ii) form and place of organization or incorporation; and (iii) principal place of business.

I. In the event Respondent asserts that any document or thing the identity of which is requested is privileged or subject to immunity, Respondent is requested to so state when identifying the document or thing, and to state with respect to the asserted claim the following information:

(a) The date, identity, and general subject matter of each document in detail sufficient to understand the nature of the document;

(b) The grounds asserted in support of the failure to produce the document;

(d) The identity of each person (other than stenographic or clerical assistants) participating in the preparation of the document;

(e) The identity of each person to whom the contents of the document were communicated by copy, distribution, reading, or substantial summarization;

(f) A description of any document or other material transmitted with or attached to the document;

(g) The number of pages in the document;

(h) The particular interrogatory or request to produce to which the document is responsive; and

(i) Whether any business or non-legal matter is contained or discussed in the document.

J. "Date" means the exact day, month and year, if ascertainable and, if not, Respondent's best approximation thereof.

K. The terms "trademark" or "mark" as used in these interrogatories shall include trademarks, service marks, trade names, or any word or symbol utilized in connection with business activities.

L. Any reference to MAGO CAFÉ will include the mark, term or designation used by the Respondent, and will also include any other marks, terms or designations used by the Respondent that include as part of the mark, term or designation the wording MAGO CAFÉ.

M. The use of male, female or neutral gender in these interrogatories incorporates all genders and should not be construed to limit the information requested in any way. The use of the singular form of any word includes the plural and vice-versa.

INTERROGATORIES

INTERROGATORY NO. 1

For all goods and services sold or distributed under the mark MAGO CAFÉ during the preceding five (5) years, identify: a) The type of product or service; b) The consumers thereof, including the nature or extent of any relationship that may exist with Respondent; c) The volume of sales in dollars; d) The number of units sold or distributed; e) The date of the sale or distribution; and f) All documents which refer or relate to this interrogatory answer.

Answer: See 2012 Menu (Bates BRC000011-31). The Mago Café closed on August 31, 2012 when the chef returned to Korea. The Mago Café reopened on August 1, 2015. The customers are the general public and other businesses in the Sedona area for catering. Respondent is not a customer.

Respondent is attempting to obtain any additional documents in the possession of the operator STI Network Inc related to monthly sales reports and other metrics. These documents will be produced subsequently as soon as they are available.

INTERROGATORY NO. 2

Describe the channels of trade by which Respondent's goods or services were sold or intended for sale under the mark MAGO CAFÉ, and identify all documents which refer or relate to this interrogatory answer.

Answer: The Mago Café operates at a single retail location at 340 Jordan Road, Sedona, Arizona. Respondent has previously produced the lease related to this location.

INTERROGATORY NO. 3

Identify any other business entity(ies) which fully or partly owns or controls Respondent's business and identify any other business entity(ies) which is fully or partly owned by Respondent.

Answer: BR Consulting owns intellectual property in addition to the MAGO CAFÉ trademark. A schedule is attached as Bates BRC000395-401. No business entity fully or partly owns or controls Respondent's business. Respondent respectfully objects to the interrogatory component requesting the identification of other business entities fully or partly owned by Respondent, as this line of questioning is not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 4

Identify each person who had any responsibility for marketing, promotion, advertising or sale of products or services bearing the mark MAGO CAFÉ within the past five (5) years.

Answer: The café was operated by the Licensee.

INTERROGATORY NO. 5

Identify any period of discontinuance of use of the Respondent's mark MAGO CAFÉ on or in connection with any goods or services, since the date of first use of the mark, and identify all documents which refer or relate thereto.

Answer: See answer to Interrogatory No. 1.

INTERROGATORY NO. 6

Identify any and all plans for future use of the mark MAGO CAFÉ at any point in time, and identify all documents which refer or relate thereto.

Answer: See answer to Interrogatory No. 1. See Mago Café Business Plan (Bates BRC000365-375).

INTERROGATORY NO. 7

Identify all documents and facts which refer or relate to Respondent's basis for its factual and legal contentions as set forth in its Response to Petition for Cancellation for the Respondent's denial of abandonment of the mark MAGO CAFÉ.

Answer: See Respondent's Initial Disclosures.

INTERROGATORY NO. 8

Identify all agreements entered into with respect to the mark MAGO CAFÉ, including but not limited to any license agreements and lease agreements.

Answer: See Respondent's Initial Disclosures.

INTERROGATORY NO. 9

Identify all of your licensees, if any, with respect to the mark MAGO CAFÉ.

Answer: See answer to Interrogatory No. 1.

Dated this 9th day of September 2015.

By:



Ray K. Harris, Esq.
Stacie K. Smith, Esq.
Blake W. Atkinson, Esq.
FENNEMORE CRAIG
2394 East Camelback Road
Suite 600
Phoenix, AZ 85012
Tel: (602) 916-5000
Fax: (602) 619-5999
email: ip@fclaw.com

Attorneys for Respondent

Certificate of Service

The undersigned hereby certifies that the original this paper has been mailed, via First

Class Mail, to:

Boris Umansky
Ladas & Parry LLP
224 S. Michigan Avenue, Suite 1600
Chicago, IL 60604

Respectfully submitted this 9th day of September, 2015.


Melody Tolliver.

VERIFICATION

I, Joy J. Kim, on behalf of BR Consulting, Inc., hereby make the following declaration:

1. I am a duly appointed representative of BR Consulting, Inc., which is Defendant in Cancellation No. 92061236 before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office; and

2. I have read the Answers to Petitioner's First Set of Interrogatories and the matters contained therein are true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 4th day of September, 2015.



Joy J. Kim
BR Consulting, Inc. Representative

EXHIBIT C



E-FILED

STATE OF ARIZONA CORPORATION COMMISSION CORPORATION ANNUAL REPORT & CERTIFICATE OF DISCLOSURE

05079796



DUE ON OR BEFORE 06/10/2015

FILING FEE \$45

PLEASE READ ALL INSTRUCTIONS. The following information is required by A.R.S. §§10-1622 & 10-11622 for all corporations organized pursuant to Arizona Revised Statutes, Title 10. The Commission's authority to prescribe this form is A.R.S. §§10-121(A) & 10-3121(A). YOUR REPORT MUST BE SUBMITTED ON THIS ORIGINAL FORM. Make changes or corrections where necessary. Information for the report should reflect the current status of the corporation.

F08736580
1. BR CONSULTING, INC.
340 JORDAN RD
SEDONA, AZ 86336

Business Phone: 480-756-5705
State of Domicile: NJ

(Business phone is optional.)

Type of Corporation: BUSINESS

2. Statutory Agent: MICHAEL MCCANN
Mailing Address: 2500 S. FOWER ROAD
SUITE 126-3
City, State, Zip: MESA, AZ 85209

Statutory Agent's Street or Physical Address:
Physical Address:
City, State, Zip:

ACC USE ONLY
Fee \$ 45
Penalty \$ 0
Retrate \$ 0
Expedite \$ 0
Resubmit \$

If appointing a new statutory agent, the new agent MUST consent to that appointment by signing below. Note that the agent address must be in Arizona.
I, (Individual) or We, (corporation or limited liability company) having been designated the new Statutory Agent, do hereby consent to this appointment until my removal or resignation pursuant to law.
Signature of new Statutory Agent
Printed Name of new Statutory Agent

3. Secondary Address:
(Foreign Corporations are REQUIRED to complete this section).
111 ROMANS AVE
CLOSTER, NJ 07624

4. CHARACTER OF BUSINESS
GENERAL CONSULTING

Received: 05/28/2015 08:27

FO8736580 BR CONSULTING, INC.

Page 2

5. CAPITALIZATION: (For-profit Corporations and Business Trusts are **REQUIRED** to complete this section.)

Business trusts must indicate the number of transferable certificates held by trustees evidencing their beneficial interest in the trust estate.

5a. Please examine the corporation's original Articles of Incorporation for the amount of shares authorized.

Number of Shares/Certificates Authorized	Class	Series Within Class (if any)
2500	COMMON	

5b. Review all corporation amendments to determine if the original number of shares has changed. Examine the corporation's minutes for the number of shares issued.

Number of Shares/Certificates Issued	Class	Series Within Class (if any)
1676	COMMON	

6. SHAREHOLDERS: (For-profit Corporations and Business Trusts are **REQUIRED** to complete this section.)

List shareholders holding more than 20% of any class of shares issued by the corporation, or having more than a 20% beneficial interest in the corporation.

NONE

7. OFFICERS

Name: MICHAEL P MCCANN
 Title: PRESIDENT
 Address: 2500 S POWER RD STE 126-3
 MESA, AZ 85209
 Date Taking Office: 04/01/2010

Name: JI YOUNG KONG
 Title: SECRETARY
 Address: 340 JORDAN RD.
 C/O BR CONSULTING, INC.
 PO BOX 2155
 SEDONA, AZ 863392155
 Date Taking Office: 01/04/2010

Name: JI YOUNG KONG
 Title: TREASURER
 Address: 340 JORDAN RD.
 C/O BR CONSULTING, INC.
 P.O. BOX 2155
 SEDONA, AZ 863392155
 Date Taking Office: 01/04/2010

Name:
 Title:
 Address:
 Date Taking Office:

8. DIRECTORS

Name: JOUNG WON LEE
 Address: 340 JORDAN RD.
 C/O BR CONSULTING, INC.
 PO BOX 2155
 SEDONA, AZ 863392155
 Date Taking Office: 08/03/2004

Name: JOUNG HAN LEE
 Address: 340 JORDAN RD.
 C/O BR CONSULTING, INC.
 PO BOX 2155
 SEDONA, AZ 863392155
 Date Taking Office: 08/03/2004

Name: JI YOUNG KONG
 Address: 340 JORDAN RD.
 C/O BR CONSULTING, INC.
 PO BOX 2155
 SEDONA, AZ 863392155
 Date Taking Office: 11/04/1998

Name:
 Address:
 Date Taking Office:

F08736580 BR CONSULTING, INC.

Page 3

9. FINANCIAL DISCLOSURE (A.R.S. §10-11622(A)(9))

Nonprofits – if your annual report is due on or before September 25, 2008, you must attach a financial statement (e.g. income/expense statement, balance sheet including assets, liabilities). If your nonprofit annual report is due after September 25, 2008, a financial statement is not required. Cooperative marketing associations must in all cases submit a financial statement. All other forms of corporations are exempt from filing a financial statement no matter what date the annual report was due.

ONLY NONPROFIT CORPORATIONS MUST ANSWER THIS QUESTION:**9A. MEMBERS (A.R.S. §10-11622(A)(6))**This corporation **DOES** **DOES NOT** have members.**10. CERTIFICATE OF DISCLOSURE (A.R.S. §§ 10-202(D), 10-3202(D), 10-1622(A)(B) & 10-11622(A)(7))**

A. Has any person who is currently an officer, director, trustee, incorporator, or who, in a For-profit corporation, controls or holds more than 10% of the issued and outstanding common shares or 10% of any other proprietary, beneficial or membership interest in the corporation been:

1. Convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven year period immediately preceding the execution of this certificate?
2. Convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the seven year period immediately preceding execution of this certificate?
3. Subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven year period immediately preceding execution of this certificate where such injunction, judgment, decree or permanent order involved the violation of:
 - (a) fraud or registration provisions of the securities laws of that jurisdiction, or
 - (b) the consumer fraud laws of that jurisdiction, or
 - (c) the antitrust or restraint of trade laws of that jurisdiction?

One box must be marked: YES NO

If "YES" to A, the following information must be submitted as an attachment to this report for each person subject to one or more of the actions stated in Items 1 through 3 above.

- | | |
|---|---|
| 1. Full birth name. | 5. Date and location of birth. |
| 2. Full present name and prior names used. | 6. The nature and description of each conviction or judicial action; the date and location; the court and public agency involved; and the file or cause number of the case. |
| 3. Present home address. | |
| 4. All prior addresses for immediately preceding 7 year period. | |

B. Has any person who is currently an officer, director, trustee, incorporator, or who, in a For-profit corporation, controls or holds over 20% of the issued and outstanding common shares, or 20% of any other proprietary, beneficial or membership interest in the corporation, served in any such capacity or held a 20% interest in any other corporation on the bankruptcy or receivership of that other corporation?

One box must be marked: YES NO

If "YES" to B, the following information must be submitted as an attachment to this report for each corporation subject to the statement above.

- (a) Name and address of each corporation and the persons involved.
- (b) State(s) in which it (i) was incorporated and (ii) transacted business.
- (c) Dates of corporate operation.

11. STATEMENT OF BANKRUPTCY OR RECEIVERSHIP (A.R.S. §§ 10-1623 & 10-11623)

A. Has the corporation filed a petition for bankruptcy or appointed a receiver? **One box must be marked: YES NO**

If "Yes" to A, the following information must be submitted as an attachment to this report:

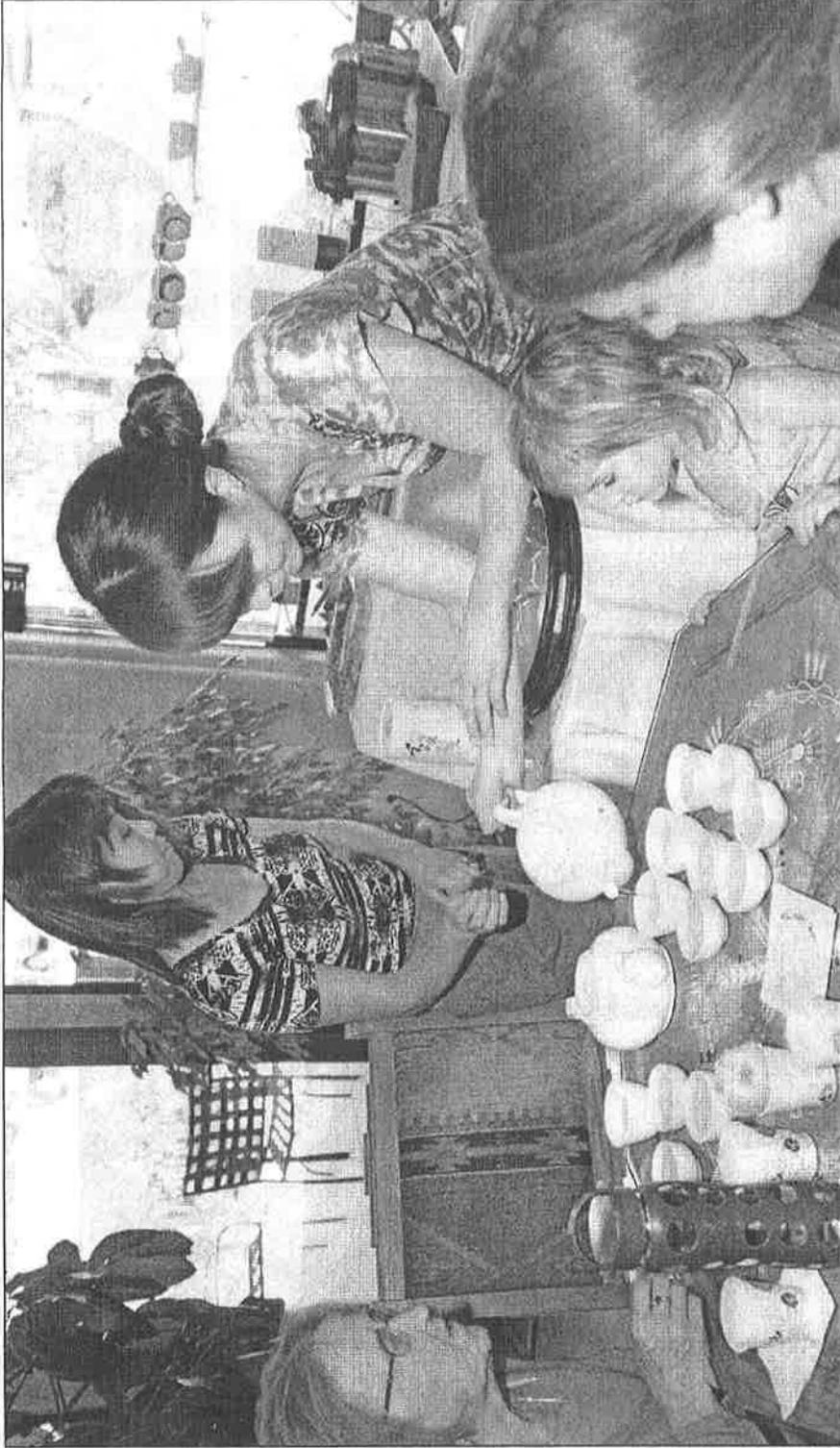
1. All officers, directors, trustees and major stockholders of the corporation within one year of filing the petition for bankruptcy or the appointment of a receiver. If a major stockholder is a corporation, the statement shall list the current president, chairman of the board of directors and major stockholders of such corporate stockholder. "Major stockholder" means a shareholder possessing or controlling twenty per cent of the issued and outstanding shares or twenty per cent of any proprietary, beneficial or membership interest in the corporation.
2. Whether any such person has been an officer, director, trustee or major stockholder of any other corporation within one year of the bankruptcy or receivership of the other corporation. If so, for each such corporation give:
 - (a) Name and address of each corporation;
 - (b) State(s) in which it (i) was incorporated and (ii) transacted business.
 - (c) Dates of operation.

12. SIGNATURES: Annual Reports must be signed and dated by at least one duly authorized officer or they will be rejected.
I declare, under penalty of perjury, that all corporate income tax returns required by Title 43 of the Arizona Revised Statutes have been filed with the Arizona Department of Revenue. I further declare under penalty of perjury that I (we) have examined this report and the certificate, including any attachments, and to the best of my (our) knowledge and belief they are true, correct and complete.

Name MICHAEL P MCCANN Date 05/28/2015Signature MICHAEL P MCCANNTitle PRESIDENT

(Signator(s) must be duly authorized corporate officer(s) listed in section 7 of this report.)

EXHIBIT D



Courtesy photo

MAGO CAFE in Uptown will hold a traditional Korean tea ceremony on Friday, Sept. 18, at 11 a.m. to introduce a tea made from hwangchil leaves, which were prized by royal households in ancient times for their medicinal properties.

Hang, chill during a hwangchil tea party at Mago Café

Formerly a Korean restaurant in Uptown, Mago Café is finding new life as a tea house nestled in the SUN Building at 340 Jordan Road, also in Uptown.

Open since Aug. 1, Mago Café specializes in Asian medicinal teas, especially tea made from hwangchil leaves. To introduce this premier tea to Sedona, the café will hold a traditional Korean tea ceremony Friday, Sept. 18, at 11 a.m. The cost is \$5.

Grown primarily in South Korea, but existing in other windy, hot and humid coastal areas such as Japan and Hawaii, the hwangchil tree [*Dendropanax morbifera*] was prized by royal households in ancient times for its medicinal properties and the golden lacquer made from its sap. Hwangchil has been said to detoxify the liver, relieve fatigue, help insomnia, calm the mind, improve circulation, activate metabolism and reduce cholesterol. Its

calming effect aids meditation, which will be a focus of the tea ceremony.

The natural healing effect of hwangchil and the other teas served at the café reflect its name, Mago. "Mago" roughly translates from Korean to "Mother Earth." Bounty of the earth, the teas work to enhance the human body's natural ability to repair, balance, detoxify and strengthen itself.

Call the Mago Café at 282-3600.

BR000410

EXHIBIT E

ESTTA Tracking number: **ESTTA665621**

Filing date: **04/08/2015**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	FWHG IP Holdings LLC		
Entity	limited liability company	Citizenship	Illinois
Address	Suite 203 171 West Wing Street Arlington Heights, IL 60005 UNITED STATES		

Attorney information	Boris Umansky Ladas & Parry LLP 224 S. Michigan Avenue, Suite 1600 Chicago, IL 60604 UNITED STATES CHIUSTM@LADAS.NET Phone:3124271300		
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Registration Subject to Cancellation

Registration No	3810357	Registration date	06/29/2010
Registrant	BR Consulting, Inc. P.O. Box 2155 Sedona, AZ 86339 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 2003/04/15 First Use In Commerce: 2003/04/15 All goods and services in the class are cancelled, namely: Restaurant and cafe services; catering services
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition for Cancellation based on non-use (with Exhibit).pdf(3187528 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Boris Umansky/
Name	Boris Umansky
Date	04/08/2015

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

FWHG IP HOLDINGS LLC,)	
	)	Cancellation No. _____
Petitioner,)	
	)	Mark: MAGO CAFÉ
v.)	
	)	Registration No. 3,810,357
BR CONSULTING, INC.)	
	)	Date of Issue: June 29, 2010
Registrant-Respondent)	

PETITION FOR CANCELLATION

Petitioner, FWHG IP Holdings LLC, a limited liability company organized and existing under the laws of the State of Illinois, with a business address at Suite 203, 171 West Wing Street, Arlington Heights, Illinois 60005, believes it is or will be damaged by the continued registration of the mark shown in Registration No. 3,810,357 for MAGO CAFÉ, and hereby petitions to cancel same.

Respondent BR Consulting Inc. filed the application for MAGO CAFÉ on November 5, 2009. The mark was registered on the Principal Register for “Restaurant and cafe services; catering services” in Class 43 on June 29, 2010, and claims a date of first use of the mark in commerce in connection with the identified services on April 15, 2003. A copy of the registration certificate for Registration No. 3,810,357 is attached hereto as Exhibit A.

As grounds for cancellation, Petitioner alleges as follows:

1. Petitioner is the owner of record of the following pending Federal trademark applications: Serial No. 86/155,443 for the mark MAGO GRILL & CANTINA and Serial No. 86/155,419 for the mark MAGO GRILL & CANTINA and Design, both covering “Restaurant and bar services” (hereinafter “Petitioner’s Marks”).

2. Petitioner's Marks for use in connection with the above-identified services have been refused registration based on an alleged likelihood of confusion with Respondent's Registration No. 3,810,357.

3. Upon information and belief, Petitioner alleges that Respondent is no longer using the mark MAGO CAFÉ in United States commerce in connection with "Restaurant and cafe services; catering services."

4. Upon information and belief, Petitioner alleges that Respondent has abandoned any rights in Registration No. 3,810,357 within the meaning of 15 U.S.C. 1064(3).

5. Petitioner is being and will continue to be damaged by continued registration of Respondent's mark MAGO CAFÉ.

WHEREFORE, Petitioner requests that Registration No. 3,810,357 for the mark MAGO CAFÉ be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,



Date: April 8, 2015

Boris Umansky
LADAS & PARRY, LLP
224 South Michigan Ave.
Suite 1600
Chicago, Illinois 60604
Phone (312) 427-1300
Attorneys for Petitioner

CERTIFICATE OF FILING AND SERVICE

This Petition for Cancellation is being filed electronically through the ESTTA system. The filing fee of \$300.00 required in §2.6(a)(16) is being paid concurrently herewith.

Petitioner's Petition for Cancellation is being served on the date indicated below by USPS First Class Mail on Respondent at the following address of record as shown in the Office's records:

BR Consulting, Inc.
P.O. Box 2155
Sedona, Arizona 86339



Date: April 8, 2015

EXHIBIT A

United States of America

United States Patent and Trademark Office

MAGO CAFÉ

Reg. No. 3,810,357

Registered June 29, 2010

Int. Cl.: 43

SERVICE MARK

PRINCIPAL REGISTER

BR CONSULTING, INC. (NEW JERSEY CORPORATION)
P.O. BOX 2155
SEDONA, AZ 86339

FOR: RESTAURANT AND CAFE SERVICES; CATERING SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 4-15-2003; IN COMMERCE 4-15-2003.

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

OWNER OF U.S. REG. NO. 2,649,311.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CAFÉ", APART FROM THE MARK AS SHOWN.

THE ENGLISH TRANSLATION OF "MAGO" IN THE MARK IS MOTHER EARTH.

SER. NO. 77-866,250, FILED 11-5-2009.

INGRID C. EULIN, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

ESTTA Tracking number: **ESTTA676252**

Filing date: **06/04/2015**

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

Proceeding	92061236
Party	Defendant BR CONSULTING, INC.
Correspondence Address	BR CONSULTING INC PO BOX 2155 SEDONA, AZ 86339 UNITED STATES
Submission	Answer
Filer's Name	Ray K. Harris
Filer's e-mail	rharris@fclaw.com, mtollive@fclaw.com, ip@fclaw.com
Signature	/Ray K. Harris/
Date	06/04/2015
Attachments	Response to Petition for Cancellation.pdf(6109 bytes)

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

FWHG IP HOLDINGS LLC,

Petitioner

v.

BR CONSULTING, INC.

Registrant-Respondent

Cancellation No. 92061236

Mark: MAGO CAFÉ

Registration No. 3,810,357

Date of Issue: June 29, 2010

RESPONSE TO PETITION FOR CANCELLATION

Respondent, BR Consulting, Inc., answers the Petition as follows:

1. Respondent admits Petitioner, FWHG IP Holdings LLC, filed federal trademark applications on December 31, 2013 for MAGO GRILL & CANTINA (Serial No. 86/155,433) and MAGO GRILL & CANTINA & Design (Serial No. 86/155,419) for restaurant and bar services.

2. Respondent admits Petitioner was denied registration and that Respondent has priority of use of the mark MAGO CAFÉ (Registration No. 3,810,357) based on actual and constructive use.

3. Respondent denies the allegations of paragraphs 3, 4 and 5 of the Petition for Cancellation and alleges Respondent has intent to resume use of the mark MAGO CAFÉ, which was last used less than three years ago.

WHEREFORE, Respondent requests that the Petition for Cancellation be denied.

Respectfully submitted this 4th day of June 2015.

By: /Ray K. Harris/
Ray K. Harris, Esq.
Stacie K. Smith, Esq.
FENNEMORE CRAIG
2394 East Camelback Road
Suite 600
Phoenix, AZ 85012
Tel: (602) 916-5000
Fax: (602) 619-5999
email: ip@fclaw.com

Attorneys for Respondent

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served via First Class

Mail, postage pre-paid, to:

Boris Umansky
Ladas & Parry LLP
224 S. Michigan Avenue, Suite 1600
Chicago, IL 60604

Respectfully submitted this 4th day of June, 2015.

By /Ray K. Harris/
Ray K. Harris
Stacie K. Smith
FENNEMORE CRAIG
2394 East Camelback Road
Suite 600
Phoenix, Arizona 85016
(602) 916-5000
Attorneys for Origami Owl, LLC.

To: FWHG IP Holdings LLC (CHIUSTM@LADAS.NET)
Subject: U.S. TRADEMARK APPLICATION NO. 86155443 - MAGO GRILL & CANTINA - mago/bu
Sent: 10/8/2014 7:35:17 PM
Sent As: ECOM108@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 86155443 MARK: MAGO GRILL & CANTINA	*86155443*
CORRESPONDENT ADDRESS: BORIS UMANSKY LADAS & PARRY LLP 224 S MICHIGAN AVE STE 1600 CHICAGO, IL 60604-2508	CLICK HERE TO RESPOND TO THIS I http://www.uspto.gov/trademarks/teas/response VIEW YOUR APPLICATION FILE
APPLICANT: FWHG IP Holdings LLC	
CORRESPONDENT'S REFERENCE/DOCKET NO : mago/bu CORRESPONDENT E-MAIL ADDRESS: CHIUSTM@LADAS.NET	

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 10/8/2014

THIS IS A FINAL ACTION.

This Office action is in response to applicant's communication filed on October 2, 2014. In the response, applicant presented argument in favor of registration, disclaimed the wording GRILL & CANTINA, provided a substitute description of the mark and provided a translation of the term MAGO. The disclaimer, substitute description of the mark and the translation are accepted and made of record.

For the reasons set forth below, the refusal under Trademark Act Section 2(d) is now made FINAL with respect to U.S. Registration No. 3810357. See 15 U.S.C. §1052(d); 37 C.F.R. §2.64(a). A copy of the registration was enclosed with the initial office action.

SECTION 2(D) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark was refused because of a likelihood of confusion with the mark in U.S. Registration Nos. 3810357. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the services of the applicant and registrant. See 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the services, and similarity of the trade channels of the services. See *In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 et seq.

In the instant matter, applicant's mark is MAGO GRILL & CANTINA for Restaurant and bar services, in Class 43. Registrant's mark is MAGO CAFÉ for Restaurant and cafe services; catering services, in Class 43.

Similarities between the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial

impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

For a visual comparison the marks are set forth below:

MAGO GRILL & CANTINA	-	applicant's mark
MAGO CAFÉ	-	registrant's mark

Marks must be compared in their entireties and should not be dissected; however, a trademark examining attorney may weigh the individual components of a mark to determine its overall commercial impression. *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342, 71 USPQ2d 1944, 1946-47 (Fed. Cir. 2004); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985) (“[I]n articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark”); *In re Kysela Pere et Fils, Ltd.*, 98 USPQ2d 1261, 1267 (TTAB 2011).

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. See *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii). The initial and dominant term in both marks at hand is the term MAGO, which is a foreign term which means magician.

It is noted that consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered” when making purchasing decisions).

Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. See *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter that is descriptive of or generic for an applicant's goods and/or services is typically less significant or less dominant when comparing marks. See *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d at 1060, 224 USPQ at 752; TMEP §1207.01(b)(viii), (c)(ii). Accordingly, the descriptive wording GRILL & CANTINA and CAFÉ is less significant than the term MAGO in making the overall commercial impression of applicant and registrant's marks.

Where the services of an applicant and registrant are “similar in kind and/or closely related,” the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987);

see *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b). In the instant matter, all of the parties offer restaurant services. Accordingly, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse services.

The Trademark Act not only guards against the misimpression that the senior user is the source of the junior user's services, but it also protects against "reverse confusion," that is, the junior user is the source of the senior user's services. In re *Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993); *Fisons Horticulture, Inc. v. Vigoro Indust., Inc.*, 30 F.3d 466, 474-75, 31 USPQ2d 1592, 1597-98 (3d Cir. 1994); *Banff, Ltd. v. Federated Dep't Stores, Inc.*, 841 F.2d 486, 490-91, 6 USPQ2d 1187, 1190-91 (2d Cir. 1988).

Applicant's Argument

In its response, applicant opines that applicant's mark and registrant's mark are unlikely to cause confusion because the marks have different commercial impressions and its consumers are sophisticated. In support of this argument, applicant states "differences exist in the appearance, sound, meaning and overall commercial impression of applicant's mark and the cited registered mark". In further support of this position the presence of the wording GRILL & CANTINA differentiate its mark from MAGO CAFÉ and that the term MAGO has a different meaning in registrant's mark and therefore, a different commercial impression.^[1]

Before addressing the issues raised by applicant, the examining attorney notes that he did not violate the anti-dissection rule because he did not ignore any portions of the marks at hand. The examining attorney merely applied the applicable Trademark Law, namely, the two part analysis of the du Pont factors, in reaching the conclusion that the marks have similar commercial impressions and are likely to cause confusion.

With respect to applicant's argument, the examining attorney notes the following difference with the marks: the descriptive wording associated with each mark. For the reasons set forth below, these differences do not sufficiently distinguish the marks in manner which will avoid confusion.

Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. See *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. See *In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751. In the instant matter, the first term associated with each mark is the dominant term.

In reaching this determination, it is noted that although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. See *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter that is descriptive of or generic for an applicant's goods and/or services is typically less significant or less dominant when comparing marks. See *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d at 1060, 224 USPQ at 752; TMEP §1207.01(b)(viii), (c)(ii). Accordingly, the generic wording GRILL & CANTINA and CAFÉ is

less significant than the term MAGO in creating the commercial impression of applicant and registrant's marks.

With respect to the argument that restaurant consumers are sophisticated, the fact that purchasers may be sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see, e.g., Stone Lion Capital Partners, LP v. Lion Capital LLP*, ___ F.3d. ___, ___, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011).

Finally, where the services of an applicant and registrant are identical or virtually identical, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse services. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (citing *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992)); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); TMEP §1207.01(b). In the instant matter, both parties have identified their services associated with the marks as restaurant services. It is noted that neither party placed any restrictions on these services. E.g. Mexican cuisine.¹²¹ Absent restrictions in an application and/or registration, the identified services are "presumed to travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Therefore, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse services.

Inasmuch as the first and dominant term of both marks is the term MAGO, and the term MAGO has the same commercial impression in each mark, the marks are similar marks which are likely to cause confusion.

Comparison of Services

The services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) ("[E]ven if the services in question are different from, and thus not related to, one another in kind, the same services can be related in the mind of the consuming public as to the origin of the goods."); TMEP §1207.01(a)(i).

The respective services need only be related in some manner or the conditions surrounding their marketing be such that they will be encountered by the same consumers under circumstances that would lead to the mistaken belief that the services originate from the same source. *Gen. Mills Inc. v. Fage Dairy Processing Indus.*, 100 USPQ2d 1584, 1597 (TTAB 2012); TMEP §1207.01(a)(i); *see On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d at 1086, 56 USPQ2d at 1475; *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

In the instant matter, applicant's identified services are Restaurant and bar services, in Class 43. Registrant's identified services are restaurant services, in Class 43. Initially, it is noted that both parties offer restaurant services. Further, it is noted that neither party restricted the type of cuisine offered at their restaurants. Accordingly, these services are identical services which will share the same trade channels. Therefore, the remaining issue to resolve is whether restaurant and bar services are related services which will share the same trade channels.

The trademark examining attorney refers to the excerpted materials from the Google search

engine in which advertisements advertise restaurants which also feature bar services. See attachments. This is evidence that restaurant and bar services are related services which will share the same trade channels.

Material obtained from the Internet is generally accepted as competent evidence. See *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB 2009) (accepting Internet evidence to show relatedness of goods in a likelihood of confusion determination); *In re Rodale Inc.*, 80 USPQ2d 1696, 1700 (TTAB 2006) (accepting Internet evidence to show genericness); *In re White*, 80 USPQ2d 1654, 1662 (TTAB 2006) (accepting Internet evidence to show false suggestion of a connection); *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1308-09 (TTAB 2006) (accepting Internet evidence to show geographic significance); *In re Consol. Specialty Rests. Inc.*, 71 USPQ2d 1921, 1927-29 (TTAB 2004) (accepting Internet evidence to show geographic location is well-known for particular goods); *In re Gregory*, 70 USPQ2d 1792, 1793, 1795 (TTAB 2004) (accepting Internet evidence to show surname significance); *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060-61 (TTAB 2002) (accepting Internet evidence to show descriptiveness); TBMP §1208.03; TMEP §710.01(b).

The trademark examining attorney also has attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar services as those of both applicant and registrant in this case. This evidence shows that the services listed therein, namely restaurant and bar services, are of a kind that may emanate from a single source under a single mark. See *In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Therefore, these services are similar type of services which will share the same trade channels.

Applicant's argument

In its response, applicant advances the argument that the services associated with its application and those that are associated with registrant's registration are different services which do not share the same trade channels.

With respect to applicant's and registrant's services, the question of likelihood of confusion is determined based on the description of the services stated in the application and registration at issue, not on extrinsic evidence of actual use. See, e.g., *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-70, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012); *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

In this case, the identification set forth in the application and registration(s) has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these services "travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)).¹³¹ Therefore, both parties' restaurant services are similar services which will share the same trade channels.

With respect to the relatedness of restaurant and bar services, the examining attorney refers to the evidence attached to the office action herein, namely, articles obtained from the Google search engine and third party registrations which identify both restaurant and bar service offered under the same Service Mark. This is evidence that these services are related services which will share the same trade channels.

The overriding concern is not only to prevent buyer confusion as to the source of the services,

but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

CONCLUSION

Since the marks of the parties create the same overall commercial impression and the services of the parties are very similar services that share the same trade channels, there is a likelihood of confusion and registration must be refused.

OTHER

Applicant must respond within six months of the date of issuance of this final Office action or the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond by providing one or both of the following:

- (1) A response that fully satisfies all outstanding requirements;
- (2) An appeal to the Trademark Trial and Appeal Board, with the appeal fee of \$100 per class.

37 C.F.R. §2.64(a); TMEP §714.04; see 37 C.F.R. §2.6(a)(18); TBMP ch. 1200.

In certain rare circumstances, an applicant may respond by filing a petition to the Director pursuant to 37 C.F.R. §2.63(b)(2) to review procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; see 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

TEAS PLUS APPLICANTS – TO MAINTAIN REDUCED FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE:

Applicants who filed their application online using the lower-fee TEAS Plus application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see TMEP §819.02(b) for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. See 37 C.F.R. §2.23(a)(1), (a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these three requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.

Examining Attorney

Law Office 108

(571) 272-9337 voice

(571) 273-9337 fax

Bill.Dawe@USPTO.GOV (not for formal responses)

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

[1] It is noted that the record is devoid of any evidence which indicates that the term in MAGO applicant's mark has a different meaning than the term MAGO in registrant's mark. As such, the term MAGO with either the English generic wording GRILL & CANTINA or the generic wording CAFÉ has precisely the same appearance, sound,

connotation, and overall commercial impression.

[2] It is noted that even if one party put a restriction on the type of food featured at the restaurant, broad wording restaurant would encompass all services of the type described, including those in the more narrow identification.

[3] It is noted that since restrictions were not placed on either parties' restaurant services, registrant would be free to open a restaurant featuring the same type of food offered by applicant.

To: FWHG IP Holdings LLC (CHIUSTM@LADAS.NET)
Subject: U.S. TRADEMARK APPLICATION NO. 86155419 - MAGO GRILL & CANTINA - magoLogo/bu
Sent: 10/8/2014 7:32:53 PM
Sent As: ECOM108@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 86155419 MARK: MAGO GRILL & CANTINA	*86155419*
CORRESPONDENT ADDRESS: BORIS UMANSKY LADAS & PARRY LLP 224 S MICHIGAN AVE STE 1600 CHICAGO, IL 60604-2508	CLICK HERE TO RESPOND TO THIS I http://www.uspto.gov/trademarks/teas/response VIEW YOUR APPLICATION FILE
APPLICANT: FWHG IP Holdings LLC	
CORRESPONDENT'S REFERENCE/DOCKET NO : magoLogo/bu CORRESPONDENT E-MAIL ADDRESS: CHIUSTM@LADAS.NET	

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 10/8/2014

THIS IS A FINAL ACTION.

This Office action is in response to applicant's communication filed on October 2, 2014. In the response, applicant presented argument in favor of registration, disclaimed the wording GRILL & CANTINA, provided a substitute description of the mark and provided a translation of the term MAGO. The disclaimer, substitute description of the mark and the translation are accepted and made of record.

For the reasons set forth below, the refusal under Trademark Act Section 2(d) is now made FINAL with respect to U.S. Registration No. 3810357. See 15 U.S.C. §1052(d); 37 C.F.R. §2.64(a). A copy of the registration was enclosed with the initial office action.

SECTION 2(D) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark was refused because of a likelihood of confusion with the mark in U.S. Registration Nos. 3810357. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the services of the applicant and registrant. See 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the services, and similarity of the trade channels of the services. See *In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 et seq.

In the instant matter, applicant's mark is MAGO GRILL & CANTINA and design for Restaurant and bar services, in Class 43. Registrant's mark is MAGO CAFÉ for Restaurant and cafe services; catering services, in Class 43.

Similarities between the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial

impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

For a visual comparison the marks are set forth below:

MAGO GRILL & CANTINA	-	applicant's mark
MAGO CAFÉ	-	registrant's mark

Marks must be compared in their entirety and should not be dissected; however, a trademark examining attorney may weigh the individual components of a mark to determine its overall commercial impression. *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342, 71 USPQ2d 1944, 1946-47 (Fed. Cir. 2004); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985) (“[I]n articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark”); *In re Kysela Pere et Fils, Ltd.*, 98 USPQ2d 1261, 1267 (TTAB 2011).

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. See *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii). The initial and dominant term in both marks at hand is the term MAGO, which is a foreign term which means magician.

It is noted that consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered” when making purchasing decisions).

Although marks are compared in their entirety, one feature of a mark may be more significant or dominant in creating a commercial impression. See *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter that is descriptive of or generic for an applicant's goods and/or services is typically less significant or less dominant when comparing marks. See *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d at 1060, 224 USPQ at 752; TMEP §1207.01(b)(viii), (c)(ii). Accordingly, the descriptive wording GRILL & CANTINA and CAFÉ is less significant than the term MAGO in making the overall commercial impression of applicant and registrant's marks.

For a composite mark containing both words and a design, the word portion may be more likely to be impressed upon a purchaser's memory and to be used when requesting the goods and/or services. *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1431 (TTAB 2013) (citing *In re*

Dakin's Miniatures, Inc., 59 USPQ2d 1593, 1596 (TTAB 1999)); TMEP §1207.01(c)(ii); see *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908, 1911 (Fed. Cir. 2012) (citing *CBS Inc. v. Morrow*, 708 F. 2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir 1983)). Thus, although such marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366, 101 USPQ2d at 1911 (Fed. Cir. 2012) (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)). Accordingly, the minor design element found in applicant's mark in the nature of a minor color design contained in the letters of the term MAGO, is less significant than the term MAGO in establishing the overall commercial impression of applicant's mark.

Where the services of an applicant and registrant are "similar in kind and/or closely related," the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); see *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b). In the instant matter, all of the parties offer restaurant services. Accordingly, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse services.

The Trademark Act not only guards against the misimpression that the senior user is the source of the junior user's services, but it also protects against "reverse confusion," that is, the junior user is the source of the senior user's services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993); *Fisons Horticulture, Inc. v. Vigoro Indust., Inc.*, 30 F.3d 466, 474-75, 31 USPQ2d 1592, 1597-98 (3d Cir. 1994); *Banff, Ltd. v. Federated Dep't Stores, Inc.*, 841 F.2d 486, 490-91, 6 USPQ2d 1187, 1190-91 (2d Cir. 1988).

Applicant's Argument

In its response, applicant opines that applicant's mark and registrant's mark are unlikely to cause confusion because the marks have different commercial impressions and its consumers are sophisticated. In support of this argument, applicant states "differences exist in the appearance, sound, meaning and overall commercial impression of applicant's mark and the cited registered mark". In further support of this position, applicant indicates that the design element associated with the term MAGO, the colors associated with the mark, the presence of the wording GRILL & CANTINA differentiate its mark from MAGO CAFÉ and that the term MAGO has a different meaning in registrant's mark and therefore, a different commercial impression.^[1]

Before addressing the issues raised by applicant, the examining attorney notes that he did not violate the anti-dissection rule because he did not ignore any portions of the marks at hand. The examining attorney merely applied the applicable Trademark Law, namely, the two part analysis of the du Pont factors, in reaching the conclusion that the marks have similar commercial impressions and are likely to cause confusion.

With respect to applicant's argument, the examining attorney notes the following differences with the marks: the descriptive wording associated with each mark; and the color design associated with the term MAGO in applicant's mark. For the reasons set forth below, these differences do not sufficiently distinguish the marks in manner which will avoid confusion.

Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. *See In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751. In the instant matter, the first term associated with each mark is the dominant term.

In reaching this determination, it is noted that although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter that is descriptive of or generic for an applicant's goods and/or services is typically less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d at 1060, 224 USPQ at 752; TMEP §1207.01(b)(viii), (c)(ii). Accordingly, the generic wording GRILL & CANTINA and CAFÉ is less significant than the term MAGO in creating the commercial impression of applicant and registrant's marks.

Although marks must be compared in their entireties, the word portion generally may be the dominant and most significant feature of a mark because consumers will request the or services using the wording. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1247 (TTAB 2010). For this reason, greater weight is often given to the word portion of marks when determining whether marks are confusingly similar. *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1431 (TTAB 2013) (citing *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999)); TMEP §1207.01(c)(ii). Therefore, the minor design element associated with applicant's mark is less significant than the term MAGO in establishing the overall commercial impression of applicant's mark.

In further support of the conclusion that the marks are similar marks which are likely to cause confusion, it is noted that a mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); 37 C.F.R. §2.52(a); TMEP §1207.01(c)(iii). Thus, a mark presented in stylized characters and/or with a design element generally will not avoid likelihood of confusion with a mark in typed or standard characters because the marks could be presented in the same manner of display. *See, e.g., In re Viterra Inc.*, 671 F.3d at 1363, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that "the argument concerning a difference in type style is not viable where one party asserts rights in no particular display"). Put another way, inasmuch as registrant's mark is in a standard character format, registrant is legally entitled to display its mark in any stylized manner, including in a style which would resemble applicant's style.

With respect to the argument that restaurant consumers are sophisticated, the fact that purchasers may be sophisticated or knowledgeable in a particular field does not necessarily mean that they are

sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see, e.g., Stone Lion Capital Partners, LP v. Lion Capital LLP*, ___ F.3d ___, ___, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011).

Finally, where the services of an applicant and registrant are identical or virtually identical, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse services. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (citing *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992)); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); TMEP §1207.01(b). In the instant matter, both parties have identified their services associated with the marks as restaurant services. It is noted that neither party placed any restrictions on these services. E.g. Mexican cuisine.^[2] Absent restrictions in an application and/or registration, the identified services are “presumed to travel in the same channels of trade to the same class of purchasers.” *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Therefore, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse services.

Inasmuch as the first and dominant term of both marks is the term MAGO, and the term MAGO has the same commercial impression in each mark, the marks are similar marks which are likely to cause confusion.

Comparison of Services

The services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the services in question are different from, and thus not related to, one another in kind, the same services can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective services need only be related in some manner or the conditions surrounding their marketing be such that they will be encountered by the same consumers under circumstances that would lead to the mistaken belief that the services originate from the same source. *Gen. Mills Inc. v. Fage Dairy Processing Indus.*, 100 USPQ2d 1584, 1597 (TTAB 2012); TMEP §1207.01(a)(i); *see On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d at 1086, 56 USPQ2d at 1475; *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

In the instant matter, applicant’s identified services are Restaurant and bar services, in Class 43. Registrant’s identified services are restaurant services, in Class 43. Initially, it is noted that both parties offer restaurant services. Further, it is noted that neither party restricted the type of cuisine offered at their restaurants. Accordingly, these services are identical services which will share the same trade channels. Therefore, the remaining issue to resolve is whether restaurant and bar services are related services which will share the same trade channels.

The trademark examining attorney refers to the excerpted materials from the Google search engine in which advertisements advertise restaurants which also feature bar services. *See attachments.* This is evidence that restaurant and bar services are related services which will share the same trade channels.

Prods. Pty Ltd., 92 USPQ2d 1198, 1202-03 (TTAB 2009) (accepting Internet evidence to show relatedness of goods in a likelihood of confusion determination); *In re Rodale Inc.*, 80 USPQ2d 1696, 1700 (TTAB 2006) (accepting Internet evidence to show genericness); *In re White*, 80 USPQ2d 1654, 1662 (TTAB 2006) (accepting Internet evidence to show false suggestion of a connection); *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1308-09 (TTAB 2006) (accepting Internet evidence to show geographic significance); *In re Consol. Specialty Rests. Inc.*, 71 USPQ2d 1921, 1927-29 (TTAB 2004) (accepting Internet evidence to show geographic location is well-known for particular goods); *In re Gregory*, 70 USPQ2d 1792, 1793, 1795 (TTAB 2004) (accepting Internet evidence to show surname significance); *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060-61 (TTAB 2002) (accepting Internet evidence to show descriptiveness); TBMP §1208.03; TMEP §710.01(b).

The trademark examining attorney also has attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar services as those of both applicant and registrant in this case. This evidence shows that the services listed therein, namely restaurant and bar services, are of a kind that may emanate from a single source under a single mark. See *In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Therefore, these services are similar type of services which will share the same trade channels.

Applicant's argument

In its response, applicant advances the argument that the services associated with its application and those that are associated with registrant's registration are different services which do not share the same trade channels.

With respect to applicant's and registrant's services, the question of likelihood of confusion is determined based on the description of the services stated in the application and registration at issue, not on extrinsic evidence of actual use. See, e.g., *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-70, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012); *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

In this case, the identification set forth in the application and registration(s) has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these services "travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)).^[3] Therefore, both parties' restaurant services are similar services which will share the same trade channels.

With respect to the relatedness of restaurant and bar services, the examining attorney refers to the evidence attached to the office action herein, namely, articles obtained from the Google search engine and third party registrations which identify both restaurant and bar service offered under the same Service Mark. This is evidence that these services are related services which will share the same trade channels.

The overriding concern is not only to prevent buyer confusion as to the source of the services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

CONCLUSION

Since the marks of the parties create the same overall commercial impression and the services of the parties are very similar services that share the same trade channels, there is a likelihood of confusion and registration must be refused.

OTHER

Applicant must respond within six months of the date of issuance of this final Office action or the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond by providing one or both of the following:

- (1) A response that fully satisfies all outstanding requirements;
- (2) An appeal to the Trademark Trial and Appeal Board, with the appeal fee of \$100 per class.

37 C.F.R. §2.64(a); TMEP §714.04; see 37 C.F.R. §2.6(a)(18); TBMP ch. 1200.

In certain rare circumstances, an applicant may respond by filing a petition to the Director pursuant to 37 C.F.R. §2.63(b)(2) to review procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; see 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

TEAS PLUS APPLICANTS – TO MAINTAIN REDUCED FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE:

Applicants who filed their application online using the lower-fee TEAS Plus application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see TMEP §819.02(b) for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. *See* 37 C.F.R. §2.23(a)(1), (a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these three requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.

/William H. Dawe, III/

Examining Attorney

Law Office 108

(571) 272-9337 voice

(571) 273-9337 fax

Bill.Dawe@USPTO.GOV (not for formal responses)

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

[1] It is noted that the record is devoid of any evidence which indicates that the term in MAGO applicant's mark has a different meaning than the term MAGO in registrant's mark. As such, the term MAGO with either the English generic wording GRILL & CANTINA or the generic wording CAFÉ has precisely the same appearance, sound, connotation, and overall commercial impression.

[2] It is noted that even if one party put a restriction on the type of food featured at the restaurant, broad wording restaurant would encompass all services of the type described, including those in the more narrow identification.

[3] It is noted that since restrictions were not placed on either parties' restaurant services, registrant would be free to open a restaurant featuring the same type of food offered by applicant.

EXHIBIT F

2:27 PM
09/24/15
Accrual Basis

STI Network, Inc. dba Mago Cafe
General Journal Transaction
August 31, 2015

Num	Name	Memo	Account	Class	Debit	Credit
4740		August 2015	0211524 · Cafe Unal...	Cafe	152.87	
		August 2015	0448212 · Snack Fo...	Cafe		143.04
	Square Inc	August 2015	0612002 · Merchant ...	Cafe	4.33	
	Arizona Department ...	August 2015	0210523 · Cafe Sale...	Cafe		14.16
					157.20	157.20
TOTAL					157.20	157.20

EXHIBIT G

Invoice

Mago Cafe
 340 Jordan Rd.
 Sedona, AZ 86336

Date	Invoice #
8/1/2015	00030

PAID
 08/31/2015

Bill To
Body and Brain Foundation Sedona Meditation Center 2500 S. Power Rd. 126-3 Mesa, AZ 85209

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
12	Yoga Brunch on August 1st	4.55	54.60T
	Sales Tax	9.90%	5.41
Total			\$60.01

Invoice

Mago Cafe
340 Jordan Rd.
Sedona, AZ 86336

Date	Invoice #
8/15/2015	00032

PAID
08/31/2015

Bill To
Body and Brain Foundation
Sedona Meditation Center
2500 S. Power Rd. 126-3
Mesa, AZ 85209

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
12	Yoga Brunch on August 15	4.55	54.60T
	Sales Tax	9.90%	5.41
Total			\$60.01

Invoice

Mago Cafe
 340 Jordan Rd.
 Sedona, AZ 86336

Date	Invoice #
8/25/2015	00031

PAID
 8/31/2015

Bill To

Body and Brain Foundation
 Sedona Meditation Center
 2500 S. Power Rd. 126-3
 Mesa, AZ 85209

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
13	Yoga Brunch on August 8	4.55	59.15T
	Sales Tax	9.90%	5.86
		Total	\$65.01

EXHIBIT H

2:08 PM
10/08/15
Accrual Basis

STI Network, Inc. dba Mago Cafe
Profit & Loss
August 2015

	<u>Aug 15</u>
Ordinary Income/Expense	
Income	
0445000 · Business Income	
0448200 · Taxable	
0448212 · Snack Foods	143.04
0448290 · Yoga Brunch	168.35
Total 0448200 · Taxable	<u>311.39</u>
Total 0445000 · Business Income	<u>311.39</u>
Total Income	<u>311.39</u>
Gross Profit	<u>311.39</u>
Net Ordinary Income	<u>311.39</u>
Net Income	<u>311.39</u>