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

Proceeding	92061981
Party	Defendant Yoel Steinberg
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Attachments	Service certification Opposition to Ps Motion 2 Amend.pdf(7759 bytes) brief in Oppostion to Ps Motion 2 Amend.pdf(28934 bytes)

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Brief in Opposition to Motion to Amend, and Counter-motion, in regard to the Proceedings of Cancellation No. 92061981, has been served on opposing counsel, MICHAEL R FRISCIA, of MCCARTER & ENGLISH, LLP by mailing said copy on December 15, 2015, via First Class Mail, postage prepaid to:

MICHAEL R FRISCIA
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Signature Joel Steinberg

Date: December 15, 2015

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

Kosher Supervision Services, Inc.

Petitioner,

v.

Yoel Steinberg,

pro se` Respondent/Registrant.

Cancellation No. 92061981

RESPONDENT'S BRIEF

IN OPPOSITION TO

MOTION TO AMEND,

and COUNTERMOTION

REGISTRANT'S BRIEF IN OPPOSITION TO MOTION TO AMEND, and COUNTERMOTION

I, Yoel Steinberg, respectfully remind the Board that the Five year anniversary of the Registration of my certification mark K (and design) has already past. Any proposed amendment to the petition to cancel that mark must therefore be rejected as untimely, regardless of the merit or lack thereof of Mr. Frisca's contentions within his Motion [for leave] to amend.

I further remind the Board that Interlocutory Attorney Ms. Faint has already ordered that the instance proceedings (other than Motion to Strike) is suspended until a determination is found in regard my Motion to Strike, so that any other motions (presumably even Petitioner's instance Motion to Amend) would be untimely as premature, And not be noted.

I also remind the Board of my related Protest and Motion for Sanctions (dated December 11, 2015) which addressed (in part) Mr. Friscia's instance Motion to amend. The instance motion is not what it is presented to be. It is not a Motion to remove a petitioner. It is rather a Motion to add a petitioner who at the time the petition was submitted did NOT own the pleaded mark(s), and did not have standing to petition.

Kosher Services, Inc. [with comma] may NOT now be included as a Petitioner in any amended filing because -even as now conceded by Mr. Friscia in his instance Motion to amend- Kosher Services, Inc. was not the original owner of the pleaded mark(s) and Registration. And further considering that the Five year anniversary of the Registration of my mark has past, Kosher Services, Inc. may not now file a petition on the grounds of which it is based. Nunc pro tunc Assignment of ownership, or not, standing cannot be created retroactively. Mr. Friscia's Motion to allow Kosher Services, Inc. to be listed as a petitioner is therefore without merit.

Additionally, Mr. Friscia's Motion is formulated as if Kosher Supervision Services Inc. [no comma] is a juristic person who is represented by Mr. Friscia, as if it may petition, as if it may file the instance Motion, and as if it may withdraw from a petition. Mr. Friscia's motion seems to be a device used to conceal the fact that there is no such corporation on record within The State of New Jersey, and that the "petitioner" Kosher Supervision Services is merely fictional. An on-line search at the website run by State of New Jersey for the public records of corporations of The State of New Jersey does not show such a corporation. Mr. Friscia himself (in his footnote to the petition which refers to Kosher Supervision Services Inc. being a typographical error) seems to concede that Kosher Supervision Services Inc. [no comma] is not a corporation . Mr. Friscia however does not openly concede this material fact but rather seems to attempts to draw attention away from this material fact by now Motioning to have the fictional Petitioner Kosher Supervision Services Inc. withdrawn from the petition.

Mr. Friscia's petition to amend the petition as he now proposes is therefore further without merit. The petition should have rather been withdrawn entirely:

The Purported Nunc Pro Tunc Assignment

Mr. Friscia in this instance Motion to amend refers to a nunc pro tunc Assignment. However, such a contention poses no merit. As shown online in the Trademark Office website, The execution date of the assignment is after the five year anniversary of my mark. Neither of the purported petitioners had standing at any time prior to then. Kosher Services, Inc. did not have standing because it did not own the mark. And Kosher Services Inc. did not have standing because it is not a juristic person. Even if nunc pro tunc would assign earlier rights owned by the mark's original owner, an assignment cannot give over rights which the original owner himself no longer had.

Since at the time of the execution of the assignment it was already after the five year anniversary of the registration of my mark, even the original owner was no longer able to petition based on the grounds given within the petition. And since the original owner could not petition, no rights to petition could have been assigned to any other party.

I also pointed out in my Motion for Sanctions, that even now, after the purported Assignment nunc pro tunc, Kosher Services, Inc. still does NOT own the Registration (and even the Application) of the pleaded marks. The Assignment was invalid due to a break in the chain of title.

The Assignment was also invalid because the notarization for the Assignment is defective. The notary did not state that Harvey Senter signed and swore before her. And the notary did not state who is the party who came before her. The notary left that space blank.

Additionally, the pleaded Application is also invalid. It is a nullity because Applicant did not own the mark at the time the Application was submitted. The assignment did not take place until after the Application was submitted. Furthermore, as already explained within my reply brief in support of Motion to Strike, Petitioner did not exist prior to 1986, and even Harvey Senter is not listed as ever owning the mark of the

pleaded Application. As it comes out, another assignment would have been necessary from this mark's -as of yet- unidentified original owner from 1972.

The Board might also find it sanctionable that Mr. Friscia still withholds the material information that "Petitioner" did not exist at any time prior to 1986.

Impermissible Contention Cannot Contribute Toward Merits of the Motion

I also pointed out that the petition never gave fair notice that "Petitioner" intended to solicit an Assignment of ownership from the then owner of the pleaded Registration -who may or may not have consented to Assign. I was also never serviced with the Assignment data and documentation for the Assignment which Mr. Friscia bases his instance Motion to amend. (I had to find out on my own by exploring the Trademark office website). The Board might therefore determine that Mr. Friscia may not now use those newly created facts as part of "Petitioner's" Cause for Complaint because doing so is in violation of the Rule of Federal Procedure which requires that fair notice be given.

Counter-motion

I therefore also respectfully counter-motion (if I may) that an Order to Show Cause be issued from The Board That "Petitioner" and Mr. Friscia must show cause as to why "Petitioner" and Mr. Friscia should not be obligated to present in a timely manner evidence to support its past and present factual contentions about Kosher Services Inc. [no comma] -whether stated or implied. Mr. Friscia must prove that Kosher Services Inc. [no comma] is a corporation. And Mr. Friscia must prove that Applicant/Petitioner Kosher Services, Inc. existed all the way back to 1972 when the mark of the pleaded Application is asserted (in the petition, and in the Application) to have first been used.

CONCLUSION

In conclusion, Petitioner (whomever that might be) should NOT be granted leave to re-submit ANY petition -regardless of which amendment is requested by Petitioner. And the petition to cancel Registration of my mark, should not be allowed to contain ANY Petitioner. And any defects found within the petition as originally filed must be deemed fatal to the petition, with prejudice in my favor. Additionally, if I may counter motion in this brief, an Order to Show Cause should be issued as described above.

Respectfully submitted,

Dated December 15, 2105

By: Yoel Steinberg

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