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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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**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

Cancellation No. 92061981

RESPONDENT'S REPLY BRIEF

IN SUPPORT OF MOTION

TO SANCTION

**RESPONDENT'S REPLY BRIEF IN SUPPORT OF MOTION TO SANCTION**

I, Respondent, Yoel Steinberg, in regard to the Petition for Cancellation Proceeding No. 92061981 respectfully reply in Support of Motion for Sanctions (dated December 11, 2015) as follows:

My Motion for sanctions should be sustained on the merits.

The Motion for sanctions was triggered not only by Petitioner's Motion to amend but also to Petitioner's previous submissions. Even in its latest brief, Petitioner continues to avoid coming clean on the fact that the fictional petitioner Kosher Supervision Services Inc. [no comma], is not and never was a corporation. Even in its latest brief, Petitioner and Mr. Friscia give no *valid* explanation as to why he originally resorted to listing two petitioners, and *paying two fees* -if not as a device to artificially create standing for his client when in fact there wasn't any. Even in its latest brief, Petitioner and Mr. Friscia give no valid explanation as to why the petition withheld material information that Petitioner is not the original owner of the mark(s) -And that he only conceded the fact of an assignment having taken place after I found out this information on my own, and then mentioned it in my briefs. Even in its latest brief, Petitioner and Mr. Friscia give no valid explanation as to why he withheld material information that his client did not exist as a corporation prior to 1986 [under any name] so that Petitioner cannot possibly be the original owner of the mark of the Application, which was asserted to have been used since 1972. Mr. Friscia continues to refuse to concede the truth even when it is pointed out to him numerous times.

Mr. Friscia rather continues to insist on calling the new assignment a "correction", despite the new assignment being new as opposed to corrective. Need I remind The Board and Mr. Friscia yet again that TMEP 503.06 and 37 C.F.R. §3.34 (a)&(b) list statutory requirements for a "correction" which have not been met by Petitioner? Mr. Friscia now also insists (in first page of his opposition brief, and in his declaration) that even the names listed in the petition were also a "typographical error". The Board might find this assertion of Mr. Friscia's to be an affront to The Board and to myself. Who is Mr. Friscia trying to fool? The Board might agree that the names within the petition were typed exactly as Mr. Friscia intended them to be typed. And that there was no "typographical" error. Rather the error was strategic in that Mr. Friscia blundered by listing a fictional petitioner, and now wishes to have the names changed within the caption to divert attention away from that blunder. The Board might therefore interpret Mr. Friscia now terming even that blunder a "typographical error" to be further example of Mr. Friscia's bad faith and efforts to conceal, so that there would be yet additional grounds for sanction.

Furthermore, in addition to being misleading, Mr. Friscia's insisting on terming the previous assignment a "typographical error" lacks credibility. If it was indeed an error, then who could have made this error: Harvey Senter? McCarter and English? Petitioner? USPTO? All the record can show (for the first purported Assignment) is that Harvey Senter assigned the mark to Kosher Supervision Services Inc. [no comma], And that was indeed the name previously showing on the Registration. USPTO did exactly what Harvey Senter asked them to. What "typographical error" is there? If Kosher Supervision Services Inc. [no comma] is a corporation then there was no typographical error in the Registration at all. To assert a "typographical error", Mr. Friscia must first come clean on the truth that Kosher Supervision Services Inc. [no comma] is not a corporation.

Mr. Friscia must also come clean that the previous version of the Registration contained not merely a "typographical error" but rather a fatal defect to the petition in that "Petitioner" required an assignment to which the original owner may or may not have agreed to at the time the petition was filed. Either way, "Petitioner" did not have standing at the time the petition was filed, And did not have standing at any time prior to the five (5)

year anniversary of my Mark's Registration. And either way, the petition did not give fair notice on time that an Assignment would be solicited from the mark(s) original owner(s).

It should rather seem obvious that the reason Mr. Friscia needs to make these "corrections" is that Kosher Supervision Services Inc. [no comma] is not a corporation, And is therefore not a juristic person. But Instead of admitting his own and his law firm's strategic blunders, and the misrepresentations about Kosher Supervision Services Inc. [no comma] being a corporation, Mr. Friscia continues to insist –even now- that listing two petitioner's was done in good faith. And that he is merely the innocent victim of numerous "typographical errors" by some unidentified person whose typing skills are in need of improvement. But which “typographical error” is going to conceal that Petitioner did not exist as a corporation at any time prior to 1986?

Additionally, “Refraining at this time from commenting on” “the merits of the case” is not an excuse for Mr. Friscia to avoid explaining why Mr. Friscia and his client misrepresented obvious facts of if and when “Petitioner” was incorporated. Neither is “Refraining at this time...” an excuse for Mr. Friscia to avoid justifying his other willful misrepresentations and unwarranted assertions such as his contentions about Hebrew alphabet, which are openly contradicted by Dictionary and Encyclopedia, and his frivolous unwarranted legal assertions and untenable novel legal theories. The Board might therefore find sanctionable that Mr. Friscia willfully and knowingly asserted unwarranted and frivolous factual and/or legal contentions, even if the unwarranted assertions address the purported merits of the complaint. "Refraining at this time from commenting" is not a defense for harassing me with a frivolous lawsuit. (-See my Motion to Dismiss within the related the proceedings of No. 92062710 for more detailed discussion). If Mr. Friscia does not wish to defend himself against all the accusations suggested within my Motion for sanctions, then perhaps The Board should interpret Mr. Friscia's refraining from discussing them as a concession that the accusations are correct.

Additionally, Mr. Friscia's response that a notarization is not necessary for an Assignment, does not mitigate the fact that a defective document was willfully submitted. If a notarization is not needed, then don't send one. But to submit a fake notarization as if it were valid, is a misrepresentation. And why should we rule out a possibility that Harvey Senter actually did not sign the assignment –especially considering that the signature

doesn't match with that of the first Assignment. How should even Mr. Friscia know that Harvey Senter signed the new Assignment, considering that the document is actually a fax from "Rosenbaum" and "Juravel" (as reflected by the fax headers) rather than from "Senter". Additionally, MPEP 302.09 (C) notes that *requests for corrections to documents recorded previously may not be submitted via facsimile*. (I presume the same law applies to trademark assignments). If Harvey Senter wanted to "correct" the first Assignment, then he shouldn't have used a fax for the new assignment. "*The United States Patent and Trademark Office will accept and record only an original, or a true copy of an original assignment or other document. See MPEP § 317*".

Moreover, Mr. Frisca's focusing on a notarization not being needed still does not address the break in chain of title for the Registration. Unless Mr. Friscia concedes that Kosher Supervision Services Inc. [no comma] is not a corporation, Kosher Supervision Services Inc. [no comma], would still be the last link in the chain of title so that Harvey Senter would not be able to re-assign the mark -nunc pro tunc or otherwise. Mr. Friscia's offers no answer to rectify the break in chain of title for the registration.

Similarly, The Board might therefore also find that Mr. Friscia stating on page 2 of his current opposition brief that "*The effect of the Assignment was to make Kosher Supervision Service, Inc. the owner of U.S. Registration No. 927,067 effective December 2, 2003. Petitioner diligently and in good faith filed the Motion to Amend to correct the Petition to reflect the Assignment.*" is itself not stated in good faith. Mr. Friscia should instead come clean on the fact that the assignment is not valid and that the chain of title is broken. And that even a nunc pro tunc Assignment cannot assign rights to sue which were lost to the original owner once the five year anniversary of the Registration of my mark has passed.

Besides all this, Mr. Friscia did not submit any Assignment data within the petition. And as mentioned within my previous briefs, that in itself should be grounds to dismiss the complaint. (TMEP 501.01, 37 C.F.R. §3.73 (b) ).

**In reply to Petitioner's assertion that the body of the petition showed a picture of the marks:** A close reading of the allegation will note that those marks were not referred to in the petition specifically as "the pleaded marks". The Board might therefore find the petition to be defective for that reason as well. Also Mr. Friscia

offered no response to the accusation that he signed and uploaded a certification of service before the service took place. Having made a mistake in good faith is not sufficient defense against Motion for Sanctions. Even if Mr. Friscia was sincerely unaware that that his client is not the original owner of the mark(s), once Mr. Friscia was informed of this information, he should have been honest and admitted his mistake. Same goes for the other mistakes and unwarranted assertions within the petition. Petitioner should have withdrawn its complaint.

### **REPLY TO MR. FRISICA'S DECLARATION**

I am replying based on TTABView. I was not (yet) serviced with Mr. Friscia's Declaration. (This is understandable since it can take time for the Opposition brief and Declaration to arrive in the mail.). Significantly however, a certificate of service for that Declaration is not showing on TTABView. The Board might therefore reject the declaration as defectively serviced. The point I wish to bring out with this is that if Mr. Friscia is prone to sloppiness on procedural requirements of servicing his declaration, and on the notarization, and on the servicing of the petition, and on the "spelling" within the registration, and etc. then The Board should not presume Mr. Friscia and McCarter & English to be very reliable.

Additionally, The Declaration comes after the five (5) year anniversary of the registration of my mark. If Mr. Friscia's Declaration is a fatally omitted and required clearer re-statement of the petition which was vital to be included within the petition itself, then The Board might reject the Declaration and the petition as untimely.

**Paragraph 3 of the declaration** does not seem sufficient to establish that designs of the marks were directly indicated within the petition to be the pleaded marks. The petition itself does not say for example "This complaint is based on marks of the following designs". The words "basis for Cancellation" only appears on the receipt.

Additionally, even with Mr. Friscia's declaration, at most there would have been a contradiction as to the design of the marks between the serviced receipt and the serviced petition. And since a contradiction exists, the resulting ambiguity would negate the complaint from being clearly stated as required by Federal Rule 8 of Civil Procedure.

**Paragraph 4 of the declaration:** is contradicted by Mr Friscia's assertion (in footnote of petition) that the two "Petitioners" are "one and the same". If they are "one and the same" then both marks should have been listed for both "Petitioners". And only one fee should have been paid.

Additionally, Mr. Friscia's declaration that "*4. Kosher Supervision Services Inc. was listed as a petitioner on the Petition because ....*" is insufficient to rectify that Kosher Supervision Service Inc. is not a corporation. And that Paragraph 1 of the petition would therefore be false. Mr. Friscia is obligated to tell the truth despite what he asserts are "typographical errors". The Board might further find that Mr. Friscia even within his declaration further conceals that Kosher Supervision Services Inc. [no comma] is not a juristic person who may own a mark or who may have filed a petition. The Board might find that Mr. Friscia's insisting to continue to withhold this factual information, despite the numerous times he has been apprised of the impossibility of such a contention, is itself grounds for sanctions against Mr Friscia and his client.

Additionally, Mr. Friscia's continues to conceal that lack of an assignment at the time the petition was filed is not merely "*the typographical error in this name*" but is rather a fatal defect of the petition. Kosher Supervision Services, Inc, [with comma] did not own the Registration at all at the time the petition was filed. (Furthermore, Mr. Friscia doesn't address that he failed to give fair notice that an assignment would be solicited. -So that even a legitimate but subsequent "amendment" cannot "relate back" to the date of the petition. (-See Federal Rule 15 of Civil procedure). Mr. Friscia here implicitly concedes that at the time the Petition was filed, Kosher Supervision Services, Inc. [with comma] was not the owner name listed on U.S. Registration No. 927,067. And that its subsequent assertion of ownership –even if nunc pro tunc- would still be untimely and not forewarned within the petition).

Additionally, in regard to Mr. Friscia's declaration that "*Kosher Supervision Service, Inc. was and continues to be the owner of U.S. Application No. 86/713,509.*" The Board might find that declaration to be false because -as reflected by the public record of corporations for State of New Jersey- Kosher Supervision Service, Inc. did not exist all the way back to 1972 when the mark is asserted to have first been used. The Board might find

that Mr. Friscia's continuing to insist ownership of the Applied for mark, despite the numerous times he has been apprised of the impossibility of such a contention, is itself grounds for sanctions against Mr Frisca and his client.

**Paragraph 5 of the declaration** Mr Friscia's declaration within paragraph 5 strains credibility, and is contradicted by the Assignment record. Mr. Frisca writes: "5. ... (the "Assignment"), was made to correct a typographical error in the name of assignee on the assignment document that was recorded on February 5, 2004. The name of the assignee on the assignment document recorded on February 5, 2004, was mistakenly written as *Kosher Supervision Services Inc.* instead of the correct name, *Kosher Supervision Service, Inc.* ".

The Assignment record for the second Assignment does not state that it is a corrective document. It is rather clearly titled to be a "New Assignment". Additionally, Mr. Friscia does not identify who could have possibly made this "typographical error" or who could have "mistakenly written" "Kosher Supervision Services Inc.". Mr. Friscia likewise does not indicate why the name "Kosher Supervision Service, Inc." is more "correct" than "Kosher Supervision Services Inc.". Specifically, Mr. Friscia further refuses to come clean on the fact that Kosher Supervision Service Inc. [no comma] is not a corporation, and never was a corporation.

**Paragraph 6 of the declaration:** Paragraph 6 of Mr. Friscia's declaration is similarly lacking in credibility. Mr. Friscia writes: "6. *Petitioner's Motion to Amend ... was filed for the sole purpose of correcting a typographical error in Petitioner's name on the Petition following the recordation of the Assignment. Specifically, the Motion to Amend seeks to remove the petitioner Kosher Supervision Services Inc. because, with the Assignment, Kosher Supervision Services Inc. does not own U.S. Registration No. 927,067, and the owner of U.S. Registration No. 927,067 from December 2, 2003 to the present is Kosher Supervision Service, Inc.* ".

As mentioned above, the "error" committed by Mr. Friscia in listing a fictional corporation as a plaintiff on the petition was not "typographical". The names on the petition were presumably typed exactly as Mr. Friscia intended them to be typed. The purported "Motion to Amend" is actually rather a Motion to add a Plaintiff. Mr. Friscia's misrepresenting defects of the petition to be typographical errors is material because couching it in those terms would make his "Motion to Amend" appear fair even though it is not. The motion rather seeks to prejudice

my position within these proceedings by adding a new plaintiff as owner of a Registration which it did not own prior to the Five year anniversary of registration of my mark.

Additionally, Mr. Friscia's saying that "*the owner of U.S. Registration No. 927,067 from December 2, 2003 to the present*" is also misleading because it presents as if the assignee were the owner as of 2003 without pointing out that a Nunc pro tunc assignment must reflect the execution date. And that standing itself cannot be nunc pro tunc. (See TMEP §503.06).

**Summary:** It might not be pleasant to bring this to The Board's attention, but Mr. Friscia's declaration does not come across as true in too many of its paragraphs. His noting that "false statements may jeopardize the validity of the application or any resulting registration", is also not persuasive. The Application should anyway not be approved. Such sanction would not be sufficient to deter future misdeeds. Rather, if the Board sees fit, his client's registration be revoked, and additional sanctions should be implemented.

If Mr. Friscia and his client really were acting in good faith then they should have done the right thing to do by withdrawing their complaints with prejudice in my favor. -Both in regard to this proceeding, and in regard to their new complaint against my service mark CupK within the related proceedings of Cancellation No. 92062710. But since they didn't do that, The Board may come to the reasonable conclusion that Mr. Friscia and his client should be sanctioned. And that my Motion for Sanctions should be sustained.

**In Conclusion:** My Motion for Sanctions should be sustained. And if The Board sees fit, additional sanctions against Mr. Friscia and his client might be warranted due the further bad faith he exhibited within his current Opposition brief and declaration.

Respectfully submitted,

By: Yoel Steinberg

Dated December 31, 2105

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **RESPONDENT'S REPLY BRIEF IN SUPPORT OF MOTION TO SANCTION**, 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 31, 2015, via First Class Mail, postage prepaid to:

MICHAEL R FRISCIA  
MCCARTER & ENGLISH, LLP  
FOUR GATEWAY CENTER, 100 MULBERRY STREET  
NEWARK, NJ 07102-4056 UNITED STATES

Dated December 31, 2015

Signature



Yoel Steinberg