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Filing date: **08/30/2016**

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

Proceeding	92063448
Party	Plaintiff La Terra Fina USA, Inc.
Correspondence Address	KAYLA JIMENEZ TECHLAW LLP PO BOX 1416 LA JOLLA, CA 92037 UNITED STATES kayla@techlawllp.com, dana@techlawllp.com
Submission	Motion to Strike
Filer's Name	Dana Robinson
Filer's e-mail	dana@techlawllp.com
Signature	/Dana Robinson/
Date	08/30/2016
Attachments	Motion to Strike Respondent reply.pdf(1890302 bytes)

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

La Terra Fina USA, Inc.)	
)	
A Delaware Corporation)	
)	Cancellation No.: 92063448
Petitioner,)	
)	
v.)	
)	Registration No.: 3810927
Cormorant Group LLC)	Date of Issue: June 29, 2010
)	
A New York Corporation)	
)	
Respondent.)	
<hr/>		

PETITIONER’S MOTION TO STRIKE RESPONDENT’S REPLY BRIEF

I. INTRODUCTION

Petitioner La Terra Fina USA, Inc. (“Petitioner”) submits this Motion to Strike the Reply Brief filed by Respondent, Cormorant Group LLC (“Respondent”). As set forth in detail below, the Reply Brief is no more than a transparent attempt to prejudice Petitioner and attack the ethics of Petitioner’s counsel, and it is rife with material misrepresentations. Meanwhile, Respondent fails to respond to critical issues raised in Petitioner’s Opposition Brief. In short, because the Reply Brief is no more than a blatant attempt to improperly influence the Board right before it renders its decision on the Motion to Set Aside the Default Judgment rendered in this case, Petitioner respectfully requests that the Board strike the Reply Brief in its entirety.

II. FACTUAL BACKGROUND

Since 1991, Petitioner has sold various food products under the brand name LA TERRA FINA (US Reg. No. 3953482 – “Petitioner’s Mark”). Respondent began selling food products

under the name TERRAFINA in 2006, and subsequently applied to register TERRAFINA with the USPTO (Serial No. 78929735 – “Respondent’s Mark”). On March 26, 2008, Petitioner filed an Opposition to Respondent’s Mark. *See* Declaration of Dana B. Robinson (“Robinson Decl.”) at ¶ 2. The Opposition was resolved by settlement on November 18, 2010. *Id.* at ¶ 3.

In late 2015, Petitioner discovered that Respondent was selling foods that were prohibited by the Settlement Agreement. *Id.* at ¶ 4-5. Per the Agreement at p. 8, ¶ 21, Petitioner was required to send notice of the breach directly to Respondent, care of James Locke, with a copy to Respondent’s attorney of record, Rogelio Carrasquillo. *Id.* The Agreement *specifically stated*:

Any and all notices to be provided to either party **shall** be given to the respective addressees referenced below ...:

If to Cormorant Group:

Cormorant Group LLC
c/o James Locke
204 28th Street
Brooklyn, NY 11232

With a copy to:

Rogelio J. Carrasquillo
Gibbons P.C.
One Pennsylvania Plaza, 37th Floor
New York, NY 10119-3701

Id. at ¶ 6 (emphasis added). Thus, by contract, Respondent and its attorney *required* Petitioner send notice to Respondent, and only “copy to” Respondent’s attorney.

On January 4, 2016, Petitioner’s attorney prepared a letter demanding that Respondent discontinue sales of products that were prohibited under the Settlement Agreement. *Id.* at ¶ 5, Exhibit 1. The letter was sent, per the Agreement, directly to Respondent, care of James Locke, with a copy to Rogelio J. Carrasquillo at Gibbons P.C. *Id.* In an abundance of caution, Counsel also sent a copy to John J. Driscoll of Windels Marx Lane & Mittendorf, who was listed with the USPTO as attorney of record for the TERRAFINA trademark. Robinson Decl. at ¶ 5, Exhibit 1.

Petitioner's Counsel also checked Respondent's entity records in New York, where the company was organized. *Id.* at ¶ 3-4. Counsel found that Respondent was still an existing entity. *Id.* at ¶ 4. Moreover, they found that the New York Department of State had the same contact information as the Settlement Agreement: **204 28th Street, Brooklyn, NY 11232**. *Id.* at ¶ 4. Interestingly, this is *still* Respondent's address of record with the New York Department of State.

Petitioner's attorney also visited www.terrafina.us – a website where Respondent's products are sold. *Id.* at ¶ 8. Counsel discovered that the website was actually owned by a different entity – Terrafina LLC. *Id.* After examining the website at length, Counsel could not find *any* mention of Respondent *whatsoever*. *Id.* at ¶ 8-9. Further, Counsel investigated the records for Terrafina LLC on the New York Department of State's website, and found that Terrafina LLC was, indeed, a different legal entity with a different legal address. *Id.* at ¶ 4. Even though Counsel was not sure as to the connection between TerraFina LLC and Respondent, Counsel sent a letter to the address listed on the "Contact Us" tab of terrafina.us: **1610 Bathgate Avenue, NY 10457**. *Id.* at ¶ 7, Exhibit 2.

In early February, Counsel received numerous missed calls and voicemails from James Locke – Respondent's President and the "Care Of" addressee listed in the Settlement Agreement. Jimenez Decl. at ¶¶ 8-11. At that point, Petitioner's counsel had received no communications whatsoever from any *attorneys* for Respondent. Robinson Decl. at ¶ 11. When Ms. Jimenez attempted to return Respondent's phone call, she received a secretarial employee, who requested that Ms. Jimenez email her a request for a conference call. Jimenez Decl. at ¶¶ 8-11. On February 9, 2016, Counsel sent an email to a.aygun@terrafina.us, requesting a specific time for a conference call to discuss the January 4 letter. *Id.* Ms. Jimenez never received a response to this email. *Id.* at ¶ 12. Further, Counsel never received a response from Mr. Carrasquillo or Mr.

Driscoll. Robinson Decl. at ¶ 11. In fact, neither Mr. Carrasquillo nor Mr. Driscoll ever appeared, communicated about, or otherwise engaged in the dispute.

Petitioner waited nearly *three months* after the notice to cure before filing its Petition for Cancellation of Respondent's Mark. Notice was served via certified mail to Respondent's correspondence address on the USPTO records, per 37 CFR § 2.111(b), which states in relevant part: "Petitioner must serve a copy of the petition ... on the owner of record for registration..., at the correspondence address of record in the Office." Jimenez Decl. at ¶ 14. On March 31, the USPTO also sent notice of the Petition for Cancellation to the correspondence address of record: **204 28th Street, Brooklyn, NY 11232**. See USPTO Cancellation Notice dated March 31, 2016.

A few weeks later, on April 18, 2016, Ms. Jimenez received a phone call from an unknown number while en route a meeting. Jimenez Decl. at ¶¶ 15, 18. The call was from Mr. Locke, who immediately and repeatedly stated that he was not selling any products that were prohibited by the Settlement Agreement. *Id.* at ¶ 16. Once Ms. Jimenez had a chance to speak, she informed Mr. Locke that they would need it in writing, and she ended the call. *Id.* The call lasted for a total of three minutes, including time when the phone was ringing or when Mr. Locke was being routed through the firm's phone system. *Id.* at 16-17. Ms. Jimenez provided no legal advice, and did not pressure Mr. Locke to make a statement. *Id.* at ¶ 19. Instead, most of the call was occupied by Mr. Locke proclaiming that Respondent was not selling veggie chips, which Counsel later discovered was untrue. *Id.* at ¶ 21, Exhibit C. The items were still available on Amazon and on terrafina.us, but were merely removed from the list of products that could be purchased *a la carte*. *Id.* They were still available for purchase as part of a package of foods. *Id.*

Respondent did not answer the Petition for Cancellation, and default judgment was entered on June 30, 2016. On July 20, Respondent filed a Motion to Set Aside the Default

Judgment, claiming it did not receive Notice of the proceedings. Petitioner filed an Opposition on August 5, to which Respondent filed the Reply at issue here. For the reasons addressed below, Petitioner respectfully submits that the Board should strike the Reply Brief from the record.

III. ARGUMENT

The August 25 Reply Brief does not respond to substantive arguments in the Opposition. Moreover, it contains material misrepresentations, and recklessly impugns the integrity of Ms. Jimenez with scurrilous accusations that Respondent *knows* will remain a public record. These actions add nothing to Respondent's arguments, and are purely inflammatory statements, that Petitioner respectfully submits should be struck from the record.

A. **The Reply Brief is rife with intentional material misrepresentations.**

In the first paragraph of page 3, Respondent states: "Petitioner was able to contact Respondent (and, in fact, did so) but did not inform it of the proceeding." That is factually inaccurate. Petitioner's attorneys sent two letters to Respondent and Respondent's "attorneys," neither of which received any formal response. Robinson Decl. at ¶ 10. Instead, Counsel received numerous voicemails from Mr. Locke over a three-month period, even amidst repeated attempts by Petitioner's attorneys to schedule a formal conference call to discuss the matter in detail. Jimenez Decl. at ¶ 8. Respondent claims that Petitioner knew how to contact Respondent because Petitioner's attorneys sent the second letter to the "new address." However, that address was not for Respondent, but for a completely different entity (TerraFina LLC). Petitioner did not know how the two entities were related, only that TerraFina LLC used Respondent's Mark.

In addition, the Reply Brief claims that Petitioner "intentionally sen[t] a copy of the notice to an address that *it knew was out-of-date*." See Reply Brief at p. 3 (emphasis in original). Petitioner addresses the "knowledge" issue in Section III.B. For now, we note that Mr. Silfin

does not deal with the fact that the Petition for Cancellation was sent to the address on file with both the USPTO and the New York Department of State. Serving the Petition at this address was not chicanery by Petitioner, but instead, the **required** procedure under binding federal regulations. Further, there is good reason to question Respondent's claim that it relocated its offices in November 2010. If that is true, **Respondent willfully breached state and federal regulations for over five years.** See 37 C.F.R. §2.18(b)(1) ("If a physical or e-mail correspondence address changes, the applicant, registrant, or party to a proceeding **must** file a written request to change the correspondence address [emphasis added]. The request should be promptly filed."); Trademark Manual of Examining Procedure § 609.03 ("The owner of an application or registration has a duty to maintain a current and accurate correspondence address."); NY LLC Code § 211(d) ("a limited liability company **shall** amend its articles of organization no later than ninety days after the happening of any of the following events: ... (2) a change in the county within this state in which the office of the limited liability company is to be located; ... (6) a change in the post office address to which the secretary of state shall mail a copy of any process against the limited liability company ...; [or] ... (9) the decision to change any other statement in the articles of organization."). Further, the Settlement Agreement was executed on November 18, 2010 – the Thursday before Thanksgiving. If Respondent *did* relocate its offices in November 2010, it is rather strange that it did not put the new address in the Settlement Agreement, or even *mention* to Petitioner that it intended to relocate the following week. Thus, given that no mail was returned undeliverable (from either the demand letter or the USPTO's notice of cancellation), one might surmise that Respondent still maintains that address.

Further, Mr. Silfin omits the fact that, while Ms. Jimenez did speak with Mr. Locke in a brief call that was initiated by Mr. Locke, it was *after* letters to Respondent and Respondent's

attorneys went unanswered for months. Robinson Decl. at ¶ 11. The implication made by Respondent is that Ms. Jimenez went out and tried to contact Respondent in the absence of its attorneys, when in reality, Ms. Jimenez went above and beyond what was required of her by the Rules of Professional Conduct and the procedural rules applicable to Cancellation Proceedings.

Notably, the deadline for the renewal of Respondent's Mark was on June 29, 2016. *See* Declaration of James Locke at ¶ 10. It was not until June 29, the last day to file a Section 8, that Ira E. Silfin substituted in as the new attorney of record for Respondent's Mark, and filed the renewal paperwork. *Id.* at ¶ 5. This was also just one day before the Board granted the Petition to Cancel Respondent's Mark by Default Judgment. Significantly, even in the Reply Brief, Mr. Silfin is careful not to allege that Respondent was, in fact, represented by counsel. Instead, he alleges that Ms. Jimenez *knew* that Respondent was represented, an accusation for which Mr. Silfin has no basis in law, fact or reasonable inference. Simply put, Petitioner materially misrepresents facts in a misguided attempt to prejudice Petitioner.

B. The Reply Brief accuses Ms. Jimenez of misconduct in yet another transparent attempt to prejudice the Board against Petitioner.

In the first paragraph of page 4 of the Reply Brief, Respondent alleges that Kayla Jimenez committed misconduct when she answered a call from an unknown number on April 18. Because the unsolicited three-minute call was with James Locke – Respondent's President – Mr. Silfin has the audacity to state: "Such a conversation would be in direct violation of the Rules of Professional Conduct of both the California Bar and the USPTO, which both prohibit attorneys communicating with a represented party." *See* Respondent's Reply Brief at p. 4, citing California Bar Rules of Professional Conduct Rule 2-100 ("While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the

member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.”); 37 C.F.R. § 11.402 (“In representing a client, a practitioner shall not communicate about the subject of the representation with a person the practitioner knows to be represented by another practitioner in the matter, unless the practitioner has the consent of the other practitioner or is authorized to do so by law, rule, or a court order.”). Parsing the rules, we see that a “No Contact Rule” violation occurs when counsel:

- (1) Communicates with a party that is actually represented by an attorney;
- (2) When counsel *actually knows* is represented by another attorney;
- (3) Without consent of the other attorney; and
- (4) The communication is not otherwise authorized by law.

First, the Reply Brief does not allege Respondent was actually a “represented party.” Mr. Silfin does not state *anywhere* in the Reply that Respondent was, in fact, represented as of April 18 when the allegedly improper communication took place. To run afoul of the No Contact Rule, the communication must be with a party that is actually represented in the dispute at hand. Here, there is no allegation or evidence that Respondent was represented on April 18, and there is ample reason to suspect it was not. Petitioner’s attorneys sent the January 4 demand letter to two different attorneys who supposedly represented Respondent at various points in time. John Driscoll has over forty (40) years of experience, and at the time, was a Partner at a firm with hundreds of attorneys. Rogelio Carrasquillo has nearly twenty (20) years of experience, and at the time, was a Partner at Gibbons P.C., another firm with over 200 attorneys. Surely attorneys with this much experience would have responded if they actually represented Respondent. But Petitioner was not informed that Respondent was represented until Mr. Silfin entered the dispute on June 30. The fact that Respondent’s own Brief fails to state that it was actually represented on

April 18 is rather telling.

Second, *if* Respondent was, in fact, represented by counsel on April 18, a violation would only occur if Ms. Jimenez had **actual knowledge** that Mr. Locke was a represented party. Both the California Rules and the USPTO Rules recite a **knowledge** requirement, prohibiting Counsel from communicating “with a party the member **knows** to be represented by another lawyer” (emphasis added). It is well established that this requires “actual knowledge.” *See e.g.*, 37 CFR § 11.1 (“Knowingly, known, or knows means actual knowledge of the fact in question.”); *Truitt v. Superior Court*, 59 Cal.App.4th 1183, 1188 (1997) (“The proscription against ex parte contact [applies] only where counsel ‘knows’ the other person is represented by counsel. ... It does not apply where the attorney does not actually ‘know’ but merely ‘should have known’ that the opposing party was represented.”); *Snider v. Superior Court*, 113 Cal.App.4th 1187, 1215 (2003) (“attorneys should not be at risk of disciplinary action for violating rule 2–100 because they should have known that an opposing party was represented or would be represented at some time in the future. ... [C]onstructive knowledge is insufficient.”).

The idea that Ms. Jimenez **knew** that Respondent was represented is preposterous. As noted above, Mr. Locke attempted to contact Petitioner’s attorneys numerous times between January 26, 2016, and April 18, 2016. Jimenez Decl. at ¶ 8. During that time, no attorney for Respondent ever contacted Petitioner’s counsel. Robinson Decl. at ¶ 11. On February 9, Ms. Jimenez emailed a secretarial employee of Respondent to schedule a conference call. *Id.* at ¶ 9-11. Ms. Jimenez never received a response to that email. *Id.* at ¶ 12. Instead, over two months later, she received a call from Mr. Locke. *Id.* at ¶ 15-16. Under the actual knowledge standard, Ms. Jimenez **knew** a few things:

- Respondent had an attorney (Mr. Carrasquillo) six years ago that handled the

settlement of an Opposition initiated by Petitioner;

- Respondent and Mr. Locke were signatories to the settlement, which specifically required contact with Mr. Locke personally, with only a copy to Mr. Carrasquillo;
- Respondent had a different attorney (Mr. Driscoll) listed as the “attorney of record” for Respondent’s Mark from July 14, 2006, until June 29, 2016; and
- In the four and a half months between Mr. Robinson’s January 4 letter and that phone call, TechLaw had not received any communication from either attorney.

Mr. Locke **never** stated that Respondent was represented by an attorney during the April 18 call, and Mr. Silfin was the only attorney to contact Petitioner on Respondent’s behalf. Further, Mr. Locke is the owner and President of Cormorant Group, LLC. It is completely reasonable to assume that a businessman with this much experience would have his attorneys reach out to TechLaw if he was, in fact, represented. Under the circumstances, the *only* reasonable assumption would be that Mr. Locke was not represented when he initiated contact with Ms. Jimenez on April 18.

Moreover, even if Respondent *was* represented by Mr. Driscoll on April 18, which again, seems highly unlikely, the fact that Mr. Driscoll was listed as the “attorney of record” for Respondent’s Mark is not sufficient to give rise to a finding that Ms. Jimenez ***actually knew*** that Mr. Locke was represented when she discovered that he was the unknown caller on April 18. The “attorney of record” for a trademark is not assumed to represent the trademark owner, given that federal regulations state that a power of attorney for a trademark application expires once the mark is registered. *See* 37 CFR § 2.17(g); *see also* TMEP §604.02. However, the USPTO “will not automatically change the attorney and correspondence address in its Trademark database” when the trademark registers. *See* TMEP § 604.02. Thus, the attorney listed as “attorney of

record" is not presumed to be the trademark owner's attorney, but will still receive correspondence related to the trademark from the USPTO. In this case, Mr. Driscoll signed the application for Respondent's Mark on July 14, 2006. When he changed firms in 2009, he filed paperwork to update the USPTO. That information was not updated again **for seven years**. Thus, Ms. Jimenez had no reason to suspect that an attorney *who did not even respond to Petitioner's January 4 letter* was representing Respondent, and by extension Mr. Locke, on April 18, 2016.

Third, TechLaw was given authority to communicate directly with Respondent per the notice provision of the Settlement Agreement, which was reviewed by counsel for both parties at the time. Robinson Decl. at ¶ 6. The Settlement Agreement required Petitioner to send notices directly to Respondent, and to send a copy to Mr. Carrasquillo. Petitioner sent the January 4 letter to Respondent, Mr. Carrasquillo, and Mr. Driscoll. Notably, the Reply Brief fails to address the fact that **neither of these attorneys ever responded to the January 4 letter**. Setting aside the fact that the suspect call was so brief, as well as the fact that it was not substantive, it is absolutely absurd to allege that Ms. Jimenez had "direct and clear knowledge" that Mr. Locke was represented when he, and not the attorneys, contacted TechLaw numerous times between January and April of 2016.

As multiple Courts have recognized, this Rule is a matter of "common sense." "Rule 2-100 should be given a reasonable, common sense interpretation, and should not be given a 'broad or liberal interpretation' which would stretch the rule so as to cover situations which were not contemplated by the rule." *Jorgensen v. Taco Bell Corp.*, 50 Cal. App. 4th 1398, 1401 (1996). As the Ninth Circuit said in *U.S. v. Talao*, 222 F.3d 1133, 1138 (9th Cir. 2000):

In determining the applicability of Rule 2-100, we must be mindful of the fundamental reasons behind the venerable rule in legal ethics prohibiting ex parte contacts with represented parties. The rule exists in order to preserve the attorney client relationship and the proper functioning of the administration of justice. It is a rule governing

attorney conduct and the duties of attorneys, and does not create a right in a party not to be contacted by opposing counsel. Its objective is to establish ethical standards that foster the internal integrity of and public confidence in the judicial system.

It would stretch the rules beyond their intended meaning to find a violation where the alleged misconduct was a brief, insubstantial call, initiated by a party that was not even represented. The Reply is nothing more than a transparent attempt to tarnish Ms. Jimenez's reputation in the hopes that the Board will set aside a valid default judgment rendered on Respondent's Mark. This is a remarkably distasteful way to try to win a case, given that Respondent still lists the alleged "former address" as its address with the State of New York. Jimenez Decl. at ¶¶ 22-23.

IV. CONCLUSION

Respondent's Reply Brief is nothing more than a transparent attempt to prejudice Petitioner and Petitioner's attorneys because frankly, Respondent has no excuse for why it failed to update USPTO and New York state records for over five years, if Respondent even moved at all. Because of the seriousness of the ethical violation accusations in the Brief, as well as the fact that the Brief is rife with untruths, Petitioner respectfully submits that simply disregarding the Brief would be insufficient. Petitioner respectfully requests that the Board strike the Reply Brief in its entirety to prevent the misrepresentations from causing further unnecessary harm.

Respectfully Submitted this 30th day of August 2016,

By: /Dana Robinson/

Dana Robinson
TECHLAW LLP
P.O. Box 1416
La Jolla, CA 92038
dana@techlawllp.com
Attorney for Petitioner

Certificate of Service

I hereby certify that I have on August 30, 2016 served the foregoing:

PETITIONER'S MOTION TO STRIKE RESPONDENT'S REPLY BRIEF

Via U.S. first-class mail on the following person(s):

Ira E. Silfin, counsel for Respondent Cormorant Group LLC
Amster, Rothstein & Ebenstein LLP
90 Park Avenue, New York
New York, United States 10016

By: /s/ Kayla Jimenez

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

La Terra Fina USA, Inc.)	
)	
A Delaware Corporation)	
)	Cancellation No.: 92063448
Petitioner,)	
)	
v.)	
)	Registration No.: 3810927
Cormorant Group LLC)	Date of Issue: June 29, 2010
)	
A New York Corporation)	
)	
Respondent.)	
_____)	

**DECLARATION OF DANA ROBINSON IN SUPPORT OF PETITIONER'S
OPPOSITION TO RESPONDENT'S MOTION TO SET ASIDE DEFAULT JUDGMENT**

I, Dana Robinson, declare as follows:

1. I am an attorney, duly admitted to practice law before Courts in the State of California. I am an attorney of record for Petitioner La Terra Fina USA, Inc. ("Petitioner") in the above-entitled action and I have personal knowledge as to the facts recited in this declaration.
2. I represented Petitioner in connection with a 2008 Opposition of the trademark TERRAFINA (US Serial No. 78929735).
3. The Opposition was resolved by a mutual Settlement and Release, executed by the Parties on November 18, 2010.
4. Petitioner notified me in late 2015 that it appeared Cormorant Group LLC ("Respondent") was selling veggie chips through various retail sites, including amazon.com and terrafina.us.

5. On January 4, 2016, I sent a letter on behalf of Petitioner via certified U.S. mail to Respondent stating that Respondent was in violation of the terms of the settlement agreement Respondent executed with Petitioner on November 18, 2010 (the "Settlement Agreement"). The letter was sent to Respondent's to same address that was listed in the Settlement Agreement and the address of record with the USPTO, which is 204 28th Street Brooklyn, NY 11232. A true and correct copy of the January 4, 2016 letter of notification is attached as Exhibit 1.
6. The Settlement Agreement specifically stated: "Any and all notices to be provided to either party shall be given to the respective addressees referenced below ...:

If to Cormorant Group:

Cormorant Group LLC
c/o James Locke
204 28th Street
Brooklyn, NY 11232

With a copy to:

Rogelio J. Carrasquillo
Gibbons P.C.
One Pennsylvania Plaza,
37th Floor
New York, NY 10119-3701"

7. We sent copies of the January 4 letter to the attorney listed in the Settlement Agreement, as well as the attorney listed for Respondent's Mark.
8. On January 26, 2016, I sent another letter of notification on behalf of Petitioner via certified U.S. mail to Terrafina LLC, the apparent owner of the terrafina.us website based on the website's contact information. The letter was sent to 1610 Bathgate Avenue New York, NY 10457, the address listed for Terrafina LLC on terrafina.us, along with a copy to the attorney

identified in the Settlement Agreement. A true and correct copy of the January 26, 2016 letter of notification is attached as Exhibit 2

9. There was no mention of Cormorant Group LLC on any of the contents on Terrafina LLC's website. A true and correct copy of the terrafina.us website is attached as Exhibit 3.
10. At no point in time did the Respondent inform me of a change of address or indicate that its business was no longer at its address of record with the USPTO or the Settlement Agreement.
11. I never received a formal response to any correspondence I or my office sent on behalf of Petitioner, and have never received any kind of response from either of the attorneys who supposedly represented Respondent between November 18, 2010, and January 29, 2016.
12. It was only *after* default had been entered that I was contacted by Ira Silfin, Respondent's new attorney, in late June.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on this 29th day of August 2016.

By: 

Dana Robinson

Exhibit 1

DANA B. ROBINSON, Esq.
E-MAIL: DANA@TECHLAWLLP.COM
TEL (858) 488-2545
FAX (858) 777-3347



P.O. Box 1416
LA JOLLA, CA 92038
WWW.TECHLAWLLP.COM

January 4, 2016

Via Certified U.S. Mail

Cormorant Group LLC
c/o James Locke
204 28th Street
Brooklyn, NY 11232

Re: Violation of TERRAFINA Settlement Agreement

Dear Mr. Locke:

We represent La Terra Fina USA, Inc. ("LTF"). It has come to our attention that Cormorant Group LLC ("Cormorant") is in violation of the terms of the settlement agreement Cormorant executed with LTF on November 18, 2010 (the "Settlement Agreement"). A copy of the Settlement Agreement is enclosed with this letter for your reference.

The Settlement Agreement addresses, in part, the opposition LTF filed against Cormorant's TERRAFINA trademark application (Serial No. 78958154). The terms of the Settlement Agreement allow Cormorant to use TERRAFINA "on or in connection with roasted nuts, flavored nuts, roasted seeds, fruit and nut mixes, trail mixes, confections, including brittles, crunch bards, chocolate covered nuts, chocolate covered dried fruits, raw nuts, dried fruits, raw seeds, grains, pulses and coffee." However, Section 1 of the Settlement Agreement explicitly prohibits Cormorant from "using the TERRAFINA Mark on or in connection with any other goods or services," other than those specifically listed in the Settlement Agreement.

Cormorant is violating the terms of Clause 1 of the Settlement Agreement by selling "veggie chips" under the TERRAFINA brand. See www.terrafina.us. Veggie chips are not listed as a permitted item in Settlement Agreement, and thus Cormorant may not offer the veggie chips for sale under the TERRAFINA name.

This letter serves as notice under Section 11 of the Settlement Agreement, which provides that Cormorant must cure its breach within thirty (30) business days after receipt of this

letter. You can reach me by email, dana@techlawllp.com, to discuss this matter further. Nothing herein shall constitute a waiver of any kind nor prejudice any of our client's rights or remedies.

Very truly yours,

/s/ Dana B. Robinson

Dana B. Robinson

cc: Rogelio J. Carrasquillo
Gibbons, P.C.
One Pennsylvania Plaza
37th Floor
New York, NY 10119

cc: John J. Driscoll
Windels Marx Lane & Mittendorf
Via email john.driscoll@tklaw.com

Exhibit 2

DANA B. ROBINSON, Esq.
E-MAIL: DANA@TECHLAWLLP.COM
TEL (858) 488-2545
FAX (858) 777-3347



TECHLAW LLP
P.O. Box 1416
LA JOLLA, CA 92038
WWW.TECHLAWLLP.COM

January 26, 2016

Via Certified U.S. Mail

Terrafina LLC
Cormorant Group LLC
1610 Bathgate Avenue
New York, NY 10457

Re: Violation of TERRAFINA Settlement Agreement

To Whom It May Concern:

We represent La Terra Fina USA, Inc. ("LTF"). It has come to our attention that Cormorant Group LLC ("Cormorant") is in violation of the terms of the settlement agreement Cormorant executed with LTF on November 18, 2010 (the "Settlement Agreement").

The Settlement Agreement addresses, in part, the opposition LTF filed against Cormorant's TERRAFINA trademark application (Serial No. 78958154). The terms of the Settlement Agreement allow Cormorant to use TERRAFINA "on or in connection with roasted nuts, flavored nuts, roasted seeds, fruit and nut mixes, trail mixes, confections, including brittles, crunch bards, chocolate covered nuts, chocolate covered dried fruits, raw nuts, dried fruits, raw seeds, grains, pulses and coffee." However, Section 1 of the Settlement Agreement explicitly prohibits Cormorant (and its parents, affiliates, subsidiaries, successors and assigns) from "using the TERRAFINA Mark on or in connection with any other goods or services," other than those specifically listed in the Settlement Agreement.

Cormorant is violating the terms of Clause 1 of the Settlement Agreement by selling "veggie chips" under the TERRAFINA brand. See www.terrafin.us. Veggie chips are not listed as a permitted item in Settlement Agreement, and thus Cormorant may not offer the veggie chips for sale under the TERRAFINA name.

This letter serves as notice under Section 11 of the Settlement Agreement, which provides that Cormorant must cure its breach within thirty (30) business days after receipt of this

letter. Please let us know if you cannot locate a copy of the Settlement Agreement, and we will send it to you.

You can reach me by email, dana@techlawllp.com, to discuss this matter further. Nothing herein shall constitute a waiver of any kind nor prejudice any of our client's rights or remedies.

Very truly yours,

/s/ Dana B. Robinson

Dana B. Robinson

cc: Rogelio J. Carrasquillo
Gibbons, P.C.
One Pennsylvania Plaza
37th Floor
New York, NY 10119

Exhibit 3



feedback

We love hearing from our customers, so if you have an idea or suggestion, or you'd just like to let us know how we're doing, then please contact us at feedback@terrafina.us

if you'd like to get in touch

TerraFina LLC
Bathgate Industrial Estate
1610 Bathgate Avenue
The Bronx
New York, NY 10457
USA

e: hello@terrafina.us
t: +1 718-299-8290
f: +1 718-299-8291

If you're interested in stocking our products for the first time, please fill in the form below:

name *
company *
email *
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our brands





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our story

Terrafina was born in 2005 when, in true entrepreneurial spirit, we seized a window of opportunity in the market and unleashed our passion for healthy snacks.

retailers & wholesalers

We pride ourselves on collaborating with our wholesalers and retailers to deliver innovation, not only with our products, but also with our packaging.

whats new

Keep up to date with all things Terrafina! See our news and our blog for more info.

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our brands



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

La Terra Fina USA, Inc.)	
)	
A Delaware Corporation)	
)	Cancellation No.: 92063448
Petitioner,)	
)	
v.)	
)	Registration No.: 3810927
Cormorant Group LLC)	Date of Issue: June 29, 2010
)	
A New York Corporation)	
)	
Respondent.)	
_____)	

**DECLARATION OF KAYLA JIMENEZ IN SUPPORT OF PETITIONER'S MOTION
TO STRIKE TO RESPONDENT'S REPLY BRIEF**

I, Kayla Jimenez, declare as follows:

1. I am an attorney, duly admitted to practice law before Courts in the State of California. I am an attorney of record for Petitioner La Terra Fina USA, Inc. ("Petitioner") in the above-entitled action and I have personal knowledge as to the facts recited in this declaration.
2. I assisted with the preparation of the correspondence sent to Respondent on Petitioner's behalf on January 4, 2016, a copy of which is attached to the Declaration of Dana Robinson as **Exhibit 1**.
3. While working on this letter, I investigated the address information and representation of Respondent on the USPTO website and the State of New York's website.
4. The websites for both agencies showed no updates in address information.

5. Attached as Exhibit A is a true and correct copy of the current TESS record for TERRAFINA (US Serial No. 78929735).
6. Respondent had an attorney of record listed with the USPTO for its TERRAFINA trademark: John J. Driscoll of Windels Marx Lane & Mittendorf.
7. In addition, I investigated the website terrafina.us, which was owned by Terrafina LLC, a New York limited liability company with the address to 1610 Bathgate Avenue New York, NY 10457.
8. Between January 2016 and April 2016, I (on behalf of TechLaw) received numerous missed calls and voicemails from James Locke the president of Respondent Cormorant Group LLC ("Respondent").
9. On February 9, 2016, I sent an email to a secretarial employee of Respondent, requesting to schedule a phone conference after receiving several of such missed calls from Mr. Locke. A true and correct copy of this email is attached as Exhibit B.
10. I sent the February 9, 2016 email to Mr. Locke's secretary because when I tried returning Mr. Locke's calls, Mr. Locke was unavailable and the secretary would not give me Mr. Locke's email address to set up a time for a telephone conference.
11. However, the secretary requested that I email her and she would forward the email to Mr. Locke.
12. I did not receive a formal response to this email.
13. On March 29, 2016, I filed a Petition for Cancellation of Respondent's registration with the USPTO on behalf of the Petitioner.
14. I mailed the petition for cancellation to Respondent's address on record with the USPTO at 204 28th Street, Brooklyn, NY 11232.
15. On April 18, 2016, I received an unsolicited call from an unknown number.
16. The call was from Mr. Locke, who stated that Respondent had no veggie chips on the market

under the TERRAFINA brand and that any photos of the veggie chips would be taken down. I requested that the Respondent provide such confirmation in writing, and the phone call ended.

17. The records for the TechLaw phone system indicate that the entire call (including ringing and routing to the right extension) lasted three minutes.
18. At the time Mr. Locke called, I was on my way to a meeting.
19. I did not provide legal advice or pressure Mr. Locke in any way, shape, or form during that call.
20. Respondent did not provide the confirmation in writing and never contacted me again.
21. Respondent continues to violate the Settlement Agreement by using the TERRAFINA brand on veggie chips and sesame sticks. Respondent's prior and current violation of the Settlement Agreement are attached as Exhibit C.
22. The New York Department of State's website lists the following address for Respondent, Cormorant Group LLC: 204 28th Street, Brooklyn, NY 11232. A true and correct copy of the entity information from the New York Department of State Website is attached as Exhibit D.
23. The address for Terrafina LLC is 1610 Bathgate Avenue, New York, NY 10457, and it is listed as a separate entity from Cormorant Group LLC on the New York Secretary of State's website. A true and correct copy of the entity information from the New York State Department of State website is attached as Exhibit E.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on this 29th day of August 2016.

By: _____

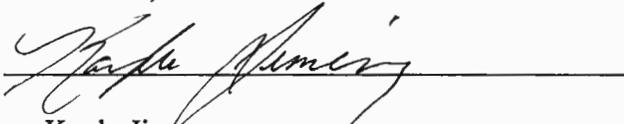

Kayla Jimenez

Exhibit A



United States Patent and Trademark Office

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TERRAFINA

Word Mark TERRAFINA

Translations The English translation of the word TERRAFINA in the mark is FINE EARTH.

Goods and Services (CANCELLED) IC 029. US 046. G & S: ROASTED NUTS, FLAVORED NUTS, NUT BUTTERS, ROASTED SUNFLOWER AND PUMPKIN SEEDS, FRUIT AND NUT MIXES, NAMELY, TRAIL MIXES DRIED FRUITS. FIRST USE: 20060115. FIRST USE IN COMMERCE: 20060115

(CANCELLED) IC 030. US 046. G & S: CONFECTIONS, NAMELY, BRITTLES, CRUNCH BARS, CHOCOLATE COVERED NUTS, CHOCOLATE COVERED DRIED FRUIT. FIRST USE: 20060115. FIRST USE IN COMMERCE: 20060115

(CANCELLED) IC 031. US 001 046. G & S: RAW NUTS AND RAW SEEDS. FIRST USE: 20060115. FIRST USE IN COMMERCE: 20060115

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78929735

Filing Date July 14, 2006

Current Basis 1A

Original Filing Basis 1A

Published for Opposition November 27, 2007

Registration Number 3810927

Registration Date June 29, 2010

Owner (REGISTRANT) Cormorant Group LLC LIMITED LIABILITY COMPANY NEW YORK 204 28th Street Brooklyn
NEW YORK 11232

Attorney of Record Ira E. Silfin

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator DEAD

Cancellation Date July 1, 2016

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Exhibit B



Kayla Jimenez <kayla@techlawllp.com>

Telephone call with TechLaw LLP re: La Terra Fina

1 message

Kayla Jimenez <kayla@techlawllp.com>

Tue, Feb 9, 2016 at 9:45 AM

To: a.aygun@terrafin.us

Cc: Dana Robinson <dana@techlawllp.com>

Hello Mr. Locke,

I am Mr. Robinson's associate at TechLaw LLP. We have been playing phone tag, so I think it is best to schedule the call in advance. Dana and I are both available to speak about the La Terra Fina letter (dated 1/26/16) at 11am PST Wednesday, February 10th.

I also have this afternoon (1pm PST - 4pm PST) free to take a call. You can reach me on my direct line at [858-952-0998](tel:858-952-0998).

Please let me know your availability so we can set something up.

Best,

Kayla Jimenez
Associate Attorney
TechLaw LLP
P.O. Box 1416
La Jolla, CA 92038
kayla@techlawllp.com

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Exhibit C



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our products

Our extensive range means we can satisfy everyone's tastes, and as always, product quality lies at the heart of our offering.

being sustainable

We're determined to have a healthy impact on the world around us. That's why sustainability and ethical trading are high on our agenda.

get in touch

We love hearing from our customers, so if you have an idea or suggestion, please contact us.

tub program

Our range of tubs gives you choice and flexibility.

Our tubs are made using 50% post-consumer recycled (PCR) plastic PET bottles which reduces the use of virgin raw materials and the amount of refuse going to waste streams. And with 50% PCR messaging engraved on the bottom of each tub, your customers will understand that you're as committed to the environment as they are.

small tub program



Container Sizes	5oz	8oz	12oz	16oz	24oz	32oz
Case Pack:	25	24	16	12	8	6
Case Dimensions (in.):	9.5 x 9.5 x 8.25					
Cases Per Layer:	20 (16)	20 (16)	20 (16)	20 (16)	20 (16)	20 (16)
Layers Per Pallet:	5 (6)	5 (6)	5 (6)	5 (6)	5 (6)	5 (6)
Cases Per Pallet:	100 (96)	100 (96)	100 (96)	100 (96)	100 (96)	100 (96)

Numbers in parenthesis are alternate pallet layouts.

large tub program

crafted with care right here in the usa



Container Sizes	18oz	29oz	34oz	44oz	32oz 2C	32oz 4C
Case Pack:	12	12	8	8	12	12
Case Dimensions (in.):	14.5 x 14.5 x 7.5					
Cases Per Layer:	9	9	9	9	9	9
Layers Per Pallet:	7	7	7	7	7	7
Cases Per Pallet:	63	63	63	63	63	63
Shipper:	Yes	Yes	Yes	No	Yes	Yes
Compartments:	No	No	No	No	2	4

our brands

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Terrafina Vegetable Chips-5 oz from Terrafina

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Price: **\$6.79** (\$1.36 / oz) + \$4.49 shipping

Only 4 left in stock - order soon. Ships from and sold by Vine.com (Quidsi Retail, an Amazon company).

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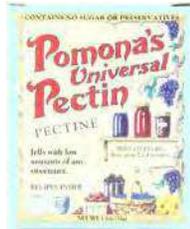
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\$19.72 Prime



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★★★★★ 76

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Grocery & Gourmet Food > Produce > Fresh Vegetables > Sea Vegetables

Terrafina Salted Sesame Sticks-6 oz from Terrafina

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Price: **\$3.94** (\$0.66 / oz) + \$4.99 shipping

In Stock. Ships from and sold by [Vine.com](#) (Quidsi Retail, an Amazon company).

Get it Sooner. Estimated delivery on **Aug. 5 - 10** when you choose **Expedited Shipping** at checkout.

Ship to: SANDIEGO, CA 92101

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Bounty

More absorbent* so the roll can last 50% longer

Shop now

*vs. leading ordinary brand

AdChoices

Terra Chips Grand Sales

Saturday, January 21, 2012

Terrafina Vegetable Chips, 5-Ounce Tubs (Pack of 8)

Terrafina Vegetable Chips, 5-Ounce Tubs (Pack of 8) Review



Blog Archive

▼ 2012 (39)

▶ May (1)

▶ April (7)

▶ March (11)

▼ January (20)

Terra Chips Pesto & Smoked Mozzarella Kettle Chip ...

Terra Chips Candied Sweet Potato Crinkles (12x7 OZ...

Welch's Fruit Snacks, Mixed Fruit, Fat Free Snacks...

Terrafina Vegetable Chips, 5-Ounce Tubs (Pack of 8...

Terra Exotic Vegetable Chips Mediterranean -- 7.5 ...

TERRA SWEET POTATO KRINKLE CHIPS (6X6OZ)

Terra Plain Sweet Potato Chips -- 6 oz

Terra Exotic Vegetable Chips Mediterranean -- 7.5 ...

Terra Chips, Chip Sweet Pto Sea Salt, 6-Ounce (12 ...

Terra Original Exotic Veggie Chips (12x5oz)

Terra Chips Sea Salt Terra Sweet (12x5 OZ)

Exhibit D

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 3, 2016.

Selected Entity Name: CORMORANT GROUP, L.L.C.

Selected Entity Status Information

Current Entity Name: CORMORANT GROUP, L.L.C.

DOS ID #: 3223642

Initial DOS Filing Date: JUNE 27, 2005

County: QUEENS

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

CORMORANT GROUP, L.L.C.

EMRE IMAMOGLU

204 28TH ST

BROOKLYN, NEW YORK, 11232

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 27, 2005	Actual	CORMORANT GROUP, L.L.C.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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Exhibit E

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 3, 2016.

Selected Entity Name: TERRAFINA, L.L.C.

Selected Entity Status Information

Current Entity Name: TERRAFINA, L.L.C.

DOS ID #: 3223448

Initial DOS Filing Date: JUNE 24, 2005

County: QUEENS

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

TERRAFINA, L.L.C.
1610 BATHGATE AVENUE
BRONX, NEW YORK, 10457

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 24, 2005	Actual	TERRAFINA, L.L.C.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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