

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

In the matter of trademark application Serial No. 78110344
Filed on: February 22, 2002
For the mark "Superfreaks Funky Disco Revue"
Published in the Office Gazette on December 17, 2002



09-24-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

Joe J. Alfaro, Jr.
v.
Guy A. Hoffman

Opposition No. 91155188

**ANSWER OF APPLICANT GUY A. HOFFMAN TO
AMENDED NOTICE OF OPPOSITION**

1, As to the First Ground of Opposer For Opposition to Registration

Applicant Guy A. **HOFFMAN** hereby denies that Opposer has used his mark **THE SUPERFREAKS** in Interstate Commerce since at least as early as 1999.

Applicant Guy A. **HOFFMAN** is without knowledge or information sufficient to form a belief as to the truth of the allegation that Opposer continues to use the mark in connection with "entertainment services in the nature of live disco music from the 70's and 80's as performed by live musicians" long prior to any date on which Applicant can rely upon and thereby so states, denying said allegation.

Applicant Guy A. **HOFFMAN** is without knowledge or information sufficient form a belief as to the truth of the allegation that this service is marketed and sold

through various channels including mass post office mailing, newspaper and radio ads, flyers, t-shirts, business cards, and on the world wide web and thereby so states, denying said allegation.

Applicant Guy A. **HOFFMAN** is without knowledge or information sufficient to form a belief as to the truth of the allegation that Opposer has expended substantial resources including time, effort, and capital to promote Opposer's services under its mark ***THE SUPERFREAKS*** resulting in distinctiveness, popularity, and strong good will and thereby so states, denying said allegation.

Applicant Guy A. **HOFFMAN** hereby denies that by reason of Opposer's extensive promotions and use, as well as its services, Opposer's mark has come to be well recognized as signifying and identifying Opposer's services.

Applicant Guy A. **HOFFMAN** hereby denies that Opposer's band and ***THE SUPERFREAKS*** continues to enjoy a very successful career providing entertainment services for many prestigious venues and events.

2. As to the Second Ground of Opposer for Opposition to Registration

Applicant Guy A. **HOFFMAN** admits that the Opposer owns a Certificate of Registration from the State of California (#056707), Int'l Class 041, denies that said Certificate of Registration is for its [the Opposer's] mark ***THE SUPERFREAKS*** and further denies that Opposer's registration is valid, subsisting and in full force.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE SECOND GROUND OF OPPOSER FOR OPPOSITION TO REGISTRATION:

Applicant Guy A. **HOFFMAN** hereby alleges that Opposer's Certificate of Registration from the State of California (#056707) was obtained in a wrongful and

unlawful manner in that Opposer filed an application with the Secretary of State of the State of California with actual knowledge that applicant Guy A. **HOFFMAN** has previously filed an application on February 22, 2002 with this Board for the same mark and nevertheless willfully and unlawfully failed to disclose said knowledge to the Secretary of State of the State of California at the filing of said application or any time thereafter.

3. As to the Third Ground of Opposer for Opposition to Registration

Applicant Guy A. **HOFFMAN** hereby denies that Opposer is the owner of the mark *THE SUPERFREAKS* for the services of Musical Performances.

Applicant Guy A. **HOFFMAN** is without knowledge of information sufficient to form a belief as to the truth of the allegation that several specimens: contract, postcard, business flyer, newspaper ad attached as Exhibits B, C, D, E, and F, demonstrate how the mark is used in commerce and thereby so states denying said allegation.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit G, the affidavit of JOE J. ALFARO, JR., each and every allegation of paragraph 1 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit G, the affidavit of JOE J. ALFARO, JR., each and every allegation of paragraph 2 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit G, the affidavit of JOE J. ALFARO, JR., each and every allegation of paragraph 3 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit H, the affidavit of KEITH KESSINGER, each and every allegation of paragraph 1 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit H, the affidavit of KEITH KESSINGER, each and every allegation of paragraph 2 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit H, the affidavit of KEITH KESSINGER, each and every allegation of paragraph 3 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit I, the affidavit of DANNY ARROYO, each and every allegation of paragraph 1 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit I, the affidavit of DANNY ARROYO, each and every allegation of paragraph 2 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit I, the affidavit of DANNY ARROYO, each and every allegation of paragraph 3 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit I, the affidavit of DANIEL ALFARO, each and every allegation of paragraph 1 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit I, the affidavit of DANIEL ALFARO, each and every allegation of paragraph 2 of said Affidavit.

Applicant Guy A. **HOFFMAN** hereby denies in Exhibit I, the affidavit of DANIEL ALFARO, each and every allegation of paragraph 3 of said Affidavit.

4. As to the Fourth Ground of Opposer for Opposition to Registration

Applicant Guy A. **HOFFMAN** admits on February 2, 2002 that Applicant filed the Intent-to-Use Application at issue to register the mark but denies being dismissed from *THE SUPERFREAKS* band by Opposer.

5. As the Fifth Ground of Opposer for Opposition to Registration

Applicant Guy A. **HOFFMAN** hereby denies that Applicant's proposed mark SUPERFREAKS FUNKY DISCO REVUE is identical (except for the disclaimed words "funky disco revue") in every way to the Opposer's previously used service mark *THE SUPERFREAKS* for "entertainment services in the nature of live disco music from the

70's and 80's as performed by live musicians" as to be likely to cause confusion, under Section 2(d) of the Trademark Act of 1946, 15 U.S.C., Section 1052.

Applicant Guy A. **HOFFMAN** denies that everything about Applicant's mark is identical: same classification – Int'l 041, same geographic area (both parties are based in Riverside County), both would perform disco, funk and 80's hits wearing costumes from the disco era and both would appeal to the same class of consumers, casinos, nightclubs, private events, birthday parties, etc.

Applicant Guy A. **HOFFMAN** hereby denies that given all these facts, it is inevitable that Applicant's use and registration of *THE SUPERFREAKS* service mark in connection with musical performances is likely to cause confusion or mistake, and deception among reasonable consumers or potential consumers of Opposer's services.

Applicant GUY A. **HOFFMAN** hereby denies that upon encountering Applicant services offered under the proposed **SUPERFREAKS FUNKY DISCO REVUE** mark, consumers will believe that the services offered by Applicant are in fact those of which Opposer has been offering since 1999.

6. As to the Sixth Ground of Opposer for Opposition to Registration

Applicant Guy A. **HOFFMAN** hereby denies that Applicant's registration of *THE SUPERFREAKS* mark will interfere with Opposer's right in Opposer's mark and will seriously damage Opposer, its business and its good will.

7. As to the Seventh Ground of Opposer for Opposition to Registration

Applicant Guy A. **HOFFMAN** hereby denies that Applicant filed a false oath in its "Intent-to-Use Application" submitted to the United States Patent and Trademark Office and knowingly made wilfull, false, material representations of fact in his

application by filing an Application to Register a mark which it knew infringed on the superior rights of the Opposer.

Applicant Guy A. **HOFFMAN** hereby denies that Applicant had an obligation to disclose the existence of the Opposer's band and right in the mark.

Applicant Guy A. **HOFFMAN** admits in his declaration that it is states that he believes the Applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief, no other person, firm, corporation, or association has the right to use the mark in commerce.

Applicant Guy A. **HOFFMAN** hereby denies that Applicant's knowledge of Opposer's existence can be proven by the Small Claims Court documents that Applicant filed only four days after submitting its unauthorized "Intent-to-Use Application."

Applicant Guy A. **HOFFMAN** admits he filed a Small Claims suit again Opposer for an alleged breach of contract but denies it was concerning his participation in the Opposer's band ***THE SUPERFREAKS*** – the very mark at issue in this opposition.

Applicant Guy A. **HOFFMAN** hereby denies that on April 10, 2002, Applicant lost this Small Claims case against Opposer and alleges that the Small Claims case is legally irrelevant and immaterial to a determination of the trademark application in this procedure.

AS A SEPARATE, AFFIRMATIVE DEFENSE, OPPOSER JOE J. ALFARO, JR. IS GUILTY OF "UNCLEAN HANDS"

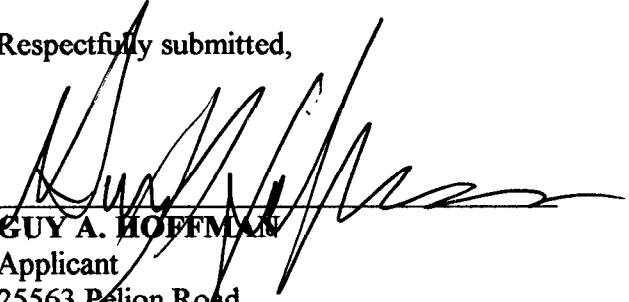
Applicant Guy A. **HOFFMAN** hereby alleges that Opposer Joe J. Alfaro, Jr. is guilty of "unclean hands" in his opposition to this application in that he obtained a Certificate of Registration from the State of California for a service mark, ***THE***

SUPERFREAKS, by willfully, wrongfully and unlawfully concealing that this proceeding before the Board was then pending.

Applicant GUY A. **HOFFMAN** therefore requests that Opposer Joe J. Alfaro's Amended Notice of Opposition be dismissed in its entirety and that the application of GUY A. **HOFFMAN** be granted.

DATED: September 21, 2004

Respectfully submitted,



GUY A. HOFFMAN
Applicant
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **ANSWER OF APPLICANT GUY A. HOFFMAN TO AMENDED NOTICE OF OPPOSITION** has been served on Joe A. Alfaro, Jr. by mailing said copy on September 21, 2004 via ~~Express~~ Mail Post Office to Addressee" to:

*PRIORITY
mem*

Joe J. Alfaro, Jr.,
481 W. Blaine Street
Riverside, California 92507

May L. Mandel

May L. Mandel

9/21/04

Date

3034 N. 151st Lane
Goodyear, AZ 85338