

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

JOE J. ALFARO, JR.)
)
) Opposition No.: 91155188
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) Opposer,)
)
) IN RE:
)
) Serial No.: 78/110,344
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) Mark: SUPERFREAKS FUNKY
) DISCO REVUE
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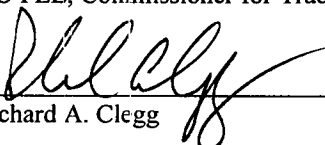
02-02-2006

U.S. Patent & TMO/TM Mail Rcpt Dt #11

OPPOSER'S REPLY BRIEF

CERTIFICATION UNDER 37 CFR § 1.8

I hereby certify that the document referred to as enclosed herein is being deposited with the United States Postal Service as first-class mail on this date, January 26, 2006, in an envelope addressed to: Box TTAB, NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.



Richard A. Clegg

Opposer, Joe J. Alfaro, Jr., submits this reply brief in further support of his opposition to Application Serial No 78/110,344 filed by Guy Hoffmann (“Applicant”).

Applicant has not even attempted to dispute any of the facts that Opposer established in support of his opposition, including standing, priority and likelihood of confusion. In particular, Applicant does not dispute that:

1. Opposer founded the band called THE SUPERFREAKS;
2. Opposer has been using the SUPERFREAKS mark in interstate commerce since 1999, in connection with live disco musical performances;
3. Applicant never used the mark after he was fired from the SUPERFREAKS band;
4. Applicant filed his ITU application without having any actual, *bona fide* intent to use the mark; and
6. Applicant is trying to register a mark that is confusingly similar to (and, indeed, essentially identical to) Opposer’s mark.

In view of these uncontroverted facts, the opposition should be sustained.

Applicant’s only argument is that Opposer somehow acted with “unclean hands” by trying to register the mark (which Applicant tacitly admits is the Opposer’s mark) at the state level, after Applicant filed his baseless application to register the mark with the USPTO. Applicant seems to suggest that, by filing a fraudulent “spite” application with the USPTO, Applicant somehow divested *Opposer* of the right to register *Opposer’s* mark at the state level.


Applicant’s argument is utterly devoid of any factual or legal basis. There is no evidence in the record to suggest that Opposer acted wrongfully in seeking to register *Opposer’s* mark with his home state. On the contrary, the evidence is clear that Opposer owns the subject mark and had every right to register the mark with his home state.

Applicant's "unclean hands" argument is specious and legally insufficient as an affirmative defense, and should be rejected. The Board should sustain the opposition.

Respectfully submitted:

Dated: January 26, 2006

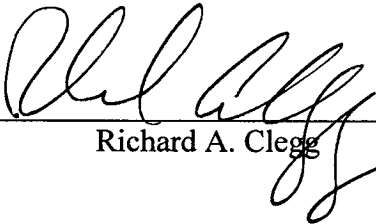
By:


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CERTIFICATE OF SERVICE

I hereby certify that, on January 26, 2006, a true and correct copy of the foregoing OPPOSER'S REPLY BRIEF was served on Applicant's counsel, via First Class Mail, postage prepaid, at the following address:

Leonard H. Mandel, Esq.
3034 North 151st Lane
Goodyear, Arizona 85338


Richard A. Clegg