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

In the matter of trademark application Serial Number 78110344
For the mark "Superfreaks Funky Disco Revue"
Published in the Official Gazette on December 17, 2002
Applicant: Guy A. Hoffmann



Opposition No. 91155188

01-06-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #74

Certificate of Service

I hereby certify that a true and complete copy of the forgoing Opposition to Motion for Summary Judgment, accompanying brief and all supporting documents including the declaration of Guy A. Hoffmann has been served on Joe J. Alfaro, Jr., Opposer by mailing said copy on January ,2004, via Express Mail Post Office to Addressee to:

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481 W. Blaine Street
Riverside, CA 92507

Guy A. Hoffmann, Applicant
25563 Pelion Road
Menifee, CA 92507

01/05/04

Date

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 78110344
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Applicant filing date: February 22, 2002
Applicant: Guy A. Hoffmann



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Opposition No. 91155188

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

AND BRIEF IN SUPPORT OF

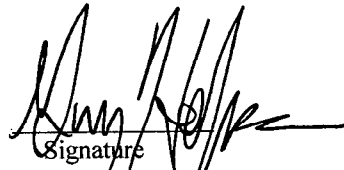
(including affidavit and exhibits)
filed by Guy A. Hoffmann, Applicant

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service
as "Express Mail Post Office to Addressee" in an envelope addressed to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

on 01-05-04
Date


Signature

Guy A. Hoffmann, Applicant

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

In the matter of trademark application Serial No, 781110344
Filed on : February 22, 2002
For the mark "Superfreaks Funky Discoe Revue"
Published in the Official Gazette on December 17, 2002

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

Opposition No. 91155188

01-06-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
and accompanying Brief
Guy A. Hoffmann
25563 Pelion Road
Menifee, CA 92584

1. Introduction

Opposer, Joe J. Alfaro, Jr has moved for Summary Judgment. Applicant opposes Summary Judgment and demonstrates in his motion for Summary Judgment that there are genuine issues of facts which Opposer has conveniently ignored in his affidavit and those of others. The motion for summary judgment is without merit and should be denied.

2. Background

The first performance on October 15, 1999 in the Olympic Club in San Francisco involving Guy A. Hoffmann, Joe J. Alfaro Jr. and other members of the band was performed under the name "THE GROOVIE KNIGHTS" not Superfreaks as alleged by opposer. Some time after that, Guy A. Hoffmann suggested the band use the name "SUPERFREAKS" which Joe Alfaro agreed to use. Guy A. Hoffmann and Joe Alfaro entered into a verbal partnership agreement where Guy A. Hoffmann was to split on a 50 50 basis a portion of the total revenue for "gigs"(performances) that Guy A. Hoffmann booked. Guy A. Hoffmann did in fact book over 200 gigs in a two year period and in those gigs took charge to see that they were in fact performed. Guy A. Hoffmann received his share, 50% for over 200 gigs that he booked. At some point, Joe J. Alfaro told Guy A Hoffmann not to appear with the Superfreaks. A resulting Small Claims Action was filed by Guy A. Hoffmann for monies owed for performances of the Superfreaks which he was barred from performing by Joe J. Alfaro. Several months after the name Superfreaks was used in lieu of THE GROOVIE KNIGHTS Guy A. Hoffmann to protect his interests took a CD of the Superfreaks musical performance and picture of himself in costume performing with the Superfreaks, placed it in a sealed package addressed to himself, mailed it and still has possession of this package. Upon a further hearing or trial of this matter, this package will be produced and unsealed. After Guy A. Hoffmann filed his application, Joe. J. Alfaro filed for a Certificate of Registration from the State of California knowing this application was pending before the Board.

3. Statement of Facts

A. Guy A Hoffmann was the first one to suggest the use of the name Superfreaks.

- B. Joe J. Alfaro agreed with Guy A. Hoffmann to use this name and did so in the performance of many "gigs"
- C. Guy A. Hoffmann booked in excess of 200 gigs under the name Superfreaks
- D. Guy A. Hoffmann and Joe J. Alfaro shared profits on a 50 50 basis for the gigs booked by Guy A. Hoffmann
- E. At some point Joe J. Alfaro barred Guy A. Hoffmann from performing with the Superfreaks.
- F. Guy A. Hoffmann filed a Small Claims Action in Riverside County Superior Court for monies owed for gigs that he was barred from by Joe J. Alfaro. The Court was never asked to decide who had the right to use the name Superfreaks.
- G. Opposer has presented no credible evidence that would be admissible in a trial over an objection to prove to the finder of fact that he originated the name Superfreaks.

4. Argument:

Summary Judgment shall be rendered if there is no genuine issue as to any material fact. If there is a genuine issue as to any material fact summary judgment shall be denied. See Federal Rules of Civil Procedure 56(c) applicable to this Board pursuant to Code of Federal Regulations Title 37, Volume 1 Section 2.116

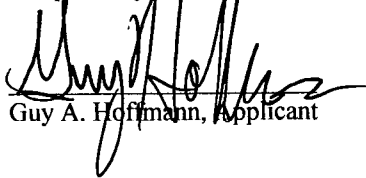
5, Conclusion

Opposer's affidavit and those others presented by Opposer are sketchy and do not address the issue of exactly how, when and who created the use of the name SUPERFREAKS. They would not be admissible over objection at a contested hearing or trial. The affidavit of Guy A. Hoffmann states clearly when he created the use of the name of Superfreaks and his relation to its future performances under that name. Clearly there is a genuine issue of a material fact.

6. Relief Sought

Applicant requests that this Board deny Opposer's motion for Summary Judgment.

Respectfully submitted,


Guy A. Hoffmann, Applicant

01-05-04
Date

State of California
County of Riverside

01-06-2004

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #74

Subscribed and sworn before me on
this 5 day of January, 2004.

by name of signer Guy A. Hoffmann

Kristin Chamberlin

Signature of Notary



AFFIDAVIT

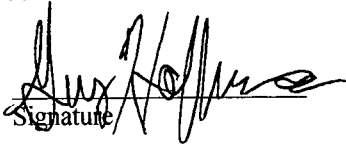
I, Guy A. Hoffmann am over the age of 18 years and have personal knowledge of the facts contained in this declaration. Being duly sworn according to law, upon my oath, state the following:

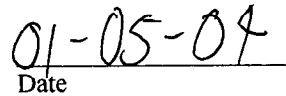
1. On October 15, 1999 when I performed with Joe J. Alfaro, Jr in the Olympic Club in San Francisco, Joe called the band "THE GROOVIE KNIGHTS". See my notice of answer to opposition of 3/26/03 and the enclosure, a color photo of the band called THE GROOVIE KNIGHTS". The band was not called the Superfreaks at that time.
2. Sometime after that performance but before our next performance on New Year's Eve 2000, I had a telephone conversation with Joe regarding the name of the band. I told Joe the name of the band was a foolish one and "Superfreaks" was a better name. Joe agreed with me to use the name of Superfreaks for our band.
3. My relationship with Joe Alfaro was an oral partnership not reduced to writing. This agreement started before the first performance. Our verbal agreement regarding performances was as follows: When I booked a "gig" or musical performance, I would keep 10 to 20% of the performance fees as long I split this with Joe Alfaro. Joe verbally concurred with this arrangement. Joe never reduced this agreement to writing despite my many requests that he do so.
4. Every "gig" that I booked, I was in charge of it, that is to say, I ensured that all the players in the band were transported to the performance site, all the musical equipment was taken to the site and I appeared on stage performing as a member of Superfreaks. This led me to believe I was a partner and coprincipal with Joe Alfaro in the Superfreaks.
5. While I performed with the Superfreaks over a two year period, I booked 75 to 85 % of the gigs performed. There were approximately 200 gigs during this period.
6. Several months after I selected the name Superfreaks, I sent a CD and pictures of myself with The Superfreaks in a package to prove in the future that I, not Joe Alfaro had originated the name. I still have the package in my possession and will produce at a trial in the future should this be necessary. I did this because Joe Alfaro would not reduce our working arrangement to a written agreement despite my requests to do so.
7. The Small Claims action that Joe Alfaro has referred to involving moneys sought by me

for the gigs performed by Superfreaks after Joe Alfaro would not let me perform with the band. At no time was the Small Claims Judge asked to determine who had the right to use the name Superfreaks. A small claims court in California does not decide such issues.

8. I filed an application with this Board on February 22, 2002. Obviously this action is still pending and delayed by Joe Alfaro's opposition. At the time of my filing this application, Joe Alfaro had not filed a certificate of registration with the Secretary of State of California. His affidavit offers no explanation for the timeliness of his filing with the State of California nor exactly what did he state when he applied for a certificate of registration with the Secretary of State of California knowing well this action was pending.

9. It is my position that I, Guy A. Hoffmann not Joe J. Alfaro, Jr was the creator of the name Superfreaks and should get the action I have requested from the Board. Joe Alfaro's affidavits and those others submitted do not address the issue of the origin of the name Superfreaks for obvious reasons. Joe Alfaro did not create the name Superfreaks. I DID.


Signature


Date