TTAB

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

In the Matter of Trademark Application No. 78/162,596

AIDS Healthcare Foundation

Opposer,

v.

Theodore Joseph Trentman,

Applicant.

Opposition No. 91160024

Interlocutory Attorney:
Andrew P. Baxley

[redacted]

09-13-2006

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #

Revocation of Power of Attorney
and New Power of Attorney

The Undersigned representative of AIDS Healthcare Foundation, Tom Myers, hereby revokes all previous Powers of Attorney given in the above-identified matter and now appoints:

Daniel C. DeCarlo, Esq. of
Lewis Brisbois Bisgaard & Smith LLP
221 N. Figueroa Street, Suite 1200
Los Angeles, California 90012
Telephone: 213-250-1800
Fax: 213-250-7900

to represent Opposer in all proceedings before the Trademark Trial and Appeal Board

9/13/06
Date

Tom Myers
General Counsel, AIDS Healthcare Foundation

4848-5486-6689

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

In the Matter of Trademark Application Serial No. 78/162,596

AIDS Healthcare Foundation Opposer, v. Theodore Joseph Trentman, Applicant.	Opposition No. 91160024 Interlocutory Attorney: Andrew P. Baxley

AIDS HEALTHCARE FOUNDATION ("AHF") OPPOSITION TO THE TTAB'S OSC RE DISMISSAL; DECLARATION OF TOM MYERS IN SUPPORT THEREOF

Opposer, AIDS Healthcare Foundation ("AHF") responds to the Trademark Trial and Appeal Board ("TTAB") Order to Show Cause dated August 15, 2006. The declaration of Tom Myers, AHF'S General Counsel, is submitted herein as support. AHF also seeks by way of this response to reopen discovery and set new discovery cut-off dates as well as re-open and re-set the applicable testimonial period. The basis for AHF's opposition to the OSC and its rational for requesting revised dates is set forth herein.

AHF's DELAY IN PROSECUTION WAS CAUSED BY COUNSEL SINCE SUSPENDED

AHF's counsel was suspended by the California Bar after a conviction of criminal grand theft and forgery in June of 2006. (Myers Dec. ¶ 7,8 and Exhibit "A").

This Opposition has been pending since 2004 and the opposer, AHF, has been represented by its general counsel's office. Specifically, Associate General Counsel for AHF, Katharine Sabich-Robison was principally responsible for the management of this Opposition

and was to report to AHF's general counsel Tom Myers. (Myers Dec. ¶ 5) Unbeknownst to Mr. Myers, Ms. Sabich-Robison was apparently engulfed in personal legal problems which ultimately lead to her conviction of grand-theft and forgery and which apparently kept her from paying attention to her cases. (Myers Dec. ¶ 4-6) Mr. Myers also has been informed by Ms. Sabich-Robison that everything was being taken care of on the case. (Myers Dec. ¶ 5) In fact, AHF had done very little and Ms. Sabich-Robison had mislead Mr. Myers. As such, AHF is a victim and requests that this matter be re-set so that AHF's substantive claim can be heard.

In June of 2006 Ms. Sabich-Robison was suspended by the California Bar after being convicted of California Penal Code Section 487(a) regarding grand theft and California Penal Code Section 470(a) forgery; crimes against elders and dependent adults. (Myers Dec. and Exhibit "A") As such, unbeknownst to AHF's general counsel, it's associate general counsel, who was principally responsible for the management of this case was (1) not managing the case apparently because of distractions with personal legal problems; (2) repeatedly misrepresented to Mr. Myers throughout the pendency of this matter that things were being handled and (3) subsequently lost her license to practice. As such, AHF is a victim of its own counsel's in-action through no fault of AHF. As such, good cause exists to refrain from dismissing the Opposition and indeed in re-setting the dates for discovery and testimony so that the substance of the Opposition can be properly addressed. AHF is of the view that the registration by applicant of its mark OUT OF THE CLOSET will damage AHF[1] and AHF has taken precautions to ensure that the current situation does not repeat itself. Specifically, AHF has now retained outside counsel, Daniel C. DeCarlo, of the law firm Lewis Brisbois Bisgaard & Smith to represent AHF's interest

in this regard. Mr. DeCarlo and his firm have extensive experience in trademark matters.

Accordingly, AHF requests that the Board refrain from dismissing the above-referenced case as good cause has been shown for permitting the case to continue. Additionally, pursuant to 37 C.F.R. Section 2.120 and 2.121 AHF hereby requests that the Board re-set the discovery cut-off dates to enable AHF to take discovery (it has responded to no discovery) and re-open the testimony period. AHF suggests the following schedule:

1. Discovery to re-open immediately;
2. Discovery to Close: February 27, 2007;
3. Testimony period for party in position of Plaintiff to Close: April 27, 2007;
4. Thirty-day testimony period for party in position of Defendant to Close: June 28, 2007;
5. Fifteen-day rebuttal testimony period for Plaintiff to Close: June 28, 2007

Respectively submitted,

Dated: September 13, 2006

Lewis Brisbois Bisgaard & Smith LLP

by_____
Daniel C. DeCarlo
Attorneys for Opposer AIDS Healthcare Foundation
221 N. Figueroa Street, Suite 1200
Los Angeles, California 90012
Tel.: (213) 250-1800
Fax: (213) 250-7900

CERTIFICATE OF MAILING 37 C.F.R. 1.10
Express Mail No.EV777155127US I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service as Express Mail Post Office to Addressee Service under 37 C.F.R 1.10 Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451
Date of Deposit: September 13, 2006

Melesa Noguera

[1] AHF owns the registration for OUT OF THE CLOSET THRIFT STORES

DECLARATION

DECLARATION OF TOM MYERS IN SUPPORT OF OPPOSER'S AIDS HEALTHCARE FOUNDATION'S ("AHF") OPPOSITION TO THE TTAB'S ORDER TO SHOW CASE RE DISMISSAL AND FOR REQUEST TO RESET DISCOVERY CUT-OFF DATES AND TESTIMONY

I, Tom Myers do hereby declare:

1. I am an attorney duly licensed to practice law before all of the Courts of the State of California. I am general counsel for AIDS Healthcare Foundation ("AHF"). I make the following declaration of my personal knowledge and could and would competently testify thereto if called to trial or hearing.

2. The Board has issued an OSC re Dismissal of this case and AHF respectfully requests that the case not be dismissed. I have come to learn that AHF has been delinquent in prosecuting its Opposition and specifically, has not responded to discovery or submitted any testimony. The failures of AHF is a result of several factors all of which we respectfully request represent good cause for the relief being requested herein by AHF.

3. AHF is the largest AIDS non-profit organization in the United States. Its mission is to provide cutting edge medical care and advocacy to people with HIV/AIDS regardless of their ability to pay. Among other things, it provides direct medical care to over 6,000 Californians with HIV, the vast majority of whom receive their care via the Medicaid Program, the Ryan White Care Act (a Federal law that helps pay for medical care for indigent Americans with HIV/AIDS) or through AHF's funds. AHF also operates free HIV medical clinics in countries including Mexico, South Africa, Uganda, India, Honduras and Rwanda. In all, AHF employs over 600 employees in over ten countries. Of significance to these Opposition proceedings, AHF operates a string of retail thrift stores known as Out of the Close Thrift Stores,

and owns a federal registration in Out of the Closet Thrift Stores, United States Trademark Registration 2,048,924.

4. Despite its size and scope of its operations, AHF is a non-profit, is very leanly staff, and operates on a tight margin. For example, there are just two attorney positions at AHF, who are responsible for the entirety of the Foundation's legal affairs. In order to help manage this truly international workload, the attorneys are located at separate sites. I, as the General Counsel, am based in Washington, D.C. while the Associate General Counsel is based in Los Angeles, California.

5. This Opposition proceeding was assigned for responsibility to AHF's Associate General Counsel, Katharine Sabich-Robison. Ms. Sabich-Robison was responsible for the day to day management of this matter and as I have since learned she did almost nothing. All the documents in the files were kept and maintained by Ms. Sabich-Robison in Los Angeles and the only access I had was through reports from Ms. Robison. Ms. Sabich-Robison frequently reported to me on the status of this case and advised me that everything was being handled as it should.

6. I, of course, have subsequently learned that in fact AHF had done practically nothing in prosecuting this Opposition. Specifically, I have been advised that AHF responded to no discovery and did not pursue discovery that apparently we did propound. I'm also aware that we presented no testimony during the operative testimony periods.

7. Ms. Sabich-Robison resigned her position from AHF on approximately April 11, 2006. I learned shortly thereafter, that Ms. Sabich-Robison lost her license to practice law in

California because of criminal convictions involving moral turpitude. Specifically, in the June 30, 2006 "Disciplinary Actions" sections of the Los Angeles Daily Journal, the local legal newspaper, a notice ran as follows:

"Katharine Sabich-Robison, Los Angeles (May 22) – Sabich-Robison was placed on interim suspension after her conviction for violating Penal Code Sections 47(a), grand theft; 470(a), forgery; crimes against elders and dependent adults, all felonies involving moral turpitude. The interim suspension remains in effect until further order by the State Bar Court. The order took effect June 21."

8. I have also attached as Exhibit "A" to my declaration a true and accurate copy of a page from the California State Bar website which indicates that as of June 24, 2006 Ms. Sabich-Robison is no longer eligible to practice law by virtue of an interim suspension after conviction. This page of the California State Bar can be accessed at www.calbar.ca.gov.

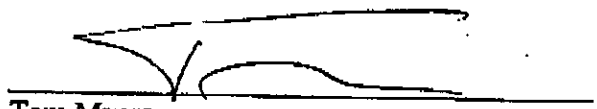
9. AHF apologizes to the TTAB for the inconvenience that has been caused as a result of AHF's former Associate General Counsel not managing this case. In light of the fact that the California State Bar suspended Ms. Sabich-Robison after a conviction relating to moral turpitude, such clearly shows that AHF was also a victim of Ms. Sabich-Robison's in-action. In light of the circumstances, AHF requests that the TTAB grant leave to extend the dates for discovery and testimony so that AHF's Opposition can proceed on the merits.

10. AHF has insured that a situation like this will not occur again by retaining outside counsel experienced and competent in trademark matters and as such AHF has retained Daniel C.

DeCarlo of the law firm Lewis Brisbois Bisgaard & Smith to represent AHF in this Opposition proceeding.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on September 13, 2006 at Washington, D.C.



Tom Myers
General Counsel, AIDS Healthcare Foundation

EXHIBIT A

ATTORNEY SEARCH

Katharine Sabich-Robison - #183234

Current Status: Not eligible to practice law (Not Entitled)

See below for more details.

Profile Information

Bar Number	183234		
Address	1732 Aviation Blvd # 104 Redondo Beach, CA 90278	**Phone Number**	Not Available
		Fax Number	(323) 395-0943
		e-mail	katyrobison68@yahoo.con
District	District 7	**Undergraduate School**	Stanford Univ; Stanford C/
County	Los Angeles	**Law School**	UC Davis SOL King Hall; [

Status History

Effective Date	Status Change
Present	Not Eligible To Practice Law
6/24/2006	Not Eligible To Practice Law
6/28/1996	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Effective Date	Description	Case Number	Resulting Status
Disciplinary and Related Actions			
6/24/2006	Interim suspension after conviction	05-C-2150	Not Eligible To Practice Law

Administrative Actions

This member has no public record of administrative actions.

Copies of official attorney discipline records are available upon request.

Explanation of common actions

Start New Search >

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2006, a true copy of the foregoing AIDS Healthcare Foundation (AHF) Opposition to The TTAB's OSC Re Dismissal; Declaration of Tom Myers in Support Thereof, and Revocation of Power of Attorney and New Power of Attorney was served on APPLICANT by depositing same with the United States Postal Service, first class postage prepaid, and addressed to APPLICANT'S counsel as follows:

Elsa Ramo, Esq.
315 South Beverly Drive, Suite 508
Beverly Hills, CA 90212
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eramo@entertainmentattorney.biz

Dated: September 13, 2006

Melesa Noguera