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

Proceeding	91188462
Party	Plaintiff NITE LIFE OF SANTA BARBARA
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Submission	Plaintiff's Notice of Reliance
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Nitelif e of Santa Barbara,)
)
 Opposer)
)
 v.)
)
 Nite Life Car Club Association,) Opposition No. 91188462
)
 Applicant)
)

**OPPOSER’S NOTICE OF RELIANCE
PURSUANT TO RULE 2.120**

Opposer, by its attorney, hereby submits this Notice of Reliance Pursuant to 37 CFR Section 2.120. Specifically, Opposer relies on Applicant’s responses to Opposer’s interrogatories and requests for documents and Applicant’s Response To Opposer’s Amended Notice Of Opposition as follows:

1. Opposer submits herewith copies of Applicant’s responses to Opposer’s interrogatories and the documents submitted in connection therewith showing Opposer’s inability to offer proof of usage of the mark as claimed in its application; and,
2. Opposer submits herewith a copy of Applicant’s Response to Opposer’s Amended Notice of Opposition, which includes Applicant’s admission that it is not the exclusive user of the mark.

Respectfully submitted,
Nitelif e of Santa Barbara

/vcarver/
Victoria A. Carver
Attorney for Opposer

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail on December 22, 2009 in an envelope addressed to:

W. Douglas English, III
English & Associates
674 County Square Dr., Ste 101
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By: Victoria Carver

_____ December 22, 2009
(Signature)

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Attorney for Applicant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Nitelife of Santa Barbara,)
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Nite Life Car Club Association,)
)
 Applicant)
)

Opposition 91188462

2 Dec 2009

APPLICANT'S RESPONSE TO OPPOSER'S AMENDED NOTICE OF OPPOSITION

Note: In view of the Holiday Season, Opposer's Counsel has courteously granted Applicant a one week extension to file this Response.

PREAMBLE

In Opposer's Request to Amend their Notice of Oppositon, Opposer argues that Applicant was not the "actual owner" of the rights sought in Subject Application for registration of the Trademark NITE LIFE with crossed knife logo. Opposer states that Edmundo Rosas filed a DBA claiming Night Life Car Club Ventura County and Nite Life as fictitious business names of the Association, and further that Applicant used the name Nite Life Car Club Ventura County for a Seller's permit from the California State Board of Equalization .

Applicant wishes to point out, however, that a DBA, Corporate Name, and TradeName are, probably more often than not, concomitantly used as a TradeMark or

ServiceMark as well by virtue of said mark being applied to and in promotion of the Goods or Services of a company. Surprising but true...

5 Indeed, in the instant case, evidence produced in Discovery amply discloses that both Applicant and Opposer have for nearly 30 years concomitantly used the NITE LIFE mark and logo, together and separately, both as a trademark labeled on goods sold therewith, and also as a service mark relating to the Vintage Car Club Association public events, and on a variety of services provided by the Association since the early 1980's. In so doing, each party hereto has on various occasions used the mark in a variety of forms
10 with and with out the crossed knives logo, to wit:

15 NITELIFE
NITE LIFE
NITELIFE CAR CLUB
NITELIFE SANTA BARBARA
NITE LIFE SANTA BARBARA
NITE LIFE SANTA BARBARA CAR CLUB
NITE LIFE OF SANTA BARBARA
NITE LIFE CAR CLUB OF SANTA BARBARA
20 NITE LIFE VENTURA
NITE LIFE CAR CLUB ASSOCIATION
NITE LIFE VENTURA COUNTY
NITE LIFE CAR CLUB
NITE LIFE CAR CLUB VENTURA COUNTY
25 and even...
NIGHTLIFE CAR CLUB
and
KNIGHT LIFE AUTO CLUB...

30 In each of the foregoing variations of a common theme "NITE LIFE", the NITE LIFE Mark eschewed an image and source of a vintage auto club. In retrospect, there existed a lengthy use of said Mark as a Common Law TradeMark and ServiceMark long before said Mark also became an official DBA, TradeName and Registered TradeMark/ServiceMark.

35 The Applicant named in the application at hand was and is "NITE LIFE CAR CLUB ASSOCIATION" and as such did not address any individual of either the Santa Barbara NiteLife Group or the Ventura NiteLife Group. Both groups were originally a single group in Santa Barbara, initially called "Night Life Car Club", formed with encouragement and assistance from Edmundo Rosas's father, Lorenzo Rosas circa 1981; Edmundo Rosas is
40 in the Ventura Nite Life Group (i.e. Applicant herein) At a later time, the original members of the "Night Life Car Club" resident in Ventura along with new members, elected to have their meetings in Ventura rather than Santa Barbara.

45 In short, Opposer has no greater, nor lessor Common Law or Registered right to use the Mark NITE LIFE and or its logo than Applicant; and this is so despite the fact that Applicant has been granted a US Registration for the TradeMark NITE LIFE (S/N

78344503, R/N 3,415,520) status over Opposer's earlier Opposition thereto (O/N 91166528).

5 Applicant has urged earlier in these proceedings that all Nite Life members, whether in the NiteLife Santa Barbara group (Opposer herein) or the NiteLife Ventura group (Applicant herein), be allowed to comcomitantly use the term Nite Life as a TradeMark and ServiceMark ,with and without the crossed knives logo, as present and original members have done so for 30 years, and to secure that right by granting Applicant's registration in the name of Nite Life Car Club Association, whether resident in 10 Santa Barbara, Ventura or other intrastate and interstate extensions of the Club/Association.

15 Applicant wishes to point out that the present multi registration processes and multi opposition processes of a mark used by both parties hereto were initiated by a recent new member, Daniel Trejos of the Santa Barbara group, when he was attempting to gain total control of the whole Nite Life Association, and as part of and in furtherance thereof, filed an application for registration of the TradeMark NITE LIFE and logo (S/N 76599200) under his name alone and not on behalf of the Association. In so doing, Mr Trejos indicated that only he had the right to use or right to license anyone else in the Car Club 20 Association to use the mark" NITE LIFE.

25 As a result of Mr. Trejos' filing of the 76599200 application, and in view of Mr. Trejos' intent to have total control of the mark, Edmundo Rojas of the Ventura group, and on behalf of all members of the Association, members in the Santa Barbara group as well as members in the Ventura group, filed an opposition (O/N 91165738) to registration of Mr. Trejos' application. Although Mr. Trejos' mark did issue as a registered mark (R/N 2918594) during the opposition process, said mark was subsequently Cancelled in view of said pending opposition.

30 **RESPONSE TO OPPOSER'S ALLEGATIONS**

I. OPPOSER AND APPLICANT USED THE MARK NITELIFE AND DESIGN

- 35 1. Admit in part: with the understanding that Opposer (NiteLife of Santa Barbara aka NiteLife Car Club) and Applicant (NiteLife Car Club Association) were the same party in the 1980's and 90's, and both Applicant and Opposer used the same mark as a service mark and as a trademark.
- 40 2. Admit.
3. Deny: certain members of the Santa Barbara group decided to meet in Ventura where they lived.
- 45 4. Admit in part: both Applicant and Opposer were using various forms (supra) of the Nite Life mark and logo.

5. Admit.

5 6. Admit: with the understanding that though both Applicant and Opposer engage in community and charitable events, Applicant really does donate its earnings to charity, whereas Opposer issues its earnings to its members.

7. Admit in part: with the understanding that Applicant likewise promotes its events in similar manner.

10 8. Admit.

9. Deny: Jamie Maldonado's then girlfriend authored, created the logo design of the mark and there's no evidence that she, as the real legal owner of the design, ever conveyed her rights therein to anyone.

15 10. Deny.

II. THERE IS NO LIKELIHOOD OF CONFUSION

20 11. Deny.

12. Deny.

25 13. Deny.

III. APPLICANT HAS NO BAD FAITH OR HARM TO OPPOSER

30 14. Deny: both parties, Applicant and Opposer, have used the same mark and logo for 30 years.

15. Deny.

35 16. Deny: some of Applicant's members were existant in the early 1980's and some later members were not.

17. Deny: both Applicant and Opposer have Common Law rights of use of the NITELIFE mark and logo since the early 1980's.

IV. SUBJECT MARK IS NOT MERELY A TRADENAME

40 18. Deny: Applicant provided numerous clothing specimens of Applicant's application of the mark to the labels on the clothing, evidencing use as a TradeMark, as well as various promotional displays and leaflets promoting car show and community events evidencing Applicant's use of the mark as a ServiceMark as well as a TradeMark and as well as a TradeName.

45

V. SUBJECT MARK IS NOT ONLY USED DECORATIVELY

5 19. Deny: Counsel for Opposer appears to have misplaced or lost the several photos indicating Applicant's application of the mark to labels on shirt and coat collars as well as labels attached to various clothing via tags indicating a TradeMark use in addition to the same mark being boldly and decoratively applied on the front or back of the garment as well.

10 **WHEREFORE**, in view of the foregoing responses to Opposer's allegations, Applicant prays that the Opposition be denied and that Applicant's registration be granted.

Respectfully submitted ,
Nite Life Car Club Association

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/W.D.English/

20 W.Douglas English, Esq.
Attorney for Applicant

CERTIFICATE OF SERVICE

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The undersigned attorney for Applicant, hereby certifies that a copy of the foregoing RESPONSE TO OPPOSITION was served upon Opposer by email at vc@etmlaw.com, and also by mailing a copy thereof, first class mail, postage prepaid, to counsel for Opposer, Victoria A. Carver, Esq. at P.O. Box 2425, Champlain, NY 12919, on 2
30 December 2009.

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/W.D.English/
By _____
W. Douglas English
Attorney at Law