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

Proceeding	91196016
Party	Plaintiff Carlos Ramirez
Correspondence Address	GORDON E GRAY III GRAY LAW FIRM 4401 NORTH ATLANTIC AVENUE, SUITE 233 LONG BEACH, CA 90807-2218 UNITED STATES geg@grayiplaw.com
Submission	Opposition/Response to Motion
Filer's Name	Gordon E. Gray III
Filer's e-mail	geg@grayiplaw.com
Signature	/Gordon E Gray III/
Date	02/18/2014
Attachments	Opp Mot Intervene 2-18-14.pdf(107133 bytes )

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

CARLOS RAMIREZ, an individual, and	)	Opposition No. 91196016
MAJESTICS CAR CLUB - SOCAL,	)	(consolidated with Opposition No.
a club and unincorporated association,	)	91198643)
	)	
Opposers,	)	
	)	
v.	)	Mark: MAJESTICS CAR CLUB
	)	and design
	)	Serial No. 77/729,569
FREDRICK J. STAVES, an individual,	)	Filed: May 5, 2009
	)	
	)	
Applicant.	)	
	)	

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**OPPOSITION TO MOTION TO INTERVENE BY TODD LAND**

Opposer Carlos Ramirez hereby opposes the motion of Todd Land to intervene.

**I. INTRODUCTION**

A third party, Todd Land, has filed a motion to intervene in the present action. Mr. Land alleges, without any documentary or testimonial evidence, that he is the president of the Majestics Car Club in Arizona. Land brief at p. 2. Mr. Land further alleges, again without any documentary or testimonial evidence, that he has received “letters demanding that the card

{sic} club representatives stop using the Majestics’ symbol...” *Id.* However, there is no statutory or regulatory basis for Mr. Land’s motion and there is no rule in the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) permitting such a motion. Moreover, the motion fails to comply with the express requirements of FRCP, Rule 24 because it is untimely and there is no proposed pleading submitted with the motion as required by FRCP, Rule 24(c). Furthermore, Mr. Land has submitted no evidence to support his belated claim to intervene. Though Mr. Land has submitted numerous unauthenticated, hearsay declarations with his motion, he has failed to offer any declaration or affidavit of his own (or the alleged “demanding” letters) in evidence. Accordingly, Mr. Land has failed to provide any evidentiary basis for intervention. Thus, the motion to intervene should be denied in its entirety.

**II. THE MOTION IS NOT PERMITTED BY STATUTE, REGULATION OR TBMP RULE.**

The statutory basis for a trademark opposition, such as the present action, is 15 U.S.C. §1063(a). The statute reads:

Any person who believes that he would be damaged by the registration of a mark upon the principal register, including as a result of dilution under section 43(c) [15 USC 1125(c)], may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 12 of this Act [15 USC 1062] of the mark sought to be registered. Upon written request prior to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Director for good cause when requested prior to the expiration of an extension. The Director shall notify the applicant of each extension of the time for filing opposition. An opposition may be amended under such conditions as may be prescribed by the Director.

Thus, Mr. Land and anyone else that believed they would be damaged by the registration of the mark, had thirty (30) days from publication of the application to file a notice of opposition and pay the prescribed fee (or file an extension). Mr. Staves is the only party to timely oppose that application and, therefore, Mr. Land is statutorily barred from opposing this trademark application. The U.S. Constitution's Supremacy clause bars a federal rule from superseding an act of Congress. U.S. Constitution, Art. VI, Cl. 2. Thus, Mr. Land's motion should be denied.

Moreover, the Board does not have a regulation or rule permitting a motion to intervene. The Code of Federal Regulations governs the U.S. Patent and Trademark Office. In particular, 37 CFR §2.101 governs

opposition actions. Again, any person (with standing) was permitted to oppose Mr. Ramirez's trademark application within thirty (30) days (with payment of a fee and a notice of opposition). *See* 37 CFR §2.101. Mr. Land did not oppose the application.

Furthermore, the TBMP has no rule permitting a motion to intervene. Notably, Mr. Land has failed to cite a single case that allows a motion to intervene at the Board (as opposed to an Article III court.) Thus, Mr. Land's motion to intervene should be denied in its entirety.

### **III. THE MOTION FAILS TO COMPLY WITH FRCP, RULE 24.**

Procedure before the Board is generally governed by the Federal Rules of Civil Procedure ("FRCP") but only as "adapted." *Yamaha International Corp. v. Hoshino Gakki Co., Ltd.*, 840 F.2d 1572 (Fed. Cir. 1988). As shown above, the Board has not adapted the FRCP to allow motions to intervene in a trademark opposition and is statutorily barred from doing so. 15 U.S.C. §1063(a). Nevertheless, Mr. Land's motion also fails to comply with FRCP, Rule 24 for a motion to intervene.

**A. THE MOTION IS UNTIMELY.**

FRCP, Rule 24(a) and (b) both require that intervention be done “on timely motion...” Mr. Land’s motion is *far* from timely. The present case is no longer in discovery or even on the eve of trial. Instead, the testimony periods for all parties have closed. Only briefing remains. (Dkt. #33, p. 4.) In fact, Applicant Staves has failed to take any testimony or submit any evidence supporting his opposition to date and Opposer Ramirez filed a motion for judgment on Staves’ opposition counterclaim. *See* Dkt. #39 (no suspension or ruling on this unopposed motion as yet). Thus, Mr. Land seeks to intervene in the case after the close of discovery *and* testimony. Thus, Mr. Land’s motion would prejudice the parties by denying them the right to conduct discovery and take testimony regarding Mr. Land’s as yet unstated claims.

Mr. Land claims that “recent threats” have been made. Brief at p. 5. However, Mr. Land fails to include a copy of any of the alleged “threats” and fails to identify the date(s) the alleged threat(s) were made. Thus, there is no way to determine how “recent” these alleged threats were made or how timely Mr. Land’s motion is. Mr. Land’s motion to intervene should be denied.

**B. THE MOTION FAILS TO INCLUDE A PROPOSED PLEADING.**

FRCP, Rule 24(c) states, “The motion *must* state the grounds for intervention *and* be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” (emphasis added.) Mr. Land has not included a pleading with his motion. In fact, the motion itself admits that no pleading is included and asks the “Court” to advise him as to what pleading should be filed. Brief at p. 6. However, Mr. Land is represented by counsel, presumably counsel that is capable of reading the TBMP and the associated statutes and regulations. Mr. Land’s failure to comply with the FRCP is not excusable. His motion should be denied.

**IV. THE MOTION IS UNSUPPORTED BY EVIDENCE.**

Mr. Land’s motion to intervene is unsupported by evidence supporting intervention. In particular, FRCP, Rule 24(a)(2) requires that Mr. Land show he has “an interest relating to the property or transaction that is the subject matter of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest...” and that existing parties do not “adequately represent that interest.” *See* FRCP, Rule 24(a)(2).

Again, Mr. Land has failed to provide any evidence, testimonial or documentary, to support that he has an interest in the subject matter of this action.<sup>1</sup> There is no evidence that he is a member of the Majestics Car Club or that he has received any “letters.” Moreover, Mr. Land admits in his brief that his interest is in alignment with Mr. Staves’ interest. Land brief at p. 5. Mr. Land has submitted no evidence that Mr. Staves is unable to adequately represent Mr. Land’s alleged interest in this action. Accordingly, Mr. Land’s motion should be denied.

## V. CONCLUSION

For the reasons stated above, the motion to intervene by third-party Todd Land should be denied.

Respectfully submitted,

Dated: February 18, 2014

By:                   /s/ Gordon E. Gray III                    
Gordon E. Gray III  
GRAY LAW FIRM  
4401 N. Atlantic Ave., Suite 233  
Long Beach, CA 90807  
Telephone: (562) 984-2020  
Email: geg@grayiplaw.com  
Attorney for Carlos Ramirez

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<sup>1</sup> Opposer Ramirez hereby objects to the declarations submitted with the motion as inadmissible hearsay (FRE 801-807), argumentative, and lacking authentication or personal knowledge (FRE 602).



**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2014, I served the foregoing:

**OPPOSITION TO MOTION TO INTERVENE BY TODD LAND**

on the party below by First Class U.S. Mail:

FREDRICK J. STAVES  
P.O. Box 211  
Rialto, CA 92376

David W. Dow, Esq.  
3104 E. Camelback Road, #281  
Phoenix, AZ 85016

Dated: February 18, 2014

By: /Gordon E. Gray III/  
Gordon E. Gray III (SBN 175209)  
geg@grayiplaw.com