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

Proceeding	91203191
Party	Plaintiff Future Ads LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL & APPEAL BOARD**

FUTURE ADS LLC)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91203191
)	
Kent G. Anderson)	Serial No. 76/133,905
)	
Applicant)	
_____)	

OPPOSER’S TRIAL BRIEF

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DISCUSSION

Pursuant to 37 C.F.R. §2.128(a) and T.B.M.P. §801.02(a), Future Ads LLC (“Opposer”) hereby submits this brief in support of Opposition No. 91203191 and requests that judgment be entered against the application of Kent G. Anderson (“Applicant”) to register the mark FUTURE, Serial No. 76/133,905 (“Application”).

I. DESCRIPTION OF THE RECORD

By operation of Trademark Rule 2.122, the record includes the pleadings and the file of the subject applications and registration. In addition, Opposer has introduced the following into evidence via a Notice of Reliance filed with the Board on July 9, 2013:

- Opposer’s U.S. Trademark Registration No. 3,560,478 for the mark FUTURE ADS. See **Exhibit A** to Opposer’s Notice of Reliance.
- Records for Opposer’s U.S. Trademark applications as identified in **Exhibit B** to Opposer’s Notice of Reliance:
 - US Trademark Application No. 77/484,135, filed May 27, 2008, for the mark FUTURE ADS.
 - US Trademark Application No. 77/484,102, filed May 27, 2008, for the mark FUTURE ADS.
 - US Trademark Application No. 77/484,077, filed May 27, 2008, for the mark FUTURE ADS.
- Applicant’s US trademark application files of the following, See **Exhibit C** to Opposer’s Notice of Reliance.
 - US Trademark Application No. 76/537,316, filed August 14, 2003, for the mark FUTURE. Opposer relies upon the identification of services, including the Class 35 recitation, and papers filed by Applicant with the USPTO on February 10, 2005 and February 17, 2006.

- US Trademark Application No. 76/188,809, filed January 2, 2001, for the mark FUTURE. Opposer relies on the Notice of Abandonment mailed October 27, 2011.
- US Trademark Application No. 76/312,587 registered May 20, 2008, under Registration No. 343164 for the mark FUTURE. Opposer relies upon the cancellation status of the registration, and upon the recitation of services including the recitation in Class 35.
- US Trademark Application No. 76/437,630, filed August 2, 2002, for the mark FUTURE. Opposer relies upon the abandoned status and identification of services in Class 35.
- US Trademark Application No. 76/634,950, filed April 4, 2005, for the mark FUTURE. Opposer relies upon the identification of goods and services, including the recitation of services in Class 35. Opposer also relies upon the paper titled “Trademark Application/Principal Register” signed by Applicant and dated March 29, 2005.
- US Trademark Application No. 76/687,670, filed March 13, 2008, for the mark FUTURE. Opposer relies upon the identification of services that covers Class 35. Opposer also relies upon the paper titled Response to Office Action signed by Applicant August 2, 2008.
- Default judgments entered by the Board against Applicant in the following opposition proceedings introduced into evidence via NOA pursuant to 37 C.F.R. §2.122(e), See **Exhibit D** to Opposer’s Notice of Reliance.
 - TTAB Opposition No. 91195950, Future Ads, LLC v. Kent G. Anderson, dated July 13, 2011.
 - TTAB Opposition No. 91184059, Lincoln National Corporation v. Kent G Anderson, dated November 17, 2009.

- TTAB Opposition No. 92050325, Lincoln National Corporation v. Kent G. Anderson, dated July 14, 2010.
- TTAB Opposition No. 92050700, Future Ads v. Kent G. Anderson, dated March 19, 2010.
- Specimens of the following application files of Applicant introduced into evidence via NOA pursuant to 37 C.F.R. §2.122(b) (2), See **Exhibit E** to Opposer's Notice of Reliance.
 - U.S. Application No. 76/229,536
 - U.S. Application No. 75/618,703
 - U.S. Application No. 75/646,500
 - U.S. Application No. 76/188,809
 - U.S. Application No. 75/619,419
 - U.S. Application No. 76/101,024
 - U.S. Application No. 76/073,356
 - U.S. Application No. 76/027,774
 - U.S. Application No. 76/045,282
 - U.S. Application No. 76/324,919
- Certain excerpted pages obtained from Applicant's website located at <http://www.futurevisionaries.com/> introduced into evidence by an NOR pursuant to 37 C.F.R. § 2.122(e) See **Exhibit F** to Opposer's Notice of Reliance.
- Testimony Deposition of Kent G. Anderson dated July 11, 2013 and accompanying Exhibits.
- Rebuttal Testimony Deposition of Kent G. Anderson dated October 22, 2013 and accompanying Exhibits.

During Applicant's testimony period, Applicant filed no evidence in accordance with the applicable rules.

The Board should rely on and consider only evidence introduced by Opposer. Applicant's failure to submit evidence in compliance with the applicable rules leaves Opposer's evidence and contentions unrebutted.

II. ISSUES PRESENTED FOR REVIEW

- A.** Whether Applicant, at the time of filing the application, had a bona fide intent to use the mark in commerce on the opposed goods.
- B.** Whether Applicant, at the time of filing the application, committed fraud upon the USPTO when it willfully made false statements declaring a bona fide intent to actually and genuinely use the mark in commerce on the opposed goods.

III. STATEMENT OF FACTS

Opposer Future Ads is a leading provider of advertising technology services to computer application developers and advertisers. Future Ads' products and services enable advertisers to place ads on computer displays, such as in computer-based games on desktop computers or mobile devices. The Notice of Opposition describes the Opposer, its business, and the basis of its interest and rights in this proceeding. Notice of Opposition, ¶¶ 1, 3-11, 13-28. The Applicant did not take testimony depositions or otherwise introduce any evidence to counter Opposer's allegations of fact in its Notice of Opposition relating to Opposer, its marks and its business, and therefore all such averments should be deemed admitted and adopted as findings of fact, and repeating those averments here is not necessary.

The present dispute arises from Future Ads' attempts to obtain federal trademark registrations for the mark FUTURE ADS, which is the Opposer's "house mark" and used to promote virtually all its services. On May 27, 2008, Future Ads filed applications 77/484,135, 77/484,102, and 77/484,077 for the mark FUTURE ADS. The USPTO has refused to register, or suspended, those applications (and those of several other third parties) based in part on one or more of dozens of applications to register FUTURE submitted by Kent G. Anderson, an individual and *pro se* applicant, in a thicket of overlapping suspensions and refusals that have effectively blocked the ability of virtually all parties to obtain registrations for marks containing

the formative FUTURE for non-competitive goods. None of the Anderson applications is *bona fide*. This case is an attempt by Future Ads to remove one of the bogus Anderson applications so that a genuine commercial user can obtain a proper registration.

On September 22, 2000, the Applicant filed application 76/133,905 (“Application”) based on intent-to-use seeking registration of the mark FUTURE—on all goods in International Classes 1-34 inclusive. *See* Notice of Opposition at ¶12 (pp. 3-19); Applicant’s reply filed July 24, 2001 (requesting registration of the mark on all goods in all of classes 1-34). On December 29, 2011, Opposer timely filed a Notice of Opposition with the Board and pleaded fraud and a lack of bona fide intent to actually and genuinely use the mark on three (3) of the classes of goods and services listed in the application.

Discovery began. On January 2, 2013, Opposer served its First Set of Requests of Production of Documents; on January 18, 2013, Applicant filed a set of documents with the Board. During Applicant’s discovery period and before the testimony periods, on April 15, 2013 and April 22, 2013, Applicant mailed to Opposer and filed with the Board a set of duplicative documents and statements unrelated to any of the Opposer’s discovery requests.

On May 23, 2013, Opposer served Opposer’s Pretrial Disclosures to Applicant. During its testimony period, on July 9, 2013 Opposer filed and served a Notice of Reliance. As specified in the Notice, numerous past applications of Anderson for the mark FUTURE have become abandoned or canceled, such as 76188809, 76312587, and 76437630. Other applications have included “class heading” descriptions in class 35 and others; *see, e.g.*, 76188809, 76312587, 76437630, 76537316, 76634950, and 76687670.

During its trial period, on July 11, 2013, Opposer took the testimony deposition of Kent G. Anderson by telephone, and a copy of the transcript was mailed to Applicant as witness on July 19, 2013; Opposer filed a certified copy of the transcript along with Exhibits with the Board and served a notice of filing on Applicant on August 24, 2013.

On September 25, 2013 Opposer served Opposer’s Rebuttal Disclosures to Applicant. During its rebuttal period, on October 22, 2013 Opposer took the rebuttal testimony of Kent G.

Anderson by telephone, and a copy of the transcript was mailed to Applicant as witness on November 7, 2013. Opposer filed a certified copy of the transcript along with Exhibits with the Board and served a notice of filing on Application on November 13, 2013.

Applicant filed nothing during its testimony period. Applicant did not serve Pretrial Disclosures. Applicant did not take any testimony depositions, and did not file or serve a Notice of Reliance. Instead, during its testimony period, on August 26, 2013, Applicant mailed Opposer a set of documents identified as “exhibits” to the Anderson deposition. These documents included copies of the documents previously provided as discovery responses or filed with the Board. While Applicant probably intended these submissions as evidence, they do not comply with the applicable rules and must be refused consideration. Pursuant to 37 CFR §§2.120, 2.122 and 2.123, and TBMP §§704, 706 and 707 Opposer objected to all the documents described above as not properly authenticated and therefore inadmissible, not relevant, and/or otherwise incapable of consideration by the Board, in Opposer’s Objections to Applicant’s Informally Submitted Document on October 3, 2013.

Applicant Anderson is 48 years old. Testimony Deposition of Kent G. Anderson, July 11, 2013 (“Anderson Depo. I”) at 7. He lives with his parents in their basement in Bismarck, North Dakota. *Id.* at 6, 17. He once worked as a security officer (*Id.* at Exh. 3) but is now unemployed and on disability. *Id.* at 8. His disability income is about \$700 per month. *Id.* at 9. He filed the 2000 trademark application at issue here because he “saw the vision in my mind where people can work together around the world in the future.” *Id.* at 9. The application asserted all goods and services. *Id.* at 13. He had not completed any licensing transaction at the time of filing, and his licensing efforts at the time consisted of attempting to contact President Bush. *Id.* at 10.¹ He has never had enough money to start any businesses, and apparently had only mental hopes of creating “things and stuff.” *Id.* at 11, 14, 15. In fact, in Anderson’s view, “people’s ideas would be the product, through them”— *Id.* at 14—and thus Anderson apparently thought that mere

¹ Opposer’s motion to strike a portion of the referenced answer is withdrawn.

conception of ideas on the part of people learning about his plans would somehow constitute “use in commerce.” His “mindset was to help people throughout the world” and their “individual ideas—they would be the product.” *Id.* at 17.

Anderson has no document consisting of a budget for a business associated with the mark. *Id.* at 17-18. Any budget existed only in his mind. *Id.* at 18. Any business model was nonsensical and unrecognizable in any objective business sense, as “countries would be the products and ideas of people.” *Id.* at 18. Anderson could not recall any instance of working with an advertising agency or design agency relating to products in the application. *Id.* at 20-21.

IV. ARGUMENT

Opposer’s interest in registering the mark shown in its applications for FUTURE ADS that have been blocked by Applicant’s application is established in Opposer’s averments in the Notice of Opposition, and Applicant has introduced no evidence to the contrary. Any statements, arguments or other contentions of Applicant at the briefing stage with respect to Opposer’s registration and applications must be turned aside by the Board, since Applicant has not filed a counterclaim or petition to cancel. *Cf. Intel Corporation v. Steven Emeny*, Opp. No. 91123312 (slip op. May 15, 2007) at 7-8.

A. At The Time Applicant Filed Its Application, Applicant Did Not Have A Bona Fide Intent To Use The FUTURE Mark On At Least The Opposed Goods

The evidence in this case unequivocally shows that Applicant’s behavior—serially and concurrently filing for multiple ITU-based applications without ever developing or using them; filing unrealistically broad identifications of goods and/or services; abandoning or permitting default judgment in multiple applications after requesting numerous extensions of time and/or failing to participate in contested proceedings; and lacking any material objective proof of his *bona fide* intent to use the FUTURE mark—is exactly what the legislature intended to prevent when it required that ITU applicants attest to a *bona fide* intent to use marks. Given the complete absence of evidence to corroborate Applicant’s declaration that he possessed a *bona fide* intent to

use the FUTURE mark at the time of its filing, the Board should sustain Future Ads' opposition and refuse registration of Applicant's FUTURE mark.

The failure of an ITU applicant to have a bona fide intention to use the mark when it filed its application is a ground for opposition. 3 McCarthy On Trademarks § 20:21 at 20-66. The evidence of record amply demonstrates that Applicant had no such bona fide intention to use its FUTURE mark all the opposed goods—or even all the goods in International Classes 1 to 34 as alleged in the application.

A bona fide intent to use the mark in commerce is a statutory requirement of a valid intent-to-use trademark application under § 1(b) of the Lanham Act. See 15 U.S.C. § 1051(b) (1) (providing that a “person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register”).

Section 1(b) requires both an actual intent to use a mark in commerce and evidence, contemporary with the application, which objectively demonstrates such an intent. *Aktieselskabet AF 21 November 2001 v. Fame Jeans Inc.*, 525 F.3d 8, 21 (D.C. Cir. 2008); *City of Carlsbad v. Shah*, 666 F. Supp. 2d 1159, 1163-1168 (S.D. Cal. 2009). A determination of whether an applicant has a bona fide intention to use the mark in commerce is an objective determination based on all the circumstances. *Boston Red Sox Baseball Club Ltd. P'ship v. Brad Francis Sherman*, 88 U.S.P.Q.2d 1581, 1587 (TTAB 2008).

No Contemporaneous Documentary Evidence of Intent

Perhaps because intent is a subjective mental concept, having actual evidence of intent is crucial so that a trier of fact has an objective basis to determine whether intent existed. As the Board has said, “absent other facts which adequately explain or outweigh the failure of an applicant to have any documents supportive of or bearing upon its claimed intent to use its mark in commerce, the absence of any documentary evidence on the part of an applicant regarding such intent is sufficient to prove that the applicant lacks a bona fide intention to use its mark in commerce as required by Section 1(b).” *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*,

26 USPQ2d 1503, 1507 (TTAB 1993). Further, “if there is an absence of documentary evidence showing the applicant's intent to use the mark, the burden shifts to the applicant to adequately explain that lack of documentary evidence.” *W. Brand Bobosky v. Adidas AG*, 2011 U.S. Dist. LEXIS 149611, 14-20 (D. Oreg., December 29, 2011) (citing *Boston Red Sox*). The absence of any documentary evidence of an applicant's bona fide intention to use a mark in commerce is sufficient to prove that an applicant lacks such intention as required by Section 1(b), unless other facts are presented which adequately explain or outweigh applicant's failure to provide such documentary evidence. *Honda Motor Co., Ltd. v. Friedrich Winkelmann*, 90 USPQ2d 1660 (citations omitted); *Spirits International, B.V. v. S.S. Taris Zeytin Ve Zeytinyagi*, Opp. No. 91163779 (TTAB July 6, 2011), slip op. at 9. This “emphasizes the need for ITU applicants to document their plans and intentions by means of some written business plan made in the ordinary course of trade.” McCarthy, *supra*, § 19:14.

To support its ITU application if challenged, and to avoid losing this opposition, the Applicant must show evidence demonstrating intent to use the mark that is contemporaneous with the filing of its application. *Aktieselskabet AF 21 November 2001*, 525 F.3d 8, 21 (“The TTAB has held § 1(b) to require both actual intent to use a mark in commerce and evidence, contemporary with the application, that objectively demonstrate such an intent”). Applicant has provided no cognizable evidence that existed as of his filing date in 2000 that shows a genuine intent to use the mark; while Applicant has showered the Opposer at various times with miscellaneous documents, none has been introduced properly as evidence, and even if they were, they are utterly inadequate to establish genuine intent at the time of filing the application.²

Similarly, case decisions have recognized that evidence of activities such as the following is the kind of evidence needed to show a bona fide intent to use: “product or service research or development, market research, manufacturing activities, steps to acquire distributors, steps to

² As just one example, multiple letters to President Obama, to the owners of “Downton Abbey,” and to the General Secretariat of the European Union requesting help in protecting the mark—which Applicant has produced in multiple copies—cannot establish *bona fide* intent to use and are not contemporaneous, so they are irrelevant.

obtain required governmental approval, or other similar activities.” McCarthy, *supra* § 19: 14 at 19-47. Applicant has not done any of these things—certainly not to the extent that a legitimate business would, even at the difficult start-up phase. Applicant has not introduced any documents showing that, at the time of filing the application, it had performed any such activities or steps relating to the FUTURE mark for any of the opposed goods, much less for all the goods in International Classes 1 to 34. For example, despite listing all alcoholic beverage items in his application, Applicant never obtained permits or bonds for the sale of such products. Anderson Testimony Depo I at 23.

Applicant contends that his plan is to license others to perform these things. But Applicant has no licensees, and has never undertaken any legitimate actions directed toward a genuine licensing program. Most of Applicant’s efforts involve the repetitive, empty assertion of hope to attract a licensee, but an applicant’s “mere statement of subjective intent” alone is never sufficient to establish bona fide intent to use. *Lane Ltd. V. Jackson International Trading Co.*, 33 USPQ2d 1351, 1356 (TTAB 1994); *Honda Motor*, 90 USPQ2d 1660.

For example, **Exhibit F** to Opposer’s Notice of Reliance—which is a web page that Applicant wrote (*see* Rebuttal Testimony Deposition of Kent G. Anderson, October 22, 2013 [“Anderson Depo. II”], at 9)—says that Applicant “envisions a global intellectual property where people can license ... the Brand FUTURE [for] their own ideas ...”, but offers no concrete information such a form of license agreement or summary license terms, what products Anderson wants to license, how he would exercise quality control, or other business terms. When questioned about whether the web page could be used to purchase any product or service, Anderson refused to answer. Anderson Depo. II at 10. Anderson allegedly obtained a business loan, but refused to specify the amount, so it is not credible that he obtained one at all. *Id.* at 10-11. Anderson contends that he placed a telephone book advertisement relating to licensing, but could not state that it occurred contemporaneous with his trademark application. *Id.* at 12.

In discovery, Applicant produced a copy of a two-inch advertisement in *Opulence Magazine*, stating: “FUTURE—Angel Investors Wanted. Building a new multi-billion dollar

Corporation of Future brands in all Marketing sectors.” The document is undated, but could be from 2001. If so, it isn’t contemporaneous with the application date of 2000. Moreover, placing a single ad is hardly evidence of a consistently pursued licensing program. If anything, it is a solicitation to invest, not an offer to license a brand for specific goods or services.

In a paper submitted in the opposed application with a reply on April 21, 2007, Applicant provided a two-page document titled “Business Plann” [sic]. The document does not describe a plan for any particular product or service, but describes Applicant’s goal to “cover the market” ... “by securing the rights to the name of FUTURE in any marketing sector ...” Applicant also produced a slightly different version of the same document, also undated. These documents are not a plan for a business—rather, they reveal Applicant’s goal to “warehouse” the mark FUTURE and prevent its use by anyone. They contain no financial projections, licensing terms, descriptions of what markets to pursue, customer descriptions, assessment of competition—they merely ask for money for unclear purposes. Bluntly, the documents are so short, vague and indefinite that any legitimate business person would find no way to take them seriously. When the evidence shows that the applicant filed the application merely to reserve a right in the mark in case it developed a product at some future time, no bona fide intent to use exists. *See Swatch AG v. M.Z. Berger & Co.*, Opp. No. 91187092 (Sept. 30, 2013).

Applicant also has produced copies of unsolicited letters allegedly sent to President Obama, T. Boone Pickens, Crown Prince Abdullah Bin Abdul Aziz Al Saud of Saudi Arabia, George Lucas, Cathay Pacific Airways, Reebok, Nike, Avon, HIT Entertainment, Kellogg’s, Toscano, ITZ Toys, Wall Street Journal, and Ford Motor Company in 2001-2004. None is contemporaneous with his 2000 application and virtually none mentions licensing; most are solicitations for funds, or are unclear about what they request. Applicant has made no serious efforts to license the mark or his applications. As further addressed below, Applicant lacks the resources and ability to conduct a genuine licensing operation for all the goods and services recited in the application.

Duplicative Applications with Unreasonably Broad Identifications of Goods/Services; Abandonments, Default Judgments, Cancellations

Because the determination of intent to use is based on the “totality of the circumstances,” the Board also should review the ample evidence of what Opposer would term “secondary indicia of non-intent.” For example, USPTO files are replete with applications of the Applicant that have been abandoned and registrations that have been canceled (*see* **Exhibit C**) and default judgments entered by the Board against Applicant in other opposition proceedings, such as the four (4) judgments shown in **Exhibit D**. Anderson’s behavioral pattern is to file applications with unusually broad and extensive identifications of goods and services, engage in protracted prosecution in the PTO punctuated by repeated requests for time extensions and assistance from Examining Attorneys (for extensive examples, *see* **Exhibit E**), and then capitulate when genuine applicants seek to remove Anderson’s bogus filings from the register. Considered as a whole, these cases and their result paint an exceedingly unflattering picture of an Applicant who manipulates the USPTO to interpose delays and obstacles in the path of genuine applicants.

The excessive breadth of Applicant’s original identification of goods and services also is objective evidence of lack of intent to use. *Cf. Intel, supra*, slip op. at 13 (recitation of 200 items in ID coupled with no business plans indicated lack of intent). Applicant’s application of September 22, 2000 requested registration for “any all goods of now n of the future ...” and set forth “class heading” identifications for every international class. Although Opposer has contested only the three (3) classes that appear to be blocking its applications in the USPTO, Applicant’s recitation of everything in all international classes cannot represent genuine intent to use.

Similar defects are present in multiple other applications of Applicant. As specified in the Notice, numerous past applications of Anderson for the mark FUTURE have become abandoned or canceled, such as 76188809, 76312587, and 76437630. Other applications have included “class heading” descriptions in class 35 and others; *see, e.g.*, 76188809, 76312587, 76437630, 76537316, 76634950, and 76687670. The legislative history of the ITU statutory provisions

suggests that the filing of numerous ITU applications with the USPTO for marks covering the same goods and services might well cast doubt on an applicant's *bona fide* intention to use the marks. Senate Judiciary Committee Report on S.1883, *S. Rep. No. 100-515*, pp. 23-24 (Sept. 15, 1988).

Applicant's application even sought to assert rights for "any all goods of now **n of the future**" (emphasis added; original spelling). It is not possible to have a bona fide intent to use a mark in connection with "all goods of the future" because it is not possible to mentally conceive of the manner of use unless one knows what the goods are. In a paper filed April 9, 2002, Applicant requested registration of the mark FUTURE in all goods in all of International Class 001 to 034, inclusive, in a goods listing of some 5,000 words. The sheer number of goods, and the technical complexity of many of them—for example, "biochemicals used in genetic engineering" in class 001—is circumstantial evidence that Applicant lacked a bona fide intent to use the mark. In the same paper, the Applicant stated, "If feasible applicant is claiming the word FUTURE with no particular design or style or design element ofer [sic] the best protection." Applicant's repeated attempts to change the form of presentation of the mark from stylized to unstylized indicate that, as of April 9, 2002, Applicant could not have provided evidence of any bona fide intent to actually and genuinely use the mark in commerce on or in connection with the goods recited in the application.

As averred in the Notice of Opposition, numerous Anderson applications have been abandoned, canceled after registration, or resulted in default judgments after contested proceedings. *See Exhibits C, D.* Indeed, in the present application, at least as early as September 22, 2009, Applicant allowed the application to become abandoned by inaction and/or failure to properly prosecute the application. If Applicant had possessed a bona fide intent to use the mark in commerce on or in connection with all the goods identified in the application, Applicant would not have allowed the application to become abandoned.

Insufficient Education, Training or Resources to Pursue Business or Licensing

In a paper signed July 18, 2005, Applicant observed that he had paid \$9,760 in filing fees for the application and that the “total of \$9760 represents a substantial portion of the applicant’s net worth ...” Applicant has never started or run a business of any kind, and has no education, training or experience in making or selling goods, or licensing brands. Notice of Opposition ¶21; *see generally* Anderson Depo. I at 6-21. Applicant did not have, at the time of filing the application through the present, the financial and business resources and knowledge necessary to actually use the mark in interstate commerce on all the goods identified in the application or to conduct any business of licensing the mark for use by others—and he knew it. Applicant’s statements in the paper of July 18, 2005 and the paper of 2006 constitute admissions that Applicant lacked a bona fide intent to use the mark in interstate commerce on or in connection with all the goods identified in the application.

In December 2003, Applicant and his father jointly filed a fictitious business name statement with the Secretary of State of North Dakota asserting the intent to use the name FUTURE ISLAND for “operation of future city and related business.” Application file history, PDF page 940; Notice of Opposition ¶25. On March 28, 2004, Applicant wrote to his attorney, “I don’t even have the funds to protect these rights I have pending.” Notice of Opposition ¶25 Applicant lacks any genuine experience in the manufacture or sale of any of the goods identified in the application and has insufficient financial resources to undertake any real steps toward making or selling any of the goods identified in the application.

Improper Purpose to “Warehouse” the mark FUTURE

Applicant has placed into the public record extensive correspondence with his attorneys during the period 2003-2004. In an email to his attorney on April 1, 2004, Applicant wrote, “We can now cover cosmetics, keeps Chanel, Avon grounded ...” Applicant’s goal always has been to “warehouse” the mark FUTURE and prevent its use by anyone. In a paper filed December 12, 2009 and apparently intended as a petition, Applicant wrote: “The applicant has filed for the trademark FUTURE on the behalf of global individual rights of people giving people a voice.

FUTURE is like a country created from this country with intent of self supporting infrastructure based on individual ideas of people of countries worldwide and the intent to give hope in any language. ... Applicant has not received any money from any of the pending application. The applicant has been and is continually seeking business partnerships worldwide for the development of FUTURE.” The Applicant then requested suspension of the application and various others. Applicant’s statements of December 18, 2009 are evidence that Applicant has never had a bona fide intent to use the mark on or in connection with any goods and services; instead, Applicant has intended to “warehouse” the mark FUTURE to prevent others from using it.

Based on the foregoing, Applicant’s lack of documentary evidence along with any other objective evidence reflecting a bona fide intent to use the FUTURE mark renders the application *void ad initio*. Thus, the application for registration of the FUTURE mark should be refused. A finding of lack of bona fide intent to use with respect to any goods or services in a particular class of goods or services renders the application void as to the entire class. *Spirits International, B.V., supra*, footnote 3. Here, Opposer’s evidence that Applicant had no bona fide intent to use as to any goods or services in the application in un rebutted, and is sufficient to dispose of the entire application—or at least all of the opposed classes in their entirety. Therefore, the Board should determine that Anderson’s application is void *ab initio* as to the entire opposed classes 9, 16, and 28.

B. Applicant Committed Fraud Upon The USPTO Wilfully Declaring a Bona Fide Intent to Use The FUTURE Mark On All The Goods At The Time The Application Was Filed

Fraud in obtaining a trademark registration occurs when an applicant knowingly makes a false, material misrepresentation of fact in connection with his application, or in connection with a declaration or in connection an application filed for renewal, and there is a showing of knowledge and intent to defraud the USPTO by clear and convincing evidence. *In re Bose Corp.*, 580 F.2d 1240, 1245 (Fed. Cir. 2009). In contrast, fraud does not exist if “a false representation

is occasioned by an honest misunderstanding or inadvertence without a willful intent to deceive.” *Id.* However—importantly—because an applicant almost never admits intent to deceive on the record, fraud can be established by circumstantial evidence that is clear and convincing. *DaimlerChrysler Corporation et al. v. American Motors Corp.*, 94 USPQ2d 1086 (2010). If indirect or circumstantial evidence would lead “to the inevitable conclusion ... that respondent had the intent to deceive the Office, or at least had a reckless disregard for the truth,” a fraud holding is proper. *Id.* (related decision of March 2010).

Opposer has developed ample indirect evidence that compels the conclusion that Anderson intended to deceive the USPTO, or at least had a reckless disregard for the truth, in pursuing the present application. Based upon all the evidence discussed in the previous sections above—which is incorporated by reference here—it is simply not believable that Applicant thought he could eventually use the mark FUTURE in commerce for all the goods in his application, or even for all the goods in the three (3) classes that Opposer has opposed. At the time of filing in 2000, Applicant knew he had no money and no training in business, and could not reasonably have believed that his two-page amateurish “business plan” and a campaign of letters to heads of state and corporations would have resulted in licensing the mark.

Applicant also has engaged in a pattern of fraud on the USPTO in the course of numerous prior and pending application filings, and is a vexatious filer. As an example, in application 76/188,809, which is abandoned, Applicant submitted false specimens consisting of hand written and/or computer printed documents prepared for the purpose of submission to the USPTO rather than actual tags, labels, packing or other proper specimens that were in commerce; the Examining Attorney questioned the validity of the specimens and Applicant could not provide genuine substitutes. Notice of Opposition at ¶28. In registration 2,704,922, for “retail store, shopping malls and plazas, and strip malls services featuring electronic consumer products, toys, consumer house hold products, consumer beauty products, consumer safety products, consumer sporting products and auto related products,” on April 28, 2008, upon information and belief, the Applicant submitted a faked specimen consisting of a line drawing prepared solely for the

purpose of deceiving the USPTO and not consisting of an actual photo of a store, a printed business card, or other genuine evidence to establish that a retail store actually existed. *Id.* Applicant also submitted a fake specimen in registration 2,540,936, with a Section 8 affidavit filed March 29, 2007. *Id.* Applicant also submitted a fake specimen in registration 2,721,658, with a Section 8 affidavit on June 13, 2008. *Id.* In application 76/605,689, filed August 5, 2004, Applicant submitted the same original list of goods and services as in the present application and copied from a filing of August 2, 2002, *Id.* Applicant's use of repeatedly copied forms, and claims to all goods in the Nice Classification, is clear evidence that Applicant is engaged in filing vexatious applications in bad faith. In application 76/634,950, registration was finally refused after the Board entered default judgment in response to a motion for discovery sanctions against Applicant. *Id.* In application 76/690,134, Opposer's opposition was sustained as a result of the failure of Applicant to participate in discovery in the case. *Id.* In application 76/437,630, the application was abandoned after adverse judgment against Applicant. *Id.* Upon information and belief, Applicant filed application 76/602,117 in the name of a non-existent entity, "Future Motor Cycle Automobile Company," having the same address as Applicant, solely for the purpose of causing suspensions of other applications filed by Applicant for similar goods, to frustrate the ability of other applicants to obtain registrations. *Id.* In application 75/709,139, on January 8, 2002, Applicant filed a request for an extension of time in which to file a statement of use and asserted that "applicant has been is still establishing rights," but failed to identify any particular ongoing efforts to use the mark in commerce. *Id.* Applicant knew that he had taken no steps toward genuine use and knew that his assertion was an legally insufficient basis for obtaining a time extension.

As the evidence made of record and discussed above amply indicates, Applicant knew that he lacked the financial resources and ability to license, make or use all the goods identified in the application. The mere dream of an individual, aware that he has no access to resources and taking no significant steps toward use, cannot support the *bona fide* intent to use a mark in

commerce that the statute demands. The Lanham Act does not permit mere dreamers to warehouse marks to the frustration of others.

Applicant made the representations alleged above in his trademark application to induce the USPTO to issue a registration. Notice of Opposition ¶31. Applicant knew the representations were false. *Id.* Applicant's representations were material and were knowingly made in order to procure a registration. *Id.* Applicant willfully directed false statements to be executed within the declaration of his trademark application. *Id.* Applicant knowingly allowed and/or directed false statements to be relied upon in the examination and allowance of the application and thus had the intent to deceive the USPTO, or at least reckless disregard for the truth. *Id.* Applicant has knowingly made false, material representations of fact in connection with his application to the USPTO that are sufficient to amount to fraud on the USPTO in procuring a trademark registration.

There is a public interest in ending the abuses of a vexatious filer of trademark applications, and this case is the opportunity to end the abuses of Anderson.

A finding of fraud with respect to a particular class of goods or services renders any resulting registration void as to that class. *Meckatzer Lowenbrau Benedikt Weiss KG v. White Gold, LLC*, 95 USPQ2d 1185 (TTAB 2010). Therefore, the Board should determine that Anderson's application is void *ab initio* as to the entire opposed classes 9, 16, and 28.

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V. CONCLUSION

For the foregoing reasons, Applicant's application to register FUTURE mark is *void ab initio*. Opposer respectfully requests that the Board refuse registration of the FUTURE mark.

Dated: December 26, 2013

Respectfully submitted,

FUTURE ADS LLC

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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true and complete copy of the foregoing Opposer's Trial Brief has been served on Applicant, Kent G. Anderson, unrepresented/pro se, by United States First Class Mail with postage affixed thereon and fully prepaid, on December 26, 2013 to:

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