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

Proceeding	91216605
Party	Plaintiff Derek A. Lopez
Correspondence Address	JON M GIBBS LOWNDES DROSDICK DOSTER KANTOR & REED PA 215 N EOLA DR ORLANDO, FL 32801 UNITED STATES trademarks@lowndes-law.com, jon.gibbs@lowndes-law.com 407-843-4600
Submission	Brief on Merits for Plaintiff
Filer's Name	Jon M. Gibbs, Reg. No. 47,594
Filer's email	trademarks@lowndes-law.com, jon.gibbs@lowndes-law.com
Signature	/Jon M. Gibbs/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DEREK A. LOPEZ, an Individual,)	
)	
Opposer,)	Opposition Nos.: 91216672, 91216605,
)	91216538
vs.)	
)	Serial Nos.: 85/310,210, 85/310,234,
TED WONG JKD, LLC,)	85/310,186
)	
Applicant.)	

OPPOSER'S TRIAL BRIEF

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I. INTRODUCTION

In 2008, Opposer Derek A. Lopez, an individual person (“Opposer”), created the following work:



(“TWJKD Logo”). In addition to the creation of the logo, Opposer, registered the domain name www.twjkd.com and created the website connected to that domain name (“TWJKD Website”). Opposer has operated the TWJKD website since 2008 as a tribute site to Ted Wong, offering information related to Ted Wong’s style of the martial art Jeet Kune Do. Further to the creation and maintenance of the TWJKD Website, Opposer has printed and sold shirts bearing the TWJKD Logo.

As a result of Opposer’s creation and use of the TWJKD Logo, Opposer has established rights in the TWJKD Logo under 17 U.S.C. § 101 and 15 U.S.C. § 1143(a). Accordingly, Opposer believes that he will be damaged by the registration on the Principal Register of Application Serial No.: 85/310,186 (“Application”) for the mark TED WONG JEET KUNE DO and Design (“Applicant’s Mark”) for “Clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; Clothing for athletic use, namely, padded pants; Clothing for athletic use, namely, padded shirts; Clothing for athletic use, namely, padded shorts; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing, namely, athletic sleeves; Clothing, namely, khakis; Headbands for clothing; Jackets; Jerseys; Leather belts; Perspiration absorbent underwear clothing; Short sets; Ties; Tops” in International Class 025 (“Applicant’s Services”), and therefore opposes registration of Applicant’s Mark.

II. DESCRIPTION OF THE RECORD

The Evidence of record consists of the following:

A. Opposer’s Testimony.

Opposer will rely on the Testimony Affidavit of Derek Lopez, ¹ dated April 30, 2018, served upon Applicant that same date (“Lopez Affidavit”). TTABVIEW 24². The Lopez Affidavit is also appended hereto as **EXHIBIT 1** for convenience.

B. Applicant’s Testimony.

The Applicant has submitted no testimony or other evidence in support of its Application, Answer, Affirmative Defenses, or in rebuttal to Opposer’s Testimony Affidavit.

C. Application Files and Pleadings.

Pursuant to 37 C.F.R. § 2.122(b), the files of the trademark applications involved (United States Trademark Application Serial Numbers: 85/310,210, 85/310,234, and 85/310,186 collectively “Applications”)) and the pleadings in this consolidated opposition are deemed to be of record.

III. OBJECTIONS TO APPLICANT’S EVIDENCE

Applicant has submitted no testimony or other evidence in support of its Application, Answer, Affirmative Defenses, or in rebuttal to Opposer’s Testimony Affidavit, submitted to Applicant on April 30, 2018. Accordingly, Opposer has nothing to which to object.

IV. STATEMENT OF THE ISSUES

1. Whether Applicant’s proposed TED WONG JEET KUNE DO Marks so resemble Opposer’s asserted trademarks as to be likely, if registered in connection with “Licensing of intellectual property;

¹ On September 29, 2017, the parties stipulated to allow the testimony of Derek Lopez by Testimony Affidavit.

² All references to TTABVIEW shall be with respect to U.S. Opposition Proceeding No.: 91216538 to which U.S. Opposition Proceeding Nos. 91216605 and 91216672 have been consolidated.

Licensing of Lessons in Martial Arts” in International Class 045; “Training services in the field of Martial Arts” in International Class 041; and “Clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; Clothing for athletic use, namely, padded pants; Clothing for athletic use, namely, padded shirts; Clothing for athletic use, namely, padded shorts; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing, namely, athletic sleeves; Clothing, namely, khakis; Headbands for clothing; Jackets; Jerseys; Leather belts; Perspiration absorbent underwear clothing; Short sets; Ties; Tops,” in International Class 025 to cause confusion, or to cause mistake, or to deceive;

2. Whether Applicant’s naked licensing of the proposed TED WONG JEET KUNE DO Marks, led to the abandonment of any rights that it may have established in such marks; and

3. Whether Applicant’s fraudulent statements in furtherance of its Applications invalidate those Applications for fraud on the USPTO.

V. RECITATION OF FACTS

A. The TWJKD Logo.

Opposer created the logo depicted below (“TWJKD Logo”), among other logos, and is the author for purposes of 17 U.S.C. § 101 *et seq.* Lopez Affidavit at ¶ 5.



Opposer is the sole artist that created the TWJKD Logo and has made no transfer of ownership to any other person or entity. *Id.* at ¶ 6. Opposer is the sole owner of the TWJKD Logo under 17 U.S.C. § 201(a) and holds all exclusive rights under 17 U.S.C. § 106. *Id.* at ¶ 7.

B. The TWJKD Domain Name and Website.

In addition to the foregoing, Opposer is the registrant of the domain name “twjkd.com” (“TWJKD Domain Name”). *Id.* at ¶ 8. Opposer registered the TWJKD Domain Name on June 16, 2008. *Id.* at ¶ 9. Opposer is also the author and owner of the original content of the website associated with the TWJKD Domain Name located at <http://www.twjkd.com> (“TWJKD Website”). *Id.* at ¶ 10. Opposer makes no claim to the linked articles authored by others. *Id.* The TWJKD Website, intended to perpetuate and pay tribute to the Jeet Kune Do teachings of Ted Wong as taught to him by Bruce Lee, was authorized by Ted Wong, himself. *Id.* at ¶ 11 Select screenshots from the animated sequence on the homepage of the TWJKD Website are attached to the Lopez Affidavit as Composite Exhibit A. *Id.* Jeet Kune Do is a style of martial arts founded and made popular by the late Bruce Lee. *Id.* at ¶ 12.

The TWJKD Website comprises educational information relating to Ted Wong and Jeet Kune Do as well information regarding Jeet Kune Do training and instruction. Lopez Affidavit at ¶ 13. Select screenshots from the animated sequence on the “about – TWJKD” page of the TWJKD Website are attached to the Lopez Affidavit as Composite Exhibit B. *Id.* Opposer has never transferred the registration of the TWJKD Domain Name or the ownership of the original content of the TWJKD Website created by him to any other person or entity. *Id.* at ¶ 14.

C. The Sifu Ted Wong Logo.

Opposer published TWJKD Website at least as early as February 2009 and it has always comprised the following logo (“Sifu Ted Wong Logo”), also created by Opposer:



Id. at ¶ 15. Opposer created the Sifu Ted Wong Logo and is the author for purposes of 17 U.S.C. § 101 *et seq.* *Id.* at ¶ 16. Opposer is the sole artist that created the Sifu Ted Wong Logo and has made no transfer of ownership to any other person or entity. *Id.* at ¶ 17. Opposer is the sole owner of the Sifu Ted Wong Logo under 17 U.S.C. § 201(a) and holds all exclusive rights under 17 U.S.C. § 106. *Id.* at ¶ 18.

The first image in each of Composite Exhibits A and B to the Lopez Affidavit shows the Sifu Ted Wong Logo that Opposer created contemporaneously with the TWJKD Logo. *Id.* at ¶ 19. The Sifu Ted Wong Logo and the TWJKD Logo are substantially similar as they contain many common elements. *Id.* at ¶ 20.

D. The '186 Application.

Applicant filed United States Trademark Application Serial No.: 85/310,186 (“’186 Application”) comprising the TWJKD Logo for “Licensing of intellectual property; Licensing of Lessons in Martial Arts” in International Class 045. *See* ‘186 Application File History; *see also* Lopez Affidavit at ¶ 21. Applicant had full knowledge of, had reason to know, or should have known of Opposer’s prior rights in and to the TWJKD Logo and the Sifu Ted Wong Logo prior to filing the ‘186 Application. Lopez Affidavit at ¶ 22.

The specimen submitted with the ‘186 Application on May 2, 2011 shows a website screen capture. *See* ‘186 Application File History; *see also* Lopez Affidavit at ¶ 23. The screen capture is from the TWJKD Website owned by Opposer and was not authorized by him. Lopez Affidavit at ¶ 24. The screen capture includes Opposer’s TWJKD Domain Name in the lower left corner. *See* ‘186 Application File History; *see also* Lopez Affidavit at ¶ 25.

Opposer’s use and ownership of the TWJKD Logo and Sifu Ted Wong Logo pre-dates the January 1, 2011 date of first use claimed by Applicant in the ‘186 Application. Lopez Affidavit at ¶ 26. Opposer believes that he would be damaged by registration of the ‘186 Application because such registration would give Applicant ownership of, and exclusive rights to use, a mark that is confusingly similar to the Sifu Ted Wong Logo and identical to the TWJKD Logo for services which are related to Opposers inasmuch

as they are contained in, and related to, the content of the TWJKD Website, in derogation of Opposer's invaluable property rights in the Sifu Ted Wong Logo and TWJKD Logo. *Id.* at ¶ 27.

E. The '210 Application.

Applicant filed United States Trademark Application Serial No.: 85/310,210 ("210 Application") comprising the TWJKD Logo for "Training services in the field of Martial Arts" in International Class 041. See '210 Application File History; see also Lopez Affidavit at ¶ 28. Applicant had full knowledge of, had reason to know, or should have known of Opposer's prior rights in and to the TWJKD Logo and the Sifu Ted Wong Logo prior to filing the '210 Application. Lopez Affidavit at ¶ 29.

The specimen submitted with the '210 Application on May 2, 2011 shows a website screen capture. See '210 Application File History; see also Lopez Affidavit at ¶ 30. The screen capture is from Opposer's TWJKD Website and was not authorized by him. *Id.* at ¶ 31. The screen capture includes Opposer's TWJKD Domain Name in the lower left corner. See '210 Application File History; see also Lopez Affidavit at ¶ 32.

Opposer's use and ownership of the TWJKD Logo and Sifu Ted Wong Logo pre-date the January 1, 2011 date of first use claimed by Applicant in the '210 Application. Lopez Affidavit at ¶ 33. Opposer believes that he will be damaged by registration of the '210 Application because such registration would give Applicant ownership of, and the exclusive rights to use, a mark that is confusingly similar to the Sifu Ted Wong Logo and identical to the TWJKD Logo for services which are related to Opposer's inasmuch as they are contained in, and related to, the content of the TWJKD Website, in derogation of my invaluable property rights in the Sifu Ted Wong Logo and TWJKD Logo. *Id.* at ¶ 34.

F. The '234 Application.

Applicant filed United States Trademark Application Serial No.: 85/310,234 ("234 Application") on May 2, 2011, comprising the TWJKD Logo for "Clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; Clothing for athletic use, namely, padded pants;

Clothing for athletic use, namely, padded shirts; Clothing for athletic use, namely, padded shorts; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing, namely, athletic sleeves; Clothing, namely, khakis; Headbands for clothing; Jackets; Jerseys; Leather belts; Perspiration absorbent underwear clothing; Short sets; Ties; Tops” in International Class 025. *See* ‘234 Application File History; *see also* Lopez Affidavit at ¶ 35.

The ‘234 Application is an intent-to-use trademark application filed under 15 U.S.C. § 1051(b). *See* ‘234 Application File History; *see also* Lopez Affidavit at ¶ 36. Applicant had full knowledge of, had reason to know, or should have known of Opposer’s prior rights in and to the TWJKD Logo and the Sifu Ted Wong Logo prior to filing the ‘234 Application. Lopez Affidavit at ¶ 37.

The specimens submitted during the prosecution of the ‘234 Application on April 8, 2013, show a series of five (5) T-shirt photos. *See* ‘234 Application File History; *see also* Lopez Affidavit at ¶ 38. The first of the submitted photos (1 of 5) shows a Black T-shirt comprising the TWJKD Logo over a white silhouette image. *See* ‘234 Application File History; *see also* Lopez Affidavit at ¶ 39. Not only did Opposer create the TWJKD Logo shown on the subject T-shirt, Opposer made arrangements to have the subject T-shirt printed. Lopez Affidavit at ¶ 40. Opposer did not authorize use of the T-shirt or use of the photo for purposes of applying for and obtaining a trademark registration based on the ‘234 Application. *Id.* at ¶ 41.

The second of the submitted photos (2 of 5) shows a white T-shirt comprising the Sifu Ted Wong Logo and further comprising four print crosshairs, one each adjacent to the four corners of the Sifu Ted Wong Logo. *See* ‘234 Application File History; *see also* Lopez Affidavit at ¶ 42. The print crosshairs were placed there by the printer of the T-Shirt when the printer created this first sample of the subject T-shirt. Lopez Affidavit at ¶ 43. Not only did Opposer create the Sifu Ted Wong Logo shown on the subject T-shirt, Opposer made arrangements to have the subject T-shirt printed. *Id.* at ¶ 44. As can be seen in the photo, the T-shirt comprises the Sifu Ted Wong Logo, not the TWJKD Logo. *Id.* at ¶ 45. Opposer still owns the T-shirt shown in the photo and, in fact, took the photo used by Applicant and submitted to the USPTO. Lopez

Id. at ¶ 46. Opposer did not authorize use of the T-shirt or use of the photo for purposes of applying for and obtaining a trademark registration based on the '234 Application. *Id.* at ¶ 47.

Opposer's use and ownership of the TWJKD Logo and Sifu Ted Wong Logo pre-date the May 2, 2011 filing date for the '234 Application. *Id.* at ¶ 48. Opposer believes that he will be damaged by registration of the '234 Application because such registration would give Applicant ownership of, and the right to use, a mark that is confusingly similar to the Sifu Ted Wong Logo and identical to the TWJKD Logo for goods which are related to Opposer's inasmuch as they are contained in, and related to, the content of the TWJKD Website and goods that Opposer has had manufactured and sold with the express consent of Ted Wong, in derogation of Opposer's invaluable property rights in the Sifu Ted Wong Logo and TWJKD Logo. *Id.* at ¶ 49.

G. Abandonment of Applicant's Marks.

Opposer has continuously used the Sifu Ted Wong Logo and TWJKD Logo with Ted Wong's knowledge, without restriction and without any quality control requirements. *Id.* at ¶ 50. In addition, Opposer has learned that Ted Wong and Applicant have granted use of the TWJKD Logo and Sifu Ted Wong Logo to third parties without restriction and without any quality control requirements. *Id.* at ¶ 51.

Opposer believes that Applicant's grant of usage of the TWJKD Logo and Sifu Ted Wong Logo without restriction amounts to a naked license of both logos. *Id.* at ¶ 52. To the extent that Applicant may have ever established any rights in the TWJKD Logo or the Sifu Ted Wong Logo, the naked licenses granted by Applicant to third-parties resulted in the abandonment of any rights that Applicant may have established in TWJKD Logo or the Sifu Ted Wong Logo. *Id.* at ¶ 53.

The conduct of the Applicant, including acts of omission as well as commission, caused the TWJKD Logo or the Sifu Ted Wong Logo to lose its significance as a trademark for Applicant. *Id.* at ¶ 54. Pursuant to 15 U.S.C. § 1127, Applicant's acts of omission or commission have resulted in the abandonment of any rights Applicant may have established in Opposer's Mark.

VI. ARGUMENT

Section 2(d) of the Lanham Act prohibits the registration of marks that consist of or comprise a mark that “so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive” 15 U.S.C. § 1052(d). Based upon the facts set forth above, it is apparent that confusion, mistake, or deception would be likely, and that Opposer would be damaged, if registration of Applicant’s Mark were permitted in connection with the goods identified in the applications at issue herein. Therefore, Opposer urges that Opposition Nos. 91216672, 91216605, and 91216538 be sustained and that registration of the Applicant’s Mark in connection with these goods be rejected.

A. Opposer’s Ownership of Opposer’s Mark and Applicant’s Mark.

Opposer is the creator of both Opposer’s Mark and Applicant’s Mark (Lopez Affidavit). Both Opposer’s Mark and Applicant’s Mark are considered works of authorship under 17 U.S.C § 101. Ownership of an original work of authorship vests in the author. See 17 U.S.C § 201(a). Transfer of ownership is not valid until such time as the owner transfers such ownership in a written instrument of conveyance signed by the owner. See 17 U.S.C § 204(a). Opposer has made no such transfer. Lopez Affidavit at ¶¶ 6 and 17. Accordingly, Opposer is the owner of both Applicant’s Mark and Opposer’s Mark.

B. Opposer’s Standing.

Opposer plainly has standing to oppose the applications at issue and its priority of use is not in dispute. For an opposer to have standing, it must have a “real interest” in the outcome of the proceeding, and a “reasonable” belief that its rights would be damaged if the mark at issue were registered. *Ritchie v. Simpson*, 170 F.3d 1092, 1095, 50 U.S.P.Q.2d 1023, 1026 (Fed. Cir. 1999). Opposer has strong, prior rights in both Applicant’s Mark and Opposer’s Mark. See Lopez Affidavit at ¶¶ 22, 26, 29, 33, 37, 48, and 50.

C. Likelihood of Confusion Exists.

Whether a likelihood of confusion exists is a question of law, determined case-by-case applying the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). Not all of the *du Pont* factors are relevant or given equal weight in the analysis but any one factor may be dominant in a given case. *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 1315, 65 U.S.P.Q.2d 1201, 1204 (Fed. Cir. 2003); *In re E.I. du Pont*, 476 F.2d at 1361-62, 177 U.S.P.Q. at 567-68. In the present case, the following factors are the most relevant and of record: (1) the similarity of the marks; (2) the similarity of the goods associated with the marks; (3) the similarity of the trade channels and target markets; (4) the conditions under which the goods are sold and the level of care with which the goods are purchased; (5) the similarity of the marks; (6) the nature and number of similar marks in use on similar goods; (7) the extent of potential confusion; and (8) Applicant's effective admission that confusion and dilution are likely. As set forth below, each of the relevant factors weigh in favor of a finding of likelihood of confusion.

1. Similarities in Marks.

As a threshold matter, Opposer has prior rights to the TWJKD Logo which is identical to Applicant's Mark. See Lopez Affidavit at ¶¶ 22, 26, 29, 33, 37, 48, and 50. Turning next to the similarity of Applicant's Mark to Opposer's Mark, to gauge their similarity, the marks are compared in terms of their appearance, sound, connotation, and commercial impression. *In re E. I. du Pont*, 476 F.2d at 1361, 177 U.S.P.Q. at 567; *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329-30, 54 U.S.P.Q.2d 1894, 1899 (Fed. Cir. 2000). A finding of similarity in any one of these aspects is sufficient to support a determination that there is a likelihood of confusion. *In re White Swan, Ltd.*, 8 U.S.P.Q.2d 1534, 1535 (T.T.A.B. 1988). The ultimate question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods such marks identify have a common origin. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 201, 175 U.S.P.Q. 558, 558 (C.C.P.A. 1972). The respective marks are reproduced below:

Applicant's Mark



Opposer's Mark



The marks at issue are identical with respect to Opposer's prior use of the TWJKD Mark and nearly identical with respect to Opposer's Mark and, accordingly, sufficiently similar in sight, sound, and meaning to cause confusion. Indeed, both marks comprise the words "TED WONG" at the top; both marks comprise the same Chinese characters on each side of the mark that translate to "Wong Kam Ming Jeet Kune Do"; both marks comprise the words "JEET KUNE DO" at the bottom of the mark; and both marks have a red and gold yin and yang symbol in the center. The differences between the marks are generally insignificant. Both the Federal Circuit and the Board have regularly found confusing similarity between marks that even share a common word or syllable, let alone such a large number of similarities. *See, e.g., Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 73 U.S.P.Q.2d 1689 (Fed. Cir. 2005) (finding likelihood of confusion between VEUVE ROYALE and VEUVE CLICQUOT); *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1341, 71 U.S.P.Q.2d 1944, 1945 (Fed. Cir. 2004) (affirming likelihood of confusion finding between JOSE GASPAR GOLD for tequila and GASPAR'S ALE for beer); *Bose Corp. v. QSC Audio Prods., Inc.*, 293 F.3d 1367, 1378, 63 U.S.P.Q.2d 1303, 1311 (Fed. Cir. 2002) (holding POWERWAVE mark for amplifiers similar in sound and connotation to ACOUSTIC WAVE for loudspeaker systems and WAVE for radios and stereos); *Nina Ricci, S.A.R.L. v. E.T.F. Enters., Inc.*, 889 F.2d 1070, 1073-4, 12 U.S.P.Q.2d 1901, 1903-4 (Fed. Cir. 1989) (holding VITTORIO RICCI confusingly similar to NINA RICCI); *Colgate-Palmolive Co. v. Warner-Lambert Co.*, 184 U.S.P.Q. 380, 383 (T.T.A.B. 1974) (finding reasonable

likelihood purchasers of ULTRA-DENT denture cleanser tabs would mistakenly believe product emanated from producer of ULTRA BRITE toothpaste).

When the marks “would appear on legally identical goods, the degree of similarity between the marks which is necessary to support a finding of likelihood of confusion declines.” *Mattel, Inc. v. Funline Merchandise Co., Inc.*, 81 U.S.P.Q.2d 1372, 1374 (T.T.A.B. 2006); *see also Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877, 23 U.S.P.Q.2d 1698 (Fed. Cir. 1992). The goods and services on which Applicant proposes to apply the Applicant’s Mark, i.e., clothing and Jeet Kune Do-related instruction and licensing, are legally identical to the goods and services on which Opposer’s Mark are applied. Thus, for all of the foregoing reasons, this factor favors a finding of likelihood of confusion.

2. Similarities in Goods and Services.

As a threshold matter, it should be noted that each of the subject applications were filed using specimens either obtained from Opposer’s own website, or directly attributable to Opposer and not Applicant. (Lopez Affidavit) More specifically, the ‘186 Application and ‘210 Application were filed using specimens comprising screen captures from Opposer’s Website, not Applicant’s website. (Lopez Affidavit) In addition, the ‘234 Application was filed using specimens comprising photos of T-shirts owned by Opposer, not Applicant. (Lopez Affidavit) In fact, one of the photos in question was actually taken by Opposer and Opposer still owns the T-Shirt in the photo. (Lopez Affidavit).

When considering the similarities between the parties’ goods and services, the issue is not whether purchasers would confuse the goods and services, but rather whether there is a likelihood of confusion as to the source of the goods. *See generally, In re Rexel Inc.*, 223 U.S.P.Q. 830 (T.T.A.B. 1984). Here, the identifications of goods and services in the applications at issue are identical or closely related to the goods and services for which Opposer’s Mark is used. Opposer uses and has used Opposer’s mark in connection with the T-Shirts and a tribute website related to martial arts, namely, Jeet Kune Do. It is beyond dispute that Opposer uses Opposer’s Mark, and Applicant intends to use Applicant’s Mark, in

connection with all of the goods claimed in the '234 Application. As to the remaining services in the '186 Application and the '210 Application, consumers may be likely to believe that Opposer has expanded the use of its mark from the T-Shirts and website to the training services in the '210 Application and/or the licensing of intellectual property or licensing of lessons in the '186 Application, especially where the intellectual property in question, namely, Applicant's Mark was created and is owned by Opposer.

Likelihood of confusion must be found if the public is likely to believe that the opposer has expanded its use of the mark, directly or under license, with respect to any item that comes within the identification of goods and services in the application opposed. *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 1336, 209 U.S.P.Q. 986, 988 (C.C.P.A. 1981). Accordingly, Opposer submits that the Board need not consider any arguments as to why the remaining services in the '186 Application and '210 Application are different from Opposer's services. Given the legal identity of the goods and services claimed in the '234 Application and the legal identity and near identity of the goods claimed in the '186 Application and '210 Application, this factor weighs heavily in favor of a finding of likelihood of confusion.

3. Similarities in Trade Channels.

Logic dictates that given the similarities in the goods and services of Opposer and Applicant in addition to the relatively narrow subject matter with which those goods and services are offered, namely, Jeet Kune Do, that Applicant's Goods and Services will be offered in the same channels of trade as Opposer's. To the extent the Board is inclined to consider the differences between the remaining goods in the '186 Application and '210 Application on the one hand and Opposer's goods on the other hand, Opposer submits that the goods are sufficiently related such that confusion is still likely. The relevant goods on which the parties use or seek to use their marks need not be identical or directly competitive to prove a likelihood of confusion, but need only be related in the sense that consumers encountering the marks would have the mistaken belief that the goods emanate from the same source. *See On-line Careline*,

Inc. v. Am. Online, Inc., 229 F.3d 1080, 1086, 56 U.S.P.Q.2d 1471, 1475 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-67, 223 U.S.P.Q. 1289, 1289-90 (Fed. Cir. 1984); *Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1403-04, 186 U.S.P.Q. 476, 479-80 (C.C.P.A. 1975). Thus, this factor weighs heavily in favor of a likelihood of confusion.

4. Low Level of Care in Purchasing Goods/Services.

The exercise of a low level of care by consumers in purchasing the goods at issue supports a determination of a likelihood of confusion. See *In re Martin's Famous Pastry Shoppe*, 748 F.2d at 1567, 223 U.S.P.Q. at 1290. If the goods are of relatively low cost, purchasers are less likely to use a great deal of care when buying the goods. *Nike, Inc. v. WBNA Enterprises, LLC*, 2007 WL 763166, at *9, 85 U.S.P.Q.2d 1187, 1196 (T.T.A.B. 2007) (holding goods in the range of \$15-\$100 were "relatively inexpensive" such that "[i]t is unlikely that these products would be purchased with the exercise of a great deal of care."); see also *Specialty Brands v. Coffee Bean Distrib., Inc.*, 748 F.2d 669, 672, 223 U.S.P.Q. 1281, 1282 (Fed. Cir. 1984) ("Purchasers of [relatively inexpensive] products have been held to a lesser standard of purchasing care."). As is common knowledge, t-shirts are generally not expensive items and are often impulse purchases. Accordingly, such purchases are not typically attended by great care and deliberation. Purchasers of T-shirts often purchase them on impulse.

Furthermore, to the extent that the parties' goods are identical or otherwise closely related, and there are no limitations in the applications at issue, the Board must presume that they are to be marketed and sold in the same channels of trade and to the same classes of purchasers. See *In re Smith and Mehaffey*, 31 U.S.P.Q.2d 1531, 1532 (T.T.A.B. 1994); *Brown Shoe Co., Inc. v. Robbins*, 90 U.S.P.Q.2d 1752, 1754-55 (T.T.A.B. 2009).

Given the low degree of care and the relatively low price of the goods, consumers are more likely to be confused when they encounter Opposer's Mark and Applicant's Mark in the marketplace for the

same goods, or when they encounter Applicant's Mark for closely related goods. Accordingly, this factor supports a finding of likelihood of confusion.

5. Use of Opposer's Mark is Exclusive.

"The probative value of third-party trademarks depends entirely upon their usage." *Palm Bay Imports*, 396 F.3d at 1373, 73 U.S.P.Q.2d at 1693. In this case, there is nothing in the record showing the use of mark similar to Opposer's made by a third party in connection with clothing or Jeet Kune Do-related services. Opposer's use of the Opposer's Mark is, without question, exclusive for the goods for which it is used. Opposer has used Opposer's Mark at least three (3) years prior to Applicant's filing or the subject Applications or Applicant's claimed dates of first use. Accordingly, this factor supports a finding of a likelihood of confusion.

6. Potential Confusion Exists.

The potential of confusion between Applicant's Mark and Opposer's Mark is high. *See In re Aladdin's Eatery, Inc.*, Ser. No. 76020517, 2006 WL 402558, at *7 (T.T.A.B. Feb. 7, 2006) ("The potential for confusion from the use of virtually identical marks in connection with legally identical services that could be offered to the general public across the United States is substantial."). As the newcomer, Applicant has the opportunity of avoiding confusion and can select its own original mark. *See In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 U.S.P.Q.2d 1025 (Fed. Cir. 1988). Given the probability of such confusion here, Applicant is particularly obligated to do so, and this factor weighs in favor of a finding of likelihood of confusion.

7. Evaluation of Factors Favors Likelihood of Confusion.

In sum, the evaluation of all the evidence of record demonstrates the existence of a likelihood of confusion between Opposer's Mark and Applicant's Mark, when that mark is used in connection with T-Shirts and Jeet Kune Do-related services. Because the goods and services are identical in part and related as to the remaining part, sold in the same channels of trade, and subject to impulse purchase, Applicant's

registration of the closely similar Applicant's Mark as set forth in the applications at issue is likely to cause confusion with Opposer's Mark. All doubt as to whether confusion, mistake, or deception is likely must be resolved against the newcomer, especially where the established mark is applied to an inexpensive product bought by all kinds of people without much care. *Specialty Brands*, 748 F.2d at 676, 223 U.S.P.Q. at 1285; *see also Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 U.S.P.Q.2d 1001, 1003 (Fed. Cir. 2002); *Broderick & Bascom Rope Co. v. Goodyear Tire & Rubber Co.*, 531 F.2d 1068, 1070, 189 U.S.P.Q. 412, 413 (C.C.P.A. 1976). In short, consumers familiar with Opposer's goods and services, who then encounter Applicant's Mark being used on identical and closely related goods, are likely to be confused as to the source of the goods.

D. Applicant Abandoned Applicant's Mark.

Alternatively, although no evidence has been submitted by Applicant, to the extent that the Board infers that trademark rights were established by Applicant and/or that Opposer was at any time a licensee of Applicant, Applicant abandoned its rights in Applicant's Mark by failing to police or otherwise control the quality of the goods and/or services provided under Applicant's Mark. Opposer's Mark is virtually identical to Applicant's Mark. Opposer has been using Opposer's Mark without control by Applicant since prior to the dates in which Applicant filed the trademark applications at issue. Applicant's lack of control amounts to naked licensing and is an abandonment of Applicant's Mark.

"A marks shall be deemed to be 'abandoned' . . . [w]hen any course of conduct of the owner, including acts of omission as well as commission, causes the mark to . . . lose its significance as a mark ." 15 U.S.C. § 1127. Abandonment of a mark can result from "engaging in naked licensing— that is, by allowing others to use the mark without exercising 'reasonable control over the nature and quality of the goods, services, or business on which the [mark] is used by the licensee'. *Eva's Bridal, Ltd. v. Halanick Enters.*, 639 F.3d 788, 789 (7th Cir. 2011) (internal citations omitted). "[N]aked licensing is 'inherently deceptive and constitutes abandonment of any rights to the trademark by the licensor.'"

FreecycleSunnyvale v. Freecycle Network, 626 F.3d 509, 516 (9th Cir. 2010) (citing *Barcamerica Int'l USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 598 (9th Cir. 2002)). A lack of an express contractual right to inspect and supervise use of a trademark gives rise to a naked license and a finding of abandonment. See *Barcamerica Int'l*, 289 F.3d 589. See also *FreecycleSunnyvale*, 626 F.3d at 516 (“The absence of an agreement with provisions restricting or monitoring the quality of goods or services produced under a trademark supports a finding of naked licensing.”) Applicant has allowed use of Applicant’s Mark without contractual or other quality control terms and has therefore abandoned any and all rights that it may have had in Applicant’s Mark.

E. Fraud on the USPTO.

Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with its application with intent to deceive the USPTO. See *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009); see also *Swiss Watch Int'l Inc. v. Fed'n of the Swiss Watch Indus.*, 101 USPQ2d 1731, 1745 (TTAB 2012). A party alleging fraud in the procurement of a registration bears the heavy burden of proving fraud with clear and convincing evidence. *Bose*, 91 USPQ2d at 1939 (quoting *Smith Int'l, Inc. v. Olin Corp.*, 209 USPQ 1033, 1044 (TTAB 1981)).

1. The ‘186 Application.

On May 2, 2011, Applicant filed the ‘186 Application claiming use of the mark with the identified goods at least as early as January 1, 2011. Submitted with that application was the Specimen Description which stated: “Depiction of the mark as actually used in commerce by Applicant on or in connection with the services contained in the recitation of services.” In submitting the specimen of use, applicant represented to the Trademark Office that what it was submitting actually belonged to Applicant. This representation was material and was false, as evidenced by the Testimony Affidavit of Derek Lopez. See Lopez Affidavit ¶ 23 – 25. The specimen submitted was actually a website screen capture of Opposer’s website.

2. The '210 Application.

On May 2, 2011, Applicant filed the '210 Application claiming use of the mark with the identified goods at least as early as January 1, 2011. Submitted with that application was the Specimen Description which stated: "The specimen shows the mark as actually used in commerce on and in connection with training services in the area of martial arts." In submitting the specimen of use, applicant at the very least inferred to the Trademark Office that what it was submitting actually belonged to Applicant. This representation was material and was false, as evidenced by the Testimony Affidavit of Derek Lopez. See Lopez Affidavit ¶ 30 – 32. The specimen submitted was actually a website screen capture of Opposer's website.

3. The '234 Application.

On May 2, 2011, Applicant filed the '234 Application claiming a bona fide intent to use the mark with the identified goods. On April 8, 2013, Applicant made a filing revising the application and submitting a specimen. The Specimen Description stated: "The specimen depicts the Mark as actually used on and in connection with the goods in International Class 025." In submitting the specimen of use, applicant at the very least inferred to the Trademark Office that what it was submitting actually belonged to Applicant. This representation was material and was false, as evidenced by the Testimony Affidavit of Derek Lopez. See Lopez Affidavit ¶ 30 – 32. The specimen submitted was actually a website screen capture of Opposer's website.

4. The Declarations

In each of the '186, 210, and '234 Applications, Applicant made the following Declaration:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark

in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

See Applications (emphasis added). Like the submission of the respective Specimens, each Declaration was material to the respective Application and was false, as evidenced by the Testimony Affidavit of Derek Lopez. See Lopez Affidavit ¶¶ 22, 29, and 37.

The evidence of record shows that applicant's representations to the Office were false and knowingly made with the requisite intent to deceive the USPTO. This question goes to Applicant's state of mind, which is peculiarly and exclusively accessible only to the Applicant. However, fraud is rarely proven directly, and may therefore be inferred through circumstantial evidence. "Since direct evidence of intent is almost never available, circumstantial evidence is usually the evidentiary basis for proving fraudulent intent of the defendant." McCarthy on Trademarks and Unfair Competition § 23:113 (4th ed. 2009); *Jellibeans, Inc. v. Skating Clubs of Georgia, Inc.*, 212 USPQ 170, 176 (N.D. Ga. 1981) *aff'd*, 716 F.2d 833, 222 USPQ 10 (11th Cir. 1983) ("Since improper motive is rarely, if ever, admitted ... the court can only infer bad intent from the facts and circumstances in evidence."). "[E]ven in criminal law, intent is rarely susceptible of direct proof and usually must be inferred from circumstantial evidence of defendant's conduct." *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d at 1941. The Board may infer culpable intent in cases where the accused party's testimony lacks credibility. See, *Global Maschinen GmbH v. Global Banking Sys, Inc.*, 227 USPQ 862, 867 (TTAB 1985).

Applicant has provided no explanation as to why the specimen it initially submitted was actually that of Opposer. Nor has Applicant offered any evidence that would support its false declaration in the USPTO, stating that "to the best of his/her knowledge and belief no other person, firm, corporation, or

association has the right to use the mark in commerce.” Applicant was well aware of Opposer’s ownership and use of Applicant’s Mark and Opposer’s Mark in commerce in the United States.

Statements regarding the use of goods or services are made “under penalty of ‘fine or imprisonment, or both, . . . and [knowing] that such willful false statements may jeopardize the validity of the application or any resulting registration....” *Herbaceuticals Inc. v. Xel Herbaceuticals Inc.*, 86 USPQ2d 1572, 1577 (TTAB 2008). An error “in this statement cannot be characterized as mere carelessness or misunderstanding to be winked at as of no importance.” See *First Int’l Servs. Corp. v. Chuckles, Inc.*, 5 USPQ2d 1628, 1636 (TTAB. 1988) (citing *Duffy-Mott Co. v. Cumberland Packaging Co.*, 424 F.2d 1095, 1098- 1100, 165 USPQ 422, 425 (CCPA 1970)). Applicant was obligated to read and understand what its counsel was signing on its behalf and investigate the accuracy of his statements in the application to confirm it had evidentiary support prior to signature and submission to the USPTO. See *Herbaceuticals*, supra. Even when counsel is retained to file an application, Applicant would have “shared the duty to ensure the accuracy of the application and the truth of its statements.” *Hachette Filipacchi Presse v. Elle Belle, LLC*, 85 USPQ2d 1090, 1094 (TTAB 2007) (citing *Smith Int’l*, 209 USPQ at 1047).

Considering the facts presented, it is clear that Applicant’s false statements were made knowingly and with an intent to deceive the USPTO. Even if Applicant did not understand that its statements were false at the time it filed its Amendment to Allege Use in this proceeding, it took no steps to correct the false statements in the opposed application, or in its second pending application for this mark for the same goods. Accordingly, the Board may infer Applicant’s fraudulent intent from the facts and circumstances in evidence.

F. No Evidence for Affirmative Defenses.

Because Applicant has submitted no evidence in this matter, there is no factual or other support for the Affirmative Defenses raised in Applicant’s Response and Affirmative Defenses to Notice of

Opposition dated July 14, 2014. Accordingly, Applicant's Affirmative Defenses should be deemed waived and of no effect.

VII. CONCLUSION

For more than two years prior to Applicant's filing of the applications at issue, Opposer had been using the TWJKD and the Sifu Ted Wong Logo as a means to promote his website and to sell printed shirts bearing the mark in the Jeet Kune Do/martial arts space. Opposer clearly has prior use over Applicant. Moreover, Applicant has abandoned all rights that it may have had in and to the TWJKD Logo as a result of its naked licensing. Allowing Applicant to register the TWJKD Logo in International Classes 025, 041 and 045 in connection with Jeet Kune Do/martial arts, and related goods and services clearly would create a likelihood of confusion, mistake, or deception, and would injure both Opposer and the consuming public.

Accordingly, Opposer respectfully requests the Board to sustain this consolidated opposition proceeding and refuse registration of Applicant's applications.

Respectfully submitted,

Date: October 11, 2018

By: /s/Jon M. Gibbs
Jon M. Gibbs
Florida Bar No.: 494534
LOWNDES, DROSDICK, DOSTER,
KANTOR & REED, P.A.
215 North Eola Drive
Orlando, FL 32801
Ph: 407-843-4600
Fax: 407-843-4444
jon.gibbs@lowndes-law.com
Attorney for Opposer
Derek A. Lopez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 11, 2018, I filed the foregoing via ESTTA and served a true and correct copy of the foregoing via mail and e-mail to:

Theodore J. Minch
Sovich Minch, LLP
10500 Crosspoint Blvd
Indianapolis, IN 46256
tjminch@sovichminch.com

By: /s/Jon M. Gibbs
Jon M. Gibbs
Florida Bar No.: 494534
**LOWNDES, DROSDICK, DOSTER,
KANTOR & REED, P.A.**
215 North Eola Drive
Orlando, FL 32801
Ph: 407-843-4600
Fax: 407-843-4444
jon.gibbs@lowndes-law.com
Attorney for Opposer
Derek A. Lopez

EXHIBIT 1

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

DEREK A. LOPEZ, an Individual,)	
)	
Opposer,)	Opposition Nos.: 91216672, 91216605,
)	91216538
vs.)	
)	Serial Nos.: 85/310,210, 85/310,234,
TED WONG JKD, LLC,)	85/310,186
)	
Applicant.)	

TESTIMONY AFFIDAVIT OF DEREK LOPEZ

1. My name is Derek A. Lopez. I am above the age of majority and competent to testify to the matters contained herein.

2. I make this Testimony Affidavit in support of United States Trademark Opposition Nos.: 91216672, 91216605, and 91216538 opposing the registrations of United States Trademark Applications Serial Nos.: 85/310,186; 85/310,210; and 85/310,234, each consisting of the following logo (“TWJKD Logo”):



3. United States Trademark Applications Serial Nos.: 85/310,186; 85/310,210; and 85/310,234 were filed by Ted Wong JKD, LLC (“Applicant”).

4. The file histories of United States Trademark Applications Serial Nos.: 85/310,186; 85/310,210; and 85/310,234 are incorporated herein in their entirety by reference.

5. I created the TWJKD Logo, among other logos and am the author for purposes of 17 U.S.C. § 101 *et seq.*

6. I am the sole artist that created the TWJKD Logo and have made no transfer of ownership to any other person or entity.

7. I am the sole owner of the TWJKD Logo under 17 U.S.C. § 201(a) and hold all exclusive rights under 17 U.S.C. § 106.

8. In addition to the foregoing, I am the registrant of the domain name “twjkd.com” (“TWJKD Domain Name”).

9. I registered the TWJKD Domain Name on June 16, 2008.

10. I am also the author and owner of the original content of the website associated with the TWJKD Domain Name located at <http://www.twjkd.com> ("TWJKD Website"); I make no claim to the linked articles authored by others.

11. The TWJKD Website, intended to perpetuate and pay tribute to the Jeet Kune Do teachings of Ted Wong as taught to him by Bruce Lee, was authorized by Ted Wong, himself. Select screenshots from the animated sequence on the homepage of the TWJKD Website are attached hereto as Composite Exhibit A.

12. Jeet Kune Do is a style of martial arts founded and made popular by the late Bruce Lee.

13. The TWJKD Website comprises educational information relating to Ted Wong and Jeet Kune Do as well information regarding Jeet Kune Do training and instruction. Select screenshots from the animated sequence on the about – TWJKD page of the TWJKD Website are attached hereto as Composite Exhibit B.

14. I have never transferred the registration of the TWJKD Domain Name or the ownership of the original content of the TWJKD Website created by me to any other person or entity.

15. I published TWJKD Website at least as early as February 2009 and it has always comprised the following logo ("Sifu Ted Wong Logo"), also created by me:



16. I created the Sifu Ted Wong Logo and am the author for purposes of 17 U.S.C. § 101 *et seq.*

17. I am the sole artist that created the Sifu Ted Wong Logo and have made no transfer of ownership to any other person or entity.

18. I am the sole owner of the Sifu Ted Wong Logo under 17 U.S.C. § 201(a) and hold all exclusive rights under 17 U.S.C. § 106.

19. The first image in each of Composite Exhibits A and B show the Sifu Ted Wong Logo that I created contemporaneously with the TWJKD Logo.

20. The Sifu Ted Wong Logo and the TWJKD Logo are substantially similar as they contain many common elements.

21. I have reviewed United States Trademark Application Serial No.: 85/310,186 ("186 Application") comprising the TWJKD Logo for "Licensing of intellectual property; Licensing of Lessons in Martial Arts" in International Class 045.

22. Applicant had full knowledge of, had reason to know, or should have known of my prior rights in and to the TWJKD Logo and the Sifu Ted Wong Logo prior to filing the '186 Application.

23. The specimen submitted with the '186 Application on May 2, 2011 shows a website screen capture.

24. The screen capture is from my TWJKD Website and was not authorized by me.

25. The screen capture includes my TWJKD Domain Name in the lower left corner.

26. My use and ownership of the TWJKD Logo and Sifu Ted Wong Logo pre-dates the January 1, 2011 date of first use claimed by Applicant in the '186 Application.

27. I believe that will be damaged by registration of the '186 Application because such registration would give Applicant ownership of, and exclusive rights to use, a mark that is confusingly similar to the Sifu Ted Wong Logo and identical to the TWJKD Logo for services which are related to mine inasmuch as they are contained in, and related to, the content of the TWJKD Website, in derogation of my invaluable property rights in the Sifu Ted Wong Logo and TWJKD Logo.

28. I have reviewed United States Trademark Application Serial No.: 85/310,210 ("210 Application") comprising the TWJKD Logo for "Training services in the field of Martial Arts" in International Class 041.

29. Applicant had full knowledge of, had reason to know, or should have known of my prior rights in and to the TWJKD Logo and the Sifu Ted Wong Logo prior to filing the '210 Application.

30. The specimen submitted with the '210 Application on May 2, 2011 shows a website screen capture.

31. The screen capture is from my TWJKD Website and was not authorized by me.

32. The screen capture includes my TWJKD Domain Name in the lower left corner.

33. My use and ownership of the TWJKD Logo and Sifu Ted Wong Logo pre-date the January 1, 2011 date of first use claimed by Applicant in the '210 Application.

34. I believe that will be damaged by registration of the '210 Application because such registration would give Applicant ownership of, and the exclusive rights to use, a mark that is confusingly similar to the Sifu Ted Wong Logo and identical to the TWJKD Logo for services which are related to mine inasmuch as they are contained in, and related to, the content of the TWJKD Website, in derogation of my invaluable property rights in the Sifu Ted Wong Logo and TWJKD Logo.

35. I have reviewed United States Trademark Application Serial No.: 85/310,234 ("234 Application") comprising the TWJKD Logo for "Clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; Clothing for athletic use, namely, padded pants; Clothing for athletic use, namely, padded shirts; Clothing for athletic use, namely, padded shorts; Clothing for wear in judo practices; Clothing for wear in wrestling

games; Clothing, namely, athletic sleeves; Clothing, namely, khakis; Headbands for clothing; Jackets; Jerseys; Leather belts; Perspiration absorbent underwear clothing; Short sets; Ties; Tops” in International Class 025.

36. The ‘234 Application is an intent-to-use trademark application filed under 15 U.S.C. § 1051(b).

37. Applicant had full knowledge of, had reason to know, or should have known of my prior rights in and to the TWJKD Logo and the Sifu Ted Wong Logo prior to filing the ‘234 Application.

38. The specimens submitted during the prosecution of the ‘234 Application on April 8, 2013, show a series of five (5) T-shirt photos.

39. The first of the submitted photos (1 of 5) shows a Black T-shirt comprising the TWJKD Logo over a white silhouette image.

40. Not only did I create the TWJKD Logo shown on the subject T-shirt, I made arrangements to have the subject T-shirt printed.

41. I did not authorize use of the T-shirt or use of the photo for purposes of applying for and obtaining a trademark registration based on the ‘234 Application.

42. The second of the submitted photos (2 of 5) shows a white T-shirt comprising the Sifu Ted Wong Logo and further comprising four print crosshairs, one each adjacent to the four corners of the Sifu Ted Wong Logo.

43. The print crosshairs were placed there by the printer of the T-Shirt when the printer created this first sample of the subject T-shirt.

44. Not only did I create the Sifu Ted Wong Logo shown on the subject T-shirt, I made arrangements to have the subject T-shirt printed.

45. As can be seen in the photo, the T-shirt comprises the Sifu Ted Wong Logo, not the TWJKD Logo.

46. I still own the T-shirt shown in the photo and, in fact, took the photo used by Applicant and submitted to the USPTO.

47. I did not authorize use of the T-shirt or use of the photo for purposes of applying for and obtaining a trademark registration based on the ‘234 Application.

48. My use and ownership of the TWJKD Logo and Sifu Ted Wong Logo pre-date the May 2, 2011 filing date for the ‘234 Application.

49. I believe that will be damaged by registration of the ‘234 Application because such registration would give Applicant ownership of, and the right to use, a mark that is confusingly similar to the Sifu Ted Wong Logo and identical to the TWJKD Logo for goods which are related to mine inasmuch as they are contained in, and related to, the content of the TWJKD Website and goods that I have had manufactured and sold with the express consent of Ted Wong, in derogation of my invaluable property rights in the Sifu Ted Wong Logo and TWJKD Logo.

50. I have continuously used the Sifu Ted Wong Logo and TWJKD Logo with Ted Wong's knowledge, without restriction and without any quality control requirements.

51. In addition, I have learned that Ted Wong and Applicant have granted use of the TWJKD Logo and Sifu Ted Wong Logo to third parties without restriction and without any quality control requirements.

52. I believe that Applicant's grant of usage of the TWJKD Logo and Sifu Ted Wong Logo without restriction amounts to a naked license of both logos.

53. To the extent that Applicant may have ever established any rights in the TWJKD Logo or the Sifu Ted Wong Logo, the naked licenses granted by Applicant to third-parties resulted in the abandonment of any rights that Applicant may have established in TWJKD Logo or the Sifu Ted Wong Logo.

54. The conduct of the Applicant, including acts of omission as well as commission, caused the TWJKD Logo or the Sifu Ted Wong Logo to lose its significance as a trademark for Applicant.

55. Pursuant to 15 U.S.C. § 1027, Applicant's acts of omission of commission have resulted in the abandonment of any rights Applicant may have established in Opposer's Mark.

FURTHER AFFIANT SAYETH NAUGHT

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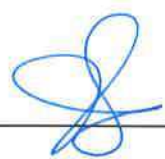
Respectfully submitted this 30 day of April, 2018.



Derek A. Lopez

State of Florida)
) ss:
County of Orange)

SWORN TO AND SUBSCRIBED before me this 30th day of April 2018, by Derek A. Lopez who took an oath, and swore that the foregoing statements are true and correct to the best of his knowledge, and who X is personally known to me or has produced _____ as identification.

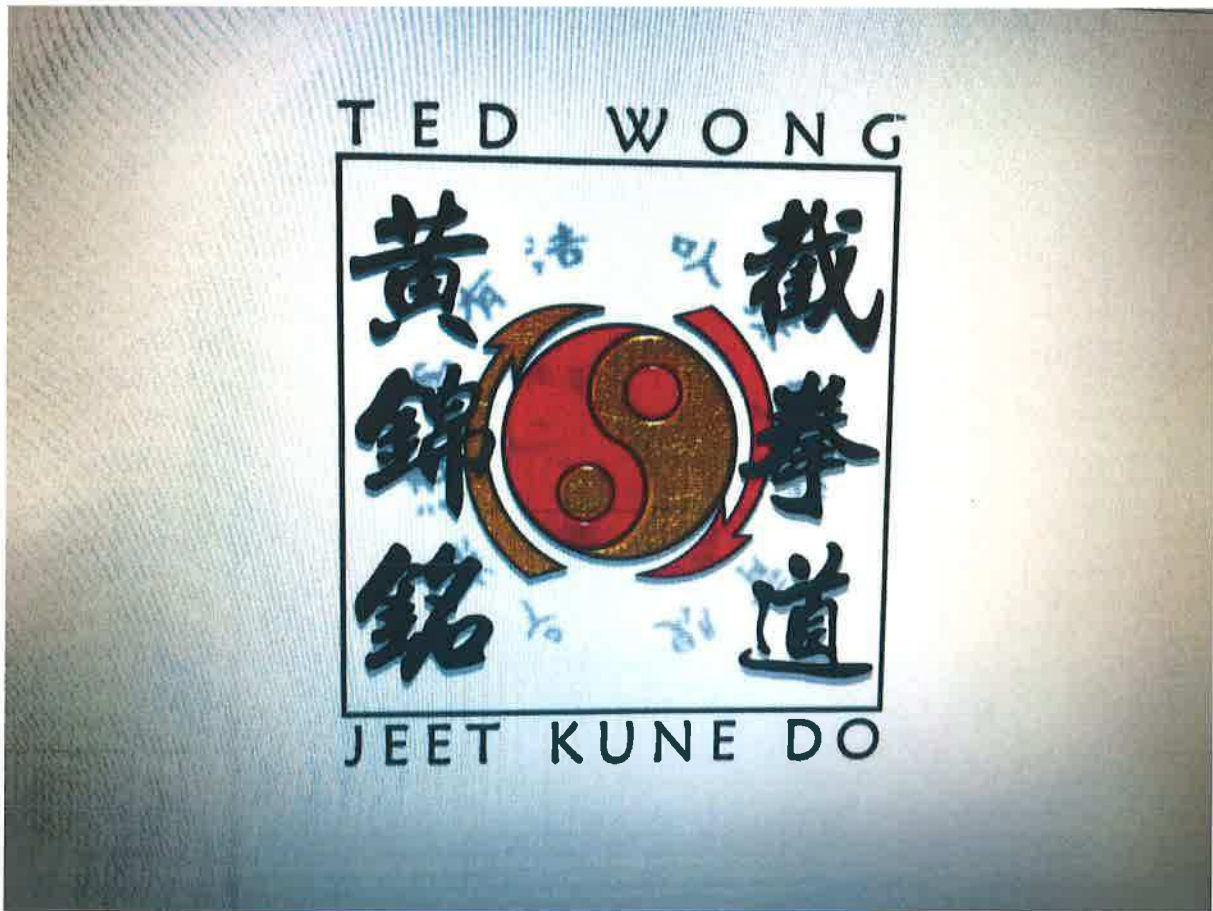


Notary Public, State of Florida

Notary Stamp:



Exhibit A





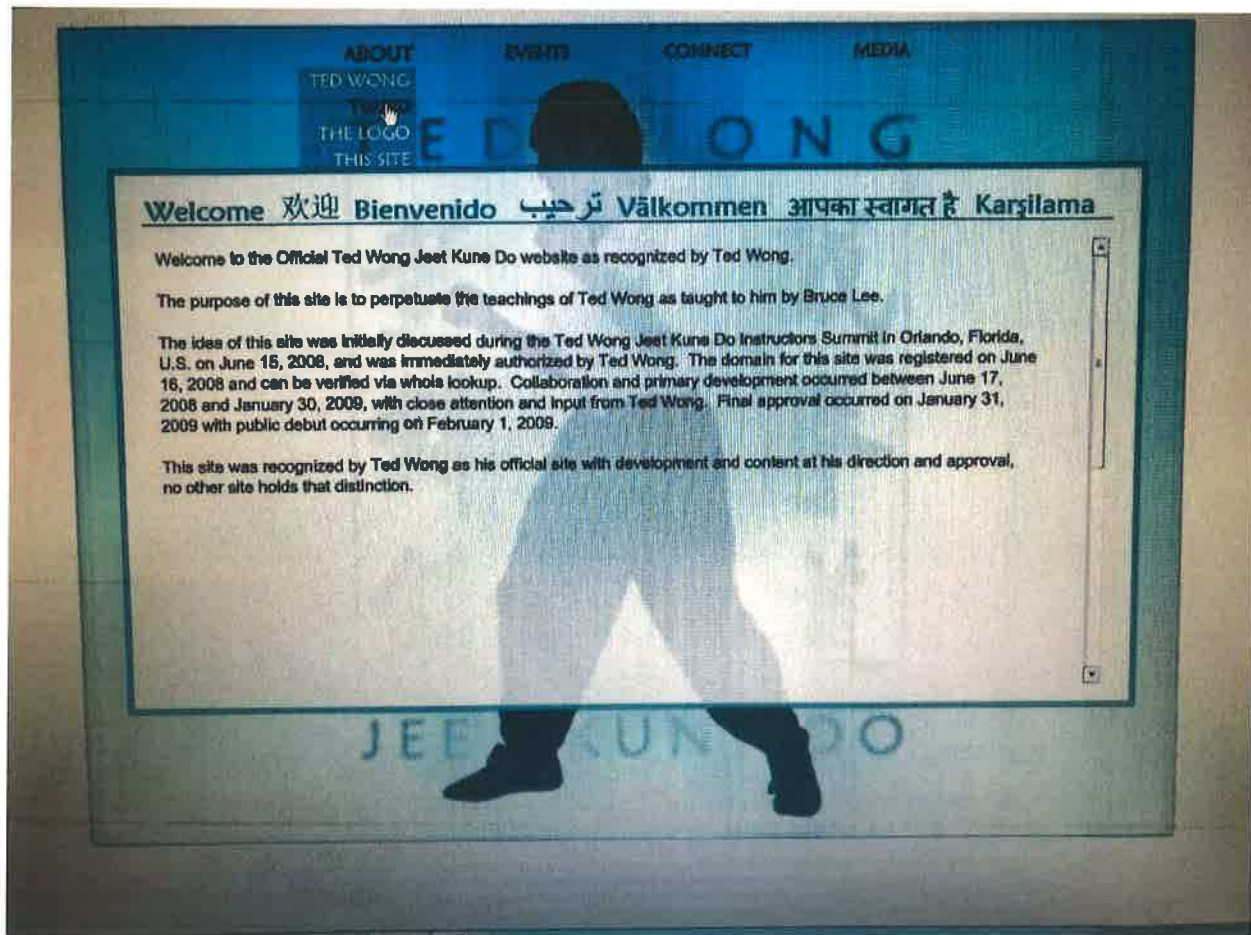


Exhibit B

