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

Proceeding	91224573
Party	Plaintiff ADG, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ADG, LLC,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91224573
	)	Application Serial No. 85/658,932
SMILE EXPRESSIONS P.A.,	)	Mark: SMILE EXPRESSIONS
	)	
Applicant.	)	
_____	)	

**AMENDED NOTICE OF OPPOSITION**

ADG, LLC, a Michigan limited liability company at 300 East Long Lake Road, Bloomfield Hills, Michigan 48304 (“Opposer”), believes that it will be damaged by registration of the mark SMILE EXPRESSIONS of Application Serial No. 85/658,932 (“Application”) by Smile Expressions P.A. (“Applicant”) for the dental services recited therein, and hereby opposes the Application on the grounds that:

- (1) the mark is likely to cause confusion, or to cause mistake or to deceive with respect to:
  - (a) Opposer’s prior adoption and use of marks formed by or incorporating “GREAT EXPRESSIONS” and/or a “smile design” mark (“SMILE DESIGN”), including but not limited to the marks GREAT EXPRESSIONS, GREAT EXPRESSIONS DENTAL CENTERS, GREAT EXPRESSIONS DENTAL CENTERS & SMILE DESIGN, SMILE DESIGN, LOOK FOR THE SMILE ABOVE OUR NAME and SMILE PROTECTION PLAN (collectively, “Opposer’s GREAT EXPRESSIONS, SMILE DESIGN and SMILE Marks”); and
  - (b) Opposer’s prior registrations for Opposer’s GREAT EXPRESSIONS, SMILE DESIGN and SMILE Marks, as identified below , (collectively, “Opposer’s GREAT EXPRESSIONS, SMILE DESIGN and SMILE Registrations”); and

- (2) Applicant knowingly made a false, material representation of fact with the intent to deceive the USPTO to allow the mark in the Application for registration and therefore the application is void ab initio due to fraud in the application.

In further support of the foregoing grounds, Opposer alleges as follows:

1. Opposer, through over 200 dental professional offices located in multiple states, is extensively engaged in providing goods and services in the dental field, including providing dentistry services (“Opposer’s Goods and Services”).

2. In connection with Opposer’s Goods and Services, Opposer has used Opposer’s GREAT EXPRESSIONS, SMILE DESIGN and SMILE Marks. Opposer has continuously used one or more of these marks in commerce since at least as early as January 2000.

3. As a result of the quality of Opposer’s Goods and Services and the widespread promotion thereof under Opposer’s GREAT EXPRESSIONS, SMILE DESIGN and SMILE Marks, Opposer’s Goods and Services have met with substantial commercial success and customer recognition. As a further result, Opposer’s GREAT EXPRESSIONS, SMILE DESIGN and SMILE Marks have become symbols of Opposer, its quality goods and services and its goodwill.

4. In recognition of the valuable rights in and to Opposer’s GREAT EXPRESSIONS, SMILE DESIGN and SMILE Marks, the USPTO granted Opposer’s GREAT EXPRESSIONS, SMILE DESIGN and SMILE Registrations:

- a. Registration No. 2412950 dated December 12, 2000 for the mark GREAT EXPRESSIONS for “*oral hygiene products, namely, non-medicated mouthwashes and dentifrices,*” in Class 3, “*oral hygiene products, namely, flossing instruments and tongue scrapers,*” in Class 10, “*oral hygiene products, namely, toothbrushes,*” in Class 21 and “*dentistry services,*” in Class 42;
- b. Registration No. 2407182 dated November 21, 2000 for the mark GREAT EXPRESSIONS DENTAL CENTERS & DESIGN for “*dentistry services,*” in Class 42;

- c. Registration No. 4256157 dated December 11, 2012 for GREAT EXPRESSIONS DENTAL CERNTERS & DESIGN for “*dentistry services*,” in Class 42;
- d. Registration No. 3261027 dated July 10, 2007 for SMILE DESIGN for “*dentistry*,” in Class 44;
- e. Registration No. 3258754 dated July 3, 2007 for LOOK FOR THE SMILE ABOVE OUR NAME for “*dentistry*,” in Class 44; and
- f. Registration No. 4839586 dated October 27, 2015 for SMILE PROTECTION PLAN for “*membership program providing discounts in the field of dental care services*,” in Class 35 and “*dental care services in the nature of dentist services*,” in Class 44.

5. Opposer’s Registration Nos. 2412950, 2407182, 3258754 and 3261027 have achieved incontestable status, and therefore constitute conclusive evidence of the validity of the marks, the registrations therefor, Opposer’s ownership of the marks, and its exclusive right to use the marks in commerce. The remaining registrations, although not incontestable, rest on the Principal Register and thus constitute *prima facie* evidence of the validity of the registered marks, the registrations therefor, Opposer’s ownership thereof, and its exclusive right to use the marks in commerce. Notwithstanding Opposer’s prior use of Opposer’s GREAT EXPRESSIONS, SMILE DESIGN and SMILE Marks and Opposer’s GREAT EXPRESSIONS, SMILE DESIGN and SMILE Registrations, on June 22, 2012, Applicant filed the Application seeking registration of the mark SMILE EXPRESSIONS on the Principal Register for “*dentistry services, including periodontics, endodontics, restorative dentistry, prosthodontics, oral surgery, diagnostic dentistry, including x-rays, orthodontics, oral pathology, dental treatment planning and consultation, cosmetic surgery, skin treatment, including microdermabrasion and injection of dermal fillers, teeth in a day, wisdom teeth removal, dental implants, cosmetic dentistry and teeth whitening services*,” in Class 44 (collectively, “Applicant’s Services”), claiming a date of first use of December 20, 2008 and a date of first use in commerce of March 1, 2009.

6. Prior to the filing date and claimed dates of first use and first use in commerce recited in the Application, Opposer used Opposer's GREAT EXPRESSIONS, SMILE DESIGN and SMILE Marks, in commerce and Opposer's Registration Nos. 2412950, 2407182, 3258754 and 3261027 issued and achieved incontestable status.

7. The mark of the Application is at least similar to Opposer's GREAT EXPRESSIONS, SMILE DESIGN and SMILE Marks. Further, Applicant's Services are identical and/or similar and related to Opposer's Goods and Services. In view thereof, purchasers and others are likely to mistakenly assume that Applicant's Services originate from, are sponsored by or are in some way associated with Opposer. The mark of the Application so resembles Opposer's GREAT EXPRESSIONS, SMILE DESIGN and SMILE Marks and Opposer's GREAT EXPRESSIONS, SMILE DESIGN and SMILE Registrations as to be likely to cause confusion, or to cause mistake or to deceive. Accordingly, Opposer is likely to be damaged by registration of the mark of the Application for the services recited therein.

8. Upon filing the Application, Applicant signed a declaration verifying pursuant to 15 U.S.C. Section 1051(b) that it knew of no other person or corporation that had a right to use the mark of the Application, or similar variations thereof, in commerce so as to cause a likelihood of confusion with respect to the goods and/or services of the Application. Upon information and belief, Applicant was aware of at least one other entity using the mark of the Application for identical or at least similar services, with priority of use over Applicant, before Applicant signed the declaration. The Application contains a false declaration. Accordingly, Applicant fraudulently signed the declaration and the Application is void.

9. Applicant knowingly made false, material representations of fact in the Application.

10. Applicant testified under oath that he had researched other dental office users of the subject mark, SMILE EXPRESSIONS, and, prior to submitting the Application, had knowledge of a prior use of the same mark by a dental office in the Northeastern part of the United States.

11. Nevertheless, Applicant's officer signed the declaration notwithstanding the required attestation at the conclusion of the application that, to the best of his knowledge and belief, no other person, firm, corporation or association had 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. The misrepresentation by Applicant was material.

12. Applicant's attestation was knowingly false. In support thereof and by way of example, Applicant's officer testified at his deposition that he knew that the pre-existing dental office operating under the mark SMILE EXPRESSIONS provided general dentistry services. He then testified falsely that such use distinguished Applicant's use of SMILE EXPRESSIONS, because Applicant did not provide general dentistry services. But, a series of follow-up questions actually established that Applicant's dental office likewise provided general dentistry services. Thus, Applicant's facile and fallacious attempt at his deposition to explain away the fraud fell short and, consequently, Applicant's officer was and will be unable to credibly thwart the legal conclusion that he had the requisite *scienter* that underlies a claim of fraud.

13. The following are some of the portions of the relevant testimony:

**Q. Tell me more about why the office in the Northeastern U.S. was not a concern to you.**

A. They don't do stuff that we do. It was just a general, you know, dentistry office.

**Q. Does Dr. Ryanne in your office do teeth cleanings?**

A. Herself, no. Hygienist, yes.

\*\*\*

**Q. Does your office fill cavities?**

A. Yes.

**Q. Does your office put in crowns?**

A. Correct.

**Q. Does your office take...dental X-rays and advise clients or advise patients of the results?**

A. Correct.

\*\*\*

**Q. What general dentistry do you not do?**

A. I don't think there is anything that we don't do.

*See pages 30-31 of the deposition of Devin Gilliland, at Exhibit A.*

**Q. ...[Y]ou do do general dentistry?**

A. Yes, we do.

*See page 40 of the deposition of Devin Gilliland, at Exhibit A.*

**Q. [D]oes Dr. Ryanne Gilliland have any credentials in any particular specialties given by the State of Florida?**

A. No. No.

**Q. In terms of advertising, do you issue any ads that hold Dr. Ryanne out as a specialist?**

A. No.

*See page 57 of the deposition of Devin Gilliland, at Exhibit A.*

**Q. I am looking at your website right now, and it says dentistry is one of the – is one of the areas. Is that true?**

A. Yes.

14. In fact, the specimen accompanying the Application is headed, "State-of-the Art Dentistry for the Entire Family" and the logo thereon includes a prominent reference to "Family Dentistry," along with "Oral Surgery" and "Implants," all services within the repertoire of a general dentist with a "DDS" or Doctor of Dental Surgery degree.

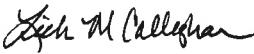
15. The services in the opposed application are identical to or similar to those of the prior user of the SMILE EXPRESSIONS mark, of which Applicant had actual knowledge before filing the Application.

16. Accordingly, because Applicant knowingly made a false, material representation with the intent to deceive the USPTO Applicant committed fraud in the Application, and the application is void ab initio.

WHEREFORE, Opposer prays that the Application be refused registration, that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

Dated: April 4, 2017

By:   
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I certify that on this 4th day of April 2017, a copy of the foregoing was served by email on counsel for Applicant to Joshua M. Gerben, Esq. at [jgerben@gerbenlawfirm.com](mailto:jgerben@gerbenlawfirm.com) and Eric Perrott, Esq. at [eperrott@gerbenlawfirm.com](mailto:eperrott@gerbenlawfirm.com) and deposited with the United States Post Office with sufficient postage as first class mail with an envelope addressed to:

Joshua M. Gerben, Esq.  
Gerben Law Firm, PLLC  
1050 Connecticut Ave NW, Ste. 500  
Washington, D.C. 20036

Date: April 4, 2017

  
\_\_\_\_\_  
Linda Monge Callaghan



**EXHIBIT A**



1  
2 (Thereupon, the requested question was read  
3 back by the court reporter.)

4 THE WITNESS: Is that something I can answer  
5 here?

6 MR. PERROTT: Go ahead, Devin.

7 THE WITNESS: The office in Canada and  
8 everything else, like there wasn't really anything  
9 out there to go about. And I believe the practice  
10 that was up in Canada and the one in the Northeast  
11 were not relevant offices to what we do. So...

12 BY MS. MANDELL:

13 Q Tell me more about why the office in the  
14 Northeastern U.S. was not a concern to you.

15 A They don't do stuff that we do. It was just a  
16 general, you know, dentistry office.

17 Q Does -- does Dr. Ryanne in your office do teeth  
18 cleanings?

19 A Herself, no. Hygienist, yes.

20 Q You have a hygienist to do --

21 A Yes.

22 Q Does your office fill cavities?

23 A Yes.

24 Q Does your office put in crowns?

25 A Correct.

1 Q Does your office take -- people in your office  
2 take dental X-rays and advise clients or advise patients  
3 of the results?

4 A Correct.

5 Q Does your office counsel patients on the need  
6 for specialty care such as orthodontics?

7 A We do it at our office.

8 Q You do orthodonture?

9 A Correct.

10 Q You fit braces on children?

11 A Correct.

12 Q Do you do periodontal care?

13 A Yes. Not a lot, but we do.

14 Q What specialties do you not do?

15 A I would say there isn't anything we don't do.

16 Q What general dentistry do you not do?

17 A I don't think there is anything that we don't  
18 do.

19 Q Okay. Thank you.

20 Okay. I would like to mark as Exhibit 5. It  
21 is in the stack of documents, and it says "SMI  
22 Production 1 Public" on top. And it's the Trademark  
23 Electronic Search System findings. And it says "Three  
24 records found."  
25

1 marketing or --

2 A No.

3 Q -- or -- no.

4 So at the time you selected the mark Smile  
5 Expressions, there was already another dental office in  
6 the country using that same mark, correct?

7 A It was around that time that another one opened  
8 up, at least that I noticed. Yes. The one in Canada is  
9 the one I know for sure.

10 Q Let's take a look at your answer to  
11 interrogatory number 59. I'm going to read into the  
12 record.

13 "At the time of selection there was only one  
14 other dental office in the country with the name 'Smile  
15 Expressions' after careful research, the name was put  
16 into use in Mt. Dora, Florida. The term 'Smile  
17 Expressions' has been the name Dr. Ryanne  
18 Hazen-Gilliland had planned on using for her own office  
19 since 2002."

20 Okay. So let's parse that out. "At the time  
21 of selection there was only one other dental office in  
22 the country." I assume by "the country," you mean in  
23 this country, correct?

24 A Yes. It was around that time or shortly after  
25 we filed the application.

1 Q Wait a minute. It says: "At the time of  
2 selection there was only one other dental office in the  
3 country."

4 You said you selected the mark back in 2009,  
5 correct?

6 A Yeah. It was around that time.

7 Q According to Exhibit 7, you didn't file your  
8 trademark application in 2012, correct?

9 A Correct.

10 Q Okay. So let's get our dates clear. It says:  
11 "At the time of selection," which based upon your prior  
12 interrogatory answers would have been in 2009. You said  
13 under oath there was only one other dental office in the  
14 country with the name Smile Expressions; is that true?

15 A Yes.

16 Q Okay. And then you write: "After careful  
17 research, the name is put into use in Mt. Dora."

18 What is the careful research you're  
19 referencing?

20 A Researching the name. There wasn't anybody  
21 else out there except for, you know, pretty much us.  
22 So...

23 Q And -- and the company in the U.S., right?

24 A Yes. Correct. Correct.

25 Q Okay. Okay. So there was only one user of

1 Smile Expressions in the country; is that your testimony  
2 today?

3 A Yes.

4 Q Why did you decide to call your business Smile  
5 Expressions when there was another -- let me finish --  
6 when there was another dental office using the same name  
7 in the country, as you said in interrogatory 59?

8 A They don't do what we do. They are a general  
9 dentist office. We do specialized --

10 Q Oh --

11 A -- high-end procedures. They don't. So that's  
12 just what I went off of. You know. I'm not an attorney  
13 on trademarks.

14 Q Okay. So you felt that -- you do do general  
15 dentistry?

16 A Yes, we do.

17 Q Okay. In the trademark application that you  
18 signed, there is a declaration in there.

19 A Uh-huh.

20 Q It says -- that is on the second page -- it  
21 says, in part, that you declare that, to the best of  
22 your knowledge, no other person, firm, corporation, or  
23 association has the right to use this mark in commerce,  
24 either in the identical form thereof or in such near  
25 resemblance as to be likely to cause confusion.

1           Do you see that when you signed that  
2       **declaration that wasn't true because you were aware of**  
3       **another company using that exact name in commerce?**

4           A     Yes.

5           Q     So you agree that you really could not make  
6       **that statement truthfully?**

7           MR. PERROTT: I want to object on the grounds  
8       that that is a legal determination.

9           MS. MANDELL: Fine. You can make your  
10       objection.

11           Can you hear me now?

12           MR. PERROTT: I can hear you. Yeah, I'm  
13       objecting for the record.

14           MS. MANDELL: Can the witness hear me?

15           THE WITNESS: Yes.

16       BY MS. MANDELL:

17           Q     So you agree that at the time you made that  
18       **statement, it wasn't true because you were aware of**  
19       **another company using Smile Expressions in commerce for**  
20       **dental services?**

21           THE WITNESS: Is that something you want me to  
22       answer, Eric, or...

23           MR. PERROTT: Yeah. You can go ahead.

24           MS. MANDELL: Yes. You can answer.

25           THE WITNESS: I wasn't sure if that was



1 something -- yeah, I wasn't -- I had a  
2 misunderstanding of what the word "commerce" is on  
3 that. Again, I didn't -- you know, I'm not an  
4 attorney. So...

5 BY MS. MANDELL:

6 Q But at the time you signed this declaration,  
7 you were, in fact, aware of another dental office open  
8 using this name, correct?

9 A Correct.

10 Q I would like to mark the next exhibit. I guess  
11 we are up to Exhibit 8. And there is a cover sheet to  
12 this exhibit that says "Discovery 1 Marketing and  
13 Patient Coverage."

14 The second page looks like a map -- it's upside  
15 down -- of Central Florida.

16 (Opposer's Exhibit 8 was marked for  
17 identification.)

18 THE WITNESS: I have got it.

19 BY MS. MANDELL:

20 Q Mr. Gilliland, we received these -- this map  
21 and this cover sheet from your counsel. I am wondering  
22 if you can help me identify what it is.

23 A It's basically a location of patient base.

24 Q Your patient base?

25 A Uh-huh.

1 a special license for -- to do endodontistry [sic]?

2 A Endodontics. Yeah. I do the same thing.

3 Q Endodontics. Thank you.

4 A Yes. If that is all they do.

5 Q Okay. So does Dr. Ryanne Gilliland have any  
6 credentials in any particular specialties --

7 A She has --

8 Q -- given by the State of Florida?

9 A No. No.

10 Q In terms of advertising, do you issue any ads  
11 that hold Dr. Ryanne out as a specialist?

12 A No.

13 Q Do you hold out anyone else in your office as a  
14 dental specialist?

15 A Yes.

16 Q Who would that be?

17 A Dr. Gary Raska.

18 Q Can you spell Raska?

19 A R-A-S-K-A.

20 Q And what is -- is it, you said, Gary?

21 A Gary, G-A-R-Y. Yes.

22 Q Yes. Is Dr. Gary Raska, what kind of  
23 specialist is he?

24 A He's an oral maxillofacial surgeon.

25 Q In advertising, does Dr. Ryanne hold herself