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

Proceeding	91226647
Party	Defendant Food Dudes Delivery, LLC
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Date	01/30/2017
Attachments	Food Dudes - Reply Brief in Support of its Motion to Amend Answer.pdf(33333 bytes) Food Dudes - Declaration of M Littman in support of Reply Brief with exs 1-14.pdf(5615717 bytes)

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

Dude IP, LLC, Opposer, v. Food Dudes Delivery, LLC, Applicant.	Opposition No.: 91226647 Application No.: 86/577,684 Mark: FOOD DUDES

APPLICANT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO AMEND ANSWER AND ASSERT COUNTERCLAIM

Applicant Food Dude Delivery, LLC, hereby submits its reply brief in support of its motion to amend its answer and assert a counterclaim, in accordance with TBMP §§ 502.02(b). Consistent with the Board's prior decisions, Applicant has shown that it should be granted leave to amend its answer and assert counterclaims of fraud and abandonment on the grounds that Applicant was not aware of the facts giving rise to its proposed counterclaims prior to December 2016. Because Applicant timely moved for leave to amend its answer after discovering the new information, and because the information lays sufficient grounds for counterclaims of fraud and abandonment, Applicant's motion should be granted.

ARGUMENT

The Board "liberally grants leave to amend pleadings at any stage of a proceeding . . . unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party." TBMP § 507.01. When a proposed amendment will neither violate settled law nor prejudice the Opposer, the Board will "freely grant leave," as justice so requires. Fed. R. Civ. P. § 15(a); TBMP § 315. Applicant seeks leave to amend its answer to add counterclaims of fraud and abandonment based on information Applicant discovered in late-December 2016: that

while Opposer claims a first use date of October 7, 2005 based on an assignment from Marc Veneziano in 2012 (the "2012 assignment"), neither Opposer nor its assignor used the mark in connection with restaurant delivery services until 2009. Applicant also learned that Veneziano applied for and received Reg. No. 4101367, (the "'367 Reg."), despite failing to use the mark for at least three consecutive years. Shortly after discovering this information Applicant filed this motion for leave to amend. As such, Applicant's motion should be granted.

I. Applicant's motion is timely.

Applicant filed this motion for leave to amend its answer only two weeks after learning the information that gave rise to its proposed counterclaims. This is well within the time frame that the Board generally recognizes as timely. *See* TBMP §507.02(b) ("If, during the proceeding, the defendant learns of grounds for a counterclaim to cancel a registration pleaded by the plaintiff, the counterclaim should be pleaded promptly after the grounds therefor are learned."); *Cal. Board Sports, Inc. v. Topo Athletic, LLC*, 2014 WL 11032973, at *4 (TTAB Jan. 31, 2014) (finding motion timely when filed within one month of learning information). Applicant learned in late-December that Opposer was unwilling (or unable) to produce information of use prior to 2009. In its response to Interrogatory No. 1, Opposer listed August 1, 2009 and October 7, 2009 as its dates of first use, contrary to its previously claimed first use date of October 7, 2005. (Declaration of Molly R. Littman ("Littman Decl."), Ex. 1.) In response to Applicant's Document Request No. 25, Opposer also refused to produce documents concerning the 2012 assignment, on the grounds that it "no longer has certain documents, particularly emails, exchanged with [Delivery Dudes, LLC and/or Marc Veneziano] . . . ." (Littman Decl., Ex. 2.) Applicant proposed a meet-and-confer conference, and the parties' counsel held a telephonic

conference on December 22, 2016 where the issue was addressed. (Littman Decl., Ex. 3.) Opposer has still not produced the requested discovery. (Littman Decl. ¶ 4.)

Opponent contends that regardless of its failure to comply with its discovery obligations, Applicant's motion is not timely because these documents were "available to" Applicant at the time Applicant's answer was filed. (11 TTABVUE 15.) However, the mere fact that archives of a defunct website are publically available does not render a motion to amend untimely, particularly where the party knowing of the relevant information failed to disclose it. *See e.g.*, *Intel Corp. v. Bevintel, LLC*, 2013 WL 4111810, at *2 (N.D. Cal. Aug. 12, 2013) (granting motion for leave to amend where list of franchisees was public information but the non-movant failed to "direct [the plaintiff] to this information until last month . . . ."); *Centerforce Techns., Inc. v. Austin Logistics, Inc.*, 2000 WL 652943, at *5 (D. Del. Mar. 10, 2000) (finding no undue delay where information about patent infringement was publicly available, but where nonmovant refused movant's request for additional information).

Beyond the Internet archive of www.asudeliverydudes.com, proof of Opposer's sworn use of DELIVERY DUDES since 2005 is not publically available. Opposer has repeatedly asserted that its date of first use is October 7, 2005 in its Notice of Opposition, (1 TTABVUE 1), its trademark applications, (Littman Decl., Exs. 4-5), and in other USPTO filings, such as Opposer's Section 7 filing, (Littman Decl., Ex. 6). Thus, at the time Applicant filed its answer, it did know Opposer could provide no evidence of use on restaurant delivery services since October 7, 2005. It was not until Applicant received discovery responses that it became clear that Opposer's alleged first-use date was false. Applicant did not have this information at the time of its original answer. Further, after Applicant filed its answer, the parties stayed the opposition proceedings twice to discuss settlement, once before discovery even opened. (5 TTABVUE 1, 7

TTABVUE 1.) Thus, while Opposer alleges that it took eight months for Applicant to file this motion, it ignores that the matter was stayed for most of that time and that the parties did not start discovery until settlement talks broke down in mid-November 2016. (Littman Decl. ¶ 15; Ex. 3.)

Opposer also blankly asserts that Applicant's alleged untimeliness is prejudicial to Opposer. (11 TTABVUE 15.) The Board routinely finds that a party is not prejudiced when it is in possession of the information needed to try the added claim. *See e.g.*, *Saddlesprings, Inc. v. Mad Croc Brands, Inc.*, 2014 WL 1649335, at *6 (TTAB Mar. 31, 2014) (finding no prejudice where the evidence regarding petitioner's fraud claim was in respondent's possession); *PB Brands, LLC v. KRBL Ltd.*, 2013 WL 11247071, at * 3 (TTAB Dec. 5, 2013). Because Opposer holds all of the relevant information pertaining to its claimed use prior to 2009 and the 2012 assignment—which it still has not produced—it is not prejudiced by the addition of Applicant's proposed counterclaims. Applicant's motion is timely and should be granted.

II. Applicant is not required to prove its counterclaims.

Opposer spends at least half of its brief asserting that Applicant's motion should be denied because Applicant has not proven its counterclaims "to the hilt." (11 TTABVUE 6.) [1] However, in a motion for leave to amend, the movant need not "actually prove the allegation sought to be added to a pleading." TBMP §507.01. Any determination on the merits of the counterclaim is reserved for "after the introduction of evidence at trial or in connection with a proper motion for summary judgment." *Id.* In fact, the Board has cautioned non-movants from arguing against granting leave to amend "merely because the nonmoving party believes the

[1] The "prove to the hilt" argument is wholly inconsistent with Opposer's untimeliness argument, (*supra*) as only two weeks before filing the motion that Applicant learned Opposer that has no evidence to support its multiple sworn statements to the Office and in pleadings of use of the mark DELIVERY DUDES for restaurant delivery services dating back to October 7, 2005.

moving party will not be able to prove the additional claim or allegations at trial." *Id.* While Opposer asserts Applicant must prove its claims "to the hilt" it does not attempt to refute Applicant's evidence that its sworn statements were in fact false. Opposer misstates the law with regard to what evidence Applicant must show to amend its answer and assert a counterclaim.

III. Applicant's abandonment counterclaim is legally sufficient.

Disregarding the fact that Applicant is not required to prove its allegations at this time, Applicant's proposed counterclaim for abandonment is legally sufficient and not futile as Opposer contends. A trademark is abandoned "when its use has been discontinued with intent not to resume such use." 15 U.S.C. §1127. "Evidence of nonuse of a mark in commerce for three consecutive years constitutes a *prima facie* showing of abandonment." *Pristine Nutraceuticals, LLC v. Tuong Van Nguyen*, 2016 WL 3015160 (TTAB May 17, 2016). On its own, Applicant has been able to uncover the following despite Opposer's attempts to block discovery:

1. Marc Veneziano used the DELIVERY DUDES, LLC trademark until about mid-April 2007. (Littman Decl., Ex. 7, Website Archives.)

2. Marc Veneziano has not used the DELIVERY DUDES, LLC trademark since about mid-April 2007. (Littman Decl., Ex. 8, Post-April 2007 Website Archives.)

3. Marc Veneziano applied for and received a trademark registration for DELIVERY DUDES, LLC on February 21, 2012. (Littman Decl., Ex. 9, Veneziano Application.)

4. On September 17, 2012, Marc Veneziano "assigned" the trademark to Opposer for $10.00. (Littman Decl., Ex. 10, Assignment.)

As the exhibits listed above show, Marc Veneziano used the trademark DELIVERY DUDES, LLC until about mid-April 2007, at which time a search of Internet archives shows that Veneziano's website, www.asudeliverydudes.com, was taken down. (Littman Decl., Exs. 7-8.) Such evidence, coupled with Opposer's failure to provide any evidence of use of the DELIVERY DUDES, LLC mark after 2007, leads Applicant to credibly assert that Veneziano

failed to use the mark for a period of at least three years and, therefore, abandoned the trademark sometime in 2010.

Nonetheless, Veneziano filed a use-based application and received a trademark registration for DELIVERY DUDES, LLC in 2012 (the '367 Reg.). (Littman Decl., Ex. 9.) However, because Veneziano abandoned the trademark by 2010, his procurement of the trademark registration was at least improper, if not fraudulent. "Trademark rights are acquired and retained only through actual use of the mark." *S.C. Johnson & Son, Inc. v. Nutraceutical Corp.*, 2014 WL 131114 (E.D. Wis. Jan. 14, 2014). Thus, "the owner of a mark will lose his exclusive rights if he fails actually to use it." *Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 954-55 (7th Cir. 1992). "An application filed under Trademark Act Section 1(a) includes a declaration that the mark is in use at the time of filing; therefore, an applicant filing under this provision is required to have used its mark in commerce prior to the filing of its application. By logical extension, a registration issued from an underlying application not meeting this requirement is void ab initio." *East West Bank CO. v. The Plubell Firm, LLC*¸2016 WL 521924, at *20 (TTAB Sept. 8, 2016).

In his application, filed on March 17, 2011, Veneziano stated the following:

> In International Class 035, the mark was first used at least as early as 10/07/2005, and first used in commerce at least as early as 10/07/2005, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) this is the logo developed exclusively for Delivery Dudes, LLC and advertised on our previous website www.asudeliverydudes.com, and is still preserved on our facebook page under the Arizona State University Network. It is the same logo on business cards.

(Littman Decl., Ex. 9) (emphasis added). Veneziano therefore confirms that at the time he filed the '367 Reg., the website hosted at www.asudeliverydudes.com was no longer active, essentially confirming here had been no use since 2007. (*Id.*) Veneziano also states that for

"informational purposes only" his current website is www.deliverydudes.com. The Internet archives for www.deliverydudes.com also show no activity since 2007, let alone on March 17, 2011—the date of Veneziano's application. (*Id.* at Exs. 11-13, Screenshots of Website Archives.) Additionally, Veneziano's accepted use specimen was from 2006, over four years before the application was filed. (*Id.* at Ex. 14 at 2.) Despite this, Veneziano swore that the 2006 "specimen(s) was/were in use in commerce at least as early as the filing date of the application". (*Id.* at 1.) Because Veneziano was not providing services under the mark at the time the application for the '367 Reg. was filed, his statements to the USPTO that the mark "is now in use in such commerce" was fraudulent, and warrants cancellation of the registration. *See DC Comics v. Gotham City Networking, Inc.*, 2008 WL 4674611 (TTAB Sept. 24, 2011) ("[T]he law is clear that an applicant may not claim a Section 1(a) filing basis unless the mark was in use in commerce on or in connection with all the goods or services covered by the Section 1(a) basis as of the application filing date."). Because the DELIVERY DUDES, LLC trademark had not been used in commerce for three consecutive years at the time Veneziano filed the use-based application, the '367 Reg. is invalid and should be cancelled. Nowhere in its brief does Opposer address or contest any of these facts.

Lastly, because DELIVERY DUDES, LLC was abandoned sometime in 2010 (more than three years after its last use), Veneziano could not have assigned the '367 Reg. to Opposer in 2012. *See Auburn Farms Inc. v. McKee Foods Corp.,* 51 U.S.P.Q.2d 1439 (TTAB 1999) (an abandoned trademark cannot be assigned); McCarthy on Trademarks § 17:14 (a defunct company no longer has any goodwill to convey). Thus, any benefit that Opposer contends it received from the assignment, including an October 7, 2005 first-use date, is unsupported. The assignment was improper and as such Opposer does not have rights in the trademark dating back

to 2005. *See interstate Net Bank v. NetB@nk, Inc.*, 348 F. Supp. 2d 340, 351 (D. N.J. 2004) (granting summary judgment and directing cancellation of the NETBANK registration because the defendant had obtained the registration through an invalid assignment in gross, and the assignor had abandoned the mark for failure to use for three consecutive years). Applicant's proposed abandonment counterclaim is therefore neither legally insufficient nor futile.

IV. Applicant's fraud counterclaim is legally sufficient.

On the same token, because Opposer did not receive any rights in DELIVERY DUDES, LLC due to the invalid assignment, its repeated claim that it has used the mark in commerce since October 7, 2005 is fraudulent. "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." *Nationstar Mortg. LLC v. Mujahid Ahmad*, 112 U.S.P.Q.2d 1361, at *3 (TTAB 2014). In the trademark context, a fact is material if the registration would not have issued had the truth been known to the examiner. *See CTF Development, Inc. v. Penta Hospitality, LLC*, 2009 WL 3517617, at *3 (N.D. Cal. 2009); *see also Bauer Bros, LLC v. Nike, Inc.*, 2011 WL 843971, at *6 (S.D. Cal. Mar. 8, 2011) ("Statements regarding the use of the mark on the identified goods are certainly material to the issuance of a registration."). Based on the evidence that Applicant has been able to uncover thus far, Applicant contends that had the trademark examiner known that the DELIVERY DUDES, LLC trademark was abandoned, Opposer's Section 7 affidavit and assignment, as well as its subsequent trademark applications claiming use back to 2005 would have been rejected.

Applicant also contends that Opposer intended to deceive the USPTO when it claimed first use on October 7, 2005 because Opposer knew that Veneziano had not used the mark in commerce for at least three years. As of March 2013, Veneziano's prior domain,

www.deliverydudes.com, had resolved to Opposer's current website, meaning that when Opposer filed its Section 7 declaration on April 23, 2013 it knew that Veneziano's website had not been active since at least 2007. Despite this, Opposer filed a Section 7 declaration, and several later documents, with the USPTO on the grounds that the mark had been continuously used in commerce since October 7, 2005. Such statements are clearly fraudulent. *See Zodiac Spirits, Inc. v. Anil Mezini*, 2008 WL 885884, at *7 (TTAB Feb. 14, 2008) (cancelling registration where assignor had fraudulently claimed use on goods that it had not used the mark in connection with, and assignees procured and maintained the registration fraudulently.)

From a public policy standpoint, Applicant requests that the Board find that Applicant's fraud counterclaim is not futile because Opposer has continuously claimed a first use date of October 7, 2005 for no other purpose than to have priority over trademarks it deems confusingly similar. McCarthy on Trademarks §16:1 ("The basic rule of trademark ownership in the United States is priority of use."). Opposer has repeatedly claimed October 7, 2005 as its date of first use because if the Board were to find the Parties' marks confusingly similar, (though Applicant, and the Office, contend they are not), Applicant may have priority over Opposer. This is a knowingly false extension of Opposer's claimed first use on restaurant delivery services by over four years. Applicant began soliciting restaurants under its mark in 2008 and had its first use in commerce in November 2009. (4 TTABVUE 1.) Opposer claims a first use and first use in commerce on August 1, 2009, but has provided no evidence of a sale on that date. (Littman Decl. Ex. 1.) Therefore, to allow Opposer to use an earlier first-use date could stifle Applicant's rights to use FOOD DUDES, even though Applicant may have been "first in time." For these reasons, Applicant's fraud counterclaim is legally sufficient and not futile as Opposer contends. The Board should grant Applicant's motion for leave to amend.

V. If Applicant is not allowed to amend at this time, the denial should be without prejudice.

Should the Board deny Applicant's motion, it should do so without prejudice. Courts have denied motions for leave to amend without prejudice when the movants' amended pleadings are procedurally deficient under Fed. R. Civ. P. 9(b). *See e.g.*, *Boardwalk Apartments, L.C. v. State Auto Property & Cas. Ins. Co.*, 2012 WL 3024712, at *4 (D. Kan. July 24, 2012) (denying motion without prejudice and allowing movant to file subsequent motion and amended answer). Thus, if the Board agrees with Opposer that Applicant's amended answer is procedurally deficient, Applicant requests that the Board deny the motion without prejudice and allow Applicant time to cure the deficiencies. Further, Opposer has still not fully responded to Applicant's discovery requests, and given the lack of evidence Opposer has to support is registrations and sworn statements, Applicant should be able to seek amendments based on newly revealed discovery.

CONCLUSION

Applicant respectfully requests that the Board grant its motion for leave to amend its answer and add its proposed counterclaims.

Dated: January 30, 2017.

Respectfully submitted,

GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that this REPLY BRIEF IN SUPPORT OF APPLICANT'S MOTION TO AMEND is being emailed to the below counsel for Opposer pursuant to TBMP 502.02(a):

Heidi Tandy
Price Benowitz
1691 Michigan Ave., Suite 360
Miami, FL 33139
Heidi@heidi8.com

Dated: January 30, 2017

/Norman M. Abramson/
Norman M. Abramson

Subscribed and sworn to before me
this 30th day of January, 2017

/Amy K. Milbradt/
Notary Public
My Commission Expires: 01/31/2018

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

Dude IP, LLC,

Opposer,

v.

Food Dudes Delivery, LLC,

Applicant.

Opposition No.: 91226647

Application No.: 86/577,684
Mark: FOOD DUDES

DECLARATION OF MOLLY R. LITTMAN IN SUPPORT OF REPLY BRIEF IN SUPPORT OF APPLICANT'S MOTION FOR LEAVE TO AMEND ITS ANSWER

I, **MOLLY R. LITTMAN**, declare as follows:

1. I am an Attorney with the law firm of Gray, Plant, Mooty, Mooty & Bennett, P.A., which is counsel for Applicant in this matter.

2. Attached as Exhibit 1 is a true and correct copy of excerpts from Opposer's Responses to Applicant's First Set of Interrogatories, dated December 15, 2016.

3. Attached as Exhibit 2 is a true and correct copy of excerpts from Opposer's Responses to Applicant's First Set of Document Requests, dated December 15, 2016.

4. Attached as Exhibit 3 is a true and correct copy of Applicant's Meet and Confer Letter to Opposer, dated December 20, 2016. To date Opposer has not provided Applicant with any further information or documents pertaining to the use of the mark DELIVERY DUDES by Mark Veneziano, communications with the Mr. Veneziano or the assignment of the U.S. Reg. No. 4101367.

5. Attached as Exhibit 4 is a true and correct copy of excepts from Opposer's trademark application, Serial No. 86731725, dated August 20, 2015.

6. Attached as Exhibit 5 is a true and correct copy of excerpts from Opposer's trademark application, Serial No. 86297424, dated June 2, 2014.

7. Attached as Exhibit 6 is a true and correct copy of excerpts from Opposer's Section 7 Declaration, Reg. No. 4101367, dated April 23, 2013.

8. Attached as Exhibit 7 is a true and correct copy of a screenshot of the archived webpage www.asudeliverydudes.com, dated April 8, 2007.

9. Attached as Exhibit 8 is a true and correct copy of a screenshot of the archived webpage www.asudeliverydudes.com, dated June 12, 2007.

10. Attached as Exhibit 9 is a true and correct copy of excerpts from Veneziano's trademark application for DELIVERY DUDES, LLC, Reg. No. 4101367, dated March 17, 2011.

11. Attached as Exhibit 10 is a true and correct copy of excerpts from the assignment submitted to the USPTO, dated September 17, 2012.

12. Attached as Exhibit 11 is a true and correct copy of a screenshot of the archived webpage www.deliverydudes.com, dated September 14, 2008.

13. Attached as Exhibit 12 is a true and correct copy of a screenshot of the archived webpage www.deliverydudes.com, dated September 23, 2010

14. Attached as Exhibit 13 is a true and correct copy of a screenshot of the archived webpage www.deliverydudes.com, dated March 17, 2011.

15. Attached as Exhibit 14 is a true and correct copy of Veneziano's response to office action and amended specimen of use, dated September 22, 2011.

16. From on or about April 28, 2016 to November 10, 2016, Applicant made settlement offers to Opposer with little or no response from Opposer. Opposer's counsel finally provided a firm proposal on Thursday, November 10, 2016, which Opposer recanted the following Tuesday, November 15, 2016. After that, Applicant served written discovery, shortly followed by Opposer.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: January 30, 2017

/Molly R. Littman/
Molly R. Littman

EXHIBIT 1

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

Dude IP, LLC,
Opposer,

V.

Food Dudes Delivery, LLC,
Applicant.

Opposition No.: 91226647
Application No.: 86/577,684
Mark: FOOD DUDES

OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to the rules of the Trademark Trial and Appeal Board and the Federal Rules of Civil Procedure, Opposer submits the following objections and responses to App1icant's first set of interrogatories.

GENERAL OBJECTIONS

1. Opposer objects to each of the Definitions, Instructions and Interrogatories to the extent they seek to impose on Opposer any obligations or responsibilities other than those mandated by the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board ("TTAB") Rules.

2. Opposer objects to each of the Definitions, Instructions and Interrogatories insufar as they seek information that is not in Opposer's possession or control.

3. Opposer objects to each of the Definitions, Instructions and Interrogatories insofar as they seek information that is irrelevant and/or unlikely to lead to the discovery of admissible evidence.

4. Opposer objects to each of the Definitions, Instructions and Interrogatories insofar as they seek information that is protected under attorney-client privilege or pursuant to the work product doctrine, or is in any other way a trade secret of Opposer, or is in any other way an applicable privilege.

5. Opposer objects to each of the Definitions, Instructions and Interrogatories to the extent that it uses language incorporating or calling for a legal conclusion or making an erroneous statement of law. Opposer's responses herein shall be as to matters of fact only, and shall not be construed as stating or implying any conclusions of law concerning the matters referenced in any interrogatory.

6. Opposer objects to the Interrogatories to the extent they require any information or documents beyond what is presently available to Opposer based upon a reasonable search of its own files and a reasonable inquiry of present employees. Opposer responses herein are based on facts presently known to it and represent a diligent and good faith effort to comply with the Interrogatories. Opposer's discovery and investigation into the matters specified is continuing. Opposer reserves all right to supplement or modify these responses with any pertinent information that may hereafter become known, or as may be informed by the opinions of any experts retained by the parties to testify in the trial of this matter.

7. Opposer objects to the Interrogatories to the extent that more than 75 interrogatories including subparts, have been set forth by Applicant, in violation of Trademark Rule 2.120(d)(1). Nonetheless, Opposer is answering all the Interrogatories set forth herein.

INTERROGATORY NO. 1: Identify each of Opposer's Services that Opposer has sold or offered for sale in the United States under each of Opposer's Marks, and for each identify:

a. The date of first sale or offer for sale of each of the identified Opposer's Services within the United States, including but not limited to, restaurant take-out and delivery service;

b. The date on which Opposer first sold each of the identified Opposer's Services in interstate commerce;

c. The time period or periods during which Opposer sold each of the identified Opposer's Services under each of Opposer's Marks.

d. The dollar amount of Opposer's Services sold under each of Opposer's Marks in the United States;

e. The states in which Opposer has sold each of the identified Opposer's Services under each of Opposer's Marks;

f. The bars, restaurants, or other prepared food retail outlets from which members of the general public ordered take-out delivery services through Opposer;

g. The advertising or marketing expenditures for each of the identified Opposer's Services; and

h. The person or persons with the most first-hand knowledge of the answers identified in Interrogatory No. 1 and its subparts.

Objection; vague, ambiguous and unduly burdensome. Opposer further objects to "f" on grounds of overbreadth and lack of likelihood to lead to the discovery of admissible evidence. Without waiving these objections, Opposer states that it has performed the below-listed services in the

United States in connection with its DELIVERY DUDES, DD and DD DELIVERY DUDES marks, as well as hex color #C02131; Opposer notes that it does not have a definitive date of first use or first use in interstate commerce for all the below-listed services and thus provides below a date by which each such mark was in use in commerce by Opposer or its predecessor in interest, with the stipulation that such marks may have been in use in commerce at an earlier date. Opposer further notes that it does not divide its marketing and/or advertising expenditures for each of its services, nor for each of its marks, and thus all advertising and marketing expenditures are for the promotion of all of its marks in connection with all of its services, and objects to such interrogatory as is unduly burdensome for Applicant to ask Opposer to so do. Opposer further does not differentiate its sales figures in a manner that would enable it to respond to Interrogatory "e" and objects to such interrogatory as it is unduly burdensome for Applicant to ask Opposer to so do.

Retail and on-line grocery store services featuring home delivery service
Delivery services to businesses
Delivery services of goods ordered online and from local retail stores
Delivery services of food
Delivery services of beverages
Delivery services of legal documents
Delivery services of groceries
Delivery services of general merchandise from local retail stores
Delivery services of beer
Delivery services of wine
Delivery services of liquor
Delivery services of cigarettes
Delivery services of prescription drugs

Retail and on-line grocery store services featuring home delivery service
A While Opposer's predecessor in interest had its own date of first use, Opposer's Date of First Use of the DELIVERY DUDES mark is August 1, 2009
B. Opposer or their predecessor in interest offered these services in interstate commerce at least as early as August 1, 2009
C.Opposer's advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E. Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

Delivery services of goods ordered online and from local retail stores
A While Opposer's predecessor in interest had its own date of first use, Opposer's Date of First Use of the DELIVERY DUDES mark is August 1, 2009

B. Opposer or their predecessor in interest offered these services in interstate commerce at least as early as August 1, 2009
C. Opposer’s advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E. Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

Delivery services of food
A While Opposer's predecessor in interest had its own date of first use, Opposer's Date of First Use of the DELIVERY DUDES mark is August 1, 2009
B. Opposer or their predecessor in interest offered these services in interstate commerce at least as early as August 1, 2009
C. Opposer’s advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E. Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

Delivery services of beverages
A While Opposer's predecessor in interest had its own date of first use, Opposer's Date of First Use of the DELIVERY DUDES mark is August 1, 2009
B. Opposer or their predecessor in interest offered these services in interstate commerce at least as early as August 1, 2009
C. Opposer’s advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E.Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

Delivery services of legal documents
A While Opposer's predecessor in interest had its own date of first use, Opposer's Date of First Use of the DELIVERY DUDES mark is August 1, 2009
B. Opposer or their predecessor in interest offered these services in interstate commerce at least as early as August 1, 2009

C. Opposer’s advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E. Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

Delivery services of groceries
A While Opposer's predecessor in interest had its own date of first use, Opposer's Date of First Use of the DELIVERY DUDES mark is August 1, 2009
B. Opposer or their predecessor in interest offered these services in interstate commerce at least as early as August 1, 2009
C. Opposer’s advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E. Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

Delivery services of general merchandise from local retail stores
A. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
B. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
C. Opposer’s advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E. Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

Delivery services of beer
A. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
B. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
C. Opposer’s advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.

E.Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

Delivery services of wine
A. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
B. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
C. Opposer's advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E. Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

Delivery services of liquor
A. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
B. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
C. Opposer's advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E. Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

Delivery services of cigarettes
A. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
B. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
C. Opposer's advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E. Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.

G. Objection as stated above.
H. Ryan Sturgis

Delivery services of prescription drugs.
A. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
B. Opposer or their predecessor in interest offered these services at least as early as October 7, 2009
C. Opposer's advertising and promotion of these services has been consistent since the date of first use.
D. Objection; Opposer does not separate out its revenue in such a manner.
E. Opposer has advertised and promoted this service in Florida, Colorado, Oregon, Pennsylvania and Tennessee
F. Objection as stated above.
G. Objection as stated above.
H. Ryan Sturgis

INTERROGATORY NO. 2: Identify all witnesses who testimony you intend to use at trial.

Opposer notes that this information was provided in the Initial Disclosures. Opposer states that Ryan Sturgis, an officer of Opposer, whose corporate office is located at 114 N.E. 1st Ave., Delray Beach, FL 33444, is intended by Opposer to be called as a witness for testimony at trial. Opposer notes that discovery in this matter is still ongoing and it is continuing to investigate Applicant's claims and defenses. Opposer will supplement this Answer at the close of the discovery period if necessary.

INTERROGATORY NO. 3: Identify each expert witness whose testimony you intend to use at trial, state the subject matter upon which each expert will testify and summarize their substance of the facts and opinions about which each expert will testify.

At present, Opposer does not plan to use any expert witnesses at trial, although Opposer reserves the right to amend this answer pursuant to documents produced by and interrogatories answered by Applicant in discovery which have not, to date, been provided to Opposer.

INTERROGATORY NO. 4: Identify Opposer's planned future use, advertising, promotion and marketing of Opposer's Marks in connection with Opposer's Services.

Objection. Speculation is required to answer this Interrogatory, which is vague and ambiguous. Without waiving these objections, Opposer intends to continue to engage in the use, advertising, promotion and marketing of its Marks in connection with its Services.

INTERROGATORY NO. 5: For each of Opposer's Services sold under Opposer's Marks, identify all other marks, names, logos, drawings appearing on Opposer's advertising or materials used to perform the delivery services besides Opposer's Marks and the length of

SIGNATURE

I declare and attest under penalty of perjury under the laws of the United States that I am an officer of Opposer and as such am authorized to make this verification on behalf of Opposer. I have read the attached Response to Applicant's First Set of Interrogatories and am familiar with the contents thereof. These foregoing responses are based on a diligent and reasonable effort by me, with the assistance of counsel, to obtain information currently available. I reserve the right to make changes in or additions to any of these answers if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. Subject to these limitations, I hereby attest that these responses are true to the best of my present knowledge, information, and belief.

RYAN STURGIS: _____
DATE: December 15, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 15th Day of December, 2016, pursuant to the parties' agreement to accept service by email, I sent the foregoing document by electronic mail to Norman Abramson at Norman.Abramson@gpmlaw.com with an additional copy emailed to Jennifer Veldhuizen at Jennifer.Veldhuizen@gpmlaw.com.

____/HHT/____
Heidi Howard Tandy
Counsel for Opposer

EXHIBIT 2

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

Dude IP, LLC,
Opposer,

V.

Food Dudes Delivery, LLC,
Applicant.

Opposition No.: 91226647
Application No.: 86/577,684
Mark: FOOD DUDES

OPPOSER'S RESPONSES TO APPLICANT'S
FIRST SET OF DOCUMENT REQUESTS

Pursuant to the rules of the Trademark Trial and Appeal Board and the Federal Rules of Civil Procedure, Opposer submits the following objections and responses to App1icant's first set of Document Requests. Opposer notes that responsive documents can be accessed by Counsel for Applicant through the link to the Google Drive folder sent under separate cover to Counsel for Applicant.

GENERAL OBJECTIONS

1. Opposer objects to each of the Definitions, Instructions and Document Requests to the extent they seek to impose on Opposer any obligations or responsibilities other than those mandated by the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board ("TTAB") Rules.

2. Opposer objects to each of the Definitions, Instructions and Document Requests insofar as they seek information that is not in Opposer's possession or control.

3. Opposer objects to each of the Definitions, Instructions and Document Requests insofar as they seek information that is irrelevant and/or unlikely to lead to the discovery of admissible evidence.

4. Opposer objects to each of the Definitions, Instructions and Document Requests insofar as they seek information that is protected under attorney-client privilege or pursuant to the work product doctrine, or is in any other way a trade secret of Opposer, or is in any other way an applicable privilege.

5. Opposer objects to each of the Definitions, Instructions and Document Requests to the extent that it uses language incorporating or calling for a legal conclusion or making an

Opposer will produce such documents.

REQUEST NO. 19: All documents containing or comprising Opposer's internal communications referring to or regarding Applicant or Applicant's mark prior to the initiation of this Opposition.
Objection as such documents include documents protected by attorney-client privilege, the work product doctrine and other privileges.

REQUEST NO. 20: All documents related to opinions of counsel in any way related to the extent of rights Opposer has in any mark containing the words DELIVERY and/or DUDES.
Objection as such documents include documents protected by attorney-client privilege, the work product doctrine and other privileges.

REQUEST NO. 21: All documents reflecting or relating to any actual confusion between a third party's goods sold under a mark containing the words DELIVERY and/or DUDES and Opposer or Opposer's Services sold under Opposer's Marks.
Objection; this request is vague and ambiguous. Without waiving such objection, Opposer will produce documents that respond to this request.

REQUEST NO. 22: All documents related to your allegation in paragraph 4 of the Notice of Opposition that the use of DELIVERY DUDES trademarks to identify Opposer's Services and Opposer as their source is distinctive.
Objection as such documents include documents protected by attorney-client privilege, the work product doctrine and other privileges.

REQUEST NO. 23: All documents related to your allegation in paragraph 4 of the Notice of Opposition that the use of DELIVERY DUDES trademarks to identify Opposer's Services and Opposer as their source has been "widespread, continuous and exclusive".
Objection; this document request is unduly burdensome as it requests all documents that Opposer has ever created. Without waiving such objection, Opposer will produce a selection of documents created over a number of years in support of this allegation.

REQUEST NO. 24: All documents related to your allegations in paragraph 13 of the Notice of Opposition.
Objection; this document request is unduly burdensome, asks for information that Opposer does not have, and is ambiguous and overbroad as Opposer cannot be expected to hold in its possession all such documents. Without waiving such objection, Opposer will produce a selection of documents relating to such allegations.

REQUEST NO. 25: All documents you received from Delivery Dudes, LLC and/or Marc Veneziano in any way related to any of Opposer's Marks.
Opposer no longer has certain documents, particularly emails, exchanged with these entities; Opposer will produce the Veneziano assignment.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th Day of December, 2016, pursuant to the parties' agreement to accept service by email, I sent the foregoing document by electronic mail to Norman Abramson at Norman.Abramson@gpmlaw.com with an additional copy emailed to Jennifer Veldhuizen at Jennifer.Veldhuizen@gpmlaw.com.

____/HHT/____
Heidi Howard Tandy
Counsel for Opposer

EXHIBIT 3

GRAY PLANT MOOTY

80 SOUTH EIGHTH STREET
500 IDS CENTER
MINNEAPOLIS, MN 55402
MAIN: 612.632.3000
FAX: 612.632.4444

NORMAN M. ABRAMSON
ATTORNEY
DIRECT DIAL: 612.632.3342
DIRECT FAX: 612.632.4342
NORMAN.ABRAMSON@GPMLAW.COM

December 20, 2016

Heidi Tandy
Price Benowitz
1691 Michigan Ave., Suite 360
Miami Beach, FL 33139

VIA EMAIL ONLY

Re: Dude IP, LLC v. Food Dudes Delivery, LLC (TTAB Opposition No. 91226647)

Dear Heidi:

I write in regard to Opposer's answers to interrogatories and responses to requests for production of documents we received via email on Thursday December 15, 2016. In general, the responses were insufficient, incomplete, or otherwise deficient for the reasons set forth below. In light of the deficiencies rendering these discovery responses incomplete, I request a phone call to discuss a response to and cure of these deficiencies.

A. Opposer's Answers to Interrogatories

Interrogatory No. 1: There are several issues of dispute. First is the effort to avoid providing any information regarding use back to October 7, 2005. The pled Opposition relies on three registrations, two of which claim use of the mark DELIVERY DUDES back to October 7, 2005, including Reg. No. 4101367 (Opposition, ¶ 2). In the Answer to Interrogatory No. 1, Opposer refuses to provide answers on use of the marks prior to August 1, 2009 based on Opposer's selection of that date. Opposer cannot so limit discovery. Opposer has put its use in question in the Opposition and cannot shield those claims of use from discovery by fiat.

Second, Opposer creates categories of delivery services in its answer, but ignores the critical category: delivery services from restaurants. In Reg. No. 4101367, Opposer claims use of the mark DELIVERY DUDES since October 7, 2005 for "[d]elivery services to residences and businesses, namely, delivery of food and beverages ordered from restaurants….." The category of food and beverages ordered from restaurants is expressly omitted from the categories arbitrarily created in the interrogatory answer. As you are aware, Applicant's primary business is delivery services from restaurants. Discovery needs to be provided on the delivery of food and beverages from restaurants.

Third, the dollars Opposer generated on services sold under the DELIVERY DUDES mark is clearly relevant to Opposer's claims and must be disclosed. We do not understand how Opposer cannot identify these sales in U.S. dollars on at least an annual basis. We are particularly interested in those revenues from restaurant delivery services.

Finally, the restaurants through which Opposer obtains food for delivery are clearly relevant to the above points and whether or not the parties use similar channels of distribution.

Similar issues also apply to **Interrogatory No. 15, Request Nos. 3, 15, 28, 29, 31.**

Interrogatory No. 4: We are entitled to confirm if Opposer will use future expansion plans at trial. If so, we are entitled to know about them in discovery. Again Opposer has put its use of the DELIVERY DUDES marks into issue. We do not see how marketing plans are privileged as they are not generated in anticipation of litigation or generated by attorneys. If the issue is confidentiality, the Standard Protective Order addresses the issue. Moreover, following the recommendation of the Board, I have circulated the Standard Protective Order for signature to give parties additional contractual rights that the materials are maintained as confidential after the expiration of this Board proceeding. Similar issues apply to **Request No. 4.**

Interrogatory No. 5: We do not see what is vague about other marks, names or logos. If, for example, your advertisements also contained the names of restaurants etc., we should be able to discover this. We need to confirm whether any responsive information is being withheld based on these objections.

Interrogatory Nos. 7 & 8: The objections are not well founded. Clearly an answer to an interrogatory only covers what is in Opposer's knowledge. The interrogatory is not limited to those instances in which Opposer attempted some action. We need to confirm no information is being withheld based on these objections. This is also applies to **Request Nos. 7, 13.** As set forth in our Answer, Food Dudes' trademark application was pending at the time the application that became Reg. No. 4101367 claiming use for "[d]elivery services to residences and businesses, namely, delivery of food and beverages ordered from restaurants….." was filed.

Interrogatory No. 9: The objections are not well founded. The interrogatory does not seek a legal conclusion, but asks what facts and documents support a claim that Opposer has developed as association in the mind of the public between marks with the word DUDE and Opposer's delivery services. This is clear and fairly common language to describe trademark goodwill. We need to confirm no responsive information is being withheld based on these objections.

Interrogatory No. 11: The objections are not well founded. "Transfer" and "receive" are commonly understood words. Further the interrogatory requires the identification of the licenses, assignments and franchise agreements identified in the interrogatory answer. Similar issues apply to **Request Nos. 9, 12.** We are entitled to review all of these non-privileged documents and confirm that no responsive documents are being withheld based on these objections.

Interrogatory No. 13: The identification that an opinion exists is not protected by the attorney/client privilege. The content may be protected, but we also have a right to seek that opinion in discovery or confirm it will not be used at trial. Further if these opinions are shared with any third-parties the privilege is waived. Similar issues apply to **Request Nos. 11, 20.**

Interrogatory No. 14: This objection is not well founded. Opposer's basis for this Opposition is likelihood of confusion. We need to confirm that Opposer is not withholding any information based on its objections. Similar issues apply to **Request No. 21.**

B. Opposer's Responses to Requests for Production of Documents

Request No. 1: We don't see what trade secrets are at issue and again the Standard Protective Order addresses this issue. We are also willing to execute the Order as an additional contractual obligation to maintain the confidential status of produced documents. Please execute the draft I forwarded. If you are claiming privilege for documents produced before this litigation began, you need to provide us with a privilege log.

Request No. 2: Opposer is certainly entitled to select which documents will be used at trial at a later date, but discovery allows us to see the pool of documents likely to be used at trial during the discovery period and not just at the close of discovery. We will object to a document dump at the close of discovery.

Request Nos. 5, 6: The objections are not well founded. Opposer has put the registrations at issue in making them a basis of the Opposition. The selection, development and approval of the marks can hardly be claimed as work product as Opposer had not brought the pending litigation. Again the trade secret claim ignores the Standard Protective Order.

Request No. 19: All internal documents related to Applicant are not privileged per se. Certainly internal communications forwarded to third parties and communications made prior to the initiation of the Opposition that were not solely made to counsel are not privileged. We will need a privilege log of the documents generated prior to the initiation of the Opposition.

Request Nos. 22-24: These requests seek documents supporting allegations made directly in the Notice of Opposition. As an example, Opposer claims the mark DELIVERY DUDES is distinctive. (Opposition, ¶ 4). We are entitled to know what documents will be used to support that allegation and not on the last day of the discovery period.

Request Nos. 25, 26: Producing only the assignment is not a full response. We are entitled to review in discovery all documents Opposer's predecessor in interest in the original DELIVERY DUDES registration provided to Opposer. Also if any of this data was destroyed during the Opposition, Opposer needs to disclose that.

Request No. 33: The objections are not well founded. If a valuation exists it should be produced and can be done so pursuant to the protective order.

Very Truly Yours,

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

Norman M. Abramson

cc: David Carlson
Lori Wiese Parks

GP:4695488 v1

EXHIBIT 4

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 02/28/2018)

Trademark/Service Mark Application, Principal Register

Serial Number: 86731725
Filing Date: 08/20/2015

To the Commissioner for Trademarks:

MARK: DELIVERY DUDES (Standard Characters, see mark)
The literal element of the mark consists of DELIVERY DUDES.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Dude IP, LLC, a limited liability company legally organized under the laws of Florida, having an address of
Suite 2,
824 East Atlantic Avenue
Delray Beach, Florida 33483
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 035: Delivery services of goods ordered online and from retail stores; delivery services of food, beverages, legal documents, groceries, general merchandise from retail stores, beer, wine, liquor, cigarettes, prescription drugs

In International Class 035, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 10/07/2005, and first used in commerce at least as early as 10/07/2005, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) Pages from Applicant's website that describe Applicant's services, and which allow members of the public to engage Applicant's services by purchasing products for delivery by Applicant..
Specimen File1
Specimen File2

SECTION 2(f) Claim of Acquired Distinctiveness, based on Active Prior Registration(s)
The mark has become distinctive of the goods/services as evidenced by the ownership on the Principal Register for the same mark for sufficiently similar goods/services of active U.S. Registration No(s). 4101367.

SECTION 2(f) Claim of Acquired Distinctiveness, based on Five or More Years' Use
The mark has become distinctive of the goods/services through the applicants substantially exclusive and continuous use of the mark in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

The applicant's current Attorney Information:
Heidi Tandy of Price Benowitz

Suite 360
1691 Michigan Avenue
Miami Beach, Florida 33139
United States

The applicant's current Correspondence Information:
Heidi Tandy
Price Benowitz
Suite 360
1691 Michigan Avenue
Miami Beach, Florida 33139

3059262227(phone)

heidi@heidi8.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of $50 per international class of goods/services.

A fee payment in the amount of $275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /hht/ Date: 08/20/2015
Signatory's Name: Heidi Howard Tandy
Signatory's Position: Attorney of Record, New York and Florida Bar Member
RAM Sale Number: 86731725
RAM Accounting Date: 08/21/2015

Serial Number: 86731725
Internet Transmission Date: Thu Aug 20 17:20:08 EDT 2015
TEAS Stamp: USPTO/BAS-XXX.XX.XX.XX-20150820172008163
907-86731725-540c3692773afbcad66a5d99126
170c8bf58fe528a01a2e59f13f974b1e8cea-CC-
4007-20150820170253406650

EXHIBIT 5

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2014)

Trademark/Service Mark Application, Principal Register

Serial Number: 86297424
Filing Date: 06/02/2014

To the Commissioner for Trademarks:

MARK: DELIVERY DUDES (Standard Characters, see mark)
The literal element of the mark consists of DELIVERY DUDES.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Dude IP, LLC, a limited liability company legally organized under the laws of Florida, having an address of
Suite 2,
824 East Atlantic Avenue
Delray Beach, Florida 33483
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 035: Delivery services to residences and businesses

In International Class 035, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 10/07/2005, and first used in commerce at least as early as 10/07/2005, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Images of website pages showing use of Applicant's mark in connection with identified services.

Original PDF file:
SPE0-75145228197-113016267_._Delivery_Dudes_Specimen.pdf
Converted PDF file(s) (3 pages)
Specimen File1
Specimen File2
Specimen File3

No claim is made to the exclusive right to use "DELIVERY" apart from the mark as shown.

The applicant claims ownership of U.S. Registration Number(s) 4101367.

The applicant's current Attorney Information:
Scott D. Smiley of The Concept Law Group, P.A.

200 S. Andrews Avenue
Suite 100
Fort Lauderdale, Florida 33301
United States
The attorney docket/reference number is DUDE_SC_SM1.

The applicant's current Correspondence Information:
Scott D. Smiley
The Concept Law Group, P.A.
200 S. Andrews Avenue
Suite 100
Fort Lauderdale, Florida 33301
7543001500(phone)

Info@ConceptLaw.com (authorized)

A fee payment in the amount of $325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like 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 registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Scott D. Smiley/ Date: 06/02/2014
Signatory's Name: Scott D. Smiley
Signatory's Position: Attorney of record; Florida Bar member
RAM Sale Number: 86297424
RAM Accounting Date: 06/02/2014

Serial Number: 86297424
Internet Transmission Date: Mon Jun 02 11:44:13 EDT 2014
TEAS Stamp: USPTO/BAS-XX.XXX.XXX.XXX-201406021144138
76531-86297424-500e73c9c29f321acbbfd9a60
71d1d8ebb158c9a247646f78811c4dba45769a38
3-CC-10720-20140602113016267836

EXHIBIT 6

TEAS STAMP

PTO Form 1597 (Rev 11/2007)
OMB No. 0651-0055 (Exp. 07/31/2018)

Section 7 Request Form

To the Commissioner for Trademarks:

The registrant requests the following amendment(s) to registration no. **4101367** DELIVERY DUDES, LLC(Standard Characters, see http://tess2.uspto.gov/ImageAgent/ImageAgentProxy?getImage=85269106) has been amended as follows:

MARK
Applicant proposes to amend the mark as follows:
Current: DELIVERY DUDES, LLC(Standard Characters, see http://tess2.uspto.gov/ImageAgent/ImageAgentProxy?getImage=85269106)
Proposed (USPTO generated image): DELIVERY DUDES (Standard Characters, see mark)
The mark consists of standard characters, without claim to any particular font, style, size, or color.

Registrant hereby submits a specimen for the mark that was in use in commerce on or before the filing date of this request. The specimen(s) submitted consists of Each specimen applies to IC 035 for retail and online grocery store services featruing home delibery service. Specimens include the following advertising media 1) door hangers 2) refrigerator magnets 3) pens and 4) screen shot of website and Google listing results..
Original PDF file:
SPM_108218114215-130501994_._DoorHangers-1.pdf
Converted PDF file(s) (1 page)
Specimen File1
Original PDF file:
SPM_108218114215-130501994_._Magnets-3.pdf
Converted PDF file(s) (1 page)
Specimen File1
Original PDF file:
SPM_108218114215-130501994_._Pens-1.pdf
Converted PDF file(s) (1 page)
Specimen File1
Original PDF file:
SPM_108218114215-130501994_._Google-And-Website.pdf
Converted PDF file(s) (2 pages)
Specimen File1
Specimen File2

EXPLANATION OF FILING

Requesting amendent to mark to delete "LLC" from the mark. The proposed amended mark will consist only of "Delivery Dudes

OWNER AND/OR ENTITY INFORMATION
Registrant proposes to amend the following:
Current: DUDE IP, LLC, a limited liability company legally organized under the laws of Florida, having an address of
824 EAST ATLANTIC
DELRAY BEACH, Florida 33483
United States
Proposed: DUDE IP, LLC, a limited liability company legally organized under the laws of Florida, having an address of
SUITE 2
824 EAST ATLANTIC

DELRAY BEACH, Florida 33483
United States
smcarlisle@aol.com
954-764-4000
954-764-4092

ATTORNEY INFORMATION
Registrant proposes to amend the following:
Current: WALTER L MORGAN MORGAN, OLSEN & OLSEN 633 S. FEDERAL HIGHWAY, SUITE 400A FORT LAUDERDALE Florida (FL) United States (USX) 33301
Proposed: Stephen M. Carlisle, having an address of 212 SE 8th Street Suite 103 FORT LAUDERDALE, Florida United States 33316, whose e-mail address is smcarlisle@aol.com;jkoss@deliverydudes.com, whose phone number is 954-764-4000 and whose fax number is 954-764-4092.

CORRESPONDENCE ADDRESS CHANGE
Registrant proposes to amend the following:
Current: WALTER L MORGAN MORGAN, OLSEN & OLSEN 633 S. FEDERAL HIGHWAY, SUITE 400A FORT LAUDERDALE Florida (FL) United States (USX) 33301
Proposed: Stephen M. Carlisle, having an address of 212 SE 8th Street Suite 103 FORT LAUDERDALE, Florida United States 33316, whose e-mail address is smcarlisle@aol.com;jkoss@deliverydudes.com, whose phone number is 954-764-4000 and whose fax number is 954-764-4092.

ADDITIONAL STATEMENTS
Miscellaneous Statement(s)
Delete the following: No claim is made to the exclusive right to use "LLC" apart from the mark as shown.

FEE(S)
Fee(s) in the amount of $100 is being submitted.

SIGNATURE(S)
Declaration Signature
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. §1001, and that such willful false statements may jeopardize the validity of the application or document or any resulting registration, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Signature: /Stephen M Carlisle/ Date: 04/23/2013
Signatory's Name: Stephen M Carlisle
Signatory's Position: Attorney of Record, Florida Bar Member
Signatory's Phone: 954-764-4000

Request Signature
Signature: /Stephen M Carlisle/ Date: 04/23/2013
Signatory's Name: Stephen M Carlisle
Signatory's Position: Attorney of Record Florida Bar member

Signatory's Phone: 954-764-4000

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the registrant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the registrant in this matter: (1) the registrant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the registrant has filed a power of attorney appointing him/her in this matter; or (4) the registrant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The registrant is NOT filing a Declaration of Use of Mark under Section 8; a Combined Declaration of Use of Mark under Sections 8 & 15; or a Combined Declaration of Use of Mark/Application for Renewal of Registration of Mark under Sections 8 & 9 in conjunction with this Section 7 Request.

Mailing Address: Stephen M. Carlisle
Suite 103
212 SE 8th Street
FORT LAUDERDALE, Florida 33316

RAM Sale Number: 4101367
RAM Accounting Date: 04/23/2013

Serial Number: 85269106
Internet Transmission Date: Tue Apr 23 13:14:55 EDT 2013
TEAS Stamp: USPTO/S7R-XXX.XXX.XXX.XXX-20130423131455
768059-4101367-5009f26ba7f31301e9654aefb
f75112231fdd3415b0664cbcbcf9317cf70ee70f
-CC-11070-20130423130501994041

EXHIBIT 7

Open Screenshot

INTERNET ARCHIVE Wayback Machine
http://www.asudeliverydudes.com/ Go
35 captures
11 Feb 06 - 3 Oct 16
DEC APR JUN
2006 2007 2013
Close
Help

Delivery Dudes

Free Delivery, Same Prices as Groc

Home | About | Contact & Feedback

Arizona State University

Submit

- ALL
- BEAUTY AND HYGEINE
- BEVERAGES
- BREADS
- CANDY
- CANNED FOODS
- CEREAL
- CLEANING SUPPLIES
- CONDIMENTS
- DAIRY
- DRY GOODS
- FROZEN FOODS
- ICE CREAM
- LUNCH/ SANDWICH MEATS
- MEATS
- ON-DEMAND DELIVERY
- PAPER PRODUCTS
- PLASTICWARE
- PRODUCE
- SCHOOL SUPPLIES
- SNACKS
- TOBACCO

Start your Delivery Dudes Account Today

Click Here

Your Cart

View Cart Details - My Account

Items: 0
Price: $0
Delivery Date:
Location:
Time
Choose Location/Time

You are not logged in. Login Here

Sales

Red Delicious Apple
~~Price: $1.29~~
Sale: $0.99
Add To Cart
1

Totinos Crisp Crust 3 Meat Pizza
~~Price: $1.59~~
Sale: $1.09
Add To Cart
1

Totinos Crisp Crust Supreme Pizza
~~Price: $1.59~~
Sale: $1.09
Add To Cart
1

Red Bell Pepper
~~Price: $2.39~~
Sale: $1.59
Add To Cart
1

Totinos Crisp Crust Cheese Pizza
~~Price: $1.59~~
Sale: $1.09
Add To Cart
1

Next Delivery Times

El Adobe Apartments	Sun	3:00 PM
Hayden Hall	Wed	1:00 PM
Palms on Scottsdale	Wed	10:30 AM
The Villas	Wed	10:30 AM
Villagio	Sun	7:00 PM

Page By AZPixels.com

http://web.archive.org/web/20070408025039/http://www.asudeliverydudes.com/ Thu Jan 26 2017 14:00:26 GMT-0600 (Central Standard Time)

EXHIBIT 8

Hello World!!!

EXHIBIT 9

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85269106
Filing Date: 03/17/2011

To the Commissioner for Trademarks:

MARK: Delivery Dudes, LLC (Standard Characters, see mark)
The literal element of the mark consists of Delivery Dudes, LLC.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Veneziano, Marc Vincent, a limited liability company legally organized under the laws of Arizona, having an address of
www.deliverydudes.com,
P.O.Box 51383
Boston, Massachusetts 02205
United States
requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 035: Retail and on-line grocery store services featuring home delivery service

In International Class 035, the mark was first used at least as early as 10/07/2005, and first used in commerce at least as early as 10/07/2005, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) this is the logo developed exclusively for Delivery Dudes, LLC and advertised on our previous website www.asudeliverydudes.com, and is still preserved on our facebook page under the Arizona State University Network. It is the same logo on business cards.
Specimen File1

For informational purposes only, applicant's website address is: www.deliverydudes.com
The applicant's current Correspondence Information:

Veneziano, Marc Vincent
Veneziano, Marc Vincent
www.deliverydudes.com
P.O.Box 51383
Boston, Massachusetts 02205
7817380470(phone)
venezianom@gmail.com (authorized)

A fee payment in the amount of $325 has been submitted with the application, representing payment for 1 class(es).

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.

Signature: /Marc V. Veneziano/ Date Signed: 03/17/2011
Signatory's Name: Marc V. Veneziano

Signatory's Position: Owner

RAM Sale Number: 5955
RAM Accounting Date: 03/17/2011

Serial Number: 85269106
Internet Transmission Date: Thu Mar 17 00:48:56 EDT 2011
TEAS Stamp: USPTO/BAS-XX.XXX.XX.XX-20110317004856744
828-85269106-48075f9a931be9f3eb3e974f914
5f6189b2-CC-5955-20110317001357519258

EXHIBIT 10

TRADEMARK ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Assignment

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Marc Vincent Veneziano		09/17/2012	INDIVIDUAL:

RECEIVING PARTY DATA

Name:	Delivery Dudes, LLC
Street Address:	169 SE 1st Avenue
City:	Delray Beach
State/Country:	FLORIDA
Postal Code:	33444
Entity Type:	LIMITED LIABILITY COMPANY: FLORIDA

PROPERTY NUMBERS Total: 2

Property Type	Number	Word Mark
Serial Number:	85269106	DELIVERY DUDES, LLC
Registration Number:	4101367	DELIVERY DUDES, LLC

OP $65.00 85269106

CORRESPONDENCE DATA

Fax Number:
Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.
Phone: 5619007060
Email: jkoss@delraydeliverydudes.com
Correspondent Name: Delivery Dudes, LLC
Address Line 1: 169 SE 1st Avenue
Address Line 4: Delray Beach, FLORIDA 33444

NAME OF SUBMITTER:	Jayson Koss
Signature:	/Jayson Koss/
Date:	09/24/2012

Total Attachments: 1
source=delivery dudes assn#page1.tif

ASSIGNMENT

WHEREAS, Marc Vincent Veneziano, whose address is P.O. Box 51383, Boston, MA 00205, has adopted and used in his business a trademark and/or service mark which mark is identified as "Delivery Dudes, LLC" (the "Mark"), which is registered under number 4101367, dated February 21, 2012, in the United States of America; and has agreed to sell said Mark; and

WHEREAS, Delivery Dudes, LLC, a Florida limited liability company, whose address is 169 SE 1st Ave., Delray Beach, FL 33444, has agreed to purchase said Mark and the good will of said Mark;

NOW THEREFORE, to all whom it may concern:

Be it known that for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration to him in hand paid, the receipt of which is hereby acknowledged, Marc Vincent Veneziano, by these presents does sell, assign, and transfer unto Delivery Dudes, LLC, a Florida limited liability company, the entire right, title and interest in and to the said Mark and the registration thereof, under number 4101367, together with the good will of the Mark and business in connection with which the said Mark was and/or is used.

Executed this 17 day of September, 2012.

By: _____
Marc Vincent Veneziano

MARC V. Veneziano
Print Name:

Edward Murphy
Print Name:

STATE OF Massachusetts

COUNTY OF Worcester

The foregoing instrument was acknowledged before me this 17 day of September, 2012, by Marc Vincent Veneziano, who [ ] is personally known by me, or who [X] produced a driver's license as identification.

EDWARD J. MURPHY
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
JULY 6, 2018

_____
NOTARY PUBLIC
State of _____ (Seal)
My Commission Expires: 7/6/18

EXHIBIT 11

Open Screenshot

INTERNET ARCHIVE Wayback Machine
http://deliverydudes.com/ Go
62 captures
14 Sep 08 - 23 Oct 16
AUG SEP SEP
2007 14 2008 2010
Close
Help

SEARCH

Sponsored Listings

Get Food Delivered Now
Find Menus & Order Food Online. Tons Of SF Restaurants- Try Us!
www.SeamlessWeb.com

Food Delivery Presidio
More Than 800 SF Restaurants that Deliver. Order On-Line or by Phone!
www.GrubHub.com

Home Delivery Experts
Nationwide home delivery. Furniture Assembly & Distribution
www.NonstopDelivery.com

Hungry After Work?
Browse Local Menus Online & Order Dinner While Commuting Back to SF!
www.CityMint.com

Chinese Delivery
Chinese Food To Go. Delivering In Potrero Hill, Soma & Downtown SF.
jadecafe.reachlocal.com

Sofia's II
Hungry? Excellent pizza restaurant Quick pizza delivery & carry-out.
sofiaspizzalasvegas.com

Pizza Delivery
Delicious Pizza - Delivery in SF Pac Heights, Nob, Financial, Soma.
www.CybellesOnBush.com

Funeral Flowers
Fast delivery to Phoenix area. Compare Prices, Our quality shows.
shop.azfirstcall.com

Restaurants
Greeley restaurants. Find local businesses on DexKnows.
www.DexKnows.com

In Water Flowers
Unique flower bouquets and orchids Outstanding service and delivery
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*Plus ICANN fee of 20 cents per domain name year.
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Related Searches

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- Thai Food Delivery
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$8.99/yr!
Protect yourself from spam, scams, prying eyes & worse!

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GoDaddy.com is the world's No. 1 ICANN-accredited domain name registrar for .COM, .NET, .ORG, .INFO, .BIZ and .US domain extensions.
Source: Name Intelligence, Inc. 2005

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http://web.archive.org/web/20080914073800/http://deliverydudes.com/ Thu Jan 26 2017 14:47:31 GMT-0600 (Central Standard Time)

EXHIBIT 12

Open Screenshot

INTERNET ARCHIVE Wayback Machine
http://deliverydudes.com/ Go
62 captures
14 Sep 08 - 23 Oct 16
SEP 23 FEB
2008 2010 2012
Close
Help

Domains, websites & everything* in between!*

WELCOME TO: deliverydudes.com

SEARCH

Is this your domain?
Add hosting, email and more.
GO

Want to buy this domain? Our Domain Buy Service can help you get it.

Get a FREE domain†
when you complete one of these valuable offers!
Powered by TrialPay®
Get your FREE domain now!

BOB PARSONS CEO & Founder of GoDaddy.com®
Learn how to succeed — in life and online — with straight talk from Go Daddy's CEO & Founder, Bob Parsons®.
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OF $75 OR MORE AT GODADDY.COM
Use code **PARKED20** when you check out.
SAVE 20%‡

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.com GO

Websites
- Build it yourself with one of our easy sitebuilders!
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Affordable Web Hosting
From the world's largest hostname provider!
.net CF Java php perl
ON SALE!††
As low as $2.99/mo

Everything In Between
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- Fast, spam-free email with a memorable email address.
- Marketing tools help you promote your business online.
- Sell online with 2009's "Most Popular Shopping Cart",+
- Go Daddy Marketplace® – Buy and sell just about anything.

Go Daddy MARKETPLACE®
Find these and other great deals now at GoDaddyMarketplace.com

MONSTER ENERGY HAT CAP k	Litter-Lifter™ Magic-S...	Fruta Planta 30 Capsules...	Baggallini Milano Bagg S...	Baby Bunting - Pizza Inf...
$19.88	$8.75	$16.95	$65.66	$23.51

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Go Daddy Super Bowl® Commercial • Danica Patrick • Dale Jr • Go Daddy Girls®

‡ Valid on orders of $75 or more at GoDaddy.com. Not applicable to ICANN fees, taxes, shipping and handling, sale-priced domain names, bulk domains, premium domains, Sunrise/Landrush domain registrations and pre-registrations, memberships or maintenance plans, additional disk space and bandwidth renewals, custom page layouts, incorporation and brand identity services, Go Daddy Marketplace® products, posters, die-cast cars or gift cards. Discount reflected in your shopping cart - cannot be used in conjunction with any other offer, discount or promotion.
* Plus ICANN fee of 18 cents per domain name year.
+Practical eCommerce survey, 2009.
† Good for one 1-year registration of any available .COM, .US, .BIZ, .INFO, .NET or .ORG
†† Annual discounts available on NEW purchases only.
GoDaddy.com is the world's No. 1 ICANN-accredited domain name registrar for .COM, .NET, .ORG, .INFO, .BIZ and .US domain extensions.
Source: RegistrarSTATS.com

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http://web.archive.org/web/20100923150744/http://deliverydudes.com/ Thu Jan 26 2017 14:48:14 GMT-0600 (Central Standard Time)

EXHIBIT 13

Open Screenshot

INTERNET ARCHIVE Wayback Machine
http://www.deliverydudes.com/ Go
62 captures
14 Sep 08 - 23 Oct 16
FEB MAR JAN
2008 17 2011 2013
Close
Help

Domains, websites & everything in between!

WELCOME TO: deliverydudes.com

SEARCH

Is this your domain?
Add hosting, email and more.
GO

Want to buy this domain? Our Domain Buy Service can help you get it.

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when you complete one of these valuable offers!
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Get your FREE domain now!

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ENTER

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Websites
- Build it yourself with one of our easy sitebuilders!
- Reliable website hosting keeps your site up and running.
- Let our web pros build your website, logo, banners and more.

Affordable Web Hosting
4th Generation Hosting from the world's largest hostname provider†
.net CF Java php perl
Starting at $4.99/mo

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PLUS a smoking hot crazy blonde.
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> Watch now

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- Marketing tools help you promote your business online.
- Sell online with 2009's "Most Popular Shopping Cart".+

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Go Daddy Super Bowl® Commercial • Danica Patrick • Dale Jr • Go Daddy Girls®

* Plus ICANN fee of 18 cents per domain name year. Discount based on new one-year registration prices as of 10/25/2010 with sale price reflected in your shopping cart at checkout. Discount applies to new registrations and renewals and cannot be used in conjunction with any other offer or promotion. Domains purchased through this offer will renew at regular price after the initial term has expired. Some limitations apply.
+Practical eCommerce survey, 2009.
† Good for one 1-year registration of any available .COM, .US, .BIZ, .INFO, .NET or .ORG
GoDaddy.com is the world's No. 1 ICANN-accredited domain name registrar for .COM, .NET, .ORG, .INFO, .BIZ and .US domain extensions.
Source: RegistrarSTATS.com
[1] GoDaddy.com is rated the world's largest hostname provider according to Netcraft®.

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http://web.archive.org/web/20110317084252/http://www.deliverydudes.com/ Thu Jan 26 2017 14:48:54 GMT-0600 (Central Standard Time)

EXHIBIT 14

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85269106
LAW OFFICE ASSIGNED	LAW OFFICE 111
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	035
DESCRIPTION	
Retail and on-line grocery store services featuring home delivery service	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/07/2005
FIRST USE IN COMMERCE DATE	At least as early as 10/07/2005
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	035
DESCRIPTION	
Retail and on-line grocery store services featuring home delivery service	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/07/2005
FIRST USE IN COMMERCE DATE	At least as early as 10/07/2005
STATEMENT TYPE	"**The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application**"*[for an application based on Section 1(a), Use in Commerce] OR* "**The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use**" *[for an application based on Section 1(b) Intent-to-Use].*
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT 11\852\691\85269106\xml4\ ROA0002.JPG
SPECIMEN DESCRIPTION	article describing applicant's services and displaying mark
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use DELIVERY, LLC apart from the mark as shown.
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Matthew H. Swyers/
SIGNATORY'S NAME	Matthew H. Swyers
SIGNATORY'S POSITION	Attorney of Record
DATE SIGNED	09/22/2011

RESPONSE SIGNATURE	/Matthew H. Swyers/
SIGNATORY'S NAME	Matthew H. Swyers
SIGNATORY'S POSITION	Attorney of Record
DATE SIGNED	09/22/2011
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Sep 22 16:54:57 EDT 2011
TEAS STAMP	USPTO/ROA-XX.XX.XXX.XXX-2 0110922165457313127-85269 106-480794095ec9d7bee85d4 cb644746aaed1-N/A-N/A-201 10922164527240649

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **85269106** has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES
Applicant proposes to amend the following class of goods/services in the application:
Current: Class 035 for Retail and on-line grocery store services featuring home delivery service
Original Filing Basis:
Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 10/07/2005 and first used in commerce at least as early as 10/07/2005, and is now in use in such commerce.

Proposed: Class 035 for Retail and on-line grocery store services featuring home delivery service
Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 10/07/2005 and first used in commerce at least as early as 10/07/2005, and is now in use in such commerce.
Applicant hereby submits a new specimen for Class 035. The specimen(s) submitted consists of article describing applicant's services and displaying mark.
"**The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application**" *[for an application based on Section 1(a), Use in Commerce] OR* "**The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use**" *[for an application based on Section 1(b) Intent-to-Use]*.
Specimen File1

ADDITIONAL STATEMENTS
Disclaimer
No claim is made to the exclusive right to use DELIVERY, LLC apart from the mark as shown.

SIGNATURE(S)
Declaration Signature
If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the

applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. 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 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; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Matthew H. Swyers/ Date: 09/22/2011
Signatory's Name: Matthew H. Swyers
Signatory's Position: Attorney of Record

Response Signature
Signature: /Matthew H. Swyers/ Date: 09/22/2011
Signatory's Name: Matthew H. Swyers
Signatory's Position: Attorney of Record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

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Paper, plastic or home delivery?

Grocery delivery services fill community niche

by Grayson Steinberg
published on Monday, September 25, 2006

ASU students living on or close to campus now have another option to buy grocery items from the comfort of their computer chairs.

Delivery Dudes, an online grocery delivery business, was launched about four weeks ago to deliver basic goods to students in residence halls and off-campus apartments in Tempe.

Deanna Dent / THE STATE PRESS

Marc Vendzio, along with others, represents the new delivery service, Delivery Dudes, which delivers around the ASU campus.

Russ Hancock, co-owner of Delivery Dudes with management junior Marc Vaneziano, said his business targets students who don't have transportation or the time to visit a grocery store.

Another student-run service, Mike's Campus Delivery, also offers grocery delivery for students living on or near campus.

The Web site, asudeliverydudes.com, offers about 300 items now, but Hancock, a supply chain management senior, said he's open to suggestions for new items.

"We do encourage feedback if somebody doesn't see what they would like," he said.

advertisement

Items are currently delivered on a schedule that alternates between mornings and afternoons to have the best chance of reaching students when they're actually around, Hancock added.

For example, Delivery Dudes would deliver to Manzanita Hall in the morning one day and in the afternoon on another, he said.

"We're trying to make it as convenient as possible," he said.

Students can use the service by creating an account with Delivery Dudes.

Free delivery is offered for first orders and a $5 charge is added after that, Hancock said.

Music education sophomore Jay Balk said he would use Delivery Dudes as long as delivery costs remained low.

"If I don't have time to go to the store, we can work out a specific time for them to deliver," Balk said.

Hancock said since starting the business, he has had about eight orders a week, usually ranging $35 to $40.

Once Hancock starts receiving between $3,000 and $4,000 a week in orders, he said he would consider buying his products from a wholesale distributor.

Delivery Dudes buys products from area grocery stores that offer the lowest prices on items, Hancock said.

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