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

Proceeding	91238874
Party	Plaintiff NFL Properties LLC and The Oakland Raiders
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Attachments	FINAL Reply ISO Motion to Amend and Motion for Summary Judgment re SIL-VER BLACK NATION.pdf(328554 bytes)

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

THE OAKLAND RAIDERS and NFL PROPERTIES LLC, Opposers, v. JOSEPH HONG, Applicant.	In re Application Serial No. 87/439,181 Mark: SILVER & BLACK NATION Published: September 12, 2017 Opposition No. 91238874

OPPOSERS' REPLY IN SUPPORT OF MOTION TO AMEND NOTICE OF OPPOSITION AND MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Faced with a well-supported summary judgment motion on *bona fide* intent, an applicant must come forward with objective documentary evidence of such intent, or must present an explanation or excuse sufficient to outweigh an admitted lack of documentary evidence. Opposers The Oakland Raiders and NFL Properties LLC (collectively, "Opposers") met their prima facie burden to prove that Applicant Joseph Hong ("Applicant" or "Mr. Hong") lacked the required *bona fide* intent to use the designation SILVER & BLACK NATION ("Applicant's Mark") when he filed Application Serial No. 87/439,181 (the "Application"). Instead of successfully rebutting this prima facie showing, Applicant launches a baseless attack on Opposers' motion to amend, and attempts to dodge summary judgment through declaration testimony that is irrelevant, inadmissible, and, ultimately, insufficient to defeat summary judgment. The Board should grant Opposers' motion to amend and motion for summary judgment on the issue of *bona fide* intent.

ARGUMENT

I. The Board Should Grant Opposers' Motion to Amend the Notice of Opposition.

It is well established that amendments should be "freely given" and "allowed with great liberality at any stage of the proceeding" unless "it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of any opposing parties." Fed. R. Civ. P. 15(a); *Am. Optical Corp. v. Am. Olean Tile Co.*, 168 U.S.P.Q. 471, 473 (TTAB 1971). Applicant has not argued that Opposers' requested amendment—to include a claim that Applicant lacked the required *bona fide* intent to use Applicant's Mark when he filed the Application—violates settled law or is prejudicial to Applicant's rights. Instead, Applicant asserts only that Paragraphs 22 and 23 of Opposers' proposed Amended Notice of Opposition contain "contradictory allegations," and that the Board should deny leave to amend as a result. (*See* TTABVUE Dkt. No. 22 at 5–8.) Applicant is wrong.

First, the allegations of Paragraphs 22 and 23 are not contradictory. Opposers do not anywhere allege that Applicant had a *bona fide* intent to use Applicant's Mark *at the time he filed the Application in May 2017*. Instead, Opposers allege, upon information and belief, *and as of the filing of the Notice of Opposition in early 2018*, that Applicant planned to use the designation SILVER AND BLACK NATION to invoke the Raiders. This in no way contradicts Opposers' allegation that Applicant lacked the *bona fide* intent required under when he filed the Application.

Second, even if the allegations in Paragraphs 22 and 23 are "contradictory" (they are not), the Federal Rules expressly contemplate alternative and inconsistent pleadings. *See* Fed. R. Civ. P. 8(d). Indeed, as the Board has recognized, "[i]t is clear that a pleading may present alternative statements of fact . . . and that inconsistent positions taken in the pleading may not be introduced in evidence against the pleader as admissions." *GTE Automatic Elec. Inc. v. Nippon Elec. Co.*, 213 U.S.P.Q. 507, 509 (TTAB Mar. 27, 1980). Applicant's argument ignores this well-established rule of pleading and the Board's consistent application of it.[1]

In short, the requested amendment does not violate settled law and is not prejudicial to Applicant's rights. And indeed, Applicant will suffer no undue prejudice from Opposers' additional ground for opposition; Applicant does not require discovery on the issue of his own *bona fide* intent to use Applicant's Mark in commerce. *See Hollywood Casino LLC v. Chateau Celeste, Inc.*, 116 U.S.P.Q.2d 1988, 1991 (TTAB 2015). Accordingly, the Board should grant Opposers' Motion to Amend the Notice of Opposition.

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[1] Instead, Applicant cites district court cases that do not even support Applicant's position—the court in *Openwave Messaging, Inc. v. Open-Xchange, Inc.*, No. 16-cv-00253-WHO, 2016 BL 362858, at *6–7 (N.D. Cal. Oct. 28, 2016) ultimately determined that the allegations at issue were, as they are here, entirely consistent, and denied Openware's motion to dismiss. And in *Amelio v. McCabe, Weisberg & Conway P.C.*, No. 14-1611, 2015 BL 241394, at *5 (W.D. Pa. July 28, 2015), the court dismissed a claim for improper debt collection on statute of limitations grounds because the plaintiff's allegation about the triggering event (the date the mortgage foreclosure action was filed) were contradicted by public court records of the foreclosure proceedings.

II. Opposers are Entitled to Summary Judgment that Applicant Lacked *Bona Fide* Intent.

Applicant's arguments on the merits fare no better. Applicant admits that there is an "absence" of documentary evidence that Applicant had a *bona fide* intent to use the designation SILVER & BLACK NATION when he filed the Application, and that this "absence" establishes a prima facie case that the Application is invalid. (*See* TTABVUE Dkt. No. 22 at 8–9.) Because Opposers made a prima facie showing of lack of bona fide intent, the burden shifted to Applicant to

> either come forward with objective documentary evidence demonstrating *bona fide* intent, or else provide "other facts which adequately explain or outweigh the applicant's failure to provide such documentary evidence." Without a valid excuse, "the absence of any documentary evidence on the part of an applicant regarding *bona fide* intent constitutes objective proof sufficient to prove that the applicant lack[ed] a bona fide intention to use its mark in commerce."

Kelly Servs. v. Creative Harbor, LLC, 846 F.3d 857, 865 (6th Cir. 2017) (quoting *Honda Motor Co. v. Winkelmann*, 90 U.S.P.Q.2d 1660, 1662 (TTAB 2009) and *Boston Red Sox Baseball Club LP v. Sherman*, 88 U.S.P.Q.2d 1581, 1587 (TTAB 2008) and citing *Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha Opp'n*, 26 U.S.P.Q.2d 1503, 1507 (TTAB 1993)). In other words, the Board "should grant [Opposers'] motion for summary judgment if (1) [Opposers] show an absence of objective documentary evidence of [Applicant's] intent to use the marks in commerce at the time of application, and (2) [Applicant] provides no valid explanation as to why it has produced no such evidence." *Rolex Watch U.S.A., Inc. v. PRL USA Holdings, Inc.*, No. 12 Civ. 6006, 2015 U.S. Dist. LEXIS 54766, at *13 (S.D.N.Y. Apr. 27, 2015) (citing *Honda Motor Co.*, 90 U.S.P.Q.2d at 1662).

Applicant did not come forward with any documentary evidence of *bona fide* intent in his response, and he failed to present an explanation or excuse sufficient to outweigh the complete and admitted lack of documentary evidence in this case. Applicant's rebuttal evidence consists of

the declarations of Applicant Joseph Hong, Connie R. Masters, Scott Garrison, and Shayne Hadley. For the reasons set forth below, these declarations are insufficient to rebut Opposers' prima facie showing that the Application is invalid for lack of *bona fide* intent, and Opposers are entitled to summary judgment.

A. The Hong Declaration Does Not Rebut Opposers' Prima Facie Showing of Lack of *Bona Fide* Intent.

The Declaration of Applicant Joseph Hong is insufficient to defeat summary judgment for a number of reasons. First, because Applicant has not introduced any documentary evidence to rebut Opposers' prima facie showing, Applicant was required to explain the lack of such evidence. Applicant makes no effort whatsoever to do so. To be clear, in his declaration, Mr. Hong claims that, among other things:

1. He retained Scott Garrison to work on the "Silver & Black Nation" project for a minimum of three hours per day Mondays through Fridays in exchange for an 18% ownership interest in "Silver and Black Nation." (Hong Decl. ¶ 6.)
2. Mr. Hong retained Shayne Hadley to promote the "Silver and Black Nation" brand for a minimum of four hours daily and to oversee numerous independent contractor brand ambassadors in exchange for a salary of $40,000.00 annually and a 3% ownership interest in "Silver and Black Nation." (*Id.* at ¶ 7.)
3. Mr. Hong and Mr. Garrison agreed to a budget of $200,000.00 for the initial manufacturing of the clothing line and $100,000.00 for the initial marketing of the clothing line. (*Id.*at ¶ 6.)
4. Mr. Hong and Mr. Garrison met at least three times a week between late January 2017 and the end of 2017, *id.*, *which totals more than 150 meetings*.
5. Mr. Hong and Mr. Garrison planned to commence manufacturing overseas less than one year after their last meeting. (*Id.*)

Yet Mr. Hong—an attorney himself—has no documents reflecting these substantial investments and these business transactions and arrangements, all of which would have significantly impacted the participants' legal rights and status (*e.g.*, grants of equity in a brand or company, designation of independent contractor status). Indeed, Mr. Hong did not even testify—let alone show through objective documentary evidence—that he at any time formed a business entity in which he could grant an ownership interest, or that he actually paid anyone for their participation in this project. Nor does Mr. Hong—again, an attorney himself—explain in his declaration or elsewhere why no such documents, not even a single email, calendar invite, or text, exist. Absent objective documentary evidence or explanation, Mr. Hong's Declaration is unconvincing, and simply does not rebut Opposers' prima facie case. *See Honda*, 90 U.S.P.Q.2d at 1662; *Boston Red Sox*, 88 U.S.P.Q.2d at 1587; *Kelly Servs.*, 846 F.3d at 865; *Rolex*, 2015 U.S. Dist. LEXIS 54766, at *13. Opposers are entitled to summary judgment on this ground alone.

Even if the Hong Declaration were probative of *bona fide* intent—it is not—the Hong Declaration should be excluded from the summary judgment record because (1) Mr. Hong failed to supplement his written discovery responses to reflect the facts presented in his declaration, *see* **Exhibit A**, Supplemental Declaration of Kathryn A. Feiereisel, ¶¶ 3–4; and (2) Mr. Hong's declaration contradicts his previous, sworn interrogatory responses.

Mr. Hong's failure to supplement his previous discovery responses to reflect the facts presented in his declaration bars Mr. Hong from offering those facts "to supply evidence on a motion . . . unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). Applicant has the burden to demonstrate that his violation of Rule 26 was substantially justified or is harmless. *See, e.g.*, *Flores v. AT&T Corp.*, No. EP-17-CV-00318-DB, 2019 U.S. Dist. LEXIS 118478, at *6 (W.D. Tex. Mar. 27, 2019). Yet Applicant makes no showing whatsoever that his failure to disclose these facts during discovery was substantially harmless or justified; in fact,

Applicant does not even acknowledge his failure to supplement his written discovery responses. The Hong Declaration should be excluded for this reason alone.

The Hong Declaration also contradicts Mr. Hong's previous, sworn responses to Opposers' interrogatories. For instance, Opposers asked Mr. Hong to "[i]dentify all agreements (including, but not limited to, oral and written licenses, assignments, coexistence agreements, and consents) entered into by Applicant, and/or contemplated or negotiated by Applicant but not consummated, regarding or relating to Applicant's Mark or the goods and services intended to be offered and/or sold using Applicant's Designation." (*See* TTABVUE Dkt. No. 15, Declaration of Kathryn A. Feiereisel, at Ex. 5, Interrog. No. 4.) Mr. Hong responded, clearly and unequivocally, "None." Now, Mr. Hong declares that he entered into oral agreements in which at least Mr. Garrison and Mr. Hadley agreed to spend twenty-plus hours a week developing the "Silver & Black Nation" brand in exchange for an ownership interest in that company and brand.

"'It is well settled that [the Board] may disregard an affidavit submitted solely for the purpose of opposing a motion for summary judgment when that affidavit is directly contradicted by [sworn] testimony.'" *Hollywood Casino LLC v. Chateau Celeste, Inc.*, 116 U.S.P.Q.2d 1988, 1997–98 (TTAB Dec. 14, 2015) (quoting *Del. Valley Floral Grp., Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1381 (Fed. Cir. 2010)). The Hong Declaration and Applicant's previous, sworn interrogatory responses are irreconcilable. Even if the Hong Declaration was probative of *bona fide* intent, the Board should nonetheless exclude it from the record for this additional reason.

B. The Garrison and Hadley Declarations Should Be Excluded From the Summary Judgment Record.

The Declarations of Scott Garrison and Shayne Hadley—which are, at bottom, rote restatements of Mr. Hong's declaration, and thus also not probative of *bona fide* intent—should also be excluded from the summary judgment record. Affidavits may only be submitted in opposition to a motion for summary judgment if they are (1) made on personal knowledge; and (2)

set forth facts that would be admissible in evidence. *See* TBMP § 528.05(b); Fed. R. Civ. P. 56(c)(4). Mr. Garrison and Mr. Hadley admit that at least part of their declarations are based upon "facts which are not from [their] personal knowledge." (Garrison Decl. ¶ 2; Hadley Decl. ¶ 2.) And indeed, in their declarations Mr. Garrison and Mr. Hadley describe Mr. Hong's desires and intent (*see, e.g.*, Garrison Decl. ¶¶ 4, 9; Hadley Decl. ¶ 9)—subjects of which they have no *personal* knowledge.

The remainder of both declarations catalogs conversations reflecting Mr. Hong's alleged intent to start a clothing company under the designation SILVER & BLACK NATION and indicia of that intent. These out-of-court statements—which are summarized in **Exhibits B and C**—are offered for the truth of the matters asserted therein, and are thus inadmissible hearsay. Fed. R. Evid. 801. Mr. Garrison and Mr. Hadley's declarations must be excluded as a result. *See, e.g.*, *Time Warner Entm't Co., L.P. v. Keyes*, 1999 TTAB LEXIS 454, at *1 n.3 (TTAB 1999) (refusing at summary judgment to consider portions of affidavits that were hearsay).

The Garrison and Hadley Declarations should also be excluded because Applicant failed to identify Mr. Garrison or Mr. Hadley as witnesses during discovery as required by Federal Rule of Civil Procedure 26. (*See* **Exhibit A**, Supplemental Affidavit of Kathryn A. Feiereisel.) Again, this failure bars Applicant from offering Mr. Garrison or Mr. Hadley "to supply evidence on a motion . . . unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). Applicant has the burden of demonstrating that his violation of Rule 26 was substantially justified or is harmless. *See, e.g.*, 2019 U.S. Dist. LEXIS 118478, at *6. And again, Applicant makes no showing whatsoever that his failure to disclose these witnesses was substantially harmless or justified; in fact, Applicant does not even acknowledge his failure to disclose Messrs. Garrison and Hadley or to supplement his written discovery requests to reflect their existence. The Garrison and Hadley Declarations should be excluded for this additional reason.

C. Even if it is Not Excluded, the Hadley Declaration Does Not Create a Genuine Issue of Material Fact Regarding *Bona Fide* Intent.

Even if the Board does not exclude the Hadley Declaration, that declaration does not create a genuine issue of material fact regarding *bona fide* intent. A fact is material if it is relevant and necessary to the outcome of the proceedings. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Under 15 U.S.C. § 1051(b)(1), an applicant must have a *bona fide* intent a*t the time it files its intent-to-use application*. Applicant filed the Application on May 5, 2017. By Mr. Hadley's account, he first met Mr. Hong more than two months later, on July 31, 2017. (Hadley Decl. ¶ 4.) While *objective, documentary evidence* that post-dates the filing of an intent-to-use application can *corroborate* other evidence of record of the applicants' intent to use, *see Lane Ltd. v. Jackson Int'l Trading Co.*, 33 U.S.P.Q.2d 1351, 1356 (TTAB 1994), hearsay testimony of a previously undisclosed third-party witness that post-dates the filing of such an application should carry no weight. *See, e.g.*, *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1443 (TTAB 2012); *Swiss Grill Ltd. v. Wolf Steel Ltd.*, 115 U.S.P.Q.2d 2001, 2009 (TTAB Sept. 10, 2015). Accordingly, Mr. Hadley's testimony that he worked with Mr. Hong on his purported "Silver & Black Nation" business months after Mr. Hong filed the Application is neither relevant nor necessary to the outcome of these proceedings, and does defeat summary judgment. *See Anderson*, 477 U.S. at 248.

D. The Masters Declaration Is Irrelevant To and Does Not Create a Genuine Issue of Material Fact Regarding *Bona Fide* Intent.

The Declaration of Connie M. Masters is also irrelevant to the issue of *bona fide* intent and therefore does not create a genuine issue of material fact sufficient to defeat summary judgment. The Masters Declaration—and indeed Applicant's entire so-called "Counterstatement of Disputed Material Facts"—are aimed at challenging the validity Opposers' rights to their SILVER & BLACK formative marks. Applicant has not challenged Opposers' standing or counterclaimed

for cancellation of these incontestable trademark registrations, and their validity is irrelevant to Applicant's *bona fide* intent. Accordingly, like the other declarations proffered by Applicant in his response, the Masters Declaration fails to preclude summary judgment on *bona fide* intent.

In sum, Opposers met their prima facie burden to prove a lack of *bona fide* intent by showing an absence of documentary evidence reflecting such intent. (*See* TTABVUE Dkt. No. 15.) Applicant admits as much. (*See* TTABVUE Dkt. No. 22 at 8–9.) Yet Applicant failed to offer any objective documentary evidence of *bona fide* intent in his response, and he failed to present an explanation or excuse sufficient to outweigh the complete and admitted lack of documentary evidence in this case. Opposers are entitled to summary judgment as a result.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in their opening brief, Opposers respectfully request that the Board (1) grant Opposers' Motion to Amend their Notice of Opposition to add the requested additional ground; and (2) grant Opposers' Motion for Summary Judgment, resulting in Opposers' opposition to Application Serial No. 87/439,181 being sustained.

Respectfully submitted,

Dated: September 3, 2019

By: *s/ Kathryn A. Feiereisel*

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2019, a copy of the foregoing Opposers' Reply In Support of Motion to Amend Notice of Opposition and Motion for Summary Judgment has been sent via email to:

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EXHIBIT A

Supplemental Declaration of
Kathryn A. Feiereisel

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

THE OAKLAND RAIDERS and NFL PROPERTIES LLC, Opposers, v. JOSEPH HONG, Applicant.	In re Application Serial No. 87/439,181 Mark: SILVER & BLACK NATION Published: September 12, 2017 Opposition No. 91238874

SUPPLEMENTAL DECLARATION OF KATHRYN A. FEIEREISEL IN SUPPORT OF OPPOSERS' MOTION FOR SUMMARY JUDGMENT

I, Kathryn A. Feiereisel, declare as follows:

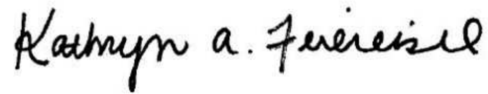
1. I am an attorney licensed to practice in Illinois and Colorado and am counsel for Opposers The Oakland Raiders ("The Raiders Club") and NFL Properties LLC ("NFLP," and together with The Raiders Club, "Opposers") in the above-captioned matter. I submit this supplemental declaration in support of Opposers' Motion for Summary Judgment. I have personal knowledge of the matters set forth in this declaration and if called as a witness I could and would testify competently to them.

2. Applicant never served initial disclosures in this matter.

3. Applicant has not at any time supplemented his responses to Opposers' First Set of Requests for Production of Documents (attached as Exhibit 4 to my pervious Declaration, at TTABVUE Dkt. No. 15), Applicant's Responses to Opposers' First Set of Interrogatories (attached as Exhibit 5 to my previous Declaration, at TTABVUE Dkt. No. 15), or Applicant's Responses to Opposers' First Set of Requests for Production of Documents (as Exhibit 6 to my previous Declaration, at TTABVUE Dkt. No. 15).

4. Applicant's written discovery responses described in Paragraph 3 above do not disclose Shane Garrison or Shayne Hadley as witnesses and do not disclose the facts set forth in the Declarations of Joseph Hong, Scott Garrison, or Shayne Hadley.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Executed on September 3, 2019

Kathryn A. Feiereisel

EXHIBIT B

Demonstrative Summary of
Declaration of Scott Garrison

Out of Court Statement	Offered To Prove That	Result
On about January 9, 2017 . . . Hong informed me of his desire to start a clothing brand called "Silver & Black Nation." (Garrison Decl. ¶ 4.)	In January 2017, Hong desired to start a clothing brand called "Silver and Black Nation."	Inadmissible Hearsay
Hong asked me for assistance in providing my extensive consulting experience with clothing brands wherein I was to assist in overseeing of the manufacturing, branding, marketing, and retail and internet distribution and sales for the "Silver & Black Nation" clothing brand. (*Id.*)	In January 2017, Hong asked Garrison for assistance in commencing business operations connected to the "Silver & Black Nation."	Inadmissible Hearsay
Hong informed me that he envisioned the brand to be a hybrid of the "Lululemon" and "Supreme" brands where the clothing Line was to entail sporty, casual and athletic high end short sleeve shirts, long sleeve shirts, shorts, pants, pullover sweatshirts, pullover hoodies and zip up hoodies that could be worn on a daily basis and nice enough to be worn to a restaurant. (*Id.*)	In January 2017, Hong had a vision for his "Silver & Black Nation" brand—a Lululemon / Supreme hybrid.	Inadmissible Hearsay
Hong wanted these types of apparel to be of high quality, like "Lululemon" apparel, with a cutting edge/progressive type image of "Supreme." (*Id.*)	In January 2017, Hong had a vision for his "Silver & Black Nation" brand—a Lululemon / Supreme hybrid.	Inadmissible Hearsay
Hong made it very clear to me that he had no intention to ever have any type of jersey apparel, i.e. baseball, basketball football or hockey, since jerseys "were not associated with high end apparel and could not be worn to restaurants." (*Id.*)	In January 2017, Hong had no intention of using a vision for his "Silver & Black Nation" brand in connection with certain types of athletic apparel.	Inadmissible Hearsay
Hong informed me that he envisioned the distribution and sales platforms to be via the Hong informed me that he	In January 2017, Hong envisioned that his distribution platform would	Inadmissible Hearsay

Out of Court Statement	Offered To Prove That	Result
envisioned the distribution and sales platforms to be via the internet and also at high end retail stores like Barneys, Neiman Marcus, Bergdorf Goodman and Bloomingdales. (*Id.* at ¶ 5.)	consist of internet and high-end retail sales.	
Hong also envisioned eventually opening free standing "Silver & Black Nation" retail stores in New York City, Los Angeles, San Francisco, Las Vegas, and Honolulu. (*Id.*)	In January 2017, Hong envisioned opening brick-and-mortar "Silver & Black Nation" stores.	Inadmissible Hearsay
I informed Hong that I would be happy to assist him with his "Silver & Black Nation" endeavor. (*Id.* at ¶ 6.)	In January 2017, Mr. Garrison agreed to assist Mr. Hong with his "Silver & Black Nation" endeavor.	Inadmissible Hearsay
Hong, therefore, stated that he would begin the process of retaining a trademark attorney to apply for the "Silver & Black Nation" mark. (*Id.*)	In January 2017, Mr. Hong began the process of retaining a trademark attorney to apply for the "Silver & Black Nation" mark.	Inadmissible Hearsay
After our initial meeting on or about January 9, 2017, Hong and I then had routine meetings at my office at least 3 to 4 times a week from Mondays through Fridays through December 2017. These meetings usually took place at approximately 7:00 a.m. in the mornings or at approximately 4:00 p.m. in the late afternoons. Each of the meetings lasted at least one hour wherein we discussed the options for manufacturing and distribution, as well as branding and marketing. (*Id.* at ¶ 7)	Between January 9, 2017 and December 2017, Hong and Garrison had routine meetings at Garrison's office that took place early in the morning or in the late afternoon. These meetings lasted for an hour, during which they discussed the options for manufacturing and distribution, as well as branding and marketing.	Inadmissible Hearsay
We also discussed the initial budget for manufacturing, branding, marketing and distribution. Hong's initial budget for the manufacturing	Between January 9, 2017 and December 2017, Hong and Garrison had routine meetings during which they also discussed the initial	Inadmissible Hearsay

Out of Court Statement	Offered To Prove That	Result
and distribution was $200,000.00. (*Id.*)	budget for manufacturing, branding, marketing and distribution, which was $200,000.00.	
The initial plan was to manufacture the clothing in either China or Indonesia based on my ties with manufacturing companies in China and Hong's ties with manufacturing companies in China and Indonesia. Hong's preference was Indonesia because he believed the quality would be better. (*Id.*)	Hong and Garrison's initial plan was to manufacture the clothing in either China or Indonesia based their existing ties, and Hong preferred was Indonesia because he believed the quality would be better.	Inadmissible Hearsay
The goal was to begin the manufacturing and distribution in or about the Fall of 2018. (*Id.*)	Hong's goal was to begin the manufacturing and distribution in or about the Fall of 2018.	Inadmissible Hearsay
The plans for branding and marketing were through the internet and also at various events around the country that were popular to people wearing the Lululemon and Supreme brands. We discussed and formulated plans of branding and marketing through youtube videos, instagram, and twitter. (*Id.*)	In 2017, Hong and Garrison planned to market Hong's brand through the internet, social media, and at various events.	Inadmissible Hearsay
Staffing for "Silver & Black Nation" was to include Hong, myself, one independent contractor consultant focused on marketing through youtube, Instagram, and twitter, and 3 independent contractors as brand ambassadors. (*Id.*)	In 2017, Hong and Garrison planned to staff the company with Hong, Garrison, Hadley, and 3 brand ambassadors.	Inadmissible Hearsay
The budget for these 4 independent contractors was to initially be in the total amount of $100,000.00 - to be distributed accordingly amongst the 4 - plus an equity ownership of 3% for the	In 2017, Hong and Garrison set a marketing budget of $100,000.00 plus a 3% equity share for Hadley.	Inadmissible Hearsay

Out of Court Statement	Offered To Prove That	Result
independent contractor consultant in the "Silver & Black Nation." (*Id.*)		
The independent contractor consultant was to work a minimum of 4 hours per day Mondays through Fridays, and the other 3 independent contractors as brand ambassadors were to work a minimum of 2 hours per day Mondays through Fridays. (*Id.*)	In 2017, Hong and Garrison envisioned that Hadley would work a minimum of 4 hours per day Mondays through Fridays, and the other 3 independent contractors as brand ambassadors were to work a minimum of 2 hours per day Mondays through Fridays.	Inadmissible Hearsay
Hong and I were going to mainly oversee the manufacturing and distribution of the clothing, as well as oversee the 4 independent contractors. (*Id.*)	In 2017, Hong and Garrison envisioned that they would oversee manufacturing and distribution of the clothing, as well as oversee the 4 independent contractors.	Inadmissible Hearsay
My commitment was for a minimum of 3 hours everyday from Mondays through Fridays. My compensation was going to be 18% equity ownership in "Silver & Black Nation." (*Id.*)	In 2017, Garrison committed to work for a minimum of 3 hours everyday from Mondays through Fridays in exchange for an 18% equity ownership in "Silver & Black Nation."	Inadmissible Hearsay

EXHIBIT C

Demonstrative Summary of
Declaration of Shanye Hadley

Out of Court Statement	Offered To Prove That	Result
In or about July 2017, I was introduced by a friend to Joseph Y. Hong ("Hong"). My friend had informed me that Hong was looking for a potential consultant/employee to assist him in launching a new clothing brand that was to be a combination/hybrid of Lululemon and Supreme. (Hadley Decl. ¶ 4.)	In July 2017, Hong desired to start a clothing brand called "Silver and Black Nation."	Inadmissible Hearsay
I had my first meeting with Hong on or about July 31, 2017 at Hong's office. At our first meeting, Hong informed me of his desire to start a clothing brand called "Silver & Black Nation" clothing brand. (*Id.* at ¶ 5.)	In July 2017, Hong asked Garrison for assistance in commencing business operations connected to the "Silver & Black Nation."	Inadmissible Hearsay
Hong informed me that he envisioned the brand to be a hybrid of the "Lululemon" and "Supreme" brands where the clothing Line was to entail sporty, casual and athletic high end short sleeve shirts, long sleeve shirts, shorts, pants, pullover sweatshirts, pullover hoodies and zip up hoodies that could be worn on a daily basis and nice enough to be worn to a restaurant. (*Id.*)	In July 2017, Hong had a vision for his "Silver & Black Nation" brand—a Lululemon / Supreme hybrid.	Inadmissible Hearsay
Hong wanted these types of apparel to be of high quality, like "Lululemon" apparel, with a cutting edge/progressive type image of "Supreme." (*Id.*)	In July 2017, Hong had a vision for his "Silver & Black Nation" brand—a Lululemon / Supreme hybrid.	Inadmissible Hearsay
Hong made it very clear to me that he had no intention to ever have any type of jersey apparel, i.e. baseball, basketball football or hockey, since jerseys "were not associated with high end apparel and could not be worn to restaurants." (*Id.*)	In July 2017, Hong had no intention of using a vision for his "Silver & Black Nation" brand in connection with certain types of athletic apparel.	Inadmissible Hearsay

Out of Court Statement	Offered To Prove That	Result
After our initial meeting on or about July 31, 2017, Hong and I then had routine meetings at my office at least 2 times a week from Mondays through Fridays through December 2017. These meetings usually took place at approximately 7:00 a.m. in the mornings or at approximately 4:00 p.m. in the late afternoons. Each of the meetings lasted at least one hour wherein we discussed the options and ideas of marketing the "Silver & Black Nation" brand through youtube, instagram, and twitter. (*Id.* at ¶ 7)	Between July 31, 2017 and December 2017, Hong and Hadley had routine meetings that lasted for an hour, during which they discussed marketing the Silver & Black Nation brand.	Inadmissible Hearsay
We also discussed me overseeing 3 independent contractors as brand ambassadors to assist me with the marketing. My compensation was to be $40,000.00 annually and 3% equity ownership in "Silver & Black Nation." I was to be responsible for the marketing through youtube, instagram and twitter and oversee the other 3 independent contractors as brand ambassadors. My commitment was for a minimum of 4 hours daily Mondays through Fridays. (*Id.*)	Between July 31, 2017 and December 2017, Hong and Hadley had routine meetings during which they discussed Hadley's responsibilities and compensation.	Inadmissible Hearsay
We had planned to begin the marketing in the Summer of 2018, prior to beginning of the manufacturing of the clothing line in the Fall of 2018. (*Id.*)	Between July 31, 2017 and December 2017, Hong and Hadley planned to begin marketing in the Summer of 2018, prior to beginning of the manufacturing of the clothing line in the Fall of 2018.	Inadmissible Hearsay