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Filing date: **09/12/2018**

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

Proceeding	91238881
Party	Plaintiff Phusion Projects, LLC
Correspondence Address	Phusion Projects, LLC 640 North LaSalle Drive, Suite 265 Chicago, IL 60654 UNITED STATES ds@saperlaw.com, trademark@saperlaw.com 312-527-4100
Submission	Other Motions/Papers
Filer's Name	Matthew R. Grothouse
Filer's email	ds@saperlaw.com, trademark@saperlaw.com
Signature	/Matthew R. Grothouse/
Date	09/12/2018
Attachments	Exhibit 1 9.12.2018.pdf(364646 bytes) OpposerMotionforSummaryJudgment.9.12.2018.pdf(552647 bytes)

Exhibit 1

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

In the Matter of:
Application No. 87/443,066 for the mark:
FLOLOCO in Classes 025 and 035

PHUSION PROJECTS, LLC

Opposer,

v.

FLOLOCO, LLC

Applicant.

Opposition No. 91238881

Application Serial No. 87443066

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

Pursuant to Fed. R. Civ. P. 36 and 37 C.F.R. § 2.120(h)(2), Opposer Phusion Projects, LLC ("Opposer") hereby requests that Applicant FLOLOCO, LLC ("Applicant") answer, separately and fully in writing, under oath, and within 30 days from service hereof, the Requests for Admission set forth below. Pursuant to Fed. R. Civ. P. 26(e), the responses to Opposer's First Set of Requests for Admission to Applicant are to be supplemented promptly upon acquisition of further additional information.

DEFINITIONS

1. "Opposer" means Phusion Projects, LLC, and any of their officers, directors, employees, agents and representatives and all persons acting or purporting to act on their behalf.

2. "FOUR LOKO" shall refer to any and all clothing, products, and beverages produced and provide by Phusion Projects, LLC that bear the phrase and mark "FOUR LOKO".

3. “Applicant” means FLOLOCO, LLC, d/b/a FLOLOCO and any of its officers, directors, employees, agents, and representatives and all persons acting or purporting to act on its behalf.

4. The terms “FLOLOCO,” “you,” and “your” refer to Applicant and include any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, owners, employees, agents, representatives, attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

5. “The FLOLOCO Mark” or “FLOLOCO Trademark” means the name and trademark “FLOLOCO”, as contained within the federal trademark application (No. 87443066) with a publication date of September 12, 2017.

6. “Opposer’s Marks” refers to the trademarks and service marks –both registered and unregistered—that Opposer owns under states and federal laws.

7. “Document” and “documents” are used in the broadest permissible sense under the Federal Rules of Civil Procedure and shall include, without limitation, tangible things and all written, typewritten, recorded (including audio or videotape or both), graphic, photographic (including negatives), facsimile transmissions, or computerized materials in whatever form, including copies, drafts, and reproductions thereof to which you have or have had access and every copy of such document which contains any commentary or notation not appearing in the original.

8. “Person” means any natural person or any business, legal or governmental entity or association.

9. “Entity” means any company, corporation, partnership, union, joint venture, sole proprietorship, association, government agency, organization or any other similar type of group through which business is conducted, or any director, officer, employee or agent thereof.

10. “Concerning” means relating to, referring to, describing, evidencing or constituting.

11. “Relate to”, “related,” and “relating to” shall mean and include any information concerning, comprising, identifying, summarizing, evidencing, containing, discussing, mentioning, describing, reflecting, comparing, analyzing, memorializing or pertaining in any way to the subject matter of the discovery request in which such term is used.

12. “All” and “each” shall be construed as all and each.

13. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

14. Masculine forms of any noun or pronoun shall embrace and be read to include the feminine or neutral, as the context may make appropriate.

15. The use of the singular form of any word also includes the plural and vice versa.

16. The use of a present tense shall include past tenses.

17. “Clothing” means any article of wear in the purview of international trademark classification 25 of the Nice Agreement Tenth Edition.

18. “Confuse” means to identify wrongly; or to mistake.

19. “Associate” means to connect (something or someone) with something else in one’s mind.

20. “Products” means commercially manufactured articles, especially articles refined for sale.

21. “Famous” means widely recognized by the general consuming public of the United States as a designation of source of goods or of the mark’s owner. The word should be understood to be consistent with the definition stated in Federal Trademark Dilution Act, 15 U.S.C. §§ 1125(c) and 1127.

22. “Beverages” means a drinkable (alcoholic or non-alcoholic) liquid.

23. “Constructive knowledge” means that an individual has indirect knowledge of a fact or suspects something to be true.

24. “Actual knowledge” indicates an honest belief.

25. “Applicant” refers to FLOLOCO, LLC.

26. The term “correspondence” includes but is not limited to communication by letter, e-mail, text message, phone call, or fax.

27. “Class” or “classes” refer(s) to the international trademark groupings listed in the Tenth Edition of the Nice Agreement.

INSTRUCTIONS

1. These Requests are intended to cover all knowledge in the possession of Applicant, or subject to its custody and or control, or available to Applicant wherever such information is located. Information includes but is not limited to, any of Applicant’s personnel and or third-party personnel used by Applicant, its agents, employees, joint venturers, partners, independent contractors, accountants or attorneys, or any other individual with whom information is kept.

2. Each matter is admitted unless, within 30 days after service of this Request, Applicant serves a written answer or objection addressed to the matter, signed by Applicant or its attorney.

3. Your written response to this request must comply with Rule 36 of the Federal Rules of Civil Procedure, in that if you do not admit each matter, you must separately respond under oath to each request within thirty (30) days of the service of this request by:

a. Admitting so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by you;

b. By denying so much of the matter involved in the request as is untrue; and

c. Specifying so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge.

4. If an objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why Applicant cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that Applicant qualify an answer or deny only a part of the matter of which an admission is requested, it shall specify so much of it as is true and qualify or deny the remainder.

5. If your response is that only part of a request for admission is objectionable, the remainder of the request shall be answered.

6. Applicant may not give lack of information or knowledge as a reason for failure to admit or deny unless it states that it has made reasonable inquiry and that information known or readily obtainable by it is insufficient to enable it to admit or deny.

7. If Applicant does not admit an item, it shall:

a. Produce to Plaintiffs all documents concerning the requested admission in its possession, custody or control;

b. State, with particularity, the factual basis upon which its response is based;

c. Identify all persons with knowledge of the requested admission; and

d. These Requests for Admission are continuing. Applicant shall promptly supply by way of supplemental responses any and all additional information that may become known prior to any hearing in or trial of this action pursuant to Federal Rule of Civil Procedure 26(e).

8. Unless otherwise stated, the relevant time period for the requests below is January 1, 2010 to the present.

REQUESTS FOR ADMISSION

1. Admit that You intend to use the FLOLOCO market to market and sell clothing and other attire, including shirts, hats, and caps.

2. Admit that you intend to sell goods bearing the FLOLOCO Mark online through an online store.

3. Admit that Opposer owns a federal registration for the mark FOUR LOKO (Reg. No. 4428131) for clothing and headgear, namely, shirts, hats and caps.

4. Admit that FLOLOCO knows Opposer uses the FOUR LOKO mark in connection with shirts and hats, among other goods.

5. Admit that Opposer had constructive knowledge of the existence of FOUR LOKO prior to FLOLOCO's effective date of filing with the U.S. Patent and Trademark Office ("USPTO").

6. Admit that Opposer had constructive knowledge of Phusion's registration of its FOUR LOKO mark at the time Opposer filed the FLOLOCO trademark application.

7. Admit that Opposer saw shirts and/or hats featuring or otherwise bearing the phrase "FOUR LOKO" before it filed the FLOLOCO Application.

8. Admit that the word FLOLOCO shares five of its seven letters with the phrase "FOUR LOKO."

9. Admit that the terms "LOCO" and "LOKO" are undistinguishable from an auditory standpoint.

10. Admit that the terms "FLO" and "FOUR" both start with the letter "f."

11. Admit that the terms "FLO" and "FOUR" are both one syllable.

12. Admit that the FOUR LOKO mark is "famous" within the meaning of the Federal Trademark Dilution Act, 15 U.S.C. §§ 1125(c) and 1127.

13. Admit that the FOUR LOKO mark became "famous" within the meaning of the Federal Trademark Dilution Act, 15 U.S.C. §§ 1125(c) and 1127, before FLOLOCO began manufacturing and selling clothing using the FLOLOCO mark.

14. Admit that the FOUR LOKO brand name is widely known and carries substantial commercial currency.

15. Admit that Applicant did not seek Opposer's permission before filing the FLOLOCO application.

16. Admit that Applicant did not hire an attorney to perform a trademark search for its FLOLOCO Mark before filing its federal trademark application.

17. Admit that Applicant did not consult with an attorney about its FLOLOCO Mark before filing its application.

18. Admit that no attorney assisted Applicant in filing its federal trademark application for FLOLOCO.

19. Admit that you have received e-mails, documents, phone calls, or any other type of correspondence intended for Phusion about FOUR LOKO products.

20. Admit that the brand name FLOLOCO could causes consumers who hear or think of your brand to associate FLOLOCO with FOUR LOKO.

21. Admit that consumers could easily confuse the name FLOLOCO with the name FOUR LOKO.

22. Admit that Applicant would have filed the FLOLOCO application even if an attorney advised it of Opposer's Marks.

23. Admit that Applicant would object to a third party starting to use a mark called FLOWLOCO mark in connection with clothing and other attire.

24. Admit that Applicant would object to a third party starting to use the mark SLOLOCO in connection with clothing and other attire.

Respectfully submitted,

PHUSION PROJECTS, LLC

Date: July 16, 2018

/s/ Matthew R. Grothouse
Matthew R. Grothouse
Saper Law Offices, LLC
505 N. LaSalle Suite 350
Chicago, Illinois 60654
Attorney No. 6314834
matt@saperlaw.com
(312) 527-4100

*Attorney for Oppo*ser.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT** was served on Counsel for Applicant via electronic mail to the email addresses below:

TODD WENGROVSKY
LAW OFFICES OF TODD WENGROVSKY PLLC
285 SOUTHFIELD ROAD, BOX 585
CALVERTON, NY 11933
UNITED STATES
contact@twlegal.com
Phone: 631-727-3400

Date: July 16, 2018

By: Matthew R. Grothouse
Matthew R. Grothouse
Saper Law Offices, LLC
505 N. LaSalle Suite 350
Chicago, Illinois 60654
(312) 527-4100
matt@saperlaw.com

Attorneys for Opposer.

Gmail by Google

Matt Grothouse <matt@saperlaw.com>

Phusion Projects, LLC's Initial Disclosures, Discovery, and Proposed Protective Order

Matt Grothouse <matt@saperlaw.com> Mon, Jul 16, 2018 at 3:24 PM
To: "Law Offices of Todd Wengrovsky, PLLC." <contact@twlegal.com>
Cc: Daliah Saper <ds@saperlaw.com>

Todd,

Attached are additional discovery requests from Opposer.

I am sure you are quite aware of the egregious delays in Applicant serving (or not serving) its discovery responses. And I am sure you are also aware of the list of excuses piling up. I am not interested in any more excuses.

Sincerely,

Matt Grothouse
Associate Attorney
Saper Law Offices, LLC
505 North LaSalle, Suite 350
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T: 312.527.4100
matt@saperlaw.com

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2 attachments

FirstSetofRequestsforAdmission 7.16.2018.pdf
155K

Opposer'sSecondSetofRequestsforProduction.716.2018.pdf
130K

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

In the Matter of:
Application No. 87/443,066 for the mark:
FLOLOCO in Classes 025 and 035

PHUSION PROJECTS, LLC Opposer, v. FLOLOCO, LLC Applicant.	Opposition No. 91238881 Application Serial No. 87443066

OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56 and 37 C.F.R. § 2.127(e), Phusion Projects, LLC ("Opposer") hereby moves for summary judgment against Applicant FOLOCO, LLC ("Applicant") because there is no genuine issue of material fact as to the likelihood of confusion between Applicant's mark and Opposer's marks and, therefore, registration of Applicant's mark is improper under Lanham Trademark Act Section 2(d). Accordingly, the Applicant's application (Serial No. 87443066) should be cancelled in accordance with Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 309.03(c)(1). In support thereof, Opposer submits the following:

I. SUMMARY JUDGMENT STANDARD

"[S]ummary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(c). In reviewing a summary judgment motion, the Board may consider requests for admission and requests for production and their responses if they are provided with the moving party's brief. 37 C.F.R. § 2.127(e)(2). "It is undisputed that failure to answer or object

to a proper request for admission is itself an admission: [Fed. R. Civ. P. 36(a)] itself so states." *Asea, Inc. v. S. Pac. Transp. Co.*, 669 F.2d 1242, 1245 (9th Cir. 1981).

II. STATEMENT OF UNDISPUTED FACTS

A. Applicant intends to use the FLOLOCO mark to market and sell clothing and other attire, including shirts, hats, and caps. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 1.[1]

B. Opposer owns a federal registration for the mark FOUR LOKO (Reg. No. 4428131) for clothing and headgear, namely, shirts, hats and caps. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 3.

C. Applicant intends to sell goods bearing the FLOLOCO mark through an online store. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 2.

D. Opposer sells or license the sale of its FOUR LOKO shirts and hats via online stores.

E. FLOLOCO shares five of its seven letters with the phrase "FOUR LOKO." *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 8.

F. The terms "LOCO" and "LOKO" are undistinguishable from an auditory standpoint. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 9.

G. The terms "FLO" and "FOUR" both start with the letter "f." *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 10.

H. The terms "FLO" and "FOUR" are both one syllable. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 11.

[1] Opposer served Applicant with Opposer's First Set of Requests for Admission on July 16, 2018. Applicant did not serve any responses to the requests within thirty days, nor has Applicant served responses to date. Therefore, all twenty-four of Opposer's requests for admission are deemed admitted for evidence purposes. Fed. R. Civ. P. 36(a).

I. Opposer's FOUR LOKO mark is "famous" within the meaning of the Federal Trademark Dilution Act, 15 U.S.C. §§ 1125(c) and 1127. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 12.

J. The FOUR LOKO brand name is widely known and carries substantial commercial currency. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 14.

K. Applicant did not seek Opposer's permission before filing the FLOLOCO application. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 15.

L. Applicant did not hire an attorney to perform a trademark search for its FLOLOCO mark before filing its federal trademark application. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 16.

M. Applicant did not consult with an attorney about its FLOLOCO Mark before filing its application. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 17.

N. No attorney assisted Applicant in filing its federal trademark application for FLOLOCO. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 18.

O. Consumers are high likely to confuse the source of the clothing clothing and hats sold under the FLOLOCO mark with the clothing and hats sold under the FOUR LOKO mark. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 19-21.

III. ARGUMENT

Applicant's FLOLOCO mark is likely to cause consumer confusion with Opposer's FOUR LOKO mark for the same and similar goods.

A. Opposition Standard

The party seeking to oppose a registration under 15 U.S.C. § 1064 must prove that (1) it has standing and that (2) there are valid grounds for opposing the registration. *See International*

Order of Job's Daughters v. Lindeburg & Co., 727 F.2d 1087, 1091 (Fed.Cir.1984). In the context of the USPTO, "standing is conferred by Section 13 of the Lanham Act, which provides, in pertinent part, that "any person who believes that he would be damaged by the registration of a mark . . . may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor." 15 U.S.C. § 1063(a). In addition to meeting the broad requirements of Section 13, an opposer must satisfy two judicially-created standing requirements. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1376 (Fed. Cir. 2012). Specifically, an opposer must show: (1) a "real interest" in the proceeding; and (2) a "reasonable basis" for believing that it would suffer damage if the mark is registered. *Id.* Under the "real interest" requirement, an opposer must have " legitimate personal interest in the opposition." *Id.* With respect to the second inquiry, the opposer's belief of damage "must have a reasonable basis in fact." *Id.*

B. Opposer Has Standing.

Here, Opposer validly and reasonably (1) believes it would be damaged by the registration of the mark at issue and has paid the prescribed fee; (2) has a "real interest" or a "legitimate personal interest in the opposition" as the registration of the mark at issue will directly affect the value, source identifying nature, and enforceability of Opposer's mark; and (3) has a reasonable basis to believe it will be damaged by the registration of the at-issue mark. *See* Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 309.03(b).

C. Opposer Has Valid Grounds For Opposing the Registration.

Registration of Applicant's FLOLOCO mark is improper under Lanham Trademark Act Section 2(d) because it is likely to cause consumer confusion with Opposer's FOUR LOKO mark for the exact same goods. Accordingly, the Applicant's application (Serial No. 87443066) should

be denied registration in accordance with Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 309.03(c)(1).

"Likelihood of confusion under the Lanham Act, 15 U.S.C. § 1052(d), is a legal determination based upon factual underpinnings." *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005). The TTAB determines the question on a case-specific basis by applying the thirteen factors set forth in *In re E.I. DuPont DeNemours & Co.,* 476 F.2d 1357, 1361 (C.C.P.A.1973). *Id.* Most pertinent to the opposition at issue are (1) the similarity of the marks in their entireties as to appearance, sounds, connotation, and commercial impression; (2) the similarity of the goods and services used under each mark; (3) the similarity of the channels of trade of the trademarked goods; and, (4) the fame of Opposer's mark.

1. Similarity of the Marks.

Applicant's mark so resembles Opposer's registered mark as to be likely, when used on or in connection with the goods or services of the Applicant, to cause confusion, or to cause mistake, or to deceive. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369 (Fed. Cir. 2005). First, Applicant's mark is extremely similar to Opposer's mark as to appearance, sounds, connotation, and commercial impression. From a visual standpoint, both marks begin with a short word that starts with the letter "f" and both marks are then followed by the word "loko" (or "loco"). From an auditory standpoint, both marks sound extremely similar because they both have the same number of syllables, start with the "f" sound, and end with the "loco" sound. Lastly, both marks carry the "loco (Spanish for "crazy") connotation and commercial impression.

2. *Similarity of Goods and Services.*

Second, both marks are used in connection with the exact same goods (t-shirts and hats) and Applicant's additional goods and services are closely related to the shirt and hats (additional clothing items and retail store services for the clothing items).

3. *Similarity of Channels of Trade.*

Third, Applicant intends to sell goods bearing the FLOLOCO mark through an online store while Opposer sells or licenses the sale of its FOUR LOKO-branded shirts and hats through online stores.

4. Opposer's FOUR LOKO Mark is Famous.

Opposer's FOUR LOKO mark is "famous" within the meaning of the Federal Trademark Dilution Act, 15 U.S.C. §§ 1125(c) and 1127, as the brand name carries substantial commercial currency. Applicant has admitted this fact. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 12.

Combined, these four factors overwhelmingly demonstrate that Applicant's mark is likely to confusion, mistake, or deception with Opposer's mark. Indeed, Applicant all but admitted that its applied-for-mark is likely to cause consumer confusion. *See* Exhibit 1, Oppsr.'s Reqs. Admis., ¶ 19-21.

CONCLUSION

Registration of Applicant's FLOLOCO mark would be improper under Lanham Trademark Act Section 2(d) because it is likely to cause consumer confusion with Opposer's FOUR LOKO mark for the exact same goods. Accordingly, the Applicant's application (Serial No. 87443066) should be denied registration in accordance with Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 309.03(c)(1).

Dated: September 12, 2018

Respectfully submitted,

Phusion Projects, LLC

By: /*Matthew R. Grothouse*/
Matthew R. Grothouse
Saper Law Offices, LLC
505 N. LaSalle Suite 350
Chicago, Illinois 60654
(312) 527-4100
matt@saperlaw.com

Attorney for Opposer.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSER'S MOTINO FOR SUMMARY JUDGMENT** was served on Counsel for Applicant via electronic mail to the email addresses below:

TODD WENGROVSKY
LAW OFFICES OF TODD WENGROVSKY PLLC
285 SOUTHFIELD ROAD, BOX 585
CALVERTON, NY 11933
UNITED STATES
contact@twlegal.com
Phone: 631-727-3400

Date: September 12, 2018

By: /*Matthew R. Grothouse*/
Matthew R. Grothouse
Saper Law Offices, LLC
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Chicago, Illinois 60654
(312) 527-4100
matt@saperlaw.com

Attorneys for Opposer.

Exhibit 1

Gmail by Google

Matt Grothouse <matt@saperlaw.com>

Phusion Projects, LLC's Initial Disclosures, Discovery, and Proposed Protective Order

Matt Grothouse <matt@saperlaw.com> Mon, Jul 16, 2018 at 3:24 PM
To: "Law Offices of Todd Wengrovsky, PLLC." <contact@twlegal.com>
Cc: Daliah Saper <ds@saperlaw.com>

Todd,

Attached are additional discovery requests from Opposer.

I am sure you are quite aware of the egregious delays in Applicant serving (or not serving) its discovery responses. And I am sure you are also aware of the list of excuses piling up. I am not interested in any more excuses.

Sincerely,

Matt Grothouse
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Application No. 87/443,066 for the mark:
FLOLOCO in Classes 025 and 035

PHUSION PROJECTS, LLC Opposer, v. FLOLOCO, LLC Applicant.	Opposition No. 91238881 Application Serial No. 87443066

DECLARATION OF MATTHEW R. GROTHOUSE IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

I, Matthew R. Grothouse, declare as follows:

1. I am one of the attorneys for Opposer, Phusion Projects, LLC, in the above-referenced Opposition proceeding. I have personal knowledge of the facts contained in this Declaration and, if called up to do so, I could and would testify competently thereto.

2. Attached as Exhibit 1 are true and correct copies of Opposer's First Set of Requests or Admission served on counsel for Applicant on June 16, 2018, along with the related email correspondence between myself and Applicant's counsel showing such service.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed: September 12, 2018

/s/ Matthew R. Grothouse
Matthew R. Grothouse

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DECLARATION OF MATTHEW R. GROTHOUSE IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT** was served on Counsel for Applicant via electronic mail to the email addresses below:

TODD WENGROVSKY
LAW OFFICES OF TODD WENGROVSKY PLLC
285 SOUTHFIELD ROAD, BOX 585
CALVERTON, NY 11933
UNITED STATES
contact@twlegal.com
Phone: 631-727-3400

Date: September 12, 2018

By: /*Matthew R. Grothouse*/
Matthew R. Grothouse
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(312) 527-4100
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Attorneys for Opposer.