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

Proceeding	91239337
Party	Plaintiff Rotary Club of Houston, Inc.
Correspondence Address	MICHAEL J GARVIN VORYS SATER SEYMOUR AND PEASE LLP 200 PUBLIC SQUARESUITE 1400 CLEVELAND, OH 44114-2327 UNITED STATES mjgarvin@vorys.com, mawatkins@vorys.com, vclombardozzi@vorys.com, iplaw@vorys.com 216-479-6100
Submission	Response to Board Order/Inquiry
Filer's Name	Vincent C. Lombardozzi
Filer's email	iplaw@vorys.com, vclombardozzi@vorys.com, mjgarvin@vorys.com
Signature	/vcl/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 87584637.

Rotary Club of Houston, Inc.

Opposer,

v.

Lombardi Foundation Inc.

Applicant.

Opposition No. 91239337

**OPPOSER’S REPLY IN SUPPORT
OF ITS STANDING TO OPPOSE APPLICATION**

Opposer Rotary Club of Houston, Inc. (“Rotary Houston”) submits this Reply to Applicant Lombardi Foundation Inc.’s (“Applicant”) Response to Rotary Houston’s Supplemental Brief on Standing (“Standing Response”) in accordance with Trademark Rule 2.127.

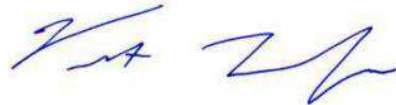
In brief, Applicant’s Standing Response does not actually address the standing issue, but rather provides a disguised sur-reply in opposition to Rotary Houston’s motion for summary judgment (“Summary Judgment Motion”). Specifically, the Standing Response rests entirely on the erroneous argument made by Applicant in opposition to the Summary Judgment Motion (“Summary Judgment Opposition”) that Rotary Houston was a mere licensee of the mark LOMBARDI AWARD (the “Mark”) and that its license rights were revoked by an undefined entity described as “the Lombardi family.” Rotary Houston has already demonstrated conclusively that this argument is meritless in its briefs in support of the Summary Judgment Motion, but will reiterate these arguments in summary here because Applicant’s Response focuses on them.

Applicant first argues that Rotary Houston was a mere licensee of the Mark (Standing Resp., 34 TTABVUE 4-6.), which is identical to an argument it made in its Summary Judgment Opposition (29 TTABVUE 10-11, 15.). But Rotary Houston already rebutted that argument with the following points in its reply in support of the Summary Judgment Motion (“Rotary Houston’s Reply”): (a) Applicant had failed to supply any legal authority supporting the proposition that the Lombardi family had any proprietary rights in the name “Lombardi” at the time of Vince Lombardi’s death (Rotary Houston’s Reply, 31 TTABVUE 3-6.); and (b) Applicant itself provided evidence that the Lombardi family did not begin to consider or to police any trademark rights in the name Lombardi until at least several years after Rotary Houston’s use of the Mark (Rotary Houston’s Reply, 31 TTABVUE 4). The Standing Response does not even address these points, let alone cite any contravening legal authority. Instead, Applicant rehashes its argument that Rotary Houston was a licensee of the Mark LOMBARDI AWARD because Vince Lombardi’s widow consented to use of the Lombardi surname. As with the Summary Judgment Opposition, Applicant fails to cite any legal authority supporting the proposition that consent to use a surname in which a party has no legally enforceable interest constitutes a license to use a trademark that incorporates that surname.¹

Applicant’s other two arguments – that Rotary Houston (purportedly) does not have standing and does not have priority – fail for the same reason. As with Applicant’s first argument, both arguments assume that Rotary Houston was a licensee of the Mark and that “the Lombardi family” had the right to revoke that alleged license, while again citing absolutely no legal support.

¹ Even if there were legal support for the argument that the consent from Marie Lombardi constitutes a license to use the Mark LOMBARDI AWARD, Applicant also fails to address the cases cited by Rotary Houston showing that such a “license” would not have been revocable at will because it was made in exchange for consideration, namely, Rotary Houston’s fulfilled promise to hold an award ceremony and to donate the proceeds from that ceremony to cancer research. (Rotary Houston’s Reply, 31 TTABVUE 5.)

For the foregoing reasons, the Board should determine that Rotary Houston has proved its standing to bring this Opposition and thereafter grant summary judgment in Rotary Houston's favor for the reasons stated in the Summary Judgment Motion.



Dated: June 8, 2020

Michael J. Garvin
Vincent C. Lombardozzi
Vorys, Sater, Seymour and Pease LLP
1909 K Street, NW, Ninth Floor
Washington, DC 20006
E-Mail: iplaw@vorys.com

Attorneys for Rotary Houston

CERTIFICATE OF SERVICE

The foregoing OPPOSER'S REPLY IN SUPPORT OF ITS STANDING TO OPPOSE APPLICATION was served on counsel for Applicant by electronic mail at the following email address:

mtodd@polsinelli.com
dmullarkey@polsinelli.com
uspt@polsinelli.com
doecking@polsinelli.com
jwillard@polsinelli.com

Date: June 8, 2020



Vincent C. Lombardozzi

Attorney for Rotary Houston