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

Proceeding	91241481
Party	Defendant THE TAI WALKER COMPANY, LLC, TY WALKER
Correspondence Address	Ty Walker PO BOX 2809 New York, NY 10163 UNITED STATES Email: smokeyislandgrille@gmail.com, info@taiwalker.com
Submission	Motion to Dismiss - Rule 12(b)
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Date	06/26/2018
Attachments	smokey.pdf(80731 bytes)

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

SMOKEY ISLAND GRILLE LLC

Opposition No.: 91241481

Opposer,

V

SMOKEY ISLAND GRILLE JAMAICAN STYLE

THE TAI WALKER COMPANY, LLC, TY WALKER

Applicant.

MOTION TO DISMISS

Comes now, Applicant, by and through undersigned counsel, and files its Motion to Dismiss, and in support hereof states:

1. Opposer claims that it is the owner of two Caribbean restaurants in Brooklyn, New York.
2. Opposer claims that it has operated these restaurants since 2012.
3. Opposer claims that its trademark has become famous, as defined by the Lanham Act.
4. Opposer fails to state a claim for trademark dilution under 15 U.S.C. § 1125(c) as only “*the owner* of a famous mark...shall be entitled to an injunction against another person who, at any time after the owner’s mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark...” 15 U.S.C. 15 U.S.C. § 1125(c).
5. The actual owner is the exclusive party given the right to bring a trademark dilution claim. *See Thane Int’l v. Trek Bicycle Corp.*, 305 F.3d 894, 907 (9th Cir. 2002) (stating that trademark dilution under § 1125(c) “limits protection to the owners of a famous mark”) (citing 15 U.S.C. §1125(c)(1)); see also *Nissan Motor Co. v. Nissan Computer Corp.*, 378 F.3d 1002,

1012 (9th Cir. 2004)(stating that the “point of dilution is to protect the owner’s investment in the mark”).

6. Applicant is the actual owner of the mark or, at a minimum, an owner of the company which owns the mark.

7. Further, Opposer fails to state with any sort of particularity how SMOKEY ISLAND GRILLE, LLC, which has allegedly owned two restaurants under the mark for six (6) years has become famous.

8. The exhibits attached by Opposer, on their face, shows a lack of a claim to fame.

9. Opposer has thus failed to state a claim for dilution under 15 U.S.C. § 1063 and its claim should be dismissed.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on stephanie@hendricksfirm.com on this 26th day of June, 2018.

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