

ESTTA Tracking number: **ESTTA1323490**Filing date: **11/20/2023**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91281414
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Date	11/20/2023
Attachments	11-20-2023 BIO TreeDeFi Mtn to Dismiss.pdf(224757 bytes)

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

In re Trademark Application Serial No. 90881203
Filed: August 13, 2021
Published: June 28, 2022
Trademark: TREEDEFI

NICCOLÒ MASCARO,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91281414
)	
TREEDEFI LTD,)	
)	
Applicant.)	

**OPPOSER’S RESPONSE TO APPLICANT’S MOTION
TO DISMISS THE NOTICE OF OPPOSITION FOR FAILURE TO
STATE A CLAIM UNDER FRCP 12(b)(6)**

On July 21, 2023, the Board issued an Order noting that there were typographical errors in Opposer Niccolò Mascaro’s (“Opposer”) Notice of Opposition with respect to the classes identified in Opposer’s claims for nonuse, non-ownership, and lack of bona fide intent to use.¹ (23 TTABVUE at n. 6). The Board rejected Applicant TreeDeFi Ltd.’s (“Applicant”) other arguments with respect to these claims, in particular finding that it was inappropriate for Applicant to rely on materials outside the pleadings and that reminding Applicant that the purpose of a motion to dismiss is not determine the merits of the case, but rather to test the sufficiency of the pleadings. (*Id.* at 6). On August 18, 2023, Opposer filed an amended notice of opposition fixing these

¹ The Board also dismissed Opposer’s fraud claim for failure to state a claim because Opposer was not able to plead specific facts showing Applicant’s intent to commit fraud. Opposer has chosen not to replead this claim at this point. Rather, Opposer intends to take discovery on this matter and will move for leave to amend in the future should discovery lead to additional evidence of Applicant’s intent to commit fraud.

typographical errors. (24 TTABVUE). Rather than heeding the Board's advice regarding the purpose of a motion to dismiss, Applicant instead filed another motion to dismiss in which it doubled down on its rejected strategies. In particular, Applicant again tries to convince the Board to consider matters outside of the pleadings and to argue the merits of its case. These arguments are simply improper in this procedural context. Opposer's amended notice of opposition states claims for: (1) Applicant's lack of ownership of the mark for the goods in Class 42; (2) Applicant's lack of use of the mark in commerce for the goods in Class 42; and (3) Applicant's lack of bona fide intent to use the mark in commerce for the goods in Class 9 under the Board's precedent. Applicant's Motion should be denied.

I. FACTS

The Board is already generally familiar with the facts of this case. They are repeated here for the Board's convenience. Opposer is one of the creators of the decentralized finance platform TreeDeFi. (24 TTABVUE § 1). TreeDeFi aims to help the environment by planting trees and using blockchain technology to allow users to collect profits in cryptocurrency based on the amount of carbon dioxide absorbed through the planted trees. (24 TTABVUE § 1). Opposer has operated the TreeDeFi platform under the TreeDeFi name since at least March 2021. (24 TTABVUE § 2). When Opposer first started work on the TreeDeFi platform, he worked in collaboration with other individuals including Gheorhe Daniel Morosan and Lorenzo Castagnone. (24 TTABVUE § 6). However, Opposer alone registered and paid for the treedefi.com domain. (*Id.*)

On August 13, 2021, Messrs. Morosan and Castagnone formed Applicant TreeDeFi Ltd without Opposer's knowledge or consent. (24 TTABVUE § 7). That same day, Applicant filed a TEAS Plus Application with the USPTO for use of the mark TREEDEFI in Classes 9 and 42, without Opposer's knowledge or consent. The mark was filed for the following goods:

Computer software platforms, downloadable, for processing and managing blockchain operations; Downloadable computer application software for mobile phones, namely, software for processing and managing blockchain operations via a wallet app; Downloadable computer software for processing and managing blockchain operations; Downloadable computer software for blockchain-based inventory management; Downloadable computer software for managing cryptocurrency transactions using blockchain technology; Downloadable computer software development tools in Class 9; and

Authentication of data in the field of financial transaction using blockchain technology; Computer programming; Computer software development; Information technology consulting services; Providing temporary use of on-line non-downloadable software for accessing, reading, and tracking information in the field of financial transaction on a blockchain; Software design and development; Platform as a service (PAAS) featuring computer software platforms for managing financial transactions using blockchain; Software as a service (SAAS) services featuring software for managing financial transactions using blockchain in Class 42

(24 TTABVUE § 12). The application was assigned serial number 90881203 and was filed under Section 1(b) for the goods in Class 9 and under Section 1(a) for the goods in Class 42. *Id.* The application was published in the *Official Gazette* on June 28, 2022. *Id.* Applicant filed this application without rights in the TREEDEFI mark and with the knowledge thereof. (24 TTABVUE § 16).

With respect to Class 42, Applicant submitted as its specimen screenshots of treedefi.com. (See 22 TTABVUE at Exhibit 1, pages 12-15, the treedefi.com screenshots²). Applicant was not using the TREEDEFI mark in commerce when it filed its application. (24 TTABVUE § 14). Applicant did not obtain Opposer's consent before filing its registration for TREEDEFI, nor did Applicant inform Opposer of the filing. (24 TTABVUE § 15).

Upon information and belief, around the time Messrs. Morosan and Castagnone founded TreeDeFi Ltd., they also edited a small portion of the code which powers a fraction of the

² The application in question is automatically part of the record in any opposition proceeding. See TBMP § 528.05(a)(1) (2022); 37 C.F.R. § 2.122(b).

Exchange Service on the dex.treedefi.com website (a subdomain of treedefi.com) in an attempt to indicate TreeDeFi Ltd. was the license holder for the all website, by adding the wording “SPDXLICENCE: TREEDEFI LTD 13410488.”³ (24 TTABVUE § 8). This wording is not visible to the general community. (*Id.*) Rather, only a few experts who are able to read the source code can reach the exact location of this code and read the wording. (*Id.*) Despite making this representation, at no time did Messrs. Morosan and Castagnone or TreeDeFi Ltd. have any rights in the treedefi.com website, including at the time Messrs. Morosan and Castagnone made this change to the code. (*Id.*)

While Messrs. Morosan and Castagnone listed that TREEDEFI LTD 13410488 license in this source code for dex.treedefi.com website, there is no such license. (24 TTABVUE § 9). The TreeDeFi SPDX does not exist in the SPDX License official and public database. (*Id.*)

In or around April 2022, Messrs. Morosan and Castagnone stopped working on the TreeDeFi project and parted ways with the project. (24 TTABVUE § 10). Messrs. Morosan and Castagnone together with Opposer and another partner formed an agreement detailing the breakup of the partnership and the ownership of equity in the TreeDeFi project. (*Id.*) Part of the agreement was Opposer’s continued ownership and operation of the TreeDeFi platform and use of the TREEDEFI mark in connection to the platform and the goods and services offered therein. (*Id.*) The parties had conversations in which they agreed that Messrs. Morosan and Castagnone would exit TreeDeFi and Mr. Mascaro would be the sole owner of TreeDeFi. (*Id.*) This agreement did not give Applicant any rights in the TREEDEFI mark, nor did it give Applicant or Messrs. Morosan

³ Software Package Data Exchange or “SPDX” is an open standard for communicating, inter alia, licenses information relating to software and websites. The listing of an SPDX license is irrelevant to trademark ownership.

and Castagnone any right to use the TREEDEFI mark. (*Id.*) Translated portions of this agreement are attached to the Amended Notice of Opposition (24 TTABVUE) as Exhibit 1.

In or around June 2022, Mr. Mascaro discovered that Messrs. Morosan and Castagnone had edited the code on treedefi.com to include TreeDeFi Ltd. as the license holder for the website. (24 TTABVUE § 11). Shortly thereafter, on or around June 13, 2022, Mr. Mascaro asked Mr. Castagnone whether the inclusion of TreeDeFi Ltd. as the license holder of the treedefi.com website indicated that TreeDeFi Ltd. had any intellectual property rights in the TREEDEFI mark. (*Id.*) Mr. Castagnone responded that it did not. (*Id.*)

Opposer brought this opposition to oppose Applicant's attempt to register the TREEDEFI mark. The Board has already found that Opposer has standing to bring this Opposition. (23 TTABVUE 4-6).

II. ARGUMENT

A. **Applicant's requests for judicial notice should be denied because Applicant's materials for consideration were improperly submitted and Applicant improperly requests that the Board take judicial notice of facts outside the scope of TBMP 1208.04**

The Board was clear in its prior ruling that it would not consider material outside of the pleadings in deciding a motion to dismiss under Fed. R. Civ. P. 12(b)(6). (23 TTABVUE 4.) Despite this, Applicant again asks the Board to take judicial notice of myriad documents. (29 TTABVUE ¶¶22-40.) As explained herein, these are not the types of records that the Board can take judicial notice of.

As the Board is aware, the Federal Rules of Evidence tightly restrict the types of material that a court can judicially notice. Under Rule 201, a court can take judicial notice of notice “[o]fficial acts of the legislative, executive, and judicial departments of the United States,” “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and

accurate determination by resort to sources of reasonably indisputable accuracy[,]” and facts that are “generally known within the territorial jurisdiction of the trial court” or “capable of accurate and ready determination.” Fed. R. Evid. 201. The Board adheres to similar rules on taking judicial notice. According to TBMP 1208.04, “the Board will not take judicial notice of facts not commonly known[,]” and “[e]ven where facts are commonly known and accepted, however, the Board is not required to take judicial notice because the taking of judicial notice is discretionary.” TBMP § 1208.04 (2022).

1. Applicant did not follow the proper procedure for submitting internet materials for consideration to the Board

Applicant requests that the Board take judicial notice of United Kingdom Companies House to establish “the sole owners of [TreeDeFi, Ltd.] and that the Opposer has no ownership in TreeDeFi Ltd.” (29 TTABVUE ¶ 37). However, because Applicant did not provide its internet materials it seeks to have considered for judicial notice in accordance with the requirements of TBMP Section 528.05(e), the information contained in those materials should not be considered for judicial notice and Applicant’s motion to dismiss should be denied.

Trademark Rule 2.122(e)(2) and TBMP Section 528.05(e) state that [i]nternet materials may be admitted into evidence under a notice of reliance . . . so long as the date the internet materials were accessed and their source (e.g., URL) are provided.” TBMP § 1208.04 (2022); *see Allergan, Inc. v. Gems Style Inc.*, 2019 WL 5294892 fn. 15 (TTAB 2019) (“we have not considered any proffered Internet material that does not show the date on which it was accessed and its source (e.g., URL)”). Applicant requests that the Board take judicial notice of exhibits A and B from the supplemental Morosan Affidavit (available at 17 TTABVUE) and exhibit C of the Castagnone Affidavit (available at 6 TTABVUE). However, none of the accompanying exhibits list both

the date the internet materials were accessed and the source from which they were accessed. Thus, these materials are not properly before the Board and Applicant's requests for judicial notice should be denied.

2. Applicant requests that the Board take judicial notice of information found on a private Internet website, which is discouraged under both the TTAB and the Federal Rules of Evidence

Applicants request that the Board take judicial notice of TreeDeFi's Software Package Data Exchange License, which is located on the private internet website BscScan at the Internet address bscsan.com and the terms and conditions of the TreeDeFi store, which are also located online. The Board has refused to consider information from private Internet websites for judicial notice. *See Kona USA, Inc. v. Global Esprit Inc.*, 2021 WL 5527808 *3 (TTAB 2021) (finding that the private Internet website Ironman Triathlon was not a "source[] whose accuracy cannot reasonably be questioned" so as to comply with Federal Rules of Evidence Rule 201(b)(2))

Federal courts have refused to consider information from private Internet websites for judicial notice for the same reason. *See Gerritsen v. Warner Bros. Entertainment Inc.*, 112 F.Supp.3d 1011, 1030 (C.D. Cal. 2015) ("Accordingly, the court declines to take judicial notice of information published on private websites, including information that appears on WB's website."); *See Ruiz v. Gap, Inc.*, 540 F.Supp.2d 1121, 1124 (N.D. Cal. 2008) (holding that a study on identity theft and data breach incidents reported in California in the past two years, both from the internet, were "not remotely akin to the type of facts which may be appropriately judicially noticed."); *United States ex rel. Dingle v. BioPort Corp.*, 270 F.Supp.2d 968, 972, 973 (W.D. Mich. 2003) (drawing a distinction between documents available only on private Internet websites and public records available from government Internet websites, noting that it refused to take judicial

notice of information from private Internet websites because “the Court could not verify the information found on these websites for accuracy or authenticity”).

Applicant has not cited any TTAB caselaw to support its position that the Board should consider the information from a private Internet website for judicial notice. Therefore, Applicant’s request that the Board take judicial notice of information contained on a private Internet website should be denied.

Thus, because Applicant improperly submitted its internet materials and because the BscScan materials come from a private internet website, Applicant’s requests for judicial notice should be denied.

B. Applicant’s Motion to Dismiss should be denied because Applicant did not prove that the facts in Opposer’s complaint, if proven true, would fail to establish that Opposer is entitled to relief sought.

“A motion made under Rule 12(b)(6) challenges the legal theory of the complaint, not the sufficiency of any evidence that might be adduced.” *Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993). “A motion to dismiss for failure to state a claim upon which relief can be granted is a test solely of the legal sufficiency of a complaint.” TBMP § 503.2 (2022). “Whether a plaintiff can actually prove its allegations is a matter to be determined not upon motion to dismiss, but rather at final hearing or upon summary judgment, after the parties have had an opportunity to submit evidence in support of their respective positions.” *Id.* “In ruling on a motion to dismiss, it is only necessary to determine whether opposer has set forth a claim which, if proved, may entitle it to the relief which it is seeking.” *The Alliance Mfg. Co., Inc. v. Bentley Lighter Corp.*, 174 U.S.P.Q. 248, 1972 WL 17762 *1 (TTAB 1972). “Whether or not Opposer can prove the pleaded allegations is a matter to be determined after the introduction of evidence at trial (or in connection with a proper motion for

summary judgment).” *Deford Bailey LLC v. Carlos Deford Bailey and Deford Bailey III*, 2014 WL 11032969 *2 (TTAB 2014); *See also Flatley v. Trump*, 11 USPQ2d 1284, 1286 (TTAB 1989). The Board generally will not construe a motion to dismiss or a motion for judgement on the pleadings as a motion for summary judgement before initial disclosures have been filed. TBMP § 528.04 (2022).

1. A Motion to Dismiss solely tests the legal sufficiency of a complaint and not the merits of the other side’s argument

Applicant argued that the facts in the complaint are insufficient to sustain this Opposition. However, all that is argued on a motion to dismiss is whether the facts, if proven true, entitle Opposer to the relief sought. *The Alliance Mfg. Co., Inc.*, 1972 WL 17762 at *1. In its motion, Applicant attacks the sufficiency of the facts upon which Opposer’s claim rests. Applicant argues that the facts in the Complaint and supplemental materials show no allegations that Applicant lacks ownership in the mark and lacked ownership when its Application was filed. (29 TTABVue ¶ 47). This is Applicant’s attempt at attacking the facts upon which the Complaint rests, which is improper at the Motion to Dismiss stage, where all the facts in the complaint are taken to be true; whether or not they are true is to be decided after introduction of evidence or in connection with a motion for summary judgement. *Deford Bailey LLC*, 2014 WL 11032969 at *2; *See also Flatley*, 11 USPQ2d at 1286.

Because Applicant failed to establish that the facts in Opposer’s complaint, if proven true, would not establish that Opposer is entitled to the relief sought, Applicant’s motion to dismiss should be denied.

2. The Board should not convert Applicant's motion to dismiss into a motion for summary judgement because initial disclosures have not been served.

Applicant's motion to dismiss should be denied and not converted into a motion for summary judgement because initial disclosures have not yet been served. In the TTAB, "the Board does not allow a party to file a motion for summary judgment prior to the moving party's service of initial disclosures on the adverse party," and "the Board generally will no longer exercise its discretion to convert motions to dismiss that refer to matters outside the pleadings into motions for summary judgment, if such motions are filed before the moving party serves its initial disclosures." *Compagnie Gervais Danone v. Precision Formulations, LLC*, 89 USPQ2d 1251, 2009 WL 34747 *5 (TTAB 2009); Trademark Rule 2.127(e)(1), 37 C.F.R. § 2.127(e)(1) (party may not file a motion for summary judgement until the party has made its initial disclosures); *see also Nike, Inc. v. Palm Beach Crossfit Inc.*, 116 U.S.P.Q.2d 1025, 1028 (TTAB 2015) (where initial disclosures had not been filed, a motion to dismiss including matters outside of the pleadings was not considered as motion for summary judgment). Initial disclosures have not yet been filed in this case. Thus, because no disclosures have been filed in this case, it would be improper for the Board to convert Applicant's motion to dismiss into a motion for summary judgement.

Thus, because Applicant improperly argued the merits of its and Opposer's claims on its motion to dismiss and because initial disclosures have not yet been filed, the Board should deny Applicant's motion to dismiss and not convert it into a motion for summary judgement.

C. Applicant’s Motion to Dismiss should be denied because Applicant did not have use in commerce in connection with the identified services in Class 42 as of the filing date.

Under Section 45 of the Trademark Act, 15 U.S.C. § 1127, a mark is considered in use when “it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale . . .” *See* Trademark Rule 2.56(a), 37 C.F.R. § 2.56(a) (“[A] statement of use under § 2.88 must . . . include one specimen per Class showing the mark as used on or in connection with the goods or services”). A specimen of use in a service mark application “must show the mark as used in the sale or advertising of the services.” *In Re Florists’ Transworld Delivery, Inc.*, 119 U.S.P.Q.2d 1056, 2016 WL 3997062 *3 (TTAB 2016) (quoting Trademark Rule 2.56(b)(2), 37 CFR § 2.56(b)(2)).

“[A]n application filed under Section 1(a) of the Trademark Act is void ab initio where it is found that there was no use of the mark in commerce on the identified goods or services prior to the filing date of the application. *See Couture v. Playdom, Inc.*, 778 F.3d 1379, 113 USPQ2d 2042, 2043 (Fed. Cir. 2015) (“To apply for registration under Lanham Act § 1(a), a mark must be ‘used in commerce.’ 15 U.S.C. § 1051(a)(1). . . . Use in commerce must be ‘as of the application filing date.’ 37 CFR § 2.34(a)(1)(i),” and “The registration of a mark that does not meet the use [in commerce] requirement is void ab initio.”), citing *Aycock Engineering Inc. v. Airflite Inc.*, 560 F.3d 1350, 90 USPQ2d 1301, 1305 (Fed. Cir. 2009).” (23 TTABVUE pgs. 7-8).

Applicant has not provided a specimen showing its use of the TREEDEFI mark in Class 42 as of the filing date. Applicant has applied for the TREEDEFI mark in Class 42, identifying “[s]oftware as a service (SAAS) services featuring transactions using blockchain[.]” What applicant provided as specimens, however, are screenshots of TreeDeFi’s website at treedefi.com showing use of the TreeDeFi mark therein. (*See* 22 TTABVUE at Exhibit 1, pages 12-15).

However, Applicant does not own or operate the treedefi.com website, Opposer does. Thus, this specimen shows Opposer's use of the TREEDEFI mark in Class 42, not Applicant's use. Applicant has not submitted any other specimens of its use showing its use of the mark in commerce in Class 42. Therefore, has not established a showing of use in commerce with the identified services in Class 42 as of the filing date necessary for registration.

Thus, Applicant's motion to dismiss should be denied because Applicant lacks use of the TREEDEFI mark in commerce in connection with the identified services in Class 42.

D. Applicant's Motion to Dismiss should be denied because Applicant was not the rightful owner of the mark at the time of filing.

Applicant did not own TREEDEFI mark as of the filing date. Section 1(a) of the Trademark Act requires that an applicant have exclusive ownership of the mark it seeks to register. 15 U.S.C. § 1051(a)(3)(D); *Great Seats, Ltd. v. Great Seats, Inc.*, 84 USPQ2d 1235, 1239 (TTAB 2007) (“[I]f the [person] filing the application is not the owner of the mark as of the filing date, the application is void ab initio.”). Opposer, Morosan, Castagnone, and other associates all worked on the creation and operation of the TreeDeFi finance platform. Morosan and Castagnone ceased working on the TreeDeFi project around April 2022. (24 TTABVUE ¶ 10). They, along with Opposer, entered into an agreement in April 2022 whereby it was agreed that Opposer would continue to use the TREEDEFI mark in Opposer's continued operation of treedefi.com. *Id.*

The April 2022 agreement did not give Applicant rights in the TREEDEFI Mark. The agreement detailed Morosan and Castagnone's exit from the project with the understanding that Opposer would continue operation of the TreeDeFi finance platform. (6 TTABVUE at Exhibits A and B). Nowhere in the agreement does it say anything about the TREEDEFI mark's ownership being transferred to Applicant, Castagnone, or Morosan. Moreover, Applicant's lack of involvement in the creation and operations of the TREEDEFI platform cut against Applicant's

claim of ownership of the mark. Applicant thus seeks registration of a mark in which it has no rights.

Moreover, Applicant has not presented any facts showing that Opposer's allegations of non-ownership are false. In deciding a motion to dismiss, the Board must accept all factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to [']state a claim to relief that is plausible on its face.[']"). Therefore, the Board should rely on the facts presented by Opposer in deciding the matter of ownership.

Thus, Applicant's motion to dismiss should be denied because Applicant did not have ownership of the TREEDEFI mark at the time of filing.

E. Applicant's Motion to Dismiss should be denied because Applicant lacked a bona fide intent to use the mark in connection with the Class 9 goods as of the filing date.

"In determining whether an applicant under Section 44(d) has the requisite bona fide intent to use the mark in United States commerce, [the Board] use[s] the same objective analysis of good faith used to determine whether a Section 1(b) applicant has the required bona fide intent to use the mark in United States commerce." *Volvo Trademark Holding Ab v. Ckl Holdings N.v.*, 2020 WL 2785121 *4 (TTAB. 2020) (citing *Lane Ltd. v. Jackson Int'l Trading Co.*, 33 USPQ2d 1351, 1355 (TTAB 1994)). An Applicant's bona fide intent to use the mark must represent an intent to use the mark "in the ordinary course of trade," given such use is "not made merely to reserve a right in a mark." *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1507, 1993 WL 156479 *4 (TTAB 1993) (quoting Trademark Act Section 45, 15 U.S.C. § 1127, and citing Senate Judiciary Comm. Rep. on S. 1883, S. Rep. No. 515, 100th Cong., 2d Sess. 24-25 (1988)). "[A]bsent other facts which adequately explain or outweigh the failure of an applicant to have any documents

supportive of or bearing upon its claimed intent to use its mark in commerce, the absence of documentary evidence on the part of an applicant regarding such intent is sufficient” to establish that there was no bona fide intent to use the mark when the involved application was filed. *Id.* at 5.

Applicant claims Opposer is attempting to “engage in mind reading games” to conclude Applicant has no bona fide intent to use the mark in Class 9. This shows Applicant either misunderstands or is disregarding the requirements to show a bona fide intent to use the mark, which would require Applicant to submit documents supporting a claimed intent to use the mark in connection with the Class 9 goods and services as of the filing date. Absent such documentary evidence, it is proper to determine whether an applicant has intent to use. *See Commodore Electronics Ltd.*, 1993 WL 156479, at *4.

Thus, because Applicant has failed to provide to the Board any evidence of a bona fide intent to use the TREEDEFI mark in connection with the Class 9 goods as of the filing date, Applicant’s motion to dismiss should be denied.

III. CONCLUSION

WHEREFORE, Opposer requests that the Court deny Applicant’s Motion to Dismiss and deny Applicant’s requests for judicial notice.

Date: November 20, 2023

Respectfully Submitted,

BROOKS KUSHMAN P.C.

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CERTIFICATE OF SERVICE

I certify that I served:

**OPPOSER'S RESPONSE TO APPLICANT'S MOTION
TO DISMISS THE NOTICE OF OPPOSITION FOR FAILURE TO
STATE A CLAIM UNDER FRCP 12(b)(6)**

On November 20, 2023 by email to:

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