

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

INSTIGATOR, LLC, through its sole  
member, ADAM K. BLANK,

Cancellation #92045828  
Registration #2245788

Petitioner,

v.

WORLD CLASS STUDIOS, INC.,

Respondent.

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**RESPONDENT'S MOTION TO DISQUALIFY COUNSEL  
AND INCORPORATED MEMORANDUM OF LAW**

The Respondent, WORLD CLASS STUDIOS, INC., by and through its undersigned attorney, pursuant to Rule 513.02 of the Trademark Trial and Appeal Board Manual of Procedure, hereby moves to disqualify counsel for the Petitioner, INSTIGATOR, LLC, and as grounds therefore would show:

1. In the instant case, the Petitioner's pleading clearly shows that Petitioner's counsel will almost certainly be called as a witness on behalf of Petitioner. The petition bases its claim that the subject mark has not been in continuous use in commerce since on or before the date of application entirely on three telephone conversations - one between Petitioner's counsel, Kristofer R. Schleicher, Esq., and the president of the Respondent, Henry Wardwell, and two between Mr. Wardwell and Mr. Blank, the principal of the Petitioner.

2. Neither side disputes that the telephone conversations took place. However, the factual issue of what was said during the telephone conversations is very much in dispute, virtually assuring that Mr. Schleicher will need to be a witness on his client's behalf.

3. Rule 513.02 of the Trademark Trial and Appeal Board Manual of Procedure provides, in pertinent part:

If a party to an inter partes proceeding before the Board believes that a practitioner representing another party to the proceeding should be disqualified (due, for example, to a conflict of interest, or because the practitioner may testify in the proceeding as a witness on behalf of his client), the party may file a petition to disqualify the practitioner.

4. 37 C.F.R. §10.63 provides, in pertinent part:

(a) If, after undertaking employment in a proceeding in the Office, a practitioner learns or it is obvious that the practitioner or another practitioner in the practitioner's firm ought to sign an affidavit to be filed in the Office or be called as a witness on behalf of a practitioner's client, the practitioner shall withdraw from the conduct of the proceeding and the practitioner's firm, if any, shall not continue representation in the proceeding, except that the practitioner may continue the representation and the practitioner or another practitioner in the practitioner's firm may testify in the circumstances enumerated in paragraphs (1) through (4) of §10.62(b).

None of the exceptions in §10.62 are germane to this action.

5. In short, because the Petitioner's pleading makes it very clear that it will depend in large part on the testimony of its counsel as to what purportedly transpired during his telephone call with Respondent's president, Mr. Schleicher and his law firm should be disqualified on proper motion.

6. The board's attention is respectfully directed to In Re: Gray, Inc., 3 U.S.P.Q. 2D 1558 (1987) (to avoid the predicament of a lawyer's having to testify and then having to argue the credibility and effect of his own testimony, both the Code of Professional Responsibility (Rule 5-102) and our own rules, 37 C.F.R. §10.63 (1986), require an attorney to withdraw as counsel in a case if he learns that he ought to be called as a witness or sign an affidavit to be filed in the case). In that case, the board refused to consider the affidavit of the attorney, because he should have but had not withdrawn.
7. Given the early stage of the proceedings, the Petitioner will not be prejudiced by the granting of this motion.

WHEREFORE, Respondent, WORLD CLASS STUDIOS, INC., respectfully requests that the board enter an order disqualifying Kristofer R. Schleicher, Esq., and the law firm of Kristopher R. Schleicher, LLC, as counsel for the Petitioner in this proceeding, and granting such other and further relief as this board deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S.P.S. first class delivery to Kristopher R. Schleicher, Esq., Kristopher R. Schleicher, LLC, Post Office Box 1817, Roswell, Georgia 30007, on this 14<sup>th</sup> day of July, 2006.

KINBERG & ASSOCIATES, LLC

By: 

Edward J. Kinberg  
Florida Bar #0996742

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Attorneys for Respondent

# KINBERG & ASSOCIATES, LLC

Attorneys At Law

Edward J. Kinberg, Esq.  
Fellow, National Contract Management Association  
Also admitted in Missouri  
Certified Mediator and Qualified Arbitrator

July 14, 2006

**TTAB**

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
Post Office Box 1451  
Alexandria, Virginia 22313-1451

RE: Cancellation No.: 92045828  
Registration No.: 2245788  
Petitioner: Instigator, LLC, through its sole member, Adam K. Blank  
Respondent: World Class Studios, Inc.

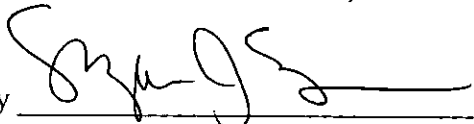
Dear Madam or Sir:

Enclosed for filing please find our original Respondent's Motion to Disqualify Counsel and Incorporated Memorandum of Law bearing a certificate of service date of July 14, 2006.

Thank you for your cooperation and assistance, and please contact me if you have any questions regarding the foregoing.

Very truly yours,

KINBERG & ASSOCIATES, LLC

By   
Suzann J. Smithson,  
Secretary to Edward J. Kinberg

sjs; enclosures

Copy w/ enclosures: Client



07-17-2006

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