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

Proceeding	92065178
Party	Plaintiff Philanthropist.com, Inc.
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Submission	Opposition/Response to Motion
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Date	07/19/2017
Attachments	Opp to MTD Adventist.pdf(578547 bytes)

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

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PHILANTHROPIST.COM, INC. :
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 Petitioner, : Cancellation No. 92065178
 : Registration No. 1176153
 :
 v. : Mark: ADVENTIST
 :
 GENERAL CONFERENCE CORPORATION :
 :
 OF SEVENTH-DAY ADVENTISTS :
 :
 Respondent. :
 :
 -----X

OPPOSITION TO RESPONDENT’S MOTION TO DISMISS

PHILANTHROPIST.COM, INC. (“Petitioner”) hereby responds to and opposes the Motion to Dismiss submitted by THE GENERAL CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS (“Respondent”). Respondent has based its motion on claims that: (a) Petitioner lacks standing to bring this suit; and (b) alleged formatting errors in Petitioner’s Amended Petition to Cancel render it impossible to answer. Petitioner addresses and refutes Respondent’s claims as follows:

I. PETITIONER HAS ESTABLISHED STANDING IN THIS MATTER

Respondent claims that Petitioner failed to allege facts supporting standing in this matter. To the contrary, Petitioner’s Amended Petition thoroughly details Petitioner’s substantial commercial interests in this proceeding. Petitioner’s direct commercial interest in the outcome of this case is evidenced by Petitioner’s investment in and continued ownership of the domain

Adventist.com, which has a potential market value of \$1.2 million, and which is subject to continued attack, depreciation, and loss should the challenged registration subsist.¹

Petitioner has further provided documentary evidence that Respondent has brought a proceeding against Petitioner in another tribunal based on the same registration that is at issue in this proceeding. Specifically, Respondent filed and prosecuted a formal proceeding against Petitioner under ICANN's Uniform Domain-Name Dispute-Resolution Policy, contending that Respondent's ownership of its ADVENTIST registration provided Respondent with grounds to seize Petitioner's Adventist.com domain. *See General Conference Corporation of Seventh-day Adventists v. Philanthropist.com*, Case No. FA1612001706357. The existence of another dispute between the parties involving the same registration is, in itself, sufficient to evidence Petitioner's standing before the Board. *See Anthony's Pizza & Pasta International, Inc. v. Anthony's Pizza Holding Company, Inc.*, Opposition No. 91171509 and Cancellation No. 92045956 (T.T.A.B. 2009) (the existence of another dispute between the parties involving the same registrations evidences a petitioner's standing before the Board); *Texas Department of Transportation v.*

¹ Respondent defamatorily accuses Petitioner in its motion of being a "cybersquatter" and a "pirate." Petitioner is neither. The professional practice of buying and selling undeveloped Internet domains is a legitimate, billion-dollar industry. Well-known, publicly traded companies including GoDaddy, HostGator, and DreamHost base their revenue models on purchasing in-demand or commercially viable domain names and then offering them for sale at a profit. Generic domains such as Hotel.com and Business.com have been known to sell for upwards of \$10 million each. Identifying valuable domains, researching them, negotiating their purchase, and marketing them to potential purchasers is a considerable endeavor, and one that is undertaken and supported by respected professional organizations such as the [Internet Commerce Association](#), which is dedicated to educating the public about the value that the domain name industry brings to the Internet ecosystem and to the open market. Cybersquatting, on the other hand, is a specific legal term defined by the United States Anti-Cybersquatting Consumer Protection Act as "registering, trafficking in, or using a domain name with bad-faith intent to profit from the goodwill of a trademark belonging to someone else." *See also DaimlerChrysler v. The Net Inc.*, 388 F.3d 201 (6th Cir. 2004). It is impossible, by its very definition, to cybersquat on a generic domain.

Richard Tucker, Cancellation Nos. 92030882 and Opposition No. 91165417 (T.T.A.B. 2010) (party had standing to cancel a registrant's registration by virtue of being the defendant in another proceeding because the registrant had actually asserted its registration against the petitioner).

If the actual proceeding that Respondent filed against Petitioner was not enough to establish Petitioner's standing, Respondent has additionally threatened Petitioner, in writing, with preliminary and permanent injunctions, money damages, attorneys' fees and "possible treble money damages," again based upon Respondent's assertion of its ADVENTIST registration against Petitioner's Adventist.com domain. Surely, the threat of loss of property valued at \$1.2 million, the filing of a UDRP proceeding against a domain for which Petitioner was a bona fide purchaser for value, *and* potential future litigation costs, punitive damages, and attorneys' fees, must qualify as a direct commercial interest in the outcome of this cancellation proceeding. *See* 15 U.S.C. § 1063; *Ritchie v. Simpson*, 170 F.3d 1092, 1095, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999); *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1727 (Fed. Cir. 2012) (any person or entity that believes that it would be damaged by the registration of a mark upon the principal register may challenge the registration in the Patent and Trademark Office); *see also* *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (in order to meet the standing requirement, a plaintiff need only show that it has a real interest or personal stake in the outcome of the proceeding, which may be proven by establishing a direct commercial interest).

Petitioner has made ample showing that it may be damaged through loss of sales and profits if the challenged registration is permitted to remain on the principal register. Petitioner is by no means the mere intermeddler, gratuitous interloper, or "vicarious avenger" that the

Lanham Act's standing requirement is intended to weed out. *See* Lipton Industries, Inc. v. Ralston Purina Co., 670 F.2d 1024, 213 U.S.P.Q. 185 (C.C.P.A. 1982) (the purpose of standing is to weed out "intermeddlers" from those with "a personal interest in the outcome beyond that of the general public"); Syngenta Crop Protection, Inc. v. Bio-Chek, LLC, 90 U.S.P.Q.2d 1112, n.8, 2009 WL 691309 (T.T.A.B. 2009) ("Proof of standing in a Board opposition is a low threshold, intended only to ensure that the plaintiff has a real interest in the matter, and is not a mere intermeddler."); Jewelers Vigilance Committee, Inc. v. Ullenberg Corp., 823 F.2d 490, 2 U.S.P.Q.2d 2021, 2024 (Fed. Cir. 1987) (even a party with no direct proprietary ownership interest in a trademark can have standing to oppose if it meets the requirement of having a real commercial interest and is not merely an intermeddler). Indeed, as Professor McCarthy has notes, "there are few gratuitous interlopers and intermeddlers willing to spend the time and money in undertaking expensive *inter partes* challenges to the registration of marks."

In sum, Respondent's wielding of the challenged registration against Petitioner and against Petitioner's commercial property directly threatens Petitioner's financial interests. It is more than reasonable for Petitioner to fear that Respondent's ADVENTIST registration will continue to damage Petitioner in demonstrable, calculable ways. Hence, Petitioner has standing to bring and maintain this proceeding. *See* Duramax Marine, LLC v. R.W. Fernstrum & Company, Opposition No. 91119899 (T.T.A.B. 2005) (standing is liberally construed and requires only proof that the party seeking cancellation is likely to be damaged by the registration).

II. RESPONDENT'S PROCEDURAL COMPLAINTS ARE BASELESS AND FRIVOLOUS

In addition to its standing argument, Respondent alleges that Petitioner failed to meet procedural thresholds for proper pleadings. Respondent's position is that these alleged procedural deficiencies render a response to the Amended Petition to Cancel "impossible" to craft. As detailed below, this is both false and preposterous.

Respondent first claims that Petitioner failed to file its Amended Petition to Cancel in a timely manner. Pursuant to the Board's May 1, 2017 order consolidating this case with Cancellation No. 92065255, however, it is Petitioner's understanding that its Amended Petition was due on June 3, 2017. Petitioner filed its Amended Petition on June 1, 2017, well within the allotted time.²

Lastly, Respondent makes the remarkable contention that, because Petitioner's introduction to its Amended Petition is long and detailed, the entire petition is indecipherable and unanswerable. This is a truly mind-blowing assertion. The Amended Petition is a mere eight pages long, with a clear delineation where the numbered allegations of the complaint are plainly and succinctly listed.³ Moreover, Fed. R. Civ. Proc. 8, which Respondent cites as its basis for impugning Petitioner's formatting choices, says nothing about restricting the length of an introduction or background section in a pleading. In fact, Rule 8 notes that "No technical form is required." Fed. R. Civ. Proc. 8(d). While creative, Respondent's argument that Petitioner

² Even if the matters had not been consolidated, and the deadline in this proceeding had remained May 31, 2017, Petitioner is hard pressed to identify any harm or prejudice caused to Respondent by a delay of less than 24 hours.

³ Respondent's own motion to dismiss the Amended Petition is ten pages long.

included *too many legal arguments and case citations* in its petition is neither persuasive nor logical.

In light of the above, Petitioner respectfully requests that the Board deny Respondent's Motion to Dismiss and allow this cancellation proceeding to continue.

Dated: July 19, 2017

BRICOLAGE LAW, LLC

A handwritten signature in cursive script that reads "Eve Brown". The signature is written in black ink and is positioned above a horizontal line.

Eve J. Brown

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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon counsel for Respondent by e-mail this 19th day of July, 2017 at the following address:

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