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Filing date: **07/15/2019**

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

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|------------------------|---|
| Proceeding | 92065883 |
| Party | Defendant William J. Bearden dba NERO Central |
| Correspondence Address | JOVANNA R BEARDEN BEARDEN LAW 104 S MAIN STREET BUTLER, MO 64730 UNITED STATES jovannabearden@gmail.com, email@bearden.law 816-787-1979 |
| Submission | Other Motions/Papers |
| Filer's Name | Jovanna R Bearden |
| Filer's email | email@bearden.law |
| Signature | /Jovanna R Bearden/ |
| Date | 07/15/2019 |
| Attachments | Reply ISO Mtn for Discovery.pdf(57295 bytes) |

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

Joseph Valenti, NERO International Holding)
Co., Inc., & NERO Live Adventure Games, LLC,)
v.) Cancellation No.
) 92065883 (Parent Case)
William J. Bearden dba NERO CENTRAL)
)
)
)
)
Joseph Valenti, NERO International Holding)
Co., Inc., & NERO Live Adventure Games, LLC,)
v.) Cancellation No.
) 92065911 (Child Case)
)
NERO World, LLC,)

REPLY IN SUPPORT OF DEFENDANTS MOTION FOR DENIAL OF
SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, DISCOVERY
UNDER FEDERAL RULE OF CIVIL PROCEDURE 56(D)

Comes now Defendants, by and through Counsel, and in support of
their Motion for Denial of Summary Judgment or, in the alternative,
Discovery under Federal Rule of Civil Procedure 56(D) states the following.

1. Defendant has specified why the requested discovery is relevant to their response to a summary judgment motion

Plaintiffs argue that Defendants have failed to meet their burden
under rule 56(d), alleging that Defendants have not specified why the
requested discovery is relevant to responding to the Motion for Summary

Judgment. Defendants disagree with Plaintiffs' assessment of their Motion for Discovery. Defendants state in support of their Motion that they are entitled to present affirmative defenses in response to a motion for summary judgment. Defendant has been prevented from obtaining discovery to support these affirmative defenses because they have been denied access to evidence solely in possession of Plaintiff, as described in Defendants' motion and supporting affidavit. The information necessary to support these affirmative defenses has been detailed in the affidavit supporting Defendants' motion.

2. Defendants request discovery to raise affirmative defenses in addition to demonstrating a lack of standing

Plaintiffs argue that Defendants only want discovery regarding standing, and that information is not needed because Plaintiffs' have the burden to prove standing and have allegedly done so. It is true that Defendants believe Plaintiffs do not have standing in this case, and some of the discovery Defendants are requesting relates to standing. The Board specifically granted Defendants the ability to conduct this discovery in their order dated August 14, 2018. Defendants have propounded these requests, but Plaintiffs have gamed their responses in order to avoid substantive responses prior to filing for summary judgment.

Further, Plaintiffs ignore that in addition to information regarding standing, Defendants request discovery relating to Plaintiff's claim of priority, and to Defendants affirmative defenses. Defendants have a right to rely on their affirmative defenses in response to a motion for summary judgment, and facts regarding who used the marks first in time are relevant to responding to Plaintiffs' claim of priority. Defendant has asked for permission to conduct discovery on these matters, as well as discovery on standing.

3. Defendant has specified the information they seek and why they seek it

Plaintiffs have accused Defendants of wanting to conduct a fishing expedition, of not specifying what information they want or why they want it. Defendants have reviewed the affidavit supporting their motion and disagree with Plaintiffs' assessment of their request. Defendants have itemized exactly what information they are requesting to support their affirmative defenses, claim of priority, and to determine Plaintiff's standing in this case. Defendants ask that their request be granted by the Board.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Jovanna R. Bearden, certify that on this 15th day of July, 2019, a true and correct copy of the foregoing document was sent by email to Counsel for Plaintiff, Phillip Thomas Horton at NEROLitigation@gmail.com.

By: Jovanna R. Bearden/
Jovanna R. Bearden