

ESTTA Tracking number: **ESTTA980947**

Filing date: **06/14/2019**

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

Proceeding	92066525
Party	Plaintiff Mariana Travassos Miguel Pereira
Correspondence Address	DEREK A SIMPSON THE LAW OFFICES OF DEREK A SIMPSON 555 S FLOWER ST STE 3200 LOS ANGELES, CA 90071 UNITED STATES derek@dsimpsonlegal.com 213-293-9401
Submission	Opposition/Response to Motion
Filer's Name	Derek A. Simpson
Filer's email	derek@dsimpsonlegal.com
Signature	/Derek Simpson/
Date	06/14/2019
Attachments	2019 06 14 Opposition to Thompson motion for summary judgment FOR FILING.pdf(85634 bytes)

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

In the matter of Registration No.: 4771161
For the mark: HUNTER FIGHT WEAR
Registered on July 14, 2015

Mariana Travassos Miguel Pereira,

Petitioner,

vs.

Dean Thompson,

Registrant.

Cancellation No. 92066525

**PETITIONER’S BRIEF IN RESPONSE TO REGISTRANT’S MOTION
FOR SUMMARY JUDGMENT**

Mariana Travassos Miguel Pereira (“petitioner”) submits the following brief in response to registrant’s May 28, 2019 motion for summary judgment. As with registrant’s May 3, 2019 motion to dismiss, petitioner opposes the motion and urges the Board to deny it.

First, this motion is based on registrant’s unsupported argument that a case must be dismissed or that judgment must be granted in the defendant’s favor because petitioner did not engage in written discovery, take discovery depositions, or prematurely file evidence before the start of petitioner’s trial period. But there is no legal authority that supports his contention. Regardless, on June 13, 2019, Petitioner served registrant with her Pretrial Disclosures and intends to file declarations and documentary evidence once her Trial Period starts on June 28, 2019 to support her petition for cancellation.

Second, registrant’s motion does not satisfy the summary judgment standard set out in TBMP 528, incorporating Federal Rule of Civil Procedure 56. Motions for

summary judgment follow the federal standard and, as a preliminary matter, must show that there is no genuine dispute as to any material fact and that movant is entitled to judgment. Here, registrant made no such showing. Registrant could have supported his motion by including evidence in the form of his own declaration, declarations of third-party witnesses, documentary evidence, discovery depositions, or written discovery responses.¹ But he did not submit any such things to show that there is no dispute of material facts and that he is entitled to judgment in his favor. Moreover, registrant did not specify what element or elements to petitioner's action supposedly cannot be supported or for which there an absence of a genuine dispute. Is he claiming that petitioner lacks standing, that he has prior rights in the HUNTER FIGHT WEAR mark, etc.? The motion provides no guidance about what claim, element, or defense this motion is addressing.

Based on the foregoing, petitioner requests that the Board deny registrant's motion and keep the current trial schedule in place.

Respectfully submitted,

Dated: June 14, 2019

/s/ Derek A. Simpson

Derek A. Simpson, California Bar No. 186603
The Law Offices of Derek A. Simpson
555 S. Flower St., Ste. 3200
Los Angeles, CA 90071-2419
Tel.: 213-293-9401; Fax: 213-402-2514
Email: derek@dsimpsonlegal.com
Counsel for petitioner,
Mariana Travassos Miguel Pereira

¹ Petitioner disputes Registrant's claim that he served her with discovery requests on August 12, 2018, or at any time before the close of discovery. And Petitioner disputes that Registrant's counsel and Petitioner's counsel didn't participate in a Discovery Conference. The conference took place on June 22, 2018.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document has been served on registrant's counsel of record by emailing a copy of the document on June 14, 2019 to:

pollie@gandalegal.com

Pollie Gautsch, G&A Legal, 665 San Rodolfo, #124-209, Solana Beach, CA 92075

Date: June 14, 2019

/s/ Derek A. Simpson
Derek A. Simpson