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

Proceeding	92068284
Party	Defendant Honson Luma
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Honson Luma

Registrant,

v.

DIB Funding, Inc.

Petitioner.

Mark: DIBCOIN

Cancellation No.: 92068284

Reg.: 5396033

**REGISTRANT'S TRIAL BRIEF**

Registrant Honson Luma (“Registrant” or “Mr. Luma”) hereby files this Brief in Opposition to cancellation of Registration No. 5396033 of the Mark DIBCOIN in the name of Registrant, Honson Luma.



Honson Luma  
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## **I. PRELIMINARY STATEMENT**

The foundation of virtually every business and commercial transaction is a contract. In Fact, it is hard to imagine any transaction for the purchase or sale of goods, the merger or acquisition of a business, or the provision of services that is not founded upon a contract.

Honson Luma is President of Space Age Investments Group, LLC of Baltimore Maryland. Luma is well known as somewhat of an expert in stock investments and cryptocurrency. In early 2016, Luma, through an intermediary, solicited Daniel J. Duffy, a principal in Sunshine Capital, Inc. to discuss the possibility of joining with him on a project in which Luma would provide a cryptocurrency and Duffy would provide his company's stock in order to produce a mutual accelerated growth of both. Duffy agreed.

Duffy's designee, James R. Scheltema, was president of Sunshine Capital at that time, and was asked by Duffy to help us to execute the plan. Essentially, Luma would create a cryptocurrency, and distribute a calculated amount to Duffy in order to pair with shares of stock. As such, Luma's coin would increase in value as the stock increased in value. Luma's original plan was to create 300 million coins, but as the plan evolved, it was agreed the 5 billion coins would be created.

Luma created DIBCOIN and distributed certain amounts to purchasers and also many who were affiliated with Sunshine Capital Inc.

Scheltema began to have legal troubles and presented Luma with a contract to assist them in managing their side of the deal. That contract was dated April 28, 2016. But such a contract, in the original form would blur the lines of ownership, and therefore Luma did not sign it until July 28, 2016, when Scheltema removed restrictions for Luma to represent himself and his own company, Space Age Investment Group. Luma had created DIBCOIN prior to that agreement. That contract allowed Luma to continue to work on his own behalf while helping to execute his own plan in harmony Sunshine Capital's side of the plan.

Subsequently, around August of 2016, a second company, Dib Funding Inc., was brought in by Sunshine Capital to assist in executing their side of the deal. There were no agreements signed between Luma and Dib Funding Inc.

As the plan collapsed in 2017, Luma terminated the contract with Sunshine Capital, and began to execute his plan without them. Sunshine Capital, or Dib Funding, attempted to shut the operation down, asserting that they should have ownership of Luma's work. Luma filed a trademark application for the Mark DIBCOIN, which matured into a registration. Dib Funding, a non-party to the contract, filed an application for the same mark, but registration was denied. Dib Funding brought the present proceeding in order to cancel Luma's registration.

**II. ISSUES PRESENTED FOR REVIEW**

Whether Honson Luma is the owner of the DIBCOIN Mark

Whether Dib Funding, Inc of Michigan is a proper party to bring this action

**III. DESCRIPTION OF THE RECORD**

The evidence of record consists of:

- (1) The pleadings and file history of Registrant's Registration No. 5396033
- (2) The pleadings and file history of Petitioner's Application No. 87532987 and status
- (3) Portions of Petitioner's responses to Registrant's Interrogatories
- (4) Portions of Petitioner's responses to Registrant's first Request for production of documents
- (5) Portions of Petitioner's responses to Registrant's Request for Admissions
- (6) Printed Publications submitted with Petitioner's Notice of Reliance
- (7) Printed Publications submitted with Registrant's Notices of Reliance
- (8) Internet materials submitted with Registrant's Notices of Reliance
- (9) Declarations of Registrant's witnesses Percy L. Square and David A. Miller

- (10) Facebook feed of Dibcoin
- (11) Incorporation Records of Dib Funding Inc
- (12) SEC suspension postings of Sunshine Capital
- (13) All Exhibits of Record
- (14) All evidence of Record
- (15) Honson Luma Compensation Agreement

**IV. THE WRITTEN AGREEMENT**

The written agreement is governed by and construed in accordance with the laws of the State of Florida. The agreement was drafted by James Scheltema, an attorney, and all ambiguities should be resolved in favor of Honson Luma.

**V. FLORIDA LAW 685.101 CHOICE OF LAW:**

Contract Language Construction - The contract, page 4 paragraph 3 provides:

“This agreement shall be governed by and construed in accordance with the laws of the State of Florida in force therein.

"In construing a contract, [we] should consider its plain language and take care not to give the contract any meaning beyond that expressed. When the language is clear and unambiguous, it must be construed to mean 'just what the language therein implies and nothing more." *Walker v. State Farm Fire & Cas. Co.*, 758 So. 2d 1161, 1162 (Fla. 4th DCA 2000) (quoting *Walgreen Co. v. Habitat Dev. Corp.*, 655 So. 2d 164, 165 (Fla. 3d DCA 1995)) (internal citation omitted). And "[we are] not empowered to rewrite [\*\*10] a clear and unambiguous provision, nor should [we] attempt to make an otherwise valid contract more reasonable for one of the parties."

Language: “Honson Luma (Hereinafter called the “Vice President”)

Construction: Honson Luma is called “Vice President”. Nothing more and nothing less.

It is not a language signifying appointment. Rather, it is a designation by which Honson Luma shall be referred to for contract purposes.

Language: The company shall retain the vice president to provide general management services.

Construction: Luma is retained to provide general management services. No more, no less.

Language: “Vice President is at liberty to provide general management services to any other person, firm or corporation.

Construction: Mr. Luma is free to provide the same services to himself, his company, or any other person or company.

Language: The Vice President shall render the Services to the best of its ability

Construction: Mr. Luma shall do his best. No more, no less.

Language: [S]hall use his best efforts to promote the interests of the Company.

Construction: Mr. Luma shall do his best. No more, no less.

Language: The Company agrees to compensate the Vice President in the amount of one million restricted common shares.

Construction: Sunshine Capital shall pay Mr. Luma one million shares

Language: This contract shall be deemed to have come into force and effect on the 28<sup>th</sup> of July, 2016 and shall last for a period of one year with 333,333 shares due upon the execution of the contract; a second issuance 333,334 due on the 28<sup>th</sup> day of Jul, 2017 and 33,334 shares due on the 28<sup>th</sup> day of 2018.

Construction: 333,333 shares are due to Honson Luma on the 28<sup>th</sup> day of July, nothing more, nothing less.

Language: This Agreement shall be terminated in any of the following circumstances: (e) by mutual agreement of the parties hereto.

Construction: If the parties agree, the agreement shall be terminated.

Language: Entire Agreement and Waiver- This agreement constitutes all of the agreements between the Vice President and the Company pertaining to the subject-matter of it and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written, of the parties to it and there are no warranties, representations or other agreements between the parties to it connection with the subject matter of it except as specifically set forth or referred to in the Agreement. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the part hereto to be bound thereby.

Construction: This is the only agreement between the parties. There are no other agreements. This is the entire agreement. Any changes must be made in writing and agreed to by both parties. If it's not in here, then it is not term of the agreement.

Language: and Assigns – this agreement shall be binding upon the successors and assigns of the Company.

Construction: Any successor company to Sunshine Capital, Inc is bound by the same terms and provisions of this agreement.

. *State Farm Mutual Auto, Supra*, provides that when the language is clear and unambiguous, it must be construed to mean “just what the language therein implies and nothing more”. In that respect, the following portions of the contract must be construed to mean nothing more than the language implies.

Language: This agreement made on the 28<sup>th</sup> day of April 2016 between Sunshine Capital Inc and Honson Luma, and “this contract shall be deemed to come into force and effect on the 28<sup>th</sup> of July 2016.

Construction: There are no parties to this contract except Sunshine Capital, Inc and Honson Luma. Dib Funding is not a party.

Language: “Honson Luma (Hereinafter called the “Vice President”)

Construction: Honson Luma is called “Vice President”. Nothing more and nothing less.

It is not a language signifying appointment. Rather, it is a designation by which Honson Luma shall be referred to for contract purposes.

Language: The company shall retain the vice president to provide “general management services”.

Construction: Luma is retained to provide general management services. Nothing more, nothing less.

Language: “Vice President is at liberty to provide general management services to any other person, firm or corporation.

Construction: Mr. Luma is free to provide the same services to himself, his company, or any other person or company. Nothing more and nothing less.

Language: The Vice President shall render the Services to the best of its ability

Construction. Mr. Luma shall do his best. Nothing more, nothing less.

Language: [S]hall use his best efforts to promote the interests of the Company.

Construction: Mr. Luma shall do his best. No more, no less.

Language: The Company agrees to compensate the Vice President in the amount of one million restricted common shares.

Construction: Sunshine Capital shall pay Mr. Luma one million shares of stock. Nothing more and nothing less.

Language: This contract shall be deemed to have come into force and effect on the 28<sup>th</sup> of July, 2016 and shall last for a period of one year with 333,333 shares due upon the execution of the contract; a second issuance 333,334 due on the 28<sup>th</sup> day of Jul, 2017 and 33,334 shares due on the 28<sup>th</sup> day of 2018.

Construction: 333,33 shares are due to Honson Luma on the 28<sup>th</sup> day of July 2016,

nothing more, nothing less.

Language: This Agreement shall be terminated in any of the following circumstances: (e)

by mutual agreement of the parties hereto.

Construction: If the parties agree, the agreement shall be terminated.

Language: Entire Agreement and Waiver- This agreement constitutes all of the agreements between the Vice President and the Company pertaining to the subject-matter of it and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written, of the parties to it and there are no warranties, representations or other agreements between the parties to it connection with the subject matter of it except as specifically set forth or referred to in the Agreement. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the part hereto to be bound thereby.

Construction: This is the only agreement between the parties. There are no other agreements. This is the entire agreement. Any changes must be made in writing and agreed to by both parties. If it's not in here, then it is not term of the agreement.

Language: Successors and Assigns – this agreement shall be binding upon the successors and assigns of the Company.

Construction: Any successor company to Sunshine Capital, Inc is bound by the same terms and provisions of this agreement.

#### **IV. PETITIONER COMPANY LACKS STANDING**

##### **A. Inaccuracies in Petitioner's Statement of Facts**

1. There is nothing in Dib Funding's Corporate documents that state that it was formed for the purpose of acquiring third-party companies through the use of cryptocurrency. Acquiring companies with cryptocurrency was Honson Luma's brainchild.

2. The trademark DIBCOIN and related services are not assets owned by DIB Funding. They are owned by Honson Luma.
3. DIB Funding's assets do not include DIBCOIN, and there is no record of any assignment of assets.
4. DIBCOIN did not develop any services in connection with the DIBCOIN Mark with respect to the blockchain.
5. The trademark DIBCOIN and associated cryptocurrency and related services used in connection with the Mark are not owned by, nor an asset of DIB Funding. Particularly, neither the coin, nor the network are owned by DIB Funding.
6. The acronym DIB does not stand for DOING IT BIG, and there is no record of such. DIB stands for Development Investment Bonds.

**B. Respondent Honson Luma**

7. Honson Luma was never appointed Vice President of DIB Funding Inc.  
Luma never had any agreement to create cryptocurrencies solely for DIB Funding or any other entity. Luma never had any agreement to get any company listed on a public exchange. It is unlikely that there is any such thing as getting a company listed on a public exchange.
8. Luma appears to have been given the right to use the label "Vice President" connection with the contract. However, the contract is not equivalent to an appointment. Luma cannot speak to details concerning the organization of Sunshine Capital Inc.
9. Luma admitted that he held himself out as Vice president of both Sunshine Capital and DIB Funding Inc. However, a careful examination of the employment contract shows that Luma was never, in fact, a Vice President.

The contract appeared only to give Luma the designation as Vice President, but the word “appoint” is not in the contract. With respect to Dib Funding Inc., no contract of any kind was presented with respect to becoming a vice president. However, the contract deceptively said that Sunshine Capital was a Dib Funding Company. It was a grey area, but not definitive in terms of making an appointment. It did not form to any of the rules for appointment of officers to a corporation.

10. Luma, out of an abundance of caution, did in fact put out a press release regarding resignation as vice president of Sunshine Capital and Dib Funding. This was to cover all bases with regard to abundance of caution. However, there is no document proving that I every was officially a Vice President of either Sunshine Capital Inc or Dib Funding Inc. Only that I was “hereinafter referred to as Vice President” for deception purposes.

### **C. The parties’ competing DIBCOIN trademark applications**

11. It is true that Luma filed an application for his trademark DIBCOIN.
12. Luma changed the dates of use after supplying a document showing proof of earlier use of the trademark DIBCOIN. The document had a data of July 2, 2016, but Luma only claimed the July 5, 2016 data. There was nothing illegal, nor deceptive. In fact, the Petitioner followed suit by changing his data of first use.
13. Indeed, Luma made the statement alleged. No one has the right to use the Mark in Commerce with respect to creating a coin or creating a network for distribution of the coin. However, every purchaser had a right to buy, sell and trade using the Mark as they please.
14. It is true that the Mark is registered.
15. Dib Funding is not the rightful owner of the Mark. It has never used the Mark

for the goods and services described. Dib Funding did not exist as an entity until about 6 months after the Mark was used in commerce

16. The '987 Application was refused, and rightfully so. Applicant corporation, which did not exist in 2016, does not have a right to file an application based on an asset assignment which is not recorded.

**D. Luma's actions to harm Dib Funding, Inc.**

17. Luma's resignation did no harm to Dib Funding's business plan. Dib Funding's plan became unattainable when Sunshine Capital was shut down by the SEC. Because Sunshine Capital's stock became worthless, the plan could no longer be executed. Luma separated himself so that he could focus on his own plan. Sunshine Capital and Dib Funding decided not to participate any more. However, Luma continued.

18. Luma's wallet (the Master Wallet), belonging the creator, did not belong to Sunshine Capital or Dib Funding. Sunshine Capital and Dib Funding owned many of their own wallets from which to execute their plans. The specimen shows the addresses of those wallets and distributions of DIBCOINS to those wallets. Luma did not need to give up his wallet in order for them to execute their plans. DIBCOIN is like currency. They could've bought and sell anything they wanted to. It was their choice. They tried to shut the enterprise down.

19. Luma owned the Mark DIBCOIN. Dib Funding was attempting to use the Mark in a way that it created customer confusion. Luma wanted to shut them down but did not have success.

20. Luma wanted to shut-down the [dibcoin.us](http://dibcoin.us) website but was unsuccessful.

## V. ARGUMENT

### A. Petitioner does not have standing

Dib Funding of Michigan, the Petitioner, did not exist until its date of incorporation (January 17, 2017). Yet, the Petitioner alleges that it created a cryptocurrency on July 3, 2016 (also first use in commerce). It is impossible for a non-existent entity to create or use cryptocurrency before the date of the entity's formation (January 17, 2017). The Petitioner filed an application for registration of a trademark that existed before Dib Funding was formed. Therefore, Dib Funding Inc cannot be owner of the Mark. The Petition should be dismissed on this basis alone. The Petitioner's attempts to establish standing by reciting that it received the intellectual property by assignment of assets of another company.

However, there was no such assignment of assets recorded. In particular, 37 C.F.R. §3.73 (b) provides that:

(1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:

(i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment). For trademark matters only, the documents submitted to establish ownership may be required to be recorded pursuant to §3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office.

Further,

An application based on use in commerce under **15 U.S.C. §1051(a)** must be filed by the party who owns the mark on the application filing date. If the applicant does not own the mark on the application filing date, the application is void. **37 C.F.R. §2.71(d)**; *Lyons v. Am. Coll. of Veterinary Sports Med. & Rehab.*, 859 F.3d 1023, 1027, 123 USPQ2d 1024, 1027 (Fed. Cir. 2017); *Conolty v. Conolty O'Connor NYC LLC*, 111 USPQ2d 1302, 1309 (TTAB 2014); *see Huang v. Tzu Wei Chen Food Co.*, 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir.

1988); *Great Seats, Ltd. v. Great Seats, Inc.*, 84 USPQ2d 1235, 1239 (TTAB 2007).

Conclusively then,

Dib Funding has no right to bring any action or to participate in this trademark cancellation proceeding. Dib Funding's application is void because it did not record an assignment of intellectual property for the trademark DIBCOIN.

#### **B. Petitioner is not the rightful owner of the DIBCOIN Mark**

Only the owner of a trademark used in commerce may request registration of the Mark. Section 1 of the Trademark Act, 15 U.S.C. § 1051; *In re Wella A. G.*, 787 F.2d 1549, 229 USPQ 274, 277 (Fed. Cir. 1986) (C.J. Mies concurring) ("Under section 1 of the Lanham Act, only the owner of a mark is entitled to apply for registration."); See also, *Great Seats Ltd. V. Great Seats Inc.*, 84 USPQ2d 1235, 1239 (TTAB 2007); Trademark Rule 2.71(d), 37 C.F.R. § 2.71(d) ("An application filed in the name of an entity that did not own the mark as of the filing date of the application is void.").

If a party is not the rightful owner of a trademark at the time of the application or anytime thereafter, then any subsequent registration of the mark may be cancelled

#### **McCarthy Test for Ownership of the Mark**

The proper test is set forth in *Covertch Fabricating, Inc. v. TVM Building Products, Inc.*, 124 F. Supp. 3d 489 (W.D. Pa. 2015). Where initial ownership between a manufacturer and its exclusive distributor is at issue and no contract exists, the manufacturer is the presumptive trademark owner unless the distributor rebuts that presumption using a multi-factor balancing test designed to examine the distribution agreement in effect between the parties. The six factors that should be considered are: (1) Which party invented or created the mark (2) Which party first

affixed the mark to goods sold (3) Which party's name appeared on packaging and promotional materials in conjunction with the mark (4) Which party exercised control over the nature and quality of goods on which the mark appeared (5) To which party did customers look as standing behind the goods, *e.g.*, which party received complaints for defects and made appropriate replacement or refund and (6) Which party paid for advertising and promotion of the trademarked product.

**(1) Which party invented or created the mark.**

Honson Luma is the creator of the Mark DIBCOIN. The Petitioner states that it hired Luma in August to create DIBCOIN. However, DIBCOIN was created and used in commerce long before then. Yet, the Petitioner alleges a date of first use of July 3, 2016. How can this be true if Petitioner asserts that the coin was not created until August. It is fraud. In practically every one of hundreds of emails, Facebook posts, twitter posts and news releases, Honson Luma attached the words “Creator of DIBCOIN”. Neither Dib Funding, nor Sunshine Capital ever challenged, protested or disagreed with this open and notorious claim of creating the mark.

**(2) Which party first affixed the mark to goods sold**

Honson Luma created the cryptocurrency DIBCOIN and sold and distributed the coins under that name.

**(3) Which party's name appeared on packaging and promotional materials in conjunction with the mark.**

All of the promotional material in conjunction with the DIBCOIN openly declared that it was created by Honson Luma.

**(4) Which party exercised control over the nature and quality of goods on which the mark appeared.**

Honson Luma exercised control over the nature and quality of goods on which mark appeared. Luma communicated with the various exchanges continually with respect to enhancing the product, adding more exchanges, promotional activities, coin swaps and resumptions of pauses in trading. Luma also responded to hacks of the system.

**(5) To which party did customers look as standing behind the goods, e.g., which party received complaints for defects and made appropriate replacement or refund.**

Honson Luma is the party whom customers look to as standing behind the goods. The complained to him and looked to him for restoration and re-issue of defective coins.

**(6) Which party paid for advertising and promotion of the trademarked product.**

Honson Luma paid for advertising and promotion of the trademarked initially. Dib Funding sponsored promotions for use of their distribution of coin from Luma. However, their promotion was as manufacturer, and not a distributor.

The written contract was executed between Honson Luma and Sunshine Capital Inc. on July 28, 2016. Dib Funding was not a party to the contract. The contract does not designate ownership of the trademark. The relevant case law provides that where ownership must be determined when the initial sale of goods bearing the Mark is between and manufacturer and a distributor e.g., “where initial ownership between a manufacturer and its exclusive distributor is at issue and no contract exists, the manufacturer is the presumptive trademark owner unless the distributor rebuts the presumption using a multi-factor balancing test designed to examine the distribution agreement in effect between the parties. *See Covertch Fabricating,*

*Inc. v. TVM Building Products, Inc.*, 124 F. Supp. 3d 489 (W.D. Pa. 2015).

In this case, it is clear from the record that the Registrant (Honson Luma), is owner of the Mark DIBCOIN because the written contract is silent as to ownership, and Luma is the manufacturer (creator) of the Mark, and Sunshine Capital is a distributor. The Petitioner corporation did not exist at the time the product (dibcoins) and the trademark (DIBCOIN) was created by Mr. Luma.

The written contract between Sunshine Capital Inc. provided for Registrant to perform non-specified general management services for that company. The Petitioner, in this case (Dib Funding, Inc), alleges that the contract was not only between Honson Luma and Sunshine Capital Inc. That is, of course, an impossibility because the Petitioner company did not exist.

In either case, Florida law governs (as provided by the written contract and provides that “When the language is clear and unambiguous, it must be construed to mean “just what the language therein implies and nothing more.”” *See State Farm Mutual Auto. Ins. Co. v. Walker*, 382 F.2d 548 (7th Cir. 1967). In the case at bar, the Petitioner falsely alleges that Dib Funding Inc. was also a party to the contract, and that the general management services to be performed under the contract included the development of the Mark DIBCOIN. However, Florida law provides that the contract must be construed to mean “just what the language therein implies and nothing more”.,

Mr. Luma created the Mark DIBCOIN (also a virtual currency) and its associate distribution channels (network) by his own efforts alone and through a huge personal expenditure of time and money. He also made the first distribution associated with the DIBCOIN Mark.

Mr. Luma’s initial distributions of DIBCOIN included distributions of about 80%

of the Coins he created to Sunshine Capital's designees. Distributions were also made to another corporation Dib Funding Inc. which was an offshoot from a Nevada corporation. This was done at the instruction of the Trustee of Sunshine Capital (Daniel J. Duffy).

Subsequent distributions were made to purchasers of dibcoin from Honson Luma's personal wallet. These purchasers, from the general public, were members of a nationwide multilevel marketing company operated by Luma, in conjunction with Rx Smart Coffee. These purchasers looked to Luma as controlling the quality and nature of the services.

Mr. Luma retained only 10% of the coins and control of the network that he created. Mr. Luma retained only 500,000,000 of his coins, which were calculated to be sufficient for him to execute against his expected one million shares of Sunshine Capital stock he would contractually receive over the course of three years. The relationship was simple. Luma provided coins. Sunshine Capital provided stock. Luma would give coins to Sunshine Capital. Sunshine Capital would give stock to Luma. Sunshine Capital owned the stock, Luma owned the coins. However, the contract did not provide for Luma to give anything to Sunshine Capital. The general distribution would inure to his own profit and benefit if the plan was properly executed.

Mr. Luma, under contract for "general management services", proceeded to conduct activities to peg the value of Sunshine Capital stock against the cryptocurrency DIBCOIN in order to maximize the value of both.

However, at the signing of the contract, Sunshine Capital was obligated to pay Mr. Luma about 333,000 shares of Sunshine Capital Stock on the day of execution of the contract. Sunshine Capital reneged in that they issued Mr. Luma a worthless

stock certificate for only 100,000 shares of stock.

Nevertheless, having a vested interest in increasing the value of both stock and coin, Mr. Luma recruited the first company (Rx Smart Coffee Inc) to be purchased using DIBCOIN. Sunshine Capital refused to pay, even as they had refused to pay Luma. Meanwhile, during the delay in paying, Sunshine Capital's stock tanked and it was banned from trading. That destroyed the plan in that Sunshine Capital had nothing of value to contribute to the enterprise.

Ultimately, Mr. Luma sent Sunshine Capital and Dib Funding (of Michigan or Florida) a default letter based on the written agreement. Mr. Luma terminated the contract at least for failure of consideration, seeing that the stock had no value, the stock certificate was fake, and Sunshine Capital was showing bad faith in all of its dealings. Luma requested the return of his 3.9 billion DIBCOINS. Sunshine Capital withdrew from the endeavor and sought to create another coin by the same name.

However, Mr. Luma continued to operate the network and continued to trade in DIBCOIN. He reassured the holders of the coin that he would continue working on their behalf. Dib Funding of Michigan (or Florida) attempted to get the exchanges to halt trading of DIBCOIN and were unsuccessful. So, Dib Funding of Michigan (or Florida) flooded the exchange with its massive store of coins which plunged the value of DIBCOIN from about \$1/share to a fraction of a penny per share.

Mr. Luma, through his duty to the coin holders, executed a coin swap to each coin holder in proportion to bring the value of their coin back up to the pre-crash value. As that recovery plan went into execution, Dib Funding of Michigan filed this present cancellation proceeding and convinced the new exchange to suspend trading

of DIBCOIN until the trademark issue was resolved. While this has caused great chagrin among coin holders, Mr. Luma has maintained continuous communications with them as to the progress of the proceedings. He still has control of both the DIBCOIN and the network.

#### **I. INACCURACIES AND OBJECTIONS TO PETITIONER'S TRIAL BRIEF.**

- A. Relationship of the Parties. First of all, the relationship between the Registrant and any named party is governed wholly by the contract (Dib Funding is not a party). Accordingly, the language of the contract governs the relationship of the parties. The contract contains nothing about ownership of or collaboration to develop any intellectual property. Further, the contract mentions nothing about the creation of DIBCOIN or any other cryptocurrency.
- B. In this case, the Registrant created the products (DIBCOIN and network) to which the trademark is affixed at its own expense, amounting to tens of thousands of dollars in money, time and other resources, and delivered DIBCOINS to purchasers and designated recipients including Sunshine Capital (party to contract) and Dib Funding (non-party to contract). Further, it was Sunshine Capital and Dib Funding Inc. that abandoned its participation and left the enterprise, while Honson Luma continued, as he is doing to this day. Therefore, the proper test for rightful ownership is not based on collaboration between the parties and therefore the proper test is not based on the cases Petitioner cited with respect thereto. That is, the test for ownership enunciated in *Lyons* and *Wonderbread* are inapposite.

#### **Goods and Services are Different from Dib Funding Inc.**

The goods and services associated with the registration of the DIBCOIN Mark is a very narrow niche. It does not cover purchasing real world assets with

cryptocurrency. It does not cover any activity related to stock or the stock market. It does not cover any activity related to making purchases in stores. These are things that Dib Funding alleges the registration prevents them from doing. The only thing that it prevents them from doing is (1) creating a virtual currency named DIBCOIN, and (2) creating a network for use of the currency (paraphrasing). This is the narrow niche the Registrant has carved out for himself, building a network, and providing a coin. That is all. Sunshine Capital and its associates, including Dib Funding of Florida, were distributed a total of about 3.9 billion dibcoins. They had their own wallets to operate out of. Not a single person had any access to it, except themselves. Out of their own wallets, they were free to execute their business plans using the DIBCOIN that was distributed to them by Mr. Luma. In fact, they retired all of their corporate debt using dibcoin. It was executed out of their own abundant supply and out of their own company wallets. They had all of the stock, and they had 90% of the DIBCOIN.

### **Dibcoin Functions like Money**

Dibcoin is likened to a money supply that has come off of a printing press. Luma is the person who created the press, and Luma is the one who put the money (coin) into circulation. What the user does with it after that is up to the user. The trademark owner cannot stand in their way. Remember, the Mark is only for (1) Creating the Coin and (2) Providing a network for distribution. Neither Sunshine Capital, Dib Funding Inc. of Florida ever engage in either activity, or neither did its business plan state a purpose of engaging in such activity.

They had their coin. They had their stock. Luma only had a fairly small amount of coins (DIBCOIN) and the network he created.

### **Luma Obligation to Sunshine Capital**

Luma had a personal stake in the success of Sunshine Capital, the success of Dib Funding of Florida, and the success of each person or entity which received or should receive DIBCOIN distributions. To make them succeed, is the make himself succeed. Luma promoted the goals of Sunshine Capital and Dib Funding of Florida with an exceptional amount of vigor. He did everything that he could for them. However, he was not contractually bound to do anything except to provide “general management services”, such services which the contract stated could be provided for any other person or business. Nevertheless, Luma prioritized himself and Space Age Investment Group company and then Sunshine Capital and Dib Funding of Florida, who he promised only that he would “do his best”.

### **Abandonment of Trademark**

The Petitioner cited case law which suggested that Luma has abandoned his trademark. No so. The network and coin creation are a normally eon-time event which cannot be abandoned. However, in case of something going awry, the creator of the coin and associated networks has a duty to look out for the interests of the coin holders. Because Dib Funding of Florida and Sunshine Capital tried to shut the network down several times, Luma had create new coins under the same mark (DIBCOIN) and solicit new networks to facilitate trading. To this day, the vast community of coin holders look to Luma to conclude this preceding and to restore their coin to its original value.

### **Cases Cited by Petitioner**

#### ***Wonderbread* is wrong standard**

While *Wonderbread* does not provide the test applicable to this case, even under that test, the Registrant would prevail. This is because while Honson Luma

terminated his contract, it was Luma who continued the enterprise. As shown by the almost 200-page Dibcoin Facebook feed that has been made part of the record, Luma was tireless in looking after the community and the product. He continually watched over the coin, kept them informed and encouraged them. It is clear that they also looked to him in resolving their problems and complaints.

The cases cited by Petitioner are inapposite. In each of the cases, the Petitioner had actually used the Mark in commerce for either the goods or services described. In this case, however, the Petitioner had never (1) created a network or planned to create a network or (2) create a digital currency or planned to create a digital currency. Therefore, the Petitioner had not made a credible case for having a real interest. The Petitioner has no standing.

#### **Assignment of Assets**

The Petitioner, Dib Funding Inc of Michigan, was formed in January 2017 in the state of Michigan. Having realized that it has no stake or involvement in any of the activities occurring between Mr. Luma and Sunshine Capital, Inc., It now retrospectively alleges that it was assigned the assets of Dib Funding of Florida. This is a falsehood. If such an assignment had taken place, the Petitioner would have not merely made and allegation, but would have produced the assignment document.

#### **Petitioner Produced no Documentation**

Petitioner had continually alleged that Luma was hired for this or Luma was tasked with that, or Luma said he wanted to be paid in dibcoin instead of stock, or Luma was appointed president of Dib funding. However, Petitioner has not produced a single document (among the thousands it presented) to substantiate those wild assertions. There is not a single contract between Luma and Dib Funding of either Florida, or Michigan or Delaware or whatever other shadow entities it seeks to hide behind.

### **Misleading Contract**

It is now clear that the contract was written very cleverly by James Scheltema (now disbarred). Upon accepting the contract, Luma initially believed for years that it had a term of three years for the million shares of stock. However, it does not. Luma even said that he was going to enjoy the three years in his acceptance email..

The contract also misleads because on the heading it indicates that Sunshine Capital (party) is a Dib Funding company. It deceived Luma into believing that he was also under contract with Dib funding to become a vice present. However, he was not.

The contract misleads in that the first reading had Luma believing for years that he had been appointed as a Vice President of Sunshine Capital. However, he had not.

The contract only says, “hereinafter referred to as Vice President”. Luma believes that it only allows him to be so called and referred to but does not say anywhere “appoint” of “appointing”. Therefore, it seems to permit him only to use the designation of Vice President.

### **Admissions and Denials**

The Petitioner said that Luma admitted that Dibcoin was an asset of sunshine capital and/or Dib Funding. Indeed, it is, as Luma answered. However, it is also an asset of thousands of others, that is, whoever holds DIBCOIN. DIBCOIN is like money. It is an asset of whoever has some. The Petitioner said that Luma admitted that he was vice president of sunshine capital and Dib Funding. Indeed, Registrant believed initially until careful reading of the employment contract. The contract is not an appointment to an office and neither meets the formalities of Sunshine Capital of Nevada or Florida, or any of the multiple Dib Funding’s that seem to spring out of nowhere perpetually.

### **Luma paid for DIBCOIN**

Luma developed DIBCOIN, the network, and all related services at his own expense. He worked on his own time, and never received a single cent in compensation from anyone.

### **Can Registrant be Paid out of his own Money?**

Dib Funding says that it paid Luma in Dibcoin. The question is how can they Luma from assets that already belong to Luma? That's like telling someone "I'll give you a million dollars if you give me 10 million". It does not compute. Luma created Dibcoin and the networks at his own expense. Dib Funding did not contribute a single penny. Luma had the power to retain every dibcoin for his own purposes. He did not have to ask Sunshine Capital or Dib Funding (any of the three) whether he could be paid in coin. He created all of it, and he owned all of it. Sunshine Capital owned stock. It did not own a single coin except what Luma distributed to them.

### **Fraud and Failure of Consideration**

By whatever name it is called, neither of the three Dib funding's or the two or three Sunshine Capitals pay Mr. Luma the million dollars that they promised in exchange for performing "general management services". Even the 100,000-stock certificate they issued to Mr. Luma was fraudulent and worthless. Even in this face of this, Luma sought to make Sunshine Capital's endeavors successful. This was not because of the somewhat illusory contract. Rather, it is apparent that if they succeeded, then Mr. Luma succeeded.

### **Subsequent to the creation, Mr. Luma distributed coin**

In this case, Luma was the creator (manufacturer and also the first distributor). Recipients made distributions from their own wallets after that. Honson Luma, the owner of the Mark, is described in a news release by Sunshine Capital Inc. as follows:

Mr. Luma is a seasoned futures and cryptocurrencies trader and uses his company, Space Age Investment Group/Consultant, LLC (SAIG) for its members to achieve financial independence. Mr. Luma brings an extensive knowledge of the cryptocurrency market - not only as a trader but as a creator and programmer of cryptocurrencies to his new role at Sunshine Capital.

Particularly, the Registrant (Honson Luma) is in the business of:

1. Providing a virtual currency for use by members of an on-line community via a global computer network;
2. Providing electronic transfer of a virtual currency for use by members of an on-line community via a global computer network;

*Luma has not only advertised these services/products but has a history of performing them.*

By Contrast, neither Sunshine Capital Inc., nor Dib Funding Inc. has ever created or programmed cryptocurrencies. Specifically, neither company has done or alleged to do either of the following:

- a. Providing a virtual currency for use by members of an on-line community via a global computer network;
- b. Providing electronic transfer of a virtual currency for use by members of an on-line community via a global computer network;

The Petition for Cancellation should be dismissed with prejudice.

Respectfully submitted,

*Honson Luma*

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CERTIFICATE OF SERVICE

I, Honson Luma, hereby certify that a true and correct copy of the foregoing **Registrant's Trial Brief** has been electronically served on Petitioner by forwarding said copy on March 24, 2020 to:

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