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

Proceeding	92070438
Party	Plaintiff 142 Mercer Street, LLC, John F. McDonald
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Submission	Plaintiff's Notice of Reliance
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Date	08/13/2020
Attachments	NOTICE OF RELIANCE 2 - JM v Cortina.pdf(96436 bytes)

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

In re Registration of DAVID CORTINA

Mark: LURE FISH HOUSE
Reg. No.: 4,608,249

JOHN F. MCDONALD; and 142 MERCER
STREET, LLC d/b/a LURE FISHBAR,

Petitioners,

v.

DAVID CORTINA,

Registrant/Respondent.

CANCELLATION NO. 92070438

**PETITIONERS' NOTICE OF RELIANCE 2:
NOTICE OF RELIANCE ON DOCUMENTS FROM
USPTO ELECTRONIC DATABASE**

Pursuant to 37 C.F.R. §§ 2.120 and 2.122, Petitioners John F. McDonald and 142 Mercer Street, LLC, by and through their undersigned counsel, hereby give notice of reliance upon the following materials attached as Exhibits to rebut the alleged defenses of Registrant/Respondent raised in the Trial Declaration of David Cortina, and the materials submitted in Respondent's Notice of Reliance No. 1 and Notice of Reliance No. 2:

(1) Exhibit 2A - LURE FISHBAR 2006 Registration Trademark Documents downloaded from the USPTO TSDR electronic database on July 1, 2020. This exhibit is relevant to the issues of: priority in this matter, as it demonstrates that both Petitioners' first use of the LURE FISHBAR marks and registration of the LURE FISHBAR mark pre-date Respondent's use of the LURE FISH HOUSE marks; the strength of the LURE FISHBAR mark; Respondent's claims

that Petitioners' Consent Agreement with L.U.R.E. International, Inc. was a naked consent agreement; Respondent's claims that include lack of likelihood of confusion, dilution, laches, abandonment, lack of strength, differences in the classes of customers, differences in the channels of trade, differences in the advertising channels, the number of similar marks in use, and a lack of fame of Petitioner's trademark.

(2) Exhibit 2B – LURE FISH HOUSE 2014 Registration Trademark Documents downloaded from the USPTO TSDR electronic database on August 12, 2020. This exhibit is relevant to the issues of: priority in this matter, as it demonstrates that both Petitioners' first use of the LURE FISHBAR marks and registration of the LURE FISHBAR mark pre-date Respondent's use of the LURE FISH HOUSE marks; bad faith and the misrepresentations of Respondent David Cortina; Respondent's claims that include lack of likelihood of confusion, dilution, laches, abandonment, lack of strength, differences in the classes of customers, differences in the channels of trade, differences in the advertising channels, the number of similar marks in use, and a lack of fame of Petitioner's trademark.

(3) Exhibit 2C - LURE FISHBAR 2018 Design Mark Application Trademark Documents downloaded from the USPTO TSDR electronic database on July 1, 2020. This exhibit is relevant to the issues of: priority in this matter, as it demonstrates that both Petitioners' first use of the LURE FISHBAR marks and registration of the LURE FISHBAR mark pre-date Respondent's use of the LURE FISH HOUSE marks; Respondent's claims that include lack of likelihood of confusion, dilution, laches, acquiescence, abandonment, lack of strength, differences in the classes of customers, differences in the channels of trade, differences in the advertising channels, the number of similar marks in use, and a lack of fame of Petitioner's trademark.

(4) Exhibit 2D - LURE OYSTER HOUSE 2019 Registration Trademark Documents downloaded from the USPTO TSDR electronic database on July 2, 2020. This exhibit is relevant to the issues of: likelihood of confusion in this matter, as it evidences that Examining Attorney Amy Alfieri found a likelihood of confusion between the LURE OYSTER HOUSE mark and the LURE FISHBAR marks; Respondent's claims that include lack of likelihood of confusion, dilution, laches, acquiescence, abandonment, lack of strength, differences in the classes of customers, differences in the channels of trade, differences in the advertising channels, the number of similar marks in use, and a lack of fame of Petitioner's trademark; bad faith and the misrepresentations of Respondent David Cortina.

(5) Exhibit 2E – LURE BURGER 2015 Application Trademark Documents downloaded from the USPTO TSDR electronic database on July 2, 2020. This exhibit is relevant to the issues of: likelihood of confusion in this matter, as it evidences that Examining Attorney Amy Alfieri found a likelihood of confusion between the LURE BURGER mark and the LURE FISHBAR marks; Respondent's claims that include lack of likelihood of confusion, dilution, laches, acquiescence, abandonment, lack of strength, differences in the classes of customers, differences in the channels of trade, differences in the advertising channels, the number of similar marks in use, and a lack of fame of Petitioner's trademark; bad faith and the misrepresentations of Respondent David Cortina.

(6) Exhibit 2F – LURE FISHBAR 2018 Word Mark Application Trademark Documents downloaded from the USPTO TSDR electronic database on July 1, 2020. This exhibit is relevant to the issues of: likelihood of confusion in this matter, as it evidences that Examining Attorney Josette M. Beverly found a likelihood of confusion between the LURE FISHBAR mark and the

LURE FISH HOUSE mark; priority in this matter, as it demonstrates that both Petitioners' first use of the LURE FISHBAR marks pre-dates Respondent's use of the LURE FISH HOUSE marks; Respondent's claims that include lack of likelihood of confusion, dilution, laches, acquiescence, abandonment, lack of strength, differences in the classes of customers, differences in the channels of trade, differences in the advertising channels, the number of similar marks in use, and a lack of fame of Petitioner's trademark.

(7) Exhibit 2G – L.U.R.E. Registration Trademark Documents downloaded from the USPTO TSDR electronic database on August 12, 2020. This exhibit is relevant to the issue of likelihood of confusion in this matter, as it evidences that the LURE FISHBAR mark was initially refused registration due to the prior use of the mark L.U.R.E. It is also relevant to the strength of the LURE FISHBAR mark, as it rebuts Respondent's claims that Petitioners' Consent Agreement with L.U.R.E. International, Inc. was a naked consent agreement.

(8) Exhibit 2H – LURE 2012 Atlanta Application Trademark Documents downloaded from the USPTO TSDR electronic database on August 12, 2020. This exhibit is relevant to the issues of: likelihood of confusion in this matter, as it evidences that the LURE mark was denied registration due to likelihood of confusion with the LURE FISHBAR mark; Respondent's claims that include lack of likelihood of confusion, dilution, laches, acquiescence, abandonment, lack of strength, differences in the classes of customers, differences in the channels of trade, differences in the advertising channels, the number of similar marks in use, and a lack of fame of Petitioner's trademark.

(9) Exhibit 2I – LURE RESTAURANT & LOUNGE 2017 Application Trademark Documents downloaded from the USPTO TSDR electronic database on July 13, 2020. This exhibit is relevant to the issues of: likelihood of confusion in this matter, as it evidences that the

LURE RESTAURANT & LOUNGE mark was denied registration due to likelihood of confusion with the LURE FISH HOUSE mark; Respondent's claims that include lack of likelihood of confusion, dilution, laches, acquiescence, abandonment, lack of strength, differences in the classes of customers, differences in the channels of trade, differences in the advertising channels, the number of similar marks in use, and a lack of fame of Petitioner's trademark.

(10) Exhibit 2J – LURE LA 2012 Application Trademark Documents downloaded from the USPTO TSDR electronic database on August 12, 2020. This exhibit is relevant to the issues of: likelihood of confusion in this matter, as it evidences that the LURE RESTAURANT & LOUNGE mark was denied registration due to likelihood of confusion with the LURE FISH HOUSE mark; Respondent's claims that include lack of likelihood of confusion, dilution, laches, acquiescence, abandonment, lack of strength, differences in the classes of customers, differences in the channels of trade, differences in the advertising channels, the number of similar marks in use, and a lack of fame of Petitioner's trademark.

Dated: August 13, 2020

Respectfully submitted,

LOPRESTI, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of PETITIONERS' NOTICE OF RELIANCE 2: NOTICE OF RELIANCE ON DOCUMENTS FROM USPTO ELECTRONIC DATABASE has been served on Registrant/Respondent DAVID CORTINA by forwarding said copy on August 13, 2020 via email at angie@angiesmall.org to:

Angela Small Booth
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143 Figueroa Street, Suite 14
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805-765-5413
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/s/ Anthony A. LoPresti

Anthony A. LoPresti

Date: August 13, 2020