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

Proceeding no.	92083501
Party	Defendant Rosanna L. Servodio
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Signature	/Ana Juneja/
Date	10/11/2024
Attachments	Final 56d.pdf(942053 bytes)

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

KITTY CARDBOARD, LLC

Petitioner

Cancellation No. 92083501

Registration No. 5771739

ROSANNA SERVODIO

Registrant / Respondent

Mark: KITTY KARDBOARD

Registration Date: June 4, 2019

**REGISTRANT ROSANNA SERVODIO'S CANCELLATION OF
PETITIONER'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56**

Registrant Rosanna Servodio (“Registrant” or “Respondent”) hereby submits this opposition to Petitioner Kitty Cardboard, LLC’s (“Petitioner”) motion for summary judgment pursuant to Rule 56. Petitioner has moved for summary judgment before any aspect of discovery has been fully completed. Petitioner’s motion is simply premature to be properly briefed and opposed. Accordingly, pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, Registrant Rosanna Servodio respectfully requests that Petitioner’s motion for summary judgment be denied without prejudice.

Registrant respectfully submits that, despite timely requests made during the discovery period, Petitioner has failed to adequately respond to Registrant’s First Set of Interrogatories, Requests for Admissions, and Requests for Documents. In light of Petitioner’s insufficient responses, Registrant requests that the Trademark Trial and Appeal Board (the “Board”) deny Petitioner’s Motion for Summary Judgment on this basis.

Registrant respectfully requests that the Board deny the motion on the merits. Since Petitioner has clearly not met its burden to demonstrate the absence of any genuine dispute of material fact and has failed to meet the essential requirements of Rule 56 of the Federal Rules of

Civil Procedure in the present case, (1) there exists facts that are presently unattainable; (2) Registrant has made a substantial effort to obtain additional information and evidence from Petitioner; and (3) Petitioner has not presented relevant facts during the discovery period.

In the alternative, Registrant requests the opportunity to conduct discovery sufficient to respond to Petitioner's Motion for Summary Judgment in good faith upon any re-filing.

FACTUAL BACKGROUND

On August 15, 2018, Registrant Rosanna Servodio filed an application for the trademark KITTY KARDBOARD ("Registrant's Mark), which was assigned Serial No. 88078551 for use in connection with the goods in Class 20 "Pet furniture in the nature of cardboard cat houses; Pet furniture in the nature of cat houses". The USPTO subsequently granted the registration on June 4, 2019, under U.S. Registration No. 5771739.

On October 24, 2023, Petitioner filed its application for KITTY CARDBOARD ("Petitioner's Mark"), which was assigned Serial No. 98237755 for "Pet furniture in the nature of cardboard cat houses; Pet furniture in the nature of cat shelters" in Class 20. On the same date, Pursuant to Section 14 of the Trademark Act, 15 U.S.C. § 1064, Petitioner filed a Petition to Cancel ("Cancellation") Registration No. 5771739 for the mark KITTY KARDBOARD.

As set forth in the Cancellation, Petitioner alleges that continued registration of the Registrant's Mark is likely to cause confusion with Petitioner's trademarks and falsely suggests a connection with Petitioner and its mark. On December 3, 2023, Registrant filed its Answer, stating that it has been using its registered mark since 2017, more than 7 years before Petitioner's filing date for the application. In addition, Registrant provided sufficient evidence demonstrating that Registrant's first use of a registered mark in commerce predates Petitioner's first use in commerce, and Petitioner has replicated its goods description verbatim from Registrant's existing registration.

On January 4, 2024, the Board reviewed the pleadings in this case and issued critical findings. While Petitioner had asserted a statutory cause of action under Section 2(d) of the

Trademark Act, the Board found that the likelihood of confusion claim was insufficiently pleaded, as Petitioner failed to specify the goods and services allegedly associated with its mark. The Board also noted that Petitioner's pleadings did not comply with the formatting requirements under Trademark Rule 2.126(a)(1).

Subsequently, on January 23, 2024, Petitioner filed its Motion to Amend Pleadings and on February 12, 2024, Registrant filed its Motion to Amend Answer/Counterclaims.

On March 13, 2024, discovery commenced, and Registrant duly served its initial disclosures on April 12, 2024. Following this, on June 24, 2024, Registrant served its First Set of Interrogatories, Requests for Admission, and Requests for Production of Documents and Things on Petitioner. Petitioner responded on July 24, 2024. However, upon review of Petitioner's responses, Registrant determined that Petitioner had deliberately failed to adequately respond to several key interrogatories, requests for admission, and requests for production. In essence, Petitioner's responses were incomplete and evasive, failing to address Registrant's discovery requests in full.

On August 10, 2024, Petitioner served its own discovery requests on Registrant. Subsequently, on September 12, 2024, Registrant sent a detailed email to Petitioner, requesting full and complete responses to its earlier discovery requests. In this communication, Registrant also explained that, due to the deficient and incomplete nature of Petitioner's responses, it was not in a position to provide responses to Petitioner's discovery requests at that time. To date, Registrant has received no response from Petitioner regarding its request for the missing and incomplete discovery responses.

On September 12, 2024, while Registrant was still awaiting Petitioner's response to its discovery requests, Petitioner prematurely filed a Motion for Summary Judgment, asserting that no genuine issue of material fact exists. However, there remains a clear dispute of fact regarding Registrant's actual use of the registered mark in commerce, which predates Petitioner's alleged use in commerce. Moreover, a genuine issue of material fact exists as to Petitioner's conduct in filing a trademark application with full knowledge of Registrant's prior registration for identical services under a similar name. Petitioner's actions suggest an intent to appropriate the goodwill

and reputation associated with Registrant's mark and to mislead the USPTO into granting the registration. Accordingly, these unresolved factual issues preclude summary judgment.

Petitioner's summary judgment motion therefore fails on the merits, because the parties dispute genuine issues of material fact, and any claims regarding the prior use in commerce cannot be decided on the present record as a matter of law.

LEGAL STANDARD

Summary judgment is appropriate only if the pleadings, the discovery and disclosure materials on file, and any affidavits, show that there "is no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see, e.g., *Celotex Corp. v. Catrell*, 477 U.S. 317 (1986). "A factual dispute is genuine if sufficient evidence is presented such that a reasonable fact finder could decide the question in favor of the nonmoving party." T.B.M.P. § 528.01 (citing *Opryland USA, Inc. v. Great Am. Music Show, Inc.*, 970 F.2d 847, 23 U.S.P.Q.2d 1471, 1472 (Fed. Cir. 1992) (explaining that the non-moving party is not required to present its entire case in response to a motion for summary judgment, but just sufficient evidence to show an evidentiary conflict as to a material fact in dispute)). Thus, the non-moving party must be given the benefit of all reasonable doubt as to whether genuine disputes of material fact exist. *Id.* (citing *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 U.S.P.Q.2d 1295, 1298 (Fed. Cir. 1992)). *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When ruling on a motion for summary judgment, the court is required to view all facts and inferences in the light most favorable to the nonmoving party and resolve all disputed facts in favor of the nonmoving party. *Boudreaux v. Swift Transp. Co., Inc.*, 402 F.3d 536, 540 (5th Cir. 2005). Further, a court "may not make credibility determinations or weigh the evidence" in ruling on a motion for summary judgment. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000); *Anderson*, 477 U.S. at 254- 55.

Once the moving party has made an initial showing that there is no evidence to support the nonmoving party's case, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine dispute of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986). On the other hand, "if the movant

bears the burden of proof on an issue, either because he is the plaintiff or as a defendant he is asserting an affirmative defense, he must establish beyond peradventure all of the essential elements of the claim or defense to warrant judgment in his favor.” *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986) (emphasis in original). “[When] the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine [dispute] for trial.’” *Matsushita*, 475 U.S. at 587. (citation omitted). Mere conclusory allegations are not competent summary judgment evidence, and thus are insufficient to defeat a motion for summary judgment. *Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir. 1996). Unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary judgment evidence. See *Forsyth v. Barr*, 19 F.3d 1527, 1533 (5th Cir. 1994). While Rule 56(b) allows a party to move for summary judgment "at any time until 30 days after the close of all discovery" (Fed. R. Civ. P. 56(b)), "the prevailing rule in all circuits" is that "[u]nder the Federal Rules of Civil Procedure, the parties must be afforded adequate time for general discovery before being required to respond to a motion for summary judgment." See *Metro. Life Ins.* "[D]iscovery digs subsurface and may unearth facts that tend to, support the contrary conclusion" to any conclusion asserted in a summary judgment motion. *Doe*, 480 F.3d at 259 (vacating grant of summary judgment motion where parties opposing summary judgment "were not given an opportunity to marshal facts in aid of their argument "). For this reason, Rule 56(d), formally Rule 56(f), provides that:

If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

Registrants are not yet in a position to present all material and undisputed facts in response to Petitioner’s Motion for Summar Judgement. Further, because of this action is in its infancy, there have been no substantive rulings and no substantive discovery has been taken, Defendants' instant Rule 56(d) Motion should be granted without the need of any "strict showing

of necessity and diligence that is otherwise required." *Metro. Life Ins.*, 527 F.3d at 1337. Fed. R. Civ. P. 56(d). "[C]ourts usually grant properly filed Rule 56(f) motions 'as a matter of course.'" See *St. Surin p. V.I. Daily News, Inc.*, 21 F.3d 1309, 1314 (3d Cir, 1994) (finding that trial court acted "prematurely" in considering merits of summary judgment motion "while significant discovery was yet to be had"). The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his or her claim. *Ragas*, 136 F.3d at 458. Rule 56 does not impose a duty on the court to "sift through the record in search of evidence" to support the nonmovant's opposition to the motion for summary judgment. *Id.*; see also *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 915-16 & n.7 (5th Cir. 1992). "Only disputes over facts that might affect the outcome of the suit under the governing laws will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248. Disputed fact issues that are "irrelevant and unnecessary" will not be considered by a court in ruling on a summary judgment motion. *Id.* If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to its case and on which it will bear the burden of proof at trial, summary judgment must be granted. *Celotex*, 477 U.S. at 322-23.

A party that believes that it cannot effectively oppose a motion for summary judgment without first taking discovery may file a request with the Board for time to take the needed discovery." T.B.M.P. § 528.06. "If a party has demonstrated a need for discovery that is reasonably directed to obtaining facts essential to its opposition to the motion, discovery will be permitted, especially if the information sought is largely within the control of the party moving for summary judgment." *Id.* Rule 56(d) exists to provide nonmovants with protection from being "railroaded" by premature summary judgment motions. See *Opryland USA Inc. v. The Great Am. Music Show Inc.*, 970 F.2d 847, 23 U.S.P.Q.2d 1471, 1474 (Fed. Cir. 1992) (citing *Celotex Corp.*, 477 U.S. at 326).

ARGUMENTS

A. Petitioner's Motion for Summary Judgment Should Be Denied

A party moving for summary judgment bears the burden of demonstrating the absence of any genuine dispute of material fact, and it is entitled to judgment as a matter of law. This burden is greater than the evidentiary burden at trial, and can only be met if the Petitioner supports motion with affidavits or other evidence which, if unopposed, would establish its right to judgment. Only if and once, this heavy burden is met does the burden shift to the Registrants to proffer countering evidence to show that there is a genuine factual dispute for trial.

In this case, Petitioner does (and cannot) meet its initial burden as the Motion for Summary Judgment consists of arguments unsupported by evidence. The evidence submitted by Petitioner does not substantiate its conclusory statements regarding the alleged use of the mark in commerce or its alleged sales. Petitioner has made vague submissions concerning why the mark was not registered earlier and claims of prior use in the market lack evidentiary support. Petitioner has not provided any evidence at any point in the proceeding to establish that it had actually made use in commerce of KITTY CARBOARD mark in connection with the Class 20 Pet furniture in the nature of cardboard cat houses; Pet furniture in the nature of cat houses.

Petitioner relies upon unsupported claims that it used the mark in commerce prior to Registrant's use of the mark on or before 2017. But Petitioner fails to establish the alleged prior use. Further, Petitioner has not provided any evidence to establish its statements. Petitioner's motion for summary judgment should be denied, as there is clearly a genuine issue of material fact.

1. Petitioner's Motion for Summary Judgment Is Premature

Petitioner refers to Fed. R. Civ. P. 56; 37 C.F.R. § 2.127(e) as a Motion for Summary Judgment. Registrants note that a summary judgment motion that is filed when incomplete discovery has been conducted is premature. "The Supreme Court has made clear that *summary judgment is inappropriate unless a tribunal permits the parties adequate time for discovery . . .*" *Dunkin' Donuts of America, Inc. v. Metallurgical Exoproducts Corp.*, 840 F.2d 917, 918 (Fed. Cir. 1988) (vacating the Board's grant of summary judgment where DDA did not have the opportunity to gather evidence through discovery) (emphasis added). Here, discovery has been incomplete. Registrants have not been afforded sufficient opportunity to gather evidence, as

Petitioner has failed to produce complete discovery responses and neither responded to Registrant's second request to produce more information. Thus, Petitioner's Motion is premature and must be denied.

2. Registrant Requires Discovery To Respond To The Allegation Made In Petitioner's Motion

Even if the Board does not outright deny Petitioner's Motion for Summary Judgment as premature, it should defer ruling on the merits and allow Registrant to pursue the necessary discovery under Rule 56(d) to adequately respond. Petitioner's Motion is based on numerous disputed facts that lack evidentiary support, as Petitioner has failed to produce complete and relevant documents, discovery responses, or witness testimony.

Specifically, Petitioner makes several unsubstantiated claims, including:

- Alleging full use of the mark in commerce across all 50 states and internationally without providing any sales records;
- Citing customer confusion between the two marks while failing to provide evidence of such confusion;
- Referencing external events, such as Hurricane Irma and COVID-19, to justify delays in filing its trademark application;
- Claiming ignorance of Registrant's mark, despite referencing it in a 2016 search report.

Petitioner has not provided any relevant discovery to substantiate these factual assertions. Without this discovery, Registrant cannot adequately respond to claims regarding Petitioner's business practices, the commercial impression of Petitioner's mark, or the verbal enunciation of Petitioner's mark. Registrant has made diligent efforts to obtain this discovery, but Petitioner has failed to respond to Registrant's written discovery requests, despite being well past the deadline.

In light of these deficiencies, Registrant respectfully requests that the Board grant leave to obtain discovery from Petitioner pursuant to Rule 56(d) and defer any ruling on Petitioner's

Motion until Registrant has had a fair opportunity to conduct discovery and challenge Petitioner's unsupported claims.

B. Petitioner's Arguments Regarding Prior Use than Registrant's First Use in Commerce Are Irrelevant

Petitioner's arguments regarding its alleged prior use in commerce are not only irrelevant but also unsupported by any credible evidence. Petitioner has provided no documentation substantiating its claim of prior use in commerce before Registrant's well-documented first use of the KITTY KARDBOARD mark in 2017. Petitioner's reliance on vague assertions and unverified claims fails to meet the necessary evidentiary standard required in trademark disputes. Specifically, Petitioner has not produced any invoices, sales records, or other business documentation that could demonstrate continuous or bona fide use of the mark in commerce prior to Registrant's first use. Petitioner's failure to provide any concrete documentation, such as sales records or shipping logs, to substantiate its claims of prior use directly contravenes its burden of proof in this proceeding. In trademark cases, the Petitioner must demonstrate prior use through clear and convincing evidence, not unsubstantiated assertions (see *Crash Dummy Movie, LLC v. Mattel, Inc.*, 601 F.3d 1387 (Fed. Cir. 2010)).

Petitioner's invocation of Hurricane Irma and COVID-19 as reasons for delaying its trademark application lacks any factual basis or documentation to support this claim. Furthermore, these events occurred after Registrant had already begun using the KITTY KARDBOARD mark in commerce, rendering them irrelevant to the issue of priority. Without specific evidence demonstrating how these events prevented Petitioner from filing its application in a timely manner, these arguments are nothing more than attempts to deflect from Petitioner's failure to establish priority.

Further, Petitioner's argument that it was unaware of Registrant's use of the mark, despite referencing Registrant's mark in a 2016 trademark search report, raises serious questions about Petitioner's credibility. This admission demonstrates not only Petitioner's knowledge of Registrant's prior use but also a deliberate choice to proceed with a conflicting mark. Such conduct indicates bad faith on the part of Petitioner, who seeks to undermine Registrant's

established rights despite being fully aware of Registrant's prior registration and continuous use of the mark.

In summary, Petitioner's unsupported claims of prior use, coupled with its contradictory and self-serving explanations for delays in filing, are irrelevant to the issue of priority. Registrant's first use in commerce is well-documented and predates any credible evidence of Petitioner's use. Accordingly, Petitioner's arguments regarding prior use should be dismissed as legally insufficient and factually baseless.

C. Alternatively, Registrants Should Be Given Reasonable Notice and An Opportunity to Respond on the Merits

"[W]hatever its decision, it is 'improper' for a court to rule on summary judgment without first ruling on a pending Rule 56(f) motion." Doe, 480 F.3d at 257 (citing St. Surin, 21 F.3d at 1315). A court thus should resolve a Rule 56(d) first request "before proceeding to the merits of [a] summary judgment motion and then, if it decide[s] to deny the request", give the party opposing summary judgment "reasonable notice and an opportunity to respond on the merits to the motion for summary judgment. See St. Surin, 21 F.3d at 1315 (noting also that a "court should be wary before granting summary judgment without conducting a hearing ") (citing cases).

Hence, in the event that this Board does not grant the instant Rule 56(d) Motion, Registrants respectfully request an enlargement of time to respond to Petitioner's Motion for Summary Judgment after the Board has ruled on the instant Motion. The alternative enlargement of time is requested simply to afford Registrants, and their undersigned counsel, sufficient notice and opportunity to file a substantive response in opposition. See, e.g., St. Surin, 21 F.3d at 1315 (trial "court abused its discretion when it granted summary judgment without giving [the non-movant] notice and an opportunity to file a response" on the merits).

The enlargement is also made in good faith and not for dilatory tactics. Rather, Registrant asserts that good cause exists pursuant to the authority cited in this Motion, for the requested

enlargement of time. Registrants do not believe that there is sufficient information or evidence available to reasonably respond to Petitioners' Motion for Summary Judgment at this early stage.

ETHICS CONCERNS

Petitioner's Motion for Summary Judgment has been improperly filed, violating 37 CFR § 11.301, which prohibits practitioners from pursuing proceedings without a basis in law and fact. Frivolous filings include those lacking merit or intended to harass, delay, or unnecessarily increase costs.

Here, Petitioner's motion is both procedurally and substantively defective. Discovery remains incomplete, no reasonable effort was made to meet and confer, and a Motion to Compel was not filed. Numerous factual disputes persist, and Petitioner has failed to provide adequate discovery responses. This demonstrates a disregard for procedural integrity.

Moreover, Petitioner's pro se status has prejudiced Registrant, Rosanna Servodio. Petitioner's lack of procedural understanding has resulted in a series of erroneous, frivolous submissions, forcing Registrant to incur significant legal expenses to address and correct these deficiencies. This has escalated fees for Registrant, who should not bear the burden of "educating" Petitioner on TTAB rules and practice.

Additionally, Petitioner's Motion for Summary Judgment appears designed to force Registrant to expend resources, as evidenced by Petitioner's history of needing basic legal concepts explained, improperly filing motions, and expressing an intent to financially pressure Registrant. Petitioner's behavior further complicates proceedings and detracts from legitimate legal arguments.

Given the ongoing prejudice and inefficiencies, and in light of the TTAB's guidance in TBMP § 114.01, which advises against pro se representation by business entities, Registrant respectfully requests that the Board order Petitioner to obtain appropriate counsel. If Petitioner fails to do so, the Board should strike all improper filings and consider dismissal. Such action is essential to prevent further waste of resources and ensure an orderly, fair proceeding.

CONCLUSION

Petitioner's Motion for Summary Judgment is not only premature but also an abuse of the legal process, intended to burden Registrant with excessive legal costs. By filing this motion without providing adequate responses to Registrant's discovery requests, Petitioner seeks to avoid the proper adjudication of material facts that are crucial to this proceeding. Such tactics, aimed at forcing Registrant to incur substantial legal fees while withholding critical information, are contrary to the spirit of Rule 56 and the Trademark Trial and Appeal Board's procedures. Registrant respectfully submits that this motion is not only improper at this stage but also filed with the intent to harass and delay, further supporting its denial.

Given Petitioner's continued non-compliance with discovery obligations and its premature filing of a Motion for Summary Judgment, Registrant respectfully requests that the Board impose appropriate sanctions under Rule 56(h) for Petitioner's improper use of this motion to delay proceedings and burden Registrant with unnecessary costs. Furthermore, in light of Petitioner's pro se status and the complexity of the issues at hand, Registrant requests that the Board order Petitioner to obtain legal counsel to ensure compliance with the procedural and substantive rules governing this proceeding. Petitioner's actions, thus far, have demonstrated a clear misunderstanding of the applicable legal standards, further warranting this request.

For the foregoing reasons, the facts pled in Registrant's Answer, which must be presumed to be true, establish a prior use by Registrant. Accordingly, Applicant's Motion should be denied. Petitioner's Motion should further be denied as a premature motion for summary judgment as discovery has been incomplete. At a minimum, Registrant should be afforded the opportunity to conduct discovery to make such a determination under Rule 56(d).

For the foregoing reasons, Registrants respectfully request that an Order denying Petitioner's Motion for Summary Judgment without prejudice as the motion was filed prematurely; and allowing the parties, including Registrants, sufficient opportunity to conduct discovery and to prepare a response in opposition to any summary judgment motion upon re-filing. Alternatively, in the event the Board does not grant the instant Rule 56(d) Motion,

Registrants respectfully request that the Board enter an order granting Registrants an enlargement of time to respond to Petitioner's Motion for Summary Judgment; and awarding such other relief as is deemed just and appropriate.

Date: October 9, 2024

Respectfully submitted,

/s/ Ana Juneja /

Ana Juneja
Attorney for Registrant
Ana Law LLC
1300 Pennsylvania Ave NW, Suite 700
Washington DC 20004

Certificate of Service

I hereby certify that a copy of the foregoing Registrant's Response to Petitioner's Motion For Summary Judgment Pursuant to Rule 56 has been served to Petitioner on October 8, 2024, via electronic email, at liene@kittycardboard.com.

/s/ Ana Juneja /

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

KITTY CARDBOARD, LLC

Petitioner

Cancellation No. 92083501

Registration No. 5771739

ROSANNA SERVODIO

Registrant / Respondent

Mark: KITTY KARDBOARD

Registration Date: June 4, 2019

**DECLARATION OF ANA JUNEJA IN SUPPORT OF REGISTRANT'S RESPONSE TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56**

I, Ana Juneja declare as follows:

1. I am an attorney licensed to practice in the state of Illinois and the District of Columbia. I am the owner of Ana Law LLC and counsel for Registrant Rosanna Servodio ("Registrant") in the above-identified Cancellation proceeding. I have personal knowledge of the facts set forth below. If called upon and sworn as a witness, I could and would competently testify as set forth below.
2. On June 24, 2024, Registrant served its Initial Disclosures, First Set of Interrogatories (Nos. 1- 43) Requests for the Production of Documents (Nos. 1- 32), and Request for Admissions (Nos. 1-25). Attached hereto as **Exhibit 1** is a true and correct copy of the First Set of Interrogatories (Nos. 1- 43), Requests for the Production of Documents (Nos. 1- 32), and Request for Admissions (Nos. 1- 25) Registrant served on Petitioner on June 24, 2024.

3. On July 23, 2024, Petitioner served the discovery response to the above-referenced discovery request by Registrant served.
4. Petitioner's response to Registrant's discovery did not include a clear document showing the date of Petitioner's alleged first use in commerce of KITTY CARDBOARD mark in connection with Class 20 goods recited in the present proceeding.
5. While Petitioner's response to Registrant's discovery included various screenshots substantiating first use in commerce, third-party articles, press releases, and sales presentations, these documents do not show or establish a date of first use in commerce on or before February 18, 2017. Notably, Petitioner's response does not include any fully executed sales documents such as purchase orders, purchase agreements, purchase confirmations, financial statements, evidence of consumer confusion and communication, investment plans, detailed information on product design, packaging, or any other document showing use in commerce of the KITTY CARDBOARD mark in connection with Class 20 goods recited in the application on or before either February 18, 2017.
6. Registrant should be afforded the opportunity to conduct discovery in accordance with Fed. R. Civ. P. Rule 56(d) in order to respond to Petitioner's Motion. As shown in **Exhibit 1** to this Declaration, all of Registrant's discovery requests relate to issues that are germane to Petitioner's Motion, including, for example, the nature and extent of Petitioner's use of Petitioner's Mark, Petitioner's plans regarding Petitioner's Mark, and evidence of actual confusion. Since there has been incomplete discovery in this proceedings, Registrant needs discovery regarding all of the requests it served on June 24, 2024, as shown in **Exhibit 1** to this Declaration, to present facts essential to justify its Cancellation.
7. Petitioner has filed a Motion for Summary Judgment, alleging that no genuine issue of material fact exists. However, Registrant has not had a sufficient opportunity to take discovery on key issues necessary to fully oppose Petitioner's Motion. Specifically, Petitioner has failed to respond to several critical interrogatories, requests for production,

and requests for admissions that Registrant has served. Without complete responses to these requests, Registrant is unable to fully contest the facts presented by Petitioner.

8. On September 12, 2024, I, on behalf of Registrant, sent an email to Petitioner requesting complete responses to the above discovery requests as seen in **Exhibit 2**. Despite the passage of time and Registrant's good faith effort to seek cooperation, Petitioner has failed to respond or provide the missing information. As a result, Registrant is left without the necessary discovery to effectively oppose Petitioner's Motion for Summary Judgment. The following discovery responses remain incomplete or unproduced:
 - a. Interrogatories Nos. 3 & 21 – Investment and revenue data are crucial to determining the market strength and commercial presence of the KITTY CARDBOARD mark. Without this financial data, Registrant cannot properly evaluate the economic footprint of Petitioner's mark, which is directly relevant to claims of priority and likelihood of confusion.
 - b. Interrogatories Nos. 16 & 34 – Petitioner has failed to disclose its due diligence efforts and the basis for its infringement claims, which is critical to assessing Petitioner's knowledge of Registrant's prior use and the legitimacy of its infringement allegations.
 - c. Interrogatories Nos. 24 & 25 – Information on the design, packaging, and agreements associated with Petitioner's mark is necessary to analyze the likelihood of confusion between the two marks. This includes understanding how Petitioner presents its mark to consumers and whether there is a risk of confusion in the marketplace.
 - d. Interrogatories Nos. 2, 12 & 14 – Petitioner has claimed that it operates in all 50 states and internationally but has only provided limited screenshots of sales, which are insufficient to substantiate these claims. Comprehensive sales records are needed to verify the geographic scope of Petitioner's operations.

- e. Interrogatory No. 18 – Petitioner has mentioned emails indicating customer confusion but has not produced any such evidence. These emails are directly relevant to the likelihood of confusion and must be disclosed.
- f. Interrogatory No. 29 – Petitioner has cited Hurricane Irma and COVID-19 as reasons for delaying its trademark application, despite both events occurring after Registrant’s use of its mark. Petitioner must explain the causal connection between these events and the timing of its application.
- g. Interrogatories Nos. 35 & 36 – Petitioner has claimed damages caused by Registrant’s use of the mark but has failed to provide any evidence of such damages. This omission undermines Petitioner’s claims, and full documentation is required.
- h. Interrogatory No. 37 – Petitioner has omitted mention of a verbal altercation at Cat Con, where Petitioner’s partner allegedly harassed Registrant, leading to Petitioner’s ban from the convention. An account of this incident is relevant to assessing Petitioner’s conduct and credibility.
- i. Request to Produce Documents and Things Nos. 5 & 6 – Financial statements and brand strategy documents are essential for evaluating the strength and development of Petitioner’s mark, yet Petitioner has not provided these materials.
- j. Request to Produce Documents and Things Nos. 10 & 14 – Petitioner has failed to provide documents related to the creation of its mark and the trademark application process. These documents are necessary to substantiate Petitioner’s claims regarding the history and ownership of the mark.
- k. Request to Produce Documents and Things Nos. 25, 26 & 30 – Evidence of consumer confusion and documentation supporting Petitioner’s claim of sales across all 50 states and internationally is necessary for assessing Petitioner’s allegations. To date, Petitioner has failed to produce these critical documents.

- l. Request for Admissions Nos. 7 & 15 – Petitioner has not provided clear admissions or denials regarding its knowledge of Registrant’s mark and the timeline of events. These admissions are critical for resolving issues related to priority and intent.

- m. Request for Admissions No. 9 – Petitioner has claimed that it conducted a trademark search in 2016, yet it has not provided any evidence of this search. Moreover, Petitioner has not explained why it did not file its trademark application at that time, despite allegedly being aware of Registrant’s mark.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: October 9, 2024

Respectfully submitted,

/s/ Ana Juneja /

Ana Juneja
Attorney for Registrant
Ana Law LLC
1300 Pennsylvania Ave NW, Suite 700
Washington DC 20004

Certificate of Service

I hereby certify that a true copy of the foregoing Declaration of Ana Juneja in support of Registrant's Response to Petitioner's Motion For Summary Judgment Pursuant to Rule 56 has been served to Petitioner on October 9, 2024, via electronic email to Petitioner, at liene@kittycardboard.com.

/s/ Ana Juneja /

Ana Juneja
Attorney for Registrant
Ana Law LLC
1300 Pennsylvania Ave NW, Suite 700
Washington DC 20004

EXHIBIT 1

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/s/ Ana Juneja /

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Certificate of Service

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A [redacted], A [redacted] R [redacted] F [redacted] P [redacted] O [redacted] D [redacted] A [redacted]
P [redacted], K [redacted] C [redacted]@ [redacted] LLC, [redacted] [redacted] 24 [redacted] [redacted] [redacted] J [redacted] 2024

/s/ Ana Juneja /

A [redacted] J [redacted]
A [redacted] [redacted] R [redacted]
A [redacted] L [redacted] LLC
444 N M [redacted] A [redacted], S [redacted] 120
C [redacted], I [redacted] 6061

EXHIBIT 2



Supreet Prasad <supreet@analaw.com>

Resubmission of Corrected Exhibits for Interrogatory Responses in Cancellation No. 92083501

Supreet Prasad <supreet@analaw.com>

Thu, Sep 12, 2024 at 7:05 PM

To: Liene Golovatjuka <liene@kittycardboard.com>

Cc: Docket Team <docket@analaw.com>, Ana Juneja <lawyer@analaw.com>, Christeen Morquianos <christeen@analaw.com>

Dear Ms. Golovatjuka,

I hope you had a great weekend.

We have identified significant gaps in your responses to several critical interrogatories, document requests, and admissions. The lack of detail and relevance objections are unacceptable and hinder a full evaluation of this case. We require complete and detailed responses to the following:

Interrogatories:

- **Nos. 3 & 21:** Investment and revenue data are essential for assessing the commercial impact and market presence of the KITTY CARDBOARD mark.
- **Nos. 16 & 34:** Full disclosure of due diligence and the basis for infringement claims is crucial to evaluating your position on priority and infringement.
- **Nos. 24 & 25:** Detailed information on design, packaging, and agreements related to the mark is necessary to assess the likelihood of confusion and exclusivity.
- **Nos. 2, 12 & 14:** Your claim of operating in all 50 states and internationally is unsupported by the four screenshots of sales you provided, which do not substantiate sales in every state or country. Please provide comprehensive evidence.
- **No. 18:** You mentioned emails indicating customer confusion but failed to provide any evidence. These must be submitted.
- **No. 29:** You cite Hurricane Irma (2018) and COVID-19 (2020) as reasons for delaying your trademark application, though both events occurred after my client's website launch. Please explain why these events affected your application timeline when you continued to make sales.
- **Nos. 35 & 36:** You claim damages from my client's trademark but provided no supporting evidence. This is contradictory, and we expect full documentation.
- **No. 37:** You omitted that your partner verbally harassed my client at Cat Con, leading to their ban from the convention. We request an account of this incident as it may be relevant to the case.

Document Requests:

- **RFPD Nos. 5 & 6:** Financial statements and brand strategy documents are non-negotiable for determining the strength and development of your mark.
- **RFPD Nos. 10 & 14:** All documents related to the creation and trademark application process must be provided to substantiate your claims.
- **RFPD Nos. 25, 26 & 30:** Evidence of consumer confusion and communications, as well as evidence supporting your claims of sales in all 50 states and internationally, is essential and must be fully disclosed.

Admissions:

- **Nos. 7 & 15:** Clear admissions or denials regarding the timeline and knowledge of our client's mark are mandatory for resolving fundamental issues in this case.
- **No. 9:** Please provide evidence of any trademark search conducted in 2016, as you claim, and clarify why a trademark application was not filed at that time.

Failure to provide these responses within 10 days will leave us with no choice but to pursue further legal remedies, including a motion to compel.

We expect your prompt and full compliance.

Cheers,

Supreet Prasad

IP Specialist



Office: 202-266-7100 **Fax:** 202-266-7101

supreet@analaw.com | analaw.com

1300 Pennsylvania Ave NW Suite 700 | Washington DC 20004



As seen in: Entrepreneur, Inc, Yahoo Finance, Fox News, Law.com, Business Insider, MarketWatch, & More!

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