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

Proceeding no.	92087504
Party	Defendant KRBL Limited
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Submission	Motion to Dismiss - Rule 12(b)
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Attachments	20250701 KRBL Pas Agro Motion to Dismiss or for Judgment on Pleadings .pdf(247305 bytes)

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

In the matter of Trademark Reg. No. 3168607
for the mark INDIA GATE & Design

Cancellation No. 92087504

Asharaf K V, v. KRBL Limited,	Petitioner, Respondent.
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**MOTION TO DISMISS OR ALTERNATIVELY FOR
JUDGMENT ON THE PLEADINGS**

Respondent KRBL Limited moves the Board for a judgment dismissing the Petition for Cancellation (“Petition”) under Rule 12(b)(6), *Federal Rules of Civil Procedure* for failure to state a claim because the Petitioner is not the real party in interest; or alternatively for Petitioner’s several failures to comply with the rules requiring a discovery conference and for his failure to submit an initial disclosure statement. In the alternative, Petitioner seeks similar relief under Rule 12(c), *Federal Rules of Civil Procedure*, granting the Respondent’s Judgment on the Pleadings. The *Federal Rules of Civil Procedure* are applicable to this proceeding pursuant to 37 C.F.R. §2.122, 37 C.F.R. §2.120.

A. Petitioner is Not a Real Party in Interest to this Proceeding

In order for a person to be able to oppose a trademark application or to file a petition for cancellation, the petitioner must show that (1) he has a real interest in the outcome of the proceeding and (2) he has a reasonable belief that he will be damaged by the registration. *Ritchie*

v. Simpson, 170 F.3d 1092, 1095 (Fed. Cir. 1999). The Petitioner must have some interest beyond the interest of the general public. *Australian Therapeutic Supplies PTY. Ltd. v. Naked TM, LLC*, 965 F.3d 1370 (Fed. Cir. 2020). Mere intermeddlers who do not raise a real controversy may not bring an opposition action or petition to cancel. *Lipton Indus. v. Ralston Purina Co.*, 670 F.2d 1024 (CCPA 1982). That real interest of the Petitioner in the proceedings must be properly alleged in the petition and must be capable of proof. *Lipton Indus. v. Ralston Purina Co.*, 670 F.2d 1024, 1028.

The Petitioner in these proceedings is Asharaf K V, an individual. Interestingly, the address listed for the Petitioner is “Pas Agro Pas Agro Foods, Koduvayakkad House, Mannarkkad College P.O., Palakkad, Kerala State, 678582, India.” However, the Petitioner is not identified as Pas Agro Foods, nor is there any information in the Petition which identifies the Petitioner, or why he has any interest in this case. In addition, the Petitioner is identified by only a first name followed by his initials. This is insufficient information to even fully identify the Petitioner or establish in any manner what his interest in this action might be. Further, this is not in compliance with the rules which require that the person in the position of the Plaintiff needs to include his name. TBMP §309.02. The fact that the Petitioner is only identified by a first name and initials is insufficient to properly identify the petitioning party.

In addition, except for the portion generated by ESTTA, the Petition is not in the proper form and fails to include the information required to be included in this type of petition. TBMP §309.02. This is not merely an issue of format, but again except for the portion of the document generated by ESTTA, the body prepared by the Petitioner fails to include a signature. In order for a pleading to be considered by the Board it must comply with Rule 11 of the *Federal Rules of Civil Procedure*. See 37 C.F.R. §2.116 (adopting the Federal Rules of Civil Procedure) and

TBMP § 318, specifically referencing that Federal Rule of Civil Procedure 11 is applicable to these proceedings. Rule 11 rule requires that, “Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number.” While the ESTAA form includes a signature, the allegations which form the body of the Petition for cancellation were not signed, and such failure is material. (Respondent is not seeking sanctions for this failure by this motion, as any such motion for sanctions must be filed separately. Rather, the Respondent notes this failure as it supports its position that the Petitioner has not been properly identified and has no meaningful interest in this matter).

In addition, the Petition does not demonstrate any interest that the Petitioner has in this case and the Petition does not include any information showing that the Petitioner would or could suffer any damages by the Registration being maintained. In short, it appears that the Petition was filed by the Petitioner whose identify was deliberately withheld or ambiguously presented and whose sole interest in the proceedings seems to be harass the Respondent.

The Petitioner needs to show that he has a real interest in the cancellation proceedings. Yet the Petition recites no business activities of the Petitioner, no relationship between the Petitioner and the Respondent, no trademark owned or applied for by the Petitioner that could be affected by the Registration, nor any other business interest of the Petitioner that might be affected by the Registration. In *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298 (CAFC 2020), the Court of Appeals explained that the Petitioner can demonstrate that it has a real interest in the proceedings by demonstrating that is has a commercial interest that would be affected by the proceedings. *Corcamore* at p. 1303 citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 131-132 (2014) (holding that a plaintiff alleging a claim under the Lanham

act must come within the zone of interest protected by the statute. In a Lanham Act case the plaintiff must show an injury to a commercial interest in reputation or sales.) The failure to show any commercial interest, or any meaningful interest in this case at all, means this case must be dismissed.

Petitioner also fails the second part of the test for successfully maintaining an action for cancellation which requires that the Petitioner must show proximate causation, in other words that the Petitioner must allege in the Petition that they will suffer damages proximately caused by the Registration. Here the Petitioner has not presented any allegations showing that he would be harmed by the Registration or how the Registration could harm him. All the Petitioner does is complain that "...Registrations [sic] go against the basic intent and spirit of the Acts [sic]..." (Petition at p.1). This is precisely the type of Petitioner the Court's have warned us against – parties that are "mere intermeddlers or meddlesome parties acting as self-appointed guardians of the purity of the Register." *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1305 citing *Selva & Sons, Inc. v. Nina Footwear, Inc.*, 705 F.2d 1316, 1325-1326 (CAFC 1983). The Petitioner has not set forth any allegations showing that it might be damaged by the Registration. The Petition merely argues that the Registration is contrary to the Act (which the Respondent strongly denies) but does not indicate how the Registration might harm the Petitioner or why the Petitioner has an interest in this case. In the absence of such showing, the Petition must be denied.

Since the Petitioner has not shown any real interest in the proceedings and has not shown that it would be damaged by the Registration, the Petition must be denied. *Ritchie v. Simpson*, 170 F.3d 1092, 1095.

B. Petitioner Has Failed to Comply with Rules Regarding Discovery and Disclosure

The Scheduling Order issued in this case on February 11, 2025, set a deadline of April 22, 2025, for the parties to conduct a discovery conference. (See Dkt. 2). The Petitioner failed to set up or attend a discovery conference or in any manner participate in such a conference. See 37 C.F.R. §2.120(a)(1). The Respondent acknowledges that the Petitioner filed a request for a two month extension of this deadline on April 21, 2025. (Dkt. 5). On April 30, 2025, the Board summarily denied this request for an extension. (Dkt. 6). However, despite the Petitioner being advised of this denial, the Petitioner made no effort to contact the Respondent regarding setting up a discovery conference and no discovery conference was ever held by the parties. See TBMP 408.01(a).

The Scheduling Order further set forth a deadline of May 22, 2025, for the parties to exchange initial disclosure statements. On May 22, 2025, the Respondent submitted its disclosure statement to the Petitioner by emailing a copy of their disclosure statement to the Respondent. (See Exhibit A attached hereto). Despite this, the Petitioner has not, as of this date, submitted an Initial Disclosure Statement, nor has the Petitioner disclosed any information at all regarding its case to the Respondent. Nor has the Petitioner contacted the Respondent with regard to either holding a discovery conference or providing a disclosure statement or any other information at all to the Respondent.

The Board rules are clear that the parties are expected to cooperate in the disclosure and discovery process. TBMP §408.01. Fed.R.Civ.P. 26 (g); See e.g. *SFM, LLC v. Corcamore, LLC*, 129 USPQ2d 1072, 1078 (TTAB 2018) (defendant refused to cooperate in the discovery process for over sixteen months), *aff'd*, 978 F.3d 1298, 2020 USPQ2d 11277 (Fed. Cir. 2020),

cert. denied, 141 S. Ct. 2671 (2021); *Amazon Technologies Inc. v. Wax*, 93 USPQ2d 1702, 1705 (TTAB 2009) (parties expected to cooperate in the meet and confer process).

The Board has the authority to issue sanctions when a party fails to comply with disclosure or discovery rules. See also Fed.R.Civ.P. 37. Those sanctions include the entry of default or dismissal of a petition for cancellation in appropriate cases. 37 C.F.R. §2.120; *See e.g. Benedict v. Super Bakery, Inc.*, 665 F.3d 1263, 1268 (Fed. Cir. 2011) (Holding that the Board may enforce its rules and that if a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery the Board may make any appropriate order, including those provided in Fed.R.Civ.P. 37). As the Petitioner is not the real party in interest and has failed to comply with the rules regarding disclosure, the appropriate remedy is for the petition be dismissed.

C. The Failure to Comply with the Disclosure Rules Indicates the Petitioner has no Real Interest in this Case

While these disclosure and discovery violations independently support the Respondent's request for dismissal of this action, even if not sufficient in themselves to justify such as dismissal, the fact that the Petitioner has not meaningfully complied with any of the discovery and disclosure rules further support that the Petitioner has no meaningful interest in this case, and that the Petitioner filed this case as an intermeddler, merely for the purpose of harassing the Respondent. When these failures are combined with the manifest insufficiencies in the Petition, these factors taken as whole clearly establish that the Petitioner has no meaningful interest in this matter, and that matter should be dismissed.

D. Summary

The Petitioner has no meaningful interest in this proceeding. In order to have standing to assert a Petition, the Petitioner must show that he has a real interest in the case and must also show that he may be damaged by the Registration. *Ritchie v. Simpson*, 170 F.3d 1092. The Petition does not include any allegations which would support either of those elements. The Petitioner is not adequately identified to allow any meaningful showing of who he is or how he has an interest in the Registration. The Petitioner has failed to establish any commercial interest, or any interest at all in this case, other than that of a self-proclaimed person interested in the purity of the Register. Nor has he alleged that the Registration may cause him damage in any manner whatsoever.

Further, the Petitioner has failed to make any effort to set up or attend a discovery conference and has failed to provide an initial disclosure. These failings alone support the dismissal of the Petition. TBMP §408.01. Fed.R.Civ.P. 26(g) and 37.

The failure to comply with the rules, also provide additional evidence that the Petition has no real interest in this case, either a legally protectible interest or just a general interest in pursuing the case as required by the rules. This lack of interest further supports dismissal for both a violation of the Rules and a lack of standing.

D. Alternative Motion to Compel Compliance with Discovery and Disclosure Rules

In the event the Board declines to dismiss this action, the Respondent moves that the Board issue an order compelling the Petitioner to immediately participate in a discovery conference by a specified date and further compelling the Petitioner to immediately submit an Initial Disclosure in compliance with the Board's prior orders. The Respondent further requests

that the Board order that any failure to comply with such order will result in the dismissal of this action. 37 C.F.R. § 2.120, Fed.R.Civ.P. 26, 37; TBMP §411.01.

Dated: July 1, 2025.

Respectfully submitted,

/Ira M. Schwartz/ _____

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Exhibits

Exhibit A – Respondent Email dated May 22, 2025

Certificate of Service

I certify that a true and complete copy of the foregoing MOTION TO DISMISS OR ALTERNATIVELY FOR JUDGEMENT ON THE PLEADINGS was served on the party identified below on the date stated below by forwarding said copy via email to:

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Dated: July 1, 2025

/Ira M. Schwartz/
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