

ESTTA Tracking number: **ESTTA496226**

Filing date: **09/24/2012**

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

Proceeding	91206543
Party	Defendant Walters, Marvin J.
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Submission	Motion to Dismiss - Rule 12(b)
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Date	09/24/2012
Attachments	FINAL_FINAL Walters_MTD_Case No. 91206543Sept_23_201.pdf (15 pages) (170377 bytes)

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

In the matter of Application Serial No. 85/531665
Filed on February 2, 2012
For the Mark BLACK STUNTMEN'S ASSOCIATION HOLLYWOOD BSA (and design)
Published in the *Official Gazette* on July 10, 2012

BLACK STUNTMEN'S ASSOCIATION, a
Nevada non-profit corporation,

Opposer,
vs.

MARVIN J. WALTERS, an individual

Applicant.

Case No. 91206543

APPLICANT MARVIN J. WALTER'S MOTION TO DISMISS OPPOSER'S
OPPOSITION TO APPLICATION SERIAL NO. 85/531665 DUE TO LACK OF
SUBJECT MATTER JURISDICTION DUE TO OPPOSER'S LACK OF STANDING

I. SUMMARY OF THE ARGUMENT

This case derives from the February 2, 2012 Trademark Application filed by Marvin Walters (Applicant) to register the "Black Stuntmen's Association Hollywood aka BSA" Name and Mark shown in Application Serial No. 85/531665. Opposer filed an opposition on August 3, 2012 claiming its ownership in same.

Opposer has never owned the "Black Stuntmen's Association aka BSA" Name and Mark as shown in Application Serial No. 85/531665. The true owner of the said Name and Mark has always been Applicant Marvin J. Walters.

Opposer's President Willie Harris formally acknowledged same on July 31, 2008 when he executed a nonexclusive, noncommercial License Agreement with Applicant to use the "Black Stuntmen's Association aka BSA" Name and Logo for the limited purposes defined in the License Agreement ("Agreement"). Opposer acknowledged Applicant as the creator and owner of the

Name and Mark; and agreed not to challenge or interfere with Applicant's ownership rights, including Applicant's right to register the "Black Stuntmen's Association aka BSA" Name and Mark with the USPTO. (EXHIBIT "A" – License Agreement)

Opposer's claim that on September 8, 2008 it filed Articles of Incorporation for the "Black Stuntmen's Association Nevada non-profit corporation" is wholly untrue. Instead the Nevada Secretary of State records indicate that Opposer was "formed" by of Certificate of Correction to change its name to "The Black Stuntmen's Association." The Certificate of Correction was filed by its President Willie Harris (licensee) on July 12, 2012, days before it filed the Notice of Opposition. (EXHIBIT "B" - Certificate Of Correction).

Opposer's unsupported allegation that its President Willie Harris revived the "Black Stuntmen's Association aka BSA" Name and Mark in 2006 is not persuasive and fails to establish ownership here. First Applicant never abandoned the "Black Stuntmen's Association aka BSA" Name and Mark and second, Willie Harris ultimately signed the License Agreement with Applicant.

As a licensee, Opposer is not the owner of "Black Stuntmen's Association aka BSA" Name and Mark; it has no real interest in the proceedings and no reasonable basis in fact to believe it would suffer any damages upon Applicant's registration of the Black Stuntmen's Association Name and Mark, particularly since Opposer acknowledged Applicant's right to do so in the License Agreement.

This motion will also show that Opposer's complaint before the TTAB and the actions by its President Willie Harris, evidence a malicious, fraudulent and deliberate campaign of trademark infringement designed to distort Applicant's personal record of achievement and completely strip Applicant of his rights in the "Black Stuntmen's Association aka BSA" Name and Mark. Opposer's actions also illustrate a wanton disregard for the truth, a willful disrespect for the law and the processes afforded by the Nevada Secretary of State and the USPTO; and, a basic lack human decency. Therefore, Applicant prays that the Board dismisses the Opposition in its entirety with prejudice and awards Applicant reasonable attorney's fees.

II. FACTS

Mr. Walters co-founded the "Black Stuntmen's Association" also known as the "BSA" in 1967. Mr. Walters created the name "Black Stuntmen's Association aka BSA" and singularly designed its

logo. Mr. Walters has possession of his original hand drawings of both the “Black Stuntmen’s Association aka BSA” logo and its predecessor the “Negro Stuntmen’s Association” also known as the “NSA.” The documents bear Mr. Walters’ signature and are dated in 1967 and 1968. Mr. Walters granted the “Black Stuntmen’s Association aka BSA” a nonexclusive, nontransferable limited license to use the “Black Stuntmen’s Association aka BSA” Name and Mark for as long as the organization existed in due form and pursued its original mission of advancing diversity, equality, and the interests of stunt performers in the entertainment industry. The license and all rights granted to the “Black Stuntmen’s Association aka BSA” thereby immediately terminated and reverted to Mr. Walters once the organization became defunct.

In 1973, Applicant founded the “Coalition of Black Stuntmen and Women” (“Coalition”) to unite African American stunt performers in various Hollywood guilds. Applicant, like all Coalition members, maintained dual memberships in the “Black Stuntmen’s Association aka BSA” and other unions. However, Applicant strategically used the Coalition to launch several historic federal lawsuits against the motion picture industry on behalf of the BSA since some members feared reprisal from the studios. Applicant courageously filed the federal suits under the caption: “Marvin Walters on behalf of the Coalition and others similarly situated.” (Exhibit “C” Federal Pleadings).

By doing so, Applicant singularly placed himself in grave danger. He was blacklisted and the target of a malicious firebombing and other threats. (Exhibit “D” Daily Variety Oct. 1976” Civil Rights Witness Threatened”). However, upon settlement of the litigation, each member of the BSA, including Opposer’s President, Willie Harris, received a monetary payout in addition to improved working conditions and opportunities for advancement in the entertainment Industry. (Exhibit “E” Settlement Agreement signed by Willie Harris; Class included All members of Black Stuntmen’s Association) Applicant’s strategy was noble and singularly courageous. It created racial and gender equality for stunt performers, model diversity training programs at the major studios, the Stunt Safety Division of the Screen Actors Guild, and numerous beneficial changes for all people regardless of race throughout the industry. Many studios employ these programs and policies still exist today. Opposer’s deliberate mischaracterization of these events is unfortunate.

License Agreement

In July 2008, Willie Harris, President of Opposer organization, executed a License Agreement wherein Applicant granted him the limited right to use the “Black Stuntmen’s Association aka BSA” Name and Mark. While the License Agreement was formally executed in July 2008, the parties

discussed the matter as early as January or February 2008 in anticipation of a November 6, 2008 reunion. The event was organized by Willie Harris to honor BSA members.

In special recognition of Applicant's achievements and as an enticement for Applicant to attend as the surviving co-founder of the Black Stuntmen's Association, Willie Harris purchased a plane ticket on September 23, 2008 and secured accommodations at the Fitzgerald Hotel (the site of the reunion) for the Applicant. (Exhibit "F" Southwest Airlines Payment Record) The reunion was not for, and did not separately recognize the Coalition of Black Stuntmen and Women ("the Coalition"). Applicant was given the identical personalized "BSA" trophy award that all other members received. It is Applicant's understanding and belief that Willie Harris, who is retired, unemployed and on a fixed income, did not secure a plane ticket for any of the many other stunt performers who attended; nor did he purchase or arrange for a ticket for the many indigent stunt performers who would have attended but for the travel costs.

In 2005, as part of Applicant's ongoing work with the "Black Stuntmen's Association aka BSA", Applicant began Executive Producing a media project about the Black Stuntmen's Association. Applicant had been discussing the project with Willie Harris in anticipation of the reunion since this was the first time they would be gathered in one place. Applicant hired a production crew, paid for travel from New York, rented production equipment and shot extensive raw footage of the 2-day event and individual interviews of members of the original Black Stuntmen's Association organization, including Willie Harris. Each member of the original Black Stuntmen's Association organization signed a Production Release acknowledging Applicant Marvin Walter's as the Executive Producer of the BSA project. The production release gave all rights to the project to Applicant. (Exhibit "G" Production Release) In 2009, Applicant also filmed an event in Washington D.C. in which the Black Stuntmen's Association was honored by the U.S. House of Representatives, the U.S. Senate and the Congressional Black Caucus.

This was not a "Naked License," all of Willie Harris' activities on behalf of the BSA per the License were organized with the full knowledge, consent and participation of Applicant. Applicant actively provided oversight, input, contacts, production equipment and financial resources to produce and promote the events, ensure quality control and maintain the goodwill of the "Black Stuntmen's Association aka BSA's" Name and Mark. Applicant and Ms. Tilque, an attorney and producer who has worked with Applicant to advance the mission of the "Black Stuntmen's Association aka BSA" since 2005, created and supplied all of the work product (research, files, treatments,

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