

ESTTA Tracking number: **ESTTA620218**

Filing date: **08/07/2014**

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

Proceeding	91208858
Party	Defendant Holy Spirits, LLC
Correspondence Address	CRAIG A FIESCHKO DEWITT ROSS & STEVENS SC 2 E MIFFLIN ST STE 600 MADISON, WI 53703 2865 UNITED STATES cftm@dewittross.com
Submission	Motion for Summary Judgment
Filer's Name	Craig A. Fieschko
Filer's e-mail	cftm@dewittross.com, nftm@dewittross.com
Signature	/craigfieschko/
Date	08/07/2014
Attachments	TTAB--140807--Motion_for_Summary_Judgment.pdf(2499399 bytes)

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

STF ENTERPRISES, LLC, Opposer, v. HOLY SPIRITS, LLC, Applicant	Opposition No.: 91208858 Marks: FATHER DOM'S; FATHER DOM'S PREMIUM PRODUCTS Serial Nos.: 85/554963; 85/554993
--	---

APPLICANT'S MOTION FOR SUMMARY JUDGMENT

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Pursuant to Federal Rule of Civil Procedure 56, 37 C.F.R. §2.127, and TBMP §528, Applicant Holy Spirits, LLC ("Holy Spirits") hereby states the following in support of its Motion for Summary Judgment. The Board suspended proceedings on July 25, 2014. A cross-motion for summary judgment is a proper filing even after proceedings are suspended. See TBMP §528.03. This Opposition is barred by claim preclusion for the below reasons.

"A subsequent claim will be barred by claim preclusion if: '(1) there is identity of parties (or their privies); (2) there has been an earlier final judgment on the merits of a claim; and (3) the second claim is based on the same set of transactional facts as the first.'" *Zoba International Corp. v. DVD Format/LOGO Licensing Corp.*, 98 USPQ2d 1106, 1109 (TTAB 2011) (quoting *Jet Inc. v. Sewage Aeration Systems*, 223 F.3d 1360, 55 USPQ2d 1854, 1857 (Fed. Cir. 2000)). This standard is met here:

The undersigned certifies that a copy of this paper is being served upon Opposer STF Enterprises, LLC via email (to wklar@yahoo.com and milwaukeeimports@wi.rr.com) and by first-class mail to the address of record (3144 S. 47th Street, Milwaukee, WI 53219) on the date set out below.

08/07/2014

/craigfieschko/

Date of Deposit

Craig A. Fieschko

1. Opposer STF Enterprises, LLC (“STF”) sued Holy Spirits in *STF Enterprises LLC v. Holy Spirits LLC et al.*, Milwaukee County Case Number 2012SC007587 (the “First Action”) for matters arising from STF’s business relations with Holy Spirits. See Exhibit 1.
2. The First Action resulted in a judgment against Holy Spirits for \$4,925, which was entered on June 8, 2012. See Exhibit 2.
3. The Judgment in the First Action was satisfied by Holy Spirits via cashier’s check, a copy of which was filed with the Court on June 15, 2012. See Exhibit 3.
4. STF subsequently sued Holy Spirits’ principal, Father Domenic J. Roscioli (“Father Dom”), personally in *STF Enterprises, LLC v. Father Domenic Roscioli*, Milwaukee County Circuit Court Case Number 13SC010391 (“Second Action”). See Exhibit 4.
5. STF alleged in the Second Action that “STF and Father Dom entered into an oral partnership agreement, whereby STF and Father Dom would be equal partners in the development of the ‘Father Dom’s’ [sic] trademark and line of products to be sold under that trademark as well as private label products.” See Exhibit 5, ¶3. But “development of the ‘Father Dom’s’ trademark and line of products,” and “outstanding invoices” therefrom, was the basis for STF’s First Action. See Exhibit 6, ¶20.
6. In the Second Action, Father Dom moved for summary judgment due to claim preclusion (see Exhibit 7), and STF responded with an opposition brief (see Exhibit 8).
7. In the Second Action, the Circuit Court granted Holy Spirits’ Motion for Summary Judgment due to claim preclusion, and dismissed STF’s Second Action with prejudice. See Exhibit 9.
8. STF filed the present Opposition claiming that a partnership was formed and that it is entitled to an ownership interest in the applied-for marks. See Exhibit 10. STF’s Opposition to the applied-for marks is based on the business dealings between STF, Holy Spirits, and Holy Spirits’ principal, Father Dom.

9. This Opposition should thus be dismissed with prejudice at least for being barred by claim preclusion:
- a. There is identity of parties (or their privies) between the First Action, the Second Action, and the present Opposition, as discussed above in paragraphs 1 and 4. Specifically, Opposer STF has pursued claims against Applicant Holy Spirits and/or its principal, Father Dom (a privy of Holy Spirits), in the First Action and the Second Action as well as this Opposition.
 - b. There has been an earlier final judgment on the merits of a claim in both the First Action (which resulted in a judgment against Holy Spirits) and the Second Action (which was dismissed with prejudice at summary judgment due to claim preclusion), as discussed above in paragraphs 2 and 7.
 - c. This Opposition is based on the same set of transactional facts as the First Action and the Second Action, as discussed above in paragraphs 5 and 8. Specifically, the transactional facts involved in all three are the facts related to the business dealings between STF and Holy Spirits (and/or its privy, Father Dom) and the efforts surrounding the development of the FATHER DOM'S line of products.

STF has been pursuing Holy Spirits for over two years using multiple different attorneys¹ and under multiple different theories. In the First Action, STF claimed that it was owed monies for “past due accts,” consistent with its role as an independent contractor of Holy Spirits. Subsequently, in the Second Action, STF alleged that there was an oral partnership agreement between STF and Father Dom. Most recently, on July 10, 2014, STF filed a Motion for Summary Judgment² in which STF makes baseless (and irrelevant) copyright claims, and asserts

¹ STF's prior counsel include: Michael T. Hopkins of Hopkins McCarthy LLC; Willard G. Neary and Joseph A. Abruzzo of Lichtsinn & Haensel S.C.; and J. Scott Scarbrough. STF has been representing itself since the withdrawal of Mr. Scarbrough as counsel.

² Holy Spirits filed Applicant's Brief In Opposition To Opposer's Motion For Summary Judgment on August 6, 2014, addressing the claims in STF's Motion for Summary Judgment.

that STF has rights in the applied-for marks because it made a first sale in October 2011 (when such sale was made on behalf of Holy Spirits, and Holy Spirits had already started using the marks in commerce months earlier). STF has sought to litigate and re-litigate its dealings with Holy Spirits and Father Dom, and now persists with this Opposition at significant cost and inconvenience to Holy Spirits and Father Dom. STF should not be allowed to continue its vexatious litigation against Holy Spirits when it has already been fully compensated in the First Action.

In view of the foregoing, Applicant Holy Spirits respectfully requests that this Motion be granted, and STF's Opposition be dismissed with prejudice.

For the Applicant,

/craigfieschko/

08/07/2014

Craig A. Fieschko

Date

DeWitt Ross & Stevens, SC

2 E. Mifflin St., 6th Floor

Madison, Wisconsin 53703-2865

Telephone: (608) 395-6722

Facsimile: (608) 252-9243

cf@dewittross.com

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.