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

Proceeding	91224855
Party	Defendant Anthony Tellez III
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AOP Ventures, Inc.

Opposer,

Opposition No.: 91224855

v.

Anthony Tellez III,

Applicant.

NOTIFICATION OF CIVIL ACTION

Applicant, Anthony Tellez III (“Tellez” or “Applicant”), hereby notifies the Board of a second pending civil action, *One Hit Wonder, Inc. v. AOP Ventures, Inc.*, Case No. 3:17-cv-02105-M in the United States District Court for the Northern District of Texas (“Texas Action”), “which may have a bearing on the case.” *See* 37 C.F.R. § 2.117(a). A copy of the as-filed Complaint in the Texas Action is attached hereto as Exhibit A.

I. The California Action

This opposition is currently suspended pending the civil action *AOP Ventures, Inc. v. Steam Distribution, LLC*, Case No. 5:15-CV-01586 VAP (KKx) in the United States District Court for the Central District of California (“California Action”). That case is currently ongoing.

For context, Applicant provides the Board with a brief background of the California Action as follows:

On August 5, 2015, Opposer, AOP Ventures, Inc. (“AOP” or “Opposer”), filed an action against Steam Distribution, LLC, One Hit Wonder, Inc. (“OHW”), Havz, LLC, and

Anthony Tellez III (collectively, “Defendants”) alleging infringement of Opposer’s alleged common law trademark for THE MILKMAN, used in connection with the sales of electronic cigarette liquid, and having an alleged priority date of January 2015.

In an attempt to improve its priority date, Opposer allegedly acquired rights to Deus Juice, LLC’s allegedly earlier common law rights in another MILKMAN trademark for e-cigarette liquid that pre-dated Opposer’s asserted priority date, having an alleged priority date of October 2014.

Similarly, on October 5, 2016, Defendant OHW acquired common law rights in another MILKMAN trademark owned by third party, Good Vapes, Inc. (“Good Vapes”). *See* Ex. A, Compl. [Dkt. 1], at Exs. A and B. The next day, October 6, 2016, OHW notified the California court of the Good Vapes acquisition through a Notice of Material Change of Facts. *Id.* at Ex. C, Notice of Material Change of Facts [CA Dkt. 99].

The California court, however, failed to consider – or even mention – OHW’s acquisition of Good Vapes’ MILKMAN trademark rights and issued partial summary judgment against Defendants, including Applicant, just five days later, on October 11, 2016. *See id.* at Ex. D, Summ. J. Order [CA Dkt. 104].

On November 8, 2016, OHW filed a Motion for Reconsideration of the California court’s Summary Judgment Order. *See id.* at Ex. E, Mot. For Recons. [CA Dkt. 130] at 6-9 and Decl. of Eric Freeman [CA Dkt. 130-3]. In opposition, Opposer AOP argued “**the proper path to be followed...will be for [OHW] to file a new action seeking a declaration of the rights belatedly acquired from Good Vapes.**” *See AOP Ventures, Inc. v. Steam Distribution, LLC, Case No. 5:15-cv-01586 VAP (KKx)*, Plaintiff’s Opposition to Defendants’

Motion for Reconsideration, Dkt. No. 146-2, at 11 attached hereto as Exhibit B (emphasis added).

On December 27, 2016, the California court issued its Order on Reconsideration and “decline[d] to hold that it erred in refusing to consider the Notice of Material Change of Facts [involving the Good Vapes rights] before issuing its Summary Judgment Order.” Ex. A at Ex. F, Order on Recons. [CA Dkt. 174]. Thus, to date, the California court has refused to consider the Good Vapes MILKMAN trademark rights on its merits, and Applicant intends to appeal any decision from the California court based on their failure to consider the Good Vapes rights.

II. The Texas Action

Per Opposer’s suggested “proper path,” on August 9, 2017, OHW filed a Complaint against Opposer AOP and Deus Juice, LLC in the Texas Action. Among other things, the Complaint in the Texas Action seeks declaratory judgment that OHW is the owner of trademark rights in the mark MILKMAN, on the basis of the acquired Good Vapes rights and as successor in interest to priority rights in the MILKMAN mark, and alleges that Opposer infringes OHW’s trademark rights. Ex. A at ¶¶ 47-66.

On October 16, 2017, Opposer filed a Motion to Dismiss and/or Stay the Texas Action, to which OHW opposed on November 6, 2017.

Presently, the parties are completing briefing on Opposer’s Motion to Dismiss and/or Stay, and awaiting the Texas court’s decision on the same.

The Texas Action is currently ongoing and may have a bearing on the instant opposition involving ownership of rights and priority in the MILKMAN trademark in connection with electronic cigarette liquid. *See* 37 C.F.R. § 2.117(a).

Respectfully submitted,

Date: November 16, 2017

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