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Filing date: **02/28/2022**

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

|                        |  |
|------------------------|--|
| Proceeding no.         | 91268935   |
| Party                  | Defendant<br>Zane Ventures LLC   |
| Correspondence address | AMBER C SAUNDERS<br>THE SAUNDERS FIRM LLP<br>6 CONCOURSE PARKWAY<br>SUITE 2140<br>ATLANTA, GA 30328<br>UNITED STATES<br>Primary email: amber@thesaundersfirm.com<br>678-680-4336 |
| Submission             | Motion to Dismiss - Rule 12(b)   |
| Filer's name           | Sammy M. Naoulo  |
| Filer's email          | team@thesaundersfirm.com, amber@thesaundersfirm.com  |
| Signature              | /Sammy M. Naoulo/  |
| Date                   | 02/28/2022   |
| Attachments            | Motion to Dismiss Zane.pdf(823060 bytes )  |

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

Marguerite Davis

Opposer

v.

Zane Ventures, LLC

Applicant

OPPOSITION NO. 91268935

**NOTICE OF OPPOSITION**

Mark: ZANE ACCESS

App. No.: 90216882

Filed: September 28, 2020

Published: March 30, 2021

**APPLICANT ZANE VENTURES, LLC'S RESPONSE TO OPPOSER & MOTION TO  
DISMISS**

COMES NOW, Applicant ZANE VENTURES, LLC ("Applicant"), by and through undersigned counsel, hereby renews its Motion to Dismiss the Notice of Opposition by MARGUERITE DAVIS ("Opposer") for the failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

**FACTS**

Opposer began working with Zane Venture Fund Management, LLC as a consultant to serve as Program Lead for entrepreneurs matriculating through the Zane Access accelerator program. On July 31, 2020, Opposer terminated the consulting agreement via email, with an effective date of August 30, 2020. In her termination notice, Opposer states "Thank you for the opportunity to work with Zane on Zane Access, I know it will be greatly successful. I will take the appropriate actions to make for a smooth and easy transition." Opposer neither created the Zane Access core programming, nor did she create the name Zane Access.

On August 3, 2020, Shila Nieves Burney, Managing Member of Zane Venture Management Fund, LLC, accepted Opposer's termination and advised that Opposer need not complete the 30 days provided within her notice, i.e. the termination would be effective immediately. Opposer responded on August 11, 2020, demanding payment for purported expenses incurred by Opposer and compensation Opposer felt she was owed between January 1, 2020 and July 31, 2020 to the tune of approximately \$14,000. While Zane Venture Management Fund, LLC did not feel as though any money was owed to Opposer, attempts at settlement were made, to no avail. Opposer then began to file a lawsuit against Zane Venture Management Fund, LLC, Shila Nieves Burney, and Zane Ventures, LLC in the Magistrate Court of Fulton County to recover the funds that Applicant feels she is owed. Attached as **Exhibit A** is a copy of the Complaint filed by Opposer with Exhibits.

On September 28, 2020, Applicant, Zane Ventures, LLC, filed an application with the USPTO to register the mark ZANE ACCESS ("Mark") in international class 035, 036, 041 (United States Trademark Application Serial No. 90216882). The USPTO published the Applicant's application in the *Official Gazette* on March 30, 2021 for opposition. Opposer requested an extension of time to oppose on June 02, 2021 without consent, requesting to make the deadline to oppose August 2, 2021.

Opposer *alleges* that the Applicant's Mark should not be allowed to register because there is a pending contractual dispute between the parties in the State of Georgia, Fulton County Magistrate Court. Opposer claims that it would be unfair for Applicant to benefit financially from a Mark that was not paid for.

## ARGUMENT

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted. In addition to the basic statutory cause of action for opposition provided for in 15 U.S.C. § 1063(a), Opposer must also plead, and later prove, a statutory ground for opposition. TBMP §309.03(c)(1). Opposer has no valid statutory grounds based on Opposer's Complaint. Opposer alleges that Applicant is not the rightful owner of mark for identified goods or services. However, Opposer does not state that Opposer is the rightful owner.

Opposer cannot overcome that she was a contract employee of Applicant. As a part of her Complaint with Fulton County Magistrate Court, Opposer attached a fully executed copy of the contract that she is seeking to enforce. Within that contract there is a specific provision regarding intellectual property. Per the executed contract, all intellectual property created during the term of the contract is considered work for hire and the property of the Applicant. Opposer resubmitted her Notice of Opposition with an email stating that she came up with the name, however that email does not overcome the enforceable contract signed by the Opposer that she is seeking to enforce in another court. The Board is not authorized to determine the right to use, nor may it decide broader questions of infringement or unfair competition.

Thus, the Notice of Opposition should be dismissed.

**WHEREFORE**, Applicant respectfully requests that:

- 1.) This Board dismiss Opposer's Notice of Opposition; and,
- 2.) Grant the registration of the mark ZANE ACCESS.

Respectfully submitted this 28<sup>th</sup> of February, 2022.

**THE SAUNDERS FIRM, P.C.**

/s/ Sammy M. Naoulo

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