

ESTTA Tracking number: **ESTTA693082**

Filing date: **09/01/2015**

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

Proceeding	92061640
Party	Plaintiff SeeLite, LLC
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Submission	Motion to Dismiss - Rule 12(b)
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Date	09/01/2015
Attachments	response.motion.dismiss.pdf(424352 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SEELITE, LLC)	
)	In the matter of Registration No.
Petitioner)	3,825,621
)	
and)	For the mark CEELITE
)	
CEELITE TECHNOLOGIES, LLC)	Registered on July 27, 2010
)	
Registrant)	Cancellation No. 92061640

RESPONSE TO MOTION TO DISMISS

SeeLite, LLC, for its response to CeeLite Technologies, LLC's motion to dismiss, states as follows.

I. Petitioner Is An Existing Arkansas Limited Liability Company And Has Standing To Bring This Action.

Petitioner is an existing legal entity created under Arkansas law. Registrant mischaracterizes Arkansas law, which controls Petitioner's status as a legal entity. In Arkansas, corporations and limited liability companies must pay an annual franchise tax. *See* Ark. Code Ann. §§ 26-54-101, *et seq.* The Arkansas Secretary of State applies these statutes to both corporations and limited liability companies. *See* Exhibit 1; *see also* Ark. Code Ann. § 25-54-102. The franchise tax is due on May 1 of the reporting year. *See* Ark. Code Ann. § 26-54-105(c)(2)(B). If the company fails to pay the franchise tax, the corporate charter is not revoked until January 31 of the following year. *See* Ark. Code Ann. § 26-54-11.

An Arkansas limited liability company does not lose its status as a valid legal entity until its charter has been revoked by the Secretary of State. For illustration, a sample record from the Arkansas Secretary of State is attached as Exhibit 2. When a corporate entity no longer exists,

its status is “revoked,” “dissolved,” or “withdrawn.” *See id.* For example, A.C. Smith & Company, LLC, is no longer an existing entity because it has been revoked. *Id.*

For nearly a century, Arkansas law has consistently maintained that a corporate entity retains its legal status until its corporate charter is revoked, even if it has not timely paid the franchise tax. *See Jones v. Bank of Commerce of Fort Smith*, 131 Ark. 362, 199 S.W. 103, 104 (1917). In that case, the plaintiff filed a lawsuit and proceeded all the way to a jury verdict while being delinquent on its franchise taxes. *Id.* The Arkansas Supreme Court held it was a valid corporate entity entitled to maintain the lawsuit because no action had ever been taken to revoke its corporate status. *Id.*

Also under Arkansas law, even when a corporate charter has been revoked, the subsequent reinstatement of the charter is retroactive to the date of revocation. *Van Cleve v. City of North Little Rock*, 2012 Ark. App. 694 at 2; *see also* Ark. Code Ann. § 25-54-112. An Arkansas corporate entity that has had its charter revoked can still file and maintain a lawsuit, provided that it later reinstates its corporate status. *Id.*

Petitioner has not been revoked by the Arkansas Secretary of State. Its status is “not current,” which only means the 2015 franchise tax was not timely paid by May 1, 2015. *See* Exhibit 3. Moreover, Petitioner paid its franchise tax on September 1, 2015. Petitioner has at all times, and currently remains, an existing business entity under Arkansas law.

II. Petitioner Has Alleged Sufficient Facts To Meet The “Who, What, When, Where, and How” Requirements of Rule 9(b).

The pleading requirements of Rule 9(b) require Petitioner to identify the “who, what, when, where, and how of the acts constituting the fraud.” *Slep-Tone Entertainment Corp. v. Kalamata, Inc.*, 75 F.Supp.2d 898, 906 (N.D. Ill. 2014). When evaluating a motion to dismiss, it is appropriate to consider public records of the USPTO. *Id.* at 904. The “who” and “what”

requirements are met by identifying the material misrepresentations made to the USPTO. *Id.* at 906. The “how” requirement is met by alleging the nature of the misrepresentation made to the USPTO. *Id.* The “where” and “when” requirements” are met by alleging the date of the misrepresentations made to the USPTO. *Id.*

Petitioner has met all the requirements to state a claim that the Registration was procured by fraud. On July 2, 2008, the examining attorney for the Registration sent an office action. *See* Exhibit 5. The office action stated that if Registrant’s goods were in fact lighting fixtures, they were properly filed in Class 11. *Id.* However, if the goods were in fact display panels, they needed to be filed in Class 9. *Id.* On January 2, 2009, Registrant responded that the goods were light fixtures in Class 11. *Id.*

The “who, what, when, where, and how of the acts constituting the fraud” are properly alleged in paragraphs 35 – 44 of the petition. The “who” is Registrant. *Id.* The “what” is Registrant claimed a date of first use in commerce that pre-dated its own intent-to-use application by five years. *Id.* Registrant did so by taking the date of first use for display panels and claiming that date of first use for lighting fixtures. *Id.* Additionally, Registrant submitted a specimen of a display panel as the specimen for lighting fixtures. *Id.* The “when,” “where,” and “how,” is Registrant’s submission of the Statement of Use to the USPTO containing this false information. *Id.* From the USPTO records, this occurred on June 9, 2010. These allegations satisfy the pleading requirements of Rule 9(b). Moreover, there is nothing more that Petitioner could plead to establish the fraud in the procurement.

CONCLUSION

Petitioner is an existing legal entity under Arkansas law. Petitioner has properly alleged facts showing the “who, what, when, where, and how” of the fraudulent acts in procuring the Registration. Registrant’s motion to dismiss should be denied.

DATED: September 1, 2015

Kevin M. Lemley, P.A.

By: /s/ Kevin Lemley

Kevin M. Lemley

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Attorney for SeeLite, LLC

CERTIFICATE OF SERVICE

I certify that on September 1, 2015, the foregoing is being deposited with the United States Postal Service, with sufficient postage, as first class mail in an envelope addressed to the Registrant’s authorized representative:

Mr. Scott Scioli
Pinnacle IP Strategies, LLC
P.O. Box 2498
Cinnaminson, NJ 08077

By: /s/ Kevin M. Lemley

Kevin M. Lemley

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