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

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|---------------------------|--|
| Proceeding | 92071109 |
| Party | Defendant Majik Medecine, LLC |
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CBDMD, LLC

Cancellation Proceeding # 92071109

Plaintiff/Petitioner

Registration # 5173264

-v-

Majik Medicine, LLC,

Defendant/ Registrant

Motion and Brief under Fed. R. Civ. P. Rule 12(b)(6)

Background

This petition is nothing more than the blatant attempt of a multimillion dollar corporation to usurp the legitimate prior trademark rights of a smaller competitor. The essence of the petitioner's argument can be boiled down to the fact that since they are much bigger and spent a large amount of money on the use of the subject mark CBDMD then they assert that they should be allowed to steal the mark for their own use.

The registrant in this action is a small herbal company, Majik Medicine, LLC (Majik Medicine). The co-founder, Christy Peachey, is the driving force of the registrant who, together with her former stepmother and co-founder Brenda M. Kraft, owns a controlling interest in the registrant. Ms. Peachey is a single mother raising three children and attempting to grow two businesses. The final principle of the registrant is co-founder Daniel Sinclair, a serial entrepreneur who provides continued guidance and mentoring to Ms. Peachey as she tirelessly grows this business.

Ms. Peachey began investigating the effects of CBD as a natural anti-inflammatory in 2015. Ms. Peachey personally experienced the benefits of taking CBD. Ms. Peachey, through Majik Medicine, developed a line of products incorporating CBD and worked on finding a suitable brand name, eventually settling on the subject mark CBD MD, noting that CBD aside from its obvious connection to the product

also reflected the initials for the principles: **Christy, Brenda and Daniel**. Ms. Peachey filed the application for trademark registration for the mark CBD MD that issued as the subject registration on behalf of Majik Medicine and Majik Medicine began legally selling the product line through medical practitioners in February 2016, long before the Petitioner used substantially the same mark in 2017. Majik Medicine has continuously used the mark CBD MD in commerce since the introduction in the beginning of 2016.

Upon learning of the petitioner's entry into the market with the same goods and the substantially the identical mark CBDMD, Majik Medicine advised the petitioner of the subject registration and the associated mark CBD MD, and advised the petitioner to avoid the use of Majik Medicine's mark and to respect Majik Medicine's rights. When the petitioner was unable to secure a co-existence agreement, mainly because the onerous proposed agreement from the petitioner refused to respect the trademark rights of Majik Medicine, then the petitioner proceeded with this more nefarious approach of blatant trademark theft.

The petitioner/plaintiff filed the petition in this matter on April 16, 2019, and this proceeding was instituted on April 24, 2019. As set forth below the petition fails to contain sufficient factual matter, even if accepted as true, which states a claim to relief that is plausible on its face. The implausibility of the petitioner's positions are addressed in turn below.

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