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

Proceeding	92071109
Party	Defendant Majik Medecine, LLC
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Submission	Motion for Summary Judgment  <b>Yes</b> , the Filer previously made its initial disclosures pursuant to Trademark Rule 2.120(a); OR the motion for summary judgment is based on claim or issue preclusion, or lack of jurisdiction.  The deadline for pretrial disclosures for the first testimony period as originally set or reset: <b>07/23/2021</b>
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Date	03/04/2021
Attachments	MotionForSummaryJudgementMARCH2021.pdf(135088 bytes ) EXHIBITFirstRequestforDiscoveryJanuary22FINAL2021.pdf(141643 bytes ) EXHIBITInitialDisclosurePetitioner.pdf(14250 bytes )

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 Medecine, LLC,

Defendant/ Registrant

**MOTION FOR SUMMARY JUDGEMENT**

This filing is a motion for summary judgement pursuant to 37 C.F.R. §2.120, with integrated brief, as this motion establishes that there is no genuine dispute as to any material fact and the Registrant is entitled to judgment as a matter of law and dismissal of the petition for cancellation.

This filing is proper as it follows the Defendants Initial disclosures (submitted timely on January 11, 2021) and is prior to the deadline for pretrial disclosures for the first testimony period.

Pursuant to 37 C.F.R. §2.127(e)(2), this filing is supported by the admissions contained within the “**Registrant’s first request for Admissions, set of Interrogatories and Request for production of documents directed to Petitioner CBDMD, LLC**” (hereinafter Registrant’s First Request attached hereto as an exhibit) which was properly served upon counsel for Petitioner on January 22, 2021. The Request for Admissions contained in the Registrant’s First Request are deemed admitted by operation of law

pursuant to Fed. R. Civ. P. 36(a)(3) as the party from whom the admissions were requested, the Petitioner, *failed to respond thereto*.

Pursuant to 37 C.F.R. §2.127(e)(2), this filing is supported by what purports to be the Petitioner's Initial Disclosure, a copy of which is attached hereto.

This filing is further supported by the pleadings, the file of the registration that is the subject of the proceeding, and those registrations pleaded and made of record by the plaintiff with its complaint.

#### CONCURRENT FILINGS

Concurrent with this **Motion for Summary Judgement** the Registrant is filing i) **Registrant's Opposition to Petitioner's Motion to Stay Proceeding Pending Outcome of Civil Action** and ii) a **Motion to Compel Discovery**. These concurrent filings are interrelated and are separated in accordance with the guidance of TBMP 502.02(b), although the background below is generally repeated verbatim in all these filings.

#### BACKGROUND

This action remains a blatant attempt of a multimillion dollar corporation, now known as cbdMD, Inc (the managing member of the Petitioner<sup>1</sup>) to usurp the legitimate prior trademark rights of a smaller competitor.

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<sup>1</sup> Admission No.3 of Registrant's First Request

The Petitioner was formed November 26, 2018 by Level Brands, Inc after Level Brands, Inc. was advised to cease and desist from using marks confusing similar to the Registrant's mark, CBD MD.<sup>2</sup> The Petitioner's very name, CBDMD, LLC (now CBD Industries LLC), was selected to unfairly usurp the rights of the Registrant and in violation of federal and state unfair competition laws. The name of the managing member of Petitioner was changed from Level Brands, Inc. to cbdMD, Inc in the spring of 2019<sup>3</sup> to unfairly usurp the rights of the Registrant and in violation of federal and state unfair competition laws and further at a time well after it was formally advised to cease and desist from using marks confusing similar to the Registrant's mark CBD MD.

The Petitioner filed this cancellation proceeding in bad faith to drive up the legal fees of the Registrant. Marty Sumachrist, chairman of the Board of Directors and CoCEO of cbdMD, Inc., made this strategy clear when he sent a text message to a member of Registrant stating "I hope your shareholders like to write checks to lawyers."<sup>4</sup> The initial pleadings of the Petitioner were so deficient that the Board noted in the Order of December 30, 2019 (paper #13 – Granting Defendant's motion to dismiss on 7 of 9 grounds and denying the motion on two remaining grounds) that the "abundance of deficiencies in the pleadings appears to demonstrate a lack of reasonable inquiry into the subject matter."

The Plaintiff filed a Corrected Amended Complaint which in paragraphs 61-63 baselessly asserted that that the "phrase CBD MD is a commonly used descriptive phrase

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<sup>2</sup>Admission No.2 of Registrant's First Request

<sup>3</sup> Admission No. 11 of Registrant's First Request

<sup>4</sup> Admission Nos. 77-78 of Registrant's First Request

that connotes information on products which include CBD as an ingredient” (Emphasis Added). The Petitioner concludes therein that the “CBD MD mark is incapable of distinguishing the goods of [Registrant] from the goods of others and therefore cannot function as a trademark and an indicator of source.” The Petitioner had, and still has, no basis to support this assertion which was raised in bad faith solely to harass the Defendant and increase their costs in defending this baseless claim.

The Defendants sought to engage in a discovery conference, in which, in accordance with Fed. R. Civ. P. 26(f)(2), “the parties must consider the nature and basis of their claims.” The Plaintiff further evidenced their bad faith filing of this case and their complete disinterest in prosecuting the merits of this action when for several months through November 16, 2020 they failed to cooperate with the Defendant to even schedule the required Discovery Conference. Pursuant to 37 C.F.R. § 2.120(h)(1) the Defendant filed a Motion for Sanctions on November 16, 2020 against Plaintiff for its failure to participate in the required Discovery Conference.

The Plaintiff’s counsel contacted the undersigned only after the filing of the Motion for Sanctions. The Parties then hastily conducted an extremely brief Discovery Conference, that the undersigned considers so brief and unavailing as not believed to be within the spirit or meaning of the rules. In the Discovery Conference when discussing the cancellation grounds that the “CBD MD mark is incapable of distinguishing the goods of [Registrant] from the goods of others and therefore cannot function as a trademark and an indicator of source” because “phrase CBD MD is a commonly used descriptive phrase that connotes information on products which include CBD as an ingredient,” the Plaintiff’s counsel would provide the undersigned no details or hint of supporting material.

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