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OMB No. 0651-0009 (Exp 02/28/2018)

Trademark/Service Mark Application, Principal Register

Serial Number: 87172475
Filing Date: 09/15/2016

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87172475
MARK INFORMATION	
***MARK**	Venicekush
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Venicekush
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
***OWNER OF MARK**	Moreno Olvera, Hugo
INTERNAL ADDRESS	#202
***STREET**	11421 W. Washington Blvd
***CITY**	Los Angeles
***STATE (Required for U.S. applicants)**	California
***COUNTRY**	United States
***ZIP/POSTAL CODE (Required for U.S. applicants)**	90066
PHONE	3105257940
EMAIL ADDRESS	XXXX
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	025
***IDENTIFICATION**	Clothing, namely, hats, shirts, socks, jackets, sweaters, and gloves
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/15/2010

FIRST USE IN COMMERCE DATE	At least as early as 09/15/2010
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT17\IMAGEOUT 17\871\724\87172475\xml1\ RFA0003.JPG
SPECIMEN DESCRIPTION	digital image of a website currently used in commerce
CORRESPONDENCE INFORMATION	
NAME	Moreno Olvera, Hugo
INTERNAL ADDRESS	#202
STREET	11421 W. Washington Blvd
CITY	Los Angeles
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	90066
PHONE	3105257940
*EMAIL ADDRESS	venicekush@yahoo.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE DUE	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
SIGNATURE	/Hugo Moreno Olvera/
SIGNATORY'S NAME	Hugo Moreno Olvera
SIGNATORY'S POSITION	Owner
SIGNATORY'S PHONE NUMBER	3105257940
DATE SIGNED	09/15/2016

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.
PTO Form 1478 (Rev 09/2006)
OMB No. 0651-0009 (Exp 02/28/2018)

Trademark/Service Mark Application, Principal Register

Serial Number: 87172475
Filing Date: 09/15/2016

To the Commissioner for Trademarks:

MARK: Venicekush (Standard Characters, see mark)
The literal element of the mark consists of Venicekush.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Hugo Moreno Olvera, a citizen of United States, having an address of
#202
11421 W. Washington Blvd
Los Angeles, California 90066
United States
3105257940(phone)
XXXX

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 025: Clothing, namely, hats, shirts, socks, jackets, sweaters, and gloves

In International Class 025, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 09/15/2010, and first used in commerce at least as early as 09/15/2010, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) digital image of a website currently used in commerce.
Specimen File1

The applicant's current Correspondence Information:
Moreno Olvera, Hugo
#202
11421 W. Washington Blvd
Los Angeles, California 90066
3105257940(phone)
venicekush@yahoo.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of $50 per international class of goods/services.

A fee payment in the amount of $275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the

validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Hugo Moreno Olvera/ Date: 09/15/2016
Signatory's Name: Hugo Moreno Olvera
Signatory's Position: Owner
RAM Sale Number: 87172475
RAM Accounting Date: 09/16/2016

Serial Number: 87172475
Internet Transmission Date: Thu Sep 15 14:35:25 EDT 2016
TEAS Stamp: USPTO/BAS-XX.XXX.XXX.XXX-201609151435255
27023-87172475-550b646ff17356359c6b606df
043a42ef9c386678ec3bdad24baab3ffc0f11d-D
A-902-20160915124830888192

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VENICEKUSH

AMERICA'S FIRST MARIJUANA CIGARETTES

Venicekush Dimond Logo T - Shirt

$29.99

ADD TO CART

Gray Light weight mens Tee Shirt with Venicekush Dimond Logo.

VENICEKUSH BRAND LLC

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov
ESTTA Tracking number: **ESTTA810680**
Filing date: **03/31/2017**

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

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	AMERICAN CANNABIS COMPANY
Granted to Date of previous extension	04/01/2017
Address	11554 VANOWEN STREET NORTH HOLLYWOOD, CA 91605 UNITED STATES

Name	VENICE KUSH		
Entity	CORPORATION	Citizenship	CALIFORNIA
Address	333 WASHINGTON BLVD. #505 MARINA DEL REY, CA 90292 UNITED STATES		

Correspondence information	JAIME MORENO CEO VENICE KUSH 333 WASHINGTON BLVD #505 MARINA DEL REY, CA 90292 UNITED STATES CEOMORENO@GMAIL.COM, DIGITALMAIL310@GMAIL.COM Phone:2133618148

Applicant Information

Application No	87172475	Publication date	01/31/2017
Opposition Filing Date	03/31/2017	Opposition Period Ends	04/01/2017
Applicant	Moreno Olvera, Hugo #202 Los Angeles, CA 90066 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2010/09/15 First Use In Commerce: 2010/09/15
All goods and services in the class are opposed, namely: Clothing, namely, hats, shirts, socks, jackets, sweaters, and gloves

Grounds for Opposition

Applicant not rightful owner of mark for identified goods or services	Trademark Act Section 1
False suggestion of a connection with persons,	Trademark Act Section 2(a)

living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	
Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	Rev Notice of opposition.pdf(79836 bytes)

Signature	/Jaime moreno/
Name	JAIME MORENO
Date	03/31/2017

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

In the matter of trademark application Serial No....87172475

For the mark ...Venicekush

Published in the *Official Gazette* on ...January 31, 2017

JAIME MORENO D/B/A AMERICAN CANNABIS COMPANY,

And

VENICE KUSH,

Opposer

v.

HUGO MORENO OLVERA,

Applicant

NOTICE OF OPPOSITION

Opposer, JAIME MORENO D/B/A AMERICAN CANNABIS COMPANY, an individual with a business address of 11554 Vanowen Street, North Hollywood, California 91605

and ,

Opposer , VENICE KUSH, a California Corporation with a business address of 333 Washington Boulevard #505 , Marina Del Rey , California 90292, hereby oppose registration of the mark Venicekush that is the subject of application Serial No. 87172475, published in the Official Gazette of January 31, 2017, and request that registration to Applicant be refused.

The above-identified opposers believes that they will be damaged by registration of the mark shown in the above-identified application, and hereby oppose the same.

As grounds in support of its opposition, Opposers Collectively assert as follows:

1. Applicant not rightful owner of mark for identified goods and services.

2. Opposer, JAIME MORENO D/B/A AMERICAN CANNABIS COMPANY in conjunction with VENICE KUSH a California Corporation are the rightful owners of the mark by common-Law right with bona fide first use in commerce using mark on hats, shirts, and other products.

3. JAIME MORENO D/B/A AMERICAN CANNABIS COMPANY first used the mark on hats in April of 2015 by instructing a manufacturer to print the mark on the hats, then gave permission to VENICE KUSH to sell in commerce at Public event in 2015.

4. JAIME MORENO D/B/A AMERICAN CANNABIS COMPANY first used the mark in bona fide commerce on shirts in 2015.

5. JAIME MORENO an individual and the sole officer and director of VENICE KUSH a California Corporation brought the mark to commerce and gained it secondary meaning in May of 2015 at a public event entitled HIGHFI 2015 by putting the mark venicekush on hats, shirts, and other products.

6. Any and all use prior and existent to the 2015 date of use of the mark by VENICE KUSH, was under exclusive controlled by JAIME MORENO D/B/A AMERICAN CANNABIS COMPANY where all quality and nature of the shirts and hats sold with the mark where under direction and control of JAIME MORENO.

7. JAIME MORENO D/B/A AMERICAN CANNABIS COMPANY has always exclusively exercised control over the nature and quality of the goods in connection with the the mark as used on hats and shirts and other products.

8. Applicant was only at one time allowed to distribute products with the mark on such products with the consent of JAIME MORENO.

9. Applicant does not have consent to use the mark from JAIME MORENO and is counterfeiting venicekush hats and t-shirts with my copyrighted logo with federal registration # TX0008184898.

8. Applicant does not have consent to use my copyrighted image under federal copyright registration #TX0008184898 for submission on application for registration of mark as submitted as Specimen File 1 on said application.

9. Opposers request refusal of registration based on False suggestion of a connection with VENICE KUSH a California Corporation that sells hats and shirts with the mark venice Kush across the front of hats and shirts.

10. Opposers request refusal of registration to Applicant based on Fraud upon the USPTO.

11. Applicant committing fraud upon the USPTO by falsely claiming ownership when he clearly is aware that he is not the owner of the mark.

12. Applicant through email communications with JAIME MORENO through email address "venicekush@yahoo.com has agreed that he is not the owner of the mark.

13. Applicant registered the email address venicekush@yahoo.com as a method of communication with the USPTO, which verifies the identity behind such admissions.

14. Applicant is committing fraud upon the USPTO by falsely claiming bona fide first use of mark on said goods specified in application as early as 09/15/2010 on application filed with the USPTO.

15. Applicant is committing fraud upon the USPTO by claiming bona fide use of mark on identified goods at the time the application is filed as stated on signed declaration on filing date of 09/15/2016.

16. Applicant committed fraud upon the USTPO by filing declaration that he is entitled to use the mark, when in fact numerous communications with JAIME MORENO through email address venicekush@yahoo.com clearly shows that he agrees he is not.

17. Applicant was present at a event in 2015 where hats and T-shirts and other products were sold with the mark of venicekush on the hats and shirts and VENICE KUSH a California Corporation was the entity selling the products. Therefore Applicant is aware he is not the owner of mark and is not and has not been in control of quality and nature of the hats and shirts or other products.

Respectfully submitted,
BY: /JAIME MORENO/
JAIME MORENO, D/B/A AMERICAN CANNABIS COMPANY

And
By: /JAIME MORENO/,

CEO for VENICE KUSH a California Corporation.

THIS ORDER IS NOT A PRECEDENT OF THE TTAB

Elgin

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

April 9, 2021

Opposition No. 91233735

Jaime Moreno DBA American Cannabis Company & Venice Kush

v.

Hugo Moreno Olvera

Before Wolfson, Lynch, and Johnson,
Administrative Trademark Judges.

By the Board:

This case now comes up for consideration of Applicant's motion, filed October 13, 2020, for involuntary dismissal under Trademark Rule 2.132(a), 37 C.F.R. § 2.132(a).[1] On October 31, 2020, Opposer opposed the motion and requested that the Board reopen Opposer's trial period.[2]

We have considered the parties' briefs and any evidence submitted therewith, but address the record only to the extent necessary to set forth our analysis and findings

[1] 33 TTABVUE. Record citations are to TTABVUE, the Board's publicly available docket history system. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

[2] 37 TTABVUE 16. The Board permitted Opposer to refile his brief with proof of service, which Opposer timely did on January 7, 2021. 37 TTABVUE. All references to Opposer's brief in opposition are to the later-filed submission at 37 TTABVUE; the filing at 35 TTABVUE is given no further consideration. Applicant did not file a reply.

and do not repeat or address all of the parties' arguments or evidence. *Guess? IP Holder LP v. Knowluxe LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

I. Relevant Background

On March 31, 2017, Opposer filed a notice of opposition against registration of the mark VENICEKUSH in standard characters for "Clothing, namely, hats, shirts, socks, jackets, sweaters, and gloves" in International Class 25.[3] On April 19, 2018, the Board granted judgment on the pleadings as to certain pleaded claims, leaving as the sole remaining ground for opposition a claim of non-ownership of the subject mark.[4] Applicant, in his answer, denies the salient allegations of the claim.[5]

As last reset, Opposer's main trial period ended April 26, 2020 and his rebuttal trial period ended August 9, 2020. Opposer's brief was due October 8, 2020.[6] Applicant seeks dismissal of the opposition with prejudice in view of Opposer's failure to submit any evidence during trial or file a brief.[7]

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[3] Application Serial No. 87172475, filed September 15, 2016 based on an allegation of first use and first use in commerce of September 15, 2010 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

[4] *See* 1 TTABVUE 5 (Notice of Opposition); 13 TTABVUE 9 (dismissing claims of fraud and false suggestion of a connection); 26 TTABVUE (order construing "Amended Notice of Opposition" as Opposer's election to proceed only on the ground of non-ownership, and confirming that the original notice of opposition (1 TTABVUE) and Applicant's answer thereto (4 TTABVUE) are the operative pleadings).

[5] *See* 4 TTABVUE.

[6] *See* 32 TTABVUE 1.

[7] 33 TTABVUE. Applicant also did not file any evidence during his trial period, which ended June 25, 2020. *See* 32 TTABVUE 1. Although a motion for judgment under 37 CFR § 2.132(a) should be filed before the opening of the moving party's testimony period, we have exercised our discretion to consider Applicant's later-filed motion. *See* Trademark Rule 2.132(c), 37 CFR § 2.132(c); *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710, 1712 (Fed. Cir. 1991).

In response, Opposer contends he has made evidence of record, pointing to "email communication, receipts, and some kind of documentation" served on Applicant with Opposer's initial disclosures.[8] Opposer further asks the Board to take judicial notice of evidence attached to his response brief.[9] Finally, Opposer requests that his testimony period be reopened to allow him an opportunity to submit additional evidence.[10]

II. Decision

A. No Evidence of Record

We first turn to Opposer's argument that he has introduced evidence in the proceeding. There are a number of ways to introduce evidence into the record in a Board proceeding.[11] To be considered at final hearing, however, all evidence that is not automatically of record must be properly introduced during a party's trial period. *Cf. Land O'Lakes, Inc. v. Hugunin*, 88 USPQ2d 1957, 1960 n.7 (TTAB 2008) (evidence

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[8] *See* 37 TTABVUE 5.

[9] *See id.* at 2-3, 25-57. These documents were included as exhibits to Applicant's Answer: a partial "Affidavit of Fact and Truth" by Applicant (the complete, signed version is at 4 TTABVUE 7-10); California articles of incorporation of "Venice Kush"; a California Seller's Permit; a California trademark registration; and an application for event insurance.

[10] *Id.* at 5. Opposer states that he intends to introduce evidence in support of "fraud" – however, Opposer's fraud claim was dismissed and is not a pending ground for opposition. *See* note 4, *supra*.

[11] For example, evidence may be introduced either in the form of testimony depositions taken by a party or by witness affidavits or declarations. Trademark Rules 2.123, 37 C.F.R. § 2.123. Documents and other exhibits may be made of record with appropriate identification and introduction by a witness. *Id.* Certain specified types of evidence, such as official records and printed publications and discovery responses, also may be introduced by filing the materials with the Board under cover of a notice of reliance. Trademark Rules 2.120(k), 2.122(e), 37 C.F.R. §§ 2.120(k), 2.122(e). *See generally* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 703-705 (2020).

submitted with summary judgment motion not of record); *Univ. Games Corp. v. 20Q.net, Inc.*, 87 USPQ2d 1465, 1468 n.4 (TTAB 2008) (same). Evidence not obtained and filed in compliance with the rules of practice will not be considered by the Board. Trademark Rule 2.123(k), 37 C.F.R. § 2.123(k). *See, e.g., Baseball Am. Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1846 n.8 (TTAB 2004) (materials submitted outside of applicant's assigned testimony period and which failed to comply with the Board's evidentiary rules given no consideration); *Original Appalachian Artworks Inc. v. Streeter*, 3 USPQ2d 1717, 1717 n.3 (TTAB 1987) (stating a party may not reasonably presume evidence is of record when it is not offered in accordance with the rules). *See also* TBMP § 706.

Opposer has not properly made any evidence of record during his trial period in this proceeding. Any documents served as part of Opposer's initial disclosures, and the exhibits attached to Opposer's brief, are not properly of record because they were not submitted during Opposer's trial period. Most of the documents that are the subject of Opposer's request for "judicial notice" do not comprise the kind of facts that may be judicially noticed by the Board. *See* Fed. R. Evid. 201(b);[12] *Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1692-93 (Fed. Cir. 2018) (discussing the taking of judicial notice in Board proceedings). *See also* TBMP § 704.12(a) & nn.1-2 (discussing the kinds of facts that may be judicially

[12] Rule 201(b) provides that a tribunal "may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the [tribunal's] territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

noticed, and collecting cases in which the Board has taken, or declined to take, judicial notice of facts). Moreover, Opposer's request for judicial notice is untimely. *See Litton Bus. Sys., Inc. v. J.G. Furniture Co.*, 190 USPQ 431, 434 (TTAB 1976) ("[W]e should not use judicial notice to remedy plaintiff's failure to present adequate evidence."). *See also* TBMP § 704.12(b) ("The request [for judicial notice] should be made during the requesting party's testimony period, by notice of reliance accompanied by the necessary information.").[13]

Accordingly, unless Opposer's testimony period is reopened, it would be futile to allow this case to proceed. Fed. R. Civ. P. 6(b)(1)(B); *Gaylord Enter. Co. v. Calvin Gilmore Prods. Inc.*, 59 USPQ2d 1369, 1373 (TTAB 2000).

B. Reopening of Opposer's Testimony Period

To overcome Applicant's motion for involuntary dismissal, Opposer must show good and sufficient cause why judgment should not be rendered against him, failing which the notice of opposition will be dismissed with prejudice. The "good and sufficient cause" standard in the context of Trademark Rule 2.132(a) is equivalent to the "excusable neglect" standard which Opposer would be required to meet to reopen Opposer's testimony period under Fed. R. Civ. P. 6(b)(1)(B). *PolyJohn Enters. Corp. v. 1-800-Toilets Inc.*, 61 USPQ2d 1860, 1860-61 (TTAB 2002).

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[13] Applicant has not made any admissions in his answer that would establish Opposer's entitlement to a statutory cause of action, *see Spanishtown Enters., Inc. v. Transcend Resources, Inc.*, 2020 USPQ2d 11388, at *2 (TTAB 2020) (discussing change in nomenclature of doctrine formerly known as "standing"), or Opposer's claim of Applicant's non-ownership of the subject mark. The documents attached to Applicant's Answer, 4 TTABVUE 6-94, also are not of record in the proceeding.

As discussed by the Board in *Pumpkin, Ltd. v. Seed Corps*, 43 USPQ2d 1582, 1585-86 (TTAB 1997), the Supreme Court has clarified the meaning and scope of "excusable neglect" as used in the Federal Rules of Civil Procedure and elsewhere. In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. L.P.*, 507 U.S. 380, 395 (1993), the Court held that the determination of whether a party's neglect is excusable is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." These include:

(1) The danger of prejudice to the non-movant;

(2) The length of the delay and its potential impact on judicial proceedings;

(3) The reason for the delay, including whether it was within the reasonable control of the movant; and

(4) Whether the movant acted in good faith.

Id. In subsequent applications of this test, several courts and the Board have stated that the third *Pioneer* factor – namely, the reason for the delay and whether it was within the reasonable control of the movant – might be considered the most important factor in a particular case. *See Pumpkin,* 43 USPQ2d at 1587, n.7 and cases cited therein. *See also Luster Prods., Inc. v. Van Zandt,* 104 USPQ2d 1877, 1878 (TTAB 2012). The Board balances the reason for the delay with the other factors enumerated by the Supreme Court in *Pioneer* to take into account all relevant circumstances. *Coffee Studio LLC v. Reign LLC*, 129 USPQ2d 1480, 1482 (TTAB 2019).

1. First *Pioneer* Factor: Danger of Prejudice

The type of prejudice contemplated by the first *Pioneer* factor is prejudice to the non-movant's ability to litigate the case, e.g., where the non-movant has lost evidence or witnesses as a result of the delay. *See Pumpkin*, 43 USPQ2d at 1587. Applicant has not pointed to any specific loss of evidence or witness testimony as a result of Opposer's delay, and there is no evidence in the record that Applicant's ability to defend against Opposer's claim has been prejudiced by the delay. Accordingly, this factor weighs in favor of finding excusable neglect.

2. Second *Pioneer* Factor: Length of Delay

With respect to the length of the delay and its potential impact on proceedings, the Board must evaluate the total length of the delay caused by Opposer's failure to properly offer evidence during his testimony period or file a brief and the resulting motion practice, including the time for the Board to consider the pending motion. *Coffee Studio*, 129 USPQ2d at 1483 (citing *Pumpkin*, 43 USPQ2d at 1588).

It has been almost a year since Opposer's testimony period closed. Reopening Opposer's testimony period would further delay resolution of this case by many months and runs counter to the Board's interest in an expeditious adjudication of this and other cases, as well as Applicant's interest in the resolution of this case. *See Pumpkin*, 43 USPQ2d at 1588 ("The Board, and parties to Board proceedings generally, clearly have an interest in minimizing the amount of the Board's time and resources that must be expended on matters[.]"). Accordingly, we find this factor weighs against a finding of excusable neglect.

3. Third *Pioneer* Factor: Reason for Delay

Turning to the third *Pioneer* factor, the reason for the delay, Opposer claims his prior counsel "kept possession of documentary evidence given to him by Opposer in order for counsel to represent Opposer [sic] case to the Board. Counsel . . . would not return my phone calls after a disagreement concerning his competence to prosecute the case. If not for counsels [sic] neglect there would be no delay by Opposer."[14]

The Board granted the motion of Opposer's former counsel, The Berglund Group ("TBG"), to withdraw from the proceeding on December 21, 2019 – over four months before Opposer's trial period closed.[15] TBG stated it was Opposer who would not return his counsel's calls, and "[t]he only documents and property in TBG's possession related to this action were the pleadings filed by TBG on behalf of Opposer which [TBG] emailed to Opposer at the time of filing."[16] Accordingly, Opposer's representations regarding the fault of his former counsel are, at best, inconsistent with the record in this proceeding.

Nonetheless, on January 18, 2020, Opposer stated he intended to represent himself without the aid of counsel.[17] Notwithstanding that Opposer appears pro se, the Board expects all parties appearing before it, regardless of whether they are

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[14] 37 TTABVUE 14.

[15] 27 TTABVUE. Counsel supplemented his withdrawal on December 16, 2019 in response to the Board's order. *See* 29 TTABVUE. The Board notes that Opposer initiated this proceeding without the aid of counsel. *See* 1 TTABVUE. Subsequently, two sets of counsel have appeared and withdrawn from representing Opposer in this proceeding. *See* 7, 23, 24, 27, 29 TTABVUE. Applicant's former counsel also withdrew from the proceeding. *See* 17 TTABVUE. Accordingly, both parties currently appear pro se.

[16] 29 TTABVUE 5-6 (Declaration of Russell J. Miller ¶¶ 6, 8).

[17] 31 TTABVUE.

represented by counsel, to comply with applicable rules and authorities. *McDermott v. S.F. Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx. 865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008). *See also* 30 TTAVUE 2-3 (warning Opposer that representation by an attorney is strongly advisable and strict compliance with Board's rules is required of all parties, whether or not they are represented by counsel). Opposer assumed responsibility for this case as a pro se plaintiff, and in so doing took responsibility for moving this case forward on the established schedule. *See Atlanta-Fulton County Zoo Inc. v. DePalma*, 45 USPQ2d 1858, 1860 (TTAB 1998). If Opposer believed that he needed more time to obtain papers or files, it was incumbent upon him to file a motion to extend the deadline for his testimony period before the period closed more than three months later.

In view thereof, the failure to file evidence and a brief appears to be wholly in the control of Opposer. This weighs heavily against a finding of excusable neglect.

4. Fourth *Pioneer* Factor: Good Faith

The fourth factor concerns Opposer's good faith. There is no evidence of record that Opposer failed to file evidence during his testimony period in bad faith. Accordingly, we find this factor neutral.

5. Decision

After careful consideration of the *Pioneer* factors and all of the relevant circumstances in this case, we find that Opposer's delay was not the result of excusable neglect.

Dismissal is appropriate under Section 2.132(a) of the Trademark Act where the plaintiff's time for taking testimony has expired and the plaintiff has not taken any testimony or offered any evidence. Because Opposer failed to take any testimony or offer any other evidence in support of his claim during his assigned testimony period, and because we determine that Opposer is not entitled to a reopening of the period, Applicant's motion to dismiss the opposition under Trademark Rule 2.132(a) is **granted** and the opposition is **dismissed with prejudice**.

United States of America

United States Patent and Trademark Office

Venicekush

Reg. No. 6,430,744

Registered Jul. 27, 2021

Int. Cl.: 25

Trademark

Principal Register

Moreno Olvera, Hugo (UNITED STATES INDIVIDUAL)
#202
11421 W. Washington Blvd
Los Angeles, CALIFORNIA 90066

CLASS 25: Clothing, namely, hats, shirts, socks, jackets, sweaters, and gloves

FIRST USE 9-15-2010; IN COMMERCE 9-15-2010

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 87-172,475, FILED 09-15-2016

Performing the Functions and Duties of the
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

From: TMDesignCodeComments
Sent: Wednesday, September 21, 2016 00:21 AM
To: venicekush@yahoo.com
Subject: Official USPTO Notice of Pseudo Mark: U.S. Trademark SN: 87172475: VENICEKUSH

Docket/Reference Number:

The USPTO may assign pseudo marks, as appropriate, to new applications to assist in searching the USPTO database for conflicting marks. They have no legal significance and will not appear on the registration certificate.

A PSEUDO MARK may be assigned to marks that include words, numbers, compound words, symbols, or acronyms that can have alternative spellings or meanings. For example, if the mark comprises the words 'YOU ARE' surrounded by a design of a box, the pseudo mark field in the USPTO database would display the mark as 'YOU ARE SQUARE'. A mark filed as 'URGR8' would receive a pseudo mark of 'YOU ARE GREAT'.

Response to this notice is not required; however, to suggest additions or changes to the pseudo mark assigned to your mark, please e-mail TMDesignCodeComments@USPTO.GOV. You **must** reference your application serial number within your request. The USPTO will review the proposal and update the record, if appropriate. For questions, please call 1-800-786-9199 to speak to a Customer Service representative.

The USPTO will not send any further response to your e-mail. Check TESS in approximately two weeks to see if the requested changes have been entered. Requests deemed unnecessary or inappropriate will not be entered.

To view this notice and other documents for this application on-line, go to http://tdr.uspto.gov/search.action?sn=87172475. NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

Pseudo marks assigned to the referenced serial number are listed below.

PSEUDO MARK:

VENICE KUSH

Secretary of State
Business Programs Division
Special Filings, P.O. Box 942877, Sacramento, CA 94277-0001

May 12, 2016

Venicebrands LLC
c/o Hugo Moreno
P.O. Box 661577
Los Angeles, CA 90066

Dear Mr. Moreno:

RE: Trademark Registration for VENICEKUSH BRAND

We are returning, unfiled, the Registration of Trademark or Service Mark application form (Application) and payment.

Please refer to the final rejection letter sent to you for this mark dated April 14, 2016.

The mark has been deemed abandoned pursuant to California Business and Professions Code section 14209(e).

Sincerely,

Trademark Unit
Business Programs Division

Enclosure(s)

#104

State of California
Secretary of State

REGISTRATION OF TRADEMARK OR SERVICE MARK

Pursuant to Business and Professions Code sections 14207 and 14235

IMPORTANT – Read instructions before completing this form.

REGISTRATION APPLICATION FOR (Check One): ☑ **TRADEMARK** ☐ **SERVICE MARK**

1. NAME OF OWNER OF MARK (REGISTRANT)
Venicebrands LLC

2. BUSINESS ADDRESS OF REGISTRANT
269 South Beverly Drive #1084

CITY AND STATE
Beverly Hills, California

ZIP CODE
90212

3. BUSINESS STRUCTURE OF REGISTRANT (Check One and Complete)

☐ CORPORATION (State of Incorporation)_____

☑ LIMITED LIABILITY COMPANY (State of Organization) California

☐ LIMITED PARTNERSHIP (State of Organization) _____

☐ GENERAL PARTNERSHIP (State of Organization) _____

☐ SOLE PROPRIETOR

☐ SPOUSES, AS COMMUNITY PROPERTY

☐ DOMESTIC PARTNERS, AS COMMUNITY PROPERTY

☐ OTHER (Describe)_____

4. NAMES OF GENERAL PARTNERS, IF REGISTRANT IS A PARTNERSHIP

5. NAME AND/OR DESIGN OF MARK. (For design, provide a brief written description that can be pictured in the mind without reference to the specimens. Do not draw the design on the application. Attach a drawing of the mark.)

Venicekush Brand

6. DISCLAIMER (If Applicable) NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE THE TERM:
Brand, Made, In, USA, EST, 2015

7a. DATE THE MARK WAS FIRST USED IN CALIFORNIA
September 14, 2010

7b. DATE THE MARK WAS FIRST USED ANYWHERE
Same

8a. IF A TRADEMARK, LIST SPECIFIC GOODS. IF A SERVICE MARK, LIST SPECIFIC SERVICE.

Hats, Shirts, Containers, Surfboards, Socks, Medical Marijuana Accesories and Apparatus'
Thrift Items, Clothing

8b. CLASS NUMBER(S) 25 16 10 26 34

THIS SPACE FOR FILING OFFICER USE
TRADEMARK OR SERVICE MARK

REG. NO. _____

CLASS NO.(S) _____

9. RETURN ACKNOWLEDGMENT TO: (Type or Print)

NAME Venicebrands LLC

ADDRESS c/o Hugo Moreno
P.O. Box 661577

CITY/STATE/ZIP Los Angeles, CA 90066

10. INDICATE WHETHER AN APPLICATION TO REGISTER THE MARK, OR PORTIONS, OR A COMPOSITE THEREOF, HAS BEEN FILED BY THE REGISTRANT OR A PREDECESSOR IN INTEREST WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE.

FILING DATE 02-02-2016 SERIAL/FILE NO. _____ STATUS OF APPLICATION Rejected

REFUSED, WHY? Disclaimer error

☐ CHECK HERE IF THIS ITEM DOES NOT APPLY

11. MANNER IN WHICH THE MARK IS USED (Check all that apply)

FOR TRADEMARKS ONLY

- ☑ ON LABELS AND TAGS AFFIXED TO THE GOODS
- ☑ ON LABELS AND TAGS AFFIXED TO CONTAINERS OF THE GOODS
- ☑ BY PRINTING IT DIRECTLY ONTO THE GOODS
- ☑ BY PRINTING IT DIRECTLY ONTO THE CONTAINERS OF THE GOODS
- ☐ OTHER _____

FOR SERVICE MARKS ONLY

- ☐ ON BUSINESS SIGNS
- ☐ ON ADVERTISING BROCHURES
- ☐ ON ADVERTISING LEAFLETS
- ☐ ON BUSINESS CARDS
- ☐ ON LETTERHEADS
- ☐ ON MENUS
- ☐ OTHER _____

12. SPECIMENS (Check one box below and enclose three (3) identical original specimens showing current use of the mark.)

FOR TRADEMARKS ONLY

- ☐ ACTUAL LABELS
- ☐ ACTUAL TAGS
- ☑ PHOTOGRAPHS OF GOODS/CONTAINERS SHOWING THE TRADEMARK
- ☐ FRONT PANELS OF A PAPER CONTAINER BEARING THE TRADEMARK
- ☐ OTHER _____

FOR SERVICE MARKS ONLY

- ☐ BUSINESS CARDS
- ☐ ADVERTISING BROCHURES
- ☐ ADVERTISING LEAFLETS
- ☐ MENUS SHOWING THE MARK
- ☐ OTHER _____

13. DECLARATION OF OWNERSHIP

Applicant declares that the applicant is the owner of the mark, that the mark is in use, and that to the knowledge of the person verifying the application, no other person has registered in this state, or has the right to use the mark, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion, to cause mistake, or to deceive.

14. DECLARATION OF ACCURACY

Applicant declares that all the information contained in this registration is accurate and if the applicant willfully states in the registration any material fact that the applicant knows to be false, the applicant shall be subject to a civil penalty of not more than ten thousand dollars ($10,000.00).

05-01-2016
DATE

Ex Rel Jason Abraham
SIGNATURE OF AUTHORIZED PERSON

Jason Abraham, Member
TYPE OR PRINT NAME AND TITLE

#243

#245

Secretary of State
Business Programs Division
Special Filings, P.O. Box 942877, Sacramento, CA 94277-0001

May 12, 2016

Venicebrands LLC
c/o Hugo Moreno
P.O. Box 661577
Los Angeles, CA 90066

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Sincerely,

Trademark Unit
Business Programs Division

Enclosure(s)

#75

#111

United States Copyright Office
Library of Congress · 101 Independence Avenue SE · Washington DC 20559-6000 · www.copyright.gov

June 02, 2016

Hugo Moreno
Po box 661577
Los Angeles, CA

Correspondence ID: 1-1MD0SG0

RE: Venicekush

Dear Hugo Moreno:

Registration of this work must be refused because it lacks the authorship necessary to support a copyright claim.

Copyright protects original works of authorship that are fixed in some physical form. See 17 U.S.C. § 102(a). As used in the copyright context, the term "original" means that the work was independently created by the author (as opposed to copied from other works), and that it possesses sufficient creative authorship. See Feist Publications v. Rural Telephone Service Co., 499 U.S. 340 (1991).

To satisfy these requirements, a work of the visual arts must contain a minimum amount of creative pictorial, graphic or sculptural authorship; a literary work must contain a minimum amount of text. Copyright does not protect familiar symbols or designs; basic geometric shapes; words and short phrases such as names, titles, and slogans; or mere variations of typographic ornamentation, lettering or coloring. See 37 C.F.R. §202.1. Further, copyright does not extend to any idea, concept, system, or process which may be embodied in a work. 17 U.S.C. §102(b).

Neither the aesthetic appeal or commercial value of a work, nor the amount of time and effort expended to create a work are factors that are considered under the copyright law. See Bleistein v. Donaldson, 188 U.S. 239 (1903); Feist Publications v. Rural Telephone Service Co., 499 U.S. 340 (1991). The question is whether there is sufficient creative authorship within the meaning of the copyright statute and settled case law.

After careful consideration, we have determined that this particular work will not support a claim to copyright under the standards described above. Therefore we must refuse registration of this claim. The copyright law requires that we retain the deposit of this work. The filing fee is nonrefundable.

Some brand names, trade names, slogans, logos and labels may be entitled to protection under the general rules of law relating to unfair competition or to registration under the provisions of the trademark laws. For information on trademark registration go to www.uspto.gov.

#53

#106

eco.copyright.gov

Yahoo! Apple iCloud YouTube Google venicekush.com www.authpro.com

eCO Registration System | U. S. Copyright Office | Electronic Copyright Office (eCO) | U.S. Copyright Office - Help: Claimant

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Your Contact Information

Name: Hugo Moreno
Organization Name:
Email Address: venicekush@yahoo.com
Phone #: (760) 514-1939
Alternate Phone #: (323) 377-8552

Address: Po Box 661577
City: Los Angeles
State: CA
Postal Code: 90066
Country: United States

Cases in Cart

1 - 1 of 1

	Case #	Status	Opened	Title	Vol/ Num/Issue	Month/Year	Type of Case	Fee Due	Remove to Working Cases
>	1-2554034020	In-Cart	7/14/2015	Venicekush			Work of the Performing Arts	55.00	x
Total Due:								$55.00	

Case Details

1 - 1 of 1

Reference Id	Fee Type	Quantity	Rate	Amount Due
1-168LTD6	Performing Arts - Basic (Web)	1	55.00	55.00

Attachments

No Records

Attachment Name	File Type	Size	Date and Time	Comments

Working Cases

No Records

Case #	Status	Opened	Title	Type of Case	Discard

The United States Code authorizes the Copyright Office to collect the personally identifying information requested on this form in order to process the application for copyright registration. By providing this information you are agreeing to routine uses of the information that may be published by 17 U.S.C. § 705. It will appear in the Office's online catalog. If you do not provide the information requested, registration may be refused or delayed, and you may not be entitled to certain relief, remedies, and benefits under the copyright law.

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