

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

In re Application Serial No. 85281738 91203150
Filed: March 30, 2011
For Mark: Nationwide Digital Monitoring Co. (and Design)

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NEW YORK MERCHANTS PROTECTIVE CO.,

Opposer,

REPLY TO OPPOSITION

v.

AARON WAHRSAGER,

Applicant.
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Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Applicant, Aaron Wahrsager believes that the Notice of Opposition filed by New York Merchants Protective Co., Inc. ("NYMP") is improper and should be overruled.

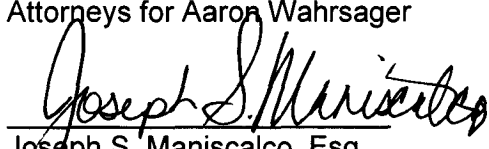
1. As an initial matter, NYMP is currently in receivership before the United States District Court for the Eastern District of New York under Case Number **2:11-cv-00038 (DRH)(ARL)**. Ronald J. Friedman was appointed as the receiver (the "Receiver") in that case on or about January 5, 2011. A copy of the Receiver appointment Order is annexed hereto as Exhibit "A". Therefore, the opposition filed by NYMP is invalid on its face as NYMP does not have the authority to act any longer. The only person with authority to act is the Receiver. In the opposition, it clearly states that it is being filed by NYMP, through its counsel. However, NYMP has no management or authority to hire an attorney. The only person with authority to act is the Receiver. In addition, the Receiver would normally seek permission from the Court that appointed him in order to retain counsel to act in matters which are not under the jurisdiction of the Court.

2. Furthermore, the opposition merely took a picture of the web site of Nationwide and then filed an opposition stating it is similar to one that NYMP was using. Indeed, NYMP does not provide any evidence from its own web site or its own documents to show that it has used the mark and design and how it has been harmed by the Applicant's use. Clearly, this is an improper objection.
3. Finally, this office should be aware that by Order of the Court dated October 17, 2011, the alleged Opposer sold substantially all of its assets. Therefore, it no longer has standing to pursue this opposition. The Opposer's counsel has never been retained or approved by an order of the Court which appointed the Receiver. Therefore, the attorney has no standing to file the opposition.

Dated: Wantagh, New York
February 6, 2012

LaMONICA HERBST & MANISCALCO, LLP
Attorneys for Aaron Wahrsager

By:


Joseph S. Maniscalco, Esq.
A Member of the Firm
3305 Jerusalem Avenue
Wantagh, New York 11793
(516) 826-6500

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
BANK OF AMERICA, N.A., individually and
as a successor to LaSalle Bank, National
Association, a national banking association,

Plaintiff,

-against-

ORDER

11 CV 38 (DRH) (ARL)

NEW YORK MERCHANTS PROTECTIVE
CO., INC., a New York Corporation, NEW YORK
MERCHANTS ALARM RESPONSE INC., a
Delaware Corporation, and NY MERCH PROT
CO., INC., a Delaware Corporation,

Defendants.

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APPEARANCES:

MAYER BROWN LLP

Attorneys for Plaintiff

1674 Broadway

New York, New York 11019

By: Jean Marie Lucien Atamian, Esq.

RUSKIN, MOSCOU, FALTISCHEK, P.C.

Attorneys for Defendants

1425 Reckson Plaza

East Tower, 15th Floor

Uniondale, New York 11556

By: Jeffrey A. Wurst

HURLEY, Senior District Judge:

On January 5, 2011, plaintiff Bank of America, N.A. ("Plaintiff") commenced this action by filing a Complaint asserting claims against defendants New York Merchants Protective Co., Inc., New York Merchants Alarm Response, Inc., and NY Merch Prot Co., Inc. (collectively, "Defendants") for breach of a loan agreement, collection under guaranty, and breach of guaranty. The Complaint also seeks temporary and permanent equitable relief in the form of the

appointment of a Receiver “to take possession, manage and control the business” of Defendants.
(Compl, WHEREFORE (b).)

On the same date, Plaintiff filed an unsigned Order to Show Cause, along with accompanying declarations, seeking the immediate appointment of a “temporary receiver” with the power to, *inter alia*, “(a) take exclusive possession, custody and control of all Defendants’ books and records and assets, wherever located; (b) exclusively operate and manage Defendants’ businesses until disposition thereof or until further order of Court; and (c) pursue such further and other relief as may be proper, necessary or just under the circumstances.” (Unsigned Order to Show Cause, dated January 5, 2011, at 2.)

The parties appeared before the Court on January 5, 2011 for a hearing on Plaintiff’s emergency application. Additionally, a plenary hearing was scheduled for January 18, 2011 at 9:30 a.m. to more fully address the relief sought in the unsigned Order to Show Cause. The Court made numerous rulings on the record on January 5, 2011 and directed Plaintiff to submit a proposed order incorporating those rulings. Plaintiff submitted a proposed order under cover of a letter dated January 10, 2011. (Docket No. 8.) By letter of the same date, Defendants submitted objections to Plaintiff’s proposed order as well as their own version of the proposed order. (Docket No. 7.) Having considered the parties’ written submission and after a review of the transcript from the January 5, 2011 proceedings, IT IS HEREBY ORDERED:

(1) Ronald J. Friedman, Esq., Silverman Acampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York, is appointed to serve as a receiver (the “Receiver”) for Defendants New York Merchants Protective Co., Inc., New York Merchants Alarm Response, Inc., and New York Merc Prot Co., Inc.

(2) The Receiver's appointment and the other provisions of this Order are effective as of January 5, 2011 consistent with the oral orders entered on the record on that date and shall remain effective until the latter of January 18, 2011 or the date of the show cause hearing (the "period of the Receivership");

(3) The Receiver shall have the power and the responsibility to monitor and control all monies that are received by Defendants as well as all monies that are owed to Defendants during the period of the Receivership;

(4) The Receiver shall oversee, directly or indirectly, the disbursements by Defendants of any funds under the control of any of the defendant corporations during the period of the Receivership;

(5) The Receiver shall not take over the control over the management of the defendant corporations. The present management may continue in their current capacities during the period of the Receivership;

(6) The Receiver shall make all reasonable efforts to prevent any dissipation of the Defendants' assets during the period of the Receivership;

(7) The Receiver shall make all reasonable efforts to prevent any documents presently on site or under the control of any one or more of the defendant corporations from being destroyed during the period of the Receivership; and

(8) The Receiver shall have the right to engage the services of professionals to assist him in performing his role. The Receiver shall act reasonably in this regard. The Receiver may engage the forensic accounting services of Mr. Brady.

IT IS FURTHER ORDERED, that Defendants are directed:

(1) Not to take engage in any action or inaction that would result in the dissipation of any of the Defendants' assets during the period of the Receivership; and

(2) Not to destroy any documents or records without a prior Court order until this matter is adjudicated.

IT IS FURTHER ORDERED, that the Receiver's reasonable fees during the period of the Receivership will be charged to Defendants; and

IT IS FURTHER ORDERED, that the Receiver post a bond in the amount of \$50,000 by 12:00 p.m. on January 7, 2011.

Finally, it is noted that by letter dated January 14, 2011, Defendants informed the Court that Defendants consented to the appointment of a receiver without any admission of wrongdoing. (Docket No. 10.) Based on that representation, the January 18, 2011 hearing was cancelled. (Jan. 14, 2011 Elec. Order.) On January 19, 2011, at the Court's direction, the parties submitted a proposed Order Appointing Receiver (docket no. 11), which the Court endorsed by Electronic Order of the same date.

SO ORDERED.

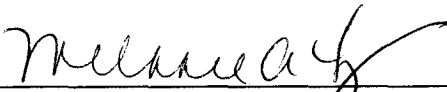
Dated: Central Islip, New York
January 19, 2011

/s/
Denis R. Hurley
Unites States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2012, a true and correct copy of the foregoing **REPLY TO OPPOSITION** was served by Overnight Mail on Opposer's counsel at the following address:

Robert J. English, Esq.
Cowan Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, New York 10036-6799



Melanie A. FitzGerald