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Small Business “Trademark Bullying” Comments Made Public

FALLS CHURCH, VA – April 5, 2011 -- For the first time, recent comments submitted to the government about abusive [trademark litigation tactics](#) and their effects on small businesses have been made available to the public, said Erik M. Pelton, managing partner of the trademark law firm Erik M. Pelton & Associates (or “EMP&A”).

Last fall, the United States Patent and Trademark Office (“USPTO”) issued a request for comments about “trademark bullying” as part of a congressionally mandated investigation into growing concerns that small businesses and entrepreneurs are unfairly disadvantaged in trademark disputes. The USPTO request defined a “bully” as “a trademark owner that uses its trademark rights to harass another business beyond what the law might be reasonably interpreted to allow.”

Though the USPTO has yet to publish any findings from the study, [trademark law firm](#) EMP&A has publicly posted the comments from more than 40 different businesses, individuals, and organizations. EMP&A obtained these comments through a records request under the Freedom of Information Act.

“The comments offer insight into the deeply conflicting views about whether small businesses and entrepreneurs are treated fairly in the trademark system,” said Pelton. Many small businesses submitted comments describing their own encounters with “trademark bullies.” For example, Rock Art Brewery, a Vermont micro-brewery that has been making VERMONSTER® brand beer since 2006, described how it had to overcome allegations of trademark infringement it received from the makers of MONSTER energy drink in late 2009. Rock Art’s case received significant media attention, which helped inspire the congressional study.

Pelton said comments from several larger companies tended to dismiss the idea that small businesses faced a pattern of “bullying.” For example, Intel Corporation characterized the experiences of small businesses as a “subjective impression of being ‘bullied’” that could be reduced by “additional education in the area of trademark law, particularly targeted to individuals and small businesses...” but not all large companies shared this view. eBay, Inc., also acknowledged some factors that have encouraged the practice of trademark bullying: “Trademark bullies are successful in obtaining settlements against trademark owners, even where the trademark infringement claims asserted are questionable, because defending parties are either not capable, financially or otherwise, or willing to deal with the risks and uncertainty involved in litigating a trademark dispute.”

EMP&A has also submitted its own comments to the USPTO. Erik Pelton, EMP&A’s founder, became interested in the issue after some of his own small business clients had to overcome questionable claims raised by larger companies. “Lately we have seen many small businesses struggle with the tough choice of either enduring years of expensive litigation to defend their

valid trademark rights or agreeing to rebrand their products under threat from an opponent with deeper pockets,” Pelton said. “Either way, small businesses and entrepreneurs are forced to divert time and resources away from growing a successful business.” Since more than half of all Americans are employed by companies with less than 500 employees, Pelton is concerned that trademark litigation policies which unfairly burden small businesses have become a significant drain on the growth of the economy.

To date, the USPTO has not published the results of its study, but EMP&A has already filed a new FOIA request seeking its release. In addition, Pelton recently wrote to Senator Patrick Leahy, Chair of the Senate Judiciary Committee, urging the committee to hold hearings on abusive trademark litigation tactics and their effect on small businesses. According to Pelton, “Congress needs to ensure that the experiences of America’s small businesses and entrepreneurs have been taken into account.”

About Erik M. Pelton & Associates, PLLC

EMP&A is a boutique trademark law firm in Falls Church, VA, representing businesses and entrepreneurs around the world. The firm has registered more than 1,400 trademarks, and has successfully represented clients in numerous trademark disputes. This week, EMP&A’s founder, Erik Pelton, will participate in a panel discussion with the Commissioner for Trademarks at the American Bar Association’s 26th Annual Intellectual Property Law Conference in Arlington, Virginia. EMP&A is a member of the National Small Business Association, and Mr. Pelton is on the board of directors of the Falls Church Chamber of Commerce. More information about the firm is available at www.tm4smallbiz.com.

All the comments obtained from the USPTO, along with a copy of FOIA request itself, have been published online for the public on the firm’s IPelton® blog at <http://ipelton.wordpress.com/> or <http://bit.ly/USPTOFOIA>.