

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

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In re Registration of  
Antonio Malpica  
Registration No:  
6102744  
Registration Date:  
July 14, 2020  
For: COMICS GATE

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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PETITION FOR REEXAMINATION**

Pursuant to 15 U.S.C. § 1066(b) and 37 C.F.R. § 2.91(b)(2), Petitioner, COMMON SENSE PRESS INC DBA POCKET JACKS COMICS (hereinafter, "Petitioner"), a Texas corporation with a principal address of 12471 Wood Manor Circle, Dallas, TX 75234, hereby petitions for ex parte reexamination of U.S. Registration No. 6,102,744 (hereinafter, "Subject Registration") for the mark COMICS GATE (hereinafter, "Subject Mark") owned by ANTONIO J. MALPICA (hereinafter, "Registrant"), an individual with a principal address of 88 S Jefferson St, Beverly Hills, FL 34465.

Petitioner petitions for ex parte reexamination on the grounds that the Subject Mark was not in use in commerce in connection with any of the goods listed in the Subject Registration, namely "comics" (hereinafter, "Subject Goods"). Specifically, Registrant had not used his mark in commerce in connection with the Subject Goods as of the filing of his Statement of Use on

April 24, 2020, or as of the registration date of his mark (July 14, 2020), or as of the time by which he was required to file his statement of use under section 1(d).

Petitioner requests that the Director institute reexamination proceedings and cancel the Subject Registration in connection with the Subject Goods. In support of its Petition, Petitioner includes herewith, pursuant to 15 U.S.C. 1066a(b) and 37 C.F.R. § 2.91(c)(8)-(9), a verified statement setting forth the elements of the reasonable investigation of nonuse conducted and a factual statement of the relevant basis for the Petition, an index of all documentary evidence supporting a prima facie case of nonuse of the Subject Mark in commerce, and accompanying Exhibits.

In support of the Petition for Ex Parte Reexamination of U.S. Registration No. 6,102,744, (hereinafter, "Petition") filed by Petitioner, I, Francis John Ciaramella, Esq., having firsthand knowledge of the facts to be proved, affirm, as follows:

1. I am an attorney at law in the State of Florida, where I am a member in good standing of the bar. I am the managing attorney of the law firm of Francis John Ciaramella, PLLC, 110 Front Street, Suite 300, Jupiter, FL 33477. I submit this verified statement in support of Petitioner's Petition based upon my personal knowledge, information, and belief. I declare under penalty of perjury under the laws of the United States of America that the following is true and correct.

2. On September 3, 2018, Registrant filed Application Serial No. 88/102,778 for the mark COMICS GATE (the "Subject Mark") in International Class 016 for the following goods: "comics" (the "Subject Goods"). A true and accurate copy of same is attached herein as Exhibit A.

3. On April 24, 2020, after the Subject Mark abandoned, Registrant filed a statement of use asserting a date of first use of September 7, 2018. A true and accurate copy of same is attached herein as Exhibit B.

4. On July 14, 2020, Application Serial No. 88/102,778 matured into U.S. Registration No. 6,102,744 (the "Subject Registration") in connection with the Subject Goods in International Class 016. A true and accurate copy of same is attached herein as Exhibit C.

5. Based upon internet research and a reasonable investigation of nonuse, Registrant was not using the Subject Mark in commerce in connection with the listed goods (comics) in the Subject Registration as of the filing of his Statement of Use on April 24, 2020, or as of the registration date of his mark (July 14, 2020), or as of the time by which he was required to file his statement of use under section 1(d).

6. Indeed, based upon internet research and a reasonable investigation, the specimen submitted to the United States Trademark Office in connection with Registrant's allegation of use shows no use inside of the United States, but rather pre-sales activity not constituting use in commerce as defined by the Trademark Act.

7. Registrant's specimen consists of three screenshots from the websites indiegogo.com (a crowd-funding site wherein consumers pitch in to fund a project) and youtube.com. *See* Exhibit B. The first image submitted by Registrant does not show use of the COMICS GATE mark in commerce in connection with comics. Specifically, the first image notes that "this is going to be one of the best Comics Gate projects to rest on your shelves." Registrant's own specimen of use indicates that the "project" may be available at some future date, and that it is not presently available (i.e., "is going to be"). The second image submitted by Registrant does not show use of the COMICS GATE mark in commerce in connection with comics. Despite Registrant's

claims to the contrary, the second image does not show any sales. In reality, the second image only shows purported “contributions” rather than actual sales, suggesting that the “project” may be available at some future date. The third image submitted by Registrant does not show use of the COMICS GATE mark in commerce in connection with comics. According to the Registrant, the third image shows a screenshot of a “promotional video.” Like, the first two images, this “promotional video” does not demonstrate actual sales and indicates that the “project” may be available at some future date (i.e., it is promoting its potential future release).

8. On February 24, 2022, I attempted to check the status of Registrant’s crowdfunded comic book located at the website [indiegogo.com](http://indiegogo.com), and labeled as “Detective Dead” (*see* Exhibit B), which was the basis for Registrant’s specimen submitted in his statement of use to register the Subject Registration with the USPTO. Upon visiting the website, the listed crowdfunding campaign was closed. The site allows the user (here, the Registrant Antonio Malpica) to provide updates to crowdfunders as needed. The most recent update was dated September 8, 2020. In the update, the Registrant Antonio Malpica stated: “I want to ask for your forgiveness on the quietness of this campaign, I realize that there are no words that I can write to express my sincere apologies. With that being said, I can say is that it is still being made and I am still receiving artwork. Attached to this update, is an early 27-page **preview of Detective Dead** in which you can view with the link provided below. When I say early, there are some interior [sic] pages that need to be added between the beginning of the story and cover. I had a little issue resizing the cover so it's a tad huge compared to the interior pages. Anyhow, I hope you like what you see and read.” This update, issued on September 8, 2020, would have also been after the deadline by which Registrant would have been able to file a statement of use. A true and accurate copy of same is attached herein as Exhibit D.

9. Registrant's statement that it only possesses a preview of its comic is an admission that he has never sold comics in the United States, including as of the filing of his Statement of Use on April 24, 2020, or as of the registration date of his mark (July 14, 2020), or as of the time by which he was required to file his statement of use under section 1(d).

10. On October 1, 2020, on behalf of Petitioner, I filed Cancellation Proceeding No. 90275375 against the Subject Registration (hereinafter, "Cancellation") before the Trademark Trial and Appeal Board. Among other things, in the Cancellation, it was alleged that "Registrant had not used his mark in commerce as of the filing of his Statement of Use on April 24, 2020 (or as of the registration date of his mark (July 14, 2020), or as of the time by which he was required to file his statement of use), such that Registrant's COMICS GATE mark should be considered void." A true and accurate copy of the petition for cancellation is attached herein as Exhibit E.

11. In support of its Cancellation, Petitioner likewise asserts that there was no use of the Subject Registration in commerce before the statement of use was filed, with Registrant's specimens indicating that the "project" was to be completed at some point in the future. See Exhibit E.

12. Furthermore, the Registrant, Antonio J. Malpica, seems to be well aware of this fact, and has already effectively **admitted** before the Trademark Trial and Appeal Board that he has not used his COMICS GATE mark in connection with all of the listed goods (i.e., comic books) of the Subject Registration. Moreover, the Registrant, Antonio J. Malpica, has admitted that his comic book for "Detective Dead," which as alluded to above, was the basis for Registrant's specimen submitted in his statement of use to register the Subject Registration with the USPTO **was not complete**. Specifically, the Registrant, Antonio J. Malpica stated "**It would also be very irresponsible of me to attempt to sell another book when my first one is yet to be**

**done.**” See Cancellation No. 90275375, 14 TTABVUE 14-15 (emphasis added). Indeed, on many such occasions, Mr. Malpica plainly admitted that he is not presently using his trademark. “I cannot sell another book until I fulfill my first. To release another book while the first one is still due is a poor business decision and would ruin my reputation as a creator.” *Id.* at 6. “After August 29th of 2019 I took the book off the store mode so I can focus on its production.” *Id.* at 8-9. “I cannot release a new book until the first one is done, or I will risk losing all my customers and the business I am attempting to build. That is why I must wait patiently for my creative team deliver the production pages of my comic book.” *Id.* at 9. “Again, my book is still under production and I cannot risk losing those customers by releasing a new book under the mark COMICS GATE when the first one is yet to be finished.” *Id.* “However, I cannot release another book under the mark COMICS GATE until my first book is done. It would damage the business I am trying to build.” *Id.* at 10. “There is date on the webpage where my book was sold, however, the book’s released has been delayed due to the slow process of my creative team’s work. When I released the campaign, the money that I received was used to pay my creative team... The attempt to invalidate my proof is solely based on my book’s original completion date, which is now very, very late... The book’s completion heavily depends on the working speed of my creative team.” *Id.* at 10-11. “The mark itself was going to be placed on my book upon its printing date when the production was complete... I have met the requirements explained here in Section (2) when I used the mark in advertisement of my book as seen in ‘EXHIBIT C’ and I have linked my customers to the first 26-27-page digital preview of the book they bought into thus being a rendered service in commerce across the United States and internationally.” *Id.* at 11-12. “Again, the Petitioner references the projected completion date of my book, any independent creator knows when you try to fund a book from scratch with only a

few images to engage your buyer, it takes time for its completion.” *Id.* at 13. “It does not indicate a release date because the production depends on the speed and availability of my creative team.” *Id.* at 14. “During and after the closing my store, I have issued refunds to customers for the delayed production of my book.” *Id.* A copy of Registrant’s responses is attached as Exhibit F.

12. Additionally, on March 10, 2022, I searched Google for the phrase "ANTONIO MALPICA COMICSGATE". None of the results showed use of the Subject Registration by the Registrant, Antonio J. Malipica. Instead, the results consisted of (1) a Twitter website page regarding the procedural history of Cancellation No. 92075375; (2) a third-party website reproducing publicly available USPTO content regarding the Subject Registration; (3) websites reproducing content from the USPTO; (4) documents filed at the Trademark Trial and Appeal Board; (5) third party opinions regarding Cancellation No. 92075375; and (6) other unrelated websites. A true and accurate copy of the google search is attached herein as Exhibit G.

13. On or around March 10, 2022, and through further investigation based upon the above Google search, I also became aware of other third parties complaining of their lack of receipt of a “Detective Dead” comic, which as referenced above was not completed by the Registrant despite being the specimen of use used to obtain registration of the Subject Registration. Specifically, by following the link to the Twitter website referenced above, and taken in conjunction with the indiegogo website described earlier, it is clear that the Registrant, Mr. Malpica, did not finish his “Detective Dead” comic as of the filing of his Statement of Use on April 24, 2020, or as of the registration date of his mark (July 14, 2020), or as of the time by which he was required to file his statement of use under section 1(d). Specifically, the third parties, in conversation with another, state as follows: “Is Antonio Malpica the guy who owes me

a Detective Dead?” In response, a second user stated “You and me both. Last I heard he was still getting pages from the artists but who knows?” The first user replied back that he was “still f\*\*\*ing waiting” and that October 31, 2018 was “the date of my contribution.” The second user responded “I hear you. I bought my copy on Feb. 20, 2019. Still looking forward to it.” As is plainly evident, third parties have still yet to receive their comic book from Mr. Malpica, who himself has stated that the “first one is yet to be done.” Furthermore, the above conversation took place in July 2021, **a year after** Registrant received the registration certificate for the Subject Registration. A true and correct copy of the Twitter website is attached as Exhibit H.

14. As outlined above, I have conducted a reasonable investigation of nonuse of the Subject Registration in connection with the Subject Goods by searching the following reasonably accessible sources where evidence concerning use of the Subject Registration during the relevant time period on or in connection with the relevant goods would normally be found: a. Federal trademark records; b. Web pages likely to contain reviews or discussion of the relevant goods; and c. Records of administrative proceedings reasonably likely to contain evidence bearing on the Registrant's use or nonuse of the registered mark.


15. Based upon the foregoing reasonable investigation of nonuse, on information and belief, the Subject Registration was not in use in commerce by Registrant Antonio J. Malpica in connection with the goods of the Subject Registration as of the filing of his Statement of Use on April 24, 2020, or as of the registration date of his mark (July 14, 2020), or as of the time by which he was required to file his statement of use under section 1(d).

WHEREFORE, Petitioner, by its attorneys, deems that it is being damaged by Reg. No. 6,102,744, and respectfully requests that this petition for reexamination be granted.



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Dated: March 23, 2022