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

Lenworth Alexander Hyatt  
P.O. Box 4864  
Hollywood, FL 33083 - 4864



06-02-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

Re: Serial No. 76/242,606 / Opposition No. 151,757  
Filing Date: April 17, 2002

**MOTION FOR RELIEF FROM JUDGEMENT OF BOARD / PETITION TO RE-OPEN  
APPLICATION SERIAL NUMBER 76/242.606**

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TRADEMARK TRIAL AND APPEAL BOARD

On May 19, 2003 Applicant received ruling from The Trademark Trial and Appeal Board against Serial No. 76/242,606 ( See Exhibit A. ). Pursuant to FRCP 60 (b), and 37 CFR § 2.142 (g) Applicant is concurrently filing this Motion for relief from the Judgement of The Trademark Trial and Appeal Board , and an Appeal to The Commissioner for Trademarks for re-opening Serial Number 76/242,606. The Applicant seeks relief based on the following :

1. Judges Seeherman , Hanak and Hairston erred on their ruling.
2. The ruling against Serial No. 76/242,606 was bias in favor of Opposers , but prejudicial toward Applicant.
3. The Bias in favor of Opposers, could be Construe as racial preference since no evidence of fact was presented by Opposers in Opposition No. 151,757, and, or the subsequent Motion for Summary Judgement . There was no documentary evidence presented to substantiate any claim made in the opposition. There was also no documentary Proof presented to prove that the alleged Interrogatories, Request for Production of Documents, and Request for admission were ever mailed apart from Exhibit B. The Judges however made their ruling without even seeing the alleged documents. The action of the Judges is proof of racial bias.
4. The Judges made their ruling on the assertion of the Service of The Interrogatories Request for the production of Documents, and Request for Admission. Is not this Ruling of the Judges conspicuously bias, and prejudicial?
5. On February 6, 2003 Applicant declared in defense number ten that the alleged Discovery Requests were not received by Applicant ( See Exhibit C ). If this document is not in my file, and was not seen by the Judges in their deliberation, then this would be proof to Applicant that this document was deliberately not placed in the file. Applicant had declares that the allege Interrogatories Request, and, or the Request for

Admission were not knowingly received, and ignored. It is not unusual for Applicant to return correspondence addressed from Attorneys to senders without ever opening most of them. Applicant have several pending Trademarks for which solicitation is received from attorneys all over the country soliciting to represent him, because Applicant always represent self ( See Exhibit D ).

6. The attorneys for Opposers have not , and could not declare that the allege Discovery documents were not returned to them sealed . It is the recollection of the Applicant that all correspondence from soliciting attorneys on, or , around the time Opposers' Attorneys alleged to have mailed out Discovery Documents were all returned to senders. Applicant had not raised the possibility of unknowingly returning any document to Opposers' attorneys, because Applicant was truthful in stating as a fact that no Discovery Document were ever received, and ,or ignored.

7. The Judges erred on making their ruling based on the assertion of Opposers' Attorney, and its declaration. The only evidence presented in support of Opposers' Motion were the allege Certificate of Service. If the Judges ruling was not bias, and prejudicial then this should not be sufficient evidence to make the ruling they have made.

8. The judges erred in their ruling in the absence of any convincing, and indisputable Set of Evidence.

9. When the attorneys for Opposer filed Motion for Summary Judgement it was filed against itself, the Judges nevertheless ruled in favor of the Opposers. The attorneys for Opposers in its subsequent brief allege that the filing of the Motion was a typographic error. The judges in their ruling stated that Opposers' attorneys filing against self was a typographic mistake. Maybe the attorneys, and Judges' interpretation of what constitute a typographic error are different from that of Applicant. How can an entire statement be considered a typographic mistake / error ? Is not this absurd ? The attorneys for Opposers had ample time to correct and submitted a correction of the allege typographic error, instead all they did was to allude to a typographic error in their subsequent brief. Since the attorneys should have been highly educated, any allege typographic error should have been spotted before submitting the Motion. The Judges however in their prejudice against Applicant sided with the attorneys for Opposers . This ruling is not only bias, it is unfair, unjust and prejudicial.

10. The Applicant also query why the top left hand corner of the Exhibit A is stamped "This opinion is not citable as precedent of The T.T.A.B." . If this ruling is not citable then it should be overturned . This is a clear indication that this ruling is not based on The Trademark Trial and Appeal Board Rule of Procedure but on the opinions of some racially bias, prejudicial, and partial Judges.

11. The Opposers in Opposition No.151,757 mark is only registered for footwear in International Class 025. Opposers only concern was for the deletion of footwear from the categories of goods (See Exhibit E). Applicant could not accede to this request up

unto the time of the filing of the Motion, because there is another Opposer, and Applicant did not know what their claims were. When Applicant was made aware of the claims of the other Opposer, the Motion for Summary Judgement was already filed, and Pursuant to 37 CFR § 2.127 of The Trademark Trial and Appeal Manual of Procedure Applicant could not file an amendment to Serial No. 76/242,606 since this was not germane to the Motion which was pending. Now that the Board has ruled the Applicant is taking this opportunity Pursuant to 37 CFR 2.142 (g) to concurrently Appeal to The Commissioner for Trademarks to re-open the Application Serial Number 76/ 242,606, and consider an amendment to the mark's Category of Goods, and the drawing.

12. Since the ruling of Judges Seeherman, Hanak, and Hairston, 'Opinion Ruling' toward Serial No. 76/242,606 is not citable as precedent of The Trademark Trial and Appeal Board, the Applicant hereby Appeal to The Honorable Chief Administrative Trademark Judge for relief from this judgement. The Applicant will not accept any ruling which is not citable.

13. Pursuant to 37 CFR § 2.142 (g) Applicant concurrently petition The Honorable Commissioner for Trademarks to re-open Serial No. 76/242,606. The Applicant's petitioning for a re-opening of this mark is based on the following:

- (a.) The Applicant seeks to amend the mark bearing Serial Number 76/242,606 by the deletion of footwear from the list of Goods. The amended mark shall there after be: Clothing for men, women, children, and infants, Namely: Pants, head-wear, underwear, swim-wear, lingerie, shirts, jackets, socks, dresses, blouses, stockings, sweaters, blazers, pajamas, Robes, trench coats, sports jerseys, gloves, overalls, skirts, jump-suits, leotards, tank-tops, neck-ties, bow-ties, shorts, suits scarves, handkerchiefs, vests, shawls, blazers.
- (b.) An amendment is also sought to the drawing of Serial Number 76/242,606 thereby making the mark an identical replica of the top half of U.S. Registered Number 2,588,737 which is also owned by Applicant (See Exhibits F & G).

### CERTIFICATE OF MAILING

I Lenworth Alexander Hyatt hereby certifies that this correspondence is being deposited in The United States Post Office as Certified Mail, addressed to The Chief Administrative Trademark Judge, Trademark Trial and Appeal Board at 2900 Crystal Drive, Arlington, VA 22202- 3513.

ON May 28, 2003  
Date

BY LA Hyatt  
Lenworth Alexander Hyatt

**CERTIFICATE OF MAILING**

I Lenworth Alexander Hyatt hereby certifies that this correspondence is being deposited in The United States Post Office as Certified Mail, addressed to The Commissioner for Trademarks at 2900 Crystal Dr. , Arlington, Va. 22202 - 3513.

ON May 28, 2003  
Date

BY LA Hyatt  
Lenworth Alexander Hyatt

# EXHIBIT

# A

THIS OPINION IS NOT  
CITABLE  
AS PRECEDENT OF  
THE T.T.A.B.

UNITED STATES PATENT AND TRADEMARK  
OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Wellington

Mailed: May 15, 2003

Opposition No. 151,757

Columbia Insurance Company and  
H. H. Brown Shoe Company, Inc.

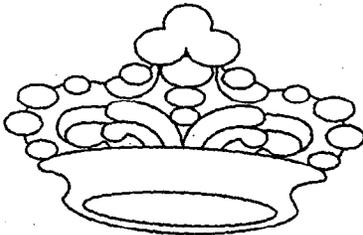
v.

Hyatt, Lenworth Alexander

Before Seeherman, Hanak and Hairston, Administrative Trademark  
Judges.

By the Board:

Applicant Lenworth A. Hyatt filed an application to register  
the following mark:



for "clothing for men, women, children and infants, namely;  
footwear, pants, headwear, underwear, swimwear, lingerie, shirts,  
jackets, socks, dresses, blouses, stockings, sweaters, blazers,  
pajamas, robes, trench coats, sports jerseys, gloves, overall  
(sic), skirts, jump-suits, leotards, tank-tops, neck-ties, bow-

Opposition No. 151,757

ties, shorts, suits, scarves, handkerchiefs, vest, shawls, blazers" in International Class 25.<sup>1</sup>

On February 13, 2001, opposers, Columbia Insurance Company and H. H. Brown Shoe Company, Inc., filed a notice of opposition opposing registration of applicant's mark. As grounds for the opposition, opposers allege that applicant's mark, when used on the identified goods, so resembles opposers' previously used and registered mark, as to be likely to cause confusion, mistake or deception. Opposers' pleaded registration is for the following mark:



for "footwear" in International Class 25.<sup>2</sup>

On August 29, 2002, applicant filed an answer denying all of opposers' allegations in the notice of opposition.

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<sup>1</sup> Application Serial No. 76/242,606, filed on April 17, 2001, and based on a bona fide intention to use the mark in commerce pursuant to Trademark Act Section 1(b).

<sup>2</sup> Registration No. 1,981,495, registered on June 18, 1996, and claiming use in commerce since March 5, 1994. Original registrant and opposer, H. H. Brown Shoe Company, Inc., assigned the registration to opposer Columbia Insurance Company on June 27, 1998 (assignment recorded with the Trademark Office on April 27, 1999 at Reel/Frame 1922/0063).

This case now comes up on the following motions:

(1) opposers' motion (filed December 23, 2002) for summary judgment, and (2) applicant's motion (filed January 7, 2003) for involuntary dismissal under Trademark Rule 2.132.

We turn first to the latter motion. When applicant filed his motion for involuntary dismissal, the testimony period for opposers had not yet opened.<sup>3</sup> Because the motion was filed before opposers' testimony period, it is hereby denied as untimely. Trademark Rule 2.132; see also TBMP § 535 and authorities cited therein.

We now turn to opposer's motion for summary judgment on the issue of priority and likelihood of confusion. The motion is accompanied by the declaration of Mark J. Speciner, counsel for opposers, and accompanying exhibits.

Opposers also assert that on July 22, 2002, they served interrogatories, requests for production of documents and requests for admissions on applicant; and that applicant has not responded to these discovery requests and, therefore, the requests for admissions are to be deemed admitted by applicant, including an admission that applicant's proposed mark is confusingly similar to opposers' relied on mark.

In response to opposers' motion, applicant filed one paper which contains his motion for involuntary dismissal (denied by

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<sup>3</sup> Pursuant to the Board's June 4, 2002 order, opposers' testimony period was scheduled to open on February 20, 2003 and close on March 21, 2003.

the Board herein) and interspersed arguments regarding why he believes opposers' motion for summary judgment should be denied. Specifically, applicant argues, *inter alia*, that opposers' current counsel of record "could not legally serve interrogatories, request[s] for production of documents and request[s] for admission" because said counsel did not file a notice of appearance prior to service of the discovery requests; that opposers have "failed to prove by United States Postal Confirmation" that said discovery requests were served on applicant; that opposers have admitted in their brief in support of the motion for summary judgment that "there is no confusion between the parties' products, and therefore no infringement" [applicant quoting from opposers' brief]; and that a genuine issue of material fact exists "regarding the un-pleaded claim of the service of [opposers' discovery requests]."

Attached as exhibits to applicant's response are copies of the following: the notice of opposition, applicant's request to produce documents and things (certificate of service dated December 12, 2002), a certified mail receipt, opposers' motion for summary judgment, former counsel for opposers' withdrawal of representation (certificate of mailing dated September 20, 2002) and counsel for opposers' notice of appearance (dated August 14, 2002).

A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact,

and that it is entitled to summary judgment as a matter of law. Fed. R. Civ. P. 56(c). See also, *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). When the moving party's motion is supported by evidence sufficient, if unopposed, to indicate that there is no genuine issue of material fact and that the moving party is entitled to judgment, the nonmoving party may not rest on mere denials or conclusory assertions, but rather must offer countering evidence, by affidavit or as otherwise provided in Fed. R. Civ. P. 56, showing that there is a genuine factual dispute for trial. See Fed. R. Civ. P. 56(e), and *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990). In a motion for summary judgment, the evidentiary record and all reasonable inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the nonmoving party. See *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

We have carefully considered the parties' arguments and evidentiary submissions. For the reasons discussed below, we find that no genuine issues of material fact exist as to the factors bearing on priority and likelihood of confusion, and that opposer is entitled to judgment as a matter of law on its Section 2(d) claim.

Preliminarily, we turn to opposers' request to deem its requests for admission as admitted based on applicant's failure to respond to said requests. In particular, opposers rely on its

first request for admission, wherein opposers request that applicant "admit that applicant's mark is confusingly similar to opposers' mark."

Fed. R. Civ. P. 36 provides that if a party upon which requests for admission have been served fails to file a timely response thereto, the requests will stand admitted (automatically), and may be relied upon by the propounding party pursuant to 37 CFR § 2.120(j)(3)(i), unless the party upon which the requests were served is able to show that its failure to timely respond was the result of excusable neglect; or unless a motion to withdraw or amend the admissions is filed pursuant to FRCP 36(b), and granted by the Board. See also TBMP § 527.04.

Based on the record before us, we find that applicant failed to respond to opposers' first set of requests for admission (served on July 22, 2002). We also find that applicant has not shown that his failure to respond was the result of excusable neglect. Indeed, applicant's argument that counsel for opposers could not legally serve discovery requests, including the requests for admission, prior to filing a notice of appearance is without legal basis and lacks logic. A notice of appearance is a device for a party's counsel to inform the Board, and opposing counsel, of the proper address of record for the party. See, generally, TBMP Sections 114, 116-117 regarding representation. However, a formal notice of appearance is not required in order for the Board to accept a paper filed by an attorney. See TBMP

Opposition No. 151,757

Section 114.03. Furthermore, applicant does not explain why, if there was any concern about the discovery requests, he did not simply contact either the Board or opposing counsel.

Applicant's second argument, that opposers must prove "by United States Postal Confirmation" that the discovery requests were actually served on applicant, is not well taken. Opposers' discovery requests contained a certificate of service stating that said discovery requests were placed in the U.S. Mail and addressed to applicant on July 22, 2002. The Board accepts opposers' certificate of service as *prima facie* proof of service. Trademark Rule 2.119(a). Applicant has not submitted any evidence to the contrary. The Board notes applicant does not contest that he received the discovery requests.

In view of the above, the requests for admissions served on applicant stand admitted, including applicant's admission that his mark is confusingly similar to opposers' mark.

We find that no genuine issues of material fact exist as to the factors bearing on priority and likelihood of confusion, and that opposer is entitled to judgment as a matter of law on its Section 2(d) claim.<sup>4</sup>

First, as to priority, there is no genuine issue that opposer Columbia Insurance Company owns the pleaded Registration No. 1,981,495, claiming dates of first use in commerce since 1994. Opposers have submitted a TESS database status copy of the

registration, by way of the declaration of Mr. Speciner, who has attested to the status and title copy of this registration.

Thus, priority is not in issue. *King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Turning to the issue of likelihood of confusion, we find no genuine issue as to the similarity of the parties' respective marks in this case. The parties' respective marks are highly similar designs of crowns. While opposers' design mark contains the letter "H" and cross design and applicant's mark does not, these features do not distinguish the parties' respective marks in a significant manner nor do they overcome the otherwise substantial similarity of the marks.<sup>5</sup>

Furthermore, there is no genuine issue that the goods of the parties are in part identical, opposers' registration being for footwear and footwear being one of the items listed in applicant's identification. Such goods as the stockings and socks listed in applicant's application are closely related to opposers' footwear. If the goods of the respective parties are closely related or identical, as is the case here, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods. *Century 21 Real Estate Corp. v. Century Life of*

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<sup>4</sup> We would reach this conclusion even if we did not treat the requests for admission as admitted.

<sup>5</sup> And, as noted, applicant has been deemed to have admitted that the marks are confusingly similar.

*America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *HRL Associates v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, 14 USPQ2d 1840 (Fed. Cir. 1990); and *ECI Division of E. Systems, Inc. v. Environmental Communications, Inc.*, 207 USPQ 443 (TTAB 1980).

In response, applicant has not submitted any evidence at all to demonstrate that there is a genuine issue of fact. As stated previously, when the moving party's motion is supported by evidence sufficient, if unopposed, to indicate that there is no genuine issue of material fact and that the moving party is entitled to judgment, the nonmoving party may not rest on mere denials or conclusory assertions, but rather must offer countering evidence. Applicant has failed to do this.

Finally, we are not persuaded by applicant's argument that opposers' typographical errors in their moving brief constitute an admission that there is no likelihood of confusion. In the introductory paragraph of their moving brief, opposers state that "there is not confusion between the parties' products, and therefore, no infringement." However, a full reading of opposers' brief removes any possible confusion as to opposers' intentions. In the conclusion of the brief, opposers' state that they have "clearly demonstrated that there is a likelihood of confusion." (emphasis provided). Also, in their reply brief, opposers clarified that they made a typographical mistake and, as

Opposition No. 151,757

plaintiffs herein, it would make no sense to seek summary judgment against themselves.

Accordingly, opposers' motion for summary judgment is granted, the opposition is sustained, and registration of applicant's mark is refused.

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\* \* \*

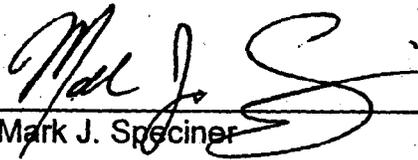
# **EXHIBIT**

# **B**

CERTIFICATE OF SERVICE

I hereby certify that on this 22<sup>nd</sup> day of July, 2002, I placed a true and correct copy of the foregoing Opposer's First Set of Requests to Admit to applicant by placing same in the U.S. mail, postage prepaid, addressed to:

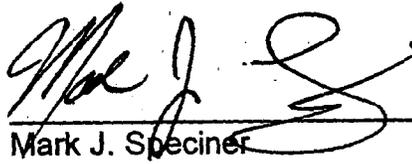
Lenworth Alexander Hyatt  
P.O. Box 4864  
Hollywood, FL 33083

  
Mark J. Speciner

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2002, I placed a true and correct copy of the foregoing Opposer's First Requests for Production to Applicant to opposing counsel by placing same in the U.S. mail, postage prepaid, addressed to:

Lenworth Alexander Hyatt  
P.O. Box 4864  
Hollywood, FL 33083



Mark J. Speciner

# **EXHIBIT**

# **C**

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

**RE : OPPOSITION NO. 151,757**

**COLUMBIA INSURANCE COMPANY  
&  
H.H. BROWN SHOE COMPANY  
VS.  
LENWORTH ALEXANDER HYATT**

**Defense against Motion for Summary Judgement**

Pursuant to 37 CFR § 2.127 (d) of The Trademark Trial and Appeal Manual of Procedure, Defendants submit the following affidavit, which is germane to the Motion for Summary judgement filed on December 18, 2002 , as Applicant's defense against motion.

1. On January 22, 2003, attorneys for Opposers respond to Applicant's initial defense to Motion for Summary Judgement, in favor of Nonmoving Party, "Applicant".
2. In its response attorneys admit on page 3, lines 15 & 16 to receiving Applicant's Request to Produce Documents and Things ( See Exhibit A.).
3. Attorneys for Opposers admit to filing Motion for Summary Judgement four (4) days prior to the expiration of the time granted to respond to, Applicant's Request to Produce Documents and Things (See pages three & four of Exhibit A).
4. Attorneys for Opposers failed to respond to Applicant's Request to Produce Documents and Things, was due to their arrogance.
5. On page four (4) of Exhibit A, the attorneys for Opposers states' "In the fourth and fifth sentences, Applicant attempts to make hay from what are obviously typographic errors( sic)". Attorneys further state, "Once the typographical errors are corrected, this issue disappears (sic)" What typographical errors? Where is the correction?
6. On page four of attorneys response to Defense for Summary Judgement in favor of Nonmoving Party "Applicant ", it is alleged that in May 2002, the entire trademark was transferred to it, but failed to serve Notice of Appearance.
7. Attorney for Opposers failure to serve a timely Notice of Appearance is slighted as a 'technical issue'( See Exhibit A, page 4).
8. Applicants / Defendant did not receive the alleged discovery requests alluded to on page 5, of

Exhibit A.

9. Attorneys for Opposers failure to serve discovery request was probably another technical error.

10. Applicant / Defendant receipt of the Motion for Summary Judgement, but not the discovery request is a clear indication that the allege documents were not served.

It is appropriate for the Honorable Trademark Trial and Appeal Board to enter Summary Judgement, in favor of Nonmoving Party ( Applicant /Defendant), because Applicant did not receive the alleged discovery request.

**CERTIFICATE OF MAILING**

I Lenworth Alexander Hyatt hereby certifies that this correspondence is being deposited with The United States Post Office as Certified Mail, addressed to The Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA. 22202 -3513.

ON February 6, 2003 BY LA Hyatt  
Date Lenworth Alexander Hyatt

**CERTIFICATE OF SERVICE**

I Lenworth Alexander Hyatt hereby certifies that this correspondence was deposited with The United States Post Office as Certified Mail, to be served on attorneys for Opposers Gene S. Winter, and Mark J. Speciner, at St. Onge Steward Johnson & Reens LLC. , At 986 Bedford Street, Stamford, CT. 06905.

ON February 6, 2003 BY LA Hyatt  
Date Lenworth Alexander Hyatt

# **EXHIBIT**

# **D**

**BRIAN R. GIBBONS, P.A.**  
**Attorney at Law**

3936 S. Semoran Boulevard, Suite 330  
Orlando, Florida 32822-4015  
E-mail: [trademarks@briangibbons.com](mailto:trademarks@briangibbons.com)

Toll-Free: (866) 745-5187  
Telephone: (407) 384-6156  
Facsimile: (407) 384-6055

January 30, 2003

Lenworth Hyatt  
PO Box 4864  
Hollywood, FL 33083-4864

Re: CHUMMY  
Trademark Application Serial No. 76/386,379

Dear Mr. Hyatt:

If you have already retained a lawyer for this matter, please disregard this letter. While reviewing U.S. Patent and Trademark Office ("PTO") records, I noticed your application referenced above. The PTO's public database reflects that an office action letter was mailed to you on October 7, 2002 for Application Serial No. 76/386,379, but does not show that a response has been filed. (If you have already filed a response, please disregard this letter, as it may simply be that the PTO had not yet updated its on-line database at the time I noticed your application.)

If a response has not yet been filed, that leaves about two months to properly respond to the PTO by the six-month deadline or risk having the application deemed abandoned. If this happens, the CHUMMY mark may be lost to another applicant. Since you have already begun the application process, it seems you have a strong interest in protecting your trade identity rights. Because the records do not show that you are represented by counsel, I wanted to offer my assistance.

It is common for trademark applications to be refused by the PTO trademark examiner after the initial review. There are a number of different grounds for refusal, and depending on the grounds for the refusal, it may be difficult to overcome and require persuasive arguments to be made to the examiner. Responding to the office action letter may involve amending the application, filing a written response arguing against the legal grounds stated by the examiner, and telephone interviews with the examiner. Failure to properly respond to an office action letter will result in abandonment of the application.

I am available to assist you in responding to the office action, as well as any other intellectual property matters with which you may require assistance. While I cannot guarantee a successful registration, I believe my experience with trademark prosecution and the Patent and Trademark Office will enhance your chance for success.

**BRIAN R. GIBBONS**  
*Attorney at Law*

January 30, 2003

Page 2 of 2

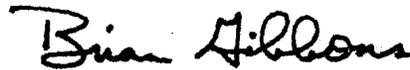
I practice exclusively in the field of intellectual property law, and have worked in that field since 1999. In the last year alone, I filed over a hundred responses and other documents with the Patent and Trademark Office on behalf of clients seeking federal trademark registration, and am quite familiar with PTO procedure and the various types of office actions they issue.

To help you decide whether to retain my services, I am available to review the office action letter you received from the PTO, outline your options and provide a cost estimate at no charge. I invoice for services only after they have been rendered, and do not require a retainer or advance payment.

Please feel free to contact me at the above number to discuss your trademark needs, or, if you so desire, you may simply fax the office action letter to my office for my review, and I will get back to you with an evaluation of your options at no expense.

Failure to respond swiftly to the Patent and Trademark Office will result in your application being abandoned, and may risk your trade identity rights. I look forward to hearing from you.

Sincerely,



Brian R. Gibbons, Esq.

BRG/seg

# **EXHIBIT**

**E**

# FISH & RICHARDSON P.C.

Frederick P. Fish  
1855-1930

W.K. Richardson  
1859-1951

December 10, 2001

*By Certified Mail*

Lenworth Alexander Hyatt  
P.O. Box 4864  
Hollywood, Florida 33083

Re: Crown Design trademark application  
Our file: 10294-602PP1

Dear Mr. Hyatt:

We represent Columbia Insurance Company ("Columbia Insurance") and its licensee, H.H. Brown Shoe Company, Inc. ("H.H. Brown") and are writing to you on their behalf. It has come to our attention that you have applied to register the trademark Crown Design in Int'l Class 25 for a number of goods, including "footwear." As explained below, we believe that use of your Crown Design in this manner is likely to create confusion among consumers with respect to our clients' trademark H and Crown Design.

H.H. Brown has been manufacturer and distributor of shoes and boots since 1883. Columbia Insurance is the owner, and H.H. Brown is its licensee, of numerous trademark registrations and applications, including for the trademark H and Crown Design. A copy of U.S. Registration No. 1,981,495 for this trademark is enclosed for your reference. H.H. Brown has used the trademark H and Crown Design since March 5, 1994, and through extensive use and promotion of H and Crown Design, Columbia Insurance and H.H. Brown have established valuable goodwill in H and Crown Design in the footwear market.

As we are sure you appreciate, it is important to avoid any likelihood of confusion between our clients' H and Crown Design products and your Crown Design goods. We are concerned that the use of Crown Design in connection with **footwear** may result in consumer confusion, mistake or deception as to the association of your goods and our client's goods. In order to avoid such mutually undesirable confusion, we ask that you amend your application and delete **footwear** from the identification of goods and assure us that you will not market any footwear under the Crown Design mark.

We hope that alerting you to this potential problem will resolve this issue. Columbia Insurance and H.H. Brown are hopeful that the parties will make diligent efforts to avoid any likelihood of consumer confusion between the respective marks and in connection with the respective goods. In accordance with this hope, we have filed for

225 Franklin Street  
Boston, Massachusetts  
02110-2804

Telephone  
617 542-5070

Facsimile  
617 542-8906

Web Site  
[www.fr.com](http://www.fr.com)



BOSTON  
DALLAS  
DELAWARE  
NEW YORK  
SAN DIEGO  
SILICON VALLEY  
TWIN CITIES  
WASHINGTON, DC

FISH & RICHARDSON P.C.

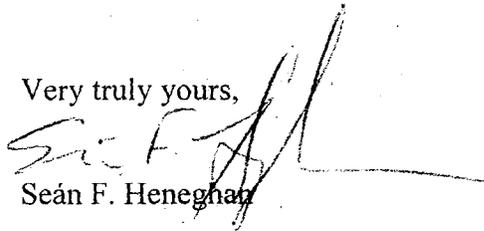
December 10, 2001  
Lenworth Alexander Hyatt  
Page 2

an extension of time to oppose your application. A copy of our most recent request is enclosed for your reference.

To ensure appropriate time to analyze this matter and give it the attention it deserves, we ask that you respond to this letter no later than **January 10, 2002**.

Thank you in advance of your attention to this matter and we look forward to your response. Should you have any questions in the meantime, please feel free to call me at (617) 542-5070.

Very truly yours,

A handwritten signature in black ink, appearing to read "Seán F. Heneghan", written over a horizontal line. The signature is stylized and somewhat cursive.

Seán F. Heneghan

SFH/nlb

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# **EXHIBIT**

**F**

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