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

Proceeding	91160266
Party	Plaintiff Christopher Brooks Mr. Christopher Brooks 83 Myrtle Boulevard Larchmont, NY 10538 UNITED STATES
Correspondence Address	EVAN GOURVITZ FROSS ZELNICK LEHRMAN & ZISSU, P.C. 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES egourvitz@frosszelnick.com
Submission	Other Motions/Papers
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Date	12/22/2005
Attachments	91160266 Evan Gourvitz Declaration in Support of Motion for Reconsideration.pdf ( 8 pages )

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

In the Matter of Application Serial No. 75/761,159  
Mark: CAB CALLOWAY  
Opposer's Ref: CWBK 04/18950

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CHRISTOPHER BROOKS,	:	
	:	
Opposer,	:	
	:	Opposition No. 91/160,266
- v. -	:	
	:	
CREATIVE ARTS BY CALLOWAY, LLC,	:	
	:	
Applicant.	:	
-----X	:	

**DECLARATION OF EVAN GOURVITZ IN SUPPORT OF OPPOSER'S MOTION  
FOR RECONSIDERATION OF ITS MOTION FOR SUMMARY JUDGMENT**

I, Evan Gourvitz, hereby declare under penalty of perjury:

1. I am an attorney at the law firm of Fross Zelnick Lehrman & Zissu, P.C., counsel for Opposer Christopher Brooks in this action. I submit this declaration on the basis of personal knowledge.
2. Attached hereto as Exhibit A is a true and correct copy of TTAB Chief Administrative Trademark Judge J. David Sams' paper "Current Developments in Trademark Trial and Appeal Board Practice," presented at the 16<sup>th</sup> Annual PTO Day Conference on December 5, 2005.

I declare under penalty of perjury that the foregoing is true.

Executed this 22<sup>nd</sup> day of December, 2005



Evan Gourvitz

# **EXHIBIT A**

**CURRENT DEVELOPMENTS  
IN  
TRADEMARK TRIAL AND APPEAL BOARD PRACTICE**

**J. David Sams, Chief Administrative Trademark Judge, TTAB**

**I. TTAB WORKLOAD, PENDENCY, AND ORGANIZATION**

A. TTAB filings in Fiscal Year 2005 (for ex parte appeals, oppositions, and cancellations) remained at about the same levels as in Fiscal Year 2004—in excess of 8000 new proceedings per year:

Type of Filing	FISCAL YEAR 2005	FISCAL YEAR 2004	Change From FY04 to FY05
Ex Parte Appeals	2536	2471	+2.6%
Oppositions	4696	4629	+1.4%
Cancellations	1368	1381	-0.1%

B. The average time-to-final-decision for TTAB ex parte appeals and inter partes cases in FY2005, as measured from the date of the oral hearing or the date the case is set for decision on brief, remained under the goal of 10 weeks.

C. TTAB now has 15 administrative trademark judges (not including the chief judge), 14 interlocutory attorneys, and 14 paralegal specialists, in addition to other supervisory, administrative, and technical support staff.

**II. TTAB E-GOVERNMENT:** The TTAB has developed a suite of electronic systems that speed internal processing and provide on-line access to TTAB information. Those systems are:

- A. **TTABIS.** TTABIS is the TTAB's internal workflow system, which permits the TTAB to move electronic files to the proper TTAB staff members for action.
- B. **TTABVUE.** TTABVUE is the Internet version of TTABIS and is accessible through the USPTO website. This system provides on-line access to TTAB electronic proceeding files. TTABVUE provides a variety of options for searching proceeding files: by proceeding number, by application or registration number, by parties, by marks, by correspondent address.
- C. **ESTTA.** ESTTA is the TTAB's electronic filing system, accessible through the USPTO website. ESTTA permits parties to file all papers electronically, in both ex parte and inter partes proceedings. For properly filed extensions of time to oppose, ESTTA grants extensions automatically and updates the on-line TTAB electronic record. ESTTA permits on-line changes to correspondence address information, with automatic updates to the TTAB records. And consented motions filed through ESTTA are automatically granted, with automatic updates to TTAB records. The next version of ESTTA will provide automatic institution of oppositions.

**D. TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) ON LINE.** The latest version of TTAB's manual of practice and procedure, the TBMP, is available on line, accessible through the USPTO website. The manual has been updated with practice changes made contemporaneously with the implementation of the Madrid Protocol. Because

the manual is now in an electronic format, the TTAB will be able to provide revisions and updates on a more regular basis than has been the case until now.

### **III. MADRID PROTOCOL AND TTAB**

A. Filings under the Madrid Protocol are now being published for opposition.

But the TTAB has not yet issued any substantive decisions involving Protocol filings.

B. Certain TTAB rules changed with the implementation of the Protocol. Now extensions of time to oppose are limited to no more than 180 days from the date of publication for opposition. The TTAB no longer will suspend action on extensions of time to oppose for entry of an amendment to the application or for action on a letter of protest. Requests for extensions of time to oppose applications filed under the Protocol must be filed electronically, using ESTTA. The same is true for notices of opposition to applications filed under the Protocol. And notices of opposition to applications filed under the Protocol must specify all grounds and all goods and services opposed and must include fees for all classes opposed.

#### **IV. INITIATIVES UNDER CONSIDERATION**

- A. Mandatory Initial Disclosure of Information.** The TTAB is proposing to amend its rules of practice to require parties in oppositions and cancellations to participate in discovery conferences and to provide initial disclosure of certain information, along the lines of Federal Rule of Civil Procedure 26.
- B. Accelerated Case Resolution.** The TTAB is implementing a plan to encourage parties to seek early resolution of contested cases and avoid trial by submitting evidence in the nature of cross motions for summary judgment with the stipulation that these submissions be treated as the evidentiary record and briefing on which the TTAB will issue its final decision in the case.
- C. Service of Papers.** The TTAB is proposing to amend its rules to require a party plaintiff in an opposition or cancellation proceeding to serve the notice of opposition or petition to cancel on its party opponent. The TTAB would no longer serve a copy of the complaint on the party defendant. Instead, when a notice of opposition or petition to cancel was filed with the TTAB, the TTAB would simply send out a notice to both parties setting a due date for the answer and a discovery/trial schedule.

#### **D. Other Proposed Rules Changes.**

- The TTAB is proposing to amend its rules to delete a party's option to make submissions to the Board on CD-ROM. Because of the availability of electronic filing via ESTTA, the CD-ROM alternative is no longer necessary. Moreover, parties to contested TTAB proceedings have used the CD-ROM option rarely.
- In light of the TTAB's proposal to require initial disclosure of information in opposition and cancellation proceedings, the Board is proposing to limit the number of discovery interrogatories to 25.
- The TTAB is proposing to amend its rule that sets the page limitations for briefs on motions to make clear a table of contents, index of cases, description of the record, statement of the issues, recitation of facts, argument and summary all count against the limit of 25 pages for a brief in support of a motion or in response to a motion and the limit of 10 pages for a reply brief on a motion.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the MOTION FOR RECONSIDERATION OF OPPOSER MOTION FOR SUMMARY JUDGMENT and the DECLARATION OF EVAN GOURVITZ IN SUPPORT OF OPPOSER'S MOTION FOR RECONSIDERATION OF ITS MOTION FOR SUMMARY JUDGMENT with Exhibit A, was served via first class mail to Cynthia Johnson Walden, Esq., Fish & Richardson P.C., 225 Franklin Street, Boston, MA 02110-2804, attorneys for Applicant Creative Arts by Calloway, LLC, on this 22nd day of December 2005.

  
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Mario F. Ortiz