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

Proceeding	91177192
Party	Plaintiff NAUTICA APPAREL, INC.
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Attachments	91177192 opp object 8-4-09.pdf (5 pages)(214673 bytes)

. . .

Each of the decisions and/or findings are relevant to Opposer's policing efforts in connection with its trademarks, the renown and fame of Opposer's trademarks and of Opposer and its services and products, use by Opposer of the mark and name NAUTICA, the goods and services marketed and sold by Opposer, the channels of trade through which Opposer's goods and services are and have been, offered and sold, and the similarity of the parties' respective marks, goods and services, and the legal similarity in channels of trade. [Emphasis added].

Nautica's Main Trial Brief

On pg. 26 of its main Trial Brief, Nautica refers to its 24th Notice of Reliance which Notice of Reliance includes, *inter alia*, full copies of the Board's substantive decisions in (1) *Nautica Apparel, Inc. v. Brian Carlucci*, Opp. No. 91165909 (opposition to NAUTIGIRL in classes 9 and 25), and (2) *Nautica Apparel, Inc. v. Kevin Crane*, Opp. No. 91113893 (opposition to NAUTI BODY in class 25). Nautica referred to the cases as evidence of Nautica's policing of its marks and the strength of its marks.

The Applicant's Trial Brief

On p. 16 of the Applicant's Trial Brief, Applicant, in discussing the meaning and commercial impression of the parties' respective marks, states that the sole commercial impression of the Applicant's mark "nauti" is "naughty," and with regard to Opposer's marks:

In fact, Opposer advised the PTO in the context of its registration of the mark NAUTICA that "THE ENGLISH TRANSLATION OF THE WORD 'NAUTICA' IN THE MARK IS 'NAUTICAL'. . . . the commercial impression conveyed by Opposer's Marks is of nautical or water-related products. . .

Nautica's Trial Reply Brief

On p. 5 of Nautica's Trial Reply Brief, Nautica states: "Reference is made to Nautica's 24th Notice of Reliance . . . The following excerpts from two of the cases . . . respond directly to statements made by Applicant in its Brief . . ." [Emphasis added].

The primary cited excerpt, in Nautica's Reply Brief, from the *Brian Carlucci* case (NAUTIGIRL) states:

In view of the public recognition and renown of the NAUTICA marks, opposer's marketplace strength of its NAUTICA marks outweighs any inherent weakness in opposer's marks created by the translation of "Nautica" as "nautical".

The excerpt goes on to discuss the strength and renown of Nautica's marks, the effect upon the similarity of the parties' respective marks and the legal conclusions that arise from the same.

The excerpt responds directly to the statements and arguments made by Applicant on, *inter alia*, page 16 of its Trial Brief. In fact, it refers to the same statements and arguments made in the *Brian Carlucci* case.

In the *Kevin Crane* case (NAUTI BODY) the Applicant therein made the same argument as the Applicant herein concerning meaning and commercial impression of "Nautica" as implying water related clothes contrasted with the Applicant's limited assertion that "nauti" implies sensual or naughty. The Board, at pp. 12-13 of the *Kevin Crane* decision, stated that while the "applicant's argument is not without merit" that nevertheless:

Applicant chose a misspelling of the word "naughty," and that misspelling obviously makes the appearance of the marks more similar. A famous mark "casts a long shadow which competitors must avoid." Recot, 54 USPQ2d at 1897, quoting, Kenner Parker Toys, 22 USPQ2d at 1457. This spelling also dilutes the meaning applicant claims he was trying to create of "naughty body." If the correct spelling of the word "naughty" was

used, the meaning that applicant was trying to create would be more readily apparent to purchasers. By misspelling the word, applicant's mark, at first glance, suggests a connection with the word "nautical" and then requires the potential purchaser to reevaluate the word in light of the incongruous word "body."

The excerpt goes on to discuss the strength and renown of Nautica's marks, the effect upon the similarity of the parties' respective marks and the legal conclusions that arise from the same.

Again, the above excerpt in Nautica's Reply Brief responds directly to statements and arguments made by Applicant on, *inter alia*, page 16 of its Trial Brief.

Applicant's Motion to Strike

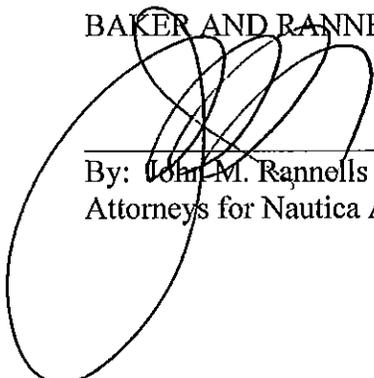
On page 3 of the Applicant's motion to strike, Applicant set forth the basis of its motion, namely, that the excerpts from Nautica's 24th Notice of Reliance "[do] not "reply" to any portion of Martanna's Case Brief." As evidenced by all of the above, the Applicant's motion is hollow and baseless.

The only possible purpose for the Applicant's motion is to act as a vehicle for Applicant to file an impermissible sur-reply in this case – to which Nautica objects.

For all the foregoing reasons, the Applicant's motion to strike or alternatively disregard a portion of Opposer's Reply Brief should be denied and the Applicant's motion to strike should be stricken.

Respectfully submitted,

BAKER AND RANNELLS PA

By: 
Attorneys for Nautica Apparel, Inc.

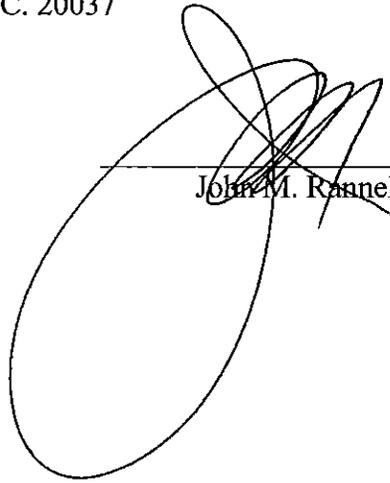
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Certificate of Service

I hereby certify that a true and complete copy of the foregoing
**OPPOSER'S OBJECTION AND RESPONSE TO APPLICANT'S MOTION TO STRIKE
OR DISREGARD A PORTION OF OPPOSER'S REPLY BRIEF
AND OBJECTION TO APPLICANT USING ITS MOTION FOR THE PURPOSE OF
SUBMITTING A SUR-REPLY**

has been served on counsel for Applicant by mailing said copy on August 4, 2009, via First Class
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