

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

tlc

Mailed: December 28, 2009

Opposition No. 91191735

**Abercrombie & Fitch Trading
Co.**

v.

Kenneth Michael Cheney

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

Applicant's motion (filed December 4, 2009) to extend time to answer fails to indicate proof of service on opposer, as required by Trademark Rule 2.119. In order to expedite this matter, a copy of the (December 4, 2009) paper is forwarded herewith to opposer's counsel.

Notwithstanding, strict compliance with Trademark Rule 2.119 is required by opposer in all future papers filed with the Board (as discussed later in this order).

Applicant's answer (filed December 10, 2009) is noted and entered. In as much as applicant's answer is timely filed according to the approved trial schedule set forth in opposer's motion (filed November 4, 2009), applicant's

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motion (filed December 4, 2009) to extend time to answer is moot and will be given no further consideration.

Trial dates remain as indicated in opposer's motion of November 4, 2009 and are copied below:

Deadline for Discovery Conference :	01/09/2010
Discovery Opens :	01/09/2010
Initial Disclosures Due :	02/08/2010
Expert Disclosure Due :	06/08/2010
Discovery Closes :	07/08/2010
Plaintiff's Pretrial Disclosures :	08/22/2010
Plaintiff's 30-day Trial Period Ends :	10/06/2010
Defendant's Pretrial Disclosures :	10/21/2010
Defendant's 30-day Trial Period Ends :	12/05/2010
Plaintiff's Rebuttal Disclosures :	12/20/2010
Plaintiff's 15-day Rebuttal Period Ends :	01/19/2011

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

Applicant has indicated he is representing himself. The Board provides the following general information about its proceedings to assist applicant in his self-representation.

NATURE OF BOARD PROCEEDINGS

Applicant is advised that an *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

REQUIREMENT FOR SERVICE OF PAPERS

The service requirements are set forth in Trademark Rule 2.119. Trademark Rules 2.119(a) and (b) and require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is

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no attorney, and proof of such service must be made before the paper will be considered by the Board.

Consequently, copies of all papers which either party may subsequently file in this proceeding, including applicant's answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. Strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

The Board will accept, as *prima facie* proof that a party filing a paper in a Board *inter partes* proceeding has served a copy of the paper upon every other party to the proceeding, a statement signed by the filing party, or by its attorney or other authorized representative, clearly stating the date and manner in which service was made.

This written statement should take the form of a

"certificate of service" which should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via first class mail, postage prepaid to: [insert name and address].

The certificate of service must be signed and dated. See also TBMP §113 (2d ed. rev. 2004).

OPTION OF E-MAIL SERVICE

The parties may agree to the email service option now available under Trademark Rule 2.119(b)(6) ("Electronic transmission when mutually agreed upon by the parties.").¹ Should the parties decide to continue using traditional service options, the parties may consider agreeing at least to courtesy email notification when any paper is served.

THE BOARD'S STANDARDIZED PROTECTIVE ORDER IS IN PLACE

The Board's standard protective order is in place in this case governing the exchange of confidential and proprietary information and materials. The parties may substitute a stipulated protective agreement (signed by both parties). However, the Board will not become involved in a dispute over any substitution in view of the existence of the Board's standardized protective order.

REPRESENTATION

The Board notes applicant is representing himself. Applicant may do so. However, it should also be noted that while Patent and Trademark Rule 11.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural

¹ The additional five days available under Trademark Rule 2.119(c) for traditional service modes (e.g., First Class Mail) is not available for email service.

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and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, as the impartial decision maker, the Board may not provide legal advice, though may provide information as to procedure.

ELECTRONIC RESOURCES

All parties may refer to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both available on the USPTO website, www.uspto.gov. The TTAB homepage provides electronic access to the Board's standardized protective order, a chart of the new rules and the text of the new rules (effective August 31, 2007 and November 1, 2007), and answers to frequently asked questions. Other useful databases include the ESTTA filing system² for Board filings and TTABVUE for status and prosecution history.

² Use of electronic filing with ESTTA, available through the USPTO website, is strongly encouraged. This electronic file system operates in real time. The filing party is also provided with a confirmation number that the filing has been received.

A party may also use first class mail. Correspondence required to be filed in the Office within a set period of time will be considered as being timely filed on the date of deposit in the mail if accompanied by a certificate of mailing.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

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The Board's records are public records. Thus, applicant may use the TTABVUE database to view other cases to get an idea of the course of Board proceedings.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

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The certificate of mailing must be signed and dated. The actual date of receipt by the Office will be used for all other purposes, including electronically filed documents.

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Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>

ESTTA Tracking number: **ESTTA320337**

Filing date: **12/04/2009**

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

Proceeding	91191735
Party	Defendant Cheney, Kenneth Michael
Correspondence Address	DANIELLE I. MATTESSICH MERCHANT & GOULD P.C. P.O. BOX 2910 MINNEAPOLIS, MN 55402-0910 UNITED STATES michael@verumsports.com, dmattessich@merchantgould.com
Submission	Other Motions/Papers
Filer's Name	Kenneth Michael Cheney
Filer's e-mail	michael@verumsports.com, kmcheney@hotmail.com
Signature	/Kenneth Michael Cheney/
Date	12/04/2009
Attachments	Extension Request.pdf (1 page)(9552 bytes) In the matter of Proceeding.pdf (1 page)(8969 bytes)

Extension Request

December 4, 2009

Due to the fact that I will now be representing myself in the matter of Proceeding # 91191735, I would like to respectfully request a 30 day extension of the deadline to answer the objection to my registration.

Thank you,

Kenneth Michael Cheney
(404) 861-9951

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December 4, 2009

In the matter of Proceeding #91191735, I would like to inform the Board that Merchant and Gould and Ms. Danielle Mattessich will no longer be representing me in this matter. I will be representing myself going forward.

As such I will also be asking for a 30 day extension to prepare the necessary information.

Thank you very much,

Kenneth Michael Cheney
(404) 861-9951