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

Proceeding	91191735
Party	Defendant Kenneth Michael Cheney
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Submission	Motion for Summary Judgment
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Date	11/09/2010
Attachments	Motion for Summary Judgement.pdf (2 pages)(17732 bytes)

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

Abercrombie & Fitch Trading Co.,

Opposer,

Application No. 77/117,258

v.

Opposition No. 91191735

Kenneth Michael Cheney

Date of Filing: February 27, 2007

Applicant,

APPLICANT'S MOTION FOR SUMMARY JUDGEMENT

Applicant, Kenneth Michael Cheney, hereby makes a motion for summary judgment in the pending opposition referenced above based on the following:

1. Opposer's discovery and requests for information includes nothing which addresses the only issue which is relevant to the opposition. The only issue in dispute (by Opposer) is whether or not the Applicant's requested mark is similar enough to Opposer's mark to confuse potential consumers and thereby, cause damage to Opposer.
2. This issue already been decided in favor of Applicant when the United States Patent and Trademark Office originally granted registration to Applicant. This decision was based on due diligence done by the Patent and Trademark Office which included comparing Applicant's mark to Opposer's mark and then granting registration to Applicant based on said due diligence.
3. Furthermore, Opposer's mark is used in an ancillary manner (decorative) and is not used in a manner which would lead to confusion on the part of a consumer as to the identity of Applicant's mark and Opposer's mark.
4. With all due respect, with the only relevant issue having been decided by the due diligence and original granting of Applicant's registration by the United States Patent and Trademark Office and Opposer being unable to produce and relevant information to address this issue, summary judgment should be granted in favor of Applicant.

Respectfully submitted,

By: /Kenneth M. Cheney/

Kenneth Michael Cheney

Certificate of Service

I hereby certify on this 9th day of November, 2010, the foregoing Applicant's Motion For Summary Judgement was served upon Opposer via email by agreement of the parties to: IPDocketing@howrey.com, KayserS@howrey.com, McCartyK@howrey.com, RenneM@howrey.com, IPDocketingWest@abercrombie.com

/Kenneth M. Cheney/

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