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

Proceeding	91192417
Party	Defendant Matthew R. Dallmann
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of

Application Serial No.: 77719913  
Filing Date: 04/22/2009  
Mark: i.Ride word mark  
Published: 09/22/2009

\_\_\_\_\_  
K-2 CORPORATION, )  
Opposer, )  
v. ) Opposition No.: 91192417  
MATTHEW DALLMAN )  
Applicant. )  
\_\_\_\_\_ )

**MOTION TO DISMISS NOTICE OF OPPOSITION**

Applicant, MATTHEW DALLMAN (“Applicant”) by and through his undersigned attorneys hereby files his Motion to Dismiss Opposer K-2 CORPORATION’s (“Opposer”) Notice of Opposition under Federal Rule of Civil Procedure 12(b)(g) for failure to state a claim and states:

1. On April 22, 2009 Applicant filed its application for registration (Serial No. 77719912) of its i.Ride trademark for the following goods:

“Stickers, bumper stickers, embroidered patches for clothing, appliques in the form of decals, decals” in International Class 016; and

“Clothing geared towards extreme sports enthusiasts, namely, athletic apparel, shirts, pants, jackets, footwear, hats and caps, bathing suits for men and women, bathing trunks, beachwear, belts, bicycle gloves, board shorts, ski boots, snowboarding boots, boxer shorts, visors, cargo pants, coats, heavy coats, winter coats, ski jackets, snowboarding jackets, footwear,

fleece pullovers, flight suits, gloves, hooded sweatshirts, socks, jerseys, knitted caps, knitted gloves, long underwear, long-sleeved shirts, t-shirts, turtlenecks, motorcycle gloves, motorcycle jackets, motorcyclist boots, mountaineering boots, pants, ski pants, snowboarding pants, pullovers, shorts, ski and snowboard shoes and parts thereof, ski bibs, ski boot bags, ski gloves, ski masks, ski suits, skiwear, skullies, snowboarding suits, snowboard gloves, surf wear, tank tops, underclothes, wetsuits, wristbands” in International Class 025.

2. On July 17, 2009 the examining attorney filed an Office Action stating that “the trademark examining attorney has searched the Office’s database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d).” The examining attorney then requested that applicant slightly amend its classification of goods, which Applicant promptly did on August 10, 2009. The amendment was as follows:

“Stickers, bumper stickers, appliques in the form of decals, decals” in International Class 016; and

“Clothing geared towards extreme sports enthusiasts, namely, shirts, pants, jackets, footwear, hats and caps, bathing suits for men and women, bathing trunks, beachwear, belts, bicycle gloves, board shorts, ski boots, snowboarding boots, boxer shorts, visors, cargo pants, coats, heavy coats, winter coats, ski jackets, snowboarding jackets, fleece pullovers, flight suits, gloves, hooded sweatshirts, socks, jerseys, knitted caps, knitted gloves, long underwear, long-sleeved shirts, t-shirts, turtlenecks, motorcycle gloves, motorcycle jackets, motorcyclist boots, mountaineering boots, ski pants, snowboarding pants, pullovers, shorts, ski and snowboard shoes and parts thereof, ski bibs, ski boot bags, ski gloves, ski masks, ski suits, skiwear, skullies,

snowboarding suits, snowboard gloves, surf wear, tank tops, underclothes, wetsuits, wristbands” in International Class 025

3. Shortly thereafter the examining attorney approved the mark for publication and it was later published on September 22, 2009.

4. On October 21, 2009, Opposer filed a Notice of Opposition arguing that based on Opposer’s registration in International Class 028 for “snowboards and accessories for snowboards; namely, snowboard boots, snowboard binding and parts thereof, snowboard boot bags and snowboard leashes,” Opposer was likely to be damaged by Applicant’s trademark application.

5. The parties have attempted to resolve this case through settlement, but have been unsuccessful.

6. On March 31, 2010, Applicant filed a Motion to Amend its classification of goods and believes that amending its classification obviates any likelihood of confusion among consumers and based on such Amendment, Opposer’s Notice of Opposition should be dismissed for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

7. As seen in Applicant’s Motion to Amend, Applicant requested an amendment as follows:

“stickers, bumper stickers, appliques in the form of decals and decals *geared towards water sports enthusiasts*” in International Class 16; and

“clothing, namely, t-shirts, board shorts, bathing suits, hats and caps *geared towards water sports enthusiasts*” in International Class 025.

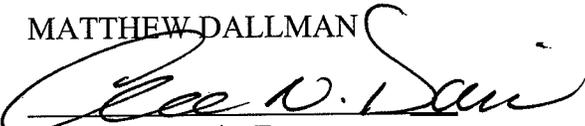
8. Applicant’s amendment alleviates any potential for confusion among consumers based on the fact that Opposer’s goods are snowboarding accessories in International Class

028, which are geared towards snow boarding and ski enthusiasts whereas Applicant's goods are for stickers and decals geared toward water sports enthusiasts in International Class 016 and t-shirts, board shorts, bathing suits, hats and caps in International Class 025 geared towards water sports enthusiasts.

9. Based on Opposer's Notice of Opposition; along with Applicant's Amendment to its goods and its Motion to Dismiss, it is clear that there can be no confusion among consumers. Not only are the marks and their connotations distinguishable, but the goods being offered, consumers being targeted and trade channels through which the goods will be distributed are all different.

WHEREFORE Applicant respectfully requests that the Board dismiss Opposer's Notice of Opposition on the grounds that Opposer has failed to state a claim upon which relief can be granted. Should the Board deny Applicant's Motion to Dismiss, Applicant requests additional time to Answer Opposer's Notice of Opposition.

Dated this 2nd day of April, 2010.

MATTHEW DALLMAN  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Motion to Amend Classification of Goods was mailed first-class mail, postage prepaid this 2nd day of April, 2010 to Cindy Caditz, Davis Wright Termaine, LLP, 1201 Third Ave., Suite 2200, Seattle, WA 98101, attorneys for Opposer.

A handwritten signature in black ink, appearing to read "C. Caditz", written over a horizontal line.

Attorney