ESTTA Tracking number: **ESTTA345389**
Filing date: **05/03/2010**

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

Proceeding	91192417
Party	Defendant Matthew R. Dallmann
Correspondence Address	AMBER N. DAVIS BEUSSE WOLTER SANKS MORA & MAIRE, P.A. 390 N ORANGE AVE STE 2500 ORLANDO, FL 32801-1683 UNITED STATES adavis@iplawfl.com, bjones@iplawfl.com, tsanks@iplawfl.com
Submission	Other Motions/Papers
Filer's Name	Amber N. Davis
Filer's e-mail	adavis@iplawfl.com, tsanks@iplawfl.com, bjones@iplawfl.com
Signature	/Amber N. Davis/
Date	05/03/2010
Attachments	Motion to Suspend Time to Answer Pending Settlement.pdf (2 pages)(58742 bytes) Signed Settlement Agreement.pdf (6 pages)(236398 bytes) Stipulated Motion to Amend and Motion to Dismiss.pdf (3 pages)(105484 bytes)

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 SUSPEND TIME TO ANSWER PENDING SETTLEMENT NEGOTIATIONS

Applicant, MATTHEW DALLMAN ("Applicant") by and through his undersigned attorneys files a Motion to Suspend Time to Answer Pending Settlement Negotiations:

1. Applicant signed a Settlement Agreement with Opposer as well as a Motion to Amend its Classification of Goods and a Conditional Motion to Dismiss. A true and correct copy of the signed Agreement and Motions is attached hereto as Exhibits "A" and "B."

2. The undersigned sent the signed copy of the Agreement and Motions to opposing counsel, Cindy Caditz, at 2:38 p.m. and asked that Ms. Caditz file the Settlement Agreement and Motions today since Opposer's Answer to the Opposition was due today.

3. The undersigned called Cindy Caditz at 4:00 p.m. and left a message to confirm that she received the undersigned's email.

4. It is now 5:45 p.m. and the Agreement and Motions have yet to be filed with the TTAB.

5. Therefore, in an abundance of caution, Applicant is filing this Motion and requesting that this Court Suspend the Time for Applicant to Answer for twenty (20) days pending Settlement Negotiations with Opposer.

Dated this 3rd day of May, 2010.

MATTHEW DALLMAN

By: _____

Amber N. Davis, Esq.
Florida Bar No.: 026628
Beusse Wolter Sanks Mora
& Maire, P.A.
390 N. Orange Ave., Suite 2500
Orlando, Florida 32801
Phone: (407) 926-7716
Fax: (407) 926-7720
Email: adavis@iplawfl.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Amend Classification of Goods was mailed first-class mail and email, postage prepaid this 3rd day of May, 2010 to Condy Caditz, Davis Wright Termaine, LLP, 1201 Third Ave., Suite 2200, Seattle, WA 98101, attorneys for Opposer.

_____

Attorney

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by and between Matthew R. Dallman, a citizen of the United States having a mailing address at 12446 Castlemain Trail, Orlando, FL 32828 ("Applicant"), and K-2 Corporation, an Indiana corporation having a place of business at 4201 6th Avenue South, Seattle, WA 98108, which is the current owner of all assets, rights and property previously owned by Ride Snowboard Company, a Washington corporation which has been merged into K-2 Corporation ("Opposer").

WHEREAS, Applicant has filed Application Serial No. 77/719,913 in the United States seeking registration of the mark i.RIDE for "stickers, bumper stickers, appliques in the form of decals, decals" in International Class 16 and for "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 25.

WHEREAS, Opposer has initiated Opposition No. 91/192,417 against Application Serial No. 77/719,913; and,

WHEREAS, to avoid the cost and burden of litigation, the Parties have agreed to resolve their differences and to settle their dispute in accordance with the following terms and conditions:

1. Applicant shall amend Application Serial No. 77/719,913 in the form of the Motion attached hereto as Exhibit A to claim the following goods: "stickers, bumper stickers, appliques in the form of decals, decals *excluding any goods made or promoted specifically for ski or snowboarding enthusiasts*" in International Class 16 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, boxer shorts, visors, cargo pants, coats, heavy coats, winter coats, fleece pullovers, flight suits, hooded sweatshirts, socks, jerseys, long-sleeved shirts, t-shirts, turtlenecks, motorcycle gloves, motorcycle jackets, motorcyclist boots, mountaineering boots, pullovers, shorts, surf wear, tank tops, underclothes, wetsuits, and wristbands, *excluding clothing made or promoted specifically for skiing or snowboarding and excluding clothing made or promoted specifically for skiing or snowboarding enthusiasts*" in International Class 25.

2. Applicant shall not use the mark i.RIDE in association with any goods made or promoted specifically for skiing or snowboarding or made or promoted specifically for skiing or snowboarding enthusiasts.

3. Applicant shall refrain from any objection to Opposer's use or registration of the mark RIDE.

4. Applicant shall not use or register any mark comprised of or including RIDE in association with the sale of goods made or promoted specifically for skiing or snowboarding or made or promoted specifically for skiing or snowboarding enthusiasts.

5. Applicant shall never use RIDE alone as a name or mark.

6. If any application owned by Opposer and seeking registration of a mark comprised of or including RIDE for winter sports products, winter sports clothing, or any other goods made or promoted specifically for skiing or snowboarding is refused based upon a prior application or registration owned by Applicant, Applicant shall provide consent or cooperation as necessary to facilitate registration of the mark as requested by Opposer.

7. **Further Documents.** The Parties hereto shall execute all further documents necessary to accomplish the purposes of this Agreement either simultaneously with the execution of this Agreement, or upon reasonable request thereafter.

8. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one agreement.

9. **Facsimile Signatures.** Facsimile signatures shall be deemed to constitute an original.

10. **Signatures.** This Agreement may be delivered to each Party by facsimile or e-mail and such delivery shall be effective and binding. The Parties acknowledge and agree that after execution and delivery by facsimile or e-mail, additional copies of this Agreement may be circulated for signature so that each Party will ultimately retain a fully-executed original. The circulation of these additional copies for original signature shall in no way affect or diminish the binding effect of the Agreement previously signed in counterparts and delivered by facsimile or e-mail.

11. **Remedies.** The Parties hereby recognize that irreparable damage may result in the event of breach of any of the covenants and assurances contained in this Agreement by either Party. As such, in the event of breach or threatened breach of any of the covenants and

assurances contained in this Agreement, the non-breaching Party shall be entitled to enjoin and restrain the breaching Party from violation or continued violation of said covenant or assurance. A defendant in an injunction action brought pursuant to this Paragraph hereby waives any defense that there is an adequate remedy at law. Such remedies will not be the exclusive remedies for any breach of this Agreement, but will be in addition to all other remedies available at law or equity to the non-breaching party, including an action for damages.

12. **Advice of Counsel.** The Parties have been fully advised by counsel regarding the terms of this Agreement.

13. **Authority of Parties.** Applicant and Opposer represent and warrant to each other that they have the full right and exclusive authority to enter into and execute this Agreement.

14. **Amendment to Agreement.** This Agreement may not be altered, amended, modified, or otherwise changed in any respect or particular whatsoever except by a writing executed by an authorized representative of each Party.

15. **Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the respective Parties.

16. **Notices.** All notices, requests, demands, directions, and other communications provided for hereunder shall be in writing and mailed, or faxed, or delivered to the applicable Party at the address of such party set forth below (or such other address duly provided in writing to the other side). Each such notice, request, demand, direction, or other communication shall be effective upon delivery.

If to Applicant:

Matthew Dallman
12446 Castlemain Trail
Orlando, Florida 32828

With a copy to:

Amber Neilson Davis, Esq.
Beusse Wolter Sanks Mora & Maire, P.A.

390 N. Orange Ave., Suite 2500
Orland, FL 32801

If to Opposer:

Ride Snowboard Company
c/o K-2 Corporation
4201 6th Avenue South
Seattle, Washington 98108.

With a copy to:

Cindy L. Caditz, Esq.
Davis Wright Tremaine LLP
1201 Third Avenue
Seattle, Washington 98101
Fax: 206-757-7097

17. **Severability.** If any provision of this Agreement shall be held void or unenforceable by a court or arbiter or mediator, such provision shall be severable and shall not affect the validity or enforceability of any other provisions of this Agreement.

18. **No Waivers.** The waiver by any Party of a breach of any provision of this Agreement, or the failure by any of the Parties to exercise any right hereunder, shall not operate or be construed as a waiver of any subsequent breach of that right or a waiver of any other right. It is further expressly agreed that the waiver of any right of any Party hereunder or under the trademark laws shall be effective only if in writing and executed by an authorized officer of the affected Party.

19. **Headings.** All section headings are stated for convenience only and shall not be considered in construing this Agreement.

20. **Complete Agreement.** Each Party hereto acknowledges that no other party or any agent or attorney of any other party, or any other person, firm, corporation, or any other entity has made any promise, representation, or warranty, whether express, implied, or statutory, not contained or referred to herein, concerning the subject matter hereof, to induce the execution

of this Agreement. Each signatory hereto acknowledges that it has not executed this Agreement in reliance on any promise, representation, or warranty not contained or referred to herein.

IN WITNESS WHEREOF, Opposer and Applicant have caused this Agreement to be signed by their duly authorized respective corporate officers.

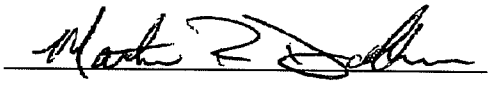
K-2 Corporation

Date: _____

_____
Name:_____
Title:_____

Matthew Dallman

Date: _____



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

K-2 CORPORATION Opposer, v. MATTHEW R. DALLMAN, Applicant.	Opposition No. 91/192,417 STIPULATED MOTION TO AMEND APPLICATION AND CONDITIONAL MOTION TO DISMISS

TO THE COMMISSIONER FOR TRADEMARKS

TRADEMARK TRIAL AND APPEAL BOARD:

Applicant, Matthew R. Dallman, hereby requests amendment of Application Serial No. 77/719,913 to delete the current claim of goods and claim the following goods:

stickers, bumper stickers, appliques in the form of decals, decals *excluding any goods made or promoted specifically for ski or snowboarding enthusiasts*" in International Class 16 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, boxer shorts, visors, cargo pants, coats, heavy coats, winter coats, fleece pullovers, flight suits, hooded sweatshirts, socks, jerseys, long-sleeved shirts, t-shirts, turtlenecks, motorcycle gloves, motorcycle jackets, motorcyclist boots, mountaineering boots, pullovers, shorts, surf wear, tank tops, underclothes, wetsuits, and wristbands, *excluding clothing made or promoted specifically for skiing or snowboarding and excluding clothing made or promoted specifically for skiing or snowboarding enthusiasts*" in International Class 25

Opposer consents to this amendment, which consent is indicated by signature of counsel for Opposer below.

DAVIS WRIGHT
TREMAINE LLP

LAW OFFICES
1201 Third Avenue
Suite 2200
Seattle, WA 98101-3045

Conditioned upon the acceptance and entry of the requested amendment to Application Serial No. 77/719,913, Opposer and Applicant jointly request that Opposition No. 91/192,417 be dismissed without prejudice. If the requested amendment is not accepted, the Parties jointly request that the discovery and testimony periods be reset and extended to permit the meaningful conduct of discovery.

Dated this 3rd day of ~~March~~ May, 2010.

DAVIS WRIGHT TREMAINE LLP	BUESSE WOLTER SANKS MORA & MAIRE, P.A.
By: _____ Cindy L. Caditz Attorneys for Opposer 1201 Third Avenue Seattle, WA 98101 Telephone: 206.757.8097	By: _____ Amber Neilson Davis Attorneys for Applicant 390 N. Orange Ave., Suite 2500 Orlando, FL 32801 Telephone: 407.926.7716

CERTIFICATE OF FILING

I hereby certify that this MOTION TO AMEND APPLICATION AND CONDITIONAL MOTION TO DISMISS is being filed with the Trademark Trial and Appeal Board using the ESTTA filing system of the U.S. Patent and Trademark Office on the below date.

Date:_____ _____

CERTIFICATE OF SERVICE

I hereby certify that this MOTION TO AMEND APPLICATION AND CONDITIONAL MOTION TO DISMISS is being duly served upon the Attorney of Record for Registrant by mailing a copy thereof via the U.S. Postal Service in a sealed envelope via First Class Mail with postage thereupon fully prepaid and addressed to:

Amber Neilson Davis
Attorneys for Applicant
390 N. Orange Ave., Suite 2500
Orlando, FL 32801
Telephone: 407.926.7716

Date:_____ _____