

ESTTA Tracking number: **ESTTA388881**

Filing date: **01/18/2011**

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

Proceeding	91197014
Party	Plaintiff Big Creek Expeditions, Inc., Nantahala Outdoor Center, Inc., Outdoor Adventures, Inc., Smoky Mountain Outdoors Unlimited, Inc., Rapid Expeditions, LLC
Correspondence Address	Jacob G. Horton Pitts and Brittian, P.C. P.O. Box 51295 Knoxville, TN 37950-1295 UNITED STATES JHorton@pitts-brittian.com
Submission	Opposition/Response to Motion
Filer's Name	Jacob G. Horton
Filer's e-mail	jhorton@pitts-brittian.com
Signature	/Jacob G. Horton/
Date	01/18/2011
Attachments	00228334.PDF (4 pages)(15645 bytes)

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

In the Matter of Application Serial No. 85/019,492
Mark: RAFTING IN THE SMOKIES
Published in the *Official Gazette* on September 21, 2010

)	
BIG CREEK EXPEDITIONS, INC.,)	
NANTAHALA OUTDOOR CENTER, INC.,)	
OUTDOOR ADVENTURES, INC.,)	
RAPID EXPEDITIONS, LLC, and)	
SMOKY MOUNTAIN OUTDOORS)	
UNLIMITED, INC.,)	
)	
Opposers,)	
)	
v.)	Opposition No. 91197014
)	
RITS, LLC,)	
)	
Applicant.)	
)	

Commissioner for Trademarks
Trademark Trial and Appeal Board
P. O. Box 1451
Alexandria, VA 22313-1451

RESPONSE TO MOTION TO STAY OR DISMISS PROCEEDINGS

Now comes Opposer Big Creek Expeditions, Inc. (“Big Creek”), Opposer Nantahala Outdoor Center, Inc. (“NOC”), Opposer Outdoor Adventures, Inc. (“Outdoor Adventures”), Opposer Rapid Expeditions, LLC (“Rapid Expeditions”), and Opposer Smoky Mountain Outdoors Unlimited, Inc. (“Smoky Mountain Outdoors”), (hereinafter, collectively, “Opposers”), by and through the undersigned counsel, and hereby responds to Applicant RITS, LLC’s Motion to Stay or Dismiss as follows:

On December 27, 2010, Applicant RITS, LLC (“RITS”) filed its Motion to Stay or Dismiss Proceedings, which purports to seek stay or dismissal of the present Opposition under 37 C.F.R. § 2.117(a) and § 2.67 based upon RITS’ filing of a lawsuit in the United States District Court for the Eastern District of Tennessee, Northern Division (Case No. 3:10-cv-00558) (hereinafter, the “Lawsuit”) against only a portion of the Opposers in the present Opposition. Inasmuch as RITS claims in its Motion to Stay or Dismiss Proceedings that a “stay” of the present Opposition “is required to be granted pursuant to 37 C.F.R. § 2.117(a),” Opposers respectfully disagree. Rather, 37 C.F.R. § 2.117(a) provides that “[w]henver it shall come to the attention of the Trademark Trial and Appeal Board that a party... [is] engaged in a civil action... which may have a bearing on the case, proceedings before the Board *may be suspended* until termination of the civil action.” 37 C.F.R. § 2.117(a) (emphasis added). Such suspension by the Board is not, however, mandatory. *Id.*

Furthermore, to the extent RITS seeks suspension of the present Opposition pending the outcome of the Lawsuit, Opposers respectfully submit that suspension of the present Opposition is not appropriate and request denial of the same. Specifically, two of the Opposers (NOC and Smoky Mountain Outdoors) are not parties to the Lawsuit, and it is unlikely that any judgment resulting from the Lawsuit would be binding upon either NOC or Smoky Mountain Outdoors. Thus, it is highly unlikely that any judgment rendered in the Lawsuit would serve to simplify the issues in the present Opposition with respect to NOC or Smoky Mountain Outdoors, and suspension of the present Opposition would only serve to unnecessarily delay the outcome of the present Opposition with regard to NOC and Smoky

Mountain Outdoors. Opposers therefore request that, to the extent RITS has requested suspension of the present Opposition, such request be denied.

To the extent that RITS seeks dismissal of the present Opposition, Opposers respectfully submit that neither 37 C.F.R. § 2.117(a) nor 37 C.F.R. § 2.67 provides for dismissal of an Opposition proceeding by the Trademark Trial and Appeal Board. Furthermore, RITS offers no explanation or rationale in its Motion to Stay or Dismiss Proceedings, or in its accompanying brief, as to why such a dismissal of the present Opposition would be appropriate. Opposers respectfully submit that no such rationale exists, and that dismissal of the present Opposition is not, in fact, appropriate. Opposers therefore request that RITS' request to dismiss the present Opposition be denied.

Respectfully submitted,

s/Jacob G. Horton

Robert E. Pitts (Tenn. BOPR# 01610)
R. Bradford Brittian (Tenn. BOPR# 7130)
Melinda L. Doss (Tenn. BOPR# 13217)
Jacob G. Horton (Tenn. BOPR# 25,467)
Paul A. Forsyth (Tenn. BOPR# 26307)
PITTS AND BRITTIAN, P.C.
P. O. Box 51295
Knoxville, TN 37950-1295
(865) 584-0105 – Telephone
(865) 584-0104 - Facsimile

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this RESPONSE MOTION TO STAY OR DISMISS has been served on counsel of record at the following addresses by First Class Mail on the 18th day of January 2011.

Michael E. Robinson
Michael J. Bradford
Luedeka, Neely, Graham, P.C.
P.O. Box 1871
Knoxville, TN 37901

s/Jacob G. Horton
Jacob G. Horton