

ESTTA Tracking number: **ESTTA677365**

Filing date: **06/10/2015**

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

Proceeding	91197504
Party	Defendant Alpha Phi Omega
Correspondence Address	JACK A WHEAT STITES & HARBISON PLLC 400 WEST MARKET STREET, SUITE 1800 LOUISVILLE, KY 40202-3352 UNITED STATES jwheat@stites.com
Submission	Other Motions/Papers
Filer's Name	Jack A. Wheat
Filer's e-mail	jwheat@stites.com
Signature	/jackawheat/
Date	06/10/2015
Attachments	REPLYreMFSJ.doc.pdf(1933432 bytes) DE5.PDF(74409 bytes) DEx6.PDF(501687 bytes) MiragliaDepoExcerpts.pdf(240783 bytes) SmileyDepExcerpts.PDF(127793 bytes) WamplerDepoExcerpts.pdf(1782264 bytes)

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

OMEGA, S.A.,

OPPOSER,

v.

ALPHA PHI OMEGA,

APPLICANT.

Opposition Nos.
91197504 (Parent) &
91197505 (Child)

Serial Nos.
77950436 & 77905236

**REPLY BRIEF IN SUPPORT OF
ALPHA PHI OMEGA'S MOTION FOR SUMMARY JUDGMENT**

Comes the Applicant, Alpha Phi Omega, by counsel and for its Reply Brief In Support of its Motion for Summary Judgement, it submits the following:

Opposer and its Burden of Proof.

As the Board noted just last month, the Omega marks are most commonly used with timepieces.¹ Opposer asserts that the Alpha Phi Omega coat-of arms, shown here, when used for jewelry, and the Greek letters, ΑΦΩ, when used for headwear, jackets, shirts, and sweat shirts are likely to cause confusion. The Opposer, of course, bears the burden of proof on this issue. *See*



Cunningham v. Laser Golf Corp., 222 F.3d 943, 951 (Fed. Cir. 2000). Omega further asserts its marks are “famous”; thus diluted by these ΑΦΩ marks. As for the burden of proof requisite to a showing a fame, “it is the duty of the party asserting that its mark is famous *to clearly prove it.*” *Lacoste Alligator S.A. v. Maxoly Inc.*, 91 USPQ2d 1694, 1597. (TTAB 2009) (emphasis added).

¹*Omega S.A. v. National Mentoring Partnership, Inc/Mentor*, No. 91172812 <http://ttabvue.uspto.gov/ttabvue/v?pno=91172812&pty=OPP&eno=97> slip op. at 22 (TTAB May 29, 2015) (“Opposer’s “predominant” product line is “timepieces”).

Notwithstanding Omega’s Burden Of Proof, It Has Not Come Forward to Demonstrate the Existence of any Genuine Issue of Material Fact.

As a result of the Supreme Court’s *Anderson v. Liberty Lobby* line of cases, a party may no longer merely rest on its pleadings and conclusory assertions in opposition to a motion for summary judgment no longer suffice. Summary Judgment is to be granted when the party bearing the burden of proof fails to come forward and demonstrate the existence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (emphasis added). When the party bearing the burden of proof merely relies on its pleadings and fails to demonstrate there is a genuine issue of material fact, the tribunal “shall then grant summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

Notwithstanding its burden to come forward and demonstrate there is a ***genuine*** issue of ***material*** fact, essentially all Omega does is rely on its pleadings, conclusory assertions of counsel, and hollow cries, “there are fact issues.” Well if there are, what are those genuine issues of material fact? The “best” Omega does is offer immaterial assertions the witnesses from the Alpha Tau Omega Fraternity and the Alpha Chi Omega Sorority could not testify as to the ***exact day*** their respective organization’s begin using their Greek letter insignia for jewelry. Omega’s clever spin on their testimony ignores the fact that Wynn Smiley, the ATΩ Fraternity witness definitively testified the fraternity has used its ATΩ letters with jewelry continuously since 1865. *See* Smiley Dep. 23:20-24:22 & 35:18-36:23. (Attached). And Janine Wampler, the AXΩ Sorority witness definitively testified the sorority has used its AXΩ letters for jewelry continuously since 1885: the member badge bearing the AXΩ insignia was designed and first used in 1885; The badge design has been used since 1885; and the AXΩ marks have been continuously used since 1865 (Wampler Dep. 10:16-23; 20:21-24; 57:13-18; and 51:6-17) (Attached). Further, Omega totally ignores the definitive testimony of Carol Miraglia of the Chi

Omega Sorority of that sorority's use of the XΩ insignia for jewelry continuously since 1895. See Miraglia Dep. 13:17-14:7 (Attached). Further, each of these witnesses also definitively testified that their marks are commonly used for clothing. (Miraglia Dep. 56:15-23; Smiley Dep. 32: 21-23, 33:1-3 and 7-8, 35:11-15; Wampler Dep. 8:16-9:2). *See also* Shaver Decl.

There are No Genuine Issues of Material Fact.

Notwithstanding Opposer's conclusory assertions "there are fact issues," the reality here is there are no *genuine* issues of *material* fact. To the contrary, it is quite telling that Opposer does not dispute *any* of the statements of undisputed fact set forth in ΑΦΩ's opening brief at pps.8-11. Instead, it merely contends that these facts are immaterial or irrelevant. Regardless of Opposer's attempts to avoid inevitable judgment, it cannot dispute any of the following key dispositive points:

1. Alpha Phi Omega Has Used its Coat-Of-Arms for Jewelry Since The 1920s.

The declaration with the application to register the ΑΦΩ coat-of-arms verifies the mark has been used for jewelry since at least 1930. Omega does not dispute this first use claim. *See also* Defendant's Exhibit 5 submitted herewith (March 1929 newsletter of the fraternity identifying the L.G. Balfour Co. as the "Official Jewelers to Alpha Phi Omega" and a full page price list of "Alpha Phi Omega Jewelry" including the fraternity's "Standard Official . . . Badge" and pertinent to the coat-of-arms mark, "rings, tie pins" bearing the "Coat of Arms").

It is also significant to note, in addition to use of the coat-of-arms mark with jewelry since the 1920s, Applicant has also used its ΑΦΩ Greek letters for jewelry continuously since the founding of the fraternity in 1925. (London Depo. 113:9-22). As noted in our opening brief, in statement of undisputed fact No. 11, notwithstanding concurrent use by the parties of their respective marks for 90 years, there have been no known instances of confusion. This Omega does not dispute.

2. Alpha Phi Omega's Use of the ΑΦΩ Mark for Clothing Since at Least 1980 Precedes Opposer's Priority Date for Clothing.

The declaration with the application to register ΑΦΩ for “headwear, jackets, shirts, and sweat shirts” verifies that this insignia has been used for clothing since at least 1980. Omega does not dispute this first use claim. *See also* Defendant's Exhibit 6 submitted herewith, a 1976 publication of the fraternity containing a photograph of multiple members of the fraternity wearing clothing items such as shirts, jerseys and hats bearing the ΑΦΩ insignia.²

Although the opposed mark is for headwear, jackets, shirts, and sweat shirts, Opposer's clothing registration is for different items, namely scarves and neckties. *See* Exhibit 7 to Opposer's response brief. Not only is Opposer's clothing registration for different goods, even more significant is the fact that Applicant's use of its ΑΦΩ insignia for clothing relates to uses dating back prior to 1980, uses which *predate* Opposer's April 23, 1996 priority date for clothing.

Further, notwithstanding decades of concurrent use, there have been no known instances of confusion. Opposer has not come forward with anything to demonstrate the existence of any genuine issue of material fact supporting its conclusory assertions that use of the ΑΦΩ insignia for headwear, jackets, shirts, and sweat shirts is likely to cause any confusion with Opposer's registration for scarves and neckties, the constructive use of which post-dates Applicant's uses for clothing.

3. Opposer's Dilution Claim Fails as a Matter Of Law.

Opposer wrongly states our “motion fails to address . . . the critical factor of fame of opposer's mark” and our “motion is void of any reference whatsoever to the fame of Opposer's

² It is curious to note that Applicant owns a subsisting registration of the mark ALPHA PHI OMEGA for the same goods. *See* the Deposition Exhibit marked as Plaintiff's Exhibit 9 submitted with Applicant's opening brief. One must wonder why Opposer believes itself to be injured by registration of the letters ΑΦΩ when it has not challenged Applicant's registration of the literally equivalent mark ALPHA PHI OMEGA for the identical goods?)

OMEGA marks.” See Opposition Brief at pps. 1 & 4. To the contrary, in our opening brief we explicitly point out that Omega has done nothing to demonstrate the requisite fame:

[I]n order to prevail on the ground of dilution, Opposer must show that its mark became famous prior to the Applicant’s use of the allegedly famous mark. *Toro Company*, 61 USPQ2d [1164] at 1174, n.9 and *Chanel, Inc. v. Makarczyk*, 110 USPQ2d 2013, 2024 (TTAB May 27, 2014). . . . Omega must show that its OMEGA marks became famous prior to Alpha Phi Omega’s commencement of use of crest and the Greek letter mark ΑΦΩ in 1925.

Notwithstanding discovery requests that it do so, Omega has not produced any evidence to indicate that the OMEGA mark was famous in the United States prior to 1925. Omega has failed to even address its burden to prove its marks were famous prior to 1925.

See Motion for Summary Judgment at p. 17-18. More egregious than its statement our brief “fails to address this critical” factor is Opposer’s accusation we “misstate[] the applicable law” by even suggesting that a dilution claim requires a showing of fame prior to the adoption of the opposed marks. See Opposition Brief at p. 2 & 13 What is tellingly clear is Opposer’s apparent misunderstanding (or mischaracterization) of the law; Opposer erroneously asserts that to prevail on a dilution claim it need only show fame “prior to the filing date of the opposed applications.” Opposer’s assertion is totally contrary to the Lanham Act provisions relating to dilution. As the Board is well aware, a dilution claim is stated only against one “who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution.” 15 U.S.C. § 1125 (c)(1). Surprisingly, Opposer suggests that the Federal Circuit has abrogated this statutory provision. In *Toro*, the Board did hold that for a dilution based Opposition ***to an ITU application***, the pertinent date for scrutinizing the fame of an Opposer’s mark is the filing date of the opposed ITU application, a rational application of the dilution act, considering that with an ITU application, the filing date is the Applicant’s constructive first use date. But as the Board also correctly noted in *Toro*, ***when a use based***

application is opposed on dilution grounds, Opposer must prove that its mark became famous prior to the Applicant's use of the opposed mark. *Toro Company*, 61 USPQ2d at 1174, n.9. Omega contends the Federal Circuit overruled this distinction when it quoted the excerpt from *Toro* dealing with opposed ITU applications. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1375 (Fed. Cir. 2012). It is quite an illogical leap to contend that because the Federal Circuit quotes the *Toro* excerpt relating to ITU oppositions, it has abrogated the legislative requirement that to show fame for dilution purposes, the proponent must prove that its mark was famous *prior* to the adoption of the opposed mark. The Federal did not so hold.

Notwithstanding its burden to come forward with proof of fame predating Applicant's adoption of its marks, Omega has not produced anything to indicate that the OMEGA mark was famous in the United States prior to 1925. All Opposer has come forward with to support its burden to prove fame is sales and marketing data and media attention *from this century*. The putative "proof" presented by opposer, sales and marketing data from 2000 to 2009 is completely irrelevant to the question hand.

Further, and especially egregious is the false suggestion in Omega's brief that the Board has heretofore held that the OMEGA mark is famous for dilution purposes. Omega presents this mischaracterization by stating *in the dilution section of its brief*, the Board previously has determined that "[t]he OMEGA mark is a famous mark." See Opposition Brief at p. 6 (*citing Omega SA v. Hanif*, 2013 TTAB LEXIS 420, *17-18 (TTAB August 5, 2013)). The Board did not there find that Omega's marks are famous *for dilution purposes*. Indeed, it was not even a dilution case. *Id.* at n.2. The Board did recognize there is notoriety associated "with opposer's mark *with respect to opposer's timepieces*" but most telling, as the Board there noted "[t]here is no evidence that opposer has established fame with respect to goods other than watches." *Id.* at

*17 (emphasis added). See also *Omega S.A. v. Alliant Techsystems Inc.*, No. 91173785

<http://ttabvue.uspto.gov/ttabvue/v?pno=91174067&pty=OPP&eno=24> slip op. at 13 (TTAB April 29, 2015) (“Opposer’s OMEGA mark is famous, *but only for watches*” (emphasis added)).

Although the TTAB has held that the OMEGA mark might now be famous, “but only for watches,” as best we can tell, all of the Board’s numerous Omega cases deal with fame *solely* in the context of a likelihood of confusion analysis, not in a dilution analysis. And, of course, “[t]he standard for fame and distinctiveness required to obtain anti-dilution protection is more rigorous than that required to seek infringement protection.” *Toro Company*, 61 USPQ2d at 1174 (quoting *I.P. Lund Trading ApS v. Kohler Co.*, 163 F.3d 27, 47 (1st Cir. 1998)). Indeed, it appears the Board has never held Opposer’s marks to be famous for dilution purposes. See e.g. *Omega S.A. v. Alliant*, slip op. at 13 & 33 (“Opposer’s OMEGA mark is famous, *but only for watches.*” HELD: Applicant’s use of the marks, “Ωmega” and “Ωmega Elite” for protective clothing and other items not likely to be confused with the Omega Watch marks, the goods are “offered in distinct channels of trade to different classes of purchasers”).

Because Opposer bears the burden of proof, it must come forward at the Summary Judgment juncture with a showing its marks became famous for dilution purposes prior to Alpha Phi Omega’s commencement of use of its marks. The showing made by Opposer of sales, marketing and publicity from 2000 to 2009 is totally irrelevant to the dilution issue. Under the facts of this case, the Opposer’s marks are not famous for dilution purposes.

4. Marks Connoting a Fraternity are Too Dissimilar From Opposer’s Marks to Cause a Likelihood Of Confusion, Especially Considering the Distinct Channels of Trade.

Opposer’s contentions as to similarity of the marks completely ignore the connotation of the Applicant’s marks. When the public encounters insignia consisting of a combination of two or three Greek alphabet letters or words, the public will recognize the insignia as a reference to a

Greek letter organization such as a fraternity or sorority. “[U]se of various combinations of Greek letters, in the mind of the public, generally refers to fraternities and sororities.” *Abraham v. Alpha Chi Omega*, , 781 F.Supp.2d 396, 410 (N.D. Tx. 2011). Indeed, the Board itself recently likewise so noted holding the letters EK on caps is not likely to be confused with the Greek alphabet letters for Sigma Kappa Sorority, namely, ΣΚ, because Greek letter insignia will be “perceived as identifying both Greek letters and the name of a sorority.” *In re New Era Cap Co., Inc.*, No. 85515684, <http://ttabvue.uspto.gov/ttabvue/v?pno=85515684&pty=EXA&eno=21> slip op. at 5 (TTAB July 7, 2014).

Ignoring the connotation of applicant’s marks, Opposer contends that because the marks sought to be registered subsume Opposer’s mark, there is a likelihood of confusion. Sometimes this principle is pertinent, *especially when the commonality* relates to the “the first part of a mark which is most likely to be impressed upon the mind of a purchaser.” *Omega S.A. v. Alliant*, slip op. at 17. Here though, we are not dealing with Applicant’s use of the word Omega as the first word in its name. Opposer’s simplistic assertion overlooks the fact Applicant’s marks connote a totally different meaning. Even when an accused mark subsumes the mark of another, there is no likelihood of confusion when the added matter is “sufficient to distinguish the marks under circumstances where the marks in their entirety convey significantly different meanings or commercial impressions or the incorporated matter has been so merged with the other matter that it ‘loses its separate identity.’” *Outback Steakhouse of Fla., Inc. v. Waterworldwide Pty Ltd.*, 2009 TTAB LEXIS 50, *9-10 (TTAB 2009). Opposer’s marks do not share the same connotation as the marks sought to be registered. When viewing Applicant’s marks as a whole, consumers will readily recognize the ALPHA PHI OMEGA crest and the ΑΦΩ insignia as references to a fraternity. *See Abraham*, 781 F.Supp.2d at 410 and *New Era Cap*, slip op. at 5.

Granted, when Applications recite a class of goods without limitation, here “jewelry” and “headwear, jackets, shirts, and sweatshirts,” “the goods are *presumed* to travel in all normal channels and to all prospective purchasers for the relevant goods.” *Coach Servs.*, 668 F.3d at 1370. This is merely a “presumption” though, the inapplicability of which is apparent when we consider the fundamental realities associated with the disparate markets in which high-end watches costing thousands of dollars are sold, as compared with the niche market in which Greek affinity merchandise is offered. *See* Listing of Undisputed Facts, No. 2. Indeed, even in another Omega case, the Board appears to have found the presumption inapplicable considering the facts of that case. *See Omega S.A. v. Alliant Techsystems Inc.*, No. 91173785 <http://ttabvue.uspto.gov/ttabvue/v?pno=91174067&pty=OPP&eno=24> slip op. at 13 (TTAB April 29, 2015). As the Board there noted, the Omega Watch channel of trade consists of “its own stores, authorized Omega Dealers and boutiques,” whereas the channel of trade of the Applicant included clothing marketed to military and law enforcement personnel. Even though many of the goods recited in the application did “not contain any limitations with respect to channels of trade,” the presumption was nonetheless held to be inapplicable because the “relevant goods” clearly moved in distinct channels of trade. *Id.* at 30-31. So too here, the marks are generally recognizable as a reference to a fraternity, used with fraternal merchandise sold in the Greek merchandise markets, not at Omega stores, authorized Omega Dealers and boutiques. Consumers will not “consider the goods to emanate from the same source.” *Id.* slip op. at 32.

CONCLUSION

If ever a case were appropriate for summary judgment, this is it. Even though the parties and their marks have coexisted for nearly 90 years, neither party is aware of even a single instance of confusion. We pray the Board will utilize the summary judgment procedure for its intended purpose, to dispose of factually and legally unfounded claims. It is clear that Opposer’s

claims are without legal and factual basis, and that there are no issues which require a trial for their resolution. There are no genuine issues of material fact relating to Omega's claims of likelihood of confusion and dilution. Alpha Phi Omega is entitled to a judgment as a matter of law.

Respectfully requested,

/jackawheat/

Jack A. Wheat
Mari-Elise Taube
STITES & HARBISON PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202-3352
Telephone: (502) 587-3400

Counsel for Alpha Phi Omega

CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION

I hereby certify that a true copy of this REPLY BRIEF IN SUPPORT OF ALPHA PHI OMEGA'S MOTION FOR SUMMARY JUDGMENT is being filed electronically with the U.S. Patent and Trademark Office using the ESTTA service, and a copy has been served on counsel for Opposer by mailing said copy this 10th day of June, 2015, via First Class Mail, postage prepaid, to:

Jess M. Collen
Thomas P. Gulick
Oren Gelber
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Ave.
Ossining, New York 10562

/jackawheat/

Jack A. Wheat

Honorary
Professional

The LightBearer
of
Alpha Phi Omega
(National College Fraternity)
International in Scope

Educational
Social Service

International
Office

Frank R. Horton, Editor,
606 W. Cork St.
Winchester, Va.

Supreme Council

Vol 15.

March 1929.

No. 1

Contents.	Page
L.G. Balfour Co. Jewelers	2
Election of Supreme Officers	3
Installation of Epsilon Chapter	3
Installation of Zeta Chapter	4
Scholarship Cup Award	4
Page in Baird's Manual	4
Article in Bantas Greek Exchange	5
National Expansion	5
International Expansion	5
Suggested Changes in Ritual and Laws	5
Is the Honor System in college A Failure?	5
What should a Chapter Do?	6
New Members	7
Welcome Theta Chapter (University of Virginia)	7
Iota Chapter Park College, Mo.	7
Kappa Chapter, Carnegie Tech, Pittsburgh, Penna.	7
Alpha Chapter News	7
Beta Chapter News	8
Gamma Chapter News	8
Delta Chapter News	8
Epsilon Chapter News	8
Zeta Chapter News	8
Eta Chapter News	9
Fraternity Directory	10

Published twice during the college year, November and March,
By the Alpha Phi Omega Fraternity. Per Copy: 50c / Per Year: \$1.00
Entered as third class matter at the Post Office, Winchester, Va.,
U.S.A. Address Alpha Phi Omega, Box 360, Winchester, Va.

DEFENDANT'S
EXHIBIT

5

AL0132

L. G. Balfour Co.
Attleboro, Massachusetts

Sole Official Jewelers to Alpha Phi Omega
"Branch Office"

Boston	Kansas City	Ann Harbor	Des Moines
New York	Denver	Richmond	San Francisco
Chicago	Washington	Dallas	Los Ang
Philadelphia	Atlanta	Indianapolis	State College
Pittsburg	Columbus	Ithaca	Seattle

Alpha Phi Omega Jewelry

1. Recognition Buttons, silver, gold, 10k.	75cents, \$1.00- \$1.50
2. Pledge Button	\$1.00
3. Standard Official Plain Badge	4.50
4. Standard Official Plain Key	5.25
5. Jeweled Badge	10.00
6. Jeweled Key	15.25
7. Heavily Jeweled Badge	18.00
8. Heavily Jeweled Key	23.25

Also Rings, Tie Pins, Watch Charms, and Novelties, with Coat of Arms

Note; EACH OFFICIAL BADGE AND KEY MUST HAVE BLUE AND GOLD NOT BLACK AND GOLD. RETURN ALL BLACK ENAMELED JEWELRY TO L. G. BALFOUR CO., ATTLEBORO, MASS. AND REQUEST BLUE ENAMEL. YOUR REQUEST WILL BE GRANTED.



torch and trefoil



WINTER-SPRING 1976

1975 H. ROE BARTLE CHAPTER AWARDS

Forty-six chapters across the country were the first to qualify for the H. Roe Bartle Chapter Award, established in the name and memory of our longest serving past National President. The basis for this award was a chapter program review — a self-evaluation of what had been accomplished during the academic year 1974-75, and setting goals for the current year. Ten areas of chapter operation were considered. Attractive certificates, featuring a likeness of Brother Bartle, were presented to the qualifying chapters at their respective Regional Conferences in November and December.

The self-evaluation forms for the current 1975-76 academic year are be-



ing transmitted in the January-February Chapter Bulletin. The criteria for this year emphasize sustained membership growth in line with the "Serve More Students '76" program, and significant, relevant, new directions in service.

It should be possible for every chapter to qualify for this recognition if we all take serious advantage of our Golden Opportunity for Service as we celebrate our Nation's bicentennial and our Fraternity's half century of service. Congratulations to those chapters which set the pace for 1975. Let's all match that and more in '76.

H. ROE BARTLE AWARD CHAPTERS 1974-75

REGION I

- Gamma Iota
Brooklyn College
- Sigma Xi
University of Maine at Orono

REGION II

- Alpha
Lafayette College
- Gamma
Cornell University
- Alpha Psi
Lehigh University
- Xi Zeta
Rochester Institute of Technology
- Xi Pi
Lycoming College
- Sigma Nu
Delaware Valley College

REGION III

- Zeta Beta
Virginia Polytechnic Institute and State University
- Iota Lambda
North Carolina State University
- Kappa Theta
Wake Forest University
- Sigma Rho
Elon College

REGION IV

- Delta
Auburn University
- Delta Iota
Mercer University
- Pi Iota
Wofford College

- Rho Epsilon
Savannah State College
- Tau Epsilon
Tennessee Technological University

REGION V

- Delta Gamma
Ohio University
- Delta Theta
University of Louisville
- Zeta Delta
Miami University
- Zeta Kappa
Bowling Green State University
- Lambda Omicron
West Virginia University
- Mu Chi
Indiana University of Pennsylvania

REGION VI

- Alpha Alpha
University of Illinois
- Alpha Tau
Butler University
- Theta Pi
Indiana Central University
- Mu Nu
Western Illinois University
- Omicron Lambda
Calumet College
- Tau Omicron
Indiana-Purdue University-Indianapolis
- Upsilon Gamma
Lake Michigan College
- Chi Mu
Henry Ford Community College

REGION VII

- Alpha Rho
University of Texas
- Eta Tau
West Texas State University
- Sigma Omicron
Howard Payne University
- Tau Rho
Del Mar College
- Phi Gamma
Texas Lutheran College
- Phi Upsilon
Amarillo College
- Psi Zeta
Bishop College

REGION VIII

- Alpha Mu
William Jewell College
- Beta Mu
Southwest Missouri State University
- Zeta Tau
Central Methodist College

REGION IX

- Tau Upsilon
University of Wisconsin-Platteville
- Upsilon Upsilon
College of St. Thomas
- Chi Iota
Bemidji State University

REGION X

- Alpha Delta
San Diego State
- Theta Iota
University of

DEFENDANT'S EXHIBIT

6

Action...

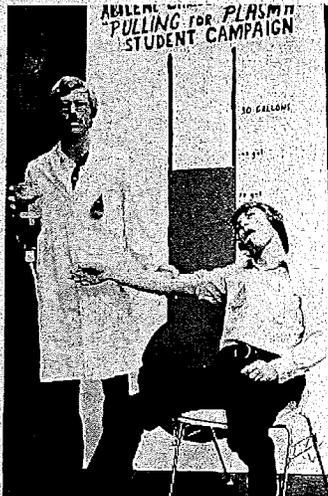
• PHI CHAPTER ALUMNI ASSOCIATION

At the 1972 National Convention in Denver, nine alumni brothers of PHI CHAPTER, SYRACUSE UNIVERSITY, formed a committee to organize an alumni association. During 1973, the association was organized with adoption of governing articles and the election of officers with an initial membership of nearly 30 alumni. Presently there are 50 brothers from 18 states and 2 continents, and the wisest member is from the class of '42.

Activities have included several service/fellowship reunion weekends; financial, moral and advisory support for our undergraduate chapter; financial support for the future employment of a National Field Representative; career advising for undergraduates; and a thrice yearly newsletter with alumni brother news, news of Phi chapter and National, and employment information exchange for members. Upcoming activities include membership expansion; increased support of the undergraduate chapter; fellowship/service reunion weekend in the Spring; and recognition and celebration of Phi Chapter's 45th anniversary, as well as the Fraternity's 50th.

Brothers have found the Alumni Association to be of viable service to the undergraduate chapter and to be more than willing to continue the ever cherished brotherhood and fellowship we shared years ago. In observation of the Golden Anniversary and to recognize the chapter's outstanding alumni, the undergraduates presented the "Phi Chapter Golden Anniversary Award" to all members of the Phi Chapter Alumni Association for their collective support of the Chapter and the Fraternity — a tribute to a proud and growing brotherhood in leadership, friendship, and service. For more information, contact the Phi Chapter Alumni Association President Fred Pollack at Alpha Phi Omega, Archbold Gym, Syracuse University, Syracuse, N.Y. 13210.

• NU ZETA — ABILENE CHRISTIAN COLLEGE



Allen L. Price, Nu Zeta President, and Dan Wilson, Vice President, at the "Pulling for Plasma" Blood Drive.

The major work force for the "Pulling for Plasma" Blood Drive at ABILENE CHRISTIAN COLLEGE was provided by Brothers of NU ZETA CHAPTER. In the drive, students and faculty members of the college pledged 1193 pints of blood to be given at Hendricks Memorial Hospital in Abilene. For each pint of blood, the hospital credited for \$10.00 the account of Christian Homes, a benevolent organization which cares for unwed mothers and places children for adoption and foster home care. The chapter did all of the work in signing up the pledges, an outstanding record for a chapter of 12 actives and 10 pledges. If you are interested in the project, contact Nu Zeta at Abilene Christian College, Box 7771, ACC Station, Abilene, Texas 79601.

• ETA OMICRON — BRIGHAM YOUNG UNIVERSITY

During the month of November, ETA OMICRON CHAPTER, BRIGHAM YOUNG UNIVERSITY, was named the outstanding service organization of the month at BYU. More than 2500 hours of service were donated by BYU students to the community and schools, and Eta Omicron averaged 24 hours per member. The major event for the chapter was a Merit Badge Pow Wow for the Scout Council, which the chapter helped organize and run. It was attended by 2,800 Scouts on three Saturdays in November. To find out more about the chapter's outstanding service program, write Eta Omicron at Box 431 ELWC, Brigham Young University, Provo, Utah 84602.

• ALPHA KAPPA — U. OF SOUTHERN CALIFORNIA

In December, ALPHA KAPPA CHAPTER, UNIVERSITY OF SOUTHERN CALIFORNIA worked with the Los Angeles Area Council of the Boy Scouts on their annual "Good Turn Day." Their actions were well received by Scouts and Scouters alike. You can contact Alpha Kappa at Student Union Building #313E, University of Southern California, Los Angeles, California 90007.



Brothers and Little Sisters of Theta Rho take a break at their fall work project at the Huntsville Community Day Care Center.

• THETA RHO — SAM HOUSTON STATE UNIVERSITY

Brothers and Little Sisters of THETA RHO CHAPTER, SAM HOUSTON STATE UNIVERSITY, conducted a fall work day at the Huntsville (Texas) Community Day Care Center. The project involved rebuilding and painting a toy storage shed, a tool shed and a porch stairway; putting up a new sign; and painting playground equipment, tricycles and other toys. The 23 Brothers and Little Sisters amassed a total of 184 service hours on the project. You can reach Theta Rho at P.O. Box 2212, Sam Houston State University, Huntsville, Texas 77340.

• SECTION 74

December 16, 1975 was officially designated as Alpha Phi Omega Day in the State of Florida by Governor Reubin O'D. Askew, an alumnus of Iota Rho Chapter at Florida State University. The proclamation was "in recognition of the anniversary of the National Service Fraternity which during its 50 years has provided continuous and unselfish service to fellowmen."

• SECTION 54

An innovative event at the Fall Conference of SECTION 54, MICHIGAN, was the first annual "APO Bowl." The contest, modeled after College Bowl, consisted of questions about Alpha Phi Omega, and was an outstanding success. Receiving the "Glen T. Nygreen Award" victory trophy for the Bowl was Upsilon Gamma Chapter of Lake Michigan College. To find out how your chapter or Section can conduct an APO Bowl, contact Sectional Chairman Robert Skolnick at 29245 Dequindre, Madison Heights, Michigan 48071.

• RHO THETA — CAPITAL UNIVERSITY

Last Fall, Brothers of RHO THETA, CAPITAL UNIVERSITY, in Columbus, Ohio, conducted a Baby Buggy Marathon for the Franklin County United Way Campaign. The Brothers collected \$327.00 from the campus after pushing a baby buggy 50 miles in 6 hours. Contact Rho Theta at Box 110, Capital University, Columbus, Ohio 43209.

• METRO ATLANTA CHAPTERS

On November 1, 1975 the Metro Atlanta Chapters, GAMMA ZETA, GEORGIA TECH; UPSILON CHI, CLARK COLLEGE; PSI OMICRON, MOREHOUSE COLLEGE; and the reactivation group from MU MU, OGLETHORPE UNIVERSITY, assisted the Atlanta Area Council in making the 1975 Scout Show a great success. The Brothers, Pledges, and Phyettes served as judges, coordinators, and service corps members, and hosted a booth to tell the Alpha Phi Omega story. For more information contact Sectional Chairman Doug Troutman at 1975 Alison Court S.W., Apartment B-5, Atlanta, Georgia 30311.

• CHI EPSILON — RICHARD BLAND COLLEGE

The Robert E. Lee Council of the Boy Scouts of America in Richmond, Virginia, recently recognized CHI EPSILON CHAPTER, RICHARD BLAND COLLEGE, for its excellent participation as coordinator of the Council's Fall School Night for Cub Scouting. As a result of the chapter's participation in the recruitment effort for new Cub Scouts in the area surrounding the college, 250 boys entered the Cub Scouting movement. For more information contact Chi Epsilon at Richard Bland College, Petersburg, Virginia 23803.

C
L
I
P
A
N
D
S
A
V
E

Action...

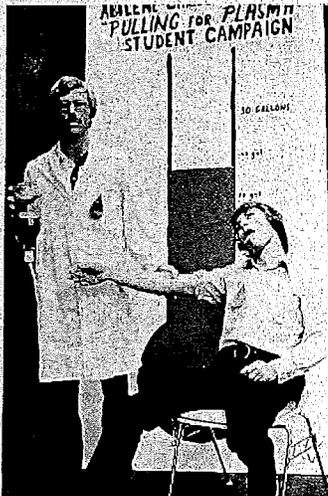
• PHI CHAPTER ALUMNI ASSOCIATION

At the 1972 National Convention in Denver, nine alumni brothers of PHI CHAPTER, SYRACUSE UNIVERSITY, formed a committee to organize an alumni association. During 1973, the association was organized with adoption of governing articles and the election of officers with an initial membership of nearly 30 alumni. Presently there are 50 brothers from 18 states and 2 continents, and the wisest member is from the class of '42.

Activities have included several service/fellowship reunion weekends; financial, moral and advisory support for our undergraduate chapter; financial support for the future employment of a National Field Representative; career advising for undergraduates; and a thrice yearly newsletter with alumni brother news, news of Phi chapter and National, and employment information exchange for members. Upcoming activities include membership expansion; increased support of the undergraduate chapter; fellowship/service reunion weekend in the Spring; and recognition and celebration of Phi Chapter's 45th anniversary, as well as the Fraternity's 50th.

Brothers have found the Alumni Association to be of viable service to the undergraduate chapter and to be more than willing to continue the ever cherished brotherhood and fellowship we shared years ago. In observation of the Golden Anniversary and to recognize the chapter's outstanding alumni, the undergraduates presented the "Phi Chapter Golden Anniversary Award" to all members of the Phi Chapter Alumni Association for their collective support of the Chapter and the Fraternity — a tribute to a proud and growing brotherhood in leadership, friendship, and service. For more information, contact the Phi Chapter Alumni Association President Fred Pollack at Alpha Phi Omega, Archbold Gym, Syracuse University, Syracuse, N.Y. 13210.

• NU ZETA — ABILENE CHRISTIAN COLLEGE



Allen L. Price, Nu Zeta President, and Dan Wilson, Vice President, at the "Pulling for Plasma" Blood Drive.

The major work force for the "Pulling for Plasma" Blood Drive at ABILENE CHRISTIAN COLLEGE was provided by Brothers of NU ZETA CHAPTER. In the drive, students and faculty members of the college pledged 1193 pints of blood to be given at Hendricks Memorial Hospital in Abilene. For each pint of blood, the hospital credited for \$10.00 the account of Christian Homes, a benevolent organization which cares for unwed mothers and places children for adoption and foster home care. The chapter did all of the work in signing up the pledges, an outstanding record for a chapter of 12 actives and 10 pledges. If you are interested in the project, contact Nu Zeta at Abilene Christian College, Box 7771, ACC Station, Abilene, Texas 79601.

• ETA OMICRON — BRIGHAM YOUNG UNIVERSITY

During the month of November, ETA OMICRON CHAPTER, BRIGHAM YOUNG UNIVERSITY, was named the outstanding service organization of the month at BYU. More than 2500 hours of service were donated by BYU students to the community and schools, and Eta Omicron averaged 24 hours per member. The major event for the chapter was a Merit Badge Pow Wow for the Scout Council, which the chapter helped organize and run. It was attended by 2,800 Scouts on three Saturdays in November. To find out more about the chapter's outstanding service program, write Eta Omicron at Box 431 ELWC, Brigham Young University, Provo, Utah 84602.

• ALPHA KAPPA — U. OF SOUTHERN CALIFORNIA

In December, ALPHA KAPPA CHAPTER, UNIVERSITY OF SOUTHERN CALIFORNIA worked with the Los Angeles Area Council of the Boy Scouts on their annual "Good Turn Day." Their actions were well received by Scouts and Scouters alike. You can contact Alpha Kappa at Student Union Building #313E, University of Southern California, Los Angeles, California 90007.



Brothers and Little Sisters of Theta Rho take a break at their fall work project at the Huntsville Community Day Care Center.

• THETA RHO — SAM HOUSTON STATE UNIVERSITY

Brothers and Little Sisters of THETA RHO CHAPTER, SAM HOUSTON STATE UNIVERSITY, conducted a fall work day at the Huntsville (Texas) Community Day Care Center. The project involved rebuilding and painting a toy storage shed, a tool shed and a porch stairway; putting up a new sign; and painting playground equipment, tricycles and other toys. The 23 Brothers and Little Sisters amassed a total of 184 service hours on the project. You can reach Theta Rho at P.O. Box 2212, Sam Houston State University, Huntsville, Texas 77340.

• SECTION 74

December 16, 1975 was officially designated as Alpha Phi Omega Day in the State of Florida by Governor Reubin O'D. Askew, an alumnus of Iota Rho Chapter at Florida State University. The proclamation was "in recognition of the anniversary of the National Service Fraternity which during its 50 years has provided continuous and unselfish service to fellowmen."

• SECTION 54

An innovative event at the Fall Conference of SECTION 54, MICHIGAN, was the first annual "APO Bowl." The contest, modeled after College Bowl, consisted of questions about Alpha Phi Omega, and was an outstanding success. Receiving the "Glen T. Nygreen Award" victory trophy for the Bowl was Upsilon Gamma Chapter of Lake Michigan College. To find out how your chapter or Section can conduct an APO Bowl, contact Sectional Chairman Robert Skolnick at 29245 Dequindre, Madison Heights, Michigan 48071.

• RHO THETA — CAPITAL UNIVERSITY

Last Fall, Brothers of RHO THETA, CAPITAL UNIVERSITY, in Columbus, Ohio, conducted a Baby Buggy Marathon for the Franklin County United Way Campaign. The Brothers collected \$327.00 from the campus after pushing a baby buggy 50 miles in 6 hours. Contact Rho Theta at Box 110, Capital University, Columbus, Ohio 43209.

• METRO ATLANTA CHAPTERS

On November 1, 1975 the Metro Atlanta Chapters, GAMMA ZETA, GEORGIA TECH; UPSILON CHI, CLARK COLLEGE; PSI OMICRON, MOREHOUSE COLLEGE; and the reactivation group from MU MU, OGLETHORPE UNIVERSITY, assisted the Atlanta Area Council in making the 1975 Scout Show a great success. The Brothers, Pledges, and Phyettes served as judges, coordinators, and service corps members, and hosted a booth to tell the Alpha Phi Omega story. For more information contact Sectional Chairman Doug Troutman at 1975 Alison Court S.W., Apartment B-5, Atlanta, Georgia 30311.

• CHI EPSILON — RICHARD BLAND COLLEGE

The Robert E. Lee Council of the Boy Scouts of America in Richmond, Virginia, recently recognized CHI EPSILON CHAPTER, RICHARD BLAND COLLEGE, for its excellent participation as coordinator of the Council's Fall School Night for Cub Scouting. As a result of the chapter's participation in the recruitment effort for new Cub Scouts in the area surrounding the college, 250 boys entered the Cub Scouting movement. For more information contact Chi Epsilon at Richard Bland College, Petersburg, Virginia 23803.

C
L
I
P
A
N
D
S
A
V
E

In the Matter Of:

OMEGA vs. ALPHA OMEGA

91214449 (Parent)

CAROL MIRAGLIA

April 15, 2015



ESQUIRE
S O L U T I O N S

800.211.DEPO (3376)
EsquireSolutions.com

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

3 OMEGA S.A. (OMEGA AG)
4 (OMEGA LTD.),
5 Opposer,

6 V Mark:
7 Opp. No.: 91214449 (Parent)
8 Serial No.: 85855823

9 ALPHA OMEGA EPSILON, INC.,
10 Applicant.

11 OMEGA S.A. (OMEGA AG)
12 (LTD.),
13 Opposer,

14 v Mark: ALPHA OMEGA EPSILON
15 Opp. No.: 91214454 (Child)
16 Serial No.: 85855839

17 ALPHA OMEGA EPSILON, INC,
18 Applicant.

19 OMEGA S.A. (OMEGA AG)
20 (OMEGA LTD.),
21 Opposer,

22 v Mark: ALPHA OMEGA EPSILON
23 & Design
24 Opp. No.: 91214452 (Child)
25 Serial No.: 85857062

ALPHA OMEGA EPSILON, INC.,
Applicant.

OMEGA S.A. (OMEGA AG)
(OMEGA LTD.),
Opposer,

v Mark: ALPHA OMEGA EPSILON
Opp. No.: 91214453 (Child)
Serial No.: 85857065

ALPHA OMEGA EPSILON, INC.,
Applicant.

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

3 OMEGA S.A. (OMEGA AG)
4 (OMEGA LTD.),

Opposer,

v

Mark: ALPHA PHI OMEGA
Opp. No.: 91157504 (Parent)
Serial No.: 77950436

7 ALPHA PHI OMEGA, INC.,
8 Applicant.

9 OMEGA S.A. (OMEGA AG)
10 (OMEGA LTD.),

Opposer,

v

Mark: ALPHA OMEGA EPSILON
Opp. No.: 91157505 (Child)
Serial No.: 7790536

12 ALPHA PHI OMEGA, INC,
13 Applicant.

14 DEPOSITION OF
15 CAROL MIRAGLIA

17 April 15, 2015

18 1:00 p.m.

19 3395 Players Club Parkway

20 Memphis, Tennessee

21
22
23
24
25 Kelly Stephens, RPR, TN #477, MS #1865

1 Q Okay. And is this used -- is this used
2 widespread across multiple licenses or is there one
3 specific licensee who specializes in watches with
4 the Chi Omega Greek mark?

5 A I don't know if we have one particular or
6 many licensed vendors who produce watches.

7 Q Okay. And as to the crest mark, is the
8 crest mark used on watches as well?

9 A I would have to look at the merchandise to
10 be for sure.

11 Q Okay.

12 A I can't recall one.

13 Q Okay. And do you know when watches were
14 first sold featuring, let's say, the Greek letter
15 mark?

16 A No, I do not.

17 Q Okay. Do you have any idea when jewelry
18 was first sold using any variation of the Chi Omega
19 mark?

20 A First --

21 Q First sold.

22 A No. I don't know that particular date
23 either.

24 Q Would you have -- would you be able to give
25 an estimate, 10 years, 20 years, 50 years?

1 A We have had our Chi Omega badge since the
2 beginning of the organization. And our members
3 purchase that badge.

4 Q Okay. When you say the beginning of the
5 organization, do you have a year for that, the
6 beginning of the organization?

7 A Yes. Chi Omega was founded in 1895.

8 Q And do you have any idea when Chi Omega as
9 an organization was incorporated?

10 A Yes. We were incorporated as an
11 organization in 1974.

12 Q And where is it incorporated?

13 A In the state of Ohio.

14 Q Okay. Does Chi Omega as an organization
15 use the Chi Omega mark, let's say any variation
16 thereof, on key chains or sometimes they call them
17 key fobs as well?

18 A Yes.

19 Q Okay. The word mark on key chains and key
20 fobs?

21 A Yes.

22 Q And the Greek letter mark?

23 A Yes.

24 Q And the crest mark?

25 A Yes.

1 sell year after year to an extent that they remain
2 in the Chi O store -- the Chi O Creations store as a
3 standard item or an item is almost perpetual?

4 A I mean, we offer some of the traditional
5 jewelry, you know, perpetually, like, the Greek
6 letter lavalier, the silhouette owl. Those have
7 been perpetually available in the inventory at Chi O
8 Creations. An item that is a really great jewelry
9 seller for us over the last several years has been
10 the carnation line, which doesn't have our word
11 marks or any of our marks on it. It's just really a
12 flower ring, you know. So it just depends --

13 Q Okay.

14 A -- on the style of the day.

15 Q Right. Would you be able to say what your
16 best-selling merchandise in terms of quantity sold
17 would be? You can do a general category, say,
18 apparel or jewelry or gift items?

19 A Apparel.

20 Q Apparel. And your best-selling merchandise
21 in terms of, say, dollars sold, would that also be
22 apparel?

23 A It would be apparel.

24 Q Do you know which Chi Omega goods generate
25 the largest profit for Chi Omega in the Chi O

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF COURT REPORTER

I, Kelly Stephens, Registered Professional Reporter, Licensed Court Reporter for the States of Tennessee and Mississippi, do certify that the above deposition was reported by me and that the foregoing transcript is a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am not an employee of counsel or any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

Subscribed and sworn to before me when taken, this 23rd day of March, 2015.



KELLY STEPHENS, TN #477, MS #1865

Expiration Dates: 6/30/16, 4/1/16

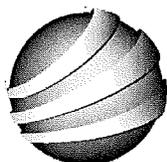
In the Matter Of:

OMEGA S.A. V. ALPHA PHI OMEGA

91157504(Parent)

WYNN SMILEY

April 09, 2015



ESQUIRE
SOLUTIONS

800.211.DEPO (3376)
EsquireSolutions.com

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

3 OMEGA S.A. (OMEGA AG)
4 (OMEGA LTD.),
5 Opposer,

6 v.

7 ALPHA PHI OMEGA, INC.,
8 Applicant.

Mark: ALPHA PHI OMEGA
Opp. No.: 91157504 (Parent)
Serial No.: 77950436

9 OMEGA S.A. (OMEGA AG)
10 (OMEGA LTD.),
11 Opposer,

12 v.

13 ALPHA PHI OMEGA, INC.
14 Applicant.

Mark: ALPHA PHI OMEGA
(Greek letters)
Opp. No.: 91157505 (Child)
Serial No.: 77905236

15 The deposition upon oral examination of
16 WYNN SMILEY, a witness produced and sworn before me,
17 Robin P. Martz, RPR, Notary Public in and for the
18 County of Johnson, State of Indiana, taken on behalf
19 of the Opposer at the offices of Alpha Tau Omega, One
20 North Pennsylvania Street, Indianapolis, Indiana, on
21 April 9, 2015, at 3:12 p.m., pursuant to the Indiana
22 Rules of Trial Procedure.
23
24
25

1 Q And can you tell me a little bit about the badge
2 that was, the original badge that was designed?

3 A Yes.

4 Q Would it be what appears on or can you tell me
5 which of the ones on AT003 it would be?

6 A It would be the fourth one in the top line, the
7 Glazebrook badge.

8 Q And do you know when it was designed?

9 A 1865.

10 Q How do you know it was designed in 1865?

11 A The founder, Glazebrook, designed the badge. And
12 immediately after the founding of the fraternity,
13 he wore that badge as a member.

14 Q And has the look of that badge ever changed?

15 A It's gotten smaller, but the face of the badge, the
16 markings on the face have not changed.

17 Q When was merchandise, other than the badges, first
18 sold?

19 A I don't know.

20 Q Do you know what the first piece of merchandise was
21 besides the badge?

22 A No.

23 Q Do you know if the first piece of merchandise sold
24 was the badge?

25 A I don't know.

1 Q Do you have documents evidencing your sales of
2 merchandise with the Alpha Tau Omega marks?

3 A Yes.

4 Q Do you know how far back they go?

5 A I don't. I don't.

6 Q Rough estimate, a year, five years, a hundred
7 years?

8 A I don't know. Could be as far as back as 150
9 years. I would have to go back in the archives to
10 see if there were receipts written for sale of the
11 badge.

12 Q How do you know the badge has been continuously
13 used since 1865?

14 A Historical documents, the display of the evolution
15 of the badge from different eras.

16 Q Can you just describe generally what these
17 historical documents would be?

18 A The history of the fraternity, history books
19 written by members of the fraternity, leaders in
20 the fraternity, written about the fraternity, the
21 fact that a badge is a badge of membership, and we
22 have been initiating men since 1865 continuously.

23 Q So would there be any way to know whether the first
24 piece of merchandise that was sold was the badge?

25 A I have no idea.

1 A Including the declaration.

2 Q Was that the extent of the documents?

3 A And the attachments, yes, everything attached.

4 Q And you didn't view any of the trademark
5 applications or registrations prior to coming here?

6 A No.

7 Q Do you know if the Alpha Tau Omega mark, the word
8 mark, is used on jewelry?

9 A I don't know that.

10 Q Do you know if the Alpha Tau Omega Greek letters
11 are used on jewelry?

12 A Yes.

13 Q Do you know for how long those, the Greek letter
14 mark has been used on jewelry?

15 A I do not.

16 Q Do you know if the crest mark is used on jewelry?

17 A It is.

18 Q Do you know for how long the crest mark has been
19 used on jewelry?

20 A I do not.

21 Q Do you know if the Alpha Tau Omega word mark is
22 used on apparel?

23 A It is.

24 Q Do you know how long it has been used on apparel?

25 A No.

1 Q Do you know if the Greek letters Alpha Tau Omega
2 are used on apparel?

3 A Yes.

4 Q Do you know how long they have been used on
5 apparel?

6 A I do not.

7 Q Do you know if the crest mark is used on apparel?

8 A Yes.

9 Q Do you know for how long the crest mark has been
10 used on apparel?

11 A I do not.

12 Q Would Alpha Tau Omega have documents showing when
13 the Greek letter Alpha Tau Omega was first used on
14 apparel?

15 A I don't know.

16 Q Do you know if there would be documents showing
17 when the Greek letter Alpha Tau Omega was used on
18 jewelry?

19 A I don't know.

20 Q Same question for the Alpha Tau Omega word mark for
21 apparel?

22 A Yes. I'm sorry, what?

23 Q Do you have documents that would show?

24 A Oh, I don't know.

25 Q How about for the Alpha Tau Omega word mark for

1 Q And that would be true of the Alpha Tau Omega word
2 mark, the Alpha Tau Omega Greek letter mark, and
3 the crest mark?

4 A Yes.

5 MR. GULICK: I don't have any further
6 questions.

7 CROSS-EXAMINATION

8 BY MR. WHEAT

9 Q Mr. Smiley, how old are you?

10 A Fifty-three.

11 Q For as long as you can remember, have fraternities
12 put their letters or their name on merchandise?

13 A Yes.

14 Q Such as clothing?

15 A Yes.

16 Q Such as jewelry?

17 A Yes.

18 Q How extensive are the archives of Alpha Tau Omega?

19 A Going back to 1865.

20 Q Is the use of the word mark Alpha Tau Omega
21 something of recent vintage or would there be
22 various old photographs and magazines?

23 A Various photographs, magazines.

24 Q Reflecting --

25 A Absolutely.

1 Q -- the use of the word mark or the letters?

2 A Yes.

3 Q Okay. I kind of got confused on one question, but
4 I think I'm following it now. In the lines of
5 questions, I assume you understood Mr. Gulick when
6 he said letter mark mean just the letters alone,
7 and that the badge itself was a different insignia?

8 A Yes.

9 Q So but the badge itself does have the Greek letters
10 on it?

11 A Correct.

12 Q Twice actually. Well, Alpha twice and Omega twice,
13 and Tau once in the center?

14 A Correct.

15 Q And there's no question in your mind and the
16 historical records supports that the Glazebrook
17 badge was created in 1865?

18 A Correct.

19 Q And I believe you testified, and I don't remember
20 what your word was, but that the elements or the
21 visual elements have never changed?

22 A Correct. The face of the badge, the elements on
23 the face of the badge have been consistent.

24 Q Yeah. So the original badge was one layer. So now
25 there's the gold layers of background, and then the

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

3 OMEGA S.A. (OMEGA AG)
4 (OMEGA LTD.),
5 Opposer,

6 v.

7 ALPHA PHI OMEGA, INC.,
8 Applicant.

9 Mark: ALPHA PHI OMEGA
10 Opp. No.: 91157504 (Parent)
11 Serial No.: 77950436

12 OMEGA S.A. (OMEGA AG)
13 (OMEGA LTD.),
14 Opposer,

15 v.

16 ALPHA PHI OMEGA, INC.
17 Applicant.

18 Mark: ALPHA PHI OMEGA
19 (Greek letters)
20 Opp. No.: 91157505 (Child)
21 Serial No.: 77905236

22 Job No. 311284

23 The deposition of WYNN SMILEY, taken in the
24 above-captioned matter, on April 9, 2015, and at the
25 time and place set out on the title page hereof.

It was requested that the deposition be
transcribed by the reporter and that same be reduced
to typewritten form.

It was agreed that the reading and signature
by the deponent to the deposition were waived on
behalf of the parties, the witness being present and
consenting thereto, the deposition to be read with the
same force and effect as if signed by said deponent.

1 STATE OF INDIANA
2 COUNTY OF JOHNSON

3 I, Robin P. Martz, a Notary Public in and for
4 said county and state, do hereby certify that the
5 deponent herein was by me first duly sworn to tell the
6 truth, the whole truth, and nothing but the truth in
7 the aforementioned matter;

8 That the foregoing deposition was taken on
9 behalf of the Opposer; that said deposition was taken
10 at the time and place heretofore mentioned between
11 3:12 p.m. and 4:43 p.m.;

12 That said deposition was taken down in
13 stenograph notes and afterwards reduced to typewriting
14 under my direction; and that the typewritten
15 transcript is a true record of the testimony given by
16 said deponent;

17 And that the reading and signature by the
18 deponent to the deposition were waived on behalf of
19 the parties plaintiff and defendant by their
20 respective counsel, the witness being present and
21 consenting thereto, the deposition to be read with the
22 same force and effect as if signed by said deponent.

23 I do further certify that I am a disinterested
24 person in this cause of action; that I am not a
25 relative of the attorneys for any of the parties.

1 IN WITNESS WHEREOF, I have hereunto set my
2 hand and affixed my notarial seal this 22nd day of
3 April, 2015.

4
5
6 *Robin P. Martz*
7

8 _____
9 Robin P. Martz, Notary Public

10 My Commission expires:
11 March 2, 2016

12 Job No. 97108
13
14
15
16
17
18
19
20
21
22
23
24
25

In the Matter Of:

OMEGA S.A. V. ALPHA PHI OMEGA

91157504(Parent)

JANINE WAMPLER

April 09, 2015



ESQUIRE
S O L U T I O N S

800.211.DEPO (3376)
EsquireSolutions.com

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

3 OMEGA S.A. (OMEGA AG)
4 (OMEGA LTD.),
5 Opposer,

6 v.

7 ALPHA PHI OMEGA, INC.,
8 Applicant.

Mark: ALPHA PHI OMEGA
Opp. No.: 91157504 (Parent)
Serial No.: 77950436

9 OMEGA S.A. (OMEGA AG)
10 (OMEGA LTD.),
11 Opposer,

12 v.

13 ALPHA PHI OMEGA, INC.
14 Applicant.

Mark: ALPHA PHI OMEGA
(Greek letters)
Opp. No.: 91157505 (Child)
Serial No.: 77905236

15 The deposition upon oral examination of
16 JANINE WAMPLER, a witness produced and sworn before
17 me, Robin P. Martz, RPR, Notary Public in and for the
18 County of Johnson, State of Indiana, taken on behalf
19 of the Opposer at the offices of Alpha Tau Omega, One
20 North Pennsylvania Street, Indianapolis, Indiana, on
21 April 9, 2015, at 1:00 p.m., pursuant to the Indiana
22 Rules of Trial Procedure.
23
24
25

1 A Okay.

2 Q So when you oversaw the Alpha Chi Omega mark, I'm
3 going to refer first, did you oversee the use of
4 the word mark Alpha Chi Omega?

5 A Yes.

6 Q Did you oversee the use of the Greek letters Alpha
7 Chi Omega?

8 A Yes.

9 Q And did you oversee the use of the Alpha Chi Omega
10 coat of arms?

11 A Yes.

12 Q And was that part of your original responsibilities
13 back in 2003?

14 A Yes.

15 Q Let's start with the word mark Alpha Chi Omega.
16 Can you tell me what merchandise was sold with the
17 Alpha Chi Omega word mark?

18 A Obviously, apparel. It appears on some jewelry,
19 any kind of merchandise that a licensed vendor may
20 sell, if it's a cup, if it's a belt, if it's a pair
21 of shorts.

22 Q Would the same be true of the Alpha Chi Omega Greek
23 letter mark?

24 A Yes.

25 Q And would the same be true of the Alpha Chi Omega

1 started selling products, apparel products with the
2 Alpha Chi Omega word mark?

3 A I would have to look at records. I don't recall.

4 Q How about for the Alpha Chi Omega Greek letter
5 mark?

6 A On apparel, the same, I don't recall.

7 Q How about for the Alpha Chi Omega coat of arms
8 mark?

9 A I don't recall.

10 Q Can you tell me when watches were first sold with
11 any of the three Alpha Chi Omega marks?

12 A No, I cannot.

13 Q How about for what you referred to as accessory
14 jewelry?

15 A I cannot.

16 Q How about for badges?

17 A Yes. On our founding day October 15, 1885.

18 Q And that would have been a badge?

19 A Yes.

20 Q And would that have been the words Alpha Chi Omega?

21 A No, the letters.

22 Q Do you mean the Greek letters?

23 A The Greek letters.

24 Q Was part of your responsibilities at Alpha Chi
25 Omega controlling how the Alpha Chi Omega marks

1 be licensed for sale by Alpha Chi Omega. Would
2 that be correct?

3 A This one doesn't contain our marks, that particular
4 one.

5 Q This particular one would not then sold by Alpha
6 Chi Omega?

7 A Yes.

8 Q And the same would be true, for instance --

9 A No. I'm saying, yes, it would be part of our
10 product line.

11 Q So an accessory similar to the one that you see --

12 A Yes, a carnation. And a carnation is our official
13 flower. That's why that piece appears on there.

14 Q That piece does not have the Alpha Chi Omega
15 mark --

16 A It does not have the insignia on it.

17 Q Would any of these particular pictures that appear
18 on AX002 to AX003 not be sold or licensed for sale
19 by Alpha Chi Omega?

20 A They would all be.

21 Q Turning to AX001. Can you tell me what this is a
22 picture of?

23 A This is a picture of our first badge that was made
24 in 1885.

25 Q Do you know where this picture came from?

1 Q -- substantiate that --

2 A Yes.

3 Q -- particular series of events?

4 A Yes. There are audio recordings as well of our
5 founders telling the story.

6 Q Are there documents that show the continuous use of
7 the Alpha Chi Omega marks from 1885 to the present?

8 A Yes, presuming I understand the question.

9 Q Can you tell me what your understanding of the
10 question was?

11 A When you say documents, I'm not sure. Do you mean
12 official documents? Do you mean -- there's
13 magazine articles. There are all sorts of
14 photographs in our archives for any given year in
15 time.

16 Q Invoices?

17 A Sure.

18 Q Was merchandise always licensed out from Alpha Chi
19 Omega?

20 A I don't know the answer to that.

21 Q So you don't know if merchandise was created by
22 third parties for sale for Alpha Chi Omega?

23 A I mean, third parties create it now.

24 Q But I'm talking about -- I understand now they do.

25 A Unlicensed?

1 A No.

2 Q Did you provide the exhibits that appear with your
3 declaration in Exhibit 1?

4 A I provided, yes, the information to Jack so that he
5 could put them with it, yes.

6 Q So these particular exhibits that follow from
7 AX1 --

8 A Uh-huh.

9 Q -- to AX19?

10 A Yes.

11 Q They would have been provided by you?

12 A Yes.

13 Q And you've mentioned on several occasions documents
14 that the company has to establish the use of the
15 badge or the purchase of the badge in 1885 as well
16 as the letters between Alpha Chi Omega and the
17 jeweler; is that correct?

18 A Yes.

19 Q And the different jewelers that were --

20 A Yes.

21 Q -- involved in a particular point in time. And
22 invoices as well showing the use of the or sales of
23 the particular mark?

24 A You mentioned invoices. We have different
25 documents. I don't know for sure that there are

1 STATE OF INDIANA

2 COUNTY OF JOHNSON

3 I, Robin P. Martz, a Notary Public in and for
4 said county and state, do hereby certify that the
5 deponent herein was by me first duly sworn to tell the
6 truth, the whole truth, and nothing but the truth in
7 the aforementioned matter;

8 That the foregoing deposition was taken on
9 behalf of the Opposer; that said deposition was taken
10 at the time and place heretofore mentioned between
11 1:00 p.m. and 3:00 p.m.;

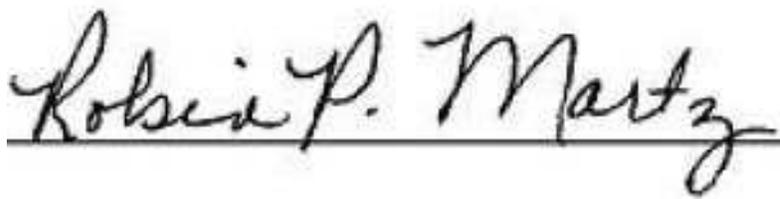
12 That said deposition was taken down in
13 stenograph notes and afterwards reduced to typewriting
14 under my direction; and that the typewritten
15 transcript is a true record of the testimony given by
16 said deponent;

17 And that the reading and signature by the
18 deponent to the deposition were waived on behalf of
19 the parties plaintiff and defendant by their
20 respective counsel, the witness being present and
21 consenting thereto, the deposition to be read with the
22 same force and effect as if signed by said deponent.

23 I do further certify that I am a disinterested
24 person in this cause of action; that I am not a
25 relative of the attorneys for any of the parties.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal this 22nd day of
April, 2015.



Robin P. Martz, Notary Public

My Commission expires:
March 2, 2016

Job No. 97108