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Filing date: **07/24/2015**

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

Proceeding	91197504
Party	Plaintiff Omega SA (Omega AG) (Omega Ltd.)
Correspondence Address	JESS M COLLEN COLLEN IP THE HOLYOKE-MANHATTAN BUILDING, 80 SOUTH HIGHLAND AVENUE OSSINING, NY 10562 UNITED STATES ogelber@collenip.com, tgulick@collenip.com, docket@collenip.com, kmogavero@collenip.com
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Signature	/Kristen A. Mogavero/
Date	07/24/2015
Attachments	Consented Motion to Amend Exhibit 11 to the Affidavit of Thomas P. Gulick.pdf(436140 bytes)

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

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

v.

ALPHA PHI OMEGA,
Applicant.

Mark: ALPHA PHI OMEGA and design
Opp. No.: 91197504 (Parent)
Serial No.: 77950436

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

v.

ALPHA PHI OMEGA,
Applicant.

Mark: AΦΩ
Opp. No.: 91197505 (Child)
Serial No.: 77905236

**CONSENTED MOTION TO AMEND EXHIBIT 11 TO THE AFFIDAVIT OF
THOMAS P. GULICK**

Opposer, Omega S.A. (Omega AG) (Omega Ltd) respectfully requests that Exhibit 11 to the Affidavit of Thomas P. Gulick (D.E. 78) be replaced with Exhibit A as attached hereto. In the original filing a single page (page 17 of the deposition of Wynn Smiley) was inadvertently left out of the Exhibit. The original exhibit, supplemented with the missing page, is included as Exhibit A hereto, which is intended to replace the existing content of Exhibit 11 (D.E. 78). Applicant, through its counsel consented to this request via telephone on July 21, 2015.

Respectfully submitted
for Opposer,



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JMC/TPG/KAM
Dated: July 24, 2015

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED ELECTRONICALLY WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE.

Date: July 24, 2015



CERTIFICATE OF SERVICE

I, Maighan Macheinski, hereby certify that a copy of the foregoing Opposer's Consented Motion to Amend Exhibit 11 to the Affidavit of Thomas P. Gulick was served by First Class U.S. Mail, postage prepaid on this 24th Day of July, 2015 upon

Jack A. Wheat
Stites & Harbison PLLC
400 W Market St Ste 1800
Louisville, KY 40202-3352

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

EXHIBIT A

EXHIBIT 11

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 Mark: ALPHA OMEGA EPSILON
7 (Greek letters)
8 Opp. No.: 91214449 (Parent)
9 Serial No.: 85855823

v.

10 ALPHA OMEGA EPSILON, INC.,
11 Applicant.

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

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

v.

18 ALPHA OMEGA EPSILON, INC.,
19 Applicant.

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

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

v.

ALPHA OMEGA EPSILON, INC.,
Applicant.

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

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

v.

ALPHA OMEGA EPSILON, INC.,
Applicant.

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APPEARANCES

FOR THE OPPOSER:

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FOR THE APPLICANT:

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1 WYNN SMILEY,
2 having been first duly sworn to tell the truth, the
3 whole truth, and nothing but the truth took the stand
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GULICK

7 Q Can you state your name and address for the record.

8 A Wynn Smiley, 8463 Pine Tree Boulevard,
9 Indianapolis.

10 Q Mr. Smiley, can you tell me where you're employed?

11 A Alpha Tau Omega.

12 Q And can you tell me your position with the company?

13 A Chief executive officer.

14 Q And have you held any previous positions within the
15 company?

16 A I was director of communication.

17 Q That was prior?

18 A Yes.

19 Q About how long ago was that?

20 A About 18 years ago.

21 Q Can you tell me what your responsibilities are in
22 your current position?

23 A I'm responsible for the management of the National
24 Fraternity and carrying out the directives of the
25 National Fraternity Board of Directors.

1 A Sure. Could range anywhere from clothing to
2 jewelry to educational publications.

3 Q Would the same be true of the Alpha Tau Omega Greek
4 letter mark, same merchandise?

5 A Yes.

6 Q Same would be true for the crest?

7 A Yes.

8 Q Can you tell me what type of jewelry would be sold
9 under those marks?

10 A Any variety of jewelry. Really, we leave it up for
11 the jeweler to propose pieces, and then we sign off
12 on them.

13 Q And are you in charge of signing off on all of the
14 merchandise that gets sold?

15 A Yes.

16 Q Do you know when the first piece of clothing was
17 sold with an Alpha Tau Omega mark?

18 A I do not.

19 Q Do you know when the first piece of jewelry was
20 sold with the Alpha Tau Omega mark?

21 A Sold, no.

22 Q Does Alpha Tau Omega manufacture any products?

23 A Jewelry or clothing, no. Some publications, yes.

24 Q And do you license the use of the Alpha Tau Omega
25 marks to third parties?

1 the Greek letter mark? Is it the crest?

2 A I don't know.

3 Q So the badges that appear on ATO03?

4 A Yes.

5 Q These would be examples of ones that someone would
6 have to purchase. Would that be correct?

7 A Yes.

8 Q But if you're a member, you don't have to purchase
9 the badge, you're given one; is that correct?

10 A Correct.

11 Q So then these would be sold to persons other than
12 members?

13 A No. They are not available to anyone other than
14 members. Members frequently buy a second badge.
15 If they want a more ornate badge or if they lose an
16 original badge, they will buy a replacement badge.

17 Q Was there ever a point in time where members had to
18 purchase the badge?

19 A Not that I'm aware of.

20 Q So then to your knowledge it's always been that
21 members receive a badge upon membership?

22 A To my knowledge.

23 Q If we look at page ATO6 --

24 A Yes.

25 Q -- would these be further examples of jewelry sold

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

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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 Robin P. Martz, Notary Public

9
10 My Commission expires:
11 March 2, 2016

12 Job No. 97108
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