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

Proceeding	91214449
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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

OPPOSER,

vs.

ALPHA OMEGA EPSILON, INC.

APPLICANT.

Opposition Nos. 91214449 (Parent)  
91214452  
91214453  
91214454

Serial Nos. 85/855823  
85/857062  
85/857065  
85/855839

**ALPHA OMEGA EPSILON’S REPLY  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

The Omega marks are most commonly used with timepieces.<sup>1</sup> And although there may be notoriety associated “with opposer’s mark with respect to opposer’s timepieces,” the Board has at least twice held, “[t]here is no evidence that opposer has established fame with respect to goods other than watches.” *Omega SA v. Hanif*, 2013 TTAB LEXIS 420, at \*17(TTAB August 5, 2013)); *see also Omega S.A. v. Alliant Techsystems Inc.*, 2015 TTAB LEXIS 124, at \*18 (TTAB April 29, 2015) (“OMEGA mark is famous, *but only for watches*” (emphasis added)).

This Opposition do not involve watches<sup>2</sup>, nor does it involve scarves or neckties, the goods recited in Opposer’s clothing registration. This Opposition involves Greek letter membership societies such as fraternities or sororities, the names of which typically consist of a combination of two or three Greek alphabet letters. As both the Courts and the Board recognize, the public recognizes insignia consisting of a combination of two or three Greek letters as a reference to a Greek letter society. “[V]arious combinations of Greek letters, in the mind of the

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<sup>1</sup>*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”).

<sup>2</sup> Although Opposer suggests that the opposed marks have been used for watches, Applicant neither sells watches nor has it sought to register its marks for watches. “We have never sold a watch.” *See Devine Dep.* 47:9-11; *see also* 39:23-25. (Attached).

public, generally refers to fraternities and sororities.” *Abraham v. Alpha Chi Omega*, 781 F.Supp.2d 396, 410 (N.D.Tx. 2011) *aff’d* 708 F.3d 614 (5th Cir. 2013). The Board itself recently so noted, holding **as a matter of law**, the letters EK are not likely to be confused with the Greek alphabet letters for Sigma Kappa Sorority, namely, ΣK, for the *identical goods* because Greek insignia will be “perceived as identifying both Greek letters **and the name of a sorority**.” *New Era Cap Co., Inc., 2014 TTAB LEXIS 302, at \*7* (TTAB July 7, 2014) (emphasis added).

There are 24 letters in the Greek alphabet, and 100s of Greek letter membership societies. It is undisputed that in addition to Applicant, dozens of other such societies use the word, “Omega,” in their name, including (1) Alpha Tau Omega<sup>3</sup>, (2) Alpha Chi Omega<sup>4</sup>, (3) Chi Omega<sup>5</sup>, (4) Alpha Phi Omega<sup>6</sup>, (7) Gamma Alpha Omega<sup>7</sup>, and (8) the Order of Omega<sup>8</sup>. Opposer even acknowledges its awareness of over a dozen membership societies with the word Omega in their name. *See* Def’s Ex. 6 (Opposer’s Response to Interrogatory No. 12).

An even bigger problem with Opposer’s claim is that some large Greek letter organizations with the word “Omega” in their name have been in operation, and have used their insignia on jewelry continuously **since prior to Opposer’s adoption** of the Omega mark in the mid-1890s, including ATΩ since 1865 (*see* Def’s Ex. 1 & 8 ), AXΩ since 1885 (*see* Def’s Ex. 9 & 11), and contemporaneous with Opposer in the mid-1890s, the XΩ Fraternity for women (*see* Def’s Ex.1 & 10 ). Thus, ironically, if there is a likelihood of confusion between the Omega Watch marks and fraternity or sorority jewelry bearing Greek alphabet letters including Ω, then logic would hold that Opposer is an infringer of the ATΩ and AXΩ marks, and perhaps the XΩ

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<sup>3</sup> *See* Defendant’s Exhibits 1 (Registration) & 8 (Smiley Decl.)

<sup>4</sup> *See* Defendant’s Exhibits 9 (Wampler Decl.) & 17 (Registration)

<sup>5</sup> *See* Defendant’s Exhibits 1 (Registration) & 10 (Miraglia Decl.)

<sup>6</sup> *See* Defendant’s Exhibit 12 (Shaver Decl.)

<sup>7</sup> *Id.*

<sup>8</sup> *See* Defendant’s Exhibit 7 and <http://orderofomega.org/>.

marks! Opposer tries to deflect from these crucial undisputed facts with hollow assertions the witnesses were unaware of the *exact day* their respective organization's begin using their insignia for jewelry. Omega's clever spin on their testimony and deflection from the undisputed facts ignores that Wynn Smiley of ATΩ definitively testified the fraternity has used its letters with jewelry continuously since 1865. *See* Smiley Dep. 23:20-24:22 & 35:18-36:23 (attached)<sup>9</sup>. And Janine Wampler of AXΩ definitively testified the sorority has used its letters for jewelry continuously since 1885. *See* Wampler Dep. 10:16-23; 20:21-24; 57:13-18; and 51:6-17 (attached). And Carol Miraglia of XΩ definitively testified of that sorority's use of the insignia for jewelry continuously since 1895. *See* Miraglia Dep. 13:17-14:7 (attached).

It is undisputed that Omega is widely used in the name of fraternities and sororities and in relation to the affinity merchandise members acquire to display their membership in, and affinity for their respective fraternity or sorority. So, especially *apropos* is the Federal Circuit decision only three weeks ago holding the Board was giving inadequate weight to the principle that even when a mark is totally subsumed as a component within the marks of others, in a market space in which the same component is incorporated in marks of *multiple third-parties*, that component is weak, and the simple addition of another word(s) to the accused mark is adequate to educate consumers to differentiate the marks. *Juice Generation, Inc. v. GS Enters. LLC*, 2015 U.S. App. LEXIS 12456, at \*7 (Fed. Cir. July 20, 2015) (“evidence of third-party use of similar marks can ‘show that customers . . . ‘have been educated to distinguish between different . . . marks on the basis of minute distinctions’”). This principle is especially pertinent in relation to the Greek letter combination marks in the fraternity and sorority market space. Indeed, in case law actually

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<sup>9</sup> Omega offers a specious argument that the use of ATΩ insignia with jewelry continuously since 1865 is somehow irrelevant simply because new members do not directly pay for the membership badge issued to them at their initiation into the Order. The ATΩ official actually testified is that the members indirectly pay for their membership badge, the cost is factored into to the initiation fee paid by the new member. *See* Smiley Dep. 39:8-16 (attached).

involving ATΩ, AXΩ, and XΩ, the Court described the Greek merchandise niche market and noted the effect of minute distinctions such a single Greek letter difference in two marks:

Here, the ‘relevant public,’ the target consumers, are the members of the Greek Organizations; only those associated with the Greek Organizations, or perhaps their friends and family members . . . . It is further clear to the Court that members of these Greek Organizations can distinguish between the marks of different Greek Organizations, even if they involve some of the very same letters. A member of Alpha Omicron Pi could certainly distinguish the mark of her organization from the mark of Alpha Delta Pi, despite the fact that they both contain two of the same letters.

*Abraham*, 781 F.Supp.2d at 410-11.

The Federal Circuit’s *Juice Generation* decision is also especially pertinent to diffuse Opposer’s contention we did not show the full extent and duration of use of OMEGA by *each* of the dozens of Greek letter societies with Omega in their name. We did not overburden the record with proof of the extent and duration of use of Omega variants by each and every one of the “Omega” Greek letter societies; we focused generally on the major players. Indeed, even Opposer acknowledges its awareness of more than a dozen of these fraternities and sororities. *See* Def’s Ex. 6 (Opposer’s Response to Interrogatory No. 12). The undisputed existence of multiple Greek societies with the word Omega in their name is more than adequate evidence. As explained by the Federal Circuit in *Juice Generation*, the key consideration is not the extent and duration of third-party use. Rather the undisputed fact of multiple third-party registrations or use of variants on the mark alone is “evidence . . . powerful on its face,” even without proof of “the extent and impact” of the various third-party uses. *Id.*, 2015 U.S. App. LEXIS 12456, at \*9 (“[t]he ‘specifics’ as to the extent and impact of use of the third parties’ marks may not have been proven, but the . . . [undisputed evidence of third-party use] *is nonetheless powerful on its face*”) (emphasis added).

### Summary Judgment Is Appropriate

Omega here opposes (1) the application to register the ΑΩΕ Greek letter insignia as a for “Jewelry” and for “Hats; Jackets; Shirts; Sweat pants; Sweat shirts; Sweaters” (the ‘823 Application), and (2) the application to register to register the ALPHA OMEGA EPSILON words for “Hats; Jackets; Shirts; Sweat pants; Sweat shirts; Sweaters” (the ‘839 Application). In addition to these **trademarks**, Opposer here also opposes the applications to register (1) the words ALPHA OMEGA EPSILON, (the ‘065 Application), and (2) and the ΑΩΕ coat-of-arms, (the ‘062 Application) as **collective membership marks** used to denote “membership in a professional and social collegiate sorority for student and alumna members.”<sup>10</sup>

Opposer asserts these marks are likely to cause confusion and dilute its marks. As to the alleged likelihood of confusion, Opposer, of course, bears the burden of proof. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 951 (Fed. Cir. 2000). And as to the fame requisite to a dilution claim, “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).

Summary Judgment is no longer a disfavored remedy. As a result of the Supreme Court’s *Anderson v. Liberty Lobby* line of cases, a party bearing the burden of proof may no longer merely rest on its pleadings or conclusory assertions in opposition to a Motion for Summary Judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Now, Summary Judgment is mandatory when the party bearing the burden of proof fails to come forward and demonstrate the existence of genuine issues of material fact. When the party bearing the burden 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

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<sup>10</sup> It is curious to note Applicant’s use of its Greek letter insignia, ΑΩΕ, is registered as a collective membership mark with the PTO, *See* Def’s Ex. 3. Opposer does not challenge that registration, but here challenges registration of the phonetically equivalent words as a membership mark.

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. Opposer does not actually dispute *any* of the statements of undisputed fact set forth in AΩE's opening brief at pps.9-12. Instead, it merely contends that these facts are immaterial, irrelevant, or of little weight. Especially telling is that notwithstanding concurrent use by the parties of the marks for over 30 years, there have been no known instances of confusion. *See* Statement of Undisputed Fact No. 11. Opposer nonetheless offers hollow cries, "there are fact issues." Well if so, what are those issues? Other than conclusory assertions "there are fact issues," Opposer has totally neglected its burden come forward *with anything* to show the existence of any genuine issue of material fact supporting its assertions that use of the AΩE Sorority's insignia is at all likely to cause confusion or dilution.

**Marks Connoting a Sorority are Too Dissimilar From Opposer's Marks to Cause a Likelihood Of Confusion, Especially Considering the Distinct Channels of Trade.**

Opposer's conclusory contentions completely ignore the connotation of the Applicant's marks. Insignia consisting of a combination of Greek alphabet letters are recognized as a reference to a fraternity or sorority. "[V]arious combinations of Greek letters, in the mind of the public, generally refers to fraternities and sororities." *Abraham*, 781 F.Supp.2d at 410. The Board itself agrees holding **as a matter of law** the Greek letter insignia ΣΚ will be "perceived as identifying . . . the name of a sorority." *New Era*, 2014 TTAB LEXIS 302, at \*7.

Ignoring the connotation of Applicant's marks, Opposer essentially contends that simply because the marks 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." *Alliant*, 2015 TTAB LEXIS 124, at \*21. Here though, we are not dealing with Applicant's use of the word Omega as the first

word in its name. Further, 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 entireties 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). Viewing Applicant’s marks as a whole, consumers will readily recognize the AΩE insignia as a reference to a fraternity or sorority. *See Abraham*, 781 F.Supp.2d at 410 and *New Era Cap*, 2014 TTAB LEXIS 302, at \*7. And because of widespread use by Greek Societies of the word Omega, the Federal Circuit’s decision just this July in *Juice Generation* is especially pertinent. In that case, the Federal Circuit vacated a Board finding that PEACE LOVE AND JUICE for juice bar services is likely to be confused with PEACE & LOVE registered for restaurant services,. As the Federal Circuit there explained, even when the senior user’s mark is totally subsumed as a component within the marks of others, if the challenged marks are used in a market space in which the same component is incorporated in marks of multiple third-parties, that component is weak, and the simple addition of another word(s) to the accused marks can be adequate to differentiate the marks. *Id.*, 2015 U.S. App. LEXIS 12456, at \*7 (“evidence of third-party use of similar marks can ‘show that customers . . . ‘have been educated to distinguish between different . . . marks on the basis of minute distinctions’”).

Opposer’s other point is that when Applications recite a class of goods without limitation, here jewelry and hats, jackets, shirts, sweat pants, sweat shirts and sweaters, “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

insignificance 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* Undisputed Facts, No. 2. Indeed, even in an Omega case, the Board appears to have found the presumption inapplicable. *See Alliant, 2015 TTAB LEXIS 124, at \*33-34*. As the Board there noted, the Omega Watch channel of trade consists of “its own stores, authorized Omega Dealers and boutiques.” Even though many of the goods recited in the opposed 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.* So too here, the marks are generally recognizable as a reference to a Greek letter society, used with affinity merchandise sold in niche markets, not at Omega stores, authorized Omega Dealers and boutiques. Consumers will not “consider the goods to emanate from the same source.” *Id.*

Further, what Opposer’s clever argument relating to “presumed overlap” ignores is the fact that *Applicant has repeatedly offered to narrow its recitation* of goods to limit it to Greek affinity merchandise marketed only in Greek merchandise markets. The markets do not overlap and Applicant is agreeable to limiting its recitation to so provide.

#### **Opposer’s Dilution Claim Fails as a Matter Of Law.**

“There is no evidence that opposer has established fame with respect to goods other than watches.” *Hanif, 2013 TTAB LEXIS 420, at \*17. See also Alliant 2015 TTAB LEXIS 124, at \*18* (“OMEGA mark is famous, *but only for watches*”). As best we can tell, these Board 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 (1<sup>st</sup> Cir. 1998)). It appears the Board has never held Opposer's marks to be famous for dilution purposes.

In our opening brief we explicitly point out that Omega has done nothing to demonstrate any fame associated with its mark "prior to Alpha Omega Epsilon's commencement of use of the" AOE insignia in 1983. *See* Motion for Summary Judgment at p. 19. Rather than come forward with proof of any fame pre-dating AOE's adoption and use of the marks in issue, Opposer suggests that it need only show fame "prior to the filing date of the opposed applications." This assertion is totally contrary to the Lanham Act requirement that a dilution claim can only be viable 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). 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 notes in *Toro*, ***when a use based application*** is opposed, 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 suggests the Federal Circuit overruled this distinction when the ITU pertinent excerpt from *Toro* was quoted in *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1375 (Fed. Cir. 2012). It is quite an illogical leap to contend that merely 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 mid-1980s.<sup>11</sup> The putative "proof" presented by Opposer, advertising, sales and marketing data from 2000 to 2009 is completely irrelevant to the actual question at hand which is whether the Opposer's marks were generally famous for dilution purpose *prior to the mid-1980s*. 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 AΩE's commencement of use of its marks. The showing made by Opposer is totally irrelevant to the dilution issue here. The Opposer's dilution claim fails as a matter of law.

### **CONCLUSION**

If ever a case were appropriate for summary judgment, this is it. Even though the parties have co-existed for over 30 years, neither party is aware of even a single instance of confusion. There are no genuine issues of material fact relating to claims of likelihood of confusion or dilution. Opposer's claims are without legal and factual basis; there are no issues which require trial for resolution. Alpha Omega Epsilon is entitled to a judgment as a matter of law.

Respectfully requested,

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Counsel for Alpha Omega Epsilon

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<sup>11</sup> Opposer takes a timid stab at the proof relating Applicant's commencement of use of the marks, relying on a single deposition passage in which a witness testified AΩE is unaware of any existing "records" relating to the actual very first sale of merchandise bearing its insignia. Regardless, it is undisputed the marks have continuously been in use since 1983 when the sorority was founded, and although tangible records of the earliest sales of merchandise might be unavailable, it is undisputed there is tangible proof showing AΩE use of its marks on merchandise since at least 1984. *See* Devine Dep. 32:1-23; 38:1-21; 41:13-16; 42:6-12; 89:10-90:14.

**In the Matter Of:**

**OMEGA S.A. V. ALPHA PHI OMEGA**

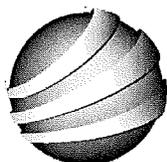
91157504(Parent)

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**WYNN SMILEY**

*April 09, 2015*

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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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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 The deposition upon oral examination of  
23 WYNN SMILEY, a witness produced and sworn before me,  
24 Robin P. Martz, RPR, Notary Public in and for the  
25 County of Johnson, State of Indiana, taken on behalf  
of the Opposer at the offices of Alpha Tau Omega, One  
North Pennsylvania Street, Indianapolis, Indiana, on  
April 9, 2015, at 3:12 p.m., pursuant to the Indiana  
Rules of Trial Procedure.

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 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 Q A Greek store, I guess we have to define that. A  
2 store that specializes in selling fraternity and  
3 sorority merchandise?

4 A Yes.

5 Q Or maybe a private bookstore off campus might carry  
6 fraternity and sorority merchandise?

7 A Yes.

8 Q Do your incoming members pay a fee in association  
9 with becoming a member?

10 A Yes.

11 Q Is part of that, the purpose of part of that fee to  
12 fund the member badge they are provided?

13 A Yes.

14 Q So it is indirectly purchased by the incoming  
15 member?

16 A Indirectly.

17 Q When Affinity is considering expanding a product  
18 line, do they obtain suggested pricing from the  
19 vendors?

20 A As far as I know.

21 Q I believe you testified earlier today that you  
22 don't really know how many vendors you have, but  
23 certainly it's more than dozens?

24 A Yes.

25 Q More than scores?

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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  
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**In the Matter Of:**

**OMEGA S.A. V. ALPHA PHI OMEGA**

91157504(Parent)

**JANINE WAMPLER**

*April 09, 2015*



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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 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

10 v.

11 ALPHA OMEGA EPSILON, INC.,  
12 Applicant.

---

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

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

19 v.

20 ALPHA OMEGA EPSILON, INC.,  
21 Applicant.

---

22 OMEGA S.A. (OMEGA AG)  
23 (OMEGA LTD.),  
24 Opposer,

25 Mark: ALPHA OMEGA EPSILON  
& Design  
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.

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.;

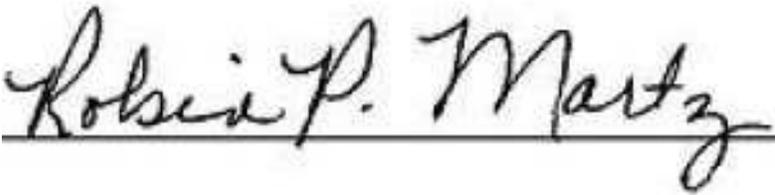
12 That said deposition was taken down in  
13 stenograph notes and afterwards reduced to typewriting  
14 under my direction; and that the typewritten  
15 transcript is a true record of the testimony given by  
16 said deponent;

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.

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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

**In the Matter Of:**

**OMEGA vs. ALPHA OMEGA**

91214449 (Parent)

**CAROL MIRAGLIA**

*April 15, 2015*



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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

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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

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

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

6  
7 VS.

8  
9 ALPHA OMEGA EPSILON, INC. ,  
10 APPLICANT

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23 DEPONENT: AMY DEVINE

24 DATE: JUNE 1, 2015

25 REPORTER: JAMIE ROLL

1 Q. Okay. And do you know when that adoption took  
2 place?

3 A. Of what adoption?

4 Q. The Greek letter mark?

5 A. It's at our inception.

6 Q. Okay. And when would that have been?

7 A. 1983.

8 Q. And do you know what were the first goods --  
9 strike that. Does Alpha Omega Epsilon sell goods with  
10 the Greek letter mark on it?

11 A. The sorority, yes. We don't sell any goods.

12 Q. Do you know if goods are sold with the Alpha  
13 Omega Epsilon mark?

14 A. Yes.

15 Q. Are they sold with your permission?

16 A. Yes.

17 Q. Can you tell me what the first goods were sold  
18 with the Alpha Omega Epsilon Greek letter mark with your  
19 permission?

20 A. I would have to say our badges.

21 Q. Okay. And why would you say your badges?

22 A. Because they are the oldest material that we  
23 know of.

24 Q. We may go back there, but. Have you seen this  
25 particular document before?

1 Q. You may have. But do you generally know?

2 A. When it was first used on jewelry? In the  
3 late -- or excuse me. 1984, '85ish.

4 Q. Okay. And do you know when it would have been  
5 first used with clothing?

6 A. I would say '83, '84.

7 Q. Do you know if there's ever been any lapse of  
8 time where this particular mark was not being used on  
9 clothing?

10 A. There has been no lapse in time, ever.

11 Q. Since 1983?

12 A. Yep.

13 Q. Okay. In association with clothing?

14 A. In association --

15 Q. Would the same be true of jewelry?

16 A. Yes, it would be the same.

17 Q. Getting back to Exhibit 3, again.

18 A. Okay.

19 Q. Would this mark have been continuously used  
20 since 1983?

21 A. Yes.

22 Q. And I'll show you what we'll mark as 5.

23 (EXHIBIT 5 MARKED FOR IDENTIFICATION)

24 Q. Have you seen this particular document before?

25 A. I have not.

1 Q. Okay. I'm going to reference what's in the  
2 upper right-hand corner again. Would that be the words  
3 Alpha Omega Epsilon as you use on products?

4 A. Yes.

5 Q. And can you tell me what products are sold  
6 with your permission with that Alpha Omega Epsilon word  
7 mark?

8 MR. WHEAT: Once again, Tom, I think the board  
9 directed you to limit it to the goods for which  
10 they're seeking to register it, plus you can also  
11 ask if they've used it for the types of products  
12 that you base the opposition on. I think to ask  
13 her to name all of the types of products is going  
14 too broad and wasting time.

15 BY MR. GULICK:

16 Q. Can you tell me if the Alpha Omega Epsilon  
17 mark is used on jewelry, the word mark?

18 A. Yes.

19 Q. Can you tell me what types of jewelry?

20 A. Pins, for example.

21 Q. Any other pro -- any other jewelry products?

22 A. Not that I'm aware of.

23 Q. Has the Alpha Omega Epsilon word mark ever  
24 been used on watches?

25 A. No.

1 A. Sorry, I don't know.

2 Q. Okay. How about with t-shirts?

3 A. This specific word mark?

4 Q. Uh-huh?

5 A. I don't know. Do you mind if I get some  
6 water.

7 Q. Uh-huh.

8 A. Okay. Can we take a five-minute break?

9 MR. WHEAT: Yeah, it's been over an hour now.

10 (OFF THE RECORD)

11 BY MR. GULICK:

12 Q. I apologize, I may have lost my place. But,  
13 well, just want to ask you, do you know when the word  
14 Alpha, the word mark, Alpha Omega Epsilon was first used  
15 on t-shirts?

16 A. Yeah. 1984.

17 Q. Okay. And would that be another example where  
18 the product -- the mark's continuously used on T-shirts  
19 since 1984?

20 A. I'm sorry. I don't understand that question.

21 Q. Was the word mark Alpha Omega Epsilon --

22 A. Uh-huh.

23 Q. -- used on T-shirts continuously since 1984?

24 A. Yes.

25 Q. Have you seen this particular document before?

1 A. No.

2 Q. Okay. In the upper right-hand corner there's  
3 a reference, again, to the word mark Alpha Omega  
4 Epsilon?

5 A. Uh-huh.

6 Q. And has this word mark been used in  
7 association with membership in a professional or social  
8 collegiate sorority since -- when has it been used since  
9 I should say?

10 A. Since our inception.

11 Q. Okay. 1980 -- roughly 1983?

12 A. Correct.

13 Q. And continuously used, the word mark has been  
14 continuously used?

15 A. Correct.

16 Q. Does Alpha Omega Epsilon have a meaning?

17 A. What do you mean by "meaning?"

18 Q. In other words, is there a reason that Alpha  
19 Omega Epsilon was selected for the name of the sorority?

20 A. There's some tales.

21 Q. Okay. Please tell me?

22 A. One of the tales is that Alpha and Omega are  
23 in the Bible, beginning and the end; and used for  
24 engineering, so kind of like the beginning and end of  
25 engineering.

1 own price point for the different products.

2 Q. Do you play any part in setting the price  
3 range for any of the products?

4 A. We do not.

5 Q. How about for pins, price -- sorry. Let me  
6 get it right on the record. The price range for pins  
7 with the Alpha Omega Epsilon marks?

8 A. You know, under \$70 is a good estimate.

9 Q. Do you know what the price range would be for  
10 watches?

11 A. We have never sold a watch.

12 Q. Do you know what the price range would be for  
13 a hat?

14 A. Anywhere from maybe 10 to \$25.

15 Q. Can anyone purchase a product or goods bearing  
16 the Alpha Omega Epsilon Greek letter mark?

17 A. Yes.

18 Q. Would the same be true of the Alpha Omega  
19 Epsilon word mark?

20 A. Yes.

21 Q. And would the same be true of the, what we've  
22 referred to, as the crest mark?

23 A. No.

24 Q. Okay. Can you tell me, are there certain  
25 goods that not everyone can purchase?

1 line 7 look a little bit different from the printing on  
2 line 6?

3 A. Yeah, it does a little bit. Yep. Yeah.

4 Q. Whoever working with the group to get them  
5 approved presumably had this document in their file  
6 involving the review of the application which ultimately  
7 led to their approval as a recognized student  
8 organization?

9 A. Yes.

10 Q. Let's go to page 8 of this exhibit. Do you  
11 know what Owls Run is?

12 A. It's a run in -- I believe in Milwaukee. It's  
13 open to the public. Anybody can sign up for it.

14 Q. Do you recognize that person in the middle of  
15 that photograph? Unless you're a sports fan you might  
16 not.

17 A. I actually do not.

18 Q. The text refers to Al McGuire?

19 A. Uh-huh.

20 Q. And this is a charity run through Milwaukee.  
21 Do you know why we produced this photograph?

22 A. I do.

23 Q. And why is that?

24 A. In the left-hand side of the photo we have a  
25 member, Lou Ann Lathrop, actually wearing the T-shirt,

1 wearing our Greek letters, Alpha Omega Epsilon.

2 Q. With the AOE letters on it?

3 A. Correct.

4 Q. So that was the earliest tangible proof of the  
5 founders putting the insignia on merchandise was at  
6 least in 1984?

7 A. That's correct.

8 Q. The earliest tangible proof we could come up  
9 with?

10 A. Correct.

11 Q. So the founders then, apparently, were  
12 approving the production of merchandise with the  
13 insignia?

14 A. Correct.

15 Q. Whether that was pursuant to a formal written  
16 license agreement, the records don't exist, we don't  
17 know?

18 A. Correct.

19 Q. But they were approving the production of  
20 merchandise?

21 A. Yes.

22 Q. Let's look at page 12 through 15. So this we  
23 know is some minutes from a chapter meeting in February  
24 of 1985?

25 A. That's correct.

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

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

OPPOSER,

vs.

ALPHA OMEGA EPSILON, INC.

APPLICANT.

Opposition Nos. 91214449 (Parent)  
91214452  
91214453  
91214454

Serial Nos. 85/855823  
85/857062  
85/857065  
85/855839

**CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION**

I hereby certify that a true copy of ALPHA OMEGA EPSILON'S REPLY IN SUPPORT OF 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 August, 2015, via First Class Mail, postage prepaid, to:

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