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

| | |
|------------------------|---|
| Proceeding | 91218738 |
| Party | Plaintiff Abercrombie & Fitch Trading Co. |
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| Submission | Stipulation of Facts |
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| Signature | /Jessica D. Bradley/ |
| Date | 10/09/2015 |
| Attachments | Joint Stipulation of Facts.pdf(158040 bytes) |

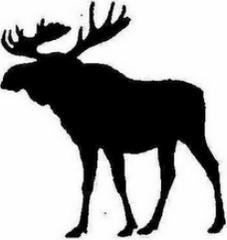
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

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|------------------------------------|---|-------------------------|
| ABERCROMBIE AND FITCH TRADING CO., | § | |
| | § | |
| Opposer, | § | |
| | § | |
| v. | § | Opposition No. 91218738 |
| | § | |
| SCHNITTGER, ISABELLA ELISABETH | § | |
| | § | |
| Applicant. | § | |
| | § | |

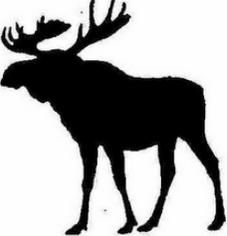
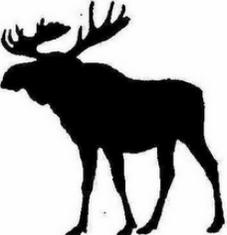
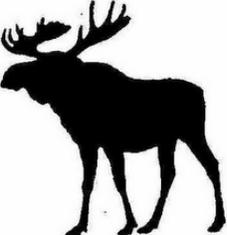
JOINT STIPULATION OF FACTS

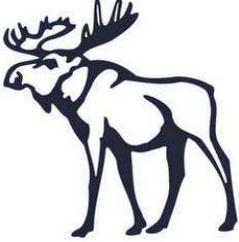
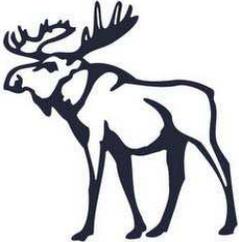
Pursuant to the Board’s August 19, 2015 Order, and the parties’ September 2, 2015 Joint Stipulation Regarding Testimony and Trial Procedures, Abercrombie & Fitch Trading Co. (“A&F” or “Opposer”) and Ms. Isabella Elisabeth Schnittger (“Ms. Schnittger” or “Applicant”) (collectively “parties”) hereby stipulate to the following facts:

1. A&F is the owner of the following U.S. trademark registrations for Opposer’s Mark¹ which are valid, subsisting and have never been abandoned:

| <u>Mark</u> | <u>Reg. No.</u> | <u>Reg. Date</u> | <u>Filing Date</u> | <u>First Use</u> | <u>Goods</u> |
|---|-----------------|------------------|--------------------|------------------|---|
|  | 3,065,016 | 3/7/2006 | 9/12/2003 | 2/2002 | Cl. 25: clothing, namely, shirts and sweaters |

¹ As used herein, the term “Opposer’s Mark,” shall mean the marks that are the subject of U.S. Trademark Registration Nos. 3,065,016; 4,551,991; 3,964,371; 4,168,384; 3,212,644; and 3,574,198.

| <u>Mark</u> | <u>Reg. No.</u> | <u>Reg. Date</u> | <u>Filing Date</u> | <u>First Use</u> | <u>Goods</u> |
|---|-----------------|------------------|--------------------|------------------|--|
|  | 4,551,991 | 6/7/2014 | 10/31/2005 | 2/2002 | Cl. 25: Clothing, namely, beach cover-ups, bras, camisoles, halter tops and night shirts |
|  | 3,964,371 | 5/24/2011 | 10/31/2005 | 12/31/2003 | Cl. 25: Clothing, namely, polo shirts, blouses, sweaters, t-shirts, knit shirts, knit tops, sweatshirts, sweatpants, sweat suits, pants, jogging suits, jeans, shorts, skirts, caps, hats, scarves, jackets, coats, sandals, flip flops, socks, belts, tank tops, underwear, boxer shorts, swim suits, pajamas, sleepwear and thongs Cl. 35: Retail store services, mail order catalog services and on-line retail store services featuring clothing, footwear, accessories, fragrances and jewelry |
|  | 4,168,384 | 7/3/2012 | 10/31/2005 | 11/2002 | Cl. 25: Clothing, namely, beachwear, belts, blazers, dresses, footwear, gloves, knee highs, loungewear, mittens, tights and vests |

| <u>Mark</u> | <u>Reg. No.</u> | <u>Reg. Date</u> | <u>Filing Date</u> | <u>First Use</u> | <u>Goods</u> |
|--|-----------------|------------------|--------------------|-------------------|---|
|  | 3,212,644 | 2/27/2007 | 11/3/2005 | 11/1/2004 | Cl. 25: Clothing, namely, polo shirts, sweaters, t-shirts, shirts, knit tops, woven tops, sweatshirts, sweatpants, pants, shorts, caps, hats, scarves, jackets, coats, sandals, flip flops, belts, tank tops, underwear, boxer shorts, swim suits, pajamas, sleepwear |
|  | 3,574,198 | 2/10/2009 | 11/3/2005 | 11/2004 4/2007 | Cl. 25: Clothing, namely, footwear Cl. 14: Jewelry, namely, necklaces and bracelets |

2. A&F's Registration Nos. 3,065,016, 3,212,644, and 3,574,198 are incontestable.

3. A&F has been using Opposer's Mark in solid form (Reg. Nos. 3,065,016, 4,551,991, and 4,168,384) in commerce in connection with clothing since at least as early as February 2002.

4. A&F has been using Opposer's Mark in outline form (Reg. No. 3,212,644) in commerce in connection with clothing since at least as early as November 1, 2004.

5. Applicant filed U.S. Application No. 86/152,857 on December 26, 2013 for Applicant's Mark² (depicted below) covering "caps; hats; hooded sweatshirts; jackets; long-sleeved shirts; socks; sweatshirts; t-shirts; underwear" in International Class 25 and claims an intent to use filing basis:



6. Applicant's image faces to the right as seen by the viewer and Applicant's mark includes the words "Red Dear" below the image.

7. A&F's trademark Reg. Nos. 3,065,016, 3,964,371, 4,168,384, 3,212,644, and 3,574,198 for Opposer's Mark were filed and issued prior to the filing date of Applicant's Trademark Application No. 86/152,857 for Applicant's Mark.

8. A&F used Opposer's Mark in commerce prior to the filing date of Applicant's U.S. Trademark Application No. 86/152,857.

9. A&F's trademark Reg. Nos. 3,065,016, 3,964,371, 4,168,384, 3,212,644, and 3,574,198 for Opposer's Mark issued prior to the filing date and creation date of Applicant's U.S. Copyright Registration VAu 1-149-334.

10. Applicant did not sell or offer to sell any products or services bearing Applicant's Mark prior to December 26, 2013.

11. Applicant did not use Applicant's Mark prior to December 26, 2013.

² The term "Applicant's Mark," shall mean the mark that is the subject of U.S. Trademark Application No. 86/152,857.

12. Both Applicant's Mark and Opposer's Mark include profiles of full-bodied, four-legged animals with antlers in silhouette form.

13. Applicant's Application No. 86/152,857 states that "[c]olor is not claimed as a feature of the mark."

14. Applicant's Application No. 86/152,857 for Applicant's Mark, and A&F's Reg. Nos. 3,964,371 and 3,212,644 for Opposer's Mark, identify "caps," "hats," "sweatshirts," "jackets," "t-shirts," and "underwear" in the description of goods.

15. Applicant's Application No. 86/152,857 for Applicant's Mark, and A&F's Reg. Nos. 3,065,016, 4,551,991, 3,964,371, and 3,212,644 for Opposer's Mark, identify "shirts" in the description of goods.

16. Applicant's Application No. 86/152,857 for Applicant's Mark, and A&F's Reg. Nos. 3,964,371 for Opposer's Mark, both identify "socks" in the description of goods.

17. A&F sells caps, hats, hooded sweatshirts, sweatshirts, jackets, long-sleeved shirts, socks, sweatshirts, t-shirts, and underwear bearing Opposer's Mark.

18. A&F currently sells goods bearing Opposer's Mark, through its retail stores and Internet websites at www.abercrombie.com and www.abercrombiekids.com.

19. As of May 4, 2015, A&F had over 370 retail store locations across the United States, including over 240 Abercrombie & Fitch retail store locations, and over 120 abercrombie kids retail store locations.

20. Applicant intends to sell clothing bearing Applicant's Mark on the Internet.

21. Applicant has not sold any goods with Applicant's Mark.

22. Applicant has posted pictures of t-shirts bearing Applicant's Mark on her website at www.myreddear.com, but the t-shirts are not yet available for sale.

23. Applicant intends to sell sport and outdoor clothing and accessories made in the U.S. A..

24. Applicant intends to license Applicant's Mark to manufacturers and marketers of sport and outdoor clothing made in the U.S.A., and/or to an athletic team in the U.S.A..

25. Applicant believes that Applicant's Mark will appeal to young and old alike, and Applicant's Mark is not aimed at a specific income demographic.

26. Prior to December 26, 2013 Applicant and members of her immediate family shopped at or visited an Abercrombie & Fitch retail store.

27. There is no restriction on channels of trade or classes of consumers in Applicant's Application No. 86/152,857 for Applicant's Mark.

28. There is no restriction on channels of trade or classes of consumers in A&F's trademark registrations for Opposer's Mark listed in Fact No. 1.

29. Consumers of products bearing Opposer's Mark could also be consumers of products bearing the Applicant's Mark.

30. A&F has promoted Opposer's Mark on its websites at www.bercrombie.com and www.bercrombiekids.com, its Facebook page, in catalogs, in its retail store locations through use on items such as in-store speakers and product stickers and tags, and through promotional emails.

31. From 2001-2006, A&F released and distributed catalogs displaying and offering for sale clothing bearing Opposer's Mark, with a total U.S. circulation of over 10.3 million copies.

32. A&F periodically sends promotional e-mails regarding products, including products bearing Opposer's Mark, to customers who have registered for A&F's e-mail distribution list.

33. Actor Cory Monteith wore an A&F polo shirt bearing Opposer's Mark during an episode of the television show Glee which aired nationwide on Fox.

34. An A&F polo shirt bearing Opposer's Mark was worn on an episode of the television show Will & Grace which aired nationwide on NBC.

35. Third-party websites such as www.coolspotters.com, victoriadavidbeckham.blogspot.com, www.ihearthat.com, www.theceleblife.com, and www.seenon.com have published photographs identifying the following celebrities as wearing clothing bearing Opposer's Mark, Jennifer Aniston, David Beckham, Jessica Simpson, Jonathan Rhys Meyers, Ashley Tisdale, Kimberly Garner, Lexie Priessman, and Ashley Greene.

36. Coolspotters.com advertises that it is an online service that makes it easy to discover and buy the products, brands, and fashions being used by your favorite celebrities – in their real lives, and in movies and television. In May 2015, the website coolspotters.com had over 230,000 unique visitors in that month.

37. Clothing bearing Opposer's Mark has been featured in various magazines with nationwide circulation including FHM, Teen Vogue, GQ, Jane, Details, CosmoGirl, and Men's Fitness.

38. Newspapers including The New York Times, The Chicago Tribune, and The Washington Post have published articles regarding Opposer's Mark.

39. A book of essays titled Soul Cravings, by Erwin Raphael McManus, published in 2006 contains the following reference to Opposer's Mark:

“We live in a world of planned communities and virtual communities that are growing as fast as the human community is disintegrating. I don't think it's incidental that over the past twenty years the labels on our clothes moved from the inside to the outside. We know who we are by our symbols, and we can identify those who belong to our tribe by simply reading the signs. Izod has an alligator, Polo has a rider, Abercrombie & Fitch has a moose, Lucky Brand has a shamrock, Hollister has a seagull, Modern Amusement has a crow, American Eagle has, well, an American eagle, and Penguin has, you guessed it, a penguin- not to mention True Religion, which has a Buddha, and may give us insight to what's really going on.”

40. A&F has enforced its rights in Opposer's Mark against many third parties for uses of marks similar to Opposer's Mark including Michel Design USA, Inc., JJ Basics, Inc., The Wet Seal, Inc., Jake Wear, Moose Creek, Inc., The Idaho Club, LLC, Paul R. Lopes, GoGo Sports, Inc., and Fairview Import Corporation, resulting in these companies agreeing to cease use of similar marks and also abandoning applications for similar marks where filed.

Dated: October 9, 2015

Respectfully submitted,

By: /Jessica D. Bradley/
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Joint Stipulation of Facts has been served on Applicant, Isabella Elisabeth Schnittger, on October 9, 2015, via email at isartdesign7@aol.com and myreddear@aol.com pursuant to the agreement of the parties.

/Jessica D. Bradley/
Jessica D. Bradley