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

Proceeding	91218738
Party	Defendant Isabella Elisabeth Schnittger
Correspondence Address	ISABELLA ELISABETH SCHNITTGER 121 DUFFIE ROAD SIMPSONVILLE, SC 29681-1996 UNITED STATES isartdesign7@aol.com, myreddear@aol.com
Submission	Testimony For Defendant
Filer's Name	Isabella Schnittger
Filer's e-mail	isartdesign7@aol.com
Signature	/Isabella Schnittger/64
Date	12/01/2015
Attachments	Isabella Schittger's Testimony Affidavit USPTO .pdf(372425 bytes )

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

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

**TESTIMONY AFFIDAVIT OF APPLICANT ISABELLA SCHNITTGER**

Applicant, Isabella Elisabeth Schnittger (“Applicant”), declares as follows,

1. I am the individual who created the Red Dear Trademark described in Application No. 86/152,857, and referenced in the Joint Stipulation of Facts filed in this matter. I have firsthand knowledge of the facts set forth below, or I am aware of them because they are public facts subject to judicial notice and may be recognized by this Board. Where I reference such facts, I provide in an attachment relevant documentary substantiation.

2. I am not an attorney, and do not have the support of a corporate trademark and intellectual property division of a General Counsel’s Office, nor a law firm. I am responding to A&F’s Opposition for myself. Opposing counsel has provided in her documents many documents from my website [www.reddear.com](http://www.reddear.com), including some documents made when I had a copyright before I had applied for a Trademark, and before I learned that I needed to include the

words “Red Dear” with my silhouette stag. I have learned from experience, from the Patent & Trademark Office website, from the Internet and from Ms. Bradley.

3. As the Trademark Trial & Appeal Board can see from the Joint Stipulation of facts filed in this matter, I have no real quarrel with Opposer Abercrombie & Fitch (hereinafter “A&F”) being the owner of its various Trademarks based on a silhouette of a stylized moose and extensively marketed by A&F. I have applied for, and been granted, subject to A&F’s Opposition, a trademark which is shown in the Joint Stipulation of Facts Nos. 5 and 6, and in all the other materials filed in respect of this matter. My trademark is a combination trademark, i.e. it has both words “Red Dear” and a silhouette image of a seven point stag (male) deer. [These images are copied from the joint Stipulation of Facts, No. 5, Applicant’s mark, and No. 1, Opposer’s mark:





3. The issue in this matter is really much simpler than A&F attempts to make it: Is there any substantial likelihood of confusion between a combination mark consisting of a seven point stag silhouette with the words “Red Deer” and a silhouette of a moose, with no words, or the words “Abercrombie & Fitch”?

4. Applicant would ask that this Board take judicial notice of the fact that although a moose is part of the deer family biologically, it is distinguished in particular by the shape of its antlers (described as “palmate”), which are rounded, as opposed to male deer antlers which are pointed. [See on-line World Book articles excerpted and attached at Exhibit (A).]

5. The distinctiveness of “moose” versus “deer” is clearly underscored by the fact that the State of Maine, known home to many moose, requires a hunting license to hunt “wild birds or wild animals” [See Maine Government Department of Fisheries & Wildlife website reference attached at Exhibit (B)], but requires an additional special license to hunt moose. [See Maine Revised Statutes Title 12, Chapter 915, section 11154, attached as Exhibit (C).] Once equipped with a license, a hunter is expected to analyze an image in his sights or scope in

seconds and correctly distinguish a “deer” from a “moose”, at the risk of serious penalties [3 days in jail] if he shoots a moose without a permit.

6. The distinction between a “combination mark” with both words and a symbol and a mark without words is discussed at length in prior litigation between A&F and Moose Creek [Moose Creek, Inc. v. Abercrombie & Fitch Co., 331 F.Supp 2d 1214, 1227 (2004)]. A later case between the same parties also notes that the moose antlers on A&F’s various trademarks are in fact turned 45 degrees as compared to the skull of the moose, which makes them even more distinct from the stag antlers that are depicted on the silhouette of the Red Deer trademark. [Abercrombie & Fitch Co. v. Moose Creek, Inc. 486 F.3d 629, 637 (9<sup>th</sup> Cir., 2007)]

7. With perhaps some mild amusement, I would also call to this Board’s attention that since the onset of A&F’s Opposition to my Application, A&F has started using a “Red Deer Logo” with a picture of a red moose in Australia, the UK and Canada, and even one with a figure of a soaring bird. [ Exhibit (D)] A&F could similarly put a picture of a kangaroo and call it a “red deer” to follow their logic. A&F is exactly trying to create the confusion that they claim that my Red Deer trademark would pose for consumers.

8. As this Board is the ‘trier of fact’ for those matters which the parties have not been able to stipulate, I ask that this Board use its common sense to prevent A&F from trying to occupy an entire animal family by using a silhouette of an artistically modified single member of that family to close out anyone from using other members of that family. Indeed, if one puts “red deer” or “red deer” into a Google search, this common-sense based search engine brings up a picture of a red deer, not a moose, but now it also brings up A&F’s “Red Deer Logo” with pictures of a moose, shown in red much like my own deer. As noted above, now a soaring bird

can also be a deer. One is reminded of Humpty Dumpty in Lewis Carroll's Through the Looking Glass: "When I use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean — neither more nor less.'" [http://sabian.org/looking\\_glass6.php](http://sabian.org/looking_glass6.php)

Dated: November 30, 2015.

Respectfully submitted,

By \_\_\_\_\_  
Isabella Schnittger  
121 B Duffie Road  
Simpsonville, SC 29681  
(864)

228-7829

[isartdesign7@aol.com](mailto:isartdesign7@aol.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Applicant's Initial Disclosures has been served on Jessica D. Bradley on December 4, 2015, via email at [jbradley@jonesday.com](mailto:jbradley@jonesday.com) and [skayser@jonesday.com](mailto:skayser@jonesday.com), pursuant to the agreement of the parties.

Signature /s/ Isabella E. Schnittger Date November 30, 2015

## Exhibit (A)

[www.worldbook.com/all-creatures/creatures/animal/equine/moose](http://www.worldbook.com/all-creatures/creatures/animal/equine/moose)

# MOOSE

*Alces americanus*

### Physical features:

- A moose has big shoulders that form a hump. Its long legs and broad hoofs make the moose a strong swimmer and help it to walk in marshy areas and through deep snow.
- Moose fur is brownish-black on the upper parts, and grayish-brown on the belly and lower legs. A flap of skin and fur, called a bell, hangs from the moose's throat.

### Unique adaptations:

- The male moose, or bull, has antlers that are shaped like the palm of a hand with many short, pointed fingers. Bull moose use their antlers to protect themselves.
- Bulls shed their antlers every winter and then begin to grow new ones in spring.

### Carnivore, herbivore, or omnivore?

- Moose are **herbivores** because they get most of their nutrients from plants. Moose eat woody plants, especially twigs of willows and such shrubs as hazel, dogwood, and mountain maple.

[https://www.google.com/search?q=world+book+moose&safe=off&rlz=1C1CHMO\\_enUS561US561&espv=2&biw=956&bih=933&tbm=isch&imgil=d66soIceM3FuYM%253A%253BRKV33ncTOyB-SM%253Bhttp%25253A%25252F%25252Fwww.amazon.com%25252FMoose-Wild-World-Anthony-Fredericks%25252Fdp%25252F1559717440&source=iu&pf=m&fir=d66soIceM3FuYM%253A%252CRKV33ncTOyB-SM%252C\\_&dpr=1&usg=\\_\\_Mztka9oUFpaR63dYJItmVDKU9Y%3D&ved=0ahUKEwiZpMqwurjJAhUJeD4KHa0UCOMQyjcILg&ei=XmpcVpn9Jonw-QGtqaCYDg#imgrc=d66soIceM3FuYM%3A&usg=\\_\\_Mztka9oUFpaR63dYJItmVDKU9Y%3D](https://www.google.com/search?q=world+book+moose&safe=off&rlz=1C1CHMO_enUS561US561&espv=2&biw=956&bih=933&tbm=isch&imgil=d66soIceM3FuYM%253A%253BRKV33ncTOyB-SM%253Bhttp%25253A%25252F%25252Fwww.amazon.com%25252FMoose-Wild-World-Anthony-Fredericks%25252Fdp%25252F1559717440&source=iu&pf=m&fir=d66soIceM3FuYM%253A%252CRKV33ncTOyB-SM%252C_&dpr=1&usg=__Mztka9oUFpaR63dYJItmVDKU9Y%3D&ved=0ahUKEwiZpMqwurjJAhUJeD4KHa0UCOMQyjcILg&ei=XmpcVpn9Jonw-QGtqaCYDg#imgrc=d66soIceM3FuYM%3A&usg=__Mztka9oUFpaR63dYJItmVDKU9Y%3D)



<http://photo.pds.org:5005/student/article?id=ar151960&st=deer>

WORLD BOOK STUDENT EDITION



**Deer** are the only animals with bones called *antlers* on their heads. Antlers somewhat resemble horns but are shed each year. Deer rank among the most common large wild animals throughout much of the world.

The deer family includes more than 30 different *species* (kinds), such as the common North American mule deer and white-tailed deer. Other members of the deer family include the elk, caribou, reindeer, and moose. Some deer live in hot, dry deserts. Others live in cold regions above the Arctic Circle. However, most kinds of deer live in prairies, swamps, or woodlands that have a mild climate. In most species of deer, only the males have antlers. Most male deer are deer

are called *bucks*, but in some species the males are known

as *stags* or *harts*. Female deer are called *does* or *hinds*, and young deer are

called *fawns*.

## Exhibit (B)

[http://maine.gov/ifw/licenses\\_permits/hunting/index.htm#anydeer](http://maine.gov/ifw/licenses_permits/hunting/index.htm#anydeer)

### WHO NEEDS A HUNTING LICENSE?

- Anyone 10 years of age and over must obtain a license to hunt wild birds or wild animals (except Maine resident landowners may hunt without a license on land they own and reside on provided the land exceeds 10 acres in size and is used exclusively for agricultural purposes).
- Children under 10 years of age are not allowed to hunt.
- Hunters between the ages of 10 and 15 must possess a junior license.
- Hunters 16 years of age and over must possess an adult license to hunt.  
**(NOTE:** A junior license holder who turns 16 may hunt with that junior license for the remainder of the year, but must complete a hunter safety course prior to hunting without adult supervision.
- Hunters 16 years of age and over wishing to hunt with bow and arrow during the special or expanded archery seasons must obtain an archery license and the appropriate expanded archery permits.

Exhibit C

**Maine Revised Statutes**

**Title 12: CONSERVATION**

**Chapter 915: HUNTING: SEASONS, REQUIREMENTS AND RESTRICTIONS**

**HEADING: PL 2003, c. 414, Pt. A, §2 (new); Pt. D, §7 (aff); c. 614, §9 (aff)**

**§11154. MOOSE PERMIT**

**1. Permit required.** Except as otherwise provided in this Part, a person may not hunt or possess a moose unless that person has a valid permit issued under this section. A person without a moose permit may possess moose parts lawfully sold under section 11217, subsection 2, paragraph D. A person who violates this subsection commits a Class D crime for which the court shall impose a sentencing alternative of not less than 3 days for the first offense, none of which may be suspended, and of not less than 10 days for each succeeding offense, none of which may be suspended; the court also shall impose a fine of not less than \$1,000, none of which may be suspended.

[ 2003, c. 614, §9 (AFF); 2003, c. 655, Pt. B, §125 (AMD); 2003, c. 655, Pt. B, §422 (AFF) .]

**2. Issuance of moose hunting permits.** In accordance with section 11552, the commissioner may issue moose hunting permits and may establish the number of moose hunting permits to be issued for each wildlife management district established by the commissioner by rule open to moose hunting. No more than 10% of the moose hunting permits may be issued to nonresident and alien hunters.

[ 2003, c. 414, Pt. A, §2 (NEW); 2003, c. 614, §9 (AFF) .]

**3. Moose hunting permit fee.** The fee for a moose hunting permit is \$52 for a resident and \$585 for a nonresident or alien. [ 2011, c. 370, §4 (AMD) .] **4. Big game hunting license required.** While hunting moose, the permittee and the subpermittee shall

each have in that person's possession a valid Maine resident, nonresident or alien big game hunting license, whichever is applicable. Each day a person violates this subsection that person commits a Class E crime for which a minimum fine of \$50 and an amount equal to twice the applicable license fee must be imposed.

[ 2003, c. 614, §9 (AFF); 2003, c. 655, Pt. B, §126 (AMD); 2003, c. 655, Pt. B, §422 (AFF) .]

Exhibit (D)

<http://www.aftshirt.com/index.php?route=product/search&search=red%20deer%20logo>

One of the products is labeled “2015 A&F Fitch Deer Logo Lapel Red T-Shirt” pictured below:



[http://www.aftshirt.com/index.php?route=product/product&product\\_id=855&search=red+deer+logo](http://www.aftshirt.com/index.php?route=product/product&product_id=855&search=red+deer+logo)

This product is described as “2015 A&F Small Deer Logo Stripe Shirt Red White Men, and the ‘animal’ pictured is a bird:

