

ESTTA Tracking number: **ESTTA765820**

Filing date: **08/22/2016**

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

Proceeding	91227399
Party	Plaintiff NIKE, Inc.
Correspondence Address	HELEN HILL MINSKER BANNER & WITCOFF LTD 10 SOUTH WACKER DRIVE , SUITE 3000 CHICAGO, IL 60606 UNITED STATES hminsker@bannerwitcoff.com, aheinze@bannerwitcoff.com, mhouston@bannerwitcoff.com, bwlitdocket@bannerwitcoff.com, bwptotm@bannerwitcoff.com
Submission	Motion to Suspend for Settlement Discussions
Filer's Name	Helen Hill Minsker
Filer's e-mail	hminsker@bannerwitcoff.com, aheinze@bannerwitcoff.com, mhouston@bannerwitcoff.com, bwlitdocket@bannerwitcoff.com, bwptotm@bannerwitcoff.com
Signature	/helen hill minsker/
Date	08/22/2016
Attachments	007834.00130 Consented Motion for Suspension.pdf(84747 bytes ) 007834.00130 Exhibit A.pdf(47683 bytes ) 007834.00130 Exhibit B.pdf(37788 bytes )

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

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NIKE, Inc,	)
	)
Opposer,	) Opposition No. 91227399
	)
vs.	) Application No. 86/647963
	)
Dommonic Nelson,	) Mark: WAFL+
Applicant.	)

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**CONSENTED MOTION FOR SUSPENSION**

Opposer, NIKE, Inc. (“Opposer”), with the consent of Applicant, Dommonic Nelson (“Applicant”), for good cause shown, hereby moves the Board for a suspension of the proceedings and resetting of all pending deadlines by sixty (60) days. The parties also seek the Board’s guidance on how to obtain a resolution expeditiously of a proposed post-publication amendment to the identification of the goods that was filed by Applicant shortly before the opposition was filed. The parties recognize that it is unusual for the Board to grant a suspension before the discovery conference is held, but respectfully submit that the circumstances here warrant the suspension, as the parties are awaiting a decision by the USPTO. The basis for this motion is set forth below.

The parties have conferred over the course of the last few months and already have an agreement in place for an amicable resolution of this proceeding. However, the steps to complete the resolution have been delayed because the USPTO has not yet acted on a post-publication amendment filed by the Applicant on April 16, 2016 (two days before the notice of opposition was instituted by the Board). A copy of the TSDR record for the application is

attached as Exhibit A, and a copy of the post publication amendment filed on April 16, 2016 is attached as Exhibit B.

The parties had hoped to have a decision on the April 16 post-publication amendment before the deadline for Applicant's answer, but when none was forthcoming, the Applicant filed his answer on July 26, 2016.<sup>1</sup>

The next steps in the current proceeding leading to resolution are dependent in part on the content of the USPTO's decision on Applicant's April 16, 2016 post-publication amendment. Once a determination is made on that amendment, the parties then expect to be able to complete this opposition proceeding expeditiously.

A brief suspension is thus reasonably requested. This motion is made in good faith and with the consent of the Applicant. Accordingly, the parties have shown good cause for granting this motion, which is not interposed to create unreasonable delay but will rather further the interests of justice and preserve the resources of the parties. If it would be helpful for the parties to participate in a telephone conference with the Board to discuss this motion, they will be pleased to do so.

The new dates proposed in this motion are as follows:

Time to Answer: CLOSED  
Deadline for Discovery Conference: October 25, 2016  
Discovery Opens: October 25, 2016  
Initial Disclosures: November 24 2016  
Expert Disclosures Due: March 24, 2017

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<sup>1</sup> The parties had intended to seek a further suspension while the amendment was pending, but Applicant's answer ended up being filed by Applicant (who is not represented by counsel) before that motion was submitted, necessitating this current request for a departure from the Board's usual procedures.

Discovery Closes: April 21, 2017  
Plaintiff's Pretrial Disclosures: June 7, 2017  
Plaintiff's 30-day Trial Period Ends: July 22, 2017  
Defendant's Pretrial Disclosures: August 6, 2017  
Defendant's 30-day Trial Period Ends: September 22, 2017  
Plaintiff Rebuttal Disclosures Due: October 5, 2017  
Plaintiff's 15-day Rebuttal Period Ends: November 4, 2017

WHEREFORE, Opposer moves the Board for a suspension of the proceedings and the resetting of all pending deadlines as set forth above.

Respectfully submitted,

Date: August 22, 2016

By: /helen hill minsker/

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Helen Hill Minsker  
Audra Eidem-Heinze  
Banner & Witcoff, Ltd.  
Attorneys for Applicant  
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Chicago, Illinois 60606  
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bwlitdocket@bannerwitcoff.com,  
bwptotm@bannerwitcoff.com

Attachments:

EXHIBIT A: TSDR Record

EXHIBIT B: April 16 Post-Publication Amendment

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2016, a copy of the foregoing Consented Motion for Suspension was served on Applicant by first-class class mail, postage prepaid, addressed as follows to its correspondence address of record:

Dommonic Nelson  
WAF LLC  
2402 Blackridge Road  
Houston, TX 77067

- /helen hill minsker/

# Exhibit A

Generated on: This page was generated by TSDR on 2016-08-22 12:22:13 EDT

Mark: WAFL+

WAFL+

US Serial Number: 86647963

Application Filing Date: Jun. 01, 2015

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Apr. 18, 2016

Publication Date: Oct. 20, 2015

## Mark Information

Mark Literal Elements: WAFL+

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

For: Apparel for dancers, namely, t-shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, socks, hats and caps, athletic uniforms; Athletic shirts; Graphic t-shirts; Hooded sweat shirts; Long-sleeved shirts; Shirts and short-sleeved shirts; Sweat shirts; t-shirts for men and women

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 1(a)

First Use: Aug. 22, 2012

Use in Commerce: Sep. 01, 2012

## Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

Owner Name: Nelson, Dommonic

Owner Address: 2402 Blackridge Rd.  
Houston, TEXAS 77067  
UNITED STATES

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

## Attorney/Correspondence Information

### Attorney of Record - None

#### Correspondent

**Correspondent Name/Address:** DOMMONIC NELSON  
WAF LLC  
2402 BLACKRIDGE RD  
HOUSTON, TEXAS 77067  
UNITED STATES

**Phone:** 8322290604

**Correspondent e-mail:** [inventingtomorrowtoday@gmail.com](mailto:inventingtomorrowtoday@gmail.com)

**Correspondent e-mail Authorized:** Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Apr. 16, 2016	TEAS POST PUBLICATION AMENDMENT RECEIVED	
Apr. 18, 2016	OPPOSITION INSTITUTED NO. 999999	227399
Apr. 16, 2016	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Apr. 16, 2016	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Apr. 16, 2016	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Nov. 06, 2015	EXTENSION OF TIME TO OPPOSE RECEIVED	
Oct. 20, 2015	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Oct. 20, 2015	PUBLISHED FOR OPPOSITION	
Sep. 30, 2015	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Sep. 11, 2015	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 11, 2015	ASSIGNED TO EXAMINER	82429
Jun. 08, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

## TM Staff and Location Information

### TM Staff Information

**TM Attorney:** MANOR, THOMAS M

**Law Office Assigned:** LAW OFFICE 110

### File Location

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Sep. 17, 2015

## Proceedings

### Summary

**Number of Proceedings:** 2

### Type of Proceeding: Opposition

**Proceeding Number:** [91227399](#)

**Filing Date:** Apr 18, 2016

**Status:** Pending

**Status Date:** Apr 18, 2016

**Interlocutory Attorney:** ELIZABETH A DUNN

### Defendant

**Name:** Dommonic Nelson

**Correspondent Address:** DOMMONIC NELSON  
WAF LLC  
2402 BLACKRIDGE RD  
HOUSTON TX , 77067  
UNITED STATES

**Correspondent e-mail:** [inventingtomorrowtoday@gmail.com](mailto:inventingtomorrowtoday@gmail.com)

Associated marks			
Mark	Application Status	Serial Number	Registration Number
WAFL+	Opposition Pending	<a href="#">86647963</a>	
Plaintiff(s)			

**Name:** NIKE, Inc.

**Correspondent Address:** HELEN HILL MINSKER  
BANNER & WITCOFF LTD  
10 SOUTH WACKER DRIVE , SUITE 3000  
CHICAGO IL , 60606  
UNITED STATES

**Correspondent e-mail:** [hminsker@bannerwitcoff.com](mailto:hminsker@bannerwitcoff.com) , [ahainze@bannerwitcoff.com](mailto:ahainze@bannerwitcoff.com) , [mhouston@bannerwitcoff.com](mailto:mhouston@bannerwitcoff.com) , [bwlitdocket@bannerwitcoff.com](mailto:bwlitdocket@bannerwitcoff.com) , [bwptotm@bannerwitcoff.com](mailto:bwptotm@bannerwitcoff.com)

Associated marks			
Mark	Application Status	Serial Number	Registration Number
WAFFLE	Renewed	<a href="#">73190217</a>	<a href="#">1276233</a>
WAFFLE RACER	Renewed	<a href="#">75883316</a>	<a href="#">2652318</a>
WAFFLE TRAINER	Renewed	<a href="#">75883317</a>	<a href="#">2893674</a>

Prosecution History			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Apr 18, 2016	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Apr 18, 2016	May 28, 2016
3	PENDING, INSTITUTED	Apr 18, 2016	
4	STIP FOR EXT	Apr 28, 2016	
5	EXTENSION OF TIME GRANTED	Apr 28, 2016	
6	ANSWER	Jul 26, 2016	

#### Type of Proceeding: Extension of Time

**Proceeding Number:** [86647963](#)

**Filing Date:** Nov 06, 2015

**Status:** Terminated

**Status Date:** Apr 18, 2016

**Interlocutory Attorney:**

#### Defendant

**Name:** Nelson, Dommonic

**Correspondent Address:** NELSON, DOMMONIC  
15910 N Bend Ct  
Houston TX , 77073-5450

Associated marks			
Mark	Application Status	Serial Number	Registration Number
WAFL+	Opposition Pending	<a href="#">86647963</a>	
Potential Opposer(s)			

**Name:** NIKE, Inc.

**Correspondent Address:** Helen Hill Minsker  
Banner & Witcoff, Ltd.  
10 South Wacker Drive Suite 3000  
Chicago IL , 60606  
UNITED STATES

**Correspondent e-mail:** [hminsker@bannerwitcoff.com](mailto:hminsker@bannerwitcoff.com) , [mknutsson@bannerwitcoff.com](mailto:mknutsson@bannerwitcoff.com) , [mhouston@bannerwitcoff.com](mailto:mhouston@bannerwitcoff.com) , [bwlitdocket@bannerwitcoff.com](mailto:bwlitdocket@bannerwitcoff.com) , [bwptotm@bannerwitcoff.com](mailto:bwptotm@bannerwitcoff.com)

Associated marks			
Mark	Application Status	Serial Number	Registration Number
WAFL+	Opposition Pending	<a href="#">86647963</a>	
Prosecution History			
Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Nov 06, 2015	
2	EXTENSION OF TIME GRANTED	Nov 06, 2015	

3	INCOMING - EXT TIME TO OPPOSE FILED	Dec 17, 2015
4	EXTENSION OF TIME GRANTED	Dec 17, 2015
5	INCOMING - EXT TIME TO OPPOSE FILED	Feb 17, 2016
6	EXTENSION OF TIME GRANTED	Feb 17, 2016

# Exhibit B

## Post-Approval/Publication/Post-Notice of Allowance (NOA) Amendment

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	86647963
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 110
<b>MARK SECTION</b>	
<b>MARK</b>	http://tmng-al.uspto.gov/resting2/api/img/86647963/large
<b>LITERAL ELEMENT</b>	WAFL+
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>EXPLANATION OF FILING</b>	
<p>Post-Approval/Publication/Post-Notice of Allowance (NOA) Amendment is in response to SETTLEMENT COMMUNICATION PURSUANT TO Rule 408 Fed.R.Evid. Agreement is entered into by NIKE, Inc., an Oregon corporation having a principal place of business at One Bowerman Drive, Beaverton, Oregon 97005 (hereinafter "NIKE?"), and Dommonic Nelson, a United States individual having an address at 15910 N. Bend Ct., Houston, Texas 77073 (hereinafter Nelson). (A) Nelson will file a request with the United States Patent &amp; Trademark Office (USPTO) to amend the description of the goods in the Application (the "Amendment?") to the following description (the Amended Goods): Urban apparel, namely, t-shirts for men, women and children; all of the foregoing excluding footwear and athletic apparel, such as socks, graphic t-shirts, hooded sweat shirts, long-sleeved shirts, shirts and short-sleeved shirts and sweat shirts (in International Class 25).</p>	
<b>GOODS AND/OR SERVICES SECTION (current)</b>	
<b>INTERNATIONAL CLASS</b>	025
<b>DESCRIPTION</b>	
Apparel for dancers, namely, t-shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, socks, hats and caps, athletic uniforms; Athletic shirts; Graphic t-shirts; Hooded sweat shirts; Long-sleeved shirts; Shirts and short-sleeved shirts; Sweat shirts; t-shirts for men and women	
<b>FILING BASIS</b>	Section 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 08/22/2012
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 09/01/2012
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
<b>INTERNATIONAL CLASS</b>	025
<b>TRACKED TEXT DESCRIPTION</b>	
<p><del>Apparel for dancers, namely, t-shirts, sweatshirts, pants, leggings, shorts and jackets;</del> <a href="#">Urban apparel, namely, t-shirts for men, women and children;</a> <del>Athletic apparel, namely, shirts, pants, jackets, socks, hats and caps, athletic uniforms; Athletic shirts; Graphic t-shirts; Hooded sweat shirts; Long-sleeved shirts; Shirts and short-sleeved shirts; Sweat shirts; t-shirts for men and women</del></p>	
<b>FINAL DESCRIPTION</b>	Urban apparel, namely, t-shirts for men, women and children.
<b>FILING BASIS</b>	Section 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 08/22/2012

<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 09/01/2012
<b>CORRESPONDENCE SECTION</b>	
<b>ORIGINAL ADDRESS</b>	NELSON, DOMMONIC 15910 N Bend Ct Houston Texas US 77073-5450
<b>NEW CORRESPONDENCE SECTION</b>	
<b>NAME</b>	NELSON, DOMMONIC
<b>FIRM NAME</b>	WAFL, LLC
<b>STREET</b>	2402 Blackridge Rd.
<b>CITY</b>	Houston
<b>STATE</b>	Texas
<b>ZIP/POSTAL CODE</b>	77067
<b>COUNTRY</b>	United States
<b>PHONE</b>	8322290604
<b>EMAIL</b>	inventingtomorrowtoday@gmail.com
<b>AUTHORIZED EMAIL COMMUNICATION</b>	Yes
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/D.Nelson/
<b>SIGNATORY'S NAME</b>	Dommonic Anthony Nelson
<b>SIGNATORY'S POSITION</b>	Owner
<b>SIGNATORY'S PHONE NUMBER</b>	832-229-0604
<b>DATE SIGNED</b>	04/16/2016
<b>AUTHORIZED SIGNATORY</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Sat Apr 16 16:37:45 EDT 2016
<b>TEAS STAMP</b>	USPTO/PPA-XX.XX.XXX.XXX-2 0160416163745605619-86647 963-550a9ee8aa1808afd7117 4737df5fc19a42a010758307b 5da86f22fcfd6bd998da-N/A- N/A-20160416161050113323

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PTO Form 1771 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

**Post-Approval/Publication/Post-Notice of Allowance (NOA) Amendment  
To the Commissioner for Trademarks:**

Application serial no. **86647963** WAFL+(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86647963/large>) has been amended as follows:

#### **EXPLANATION OF FILING**

Post-Approval/Publication/Post-Notice of Allowance (NOA) Amendment is in response to SETTLEMENT COMMUNICATION PURSUANT TO Rule 408 Fed.R.Evid. Agreement is entered into by NIKE, Inc., an Oregon corporation having a principal place of business at One Bowerman Drive, Beaverton, Oregon 97005 (hereinafter "NIKE?"), and Dommonic Nelson, a United States individual having an address at 15910 N. Bend Ct., Houston, Texas 77073 (hereinafter Nelson). (A) Nelson will file a request with the United States Patent & Trademark Office (USPTO) to amend the description of the goods in the Application (the "Amendment?") to the following description (the Amended Goods): Urban apparel, namely, t-shirts for men, women and children; all of the foregoing excluding footwear and athletic apparel, such as socks, graphic t-shirts, hooded sweat shirts, long-sleeved shirts, shirts and short-sleeved shirts and sweat shirts (in International Class 25).

#### **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 025 for Apparel for dancers, namely, t-shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, socks, hats and caps, athletic uniforms; Athletic shirts; Graphic t-shirts; Hooded sweat shirts; Long-sleeved shirts; Shirts and short-sleeved shirts; Sweat shirts; t-shirts for men and women

Original Filing Basis:

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/22/2012 and first used in commerce at least as early as 09/01/2012 , and is now in use in such commerce.

#### **Proposed:**

**Tracked Text Description:** ~~Apparel for dancers, namely, t-shirts, sweatshirts, pants, leggings, shorts and jackets;~~ Urban apparel, namely, t-shirts for men, women and children.; ~~Athletic apparel, namely, shirts, pants, jackets, socks, hats and caps, athletic uniforms; Athletic shirts; Graphic t-shirts; Hooded sweat shirts; Long-sleeved shirts; Shirts and short-sleeved shirts; Sweat shirts; t-shirts for men and women~~

Class 025 for Urban apparel, namely, t-shirts for men, women and children.

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/22/2012 and first used in commerce at least as early as 09/01/2012 , and is now in use in such commerce.

#### **CORRESPONDENCE ADDRESS CHANGE**

Applicant proposes to amend the following:

#### **Current:**

NELSON, DOMMONIC  
15910 N Bend Ct  
Houston  
Texas  
US  
77073-5450

#### **Proposed:**

NELSON, DOMMONIC of WAFL, LLC, having an address of  
2402 Blackridge Rd. Houston, Texas 77067  
United States  
inventingtomorrowtoday@gmail.com  
8322290604

#### **SIGNATURE(S)**

Signature: /D.Nelson/ Date: 04/16/2016  
Signatory's Name: Dommonic Anthony Nelson  
Signatory's Position: Owner

Signatory's Phone Number: 832-229-0604

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either: (1) the owner/holder ; or (2) a person(s) with legal authority to bind the owner/holder; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or

the USPTO has granted the request of his/her prior representative to withdraw.

Mailing Address: NELSON, DOMMONIC  
WAFL, LLC  
2402 Blackridge Rd.  
Houston, Texas 77067

Serial Number: 86647963

Internet Transmission Date: Sat Apr 16 16:37:45 EDT 2016

TEAS Stamp: USPTO/PPA-XX.XX.XXX.XXX-2016041616374560

5619-86647963-550a9ee8aa1808afd71174737d

f5fc19a42a010758307b5da86f22fcfd6bd998da

-N/A-N/A-20160416161050113323