

ESTTA Tracking number: **ESTTA7404**

Filing date: **04/08/2004**

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

Proceeding	92041805
Party	Defendant QUIKSILVER, INC. QUIKSILVER, INC. 1740 Monrovia Avenue Costa Mesa, CA 92627
Correspondence Address	JEFFREY L. VAN HOOSEAR KNOBBE, MARTENS, OLSON & BEAR. LLP 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614
Submission	Reply To Registrant's Request For Decision Based On Related Civil Action
Filer's Name	Jeffrey L. Van Hoosear
Filer's e-mail	efiling@kmob.com
Signature	/Jeffrey L. Van Hoosear/
Date	04/08/2004
Attachments	3045_001.pdf (6 pages)

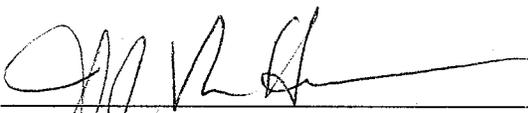
mark ROXY, which is the sole basis for Kymsta's cancellation action. The finding of fact by the District Court regarding Quiksilver's prior use of the mark ROXY was not appealed by Kymsta. Therefore, the civil action has decided the simple issue before the Board, and the decision in the civil action is therefore dispositive of this cancellation proceeding.

For the foregoing reasons, Registrant therefore requests that the cancellation proceeding be dismissed.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

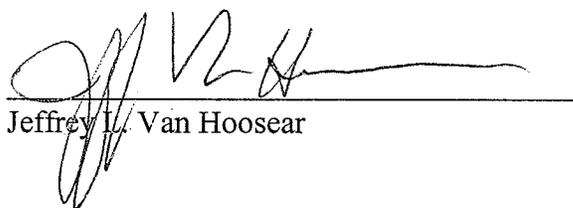
Dated: April 8, 2007

By: 
Jeffrey L. Van Hoosear
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Registrant, Quiksilver, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing REPLY TO REGISTRANT'S REQUEST FOR DECISION BASED ON RELATED CIVIL ACTION upon Petitioner's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on April 8, 2004 addressed as follows:

William J. Robinson
James D. Nguyen
FOLEY & LARDNER
2029 Century Park East, 35th Floor
Los Angeles, California 90067



Jeffrey L. Van Hoosear

H:\DOCS\CAB\CAB-4779.DOC:ldb
040804

Form 6. Civil Appeals Docketing Statement

USCA DOCKET # (IF KNOWN)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: QUIKSILVER, INC. v. KYMSTA CORP., ARTHUR PEREIRA and ROXANNE HEPTNER <hr/> KYMSTA CORP. v. QUIKSILVER, INC. and ROBERT MCKNIGHT	DISTRICT: CENTRAL JUDGE: DICKRAN TEVRIZIAN	
	DISTRICT COURT NUMBER:	
	DATE NOTICE OF APPEAL FILED: March 18, 2004	IS THIS A CROSS-APPEAL? <input type="checkbox"/> YES
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY): N/A	

BRIEF DESCRIPTION OF ACTION AND RESULT BELOW: Trademark infringement action and crossclaim over "ROXY" mark; judgment entered by Court after trial (without submission to jury) enjoining Kymsta Corp. from using "Roxywear" mark in certain manners

PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL: Please see attached page.

PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS): None. However, there is a petition by Kymsta Corp. to cancel Quiksilver's ROXY registration for clothing pending before the Trademark Trial & Appeal Board (Cancellation No. 9204805). That proceeding is suspended pending resolution of this case.

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

Possibility of settlement

Likelihood that intervening precedent will control outcome of appeal

Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (specify)

Any other information relevant to the inclusion of this case in the Mediation Program

Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges.

EXHIBIT 1

LOWER COURT INFORMATION			
JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT / ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> FEDERAL QUESTION <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER (SPECIFY)	<input checked="" type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL / JURISDICTION <input type="checkbox"/> DISMISSAL / MERITS <input type="checkbox"/> SUMMARY JUDGMENT <input type="checkbox"/> JUDGMENT / COURT DECISION <input type="checkbox"/> JUDGMENT / JURY VERDICT <input type="checkbox"/> DECLARATORY JUDGMENT <input checked="" type="checkbox"/> JUDGMENT AS A MATTER OF LAW <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DAMAGES: SOUGHT \$ _____ AWARDED \$ _____ <input checked="" type="checkbox"/> INJUNCTIONS: <input type="checkbox"/> PRELIMINARY <input checked="" type="checkbox"/> PERMANENT <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input type="checkbox"/> ATTORNEY FEES: SOUGHT \$ _____ AWARDED \$ _____ <input type="checkbox"/> PENDING <input type="checkbox"/> COSTS: \$ _____

CERTIFICATION OF COUNSEL

I CERTIFY THAT:

1. COPIES OF ORDER / JUDGMENT APPEALED FROM ARE ATTACHED.
2. A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2
3. A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
4. I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.



 Signature

March 24, 2004

 Date

COUNSEL WHO COMPLETED THIS FORM

NAME: JAMES D. NGUYEN
 FIRM: FOLEY & LARDNER LLP
 ADDRESS: 2029 Century Park East, Suite 3500
 Los Angeles, CA 90067
 E-MAIL: jnguyen@foley.com
 TELEPHONE: 310.277.2223
 FAX: 310.557.8475

* THIS DOCUMENT SHOULD BE FILED IN THE DISTRICT COURT WITH THE NOTICE OF APPEAL *
 * IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS *

Attachment Page
Civil Appeals Docketing Statement

PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL:

- (1) Whether the trial court erred in granting portions of Quiksilver's motion for judgment as a matter of law at the conclusion of Kymsta's defense case, rather than sending some or all issues to the jury;
- (2) Whether the trial court incorrectly found the "tacking" doctrine applicable so that Quiksilver's ROXY mark for clothing was entitled to the same first use date (for trademark priority purposes) as Quiksilver's QUIKSILVER ROXY mark for clothing;
- (3) Whether the trial court incorrectly found that Quiksilver's ROXY trademark registration no. 2,427,898 is valid and protectable;
- (4) Whether the trial court erred in imposing unreasonable restrictions on Kymsta's use of the ROXYWEAR mark as part of the injunction contained in the judgment.

[This is not an exhaustive list of all issues that Kymsta will raise on appeal, but summarizes the major categories of issues.]