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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

EJW/vw

Mailed: June 21, 2010

Cancellation No. 92041805

Kymsta Corp.

v.

Quicksilver, Inc.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

This proceeding has been suspended since September 16, 2003 pending final determination of a civil action styled *Quiksilver, Inc. v. Kymsta Corp.*, Case No. CV 02-5497 VBF (RCx), filed in the United States District Court, Central District of California.

On May 13, 2010, in response to the Board's query regarding the status of the civil action, respondent filed a communication with the Board, stating that the civil action had been finally determined and that the Memorandum issued by the U.S. Court of Appeals for the Ninth Circuit affirmed the district court judgment in respondent's favor (plaintiff in the civil action) and modified the scope of the injunction awarded to respondent. With its response, respondent included a copy of the district court order,

07-12-2010

which includes a finding that respondent's trademark registration sought to be cancelled in this proceeding is valid and protectable, and a copy of the appellate court memorandum. The Board also notes that the district court determined that respondent is the senior user and owner of the ROXY trademarks (Case 2:02-cv-05497-VBF-RC; document 590; order at 7, ¶3). Petitioner has not opposed or otherwise contradicted respondent's submission.

In view of the foregoing, petitioner is allowed until **THIRTY (30) DAYS** from the mailing date of this order to show cause why judgment should not be entered in favor of respondent in this proceeding, failing which this case will be dismissed with prejudice and judgment will be entered in respondent's favor.

This proceeding otherwise remains **SUSPENDED**.

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Commissioner for
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