



*Co., Inc. v. Colita Beverage Corp.*, 169 U.S.P.Q. 568, 570 (TTAB 1971). Instead, decision on whether to suspend this action lies within the Board's discretion. *The Other Telephone Company v. Connecticut Nat'l Telephone Co., Inc.*, 181 U.S.P.Q. 779, 782 (Com'r Pat. & Trademarks 1974).

*Inter partes* proceedings before this Board are also governed by the Federal Rules of Civil Procedure "wherever applicable and appropriate." See 37 C.F.R. § 2.116(a). Given that decision about whether to stay this proceeding lies in the Board's discretion, it is appropriate for the Board to look for guidance to general federal law governing stays of actions. In federal law, it is long-established that the pendency of a related suit between the parties in one proceeding does not bar another forum's jurisdiction. *Stanton v. Embrey*, 93 U.S. 548, 554 (1876). And while the Supreme Court has recognized that federal courts may stay actions pending before them for reasons of sound judicial administration — *i.e.*, when there is a parallel suit pending in another forum, it has disapproved of abstention in such circumstances as a "docket-control" mechanism. See *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800 (1976); *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983). Instead, the Supreme Court has consistently emphasized the federal courts have an unflagging obligation to exercise their jurisdiction, and abstention because of duplicative litigation is appropriate in only very limited, exceptional circumstances.

Similarly, this Board should be reluctant to suspend this action. It should be particularly reluctant to do so in this case, because, as discussed below, Quiksilver's true motive behind this motion is not a fear of inconsistent rulings but to cut off Kymsta's legitimate discovery rights.

## II. THE BOARD SHOULD NOT PERMIT QUIKSILVER TO CUT OFF KYMSTA'S DISCOVERY RIGHTS.

### A. Quiksilver's true motive is to preclude Kymsta from conducting discovery.

The Board should view this motion with great skepticism because Quiksilver omitted its true motive: to preclude Kymsta from pursuing discovery. Quiksilver correctly reports that the parties are engaged in a related civil action pending in the Central District of California (the "Federal Court Action"). In that action, Quiksilver alleges that Kymsta's ROXYWEAR mark infringes eight marks owned by Quiksilver: QUIKSILVER ROXY for use on clothing and ROXY for use on clothing and many other product classes.<sup>1</sup> Kymsta counter-sued for infringement of its ROXYWEAR mark. The Federal Court Action therefore deals with many other marks — QUIKSILVER ROXY and ROXY for use on non-clothing products — that are not directly raised by this cancellation proceeding, which only seeks to cancel the ROXY mark for clothing.

The Federal Court Action was filed on May 22, 2002, before Kymsta filed this cancellation petition. The discovery cut-off in the Federal Court Action was July 11, 2003, but under agreement, the parties are continuing to complete certain discovery after the cut-off. (Nguyen Decl., ¶ 4.) That action is set for trial on November 4, 2003. (See Ex. 1, Trial-Setting Order).

On July 28, 2003, while the parties were discussing various deadlines in the Federal Court Action, Kymsta's counsel asked whether Quiksilver would be amenable to continuing the discovery cut-off in the Federal Court Action. (Nguyen Decl., ¶ 8.) Kymsta expressed its desire to conduct certain additional discovery to find information

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<sup>1</sup> Specifically, Quiksilver's complaint in the Federal Court Action alleges infringement of the following registered marks: (1) QUIKSILVER ROXY for clothing, Reg. No. 2,083,400; (2) ROXY for clothing, Reg. No. 2,427,898; (3) ROXY for athletic bags, etc., Reg. No. 2,255,435; (4) ROXY for bed sheets, etc., Reg. No. 2,375,481; (5) ROXY for watches and jewelry, Reg. No. 2,225,688; (6) ROXY for furniture, Reg. No. 2,474,406; (7) ROXY for paper goods, Reg. No., 2,297,591; and (8) ROXY for retail store services, Reg. No. 2,228,883.

which Quiksilver had yet been able to confirm in the Federal Court Action. (*Id.*) Kymsta explained that it already had the right to pursue that discovery in this cancellation proceeding, but as a matter of courtesy and efficiency, approached Quiksilver first about conducting the discovery in the Federal Court Action. (*Id.*) In response, Quiksilver's counsel in the Federal Court Action asked whether depositions were permissible in this cancellation proceeding, and then noted that Quiksilver could seek to stay this proceeding to preclude the discovery. (*Id.*) Nevertheless, Quiksilver's counsel said he was willing to consider the discovery proposal. On August 1, he told Kymsta that Quiksilver might agree to certain limited additional discovery and asked Kymsta to outline specific items. (*Id.*, at ¶ 9.) That same day, Quiksilver's counsel in this proceeding served this motion, which Kymsta received on August 4. (*Id.*)

It is apparent that Quiksilver is using this motion to preclude Kymsta from conducting legitimate discovery, and to use as a bargaining chip in negotiations relating to the Federal Court Action. This is even more evident when the Board looks at the bare-bones reasoning Quiksilver offers for purportedly needing a stay. In short, Quiksilver has no true reason for needing a stay, and its true motive is litigation gamesmanship.

**B. The discovery Kymsta wants to conduct is important.**

The Board should not permit Quiksilver to thwart Kymsta's legitimate discovery efforts. This is not a situation where Kymsta is trying to duplicate discovery in this proceeding that it already conducted in the Federal Court Action. To date, Kymsta has not pursued **any** discovery in this proceeding because it did not want to unnecessarily duplicate efforts taken in the Federal Court Action.

But certain discovery is now warranted because Quiksilver has been unable to confirm certain important facts related to its first use of the ROXY mark — an issue pivotal to this cancellation proceeding. Kymsta began using its ROXYWEAR mark by mid-January, 1992. On its registration for the ROXY “standalone” mark, Quiksilver lists a first use date of January 1, 1992. But Quiksilver also has a separate registration for the

mark QUIKSILVER ROXY, which it registered two years before registering ROXY. One of the pivotal issues for this cancellation proceeding is which mark did Quiksilver use on products it sold by January, 1992. Kymsta believes (and various evidence uncovered in the Federal Court Action confirms) that Quiksilver's first products did not bear the standalone ROXY mark, but instead used the combined phrase QUIKSILVER ROXY instead. This is a significant issue, because if Kymsta is correct, Quiksilver only has priority to the QUIKSILVER ROXY mark but not to ROXY (and the registration for ROXY should be cancelled, as Kymsta requests).

To investigate this significant issue further, Kymsta wants to pursue discovery in this proceeding, including: (1) issue document subpoenas to the companies which supplied Quiksilver's labels and hangtags for any QUIKSILVER ROXY or ROXY products from 1990 to 1995; (2) take the deposition of such label or hangtag companies; (3) take the deposition of Natalie Murphy, who apparently was the assistant designer for the first ROXY products and who has knowledge concerning when and how Quiksilver first use the ROXY mark; (4) possibly take the depositions of Mel Matsui and Sonia Kasparian, who were designers for the ROXY line in the early 1990's and who will have knowledge about what mark(s) was first used on Quiksilver's products at issue; (5) possibly take the depositions of Quiksilver employees Pat DeRush, Lissa Zhwalen, and Danny Kwock, who have knowledge of the ROXY line and what mark(s) were used on the goods. (Nguyen Decl., ¶ 12; Ex. 3, August 6, 2003 letter to B. Loewy.) **None** of this discovery has been conducted in the Federal Court Action, and Kymsta is being careful not to duplicate any discovery already obtained in that case. (Nguyen Decl., ¶ 12.)

This discovery will be important to pinpoint exactly what mark(s) was used by Quiksilver on the products it began selling in 1990 or 1991: QUIKSILVER ROXY, ROXY or perhaps something else. Of course, this is directly relevant to establishing whether Kymsta's ROXYWEAR mark has priority over the ROXY "standalone" mark for this cancellation proceeding.

Blocking discovery is not a basis for staying this proceeding, and certainly should not be when that anticipated discovery is legitimate and not duplicative.

### **III. THERE IS NO REASON TO SUSPEND THIS ACTION.**

#### **A. The Federal Court Action is near completion and will be decided well before this proceeding.**

Normally, it might make sense to stay this proceeding if there was any risk that the Board would reach decision in this proceeding before the Federal Court Action was resolved. **But there is no such risk.** To the contrary, the Federal Court Action is near an end. Trial is set for November 4. Discovery is almost entirely completed. Kymsta has even filed, and already had a decision on, a motion for partial summary judgment on the issue of priority of use. (The Court found triable issues of fact, and denied Kymsta's motion and further denied Quiksilver's counter-request that it *sua sponte* be found the first user.) (Nguyen Decl., ¶ 4.) Quiksilver has already announced that it intends to file its own motion for partial summary judgment to decide itself the first user of the ROXY mark. (*Id.*) Both parties also plan to bring counter summary judgment motions on their respective laches defenses. (*Id.*) Therefore, the Federal Court Action will reach decision (either via summary judgment motion or via trial) within 3-4 months. (*Id.*, at ¶ 5.)

In contrast, this proceeding is just beginning. Under this Board's scheduling order, the period for trial testimony will not close until April 29, 2004 — almost six months after trial in the Federal Court Action. (Ex. 2.) Of course, the Board's decision will not be issued until some time after that. To date, no discovery has even been taken in this proceeding yet, and the discovery period — which ends October 17, 2003 — has not even closed yet. (*Id.*; Nguyen Decl., ¶ 7.)

Quiksilver obviously recognized there was no reason to suspend this proceeding, because it never sought a stay before — even though this cancellation petition was filed **after** the Federal Court Action was already pending. If Quiksilver truly believed that it

was wise to stay this proceeding, it could have and would have sought a stay promptly after Kymsta filed the cancellation petition. Instead, Quiksilver notably brings this motion only **after** Kymsta announced its intent to seek discovery in this proceeding that had not been taken in the Federal Court Action. Precluding Kymsta's legitimate discovery is not a basis for staying this proceeding, and Quiksilver's transparent motion should be denied.

Most significantly, a stay will not save the Board any time or resources. The Federal Court Action will be decided well before the Board ever has to consider the merits of this cancellation petition. Discovery can proceed in this action without any involvement by the Board, and the Board's time and resources will not be unnecessarily wasted — especially because the Federal Court Action is so near completion.

**B. The Federal Court Action involves additional trademarks not at issue in this proceeding, and there is a good chance its final decision may have no bearing on this proceeding.**

This proceeding only relates to Quiksilver's ROXY mark for clothing (Reg. No. 2,427,898.) The Federal Court Action involves not only that mark, but seven additional marks (for QUIKSILVER ROXY on clothing and ROXY in various classes). Given the number of marks at issue in the Federal Court Action, there is no way to know how the decision in that case will affect this proceeding, or whether there will be any affect at all.

Furthermore, there is a good chance the Federal Court Action may be terminated based on both parties' respective laches defenses (Quiksilver has known about Kymsta's ROXYWEAR mark since at least 1994 or 1995, eight years before it filed suit). There may never been any final ruling about which party has priority of use, which is the key issue in this proceeding. This proceeding should not be stayed in the mean time, especially given that the Federal Court Action will be completed well before this Board ever considers the merits of the cancellation petition.

#### IV. REQUEST FOR TELEPHONIC HEARING

Kymsta recognizes the Board rarely grants oral hearings on motions, but believes a telephonic hearing is warranted in this instance. This is not the typical circumstance for a motion to suspend: (1) this motion was only triggered once Kymsta announced its intent to exercise discovery rights; and (2) the Federal Court Action is almost over, so the normal reasons for suspending this proceeding are not applicable. An oral hearing will be useful to explain these events, so the Board can understand that Quiksilver is not seeking a stay out of efficiency interests but purely to thwart Kymsta's discovery rights.

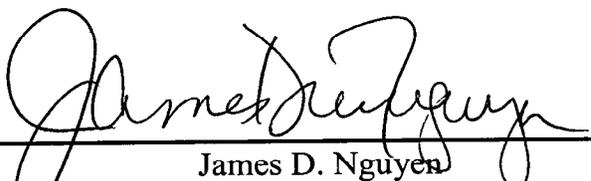
#### V. CONCLUSION

For the foregoing reasons, Kymsta respectfully requests that the Court deny the motion to suspend this proceeding. Otherwise, Kymsta will be unfairly precluded from invoking its legitimate discovery rights. Kymsta respectfully requests a telephonic hearing on this motion.

DATED: August 11, 2003

Respectfully submitted,

KYMSTA CORP.

By:   
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William J. Robinson

James D. Nguyen

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Attorneys for Petitioner **KYMSTA CORP.**

Dec.

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

KYMSTA CORP.,	)	CANCELLATION NO. 92041805
a California corporation,	)	
	)	
Petitioner,	)	<b>DECLARATION OF JAMES D.</b>
	)	<b>NGUYEN IN OPPOSITION TO</b>
vs.	)	<b>MOTION TO SUSPEND</b>
	)	<b>CANCELLATION ACTION</b>
QUIKSILVER, INC.,	)	
a Delaware corporation,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

I, James D. Nguyen, declare and state as follows:

1. I am an attorney at law, duly licensed to practice before all courts of the State of California, before the United States District Courts for the Central, Southern, Northern, Eastern Districts of California, and before the United States Courts of Appeal for the Second and Ninth Circuits. I am Senior Counsel at the law firm of Foley & Lardner, counsel for Kymsta Corp., petitioner in this action. I have personal knowledge of the facts contained herein. If called upon to testify, I could and would competently testify thereto.

**THE FEDERAL COURT ACTION**

2. In addition to representing Kymsta Corp. in this cancellation proceeding, I also represent Kymsta Corp. in a federal court action pending in the U.S. District Court for the Central District of California — *Quiksilver, Inc. v. Kymsta Corp., et al.* and

related cross-action, Case No. CV 02-5497 DT (MCx) (the "Federal Court Action"). In the Federal Court Action, Quiksilver alleges that Kymsta's ROXYWEAR mark infringes Quiksilver's QUIKSILVER ROXY mark and seven registrations for the ROXY mark. Kymsta filed a counter-claim, alleging that Quiksilver is infringing Kymsta's ROXYWEAR mark.

3. Attached hereto as Exhibit 1 is true and correct copy of the January 27, 2003 Scheduling Order in the Federal Court Action. That order set the discovery cut-off in the case as July 11, 2003. Trial in that action is set for November 4, 2003.

4. The Federal Court Action is nearing completion. The discovery cut-off was July 11, 2003; under agreement, the parties have continued to complete certain discovery in the Federal Court Action after that cut-off, but the bulk of discovery in that case has now been completed. Further, Kymsta already filed a motion for partial summary judgment on the issue of priority of use. In response to that motion, Quiksilver made a cross-request for a *sua sponte* finding that it had priority of use. On July 14, 2003, the Court issued an order denying both Kymsta's motion and Quiksilver's cross-request, finding triable issues of fact as to both parties' requested relief. Since then, Quiksilver's counsel in the Federal Court Action, Robert Loewy (from O'Melveny & Myers, LLP), has informed me that Quiksilver intends to bring an independent motion for partial summary judgment on the first use issue. Both Mr. Loewy and I have also announced our intent to bring motions for summary judgment based on our respective clients' laches defense to the opposing party's claim.

5. Given the expected cross-summary judgment motions on the laches issues, I expect the Federal Court Action to be resolved — either by summary judgment motion, trial or otherwise — within 3-4 months from now.

**THIS CANCELLATION PROCEEDING**

6. On March 12, 2003, I submitted the Petition in this cancellation proceeding for filing before the Trademark Trial and Appeal Board. The cancellation petition was therefore filed almost one year after the Federal Court Action was initiated.

7. The Federal Court Action is much further along than this cancellation proceeding. Attached hereto as Exhibit 2 is a true and correct copy of the March 31, 2003 scheduling order in this proceeding. That order sets the end of the discovery period as October 17, 2003. To date, neither Kymsta nor Quiksilver has conducted **any** discovery in this proceeding. In fact, other than the filing of the initial pleadings (petition and answer), the parties have taken no other action in this proceeding. Furthermore, the scheduling order sets the end of the period for trial testimony as April 29, 2004. Therefore, a final decision in this proceeding will not be issued until some time after May, 2004 — at least six months after trial in the Federal Court Action.

**QUIKSILVER'S TRUE MOTIVE IS TO CUT OFF  
KYMSTA'S LEGITIMATE DISCOVERY RIGHTS**

8. Quiksilver's true motive behind this motion is to prevent Kymsta from exercising its legitimate discovery rights in this proceeding. On July 28, 2003, I had a telephone conversation with Mr. Loewy concerning various deadlines in the Federal Court Action. During that conversation, I asked whether Quiksilver would be amenable to continuing the discovery cut-off in the Federal Court Action. I explained that Kymsta wanted to conduct certain additional discovery to find information that Quiksilver had yet been able to confirm in the Federal Court Action. I explained that Kymsta already had the right to pursue that discovery in this cancellation proceeding, but as a matter of courtesy and efficiency, I approached Quiksilver first about conducting the discovery in the Federal Court Action. In response, Mr. Loewy asked whether depositions were permissible in this cancellation proceeding, **and then noted that Quiksilver could seek**

**to stay this proceeding to preclude the discovery.** Nevertheless, Mr. Loewy said he was willing to consider the discovery proposal.

9. On August 1, 2003, Mr. Loewy told me that Quiksilver might agree to certain limited additional discovery in the Federal Court Action, and asked me to outline what specific additional discovery items I wanted to pursue. That same day, Quiksilver's counsel in this proceeding served this motion, which I received on August 4.

10. On August 6, 2003, I sent Mr. Loewy a letter outlining the additional discovery items I wanted to pursue in the Federal Court Action. A true and correct copy of that letter is attached hereto as Exhibit 3. On August 8, Mr. Loewy and I had an exchange of e-mail correspondence, in which he indicated that Quiksilver was still considering my request but was generally not inclined to agree.

11. The discovery Kymsta wants to pursue (either in this cancellation proceeding or in the Federal Court Action) is significant to the merits of the parties' dispute. The additional discovery would not duplicate discovery that was already conducted in the Federal Court Action. In fact, I had not pursued **any** discovery to date in this proceeding because I did not want to unnecessarily duplicate efforts taken in the Federal Court Action.

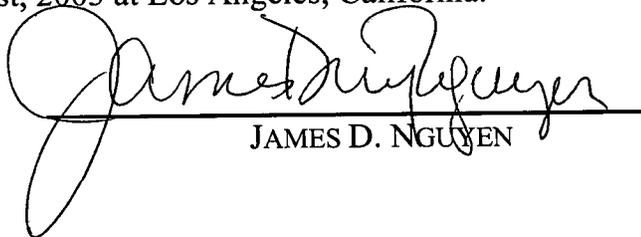
12. But certain discovery is now warranted because Quiksilver has been unable to confirm certain important facts related to its first use of the ROXY mark — an issue pivotal to this cancellation proceeding. Kymsta began using its ROXYWEAR mark by mid-January, 1992. On its registration for the ROXY "standalone" mark, Quiksilver lists a first use date of January 1, 1992. But Quiksilver also has a separate registration for the QUIKSILVER ROXY mark, which it registered two years before registering ROXY. One of the pivotal issues for this cancellation proceeding is which mark did Quiksilver use on products it sold by January, 1992. Kymsta believes (and various evidence uncovered in the Court Action confirms) that Quiksilver's first products did not bear the standalone ROXY mark, but instead used the combined phrase QUIKSILVER ROXY

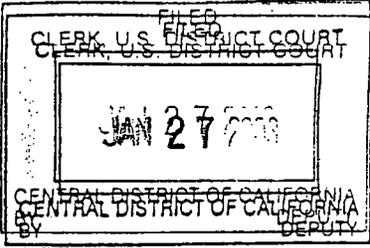
instead. This is a significant issue, because if Kymsta is correct, Quiksilver only has priority to the QUIKSILVER ROXY mark but not to ROXY (and the registration for ROXY should be cancelled, as Kymsta requests).

13. To investigate this issue further, I want to pursue additional discovery, including: (1) issue document subpoenas to the companies which supplied Quiksilver's labels and hangtags for any QUIKSILVER ROXY or ROXY products from 1990 to 1995; (2) take the deposition of such label or hangtag companies; (3) take the deposition of Natalie Murphy, who apparently was the assistant designer for the first ROXY products and who has knowledge concerning when and how Quiksilver first use the ROXY mark; (4) possibly take the depositions of Mel Matsui and Sonia Kasparian, who were designers for the ROXY line in the early 1990's and who will have knowledge about what mark(s) was first used on Quiksilver's products at issue; (5) possibly take the depositions of Quiksilver employees Pat DeRush, Lissa Zhwalen, and Danny Kwock, who have knowledge of the ROXY line and what mark(s) were used on the goods. **None** of this discovery has been conducted in the Federal Court Action, and I am being very careful not to duplicate any discovery already obtained in the Federal Court Action. **If Quiksilver does not agree to permit this discovery in the Federal Court Action, I will invoke Kymsta's right to take such discovery in this cancellation proceeding.** Quiksilver served this motion to suspend only in response to hearing that I may want to pursue such discovery in this proceeding.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11<sup>th</sup> day of August, 2003 at Los Angeles, California.

  
JAMES D. NGUYEN



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Quiksilver

Plaintiff(s),

vs.

Kymsta

Defendant(s).

CASE NO. CV \_\_\_\_\_ DT

ORDER FOR JURY TRIAL:

- 1. Establishing a Discovery Cut-Off Date of 11/11/03
- 2. Setting the Final Pre-Trial Conference for 10/6/03 at 1:30 P.M.
- 3. Setting 1/4/03 at 1:30 9:30 A.M. as the Trial Date 93
- 4. Re: Preparation for JURY TRIAL

Ly d. H.

SCHEDULING:

1. In General: All motions to join other parties or to amend the pleadings shall be filed and served within sixty (60) days of the date of this order and noticed for hearing within ninety (90) days hereof. All unserved parties are subject to dismissal at the time of the Final Pre-Trial Conference.

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1           2.   Motions for Summary Judgment or Partial Summary

2   Judgment: No motions for summary judgment or partial summary  
3 judgment may be filed later than fifteen (15) days after the  
4 discovery cut-off date.

5           3.   Discovery Cut-Off: The Court has established a cut-off  
6 date for discovery in this action. All discovery is to be  
7 completed on, or prior to, the cut-off date. Accordingly, the  
8 following discovery schedule shall apply to this Court:

9           A.   Depositions: All depositions shall be scheduled to  
10 commence at least five (5) working days prior to the discovery  
11 cut-off date. All original depositions to be used in trial shall  
12 be lodged with the Courtroom deputy on the day of trial.

13           B.   Interrogatories: All interrogatories must be  
14 served at least forty-five (45) days prior to the discovery cut-  
15 off date. The Court will not approve stipulations between  
16 counsel which permits responses to be served after the cut-off  
17 date except in unusual circumstances and upon showing of good  
18 cause.

19           C.   Production of Documents, etc.: All requests for  
20 production, etc., shall be served at least forty-five (45) days  
21 prior to the discovery cut-off date. The Court will not approve  
22 stipulations between counsel which permit responses to be served  
23 after the cut-off date except in unusual circumstances and upon a  
24 showing of good cause.

25           D.   Request for Admissions: All requests for  
26 admissions shall be served at least forty-five (45) days prior to

1 the discovery cut-off date. The Court will not approve  
2 stipulations between counsel which permit responses to be served  
3 after the cut-off date except in unusual circumstances and upon a  
4 showing of good cause.

5 E. Discovery Motions: Any motion respecting the  
6 inadequacy of responses to discovery must be filed and served not  
7 later than ten (10) days after the discovery cut-off date.  
8 Whenever possible, the Court expects counsel to resolve discovery  
9 problems among themselves in a courteous, reasonable, and  
10 professional manner. Consistent resort to the Court for guidance  
11 in discovery is unnecessary and will result in the Court  
12 appointing a Special Master at the joint expense of the parties  
13 to resolve discovery disputes. The Court expects that counsel  
14 will strictly adhere to the Civility and Professional Guidelines  
15 adopted by the United States District Court for the Central  
16 District of California in July of 1995.

17 F. Disclosure of Expert Testimony: Pursuant to  
18 Fed.R.Civ.P. P. 26(a)(2)(c), a party shall make all disclosures  
19 required at the time and in the sequence directed by the Court.  
20 On the absence of other directions from the Court or stipulation  
21 by the parties, the disclosures shall be made at least 90 days  
22 before the trial date or the date the case is to be ready for  
23 trial, or, if the evidence is intended solely to contradict or  
24 rebut evidence on the same subject matter identified by another  
25 party under paragraph (2)(B), within 30 days after the disclosure  
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1 made by the other party. The parties shall supplement these  
2 disclosures when required under subdivision (e) (1).

3 FINAL PRE-TRIAL CONFERENCE:

4 This case has been placed on calendar for a Final Pre-Trial  
5 Conference pursuant to Fed.R.Civ.P. 16 and 26. Unless excused  
6 for good cause, each party appearing in this action shall be  
7 represented at the Final Pre-Trial Conference, and all pre-trial  
8 meetings of counsel, by the attorney who is to have charge of the  
9 conduct of the trial on behalf of such party.

10 STRICT COMPLIANCE WITH THE REQUIREMENT OF FED.R.CIV.P. 26  
11 AND LOCAL RULES ARE REQUIRED BY THE COURT. Therefore, carefully  
12 prepared Memoranda of Contentions of Fact and Law, Witness List,  
13 and Exhibit List shall be submitted to the Court by each party.

14 The Memoranda of Contentions of Fact and Law, Witness List  
15 and Exhibit List are due twenty-one (21) days before the Final  
16 Pre-Trial Conference.

17 If expert witnesses are to be called at trial, each party  
18 shall list and identify their respective expert witnesses.  
19 Failure of a party to list and identify an expert witness shall  
20 preclude a party from calling an expert witness at trial. If  
21 expert witnesses are to be called at trial, the parties shall  
22 exchange at the Final Pre-Trial Conference short narrative  
23 statements of the qualifications of the expert and the testimony  
24 expected to be elicited at trial. If reports of experts to be  
25 called at trial have been prepared, they shall be exchanged at  
26

1 the Final Pre-Trial Conference but shall not substitute for the  
2 narrative statements required.

3 TRIAL PREPARATION FOR JURY TRIAL - MOTIONS, INSTRUCTIONS AND  
4 EXHIBITS:

5 THE COURT ORDERS that all counsel comply with the following  
6 in their preparation for trial:

7 1. MOTIONS IN LIMINE:

8 All motions in limine must be filed and served a  
9 minimum of forty-five (45) days prior to the scheduled trial  
10 date. Each motion should be separately filed and numbered. All  
11 opposition documents must be filed and served at least twenty  
12 (20) days prior to the scheduled trial date. All reply documents  
13 must be filed and served at least five (5) days prior to the  
14 scheduled trial date.

15 All motions in limine will be heard on the scheduled  
16 trial date.

17 2. JURY INSTRUCTIONS/SPECIAL VERDICT FORMS:

18 Thirty-five (35) days before trial, plaintiff shall  
19 serve plaintiff's proposed jury instructions and special verdict  
20 forms on defendant. Twenty-eight (28) days before trial,  
21 defendant shall serve on plaintiff defendant's objections to  
22 plaintiff's instructions together with any additional  
23 instructions defendant intends to offer. Twenty-one (21) days  
24 before trial, counsel are ordered to meet and confer to attempt  
25 to come to agreement on the proposed jury instructions.

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1 Fourteen (14) days before trial, counsel shall file with the  
2 Court a JOINT set of jury instructions on which there is  
3 agreement. Defendant's counsel has the burden of preparing the  
4 joint set of jury instructions. At the same time each party  
5 shall file its proposed jury instructions which are objected to  
6 by any other party, accompanied by points and authorities in  
7 support of those instructions.

8 Seven (7) days before trial, counsel are to file points and  
9 authorities supporting their objections to any other parties'  
10 proposed jury instructions.

11 The Court prefers the use of "Devitt & Blackmar," "Manual of  
12 Model Jury Instructions for the Ninth Circuit," or applicable  
13 "BAJI" instructions as modified or supplemented to fit the  
14 circumstances of this case. Each requested instruction shall be  
15 set forth in full; be on a separate page; be numbered; cover only  
16 one subject or principle of law; not repeat principles of law  
17 contained in any other requested instructions; and cite the  
18 authority for a source of the requested instruction. In addition  
19 to the foregoing, each party shall file with the Courtroom Deputy  
20 on the first day of trial a "clean set" of the aforesaid  
21 requested duplicate jury instructions in the following form:  
22 Each requested instruction shall be set forth in full; be on a  
23 separate page with the caption "COURT'S INSTRUCTION NUMBER \_\_\_\_";  
24 cover only one subject or principle of law; and not repeat  
25 principles of law contained in any other requested instruction.

1 The "clean set" shall not cite the authority for a source of the  
2 requested instruction.

3 During the trial and before argument, the Court will meet  
4 with counsel and settle the instructions. Failure of counsel to  
5 strictly follow the provisions of this section may subject the  
6 non-complying party and/or its attorney to sanctions and shall  
7 constitute a waiver of jury trial in all civil cases.

8 3. TRIAL EXHIBITS:

9 Counsel are to prepare their exhibits for presentation  
10 at the trial by placing them in binders which are indexed by  
11 exhibit number with tabs or dividers on the right side. Counsel  
12 shall submit to the Court an original and one copy of the  
13 binders. The exhibits shall be in a three-ring binder labelled  
14 on the spine portion of the binder as to the volume number and  
15 contain an index of each exhibit included in the volume.  
16 Exhibits must be numbered in accordance with Fed.R.Civ.P. 16, 26  
17 and the Local Rules.

18 The Court requires that the following be submitted to the  
19 Courtroom Deputy Clerk on the first day of trial:

20 A. The original exhibits with the Court's exhibit tags  
21 shall be stapled to the front of the exhibit on the upper right-  
22 hand corner with the case number, case name, and exhibit number  
23 placed on each tag.

24 B. One bench book with a copy of each exhibit for use  
25 by the Court, tabbed with numbers as described above. (Court's  
26 exhibit tags not necessary.)

1 C. Three (3) copies of exhibit lists.

2 D. Three (3) copies of witness lists in the order in  
3 which the witness may be called to testify.

4 E. A joint statement of the case will be read by the  
5 Court to the prospective panel of jurors prior to the  
6 commencement of the jury trial. Counsel are ordered to meet and  
7 so agree to this 1-2 page joint statement of the case five (5)  
8 days prior to the trial date.

9 All counsel are to meet not later than ten (10) days before  
10 trial and to stipulate so far as is possible as to foundation,  
11 waiver of the best evidence rule, and to those exhibits which may  
12 be received into evidence at the start of trial. The exhibits to  
13 be so received will be noted on the extra copies of the exhibit  
14 lists.

15 The Clerk is ordered to serve a copy of this Order either  
16 personally or by electronic mail or by mail on counsel for all  
17 parties to this action.

18 DATED: December 1, 2000

19  
20  
21 **DICKRAN TEVRIZIAN**

22 Dickran Tevrizian, Judge  
23 UNITED STATES DISTRICT COURT

24 COPIES TO:

25 COUNSEL OF RECORD  
26

1 C. Three (3) copies of exhibit lists.

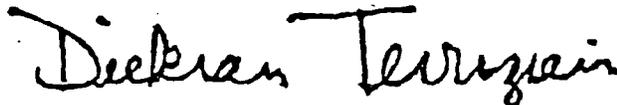
2 D. Three (3) copies of witness lists in the order in  
3 which the witness may be called to testify.

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5 Court to the prospective panel of jurors prior to the  
6 commencement of the jury trial. Counsel are ordered to meet and  
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8 days prior to the trial date.

9 All counsel are to meet not later than ten (10) days before  
10 trial and to stipulate so far as is possible as to foundation,  
11 waiver of the best evidence rule, and to those exhibits which may  
12 be received into evidence at the start of trial. The exhibits to  
13 be so received will be noted on the extra copies of the exhibit  
14 lists.

15 The Clerk is ordered to serve a copy of this Order either  
16 personally or by electronic mail or by mail on counsel for all  
17 parties to this action.

18 DATED: December 1, 2000

19  
20 

21 DICKRAN TEVRIZIAN  
22 UNITED STATES DISTRICT COURT

23 COPIES TO:

24 COUNSEL OF RECORD  
25  
26  
27

UNITED STATES PATENT AND TRADEMARK  
OFFICE

Trademark Trial and Appeal Board

2900 Crystal Drive

Arlington, Virginia 22202-3513

2

Mailed: March 31, 2003

QUIKSILVER, INC.  
1740 Monrovia Avenue  
Costa Mesa, CA 92627

Cancellation No. 92041805

Reg. No. 2427898

JAMES D NGUYEN  
FOLEY & LARDNER  
2029 CENTURY PARK EAST 35TH FLOOR  
LOS ANGELES, CA 90067

KYMSTA CORP.

V.

QUIKSILVER, INC.

**James Scott Legal Assistant**

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof. (See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as

well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

**Discovery and testimony periods are set as follows:**

Discovery period to open:	April 20, 2003
Discovery period to close:	October 17, 2003
30-day testimony period for party in position of plaintiff to close:	January 15, 2004
30-day testimony period for party in position of defendant to close:	March 15, 2004
15-day rebuttal testimony period for plaintiff to close:	April 29, 2004

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

## THE TRADEMARK TRIAL AND APPEAL BOARD WOULD LIKE YOU TO KNOW:

The TTAB Customer Service Center is available to

- \*answer telephone inquiries
- \*explain pertinent legal provisions and related administrative practices as they apply to specific cases
- \*provide status information on pending cases
- \*provide access to the files of pending cases
- \*resolve problems

The telephone number for the TTAB Customer Service Center is (703) 308-9300, extension 0 [zero].

The Patent and Trademark Office has two special boxes for expedited processing and distribution of documents filed with the TTAB. Envelopes and transmittal letters for TTAB should be addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, followed by one of the following designations

"Box TTAB Fee": for papers filed with the TTAB that include filing fees, such as notices of opposition, petitions to cancel, and notices of ex parte appeal

and

"Box TTAB": for all non-fee papers filed with the TTAB, such as requests for extensions of time to file notices of opposition and motions.

The TTAB Customer Service Center makes every effort to provide public access to application files, opposition files, cancellation files and concurrent use files immediately upon request for access. Files located will be made available in a central storage area accessible to the public. You can also access information about TTAB proceeding files online. Go to <http://www.uspto.gov/web/offices/dcom/ttab/> and click the "BISX LINK".

Any questions, comments, or suggestions concerning TTAB service should be directed to Jean Brown, TTAB Technical Program Manager, at (703) 308-9300, extension 123 or Afendi Ziad, Supervisory Legal Assistant at (703) 308-9300, extension 205 or Angela Pope, Supervisory Legal Assistant at (703) 308-9300, extension 144.

The Trademark Trial and Appeal Board encourages you to consider alternative dispute resolution as a means of settling the issues raised in this opposition or cancellation proceeding. Although more than 95% of Board proceedings are decided prior to trial (by settlement or by entry of pre-trial judgment), alternative dispute resolution techniques might produce an earlier, mutually agreeable resolution of your dispute or might, at least, narrow the scope of discovery or the issues for trial. In either case, alternative dispute resolution might save you time and money.

Many non-profit organizations, both inside and outside the intellectual property field, offer alternative dispute resolution services. Listed below are the names and addresses of organizations that have indicated that they can make arrangements for alternative dispute resolution. The listings are given for your convenience; the Board does not sponsor nor endorse any particular organization's alternative dispute resolution services.

International Trademark Association Telephone: (212) 642-1726 Fax: (212) 768-7796 <a href="http://www.inta.org/adr/index.shtml">www.inta.org/adr/index.shtml</a> e-mail: <a href="mailto:lstigliano@inta.org">lstigliano@inta.org</a>	CPR Institute for Dispute Resolution Telephone: (212) 949-6490 Fax: (212) 949-8859 <a href="http://www.cpradr.org">www.cpradr.org</a> e-mail: <a href="mailto:info@cpradr.org">info@cpradr.org</a>
American Intellectual Property Law Association (AIPLA) 2001 Jefferson Davis Highway Suite 203 Arlington, Virginia 22202 Telephone: (703) 415-0780 Fax: (703) 415-0786	
American Arbitration Association (AAA) Headquarters 140 West 51 <sup>st</sup> Street New York, New York 10020-1203 Telephone: (212) 484-3266 Fax: (212) 307-4387	

Finally, if the parties consider using alternative dispute resolution in this proceeding, the Board would like to know; and if the parties actually engage in alternative dispute resolution, the Board would be interested to learn what mechanism (e.g., arbitration, mediation, etc.) was used and with what general result. Such a statement from the parties is not required but would be helpful to the Board in assessing the value of alternative dispute resolution in Trademark Trial and Appeal Board proceedings.

**PROCEEDING SYNOPSIS**

United States Patent and Trademark Office, Trademark Trial and Appeal Board  
 Trademark Opposition and Cancellation Proceedings Under 15 USC 1063, 1064, 37 CFR 2.101 et seq.

**FILING OPPOSITION/CANCELLATION**

Any person (Opposer) may file a Notice of Opposition within 30 days against any mark published under 15 USC 1062(a) in Official Gazette; may oppose in whole or part.

Time for filing Notice may be extended by written request to TTAB. A first extension for not more than 30 days will be granted upon request. Further extensions may be granted for good cause. Extensions aggregating more than 120 days from pub. date not granted unless consented to by applicant or extraordinary circumstances. 37 CFR 2.102(c). Request should be in triplicate. 37 CFR 2.102(d).

Any person (Petitioner) may file a Petition to cancel a registration in whole or in part, but only under conditions set forth in 15 USC 1064.<sup>2</sup> Geographic limitation will be considered by TTAB only in concurrent use proceeding. 37 CFR 2.99(h), 2.133(c).

Opposer/Petitioner is in position of Plaintiff and Applicant/Respondent is Defendant. 37 CFR 2.116(b).

Notice/Petition corresponds to complaint in civil action. 37 CFR 2.116(c).

Amendment to pleadings in accord with Rule 15, Fed. Rules of Civil Procedure (FRCP). 37 CFR 2.107, 2.115.

**MAILING PROCEDURES**

Certificate of Mailing or Transmission and Express Mail procedures effective for all papers. 37 CFR 1.8, 1.10.

**INSTITUTION OF PROCEEDING; WITHDRAWAL**

TTAB examines Notice/Petition for formal requirements and sends notification to Defendant, generally within few weeks of filing date. Duplicate copy of Notice/Petition and Exhibits sent to Defendant. 37 CFR 2.105, 2.113.

Notice/Petition may be withdrawn without prejudice before Defendant files Answer. 37 CFR 2.106(c), 2.114(c). With written consent of Defendant, later withdrawal may be without prejudice.

Defendant may not abandon application or surrender registration without prejudice except with written consent of Plaintiff. 37 CFR 2.135, 2.134.

**ANSWER; MOTIONS**

Time for Answer set by TTAB for 40 days from Notification mailing date.<sup>3</sup> Counterclaim should be filed with answer or promptly upon discovery of information supporting Counterclaim. 37 CFR 2.106(b), 2.114(b).

Time for reply to Counterclaim set by TTAB for not less than 30 days from TTAB action mailing date. 37 CFR 2.106(b), 2.114(b).

Motions may be brought before TTAB in writing and with Brief in support. Brief in opposition thereto, 15 days (30 days for summary judgment motion). Briefs limited to 25 pages. Reply Brief, if filed, 15 days, limited to 10 pages. Reconsideration 30 days after decision; Opposition Brief, 15 days. 37 CFR 2.127. Most motions used in Federal practice are applicable.

Motions for Summary Judgment, to Compel, and to Test Sufficiency of Responses to Requests for Admissions, if filed, due before Plaintiff testimony period opens. 37 CFR 2.127(e), 2.120(e), 2.120(h).

**TRIAL DATES**

TTAB issues Order setting opening and close of Discovery and Trial dates. Discovery set for period of 180 days; 30-day Pl. Testimony period closes 90 days after close of Discovery period; 30-day Def. Test. period closes 60 days after Pl. Test. period; 15-day Pl. Rebuttal Test. period closes 45 days after Def. Test. period. 37 CFR 2.120(a), 2.121.

In cases where Counterclaim filed, TTAB sets additional time periods for testimony and briefing.

**DISCOVERY PERIOD**

Interrogatories, Reqs. for Prod. Of Docs. & Things, and Reqs. for Adm., if served, must be served by last day of Discovery period. Written Responses within 30 days from date of service of Disc. Reqs. FRCP apply except as otherwise provided. 37 CFR 2.116, 2.120(a). Extension of Time to respond to discovery granted upon cause or by stipulation.<sup>4</sup>

Interrogatories limited to proceeding total of 75, counting subparts; additional interrogatories allowed upon motion for good cause or by stipulation. 37 CFR 2.120(d)(1).

Discovery Depositions (noticed and taken within Disc. Period) in District where deponent resides or is employed. 37 CFR 2.120(a), 2.120(b). Either party may request designation of witnesses under FRCP 30(b)(6), 31(a).

**PLAINTIFF'S TRIAL PERIOD**

Plaintiff's Testimony-In-Chief. Opens 60 days after Discovery Period closes, and runs for 30 days (refer to Order).

Testimony taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.

Plaintiff serves Transcript of testimony and copies of documentary exhibits on adverse party within 30 days after completion of taking testimony. Certified transcript and exhibits filed with TTAB. 37 CFR 2.125.

Notice of Reliance as appropriate on Discovery Deps., Adms. and Int. Answers, with copies of same, due before close of Test. 37 CFR 2.120.<sup>5</sup>

Involved app. or reg. files are in evidence for relevant and competent purposes. Publications in gen. Circ. or in libraries, and official records, may be received if appropriate Notice of Reliance is filed and copies submitted within Test. period. 37 CFR 2.122.

Motion under 37 CFR 2.132, if filed, due after close of Pl.'s Test. period & before opening of Def.'s.

**DEFENDANT'S TRIAL PERIOD**

Opens 30 days after close of Pl.'s Test. period. Runs for 30 days.

Test. taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.

Notice of Reliance on Discovery responses also due within Test. period, if filed. 37 CFR 2.120.

Notice of Reliance on gen. circ. publ. and official records due within Test. period, if filed. 37 CFR 2.122.

Def. serves Test. transcript on Pl. within 30 days and files certified transcript and exhibits with TTAB. 37 CFR 2.125.

**PLAINTIFF'S REBUTTAL PERIOD**

Rebuttal Test. period for Pl. opens 30 days after close of Def.'s Test. period and runs for 15 days.

Pl. may file Notice of Reliance under 37 CFR 2.120, 2.122, with matter relied on, and take Test. to rebut Def. Test. and other evidence.

Pl. serves and files Transcript of Rebuttal Test. and exhibits in accordance with 37 CFR 2.125.

**BRIEFS; ORAL HEARING**

Pl. Brief due 60 days after Rebuttal period closing.<sup>6</sup>

Def. Brief, if filed, due 30 days after Pl. Brief due.

Pl. Reply Brief, if filed, due 15 days after Def. Brief due. 37 CFR 2.128.

Separate Request for Oral Hearing, if filed, due not later than 10 days after Reply Brief due. 37 CFR 2.129.

TTAB Notice of Oral Hearing sent to all parties.

❖ Oral Hearing before panel of at least three TTAB judges. 30 minutes for each party. 37 CFR 2.129.

❖ DECISION; RECONSIDERATION; APPEAL  
TTAB Deliberation. Writing of Opinion and Decision in due course.

❖ Request for rehearing, reconsideration or modification, if

filed, due within one month. Brief in opposition due within 15 days. 37 CFR 2.129(c).

❖ Any Appeal from TTAB Decision due within two months of Decision or two months after denial of req. for recon. See especially 37 CFR 2.129(d).

**NOTE: Footnotes and TTAB addresses and telephone number appear on the back of this sheet**

**FOOTNOTES**

- (1) Opposer may be any legal entity including a corporation. Opposer must believe that opposer would be **damaged by registration of the mark** and state the reasons. 15 USC 1063 and 37 CFR 2.101. Notice of Opposition need not be verified. \$200 required fee for each class for each person opposing. 37 CFR 2.6, 2.101(b). May be signed by attorney. 37 CFR 2.101(b). Duplicate copy including exhibits required. Order status and title copies of pleaded registrations in advance and attach to Notice/Petition or introduce as evidence during Testimony-In-Chief period. 37 CFR 2.122.
- (2) Action, grounds and requirements (Footnote 1) for initiation of Cancellation proceeding are similar to those for an Opposition proceeding and are covered in 15 USC 1064, 1092 and 37 CFR 2.111, 2.112. \$200 required fee per class, per person. Duplicate copy required.
- (3) Except Notice/Petition, each paper must be served on opponent. Statement of service (date and manner) is required. Period to respond to Motions and Discovery Requests is extended 5 days when service is by first-class mail, "Express Mail," or overnight courier. 37 CFR 2.119. Action due on weekend or D.C. holiday can be taken on next business day. 37 CFR 1.7.
- (4) Resetting of time to respond to Discovery Request does not result in extension of Discovery period and subsequent testimony periods unless requested. 37 CFR 2.120(a). All consented extensions of time should be filed in triplicate and list specific dates for all subsequent periods affected.
- (5) Except for 37 CFR 2.122(e) documents, documents produced in response to Requests for Production cannot be made of record by Notice of Reliance alone. 37 CFR 2.120(j)(ii).
- (6) Briefs should be typewritten or printed, double-spaced, in at least pica or eleven-point type, on letter paper (8½ x 11). Three copies of briefs required. Alphabetical index of cases required. Length limit of 55 pages, including table of contents, index of cases, description of record, statement of issues, recitation of facts, argument, and summary. Reply brief 25 pages total. 37 CFR 2.128(b).

**ADDRESSES AND TELEPHONE**

**All papers not requiring a fee should be mailed to:**

**Box TTAB No Fee  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513**

**NOTE: For papers with fee, use "Box TTAB Fee"**

**TTAB Office Location and Telephone Number**

**2900 Crystal Drive  
South Tower, Suite 9B40  
Arlington, Virginia 22202-3513**

**Telephone: (703) 308-9300**

August 6, 2003

WRITER'S DIRECT LINE  
310.975.7837  
EMAIL: jnguyen@foleylaw.com

CLIENT/MATTER NUMBER  
025090.9001

VIA FACSIMILE (949) 823-6994 AND FIRST CLASS MAIL

Robert G. Loewy, Esq.  
**O'MELVENY & MYERS LLP**  
610 Newport Center Drive, 17th Floor  
Newport Beach, California 92660-6429

Re: *Quiksilver, Inc. v. Kymsta Corp., et al.*  
C.D.Cal. Case No. CV 02-5497 DT (MCx)

Dear Bob:

Following up our conversation Friday afternoon, here is the additional discovery we want to take:

(1) Up to five additional interrogatories. One of the interrogatories will ask Quiksilver to identify the companies from which it obtained labels and handtags for QUIKSILVER ROXY or ROXY line from 1990 to 1995. As noted below, we may want to depose those companies. Quiksilver's 30(b)(6) witness was unable to identify the company which produced the first labels. Our client believes it has found the first company, but we naturally do not want to expend unnecessary time taking that company's deposition until we can confirm it is the correct label handtag company. This interrogatory can be avoided if you are willing to informally identify for us the names of the early label and hangtag companies for the line;

(2) Up to five requests for admission;

(3) Document subpoenas to label and hangtag companies identified, as above. This may be combined with depositions of those companies;

(4) The following further depositions:

(a) Natalie Murphy

(b) Quiksilver's label and hangtag companies from 1990-1995 for QUIKSILVER ROXY or ROXY labels and handtags (there may be more than one company, and we would evaluate whether to depose all of them once they are identified)

(c) possibly, Mel Matsui, Sonia Kasparian, Pat DeRush, Lissa Zwhalen and/or Danny Kwock. (At this time, we say possibly because our decision to depose these individuals may depend on the conclusiveness of information we learn from Quiksilver's label and hangtag companies and/or from re-taking Quiksilver's 30(b)(6) deposition.)

Robert G. Loewy, Esq.

August 6, 2003

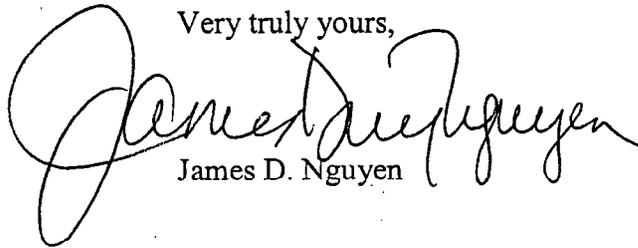
Page 2

Please let me know if you are agreeable to extending the discovery cut-off for the foregoing purposes. Also, if there is specific additional discovery Quiksilver wants to pursue, please let me know so any agreement we reach covers that as well.

In addition, we wish to re-take Quiksilver's 30(b)(6) deposition on categories that were unanswered by Deanna Jackson (though we do not necessarily concede that an extension of the discovery cut-off is needed for that).

Depending on what agreement we reach on the discovery cut-off, we may still need to deal with the motion cut-off. Finally, we still need to set a continued date in September for expert designations.

Very truly yours,

A handwritten signature in black ink, appearing to read "James D. Nguyen". The signature is fluid and cursive, with a large initial "J" and "N".

James D. Nguyen

**CERTIFICATE OF MAILING BY "EXPRESS MAIL"**

"Express Mail" Mailing label Number:

Date of Deposit: August \_\_, 2003

I hereby certify that this KYMSTA CORP.'S OPPOSITION TO MOTION TO SUSPEND CANCELLATION ACTION; REQUEST FOR TELEPHONIC HEARING and all marked attachments are being deposited with the United States Postal Service "Express Mail Post Office to Address" service on the date indicated above and is addressed to: BOX TTAB — FEE, Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513

Name of Person Signing this Certificate: **Mayra Contreras**

Signature of Person Signing this Certificate:

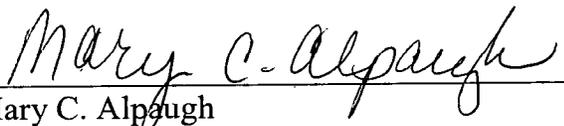
  
\_\_\_\_\_

Date of Signature: August 12, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that this KYMSTA CORP.'S OPPOSITION TO MOTION TO SUSPEND CANCELLATION ACTION; REQUEST FOR TELEPHONIC HEARING and all marked attachments have been served upon the attorney for the trademark owner and respondent, Quiksilver, Inc., by depositing same in the United States mail, first class postage prepaid, in an envelope addressed as follows:

Jeffrey L. Van Hoosear, Esq.  
**KNOBBE, MARTENS, OLSON & BAER, LLP**  
2040 Main Street, 14<sup>th</sup> Floor  
Irvine, CA 92614

  
\_\_\_\_\_  
Mary C. Alpaugh  
Date of Signature: August 2, 2003