

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

Adidas America, Inc., a Delaware Corporation,
Petitioner,
-against-
Michael D. Calmese, a resident of Arizona,
Respondent

Cancellation No.: 92048777
Registration No.: 2,202,454
Registration Date: November 10, 1998
Mark: PROVE IT!

75145058

RESPONDENT'S FIRST SET OF REQUEST FOR ADMISSIONS

Propounding Party: Respondent Michael D. Calmese

Responding Party: Adidas America, Inc.

Set No.: ONE

Pursuant to Rule 36 of the Federal Rule of Civil Procedure and 37 CFR . § 2.120,
Respondent Michael D. Calmese ("Calmese") requests that within the time period and according to the procedures prescribed by the Federal Rules of Civil Procedure, or otherwise by Trademark Trial and Appeal Board order, and pursuant to the following definitions and instructions, Petitioner ADIDAS admit the truth of the following matters.
If Petitioner cannot truthfully admit or deny a request it shall set forth in detail the reasons why. It shall not give "lack of information or knowledge" as the reason for failure to admit or deny unless it also states that it has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable it to admit or deny the request.



06-09-2008

DEFINITIONS

1. The words "YOU", "YOUR" or "PETITIONER" shall mean Respondent ADIDAS and shall of its past and present employees, agents, representatives, attorneys, assignees, licensees, parents, subsidiaries, predecessors, successors, or anyone else acting on behalf of you or otherwise subject to your control.
2. The word "CALMESE" or "RESPONDANT" shall mean Respondent Michael D. Calmese and all of its past and present employees, agents, representatives, attorneys, assignees, licensees, parents, subsidiaries, predecessors, successors, or anyone else acting on behalf of Respondent or otherwise subject to its control.
3. The term "PETITIONER'S MARK" shall mean the trademark for PROVE IT set forth in Paragraph 3 of the Petition to Cancel.
4. The term "RESPONDENT'S MARK" shall mean the registered trademark for PROVE IT! registered by RESPONDANT in the United States Trademark Office Registration Number 2,202,454.

REQUEST FOR ADMISSION

1. RESPONDENT has made continuous use of RESPONDENT'S MARK on clothing since April 1996.
2. RESPONDENT uses RESPONDENT'S MARK on various products throughout the United States.
3. RESPONDENT used RESPONDENT'S MARK on various products that are sold throughout the United States.
4. RESPONDENT uses RESPONDENT'S MARK on various products that are sold in the United States.

5. PETITIONER allows consumers from all over the United States to purchase its products bearing RESPONDENT'S MARK.
6. PETITIONER allowed consumers from all over the United States to purchase its products bearing RESPONDENT'S MARK.
7. PETITIONER is unaware of any other user of the mark PROVE IT on clothing products in the United States besides RESPONDENT.
8. RESPONDENT'S t-shirts are sold over the internet using RESPONDENT'S MARK.
9. RESPONDENT'S MARK on t-shirts are sold to consumers at retail.
10. PETITIONER'S MARK on t-shirts are sold over the internet.
11. PETITIONER'S t-shirts are sold to consumers at retail with PETITIONER'S MARK.
12. RESPONDENT'S t-shirts are sold in sports retail stores with RESPONDENT'S MARK.
13. PETITIONER'S t-shirts are sometimes sold in retail stores with PETITIONER'S MARK.
14. RESPONDENT'S MARK on t-shirts and PETITIONER'S MARK on t-shirts are sometimes sold at the same retail stores.
15. RESPONDENT'S MARK on t-shirts and PETITIONER'S MARK on t-shirts are both clothing products.
16. RESPONDENT'S MARK on t-shirts and PETITIONER'S MARK on t-shirts are related goods.
17. RESPONDENT'S MARK on t-shirts and PETITIONER'S MARK on t-shirts are closely related goods.
18. RESPONDENT'S MARK on t-shirts and PETITIONER'S MARK on t-shirts are

competitive goods.

19. RESPONDENT'S t-shirts bearing RESPONDENT'S MARK and the t-shirts that PETITIONER sold under PETITIONER'S MARK are competitive goods.
20. RESPONDENT'S t-shirts bearing RESPONDENT'S MARK and PETITIONER'S t-shirts sold under PETITIONER'S MARK are closely related goods.
21. RESPONDENT'S MARK and PETITIONER'S MARK are almost identical in appearance.
22. RESPONDENT'S MARK and PETITIONER'S MARK are similar in sight and sound.
23. Consumers or users of PETITIONER'S products bearing PETITIONER'S MARK will encounter products bearing RESPONDENT'S MARK.
24. Consumers will assume that products bearing RESPONDENT'S MARK and products bearing PETITIONER'S MARK are related.
25. PROVE IT is the most distinctive portion of RESPONDENT'S MARK.
26. Consumers will assume that RESPONDANT'S t-shirts and PETITIONER'S t-shirts sold under the same mark are related.
27. Consumers will assume that RESPONDANT'S t-shirts and PETITIONER'S t-shirts that both use the PROVE IT mark are related.
28. RESPONDENT'S t-shirts bearing RESPONDENT'S MARK are sold over the internet.
29. RESPONSENT'S t-shirts bearing RESPONDENT'S MARK are sold to consumers at retail.

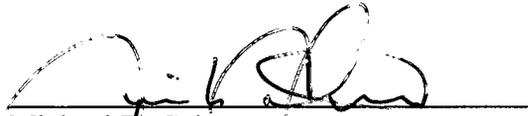
30. RESPONDENT'S MARK is recognized in the United States as a trademark for clothing.
31. RESPONDENT'S MARK has achieved secondary meaning in the United States.
32. PETITIONER was aware of RESPONDENT'S MARK before it used RESPONDENT'S MARK on clothing products.
33. RESPONDENT'S MARK is a strong mark.
34. RESPONDENT'S MARK is a distinctive mark.
35. RESPONDENT'S MARK has become associated in the public's mind exclusively with products finding their source in RESPONDENT.
36. PETITIONER advertises or promotes products bearing APPLICANT'S MARK over the internet.
37. PETITIONER willfully advertised and promoted its products bearing PETITIONER'S MARK in retail stores.
38. PETITIONER did not conduct a trademark search prior to adopting RESPONDENT'S MARK.
39. PETITIONER'S use of RESPONDENT'S MARK is likely to cause confusion among consumers of PETITIONER'S products as to the affiliation, connection, or association of PETITIONER with RESPONDENT.
40. PETITIONER'S MARK comprises the first two words of RESPONDENT'S MARK.
41. The term PROVE IT is the dominant portion of RESPONDENT'S MARK.
42. PETITIONER conceded to RESPONDENT'S cease and desist demand to stop using RESPONDENT'S MARK in 2007.

43. PETITIONER provided RESPONDENT with a spreadsheet to confirm the sale of PETITIONER'S clothing product bearing RESPONDENT'S MARK in 2007.
44. PETITIONER asked RESPONDENT how much money RESPONDENT wanted to settle this matter in 2007.
45. PETITIONER stated it has no future plans for RESPONDENT'S MARK in 2007.
46. PETITIONER filed a non-infringement claim in an Oregon District Court in connection with this claim with the United States Patent Trademark Office.
47. PETITIONER stated in its declaratory suit filed in an Oregon District Court that PETITIONER'S Petition To Cancel with the United States Trademark Office is an extraordinary circumstance.
48. Judge Stewart is the presiding judge in Adidas America Inc v. Michael Calmese in an Oregon District Court Case No. 3:08-cv-00091.
49. PETITIONER does not believe its Petition To Cancel RESPONDENT'S MARK is the extraordinary circumstance Judge Stewart was looking for.
50. PETITIONER does believe its Petition To Cancel RESPONDENT'S MARK is an extraordinary circumstance.
51. PETITIONER does not believe its owes RESPONDENT any compensation for PETITIONER'S use of PETITIONER'S MARK.
52. PETITIONER has superior rights in RESPONDENT'S MARK.
53. PETITIONER asked RESPONDANT how much compensation RESPONDANT wanted to settle this dispute in 2007
54. PETITIONER MARK is stronger than RESPONDENT'S MARK.
55. PETITIONER has note filed for any trademark rights in PETITIONER'S MARK.

56. PETITIONER does not have a registered trademark for PETITIONER'S MARK.

57. RESPONDANT does have a registered trademark for RESPONDANT'S MARK.

Dated: June 5, 2008



Michael D. Calmese
14666 N. 90th Lane
Peoria, Arizona 85381
(602)348-0964

Attorney Pro Se

PROOF OF SERVICE

On June 5, 2008, I served RESPONDENT'S FIRST SET OF REQUESTS FOR
ADMISSIONS on the PETITIONER in this action by placing a true copy thereof
enclosed in an envelope, addressed as follows:

David K. Friedland
Jaime S. Rich
355 Alhambra Circle Ste. 1100
Coral Gables, FL 33134

