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

Proceeding	92048777
Party	Plaintiff adidas America, Inc.
Correspondence Address	DAVID K. FRIEDLAND LOTT & FRIEDLAND PA 355 LHAMBRA CIR STE 1100 CORAL GABLES, FL 33134 UNITED STATES dkfriedland@lfiplaw.com, jrich@lfiplaw.com
Submission	Opposition/Response to Motion
Filer's Name	David K. Friedland
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Signature	/David K. Friedland/
Date	01/12/2011
Attachments	Petitioners Response to Registrants Notice of Disposition of the Civil Action.pdf (6 pages)(2484689 bytes)

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

adidas America, Inc., a Delaware
corporation,
Petitioner,

v.

Michael D. Calmese, a resident of
Arizona,
Registrant

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

**PETITIONER'S RESPONSE TO REGISTRANT'S NOTICE OF DISPOSITION
OF THE CIVIL ACTION**

Pursuant to the Board's December 23, 2010 Order, Trademark Rule § 2.117, and TBMP § 510.02(a), Petitioner, adidas America, Inc. ("adidas" or "Petitioner"), hereby responds to the Notice of Disposition of the Civil Action filed by Registrant Michael D. Calmese ("Calmese" or "Registrant") dated December 14, 2010 (and supplemented on December 28, 2010), and requests that the Board maintain the suspension of this cancellation proceeding. As grounds for this request, adidas states as follows:

On January 11, 2011 (and again on January 12, 2011), Calmese sent undersigned counsel a service copy of his Notice of Appeal to the Ninth Circuit Court of Appeals. A copy of the Notice is attached as Exhibit A. Accordingly, adidas respectfully requests that the Board maintain the suspension of this cancellation proceeding pending disposition of the appellate proceedings, on the basis that the civil action which occasioned the suspension of this proceeding is still pending and has not come to final determination. *See Softbelly's, Inc. v. Ty, Inc.*, 2002 TTAB LEXIS 529, *6 (TTAB Aug. 13, 2002)("Clearly in this case, post-trial motions are pending and opposer has indicated its

intention to appeal an unfavorable ruling to the U.S. Court of Appeals for the Seventh Circuit. Therefore, for Board purposes, the district litigation has not finally determined the merits of the case...Proceedings herein remain suspended pending final determination of the parties' civil action”).

Date: January 12, 2011

Respectfully submitted,

LOTT & FRIEDLAND, P.A.

s/Jaime Rich Vining

David K. Friedland

Jaime Rich Vining

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Attorneys for Petitioner adidas America

Our File 01153-1-8820

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **PETITIONER'S RESPONSE TO REGISTRANT'S NOTICE OF DISPOSITION OF THE CIVIL ACTION** was served upon the Registrant by delivering a true and correct copy of same to Registrant via U.S. Mail and e-mail on January 12, 2011 as follows:

Michael D. Calmese
3046 N. 32nd Street, Unit 321
Phoenix, AZ 85018
proveit@excite.com

s/Jaime Rich Vining

Jaime Rich Vining

EXHIBIT A

and correct copy of which is attached as **Exhibit F**, (iv) the Minute Order filed on August 10, 2010 (Doc. No. 213), a true and correct copy of which is attached as **Exhibit G**, (v) the Order filed on October 1, 2010 (Doc. No. 249), a true and correct copy of which is attached as **Exhibit H**, and (vi) the Opinion and Order entered on April 21, 2010 (Doc. No. 181), a true and correct copy of which is attached as **Exhibit I**. Also enclosed is a copy of the December 14, 2010 Final Judgment attached hereto as **Exhibit J** and a check for the filing fee in the amount of \$455.00.

DATED: January 11, 2011

Respectfully submitted,

By _____
Michael D. Calmese
Attorney Pro Se Litigant
3046 N. 32nd Street Unit 321
Phoenix, Arizona 85018
(602)348-0964

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January 2011, I caused to be served Michael D. Calmese's NOTICE OF APPEAL on the following parties:

Stephen M. Feldman, OSB No. 932674
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AND TWO COPIES TO:

United States Court of Appeals – Ninth Circuit
Attn: Molly Dwyer, Clerk
U.S. Courthouse
P.O. Box 193939
San Francisco, CA 94119-3939

Via Federal Express

Michael D. Calmese
Attorney Pro Se