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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.
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Date	04/04/2013
Attachments	NOT - Status - FINAL.pdf ( 3 pages )(98180 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!**

**NOTICE OF STATUS**

Pursuant to the Board's Order dated March 5, 2013, Petitioner adidas America, Inc. ("adidas") submits the following Notice of Status. On November 21, 2012, the Ninth Circuit affirmed the decision of the District Court for Oregon (i.e. the civil action which occasioned the suspension of this proceeding). On November 28, 2012, Defendant Michael Calmese ("Calmese") filed a Petition for Panel Rehearing or Rehearing En Banc and Judicial Disqualification Under 28 U.S.C. § 455.

Calmese, however, subsequently assigned U.S. Trademark Registration No. 2,202,454 (the "'454 Registration") for PROVE IT! on December 22, 2012 to Registrant Laura Ann Fisher ("Fisher") and recorded the Trademark Assignment with the U.S. Patent & Trademark Office (the "PTO") on the same day. The PTO records now indicate that the '454 Registration is owned by Fisher, and not Calmese. adidas is not engaged in concurrent civil litigation with Fisher and therefore suspension is no longer appropriate. *Martin Beverage Co., Inc. v. Colita Beverage Corp.*, 169 U.S.P.Q. 568, 570 (TTAB 1971)(rejecting notion that the Board "automatically suspends proceedings" when civil litigation is concurrently pending and observing that "[s]uspension under such

circumstances is granted only after both parties have been heard on the question and the Board has carefully reviewed the pleadings in the civil suit to determine if the outcome thereof will have a bearing on the question of the rights of the parties in the Patent Office proceeding”).

Date: April 4, 2013

Respectfully submitted,

**FRIEDLAND VINING, P.A.**

s/Jaime Rich Vining \_\_\_\_\_  
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*Attorneys for Petitioner  
adidas America, Inc.*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that the foregoing **NOTICE OF STATUS** was served upon both Calmese and Fisher by delivering a true and correct copy of same via U.S. Mail on April 4, 2013 as follows:

Laura Ann Fisher  
3046 N. 32nd Street, Unit 321  
Phoenix, AZ 85018

Michael D. Calmese  
3046 N. 32nd Street, Unit 321  
Phoenix, AZ 85018

s/Jaime Rich Vining  
Jaime Rich Vining