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**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!**

75/145,058

**ANSWER TO PETITION TO CANCEL**

Respondent Michael D. Calmese ("Calmese"), by its undersigned, as and for its Answer to the Petition to Cancel alleges as follows:

1. With regard to the introductory paragraph, Respondent admits Petitioner, Adidas America, Inc., is a Delaware corporation, located and doing business at 5055 N. Greeley Avenue, Portland, Oregon, but vigorously denies all other allegations contained in the introductory paragraph. The Trademark Trial And Appeal Board should note that there have been two **IDENTICAL** actions filed against Respondent seeking a declaratory judgment in federal court. Respondent has successfully defended its mark against cancellation in EASTBAY INC., v. MICHAEL D. CALMESE Case No. CV-06-0162 in United States District Court, Southern District Of New York and NOW Respondent is currently defending its mark against cancellation in ADIDAS AMERICA INC., v. MICHAEL D. CALMESE Case No.



02-28-2008

CV-08-0091 in United States District Court, District Of Oregon. It should also be noted that the declaratory suits filed by Adidas America Inc., and Eastbay Inc., seeking cancellation of Michael D. Calmese's PROVE IT! trademark are based on the same frivolous foundation.

2. Respondent admits the allegations contained in paragraph 1 of the Petition To Cancel.
3. Respondent admits the allegations contained in paragraph 2 of the Petition To Cancel.
4. Respondent vigorously denies the allegations contained in paragraph 3 of the Petition To Cancel.
5. Respondent vigorously denies the allegations contained in paragraph 4 of the Petition To Cancel.
6. Respondent denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 5 of the Petition To Cancel.
7. Respondent denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 6 of the Petition To Cancel.
8. Respondent vigorously denies the allegations contained in paragraph 7 of the Petition To Cancel. Current use of the PROVE IT! mark in connection with ALL of the goods identified in Trademark Registration 2,202,454 can be confirmed at [www.proveitsportswear.com](http://www.proveitsportswear.com) .
9. Respondent vigorously denies the allegations contained in paragraph 8 of the Petition To Cancel.
10. Respondent vigorously denies the allegations contained in paragraph 9 of the Petition To Cancel. Current use of the PROVE IT! mark in connection with "underwear" and/or "men's and women's shorts" can be confirmed at [www.proveitsportswear.com](http://www.proveitsportswear.com) and

[www.usaproveit.com](http://www.usaproveit.com) and also in Respondent's mail order PROVE IT!® catalogs.

11. Respondent vigorously denies the allegations contained in paragraph 10 of the Petition To Cancel.
12. Respondent vigorously denies the allegations contained in paragraph 11 of the Petition To Cancel.
13. Respondent vigorously denies the allegations contained in paragraph 12 of the Petition To Cancel.
14. Respondent vigorously denies the allegations contained in paragraph 13 of the Petition To Cancel. Again, current use of the PROVE IT! mark in connection with ALL of the goods identified in Trademark Registration 2,202,454 can be confirmed at [www.proveitsportswear.com](http://www.proveitsportswear.com) AND [www.usaproveit.com](http://www.usaproveit.com) and also in Respondent's mail order PROVE IT!® catalogs.

**AS AND FOR A  
FIRST AFFIRMATIVE DEFENSE**

15. Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted.

**AS AND FOR A  
SECOND AFFIRMATIVE DEFENSE**

16. Petitioner's claims are barred by doctrines of waiver and estoppel.

**AS AND FOR A  
THIRD AFFIRMATIVE DEFENSE**

17. Petitioner's claims are barred because he appears before this Board with unclean

hands.

**AS AND FOR A  
FOURTH AFFIRMATIVE DEFENSE**

18. As Respondent's registration for the mark PROVE IT! has been in effect for over five(5) years, it has reached "incontestable status" and is consequently not subject to third party challenges other than on very limited valid grounds.

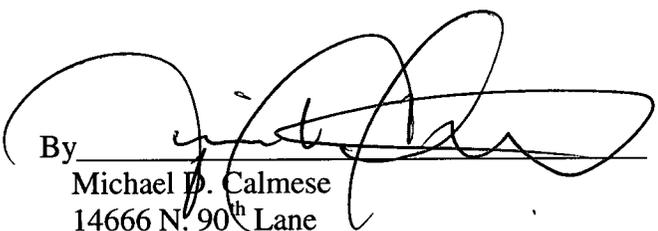
**AS FOR A  
FIFTH AFFIRMATIVE DEFENSE**

19. Petitioner lacks standing to initiate the cancellation proceeding, as Petitioner does not have ANY rights in and to the mark PROVE IT!, has not made any continued use of the mark PROVE IT, and/or did not and/or does not now have a bona fide intent to use the mark PROVE IT! in commerce.

WHEREFORE, Respondent respectfully requests that the Board dismiss this cancellation proceeding in it entirely.

Date: February 25, 2008

By \_\_\_\_\_

  
Michael D. Calmese  
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(602)348-0964 telephone  
[proveit@excite.com](mailto:proveit@excite.com)

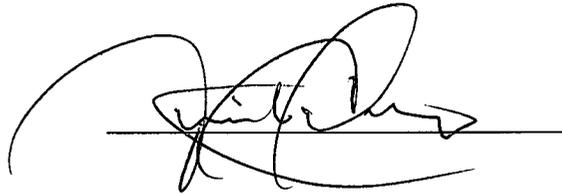
Attorney Pro

## Certificate of Service

I, Michael D. Calmese under penalty of perjury, that on February 26, 2008, I served, via first class mail, the attached Respondent's Answer, on counsel for Plaintiff:

David K. Friedland, Esq.  
Jaime S. Rich, Esq.  
Lott & Friedland, P.A.  
355 Alhambra Circle, Suite 1100  
Coral Gables, FL 33134

Dated: February 26, 2008

A handwritten signature in black ink, appearing to read "Michael D. Calmese", is written over a horizontal line. The signature is stylized and cursive.