

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Mailed: April 29, 2013

Cancellation No. 92048777

adidas America, Inc.

v.

Michael Calmese, and
Laura Ann Fisher

**Robert H. Coggins,
Interlocutory Attorney:**

Now before the Board are petitioner's motion (filed April 4, 2013) to resume proceedings and respondent's notices (filed April 3 and 10, 2013) of the status of the civil action which occasioned suspension of this proceeding. The Board exercises its discretion to determine the motion to resume prior to the expiration of time in which petitioner might otherwise file a reply.

Party Defendant Joined

In the motion to resume, petitioner states that the subject registration has been assigned to Laura Ann Fisher. It appears that since the institution of this cancellation proceeding, two assignment documents have been filed with the Assignment Recordation Branch of the USPTO. By way of

the first document, which was recorded December 22, 2012, at Reel 4928, Frame 0273, Michael Calmese appears to assign his entire interest in the subject registration to Ms. Fisher; and by way of the second document, which was recorded April 8, 2013, at Reel 5000, Frame 0969, Ms. Fisher appears to assign half of her interest in the subject registration back to Mr. Calmese. In view of these two documents, the Board, *sua sponte*, joins Lara Ann Fisher as a party defendant to this cancellation proceeding. See TBMP § 512.01 (3d ed. rev 2012). In view thereof, the caption of this proceeding has been updated to reflect the joinder. Inasmuch as the assignment documents indicate that Mr. Calmese and Ms. Fisher share an address, only a single copy of Board orders will be sent to respondents at their common address of record.¹

Motion to Resume

Petitioner moves to resume proceedings because the subject registration has been assigned to Laura Ann Fisher, and Ms. Fisher "is not engaged in concurrent civil litigation with" petitioner. Joint respondent Michael

¹ Joint respondents are advised that absent representation by a qualified practitioner, each individual respondent must sign all papers filed with the Board. See, for example, TMEP § 712.01. See also TMEP §804.04 ("Under 5 U.S.C. §500(d) and 37 C.F.R. §11.14(e), non-attorneys may not represent a party in a trademark proceeding before the USPTO.").

Calnese opposes the motion because the civil action which occasioned the suspension is still pending.

The Board notes that joint respondent Mr. Calnese remains a party to this cancellation proceeding. The Board also notes that Mr. Calnese's April 10, 2013 filing states that the Ninth Circuit Court of Appeals reached a final determination of the civil action on April 8, 2013, and that Mr. Calnese plans to file a petition for certiorari. In view of Mr. Calnese's statement, and inasmuch as Mr. Calnese's time in which to file an appeal from the Ninth Circuit has not yet run (*see, e.g.,* Sup. Ct. R. 13 (allowing 90 days for a writ of certiorari)), petitioner's motion to resume proceedings is denied.

Suspension

In view of the denial of the motion to resume, proceedings in this Board case remain suspended pending final determination of the civil action, including joint respondent Mr. Calnese's (presumptive) appeal to the Supreme Court. *See* Trademark Rule 2.117(a).

Within thirty days after the final determination of the civil action, the parties shall so notify the Board so that this case may be called up for appropriate action. *NB* the discussion of outstanding matters, *infra*. During the suspension period the Board shall be notified of any address changes for the parties or their attorneys.

All Pending Motions Mooted

In view of this suspension, all pending motions are denied without prejudice, and are, therefore, moot.

If a party believes that its previously outstanding motion, which was pending at the time of this order and denied hereby, has not been resolved or made moot by the civil action, the party may renew the motion in its notification of the final determination of the civil action by citing the motion's, date of filing, and docket entry number in the Board's electronic proceeding file (i.e., TTABVUE). Any renewed motion must be accompanied by a signed statement that the motion has been contemporaneously reviewed in its entirety and concerns matters still disputed between the parties. If the renewed motion was contested at the time of suspension and the non-moving party believes that its original response requires supplementation in view of events since suspension, the non-moving party is allowed until fifteen days from the date of service of the renewal of the motion to file a supplemental response.