

ESTTA Tracking number: **ESTTA536854**

Filing date: **05/08/2013**

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

Proceeding	92048777
Party	Defendant Michael Calmese, and Laura Ann Fisher
Correspondence Address	MICHAEL CALMESE 3046 N 32ND ST UNIT 321 PHOENIX, AZ 85018 6842 UNITED STATES proveit@excite.com, usaproveit.com, usaproveit@yahoo.com
Submission	Other Motions/Papers
Filer's Name	Michael Calmese
Filer's e-mail	usaproveit@yahoo.com
Signature	s/Michael Calmese/s
Date	05/08/2013
Attachments	PTO may 8 2013 Response.pdf(247680 bytes)

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

Adidas America, Inc., a Delaware Corporation,) Cancellation No.: 92048777
Petitioner,) Registration No.: 2,202,454
-against-) Registration Date: 11/10/98
Michael D. Calmese, a Resident of Arizona) Mark: PROVE IT!
Respondent.)
_____)

PLEASE TAKE NOTICE, pursuant to the Board’s Order dated April 29, 2013, the assignment which occasioned the so-called motion to join Laura Fisher to this suspended matter is null and void and has been forfeited due to the harassing and intimidating April 6, 2013 legal letter from adidas to Laura Fisher (“Ms. Fisher”) who was not name in this dubious suspended cancellation proceeding on April 6, 2013. As it may be up to a higher Court to decide if adidas’ April 6, 2013 harassing letter to Laura Fisher was in fact a motion or a simply malicious intimidating legal document that was sent to a party Michael Calmese (“Calmese”) was attempting to do business with which may have subsequently violated Calmese’s rights. See Tortious interference. Tortious interference with business relationships occurs where the tortfeasor acts to prevent the [plaintiff](#) from successfully establishing or maintaining business relationships. This tort may occur

when a first party's conduct intentionally causes a second party not to enter into a business relationship with a third party that otherwise would probably have occurred. Such conduct is termed tortious interference with prospective business relations, expectations, or advantage or with prospective economic advantage. Now that Calmese's is the only owner and Ms. Fisher's assignment has been forfeited due to the April 6, 2013 letter, all concerns and legal documents should be sent to Calmese, and should have only been sent to Calmese prior to April 29, 2013.

As the Board joined Ms. Fisher to a suspended matter and with all due respect Calmese requests the Board correct the record immediately to ensure Fisher's name will not appear in the caption of this dubious suspended cancellation proceeding. It should be further noted that Calmese was not afforded the right to file opposition to adidas' so-called motion to join Ms. Fisher. Ms. Fisher has also expressed her wishes to reverse the dubious April 29, 2013 order that included her name to a suspended proceeding only after being threatened by adidas on April 6, 2013. *Id.* Attached as exhibit A is an accurate copy of Laura Fisher's May 3, 2013 assignment and expressed concerns of not wanting bothered, harassed or threatened by adidas and their legal team, Lott & Friedland now Friedland & Vinning or Perkin Coie ever again, as she was not named in this matter on April 6, 2013 and she is not an owner today. See Ms. Fisher's May 3, 2013 assignment

Reel/Frame 5020/0950 on file with the USPTO. Adidas cannot be allowed to intimidate Ms. Fisher by unrightfully sending her legal paper work to a matter she was not and is not named in.

Furthermore, Calmese request this Court issue an order compelling adidas to cease and desist from sending anymore legal documents to individuals, investors, potential retailers or anyone of the such, including Ms. Fisher, who may want to do business with Calmese and who are not named in this suspended cancellation proceeding or the pending civil litigation that occasioned this dubious proceeding, as adidas lost the District Court trial to cancel Calmese's trademark and their subsequent appeal that followed. Why the Board decided to add Ms. Fisher to a suspended Cancellation proceeding after adidas lost the trial and their appeal is very bothersome in light of the high Courts' ruling while this matter was suspended. If adidas' April 6, 2013 letter was a motion then why was Calmese not allowed to respond to or oppose adidas' so-called motion to join? It appears adidas' April 6, 2013 letter to Ms. Fisher, who was not named in this matter, is nothing but an unwarranted aggressive attack on anyone who might want to do business with Calmese.

RESPECTFULLY SUBMITTED this 8th, day of May 2013.

s/Michael Calmese/s

Michael Calmese Attorney Pro Se

3046 N. 32nd Street Unit 321

Phoenix, Az 85018

www.usaproveit.com

EXHIBIT A.

TRADEMARK ASSIGNMENT

WHEREAS, LAURA FISHER, is a 50% owner of the following registered trademark currently registered in the United States Patent and Trademark Office:

<u>Mark</u>	<u>Registration No.</u>	<u>File Date</u>	<u>Reg. Date.</u>	<u>Status.</u>
PROVE IT!	2,202,454	8/05/1996	11/10/1998	LIVE

WHEREAS, I LAURA FISHER again, clarify for this record that my initial goal was to only acquire 50% of said registered trademark and not get attacked, intimidated, sued and/or harassed or added to lawsuits initiated by adidas or its legal counsel against Michael Calmese ("Calmese"). Especially, after I learned, from public records, that adidas lost a trial were Calmese had no representation after being represented by adidas' former employee (Anthony McNamer a.k.a. Anthony Davis) and were adidas ultimately FAILED to prove Michael D. Calmese committee fraud on the United States Patent Trademark Office

("PTO") to procure the 1998 federally registered PROVE IT! trademark.¹

WHEREAS, on April 29, 2013, the Trademark Trial and Appeal Board ("TTAB") ruled to join me Laura Fisher to a Suspended Cancellation Proceeding No.92048777 even though I was not joined to the civil litigation or appeal and in light of the fact that adidas lost the November 2, 2010 trial for cancellation and the subsequent appeal that followed on November 21, 2012, according to public record. I feel I am now unrightfully being called a fraud by adidas after adidas LOST the district court trial by failing to prove fraud against Calmese, according to public record.

WHEREAS, I LAURA FISHER, will not entertain anymore letters or threats from adidas.

WHEREAS, LAURA FISHER is NOT obligated and cannot be obligated or liable for any damages as a result of adidas' litigation with Calmese nor am I obligated to go through the difficult task

¹ Public district court records reveal Calmese represent himself as an attorney pro se litigant after it was discovered and confirmed that Calmese's former attorney Anthony McNamer a.k.a. Anthony Davis was formally employed by adidas.

of dealing with adidas and their highly skilled attorneys who lost the November 2, 2010 trial and their appeal on November 21, 2012, according to public record.

WHEREAS, I LAURA FISHER was threatened by adidas on April 6, 2013, when counsel for adidas sent me legal documents concerning a legal matter I had not been named in. As a result this has stressed me to the point where I do not want or have to fulfill my contractual obligation to retain ownership of Calmese's said trademark for \$9,106.50, in the face of the intimidating April 6, 2013 legal documents sent to me from adidas' legal counsel who can apparently go around accusing people of fraud and not prove it.

WHEREAS, I LAURA FISHER cannot afford to be bothered by huge law firms, like Lott & Friedland now Friedland & Vining or Perkins Coie, who can lose a district court trial and appeal regarding fraud on the PTO with no apparent relief to a defendant, only that the defendant Calmese got to keep his intellectual property.

WHEREAS, I LAURA FISHER soon after the Ninth Circuit Affirmed the November 2, 2010 trial it prompted me to entered into an agreement with Calmese during December of 2012, in regards to a monetary investment as a direct result of Calmese's attorney pro se victory over adidas at the November 2, trial and the fact the adidas lost the appeal that followed on November 21, 2012.

WHEREAS, I LAURA FISHER should not have received the April 6, 2013 legal documents from adidas concerning a "suspended" legal matter to which I was not named.

WHEREAS, MICHAEL CALMESE, an Arizona resident, having his address at 3046 N. 32nd Street Unit #321, **IS NOT** desirous of this May 3, 2013 Assignment, but in light of the intimidating April 6, 2013, legal documents concerning a matter Fisher was not named in and the TTAB dubious decision to add Fisher to a suspended proceeding after a district court and appeals final decision favored Calmese, Calmese is now forced to retain Fisher's 50% interest and ownership of said registered trademark and pay back the \$9,106.50.

NOW, THEREFORE, in consideration of not wanting to be bothered by adidas with threatening legal action, to which I was not AND will not be named in and as a direct result of the threatening April 6, 2013 mailing of legal documents to me, the sum of \$9,106.50 already paid by Laura Fisher for the 12/22/2012 Trademark Assignment No. 900242249, and other good and valuable consideration will be paid back to me by Calmese, I LAURA ANN FISHER, now, hereby rightfully assigns back to MICHAEL D. CALMESE, 50% of the right, title, and interest in the United States in and to said trademark and registration thereof.²

Date

LAURA FISHER
By: Laura Fisher

² The April 6, 2013 legal documents sent to me regarding a legal matter I was not name in is confirmed in my April 8, 2013 Assignment Reel/Frame 5000/0975 as Exhibit B, as on April 6, 2013, I was not named as a party in the adidas vs. Calmese proceeding which has been suspended for nearly 5 years.

State of Arizona)
) ss
County of Maricopa)
)

On this 3rd day of May 2013, before me, the undersigned,
personally appeared Laura Fisher, known to me to be the person
whose name is subscribed to the within instrument, and
acknowledge to me that she executed the foregoing instrument
for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public