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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@yahoo.com
Submission	Other Motions/Papers
Filer's Name	Michael Calmese
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Signature	s/Michael Calmese/s
Date	07/11/2013
Attachments	Reply adidas PTO Fridland doc (1).pdf(291665 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.)
_____)

REPLY TO PETITIONER’S RESPONSE

Now comes Michael Calmese and Laura Fisher (“Respondents’ ”), who respectfully submits their reply to Petitioner’s (“adidas”), response to Respondents motion to dismiss Laura Fisher and for sanctions.¹ Respondents contend that if adidas was able to motion this Board to join another party to this suspended proceeding then Respondents should be allowed the same opportunities granted to adidas.

¹ The Board should note, with all due respect, that Respondents’ motion to dismiss Ms. Laura Fisher is the same kind of motion adidas filed while this matter was already suspended. Therefore, it is evident that while a matter is suspended or not, parties obviously can be added, just like adidas did when they motion this Board to join Ms. Fisher to this suspended cancellation proceeding only after sending Ms. Fisher legal documents concerning this matter prior to their motion.

REPLY TO ADIDAS' INTRODUCTION

Adidas' has termed Respondents claim "vexatious" and now "unmeritorious". The District Court appropriately denied adidas' vexatious claims against Respondent Micheal Calmese as this Board, with all due respect, should dismiss adidas' response with its misguided accusations accordingly.² As discussed below in opposition to adidas' ridiculous claims that Laura Fisher is somehow liable to pay adidas' legal fees that are pending before the Oregon District Court in Michael Calmese's Malpractice Lawsuit in which adidas allegedly knowingly took advantage of Anthony McNamer's neglect to win a summary judgment in part and attorney fees. See District Court Complaint **No: 3:13-cv-1042-HU**. A copy of which will be filed with this Board as soon as Michael Calmese's Amended Malpractice Complaint is filed. Adidas goal here is clearly to distract, provoke and harass Michael Calmese and his "girlfriend" with the attorney fee award adidas won in district court while Michael Calmese was unknowingly being represented by one of adidas' own, Anthony McNamer (aka) Anthony Davis. That's all adidas has at this point after losing the November 2, 2010 trial and their appeal that

² The Board should note that Ms. Laura Fishier has NEVER been name in any civil litigation concerning this matter.

followed. These issues are currently pending before the Oregon District Court and the Supreme Court of the United States.³

REPLY TO ADIDAS' FACTUAL BACKGROUND

Adidas' claim that Respondents' are playing the corporate shell game is inaccurate and clearly false because Respondents' do not have a corporation and clearly Ms. Fisher IS NOT an owner of any percentage of the PROVE IT! Registration. Moreover, Respondents' appropriately filed a motion to have Ms. Laura Fisher relieved of having to deal with adidas and their aggressive attack on Michael Calmese and his trademark.

REPLY TO ADIDAS ARGUMENT

Adidas again attempts to tie Ms. Laura Fisher to this matter to try and collect from her because adidas is aware that her father is Dr. Marvin Fisher and she has more assets than Michael Calmese. Respondents' contend the "Michael Calmese" Malpractice Lawsuit is pending and should resolve the adidas litigation accordingly. The Board should note, Michael Calmese has been the only party name in the civil litigation that occasioned these proceedings, not Ms. Laura Fisher. Again, Michael Calmese will file a copy with this Board as soon as Michael Calmese's Amended Malpractice Complaint is available. Attached as

³ Respondents' are confident that the law does not allow or construe judgments from lawsuits or cancellation proceedings to be the responsibility of friends or girlfriends and surly a friend or girlfriend who is not name in an action cannot legally be liable, as is the case here.

Exhibit A, is a copy of the question presented to the U.S. Supreme Court which is pending and will also aid in resolving the adidas v. Calmese civil litigation.⁴ As Michael Calmese's Writ of Mandamus and Malpractice Lawsuit against adidas' former employee should effectively explain why adidas' response in this cancellation proceeding is moot, and why Respondents' motion to dismiss and for sanctions should be granted.⁵ With all due respect, the Board should also note, adidas has not disputed any of the Respondents' indisputable facts in Respondents' Motion to Dismiss and For Sanctions. Petitioner's cancellation claims are unwarranted and oppressive considering the high court has ruled in Michael Calmese's favor and denied adidas' cancellation claims. Moreover, while Petitioner may term Respondents' argument "vexatious" the current action raises vexatious motivation to heights of arrogance.⁶

Respondents', as pro se litigants, have taken notice of Section 502.05, per. adidas' response as Respondents' were not aware of his rule but will endeavor to follow all rules and laws provided by the Trademark Trial and Appeal Board. Michael Calmese may seek further relief for adidas' alleged Tortious acts as relief cannot be granted in this proceeding.

⁴ Michael Calmese's Writ of Mandamus was filed with the U.S. Supreme Court within (90)days of the April 8, 2013 Order.

⁵ Adidas may still have to answer to Mr. Calmese's fraud allegations if the High Court allows Mr. Calmese's Forensic Expert Witness to testify.

⁶ Laura Fishers Constitutional Rights to due process and equal protection under the law will be violated if the Board does not remove her name from this matter, accordingly.

CONCLUSION

Accordingly, Respondents' Motion to dismiss Ms. Laura Fisher should be granted.

RESPECTFULLY SUBMITTED this 11th, day of July 2013.

s/Michael Calmese/s

and

s/Laura Fisher/s

Michael Calmese & Laura Fisher Respondents'

3046 N. 32nd Street Unit 321

Phoenix, Az 85018

CERTIFICATE O SERVICE

I HEREBY CERTIFY that the foregoing REPLY was served upon FRIEDLAND AND VINING P.A and PERKINS COIE by delivering a true and correct copy of the same via U.S. Mail on July 11, 2013 as follows:

FRIEDLAND AND VINING P.A.

David K. Friedland

1500 San Remo Ave., Ste. 200,

Coral Gables, FL 33146

And

PERKINS COIE

Stephen M. Feldman, OSB No. 93267 S

PERKS COIE LLP

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Portland, OR 97209-4128

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EXHIBIT A

QUESTIONS PRESENTED FOR REVIEW

- (1) Did the District Court and the Ninth Circuit Court of Appeals violate Michael Calmese's ("Petitioner"), Constitutional Right to due process and equal protection under the law by not conducting a de novo review, or any review of the U.S. Patent Trademark Office's ("PTO"), previous ruling?
- (2) Did the District Court and the Ninth Circuit Court of Appeals violate Petitioner's Constitutional Right to due process and equal protection under the law by denying forensic expert witness testimony regarding fraud allegedly committed by adidas even after the expert witness' filed his disclosure statement with the District Court, accordingly?
- (3) Did the District Court and the Ninth Circuit Court of Appeals violate Michael Calmese's Constitutional rights by not conducting a de novo review all of the pleadings, specifically the PTO's previous rulings that were overlooked, on the District Court and Ninth Circuit Court record prior to granting and then affirming adidas' motion for summary judgment?
- (4) Should this Court exercise its discretion to impose a stay of this proceeding until the District Court decides the merits of Petitioner's underlying malpractice lawsuit currently pending in District Court against the opposing party, adidas', former employee, Anthony McNamer (aka) Anthony Davis, who changed his name before offering his services for fee to Petitioner without disclosing his former employment with adidas?