

ESTTA Tracking number: **ESTTA208991**

Filing date: **05/03/2008**

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

Proceeding	92048777
Party	Defendant CALMESE, MICHAEL
Correspondence Address	Michael Calmese 14666 N. 90th Lane Peoria, AZ 85381 UNITED STATES proveit@excite.com
Submission	Other Motions/Papers
Filer's Name	/Michael D. Calmese
Filer's e-mail	proveit@excite.com
Signature	/Michael Calmese/
Date	05/03/2008
Attachments	adadiaz2[1].pdf ( 4 pages )(25755 bytes )

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

Adidas America, Inc., a Delaware Corporation,	)	Cancellation No.: 92048777
Petitioner,	)	Registration No.: 2,202,454
	)	Registration Date: November 10, 1998
-against-	)	Mark:    PROVE IT!
	)	
Michael D. Calmese, a resident of Arizona,	)	
Respondent	)	
_____	)	

Pursuant to Federal Rules of Civil Procedure, Rule 26(a), Respondent Michael Calmese. (hereafter Respondent) hereby submits its Initial Disclosure Statement, and reserves the right to supplement this Disclosure Statement, as necessary:

RULE 26(a)(1)(A) Individuals Likely To Have Discoverable Information Relevant To  
The Disputed Facts.

1. Michael Calmese, Owner, Prove It! Trademark, 14666 North 90<sup>th</sup> Lane, Peoria, Arizona 85381. Mr. Calmese is expected to testify on the formation of various entities to do business with the trademark Prove It!, negotiations with Adidas, and all discussions he had with Adidas, all facts contained in the Petition based on his own knowledge, various phone conversations he had with Adidas, all operations and sales of Prove It! branded merchandise, all facts concerning the registration of the PROVE IT! mark, all payments he made on and for the application that matured into the PROVE IT! mark, and all other matters between Prove It! and third parties, and between Mr. Calmese and Petitioner, and promises made by Adidas to PROVE IT! to never use Defendant's trademark

- PROVE IT in the future.
2. Attorney Scot L. Clause, MARISCAL, WEEKS, McINTYRE & FRIEDLANDER, P.A., 2901 North Central Avenue, Suite 200, Phoenix, Arizona 85012, (602)285-5000. Mr. Scot Claus is expected to testify on the specifics of filing the application for the PROVE IT! mark.
  3. Attorney Jordan M. Meschkow, MESCHKOW & GRESHAM, P.L.C., 5727 North Seventh Street, Suite 409, Phoenix, Arizona 85014, (602)274-6996. Mr. Meschkow is expected to testify on the specifics of filing the §8 and §15 Affidavit on behalf of the registered trademark PROVE IT! and that this affidavit attest that the mark is still in use and has been continuously used for at least five years from registration.
  4. Attorney Dennis E. Sheehan, Footlocker, Inc., 112 West 34<sup>th</sup> Street, New York, New York 10120 (telephone to be supplemented). Mr. Sheehan is expected to testify that on September 9, 2005 he represented Eastbay Inc., in the Eastbay Inc., v. Michael Calmese matter in a New York District Court and consented to having Michael Calmese's approval for future use of the mark "Prove It".
  5. The documents produced by or to Petitioner Adidas may also disclose the identities of individuals having discoverable information relevant to disputed facts alleged with particularity in the pleadings.
  6. Respondent reserves the right to supplement this disclosure after further discovery.

RULE 26(a)(1)(B) Documents.

1. All records of Attorney Scot L. Claus's documents relating to the application for the PROVE IT! mark, maintained by Mr. Claus at MARISCAL, WEEKS, McINTYRE & FRIEDLANDER, P.A., 2901 North Central Avenue, Suite 200, Phoenix, Arizona 85012, (602)285-5000.
2. All records of Attorney Jordan Meschkow's documents relating to the specifics of filing the §8 and §15 Affidavit on behalf of the registered trademark PROVE IT!, maintained by Mr. Meschkow at MESCHKOW & GRESHAM, P.L.C., 5727 North Seventh Street, Suite 409, Phoenix, Arizona 85014, (602)274-6996.
3. All records of Adidas General Counsel Vanessa Backman's documents relating to ADIDAS'S written consent to CEASE AND DESIST use of Respondent's registered trademark and documents relating to Adidas's spread sheet confirming the alleged illegal sale of the "PROVE IT" Adidas tee shirts at Dick's Sporting Goods and Academey Sports+Outdoor retail stores around the nation, maintained by Mrs. Vanessa Backman at Adidas Legal Department 5055 N. Greeley Ave., Portland, Oregon 97217.
4. Plaintiff reserves the right to supplement this disclosure after further discovery.

RULE 26(a)(1)(C) Damages.

ADIDAS'S actions have caused Respondent irreparable harm, as well as economic damages, however the amount of damages has not yet been ascertained. Moreover, since part of damages are based on Adidas's profits and/or Respondent's lost profits, these amount of damages have not yet been ascertained either. Further, in addition to

seeking elevated damages due to ADIDAS'S willful misconduct, Respondent will seek reasonable attorneys' fees and costs incurred in litigating this suit. The amount of attorneys' fees and cost are unknown at this time, but will continue to accumulate.

RULE 26(a)(1)(D) Insurance.

Respondent has no general commercial liability insurance policy and no coverage applies to this matter.

RULE 26(a)(2) Experts.

Respondent plans on calling one or more experts on trademark ownership and infringement issues, and on damages, but no such experts have been selected or retained as yet.

Respectfully submitted this 30<sup>th</sup> day of April, 2008,

---

Michael Calmese  
14666 N. 90<sup>th</sup> Lane  
Peoria, Arizona 85381  
Telephone(602) 348-0964  
ATTORNEY PRO SE

Copy mailed this 30<sup>th</sup> April 2008 to:

Stephen M. Feldman, Esq.  
Perkins Coie LLP  
1120 N.W. Couch Street, Tenth Floor  
Portland, OR 97209

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