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

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|------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding | 92051860 |
| Party | Defendant Michael Akkawi |
| Correspondence Address | MICHAEL AKKAWI 8 PLUM HOLLOW ROAD EAST FALMOUTH, MA 02536 UNITED STATES miltoliver@gmail.com, miltonoliver@IEEE.org |
| Submission | Other Motions/Papers |
| Filer's Name | Milton Oliver |
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| Signature | /Milton Oliver/ |
| Date | 01/23/2012 |
| Attachments | CAPE-COD-WATCH-MOTION-for-LEAVE.pdf (4 pages)(59696 bytes) CAPE-COD-WATCH-MOTION-TO-SUSPEND-2012-JAN.pdf (2 pages)(49550 bytes) |

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

In the matter of Registration No.: 3,433,601
Mark: CAPE COD WATCH

La Montre Hermès S.A.,

Petitioner,

vs.

MICHAEL AKKAWI,

Registrant.

Cancellation No.: 92-051 860

MOTION FOR LEAVE TO
SUBMIT BELATED INITIAL DISCLOSURES
OR TO STRIKE NOTICE OF RELIANCE

Registrant Akkawi hereby requests leave to submit belated initial disclosures, in compliance with Rule 120(a)(3).

GROUND

At the beginning of this proceeding in Dec. 2009, Registrant Akkawi, a local jeweler, appeared Pro Se, and submitted an informal Answer on JAN. 28, 2010. After retaining counsel, Registrant filed an Amended Answer on FEB. 23, 2010. Petitioner Hermes then submitted an Amended Petition on JUL. 14, 2010, and Registrant Akkawi served his Answer to the First Amended Petition on SEP. 21, 2010.

Petitioner served extensive discovery requests on Registrant, was dissatisfied with the responses, and obtained an Order to Compel on OCT. 7, 2010. Registrant Akkawi complied with the Board's Order by providing interrogatory answers and voluminous business documents, including a stack of watch sales receipts more than four inches thick, essentially disclosing (under protective order) the names and addresses of **all its customers** for the goods sold under the mark in dispute, over a period of years (2007-2010). These documents were dispatched on DEC. 10, 2010 from Mashpee MA and received on DEC. 13, 2010 at the offices of Petitioner's counsel, FOLEY & LARDNER. Attached is US Postal Service "Track & Confirm" receipt number 0309 2880 0000 2452 2014, confirming the foregoing.

Registrant on JAN. 15, 2011 served on Petitioner Registrant's First Set of Document Requests to Petitioner and Registrant's First Set of Interrogatories to Petitioner. Copies are attached hereto as Exhibits A & B.

Despite Registrant's good faith efforts and voluminous disclosures to Petitioner, Petitioner Hermes has refused to provide any responses to Registrant's interrogatories and has refused to provide any responses to Registrant's requests for production of documents.

In refusing to provide discovery responses, Petitioner relies upon the decision Dating DNA v. Imagini, 94 USPQ 2d 1889 (TTAB 2010) stating that compliance with initial disclosures, per Rule 120, is a prerequisite for grant of a motion to compel discovery, and cannot be cured after discovery has closed. Needless to say, Petitioner stated its unwillingness to reopen the discovery period.

Despite the failure of Petitioner Hermes to provide any

evidence of its asserted prior use of CAPE COD formative marks, Petitioner has submitted a Notice of Reliance on OCT. 7, 2011, contending that its use of CAPE COD 2 ZONES pre-dates Registrant's use of CAPE COD WATCH.

Registrant Akkawi is ready and able to provide any information required by Rule 120(a)(3) which has not already been provided. Most or all of this same information was provided to Petitioner **more than a year ago**. Thus, there is no justification for Petitioner's contention that it is entitled to acceptance at face value of its alleged dates of use, without providing any of the documentation requested by Registrant during discovery.

Without the information requested by Registrant, Registrant cannot adequately formulate a response to Petitioner's Notice of Reliance. Therefore, Registrant moves the Board to either

(A) grant Registrant leave to submit Initial Disclosure material within 30 days of the Board's Order or

(B) strike Petitioner's Notice of Reliance, and dismiss the Petition for Cancellation.

Respectfully submitted,
Michael Akkawi
by his attorney:

/Milton Oliver/
Milton Oliver
OLIVER INTELLECTUAL PROPERTY
PO BOX 1670
COTUIT MA 02635

DATE: JAN. 23, 2012

CERTIFICATE OF SERVICE

I hereby certify that the attached MOTION FOR LEAVE TO
SUBMIT BELATED INITIAL DISCLOSURES OR TO STRIKE NOTICE OF RELIANCE
was served on Petitioner by emailing a copy thereof to:
abaum@foley.com & emarmo@foley.com, this 23rd day of JAN. 2012.

/Milton Oliver/

Milton Oliver

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In the matter of Registration No.: 3,433,601

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MICHAEL AKKAWI,

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Cancellation No.: 92-051 860

MOTION TO SUSPEND PROCEEDINGS

Registrant Akkawi hereby moves the Board to suspend proceedings, pending disposition of Registrant's Motion for Leave to Submit Belated Initial Disclosures or to Strike Petitioner's Notice of Reliance.

Since the aforementioned Motion is potentially dispositive of this action, suspending proceedings will minimize efforts which may prove to be ultimately unnecessary.

Respectfully submitted,
Michael Akkawi
by his attorney:

/Milton Oliver/
Milton Oliver
OLIVER INTELLECTUAL PROPERTY
PO BOX 1670
COTUIT MA 02635

DATE: JAN. 23, 2012

CERTIFICATE OF SERVICE

I hereby certify that the attached MOTION TO SUSPEND PROCEEDINGS was served on Petitioner by emailing a copy thereof to:

abaum@foley.com & emarmo@foley.com, this 23rd day of JAN. 2012.

/Milton Oliver/