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

Proceeding	92053314
Party	Plaintiff adidas AG
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Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/J287-839JZ/
Date	11/07/2011
Attachments	Stip to Amended Petition (signed) - 92053314.pdf ( 9 pages )(105910 bytes )



# EXHIBIT A



3. Registration No. 3,173,207 for the mark ADD A ZERO issued from Application Serial No. 78/593, 318 (“the ‘318 Application”). The ‘318 Application was filed on the basis of use on March 23, 2005. The ‘318 Application claims a date of first use in commerce of the ADD A ZERO mark of January 9, 2005.

4. Registration No. 3,173,208 for the mark ADD A ZERO & Design issued from Application Serial No. 78/594, 295 (“the ‘295 Application”). The ‘295 Application was filed on the basis of use on March 24, 2005. The ‘295 Application claims a date of first use in commerce of the ADD A ZERO & Design mark of January 9, 2005.

5. Petitioner’s Application Serial No. 77/822,018 for the mark ADIZERO (“Petitioner’s Application”) has been refused registration by the USPTO Examining Attorney based on asserted likelihood of confusion with Registration No. 3,173,207 for ADD A ZERO and Registration No. 3,173,208 for ADD A ZERO & Design, under Section 2(d) of the Trademark Act.

6. On information and belief, Respondent had not used the ADD A ZERO mark in commerce for any of the goods listed in the ‘318 Application on or prior to the filing date of the ‘318 Application.

7. On information and belief, Respondent had not used the ADD A ZERO mark in commerce for any of the goods listed in the ‘318 Application on or prior to issuance of Registration No. 3,173,207.

8. Registration No. 3,173,207 is void ab initio based on non-use of the ADD A ZERO mark.

9. On information and belief, Respondent had not used the ADD A ZERO & Design mark in commerce for any of the goods listed in the ‘295 Application on or prior to the filing

date of the '295 Application.

10. On information and belief, Respondent had not used the ADD A ZERO & Design mark in commerce for any of the goods listed in the '295 Application on or prior to issuance of Registration No. 3,173,208.

11. Registration No. 3,173,208 is void ab initio based on non-use of the ADD A ZERO & Design mark.

12. Upon information and belief, Respondent is not using the marks ADD A ZERO and ADD A ZERO & Design in commerce on or in connection with the goods listed in Registration No. 3,173,207 and Registration No. 3,173,208.

13. Upon information and belief, Respondent has never used the ADD A ZERO mark in commerce on or in connection with pants.

14. Upon information and belief, Respondent has never used the ADD A ZERO & Design mark in commerce on or in connection with pants.

15. Upon information and belief, Respondent has discontinued use of the marks ADD A ZERO and ADD A ZERO & Design, with no intent to resume use.

16. Upon information and belief, Respondent did not use the marks ADD A ZERO and ADD A ZERO & Design in commerce on or in connection with Respondent's goods for at least three (3) years prior to the commencement of the subject cancellation.

17. Any use and/or resumption of use of the marks ADD A ZERO and ADD A ZERO & Design by Respondent on or in connection with Respondent's goods has been spurred by the commencement of the subject cancellation.

18. Upon information and belief, Respondent has abandoned the marks ADD A ZERO and ADD A ZERO & Design. Section 45 of the Trademark Act, 15 U.S.C. § 1127.

19. The marks ADD A ZERO and ADD A ZERO & Design include the word “add” which means to make an addition.
20. The marks ADD A ZERO and ADD A ZERO & Design include the word “zero” which means a numerical symbol.
21. The ADD A ZERO & Design mark includes a design of a plus sign.
22. Upon information and belief, Respondent uses and/or has used the words “ADD A ZERO” as a slogan for Respondent’s fundraising activities in connection with Respondent’s church.
23. Upon information and belief, Respondent uses and/or has used the words “ADD A ZERO” as a message to Respondent’s members to increase the amount of a member’s donation to Respondent.
24. The ADD A ZERO mark is ornamental and/or functional.
25. The ADD A ZERO mark does not function as a trademark to identify and distinguish Respondent’s goods from those of others and to indicate the source of Respondent’s goods.
26. The ADD A ZERO & Design mark is ornamental and/or functional.
27. The ADD A ZERO & Design mark does not function as a trademark to identify and distinguish Respondent’s goods from those of others and to indicate the source of Respondent’s goods.
28. In the alternative, Petitioner seeks a partial cancellation of Registration No. 3,173,207 and Registration No. 3,173,208 under Section 18 of the Trademark Act, 15 U.S.C. § 1068.
29. On information and belief, any use of ADD A ZERO and ADD A ZERO & Design by

Respondent has been limited to caps and shirts printed with information in the nature of fundraising messages.

30. Registration No. 3,173,207 and Registration No. 3,173,208 are overbroad in that they cover all forms of caps, shirts and pants without specifying the type, nature or trade channel of the clothing for which Respondent uses the ADD A ZERO mark and ADD A ZERO & Design mark.

31. Petitioner requests, in the alternative, that Registration No. 3,173,207 and Registration No. 3,173,208 be restricted to “caps and shirts printed with information in the nature of fundraising messages.”

32. The restriction would conform the identification of Registration No. 3,173,207 and Registration No. 3,173,208 to the actual use of the ADD A ZERO mark and ADD A ZERO & Design mark.

33. Petitioner’s Application has been refused under Section 2(d) of the Trademark Act on the ground that Petitioner’s adizero mark so resembles the marks of Registration No. 3,173,207 and Registration No. 3,173,208 as to be likely, when used with the identified goods to cause confusion, or to cause mistake, or to deceive.

34. Petitioner’s ADIZERO mark and Respondent’s ADD A ZERO and ADD A ZERO & Design marks have different appearances, sounds, meanings and commercial impressions.

35. Petitioner’s goods sold under Petitioner’s ADIZERO mark travel in different trade channels than those of Respondent’s goods.

36. On information and belief, there has been no actual confusion between Petitioner’s ADIZERO mark and Respondent’s ADD A ZERO and ADD A ZERO & Design marks.

37. Entry of the proposed restriction will avoid any likelihood of confusion between

Petitioner's ADIZERO mark and the ADD A ZERO mark and ADD A ZERO & Design mark.

38. Petitioner is being damaged by the continued registration by Respondent of the mark ADD A ZERO as set forth in Respondent's Registration No. 3,173,207 and ADD A ZERO & Design as set forth in Respondent's Registration No. 3,173,208, in that Respondent's registrations have been cited by the USPTO Examining Attorney as a bar to registration of Petitioner's mark ADIZERO.

WHEREFORE, Petitioner adidas AG prays that this Consolidated Petition to Cancel be granted and that Registration No. 3,173,207 and Registration No. 3,173,208 be cancelled, or, in the alternative, partially cancelled in the form of a restriction.

Dated: November 7, 2011

Respectfully submitted,

/s/ Angelo Notaro

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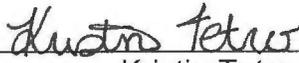
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Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing STIPULATION TO ENTRY OF FIRST AMENDED CONSOLIDATED PETITION FOR CANCELLATION has been served by causing a copy thereof to be sent first class mail, postage prepaid, on November 7, 2011 to:

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Kristin Tetro