

ESTTA Tracking number: **ESTTA850125**

Filing date: **10/04/2017**

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

Proceeding	92057550
Party	Defendant Richard Diaz
Correspondence Address	MICHAEL J DOUGLAS LEAK DOUGLAS & MORANO PC 17 20TH ST N STE 200, THE JOHN A HAND BUILDING BIRMINGHAM, AL 35203 UNITED STATES Email: mdouglas@leakdouglas.com, aperkins@leakdouglas.com
Submission	Appeal or Cross-Appeal of Final Board Decision
Notice of Appeal to	Civil Action in United States District Court
Name of U.S. District Court (if applicable)	Northern District of Alabama
Case Number (if known)	7:17-cv-01702-TMP
Certificate of Service	The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by Email on this date.
Filer's Name	Michael J. Douglas
Filer's email	mdouglas@leakdouglas.com, aperkins@leakdouglas.com
Signature	/s/ Michael J. Douglas
Date	10/04/2017
Attachments	Doc 1 Complaint .pdf(454643 bytes)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

RICHARD DIAZ, *

PLAINTIFF, *

vs. * CASE NO. _____

BOARD OF TRUSTEES OF THE *
UNIVERSITY OF ALABAMA, and *
PAUL W. BRYANT, JR., *

DEFENDANTS. *

COMPLAINT

Plaintiff Richard Diaz (“Plaintiff” or “Diaz”) states the following for his Complaint against Board of Trustees of the University of Alabama (“University”) and Paul W. Bryant, Jr. (“Bryant Jr.”) (collectively, “Defendants”):

NATURE OF THE ACTION

This is an appeal of a decision by the Trademark Trial and Appeal Board (the “Board”) pursuant to 15 U.S.C. § 1701(b).

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under § 29 of the Lanham Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1331 and 1338.
2. This Court has personal jurisdiction over Defendants because, on information and belief, Defendants reside within this State, transact business

within this State, contract to supply goods or services in this State and/or have otherwise established contacts in this State making the exercise of personal jurisdiction proper.

3. This District is a proper venue under 28 U.S.C. § 1391(b)(1) and (2) because this is where the Defendants reside and a substantial part of the events giving rise to this action occurred in this District.

THE PARTIES

4. Plaintiff Richard Diaz is an individual with an address located at 122 Fernway Drive, Enterprise, Alabama 36330. Diaz has transacted business in this State and this District.

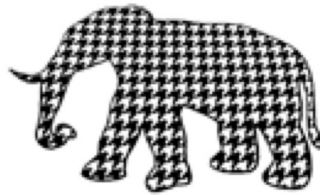
5. Defendant Board of Trustees of the University of Alabama is, upon information and belief, a public corporation located at 401 Queen City Avenue, Tuscaloosa, Alabama 35401.

6. Defendant Paul W. Bryant, Jr., is, upon information and belief, an individual with an address located at 1550 McFarland Blvd. North, Tuscaloosa, Alabama 35406.

FACTS

7. On July 12, 2011, Diaz received a U.S. federal trademark for Registration No. 3,993,520 for the houndstooth elephant design mark. Diaz owns

the mark for use in connection with selling items of merchandise: “sweatshirts and t-shirts.”



8. On July 11, 2013, Defendants filed a Petition to Cancel this mark on the grounds of likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d); false suggestion of a connection under Trademark Act Section 2(a), 15 U.S.C. § 1052(a); abandonment, as defined in Section 45, 15 U.S.C. § 1127; and non-use of the mark at the time Diaz filed his use-based application underlying the Registration.

9. Defendants based their claims on seven trademarks registered on the USPTO Principle Register (numbers 2706104, 3730292, 3730291, 1322955, 1351302, 2745882 and 4,625,053, the “Elephant Design Marks”), as well as alleged rights in the Paul W. Bryant Museum Design Marks (“the Museum Marks”) and the houndstooth pattern.

10. On August 2, 2017, the Board granted Defendants’ Petition to Cancel on the grounds of likelihood of confusion.

COUNT I
APPEAL OF THE AUGUST 2, 2017 BOARD OPINION AND DENIAL OF
REGISTRATION FOR HOUNDSTOOTH ELEPHANT DESIGN MARK

11. Plaintiff restates and incorporates by reference the allegations contained in the preceding paragraphs.

12. On August 2, 2017, the Board erroneously granted Defendants' Petition to Cancel (the "Board Opinion").

13. Pursuant to 15 U.S.C. § 1071(b), Plaintiff hereby institutes a *de novo* appeal of the Board Opinion and this Court should overturn the Board Opinion and reinstate Plaintiff's mark.

14. Pursuant to 15 U.S.C. § 1119, the Court should order that the USPTO restore Diaz's cancelled mark reflected in Registration No. 3,993,520.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that:

1. The Court overturn the Board Opinion and reinstate Plaintiff's cancelled mark.

2. Defendants be required to pay to Plaintiff the costs of this action and his reasonable attorney's fees;

3. Plaintiff have such other and further relief as the Court may deem just.

Respectfully submitted,

/s/ Michael J. Douglas
Michael J. Douglas ASB-2888-C52D
LEAK, DOUGLAS & MORANO, P .C.
The John A. Hand Building
17 20th Street North, Suite 200
Birmingham, AL 35203
Phone: 205.977.7099
Fax: 205.977.7167
Email: mdouglas@leakdouglas.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2017, a copy of the foregoing pleading and will be sent to the parties at the addresses listed below via email and regular U.S. mail.

/s/ Michael J. Douglas
OF COUNSEL

cc:
Alicia Grahn Jones, Esq.
Harris W. Henderson, Esq.
Kilpatrick Townsend & Stockton, LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530
aljones@ktslaw.com
hhenderson@ktslaw.com
Attorneys for Defendants