

TTAB

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

-----X
NEW BALANCE ATHLETIC SHOE, INC.,
Opposer, :
v. : Opposition No. 122,837
H. JOHN CAMPAIGN,
Applicant. : Serial No. 76/024,587
-----X

Honorable Commissioner for Trademarks
BOX TTAB NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

MOTION TO DISMISS AND
BRIEF IN SUPPORT THEREOF


M A D A M :

In accordance with Rule 2.132(a) of the Trademark Rules of Practice, Applicant hereby moves this honorable Board for an Order Dismissing the Notice of Opposition for failure of Opposer to take testimony, the period for which closed on February 25, 2002, and no other evidence has been filed by Opposer in support of the opposition. A copy of the Official Action of May 11, 2001, setting the trial dates for testimony is enclosed. No Extension of Time has been filed by either party and no other scheduling order has been issued by the Trademark Trial and Appeal Board.

WHEREFORE, Applicant prays that the Notice of Opposition will be dismissed and that thereafter a Notice of Allowance of the application be issued.

Respectfully Submitted,

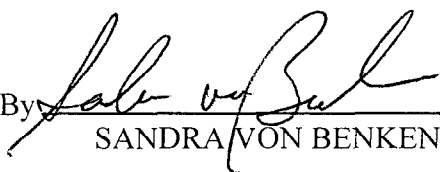
Date: April 25, 2002

By: 
H. John Campaign
36 West 44th Street
New York, New York 10036-8178
(212) 354-5650

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF in Opposition No. 122,837 is being deposited with the U.S. Postal Service, via First-Class mail, with sufficient postage prepaid, in an envelope addressed to: BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, this 25th day of April, 2002.

Dated: April 25, 2002
New York, NY

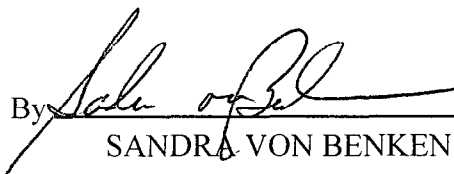
By 
SANDRA VON BENKEN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF in Opposition No. 122,837 was served by First Class mail, postage prepaid, this 25th day of April, 2002 upon Opposer's attorney of record:

Jeremiah Lynch, Esq.
Lahive & Cockfield, LLP
28 State Street
Boston, Massachusetts 02109

Dated: April 25, 2002
New York, NY

By 
SANDRA VON BENKEN

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

MAILED

MAY 11 2001

PAT. & T.M. OFFICE

Plaintiff's attorney:
Jeremiah Lynch, Esq.
Lahive & Cockfield, LLP
28 State Street
Boston, Massachusetts 02109

Defendant's attorney:
H. John Campaign
Graham & Campaign, PC
The Bar Building
36 West 44th Street
New York, New York 10036-8178

Paper No. 03

Opposition No 122,837

Serial No. 76/024,587

New Balance Athletic Shoe,
Inc.

v.

H. John Campaign

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open:	May 31, 2001
Discovery period to close:	November 27, 2001
30-day testimony period for party in position of plaintiff to close:	February 25, 2002
30-day testimony period for party in position of defendant to close:	April 26, 2002
15-day rebuttal testimony period for plaintiff to close:	June 10, 2002

DOCKETED

DUE DATE: 11/27/01

DOCKETED

DUE DATE: 4/20/02

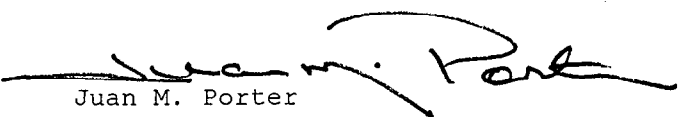
Opposition No. 122,837

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.



Juan M. Porter
Legal Assistant,
Trademark Trial and
Appeal Board
(703) 308-9300, Ext.252