

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



VARSITY SPIRIT CORPORATION)
AND VARSITY SPIRIT FASHIONS)
& SUPPLIES, INC.,)

Opposer,)

v.)

RUSSELL ASSET MANAGEMENT,)
INC.)

Applicant.)

03-06-2003
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #30

Opposition No. 91154710
Application Serial No.
76/330,770

ANSWER OF APPLICANT AND
COUNTERCLAIMS FOR CANCELLATION

Applicant, Russell Asset Management, Inc. ("Applicant"), for its answer to the Notice of Opposition states as follows in response to the numbered paragraphs of the Notice of Opposition filed by Varsity Spirit Corporation and Varsity Spirit Fashions & Supplies, Inc. ("Opposers"):

03/18/2003 K6IBBONS 00000169 76330770

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1. Applicant admits the allegations of Paragraph 1 of the Notice of Opposition.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 2 and so states, which has the effect of denial.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 3 and so states, which has the effect of denial.

4. Applicant denies the material allegations of Paragraph 4 on the basis that (1) Opposers abandoned such registrations and marks with respect to the term VARSITY in respect of some or all of the goods, as set forth in the counterclaims; and (2) the online database of the U.S. Patent and Trademark Office reports that Registration Number 2,374,724 concerns the mark NEXELL, which is reported to be owned by Nexell Therapeutics, Inc.; to all other extents, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 4 and so states, which has the effect of denial.

5. Applicant denies the material allegations of Paragraph 5 on the basis that (i) Opposers abandoned such applications and marks with respect to the term VARSITY in respect of some or all of the goods, as set forth in the counterclaims; and (2) the online data base of the U.S. Patent and Trademark Office reports that Serial Number 75/976,804 is abandoned. The last sentence of Paragraph 5 is a statement of definition, requiring no response, admission, or denial by Applicant. To all other extents, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 5 and so states, which has the effect of denial.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 6, and so states, which has the effect of denial.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 7, and so states, which has the effect of denial.

8. Applicant denies the material allegations of Paragraph 8 of the Notice of Opposition and demands strict proof thereof.

9. Applicant denies the material allegations of Paragraph 9 of the Notice of Opposition and demands strict proof thereof.

10. Applicant denies the material allegations of Paragraph 10 of the Notice of Opposition and demands strict proof thereof.

11. Applicant denies the material allegations of Paragraph 11 of the Notice of Opposition and demands strict proof thereof.

12. Applicant denies the material allegations of Paragraph 12 of the Notice of Opposition and demands strict proof thereof.

13. With respect to the first sentence of Paragraph 13 of the Notice of Opposition, Applicant admits that a federal registration of a mark shall be prima facie evidence of the registrant's exclusive right to use the mark, as shown in such registration, in commerce on or in connection with the goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude another person from proving any legal or equitable defense or defect, including those set forth in 15 U.S.C. § 1115(b), which might have been asserted if such mark had not been registered. Applicant denies the remaining material allegations of Paragraph 13 of the Notice of Opposition and demands strict proof thereof.

Affirmative Defenses

1. Applicant denies the material allegations of the Notice of Opposition.

2. Opposers have abandoned any rights they possessed in any trademark incorporating the term VARSITY.

3. Opposers' claims are barred by the doctrine of laches.

4. Opposers' claims are barred by the doctrine of estoppel.

5. Opposers' claims are barred by the doctrine of acquiescence.

6. Opposers' Notice of Opposition fails to state a claim upon which relief can be granted.

7. The Notice of Opposition is barred because it would result in a multiplicity of suits in light of Opposition Number 91153079, previously filed on June 10, 2002.

8. The Notice of Opposition is barred because of the doctrine of abatement.

9. The Notice of Opposition is untimely filed, and the Board does not have jurisdiction to hear this matter. The Opposers' September 12, 2002 request for extension of time to file an opposition did not recite consent of the applicant, as required by 37 C.F.R. 2.102(c). On October 7, 2002, in denying the request to extend until October 10, 2002, the Board highlighted the failure to recite consent, stating "the request is granted only to the extent that potential opposer was allowed until 9/10/02, in which to file an opposition to the registration sought by applicant." While the Opposers' October 15, 2002 request for extension of time to file an opposition does recite that "Jeanne Maynard of Russell Corporation has consented to **this** request for an extension of time" (emphasis added), the October 15, 2002 request (1) was filed after the expiration of the extensions previously granted, and (2) refers to the consent only as relating to the then-present request that sought an extension from "October 10, 2002 to and including November 9, 2002." No consent was recited for the period from September 10, 2002 to October 10, 2002. Even had such consent been recited, it would be insufficient, given that 37 C.F.R. 102(c) requires that "the written request to extent the time for filing an opposition must be **filed ... within** any extension of time previously granted..." (emphasis added).

WHEREFORE, Applicant requests that this Opposition number 91154710 be dismissed.

FIRST COUNTERCLAIM FOR CANCELLATION IN WHOLE OR IN PART

(REGISTRATION NUMBER 1,796,645)

Applicant asserts the following First Counterclaim for Cancellation, of Registration Number 1,796,645, for the mark VARSITY SPIRIT CORPORATION, in further response to the Notice of Opposition.

Opposer/Counterclaim Defendant Varsity Spirit Corporation asserts Registration Number 1,796,645 for VARSITY SPIRIT CORPORATION for "Clothing; Namely, Cheerleader And Dance Team Uniforms With Pom-Pons, Gloves, Vests, Tops, Shirts, Skirts, Jumpers, Warm-Up Suits, Pants, Sweaters, Shoes, Socks, Sweatshirts, T-Shirts, Shorts, Sweat Pants, Tights, Leotards, Unitards, Dresses And Jackets" as a basis for opposition. Applicant believes that it is or will be damaged by the continued existence on the Register of said registration, at least in part due to Opposers'/Counterclaim Defendants' assertion of the registration against Applicant, and hereby petitions to cancel said registration. The grounds for cancellation are as follows:

1. Upon information and belief, Varsity Spirit Corporation abandoned the mark VARSITY SPIRIT CORPORATION, the subject of Registration 1,796,645.

2. Upon information and belief, Varsity Spirit Corporation and its authorized licensees abandoned the mark and registration by virtue of non-use, in that they do not now use the VARSITY SPIRIT CORPORATION mark in a trademark sense, in connection with some or all of the goods listed in registration number 1,796,645 in a manner cognizable to avoid abandonment under the definition of the terms "use" and

“abandonment” recognized by 15 U.S.C. § 1051 et seq., and specifically § 1127; and Varsity Spirit Corporation and its authorized licensees have in the past intended not to resume use and do now intend not to resume such use. Any use by Varsity Spirit Corporation of the term VARSITY SPIRIT CORPORATION is at most use as a trade name, rather than as a trademark.

3. To the extent that the term “varsity” dominates the mark VARSITY SPIRIT CORPORATION or provides essential character to such mark, Varsity Spirit Corporation abandoned the mark and registration by virtue of causing the mark to lose its single source indicating function. By means of a certain coexistence agreement dated July 9, 1996 between Opposers/Counterclaim Defendants and Knothe Corporation (attached as Exhibit A), Varsity Spirit Corporation allowed Knothe Corporation to use and/or register the term “varsity” in connection with “pajama and robe sets,” “sleepwear, lounge wear and underwear, nightshirts, and boxer shorts,” and “athletic wear, including but not limited to sport shirts, gym shorts, sweatsuits, t-shirts, briefs, athletic shirts, athletic shorts, soccer shorts, volleyball shorts, and swim shorts, sold through retail outlets.” (Settlement Agreement at Paragraphs 11–16). Despite the purported distinction in marketing through on-campus venues and off-campus venues, consumers of the goods under each entity’s usage of the term “varsity” are likely to overlap, because individuals that frequent or live on campuses also shop off campus, and because a substantial portion of the general public visit campus venues in connection with sports events and for other reasons; furthermore, substantial overlap exists between customers of retail outlets in off-campus venues and customers of mail order catalog services and direct sales

representatives and employees. The term “varsity” and the registered mark thus have lost the function and ability to distinguish Varsity Spirit Corporation’s goods in commerce or to otherwise serve a source indicating function to the relevant consuming market.

4. To the extent that the term “varsity” is dominant or provides essential character to the VARSITY SPIRIT CORPORATION mark, Varsity Spirit Corporation abandoned the mark and registration by virtue of naked licensing, in that the coexistence agreement referenced in Paragraph 3 of this counterclaim amounts to a license without actual or contractual control of quality or continuity.

5. Varsity Spirit Corporation expressly abandoned the mark and registration with respect to athletic wear; Varsity Spirit Corporation expressly stated the intent to abandon use of the mark “varsity” in its marks, at least with respect to “sport shirts; gym shorts; sweatsuits; underwear; athletic shorts; soccer shorts; boxer shorts; volleyball shorts; and swim shorts” sold through “retail outlets that are not owned by Varsity Spirit unless said outlets are located at high schools and colleges;” and upon information and belief has acted on such intent by failure to distribute, market, offer, or sell any goods in connection with the mark “varsity,” including without limitation the mark VARSITY SPIRIT CORPORATION, other than through retail outlets owned by Varsity Spirit Corporation and outlets located at high schools and colleges, if at all. Varsity Spirit Corporation’s expressly stated intent is memorialized at Paragraph 10 of the Settlement Agreement attached hereto as Exhibit A. The registered mark thus has lost the function

and ability to distinguish Varsity Spirit Corporation's goods in commerce or to otherwise serve a source indicating function to the relevant consuming market.

6. By virtue of the Settlement Agreement and the sections thereof referred to in Paragraph 5, above, Varsity Spirit Corporation abandoned the registration with respect to all uses outside of "retail outlets that are not owned by Varsity Spirit unless said outlets are located at high schools and colleges."

7. Varsity Spirit Corporation further confirmed the limited nature of its rights in any mark including the term "varsity" by virtue of that certain Consent To Use Agreement executed March 19, 2001 between Varsity Spirit Corporation and Lolly Togs, Ltd. (attached hereto as Exhibit B), whereby Varsity Spirit Corporation agreed that the term VARSITY GIRL is not confusingly similar to the term "varsity" as used by Varsity Spirit Corporation, based partially upon the marks and "the marketing of the products and the channels of trade."

8. In view of the foregoing, Registration No 1,796,645 should be cancelled in its entirety.

9. In the alternative, and in view of the foregoing, Registration No. 1,796,645 should be partially cancelled by (a) restriction to exclude athletic wear, that is "not sold through retail outlets owned by Varsity Spirit unless said outlets are located at high

schools or colleges,” or (b) striking all recited goods that qualify as “athletic wear,” including at least tops, shirts, warm-up suits, pants, sweatshirts, t-shirts, and shorts.

10. This Counterclaim for Cancellation is timely filed pursuant to 15 U.S.C. § 1064(3).

11. Applicant encloses herewith a duplicate copy of this counterclaim and payment in the amount of \$300.00 for the filing fee for a petition for cancellation by a single petitioner against all classes in the subject Registration No. 1,796,645, and authorizes the drawing of any underpayment from deposit account 50-0954.

WHEREFORE Applicant/Counterclaim Plaintiff requests that Registration No. 1,796,645 be cancelled, or in the alternative partially cancelled by restriction or striking, and that this Cancellation be sustained.

SECOND COUNTERCLAIM FOR CANCELLATION IN WHOLE OR IN PART
(REGISTRATION NUMBER 1,680,452 for VARSITY SPIRIT FASHIONS)

Applicant asserts the following Second Counterclaim for Cancellation, of Registration Number 1,680,452, for the mark VARSITY SPIRIT FASHIONS, in further response to the Notice of Opposition.

Opposer/Counterclaim Defendant Varsity Spirit Fashions & Supplies, Inc. asserts Registration Number 1,680,452 for VARSITY SPIRIT FASHIONS for “Men's And Women's Cheerleader And Dance Team Clothing; Namely, Skirts, Sweats, Sweaters, Tops, Pants, Shoes” as a basis for opposition. Applicant believes that it is or will be damaged by the continued existence on the Register of said registration, at least in part due to Varsity Spirit Fashions & Supplies, Inc.’s assertion of the registration against Applicant, and hereby petitions to cancel said registration. The grounds for cancellation are as follows:

1. Upon information and belief, Varsity Spirit Fashions & Supplies, Inc. abandoned the mark VARSITY SPIRIT FASHIONS, the subject of Registration 1,680,452.

2. Upon information and belief, Varsity Spirit Fashions & Supplies, Inc. and its authorized licensees abandoned the mark and registration by virtue of non-use, in that they do not now use the VARSITY SPIRIT FASHIONS mark in a trademark sense, in connection with some or all of the goods listed in registration number 1,680,452, in a manner cognizable to avoid abandonment under the definition of the terms “use” and

“abandonment” recognized by 15 U.S.C. § 1051 et seq., and specifically § 1127; and Varsity Spirit Fashions & Supplies, Inc. and its authorized licensees have in the past intended not to resume use and do now intend not to resume such use. Any use by Varsity Spirit Fashions & Supplies, Inc. of the term VARSITY SPIRIT FASHIONS is at most use as a trade name, rather than as a trademark.

3. To the extent that the term “varsity” is dominant or provides essential character to the mark VARSITY SPIRIT FASHIONS, Varsity Spirit Fashions & Supplies, Inc. abandoned the mark and registration by virtue of causing the mark to lose its single source indicating function. By means of a certain coexistence agreement dated July 9, 1996 between Opposers/Counterclaim Defendants and Knothe Corporation (attached as Exhibit A), Varsity Spirit Fashions & Supplies, Inc. allowed Knothe Corporation to use and/or register the term “varsity” in connection with “pajama and robe sets,” “sleepwear, lounge wear and underwear, nightshirts, and boxer shorts,” and “athletic wear, including but not limited to sport shirts, gym shorts, sweat suits, t-shirts, briefs, athletic shirts, athletic shorts, soccer shorts, volleyball shorts, and swim shorts, sold through retail outlets.” (Settlement Agreement at Paragraphs 11–16). Despite the purported distinction in marketing through on-campus venues and off-campus venues, consumers of the goods under each entity’s usage of the term “varsity” are likely to overlap, because individuals that frequent or live on campuses also shop off campus, and because a substantial portion of the general public visit campus venues in connection with sports events and for other reasons; furthermore, substantial overlap exists between customers of retail outlets in off-campus venues and customers of mail order catalog

services and direct sales representatives and employees. The term “varsity” and the registered mark thus have lost the function and ability to distinguish Varsity Spirit Fashions & Supplies, Inc.’s goods in commerce or to otherwise serve a source indicating function to the relevant consuming market.

4. To the extent that the term “varsity” is dominant or provides essential character to the mark VARSITY SPIRIT FASHIONS, Varsity Spirit Fashions & Supplies, Inc. abandoned the mark and registration by virtue of naked licensing, in that the coexistence agreement referenced in Paragraph 3 of this counterclaim amounts to a license without actual or contractual control of quality or continuity.

5. Varsity Spirit Fashions & Supplies, Inc. expressly abandoned the mark and registration with respect to athletic wear; Varsity Spirit Fashions & Supplies, Inc. expressly stated the intent to abandon use of the mark “varsity” in their marks, at least with respect to “sport shirts; gym shorts; sweat suits; underwear; athletic shorts; soccer shorts; boxer shorts; volleyball shorts; and swim shorts” sold through “retail outlets that are not owned by Varsity Spirit unless said outlets are located at high schools and colleges;” and upon information and belief has acted on such intent by failure to distribute, market, offer, or sell any goods in connection with the mark “varsity,” including without limitation the mark VARSITY SPIRIT FASHIONS, other than at retail outlets owned by Varsity Spirit and outlets located at high schools and colleges, if at all. Varsity Spirit Fashions & Supplies, Inc.’s expressly stated intent is memorialized at Paragraph 10 of the Settlement Agreement attached hereto as Exhibit A. The registered

mark thus has lost the function and ability to distinguish the goods of Varsity Spirit Fashions & Supplies, Inc. in commerce or to otherwise serve a source indicating function to the relevant consuming market.

6. By virtue of the Settlement Agreement and the sections thereof referred to in Paragraph 5, above, Varsity Spirit Fashions & Supplies, Inc. abandoned the mark and registration with respect to all uses outside of “retail outlets that are not owned by Varsity Spirit unless said outlets are located at high schools and colleges.”

7. In view of the foregoing, Registration No 1,680,452 should be cancelled in its entirety.

8. In the alternative, and in view of the foregoing, Registration No. 1,680,452 should be partially cancelled by (a) restriction to exclude athletic wear, that is “not sold through retail outlets owned by Varsity Spirit unless said outlets are located at high schools or colleges,” or (b) striking all recited goods that qualify as “athletic wear” including at least sweats, tops, and pants.

9. This Counterclaim for Cancellation is timely filed pursuant to 15 U.S.C. § 1064(3).

10. Applicant encloses herewith a duplicate copy of this counterclaim and payment in the amount of \$300.00 for the filing fee for a petition for cancellation by a

single petitioner against all classes in the subject Registration No. 1,680,452, and authorizes the drawing of any underpayment from deposit account 50-0954.

WHEREFORE Applicant/Counter Plaintiff requests that Registration No. 1,680,452 be cancelled, or in the alternative partially cancelled by restriction or striking, and that this Cancellation be sustained.

THIRD COUNTERCLAIM FOR CANCELLATION IN WHOLE OR IN PART

(REGISTRATION NUMBER 2,293,083 for VARSITY SPORT)

Applicant asserts the following Third Counterclaim for Cancellation, of Registration Number 2,293,083, for the mark VARSITY SPORT, in further response to the Notice of Opposition.

Opposer/Counterclaim Defendant Varsity Spirit Corporation asserted Registration Number 2,293,083 for VARSITY SPORT for “Athletic Wear, Namely, Sports Shirts, Sports Shorts, Gloves, Vests, Tops, Skirts, Jumpers, Warm-Up Suits, Pants, Sweaters, Athletic Shoes, Sweatshirts, T-Shirts, Athletic Shorts, Sweatpants, Tights, Leotards, Unitards, Dresses And Jackets” as a basis for opposition. Applicant believes that it is or will be damaged by the continued existence on the Register of said registration, at least in part due to Opposers’/Counterclaim Defendants’ assertion of the registration against Applicant, and hereby petitions to cancel said registration. The grounds for cancellation are as follows:

1. Upon information and belief, Varsity Spirit Corporation abandoned the mark VARSITY SPORT, the subject of Registration 2,293,083.

2. Upon information and belief, Varsity Spirit Corporation and its authorized licensees abandoned the mark and registration by virtue of non-use, in that they do not now use the VARSITY SPORT mark in a trademark sense, in connection with some or all of the goods listed in registration number 1,680,452, in a manner cognizable to avoid abandonment under the definition of the term “use” and “abandonment” recognized by 15

U.S.C. § 1051 et seq., and specifically § 1127; and Varsity Spirit Corporation and its authorized licensees have in the past intended not to resume use and do now intend not to resume such use.

3. To the extent that the term “varsity” is dominant or provides essential character to the mark VARSITY SPORT, Varsity Spirit Corporation forfeited any right to acquire exclusive rights in the mark or to develop “varsity” as a single source indicator, and further is estopped from claiming such rights. By means of a certain coexistence agreement dated July 9, 1996 between Opposers/Counterclaim Defendants and Knothe Corporation (attached as Exhibit A), Varsity Spirit Corporation allowed Knothe Corporation to use and/or register the term “varsity” in connection with “pajama and robe sets,” “sleepwear, lounge wear and underwear, nightshirts, and boxer shorts,” and “athletic wear, including but not limited to sport shirts, gym shorts, sweat suits, t-shirts, briefs, athletic shirts, athletic shorts, soccer shorts, volleyball shorts, and swim shorts, sold through retail outlets.” (Settlement Agreement at Paragraphs 11–16). Despite the purported distinction in marketing through on-campus venues and off-campus venues, consumers of the goods under each entity’s usage of the term “varsity” are likely to overlap, because individuals that frequent or live on campuses also shop off campus, and because a substantial portion of the general public visit campus venues in connection with sports events and for other reasons; furthermore, substantial overlap exists between customers of retail outlets in off-campus venues and customers of mail order catalog services and direct sales representatives and employees. The term “varsity” and the registered mark thus have lost the function and ability to distinguish the Varsity Spirit

Corporation's goods in commerce or to otherwise serve a single source indicating function to the relevant consuming market.

4. Varsity Spirit Corporation expressly forfeited any right to develop exclusive rights in marks including the term "varsity" with respect to athletic wear, and is estopped from claiming such rights; Varsity Spirit Corporation expressly stated the intent to forego all use of the mark "varsity" in its marks, at least with respect to "sport shirts; gym shorts; sweat suits; underwear; athletic shorts; soccer shorts; boxer shorts; volleyball shorts; and swim shorts" sold through "retail outlets that are not owned by Varsity Spirit unless said outlets are located at high schools and colleges;" and upon information and belief has acted on such intent by failure to distribute, market, offer, or sell any goods in connection with the mark "varsity," including without limitation the mark VARSITY SPORT, other than at retail outlets owned by Varsity Spirit and outlets located at high schools and colleges, if at all. Varsity Spirit Corporation's expressly stated intent is memorialized at Paragraph 10 of the Settlement Agreement attached hereto as Exhibit A. Varsity Spirit Corporation filed this Settlement Agreement in public proceedings. Varsity Spirit is estopped from claiming that the now-registered mark has developed the function and ability to distinguish Varsity Spirit Corporation's goods in commerce or to otherwise serve a source indicating function to the relevant consuming market.

5. Varsity Spirit Corporation further confirmed the limited nature of its rights in any term "varsity" by virtue of that certain Consent To Use Agreement executed March 19, 2001 by Varsity Spirit Corporation with Lolly Togs, Ltd (attached hereto as

Exhibit B), whereby Varsity Spirit Corporation agreed that the term VARSITY GIRL is not confusingly similar to the term “varsity” as used by Varsity Spirit Corporation, based at least in part on “the marketing of the products and the channels of trade.”

6. By virtue of the express limitations on its use of “varsity” agreed to by Varsity Spirit Corporation in Paragraph 10 of the Settlement Agreement, Varsity Spirit Corporation was, at the time of filing of the VARSITY SPORT application, contractually committed to, on notice of, and in express agreement with the limited scope of both its rights and its actual and potential market for the VARSITY SPORT mark.

7. Upon information and belief, in connection with the filing of the application for the VARSITY SPORT mark, Varsity Spirit Corporation swore to or declared an intention to use the mark, without limitation to exclude the markets from which Varsity Spirit Corporation was prohibited to market.

8. Upon information and belief, in connection with the filing of the application for the VARSITY SPORT mark, Varsity Spirit Corporation swore to or declared that (1) it was entitled to use the mark and (2) to the best of its knowledge and belief, no other person had the right to use the mark in commerce either in identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive.

9. By virtue of the Settlement Agreement, Varsity Spirit Corporation was at the time of making of the oath or declaration aware of its agreement with Knothe Corporation to (1) limit Varsity Spirit Corporation's use of "varsity" and (2) allow use by Knothe of "varsity" for certain goods and channels.

10. Upon information and belief, Varsity Spirit Corporation, in connection with the Application for Registrations of VARSITY SPORT, did not notify the Trademark Examiner or the U.S. Patent and Trademark Office of the existence of Knothe's rights or use, or of the Settlement Agreement.

11. Varsity Spirit Corporation knew that the U.S. Patent and Trademark Office and the Trademark Examiner would rely on its oath or declaration in examining the VARSITY SPORT application.

12. Varsity Spirit Corporation intended to deceive the U.S. Patent and Trademark Office into issuing a registration unrestricted by market or channel, by failing to disclose the information described in Paragraph 6 and 9, above.

13. The failure of Varsity Spirit Corporation to notify the Trademark Examiner or the U.S. Patent and Trademark Office of the limits of its entitlement to use the mark, and of the rights of Knothe to use "varsity," amount to fraud on the Office.

14. In view of the foregoing, Registration No 2,293,083 should be cancelled in its entirety.

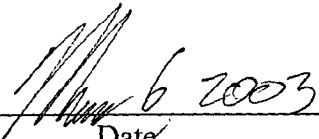
15. In the alternative, and in view of the foregoing, Registration No. 2,293,083 should be partially cancelled by (a) restriction to exclude athletic wear “not sold through retail outlets owned by Varsity Spirit unless said outlets are located at high schools or colleges,” or (b) striking all recited goods that qualify as “athletic wear,” including at least sport shirts, sport shorts, tops, warm-up suits, pants, sweatshirts, t-shirts, and athletic shorts.

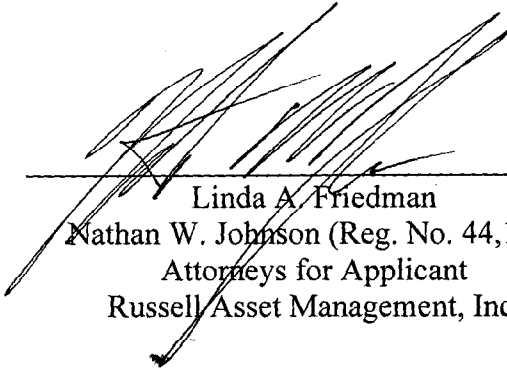
16. This Counterclaim for Cancellation is timely filed pursuant to 15 U.S.C. § 1064(3).

17. Applicant encloses herewith a duplicate copy of this counterclaim and payment in the amount of \$300.00 for the filing fee for a petition for cancellation by a single petitioner against all classes in the subject Registration No. 2,293,083, and authorizes the drawing of any underpayment from deposit account 50-0954.

WHEREFORE Applicant/Counter Plaintiff requests that Registration No. 2,293,083 be cancelled, or in the alternative partially cancelled by restriction or striking, and that this Cancellation be sustained.

Respectfully submitted,


Date 6 2003


Linda A. Friedman
Nathan W. Johnson (Reg. No. 44,173)
Attorneys for Applicant
Russell Asset Management, Inc.

OF COUNSEL:

BRADLEY ARANT ROSE & WHITE LLP
1819 Fifth Avenue North
Birmingham, Alabama 35203-2104
205-521-8369 (Direct)
205-521-8000 (Main)
205-488-6369 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing Answer of Applicant, on Arlana S. Cohen, Esq., St. Onge Steward Johnston & Reens, LLC, 986 Bedford Street, Stamford, Connecticut 06905-5619, by placing a copy of the same in the U.S. Mail, first-class postage prepaid and addressed to his regular mailing address, on this 6th day of March, 2003.

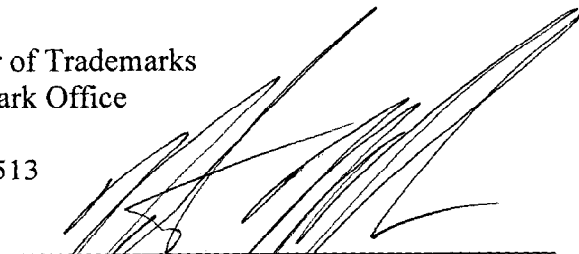


OF COUNSEL

CERTIFICATE OF EXPRESS MAILING

I hereby certify that and original and two copies of Answer of Applicant, together with three counterclaims and affirmative defenses, and accompanied by a check in the amount of \$900.00 for the filing fee for three cancellation petitions, are being deposited on March 6, 2003, with the United States Postal Service as Express Mail No. EV193765236US, Post Office to Addressee, in an envelope addressed to:

Box TTAB
FEE
Assistant Commissioner of Trademarks
U.S. Patent and Trademark Office
2900 Crystal Drive
Arlington, VA 22202-3513



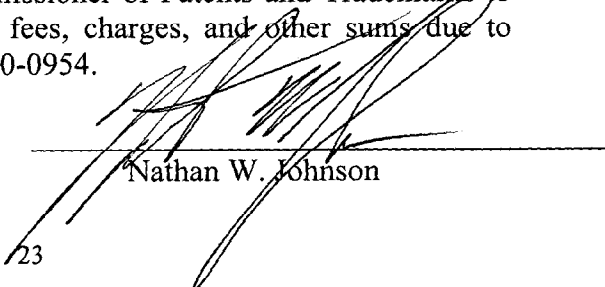
Linda A. Friedman
Nathan W. Johnson (Reg. No. 44,173)
Attorneys for Applicant
Russell Asset Management, Inc.



Date

**AUTHORIZATION TO CHARGE
DEPOSIT ACCOUNT**

If, after processing the enclosed items, any charges, fees or sums due remain unpaid in connection with this correspondence, I hereby authorize the Commissioner of Patents and Trademarks to charge all such remaining fees, charges, and other sums due to Deposit Account Number 50-0954.



Nathan W. Johnson


Bradley Arant
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TTAB

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March 6, 2003



03-06-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #30

Box TTAB
FEE
Assistant Commissioner of Trademarks
US Patent and Trademark Office
2900 Crystal Drive
Arlington, VA 22202-3513

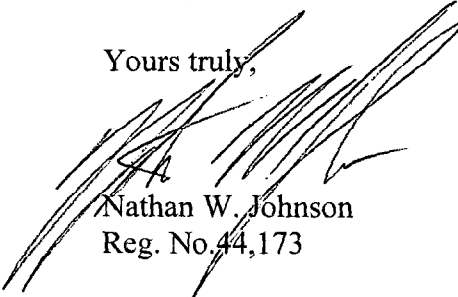
RE: Opposition No. 91154710
Application Serial No. 76/330,770

Dear Sirs:

Enclosed herewith are the original and two copies of Answer of Applicant and Counterclaims for Cancellation in the above-referenced Opposition, a check in the amount of \$900.00 for fees, and a postcard to be returned to us, marked with your office stamp.

If you have any questions, please contact me.

Yours truly,


Nathan W. Johnson
Reg. No. 44,173

NWJ/tlu1/1031554.1

Enclosures

cc: Linda A. Friedman, Esq.
Ms. Lakeysucha A. Adams

Express Mail No: EV193765236US

