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

In the Matter of Serial No. 77/744,817
Mark: bird design
Filing Date: May 26, 2009
Publication Date: October 6, 2009
Our Reference No.: 57289-383514

RETAIL ROYALTY COMPANY,

Opposer,

v.

MICHAEL R. LONGSHORE,
D/B/A "UNIVERSAL PEACEWEAR,"

Applicant.

Opposition No. 91192917

Mark: 

APPLICANT'S NOTICE OF RELIANCE #1: OFFICIAL RECORDS AND EXHIBITS

Applicant Michael Longshore ("Applicant") pursuant to 37 C.F.R. § 2.122 (E) submits of record in connection with this opposition proceeding printouts of decisions of the Trademark Trial and Appeal Board ("TTAB") that are relevant to the issues in this proceeding. This evidence is relevant to this proceeding to show, inter alia other bird design marks were unopposed by Opposer and are currently in use. Also the likelihood of confusion between Applicant's Bid Design and Opposer's Bird Design marks.

///

///

Applicant's Exhibit No.	Description	# of Pages
1	Selena Gomez Dream Out Loud	2
2	Hollister Word Mark Registration	4
3	Universal Peace Wear – Registration	1
4	Class Descriptions	1
5	Sample – Hoodies	1
6	Sample – T-shirts	1
7	Sample – T-shirts	1
8	Longshore Bird Design Mark "Dove"	3
9	Opposer's Bird Design Mark "Eagle"	1
10	Opposer's Bird Design Mark "Aerie"	1
11	Explanation of Dove from a Biblical View	5
12	Answers to Notice of Opposition dated May 7, 2010	5
13	Applicant's Response to Oppose Opposer's Reply in Support of Motion for Summary Judgment dated May 12, 2011	4
14	Applicant's Request to Amend Opposer's First Set of Admissions Request dated February 22, 2012	9
15	Applicant's Response to Oppose Opposer's Motion for Summary Judgment and to Suspend Proceeding and to Reset Trial Periods dated August 2, 2012	5
16	TTAB – Board Order: dated February 13, 2012	14
17	Uncontested Motion to Amend Notice of Opposition – TTAB dated June 5, 2012	3
18	TTAB – Proceedings Suspended dated August 4, 2012	1
19	TTAB – By the Board: dated December 20, 2012	5

Applicant reserves its right to amend and/or supplement these disclosures as necessary.

Dated: May 3, 2013

Respectfully submitted,

Michael R. Longshore, Applicant
dba Universal Peacewear
924 Junipero
Duarte, CA 91010
Telephone: (626) 358-2346

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CERTIFICATE OF MAILING

I hereby certify that **APPLICANT'S NOTICE OF RELIANCE #1: OFFICIAL RECORDS AND EXHIBITS** is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P. O. Box 1451
Alexandria, VA 22313-1451

On May 3, 2013.

Michael Longshore
Michael R. Longshore

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CERTIFICATE OF SERVICE

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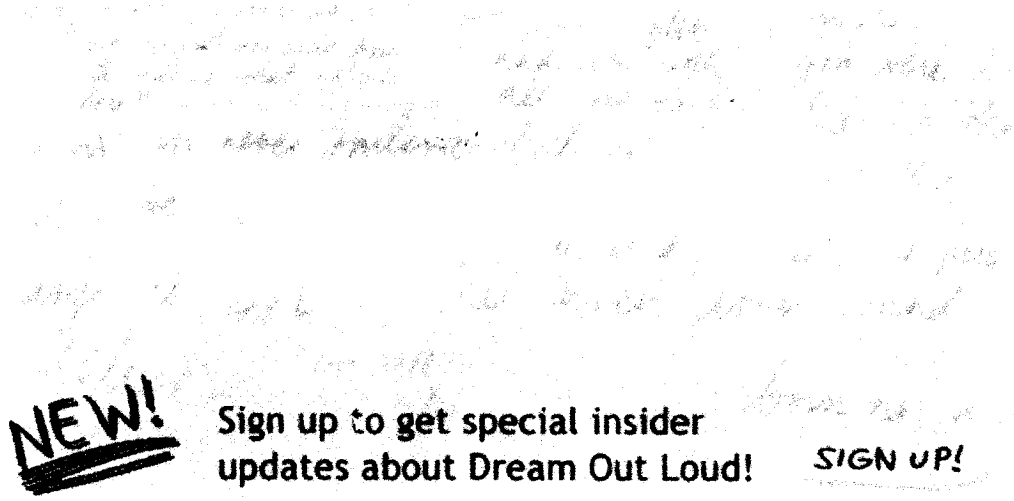
Kristin Garris
KILPATRICK TOWNSEND & STOCKTON LLP
1114 Avenue of the Americas, 21st Floor
New York, NY 10036

Michael Longshore
Michael R. Longshore, Applicant
dba Universal Peacewear

EX. 1

DREAM OUT LOUD

JOIN DREAM OUT LOUD



(http://selenagomezdreamoutloud.webs.com/apps/photos/photo?photoid=126515103)

DREAM OUT LOUD

Hey Dreamers,

I hope you'll join me and be part of Dream Out Loud. I want everyone wearing Dream Out Loud to feel good about themselves and to know that they can make a difference in the world.

We're committed to doing the same - Dream Out Loud will be good to the Earth by using a percentage of eco-friendly fabrics, and using factories with established sustainability practices in the reduction of waste, water, and energy; we'll be good to others by giving back to charitable organizations such as UNICEF; and we'll be good to ourselves by being active and involved in our communities.

Thanks so much for checking out Dream Out Loud. Lets show the world where our dreams can take us!

xoxo,
Sel

SELENA WEARING **DREAM OUT LOUD**

EXHIBIT #1

Selena Gomez advertisement of Dream Out Loud, which is a clothing line and features a dove as part o the name. The example was downloaded from her website: http://selenagomezdreamoutloud.webs.com. This is just one example of birds in the marketplace as logos.

EXHIBIT #2

Hollister is another company that advertize with a bird as part of the name. Hollister has filed on December 9, 2010 to be registered and on February 15, 2011 was published for opposition. There is not a reference of any opposition listed on the printout from the Trademark Electronic Search System (TESS) if unopposed will be registered without opposition. The example was downloaded from Hollister's website: http://www.hollisterco.com.

EX. 2

United States Patent and Trademark Office

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed May 1 02:29:10 EDT 2013

HOLLISTER

Word Mark	**HOLLISTER**
Goods and Services	IC 025. US 022 039. G & S: Belts; Bottoms; Coats; Dresses; Footwear; Gloves; Headwear; Jackets; Leggings; Scarves; Sleepwear; Swim wear; Tops; Undergarments
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	03.15.19 - Birds or bats in flight or with outspread wings 03.15.24 - Stylized birds and bats 03.15.25 - Cardinals; Crows; Doves; Other birds; Pigeons; Ravens; Robins; Woodpeckers
Serial Number	85193900
Filing Date	December 9, 2010
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	February 15, 2011
Owner	(APPLICANT) Abercrombie & Fitch Trading Co. CORPORATION OHIO Attn: Jacob Kramer 6301 Fitch Path New Albany OHIO 43054
Prior Registrations	3783586;3804833;3815111;AND OTHERS
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the word "**HOLLISTER**" under a bird design silhouette.
Type of Mark	TRADEMARK
Register	PRINCIPAL

USPTO will deploy a small maintenance release for Trademark Status and Document Retrieval (TSDR) system. Deployment will start at 10:00 p.m. on Friday, April 26 and end at 5:00 a.m. on Saturday, April 27. TSDR will be unavailable during the deployment period.

STATUS DOCUMENTS Back to Search Print

Generated on: This page was generated by TSDR on 2013-05-02 01:44:51 EDT

Mark: HOLLISTER

US Serial Number: 85193900

Application Filing Date: Dec. 09, 2010

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: A fourth request for extension of time to file a Statement of Use has been granted.

Status Date: Apr. 15, 2013

Publication Date: Feb. 15, 2011

Notice of Allowance Date: Apr. 12, 2011

Mark Information

Related Properties Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

TM Staff and Location Information

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

SIGN ME UP!
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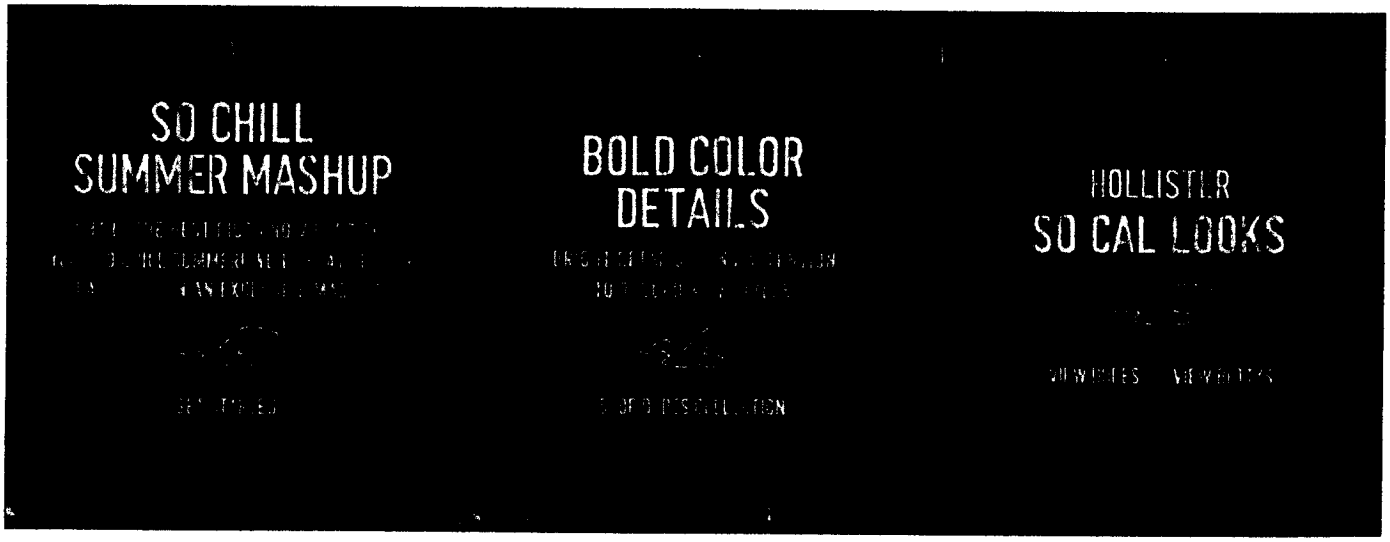
EMAIL ADDRESS

SUBSCRIBE PRIVACY POLICY

NO THANKS

TAKE AN ADDITIONAL 40% OFF CLEARANCE!

HOLLISTER
CALIFORNIA



Ex. 3

United States Patent and Trademark Office

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Thu May 2 02:47:27 EDT 2013

Record 1 out of 1

Typed Drawing

Word Mark	**UNIVERSAL PEACEWEAR**
Goods and Services	IC 025. US 022 039. G & S: Clothing, namely, underwear, briefs, boxers and gloves, shirts, pants, sweatsuits, caps, beannies, T-shirts, robes, socks, shoes, tennis shoes, ties, dresses and pajamas. FIRST USE: 20011200. FIRST USE IN COMMERCE: 20011200
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76021059
Filing Date	April 10, 2000
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	May 21, 2002
Registration Number	2606534
Registration Date	August 13, 2002
Owner	(REGISTRANT) LONGSHORE, MICHAEL R. INDIVIDUAL UNITED STATES 924 JUNIPERO Duarte CALIFORNIA 91010
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 8 (6-YR). SECTION 8(10-YR) 20120907.
Renewal	1ST RENEWAL 20120907
Live/Dead Indicator	LIVE

Class 22 includes mainly rope and sail manufacture products, padding and stuffing materials and raw fibrous textile materials.

This Class includes, in particular:

EX.4

– cords and twines in natural or artificial textile fibres, paper or plastics.

This Class does not include, in particular:

– certain nets, sacks and bags (consult the Alphabetical List of Goods);

– strings for musical instruments (Cl. 15).

CLASS 23

Yarns and threads, for textile use.

CLASS 24

Textiles and textile goods, not included in other classes; bed covers; table covers.

Explanatory Note

Class 24 includes mainly textiles (piece goods) and textile covers for household use.

This Class includes, in particular:

– bedding linen of paper.

This Class does not include, in particular:

– certain special textiles (consult the Alphabetical List of Goods);

– electrically heated blankets, for medical purposes (Cl. 10) and not for medical purposes (Cl. 11);

– table linen of paper (Cl. I6);

– horse blankets (Cl. 18).

CLASS 25

Clothing, footwear, headgear.

Explanatory Note

This Class does not include, in particular:

– certain clothing and footwear for special use (consult the Alphabetical List of Goods).

CLASS 26

Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

EX. 5


FOREVER
UNIVERSAL PEACEWEAR
LOVE
FOREVER
PEACE
UNIVERSAL PEACEWEAR

Ex. 6

Ex. 6

Ex. 7

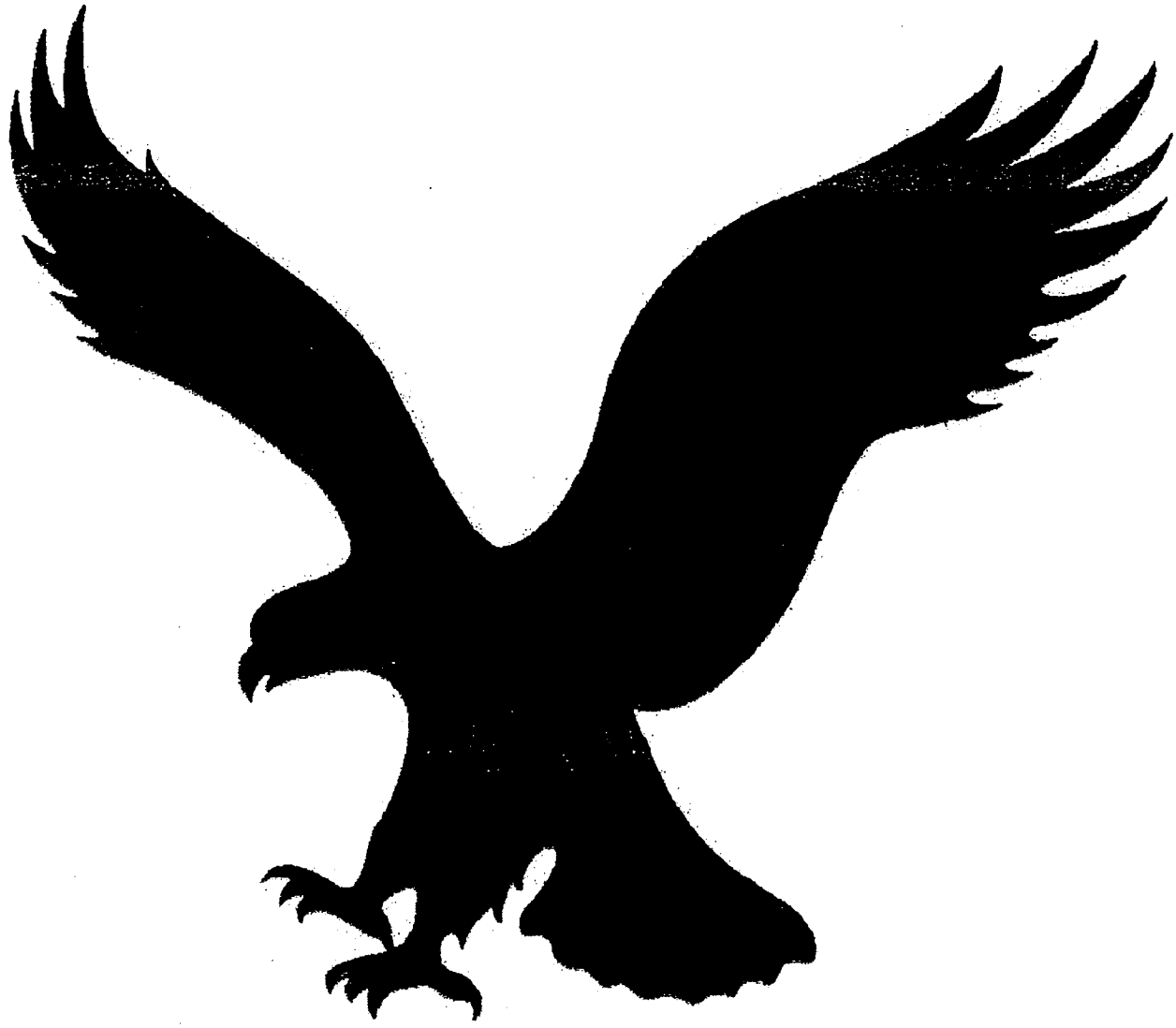
EXHIBIT #8

In response to allegation of likelihood of confusion between the Applicant's bird design mark and the Opposer's bird design mark would cause consumers to be confused, deceived, and mislead that would be impossible. As stated by the Opposer, "together with its affiliated companies (collectively "AEO") is a leading retailer that designs, markets and sells clothing, footwear, accessories and other products and operates retail stores under multiple trademarks including bird design marks and eagle design marks. AEO's trademarks include the bird design in a variety of forms (the Aerie Bird Design) also included the eagle design (The AEO Eagle Design). With all of the goods and services offered under the extremely popular Aerie collection and equally as popular American Eagle Outfitters the Aerie Bird Design and the AEO Eagle Design were designated exclusively to represent each entity. An illustration of both trademark designs with the Aerie Bird Design in a variety of forms and the AEO Eagle Design also shown not only does the Opposer name the Aerie Bird Design and the AEO Eagle Design by name, but includes pictures of said design. Pictures are worth a thousand words. The Longshore Bird Design is of a "dove" that does not resemble either an Aerie bird or an Eagle. The designation of the "dove" is not mentioned in any bird designs submitted by the Opposer. The Opposer refers to the Aerie Bird or the AEO Eagle

Designs never using the "dove" by name or design. As for a likelihood of confusion relates is impossible because the Opposer has devised the names of the Aerie Bird Design and AEO Eagle Design and have given an obvious visual of both. Neither design resembles a dove and each design has been given a name to make the distinction clear. There is no similarities of the marks.

Ex. 8

Ex. 9



Ex. 10

EXHIBIT #11
The Dove

The Longshore Bird Design was created to be the logo for the trademark name Universal PeaceWear that has been registered and in use since 2002. Universal PeaceWear is a faith-based Christian business and my faith in Jesus Christ led me to use the flying dove as my logo. In 2009 I decided to include a logo for my apparel and chose the dove. The mark is suitable with the company's name Universal PeaceWear. Biblically speaking the dove has many attributes, but the most recognized is peace and love from God. The dove is a symbol of peace worldwide. Doves have been incorporated in the opening ceremonies of the Olympics as a symbol of peace around the world.

EX. 11

What to know more about birds in the Bible ? Click here

The Dove

Click on Dove above to go back to the Award Program Icon page

To be a real Hero one must pocess LOVE!

Did you know? In all, the dove is mentioned about fifty times in the Bible.

A symbol is a picture that stands for an idea. One very special symbol is the dove. It stands for the idea of peace and love. Sometimes an artist will add a dove to a picture to say "Peace on Earth".

The dove has been a symbol for a long, long time. In an ancient Greek myth, Aphrodite was the goddess of love. She kept a dove as a pet. The dove became a symbol for love.

Later, Christians used the dove to symbolize the Holy Ghost. Artists often painted a dove above Christ's head. Here's an example. This is part of a picture that was painted over 500 years ago. It's called "The Baptism of Christ".

Psalm 55 6 And I said, Oh that I had wings like a dove! for then Would I fly away, and be at rest.

The early Hebrews, having been in close contact with, and possibly related to , the adjoining polytheistic cultures, assumed many of the thoughts, reactions, and doctrines of their neighbors. We find that the sacrifice of doves and pigeons in the early Hebrew rituals of expiation was a remnant of the ancient rites of the god, Astarte. Doves, turtledoves, and pigeons were the only birds or fowls, specifically mentioned in the Old Testament, which were allowed under the law of Moses to be sacrificed in early Hebrew rituals of purification. (Langdon, 1931, p.59) Not only did the dove hold a high place for sacrificial purposes, but it was the dove that was given the honor of bearing the glad tidings of land to Noah. Noah sent out a raven, but the raven failed him and did not return; he sent out a dove which returned when it could not find land; again the dove was sent out and this time it found land but, instead of staying, it returned to Noah with the olive leaf; a demonstration of trustworthiness which remains one of the most endearing qualifies of the dove to this day.

This is the Hebraic version of the Great Flood, a flood which archaeologists believe depicts the historical flooding of the Black Sea basin. Other cultures in the region had their own versions of the deluge, and, in the vast majority, the dove plays an honorable part. The Hebrew version is said to be patterned after the

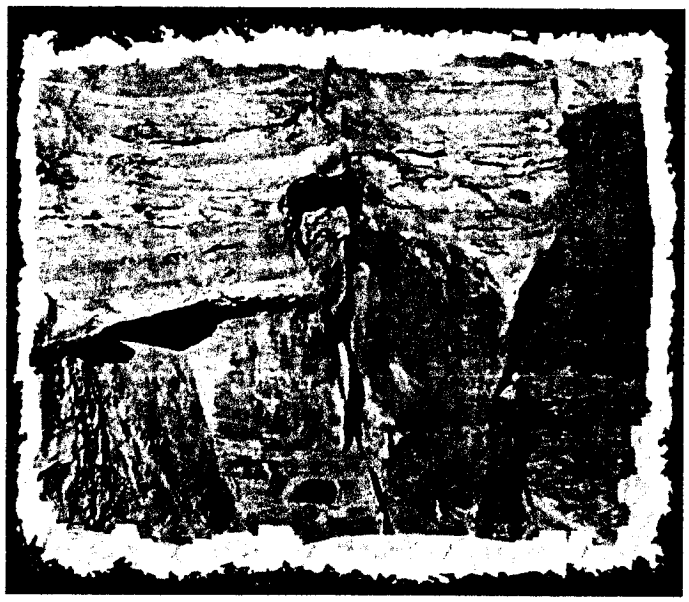
Arcadian. According to the early Arcadian version, Utnapishtim (Noah) first released a dove, which returned; then a swallow, which returned; then a raven, which did not return, so that Utnapishtim knew the flood had abated and released the animals.
(Drury, 1902, p.109)

The foregoing references to the dove are not the only ones in the Old Testament. There are numerous others, each one of which is deferential, referring to the dove as an emblem of peace, of purity, of tenderness, and of affection. The Song of Solomon and the Psalms have a number of such references:

Psalms 68:13: A song of David- (A prayer at the removing of the ark)
"Though ye have lien among the pots, yet shall ye be as the wings of a dove covered with silver, and her feathers with yellow gold."

Leviticus 1 :14:
"And if the burnt sacrifice for his offering to the Lord be of fowls, then he shall bring his offering of turtledoves, or of young pigeons."

Clefts of the rocks

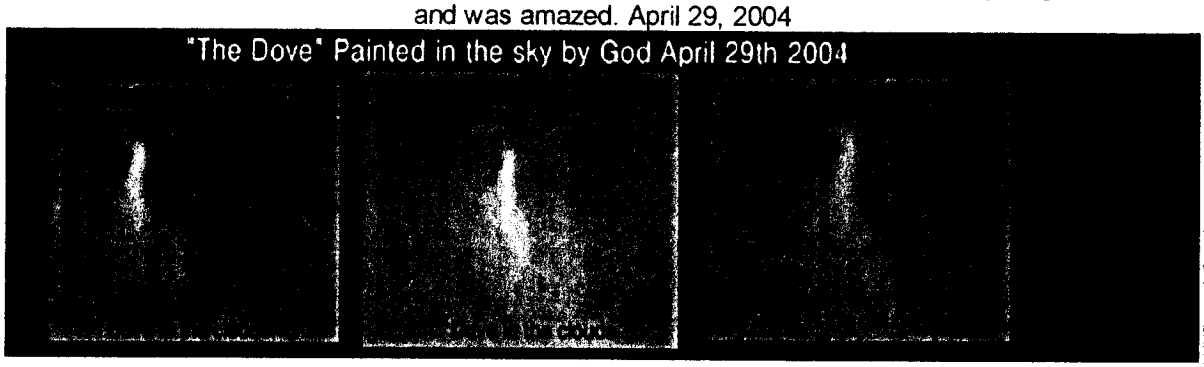


2:21 To go into the clefts of the rocks, and into the tops of the ragged rocks, for fear of the LORD, and for the glory of his majesty, when he ariseth to shake terribly the earth.

Dove - In the wild doves generally build their nests in the clefts of rocks, but when domesticated "dove-cots" are prepared for them (Cant. 2:14; Jer. 48:28; Isa. 60:8). The dove was placed on the standards of the Assyrians and Babylonians in honour, it is supposed, of Semiramis (Jer. 25:38; Vulg., "fierceness of the dove;" comp. Jer. 46:16; 50:16). Doves and turtle-doves were the only birds that could be offered in sacrifice, as they were clean according to the Mosaic law (Ge. 15:9; Lev. 5:7; 12:6; Luke 2:24). The dove was the harbinger of peace to Noah (Gen. 8:8, 10). It is often mentioned as the emblem of purity (Ps. 68:13). It is a symbol of the Holy Spirit (Gen. 1:2; Matt. 3:1; Mark 1:10; Luke 3:22; John 1:32); also of tender and devoted affection (Cant. 1:15; 2:14. **David** in his distress wished that he had the wings of a dove, that he might fly away and be at rest (Ps. 55:68).There is a species of dove found at Damascus "whose feathers, all except the wings, are literally as yellow as gold" (68:13). (From Eastons Dictionary)

In the Keyboards for Christ Music Program the symbolic bird is the "dove". For many years this bird has been my favorite

Why the Dove is such a important symbol to me
I can tell you one day that I was so beat down with the storms that I listened outside my bedroom window to the sound of a rain dove. And to this day when I am down God reminds me in such ways that are only from him. On another day I went outside and wanted just to Shout out as we all want to sometimes and I looked up into the sky and beheld a dove painted in the clouds. My neighbor saw it and was amazed. April 29, 2004



My son, forget not my law;
but let your heart keep my commandments:
She is a tree of life to them that lay hold upon her:
and happy is every one that retains her. (Proverbs 3:1, 18)

The olive tree read more about it click on the banner below.

There are numerous references to doves in The Bible, both literal and symbolic, here are just a few:

The Lord used doves in an analogy, "Behold, I send you out as sheep in the midst of wolves; so be wise as serpents and innocent as doves." (Matthew 10:16)

In some translations of The Bible, the word dove is sometimes used interchangeably with the word pigeon:

In one of the most famous incidents of Bible History, Jesus Christ drove out those who were selling doves and exchanging money within the Temple area– "And when He entered Jerusalem, all the city was stirred, saying, "Who is this?" And the crowds said, "This is the prophet Jesus from Nazareth of Galilee." And Jesus entered the Temple of God and drove out all who sold and bought in the Temple, and He overturned the tables of the money-changers and the seats of those who sold pigeons. He said to them, "It is written, 'My house shall be called a house of prayer'; but you make it a den of robbers." (Matthew 21:10-13)

Columbbids occupy a prominent and generally revered position in most cultures and religions. Doves have been historically important in both Protestant and Catholic religions.

Doves are harmless, peaceful birds which came to be used as a symbol of The Holy Spirit: "And when Jesus was baptized , He went up immediately from the water, and behold, the heavens were opened and He saw the Spirit of God descending like a dove, and alighting on Him." (Matthew 3:16)

The Turtle Dove is not the only species of dove mentioned within The Bible.

The early Christian religion, being the offspring of the Hebraic, naturally adopted the sentiments of its parent religion about the dove and pigeon. They brought this reverence to a higher degree, for when reference is made to the dove in the New Testament, we find that the dove is emblematic of the Holy Spirit.In Christian art, as early as the sixth century, the dove was employed as an emblem of the Holy Ghost, most likely because of the passage from Luke above. In stained glass church windows the dove is portrayed with seven rays leading form it to seven stars, symbolic of the gifts of the Holy Spirit. In paintings, the dove, issuing form the lips of dying saints and martyrs, represents the human soul purified by suffering.

Matthew 3:16: *"And Jesus, when he was baptized, went up straightway out of the water: and, lo, the heavens were opened unto him, and he saw the Spirit of God descending like a dove, and lighting upon him:"*

When Jesus was Baptised

Mathew 3: 13-16

Then Jesus came from Galilee to the Jordan to John, to be baptized by him. John would have prevented him, saying, "I need to be baptized by you, and do you come to me?" But Jesus answered him, "Let it be so now; for thus it is fitting for us to fulfill all righteousness." Then he consented. And when Jesus was baptized, he went up immediately from the water, and behold, the heavens were opened and he saw the Spirit of God descending like a dove, and alighting on him; and lo, a voice from heaven, saying, "This is my beloved Son, with whom I am well pleased."

Jesus being Baptised and the Dove

EX 12

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ANSWER TO NOTICE OF OPPOSITION

Applicant, Michael Longshore, dba Universal Peacewear, answers the Notice of Opposition as follows:

1. Deny - The Longshore bird ("dove") has no likeness to the Aerie Bird or the AEO Eagle designs. It would not infringe on the marketing of their clothing lines.

2. Deny - Applicant is without knowledge or information sufficient to form a belief as to the truth of averment, but believe Longshore bird ("dove") has no likeness to opposer's trademark.

3. Deny - Applicant is without knowledge or information sufficient to form a belief as to the truth of averment, but believe Longshore bird ("dove") has no likeness to opposer's trademark.

4. Deny - Applicant is without knowledge or information sufficient to form a belief as to the truth of averment, but believe Longshore bird ("dove") has no likeness to opposer's trademark.

5. Deny - Applicant is without knowledge or information sufficient to form a belief as to the truth of averment, but believe Longshore bird ("dove") has no likeness to opposer's trademark.

6. Deny - Applicant is without knowledge or information sufficient to form a belief as to the truth of averment, but believe Longshore bird ("dove") has no likeness to opposer's trademark.

7. Deny - Applicant is without knowledge or information sufficient to form a belief as to the truth of averment, but believe Longshore bird ("dove") has no likeness to opposer's trademark.

8. Deny - Applicant is without knowledge or information sufficient to form a belief as to the truth of averment, but believe Longshore bird ("dove") has no likeness to opposer's trademark.

9. Deny - Applicant is without knowledge or information sufficient to form a belief as to the truth of averment, but believe Longshore bird ("dove") has no likeness to opposer's trademark.

10. Deny - Applicant is without knowledge or information sufficient to form a belief as to the truth of averment, but believe Longshore bird ("dove") has no likeness to opposer's trademark.

11. Agree

12. Agree

13. Agree

14. Deny - The Longshore bird ("dove") has no likeness to the Aerie Bird or the AEO Eagle designs.

15. Deny - The Longshore bird ("dove") has no likeness to the Aerie Bird or the AEO Eagle designs.

16. Deny – The Longshore bird ("dove") has no likenss to the Aerie Bird or the AEO Eagle and therefore would not be a source of damage and injury to Opposer.

WHEREFORE, Applicant requests that the registration of Application Serial No. 77/744,816 be approved pursuant to 15 U.S.C. § 1051.

Dated: May 7, 2010

Respectfully submitted,

Michael R. Longshore, Applicant
dba Universal Peacewear
924 Junipero
Duarte, CA 91010
Telephone: (626) 358-2346

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P. O. Box 1451
Alexandria, VA 22313-1451

On May _____, 2010.

_____
Michael R. Longshore

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** has been served on the Opposer of record by mailing said copy of May _____, 2010, via First Class Mail, postage prepaid, and addressed as follows:

Laura C. Miller
KILPATRICK STOCKTON LLP
31 West 52nd Street, 14th Floor
New York, New York 10019

Michael R. Longshore, Applicant
dba Universal Peacewear

EX 13

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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RETAIL ROYALTY COMPANY, Opposer, v. MICHAEL R. LONGSHORE, D/B/A "UNIVERSAL PEACEWEAR," Applicant.	Opposition No. 91192917

APPLICANT'S RESPONSE TO OPPOSE OPPOSER'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, TO COMPEL DISCOVERY RESPONSES AND DEPOSITION

Applicant, Michael Longshore, dba Universal Peacewear ("Applicant"), pursuant to Fed. R. civ. 56 (F) hereby submits this reply in support of denying Opposer's pending motion for Summary Judgment filed March 1, 2011 and response to Opposer's Reply in Support of Motion for Summary Judgment, or, in the alternative, to compel discovery responses and deposition filed on April 15, 2011.

As stated in Applicant's Response to Opposer's Motion for Summary Judgment filed March 30, 2011, the factual reason why applicant needed extension of time to complete Opposer's interrogatories and documents request was due to Applicant's heavy workload and

frequently being out of town and was not aware of the Opposer's requests until early January of 2011. Either Laura Miller has forgotten or is being totally dishonest about recalling my requests for the extension of time on the following dates: January 14, 2011, I explained my mishap and informed her that her documents requested could not be completed at the time requested and that more time was needed, she refused. I again called her on February 7, 2011, asking her once again to give me more time to complete all requests. Again, she refused, but stated that I should file a motion to the board for an extension of time.

CONCLUSION

Laura Miller is not being honest on recalling my request for more time on both dates. I ask that the board grant the Applicant the request of extension of time to complete the following:

1. Opposer's interrogatories and document request.
2. Opposer's First Set of Admissions.
3. To schedule a deposition at a time and location mutually agreeable to the parties.

Dated: May 12, 2011

Respectfully submitted,

Michael R. Longshore, Applicant
dba Universal Peacewear
924 Junipero
Duarte, CA 91010
Telephone: (626) 358-2346

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

In the Matter of Serial No. 77/744,817
Mark: bird design
Filing Date: May 26, 2009
Publication Date: October 6, 2009
Our Reference No.: 57289-383514

RETAIL ROYALTY COMPANY, Opposer, v. MICHAEL R. LONGSHORE, D/B/A "UNIVERSAL PEACEWEAR," Applicant.	Opposition No. 91192917

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Trademark Trial and Appeal Board
P. O. Box 1451
Alexandria, VA 22313-1451

On May _____, 2011.

_____
Michael R. Longshore

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

In the Matter of Serial No. 77/744,817
Mark: bird design
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Laura C. Miller
KILPATRICK STOCKTON LLP
1001 West Fourth Street
Winston-Salem, NC 27101

Michael R. Longshore, Applicant
dba Universal Peacewear

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

In the Matter of Serial No. 77/744,817
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RETAIL ROYALTY COMPANY, Opposer, v. MICHAEL R. LONGSHORE, D/B/A "UNIVERSAL PEACEWEAR," Applicant.	Opposition No. 91192917

APPLICANT'S REQUEST TO AMEND OPPOSERS FIRST SET OF ADMISSIONS REQUESTS IN COMPLIANCE WITH FED. R.CIV. P. 36 (b) IN COMPLIANCE WITH R.CIV. RULE 36 AND AMENDMENT OF ADMISSIONS

Applicant, Michael Longshore, dba Universal Peacewear ("Applicant"), to comply with Fed.R. Civ. P. Rule 36, hereby requests to Amend Opposers First Set of Admissions Request in compliance with Red.R. Civ. P36(b) and the Board's Order of February 13, 2012. Applicant hereby submits this amended Response to Opposer's First Set of Admissions Requests.

1. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

2. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

3. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

4. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

5. No, not true.

6. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

7. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

8. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

9. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

10. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

11. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

12. No, not true.

13. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

14. No, not true.

15. Yes, that is true.

16. No, not similar at all.

17. No, they wouldn't.

18. No, they wouldn't.

19. No, Applicant doesn't need to use Opposer's mark.

20. No, Applicant doesn't need Opposer's permission to register opposed mark.

21. No, not needed.

22. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

23. No, not true.

24. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

25. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

26. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

27. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

28. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

29. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

30. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

31. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

32. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

33. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

34. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

35. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

36. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

37. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

38. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

39. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

40. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

41. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

42. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

43. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

44. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

45. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

46. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

47. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

48. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

49. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

50. No, not true.

51. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

52. No, not true.

53. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

54. No, not true.

55. No, it's not similar.

56. No, there is no connection.

57. No, not true.

58. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

59. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

60. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

61. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

62. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

63. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

64. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

65. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

66. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

67. No, not true.

68. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

69. No, not true.

70. Don't know, has made reasonable inquiry and information readily obtainable is insufficient to admit or deny the admission requests.

71. No, not true.

72. No, opposed mark is not confusingly similar to Opposer's mark.

73. No, not true.

74. No, not true.

///

CONCLUSION

Applicant respectfully submits this Amended Admissions Request and dates of availability for deposition are March 6, 2012, March 13, 2012 and March 16, 2012. Proof of service per Board Order of February 13, 2012.

Dated: February 22, 2012

Respectfully submitted,

Michael R. Longshore, Applicant
dba Universal Peacewear
924 Junipero
Duarte, CA 91010
Telephone: (626) 358-2346

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

In the Matter of Serial No. 77/744,817
Mark: bird design
Filing Date: May 26, 2009
Publication Date: October 6, 2009
Our Reference No.: 57289-383514

RETAIL ROYALTY COMPANY, Opposer, v. MICHAEL R. LONGSHORE, D/B/A "UNIVERSAL PEACEWEAR," Applicant.	Opposition No. 91192917

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Trademark Trial and Appeal Board
P. O. Box 1451
Alexandria, VA 22313-1451

On November _____, 2011.

_____
Michael R. Longshore

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

In the Matter of Serial No. 77/744,817
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Laura C. Miller
KILPATRICK, TOWNSEND & STOCKTON LLP
31 West 52nd Street, 14th Floor
New York, New York 10019

Michael R. Longshore, Applicant
dba Universal Peacewear

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

In the Matter of Serial No. 77/744,817
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P. O. Box 1451
Alexandria, VA 22313-1451

On November _____, 2011.

_____
Michael R. Longshore

EX 15

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

In the Matter of Serial No. 77/744,817
Mark: bird design
Filing Date: May 26, 2009
Publication Date: October 6, 2009
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RETAIL ROYALTY COMPANY, Opposer, v. MICHAEL R. LONGSHORE, D/B/A "UNIVERSAL PEACEWEAR," Applicant.	Opposition No. 91192917

APPLICANT'S RESPONSE TO OPPOSE OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND TO SUSPEND PROCEEDING AND TO RE-SET TRIAL PERIODS

Applicant, Michael Longshore, dba Universal PeaceWear ("Applicant") hereby submits **APPLICANT'S RESPONSE TO OPPOSE OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND TO SUSPEND PROCEEDING AND TO RE-SET TRIAL PERIODS.**

In response to the allegation of lack of a *bona fide* intent to use mark. The Longshore Bird Design was created to work in tandem with the trademark name of Universal PeaceWear that has been registered and in use since 2002. In 2009 I decided to include a logo for my apparel and chose the dove. The mark was researched through the United States Trademark and Patent Office design codes and various other resources to determine the mark availability. The mark is suitable with the company Universal PeaceWear. The Applicant has submitted several

exhibits and samples demonstrating a *bona fide* intent to use the mark. Applicant has given explanation of how and where the mark originated and how the mark would be incorporated with Universal PeaceWear. For Ms. Miller to state the Applicant did not have a *bona fide* intent to use the Longshore Bird Design and did not possess such intent as of the filing date of Application is erroneous and absurd. Ms. Miller has also misconstrued some hand picked answers from the deposition to dispute my validity. Several answers gave clarity to the question asked regarding intent:

- On plans to use the mark in connection with Universal PeaceWear apparel: "That's all I have at this time that I'm going to use it for ..." Have you used the mark . . . this bird design, on any goods as of today? "... I have samples" ... Okay. id at 23:12-21.
- At the time you filed the application in May of 2009 you had the intent to use the bird design? "If this means like -- this is confusing. All of this is intent to use. I have a few samples of things. Most of these categories are all intent to use." Id at 48:9-15.
- At the time you signed the declaration did you have a bona fide intention to use the bird design that appears on the next page in connection with each of the items that we just went through in the identification section? "Yes. If -- those are all possibilities of the dove being used on those items." id at 54:1-7.

The Longshore Bird Design would be the logo for Universal PeaceWear and all of the items recited in the Application at the time of filing on May 26, 2009.

This matter has been going on since December 7, 2009 when the Opposer filed a Notice of Opposition alleging that Applicant's mark is likely to cause confusion with the Opposer's various bird design marks. Motions for Summary Judgment have been filed. Motion to Amend the Motion. Just motion after motion. Now, another motion is being alleged that the Applicant

lacks a bona fide intent to use Applicant's mark as a mark in connection with "all" of the goods recited in the Application on May 26, 2009.

To make matters worse, the Opposer states "granting Applicant exclusive right to the Longshore Bird Design would be a source of damage or injury to the Opposer." With the Opposer being a leading retailer that designs, markets, and sells clothing, footwear, accessories, and other products and operates retail stores under multiple trademarks, including the bird design marks and eagle design how much damage could they suffer?

Now another delay tactic to suspend the opposition proceeding to determine another motion, but the Applicant will not suffer any prejudice according to the Opposer. If this is prolonged any longer we will be into another year with no end in sight. Criminal proceedings would not have been this long.

I had the purpose, the will and the determination at the time of filing the Application to use the Longshore Bird Design on every item recited in the Application as of May 26, 2009. I still possess the will and the determination (INTENT) to get my bird design registered.

Applicant respectfully requests that the Board deny Opposer's Motion for Summary Judgment and to Suspend Proceeding and to Re-Set Trial periods and to grant Applicant's registration of Application Serial No. 77/744,817.

Dated: August 2, 2012

Respectfully submitted,

Michael R. Longshore, Applicant
dba Universal PeaceWear
924 Junipero
Duarte, CA 91010
Telephone: (626) 358-2346

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

In the Matter of Serial No. 77/744,817
Mark: bird design
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RETAIL ROYALTY COMPANY, Opposer, v. MICHAEL R. LONGSHORE, D/B/A "UNIVERSAL PEACEWEAR," Applicant.	Opposition No. 91192917

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P. O. Box 1451
Alexandria, VA 22313-1451

On August _____, 2011.

_____
Michael R. Longshore

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

In the Matter of Serial No. 77/744,817
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RETAIL ROYALTY COMPANY, Opposer, v. MICHAEL R. LONGSHORE, D/B/A "UNIVERSAL PEACEWEAR," Applicant.	Opposition No. 91192917

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Laura C. Miller
KILPATRICK TOWNSEND
1001 West Fourth Street
Winston-Salem, NC 27101-2400

Michael R. Longshore, Applicant
dba Universal PeaceWear

EX.16

THIS OPINION IS NOT A PRECEDENT OF THE TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

WINTER

Mailed: February 13, 2012

Opposition No. 91192917

Retail Royalty Company

v.

Michael R. Longshore

Before Seeherman, Taylor, and Lykos,
Administrative Trademark Judges.

By the Board:

This case now comes up for consideration of opposer's motion (filed March 1, 2011) for summary judgment on its claim of priority and likelihood of confusion or, in the alternative, to compel applicant to respond to opposer's discovery requests[1] and to attend a previously noticed deposition. We also consider opposer's related motion (filed October 27, 2011) to strike applicant's responses to opposer's requests for admission.[2]

[1] With respect to the segment of opposer's alternative motion to compel applicant's responses, without objection, to opposer's interrogatories and requests for production of documents, said motion is moot insofar as applicant served his responses thereto on opposer on October 6, 2011, following our September 27, 2011 order discussed *infra*.

[2] Applicant's December 8, 2011 brief in response to opposer's motion to strike was not timely and, thus, to the extent it

By way of background, opposer's motion for summary judgment relies solely on applicant's effective admissions under Fed. R. Civ. P. 36(a)(3), which resulted from applicant's failure to respond to opposer's requests for admission served on December 10, 2010. In our order dated September 27, 2011, after noting the potentially dispositive effect in this case if applicant were not permitted to amend his admissions and that applicant is not represented by counsel, we deferred consideration of opposer's motion for summary judgment and allowed applicant time to serve responses to opposer's requests for admission. Applicant timely filed his responses to opposer's admission requests with the Board on October 6, 2011, and served said responses on opposer on the same date. Because opposer requests that its motion for summary judgment be considered without regard to applicant's October 6, 2011 responses to opposer's admission requests, we turn first to opposer's motion to strike.

Motion to Strike

Opposer requests that the Board strike applicant's responses to opposer's requests for admission on the basis

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specifically responds to opposer's motion, the response will not be considered. *See* Trademark Rule 2.127(a) ("a brief in response to a motion shall be filed within fifteen days from the date of service of the motion"). Nonetheless, because it is clear that applicant does not concede opposer's motion to strike, we will consider opposer's motion on the merits.

that over 75 percent of his responses assertedly do not comply with the requirements of Fed. R. Civ. P. 36(a)(4). Specifically, opposer contends:

- that applicant's responses to 51 of 74 requests are improper insofar as applicant responded "I don't know," but did not state that he had made a reasonable inquiry and that the information he knows or could readily obtain was insufficient to enable him to admit or deny; and
- that applicant's responses to Request Nos. 19, 20, 21, 56 and 73 are unresponsive insofar as applicant responded with evasive or otherwise improper remarks, rather than admit or deny said requests.

In view of applicant's asserted failure to comply with Rule 36(a)(4), opposer argues that applicant also failed to comply with the Board's September 27, 2011 order requiring applicant's "strict adherence" to all relevant Federal Rules of Civil Procedure and Trademark Rules.

Separate from applicant's assertedly deficient answers to opposer's admission requests, opposer points to applicant's conduct earlier in this proceeding, *i.e.*, that he failed to timely file an answer in this proceeding; that, after applicant was allowed additional time to file an answer, applicant submitted a legally insufficient answer; and that applicant failed to respond to opposer's discovery

requests for many months, notwithstanding opposer's good faith efforts to obtain applicant's responses. In view of applicant's responses and previous actions during the proceeding, opposer argues that, with respect to certain admission requests, "applicant lacks a good faith basis to deny these requests," and opposer also argues that applicant is not conducting himself in accordance with applicable rules as required in the September 27, 2011 order. Opposer requests that the Board sanction applicant under Fed. R. Civ. P. 37(b)(2)(A) and Trademark Rule 2.120(g)(1) by considering the subject motion for summary judgment without regard to applicant's responses to opposer's admission requests.

Although couched as a motion to strike, opposer is essentially requesting that the Board deem applicant's responses to be insufficient. To determine whether applicant's responses are sufficient, the Board must consider whether they comply with the requirements of Federal Rule 36(a)(4). Federal Rule 36(a)(4) requires that the answering party admit or deny the matter set forth in the requests for admission or, if he lacks knowledge or information required to admit or deny any particular request, the answering party must state that he has made a reasonable inquiry and that the information he knows or can readily obtain is insufficient to enable him to admit or

deny the particular admission request. Fed. R. Civ. P. 36(a)(4); Trademark Rule 2.116(a). However, the responding party is not required to undertake factual investigation and legal analysis to respond to requests for admission. Federal Rule 36(a)(4) requires only that the answering party conduct a "reasonable inquiry" into information that the responding party knows or can readily obtain. *See generally* 8B Fed. Prac. & Proc. Civ.3d § 2261 (2011 update).

We are also mindful that the purpose of requests for admission is to determine prior to trial facts that are not in dispute, thereby narrowing the matters that must be tried. *See, e.g., Apple Computer v. TVNET.Net, Inc.*, 90 USPQ2d 1393, 1394 (TTAB 2007); and *Squirtco v. Tomy Corporation*, 212 USPQ 304, 306 n.5 (TTAB 1981) ("requests for admission are not to be used to discover facts but to establish facts of a peripheral nature which are not in dispute"). However, "requests for admission are not to be employed as a means to establish facts which are obviously in dispute or to answer questions of law." *Lakehead Pipe Line Co. v. American Home Assurance Co.*, 177 F.R.D. 454, 457-58 (D.Minn. 1997) (internal citations omitted).

We have carefully reviewed applicant's responses to opposer's admission requests and find that many of applicant's responses to opposer's requests for admission are sufficient. Specifically, applicant's responses "not

true" (no. 5), "no, not true" (nos. 12, 14, 23, 50, 52, 54, 57, 67, 69, 71 and 74), "no, it's not similar" (no. 55), "no connection" (nos. 56 and 73), "no, [followed by an explanation]" (nos. 16, 17, 18, 72), "not needed" (no. 21), or responses essentially rejecting the statement (*i.e.*, nos. 19 and 20), are clearly denials of the requests to which the responses apply. Likewise, applicant's response "yes, that is true" (no. 15), to which opposer did not object, is clearly the equivalent of "admit."

Additionally, applicant was not required to respond to opposer's admission requests that required him to admit or deny a legal conclusion. *See, e.g., Disability Rights Council v. Wash. Metro. Area*, 234 F.R.D. 1 (D.D.C. 2006) ("one party cannot demand that the other party admit the truth of a legal conclusion"); and *Golden Valley Microwave Foods, Inc. v. Weaver Popcorn Company, Inc.*, 130 F.R.D. 92, 96 (N.D.Ind. 1990) ("improper to seek legal conclusion through Rule 36"). *See generally* 8B Fed. Prac. & Proc. Civ.3d § 2255 (2011 update). Accordingly, we find that applicant's responses to opposer's request nos. 16-18, 55, and 72, are sufficient insofar as applicant was not required to answer those requests.

However, applicant's response "don't know" to Request Nos. 1-2, 3-4, 6-11, 13, 22, 24-39, 20-45, 46-48, 49, 51, 53, 59-62, 63-65, 66, 68, and 70, is problematic insofar as

applicant did not also state with that response that he made a reasonable inquiry and the information known or readily obtainable to him was insufficient to allow him to either admit or deny opposer's admissions. *See* Fed. R. Civ. P. 36(a)(4); and *Tequila Centinela, S.A. de C.V. v. Bacardi & Company Limited*, 242 F.R.D. 1, 14 (D.D.C. 2007) ("In order to use lack of knowledge as a reason for neither admitting or denying a request, a party must both assert that it has made a reasonable inquiry and that the information known or readily obtainable by the party is insufficient to fashion a response" (internal citations omitted)).[3]

Nonetheless, although we have not considered applicant's defense to the motion to strike set forth in his late-filed brief in response to opposer's motion, we note that within his brief applicant has set forth revised

[3] Other than the missing wording required by Rule 36, applicant's responses expressing his lack of knowledge with respect to the following requests for admission were not improper insofar as the requests clearly were based on information that is not in the relative control of applicant, *i.e.*, opposer's asserted status as a national clothing retailer and that it has numerous stores under multiple trademarks (Nos. 1-2); "Opposer has at all times diligently protected its trademark rights in Opposer's marks" (No. 22); that opposer is the owner of its five pleaded registrations, of two other registrations which were pleaded applications when the notice of opposition was filed, and an eighth previously unmentioned registration, and that those registrations are in full force and effect (Nos. 24-39); opposer's use of its "AERIE BIRD" marks and its operation of retail stores using those marks (Nos. 40-45 and 49); and opposer's use of its "AEO Eagle Design" mark and its operation of retail stores using that mark (Request Nos. 58-62 and 66). *See T. Rowe Price Small-Cap Fund, Inc. v. Oppenheimer & Co., Inc.*, 174 F.R.D. 38, 43 (S.D.N.Y. 1997).

responses to opposer's requests for admission. In view of the importance of resolving this matter on the merits, and finding no prejudice to opposer, we have considered applicant's late-filed brief only to the extent that he has attempted to satisfy opposer's objections to his original responses. In particular, applicant added to his original "don't know" answers the phrase "has made reasonable inquiry and insufficient information was available." Applicant also changed his answers to Request Nos. 19, 20, 21, 56, and 73 to include the answer "no," which we construe to be a denial of the particular admission requests. Applicant's revised responses are thus sufficient.

In the absence of any evidence that applicant seeks to obfuscate whether the requested information is available, and we find no such evidence in the record, the fact that applicant did not use in his responses the specific language set forth in Fed. R. Civ. P. 36(a)(4) does not warrant a litigation windfall in the form of disputed matters being deemed admitted.

In view of the foregoing, opposer's motion to strike applicant's responses to opposer's requests for admission and to grant summary judgment in opposer's favor based on applicant's effective admissions, as a sanction for failing to adhere to relevant rules, is denied. However, applicant is allowed until **TEN DAYS** from the mailing date of this

order to serve opposer's counsel with a complete copy of his revised responses to opposer's admission requests as those responses are shown in applicant's brief in response to opposer's motion to strike. *See* Fed. R. Civ. P. 36(a)(6) ("On finding that an answer does not comply with this rule, the court may order … that an amended answer be served"). In addition, applicant is allowed until **TEN DAYS** from the mailing date of this order to submit proof of such service to the Board. Once applicant serves a complete copy of his revised responses on opposer's counsel, they shall be considered to be applicant's operative responses in this case.

Should applicant fail to serve the amended answers to opposer's admission requests as directed, opposer may file a motion for sanctions, including judgment, under Trademark Rule 2.120(g).

Motion for Summary Judgment

As noted, opposer's motion for summary judgment relies exclusively on applicant's effective admissions resulting from his failure to timely respond to opposer's request for admissions. Now that applicant's effective admissions are considered to be withdrawn and, in his amended responses to opposer's requests for admission, applicant has essentially denied the salient statements therein, we find that opposer as the party moving for summary judgment on its claim of

likelihood of confusion, has not met its burden to establish that there is no genuine dispute as to any material fact with respect to its claim and that it is entitled to judgment as a matter of law. *See Hobie Designs Inc. v. Fred Hayman Beverly Hills Inc.*, 14 USPQ2d 2064, 2065 (TTAB 1990). Accordingly, opposer's motion for summary judgment is denied.

Motion to Compel Applicant's Appearance at Deposition

Opposer requests, in the alternative to its summary judgment motion, that the Board issue an order compelling applicant to appear at a discovery deposition. The record indicates that on February 2, 2011, opposer served applicant with a notice of deposition to be conducted on February 11, 2011; and that applicant advised opposer's counsel on February 7, 2011, that he was unable to attend the deposition, but agreed to attend on another date if necessary (see first declaration of opposer's counsel, Laura Miller, ¶¶ 8-10). The motion for summary judgment was filed three weeks later, and there is no indication in the alternative motion to compel that opposer had requested an alternative date from applicant for conducting the deposition and/or sought applicant's agreement to extend the discovery period in order to properly conduct the deposition. Further, although opposer included in its alternative motion to compel a statement that it had made a

good faith effort to obtain from applicant his responses to opposer's interrogatories and to its document requests, there is no such statement related to the scheduling issues presented in opposer's motion to compel applicant's attendance at a deposition. *See* Trademark Rule 2.120(e)(1).

In view of the foregoing, opposer's motion to compel applicant's attendance at the previously noticed deposition is denied without prejudice. Nonetheless, applicant is allowed until **TEN DAYS** from the mailing date of this order to provide opposer's counsel with at least *three* dates on which he can appear for a deposition; and said deposition must be conducted within **FORTY DAYS** of the mailing date of this order. *See Sunrider Corp. v. Raats*, 83 USPQ2d 1648, 1654 and 1655 n.12 (TTAB 2007) (parties have a duty to cooperate in resolving conflicts in the scheduling and taking of depositions).

Should applicant not follow this scheduling order with respect to opposer's previously noticed deposition, opposer may file a motion for sanctions, including judgment, under Trademark Rule 2.120(g)(1). **APPLICANT IS REQUIRED TO MEET ALL DEADLINES.** Applicant is reminded that he is expected to adhere to all deadlines and due dates in this proceeding, as required under applicable Federal Rules of Civil Procedure and Trademark Rules. *See* Trademark Rule 2.116(a). **If applicant fails to meet any of his deadlines in this**

proceeding from this point forward, the Board may exercise its inherent authority to sanction applicant by entering judgment in favor of opposer. In other words, this opposition may be sustained and registration to applicant may be refused. *See e.g. Carrini Inc. v. Carla Carani S.R.L.*, 57 USPQ2d 1067, 1071-72 (TTAB 2000).

Summary; Proceeding Resumed; Trial Dates Reset

For the reasons discussed, opposer's motion to strike and opposer's motion for summary judgment are denied, and opposer's alternative motion to compel applicant's appearance at a deposition is denied without prejudice.

Applicant is also **ORDERED** to provide to opposer's counsel **within TEN days of the mailing date of this order**, (1) at least three separate dates on which he is available for a deposition, and (2) a complete copy of his revised responses to opposer's requests for admission.

Applicant is also **ORDERED** to file a copy of his proof of service of his amended admission responses with the Board. Applicant's deposition must be conducted no later than **FORTY** days after the mailing date of this order.

Opposer also requests that the Board reopen the discovery period for sixty days for the limited purposes of allowing opposer to conduct a previously-noticed deposition of applicant and to take any additional discovery to follow up on applicant's responses to opposer's discovery requests

(motion, at 1-2 and 13). Applicant does not contest opposer's motion. In view thereof, opposer's motion to reopen the discovery period for sixty days is granted as conceded, to the extent that the discovery period is *extended* for opposer for sixty days from the mailing date of this order.[4] *See* Trademark Rule 2.127(a).

Accordingly, the discovery period is extended for sixty days from the mailing date of this order for the limited purpose of allowing opposer to conduct applicant's deposition and to serve applicant with any follow-up discovery requests related to applicant's responses to opposer's interrogatories and production requests served on October 6, 2011.

This proceeding is resumed. Trial dates are reset as follows:

Extended Discovery Period for Opposer Commences	**2/13/2012**
Discovery Closes	**4/13/2012**
Plaintiff's Pretrial Disclosures Due	**5/28/2012**
Plaintiff's 30-day Trial Period Ends	**7/12/2012**
Defendant's Pretrial Disclosures Due	**7/27/2012**
Defendant's 30-day Trial Period Ends	**9/10/2012**

[4] Insofar as one day remained in the discovery period when opposer filed its motion for summary judgment, and the Board generally deems a proceeding to have been suspended since the filing date of the potentially dispositive motion, the discovery period may be extended for good cause. Fed. R. Civ. P. 6(b)(1)(A); Trademark Rule 2.116(a).

Plaintiff's Rebuttal Disclosures Due	**9/25/2012**
Plaintiff's 15-day Rebuttal Period Ends	**10/25/2012**

IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party **WITHIN THIRTY DAYS** after completion of the taking of testimony. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

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EK17

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

EJW

Mailed: June 5, 2012

Opposition No. 91192917

Retail Royalty Company

v.

Michael R. Longshore

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

Uncontested Motion to Amend Notice of Opposition

On May 3, 2012,[1] opposer filed a motion to amend the notice of opposition, along with its proposed amended notice of opposition and the declaration of its counsel in support of its motion.[2] In its proposed amended pleading, opposer seeks to include a new claim against applicant, namely, that applicant did not have and does not have a *bona fide* intent to

[1] Insofar as the subject motion was filed on May 3, 2012, the Board presumes that the date "March 3, 2012," set forth in the certificate of service is a typographical error. For clarity of the record, however, it is recommended that opposer submit a corrected certificate of service showing that opposer mailed a copy of the amended notice of opposition to applicant on May 3, 2012, rather than on March 3, 2012.

[2] Given the proximity of the trial periods in this proceeding, opposer also requests that the Board suspend this proceeding pending its consideration of the subject motion. Said motion is denied. However, in view of the Board's order granting opposer's motion to amend its pleading, the trial schedule shall be reset.

use the mark in commerce with each of the goods identified in the opposed application. The new claim is set forth in paragraphs 18, 19, 20 and 21, of the amended pleading.[3]

Fed. R. Civ. P. 15(a), applicable to this proceeding under Trademark Rule 2.116(a), provides, in relevant part, that once a responsive pleading is filed, a party may amend its pleading only by leave of the court or by written consent of the adverse party. Applicant has not filed a response to opposer's motion. In view thereof, opposer's motion to amend its pleading is granted as conceded. *See* Trademark Rule 2.127(a).

Accordingly, opposer's Amended Notice of Opposition filed on May 3, 2012, is made of record and is considered opposer's operative pleading herein.

Applicant Allowed Time to File an Amended Answer

Because opposer now has an amended pleading in this opposition, applicant is allowed to submit an amended answer. *See* Trademark Rule 2.106. In view thereof, applicant is allowed until **THIRTY DAYS** from the mailing date of this order, that is, no later than July 5, 2012, to file with the Board and serve on opposer an amended answer in

[3] In view of the changes to the notice of opposition, the original paragraphs 14, 15, and 16 are renumbered, and there is a new paragraph 14; thus, the revised or new paragraphs in the amended notice of opposition are paragraphs 14 through 21. Applicant's amended answer must respond to all allegations in the amended notice of opposition, but the answers to paragraphs 14 through 21 will be new responses.

this proceeding, failing which default judgment may be entered against applicant, the opposition may be sustained, and registration may be refused.

Additionally, remaining disclosure and trial dates are reset as shown in the following schedule:

Applicant's Amended Answer is Due	**7/5/2012**
Plaintiff's 30-day Trial Period Ends	**8/19/2012**
Defendant's Pretrial Disclosures Due	**9/2/2012**
Defendant's 30-day Trial Period Ends	**10/18/2012**
Plaintiff's Rebuttal Disclosures Due	**11/2/2012**
Plaintiff's 15-day Rebuttal Period Ends	**12/2/2012**

IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party **WITHIN THIRTY DAYS** after completion of the taking of testimony. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

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EK:18

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

EJW/jh

Mailed: August 4, 2012

Opposition No. 91192917

Retail Royalty Company

v.

Michael R. Longshore

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

Proceedings herein are **SUSPENDED** pending disposition of opposer's motion for summary judgment filed on July 20, 2012.[1] Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. *See* Trademark Rule 2.127(d).

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[1] It is the policy of the Board to treat the proceeding as if it had been suspended as of the filing date of the potentially dispositive motion. *See Leeds Technologies Limited v. Topaz Communications Ltd.*, 65 USPQ2d 1303 (TTAB 2002); TBMP § 510.03(a) (2d ed. rev. 2004). In view thereof, the proceeding is deemed to have been suspended since July 20, 2012.

EX. 19

THIS OPINION IS NOT A PRECEDENT OF THE TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

WINTER

Mailed: December 20, 2012

Opposition No. 91192917

Retail Royalty Company

v.

Michael R. Longshore
DBA Universal Peacewear

Before Seeherman, Taylor, and Wellington, Administrative Trademark Judges.

By the Board:

This case now comes up for consideration of opposer's fully briefed motion (filed on July 20, 2012) for summary judgment on its claim that applicant lacked a *bona fide* intent to use the applied-for mark in commerce for all the goods identified in the application[1] as of the date on which the application was filed.[2]

Summary judgment is an appropriate method of disposing

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[1] Application Serial No. 77744817, filed May 26, 2009, for goods identified as "A-shirts; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Dress shirts; Hooded sweat shirts; Knit shirts; Long-sleeved shirts; Night shirts; Open-necked shirts; Polo shirts; Shirts; Shirts for suits; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Sleep shirts; Sport shirts; Sports shirts; Sports shirts with short sleeves; Sweat shirts; T-shirts; Turtle neck shirts; Wearable garments and clothing, namely, shirts."

[2] Opposer's claim of likelihood of confusion is not the subject of opposer's motion.

of cases in which there is no genuine dispute with respect to any material fact, thus leaving the case to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(c)(1). A party moving for summary judgment has the burden of demonstrating the absence of any genuine dispute as to a material fact, and that it is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Sweats Fashions, Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793, 1796 (Fed. Cir. 1987). A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *See Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992); *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992).

Additionally, the evidence of record and all justifiable inferences that may be drawn from the undisputed facts must be viewed in the light most favorable to the non-moving party. *See Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993); and *Opryland USA*, 23 USPQ2d at 1472. Further, in considering whether summary judgment is appropriate, the Board may not resolve genuine disputes as to material facts and, based thereon, decide the merits of the opposition. Rather, the Board may only ascertain whether any material fact cannot be

disputed or is genuinely disputed. *See Lloyd's Food Products*, 25 USPQ2d at 2029; and *Olde Tyme Foods* 22 USPQ2d at 1542.

Turning to opposer's motion, we acknowledge that applicant's responses to the questions put to him during his discovery deposition are, to say the least, vague. However, after reviewing the arguments and supporting papers of the parties in a light favorable to applicant, we find that opposer, as the party moving for summary judgment, has not met its burden of establishing the absence of any genuine dispute as to a material fact and that it is entitled to judgment as a matter of law on its claim that applicant did not have a *bona fide* intent to use the applied-for mark in commerce on the identified goods as of the filing date of the application. In this connection, we note that the factual question of intent is particularly unsuited to disposition on summary judgment. *See Copeland's Enters., Inc. v. CNV, Inc.*, 945 F.2d 1563, 20 USPQ2d 1295 (Fed. Cir. 1991).[3]

Accordingly, opposer's motion for summary judgment is

[3] Nonetheless, there may be a different result at trial when, in contrast to opposer's burden on summary judgment, opposer has the initial burden of demonstrating only by a preponderance of the evidence that applicant lacked a *bona fide* intent to use the mark on the identified goods. *See, e.g., Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581, 1587 (TTAB 2008).

denied.[4]

Proceeding Resumed; Trial Dates Reset

This proceeding is resumed. Trial dates, including remaining disclosure dates,[5] are reset as shown in the following schedule:

Plaintiff's Pretrial Disclosures Due	**1/19/2013**
Plaintiff's 30-day Trial Period Ends	**3/5/2013**
Defendant's Pretrial Disclosures Due	**3/20/2013**
Defendant's 30-day Trial Period Ends	**5/4/2013**

[4] We also note that, inasmuch as opposer submitted only photocopies of its certificates of registration and did not include current status and title information with respect to its pleaded registrations, there also remains a genuine dispute as to opposer's standing. *See* Trademark Rule 2.122(d)(1). *Cf. Baroness Small Estates, Inc. v. American Wine Trade, Inc.*, 104 USPQ2d 1224, 1225 (TTAB 2012) (copies of petitioner's registrations covering the same goods and showing current status and title found sufficient to establish that petitioner is in the business of selling identified goods and is a competitor of respondent, thus, establishing petitioner's standing); and *Research In Motion Ltd. v. NBOR Corp.*, 92 USPQ2d 1926, 1928 (TTAB 2009) (pleaded registrations are properly of record when either USPTO database printouts showing current status and title, or certificates of registration showing both the current status and title to the registration, are submitted).

The parties are also advised that the evidence submitted in connection with a motion for summary judgment is of record only for consideration of the motion. Any such evidence to be considered at final hearing must be properly introduced in evidence during their appropriate trial periods. *See Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993); *Pet Inc. v. Bassetti*, 219 USPQ 911 (TTAB 1983); *American Meat Institute v. Horace W. Longacre, Inc.*, 211 USPQ 712 (TTAB 1981).

[5] In accordance with the Board's last rescheduling order dated June 5, 2012, the deadline for opposer to serve pre-trial disclosures should have been July 5, 2012, the same date on which applicant's amended answer was due. Opposer is allowed additional time to serve said disclosures, if necessary.

Plaintiff's Rebuttal Disclosures Due	**5/19/2013**
Plaintiff's 15-day Rebuttal Period Ends	**6/18/2013**

IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party **WITHIN THIRTY DAYS** after completion of the taking of testimony. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

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