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

Proceeding	91208652
Party	Plaintiff Omega SA (Omega AG) (Omega Ltd.)
Correspondence Address	JESS M COLLEN COLLEN IP THE HOLYOKE MANHATTAN BUILDING, 80 SOUTH HIGHLAND AVENUE OSSINING, NY 10562 UNITED STATES tgulick@collenip.com, ogelber@collenip.com, docket@collenip.com
Submission	Motion for Summary Judgment
Filer's Name	Oren Gelber
Filer's e-mail	ogelber@collenip.com, docket@collenip.com
Signature	/Oren Gelber/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),
Opposer,

v.

LAMBDA TAU OMEGA
SORORITY, INC.,
Applicant.

Mark: $\Lambda T\Omega$

Opp. No.: 91208652 (Parent)

Serial No.: 85548759

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),
Opposer,

v.

LAMBDA TAU OMEGA
SORORITY, INC.,
Applicant.

Mark: LAMBDA TAU OMEGA
SORORITY, INC.

Opp. No.: 91208881 (Child)

Serial No.: 85539840

OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Opposer, Omega SA ("Opposer" or "Omega"), by and through its attorneys, hereby moves for summary judgment pursuant to TBMP § 528 on the grounds that 1) Applicant has abandoned its marks; 2) Applicant's Application Nos. 85548759 and 85539840 are void ab initio; and 3) Applicant's marks are likely to cause confusion with Opposer's Marks. In the alternative, Opposer seeks judgment as a sanction based on Applicant's refusal to comply with previous Board Orders regarding discovery. The relevant facts are set forth in

Opposer's prior filings with the Board and the accompanying Affidavit of Oren Gelber and in the exhibits attached thereto.

I. BACKGROUND

On February 10, 2012, Applicant filed U.S. Trademark Serial No. 85539840 for the mark LAMBDA TAU OMEGA SORORITY INC. for:

dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Body shirts; Bomber jackets; Button down shirts; Collared shirts; Dress shirts; Hats; Headbands for clothing; Headgear, namely, hats, caps, headbands, hoods; Hooded sweat shirts; Hoods; Jackets; Jerseys; Jogging pants; Long-sleeved shirts; Polo shirts; Rugby shirts; Shirts; Shirts and short-sleeved shirts; Shirts for suits; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Sleeves worn separate and apart from blouses, shirts and other tops; Sport shirts; Sports caps and hats; Sports jackets; Sports jerseys; Sports shirts; Sports shirts with short sleeves; Sweat jackets; Sweat pants; Sweat shirts; T-shirts; T-shirts for women; Tee shirts; Turtle neck shirts; Wearable garments and clothing, namely, shirts; Women's clothing, namely, shirts, dresses, skirts, blouses; Women's hats and hoods in class 025; and Association services, namely, organizing chapters of a sorority and promoting the interests of members thereof; Association services, namely, promoting the interests of members of a national sorority in class 035.

Application Serial No. 85539840 claims October 9, 1988 as the date of first use of the LAMBDA TAU OMEGA SORORITY INC. mark.

On February 21, 2012, Applicant filed U.S. Trademark Serial No. 85548759 for the mark ΛΤΩ for:

Bracelets; Bracelets; Jewellery; Jewelry; Jewelry pins for use on hats; Jewelry watches; Jewelry, namely, dog tags for wear by humans for decorative purposes; Key chains as jewellery; Lapel pins; Leather jewelry and accessory boxes; Neck chains; Necklaces; Ornamental pins; Rings in class 014; Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants,

jackets, footwear, hats and caps, athletic uniforms; Body shirts; Button down shirts; Collared shirts; Dress shirts; Headgear, namely, hats and caps; Hooded sweat shirts; Hooded sweatshirts; Long-sleeved shirts; Polo shirts; Rugby shirts; Shirts; Shirts and short-sleeved shirts; Shirts for suits; Sleeves worn separate and apart from blouses, shirts and other tops; Sport shirts; Sports shirts; Sports shirts with short sleeves; Stoles; Sweat shirts; T-shirts; T-shirts for women; Tee shirts; Turtle neck shirts; Wearable garments and clothing, namely, shirts; Women's clothing, namely, shirts, dresses, skirts, blouses in class 025; and

Association services, namely, organizing chapters of a sorority and promoting the interests of members thereof; Association services, namely, promoting the interests of members of a national sorority in class 035.

Application Serial No. 85548759 claims an October 9, 1988 first use date for the mark $\Lambda\Omega$. Applicant's marks LAMBDA TAU OMEGA SORORITY INC. and $\Lambda\Omega$ marks are referred to collectively as "Applicant's Marks." Applicant's U.S. Trademark Applications Serial Nos. 85539840 and 85548759 are referred to collectively as "Applicant's Applications."

Opposer filed Notices of Opposition on December 28, 2012 (Opposition No. 91208652, D.E. 1¹) and January 16, 2013 (Opposition No. 91208881, D.E. 1) based on likelihood of confusion and dilution. On March 20, 2013, the Board ordered Opposition Nos. 91208652 and 91208881 consolidated. D.E. 6. On October 31, 2016, Opposer moved to amend its Notices of Opposition to include claims of abandonment, nonuse, and a claim that the applications were void ab initio. D.E. 51 and Opposition No. 91208881 D.E. 7. The Board has accepted the Amended Notice of Opposition (D.E. 56) and Applicant has filed its Answer. D.E. 54.

¹ Unless otherwise indicated all D.E. numbers refer to Opposition No. 91208652.

II. PROCEDURAL HISTORY

Discovery opened in the consolidated proceedings on March 27, 2013. D.E. 6. After a number of suspensions for settlement, Opposer served its First Set of Interrogatories, Requests for the Production of Documents and Things, and Requests for Admission (collectively referred to as “Discovery Requests”) upon Applicant on February 25, 2014. *See* D.E. 26, Declaration of Thomas P. Gulick (“Gulick Decl.”) ¶¶ 4-6, Exs. 1-3. Following efforts to obtain responses from Applicant, Opposer filed a Motion to Compel on August 17, 2015. D.E. 26. Applicant did not oppose the motion. D.E. 28, p. 1.

The Board ordered Applicant to respond to all Interrogatories and Document Production Requests. *Id.* When Applicant failed to respond in the time required by the Board, Opposer moved for sanctions. D.E. 29. The Board sanctioned Applicant and required Applicant to respond to Opposer’s discovery requests. D.E. 37.

While Applicant provided some responses on January 15, 2016, Applicant’s responses were still deficient, requiring Opposer to file a second Motion for Sanctions, in part based on inconsistent responses and a lack of responsive documents. D.E. 40; *see also* D.E. 44, p. 4 (Board’s summary of Opposer’s claims). In its Order on Opposer’s second Motion for Sanctions, the Board found,

[I]t [is] quite unusual that Applicant could only produce two documents in response to Opposer’s 46 document requests, especially since Applicant has allegedly been offering its identified goods and services under its involved marks for a period of approximately thirty years, the Board must nonetheless take Applicant at its word that it does not have documents in its possession, custody or control that are responsive to a vast majority of Opposer’s documents requests.....Furthermore, the Board agrees with Opposer that Applicant has provided inconsistent responses to certain interrogatory requests and that one of the two documents it has produced is not even responsive to the request for which it was produced. D.E. 44, at 6-7.

In relevant part, the Board ordered Applicant to provide a detailed explanation of what search was conducted to locate documents responsive to Opposer's Document Request Nos. 2, 6-9, 11-12, 14-15, 17-22, 24-27, 29-32, 34-35, 38 and 45 (*id.*, at p. 8) and an explanation for any responsive document that has been lost or destroyed (*id.*, at pp. 8-9), and confirmation that no factual information responsive to any interrogatory requests has been withheld (*id.*, at p. 11). Applicant was "precluded from stating that it reserves the right to supplement responses" to Interrogatories 14 and 16. *Id.*, at p. 10. Finally, the Board barred Applicant from "submitting at trial, and relying on as evidence at trial, any information or documents subject to a discovery request which have not been produced or provided in the manner directed by this order or by the Board's orders dated September 14, 2015 and December 4, 2015." *Id.*, at p. 11.

On June 9, 2016, Opposer filed its third Motion for Sanctions. D.E. 45. As a result of this motion, the Board:

- "precluded [Applicant] from introducing and/or relying upon at trial any information or documents responsive to Opposer's written discovery it provided for the first time in its response to Opposer's June 9, 2016, motion...or that it is ordered to provide by this order...
- Precluded [Applicant] from introducing and/or relying upon at trial any such supplementation made after the filing date of Opposer's June 9, 2016, motion...[and]...
- Estopped [Applicant] from relying upon or later producing documents or facts at trial responsive to Opposer's written discovery that has been withheld by Applicant." D.E. 50, p. 7.

On October 24, 2016, Opposer deposed Applicant's Rule 30(b)(6) witness. Affidavit of Oren Gelber ("Gelber Aff."), ¶ 2. As will be explained in more detail below, Applicant's

corporate representative's testimony conflicts with answers Applicant provided in response to written discovery requests. Applicant's corporate representative's testimony also indicates that Applicant may have additional documents which Applicant failed to produce in response to Opposer's discovery requests and the Board's numerous Orders compelling Applicant to produce responsive information and documents. Applicant's witness was deficient in several of the topics listed in Opposer's Rule 30(b)(6) Notice of Deposition.

On October 31, 2016, based in part on the deposition of Applicant's corporate representative, Opposer moved to amend its Notice of Opposition to include claims of non-use, abandonment and the applications are void ab initio. *See* D.E. 51. Applicant did not oppose this request and the Board granted the Motion to Amend. D.E. 56, pp. 1-2.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where the record reveals that there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The burden is on the moving party to establish that there are no genuine issues of material fact in dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). A factual dispute is genuine if based on the evidence of record, a fact-finder could resolve the matter in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); see also *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847 (Fed. Cir. 1992). All evidence must be viewed in a light most favorable to the non-movant and all justifiable inferences must be drawn in the nonmovant's favor. *Id.* The

“Board may not resolve issues of material fact; it may only ascertain whether issues of material fact exist.” *SARL Corexco v. Webid Consulting Ltd.*, 110 U.S.P.Q.2D (BNA) 1587, 1590 (TTAB 2014)

IV. ARGUMENT

The record presented herein demonstrates that there are no genuine disputes as to any material fact and Opposer is entitled to judgment as a matter of law on the claims before the Board, namely, that (1) Applicant has failed to use and/or has abandoned its Marks; (2) Applicant’s Applications are void ab initio because Applicant has not and cannot establish use prior to the filing dates of its Applications; (3) Applicant’s Marks are likely to cause confusion with Opposer’s Marks; and (4) Applicant’s Marks are likely to dilute and cause harm to Opposer’s famous Marks.

Alternatively, in the unlikely event the Board determines that Opposer has not carried its burden and that there exist genuine disputes as to any material fact, Opposer submits that any such genuine disputes as to any material fact are of the Applicant’s own making, namely, Applicant’s repeated refusal to cooperate in discovery despite the Board’s numerous Orders requiring Applicant to do so. Applicant has provided conflicting responses; has failed to provide responsive documents; and has produced a corporate designee who lacked knowledge of topics outlined in the Rule 30(b)(6) Notice of Deposition and who failed to adequately prepare for the deposition. For its continued efforts to evade discovery and manufacture genuine disputes of material fact in flagrant disregard of the Board’s Orders and the rules of discovery, the Board should sanction Applicant in the form of judgment against it.

A. Applicant Has Abandoned the Marks

A mark is considered abandoned when “its use has been discontinued with intent not to resume such use”; and “nonuse for 3 consecutive years shall be prima facie evidence of abandonment.” 15 U.S.C. § 1127; see also *ShutEmDown Sports, Inc. v. Lacy*, 102 U.S.P.Q.2D (BNA) 1036, 1042 (TTAB 2012). Thus, “[t]here are two elements to an abandonment claim that a plaintiff must prove: non-use of the mark and intent not to resume use.” *ShutEmDown Sports, Inc.*, 102 U.S.P.Q.2D (BNA) at 1042; see also *Imperial Tobacco Ltd. v. Philip Morris Inc.*, 899 F.2d 1575, 14 U.S.P.Q.2D (BNA) 1390, 1395 (Fed. Cir. 1990) (abandonment found where mark had never been used); and *The Procter & Gamble Co. v. Sentry Chemical Co.*, 22 U.S.P.Q.2D (BNA) 1589, 1592, (TTAB 1992) (abandonment may be established by proving that a party is not using or has never used its mark on certain goods).

As explained below, Applicant’s Rule 30(b)(6) deposition along with its discovery responses show Applicant’s failure to use the Marks. Nothing provided by Applicant establishes any continuous or first use of its Marks or any intent to resume use.

Throughout discovery Applicant provided contradictory and conflicting responses to inquiries regarding its trademark use. For example, Applicant claims October 9, 1988 as the date of first use of its Marks. See D.E. 40, Gulick Decl. ¶ 2, Ex. A (Interrogatory (“Interrog.”) 3 and 4). However, Applicant’s corporate representative testified that no goods or services had been sold when the organization was started on October 9, 1988. (“Gelber Aff.”), ¶ 2 and Ex. A (Transcript of the Deposition of Desiree Hiranman (“Hiranman”) 11:4-18). Further, Applicant has not produced any documents supporting its

claimed dates of first use of the Applicant's Marks. *See* D.E. 40, Gulick Decl. ¶¶ 3, 4, Ex. B (Document Production ("D.R.") 1) and Ex. C; D.E. 45, Gulick Decl. ¶ 3, Ex. B (D.R. 1). The corporate designee testified that she did not know when goods were first sold under the Applicant's Marks:

Q. Do you know approximately when goods were sold, first sold under the Lambda Tau Omega word mark?

A. No.

Q. How about the Greek letter mark?

A. No.

Gelber Aff., ¶ 2, Ex. A (Hiraman 11:19-12:5).

Applicant did not produce a single sales record of any goods sold. *See* D.E. 40, Gulick Decl. ¶¶ 2, 3, Ex. A (Interrog. 8) and Ex. B (D.R. 12, 15). Even if such sales records demonstrating use exist², Applicant has impermissibly withheld these records despite a Motion to Compel and three Motions for Sanctions. Per the Board's Orders (D.E. 44 and 50), to the extent that such records exist, Applicant is precluded from relying upon them and thus is unable to substantiate any degree of use of its Marks on the claimed goods in these proceedings.

In response to Interrogatory No. 8, Applicant claims that products bearing Applicant's Marks are sold by third party vendors or members of Applicant. *See* D.E. 40, Gulick Decl. ¶ 2, Ex. A. Yet Applicant's Rule 30(b)(6) witness who states that "none of our members sell any of our articles," and that she is "not aware of any vendor approved to sell goods under the Applicant's Marks." Gelber Aff., ¶ 2, Ex. A (Hiraman 39:15-24 and 62:19-21). Applicant's designee also stated that Applicant is unaware of any third

² Applicant's testimony indicates that such records exist. Gelber Aff., ¶ 2, Ex. A (Hiraman 43:14-44:10 and 66:14-67:23).

parties using Applicant's marks. See D.E. 40, Gulick Decl. ¶ 2, Ex. A (Interrog. 14).³ Applicant also claims that it has oral licenses with third parties to use the mark. *Id.* (Interrog. 16); D.E. 45, Gulick Decl. ¶ 2, Ex. A (Interrog. 16). Yet Applicant has not collected any royalties. *Id.*

According to Ms. Hiranman, to the extent that third party vendors selling Applicant's goods actually exist, such third party vendors would have to be approved by the Applicant's Board to sell items and vendors would have to submit samples. Gelber Aff., ¶ 2, Ex. A (Hiranman, 60:14-23). Ms. Hiranman testified that she has never seen samples or documents to support samples provides by vendors for approval. *Id.* at 60:24-61:15. Further, Applicant does not have a single document concerning third party use (including licenses) for Applicant's Marks. See D.E. 40, Gulick Decl. ¶¶ 3, 4, Ex. B (D.R. 7, 8) and Exhibit C; D.E. 45, Gulick Decl. ¶ 3, Ex. B (D.R. 7, 8).⁴

Most glaringly, Applicant is unable to produce a single document evidencing each product sold under Applicant's Marks. See D.E. 40, Gulick Decl. ¶ 3, Ex. B (D.R. 9) and Exhibit C; D.E. 45, Gulick Decl. ¶ 3, Ex. B (D.R. 9). Indeed, nothing in Applicant's written responses, document production, or testimony supports the actual sales or ongoing sales of the goods recited in the Applicant's Applications bearing the Marks.

In response to one of the Board's Orders compelling discovery, Applicant provided a list of websites which allegedly sell goods bearing Applicant's Marks. See D.E. 45, Gulick Decl. ¶ 2, Ex. A (Interrog. 16); Gelber Aff., ¶¶ 2, 4, Ex. A (Hiranman, 57:15-23) and Ex. C. As part of its document production Applicant provided documents

³ Applicant's supplemental response to Interrogatory 14 did not answer the question presented. See D.E. 45, Gulick Decl. ¶ 2, Ex. A (Interrog. 14).

⁴ Of course, this also raises the issue of whether Applicant has an ability to control use of its Marks.

of different websites where goods with Applicant's Marks could be purchased (Gelber Affl., ¶¶ 2, 5, Ex. A (Hiraman 62:22-63:15) and Ex. D); however, Applicant's corporate representative acknowledged that none of the document production provided showed the use of the Applicant's Marks on the applied-for goods:

Q. You mentioned that these were web sites of vendors who sold your goods?

A. Yes.

Q. Is there anything on these particular pages that would indicate Lambda Tau Omega goods were sold on these web sites?

A. No.

Q. Would these be the web sites, pages of web sites that you see in Exhibit 16, would these be the web sites that are referenced in Exhibit 15?

A. Yes.

Gelber Affl., ¶ 2, Ex. A (Hiraman 63:13-23).⁵

If Applicant made sales of goods bearing its Marks, whether directly or through third parties, one would expect for there to be some type of confirmatory record. Gelber Aff., ¶ 2, Ex. A. (Hiraman 66:14-67:23) (Applicant keeps track of how much money it makes on the sale of products that it sells). Applicant would also be expected to maintain records about the number of products it sold. Gelber Aff., ¶ 2, Ex. A (Hiraman 43:19-44:10). Yet Applicant did not produce a single document to show any sales or advertising of goods/services bearing its marks. D.E. 40, Gulick Decl. ¶¶ 3, 4, Ex. B (D.R. 18) and Ex. C.

Applicant has no examples of tags, labels or packaging. D.E. 40, Gulick Decl. ¶ 3, Ex. B (D.R. 11, 20); D.E. 45, Gulick Decl. ¶ 3, Ex. B (D.R. 20). Applicant has no samples of advertising in the United States (D.E. 40, Gulick Decl. ¶ 3, Ex. B (D.R. 24);

⁵ This is not the first time Applicant has responded to document production requests with non-responsive documents. See D.E. 44, p. 9.

D.E. 45, Gulick Decl. ¶ 3, Ex. B (D.R. 24)), nor any documents relating to the promotion and marketing of products bearing Applicant's Marks. *Id.* (D.R. 25).

Applicant's corporate designee was required to be familiar with the topics listed in Opposer's Rule 30(b)(6) Notice of Deposition. *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 433 (5th Cir. 2006) citing *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996). As Applicant's corporate designee, Ms. Hiranman represents the Applicant corporation's knowledge, as well as its subjective beliefs and opinions. *Lapenna v. Upjohn Co.*, 110 F.R.D. 15, 20 and 25 (E.D. Pa. 1986). Further, "the designated representative's testimony is binding on the corporation." *Sprint Communs. Co., L.P. v. Comcast Cable Communs., LLC*, 2015 U.S. Dist. LEXIS 76845, *31-32 (D. Kan. 2015); *United States ex rel. Health Dimensions Rehab., Inc. v. Rehabcare Grp., Inc.*, 2013 U.S. Dist. LEXIS 114479, *2 (E.D. Mo. 2013) (Rule 30(b)(6) deposition "is a sworn corporate admission that is binding on the corporation."). Ms. Hiranman's testimony amounts to admissions by the Applicant that:

- the first use dates alleged in the Applications are incorrect; (Gelber Aff., ¶ 2, Ex. A (Hiranman 11:4-18))
- the Applicant could not identify when goods were first sold under the Applicant's Marks; (*Id.* (Hiranman 11:19-12:5; 17:19-18:1))
- that Applicant is "not aware of any vendor approved to sell goods under the Applicant's Marks." (*Id.* (Hiranman 62:19-21))
- that Applicant's Board would have to approve third party vendors selling goods bearing the Applicant's Marks and vendors would have to submit samples, but

that Applicant has never seen samples or documents to support samples submitted for approval; (*Id.* (Hiraman 60:14-61:15))

- that the document production provided by the Applicant does not show the use of the Applicant's Marks on the applied-for goods; (*Id.* (Hiraman 63:16-23)); and
- that Applicant is unaware or lacks knowledge about its sales figures. *Id.* (Hiraman 11:8-10; 44:8-10).

In sum, Applicant has provided no evidence supporting its 1) date of first use, 2) sales of any product bearing its Marks (past or present), 3) sales of goods via authorized third parties, or 4) an ability to control third parties making use of the Applicant's Marks. Based upon the evidence Applicant has furnished to date, along with its contradictory and inconsistent statements and responses, Applicant cannot demonstrate use of its mark in U.S. commerce now or over the past three years. Nothing Applicant has disclosed or provided indicates an intent to resume use. Applicant is also precluded from belatedly producing and relying upon such evidence at this late date given the Board's various Orders. *See* D.E. 44, p. 11 and D.E. 50, p. 7.

Alternatively, the Applications are void ab initio.

B. The Applications are Void Ab Initio

When an applicant has not used the applied-for mark on any of the goods or services identified in the application prior to the filing of the application, a holding that the application is void is an appropriate remedy. *Grand Canyon West Ranch, LLC v. Hualapai Tribe*, 2006 TTAB LEXIS 82, *2-3 (TTAB 2006) citing *Laboratories du Dr.*

N.G. Payot Establisement v. Southwestern Classics Collection Ltd., 3 U.S.P.Q. 2D 1600 (TTAB 1987); and *CPC International Inc. v. Skippy Inc.*, 3 U.S.P.Q. 2D 1456, 1460 (TTAB 1987). The evidence of record in these consolidated proceedings clearly indicates that such remedy is warranted in this case.

As discussed above, Applicant has provided no evidence to demonstrate any past or current use of its Marks on the applied-for goods. *See* D.E. 40, Gulick Decl. ¶¶ 2, 3, Ex. A (Interrog. 8) and Ex. B (D.R. 12, 15) (no records indicating sale of goods under Applicant's Marks). Indeed, Applicant has not supplied any documents or information which would support use of its mark prior to the filing date of the Applications (or even after the filing date of the Applications). *Id.* Given the various Orders sanctioning the Applicant, Applicant is precluded from relying upon any evidence not previously provided to Opposer. D.E. 44, p. 11 and D.E. 50, p. 7. Based upon the evidence of record in this proceeding, Applicant cannot support use of its mark on or prior to the filing date.

Accordingly, there is no triable issue of fact and Applicant's Applications should be refused as void ab initio due to Applicant's failure to demonstrate use of its mark prior to the filing date of its Applications.

C. There is a Likelihood of Confusion, and of Dilution

As a result of Applicant's failure to respond to Opposer's First Set of Requests for Admission, all admissions are deemed admitted by operation of law. Fed. R. Civ. P. 36(a) and TBMP 407.03(a); *see also* D.E. 26, p. 5 and n. 1 and Affidavit of Thomas P. Gulick

(“Gulick Aff.”), ¶¶ 6, 9 and Ex. 3. Pursuant to Fed. R. Civ. P. 36(a)(3), Applicant has therefore admitted that:

- Opposer’s Marks are well-known in the United States (*Id.* (Request 17));
- Opposer’s Marks are famous marks (*Id.* (Request 18));
- Opposer’s Marks are highly distinctive (*Id.* (Request 21));
- The goods listed in the Applications for Applicant’s Marks are highly similar to the goods and services Opposer offers under Opposer’s Marks (D.E. 26, Gulick Aff. ¶ 6 and Ex. 3 (Request 13));
- Registration of Applicant’s Marks is likely to confuse consumers as to the source, sponsorship and/or affiliation of Applicant’s goods (*Id.* (Request 20));
- Registration of Applicant’s Marks is likely to dilute the distinctiveness of Opposer’s Marks (*Id.* (Request 19)); and
- Opposer will be damaged by registration of Applicant’s Marks. *Id.* (Request 22).

Applicant is precluded from denying that its marks are likely to cause confusion and dilute Opposer’s Marks. *See Texas Department of Transportation v. Tucker*, 95 U.S.P.Q. 2D 1241, 1244 (TTAB 2010) (admission conclusively establishes matter that is the subject of request for admission, subsequent argument to the contrary in response brief insufficient to raise genuine issue of material fact). Thus, the Board should grant summary judgment to Opposer on the grounds of likelihood of confusion and dilution.

D. Sanctions in the Form of Judgment are Appropriate

In the alternative, Opposer seeks sanctions in the form of judgment. *See Super Bakery, Inc. v. Benedict*, 96 U.S.P.Q.2D (BNA) 1134 (TTAB 2010)(Sanctions in the form of judgment warranted against respondent due to failure to comply with Board's discovery order and refusing to consider respondent's motion for summary judgment.); *Supreme Oil Co. v. Lico Brands, Inc.*, 39 U.S.P.Q.2D (BNA) 1695 (TTAB 1996) (Discovery sanctions in the form of judgment granted, motion for summary judgment held moot).

The Board may order appropriate sanctions, including entry of judgment, pursuant to 37 C.F.R. § 2.120(h)(1) and Fed. R. Civ. P. 37(b)(2), if a party fails to comply with an order of the Board relating to discovery. *See Benedict v. Superbakery Inc.*, 101 U.S.P.Q.2D 1089, 1093 (Fed. Cir. 2011). Although entry of judgment is a harsh remedy, it is justified here where Applicant has repeatedly failed to comply with reasonable Orders of the Board and lesser sanctions have been in effective. *Id.*

Opposer has moved for sanctions three times due to Applicant's repeated failure to comply with Board Orders relating to discovery. D.E. 29, 40, and 45. Each time, the Board has found that Applicant's conduct warranted sanctions. D.E. 37, 44, and 50. Despite the Board's numerous Orders requiring Applicant to provide full and complete responses, Applicant's Rule 30(b)(6) deposition cast further doubt on the veracity and completeness of many of Applicant's discovery responses.

For example, during the deposition on several occasions, Applicant's representative indicated that documents responsive to Opposer's discovery requests exist

but Applicant's written responses state that there are no documents or Applicant simply failed to provide a response. *See e.g.* Gelber Aff. ¶ 2, Ex. A (Hiraman Dep. 43:19-44:10) and D.E. 40, Gulick Decl. ¶ 3, Ex. B (D.R. No. 18); Gelber Aff. ¶ 2, Ex. A (Hiraman 66:14-67:23) and D.E. 40, Gulick Decl. ¶¶ 2, 3, Ex. A (Interrog. 8) and Ex. B (D.R. 15, 17).

Further, Applicant provided documents it claimed were responsive to Opposer's requests (*see* Gelber Aff. ¶ 4, 5, Ex. C, D and D.E. 40, Gulick Decl. ¶ 3, Ex. B (D.R. 37)) and as Applicant's corporate representative stated, nothing in the documents produced provides any indication that goods bearing Applicant's marks were sold on these websites. Gelber Aff. ¶ 2, Ex. A (Hiraman 63:16-23)

Applicant failed to provide a knowledgeable corporate designee to testify in response to Opposer's Rule 30(b)(6) Notice of Deposition. Applicant was obligated to provide a corporate designee familiar with the topics listed in Opposer's Rule 30(b)(6) Notice of Deposition. Fed. R. Civ. P. 30(b)(6); *Int'l Fin. Corp. v. Bravo Co.*, 64 U.S.P.Q.2D (BNA) 1597, 1605 (TTAB 2002) ("party producing a witness in response to a Rule 30(b)(6) notice is obligated to produce a knowledgeable witness able to testify on topics listed in the notice."); *Kellogg Co. v. New Generation Foods, Inc.*, 6 U.S.P.Q.2D (BNA) 2045, 2049 n. 5 (TTAB 1988). The Rule 30(b)(6) designee does not give his personal opinions. Rather, he presents the corporation's "position" on the topic. *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 433 (5th Cir. 2006) citing *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996).

Moreover, the designee must not only testify about facts within the corporation's knowledge, but also the corporation's subjective beliefs and opinions and the

corporation's interpretation of documents and events. *Id.*; *Buck v. Ford Motor Co.*, 2012 U.S. Dist. LEXIS 22641, *7 (N.D. Ohio 2012). A corporate party's obligation "to present and prepare a Rule 30(b)(6) designee goes beyond matters personally known to that designee or to matters in which that designee was personally involved." *United States v. Taylor*, 166 F.R.D. at 361. It is the duty of the Applicant to provide a witness capable of testifying knowledgably on the noticed topics regardless of whether the information was in the witness's personal knowledge, and to "prepare the designee to the extent matters are reasonably available, whether from documents, past employees, or other sources." *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 433 (5th Cir. 2006); *Covad Communs. Co. v. Revonet, Inc.*, 267 F.R.D. 14, 25 (D.D.C. 2010).

Applicant's witness claimed to be familiar with the topics listed in Schedule A of the Notice. Gelber Aff. ¶¶ 2, 3, Ex. A (Hiraman 6:4-17) and Ex. B. Yet when asked specific questions regarding the topics listed in Schedule A of the Notice, Applicant's designee lacked the knowledge to respond. *See e.g.* Gelber Aff. ¶ 2, Ex. A (Hiraman 11:19-12:5; 14:19-23; 17:19-22; 24:13-16; 31:11-16; 44:8-10). The testimony of Applicant's Rule 30(b)(6) witness discloses that the witness did not appear to properly prepare for the deposition on behalf of the company. For example, the witness testified to have reviewed Applicant's document production (Hiraman 6:17-7:6), and spoke to no one other than the lawyers to prepare for the deposition. (Hiraman 7:7-9; 73:15-74:7). The witness was not knowledgeable about where some of the documents produced came from (Hiraman 24:13-22, 25:18-22, 37:10-38:4). As noted above, Applicant's corporate designee also contradicted many of Applicant's written discovery responses. *See supra* at pp. 8-11.

Only one of two conclusions can be drawn from Applicant's conduct thus far in discovery. Either Applicant is unable to provide adequate and consistent information and documents because (1) it does not use and has not used its Marks and/or Applicant does not control use of its Marks, or (2) Applicant is purposefully and intentionally frustrating Opposer's efforts to obtain discovery. Under the former conclusion, judgment in favor of Opposer is merited as discussed above (*see supra* at pp. 8-14). Under the latter conclusion, sanctions in the form of judgement in favor of Opposer are warranted.

The Board itself repeatedly warned Applicant of the consequences of the failure to cooperate in discovery. On December 4, 2015, the Board advised the Applicant that if it continued to defy the Board's discovery Orders, "and if Opposer brings another motion for discovery sanctions in the form of judgment, **the Board will likely enter the sanction of judgment against Applicant.**" See D.E. 37, p. 4 (emphasis added). The Board repeated this warning to Applicant in its Order granting Opposer's Second Motion for Sanctions. See D.E. 44, p. 11 ("If Opposer brings another motion for discovery sanctions in the form of judgment, **the Board, in all likelihood, will enter the sanction of judgment against Applicant.**") (emphasis added). This is the fourth time that Opposer is seeking sanctions against the Applicant for its failure to comply with the Board's discovery orders and its refusal to cooperate in discovery. See D.E. 29, 40, and 45.

The Board has provided Applicant with every opportunity to comply with the Board's various discovery Orders and uphold its obligation to provide Opposer with the discovery it needs. Yet Applicant continues to flout the Board's directives with impunity. Opposer is prejudiced by Applicant's failure to provide responsive information, documents and testimony. Applicant is attempting to create triable issues of fact by

providing a witness who is not knowledgeable regarding deposition topics and by providing contradictory and non-responsive materials and as a result Opposer is prejudiced.

Opposer is further prejudiced as it must continually expend time, money and resources pursuing basic facts and supporting evidence from the Applicant instead of litigating the merits of these Oppositions. The Board is also hampered by Applicant's conduct, when it is required to spend significant time addressing these multiple infractions by the Applicant.

As lesser sanctions have proved ineffective, the Board should sanction the Applicant for its ongoing failure to cooperate in discovery and its refusal to comply with the Board's Orders by issuing judgment in Opposer's favor.

V. CONCLUSION

The information, documents and testimony provided by the Applicant in this proceeding evidence that Applicant has failed to use the Marks over the past three years and that Applicant has no intent to resume use. The Applicant's Marks are therefore abandoned. Alternatively, Applicant has not provided any evidence supporting use of its Marks prior to the filing of the Applications. Applicant's Applications are thus void ab initio. Applicant has admitted that the Parties' marks are likely to be confused, that Opposer's Marks are famous and that Applicant's Marks will dilute and damage Opposer's Marks. There is no triable issue of fact on the substantive claims presented by

Opposer's Amended Notices of Opposition and judgment is warranted in favor of Opposer.

Applicant has also failed repeatedly to comply with discovery rules and the Board's discovery Orders. Applicant's corporate designee has testified that documents exist which were not produced despite the Board's Order compelling such production. Further, Applicant's corporate designee was not adequately prepared for the deposition and not knowledgeable about the topics listed in Opposer's Rule 30(b)(6) Notice of Deposition. The Board repeatedly warned the Applicant that failure to comply with its discovery Orders would lead to a sanction of judgment. Applicant refused to heed this warning. The Board should sanction Applicant in the form of judgment.

Respectfully submitted,



Jess M. Collen

Oren Gelber

COLLEN

The Holyoke-Manhattan Building

80 South Highland Avenue

Ossining, New York 10562

(914) 941-5668 Tel.

(914) 941-6091 Fax

Attorneys for Opposer

Dated: March 24, 2017

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

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

LAMBDA TAU OMEGA
SORORITY, INC.,

Applicant.

Mark: ΛΤΩ

Opp. No.: 91208652 (Parent)

Serial No.: 85548759

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

LAMBDA TAU OMEGA
SORORITY, INC.,

Applicant.

Mark: LAMBDA TAU OMEGA
SORORITY, INC.

Opp. No.: 91208881 (Child)

Serial No.: 85539840

AFFIDAVIT OF OREN GELBER


I, Oren Gelber, being first duly sworn upon oath, state as follows:

1. My name is Oren Gelber and I am an attorney at the law firm COLLEN, attorneys of record for Opposer, Omega SA (Omega AG) (Omega Ltd.) (“Omega” or “Opposer”) in the above-referenced matter. I have personal knowledge of the facts contained in this affidavit.
2. On October 24, 2016, Opposer deposed the Applicant’s corporate designee, Desiree Hiranman. True and correct portions of Ms. Hiranman’s deposition are attached hereto as Exhibit A.

3. A true and correct copy of the document marked as Exhibit 1 during the deposition of Ms. Hiranman is attached hereto as Exhibit B.
4. A true and correct copy of the document marked Exhibit 15 during the deposition of Ms. Hiranman is attached hereto as Exhibit C.
5. A true and correct copy of the document marked Exhibit 16 during the deposition of Ms. Hiranman is attached hereto as Exhibit D.

Respectfully Submitted,

Dated: March 24, 2017



Oren Gelber

EXHIBIT

A

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

Mark: ATO
Opp. No.: 91208652 (Parent)
Serial No.: 85548759
Mark: LAMBDA TAU OMEGA
SORORITY, INC.
Opp. No.: 91208881 (Child)
Serial No.: 85539840

OMEGA S.A. (OMEGA AG) :
(OMEGA LTD) ,

Opposer,

DEPOSITION

vs.

OF

LAMBDA TAU OMEGA

DESIREE HIRAMAN

SORORITY INC. ,

Applicant.

- - - - -

Transcript of the stenographic notes of
the proceedings in the above titled matter as taken
by and before SHARI CATHEY, CCR, RPR, a Certified
Court Reporter and Notary Public of the State of New
Jersey, at the offices of FERRER GOLDFINE, LLC, 670
Bergen Boulevard, Ridgely, New Jersey, on Monday,
October 24, 2016, commencing at 1:08 p.m., pursuant
to Notice.

1 is taking this down, so yes or no if possible. I'll
2 try to keep reminding as we go along, okay?

3 A Okay.

4 Q All right. I'm going to show what we
5 we're going to mark as Exhibit 1.

6 (Exhibit 1 is received and marked for
7 Identification by the Reporter.)

8 Q Okay. Have you seen this particular
9 document before?

10 A Yes, I have.

11 Q Can you tell me when?

12 A Last week.

13 Q And if I can just direct you to the
14 page that's on the top labeled Schedule A, are you
15 familiar with the particular topics listed in
16 Schedule A?

17 A Yes.

18 Q How did you prepare for this
19 deposition today?

20 A Just reviewed the documents.

21 Q Can you tell me what documents you
22 reviewed?

23 A The deposition and --

24 Q When you say "the deposition," what
25 do you mean, the notice of deposition?

1 A Yes, and the evidences that are
2 provided with the marks.

3 Q When you say "the evidences provided
4 with the marks," do you mean the document
5 production?

6 A Yes.

7 Q Did you talk to anyone besides your
8 lawyers to prepare for this deposition?

9 A No.

10 Q Can you tell me what type of
11 organization Lambda Tau Omega is?

12 A It's a sorority nonprofit
13 organization.

14 MR. GULICK: Let me show you Exhibit
15 2.

16 (Exhibit 2 is received and marked for
17 Identification by the Reporter.)

18 Q Have you seen that particular
19 document before?

20 A Yes.

21 Q Can you tell me where you saw it?

22 A It was with the other documents that
23 I reviewed as well.

24 Q Do you know what this document
25 represents?

1 concerning the adoption of the first use of the
2 Lambda Tau Omega word mark?

3 A Yes.

4 Q Can you briefly explain what your
5 knowledge is about the adoption and use of the mark?

6 A Our founders which consists of 16
7 women, used the mark when they create the
8 organization, which was on October 9, 1988. That
9 was the first use of the mark.

10 Q Was the Greek letter mark adopted at
11 the same time?

12 A Yes.

13 Q At that time can you me was there
14 anything sold under the Lambda Tau Omega word mark?

15 A No.

16 Q Was there anything sold under the
17 Lambda Tau Omega Greek letter mark?

18 A No.

19 Q Do you know approximately when goods
20 were sold, first sold under the Lambda Tau Omega
21 word mark?

22 A No.

23 Q How about the Greek letter mark?

24 A No.

25 MR. DELGADO: I'm sorry. Just so

1 clarify when you say "sold," you're referring to
2 organization any sort of outside entities?

3 MR. GULICK: Anybody selling those
4 particular goods and services.

5 A I don't know the exact date, no.

6 Q Can you tell me what goods were or
7 services are sold under the Lambda Tau Omega word
8 mark today?

9 A Jewelry, clothing, paddles. That's
10 all.

11 Q Would these same goods be sold under
12 the work mark and the Greek letter mark?

13 A Yes.

14 (Exhibit 4 is received and marked for
15 Identification by the Reporter.)

16 Q Have you seen this particular
17 document before?

18 A Yes.

19 Q Can you tell me what it is?

20 A It's a response to the questions
21 being asked to us.

22 Q And did you take part in providing
23 any responses to these particular questions?

24 A A few, yes.

25 Q Can you tell me which ones?

1 Q Now, if you go back to page 2, you
2 mentioned that you participated in the responses for
3 Interrogatory No. 2?

4 A Yes.

5 Q Did you mentioned before goods that
6 were sold with the Lambda Tau Omega mark including
7 jewelry, clothing, paddles?

8 A Yes.

9 Q Would the other goods listed on this
10 page also be included there?

11 A Yes, they would.

12 Q That would include bags?

13 A Bags, license plate frames, pens,
14 phones case, padfolios, bracelets and necklaces.

15 Q You also mention that you
16 participated in Interrogatories No. 4, which is also
17 on page 2?

18 A Yes.

19 Q You mentioned that the sorority had
20 been founded in October of 1988?

21 A Yes.

22 Q Were any goods sold on October 1988?

23 A I would not know.

24 MR. GULICK: Okay. Let me show you,
25 I may be going back to that particular exhibit. Let

1 right now would that be the word mark?

2 A Yes, the word mark.

3 Q And directly below that you do you
4 see a second "for" in bold with another listing?

5 A Yes.

6 Q Are you familiar with those
7 particular services?

8 A Yes.

9 Q What do they represent?

10 A These are the services only offered
11 to the members of our organization.

12 Q If you look along those same lines
13 right there under the heading Goods and Services,
14 there is a heading that says First Use?

15 A Yes.

16 Q Okay. That's the October 9, 1988
17 date we spoke of before?

18 A Yes.

19 Q Do you know if the goods listed in
20 I'll call it the first listing of goods were sold as
21 of that date?

22 A I do not know.

23 Q Do you know roughly at what point
24 these goods were sold with the word mark on them?

25 A Yes. December 1988, around that time

1 frame.

2 Q Do you know where they were sold?

3 A Where, no.

4 Q So was there a document that you
5 looked at to determine they were sold by that
6 particular period of time in December 1988?

7 A No.

8 Q How did you know that those
9 particular goods were sold at that point in time?

10 A Because our organization was founded
11 in 1988, then had a subsequent university go on
12 right afterwards, which was another nearby school.
13 At that point in time those young women that were in
14 our organization ended up crossing into our
15 organization, becoming members. At the time based
16 on photographs, they have items with our word mark
17 on it.

18 Q Can you tell me who would have those
19 members?

20 A The members of that chapter, which is
21 William Paterson University.

22 Q Have you seen those photographs?

23 A Yes.

24 Q Where did you see them?

25 A Social media.

1 A Yes. They also asked other members
2 of the organization such as our founders for
3 document.

4 (Exhibit 7 is received and marked for
5 Identification by the Reporter.)

6 Q Let me show you Exhibit 7. Have you
7 seen this particular document before?

8 A Yes.

9 Q Can you tell me what it is?

10 A It's a document showing where our
11 word marks are located, whether it be clothing or
12 flyers.

13 Q I have a specific question if you
14 start with Document No. 9. Do you know what this is
15 a particular picture of?

16 A No.

17 Q How about 10?

18 A Yes.

19 Q What is it a picture of?

20 A A license plate frame.

21 Q Do you know where this came from?

22 A No.

23 Q Oh, take a step back. Go back to
24 Document 9, do you know where that particular
25 document came from?

1 A No.

2 Q Let me ask you about 20.

3 A Yes.

4 Q Do you know where this came from?

5 A Yes.

6 Q Where?

7 A This is our national web site for our
8 sorority.

9 Q And do you know where that web site
10 is located, the domain name where it's located?

11 A I don't know the domain name because
12 it's changed a few times.

13 Q Do you know where it was most
14 recently located?

15 A Yes.

16 Q Where would that be?

17 A I want to say lto1988.org.

18 Q If you look at Document 13.

19 A Yes.

20 Q Do you know where this particular
21 image came from?

22 A No.

23 Q How about 17?

24 A Yes.

25 Q Where did that come from?

1 listing of goods there with the bold word in front
2 it?

3 A Yes.

4 Q It says bracelets, jewelry, jewelry
5 pins for use on hats, jewelry, namely, dog tags for
6 wear by humans for decorative purposes; key chains
7 as jewelery; lapel pins; leather jewelry and
8 accessory boxes; neck chains; necklaces; ornamental
9 pins; rings.

10 A Yes.

11 Q Would those be the items of jewelry
12 that are sold with the Greek letter mark on them?

13 A Yes.

14 Q And would they have been first used
15 approximately October 9, 1988?

16 A I don't know.

17 Q Below you'll see a second bolded
18 "for" with a listing of goods?

19 A Yes.

20 Q That is a number of clothing items?

21 A Yes.

22 Q Would those goods be used with the
23 Greek letter mark?

24 A Yes.

25 Q Would those goods have been used

1 A No.

2 Q How about Document 31?

3 A This is also a tiki that our members
4 wear. It's hung around the neck.

5 Q And do you know where this document
6 came from, this image came from?

7 A No.

8 Q Do you know when it's from?

9 A No.

10 Q How about Document 32?

11 A Document 32, I do not know where this
12 is from.

13 Q Do you know what it is?

14 A No.

15 Q Document 33?

16 A Yes.

17 Q Where is this from?

18 A I don't know where this is from.

19 Q Do you know when it's from?

20 A No.

21 Q Document 34?

22 A I don't know where this is from.

23 Q Do you know where it's from?

24 A No.

25 Q I think we spoke about 35 before. Is

1 this picture of the license plate again?

2 A Yes.

3 Q Do you recall where that was from?

4 A No.

5 Q How about Document 36?

6 A It has information here from one of
7 our members. I don't know which member. This is
8 from our Kean University chapter because there is a
9 symbol of our delta sign, which is our Kean
10 University chapter.

11 Q What gives you that indication?

12 A The information that's on the
13 sleeves.

14 Q Do you know who gave you this
15 particular image?

16 A I do not know.

17 Q Have you ever seen this item for
18 sale?

19 A No.

20 Q How about Document 37?

21 A Document 37 is a jacket, and it is
22 also from a member of that chapter, delta chapter
23 which is Kean University.

24 Q And do you know who provided it to
25 you?

1 A Yes. There is a sister's name, a
2 member of our organization's name on the jacket.

3 Q Are you familiar with that particular
4 individual?

5 A Yes, I am.

6 Q Tell me who that?

7 A Her name is Gina Battista, and she
8 came into our organization in the spring of 2008.

9 Q How about Document 38?

10 A Document 38 is graduation stole. I
11 do know who provided it or where it came from.

12 Q Do you know when it's from?

13 A It looks like it's from 2009. There
14 is information on here that says Class of 2009.

15 Q Okay. Do you have documents which
16 show the use of the Greek mark on bracelets?

17 A Yes.

18 Q Can you tell me where?

19 A Our members would have that
20 information.

21 Q Do you know if they sell those
22 bracelets?

23 A Usually, it's third-party vendors.
24 None of our members sell any of our articles.

25 Q How about watches?

1 (Exhibit 12 is received and marked
2 for Identification by the Reporter.)

3 Q Have you seen this particular
4 document before?

5 A Yes.

6 Q Can you tell me what it is?

7 A It's a number of items that our
8 national organization sells, and it's listed on our
9 national Instagram page.

10 MR. DELGADO: Starting at the top
11 left, would that be the crest?

12 THE WITNESS: Yes. On the top left
13 would be a symbol of our crest.

14 Q You said these are sold by the
15 national organization?

16 A Yes.

17 Q Can you explain to me what that
18 means?

19 A Our national board, we sell items to
20 our members.

21 Q Where do you sell them?

22 A We sell them at events that we host
23 for our members.

24 Q So are you a member of national
25 board?

1 A Yes.

2 Q Do you know if records are kept about
3 how many of these products have been sold?

4 A Yes.

5 Q Can you tell me where they're kept?

6 A Typically our finance director holds
7 that record.

8 Q Do you happen to know what those
9 sales figures would be?

10 A No.

11 Q Do you happen to know -- do you have
12 personal knowledge about whether or not any of these
13 images on this particular page have been sold?

14 A Yes.

15 Q Which ones?

16 A The first one on the left. The
17 second one in the middle which is of a hat.

18 Q Okay.

19 A And the bottom left which are
20 bracelets, and the bottom right which is a
21 long-sleeved shirt.

22 Q How do you know these were sold?

23 A Because we sold them at our national
24 event or national workshops that we have semesterly
25 for our members.

1 Q Okay. Are there any materials
2 available for sale on your web site?

3 A No.

4 Q Have there ever been materials
5 available for sale on your web site?

6 A No.

7 Q Do you know if there are any vendors
8 that are licensed to sell Lambda Tau Omega products
9 in stores? When I say "stores." I don't mean online
10 stores. I mean like a physical retail location.

11 A No.

12 Q You don't know; or no, they're not
13 allowed?

14 A No, I don't know.

15 MR. GULICK: Okay. I'm going to show
16 you Exhibit 15.

17 (Exhibit 15 is received and marked
18 for Identification by the Reporter.)

19 Q Have you seen that document before?

20 A Yes.

21 Q Can you tell me what it is?

22 A It's a list of vendors that sell our
23 items.

24 Q Do you know how this list was
25 obtained?

1 A I don't know, maybe the president.

2 Q So can you briefly explain, how did
3 you compile any of the information for this list?

4 A I only gave the three online web
5 sites that I know that I personally purchased items
6 from. I don't know where the other information came
7 from.

8 Q Okay. As a board member, do you have
9 to approve agreements?

10 A Yes.

11 Q Did you personally have to approve of
12 the agreements?

13 A No.

14 Q Explain to me what you mean when you
15 say the board has to approve agreements?

16 A We review vendors that could
17 potentially want to sell our items, and we look to
18 see for the quality and the types of items that they
19 will be selling to our members.

20 Q How do you do that?

21 A They have to submit a package to us.
22 As far as the clothing it would be swatches of the
23 clothing.

24 Q When you say "swatches," what do you
25 mean by that?

1 A Color because our colors are red,
2 blue and gray, so we want to make sure that our
3 colors are consistent across our members about the
4 shades. We review that packaging and how it's going
5 to be represented, the clothing that our members
6 will wear.

7 Q Have you ever seen one of those
8 packets?

9 A I have not.

10 Q Do you know if anyone has ever
11 submitted a packet?

12 A I do not know.

13 Q Do you know if there are any
14 documents showing packets?

15 A I don't know.

16 Q Who would know that?

17 A The president would know and
18 parliamentarian.

19 Q Do you know how long that national
20 board has been selling products bearing the Lambda
21 Tau Omega marks, when I say that I mean either or,
22 the Greek letter or the word mark?

23 A No, I don't know.

24 Q Has it been as long as you've been a
25 member?

1 A Yes.

2 Q So that would be 1998?

3 A Yes.

4 Q And back then how would you know that
5 the national board was selling those products or
6 selling products?

7 A They would sell them at our events
8 that we hold either annually or biannually. That
9 would be the only way.

10 Q Do you ever purchase anything at
11 those events?

12 A No.

13 Q Do you know how long ago this list,
14 the Document 44 was compiled?

15 A No.

16 Q Do you know where these records would
17 be kept?

18 A No.

19 Q Are you aware of any vendor being
20 approved to sell Lambda Tau Omega goods?

21 A No.

22 MR. GULICK: All right. I'm going to
23 show you Exhibit 16.

24 (Exhibit 16 is received and marked
25 for Identification by the Reporter.)

1 Q Have you seen those particular
2 documents before?

3 A Yes.

4 Q Can you tell me what they're pictures
5 of?

6 A This pictures of different web sites
7 that our member go to purchase items.

8 Q Do you know -- did you compile these
9 documents?

10 A No.

11 Q Do you know who did?

12 A No.

13 Q You mentioned that these were web
14 sites of vendors who sold your goods?

15 A Yes.

16 Q Is there anything on these particular
17 pages that would indicate Lambda Tau Omega goods
18 were sold on these web sites?

19 A No.

20 Q Would these be the web sites, pages
21 of web sites that you see in Exhibit 16, would these
22 be the web sites that are referenced in Exhibit 15?

23 A Yes.

24 Q So these would be pictures of what
25 you would see on web sites that are listed in

1 Q And do you know specifically what
2 types of items they were offering for sale?

3 A Pins and hats.

4 Q How about on the Instagram page?

5 A Instagram page, shirts, pins and
6 hats.

7 Q Do you know if Lambda Tau Omega
8 spends any money on advertising products?

9 A No, we do not.

10 Q Now we're going to talk about what I
11 call the third-party vendors. Do you know if they
12 advertise the sale of Lambda Tau Omega products?

13 A Not that I know of.

14 Q Does Lambda Tau Omega keep track of
15 how much money it makes on the sale of products?

16 A Only on the products that we sell.

17 Q The national board sells?

18 A Yes.

19 Q Okay. Were there any documents to
20 show what those figures would be?

21 A Yes.

22 Q Could you tell me what they are?

23 A I don't know what they are. The
24 finance director would have that record.

25 Q In addition to the total amount of

1 money, would there be a record kept of the actual
2 item sold?

3 A Yes.

4 Q Would that also be with the finance
5 director?

6 A Yes.

7 Q So just as an example, would it be
8 possible to determine how much jewelry has been sold
9 with the Lambda Tau Omega marks?

10 A The national board?

11 Q Yes.

12 A Yes.

13 Q And it would be by the number of
14 units sold?

15 A Yes.

16 Q And would it be by the number of dollars
17 it collected as well?

18 A Yes.

19 Q How do you know that particular
20 information?

21 A Because I've attended events, and
22 when we have our national meetings, we discuss the
23 items, how much was sold at the events.

24 Q Would Lambda Tau Omega know how many
25 products bear the Lambda Tau Omega marks that were

1 Q A follow-ups, okay? Do you know how
2 far back records would be kept for sales of Lambda
3 Tau Omega goods that were sold by the national
4 board?

5 A No.

6 Q When you were performing your search
7 for documents, what did you ask the members for?

8 A I asked them to send to me images of
9 our name on clothing, such as jackets, shirts.

10 Q Did you ask for jewelry as well?

11 A No.

12 Q Did you specify whether it was a
13 Greek mark or the word mark?

14 A I requested for both.

15 Q And if you were looking at Exhibit 1,
16 which is this, we looked at these topics earlier,
17 what preparation did you do to become knowledgeable
18 on these topics?

19 A Prior to coming here today?

20 Q Yes.

21 A No preparation. So I just read the
22 documents, that was all.

23 Q You say the "documents," you mean
24 essentially the documents that you've seen in these
25 exhibits?

1 A Yes, correct.

2 Q And you didn't speak to anyone else
3 about Lambda Tau Omega organization?

4 A No.

5 Q So for instance, you didn't speak to
6 the finance director about the sales records?

7 A No.

8 Q That's all my question. Thank you.

9 (Whereupon the deposition is then
10 concluded at 3:28 p.m.)

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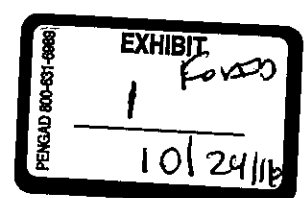
25

EXHIBIT

B

EXHIBIT

1



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

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

LAMBDA TAU OMEGA
SORORITY, INC.,
Applicant.

Mark: ATΩ

Opp. No.: 91208652 (Parent)

Serial No.: 85548759

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

LAMBDA TAU OMEGA
SORORITY, INC.,
Applicant.

Mark: LAMBDA TAU OMEGA
SORORITY, INC.

Opp. No.: 91208881 (Child)

Serial No.: 85539840

UPDATED NOTICE OF RULE 30(b)(6) DEPOSITION
UPON ORAL EXAM

TO: Lambda Tau Omega Sorority, Inc.

C/O: Antonio Gutierrez
Gutierrez Business Law LLC
3312 Hudson Avenue, Suite 3M
Union City, NJ 07087

Attn: Antonio Gutierrez, Esq.
Gamaliel Delgado, Esq.

PLEASE TAKE NOTICE that in the above-captioned opposition proceedings, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and TBMP § 404.01, on October 24,

2016 at 1:00PM at the offices of Ferrer Goldfine LLC, 670 Bergen Boulevard, Ridgefield, NJ 07657, Opposer will take the deposition of Lambda Tau Omega Sorority Inc. through one or more of its officers, directors, or managing agents, or other persons designated by Applicant, pursuant to Fed. R. Civ. P. 30(b)(6), and said deposition will continue day to day until completion. The deponent(s) should be prepared to testify on the topics designated in the attached Schedule A.

Please take further notice that pursuant to Rule 30(b)(3) of the Federal Rules of Civil Procedure the deposition will be recorded by one or more of the following means: stenographic, sound and/or visual means.

You are invited to attend and cross-examine.

Respectfully Submitted,

By:



Jess M. Collen
Thomas P. Gulick
Oren Gelber
COLLEN *IP*
THE HOLYOKE-MANHATTAN BUILDING
80 South Highland Avenue
Ossining, NY 10562
(914) 941-5668 Tel.
(914) 941-6091 Fax

Counsel for Opposer

Dated: October 7, 2016

SCHEDULE A

The corporate representative(s) should be the individual(s) most familiar with, and should be prepared to testify concerning the matters described below:

1. All products and services sold or offered for sale in the United States by Applicant Lambda Tau Omega Sorority Inc. ("Applicant") in conjunction with the marks depicted in Application Serial Nos. 85548759 and 85539840 ("Applicant's Marks").

2. The circumstances surrounding the adoption and first use of Applicant's Marks in the United States.

3. The adoption and first use of Applicant's Marks in the United States.

4. Use of Applicant's Marks in the United States since its adoption, as well as any periods of non-use, and any intended future uses of the marks.

5. Applicant's advertising, marketing, manufacturing and product development activities and plans in the United States.

6. The channels of trade through which Applicant sells and/or distributes goods in conjunction with Applicant's Marks in the United States.

7. The customers and distributors to whom Applicant sells goods in conjunction with Applicant's Marks in the United States.

8. Applicant's customers and distributors in the United States.

9. Applicant's contacts with its customers and distributors in the United States.

10. The manner in which Applicant distributes products bearing Applicant's Marks in the United States.

11. The dollar amounts expended by Applicant in developing and promoting Applicant's Marks, either in alone or in combination with any other term, design, or designation in the United States.

12. Applicant's annual U.S. sales of goods bearing Applicant's Marks for the past five years, in U.S. dollars.

13. Applicant's annual U.S. sales of goods bearing Applicant's Marks for the past five years, in units.

14. Past or present confusion or evidence of confusion between Applicant's Marks and other marks in the United States.

15. Licenses or agreements with any third parties in the United States related to Applicant's Marks.

16. Applicant's plans to market, distribute, sell, or provide products using Applicant's Marks in the United States.

17. Applicant's use of other marks containing the term OMEGA or the symbol Ω .

18. The commercial impression and pronunciation of Applicant's Marks.

19. The fame and goodwill associated with Applicant's Marks.

20. The factual bases supporting the Affirmative Defenses alleged in Applicant's Answers to the Notices of Opposition.

21. All documents produced by Applicant in response to Opposer's First Set of Interrogatories.

22. All information provided by Applicant in its responses to Opposer's First Set of Interrogatories.

23. All documents produced by Applicant in response to Opposer's First Request for Production of Documents and Things.

24. The factual bases for Applicant's admissions and denials provided in response to Opposer's First Set of Requests for Admissions.

25. Any searches, surveys, polls, consumer perception studies, focus group studies, market research studies, or other investigations, searches, studies, or reports that Applicant conducted, caused to be conducted, or obtained in connection with the selection of the Applicant's Marks

26. Any searches, surveys, polls, consumer perception studies, focus group studies, market research studies, or other investigations, searches, studies, or reports that Applicant conducted, caused to be conducted, or obtained that include any reference to Opposer, Opposer's Marks, Applicant, or Applicant's Marks.

CERTIFICATE OF SERVICE

I, Nicole Kelly hereby certify that on October 7, 2016, I caused a true and correct copy of the foregoing **Updated Notice of Rule 30(b)(6) Deposition Upon Oral Examination** to be served via First Class Mail, postage pre-paid, upon Applicant's Attorney of Record at the following address:

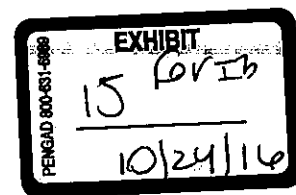
Antonio Gutierrez
Gutierrez Business Law LLC
3312 Hudson Avenue, Suite 3M
Union City, NJ 07087



EXHIBIT C

EXHIBIT

15

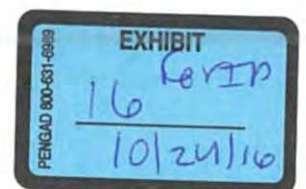


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EXHIBIT D

EXHIBIT

16





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Our catalog of unique Greek gifts and merchandise includes everything from Greek paddles and plaques, to wooden Greek letters, symbols, crests, pins, hats, bags, and jewelry, plus many other Greek sorority and Greek fraternity dorm accessories, including graduation gifts! We also offer custom screen-printing and twill applique embroidery on a huge selection of Greek sorority clothing and Greek fraternity clothing including Greek jackets, pants, shorts, crewneck sweatshirts, hoodies, cardigans, twill shirts, t shirts, tanks, and Greek sports jerseys. You can even purchase custom Greek clothing and accessories as individual items or in package specials!

We sell custom screen-printed or embroidered Greek clothing and gifts through SomethingGreek.com, our online Something Greek store, as well as our brick and

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mortar Greek store location in West Hempstead, New York. What makes Something Greek stand out among the rest in the industry is that all of our custom screen printing, embroidery and twill applique work is done on premises; we have our own in-house art department, embroidery machines, laser engravers, seamstresses, and screen-printing machines. We can even custom print Greek letters, symbols, and crests on Greek glassware and other unique gift items using our specialty printing machine.

By doing all custom screen-printing and twill applique embroidery work in-house, it allows us to offer the lowest possible costs on Greek clothing and merchandise, while providing the fastest and best turn-a-round time in the industry. At the Something Greek store, we pride ourselves on our customer service and the quality of our Greek clothing and gift products and we've built great, long-standing relationships with most Greek sororities and fraternities across the country. Thanks for visiting Something Greek! We look forward to working with you and your Greek sorority or fraternity.

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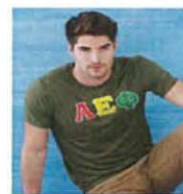
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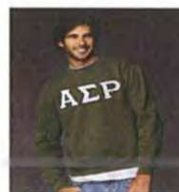
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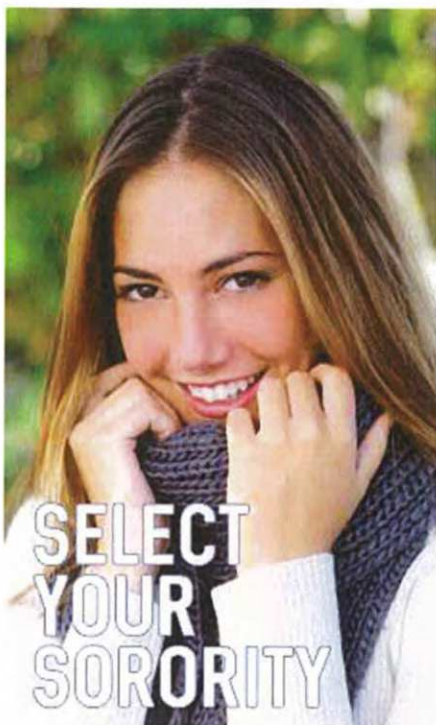
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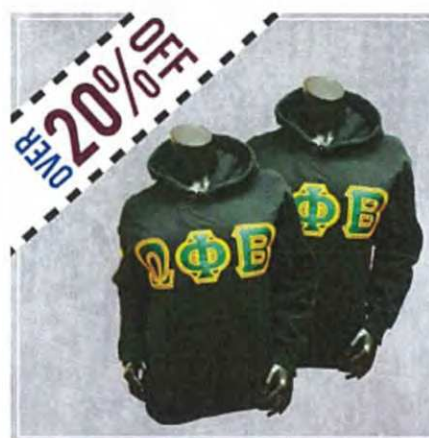
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We Specialize in Custom Greek Apparel, Greek Merchandise and Gifts

If you've been looking for a Greek store that can truly [customize your Greek apparel](#) - everything from [fraternity shirts](#) and jackets, to sorority hoodies and clothes - then you've come to the right place. Any Greek store can stitch Greek letters on clothing, but only stuff4GREEKS can turn you into a walking piece of art. We are a team of real artists, and most of us are members of Greek-letter organizations. We can help you create custom artwork for your clothing, then once you approve the design, we embroider it on your Greek wear ourselves. Our headquarters is in Atlanta, Georgia, but we ship all over the world.

No matter what type of Greek gear you need, whether it be t-shirts, custom line jackets, paddles, or anything in between, we take your fraternity and sorority apparel to the next level! We specialize in premium Greek merchandise, meaning that we don't cut corners and sell cheap products. We only offer the finest-quality Greek paraphernalia. We also make custom Masonic and Eastern Star (OES) apparel.

We are known for our outstanding quality, service, and creativity. If you want to design your own customized Greek wear on sweatshirts, sweaters, or even on screen printed t-shirts, then we can help you create your masterpiece. Our motto is "you dream it, we design it," and for over a decade, we have been regarded as *the paraphernalia of choice*.

But don't take our word for it... see what our customers have to say by reading our [customer testimonials](#) and looking through our [photo gallery](#).

When you're ready to make a purchase, you can [shop by organization](#) or view all [custom Greek products](#).

Find or make custom Greek gear for your fraternity or sorority - Shop by organization:

LEARN

- About Us
- How It Works
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- Lifetime Guarantee
- FAQ
- Product Index
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- Become an Affiliate
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- Become a Sales Rep
- Wholesale
- Become a Greekpreneur
- Make a Chapter Store

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- Join VIP Email Club
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- S4G Rewards
- Gift Registries

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by

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We have MOVED. Come visit us at our

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Regalia.com**

University Apparel's
Corporate page. Find
out our store hours,
how to get here, or just
more information about
our company.

The GREEKSHOP

for custom Greek
Paraphernalia and
Accessories.

TheMAAC.com

find custom Masonic
Apparel and
Accessories in this on-
line store.

Groove Gear

enter here to order
custom paraphernalia
for GFG® and Groove
GEMS.

IOTAWear.com

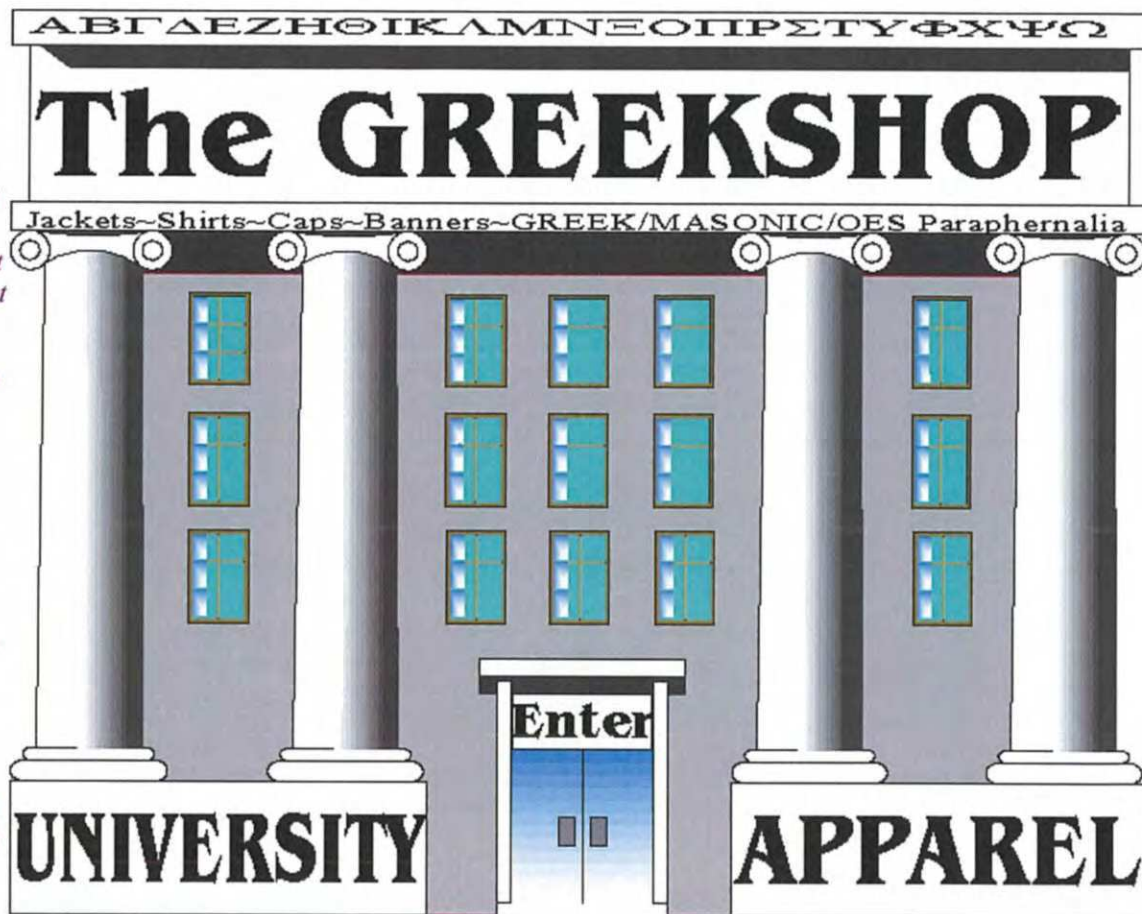
items specifically
designed for Iota Phi
Theta and Iota
Sweethearts

J2Sports

custom order school
and team "Spirit" Wear
and gifts, including
shirts, caps, and jackets

ElkExpressions.com

for IBPOEW and
General ELKS
paraphernalia and
accessories



Click on the TEMPLE above to [ENTER](#) The GREEKSHOP™ by University Apparel or
use one of the links on the left to visit one of our other on-line shops

Specializing in custom Greek paraphernalia, fraternity and sorority apparel, jackets, shirts,
bags, caps, jerseys, accessories, gifts, jewelry, Masonic paraphernalia, fraternal regalia, Blue
House Masons, OES, Shriners, Daughters of Isis, IBPOEW, ELKS, etc., as well as team and spirit
wear. Shop on-line or in our retail store.

**NEW EXPRESS SERVICE: 5-8 day production for select t-shirts,
polo shirts, sweatshirts & jackets !! Visit [EXPRESS SERVICE](#)
for more information !**

This site updated and maintained by



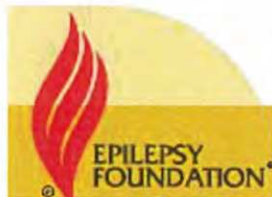
Sunshine #3!!!



Photographic images captured by Papa Smurf #9



IN GOD WE TRUST.
WE SALUTE OUR MEN & WOMEN IN UNIFORM
AND PRAY FOR THEIR SAFE RETURN.



The Epilepsy Foundation will ensure that people with seizures are able to participate in all life experiences; and will prevent, control and cure epilepsy through research, education, advocacy and services.

The items shown on this website are not marketed nor offered for sale as ready-made or in-stock retail items for any specific organization, unless specified as such. Photos are shown as examples of the work that may have been done in the past and/or that may be made for your particular fraternal organization.

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"Special order purchases from local vendors are tantamount to a consent to use agreement or a limited license..."

Sarah Evans Barker, Judge, United States District Court, Southern District of Indiana

So ordered, 25 October 2004



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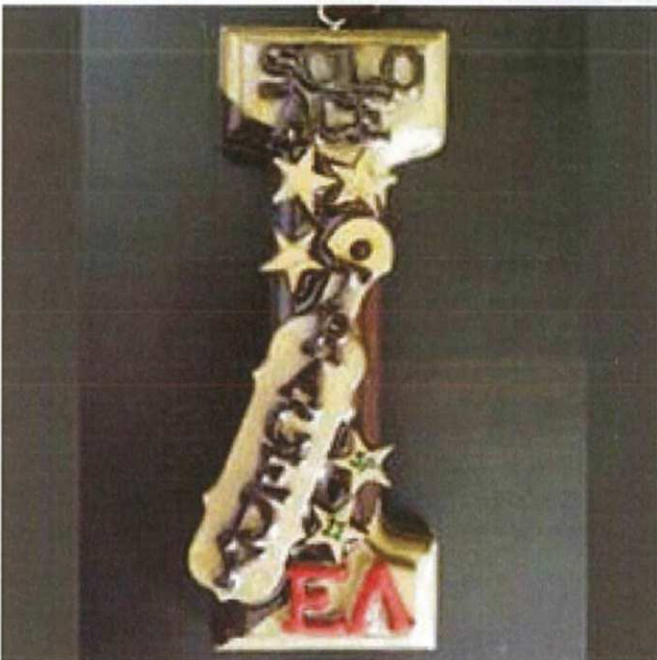
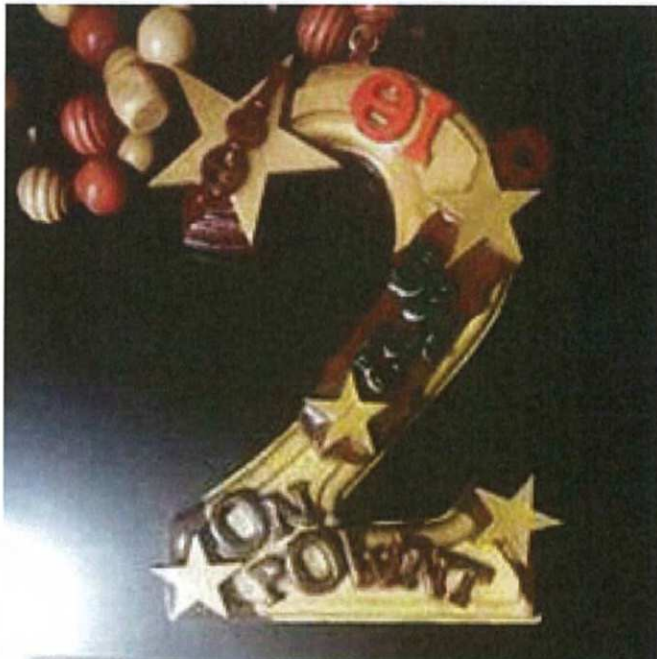
Weddings

Entertainment

Home & Living

Kids & Baby

Vintage



Custom State Pins
\$7.50



Custom Heart Pins
\$7.00



tiki of Africa or Trinidad
\$10.00



Custom State tiki
\$10.00

Items

Sort: Custom Sort

A00065

1/4

10/12/2016

All Items are painted and customized any way you by SweetNalia

All

11

Pins

2

Paddles & Plaques

2


Large Tiki

3

Small Tikis

4

 Request Custom Order

 Contact shop owner

81 Sales

70 Admirers

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Custom Tikis and Pins
\$10.00



Custom State Pins
\$7.50



Custom Paddles
\$30.00



Sweetheart Para
\$7.50



Custom Plaques
\$45.00



Custom Heart Pins
\$7.00



tiki of Africa or Trinidad
\$10.00



Custom Paddle Tiki
\$10.00



Number tiki
\$31.50



Greek-Letter Tiki
\$31.50



Custom State tiki
\$10.00

Reviews

Average item review  (29)



[sojentastic](#) on Jul 31, 2016



Very well made tiki. Thank you!!



Custom State tiki



[musicxlife](#) on Jun 20, 2016



Very nicely done. Hand painted and precise! Took a while to ship, only reason it's not 5 stars.



Custom State Pins



[sojentastic](#) on Jun 10, 2016



Well made item. I'm thrilled by my purchase.



Custom State Pins

[View all 29 reviews](#)

About

Hello and welcome to Sweet_Nalia!!

We have you covered for all you wooden para needs! We specialize in custom, unique to you and only you, hand-painted para!

Great as gifts or just a little something special for yourself!

Don't forget to follow us on Instagram (@sweet_nalia), Twitter (@sweet_nalia_) and Facebook (Sweet_Nalia) for periodic specials and promotions!!

Thanks,
Sweet_Nalia

♡ Favorite shop (70)

♡ Favorite shop (70)

 Tweet

 Share

Around the web

 [Instagram](#)

 [Twitter](#)

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Shop members

Princess Roy

Owner

Hello all and welcome to my shop! I've been in business for over a year now. I finally made the steps to have a website and expand my business. I look forward to working with each and every one of you!

Shop policies

Last updated on May 14, 2015

We stand behind the products we sell, your satisfaction with your purchase is extremely important to us!!

Accepted payment methods

Accepts Etsy gift cards

Payment

All major forms of credit/ debit are accepted, we also accept Etsy gift cards.

All orders are processed immediately and all necessary supplies are purchased in the order they are received.

Shipping

10/12/2016

All Items are painted and customized any way you by SweetNalia

All items are sent via priority mail with tracking. Shipping generally takes up to 2-3 business days, Excluding Sunday's and holidays.

Q: How long is production time?

A: Production varies depending on the amount of items purchased and the extent of customization. Smaller items take between 14-21 days (firm) and larger items and MULTIPLE items take between 21 - 28 days (firm), including weekends and holidays!!!

* When making a purchase please be sure to take note of how long it says until the item will be shipped*

Refunds and Exchanges

Please note ALL SALES ARE FINAL because everything is made to order, we do not except refunds or exchanges under any circumstance, unless an issue occurred on our behalf.

Any questions or concerns please message us via Etsy or email us at sweet.paraphernalia [!at] gmail.com

Additional policies and FAQs

All fraternity & sorority lettering, shields, crests, etc. are purchased from liscensed vendors!

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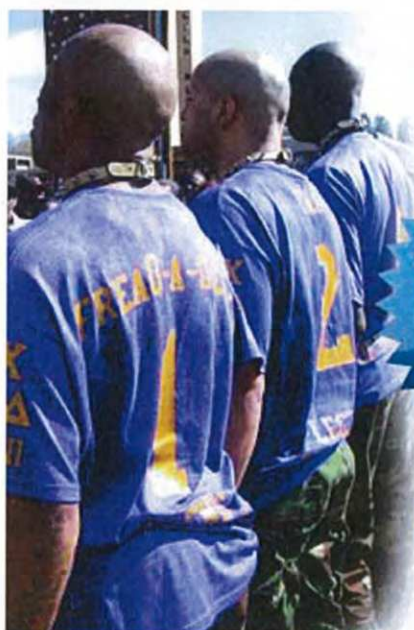
CONTACT

WELCOME

Greekcrossingtees.com keeps it simple by providing quality custom made crossing t-shirts in a timely fashion for Greek Fraternities and Social Fellowship organizations.

- Need shirts for your line?
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- Have a reunion coming?
- Need a fresh shirt?

Whatever your reason, we can do it!



greekcrossingtees.com
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Crossing T-Shirt
\$39.99
*plus shipping

Customize Now!



www.greekcrossingtees.com



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Current Subtotal: \$0.00

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it's paddle season!

PADDLE KINGS!

We carry the largest selection of paddles, plaques and accessories. Find the perfect gift item for your Big Bro/Little Bro or Big Sis/Little Sis with a traditional keepsake. Get your paddles with us and save big!

take **\$10 off**
Matching Hoodie & T

USE CODE: HOODIESETSAVE

\$100 off paddle & plaque orders of \$500 or more!

USE CODE: PADDLEBULK

any **\$75** order gets **Free Shipping**

USE CODE: FREESHIP4ME

POPULAR FRATERNITY & SORORITY GIFTS



Fraternity and Sorority
Traditional Branded 22 Inch
Paddle

Price: **\$37.95**

A Greek Creations best seller!



Gildan Sewn-On Letters Short
Sleeve T-shirt

Price: **\$20.00**

A classic bestseller. You can't go wrong!



1 Inch Regular Wood Letters
or Numbers

Price: **\$0.99**

A nice intermediate size



Sterling Silver Lavalier Drop
for Custom Groups

Price: **\$24.00**

Order any group with this lavalier!

FRATERNITY & SORORITY TOP CATEGORIES



Custom T Shirt Art & Design



Sewn On Greeks



Fraternity & Sorority Embroidery



Bags, Totes & Backpacks



Wood Paddles & Accessories



Greek Gold & Silver Jewelry



Signs, Banners & Flags



Plastic Cups & Plasticware



SHOP SEWN ON ▶



Choose your Sorority... ▼

Choose your Fraternity... ▼

Since 1995, Greek Creations has proudly served the College Greek community by exceeding our customer's expectations when they shop for fraternity merchandise and sorority gifts. Our online Greek store boasts the best selection and hottest trends in custom Greek clothing and apparel including our signature fraternity hoodies, sorority t-shirts, Greek letter sweatshirts and screenprinted recruitment shirts. Gear up today with Greek Creations for all your fraternity and sorority swag and look fabulous all semester long. Once your wears are covered, check out our fantastic offerings of Greek paraphernalia such as lavaliers, cheap Bid Day packages, school mugs and a huge selection of pledge paddles ready to decorate for your big brother or big sis.



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BLU BOUTIQ

about blu boutiq

Eco-Chic Accessories & Gifts

Our work is a labor of love in the truest sense; our passion is to create unique, wearable art that is low-impact, made by environmentally conscious practices. Blu Boutiq creates jewelry and keepsakes that are as ethical as they are beautiful. Because of our care for the planet, we use reclaimed, repurposed, recycled and sustainably sourced materials as often as possible and wholly support the fundamental principles of eco-design. It is the right choice to handcraft our jewelry in the USA using fairly traded artisan materials that support local economies not only as a marketing strategy but our responsibility. Every piece has a history, a starting point. Each piece is individual with a unique past, present and a future story of its own. With an emphasis on harmonious proportions and balance, Blu Boutiq uses primarily organic materials of wood, clay and leather, focusing on bringing them together to create well-designed items. Blu Boutiq artisans do all of the design, sanding, oil finishing, laser cutting and assembly by hand.





www.tikimanstore.com is currently unavailable.

What can I do?



If you're a visitor to this store

Please try again later.



If you're the owner of this store

Please [sign in](#) to resolve the issue, or [contact support](#).

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED ELECTRONICALLY WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE.

By: Oren Gelber Dated: March 24, 2017

CERTIFICATE OF SERVICE

I, Oren Gelber, hereby certify that on March 24, 2017, I caused true and correct copy of **Opposer's Motion for Summary Judgment** to be served upon Applicant's Counsel of Record at the below email address:

ANTONIO@GBUSINESSLAW.COM

Oren Gelber