

ESTTA Tracking number: **ESTTA802486**

Filing date: **02/20/2017**

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

Proceeding	91223575
Party	Plaintiff Pinkette Clothing, Inc.
Correspondence Address	KELLY W CUNNINGHAM CISLO & THOMAS LLP 12100 WILSHIRE BOULEVARD, SUITE 1700 LOS ANGELES, CA 90025-7103 UNITED STATES tmk@cislo.com,kcunningham@cislo.com,trichen@cislo.com
Submission	Other Motions/Papers
Filer's Name	Kelly W. Cunningham
Filer's e-mail	ttab@cislo.com, kunningham@cislo.com, lbanuelos@cislo.com, trichen@cislo.com
Signature	/s/Kelly W. Cunningham
Date	02/20/2017
Attachments	Executed notice to the Board re Non-Appearance of Deft.PDF(18855 bytes) Executed notice to the Board re Non-Appearance of Deft - Cunningham suppl decl.PDF(80945 bytes)

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

IN THE MATTER OF TRADEMARK SERIAL NO. 86/310,344
PUBLISHED IN THE OFFICIAL GAZETTE ON MAY 5, 2015

Pinkette Clothing, Inc., a California corporation,)	Opposition No.: 91223575
)	
Opposer,)	PINKETTE CLOTHING, INC.’S
)	NOTICE TO THE BOARD OF THE
v.)	NON-APPEARANCE OF EITHER
)	APPLICANT LAWRENCE MALLARD
Lawrence Mallard, a Florida corporation,)	OR ITS PINCIPAL AT THEIR
)	NOTICED TRIAL-PERIOD
Applicant.)	DEPOSITIONS
)	
)	

Opposer Pinkette Clothing, Inc. (“Pinkette”) hereby submits this notice to the Board that Pinkette had served two notices of deposition on Applicant Lawrence Mallard: one for a deposition of Applicant to take place on February 13, 2017 and another for a deposition of Applicant’s principal, Mr. Lawrence Mallard, to take place on February 14, 2017. (Supplemental Declaration of Kelly W. Cunningham, attached herewith, “Suppl. Cunningham Decl.,” ¶ 2). Pinkette submits concurrently herewith true and correct copies of these notices of deposition as Exhibits 14 and 15 to Suppl. Cunningham Decl. (*Id.* and Exhs. 14 and 15).

The dates for both of these depositions were within Pinkette’s Board-ordered trial testimony period in the present proceeding. [Docket No. 10]. Neither Applicant nor its principal, however, appeared for either of these depositions. (Suppl. Cunningham Decl., ¶ 3). Pinkette submits concurrently herewith true and correct copies of the two Certificates of Non-Appearances sworn to and prepared by the court reporters involved, attached as Exhibits 16 and 17, respectively, to the Suppl. Cunningham Decl. (*Id.* and Exhs. 16 and 17).

Accordingly, Pinkette requests that the Board add this notice to its consideration of Pinkette's motion for default judgment or, in the alternative, for an order extending all pre-trial deadlines by six (6) months, which Pinkette previously filed on February 1, 2017.

Respectfully submitted,

CISLO & THOMAS LLP

Date: February 20, 2017

/s/Kelly W. Cunningham
Kelly W. Cunningham, Esq.

Counsel for Opposer
Pinkette Clothing, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing

**PINKETTE CLOTHING, INC.'S NOTICE TO THE BOARD OF THE NON-
APPEARANCE OF EITHER APPLICANT LAWRENCE MALLARD OR ITS
PINCIPAL AT THEIR NOTICED TRIAL-PERIOD DEPOSITIONS**

was served upon the Applicant below, by email and by first class mail, postage prepaid, to the address listed on the date given below.

Lawrence Mallard
19410 NW 27th Avenue
Miami Gardens, Florida 33056
Email: Lavishcouture@yahoo.com;
Leonastefanos@yahoo.com

Dated: February 20, 2017

/s/Kelly W. Cunningham
Kelly W. Cunningham, Esq.

CISLO & THOMAS LLP
12100 Wilshire Boulevard, Suite 1700
Los Angeles, California 90025-7103
Tel: (310) 451-0647
Fax: (310) 394-4477
www.cislo.com

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

IN THE MATTER OF TRADEMARK SERIAL NO. 86/310,344

Pinkette Clothing, Inc., a California corporation,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223575
)	
Lawrence Mallard, a Florida corporation,)	
)	
Applicant.)	
)	
)	

**SUPPLEMENTAL DECLARATION OF KELLY W. CUNNINGHAM IN SUPPORT
OF PINKETTE CLOTHING, INC.’S NOTICE TO THE BOARD OF THE NON-
APPEARANCE OF EITHER APPLICANT LAWRENCE MALLARD OR ITS
PINCIPAL AT THEIR NOTICED TRIAL-PERIOD DEPOSITIONS**

I, Kelly W. Cunningham, declare as follows:

1. I am an attorney admitted to practice in the State of California. I am a member of the law firm of Cislo & Thomas LLP representing Pinkette Clothing, Inc. in this action. I make this declaration of my own personal knowledge or on information and belief where so stated. If called as a witness, I could and would competently testify to the truth of the matters asserted herein.

2. On February 1, 2017, I served two notices of deposition on Applicant Lawrence Mallard: one for a deposition of Applicant to take place on February 13, 2017 and one for the Applicant’s principal, Mr. Lawrence Mallard, to take place on February 14, 2017. I attach as Exhibits 14 and 15, respectively, true and correct copies of these notices.

3. I arranged for a court reporter to conduct this deposition at a location that is fully compliant with the Federal Rules of Civil Procedure. Nevertheless, neither Applicant nor Applicant's principal appeared for these depositions. I hereby attach as Exhibits 16 and 17 true and correct copies of the two certificates of non-appearance signed by the court reporters involved. To date, I received no communication of any kind from Applicant concerning Applicant's non-cooperation with these depositions.

I declare under penalty of perjury that under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on Monday, February 20, 2017.

/s/Kelly W. Cunningham
Kelly W. Cunningham

KWC:lb:ce

CISLO & THOMAS LLP
12100 Wilshire Blvd., Suite 1700
Los Angeles, CA 90025
Tel: (310) 451-0647
Fax: (310) 394-4477

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1. Applicant's selection of the LASH and Design trademark
2. Applicant's first commercial use of the LASH and Design trademark
3. connotation and commercial impression of the LASH and Design trademark.
4. goods sold under the LASH and Design trademark
5. established trade-channels for the LASH and Design trademark
6. sophistication of the purchaser.
7. knowledge of other similar marks at the time of first commercial use
8. knowledge of Pinkette's mark
9. nature and extent of any actual confusion.
10. any prior mark that Applicant seeks to use for tacking purposes

Respectfully submitted,

CISLO & THOMAS LLP

Dated: February 1, 2017

/s/Kelly W. Cunningham
Kelly W. Cunningham, Esq.
CISLO & THOMAS LLP
12100 Wilshire Boulevard, Suite 1700
Los Angeles, California 90025
Tel: (310) 451-0647
Fax: (310) 394-4477

Attorneys for Opposer
Pinkette Clothing, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Deposition to Applicant Lawrence Mallard was served upon the Applicant below, by email and by first class mail, postage prepaid, to the address listed on the date given below.

Lawrence Mallard
19410 NW 27th Avenue
Miami Gardens, Florida 33056
Email: Lavishcouture@yahoo.com;
Leonastefanos@yahoo.com

Dated: February 1, 2017

/s/ Kelly W. Cunningham
Kelly W. Cunningham, Esq.

The deposition may be conducted by telephone and recorded by stenographic, audio, and video or other means.

Respectfully submitted,

CISLO & THOMAS LLP

Dated: February 1, 2017

/s/Kelly W. Cunningham
Kelly W. Cunningham, Esq.
CISLO & THOMAS LLP
12100 Wilshire Boulevard, Suite 1700
Los Angeles, California 90025
Tel: (310) 451-0647
Fax: (310) 394-4477

Attorneys for Opposer
Pinkette Clothing, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Deposition to Mr. Lawrence Mallard was served upon the Applicant below, by email and by first class mail, postage prepaid, to the address listed on the date given below.

Lawrence Mallard
19410 NW 27th Avenue
Miami Gardens, Florida 33056
Email: Lavishcouture@yahoo.com;
Leonastefanos@yahoo.com

Dated: February 1, 2017

/s/ Kelly W. Cunningham
Kelly W. Cunningham, Esq.

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

3 IN THE MATTER OF TRADEMARK APPLICATION NO. 86/310,344
4

5
6 PINKETTE CLOTHING INC., OPPOSITION NO. 91223575

7 Opposer,

8 v.

9 LAWRENCE MALLARD,

10 Applicant.
11 _____/

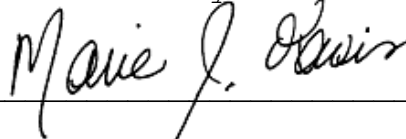
12
13 CERTIFICATE OF NON-APPEARANCE

14 STATE OF FLORIDA
15 COUNTY OF MIAMI-DADE

16 I, MARIE J. DAVIS, COURT REPORTER, hereby certify
17 that KELLY W. CUNNINGHAM, ESQUIRE, and I did appear at 401
18 E. Las Olas Blvd., Suite 1400, Fort Lauderdale, Florida
19 33301 from 12:00 P.M. until 12:20 P.M. February 13, 2017,
for purpose of taking the Deposition of LAWRENCE MALLARD.
Said Deponent failed to appear.

20 Under penalties of perjury, I declare that I have
21 read the foregoing certificate and that the facts stated
in it are true.

22 DATED this 17th Day of February 2017.

23 

24 _____
MARIE J. DAVIS, COURT REPORTER

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

3 _____
4 IN THE MATTER OF TRADEMARK APPLICATION NO. 86/310,344
5 _____

6 PINKETTE CLOTHING, INC.,

7 Opposer,

8 VS.

9 LAWRENCE MALLARD,

10 Applicant.

11 * * * * *

12 CERTIFICATE OF NON-APPEARANCE
13 In Re: Lawrence Mallard

14 STATE OF FLORIDA)
15 COUNTY OF BROWARD)

16 I, LORA LEE KNORR, FPR, RPR and Notary Public
17 in and for the State of Florida at Large, do hereby
18 certify that I did appear at 401 East Las Olas
19 Boulevard, Suite 1400, Florida, 33301 on Tuesday,
20 February 14th, 2017 at 12:00 p.m. for the purpose of
21 taking the deposition of Lawrence Mallard. Said
22 deponent failed to appear.

23 Under penalties of perjury, I declare that I
24 have read the foregoing certificate and that the
25 facts stated in it are true.

DATED this 14th day of February, 2017.



LORA LEE KNORR, FPR, RPR AND
NOTARY PUBLIC IN AND FOR THE
STATE OF FLORIDA, AT LARGE
COMMISSION NO. FF198698
MY COMMISSION EXPIRES: 4/30/19