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

Proceeding	91237356
Party	Defendant Dexter Kan
Correspondence Address	MORTON J ROSENBERG ROSENBERG KLEIN & LEE 3458 ELLICOTT CENTER DRIVE SUITE 101 ELLICOTT CITY, MD 21043 UNITED STATES rkl@rkpatlaw.com 410-465-6678
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Morton J. Rosenberg
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ROCKET SPORTS, LLC,

Opposer,

vs.

DEXTER KAN,

Applicant.

Opposition No. 91237356

**APPLICANT'S MOTION FOR  
LEAVE TO AMEND ANSWER TO  
NOTICE OF OPPOSITION**

Pursuant to Rule 2.107 of the Trademark Rules of Practice, 37 C.F.R. § 2.106(b)(3) and 2.107, Trademark Board Manual of Procedure ("TBMP") §§ 313, 315, and 507, and Rule 15(a) of the Federal Rules of Civil Procedure, Dexter Kan ("Applicant") respectfully moves the Board for leave to amend its Answer to the Notice of Opposition to add a counterclaim that Registration No. 5,297,623 (for the "ROCKET SPORTS Mark") should be cancelled on the basis of fraud upon the US Patent and Trademark Office, and on the basis of lack of a bona fide use of the mark in the ordinary course of trade within the identified services. The proposed Amended Answer is attached hereto, in a clean and unmarked form as Exhibit A, and with markup as Exhibit B.

**I. FACTS AND PROCEDURAL HISTORY**

On March 25, 2017, Applicant filed Application No. 87/385,665 (for the "ROCKET MESH Mark") under 15 U.S.C. § 1051(b) for the goods "Lacrosse balls; Lacrosse sticks."

Opposer filed its Notice of Opposition on October 21, 2017, and amended the Notice of Opposition on November 11, 2017, based on ownership of the ROCKET SPORTS Mark.

(TTABVUE Doc. Nos. 1 and 4.) Applicant filed its Answer to the Amended Notice on November 16, 2017. (TTABVUE Doc. No. 6.) At the time, the identification of services in the registration for the ROCKET SPORTS Mark, as supported by a Statement of Use filed on July 22, 2017, was assumed by Applicant to be accurate.

On May 23, 2019, Applicant deposed Opposer, as represented by Mr. Stephen Koda, president and sole principal of Opposer. (See Exhibit C.) The transcript for this deposition was first made available to each party on June 5, 2019. (See Exhibit D.)

New information was discovered through the deposition and corresponding transcript. This new information indicates that there was no bona fide use of the ROCKET SPORTS mark in commerce to support the original registration, in connection with the services identified in its registration, and also that the Statement of Use filed for the ROCKET SPORTS mark was fraudulent.

Having determined that the ROCKET SPORTS Mark should not have been granted for these reasons, Attorneys for Applicant prepared an Amended Answer, and now submits the same for entry in these proceedings, in the event the Board grants this motion.

## **II. ARGUMENT AND CITATION OF AUTHORITY**

Pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action. 37 C.F.R. § 2.107. A party may amend its pleading by leave of court, which should be freely given “when justice so requires.” Fed. R. Civ. P. 15(a). The Board “liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties.” TBMP 507.02. It is well-established that an amendment may add

a counterclaim to an answer if “during the proceeding, the defendant learns of grounds for a counterclaim to cancel a registration pleaded by the plaintiff,” so long as the counterclaim is pleaded “promptly.” TBMP 507.02(b). The present standard for entering a counterclaim in a trademark opposition is elaborated in the precedential *Jive Software, Inc. v. Jive Communications, Inc.*, Opposition No. 91218826, 125 USPQ2d 1175 (TTAB 2017).

Here, justice requires that Applicant's amendment be entered. Additionally, granting Applicant leave to amend would neither violate settled law nor prejudice Opposer's rights.

**A. Justice Requires that Applicant's Motion for Leave Be Granted.**

As a rule, the Board will allow amendments except when it “is legally insufficient, or would serve no useful purpose.” TBMP 507.02. Here, the counterclaim added by amendment is legally sufficient and consistent with a valid defense to the Opposition.

The ROCKET SPORTS Mark was registered on September 26, 2017, well within five years of the filing of this motion. As such, a cancellation may be supported on “the ground that there was no bona fide use of respondent's mark in commerce to support the original registration.” TBMP 307.02(a). A cancellation may also be supported on the ground that Opposer “committed fraud in the procurement of its registration or during the prosecution of its application for registration.” TBMP 309.03(c)(1). At the pleading stage, it is sufficient that Applicant provide sufficient supporting factual allegations to “plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Such allegations have indeed been provided in the amended Answer, and are supported by Opposer's own admissions. (See Exhibits 4 and 5 accompanying the proposed Amended Answer.) The counterclaims are therefore legally sufficient.

Additionally, should the ROCKET SPORTS Mark Registration be cancelled as a result of the counterclaim, Opposer no longer has prima facie evidence of the alleged priority trademark rights, or of the alleged scope of protection. The cancellation counterclaim therefore serves a useful legal purpose in the defending against the present Opposition.

It is also noted that fraud upon the US Patent and Trademark Office is serious and should, in the interest of justice, be investigated in any event when plausibly alleged.

Accordingly, the proposed amendment would be in the interest of justice.

**B. The Amendment is Within the Bounds of Settled Law.**

Generally, TBMP 313.01 states that the Board may entertain “a counterclaim for cancellation of a registration owned by an adverse party.” 37 C.F.R. § 2.106(b)(3)(i) states: “If grounds for a counterclaim are learned during the course of the opposition proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned.” In the present case, the grounds were learned by the discovery of new information on May 23, 2019, which was only confirmed upon receipt of the transcript deposition on June 5, 2019. (See Exhibits C, D.) This motion is filed twenty-five days following the deposition and twelve days following receipt of the transcript, after spending a reasonable amount of time to confirm the legal implications of the new information. This is more prompt than in *Jive Software*, in which the applicant had a lengthy suspension in which to research the possibility of counterclaims, and was allowed to add counterclaims within “a few weeks” of resumption of proceedings. *Jive Software* at \*15.

Additionally, as already shown above, a cancellation, and by extension a counterclaim for cancellation, may be legally supported on either of the grounds named within the Amended Answer.

Accordingly, the proposed amendment is within the bounds of settled law.

**C. Any Potential Prejudice to Opposer Has Been Minimized to the Extent Possible and is Also Outweighed by the Allegations.**

The Board has not found prejudice when the claim was filed promptly after it became “available.” For example, in *Boral Ltd. v. FMC Corp.*, 59 USPQ2d 1701 (TTAB 2000), dilution claims in oppositions first became available through an amendment to the Lanham Act during the proceeding. The opposer therefore successfully added a claim of dilution over two years after the initial complaint, but only thirty-three days after the new law became effective. *Id.* at 1702. The Board did not find this to be a prejudicial delay. *Id.* at 1703-04.

TBMP 507.02(a), note 1 lists numerous cases in which a claim was found to be first made “available” when the movant became aware of the facts necessary for the pleading, and repeatedly emphasizes the importance of the length of time passed between this awareness and the addition of the pleading. Here, the ability to counterclaim on these grounds was not realized until new information came to light in the deposition conducted on May 23, 2019, and this information could not be confirmed until the deposition transcript was received on June 5, 2019. (See Exhibits C, D.) Both dates are less than a month prior to the filing of this motion, which is therefore filed more promptly than in *Boral*. Applicant has thereby been duly diligent in minimizing prejudice to the Opposer.

Indeed, the only reason Applicant failed to discover the new information or move to amend sooner is because Applicant previously took at face value the content of the Registration for the ROCKET SPORTS Mark, as well as Opposer's statements in the Complaint and during earlier discovery that the services were indeed provided in connection with the mark. Applicant did not contemplate, before new information was discovered through the Deposition, that Opposer was either intentionally or unintentionally misrepresenting the services offered.

Additionally, Opposer is represented by counsel, namely, Paul W. Koda, in the Opposition. Said counsel was the same to file the original application for the ROCKET SPORTS Mark, reviewing the listed services as part of the process, and to execute the Statement of Use claiming use of the mark. (See Exhibits 1 and 2 accompanying the proposed Amended Answer.) As such, said counsel was well aware of the content of the application and of the Statement of Use, and of the potential consequences of declaring use of services which were not supported by bona fide use in commerce, as of the filing of the Opposition. Opposer's counsel may also be presumed to be aware of what does or does not qualify as a service offered in commerce under US trademark law, more specifically under TBMP 1301.01(a)(ii), and of the legal meaning of the services listed in Registration No. 5,297,623. Opposer should have therefore been aware of the possibility of a counterclaim once the nature of Opposer's actual services was determined during discovery.

Furthermore, as fraud upon the US Patent and Trademark Office has been plausibly alleged in the counterclaim, this fraud substantially outweighs any claim of prejudice on the part of Opposer. Cf. *Ohio State University v. Ohio University*, 51 USPQ2d 1289, 1295 n.16 (TTAB 1999) (a defense of laches may not be maintained against fraud).

Finally, to the extent that Opposer would be prejudiced by the addition of a counterclaim, the Board may resolve this prejudice by adjusting the Opposition schedule to provide time to further address the counterclaim, including by reopening discovery. TBMP 507.02(a).

Accordingly, the proposed amendment will not prejudice the Opposer.

**III. CONCLUSION**

For the foregoing reasons, Applicant prays that this Motion to Amend be granted by the Board.

Respectfully submitted,  
FOR: ROSENBERG, KLEIN & LEE

DATE: June 17, 2019

/Christopher Reaves/  
Christopher Reaves

/Morton J. Rosenberg/  
Morton J. Rosenberg

*Attorneys for Applicant*  
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[RKL@rklatlaw.com](mailto:RKL@rklatlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2019, I served a copy of the Document entitled **APPLICANT'S MOTION FOR LEAVE TO AMEND ANSWER TO NOTICE OF OPPOSITION** on Opposer by sending a true and correct copy of the Document by email to Paul Koda at [paul@kodafirm.com](mailto:paul@kodafirm.com).

/Christopher Reaves/  
Christopher Reaves



# EXHIBIT

A

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

ROCKET SPORTS, LLC,

Opposer,

vs.

DEXTER KAN,

Applicant.

Opposition No. 91237356

**APPLICANT'S AMENDED  
ANSWER TO OPPOSER'S  
AMENDED NOTICE OF  
OPPOSITION**

COMES NOW applicant Dexter Kan (“Applicant”) herein answers the above indicated Amended Notice of Opposition (the “Notice”) brought by Rocket Sports, LLC (“Opposer”) as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Notice, and therefore denies it.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice, and therefore denies it.

3. Admit in part. Applicant admits that the legal chain of title described in the first sentence of Paragraph 3 of the Notice appears to be consistent with the USPTO public record. Applicant avers that the allegations set forth in the second sentence of Paragraph 3 of the Notice call for a legal conclusion, which no response is required. To the extent any response is required to the allegations set forth in the second sentence of Paragraph 3 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore denies it.

4. Admit.

5. Admit in part. Applicant admits that the file date set forth in the first sentence of Paragraph 5 of the Notice appears to be consistent with the USPTO public records. Applicant avers that the allegations set forth in the second sentence of Paragraph 5 of the Notice call for a legal conclusion, which no response is required. To the extent any response is required to the allegations set forth in the second sentence of Paragraph 5 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore denies it.

6. Applicant avers that the allegation set forth in Paragraph 6 of the Notice calls for a legal conclusion, which no response is required. To the extent any response is required, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth therein, and therefore denies it.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Notice, and therefore denies them.

8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Notice, and therefore denies them.

9. Applicant avers that the allegation set forth in Paragraph 9 of the Notice calls for a legal conclusion, which no response is required. To the extent any response is required, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth therein, and therefore denies it.

All allegations of the Notice, whether explicit or implicit and including averments, which require an answer are denied to the extent that those allegations are not expressly and specifically admitted herein. Moreover, pursuant to Rule 8(b)(6) of the Federal Rules of Civil Procedure, allegations of the Notice to which no responsive pleading is required, shall be deemed as denied.

**AFFIRMATIVE DEFENSES, AVOIDANCES, AND ARGUMENTS**

1. FOR A FURTHER, SEPARATE, AND DISTINCT DEFENSE, Applicant is informed and believes, and thereupon alleges, that the Notice was filed without merit and for improper reasons, namely to adversely affect Applicant's application.

2. FOR A FURTHER, SEPARATE, AND DISTINCT DEFENSE, Applicant is informed and believes, and thereupon alleges, that the Notice is fraudulent and was filed to adversely affect Applicant's application.

3. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, Applicant alleges it is informed and believes, and based upon such information and belief, that Opposer is barred from seeking any relief herein because third parties have used similar marks for similar goods, thus Opposer's mark is weak and entitled to a narrow scope of protection. 87 records appear when searching the USPTO Database for Live marks in Class 35; 160 records appear if the search is expanded to also include Class 28.

4. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, Applicant alleges it is informed and believes, and based upon such information and belief, that Opposer is barred from seeking any relief herein because the channels of trade for the parties' respective goods are dissimilar. Applicant sells new goods and Opposer is a reseller of goods.

5. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, Applicant alleges it is informed and believes, and based upon such information and belief, that Opposer is barred from seeking any relief herein because Opposer is currently not using its mark in connection with all of the goods or services, or in all of the trade channels, set forth in its registration.

6. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, Applicant alleges it is informed and believes, and based upon such information and belief, that Opposer is barred from seeking any relief herein because Opposer has ceased using its mark in connection with one or more of the goods or services, or in all of the trade channels, set forth in its registration.

7. Applicant alleges that it is informed and believes, and based upon such information and belief, that it may have additional defenses not currently available and that may be available after completion of initial disclosures and discovery, and therefore reserves the right to set forth additional defenses as information becomes available.

### **COUNTERCLAIM**

Counterclaimant Dexter Kan (Counterclaimant) is an individual residing at 3681 Hollyberry Drive, Huntingtown, Maryland 20639, doing business as “Rocket Mesh Lacrosse.”

The registrant and current owner (Registrant) of Trademark Reg. No. 5,297,623 (the Registration) for “ROCKET SPORTS” in International Class 35 (the ROCKET SPORTS Mark) is Rocket Sports, LLC, a Maryland limited liability company with a place of business located at 4 Baederwood Court, Derwood, Maryland 20855.

For the reasons provided below, Counterclaimant believes that he will be damaged by the Registration, and hereby petitions to cancel the same under 15 U.S.C. § 1064(1) and 37 CFR § 2.111, on the grounds of non-use of the mark (see TBMP 307.02(a)) and of fraud in the procurement of the Registration (see TBMP 309.03(c)(1)).

1. Counterclaimant filed Trademark Application No. 87/385,665, for registration of “ROCKET MESH” in International Class 28 for “Lacrosse balls; Lacrosse sticks” (the ROCKET MESH Mark), on March 25, 2017.

2. Counterclaimant has invested in an inventory of goods relating to lacrosse balls and lacrosse sticks, bearing the ROCKET MESH Mark.
3. On October 21, 2017, Registrant filed Opposition No. 91237356 to oppose registration of the ROCKET MESH Mark, basing the Opposition on the Registration alleging prior use of the ROCKET SPORTS Mark in commerce.
4. Registrant has also threatened to bring an action of trademark infringement of the Registration if Counterclaimant continues to sell goods of any variety bearing the ROCKET MESH Mark.

On the basis of the allegations set forth above, Counterclaimant believes that Registrant's hostile assertion of the Registration against him will damage Counterclaimant, and Counterclaimant therefore has standing to petition for cancellation of the Registration.

5. On June 19, 2016, Registrant filed US Trademark Application No. 87/076,555 (the RS Application) for registration of the ROCKET SPORTS Mark, for the services of "Marketing services for the sports equipment of others; marketing services in the field of sports equipment; marketing services, namely, promoting or advertising the goods and services of others; marketing, promotional and advertising services provided by mobile telephone connections; marketing, advertising, and promoting the retail goods and services of others through wireless electronic devices; promoting and marketing the goods and services of others by distributing advertising material, coupons and discount offers via text messages; promoting and marketing the goods and services of others by websites and social media; promoting the goods and services of others by means of word-of-mouth and nontraditional marketing programs; promoting the sale of goods and services of others by websites and social media; advertising and

marketing services, namely, promoting the goods and services of others; advertising, marketing, and promoting the goods and services of others via websites and social media; on-line advertising and marketing services; providing marketing services for the sports equipment industry; reseller services, namely, distributorship services in the field of sports equipment.” By admission of the Registrant, this list of services was reviewed by both Registrant and Paul W. Koda, the Attorney for Registrant. (See Exhibit 1.)

6. The Registration for the ROCKET SPORTS Mark was issued on September 26, 2017, listing the above services without amendment and alleging a first use in commerce of January 10, 2017.
7. A “service” which primarily benefits Registrant, and not others, is not a service under US trademark law. TBMP 1301.01(a)(ii).
8. On information and belief, and based upon Registrant’s admissions under oath during a Deposition of Registrant on May 23, 2019, the Registration was granted based on a fraudulent Statement of Use.
  - a. In the prosecution of the RS Application, Registrant submitted a Statement of Use on July 22, 2017. This statement was signed by Paul W. Koda, the Attorney for Registrant. (See Exhibit 2.)
  - b. This Statement of Use included a declaration that “the mark is in use in commerce on or in connection with all the goods/services in the application or notice of allowance, or as subsequently modified.”
  - c. Concurrent with the Statement of Use, Registrant submitted a Specimen displaying the ROCKET SPORTS Mark as applied to Registrant’s website.

(See Exhibit 3.) The Statement of Use included a declaration under oath that “The specimen(s) shows the mark as used on or in connection with the goods/services/collective membership organization in commerce.”

- d. The Specimen does *not* indicate that Registrant offers to others any of the services identified in the RS Application in connection with the ROCKET SPORTS Mark. More specifically, the Specimen does not indicate that another party may hire Registrant for the services of marketing, advertising, promotion, distribution, etc. as described in the RS Application, or display means to do so.
- e. During the Deposition of Registrant on May 23, 2019, Registrant admitted to non-use of each of the services identified in the RS Application and Registration, both in connection with the ROCKET SPORTS Mark and generally.
  - i. Registrant repeatedly *denied* being “an advertising agency” and admitted that Registrant was not hired by others to provide advertising or promotional services. (See Exhibit 4.)
  - ii. When asked about the services provided in connection with the ROCKET SPORTS Mark, Registrant described only services which do not qualify as any of “marketing,” “advertising,” “promotion,” or “distributorship” for the primary benefit of others. Rather, the ROCKET SPORTS Mark was described as used in connection with advertising and promoting sales of products solely within Registrant’s own inventory, sold solely through Registrant’s own website.



Registrant is also not paid other than by the end consumer. (See Exhibit 5.<sup>1</sup>)

- f. By implication of the above admissions, Registrant admitted to not having provided any of the services identified in the Registration in conjunction with the website shown in the Specimen.
- g. By implication of the above admissions, Registrant knew, at the time the Statement of Use was filed, that the services being provided in connection with the ROCKET SPORTS Mark at the time of the filing of the Statement of Use were not the services identified in the RS Application.
- h. By implication of the above admissions, Registrant knew, at the time the Specimen was filed, that the services being provided through the website at the time of the filing of the Statement of Use were not the services identified in the RS Application.
- i. Upon information and belief, had Registrant identified the services actually provided to others in connection with the ROCKET SPORTS Mark, the Registration would have been barred based on multiple prior marks, including but not limited to prior Trademark Reg. No. 2,734,981 for “ROCKET.” (See Exhibit 6.)
- j. Therefore, consistent with Registrant's admissions, Registrant committed fraud in the procurement of its registration by knowingly filing a false Statement of Use and Specimen with the US Patent and Trademark Office

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<sup>1</sup> Because Exhibit 5 includes discovery which has been designated as confidential, a redacted version is to be submitted in a separate copy of this filing.

during prosecution of the ROCKET SPORTS Mark. The ROCKET SPORTS Mark is thereby barred from registration, under TBMP 309.03(c)(1).

9. Upon information and belief, and based upon Registrant's admissions under oath during a Deposition of Registrant on May 23, 2019, the Registrant has not used the ROCKET SPORTS Mark in connection with the services identified in the Registration.

a. During the Deposition of Registrant on May 23, 2019, Registrant admitted to non-use of each of the services identified in the RS Application and Registration, both in connection with the ROCKET SPORTS Mark and generally.

i. Registrant repeatedly *denied* being "an advertising agency" and admitted that Registrant was not hired by others to provide advertising or promotional services. (See Exhibit 4.)

ii. When asked about the services provided in connection with the ROCKET SPORTS Mark, Registrant described only services which do not qualify as any of "marketing," "advertising," "promotion," or "distributorship" for the primary benefit of others. Rather, the ROCKET SPORTS Mark was described as used in connection with advertising and promoting sales of products solely within Registrant's own inventory, sold solely through Registrant's own website. Registrant is also not paid other than by the end consumer. (See Exhibit 5.)

- b. Therefore, consistent with Registrant's admissions, the ROCKET SPORTS Mark is barred from registration for lack of a bona fide use of the mark in the ordinary course of trade, under 15 U.S.C. §§ 1051(c) and 1127.

On the basis of the allegations set forth above, Counterclaimant believes that the ROCKET SPORTS Mark should have been barred from registration, and therefore requests that Trademark Reg. No. 5,297,623 for the ROCKET SPORTS Mark be cancelled.

As it is unclear whether this counterclaim will be entered by the Board, the Cancellation fee is not included at this time. However, in the event the accompanying Motion is granted and the counterclaim entered, such that a fee for the filing of the counterclaim and/or any further fees are required, the Director of Patents and Trademarks is hereby authorized to charge such to Deposit Account 50-5298.

WHEREFORE, Applicant/Counterclaimant prays that this Board find in favor of Applicant/Counterclaimant, cancel Opposer/Registrant's mark, and deny and dismiss with prejudice the Notice.

Respectfully submitted,  
FOR: ROSENBERG, KLEIN & LEE

DATE: June 17, 2019

/Christopher Reaves/  
Christopher Reaves

/Morton J. Rosenberg/  
Morton J. Rosenberg

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Ellicott City, MD 21043  
Phone: 410-465-6678  
RKL@rkllpatlaw.com

MR4861-2

Opposition No. 91237356

Applicant's Amended Answer to Opposer's Amended Notice of Opposition – Marked

**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2019, I served a copy of the Document entitled  
**APPLICANT'S MOTION FOR LEAVE TO AMEND ANSWER TO NOTICE OF  
OPPOSITION** on Opposer by sending a true and correct copy of the Document by email to Paul  
Koda at [paul@kodaform.com](mailto:paul@kodaform.com).

/Christopher Reaves/

Christopher Reaves

# EXHIBIT

1



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# Transcript of Stephen Koda

**Date:** May 23, 2019

**Case:** Rocket Sports, LLC -v- Kan

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**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X

ROCKET SPORTS, LLC, :

Opposer, :

-v- : Case No.: 91237356

DEXTER KAN,

Applicant. :

-----X

Deposition of STEPHEN KODA

Ellicott City, Maryland

Thursday, May 23, 2019

9:57 a.m.

Job No.: 242831

Pages: 1 - 245

Reported by: Fazier Walle

1                   Deposition of STEPHEN KODA, held at  
2                   the offices of:

3  
4  
5  
6                   LAW OFFICES OF ROSENBERG, KLEIN & LEE  
7                   3458 Ellicott Center Drive  
8                   Suite 101  
9                   Ellicott City, Maryland 21043  
10                  (410) 465-6678

11  
12  
13                  Pursuant to Notice, before Fazier Walle,  
14                  a Shorthand Court Reporter and Notary Public in  
15                  and for the State of Maryland.



1                   There's probably others, but I'm  
2 blanking on them.

3           Q     Okay. Has any third party alleged any  
4 potential or actual infringement of their  
5 trademark or service mark rights by your company's  
6 use of Rocket Sports?

7           A     No.

8           MR. KODA: Let me add one piece.  
9 Outside of this proceeding, of course.

10          MR. LEE: Outside of this proceeding,  
11 yes, thank you.

12          Q     Does Rocket Sports, LLC ever use the  
13 Mark, Rocket, by itself to identify its services?

14          A     No.

15          Q     Has -- strike this last question.

16          MR. LEE: Let's go ahead and show  
17 that -- mark that Registration, 623.

18               (Exhibit 2 was marked for identification  
19 and is attached to the transcript.)

20          Q     I've just handed you a document that  
21 we've marked as Exhibit SK-2. Do you recognize  
22 that document?

1           A     Yes, I do.

2           Q     Could you identify it for the record?

3                 MR. KODA: And counsel did receive a  
4 copy.

5                 MR. LEE: Yes, yes.

6           A     It is my Rocket Sports wordmark with the  
7 Registration Number 5,297,623.

8           Q     Were you involved in the application  
9 process for this registration?

10          A     Yes.

11          Q     And how so?

12          A     I picked the name. And things in Class  
13 35 that we have selected, I helped pick those out.

14          Q     Okay. So what you're talking about is  
15 identification of services --

16          A     Yeah.

17          Q     -- that are listed on the registration;  
18 right?

19          A     Yeah.

20          Q     Beginning with "marketing services" and  
21 then ending with the words "sports equipment"?

22          A     Correct.

1 Q Okay. You said you helped pick those  
2 out. Who else helped in that regard?

3 A Mr. Koda.

4 MR. KODA: Let me object to the point in  
5 case we get into issues of attorney/client  
6 privilege.

7 MR. LEE: Okay.

8 Q So before the application was filed, you  
9 had a chance to, I guess, review the full list and  
10 you ultimately approved them; is that correct?

11 A Yeah.

12 Q Were you involved at all after the  
13 application was filed and during the examination  
14 process?

15 A I don't recall.

16 Q Okay. That's fine.

17 When did you first start -- as  
18 specifically as you could recall, when did you  
19 first start using the mark anywhere?

20 A So we produced a document that has the  
21 first time I used it, it was actually on a Big  
22 Cartel website that was before January 10th, 2017.

# EXHIBIT

2

## Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	87076555
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 111
<b>EXTENSION OF USE</b>	NO
<b>MARK SECTION</b>	
<b>MARK</b>	https://tmng-al.uspto.gov/resting2/api/img/87076555/large
<b>LITERAL ELEMENT</b>	ROCKET SPORTS
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>OWNER SECTION (current)</b>	
<b>NAME</b>	ROCKET SPORTS, LLC
<b>STREET</b>	4 BAEDERWOOD COURT
<b>CITY</b>	DERWOOD
<b>STATE</b>	Maryland
<b>ZIP/POSTAL CODE</b>	20855
<b>COUNTRY</b>	United States
<b>OWNER SECTION (proposed)</b>	
<b>NAME</b>	ROCKET SPORTS, LLC
<b>STREET</b>	4 BAEDERWOOD COURT
<b>CITY</b>	DERWOOD
<b>STATE</b>	Maryland
<b>ZIP/POSTAL CODE</b>	20855
<b>COUNTRY</b>	United States
<b>EMAIL</b>	pwkoda@gmail.com
<b>AUTHORIZED TO COMMUNICATE VIA E-MAIL</b>	Yes
<b>GOODS AND/OR SERVICES SECTION</b>	
<b>INTERNATIONAL CLASS</b>	035
	Marketing services for the sports equipment of others; Marketing services in the field of sports equipment; Marketing services, namely, promoting or advertising the goods and services of others; Marketing, promotional and

CURRENT IDENTIFICATION	advertising services provided by mobile telephone connections; Marketing, advertising, and promoting the retail goods and services of others through wireless electronic devices; Promoting and marketing the goods and services of others by distributing advertising material, coupons and discount offers via text messages; Promoting and marketing the goods and services of others by websites and social media; Promoting the goods and services of others by means of word-of-mouth and nontraditional marketing programs; Promoting the sale of goods and services of others by websites and social media; Advertising and marketing services, namely, promoting the goods and services of others; Advertising, marketing, and promoting the goods and services of others via websites and social media; On-line advertising and marketing services; Providing marketing services for the sports equipment industry; Reseller services, namely, distributorship services in the field of sports equipment
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	01/10/2017
FIRST USE IN COMMERCE DATE	01/10/2017
SPECIMEN FILE NAME(S)	<a href="#">\\TICRS\EXPORT17\IMAGEOUT 17\870\765\87076555\xml13\SOU0002.JPG</a>
	<a href="#">\\TICRS\EXPORT17\IMAGEOUT 17\870\765\87076555\xml13\SOU0003.JPG</a>
	<a href="#">\\TICRS\EXPORT17\IMAGEOUT 17\870\765\87076555\xml13\SOU0004.JPG</a>
	<a href="#">\\TICRS\EXPORT17\IMAGEOUT 17\870\765\87076555\xml13\SOU0005.JPG</a>
SPECIMEN DESCRIPTION	The specimen consists of a screen image showing the owner's main web page with three additional screen images collectively showing the owner's electronic shopping cart associated with the owner's web site.
REQUEST TO DIVIDE	NO
PAYMENT SECTION	
NUMBER OF CLASSES IN USE	1
SUBTOTAL AMOUNT [ALLEGATION OF USE FEE]	100
TOTAL AMOUNT	100
SIGNATURE SECTION	
DECLARATION SIGNATURE	/pwk/
SIGNATORY'S NAME	Paul W. Koda
SIGNATORY'S POSITION	Attorney of record, District of Columbia bar member
DATE SIGNED	07/22/2017
SIGNATORY'S PHONE NUMBER	240-997-1116
FILING INFORMATION	
SUBMIT DATE	Sat Jul 22 13:59:20 EDT 2017
TEAS STAMP	USPTO/SOU-XXX.XX.XXX.XX-2 0170722135920746773-87076 555-5103565f84867f714d1cc bdab22c5bc2ea652c2dc555fa 5625c5a5033c3b786f18-CC-6 192-20170722133934078896



## Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

To the Commissioner for Trademarks:

**MARK:** ROCKET SPORTS(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/87076555/large>)

**SERIAL NUMBER:** 87076555

The applicant, ROCKET SPORTS, LLC, having an address of

4 BAEDERWOOD COURT  
DERWOOD, Maryland 20855  
United States

pwkoda@gmail.com (authorized)

is submitting the following allegation of use information:

For International Class 035:

Current identification: Marketing services for the sports equipment of others; Marketing services in the field of sports equipment; Marketing services, namely, promoting or advertising the goods and services of others; Marketing, promotional and advertising services provided by mobile telephone connections; Marketing, advertising, and promoting the retail goods and services of others through wireless electronic devices; Promoting and marketing the goods and services of others by distributing advertising material, coupons and discount offers via text messages; Promoting and marketing the goods and services of others by websites and social media; Promoting the goods and services of others by means of word-of-mouth and nontraditional marketing programs; Promoting the sale of goods and services of others by websites and social media; Advertising and marketing services, namely, promoting the goods and services of others; Advertising, marketing, and promoting the goods and services of others via websites and social media; On-line advertising and marketing services; Providing marketing services for the sports equipment industry; Reseller services, namely, distributorship services in the field of sports equipment

The mark is in use in commerce on or in connection with all of the goods/services, or to indicate membership in the collective organization listed in the application or Notice of Allowance or as subsequently modified for this specific class.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 01/10/2017, and first used in commerce at least as early as 01/10/2017, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) The specimen consists of a screen image showing the owner's main web page with three additional screen images collectively showing the owner's electronic shopping cart associated with the owner's web site..

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

The applicant is not filing a Request to Divide with this Allegation of Use form.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for the allegation of use for 1 class.

### Declaration

The signatory believes that the applicant is the owner of the mark sought to be registered.

**For a trademark or service mark application**, the mark is in use in commerce on or in connection with all the goods/services in the application or notice of allowance, or as subsequently modified.

**For a collective trademark, collective service mark, collective membership mark application**, the applicant is exercising legitimate control over the use of the mark in commerce by members on or in connection with all the goods/services/collective membership organization in the application or notice of allowance, or as subsequently modified.

**For a certification mark application**, the applicant is exercising legitimate control over the use of the mark in commerce by authorized



users on or in connection with the all goods/services in the application or notice of allowance, or as subsequently modified, and the applicant is not engaged in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

The specimen(s) shows the mark as used on or in connection with the goods/services/collective membership organization in commerce.

To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.

To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Signature: /pwk/ Date Signed: 07/22/2017

Signatory's Name: Paul W. Koda

Signatory's Position: Attorney of record, District of Columbia bar member

Signatory's Phone: 240-997-1116

RAM Sale Number: 87076555

RAM Accounting Date: 07/24/2017

Serial Number: 87076555

Internet Transmission Date: Sat Jul 22 13:59:20 EDT 2017

TEAS Stamp: USPTO/SOU-XXX.XX.XXX.XX-2017072213592074

6773-87076555-5103565f84867f714d1ccbda2

2c5bc2ea652c2dc555fa5625c5a5033c3b786f18

-CC-6192-20170722133934078896

# EXHIBIT

3


Rocket Sports

rocketsports.us

80%

Search

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# ROCKET SPORTS<sup>SM</sup>

[Epoch](#) [Shafts](#) [Heads](#) [Pads](#) [Balls](#) [Men's Apparel](#) [Women's Apparel](#) [Shop All](#)


ROCKET SPORTS Brand - The premier provider of lacrosse equipment and apparel.

Featured Products




Prequel Lacrosse Head  
\$99.99

CHOOSE OPTIONS




Signature Lacrosse Ball  
\$180.00

CHOOSE OPTIONS



Integra Gloves  
\$154.99

CHOOSE OPTIONS



Voltage Tee  
\$22.50

CHOOSE OPTIONS





# ROCKET SPORTS<sup>SM</sup>

[Epoch](#) [Shafts](#) [Heads](#) [Pads](#) [Balls](#) [Men's Apparel](#) [Women's Apparel](#) [Shop All](#)

[Home](#) > [Previous Page](#) > [Your Shopping Cart](#)

## Your Shopping Cart


[PROCEED TO CHECKOUT](#)

Cart Items	Qty	Item Price	Total	
 <b>Prequel Lacrosse Head</b> Mesh: None	1	\$99.99	\$99.99	

Rocket Sports - Shopping Cart

https://store-exid4tmjag.mybigcommerce.com/cart.php

Search

Cart Items	Qty	Item Price	Total
<div><div></div><div><div>Prequel Lacrosse Head</div><div>Mesh: None</div><div>Change</div></div></div>	<div>1</div>	\$99.99	\$99.99

Subtotal

\$99.99

ESTIMATE SHIPPING & TAX

Grand Total \$99.99

PROCEED TO CHECKOUT

PayPal Checkout

The safer, easier way to pay

-- or use --

Check out with PayPal

CLICK HERE TO KEEP SHOPPING

Coupon Code

If you have a coupon code, enter it in the box below and click 'Go'.

GO

Redeem Gift Certificate

To pay for this order using a gift certificate, enter the gift certificate code in the box below and click 'Go'.

GO

Rocket Sports - Shopping Cart

https://store-exid4tmjzg.mybigcommerce.com/cart.php

Search

☆ | 📁 | ♥ | ⬇ | 🏠 | ☰

PROCEED TO CHECKOUT

PayPal Checkout

The safer, easier way to pay

-- OF US\$ --

Check out with **PayPal**

CLICK HERE TO KEEP SHOPPING

### Coupon Code

If you have a coupon code, enter it in the box below and click 'Go'.

GO

### Redeem Gift Certificate

To pay for this order using a gift certificate, enter the gift certificate code in the box below and click 'Go'.

GO

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# EXHIBIT

4



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# Transcript of Stephen Koda

**Date:** May 23, 2019

**Case:** Rocket Sports, LLC -v- Kan

**Planet Depos**

**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

**[www.planetdepos.com](http://www.planetdepos.com)**



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

-----X

ROCKET SPORTS, LLC, :

Opposer, :

-v- : Case No.: 91237356

DEXTER KAN,

Applicant. :

-----X

Deposition of STEPHEN KODA

Ellicott City, Maryland

Thursday, May 23, 2019

9:57 a.m.

Job No.: 242831

Pages: 1 - 245

Reported by: Fazier Walle

1                   Deposition of STEPHEN KODA, held at  
2                   the offices of:

3  
4  
5  
6                   LAW OFFICES OF ROSENBERG, KLEIN & LEE  
7                   3458 Ellicott Center Drive  
8                   Suite 101  
9                   Ellicott City, Maryland 21043  
10                  (410) 465-6678

11  
12  
13                  Pursuant to Notice, before Fazier Walle,  
14                  a Shorthand Court Reporter and Notary Public in  
15                  and for the State of Maryland.

1           MR. LEE: Okay, yeah. So I'm going to  
2 be covering other registrations, but they are all  
3 part of that disclosure.

4 BY MR. LEE:

5           Q     Mr. Koda, have you had a chance to  
6 review it?

7           A     Yes.

8           Q     This registration, it shows the  
9 registration date of December 13, 2011; does it  
10 not?

11          A     December 13, 2011, yes.

12          Q     Yes.

13          A     Yes.

14          Q     Your testimony just now was that you  
15 were not aware of this Mark before; correct?

16          A     I did not know that this Mark existed  
17 inside Class 35.

18          Q     Were you aware of it being -- existing  
19 outside 35 or --

20          A     I've heard the words "Rocket Media"  
21 before. I didn't know it was -- that this is what  
22 it consisted of. I never looked into it.

1 Q Fair enough.

2 When did you hear of Rocket Media?

3 A Just like in passing, like I just heard  
4 those words as together. I didn't know it was  
5 this right here (indicating).

6 Q Okay. But when would that have been?

7 A I -- I don't recall. No idea.

8 Q Would it have been in the past six  
9 months, past year, past couple years, can you give  
10 me some time frame?

11 A Not in the past five months.

12 Q And do you recall the context in which  
13 you heard that?

14 A No.

15 Q Would you say this Mark is similar to  
16 your company's mark "Rocket Sports"?

17 MR. KODA: I'm going to object. This is  
18 calling for a legal conclusion.

19 Q Based on your understanding as a  
20 layperson, would you say this Mark is similar to  
21 your Mark -- or the company's Mark, Rocket Sports?

22 A I have no idea.

1           Q     Do you perceive any differences between  
2     this Mark and your company's Mark, Rocket Sports?

3           MR. KODA: Let me add to this that, in  
4     order to make such a judgment call, you would have  
5     to take a look at what's going on out in the  
6     marketplace. This is a stand-alone document that  
7     makes it very difficult to make such an analysis.

8           MR. LEE: Well, I would object to that  
9     coaching of the witness. And, you know, I -- your  
10    objection is noted for the record, Attorney Koda,  
11    however I would still like the witness's  
12    impressions.

13          A     What was the question?

14          Q     My question was, what differences do you  
15    perceive between Rocket Media as shown in this  
16    SK-12 exhibit and your company's Mark, Rocket  
17    Sports?

18          A     Well, I'm not an attorney, but media is  
19    a different word than sports. Doesn't look like  
20    they do anything with lacrosse, doesn't look like  
21    they do anything with sports. They're an agency,  
22    an advertising agency, which I'm not an

1 advertising agency.

2 I don't track goods, services and  
3 brands. "Through all public communication means,"  
4 I don't even know what that means. It looks like  
5 they're a different channel of trade than I am.

6 Q Can you explain that?

7 A It looks like they're -- you hired  
8 them -- I don't know, I have no idea. I've never  
9 seen anything other than this document that you're  
10 putting in front of me.

11 Q Are you reading from the document when  
12 you say "you hired them"?

13 A Well, based on -- it says: Particularly  
14 specializing in the use of mobile, social and  
15 online print media to drive consumer interest.

16 It seems like you hire them to help you  
17 with your online presence and your print media and  
18 stuff like that, which is a completely different  
19 thing to what I do, and they don't do anything  
20 with sports, which is my channel.

21 Q So completely different thing referring  
22 to, what, hiring them for --

1           A     Yeah.

2           Q     -- performing these services?

3           A     It -- I know absolutely nothing other  
4     than what you're putting in front of me.

5           Q     Sure, understood. Understood.

6           A     But based on that, it seems like you  
7     hire them to help promote your social media. Like  
8     you don't know what you're doing, you hire them.

9                     So, for example, if I needed someone to  
10    run my Instagram, Rocket Media seems like a  
11    company that would be able to say, hey, post this  
12    at this time and this is how you're going to get  
13    the most clicks or whatever. I don't know.

14                    But there's no way for me to -- I just  
15    don't know.

16          Q     In your opinion, what is the dominant  
17    portion of the Mark, Rocket Media?

18          A     What's your definition of "dominant"?

19          Q     The part that stands out more.

20                 MR. KODA: I'm going to object with  
21    respect to making a legal conclusion. I mean,  
22    there's a statement in here about "no claim is

1 made to the exclusive right to use "Media," apart  
2 from the Mark as shown."

3 Q So I'm asking for your opinion, if you  
4 look at Mark Rocket Media, which part of the Mark  
5 appears to be dominant to you?

6 A I don't know.

7 Q All right. So the registration -- you  
8 were just looking at that -- includes, among other  
9 things, if you see the first line, "advertising,  
10 marketing and promotion services," semicolon.

11 Do you see that?

12 A So three -- so it says, For:  
13 Advertising agencies," semicolon. Starting from  
14 "advertising"?

15 Q Yes.

16 A "Advertising, marketing and promotion  
17 services."

18 Q Are these services reflected in the  
19 services identified in your Rocket Sports  
20 registrations, your meaning the company's Rocket  
21 Sports registrations?

22 A Would you like me to go look at SK-2 --



1 Q Sure.

2 A -- and see if those words match up?

3 Q SK-2 and SK-11.

4 A Okay. Which we've said are the same.

5 Marketing and promotion -- wait.

6 "Advertising marketing, and promotion services."

7 I do not see that exact string of text  
8 in my -- either of my Registered Marks -- either  
9 of the company's Registered Marks.

10 Q You do not see the exact string of text.

11 A That's correct.

12 Q How about with the words jumbled out of  
13 order, do you see that reflected in your services?

14 MR. KODA: Would you clarify that.

15 MR. LEE: Sure, sure, as soon as I can  
16 find my copy of the registration.

17 Q Okay. If I could direct your attention  
18 to -- let's take SK-2, recognizing both SK-2 and  
19 SK-11 have identical services, if you go to the  
20 second line after the first semicolon there, could  
21 you read from that line on to the end of the third  
22 line?

1           A     So "marketing services, namely promoting  
2     or advertising the goods and service of others;  
3     marketing, promotional and advertising services  
4     provided by mobile."

5           Q     And then moving down to the very next  
6     line where it says, it starts with "marketing,"  
7     would you read from there to the end of the -- to  
8     the semicolon on the next line?

9           A     "Marketing, advertising, and promoting  
10    the retail goods and services of others through  
11    wireless electronic devices."

12          Q     So having read that, I would ask again,  
13    are the services identified in Rocket Media's  
14    registration for advertising, marketing and  
15    promoting services, is that reflected in the  
16    services identified in your registration SK-2 and  
17    also registration SK-11?

18          A     It's impossible for me to understand  
19    what they -- what the people who own the Rocket  
20    Media Mark in SK-12 are using their Mark for.

21          Q     All right. I'm just asking you to take  
22    the words "advertising, marketing and promotion

1 services," all right, and to the best of your  
2 understanding, answer the question whether that is  
3 reflected in the Rocket Sports registrations SK-2  
4 and SK-11.

5 MR. KODA: Objection. That's been asked  
6 and answered.

7 Q All right. We'll move on.

8 I'd like you to go to this part on the  
9 second line of the services for Rocket Media  
10 starting with the second full word, "marketing."  
11 Okay?

12 A Yes.

13 Q If you go all the way down towards that  
14 one.

15 A Wait. Where am I reading until?

16 Q Hold on, I'm trying to count the lines  
17 here.

18 If you read, that's the second line, to  
19 the beginning of the sixth line.

20 A Okay. So "and action"?

21 Q Uh-huh.

22 A Okay. "Marketing and consulting

1 services in the field of promoting and tracking  
2 the goods, services and brands of others through  
3 all public communication means, particularly  
4 specializing in the use of mobile, social, online  
5 and print media to drive consumer interest,  
6 engagement and action."

7 Q Now, are these services reflected in the  
8 services identified in your two registrations,  
9 SK-2 and SK-11?

10 A They are not reflected in either.

11 Q And why are they not?

12 A Because I do not provide marketing and  
13 consulting services in the field of promoting and  
14 tracking the goods, services and brands of others  
15 through all public communication means,  
16 particularly specializing in the use of mobile,  
17 social, online and print media to drive consumer  
18 interest, engagement and action.

19 Q That was a lot.

20 You don't do any of that?

21 A I don't know the way that they're using  
22 it in their business and it's impossible for me to

1 know the way that they're using it. I -- I just  
2 can't speculate as to what they're using it for.

3 Q I'd like you to move on and read the  
4 rest of that starting from "social media."

5 A "Social media strategy and marketing  
6 consultancy focusing on helping clients create and  
7 extend their product and brand strategies by  
8 building virtually engaging marketing solutions in  
9 Class 35."

10 Q Now, are these services reflected in the  
11 services identified in your two registrations, the  
12 company's two registrations, SK-2 and SK-11?

13 A No, they do not.

14 Q Why is that?

15 A Well, I don't provide any consulting for  
16 anyone, I don't help clients create and extend  
17 their product and brand strategies by building  
18 virtually engaging marketing solutions in Class  
19 35. But, again, I don't know how they use their  
20 mark. I don't know what they do as a business.

21 Q Okay. Now, going back to the Rocket  
22 Media identification of services, do you see

1 anything in the services that are listed in this  
2 registration for Rocket Media which would preclude  
3 use involving sports or sports equipment of any  
4 kind?

5 MR. KODA: Objection. You're asking for  
6 a legal conclusion.

7 MR. LEE: No, I'm just asking for an  
8 observation.

9 A Well, the first line here says, "For:  
10 Advertising agencies." That's something I am not,  
11 I'm not an advertising agency. And my contention  
12 is I don't -- I just have no idea what they do.

13 Q Okay. Let me clarify my question. I'm  
14 not asking you to explain to me what they do.

15 I'm asking you to review those services  
16 and tell me if you see anything in those listed  
17 services which would preclude use that involves  
18 sports or sports equipment of any kind.

19 A I don't see anything regarding sports  
20 equipment on SK-12 or in the sports equipment  
21 industry.

22 Q So is that a "no" to my question?

1           A     Correct.

2           Q     Taken as a whole, would you say the  
3 Mark, Rocket Sports, is similar to this Mark,  
4 Rocket Media?

5           A     In what way?

6           Q     In the impression that it makes to you.

7           A     Oh, definitely not. I do Rocket Sports  
8 and they're doing something completely different  
9 with Rocket Media. I sell lacrosse equipment. I  
10 don't see anything about lacrosse equipment.

11          Q     So the distinguishing part of the Mark  
12 is "Sports" in your case and "Media" in their  
13 case; is that correct?

14          A     If you're asking if I look at the  
15 Registered Number 5,297,623, which says Rocket  
16 Sports, and Registration Number 4,069,932, the  
17 R-O-C-K-E-T in Rocket Sports is the same as  
18 R-O-C-K-E-T in Rocket Media. The difference in  
19 those two Marks is, I guess, the word "Sports" and  
20 "Media," if you look at the exact text. But,  
21 again, I don't know what Rocket Media does.

22          Q     But when I ask you about the impression,

1 and I don't want to misquote, but could we go back  
2 and get Mr. Koda's answer to the question of what  
3 different impression the two Marks make.

4 (Record read.)

5 Q So my question now is, is the  
6 distinguishing factor between the two Marks the  
7 impression that "Sports" makes as opposed to  
8 "Media"?

9 A My impression when I look at Rocket  
10 Media is an independent company from Rocket Sports  
11 where there has been no instance of confusion, and  
12 that's probably why I've heard of them --

13 Q Now, when you say "no instance -- "

14 A -- as --

15 Q -- of confusion" -- I'm sorry, finish  
16 your answer and then I'll ask.

17 A I don't -- I don't know how I can have  
18 an impression of something I don't know.

19 Q Let me ask you the next question then,  
20 moving on.

21 Is it your understanding that your  
22 company's Rocket Sports Registration gives your



1 company the right to exclude others from using the  
2 Mark, Rocket, in connection with services covered  
3 by your registrations?

4 A Legal conclusion? I'm not a lawyer.

5 MR. KODA: I object.

6 Q I understand you're not an attorney, but  
7 your understanding is what I'm asking for.

8 A My understanding of what?

9 Q Your understanding that the Rocket  
10 Sports Registration gives your company the right  
11 to exclude others from using the Mark, Rocket, in  
12 connection with services covered by that  
13 Registration, is that your understanding?

14 A That my Trademark is a piece of  
15 intellectual property that protects me, yes, I  
16 understand that.

17 Q Well, but that was not my question.

18 My question was, does -- do you  
19 understand the Registration for Rocket Sports to  
20 give your company the right to exclude others from  
21 using the Mark, Rocket, in connection with the  
22 same services that are identified in your

1 Registrations?

2 A So you're saying that if someone were to  
3 file a Trademark for just the word "Rocket," no  
4 "Sports"?

5 Q I'm saying if someone were to use the  
6 word "Rocket" for the same services that are  
7 identified in your Registration as SK-2 and SK-11,  
8 is it your understanding that those Registrations  
9 for Rocket Sports would give your company the  
10 right to make them stop?

11 MR. KODA: And, again, this is not an  
12 answer that is a legal conclusion.

13 Q Right. I'm asking for your  
14 understanding as a layperson.

15 A So you're saying if someone has -- so  
16 this thing up here says "Rocket" and it says  
17 "marketing services for the sports equipment of  
18 others." My understanding is someone is not  
19 allowed to do that.

20 Q Okay. Someone with the wordmark just  
21 "Rocket" is not allowed to do that?

22 A Yeah, but I don't know if that's --

1 Q Right.

2 A -- the right answer.

3 Q Is it your understanding that that's  
4 true for the other services identified below what  
5 you just read?

6 A Yes.

7 Q Thank you.

8 MR. LEE: I want to mark another  
9 exhibit, this will be SK-13, I believe.

10 (Exhibit 13 was marked for  
11 identification and is attached to the transcript.)

12 Q I'm going to hand you, Mr. Koda, what  
13 I've just had marked as Exhibit SK-13.

14 I've handed Attorney Koda a copy as  
15 well.

16 Before we get to that, however, are you  
17 aware of other Federal Registration in Class,  
18 International Class 28 that have the term "Rocket"  
19 in them for the Mark?

20 A No.

21 Q All right. So I'm going to show you  
22 this Registration, if you take a look -- take a

# EXHIBIT

5



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# Transcript of Stephen Koda

**Date:** May 23, 2019

**Case:** Rocket Sports, LLC -v- Kan

**Planet Depos**

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1       IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
2       BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
3       -----x  
4       ROCKET SPORTS, LLC,                               :  
5                               Opposer,                               :  
6                       -v-                               : Case No.: 91237356  
7       DEXTER KAN,                               :  
8                               Applicant.                               :  
9       -----x  
10  
11                               Deposition of STEPHEN KODA  
12                               Ellicott City, Maryland  
13                               Thursday, May 23, 2019  
14                               9:57 a.m.  
15  
16  
17  
18  
19  
20       Job No.: 242831  
21       Pages: 1 - 245  
22       Reported by: Fazier Walle

1                   Deposition of STEPHEN KODA, held at  
2                   the offices of:

3  
4  
5  
6                   LAW OFFICES OF ROSENBERG, KLEIN & LEE  
7                   3458 Ellicott Center Drive  
8                   Suite 101  
9                   Ellicott City, Maryland 21043  
10                  (410) 465-6678

11  
12  
13                  Pursuant to Notice, before Fazier Walle,  
14                  a Shorthand Court Reporter and Notary Public in  
15                  and for the State of Maryland.

1                   When was the company founded?

2           A       I believe on or about June 19, 2016.

3           Q       And how did it come to start? How did  
4 that come about, the founding of the company?

5           A       The idea?

6           Q       Well, just --

7           A       Or actually filing an LLC?

8           Q       Well, I mean, just the whole, yeah, the  
9 idea of the company forming. How did it happen?

10          A       So I went to Gaithersburg, which isn't  
11 like known for lacrosse. We won, I don't know,  
12 two games and lost 11. And so we walked out on  
13 the field and we had these yellow banana uniforms  
14 and jerseys on and everyone had different gloves,  
15 different shafts, different heads, it just  
16 didn't -- we didn't look like a team. And then  
17 we'd go and play Winston Churchill or one of the W  
18 schools, and they looked like a major league  
19 lacrosse team, they looked professional. So the  
20 game is already lost before you go out onto the  
21 field because there's a mental part of the game  
22 beforehand. And so I wanted to change that.



1                   And so I believe this was before I  
2     started Rocket Sports, I went to STX, their  
3     warehouse sale, and I was talking with a -- it was  
4     the Vice President of Global Sales, I believe was  
5     his title. I forgot his name. But they were  
6     selling a lot of lacrosse equipment and I was like  
7     this would be great to get a bunch of these  
8     shafts, either all silver or all blue, because  
9     Gaithersburg is blue and gold, so silver would --  
10    it's a color that any school can wear or use, so  
11    it would be great to have one team pack,  
12    essentially, for each player and then we could all  
13    go out on the field looking exactly the same.

14                  And that's what I wanted. That's what  
15    it started as, as making Gaithersburg look the  
16    best. And then it blossomed from there.

17           Q     So you went and you arranged for --  
18    coordinated equipment, uniforms and -- and then  
19    just expanded from there product-wise?

20           A     We didn't do the uniforms at first. It  
21    was just the sport -- it was just the lacrosse  
22    equipment.

1           Q     So this would have been when you were a  
2 student still at Gaithersburg or --

3           A     Yes. Yeah, yeah.

4           Q     So around what --

5           A     My senior year, whenever the STX  
6 warehouse sale was, it was in the spring season  
7 because our coach told us about it. So anywhere  
8 between March and June.

9           Q     And so was this an individual endeavor,  
10 you did it yourself, or was there other people  
11 involved?

12          A     Well, Mr. Koda drove me to the STX.

13          Q     Mr. Koda, meaning Mr. Paul Koda?

14          A     Mr. Paul Koda.

15          Q     Who happens to be your father?

16          A     Correct.

17          Q     And so when -- I mean, just kind of walk  
18 me through the steps, you went and you talked to  
19 STX and I imagine whoever else you could to find  
20 the source for these goods, and then what did you  
21 do?

22          A     After talking -- that's like two years

1 of story. So what specifically are you looking  
2 for? Because I can go into that.

3 Q Just a sense of how the whole thing  
4 developed. I mean, you just testified that you  
5 went, you saw the need; right?

6 A Uh-huh.

7 Q And basically my understanding is that  
8 you saw the need for a more coordinated team.

9 A Uh-huh.

10 Q Just appearance-wise and all that.

11 So you saw the need and you found a  
12 supplier for coordinated equipment?

13 A Uh-huh.

14 Q And then you said it just kind of went  
15 from there, and I just want to know --

16 A What it was.

17 Q Yeah -- what the went from there was.

18 A So at the STX warehouse sale, I  
19 purchased around \$1300, which is, I think, all my  
20 money I had at the time to buy shafts, heads,  
21 don't think they had mesh, and brought them back  
22 in the car and was selling them to anyone that I

1 could find that needed a lacrosse stick.

2 I had some red shafts because I wanted  
3 to expand to QO because I knew QO was really good  
4 and we were playing them soon, so maybe I could  
5 get an introduction with their coach.

6 Q QO?

7 A Quince Orchard High School, yeah.

8 And what else are you looking for?

9 Q So you started selling these -- you  
10 purchased them, you started selling them out of  
11 your car.

12 A Yes.

13 Q And then did you have another -- I mean,  
14 did you purchase more, how did sales go?

15 A The sales of the -- I probably sold 700  
16 out of the \$1300 of the shafts I bought. And then  
17 we -- or I was trying to get another like reorder  
18 essentially from STX, but I actually have a  
19 wholesaler account with them, and then  
20 communications with the -- my contact at STX  
21 eventually just -- they just stopped, they fizzled  
22 out effectively.

1                   He wanted me to be a team sales dealer  
2                   and I would get -- I believe it was 10 percent --  
3                   I'm not exactly sure if it was 10 percent -- of  
4                   everything I sold, to the teams, but I liked the  
5                   idea of working for myself, so ...

6               Q       Okay. So 10 percent, can you explain  
7                   that, when you're a teams dealer, how does that  
8                   work?

9               A       I'd have to look at the e-mails to be  
10                   completely sure, but the way I recall it is, they  
11                   offer me their catalog, I go to a high school, I  
12                   meet with whoever makes the decision at that high  
13                   school for purchasing goods, and they say, okay,  
14                   we need --

15                   MR. KODA: Let me interject for just a  
16                   minute. To the extent that this is covered under  
17                   confidentiality with STX, I would --

18                   MR. LEE: We'll mark it confidential?

19                   MR. KODA: Yes.

20                   MR. LEE: Sure. That's fine. That's  
21                   fine with us.

22                   If you would just, you know, tell us

1 representing you to get that organized?

2 A Yes, Mr. Koda helped me start the LLC.

3 Q Okay. Now, other than legally forming  
4 the LLC, practically speaking, business-wise, what  
5 else did you do when you started the company?

6 A A lot. So opened a SunTrust bank  
7 account, I don't know if it was on the 19th of  
8 June, but sometime shortly thereafter, I would  
9 assume, a website with BigCommerce, adding  
10 products to the website, getting a supplier,  
11 contacting coaches, just all the aspects of  
12 business pretty much.

13 Q Was this still a one-person operation or  
14 did you have others involved at this stage?

15 A It's a single-member LLC.

16 Q So you were doing all the legwork at  
17 this point --

18 A Correct.

19 Q -- to try and get some business going?

20 A Uh-huh.

21 Q Other than lacrosse equipment, did you  
22 go into other -- you know, other equipment outside

1 lacrosse?

2 A No.

3 Q What -- you know, did the business grow  
4 from there at that point after June 19th of 2016?

5 A Yes.

6 Q Can you elaborate on that?

7 A Well, in June of 2016, I had zero  
8 dollars in sales, and eventually I had more sales.

9 Q And can you explain how you got those  
10 more sales or what --

11 A So the first thing -- so after getting  
12 Epoch Lacrosse as a supplier, they -- I had to  
13 open an account with them, they sent me some  
14 inventory, and then I got a coaching job at Wilson  
15 High School and they were looking for the exact  
16 thing that I set out to start Rocket Sports with,  
17 they were looking for a uniform set -- uniform  
18 meaning same, not meaning uniforms (indicating) as  
19 in what you wear to a game.

20 And so I supplied them with over \$8,000  
21 worth of sticks, shafts, mesh, gloves, shoulder  
22 pads, elbow caps, armed guards, the full set,

1 everything.

2 Q And when you supplied them, how did that  
3 work? Do you -- was it the same sort of  
4 arrangement where the supplier would drop-ship and  
5 you get a commission or --

6 A No.

7 Q How does it work then, or how did it  
8 work?

9 A The -- I purchased goods, they came to  
10 my company, the company sent them to Wilson High  
11 School and like it was a triangle, it wasn't  
12 drop-shipped.

13 Q So you would purchase and then you would  
14 resell at a profit; right?

15 A Correct.

16 Q You mentioned Epoch?

17 A Epoch.

18 Q Epoch Lacrosse was it?

19 A Yeah.

20 Q Any other -- what other companies did  
21 you deal with at this time?

22 A At what time?



1           Q     When you were starting to get the  
2 business going like this, expanding the business?

3           A     I went to StringKing.

4                     Epoch Lacrosse was the last one I went  
5 to because they're the ones that said yes.

6                     I went to StringKing before, I went to  
7 East Coast Dyes before, actually had a meeting in  
8 Baltimore with them. I went to STX, Warrior, and  
9 I think Maverik's with Warrior. So I think those  
10 would be combined. Cascade. And that's all I can  
11 remember off the top of my head.

12          Q     Of those, Epoch decided to work with  
13 you?

14          A     Correct.

15          Q     Or you decided to work with Epoch, vice  
16 versa?

17          A     Vice versa, yes.

18          Q     Were there any other companies that you  
19 developed working relationships with beyond Epoch?

20          A     Are you talking about from now, looking  
21 all the way back into the past? Or are you  
22 talking about on or about June 19th in the early

1 beginnings of the company?

2 Q If you can just walk me through all of  
3 them, I'm interested in --

4 A Okay.

5 Q Yes, the answer is yes.

6 A So recently -- well, not recently --  
7 more recent than Epoch, after Epoch, Signature  
8 Lacrosse had contacted me and one of their sales  
9 rep, Charlie Cummins came -- called me up as I was  
10 walking out of class and pitched me on selling  
11 their lacrosse balls.

12 And I had to think about it, and then he  
13 called me up again later that -- either later that  
14 day or later, a couple days afterwards, I can't  
15 remember, and I agreed to sell their lacrosse  
16 balls.

17 So he sent me a Rocket Sports lacrosse  
18 ball because they embroidered -- or they don't  
19 embroider -- they engrave logos and stuff into  
20 their lacrosse balls. So he sent me one of those  
21 as like a welcome to our company type thing.

22 And now I currently supply mesh and

1 lacrosse balls from --

2 Q Through that company?

3 A Signature Lacrosse manufactures them. I  
4 sell them.

5 Q What other companies do you have  
6 relationships with?

7 A Okay, so after that is when I expanded  
8 from lacrosse to also adding an apparel line and  
9 that is my main suppliers --

10 THE WITNESS: Is this privileged to tell  
11 him my suppliers for this?

12 MR. KODA: No, I don't think it's  
13 privileged, but if you get into the information  
14 related to what the terms of that are, I would  
15 have it marked as confidential.

16 MR. LEE: Okay.

17 A So I do -- so there's two wholesalers I  
18 work with mainly, and it's Order ACC and Alpha  
19 Broder and they are -- I would define them as  
20 wholesalers, I guess.

21 And then there's Holloway, Augusta and  
22 High Five, which are all sister companies. Then

1       there's Jerzees, Hanes, Soffe, S-O-F-F-E, Badger  
2       Sport. And there's more, I'm pretty sure, but I  
3       just don't remember them all.

4               Q       And what kind of apparel -- all the  
5       companies you just recently -- you mentioned after  
6       Stringer, they're apparel suppliers?

7               A       Correct.

8               Q       What kind of apparel?

9               A       Anywhere from a hundred percent cotton  
10       to a hundred percent polyester or spandex sports  
11       apparel, but --

12              Q       Sports apparel meaning like uniforms --

13              A       I can do uniforms, I can do shooter  
14       shirts, I can do anything pretty much.

15              Q       What have you --

16              A       What have I supplied?

17              Q       Yeah, what have you supplied, yes.

18              A       I have supplied pinnies, meaning like  
19       the -- you guys know what a pinney is, I'm  
20       assuming; right?

21              Q       No, I don't.

22              A       You wear it over a jersey and it has --

1     it's like your warm-up jersey essentially, it has  
2     your number on it, so that like -- so offense  
3     wears white and they reverse and they --

4             Q     I see.

5             A     If your colors are white and blue --

6             Q     It's like an outer jersey?

7             A     Yes.

8             Q     Quarterbacks wear those bright red ones,  
9     those obnoxious ones.

10            A     Yes, and like -- yeah, yeah.

11            Q     So they don't get whacked during  
12     practice.

13            A     Yes, exactly.

14                   Pinnies, shooter shirts, jackets,  
15     sweatshirts, sweatpants, shorts. I don't think  
16     I've done hats.

17                   Those are the main ones. I'm sure  
18     there's some weird one that I'm -- I'm not  
19     remembering.

20            Q     Okay. Now, when these apparel items or  
21     equipment items get supplied, are they supplied as  
22     Rocket Sports items?

1           A     Yes.

2           Q     And can you explain that? I mean, how  
3 would the customers that you supply know that it's  
4 from Rocket Sports?

5           A     So you can go onto our website, which is  
6 under the Rocket Sports wordmark and you can go  
7 to -- there's a tab that says -- on the left,  
8 there's a tab that says "customer apparel," and  
9 you can fill out your information there. And then  
10 when you submit it, I get a form saying -- with  
11 all the information they input, their name, their  
12 organization, T-shirts, how many colors do they  
13 want, their logo, stuff like that.

14                Or you can go to the men's tab, men's  
15 apparel tab or women's apparel tab and when you  
16 click on that, you can go in and see, for example,  
17 an Electrify Tee, I think is one of the names of  
18 them, and you select the color of the tee you  
19 want, you upload the logo, how many colors on the  
20 logo, you press that and it adjusts on the price  
21 and then you add to cart and check out.

22          Q     So when it's delivered to the customer,

1 I take it that's delivered through a delivery  
2 service?

3 A Mainly -- if it's through the website,  
4 it's through being shipped unless like they called  
5 me up beforehand and was like -- like for Wilson  
6 lacrosse, I just drove it to them because there's  
7 no need for them to pay extra money in shipping  
8 when I go to practice in the morning.

9 Q Now, is the packaging -- does the  
10 packaging identify Rocket Sports?

11 A The -- inside each bag of -- so we --  
12 all the clothes, if you buy -- so like, let's say,  
13 for example, the last lacrosse team I supplied, it  
14 was lacrosse equipment and sports apparel on the  
15 same page that they can order from, I take a big  
16 bag, I put in -- let's say they ordered a  
17 sweatshirt and a lacrosse set, I put a sweatshirt  
18 in there, I put a lacrosse set in there, and then  
19 I put a receipt which has Rocket Sports at the  
20 top, fold that, put all of the packs, as I call  
21 them, into the box and then hand the box to the  
22 coach, or whoever is picking up.

1           Q     But the items themselves have whatever  
2 brand name that are on there when you get them  
3 supplied to you?

4           A     Correct.

5           Q     You mentioned online sales. Is that  
6 your primary means of sales, your website?

7           A     What's your definition of "primary"?

8           Q     Well, I mean, let me rephrase the  
9 question.

10                   How do you make your sales, one is  
11 online through your website?

12          A     One's online, yeah.

13          Q     How else do you make your sales?

14          A     Advertisements on social media,  
15 promotions on social media.

16          Q     Which social media?

17          A     I have Instagram, Facebook, Twitter.

18          Q     So when you advertise there and someone  
19 is interested in your product, would they get  
20 directed to your website then or --

21          A     Correct --

22          Q     -- how does that work?



1           A     -- yeah.

2           Q     So those social networking sites serve  
3     as conduits to your websites, so ultimately they  
4     get directed to your website and the purchase is  
5     made through your website; is that correct?

6           A     Yes. You'd have to actually check out  
7     on the website.

8           Q     Okay.

9           A     And then word of mouth.

10                Can you repeat the question again?

11          Q     Yeah. Just you were going through -- I  
12     was asking you to go through all the different  
13     ways that sales are made of your products.

14          A     And I had said word of mouth, online,  
15     social     media ...

16          Q     Now, let me ask you, if it's word of  
17     mouth, you know, somebody tells a buddy, hey,  
18     this -- you know, this is a good supplier, how  
19     would they make a purchase? Would they pick up  
20     the phone and call you?

21          A     They could do that. They could e-mail  
22     me. It's like they could go to the website, fill

1 out a contact us form. And I don't know, I'm not  
2 them, so I don't know how they find me.

3 Q Okay, okay. But ultimately either  
4 through the website or through other communication  
5 means, they contact you and you fill the orders?

6 A Correct.

7 Q Does Rocket Sports, LLC advertise?

8 A Yes.

9 Q How and through what channels?

10 A We advertise on our website, we  
11 advertise on Twitter, Facebook, Instagram, we  
12 advertise on -- at lacrosse games.

13 Q How do you do that at lacrosse games?

14 A We have a table that we set up that had  
15 a Rocket Sports banner, and it had all our  
16 equipment displayed on the table, and me sitting  
17 behind the table.

18 Q And how else?

19 A Word of mouth, fliers, text messages.

20 I already said Instagram.

21 Those are probably the main ones.

22 Q Okay.

1           A     I'm sure there's a couple more.

2           Q     Do you have an advertising budget?

3           A     When you say "budget," do you mean  
4 something that I've laid out, I say, okay, I have  
5 a thousand dollars coming in this month, where is  
6 it going to be allocated to? If you're asking for  
7 that, I don't have an actual document of that. I  
8 am the only one in the company, so I make all the  
9 decisions, so ...

10          Q     Okay. Go ahead. Are you finished with  
11 your answer?

12          A     Yes.

13          Q     How much have you spent on advertising,  
14 maybe, you know, thus far, total?

15          A     I mean, are you talking about paying a  
16 third party?

17                I've spent countless hours developing my  
18 website for advertising. I would say if I was  
19 working for eight hours a day, it's probably taken  
20 me a month, so what's that, 40 -- 160 hours for  
21 the website. Instagram has taken 20 hours.

22                I've actually paid Instagram for a

1 couple of promotions and advertisements for them  
2 to run, which I don't know what the total is.  
3 Under a hundred dollars.

4 Q Have you paid any other party for  
5 advertisements, promotions and such?

6 A Maybe Facebook, I think Facebook and  
7 Instagram are linked, so the receipt would say  
8 Facebook on it. So I can't remember if I actually  
9 did one through Facebook, but I'm trying to recall  
10 it.

11 Q So rough estimate, what would you say is  
12 the amount of money that you actually paid  
13 out-of-pocket for advertising services like that?

14 A 50 bucks.

15 Q Let me move on to the company itself.

16 You said you're the sole member. I take  
17 it, it has no other employees other than you;  
18 right?

19 A (Non-verbal answer.)

20 MR. KODA: You have to answer and not  
21 just nod.

22 THE WITNESS: Oh.

1           A     Yes.

2           Q     Does the company have any investors?

3           A     What's your definition of "investor"?

4           Q     People who gave you money for the  
5 business.

6           A     For equity?

7           Q     Yes.

8           A     No.

9           Q     For non-equity?

10          A     What is your question?

11          Q     Well, did you receive money to start the  
12 business or to run the business?

13          A     No.

14                To run the business?

15          Q     Well, to -- to keep the business going,  
16 yes.

17          A     I have a loan outstanding that I pay  
18 monthly interest payments on, but to start the  
19 business was all my money.

20          Q     So you do have creditors. Is it a  
21 creditor or is it multiple, more than one  
22 creditor?

1           A     One creditor.

2           Q     And who or what would that be?

3           A     Paul S. Koda.

4           Q     That would be your attorney, Paul Koda?

5           A     No. My attorney's father.

6           Q     Oh, okay. Paul S. Koda, okay. That  
7 would be your grandfather then?

8           A     Correct.

9           Q     And how much of a loan was that?

10          A     So the initial amount was \$20,000 and  
11 then a year passed, I paid back the full 20,000.  
12 And then we started a new loan or it was a  
13 continuation of the previous loan for \$10,000.  
14 And that 10,000-dollar loan is outstanding.

15          Q     Okay. Do you have any other creditors  
16 beyond that?

17          A     No.

18          Q     Do you have any -- any other individuals  
19 who maybe are not paid, but help run the business?

20          A     No.

21          Q     It's all you?

22          A     Correct.

1           Q     Now, in terms of, you know, the way you  
2     run your business, you said earlier on that you  
3     invest a lot of time in doing advertising through  
4     your website.

5           A     And other platforms, but yes.

6           Q     And what other platforms would they be?

7           A     She has the --

8           Q     Oh, the social media platforms you mean?

9           A     Yes. And the trade shows -- or not the  
10    trade shows, the games that I go to and stuff like  
11    that. That takes a tremendous amount of time.

12          Q     Could you describe the information that  
13    you consider advertising?

14          A     Advertising, you want my definition of  
15    advertising?

16          Q     Well, no. What -- like all the time  
17    that you spent developing, what you refer to as  
18    advertising, on your website, let's take that as  
19    an example, what did that entail or what kind of  
20    things did you do?

21          A     I made a product available for purchase  
22    visible, a customer can read a description of the

1 product, they can purchase a product, they see my  
2 website, they come to my website. The whole --  
3 the whole process for my customer not even knowing  
4 what Rocket Sports is to making a purchase --  
5 making a purchase happen, all that happened  
6 because I advertised and I promoted the product.

7 Q So when you advertise, you're  
8 advertising the products of other -- other  
9 companies then, the examples you gave earlier, for  
10 instance, the apparel companies and such?

11 A As of right now for sale, everything is  
12 manufactured by another person, not me.

13 Q Okay. But you're selling -- an example,  
14 the apparel companies, you mentioned a number of  
15 companies, but I think Jerzee was one of them?

16 A Jerzees.

17 Q Yeah, Jerzees was one of them.

18 A Yeah. Jerzee is a brand.

19 Q Right, that's what I mean, I'm talking  
20 about a brand.

21 So on your website you highlight the  
22 Jerzees brand?



1 A On the website it's mainly Holloway.

2 Q Holloway, okay.

3 A Yeah.

4 Q So Holloway is a different brand.

5 A Correct.

6 Q And you highlight Holloway, so --

7 A Yes.

8 Q -- a person coming to your website would  
9 be interested in seeing what Holloway has to offer  
10 through your site?

11 A They'd be interested in seeing what I  
12 have to offer through my website.

13 Q Okay. Is there a distinction?

14 A Well, you can buy just blank -- if you  
15 go to the Holloway website, you just buy a  
16 Holloway T-shirt.

17 With Rocket Sports, you get -- you can  
18 put a logo on it, you can customize it, stuff like  
19 that.

20 Q So you provide that service as well?

21 A Right.

22 Q That you can take a Holloway shirt and

1 customize it for a team, a particular team then?

2 A Correct.

3 Q Who provides that service, that  
4 customization service?

5 A I do the customization myself. I do --  
6 not -- I don't do embroidery. I do other like  
7 string printing and --

8 Q You physically do that yourself?

9 A Correct.

10 Q Okay. So on your website, you provide  
11 that customization service.

12 Do you do that for all the products that  
13 are offered on your website?

14 A For all apparel, yes.

15 Q How about the equipment?

16 A Equipment, I was talking to someone  
17 local to me about trying to get the shafts  
18 customized, it wouldn't be -- it obviously  
19 wouldn't be a -- an Epoch Lacrosse shaft or one of  
20 my manufacturers, I'm not going to code over it,  
21 obviously, because why would I do that. But the  
22 shafts that I was looking at manufacturing

1 would -- I wanted to customize.

2 Q So just talking about your company's  
3 business, would you say that it covers  
4 advertising?

5 A Yes.

6 Q Marketing?

7 A Yes.

8 Q Promotion services?

9 A Yes.

10 Q Would you say it covers promoting the  
11 goods of others?

12 A Yes.

13 Q It covers promoting the brands of  
14 others?

15 A Yes.

16 Q How about the services of others?

17 A Does it promote the services? I think  
18 it does. I'd have to look at the website and what  
19 I've actually promoted, but I'm pretty sure.

20 Q Have you any inkling of what types of  
21 services or the nature of services --

22 A Yeah, custom stringing. That, I do not

1 do myself.

2 Q Do you track the sales of brands of  
3 others for them?

4 A For -- like so I have a pie chart and I  
5 say 20 percent of my sales comes from Epoch, 30  
6 percent comes from Signature, like that?

7 Q Okay. So --

8 A No. No, no, I don't do that.

9 Q Oh, you don't do that?

10 A I was trying to understand your  
11 question.

12 Q Okay.

13 A No, I do not have a thing that does  
14 that.

15 Q Okay. All right.

16 MR. REAVES: If I can interject. Can we  
17 go off the record for a second.

18 (Record suspended.)

19 BY MR. LEE:

20 Q Let me go back to the tracking of -- the  
21 tracking that we're talking about on your online.

22 Do you track online activity to your

1 website?

2 A There's a -- do I personally? No. My  
3 BigCommerce platform has an insights tab which I  
4 believe tells me four things, I think it's visits,  
5 orders, sales revenue, and one other, but I don't  
6 know what the other one is.

7 Q And does that tell you what particular  
8 products were looked at more than others?

9 A I don't know. I'm not an expert  
10 on-site.

11 Q All right. Again, going to your  
12 company's business, you've already mentioned  
13 social media outlets, you use that in your  
14 business; right?

15 A Uh-huh.

16 Q And you also mentioned texting, so you  
17 make use of mobile platforms --

18 A Uh-huh.

19 Q -- to run your business or conduct your  
20 business?

21 A Yeah.

22 Q Would it -- does your business also use

1     print media?

2             A     Uh-huh.

3             Q     Yeah?

4             A     Yes.

5             Q     In what form?

6             A     We have advertisements, anything that's  
7     paper or like a poster or, for example, at the  
8     lacrosse game, we had a banner, all that stuff,  
9     yeah, we use.

10            Q     And it's to -- I guess the purpose of  
11     that is to -- to develop and drive consumer  
12     interest --

13            A     Yeah.

14            Q     -- in the products that you're  
15     providing, you're supplying?

16            A     Yes.

17            Q     Okay. I'd like to go to the Rocket  
18     Sports Mark that we have. I don't want to quite  
19     go through that just yet, but we know of two  
20     service mark registrations and we're going to get  
21     to that shortly, but I just wanted to ask some  
22     questions before we got there.

1 Q Is that one continuous document?

2 A Correct.

3 So let me put these here (indicating).

4 This is all my -- oh, here's the other one, so

5 these two are (indicating) --

6 Q These are two separate documents; right?

7 A Yeah. So one is three pages and one is  
8 two.

9 Q Why don't we label them right now.

10 (A discussion was held off the record.)

11 (Exhibits 3 and 4 were marked for  
12 identification and are attached to the  
13 transcript.)

14 BY MR. LEE:

15 Q Mr. Koda, I'm going to show you two  
16 documents that are labeled SK-3 and SK-4 --

17 MR. LEE: And I'm sorry, Mr. Koda,  
18 Attorney Koda, if I may, for the record, obviously  
19 we don't have an extra copy, but you do have your  
20 own copy so you can follow along --

21 MR. KODA: I do.

22 MR. LEE: -- right?

1           Q     So could you identify each of those  
2 exhibits?

3           A     Yeah. So Exhibit SK-3 is messages on  
4 the app GroupMe -- I believe it's GroupMe --  
5 between myself and Bryce Smith.

6                     And SK-4 is text messages between me and  
7 Fahim.

8           Q     Okay. And you're showing these -- or  
9 you produced these in response to our Notice of  
10 Deposition as examples showing the use of Rocket  
11 Sports, the Registered Mark Rocket Sports in  
12 connection with promoting and marketing the goods  
13 and services of others by distributing advertising  
14 material, coupons and discount offers via text  
15 messages; is that correct?

16          A     Yes.

17          Q     Okay.

18          A     So if you look at SK-4, I sent a link  
19 and it says "Rocket Sports," the wordmark at the  
20 top. Underneath it was Integra Gloves, which is  
21 the goods manufactured by Epoch Lacrosse, which is  
22 what he was interested in, and I gave him the



1 direct link which is what that image represents,  
2 it's actually a link, not just the picture. And  
3 it is \$155 retail, but I offered it to him at a  
4 discount or coupon, which are interchangeable in  
5 my definition, for \$125. So \$30 off.

6 Q How about SK-3?

7 A SK-3 were -- was correspondence with  
8 Bryce Smith where I gave him the link to the  
9 Rocket Sports website and game him two promo codes  
10 or discounts or coupon offers for helmets and  
11 another coupon discount or advertisement for  
12 everything else, which was other lacrosse  
13 equipment.

14 Q And the Rocket Sports Mark is shown  
15 where on the document?

16 A On SK-4, it's located right here  
17 (indicating).

18 On SK-3, the actual wordmark, there's no  
19 actual wordmark, other than just the Rocket  
20 Sports, that US website link.

21 Q And by that you're referring to  
22 www.RocketSports.US, all one word?

1 A Correct.

2 Q And then on SK-4, it's near the top  
3 about a quarter of the way down, it has Rocket  
4 Sports, two words, and then underneath it  
5 RocketSports.US?

6 A Yes.

7 Q All right. Let's move on.

8 Does Rocket Sports, LLC currently use  
9 the Mark, Rocket Sports, in connection with  
10 promoting the goods and services of others by  
11 means of word of mouth and non-traditional  
12 marketing programs?

13 A Yes.

14 Q I have a question, when you say "by  
15 means of word of mouth," how is Rocket Sports, the  
16 Mark, identified that way?

17 A Because I'm saying -- when I'm  
18 discussing with a person, by like me talking to  
19 someone and they're asking, hey, what do you guys  
20 sell?

21 We sell lacrosse equipment. What do you  
22 need?

1                   And they're like, oh, who's it through?

2                   Rocket Sports.

3           Q       Okay.

4           A       Yeah.

5           Q       And by non-traditional marketing  
6 programs, what examples do you have?

7           A       I didn't produce anything  
8 non-traditional. I would say promoting, like  
9 advertising like a piece of paper, like a flier  
10 type thing, just in unconventional ways, I guess,  
11 is how they would classify it, but putting it on  
12 like a poster board outside a classroom or putting  
13 it in an elevator.

14          Q       You don't have samples of that to  
15 provide?

16          A       The documents for -- I don't have any  
17 document of that, no, of advertising by a flier in  
18 an elevator, no.

19          Q       Did that identify Rocket Sports --

20          A       On the -- yeah.

21          Q       On the flier?

22          A       On the flier, yeah.

1           Q     Does Rocket Sports, LLC currently use  
2     the Mark, Rocket Sports, in connection with  
3     promoting the sale of goods and services of others  
4     by websites and social media?

5           A     Yes.

6           Q     And do we have examples of that in  
7     the --

8           A     Yes.

9           Q     -- in the documents?

10          A     That was a previous example.

11          Q     That doubles the previous one, SK-4,  
12     or --

13          A     No, it is neither SK-3 or 4.

14          Q     Okay. Why don't we select those out as  
15     well.

16          A     You're looking at promoting the sale of  
17     goods and services of others by websites and  
18     social media; correct?

19          Q     Yes.

20                 MR. KODA: Let me remind my client to  
21     wait for the question.

22          Q     Mr. Koda, would you mind picking that

1 of other, that is -- that service or that good  
2 being promoted, advertised, marketed.

3 Q By virtue of it being shown with your  
4 Mark, i.e., Rocket Sports or the Rocket Sports and  
5 Design, that is the advertisement?

6 A Correct.

7 Q That is the marketing promotion?

8 A Correct.

9 Q Okay. Understood.

10 Do you charge a fee for this marketing  
11 service?

12 A No. They are my supplier. I -- that's  
13 not how supplier relationships work. I want to  
14 sell more products -- they want me to sell more of  
15 their products, I want to sell more of their  
16 products. It's a mutual relationship.

17 Q So there is no separate compensation for  
18 the marketing, advertising or promoting part of --  
19 of this process?

20 A Correct. Meaning I am not getting paid  
21 to put, for example, an Epoch Lacrosse shaft on my  
22 website.

1 Q Okay.

2 A That's what I mean.

3 Q But everything is just -- well, I mean,  
4 let me talk about that with you.

5 [REDACTED]  
6 [REDACTED] how does the compensation structure work there?

7 MR. KODA: To the extent that this is  
8 privileged or confidential, I'd like to go on the  
9 record as confidential.

10 MR. LEE: That's fine.

11 C O N F I D E N T I A L

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(End of confidentiality.)

Q Does Rocket Sports, LLC currently use

1 the Mark, Rocket Sports, in connection with online  
2 advertising and marketing services?

3 A Yes.

4 Q And I think that may be a redundant one,  
5 if I'm not mistaken. Does that seem redundant to  
6 you?

7 A Yes, it does.

8 Q I'm not going to ask you about  
9 documents.

10 Does Rocket Sports, LLC currently use  
11 the Mark, Rocket Sports, in connection with  
12 providing marketing services for the sports  
13 equipment industry?

14 A Yes.

15 Q Here, when you say "industry," are you  
16 talking about a particular association, or what is  
17 this referring to?

18 A Well, I would say an industry is a group  
19 of related goods and I sell in that industry  
20 because I sell -- they're talking about sports  
21 equipment and I sell sports equipment and,  
22 therefore, I'm in that industry.

1           Q     Okay. It doesn't mean for members of  
2     the sports equipment industry providing marketing  
3     services for members of the sports equipment  
4     industry?

5           A     It doesn't say members of the sports  
6     equipment industry.

7           Q     Okay. That's how I'm reading it,  
8     though, but --

9           A     I see you're reading it as -- I'm  
10    reading what I have under my Mark.

11           MR. KODA: Just to point out, SK-2, you  
12    are on the --

13           THE WITNESS: Second to last line.

14           MR. KODA: Or third to last line,  
15    beginning with third to last line under Class 35,  
16    description of goods and services.

17           A     So I am reading "providing marketing  
18    services for the sports equipment industry." And  
19    your question was slightly different, you say?

20           Q     Well, no, I'm trying to understand  
21    how -- first of all, how Rocket Sports, LLC uses  
22    the Mark, Rocket Sports, in connection with that

1 service. And I guess implicit in that is an  
2 understanding of what those services mean.

3 And I think you were talking about what  
4 those services meant to you.

5 A So, yeah, just reiterating, I sell  
6 sports equipment, that's in the sports equipment  
7 industry. It's -- by putting it on my website, I  
8 am providing marketing services for the sports  
9 equipment industry.

10 Q Okay. But that's not referring to any  
11 industry association or body or anything like  
12 that, it's just generally?

13 A I'm confused what you mean. Because it  
14 seems like you're trying to get more specific on  
15 to something, but I don't know what.

16 What do you mean by "body"? Like are  
17 you talking about -- well, you go ahead.

18 Q For industry, I guess -- this is a good  
19 question.

20 Industry is being referred to there in  
21 what sense?

22 A There's the sports equipment industry,

1       there's the technology industry.

2                   I sell sports equipment. I don't sell  
3       iPhones. Therefore, I'm in the sports equipment  
4       industry.

5           Q       So it's just general -- referring to a  
6       general area of -- of business?

7           A       Good and services, yeah, of business.

8           Q       Not a particular party or parties, per  
9       se?

10          A       That's not how I see it.

11          Q       And do you have examples and documents  
12       for that?

13          A       Yeah, if they're not in any of the ones  
14       we've already produced in the exhibit, we can  
15       produce this one (handing.)

16          Q       Okay. Then we'll go ahead and mark --  
17       is this all one document --

18          A       Yes, it is.

19          Q       -- that you've just handed me, multi  
20       pages?

21                   MR. LEE: We'll label this SK-9.

22                   (Exhibit 9 was marked for identification

1 and is attached to the transcript.)

2 Q I'm going to hand you SK-9.

3 MR. LEE: And, again, as before,  
4 Attorney Koda has a copy of that, that you're  
5 following with; right?

6 MR. KODA: Yes, thank you.

7 Q So, Mr. Koda, could you identify this  
8 document marked as Deposition Exhibit SK-9?

9 A SK-9 is a screenshot of a product  
10 category on my website, the category is Epoch,  
11 which is the third product category listed. And  
12 it shows sports equipment that I offer for sale,  
13 such as lacrosse shafts, lacrosse heads, lacrosse  
14 pads, et cetera.

15 Q Okay. So you're providing this as an  
16 example of how Rocket Sports, LLC currently uses  
17 the Mark, Rocket Sports, in connection with  
18 providing marketing services for the sports  
19 equipment industry; is that correct?

20 A Yes.

21 Q Let's move on to the next part of this  
22 description of goods.

1 Does Rocket Sports, LLC currently use  
2 the Mark, Rocket Sports, in connection with  
3 reseller services, namely distributorship services  
4 in the field of sports equipment?

5 A Yes. So looking at SK-9, products  
6 are -- well, for example, Prequel, Prequel is  
7 manufactured by Epoch Lacrosse and so, therefore,  
8 I'm reselling that Prequel for Epoch Lacrosse  
9 under Rocket Sports' brand.

10 Q Now, when you say -- you refer to  
11 "distributorship services." Do you have a -- are  
12 you a recognized distributor of any of these  
13 companies that you supply products of?

14 A By opening a wholesale account with  
15 them, that implies I have the right to sell,  
16 collect money, and ship out their products.

17 Q That implies the right.

18 Do you have a specific written agreement  
19 to that effect?

20 A They don't specifically say that. But  
21 if I just collect money from people and don't ship  
22 them the products, it's going to hurt both my

1 brand and Epoch Lacrosse's brand, so they don't  
2 want that.

3 And they think I'm intelligent enough to  
4 actually ship the stuff out.

5 Q So for -- let's take Epoch as an example  
6 of one of your suppliers. Do they consider you a,  
7 quote-unquote, distributor of their products?

8 A I -- speculation. I don't know. That's  
9 their job to --

10 Q But there is no documentation from them  
11 referring -- I'm asking the question. Is there  
12 any documentation from them, written documentation  
13 that identifies you as one of their distributors?

14 A I'd have to check. I don't know what  
15 terms they use.

16 Q Do you know if Epoch sells their  
17 products through other suppliers like yourself?

18 A I believe so.

19 Q How about -- not Epoch -- I don't want  
20 to mess up a name -- so your other suppliers like  
21 Epoch, do you know if any of those other suppliers  
22 or that those suppliers provide their products



1 through other sources like yourself?

2 A Yes.

3 Q You know, I was going to ask earlier and  
4 I might have asked this, if I did, I apologize,  
5 but do you have any specific contractual agreement  
6 with any of your product suppliers?

7 A When you say "contractual agreement," do  
8 you mean something that was like notarized?

9 Q Yes, a contract that you signed as  
10 Rocket Sports, LLC with terms of conduct, what  
11 you're obligated to do under this agreement,  
12 things like that.

13 A Yeah, I'm pretty sure I have them for  
14 the lacrosse manufacturers like Epoch and  
15 Signature.

16 I don't need one -- I'm pretty sure I  
17 didn't do one for like the apparel ones like Alpha  
18 Broder, but I'd have to look in my records to see  
19 each one -- to see if I have a document for each  
20 one and which ones I do have one for.

21 Q And I want to ask specifics.

22 MR. LEE: Maybe we can go on and make

1 this confidential again?

2 MR. KODA: Okay.

3 C O N F I D E N T I A L

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
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# EXHIBIT

6



**Int. Cl.: 28**

**Prior U.S. Cls.: 22, 23, 38, and 50**

**United States Patent and Trademark Office**

**Reg. No. 2,734,981**

**Registered July 8, 2003**

**TRADEMARK  
PRINCIPAL REGISTER**

**ROCKET**

EMHART INC. (DELAWARE CORPORATION)  
DRUMMOND PLAZA OFFICE PARK  
1423 KIRKWOOD HIGHWAY  
NEWARK, DE 19711

AND GOLF CLUB REFITTERS, IN CLASS 28 (U.S.  
CLS. 22, 23, 38 AND 50).

FIRST USE 12-15-2001; IN COMMERCE 12-15-2001.

SN 75-169,919, FILED 9-23-1996.

FOR: GOLF CLUB SHAFTS DISTRIBUTED EX-  
CLUSIVELY TO GOLF CLUB MANUFACTURERS

JEFFERY COWARD, EXAMINING ATTORNEY

**EXHIBIT**

**B**

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

ROCKET SPORTS, LLC,

Opposer,

vs.

DEXTER KAN,

Applicant.

Opposition No. 91237356

**APPLICANT'S AMENDED  
ANSWER TO OPPOSER'S  
AMENDED NOTICE OF  
OPPOSITION**

COMES NOW applicant Dexter Kan (“Applicant”) herein answers the above indicated Amended Notice of Opposition (the “Notice”) brought by Rocket Sports, LLC (“Opposer”) as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Notice, and therefore denies it.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice, and therefore denies it.

3. Admit in part. Applicant admits that the legal chain of title described in the first sentence of Paragraph 3 of the Notice appears to be consistent with the USPTO public record. Applicant avers that the allegations set forth in the second sentence of Paragraph 3 of the Notice call for a legal conclusion, which no response is required. To the extent any response is required to the allegations set forth in the second sentence of Paragraph 3 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore denies it.

4. Admit.

5. Admit in part. Applicant admits that the file date set forth in the first sentence of Paragraph 5 of the Notice appears to be consistent with the USPTO public records. Applicant avers that the allegations set forth in the second sentence of Paragraph 5 of the Notice call for a legal conclusion, which no response is required. To the extent any response is required to the allegations set forth in the second sentence of Paragraph 5 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore denies it.

6. Applicant avers that the allegation set forth in Paragraph 6 of the Notice calls for a legal conclusion, which no response is required. To the extent any response is required, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth therein, and therefore denies it.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Notice, and therefore denies them.

8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Notice, and therefore denies them.

9. Applicant avers that the allegation set forth in Paragraph 9 of the Notice calls for a legal conclusion, which no response is required. To the extent any response is required, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth therein, and therefore denies it.

All allegations of the Notice, whether explicit or implicit and including averments, which require an answer are denied to the extent that those allegations are not expressly and specifically admitted herein. Moreover, pursuant to Rule 8(b)(6) of the Federal Rules of Civil Procedure, allegations of the Notice to which no responsive pleading is required, shall be deemed as denied.

**AFFIRMATIVE DEFENSES, AVOIDANCES, AND ARGUMENTS**

1. FOR A FURTHER, SEPARATE, AND DISTINCT DEFENSE, Applicant is informed and believes, and thereupon alleges, that the Notice was filed without merit and for improper reasons, namely to adversely affect Applicant's application.

2. FOR A FURTHER, SEPARATE, AND DISTINCT DEFENSE, Applicant is informed and believes, and thereupon alleges, that the Notice is fraudulent and was filed to adversely affect Applicant's application.

3. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, Applicant alleges it is informed and believes, and based upon such information and belief, that Opposer is barred from seeking any relief herein because third parties have used similar marks for similar goods, thus Opposer's mark is weak and entitled to a narrow scope of protection. 87 records appear when searching the USPTO Database for Live marks in Class 35; 160 records appear if the search is expanded to also include Class 28.

4. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, Applicant alleges it is informed and believes, and based upon such information and belief, that Opposer is barred from seeking any relief herein because the channels of trade for the parties' respective goods are dissimilar. Applicant sells new goods and Opposer is a reseller of goods.

5. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, Applicant alleges it is informed and believes, and based upon such information and belief, that Opposer is barred from seeking any relief herein because Opposer is currently not using its mark in connection with all of the goods or services, or in all of the trade channels, set forth in its registration.

6. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, Applicant alleges it is informed and believes, and based upon such information and belief, that Opposer is barred from seeking any relief herein because Opposer has ceased using its mark in connection with one or more of the goods or services, or in all of the trade channels, set forth in its registration.

7. Applicant alleges that it is informed and believes, and based upon such information and belief, that it may have additional defenses not currently available and that may be available after completion of initial disclosures and discovery, and therefore reserves the right to set forth additional defenses as information becomes available.

### **COUNTERCLAIM**

Counterclaimant Dexter Kan (Counterclaimant) is an individual residing at 3681 Hollyberry Drive, Huntingtown, Maryland 20639, doing business as “Rocket Mesh Lacrosse.”

The registrant and current owner (Registrant) of Trademark Reg. No. 5,297,623 (the Registration) for “ROCKET SPORTS” in International Class 35 (the ROCKET SPORTS Mark) is Rocket Sports, LLC, a Maryland limited liability company with a place of business located at 4 Baederwood Court, Derwood, Maryland 20855.

For the reasons provided below, Counterclaimant believes that he will be damaged by the Registration, and hereby petitions to cancel the same under 15 U.S.C. § 1064(1) and 37 CFR § 2.111, on the grounds of non-use of the mark (see TBMP 307.02(a)) and of fraud in the procurement of the Registration (see TBMP 309.03(c)(1)).

1. Counterclaimant filed Trademark Application No. 87/385,665, for registration of “ROCKET MESH” in International Class 28 for “Lacrosse balls; Lacrosse sticks” (the ROCKET MESH Mark), on March 25, 2017.

2. Counterclaimant has invested in an inventory of goods relating to lacrosse balls and lacrosse sticks, bearing the ROCKET MESH Mark.
3. On October 21, 2017, Registrant filed Opposition No. 91237356 to oppose registration of the ROCKET MESH Mark, basing the Opposition on the Registration alleging prior use of the ROCKET SPORTS Mark in commerce.
4. Registrant has also threatened to bring an action of trademark infringement of the Registration if Counterclaimant continues to sell goods of any variety bearing the ROCKET MESH Mark.

On the basis of the allegations set forth above, Counterclaimant believes that Registrant's hostile assertion of the Registration against him will damage Counterclaimant, and Counterclaimant therefore has standing to petition for cancellation of the Registration.

5. On June 19, 2016, Registrant filed US Trademark Application No. 87/076,555 (the RS Application) for registration of the ROCKET SPORTS Mark, for the services of "Marketing services for the sports equipment of others; marketing services in the field of sports equipment; marketing services, namely, promoting or advertising the goods and services of others; marketing, promotional and advertising services provided by mobile telephone connections; marketing, advertising, and promoting the retail goods and services of others through wireless electronic devices; promoting and marketing the goods and services of others by distributing advertising material, coupons and discount offers via text messages; promoting and marketing the goods and services of others by websites and social media; promoting the goods and services of others by means of word-of-mouth and nontraditional marketing programs; promoting the sale of goods and services of others by websites and social media; advertising and

marketing services, namely, promoting the goods and services of others; advertising, marketing, and promoting the goods and services of others via websites and social media; on-line advertising and marketing services; providing marketing services for the sports equipment industry; reseller services, namely, distributorship services in the field of sports equipment.” By admission of the Registrant, this list of services was reviewed by both Registrant and Paul W. Koda, the Attorney for Registrant. (See Exhibit 1.)

6. The Registration for the ROCKET SPORTS Mark was issued on September 26, 2017, listing the above services without amendment and alleging a first use in commerce of January 10, 2017.
7. A “service” which primarily benefits Registrant, and not others, is not a service under US trademark law. TBMP 1301.01(a)(ii).
8. On information and belief, and based upon Registrant’s admissions under oath during a Deposition of Registrant on May 23, 2019, the Registration was granted based on a fraudulent Statement of Use.
  - a. In the prosecution of the RS Application, Registrant submitted a Statement of Use on July 22, 2017. This statement was signed by Paul W. Koda, the Attorney for Registrant. (See Exhibit 2.)
  - b. This Statement of Use included a declaration that “the mark is in use in commerce on or in connection with all the goods/services in the application or notice of allowance, or as subsequently modified.”
  - c. Concurrent with the Statement of Use, Registrant submitted a Specimen displaying the ROCKET SPORTS Mark as applied to Registrant’s website.



(See Exhibit 3.) The Statement of Use included a declaration under oath that “The specimen(s) shows the mark as used on or in connection with the goods/services/collective membership organization in commerce.”

- d. The Specimen does *not* indicate that Registrant offers to others any of the services identified in the RS Application in connection with the ROCKET SPORTS Mark. More specifically, the Specimen does not indicate that another party may hire Registrant for the services of marketing, advertising, promotion, distribution, etc. as described in the RS Application, or display means to do so.
- e. During the Deposition of Registrant on May 23, 2019, Registrant admitted to non-use of each of the services identified in the RS Application and Registration, both in connection with the ROCKET SPORTS Mark and generally.
  - i. Registrant repeatedly *denied* being “an advertising agency” and admitted that Registrant was not hired by others to provide advertising or promotional services. (See Exhibit 4.)
  - ii. When asked about the services provided in connection with the ROCKET SPORTS Mark, Registrant described only services which do not qualify as any of “marketing,” “advertising,” “promotion,” or “distributorship” for the primary benefit of others. Rather, the ROCKET SPORTS Mark was described as used in connection with advertising and promoting sales of products solely within Registrant’s own inventory, sold solely through Registrant’s own website.

Registrant is also not paid other than by the end consumer. (See Exhibit 5.<sup>1</sup>)

- f. By implication of the above admissions, Registrant admitted to not having provided any of the services identified in the Registration in conjunction with the website shown in the Specimen.
- g. By implication of the above admissions, Registrant knew, at the time the Statement of Use was filed, that the services being provided in connection with the ROCKET SPORTS Mark at the time of the filing of the Statement of Use were not the services identified in the RS Application.
- h. By implication of the above admissions, Registrant knew, at the time the Specimen was filed, that the services being provided through the website at the time of the filing of the Statement of Use were not the services identified in the RS Application.
- i. Upon information and belief, had Registrant identified the services actually provided to others in connection with the ROCKET SPORTS Mark, the Registration would have been barred based on multiple prior marks, including but not limited to prior Trademark Reg. No. 2,734,981 for “ROCKET.” (See Exhibit 6.)
- j. Therefore, consistent with Registrant's admissions, Registrant committed fraud in the procurement of its registration by knowingly filing a false Statement of Use and Specimen with the US Patent and Trademark Office

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<sup>1</sup> Because Exhibit 5 includes discovery which has been designated as confidential, a redacted version is to be submitted in a separate copy of this filing.

during prosecution of the ROCKET SPORTS Mark. The ROCKET SPORTS Mark is thereby barred from registration, under TBMP 309.03(c)(1).

9. Upon information and belief, and based upon Registrant's admissions under oath during a Deposition of Registrant on May 23, 2019, the Registrant has not used the ROCKET SPORTS Mark in connection with the services identified in the Registration.

a. During the Deposition of Registrant on May 23, 2019, Registrant admitted to non-use of each of the services identified in the RS Application and Registration, both in connection with the ROCKET SPORTS Mark and generally.

i. Registrant repeatedly *denied* being "an advertising agency" and admitted that Registrant was not hired by others to provide advertising or promotional services. (See Exhibit 4.)

ii. When asked about the services provided in connection with the ROCKET SPORTS Mark, Registrant described only services which do not qualify as any of "marketing," "advertising," "promotion," or "distributorship" for the primary benefit of others. Rather, the ROCKET SPORTS Mark was described as used in connection with advertising and promoting sales of products solely within Registrant's own inventory, sold solely through Registrant's own website. Registrant is also not paid other than by the end consumer. (See Exhibit 5.)

- b. Therefore, consistent with Registrant's admissions, the ROCKET SPORTS Mark is barred from registration for lack of a bona fide use of the mark in the ordinary course of trade, under 15 U.S.C. §§ 1051(c) and 1127.

On the basis of the allegations set forth above, Counterclaimant believes that the ROCKET SPORTS Mark should have been barred from registration, and therefore requests that Trademark Reg. No. 5,297,623 for the ROCKET SPORTS Mark be cancelled.

As it is unclear whether this counterclaim will be entered by the Board, the Cancellation fee is not included at this time. However, in the event the accompanying Motion is granted and the counterclaim entered, such that a fee for the filing of the counterclaim and/or any further fees are required, the Director of Patents and Trademarks is hereby authorized to charge such to Deposit Account 50-5298.

WHEREFORE, Applicant/Counterclaimant prays that this Board find in favor of Applicant/Counterclaimant, cancel Opposer/Registrant's mark, and deny and dismiss with prejudice the Notice.

Respectfully submitted,  
FOR: ROSENBERG, KLEIN & LEE

DATE: June 17, 2019

/Christopher Reaves/  
Christopher Reaves

/Morton J. Rosenberg/  
Morton J. Rosenberg

*Attorneys for Applicant*  
3458 Ellicott Center Drive, Suite 101  
Ellicott City, MD 21043  
Phone: 410-465-6678  
[RKL@rklatlaw.com](mailto:RKL@rklatlaw.com)

MR4861-2

Opposition No. 91237356

Applicant's Amended Answer to Opposer's Amended Notice of Opposition – Clean

**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2019, I served a copy of the Document entitled  
**APPLICANT'S MOTION FOR LEAVE TO AMEND ANSWER TO NOTICE OF  
OPPOSITION** on Opposer by sending a true and correct copy of the Document by email to Paul  
Koda at [paul@kodaform.com](mailto:paul@kodaform.com).

/Christopher Reaves/  
Christopher Reaves

**EXHIBIT**

**C**

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

ROCKET SPORTS, LLC,

Opposer,

vs.

DEXTER KAN,

Applicant.

Opposition No. 91237356

**APPLICANT'S NOTICE OF  
DEPOSITION OF STEPHEN KODA**

Pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, and Rules 2.116 and 2.120(b) of the Trademark Rules of Practice, Applicant, Dexter Kan ("Applicant"), shall conduct a deposition of Mr. Stephen Koda ("Mr. Koda"), in his individual capacity, and also in his representative capacity as president and sole principal of Opposer, Rocket Sports, LLC ("Opposer"). Both Mr. Koda and Opposer are located at 4 Baederwood Court, Derwood, MD 20855.

The deposition shall commence at 10 a.m. on the 23rd day of May, 2019, and continuing that day until complete, and shall be held at 3458 Ellicott Center Drive, Suite 101, Ellicott City, MD 21043.

The deposition shall be by oral examination, with a written record made thereof, before a court reporter authorized to administer oaths in the State of Maryland.

Pursuant to Rule 30(b)(2) and Rule 34 of the Federal Rules of Civil Procedure, and TBMP 406.01, Mr. Koda shall bring with him and produce the following Documents and Things:

1. Documents and things indicating the content of each communication between Opposer or Mr. Koda and any third party alleged to have experienced confusion between the ROCKET SPORTS mark and the ROCKET MESH mark, said third parties including all third parties identified in Opposer's Response to Applicant's Interrogatory No. 8.

2. Results of any trademark searches or service mark searches conducted by or for Opposer related to the ROCKET SPORTS mark, identifying all marks discovered thereby.

3. Documents and things demonstrating use in commerce of the ROCKET SPORTS mark in connection with each service identified in United States Trademark Registration No. 5,297,623.

### **CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2019, I served a copy of the Document entitled **APPLICANT'S NOTICE OF DEPOSITION OF STEPHEN KODA** on Opposer by sending a true and correct copy of the Document by email to Paul Koda at [paul@kodafirm.com](mailto:paul@kodafirm.com).

/Christopher Reaves/  
Christopher Reaves



**EXHIBIT**

**D**

## Christopher Reaves

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**From:** Planet Depos Production Department <transcripts@planetdepos.com>  
**Sent:** Wednesday, June 05, 2019 12:39 AM  
**To:** Christopher Reaves; RKL  
**Subject:** Rocket Sports, LLC -v- Kan; Stephen Koda - 5/23/2019  
**Attachments:** Koda, Stephen 052319 PDF Portfolio.pdf

Dear Counsel,

Attached please find the above-referenced transcript files.

**Your files have also been uploaded to your complimentary online repository**  
(<http://rbweb8.planetdepos.com/attorney/>).

**Please note that transcripts and exhibits will be available to download for a period of 3 years and video files will be available for 1 year.**

Should you need additional assistance, simply reply to this email with your request or call 888-433-3767.

We look forward to working with you in the future.

Thank you,

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SG/242831

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