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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@rklpatlaw.com 410-465-6678
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Morton J. Rosenberg
Filer's email	rkl@rklpatlaw.com
Signature	/Morton J. Rosenberg/
Date	06/17/2019
Attachments	4861-2-APPLICANT-MOTION-TO-AMEND-ANSWER-REDACTED-JUNE17-2019.pdf(3387252 bytes)

**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
3458 Ellicott Center Drive, Suite 101
Ellicott City, MD 21043
Phone: 410-465-6678
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.

/Christopher Reaves/
Christopher Reaves

EXHIBIT

A

MR4861-2

Opposition No. 91237356

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

**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 5.¹)

- 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

¹ 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@rkpatlaw.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@kodafirm.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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www.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.

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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
SERIAL NUMBER	87076555
LAW OFFICE ASSIGNED	LAW OFFICE 111
EXTENSION OF USE	NO
MARK SECTION	
MARK	https://tmng-al.uspto.gov/resting2/api/img/87076555/large
LITERAL ELEMENT	ROCKET SPORTS
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
OWNER SECTION (current)	
NAME	ROCKET SPORTS, LLC
STREET	4 BAEDERWOOD COURT
CITY	DERWOOD
STATE	Maryland
ZIP/POSTAL CODE	20855
COUNTRY	United States
OWNER SECTION (proposed)	
NAME	ROCKET SPORTS, LLC
STREET	4 BAEDERWOOD COURT
CITY	DERWOOD
STATE	Maryland
ZIP/POSTAL CODE	20855
COUNTRY	United States
EMAIL	pwkoda@gmail.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	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)	\\TICRS\EXPORT17\IMAGEOUT 17\870\765\87076555\xml13\SOU0002.JPG
	\\TICRS\EXPORT17\IMAGEOUT 17\870\765\87076555\xml13\SOU0003.JPG
	\\TICRS\EXPORT17\IMAGEOUT 17\870\765\87076555\xml13\SOU0004.JPG
	\\TICRS\EXPORT17\IMAGEOUT 17\870\765\87076555\xml13\SOU0005.JPG
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

2e5bc2ea652c2dc555fa5625c5a5033c3b786f18

-CC-6192-20170722133934078896

EXHIBIT

3



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Voltage Tee
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 Prequel Lacrosse Head Mesh: None	1	\$99.99	\$99.99

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

Subtotal \$99.99

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Grand Total \$99.99

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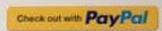
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Transcript of Stephen Koda

Date: May 23, 2019

Case: Rocket Sports, LLC -v- Kan

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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.

16

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18

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22

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

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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:

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13 Pursuant to Notice, before Fazier Walle,

14 a Shorthand Court Reporter and Notary Public in

15 and for the State of Maryland.

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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 gave 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 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

12 [REDACTED]
13 [REDACTED]
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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]

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The image shows a transcript page with 22 numbered lines. Each line contains redacted text, represented by black bars. The redactions vary in length and position. Some lines have a small black circle to the left of the main redaction bar. The redactions cover the majority of the page's content area.

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

MR4861-2

Opposition No. 91237356

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

**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 5.¹)

- 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

¹ 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@rkpatlaw.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@kodafirm.com.

/Christopher Reaves/
Christopher Reaves

EXHIBIT

C

MR4861-2
Opposition No. 91237356
Applicant's Notice of Deposition of Stephen Koda

**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.

/Christopher Reaves/
Christopher Reaves

EXHIBIT

D

Christopher Reaves

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,

Slade Grayson | Planet Depos
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SG/242831

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