

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

In the matter of trademark registration No. 2352015

For the mark BENEFEET

LANGER, INC.

Plaintiff,

v.

REFAELY AND SONS, INC.

Defendant.

Cancellation Proceeding No. 92041018

Law Offices of Andrew Lachman
834 N. Fuller Ave.
Los Angeles, CA 90046

Affidavit in Support of Response to Plaintiff's Response from Motion For Relief
From Default Judgment

State of California

County of San Diego

Declarant, Raphael Refaely, being duly sworn states that:

1. I am the President of Refaely & Sons, Inc., which sells athletic socks to retail outlets throughout the United States.
2. My then wife, Wanda Refaely, a United States Citizen, handled all filings and correspondence with the United States Patent and Trademark Office ("USPTO") regarding the BENEFEET trademark ("Trademark"). We did not engage counsel for this matter.
3. When I did see the application for the Trademark, after it was submitted, I noted that the address of contact for the Trademark Office was 7964 Arjons, Suite F (rear), San Diego, CA.
4. My wife told me that the physical address was required, not the mailing address.

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5. Refaely & Sons has invested substantial sums in building goodwill and name recognition in the BENEFEET mark, resulting in over \$3.5 million in sales in the last five years. In the last five years almost all of our \$3.5 million in sock-related revenue has been from the United States.
6. In September 2001 Refaely and Sons moved offices to 11211 Sorrento Valley Rd. Suite F, San Diego, California, with our mailing address being 4130 LA JOLLA VILLAGE DR PMB#10743 LA JOLLA, CA, a post office box we used for other business.
7. The 7964 Arjons, Suite F (rear), San Diego, CA address was shared with another company. When we were located at that address, they would give us any mail or Federal Express packages that were received at the physical address. They refused to forward mail after we moved.
8. Until March 6, 2003 I had no notice or knowledge of any pending proceeding regarding the Trademark.
9. On March 6, my attorney for another trademark matter, whom I had hired only two weeks earlier told me he had found out about the cancellation of the Trademark when doing research for me.
10. Aside from receipt of a letter from Langer, Inc, sent to the 4130 LA JOLLA VILLAGE DR. address via certified mail, I received no notice of any proceedings or other communication either from Langer of the Trademark Office.

Further affiant sayeth not.



Raphael Refaely

Subscribed and sworn to

Before me this 8th

day of APRIL, 2003



Notary Public

My Commission expires: Sept 27, 2005



Respectfully submitted,

Andrew Lachman
Attorney for Registrant
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