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

Proceeding	92055507
Party	Plaintiff Pickin' Cotton Communications, LLC
Correspondence Address	MATT FOGARTY PICKIN' COTTON COMMUNICATIONS LLC 232 IVORY STREET LAFAYETTE, LA 70506 UNITED STATES mfogartynd@hotmail.com
Submission	Opposition/Response to Motion
Filer's Name	Matt Fogarty, MD
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Signature	/Matt Fogarty, MD/
Date	06/01/2013
Attachments	Petitioner's Response to MTD - June 1, 2013.pdf(61324 bytes)

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

)	
PICKIN' COTTON COMMUNICATIONS LLC,)	
)	
Petitioner)	
)	Opposition No.: 92/055507
v.)	Appln. Serial No. 73/624412
)	Mark: FRETTE
EDMUND FRETTE S.A.R.L.,)	
)	
Respondent.)	
)	

PETITIONER'S BRIEF IN OPPOSITION TO APPLICANT'S MOTION FOR
SUMMARY JUDGEMENT

1. In response to the motion to dismiss, Petitioner represents that its petition for cancellation states a claim and has submitted an amended petition for cancellation. (See Attached Exhibit One with Attached Exhibit A).

2. Because a petition for cancellation may be amended as of right prior to the filing of a responsive pleading, and because a motion to dismiss is not considered a responsive pleading, the amended petition for cancellation should be accepted. See Fed. R. Civ. P. 15(a). See also Beth A. Chapman¹, TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff , 81 Trademark Rep. 302.

¹ Ms. Beth A. Chapman, a former Trademark Trial And Appeals Board Judge, and now is an attorney working in the law firm of OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT LLP and with Mr. Kaufman, Esq., whom represents Respondent. OBLON SPIVAK MCCLELLAN MAIER & NEUSTADT LLP represents " THE HONORABLE BETH A. CHAPMAN, a former Administrative Trademark Judge with the United States Patent and Trademark Office' s (USPTO) Trademark Trial and Appeal Board (TTAB), serves as Of Counsel in the firm' s

3. Leave to amend pleadings must be freely given 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. See Fed. R. Civ. P. 15(a); TBMP § 507.02.

4. The timing of a motion for leave to amend under Fed. R. Civ. P. 15(a) is a major factor in determining whether the adverse party would be prejudiced by allowance of the proposed amendment. See *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993).

5. Inasmuch as the motion herein was filed prior to the close of discovery and because discovery is still open, the proposed amendment would not be prejudicial to Respondent.

In view of the foregoing, Pickin' Cotton Communications, LLC. respectfully requests that the Respondent's Motion to Dismiss Petition for Cancellation be denied.

Respectfully submitted,

PICKIN' COTTON COMMUNICATIONS, LLC.

By: /Petitioner/ Matt Fogarty, MD

Trademark and Litigation practice groups. After more than three decades with the USPTO, Ms. Chapman joined Oblon, Spivak and is regularly called upon for her expertise on USPTO trademark process and procedure, including actions before the TTAB.

During Ms. Chapman's long career at the USPTO, she served as an Examining Attorney, Managing Attorney (supervising more than 20 Examining Attorneys), and Interlocutory Attorney at the TTAB. There she handled motions in inter partes cases. Ms. Chapman was appointed a TTAB Judge in 1998 and wrote decisions on the full range of trademark issues involved in ex parte appeals and inter partes cases after trial. Among the cases she decided were *Genesco Inc. v. Gregory Martz*; *In re Consolidated Specialty Restaurants Inc.*; and *DC Comics v. Pan American Grain Mfg. Co. Inc.* As many in the trademark field know, Ms. Chapman is considered the "go-to" person for USPTO process and procedures, from application through examination, and matters before the TTAB."

PETITIONER'S BRIEF IN
OPPOSITION TO
APPLICANT'S MOTION FOR
SUMMARY JUDGEMENT.

Pickin' Cotton, Communications, LLC
232 Ivory Street.
Lafayette, LA 70506
Tel (714) 353-7445
Fax(866) 234-7145
E:mfogartymd@hotmail.com Date: June 1, 2013
Representative for Opposer

PETITIONER'S BRIEF IN
OPPOSITION TO
APPLICANT'S MOTION FOR
SUMMARY JUDGEMENT.

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2013 , a copy of PETITIONER'S MOTION FOR LEAVE TO FILE A SECOND AMENDED PETITION FOR CANCELLATION has been served by US mail and email on Applicant's representatives:

Jeffrey H. Kaufmann, Beth Chapman
OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT LLP
1940 DUKE STREET
ALEXANDRIA, VA 22314
UNITED STATES
ATTORNEY FOR APPLICANT
jkaufman@oblon.com, bchapman@oblon.com

Pickin' Cotton Communications
Title: Chief Operations Officer/Majority Owner
232 Ivory Street
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(714) 353-7445 (voice)
(866) 234-7145 (fax)
mfogartynd@hotmail.com

Chief Operations Officer/Majority Owner

Date: June 1st, 2013

EXHIBIT One

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

PICKIN' COTTON COMMUNICATIONS LLC,)	
)	
Petitioner)	
)) Opposition No.: 92/055507
v.)) Appln. Serial No. 73/624412
)) Mark: FRETTE
EDMUND FRETTE S.A.R.L.,)	
)	
Respondent.)	
)	

PETITIONER'S MOTION FOR LEAVE TO FILE
A SECOND AMENDED PETITION CANCELLATION

Pickin' Cotton Communications, LLC (“Petitioner”), by and through its undersigned Authorized Representative, moves for leave to file a second amended petition for cancellation. As grounds for this motion, Petitioner recently became aware that Respondent may have committed fraud in obtaining the FRETTE mark in Respondent's Application for Renewal of the Mark FRETTE, Serial No. 73/624412, Registration No. 1,458,428. In the related Opposition Proceeding No. 91/204473, between Petitioner and Respondent, Respondent recently filed an answer, Initial Disclosures were exchange, and both parties are early in the discovery process.

The Second Amended Petition for Cancellation alleges that Registration No. 1,458,428 for the mark FRETTE was obtained by fraud perpetrated on the employee's of the USPTO. A copy of the Second Amended Petition For Cancellation is attached as Exhibit A (the changes are the addition of paragraph's 9 - 19). The August 29, 2007 Renewal Application provides another basis for Petitioner standing and grounds to cancel

Registration No. 1,458,428.

Since Petitioner only recently became aware Respondent may have committed fraud in obtaining the Registered Mark FRETTE, Registration No. 1,458,428 Pickin' Cotton Communications, LLC is promptly seeking to amend the petition for cancellation. Respondent will not be prejudiced by the amendment because Respondent has not yet filed a responsive pleading and the proceeding is still in the early stages of discovery.

In view of the foregoing, Pickin' Cotton Communications respectfully requests that its motion for leave to file a second amended petition for cancellation be granted and that Respondent be ordered to file its Answer within twenty days from the Board's order.

Please address all correspondence to Matt Fogarty, MD at Pickin' Cotton Communications, LLC, 232 Ivory Street, Lafayette, LA 70506, email address: mfogartymd@hotmail.com.

Respectfully submitted,

PICKIN' COTTON COMMUNICATIONS, LLC.

By: /Petitioner/ Matt Fogarty, MD
Pickin' Cotton, Communications, LLC
232 Ivory Street.
Lafayette, LA 70506
Tel (714) 353-7445
Fax(866) 234-7145
E:mfogartymd@hotmail.com Date: May 29, 2013
Representative for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2013 , a copy of PETITIONER'S MOTION FOR LEAVE TO FILE A SECOND AMENDED PETITION FOR CANCELLATION has been served by US mail and email on Applicant's representatives:

Jeffrey H. Kaufmann, Beth Chapman
OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT LLP
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Chief Operations Officer/Majority Owner

Date: May 29, 2013

EXHIBIT A

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

In the Matter of Registration No. 1458428

Pickin' Cotton Communications , LLC Index No.: 2012 - 002 - 041712

Petitioner,

- against -

Edmund Frette, S.A.R.L.

Registrant

Date: May 29, 2013

PETITION FOR CANCELLATION

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir or Madam:

Pickin' Cotton Communications, LLC a private limited liability corporation of Delaware, having offices located at 232 Ivory Street, Lafayette, LA 70506, represented by the authorized representative¹, Chief Financial Officer and majority owner Matt Fogarty, MD (“Petitioner”) believes that it is being damaged by Registration No. 1458428 and hereby petitions to cancel same.

The grounds for the cancellation are as follows:

¹ Dr. Fogarty's representation of Pickin' Cotton Communications. Please see TTAB Opposition Proceedings 91202323, Frette v Pickin' Cotton Communications, "Discovery Conference" ruling 2/16/2012, and Opposition Proceedings 91204473, Frette v Pickin' Cotton Communications, "Trial Date Reset" ruling 1/30/2013.

1. Pickin' Cotton Communications is a leading provider of fine and luxury apparel to Fraternity Brothers and Sorority Sisters, parents, children and siblings, and relatives who have attended college in the United States and internationally.

2. Upon information and belief, Registrant, Edmund Frette, S.A.R.L., a corporation organized and existing under the laws of LUXEMBOURG, and doing business at FRETTE S.P.A. CORPORATION ITALY 2, Avenue Charles de Gaulle Luxembourg LUXEMBOURG L1653, represented by the attorney of record, Jeffrey H. Kaufman, OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT LLP, 1940 DUKE STREET , ALEXANDRIA, VA 22314, UNITED STATES, is the owner of United States Trademark Registration No. 1458428 for FRETTE & Design for “apparel and other items” in International Class 25.

3. Registrant claims ownership of the FRETTE mark, registration number 1458428.

4. Petitioner is the owner of (1) United States Trademark FRATTY Registration No. 85207681 for "apparel and other items" in International Class 25; and (2) United States Trademark Application No. 85566088 for FRATTY FOGARTY for “apparel and other items” in International Class 25, (collectively, the “PCC Trademarks”). Petitioner hereby gives notice that, in accordance with Trademark Rule 2.122(d), it will rely on said registrations as evidence on its behalf in this proceeding, and status copies thereof showing Title will be introduced into evidence during Petitioner’s testimony period.

5. Registrants FRETTE mark is similar to the FRATTY® Mark in sound, meaning and appearance.

6. Registrants goods are related to the items of apparel and other fine clothing on which Petitioner uses its FRATTY® Mark.

7. Registrants use and registration of FRETTE for the goods of the registration herein petitioned for cancellation will likely cause confusion, mistake, or deceive consumers or members of the trade as to source or sponsorship.

8. Registrants use and continued registration of FRETTE for the goods herein petitioned for cancellation will likely dilute the distinctiveness of FRATTY ® MARK.

9. On or about August 29, 2007, Respondent filed a Renewal Application for Renewal of Trademark Registration No. 1,458,428 with the USPTO for the mark FRETTE, asserting Respondent's bona fide intention to use the mark in commerce on the identified goods, and supported by Respondent's Declaration signed by Enrico Marinelli, Managing Director on or About June 26, 2007, and submitted by James R. Meyer Attorney for Registrant.

10. On or about August 29, 2007 Respondent filed with the USPTO a Declaration of Use in its FRETTE Renewal application, stating "One Specimen". The specimen provided consists of a single picture of what appears to be a "hang-tag" with a) "FRETTE" printed on the tag, b)"Made in Italy" printed on the tag with associated c) warning labels and d) other associated information, including Respondent's signed Declaration in support thereof.

11. In Respondent's August 29, 2007 Application for Renewal, and Declaration of Use, Respondent specifically stated "The trademark shown in the above Registration is still in use in interstate commerce on or in connection with all of the goods recited in the Registration, as evidenced by the attached specimen showing the mark as currently used", supported by Respondent's Declaration, signed by Enrico Marinelli, Managing Director, and submitted by James Meyer, Esq. Attorney for Registrant.

12. Respondent's Serial No. 73/624,412 issued on September 22, 1987 as Registration No. 1,458,428 for the following goods: "nightgowns, pajamas, dressing gowns, home gowns, bed jackets, boxer shorts, [body suits, singlets/vests, camisoles, t-shirts, tops, corsets, corselettes,] slips/underskirts, bathrobes, underwear (men), panties (women), mini briefs, [bras, stockings, tights, suspender-belts, foulards, scarves, shawls"

13. Upon information and belief, Respondent's averment of a bona fide intention to use the mark FRETTE on or in connection with every good recited in the Renewal application filed on or about on August 29, 2007 was made with knowledge and belief that said averment was false. Said material false averment was made with the intent to induce employees of the USPTO to grant Respondent a registration; and reasonably relying on the truth of Respondent's material false averment, the USPTO issued Registration No. 1,458,428 to Respondent.

14. Upon information and belief, Respondent's averment of use of the mark FRETTE on or in connection with every good recited in Respondent's

Declaration of Use filed August 29, 2007 was made with knowledge and belief that said averment was false. Said material false averment was made with the intent to induce employees of the USPTO to grant Respondent a registration; and reasonably relying on the truth of Respondent's material false averment, the USPTO issued Registration No. 1,458,428 to Respondent.

15. Upon information and belief, Respondent did not have a bona fide intention to use the mark FRETTE on or in connection with every good recited in its Renewal Application filed on or about August 29, 2007.

16. Upon information and belief, Respondent is not now using, and has never used, the mark FRETTE on or in connection with every good recited in Respondent's August 29, 2007 Declaration of Use.

17. Petitioner avers that, upon information and belief, Respondent's Registration No. 1,458,428 was obtained fraudulently in that Respondent's FRETTE application and Respondent's Statement of Use as filed by Respondent with the USPTO under notice of Section 1001 of Title 18 of the United States Code and signed by James Meyer, Esq. contained known false material statements.

18. Upon information and belief, Applicant alleges that Respondent has not used the mark on or in connection with every good recited in the August 29, 2007 Declaration of Use. Therefore, Respondent's registration should be cancelled based on non-use of the mark under Section 1(a) of the Trademark Act, 15 USC §1052(a).

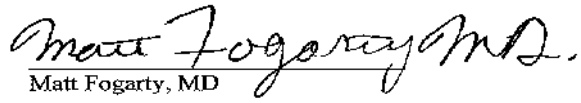
19. Petitioner avers that it is damaged by the continued existence of Respondent's Registration No. 1,458,428.

20. By reason of the foregoing, Registrant's continued registration of FRETTE for the goods of the registration herein petitioned for cancellation would cause injury and damage to Pickin' Cotton Communications.

21. WHEREFORE, Petitioner believes that it will be damaged by Registration No. 1458428 and prays that this Petition for Cancellation be sustained in favor of Petitioner, that judgment be entered against Registrant and that U.S. Trademark Registration No. 1458428 be canceled.

Dated: May 29, 2013

Respectfully Submitted,


Matt Fogarty, MD

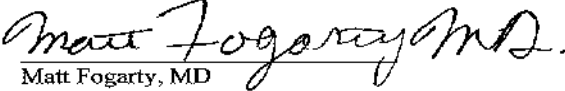
Pickin' Cotton Communications, LLC

Title: Chief Operations Officer

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2013, a copy of petitioner's PETITION FOR CANCELLATION has been served by US mail on Applicant's representatives:

Jeffrey H. Kaufmann,
OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT LLP
1940 DUKE STREET
ALEXANDRIA, VA 22314
UNITED STATES
ATTORNEY FOR REGISTRANT


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REPRESENTATIVE FOR PETITIONER