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

Proceeding	92060579
Party	Defendant Robert M. Lyden
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Submission	Answer
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Date	02/08/2015
Attachments	REGISTRANT'S ANSWER TO THE PETITION FOR CANCELLA-TION.pdf(2259809 bytes) DECLARATION OF ROBERT M. LYDEN IN SUPPORT OF REGISTRANT'S ANSWE.pdf(687581 bytes) Exhibit 1, Sur Reply and Supporting Declaration, January 18, 20.pdf(1058597 bytes) Exhibit 2, Supplemental Declaration, January 23, 2015.pdf(637217 bytes) Exhibit 3, Second Supplemental Declaration, January 28, 2015.pdf(267472 bytes) Exhibit 4, E-mail From Lyden to Feldman and Cornwell, August 27.pdf(91120 bytes) Exhibit 5, RESPONSE IN OPPOSITION TO MOTION FOR PROTECTIVE OR-DER.pdf(1609068 bytes) Exhibit 6, Plaintiff's Response in Opposition.pdf(1760069 bytes)

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

adidas America, Inc.,

Petitioner,

v.

Robert M. Lyden,

Respondent.

Cancellation No.: 92060579

In the Matter of Registration Nos. 3,629,011 and 3,633,365

REGISTRANT'S ANSWER TO THE PETITION FOR CANCELLATION

Robert M. Lyden ("Respondent") registrant in this case, represents himself, and respectfully files this answer to the "Combined Petition for Cancellation" filed by the Petitioner on December 22, 2014.

1. Admits.

2. Admits.

3. Admits.

4. Admits.

5. Admits.

6. Admits.

7. Admits.

8. Admits.

9. Admits.

10. Denied.

11. Denied.

12. The Petitioner has failed to correctly plead separate facts and related arguments. The first sentence here contains two different statements separated by the word "or." Accordingly, I will separate the sentence into two parts and answer each part. The Petitioner stated: "Moreover, even if Respondent ever used in commerce the Designs, he never has made more than token use,..." On information and belief, denied. The question of what constitutes "token use" and whether the Respondent's use of the trademarks at issue has constituted "token use" calls for a legal finding, determination and ruling that will have to take into consideration the facts, issues, and unusual circumstances associated with this Petition for Cancellation and the co-pending Complaint styled "Robert M. Lyden v. adidas America, Inc. et al., Civil Action No. 3:14-cv-1586 MO in the United States Court for the District of Oregon. Second, the Petitioner has also stated: "or he has discontinued such use with no concrete plans of resuming use of the Designs," and the Respondent's answer to this statement of the Petitioner is: Denied. As concerns the second sentence here: Denied.

13. Denied.

14. Denied.

15. Admits regarding the first three sentences. Denied regarding the fourth sentence because one can not speak of a willful infringer of the trademarks such as the Petitioner adidas, America, Inc. as being "damaged."

16. Not Applicable.

First Affirmative Defense

17. The petition for cancellation and the relief sought is barred in whole or in part, by the doctrine of unclean hands. In March, 2002, Respondent entered into an "Intellectual Property and Prototype Agreement" with the largest footwear company in the United States, Nike, Inc. This agreement was in force and effect until December, 2002, and the last payment due under the terms of the agreement was made in January, 2003. It was during this period that the Respondent filed for a similar earlier trademark Serial No. 76/459,378 on October 15, 2002 which was granted and remained in force until it was later abandoned by the Respondent on June 9, 2007. Between March, 2002 and January, 2003, the Respondent made and effectively sold about a dozen shoes bearing the trademark to Nike, Inc. Some of these articles of footwear were lab tested and provided better results for cushioning and mechanical efficiency than the product offerings of Nike, Inc. The Respondent and his business partners were paid the sum of $300,000. dollars therefore. Accordingly, the Respondent's filing for this earlier trademark Serial No. 76/459,378 constituted use and the Respondent's "intent to use" was genuine. After Nike, Inc. declined to purchase or license the Respondent's intellectual property, the Respondent subsequently engaged in continuous business activity and commerce with other footwear companies, retailers, and potential investors regarding his intellectual property and including the trademarks at issue.

In 2004, the Petitioner infringed upon one of the Respondent's utility patents for athletic shorts and settled the matter, and the Respondent then offered his patents and the aforementioned trademark for sale or licensing to the Petitioner, but the Petitioner indicated that it had no interest therein. However the Petitioned turned right around and

launched the adidas "Tunit" soccer shoe in 2005 which infringed upon several of the Respondent's utility patents between 2005-2011. The Petitioner also filed several patents for like subject matter without making the Respondent's prior art patents which were known to the Petitioner of record during the prosecution of the latter "knock-off" patents. The Respondent attempted to address the Petitioner's improper activity by filing three protests with the USPTO, but given the option to do so the Petitioner failed to make some of these of record. During this period, the Respondent offered his intellectual property including this earlier trademark Serial No. 76/459,378 to the Petitioner for sale or licensing on November 23, 2005, and numerous other times.

On January 17, 2007, the Respondent entered into a "Patent License Agreement" with DashAmerica, Inc. dba Pearl Izumi, and the Respondent and his business partners were paid $150,000. to option and license some of their intellectual property relating to footwear, but the company went up for sale and the license agreement which included guaranteed royalties of 1.45 million dollars over five years, and a buy-out option of 7 million dollars was terminated on July 16, 2007. During this period, the Respondent let his earlier trademark Serial No. 76/459,378 go abandoned on June 9, 2007. Instead, the Respondent changed the visual image of the trademark, and then filed for two trademarks on October 23, 2007 which were later allowed as the trademarks at issue Registration Nos. 3,629,011 on May 26, 2009, and 3,633,365 on June 2, 2009. On December 13, 2007, the Respondent offered the pending Trademark Applications Nos. 77/310,958 and 77/310,939 associated with the trademarks at issue for sale or licensing to the Petitioner, and the Respondent has subsequently and repeatedly done so regarding his other

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