

19-1880

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

TODD C. BANK

Appellant,

v.

AL JOHNSON'S SWEDISH RESTAURANT & BUTIK, INC.,

Appellee.

*Appeal from the United States Patent and Trademark Office,
Trademark Trial and Appeal Board in Cancellation No. 92069777*

**APPELLEE'S RESPONSE IN OPPOSITION
TO APPELLANT'S MOTION FOR ORAL ARGUMENTS**

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Attorneys for Appellee
November 25, 2019

INTRODUCTION

Appellee Al Johnson's Swedish Restaurant and Butik, Inc. ("Al Johnson's Restaurant"), by its undersigned attorneys, hereby responds to and opposes Appellant Todd C. Bank's ("Bank") motion for oral arguments on the appeal and on the parties' motions for sanctions (Doc. 36).

ARGUMENT

Al Johnson's Restaurant opposes Bank's request for oral arguments because the request is untimely and will increase Al Johnson's Restaurant's time, costs and legal fees to defend Bank's frivolous appeal, as well as waste the resources of this Court. On October 21, 2019 the Court issued a Notice of Submission without Oral Argument (Doc. 31) that informed the parties that this appeal was not scheduled for oral arguments and that the Clerk's Office will submit the case to a three-judge pane on December 6, 2019.

As stated in the Notice, "[o]ral arguments will not be held if the briefs and the record fully explain the facts and the legal arguments in the case, and oral argument would not help the panel decide the case. Fed. R. App. P. 34(a)(2). In argued and in submitted cases, the panel fully considers all arguments raised by the parties, regardless of whether oral argument occurred." Doc. 30 at 1. Al Johnson's Restaurant agrees with the statement in the Notice that the briefs

and the record explain the facts and the legal arguments, such that oral arguments would not be helpful.

The Notice also provided the parties until November 4, 2019 to submit memorandums in lieu of oral arguments or a motion to request an oral argument. *Id.* Bank submitted neither a memo in lieu of an oral argument nor a motion to request an oral argument by the November 4, 2019 deadline. Bank's request for oral arguments is untimely and will delay a decision in this appeal.

Al Johnson's Restaurant also opposes Bank's motion for oral arguments because oral arguments will increase the time and expense of defending Bank's appeal, which is frivolous as filed and as argued, as set forth in Al Johnson's Restaurant's Motion for Sanctions under Rule 38 of the Federal Rules of Appellate Procedure (Doc. 31) and in its Reply in Support of its Rule 38 Motion (Doc. 34). *See also* Rule 34(a)(2) of the Federal Rules of Appellate Procedure (noting the Federal Circuit may also decline to schedule oral arguments when an appeal is frivolous or when the dispositive issue or issues have been authoritatively decided).

Similarly, with respect to Bank's request for oral arguments on the parties' sanctions motions, Al Johnson's Restaurant submits that the parties' briefs fully set forth their respective legal arguments, such that oral arguments would not be helpful and would only create unnecessary delay and expense.

CONCLUSION

WHEREFORE, Al Johnson's Restaurant respectfully requests that the Court deny Bank's motion for oral arguments.

Dated: November 26, 2019 Respectfully submitted,

/s/ Katrina G. Hull
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*Counsel for Appellee Al Johnson's Swedish
Restaurant and Butik, Inc.*

CERTIFICATE OF INTEREST

Counsel for Appellee, Al Johnson's Swedish Restaurant & Butik, Inc., certifies the following:

1. Full name of the party represented by me:

Al Johnson's Swedish Restaurant & Butiks, Inc.

2. Name of the real party in interest represented by me is:

N/A

3. Parent corporations and publicly held companies that own 10% or more of the stock in the party:

None

4. The names of the all law firms and the partners or associates that appeared for the party now represented by me in the agency or are expected to appear in this court are:

Katrina G. Hull and Emily M. Haas of Michael Best and Friedrich LLP appeared before the agency; Katrina G. Hull and Jacqueline L. Patt of Markery Law, LLC are appearing in this Court.

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal.

None

Dated: November 26, 2019

/s/ Katrina G. Hull

Katrina G. Hull

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2019, I filed this document with the Court's CM/ECF filing system, which delivered notice of this filing to the below email address for Appellant Todd C. Bank:

tbank@toddbanklaw.com

ecf@toddbanklaw.com

I also certify that on November 26, 2019, I sent a copy of this document by U.S. mail to Appellant Todd C. Bank, as follows:

Todd C. Bank
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415

/s/ Katrina G. Hull
Katrina G. Hull