UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

TODD C. BANK,

Petitioner-Appellant,

v.

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

Registrant-Appellee.

Docket No. 19-1880

APPELLANT'S MOTION FOR SANCTIONS

TODD C. BANK,
ATTORNEY AT LAW, P.C.
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
(718) 520-7125
tbank@toddbanklaw.com
By: Todd C. Bank

Counsel to Petitioner

INTRODUCTION

Appellant, Todd C. Bank ("Bank"), moves, pursuant to 28 U.S.C. § 1927 and the inherent authority of this Court, for sanctions against Appellee, Al Johnson's Swedish Restaurant & Butik, Inc. (the "Restaurant"), and its counsel for making the Restaurant's motion for sanctions against Bank (Doc. 31).

ARGUMENT

POINT I

APPELLEE'S MOTION IS FRIVOLOUS AND VEXATIOUS

The Restaurant, in its motion for sanctions ("Rest. Mtn.") states: "Bank's appeal is frivolous as filed and frivolous as argued. . . . Bank's briefs filed with this Court provide no basis in law or fact to reverse the Board's March 2019 Order." Rest. Mtn. at 6. These charges are manifestly untrue. *See* Bank's opposition to the Restaurant's motion for sanctions ("Bank Opp."), Points I and II.

The Restaurant states: "Bank's argument that he does not have to plead an injury that can be addressed under the Lanham Act is 'patently illogical.' *See State* [*v. Mor-Flo Indus., Inc.*], 948 F.2d [1573] at 1580 [(Fed. Cir. 1991)] (finding a party's *misrepresentations of the controlling law* and 'its patently illogical and irrelevant arguments' to be frivolous as filed and argued)," Rest. Mtn. at 12 (emphasis added). First, the Restaurant misunderstands fundamental principles of standing. *See* Bank's Principal Brief ("Bank Pr. Br.," Doc. 21), Point I(A), Bank's Reply Brief ("Bank

Reply Br.," Doc. 26), Point I(C), and Bank Opp., Point II. Second, the Restaurant does not cite a single "misrepresentation of the controlling law" (or non-controlling law) by Bank.

The Restaurant states: "[i]t is illogical that the Supreme Court would strike down the disparagement clause as unconstitutional and then allow parties, like Bank, to continue to challenge registration when the only alleged injury caused by a mark is its offensiveness." *Id.* Again, the Restaurant's purported lack of understanding of the distinction between standing and the merits, *see* Bank Pr. Br., Point I(A); Bank Reply Br., Point I(C), and Bank Opp., Point II, is astounding.

The Restaurant states: "[w]hen a pro se attorney ignored two of the three bases on which a court's judgment could be sustained, the Federal Circuit sanctioned the attorney for filing a frivolous appeal because he made 'no attempt to address the overwhelming authority against his position, much less rebut that authority.'" Rest. Mtn. at 10, quoting *Finch v. Hughes Aircraft Co.*, 926 F.2d 1574, 1580 (Fed. Cir. 1991) (in which this Court "award[ed] to [the] appellee [] double its costs," *Finch*, 926 F.2d at 1583, and in which the sanctioned attorney was a "member[] of the bar of this [C]ourt," *id.*, who had "litigated in this [C]ourt previously," *id.* at 1583, n.7). Unlike in *Finch*, Bank addressed each of the bases upon which the Board made its ruling and neither ignored, nor failed to rebut, authority against his position, the only such authority, which is not binding on this Court, being *Doyle v. Al Johnson's*

Swedish Restaurant & Butik, Inc., 101 U.S.P.Q.2d 1780, 2012 WL 695211 (T.T.A.B. 2012) (regarding functionality)). *See* Bank Opp. Point I. Thus, the Restaurant's reliance upon *Finch* has no justification.

The Restaurant states: "Bank has filed essentially the same functionality claim three times with the Board, and the Board has twice warned Bank to review Rule 11 before continuing to pursue cancellation of the [Restaurant's mark] as functional." Rest. Mtn. at 6-7. First, in *Doyle*, the Board, in referring to Rule 11, did so in relation to standing. *See Doyle*, 2012 WL 695211 at *4 ("in considering whether to attempt to replead his allegations, petitioner should carefully review Fed. R. Civ. P. 11. Petitioner should *also* be aware of the extreme difficulties he would likely face in ultimately proving that [the Restaurant]'s mark is functional." (emphasis added)) (although the basis of the petitioner's standing in *Doyle* is not at issue here, that basis was not frivolous).

Second, in the present case, neither of Bank's positions, *i.e.*, regarding standing and the claim of functionality, is frivolous, but, instead, meritorious and well reasoned. *See* Bank Opp., Points I and II.

Third, this Court, under Rule 38 of the Federal Rules of Appellate Procedure, is authorized to impose sanctions if it "determines that an *appeal* is frivolous." Fed. R. App. P. 38 (emphasis added). That authority, of course, does not include the imposition of sanctions based on other matters. Indeed, Rule 38 does not even

authorize sanctions based on the proceeding from which the appeal is taken, let alone a proceeding, such as *Doyle*, that was not appealed to this Court. *See Boyer v. BNSF Railway Co.*, 824 F.3d 694, 711 (7th Cir. 2016) ("Rule 38 necessarily focuses on what a party has done in the *appellate court* rather than the district court," citing *Roth v. Green*, 466 F.3d 1179, 1188 (10th Cir. 2006), and *In re 60 E. 80th St. Equities, Inc.*, 218 F.3d 109, 118, n.4 (2d Cir. 2000) (emphasis added)).

Fourth, "the test of frivolity is an *objective* one," *McEnery v. Merit Systems Protection Bd.*, 963 F.2d 1512, 1516 (Fed. Cir. 1992) (emphasis added); *see also Maxwell v. KPMG, LLP*, No. 07-2819, 2008 WL 6140730, *4 (7th Cir. Aug. 19, 2008) ("whether a party should be sanctioned under Rule 38 depends merely on whether a party's arguments could reasonably be supposed to have any merit; the standard is *objective*. The standard . . . depends on the *work product*: neither the lawyer's *state of mind* nor the *preparation behind the appeal* matter. The standard . . . has *nothing to do with the* lawyer's *mental state*" (emphases added; citations and quotation marks omitted)); *Rose v. Utah*, 399 F. Appx. 430, 438 (10th Cir. 2010) (*"[s]ubjective good faith* is *irrelevant*; sanctions [under Rule 38] are appropriate for conduct that, viewed *objectively*, manifests either intentional or reckless disregard of the attorney's duties to the court" (citation and quotation marks omitted)). The most that could be gleaned from matters other than the one in which sanctions are sought would, of course, be the subjective matter of an attorney's (or litigant's) state of mind

(which, given the two citations by the Restaurant, would be particularly a matter of guesswork in any event); and, the consideration of other matters to determine whether a given appeal is *objectively frivolous* is inherently illogical, which is also shown by the fact that such consideration would mean that a given appeal could be 'objectively' frivolous depending on who brought it.

The Restaurant, in asking for sanctions, cites a 2012 blog post regarding *Doyle*. *See* Rest. Mtn. at 17. Not content to merely rely upon a blog post, the Restaurant describes the author of the post as "trademark scholar John L. Welch," *id.* , whereas, in fact, Mr. Welch is an attorney who represents trademark holders. *See* www.wolfgreenfield.com/professionals/w/welch-john (last checked on Nov. 12, 2019); he is not a "scholar" any more than is any other attorney, and the Restaurant's description of him in that manner was clearly less than forthright. By contrast, the law-review article that Bank block-quoted, *see* Bank Pr. Br. at 10-12, which scathingly criticized the Restaurant's mark as functional, was by Lee B. Burgunder, whose books include *Intellectual Property Law* (5th ed. 2012, Univ. of Miami), and who is a "professor of law and public policy at California Polytechnic State University, where he has been teaching for [34] years." Author Description at amazon.com (available at www.amazon.com/Legal-Aspects-Managing-Technology-Burgunder/dp/1439079811/ref=sr_1_1?keywords=lee+Burgunder&qid=1573573077&s=books&sr=1-1 (last checked Nov. 12, 2019). Furthermore, Professor

Burgunder "has published numerous articles on intellectual[-]property[][-]law issues," *id.*, and "received [a] law degree and M.B.A. from Stanford University, and practiced law at Patton, Boggs in Washington, D.C., prior to entering academia." *Id.*

The Restaurant also described Professor Burgunder's article as "a law review article that criticizes unique trade[-]dress registrations." Restaurant's Brief ("Rest. Br.," Doc. 24) at 25. On the contrary, the article did not contend that "unique trade[-]dress registrations" are invalid as a class; rather, the article, as reflected in its *title*, explained, *specifically*, why the *Restaurant's* mark was invalid. Indeed, the article began as follows:

> Recently, the *Wall Street Journal* reported that the owner of a Swedish restaurant in Wisconsin had sued a grocery store in Georgia for violating its registered trademark, which surprisingly consisted of live goats on a grass roof.[1] The Georgia market settled the dispute, but its proprietor claimed that he legally could have fought the claim because "it is ridiculous."[2]
>
> [1] Justin Scheck & Stu Woo, *Lars Johnson Has Goats on His Roof and a Stable of Lawyers to Prove It*, WALL ST. J., Sept. 17, 2010, at A1.
>
> [2] *Id.* (stating the Georgia market agreed to pay a licensing fee to gain rights to place goats on grass roofs in Georgia, South Carolina, North Carolina and Tennessee).

Lee B. Burgunder, *Trademark Protection of Live Animals: The Bleat Goes On*, 10 J. Marshall Rev. Intell. Prop. L. 715, 716 (2011). The irony of the Restaurant's claim that Bank has engaged in abusive litigation is striking.

The Restaurant, in another transparent attempt to have this Court consider a matter that is not before it, states that, "this is not the first time Bank has been chastised for failing to plead an injury," Rest. Mtn. at 12, citing *Doyle v. Mastercard Int'l Inc.*, 700 F. Appx. 22 (2d Cir. 2017), in which, the Restaurant states, "the Second Circuit recently explained to Bank and his client Robert Doyle, i.e. the same person that wanted to take pictures of goats on a grass roof, that standing requires alleging an injury that can be addressed under the law." Rest. Mtn. at 12. Notwithstanding the Restaurant's self-serving characterization of the Second Circuit as having "chastised" Bank, the court did not sanction, nor even suggest, that sanctions were warranted; but, again, the relevant matter is the one before this Court, not another case before another court (whether or not Bank represented Mr. Doyle in such case). The Restaurant acknowledges that, "the Second Circuit case is unrelated to the Lanham Act," *id.* at 13, but contends: "the logic is the same. Bank lacks standing to sue on his own behalf and on behalf of alleged 'numerous persons' because he alleges no injury addressable under the Lanham Act." *Id.* In *Doyle v. Mastercard*, the "numerous persons" were the putative class members; in the present case, by contrast, Bank, although referring to "numerous persons" in the Petition, *see* Pet., ¶¶ 3, 4 (Appx15), filed his petition individually. Thus, the Restaurant's attempt to invoke "numerous person" in order to further connect *Doyle v. Mastercard* to the present matter is yet another transparent (and deceptive) attempt by the Restaurant to encourage this Court to show disfavor

toward Bank due to a matter that is not at issue.

The Restaurant states: "[t]ellingly, the Second Circuit recently affirmed sanctions under Rule 11 against Bank," Rest. Mtn. at 16, citing *McCabe v. Lifetime Entm't Servs., LLC*, 761 F. Appx. 38 (2d Cir. 2019), *cert. denied*, No. 18-1353, 2019 WL 4921303 (U.S. Oct. 7, 2019), in which the court found that, "when 'the law of this Circuit is clearly contrary to a litigant's arguments, . . . [the litigant's] citations to older or abrogated cases [as] persuasive authority . . . cannot constitute a good-faith argument that existing law should be reversed.'" Rest. Mtn. at 17, quoting *McCabe*, 761 F. Appx. at 42. However, neither the Board nor the Restaurant has cited a single binding ruling that precludes Bank's claims, and neither has even suggested that Bank improperly relied upon any cases for their persuasive value. Indeed, the only case on point is *Doyle* (regarding functionality), which, of course, is not binding on this Court. Thus, the Restaurant's premise, *i.e.*, that the present case is comparable to *McCabe*, is blatantly false. More broadly, this Court should not countenance "pile on" arguments that have, as their obvious purpose, prejudicing this Court against Bank; and, it is insulting to the integrity of this Court to assume that it could be swayed to disfavor Bank rather than considering the facts regarding the instant appeal, in connection with which there is not even an arguable basis for sanctions against Bank.

The Restaurant states that, "Bank's appeal is frivolous because he 'has manufactured "arguments" in support of reversal by distorting the record, by

disregarding or mischaracterizing the clear authority against [his] position, and by attempting to draw illogical deductions from the facts and the law,'" Rest. Mtn. at 14-15, quoting *State Indus., Inc. v. Mor-Flo Indus., Inc.*, 948 F.2d 1573, 1579 (Fed. Cir. 1991). The Restaurant makes this charge without proving support for it; and, moreover, the charge is manifestly false. *See Bank Opp., Points I and II.* Equally baseless is the Restaurant's charge that, "[j]ust as Bank ignored the law cited by the Board when he filed his 2018 Petition, he continues to ignore the law when pursuing this Appeal." Rest. Mtn. at 15. *See Bank Opp., Points I and II.* Likewise, the Restaurant's contention that, "Bank's briefs also do not argue that any of the precedential cases, including *Doyle*, were wrongly decided by the Board or the Federal Circuit," *id.* at 16, is false. First, Bank made exactly such arguments regarding *Doyle*. *See* Bank Pr. Br. at 12-13. Second, other precedential cases, rather than undermining Bank's position, were simply mischaracterized by the Board. *See* Bank Pr. Br. at 7-8, 13-16. Third, Bank refuted the mischaracterizations of the case law that the Restaurant made it its Brief. *See* Bank Reply Br. at 1-8 (*i.e.*, every page therein). Finally, as no precedent of *this Court* precludes Bank's claims, Bank did not *need* to "argue that any of the precedential cases . . . were wrongly decided by . . . the Federal Circuit."

The Restaurant states: "Bank's [Principal] Brief cites irrelevant cases regarding standing in Article III courts in completely unrelated matters, such a [sic] death[-]row

inmate's standing to challenge another inmate's death sentence." Rest. Mtn. at 14, n.2, citing Bank Pr. Br. at 4. Presumably, the Restaurant is referring to Bank's citation to *Whitmore v. Arkansas*, 495 U.S. 149 (1990); however, as Bank noted, "[t]he Restaurant takes, out of context, Bank's quoting of *Whitmore*." Bank Reply Br. at 7.

In sum, the Restaurant offers what it describes as "three representative examples of the frivolity of Bank's appeal," Rest. Mtn. at 6, yet, even in (presumably) setting forth what it considered its strongest, or primary, points, the Restaurant does not even arguably make the case for sanctions; and, the merits of the parties' arguments clearly favor *Bank*, not the Restaurant.

CONCLUSION

Appellant's motion for sanctions should be granted, in connection with which Appellant should be awarded legal fees. *See Pickholtz v. Rainbow Technologies, Inc.*, 284 F.3d 1365, 1377 (Fed. Cir. 2002) (legal-fee sanctions available to *pro se* attorneys).

STATEMENT OF OPPOSITION

On November 13, 2019, Bank discussed the instant motion with Katrina G. Hull, counsel to the Restaurant; Ms. Hull stated that the Restaurant would oppose the motion.

Dated: November 18, 2019

TODD C. BANK,
ATTORNEY AT LAW, P.C.
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Fourth Floor
Kew Gardens, New York 11415
(718) 520-7125
tbank@toddbanklaw.com
By: Todd C. Bank

Counsel to Petitioner-Appellant

FORM 9. Certificate of Interest

Form 9
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Bank v. Al Johnson's Swednsh Rest.

Case No. 19-1880

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ■ (appellant) ☐ (respondent) ☐ (appellee) ☐ (amicus) ☐ (name of party)

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Todd C. Bank	Todd C. Bank	N/A

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

Todd C. Bank
Todd C. Bank, Attorney at Law, P.C.

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

N/A

11/18/2019
Date

Signature of counsel

Please Note: All questions must be answered

Todd C. Bank
Printed name of counsel

cc: _____

Reset Fields

DECLARATION OF TODD C. BANK

1. On November 13, 2019, I spoke with Katrina G. Hull, counsel to the Restaurant, by telephone pursuant to Federal Circuit Rule 27(a)(5) (Jacqueline Patt of Ms. Hull's firm was also on the line, but Ms. Patt's participation was minimal).

2. Just as Ms. Hull had, after trying to avoid complying altogether with the discussion requirement of Rule 27(a)(5), refused to engage in a meaningful discussion of the Restaurant's then-anticipated motion for sanctions, Ms. Hull refused to do so regarding the instant motion, whereas doing so might have persuaded the Restaurant to withdraw its motion, and, likewise, might have persuaded me to do so with respect to the instant motion (or narrow its bases). Instead, Ms. Hull stated, before any discussion had occurred regarding the instant motion, that the Restaurant would oppose it. I tried to inform Ms. Hull of the points I expected to raise in the instant motion, but Ms. Hull simply stated that the Restaurant's responsive arguments were set forth in the Restaurant's own motion (although Ms. Hull repeatedly interrupted me and thus might not have even been sure of the point I was trying to make). Ms. Hull also refused to answer any questions I had as to why the Restaurant disagreed with a point of mine, and refused to respond to comments I made in attempting to understand the basis of a supposed disagreement.

3. While I was literally in the middle of speaking, Ms. Hull hung up the telephone (Ms. Patt either hung up as well or was automatically disconnected). Shortly thereafter, I emailed a letter to Ms. Hull (a copy of which is annexed as

Exhibit "A" hereto), which stated, in full:

> Regarding our telephone conversation of today: it seems that, after approximately an hour of your refusal to cooperate, you hung up the phone on me. Not only was this rude and unprofessional, but you would not even allow me to explain all of the grounds of my anticipated motion. Please confirm whether you hung up on me, as I do not want to mischaracterize your action to the Court.

4. Approximately an hour after I emailed this letter, I received an email from Ms. Hull (a copy of which is annexed as Exhibit "B" hereto), which stated in full:

> Unfortunately, you treated the call as if it were an interrogation with numerous character assassinations, near constant interruptions and mischaracterizations of my statements. After an hour and 15 minutes on the phone, I acknowledged that I understood the basis for your intended Motion for Sanctions against me and planned to oppose the motion. I then said, "Good day," and hung up the phone to end your harassment. By way of example, if you did not like or disagreed with one of my answers to your questions, you would just keep asking the same question over and over again. Further, you did the majority of the talking on the call, and by no means was the call an equal or productive discussion.
>
> Early in the call, I explained that I had researched Federal Circuit cases granting sanctions under Rule 38 of the Federal Rules of Appellate Procedure and, based on that research, believed that your appeal clearly falls into the frivolous category, such that I am prepared to defend against your motion that I filed a frivolous Motion for Sanctions against you for filing a frivolous appeal. I understand that you disagree your appeal is frivolous, and I do not anticipate that anything left unsaid after more than two hours on the phone with you will convince you

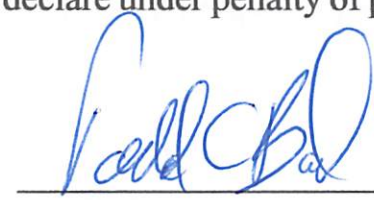
> otherwise. This is why I've asked the Federal Circuit to determine if the appeal is frivolous under Rule 38. I also asked the Federal Circuit for sanctions because you have repeatedly harassed my client by filing three actions with the Board, all of which were dismissed under Rule 12(b)(6) for a lack of standing, and then proceeded with filing an appeal to the Federal Circuit without a sound legal basis for doing so.
>
> We have a fundamental disagreement about the nature, as well as the length of the discussion, required under Federal Circuit Rule 27(a)(5). If you want to raise this issue in your motion, we will respond, and the Federal Circuit can answer the question about the type of discussion required by the rule.

5. I did not hear Ms. Hull say "good day" (or anything similar) before she hung up the telephone. Moreover, I did not "treat[] the call as if it were an interrogation," I did not engage in any, much less "numerous[,] character assassinations," and did not engage in "near constant interruptions and mischaracterizations of [Ms. Hull's] statements." Instead, it is Ms. Hull who, throughout the call, interrupted me to say, as noted above, that the answers to my questions were in the Restaurant's motion without providing any further explanation (not even, for example, *where* in the motion the answer to my question might be found), or that Ms. Hull disagrees with me while refusing to say why. It is clear that Ms. Hull, as when discussing the Restaurant's then-anticipated motion, had no interest in having what even arguably might be considered a productive discussion.

6. One example of Ms. Hull's obfuscation is that, early during the

conversation, I had asked her to tell me whether the Restaurant objected to how, in my Principal Brief, I characterized the first issue on appeal, *i.e.*, the issue of standing. Ms. Hull repeatedly stated that the Restaurant had worded that issue differently in its Brief than I had in my Principal Brief, whereas, as I tried to explain, the mere fact that the parties worded that issue differently did not indicate whether the Restaurant believed that my description of the issue was objectionable, although Ms. Hull later acknowledged that the Restaurant did not object to that description.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.



Todd C. Bank
Executed on November 18, 2019

EXHIBIT "A"

Emailed Letter from Todd C. Bank to Katrina G. Hull

November 13, 2013

TODD C. BANK, ATTORNEY AT LAW, P.C.
119-40 Union Turnpike, Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193

www.toddbanklaw.com **tbank@toddbanklaw.com**

November 13, 2019

Markery Law LLC
1200 G St., N.W.
Suite 800
Washington, DC 20005
Attn.: Katrina G. Hull

Re: Todd C. Bank v. Al Johnson's Swedish Restaurant & Butik, Inc.
Court of Appeals for the Federal Circuit; Case 19-1880

Dear Ms. Hull:

Regarding our telephone conversation of today: it seems that, after approximately an hour of your refusal to cooperate, you hung up the phone on me. Not only was this rude and unprofessional, but you would not even allow me to explain all of the grounds of my anticipated motion. Please confirm whether you hung up on me, as I do not want to mischaracterize your action to the Court.

Sincerely,

s/ Todd C. Bank

Todd C. Bank

EXHIBIT "B"

Email from Katrina G. Hull
to Todd C. Bank

November 13, 2013

Subject: RE: URGENT: Rule 27(a)(5) Notice of Motion for Sanctions - 19-1880-MA Bank v. Al Johnson's Swedish Rest.
From: Katrina Hull <katrinahull@markerylaw.com>
Date: 11/13/2019, 6:24 PM
To: Todd Bank <tbank@toddbanklaw.com>
CC: Jacqueline Patt <jackiepatt@markerylaw.com>

Attorney Bank,

Unfortunately, you treated the call as if it were an interrogation with numerous character assassinations, near constant interruptions and mischaracterizations of my statements. After an hour and 15 minutes on the phone, I acknowledged that I understood the basis for your intended Motion for Sanctions against me and planned to oppose the motion. I then said, "Good day," and hung up the phone to end your harassment. By way of example, if you did not like or disagreed with one of my answers to your questions, you would just keep asking the same question over and over again. Further, you did the majority of the talking on the call, and by no means was the call an equal or productive discussion.

Early in the call, I explained that I had researched Federal Circuit cases granting sanctions under Rule 38 of the Federal Rules of Appellate Procedure and, based on that research, believed that your appeal clearly falls into the frivolous category, such that I am prepared to defend against your motion that I filed a frivolous Motion for Sanctions against you for filing a frivolous appeal. I understand that you disagree your appeal is frivolous, and I do not anticipate that anything left unsaid after more than two hours on the phone with you will convince you otherwise. This is why I've asked the Federal Circuit to determine if the appeal is frivolous under Rule 38. I also asked the Federal Circuit for sanctions because you have repeatedly harassed my client by filing three actions with the Board, all of which were dismissed under Rule 12(b)(6) for a lack of standing, and then proceeded with filing an appeal to the Federal Circuit without a sound legal basis for doing so.

We have a fundamental disagreement about the nature, as well as the length of the discussion, required under Federal Circuit Rule 27(a)(5). If you want to raise this issue in your motion, we will respond, and the Federal Circuit can answer the question about the type of discussion required by the rule.

Regards,

Katrina

Katrina G. Hull, Esq.
Markery Law, LLC
t: 202-888-2047 (Direct)
KatrinaHull@MarkeryLaw.com

From: Todd Bank <tbank@toddbanklaw.com>
Sent: Wednesday, November 13, 2019 4:15 PM
To: Katrina Hull <katrinahull@markerylaw.com>
Subject: Re: URGENT: Rule 27(a)(5) Notice of Motion for Sanctions - 19-1880-MA Bank v. Al Johnson's Swedish Rest.

Ms. Hull:

Please see the attached letter.

Sincerely,

Todd C. Bank
Attorney at Law
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Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2019, a true and accurate copy of the foregoing was served, by the overnight delivery service of Federal Express, on the following:

Katrina. G. Hull
Markery Law, LLC
1200 G St, N.W., Suite 800
Washington, D.C. 20005

Dated: November 18, 2019

Todd C. Bank

TODD C. BANK, ATTORNEY AT LAW, P.C.
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November 18, 2019

Clerk of Court
United States Court of Appeals
for the Federal Circuit
717 Madison Place NW
Washington, DC 20439
Room 401

via Federal Express
7770 1104 2265

Re: Todd C. Bank v. Al Johnson's Swedish Restaurant & Butik, Inc.
Docket No. 19-1880

Dear Sir or Madam:

I am the appellant in the above-referenced appeal. Enclosed are the following:

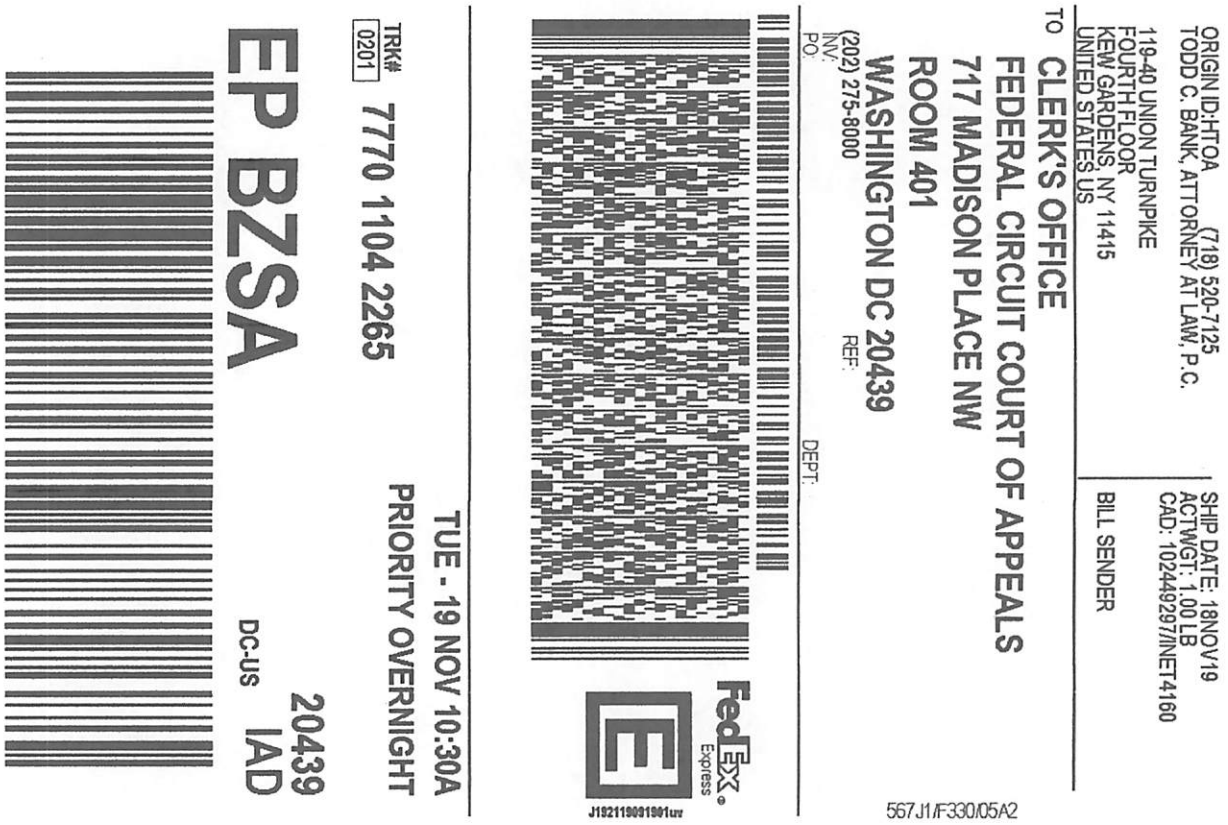
1. Appellant's opposition to Appellee's motion for sanctions; and
2. Appellant's motion for sanctions.

Thank you.

Sincerely,

Todd C. Bank

Enclosures



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