

**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

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JAN 16 2020

United States Court of Appeals
For The Federal Circuit

**APPELLANT'S RESPONSE TO APPELLEE'S
APPLICATION FOR ATTORNEY FEES**

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INTRODUCTION

Appellant, Todd C. Bank (“Bank”), hereby responds to the application for attorney fees (part of Doc. 44) by Appellee, Al Johnson’s Swedish Restaurant & Butik, Inc. (the “Restaurant”). As set forth below, the purported billing record of the Restaurant’s counsel is rife with improprieties and suspect entries, which, perhaps, explains why Katrina G. Hull, who had “acted as lead counsel . . . on this appeal,” Declaration of Katrina G. Hull, ¶ 13, attempted, in violation of this Court’s rules and of principles that are so well settled as to constitute common knowledge among attorneys, to bypass the judges of this Court and instead have her firm’s purported fees approved by the Clerk, thereby forcing Bank to submit a motion (Doc. 48) for an order: (i) directing the Clerk not to act upon the request, in the Restaurant’s application for costs and attorney fees (Doc. 44), that the Clerk determine the amount of attorney fees to be awarded to the Restaurant; and (ii) confirming that Bank’s time to respond to the application for attorney fees shall be determined by the Court pursuant to Federal Circuit Rule 47.7(a)(3). Indeed, this Court issued an order (Doc. 49) that precisely corresponded to the relief that Bank sought; and, accordingly, the order denied the motion as moot.

I

RESPONSE TO THE DECLARATION OF KATRINA G. HULL

Ms. Hull states:

“I am of counsel with Markery Law, LLC, counsel to the [Restaurant],” Declaration of Katrina G. Hull (“Hull Decl.”), ¶ 1, and that, “Markery Law is a trademark boutique based in Washington D.C.” *Id.*, ¶ 5.

Response:

The Washington, D.C., address that Markery Law uses is a ‘virtual office,’ meaning an address that a business uses to make it appear that the business is located at that address. *See* Exhibit “A” to the accompanying Declaration of Todd C. Bank (“Bank Decl.”) (the exhibit is available at www.regus.ru/en-ru/virtual-office/uni-ted-states/district-of-columbia/washington/district-of-columbia-washington-metro-center (do not use the hyphen in “uni-ted”)). Indeed, Ms. Hull also uses a Post Office box in Gaithersburg, Maryland, *see* cover page and p.35 of the Restaurant’s Brief (Doc. 24), even though Ms. Hull told Bank, during a telephone conversation on November 1, 2019, that she works “remotely” in Milwaukee. In addition, the General Docket of this appeal lists, as the only address for Markery Law, the Gaithersburg address, which is listed as the address for both Ms. Hull and Jacqueline Patt, and which is also the address used by Markery Law’s other attorney, Stacey J. Watson (these three attorneys are listed at www.markerylaw.com as Markery Law’s attorneys). *See* Trademark Trial

and Appeal Board Inquiry System, No. 87437296 (available at ttabvue.uspto.gov/ttab\vue/v?pno=87437296&pty=EXT (do not use the hyphen in “us-pto”)).

Ms. Hull states:

“Markery Law handles trademark prosecution matters before the U.S. Patent and Trademark (‘USPTO’) and the USPTO’s Trademark Trial and Appeal Board.” Hull Decl., ¶ 5.

Response:

Ms. Hull does not indicate how many trademark-prosecution matters Ms. Hull, Ms. Patt, or Markery Law have handled, nor the success rate of any of them.

Ms. Hull states:

“The attorneys at Markery Law have more than 55 years of combined experience in handling U.S. trademark matters.” Hull Decl., ¶ 5.

Response:

Ms. Hull does not provide any detail regarding this supposed experience.

Ms. Hull states:

“My practice has focused on trademarks for more than 12 years.” Hull Decl., ¶ 6.

Response:

Ms. Hull does not provide any detail of what constitutes “focus[ing] on

trademarks for more than 12 years.”

Ms. Hull states:

“Before joining Markery Law, I was a shareholder at an AmLaw 200 law firm and lead the firm’s trademark practice group.” Hull Decl., ¶ 6.

Response:

Ms. Hull does not identify the “AmLaw 200 law firm” nor indicate how long she had been a “shareholder.” Furthermore, she does not indicate the size of “the firm’s trademark[-]practice group,” nor what she means by stating that she had “lead” that “group,” such as whether she was solely in charge of it, one of a number of its ‘leaders,’ or its most experienced, credentialed, or successful attorney, nor how long she had “lead” it.

Ms. Hull states:

“Since 2016, I have taught the Trademarks and Unfair Competition Course as an Adjunct Professor at Marquette University Law School in Milwaukee.” Hull Decl., ¶ 7.

Response:

According to the Marquette University Law School website, the listing of Ms. Hull’s “[c]urrent [c]ourses” is “Workshop: Intellectual Property” (available at: www.law.marquette.edu/faculty-and-staff-directory/detail/6113436).

Ms. Hull states: “Markery Law founder Jacqueline Patt has 20 years of experience practicing U.S. trademark law, and she was a partner at an AmLaw 100 law firm before starting Markery Law.” Hull Decl., ¶ 10.

Response:

Ms. Hull does not identify the “AmLaw 100 law firm” nor indicate how long Ms. Patt had been a “partner” at that firm; nor does Ms. Hull provide any detail regarding Ms. Patt’s supposed “20 years of experience practicing U.S. trademark law.”

Ms. Hull states:

“Attorney Patt is admitted in the State of Maryland (1999), District of Columbia (2000) and the Federal Circuit (2015).” Hull Decl., ¶ 12.

Response:

On January 7, 2020, Bank searched for Ms. Patt on the attorney-directory sections of the websites of the District of Columbia Bar (the “D.C. Bar”) and the United States District Court for the District of Columbia (the “D.C. District Court”); no results were produced. *See* Bank Decl., ¶ 1. Also on January 7, 2020, Bank called the D.C. Bar and the D.C. District Court, and was told that their records did not show Ms. Patt as a member of their respective bars. *See id.*, ¶ 2.

Ms. Hull states:

“Our firm uses RocketMatter, which is electronic billing software, to record our time

and invoice our clients. Attached as Exhibit A is a report generated in RocketMatter that includes all time Attorney Patt and I contemporaneously entered into RocketMatter for our services rendered in this appeal.” Hull Decl., ¶ 16.

Response:

First, Ms. Hull does not indicate whether, and, if so, for how long, “RocketMatter” allows entries to be changed once they are made.

Second, Ms. Hull states that Markery Law “uses RocketMatter . . . to record our time and invoice our clients,” but does not indicate whether, and, if so, the extent to which, Markery Law actually *did* invoice, *i.e.*, bill, the Restaurant for the charges represented in the billing record.

Third, Ms. Hull does not indicate whether, and, if so, the extent to which, the Restaurant paid the charges represented in the billing record.

For the reasons set forth above, and because Bank is not a witness regarding the billing record, Bank’s references to it should not be deemed to constitute any expression of Bank’s views on its authenticity unless otherwise indicated.

Fourth, Ms. Hull’s reference to Ms. Patt is hearsay.

Ms. Hull states: “Markery Law’s hourly rates are significantly lower than for partners at AmLaw 100 and AmLaw 200 firms. Thus, the rates charged by Attorney Patt and me are below market rates for attorneys with a similar level of experience and fair and reasonable for handling an appeal before the Federal Circuit.” Hull Decl., ¶ 13.

Response:

Ms. Hull does not provide any indication, much less evidence, of the rates that “AmLaw 100 and AmLaw 200 firms” charge for litigation before this Court. Ms. Hull also does not provide any evidence of what attorneys charge when they are, as are Ms. Hull and Ms. Patt, with “a trademark boutique [purportedly] based in Washington D.C.” Hull Decl., ¶ 5. Furthermore, Ms. Hull’s statement that, “I believe the charges for the services described and rendered in Exhibit A are the *customary* charges for handling this type of appeal,” *id.*, ¶ 18 (emphasis added), contradicts her “below market rates” assertion.

II

**THE BILLING RECORD OF COUNSEL TO APPELLEE
VIOLATES FUNDAMENTAL PRINCIPLES OF PROPER BILLING**

N.B.: Bank numbered the entries of the billing record for the convenience of the reader. *See* Exhibit “B” to the accompanying Declaration of Todd C. Bank.

First, each of Ms. Hull’s 38 charges was based upon a single-day summary of the work that the charges were for. *See* entry nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 38, 39, 41, 43, 44, 45, 46, 47, and 49. Notwithstanding that, as discussed below, 24 of these charges were improper because they were for more than one activity, *i.e.*, these entries were block-billed, Ms. Hull did not, even once, include, for a given day, more than one entry with charges. Instead, on each of the seven days for which Ms. Hull included two entries,

the second entry, although summarizing the work to which it related, and although including an amount of time for that work, was a “no charge” entry. *See* entry nos. 15 and 16; 33 and 34; 36 and 37; 39 and 40; 41 and 42; 47 and 48; and 49 and 50. Thus, Ms. Hull clearly could have made more than one entry for a given day’s charges but never did so. The result, as noted above, is that 24 of Ms. Hull’s 38 charges were block-billed. *See* entry nos. 1, 6, 8, 10, 12, 17, 19, 20, 21, 22, 26, 27, 30, 31, 32, 33, 35, 38, 39, 41, 43, 45, 46, and 47.

With respect to each of Ms. Hull’s block-billed entries, it is not possible for Bank nor the Court to know how much any of the listed activities supposedly contributed toward the entry’s charge. That is why it was improper of Ms. Hull to engage in this billing practice and why there should be a significant reduction to the Restaurant’s requested fees. In *Monolithic Power Systems, Inc. v. O2 Micro Int’l, Ltd.*, 726 F.3d 1359 (Fed. Cir. 2013), this Court

“note[d] that the district court clarified that the [district court’s] award discounted by ten percent all attorney fees incurred and included *only twenty-five percent of the requested fees from block-billed time entries, resulting in a significant reduction in the amount.* [*Monolithic Power Systems, Inc. v. O2 Micro Int’l, Ltd.*], 2012 U.S. Dist. LEXIS 62230, at *3–4[,] [2012 WL 1577365 (N.D. Calif. May 3, 2012)]. This demonstrates to us a *careful exercise of discretion by the district court, and not an abuse of it.*

Id. at 1369 (emphases added). *See also United States ex rel. Raggio v. Seaboard Marine, Ltd.*, No. 10-cv-1908, 2017 WL 2591288 (D.D.C. May 4, 2017):

[The] [d]efendants request an across-the-board 20% reduction in the number of hours used for the lodestar calculation due to [the] [r]elator’s counsel’s use of block billing. As explained by the D.C. Circuit, block billing “make[s] it *impossible for the court to determine, with any degree of exactitude, the amount of time billed for a discrete activity,*” leaving the court “to estimate the reduction to be made because of such *insufficient documentation.*” *In re Olson*, 884 F.2d 1415, 1428–29 (D.C. Cir. 1989); *see also Cobell v. Norton*, 407 F. Supp. 2d 140, 159 (D.D.C. 2005) (“*Unlike vague or generic task entries, block billing entries do not always suffer from inadequate description. Their infirmity stems from the fact that they represent activities lumped together in a single entry with no indication how much time was spent on each task.*”).

In [the relator’s] attempts to justify his counsel’s block billing, [the] [r]elator [] argues that the entries “*contain complete and detailed descriptions for task performed and itemized billing entries. That argument misses the mark. The issue is not whether the time entries are complete. Instead, the issue is that the billing records “lump together multiple tasks, making it impossible to evaluate their reasonableness.” Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 971 (D.C. Cir. 2004). *Because the Court cannot determine how much time [the] [r]elator’s attorneys spent on each task, the Court cannot ascertain whether the time was reasonably expended. Accordingly, the Court will reduce the total hours spent by each firm by a further 20% [(the fees having already been reduced for other reasons)].*

Id. at *7 (emphases added; additional citations omitted).

Second, of Ms. Hull’s 38 charges, 34 of were for a **multiple of a half-hour**. Of those 34 charges, 18 were for whole hours, *see* entry nos. 1, 10, 12, 13, 15, 17, 19, 26, 27, 28, 29, 30, 33, 39, 41, 43, 46, and 49; and 16 ended in a half-hour, *see* entry nos.

2, 3, 4, 6, 7, 8, 11, 18, 20, 21, 22, 31, 36, 38, 45, and 47 (each of Ms. Hull's nine entries that did not list a charge were also whole-hour or multiple-of-half-hour entries, *see* respectively, no. 16 and nos. 9, 14, 34, 37, 40, 42, 48, and 50). This was improper. *See Gary Brown & Associates, Inc. v. Ashdon, Inc.*, 268 F. Appx. 837 (11th Cir. 2008) (upholding district court's fee reduction because, *inter alia*, "the majority of the time was billed in full or half-hour increments," *id.* at 845); *Segovia v. Montgomery County, Tenn.*, 593 F. Appx. 488 (6th Cir. 2014):

After reviewing the record and the district court's opinion, we cannot say that [the attorney] acted responsibly when submitting his petition for attorney's fees, nor can we say that his requested fees were reasonable. The court articulated valid reasons for its determination that a substantial fee reduction was warranted. We agree with the district court that an attorney with [his] years of experience *should not bill minimum increments of .4 hours regardless of the actual amount of time expended.* Even [the attorney]'s "revised" billing statement contains numerous entries that seem excessive at best, given [the attorney]'s level of experience. The district court did not err by substantially reducing the attorney-fee award.

Id. at 492 (emphasis added).

Even where Ms. Hull included, in a single entry, activities that resulted in a charge and activities that did not so result, Ms. Hull claims that each set of activities took a multiple of a half-hour. *See* entry nos. 1 (0.5 hours charged; 2.0 hours not charged); 2 (1.0 hour charged; 2.5 hours not charged); 3 (0.5 hours charged; 1.0 hour not charged); 4 (0.5 hours charged; 1.0 hour not charged). Ms. Hull's statement, in

entry number 4, that she spent one hour to “Finalize and file Entry of Appearance, Certificate of Interest and Docketing Statement” clearly casts doubt upon her credibility, as the preparation and filing of these documents obviously should not have taken, and most certainly did not take, even close to one hour; indeed, it seems unlikely that those tasks took even half an hour (a copy of the documents is annexed as Exhibit “C” to the accompanying Declaration of Todd C. Bank).

Third, Ms. Hull routinely included, in her charges, non-billable administrative tasks, *i.e.*, preparing certificates of compliance, interest, and service, and communicating with the Clerk’s office and the printing company that her firm used. *See* entry nos. 6, 20, 21, 22, 39, and 47. This was not proper. As explained in *Nichols v. Illinois Dept. of Transp.*, No. 12-cv-1789, 2019 WL 157915 (N.D. Ill. Jan. 10, 2019): “[p]arties cannot recover attorneys’ fees or paralegals’ fees for tasks that can be delegated to a non-professional. [T]ime spent [on such tasks] is noncompensable,” *id.* at *6 (citations and quotation marks omitted); *see also Peterson v. Sec’y of Health and Human Services*, No. 17-0893V, 2018 WL 4390072, *2 (Fed. Cl. Sp. Mstr. May 30, 2018) (“[p]repar[ing] [a] [c]ertificate of[s]ervice . . . [is] considered administrative and [is] not billable” (citation and quotation marks omitted)).

Of those of Ms. Hull’s entries that include administrative tasks, five were block-billed. *See* Entry Nos. 20, 21, 22, 39, and 47. Thus, Ms. Hull has not only improperly sought compensation for these tasks, but has made it impossible for Bank and the Court

to know how much of the charged time was spent on them. *See Cobell v. Jewell*, 234

F. Supp. 3d 126 (D.D.C. 2017):

[T]he precise time spent on the *administrative task* is *impossible to determine* because of [the attorney]’s use of block billing. Block billing is *disfavored* in this jurisdiction *precisely because it makes review of the reasonableness of an attorney’s hours difficult*. *See, e.g., Role Models [America, Inc. v. Brownlee]*, 353 F.3d [962] at 973 [(D.C. Cir. 2004)] (fifty-percent reduction where documentation was inadequate in a number of ways, including block billing); *Williams v. Johnson*, 174 F.Supp.3d 336, 349 (D.D.C. 2016) (denying compensation entirely for block-billed entries); *Cobell v. Norton*, 407 F.Supp.2d 140, 166 (D.D.C. 2005) (twenty-percent reduction where documentation was inadequate in a number of ways, including block billing). Again, it is the *fee petitioner’s burden* to submit time records that demonstrate the reasonability of the hours seeking to be compensated. [The attorney]’s failure to do so here with respect to the *administrative and clerical tasks* identified by [the] [p]laintiffs, justifies *excising 50 percent of the total time entries* at issue . . . from his fee award.

Id. at 173-174 (emphases added).

Fourth, activities pertaining to other matters in which Bank was either sanctioned (that is, one case, *i.e.*, *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)), or in which sanctions were sought against Bank (none of which Ms. Hull identified in any of the Restaurant’s filings), should not have been included in the charges. Rule 38 of the Federal Rules of Appellate Procedure authorizes an appellate court to impose sanctions if it “determines that an appeal is frivolous.” Fed. R. App.

P. 38. 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. *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) (emphases added)).

Reflecting the text of Rule 38, this Court has recognized that, “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” (emphases added; citation and quotation marks omitted)). Accordingly, the consideration of other matters

to determine whether a given appeal is *objectively frivolous* is contradictory; indeed, such consideration would credit the illogical notion that an appeal could be ‘objectively’ frivolous depending on who brought it.

III

APPELLANT’S RESPONSES TO THE ENTRIES IN THE BILLING RECORD OF APPELLEE’S COUNSEL

Entry No. 1 (1.0):

Analyze and assess sufficiency of the Notice of Appeal filed by T. Bank to challenge dismissal of the cancellation action; research Federal Circuit appeal process, procedure and timeline; correspondence with L. Johnson to report appeal; time entry of 1 hour reflects discount for 2.5 hours of time to review Federal Circuit appeal process and procedure.

Response:

First, the two activities that made up the charge were block-billed.

Second, is clear that the two activities that made up the charge should not have taken even close to one hour.

Entry No. 2 (0.5):

Analyze materials designated by T. Bank for inclusion in appendix and identify additional emails for inclusion in the appendix (.5 hours); research Federal Circuit rules and timeline for preparing appendix and create account for electronic filing with the Federal Circuit (2 hours - no charge).

Response:

First, Bank requested inclusion of only the following documents: “Orders dated March 27, 2019, and May 2, 2019, the Petition, and a copy of the trademark sought to be cancelled.” *See* Exhibit “D” to the accompanying Declaration of Todd C. Bank. It is not even conceivable that it took Ms. Hull more than a few minutes to “[a]nalyze” these materials in order to determine whether they should be “inclu[ded] in [the] appendix,” as their inclusion was *required*.

Second, Ms. Hull does not indicate what emails she claims to have reviewed, nor even the type of any such emails.

Entry No. 3 (0.5):

Draft and send email correspondence to T. Bank to provide notice of counter designation for materials to be included in the appendix on the appeal (.5 hours); prepare drafts of the Entry of Appearance, Certificate of Service and Docketing Statement (1 hour - no charge).

Response:

Having already billed for “identify[ing] additional emails for inclusion in the appendix,” Entry No. 2, Ms. Hull’s claim that it took another half-hour to “provide notice of counter designation for materials to be included in the appendix on the appeal” is not credible. *See* Bank Decl., Exhibit “E” (a copy of the email to which the entry refers).

Entry No. 4 (0.5):

Finalize and file Entry of Appearance, Certificate of Interest and Docketing Statement (1 hour - no charge); correspondence with T. Bank regarding requirements for preparing appendix in appeal and process for serving documents on appeal, and correspondence with L. Johnson to provide an update on status of the appeal (.5 hours).

Response:

The bulk of the correspondence concerns Ms. Hull’s filing of an indisputably false certificate of service with this Court. *See* Bank Decl., Exhibit “F.”

Entry No. 5 (0.2):

Analyze appendix prepared by T. Bank and correspondence with T. Bank regarding the same.

Response:

Bank does not object to this entry.

Entry No. 6 (1.5):

Telephone call to the Federal Circuit court regarding deadline for responding to Bank's brief; read and report Bank's brief to L. Johnson; begin analysis of cases cited in the brief.

Response:

First, these three activities were block-billed.

Second, Ms. Hull does not indicate what cases she "beg[a]n to analy[ze]," nor even the issue(s) that those cases concerned.

Third, the "[t]elephone call to the Federal Circuit court regarding deadline for responding to Bank's brief" was administrative and non-compensable.

Entry No. 7 (0.5):

Analyze law review article cited in Bank's appeal brief and provide summary regarding the same.

Response:

First, Bank, who quoted an excerpt from the law-review article, *i.e.*, Lee B. Burgunder, *Trademark Protection of Live Animals: The Bleat Goes On*, 10 J. Marshall Rev. Intell. Prop. L. 715 (2011), *see* Bank's Principal Brief (Doc. 21) at 10-12, had quoted the identical excerpt in Bank's opposition before the Board. *See* Bank's T.T.A.B. opp. at 8-9.

Second, Ms. Hull does not provide any details or context regarding her "summary" of the article.

Entry No. 8 (0.5):

Analyze standing arguments and outline response; correspondence with B. Johnson to coordinate research and response on the standing issue on appeal.

Response:

First, these three activities were block-billed.

Second, the identify of "B. Johnson" is unknown.

Entry No. 9 (0.5) (no-charge entry):

Analyze and report non-compliance order from the Federal Circuit.

Entry No. 10 (2.0):

Analyze cases cited in Bank's brief; draft statement of issues for appeal; begin outlining response.

Response:

First, these three activities were block-billed.

Second, Ms. Hull does not indicate what cases she "[a]nalyz[ed]," nor even the issue(s) that those cases concerned.

Entry No. 11 (2.5):

Research cases on standing to support arguments in brief.

Response:

This entry is too vague to enable an informed response.

Entry No. 12 (1.0):

Analyze Bank's revised brief and assess status of compliance with deficiency notice; prepare a designate documents for supplemental appendix.

Response:

First, these three activities were block-billed.

Second, Ms. Hull does not indicate what part(s) of Bank's revised brief she [a]nalyz[ed]."

Third, the "deficiency notice" (Doc. 16) concerned only the caption in Bank's Principal Brief.

Entry No. 13 (5.0):

Draft factual summary for brief; draft summary of arguments for brief; outline standing arguments for brief and begin drafting standing section of the brief.

Response:

These four activities were block-billed.

Entry No. 14 (1.5) (no-charge entry):

Analyze and report deficiency notice from the Federal Circuit; telephone call with Counsel Press regarding assistance with filing and printing brief; correspondence with opposing counsel to request extension of deadline.

Entry No. 15 (3.0):

Draft motion for extension of brief deadline and supporting declaration.

Response:

Presumably, Ms. Hull is referring to Doc. 19. It is difficult to believe that its drafting took three hours.

Entry No. 16 (1.0) (no-charge entry):

Electronically file motion for extension and send service copy to opposing counsel.

Entry No. 17 (2.0):

Compare Bank's final filed brief with previously filed versions of the brief; analyze Bank's arguments and outline response to Bank's functionality arguments.

Response:

First, these three activities were block-billed.

Second, the only defects concerned the caption, *see* Docs. 16, 18, and the ability to see that the only changes thus concerned the caption should have taken a few

minutes at most.

Entry No. 18 (4.0):

Draft standing section of the brief and response to Bank's arguments.

Response:

It is unclear whether the "response to Bank's arguments" concerned standing, standing and other issues, or other issues altogether.

Entry No. 19 (6.0):

Research case law to support arguments and response for functionality section of the brief; begin drafting functionality arguments and response.

Response:

These two activities were block-billed.

Entry No. 20 (6.5):

Complete drafting functionality section of the brief; revise initial draft of brief and send to client for review; correspondence with Counsel Press to coordinate filing and compliance review.

Response:

First, these three activities were block-billed.

Second, "correspondence with Counsel Press to coordinate filing and compliance review" was administrative and non-compensable.

Entry No. 21 (6.5):

Draft certificate of compliance, certificate of interest and certificate of service for the brief; prepare Supplemental Appendix for the brief; draft table of contents for the brief; research federal case law and secondary sources to add additional arguments; draft additional arguments; analyze

and revise arguments in the brief.

Response:

First, these six activities (or nine, depending upon how one counts them) were block-billed.

Second, Ms. Hull does not indicate what federal cases she “research[ed]” nor even the issue(s) that those cases concerned.

Third, Ms. Hull does not indicate what “secondary sources” she “research[ed]” nor even the issue(s) that those “secondary sources” concerned. Indeed, the Restaurant’s Brief (Doc. 24) contains minimal citations to “secondary sources.” *See* Restaurant’s Brief at 4, n.4, 26.

Fourth, drafting the certificates was administrative and non-compensable.

Entry No. 22 (2.5):

Analyze and check cites in the brief; prepare table of contents for the Supplemental Appendix; revise and send final version of the brief and Supplemental Appendix to Counsel Press and coordinate with Counsel Press on filing and service; report filing of the brief.

Response:

First, these six activities were block-billed.

Second, it is not clear what “[a]nalyz[ing] and check[ing] cites in the brief” means.

Third, the interaction with Counsel Press was administrative and non-compensable.

Entry No. 23 (1.6) (Jacqueline Patt):

Reviewing draft brief and proposing edits and changes

Response:

Bank does not object to this entry.

Entry No. 24 (0.4) (Jacqueline Patt):

Review of final brief; review of correspondence with Ms. Hull regarding motion for damages

Response:

First, these two activities were block-billed.

Second, Ms. Patt does not identify the “correspondence.”

Entry No. 25 (3.0) (Jacqueline Patt):

Review of Bank’s brief; review of draft response brief and propose edits and changes

Response:

These two activities (or three, depending upon how one count them) were block-billed.

Entry No. 26 (1.0):

Analyze reply brief filed by Bank; research cases to support filing a motion for a frivolous appeal; report reply brief and option to file for sanctions to Mr. Johnson.

Response:

These two activities were block-billed.

Entry No. 27 (3.0):

Research cases to support motion for sanctions; outline motion for sanctions; draft summary of cases from the Federal Circuit that grant sanctions for filing a frivolous appeal to use in the argument section of the motion for sanctions.

Response:

These three activities were block-billed.

Entry No. 28 (1.0):

Research cases against Attorney Banks where sanctions have been requested.

Response:

Requests for sanctions against Bank in other matters were not relevant to whether sanctions were warranted against Bank in the present appeal.

Entry No. 29 (1.0):

Research arguments that Attorney Banks has made in other cases when standing has been challenged and decisions in those cases.

Response:

Ms. Hull does not provide details of this supposed research, such as whether, and to what extent, this research was of Westlaw (based on the Restaurant's submissions in the appeal, it is apparent that Ms. Hull used Westlaw for legal research), Pacer, and/or some other source(s).

Entry No. 30 (2.0):

Draft background section for Motion for Sanctions; begin drafting argument regarding Attorney Bank's misstatements about the issues on appeal and his failure to argue he pleaded a valid basis for cancellation before the Board.

Response:

First, these three activities were block-billed.

Second, Bank *did* "argue [that] he pleaded a valid basis for cancellation before the Board," *see* Bank's Principal Brief (Doc. 21) at 10-16; nor did this Court find otherwise in its decision on the appeal (Doc. 42).

Entry No. 31 (4.5):

Complete draft of arguments regarding Attorney Bank's misstatements regarding the issues on appeal; draft argument regarding Attorney Bank's improper reliance on a law ruled unconstitutional; draft argument regarding Attorney Bank's

illogical statement he is injured by the issuance of a registration; draft arguments regarding the Board's Rule 11 warnings given to Attorney Bank and the Second Circuit ruling upholding sanctions.

Response:

First, these five activities were block-billed.

Second, given that only the merits of the appeal were to determine whether sanctions against Bank were warranted, the Board's Rule 11 warnings and the Second Circuit's ruling (in *McCabe, supra*) were not relevant to that determination.

Entry No. 32 (1.0):

Draft additional arguments in support of motion for sanctions; add cites to the record on appeal; revise and finalize draft of the motion for sanctions; correspondence with L. Johnson to send draft of motion for sanctions.

Response:

First, these four activities were block-billed.

Second, to the extent, if any, that this entry included work pertaining to other matters in which sanctions were sought, or granted, against Bank, that work was not properly billable, as such other matters were not relevant to whether Bank should have been sanctioned in the present appeal. However, this entry is vague and gives no indication of whether this work concerned such other matters, although the only such matter that was discussed in the Restaurant's motion for sanctions was *McCabe, supra*. See Doc. 31 at 16.

Entry No. 33 (1.0):

Analyze notice from the Federal Circuit regarding oral arguments and filing a memorandum in lieu of oral arguments; revise motion for sanctions to account for Federal Circuit notice; correspondence providing an update to L. Johnson on oral arguments and sanctions motion.

Response:

First, these three activities were block-billed.

Second, to the extent, if any, that this entry included work pertaining to other matters in which sanctions were sought, or granted, against Bank, that work was not properly billable, as such other matters were not relevant to whether Bank should have been sanctioned in the present appeal. However, this entry is vague and gives no indication of whether this work concerned such other matters, although the only such matter that was discussed in the Restaurant's motion for sanctions was *McCabe, supra*. See Doc. 31 at 16.

Third, the "Federal Circuit notice" is not identified.

Entry No. 34 (1.5) (no-charge entry):

Research Federal Circuit's treatment of motion for sanctions and requirements to seek consent of opposing party before filing.

Entry No. 35 (1.2):

Email Attorney Bank regarding consent to Motion for Sanctions to comply with Federal Circuit rule; prepare for and participate in hour-long phone discussion with Attorney Bank regarding the motion.

Response:

These three activities were block-billed.

Entry No. 36 (0.5):

Draft and send follow-up correspondence to Attorney Bank regarding discussion and consent for Motion for Sanctions.

Response:

It is not conceivable that it took Ms. Hull half an hour to draft and send the single email that she calls "correspondence." See Bank Decl., Exhibit "G" (a copy of the email, *i.e.*, the first email of the email chain that the exhibit includes).

Entry No. 37 (1.5) (no-charge entry):

Draft summary of notes from hour-long call with Attorney Bank; prepare strategy for filing Motion for Sanctions

without response from Attorney Bank on whether he will consent under the Federal Circuit rule.

Entry No. 38 (2.5):

Draft and respond to two letters from Attorney Bank regarding compliance with the Federal Circuit rule to discuss Motion for Sanctions before filing; prepare for and call into conference call line at time requested by Attorney Bank; follow-up correspondence to Attorney Bank to respond to his third letter and to address Attorney Bank's failure to join the conference call at the time he requested.

Response:

First, these four activities were block-billed.

Second, it is not conceivable that Ms. Hull spent 2.5 hours on these activities.

Third, to the extent, if any, that this entry included work pertaining to other matters in which sanctions were sought, or granted, against Bank, that work was not properly billable, as such other matters were not relevant to whether Bank should have been sanctioned in the present appeal. However, this entry is vague and gives no indication of whether this work concerned such other matters, although the only such matter that was discussed in the Restaurant's motion for sanctions was *McCabe, supra*. See Doc. 31 at 16.

Fourth, Ms. Hull's charges in connection with the telephone conference were improper. Bank had repeatedly requested that Ms. Hull agree to comply with Federal Circuit Rule 27(a)(5) in good faith, but Ms. Hull ignored those requests, each of which are attached as Exhibit "B" to the Restaurant's motion for sanctions (albeit in non-chronological order). See (in chronological order) Bank's letters dated November 5, 2019, *i.e.*, Doc. 31 at 44 ("[p]lease confirm that you will comply with your good-faith obligation under Federal Circuit Rule 27(a)(5) and, to that end, [please confirm] your representation that we would resume our conversation today."); Doc. 31 at 46 ("[s]hould you agree to comply with [Rule 27(a)(5)], and refrain from artificially limiting the time of the conversation to 15 minutes, I would be amenable to the resumption of our November 1 conversation."); Doc. 31 at 48 ("[a]s you have given no indication [in your email at Doc. 31 at 32] that you inten[d] to comply with Local Rule 27(a)(5), I do not accept your proposal ['offering you an additional 15 minutes as a courtesy']. Indeed, your statement that 'we have already fulfilled our obligation under

Rule 27(a)(5) to discuss the motion with you with the hour-long call on Friday, ' is, as I trust you know, false.'"). That Bank was unsuccessful in these efforts is perhaps not surprising, given that Ms. Hull had attempted to avoid compliance from the outset of the parties' post-briefing motion practice. *See* Bank's letter dated November 5, 2019 (Doc. 31), at 43-44.

Fifth, Ms. Hull refused to comply with the Federal Circuit 27(a)(5). *See* Bank Decl., Exhibit "H" (a copy of the correspondence to which the entry refers).

Entry No. 39 (3.0):

Draft and send response to fourth letter from Attorney Bank; prepare for and call into conference call line at time requested by Attorney Bank; draft declaration regarding correspondence with Attorney Bank and discussion of Motion for Sanctions; revise and finalize Motion for Sanctions; prepare certificate of interest, certificate of compliance and certificate of service for filing with Motion for Sanctions; report filing to L. Johnson.

Response:

First, these seven activities were block-billed.

Second, to the extent, if any, that this entry included work pertaining to other matters in which sanctions were sought, or granted, against Bank, that work was not properly billable, as such other matters were not relevant to whether Bank should have been sanctioned in the present appeal. However, this entry is vague and gives no indication of whether this work concerned such other matters, although the only such matter that was discussed in the Restaurant's motion for sanctions was *McCabe, supra*. *See* Doc. 31 at 16.

Third, Ms. Hull's charges in connection with the telephone conference were improper. Bank had again requested that Ms. Hull agree to comply with Rule 27(a)(5) in good faith, but Ms. Hull again ignored Bank's request. *See* Doc. 31 at 45 ("I have made clear that you are required to comply in good faith with Rule 27(a)(5), which you have repeatedly made clear you will not do. *** In sum, you have not 'fulfilled [y]our obligations under Rule 27(a)(5) to discuss the motion,' which you must do so before proceeding. Once again, I await your representation that you will comply in good faith with Rule 27(a)(5). To that end, I will be available tomorrow between 1:30 and 4:00 (except for 2:45 to 3:00)."). That Bank was unsuccessful in this effort is perhaps not

surprising, given that Ms. Hull had attempted to avoid compliance from the outset of the parties' post-briefing motion practice. *See* Bank's letter dated November 5, 2019 (Doc. 31), at 43-44.

Fourth, preparing the certificates was administrative and non-compensable.

Entry No. 40 (1.5) (no-charge entry):

Formatting Motion for Sanctions, Declaration and Declaration Exhibits for electronic filing; electronic filing and service of Motion for Sanctions.

Entry No. 41 (2.0):

Receive and respond to letter from Attorney Bank requesting a discussion on his intended Motion for Sanctions; prepare for and participate in telephone call with Attorney Bank for 1 hour and 15 minutes; respond to follow-up correspondence from Attorney Bank regarding phone call.

Response:

These three activities were block-billed.

Entry No. 42 (2.5) (no-charge entry):

Research motions for sanctions filed by and against Attorney Bank in other cases to prepare for phone call with Bank regarding his intent to file a Motion for Sanctions against Al Johnson's Restaurant.

Entry No. 43 (1.0):

Read and analyze Bank's Response to the Motion for Sanctions; read and analyze Bank's Motion for Sanctions filed against Al Johnson's Restaurant.

Response:

First, these two activities were block-billed.

Second, to the extent, if any, that this entry included “[r]ead[ing] [or] analyz[ing]” Bank’s discussions of the Restaurant’s reliance upon cases that had no bearing on the merits of the Restaurant’s motion for sanctions (Doc. 31), *i.e.*, *McCabe, supra*, and *Doyle v. Mastercard Int’l Inc.*, 700 F. Appx. 22 (2d Cir. 2017), *see* Doc. 31 at 12-13, Ms. Hull should not have billed for that work because those cases should not have been included in the Restaurant’s motion in the first place (the inclusion of which was for the obvious purpose of trying to bias this Court against Bank). However, this entry is vague and gives no indication of whether this work concerned Bank’s response regarding the Restaurant’s discussion of *McCabe* or *Doyle*.

Third, Ms. Hull described Bank’s motion for sanctions (Doc. 33) as “against Al Johnson’s Restaurant” even though that motion was against the Restaurant *and its counsel*. Ms. Hull’s incomplete description raises the question of whether the Restaurant would have resisted being billed (assuming that it was, in fact, billed) for Ms. Hull’s responding to a motion, *i.e.*, Bank’s motion for sanctions (Doc. 33), that was the result of Ms. Hull’s work, *i.e.*, the Restaurant’s motion for sanctions (Doc. 31).

Entry No. 44 (0.2):

Review letter from Attorney Bank regarding proposed motion for oral arguments; correspondence with Attorney Bank to respond to his letter.

Response:

It is difficult to imagine that Ms. Hull spent more than a couple of minutes reading Bank’s email (which Ms. Hull calls a “letter”) and responding to that email. *See* Bank Decl., Exhibit “I” (a copy of the correspondence to which the entry refers).

Entry No. 45 (1.5):

Outline Reply in support of the Motion for Sanctions against Bank; outline Response to Bank’s Motion for Sanctions against Al Johnson’s Restaurant; begin drafting Reply in Support of Motion for Sanctions against Bank.

Response:

First, these three activities were block-billed.

Second, to the extent, if any, that this entry included work pertaining to other matters in which sanctions were sought, or granted, against Bank, that work was not

properly billable, as such other matters were not relevant to whether Bank should have been sanctioned in the present appeal. However, this entry is vague and gives no indication of whether this work concerned such other matters, although the only such matter that was discussed in the Restaurant's motion for sanctions was *McCabe, supra*. See Doc. 31 at 16.

Third, Ms. Hull described Bank's motion for sanctions (Doc. 33) as "against Al Johnson's Restaurant" even though that motion was against the Restaurant *and its counsel*. Ms. Hull's incomplete description raises the question of whether the Restaurant would have resisted being billed (assuming that it was, in fact, billed) for Ms. Hull's responding to a motion, *i.e.*, Bank's motion for sanctions (Doc. 33) that was the result of Ms. Hull's work, *i.e.*, the Restaurant's motion for sanctions (Doc. 31).

Entry No. 46 (6.0):

Analyze case discussed in Bank's Response to the Motion for Sanctions; complete draft of Reply in support of Motion for Sanctions against Bank; research cases for Response to Bank's Motion for Sanctions against Al Johnson's Restaurant; draft Response to Bank's Motion for Sanctions; correspondence to L. Johnson to provide an update and send Bank's briefs and drafts of responsive briefs; correspondence with Attorney Bank to respond to his correspondence regarding oral arguments.

Response:

First, these six activities were block-billed.

Second, to the extent, if any, that this entry included work pertaining to other matters in which sanctions were sought, or granted, against Bank, that work was not properly billable, as such other matters were not relevant to whether Bank should have been sanctioned in the present appeal. However, this entry is vague and gives no indication of whether this work concerned such other matters, although the only such matter that was discussed in the Restaurant's motion for sanctions was *McCabe, supra*. See Doc. 31 at 16.

Third, Ms. Hull described Bank's motion for sanctions (Doc. 33) as "against Al Johnson's Restaurant" even though that motion was against the Restaurant *and its counsel*. Ms. Hull's incomplete description raises the question of whether the Restaurant would have resisted being billed (assuming that it was, in fact, billed) for

Ms. Hull's responding to a motion, *i.e.*, Bank's motion for sanctions (Doc. 33) that was the result of Ms. Hull's work, *i.e.*, the Restaurant's motion for sanctions (Doc. 31).

Entry No. 47 (1.5):

Revise and finalize Reply in support of Motion for Sanctions against Bank and Response to Bank's Motion for Sanctions against Al Johnson's Restaurant; draft declaration in support of opposition to Bank's Motion for Sanctions; prepare certificates of service and compliance for filing reply and response.

Response:

First, these three activities were block-billed.

Second, to the extent, if any, that this entry included work pertaining to other matters in which sanctions were sought, or granted, against Bank, that work was not properly billable, as such other matters were not relevant to whether Bank should have been sanctioned in the present appeal. However, this entry is vague and gives no indication of whether this work concerned such other matters, although the only such matter that was discussed in the Restaurant's motion for sanctions was *McCabe, supra*. See Doc. 31 at 16.

Third, preparing the certificates was administrative and non-compensable.

Entry No. 48 (1.5) (no-charge entry):

Format, electronically file and serve Reply in support of sanctions against Bank and Response in opposition to Bank's sanction's motion.

Entry No. 49 (1.0):

Analyze and draft response to Bank's motion for an oral argument.

Response:

Bank does not object to this entry.


Entry No. 50 (0.5) (no-charge entry):

Format, electronically file and serve response to Bank's motion for oral arguments.

CONCLUSION

Appellee's request for attorney fees should be reduced by an appropriate amount, and Appellant should be granted any relief that is lawful and proper.

Dated: January 15, 2020



TODD C. BANK,
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tbank@toddbanklaw.com
By: Todd C. Bank

Counsel to Petitioner-Appellant

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Bank v. **Al Johnson's Swedish Rest.**

Case No. **19-1880**

CERTIFICATE OF INTEREST

Counsel for the:

(petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Todd C. Bank

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

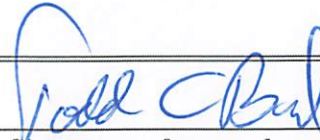
Form 9
Rev. 10/17

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

January 15, 2020

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 January 7, 2020, I searched for Jacqueline Patt on the attorney-directory sections of the websites of the District of Columbia Bar (the “D.C. Bar”) and the United States District Court for the District of Columbia (the “D.C. District Court”); no results were produced.

2. On January 7, 2020, I called the D.C. Bar and the D.C. District Court, and was told that their records did not show Ms. Patt as a member of their respective bars.

3. Exhibit “A” hereto is a copy of a page of the website of Regus Group Companies.

4. Exhibit “B” hereto is a copy of the billing record of the Restaurant’s counsel, in which I numbered the entries for the convenience of the reader.

5. Exhibit “C” hereto is a copy of the Entry of Appearance, Certificate of Interest, and Docketing Statement, to which entry number 4 of the billing record of the Restaurant’s counsel refers.

6. Exhibit “D” hereto is a copy of my designation of materials for inclusion in the appendix.

7. Exhibit “E” hereto is a copy of an email to which entry number 3 of the billing record of the Restaurant’s counsel refers.

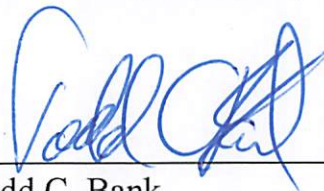
8. Exhibit “F” hereto is a copy of correspondence pertaining to Ms. Hull’s filing of a false certificate of service with this Court.

9. Exhibit "G" hereto is a copy an email to which entry number 36 of the billing record of the Restaurant's counsel refers (*i.e.*, the first email of the email chain that the exhibit includes).

10. Exhibit "H" hereto is a copy of the correspondence to which entry number 38 of the billing record of the Restaurant's counsel refers.

11. Exhibit "I" hereto is a copy of the correspondence to which entry number 44 of the billing record of the Restaurant's counsel refers.

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 January 15, 2020

EXHIBIT “A”

Page of the Website of Regus Group Companies

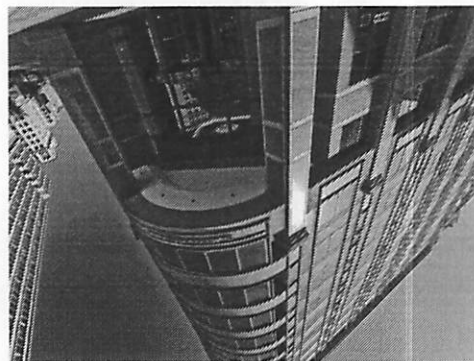
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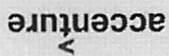
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Establish your office in a prime location at minimal cost.



Call answering
Get a local number and have someone take your calls.



Customize your plan
Add call answering and the use of a private office in the centre of your choice.



Easy to relocate

Move your contract to any of our addresses at no additional cost.

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CHOOSE YOUR VIRTUAL OFFICE PACKAGE



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Place your business in the best possible location with a credible address and mail handling service.

GET PRICES



Virtual Office

Professional address with mail handling and telephone answering; plus access to our global network of drop-in business lounges.

GET PRICES



Virtual Office Plus

Enjoy the full virtual office package, with business address, mail handling, telephone answering and free business lounge access, plus access to a private office in the centre of your choice.

GET PRICES

ALL-INCLUSIVE PRICING

Only pay for what you need - whether it's a mail handling service or a full virtual office



Regus network

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- ✓ Choose from over 3000 premium locations



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- ✓ Receive mail; calls answered with your business name
- ✓ No need for a permanent office space

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Meeting Room
Business Lounge
Co-working
Virtual Office
Workplace Recovery
Membership

BUSINESS SIZE

Individuals
Small businesses
Large companies

PARTNERS

Agents
Franchise
Workplace Recovery Channel
Partners

ABOUT

Regus PLC
Careers
International websites
Recently opened and coming soon

CONTACT

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Customer service

CONNECT



DOWNLOAD

Regus App
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• Book your space
• Manage your account



EXHIBIT “B”

**Copy of the Billing Record of the Restaurant’s
Counsel, in Which Appellant has Numbered
the Entries for the Convenience of the Reader**

	Description	User	Billing Date	Rate	Hrs	Amount
1	Analyze and assess sufficiency of the Notice of Appeal filed by T. Bank to challenge dismissal of the cancellation action; research Federal Circuit appeal process, procedure and timeline; correspondence with L. Johnson to report appeal; time entry of 1 hour reflects discount for 2.5 hours of time to review Federal Circuit appeal process and procedure.	Katrina Hull	5/10/2019	\$320	1	\$320.00
2	Analyze materials designated by T. Bank for inclusion in appendix and identify additional emails for inclusion in the appendix (.5 hours); research Federal Circuit rules and timeline for preparing appendix and create account for electronic filing with the Federal Circuit (2 hours - no charge).	Katrina Hull	5/24/2019	\$320	0.5	\$160.00
3	Draft and send email correspondence to T. Bank to provide notice of counter designation for materials to be included in the appendix on the appeal (.5 hours); prepare drafts of the Entry of Appearance, Certificate of Service and Docketing Statement (1 hour - no charge).	Katrina Hull	5/27/2019	\$320	0.5	\$160.00
4	Finalize and file Entry of Appearance, Certificate of Interest and Docketing Statement (1 hour - no charge); correspondence with T. Bank regarding requirements for preparing appendix in appeal and process for serving documents on appeal, and correspondence with L. Johnson to provide an update on status of the appeal (.5 hours).	Katrina Hull	5/28/2019	\$320	0.5	\$160.00
5	Analyze appendix prepared by T. Bank and correspondence with T. Bank regarding the same.	Katrina Hull	5/30/2019	\$320	0.2	\$64.00
6	Telephone call to the Federal Circuit court regarding deadline for responding to Bank's brief; read and report Bank's brief to L. Johnson; begin analysis of cases cited in the brief.	Katrina Hull	7/18/2019	\$320	1.5	\$480.00
7	Analyze law review article cited in Bank's appeal brief and provide summary regarding the same.	Katrina Hull	7/23/2019	\$320	0.5	\$160.00

8	Analyze standing arguments and outline response; correspondence with B. Johnson to coordinate research and response on the standing issue on appeal.	Katrina Hull	7/24/2019	\$320	0.5	\$160.00
9	Analyze and report non-compliance order from the Federal Circuit.	Katrina Hull	7/25/2019	\$320	0.5	No Charge
10	Analyze cases cited in Bank's brief; draft statement of issues for appeal; begin outlining response.	Katrina Hull	8/5/2019	\$320	2	\$640.00
11	Research cases on standing to support arguments in brief.	Katrina Hull	8/8/2019	\$320	2.5	\$800.00
12	Analyze Bank's revised brief and assess status of compliance with deficiency notice; prepare a designate documents for supplemental appendix.	Katrina Hull	8/7/2019	\$320	1	\$320.00
13	Draft factual summary for brief; draft summary of arguments for brief; outline standing arguments for brief and begin drafting standing section of the brief.	Katrina Hull	8/11/2019	\$320	5	\$1,600.00
14	Analyze and report deficiency notice from the Federal Circuit; telephone call with Counsel Press regarding assistance with filing and printing brief; correspondence with opposing counsel to request extension of deadline.	Katrina Hull	8/12/2019	\$320	1.5	No Charge
15	Draft motion for extension of brief deadline and supporting declaration.	Katrina Hull	8/13/2019	\$320	3	\$960.00
16	Electronically file motion for extension and send service copy to opposing counsel.	Katrina Hull	8/13/2019	\$320	1	No Charge
17	Compare Bank's final filed brief with previously filed versions of the brief; analyze Bank's arguments and outline response to Bank's functionality arguments.	Katrina Hull	9/13/2019	\$320	2	\$640.00
18	Draft standing section of the brief and response to Bank's arguments.	Katrina Hull	9/16/2019	\$320	5.5	\$1,760.00

19	Research case law to support arguments and response for functionality section of the brief; begin drafting functionality arguments and response.	Katrina Hull	9/17/2019	\$320	6	\$1,920.00
20	Complete drafting functionality section of the brief; revise initial draft of brief and send to client for review; correspondence with Counsel Press to coordinate filing and compliance review.	Katrina Hull	9/18/2019	\$320	6.5	\$2,080.00
21	Draft certificate of compliance, certificate of interest and certificate of service for the brief; prepare Supplemental Appendix for the brief; draft table of contents for the brief; research federal case law and secondary sources to add additional arguments; draft additional arguments; analyze and revise arguments in the brief.	Katrina Hull	9/19/2019	\$320	6.5	\$2,080.00
22	Analyze and check cites in the brief; prepare table of contents for the Supplemental Appendix; revise and send final version of the brief and Supplemental Appendix to Counsel Press and coordinate with Counsel Press on filing and service; report filing of the brief.	Katrina Hull	9/20/2019	\$320	2.5	\$800.00
23	Reviewing draft brief and proposing edits and changes	Jacqueline Patt	9/19/2019	\$335	1.6	\$536.00
24	Review of final brief; review of correspondence with Ms. Hull regarding motion for damages	Jacqueline Patt	9/20/2019	\$335	0.4	\$134.00
25	Review of Bank's brief; review of draft response brief and propose edits and changes	Jacqueline Patt	9/18/2019	\$335	3	\$1,005.00
26	Analyze reply brief filed by Bank; research cases to support filing a motion for a frivolous appeal; report reply brief and option to file for sanctions to Mr. Johnson.	Katrina Hull	9/30/2019	\$320	1	\$320.00
27	Research cases to support motion for sanctions; outline motion for sanctions; draft summary of cases from the Federal Circuit that grant sanctions for filing a frivolous appeal to use in the argument section of the motion for sanctions.	Katrina Hull	10/10/2019	\$320	3	\$960.00

28	Research cases against Attorney Banks where sanctions have been requested.	Katrina Hull	10/11/2019	\$320	1	\$320.00
29	Research arguments that Attorney Banks has made in other cases when standing has been challenged and decisions in those cases.	Katrina Hull	10/15/2019	\$320	1	\$320.00
30	Draft background section for Motion for Sanctions; begin drafting argument regarding Attorney Bank's misstatements about the issues on appeal and his failure to argue he pleaded a valid basis for cancellation before the Board.	Katrina Hull	10/16/2019	\$320	2	\$640.00
31	Complete draft of arguments regarding Attorney Bank's misstatements regarding the issues on appeal; draft argument regarding Attorney Bank's improper reliance on a law ruled unconstitutional; draft argument regarding Attorney Bank's illogical statement he is injured by the issuance of a registration; draft arguments regarding the Board's Rule 11 warnings given to Attorney Bank and the Second Circuit ruling upholding sanctions.	Katrina Hull	10/17/2019	\$320	4.5	\$1,440.00
32	Draft additional arguments in support of motion for sanctions; add cites to the record on appeal; revise and finalize draft of the motion for sanctions; correspondence with L. Johnson to send draft of motion for sanctions.	Katrina Hull	10/18/2019	\$320	2.3	\$736.00
33	Analyze notice from the Federal Circuit regarding oral arguments and filing a memorandum in lieu of oral arguments; revise motion for sanctions to account for Federal Circuit notice; correspondence providing an update to L. Johnson on oral arguments and sanctions motion.	Katrina Hull	10/21/2019	\$320	1	\$320.00
34	Research Federal Circuit's treatment of motion for sanctions and requirements to seek consent of opposing party before filing.	Katrina Hull	10/21/2019	\$320	1.5	No Charge
35	Email Attorney Bank regarding consent to Motion for Sanctions to comply with Federal Circuit rule; prepare for and participate in hour-long phone discussion with Attorney Bank regarding the motion.	Katrina Hull	11/1/2019	\$320	1.2	\$384.00

36	Draft and send follow-up correspondence to Attorney Bank regarding discussion and consent for Motion for Sanctions.	Katrina Hull	11/4/2019	\$320	0.5	\$160.00
37	Draft summary of notes from hour-long call with Attorney Bank; prepare strategy for filing Motion for Sanctions without response from Attorney Bank on whether he will consent under the Federal Circuit rule.	Katrina Hull	11/4/2019	\$320	1.5	No Charge
38	Draft and respond to two letters from Attorney Bank regarding compliance with the Federal Circuit rule to discuss Motion for Sanctions before filing; prepare for and call into conference call line at time requested by Attorney Bank; follow-up correspondence to Attorney Bank to respond to his third letter and to address Attorney Bank's failure to join the conference call at the time he requested.	Katrina Hull	11/5/2019	\$320	2.5	\$800.00
39	Draft and send response to fourth letter from Attorney Bank; prepare for and call into conference call line at time requested by Attorney Bank; draft declaration regarding correspondence with Attorney Bank and discussion of Motion for Sanctions; revise and finalize Motion for Sanctions; prepare certificate of interest, certificate of compliance and certificate of service for filing with Motion for Sanctions; report filing to L. Johnson.	Katrina Hull	11/6/2019	\$320	3	\$960.00
40	Formatting Motion for Sanctions, Declaration and Declaration Exhibits for electronic filing; electronic filing and service of Motion for Sanctions.	Katrina Hull	11/6/2019	\$320	1.5	No Charge
41	Receive and respond to letter from Attorney Bank requesting a discussion on his intended Motion for Sanctions; prepare for and participate in telephone call with Attorney Bank for 1 hour and 15 minutes; respond to follow-up correspondence from Attorney Bank regarding phone call.	Katrina Hull	11/13/2019	\$320	2	\$640.00
42	Research motions for sanctions filed by and against Attorney Bank in other cases to prepare for phone call with Bank regarding his intent to file a Motion for Sanctions against Al Johnson's Restaurant.	Katrina Hull	11/13/2019	\$320	2.5	No Charge

43	Read and analyze Bank's Response to the Motion for Sanctions; read and analyze Bank's Motion for Sanctions filed against Al Johnson's Restaurant.	Katrina Hull	11/20/2019	\$320	1	\$320.00
44	Review letter from Attorney Bank regarding proposed motion for oral arguments; correspondence with Attorney Bank to respond to his letter.	Katrina Hull	11/21/2019	\$320	0.2	\$64.00
45	Outline Reply in support of the Motion for Sanctions against Bank; outline Response to Bank's Motion for Sanctions against Al Johnson's Restaurant; begin drafting Reply in Support of Motion for Sanctions against Bank.	Katrina Hull	11/22/2019	\$320	1.5	\$480.00
46	Analyze case discussed in Bank's Response to the Motion for Sanctions; complete draft of Reply in support of Motion for Sanctions against Bank; research cases for Response to Bank's Motion for Sanctions against Al Johnson's Restaurant; draft Response to Bank's Motion for Sanctions; correspondence to L. Johnson to provide an update and send Bank's briefs and drafts of responsive briefs; correspondence with Attorney Bank to respond to his correspondence regarding oral arguments.	Katrina Hull	11/24/2019	\$320	6	\$1,920.00
47	Revise and finalize Reply in support of Motion for Sanctions against Bank and Response to Bank's Motion for Sanctions against Al Johnson's Restaurant; draft declaration in support of opposition to Bank's Motion for Sanctions; prepare certificates of service and compliance for filing reply and response.	Katrina Hull	11/25/2019	\$320	1.5	\$480.00
48	Format, electronically file and serve Reply in support of sanctions against Bank and Response in opposition to Bank's sanction's motion.	Katrina Hull	11/25/2019	\$320	1.5	No Charge
49	Analyze and draft response to Bank's motion for an oral argument.	Katrina Hull	11/26/2019	\$320	1	\$320.00
50	Format, electronically file and serve response to Bank's motion for oral arguments.	Katrina Hull	11/26/2019	\$320	0.5	No Charge

TOTAL	100.9 \$ 28,523.00
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EXHIBIT “C”

**Copy of the Entry of Appearance, Certificate of Interest
and Docketing Statement, to Which Entry Number 4 of
the Billing Record of the Restaurant’s Counsel Refers**

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Bank v. Al Johnson's Swedish Rest.

No. 19-1880

ENTRY OF APPEARANCE

(INSTRUCTIONS: Counsel should refer to Federal Circuit Rule 47.3. Counsel must immediately file an updated Entry of Appearance if representation changes, including a change in contact information. Electronic filers must also report a change in contact information to the PACER Service Center. Pro se petitioners and appellants should read paragraphs 1 and 18 of the Guide for Pro Se Petitioners and Appellants. File this form with the clerk within 14 days of the date of docketing and serve a copy of it on the principal attorney for each party.)

Please enter my appearance (select one):

Pro Se As counsel for: Al Johnson's Swedish Rest.

I am, or the party I represent is (select one):

Name of party

Petitioner Respondent Amicus curiae Cross Appellant
 Appellant Appellee Intervenor

As amicus curiae or intervenor, this party supports (select one):

Petitioner or appellant Respondent or appellee

Name: Jacqueline L. Patt
Law Firm: Markery Law, LLC
Address: PO Box 84150
City, State and Zip: Gaithersburg, MD 20883
Telephone: 202-888-7892
Fax #: _____
E-mail address: jackiepatt@markerylaw.com; docket@markerylaw.com

Statement to be completed by counsel only (select one):

- I am the principal attorney for this party in this case and will accept all service for the party. I agree to inform all other counsel in this case of the matters served upon me.
- I am replacing _____ as the principal attorney who will/will not remain on the case. [Government attorneys only.]
- I am not the principal attorney for this party in this case.

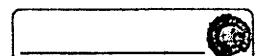
Date admitted to Federal Circuit bar (counsel only): February 5, 2015

This is my first appearance before the United States Court of Appeals for the Federal Circuit (counsel only): Yes No

A courtroom accessible to the handicapped is required if oral argument is scheduled.

Date 5/28/19 Signature of pro se or counsel s/jacquelinelpatt/

cc: _____



FORM 9. Certificate of Interest

**Form 9
 Rev. 10/17**

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Bank v. **Al Johnson's Swedish Rest.**

Case No. **19-1880**

CERTIFICATE OF INTEREST

Counsel for the:

(petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Al Johnson's Swedish Restaurant and Butiks, Inc.

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
Al Johnson's Swedish Restaurant and Butiks, Inc.	Al Johnson's Swedish Restaurant and Butiks, Inc.	none

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:

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.

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).

None.

5/28/2019

Date

Katrina G. Hull

Signature of counsel

Katrina G. Hull

Printed name of counsel

Please Note: All questions must be answered

cc: _____

Reset Fields

CERTIFICATE OF SERVICE

The undersigned, attorney for Appellee, hereby certifies that a true and complete copy of foregoing Certificate of Interest, which was electronically filed using the Court's CM/ECF system, has been served on this 28th day of May, 2019 by sending by mail and email to the attorney of record for Appellant:

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



Katrina G. Hull
Attorney for Appellee
Markery Law LLC
P.O. Box 84150
Gaithersburg, MD 20883-4150

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 19-1880

Bank

v.

Al Johnson's Swedish Rest.

DOCKETING STATEMENT

This Docketing Statement must be completed by all counsel and filed with the court within 14 days of the date of docketing. When the United States or its officer or agency is a party, this Docketing Statement must be completed by all counsel and filed with the court within 30 days of docketing. All questions must be answered or the statement will be rejected.

Name of the party you represent Al Johnson's Swedish Restaurant and Butiks, Inc.

Party is (select one)

Appellant/Petitioner

Cross-Appellant

Appellee/Respondent

Intervenor

Tribunal appealed from and Case No.

Trademark Trial and Appeal Board, Case No. 92069777

Date of Judgment/Order

May 2, 2019

Type of Case

Cancellation

Relief sought on appeal

Affirm dismissal of cancellation petition

Relief awarded below (if damages, specify) None

Briefly describe the judgment/order appealed from

The TTAB dismissed the petition for failure to plead standing or a basis to cancel the registration.

Nature of judgment (select one)

Final Judgment, 28 USC 1295

Rule 54(b)

Interlocutory Order (specify type) _____

Other (explain; see Fed. Cir. R. 28(a)(5)) _____

FORM 26. Docketing Statement

**Form 26
Rev. 10/16**

Name and docket number of any related cases pending before this court plus the name of the writing judge if an opinion was issued.
If none, please state none. None

Brief statement of the issues to be raised on appeal _____

Whether the petitioner failed to plead standing and a basis to cancel a trade dress registration.

Have there been discussions with other parties relating to settlement of this case? Yes No If "yes," when were the last such discussions?

- Before the case was filed below?
- During the pendency of the case below?
- Following the judgment/order appealed from?

If "yes," were the settlement discussions mediated? Yes No

If they were mediated, by whom? _____

Do you believe that this case may be amenable to mediation? Yes No

Please explain why you believe the case is or is not amenable to mediation.

Appellant is not seeking to register or use a similar trade dress; there is nothing to mediate.

Provide any other information relevant to the inclusion of this case in the court's mediation program.

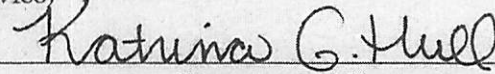
I certify that I filed this Docketing Statement with the Clerk of the United States Court of Appeals for the Federal Circuit and served a copy on counsel of record, this

28th day of May 2019

by: Mail and email

(manner of service)

Katrina G. Hull



Name of Counsel

Signature of Counsel

Law Firm

Markery Law, LLC

Address

PO Box 84150

City, State, ZIP

Gaithersburg, MD 20883

Telephone Number

202-888-2047

FAX Number

E-mail Address

katrinahull@markerylaw.com; docket@markerylaw.com

Reset Fields

EXHIBIT “D”

**Copy of Appellant’s Designation of
Materials for Inclusion in the Appendix**

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

**NOTICE PURSUANT TO
FEDERAL CIRCUIT RULE 30(b)(2)**

PLEASE TAKE NOTICE, that Petitioner-Appellant, Todd C. Bank, designates, pursuant to Fed. Cir. R. 30(b)(2), the following parts of the record that Petitioner-Appellant, intends to include in the addendum/appendix: Orders dated March 27, 2019, and May 2, 2019, the Petition, and a copy of the trademark sought to be cancelled.

PLEASE TAKE FURTHER NOTICE, that, pursuant to Fed. Cir. R. 30(b)(2), Registrant-Appellee may, within 14 days after receiving this Notice, serve, on Petitioner-Appellant, a counter-designation of additional parts to be included in the addendum/appendix.

PLEASE TAKE FURTHER NOTICE, pursuant to Fed. R. App. P. 30(b)(2), that Registrant-Appellee, should it wish to include, in the addendum/appendix, additional parts of the record, must advance the cost of including same.

Dated: May 15, 2019

s/ Todd C. Bank
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-Appellant

EXHIBIT “E”

**Copy of an Email to Which Entry Number 3 of the
Billing Record of the Restaurant’s Counsel Refers**

Subject: RE: Bank v. Al Johnson's Swedish Restaurant
From: Katrina Hull <katrinahull@markerylaw.com>
Date: 5/27/2019, 7:51 PM
To: Todd Bank <tbank@toddbanklaw.com>
CC: Docket <docket@markerylaw.com>, Tara Day Toth <taratoth@markerylaw.com>, Jacqueline Patt <jackiepatt@markerylaw.com>

Mr. Bank,

Thank you for your email. We are looking forward to working collaboratively with you to prepare the joint appendix, which is not due until seven days after the last reply brief. See Rule 30(a)(4). The appendix also cannot be finalized until we know what portions of the designated materials each party will cite in their respective briefs. It is my understanding that we first designate materials, and then later compile the appendix from the designated materials, per Rule 30(b)(6):

Preparation of Appendix. The appellant must prepare the appendix to be filed with the court from the designated material by selecting from that material only items required by these rules and pages specifically referred to in the briefs of the parties. *Pages of the designated material not referenced in the briefs—other than items required by these rules—must be omitted from the appendix filed with the court.*

To the best of our knowledge, the USPTO has not yet served the certified list referenced in Federal Circuit Rule 30(b)(2), and thus we consider your designation premature.

In the absence of an agreement, the appellant must, within 14 days after docketing in an appeal from a court or after service of the certified list or index in a petition for review or appeal from an agency, serve on the appellee or cross-appellant a designation of materials from which the appendix will be prepared and a statement of the issues to be presented for review. The appellee or cross-appellant may, within 14 days after receiving the designation, serve on the appellant a (Return to Table of Contents) Federal Circuit Rules of Practice (December 1, 2018) Page 119 FEDERAL CIRCUIT RULE 30 counter-designation of additional parts to be included in the appendix.

In any event, please consider this email as providing counter-designation notice that Appellee Al Johnson's Restaurant may also cite portions of the parties' briefs filed with the TTAB, specifically numbers 4 and 6 from the TTAB record copied below:

#	Date	History Text
11	05/02/2019	TERMINATED
<u>10</u>	05/02/2019	<u>BD DECISION: CAN DENIED W/PREJ</u>
<u>9</u>	04/18/2019	<u>D CHANGE OF CORRESP ADDRESS</u>
<u>8</u>	04/18/2019	<u>D APPEARANCE / POWER OF ATTORNEY</u>
<u>7</u>	03/27/2019	<u>PROCEEDINGS RESUMED; TRIAL DATES RESET</u>
<u>6</u>	11/30/2018	<u>P OPP/RESP TO MOTION</u>
<u>5</u>	11/29/2018	<u>SUSP PEND DISP OF OUTSTNDNG MOT</u>
<u>4</u>	11/28/2018	<u>D MOT TO DISMISS: FRCP 12(B)</u>
3	10/22/2018	INSTITUTED
<u>2</u>	10/22/2018	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>
<u>1</u>	10/12/2018	<u>FILED AND FEE</u>

Although it will likely not be necessary to include copies of the parties' TTAB briefs in their entireties in the appendix, we believe that even with the TTAB briefs the page count will be less than 100 pages. When all designated materials

are less than 100 pages, Federal Circuit Rule 30(d)(2) allows for all designated materials to be included in the appendix and filed with appellant's initial brief.

Kind regards,

Katrina

Katrina G. Hull, Esq.
Of Counsel, Admitted in Wisconsin
t: 202-888-2047 (Direct)
KatrinaHull@MarkeryLaw.com



t: 202-888-7892 (Main)
f: 202-803-7953
1200 G St., N.W., Suite 800
Washington, DC 20005

www.MarkeryLaw.com

Please consider the environment before printing this email.

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited

From: Todd Bank <tbank@toddbanklaw.com>
Sent: Wednesday, May 15, 2019 7:45 PM
To: Katrina Hull <katrinahull@markerylaw.com>
Subject: Bank v. Al Johnson's Swedish Restaurant

Ms. Hull:

Please see the attached document.

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

— Attachments: —

designation.pdf [*N.B.: see Exhibit "D"*]

77.8 KB

EXHIBIT “F”

**Copy of Correspondence Pertaining to Katrina G. Hull’s
Filing of a False Certificate of Service with this Court**

Subject: Re: Service Copies of Documents Filed with the Federal Circuit Court of Appeals
From: Todd Bank <tbank@toddbanklaw.com>
Date: 5/28/2019, 10:19 PM
To: Katrina Hull <katrinahull@markerylaw.com>

Ms. Hull:

The certificates of service state:

The undersigned, attorney for Appellee, hereby certifies that a true and complete copy of foregoing [document], which was electronically filed using the Court's CM/ECF system, **has been served** [(not that it "**would be served**")]) on this 28th day of May, 2019 by sending **by mail and email** to the attorney of record for Appellant: . . .

When you filed the above, your statement that the copy "has been served" was false. Unquestionably, irrefutably, inarguably false. I do not know if you are putting me on, but it is difficult for me to believe otherwise. As for there being "no requirement to also serve by email," I do not see how that is relevant to the matter at hand. I strongly advise you (again) to limit yourself to filing truthful certificates of service.

Todd Bank

On 5/28/2019 8:57 PM, Katrina Hull wrote:

The certificates were not false when filed. They stated you would be served by both mail and email today, and the documents were served both ways today. There was no requirement to also serve by email.

There is a requirement to include a certificate of service with all documents filed with the Federal Circuit.

Sent from my iPhone

On May 28, 2019, at 7:27 PM, Todd Bank <tbank@toddbanklaw.com> wrote:

Ms. Hull:

The second paragraph in your below email is simply inconsistent with your certificates of service, which is a nice way of saying that your certificates of service were false at the time that they were filed. If you insist on filing such false certificates of service, then I will not accept service by email. In addition, I will take all appropriate measures should you continue to file false certificates of service.

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

On 5/28/2019 3:03 PM, Katrina Hull wrote:

Mr. Bank,

Thank you for confirming the parties agreement to serve each other by email. Please copy doCKET@markerylAW.com when serving me by email. Please me know if you would like me to copy any additional emails for you.

The certificate of service indicates that the email has been sent on a certain day. The email service will occur on the day indicated in the certificate of service. The email service will be contemporaneous with the filing of the document. In other words, we file the document that includes a certificate of service, and then contemporaneously email you the service copy.

Regards,

Katrina

Katrina G. Hull, Esq.
Of Counsel, Admitted in Wisconsin
t: 202-888-2047 (Direct)
KatrinaHull@MarkeryLaw.com

<image001.png>

t: 202-888-7892 (Main)
f: 202-803-7953
1200 G St., N.W., Suite 800
Washington, DC 20005

www.MarkeryLaw.com

Please consider the environment before printing this email.

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited

From: Todd Bank <tbank@toddbanklaw.com>
Sent: Tuesday, May 28, 2019 1:52 PM
To: Katrina Hull <katrinahull@markerylAW.com>
Subject: Re: Service Copies of Documents Filed with the Federal Circuit Court of Appeals

Ms. Hull:

Email service is fine, but please do not file a certificate of service stating that you emailed a document to me unless you have already done so.

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

On 5/28/2019 2:44 PM, Katrina Hull wrote:

Dear Mr. Bank,

Attached are electronic copies of the documents filed today with the Federal Circuit Court of Appeals. These have also been sent to you by US mail.

Please let me know if you are interested in agreeing to serve each other by email only in the future.

Kind regards,

Katrina

Katrina G. Hull, Esq.
Of Counsel, Admitted in Wisconsin
t: 202-888-2047 (Direct)
KatrinaHull@MarkeryLaw.com

<image001.png>

t: 202-888-7892 (Main)
f: 202-803-7953
1200 G St., N.W., Suite 800
Washington, DC 20005

www.MarkeryLaw.com

Please consider the environment before printing this email.

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited

EXHIBIT “G”

**Copy an Email to Which Entry Number 36 of the
Billing Record of the Restaurant’s Counsel Refers
(the first email of the email chain that the exhibit includes)**

Subject: RE: Rule 27(a)(5) Notice of Rule 38 Motion for Sanctions - 19-1880-MA Bank v. Al Johnson's Swedish Rest.

From: Katrina Hull <katrinahull@markerylaw.com>

Date: 11/4/2019, 11:59 AM

To: Todd Bank <tbank@toddbanklaw.com>

CC: Jacqueline Patt <jackiepatt@markerylaw.com>, Docket <docket@markerylaw.com>

Attorney Bank,

This email follows up on our mandated Federal Circuit Rule 27(a)(5) phone discussion on Friday, November 1 regarding Al Johnson's Restaurant's Motion for Sanctions against you under Rule 38 of the Federal Rules of Appellate Procedure for filing and arguing a frivolous appeal. As you know, Federal Circuit Rule 27(a)(5) requires that the "movant must state in the motion that the movant has discussed the motion with the other parties, whether any party will object, and whether any party will file a response."

The nearly hour-long November 1 phone call was not productive for several reasons including that, despite knowing the purpose of the call, you repeatedly declined to state whether you would object to our Motion and/or if you planned to file a response. In addition, your attempts on the call to relitigate the merits of your initial appeal were argumentative and irrelevant to the purpose of the call.

We hereby decline your request for an additional call because, unfortunately, it is unlikely to be any more productive than the November 1 call. We also decline your request to provide you with a draft copy of the Motion before filing because it is not mandated by the Rules. Please note that the Practice Notes to Rule 38 state that "a party whose case has been challenged as frivolous is expected to respond or to request dismissal of the case." Thus, you will have the opportunity to respond as you see fit.

Please provide us with your decision of whether you will object to the Motion for Sanctions by 3 p.m. Eastern on Tuesday, November 5, 2019. In the absence of your response, we will file an unconsented Motion for Sanctions.

Regards,

Katrina

Katrina G. Hull, Esq.

Markery Law, LLC

t: 202-888-2047 (Direct)

KatrinaHull@MarkeryLaw.com

From: Todd Bank <tbank@toddbanklaw.com>

Sent: Friday, November 1, 2019 11:51 AM

To: Katrina Hull <katrinahull@markerylaw.com>

Subject: Re: Rule 27(a)(5) Notice of Rule 38 Motion for Sanctions - 19-1880-MA Bank v. Al Johnson's Swedish Rest.

Ms. Katrina:

I will not be available at that time, but should be available at 5:00.

Sincerely,

Todd C. Bank

Attorney at Law

119-40 Union Turnpike

Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

On 11/1/2019 12:36 PM, Katrina Hull wrote:

Todd,

Are you available this afternoon at 3 Eastern?

Katrina

Sent from my iPhone

On Nov 1, 2019, at 11:27 AM, Todd Bank <tbank@toddbanklaw.com> wrote:

Ms. Katrina:

As the rule requires that “the movant has discussed the motion with the other parties,” please let me know your availability to discuss the motion.

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

On 11/1/2019 9:41 AM, Katrina Hull wrote:

Dear Attorney Bank,

This email provides you with Notice under Federal Circuit Rule 27(a)(5) that, on behalf of Al Johnson’s Restaurant, I will be filing a motion for sanctions under Rule 38 of the Federal Rules of Appellate Procedure against you for filing and arguing a frivolous appeal.

In accordance with Federal Circuit Rule 27(a)(5), please respond as to whether you (1) consent to this motion for sanctions; and (2) will file a response to the motion for sanctions.

Regards,

Katrina

Katrina G. Hull, Esq.
Of Counsel, Admitted in Wisconsin

t: 202-888-2047 (Direct)
KatrinaHull@MarkeryLaw.com

<image001.png>

t: 202-888-7892 (Main)
f: 202-803-7953
1200 G St., N.W., Suite 800
Washington, DC 20005

www.MarkeryLaw.com

Please consider the environment before printing this email.

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited

EXHIBIT “H”

**Copy of the Correspondence to Which Entry Number 38
of the Billing Record of the Restaurant’s Counsel Refers**

Subject: RE: URGENT: Re: Rule 27(a)(5) Notice of Rule 38 Motion for Sanctions - 19-1880-MA Bank v. Al Johnson's Swedish Rest.

From: Katrina Hull <katrinahull@markerylaw.com>

Date: 11/5/2019, 4:36 PM

To: Todd Bank <tbank@toddbanklaw.com>

CC: Jacqueline Patt <jackiepatt@markerylaw.com>

Attorney Bank,

At 3:00 p.m. Eastern* today, I called in to the conference bridge number I provided to you at the time you requested in your letter of 9:33 a.m. today. I remained on the phone until 3:11 p.m. Unfortunately, you did not call in to the number provided. (*All references in this email are to the Eastern time zone.)

We have a fundamental disagreement regarding the obligations under Rule 27(a)(5). We are also confused by the contradictions in your correspondence. Your 9:33 a.m. letter states your belief that "comply[ing] with [our good faith obligation under Federal Circuit Rule 27(a)(5)]" would be to "resume our conversation today" and that "[you] will be available at 3:00 today (during the window of time that we had agreed upon) provided that you confirm your availability by 1:00." We then agreed to a further call at 3:00 p.m. by way of our email response at 12:25 p.m. We requested that the call be limited to 15 minutes given the hour long call we already had on Friday.

However, your letter of 1:28 p.m. represents that we "once again, refuse to comply with Rule 27(a)(5)" and states that "[s]hould you agree to comply with that rule, and refrain from artificially limiting the time of the conversation to 15 minutes, I would be amenable to the resumption of our November 1 conversation." Our response at 2:25 p.m. stated that we complied with the Rule with the hour long call. Nonetheless, we agreed to an additional call at 3:00 p.m. as you requested and explained that we believed 15 minutes was sufficient to answer your questions and for you to consent, or not, to the Motion. We also provided the call in details.

Finally, your letter of 3:03 p.m., received after the start of the call, stated that because we have "given no indication that [we] intend to comply with Local Rule 27(a)(5), [you] do not accept [our] proposal." However, we had already dialed in to the conference line for the additional call you requested, and we were waiting for you to join the call.

Rule 27(a)(5) requires a statement that we have "discussed the motion with the other parties." We discussed the Motion for an hour on Friday and dialed in to a conference line at the agreed time for further discussions today. Therefore, we have fulfilled our obligations under Rule 27(a)(5) to discuss the motion.

We will treat your lack of participation in today's call as an indication that you do not consent to the Motion for Sanctions, and that you intend to oppose the Motion for Sanctions.

Regards,

Katrina

Katrina G. Hull, Esq.

Markery Law, LLC

t: 202-888-2047 (Direct)

KatrinaHull@MarkeryLaw.com

From: Katrina Hull
Sent: Tuesday, November 5, 2019 2:06 PM
To: Todd Bank <tbank@toddbanklaw.com>
Cc: Jacqueline Patt <jackiepatt@markerylaw.com>
Subject: RE: URGENT: Re: Rule 27(a)(5) Notice of Rule 38 Motion for Sanctions - 19-1880-MA Bank v. Al Johnson's Swedish Rest.

Attorney Bank,

We are on the phone now, and waiting for you to join. Please call dial in if you want to have a call: DIAL IN 1-267-866-0999; PIN 6346 00 3805.

We are ready to continue the discussion. Please join the call in the next five minutes. We will remain on the line until 3:10 p.m. Easter.

Regards,

Katrina

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

From: Todd Bank <tbank@toddbanklaw.com>
Sent: Tuesday, November 5, 2019 2:03 PM
To: Katrina Hull <katrinahull@markerylaw.com>
Subject: Re: URGENT: Re: Rule 27(a)(5) Notice of Rule 38 Motion for Sanctions - 19-1880-MA Bank v. Al Johnson's Swedish Rest.

Ms.Hull:

Please see the attached letter. [***N.B.: see Doc. 31 at 48***]

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

On 11/5/2019 2:25 PM, Katrina Hull wrote:

Attorney Bank,

We have already fulfilled our obligation under Rule 27(a)(5) to discuss the motion with you with the hour-long call on Friday.

We are offering you an additional 15 minutes as a courtesy. We believe 15 minutes is more than sufficient to answer any lingering questions you have and for you to provide a clear answer regarding your consent to the motion or not, and your intention to file a response.

Please use the following information for our call at 3 p.m. Eastern: DIAL IN 1-267-866-0999; PIN 6346 00 3805.

Regards,

Katrina

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

From: Todd Bank <tbank@toddbanklaw.com>
Sent: Tuesday, November 5, 2019 12:12 PM
To: Katrina Hull <katrinahull@markerylaw.com>
Subject: Re: URGENT: Re: Rule 27(a)(5) Notice of Rule 38 Motion for Sanctions - 19-1880-MA Bank v. Al Johnson's Swedish Rest.

Ms.Hull:

Please see the attached letter. [*N.B.*: see Doc. 31 at 46-47]

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

On 11/5/2019 12:25 PM, Katrina Hull wrote:

Attorney Bank,

Your representation of our conversation is inaccurate. During the nearly hour-long call, I outlined the Restaurant's main arguments in its Rule 38 Motion for Sanctions against you for filing and arguing a frivolous appeal including:

- You have filed three cancellation petitions with the Trademark Trial and Appeal Board (the "Board") to cancel Al Johnson's Restaurant's Goats on the Roof Trade Dress Registration, and all have been dismissed at the pleading stage under Rule

12(b)(6).

- The Supreme Court ruled that trademark registrations can no longer be challenged as offensive *before* you filed the 2018 petition, which alleges only offense as the injury.
- The Board dismissed your 2018 petition for (1) failure to plead standing; and (2) failure to allege a valid basis for cancellation, and your reply brief incorrectly states that standing is the only issue on appeal.

I declined to argue with you on the phone on November 1 and stated that the conversation was not productive because the Restaurant's position on the merits of the underlying appeal is set forth in its brief already filed with the Court.

For all motions filed with the Federal Circuit, Rule 27(a)(5) requires the movant to "state in the motion that the movant has discussed the motion with the other parties, whether any party will object, and whether any party will file a response." I'm not aware of any requirement that the discussion must occur by phone instead of email.

As outlined above, I provided you with sufficient information about the contents of the Motion for Sanctions for you to answer the questions of whether you object to the Motion for Sanctions and whether you will file a response to the Motion for Sanctions.

We are available for a phone call at 3 p.m. Eastern today, on the following conditions:

1. The call will be limited to 15 minutes;
2. The call will be recorded to avoid any future disagreement about the substance of the discussion; and
3. You will answer the following questions during the call (a) whether you will withdraw the appeal, (b) whether you object to the Motion for Sanctions, and (c) whether you will file a response to the Motion for Sanctions.

If you agree to these terms, I will send out a phone number for the call. If you do not agree to these conditions, then please provide us with your additional discussion questions by email, and we will provide our responses in writing. We also renew the request for your response to the questions asked by Rule 27(a)(5): whether you object to the Motion for Sanctions and whether you plan to respond to the Motion for Sanctions.

We decline to argue with you on the phone. Your arguments about why your appeal is not frivolous should be filed with the Court in response to the Motion for Sanctions.

In closing, you have filed three cases with the Board against a small, family-owned business located in Wisconsin. In the absence of your response to this email, we will proceed with filing the Motion for Sanctions.

Regards,

Katrina

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

From: Todd Bank <tbank@toddbanklaw.com>

Sent: Tuesday, November 5, 2019 9:33 AM

To: Katrina Hull <katrinahull@markerylaw.com>

Subject: URGENT: Re: Rule 27(a)(5) Notice of Rule 38 Motion for Sanctions - 19-1880-MA Bank v. Al Johnson's Swedish Rest.

Importance: High

Ms.Hull:

Please see the attached letter. [***N.B.: see Doc. 31 at 43-44***]

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

On 11/4/2019 11:59 AM, Katrina Hull wrote:

Attorney Bank,

This email follows up on our mandated Federal Circuit Rule 27(a)(5) phone discussion on Friday, November 1 regarding Al Johnson's Restaurant's Motion for Sanctions against you under Rule 38 of the Federal Rules of Appellate Procedure for filing and arguing a frivolous appeal. As you know, Federal Circuit Rule 27(a)(5) requires that the "movant must state in the motion that the movant has discussed the motion with the other parties, whether any party will object, and whether any party will file a response."

The nearly hour-long November 1 phone call was not productive for several reasons including that, despite knowing the purpose of the call, you repeatedly declined to state whether you would object to our Motion and/or if you planned to file a response. In addition, your attempts on the call to relitigate the merits of your initial appeal were argumentative and irrelevant to the purpose of the call.

We hereby decline your request for an additional call because, unfortunately, it is unlikely to be any more productive than the November 1 call. We also decline your request to provide you with a draft copy of the Motion before filing because it is not mandated by the Rules. Please note that the Practice Notes to Rule 38 state that "a party whose case has been challenged as frivolous is expected to respond or to request dismissal of the case." Thus, you will have the opportunity to respond as you see fit.

Please provide us with your decision of whether you will object to the Motion for Sanctions by 3 p.m. Eastern on Tuesday, November 5, 2019. In the absence of your response, we will file an unconsented Motion for Sanctions.

Regards,

Katrina

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

From: Todd Bank <tbank@toddbanklaw.com>
Sent: Friday, November 1, 2019 11:51 AM
To: Katrina Hull <katrinahull@markerylaw.com>
Subject: Re: Rule 27(a)(5) Notice of Rule 38 Motion for Sanctions - 19-1880-MA Bank v. Al Johnson's Swedish Rest.

Ms. Katrina:

I will not be available at that time, but should be available at 5:00.

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

On 11/1/2019 12:36 PM, Katrina Hull wrote:

Todd,

Are you available this afternoon at 3 Eastern?

Katrina

Sent from my iPhone

On Nov 1, 2019, at 11:27 AM, Todd Bank
<tbank@toddbanklaw.com> wrote:

Ms. Katrina:

As the rule requires that "the movant has discussed the motion with the other parties," please let me know your availability to discuss

the motion.

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

On 11/1/2019 9:41 AM, Katrina Hull wrote:

Dear Attorney Bank,

This email provides you with Notice under Federal Circuit Rule 27(a)(5) that, on behalf of Al Johnson's Restaurant, I will be filing a motion for sanctions under Rule 38 of the Federal Rules of Appellate Procedure against you for filing and arguing a frivolous appeal.

In accordance with Federal Circuit Rule 27(a)(5), please respond as to whether you (1) consent to this motion for sanctions; and (2) will file a response to the motion for sanctions.

Regards,

Katrina

Katrina G. Hull, Esq.

Of Counsel, Admitted in Wisconsin

t: 202-888-2047 (Direct)

KatrinaHull@MarkeryLaw.com

<image001.png>

t: 202-888-7892
(Main)
f: 202-803-7953
1200 G St., N.W.,
Suite 800
Washington, DC
20005

www.MarkeryLaw.com

Please consider the environment before printing this email.

Please be advised that this e-mail and any files

transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited

EXHIBIT “I”

**Copy of the Correspondence to Which Entry Number 44
of the Billing Record of the Restaurant’s Counsel Refers**

Subject: Re: Bank v. Al Johnson's Swedish Rest.
From: Katrina Hull <katrinahull@markerylaw.com>
Date: 11/21/2019, 8:57 AM
To: Todd Bank <tbank@toddbanklaw.com>

Attorney Bank,

The deadline to request an oral argument has passed. Further, oral argument will unnecessarily increase the costs of this appeal. For these reasons, we will oppose your motion, should you decide to file it. You have our statement of opposition to your proposed motion.

Regards,

Katrina

Sent from my iPhone

On Nov 20, 2019, at 11:02 AM, Todd Bank <tbank@toddbanklaw.com> wrote:

Ms. Hull:

Please let me know of your availability beginning at 5:00 today or any time tomorrow or Friday to discuss, pursuant to Local Rule 27(a)(5), my anticipated motion for oral argument of the appeal.

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2020, 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: January 15, 2020



Todd C. Bank

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

January 15, 2020

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

RECEIVED

JAN 16 2020

United States Court of Appeals
For The Federal Circuit

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

Dear Sir or Madam:

Enclosed for filing is Appellant's response to Appellee's application for attorney fees.

Thank you.

Sincerely,

s/ Todd C. Bank

Todd C. Bank

Enclosure

ORIGIN ID:HTOA (718) 520-7125
TODD C. BANK, ATTORNEY AT LAW, P.C.

SHIP DATE: 15JAN20
ACTWGT: 1.00 LB
CAD: 102449297/INET4160

119-40 UNION TURNPIKE
FOURTH FLOOR
KEW GARDENS, NY 11415
UNITED STATES US

BILL SENDER

TO **CLERKS OFFICE**
FEDERAL CIRCUIT COURT OF APPEALS
717 MADISON PLACE NW
ROOM 401
WASHINGTON DC 20439

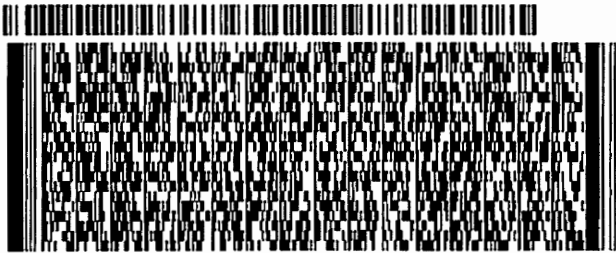
567 12/01/F82/05A2

(202) 275-8000

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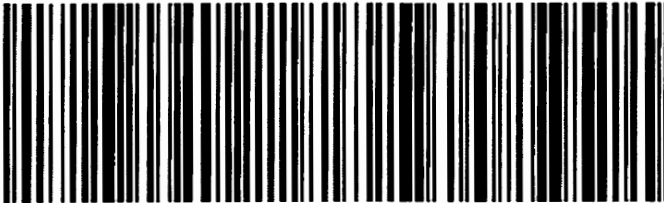
THU - 16 JAN 3:00P
STANDARD OVERNIGHT

TRK#
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7774 8503 9982

EP BZSA

20439
DC-US IAD



Case: 19-1880 Document: 50 Page: 83 Filed: 01/16/2020