

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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dmd/ejs

Mailed: February 5, 2016

In re Summit Entertainment, LLC

Serial No. 77921983

Filed: 1/28/2010

**By the Trademark Trial and Appeal Board:**

On February 4, 2016, Applicant filed a motion for permission to file an appeal brief exceeding 25 pages or, in the alternative, for permission to file a conforming brief. The motion was prompted by the Board's January 28, 2016 order advising Applicant that its 54-page brief would not be considered because it was in excess of the 25-page limit set by Trademark Rule 2.142(b)(2), and because Applicant had not sought prior leave of the Board to file an overlong brief.

In its brief, Applicant has given reasons why permission should be given to file an overlong brief. Such reasons would have been appropriate for a request that was filed prior to filing an overlong brief. Rule 2.142(b)(2) specifically says that a brief shall not exceed 25 pages "without prior leave of the Board." The only reason that Applicant has given for not requesting leave of the Board prior to filing its brief is that it "was inadvertent and an unfortunate oversight," and that "Applicant was focused on the ten Cited Marks in preparing its Appeal Brief and should have reviewed the TTAB rules again for the applicable page limitation."

Such an explanation, quite frankly, falls short of excusing Applicant for not requesting prior leave. Applicant, in effect, has said that the failure to follow the rule was due to a lack of review of the rule. However, in view of the fact that the non-conforming brief was not noted by the Board until after the appeal was fully briefed, because the Examining Attorney had considered Applicant's brief in preparing her own brief, and because having Applicant's brief is of benefit to the Board, the Board will exercise its discretion and accept Applicant's 54-page brief, filed on October 8, 2015, as the operative appeal brief in this proceeding. Applicant is cautioned, however, that failure to follow the rules for lack of review of the rules will not be tolerated as an excuse in the future.