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

Proceeding	91173189
Party	Defendant Igor Lognikov
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 78/612,360    TEMPLATEMONSTER

MONSTERCOMMERCE, LLC

Opposer,

v

Opposition No. 91173189

IGOR LOGNIKOV

Applicant.

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**APPLICANT’S RESPONSE IN OPPOSITION TO OPPOSER’S MOTION TO JOIN  
NETWORK SOLUTIONS, LLC AS A PARTY OPPOSER**

COMES NOW, the Applicant, IGOR LOGNIKOV (“Applicant”), by and through his undersigned counsel, who respectfully opposes Opposer’s, MONSTERCOMMERCE, LLC (“Opposer”), motion to join its parent corporation, Network Solutions, LLC (“NS”), as a party opposer. The operative notice, Opposer’s Second Amended Notice of Opposition, does not plead the subject registration, U.S. Reg. No. 2,947,268 for the mark MONSTERCOMMERCE, as a basis for opposing Applicant’s TEMPLATEMONSTER mark. Accordingly, ownership of that registration cannot support the motion and allow NS to join this proceeding.<sup>1</sup> Because U.S. Reg. No. 2,947,268 is not pleaded as a basis for the opposition, and since there would be no prejudice to the Opposer or its parent if the motion were not granted, the motion should be denied.

TBMP 512.01, 2d ed., Rev. 1 (March 12, 2004), states that an assignee of a mark “relied upon” in an inter partes proceeding may be joined as a party, as appropriate. But when the

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<sup>1</sup>The Board is reminded that NS filed an extension of time to oppose, but never timely filed a Notice of Opposition. The present motion is simply a ploy by Opposer and NS to allow NS to do indirectly what it failed to do directly.

assignee is not joined, the proceeding “may be continued in the name of the assignor.” *Id.* at 500-59 (citations omitted). “Further, the fact that a third party related to the plaintiff, **such as a parent** or licensor of the plaintiff, may also have an interest in a mark **relied on** by the plaintiff does not mean that the third party must be joined as a party plaintiff.” *Id.* at 500-60 (citation omitted). (Emphasis Supplied).

Here, Opposer has not “relied upon” U.S. Reg. No. 2,947,268 for MONSTERCOMMERCE as a basis for opposing Applicant’s TEMPLATEMONSTER mark. Specifically, Opposer alleges ownership of the cited registration. Second Amended Notice, ¶2. Opposer also separately alleges ownership of a “MONSTER Family of Marks,” none of which includes MONSTERCOMMERCE. Second Amended Notice, ¶3. Opposer then alleges as a basis for the opposition that Applicant’s pending TEMPLATEMONSTER mark violates Section 2(d) of the Trademark mark, but only with respect to the “MONSTER Family of Marks” and not with respect to MONSTERCOMMERCE. Second Amended Notice, ¶11. Because the pleading frames the issues, and since there is no allegation in the operative opposition that a likelihood of confusion exists between MONSTERCOMMERCE and TEMPLATEMONSTER, ownership of MONSTERCOMMERCE, for purposes of this proceeding, is irrelevant. In this regard, it is noteworthy that the motion does not assert that NS is the owner of the “MONSTER Family of Marks”; that is to say, unless another purported assignment magically appears.<sup>2</sup>

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<sup>2</sup>Incidentally, Opposer uses the alleged assignment dated November 30, 2007, never disclosed heretofore to Applicant despite being ordered by the Board on February 13, 2008 to supplement discovery or risk being prohibited from using as evidence the information not so disclosed, *see* n.8, to try to strike Applicant’s pending affirmative defenses. However, what the delayed disclosure of the alleged assignment proves is that Opposer not only failed initially and by amendment to plead with “absolute honesty” and be “guiltless of any false representations” in this proceeding, *Federal Products Co. v. Lewis*, 23 F.2d 759, 760 (C.A.D.C 1927), but that that

Because the operative opposition notice is devoid of any allegation that the Opposer will be damaged by the registration of TEMPLATEMONSTER due to the existence of the MONSTERCOMMERCE registration, and because TBMP 512.01 provides that a parent entity need not be joined in the proceeding, Applicant respectfully objects to the pending motion, and requests that it be denied.

Respectfully submitted,

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failure continues. Opposer failed to disclose, until May 9, 2008, that it did not own MONSTERCOMMERCE even though it was obligated to provide that information at least as early as February 13, 2008 when the Board lifted the suspended status of this case.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by United States Postal Service first class regular mail, and addressed to counsel for the Opposer:

Brian J. Winterfeldt  
Tricia McDermott Thompkins  
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this 21<sup>st</sup> day of May, 2008.

s/Richard S. Ross, Esq.  
Richard S. Ross, Esq.