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

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| Proceeding | 91173189 |
| Party | Defendant Logniko, Igor Logniko, Igor Apt. 2a, Brooklyn 7115 3rd Ave. , NY 11209 |
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| Date | 11/15/2006 |
| Attachments | Opp No. 91173189 reply to opp to motion to dismiss.pdf (5 pages)(172637 bytes) |

**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.

**APPLICANT’S REPLY TO OPPOSER’S MEMORANDUM IN OPPOSITION TO
APPLICANT’S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION AND STANDING, AND FOR FAILURE TO STATE A CLAIM**

COMES NOW, the Applicant, IGOR LOGNIKOV (“Lognikov”), by and through his undersigned counsel, who respectfully replies to the opposition filed by Opposer, MONSTERCOMMERCE, LLC (“MC”), to Lognikov’s motion to dismiss the pending opposition for lack of subject matter jurisdiction, and for failure to state a claim upon which relief can be granted under Rules 12(b)(1) and (6), Federal Rules of Civil Procedure. *See* 37 C.F.R. §2.127(a)(“The Board, in its discretion, may consider a reply brief.”). MC’s response to the motion is procedurally and factually flawed. Because MC filed the Notice of Opposition more than thirty (30) days after publication of the pending mark, and did not timely seek an extension to file the opposition, this Board lacks subject matter jurisdiction. The opposition should be dismissed.

It is clear from the record that MC failed to file the Notice of Opposition timely. In an attempt to cure its failure, MC argues that it is in privity with Network Solutions, LLC (“NS”) who did seek an extension of time to file an opposition, but who never did file any opposition. In

short, MC is attempting to ride on the coattails of NS and its extension of time request. In so doing, MC now argues that privity exists between it and NS. In support, MC provides a declaration from General Counsel of NS who states that it “acquired [MC] on January 4, 2005, and that [NS] owns and controls the assets of [MC].” However, what the General Counsel does not declare, and what is obvious from the four corners of the Notice of Opposition, is that NS is not, and never was, the owner of the trademark registration forming the basis of the opposition, U.S. Reg. No. 2,947,268, for the mark MONSTERCOMMERCE. As a result, there is no privity between NS and MC because MC’s use of its own mark does not inure to the benefit of NS. MC may not claim a right to file the Notice of Opposition based upon NS’s extension of time request.

The Trademark Trial and Appeal Board Manual of Procedure (“TMBP”), Chapter 206.02, provides that if a party filing a Notice of Opposition is relying upon privity based upon a different party filing an extension of time request, the filing party must show to the satisfaction of the Board privity with the different party. “The ‘showing’ should be in the form of a recitation of the facts upon which the claim of privity is based, and must be submitted either with the request or the opposition, or during the time allowed by the Board in its action requesting an explanation of the discrepancy.” *Id.*

Here, MC did not submit a recitation of the facts with its opposition attempting to explain the privity it is now claiming with NS. Furthermore, the Board has not sought an explanation of the discrepancy. Thus, procedurally, MC’s belated recitation is insufficient as being untimely. Substantively, MC’s attempt to establish privity with NS is of no moment. This is documented both as a matter of law, and based upon the allegations contained in the Notice of Opposition.

At law, MC agrees with Lognikov that the definitive issue is whether MC is a “related company” to NS as defined by 15 U.S.C. §§1055 and 1127. Clearly it is not.

In the Notice of Opposition, MC alleges that it is the owner of the registered mark MONSTERCOMMERCE, U.S. Reg. No. 2,947,268.¹ (Notice, ¶2). Nowhere in the Notice does MC allege that NS is the owner of the cited registration. A “related company” as defined “means any person whose use of a mark is controlled by the **owner of the mark...**” 15 U.S.C. §1127 (Emphasis Added). Because privity “generally includes...the relationship of ‘related companies’ within the meaning of Sections 5 and 45 of the Act, 15 U.S.C. §§1055 and 1127,” TMBP, Ch. 206.02, there can be no privity between NS and MC because MC has not alleged in its pleading that it used a mark owned by NS. To the contrary, MC alleges throughout that it, and not NS, is the owner of the cited registration. Accordingly, even if NS “acquired”² MC, based upon the opposition’s allegations, it did not “acquire” ownership rights to the U.S. Reg. No. 2,947,268 for MONSTERCOMMERCE.

“An extension of time to oppose is a personal privilege, inuring only to the benefit of the party to which it was granted or a party shown to be in privity therewith. A party cannot claim the benefit of an extension granted to another (unrelated) party.” *Cass Logistics, Inc. v. McKesson Corp.*, 27 U.S.P.Q.2d 1075, 1077 (TTAB 1993). The privilege of filing an opposition rested only with NS, because it, and not MC, sought an extension of time to file. However, NS knew that it

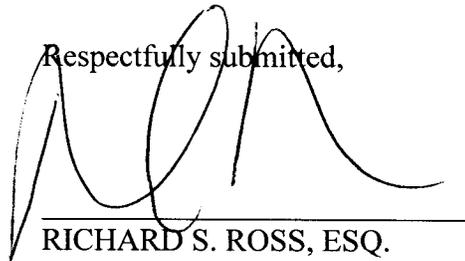
¹Despite its allegation of ownership, clearly MC cannot assert that its registration was “mistakenly” issued to Monstercommerce, Inc., an entity that is different than MC. In fact, the application that matured into the registration MC is now claiming as its own states that Monstercommerce, Inc. is the applicant. MC has not argued that it mistakenly filed for MONSTERCOMMERCE in the name of a wholly distinct corporation.

²MC provides no recitation of facts regarding its meaning of “acquired.” Specifically, MC provides no closing documents establishing any relationship between it and NS. All that MC provides is a naked, self-serving declaration from General Counsel for NS.

never owned the cited registration for MONSTERCOMMERCE, and that it would have no basis under Fed.R.Civ.P. 11 to assert injury by the registration of TEMPLATEMONSTER.

Because MC was the owner of the registered mark MONSTERCOMMERCE at the time the Notice of Opposition was filed, its use of that mark does not inure to the benefit of NS, irrespective of their current relationship. Thus, the two are not “related companies” as defined, and MC cannot rely on NS’s extension request to file an opposition in its own name. The result is this Board has no subject matter jurisdiction, and the opposition should be dismissed without prejudice to either NS, MC or both to file a petition for cancellation, if appropriate. *Cass Logistics, Inc. v. McKesson Corp.*, 27 U.S.P.Q.2d at 1077.

Respectfully submitted,



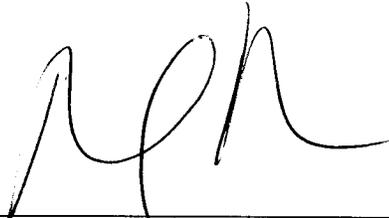
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CERTIFICATE OF SERVICE

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
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this 15th day of November, 2006.



Richard S. Ross, Esq.