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

Proceeding	91173189
Party	Defendant Logniko, Igor Logniko, Igor Apt. 2a, Brooklyn 7115 3rd Ave. , NY 11209
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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.

**APPLICANT’S RESPONSE IN OPPOSITION TO OPPOSER’S MOTION FOR
LEAVE TO AMEND PLEADINGS**

COMES NOW, the Applicant, IGOR LOGNIKOV (“Lognikov”), by and through his undersigned counsel, who respectfully responds in opposition to the motion of Opposer, MONSTERCOMMERCE, LLC (“MC”), for leave to amend its Notice of Opposition. Though leave to amend is required when justice dictates, *see* Fed.R.Civ.P. 15, justice mandates in this case that leave not be granted.

MC seeks to amend its pleadings to overcome a jurisdictional defect in its original opposition. Specifically, Lognikov has asserted in its pending motion to dismiss that MC untimely filed the Notice of Opposition and, thus, this Board lacks subject matter jurisdiction. Accordingly, MC is left to file a cancellation proceeding, if appropriate.

The proposed amended pleading makes no substantial change to the facts originally pled. However, the proposal alleges anew that MC is wholly owned by Network Solutions, LLC (“NS”) who did seek an extension of time to file an opposition, but who never filed one. In short, MC’s proposed amendment attempts to ride the coattails of NS and its extension of time request in

order to make its pleading timely. In so doing, MC now argues that privity exists between it and NS.

Review of the proposed amendment, however, details that the basis of the opposition, ownership of U.S. Reg. No. 2,947,268, for the mark MONSTERCOMMERCE, is, and has always been, in the name of MC, and used exclusively by MC. No allegation in the amended Notice asserts that NS has ever had any interest in the cited registration or mark. As a result, NS and MC are not “related companies” because MC’s use of its own mark does not inure to the benefit of NS,¹ such that MC may not claim rights under NS’s extension of time request.

Because discretion is the basis for granting or denying a motion to amend, the Board needs to consider the relevant factors. These factors include, among others, futility of the amendment and prejudice. *See Guise v. BWM Mortgage, LLC*, 377 F.3d 795 (7th Cir. 2004); *United Association of Journeymen & Apprentices v. Georgia Power Co.*, 684 F.2d 721 (11th Cir. 1982).²

The proposed amendment is futile because it does not alter the original pleading regarding ownership and use of the MONSTERCOMMERCE mark. Further, MC’s motion seeks to avoid the missed 30-day limitations period required for filing a timely Notice of Opposition. As such, the proposed amendment, if allowed, would be severely prejudicial to Lognikov. To the contrary, MC is not at all prejudiced if the motion is denied. MC is free, if it deems appropriate under Rule 11, Fed.R.Civ.P., to enforce whatever rights it claims to MONSTERCOMMERCE by filing a cancellation proceeding.

¹ 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).

²Leave to amend can also be denied where the amendment is subject to a valid motion to dismiss, *see Wilson v. DuPont*, 30 F.R.D. 37 (E.D. Pa. 1962), like the one pending before this Board.

Based upon the proposed amended pleading, there is no set of facts that can support the argument that MC timely filed the Notice of Opposition. The motion for leave to amend should be denied.

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:

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this 15th day of November, 2006.



Richard S. Ross, Esq.