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

Proceeding	91179000
Party	Defendant Adult Cartoon Network Inc.
Correspondence Address	Clifford W. Vermette Vermette & Co. 1177 West Hastings Street, Suite 320 Vancouver V6E 2K3, BC CANADA ip@vermetteco.com
Submission	Other Motions/Papers
Filer's Name	Denis O'Brien
Filer's e-mail	dobrien@vermetteco.com, kstringer@vermetteco.com
Signature	/denisobrien/
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United States Patent and Trademark Office
Trademark Trial and Appeal Board

The Cartoon Network, Inc., Opposer v. Adult Cartoon Network, Inc., Applicant	Opposition No. 91179000

Assistant Commissioner of Trademarks
P.O. Box 1451
Alexandria, Va. 22313-1451

MOTION FOR A MORE DEFINITE STATEMENT
AND
MOTION FOR EXTENSION OF DISCOVERY RESPONSE DEADLINE
AND
MOTION TO RE-SET DISCOVERY AND TESTIMONY PERIODS

In response to the Notice of Opposition issued by the Board on August 20, 2007 challenging registration application serial number 76/638229 for the mark ADULT CARTOON ADULT CARTOON NETWORK GET CONNECTED, and design ("Applicant's mark"), Applicant moves the Board to 1) require Opposer to amend its Notice of Opposition or to file a more definite statement of the claims; 2) extend the response deadline for discovery requests that have been served upon Applicant; and 3) re-set the discovery and testimony periods to accommodate the time lost in remedying the inadequate Notice of Opposition.

Motion for a More Definite Statement

Pursuant to FRCivP 16 and TBMP Rule 505, Applicant moves the Board to require Opposer to amend the Notice of Opposition or to file a more definite statement of its claims that explicitly identifies by registration number and date of issue all registered

marks that Opposer claims constitute grounds for this opposition.

In support of this Motion for a More Definite Statement, Applicant states as follows:

1. At Paragraph 14 of the Notice of Opposition, Opposer makes vague and ambiguous allegations that Applicant's mark "resembles Opposer's previously used, federally registered, and well-known CARTOON NETWORK mark." Opposer alleges that it owns 22 marks "incorporating the phrase CARTOON NETWORK." Opposer has filed Exhibit "A" that lists 22 such purported marks.
2. However, Opposer has not explicitly identified a single one of those alleged registered marks as being grounds for Opposer's claim that it would be injured by registration Applicant's mark.
3. Without specifying which of the 22 alleged registered marks Opposer is relying on as grounds for opposition, the Notice of Opposition is so vague and ambiguous that Applicant cannot reasonably be required to formulate responsive pleadings, including an answer, appropriate counter-claims, petitions for cancellation, motions for sanctions, etc.
4. For example, Exhibit "A" of the Notice of Opposition includes registration 2,239,225 for cookies, cakes, candy, frozen confections, chewing gum, bubble gum, breakfast cereals, breads, tea and coffee in International Class 030. Applicants mark in International Class 038 for adult cartoon pay per view Internet transmission is not even vaguely related to any goods or services described in registration 2,239,225. If Opposer has filed its Notice of Opposition in an attempt to deny Applicant the right to use Applicant's design in the market of adult cartoons on the basis of registration 2,239,225 for cookies and bubble gum, then obviously Opposer's filing would be frivolous and subject to sanctions pursuant to 37 CFR §10.18 and FRCivP 11. If it is not Opposer's intent to rely on the 2,239,225 mark in this opposition, either in part or entirely, then Opposer should be required to specify which of its alleged marks it is relying on.
5. The Notice of Opposition repeatedly refers to Opposer's 22 alleged collective

marks as the mark "CARTOON NETWORK. However, almost all of the 22 allegedly registered marks referred to by Opposer are not registrations of the mark CARTOON NETWORK , per se. Rather, most of the Opposer's marks are for designs such as checkerboard and cube motifs, which could not possibly be confused with Applicant's highly stylized design. Other of the marks referred to by Opposer are to typed drawings. Without even knowing what type of mark Opposer is relying upon, Applicant cannot possibly make an informed answer to the Notice.

6. Similarly with respect to Opposer's alleged 16 registered marks using the word "ADULT," Opposer fails explicitly to state which of such marks would be harmed by registration of the Applicant's design. Consequently, in this respect, too, the Notice of Opposition is so vague and ambiguous that Applicant cannot reasonably be expected to answer.

7. Opposer attempts to exploit the vagueness of its Notice for Opposition by arguing implicitly that Opposer may select words from multiple disparate marks and mix and match those selected words in order to concoct a non-existent hybrid mark that is not registered by Opposer, is not used by Oppser, and is not owned by Opposer. In order to obviate such a ploy, Opposer should be required to set forth explicitly which actual, existing, and registered mark containing the word "ADULT" will suffer harm should Applicant's design be registered.

8. Because Applicant is not properly advised as to which of Opposer's alleged marks is at issue in this opposition, not only is Applicant prevented from reasonably answering the Notice of Opposition, Applicant cannot reasonably be expected to respond to discovery requests or to formulate its own discovery strategy. For instance, if Opposer contends that all 38 registered marks alluded to in the Notice for Opposition represent grounds for denying Applicant's registration, Applicant's discovery requirements are likely to be much more expansive than if only one registered mark is at issue.

9. By vaguely alluding to more than 38 registered marks in its Notice of Opposition and by not explicitly identifying any single mark as being at issue, Opposer is

attempting to make Applicant's discovery requirements artificially onerous and daunting inasmuch as discovery must be directed to each of 38 marks, whilst not a single mark allegedly owned by Opposer has been pleaded as grounds for opposition.

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Motion for Extension of Discovery Response Deadline

Pursuant to FRCivP 6(b), 37 CFR § 2.120 and TBMP Rule 509, Applicant moves the Board to enlarge the deadline for responding to any discovery served by either party in this case until no less than 30 days after the date upon which Opposer serves its amended notice of opposition or more definite statement of claims. More specifically, Applicant moves the Board to extend the deadline for Applicant's responses to pending discovery requests until no less than 30 days after the date upon which Opposer serves its amended notice of opposition or more definite statement.

In support of this Motion for Extension of Discovery Response Deadline, Applicant states as follows:

10. The preceding paragraphs 1 - 9 are incorporated by reference as if here pleaded.
11. Opposer has already filed 26 interrogatories, not counting sub-parts, and 42 onerous document requests in this case.
12. Because Applicant has not been properly informed of the grounds of Opposer's case, Applicant cannot be expected to determine which, if any, of the pending discovery requests are relevant and proper pursuant to the TTAB and Federal discovery rules.
13. Opposer should not be permitted to force Applicant to make uninformed responses to discovery requests by filing the requests under cover of a vague and ambiguous notice of opposition.
14. Consequently, the deadline for either party's responses to current or future discovery requests should be re-set for no less than 30 days following the filing of a properly amended notice of opposition or a clear and unambiguous statement of the claims.

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Motion to Re-set Discovery and Testimony Periods

Pursuant to FRCivP 6(b), 37 CFR § 2.120 and TBMP Rule 509, Applicant moves the Board to re-set the discovery and testimony periods to run from the date upon which Opposer files its amended notice of opposition or more definite statement of claims.

In support of this Motion to re-set Discovery and Testimony Periods, Applicant states as follows:

15. The preceding paragraphs 1 -14 are incorporated by reference as if here pleaded.
16. One ultimate effect of Opposer's vague and ambiguous Notice of Opposition is to effectively reduce Applicant's portion of the discovery and testimony periods by the time required to pursue the present motions.
17. Opposer should not be permitted to file its own extensive discovery requests under cover of a defective Notice of Opposition that effectively reduces the overall discovery period available to Applicant.
18. Consequently, the discovery and testimony periods should be re-set as from the date Opposer files a properly amended notice of opposition or a clear and unambiguous statement of the claims.

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Request for relief

WHEREFORE, your Applicant respectfully requests that the Board take the following actions:

- Pursuant to FRCivP 16 and TBMP Rule 505, require Opposer to amend the Notice of Opposition or to file a more definite statement of its claims that explicitly identifies by registration number and date of issue all registered marks that Opposer claims constitute grounds for this opposition.
- Pursuant to FRCivP 6(b), 37 CFR § 2.120 and TBMP Rule 509, enlarge the deadline for any discovery served by either party in this case until no less than 30 days after the date upon which Opposer serves its amended notice of opposition or more definite statement of claims; and, more specifically, to extend the

deadline for Applicant's responses to pending discovery requests until no less than 30 days after the date upon which Opposer serves its amended notice of opposition or more definite statement.

- Pursuant to FRCivP 6(b), 37 CFR § 2.120 and TBMP Rule 509, re-set the discovery and testimony periods to run from the date upon which Opposer files its amended notice of opposition or more definite statement of claims.
- Grant all other relief the Board deems proper, prudent, and appropriate.

Adult Cartoon Network, Inc., Applicant

Date: Sep. 24, 2007 by:

Denis O'Brien, PhD/Esq., attorney for Applicant
Virginia State Bar #42366

Certificate of Service

I hereby certify that on the date entered below a true and complete copy of the foregoing **Motion for a More Definite Statement, Motion for Extension of Discovery Response Deadline** and **Motion to Re-Set Discovery and Testimony Periods** will be served upon Opposer by mailing said copy via first class mail, postage prepaid to counsel of record for Opposer, namely:

Mr. James A. Trigg, Esq., Kilpatrick Stockton, LLP, Suite 2800, 1100 Peachtree St., Atlanta, GA, 30309-4530, U.S.A.

Date of Service

Denis O'Brien, PhD/Esq.
Virginia State Bar #42366

Vermette & Co.
Suite 320 – 1177 W. Hastings St.
Vancouver, B.C. V6E 2K3
CANADA
Tel: 604-331-0381 Fax: 604-331-0382