

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DUNN

Mailed: March 27, 2008

Opposition No. 91180485

Swat.Fame, Inc.

v.

Melvina Goren

Elizabeth A. Dunn, Attorney:
(571-272-4267 or 301-565-4227)

On March 26, 2008, upon its initiative, the Board conducted a telephone hearing in this proceeding to address pending issues regarding the pleadings and the scheduled close of discovery on May 18, 2008. The participants were William Finkelstein, attorney for opposer, Patricia Kolaras, attorney for applicant, and Elizabeth Dunn, attorney for the Board.¹

Because applicant's motion to extend its time to answer, filed December 11, 2008, was unserved, the Board's January 22, 2008 order granting the motion as conceded is

¹ At the outset, the parties were advised as to the Board's authority to hold such hearings, that the hearing would not be recorded, that the resulting order would summarize only the relevant points made at the hearing, and that the Board's interlocutory order is subject to limited review.

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hereby vacated. Counsel for applicant is advised that a copy of any paper filed with Board must be served on counsel for opposer. Proof of service must accompany each filing. Trademark Rule 2.119.

Inasmuch as applicant filed its answer one day late and explained that it encountered computer problems in filing the previous day, the motion to extend time to answer is denied as moot.

Applicant's answer does not admit or deny the numbered paragraphs of the notice of opposition. Counsel for applicant is advised to review Fed. R. Civ. Pro. 8(b) and Trademark Trial and Appeal Board Manual of Procedure (TBMP) §311 (2nd ed. rev. 2004) before drafting an amended answer.

To the extent that the answer implies that applicant will not admit matters within its direct knowledge such as the filing date and content of the opposed application, counsel is advised to also review the Patent and Trademark Office Code of Professional Responsibility, codified in Section 10 of the U.S. Patent and Trademark Office Rules at Section 10.

<http://www.uspto.gov/web/offices/tac/tmlaw2.html>.

Applicant is ordered to file an amended answer which complies with Fed. R. Civ. Pro. 8(b) within ten days of the mailing date of this order.

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In view of the requirement for a formal answer, opposer's motion to strike, and opposer's motion to grant the motion to strike as conceded are denied as moot.

Based on the delay associated with these matters, the Board will extend discovery until September 18, 2008. As a guide to preventing discovery disputes, the parties are advised to consult the Board's January 17, 2006 notice of proposed rulemaking

[<http://www.uspto.gov/web/offices/com/sol/notices/71fr2498.pdf>] and the discussion of "core information" which indicates what discovery requests the Board may find reasonable and relevant. The parties are also advised that the Board's standard protective order with procedures for the exchange of confidential business information is in effect for all proceedings unless modified by agreement of the parties. See the note at the end of this order for further information

No discovery motions may be filed without the parties first discussing the disputed issue with the Board. The prospective movant shall inform attorney Elizabeth Dunn by phone of the dates the parties are available to confer regarding the discovery issues.

Discovery and trial dates are reset as follows:

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DISCOVERY PERIOD TO CLOSE:	September 18, 2008
Thirty-day testimony period for party in position of plaintiff to close:	December 17, 2008
Thirty-day testimony period for party in position of defendant to close:	February 15, 2009
Fifteen-day rebuttal testimony period to close:	April 1, 2009

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any

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protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>