

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

EJW

Mailed: March 9, 2009

Opposition No. 91185698

Yakira, LLC

v.

TAA APPAREL INC

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

The Board instituted this opposition proceeding on August 8, 2008, making applicant's answer due by September 17, 2008. On October 2, 2008, the Board sent notice of default to applicant because neither an answer nor a motion to extend time to answer had been associated with the proceeding file. On November 6, 2008, applicant (also "defendant"), acting *pro se* (*i.e.*, without counsel), filed a response to the Board's notice of default.¹ Because the response is not a legally sufficient answer to the notice of opposition, applicant remains in default but, as set forth

¹ Applicant's response was not accompanied by proof of service on opposer's counsel as required by Trademark Rule 2.119. The requirement for service is discussed later in this order. Accordingly, for purposes of expediency, a copy of applicant's response is attached to this order. The Board also notes that applicant's response, which was received after the thirty days allowed by the Board to respond to the notice of default, was untimely. Applicant's technical default in responding to the Board's October 2, 2008 notice of default is discharged.

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below, is allowed another opportunity to make the required response.

A Proper Answer to the Notice of Opposition Is Required

As noted above, applicant's communication filed in response to the notice of default is not responsive to the notice of opposition. Specifically, the communication does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable this proceeding by Trademark Rule 2.116(a), 37 C.F.R. § 2.116(a). Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer herein consists of **eight** numbered paragraphs setting forth the bases of opposer's claim(s) of damage, with the eighth paragraph having **seven** subparts. In accordance with Fed. R. Civ. P. 8(b), applicant must answer the notice of opposition by admitting or denying the allegations contained in each paragraph. Ordinarily, an applicant will use the same paragraph numbering format found in the complaint (notice of

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district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. **No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.**

Requirement for Service on Adverse Party of All Papers Filed

As noted *supra* note 1, applicant's communication with the Board did not include "proof of service," *i.e.*, a brief statement that the submission was sent to opposer's counsel. Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding,

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including the answer to the notice of opposition, must be accompanied by "proof of service" of a copy on opposer's counsel.

"Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served, (2) the method of service (e.g., first class mail), (3) the person being served and the address used to effect service, and (4) the date of service. This written statement should take the form of a "certificate of service" which should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via first class mail, postage prepaid to: [insert name and address].

The certificate of service must be signed and dated.

Legal Representation Is Strongly Encouraged

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition or opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal

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Regulations, which includes the Trademark Rules of Practice. These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage, <http://www.uspto.gov/web/offices/dcom/ttab/>, includes information on the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to The Trademark Trial and Appeal Board Manual of Procedure (the TBMP).

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

All Parties Must Comply with Board Deadlines; Dates Reset

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991).

Applicant is strongly advised to obtain counsel to present its interest in this proceeding but must, in any event, file an answer to the notice of opposition no later than **THIRTY DAYS** from the mailing date of this order, as discussed earlier in this order. Accordingly, answer is due **April 8, 2009**.

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Discovery conference, disclosure dates, discovery period and trial dates are reset as follows:

Time to Answer	4/8/2009
Deadline for Discovery Conference	5/8/2009
Discovery Opens	5/8/2009
Initial Disclosures Due	6/7/2009
Expert Disclosures Due	10/5/2009
Discovery Closes	11/4/2009
Plaintiff's Pretrial Disclosures	12/19/2009
Plaintiff's 30-day Trial Period Ends	2/2/2010
Defendant's Pretrial Disclosures	2/17/2010
Defendant's 30-day Trial Period Ends	4/3/2010
Plaintiff's Rebuttal Disclosures	4/18/2010
Plaintiff's 15-day Rebuttal Period Ends	5/18/2010

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. See Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 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

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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 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>

TTAB

**TAA APPAREL INC
48 WEST 37 STREET
NEW-YORK N.Y. 11020
212-268-4001**

Friday October 31st, 2008

RE : OPPOSITION NO. 91185698

77/298,884

Dear Millicent Canday, Paralegal Specialist.

We are respectfully writing to you in reference of above case in order to show cause as to why judgment by default should not be entered against TAA and its mark EK-GO GREEN label.

We strongly believe our mark is in now way infringing on the ECKO UNLTD mark for the following reason:

- a) Spelling and pronunciation of the mark is completely different. Our mark is spelled out as EE-key GO GREEN, and not ecko.
- b) Our labeling and graphics package is not similar to the registered ECKO mark.
- c) Our clothing is strictly organic in nature that is why is "green", ECKO UNLTD does not stand for green product.
- d) Our target customer s is eco/environmental conscious consumer which is different that the ECKO target customer.
- e) We do not believe our mark serial no 77/298,844 does not in any way dilute the ECKO brand

Wherefore, we respectfully request that the opposing to our mark disallowed and we may go forward with our registration.

Respectfully yours,

TAA Apparel



Ron Ben-Josef

President.



11-06-2008

U.S. Patent & Trademark Office Repl. 01 420