

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

Am/Dunn

Mailed: January 28, 2009

Opposition No. 91187460

Tyler Perry

v.

Edith M. Jebbinson and  
Novella S. Brown

**Elizabeth A. Dunn, Attorney (571-272-4267):**

On January 12, 2009, the Board issued notice of default for failure to file an answer or a motion to further extend time to file answer.

On review, the Board notes that on December 20, 2008, applicants, acting pro se, filed an ESTTA cover sheet titled "answer" and five pages of advertising.<sup>1</sup> It is presumed that this communication is intended as an answer to the notice of opposition. However, it does not comply

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<sup>1</sup> Applicants' communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

Opposition No. 91187460

with Rule 8(b) of the Federal Rules of Civil Procedure,  
made applicable this proceeding by Trademark Rule 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 twelve paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicants to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicants are without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, they should so state and this will have the effect of a denial.

In view of the foregoing, applicants are allowed until thirty days from the mailing date of this order in which to file an answer herein which complies with Fed. R. Civ. P. 8.

Opposition No. 91187460

Until a proper answer is filed, applicants remain in default. Should applicants fail to file a proper answer, the Board will enter default judgment for opposer.

As noted earlier in this order, 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 applicants may subsequently file in this proceeding, including their answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

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 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. Applicants are advised that an inter partes proceeding before

the Board is similar to a civil action in a Federal 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.

It is recommended that applicant review 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 amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's 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.

Conferencing, disclosure, discovery and trial dates are reset as follows:

Deadline for Discovery Conference	4/8/09
Discovery Opens	4/8/09
Initial Disclosures Due	5/8/09
Expert Disclosures Due	9/5/09
Discovery Closes	10/5/09
Plaintiff's Pretrial Disclosures	11/19/09
Plaintiff's 30-day Trial Period Ends	1/3/10
Defendant's Pretrial Disclosures	1/18/10
Defendant's 30-day Trial Period Ends	3/4/10
Plaintiff's Rebuttal Disclosures	3/19/10
Plaintiff's 15-day Rebuttal Period Ends	4/18/10

**Briefs shall be filed in accordance with Trademark Rules**

**2.128(a) and (b).** An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

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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](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>