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

gcp

Mailed: August 22, 2011

Opposition No. 91191016

Intellectual Reserve, Inc.

v.

Kendal M. Sheets

Before Seeherman, Taylor, and Lykos,
Administrative Trademark Judges.

By the Board:

This case comes before the Board for consideration of opposer's motion (filed August 6, 2010) to dismiss applicant's amended counterclaim for failure to state a claim upon which relief may be granted. The motion is fully briefed.

As background, applicant seeks to register the mark SECRET MORMON in standard character form for the following goods:

> "CD-ROMs, DVDs, magnetic tape cassettes, high definition digital disks featuring non-fictional content of history and religious doctrine; computer software for database management and interactive reading and research of electronically formatted books of history and religion; downloadable electronic publications and publications on recordable media, namely, books, magazines, newsletters, manuals, pamphlets, multimedia files, and magazine columns featuring non-fictional content of history and religious doctrine; audio and video recordings provided in analog and digital format featuring non-fictional

content of history and religious doctrine; audio and video recordings that are downloadable to recordable media featuring books, seminars, movies, documentaries, and interviews of non-fictional content of history and religious doctrine; computer game software and DVDs, CD-ROMs, and downloadable digital media files containing such software featuring non-fictional content of history and religious doctrine" in International Class 9; and

"Publications, namely, books, magazines, newsletters, pamphlets, guides, manuals, and syndicated newspaper columns featuring non-fictional content of history and religious doctrine; screenplays, books, guides, and manuals featuring fictional and non-fictional content of historical and religious events, persons, and activities; posters, calendars, note cards, greeting cards, stationery items, namely, pens, pencils, notebooks, notepads, stickers, binders, folders, writing paper and envelopes" in International Class 16.[1]

On July 13, 2009, opposer filed a notice of opposition to registration of applicant's mark on the grounds of (1) priority and likelihood of confusion under Section 2(d) of the Trademark Act, (2) false suggestion of a connection under Section 2(a) of the Trademark Act, and (3) dilution under Section 43(a) of the Trademark Act. In support of its opposition, opposer has pleaded ownership of the following registered marks:

1. MORMON HANDICRAFT (typed format) for "retail catalog mail order and telephone order services for craft items and materials, dolls, baby clothes, toys, young girls' clothing, quilts, personal gifts, needlework, porcelain statues and the like" in International Class 42;[2]

[1] Application Serial No. 77337325, filed on November 27, 2007, based on an allegation of a *bona fide* intention to use the mark in commerce under Trademark Act Section 1(b).
[2] Reg. No. 1527447, registered on February 28, 1989, issued under Section 2(f) with a disclaimer of the term "HANDICRAFT." Section 8 accepted and Section 15 acknowledged on June 2, 1996; Section 8 (10-year) accepted and Section 9 granted on March 11, 2009.

2. MORMON HANDICRAFT (typed format) for "fabrics, linens, bats [sic], towels, dish cloths, pillowcases, afghans, lap robes, quilts, quilt kits, and wall hangings, table covers, soft gifts, and hem-stitched items of textile material" in International Class 24;[3]

3. MORMON TABERNACLE CHOIR and design for various prerecorded audio and videotapes, publications and entertainment services featuring religious, family and educational themes in International Classes 9, 16 and 41;[4]

4. MORMON TABERNACLE CHOIR (typed format) for various prerecorded audio and videotapes, publications and entertainment services featuring religious, family and educational themes in International Classes 9, 16 and 41;[5]

5. BOOK OF MORMON (typed format) for various prerecorded audio and video matter and various forms of publications concerning religious subject matter in International Classes 9 and 16;[6] and

6. MORMON (typed format) for "educational services, namely, providing classes, conferences, and institutes in the fields of history and religion" in International Class 41 and "genealogy services" in International Class 42.[7]

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[3] Reg. No. 1524555, registered on February 14, 1989, issued under Section 2(f). Section 8 accepted and Section 15 acknowledged on May 15, 1996; Section 8 (10-year) accepted and Section 9 granted on March 6, 2009.

[4] Reg. No. 2913694, registered on December 21, 2004, issued under Section 2(f), in part, as to "MORMON TABERNACLE CHOIR." Section 8 accepted January 10, 2011.

[5] Reg. No. 2766231, registered on September 23, 2003, issued under Section 2(f). Section 8 accepted October 1, 2009.

[6] Reg. No. 2883572, registered on September 14, 2004, issued under Section 2(f). Section 8 accepted September 21, 2010.

[7] Reg. No. 3239919, registered on May 8, 2007, issued under Section 2(f).

Opposer has also pleaded ownership of a pending application for the mark MORMON.ORG in standard character form for "providing information and instruction in the fields of religion, ethics, and moral and religious values; providing on-line religious instruction promoting family values; providing information in the field of parenting concerning education and entertainment of children; and providing courses of instruction in the field of marital relations" in International Class 41 which we address at the end of this order.

On August 24, 2009, applicant filed his answer to the notice of opposition which included a counterclaim seeking to cancel each of opposer's six pleaded registrations on the grounds of (1) mere descriptiveness, (2) failure to function as a mark, and (3) genericness. Essentially, applicant is alleging that the word MORMON in each of opposer's pleaded registrations cannot be exclusively appropriated, and that each of the registrations should be cancelled on the aforesaid grounds because of the inclusion of this word in each mark.

On November 29, 2009, opposer filed a motion to dismiss applicant's asserted counterclaims for failure to state a claim upon which relief may be granted.

By order dated June 29, 2010, the Board granted the motion in part, dismissing all of applicant's counterclaims except for his claim of mere descriptiveness in regard to the

subject mark of opposer's pleaded Registration No. 3239919, i.e., MORMON for educational services in the field of history and religion and genealogy services. The Board, however, allowed applicant time to amend his counterclaims but only with respect to the asserted claims of genericness and mere descriptiveness. The Board dismissed with prejudice all of applicant's counterclaims alleging that the marks are functional, as well as the mere descriptiveness claims as to all of the pleaded registrations that were more than five years old on the date this opposition was filed.

On July 19, 2010, applicant filed an amended answer and counterclaim pursuant to the Board's June 29, 2010 order, re-asserting his counterclaims for (1) genericness against all of opposer's pleaded registrations and (2) mere descriptiveness against opposer's Registration Nos. 3239919 for MORMON, 2883572 for BOOK OF MORMON, and 2766231 for MORMON TABERNACLE CHOIR.[8] Applicant also asserted a new counterclaim on the ground of fraud.

We now turn to opposer's motion to dismiss applicant's amended counterclaims. In support thereof, opposer contends that each of applicant's asserted counterclaims, including his

[8] By its order dated June 29, 2010, the Board precluded applicant from re-asserting his claim of mere descriptive against opposer's Registration No. 2766231 for the MORMON TABERANCLE CHOIR mark, yet despite the Board's order, applicant has re-asserted this claim.

newly-asserted counterclaim for fraud, fail to state a claim upon which relief may granted.

With respect to applicant's asserted counterclaim for genericness, opposer maintains that, pursuant to the Supreme Court's decision in *Bell Atantic Corp. v. Twombly*, 550 U.S. 544 (2007), applicant has failed to allege sufficient factual matter to support this claim. Specifically, opposer contends that applicant's counterclaim for genericness does nothing more than simply state a legal conclusion that the subject marks of each of opposer's pleaded registrations are generic for all the goods and/or services identified in each respective pleaded registration. Opposer alleges that, because applicant has not alleged any facts to suggest plausible grounds for his genericness claim, applicant has failed to satisfy the pleading requirements under *Twombly* and, therefore, applicant's counterclaim for genericness should be dismissed.

With regard to applicant's asserted counterclaim for mere descriptiveness, opposer first maintains that applicant's claim asserted against opposer's pleaded Registration No. 2766231 for the mark MORMON TABERNACLE CHOIR is precluded, as a matter of law, inasmuch as this registration was issued more than five years before the notice of opposition was filed in this matter. With regard to the remaining two registrations that applicant seeks to cancel on mere descriptiveness

grounds, i.e., Registration No. 2883572 for the mark BOOK OF MORMON and Registration No. 3239919 for the mark MORMON, opposer argues that these two registrations were issued under Section 2(f) of the Trademark Act and, although applicant has alleged that the marks are merely descriptive of the identified goods, applicant has nonetheless failed to allege affirmatively that the marks lack acquired distinctiveness. In view thereof, opposer requests that applicant's counterclaim for mere descriptiveness also be dismissed.

Applicant's newly-asserted counterclaim for fraud alleges that opposer failed to advise the U.S. Patent and Trademark Office ("USPTO"), during the prosecution of opposer's underlying applications and during the submission of its Section 8 and 15 affidavits, that its affiliated organization, namely, The Church of Latter-Day Saints, is only one of a number of Mormon religious sects or splinter groups and that it has no rights to the exclusive use of the term MORMON. Opposer argues that these allegations do not formulate a basis for a fraud claim. Specifically, opposer maintains that it is irrelevant whether there are other Mormon religious sects or splinter groups and whether they also have rights to use the term MORMON in general or to identify their religious organizations by use of the term MORMON. Opposer further contends that the only relevant issue is whether opposer has the exclusive right to use the term MOROMON as part of its

registered marks in connection with the goods and services identified in its pleaded registrations. To that end, opposer argues that applicant has failed to allege with any specificity that opposer's statement that it has exclusive rights in its pleaded registered marks is false. Opposer also disputes applicant's allegations that a false date of first use or alleged deficient specimens submitted in conjunction with opposer's Section 8 and 15 affidavits are grounds for fraud.

To survive a motion to dismiss, a plaintiff need only allege sufficient factual matter as would, if proved, establish that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for opposing or cancelling the registration. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 187 (CCPA 1982). Specifically, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S.Ct. 1937, 1949-50 (2009), *quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In the context of *inter partes* proceedings before the Board, a claim has facial plausibility when the opposer or petitioner pleads factual content that allows the Board to draw a reasonable inference that the opposer or petitioner has standing and that a valid ground for the opposition or cancellation

exists. *Cf. Twombly*, 550 U.S. at 556, 127 S.Ct. at 1955. In particular, a plaintiff need only allege "enough factual matter … to suggest that [a claim is plausible]" and "raise a right to relief above the speculative level." *Totes-Isotoner Corp. v. U.S.*, 594 F.3d 1346 (Fed. Cir. 2010).

Initially, we find that applicant not only properly alleged his standing, but has established his standing to pursue his counterclaim inasmuch as a counterclaimant's standing to cancel a pleaded registration is inherent in his position as defendant in the original proceeding. *See General Mills, Inc. v. Natures Way Products*, 202 USPQ 840, 841 (TTAB 1979) (counterclaimant's position as defendant in the opposition gives him a personal stake in the controversy).

Turning to the claims set forth in applicant's amended counterclaim and following a careful review thereof, we find the following regarding each claim:

Sufficiency of Genericness Claim

In order to properly plead a claim of genericness, a plaintiff must affirmatively allege that the registered term is generic as applied to the specific goods and services for which it is registered. *See, e.g., In re Dial-A-Matress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001). Moreover, a claim for genericness must state that the

mark, as a whole, is generic for the identified goods and/or services and not that a portion of the mark may be generic.

In his amended counterclaim, applicant has affirmatively alleged that the marks in each of opposer's pleaded registrations are generic for the goods and/or services identified therein. While we acknowledge opposer's argument regarding the plausibility of applicant's claim of genericness, we note that whether applicant can prove that each of opposer's pleaded marks is generic for the respective identified goods and/or services is an issue regarding the merits of the claim to be proven at trial and not whether the claim has been sufficiently pleaded. The Board therefore finds that applicant has sufficiently pleaded his genericness claim and provided opposer sufficient notice thereof, except as it relates to opposer's pleaded Registration No. 2913694 for the mark MORMON TABERNACLE CHOIR for the reasons stated below.

Opposer's pleaded Registration No. 2913694 for the mark MORMON TABERNACLE CHOIR contains a design element consisting of a pictorial depiction of a Mormon temple and was issued more than five years before this opposition was filed. Applicant has made no allegation regarding the genericness of this design. Indeed, applicant's genericness claim with regard to the aforementioned registration is specifically limited to the word portion of the subject mark. We therefore

construe applicant's counterclaim for genericness in regard to this pleaded registration as seeking to cancel this registration absent a disclaimer of the alleged generic wording "MORMON TABERNACLE CHOIR." However, Section 14(3) of the Trademark Act does not contemplate such disclaimer requests as a basis for partial cancellation for registrations that are over five years old. Accordingly, applicant's counterclaim for genericness, as it pertains to opposer's pleaded Registration No. 2913694, is unavailable as a matter of law.

In view thereof, opposer's motion to dismiss applicant's genericness claim is granted with regard to opposer's pleaded Registration No. 2913694, but denied with regard to Registration Nos. 1524555, 1527447, 2766231, 288357, and 3239919.

Sufficiency of Mere Descriptiveness Claim

As noted in our previous order dated June 29, 2010, Section 14 of the Trademark Act provides that after five years from the date of the registration of a mark, a petition (or counterclaim) to cancel said registration may be filed only on grounds specified in subsections 14(3) and 14(5).[9] A claim for mere descriptiveness is not one of the grounds specified in subsections 14(3) and 14(5).

[9] This latter subsection involves certification marks and thus is not relevant herein.

In this instance, we note that applicant seeks to cancel opposer's pleaded Registration No. 2766231 for the mark MORMON TABERNACLE CHOIR (typed form) on the ground that the mark is merely descriptive of the identified goods. However, this particular pleaded registration was issued more than five years before opposer filed its notice of opposition. Accordingly, applicant's mere descriptiveness claim as to this pleaded registration fails as a matter of law.

With regard to the remaining registrations, namely, Registration No. 2883572 for the mark BOOK OF MORMON and Registration No. 3239919 for the mark MORMON, we note that applicant has properly asserted a claim of mere descriptiveness inasmuch as applicant has affirmatively alleged that the marks, as a whole, are merely descriptive of the identified goods and services.[10]

In view of the foregoing, opposer's motion to dismiss applicant's counterclaim for mere descriptiveness is granted

[10] We acknowledge that opposer, by registering its MORMON and BOOK OF MORMON marks pursuant to Section 2(f), has conceded that these marks are merely descriptive of the underlying goods and services. We previously advised applicant in our June 29, 2010 order that in a situation where a mark has been registered under Section 2(f), the better practice to assert a mere descriptiveness claim is to plead that the mark is merely descriptive and has not acquired distinctiveness. Although applicant did not make such an assertion, we presume that it is applicant's position that the marks are merely descriptive and have not acquired distinctiveness.

with regard to opposer's pleaded Registration No. 2766231 for MORMON TABERNACLE CHOIR, but denied with regard to Registration No. 2883572 for BOOK OF MORMON and Registration No. 3239919 for MORMON.

Sufficiency of Fraud Claim

In support of his counterclaim for fraud, applicant alleges that:

1. In procuring and maintaining its registrations, opposer knowingly made false statements and/or omissions, by not advising the Office during prosecution of its underlying applications, and when filing its Section 8 and 15 affidavits, that its affiliated organization, The Church of Latter-Day Saints, is only one of a number of Mormon religious sects or splinter groups and that it has no rights to the exclusive use of the term MORMON;
2. The specimens submitted in conjunction with opposer's Section 8 and 15 affidavits for some of opposer's pleaded registrations were insufficient to demonstrate opposer's continued use of the marks that are the subject of the registrations; and
3. The dates of first use alleged in the underlying application for opposer's mark BOOK OF MORMON was false.

To assert a viable claim of fraud, the plaintiff must allege with particularity, rather than by implied expression, that the defending party knowingly made a false, material representation in the procurement of or maintenance of or renewal of a registration with the intent to deceive the USPTO. *See In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1942 (Fed. Cir. 2009).

Further, fraud in procuring or maintaining a trademark registration occurs when an applicant for registration or a

registrant in a declaration of use or a renewal application knowingly makes specific false, material representations of fact in connection with an application to register or in a post-registration filing with the intent of obtaining or maintaining a registration to which it otherwise is not entitled. *Id.*

We first turn to the viability of the fraud claim based on false dates of first use. If a mark was in use at the time an application is filed, a claim of first use, even if false, does not constitute fraud. *See Western Worldwide Enterprises Group Inc. v. Qingdao Brewery*, 17 USPQ2d 1137, 1141 (TTAB 1990) ("The Board repeatedly has held that the fact that a party has set forth an erroneous date of first use does not constitute fraud unless, inter alia, there was no valid use of the mark until after the filing of the [Section 1(a)] application."); and *Colt Industries Operating Corp. v. Olivetti Controllow Numerico S.p.A.*, 221 USPQ 73, 76 (TTAB 1983) ("The Examining Attorney gives no consideration to alleged dates of first use in determining whether conflicting marks should be published for opposition.").

Here, as one of the grounds for his fraud counterclaim, applicant alleges that the dates of first use opposer provided in connection with its application for BOOK OF MORMON are false. Applicant, however, does not allege or

argue that opposer's mark BOOK OF MORMON was not in use at the time it filed its application. Thus, because applicant has not challenged the fact that opposer used the mark BOOK OF MORMON prior to the filing date of the application, opposer's motion to dismiss applicant's claim of fraud based on an allegedly false date of first use is granted.

We next turn to applicant's counterclaim for fraud based upon the alleged deficiencies of the specimens submitted in association with opposer's Section 8 and 15 affidavits. The mere fact that a specimen may be deficient is not necessarily a basis for a ground of fraud. In fact, the determination by the Office as to whether to accept a specimen is an ex parte issue, and an error on the part of the USPTO in accepting a specimen does not provide a ground for opposition or cancellation. However, it would be a ground of fraud if applicant can challenge that the opposer was not using the specimens that were submitted with the Section 8 and 15 affidavits at the time of filing such affidavits, or that the specimens that were submitted were not valid to show use.

Here, applicant has not alleged that opposer withheld information from the USPTO which would have been necessary for the Office to determine whether the specimens were sufficient nor has applicant alleged any facts that opposer fabricated the specimens or that the specimens were not in

use. In short, any deficiency in the specimens would have been readily apparent to the Office. In view thereof, opposer's motion to dismiss applicant's counterclaim for fraud on the ground that the specimens submitted with opposer's Section 8 and 15 affidavits were allegedly deficient is granted.

We finally turn to the sufficiency of applicant's fraud claim on the ground that opposer made knowingly false statements in the procurement of its registrations by failing to advise the USPTO that opposer is only one of a number of Mormon religious sects and that it has no exclusive right to use the term MORMON.

A plaintiff claiming that the declaration or oath in a defendant's application for registration was executed fraudulently, in that there was another user of the same or confusingly similar mark at the time the oath was signed, must allege particular facts, which, if proven, would establish that:

(1) there was in fact another user of the same or a confusingly similar mark at the time the oath was signed;

(2) the other user had legal rights superior to applicant's;

(3) applicant knew that the other user had rights in the mark superior to applicant's, and either believed that a likelihood of confusion would result from applicant's use of its mark or had no reasonable basis for believing otherwise; and that

(4) applicant, in failing to disclose these facts to the USPTO, intended to procure a registration to which it was not entitled.

Intellimedia Sports Inc. v. Intellimedia Corp., 43 USPQ 1203, 1206 (TTAB 1997). Indeed, the "mere knowledge of the existence of [another's] mark does not constitute fraud." *See Quicksilver, Inc. v. Kymsta Corp.*, 80 USPQ2d 1810, 1814 (9th Cir. 2006).

To the extent that applicant bases its fraud claim on the ground that the declarations or oaths in opposer's underlying applications for registration were executed fraudulently, we find that applicant has failed to allege affirmatively, in the context of his fraud claim, that opposer knew that third parties had superior rights in opposer's marks (and not in the use of the term MORMON in general), and either believed that a likelihood of confusion would result from opposer's use of its pleaded marks or had no reasonable basis for believing otherwise; and that opposer, in so failing to disclose these third-party superior rights to the USPTO, intended to procure registrations to which it was not entitled.

Notwithstanding the foregoing, we further note that, in his opposition to opposer's renewed motion to dismiss, applicant states that during the prosecution of the underlying applications the Examining Attorney inquired whether there are other splinter groups also entitled to use the term MORMON to which opposer responded that it was not aware of any so-called

"splinter groups" of the Latter Day Saints Church which are using or which are entitled to use the term MORMON. Applicant argues that opposer's response was a false statement intended to deceive the USPTO.

The Board notes that applicant does not include specific allegations in his amended counterclaim for fraud regarding the Examining Attorney's inquiry or opposer's response thereto. Even assuming applicant had included these allegations, applicant's counterclaim for fraud would nonetheless remain deficient because merely stating that opposer's response to the Office's inquiry was false without any further factual allegations as to why the statement would be deemed false, i.e., opposer knew of the existence of the Mormon splinter groups entitled to use the MORMON mark for the identified goods or services yet falsely stated that it did not, and that opposer made these statements with an intent to deceive the Office in procuring its registrations, does not sufficiently state a claim of fraud with particularity under Fed. R. Civ. P. 9(b).

For all the foregoing reasons, the Board finds applicant's counterclaim for fraud untenable in its entirety.

In view thereof, opposer's motion to dismiss applicant's counterclaim for fraud is granted.

The Board, however, freely grants leave to amend pleadings found, upon challenge under Fed. R. Civ. P.

12(b)(6), to be insufficient. In view thereof, applicant is allowed until **twenty (20) days** from the mailing date of this order to file a second amended answer and counterclaim which properly sets forth a claim of fraud pursuant to the guidelines set forth above, as well as re-asserting his claims for genericness and mere descriptiveness.[11] Applicant, however, for the reasons noted above, is precluded from re-asserting (1) a claim of genericness against opposer's pleaded Registration No. 2913694 for the mark MORMON TABERNACLE CHOIR and design and (2) a claim of mere descriptiveness against opposer's pleaded Registration No. 2766231 for the mark MORMON TABERNACLE CHOIR.

If applicant fails to submit a second amended counterclaim within the allotted time as ordered herein, the current amended counterclaim will proceed solely in regard to applicant's claims of genericness in regard to Registration Nos. 1524555, 1527447, 2766231, 288357, and 3239919 and mere descriptiveness with respect to Registration Nos. 2883572 and 3239919.

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[11] In re-asserting his counterclaims of mere descriptiveness against opposer's pleaded registrations which have been registered under Section 2(f), applicant should allege that the marks are merely descriptive and lack acquired distinctiveness as noted *supra*.

The Board notes that this is the second opportunity it has provided applicant to amend his counterclaims to assert proper and sufficient claims. Applicant is advised that the Board will be reluctant to afford applicant any further opportunities to amend his counterclaims.

In turn, opposer is allowed until **twenty (20) days** from the date indicated on the certificate of service of the second amended counterclaim to file an answer or otherwise plead to the second amended counterclaim, if filed. In the event applicant does not file a second amended counterclaim pursuant to this order, then opposer is allowed **twenty days** from the date the amended counterclaim would have been due to file an answer to applicant's amended counterclaim filed on July 19, 2010, as limited by this order.

As a final matter, we note that opposer's pleaded pending application Serial No. 77179068 for the mark MORMON.ORG for "providing information and instruction in the fields of religion, ethics, and moral and religious values; providing on-line religious instruction promoting family values; providing information in the field of parenting concerning education and entertainment of children; and providing courses of instruction in the field of marital relations" in International Class 41 has matured into a registration, i.e., Registration No. 3874153. Accordingly, opposer is advised that a plaintiff which pleads ownership of an application in its complaint does not have to amend its pleading to assert the resultant registration, so long as it issues before the plaintiff's testimony period closes. *See UMG Recordings Inc. v. O'Rourke*, 92 USPQ2d 1042, 1045 (TTAB 2009). The pleading of an application is viewed as

providing sufficient notice to the defendant of the plaintiff's intention to rely on any registration that issues from the pleaded application. *Id.* In view thereof, there is no need for opposer to amend its notice of opposition to claim ownership of its newly-issued registration.

In view of the foregoing, applicant may, if appropriate, assert claims against opposer's newly-registered MORMON.OG mark should applicant file a second amended counterclaim as permitted herein.

Trial dates are reset as follows:

Deadline for Discovery Conference	**October 24, 2011**
Discovery Opens	**October 24, 2011**
Initial Disclosures Due	**November 23, 2011**
Expert Disclosures Due	**March 22, 2012**
Discovery Closes	**April 21, 2012**
Plaintiff's Pretrial Disclosures	**June 5, 2012**
30-day testimony period for plaintiff's testimony to close	**July 20, 2012**
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	**August 4, 2012**
30-day testimony period for defendant and plaintiff in the counterclaim to close	**September 18, 2012**
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	**October 3, 2012**
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	**November 17, 2012**
Counterclaim Plaintiff's Rebuttal Disclosures Due	**December 2, 2012**
15-day rebuttal period for plaintiff in the counterclaim to close	**January 1, 2013**

Brief for plaintiff due	**March 2, 2013**
Brief for defendant and plaintiff in the counterclaim due	**April 1, 2013**
Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due	**May 1, 2013**
Reply brief, if any, for plaintiff in the counterclaim due	**May 16, 2013**

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.l25.

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.l29.