

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

Mailed: September 18, 2009

Opposition No. **91191285**

Tamara Racin

v.

Barbara Bailey Chapman

Cheryl Goodman, Interlocutory Attorney:

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties to this proceeding conducted a discovery conference on Thursday, September 17, 2009 with Board participation.<sup>1</sup>

Participating in the conference were Roger Johnston, counsel for opposer, and Barbara Chapman and Martha Hopper, pro se, for applicant. Present for the Board was the above-identified interlocutory attorney.

This order memorializes what transpired during the conference.

The Board advised applicant that if she intended to proceed without legal representation, she would be required

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<sup>1</sup> Opposer's request for Board participation in the discovery conference was received on September 3, 2009 via the Board's electronic filing ESTTA system.

to familiarize herself with all Board procedures, rules, and regulations governing this case.<sup>2</sup>

The Board advised the parties of the imposition of the Board's standard protective agreement and that applicant, as a pro se party, may not have access to trade secret and commercially sensitive information.<sup>3</sup> The parties were advised that if they seek to modify the protective agreement, they should file a motion with the Board. Opposer's counsel advised that he had reviewed the standard protective agreement and found it sufficient.

The Board advised of the nature of the Board proceeding, the discovery conference under Fed. R. Civ. P. 26(f), the nature of the parties' initial disclosures under Fed. R. Civ. P. 26(a)(1)(A) and (B), as well as general information regarding expert and pretrial disclosures.<sup>4</sup> The Board informed the parties that generally, disclosures should not be filed with the Board unless they are being

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<sup>2</sup> Information for parties representing themselves pro se is included at the end of this order. Applicant is also directed to the notice of institution dated July 30, 2009 which provides additional information regarding this proceeding.

<sup>3</sup> The "standard protective agreement" can be viewed using the following web address:  
<http://www.uspto.gov/web/offices/dcom/ttab/tbnp/stndagmnt.html>.

<sup>4</sup> The notice of final rulemaking can be viewed under "Miscellaneous Changes to Trademark Trial and Appeal Board Rules, Final Rule (01Aug2007) at the following web address:  
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>.

filed in connection with a discovery motion, motion for summary judgment, or notice of reliance. Also, no notification of service of initial disclosures need be filed with the Board.

The Board also reminded the parties that no summary judgment motion can be filed until after service of initial disclosures and that traditional discovery cannot be served until after service of initial disclosures. The parties were informed of the availability of telephone conferences with the assigned interlocutory attorney to resolve disputes between the parties.

The Board reviewed the requirements for service of all papers filed in Board proceedings under Trademark Rule 2.119.<sup>5</sup> The parties were advised that the ESTTA consent suspension and extension motion forms should not be used until after the deadline for initial disclosures has passed.<sup>6</sup> Prior to that date, the parties should file any motion to extend or suspend as a general filing.<sup>7</sup>

The Board informed the parties of other options available to settle this dispute including third party mediation and arbitration, as well as the availability of

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<sup>5</sup> Although service by e-mail was discussed, the parties did not stipulate to service by e-mail.

<sup>6</sup> The Board recommends that the parties file papers via the Board's electronic filing system, ESTTA.

accelerated case resolution at the Board, if appropriate. The Board also advised the parties of opportunities to streamline the discovery process to save time and expense by providing additional reciprocal disclosures, tailored discovery or stipulations to facts and the authenticity of documents.

Suspension for settlement was discussed, but the parties opted not to suspend at the present time.

#### **Pro Se Information**

Applicant is reminded that she will be expected to comply with all applicable rules and Board practices during the remainder of this case. The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this opposition proceeding. Applicant should note that Patent and Trademark Rule 11.14 permits any person or legal entity to represent itself in a Board proceeding, though it is generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

If applicant does not retain counsel, then applicant will have to familiarize herself with the rules governing this proceeding. The Trademark Rules are codified in part

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<sup>7</sup> In ESTTA, the parties should check the "What's New in ESTTA"

two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure, are likely to be found at most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure ("TBMP") will be helpful.

On the Internet, applicant may access most of these materials by logging onto <http://www.uspto.gov/> and making the connection to trademark materials.

Applicant must pay particular attention to Trademark Rule 2.119. That rule requires a party filing any paper with the Board during the course of a proceeding to serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. The party filing the paper must include "proof of service" of the copy. "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.

Also, applicant should note that any paper she is required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing

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alert for further information.

procedures set forth in Trademark Rules 2.197 or 2.198 is utilized. These rules are in part two of Title 37 of the previously discussed Code of Federal Regulations.

Files of TTAB proceedings can now be examined using TTABVue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

The first revision of the second edition (March 2004) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at [www.uspto.gov/web/offices/dcom/ttab/tbmp/index/.html](http://www.uspto.gov/web/offices/dcom/ttab/tbmp/index/.html)

Dates in this proceeding remain as set in the Board's institution order of July 30, 2009. Discovery shall open on October 8, 2009 and initial disclosures are due on November 7, 2009.