

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

MBA

Mailed: August 1, 2012

Opposition No. 91194679

John P. Avlon

v.

DeMarcus J. Freemon

Michael B. Adlin, Interlocutory Attorney:

This case continues to proceed in a disturbing alternate universe, where the rules are not followed, the parties do not sufficiently communicate and chaos ensues as a result. See e.g. Board's Order of November 22, 2011. Mercifully, reality is now intervening, as it always does.

The latest chaos comes during trial. Specifically, on July 12, 2012, the penultimate day of his testimony period, opposer filed a "consented" motion to suspend for settlement negotiations, which the Board granted on July 17, 2012. However, later in the day on July 17, 2012, applicant informed the Board, and presented evidence, that opposer's motion to suspend was not in fact consented. Indeed, opposer requested applicant's consent to the motion in writing in a July 12, 2012 e-mail, and applicant, on the same day, in a responsive e-mail, stated "we do not consent

to a motion to suspend the opposition proceeding."

Applicant's Motion to Resume Opposition Proceeding, filed July 17, 2012 Ex. A (emphasis supplied). However, and in violation of Trademark Rule 2.119, applicant failed to serve his motion to resume.¹

The Board convened a teleconference with the parties on July 31, 2012 to discuss the situation, at which Robert Barz appeared on opposer's behalf and Herbert T. Patty appeared on applicant's behalf. During the teleconference, opposer apologized for filing the unconsented motion as a "consent" motion, claiming, quite questionably, that he simply "misread" applicant's e-mail, having assumed that consent would be provided given that the parties had negotiated a settlement agreement. Opposer also claimed, much more credibly, that he did not become aware of applicant's motion to resume until he was contacted by the Board to arrange the teleconference. The Board assumes, as it must, that this claim is true, given applicant's failure to serve his motion to resume.²

Under the circumstances, i.e. where both parties have engaged in (adjective omitted) conduct which has again

¹ Applicant's claim that he was unaware that his motion to resume was required to be served is unfortunately credible, given what has transpired in this proceeding. However, an honest belief is no excuse for violating a clear rule, and further violations of Trademark Rule 2.119 will not be tolerated.

² Whether or not opposer was aware of his "mistake" before becoming aware of applicant's motion is an open question.

disrupted this proceeding, justice would be best served by allowing the parties time to complete their settlement, failing which they will have to lie in the beds they made. That is, proceedings herein are **SUSPENDED** until **August 13, 2012** to allow the parties time to attempt to complete a settlement and to allow opposer time to prepare for the remaining two days in his trial period.³ Unless this case is dismissed beforehand, proceedings will then resume, and opposer will have the two days remaining in his testimony period as of July 12, 2012, the date he filed his unconsented and mistakenly-granted motion to suspend. Obviously, the Board's order of July 17, 2012 is **VACATED**.

Trial dates are reset as follows:

Proceedings Resume	August 13, 2012
Plaintiff's 30-day Trial Period Ends	August 14, 2012
Defendant's Pretrial Disclosures	August 29, 2012
Defendant's 30-day Trial Period Ends	October 13, 2012
Plaintiff's Rebuttal Disclosures	October 28, 2012
Plaintiff's 15-day Rebuttal Period Ends	November 27, 2012

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits,

³ In other words, as pointed out during the teleconference, opposer will have to "walk and chew gum" at the same time, meaning prepare for the remaining two days in his testimony period while negotiating any settlement.

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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.
