

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

Mailed: June 28, 2011

Opposition No. 91198382

The Republic of Tea, Inc.

v.

Kusmi Tea

Jennifer Krisp, Interlocutory Attorney:

Counsels of record in this proceeding contacted the assigned interlocutory attorney by telephone on June 23, 2011, indicating that the parties have agreed to seek the Board's approval to conduct this opposition under the Board's Accelerated Case Resolution ("ACR") trial option in lieu of proceeding under traditional discovery, trial and briefing periods. On June 27, 2011, the Board convened a telephone conference to discuss the matter. Participating were opposer's counsel Michelle C. Burke, Esq., applicant's counsel Thomas J. Mango, Esq., and the assigned interlocutory attorney.

In summary, and as indicated below, the Board finds that this opposition proceeding is appropriate for resolution by ACR.

The Board briefly noted that the parties' submissions under ACR will constitute the full record upon which a final decision on the merits will be made by a Board panel. The

Board confirmed that the parties have generally apprised themselves of the explanatory resources about, and examples of, ACR proceedings that are available on the Board's website.

The parties confirmed that they held a fairly substantive discovery conference during which they discussed the ACR option, and that they have engaged in settlement discussions.

Upon review of the pleadings, the Board noted that the sole ground for opposition is priority and likelihood of confusion under Trademark Act Section 2(d). Counsels informed the Board that the parties have not entered into any stipulations with respect to the substantive elements of either priority or likelihood of confusion. Accordingly, both elements of the ground for opposition remain in dispute.

The Board inquired regarding any procedural stipulations to which the parties have agreed at this time. The parties have agreed to the following negotiated matters regarding disclosures, discovery, the record and briefing:

- 1) The parties forego the obligations to exchange initial disclosures.
- 2) Written discovery propounded by each party shall be limited to ten interrogatories, ten requests for production, and ten requests for admissions.
- 3) Each party may conduct one Fed. R. Civ. P. 30(b)(6) deposition.
- 4) All written discovery will be served by July 15, 2011.
- 5) All responses to written discovery will be due within thirty days of the date of service thereof, and in any event not later than August 15, 2011.

- 6) Within thirty days of the date of service of responses to written discovery, the responding party will have thirty days in which to produce documents responsive to any requests for production.
- 7) On or before September 30, 2011, the parties will serve notices of deposition.
- 8) On or before October 7, 2011, the parties will meet and confer with respect to the date, time and location of any depositions.
- 9) Discovery will close November 11, 2011.
- 10) On or before December 9, 2011, the parties will meet and confer with respect to proposed stipulations of fact.
- 11) On or before December 23, 2011, the parties will prepare their joint proposed stipulations of fact.
- 12) The parties will forego trial and agree that the Board may resolve issues of material fact that may be presented by the record or discovered at final decision.
- 13) The parties agree that they will create the record for the case by submitting summary judgment motions. The parties will file cross-motions for summary judgment, and the Board may treat their cross-motions as the final briefs on the merits. Each party is entitled to file a main motion, a response to the other's motion, and a reply in support of its own motion.
- 14) Evidence submitted in connection with the briefs shall be treated as the final record and briefs.
- 15) The schedule for filing the cross-motions for summary judgment is as follows:
 - January 27, 2012 - Both parties' cross-motions and supporting evidence are due.
 - March 2, 2012 - Both parties' responsive briefs are due.
 - March 16, 2012 - Both parties' reply briefs, if any, are due.

The parties have agreed to the following evidentiary and related issues:

- 1) No further authentication is required for publicly available information or documents which display a source and a date of printing thereof. If the information required for authentication is not displayed on publicly available information or a document, this may be admissible by declaration.
- 2) Documents produced in response to written requests for documents may be authenticated by an authorized representative of the producing party.
- 3) The parties reserve the right to object to evidence on the basis of confidentiality, competency, relevance and materiality.
- 4) Documents produced may be subject to cross-examination, such as during the depositions.
- 5) The parties forego the obligations to serve expert disclosures, and do not anticipate using expert witnesses.
- 6) The parties forego the obligations to serve pretrial disclosures.
- 7) Either party may propose to revisit or modify any of these stipulations in the event that there is a change in circumstances, such as an unforeseen circumstance.
- 8) The Fed. R. Civ. P. 30(b)(6) depositions will be treated as both discovery depositions and trial depositions, and testimony obtained through deposition can be used in support of each party's cross-motion.

The schedule set forth in this order supersedes the schedule set forth in the January 28, 2011 order instituting this proceeding.

The Board noted that its Standard Protective Order is in place in this proceeding pursuant to Trademark Rule 2.116(g). Counsels responded that they anticipate agreeing to a modified version thereof, and will circulate a proposed modified protective order. In the event that they agree to a modified

protective order, it will be filed herein for the Board's approval.

The parties may enter into any additional stipulations regarding the conduct of discovery, the submission of evidence, or the filing of their cross-motions. Any such stipulations must be filed herein, but the parties should act in accordance with them from the date of agreement, without need to wait for Board approval.

In the event that this order omits or does not adequately memorialize the parties' stipulations, either counsel will contact the interlocutory attorney by telephone.

Inasmuch as applicant's application is a request for an extension of protection under Trademark Act Section 66(a) (Madrid Protocol), the Board directed the parties, as appropriate, to particular considerations relevant to such applications.

Counsel requested clarification regarding the time in which the Board will issue a final decision. For cases under ACR, the Board generally will render a final decision within fifty days following the completion of briefing. See TBMP § 702.04(a) (3d ed. 2011). Said decision is judicially reviewable as provided for in Trademark Rule 2.145.