

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

Baxley

Mailed: March 24, 2011

Opposition No. 91198448

Salt Life Holdings, LLC

v.

Timothy J. Polovina, P.A.

By the Trademark Trial and Appeal Board:

Applicant filed a communication on March 14, 2011, which appears is intended as an answer to the notice of opposition. A reading of this communication is that it is not a responsive pleading to the notice of opposition and therefore does not comply 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 as follows:

(1) In General.

In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) Denials – Responding to the Substance.

A denial must fairly respond to the substance of the allegation.

(3) General and Specific Denials.

A party that intends in good faith to deny all the allegations of a pleading – including the jurisdictional grounds – may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying Part of an Allegation.

A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking Knowledge or Information.

A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny.

An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

The notice of opposition filed by opposer herein consists of 23 paragraphs setting forth the basis of opposer's claim of damage.¹ In accordance with Rule 8(b), applicant should

¹ The electronic cover sheet of the notice of opposition indicates that opposer intends to plead claims of false suggestion of a connection under Trademark Act Section 2(a), 15 U.S.C. Section 1052(a); priority and likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d); and dilution under Trademark Act Section 43(c), 15 U.S.C. Section 1125(c). However, only the Section 2(d) claim is sufficiently pleaded. A pleading of a claim of false suggestion of a connection under Section 2(a) requires an allegation of facts

respond to the notice of opposition by simply admitting or denying the allegations contained in each paragraph. If applicant lacks sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial. In view of the foregoing, applicant is allowed until **thirty days** from the mailing date set forth in this order to file an answer herein which complies with Rule 8(b).²

from which one may infer that: (1) the defendant's mark points uniquely to the plaintiff, as an entity, i.e., that the defendant's mark is the plaintiff's identity or persona; (2) purchasers would assume that goods bearing the defendant's mark are connected with the plaintiff; and either (3) the plaintiff previously used defendant's mark, or the equivalent thereof, as a designation of its identity or persona; or (4) the defendant's mark was associated with the plaintiff prior to the defendant's use. See *Miller Brewing Co. v. Anheuser-Busch Inc.*, 27 USPQ2d 1711 (TTAB 1993). A claim of false suggestion of a connection is based on the right to privacy and is not an alternative means of raising a Section 2(d) claim. See Trademark Act Section 14(3), 15 U.S.C. Section 1064(3); *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 703 F2d 1372, 217 USPQ 505 (Fed. Cir. 1983). To the extent that opposer intends to set forth a false suggestion claim, that claim appears to be merely an extension of its Section 2(d) claim.

A pleading of a claim of dilution requires allegations that: (1) the plaintiff's mark is famous and distinctive; (2) the plaintiff's mark(s) became famous prior to the defendant's date of first use or constructive first use date of its involved mark; and (3) registration of the defendant's mark would dilute the distinctive quality of the plaintiff's famous mark(s). See *Polaris Industries Inc. v. DC Comics*, 59 USPQ2d 1798 (TTAB 2000). Opposer has not alleged that any of its pleaded marks became famous prior to applicant's date of first use of its involved mark.

² Opposer's motion (filed March 23, 2011) for judgment on the pleadings or, in the alternative, to strike applicant's answer is moot.

Trademark Rules 2.119(a) and (b) require that every submission in this case 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 submission will be considered by the Board. Consequently, copies of all submissions which applicant may subsequently file in this proceeding, including its 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 submission when filed, will be accepted as prima facie proof of service.

Applicant intends to represent itself herein. While Patent and Trademark Rule 11.14 permits any person to represent himself, 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.

In this opposition, the parties should review the Trademark Rules of Practice, online at <http://www.uspto.gov/trademarks/law/tmlaw.pdf>, and the Trademark Board Manual of Procedure (TBMP), online at <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/index.html>.

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The Board expects all parties appearing before it, whether or not they are represented by counsel, to comply with the Trademark Rules of Practice and where applicable, the Federal Rules of Civil Procedure, online at <http://www.law.cornell.edu/rules/frcp>.

Trademark Rules 2.119(a) and (b) state that every paper filed in this proceeding 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 applicant may subsequently file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made, e.g., by mail. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service. Applicant is advised that the Board will not consider any further submissions from applicant that are filed without proof of service upon opposer at its correspondence address of record.

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.

Remaining dates are reset as follows:

Deadline for Discovery Conference	5/24/11
Discovery Opens	5/24/11
Initial Disclosures Due	6/23/11
Expert Disclosures Due	10/21/11
Discovery Closes	11/20/11
Plaintiff's Pretrial Disclosures	1/4/12
Plaintiff's 30-day Trial Period Ends	2/18/12
Defendant's Pretrial Disclosures	3/4/12
Defendant's 30-day Trial Period Ends	4/18/12
Plaintiff's Rebuttal Disclosures	5/3/12
Plaintiff's 15-day Rebuttal Period Ends	6/2/12

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 2.125.

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.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.