

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

VW

Mailed: April 14, 2011

Opposition No. 91199109

Calpis Co., Ltd.

v.

Calico Jack's LLC

Jennifer Krisp, Interlocutory Attorney:

Applicant filed a communication on April 10, 2011.¹ Although applicant calls its filing an "answer," by selecting that submission category in the ESTTA online filing system, a reading of this informal "answer" reveals, that it is pages from the Trademark Electronic Search System (TESS) system. The filing does not comply with Fed. R. Civ. P. 8(b), which is made applicable this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

¹ Applicant's communication does not indicate proof of service of a copy of same on counsel for opposer, as required by Trademark Rule 2.119 (more fully explained later in this order). To expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer. Strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board, and the Board may decline to consider any future motion or paper filed by applicant that does not include proof of service, as required.

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial.

Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer herein consists of 24 paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b), applicant must answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicant is without 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 May 23, 2011 in which to file an answer herein which complies with Fed. R. Civ. P. 8(b).

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party

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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, 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 paper when filed, will be accepted as prima facie proof of service.

It should also be noted that while Patent and Trademark Rule 11.14 permits any person to represent itself, 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.

It is recommended that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. These rules may be viewed at the USPTO's trademarks page:

<http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage

[\(http://www.uspto.gov/web/offices/dcom/ttab/\)](http://www.uspto.gov/web/offices/dcom/ttab/) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR),

Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

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.

Conferencing, disclosure, discovery and trial dates are reset as follows:

Time to Answer	5/23/2011
Deadline for Discovery Conference	6/22/2011
Discovery Opens	6/22/2011
Initial Disclosures Due	7/22/2011
Expert Disclosures Due	11/19/2011
Discovery Closes	12/19/2011
Plaintiff's Pretrial Disclosures	2/2/2012
Plaintiff's 30-day Trial Period Ends	3/18/2012
Defendant's Pretrial Disclosures	4/2/2012
Defendant's 30-day Trial Period Ends	5/17/2012
Plaintiff's Rebuttal Disclosures	6/1/2012
Plaintiff's 15-day Rebuttal Period Ends	7/1/2012

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.