

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

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Mailed: June 13, 2012

Opposition No. 91199529

Hunter Boot Limited

v.

Georgia Pellegrini Media
Group, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

At the request of applicant's counsel, the Board held a telephone conference on June 12, 2012, to resolve a discovery dispute between the parties. Tali Alban, Esq., and Margaret McHugh, Esq., appeared as counsel for opposer and Robert Kleinman, Esq., appeared as counsel for applicant.

As noted in the Board's order of June 5, 2012, opposer was to serve applicant with its discovery responses by June 8, 2012. Applicant's counsel alleges that the interrogatory responses produced by opposer were not properly verified and that opposer's counsel has twice refused to provide a date certain as to when opposer would be able to provide properly verified responses. Opposer's counsels counter that they informed applicant's counsel that the verification applicant seeks would be provided by the end of the week and that, in any event, opposer's counsels received said verification today from

opposer's witness and that the verification has now been served on applicant's counsel. Opposer's counsels further note that applicant is also guilty of failing to properly verify its own amended responses to interrogatories.

Fed. R. Civ. P. 33(b) requires each interrogatory to "be answered separately and fully in writing under oath" and provides that the "person who makes the answers must sign them." As opposer has served applicant with the requisite verification, applicant's objection to opposer's interrogatory responses served on June 8, 2012, is **MOOT** and will be given no further consideration. As to applicant's amended responses to opposer's interrogatories, **applicant is ordered to serve its verification, or a copy thereof if it has previously done so, no later than June 14, 2012.**

As noted during the conference, counsels' inability and/or refusal to cooperate, accommodate and be flexible, has resulted in an unnecessarily litigious proceeding. This is evident not only in the very nature of the dispute that occasioned this telephone conference with the Board only a week removed from the last Board-held conference with the parties' counsels, but also in the basis for applicant's motion for judgment on the pleadings filed on June 10, 2012, which was followed by opposer's motion for leave to amend its pleading filed on June 11, 2012. Since the Board views any stated delay or difficulty in the exchange of discovery as one of counsels' own making,

applicant's request to reset the discovery-related schedule mandated by the Board in its order of June 5, 2012, is **DENIED**.

As to the parties' motions filed respectively on June 10 and June 11, 2012, the Board turns first to opposer's motion to amend its pleading to correct a clerical error in its notice of opposition, i.e., incorrectly referencing the opposed mark as HUNTER GIRL instead of GIRL HUNTER. Applicant opposes any such amendment, arguing that opposer's counsel and applicant's counsel discussed this very issue in 2011 on two separate occasions and that, notwithstanding such knowledge, has unduly delayed and is only now coming forward to correct such error in opposer's notice of opposition.

The Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. *See Zanella Ltd. v. Nordstrom Inc.*, 90 USPQ2d 1758, 1759 (TTAB 2008). Applicant has failed to demonstrate how allowing said amendment is contrary to settled law or prejudicial to applicant, particularly in view of the fact that applicant was long aware of the clerical error as evidenced in its pleadings. Indeed, there is no error in the identification of the serial number of the opposed application in either the original or amended notice of opposition and the involved mark is correctly identified as GIRL HUNTER in the first paragraph, as well as in

the caption, of both notices. The error is thus clearly clerical in nature and thus applicant cannot reasonably argue that it will be prejudiced by allowing opposer to correct the error. Accordingly, opposer's motion for leave to amend its pleading is hereby **GRANTED** and the **second amended notice of opposition is now the operative pleading herein.**

In view of the Board's acceptance of opposer's second amended notice of opposition, applicant's motion for judgment on the pleadings is **MOOT** and will be given no further consideration.

As noted during the telephone conference, the discovery-related schedule culminating in the June 29, 2012, meet and confer remains unchanged. However, in view of the second amended notice of opposition, applicant is allowed until **July 20, 2012**, to serve and file an amended answer thereto and dates are commensurately reset as follows:

Applicant's Answer to Second Amended Notice of Opposition	7/20/2012
Expert Disclosures Due	9/5/2012
Discovery Closes	10/5/2012
Plaintiff's Pretrial Disclosures	11/19/2012
30-day testimony period for plaintiff's testimony to close	1/3/2013
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	1/18/2013
30-day testimony period for defendant and plaintiff in the counterclaim to close	3/4/2013
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	3/19/2013
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	5/3/2013
Counterclaim Plaintiff's Rebuttal Disclosures Due	5/18/2013

15-day rebuttal period for plaintiff in the counterclaim to close	6/17/2013
Brief for plaintiff due	8/16/2013
Brief for defendant and plaintiff in the counterclaim due	9/15/2013
Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due	10/15/2013
Reply brief, if any, for plaintiff in the counterclaim due	10/30/2013

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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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