

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

Mailed: July 24, 2012

Opposition No. 91199922

Christopher A McGrath

v.

Nike, Inc.

**George C. Pologeorgis,  
Interlocutory Attorney:**

On May 3, 2012, applicant filed a motion for a more definite statement of opposer's claim of priority and likelihood of confusion asserted by opposer in his amended notice of opposition filed on July 14, 2011. On July 2, 2012, the Board granted applicant's motion as conceded and allowed opposer twenty days from the mailing date of the order in which to file and serve a revised amended notice of opposition which sets forth his claim of priority and likelihood of confusion pursuant to the guidelines provided in the Board's March 28, 2012 order.<sup>1</sup>

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<sup>1</sup> Pursuant to the Board's May 2, 2012 order, opposer is precluded from re-asserting a claim of dilution. Additionally, by order dated March 28, 2012, the Board dismissed with prejudice opposer's claims for (1) willful trademark infringement, (2) relief under the Paris Convention, (3) any claim based solely on his ownership of a foreign registration, and (4) a stand-alone claim based solely on the U.S. Court of Appeals for the Federal Circuit's decision in *First Niagara Insurance Brokers Inc. v. First Financial Group, Inc.*, 476 F.3d 867, 81 USPQ2d 1375 (Fed. Cir. 2007).

On July 18, 2012, opposer filed what appears to be a combined response to applicant's motion for a more definite statement and a revised amended notice of opposition. To the extent opposer's July 18, 2012 filing constitutes, in part, a response to applicant's motion for a more definite statement, the response is untimely and, therefore, will be given no further consideration. See Trademark Rule 2.127. Even if the Board were to consider opposer's response, the Board does not find opposer's arguments persuasive. Accordingly, the Board's July 2, 2012 order stands as issued.

Further, to the extent opposer's July 18, 2012 filing constitutes, in part, a revised amended notice of opposition, the Board finds that this revised pleading does not comply with the guidelines set forth in the Board's orders dated March 28, 2012 and July 2, 2012. Specifically, opposer's revised pleading improperly (1) embeds evidence in the pleading, (2) cites to case law in support of his allegations, and (3) argues the merits of his allegations.

Inasmuch as the deadline to file a proper revised amended notice of opposition has expired, and not to prejudice opposer, opposer is allowed until **August 10, 2012** in which to file his revised amended notice of opposition setting forth his claim of priority and likelihood of confusion, consistent with the guidelines set forth in the

Board's March 28, 2012 and July 2, 2012 orders, failing which the notice of opposition will be dismissed with prejudice.<sup>2</sup> For opposer's reference, in order to properly state a claim of likelihood of confusion, opposer must plead that (1) the opposer's mark, as applied to its goods or services, so resembles the applicant's mark or trade name as to be likely to cause confusion, mistake, or deception; and (2) priority of use. See Fed. R. Civ. P. 8; and *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

The Board recognizes that opposer is a foreign litigant and is representing himself in this matter. However, these circumstances do not excuse opposer from complying with Board orders, the U.S. federal rules of civil procedure, or Board rules and procedure. In view thereof, the Board will be reluctant to afford opposer another opportunity to file and serve a revised amended pleading if opposer fails to do

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<sup>2</sup>By orders dated March 28, 2012 and July 2, 2012, the Board advised opposer that his revised amended pleading must include (1) a short and plain statement of the reason(s) why opposer believe he would be damaged by the registration of the opposed mark and (2) a short and plain statement of one of more grounds for opposition. See Trademark Rule 2.104(a). The Board further advised that (1) all averments should be made in numbered paragraphs, the contents of each of which should be limited as far as practicable to a statement of a single set of circumstances, (2) each claim founded upon a separate transaction or occurrence should be stated in a separate count whenever a separation would facilitate the clear presentation of the matters pleaded, and (3) a paragraph may be referred to by number in all succeeding paragraphs, and statements in the complaint may be adopted by reference in a different part of the complaint.

so in compliance with this order, as well as the Board's previous orders dated March 28, 2012 and July 2, 2012.

Applicant is allowed twenty days from the date indicated on the certificate of service of opposer's revised amended pleading in which to answer or otherwise respond to the revised amended pleading.

**Trial Schedule**

Remaining trial dates are reset as follows:

Deadline for Discovery Conference	9/28/2012
Discovery Opens	9/28/2012
Initial Disclosures Due	10/28/2012
Expert Disclosures Due	2/25/2013
Discovery Closes	3/27/2013
Plaintiff's Pretrial Disclosures Due	5/11/2013
Plaintiff's 30-day Trial Period Ends	6/25/2013
Defendant's Pretrial Disclosures Due	7/10/2013
Defendant's 30-day Trial Period Ends	8/24/2013
Plaintiff's Rebuttal Disclosures Due	9/8/2013
Plaintiff's 15-day Rebuttal Period Ends	10/8/2013

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 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.