

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

Mailed: May 23, 2012

Opposition No. 91204344

Grounded Pte Ltd.

v.

Dirk Lindley

**Robert H. Coggins,  
Interlocutory Attorney:**

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties to this proceeding conducted a discovery conference by telephone at 1:00 p.m. EDT, May 22, 2012. Board participation was requested by opposer. During the conference, opposer was represented by Jonathan Pearce, applicant appeared *pro se*, and participating for the Board was the above-signed attorney responsible for interlocutory matters in this case. The Board appreciates the professionalism of the parties during the conference.

In addition to general comments on the nature and sequence of Board proceedings, discovery, and trial, the parties were reminded of their obligation with respect to service of papers. The parties agreed to service by email. The parties were encouraged to use ESTTA in this proceeding.

The Board advised applicant that inasmuch as he wished to proceed without legal representation, he would be required to familiarize himself with all Board procedures, rules, and regulations governing this case. Applicant was directed to the Board's web page (<http://www.uspto.gov/trademarks/process/appeal>) where applicant may access the Trademark Rules, TTAB Manual of Procedure (TBMP), standard protective order, and links to many other relevant rules, laws, policy, procedure, and electronic resources.

The purpose and applicability of the Board's standard protective order were discussed, and applicant was informed that he may not be able to see trade secret or commercially sensitive information and materials from opposer unless applicant retains an outside attorney.

The parties were advised that neither discovery nor a motion for summary judgment may be served until after initial disclosures are made.

The parties stated that they were not engaged in any related Board proceeding or any related third-party litigation. Although applicant and a principal of opposer were co-defendants to an earlier civil action in the United States District Court for the Central District of California involving a third-party, that action ended by settlement.

The parties stated that they have had only preliminary settlement negotiations, that settlement remains possible, and that there was no settlement offer currently under consideration.

Applicant stated that he was waiting for a settlement proposal from opposer, and opposer stated that it would prepare a settlement offer for applicant's consideration. The Board encouraged the parties to seriously engage in bilateral settlement negotiations and informed the parties that the Board is liberal with regard to suspension of proceedings to accommodate settlement.

During a review of the notice of opposition, the Board noted that opposer had properly pleaded three grounds for opposition: priority and likelihood of confusion, that there was no bona fide use of applicant's mark in commerce prior to the filing date of the use-based application, and applicant is not (and was not, at the time of the filing of his application) the rightful owner of the mark. The Board also noted that opposer had failed to properly allege fraud, and, in view thereof, struck paragraphs 26-30 of the notice of opposition. Opposer was allowed until June 19, 2012, in which to file and serve an amended complaint, failing which the opposition would move forward only on the three properly pleaded grounds. The Board informed opposer that the exhibits to the notice of opposition were not currently in evidence. Trademark Rule 2.122(c).

During a review of the answer, the Board noted that, although applicant made a good attempt to answer the allegations in the notice of opposition, several whole and partial paragraphs

of the notice remained unanswered. In view thereof, the Board struck the answer, and allowed applicant until July 17, 2012, in which to file and serve an amended answer to the first amended notice of opposition, if one is filed, or to the original notice of opposition, as stricken, if no amended notice is filed. The answer should comply with Rule 8(b) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 8(b) provides, in relevant part (with internal divisions omitted) that:

[A] party must state in short and plain terms its defenses to each claim asserted against it; and admit or deny the allegations asserted against it by an opposing party. A denial must fairly respond to the substance of the allegation. A party that intends in good faith to deny all the allegations of a pleading ... 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. 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. 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. An allegation ... is admitted if a responsive pleading is required and the allegation is not denied.

In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition (or amended notice, if one is filed) 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, he should so state and this will have the effect of a denial. The admissions and denials

should be made in numbered paragraphs corresponding to the numbered paragraphs in the notice of opposition.

The Board discussed the use and nature of interrogatories, requests for admission, requests for production of documents and things, and depositions as discovery devices. After a discussion of the possible limitation on discovery, the parties indicated that they would utilize these traditional discovery devices without voluntary limitation.

The Board noted that inasmuch as opposer is a foreign entity and applicant expressed interest in taking several oral discovery depositions, applicant should review TBMP §§ 404 *et seq.* (3d ed. 2011) for information related to depositions of parties and non-parties residing in a foreign country.

The Board discussed the timing, purpose, and nature of initial disclosures under Fed. R. Civ. P. 26(a)(1); and concluded the conference.

Schedule

The mandatory discovery conference having been held, dates were reset on the following schedule.

Amended Complaint Due, if Filed	<b>6/19/2012</b>
Amended Answer Due	<b>7/17/2012</b>
Deadline for Discovery Conference on Amended Pleadings, if Needed	<b>8/1/2012</b>
Discovery Opens	<b>8/1/2012</b>
Initial Disclosures Due	<b>8/31/2012</b>

Expert Disclosures Due	12/29/2012
Discovery Closes	1/28/2013
Plaintiff's Pretrial Disclosures	3/14/2013
Plaintiff's 30-day Trial Period Ends	4/28/2013
Defendant's Pretrial Disclosures	5/13/2013
Defendant's 30-day Trial Period Ends	6/27/2013
Plaintiff's Rebuttal Disclosures	7/12/2013
Plaintiff's 15-day Rebuttal Period Ends	8/11/2013

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