

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

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Mailed: January 30, 2013

Opposition No. **91204473**

Pickin' Cotton Communications, LLC

v.

Edmund Frette S.A.R.L.

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on applicant's motion (filed July 2, 2012) for a more definite statement pursuant to Fed. R. Civ. P. 12(e) and for a suspension of proceedings. The motion is uncontested.

As a preliminary matter, the Board notes that two unconsented extensions of time were filed by applicant on May 4, 2012, and June 6, 2012. The Board paralegal assigned to this matter mistakenly believed the motions were consented to by opposer when, in fact, they were not and granted the motions for extension via Board orders issued on May 11, 2012, and June 14, 2012. Those orders are hereby **VACATED**. Nevertheless, and in view of applicant's reliance on the Board's orders granting the requested extensions and opposer's failure to inform the Board of the errors or otherwise object to the granting of the

extensions, the Board will consider applicant's motion for a more definite statement.¹

Fed. R. Civ. P. 12(e) permits a party to "move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." By its motion, applicant contends that the notice of opposition "is vague and ambiguous, and does not give Applicant fair notice and does not provide sufficient detail of the marks, and goods and/or services on which Opposer is asserting it has rights." *Applicant's Motion*, p. 3. In reviewing the notice of opposition, the Board does not find applicant's motion to be well taken.

While applicant complains that the notice of opposition lacks sufficient detail thereby rendering the notice vague and ambiguous, it is not so vague or ambiguous that applicant cannot reasonably prepare a response thereto. The function of pleadings is to give fair notice of the claims therein and therefore, under the simplified notice pleading regime of the Federal Rules of Civil Procedure, a party is allowed reasonable latitude in its statement of its claims. See *Harsco Corp. v. Electrical Sciences Inc.*, 9 USPQ2d 1570, 1571 (TTAB 1988).

¹ As it is the Board's practice to suspend proceedings when a motion directed to a plaintiff's pleading is filed under Fed. R. Civ. P. 12, applicant's request to suspend proceedings is hereby **GRANTED** subject to the reset schedule at the conclusion of this order.

Indeed, "the theoretical overall scheme of the federal rules calls for relatively skeletal pleadings and places the burden of unearthing the underlying factual details on the discovery process." Wright, Miller, Kane and Marcus, *Federal Practice and Procedure*, Civil 3d § 1376 (2012).

In its motion, applicant recognizes that "Opposer claimed ownership of four marks in relation to Opposer's asserted applications/registrations (and possible common law claims); and Opposer also asserted use, the renown of Opposer's marks ..., the fame of Opposer's marks 'long prior' to the acquisition of any rights by Applicant in its mark, and Opposer's asserted claims of likelihood of confusion and dilution."² *Applicant's Motion*, pp. 2-3. Based thereon, the Board sees no reason why applicant cannot frame a response to the notice of opposition. The details applicant seeks are more appropriate for the discovery process and to require more from opposer at the pleading stage places an undue burden on the pleader that is not contemplated by the Federal Rules of Civil Procedure. Furthermore, the Board reminds applicant that the ESTTA-generated cover sheet and any attachments thereto comprise a single document. See *PPG Industries Inc. v. Guardian*

² In this regard, the Board notes that the ESTTA-generated cover sheet to the notice of opposition also lists a claim of deceptiveness under Section 2(a). However, opposer's two-count notice of opposition only asserts claims of priority and likelihood of confusion and dilution. Accordingly, opposer's

Industries Corp., 73 USPQ2d 1926, 1928 (TTAB 2005).

Accordingly, the notice of opposition, when viewed as a whole, provides much of the details that applicant seeks further placing into question applicant's stated need for a more definite statement. For instance, the ESTTA cover sheet identifies opposer as a Delaware limited liability corporation and Dr. Matt Fogarty as opposer's Chief Financial Officer. The marks pleaded by opposer and the goods/services thereunder as well as dates of use, constructive or otherwise, are evident from the application serial numbers provided in the pleading. Priority has been pleaded and fame "long prior to the acquisition of any rights Applicant may claim in the mark EDMOND FRETTE" has also been pleaded. Applicant's contention that the dilution claim is legally insufficient is not well taken as *Polaris Industries Inc. v. DC Comics*, 59 USPQ2d 1798 (TTAB 2000) does not stand for the proposition that a plaintiff must plead the particular date when a mark became famous. It is enough to allege that the mark became famous prior to any use by applicant, actual or constructive. See *Toro Co. v. ToroHead, Inc.*, 61 USPQ2d 1164, 1174 (TTAB 2001).

In view thereof, applicant's motion for a more definite statement is hereby **DENIED**. Proceedings herein are **RESUMED** and

claim of deceptiveness is hereby **STRICKEN** and will be given no consideration.

dates, including applicant's time to answer, are **RESET** as follows:

Time to Answer	3/1/2013
Deadline for Discovery Conference	3/31/2013
Discovery Opens	3/31/2013
Initial Disclosures Due	4/30/2013
Expert Disclosures Due	8/28/2013
Discovery Closes	9/27/2013
Plaintiff's Pretrial Disclosures Due	11/11/2013
Plaintiff's 30-day Trial Period Ends	12/26/2013
Defendant's Pretrial Disclosures Due	1/10/2014
Defendant's 30-day Trial Period Ends	2/24/2014
Plaintiff's Rebuttal Disclosures Due	3/11/2014
Plaintiff's 15-day Rebuttal Period Ends	4/10/2014

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 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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