

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

Mailed: August 29, 2012

Opposition No. 91205699

The Rock Creek Group, LP

v.

Rock Creek Global Advisors
LLC

**M. Catherine Faint,
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 on August 28, 2012. Applicant's counsel requested Board participation in such conference via telephone on August 15, 2012. Participating in the conference were opposer's counsel, Michael J. Bevilacqua,¹ and applicant's counsel, Richard J. O'Brien, .

This order memorializes what transpired during the conference as well as providing additional guidance for both parties.

¹ Also on the teleconference was Barbara A. Barakat for opposer.

The Board asked if the parties were involved in any other Board proceeding (to determine whether consolidation was appropriate) or in litigation in court (to determine whether suspension was appropriate). The Board was informed that the parties were not so involved.

1. *Email Service*

The parties stipulated to accept service of papers by email, and that opposer may be served at the following email address: michael.bevilacqua@wilmerhale.com, and that applicant may be served at the following email address: robrien@sidley.com. The Board noted that since the parties have agreed to service by email, the parties may no longer avail themselves of the additional five days for service provided under Trademark Rule 2.119(c) that is afforded to parties when service is made by first-class or express mail.

2. *The Board's Standard Protective Order*

The Board advised the parties that the Board's standard protective order was in place in this case governing the exchange of confidential and proprietary information and materials.² There was some discussion of whether the parties wished to submit a signed copy of the protective order to the Board, and the parties agreed that they would do so.

3. *Pleadings/Scope of Discovery*

² The order may be viewed online at: <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>.

With regard to the pleadings, the Board noted that the notice of opposition alleges counts of priority and likelihood of confusion. There was some discussion regarding ways to streamline the case and the parties were to continue their discussion about these matters, and the possibility of Accelerated Case Resolution ("ACR"), after they had conducted some discovery.

The parties were directed to TBMP § 414 (3d ed. rev. 2012) regarding the discoverability of various categories of information in Board proceedings. The Board suggested to the parties that they could adopt various measures to limit the scope of discovery, including agreeing to limit the number of depositions, interrogatories, document production requests, or admission requests, and to stipulate to the authenticity of documents. During the conference, however, the parties declined to limit the scope of discovery at this time.

4. *Accelerated Case Resolution (ACR)*

The Board encourages settlement of matters between the parties. While the Board does not conduct settlement conferences, there is an ACR procedure available. The Board explained that the ACR procedure is an expedited procedure for obtaining a final decision from the Board. In order to pursue ACR, the parties must stipulate that the Board can make

findings of fact. The parties may review the more detailed information about ACR at the Board's website.³ The Board advises the parties that if the parties agree to pursue ACR, they should notify the Board in writing as soon as possible.⁴

Opposer's counsel wished to see some discovery proceed prior to agreeing to ACR, and both parties wished to discuss it further with their clients. Should the parties agree to use the ACR procedure, the parties are reminded that they may stipulate to facts after the close of the initial disclosure period and to a shortening of the discovery period. See Trademark Rule 2.120(a)(2).

5. Initial Disclosures

Dates were set by the Board's institution order of June 20, 2012, thus discovery opens August 29, 2012 and initial disclosures are due by September 28, 2012. Pursuant to the Board's rules, neither the exchange of discovery requests nor the filing of a motion for summary judgment, except on the basis of res judicata or lack of Board jurisdiction, can occur until the parties have made their initial disclosures, as required by Fed. R. Civ. P. 26(f).

The Board clarifies that under Trademark Rule 2.120(a)(3), "A party must make its initial disclosures prior to seeking

³ Information about the Board's ACR procedure may be viewed at: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

⁴ It was also suggested that the parties may telephone the Board and request another conference if they wish to discuss ACR further.

discovery, absent modification of this requirement by a stipulation of the parties approved by the Board, or a motion granted by the Board, or by order of the Board." Thus once an individual party has made its initial disclosures it may serve discovery, even if the other party has not yet served its initial disclosures. The Board views this as a means to aid settlement discussions between the parties.

6. Conclusion of the Conference

At the conclusion of the conference, the Board suggested the parties may want to further discuss ACR or stipulations to limit discovery.

7. Schedule

The schedule remains as set in the Board's order dated June 20, 2012, as copied below:

Discovery Opens:	8/29/2012
Initial Disclosures Due:	9/28/2012
Expert Disclosures Due:	1/26/2013
Discovery Closes:	2/25/2013
Plaintiff's Pretrial Disclosures:	4/11/2013
Plaintiff's 30-day Trial Period Ends:	5/26/2013
Defendant's Pretrial Disclosures:	6/10/2013
Defendant's 30-day Trial Period Ends:	7/25/2013
Plaintiff's Rebuttal Disclosures:	8/9/2013
Plaintiff's 15-day Rebuttal Period Ends:	9/8/2013

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 the taking of testimony. Trademark Rule 2.125.

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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.
