

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: February 22, 2016

Opposition No. 91206495

SignalShare, LLC

v.

Amy Gurvey

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

Now before the Board is Applicant's response (filed March 9, 2015) to the Board's February 5, 2015 order requesting information about a civil action Applicant referenced in an earlier (February 24, 2015) filing.

Subject application Serial No. 85612859 has been opposed by SignalShare, LLC on the ground of priority and likelihood of confusion under Trademark Act Section § 2(d), 15 U.S.C. § 1052(d). *See* 1 TTABVue. A review of the application file reveals that the subject application was signed and filed May 1, 2012, by Applicant, with John R. Kettle III, of Rutgers Community Law Clinic, listed as the attorney and correspondent for Applicant. *See* Trademark Rule 2.122(b)(1) (subject application file automatically part of the record).

A review of Applicant's March 9, 2015 response to the Board's February 5th order reveals that most of the information therein (including exhibits) does not appear to be relevant to this Board proceeding. The Board is empowered to determine only the right to register a mark; it is not authorized to determine broader questions. *See* TMBP § 102.02 (2015) (Jurisdiction of the Board). The civil action to which Applicant referred relates to malpractice and breach of fiduciary duty involving certain patent subject matter; it does not appear to relate to the question of whether the mark in the subject application can or should be registered.

The only portion of Applicant's response which appears to be relevant to this opposition proceeding is paragraphs 16 and 17, which state:

16. OGRP firm [Ohlandt, Greeley, Ruggiero & Perle, LLP ("OGRP")] was retained in 2011 to continue and complete prosecution of the patent portfolio. It was never retained for trademark work and began trademark work without Respondent's consent after the instant proceeding was filed by Opposer.

17. When this proceeding was filed by Opposer, Respondent immediately moved before SDNY for signed subpoenas against OGRP and other NY attorneys. This is because partner Charles Ruggiero, Esq. refused to return Respondent's nonpublic patent files and her trademark files relevant to this proceeding. Ruggiero converted and stole Plaintiff's retainer monies and used them to assign other attorneys to defend this proceeding, when his firm was never retained to represent Plaintiff's interests in trademark matters.

See 20 TTABVUE 7.

The case file for this proceeding includes a Revocation and Power of Attorney Appointment (filed September 11, 2012 (*see* 5 TTABVUE)), signed by Applicant, dated September 11, 2012, appointing members of OGRP to represent Applicant in this proceeding. This filing appears to contradict Applicant's statements in

paragraph 16 that OGRP “was never retained for trademark work and began trademark work without Respondent’s consent after the instant proceeding was filed by Opposer” and paragraph 17 that OGRP was “was never retained to represent Plaintiff’s interests in trademark matters.”

Notwithstanding this apparent inconsistency, Applicant has not otherwise explained why she is unable to defend against the sole ground of priority and likelihood of confusion pleaded in the Notice of Opposition to her application for registration of the mark LIVE-FI. In addition, Applicant has not stated even in the most general of terms the nature of the “trademark files” or how they are essential (or even relevant) to her defense in this proceeding.

Proceedings have been suspended for two years and five months (i.e., since September 18, 2013 (*see* 13 TTABVUE)), to allow Applicant to either appoint counsel or file a statement that she will represent herself, and for Applicant to provide and the Board to review the civil action information. Inasmuch as the Board has now completed review of Applicant’s March 9th response, that response states that Applicant will represent herself,¹ and the patent-related civil action does not appear to have a bearing on this trademark case, proceedings are now resumed.

¹ Paragraph 21 of the response states that “for these reasons, [Applicant] is now forced to appear pro se in the instant trademark opposition proceeding.” 20 TTABVUE 8. The Board construes this as a statement that Applicant will represent herself.

Schedule

Proceedings are resumed. The parties are allowed until thirty days from the mailing date of this order to respond to any outstanding discovery requests.² Dates are reset on the following schedule:

Plaintiff's Pretrial Disclosures	5/5/2016
Plaintiff's 30-day Trial Period Ends	6/19/2016
Defendant's Pretrial Disclosures	7/4/2016
Defendant's 30-day Trial Period Ends	8/18/2016
Plaintiff's Rebuttal Disclosures	9/2/2016
Plaintiff's 15-day Rebuttal Period Ends	10/2/2016

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.

² This is not an order compelling discovery; it is merely a scheduling matter. Discovery is otherwise closed. *See* Board order dated June 17, 2013 (11 TTABVUE 1), granting the parties' stipulated motion (filed May 16, 2013) for a ninety-day extension of discovery.