Goodman

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

Mailed: May 29, 2013

Opposition No. **91206966**

ArmadaCorp Capital LLC

v.

Armada Health Care, LLC

Before Bucher, Taylor and Mermelstein, Administrative Trademark Judges.

By the Board:

This case now comes up on applicant's motion, filed November 15, 2012, for judgment on the pleadings.[1] We have considered the parties' submissions and presume the parties' familiarity with the factual bases for the motion, and do not recount the facts or arguments here, except as necessary to explain the decision.

A motion for judgment on the pleadings is a test solely of the undisputed facts appearing in all the pleadings, supplemented by any facts of which the Board will take judicial notice. For purposes of the motion, all well-pleaded factual allegations of the non-moving party must be accepted as true, while those allegations of the moving party which have been denied (or which are taken as denied,

[1] The motion was filed before the discovery conference and prior to service of initial disclosures.

pursuant to Fed. R. Civ. P. 8(b)(6), because no responsive pleading thereto is required or permitted) are deemed false. Conclusions of law are not taken as admitted and all reasonable inferences are drawn in favor of the nonmoving party. *Baroid Drilling Fluids Inc. v. SunDrilling Products*, 24 USPQ2d 1048 (TTAB 1992). Further, a motion for judgment on the pleadings may be granted only where, on the facts as deemed admitted, there is no genuine dispute of material fact to be resolved, and the moving party is entitled to judgment on the substantive merits of the controversy, as a matter of law. *Id*. That is, "[j]udgment on the pleadings ... is appropriate upon a showing that [the plaintiff] cannot prevail even if all the allegations in his Complaint are taken as true." *Rafeedie v. Immigration and Naturalization Service*, 795 F. Supp. 13, 18 (D.D.C. 1992).

In its motion, applicant has argued that "the key *duPont* factors for likelihood of confusion," the similarity of the marks, services and trade channels "simply do not exist."

In this case, opposer has sufficiently pleaded facts in support of a number of the *duPont* factors, namely, similarity of the marks, similarity of the services, channels of trade, and classes of purchasers as well as prior use of the trade name and trademark ARMADA or its formatives in connection with services related to pharmacy

benefit plans, as well as numerous other services, which facts must be taken as true for purposes of the Rule 12(c) motion. We cannot say at the pleading stage that if opposer proved the factual allegations in the complaint it would be unable to establish likelihood of confusion as a matter of law.

Accordingly, applicant's motion for judgment on the pleadings must be denied.

Proceedings are resumed.

Dates are reset as follows:

Deadline for Discovery Conference	**6/13/2013**
Discovery Opens	**6/13/2013**
Initial Disclosures Due	**7/13/2013**
Expert Disclosures Due	**11/10/2013**
Discovery Closes	**12/10/2013**
Plaintiff's Pretrial Disclosures Due	**1/24/2014**
Plaintiff's 30-day Trial Period Ends	**3/10/2014**
Defendant's Pretrial Disclosures Due	**3/25/2014**
Defendant's 30-day Trial Period Ends	**5/9/2014**
Plaintiff's Rebuttal Disclosures Due	**5/24/2014**
Plaintiff's 15-day Rebuttal Period Ends	**6/23/2014**

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 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.