

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

Mailed: November 6, 2013

Opposition No. 91208667

Jason Head

v.

Nicoventures Limited

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

Opposer Must Show Cause

Subject application Serial No. 79105772 was published for opposition on October 23, 2012. On November 21, 2012, Jason Head, Esq., filed, and was subsequently granted, a thirty-day extension of time to oppose subject application Serial No. 79105772. Jason Head's extension period was granted until December 22, 2012. On December 21, 2012, within the extension period granted to Jason Head, a notice of opposition was filed. The ESTTA cover sheet for the notice of opposition identifies Jason Head as the opposer; however, the body of the notice of opposition, which was attached to the ESTTA cover sheet, identifies Nico Ventures,

LLC as the opposer.¹ The opposition was automatically instituted and assigned Opposition No. 91208667. Inasmuch as the name of the opposer in the body of the notice of opposition (i.e., Nico Ventures, LLC) differs from the name of the party to whom the extension of time was granted (i.e., Jason Head, Esq.), an explanation is required.

An opposition filed by a party other than the one to whom an extension of time to oppose was granted will not be rejected on that ground if it is shown to the satisfaction of the Board that either (1) the other party is in privity² with the party granted the extension, or (2) the party in whose name the extension was requested was misidentified

¹ When a notice of opposition is filed during an extension period via ESTTA against an application for which an extension of time to oppose has been granted, ESTTA requires the filer to identify itself from a list of potential opposers to whom extensions have been granted. After identification by the filer, ESTTA will pre-populate the opposer's name (in a "name" field) which may then be edited by the filer. If the name in the pre-populated field is edited in any way, ESTTA prompts the filer to provide a brief explanation why the opposer's name has changed. Inasmuch as Jason Head did not edit (or change) the name of the opposer, the ESTTA cover sheet identifies Jason Head as the opposer, notwithstanding the body of the filer's notice of opposition which was attached in ESTTA and which identifies Nico Ventures, LLC as the opposer.

² The concept of privity generally includes, *inter alia*, the relationship of successive ownership of a mark (e.g., assignor and assignee, or survivor of a merger) and the relationship shared by "related companies" within the meaning of Sections 5 and 45 of the Act, 15 U.S.C. §§ 1055 and 1127. See *International Nutrition Co. v. Horphag Research Ltd.*, 220 F.3d 1325, 55 USPQ2d 1492, 1495 (Fed. Cir. 2000). It does not, however, include the attorney/client relationship. See *In re Spang Industries, Inc.*, 225 USPQ 888 (Comm'r 1985).

through mistake³. See Trademark Rule 2.102(b). The showing should be in the form of a recitation of facts upon which either the claim of privity or misidentification is based, and must be submitted either with the opposition or during the time allowed by the Board in its action requesting an explanation of the discrepancy. See TBMP §§ 206.02 and .03 (3d ed. rev.2 2013) and authorities cited therein.

Opposer is allowed until **thirty days** from the mailing date of this order in which to show cause why the opposition should not be dismissed without prejudice inasmuch as the opposition appears to have been filed by a party other than the one to whom the extension of time to oppose was granted.

Suspension

Proceedings are **suspended** pending resolution of this matter.

³ "Misidentified through mistake," as used in Trademark Rule 2.102(b), means a mistake in the form of the potential opposer's name or its entity type, not the naming of a different existing legal entity that is not in privity with the party that should have been named. See *Custom Computer Services, Inc. v. Paychex Properties, Inc.*, 337 F.3d 1334, 67 USPQ2d 1638 (Fed. Cir. 2003); and *Cass Logistics Inc. v. McKesson Corp.*, 27 USPQ2d 1075 (TTAB 1993).