

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

Mailed: November 24, 2013

Opposition No. 91210282

Red Bull GmbH

v.

Stockmarket Burger, Inc.

**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 November 22, 2013 with Board participation. Applicant requested Board participation in such conference via telephone call about November 11, 2013.

Participating in the conference were opposer's counsel, Martin R. Greenstein and applicant's counsel, Paulo A. de Almeida.<sup>1</sup> This order memorializes what transpired during the conference as well as providing additional guidance for both parties.

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

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<sup>1</sup> Also on the teleconference were Angelique Reardon for opposer and Temy Gu for applicant.

parties were not so involved. The parties also informed the Board that they have not previously discussed settlement, although opposer had raised settlement, but applicant had not responded. Opposer indicated, however, that applicant has pending at least one other application which will be published for opposition about December 3, 2013, and that the application may be opposed. The Board directed the parties to inform the Board if another related proceeding is filed, so that the Board may consider whether consolidation is appropriate.

**1. *Courtesy copies via email***

The parties discussed the email service option now available under Trademark Rule 2.119(b)(6) ("Electronic transmission when mutually agreed upon by the parties."). The parties did not agree to this option, but did agree to continue using traditional service options, and to provide courtesy email notification on the date when any paper is served.

**2. *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.<sup>2</sup>

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<sup>2</sup> The parties may view the order here:  
<http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>

**3. Pleadings/Scope of Discovery**

With regard to the pleadings, the Board noted that the notice of opposition alleges counts of priority and likelihood of confusion, and the answer denies the salient allegations in the complaint. While opposer has alleged sufficient facts to plead standing, the Board notes that Opposer's claims are not sufficient to plead ownership of or reliance upon any trademark registrations it may own, and it is not clear what marks may be represented by the "two bulls logo" or "single bull logo" marks alleged in the notice of opposition. Trademark Rule 2.106(b)(1) ("A pleaded registration is a registration identified by number and date of issuance in an original notice of opposition or in any amendment thereto..."). Opposer's proof of standing is left to trial or summary judgment. The Board noted that "affirmative defenses" 1-9 of the answer appear to be in the nature of amplifications of applicant's denials. The Board did not strike the pleadings at this point, as opposer indicated that an amended pleading was likely in the near future, particularly if a second opposition is instituted, and/or a motion to consolidate is filed.

There was some discussion of ways to possibly streamline discovery, but the parties were unable to stipulate to any limitations at this time.

The parties are reminded that the Board is an administrative tribunal that determines the registrability of

trademarks. If the case should progress so far, the parties should be mindful when submitting trial evidence to the Board that the better practice is to focus on supporting, only to the extent required by the pertinent burden of proof, the facts to be established.

#### **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.<sup>3</sup> The Board advises the parties that if the parties agree to pursue ACR, they should notify the Board in writing as soon as possible. The parties were interested in the ACR procedure, but needed more time to conduct some initial discovery. 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).

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<sup>3</sup> Information about the Board's ACR procedure may be viewed here under the heading "ACR & ADR": <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

**5. Initial Disclosures**

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 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.

**7. Schedule**

Dates remain as set in the Board's order of October 30, 2013, as copied below.

Discovery Opens	11/22/2013
Initial Disclosures Due	12/22/2013
Expert Disclosures Due	4/20/2014
Discovery Closes	5/20/2014
Plaintiff's Pretrial Disclosures	7/6/2014
Plaintiff's 30-day Trial Period Ends	8/20/2014
Defendant's Pretrial Disclosures	9/5/2014

Defendant's 30-day Trial Period Ends	10/19/2014
Plaintiff's Rebuttal Disclosures	11/3/2014
Plaintiff's 15-day Rebuttal Period Ends	12/3/2014

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.

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