

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: May 1, 2015

**Opposition No. 91211530
(PARENT CASE)**

Cancellation No. 92056491

J-Lynn Entertainment, LLC

v.

William T. ODonnell
DBA ODonnell Entertainment

Jennifer Krisp, Interlocutory Attorney:

On December 3, 2014, the Board granted the December 1, 2014 request filed by Matthew Swyers, counsel for William. T. ODonnell DBA ODonnell Entertainment (“ODonnell”), to withdraw as counsel of record, and allowed ODonnell time to either appoint new counsel or file a paper stating that he chooses to represent himself.

Mr. Swyers filed a response, partially captioned a “Notice of Re-Entry of Counsel for Applicant,” requesting that the Board allow him to renew his representation of ODonnell. In said response, Mr. Swyers states, in pertinent part, that “all issues leading up to the (withdrawal) as Counsel for Applicant in this matter have now been resolved,” that counsel “does not foresee any other delays with regards to the remaining case deadlines in this matter, nor does Counsel for Applicant anticipate his representation of Applicant in this proceeding to terminate again in the future”

(response, p. 2), and that Applicant requested the renewal of legal representation on or about December 31, 2014. The response is not accompanied by an affidavit or declaration.

In the Board's October 28, 2014 order, the trial period for J-Lynn Entertainment, LLC ("Opposer") was reset to November 21, 2014 through December 20, 2014. Through its representative acting pro se, Mr. Neadom T. Medina ("Medina"), Opposer filed a brief in opposition to the response,¹ requesting that the Board deny Mr. Swyers' appearance as counsel for ODonnell, and that ODonnell be "given an additional 30 to 90 days to hire a new counsel" (brief, unnumbered p. 3). Opposer states, *inter alia*, that Mr. Swyers filed the request to withdraw the day before the December 2, 2014 scheduled deposition of ODonnell, and that ODonnell and Mr. Swyers "refused to participate in deposition on December 2nd resulting in the Applicant not arriving to the deposition" (brief, unnumbered p. 2). Opposer states that "Applicant and Counsel have showed a consistent pattern of delaying this case" (brief, unnumbered p. 2).

In the absence of a meritorious petition to disqualify a practitioner in an *inter partes* matter in the Office pursuant to 37 CFR §11.19(c), the Board generally will not prohibit an otherwise procedurally proper appointment or appearance of legal counsel on behalf of a party. Moreover, Opposer cites no authority under which it requests that the Board deny or otherwise refuse to accept Mr. Swyers' re-appearance as counsel for ODonnell; moreover, in the absence of a showing of factual support therefor, the arguments related to the timing of the filings are

¹ The brief is not numbered, as required by Trademark Rule 2.126(a)(5).

merely speculation. The motion to withdraw as counsel had set forth a plausible and typical course of conduct, namely, that ODonnell asked Mr. Swyers to discontinue legal representation in this matter (Dec. 1, 2014 withdrawal of counsel, p. 1), and the notice of re-entry of counsel now sets forth a sound reason for renewal of representation as well. Although the factual timing of the withdrawal and re-appearance are noted, the characterization thereof which is advanced by Opposer is not supported. The overall record does not reflect that ODonnell or his counsel have engaged in gamesmanship, or have taken the described actions for improper purposes or merely to cause delay.

In view of these findings, the Board recognizes Mr. Swyers as counsel for ODonnell as of December 31, 2014. The records for these proceedings have been updated to reflect Applicant's representation.

Ex parte Contacts with the Board

In the October 28, 2014 order, the Board noted that both Mr. Medina and Mr. Swyers (as counsel for Donnell) had initiated ex parte telephone calls to the assigned Board attorney, and had sent emails to the assigned Board attorney that did not include or had deleted the other party. During the two days after Mr. Swyers filed the motion to withdraw as counsel for ODonnell, the assigned Board attorney received four successive ex parte telephone calls, namely:

- 1) at 10:36 am on December 2, 2014, a 1-minute and 36-second voice message from Medina, from 440-610-5827;
- 2) at 12:53 pm on December 2, 2014, a 4-minute and 59-second voice message from ODonnell, from 707-442-7873;
- 3) at 2:19 pm on December 2, 2014, a 4-minute and 59-second voice message from ODonnell, from 707-442-7873; and

- 4) at 9:54 am on December 3, 2014, a 1-minute and 26-second voice message from Medina, from 440-610-5827.

In evident disregard for the Board's clear policy regarding ex parte contacts, the messages received constituted extended discourses detailing matters that pertain to the substantive issues in these proceedings. Furthermore, the sheer lengths of the recorded messages rendered the Board attorney's voicemail system box unable to accept any new calls.

The Board reiterates that all business with the Board must be conducted in writing and filed either through the United States Postal Service, or through the Board's "ESTTA" online filing system, and that the Board will only consider written communications that are in proper form and in full compliance with Trademark Rules 2.126, 2.127 and 2.119. *See* Trademark Rule 2.191; TBMP §§ 104, 105, and 106.03 (2014), and authorities cited therein. Telephone and email contacts, where otherwise appropriate and allowed, should include both parties or their counsel of record. In these consolidated proceedings, any further failure to adhere to this policy may result in the imposition of sanctions pursuant to the Board's exercise of its inherent authority to manage *inter partes* proceedings on its docket. *See* TBMP § 527.03 (2014).

Schedule

Proceedings are resumed.² When the withdrawal of counsel was filed, thus occasioning the necessary suspension of proceedings, Opposer had nineteen days

² It is the responsibility of a party to a proceeding before the Board to ensure that the Board has the party's current correspondence address, including an e-mail address. If a party

remaining in the assigned testimony period. To allow for the orderly progression of trial and scheduling, trial dates, including Opposer's testimony period, are reset as follows:

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|---|------------------|
| Plaintiff's 30-day Trial Period Ends | 6/12/2015 |
| Defendant's Pretrial Disclosures Due | 6/27/2015 |
| Defendant's 30-day Trial Period Ends | 8/11/2015 |
| Plaintiff's Rebuttal Disclosures Due | 8/26/2015 |
| Plaintiff's 15-day Rebuttal Period Ends | 9/25/2015 |

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.

To ensure complete communication, a copy of this order has been sent to all persons listed below.

cc:

NEADOM T MEDINA
J LYNN ENTERTAINMENT LLC
PO BOX 12365
MILL CREEK WA 98012

fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party. *See* TBMP § 117.07 (2014).

In the January 2, 2015 filing, Medina identifies his address with two different zip codes, namely, 98012 and 98082. The Board's record for these proceedings reflects the zip code as 98012. If the correct one is 98082, a change of correspondence address should be filed so as to maintain accurate Board records.

In the event that the address of record for ODonnell is not accurate, a change of correspondence address should be filed.

Opposition No. 91211530; Cancellation No. 92056491

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