

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

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Mailed: October 7, 2013

Opposition No. 91211998

Alt3 Media Corporation

v.

Krueger International, Inc.

Yong Oh (Richard) Kim, 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 October 4, 2013. Board participation was requested by motion of applicant filed via ESTTA, the Board's electronic filing system. Eric J. Steiger, Esq., of Miller Goler Faeges Lapine LLP appeared on behalf of opposer and Charles S. Blumenfield, Esq., and Cobby J. Shereff, Esq., of Blumenfield & Shereff LLP appeared on behalf of applicant.

Introductory Remarks

At the outset of the conference, the parties were informed that a spirit of cooperation and good faith dealing were expected during the duration of this proceeding and that any points of contention that may arise during the course of the proceeding should be handled through direct

communication between the parties and in a spirit of good faith. **The parties were put on notice that a motion to compel would not be entertained and good faith would not be found where the parties have failed to previously conduct at least one telephone conference to resolve each of the discovery requests in dispute.**

The parties were informed that telephone conferences with a Board attorney are available as necessary but that both parties would need to be on the call to discuss any substantive matter and that *ex parte* communications with the Board are generally inappropriate.

The parties were instructed to file appearances of counsel and change of correspondence forms as necessary, preferably through ESTTA.

Prior Communications and Disputes

Prior communications between the parties have been limited to the scheduling of this discovery conference and an agreement to receive service by email which is discussed later in this order. When asked about the possibility of settlement, the parties agreed to disagree on the merits of opposer's claims and expressed little interest, at this early stage of the proceeding, to engage in settlement discussions.

The Board inquired as to whether the parties were involved in any other disputes involving the subject marks

either with each other or with a third party to which the parties answered in the negative.

Pleadings

The Board and the parties discussed the claims in opposer's notice of opposition and applicant's answer thereto. Opposer confirmed that it was asserting a claim of priority and likelihood of confusion under Section 2(d) of the Trademark Act as well as a claim of false suggestion of a connection under Section 2(a) in its notice of opposition. However, in reviewing opposer's pleading, **the Board determined that opposer failed to sufficiently plead priority and the false suggestion claim and thereby granted opposer leave to replead those claims. Opposer's amended notice of opposition should be served and filed no later than November 4, 2013.**

As to applicant's answer, the Board noted that applicant's putative "affirmative defenses" were not true affirmative defenses but rather amplifications of its denials. The Board, however, declined to strike them as they served to better apprise opposer of applicant's claims and defenses. Nonetheless, in view of the leave granted opposer to amend its pleading, **applicant's answer to the amended pleading should be served and filed no later than December 4, 2013.**

Discovery and Stipulations

The parties were advised that the Board's standard protective order is operative in this proceeding, made applicable by operation of Trademark Rule 2.116(g) and available at <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>.

If the parties wish to modify the Board's standard protective order, they could do so by filing a motion for Board approval along with a copy of the proposed protective order.

As the parties have had limited communications prior to this discovery conference, they had yet to give any consideration to discovery or testimonial stipulations. However, as noted *supra*, **the parties did agree to service by email and to waive the five day grace period afforded the parties under Trademark Rule 2.119(c) as the rule is not applicable to email service. Service is to be made to steiger@mgfl-law.com for opposer and to blumenfield@cbcslaw.com and shereff@cbcslaw.com for applicant.**

As mentioned by the Board during the conference, the parties are encouraged to consider ways in which to potentially limit and simplify discovery and testimony through reciprocal disclosures, stipulations of fact, and/or agreements. For instance, the parties may consider greater use of reciprocal disclosures and less use of formal

discovery or streamlining their discovery by limiting the number of depositions,¹ interrogatories, document production requests and admission requests.

The parties may also consider simplifying the introduction of evidence into the record such as stipulating to the authentication of documents produced in response to document requests via a notice of reliance by the propounding party.

Alternative Dispute Resolution and Accelerated Case Resolution

The Board informed the parties that mediation and arbitration are outside resources available to the parties should they decide to avail themselves of such. Although the Board will not refer the parties to any particular arbitrator or mediator, the Board is amenable to suspending proceedings should the parties choose these alternatives to aid in settlement.

Accelerated Case Resolution (ACR) was also discussed and the parties were encouraged to explore this option if the parties desire an accelerated disposition of this proceeding. To facilitate that consideration, the parties are referred to the following for additional information on the procedure:

¹ Pursuant to Fed. R. Civ. P. 30(a), made applicable to Board proceedings by Trademark Rule 2.116, a party that seeks more than ten discovery depositions (without prior stipulation by the parties to do so) must obtain leave of the Board.

<http://www.uspto.gov/trademarks/process/appeal/acrognoticerule.pdf>

[http://www.uspto.gov/trademarks/process/appeal/accelerated case resolution acr faq.doc](http://www.uspto.gov/trademarks/process/appeal/accelerated%20case%20resolution%20acr%20faq.doc)

Conclusion

As noted by the Board during the conference, neither the service of discovery requests nor the filing of a motion for summary judgment (except on the basis of *res judicata*, collateral estoppel, or lack of Board jurisdiction) may occur until after initial disclosures (required under Fed. R. Civ. P. 26(a)(1)) are made.

Dates are **RESET** as follows:

Amended Notice of Opposition Due	11/4/2013
Answer to Amended Notice of Opposition Due	12/4/2013
Discovery Opens	12/11/2013
Initial Disclosures Due	1/10/2014
Expert Disclosures Due	5/10/2014
Discovery Closes	6/9/2014
Plaintiff's Pretrial Disclosures Due	7/24/2014
Plaintiff's 30-day Trial Period Ends	9/7/2014
Defendant's Pretrial Disclosures Due	9/22/2014
Defendant's 30-day Trial Period Ends	11/6/2014
Plaintiff's Rebuttal Disclosures Due	11/21/2014
Plaintiff's 15-day Rebuttal Period Ends	12/21/2014

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.

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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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