

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

BUO

Mailed: December 22, 2015

Opposition No. 91213584

Jaguar Land Rover Limited

v.

Toys Tekk

Benjamin U. Okeke, Interlocutory Attorney:

Applicant's submission filed November 30, 2015, captioned as a "Motion to Dismiss Opposition for Failure to State a Claim, and in the Alternative Motion for a More Definite Statement," will be given no consideration.¹ The parties were previously instructed that they should not file any other motions for summary judgment." 22 TTABVUE 17. Indeed, a cursory review of Applicant's thinly veiled submission reveals that it is in fact a miscaptioned motion for summary judgment, full of legal conclusions, seeking determination that there is no likelihood of confusion "as a matter of law." 24 TTABVUE 2-3.

A motion to dismiss for failure to state a claim upon which relief may be granted is a test solely of the legal sufficiency of a complaint. *See Advanced Cardiovascular Sys. Inc. v. SciMed Life Sys. Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir.

¹ Opposer's amended notice of opposition, filed November 19, 2015, is noted and is accepted as Opposer's operative pleading in this proceeding.

1993). However, rather than raise issue with the pleading, or indicate any deficiencies therein, Applicant attempted to prematurely argue the merits of the case. This is wholly inappropriate.

In light of Applicant's abuse of the Board's resources, Applicant may not file any other pretrial motion without first seeking the leave of the Board to do so.² Any motion filed that does not indicate that leave for its filing has been granted by the Board will be given no consideration.

Dates remain as set in the Board's November 9, 2015 order.

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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

² Such leave should be sought by contacting the assigned interlocutory attorney by telephone at 571-270-1254.