

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

Mailed: February 25, 2014

Opposition No. 91213742

Junkstock, LLC

v.

Montage Festivals LLC

**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 February 25, 2014 with Board participation.<sup>1</sup> Opposer requested Board participation in such conference via telephone call about January 27, 2014. Participating in the conference were opposer's counsel, Patrick E. McNamara and applicant's counsel, Matthew H. Swyers. 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 with each other (to determine whether consolidation was appropriate) or in litigation in court (to determine whether suspension was appropriate). The Board was informed that the parties were not so involved. The parties also informed the Board that they have not previously discussed

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<sup>1</sup> Notice of appearance for applicant's counsel, filed February 12, 2014 is noted and entered.

settlement, but planned to discuss settlement via telephone later the same day.

1. Courtesy copies

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 service by email, although they may send courtesy copies of all motions/papers via email.

2. The 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. The parties agreed to execute a copy of the Board's standard protective order and enter it into this proceeding.

3. Pleadings/Scope of Discovery

With regard to the pleadings, the Board noted that the notice of opposition alleges counts of priority but other than the ESTTA coversheet, does not allege likelihood of confusion. The answer denies the salient allegations in the complaint.

There was some discussion of ways to possibly streamline discovery. 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

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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 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. The Board advises the parties that if the parties agree to pursue ACR, they should notify the Board in writing as soon as possible.

#### 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.

6. Schedule

Discovery opens February 25, 2014. Dates are reset as set out below.

|   |            |
|---|------------|
| Discovery Opens                         | 2/25/2014  |
| Initial Disclosures Due                 | 3/27/2014  |
| Expert Disclosures Due                  | 7/25/2014  |
| Discovery Closes                        | 8/24/2014  |
| Plaintiff's Pretrial Disclosures Due    | 10/8/2014  |
| Plaintiff's 30-day Trial Period Ends    | 11/22/2014 |
| Defendant's Pretrial Disclosures Due    | 12/7/2014  |
| Defendant's 30-day Trial Period Ends    | 1/21/2015  |
| Plaintiff's Rebuttal Disclosures Due    | 2/5/2015   |
| Plaintiff's 15-day Rebuttal Period Ends | 3/7/2015   |

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.

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