UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

GCP

Mailed: October 3, 2014

Opposition No. 91213743

Be Sport, Inc.

v.

Al-Jazeera Satellite Channel

By the Trademark Trial and Appeal Board:

On October 1, 2014, Applicant filed a motion for summary judgment based upon the doctrine of *res judicata*. Specifically, Applicant maintains that Opposer is precluded from bringing this action in light of the Board's September 2, 2014, decision granting Applicant's motion for involuntary dismissal against Opposer herein in Opposition No. 91212091 where Opposer sought to oppose the registration of Applicant's mark BEIN for the same goods and services identified in its subject application to this proceeding.

The Board acknowledges that Applicant could not have asserted the affirmative defense of *res judicata* on the Board's September 2, 2014, decision in Opposition No. 91212091 when it filed its answer in this case on December 24, 2013. However, the Board notes that Applicant did not move for leave to amend its answer to assert the affirmative defense of *res judicata* prior to or concurrently with its motion for summary judgment. A party may not seek

summary judgment on an issue that has not been pleaded. Fed. R. Civ. P. 56(a); TBMP § 528.07(a) (2014).

In view thereof, Applicant's motion for summary judgment on its unpleaded defense of *res judicata* will be given no further consideration.

Because Applicant filed its motion for summary judgment just days before Opposer's testimony period commenced and so as to not prejudice either party, trial dates, beginning with the close of Opposer's testimony period, are reset as follows:

Plaintiff's 30-day Trial Period Ends	**11/4/2014**
Defendant's Pretrial Disclosures Due	**11/19/2014**
Defendant's 30-day Trial Period Ends	**1/3/2015**
Plaintiff's Rebuttal Disclosures Due	**1/18/2015**
Plaintiff's 15-day Rebuttal Period Ends	**2/17/2015**

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.l25.

Briefs shall be filed in accordance with Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.