

ESTTA Tracking number: **ESTTA628611**

Filing date: **09/23/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214578
Party	Plaintiff LeMans Corporation
Correspondence Address	TARA M VOLD VOLD & WILLIAMSON PLLC 8251 GREENSBORO DRIVE, SUITE 340 MCLEAN, VA 22102 UNITED STATES trademark@vwiplaw.com
Submission	Other Motions/Papers
Filer's Name	J. Paul Williamson
Filer's e-mail	trademark@vwiplaw.com
Signature	/jpw/
Date	09/23/2014
Attachments	Opposer's Request for Order with attachments.pdf(2970614 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LeMans Corporation,)	
)	Opposition No. 91214578
Opposer,)	
)	
v.)	Mark: THORO
)	Serial No. 85/956,925
Lemar Xavier Lewis,)	
)	
Applicant.)	

OPPOSER’S REQUEST FOR ORDER

LeMans Corporation (“Opposer”) is requesting assistance from the Interlocutory Attorney as Opposer is again unable to further prosecute the matter without intervention.

Chronology

A Notice of Opposition (“Opposition”) was filed in the above referenced proceeding by Opposer on January 22, 2014. The Opposition included an indication of service via email and First Class Mail at the correspondent address of record for Applicant listed with the U.S. Patent and Trademark Office (“the USPTO”), as detailed in CFR §2.101(b) and 2.119.

After re-serving the mailed copy of the Opposition (the initial mailed copy contained a numerical error in the address printed on the envelope), on February 19, 2014, Opposer received a Second “Return to Sender” notification from the U.S. Post Office with the indication “Unable to Forward.”

Notwithstanding, it appears Applicant received Opposer’s courtesy email copy because on March 3, 2014, Applicant’s Attorney filed an Answer to the Opposition and a Change of Correspondence address (to identify Applicant’s Attorney as the correspondent of record).

A Discovery Conference was promptly held on March 11, 2014 between Applicant's then counsel of record and Opposer's counsel, during which Applicant's counsel informed that email service alone was unacceptable.

On April 24, 2014, Opposer served by mail (with courtesy copy by email) its Initial Disclosures (due May 2, 2014) and Initial Set of Discovery Requests upon Applicant's counsel.

Opposer did not receive any Initial Disclosures from Applicant by the Board mandated May 2, 2014 deadline.

On May 28, 2014, Applicant's Attorney filed a Request for Permission to Withdraw as Attorney.

On June 16, 2014, the Board refused the request to withdraw as it failed to comply with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 11.116. That same day, Applicant's Attorney filed a response including the information required for withdrawal noting (among other things), that Applicant had discharged counsel and that counsel had delivered all property and documents related to the proceeding to the client.

On June 18, 2014, the Board allowed Applicant thirty days to appoint new counsel or to file a paper stating that Applicant had chosen to represent himself.

On June 30, 2014, the service copy of the Board's June 18th Order to Applicant, which was sent by the Board to Applicant's address of record, was returned as undeliverable.

On July 17, 2014, the Board indicated it had conducted a thorough search and was unable to obtain a new address for Applicant. Accordingly, the Board allowed Applicant an additional thirty days in which to show cause why default should not be entered against Applicant based on his apparent loss of interest in this case.

On July 17, 2014 (the thirtieth day following the June 18, 2014 Order), Applicant filed a response with the Board stating that he wished to represent himself. Applicant's communication failed to indicate proof of service on Opposer's counsel, as required by Trademark Rule 2.119. Opposer did not receive a service copy from Applicant. To expedite the matter, the Board forwarded a copy of the July 17, 2014 filing to Opposer's counsel and allowed Opposer 30 days to file brief in response.

On July 22, 2014, Opposer filed a response requesting the Board issue an order:

- (i) requiring Applicant to submit an updated address with the Board as specifically required under TMBP §117.07; (given that Applicant's mailing address of record was not current and that Applicant's prior counsel would not agree to service by email);
- (ii) resetting the discovery deadlines (as Applicant had received no response to its discovery properly served on April 24, 2014); and
- (iii) reminding Applicant that he would be required to abide by the rules governing this proceeding.

Having received no further communication from Applicant or the Board, on September 3, 2014, Opposer's counsel called the Interlocutory Attorney to indicate that Opposer was unable to move forward without Board action. That same day the Board, through a Paralegal Specialist, issued a new order indicating that its July 17, 2014 Order had been returned as undeliverable on August 4, 2014 and that a second attempt by the Board to obtain a new, more current address for the Applicant was unsuccessful. The Board resumed proceedings setting a new discovery deadline of November 1, 2014, but made no mention of Opposer's request for a current and valid address for Applicant, or as to a time for Applicant to respond to discovery requests.

On September 17, 2014, Opposer's counsel sent an email to Mr. Lewis using the email provided to the Board in his unserved July 17, 2014 email submission indicating that he intended to represent himself. (A copy of Opposer's September 5, 2014 email is included in Attachment

1). In that email Opposer's counsel requested a phone conference of the parties and the TTAB Interlocutory Attorney to discuss:

- a workable address of record for Applicant;
- a deadline for Applicant to respond to the outstanding discovery properly served back on April 24, 2014; and
- an extension of the discovery cutoff date (now set for 11/1/2014) to allow for more reasonable time to serve any additional discovery that may be necessary based on Applicant's first set of responses.

Having received no response, Opposer's counsel sent Applicant a follow up email on September 17, 2014, indicating Opposer would file a Motion to Compel if no response was received. (A copy of Opposer's September 17, 2014 email is included in Attachment 2).

Later that day, Applicant sent three separate one-line emails indicating in one that his family was having an unidentified family emergency. (A copy of Applicant's September 17, 2014 response emails are included in Attachment 3).

Opposer's counsel requested a time to discuss the matter with Applicant. (A copy of Opposer's September 17, 2014 follow up email is included in Attachment 4).

The next day, September 18, 2014, counsel received a response from Applicant indicating he did not want to speak to Opposer's counsel directly and was in the process of obtaining new counsel. (A copy of Applicant's September 18, 2014 email is included in Attachment 5).

Relief Requested

Since discharging his prior counsel and indicating to the Board in a July 17, 2014 email that he would be representing himself, Applicant has made no independent attempts to contact Opposer, has not given any indication of when Opposer can expect to receive responses to discovery requests properly served nearly five months ago, has filed a new application for the

opposed mark using the same invalid address of record (see THORO (Stylized) (App No. 86/367,828) and has declined to participate in a teleconference with the Board.

Opposer's counsel must again request the Board for assistance in moving this matter forward by issuing an Order:

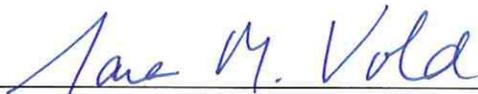
- requiring Applicant to provide a workable address of record;
- requiring Applicant to indicate whether he intends to continue to represent himself or obtain outside counsel by a date certain (not more than ten(10) days;
- requiring Applicant to respond to the outstanding discovery properly served back on April 24, 2014 by a date certain; and
- granting a 90 day extension of the discovery cutoff date (now set for 11/1/2014) to allow for more reasonable time for Opposer to serve any additional discovery that may be necessary based on Applicant's first set of responses (if ever received).

Respectfully submitted,

LeMans Corporation

Date: September 23, 2014

By: _____



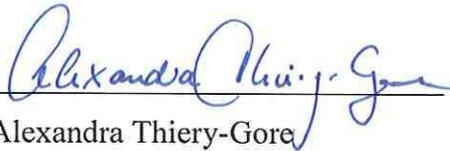
Tara M. Vold
J. Paul Williamson
VOLD & WILLIAMSON PLLC
8251 Greensboro Drive, Suite 340
McLean, VA 22012
571-395-4630

Attorneys for the Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S RESPONSE TO ORDER AND SELF-REPRESENTATION LETTER was served via first class mail with courtesy copy by email on this 23rd day of September, 2014 to the Applicant's address of record:

LEMAR XAVIER LEWIS
1655 CRESTHAVEN DRIVE
ORLANDO, FL 32811


Alexandra Thiery-Gore

Attachment 1

Tara Vold

From: Tara Vold
Sent: Friday, September 05, 2014 11:15 AM
To: 'lemarlewis@hotmail.com'
Cc: Paul Williamson (pwilliamson@vwiplaw.com); Alexandra Thiery-Gore
Subject: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)

Dear Mr. Lewis:

As you are aware, we are counsel of record for LeMans Corporation in the above-referenced opposition proceeding before the U.S. Trademark Trial and Appeal Board.

We understand that you are representing yourself in this proceeding.

We are in receipt of the Board's recent September 3, 2014 Order resetting the discovery and trial dates. However, the Order makes no mention of our request for you to provide a valid street address for service; makes no mention of the outstanding discovery (served on April 24, 2014 to your then counsel of record) that still remains unanswered; and extends the discovery cutoff only 33 days notwithstanding all the time lost from the delays resulting from your change or representation before the Board.

We further note that, on August 15, 2014, you filed a new application with the USPTO for THORO (Stylized) (App No. 86/367,828) covering hooded sweatshirts – using the same mailing address that has been ineffective for service in this opposition.

We have received no communication from you since the withdrawal of your prior counsel.

We are currently unable to make effective service of documents in this proceeding under the Rules as your former counsel indicated that service by email was not acceptable.

Accordingly, we are requesting a phone conference of the parties and the TTAB Interlocutory Attorney to discuss the following:

- a workable address of record for you (since the current street address on record with the USPTO has been identified as undeliverable by the US Post office and your previous counsel indicated email service was unacceptable);
- a deadline for you to respond to the outstanding discovery properly served back in April on prior counsel of record at the time; and
- an extension of the discovery cutoff date (now set for 11/1/2014) to allow for more reasonable time to serve any additional discovery that may be necessary based on your first set of responses.

We look forward to promptly scheduling a time for the phone conference at the participants' earliest convenience. Please let us know what dates and times will work for you next week so that we may provide this information to the Interlocutory Attorney.

Regards,

Tara M. Vold
VOLD & WILLIAMSON PLLC

8251 Greensboro Drive, Suite 340
McLean, VA 22102
571.395.4631
tvold@vwiplaw.com



Attachment 2

Tara Vold

From: Tara Vold
Sent: Wednesday, September 17, 2014 9:36 AM
To: 'lemarlewis@hotmail.com'
Cc: Paul Williamson (pwilliamson@vwiplaw.com); Alexandra Thiery-Gore
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)

Mr. Lewis,

It has now been twelve days since we sent the below email requesting a phone conference of the parties and the TTAB Interlocutory Attorney to discuss service and discovery issues.

We have received no response to this email nor have we received any communication from you since the withdrawal of your prior counsel on May 28, 2014.

As noted, we are currently unable to make effective service of documents in this proceeding under the Rules as your former counsel indicated that service by email was not acceptable and the street address identified for correspondence with the Trademark Office is not valid.

If we do not receive a response from you by Monday **September 22, 2014**, we will have no choice but to file a Motion to Compel with the Board.

Regards,

Tara M. Vold
VOLD & WILLIAMSON PLLC
8251 Greensboro Drive, Suite 340
McLean, VA 22102
571.395.4631
tvold@vwiplaw.com



From: Tara Vold
Sent: Friday, September 05, 2014 11:15 AM
To: 'lemarlewis@hotmail.com'
Cc: Paul Williamson (pwilliamson@vwiplaw.com); Alexandra Thiery-Gore
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We look forward to promptly scheduling a time for the phone conference at the participants' earliest convenience. Please let us know what dates and times will work for you next week so that we may provide this information to the Interlocutory Attorney.

Regards,

Tara M. Vold
VOLD & WILLIAMSON PLLC
8251 Greensboro Drive, Suite 340
McLean, VA 22102
571.395.4631
tvold@vwiplaw.com



Attachment 3

Tara Vold

From: Lemar Lewis <lemarlewis@hotmail.com>
Sent: Wednesday, September 17, 2014 10:16 AM
To: Tara Vold
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)

Sure lets talk.....

From: tvold@vwiplaw.com
To: lemarlewis@hotmail.com
CC: pwilliamson@vwiplaw.com; agore@vwiplaw.com
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)
Date: Wed, 17 Sep 2014 13:35:48 +0000

Mr. Lewis,

It has now been twelve days since we sent the below email requesting a phone conference of the parties and the TTAB Interlocutory Attorney to discuss service and discovery issues.

We have received no response to this email nor have we received any communication from you since the withdrawal of your prior counsel on May 28, 2014.

As noted, we are currently unable to make effective service of documents in this proceeding under the Rules as your former counsel indicated that service by email was not acceptable and the street address identified for correspondence with the Trademark Office is not valid.

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Regards,

Tara M. Vold
VOLD & WILLIAMSON PLLC
8251 Greensboro Drive, Suite 340
McLean, VA 22102
571.395.4631
tvold@vwiplaw.com



From: Tara Vold
Sent: Friday, September 05, 2014 11:15 AM
To: 'lemarlewis@hotmail.com'

Tara Vold

From: Lemar Lewis <lemarlewis@hotmail.com>
Sent: Wednesday, September 17, 2014 10:16 AM
To: Tara Vold
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)

My family is having a medical emergency sorry to inconvenience you...

From: tvold@vwiplaw.com
To: lemarlewis@hotmail.com
CC: pwilliamson@vwiplaw.com; agore@vwiplaw.com
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)
Date: Wed, 17 Sep 2014 13:35:48 +0000

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Regards,

Tara M. Vold
VOLD & WILLIAMSON PLLC
8251 Greensboro Drive, Suite 340
McLean, VA 22102
571.395.4631
tvold@vwiplaw.com



From: Tara Vold
Sent: Friday, September 05, 2014 11:15 AM
To: 'lemarlewis@hotmail.com'

Tara Vold

From: Lemar Lewis <lemarlewis@hotmail.com>
Sent: Wednesday, September 17, 2014 10:20 AM
To: Tara Vold
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)

In the mean time watch this..

<http://www.youtube.com/watch?v=Jp8HPjDOBZM>

From: tvold@vwiplaw.com
To: lemarlewis@hotmail.com
CC: pwilliamson@vwiplaw.com; agore@vwiplaw.com
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)
Date: Wed, 17 Sep 2014 13:35:48 +0000

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Regards,

Tara M. Vold
VOLD & WILLIAMSON PLLC
8251 Greensboro Drive, Suite 340
McLean, VA 22102
571.395.4631
tvold@vwiplaw.com



Attachment 4

Tara Vold

From: Tara Vold
Sent: Wednesday, September 17, 2014 1:32 PM
To: 'Lemar Lewis'
Cc: Paul Williamson (pwilliamson@vwiplaw.com); Alexandra Thiery-Gore
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)

Mr. Lewis,

Thank you for your response. Are you available to discuss tomorrow at 1pm? If so, please call me at the number below (or provide me with a number where I can reach you).

If you are not available, please propose an alternative time.

Regards,

Tara M. Vold
VOLD & WILLIAMSON PLLC
8251 Greensboro Drive, Suite 340
McLean, VA 22102
571.395.4631
tvold@vwiplaw.com



From: Lemar Lewis [mailto:lemarlewis@hotmail.com]
Sent: Wednesday, September 17, 2014 10:16 AM
To: Tara Vold
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)

Sure lets talk.....

From: tvold@vwiplaw.com
To: lemarlewis@hotmail.com
CC: pwilliamson@vwiplaw.com; agore@vwiplaw.com
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)
Date: Wed, 17 Sep 2014 13:35:48 +0000

Mr. Lewis,

It has now been twelve days since we sent the below email requesting a phone conference of the parties and the TTAB Interlocutory Attorney to discuss service and discovery issues.

Attachment 5

Tara Vold

From: Lemar Lewis <lemarlewis@hotmail.com>
Sent: Thursday, September 18, 2014 4:09 PM
To: Tara Vold
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)

Tara,

No, i'm not (since its past 1p.m i'm sure you've gathered that by now).. With you being a lawyer, I don't know how wise it would be for me to speak with you directly. I'm in the process of re-obtaining legal counsel to address this matter. This is issue quite perplexing to me, so I must seek additional legal counsel. I also will eventually update my mailing information with the U.S.P.T.O as soon as I can. I requested that they contact me via e-mail and I'm assuming my family at my previous residence has either moved, or is sending back all mail correspondences ..

Best regards,

Lemar

From: tvold@vwiplaw.com
To: lemarlewis@hotmail.com
CC: pwilliamson@vwiplaw.com; agore@vwiplaw.com
Subject: RE: LEMANS v. LEMAR XAVIER LEWIS Opposition No. 91214578 (THORO); Our Ref. (LEMA.260USOP)
Date: Wed, 17 Sep 2014 17:32:19 +0000

Mr. Lewis,

Thank you for your response. Are you available to discuss tomorrow at 1pm? If so, please call me at the number below (or provide me with a number where I can reach you).

If you are not available, please propose an alternative time.

Regards,

Tara M. Vold
VOLD & WILLIAMSON PLLC
8251 Greensboro Drive, Suite 340
McLean, VA 22102
571.395.4631
tvold@vwiplaw.com

