

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

CME

Mailed: July 16, 2015

Opposition No. 91214578

LeMans Corporation

v.

LeMar Xavier Lewis

**Christen M. English, Interlocutory Attorney:**

The Board's order of July 16, 2015 is **VACATED**.

*Pro se* Applicant filed a "motion to dismiss" on July 8, 2015. The motion does not challenge the sufficiency of the pleading, and therefore, it cannot be construed as a motion to dismiss for failure to state a claim. *See* TBMP § 503.02 (2014). The Board also does not construe the motion as one for summary judgment because Applicant has not asserted the absence of any genuine disputes of material fact. *See* Fed. R. Civ. P. 56; TBMP § 528.01. Nor has Applicant submitted any evidence in support of its motion. Lastly, the Board does not consider Applicant's filing as a motion for a protective order because the motion does not include a statement that Applicant made a good faith effort to resolve its discovery dispute with Opposer prior to filing the motion as required by Fed. R. Civ. P. 26(c)(1).<sup>1</sup> Applicant also has not attached

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<sup>1</sup> The Board advises that "[i]t is generally inappropriate for a party to respond to a request for discovery by filing a motion attacking it, such as a motion to strike, or a motion for a protective order. Rather, the party ordinarily should respond by providing the information

to the motion copies of Opposer's purportedly overreaching discovery requests. For all of these reasons, Applicant's motion, filed July 8, 2015, will be given no further consideration.

Applicant's motion to extend, filed July 10, 2015, also will be given no consideration because it fails to indicate proof of service on counsel for Opposer as required by Trademark Rule 2.119. The Board has repeatedly reminded Applicant that proof of service must be submitted before the Board will consider a filing. *See* Board's orders of July 24, 2014, n.1, September 3, 2014, pp. 2-3, October 17, 2014, pp. 1-2 and 5, and March 4, 2015, pp. 3-4.

Dates remain as set in the Board's order of April 16, 2015.

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sought in those portions of the request that it believes to be proper, and stating its objections to those which it believes to be improper." TBMP § 526; *see also* TBMP §§ 412.06 and 417. Moreover, Applicant appears to argue that Opposer's discovery requests are overreaching because they concern not only Applicant's involved application, but Applicant's Principle Register Registration No. 3206498. This argument is not well taken. Applicant has pleaded his ownership of Registration No. 3206498 as a defense to Opposer's claims, and therefore, the registration is appropriate subject matter for discovery.