

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

wbc

Mailed: August 1, 2014

Opposition No. 91216589

Color Image Apparel, Inc.

v.

Eva Rong Su

Wendy Boldt Cohen, 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 June 19, 2014.¹ Participating in the conference were opposer's attorney, Ms. Lindsay Hulley, applicant, Ms. Eva Rong Su, and Board interlocutory attorney, Wendy Boldt Cohen.

The Board reminds the parties of the automatic imposition of the Board's standard protective order in this case. The standard form protective order is online at <http://www.uspto.gov>. The Board reminds the parties that they may negotiate an amended protective agreement, subject to Board approval.

The Board further reminds the parties that neither the exchange of discovery requests nor the filing of a motion for summary judgment (except on

¹ Opposer requested Board participation on or about July 22, 2014.

the basis of *res judicata* or lack of Board jurisdiction) could occur until the parties made their initial disclosures as required by Fed. R. Civ. P. 26(f).

The parties indicated that they have not yet engaged in settlement negotiations and that there is no other pending litigation, in federal court or before the Board, between the parties. The parties are reminded that the Board encourages settlement. To that end, the Board is generous with periods of extension or suspension to facilitate settlement discussions, although the Board does not get involved in the substantive settlement negotiations.

The Board discussed accelerated case resolution (ACR) and urged the parties to discuss it further at a later date. Parties requesting ACR may stipulate to a variety of matters to accelerate disposition of this proceeding, including: abbreviating the length of the discovery, testimony, and briefing periods as well as the time between them; limiting the number or types of discovery requests or the subject matter thereof; limiting the subject matter for testimony, or limiting the number of witnesses, or streamlining the method of introduction of evidence, for example, by stipulating to facts and introduction of evidence by affidavit or declaration. The parties are directed to review the Board's website regarding ACR and TBMP §§ 528.05(a)(2) and 702.04 (2014). If the parties later agree to pursue ACR, they should notify the interlocutory attorney assigned to this proceeding by not later than two months from the opening of the discovery period.

Stipulations/Filings

The parties agreed to service pursuant to Trademark Rule 2.119(b)(4), with an email copy provided as a courtesy to the email addresses noted in the record, pursuant to Trademark Rule 2.119(b)(6). Because the parties have stipulated to accept service by first class or express mail with service by email as a courtesy, the parties may take advantage of the five additional days for service provided under Trademark Rule 2.119(c).

The parties are urged to file all submissions through the Board's Electronic System for Trademark Trials and Appeals (ESTTA) database, available online at: <http://estta.uspto.gov>. Throughout this proceeding, the parties should review the Trademark Rules of Practice and the Trademark Board Manual of Procedure ("TBMP"). The Board expects all parties appearing before it to comply with the Trademark Rules of Practice and where applicable, the Federal Rules of Civil Procedure.

Pleadings

The Board has reviewed the pleadings in this case. In the notice of opposition, opposer has adequately pleaded its standing. *See, e.g., Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); TBMP § 309.03(b) (3d ed. rev.2 2013); *see also King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). That is, the statements in paragraphs 1-10 of the notice of opposition allege facts which, if proven, would show a personal interest in the outcome of the

Opposition No. 91216589

proceeding and a reasonable basis for a belief of damages. *See Universal Oil Prod. Co. v. Rexall Drug & Chem. Co.*, 463 F.2d 1122, 1123, 174 USPQ 458, 459 (CCPA 1972).

Likelihood of Confusion

Opposer adequately set forth a claim of likelihood of confusion with its alleged prior use and registrations for or including the term, BELLA under Trademark Act § 2(d), 15 U.S.C. § 1052(d), in paragraphs 11-16 of the notice of opposition. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974); TMEP § 1207.01 *et seq* (2014). To the extent opposer relies on its registrations, priority will not be an issue in this case because opposer has made of record status and title copies of its pleaded registrations. *See Trademark Rule 2.122(d)(2); King Candy Co.*, 182 USPQ 108.

Answer

Applicant's answer was signed by Steven McDermott. There is no indication in the record that Steven McDermott, is an attorney as defined in Patent and Trademark Rule 11.1 or is otherwise authorized to represent applicant pursuant to Patent and Trademark Rule 11.14(b) or (c).

Because the answer was improperly signed, it can be given no consideration unless Mr. McDermott properly indicates he is authorized to practice law before the Patent and Trademark Office as defined in Trademark Rule 11.1,

and Trademark Rules 11.14(b) and (c). Alternatively, applicant can ratify the answer with its own signature if applicant is not otherwise represented by an authorized attorney. Accordingly, applicant or its authorized attorney is allowed **until August 21, 2014** to ratify the answer. Upon receipt of a statement ratifying the answer signed by applicant or its authorized attorney, filed prior to the deadline set forth in this order, the Board will consider the answer.²

Dates are reset as follows:

Time to Answer	8/21/2014
Discovery Opens	9/20/2014
Initial Disclosures Due	10/20/2014
Expert Disclosures Due	2/17/2015
Discovery Closes	3/19/2015
Plaintiff's Pretrial Disclosures	5/3/2015
Plaintiff's 30-day Trial Period Ends	6/17/2015
Defendant's Pretrial Disclosures	7/2/2015
Defendant's 30-day Trial Period Ends	8/16/2015
Plaintiff's Rebuttal Disclosures	8/31/2015
Plaintiff's 15-day Rebuttal Period Ends	9/30/2015

The Board thanks the parties for their participation.

² If applicant ratifies the answer filed on July 7, 2014 without any changes therein, the Board makes the following observations. In the answer, applicant included arguments regarding the merits of the allegations in the notice of opposition and did not, as to each allegation contained in the complaint, specifically admit or deny each allegation. A defendant should not argue the merits of the allegations in a complaint in its answer. *See* Trademark Rule 2.106(b)(1); TBMP § 311.02(a). Notwithstanding the foregoing, inasmuch as applicant, appearing pro se, includes in its answer the language, “we DENY the grounds for opposition,” the Board herein, upon proper ratification of the answer as noted above, may, as appropriate, treat applicant’s answer as a general denial of the salient allegations of the notice of opposition.² *See id.* (“If a defendant intends in good faith to controvert all the allegations contained in a complaint ... the defendant may do so by general denial”).