UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact No.: 571-272-8500

wbc

Mailed: September 8, 2014

Opposition No. 91216934

Blab, Inc.

v.

Wolfe, Alexander

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 September 4, 2014.[1] Participating in the conference were opposer's attorney, Mr. Kevin Costanza, applicant, Mr. Alexander Wolfe, 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 August 25, 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 but plan to do so 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 by e-mail only, with Trademark Rule 2.119(b)(6) being applicable to such service. The parties were reminded that by making this stipulation, the parties may not avail themselves of the additional five days contemplated by Trademark Rule 2.119(c) afforded to parties when service is made by first-class or express mail. *See McDonald's Corp. v. Cambrige Overseas Development Inc.*, 106 USPQ2d 1339, 1340 (TTAB 2013).

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- 6 of the notice of opposition allege facts which, if proven, would show a personal interest in the outcome of the 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 applications for or including the term, BLAB and BLABPREDICTS 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).

In its answer applicant denied the salient allegations. Applicant's answer is not double spaced and does not comply with the requirements of Trademark Rule 2.126. *See* TBMP § 311.01. A submission with the Board must be at least 11-point type and double-spaced. *Id.* Applicant is advised that future filings not in compliance with Rule 2.126 may not be given consideration.

Dates are reset as follows:

Discovery Opens	**9/9/2014**
Initial Disclosures Due	**10/9/2014**
Expert Disclosures Due	**2/6/2015**
Discovery Closes	**3/8/2015**
Plaintiff's Pretrial Disclosures	**4/22/2015**
Plaintiff's 30-day Trial Period Ends	**6/6/2015**
Defendant's Pretrial Disclosures	**6/21/2015**
Defendant's 30-day Trial Period Ends	**8/5/2015**

Plaintiff's Rebuttal Disclosures	**8/20/2015**
Plaintiff's 15-day Rebuttal Period Ends	**9/19/2015**

Pro Se Defendant

It is noted that applicant intends to represent himself in this proceeding. While Patent and Trademark Rule 11.l4 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

In addition, applicant should note that Trademark Rule 2.ll9(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as *prima facie* proof of service.

It is recommended that applicant obtain a copy of the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Strict compliance with the Trademark Rules of Practice and

where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

Files of TTAB proceedings can be examined using TTABVue, accessible at: http://ttabvue.uspto.gov. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format. The Trademark Trial and Appeal Board Manual of Procedure (TBMP) is posted on the USPTO web site at: http://www.uspto.gov.

The Board thanks the parties for their participation.