

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

Mailed: February 10, 2015

Opposition No. 91217464

Sony Pictures Television Inc.

v.

Wallace OM Rothsman, d/b/a
SpeedVenture Holdings, Inc.

**M. Catherine Faint,
Interlocutory Attorney:**

This case now comes up on the following motions and stipulations:

1. Applicant's motion, filed August 29, 2014, for summary judgment, filed under seal;
2. Opposer's opposition and cross-motion, filed October 17, 2014, for entry of default judgment;
3. Three stipulations for extension of time for applicant to file its response to opposer's cross-motion for entry of default judgment, filed October 17, 2014, December 15, 2014 and January 13, 2015.

On July 21, 2014 Sony Pictures Television, Inc. filed its notice of opposition opposing Wallace OM Rothsman, d/b/a/ SpeedVenture Holdings, Inc.'s registration of the mark FOR THAT REASON, I'M OUT. I'M OUT for services in Class 36¹ on grounds of priority and likelihood of confusion under

¹ Application Serial No. 86101155, filed October 25, 2013 based on Trademark Act § 1(b).

Trademark Act § 2(d), false suggestion of a connection under Trademark Act § 2(a), and dilution under Trademark Act § 43(c).

Premature Motion for Summary Judgment

Applicant has filed its motion for summary judgment on the pleaded grounds of priority and likelihood of confusion and dilution, prior to filing an answer. Applicant has also marked the document as “confidential” without filing a public redacted version.

In Board inter partes proceedings a party may not file a motion for summary judgment under Trademark Rule 2.127(e)(1) until that party has made its initial disclosures, except for a motion asserting claim or issue preclusion or lack of jurisdiction by the Board. *See Qualcomm, Inc. v. FLO Corp.*, 93 USPQ2d 1768, 1769-70 (TTAB 2010) (motion for summary judgment denied as premature where movant had yet to serve initial disclosures); *see also* Trademark Rule 2.127(e)(1).

The Board’s institution order of July 21, 2014, set the due date for the answer as August 30, 2014, and the due date for initial disclosures as October 29, 2014. Applicant has not indicated that it served its initial disclosures, and has not yet served its answer.

In view thereof, applicant’s motion for summary judgment is **premature and will be given no consideration.**

Applicant, however, must file for the public record a redacted version of the motion and attachments. *See Duke Univ., v. Haggard Clothing Inc.*, 54

USPQ2d 1443, 1445 (TTAB 2000); Trademark Rules 2.27(d) and (e) and 2.126(c).

In view thereof, applicant is allowed until **March 20, 2015** to **file a redacted version of the motion for summary judgment** for the public record.²

Opposer's Cross-Motion for Default

The determination of whether default judgment should be entered against a party lies within the Board's sound discretion. In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible.

In this case as the cross-motion for default was filed during the pendency of applicant's motion for summary judgment, and it was not unreasonable for applicant to expect the Board to act on the motion for summary judgment prior to filing and serving an answer.

In view thereof, opposer's motion for default is premature and therefore **denied**.

Stipulations for Extension of Time

Opposer has filed three stipulations of the parties for an extension of time for applicant to respond to opposer's response to summary judgment and cross-motion for default while the parties engage in settlement discussions. The parties seek to extend the time for response until March 19, 2015.

² This requirement must be met even though the Board will not consider the motion at this time.

Because the parties are negotiating for possible settlement of this case, proceedings herein are suspended retroactive to August 29, 2014 until and including March 19, 2015, subject to the right of either party to request resumption at any time. *See* Trademark Rule 2.117(c).

Proceedings shall resume without further notice from the Board upon the schedule set out at the end of this order.

Pro Se Information

The Board notes that Wallace OM Rothsman d/b/a SpeedVenture Holdings, Inc. is representing himself in this proceeding. Although Patent and Trademark Rule 11.14 permits an entity to represent itself, it is strongly advisable for a party 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 United States Patent and Trademark Office (USPTO) cannot aid in the selection of an attorney. As the impartial decision maker, the Board may not provide legal advice; it may provide information solely as to procedure.

Any party who does not retain counsel should be familiar with the authorities governing this proceeding, including the Trademark Trial and Appeal Board Manual of Procedure (TBMP), and the Trademark Rules of Practice (37 C.F.R. Part 2), both accessible directly from the Board's web page: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. Also on the

Board's web page are links to ESTTA, the Board's electronic filing system at <http://estta.uspto.gov>, and TTABVUE, for case status and prosecution history at <http://ttabvue.uspto.gov/ttabvue>.

Trademark Rules 2.119(a) and (b) require that every paper filed in the USPTO in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney. Proof of service must be made before the paper will be considered by the Board. Accordingly, copies of all papers filed in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. *See* TBMP § 113.03. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a certificate of service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (name and address of opposing counsel or party).

Signature _____
Date _____

Strict compliance with the Trademark Rules of Practice, and the Federal Rules of Civil Procedure (where applicable), is required of all parties before the Board, whether or not they are represented by counsel. *See*

McDermott v. San Francisco Women's Motorcycle Contingent, 81 USPQ2d 1212, n.2 (TTAB 2006).

This inter partes proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.

Dates are Reset

Proceedings are suspended and set to resume on March 20, 2015 on the schedule set out below.

Redacted version of Summary Judgment Motion Due	March 20, 2015
Time to Answer	4/29/2015
Deadline for Discovery Conference	5/29/2015
Discovery Opens	5/29/2015
Initial Disclosures Due	6/28/2015
Expert Disclosures Due	10/26/2015

Discovery Closes	11/25/2015
Plaintiff's Pretrial Disclosures Due	1/9/2016
Plaintiff's 30-day Trial Period Ends	2/23/2016
Defendant's Pretrial Disclosures Due	3/9/2016
Defendant's 30-day Trial Period Ends	4/23/2016
Plaintiff's Rebuttal Disclosures Due	5/8/2016
Plaintiff's 15-day Rebuttal Period Ends	6/7/2016

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 2.125.

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