

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: December 4, 2014

Opposition No. 91217952

Imagewear Apparel Corp.

v.

Frederick J Staves

**Amy Matelski, Paralegal Specialist:**

Opposer's October 13, 2014 motion to strike applicant's answer filed September 22, 2014, is hereby **GRANTED** as conceded, because applicant failed to respond thereto. Trademark Rule 2.127(a).

Further, applicant's answer is informal and not in compliance with the Fed. R. Civ. P. 8(b):

**Answering the Complaint (Notice of Opposition)**

Federal Rule of Civil Procedure 8(b) provides:

(1) In General.

In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

...

(5) Lacking Knowledge or Information.

A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny.

An allegation — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

The notice of opposition filed by opposer herein consists of **nine (9)** numbered paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition **by admitting or denying** the allegations contained in each paragraph. Ordinarily, a defendant will use the same paragraph numbering format found in the complaint (*i.e.* 9). If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

***Pro se Information***

The Board notes that applicant 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.

Accordingly, applicant is allowed until January 8, 2015 in which to file and amended answer. Trial dates are reset as indicated below:

Time to File Amended Answer	<b>1/8/2015</b>
Deadline for Discovery Conference	<b>2/7/2015</b>
Discovery Opens	<b>2/7/2015</b>
Initial Disclosures Due	<b>3/9/2015</b>
Expert Disclosures Due	<b>7/7/2015</b>
Discovery Closes	<b>8/6/2015</b>
Plaintiff's Pretrial Disclosures	<b>9/20/2015</b>
Plaintiff's 30-day Trial Period Ends	<b>11/4/2015</b>
Defendant's Pretrial Disclosures	<b>11/19/2015</b>
Defendant's 30-day Trial Period Ends	<b>1/3/2016</b>
Plaintiff's Rebuttal Disclosures	<b>1/18/2016</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>2/17/2016</b>

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 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.

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