

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

GCP

Mailed: June 16, 2015

Opposition No. 91218842

Instagram, LLC

v.

Gor Gevorkya and Zareh Arakelian

By the Trademark Trial and Appeal Board:

Answer was due in this case on November 24, 2014. Applicants did not file an answer by such date nor did they file a timely motion to further extend its time to answer. In view thereof, on December 10, 2014, the Board issued an order requiring Applicants to show cause why judgment should not be entered against Applicants for failing to file a timely answer or to request an extension of time to answer.¹

In a response filed on January 22, 2015,² Applicants state that, although they have attempted to retain counsel to assist them in this proceeding, Applicants have

¹ Opposer's revocation and substitution of power of attorney and change of correspondence address filed on June 12, 2015 are noted. Board records have been updated accordingly.

² Applicants' January 22, 2015, response does not demonstrate proof of service of the same on Opposer's counsel, as required by Trademark Rule 2.119. In order to expedite matters, Opposer's counsel may view Applicants' response at the following URL address:
<http://ttabvue.uspto.gov/ttabvue/v?pno=91218842&pty=OPP&eno=5>

Applicants are advised that any future filings with the Board must demonstrate proof of service of the filing on Opposer's counsel, failing which such filings will not be given any consideration.

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had a difficult time in retaining counsel and, therefore, request a 90 day extension in which to file an answer or otherwise respond to the notice of opposition.

Based upon Applicants' response, the Board finds that Applicants do intend to defend themselves in this proceeding, and that Applicants' failure to timely answer was due to their inability to retain counsel to assist them in this proceeding. Accordingly, the Board finds that Applicants have established the requisite "good cause" sufficient to justify an extension of time to file an answer. FRCP 6(b); *see* authorities cited in TBMP §509 (2014).

Accordingly, the Board's December 10, 2014, default notice is hereby set aside. Applicants are allowed until **July 6, 2015** in which to file an answer or otherwise respond to the notice of opposition.³ The Board will not entertain any further requests to extend Applicants' time to file an answer or otherwise respond to the notice of opposition, except if such request is consented to by Opposer.

With regard to the answer to be filed, Applicants should note that Fed. R. Civ. P. 8(b) provides, in part, as follows:

(b) Defenses; Admissions and Denials.

(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.

³ Both Applicants must sign the answer to be filed in this case, as well as any other filings made in the future.

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(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.

The notice of opposition filed by Opposer herein consists of 24 paragraphs setting forth the basis of Opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is therefore incumbent on Applicants to answer the notice of opposition **by specifically admitting or denying the allegations contained in each paragraph. If Applicants are without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, they should so state and this will have the effect of a denial.**

Trial Schedule

Trial dates are reset as follows:

Time to Answer	7/6/2015
Deadline for Discovery Conference	8/5/2015
Discovery Opens	8/5/2015
Initial Disclosures Due	9/4/2015
Expert Disclosures Due	1/2/2016
Discovery Closes	2/1/2016
Plaintiff's Pretrial Disclosures Due	3/17/2016
Plaintiff's 30-day Trial Period Ends	5/1/2016
Defendant's Pretrial Disclosures Due	5/16/2016
Defendant's 30-day Trial Period Ends	6/30/2016
Plaintiff's Rebuttal Disclosures Due	7/15/2016
Plaintiff's 15-day Rebuttal Period Ends	8/14/2016

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.

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

Pro Se Information

The Board notes that Applicants are currently representing themselves 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 system⁴ at <http://estta.uspto.gov>, and TTABVUE, for case status and prosecution history at <http://ttabvue.uspto.gov/ttabvue>.

⁴ The Board strongly encourages parties to file all papers through ESTTA, which operates in real time and provides a tracking number that the filing has been received. For assistance in using ESTTA, call 571-272-8500.

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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

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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.