

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: March 10, 2015

Opposition No. 91219530

Neurobrands, LLC

v.

EON Capital, Inc.

Veronica P. White, Paralegal Specialist:

The answer to the notice of opposition was due by January 5, 2015. Applicant filed a communication on December 29, 2014. This communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. As fully explained below, strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board, and the Board may decline to consider any future paper filed in this proceeding by applicant which does not comply with this requirement.¹

¹ The Board encourages electronic filing via its ESTTA system. Instructions and forms for electronic filings are available at <http://estta.uspto.gov>. All Board proceeding files can be viewed via TTABVUE at <http://ttabvue.uspto.gov>.

With the exception of a registration made of record in a manner set forth in Trademark Rule 2.122(d)(1), exhibits to pleadings are not evidence on behalf of the party to whose pleading the exhibit is attached unless identified and introduced in evidence as an exhibit during the assigned period for the taking of testimony. See Trademark Rule 2.122(c); TBMP § 317.

Although the motion is titled “motion to amend application’ the Board presumes that this communication is intended as applicant’s answer to the notice of opposition, said communication does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, which is made applicable this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

(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.

(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 35 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 specifically admitting or denying the allegations contained in each paragraph. 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.**

In view of the foregoing, applicant is allowed until **thirty (30) days from the mailing date of this order** in which to file **and serve on counsel for opposer** an answer herein which complies in full with Fed. R. Civ. P. 8.

Accordingly, conference, disclosure, discovery and trial dates are reset as follows:

Time to Answer	4/18/2015
Deadline for Discovery Conference	5/18/2015
Discovery Opens	5/18/2015
Initial Disclosures Due	6/17/2015
Expert Disclosures Due	10/15/2015
Discovery Closes	11/14/2015
Plaintiff's Pretrial Disclosures	12/29/2015
Plaintiff's 30-day Trial Period Ends	2/12/2016
Defendant's Pretrial Disclosures	2/27/2016
Defendant's 30-day Trial Period Ends	4/12/2016
Plaintiff's Rebuttal Disclosures	4/27/2016
Plaintiff's 15-day Rebuttal Period Ends	5/27/2016

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 2.135.

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 the Trademark Rule 2.129.

Information for pro se party

While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding 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.

It is recommended that applicant be familiar with Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice, and which are available at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Every motion, paper or communication filed with the Board must include proof of service of a copy on opposing counsel or party, in compliance with Trademark Rule 2.119(a) and (b). The Board may decline to consider any motion, paper or communication filed herein which does not include proof of service, such as a Certificate of Service. The Board's Manual of Procedure (TBMP) sets forth the following suggested format for a Certificate of Service:

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: (set out name and address of opposing counsel or party). See TBMP § 113.03.

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. See *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d

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1212, n.2 (TTAB 2006). The Board's order instituting this proceeding also includes information with which applicant should be familiar.

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