

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: April 2, 2015

Opposition No. 91220583

William Castle

v.

Dan Frost

Veronica P. White, Paralegal Specialist:

Applicant's March 5, 2015, filing titled "Confidential Defendant's Motion to Dismiss; Rule 12(b)" is noted.¹ A review of Applicant's filing reveals that the filing is not a motion to dismiss nor can the Board ascertain if this filing was intended to be an answer to Opposer's notice of opposition. Therefore, the Board is unable to consider Applicant's filing.

Applicant is allowed until **TWENTY (20) DAYS** from the mailing date of this order to file an answer to the notice of opposition or other appropriate response.

If, no response is filed, default will be entered against Applicant.

¹ Applicant's filing does not indicate proof of service of a copy of same on counsel for opposer, as required by Trademark Rule 2.119. Applicant should note that strict compliance with Trademark Rule 2.119 is required for all future filings. A copy of the filing can be viewed using TTABVue at <http://ttabvue.uspto.gov>. Furthermore, if a party submits a motion containing confidential information either electronically via ESTTA or by paper under seal, the party must also submit for the public record a redacted version of the motion. See TBMP 502.02(c).

Information on Board Proceedings and Answer

The following information is provided as a courtesy to Applicant:

- ***Nature of an Opposition Proceeding***

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.

- ***Legal Representation Is Strongly Encouraged***

The Board notes that Applicant is representing itself 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 system² at <http://estta.uspto.gov>, and TTABVUE, for case status and prosecution history at <http://ttabvue.uspto.gov/ttabvue>.

- ***Form of Answer***

Applicant must file an answer in response to the notice of opposition.

Said answer must comply with Federal Rule 8(b). Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall **admit or deny** the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

For instance, if the notice of opposition filed by Opposer consists of 3 numbered paragraphs setting forth the bases of Opposer's claim(s) of

² 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.

damage, then, in accordance with Federal Rule 8(b), Applicant must answer the notice of opposition by admitting or denying the allegations contained in the notice of opposition in the same three (3) paragraph numbering format found in the notice of opposition. If, Applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, he should so state and this will have the effect of a denial. Applicant is also reminded that evidence attached to the answer will not be considered by the Board at trial. *See* Trademark Rule 2.122(c).

- ***Requirement for Service on Adverse Party of All Papers Filed***

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).

If, either of the parties or their attorneys should have a change of address, the Board should be so informed.³

³ Additionally, the Board notes that on March 5, 2015 Applicant filed its change of correspondence address on its own behalf. In view of the filing, the Board presumes that Applicant will be represented by Legalinc Corporate Services, LLC herein. The Board's records have been updated accordingly.