

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 14, 2015

Opposition No. 91220956

Unique Photo Inc.

v.

Sanjay Agarwal

**Robert H. Coggins,
Interlocutory Attorney:**

Answer

An answer to the notice of opposition is currently due by April 18, 2015. On April 14, 2015, Applicant filed a communication titled "Response to the notice of opposition." Applicant's "response" 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 future papers filed by Applicant 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.

The Board presumes that Applicant's "response" was intended as Applicant's answer to the notice of opposition, but the "response" does not comply with Rule 8(b) or 10(b) of the Federal Rules of Civil Procedure, which is made applicable this

proceeding by Trademark Rule 2.116(a). The “response” is argumentative and is more in the nature of a brief on the case than an answer to the notice of opposition.

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.

Fed. R. Civ. P. 10(b) provides, in part, that:

A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading.

The notice of opposition filed by Opposer consists of ten paragraphs setting forth the basis of Opposer’s claim of damage. In accordance with Fed. R. Civ. P. 8(b) and 10(b) it is incumbent on Applicant to answer the notice of opposition by specifically admitting or denying the allegations contained in each paragraph, by paragraph number. 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.

In view of the foregoing, Applicant’s April 14th “response” will be given **no further consideration**. Applicant is allowed until **May 5, 2015**, in which to file

and serve upon counsel for opposer (with proof of such service) an answer to the notice of opposition which complies with Fed. R. Civ. P. 8 and 10. In addition, the answer --as with all filings before the Board-- should be double-spaced.

Dates are **reset** as follows:

Time to Answer	5/5/2015
Deadline for Discovery Conference	6/4/2015
Discovery Opens	6/4/2015
Initial Disclosures Due	7/4/2015
Expert Disclosures Due	11/1/2015
Discovery Closes	12/1/2015
Plaintiff's Pretrial Disclosures	1/15/2016
Plaintiff's 30-day Trial Period Ends	2/29/2016
Defendant's Pretrial Disclosures	3/15/2016
Defendant's 30-day Trial Period Ends	4/29/2016
Plaintiff's Rebuttal Disclosures	5/14/2016
Plaintiff's 15-day Rebuttal Period Ends	6/13/2016

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 Applicant as *Pro Se*

It is clear from Applicant's "response" that Applicant is not familiar with the procedural and substantive law involved in an opposition before the Board. While Patent and Trademark Rule 11.14 permits an applicant to represent himself, 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 a U.S. attorney who is familiar with such matters.

If Applicant does not retain U.S. counsel, he must familiarize himself with Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice, and which is available on the Board's webpage at the following URL: <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab.html>. The Board's webpage also 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 link to the Board's manual of procedure (the TBMP) which will be most helpful to Applicant.

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 in a proceeding which does not include proof of service. Proof of service usually takes the form of a Certificate of Service. The 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 sending said copy on [*insert date of mailing*], via overnight courier to: [*set out name and address of opposing counsel or party*].

See TBMP § 113.03. The Certificate of Service must be signed. See also TBMP § 113.05 ("A party located outside the United States generally cannot serve an adverse party by the manners of service specified in 37 CFR §§ 2.119(b)(1)-(3). Moreover, a foreign party may not substitute its national postal service, or omit

reference to the nation of the postal service employed, as a means of using 37 CFR § 2.119(b)(4) manner of service; 37 CFR § 2.119(b)(4) requires transmission by the United States Postal Service.”).

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 1212, n.2 (TTAB 2006). The Board’s order instituting this proceeding also includes information with which applicant should be familiar. Applicant may view the public record of this proceeding by using TTABVue at <http://ttabvue.uspto.gov/ttabvue>.

Again, it is highly recommended that Applicant obtain U.S. trademark counsel.