

THIS ORDER IS  
NOT A  
PRECEDENT OF  
THE TTAB

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

coggins

Mailed: May 3, 2016

Opposition No. 91221739

*NBCUniversal Media, LLC*

*v.*

*Maxima IP Holdings I LLC*

**By the Board:**

Now before the Board are Applicant's motion (filed February 11, 2016) for summary judgment, and Opposer's consented motion (filed March 17, 2016) for an extension of time to file a brief in opposition thereto.

Extension of Time

Opposer's consented motion for a one-week extension of its deadline to respond to Applicant's motion for summary judgment is **granted**. Trademark Rule 2.127(e)(1). In view thereof, Opposer's response was due on or before March 24, 2016.

Summary Judgment

Applicant moves for partial summary judgment on the basis that "Opposer has not engaged in the use of the mark 'Parks and Recreation' in commerce for clothing." Motion, p. 6 (5 TTABVUE 6). Inasmuch as Opposer failed to file a brief in opposition to Applicant's motion for summary judgment, the motion is **granted** as conceded. *See*

Trademark Rule 2.127(a); Fed. R. Civ. P. 56. *See also Luemme, Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1761 (TTAB 1999) (waiting for Board approval of previous extension request insufficient to justify resetting of dates). Accordingly, the opposition is **dismissed** with prejudice, in part, as to any use by Opposer of the pleaded mark PARKS AND RECREATION on clothing. In view thereof, Opposer may not rely on use of its mark on clothing to support either of the properly pleaded grounds, namely, priority and likelihood of confusion, and dilution. This case will proceed under Opposer's alleged common law rights obtained through use of the pleaded mark on the non-clothing goods and services alleged in the Notice of Opposition.

False Suggestion of a Connection Stricken

The Notice of Opposition was filed utilizing ESTTA and includes an ESTTA cover sheet which indicates that one of the grounds for opposition is false suggestion of a connection under Trademark Act Section 2(a). *See PPG Industries Inc. v. Guardian Industries Corp.*, 73 USPQ2d 1926, 1928 (TTAB 2005) (content of ESTTA cover sheet is integral component and read in conjunction with complaint).

To properly plead a Section 2(a) claim of false suggestion of a connection, Opposer must allege that (1) Applicant's mark is the same or a close approximation of the name or identity of a person or institution, (2) Applicant's mark would be recognized as such by purchasers, in that the mark points uniquely and unmistakably to the person or institution named or identified, (3) the person or institution named or identified is not connected with the goods sold by Applicant under the mark, and, (4)

the name or identity of the person or institution identified is of sufficient fame or reputation that when Applicant's mark is used in connection with its goods, a connection with the person or institution identified would be presumed. *Nike, Inc. v. Palm Beach Crossfit Inc.*, 116 USPQ2d 1025, 1031 (TTAB 2015), *citing In re Nieves & Nieves*, 113 USPQ2d at 1632-33. A "person" includes a juristic entity as well as a natural person.

Opposer failed to plead any of the necessary elements of this ground. In view thereof, the Board *sua sponte* **strikes** the false suggestion of a connection ground from the Notice of Opposition. Fed. R. Civ. P. 12(f). While the Board is usually liberal in granting leave to amend pleadings at any stage of a proceeding when justice so requires, it does not appear from the current pleadings that allowing Opposer time in which to replead the ground of false suggestion of a connection under Section 2(a) would be useful. This determination does not preclude a motion to amend, if Opposer has a reasonable basis for so moving; however, it is a recognition that Applicant's mark must be the same or a close approximation of Opposer NBCUniversal Media LLC's *name or identity* – not merely the same or a close approximation of Opposer's *mark* (the latter of which is contemplated under the likelihood of confusion and dilution grounds).

Schedule

Proceedings are **resumed**. Dates are **reset** on the following schedule.

Plaintiff's Pretrial Disclosures	5/18/2016
Plaintiff's 30-day Trial Period Ends	7/2/2016
Defendant's Pretrial Disclosures	7/17/2016
Defendant's 30-day Trial Period Ends	8/31/2016

Plaintiff's Rebuttal Disclosures	9/15/2016
Plaintiff's 15-day Rebuttal Period Ends	10/15/2016

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. 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.