

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

CME

Mailed: April 20, 2016

Opposition No. 91223065

*PN, LLC*

*v.*

*C2 Management Group LLC*

Christen M. English, Interlocutory Attorney:

Pursuant to Opposer's request, on April 19, 2016, the Board participated in the parties' telephonic discovery conference mandated under Fed. R. Civ. P. 26(f) and Trademark Rule 2.120(a)(1) and (a)(2). Scott Austin appeared on behalf of Opposer, Scott Conwell appeared on behalf of Applicant, and the assigned interlocutory attorney participated on behalf of the Board.

The parties did not agree to accept formal service of papers by e-mail pursuant to Trademark Rule 2.119(b)(6), but the parties did agree to serve courtesy copies of papers via e-mail. Opposer's e-mail address for service of courtesy copies is saustin@vlplawgroup.com. Applicant's e-mail address for service of courtesy copies is scott@conwellusa.com.

Opposer stated that it has filed an opposition against third-party application Serial No. 86667197 in which Opposer has pleaded the same mark that it has

pleaded here (Opposition No. 91226749 (the “749 Opposition)).<sup>1</sup> Because the applicant in the ’749 Opposition is different from the Applicant here, the Board declines to consolidate the ’749 Opposition with this proceeding.

Opposer also indicated that it is monitoring Applicant’s pending application



Serial No. 86904181 for the mark while Applicant indicated that it is monitoring Opposer’s pleaded application Serial No. 86711994 for the mark PN, in standard character format. If either application is published for opposition and opposed during the pendency of this proceeding, the parties must inform the Board so that the Board may consider whether consolidation is appropriate.

The parties have raised the possibility of settlement and are amenable to exploring a possible amicable resolution of this proceeding. The Board strongly encourages the parties to work together to amicably resolve this proceeding, if possible.

The Board reminded the parties that it issued an order on September 30, 2015, finding that Opposer has adequately pleaded its standing and a claim for priority and likelihood of confusion. 9 TTABVUE 5. Applicant filed its answer on March 21, 2016 denying the salient allegations in the notice of opposition and asserting twenty “affirmative defenses.” As the Board explained during the teleconference, the “affirmative defenses” in paragraphs 1-2 and 4-18 are not true affirmative defenses,

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<sup>1</sup> Both parties also have filed extensions of time to oppose third-party application Serial No.

86627815 for the mark .

but because they are amplifications of Applicant's denials, they are allowed to stand. The "affirmative defense" of failure to state a claim in paragraph 3 is **STRICKEN** because, as the Board explained during the teleconference, Opposer has adequately pleaded its standing and a viable ground for opposition. The "affirmative defense" in paragraph 19 attacking Opposer's pleaded application also is **STRICKEN**. Such allegations are not ripe because Opposer's pleaded application is in the examination stage. Applicant's "affirmative defense" in paragraph 20 merely incorporates the principle of Fed. R. Civ. P. 15 that leave to amend a pleading "should be freely give[n] when justice so requires." This paragraph does not set forth a true "affirmative defense" but the Board allows it to stand.

The Board next discussed ways to streamline the case by using Accelerated Case Resolution ("ACR"). Applicant indicated that it is not interested in utilizing the traditional format of ACR, but it is willing to consider stipulating to ACR efficiencies later in this proceeding.

Additional information regarding ACR may be found at the following links:

1. General description of ACR:

[http://www.uspto.gov/trademarks/process/appeal/Accelerated\\_Case\\_Resolution\\_ACR\\_notice\\_from\\_TTAB\\_webpage\\_12\\_22\\_11.pdf](http://www.uspto.gov/trademarks/process/appeal/Accelerated_Case_Resolution_ACR_notice_from_TTAB_webpage_12_22_11.pdf);

2. FAQs on ACR:

[http://www.uspto.gov/sites/default/files/trademarks/process/appeal/Accelerated\\_Case\\_Resolution\\_%28ACR%29\\_FAQ\\_updates\\_12\\_22\\_11.doc](http://www.uspto.gov/sites/default/files/trademarks/process/appeal/Accelerated_Case_Resolution_%28ACR%29_FAQ_updates_12_22_11.doc);

3. List of cases employing ACR-like efficiencies:

[http://www.uspto.gov/trademarks/process/appeal/ACR\\_Case\\_List\\_\(10-23-12\).doc](http://www.uspto.gov/trademarks/process/appeal/ACR_Case_List_(10-23-12).doc);

and

4. Sections 528.05(a)(2), 702.04 and 705 of the TBMP (2015).

The Board's standard protective order is automatically applicable in this proceeding by operation of Trademark Rule 2.116(g) and is available here:

<http://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>

Opposer indicated that it may propose some changes to the standard protective order with respect to categorizing documents and information as "Outside Counsel's Eyes Only." If the parties stipulate to a revised protective order, they must file such a stipulation with the Board. If the parties do not agree to modifications, the standard protective order will remain in place.

As the Board explained during the teleconference, it will not make any prospective rulings regarding the designation of materials as confidential. Nor will the Board prospectively address whether Applicant's counsel should be treated as in-house counsel or outside counsel for purposes of the standard protective order. The Board will address any such issues if they arise *and* are raised in a written motion filed in this proceeding.

Lastly, a party may not serve discovery requests or a motion for summary judgment until after the party serves its initial disclosures.

Dates remain as set in the Board's order of March 2, 2016.

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