

ESTTA Tracking number: **ESTTA729895**

Filing date: **02/26/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224026
Party	Plaintiff Synergent
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Submission	Motion to Dismiss - Rule 12(b)
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Date	02/26/2016
Attachments	91224026.pdf(631362 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SYNERGENT,

Petitioner,

v.

CREDIT UNION 24, INCORPORATED

Applicant.

OPPOSITION NO. 91224026

Interlocutory Attorney:

Geoffrey McNutt

**MOTION FOR JUDGMENT ON THE PLEADINGS AND TO SUSPEND
PROCEEDINGS, INCLUDING DISCOVERY**

Petitioner Synergent moves, pursuant to F.R.Civ.P. 12(c)) and TBMP § 504 for judgment on the pleadings on the grounds of estoppel arising from Applicant's Withdrawal with Prejudice in 2005 of a mark identical or substantially identical to the marks it now seeks to register.

The undisputed pleadings in each of these Oppositions establish the following. On April 23, 2002, Applicant filed an application with the U.S. Patent and Trademark Office to register the trademark CU24, Serial Number 76399306 ("the Mark") for certain "financial management and computerized electronic funds transfer ("EFT") services. Petitioner's Notice of Opposition Paragraph 11, Applicant's Answer Admitting Paragraph 11. On November 5, 2003 Petitioner filed an opposition to the registration of the Mark, and on August 25, 2005 Applicant withdrew the application for the Mark with prejudice and with Synergent's consent and reliance, and Synergent's opposition

was thereafter dismissed. Petitioner's Notice of Opposition Paragraph 12, Applicant's Answer Admitting Paragraph 12. Applicant also admits that on June 11, 2015 it filed an application for the registration of a stylized "CU24 PS" mark and admits that the mark that was the subject of the application it filed in 2002 was the mark "CU24". Petitioner's Notice of Opposition Paragraph 13, Applicant's Answer Admitting Paragraph 13.

Therefore, Applicant is estopped from attempting to register the virtually identical mark in this proceeding. *Aromatique v. Lang*, 25 USPQ2d 1359, 1361 (TTAB 1992). The fact that this application adds a design to CU24 does not save the mark, as the Board "... does not wish to encourage a losing party to modify its mark insignificantly after an adverse ruling and thereby avoid the estoppel effect of the prior adjudication." *Id.*; *Miller Brewing Co. v. Coy International Corp.*, 230 USPQ 675, 678 (TTAB 1986).

Synergent also moves to suspend the proceedings because of the filing of this dispositive motion, including if the Motion for Judgment on the Pleadings is not granted, resetting the time for Petitioner to respond to Applicant's Requests for Production of Documents and Interrogatories which were served on February 12, 2014. Copy attached as Exhibit A. Petitioner should not be required to expend time and expense gathering voluminous records in a proceeding which on its face lacks merit. *Leeds Technologies Ltd v. Topaz Communications Ltd*, 65 USPQ2d 1303, 1306-08 (TTAB 2002).

Respectfully submitted,

Dated: February 26, 2016

/s/ James. G. Goggin
James G. Goggin, Bar No. 2118
Attorney for Petitioner

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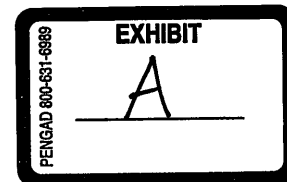
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion for Judgment on the Pleadings and to Suspend Proceedings, Including Discovery has been served on Registrant on February 26, 2016 via the Electronic System for Trademark Trials and Appeals (ESTTA).

Dated: February 26, 2016

/s/ James. G. Goggin
James G. Goggin
Attorney for Petitioner

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Applicant: Credit Union 24, Inc.

Application No.: 86/659,389

Filing Date: June 11, 2015

Mark: 

Opposition No.: 91225138

SYNERGENT,)	
a Maine corporation)	
)	Interlocutory Attorney:
)	George Pologeorgis
Petitioner,)	
)	
v.)	
)	
CREDIT UNION 24, INCORPORATED)	
a Florida corporation,)	
)	
Applicant.)	

APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS,
INTERROGATORIES AND REQUESTS FOR PRODUCTION
OF DOCUMENTS TO PETITIONER

Applicant Credit Union 24, Incorporated ("Applicant"), by its undersigned counsel, states the following for its First Set of Set of Requests for Admissions, Interrogatories and Requests for Production of Documents to Petitioner Synergent ("Petitioner"), to be answered in accordance with C.F.R. § 2.120, T.M.B.P. 402, 405, 406 and 407, and Fed. R. Civ. P. 26, 33, 34 and 36:

DEFINITIONS AND INSTRUCTIONS

A. The term “document” is used herein in its broadest sense, encompassing any medium upon which information may be recorded, and refers to and includes, but is not limited to, communications (including email), memoranda, meeting minutes, drafts, contracts, purchase orders, invoices, statements, notes, reports, logs, diaries, data, tape recordings, drawings, spreadsheets, ledgers, or plans.

B. The term “identify” with respect to a person means to provide, to the extent possible, the person’s full name, address, telephone number, email address and place of employment.

C. The term “identify” with respect to a document means identification of the following information regarding the document: (i) type (paper copy, electronic, etc....); (ii) general subject matter; (iii) date; (iv) author(s); and (v) recipient(s).

REQUESTS FOR ADMISSIONS

1. Admit that Petitioner has not used the “CU-24 (& Design)” mark to market and promote its goods and services in the State of Maine from January 1, 2013 to the present.

RESPONSE:

2. Admit that Petitioner has not used the “CU24” mark to market and promote its goods and services in the State of Maine during the time period January 1, 2013 to the present.

RESPONSE:

3. Admit that Petitioner has not used the “CU24” mark to market and promote its goods and services in the State of New Hampshire during the time period January 1, 2013 to the present.

RESPONSE:

4. Admit that petitioner has not used the “CU24” mark to market and promote its goods and services in the State of Massachusetts during the time period January 1, 2013 to the present.

RESPONSE:

5. Admit that petitioner did not use the “CU24” mark to market and promote its goods and services in the State of Rhode Island during the time period January 1, 2013 to the present.

RESPONSE:

6. Admit that petitioner did not use the “CU24” mark to market and promote its goods and services in the State of Connecticut during the time period January 1, 2013 to the present.

RESPONSE:

7. Admit that petitioner did not use the “CU24” mark to market and promote its goods and services in the State of New York during the time period January 1, 2013 to the present.

RESPONSE:

8. Admit that petitioner did not use the “CU24” mark, or any iteration thereof, to market and promote its goods and services in any other state or geographic region (*i.e.*, other than the states identified in the preceding requests for admission) during the time period January 1, 2013 to the present.

RESPONSE:

INTERROGATORIES

1. Describe in detail any and all use by Petitioner of the “CU-24 (& Design)” mark, as referenced in Paragraph 4 of Petitioner’s Notice of Opposition, to market and promote its goods and services in the State of Maine for the years 2012, 2013, 2014, and for the time period 2015 to the present, and with respect to any such use,

- (a) Identify all goods and services provided or marketed to consumers in Maine that were associated with the mark;
- (b) Identify all documents demonstrating Petitioner’s use and promotion of the mark in Maine during each of the time periods stated above;
- (c) State the amount Petitioner spent promoting and advertising the mark in Maine during each of the time periods stated above;
- (d) Identify all documents reflecting the amount Petitioner spent promoting and advertising the mark in Maine during each of the time periods stated above.

ANSWER:

2. Describe in detail any and all use by Petitioner of the “CU24” mark, as referenced in Paragraph 5 of Petitioner’s Notice of Opposition, to market and promote its goods and

services in the State of Maine for the years 2012, 2013, and 2014, and for the time period 2015 to the present, and with respect to any such use,

- (a) Identify all goods and services provided or marketed to consumers in Maine that were associated with the mark;
- (b) Identify all documents demonstrating Petitioner's use and promotion of the mark in Maine during each of the time periods stated above;
- (c) State the amount Petitioner spent promoting and advertising the mark in Maine during each of the time periods stated above;
- (d) Identify all documents reflecting the amount Petitioner spent promoting and advertising the mark in Maine during each of the time periods stated above.

ANSWER:

3. Describe in detail any and all use by Petitioner of the "CU24" mark, as referenced in Paragraph 6 of Petitioner's Notice of Opposition, to market and promote its goods and services in the State of New Hampshire for the years 2012, 2013, and 2014, and for the time period 2015 to the present, and with respect to any such use,

- (a) Identify all goods and services provided or marketed to consumers in New Hampshire that were associated with the mark;
- (b) Identify all documents demonstrating Petitioner's use and promotion of the mark in New Hampshire during each of the time periods stated above;
- (c) State the amount Petitioner spent promoting and advertising the mark in New Hampshire during each of the time periods stated above;
- (d) Identify all documents reflecting the amount Petitioner spent promoting and advertising the mark in New Hampshire during each of the time periods stated above.

ANSWER:

4. Describe in detail any and all use by Petitioner of the “CU24” mark, as referenced in Paragraph 7 of Petitioner’s Notice of Opposition, to market and promote its goods and services in the State of Massachusetts for the years 2012, 2013, and 2014, and for the time period 2015 to the present, and with respect to any such use,

- (a) Identify all goods and services provided or marketed to consumers in Massachusetts that were associated with the mark;
- (b) Identify all documents demonstrating Petitioner’s use and promotion of the mark in Massachusetts during each of the time periods stated above;
- (c) State the amount Petitioner spent promoting and advertising the mark in Massachusetts during each of the time periods stated above;
- (d) Identify all documents reflecting the amount Petitioner spent promoting and advertising the mark in Massachusetts during each of the time periods stated above.

ANSWER:

5. Describe in detail any and all use by Petitioner of the “CU24” mark, as referenced in Paragraph 8 of Petitioner’s Notice of Opposition, to market and promote its goods and services in the State of Rhode Island for the years 2012, 2013, and 2014, and for the time period 2015 to the present, and with respect to any such use,

- (a) Identify all goods and services provided or marketed to consumers in Rhode Island that were associated with the mark;
- (b) Identify all documents demonstrating Petitioner’s use and promotion of the mark in Rhode Island during each of the time periods stated above;
- (c) State the amount Petitioner spent promoting and advertising the mark in Rhode Island during each of the time periods stated above;
- (d) Identify all documents reflecting the amount Petitioner spent promoting and advertising the mark in Rhode Island during each of the time periods stated above.

ANSWER:

6. Describe in detail any and all use by Petitioner of the "CU24" mark, as referenced in Paragraph 9 of Petitioner's Notice of Opposition, to market and promote its goods and services in the State of Connecticut for the years 2012, 2013, and 2014, and for the time period 2015 to the present, and with respect to any such use,

- (a) Identify all goods and services provided or marketed to consumers in Connecticut that were associated with the mark;
- (b) Identify all documents demonstrating Petitioner's use and promotion of the mark in Connecticut during each of the time periods stated above;
- (c) State the amount Petitioner spent promoting and advertising the mark in Connecticut during each of the time periods stated above;
- (d) Identify all documents reflecting the amount Petitioner spent promoting and advertising the mark in Connecticut during each of the time periods stated above.

ANSWER:

7. Describe in detail any and all use by Petitioner of the "CU24" mark, as referenced in Paragraph 10 of Petitioner's Notice of Opposition, to market and promote its goods and services in the State of New York for the years 2012, 2013, and 2014, and for the time period 2015 to the present, and with respect to any such use,

- (a) Identify all goods and services provided or marketed to consumers in Connecticut that were associated with the mark;
- (b) Identify all documents demonstrating Petitioner's use and promotion of the mark in Connecticut during each of the time periods stated above;
- (c) State the amount Petitioner spent promoting and advertising the mark in Connecticut during each of the time periods stated above;

- (d) Identify all documents reflecting the amount Petitioner spent promoting and advertising the mark in Connecticut during each of the time periods stated above.

ANSWER:

8. Describe in detail any and all use by Petitioner of the "CU24" mark, or any iteration thereof, to market and promote its goods and services in any other state or geographic region (*i.e.*, other than the states identified in the previous interrogatories), for the years 2012, 2013, and 2014, and for the time period 2015 to the present, and with respect to any such use,

- (a) Identify all goods and services provided or marketed to consumers in each such state or geographic region that were associated with the mark;
- (b) Identify all documents demonstrating Petitioner's use and promotion of the mark in each such state or geographic region during each of the time periods stated above;
- (c) State the amount Petitioner spent promoting and advertising the mark in each such state or geographic region during each of the time periods stated above;
- (d) Identify all documents reflecting the amount Petitioner spent promoting and advertising the mark in each such state or geographic region during each of the time periods stated above.

ANSWER:

9. State all facts and identify all documents on which Petitioner relies in support of the assertion contained in Paragraph 3 of Petitioner's Notice of Opposition that "[t]he CU24 mark had become famous before Applicant's first use of the CU24 mark."

ANSWER:

10. Identify each expert witness on whose testimony Petitioner may rely, and for each such expert,

- (a) State the substance of his or her opinion(s);
- (b) Identify any reports prepared by the expert;
- (c) Identify all documents provided to the expert for the purpose of forming his or her opinion(s) or preparing any report identified in subsection (b);
- (d) State or identify his or her educational and professional background; his or her experience as an expert witness; any articles or treaties he or she has written or substantially contributed to; and the terms of his or her compensation as an expert. With the exception of the terms of each such expert's compensation, Petitioner may provide *curriculum vitae* or resume for each such expert in lieu of providing the information in the form of an interrogatory response.

ANSWER:

11. Identify each lay witness on whose testimony Petitioner may rely and state the subject matter and substance of each such person's anticipated testimony .

ANSWER:

12. Identify the person or persons employed by, or who are otherwise associated with, Petitioner who have the most knowledge regarding Petitioner's use and promotion of the "CU24" mark and the "CU-24 (& Design)" mark and, for each such person, state the subject matter of his or her knowledge.

ANSWER:

13. If Petitioner's response to any of the requests for admission set forth above is anything other than an unqualified admission, state all facts and information on which Petitioner's response is based and identify all documents that support or relate to Petitioner's response.

ANSWER:

DOCUMENT PRODUCTION REQUESTS

Please produce the following:

1. All documents identified in Petitioner's answer to Interrogatory No. 1, above.

RESPONSE:

2. All documents identified in Petitioner's answer to Interrogatory No. 2, above.

RESPONSE:

3. All documents identified in Petitioner's answer to Interrogatory No. 3, above.

RESPONSE:

4. All documents identified in Petitioner's answer to Interrogatory No. 4, above.

RESPONSE:

5. All documents identified in Petitioner's answer to Interrogatory No. 5, above.

RESPONSE:

6. All documents identified in Petitioner's answer to Interrogatory No. 6, above.

RESPONSE:

7. All documents identified in Petitioner's answer to Interrogatory No. 7, above.

RESPONSE:

8. All documents identified in Petitioner's answer to Interrogatory No. 8, above.

RESPONSE:

9. All documents identified in Petitioner's answer to Interrogatory No. 9, above.

RESPONSE:

10. All documents identified in Petitioner's answer to Interrogatory No. 10, above.

RESPONSE:

11. All documents referring or relating to Maine Trademark Registration No. 199910130 M, including, but not limited to, all documents submitted to the State of Maine or received from the State of Maine in connection with the registration.

RESPONSE:

12. All documents referring or relating to Maine Trademark Registration No. 20140120 M, including, but not limited to, all documents submitted to the State of Maine or received from the State of Maine in connection with the registration.

RESPONSE:

13. All documents referring or relating to New Hampshire Trademark Registration No. 5921, including, but not limited to, all documents submitted to the State of New Hampshire or received from the State of New Hampshire in connection with the registration.

RESPONSE:

14. All documents referring or relating to Massachusetts Trademark Registration No. 1211952, including, but not limited to, all documents submitted to the State of Massachusetts or received from the State of Massachusetts in connection with the registration.

RESPONSE:

15. All documents referring or relating to Rhode Island Trademark Registration No. 201312017, including, but not limited to, all documents submitted to the State of Rhode Island or received from the State of Rhode Island in connection with the registration.

RESPONSE:

16. All documents referring or relating to Connecticut Trademark Registration No. 0039463803, including, but not limited to, all documents submitted to the State of Connecticut or received from the State of Connecticut in connection with the registration.

RESPONSE:

17. All documents referring or relating to New York Trademark Registration No. S22828, including, but not limited to, all documents submitted to the State of New York or received from the State of New York in connection with the registration.

RESPONSE:

18. All documents comprising Petitioner's file for the TTAB opposition proceedings described in Paragraph 12 of Petitioner's Notice of Opposition.

RESPONSE:

19. All documents on which Petitioner relies in support of the assertion set forth in Paragraph 20 of the Notice of Opposition that Applicant abandoned the '306 Application and is barred by equitable estoppel from registering the mark at issue.

RESPONSE:

20. All documents referring or relating to any use in commerce by Petitioner of the "CU24" mark, or any iteration thereof, for the time period 2012 to the present.

RESPONSE:

21. All documents referring or relating to any market research studies performed or commissioned by Petitioner with respect to the “CU24” mark, or any iteration thereof, for the time period 2012 to the present.

RESPONSE:

22. All documents referring or relating to any discontinuation of use in commerce by Petitioner of the “CU24” mark, or any iteration thereof.

RESPONSE:

23. All documents referring or relating to Applicant Credit Union 24, Incorporated’s use or application for registration of a mark containing “CU24.”

RESPONSE:

24. All documents identified in Petitioner’s response to Interrogatory No. 13.

RESPONSE:

25. All documents for the time period 2012 to the present referring or relating to any marketing programs or initiatives involving Petitioner’s use in commerce of the “CU24” mark, or any iteration thereof.

RESPONSE:

26. All documents for the time period 2012 to the present referring or relating to any resumption of use in commerce of the “CU24” mark, or any iteration thereof.

RESPONSE:

27. All documents for the time period 2012 to the present regarding any budgets, projections, business plans and/or expenditures relating to any use in commerce by Petitioner of the “CU24” mark, or any iteration thereof, to market its goods and services.

RESPONSE:

Respectfully submitted,
JAFKE, RAITT, HEUER & WEISS, P.C.

By: /s/ David S. McDaniel
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(734) 222-4776

Dated: February 10, 2016

*Counsel for Defendant Credit Union 24,
Incorporated*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: Credit Union 24, Inc.

Application No.: 86/659,389

Filing Date: June 11, 2015

Mark:



Opposition No.: 91225138

SYNERGENT,
a Maine corporation

Petitioner,

v.

CREDIT UNION 24, INCORPORATED
a Florida corporation,

Applicant.

Interlocutory Attorney:
George Pologeorgis

CERTIFICATE OF SERVICE

I, Jacqueline Delevie, do hereby certify that on February 10, 2016, a true and complete copy of the **APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO PETITIONER** were served upon the following attorney of record for the above mentioned opposition by means of email:

Charles P. Bacall, Esq.
Verrill Dana, LLP
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Portland, ME 04112-0586
cbacall@verrilldana.com

/s/ Jacqueline Delevie
Jacqueline Delevie