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 19, 2016

Opposition No. 91226968

Makin International, LLC

v.

Ashleigh Mason, LLC

George C. Pologeorgis,
Administrative Trademark Judge:

Show Cause Order

Applicant's involved application Serial No. 86677899 was published for opposition on November 17, 2015. On December 11, 2015, Trademark Lawyer Law Firm (hereinafter referred to as "TLLF"), a law firm, filed a request for an extension of time to oppose application Serial No. 86677899 using the Electronic System for Trademark Trials and Appeals ("ESTTA"). On the same date, the Board granted the request and, clearly identifying TLLF as the "potential opposer," allowed TLLF until March 16, 2016 to file a notice of opposition.

On March 16, 2016, within the extension period granted to TLLF, a notice of opposition was filed. The ESTTA cover sheet for the notice of opposition, as well as the body of attached complaint, however, identifies Makin International, Inc. as the Opposer. The opposition was automatically instituted and assigned Opposition No.

91226968. Inasmuch as the name of the Opposer on the ESTTA filing cover sheet and the body of the notice of opposition (i.e., Makin International, Inc.) differs from the name of the party to whom the extension of time was granted (i.e., TLLF), an explanation is required.

An opposition filed by a party other than the one to whom an extension of time to oppose was granted will not be rejected on that ground if it is shown to the satisfaction of the Board that either (1) the other party is in privity[1] with the party granted the extension, or (2) the party in whose name the extension was requested was misidentified through mistake[2]. *See* Trademark Rule 2.102(b). The showing should be in the form of a recitation of facts upon which either the claim of privity or misidentification is based, and must be submitted either with the opposition or during the time allowed by the Board in its action requesting an explanation of the discrepancy. *See* TBMP §§ 206.02 and 206.03 (2015) and authorities cited therein.

Accordingly, Opposer is allowed until **May 4, 2016** in which to show cause why the opposition should not be dismissed ***without prejudice*** inasmuch as the opposition appears to have been filed by a party other than the one to whom the

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[1] The concept of privity generally includes, *inter alia*, the relationship of successive ownership of a mark (e.g., assignor and assignee, or survivor of a merger) and the relationship shared by "related companies" within the meaning of Sections 5 and 45 of the Trademark Act, 15 U.S.C. §§ 1055 and 1127. *See International Nutrition Co. v. Horphag Research Ltd.*, 220 F.3d 1325, 55 USPQ2d 1492, 1495 (Fed. Cir. 2000). It does not, however, include the attorney/client relationship. *See In re Spang Industries, Inc.*, 225 USPQ 888 (Comm'r 1985).

[2] "Misidentified through mistake," as used in Trademark Rule 2.102(b), means a mistake in the form of the potential opposer's name or its entity type, not the naming of a different existing legal entity that is not in privity with the party that should have been named. *See Custom Computer Services, Inc. v. Paychex Properties, Inc.*, 337 F.3d 1334, 67 USPQ2d 1638 (Fed. Cir. 2003); and *Cass Logistics Inc. v. McKesson Corp.*, 27 USPQ2d 1075 (TTAB 1993).

extension of time to oppose was granted, failing which the opposition will be dismissed without prejudice.

Suspension

Proceedings are otherwise ***suspended*** pending Opposer's response to this order.