

THIS ORDER IS NOT A
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TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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April 10, 2024

Opposition Nos. 91240180 (parent)
91242556
91243244

*Major League Baseball Players Association
and Aaron Judge*

v.

*Michael P. Chisena*¹

ON LIMITED REMAND

**Before Cataldo, Heasley, and Larkin,
Administrative Trademark Judges.**

By the Board:

In these consolidated proceedings—Opposition Nos. 91240180 (parent), 91242556, and 91243244—the Board sustained Opposer Major League Baseball Players

¹ A copy of this Order will be emailed to Applicant/Appellant Chisena at MCHISENA@MPCVC.COM, as well as to his former attorney, Charles R. Hoffman of Charles R. Hoffmann P.C., whose appearance is still entered as Applicant Chisena's counsel in these proceedings before the Board. Applicant/Appellant Chisena is urged to enter his appearance *pro se* for purposes of receiving further Board orders during the review of these cases on this limited remand and any further remands from the Court of Appeals for the Federal Circuit. Access to Board orders and the parties' respective filings is also available through regular monitoring of the TTABVUE entries for these proceedings, via <https://ttabvue.uspto.gov/ttabvue/>. Access is obtained by using the case number for the first of the three consolidated cases, the parent case Opposition No. 91240180. Citations in this order to TTABVUE are to the entries in that case, with the number preceding TTABVUE corresponding to the docket entry in that case.

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Association (MLBPA) and Aaron Judge's opposition to registration of Applicant Michael Chisena's three marks under Section 2(d), 15 U.S.C. § 1052(d), on the ground of priority and likelihood of confusion. 115 TTABVUE.

Applicant Chisena, who was represented by counsel in the Board proceedings, then appealed *pro se* to the United States Court of Appeals for the Federal Circuit. 116 TTABVUE. Before the Court, Applicant/Appellant Chisena moved to compel production of unredacted materials that Opposers/Appellees had designated as Attorneys' Eyes Only ("AEO") under the Board's standard protective order, 37 C.F.R. § 2.116(g) (standard protective order), which is automatically in effect in every Board inter partes proceeding. The Court did not find it appropriate to order "blanket disclosure of information designated as highly sensitive," but did grant "a limited remand to allow the Board to conduct appropriate proceedings to consider whether the protective order should be modified to allow disclosure to Mr. Chisena of appellees' AEO-designated material that was referenced in either the trial briefs or the Board's final decision." 117 TTABVUE 2.

The parties are accordingly ordered to proceed as follows:

Within **TWENTY (20) DAYS** of the mailing date of this Order, the parties must meet and confer in good faith to (i) identify the AEO-designated materials to which the parties' trial briefs or the Board's final decision referred, and (ii) determine which of those AEO-designated materials, if any, can be redesignated as "CONFIDENTIAL" by agreement of the parties. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 412.01(b) (2023) ("If the parties or their attorneys disagree as

to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party.”); Fed. R. Civ. P. 26(c)(1); *see also U.S. Polo Ass’n. v. David McLane Enters., Inc.*, 2019 USPQ2d 108442, *2 (TTAB 2019) (discussing how the requirement of a good faith effort may be satisfied). “When a Board determination of the propriety of a designation is sought, the Board expects that any unresolved challenges will be significantly narrowed in scope due to the requirement for good faith negotiations among the parties as set forth in the Board’s standard protective order.” TBMP § 412.01(b).

Prior to their meeting, the parties must review Section 412.01(a) of the TBMP and authorities discussed therein, regarding the proper designation of confidential matter. The parties are reminded that the Board’s standard protective order provides for two tiers of protected information:

- “**CONFIDENTIAL**” material is “material to be shielded by the Board from public access”;
- “**CONFIDENTIAL – ATTORNEYS’ EYES ONLY** (Trade Secret/Commercially Sensitive) material is “[m]aterial to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of paragraphs 4 and 5, by independent experts or consultants for the parties.” TBMP § 412.01(a). “Parties and those parties or individuals appearing *pro se* will not have access to information designated as ‘Confidential – For Attorneys’ Eyes Only (trade secret/commercially sensitive).’” TBMP §

412.01. *See generally* TTAB Standard Protective Order https://www.uspto.gov/sites/default/files/documents/Standard%20Protective%20Order_02052020.pdf.

Within **TEN (10) DAYS** after the parties have met and conferred, Opposers/Appellees MLBPA and Judge shall file with the Board and serve on Applicant/Appellant Chisena a statement (i) certifying the parties' meeting, (ii) identifying any AEO-designated materials that the parties have agreed can be redesignated as "CONFIDENTIAL"; (iii) listing the remaining AEO-designated materials on which they cannot agree and where they were referred to in the parties' briefs or the Board's decision; and (iv) stating, as to each AEO-designated material on which they cannot agree, Opposers/Appellees' position on why it is so designated, in terms reviewable by Applicant/Appellant Chisena.

Applicant/Appellant Chisena is allowed until **TWENTY (20) DAYS** from service of Opposers/Appellees' aforementioned statement to file with the Board and serve on Opposers/Appellees a motion challenging the AEO designations of the remaining matter. *See* authorities discussed in TBMP § 412.01(b). During the prior Board proceeding, Applicant/Appellant Chisena was represented by counsel, who did not object to the subject designations and who appears to have discussed at least some materials designated by Opposers/Appellees as AEO in Applicant/Appellant's trial brief. Applicant/Appellant Chisena is advised that it would be helpful for him to retain the services of that attorney or another attorney appearing on his behalf to

assist him when the parties meet and confer and/or when he files a motion challenging the AEO designations.²

Opposers/Appellees MLBPA and Judge are allowed until **TWENTY (20) DAYS** from service of Applicant/Appellant's aforesaid motion, if any, challenging the AEO designations to file and serve their brief in opposition thereto. Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a); TBMP § 502.02(b). "When a designation has been challenged, it is the party seeking protection that bears the burden of demonstrating that its confidentiality designations are appropriate. To successfully carry the burden of establishing good cause, the producing party must demonstrate a particular need for protection and that a clearly defined and serious injury will result otherwise." TBMP § 412.01(b). *See also U.S. Polo Ass'n.*, 2019 USPQ2d 108442, at *2.

Applicant/Appellant Chisena is allowed until **TWENTY (20) DAYS** from service of Opposers/Appellees' opposition to the motion challenging AEO designations to file and serve a reply, if any. Trademark Rule 2.127(a); TBMP § 502.02(b).

The parties' main briefs must comply with the requirements of Trademark Rule 2.127(a), as explained in TBMP § 502.02(b), and may not exceed 25 pages, and 10 pages for the reply brief, if any. Upon receipt of the parties' briefs, the Board will determine whether any of the subject AEO-designated materials should be

² [B]ecause the governing practices and procedures in proceedings before the Board are quite technical and highly specialized, it is strongly recommended that an attorney knowledgeable about trademark law represent a party." *See* TBMP § 114.01 and authorities discussed therein. If Applicant/Appellant Chisena elects to proceed without an attorney in this limited remand proceeding, he is reminded that *pro se* parties must comply with all applicable rules and governing procedural law, notwithstanding that such a party may choose to proceed without counsel. If he decides to proceed *pro se*, his former attorney must move to withdraw from the Board proceedings. 37 C.F.R. § 11.116(a)(3); TBMP § 513.

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redesignated as “CONFIDENTIAL.” Any filing not relevant to the pending motion will not be considered.