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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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June 21, 2024

alv

Opposition No. 91277995

*Cleveland Guardians Baseball Company,
LLC*

v.

Adam Barrington

**Before Goodman, Larkin, and Elgin,
Administrative Trademark Judges.**

By the Board:

This case comes before the Board for consideration of Opposer's motion (filed March 7, 2024) for partial summary judgment on its claim of fraud, or alternatively, its claim of non-use use of the marks as to certain goods identified in two of the three subject applications in this consolidated opposition.¹ The motion is fully-briefed.

I. Relevant Background

¹ 18 TTABVUE. Citations to the Board record refer to TTABVUE, the Board's online docketing system, unless otherwise specified. *See Turdin v. Trilobite, Ltd.*, Conc. Use. No. 94002505, 2014 TTAB LEXIS 17, at *6 n.6 (TTAB 2014). The number preceding "TTABVUE" corresponds to the docket entry number, and any number following "TTABVUE" refers to the page number of the docket entry where the cited materials appear.

The parties' future submissions, including trial briefs, motions, responses, and replies, should use citations to the TTABVUE record created throughout the proceeding and during trial to facilitate the Board's review of the evidence throughout the proceeding and at final hearing. *See Made in Nature, LLC v. Pharmavite LLC*, Opp. No. 91223352, 2022 TTAB LEXIS 228, at *40-41 (TTAB 2022); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 801.03 (2023).

Applicant seeks registration on the Principal Register of the mark CLEVELAND SPIDERS in standard characters² for “clothing, namely, shirts; tee shirts; hats; jackets; coats; jerseys; team jerseys; team uniforms; sweaters; sweat shirts; hoodies” in International Class 25. Applicant also seeks registration of the following composite marks:



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both for “Clothing, namely, shirts, hoodies, sweaters, hats, jackets, coats, headbands, pants, shorts, sport jerseys” in International Class 25.

Opposer’s notice of opposition seeks to prevent registration of Applicant’s marks on the grounds of likelihood of confusion, fraud, false suggestion of a connection, and abandonment as to all three applications, non-use of the marks on certain goods as of the filing dates for two of the applications (Application Serial Nos. 90617936 and 90624215 (the “CLEVELAND SPIDERS marks”)), and lack of a bona fide intent to use the mark as of the filing date for the third application (Application Serial No. 90755923).

² Application Serial No. 90617936, filed on April 1, 2021, under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), alleging January 1, 1991 as the date of first use and August 1, 2000 as the date of first use in commerce. The term CLEVELAND is disclaimed.

³ Application Serial No. 90624215, filed on April 5, 2021, under Trademark Act Section 1(a), alleging August 1, 1990 as the date of first use and July 1, 1999 as the date of first use in commerce. The term CLEVELAND is disclaimed.

⁴ Application Serial No. 90755923, filed on June 4, 2021, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b). This application is not at issue in the present motion.

Opposer pleads that “since long prior to August 1, 1990”⁵ it has possessed common law ownership through its “its predecessors, and their affiliated and related entities, licensees and/or sponsors” of “names or marks comprising or containing the word CLEVELAND, including in distinctive stylizations, alone or with other word, letter and/or design elements...in connection with baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, apparel, including without limitation, T-shirts, shirts, sports jerseys, shorts, pants, sweatshirts, jackets and headwear; jewelry; toys and sporting goods; and novelty items.”⁶

Opposer also pleads that “since long prior to June 4, 2021”⁷ it has possessed common law ownership through its “its predecessors, and their affiliated and related entities, licensees and/or sponsors” of “names or marks comprising or containing the letter C” in connection with including, without limitation, various distinctive C stylizations, including, but not limited to, “baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, clothing, including, without limitation, footwear, athletic wear, socks, slippers, caps, headwear, knitted headwear, hats, shirts, T-shirts, tank tops, pants, shorts, dresses, skirts, ponchos, jackets, uniforms, jerseys, sweatpants, pullovers, vests, underwear, sleepwear, swimwear, sweaters, sweatshirts, infant wear, ties, scarves, headbands,

⁵ This date is Applicant’s earliest claimed first use date for Application Serial No. 90624215.

⁶ 12 TTABVUE 32, ¶2.

⁷ This is Applicant’s filing date for Application Serial No. 90755923

visors, aprons, suspenders, belts, gloves, gaiters, face masks, and flip flops; accessories; toys and sporting goods; and novelty items.”⁸

In addition, Opposer claims ownership of several federal registrations containing the word CLEVELAND or the letter “C” for various clothing and sporting related novelty items and goods and services in International Classes 6, 14, 16, 20, 21, 24, 25, 28 and 41.⁹

In its answer, Applicant admitted that Opposer owns its pleaded registrations and denied the remaining salient allegations in the notice of opposition.¹⁰

II. Summary Judgment Standard and Analysis

For purposes of this order, we presume the parties’ familiarity with the arguments and evidence submitted with respect to the motion for partial summary judgment, and do not recount them here, except as necessary to explain this decision. *Guess? IP Holder LP v. Knowlux LLC*, Can. No. 92060707, 2015 TTAB LEXIS 482, at *4-5 (TTAB 2015).¹¹

⁸ 12 TTABVUE 32-33, ¶3.

⁹ *Id.* at 33, ¶4. These registrations are Registration Nos. 1287632; 3776353; 3776354; 3886573; and 4000824. The term CLEVELAND is disclaimed in the first four of these registrations. Opposer also pleads ownership of Application Serial Nos. 90844543; 97127932 and 97127941. We note that Application Serial No. 90844543 matured into Registration No. 7215731 on November 14, 2023. However, for this particular registration, Opposer did not submit a printout from USPTO databases showing status and title, or testimony sufficient to establish status and title, pursuant to Trademark Rule 2.122(d)(2).

¹⁰ 17 TTABVUE.

¹¹ As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, citations in this order differ from the citation form recommended in TBMP § 101.03. This order cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this order employs citations to the LEXIS legal database and cites only precedential decisions. Until further notice, however, practitioners should continue to adhere to the practice set forth in TBMP § 101.03.

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). The Board may not resolve disputes of material fact; it may only ascertain whether a genuine dispute regarding a material fact exists. *See Lloyd's Food Prods., Inc. v. Eli's, Inc.*, 987 F.2d 766 (Fed. Cir. 1993); *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200 (Fed. Cir. 1992). A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, (Fed. Cir. 1992); *Olde Tyme Foods, Inc.*, 961 F.2d at 202. The non-moving party may not rest on the mere allegations of its pleadings and assertions of counsel, but must designate specific portions of the record or produce additional evidence showing the existence of a genuine dispute of material fact for trial.

A. Entitlement to a Statutory Cause of Action

Entitlement to a statutory cause of action under Section 13 or 14 of the Trademark Act must be established in every Board inter partes case. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303 (Fed. Cir. 2020), *cert. denied*, 141 S. Ct. 2671 (2021); *Austl. Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1374 (Fed. Cir. 2020) (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 109

Precedential decisions of the Board, and precedential decisions of the Federal Circuit involving Board decisions that issued January 1, 2008, or after may be viewed in TTABVUE by entering the proceeding number, application number, registration number, expungement/reexamination number, mark, party, or correspondent. Many precedential Board decisions that issued from 1996 to 2008 are available online from the TTAB reading room by entering the same information. Most TTAB decisions that issued prior to 1996 are not available in USPTO databases.

USPQ2d 2061, 2067 n.4 (2014)). To establish entitlement, a plaintiff must demonstrate (i) an interest falling within the zone of interests protected by the statute and (ii) a reasonable belief in damage proximately caused by the registration or continued registration of the mark. *See Corcamore*, 978 F.3d at 1303; *Spanishtown Enters., Inc. v. Transcend Res., Inc.*, Can. No. 92070340, 2020 TTAB LEXIS 481, at *4-5 (TTAB 2020).

Opposer's entitlement to oppose registration of Applicant's marks on the ground of likelihood of confusion is established for five of its pleaded registrations, which are of record in this proceeding. *See, e.g., Shenzhen IVPS Tech. Co. v. Fancy Pants Prods., LLC*, Opp. No. 91263919, 2022 TTAB LEXIS 383, at *20 (TTAB 2022) (valid and subsisting pleaded registration establishes opposer's direct commercial interest in the proceeding and its belief in damage) (citing *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000)). Having established its entitlement to oppose registration on the ground of likelihood of confusion, Opposer may also pursue its claims of fraud, false suggestion of a connection, abandonment, lack of bona fide intent, and lack of bona fide use. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1377 (Fed. Cir. 2012) (citing *Jewelers Vigilance Comm., Inc. v. Ullenberg Corp.*, 823 F.2d 490, 493 (Fed. Cir. 1987) ("Once [entitlement to a statutory cause of action] is established, the opposer is entitled to rely on any of the grounds set forth in section 2 of the Lanham Act which negate applicant's right to its subject registration.")).

B. Fraud

Opposer moves for summary judgment on its claim of fraud in the procurement of Applicant's CLEVELAND SPIDERS marks making the involved applications void ab initio.

Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with its application with the intent to deceive the USPTO. *In re Bose Corp.*, 580 F.3d 1240, 1245 (Fed. Cir. 2009). The standard for finding intent to deceive is stricter than the standard for negligence or gross negligence, and evidence of subjective deceptive intent must be clear and convincing. *Id.*

In support of its motion, Opposer argues that “because Applicant committed fraud as a matter of law by claiming use of Class 25 goods which he had concededly not sold prior to the filing dates of those applications, i.e., jackets, coats, sweaters, headbands, shorts, pants and team uniforms, the applications for both Applicant's CLEVELAND SPIDERS Standard Character Mark (which included sweaters and team uniforms) and Applicant's CLEVELAND SPIDERS and Design Mark (which included sweaters, headbands and shorts) are rendered void as to all the remaining goods listed in such applications (all of which are in Class 25 as well).”¹²

Opposer points out that at his deposition Applicant conceded that (1) he never used his subject marks on sweaters, headbands, shorts, or team uniforms and (2) he only used such marks in connection with jackets, coats, and pants after the filing of

¹² 18 TTABVUE 9.

the two applications at issue.¹³ Opposer asserts that “Applicant obviously must have known at the time he filed Applicant’s CLEVELAND SPIDERS Applications that he had not used the marks on the various goods that he had not produced or sold as of that time”;¹⁴ “he nevertheless filed use-based applications in which he swore, under penalty of perjury, that he had used the marks on all the goods covered by the applications”;¹⁵ and “Applicant’s statements concerning his supposed use with respect to goods that he had not sold or produced reflect a reckless disregard for the accuracy of the representations made.”¹⁶ Opposer asserts that “[t]here can be no dispute that, at a minimum, [Applicant] acted with reckless disregard for the truth of the statements being submitted.”¹⁷

In response, Applicant asserts that he “made a good faith effort to use his marks in connection with each and every item listed in his Applications, which is often challenging with regard to sourcing, pricing, and logistics”;¹⁸ that “[s]uch was even more difficult given the supply chain problems coming out of the pandemic”;¹⁹ that he “was not able to use his marks on headbands, sweaters, shorts and team uniforms, because those items were too expensive and they were less important than the items in his main product line”;²⁰ and that he “made a good faith effort to use his marks on

¹³ *Id.* at 9-11.

¹⁴ *Id.* at 11.

¹⁵ *Id.*

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 14.

¹⁸ 20 TTABVUE 12.

¹⁹ *Id.*

²⁰ *Id.*

jackets, coats, and pants (leggings); and Applicant has in fact used his marks on those products.”²¹ Applicant submitted a signed affidavit attesting to the foregoing.²²

Applicant points out that in his first application for the standard character mark, Application Serial No. 90617936, he listed the goods simply as clothing but “[i]t was the Trademark Examiner – not Applicant – who wrote the more specific list of clothing items that is now recited in the Application.”²³ Applicant contends that he (acting pro se) “was simply following the lead and instructions of the Examiner, and Applicant had absolutely no ‘intent to deceive’ when filing, as alleged by Opposer.”²⁴

In reply, Opposer contends that “a review of the actual file histories for these marks reveals that Applicant’s attempt to cast blame on the Trademark Examine [sic] is just another false statement by Applicant intended to rescue his applications.”²⁵ Opposer explains that “[t]he documentary evidence shows that with respect to the first filed CLEVELAND SPIDERS Standard Character Mark, Applicant himself included each specific item of clothing listed directly after the word ‘clothing’”;²⁶ that “[c]ontrary to Applicant’s contention, the Trademark Examiner did not suggest the items of clothing themselves, but merely required insertion of the word ‘namely’ after the word ‘clothing’”;²⁷ “Applicant’s attempt to blame the Trademark Examiner for his own reckless disregard of what he was signing is

²¹ *Id.*

²² *Id.* 2-5, ¶19-20.

²³ *Id.* at 19.

²⁴ *Id.*

²⁵ 21 TTABVUE 2.

²⁶ *Id.* at 3.

²⁷ *Id.*

without any factual basis”;²⁸ and “Applicant filed a second application for the CLEVELAND SPIDERS and Design Mark four days after the initial application and long before the Examiner’s suggestion to include the word ‘namely.’”²⁹ Opposer argues that “Applicant’s failure to exercise any degree of reasonable diligence with respect to his claimed use on numerous items for which no use had concededly been made establishes fraud as a matter of law.”³⁰

After reviewing the arguments and supporting evidence, we conclude that Opposer has not demonstrated the absence of a genuine dispute of material fact for trial. We find that, at a minimum, there exist genuine disputes of material fact as to Applicant’s subjective deceptive intent to commit fraud on the Office. Opposer has not introduced any direct evidence of Applicant’s intent to deceive the Office, and Applicant has essentially denied such intent in his submitted affidavit.³¹ While Applicant’s alleged attempt to “cast blame” on the Examining Attorney during the prosecution of its first application is not well-taken, we find that Applicant’s testimony introduces a question of fact regarding his intent to deceive. The parties are advised that the factual question of intent is particularly unsuited to disposition on summary judgment. *Copelands’ Enters. Inc. v. CNV Inc.*, 945 F.2d 1563, 1567 (Fed. Cir. 1991); see also *Ahal Al-Sara Grp. for Trading v. Am. Flash, Inc.*, Can. No.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ 20 TTABVUE 2-5, ¶19-21.

92079775, 2023 TTAB LEXIS 13, at *12 (TTAB 2023); *Asian and W. Classics B.V. v. Selkow*, Can. No. 92048821, 2009 TTAB LEXIS 643, at *7 (TTAB 2009).³²

In view thereof, Opposer's motion for summary judgment with regard to the claim of fraud is denied.³³

C. Non-Use as to Certain Goods

In the alternative, Opposer seeks summary judgment on its claim that Applicant had not used the two CLEVELAND SPIDERS marks on certain goods as of the filing dates of the use-based applications; namely: sweaters, headbands, shorts, team uniforms, jackets, coats and pants.

Under Section 1(a) of the Trademark Act, a mark may not be registered unless it is "used in commerce." Additionally, Section 45 of the Trademark Act, 15 U.S.C. § 1127, provides that "[t]he term 'use in commerce' means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark." In a use-based application, when at the time of application there was no use on any of the goods or services specified, the application and resulting registration is

³² The claim of fraud must be proven "to the hilt" with clear and convincing evidence. There is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the charging party." *Smith Int'l, Inc. v. Olin Corp.*, 1981 TTAB LEXIS 47, at *27 (TTAB 1981).

³³ The parties should note that the evidence submitted in connection with the motion for summary judgment is of record only for consideration of the motion. To be considered at final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period. *See Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, Opp. No. 91081072, 1993 TTAB LEXIS 22, at * 3 (TTAB 1993). Moreover, the fact that we have identified and discussed only a few genuine disputes of material fact as a sufficient basis for denying the motion with regard the claim of fraud should not be construed as a finding that these are necessarily the only issues which remain for trial for this claim.

void. *Aycock Eng'g, Inc. v. Airflite, Inc.*, 560 F.3d 1350, 1357 (Fed. Cir. 2009) (“The registration of a mark that does not meet the use requirement is void ab initio.”).

However, an entire application is not deemed void ab initio if the applicant made use on any of the listed goods at the time the use-based application was filed. *Barbara's Bakery, Inc. v. Landesman*, Opp. No. 9115782, 2007 TTAB LEXIS 9, at *19 (TTAB 2007). Instead, the application is amended to delete the goods on which the mark had not been used. *Id.* (“In a use-based application filed under Trademark Act Section 1(a), 15 U.S.C. 1051(a), registration is allowed only as to goods upon which the mark is being used as of the application filing date, and an opposition will be sustained as to any of the identified goods as to which it is shown that no use had been made as of the application filing date.”); *Grand Canyon W. Ranch LLC v. Hualapai Tribe*, Opp. No. 91162008, 2006 TTAB LEXIS 82, at * 7 (TTAB 2006) (“[A]n application should not be treated as void as long as the mark was used on some of the identified goods or services at the time the application was filed.”).

In support of its motion, Opposer asserts that “[b]oth of Applicant’s CLEVELAND SPIDERS Applications falsely claimed use on sweaters, jackets and coats” and that “the opposition should be sustained based on non-use with respect to both applications as to those goods.”³⁴ Opposer also states that “the application for Applicant’s CLEVELAND SPIDERS Standard Character Mark claimed use with respect to team uniforms despite Applicant’s never having used the mark on such goods” and “the application for Applicant’s CLEVELAND SPIDERS and Design Mark

³⁴ 18 TTABVUE 14-15.

falsely claimed use with respect to headbands, shorts and pants.”³⁵ Opposer, therefore, argues that the opposition should be sustained as to these specific goods in each respective application.

In support of its motion, Opposer submits (through the declaration of its attorney) relevant excerpts of Applicant’s September 12, 2023 deposition wherein he conceded that he never has used the CLEVELAND SPIDERS marks for sweaters, headbands, shorts and team uniforms.³⁶ In such deposition, Applicant also testified that he had used Applicant’s CLEVELAND SPIDERS marks in connection with jackets, coats and pants only after the filing of the CLEVELAND SPIDERS applications.³⁷

In response, Applicant contends that “the claim is [or should be] limited to the following goods only: sweaters, headbands, shorts, and team uniforms” and that “the products were only included in the recitation of goods and services in good faith at the suggestion of the Trademark Examining Attorney by a non-attorney Applicant who did not have experience with trademarks.”³⁸ Applicant further admits that he “was not able to use his marks on headbands, sweaters, shorts and team uniforms, because those items were too expensive and they were less important than the 16 items in his main product line.”³⁹ He also states that he “also made a good faith effort to use his marks on jackets, coats, and pants (leggings), and Applicant has in fact used his marks on those products.”⁴⁰

³⁵ *Id.*

³⁶ *Id.* at 122-125.

³⁷ *Id.*

³⁸ 20 TTABVUE 21. See also, Reply Brief, 12 TTABVUE.

³⁹ *Id.*

⁴⁰ *Id.* at 22.

Having considered the evidence and arguments submitted by the parties, and viewing the evidence in the light most favorable to Applicant, we find that Opposer has satisfied its burden of setting forth a showing that there are no genuine disputes of material fact remaining for trial and that it is entitled to judgment as a matter of law as to its claim that Applicant had not made use of his mark on sweaters, headbands, shorts, team uniforms, jackets, coats, and pants in commerce as of the filing dates of his applications for the CLEVELAND SPIDERS marks.

In view of the foregoing, Opposer's motion for partial summary judgment is **GRANTED** with respect to the asserted claim of non-use in commerce in connection with sweaters, headbands, shorts, team uniforms, jackets, coats, and pants. The opposition is sustained as to these goods and such goods are deleted from the subject applications.

III. Deficient Pleadings

Although Opposer has not moved for summary judgment on all its claims, our review of the pleadings in connection with the motion for summary judgment reveals that Opposer has not adequately pleaded certain grounds.

In particular, to the extent Opposer intended to assert a claim(s) of abandonment, the pleading is deficient.⁴¹ To adequately plead such a claim, Applicant must recite facts which, if proven, would establish at least three consecutive years of nonuse, or alternatively, a period of nonuse less than three years coupled with proof of intent

⁴¹ 12 TTABVUE 36, ¶16.

not to resume use. *Imperial Tobacco Ltd. v. Philip Morris Inc.*, 899 F.2d 1575 (Fed. Cir. 1990).

In addition, to the extent Opposer intended to assert a claim(s) of false suggestion of a connection under Trademark Act Section 2(a), 15 U.S.C. § 1052(a), the pleading is deficient because Opposer fails to allege one of the four elements necessary for such claim. In particular, Opposer does not allege that its name or identity is of sufficient fame or reputation that when Applicant's mark(s) is used in connection with its goods, a connection with the Opposer's person or identity would be presumed.

To properly plead a Section 2(a) claim of false suggestion of a connection, a plaintiff must allege the following:

- 1) Defendant's mark is the same or a close approximation of the name or identity of a person or institution;
- 2) defendant'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 or activities performed by the defendant under the mark; and,
- 4) the name or identity of the person or institution identified is of sufficient fame or reputation that when the defendant's mark is used in connection with its goods or services, a connection with the person or institution identified would be presumed.

In re Nieves & Nieves, LLC, 2015 TTAB LEXIS 11, at *6-7 (TTAB 2015) (citing, *inter alia*, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372 (Fed. Cir. 1983). Accordingly, Opposer is allowed until **THIRTY DAYS** from the mailing date of this order to file an amended pleading in which these grounds are adequately pled, failing which these claims will not be further considered. Applicant is allowed **THIRTY DAYS** from the date of service of such amended pleading, if one

is filed, to respond to such amended pleading, or, if an amended pleading is not filed, the original answer remains the operative pleading.

IV. Resumption of Proceedings

Proceedings are resumed. Discovery remains closed. All other dates are reset as follows:

Plaintiff's Pretrial Disclosures Due	9/21/2024
Plaintiff's 30-day Trial Period Ends	11/5/2024
Defendant's Pretrial Disclosures Due	11/20/2024
Defendant's 30-day Trial Period Ends	1/4/2025
Plaintiff's Rebuttal Disclosures Due	1/19/2025
Plaintiff's 15-day Rebuttal Period Ends	2/18/2025
Plaintiff's Opening Brief Due	4/19/2025
Defendant's Brief Due	5/19/2025
Plaintiff's Reply Brief Due	6/3/2025
Request for Oral Hearing (optional) Due	6/13/2025

Important Trial and Briefing Instructions

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). **Such briefs should utilize citations to the TTABVue record created during trial, to facilitate**

the Board's review of the evidence at final hearing. *See* TBMP § 801.03. Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).