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

Proceeding	92047559
Party	Defendant Aimbridge Lending Group, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EAST WEST BANK,

Petitioner,

v.

THE AIMBRIDGE GROUP,

Registrant.

Cancellation No. 92047559

Registration No. 3,196,507

Mark: POWERBRIDGE

REGISTRANT’S OPPOSITION TO MOTION TO AMEND PLEADING

Petitioner East West Bank (“EWB”) should not be allowed to amend its pleading to introduce an allegation related to use of an image of a bridge. EWB seeks to add a single sentence to its pleading that asserts the use of a bridge logo “in connection with” the two alleged marks that form the basis of its petition to cancel. But the proposed amendment would serve no useful purpose because there is no accompanying allegation concerning the dates of such use. In addition, the bridge logo has not always been used together with the purported marks as alleged, and even where it has been used it has not formed part of either mark but rather has been used in a manner that is separate and distinct from either of the two alleged marks. Finally, there are so many third party uses of a bridge, either together or with a separate term, that it would be futile for EWB to contend that its use of the bridge is in any way relevant to Aimbridge Lending Group, LLC’s (“Aimbridge”) use of the mark POWERBRIDGE. As a result, the alleged use of an image of a bridge would serve no useful purpose and the proposed amendment should be denied.

A motion to amend should be denied where it is legally insufficient or would serve no useful purpose. TBMP 507.02 (stating that “the Board normally will deny” such motions to amend and citing numerous cases). Thus, for example, where a proposed amended pleading is legally insufficient, cannot prevail as a matter of law, or is futile for failure to plead necessary

facts the amendment should be denied. *Leatherwood Scopes International Inc. v. Leatherwood*, 63 USPQ2d 1699 (TTAB2002); *Trek Bicycle Corp. v. StyleTrek Ltd.*, 64 USPQ2d 1540 (TTAB 2001).

In this case, the proposed amendment should be denied because it is futile, legally insufficient, and serves no useful purpose. EWB proposes to add a single sentence to its pleading:

Petitioner has also consistently used the following bridge logo [*Logo Image*] in connection with its respective marks identified above to further identify and distinguish its services.

The “respective marks identified above” include EWB’s pending applications for YOUR FINANCIAL BRIDGE and BUSINESS BRIDGE. While the original petition alleges that EWB has been using the two marks above since 1997, the proposed amendment does not specifically state whether the alleged bridge logo has also been used since that time. More specifically, there is no allegation that the bridge logo has been used together with the two alleged EWB marks at any time prior to Aimbridge’s first use of the POWERBRIDGE mark in 2004. Without a clear allegation as to the date of use of the purported bridge mark together with the other marks, the proposed amendment is wholly irrelevant and serves no useful purpose.

The proposed amendment is also futile because it is not true. Indeed, the specimen submitted by EWB in an effort to show use in commerce for its application for YOUR FINANCIAL BRIDGE does include a depiction of a bridge but does *not* show the bridge logo in a manner that can be considered to be a part of the mark YOUR FINANCIAL BRIDGE as alleged. (Lowe Dec. Ex. 1.) To the contrary, the bridge image is unquestionably separated from the term YOUR FINANCIAL BRIDGE and accompanies the descriptive terminology “Think of us as a Bridge. From where you are. To where you want to be.” Moreover, as far as Aimbridge is aware, every use of the bridge logo has been in a similar manner that has never accompanied YOUR FINANCIAL BRIDGE in any way that would be seen as a part of the same mark.

In addition, EWB has not produced any documents in discovery in this or a related opposition proceeding involving the same two asserted EWB marks (Opposition No. 91173364)—and Aimbridge has not found any independently—showing that EWB has ever used the term YOUR FINANCIAL BRIDGE on any written materials that also include a bridge image prior to 2005. (Lowe Dec. Ex. 2.) As that date is well after Aimbridge’s first use of the mark POWERBRIDGE, it would be irrelevant if EWB had used the logo and the mark together after that date.

Likewise, the term BUSINESS BRIDGE has not been used “in connection with” the bridge image as alleged. Rather, to the extent it has been used at all, EWB has used the term “business bridge” and the bridge image separately from one another. Though the proposed amended complaint asserts that the bridge logo has been “consistently used” together with the BUSINESS BRIDGE mark, the bridge logo does not even appear on the specimen submitted by EWB in its application to register BUSINESS BRIDGE. (Lowe Dec. Ex. 3.) Where the bridge image has been used, it has accompanied other terms or descriptions such as “Your Bridge To Opportunities,” but has not been used in a manner that could be considered to form a part of the mark BUSINESS BRIDGE. *See also* Lowe Dec. Ex. 2.

Any allegations related to the use of the bridge logo alone are irrelevant. EWB has specifically conceded that the proposed amendment is *not* a new ground of cancellation. As a result, the proposed amendment does not seek cancellation of the registered POWERBRIDGE mark based on the purported use of the bridge logo alone, but rather only on the basis that the bridge logo has been used together with the terms BUSINESS BRIDGE and YOUR FINANCIAL BRIDGE. Thus, based on the nature of the case advanced by EWB, it is irrelevant to this dispute if EWB has used the bridge logo alone or with terms other than BUSINESS BRIDGE or YOUR FINANCIAL BRIDGE.

Finally, third party usages of the term BRIDGE in the financial industry are extensive. (Lowe Dec. Exs. 4 & 5.) Indeed, there are so many federal trademark registrations and third

party uses of the term BRIDGE together with a prefix or other modifier that consumers are able to readily distinguish one such bridge mark from another. It is therefore wholly irrelevant whether EWB happens to use an image of a bridge together with its alleged marks BUSINESS BRIDGE and YOUR FINANCIAL BRIDGE. EWB holds no rights whatsoever in the term BRIDGE standing alone and admits that it does not seek to advance such a new allegation in its amended pleading. As a result, the amended pleading would serve no useful purpose and should be denied.

EWB does not allege specific dates of use of the bridge logo, and has not used the bridge logo together as a part of the purported marks as alleged. There are also so many third party uses of a bridge, either together or with a separate term, that it would be futile for EWB to contend that its use of the bridge is in any way relevant to Aimbridge's use of the mark POWERBRIDGE. As a result, the alleged use of an image of a bridge would serve no useful purpose and the proposed amendment should be denied.

DATED this 6th day of November, 2007.

s/ David A. Lowe, PTO Reg. No. 39,281
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Attorneys for Aimbridge Lending Group, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of October, 2007, a true copy of the foregoing OPPOSITION TO MOTION TO AMEND was served via First Class U.S Mail as follows:

Kirk Hermann
CHAN LAW GROUP^{LLP}
1055 W. 7th Street, Suite 1880
Los Angeles, CA 90079

EXECUTED on November 6, 2007.

s/ Ryan Speer