

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 14, 2008

Opposition No. 91181141
Cancellation No. 92048120

MySpace, Inc.

v.

Donnell, Mitchell

Linda Skoro, Interlocutory Attorney

Consolidation

It has come to the attention of the Board that it is appropriate to consolidate the above-identified proceedings.

The Board has reviewed the records in the cases, and concludes that they involve the same parties and common questions of law and fact. It would therefore be appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a). Accordingly, the above-noted proceedings are hereby consolidated and may be presented on the same record and briefs.

The Board file will be maintained in Opposition No. 91181141 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding. Only a single copy of each paper should be filed by the

parties and each paper should bear the case caption as set forth above.

The Board notes that the answers have been filed.

The trial dates are those reset to reflect the dates in the last filed proceeding. They are reproduced at the end of this order for ease of reference.

Applicant/Respondent's Filings

In the cancellation proceeding, applicant's counsel filed a withdrawal of representation on March 4, 2008. Although applicant objected to the withdrawal, he seemed to indicate that he would be representing himself. Accordingly, in that the withdrawal of counsel is in compliance with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 10.40, it is accordingly granted. Mr. John D. Gugliotta no longer represents applicant in this proceeding.

Subsequently, applicant has been submitting various filings of which he is not serving on opposing counsel and has inappropriately identified as confidential.

All trademark records are public records. The only circumstances which provide for confidential filings are those filed under seal pursuant to a protective order, generally where trade secrets are involved. See 37 CFR § 2.27(e). In this case applicant has requested a motion to

suspend due to illness, to be filed as confidential. As this is not an appropriate basis for keeping the filing confidential, it is being placed in the public record.

Additionally, as indicated above, many of these filings by applicant have not been served on opposing counsel. While there is a certificate of service on one filing, it does not have opposing counsel's full name and address and the certificate is not in compliance with 37 CFR § 2.119(a). In that these filings have not been served on opposing counsel, and were filed as confidential documents, opposer has not had an opportunity to respond to the motions to suspend. To expedite matters, a copy of these filings are included with opposer's copy of this order, further in that these filings have now been made part of the public record, opposer should be able to view them on TTABVUE. Thus, the motions are being held in abeyance until opposer has an opportunity to respond and dates continue to run. Opposer has thirty days from the date of this order to file its response, if any, to applicant's motions to suspend.

Pro se information

Applicant is reminded that he will be expected to comply with all applicable rules and Board practices during the remainder of this case. The Trademark Rules of Practice, other federal regulations governing practice

before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this proceeding. Applicant should note that Patent and Trademark Rule 10.14 permits any person or legal entity to represent itself in a Board proceeding, though it is generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

If applicant does not retain counsel, then applicant will have to familiarize himself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure, are likely to be found at most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure will be helpful. On the World Wide Web, applicant may access most of these materials by logging onto <http://www.uspto.gov/> and making the connection to trademark materials.

Applicant must pay particular attention to Trademark Rule 2.119. That rule requires a party filing any paper with the Board during the course of a proceeding to serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. The party filing the paper must include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to

the following matters: (1) the nature of the paper being served; (2) the method of service (e.g., first class mail); (3) the person being served and the address used to effect service; and (4) the date of service.

Also, applicant should note that any paper it is required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 or 2.198 is utilized. These rules are in part two of Title 37 of the previously discussed Code of Federal Regulations.

Files of TTAB proceedings can be examined using TTABVue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

The first revision of the second edition (March 2004) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) is posted on the USPTO web site at www.uspto.gov/web/offices/dcom/ttab/tbmp/ <<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/>>.

Trial Schedule

As indicated above, now that these proceedings have been consolidated, the trial schedule from the opposition proceeding is the schedule which is in place. It is reproduced below for ease of reference.

Time to Answer	February 15, 2008
Deadline for Discovery Conference	March 16, 2008
Discovery Opens	March 16, 2008
Initial Disclosures Due	April 15, 2008
Expert Disclosures Due	August 13, 2008
Discovery Closes	September 12, 2008
Plaintiff's Pretrial Disclosures	October 27, 2008
Plaintiff's 30-day Trial Period Ends	December 11, 2008
Defendant's Pretrial Disclosures	December 26, 2008
Defendant's 30-day Trial Period Ends	February 9, 2009
Plaintiff's Rebuttal Disclosures	February 24, 2009
Plaintiff's 15-day Rebuttal Period Ends	March 26, 2009

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

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