

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

Mailed: June 17, 2009

Cancellation No. 92050895

Noble Communications Company

v.

AFC Network Private Limited

George C. Pologeorgis, Interlocutory Attorney:

Respondent's motion (filed June 12, 2009) to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) is noted. A review of respondent's motion, however, demonstrates that the motion is not based on the ground that petitioner has failed to properly plead its asserted claims of likelihood of confusion or dilution; rather, the motion argues the merits of those claims. As such, the Board construes respondent's motion as one for summary judgment.

A motion for summary judgment, however, may not be filed until the moving party has provided its initial disclosures to the opposing party, except if the motion is based upon claim or issue preclusion or that the Board lacks jurisdiction to entertain the case. See Trademark Rule 2.127(e)(1). Inasmuch as respondent's motion is not based upon claim or issue preclusion or that the Board lacks jurisdiction to entertain

petitioner's claims and because the record does not demonstrate that respondent provided its initial disclosures to petitioner prior to filing its June 12, 2009 motion, respondent's motion is **denied** without prejudice as premature and will be given no further consideration.

Proceedings remain ongoing. Respondent is allowed until **July 2, 2009** in which to file and serve its answer or otherwise respond to the petition to cancel. The trial schedule is reset as follows:

Time to Answer	7/2/2009
Deadline for Discovery Conference	8/1/2009
Discovery Opens	8/1/2009
Initial Disclosures Due	8/31/2009
Expert Disclosures Due	12/29/2009
Discovery Closes	1/28/2010
Plaintiff's Pretrial Disclosures	3/14/2010
Plaintiff's 30-day Trial Period Ends	4/28/2010
Defendant's Pretrial Disclosures	5/13/2010
Defendant's 30-day Trial Period Ends	6/27/2010
Plaintiff's Rebuttal Disclosures	7/12/2010
Plaintiff's 15-day Rebuttal Period Ends	8/11/2010