

ESTTA Tracking number: **ESTTA447341**

Filing date: **12/20/2011**

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

Proceeding	92052950
Party	Defendant King Par, LLC
Correspondence Address	MARSHALL G MACFARLANE 301 E LIBERTY , SUITE 680 ANN ARBOR, MI 48104 UNITED STATES macfarlane@youngbasile.com
Submission	Opposition/Response to Motion
Filer's Name	Marshall G. MacFarlane
Filer's e-mail	macfarlane@youngbasile.com, braman@youngbasile.com
Signature	/Marshall G. MacFarlane/
Date	12/20/2011
Attachments	20111220_Reply.pdf (53 pages)(4617515 bytes)

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

KING PAR, LLC,)	
)	CANCELLATION NO. 92052163
v)	
)	
JOHN S. FRANKLIN)	
)	
AND)	
)	
JOHN S. FRANKLIN,)	
)	CANCELLATION NO. 92052950
v)	
)	
KING PAR, LLC)	
)	

REPLY TO MOTION TO STRIKE PLAINTIFF/COUNTERCLAIM
DEFENDANT'S TRIAL BRIEF
UNDER SECTION 801.05

Now comes the above-named Plaintiff/Counterclaim Defendant, by and through its attorney, and in response to the Defendant/Counterclaim Plaintiff's Motion to Strike Plaintiff's Reply Trial Brief, states as follows:

As Plaintiff/Counterclaim Defendant explained in its reply to this Board's order to show cause, there was a misunderstanding on the part of the parties as to when the trial briefs would be filed in this cause.

King Par filed its Petition for Cancellation on or about March 4, 2010 (Exhibit A, Notice of Electronic Filing). On March 4, 2010, the TTAB mailed its formal notice of the petition for cancellation to undersigned counsel, as well as to Sports Source, Inc., the record owner of Registration No. 3,231,278 (Exhibit B, Petition for Cancellation Notice). On April 1, 2010, the TTAB sent its notice determining that the original notice had been returned by the Postal Service as undeliverable, and sending an additional notice indicating that a more recent address had been

located for the Registrant, and that a second mailing had been made. Consistent with the Trademark rules, the Board sent out its initial schedule for pleadings and trial testimony (Exhibit C, Revised Notice). Shortly thereafter, John Franklin, acting as president of the Respondent, Sports Source, Inc., filed a notice of compliance with Trademark Rule 2.193(a) and 2.119(b), and requested an additional thirty (30) days in which to answer the cancellation action (Exhibit D, Compliance with Trademark Rule 2.193(a) *et seq.*). Accordingly, on June 24, 2010, the TTAB reset all dates for pleadings, discovery and trial periods (Exhibit E, Notice Resetting Conferencing, Disclosure, Discovery and Trial Dates).

On July 23, 2010, Sports Source, Inc., filed its answer to the cancellation petition, including a counterclaim seeking cancellation of two King Par trademark registrations which had been asserted in King Par's original cancellation petition, but which had expired. King Par shortly thereafter withdrew its assertion of those marks as a basis for its claim of cancellation, while maintaining its rights to proceed based on its valid Registration No. 2,087,314 (Exhibit F, Answer to Counterclaims).

On August 23, 2010, the parties held a Rule 26 conference, wherein it was agreed, among other things, that the caption of the case would be changed to reflect the substitution of John Franklin, an individual, in place of the corporate defendant, Sports Source, Inc. The report of the Rule 26 conference was filed with the TTAB on or about September 21, 2010 (Exhibit G, Report of Rule 26 Conference). The delay in filing the report was due to the fact that Mr. Franklin was somewhat dilatory in returning the signed report to undersigned counsel (Exhibit H, correspondence to Franklin).

Shortly after these events, Mr. Franklin began a campaign to attempt to sell his trademark rights to King Par (Exhibit I, correspondence from Franklin to MacFarlane; Exhibit J, correspondence from Franklin to MacFarlane).

In October of 2010, the parties agreed to consolidate King Par's trademark cancellation proceeding with Franklin's cancellation proceedings, and the TTAB issued its order which, among other things, established a new discovery, trial and briefing schedule (Exhibit K, November 8, 2010 Order). On or about November 12, 2010, Franklin and undersigned counsel had a telephone conference to discuss upcoming depositions, as well as proposed changes to the scheduling order then in place. Based on that discussion, Mr. Franklin and undersigned counsel stipulated to minor changes to the scheduling order (Exhibit L, Stipulated Scheduling Order). On November 17, 2010, undersigned counsel submitted a motion for extension of answer or discovery or trial periods with consent. That motion, however, did not contain the due dates for the Plaintiff's brief and Defendant's brief.

On November 17, 2010, the Board approved King Par's motion to extend. It is unclear from the records of undersigned counsel, as to why the dates on the notice of electronic filing of the motion (Exhibit O) differ from the dates on the stipulated order (Exhibit L). What *is* known is that undersigned counsel understood the TTAB order (Exhibit M) to be an affirmation of those dates contained in the stipulation executed by the parties on November 12, 2010 (Exhibit L). These stipulated dates were memorialized in a copy of the stipulation mailed to Attorney Geffner, who appeared for and on behalf of the Defendant at the deposition of John Franklin, held on November 15, 2010 (Exhibit N, letter from MacFarlane to Geffner).

King Par completed the trial depositions of John Franklin, Mark Schlosser and Ryan Coffell by December 7, 2010. Defendant has taken no testimony in the cause, and the rebuttal testimony period is now closed.

Based on the November 12, 2010 stipulation of the parties, undersigned counsel's office has consistently docketed October 20, 2011, as the due date for Plaintiff's opening brief. At all times, undersigned counsel has been candid with the Board and opposing counsel, and it is believed that opposing counsel also understood the briefing schedule entered into by the parties on November 12, 2010, would apply in this cause.

Defendant now apparently takes the position that the Defendant did not stipulate to the "revised scheduling order" (Exhibit E to Franklin's opposition), even though:

"Upon investigation, Mr. Geffner did receive an e-mail from Plaintiff's counsel with several attachments on the date of November 17, 2010, which included the stipulated to extension and reset of trial dates as prepared by Plaintiff's attorney. This e-mail is further evidence that the thirty (30) day extension of time and reset of trial dates that was stipulated to by the parties and filed with the Board on 11/17/2010 by Plaintiff's attorney is the true and correct trial date schedule." (Opposition Brief, pg. 3)

As confirmed by the declaration of Linda L. Braman (Exhibit P), the electronic records at the offices of Plaintiff's counsel confirm that the stipulated scheduling order (Exhibit L) was created on November 9, 2010 at 1:24 P.M. Further, the correspondence to Attorney Geffner (Exhibit N) was created on November 17, 2010. This evidence clearly confirms Plaintiff's assertion, i.e., that the letter to Mr. Geffner together with the stipulated protective order was sent to Mr. Geffner on or about November 17, 2010. At no time following transmission of these documents did Mr. Geffner, Mr. Franklin, or Mr. Franklin's new attorney ever present any objections.

Obviously, a copy of the stipulated order was in the Defendant's files, based on

Franklin's attorney's admissions contained within its brief that Mr. Geffner did receive an e-mail from Plaintiff's counsel on November 17, 2010, which included the stipulated to extension and reset of trial dates.

KING PAR FILED ITS BRIEF WITHIN THE STIPULATED TIME PERIOD, AND WITHOUT THE NEED FOR THE PREVIOUSLY REQUESTED EXTENSION.

As explained in the Plaintiff's motion to extend time for filing Plaintiff's brief, Plaintiff's counsel was not oblivious to the approaching due date for the filing of its principal brief. On October 11, 2011, King Par's counsel undertook to begin preparation of its brief for submission prior to the October 20, 2011 due date. It was then discovered that the entire files for Cancellation No. 92052950 and 92052163 were lost, notwithstanding an extremely thorough search of counsel's offices. Likewise, counsel's office records, which track files sent to offsite storage, indicated that the file had never been transferred to outside storage.

Notwithstanding this finding, Plaintiff's counsel instructed his staff to contact the storage facility, and to examine all files closed in the last two years to determine if the files had, in fact, been placed in storage but not correctly indexed.

Within twenty-four hours, the missing files were located, and it was determined that they had in fact been placed in outside storage but indexed under a separate and incorrect file number. The files were immediately returned to counsel's office, and by the application of substantial effort over a period of three (3) days, counsel was able to prepare and file its main brief in advance of the October 20, 2011 due date (MacFarlane Declaration, Exhibit Q).

Prior to locating the files, however, in an abundance of caution, undersigned counsel filed a motion to extend the time for filing of the main brief, which motion was filed prior to the time that the missing files were located.

APPLICABLE LAW

Initially, Plaintiff would request that the Board reconsider its view that the Plaintiff's principal brief was not timely filed, based on the stipulation of the parties establishing the due date for the brief of October 20, 2011. However, with the understanding that the Board, by virtue of its issuance of its order to show cause, takes a contrary view, Plaintiff would respectfully request that the brief be accepted as filed, albeit nineteen (19) days late.

The applicable rule is found at 35 U.S.C. 2.128(a)(3):

“When a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than fifteen (15) days, in which to show cause why the Board should not treat such failure as a concession of the case. If the plaintiff fails to file a response to the order, or files a response indicating that he has lost interest in the case, judgment may be entered against the plaintiff.”

It is the policy of the Board not to enter judgment against a plaintiff for failure to file a main brief on the case, where the plaintiff, in its response to the show cause order, indicates that it has not lost interest in the case. The Board entered its order requiring the Petitioner to show cause why the Board should not treat failure to file its main brief as a concession of the case. *Trademark Trial and Appeal Board Manual of Procedure, Section 801.02(a)*. If a show cause order is issued pursuant to 37 C.F.R. Section 2.128(a)(3), and the plaintiff files a response indicating that it has not lost interest in the case, the show cause order will be considered discharged and judgment will not be entered against the plaintiff for failure to file a main brief. *TBMP* Section 537.

To the extent that the Defendant complains that extension of the filing date for Plaintiff's main brief will prejudice the Defendant by limiting the amount of time available for a response,

Plaintiff has no objection to the Board resetting times for filing the remaining briefs as expressly permitted by Section 537.

The Defendant/Counterclaim Plaintiff's recent motion to file Plaintiff's reply trial brief addresses the same issue, and Plaintiff/Counterclaim Defendant advances the same facts and argument in support of the timeliness of its reply trial brief. Counsel for Plaintiff/Counterclaim Defendant established its briefing docket based on a misunderstanding of the due date for the Plaintiff/Counterclaim Defendant's principal trial brief, and the due date for the Defendant/Counterclaim Plaintiff's reply brief was, accordingly, November 20, 2011. According to the Plaintiff/Counterclaim Defendant's interpretation of trademark rule 801.02(c), Plaintiff/Counterclaim Defendant's reply brief was then due on December 5, 2011. Adding the time permitted for transmission by mailing pursuant to Section 113.05 of the Trademark Trial and Appeal Board rules, Plaintiff/Counterclaim Defendant's reply brief would be due on or before December 10, 2011.

Based on all the foregoing, Plaintiff/Counterclaim Defendant respectfully submits that the Defendant/Counterclaim Plaintiff's Motion to Strike Plaintiff's Reply Trial Brief as untimely is without merit, and should be denied.

Respectfully submitted,

/Marshall G. MacFarlane/
Marshall G. MacFarlane
Reg. No. 30,403
YOUNG BASILE HANLON &
MACFARLANE P.C.
301 E. Liberty, Suite 680
Ann Arbor, MI 48104
(734) 662-0270
macfarlane@youngbasile.com

Attorneys for Plaintiff King Par, LLC

December 20, 2011

CERTIFICATE OF MAILING

I hereby certify that this **correspondence: REPLY TO MOTION TO STRIKE PLAINTIFF/COUNTER DEFENDANT'S TRIAL BRIEF UNDER SECTION 801.05**, is being filed with the TTAB electronically, on December 20, 2011.

/Marshall G. MacFarlane/
Marshall G. MacFarlane

CERTIFICATE OF SERVICE

I hereby certify that this correspondence: **REPLY TO MOTION TO STRIKE PLAINTIFF/COUNTER DEFENDANT'S TRIAL BRIEF UNDER SECTION 801.05**, is being deposited with the United States Postal Service, 1st Class Mail, postage prepaid, in an envelope addressed to Douglas M. Kautzky, 3868 Carson Street, Suite 105, Torrance, California 90503, on December 20, 2011.

/Marshall G. MacFarlane
Marshall G. MacFarlane

Linda Braman

From: Marshall MacFarlane
Sent: Thursday, March 04, 2010 9:42 AM
To: Linda Braman
Subject: FW: ESTTA. Petition for Cancellation. confirmation receipt ID: ESTTA335446

-----Original Message-----

From: estta-server@uspto.gov [mailto:estta-server@uspto.gov]

Sent: Thursday, March 04, 2010 9:21 AM

To: Marshall MacFarlane

Subject: ESTTA. Petition for Cancellation. confirmation receipt ID: ESTTA335446

Petition for Cancellation.

Tracking No: ESTTA335446

ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Petition for Cancellation, submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.

The status of any Board proceeding may be checked using TTABVUE which is available at <http://ttabvue.uspto.gov> Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your filing in due course.

~~Printable version of your request is attached to this e-mail~~

ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA335446
Filing date: 03/04/2010

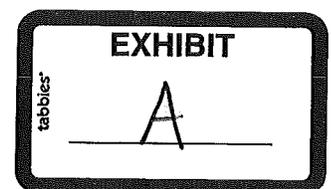
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name: King Par, LLC



RECEIVED

MAR - 9 2010

YOUNG & BASILE, P.C.

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

Mailed: March 4, 2010

Cancellation No. 92052163

Registration No. 3231278

Sports Source, Inc.
20700 Denker Ave., Building B
Torrance, CA 90502
UNITED STATES

King Par, LLC

v.

Sports Source, Inc.

Marshall MacFarlane
Young Basile
301 East Liberty
Ann Arbor, MI 48104
UNITED STATES

Nicole M. Thier, Paralegal Specialist

A petition to cancel the above-identified registration has been filed. A service copy of the petition for cancellation was forwarded to registrant (defendant) by the petitioner (plaintiff). An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system:
<http://ttabvue.uspto.gov/ttabvue/>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise,

EXHIBIT

B

tabbles

if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) ~~Other~~ deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies. See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Time to Answer	4/13/2010
Deadline for Discovery Conference	5/13/2010
Discovery Opens	5/13/2010
Initial Disclosures Due	6/12/2010
Expert Disclosures Due	10/10/2010
Discovery Closes	11/9/2010
Plaintiff's Pretrial Disclosures	12/24/2010
Plaintiff's 30-day Trial Period Ends	2/7/2011
Defendant's Pretrial Disclosures	2/22/2011
Defendant's 30-day Trial Period Ends	4/8/2011
Plaintiff's Rebuttal Disclosures	4/23/2011
Plaintiff's 15-day Rebuttal Period Ends	5/23/2011

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of

whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stdagmnt.htm>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to

participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

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

Mailed: April 1, 2010

Cancellation No. 92052163

King Par, LLC

v.

Sports Source, Inc.

Amy Matelski, Paralegal Specialist:

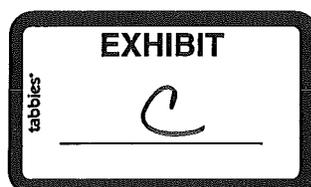
The notice instituting this proceeding and a copy of the petition to cancel were forwarded to registrant but were returned by the Postal Service as undeliverable.

This Office since ascertained a more recent address that service upon registrant could be effected and would be accepted when documents are mailed as follows:

Sports Source, Inc.
1860 W. Carson St, # 103
Torrance, CA 90501

Accordingly, the above notice, with enclosure, is remailed as indicated above.

Registrant is allowed until **FORTY DAYS** from the mailing date of this order in which to inform this Office of its correct address in order that all records may be amended.



DOCKETED

llb

Compliance with Trademark Rule 2.193(b) and Trademark 2.119(a) is required.

If there has been any transfer of interest in the involved registration, registrant must so advise the Board and registrant must submit copies of the appropriate

documents. See Section 10 of the Trademark Act and Patent and Trademark Rules 3.71 and 3.73.

In view of the circumstances, the time for filing an answer to the petition to cancel is extended to **FORTY DAYS** from the mailing date of this order. Notice is hereby given that unless the registrant listed herein, its assigns or legal representatives, shall enter an appearance, answer or other response to the petition within the time frame allowed, the cancellation may proceed as in the case of default.

In accordance with the Trademark Rules of Practice, conferencing, disclosure, discovery and testimony dates are set below. 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.

Time to Answer	5/11/10
Deadline for Discovery Conference	6/10/10
Discovery Opens	6/10/10
Initial Disclosures Due	7/10/10
Expert Disclosures Due	11/7/10
Discovery Closes	12/7/10
<hr/> Plaintiff's Pretrial Disclosures	<hr/> 1/21/11
Plaintiff's 30-day Trial Period Ends	3/7/11
Defendant's Pretrial Disclosures	3/22/11
Defendant's 30-day Trial Period Ends	5/6/11
Plaintiff's Rebuttal Disclosures	5/21/11
Plaintiff's 15-day Rebuttal Period Ends	6/20/11

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

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

RECEIVED

JUN 28 2010

YOUNG & BASILE, P.C.

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

Mailed: June 24, 2010

Cancellation No. 92052163

King Par, LLC

v.

Sports Source, Inc.

Amy Matelski, Paralegal Specialist:

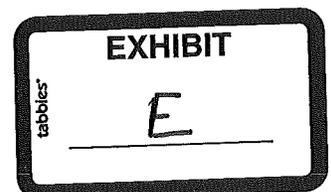
Registrant's motion filed May 17, 2010 to extend time to file its answer to the petition to cancel and to extend conferencing, disclosure, discovery and trial dates is granted as conceded. Trademark Rule 2.127(a).

Answer is due July 24, 2010. The conferencing, disclosure, discovery and trial dates are reset as follows:

Time to Answer	7/24/10
Deadline for Discovery Conference	8/23/10
Discovery Opens	8/23/10
Initial Disclosures Due	9/22/10
Expert Disclosures Due	1/20/11
Discovery Closes	2/19/11
Plaintiff's Pretrial Disclosures	4/5/11
Plaintiff's 30-day Trial Period Ends	5/20/11
Defendant's Pretrial Disclosures	6/4/11
Defendant's 30-day Trial Period Ends	7/19/11
Plaintiff's Rebuttal Disclosures	8/3/11
Plaintiff's 15-day Rebuttal Period Ends	9/2/11

DOCKETED

llb



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

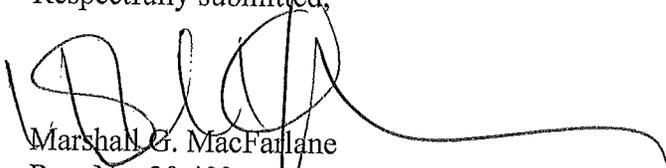
KING PAR, LLC,)
)
PETITIONER,)
) CANCELLATION NO. 92052163
v)
)
SPORTS SOURCE, INC.,)
)
RESPONDENT.)

ANSWER TO COUNTERCLAIMS

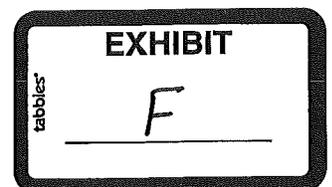
The Petitioner, by and through its attorneys, for its answer to the counterclaims filed in this cause, states as follows:

1. Petitioner admits that U.S. Trademark Registration No 1556973 for Diamond and Design was cancelled on April 21, 2010.
2. Petitioner admits that U.S. Trademark Registration No. 1558172 for Tour Diamond Solitaire was cancelled on May 1, 2010.
3. Petitioner withdraws its assertion of U.S. Trademark Registration No. 1556973 and U.S. Trademark Registration No. 1558172 as a basis for its claim of cancellation, without prejudice to assertion of Petitioner's rights at common law, and Petitioner's rights to pursue claims under 15 U.S.C. § 1125,

Respectfully submitted,

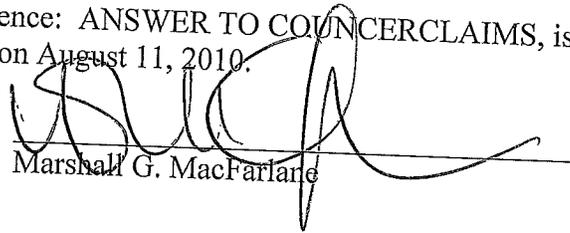

Marshall G. MacFarlane
Reg. No. 30,403
301 E. Liberty, Suite 680
Ann Arbor, MI 48104
(734) 662-0270
(734) 662-1014 (Facsimile)
macfarlane@youngbasile.com

DATED: 8-11-2010



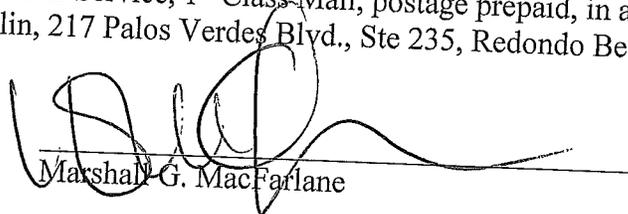
CERTIFICATE OF MAILING

I hereby certify that this correspondence: ANSWER TO COUNCERCLAIMS, is being filed with the TTAB electronically, on August 11, 2010.


Marshall G. MacFarlane

CERTIFICATE OF SERVICE

I hereby certify that this correspondence: ANSWER TO COUNTERCLAIMS, is being deposited with the United States Postal Service, 1st Class Mail, postage prepaid, in an envelope addressed to John Franklin, 217 Palos Verdes Blvd., Ste 235, Redondo Beach, CA 90277, on August 11, 2010.


Marshall G. MacFarlane

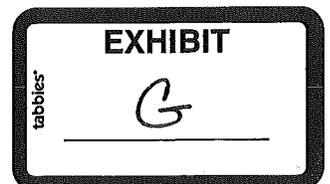
THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KING PAR, LLC,)	
)	
PETITIONER,)	
)	CANCELLATION NO. 92052163
v)	
)	
SPORTS SOURCE, INC.,)	
)	
RESPONDENT.)	

REPORT OF RULE 26 CONFERENCE

On August 23, 2010, consistent with the Scheduling Order established by the Board, the parties conducted a discovery conference in compliance with the rules of the Trademark Trial and Appeal Board and the Federal Rules of Civil Procedure. The following summarizes the content of that conference:

1. Settlement: The parties have discussed the possibility of settlement in regard to this dispute, and have committed to explore reasonable resolutions of the matter short of further proceedings before the Board.
2. Changes to Discovery Timing: The parties have agreed to abide by the Board's order that the parties' initial disclosures shall be due by September 22, 2010.
3. Subjects of Discovery: The parties have agreed that discovery shall include, but not be limited to, issues of likelihood of confusion and priority of use.
4. Electronic Records Production: The parties have agreed that documents maintained electronically may be produced by the providing of appropriately identified and certified electronic files, either by e-mail transmission or through the exchange of physical media, such as CD ROM.

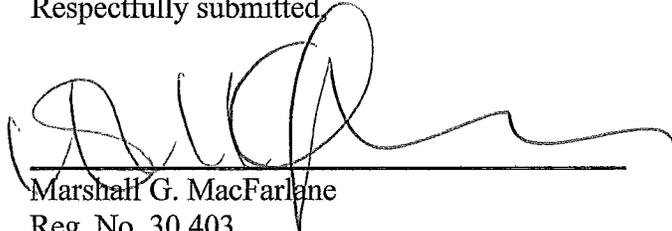


5. Protective Order: The parties do not contemplate the need for entry of a protective order at the present time, but either party may petition the Board for entry of a protective order should the need arise.

6. Limits on Discovery: The parties adopt the limits on discovery established under the Federal Rules of Civil Procedure.

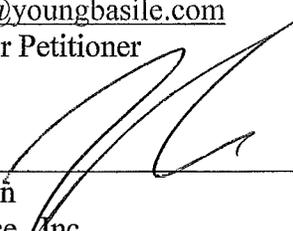
7. Other Matters: The parties have agreed to amendment of the caption of the petition to reflect the change of name of the Respondent, and a stipulated order for amendment of the petition for cancellation to reflect the name change has been filed with the Board.

Respectfully submitted,



Marshall G. MacFarlane
Reg. No. 30,403
301 E. Liberty, Suite 680
Ann Arbor, MI 48104
(734) 662-0270
(734) 662-1014 (Facsimile)
macfarlane@youngbasile.com
Attorneys for Petitioner

DATED: 9-21-2010

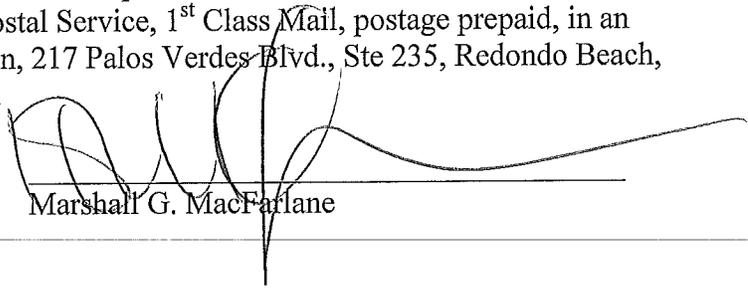


John Franklin
Sports Source, Inc.
217 Palos Verdes Blvd., Ste 235
Redondo Beach, CA 90277
Respondent

DATED: SEPT. 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that this correspondence: Report of Rule 26 Conference, is being deposited with the United States Postal Service, 1st Class Mail, postage prepaid, in an envelope addressed to John Franklin, 217 Palos Verdes Blvd., Ste 235, Redondo Beach, CA 90277, on September 21, 2010.



Handwritten signature of Marshall G. MacFarlane in black ink, written over a horizontal line.

Marshall G. MacFarlane

ck

YOUNG BASILE

MARSHALL G. MACFARLANE
macfarlane@youngbasile.com

YOUNG BASILE HANLON &
MACFARLANE P.C.
INTELLECTUAL PROPERTY LAW

301 EAST LIBERTY STREET
SUITE 680
ANN ARBOR, MICHIGAN 48104

T: (734) 662-0270
F: (734) 662-1014

BY E-MAIL ONLY

September 13, 2010

John Franklin
2562 Via Tejon
Palos Verdes Estates, CA 90274

RE: Our File KPC-469
Trademark Cancellation No. 92052163

Dear Mr. Franklin:

It has been more than two weeks since I sent to you our proposed report of the parties' discovery conference in this matter. I requested that you sign a copy and return it to me by e-mail. Do you intend to do so?

Yours very truly,

s/Marshall G. MacFarlane

Marshall G. MacFarlane

MGM:llb



John Franklin
217 Palos Verdes Blvd, No. 235
Redondo Beach, CA 90277
Ph: 310-697-8520, Cell: 310-872-4105, Fx: 310-791-2700
John@salesquest1.com



September 17, 2010

Marshall MacFarlane
Young, Basile, Hanlon & MacFarlane P.C.
301 E. Liberty, Suite 680
Ann Arbor, MI 48104

Dear Mr. MacFarlane,

Per our conversation yesterday, I am willing to sell the "Diamond Golf" trademark to your client if an acceptable price and terms can be agreed to. I also own the mark in multiple countries outside of the U.S. including key markets such as Canada, Japan and China.

I would be willing to sell the "Diamond Golf" trademark for \$50,000. I would sell the trademark in the countries outside the U.S. for which I own them for an additional \$20,000. In both cases the transfer fees would be paid by your client, the purchaser.

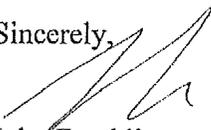
This offer to sell shall remain in effect until September 27, at 5pm (PST).

If we reach an agreement prior to the above date then upon execution of a formal agreement all parties would immediately terminate their respective cancellation actions.

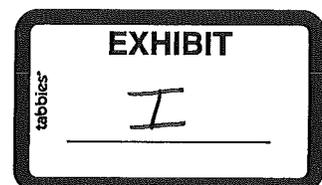
This letter has been sent electronically as well as via US mail.

I look forward to your response.

Sincerely,



John Franklin



John Franklin
2562 Via Tejon
Palos Verdes Estates, CA 90274
Ph: 310-697-8520, Fx: 310-791-2700
Mobile: 310-872-4105
John@salesquest1.com



BY EMAIL ONLY

October 4, 2010

Marshall MacFarlane
Young, Basile, Hanlon & MacFarlane P.C.
301 E. Liberty, Suite 680
Ann Arbor, MI 48104

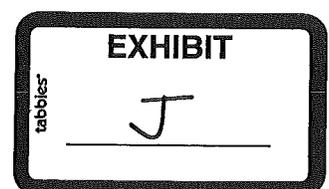
Re: Young Basile File KPC-469
Trademark Cancellation No. 92052163

Dear Mr. MacFarlane,

I am in receipt of your letter dated September 27, 2010 declining my offer to sell my rights in the "Diamond Golf" trademark. I am willing to sell my rights to the mark in the United States for \$30,000. This may or may not qualify as "nominal value" in your opinion. However, upon assigning my rights, your client's application would be released from suspension and further proceedings and discovery would not be necessary.

Respectfully,

John Franklin



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

am

Mailed: November 8, 2010

Cancellation No. 92052163

King Par, LLC

v.

John S. Franklin

Cancellation No. 92052950

John S. Franklin

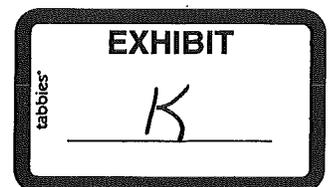
v.

King Par, LLC

Elizabeth A. Dunn, Attorney (571-272-4267):

The parties' stipulation (filed October 25, 2010) to consolidate proceedings is hereby granted. See Fed. R. Civ. P. 42(a); and Trademark Trial and Appeal Board Manual of Procedure (TBMP) §511 (2d ed. rev. 2004).

In Cancellation No. 92052163, King Par, LLC pleads its Registration No. 2087314 (DIAMOND for golf clubs) and seeks cancellation of John S. Franklin's Registration No. 3231278 (DIAMOND GOLF for clothing and sporting goods, including golf clubs) on the ground of priority and likelihood of



Cancellation Nos. 92052163 and 92052950

confusion.¹ In Cancellation No 92052950, John S. Franklin seeks cancellation of King Par, LLC's Registration No. 2087314 on the ground of abandonment. Answers have been filed in both proceedings. Because the two proceedings have common issues of law and fact, the stipulation to consolidate Cancellation Nos. 92052163 and 92052950 is approved, and Cancellation Nos. 92052163 and 92052950 are hereby consolidated and may be presented on the same record and briefs.

Cancellation No. 92052163 is the "parent" case. Papers should bear the number of each of the consolidated cases in ascending order as shown at the beginning of this order and the parties should file a single copy of each paper only in the parent case. Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. See Wright & Miller, Federal Practice and Procedure: Civil §2382 (1971).

The stipulation that the March 4, 2010 scheduling order entered in Cancellation No. 92052163 will be in effect for the consolidated proceeding presents two problems. First, because the parties are in reverse position in the two

¹ The petition to cancel also pleaded King Par, LLC's Registration Nos. 1558172 and 1556973, but those registrations have since expired under Trademark Act Sec. 9 and petitioner's amended petition withdrawing reference to those registrations was accepted.

Cancellation Nos. 92052163 and 92052950

proceedings, the usual schedule is inappropriate, and the parties must use a counterclaim schedule which reflects that King Par, LLC is plaintiff as to the priority and likelihood of confusion claim (treated in the schedule as plaintiff), and Mr. Franklin is plaintiff as to the abandonment claim (treated in schedule as counterclaim plaintiff).

Second, according to the March 4, 2010 order in Cancellation No. 92052163 which would be effective for this consolidated proceeding, discovery is scheduled to close November 9, 2010, and in Cancellation No. 92052950, that same date is the deadline for the parties' discovery conference. If the parties have been treating these cases as consolidated and addressed both proceedings in the discovery conference and initial disclosures served in Cancellation No. 92052163, this should have been part of the stipulation. Similarly, if the parties agreed to waive the discovery conference or initial disclosures in Cancellation No. 92052950, this should have been part of the stipulation. Trademark Rule 2.120(a)(2) ("Disclosure deadlines and obligations may be modified upon written stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board."). While the Board generally accommodates stipulations filed by the parties, in this case the stipulation imposes the wrong type of schedule and has the potential effect of waiving the required initial

Cancellation Nos. 92052163 and 92052950

disclosures and the opportunity to seek discovery in the cancellation filed by Mr. Franklin.²

Accordingly, proceedings herein are suspended, and the parties are allowed until TEN DAYS to file a stipulation with the Board indicating how the parties have addressed disclosure and discovery issues in Cancellation No. 92052950 (e.g. disclosure and discovery has been completed or waived), and if they wish to adopt the schedule set forth below which incorporates the November 9, 2010 close of discovery, but otherwise employs the counterclaim form which is necessary for this consolidated proceeding.

The parties are free to adopt an alternate schedule for this consolidated proceeding, but it must employ the counterclaim form used below.

Discovery Closes	November 9, 2010
Plaintiff's Pretrial Disclosures	December 24, 2010
30-day testimony period for plaintiff's testimony to close	February 7, 2011
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	February 22, 2011

² The Board notes that Mr. Franklin is acting without counsel. While Patent and Trademark Rule 10.14 permits any person to represent himself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1212 (TTAB 2006).

Cancellation Nos. 92052163 and 92052950

30-day testimony period for defendant and plaintiff in the counterclaim to close	April 8, 2011
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	April 23, 2011
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	June 7, 2011
Counterclaim Plaintiff's Rebuttal Disclosures Due	June 22, 2011
15-day rebuttal period for plaintiff in the counterclaim to close	July 22, 2011
Brief for plaintiff due	September 20, 2011
Brief for defendant and plaintiff in the counterclaim due	October 20, 2011
Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due	November 19, 2011
Reply brief, if any, for plaintiff in the counterclaim due	December 4, 2011

Proceedings herein are suspended pending the parties' response to this order.

ⓅⓅⓅⓅⓅ

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

CANCELLATION NO. 92052163

KING PAR, LLC,

v.

JOHN S. FRANKLIN

CANCELLATION NO. 92052950

JOHN S. FRANKLIN

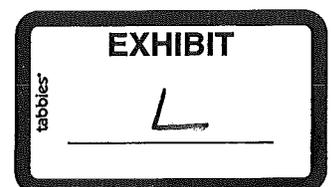
v

KING PAR, LLC

Consistent with the order of the Trademark Trial and Appeal Board mailed November 8, 2010, and stipulate to the entry of the following Scheduling Order.

STIPULATED SCHEDULING ORDER

Discovery Closes	December 19, 2010
Plaintiff's Pretrial Disclosures	January 24, 2011
30-day testimony period for plaintiff's testimony to close	March 9, 2011
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	March 24, 2011
30-day testimony period for defendant and plaintiff in the counterclaim to close	May 8, 2011
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	May 23, 2011



30-day testimony period for defendant in
the counterclaim and rebuttal testimony
for plaintiff to close

July 7, 2011

Counterclaim Plaintiff's Rebuttal
Disclosures Due

July 22, 2011

15-day rebuttal period for plaintiff
In the counterclaim to close

August 22, 2011

Brief for plaintiff due

October 20, 2011

Brief for defendant and plaintiff in
The counterclaim due

November 20, 2011

Brief for defendant in the counterclaim
and reply brief, if any, for plaintiff due

December 19, 2011

Reply brief, if any, for plaintiff in the
counterclaim due

January 4, 2012

s/Marshall G. MacFarlane

Marshall G. MacFarlane

Reg. No. 30,403

301 E. Liberty, Suite 680

Ann Arbor, MI 48104

(734) 662-0270

(734) 662-1014 (Facsimile)

macfarlane@youngbasile.com

DATED: November 12, 2010

s/John S. Franklin

John S. Franklin

2562 Via Tejon

Palos Verdes Estates, CA 90274

(310) 697-8520

(310) 791-2700 (Facsimile)

john.franklin@sportssourceinc.com

DATED: November 12, 2010

CERTIFICATE OF MAILING

I hereby certify that this correspondence: Stipulated Scheduling Order, is being filed with the TTAB electronically, on November 17, 2010.

s/Marshall G. MacFarlane
Marshall G. MacFarlane

CERTIFICATE OF SERVICE

I hereby certify that this correspondence: Stipulated Scheduling Order, is being deposited with the United States Postal Service, 1st Class Mail, postage prepaid, in an envelope addressed to Eric H. Geffner, 815 Moraga Drive, Los Angeles, CA 90049-1633, on November 17, 2010.

s/Marshall G. MacFarlane
Marshall G. MacFarlane

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

November 17, 2010

PROCEEDING NO. 92052163
King Par, LLC

v.

John S. Franklin

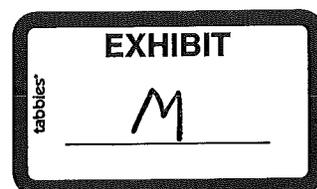
MOTION TO EXTEND GRANTED

By the Board:

King Par, LLC's consent motion to extend, filed Nov 17,
2010, is granted. Dates are reset as set out in the motion.

.oOo.

EXHIBIT "D"



YOUNG BASILE

MARSHALL G. MACFARLANE
macfarlane@youngbasile.com

YOUNG BASILE HANLON &
MACFARLANE P.C.
INTELLECTUAL PROPERTY LAW

301 EAST LIBERTY STREET
SUITE 680
ANN ARBOR, MICHIGAN 48104

T: (734) 662-0270
F: (734) 662-1014

BY E-MAIL ONLY

November 17, 2010

Eric H. Geffner
LEVY, SMALL & LALLAS
815 Moraga Drive
Los Angeles, CA 90049-1633

RE: Our File KPC-469
Trademark Cancellation Nos. 92052163 and 92052950

Dear Mr. Geffner:

Consistent with our discussions on Monday, I will direct all further pleadings and correspondence in this matter to you.

I am enclosing a copy of the Stipulated Scheduling Order to which Mr. Franklin and I agreed last week prior to your appearance.

I am also enclosing Requests for Admissions and a second set of Requests for Production of Documents and Things for your attention.

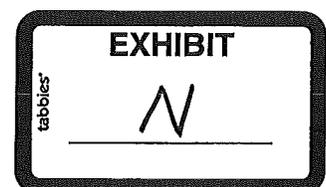
Yours very truly,

s/Marshall G. MacFarlane

Marshall G. MacFarlane

MGM:llb

Attachments





United States Patent and Trademark Office

Home | Site Index | Search | Guides | Contacts | eBusiness | eBiz alerts | News | Help



Electronic System for Trademark Trials and Appeals

Receipt

Your submission has been received by the USPTO.
 The content of your submission is listed below.
 You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA378986**

Filing date: **11/17/2010**

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

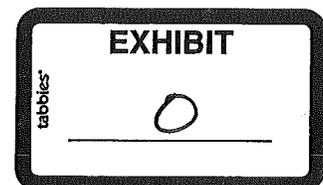
Proceeding.	92052163
Applicant	Plaintiff King Par, LLC
Other Party	Defendant John S. Franklin

Motion for an Extension of Answer or Discovery or Trial Periods With Consent

The Close of Discovery is currently set to close on 12/19/2010. King Par, LLC requests that such date be extended for 30 days, or until 01/18/2011, and that all subsequent dates be reset accordingly.

- Time to Answer :** CLOSED
- Deadline for Discovery Conference :** CLOSED
- Discovery Opens :** CLOSED
- Initial Disclosures Due :** CLOSED
- Expert Disclosure Due :** 12/19/2010
- Discovery Closes :** 01/18/2011
- Plaintiff's Pretrial Disclosures :** 03/04/2011
- Plaintiff's 30-day Trial Period Ends :** 04/18/2011
- Defendant's Pretrial Disclosures :** 05/03/2011
- Defendant's 30-day Trial Period Ends :** 06/17/2011
- Plaintiff's Rebuttal Disclosures :** 07/02/2011
- Plaintiff's 15-day Rebuttal Period Ends :** 08/01/2011

DOCKETED



The grounds for this request are as follows:

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

KING PAR, LLC,)
) CANCELLATION NO. 92052163
v)
)
JOHN S. FRANKLIN)
)
AND)
)
JOHN S. FRANKLIN,)
) CANCELLATION NO. 92052950
v)
)
KING PAR, LLC)
)

DECLARATION OF LINDA L. BRAMAN

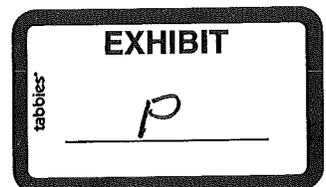
1. I am of full age, and knowledgeable about the facts and circumstances set forth in this Declaration.

2. I am the assistant to Attorney Marshall MacFarlane at the law firm of Young Basile Hanlon & MacFarlane P.C., in Ann Arbor, Michigan, and have occupied that position for a period in excess of twenty (20) years.

3. I am familiar with the practices and procedures used by our firm for filing of documents, client files, litigation files, pleadings and electronic files.

4. In particular, I am familiar with the procedure for maintaining files in “active” storage at our offices in Ann Arbor, as well as procedures for moving inactive files to off site storage.

5. Young Basile uses an alphanumeric filing system, wherein each file is provided with a three-letter code suggestive of the name of the client, followed by a three



(3) or four (4) numeral/alphanumeric code, which indicates the sequential character of each file, and provides some information regarding the type of file. For example, in the present case, the client code “KPC” is a rough abbreviation for the corporate name “King Par Corporation”. The file in this case is designated KPC-469, with numerals “469” designating that this particular file is the 469th client file open for King Par.

6. Our active client files are maintained in storage racks in our file room. Only active files are maintained in the file room, and after a matter is completed, or after a period of several years, the files are moved from our active file room to off site storage. Because of the size of the firm, there are several hundred active files in storage at our offices on any given day, and an additional several hundred files in inactive storage off site. After several years of offset storage, we contact the clients and advise them of the planned destruction of old files, and give them an opportunity to recover any materials therein contained prior to file destruction.

7. Before moving files from active storage to inactive storage, I prepare a report based on procedures which have been established at our offices to track the location of both and inactive files.

8. When multiple files have been accumulated for removal from the active file room and transferred to inactive off site storage, the files are bundled together and placed in banker boxes where they are identified by bar codes for later retrieval, if necessary.

9. On October 4, 2011, our file number KPC-470 was removed from active storage and transmitted to offset storage. Inadvertently, at the same time, the present cancellation files, KPC-469, were also removed and sent to off site storage.

10. On or about October 10, 2011, Mr. MacFarlane instructed me to retrieve KPC-469 from active storage and return it to his office for preparation of a brief on the cancellation matter. I was unable to locate the file, since it had been sent to off site storage. I conducted a thorough in-person search of all of our active files, and was not able to locate the file and I was at a loss to determine where it was.

11. Mr. MacFarlane then instructed me that I should retrieve all files which had been sent to outside storage within the last year. He also instructed me to contact the court reporters who were involved in the depositions to obtain duplicate copies of the deposition/trial testimony transcripts, and we began work attempting to reconstruct the documentary exhibits which would have been gathered during the discovery phase of the cancellation.

12. When we received the closed files from outside storage approximately two days later, we discovered the filing error, and were successful in locating all of our files associated with file number KPC-469. I advised Mr. MacFarlane of that fact, who was, at the time, traveling out of the office between October 12 and October 16. When Mr. MacFarlane returned to the office, we began work on preparing King Par's principal brief, and worked full days on October 17 and 18 to prepare the brief.

13. I am also familiar with the docketing and calendar scheduling procedures used at our offices in regard to contested matters, such as litigation and cancellations. In addition to docketing due dates through our main offices in Troy, Michigan, all relevant deadlines, appearance dates and due dates are maintained on a calendar board adjacent to my desk. When courts assign dates on which briefs will be due, discovery will close, hearings will be held, etc., I prepare a magnetic label which contains an abbreviated

description of the deadline or event. All active advisory proceedings, including cancellations, are thus available for a quick inspection by the attorneys in the office.

14. Sometime in November or December of 2010, I received a stipulation from Mr. MacFarlane which contained a variety of cutoff dates and deadlines for our file KPC-469, the present cancellation between King Par and John Franklin. I prepared labels for each of those events, including a label for October 20, 2011, as the due date for the Plaintiff's principal brief to be filed in this cause. Since that time, that briefing due date has been posted and consulted periodically by both myself and Mr. MacFarlane.

15. Since the labels above described were prepared, I have periodically reminded Mr. MacFarlane of upcoming dates on his calendar in all litigation matters, including KPC-469.

16. Our files reflect that, on November 17, 2010, a copy of the stipulated schedule establishing the October 20, 2011 due date for Plaintiff's main brief was transmitted to Attorney Geffner, then acting as counsel for Mr. Franklin.

17. I have examined the "Properties" window associated with our file "stipulated scheduling order.doc." a Microsoft Word document represented by Exhibit L in the Plaintiff's reply brief, with which this Declaration is submitted. The "Properties" window confirms the fact that I first prepared the stipulated scheduling order, pursuant to Mr. MacFarlane's instructions, on November 9, 2010. I have also examined the "Properties" window associated with our word processing file 20101117_ltrgeffner.doc. That window indicates that I prepared the letter to Mr. Geffner on Wednesday, November 17, 2010, at 9:58 A.M. A "hard copy" of the letter to Mr. Geffner, as well as a hard copy of the stipulated scheduling order are both found in our File No. KPC-469. I normally

would not include a copy of correspondence in the file unless it was a copy of a document which had actually been sent to the recipient. Based on the foregoing, it is my belief that the November 17, 2010 e-mail sent to Mr. Geffner, together with the stipulated scheduling order, was transmitted on November 17, 2010. Copies of the "screen shots" depicting the Properties windows so described are attached to my Declaration as Annex

A.



LINDA L. BRAMAN

DATED: October 31, 2011

CERTIFICATE OF MAILING

I hereby certify that this correspondence: Declaration of Linda L. Braman, is being filed with the TTAB electronically, on October 31, 2011.

/Marshall G. MacFarlane/

Marshall G. MacFarlane

CERTIFICATE OF SERVICE

I hereby certify that this correspondence: Declaration of Linda L. Braman, is being deposited with the United States Postal Service, 1st Class Mail, postage prepaid, in an envelope addressed to Douglas M. Kautzky, 3868 Carson Street, Suite 105, Torrance, California 90503, on October 31, 2011.

/Marshall G. MacFarlane

Marshall G. MacFarlane

- Print
- Burn
- New folder
- Name
- Thumbs.db
- PDX_EN_FULL_bars.cfg
- PDX_EN_FULL_sbar.cfg
- ESTTA. Response to Boe
- ESTTA. Response to Boe
- USPTO_ESTTA_Receipt
- Response.pdf
- Motion.pdf
- Scheduling Order.pdf
- StipulatedSchedulingOrd
- StipulatedSchedulingOrd
- ReceiptConsolidation.mh
- Consolidation.pdf
- CRConfirmationFranklin.i
- CRConfirmation.pdf
- Specimen.jpg
- Pleadings
- Correspondence

StipulatedSchedulingOrder.doc Properties

General | Security | Custom | Details | Previous Versions

Property	Value
Scale	No
Links dirty?	No
Language	
File	
Name	StipulatedSchedulingOrder.doc
Type	Microsoft Word Document
Folder path	M:\CLIENT FILES\KPC\400s\KP...
Date created	11/9/2010 1:24 PM
Date modified	11/17/2010 9:53 AM
Size	57.0 KB
Attributes	N
Offline availability	Not available
Offline status	Online
Shared with	
Owner	YB\braman
Computer	YBAA100

Remove Properties and Personal Information

OK Cancel Apply

File Name	Size
StipulatedSchedulingOrder.doc	57 KB
ReceiptConsolidation.mh	26 KB
Consolidation.pdf	59 KB
CRConfirmationFranklin.i	44 KB
CRConfirmation.pdf	44 KB
Specimen.jpg	10 KB

ter -> Lits (\\WBAA100\Data1) (M:) -> CLIENT FILES -> K -> KPC -> 400s -> KPC-469 -> Correspondence

Search Correspondence

Print Burn New folder

Name

- 20101117_LtGeffner2.doc
- 20101117_LtGeffner.doc**
- 20101104_LtClient.doc
- 20101027_LtFranklin.doc
- 20101019_LtFranklin.doc
- 20101020_LtSchlosser.doc
- FranklinFax.doc
- 20101005_LtClient.doc
- 10-1004 Diamond Golf - Counteroffer to Sell
- 20100927_LtFranklin.doc
- 20100921_LtFranklinDisclosures.doc
- 20100921_LtFranklinReport.doc
- 2010-9-13_LtClient.doc
- 20100913_LtFranklin.doc
- 20100825_LtFranklin.doc
- 20100811_LtFranklin.doc

20101117_LtGeffner.doc Properties

General | Security | Custom | Details | Previous Versions



20101117_LtGeffner.doc

Type of file: Microsoft Word Document (.doc)

Opens with: Microsoft Office Word Change...

Location: M:\CLIENT FILES\K\KPC\400s\KPC-469\Correspo

Size: 54.5 KB (55,808 bytes)

Size on disk: 56.0 KB (57,344 bytes)

Created: Wednesday, November 17, 2010, 9:58:41 AM

Modified: Wednesday, November 17, 2010, 9:58:41 AM

Accessed: Friday, September 16, 2011, 12:30:12 AM

Attributes: Read-only Hidden Advanced...

OK

Cancel

Apply

trGeffner.doc Date modified: 11/17/2010 9:58 AM

d Document Authors: lbraman

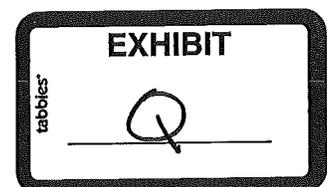
Categories: Add a category

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

KING PAR, LLC,)
) CANCELLATION NO. 92052163
v)
)
JOHN S. FRANKLIN)
)
AND)
)
JOHN S. FRANKLIN,)
) CANCELLATION NO. 92052950
v)
)
KING PAR, LLC)
)

DECLARATION OF MARSHALL G. MACFARLANE

1. I am of full age and knowledgeable about the facts recited herein.
2. Attached hereto as Exhibit A is a true and correct copy of Notice of Electronic Filing of Petition for Cancellation.
3. Attached hereto as Exhibit B is a true and correct copy of Petition for Cancellation Notice.
4. Attached hereto as Exhibit C is a true and correct copy of Revised Notice.
5. Attached hereto as Exhibit D is a true and correct copy of Compliance with Trademark Rule 2.193(a) *et seq.*
6. Attached hereto as Exhibit E is a true and correct copy of Notice Resetting Conferencing, Disclosure, Discovery and Trial Dates.
7. Attached hereto as Exhibit F is a true and correct copy of Answer to Counterclaims.



8. Attached hereto as Exhibit G is a true and correct copy of Report of Rule 26 Conference.

9. Attached hereto as Exhibit H is a true and correct copy of correspondence to Franklin.

10. Attached hereto as Exhibit I is a true and correct copy of correspondence from Franklin to MacFarlane.

11. Attached hereto as Exhibit J is a true and correct copy of correspondence from Franklin to MacFarlane.

12. Attached hereto as Exhibit K is a true and correct copy of November 8, 2010 Order.

13. Attached hereto as Exhibit L is a true and correct copy of stipulated scheduling order.

14. Attached hereto as Exhibit M is a true and correct copy of TTAB order.

15. Attached hereto as Exhibit N is a true and correct copy of letter from MacFarlane to Geffner.

16. Attached hereto as Exhibit O is a true and correct copy of notice of electronic filing.

16. On or about November 15, 2010, I took the deposition of John Franklin at 20 Corporate Park, Suite 350, Irvine, California. Prior to that deposition, Mr. Franklin was unrepresented in the case.

6. At the above deposition, Attorney Eric Geffner appeared, indicating that he was representing Mr. Franklin. Mr. Geffner requested that I direct all further pleadings and correspondence to him.

7. At the deposition, I also promised Mr. Geffner that I would forward to him a copy of the stipulated scheduling order, to which Mr. Franklin and I had agreed during the previous week. I sent the stipulated scheduling order to Mr. Geffner by e-mail on November 17, 2010.

8. On November 17, 2010, I also advised the Trademark Trial and Appeal Board of the parties' stipulation to a revision of the scheduling order then in place. I received notification from the Trademark Trial and Appeal Board that the stipulated scheduling order had been approved. For reasons that I cannot explain, the dates on the schedule to which Mr. Franklin and I had stipulated differed from the dates shown on the electronic filing of the stipulation. Our office docketed those dates contained on the stipulation as the due dates for all further proceedings in the cause, including the date of October 20, 2011, for the Plaintiff's initial brief.

9. Since December of 2010, it has been my belief and understanding that Plaintiff's principal brief was due not later than October 20, 2011, and I set my calendar file accordingly.

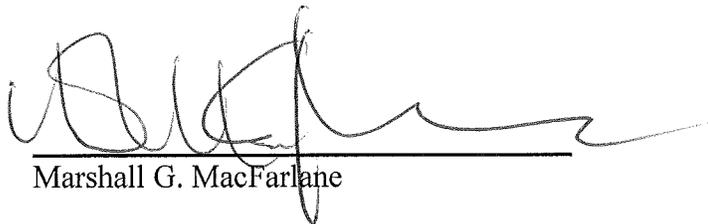
10. On October 11, 2011, I was advised that the principal file, our file number KPC-469 had been lost. Based on the belief that it would be necessary for me to reconstruct the entire file, including depositions and exhibits, I prepared and filed a motion with this Court to further extend the due dates for filing of the Plaintiff's main brief.

11. Less than two days after learning that the file had been lost, I was advised that the file had been located in offsite storage and had been retrieved. Although I was out of the office on a personal trip at the time I learned of these facts, I began outlining

the trial brief, based on my personal recollection of the events which had transpired. By the time I had returned to my office on October 17, 2011, all the necessary file materials had been returned to my office, and I had completed the outline of the necessary brief. By working full days on October 17 and 18, I was able to complete Plaintiff's principal brief. The task was simplified by the fact that the Defendant had not conducted any trial testimony depositions, nor completed any significant discovery following submission of initial interrogatories and document requests in September of 2010.

12. In view of the fact that the Plaintiff's principal brief has now been submitted for filing, I consider our motion for additional time for filing the main brief to be moot.

13. At all relevant times, it has been my understanding that the due date for my principal brief was October 20, 2011, and I have at no time intended to deceive, mislead or defraud the Trademark Office or the Trademark Trial and Appeal Board during these proceedings. I have acted purely on the basis of my understanding as to the due date, as well as to the stipulation that the parties entered into regarding that due date.



Marshall G. MacFarlane

DATED: October 31, 2011

CERTIFICATE OF MAILING

I hereby certify that this correspondence: Declaration of Marshall G. MacFarlane, is being filed with the TTAB electronically, on October 31, 2011.

/Marshall G. MacFarlane/

Marshall G. MacFarlane

CERTIFICATE OF SERVICE

I hereby certify that this correspondence: Declaration of Marshall G. MacFarlane, is being deposited with the United States Postal Service, 1st Class Mail, postage prepaid, in an envelope addressed to Douglas M. Kautzky, 3868 Carson Street, Suite 105, Torrance, California 90503, on October 31, 2011.

/Marshall G. MacFarlane

Marshall G. MacFarlane

**United States Patent and Trademark Office**

Home | Site Index | Search | Guides | Contacts | eBusiness | eBiz alerts | News | Help

**Electronic System for Trademark Trials and Appeals****Receipt**

Your submission has been received by the USPTO.
The content of your submission is listed below.
You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA438643**Filing date: **10/31/2011**

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

Proceeding	92052163
Party	Plaintiff King Par, LLC
Correspondence Address	MARSHALL MACFARLANE YOUNG BASILE 301 EAST LIBERTY, SUITE 680 ANN ARBOR, MI 48104 UNITED STATES macfarlane@youngbasile.com
Submission	Other Motions/Papers
Filer's Name	Marshall G. MacFarlane
Filer's e-mail	macfarlane@youngbasile.com, braman@youngbasile.com
Signature	/Marshall G. MacFarlane/
Date	10/31/2011
Attachments	Reply.pdf (51 pages)(4451234 bytes)

[Return to ESTTA home page](#) [Start another ESTTA filing](#)

| [.HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

Linda Braman

From: estta-server@uspto.gov
Sent: Monday, October 31, 2011 4:21 PM
To: Marshall MacFarlane; Linda Braman
Subject: ESTTA. Other Motions/Papers confirmation receipt ID: ESTTA438643

Cancellation No.: 92052163

Tracking No: ESTTA438643

~~ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt~~

We have received your Cancellation No.: 92052163 submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.

The status of any Board proceeding may be checked using TTABVUE which is available at <http://ttabvue.uspto.gov> Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your filing in due course.

Printable version of your request is attached to this e-mail

ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA438643
Filing date: 10/31/2011

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

Proceeding: 92052163
Party: Plaintiff
King Par, LLC

Correspondence Address: MARSHALL MACFARLANE YOUNG BASILE
301 EAST LIBERTY, SUITE 680
ANN ARBOR, MI 48104
UNITED STATES
macfarlane@youngbasile.com Phone:

Submission: Other Motions/Papers

Filer's Name: Marshall G. MacFarlane
Filer's e-mail: macfarlane@youngbasile.com, braman@youngbasile.com

Signature: /Marshall G. MacFarlane/
Date: 10/31/2011

Attachments: Reply.pdf (51 pages)
