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

Proceeding	92052967
Party	Defendant Wirepath Home Systems, LLC
Correspondence Address	WIREPATH HOME SYSTEMS, LLC 10405 GRANITE STREET, SUITE F CHARLOTTE, NC 28273 UNITED STATES
Submission	Other Motions/Papers
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Date	10/11/2010
Attachments	Wirepath Motion Def Stmt -152341.pdf (6 pages)(207549 bytes)

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

In the Matter of U.S. Registration No. 3,343,180

Mark: EPISODE

Registration Date: November 27, 2007

EPISODE AUDIO,

Petitioner,

v.

WIREPATH HOME SYSTEMS, LLC,

Respondent.

Cancellation No.: 92052967

RESPONDENT'S MOTION FOR A MORE DEFINITE STATEMENT

Pursuant to Rule 12(e) of the Federal Rules of Civil Procedure, Respondent, Wirepath Home Systems, LLC ("Wirepath"), by and through counsel, hereby moves for a more definite statement directed to the Petition to Cancel.

Background

On August 12, 2005, Respondent Wirepath filed an application to register the mark EPISODE in connection with "loudspeakers; loudspeaker systems; loudspeakers with built-in amplifiers; loudspeaker cabinets."

The latter application, assigned Serial No. 78/691,565, was based on intent-to-use under Section 1(b) of the Trademark Act. The office records were searched and no similar registered or pending marks were found that would bar registration under Section 2(d); subsequently, the application was approved for publication on March 29, 2006, and a Notice of Allowance was issued on July 11, 2006.

Wirepath inadvertently failed to file a Statement of Use within the six-month statutory period following the Notice of Allowance mailing date, and in order to preserve its rights, Wirepath filed a separate application to register the mark EPISODE in connection with similar goods on March 8, 2007. The latter application was assigned Serial No. 77/125,342.

However, a petition to revive Application Serial No. 78/691,565 was granted. The application was granted registration following submission of a Statement of Use on October 23, 2007.

Application Serial No. 77/125,342 was subsequently granted registration on November 27, 2007 under U.S. Registration No. 3,343,180.

On or about August 30, 2010, Petitioner Episode Audio¹ filed the above-captioned proceeding against U.S. Registration No. 3,343,180.

The first (unnumbered) page of the Petition to Cancel alleges multiple grounds for cancellation, namely likelihood of confusion and fraud. The second page of the Petition to Cancel appears to raise additional alleged grounds for cancellation, namely dilution and that Wirepath's registered mark falsely suggests a connection with Petitioner under Trademark Act Section 2(a).²

The Petition to Cancel raises even more alleged grounds for cancellation that are irrelevant to the right to register a trademark, namely common law or statutory defamation, unfair trade practices, etc.

¹ It is not clear if the Petitioner is Episode Audio or Ira Pazendeh, since Mr. Pazendeh did not indicate by his signature whether he is acting in the capacity of an individual or an officer. Wirepath has found no evidence of a legal entity "Episode Audio" at the address indicated in the Petition.

² Petitioner Episode Audio has not registered or ever applied to register EPISODE AUDIO and therefore presumably relies on prior trademark or service mark use or prior use analogous to prior trademark or service mark use.

Against this background, the averments in the Petition to Cancel are not organized into separate counts and otherwise fail to clearly present the multiple grounds for cancellation that have been pleaded.

As a result of the foregoing, Wirepath is unable to frame an Answer to every element and defense available and therefore seeks an order from the Trademark Trial and Appeal Board compelling Episode Audio to submit an amended pleading as to the particulars relied on and encompassed by all of the alleged grounds for cancellation, pursuant to Federal Rule of Civil Procedure 12(e).

Argument

Rule 12(e) of the Federal Rules of Civil Procedure states, in part,

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement.

On the first (unnumbered) page the Petitioner states the following: “The grounds for cancellation are as follows: [a]lleged fraud, identical or confusingly similar to the petitioner’s mark EPISODE AUDIO (see the attached documents).” Similar language is haphazardly repeated in certain averments made throughout the Petition to Cancel, interspersed with other alleged grounds for cancellation, e.g., dilution and Section 2(a) of the Trademark Act; however, under the subheading “Groundd for Cancellation,” it may be the case (or not) that Episode Audio is relying (exclusively or primarily) on the alleged ground of fraud.

The standard for determining the sufficiency of pleading fraud is different from that of likelihood of confusion. Against this background, it is apparent that several averments in the Petition to Cancel may give rise to different defenses if it were clear whether they exclusively addressed fraud and/or the other alleged grounds for cancellation.

The vague and ambiguous presentation of the averments in the pleading puts Wirepath in the untenable position of sorting out which alleged facts or actions of the parties give rise to which alleged ground(s) for cancellation. In other words, the Petition to Cancel as submitted would force Wirepath to anticipate every element and defense embodied in the statute and Trademark Rules of Practice that may arise depending on how broadly or narrowly certain vague and/or conclusory claims in Episode Audio's pleading may be construed. This is unreasonable.

Compounding Wirepath's difficulty in framing a responsive pleading is Petitioner's failure to present all of the allegations in sequentially numbered paragraphs or otherwise in a more simple and concise manner. *See* TBMP Sec. 309.03(a)(2).

Conclusion

Applicant notes that it has filed and served its Motion for a More Definite Statement within the forty-day period to file and serve an Answer set to expire on October 12, 2010, and thus, this Motion is timely and appropriate. *See* TBMP Sec. 505.02. Moreover, under Federal Rule of Civil Procedure 12(a)(4), an Answer shall be served no earlier than ten (10) days after notice of the Trademark Trial and Appeal Board's decision.

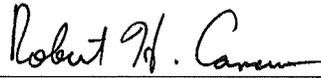
For the foregoing reasons, Wirepath respectfully requests that the Board grant its Motion for a More Definite Statement and order Episode Audio to comply with the following Rules of Practice set forth in TBMP Sec. 309.02(b) and 309.03(a):

1. Petitioner is to set forth a short and plain statement of the specific grounds for cancellation;
2. Petitioner is to set forth the alleged facts and acts of the respective parties plainly and concisely and structure them into separate counts to facilitate the clear presentation of each of the specific grounds for cancellation;
3. Petitioner is to make all averments in sequentially numbered paragraphs;

4. The signatory to the Petition to Cancel should clarify whether he acts in an individual capacity or on behalf of a legal entity; *and*
5. Any and all additional relief that the Board deems proper.

This 11th day of October 2010.

Respectfully submitted,



Robert H. Cameron

*Attorney for Respondent Wirepath Home Systems,
LLC*

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for a More Definite Statement was served on Petitioner by mailing a copy by first class mail, postage prepaid to the following address of record with the Trademark Trial and Appeal Board:

Ira Pazandeh
Episode Audio
18700 Yorba Linda Blvd. #56
Yorba Linda, CA 92886

Dated: October 11, 2010

By: Robert H. Cameron
Robert H. Cameron