

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

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Mailed: February 16, 2012

Cancellation No. 92054496

Hat World, Inc.

v.

Pass The Roc Athletics, Inc.

Yong Oh (Richard) Kim, Interlocutory Attorney:

On February 14, 2012, the Board held an oral hearing on respondent's motion for an extension of time filed on January 20, 2012. David May, Esq., and Jeffrey Molinoff, Esq., of Nixon Peabody LLP appeared on behalf of petitioner and Jarrod Greene appeared *pro se* as an officer of respondent.

To begin the hearing, the Board noted that neither of respondent's filings (filed October 25, 2011, and January 20, 2012) contain a certificate of service and explained the service requirement to respondent. The Board then inquired whether petitioner had received service copies of respondent's two motions. Counsel responded that petitioner had not but that petitioner did receive a copy of the Board's order of December 5, 2011, granting the first extension.¹ The Board

¹ As petitioner has not raised any objection concerning respondent's motion of October 25, 2011, after having received the Board's order, any defects therein have been deemed waived.

then noted that respondent first requested an extension of ninety days so as to obtain counsel and that the second request for sixty days was due to illness. The Board then inquired as to whether respondent had obtained counsel to which respondent indicated that it had not but was still in the process of doing so. As indicated during the hearing, all parties to a Board proceeding must adhere to the Board's deadlines and procedures, including *pro se* parties. Little weight will be given to the fact that a party is without legal representation. To the extent that petitioner has agreed to waive service and consents to respondent's latest motion, the motion to extend is **GRANTED** with the understanding that no further extensions or suspensions will be granted respondent for the purpose of obtaining counsel. Dates are reset as follows:

Time to Answer	3/23/2012
Deadline for Discovery Conference	4/22/2012
Discovery Opens	4/22/2012
Initial Disclosures Due	5/22/2012
Expert Disclosures Due	9/19/2012
Discovery Closes	10/19/2012
Plaintiff's Pretrial Disclosures Due	12/3/2012
Plaintiff's 30-day Trial Period Ends	1/17/2013
Defendant's Pretrial Disclosures Due	2/1/2013
Defendant's 30-day Trial Period Ends	3/18/2013
Plaintiff's Rebuttal Disclosures Due	4/2/2013
Plaintiff's 15-day Rebuttal Period Ends	5/2/2013

Pro Se Information

As respondent is not currently represented by legal counsel, the following information is provided.

While Patent and Trademark Rule 11.14(e) permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a cancellation proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

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. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). There are other rules in part one of Title 37, relevant to filing of papers, meeting due dates, etc., that are also applicable to this case. 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. If petitioner or respondent wishes to obtain a copy of Title 37 of the CFR, it may be ordered for a fee from the Government Printing Office, Washington, D.C. 20401, or from the U.S. Government Bookstore, using the following web address: <http://bookstore.gpo.gov/index.jsp>. The parties may also refer to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both

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available on the USPTO website, <http://www.uspto.gov/index.jsp>.

The third edition (May 2011) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at

http://www.uspto.gov/trademarks/process/appeal/TBMP_3rdEdition_Preface.htm. The Board's main webpage at

<http://www.uspto.gov/trademarks/process/appeal/index.jsp> includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), and Frequently Asked Questions about Board proceedings.

Respondent is reminded that Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party (or adversary), or on the party (or adversary) if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers that the parties may subsequently file in this proceeding must be accompanied by "proof of service" of a copy on the other party or the other party's counsel.

"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.

Respondent should further note that any paper it is required to file with the Board should not take the form of a letter; proper format should be utilized. The form of submissions is governed by Trademark Rule 2.126. See also TBMP § 106.03 (3d ed. 2011). In particular, "a paper submission must be printed in at least 11-point type and double-spaced, with text on one side only of each sheet" and text "in an electronic submission must be in at least 11-point type and double-spaced." Trademark Rule 2.126(a)(1) and 2.126(b).

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991). In that regard, the parties should note that any paper they are required to file herein must be received by the Board by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 and 2.198 is utilized.

In submitting an answer, respondent is referred to Rule 8(b) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Trademark Rule 2.116(a). Fed. R. Civ. P. 8(b) provides:

(b) **Defenses; Admissions and Denials**

- (1) **In General.** In responding to a pleading, a party must:
 - (A) state in short and plain terms its defenses to each claim asserted against it; and
 - (B) admit or deny the allegations asserted against it by an opposing party.
- (2) **Denials - Responding to the Substance.** A denial must fairly respond to the substance of the allegation.
- (3) **General and Specific Denials.** A party that intends in good faith to deny all the allegations of a pleading - including the jurisdictional grounds - may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.
- (4) **Denying Part of an Allegation.** A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.
- (5) **Lacking Knowledge or Information.** A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.
- (6) **Effect of Failing to Deny.** An allegation - other than one relating to the amount of damages - is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

The petition for cancellation filed by petitioner herein consists of 10 numbered paragraphs setting forth the basis of petitioner's claim of damage, and a prayer for relief. In accordance with Fed. R. Civ. P. 8(b), it is incumbent on respondent to answer the petition for cancellation by admitting or denying the allegations

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contained in each paragraph. If respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

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

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