

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

BUO

Mailed: November 27, 2013

Cancellation No. 92056510

Republic of Texas Biker
Rally, Inc.

v.

Peter Ogudo

Benjamin U. Okeke, Interlocutory Attorney:

In response to the Board's July 18, 2013 order striking respondent's initial answer and allowing respondent thirty days to replead, respondent filed an amended answer on August 8, 2013. Petitioner, in a motion filed August 15, 2013, moved for default judgment based upon petitioner's alleged failure to comply with the Board's July 18 order.

On Thursday, November 21, 2013, the Board conducted a telephone conference with the parties to resolve the issues raised in petitioner's motion, as permitted by TBMP § 502.06 (3d ed. rev.2 2013). Participating in the conference were petitioner's counsel Carl F. Schwenker,

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respondent Peter Ogudo, appearing *pro se*, and Board interlocutory attorney Benjamin U. Okeke.

The Board carefully considered the arguments raised by the parties during the telephone conference, as well as the briefs submitted in relation to this motion and the record of this case, in coming to a determination regarding the issues presented in the motion.

In light of the telephone conference, and for purposes of this order, the Board presumes the parties' familiarity with the pleadings and the arguments submitted with respect to the subject motion. Therefore, the Board will only recount the arguments and facts as necessary to discuss the determination. During the telephone conference, the Board made the following findings and determinations:

Default

The Board cannot accept petitioner's assertion that default judgment should be entered "due to Respondent's non-responsive answers," as respondent in fact filed a timely amended answer, notwithstanding any squabbles petitioner may have with its contents. See Trademark Rule 2.114(a). Therefore, the Board has not considered petitioner's motion as one for default judgment.¹

¹ The Board notes however, that had it considered petitioner's motion as one for default judgment, it would have nonetheless

Fed. R. Civ. P. 12(e) - More Definite Statement

However, the Board construed petitioner's statements regarding the "rambling, narrative" nature of the amended answer, and its argument that "Respondent's 'answer' again fails to adhere to the fundamental rules applicable to pleadings," and "unfairly deprives Petitioner and the Board of the ability to expeditiously proceed with this matter," as a motion under Fed. R. Civ. P. 12(e) for a more definite statement. Motion, pp. 5 and 6.

The Board agrees that respondent's amended answer, while it sufficiently discharges the notice of default, is nonetheless confusing, overly argumentative and generally unacceptable in form. Accordingly, petitioner's motion for a more definite statement is **GRANTED**.

A. Appropriate Answer

Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the

been denied. By filing an amended answer which not only denies the fundamental allegations in the petition for cancellation, but also responds to all of petitioner's allegations individually, respondent has asserted a meritorious defense to the cancellation of his registration. See *DeLorme Publ'g Co v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000). Petitioner was reminded that respondent need not prove its defenses in its pleading, but need only assert plausible responses to the allegations in the complaint. *Id.* Additionally, the Board favors the disposition of proceedings on their merits; accordingly, the Board is reluctant to enter a judgment by default. See *CTRL Sys. Inc. v. Ultraphonics of N. Am. Inc.*, 52 USPQ2d 1300, 1301 (TTAB 1999).

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adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The petition for cancellation consists of thirty-three numbered paragraphs and one unnumbered paragraph setting forth the basis of petitioner's claims; and in accordance with Fed. R. Civ. P. 8(b) it is incumbent on respondent to answer the complaint by admitting or denying the allegations contained in each paragraph without superfluous explanation, conditioning, or argument. As previously stated, respondent need not, and should not, attempt to prove its defenses to the petition for cancellation in its answer. (The parties will have ample opportunity to argue the merits of the case at trial or in connection with a dispositive motion.)

For reference, an appropriate answer would appear as follows:

Paragraph 1. Denied.

Paragraph 2. Admitted.

Paragraph 3. Admitted as to <insert part of allegation admitted>, but denied as to the remainder.

. . .

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Further, if respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, he should so state and this will have the effect of a denial, e.g.:

Paragraph 4. Respondent is without sufficient knowledge to form a belief as to the truth or falsity of the allegations of paragraph 4, and therefore denies the same.

For additional information regarding the substance of an answer respondent is referred to the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 311.01 *et seq.*

Additionally, while parties have a duty to thoroughly search their records for all information properly sought in a *discovery* request, it is unclear whether the parties have an analogous duty at the *pleading* stage. *Cf. No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000). Nonetheless, a party's obligations under such a rule would be to search *its own* records, not the records of the USPTO, or records from the District Court for the Western District of Texas, as petitioner has requested of respondent. Respondent need only make a good faith effort based upon its knowledge at

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hand to appropriately respond to the allegations raised in the petition for cancellation.²

Respondent is allowed **THIRTY DAYS** from the mailing date of this order to file and serve an acceptable answer that conforms to Fed. R. Civ. P. 8(b) and 10(a) and (b). Failure to file and serve an acceptable answer before the expiration of this period may result in the entry of judgment against respondent.³

Answer, conferencing, disclosure, and trial dates are reset as indicated below:

| | |
|---|------------|
| Time to Answer | 12/22/2013 |
| Deadline for Discovery Conference | 1/21/2014 |
| Discovery Opens | 1/21/2014 |
| Initial Disclosures Due | 2/20/2014 |
| Expert Disclosures Due | 6/20/2014 |
| Discovery Closes | 7/20/2014 |
| Plaintiff's Pretrial Disclosures | 9/3/2014 |
| Plaintiff's 30-day Trial Period Ends | 10/18/2014 |
| Defendant's Pretrial Disclosures | 11/2/2014 |
| Defendant's 30-day Trial Period Ends | 12/17/2014 |
| Plaintiff's Rebuttal Disclosures | 1/1/2015 |
| Plaintiff's 15-day Rebuttal Period Ends | 1/31/2015 |

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

² If petitioner seeks to make this evidence of record, petitioner should introduce this matter into evidence at an appropriate time, e.g. trial or motion for summary judgment.

³ Respondent should note additionally, that while the Board favors resolution of cases on the merits, and the Board has patiently informed respondent of his obligations in the past, our patience is exhausting.

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after completion of taking of testimony. Trademark Rule 2.125.

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.