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

Proceeding	92056644
Party	Defendant Infinite Jewelry Co. L.L.C.
Correspondence Address	R BRETT EVANSON EVANSON WEBER PLLC 2975 W EXECUTIVE PARKWAY, SUITE 201 LEHI, UT 84043 UNITED STATES brett@evansonweber.com
Submission	Opposition/Response to Motion
Filer's Name	R. Brett Evanson
Filer's e-mail	brett@evansonweber.com
Signature	/ R. Brett Evanson /
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Attachments	2014-11-19 Memo in Opp to Mtion for Leave to Amend.pdf(207334 bytes)

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

In re Matter of Reg. No. 3,721,102
For the mark BELLA'S ENGAGEMENT
RING
In Class 14

Summit Entertainment, LLC,

Petitioner,

vs.

Infinite Jewelry Co. L.L.C.;

Registrant.

Infinite Jewelry Co. L.L.C.,

Counterclaimant,

vs.

Summit Entertainment, LLC

Counterclaim-Defendant

Cancellation No. 92056644

**REGISTRANT AND
COUNTERCLAIMANT INFINITE
JEWELRY CO. L.L.C.'S
MEMORANDUM IN OPPOSITION TO
SUMMIT ENTERTAINMENT, LLC'S
MOTION FOR LEAVE TO AMEND**

Pursuant to TBMP § 502, Registrant and Counterclaimant Infinite Jewelry Co., LLC ("Infinite") hereby submits its Memorandum in Opposition to Summit Entertainment, LLC's ("Summit") Motion for Leave to Amend as follows:

I. Factual Background

1. On December 8, 2009, Infinite obtained a registration of BELLA'S ENGAGEMENT RING.
2. On December 19, 2012, Summit filed a petition seeking to cancel Infinite's Registration.
3. On February 20, 2013, Infinite filed its answer to Summit's petition denying the claims set forth therein claiming "Infinite was authorized by Ms. Meyer to register and use BELLA'S ENGAGEMENT RING for goods and services, including jewelry."
4. On July 11, 2013, Infinite served its responses to Summit's First Set of Interrogatories and First Set of Requests for Admission.
5. On November 5, 2014, Summit filed its Motion for Leave to Amend based upon information obtained from Infinite's answer filed on February 20, 2013 and its discovery responses provided on July 11, 2013.

II. The Motion for Leave to Amend is Untimely

"Pleadings in a cancellation proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court." 37 CFR 2.115. "Leave to amend is in no way automatic, but the district court must possess a substantial reason to deny a party's request for leave to amend." *Marucci Sports v. Nat'l Collegiate Athletic*, 751 F. 3d 368, 378 (5th Cir. 2014). In considering whether to grant a motion to amend, the following factors should be considered: "undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party..., and futility of the amendment." *Id.* Applying these factors to the present case, there is substantial justification to deny Petitioner's Motion for Leave to Amend.

A. Undue Delay

Summit bases its Motion for Leave to Amend on the premise that it obtained information from Infinite that warrants the amendment. According to Summit, this information was obtained by Summit in February 2013 and July 2013. Therefore, Summit has been in possession of the information providing the basis for its Motion for Leave to Amend for well over a year before seeking to obtain leave to amend. Summit provides no justification for this significant delay. Such an extended delay in seeking leave to amend surely constitutes undue delay, and indicates a potential for bad faith or dilatory motive by Summit.

The bad faith and dilatory motive is further supported when considering the Motion for Leave to Amend was filed just before the close of discovery. As a result, Infinite will not be able to conduct any additional discovery on the items raised in the proposed First Amended Petition. Preventing discovery on the newly added claims will prejudice Infinite, contrary to Summit's contention that there will be none.

B. Prejudice

Prejudice most certainly will result if Infinite is precluded from conducting discovery on the new claims laid out in Summit's proposed First Amended Petition. Specifically, Summit contends that Infinite has no ownership right to BELLA'S ENGAGEMENT RING at the time of the filing, and bases this claim on information whose source is Stephenie Meyer. This information includes reliance on phrases such as "officially licensed products" and "legally legitimate products," but does not include information that affirmatively disclaims on ownership right to the mark. In fact, the discovery documents that Summit seeks to rely upon specifically state that Infinite engaged in discussions with Stephenie Meyer "regarding licensing, association, affiliation or relationships." It is imperative that Infinite be allowed the opportunity to obtain

information directly from Stephenie Meyer to provide context and clarity to the information regarding rights discussed between the parties, and what the contents of those communications truly meant. So, contrary to Summit's claims, Infinite is not solely in possession of information related to the newly raised claims.

Infinite can only assume that Summit waited until such a late date to seek leave to amend its petition in order to prevent Infinite from obtaining deposition testimony or other information from Stephenie Meyer to support its position that the BELLA'S ENGAGEMENT RING mark is legitimate. Such tactics are inappropriate, and provide ample justification for denying the Motion for Leave to Amend.

C. Past Extensions

Summit properly notes that the parties have agreed to multiple extensions to extend the discovery period in the past. This factor actually weighs against granting Summit's Motion for Leave to Amend, not in favor of it. The multiple past extensions provided ample time for Summit to file its Motion for Leave to Amend well before the currently scheduled close of discovery in less than a month. Summit neglected to take such action, and should not now, on the eve of the close of discovery, be permitted to add new claims.

CONCLUSION

Based on the forgoing, Infinite respectfully requests Summit's Motion for Leave to Amend be denied.

Signed and Dated this 20th day of November, 2014.

EVANSON WEBER, PLLC

/s/ R. BRETT EVANSON
R. BRETT EVANSON
Attorney for Infinite Jewelry Co., LLC

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that **REGISTRANT AND COUNTERCLAIMANT INFINITE JEWELRY CO. L.L.C.'S MEMORANDUM IN OPPOSITION TO SUMMIT ENTERTAINMENT, LLC'S MOTION FOR LEAVE TO AMEND** is being transmitted electronically through ESTTA pursuant to 37 C.F.R. 2.195(a), on this 20th day of November, 2014.

_____/s/ R. Brett Evanson_____

CERTIFICATE OF SERVICE

I hereby certify that **REGISTRANT AND COUNTERCLAIMANT INFINITE JEWELRY CO. L.L.C.'S MEMORANDUM IN OPPOSITION TO SUMMIT ENTERTAINMENT, LLC'S MOTION FOR LEAVE TO AMEND** is being sent via US First Class Mail, postage prepaid, on this 20th day of November, 2014, to the following:

Jill M. Pietrini
Paul A. Bost
Sheppard, Mullin, Richter & Hampton LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, CO 90067-6055

_____/s/ R. Brett Evanson_____