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

Proceeding	92057135
Party	Defendant Nidal Haddadin
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	10/30/2013
Attachments	RESPONDENT'S MOTION FOR LEAVE TO FILE AN AMENDED ANSWER _ HALO 92057135.pdf(130505 bytes)

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

TRIDENT GROUP, LLC,)	
)	
Petitioner,)	Cancellation No. 92057135
)	Reg. No. 4027086
v.)	Mark: HALO
)	
NIDAL HADDADIN,)	
)	
Respondent.)	
)	
)	
)	

RESPONDENT’S MOTION FOR LEAVE TO FILE AMENDED ANSWER

Respondent, Nidal Haddadin ("Respondent"), an individual, by his attorneys hereby moves to amend his Answer to assert three affirmative defenses pursuant to Fed. R. Civ. P. 15 and CFR §§ 2.107 and 2.115.

I. RELEVANT BACKGROUND:

On April 30, 2013, Trident Group, LLC ("Petitioner") filed Cancellation No. 92057135. Petitioner alleges, among other things, that Petitioner has superior common law rights in the HALO mark with priority of use established as early as June, 2009, and that Respondent’s use of the HALO mark comprises deceptive matter because it falsely suggests a connection with Petitioner.

On June 3, 2013, through former counsel, Respondent filed an Answer denying the salient allegations in the Petition for Cancellation.

Petitioner, but not Respondent, has served its initial disclosures and Petitioner has sent his Requests for Document Production and its First Set of Interrogatories. Discovery is set to close on January 6, 2014.

On October 25, 2013, Respondent retained new counsel, due to the fact that Respondent's former counsel had some urgent personal matters to resolve which prevented him from adequately representing Respondent in the instant proceeding before the Board. Respondent's new counsel filed a power of attorney appointment before the Board on October 30, 2013. Upon hiring new counsel, Respondent learned for the first time that he did not file any affirmative defenses in his original Answer.

II. ARGUMENT

It is well settled that amendment of a pleading "should be allowed with great liberality at any stage of the proceeding where necessary to bring about a furtherance of justice unless it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of any opposing parties." *Am. Optical Corporation v. Am. Olean Tile Company, Inc.*, 168 USPQ 471,473 (TTAB 1971); see also Fed. R. Civ. P. 15; TBMP § 507.02 ("Leave must be freely given when justice so requires.") (emphasis added).

A. Respondent's Amendment Is Timely

Respondent promptly filed this motion upon receiving new counsel and becoming aware that his former counsel did not assert any affirmative defenses in his original Answer. As noted above, the proceeding is still in the discovery stage and neither party has issued any response to discovery requests. Under these circumstances, justice requires that Respondent be allowed to amend his Answer to assert affirmative defenses which claim use of the HALO mark on goods related to those of Petitioner prior to Petitioner's alleged

first use in commerce date, and which also bar Petitioner's claim of a false suggestion of connection.

B. Petitioner Will Not Be Prejudiced by the Amendment

The Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires. *Focus 21 Int'l, Inc. v. Kasei Kogyo Kabushiki Kaisha*, 22 USPQ2d 1316, 1318 (TTAB 1992); *Cool-Ray Inc. v. Eye Care, Inc.*, 183 USPQ 618, 621 (TTAB 1974). Thus, the Board has granted motions for leave to amend pleadings filed before the testimony period. Indeed, the Board has granted motions for leave to amend pleadings even during the testimony period in certain cases. See *Am. Optical Corp.*, 168 USPQ 471 (allowing applicant to amend answer to add affirmative defenses after the close of opposer's testimony period); *Space Base, Inc. v. Stadis Corp.*, 17 USPQ2d 1216 (TTAB 1990) (allowing amendment during testimony period).

In this case, Petitioner will not be prejudiced by the proposed amendment because, as noted above, the proceeding is still in the discovery stage and neither party has responded to discovery to date. By contrast, Respondent will be greatly prejudiced if he is denied the chance to assert his amended affirmative defenses. Much of the information and documents needed by Petitioner to rebut Respondent's affirmative defenses, if it can do so at all, should be within the possession, custody and control of Petitioner. Accordingly, Petitioner will not be prejudiced by entry of the amended pleading.

III. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Board grant Respondent's motion and enter Respondent's First Amended Answer.

Respectfully submitted,

Dated as of: October 30, 2013

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PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **RESPONDENT'S MOTION FOR LEAVE TO FILE AN AMENDED ANSWER** has been served on David Ludwig, counsel for Petitioner, on October 30, 2013, via First Class U.S. Mail, postage prepaid to:

DAVID LUDWIG
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199 LIBERTY STREET SW
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By: /Michael W. Schroeder/
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