

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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Mailed: June 23, 2014

Cancellation No. 92057838

Albert Patterson

v.

World Wrestling Entertainment, Inc.

By the Trademark Trial and Appeal Board:

In a December 4, 2013 order, the Board granted as conceded respondent's motion (filed October 21, 2013) to dismiss for failure to state a claim and for entry of summary judgment on the ground of *res judicata*. See Trademark Rule 2.127(a). On December 18, 2013, petitioner filed a submission which the Board, in a March 5, 2014 order, construed as a motion to vacate entry of judgment under Fed. R. Civ. P. 60(b). In the March 5, 2014 order, the Board allowed petitioner until March 20, 2014 to file proof of service of the December 18, 2013 submission with the Board.

Instead of complying with the March 5, 2014 order, petitioner filed by facsimile an unsigned and newly prepared "Motion to Review" ("the March 10, 2014 motion"), with proof of service by priority mail from an Office Depot in Milwaukee, Wisconsin. In an apparent abundance of caution, respondent, on March 28, 2014, filed a brief in response to petitioner's motion to vacate judgment. In an April 3, 2014 order, the Board noted that the filing

petitioner's March 10, 2014 submission by facsimile was impermissible and that neither the March 5, 2014 order nor Trademark Rule 2.127(a) authorized the filing of such motion. *See* Trademark Rule 2.195(d)(3). In that order, the Board also allowed petitioner "one last opportunity" to comply with the Board's March 5, 2014 order, giving petitioner until April 13, 2014 to file proof of service of the December 18, 2013 motion to vacate judgment.

Instead of complying with the April 3, 2014 order, petitioner on April 7, 2014 filed a reply brief in support of the December 18, 2014 motion. At thirty-six pages, the reply brief exceeds the ten-page limit for reply briefs in support of motions in Board proceedings.<sup>1</sup> *See* Trademark Rule 2.127(a). Moreover, petitioner's proof of service of that reply brief is insufficient because the service address set forth in the certificate of service is incomplete. *See* Trademark Rule 2.119. In addition, petitioner improperly filed by facsimile (1) on April 13, 2014, discovery documents, and (2) on May 16, 2014, an additional communication.

The Board expects all parties appearing before it, whether or not they are represented by counsel, to comply with Board procedural rules. Despite being given multiple opportunities to correct improper service of the December 18, 2013 motion to vacate judgment, petitioner has failed to properly serve that motion.

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<sup>1</sup> The Board does not consider motions in connection with briefs that exceed the applicable page limit. *See Mattel Inc. v. Brainy Baby Co.*, 101 USPQ2d 1140, 1141 (TTAB 2011).

In view of petitioner's failure to comply with the March 5, 2014 and April 3, 2014 order and with Board procedural rules in general, petitioner's December 18, 2013 motion to vacate entry of judgment will receive no consideration.<sup>2</sup> The December 4, 2013 order dismissing the petition to cancel with prejudice stands.

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<sup>2</sup> A cursory review of petitioner's submissions indicates that, therein, petitioner alleges trademark infringement and seeks damages of forty million dollars. The Board cannot determine issues of infringement and does not award financial damages. *See* Trademark Rule 2.127(g); TBMP Section 102.01 (3d ed. rev. 2 2013).