

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

RK

Mailed: October 27, 2014

Cancellation No. **92060050**

Cellco Partnership  
d/b/a Verizon Wireless

v.

Ross Symons

**Yong Oh (Richard) Kim, Interlocutory Attorney:**

By the Board's institution order of October 1, 2014, respondent was allowed until November 10, 2014, to file an answer in this proceeding. On October 20, 2014, respondent filed a paper which the Board presumes was intended as an answer to the petition for cancellation.<sup>1,2</sup> It is clear from a reading of this "answer" that it fails to comply with Rule 8(b) of the Federal Rules of Civil Procedure.<sup>3</sup>

Fed. R. Civ. P. 8(b) provides:

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

(1) ***In General.*** In responding to a pleading, a party must:

---

<sup>1</sup> Respondent's filing fails to indicate proof of service as required under Trademark Rule 2.119. Petitioner is referred to <http://ttabvue.uspto.gov/ttabvue/v?pno=92060050&pty=CAN&eno=5> to view a copy of the filing.

<sup>2</sup> Respondent's change of correspondence, also filed on October 20, 2014, is noted and made of record.

<sup>3</sup> Made applicable to this proceeding by Trademark Rule 2.116(a).

- (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 **9 paragraphs** setting forth the basis of petitioner’s claim of damage. 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 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, he should so state and this will have the effect of a denial.

In view of the foregoing, **respondent is allowed until NOVEMBER 26, 2014, in which to file an answer herein which complies with Fed. R. Civ. P. 8.**

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board be served upon the attorney for the other party, or on the party 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 which respondent may subsequently file in this proceeding, including his answer to the petition for cancellation, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as *prima facie* proof of service. For future reference, a suggested format for the certificate of service is provided below:

I hereby certify that a true and complete copy of the foregoing (*insert title of submission*) has been served on (*insert name of opposing counsel or party*) by mailing said copy on (*insert date of mailing*), via First Class Mail, postage prepaid (*or insert other appropriate method of delivery*) to:

(*set out name and address of opposing  
counsel or party*)

\_\_\_\_\_  
Signature

See TBMP § 113.

It should also be noted that while Patent and Trademark Rule 11.14 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.

It is recommended that respondent obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. These rules may be viewed at <http://www.uspto.gov/trademarks/law/tmlaw.pdf>. 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, Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Conferencing, disclosure, discovery and trial dates are **RESET** as follows:

Time to Answer	<b>11/26/2014</b>
Deadline for Discovery Conference	<b>12/26/2014</b>
Discovery Opens	<b>12/26/2014</b>
Initial Disclosures Due	<b>1/25/2015</b>
Expert Disclosures Due	<b>5/25/2015</b>
Discovery Closes	<b>6/24/2015</b>
Plaintiff's Pretrial Disclosures Due	<b>8/8/2015</b>
Plaintiff's 30-day Trial Period Ends	<b>9/22/2015</b>
Defendant's Pretrial Disclosures Due	<b>10/7/2015</b>
Defendant's 30-day Trial Period Ends	<b>11/21/2015</b>

Plaintiff's Rebuttal Disclosures Due  
Plaintiff's 15-day Rebuttal Period Ends

**12/6/2015**  
**1/5/2016**

**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** 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.

\* \* \*