

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

Mailed: December 22, 2006

Opposition No. **91172611**

St. Louis Cardinals, LLC

v.

Lewis, Douglas J

Linda Skoro, Interlocutory Attorney

Applicant filed a communication on November 8, 2006.¹
This communication was entitled "Motion to Continue"² and
"Response to Opposition".³ It is presumed that this

¹ Applicant's communication contains a certificate of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). However, it contains the incorrect address for opposer and opposer states it was not received until November 30, 2006 creating a substantial discrepancy between the date in the certificate and the date of actual receipt. Strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board. The parties are further advised that copies of all filings with the Board can be viewed on line through the office web site at www.uspto.gov/ttabvue.

² Applicant states that he never received a copy of the Board's institution order issued August 30, 2006 because it was sent to his former address and he requests that it be resent. In that applicant has since obtained a copy of the notice of opposition as evidenced by his attempt to answer the notice of opposition, and the Board has not received the order back by returned mail, a copy will not be resent. It is further noted that applicant did not inform the office of his new address until December 12, 2006, and did not file it correctly through the trademarks website, but rather on a form dedicated to another part of the USPTO. The Board has entered applicant's correct address in this proceeding.

³ It is also noted that on October 30, 2006 opposer filed a motion for default judgment in that applicant had not filed an

communication is intended as an answer to the notice of opposition. A reading of this informal "answer" reveals, however, that it is argumentative and more in the nature of a brief on the case than a responsive pleading to the notice of opposition. As such, it does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable this proceeding by Trademark Rule 2.116(a).

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 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 notice of opposition filed by opposer herein consists of 12 paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or

answer. In that applicant filed its informal answer on November 8, 2006 and the Board prefers to try cases on their merits, opposer's motion is hereby denied. It is believed that this

information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

In view of the foregoing, applicant is allowed until **TWENTY** days from the mailing date of this order in which to file an answer herein which complies with Fed. R. Civ. P. 8.

The Board also notes that in its response, applicant states that it seeks to cancel opposer's registration. If applicant seeks to cancel a registration, a filing fee must be paid for each registration and each class sought to be cancelled and you must identify the particular registration you seek to cancel⁴. Additionally, information that is normally contained in a petition to cancel must be provided as the counterclaim.

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 must 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 applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed

order addresses opposer's response to applicant's motion to continue and applicant reply to that motion.

⁴ Petitioner identified a dozen or so registrations that it owns.

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.

It should also be noted that while Patent and Trademark Rule 10.14 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 an opposition 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 applicant familiarize himself with The Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice that are available on the World Wide Web at <http://www.uspto.gov> under Trademarks.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

Both parties are advised to provide an appropriate caption in all future filings with the Board to insure proper association of all papers with their proceeding. See TBMP Chapters 100 and 300.

Opposition No. 91172611

Discovery and trial dates remain as set in the Board's institution order of August 30, 2006.⁵

.oOo.

⁵ Applicant is advised that all filings can be viewed on the Board's website under TTABVue and papers can be filed electronically through ESTTA.