

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

Baxley

Mailed: September 22, 2011

Opposition No. 91187204

Nathaniel Christian

v.

Tim Bernardy

**By the Trademark Trial and Appeal Board:**

On July 25, 2011, the Board issued an order wherein, among other things, it (1) set aside the order to show cause that it issued on June 1, 2011 to opposer/counterclaim defendant Nathaniel Christian ("Christian"); (2) determined that the untimely brief on the case and evidence attached thereto that Christian filed on July 5, 2011 would receive no consideration; and (3) required applicant/counterclaim plaintiff Tim Bernardy ("Bernardy") to show cause why his counterclaim in this proceeding should not be dismissed based on his failure to prosecute.<sup>1</sup>

Bernardy incorporated a motion to "extend" his testimony period as plaintiff in the counterclaim into his response thereto. The motion is actually one to reopen his

---

<sup>1</sup> Bernardy's response was served both on opposer/counterclaim defendant Christian and Christian's attorney.

testimony period and will be treated accordingly. See Fed. R. Civ. P. 6(b)(1); TBMP Section 509.01(b) (3d ed. 2011).

Because no response to such motion is of record, the motion to reopen is hereby granted as conceded.<sup>2</sup> See Trademark Rule 2.127(a). The order to show cause is therefore moot.

Concurrently with his response, Bernardy submitted evidence in support of his counterclaim. However, that evidence is not properly before the Board. To the extent that Bernardy intends to submit his and his attorney's testimony by declaration, there is no written agreement to take such testimony by declaration in the proceeding record. See Trademark Rule 2.123(b). Moreover, the declarations were filed outside of Bernardy's testimony period. Cf. Trademark Rules 2.122(d)(2) and (e) (notices of reliance must be filed during a party's testimony period).

Proceedings herein are resumed with regard to the counterclaim only. Dates are reset as follows.

Counterclaim Plaintiff's Pretrial  
Disclosures Due

10/6/11

---

<sup>2</sup> Christian filed his brief on the case *pro se*. However, his attorney has not withdrawn and therefore remains of record herein. See TBMP Sections 117.01 and 513. In addition, Christian has not stated that he will be representing himself herein and has not asked that correspondence be sent directly to him.

Opposition No. 91187204

Counterclaim Plaintiff's 30-day Trial Period Ends	11/20/11
Counterclaim Defendant's Pretrial Disclosures Due	12/5/11
Counterclaim Defendant's 30-day Trial Period Ends	1/19/12
Counterclaim Plaintiff's Rebuttal Disclosures Due	2/3/12
Counterclaim Plaintiff's 15-day Rebuttal Period Ends	3/4/12

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 the taking of testimony. Trademark Rule 2.125.

Briefs in connection with the counterclaim only shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.

cc: Nathaniel Christian  
445 Park Avenue, Suite 900  
New York, NY 10022