

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

MBA

Mailed: November 6, 2009

Opposition No. 91187342

Sean Puffy Combs

v.

Pacific Rim Marketing Inc.

Michael B. Adlin, Interlocutory Attorney:

On November 5, 2009, at applicant's request, the Board participated in the parties' telephonic discovery conference mandated under Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (a)(2). Robert A. Becker appeared on opposer's behalf, and applicant's President Fred Scherer appeared pro se on applicant's behalf. Interlocutory Attorney Michael Adlin participated on the Board's behalf.

Applicant indicated that it would continue to represent itself in this proceeding. The Board advised applicant that it is generally recommended that parties retain experienced trademark practitioners to represent them in Board proceedings.¹ The Board also indicated that applicant would be expected to comply with all applicable rules and

¹ Information for parties representing themselves pro se is included at the end of this order.

procedures, including those relating to service of papers, as set forth in 37 C.F.R. § 2.119.

The parties indicated that they have had settlement discussions, and may have additional discussions in the future, but at this point applicant is not willing to accept opposer's latest proposal. The Board strongly encouraged the parties to continue exploring settlement. More specifically, the parties briefly discussed opposer's allegation in ¶ 21 of the amended notice of opposition that one of opposer's applications was refused registration based on applicant's subject application. The Board indicated that opposers in Board proceedings will sometimes agree to withdraw a notice of opposition in exchange for an applicant's consent to registration of the opposer's application(s).

The parties are not aware of any related proceedings, marks or third party disputes. During the discussion of the pleadings in this case, and specifically opposer's claim of priority and likelihood of confusion, applicant conceded that opposer has priority. Accordingly, applicant's answer will be construed as admitting that opposer has priority. Either party may seek leave to amend its pleading. Fed. R. Civ. P. 15; Trademark Rule 2.107.

While opposer's amended notice of opposition includes four grounds for opposition (stated in five separate

"counts"), at the same time, it appears that the relevant facts are fairly limited. Therefore, the Board reminded the parties of their option to stipulate to limits on discovery, abbreviated procedures for submission of evidence and other ways to expedite resolution of this case. See, Target Brands Inc. v. Hughes, 85 USPQ2d 1676 (TTAB 2007). The Board also discussed the possibility of the parties making greater reciprocal disclosures than required by Fed. R. Civ. P. 26(a)(1), in lieu of formal discovery. See, Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 71 Fed. Reg. 2498 (January 17, 2006). The parties are encouraged to consider pursuing these possibilities, and to discuss these issues amongst themselves in the near future. While the Board also indicated that this case appears potentially appropriate for Accelerated Case Resolution ("ACR"), opposer does not agree to pursue ACR at this time. Accordingly, applicant's request that this proceeding be placed on the ACR docket, included in its filings of October 11 and 15, 2009, is **DENIED**, at this time. However, the parties are encouraged to continue discussing ACR and to agree to it, if appropriate, in the future.

The Board's standard protective order is applicable herein by operation of Trademark Rule 2.116(g) and available here:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

The parties are encouraged to acknowledge their obligations under the protective order in writing, and may utilize the following form:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/ackagrmt.htm>

The parties were reminded that although discovery is soon to open pursuant to the schedule set forth below, neither discovery requests nor motions for summary judgment may be served until after initial disclosures are made. The deadline for initial disclosures is December 5, 2009. Disclosure, discovery, trial and other dates are reset as follows:

Discovery Opens	November 5, 2009
Initial Disclosures Due	December 5, 2009
Expert Disclosures Due	April 4, 2010
Discovery Closes	May 4, 2010
Plaintiff's Pretrial Disclosures	June 18, 2010
Plaintiff's 30-day Trial Period Ends	August 2, 2010
Defendant's Pretrial Disclosures	August 17, 2010
Defendant's 30-day Trial Period Ends	October 1, 2010
Plaintiff's Rebuttal Disclosures	October 16, 2010
Plaintiff's 15-day Rebuttal Period Ends	November 15, 2010

Pro Se Information

Applicant is reminded that it will be expected to comply with all applicable rules and Board practices during

the remainder of this case. The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this opposition proceeding. Applicant should note that Patent and Trademark Rule 10.14 permits any person or legal entity to represent itself in a Board proceeding, though it is generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

If applicant does not retain counsel, then it will have to familiarize itself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure are likely to be found at most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure will be helpful.

On the World Wide Web, applicant may access most of these materials by logging onto <http://www.uspto.gov/> and making the connection to trademark materials.

Applicant must pay particular attention to Trademark Rule 2.119. That rule requires a party filing any paper with the Board during the course of a proceeding to serve a copy on its adversary, unless the adversary is represented

by counsel, in which case, the copy must be served on the adversary's counsel. The party filing the paper must include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served; (2) the method of service (e.g., e-mail, first class mail); (3) the person being served and the address used to effect service; and (4) the date of service. Also, applicant should note that any paper it is required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 or 2.198 is utilized. These rules are in part two of Title 37 of the previously discussed Code of Federal Regulations.

Files of TTAB proceedings can now be examined using TTABVue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

The first revision of the second edition (March 2004) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at www.uspto.gov/web/offices/dcom/ttab/tbmp/.
