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

Mailed: September 20, 2010

Opposition No. 91191556
Cancellation No. 92052562

Archie Comic Publications, Inc.

v.

Betty Rides Inc.

George c. Pologeorgis, Interlocutory Attorney:

By order dated July 27, 2010, the Board, *inter alia*, allowed Archie Comic Publications, Inc. (hereinafter referred to as "plaintiff") time in which to file and serve an amended notice of opposition in Opposition No. 91191556 and an amended petition to cancel in Cancellation No. 92052562 in order to cure deficiencies in the pleadings by providing a more definite recitation of specific goods upon which plaintiff uses its pleaded BETTY marks.

On August 16, 2010, plaintiff filed an amended notice of opposition and an amended petition to cancel pursuant to the Board's July 27, 2010 order. Thereafter, on September 3, 2010, plaintiff filed a second amended notice of opposition and second amended petition to cancel in order to correct typographical errors in the first amended pleadings and to

further add specificity to the pleadings as ordered by the Board.

On September 3, 2010, Betty Rides, Inc. (hereinafter referred to as "defendant") filed a response to plaintiff's second amended pleadings. While defendant does not contest plaintiff's leave to amend its pleadings, defendant nonetheless finds plaintiff's second amended pleadings deficient. Specifically, defendant contends that (1) plaintiff has not identified which specific goods its uses on each of its pleaded BETTY marks and (2) plaintiff has failed to specifically allege which of its pleaded BETTY marks has been in use since 1950, and on what goods it has used that particular BETTY mark since that time.

On September 9, 2010, plaintiff filed a reply brief in support of its second amended pleadings wherein plaintiff maintains that its second amended pleadings provide sufficient notice pleading. Moreover, in regard to defendant's contentions of purported deficiencies in the second amended pleadings, plaintiff contends that defendant has the right and is afforded the opportunity to inquire about the various permutations of uses of plaintiff's pleaded BETTY marks during discovery.

The Board, in its discretion, suggested that the issues raised by the parties should be resolved by telephonic conference as permitted by TBMP § 502.06 (2nd ed. rev. 2004).

The Board contacted the parties to discuss the date and time for holding the phone conference.

The parties agreed to hold the telephone conference at 1:00 p.m. Eastern time on Friday, September 17, 2010. The conference was held as scheduled among Oren Gilber, as counsel for Archie Comic Publications, Inc., Kevin M. Hayes and Salumeh Loesch, as counsel for Betty Rides, Inc., and George C. Pologeorgis, as a Board attorney responsible for resolving interlocutory disputes in this case.

The Board carefully considered the arguments raised by the parties, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matters. During the telephone conference, the Board made the following findings and determinations:

While the Board agrees with plaintiff that defendant may ascertain through discovery which identified goods are used with each specifically pleaded BETTY mark, as well as which pleaded BETTY marks have been in use since 1950, the Board nonetheless finds plaintiff's second amended pleadings deficient in two respects. First, in Paragraph 1 of both amended pleadings, plaintiff alleges ownership of various registered BETTY marks including an allegation of ownership of "other marks." Plaintiff, however, does not specifically identify what these "other marks." Second, the allegations

set forth in Paragraph 5 of plaintiff's second amended notice of opposition are deficient because the allegations do not clearly set forth which goods are currently sold in commerce under plaintiff's pleaded BETTY marks and which specific goods plaintiff intends to sell in the future in association with its pleaded BETTY marks.

In view of the above, plaintiff's motions to amend its pleadings filed on September 16, 2010 in each of these consolidated proceedings are granted to that the extent that plaintiff is allowed **twenty days** from the mailing date of this order in which to (1) file and serve an amended notice of opposition and an amended petition to cancel which specifically identify all the BETTY marks (whether federally-registered or based upon common law use) upon which it intends to rely in support of its asserted claim of priority and likelihood of confusion and (2) file and serve an amended notice of opposition which clarifies the goods which plaintiff currently sells in commerce under its BETTY marks and those goods which it intends to sell in commerce in association with its pleaded BETTY marks, failing which the pleadings will be limited solely to the marks specifically identified and the goods which have been clearly identified as currently in use in commerce in association with plaintiff's pleaded BETTY marks. Plaintiff should file its amended pleadings in the corresponding

proceeding to which they apply, i.e., amended notice of opposition should be filed in Opposition No. 91191556 and amended petition to cancel should be filed in Cancellation No. 92052562.

In turn, defendant is allowed **twenty days** from the date indicated on the certificates of service of the amended pleadings in which to file its answers or otherwise respond. As with plaintiff, defendant should file its answers in the appropriate corresponding proceeding.

These consolidated proceedings will proceed upon the same trial schedule as set forth below with the exception that Opposition No. 91191556 will remain suspended (except for the action required by this order) until the parties in Cancellation No. 92052562 proceeding exchange their initial disclosures by the deadline noted below. Once initial disclosures are exchanged by both parties in the cancellation proceeding, both cases will proceed simultaneously in accordance with the following trial schedule.

Deadline for Discovery Conference in Cancellation No. 92052562	**11/30/2010**
Discovery Opens	**11/30/2010**
Initial Disclosures Due in Cancellation No. 92052562	**12/30/2010**
Expert Disclosures Due	**3/1/2011**

Discovery Closes[1]	**3/31/2011**
Plaintiff's Pretrial Disclosures	**5/15/2011**
Plaintiff's 30-day Trial Period Ends	**6/29/2011**
Defendant's Pretrial Disclosures	**7/14/2011**
Defendant's 30-day Trial Period Ends	**8/28/2011**
Plaintiff's Rebuttal Disclosures	**9/12/2011**
Plaintiff's 15-day Rebuttal Period Ends	**10/12/2011**

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 Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

[1] The parties have previously agreed to a limited three-month discovery period once the subject cases were consolidated by Board order dated July 27, 2010.