

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

Mailed: January 8, 2014

Opposition No. 91203191

Future Ads LLC

v.

Kent G. Anderson

**Robert H. Coggins,  
Interlocutory Attorney:**

Now before the Board is a multitude of filings made by applicant between January 7 and November 27, 2013; and opposer's motion to strike, filed October 3, 2013. Each filing will be discussed in turn.

Applicant's Filings

It is noted that applicant is no stranger to *inter partes* proceedings at the Board. Board records indicate that applicant has, since 2003, been involved in multiple opposition and cancellation proceedings. *See, for example*, Opposition Nos. 91157538, 91158059, 91173923, 91184059, 91184524, 91192939, 91195950, 91196980, and 91204213, and Cancellation Nos. 92050325, 92050700, 92051931, 92052927, and 92053413. Moreover, applicant has, prior to the filing

of any of the papers at issue in this order, been advised that *pro se* parties are expected to familiarize themselves and comply with Board procedures, the Trademark Rules, and the Federal Rules of Civil Procedure applicable to Board proceedings. See Board order dated September 24, 2012, issued in Opposition No. 91204213. Similarly, applicant has been warned about making un-captioned, vague filings and ordered to familiarize himself with the Trademark Rules and Federal Rules of Civil Procedure. See Board order dated February 28, 2013, issued in Opposition No. 91204213.

Notwithstanding the prior advisement and intervening warning, applicant made the following filings in this case, none of which complies with the double-spacing requirement of Trademark Rule 2.126(a)(1) or pagination and exhibit requirements of Trademark Rule 2.126(a)(5) (see TBMP § 106.03 (3d ed. rev.2 2013)), and all of which are vague and, to some extent, unintelligible.

**January 7, 2013**

To the extent this filing is a motion for an extension of time, it is denied for lack of specificity or good cause. See TBMP § 509.01(a). To the extent this filing represents applicant's discovery requests upon opposer, it will be given no consideration. Trademark Rule 2.120(j)(8). To the extent this filing is a motion to suspend, it is denied for lack of specificity or good cause. Trademark Rule 2.117(c).

To the extent this filing is a motion for judgment, it is ambiguous and will be given no consideration. To the extent the filing is intended to serve any other purpose, it is unintelligible and will be given no consideration.

**January 18, 2013**

To the extent this filing represents applicant's discovery requests upon opposer, it will be given no consideration. Trademark Rule 2.120(j)(8). To the extent this filing is a motion to suspend, it is denied for lack of specificity or good cause. Trademark Rule 2.117(c). To the extent this filing purports to provide any evidence on behalf of applicant it is untimely and will be given no consideration; and, in view thereof, the attachments to the filing will be given no consideration. TBMP § 703.01(c). To the extent this filing was intended to serve any other purpose, it is unintelligible and will be given no consideration.

**February 4, 2013**

To the extent this filing is a duplicate of the January 7th filing (discussed supra), it will be given no consideration. Trademark Rule 2.193(g)(2). To the extent this filing was intended to serve any other purpose, it is unintelligible and will be given no consideration.

**April 15, 2013**

To the extent this filing memorializes settlement discussions between or any settlement position of the parties, it will be given no consideration. Fed. R. Evid. 408(a). To the extent this filing was intended to serve any other purpose, it is unintelligible and will be given no consideration.

**April 22, 2013**

To the extent this filing is a duplicate of the April 15th filing, it will be given no consideration. Trademark Rule 2.193(g)(2). To the extent this filing was intended to serve any other purpose, it is unintelligible and will be given no consideration.

**June 3, 2013**

To the extent this filing is a motion to quash, it appears moot and will be given no consideration. To the extent this filing is a motion to suspend, it is denied for lack of specificity or good cause. Trademark Rule 2.117(c). To the extent this filing contains opposer's pretrial disclosures, it will be given no consideration. Trademark Rule 2.120(j)(8). To the extent the filing was intended to serve any other purpose, it is unintelligible and will be given no consideration.

**June 24, 2013**

To the extent this filing is a motion to suspend it is denied for lack of specificity or good cause. Trademark Rule 2.117(c). To the extent this filing is a motion for default judgment, applicant provides no basis therefor; and, in view thereof, it will be given no consideration. To the extent this filing is a motion to quash, it appears moot and will be given no consideration. To the extent this filing is a motion to strike testimony, it appears premature; moreover, applicant provides no basis for the motion, and, in view thereof, it will be given no consideration. To the extent this filing was intended to serve any other purpose, it is unintelligible and will be given no consideration.

**July 16, 2013**

To the extent this filing is a brief in opposition to a motion for discovery sanctions, it is moot and will be given no consideration; there is no outstanding motion for discovery sanctions in this proceeding. To the extent this filing seeks advice on obtaining legal counsel, applicant is informed that the USPTO cannot aid in the selection of an attorney; in addition, as the impartial decision maker, the Board may not provide legal advice. See TMEP § 1805. To the extent this filing was intended to serve any other purpose, it is unintelligible and will be given no consideration.

**July 25, 2013**

To the extent this filing is a motion to suspend it is denied for lack of specificity or good cause. Trademark Rule 2.117(c). To the extent this filing purports to provide any evidence on behalf of applicant it is untimely and will be given no consideration. TBMP § 703.01(c). To the extent this filing is a motion for default judgment, applicant provides no basis therefor; and, in view thereof, it will be given no consideration. To the extent this filing is a brief in opposition to a motion for discovery sanctions, it is moot; there is no outstanding motion for discovery sanctions in this proceeding. To the extent this filing seeks a "Trademark Brief" from opposer, such a request is premature as the deadline for opposer to file its main brief on the case had not yet run when this paper was filed. See Trademark Rule 2.128(a)(1). Moreover, it is noted that opposer subsequently filed (on December 26, 2013) a timely main brief on the case. NB, applicant's main brief on the case, if filed, is due on or before January 27, 2013. See Trademark Rules 2.128(a)(1) and 2.196. Applicant has repeatedly stated that he cannot afford a trial; however, applicant has filed the subject application and seeks to avail himself of the benefits of registration. The current opposition proceeding is part of the application process. See TMEP § 1503.01. To the extent this filing seeks advice

on obtaining legal counsel, applicant is again informed that the USPTO cannot aid in the selection of an attorney or provide legal advice. See TMEP § 1805. To the extent this filing was intended to serve any other purpose, it is unintelligible and will be given no consideration.

**August 28, 2013**

The purpose of this filing is unclear; however, inasmuch as it repeatedly mentions "evidence" and was filed during applicant's testimony period, the Board presumes it is offered as evidence on behalf of applicant. To the extent this filing seeks a "Trademark Brief" from opposer, such a request is premature as the deadline for opposer to file its main brief on the case had not yet run when this paper was filed. See Trademark Rule 2.128(a)(1). Moreover, it is noted that opposer subsequently filed (on December 26, 2013) a timely main brief on the case. NB, applicant's main brief on the case, if filed, is due on or before January 27, 2013. See Trademark Rules 2.128(a)(1) and 2.196. To the extent this filing is a motion to suspend, it is denied for lack of specificity or good cause. Trademark Rule 2.117(c). To the extent applicant requests that his "trademark brief" "be allowed to replace" "the testimony," such a request is unclear and will be given no consideration. Applicant is reminded that a brief on the case is a party's "opportunity to present, in a systematic and coherent manner, and in a

form which is permanent and can be referred to, a discussion of the facts in light of the law," his strongest affirmative arguments, and a rebuttal of his adversary's arguments.

TBMP § 801.01. Moreover, the facts and arguments presented in the brief must be based on the evidence offered at trial. A brief may not be used as a vehicle for the introduction of evidence. *Id.* To the extent this filing constitutes evidence on behalf of applicant, it is subject to opposer's motion to strike, discussed below.

**November 12, 2013**

The purpose of this filing is unclear. Applicant labeled the filing as "cross examination," but the filing appears to discuss testimony, an extension of time, and evidence. By this filing, applicant states the he was not sent a copy of opposer's rebuttal testimony deposition of applicant (taken October 22, 2013) which was subsequently filed by opposer on November 13, 2013. However, it is noted that opposer states in its November 13th notice of filing testimony that applicant was served with a copy of the transcript; and, applicant appears to state in a November 27, 2013 filing that he did receive a copy of the transcript.

To the extent this filing is a motion for an extension of time, it is denied for lack of specificity or good cause. See TBMP § 509.01(a). To the extent this filing relates to

the rebuttal testimony deposition of applicant, consideration of that deposition and this filing are deferred until final decision.

**November 27, 2013**

The purpose of this filing is unclear. However, to the extent this filing relates to the rebuttal testimony deposition of applicant, consideration of that deposition and this filing are deferred until final decision.

Opposer's Motion to Strike

By way of the motion, opposer moves to strike from applicant's August 28, 2013 filing (1) a paper denoted "Additions to Testimony Deposition," (2) trade name documents and state and foreign trademark registration certificates, (3) a paper titled "Business Plan," (4) various Internet printouts, (5) excerpts from newspapers and/or magazines, (6) title pages of various documents, (7) excerpts from certain trademark applications filed or owned by applicant, (8) records of third party proceedings, and (9) copyright and patent-related materials; and moves to strike (10) various other papers (as described in Section H of the motion) previously filed or served in the current proceeding.

While the Board does not usually read trial testimony or examine other trial evidence prior to final decision (see TBMP §§ 502.01 and 532), the Board may determine the motion

herein inasmuch as applicant failed to file a brief in opposition thereto. In view of applicant's failure to contest the motion to strike, the motion is **granted** as conceded. Trademark Rule 2.127(a) ("When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded."). *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1853 (TTAB 2000) (pendency of other issues does not remove obligation to respond to motion). Moreover, the motion to strike (i.e. exclude from evidence) various papers previously filed in the current proceeding (i.e., filed outside of applicant's testimony period) is well-taken. See *Equine Touch Foundation Inc. v. Equinology Inc.*, 91 USPQ2d 1943, 1945 (TTAB 2009); and generally TBMP Chapter 700 (3d ed. rev.2 2013).

Requirement for Future Filings

Applicant is **ordered** to telephone the Board to obtain permission to file any future paper in this proceeding. The only exception to this requirement is applicant's main brief on the case, if filed. Should applicant file a future paper in this case without first obtaining leave from the Board, that filing (except for applicant's main brief, if filed) will be given no consideration.

Applicant's filings, including his main brief, must comply with the formatting requirements of Trademark Rule

2.126. Applicant may refer to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both available on the Board's homepage at <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. The Board's homepage also provides electronic access to the ESTTA filing system (<http://estta.uspto.gov>) for Board filings, and TTABVUE (<http://ttabvue.uspto.gov/ttabvue>) for case status and prosecution history. Use of electronic filing with ESTTA is strongly encouraged; this electronic file system operates in real time. See TBMP § 110.09.

Schedule

Dates **remain** as set. Pursuant to Trademark Rule 2.128, remaining briefing dates are as follows.

Defendant's main brief due, if filed: 01/27/2014  
Plaintiff's rebuttal brief due, if filed: 02/11/2014

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.