

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

DUNN

Mailed: September 16, 2013

Opposition No. 91209962

Dowco, Inc.

v.

Michael A. Siciliano

Elizabeth A. Dunn, Attorney:

As ordered by the Board, the parties appeared by phone on September 10, 2013 for a conference to discuss the stipulation filed July 31, 2013 and ACR (accelerated case resolution) procedures. The participants were Katrina Hull, counsel for opposer, Michael Siciliano, applicant acting pro se, and Elizabeth Dunn, attorney for the Board.

As set forth in the Board's June 5, 2013 order approving use of ACR procedures, the primary issue in this proceeding whether opposer can prove that the consumer of its vehicle covers is likely to believe applicant's email alerts emanate from the same source.¹ The notice of opposition alleges that applicant

¹ With the submission of the pleaded registrations with the notice of opposition, there is no issue as to opposer's standing and priority, and as to the remaining issue of likelihood of confusion, the parties' marks share the common term GUARDIAN, with other elements disclaimed (except one of opposer's marks includes the term "WEATHERALL").

uses its mark on a website that drives traffic to another website which promotes both the email alerts listed in the opposed application and vehicle covers, and that applicant's services are designed to alert consumers about hail storms so that customers use vehicle covers. During the discovery and ACR conference, the parties discussed opposer's concern regarding authentication of documents without discovery, including screen shots from applicant's website, and agreed to file a stipulation regarding those screen shots.

The parties filed the stipulation as agreed, but opposer thereafter found that applicant continues to change his website. Applicant contends that it has business interests which require changes to the website, and that the changes also make confusion unlikely. Opposer contends that proving its case is made more difficult by its inability to seek discovery as to applicant's use of its mark and services. Discovery responses must be supplemented, whereas supplementation of the stipulation is impractical. Opposer seeks dissolution of the ACR proceeding, and resumption of the Board's customary trial schedule. Applicant opposes the change, and insists that opposer already is aware of his changes to his website.

Adoption of ACR is voluntary. The Board does not dictate how the parties must prove their case, and will not require maintenance of ACR procedures when a party's litigation strategy has changed. While applicant has the prerogative to change his website, it also is undisputed that opposer raised its concerns about obtaining evidence regarding applicant's use from the outset of

this proceeding, and that the arrangement for a stipulation is not meeting its intended purpose of eliminating the need for discovery. Accordingly, the Board dissolves the ACR proceeding, and resumes this proceeding under the schedule set forth below.²

STIPULATION

The parties agree that testimony may be submitted in the form of an affidavit.

The non-testifying party may seek cross-examination.

Expert Disclosures Due	11/10/2013
Discovery Closes	12/10/2013
Plaintiff's Pretrial Disclosures	1/24/2014
Plaintiff's 30-day Trial Period Ends	3/10/2014
Defendant's Pretrial Disclosures	3/25/2014
Defendant's 30-day Trial Period Ends	5/9/2014
Plaintiff's Rebuttal Disclosures	5/24/2014
Plaintiff's 15-day Rebuttal Period Ends	6/23/2014

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 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.

² Inasmuch as the parties agree that the stipulation was accurate at the time it was filed, and the parties were proceeding under ACR at that time, either party may rely on the stipulation at trial for any probative value it possesses.