

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

Mailed: December 23, 2013

Opposition No. 91210195

Eric J. Faull

v.

Experience Based Learning,  
Inc.

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

On October 4, 2013, opposer was ordered to show cause why the opposition should not be dismissed inasmuch as the opposition was filed by Zip Idaho, LLC -a party other than Eric J. Faull, to whom an earlier extension of time to oppose was granted. Now before the Board is opposer's response (filed November 4, 2013).<sup>1</sup>

By way of the response, opposer states that Mr. Faull was not represented by counsel when the extension was filed; Mr. Faull was not aware of the legal distinction between filing an extension in his own name or in Zip Idaho, LLC's

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<sup>1</sup> The response is timely under Trademark Rule 2.196.

name<sup>2</sup>; Mr. Faull intended to file the extension in his capacity as president of Zip Idaho, LLC (and not in his personal capacity); Mr. Faull formed Zip Idaho, LLC in 2007; Mr. Faull is and always has been "a member and owner" of Zip Idaho, LLC; Mr. Faull made a mistake in filing the extension; and Mr. Faull and Zip Idaho, LLC are in privity.

To the extent that opposer basis the mistake in filing the extension in the name of Eric J. Faull instead of Zip Idaho, LLC on Mr. Faull's unfamiliarity with the substance of trademark law, such a mistake, alone, does not overcome the issue. "Misidentification by mistake" means a mistake in the form of the opposer's name or its entity type, not the naming of a different existing legal entity that is not in privity with the party that should have been named. See *Custom Computer Services, Inc. v. Paychex Properties, Inc.*, 337 F.3d 1334, 67 USPQ2d 1638 (Fed. Cir. 2003); and *Cass Logistics Inc. v. McKesson Corp.*, 27 USPQ2d 1075 (TTAB 1993). Here, Mr. Faull is a different existing legal entity; therefore, opposer's response should have focused on privity.

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<sup>2</sup> The Board notes that Mr. Faull filed an extension of time against application Serial No. 85518391 (which is the subject of Opposition No. 91210185) on January 9, 2013, in the name of Zip Idaho, LLC -not in his own name. This other extension was filed on the same day as the underlying extension at issue in the instant proceeding (i.e., Opposition No. 91210195).

It is possible that the issue of privity may counter Mr. Faull's mistake. That is, if Mr. Faull can be shown to be in privity with Zip Idaho, LLC, then the opposition need not be dismissed. Unfortunately, privity is not clearly shown from opposer's response to the show cause order. The response fails to indicate whether Mr. Faull is the owner of Zip Idaho, LLC, or merely an owner. That is, it is unclear whether Mr. Faull is a partial owner or sole owner of Zip Idaho, LLC. In the current situation, where Mr. Faull clearly identified himself as an individual U.S. citizen in the request for extension of time to oppose, the fact that Mr. Faull may also be president of Zip Idaho, LLC is of little importance; it is only ownership of Zip Idaho, LLC that may determine privity.

In view thereof, the show cause order is maintained, and opposer is allowed until **twenty days** from the mailing date of this order in which to provide detailed information as to Mr. Faull's ownership interest in Zip Idaho, LLC.

Proceedings remain **suspended** pending a resolution of this matter.