

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

EJW

Mailed: December 29, 2014

Opposition No. 91219403

*Margaritaville Enterprises, LLC*

*v.*

*Rachel A Bevis*

**ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:**

On December 29, 2014, opposer (represented by Joel Feldman of Greenberg Traurig LLP), Rachel Bevis,<sup>1</sup> *pro se*, and Elizabeth Winter, the assigned Interlocutory Attorney, participated in a discovery conference regarding this proceeding pursuant to Trademark Rule 2.120(a). This order sets forth a summary of the significant points addressed during the conference, the Board's order, and the parties' stipulation.

Conference Summary

At the outset, the Board inquired as to whether the parties had engaged in any settlement discussions and whether there are any related proceedings. The parties informed the Board that there is no related Federal court case or Board proceeding. With respect to settlement, the parties explained that there were no discussions as yet. The parties were reminded to file a

---

<sup>1</sup> Mr. Ed Madigan also was present in the conference.

consented motion to suspend should they decide to engage in settlement negotiations.

The parties were required to promptly advise the Board should a civil action between the parties or other Board proceeding be instituted so that the Board can determine whether suspension or consolidation is appropriate.

Application and Pleadings

Applicant seeks registration of the mark MARIJUANAVILLE for use with “T-shirts, hats, sweat shirts, sweat pants, jackets, socks,” in International Class 25. The application is based on applicant’s intent to use the mark. Opposer, Margaritaville Enterprises, LLC, opposes registration on the grounds that it has priority with respect to its mark and that there is a likelihood of confusion between its pleaded MARGARITAVILLE marks and applicant’s MARIJUANAVILLE mark. As discussed in detail in paragraph 13 of the notice of opposition, several of Opposer’s pleaded registrations for the mark MARGARITAVILLE are for identical or virtually identical goods, including registration no. 2729442 for t-shirts, registration no. 3002010 for sweatpants and hooded sweatshirts, registration no. 3117262 for sweat shirts, and registration no. 4597426 for jackets and athletic apparel, namely, shirts. Priority is not an issue in this proceeding because Opposer has attached electronic records to its notice of opposition which show status and title information on several of its MARGARITAVILLE marks.

Applicant has submitted two answers, one which comprises a paragraph stating her position with respect to the notice of opposition and the second which includes answers, presumably to the thirty-five paragraphs set forth in the notice of opposition. The second answer is comprised of “N/A”, “true” and “false.” Neither of Applicant’s answers complies with the applicable legal requirements set forth in Federal Rule of Civil Procedure 8(b) or Trademark Rule 2.106(b). Specifically, Fed. R. Civ. P. 8(b), which applies to this proceeding under Trademark Rule 2.116(a), provides, in part:

A party shall state in short and plain terms the party’s defenses to each claim asserted and shall **admit or deny** the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer herein consists of thirty-five (35) paragraphs setting forth the basis for Opposer’s claim of damage. In accordance with Federal Rule 8(b), Applicant must answer the notice of opposition by admitting or denying the allegations contained in each paragraph, that is, Applicant must state “admit” or “deny”. Alternatively, if

applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, she should so state and this will have the effect of a denial. *See* Trademark Rule 2.106(b)(1), 37 C.F.R. § 2.106(b)(1). *See also* TBMP § 311 (2014).

Accordingly, Applicant is allowed until **THIRTY DAYS** from the date of the conference in which to file an answer herein that complies with Fed. R. Civ. P. 8, failing which default judgment may be entered against her in accordance with Fed. R. Civ. P. 55(b). *See* Fed. R. Civ. P. 55(a).

Accelerated Case Resolution (“ACR”)

The Board recommended that the parties consider using ACR to resolve this matter. The Board explained that the parties would submit to the Board a stipulation that cross-motions for summary judgment and accompanying evidentiary submissions would substitute for a trial record and traditional briefs at final hearing, that the parties would forego trial, and that the Board may make determinations of genuine disputes of material fact on the basis of the final record and may issue a final ruling based thereon in accordance with the evidentiary burden at trial, that is, by a preponderance of the evidence. However, other approaches have been adopted by parties that realize the efficiencies sought through the ACR process and should, therefore, be considered as falling under the ACR umbrella. *See, e.g., Target Brands, Inc. v. Shaun N.G. Hughes*, 85 USPQ2d 1676 (TTAB 2007), in which the parties stipulated to 13 paragraphs of facts, including applicant’s dates of

first use, channels of trade for applicant, extent and manner of applicant's use, recognition by others of applicant's use, as well as the dates, nature and extent of descriptive use by the opposer's parent; and the parties stipulated to the admissibility of business records, government documents, marketing materials and internet printouts.<sup>2</sup>

Information concerning use of ACR in Board proceedings is available online at [http:// www.uspto.gov/trademarks/process/appeal/index.jsp](http://www.uspto.gov/trademarks/process/appeal/index.jsp).

The parties are allowed until **FEBRUARY 28, 2015**, to file a stipulation to have this proceeding decided by ACR, failing which the proceeding will move forward on the revised schedule set forth at the conclusion of this order.<sup>3</sup>

### Stipulations

Various stipulations may be agreed to by the parties, either during the course of the conference or during the pendency of the proceeding. By way of example, the parties may agree or stipulate *in writing* to the following measures to facilitate the progress of this proceeding:

- Discovery depositions may be taken by telephone and/or video conference;

---

<sup>2</sup> By way of example only, the parties may view ACR related stipulations and orders in the following cases: 92054446 (see no. 20 in case history); and 91199733 (see nos. 12 and 18 in case history).

<sup>3</sup> Should the parties decide to use ACR, the remaining schedule in the proceeding will be reset.

- Discovery depositions may be submitted in lieu of testimony depositions;
- The parties may agree to allow additional time to respond to discovery requests;<sup>4</sup>
- Matter that is otherwise improperly submitted by a notice of reliance may be introduced by a notice of reliance;
- That a party may rely on its own discovery responses;
- Testimony affidavits of witnesses may be submitted instead of testimony depositions;
- That documents are deemed authenticated; and/or
- That a notice of reliance can be filed after the testimony periods are closed.

See TBMP §§ 403.01, 501, 704.03(b) and 705 (2014).

***The parties agreed to service by regular U.S. mail of filings with the Board or other papers in the proceeding.***

Standard Protective Agreement

The Board also reminded the parties that the Board's standard protective agreement applies to this proceeding and may be modified by the parties in writing.

---

<sup>4</sup> Parties must inform the Board, by stipulation or motion, any time they agree to modify their obligations under the rules governing disclosures and discovery, as well as when they agree to modify deadlines or schedules that involve disclosures, discovery, trial or briefing. See TBMP §§ 403.01 and 501.02 (2014).

*Should the parties modify the standard agreement, the Board requests that the parties identify which clause or provision has been modified.*

Initial Disclosures

***Until the party seeking to serve discovery or to file a motion for summary judgment has served its initial disclosures, discovery may not be served, nor may a summary judgment motion be filed.***

Should the parties seek additional information on initial disclosures, they may obtain additional information regarding initial disclosures at the following sources:

[http://www.uspto.gov/trademarks/process/appeal/RULES08\\_01\\_07.pdf](http://www.uspto.gov/trademarks/process/appeal/RULES08_01_07.pdf)

and to <http://edocket.access.gpo.gov/2006/pdf/06-197.pdf>, or to [http://www.uspto.gov/trademarks/process/appeal/RULES01\\_17\\_06.pdf](http://www.uspto.gov/trademarks/process/appeal/RULES01_17_06.pdf). See

Notice of Final Rulemaking (“Miscellaneous Changes to Trademark Trial and Appeal Board Rules”) in the Federal Register, 72 Fed. Reg. 147 (August 1, 2007) and 71 Fed. Reg. 10, 2501 (January 17, 2006) (pages 2498 and 2501).

Evidence

The parties are also reminded that each party has a duty to preserve material evidence and to avoid spoliation of evidence.<sup>5</sup> *It is also recommended*

---

<sup>5</sup> “While a litigant is under no duty to keep or retain every document in its possession ... it is under a duty to preserve what it knows, or reasonably should know, is relevant in the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery and/or is the subject of a pending discovery request.” *Healthcare Advocates, Inc. v. Harding, Earley, Follmer & Frailey, et al.*, 497 F.Supp.2d 627, 639 (E.D.Pa. 2007) (addressing law firm’s failure to preserve temporary electronic files). See also *Frito-Lay North America, Inc. v. Princeton Vanguard, LLC*, 100 USPQ2d 1904 (TTAB 2011) (“ESI

that the parties promptly discuss the exchange of electronically stored information (“ESI”) should such a need arise during discovery.

**Information for *pro se*<sup>6</sup> Parties**

An *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party’s use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary’s case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. **No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.**

While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar

---

must be produced in Board proceedings where appropriate, notwithstanding the Board's limited jurisdiction and the traditional, i.e. narrow, view of discovery in Board proceedings” (internal citations omitted).

<sup>6</sup> A *pro se* party is not represented by counsel.



with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that the parties be familiar with Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice, and which are available at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

**Every motion, paper or communication filed with the Board must include proof of service of a copy on opposing counsel or party, in compliance with Trademark Rule 2.119(a) and (b).** The Board may decline to consider any motion, paper or communication filed herein which does not include proof of service, such as a Certificate of Service. The Board's Manual of Procedure (TBMP) sets forth the following suggested format for a Certificate of Service:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party). See TBMP § 113.03.

**Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.** *See McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006). The Board's order instituting this proceeding also includes information with which applicant should be familiar.

Trial Dates Reset

Trial dates in this proceeding are reset as shown in the following schedule:

<b>Time to File Amended Answer</b>	<b>1/28/2015</b>
<b>Discovery Opens</b>	<b>1/28/2015</b>
<b>Initial Disclosures Due</b>	<b>2/27/2015</b>
<b>Expert Disclosures Due</b>	<b>6/27/2015</b>
<b>Discovery Closes</b>	<b>7/27/2015</b>
<b>Plaintiff's Pretrial Disclosures Due</b>	<b>9/10/2015</b>
<b>Plaintiff's 30-day Trial Period Ends</b>	<b>10/25/2015</b>
<b>Defendant's Pretrial Disclosures Due</b>	<b>11/9/2015</b>
<b>Defendant's 30-day Trial Period Ends</b>	<b>12/24/2015</b>
<b>Plaintiff's Rebuttal Disclosures Due</b>	<b>1/8/2016</b>
<b>Plaintiff's 15-day Rebuttal Period Ends</b>	<b>2/7/2016</b>

**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. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

\*\*\*