

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
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nmt

Mailed: May 13, 2017

Opposition No. 91223575

Pinkette Clothing, Inc.

v.

Lawrence Mallard

By the Trademark Trial and Appeal Board:

As last reset, initial disclosures were due on June 20, 2016 and the discovery period closed on November 17, 2016. Opposer's pretrial disclosures were due on January 1, 2017 and Opposer's trial period closed on February 15, 2017.

The Board observes that Applicant's answer of April 11, 2016 was not served by email in accordance with Trademark Rule 2.119. Service of all papers must be by email, unless otherwise stipulated. Trademark Rule 2.119.

This case now comes up for consideration of Opposer's motion (filed February 2, 2017) captioned as "motion for default judgment or, in the alternative, for an order extending pre-trial deadlines." In such motion, Opposer argues that Applicant has failed to participate in the discovery conference, serve initial disclosures, answer or respond to Opposer's discovery requests, or participate in any discovery during this proceeding.

To the extent such motion is construed as a motion to compel initial disclosures it is denied untimely. A motion to compel initial disclosures must be filed within thirty days after the deadline therefor. Trademark Rule 2.120(f). To the extent such motion is construed as a motion to compel discovery it is denied as untimely. Such motion must be filed before the deadline for pretrial disclosures for the first testimony period. Trademark Rule 2.120(e). To the extent such motion may be construed as a motion for sanctions for Applicant's failure to participate in the required discovery conference it is denied as untimely. Such motion must be filed prior to the deadline for initial disclosures. Trademark Rule 2.120(h). With regard to the alternative motion to reopen (all pretrial dates closed by the time the motion was filed) all pretrial disclosure deadlines by six months, the Board finds that Opposer has not demonstrated the necessary showing of excusable neglect under Fed. R. Civ. P. 6(b)(1)(B). Accordingly, such motion is denied.

The Board turns to Opposer's communication filed on February 20, 2017 wherein it informs the Board of Applicant's non-appearance at two noticed depositions on February 13, 2017 and February 14, 2017. If a party wishes to take the trial testimony of an adverse party or non-party residing in the U.S., and the proposed witness is not willing to appear voluntarily or testify, the party wishing to the testimony must secure the attendance of the witness by subpoena pursuant to 35 U.S.C. § 24 and Fed. R. Civ. P. 45. The Board has no jurisdiction over depositions by subpoena. See TBMP Section 703.01(f)(2) (and cases cited therein).

Inasmuch as the Board has delayed considering the above filings¹, it finds it appropriate to toll the running of all dates herein as of the filing of the February 2, 2017 communication.

Proceedings are resumed. There are **14 days** remaining in Opposer's trial period. Dates are reset as follows:

Plaintiff's 14-day Trial Period Ends	June 7, 2017
Defendant's Pretrial Disclosures Due	June 22, 2017
Defendant's 30-day Trial Period Ends	August 6, 2017
Plaintiff's Rebuttal Disclosures Due	August 21, 2017
Plaintiff's 15-day Rebuttal Period Ends	September 20, 2017
BRIEFS SHALL BE DUE AS FOLLOWS:	
Plaintiff's Main Brief Due	November 19, 2017
Defendant's Main Brief Due	December 19, 2017
Plaintiff's Reply Brief Due	January 3, 2018

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.

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NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD ("BOARD") RULES OF PRACTICE WILL BE EFFECTIVE JANUARY 14, 2017. The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7 2016, at 81 F.R. 69950. It sets forth **several** amendments to the rules

¹ To the extent Opposer's March 8, 2017 filing merely informs the Board that Applicant has not responded to its previous motion(s), the Board acknowledges such filing, but will give it no further consideration.

that govern *inter partes* (oppositions, cancellations, concurrent use) and *ex parte* appeal proceedings.

For complete information, the parties are referred to:

- The Board's home page on the uspto.gov website:
<http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule:
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- A chart summarizing the affected rules and changes:
http://www.uspto.gov/sites/default/files/documents/RulesChart_01_14_17.pdf

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by mail. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.
- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board's notice of institution constitutes service of complaints. Trademark Rules 2.101 and 2.111.

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of

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commencement of the proceeding, should read the entire Final Rule.