

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

Mailed: December 18, 2015

Opposition No. 91224012

Survivorman Holdings Inc.

v.

Survivormate Ind. Ltd.

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

Now before the Board is counsel's renewed motion (filed December 18, 2015) for mandatory withdrawal as Applicant's counsel of record in this proceeding. Although the request to withdraw as counsel once again fails to indicate proof of service of the request upon the client itself, counsel included a copy of a November 20, 2015 letter from counsel to Applicant indicating the withdrawal and discharge.¹ In view thereof, the motion to withdraw is **granted**. The law firm of Palmer IP no longer represents Applicant in this proceeding.²

¹ It is unusual for appointed counsel to fail to provide the Board with the necessary correspondence address for the client. Counsel's failure to provide an address in the body of either of the requests to withdraw, failure to indicate proof of service upon Applicant of either request, and redaction of the mailing address on the November 20th letter allegedly sent to Applicant required the Board to search for Applicant's correspondence address elsewhere. The Board notes that a TEAS-filed Withdrawal of Attorney form provides a correspondence address which matches Applicant's address in the original application. The Board will use that address to correspond with Applicant.

² A copy of the request to withdraw is placed in the application involved in this proceeding.

In view of the withdrawal of Applicant's counsel, Applicant is allowed until **thirty days** from the mailing date of this order to appoint new counsel, or to file a paper stating that Applicant will represent itself. If Applicant files no response, the Board may issue an order to show cause why default judgment should not be entered against Applicant based on Applicant's apparent loss of interest in the proceeding.

Suspension

Proceedings remain **suspended** pending a response by Applicant to this order.

Information for Applicant Regarding Legal Representation

Although Patent and Trademark Rule 11.14 permits an entity to represent itself, it is strongly advisable for a party that is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. There are special rules governing Canadian attorneys. *See* TMEP § 602.03(a).

Any party that does not retain counsel must itself be familiar with the authorities governing this proceeding, including the Trademark Trial and Appeal Board Manual of Procedure (TBMP), and the Trademark Rules of Practice (37 C.F.R. Part 2), both accessible directly from the Board's web page at the following URL: <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>. Also on the Board's web page are links to ESTTA, the Board's

electronic filing system³ at <http://estta.uspto.gov>, and TTABVUE, for case status and prosecution history at <http://ttabvue.uspto.gov/ttabvue>.

Trademark Rules 2.119(a) and (b) require that every paper filed in the USPTO in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney. Proof of service must be made before the paper will be considered by the Board. Accordingly, copies of all papers filed in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. *See* TBMP § 113.03. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a certificate of service as follows:

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 overnight courier (or insert other appropriate method of delivery) to: (name and address of opposing counsel or party).

Signature _____

Date _____

As a practical matter, parties located outside the United States must meet the service requirement through transmission by overnight courier or electronic transmission (but only if mutually agreed). *See* TBMP § 113.04 and Trademark Rules 2.119(b)(5)-(6). Parties located outside the United States are strongly

³ The Board strongly encourages parties to file all papers through ESTTA, which operates in real time and provides a tracking number that the filing has been received. For assistance in using ESTTA, call 571-272-8500.

encouraged to list an email address with the Board for the duration of the *inter partes* proceeding, and to seek written agreement from the adverse party to service by email.

Strict compliance with the Trademark Rules of Practice, and the Federal Rules of Civil Procedure (where applicable), is required 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).

This *inter partes* proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. The Board does not preside at the taking of testimony; 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 unless it has been introduced in evidence in accordance with the applicable rules.

A copy of this order has been sent to each address below:

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