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Filing date: **11/15/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91229272
Party	Plaintiff Roth Licensing, LLC
Correspondence Address	BRIAN M DAUCHER SHEPPARD MULLIN RICHTER & HAMPTON LLP 650 TOWN CENTER DR FOURTH FLOOR COSTA MESA, CA 92626 UNITED STATES uspto-tm-oc@sheppardmullin.com, bdaucher@sheppardmullin.com, GPour-Moezzi@sheppardmullin.com
Submission	Other Motions/Papers
Filer's Name	Gazal Pour-Moezzi
Filer's e-mail	uspto-tm-oc@sheppardmullin.com, bdaucher@sheppardmullin.com, GPour-Moezzi@sheppardmullin.com
Signature	/gpm/
Date	11/15/2016
Attachments	11-15-16 Notice of Decision in Related Arbitration.pdf(138949 bytes) 11-2-16 Exhibits A and B to Roth Reply-.pdf(1428881 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Roth Licensing, LLC,
a California limited liability company,

Opposer,

v.

Dentsply Sirona Inc.,
a Delaware corporation,

Applicant.

OPPOSITION NO.: 91-229272

Mark: **RT RX**

Serial No.: 86/742,723

NOTICE OF DECISION IN RELATED ARBITRATION

Roth Licensing, LLC (“Opposer” or “Roth”) hereby provides the Board with a copy of an order issued by the arbitrator on September 21, 2016 in the parties’ underlying arbitration. (*See* Declaration of Gazal Pour-Moezzi (“Pour-Moezzi Decl.”) ¶ 3, Ex. B.) As set forth in Roth’s prior filings in this proceeding, Roth and Applicant’s wholly-owned subsidiary, GAC International, LLC (“GAC”), are parties to a pending arbitration before ADR Services, Inc. related to GAC’s use of the **RT RX** mark. [*See* Docket No. 4 at 2-3.]

On September 1, 2016, GAC filed a motion to stay the arbitration pending the outcome of this trademark opposition proceeding. (Pour-Moezzi Dec. ¶ 2, Ex. A.) By order dated September 21, 2016, the arbitrator denied GAC’s motion to stay, concluding that the most complete resolution of the parties’ dispute is available in the arbitration proceeding. (Pour-Moezzi Dec. ¶ 3, Ex. B.)

DATED: November 15, 2016

Respectfully submitted,

By



BRIAN M. DAUCHER
GAZAL J. POUR-MOEZZI

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
650 Town Center Drive, Fourth Floor
Costa Mesa, California 92626
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Attorneys for Opposer
ROTH LICENSING, LLC

DECLARATION OF GAZAL POUR-MOEZZI

I, Gazal Pour-Moezzi, declare as follows:

1. I am an attorney duly licensed to practice in the State of California. I am an associate at the law firm of Sheppard Mullin Richter & Hampton, LLP, counsel of record for Opposer Roth Licensing, LLC ("Roth") in this proceeding. I have personal knowledge of the facts set forth in this declaration, and if called to testify, I could and would testify competently thereto.
2. Attached hereto as **Exhibit A** is a true and correct copy of a motion to stay filed on September 1, 2016 by GAC International LLC ("GAC") in the arbitration proceeding between Roth and GAC. GAC's motion sought a stay of the arbitration proceeding in favor of this trademark opposition proceeding.
3. Attached hereto as **Exhibit B** is a true and correct copy of the arbitrator's order denying GAC's motion to stay the arbitration proceeding in favor of the trademark opposition proceeding.

I declare all of the foregoing under the penalty of perjury under the laws of the United States of America.

Executed on this 15th day of November, 2016 in Costa Mesa, California.



Gazal Pour-Moezzi

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF DECISION IN RELATED ARBITRATION** has been served on Dentsply Sirona Inc. by mailing said copy on November 15, 2016 via First Class Mail postage prepaid to:

Richard M. Barnes, Esq.
Goodell Devries Leech & Dann LLP
One South Street, 20th Floor
Baltimore, MD 21202

Dated: November 15, 2016

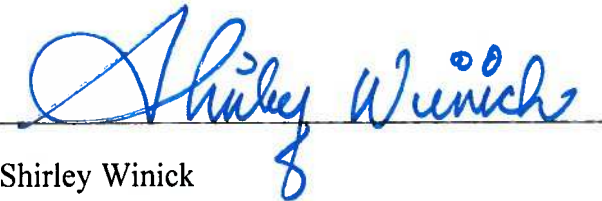

Shirley Winick

Exhibit A



Richard M. Barnes
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One South Street, 20th Floor
Baltimore, Maryland 21202
T|410-783-4000 F|410-783-4040

September 1, 2016

VIA ELECTRONIC MAIL AND U.S. MAIL

Hon. James Lambden (Ret.) (justicelambden@adrservices.org)
ADR Services, Inc.
350 Saint Catherines Square
Benicia, California 94510

Re: *Roth Licensing LLC v. GAC International LLC*
ADR Services Case No.: 15-3234-JL

Dear Justice Lambden:

Please allow this letter to serve as Respondent GAC International LLC's ("GAC") Motion to Stay Arbitration pending the outcome of a parallel administrative proceeding initiated by Claimant Roth Licensing LLC ("Roth Licensing") before the United States Patent and Trademark Office's Trademark Trial and Appeal Board ("TTAB").

INTRODUCTION

Roth Licensing has now initiated two separate proceedings pertaining to GAC's use of its mark, "RT Rx," the instant arbitration and a separate federal administrative proceeding. Roth Licensing asserts in both proceedings that GAC's RT Rx mark is likely to cause confusion with Roth Licensing's federally registered mark, "ROTH." By initiating two parallel proceedings, Roth Licensing has fostered the potential for inconsistent results that should be avoided in the interests of judicial economy.

The federal administrative proceeding squarely raises issues that are also central to this proceeding. A decision in favor of either party in the federal proceeding would be at least helpful and potentially determinative if applied here. On the other hand, inconsistent outcomes in the two tribunals would have negative, potentially untenable consequences. Accordingly, GAC respectfully requests that this arbitration be stayed pending the outcome of the federal administrative proceedings in the TTAB.

FACTUAL BACKGROUND

At least as early as April 1, 2015, GAC has been using its mark, RT Rx, in commerce. *See Application for Registration* (Ex. 1). On August 31, 2015, GAC's parent company, Dentsply Sirona Inc., applied to the United States Patent and Trademark Office for registration of this mark. *See id.*

On May 5, 2015, Roth Licensing, the holder of its own separately registered mark, ROTH, initiated the instant proceeding by filing a Demand for Arbitration. On August 1, 2016, Roth Licensing also filed a notice in the Patent and Trademark Office, challenging the registration sought by Dentsply Sirona of the mark RT Rx and commencing a formal "Opposition Proceeding." *See Notice of Opposition* (Aug. 1, 2016) (Ex. 2).

In the TTAB proceeding that it initiated, captioned Roth Licensing LLC v. Dentsply Sirona, Inc., Opp'n. No. 91229272 (Aug. 1, 2016), Roth Licensing stands in position of Plaintiff. *See, e.g.*, TTAB Rule of Procedure 302 ("An opposition proceeding is commenced by the timely filing of a notice of opposition, together with the required fee, in the USPTO. . . . The notice of opposition . . . and the answer thereto correspond to the complaint and answer in a court proceeding. The opposer in an opposition proceeding . . . is in the position of plaintiff[.]"); *see also* 37 C.F.R. § 2.101(a) ("An opposition proceeding is commenced by filing in the Office a timely notice of opposition, with the required fee."); 37 C.F.R. § 2.116(b) ("The opposer in an opposition proceeding . . . shall be in the position of plaintiff[.]").

A trial order entered in the TTAB proceeding has already scheduled the close of discovery for April 8, 2017, with "trial" submissions thereafter.¹ *See Trial Order, Roth Licensing LLC v. Dentsply Sirona, Inc.*, Opp'n. No. 91229272 (Ex. 3). The Order also contains provisions for "accelerated case resolution," a "process for a more efficient and economical means of obtaining the Board's determination of the proceeding." *Id.* at 5.

In the instant arbitral proceeding, Roth Licensing asserts a number of claims, including under the Lanham Act, 15 U.S.C. § 1114, all premised on GAC's use of the RT Rx mark. Roth Licensing contends that this mark is confusingly similar to Roth Licensing's mark, ROTH. *See generally Roth Licensing's Demand for Arbitration*. In the separate TTAB proceeding, similarly, Roth Licensing contends that GAC's mark RT Rx should be denied registration because of the likelihood of confusion with Roth Licensing's mark, ROTH. **In both proceedings, thus, the central issue will be the likelihood of confusion between Roth Licensing's mark ROTH and GAC's mark RT Rx.**

¹ "Trial" in the TTAB takes the form of written submissions. *See, e.g.*, TTAB Rule of Proc. 701.

APPLICABLE PRINCIPLES

The doctrine of primary jurisdiction is a prudential doctrine under which a court (or, as here, an arbitrator) may stay proceedings to allow referral of an issue to an administrative agency. *See, e.g., Reiter v. Cooper*, 507 U.S. 258, 268-69 (1993). The doctrine may be applied not only where a parallel administrative proceeding is already pending but even where one has not yet been initiated. *See id.* at 268 (“[The primary jurisdiction doctrine] requires the court to enable a ‘referral’ to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling.”).

Being prudential and discretionary, the primary jurisdiction doctrine does not actually deprive a court (or an arbitration) of jurisdiction. *See id.* at 268. In deciding whether its application is warranted, the “deciding factor should be efficiency; the district court should exercise jurisdiction ‘if this course is more efficient; otherwise, not.’” *Rhoades v. Avon Prods., Inc.*, 504 F.3d 1151, 1165 (9th Cir. 2007).

ARGUMENT

Here, as discussed below, the interests of efficiency and judicial economy favor staying this proceeding until a ruling by the TTAB.² The alternative would be to open up the potential for confusion and inconsistent rulings that could put the parties in an untenable situation. Moreover, staying this proceeding until a TTAB ruling could not only be helpful to the arbitrator in evaluating the merits but might even be decisive of them.

First, if this arbitration proceeds without regard to the parallel administrative proceeding, the parties could ultimately be hamstrung by conflicting outcomes. For instance, if the TTAB produces a result in favor of Dentsply/GAC but a ruling here goes in favor of Roth Licensing, Dentsply/GAC would be in the untenable position of having a federally registered mark that it may be enjoined from using in commerce or have to pay royalties to use. Conversely, if the TTAB rules in favor of Roth Licensing but this tribunal rules in favor of Dentsply/GAC, Roth Licensing would have a Pyrrhic victory in which it prevents federal registration of a mark on grounds that it is confusingly similar to its own mark – but can neither prevent the use of that mark in commerce nor gain royalties for its use.

Second, a determination by the TTAB and the United States Patent and Trademark Office on whether GAC’s RT Rx mark is confusingly similar to Roth Licensing’s mark, ROTH, would not only be helpful to the arbitrator in evaluating the merits of the parties’ positions here, but may even be determinative. *See, e.g., B&B Hardware Inc. v. Hargis Indus. Inc.*, 135 S. Ct. 1293,

² Having sought and initiated the TTAB proceeding, Roth Licensing can hardly object to such a course.

1299 (2015) (“[W]e hold that a court should give preclusive effect to TTAB decisions if the ordinary elements of issue preclusion are met.”).

As it is here, the central issue in Hargis was the likelihood of confusion between an already registered federal trademark owned by one company (B&B’s mark SEALTIGHT) and another mark sought for registration by a competing company (Hargis’s proposed mark SEALTITE). *See id.* at 1297. In Hargis, the TTAB had denied registration of SEALTITE because of the likelihood of confusion. *Id.* In a subsequent judicial proceeding, B&B argued that Hargis was precluded from contesting the likelihood-of-confusion issue based on the TTAB ruling. The district court and the Eighth Circuit initially rejected this contention, holding, among other things, that “preclusion was unwarranted because the TTAB and the court used different factors to evaluate likelihood of confusion.” *See id.* The Supreme Court, however, reversed. *See id.* at 1299.

The real question, therefore, is whether likelihood of confusion for purposes of registration is the same standard as likelihood of confusion for purposes of infringement. We conclude it is, for at least three reasons. First, the operative language is essentially the same. . . . Second, the likelihood-of-confusion language that Congress used in these Lanham Act provisions has been central to trademark registration since at least 1881. . . . That could hardly have been by accident. And third, district courts can cancel registrations during infringement litigation,³ just as they can adjudicate infringement in suits seeking judicial review of registration decisions. . . . There is no reason to think that the same district judge in the same case should apply two separate standards of likelihood of confusion.

Id. at 1307.

Here, similarly, the identical issue – likelihood of confusion between ROTH and RT Rx – is pending in this proceeding but will also be determined by the TTAB in an administrative proceeding contested between the same two parties. A TTAB decision on that issue could be preclusive here if other requirements for issue preclusion are met. *See Hargis*, 135 S. Ct. at 1299. The parallel and duplicative proceedings initiated by Roth Licensing would be inefficient and wasteful of arbitral and the parties’ resources. Accordingly, the interests of judicial efficiency would be furthered by staying this arbitral proceeding until the conclusion of the

³ In this respect, of course, an arbitration is unlike a district court proceeding. As discussed below, that provides all the more reason to stay this proceeding and allow the administrative matter to proceed.

TTAB's determination of whether GAC's mark, RT Rx, is confusingly similar to Roth Licensing's mark, ROTH.

The fact that the remedies available to an arbitrator do not extend to the grant or cancellation of federal trademark registration provides all the more reason to stay this proceeding and allow the TTAB matter that Roth Licensing initiated to run its course. The parties and this tribunal would then know whether the RT Rx mark has (or has not) been approved for federal registration, and can proceed accordingly. On the other hand, if this tribunal were to proceed before the TTAB matter had concluded, there would still be uncertainty (at best) from the absence of a definitive ruling on federal registration and confusion or worse from a later outcome if the outcomes were inconsistent.

Courts in comparable circumstances have frequently stayed their own proceedings out of prudential concerns pending the outcome of parallel administrative proceedings, including TTAB proceedings. *See, e.g., Syntek Semiconductor Co. v. Microchip Tech., Inc.*, 307 F.3d 775 (9th Cir. 2002) (on appeal from district court ruling, ordering *sua sponte* stay for referral under doctrine of primary jurisdiction to the Register of Copyrights); *Unitek Solvent Servs., Inc. v. Chrysler Group LLC*, 2014 WL 5528234 (D. Hawaii Oct. 31, 2014) (dismissing federal court proceedings without prejudice and deferring to parallel TTAB proceedings concerning registration/cancellation of trademark); *Realty Experts, Inc. v. RE Realty Experts, Inc.*, 2012 WL 699512 (S.D. Cal. Mar. 1, 2012) (dismissing federal court proceeding in light of parallel TTAB proceedings over registration of trademark); *Citicasters Co. v. Country Club Commc'ns*, 1997 WL 715034 at *2 (C.D. Cal. July 21, 1997) ("In granting the motion to stay, the court is confident that the TTAB will exercise its specialized knowledge in effecting a determination that will prove valuable to this court.").⁴

Of course, not all the decisions have been in favor of a stay or dismissal of legal proceedings. In *Goya Foods, Inc. v. Tropicana Prods., Inc.*, 846 F.2d 848 (2nd Cir. 1988), for instance, the court reversed the dismissal of a claim for non-infringement and the denial of leave to amend, holding that the plaintiff should have been allowed to amend despite the presence of parallel administrative proceedings. *Id.* at 849-50. And in *Rhoades*, the court reversed a dismissal where the trial judge had concluded erroneously that the administrative proceedings left him without subject matter jurisdiction and that "the complaint is improper, brought for an improper motive." *Rhoades*, 504 F.3d at 1156.

⁴ *See also Clark v. Time Warner Cable*, 523 F.3d 1110 (9th Cir. 2008) (affirming referral to Federal Communications Commission under doctrine of primary jurisdiction); *Reese v. Odwalla, Inc.*, 30 F.Supp. 3d 935 (N.D. Cal. 2014) (dismissing action in part and staying action in part under doctrine of primary jurisdiction in favor of proceeding before United States Food and Drug Administration).

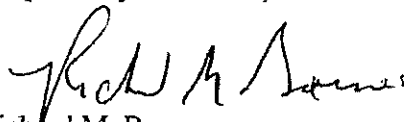
Even there, however, the court recognized that the “deciding factor” in whether to issue a stay in favor of the administrative proceedings should be “efficiency.” Rhoades, 504 F.3d at 1165. Here, for the reasons stated above, the interests of efficiency certainly favor a stay. Further, it is uncertain whether those decisions “against deference to the administrative proceeding,” Rhoades, 504 F.3d at 1163, remain good law in light of the Supreme Court’s more recent decision just last year that TTAB decisions *are* entitled to preclusive effect if the elements of issue preclusion are otherwise met. Hargis, 135 S. Ct. at 1293.

Assuming that the other requirements for application of collateral estoppel are met, a determination by the TTAB of whether the RT Rx mark is confusingly similar to the ROTH mark could be preclusive here. Even if it is not, such a determination could be helpful to the arbitrator and persuasive on a determination of the claims here – whether the TTAB determination is in favor of Roth Licensing or GAC. In the interests of judicial efficiency and prudential avoidance of inconsistent outcomes, thus, a stay of this arbitration is warranted.

CONCLUSION

For the foregoing reasons, Respondent GAC respectfully requests that the Arbitrator stay this proceeding initiated by Claimant Roth Licensing LLC pending the outcome of the parallel TTAB Opposition Proceeding also initiated by Claimant Roth Licensing LLC.

Respectfully submitted,


Richard M. Barnes

RMB/bb

cc: Tyler Smith, Case Manager
Brian M. Daucher
Gazal Pour-Moezzi

EXHIBIT

1

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 86742723

Filing Date: 08/31/2015

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	<u>RT RX</u>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	RT RX
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	DENTSPLY International Inc.
*STREET	221 West Philadelphia Street
*CITY	York
*STATE (Required for U.S. applicants)	Pennsylvania
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants)	17401
PHONE	717-849-4204
FAX	717-849-4360
EMAIL ADDRESS	trademarks@dentsply.com
LEGAL ENTITY INFORMATION	
*TYPE	CORPORATION
* STATE/COUNTRY OF INCORPORATION	Delaware
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	010
*IDENTIFICATION	Orthodontic brackets

*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 04/01/2015
FIRST USE IN COMMERCE DATE	At least as early as 04/01/2015
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT 16\867427\86742723\xml\1\ FTK0003.JPG
SPECIMEN DESCRIPTION	scanned photo of product packaging
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	Justin H. McCarthy II
FIRM NAME	Dentsply Legal Department
STREET	221 West Philadelphia Street
CITY	York
STATE	Pennsylvania
COUNTRY	United States
ZIP/POSTAL CODE	17401
PHONE	717-849-4204
FAX	717-849-4360
EMAIL ADDRESS	trademarks@dentsply.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
*NAME	Justin H. McCarthy II
FIRM NAME	Dentsply Legal Department
*STREET	221 West Philadelphia Street
*CITY	York
*STATE (Required for U.S. applicants)	Pennsylvania
*COUNTRY	United States
*ZIP/POSTAL CODE	17401
PHONE	717-849-4204
FAX	717-849-4360
*EMAIL ADDRESS	trademarks@dentsply.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	

*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
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FEE INFORMATION	
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APPLICATION FILING OPTION	TEAS Plus
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NUMBER OF CLASSES	1
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FEE PER CLASS	225
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*TOTAL FEE PAID	225
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SIGNATURE INFORMATION	
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* SIGNATURE	/deborah rasin/
-------------	-----------------

* SIGNATORY'S NAME	Deborah Rasin
--------------------	---------------

* SIGNATORY'S POSITION	Vice President/Secretary
------------------------	--------------------------

SIGNATORY'S PHONE NUMBER	717-849-4204
--------------------------	--------------

* DATE SIGNED	08/31/2015
---------------	------------

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 86742723

Filing Date: 08/31/2015

To the Commissioner for Trademarks:

MARK: RT RX (Standard Characters, see [mark](#))

The literal element of the mark consists of RT RX.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, DENTSPLY International Inc., a corporation of Delaware, having an address of
221 West Philadelphia Street
York, Pennsylvania 17401
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 010: Orthodontic brackets

Use in Commerce: The applicant is using the mark in commerce on or in connection with the identified goods/services. The applicant attaches, or will later submit, one specimen as a JPG/PDF image file showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, regardless of whether the mark itself is in the standard character format or is a stylized or design mark. The specimen image file may be in color, and the image must be in color if color is being claimed as a feature of the mark.

In International Class 010, the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 04/01/2015, and first used in commerce at least as early as 04/01/2015, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) scanned photo of product packaging.

[Specimen File1](#)

The applicant's current Attorney Information:

Justin H. McCarthy II of Dentsply Legal Department
221 West Philadelphia Street
York, Pennsylvania 17401
United States

The applicant's current Correspondence Information:

Justin H. McCarthy II
Dentsply Legal Department
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York, Pennsylvania 17401
717-849-4204(phone)
717-849-4360(fax)

trademarks@dentsply.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to

do so will result in an additional processing fee of \$50 per international class of goods/services.

A fee payment in the amount of \$225 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Signature: /deborah rasin/ Date Signed: 08/31/2015

Signatory's Name: Deborah Rasin

Signatory's Position: Vice President/Secretary

RAM Sale Number: 86742723

RAM Accounting Date: 09/01/2015

Serial Number: 86742723

Internet Transmission Date: Mon Aug 31 16:10:10 EDT 2015

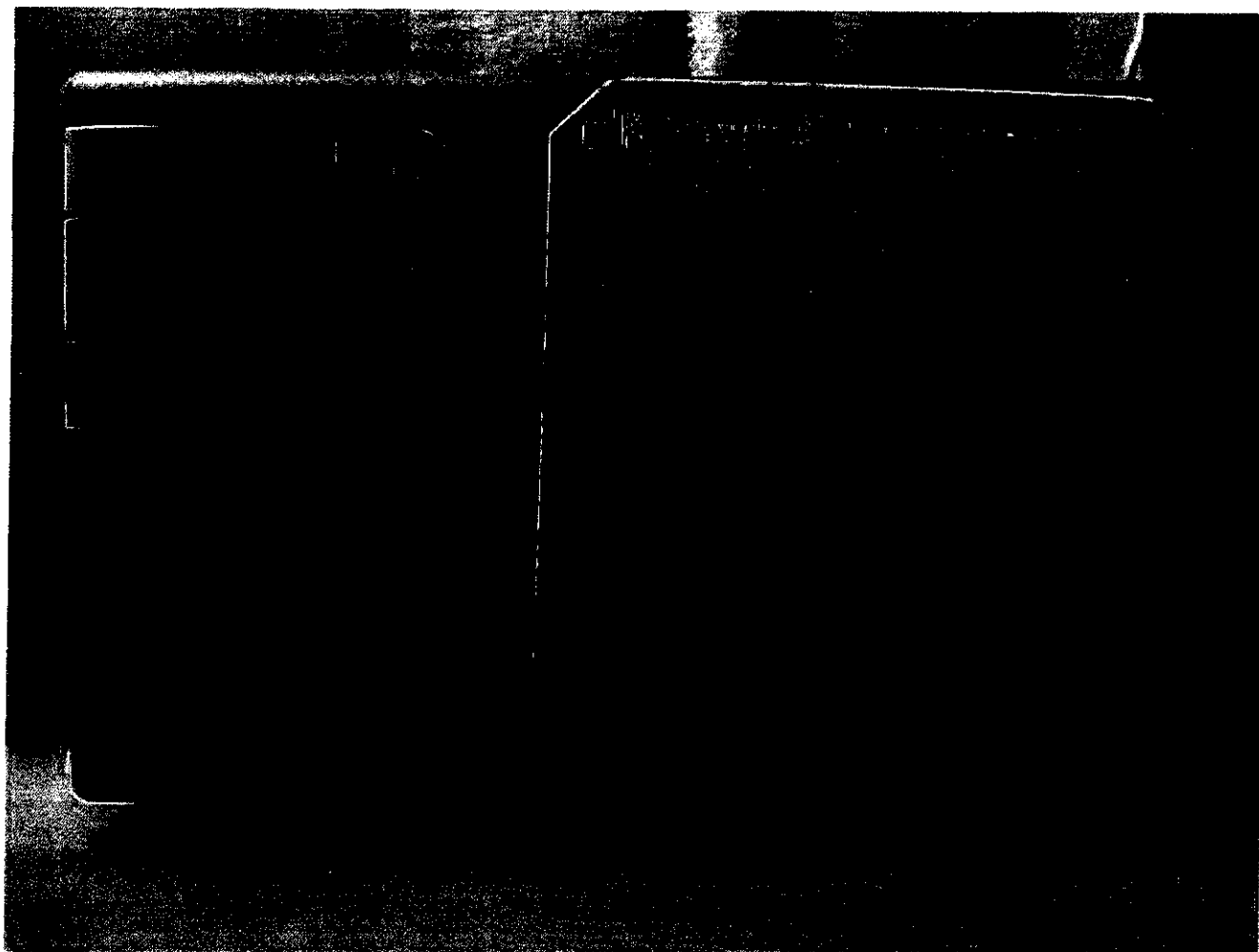
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a-DA-2826-20150831160553497750

RT RX



EXHIBIT

2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Roth Licensing, LLC,
a California limited liability company,

Opposer,

v.

Dentsply Sirona Inc.,
a Delaware corporation,

Applicant.

OPPOSITION NO.: _____

NOTICE OF OPPOSITION

In re Application of Dentsply Sirona Inc.:

Serial No.: 86/742,723
Filed: August 31, 2015
Trademark: RT RX
Filing Basis: 1(a)
Published: July 12, 2016

Roth Licensing, LLC, a California limited liability company ("Roth" or "Opposer"), having a mailing address of 4257 Oliver Way, Union City, California 94587, believes that it may be damaged by registration of the mark RT RX for goods in International Class 10 filed by Dentsply Sirona Inc. ("Dentsply" or "Applicant"). Therefore, Roth opposes Dentsply's application for the mark RT RX in accordance with the provisions of Section 13 of the Trademark Act (15 U.S.C. § 1063).

Applicant's mark is described as follows:

Mark: RT RX
Serial No.: 86/742,723

Filed: August 31, 2015
International Class: 10
Goods: Orthodontic brackets

The grounds for opposition are as follows:

1. Dr. Ronald Roth was a well-known practitioner and pioneer in the field of orthodontics. As early as 1997, Dr. Roth's name has been used in connection with the sale and advertising of orthodontic products. When Dr. Roth passed away in 2005, his widow became his successor-in-interest. Today, Opposer is Dr. Roth's successor-in-interest and owner of all intellectual property rights pertaining to Dr. Roth.
2. Opposer has obtained a number of federal trademark registrations to protect the value of its well-known **ROTH**[®] mark in connection with orthodontic products, including a registration for the mark **ROTH**[®] in International Class 10 in connection with "orthodontic appliances." *See* U.S. Reg. No. 3,733,539.
3. Through many efforts on the part of Opposer, the **ROTH**[®] mark has gained a valuable reputation and significant goodwill among the relevant purchasing public.
4. Leading up to his death in 2005, Dr. Roth had a longstanding licensing relationship with GAC International, LLC ("GAC"), Applicant's wholly-owned subsidiary, providing for GAC's right to use the **ROTH**[®] mark. Applicant (and its subsidiary GAC) are in the business of manufacturing orthodontic appliances.
5. When Dr. Roth passed away in 2005, the licensing agreement automatically terminated, but GAC continued to use the **ROTH**[®] mark without permission or compensating Dr. Roth's successors.

6. In 2007, Opposer and GAC negotiated a settlement, under which GAC would pay for its prior, unauthorized use of the **ROTH**[®] mark and receive a continuing license for five years.

7. Upon expiration of that license's term in 2012, GAC again continued to use the **ROTH**[®] mark without permission or compensating Opposer. Ultimately, Opposer and GAC entered into a further three-year license agreement, which was effective through December 31, 2014.

8. Upon expiration of that license's term on December 31, 2014, GAC continued to use the **ROTH**[®] mark without authorization from Opposer.

9. In or around spring 2015, Opposer learned that GAC and/or its parent company, Applicant, began using the mark **RT RX** in place of their use of the **ROTH**[®] mark for products that previously bore the **ROTH**[®] mark. Believing this change to be in bad faith and a continued violation of Opposer's rights in the **ROTH**[®] mark, Opposer sent GAC a letter demanding that GAC cease and desist from any further use of the **RT RX** mark. In response, GAC denied Opposer's allegations and refused to cease use of the **RT RX** mark.

10. GAC and/or Applicant continue to use the **RT RX** mark in a manner that is likely to cause confusion among the relevant purchasing public. For example, in connection with products bearing the **RT RX** mark, GAC and Applicant make the following statement on their website: "Our RT Rx has values that are equivalent to the Roth[®] prescription values" Accordingly, on information and belief, the **RT RX** mark is intended to draw an association with the **ROTH**[®] mark.

11. On or around August 31, 2015, GAC's parent company, Applicant, filed an application (Serial No. 86/742,723) with the U.S. Patent and Trademark Office ("PTO") for the mark RT RX in connection with "orthodontic brackets" in International Class 10 (the "Application"). The Application claims a first-use date of April 1, 2015.

12. On or around December 19, 2015, the PTO issued an Office Action requiring that Applicant "specify whether the letters 'RT' have any significance in the orthodontic trade or industry or as applied to the goods and/or services described in the application, or if such letters represent a 'term of art' within applicant's industry."

13. On or around May 18, 2016, Applicant responded, claiming that "RT appearing in the mark has no significance nor is it a term of art in the relevant trade or industry or as used in connection with the goods/services/collective membership organization listed in the application, or any geographical significance." Opposer believes and alleges that, in the context of the above facts, this response to the PTO was false and misleading.

14. But, based upon this response, the PTO issued a Notice of Publication for the Application on June 22, 2016, and the Application was published for opposition on July 12, 2016.

15. In submitting the Application, Applicant also made the following declaration to the PTO:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the

trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Count One – Likelihood of Confusion

16. Opposer realleges and incorporates herein each of the preceding paragraphs as though fully set forth herein.

17. Applicant's proposed mark RT RX is similar in sound, appearance and meaning and is confusingly similar to Opposer's ROTH[®] mark. Further, the goods offered by Applicant under the RT RX mark are identical and/or similar and related to those offered under the ROTH[®] mark.

18. The RT RX mark, as used on Applicant's goods, especially in light of Applicant's longstanding prior status as the sole authorized licensee of the ROTH[®] mark, is likely to cause confusion, mistake, or deception as to the source, origin, affiliation, association, connection, or sponsorship with the ROTH[®] mark and/or Opposer.

19. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Sections 3 and 43 of the Lanham Act, 15 U.S.C. §§ 1052 and 1125, and Opposer would be damaged thereby.

20. In order to protect the public against confusion and deceit, and to protect the ROTH[®] mark from infringement, registration of the RT RX mark should be refused.

Count Two – Fraud on the PTO

21. Opposer realleges and incorporates herein each of the preceding paragraphs as though fully set forth herein.

22. Applicant made material representations of fact to the PTO in prosecuting the Application, including by representing to the PTO that the term “RT” has no significance in the field of orthodontics or as applied to the goods in the Application.

23. Applicant knew or should have known that the term “RT” was intended to draw an association to the **ROTH**[®] mark and Dr. Roth, a name which is widely recognized in the field of orthodontics. In fact, on its website, Applicant claims that, “Our RT Rx has values that are equivalent to the Roth[®] prescription values”

24. Applicant made these representations to the PTO with the intent to induce authorized agents of the PTO to publish the Application for opposition and, ultimately, registration.

25. The authorized agents of the PTO reasonably relied upon Applicant’s statements to publish the Application and would not have published the Application but for Applicant’s misrepresentations.

26. The Application should be rejected and registration of the **RT RX** mark should be refused because Applicant committed fraud in its attempt to procure registration of its mark.

27. Opposer would be damaged by the registration of the **RT RX** mark in that such registration would give Applicant a *prima facie* exclusive right to the use of **RT RX**,

Roth Licensing, LLC
Trademark Opposition
RT RX
Serial No. 86/742,723

despite the likelihood of confusion, mistake, or deception, and Applicant's fraudulent misrepresentations described above.

28. THEREFORE, Opposer prays that Applicant's proposed trademark for RT RX be denied registration.

DATED: August 1, 2016

Respectfully submitted,

By /Brian M. Daucher/

BRIAN M. DAUCHER
GAZAL J. POUR-MOEZZI

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
650 Town Center Drive, Fourth Floor
Costa Mesa, California 92626
Main Telephone: 714-513-5100
Main Facsimile: 714-513-5130
Direct Telephone: 714-424-8215

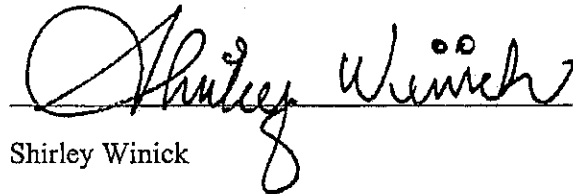
Attorneys for Opposer
ROTH LICENSING, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on Dentsply Sirona Inc. by emailing and mailing said copy on August 1, 2016 via First Class Mail postage prepaid to:

Justin H. McCarthy II
Dentsply Legal Department
221 W Philadelphia St.
York, PA 17401-2991
trademarks@dentsply.com

Dated: August 1, 2016



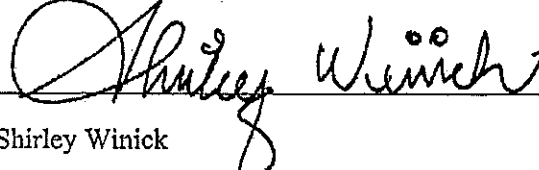
Shirley Winick

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Justin H. McCarthy II
Dentsply Legal Department
221 W Philadelphia St.
York, PA 17401-2991
trademarks@dentsply.com

Dated: August 1, 2016


Shirley Winick

EXHIBIT

3

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: August 1, 2016

Opposition No. 91229272
Serial No. 86742723

JUSTIN H. MCCARTHY II
Dentsply Legal Department
221 W Philadelphia St
York, PA 17401-2991

Roth Licensing, LLC

v.

DENTSPLY SIRONA INC.

Brian M. Daucher
Sheppard Mullin Richter & Hampton LLP
650 Town Center Dr. Fourth Floor
Costa Mesa, CA 92626

ESTTA761740

Important! Effective June 24, 2016, a revised Standard Protective Order will be applicable to all TTAB proceedings with certain exceptions. See the TTAB home page for more information:

<http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>

The opposer (plaintiff) identified above has filed a notice of opposition to the registration sought by the above-identified application filed by applicant (defendant). Opposer has certified that it served a copy of the notice of opposition on applicant, or its attorney or domestic representative of record, as required by Trademark Rule 2.101(a). The electronic version of the notice of opposition, and of the entire proceeding, is viewable on the Board's web page via the TTABVUE link: **<http://ttabvue.uspto.gov/ttabvue/v?qs=91229272>**.

APPLICANT MUST FILE AND SERVE ANSWER

As required in the schedule set forth below, **applicant must file an answer within forty (40) days from the mailing date of this order.** (For guidance regarding when a deadline falls on a Saturday, Sunday or federal holiday, *see* Trademark Rule 2.196.) Applicant's answer must comply with Fed. R. Civ. P. 8(b), must contain admissions or denials of the allegations in the notice of opposition, and may include available defenses and counterclaims. For guidance regarding the form and content of an answer, *see* Trademark Rule 2.106(b), and TBMP §§ 311.01 and 311.02. Failure to file a timely answer may result in entry of default judgment and the abandonment of the application.

SERVICE OF ANSWER AND OF ALL FILINGS

The answer, and **all** other filings in this proceeding, **must** be served in a manner specified in Trademark Rule 2.119(b), and **must** include proof of service. For guidance regarding the service and signing of all filings, *see* TBMP §§ 113-113.04. As noted in TBMP § 113.03, proof of service should be in the following certificate of service form:

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).

Signature _____
Date _____

The parties may agree to forward service copies by electronic transmission, *e.g.*, e-mail. *See* Trademark Rule 2.119(b)(6) and TBMP §113.04. Pursuant to Trademark Rule 2.119(c), however, five additional days are afforded only to actions taken in response to papers served by first-class mail, "Express Mail," or overnight courier, not by electronic transmission.

LEGAL RESOURCES AVAILABLE AT WEB PAGE

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. These rules, as well as amendments thereto, the Manual of Procedure (TBMP), information on Accelerated Case Resolution (ACR) and Alternative Dispute Resolution (ADR), and many Frequently Asked Questions, are available on the Board's web page, at: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. For a general description of Board proceedings, *see* TBMP §102.03.

FILING PAPERS ONLINE

The link to the Board's electronic filing system, ESTTA (Electronic System for Trademark Trials and Appeals), is at the Board's web page, at:

<http://estta.uspto.gov/>. The Board **strongly encourages parties to use ESTTA** for all filings. ESTTA provides various electronic filing forms; some may be used as is, and others may require attachments. For technical difficulties with ESTTA, parties may call 571-272-8500. Due to potential technical issues, parties should not wait until the last date of a deadline for filing papers. The Board may decline to consider any untimely filing.

OPPOSER'S OBLIGATION IF SERVICE IS INEFFECTIVE

If a service copy of the notice of opposition is returned to opposer as undeliverable or opposer otherwise becomes aware that service has been ineffective, opposer must notify the Board in writing within ten (10) days of the date on which opposer learns that service has been ineffective. Notification to the Board may be provided by any means available for filing papers with the Board, but preferably should be provided **by written notice filed through ESTTA**. For guidance regarding notice of ineffective service, see Trademark Rule 2.101(b) and TBMP § 309.02(c)(1).

While opposer is under no obligation to search for current correspondence address information for, or investigate the whereabouts of, any applicant opposer is unable to serve, if opposer knows of any new address information for the applicant, opposer must report the address to the Board. If an opposer notifies the Board that a service copy sent to an applicant was returned or not delivered, including any case in which the notification includes a new address for the applicant discovered by or reported to opposer, the Board will give notice under Trademark Rule 2.118.

FORMAT FOR ALL FILINGS

Trademark Rule 2.126 sets forth the required form and format for all filings. The Board may **decline to consider** any filing that does not comply with this rule, including, but not limited to motions, briefs, exhibits and deposition transcripts.

CONFERENCE, DISCOVERY, DISCLOSURE AND TRIAL SCHEDULE

Time to Answer	9/10/2016
Deadline for Discovery Conference	10/10/2016
Discovery Opens	10/10/2016
Initial Disclosures Due	11/9/2016
Expert Disclosures Due	3/9/2017
Discovery Closes	4/8/2017
Plaintiff's Pretrial Disclosures	5/23/2017
Plaintiff's 30-day Trial Period Ends	7/7/2017
Defendant's Pretrial Disclosures	7/22/2017
Defendant's 30-day Trial Period Ends	9/5/2017
Plaintiff's Rebuttal Disclosures	9/20/2017
Plaintiff's 15-day Rebuttal Period Ends	10/20/2017

PARTIES ARE REQUIRED TO HOLD DISCOVERY CONFERENCE

As noted in the schedule above, the parties are required to schedule and to participate with each other in a discovery conference by the deadline in the schedule. For guidance, *see* Fed. R. Civ. P. 26(f), Trademark Rule 2.120(a)(2), and TBMP § 401.01. In the conference, the parties are required to discuss (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling or at least narrowing the scope of claims or defenses, and (3) arrangements for disclosures, discovery and introduction of evidence at trial, if the parties are unable to settle at this time.

Discussion of amendments of otherwise prescribed procedures can include limitations on disclosures and/or discovery, willingness to stipulate to facts, and willingness to stipulate to more efficient options for introducing at trial information or materials obtained through disclosures or discovery.

The parties must hold the conference in person, by telephone, or by any means on which they agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such request is made no later than ten (10) days prior to the conference deadline. *See* Trademark Rule 2.120(a)(2). A request for Board participation must be made either through an ESTTA filing, or by telephone call to the assigned interlocutory attorney whose name is on the TTABVUE record for this proceeding. A party should request Board participation only after the parties have agreed on possible dates and times for the conference. A conference with the participation of a Board attorney will be by telephone, and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the Board attorney.

PROTECTIVE ORDER FOR CONFIDENTIAL INFORMATION

The Board's Standard Protective Order is applicable, and is available at: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>. During

their conference, the parties should discuss whether they agree to supplement or amend the standard order, or substitute a protective agreement of their choosing, subject to approval by the Board. See Trademark Rule 2.116(g) and TBMP § 412. The standard order does not automatically protect a party's confidential information and its provisions for the designation of confidential information must be utilized as needed by the parties.

ACCELERATED CASE RESOLUTION

During their conference, the parties should discuss whether they wish to seek mediation or arbitration, and whether they can stipulate to follow the Board's Accelerated Case Resolution (ACR) process for a more efficient and economical means of obtaining the Board's determination of the proceeding. For guidance regarding ACR, see TBMP § 528. Detailed information on ACR, and examples of ACR cases and suggestions, are available at the Board's webpage, at: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

DISCOVERY AND INTERLOCUTORY PROCEDURES

For guidance regarding discovery, see Trademark Rule 2.120 and TBMP Chapter 400, regarding the deadline for and contents of initial disclosures, see Trademark Rule 2.120(a)(2) and TBMP § 401.02, and regarding the discoverability of various matters, see TBMP § 414. Certain provisions of Fed. R. Civ. P. 26 are applicable in modified form. The interlocutory attorney has discretion to require the parties, or to grant a request made by one or both parties, to resolve matters of concern to the Board, or a contested motion, by telephone conference. See Trademark Rule 2.120(i)(1) and TBMP § 502.06(a).

TRIAL

For guidance regarding trial and testimony procedures, see Trademark Rules 2.121, 2.123 and 2.125, as well as TBMP Chapter 700. The parties should review authorities regarding the introduction of evidence during the trial phase, including by notice of reliance and by taking testimony from witnesses. For instance, any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties, and any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on each adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after completion of the testimony deposition.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing is not required, but will be scheduled upon request of any party, pursuant to Trademark Rule 2.129. For guidance regarding briefing and an oral hearing, see TBMP §§ 801-802.

PARTIES NOT REPRESENTED BY COUNSEL

This proceeding is similar to a civil action in a federal district court. The Board **strongly** advises all parties to secure the services of an attorney who is familiar with trademark law and Board procedure. Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. Parties not represented by such an attorney are directed to read the Frequently Asked Questions, available at the Board's web page: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

PARTIES MUST NOTIFY BOARD OF OTHER PENDING ACTIONS

If the parties are, or during the pendency of this proceeding become, parties in another Board proceeding or a civil action involving the same or related marks, or involving any issues of law or fact which are also in this proceeding, they shall notify the Board immediately, so the Board can consider whether consolidation and/or suspension of proceedings is appropriate. See TBMP § 511.

Exhibit B

1 Hon. James Lambden (Ret.)
2 ADR SERVICES, INC.
3 100 First Street, 27th Floor
4 San Francisco, CA 94105
(415) 772-0900
(415) 772-0960 (FAX)
justicelambden@adrservices.org

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ARBITRATION BEFORE ADRS SERVICES

ROTH LICENSING, LLC,)	ADR Services, Case No.: 15-3234-JL
)	
Claimant,)	ARBITRATION MANAGEMENT
)	ORDER #4
vs.)	
)	September 21, 2016
GAC INTERNATIONAL, LLC,)	
)	Justice James Lambden (Ret.) Arbitrator
Respondent)	

The telephonic Arbitration Management Conference on September 7, 2016 was partially set to hear argument of Respondent's motion to stay the arbitration indefinitely in deference to an administrative proceeding. Brian M. Daucher, Esq. of Sheppard, Mullin, Richter and Hampton LLP appeared for Claimant. Richard M. Barnes, Esq. and Matt Cole, Esq. of Goodell, DeVries, Leech and Dann LLP appeared for Respondent.

After denying Respondent's request to suspend discovery for three months and rescheduling certain matters, the Arbitrator reserved ruling on Respondent's alternative motion for an open-ended stay of the arbitration proceedings. The delay was requested to permit Respondent to a reply to the opposition to said motion. Respondent's reply to the opposition was served on September 20, 2016.

After reviewing the legal authorities and the arguments of counsel the Arbitrator has concluded that:

- the doctrine of the “primary jurisdiction” of administrative proceeding does not apply to this arbitration;
- that said doctrine does not justify deference to the pending proceeding in the Trademark Trial And Appeal Board (“TTAB”);
- the applicable law does not favor suspension of this arbitration where the parallel administrative agency proceedings involve a more narrow scope of issues than the arbitration; and the TTAB proceeding is likely to be suspended during the pending arbitration;
- the arbitration has already been delayed by collateral court proceedings beyond reasonable expectations for arbitral resolution;
- and the most complete resolution of the issues in dispute between the parties is available in this arbitration.

Accordingly, Respondent’s motion to stay the arbitration is DENIED.

Dated: September 21, 2016



James Lambden, Arbitrator

PROOF OF SERVICE

State of California
County of San Francisco

I certify that I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 100 1st Street, 27th Floor, San Francisco, California 94105.

On September 22, 2016, I served the foregoing document described as the **ARBITRATION MANAGEMENT ORDER NO. 4; and PROOF OF SERVICE** on the interested parties in this action as follows:

Brian M. Daucher, Esq.
SHEPPARD MULLIN RICHTER HAMPTON LLP
650 Town Center Drive, 4th Floor
Costa Mesa, California 92626
bdaucher@sheppardmullin.com

Richard M. Barnes, Esq.
GOODELL DEVRIES
One South Street, 20th Floor
Baltimore, Maryland 21202
rmb@gdldlaw.com

_____ **BY U.S. MAIL**, I placed a true copy of the document described above in a sealed envelope and caused such envelope with postage thereon to be placed in the United States mail at San Francisco, California.

_____ **BY FACSIMILE**, I caused such to be faxed to the attorneys on September 22, 2016


 X **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address tyler@adrservices.org to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

_____ **BY PERSONAL SERVICE**, I caused such envelope to be delivered by hand to the attorneys on September 22, 2016.

 X **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 22, 2016 at San Francisco, California


Tyler Smith