

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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DUNN

Mailed: July 5, 2018

Opposition No. 91230559

Opposition No. 91232714

*American Express Marketing & Development
Corp.*

v.

Tung B. Vo

Elizabeth A. Dunn, Attorney (571-272-4267):

On July 5, 2018, the Board held a conference by phone with the parties to discuss ACR (accelerated case resolution) procedures. The participants were Timothy Kelly, attorney for Opposer, Hans Crosby, attorney for Applicant, and Elizabeth Dunn, attorney for the Board.

As background to the discussion, the Board notes that the opposition involves Opposer's claims of priority of use and likelihood of confusion, and dilution by blurring. Discovery closed October 15, 2017. On May 21, 2018, the Board granted summary judgment as to the issues of Petitioner's standing and priority with respect to its pleaded registered marks and the goods and services shown in the pleaded registrations, and suggested conversion to ACR procedures.

After some discussion, the parties agreed that they did not want to combine trial and briefing to submit evidence attached to briefs. Rather, the parties wish to

stipulate as to the summary judgment record becoming the trial record, and then to have the conventional periods of trial during which they could supplement the summary judgment record, followed by briefing, but on an accelerated schedule.

A draft ACR stipulation reflecting the discussion is attached. If the parties wish to sign this ACR stipulation, or a modified form of the ACR stipulation, they should do so, and inform Elizabeth Dunn by phone that the signed ACR stipulation has been filed.

The ACR stipulation becomes operative upon issuance of the Board order approving the ACR stipulation.

If the signed stipulation is not filed by July 12, 2018 to allow the Board to approve it before the first deadline, the Board will resume proceedings on a conventional Board schedule.¹

Proceedings remain suspended pending the filing of the ACR stipulation.

¹ The parties remain free to submit an ACR stipulation with different dates for approval. Until an ACR stipulation has been approved, the Board's trial dates remain in effect.

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STIPULATION FOR ACCELERATED CASE RESOLUTION

The parties, in order to obtain a decision on the merits of their claims and defenses on an expedited basis, agree to the following ACR (accelerated case resolution) procedures, as indicated by the signatures of the parties' attorneys. The terms are binding from the date of signature. The dates listed are operative from the date the Board approves this agreement.

DISCOVERY AND DISCLOSURES

Discovery remains closed, and the parties waive pretrial disclosures.

MOTIONS

No motions are anticipated at this time. Should a dispute arise, in lieu of submitting written motions, the parties agree to call the Board to seek a phone conference with TTAB Attorney Elizabeth Dunn (or in her absence, her designate) to expedite resolution. The Board's oral rulings will be followed by a summary order.

TRIAL AND BRIEFING

The parties agree that the summary judgment record, as supplemented during trial, is the trial record. While the parties will not argue that any part of the summary judgment record is inadmissible, the parties reserve the right to object to evidence

on substantive grounds such as competency, relevancy or materiality, or the weight to be accorded particular items of evidence.

No testimony depositions are planned at this time. If either party supplements the record with declarations or affidavits in lieu of testimony depositions, the other party retains the right to seek cross-examination. Failure to seek cross-examination does not preclude the other party from arguing in its ACR brief that the declaration or affidavit is inconsistent, lacks corroborative detail, or otherwise merits little evidentiary weight.

TRIAL AND BRIEFING SCHEDULE

Opposer's trial period ends	July 13, 2018
Applicant's trial period ends	July 27, 2018
Opposer's rebuttal trial period ends	August 17, 2018
Opposer's Trial Brief Due	September 7, 2018
Applicant's Trial Brief Due	September 14, 2018
Opposer's Reply Brief Due	September 14, 2018
Request for Oral Hearing (optional) Due	September 24, 2017

DECISION

The parties agree that the Board will expedite determination of this matter, generally issuing a final decision on the merits within fifty days of the due date for the reply brief or the oral hearing (if one has been requested), and will decide it in accordance with the evidentiary burden at trial, that is, by preponderance of the evidence. The Board will decide disputed facts as part of the final decision.

APPEAL

The Board's decision in this ACR proceeding is final, and judicially reviewable as set forth in Trademark Rule 2.145.

<hr/> Electronic signature and date Attorney for Opposer	<hr/> Electronic signature and date Attorney for Applicant
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