ESTTA Tracking number: **ESTTA943607**

Filing date: **12/22/2018**

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

Proceeding	91243041
Party	Defendant TALMADGE LLC
Correspondence Address	Marina A. Lewis Lewis Kent LLP 235 Montgomery Street, 30th Floor San Francisco, CA 94104 docketing@lewiskentllp.com no phone number provided
Submission	Other Motions/Papers
Filer's Name	Marina A. Lewis
Filer's email	marina@lewiskentllp.com, docketing@lewiskentllp.com
Signature	/Marina A. Lewis/
Date	12/21/2018
Attachments	LKN Communications v Talmadge Applicants Motion More Definite Statement.pdf(123593 bytes)

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

LKN Communications, Inc. Opposer, v. Talmadge LLC, Applicant.	Opposition No. 91/243,041 Interlocutory Attorney: Yong Oh (Richard) Kim Application No.: 86/512,312 Mark: FLASH Publication Date: April 17, 2018 **APPLICANT'S MOTION FOR A MORE DEFINITE STATEMENT PURSUANT TO FED. R. CIV. P. 12(e)**

APPLICANT'S MOTION FOR A MORE DEFINITE STATEMENT PURSUANT TO FED. R. CIV. P. 12(e)

I. INTRODUCTION

On August 15, 2018, Opposer LKN Communications, Inc. ("Petitioner") filed its Notice of Opposition in the current proceeding. For the following reasons, Applicant Talmadge LLC ("Applicant") moves the Board to direct Opposer to amend its pleading to more accurately assert the scope of its likelihood of confusion claim on the basis that Opposer's claim is so vague and ambiguous that Applicant cannot make a responsive pleading in good faith or without prejudice to itself.

II. ARGUMENTS

A. Legal Basis For a Motion For a More Definite Statement

A party may move for a more definite statement of a pleading when the pleading states a claim upon which relief can be granted, but is so vague or ambiguous that the movant cannot make a responsive pleading in good faith or without prejudice to itself. Fed. R. Civ. P. 12(e); 5C

C. Wright & A. Miller, *Federal Practice and Procedure* Civil § 1378 (3d ed. 2018). In this instance, Opposer's likelihood of confusion claim relates to goods and services no longer in the application, and Applicant is unable to formulate its response without clarification of Opposer's claim.

B. Opposer's Likelihood of Confusion Claim Must be Clarified Because the Notice of Opposition Reflects the Identification of Goods in Services for the '312 Application at the Time of Filing, Not Publication.

In its Notice of Opposition, Opposer asserts a likelihood of confusion between its marks and Applicant's FLASH mark as shown in Application Serial No. 86/512,312 ("the '312 Application") based upon, *inter alia*, the alleged relatedness of the respective goods and services. See Not. of Opp. ¶¶ 1-2 and 8-11. In the Notice of Opposition, Opposer states that "Applicant's Goods and Services are similar and/or related to Opposer's Services." See Not. of Opp. ¶ 9.

However, "Applicant's Goods and Services" as defined by Opposer in the Notice of Opposition are the goods and services listed in the '312 Application *at the time of filing*, not at publication. See Not. of Opp. ¶ 4. Since the '312 Application was filed, Applicant has amended its identification of goods and services in Classes 9, 41, and 42 – and deleted Class 38 in its entirety – such that the current identification of goods and services is substantially more narrow than it was at the time of filing. Moreover, Opposer's pleading is inconsistent with the ESTTA cover sheet included with its Notice of Opposition, as the cover sheet recites the current (and therefore different) identification of goods and services.

Because Opposer has based its claim of likelihood of confusion on the alleged relatedness of goods and services that have either been amended or deleted from the '312 Application, Applicant is unable to respond to the corresponding claims in the Notice of Opposition as they

pertain to the alleged relatedness of the respective goods and services. Therefore, Applicant respectfully moves the Board to direct Opposer to amend its pleading to more accurately assert the scope of its likelihood of confusion claim as it relates to the alleged relatedness between its Class 38 services and the Class 9, 41, and 42 goods and services in the '312 Application as currently amended.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully submits that its Motion for a More Definite Statement should be granted and requests that favorable action be taken.

Respectfully submitted,

Dated: December 21, 2018

By: /Marina A. Lewis/

Marina A. Lewis
LEWIS KENT LLP
235 Montgomery Street, 30th Floor
San Francisco, CA 94104
Telephone: (415) 966-3402

Attorneys for Applicant
Talmadge LLC

Certificate of Service

The undersigned hereby certifies that a copy of **APPLICANT'S MOTION FOR A MORE DEFINITE STATEMENT PURSUANT TO FED. R. CIV. P. 12(e)** has been served upon all parties, at their address of record by email (minniekim@mvalaw.com, jeffreygianelli@mvalaw.com, CLT-TMCorrespondence@mvalaw.com) on this date.

Dated: December 21, 2018 By: /Marina A. Lewis/
Marina A. Lewis