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

November 27, 2018

Opposition No. 91243719

Spa Heroes, LLC

v.

Go-To Enterprise Holdings

Christen M. English, Interlocutory Attorney:

On November 27, 2018, at Applicant's request, the Board participated in the parties' telephonic discovery conference mandated under Fed. R. Civ. P. 26(f) and Trademark Rule 2.120(a). Sylvia Mulholland appeared on behalf of Opposer, Tara Vold appeared on behalf of Applicant, and the assigned Interlocutory Attorney participated on behalf of the Board.

Settlement

The parties reported that they are negotiating a possible settlement and they agreed to a thirty-day suspension of proceedings to further pursue settlement. Accordingly, proceedings are **suspended for thirty days** from the mailing date of this order and, if there is no further word from the parties, will resume on the schedule set forth at the end of this order.

Litigation

The parties are not currently involved in any other litigation involving the marks at issue in this proceeding. Applicant, however, has obtained an extension of time to

oppose Opposer's pleaded application Serial No. 87761631 for the mark HERO PRODUCTS. If Applicant files an opposition, Applicant must promptly inform the Board in writing in this proceeding so that the Board can consider whether to consolidate the proceedings.

The Pleadings

Opposer has sufficiently pleaded its standing and a claim for priority and likelihood of confusion under Section 2(d) of the Trademark Act based on alleged prior use and registration of the marks SPA HEROES and BEAUTY HEROES. Opposer also has pleaded use and ownership of applications for the marks HANDSOME HEROES and HERO PRODUCTS, but Opposer has not pleaded priority in these marks because the filing date of the pleaded applications is after Applicant's priority date and Opposer has not pleaded prior use of the marks.

In its answer, Applicant admits "Opposer is not connected in any way with Applicant or Applicant's use of Applicant's Mark." 1 TTABVUE 7, ¶ 7; 4 TTABVUE 3, ¶ 7. Applicant denies the remaining salient allegations in the notice of opposition.

Accelerated Case Resolution

If the parties are unable to settle their dispute, the Board recommends that they consider resolving this matter by using Accelerated Case Resolution ("ACR") in the form of an abbreviated trial on the merits approximating a summary bench trial. With this form of ACR, parties forego trial in favor of submitting briefs with attached evidence and agree that the Board may resolve genuine disputes of material fact

raised by the parties' filings and/or the record and may issue a final decision.[1] The Board endeavors to issue a decision on the merits within 50 days of the close of briefing. *Chanel Inc. v. Makarczyk,* 110 USPQ2d 2013 (TTAB 2014) and 106 USPQ2d 1774 (TTAB 2013). In addition, or alternatively, the parties may wish to explore stipulating to some procedures and/or facts. *Target Brands, Inc. v. Hughes,* 85 USPQ2d 1676, 1678 (TTAB 2007) (parties stipulated to entire record of the case including business records, public records, government documents, marketing materials and materials obtained from the Internet as well as thirteen paragraphs of facts; the parties agreed to reserve the right to object to such facts and documents on the bases of relevance, materiality and weight).

The following materials provide additional information regarding ACR:

1. General description of ACR:

   https://www.uspto.gov/sites/default/files/trademarks/process/appeal/Accelerated_Case_Resolution__ACR__notice_from_TTAB_webpage_12_22_11.pdf

2. FAQs on ACR:

   https://www.uspto.gov/sites/default/files/trademarks/process/appeal/Accelerated_Case_Resolution_%28ACR%29_FAQ_updates_12_22_11.doc;

3. TBMP Sections 528.05(a)(2), 702.04 and 705 (2018).

The assigned Interlocutory Attorney is available for a telephone conference if the parties wish to further discuss ACR.

[1] The earlier in a proceeding parties elect ACR, the greater the efficiencies, but parties may stipulate to ACR after some initial discovery or a full six months of discovery.

Standard Protective Order

The Board's standard protective order is automatically applicable to govern the exchange of confidential information, *see* Trademark Rule 2.116(g), and available here:

https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0

Applicant mentioned that if the parties do not settle this dispute, Applicant may seek to amend the standard protective order to address its local counsel's access to "Attorneys' Eyes Only" information and documents. If the parties agree to amend the standard protective order, they should file both a clean copy and redlined copy of the proposed amended order for Board approval.

Discovery

The Board expects that the parties will cooperate with one another in the discovery process and seek only discovery that is relevant to the disputed issues in the case. The parties should keep in mind that discovery must be proportionate to the needs of the case. Fed. R. Civ. P. 26(g).

Because there is a protective order in place, the parties should not assert confidentiality objections in response to discovery requests. Discovery should be produced subject to the appropriate tier of confidentiality under the standard protective order. The parties also should refrain from asserting boilerplate or blanket objections. Fed. R. Civ. P. 34(b)(2)(B) (party responding to a document request must "state with specificity the grounds for objecting to [a] request, including the reasons"); *Metronic, Inc. v. Pacesetter Sys., Inc.,* 222 USPQ 80, 83 (TTAB 1984) ("[I]t is

incumbent upon a party who has been served with interrogatories to respond by articulating his objections (with particularity) to those interrogatories which he believes to be objectionable, and by providing the information sought in those interrogatories which he believes to be proper."). If a party asserts privilege in response to a discovery request, the party must produce a privilege log. *Amazon Techs. Inc. v. Wax*, 93 USPQ2d 1702, 1706 n.6 (TTAB 2009); *No Fear Inc. v. Rule,* 54 USPQ2d 1551, 1556 (TTAB 2000).

As a reminder, a party may not serve discovery or file a motion for summary judgment until after the party serves its initial disclosures.

Dates Reset

As noted, proceedings are **suspended for thirty days** from the mailing date of this order and shall resume on the schedule below if there is no further word from the parties.

Discovery Opens	1/4/2019
Initial Disclosures Due	2/3/2019
Expert Disclosures Due	6/3/2019
Discovery Closes	7/3/2019
Plaintiff's Pretrial Disclosures Due	8/17/2019
Plaintiff's 30-day Trial Period Ends	10/1/2019
Defendant's Pretrial Disclosures Due	10/16/2019
Defendant's 30-day Trial Period Ends	11/30/2019
Plaintiff's Rebuttal Disclosures Due	12/15/2019
Plaintiff's 15-day Rebuttal Period Ends	1/14/2020
Plaintiff's Opening Brief Due	3/14/2020
Defendant's Brief Due	4/13/2020
Plaintiff's Reply Brief Due	4/28/2020
Request for Oral Hearing (optional) Due	5/8/2020

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).