

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

April 30, 2020

Opposition No. 91235405 (Parent)
Cancellation No. 92066440

Gibson Brands, Inc.

v.

The Executors of the Estate of Les Paul

Opposition No. 91246161

The Executors of the Estate of Les Paul

v.

Gibson Brands, Inc.

By the Trademark Trial and Appeal Board:

This case comes before the Board on Applicant Gibson Brands, Inc.'s ("Gibson Brand") November 25, 2019, motion to dismiss Opposer The Executors of the Estate of Les Paul's ("the Estate") first amended notice of opposition for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). The motion is fully briefed.

1. Consolidation

As an initial matter, it has come to the Board's attention that the above-captioned proceedings involve common questions of law and fact and, although the parties are

in reverse positions in Opposition No. 91246161, the parties are the same. When cases involving common questions of law or fact are pending before the Board, the Board may order them consolidated. *See* Fed. R. Civ. P. 42(a); *see also*, *Regatta Sport, Ltd. v. Telux-Pioneer, Inc.*, 20 USPQ2d 1154, 1156 (TTAB 1991) and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382, 1384 n.3 (TTAB 1991). Accordingly, the Board sua sponte orders the consolidation of the above-captioned proceedings.

The consolidated cases may be presented on the same record and briefs. *See Helene Curtis Indus., Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Soc’y for Human Res. Mgmt.*, 27 USPQ2d 1423 (TTAB 1993). The Board file for these consolidated cases will be maintained in Opposition No. 91235405 as the “parent case.” From this point on, only a single copy of all motions and submissions should be filed, and each submission should be filed in the parent case only, but caption all consolidated proceeding numbers, listing and identifying the “parent case” first.¹

Despite being consolidated, each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings; a copy of the decision shall be placed in each proceeding file.

¹ The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42 so that the Board can consider whether further consolidation is appropriate.

2. Motion to Dismiss in Opposition No. 91246161

Gibson Brands seeks registration of the mark LES PAUL for organizing and conducting charity auctions for charitable fundraising purposes, in International Class 35.² The Estate filed a notice of opposition as to all services in the subject application. On October 14, 2019, after several suspensions, Gibson Brands timely filed a motion to dismiss the Estate's originally filed notice of opposition.

On November 4, 2019, the Estate filed an amended notice of opposition as a matter of course. In its amended notice of opposition, as grounds for opposition, the Estate alleges: (1) nonuse, (2) non-ownership, (3) abandonment, (4) likelihood of confusion, and (5) fraud.³ Gibson Brands then timely filed the current motion to dismiss.

a. Applicable Law

A motion to dismiss under Fed. R. Civ. P. 12(b)(6) is a test of the legal sufficiency of the allegations in a complaint. To survive a motion to dismiss, a claimant need only allege sufficient factual matter as would, if proved, establish that: (1) it has standing to maintain the claims, and (2) a valid ground exists for opposing the mark. *See Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 187 (CCPA 1982). The complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "For purposes of

² Application Serial No. 87978388, filed on February 6, 2018, based on an allegation of use under Section 1(a) of the Trademark Act. The application is a "child" application of application Serial No. 87786126, which was filed for services in International Classes 41, and which is not presently part of this consolidated proceeding.

³ Amended Notice of Opposition ("Amended Notice") (12 TTABVUE 5-37).

determining the motion, all of [the claimant's] well-pleaded allegations must be accepted as true, and the [claims] must be construed in the light most favorable to [the claimant]. The pleading must be construed so as to do justice, as required by Fed. R. Civ. P. 8(e)." *Petroleos Mexicanos v. Intermix SA*, 97 USPQ2d 1403, 1405 (TTAB 2010).

A plaintiff does not bear the burden of proving its case in its complaint. *NSM Research Corp. v. Microsoft Corp.*, 113 USPQ2d 1029, 1032 (TTAB 2014); *Enbridge, Inc. v. Excelerate Energy Ltd. P'ship*, 92 USPQ2d 1537, 1543 n.10 (TTAB 2009). Whether a plaintiff ultimately can prove its allegations is a matter to be determined at trial or on summary judgment. *Advanced Cardiovascular Sys. Inc. v. SciMed Life Sys. Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993); *Covidien LP v. Masimo Corp.*, 109 USPQ2d 1696, 1697 n.3 (TTAB 2014).

b. The Estate's Standing

Although Gibson Brands has not challenged the Estate's standing, standing is an essential element of a plaintiff's case that must be both pleaded and ultimately proved. *Lipton Indus.*, 213 USPQ at 189. In its amended notice of opposition, the Estate alleges that it owns Registration No. 5193825 for the mark LES PAUL and design for a variety of services in International Classes 35, 41, and 45, and also uses the mark LES PAUL in standard character and with a design for music education and programming, museum and educational services, charitable giving and partnerships, organizing charitable events and programs, promoting, sponsoring, and funding scholarships and awards, and licensing intellectual property acquired by Les

Paul during his lifetime.⁴ These allegations are sufficient to plead that the Estate has standing. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Threshold.TV, Inc. and Blackbelt TV, Inc. v. Metronome Enter., Inc.*, 96 USPQ2d 1031, 1036 (TTAB 2010).⁵

c. Nonuse

In order to sufficiently plead a nonuse claim the Estate must plead, and ultimately prove, that the LES PAUL mark was not in use in commerce in connection with the services identified in the application as of the filing date of Gibson Brands' underlying use-based application. *See Couture v. Playdom, Inc.*, 778 F.3d 1379, 113 USPQ2d 2042, 2043 (Fed. Cir. 2015); *Clorox Co. v. Salazar*, 108 USPQ2d 1083, 1086-87 (TTAB 2013); *Grand Canyon W. Ranch LLC v. Hualapai Tribe*, 78 USPQ2d 1696, 1698 (TTAB 2006).

When the amended pleading is considered in its entirety, and the allegations therein are construed so as to do justice, the Estate has adequately pleaded a claim of nonuse. Specifically, Opposer alleges that at the date of filing its used-based application, Gibson Brands had not used LES PAUL as a trademark in connection with the services identified in the application.⁶

⁴ Amended Notice, ¶¶ 22-23, 25 (12 TTABVUE 8, 9).

⁵ The Estate also alleges it is the owner of a pending application for the mark LES PAUL, Serial No. 86737890. Amended Notice, ¶ 24 (12 TTABVUE 8-9). However, the Estate does not allege that its pending application has been refused registration in view of Applicant's pending application.

⁶ Amended Notice, ¶¶ 32, 47, 48 (12 TTABVUE 10, 12).

Gibson Brands' arguments regarding the sufficiency of the specimens submitted for the application are premature at the pleading stage because the arguments concern whether the Estate can prove its claim of nonuse. A motion made under Fed. R. Civ. P. 12(b)(6) is a challenge only to the "legal theory of the complaint, not the sufficiency of any evidence that might be adduced." *Advanced Cardiovascular Sys.*, 26 USPQ2d at 1041; *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1538 (TTAB 2007). Whether the Estate can prove nonuse, as it has pleaded, is an issue to be considered at final decision after trial or on a procedurally proper motion for summary judgment.

d. Non-Ownership

Only the owner of a mark may apply to register it. 15 U.S.C. § 1051(a). A use-based application filed by a person who does not own the mark at the time of filing is void ab initio. *Lyons v. Am. Coll. Of Veterinary Sports Med. & Rehab.*, 123 USPQ2d 1024, 1027 (Fed. Cir. 2017); *Huang v. Tzu Wei Chen Food Co.*, 849 F.2d 1458, 7 USPQ2d 1335, 1336 (Fed. Cir. 1988); *Great Seats Ltd. v. Great Seats Inc.*, 84 USPQ2d 1235, 1239 (TTAB 2007); *see also* Trademark Rule 2.71(d), 37 C.F.R. § 2.71(d) ("An application filed in the name of an entity that did not own the mark as of the filing date of the application is void.").

The Estate alleges that its predecessor, Les Paul, used the LES PAUL mark for the services identified in the involved application, he never transferred rights to use the mark for those services to Gibson Brands, and that the Estate—not Gibson Brands—is the owner of the LES PAUL mark in association with charitable giving and

partnerships, and organizing charitable events and programs.⁷ The Estate further alleges that Gibson Brands was not, at the time its involved application was filed, the owner of the LES PAUL mark for the services identified in the involved application.⁸ Accordingly, the Estate has sufficiently pleaded a claim of non-ownership.

Gibson Brands' arguments that its ownership of the mark is established through the sufficiency of its specimens, and that the Estate has not identified the date on which its priority of use began, are not well-taken. As addressed above, arguments regarding the sufficiency of the specimens or whether Gibson Brands used its mark concern whether the Estate can prove its claim and are premature at the pleading stage. *Advanced Cardiovascular Sys.*, 26 USPQ2d at 1041; *Fair Indigo LLC*, 85 USPQ2d at 1538. Additionally, the Estate's pleading concisely, plainly and simply sets forth the allegation that its priority is established through its own use as well as through its predecessor-in-interest. This is sufficient detail to give Gibson Brands fair notice of the basis of the Estate's priority claim. A plaintiff need not establish a specific date of first use; it need only establish that its use of its mark precedes that of defendant or that plaintiff owns a registration for that mark. *See King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

e. Abandonment

A claim of abandonment due to nonuse is use that has been discontinued with an "intent not to resume such use". See Trademark Act § 45, 15 U.S.C. § 1127. "Nonuse"

⁷ Amended Notice, ¶¶ 6, 7, 20, 21, 25, 26, 29, 30 (12 TTABVUE 7-10).

⁸ *Id.* at ¶ 52 (12 TTABVUE 12).

of a mark for abandonment purposes means “no bona fide use of the mark made in the ordinary course of trade,” and this is to be interpreted with flexibility to encompass a variety of commercial uses. *Lewis Silkin LLP v. Firebrand LLC*, 129 USPQ2d 1015, 1018 (TTAB 2018).

The Board notes that for a use-based application, the three-year period of nonuse, proof of which would constitute a prima facie case of abandonment, is deemed to have commenced with the filing of the application. *ShutEmDown Sports, Inc. v. Lacy*, 102 USPQ2d 1036, 1042 (TTAB 2012). Accordingly, the Estate cannot allege a prima facie case of abandonment since Gibson Brands’ use-based application was filed on February 6, 2018.

However, the Estate alleges that Gibson Brands has not used the LES PAUL mark in connection with its identified services, and does not intend to use the term as a trademark for those services.⁹ By these allegations the Estate has pleaded a legally sufficient abandonment claim. *See Lewis Silkin*, 129 USPQ2d 1015, 1020 (TTAB 2018).

f. Priority and Likelihood of Confusion

To sufficiently plead a claim under Section 2(d) of the Trademark Act, a plaintiff need only allege proprietary rights that are prior to the defendant’s rights, and that the defendant’s mark so resembles plaintiff’s mark as to be likely to cause confusion. 15 U.S.C. § 1025(d); *Nike, Inc. v. Palm Beach Crossfit Inc.*, 116 USPQ2d 1025, 1030 (TTAB 2015).

⁹ *Id.* at ¶¶ 56-57 (12 TTABVUE 13).

The Estate alleges that it owns Registration No. 5193825 and, through itself and its predecessor-in-interest, it has used the marks LES PAUL, in standard characters, and LES PAUL and design at common law since prior to Gibson Brands' filing date or any priority date upon which Gibson Brands can rely.¹⁰ This, as addressed above, is sufficient to give Gibson Brands fair notice of the basis of the Estate's priority claim. The Estate further alleges there is a likelihood of confusion between the parties' marks because of similarities in their services, consumers, channels of trade, and marks.¹¹ By these allegations, Opposer has pleaded a legally sufficient claim under Section 2(d) of the Trademark Act.

g. Fraud

Turning to the Estate's fraud claim, a legally sufficient pleading of fraud in the procurement or maintenance of a registration requires allegations that: (1) applicant/registrant made a false representation to the USPTO; (2) the false representation is material to the registrability of the mark; (3) applicant/registrant had knowledge of the falsity of the representation; and (4) applicant/registrant made the representation with intent to deceive the USPTO in order to obtain or maintain a registration to which it otherwise was not entitled. *See In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1939 (Fed. Cir. 2009); *Freki Corp. N.V. v. Pinnacle Entm't, Inc.*, 126 USPQ2d 1697, 1702 (TTAB 2018).

The pleadings must "contain explicit rather than implied expression of the circumstances constituting fraud." *King Auto., Inc. v. Speedy Muffler King, Inc.*, 667

¹⁰ *Id.* at ¶¶ 22, 23, 25-28 (12 TTABVUE 8-10).

¹¹ *Id.* at ¶¶ 59-65 (12 TTABVUE 13-14).

F.2d 1008, 212 USPQ 801, 803 (CCPA 1981). In determining the sufficiency of fraud allegations, Fed. R. Civ. P. 9(b) requires identification of the specific who, what, when, where, and how of the material misrepresentation or omission committed before the USPTO. *See Petroleos Mexicanos*, 97 USPQ2d at 1407 (elements of fraud must be pleaded with particularity); *Asian & W. Classics B.V. v. Selkow*, 92 USPQ2d 1478, 1478 (TTAB 2009) (same); *cf. Exergen Corp. v. Wal-Mart Stores Inc.*, 575 F.3d 1312, 91 USPQ2d 1656, 1667 (Fed. Cir. 2009) (“to plead the ‘circumstances’ of inequitable conduct with the requisite ‘particularity’ under Rule 9(b), the pleading must identify the specific who, what, when, where, and how of the material misrepresentation or omission”). A pleading that simply alleges the substantive elements of fraud, without setting forth the particularized factual bases for the allegation, does not satisfy Rule 9(b). *Asian & W. Classics*, 92 USPQ2d at 1478 (citing *King Auto.*, 212 USPQ at 802–03). Knowledge and intent, as conditions of mind of a person, may be averred generally in support of an allegation of fraud. *See Fed. R. Civ. P. 9(b); DaimlerChrysler Corp. v. Am. Motors Corp.*, 94 USPQ2d 1086, 1088 (TTAB 2010). However, the pleadings must allege sufficient underlying facts from which the Board may reasonably infer that a party acted with the requisite state of mind. *Asian & W. Classics*, 92 USPQ2d at 1479; *cf. Exergen*, 91 USPQ2d at 1668.

In its fraud claim, the Estate alleges Gibson Brands knowingly made false statements, with the intent to procure a registration, as to its ownership and use of the LES PAUL mark for the services identified in the involved application, as well as Les Paul’s consent to Gibson Brands to register the mark.

Gibson Brands contends that the Estate's allegations that Gibson Brands made a false material representation or had the requisite state of mind are merely conjecture or speculation, with no factual content in support. In response, the Estate contends its allegations that Gibson Brands falsely stated it owned and was using the mark, combined with its allegations that the statements were made knowingly and with the intent to procure a registration, are sufficient to allege fraud.

The Board first addresses the Estate's claim of fraud based on non-ownership. The amended pleading alleges that Les Paul never transferred rights to the LES PAUL mark for the services in the involved application to Gibson Brands or otherwise consented to Gibson Brands' use of the mark, the Estate is the owner of the mark for those services, and Gibson Brands did not own the mark when it filed the involved application.¹² The Estate further alleges that Gibson Brands made "false statements" regarding its ownership of the mark, did so "knowingly" and with the intent to procure a registration to which it was not entitled, and with the intent to deceive the Trademark Office.¹³ The Estate's allegations are sufficient to allege fraud based on non-ownership.

Turning to the Estate's claim of fraud based on nonuse, the only specific facts alleged in support of the Estate's allegations are tied to the specimens submitted by Gibson Brands with its use-based application.¹⁴ However, fraud based on the

¹² *Id.* at ¶¶ 6, 7, 20, 21, 29, 68, 71, 75, 76 (12 TTABVUE 6-8, 10, 14, 15).

¹³ *Id.* at ¶¶ 77, 80-82 (12 TTABVUE 15-16).

¹⁴ To the extent the Estate alleges that Gibson Brands failed to use the mark by the date of first use in commerce identified in its application, this allegation is insufficient to support a fraud claim. A plaintiff alleging fraud based on nonuse must plead and prove that there was

specimens submitted with an application is simply not an available claim. *See Granny's Submarine Sandwiches, Inc. v. Granny's Kitchen, Inc.*, 199 USPQ 564, 567 (TTAB 1978); *see also, Century 21 Real Estate Corp. v. Century Life of Am.*, 10 USPQ2d 2034, 2035 (TTAB 1989) (unlike a cancellation (or opposition) proceeding, during ex parte examination of the application the applicant would have had an opportunity to submit acceptable substitute specimens). Allegations of fraud that lack a corresponding factual basis for the claim do not constitute pleading with particularity. *Asian & W. Classics*, 92 USPQ2d at 1479; *see also Meckatzer Löwenbräu Benedikt Weiß KG v. White Gold LLC*, 95 USPQ2d 1185, 1186 (TTAB 2010) (sufficiently pleaded fraud allegations of nonuse were based on the results of an investigation). Based on the foregoing, the Estate has failed to set forth a legally sufficient claim of fraud based on nonuse.¹⁵

The Estate's allegation of fraud based on Gibson Brands' allegedly false consent statement also fails. Les Paul's consent was not material to the registration of the mark in this case. When a name in a mark identifies a particular living individual the mark can be registered only with the written consent of the individual. 15 U.S.C. § 1052(c); *See also* TRADEMARK MANUAL OF EXAMINING PROCEDURE §§ 813, 1206.03. "The statute, by implication, provides for the registration of the names of a deceased person." *McGraw-Edison Co. v. Thomas Edison Life Ins. Co.*, 160 USPQ 685, 687

no use in commerce prior to the filing of the use based application. *See Embarcadero Tech., Inc. v. Delphix Corp.*, 117 USPQ2d 1518, 1526 (TTAB 2016).

¹⁵ The Board notes that the claims of nonuse and fraud based on nonuse set forth in the Estate's amended pleading are based on overlapping factual allegations such that the Estate cannot prevail upon its fraud claim unless it first prevails on its nonuse claim. That is, to prevail on the fraud claim, the Estate must establish both nonuse and deceptive intent.

(TTAB 1969). As noted by the Estate in paragraph 20 of the notice of opposition, Les Paul was deceased as of the filing date of the involved application. Consequently, whether Gibson Brands had Les Paul's consent is not material to the registration of the mark and the allegations directed to Les Paul's consent are insufficient to support a fraud claim.

Accordingly, the Estate's fraud claim is sufficient solely to the extent it alleges fraud based on non-ownership.

3. Summary

In view of the foregoing, Gibson Brands' motion to dismiss the Estate's amended notice of opposition is **denied in part**, and **granted in part** as to the Estate's fraud claim based on nonuse or Gibson Brands' statement of Les Paul's consent. Notwithstanding, the Board generally grants leave to amend pleadings that have been found insufficient under Fed. R. Civ. P. 12(b)(6). *See* TBMP § 503.03. The Estate is allowed until **May 22, 2020** to file a second amended notice of opposition that properly alleges fraud based on nonuse, if the Estate has a reasonable basis for doing so, failing which this proceeding will go forward on the Estate's claims of nonuse, non-ownership, abandonment, likelihood of confusion, and fraud based on non-ownership. In turn, Gibson Brands is allowed until **June 21, 2020** in which to file an answer or otherwise respond to the second amended notice, if a second amended notice is filed, or to file an answer to the amended notice if no second amended notice is filed.

4. Schedule

Proceedings are **resumed**. Inasmuch as the parties are in reversed positions in the one opposition proceeding and the cancellation proceeding versus the remaining opposition proceeding, meaning that each party has the burden of proof with respect to its claims (Gibson Brands in Opposition No. 91235405 and Cancellation No. 92066440, and the Estate in Opposition No. 91246161), a counterclaim schedule with periods for two different plaintiffs to submit their prima facie case is appropriate, with Gibson Brands considered the “Plaintiff in Original Claim” and “Defendant in Counterclaim” and the Estate considered the “Defendant in Original Claim” and “Plaintiff in Counterclaim.” If the parties seek to change the schedule, **the proposed schedule must be in counterclaim format.**

Dates are reset as follows.¹⁶

Second Amended Notice in Opposition No. 91246161 Due	5/22/2020
Time to Answer in Opposition No. 91246161	6/21/2020
Deadline for Discovery Conference in Opposition No. 91246161	7/21/2020
Initial Disclosures Due in Opposition No. 91246161	8/20/2020
Expert Disclosures Due	12/18/2020
Discovery Closes	1/17/2021
Pretrial Disclosures Due for Party in Position of Plaintiff in Original Claim	3/3/2021
30-day Trial Period Ends for Party in Position of Plaintiff in Original Claim	4/17/2021
Pretrial Disclosures Due for Party in Position of Defendant in Original Claim and in Position of Plaintiff in Counterclaim	5/2/2021
30-day Trial Period Ends for Party in Position of Defendant in Original Claim, and in Position of Plaintiff in Counterclaim	6/16/2021

¹⁶ In view thereof, the parties’ consented motions to extend, filed February 24, March 19, and March 24, 2020, in Opposition No. 91235405 are moot. The Board also notes Gibson Brands’ December 10, 2019, withdrawal of its October 30, 2019, motion to suspend. The motion to suspend will receive no consideration.

Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Original Claim and in Position of Defendant in Counterclaim	7/1/2021
30-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Original Claim, and in Position of Defendant in Counterclaim	8/15/2021
Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Counterclaim	8/30/2021
15-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Counterclaim	9/29/2021
Opening Brief for Party in Position of Plaintiff in Original Claim Due	11/28/2021
Combined Brief for Party in Position of Defendant in Original Claim and Opening Brief as Plaintiff in Counterclaim Due	12/28/2021
Combined Rebuttal Brief for Party in Position of Plaintiff in Original Claim and Brief as Defendant in Counterclaim Due	1/27/2022
Rebuttal Brief for Party in Position of Plaintiff in Counterclaim Due	2/11/2022
Request for Oral Hearing (optional) Due	2/21/2022

The Federal Rules of Evidence generally 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).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.¹⁷ The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the ESTTA help webpage.

¹⁷ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.