UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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General Contact Number: 571-272-8500
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July 17, 2019

Opposition No. 91248134

Houzz, Inc.

v.

Elisha Gallop

J. Krisp, Interlocutory Attorney:

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties held a timely discovery and settlement conference on July 16, 2019. TBMP § 401.01. At Applicant's request, a member of the Board participated in the conference. Trademark Rule 2.120(2)(i). Participating were Opposer's counsel Salsa Ahmed, Applicant Elisha Gallop, pro se, and the assigned interlocutory attorney.

The Board apprised the parties of some general procedural rules and guidelines that govern *inter partes* proceedings, including the Board's liberal granting of motions to suspend for settlement efforts, and the requirement that a party serve its initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i) and (ii) prior to serving discovery requests (*see* Trademark Rule 2.120(a)(3)).

The Board's Standard Protective Order is automatically imposed pursuant to Trademark Rule 2.116(g), unless the parties, by stipulation approved by the Board,

agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. Although they are not required to do so, the parties may elect to exchange executed copies of the order. At this time, the parties do not make any modifications to the standard order.

Turning to the pleadings, the Board noted that Opposer sufficiently pleaded and established its standing, and sufficiently pleaded the grounds of likelihood of confusion, and dilution. Opposer's pleaded registrations are of record pursuant to Trademark Rule 2.122(d)(1) by way of its submission of the TSDR printouts thereof. 1 TTABVUE 43-61. However, the remaining exhibits are not evidence and are not of record. TBMP §§ 317 and 506.03.

The Board noted that in the first amended answer Applicant clearly denies only a few paragraphs, and does not unambiguously admit or deny the balance of the allegations, thereby leaving his admissions and denials unclear. Applicant requested, and the Board granted, leave to file a second amended answer. Accordingly, Applicant is allowed until **twenty days from the date of this order** to file a second amended answer to the notice of opposition.

For further clarity, the Board notes that Fed. R. Civ. P. 8(b) provides, in part:

(b) Defenses; Admissions and Denials.

(1) *In General.* In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

> (5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

The notice of opposition consists of 39 paragraphs setting forth the basis of Opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b), Applicant must answer the notice of opposition by specifically **admitting or denying** the allegations contained in each paragraph. If Applicant is **without sufficient knowledge or information on which to form a belief as to the truth** of any of the allegations, he should so state this, and this will have the effect of a denial. Trademark Rule 2.106(b)(2).

The Board advised that the parties should reduce to writing any stipulation into which they enter. The parties will utilize traditional discovery devices. The Board referred the parties to Chapter 400 of the TBMP, and in particular to TBMP §§ 402, 405, 406, 407 and 414 for useful guidelines regarding conducting discovery, including deadlines to serve responses to written discovery.

The Board briefly explained the availability and features of the "accelerated case resolution" ("ACR") process. For further information, the Board refers the parties to TBMP §§ 528.05(a)(2), 702.04 and 705, as well as the link on the Board's web page to a vast amount of ACR information and exemplary ACR proceedings. The Board noted that this proceeding is suitable for determination through an agreed-upon ACR schedule, and encourages the parties to give this consideration again after they exchange discovery.

If the parties stipulate to follow ACR, they should file their discovery and/or briefing schedule, and call the Board so as to alert the assigned attorney.

Suspension

During the conference the parties stipulated to **a thirty-day suspension** of discovery and trial dates in order to pursue settlement, and at a minimum to allow time for the consideration of a written settlement offer provided by Opposer.

Accordingly, proceedings are **suspended**, subject to the right of either party to request resumption at any time.[1] Trademark Rules 2.117(c) and 2.127(a); and TBMP § 605.02. Dates are reset as indicated below:

Discovery Opens	8/22/2019
Initial Disclosures Due	9/21/2019
Expert Disclosures Due	1/19/2020
Discovery Closes	2/18/2020
Plaintiff's Pretrial Disclosures Due	4/3/2020
Plaintiff's 30-day Trial Period Ends	5/18/2020
Defendant's Pretrial Disclosures Due	6/2/2020
Defendant's 30-day Trial Period Ends	7/17/2020
Plaintiff's Rebuttal Disclosures Due	8/1/2020
Plaintiff's 15-day Rebuttal Period Ends	8/31/2020
Plaintiff's Opening Brief Due	10/30/2020
Defendant's Brief Due	11/29/2020
Plaintiff's Reply Brief Due	12/14/2020
Request for Oral Hearing (optional) Due	12/24/2020

[1] In the event that proceedings become suspended for a lengthy period of time pursuant to the filing of several motions to suspend for settlement, the Board retains discretion to condition the approval of any future consented or stipulated motion to suspend on a party or the parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. Trademark Rule 2.117(c).

If, during the suspension period, either of the parties or their attorneys have a change of address or email address, the Board should be so informed. Trademark Rule 2.18(b)(1).

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).

Additional Information for Pro Se Party

While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. TBMP § 114.02.

Trademark Rules 2.119(a) and (b) require that every submission filed in a proceeding before the Board **must** be served upon the other party or parties, and

proper proof of such service must be made before the submission will be considered by the Board. TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

> 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 forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).
>
> Signature_____
> Date_____

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at http://estta.uspto.gov/.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at http://www.uspto.gov/ttab, the TTABVUE system for viewing the record for all Board proceedings, available at http://ttabvue.uspto.gov/ttabvue/, and the Standard Protective Order, available at https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0.

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. *McDermott v. San Francisco Women's Motorcycle Contingent,* 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx.865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008).