

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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tdc/JMM

January 14, 2020

Opposition No. 91250025

*NFL Properties LLC, and The Oakland Raiders*

*v.*

*Abraham Como*

**By the Trademark Trial and Appeal Board:**

This case now comes before the Board for consideration of Opposer's motion (filed September 26, 2019) to strike Applicant's answer filed September 16, 2019 on the ground that the answer does not comply with Fed. R. Civ. P. 8(b). To date, no response has been received from Applicant.

In view thereof, Opposer's motion to strike is **GRANTED** as conceded. *See* Trademark Rule 2.127(a). Accordingly, Applicant's answer filed on September 16, 2019 is hereby stricken from the record.

LEAVE TO AMEND

Notwithstanding the foregoing, it is the Board's policy to allow amendment of defective pleadings, particularly where the offending pleading is the initial pleading. *See, e.g., Intellimedia Sports Inc. v. Intellimedia Corp.*, 43 USPQ2d 1203, 1208 (TTAB 1997). Accordingly, we hereby allow Applicant leave until **February 12,**

**2020**, to file an amended answer, failing which the Board may enter notice of default against Applicant.

Any answer filed in response to this order must comply with Trademark Rule 2.106(b), 37 C.F.R. § 2.106(b), and Fed. R. Civ. P. 8(b) and 10(b), made applicable to this proceeding by Trademark Rule 2.116(a), 37 C.F.R. § 2.116(a). In addition, a copy of Applicant's answer, or any motion filed in lieu of an answer, must be served on counsel for Opposer as required by Trademark Rule 2.119.<sup>1</sup>

Trademark Rule 2.106(b)(2) provides, in part, that:

An answer shall state in short and plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies. If the applicant is without knowledge or information sufficient to form a belief as to the truth of an averment, applicant shall so state and this will have the effect of a denial.

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.

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(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.

Federal R. Civ. P. 10(b) provides, in part, that:

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<sup>1</sup> To the extent Applicant intends to file a motion to dismiss the notice of opposition in lieu of filing an answer, Applicant must clearly articulate the grounds for such a motion and the relief requested therein. *See, e.g.*, TBMP § 503.

A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading.

The notice of opposition filed by Opposer in this proceeding consists of 24 paragraphs setting forth the basis of Opposer’s claim of damage. In accordance with Fed. R. Civ. P. 8(b) and 10(b), it is incumbent on Applicant to answer the notice of opposition by specifically admitting or denying the allegations contained in each paragraph, by paragraph number. If Applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

**PROCEEDINGS RESUMED**

Proceedings herein are resumed. As noted above, Applicant is allowed until **February 12, 2020**, to file an amended answer, failing which the Board may enter notice of default against Applicant. Dates are reset as follows:

Time to Answer	2/12/2020
Deadline for Discovery Conference	3/13/2020
Discovery Opens	3/13/2020
Initial Disclosures Due	4/12/2020
Expert Disclosures Due	8/10/2020
Discovery Closes	9/9/2020
Plaintiff’s Pretrial Disclosures Due	10/24/2020
Plaintiff’s 30-day Trial Period Ends	12/8/2020
Defendant’s Pretrial Disclosures Due	12/23/2020
Defendant’s 30-day Trial Period Ends	2/6/2021
Plaintiff’s Rebuttal Disclosures Due	2/21/2021
Plaintiff’s 15-day Rebuttal Period Ends	3/23/2021
Plaintiff’s Opening Brief Due	5/22/2021
Defendant’s Brief Due	6/21/2021

Plaintiff's Reply Brief Due	7/6/2021
Request for Oral Hearing (optional) Due	7/16/2021

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).

#### INFORMATION FOR PRO SE PARTY

While Patent and Trademark Rule 11.14 permits any person domiciled in the U.S. 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 an opposition proceeding 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.

Applicant is advised that an inter partes proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the

facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

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/trademarks-application-process/trademark-trial-and-appeal-board-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>.

As stated in the Board's September 24, 2019 order, 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. Accordingly, all submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was

made, the name of each party or person upon whom service was made, and the email address or address. *See* 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 mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and 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). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at <http://estta.uspto.gov/>.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, 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).