

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
General Email: TTABInfo@uspto.gov

VV/wbc

December 23, 2019

Opposition No. 91252133

Rhythm Holding Limited

v.

Gant M. Viola

Wendy Boldt Cohen, Interlocutory Attorney:

The answer to the notice of opposition was due December 17, 2019. 2 TTABVUE
3. On December 16, 2019, Applicant filed a communication with a coversheet
“Answer” which does not include proof of service as required by Trademark Rule
2.119(a). 4 TTABVUE. As explained below, strict compliance with Trademark Rule
2.119 is required in all submissions filed with the Board. The Board may decline to
consider any future submission filed by Applicant in this proceeding which does not
include proof of service.

The Board presumes that this communication is intended as Applicant’s answer
to the notice of opposition. However, in substance said communication does not
comply with Fed. R. Civ. P. 8(b), which is made applicable this proceeding by
Trademark Rule 2.116(a).

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 filed by Opposer consists of 6 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 one of the allegations, it should so state and this will have the effect of a denial. Trademark Rule 2.106(b)(2).

In view of the foregoing, Applicant is allowed until **January 19, 2020** in which to file through ESTTA¹, and serve upon Petitioner an answer which complies with Fed. R. Civ. P. 8(b) and Board rules.

The conference, disclosure, discovery and trial dates are reset as indicated below.

Deadline for Discovery Conference	2/18/2020
Discovery Opens	2/18/2020
Initial Disclosures Due	3/19/2020
Expert Disclosures Due	7/17/2020
Discovery Closes	8/16/2020
Plaintiff's Pretrial Disclosures Due	9/30/2020
Plaintiff's 30-day Trial Period Ends	11/14/2020
Defendant's Pretrial Disclosures Due	11/29/2020
Defendant's 30-day Trial Period Ends	1/13/2021

¹ Instructions and forms for filing through ESTTA are available at <http://estta.uspto.gov>. All Board proceeding files can be viewed via TTABVue at <http://ttabvue.uspto.gov>.

Plaintiff's Rebuttal Disclosures Due	1/28/2021
Plaintiff's 15-day Rebuttal Period Ends	2/27/2021
Plaintiff's Opening Brief Due	4/28/2021
Defendant's Brief Due	5/28/2021
Plaintiff's Reply Brief Due	6/12/2021
Request for Oral Hearing (optional) Due	6/22/2021

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).

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.² 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.

Information for pro se party

While Patent and Trademark Rule 11.14 permits any person to represent itself, it is generally 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.

In addition, Trademark Rules 2.119(a) and (b) require that every submission filed in the Patent and Trademark Office in a proceeding before the Board **must** be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the submission will be considered by the Board. Consequently, copies of all submissions filed in this proceeding **must** be accompanied by a signed statement indicating the date and manner in which such service was made. *See* TBMP § 113.03. The statement, whether attached to or appearing on the submission when filed, 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:

² To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.

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, and address or email address of opposing counsel or party).

Signature _____

Date _____

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>.

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.