

ESTTA Tracking number: **ESTTA1249004**

Filing date: **11/18/2022**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91279360
Party	Plaintiff George A. Powell
Correspondence address	KURT KOENIG KOENIG & ASSOCIATES 920 GARDEN ST. SUITE A SANTA BARBARA, CA 93101 UNITED STATES Primary email: Kurt@incip.com 805-965-4400
Submission	Request for Discovery Conference
Filer's name	Kurt Koenig
Filer's email	Kurt@incip.com
Signature	/Kurt Koenig/
Date	11/18/2022
Attachments	Request for Board Participation in Discovery Conference-91279360.pdf(1082941 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 90841227
For the mark: STREET BONES
Published: May 24, 2022

GEORGE A. POWELL,)	
)	
Opposer,)	Opposition No.: 91279360
)	
v.)	
)	
E.O.L.A., LLC,)	
)	
Applicant.)	
)	

**OPPOSER’S REQUEST FOR BOARD’S PARTICIPATION
BY TELEPHONE IN DISCOVERY CONFERENCE**

Pursuant to Trademark Rule 2.120(a)(2)(i), 37 C.F.R. § 2.120(a)(2)(i), Opposer hereby requests the participation of a Board Interlocutory Attorney or Administrative Trademark Judge in the Discovery Conference in this case. Under the scheduling order, the deadline for the Discovery Conference is December 1, 2022. This request is timely because it is being submitted more than ten (10) days prior to the deadline for the conference.

The reason Opposer is requesting Board participation in the conference is due to the failure of Applicant to agree to hold the discovery conference and Applicant’s statements that *“she does not wish to attend the mandatory discovery conference, has indicated she will not attend the conference, and does not wish to respond to any matters in this proceeding moving forward.”*

On October 7, 2022, Lorraine Pierce, the General Partner of Applicant, sent an email to Opposer’s counsel Kurt Koenig indicating that she planned to request that an Interlocutory

Attorney attend the discovery conference. On October 21, 2022, Applicant indicated she talked with the “*Trademark appeal board representative and they stated we can discuss settlement privately.*”

On November 2, 2022, Ms. Pierce sent an email to Opposer’s counsel Kurt Koenig stating “*I am not attending the conference, nor proceeding in any further legal procedures pertaining to my trademark, Street Bones.*” See Attached Exhibit A.

On November 2, 2022 Kurt Koenig replied to Ms. Pierce’s email noting, *inter alia*, the obligation to conduct the discovery conference under the TTAB Rules no later than December 1, 2022. No reply was received. See Attached Exhibit B.

On November 7, 2022 Kurt Koenig followed up again with a request to hold the conference. No reply was received. See Attached Exhibit C.

On November 11, 2022 Kurt Koenig followed up again with a request to hold the conference. No reply was received. See Attached Exhibit D.

If Applicant agrees to hold the discovery conference after submission of this motion and in fact attends the conference, Board participation may not be required at the conference.

Respectfully submitted,

Dated: November 18, 2022

By:  _____
Kurt Koenig
KOENIG & ASSOCIATES
920 Garden Street, Suite A
Santa Barbara, CA 93101
Tel: 805-965-4400
Email: Kurt@incip.com

Counsel for Opposer

CERTIFICATE OF ELECTRONIC TRANSMISSION

Date: November 18, 2022

I hereby certify that this paper is being transmitted electronically to the Trademark Trial and Appeal Board of the United States Patent & Trademark Office, on the date indicated above, through the ESTTA electronic filing system at the web site <http://estta.uspto.gov>.


Kurt Koenig

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing “OPPOSER’S REQUEST FOR BOARD’S PARTICIPATION BY TELEPHONE IN DISCOVERY CONFERENCE” was served on November 18, 2022 to the emails of record at the TTAB per TBMP §113.04 and 37 CFR § 2.119(b), to Opposer’s counsel as follows:

lorraine.a.pierce@gmail.com
admin@laminerals.com
stuartwpierce@gmail.com


Kurt Koenig

Dated: November 18, 2022

EXHIBIT A

From: Lorraine Pierce lorraine.a.pierce@gmail.com
Subject: Re: Opposition No. 91279360 - GAP v. E.O.L.A., LLC - STREET BONES - App. No. 90841227
Date: November 2, 2022 at 9:01 AM
To: Kurt Koenig kurtkoenig@gmail.com

Hello Kurt,

I am not attending the conference, nor proceeding in any further legal procedures pertaining to my trademark, Street Bones. [REDACTED]

Best Regards,

Lorraine Pierce
409-474-2238

On Thu, Oct 6, 2022 at 3:01 PM Kurt Koenig <kurtkoenig@gmail.com> wrote:

I see from the website at TTABVUE that you have field an answer.

As you may know, according to the Board Schedule, we need to hold the required discovery conference. Please let me know the dates you are available from 10/19/2022 to 11/15/2022 to have the conference.

Thank you.

Kurt Koenig
Koenig & Associates
920 Garden St.
Santa Barbara, CA 93101
805-965-4400
Kurt@incip.com

EXHIBIT B

From: Kurt Koenig Kurt@kurtkoenig.com
Subject: Re: Opposition No. 91279360 - GAP v. E.O.L.A., LLC - STREET BONES - App. No. 90841227
Date: November 2, 2022 at 11:24 AM
To: Lorraine Pierce lorraine.a.pierce@gmail.com

Hi Lorraine,

Thank you for your reply.

I am not clear on what you mean when you say: "I am not attending the conference, nor proceeding in any further legal procedures pertaining to my trademark."

As you may know, we are required to hold the discovery conference under the TTAB Rules no later than December 1, 2022. The possibility of settlement is one of the items to be discussed during the discovery conference.

The Notice of Institution Order issued by the Board on September 22, 2022 states the following:

PARTIES ARE REQUIRED TO HOLD DISCOVERY CONFERENCE

*The parties are required to schedule and hold a discovery conference by the deadline in the schedule in this order, or as reset by the Board. **In the conference, the parties are required to discuss, at a minimum, 1) the nature and basis of their claims and defenses, 2) the possibility of promptly settling, or at least narrowing the scope of claims or defenses, and 3) arrangements for disclosures, discovery, preserving discoverable information and introduction of evidence at trial.** For guidance, see Fed. R. Civ. P. 26(f), Trademark Rule 2.120(a)(2)(i) and TBMP §§ 401.01 and 408.01(a).*

The parties must hold the conference in person, by telephone or by a means on which they agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference either upon request of any party made no later than ten (10) days prior to the conference deadline, or when the Board deems it useful to have Board involvement. See Trademark Rule 2.120(a)(2)(i). A request for Board participation must be made either through ESTTA, or by telephone call to the assigned interlocutory attorney named on the TTABVue record for this proceeding. A party requesting Board participation should first determine possible dates and times when all parties are available. A conference with a Board attorney's participation will be by telephone in accordance with the Board's instructions.

For efficiency, the parties may stipulate to various procedural and substantive disclosure, discovery and trial matters (e.g., modification of deadlines and obligations) upon written stipulation and approval by the Board. Trademark Rule 2.120(a)(2)(iv) provides a non-exhaustive list of matters to which parties may stipulate. The best practice is to reduce all stipulations to writing. If email service is not practical, such as for voluminous document production in discovery, the parties should discuss in the conference how production will be made. The parties, and their attorneys or representatives, have a duty to cooperate in the discovery process. TBMP § 408.01.

I am happy to have a phone call to clarify or resolve any issues prior to the discovery conference or review these issues during a formal discovery conference. I was unable to leave you a voice mail though.

In any case, we look forward to resolving this matter quickly, easily, and amicably if possible.

Thank you.

Kurt Koenig
Koenig & Associates
920 Garden St.
Santa Barbara, CA 93101
805-965-4400
Kurt@incip.com

On Nov 2, 2022, at 9:01 AM, Lorraine Pierce <lorraine.a.pierce@gmail.com> wrote:

Hello Kurt,

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As you may know, according to the Board Schedule, we need to hold the required discovery conference. Please let me know the dates you are available from 10/19/2022 to 11/15/2022 to have the conference.

Thank you.

Kurt Koenig
Koenig & Associates
920 Garden St.
Santa Barbara, CA 93101
805-965-4400
Kurt@incip.com

EXHIBIT C

From: Kurt Koenig Kurt@kurtkoenig.com
Subject: Re: Opposition No. 91279360 - GAP v. E.O.L.A., LLC - STREET BONES - App. No. 90841227
Date: November 7, 2022 at 1:40 PM
To: Lorraine Pierce lorraine.a.pierce@gmail.com

Hi,

I am following up on this.

Would you like to discuss or should I assume that you do not wish to attend the conference at all and wish to terminate the proceeding.

If you want to terminate the proceeding I can send you a withdrawal/termination and it can be concluded.

Otherwise, we need to move forward.

Thank you.

Kurt Koenig
Koenig & Associates
920 Garden St.
Santa Barbara, CA 93101
805-965-4400
Kurt@incip.com

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920 Garden St.
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Kurt Koenig
Koenig & Associates
920 Garden St.
Santa Barbara, CA 93101
805-965-4400
Kurt@incip.com

EXHIBIT D

From: Kurt Koenig Kurt@kurtkoenig.com
Subject: Re: Opposition No. 91279360 - GAP v. E.O.L.A., LLC - STREET BONES - App. No. 90841227
Date: November 11, 2022 at 4:19 PM
To: Lorraine Pierce lorraine.a.pierce@gmail.com

Hi,

I am following up again. I have not received a reply from you to any of my emails.

What I understand from your correspondence is that you do not wish to attend the mandatory discovery conference, will not attend the conference, and do not wish to respond to any matters in this proceeding moving forward.

Please confirm that is correct so that I can move ahead accordingly.

Thank you.

Kurt Koenig
Koenig & Associates
920 Garden St.
Santa Barbara, CA 93101
805-965-4400
Kurt@incip.com

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