UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
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June 1, 2023

Opposition No. 91285306
Serial No. 97313467

JAMES DAVID JOHNSON
JOHNSON & MARTIN, P.A.
500 WEST CYPRESS CREEK ROAD, SUITE 430
FORT LAUDERDALE, FL 33309

Group Authentic, LLC and Mr. David Chandler

v.

La Potencia, LLC

JOHN W. GOLDSCHMIDT, JR.
FERENCE & ASSOCIATES LLC
409 BROAD STREET
PITTSBURGH, PA 15143

Tyrone Craven, Supervisory Paralegal:

NOTICE OF INSTITUTION

The Opposer (plaintiff) identified above has filed a notice of opposition to the registration sought by Applicant (defendant) in the above-identified application. This notice of institution is forwarded pursuant to Trademark Rules 2.105(b) and (c), and constitutes service of the notice of opposition on Applicant. An electronic version of the notice of opposition is viewable on TTABVUE at https://ttabvue.uspto.gov/ttabvue/. *See* Trademark Rule 2.105(a). The parties should diligently monitor this proceeding via TTABVUE.

A review of the record reveals that jurisdiction was restored to the Trademark Examining Attorney for further examination on March 1, 2023.

Accordingly, while the notice of opposition is hereby instituted, proceedings are **SUSPENDED** until a final determination can be made with respect to the underlying application by the examining attorney. See TBMP 215.

Proceedings will be resumed and appropriate dates set once the Board receives notification of the disposition of the application.

DUTY TO MAINTAIN ACCURATE CORRESPONDENCE INFORMATION
Throughout this proceeding, the parties, and their attorneys or representatives, must notify the Board of any correction or update of physical address and email address, and should use the ESTTA change of address form. *See* Trademark Rule 2.18(b); TBMP § 117.

SERVICE OF ANSWER AND OF ALL SUBMISSIONS
The service of the answer, and all other submissions in this proceeding, and of all matters that are required to be served but not required to be filed in the proceeding record, **must** be by **email** unless the parties stipulate otherwise. Trademark Rule 2.119(b). In the absence of a stipulation, service may be by other means **only** under the **limited** circumstances and in a manner specified in Trademark Rule 2.119(b). Regarding the signing and service of all submissions, *see* TBMP §§ 113-113.04.

The answer, and all other submissions, **must** include proof of service. As noted in TBMP § 113.03, proof of service may be in the following certificate of service form:

> *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*_____

SUBMIT ALL FILINGS ONLINE VIA ESTTA
Submissions **must** be filed via ESTTA, the Board's online filing system, unless ESTTA is unavailable due to technical problems or extraordinary circumstances are present. Trademark Rule 2.126(a). Submissions may be filed in paper form **only** under the **limited** circumstances specified in Trademark Rule 2.126(b), with a required written explanation. ESTTA is accessible at the Board's webpage: https://estta.uspto.gov/. The page has instructions and tips. ESTTA offers various forms, some of which may require attachments and/or a fee. For technical questions, a party may call 571-272-8500 (Mon-Fri 8:30 a.m. to 5 p.m. ET) or email ESTTA@uspto.gov. This proceeding involves several deadlines, and due to potential technical issues, parties should not wait until the deadline to submit filings. The

Board may **decline to consider** an untimely submission. Moreover, Trademark Rule 2.126 sets forth the required form and format for all submissions (*e.g.*, page limitations), and the Board may **decline to consider** any submission that does not comply with this rule, including, but not limited to motions, briefs, exhibits, and deposition transcripts.

PROTECTIVE ORDER FOR CONFIDENTIAL INFORMATION

The Board's Standard Protective Order is automatically imposed in all *inter partes* proceedings, and is available at https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0.

During their conference, the parties should discuss whether they will use an alternative or modified protective order, subject to approval by the Board. *See* Trademark Rule 2.116(g) and TBMP § 412. The standard order does not automatically protect confidential information; its provisions for designating confidential information must be utilized as needed by the parties. Trademark Rule 2.126(c) sets forth the procedure for filing confidential submissions.

ACCELERATED CASE RESOLUTION (ACR)

During their conference, the parties are to discuss whether they wish to seek mediation or arbitration, and whether they can stipulate to the Board's Accelerated Case Resolution (ACR) process for a more efficient and cost-effective means of obtaining the Board's determination of the proceeding. For details, and examples of ACR proceedings, *see* TBMP § 528, and the Board's webpage: https://www.uspto.gov/ttab.

INITIAL DISCLOSURES AND DISCOVERY

Regarding the deadline for and contents of initial disclosures, *see* Trademark Rules 2.120(a)(1) and (2)(i), and TBMP § 401.02. Regarding deadlines for serving and responding to discovery, *see* Trademark Rule 2.120(a)(3) and TBMP § 403.03. Certain provisions of Fed. R. Civ. P. 26 are applicable in modified form. Note that written discovery (interrogatories, requests for production, requests for admission) must be served **early** enough so that responses will be due **no later than** the close of discovery. Regarding the scope and limits of discovery, *see* TBMP 414; discoverable items may include documents, tangible things, and electronically stored information (ESI).

MOTIONS

Certain provisions of Fed. R. Civ. P. 11 apply to all submissions in Board proceedings. *See* TBMP § 527.02. Regarding available motions, *see* TBMP Chapter 500. Regarding applicable deadlines to respond to motions, depending on the motion filed, *see* Trademark Rules 2.127(a) and (e)(1). When a party timely files a potentially dispositive motion the proceeding is suspended with respect to all matters not germane to the motion. *See* Trademark Rule 2.127(d). In addressing motions or other filings, if it appears to the Board that a telephone conference would be beneficial, or

upon request of one or both parties, the Board may schedule a conference. *See* Trademark Rule 2.120(j)(1) and TBMP § 502.06(a).

PRETRIAL DISCLOSURES, TRIAL AND BRIEFING

Regarding the procedures and deadlines for pretrial disclosures and trial, and specifically the noticing, taking, serving and submitting of evidence and testimony, *see* Trademark Rules 2.120(k), 2.121, 2.122, 2.123 and 2.125, as well as TBMP Chapter 700. The parties should review these authorities. For example: witness testimony may be submitted in the form of affidavit or declaration subject to the right to oral cross examination; transcripts of testimony depositions, with exhibits, must be served on each adverse party within thirty (30) days after completion of taking the testimony; certified transcripts and exhibits must be filed, with notice of such filing served on each adverse party; and all notices of reliance must be submitted during the submitting party's assigned testimony period and must indicate generally the relevance the evidence and associate it with one or more issues.

Main briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing is not required, but will be scheduled upon separate notice timely filed pursuant to Trademark Rule 2.129(a). Regarding briefs and oral hearings, *see* TBMP §§ 801-802.

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.[1] 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 please visit the ESTTA help webpage.

LEGAL RESOURCES AVAILABLE AT WEBPAGE

For a general description of Board proceedings, *see* TBMP §102.03. Proceedings are governed by the Trademark Rules of Practice in Parts 2 and 7 of Title 37 of the Code of Federal Regulations. These rules, the Manual of Procedure (TBMP), information on Accelerated Case Resolution (ACR) and Alternative Dispute Resolution (ADR), and many Frequently Asked Questions, are available on the Board's webpage, at https://www.uspto.gov/ttab. The parties should check the webpage for important

[1] To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.

changes, announcements, etc., many of which apply to proceedings already in progress.

PARTIES NOT REPRESENTED BY COUNSEL

This proceeding is similar to a civil action in a federal district court and can be complex. The Board strongly advises all parties to secure the services of an attorney who is familiar with trademark law and Board procedure. The Board cannot aid in the selection of an attorney. *See* TBMP § 114.02. The Board requires strict compliance with all applicable authorities whether or not the party is represented by counsel.

PARTIES WITHOUT A U.S. DOMICILE MUST SECURE U.S. COUNSEL

Effective August 3, 2019, the USPTO amended its rules to require applicants, registrants or parties to a proceeding whose domicile is not located within the U.S. or its territories to be represented by an attorney who is an active member in good standing of the bar of the highest court of a state in the U.S., including the District of Columbia or any Commonwealth or territory. Attorney information requires applicant's appointed attorney to provide email and bar information as follows: Year of admission, State or territory of admission and, bar number if one is issued. 84 FR 31498 (Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants, July 2, 2019). Until ESTTA forms are available which will mask the bar information, an attorney may file the required information through ESTTA and select "confidential." A filing under "confidential" is not made available for public viewing.

NOTIFY BOARD OF ALL PENDING ACTIONS

If the parties are, or during the pendency of this proceeding become, parties in another Board proceeding or a civil action involving the same or related marks, or involving any issues of law or fact which are also in this proceeding, they shall notify the Board immediately. *See* Trademark Rule 2.106(b)(3)(i). The Board will consolidate and/or suspend related Board proceedings, as appropriate. *See* Trademark Rule 2.117(c); TBMP §§ 510 and 511.