

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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RSC

October 10, 2023

Opposition No. 91286041

A Place for Rover, Inc.

v.

Gregory B. Cordeiro

Rebecca Stempien Coyle, Interlocutory Attorney:

On October 8, 2023, Applicant filed a Motion in Limine to Exclude Opposer's Arguments and Evidence. (5 TTABVUE).¹ On October 9, 2023, Applicant filed with the Board a composite document consisting of Applicant's initial disclosures and interrogatories to Opposer. (6 TTABVUE).

As an initial matter, neither of Applicant's submissions include proof of service as required by Trademark Rule 2.119. Applicant is reminded that **all submissions must include proof of service**. Any future submission that fails to comply with the service requirement may be given no consideration.

¹ Record citations are to TTABVUE, the Board's publicly available docket history system. *See, e.g., New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 USPQ2d 10596, *2 n.1 (TTAB 2020). The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry, if applicable.

Moreover, as to Applicant's "motion in limine", the Board does not entertain motions to prospectively exclude evidence. TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") §§ 502.01, 527.01(f) (2023). The motion is also improper to the extent Applicant contends Opposer's argument regarding the relatedness of the parties' goods is incorrect or should be excluded. The relatedness of the parties' goods is just one of many factors considered in determining likelihood of confusion. *In re E.I. DuPont DeNemouts & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). The Board limits its discretionary disposition of factual disputes by partial summary judgment (or judgment on the pleadings) to facts which are critical elements of a claim and does not entertain motions as to judgment on individual *DuPont* factors. Accordingly, Applicant's motion will receive **no further consideration**.²

As for Applicant's initial disclosures and interrogatories for Opposer, written disclosures or disclosed documents, requests for discovery, responses thereto, and materials or depositions obtained through the disclosure or discovery process should not be filed with the Board, except when submitted with a motion relating to disclosure or discovery, or in support of or in response to a motion for summary judgment, or under a notice of reliance, when permitted, during a party's testimony period. Trademark Rule 2.120(k)(8).

² Additionally, since Applicant does not include any evidence with his motion, the motion could not be construed as one for summary judgment. *See S&L Acquisition Co. v. Helene Arpels Inc.*, 9 USPQ2d 1221, 1225 n. 9 (TTAB 1987); *see also* TBMP § 528.04. A motion for summary judgment would also be untimely since Applicant's motion was filed before service of his initial disclosures. Trademark Rule 2.127(e)(1); *see also* TBMP § 528.02.

The record reflects that Applicant's initial disclosures and interrogatories on Opposer were not filed with respect to any of these specific reasons. In view thereof, the parties are advised that the Board will give **no further consideration** to the initial disclosures or interrogatories which were filed.

If Applicant was attempting service on Opposer by filing his initial disclosures and interrogatories with the Board, this was not appropriate. Service must be made **by email**. Trademark Rule 2.119(b); *see also* TBMP §§ 110.03 (ESTTA does not automatically serve papers), 113.04 (service on other party must be made by email).

Dates **remain as set** in the Board's order of July 13, 2023.

❖ **Information for a Pro Se Litigant**

The Board notes that Applicant currently is representing himself in this proceeding. While Patent and Trademark Rule 11.14 permits a party 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. *See* TBMP § 114.02.

Trademark Rules 2.119(a) and (b) require that except for the original notice of opposition, 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, which 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). *See* 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/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/sites/default/files/documents/Standard%20Protective%20Order_02052020.pdf.

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).

This inter partes proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. Trademark Rules §§ 2.122–2.125 govern the trial evidence and testimony. The Board does not preside at the taking of testimony; 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. Additionally, the testimony of witnesses in inter partes cases may be submitted in the form of an affidavit or a declaration pursuant to 37 C.F.R. § 2.20 and in conformance with the Federal Rules of Evidence, filed during the proffering party's testimony period, subject to the right of any adverse party to elect to take and bear

the expense of oral cross-examination of that witness. *See* Trademark Rule 2.123(a)(1), 37 C.F.R. § 2.123(a)(1). No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.