

ESTTA Tracking number: **ESTTA1352814**Filing date: **04/16/2024**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|---|
| Proceeding no. | 91290944 |
| Party | Plaintiff Pro-Football LLC |
| Correspondence address | MARK H TIDMAN BAKER & HOSTETLER LLP 1050 CONNECTICUT AVE NW WASHINGTON SQUARE, SUITE 1100 WASHINGTON, DC 20036 UNITED STATES Primary email: bhipdocket@bakerlaw.com Secondary email(s): bhipdocket@bakerlaw.com, visiondocket@bakerlaw.com, mtidman@bakerlaw.com, gmitchell@bakerlaw.com 202-861-1500 |
| Submission | Motion to Amend Pleading/Amended Pleading |
| Filer's name | Mark H. Tidman |
| Filer's email | mtidman@bakerlaw.com, gmitchell@bakerlaw.com, ahsu@bakerlaw.com, nsamad@bakerlaw.com, cldocketing@bakerlaw.com, bhipdocket@bakerlaw.com |
| Signature | /Mark H. Tidman/ |
| Date | 04/16/2024 |
| Attachments | MotiontoAmend-02001.pdf(1770424 bytes) |

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

PRO-FOOTBALL LLC and NFL
PROPERTIES LLC,

Opposers,

v.

O-LINE ENTERTAINMENT LLC,

Applicant.

Serial No.: 97515385
Filed: July 22, 2022
Published: October 17, 2023
Mark: ORIGINAL HOGS

Opposition No.: 91290944

MOTION TO AMEND COVER PAGE TO NOTICE OF OPPOSITION

Opposers hereby move to amend the Cover Page document to include Opposer NFL Properties LLC in the proceeding along with Opposer Pro-Football LLC (collectively, the “Opposers”) and to pay the additional Opposer fee. Both of the Opposers— including, specifically, NFL Properties LLC (“NFL Properties”)— are identified in the Notice of Opposition filed yesterday (1 TTABVUE). However, upon our receipt of the filing earlier today, it appears that NFL Properties was inadvertently left off of the Cover Page due to a system malfunction that occurred when a typographical error found on the Cover Page was corrected immediately prior to filing. Accordingly, Opposers seek permission to amend the Cover Page to match the Notice of Opposition parties and to pay the additional Opposer fee due for NFL Properties.

Fed. R. Civ. P. 15(a)(2) and 37 C.F.R. § 2.107 are analogous. Federal Rule of Civil Procedure 15(a)(2) provides that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” “The Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires.” TBMP § 507.02. Furthermore, in order to prevent a party from filing an amended complaint, the nonmoving party must show that doing so would be

prejudicial to its rights. *See Embarcadero Technologies, Inc. v. Delphix Corp.*, 117 USPQ2d 1518, 1523 (TTAB 2016) (“In deciding whether to grant leave to amend, the Board may consider undue delay, prejudice to the opposing party, bad faith or dilatory motive, futility of the amendment, and whether the party has previously amended its pleadings.”); *Black & Decker Corp. v. Emerson Electric Co.*, 84 USPQ2d 1482, 1486 (TTAB 2007) (“[T]he Board does not grant such leave [to amend the pleading] when entry of the proposed amendment would be prejudicial to the right of the adverse party”).

Here, the pleading itself is not being amended. As noted, both Opposers were identified, and the Applicant is aware of same. Thus, the proposed amendment to the Cover Page has no prejudicial impact on Applicant. Nor do Opposers harbor any bad faith or dilatory motive. Instead, the Notice of Opposition was entirely complete and appropriate, but the Cover Page was revised automatically by ESTTA at the time of filing via a system malfunction. As such, Opposer NFL Properties should not be precluded from being a party to the proceeding due to system defect.

Both Opposers filed extensions of time to file the notice of opposition on November 13, 2023 and January 18, 2024. The Notice of Opposition caption filed on April 15, 2024, includes both of the Opposers and the body of the Notice of Opposition refers to both Pro-Football LLC and NFL Properties LLC as the Opposers. When preparing the Notice of Opposition filing on April 15, 2024, the Cover Page document included both Opposing parties and the requisite filing fees for both parties as shown in the ESTTA printout attached hereto as Exhibit A. This document was fully reviewed and approved by the signatory with one small amendment to simply remove a comma that was originally included, in error, in Opposer Pro-Football LLC’s name as it appeared on the Cover Page. For some inexplicable reason, when the Cover Page was reopened and the comma removed, the system deleted Opposer NFL Properties from the Cover Page. This ESTTA

system malfunction thus caused a miscalculation of the fee to be paid. This system flaw was not anticipated and unknown at the time of the filing. Additionally, the filing receipt for the proceeding provides a link to TTABVUE to view the submission, but it was not available for viewing until April 16. Thus, Opposers were deprived of any opportunity to correct the error caused by the ESTTA system prior to the end of the due date.

Given the circumstances, Opposers respectfully request that the Board grant this motion and accept the amendment to the Cover Page and give leave to pay the additional fee.

Dated: April 16, 2024

Respectfully submitted,

BAKER & HOSTETLER LLP

By: /Mark H. Tidman/
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1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5403
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mtidman@bakerlaw.com

Attorney for Opposers

CERTIFICATE OF FILING AND OF SERVICE

I hereby certify that on April 16, 2024, a true and correct copy of the foregoing MOTION TO AMEND COVER PAGE TO NOTICE OF OPPOSITION has been filed electronically using ESTTA and served by e-mail upon the Applicant's attorney:

Clyde Findley
BERENZWEIG LEONARD
8300 GREENSBORO DRIVE, SUITE 1250
MCLEAN, VA 22102
UNITED STATES
cfindley@berenzweiglawn.com

/Mark H. Tidman/
Mark Tidman
Attorney for Opposers

EXHIBIT A

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Notice of Opposition

Navigation: [Add/Modify \(add-sno-opp.jsp\)](#) - [Related \(additional-statements.jsp\)](#) - [Correspondence \(corr-attorney.jsp\)](#) - [GroundsUS \(opposition-grounds-forUS.jsp\)](#) - [Pleaded Mark\(s\) \(pleaded-marks.jsp\)](#) - [Pleading \(attachments.jsp\)](#) - [Sign \(sign.jsp\)](#) - [Validate](#)

ESTTA v.3.18.2
PTO-2120 (Exp.
11/30/2026)
OMB No. 0651-0040
(Exp. 11/30/2026)

Validate

Review the information below and click on the "to proceed with payment" button if the information is correct. If you need to edit any information, go back to proper screen using navigation facilities on this web page and make your correction(s).

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

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers information

| | |
|--|---|
| Name | Pro-Football, LLC |
| Granted to date of previous extension | 04/14/2024 |
| Address | 21300 COACH GIBBS DRIVE ASHBURN, VA 20147 UNITED STATES |
| Party who filed extension of time to oppose | Pro-Football, Inc |
| Relationship to party who filed extension of time to oppose | Opposers Pro-Football LLC and NFL Properties LLC hereby request that the present opposition be accepted as Opposer Pro-Football LLC was misidentified through mistake as "Pro-Football, Inc." for the extension of time. Specifically, there was a mistake made in the specified entity type as Opposer is a limited liability company, not a corporation. The misidentified "Pro-Football, Inc." did not exist as a legal entity at the time of filing the extension of time to file the notice of opposition. Pursuant to TBMP §206.03 and 37 C.F.R. § 2.102(b), Opposers request the notice of opposition be accepted. |

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|--|--|
| Name | NFL Properties LLC |
| Granted to date of previous extension | 04/14/2024 |
| Address | 345 PARK AVENUE NEW YORK, NY 10154 UNITED STATES |

| | |
|---|--|
| Attorney information | Mark H. Tidman Baker & Hostetler LLP 1050 Connecticut Ave, NW Washington Square, Suite 1100 Washington, DC 20036 UNITED STATES Primary email: bhipdocket@bakerlaw.com Secondary email(s): bhipdocket@bakerlaw.com, visiondocket@bakerlaw.com, mtidman@bakerlaw.com, gmittchell@bakerlaw.com 202-861-1500 |
| Docket no. | 85599.020001 |
| Bar information (bar information will not appear in the record, or e-mail confirmation, and will not be publically displayed) | Year of admission: 1995 |
| | U.S. state/commonwealth/territory: DC |
| | Membership no.: 441310 |
| | This attorney of record is an active member in good standing of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory. |

Applicant information

| | | | |
|-------------------------------|---|-------------------------------|------------|
| Application no. | 97515385 | Publication date | 10/17/2023 |
| Opposition filing date | Not assigned yet | Opposition period ends | 04/14/2024 |
| Applicant | O-Line Entertainment LLC 5605 77 Center Drive, Suite 270 Charlotte, NC 28217 UNITED STATES | | |

Goods/services affected by opposition

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|--|
| Class 025. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Clothing, namely, shirts, hoodies, hats, t-shirts, sweatshirts related to professional football |
| Class 035. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: On-line retail store services featuring professional football memorabilia, professional football paraphernalia and novelty items, professional football related clothing and merchandise |
| Class 041. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Entertainment services in the nature of hosting social entertainment events; Entertainment services in the nature of organizing social entertainment events; Entertainment services in the nature of production of multimedia entertainment content featuring professional athletes; Entertainment services, namely, an ongoing multimedia program featuring professional football athletes distributed via various platforms across multiple forms of transmission media |

Grounds for opposition

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|---|----------------------------|
| Priority and likelihood of confusion | Trademark Act Section 2(d) |
| False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols | Trademark Act Section 2(a) |

Mark cited by opposer as basis for opposition

| | | | |
|------------------------------|--|------------------------------|------------|
| U.S. registration no. | 1338418 | Application date | 08/01/1983 |
| Register | Principal | | |
| Registration date | 05/28/1985 | Foreign priority date | NONE |
| Word mark | HOGS | | |
| Design mark | | | |
| Description of mark | NONE | | |
| Goods/services | Class 041. First Use: Aug 4, 1982 First Use In Commerce: Aug 4, 1982 Entertainment Services in the Form of Professional Football Games and Exhibitions | | |

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|--------------------|---|
| Attachments | 97515385_240415_Notice of Opposition.pdf(543703 bytes) |
|--------------------|---|

| | |
|------------------|------------------|
| Signature | /Mark H. Tidman/ |
| Name | Mark H. Tidman |
| Date | 04/15/2024 |

| | | | |
|--|---|---------------------|---|
| Fee calculated according to USPTO fee table (https://www.uspto.gov/learning-and-resources/fees-and-payment) | | | |
| Fee code | 7402 | | |
| Amount | 600.00 | | |
| Description | Notice of Opposition, per Class, Electronically Filed | | |
| Number of opposers | 2 | | |
| Serial # | 97515385 | # of Classes | 3 |
| Total | 3600.00 | | |

04/15/2024 01:05 PM EDT

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