

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 6, 2007

Cancellation No. 92047226

John E. Hughes Jr.

v.

Herculinks Corporation

**Robert H. Coggins,
Interlocutory Attorney:**

Between the dates of March 20, 2007 and March 27, 2007, opposer filed a series of communications identified as "confidential" with the Board.¹ The filings fail to include proper proof of service and do not appear to be confidential.

Trademark Rules 2.119(a) and (b) require that every paper 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

¹ Respondent filed at least thirty-five individual papers through ESTTA causing as many separate entries in the prosecution history of this proceeding. While the use of ESTTA is encouraged, respondent is advised that it should not make a separate filing for each individual sheet of paper; rather, it should attach related papers (e.g., a single, multiple-page document such as an answer or motion with supporting documentation and proper proof of service) under a single filing.

attorney, and proof of such service must be made before the paper will be considered by the Board. TBMP Section 113.03 (2d ed. rev. 2004) sets out the elements of a certificate of service. Inasmuch as respondent's filings fail to properly indicate proof of service on petitioner, they will be given **no consideration.**

Respondent is advised that Trademark Rules 2.27(d) and (e) provide, in essence, that the file of an issued registration, and all proceedings relating thereto, should otherwise be available for public inspection. Respondent is also referred to TBMP Section 412.04 (Filing Confidential Materials With Board) (2nd ed. rev. 2004) which provides that except for materials filed under seal pursuant to a protective order, the files of registrations which are the subject matter of pending proceedings before the Board should be available for public inspection and copying. Respondent's multiple "confidential" filings between March 20-27, 2007 appear to be an abuse of the rules. Respondent is advised that any additional papers improperly filed as "confidential" may be given no consideration.

To the extent respondent believes any of its filings constitutes an answer, respondent is directed to Fed. R. Civ. P. 8(b) which provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is

without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The petition to cancel filed by petitioner herein consists of thirteen numbered paragraphs setting forth the basis of petitioner's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on respondent to answer the petition to cancel by admitting or denying the allegations contained in each paragraph. If respondent 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.

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper 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 paper will be considered by the Board. Consequently, copies of all papers which respondent may subsequently file in this proceeding, including its answer to the petition to cancel, must be accompanied by a signed statement indicating the date and manner in which such service

was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

Respondent will be expected to comply with all applicable rules and Board practices during the remainder of this case. It should be noted that while Patent and Trademark Rule 10.14 permits an authorized officer to represent a corporation, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a cancellation proceeding 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.

If respondent does not retain counsel, then respondent will have to familiarize itself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure are likely to be found at most law libraries and may be available at some public libraries. The Board's manual of procedure will also be helpful.

On the World Wide Web, respondent may access most of these materials by logging onto <http://www.uspto.gov> and making the connection to trademark materials.

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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.

Discovery is open. Discovery and testimony dates remain as set in the Board's March 14, 2007 institution order. Answer is due by April 23, 2007.
