

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

Mailed: August 31, 2012

Cancellation No. 92055355

Eateries, Inc.

v.

Garfield's Place, LLC

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

This case comes up on petitioner's motion (filed May 18, 2012) for judgment on the pleadings. On August 2, 2012, respondent filed what the Board construes to be a brief in opposition thereto.¹

Procedural Issues

As an initial matter, the Board notes that respondent has failed to include the address and telephone number of the signatory (i.e., Ms. Goble/Dobbins) in either of its

¹ The filing fails to indicate proof of service on petitioner as required by Trademark Rule 2.119. In order to expedite this matter, petitioner is directed to the following URL where it may view a copy of the paper:
<http://ttabvueint.uspto.gov/ttabvue/v?pno=92055355&pty=CAN&eno=9>

Strict compliance with Trademark Rule 2.119 is required by respondent in all future papers filed with the Board.

filings. A document filed in a proceeding before the Board should include the name, in typed or printed form, of the person who signed, a description of the capacity in which she signed (e.g., as a corporate officer, if the filing party is a corporation), and her business address and telephone number. TBMP § 106.02 (3d ed. rev. 2012).

Respondent's brief in opposition to the motion for judgment on the pleadings was filed after the deadline allowed therefor. See Trademark Rules 2.119(c) and 2.127(a). Respondent's brief was due on or before June 7, 2012. Inasmuch as respondent has not moved to reopen its time in which to file the brief in opposition, the brief will be given no consideration. However, inasmuch as respondent clearly contests the motion for judgment, the motion will not be treated as conceded.

The format of each of respondent's filings is improper; for example, the submissions are not double-spaced. The form of submissions is governed by Trademark Rule 2.126. See TBMP § 106.03 (3d ed. rev. 2012).

Motion for Judgment on the Pleadings

Petitioner's filing of the motion has triggered a review of respondent's answer to the petition. Upon review of the answer, it is clear that respondent's answer is informal -it is argumentative and more in the nature of a

brief on the case than a responsive pleading to the petition for cancellation. As such, it does not comply with Rules 8(b) and 10(b) of the Federal Rules of Civil Procedure, made applicable this proceeding by Trademark Rule 2.116(a). In view thereof, the answer is stricken and the motion for judgment on the pleadings will be given no consideration. Fed. R. Civ. P. 12(c) and (f)(1).

Answer Required

Respondent is allowed until September 21, 2012, in which to file an answer that complies with Fed. R. Civ. P. 8(b) and 10(b), which provide, in relevant part (with internal divisions omitted) that:

[A] party must state in short and plain terms its defenses to each claim asserted against it; and admit or deny the allegations asserted against it by an opposing party. A denial must fairly respond to the substance of the allegation. A party that intends in good faith to deny all the allegations of a pleading ... may do so by a general denial. ... A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

[and]

A party must state its ... defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading [i.e., the answer] may refer by number to a paragraph in an earlier pleading [i.e., the petition for cancellation].

The petition for cancellation filed by petitioner consists of six numbered paragraphs setting forth the basis of petitioner's claim of damage. In accordance with Fed. R. Civ. P. 8(b) and 10(b) it is incumbent on respondent to answer the petition by admitting or denying the allegations contained in each numbered 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. The admissions and denials should be made in numbered paragraphs corresponding to the numbered paragraphs in the petition.

Respondent may find a review of TBMP §§ 311 *et seq.* (Form and Content of Answer) helpful when preparing the answer.

Certificate of Service

As noted above, at footnote 1, 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 for cancellation, must be accompanied by a signed statement indicating the date and manner in which such service

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was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service. The statement should take the form of a "certificate of Service" which should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [*insert title of document*] was served upon [*insert name of party served*] by forwarding said copy, via first class mail [*or insert other appropriate means*], postage prepaid to: [*insert name and address*].

The certificate of service must be signed and dated. See TBMP §§ 113 et seq. (3d ed. rev. 2012).

Pro Se Information for Respondent

The Board notes that respondent is representing itself. Respondent may do so. However, it should be noted that while Patent and Trademark Rule 11.14 permits any company to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a Board 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. In addition, as the impartial decision maker, the Board may not provide legal advice, though it may provide information as to procedure.

If respondent does not retain counsel, then respondent will have to familiarize itself with the rules governing this

proceeding. Respondent should refer to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both available on the Board's homepage at <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. The Board's homepage provides electronic access to these and other materials including the Board's standard protective order, answers to frequently asked questions, the ESTTA filing system² (<http://estta.uspto.gov>) for Board filings, and TTABVUE (<http://ttabvue.uspto.gov/ttabvue>) for case status and prosecution history.

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. All parties in matters before the Board, whether represented by counsel or not, are expected to conduct their business with decorum and courtesy. Trademark Rule 2.192.

Respondent is advised that an *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions, discovery (a party's use of discovery depositions,

² Use of electronic filing with ESTTA is strongly encouraged. This electronic file system operates in real time. See TBMP § 110.09 (3d ed. Rev. 2012).

interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, 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. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

Schedule

Proceedings are resumed, and dates are reset on the following schedule.

Respondent's Answer Due	9/21/2012
Deadline for Discovery Conference	10/21/2012
Discovery Opens	10/21/2012
Initial Disclosures Due	11/20/2012
Expert Disclosures Due	3/20/2013
Discovery Closes	4/19/2013
Plaintiff's Pretrial Disclosures	6/3/2013
Plaintiff's 30-day Trial Period Ends	7/18/2013
Defendant's Pretrial Disclosures	8/2/2013
Defendant's 30-day Trial Period Ends	9/16/2013
Plaintiff's Rebuttal Disclosures	10/1/2013
Plaintiff's 15-day Rebuttal Period Ends	10/31/2013

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In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.