

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

CME

Mailed: January 21, 2014

Opposition No. 92058230

Ansell Limited

v.

Custom LeatherCraft Mfg. Co.,  
Inc.

**Christen M. English, Interlocutory Attorney:**

On January 16, 2014, at petitioner's request, the Board participated in the parties' telephonic discovery conference mandated under Fed. R. Civ. P. 26(f) and Trademark Rule 2.120(a)(1) and (a)(2). Gwynne Sugg appeared on behalf of petitioner, Matthew Swyers appeared on behalf of respondent, and the assigned interlocutory attorney participated on behalf of the Board.

The parties indicated that they are not involved in any related proceedings against one another before the Board or in any court. Petitioner, however, advised that it is involved in another cancellation proceeding, Cancellation No. 92058296, against a third party where petitioner has asserted the same common law rights that it asserts here. After review, Board has concluded that consolidation of this proceeding with Cancellation No. 92058296 is not appropriate given that respondents in the two cases are different and

are represented by different counsel nor should this case be suspended pending disposition of Cancellation No. 92058296.

The parties did not agree to accept formal service of papers by e-mail pursuant to Trademark Rule 2.119(b)(6), but did agree to serve courtesy copies of papers via email.

Petitioner's e-mail address for service of courtesy e-mail copies is [gsugg@mtiplaw.com](mailto:gsugg@mtiplaw.com) and respondent's e-mail address for service of courtesy e-mail copies is

mswyers@TheTrademarkCompany.com. Each party need only send courtesy copies to a single e-mail address.

The parties have not discussed settlement. The Board strongly encourages the parties to work together to resolve this proceeding, if possible.

The Board reviewed the parties' pleadings and recommended that they consider using Accelerated Case Resolution ("ACR") because this appears to be a garden variety likelihood of confusion case. The parties indicated that they are interested in exploring the possibility of ACR and have scheduled a follow-up telephone conference with the assigned interlocutory attorney to discuss ACR on February 11, 2014 at 3:00 PM Eastern Standard Time. As the date for the teleconference approaches, the interlocutory attorney assigned to this proceeding will send the parties call-in instructions.

The parties are commended and encouraged to pursue ACR. As discussed during the discovery conference, ACR can take almost any form that the parties agree to and that will move this proceeding forward in an efficient and expeditious manner. The simplest form of ACR would be similar to summary judgment whereby the parties would submit briefs with attached evidence, but would agree to allow the Board to resolve any genuine disputes of material fact raised by the parties' filings or the record. Alternatively, the parties may wish to consider ACR-like efficiencies such as: stipulating to some or all of the facts, foregoing discovery in favor of greater reciprocal disclosures than required by Fed. R. Civ. P. 26(a)(1), limiting discovery in time and scope (i.e. 60-day discovery period with each party limited to 10 interrogatories, document requests and requests for admission and 1 deposition), and/or taking testimony by declaration, subject to the right of either party to cross examine, if desired. *See, e.g., Chanel Inc. v. Makarczyk*, 106 USPQ2 1774 (TTAB 2013) (parties stipulated to a number of facts and procedural issues, including submission of summary judgment briefs, accompanied by the parties' evidence); *Target Brands, Inc. v. Hughes*, 85 USPQ2d 1676, 1678 (TTAB 2007) (parties stipulated to entire record of the case including business records, public records, government documents, marketing materials and materials obtained from

the Internet as well as thirteen paragraphs of facts; the parties agreed to reserve the right to object to such facts and documents on the bases of relevance, materiality and weight).

The parties are directed to the following materials which they may find helpful in crafting an ACR plan suitable for this proceeding:

1. General description of ACR:

<http://www.uspto.gov/trademarks/process/appeal/Accelerated Case Resolution ACR notice from TTAB webpage 12 2 2 11.pdf>;

2. FAQs on ACR:

[http://www.uspto.gov/trademarks/process/appeal/Accelerated Case Resolution \(ACR\) FAQ updates 12 22 11.doc](http://www.uspto.gov/trademarks/process/appeal/Accelerated Case Resolution (ACR) FAQ updates 12 22 11.doc);

3. List of cases employing ACR-like efficiencies:

[http://www.uspto.gov/trademarks/process/appeal/ACR Case List \(10-23-12\).doc](http://www.uspto.gov/trademarks/process/appeal/ACR Case List (10-23-12).doc);<sup>1</sup>

4. Potential ACR schedules:

<http://www.uspto.gov/trademarks/process/appeal/TTAB ACR Options.jsp>; and

5. Sections 528.05(a)(2), 702.04 and 705 of the TBMP (3d ed. rev.2 2013).

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<sup>1</sup> It may be helpful for the parties to review the docket entries and filings for these cases (accessible through TTABVue at <http://ttabvue.uspto.gov/ttabvue/>) to see the types of ACR and ACR-like efficiencies that parties have utilized in Board proceedings.

The Board's standard protective order is applicable herein by operation of Trademark Rule 2.116(g) and available here:

<http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>

The parties are encouraged to acknowledge their obligations under the protective order in writing, and may utilize the following form:<sup>2</sup>

<http://www.uspto.gov/trademarks/process/appeal/guidelines/ackagmnt.jsp>

Finally, the parties were reminded that neither discovery requests nor motions for summary judgment may be served until after initial disclosures are made.

Dates remain as set in the Board's institution order of November 18, 2013.

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<sup>2</sup> Petitioner indicated that it wishes to modify the standard protective order and respondent expressed that it is generally amenable to certain modifications to the Board's standard order. As the Board advised, however, modifications of the Board's standard protective order are permitted upon motion or upon stipulation approved by the Board. See TBMP § 412.02.