

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Baxley

Mailed: April 23, 2018

Cancellation No. 92067402

G&S Sporting Goods, LLC

v.

Derrick L Gray

Andrew P. Baxley, Interlocutory Attorney:

The answer to the petition to cancel that Respondent filed on April 18, 2018 in attempted compliance with the Board's January 22, 2018 and April 6, 2018 orders does not comply with Fed R. Civ. P. 8(b), which is made applicable this proceeding by Trademark Rule 2.116(a).¹

Fed. R. Civ. P. 8(b) provides, in part:

(b) Defenses; Admissions and Denials.

(1) *In General*. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

...

¹ To the extent that Petitioner seeks to cancel Respondent's involved registration on the ground of prior use, prior use is an element of a likelihood of confusion claim and is not a ground for cancellation by itself. See Trademark Act Section 2(d), 15 U.S.C. § 1052(d); *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

(5) *Lacking Knowledge or Information.* 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.

The petition to cancel filed by Petitioner consists of 15 paragraphs setting forth the basis of Petitioner's claim of damage. In accordance with Fed. R. Civ. P. 8(b), Respondent must answer the petition to cancel by specifically 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. Trademark Rule 2.114(b)(2).

In view of the foregoing, Respondent is allowed until **thirty days** from the mailing date of this order in which to file through ESTTA pursuant to Trademark Rule 2.114(b)(1)², and serve pursuant to Trademark Rule 2.119(b), an answer which complies with Fed. R. Civ. P. 8(b). Remaining dates are reset as follows:

Deadline for Discovery Conference	6/23/2018
Discovery Opens	6/23/2018
Initial Disclosures Due	7/23/2018
Expert Disclosures Due	11/20/2018
Discovery Closes	12/20/2018
Plaintiff's Pretrial Disclosures Due	2/3/2019
Plaintiff's 30-day Trial Period Ends	3/20/2019
Defendant's Pretrial Disclosures Due	4/4/2019
Defendant's 30-day Trial Period Ends	5/19/2019
Plaintiff's Rebuttal Disclosures Due	6/3/2019
Plaintiff's 15-day Rebuttal Period Ends	7/3/2019
Plaintiff's Opening Brief Due	9/1/2019
Defendant's Brief Due	10/1/2019
Plaintiff's Reply Brief Due	10/16/2019

² Instructions and forms for filing through ESTTA are available at <http://estta.uspto.gov>. All Board proceeding files can be viewed via TTABVUE at <http://ttabvue.uspto.gov>.

Request for Oral Hearing (optional) Due 10/26/2019

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

Information for pro se party

While Patent and Trademark Rule 11.14 permits any person 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 *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.

In addition, Trademark Rules 2.119(a) and (b) require that every submission 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 submission will be considered by

the Board. Consequently, copies of all submissions filed in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. *See* TBMP § 113.03. The statement, whether attached to or appearing on the submission when filed, 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, and address or email address of opposing counsel or party).

Signature _____
Date _____

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>.

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.