

UNITED STATES PATENT AND TRADEMARK OFFICE  
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JK

June 14, 2021

Cancellation No. 92075385

*HC Salon Brand Holdings, LLC*

*v.*

*The Bubble, LLC*

**J. Krisp, Interlocutory Attorney:**

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties held a timely discovery and settlement conference on June 11, 2021. TBMP § 401.01 (June 2020). At Petitioner's request, a member of the Board participated in the conference. Trademark Rule 2.120(2)(i). Participating were Petitioner's counsel Thomas Gulick, Respondent's representative Brittany Matani, pro se, and the assigned interlocutory attorney.

Respondent's representative is strongly encouraged to secure legal counsel in this proceeding. While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly 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. TBMP § 114.02. Furthermore, strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Fran. Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx.865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008).

The Board apprised the parties of general procedural rules and guidelines that govern inter partes proceedings, including the Board's liberal granting of motions to suspend for settlement efforts. The Board noted the requirement that a party serve its initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(A) prior to serving discovery requests. Trademark Rule 2.120(a)(3); TBMP § 401.02. Also, the Board encourages the parties to reduce all stipulations to writing.

As explained in the October 5, 2020 order instituting this proceeding, the Board's Standard Protective Order is automatically imposed in this proceeding pursuant to Trademark Rule 2.116(g), unless the parties, by stipulation approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. 2 TTABVUE 4. Although they are not required to do so, the parties may elect to exchange executed copies of the order. If the parties wish to modify the order in any manner, they must file a motion for the Board's approval of the modification(s). The parties made no modifications at this time.

The Board advised Respondent that special issues regarding the exchange and disclosure of information during discovery may arise in proceedings involving pro se litigants. In particular, in the event Petitioner designates any documents or

information as being trade secret or commercially sensitive, such that access is restricted or “attorneys’ eyes only,” Respondent may be required to hire counsel in order to have access thereto. TBMP §§ 412 and 412.02(b). *Amazon Tech. Inc. v. Wax*, 95 USPQ2d 1865, 1867 n.6 (TTAB 2010) (pro se applicant hired outside attorney solely for purpose of reviewing opposer’s “trade secret/commercially sensitive” information and documents pursuant to the protective order).

Turning to the pleadings, the Board noted that Petitioner sufficiently pleads the claims of priority and likelihood of confusion, and abandonment. 1 TTABVUE. The copies of Petitioner’s pleaded registrations submitted with the pleading are not in accordance with Trademark Rule 2.122(d)(1); the copies do not show the current status of and title to the registrations. TBMP § 309.03(a)(2). Moreover, the exhibits attached to the pleadings are not evidence on behalf of the party to whose pleading they are attached unless they are identified and introduced in evidence as exhibits during the testimony period. Trademark Rule 2.122(c); TBMP §§ 317 and 506.03.

The Board noted that Respondent’s answer filed on April 21, 2021 still is not in compliance with Fed. R. Civ. P. 8(b) inasmuch as it does not set forth an admission or denial of each paragraph of the petition to cancel. 16 TTABVUE. To avoid further delay, the Board noted that inasmuch as Respondent intends in good faith to controvert the salient allegations in support of Petitioner’s claims, the Board construes said answer as a good faith general denial of these salient allegations. TBMP § 311.02(a). Also, inasmuch as the answer does not include appropriate proof of service as required by Trademark Rule 2.119(a), the Board directed Respondent to

the October 5, 2020 order instituting this proceeding for the proper Certificate of Service for all future filings. 2 TTABVUE 2.

The Board explained that in an effort to streamline discovery with respect to Petitioner's abandonment claim, Respondent may wish to consider serving on Petitioner's counsel informal discovery in the form of information and documentation directed to Respondent's continuous use of the involved mark in commerce in connection with the identified services.

The parties discussed the manner in which they will serve discovery requests and responses, and were advised to consult the "Discovery Guidelines" listed in the TBMP § 414 before making or objecting to discovery requests. The parties may consult TBMP Chapter 400, generally, for discovery guidance. Interrogatories, requests for production of documents and things, and requests for admission must be served early enough in the discovery period, as originally set or as may have been reset by the Board, so that responses will be due no later than the close of the discovery period, pursuant to Trademark Rule 2.120(a)(3). Similarly, discovery depositions must be properly noticed and taken during the discovery period. *Id.* Due to the automatic applicability and terms of the standard protective order, the parties typically cannot withhold discoverable information or documents on the basis of confidentiality. TBMP 412.01.

The Board provided some general settlement guidelines, including the need to comply with all applicable rules of procedure including those that govern amendments to registrations. The parties may consult TBMP 605, *et seq.*, for further

information regarding suspension, settlement and various manners in which to communicate resolution of the proceeding to the Board.

The Board briefly explained the availability of and features of the “accelerated case resolution” (“ACR”) process, and encourages the parties to give this option consideration after discovery gets underway and the parties have served their responses to the first set of requests. For further information, the Board refers the parties to TBMP §§ 528.05(a)(2), 702.04 and 705, as well as the link on the Board’s web page to a vast amount of ACR information and exemplary ACR proceedings.

Finally, the parties are responsible for ensuring that the Board has their current correspondence address, including an email address, at all times. TBMP § 117.07.

Discovery and trial dates remain as reset in the May 12, 2021 order. 17 TTABVUE 1-2.