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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91229513
Party	Plaintiff Right Connection, Inc.
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Submission	Motion to Amend Pleading/Amended Pleading
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RIGHT CONNECTION, INC.,	) <b>OPPOSITION NO. 91229513</b>
	)
Opposer,	)
v.	) Mark: PLAYCOUPLES
	)
ROBERT L. MCGINLEY,	) Application Serial No.: 86877408
	) Filed: January 15, 2016
Applicant.	) Published: June 14, 2016
	) Deadline for Opposition: August 13, 2016
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**OPPOSER'S MOTION FOR LEAVE TO FILE AMENDED OPPOSITION PETITION**

A. INTRODUCTION

Opposer Right Connection, Inc. ("Opposer") brings this motion pursuant to Section 507 of the Trademark Board Manual of Procedure (TBMP), Rule 15 of the Federal Rules of Civil Procedure, and Trademark Rules 2.107 and 2.115 to obtain an order granting Opposer leave to file an amended opposition petition (the "Amended Petition").

As discussed herein, Opposer seeks leave to file the Amended Petition solely to correct certain inadvertent factual errors in its initial opposition and clean up a few cosmetic and typographical errors. Opposer does not seek to raise additional grounds for opposition and Opposer's Amended Petition does not change the substantive nature of Opposer's opposition claims in any way.

Critically, there will be absolutely no prejudice whatsoever from the Amended Petition. Indeed, it was Applicant's counsel himself who first requested that Opposer's petition be amended to correct the inadvertent factual errors (although he now inexplicably will not sign a stipulation to consent to the amendment he requested).

Given the Board's policy of being extremely liberal in allowing amendment of pleadings, Opposer submits this Motion should be granted and the Amended Petition should be allowed. Pursuant to TMBP § 507.0, Opposer submits a red-lined copy of the Amended Petition as Exhibit A and a clean, signed copy of the Amended Petition as Exhibit B to this motion.

B. DISCUSSION

Amendment of pleadings in opposition proceedings like the present one are governed by Rule 15 of the Federal Rules of Civil Procedure and pleadings in opposition proceedings may be amended in the same manner and to the same extent as in a civil action. [TMBP § 507.01; Trademark Rules 2.107, 2.115.] Under Rule 15, the courts freely give leave to amend when justice so requires. [Fed. R. Civ. Proc. 15(a)(2).] The Board, in ruling on motions to amend like the present one, is extremely liberal in allowing amended pleadings and will generally grant a motion to amend provided that the proposed amended pleading does not prejudice the adverse party and does not violate settled law.<sup>1</sup>

The circumstances requiring the amendment of Opposer's petition are explained in the accompanying Declaration of Gregory P. Goonan (the "Goonan Declaration"). As set forth in the Goonan Declaration, the associate attorney in the law firm representing Opposer who drafted the original opposition petition made an error in interpreting certain information provided to counsel by Opposer. As a result of such error, paragraph 5 of Opposer's original petition alleged that Opposer owned certain domain names that Opposer in fact does not own.

We regret that we must burden the Board with this motion to amend. We would have hoped that counsel for Applicant would have consented to the proposed amended petition given the Board's policy of being extremely liberal in allowing amendment of pleadings. However, for reasons we do not understand, Applicant's counsel refused to consent to the filing of the

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<sup>1</sup> *Jafree v. Barber*, 689 F.2d 640 (7<sup>th</sup> Cir. 1982); *Commodore Electronics Ltd. v. Cbm Kabushiki Kaisha*, 26 U.S.P.Q. 2d 1503 (TTAB 1993); *United States Olympic Committee v. O-M Bread Inc.*, 26 U.S.P.Q. 2d 1221 (TTAB 1993); *Focus 21 International Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 U.S.P.Q. 2d 1316 (TTAB 1992); *Estate of Biro v. BIC Corp.*, 18 U.S.P.Q. 2d 1382 (TTAB 1991); *Space Base Inc. v. Stadis Corp.*, 17 U.S.P.Q. 2d 1216 (TTAB 1990).

Amended Petition even though he himself requested the amendment to correct the referenced factual error.

After Applicant's counsel was served with Opposer's original petition, Applicant's counsel contacted Opposer's counsel and informed him of the inadvertent factual error about the domain name ownership in paragraph 5 of the original petition. Applicant's counsel consequently requested that Opposer file an amended petition to correct such error.

After some investigation, Applicant's counsel confirmed that an error in drafting paragraph 5 had in fact been made, and determined that an amended petition needed to be filed to correct the error. Consequently, given that Applicant's counsel had himself requested the filing of an amended petition, Opposer's counsel sent Applicant's counsel a stipulation to allow the filing of an amended petition along with clean and red-lined copies of the proposed amended petition. [See Stipulation (Exhibit C); November 17, 2016 Email (Exhibit D).] However, for reasons that have never been explained and that are unknown, Applicant's counsel would not sign the stipulation. Therefore, Opposer has no choice but to seek leave to amend by this motion.

As reflected in the red-lined copy of the proposed Amended Petition submitted as Exhibit A, Opposer seeks leave to amend solely to correct the inadvertent factual error in paragraph 5 of the original petition and to clean up some cosmetic issues and typographical errors with the original petition. There will be absolutely no prejudice whatsoever if Opposer is granted leave to file the Amended Petition. This is especially true since Applicant's counsel himself requested that Opposer amend the petition to correct the inadvertent factual error in paragraph 5.

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Given the Board's policy to be extremely liberal in granting leave to amend pleadings, and the complete absence of any prejudice to Applicant from the Amended Petition, we respectfully ask that the Board grant this motion and allow the filing of the Amended Petition.

DATED: March 29, 2017

THE AFFINITY LAW GROUP

By: /s/ Gregory P. Goonan

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