

Docket No. 874-003

TRADEMARK

RESPONSE TRANSMITTAL LETTER

In re Application of: Shammass

Serial No. 77/758,863

Examining Attorney: Benjamin

Filing Date: 6/12/09

Law Office: 110

Mark: PROBIOTIC

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

In connection with the above-referenced trademark application,
please find the following:

- 1) Applicant's Response
- 2) Copy of TTAB correspondence
- 3) Copy of 37 CFR 41.41(a)(1)



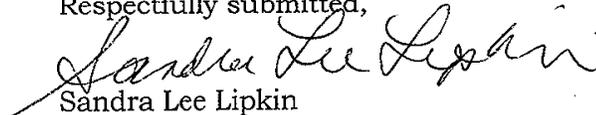
03-05-2012

U.S. Patent & TMO/TM Mail Rpt. Dt. #01

The Director is hereby authorized to charge the required fee, any
deficiency, or credit any overpayment, to Deposit Account No. 50-3946.

Law Offices of Sandy Lipkin
P.O. Box 3518
Ventura, CA 93006-3518

Respectfully submitted,


Sandra Lee Lipkin

Reg. No. 47,617

Certificate of Mailing

I hereby certify that this is being deposited with the United States
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By: 

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

In re Application of:)	Trademark Attorney
Milo Shammas)	Sara N. Benjamin
)	Law Office: 110
Serial No. 77/758,863)	
Filed: June 12, 2009)	Docket No.: 874-003
)	
Mark: PROBIOTIC)	Date: March 1, 2012

APPLICANT'S RESPONSE

Applicant hereby responds to the correspondence from the Trademark Trial and Appeal Board dated February 27, 2012 in the above-referenced matter. In this communication, it was asserted that the Reply brief was not timely filed.

Applicant did not seek an extension of time. Applicant hereby submits a copy of 37 CFR 41.41(a)(1) wherein it states that a reply brief to an examiner's answer is due within two months from the date of the examiner's answer. As such, as noted in the attached notice, Applicant's reply was submitted prior to February 15, 2012, which would have been the deadline for response given that the examiner's answer was submitted on December 15, 2012.

If there is some reason that Applicant's counsel is not aware that the reply was due prior to February 14, 2012, Applicant respectfully requests that the Reply Brief be entered despite the missing of the statutory deadline as the late filing does not in any way prejudice the case from the point of view of the Trademark Examining attorney.

Furthermore, if there was any error, it was not Applicant's error, but rather an error at the office of his counsel and would therefore be an unfair penalty to Applicant for attorney error, particularly since there is no prejudice to the Trademark Office for allowing entry of the Reply into the record.

Counsel for Applicant authorizes any deduction from Deposit Account 50-3946 required for the consideration of a retroactive extension of time for the submission of the Reply Brief if needed.

Respectfully submitted,


Sandy Lipkin
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CERTIFICATE OF MAILING

I hereby certify that this correspondence, and any attachments thereto, will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Date: 3-1-12

Signature: 

874-003

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: February 27, 2012

In re Milo Shammass

Serial No. 77758863

Filed: 6/12/09

SANDRA LEE LIPKIN
LAW OFFICES OF SANDY LIPKIN
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Amy Matelski, Paralegal Specialist:

On February 14, 2012 (with a certificate of mailing dated February 8, 2012), applicant filed its reply brief.

The Trademark Examining Attorney filed her brief on December 15, 2011, making applicant's reply brief due January 4, 2012.

The Board has no record of a timely request to extend the time for applicant to file its reply brief.

Accordingly, applicant is allowed until twenty days from the date of mailing in which to provide an explanation as to why its reply brief is late. If no explanation is received, or if the Board deems the explanation to be insufficient, then the reply brief will be given no consideration.



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37 CFR 41.41 Reply brief.

(a)

(1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.

(2) A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

(b) A reply brief that is not in compliance with paragraph (a) of this section will not be considered. Appellant will be notified if a reply brief is not in compliance with paragraph (a) of this section.

(c) Extensions of time under § 1.136 (a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136 (b) of this title for extensions of time to reply for patent applications and § 1.550 (c) of this title for extensions of time to reply for ex parte reexamination proceedings.

37 CFR 41.43 Examiner's response to reply brief.

(a)

(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may