

3. Based on the representations and assurances by Opposer that a proposed trademark use agreement would be prepared and forwarded to Applicant, numerous stipulations for Opposer to file a Notice of Opposition were consented to by the Applicant. The consented to fifth and sixth request for a thirty day extension of time to file notice of opposition both state, among other things: "The purpose of this request for an additional extension of time is to draft and discuss a proposed trademark use agreement." True and correct copies of the consented to fifth request for a thirty day extension of time to file notice of opposition and consented to sixth request for a thirty day extension of time to file notice of opposition are attached hereto as Exhibits 9 and 10, respectively.

4. Following the filing of the Notice of Opposition, Applicant and Opposer continued to communicate through their counsel, regarding preparation of the proposed trademark use agreement. Opposer, through its counsel, continued to represent to Applicant that Opposer would prepare and forward to Applicant a proposed trademark use agreement. True and correct copies of two separate stipulations for extension of time to file answer are attached hereto as Exhibits 11 and 12, respectively. Both of these stipulations for extension of time to file answer state, among other things, that: "The purpose of this request for an extension of time to file answer is for the parties to draft and discuss a proposed trademark use agreement." The second stipulation for extension of time to file answer requested an extension through and including August 29, 2003. (See, Exhibit 12).

5. Having filed the stipulation for extension of time to file answer dated July 3, 2003, which requested an extension through and including August 29, 2003

(Exhibit 12), Applicant expected to receive communication from the Trademark Trial and Appeal Board ("Trademark Board"). However, no communication was received from the Trademark Board, regarding the most recent stipulation for extension of time to file answer, until the notice of default dated January 15, 2004. The notice of default states, among other things, that: Applicant's consented motion to extend time to answer, filed July 7, 2003, is granted" and that "Applicant's answer is due up to and including August 29, 2003." However, the notice of default dated January 15, 2004 was not received until January 23, 2004, well after the time the answer was due as stated in the approved extension of time.

6. Throughout the continued extensions, it has always been Applicant's understanding that Opposer would prepare and forward a proposed trademark use agreement. Opposer has consistently represented in writing and in telephone conversations that Opposer would prepare and forward a trademark use agreement. Consistent with these representations by Opposer, Opposer has not initiated any discovery in this proceeding and has not taken any action in connection with the prosecution of its Notice of Opposition.

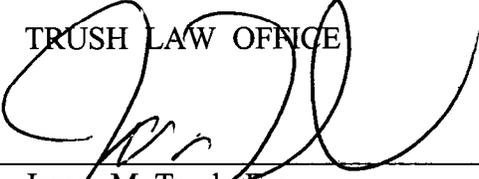
7. Filed concurrently herewith is Applicant's Answer, in which Applicant denies certain material allegations of the prima facie case set forth in the Notice of Opposition and sets forth certain affirmative defenses. The filing of Applicant's Answer demonstrates that Applicant has a meritorious defense to the Notice of Opposition. In particular, Applicant points out the denial of the allegations in paragraphs 8 through 12 of the Notice of Opposition, which allege likelihood of confusion and related claims, which

are vigorously denied by the Applicant. Applicant also refers to the amplification of these denials in Applicant's Eighth and Ninth Affirmative Defenses.

8. Based on the foregoing, Applicant respectfully submits that good cause exists as to why default judgment should not be entered against Applicant, on the grounds that Applicant has shown that the delay in filing an answer was not the result of willful conduct or neglect on the part of the Applicant, the Opposer will not be substantially prejudiced by the delay, and the Applicant has a meritorious defense to the action (See, Trademark Trial and Appeal Board Manual of Procedure, Section 312.02, Wickstrom v. Ebert (E.D. WI 1984) 101 F.R.D. 26, 33 [No default can be entered if Defendant has filed a response indicating its intent to defend the action], Hudson v. State of North Carolina (SD W. VA 1994) 158 F.R.D. 78, 80 [Even a late-filed responsive pleading prevents entry of a default]).

9. Based upon the foregoing, Applicant respectfully submits that good cause has been shown why default judgment should not be entered, and Applicant respectfully requests that its Answer be filed.

Respectfully submitted this 10th day of February, 2004.

TRUSH LAW OFFICE

By: _____
James M. Trush, Esq.
TRUSH LAW OFFICE
1920 Main Street, Suite 900
Irvine, CA 92614
phone (949) 851-9090/fax (949) 851-9004

Attorney for Applicant Larry R. Hauptert

**DECLARATION OF JAMES M. TRUSH IN SUPPORT OF
RESPONSE TO NOTICE OF DEFAULT**

I, James M. Trush, hereby declare:

1. I am an attorney at law duly licensed to practice law before all Courts in the State of California, and the Federal Courts in the United States Court of Appeal for the Ninth Circuit. I am attorney for Applicant Larry R. Haupert with respect to this matter. I have personal knowledge of the facts stated herein, and if called to testify, I would and could competently testify thereto.

2. Beginning shortly after the filing of U.S. Trademark Application Serial No. 76/189,923 ("Application"), Applicant was contacted by Opposer RE/MAX International, Inc. ("RE/MAX" or "Opposer"), regarding the Application.

3. Beginning on or about August 27, 2002, and continuing thereafter, Applicant and Opposer engaged in numerous communications by telephone and letter involving preparation of a trademark usage agreement by Opposer to be entered into between Applicant and Opposer. True and correct copies of letters reflecting those discussions are attached hereto and are incorporated herein by reference as Exhibits 1 through 8. In addition to these letters between Applicant and Opposer, through their counsel, there were several telephone conversations. During all of these communications, Opposer consistently represented that they would prepare a proposed trademark use agreement and forward it to counsel for Applicant.

4. Based on the representations and assurances by Opposer that a proposed trademark use agreement would be prepared and forwarded to Applicant, numerous stipulations for Opposer to file a Notice of Opposition were consented to by the Applicant. The consented to fifth and sixth request for a thirty day extension of time to file notice of opposition both state, among other things: "The purpose of this request for an additional extension of time is to draft and discuss a proposed trademark use agreement." True and correct copies of the consented to fifth request for a thirty day extension of time to file notice of opposition and consented to sixth request for a thirty day extension of time to file notice of opposition are attached hereto as Exhibits 9 and 10, respectively.

5. Following the filing of the Notice of Opposition, Applicant and Opposer continued to communicate through their counsel, regarding preparation of the proposed trademark use agreement. Opposer, through its counsel, continued to represent to Applicant that Opposer would prepare and forward to Applicant a proposed trademark use agreement. True and correct copies of two separate stipulations for extension of time to file answer are attached hereto as Exhibits 11 and 12, respectively. Both of these stipulations for extension of time to file answer state, among other things, that: "The purpose of this request for an extension of time to file answer is for the parties to draft and discuss a proposed trademark use agreement." The second stipulation for extension of time to file answer requested an extension through and including August 29, 2003. (See, Exhibit 12).

6. Having filed the stipulation for extension of time to file answer dated July 3, 2003, which requested an extension through and including August 29, 2003

(Exhibit 12), Applicant expected to receive communication from the Trademark Trial and Appeal Board ("Trademark Board"). However, no communication was received from the Trademark Board, regarding the most recent stipulation for extension of time to file answer, until the notice of default dated January 15, 2004. The notice of default states, among other things, that: Applicant's consented motion to extend time to answer, filed July 7, 2003, is granted" and that "Applicant's answer is due up to and including August 29, 2003." However, the notice of default dated January 15, 2004 was not received until January 23, 2004, well after the time the answer was due as stated in the approved extension of time.

7. Throughout the continued extensions, it has always been Applicant's understanding that Opposer would prepare and forward a proposed trademark use agreement. Opposer has consistently represented in writing and in telephone conversations that Opposer would prepare and forward a trademark use agreement. Consistent with these representations by Opposer, Opposer has not initiated any discovery in this proceeding and has not taken any action in connection with the prosecution of its Notice of Opposition.

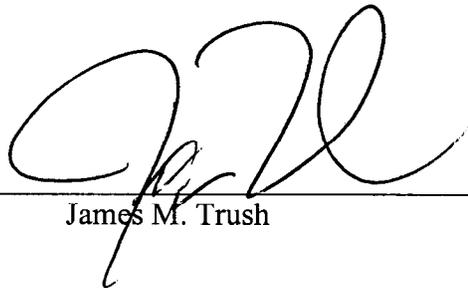
8. Filed concurrently herewith is Applicant's Answer, in which Applicant denies certain material allegations of the prima facie case set forth in the Notice of Opposition and sets forth certain affirmative defenses. The filing of Applicant's Answer demonstrates that Applicant has a meritorious defense to the Notice of Opposition. In particular, Applicant points out the denial of the allegations in paragraphs 8 through 12 of the Notice of Opposition, which allege likelihood of confusion and related claims, which

are vigorously denied by the Applicant. Applicant also refers to the amplification of these denials in Applicant's Eighth and Ninth Affirmative Defenses.

9. Based on the foregoing, Applicant respectfully submits that good cause exists as to why default judgment should not be entered against Applicant, on the grounds that Applicant has shown that the delay in filing an answer was not the result of willful conduct or neglect on the part of the Applicant, the Opposer will not be substantially prejudiced by the delay, and the Applicant has a meritorious defense to the action (See, Trademark Trial and Appeal Board Manual of Procedure, Section 312.02, Wickstrom v. Ebert (E.D. WI 1984) 101 F.R.D. 26, 33 [No default can be entered if Defendant has filed a response indicating its intent to defend the action], Hudson v. State of North Carolina (SD W. VA 1994) 158 F.R.D. 78, 80 [Even a late-filed responsive pleading prevents entry of a default]).

10. Based upon the foregoing, Applicant respectfully submits that good cause has been shown why default judgment should not be entered, and Applicant respectfully requests that its Answer be filed.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on February 12, 2004.



James M. Trush



August 27, 2002

James M. Trush, Esq.
Trush & Associates
2424 SE Bristol Street
Suite 300
Newport Beach, CA 92660

RE: U.S. Trademark Application Serial No. 76/189,923
Mark: REXCO
Your Client: Larry R. Haupert

Dear Mr. Trush:

As you may be aware, RE/MAX International, Inc. ("RE/MAX") is presently the most successful real estate organization in the world. The RE/MAX® marks symbolize the goodwill of our company and guide consumers to the home of North America's most experienced and productive agents.

RE/MAX International, Inc. owns many U.S. and foreign registrations for the marks "RE/MAX" and "REMAX" for real estate service and insurance brokerage/agency services. We have a watch service in place for these registrations which brings to our attention to marks sought to be registered bearing some similarity to the terms "RE/MAX" and "REMAX." This watching service brought your client's current registration efforts for the term "REXCO" to our attention.

When we are notified of other possible confusing marks like "REXCO," it is our practice to carefully evaluate the possibilities of confusion and dilution presented by the proposed registration. In this effort, we communicate with the applicant or intended user to find out more information about the mark, the services the mark will represent, the design or style of the mark, and any color combinations or color schemes used by the applicant for the mark or used in conjunction with the mark. In some instances, this information leads us to conclude that there is no need for concern that there might be possible confusion between the marks "REXCO" and "RE/MAX" or "REMAX." In other cases, this information enables us to pinpoint areas where confusion or dilution is possible and to draft a trademark usage agreement, which allows us to avoid the potential for confusion or dilution. Our reasoning is based on whether the phonetic characteristics or the appearance of the respective marks are similar, colors or accompanying designs are similar, and if the marks will be used in the same or different channels of commerce.

Please regard this letter as our request for further information about the products or services to be provided under the "REXCO" mark. Please include samples of your client's current trade dress,

RE/MAX International, Inc.

8390 East Crescent Parkway • Suite 600 • Greenwood Village, Colorado 80111 • (303) 770-5531

Each RE/MAX® office is independently owned and operated. 01799

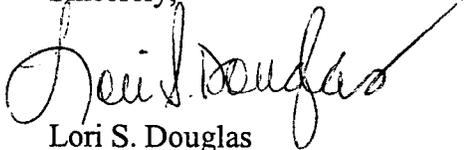
Mr. James. M. Trush
Page Two
August 27, 2002

or intended trade dress, and information regarding any colors, designs or color combinations you intend to use with the "REXCO" mark.

It is always our intention to avoid if possible a costly, protracted opposition or cancellation proceeding. If our further investigation of your client's mark leads us to conclude that a potentially serious problem does exist, we would like to discuss with you an acceptable resolution.

Thank you in advance for your cooperation. We look forward to receiving your response.

Sincerely,



Lori S. Douglas
Senior Trademark Paralegal

LSD/pt

Enclosures 

RE/MAX International, Inc.

FAX COVER SHEET

Lori S. Douglas, Senior Trademark Paralegal
Legal Department
8390 E. Crescent Parkway, Suite 600
Greenwood Village, CO 80155-3907
Direct Line: 303-796-3593 Fax: 303-796-3588

CONFIDENTIALITY NOTICE - LEGALLY PRIVILEGED INFORMATION

WARNING: This transmission is for the recipient named above. Any unauthorized interception, disclosure, copying, distribution, or taking of action based on this telecopy is prohibited and may violate federal and state law. If you received this transmission in error, please notify call 303-796-3661.

To: James Trush, Esq. Fax No. 1-949-851-9004

From: Lori S. Douglas
Senior Trademark Paralegal

Date: December 2, 2002

Re: Your Client: Larry R. Hauptert
Serial No. 76/189,923

Mr. Trush,

John Linton and I spoke to you last month concerning the above mark. At that time, it was our understanding that you would be providing us with some specimens of your client's use including web site information and letterhead. As of today, we have not received this information. We have an additional extension due this Friday, December 6th. Will you consent to an additional 30 days?

Please either contact Mr. Linton at 303-796-3609 or me at 303-796-3593.

Thank you. We look forward to hearing from you soon.

Lori

TRUSH LAW OFFICES

2424 S.E. BRISTOL STREET, SUITE 300
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE (949) 851-9090
FAX (949) 851-9004

November 8, 2002

RE/MAX International, Inc.
8390 E. Crescent Parkway, Ste. 600
Greenwood Village, CO 80111
Attn: Lori S. Douglas

Re : U.S. Trademark Application Serial No. 76/189,923
Mark : REXCO
Our Client : Larry R. Hauptert

Dear Ms. Douglas:

Pursuant to your request, enclosed is a copy of Rexco letterhead. In addition, Rexco maintains a website at www.rexcodev.com. If you require any further information, please let me know.

Very truly yours,

TRUSH LAW OFFICES

James M. Trush

JMT/dd

Enclosure

hauptert\rexco\trademar\remax.01



TRUSH LAW OFFICES

2424 S.E. BRISTOL STREET, SUITE 300
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE (949) 851-9090
FAX (949) 851-9004

December 2, 2002

VIA FAX AND U.S. MAIL
(303) 796-3588

RE/MAX International, Inc.
8390 E. Crescent Parkway, Ste. 600
Greenwood Village, CO 80155-3907
Attn: Lori S. Douglas,
Senior Trademark Paralegal

Re : U.S. Trademark Application Serial No. 76/189,923
Mark : REXCO
Our Client : Larry R. Haupt

Dear Ms. Douglas:

Enclosed is a copy of my letter dated November 8, 2002, which was sent to you on that date. That letter enclosed the Rexco letterhead and gave you the address for the website. As a courtesy, I am enclosing an additional copy of the Rexco letterhead, for your information. On behalf of Rexco, I agreed to the additional thirty (30) days from December 6, 2002, which you requested. If you have any further questions, please do not hesitate to contact the undersigned.

Very truly yours,

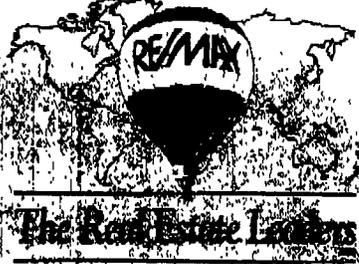
TRUSH LAW OFFICES

James M. Trush

JMT/dd

Enclosures

haupt\rexco\trademar\remax.02



VIA FACSIMILE

December 19, 2002

James M. Trush, Esq.
Trush & Associates
2424 SE Bristol Street
Suite 300
Newport Beach, CA 92660

RE: U.S. Trademark Application Serial No. 76/189,923
Mark: REXCO
Your Client: Larry R. Hauptert

Dear Mr. Trush:

Thank you for speaking with me on the telephone today and for agreeing to an additional 30-day extension of time (which will extend the time to February 5, 2003). As proposed, I will draft a trademark use agreement. We understand this is not a commitment on your part to agree to such an agreement, we do ask that you consider such an agreement.

I will forward you a draft of the proposed agreement the week of January 6, 2003.

Again, thank you for your time and consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lorr S. Douglas".

Lorr S. Douglas
Senior Trademark Paralegal

LSD/ml

RE/MAX International, Inc.

8390 East Crescent Parkway • Suite 600 • Greenwood Village, Colorado 80111 • (303) 770-5531

Each RE/MAX® office is independently owned and operated. 99085

TRUSH LAW OFFICES

2424 S.E. BRISTOL STREET, SUITE 300
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE (949) 851-9090
FAX (949) 851-9004

April 3, 2003

VIA FAX AND U.S. MAIL

(303) 297-0422

John R. Posthumus, Esq.
Leboeuf, Lamb, Greene & Macrae, LLP
633 17th Street, Suite 2000
Denver, CO 80202

Re: RE/MAX International, Inc. v. Larry R. Haupert
Trademark Trial and Appeal Board Opposition No. 91155699

Dear Mr. Posthumus:

This letter will confirm our telephone conversation on April 3, 2003, regarding the above-entitled matter. At that time, we discussed your client's previously stated intention to forward a use agreement, regarding the "Rexco" mark. You informed me that the use agreement would be forwarded next week. In addition, in order to allow sufficient time for the parties to evaluate and discuss the use agreement, you graciously granted a thirty day extension, within which the answer to the above-entitled matter may be filed. In that regard, you agreed that the applicant's answer would be due on or before May 30, 2003. If for any reason this extension is not consistent with your understanding, please immediately notify me, in writing.

I look forward to receipt of the use agreement next week. Thank you for your professional courtesy and cooperation. If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

TRUSH LAW OFFICES

James M. Trush

JMT/dd

haupert\rexco\trademar\posthum.01

TRUSH LAW OFFICES

2424 S.E. BRISTOL STREET, SUITE 300
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE (949) 851-9090
FAX (949) 851-9004

April 22, 2003

VIA FAX AND U.S. MAIL
(303) 297-0422

John R. Posthumus, Esq.
Leboeuf, Lamb, Greene & Macrae, LLP
633 17th Street, Suite 2000
Denver, CO 80202

Re: RE/MAX International, Inc. v. Larry R. Haupert
Trademark Trial and Appeal Board Opposition No. 91155699

Dear Mr. Posthumus:

It was my understanding that you were planning to send the proposed use agreement, last week. Based upon my assumption that I was going to receive the proposed use agreement last week, I had requested and you had granted a thirty (30) day extension, within which to file the answer. Since one week has now expired and I have not yet received the use agreement, I will be requesting an additional extension. Please notify me of the date that you will send the use agreement to me, for my review.

Thank you for your professional courtesy and cooperation. If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

TRUSH LAW OFFICES

James M. Trush

JMT/dd

haupert\rexco\trademar\posthum.02



TRUSH LAW OFFICE

2424 S.E. BRISTOL STREET, SUITE 300
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE (949) 851-9090
FAX (949) 851-9004
July 2, 2003

VIA FAX AND U.S. MAIL
(303) 572-6540

John R. Posthumus, Esq.
Greenberg Traurig, LLP
The Tabor Center
1200 17th Street, Suite 2400
Denver, CO 80202

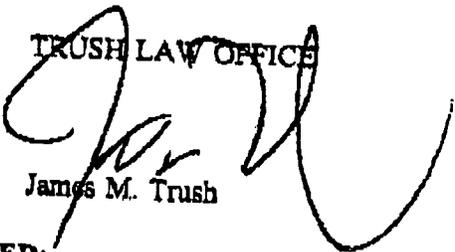
Re: RE/MAX International, Inc. v. Larry R. Hauptert
Trademark Trial and Appeal Board Opposition No. 91155699

Dear Mr. Posthumus:

As we have previously discussed, it is my understanding that you will prepare and forward a proposed use agreement with respect to the trademark, which is the subject of the above-entitled matter. We have previously been operating under extensions of time to allow you to forward to me the proposed use agreement. I have not yet received the proposed use agreement, and therefore, the applicant requires an additional extension within which to file an answer. I request that you provide an extension for the applicant to file an answer, through and including August 29, 2003. If the requested extension is acceptable, please sign and return this letter by fax.

Thank you for your professional courtesy and cooperation. If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

TRUSH LAW OFFICE

James M. Trush

ABOVE-REFERENCED EXTENSION AGREED:

Date: 7-2-03

By: John Posthumus
John R. Posthumus, Esq.

JMT/dd

hauptert\vcxcol\trademark\posthum.04

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

Applicant: Larry R. Hauptert)
)
)
Serial No.: 76/189,923)
)
Filed: January 3, 2001)
)
Mark: REXCO)
)
Classes: 36 and 37)

Published:



July 9, 2002

01-09-2003

U.S. Patent & TMOtc/™ Mail Rcpt Dt. #30

CONSENTED TO FIFTH REQUEST FOR A THIRTY DAY EXTENSION OF TIME
TO FILE NOTICE OF OPPOSITION

Assistant Commissioner
for Trademarks
Attention: TTAB
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir or Madam:

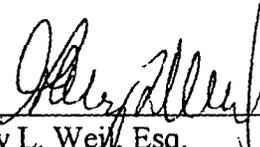
It is hereby requested that an extension of thirty (30) days to and including February 5, 2003 be granted to RE/MAX International, Inc., 8390 East Crescent Parkway, Suite 600, Greenwood Village, Colorado 80111 (mailing address P.O. Box 3907, Englewood, Colorado 80155) to oppose the above-identified application. The purpose of this request for an additional extension of time is to draft and discuss a proposed trademark use agreement. Lori S. Douglas, Senior Trademark Paralegal, for potential Opposer, communicated with James M. Trush, Applicant's attorney on December 19, 2002 and he consented to this request for an extension of an additional 30 days. This

Request for an Extension of Time is not being made for the purpose of mere delay, and favorable consideration of the Request is earnestly solicited.

Respectfully submitted,

RE/MAX INTERNATIONAL, INC.

Date: 1-6-03

By: 

Gary L. Weir, Esq.
Vice President and Assistant General Counsel
RE/MAX International, Inc.
P.O. Box 3907
Englewood, Colorado 80155
(303) 770-5531

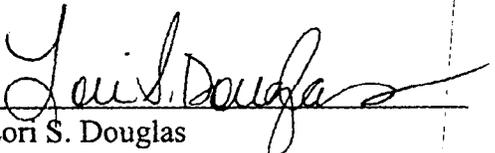
RE/MAX International, Inc.
8390 East Crescent Parkway, Suite 600
Greenwood Village, Colorado 80111

CERTIFICATE OF MAILING

I hereby certify that on this 6th day of January, 2003, a copy of the foregoing CONSENTED TO FIFTH REQUEST FOR THIRTY DAY EXTENSION OF TIME TO FILE NOTICE OF OPPOSITION was deposited with the United States Postal Service as First Class Mail, postage pre-paid, addressed to the following:

Assistant Commissioner for Trademarks
Attention: TTAB
2900 Crystal Drive
Arlington, VA 22202-3513

James M. Trush, Esq.
TRUSH LAW OFFICES
2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660


Lori S. Douglas

TTAB

CERTIFICATE OF MAILING

The undersigned hereby certifies that on this 6th day of January, a true and correct copy of the above and foregoing has been placed with the United States Postal Service as First Class Mail, postage prepaid and affixed thereto, properly addressed to the following: Assistant Commissioner of Trademarks, ATTN: TTAB, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Dated: 1/6/03

Signed: Lou S. Douglas
Lou S. Douglas

RE/MAX International, Inc.
Gary L. Weil, Legal Department
8390 E. Crescent Pkwy., Suite 600
Greenwood Village, CO 80111



01-09-2003

U.S. Patent & TMO/c/TM Mail Rpt Dt. #30

Date: January 6, 2003

ASSISTANT COMMISSIONER FOR TRADEMARKS
Attn: TTAB
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Application of: Larry R. Hauptert
Mark: REXCO
Serial #: 76/189,923
Class: 36 and 37

RECEIVED
JAN 14 2003
U.S. PATENT & TRADEMARK OFFICE

Sir:

Transmitted herewith are the following documents:

- Acknowledgment of Receipt Card
- CONSENTED TO FIFTH REQUEST FOR THIRTY DAY EXTENSION OF TIME TO FILE NOTICE OF OPPOSITION (ORIGINAL PLUS 2 COPIES)
- Return Postcard

Gary L. Weil, Esq.
Vice President and Assistant General Counsel
RE/MAX International, Inc.
Attorney for Potential Opposer
(303)770-5531

Extension of Time is not being made for the purpose of mere delay, and favorable consideration of the Request is earnestly solicited.

Respectfully submitted,

RE/MAX INTERNATIONAL, INC.

Date:

7/16/2003

By:


John R. Linton, Esq.

Vice President & Senior Counsel

RE/MAX International, Inc.

P.O. Box 3907

Englewood, Colorado 80155

(303) 770-5531

RE/MAX International, Inc.

8390 East Crescent Parkway, Suite 600

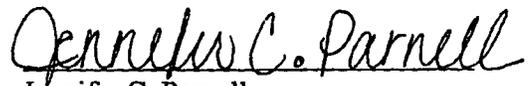
Greenwood Village, Colorado 80111

CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of February, 2003, a copy of the foregoing CONSENTED TO SIXTH REQUEST FOR THIRTY DAY EXTENSION OF TIME TO FILE NOTICE OF OPPOSITION was deposited with the United States Postal Service as First Class Mail, postage pre-paid, addressed to the following:

Assistant Commissioner for Trademarks
Attention: TTAB
2900 Crystal Drive
Arlington, VA 22202-3513

James M. Trush, Esq.
TRUSH LAW OFFICES
2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660


Jennifer C. Parnell

TTAB

CERTIFICATE OF MAILING

The undersigned hereby certifies that on this 3rd day of February, 2003, a true and correct copy of the above and foregoing has been placed with the United States Postal Service as First Class Mail, postage prepaid and affixed thereto, properly addressed to the following: Assistant Commissioner of Trademarks, ATTN: TTAB, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Dated: 2/3/2003

Signed: Jennifer C. Parnell
Jennifer C. Parnell

RE/MAX International, Inc.
John R. Linton, Legal Department
8390 E. Crescent Pkwy., Suite 600
Greenwood Village, CO 80111



Date: February 3, 2003

ASSISTANT COMMISSIONER FOR TRADEMARKS
Attn: TTAB
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Application of: Larry R. Haupt
Mark: REXCO
Serial #: 76/189,923
Class: 36 and 37

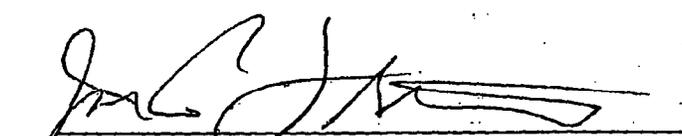
Sir:

Transmitted herewith are the following documents:

Acknowledgment of Receipt Card

CONSENTED TO SIXTH
REQUEST FOR THIRTY DAY
EXTENSION OF TIME TO FILE
NOTICE OF OPPOSITION
(ORIGINAL PLUS 2 COPIES)

Return Postcard


John R. Linton, Esq.
Vice President & Senior Counsel
RE/MAX International, Inc.
Attorney for Potential Opposer
(303) 770-5531

ME

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

In re Application Serial No.; 76/189,923

For the Mark: REXCO

Applicant: Larry R. Haupert

Filed on: January 3, 2001

RE/MAX INTERNATIONAL, INC.,)	Opposition No. 91155699
Opposer,)	Serial No. 76189923
v.)	
LARRY R. HAUPERT)	
Applicant.)	

**STIPULATION FOR EXTENSION OF TIME TO FILE ANSWER UNDER
TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE,
RULE 316.03**

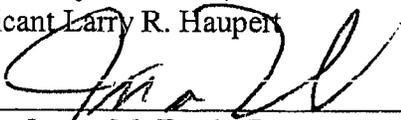
Box TTAB No Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

It is hereby requested that an extension, through and including June 30, 2003, be granted to Applicant Larry R. Haupert (current address: 2518 N. Santiago Blvd., Orange, CA 92867) to file an Answer to the Notice of Opposition filed in the above-identified matter. The purpose of this request for an extension of time to file an Answer is for the parties to draft and discuss a proposed trademark use agreement. James M. Trush, Attorney for the Applicant communicated with John R. Posthumus, Attorney for the Opposer, on April 29, 2003, and Attorney for the Opposer consented to this request for an extension. This request for an extension of time is not being made for the purpose of delay and favorable consideration of this request for an extension is hereby requested.

Dated: April 30, 2003

Respectfully submitted,
Applicant Larry R. Haupert

By: _____


James M. Trush, Esq.
Attorney for Applicant Larry R. Haupert
TRUSH LAW OFFICES
2424 S. E. Bristol Street, Suite 300
Newport Beach, CA 92660
phone (949) 851-9090/fax (949) 851-9004

CERTIFICATE OF MAILING

I hereby certify that on this 30 day of April 2003, a copy of the foregoing

**STIPULATION FOR EXTENSION OF TIME TO FILE ANSWER
UNDER TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF
PROCEDURE, RULE 316.03**

was deposited with the United States Postal Service as first class mail, postage pre-paid,
addressed to the following:

Box TTAB No Fee
Assistant Commissioner for Trademarks
2900 Crystal Avenue
Arlington, VA 22202-3513

John R. Posthumus, Esq.
LeBoeuf, Lamb, Greene & Macrae, LLP
633 17th Street, Suite 2000
Denver, CO 80202



Dee Davis

School of Chemical Engineering
University of California, Berkeley
Berkeley, California 94720-1760

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

In re Application Serial No.; 76/189,923

For the Mark: REXCO

Applicant: Larry R. Hauptert

Filed on: January 3, 2001

RE/MAX INTERNATIONAL, INC.,)	Opposition No. 91155699
Opposer,)	Serial No. 76189923
)	
v.)	
)	
LARRY R. HAUPERT)	
Applicant.)	

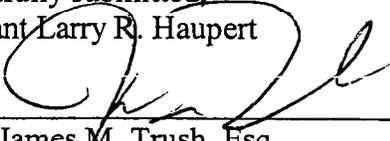
STIPULATION FOR EXTENSION OF TIME TO FILE ANSWER UNDER
TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE,
RULE 316.03

Box TTAB No Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

It is hereby requested that an extension, through and including August 29, 2003, be granted to Applicant Larry R. Hauptert (current address: 2518 N. Santiago Blvd., Orange, CA 92867) to file an Answer to the Notice of Opposition filed in the above-identified matter. The purpose of this request for an extension of time to file an Answer is for the parties to draft and discuss a proposed trademark use agreement. James M. Trush, Attorney for the Applicant communicated with John R. Posthumus, Attorney for the Opposer, on July 2, 2003, and Attorney for the Opposer consented to this request for an extension. This request for an extension of time is not being made for the purpose of delay and favorable consideration of this request for an extension is hereby requested.

Dated: July 3, 2003

Respectfully submitted,
Applicant Larry R. Hauptert

By: 
James M. Trush, Esq.
Attorney for Applicant Larry R. Hauptert
TRUSH LAW OFFICES
1920 Main Street, Suite 900
Irvine, CA 92614
phone (949) 851-9090/fax (949) 851-9004

CERTIFICATE OF MAILING

I hereby certify that on this ____ day of July 2003, a copy of the foregoing

**STIPULATION FOR EXTENSION OF TIME TO FILE ANSWER
UNDER TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF
PROCEDURE, RULE 316.03**

was deposited with the United States Postal Service as first class mail, postage pre-paid,
addressed to the following:

Box TTAB No Fee
Assistant Commissioner for Trademarks
2900 Crystal Avenue
Arlington, VA 22202-3513

John R. Posthumus, Esq.
Greenberg Traurig, LLP
The Tabor Center
1200 17th Street, Suite 2400
Denver, CO 80202

Dee Davis

CERTIFICATE OF MAILING

I hereby certify that on this 12 day of February 2004, a copy of the foregoing

RESPONSE TO NOTICE OF DEFAULT

was deposited with the United States Postal Service as first class mail, postage pre-paid, addressed to the following:

Commissioner for Trademarks
Attn: TTAB No Fee
2900 Crystal Drive
Arlington, VA 22202

John R. Posthumus, Esq.
Greenberg Traurig, LLP
The Tabor Center
1200 17th Street, Suite 2400
Denver, CO 80202



Dee Davis

4. Answering paragraph 4 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

5. Answering paragraph 5 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

6. Answering paragraph 6 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

7. Answering paragraph 7 of the Notice of Opposition, Applicant admits all allegations therein.

8. Answering paragraph 8 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

9. Answering paragraph 9 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

10. Answering paragraph 10 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

11. Answering paragraph 11 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

12. Answering paragraph 12 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

FIRST AFFIRMATIVE DEFENSE

13. As an affirmative defense, Applicant alleges that Opposer has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

14. As an affirmative defense, Applicant alleges that Opposer is barred from the relief requested in the Notice of Opposition based upon the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

15. As an affirmative defense, Applicant alleges that Opposer is barred from the relief requested in the Notice of Opposition based upon the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

16. As an affirmative defense, Applicant alleges that Opposer is barred from the relief requested in the Notice of Opposition based upon the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

17. As an affirmative defense, Applicant alleges that Opposer lacks standing to assert the claims set forth in its Notice of Opposition.

SIXTH AFFIRMATIVE DEFENSE

18. As an affirmative defense, Applicant alleges that Opposer is barred from the relief requested in the Notice of Opposition based upon the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

19. As an affirmative defense, Applicant alleges that Opposer is barred from the relief requested in the Notice of Opposition based upon the doctrine of acquiescence.

EIGHTH AFFIRMATIVE DEFENSE

20. As an affirmative defense, and as authorized by the Trademark and Trial Appeal Board Manual of Procedure, Section 311.02(d), Applicant alleges that the denials to

paragraphs 8 through 12 of the Notice of Opposition are based upon grounds, which include, but are not limited to, the following:

- (a) that the mark of Opposer and the mark of Applicant are entirely different in their style, color, trade dress and related attributes;
- (b) use of the Applicant's mark in connection with the goods identified in its application is not likely to cause confusion, mistake, or to deceive consumers, as to any affiliation or connection between Opposer and Applicant, in that Applicant has used its mark in commerce since on or about February 28, 1985, and Opposer has never alleged any likelihood of confusion, actual confusion, mistake, or that consumers were deceived as to any affiliation between Opposer and Applicant from 1985 through the date of filing Applicant's Application;
- (c) use of Applicant's mark in connection with the goods identified in the Application is not likely to cause confusion, mistake, or to deceive consumers, as to any affiliation or connection between Opposer and Applicant because the goods, services and commercial activities of the Applicant and the Opposer are entirely different.

NINTH AFFIRMATIVE DEFENSE

21. As an affirmative defense, and as authorized by the Trademark and Trial Appeal Board Manual of Procedure, Section 311.02(d), Applicant alleges that the denials to paragraphs 8 through 12 of the Notice of Opposition are based upon grounds which include, but are not limited to, the following:

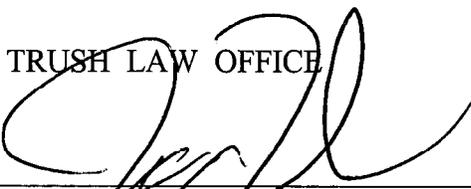
- (a) the Notice of Opposition was filed by Opposer without justification and without any reasonable basis for believing the allegations set forth in

paragraphs 8 through 12 of the Notice of Opposition, in that the only similarity between the mark of the Applicant and the mark of the Opposer is that they both begin with the letters "RE" and that, other than the use of the same first two letters, there is no other similarity between the two marks;

(b) Applicant has used its mark in commerce, since on or about February 28, 1985, and that Opposer has never claimed any likelihood of confusion, actual confusion, mistake, or deception of consumers, as to any affiliation or connection between Opposer and Applicant.

WHEREFORE, Applicant Larry R. Haupert prays that the Notice of Opposition be denied and overruled, and that U.S. Trademark Application Serial No. 76/189,923 for REXCO be approved for registration.

Respectfully submitted this 10th day of February, 2004.

By: 
James M. Trush, Esq.
TRUSH LAW OFFICE
1920 Main Street, Suite 900
Irvine, CA 92614
phone (949) 851-9090/fax (949) 851-9004

Attorney for Applicant Larry R. Haupert

CERTIFICATE OF MAILING

I hereby certify that on this 12 day of February 2004, a copy of the foregoing

ANSWER

was deposited with the United States Postal Service as first class mail, postage pre-paid, addressed to the following:

Commissioner for Trademarks
Attn: TTAB No Fee
2900 Crystal Drive
Arlington, VA 22202

John R. Posthumus, Esq.
Greenberg Traurig, LLP
The Tabor Center
1200 17th Street, Suite 2400
Denver, CO 80202



Dee Davis

ttab

TRUSH LAW OFFICE

1920 MAIN STREET, SUITE 900
IRVINE, CA 92614
TELEPHONE (949) 851-9090
FAX (949) 851-9004

February 12, 2004

VIA FEDERAL EXPRESS



Commissioner for Trademarks
Attn: TTAB NO FEE
2900 Crystal Drive
Arlington, VA 22202

02-13-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Re: RE/MAX International, Inc. Opposer
v.
Larry R. Haupert, Applicant
Opposition No. 91155699

Dear Sir/Madam:

Enclosed with this letter is the *Answer and Response to Notice of Default* filed by Applicant Larry R. Haupert in the above-referenced matter. Please stamp and return the enclosed return receipt post card to confirm the filing of these documents.

Thank you for your assistance. If you have any questions, or need any further information, please contact the undersigned.

Very truly yours,

TRUSH LAW OFFICE

James M. Trush

JMT/dd
Enclosures
M\haupter\trademark\USPTO.01