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

Proceeding	91162831
Party	Defendant TORGOVY DOM "AROMA" TORGOVY DOM "AROMA" 5 Beregovoy Proezd RUX Moscow, NY 121087
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Submission	Opposition/Response to Motion
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Signature	/Marina E. Volin/
Date	12/20/2005
Attachments	B1200 40001 Response to Opposer's Cross-Motion for SJ Motion SFX115.pdf (3 pages)

Our Ref. No. B1200-40001
Customer No. 03000

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

D & M NEW WORLD MANAGEMENT, INC.,	:	
Opposer,	:	
v.	:	**Opposition No. 91162831**
TORGOVY DOM "AROMA" TA TRADE HOUSE "AROMA",	:	
Applicant.	:	

APPLICANT'S RESPONSE TO OPPOSER'S
CROSS-MOTION FOR SUMMARY JUDGMENT MOTION

Applicant, TORGOVY DOM "AROMA", through its undersigned counsel, opposes the Cross-Motion and respectfully moves the Honorable Board to dismiss Opposer's Cross-Motion for Summary Judgment filed in response to Applicant's Motion for Judgment for Failure of Opposer to Prosecute.

Opposer's Cross- Motion should be dismissed on the basis of untimeliness because it was filed after the close of Opposer's testimony period, i.e., after October 26, 2005. *See* 37 CFR § 2.127(e)(1).

Moreover, Applicant opposes the Cross-Motion submitted in lieu of response to Applicant's Motion for Judgment as being untimely because it was filed after the expiration of the period for response to the Applicant's Motion, i.e., after November 28, 2005. *See* TBMP 534.02; 37 CFR § 2.119(c).

Opposer has failed to introduce any evidence of use within the Opposer's testimony period ending on October 26, 2005. Opposer's attempt to introduce the evidence of use in the untimely filed Opposer's Cross-Motion for Summary Judgment is improper. In the absence of the evidence of use, the Opposition should be dismissed with prejudice.

In light of the foregoing, it is respectfully submitted that Opposer's Cross-Motion should be dismissed and Applicant's Motion should be granted.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN, COHEN & POKOTILOW, LTD.

December 20, 2005

By Marina E Volin

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CERTIFICATE OF SERVICE

I hereby certify that one (1) true and correct copy of the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S CROSS-MOTION FOR SUMMARY JUDGMENT MOTION** re Opposition No. 91162831 has been electronically filed with the United States Patent and Trademark Office Trademark Trial and Appeal Board via the Electronic System for Trademark Trial and Appeal Board (ESTTA), on this 20th day of December, 2005.

Marina E. Volin

CERTIFICATE OF MAILING

I hereby certify that the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S CROSS-MOTION FOR SUMMARY JUDGMENT MOTION** re Opposition No. 91162831 has been served upon the Opposer by mailing the same via First Class Mail, postage prepaid, in an envelope addressed to Gail E. Nickols, Esq., Graham, Campaign, P.C., The Bar Building, 36 West 44th Street, New York, NY 10036-8178, on this 20th day of December, 2005.

Marina E. Volin