

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 5, 2006

Opposition No. 91162831

D & M NEW WORLD MANAGEMENT,
INC.

v.

TORGOVY DOM "AROMA"

David Mermelstein, Attorney:

On December 22, 2005, the Board granted applicant's motion for judgment pursuant to Trademark Rule 2.132(a) and denied opposer's cross-motion for summary judgment.¹ Now before the Board is opposer's "sur-reply"² in support of its motion for summary judgment, filed January 20, 2006, under certificate of mailing dated January 17, 2006.

Applicant's response to opposer's motion for summary judgment was served on December 20, 2005. "[A] reply brief, if filed, shall be filed within 15 days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended." Trademark

¹ Opposer's motion for summary judgment was denied as being untimely filed, although the Board noted that even if it were considered on its merits, it would be denied due to the fact that it was supported by nothing more than counsel's unverified statements and various unauthenticated documents.

² The paper is actually a reply brief, not a sur-reply. While reply briefs are permitted under the Board's rules, sur-reply briefs are not. Trademark Rule 2.127(a)(The Board may, in its

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Rule 2.127(e)(emphasis added). Because applicant's response was served by first class mail, five days is added to this period. Trademark Rule 2.119(c). Thus, opposer's reply brief was due no later than January 9, 2006. Opposer's brief, mailed on January 17, 2006, was clearly untimely, and will not be considered.³

In consideration of the foregoing, no change or reconsideration of the Board's December 22, 2005, entry of judgment is warranted.

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discretion, consider a reply brief. ... No further papers ... will be considered.")

³ Timeliness aside, consideration of a reply brief is discretionary. Trademark Rule 2.127(e). But as was the case with opposer's original motion for summary judgment, even if we were to consider opposer's reply brief on its merits, it adds nothing which would cure the infirmities of the original motion or dictate a contrary result.