

ESTTA Tracking number: **ESTTA43149**

Filing date: **08/25/2005**

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

Proceeding	91164280
Party	Plaintiff REGAL WARE, INC ,
Correspondence Address	JOSEPH A. KROMGOLZ RYAN KROMHOLZ & MANION, S.C. P.O. BOX 26618 MILWAUKEE, WI 53226
Submission	Opposer's Brief in Opposition of Applicant's Motion to Enlarge Time
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Date	08/25/2005
Attachments	050825 opposition to motion to extend time.pdf (2 pages) Exhibit A to Brief in Opposition to App Motion to Extend Time.pdf (2 pages) 050825 Certificate of Service Opposition to Motion to Extend Time.pdf (1 page)

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

11 Regal Ware, Inc. 12 Opposer 13 14 v. 15 Advanced Marketing Int'l, Inc. 16 Applicant	17 Opposition No.:91164280 18 19 Atty. Docket No. :9513.18067-LIT
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20 **OPPOSER'S BRIEF IN OPPOSITION OF APPLICANT'S MOTION TO ENLARGE**
21 **TIME**

22 Regal Ware, Inc. (Opposer), by its attorneys, Ryan Kromholz & Manion, S.C. by Joseph A. Kromholz,
23 and Daniel R. Johnson, hereby oppose Advanced Marketing Int'l, Inc.'s ("Applicant") motion to
24 extend time for the following reasons:

- 25 1. Applicant argues that the discovery deadline in this case is set for September 11, 2005 and that
26 Opposer is attempting to take discovery after the close of the discovery deadline.
- 27 2. The Scheduling Order in this case clearly sets the discovery deadline at November 8, 2005, not
28 September 11, 2005 as Applicant mistakenly argues. See Exhibit A, attached.
3. If the Board were to grant Applicant's motion, the new discovery deadline would be
November 10, 2005. Applicant has not shown any good cause why the deadline should be

1 extended from its current November 8, 2005 deadline to their proposed November 10, 2005
2 deadline.

3 If Applicant's motion is not almost moot, it is surely a waste of this Board's time. For the
4 foregoing reasons, Applicant's motion should be denied.

5 Respectfully submitted:

6 Date: August 25, 2005

Ryan, Kromholz & Manion, S.C.

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8 By: /Joseph A. Kromholz/

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

Greenbaum

Mailed: June 8, 2005

Opposition No. 91164280

REGAL WARE, INC

v.

Advanced Marketing
Int'l., Inc.

Cindy B. Greenbaum, Attorney:

On April 28, 2005, approximately five weeks after applicant filed an answer to the notice of opposition, opposer filed a motion to amend the notice of opposition. The record shows no response thereto.

Once a responsive pleading is served, FRCP 15(a) allows a party to amend its pleading only upon written consent of every adverse party, or by leave of the Board. Leave to amend is freely given when justice so requires. See FRCP 15(a). Accordingly, the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entering the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. See, e.g., *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993), and TBMP §507.02. This is so even where, as here, a plaintiff seeks

EXHIBIT A

to amend its complaint to plead a claim other than that included in the original complaint. See, e.g., Marmark ltd. v. Nutrexp S.A., 12 USPQ2d 1843 (TTAB 1986), recon. denied, 1 USPQ2d 1304 (TTAB 1986), and TBMP §507.02.

Inasmuch as this case was in the early days of discovery when opposer filed the motion to amend, the amendment will not cause undue prejudice to applicant, and the amendment is not futile, the motion to amend is granted.

Applicant has until **THIRTY DAYS** from the mailing date of this order to file an answer to the amended notice of opposition. Discovery remains open, and discovery and testimony periods are reset as follows:

DISCOVERY PERIOD TO CLOSE: November 8, 2005

Thirty-day testimony period for party in position of plaintiff to close: **February 6, 2006**

Thirty-day testimony period for party in position of defendant to close: **April 7, 2006**

Fifteen-day rebuttal testimony period to close: **May 22, 2006**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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11 Regal Ware, Inc. 12 Opposer)	Opposition No.:91164280
13 v.)	
14 Advanced Marketing Int'l, Inc. 15 Applicant)	Atty. Docket No. :9513.18067-LIT

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that a true copy of Opposer's Brief In Opposition of Applicant's Motion to Enlarge
18 Time has been serviced on the following attorney of record by United States Mail Addressed as
19 follows:

20 Lori T. Milvain, Esq.
21 Gronek & Latham, LLP
22 390 North Orange Avenue
23 Suite 600
24 Orlando, Florida 32801

25 this 25th day of August 2005.

26 /Joseph A. Kromholz/
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