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

Proceeding	91167991
Party	Plaintiff The H.D. Lee Company, Inc. The H.D. Lee Company, Inc. The H.D. Lee Company, Inc. 3411 Silverside Road201 Baynard Building Wilmington, DE 19810 UNITED STATES
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Date	03/28/2007
Attachments	ONE FABULOUS FIT - Reply to Applicant's Response to Motion to Extend Testimony Period.pdf (9 pages)(191049 bytes)

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

In the Matter of Serial No. 78/363,351 For the Mark: ONE FABULOUS FIT	:	
The H.D. Lee Company, Inc., Opposer	:	
v.	:	Opposition No. 91167991
Maidenform, Inc., Applicant.	:	

REPLY TO APPLICANT'S RESPONSE
TO MOTION TO EXTEND TESTIMONY PERIOD

Opposer H.D. Lee Company, Inc. ("Opposer"), by and through its undersigned counsel, hereby submits this reply to Applicant's Response to Opposer's Motion to Extend Testimony Period ("Applicant's Brief"), and in support hereof, states as follows:

I. INTRODUCTION

Opposer's Motion to Compel and Motion to Extend Testimony are both based on the underlying premise that there was an understanding[1] between the Parties that the proceeding was de facto suspended until the Parties either settled the case or decided that settlement between the Parties would be impossible to attain.

Applicant claims that there was no such understanding, and suggests that Opposer in bad faith created an after-the-fact email to support its position. This unfounded allegation is both untrue and unwarranted.

[1] This understanding was further cemented by Opposer's generous professional courtesy in allowing Applicant to not just extend, but *reopen* the discovery period so that it could serve discovery requests upon Opposer.

II. ARGUMENT

A. Opposer had a Good Faith Belief It Responded to Applicant's Settlement Proposal.

Opposer believed in good faith that it sent an email to Applicant on November 14, 2006 in response to Applicant's settlement proposal. Declaration of Helen L. Winslow, Esquire ("Winslow Dec.") ¶ 6, attached hereto as Exhibit A. As soon as Opposer realized the email was never sent, it informed Applicant of this inadvertent oversight. *Id.* at ¶ 7.

In Applicant's Brief, Applicant goes out on a limb and suggests that Opposer never actually drafted the November 14 email. Applicant's Brief alleges that Opposer was "simply trying to make excuses" by claiming that Opposer believed it sent Applicant a settlement proposal on November 14. Applicant's Brief at 18. This attack on Opposer's integrity is unfounded and unwarranted. Because Opposer's word is obviously not sufficient to satisfy Applicant's concerns, Opposer submits the Declaration of Helen Winslow, Esquire, Assistant General Counsel, Vice President, and Secretary of Opposer. Ms. Winslow, under penalty of perjury, affirms that she drafted an email on November 14, 2006 and believed that she sent the email to Jennifer Prioleau, Esquire, counsel for Applicant, on or about November 14, 2006. Winslow Dec. ¶ 6. In view of this unrefuted Declaration, it is apparent that the Parties were engaged in active settlement negotiations. Opposer was awaiting Applicant's response on settlement terms and given the evident inability of the Parties to resolve this matter, Opposer requests that the Testimony Period be extended.

B. The Exhibits to Applicant's Brief Should Be Placed Under Seal.

In violation of Federal Rule of Evidence 408, Applicant attached to its publicly available brief printouts of electronic settlement communications between the parties. While

Opposer does not object to the Board's review of those communications, Opposer respectfully requests that those communications be placed under seal.

III. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board grant Opposer's (1) extend the Testimony Period to thirty days from the date of the Board's ruling on this motion and (2) place the exhibits to Applicant's Brief under seal.

Respectfully submitted,

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Attorneys for Opposer,
The H.D. Lee Company, Inc

Date: March 28, 2007

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CERTIFICATE OF SERVICE

I, Cara M. Kearney, hereby certify that on March 28, 2007 a true and correct copy of the foregoing Reply to Applicant's Response to Motion to Extend Testimony Period was served via U.S. first class mail, postage prepaid, upon the following:

Jennifer A. Prioleau, Esquire
Maidenform, Inc.
154 Avenue E
Bayonne, NJ 07002

Cara M. Kearney

EXHIBIT A

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

In the Matter of Serial No. 78/363,351 For the Mark: ONE FABULOUS FIT	)	
The H.D. Lee Company, Inc., Opposer	)	Opposition No. 91167991
v.	)	
Maidenform, Inc., Applicant.	)	

DECLARATION OF HELEN L. WINSLOW, ESQUIRE

I, Helen L. Winslow, declare:

1. I am Assistant General Counsel, Vice President, and Secretary of The H.D. Lee Company, Inc. ("Lee"), the Opposer in the above-referenced opposition proceeding. My duties and responsibilities include enforcement of Lee's many trademark equities, including the ONE TRUE FIT® and THE BRAND THAT FITS® trademarks and branded products. I have served as Assistant General Counsel and Secretary of Lee since 2001 and as Vice President since 2005. The facts recited in this Declaration come from my own personal knowledge or from my personal involvement in this matter.

2. I submit this Declaration in support of Lee's (1) Reply to Applicant's Response to Opposer's Motion to Compel and (2) Reply to Applicant's Response to Opposer's Motion to Extend Testimony Period. I believe that a response is needed, given opposing counsel's accusation that I manufactured an email after the fact. Besides the fact that this is simply not true, it is quite disappointing to me, personally and professionally, that opposing counsel has chosen to make such an accusation.

3. On October 20, 2006, I received an e-mail from opposing counsel Jennifer Prioleau containing a settlement proposal.

4. On November 6, 2006, I sent an e-mail to Jennifer Prioleau, informing her that I was in the middle of moving my office and that I would respond to her settlement proposal after the move.

5. On November 14, 2006, after my move, I reviewed Jennifer Prioleau's settlement offer and drafted my e-mail response to her. By e-mail on November 14, 2006, I requested and received input on my draft response from outside counsel and from the trademark paralegal working with me on this matter. I then decided the e-mail was ready to go to Jennifer Prioleau.

6. From November 14, 2006 through February 16, 2007, I believed that I had sent my November 14, 2006 email to Jennifer Prioleau. I waited patiently for a reply from her. While waiting for a reply from her, I granted Jennifer Prioleau's requests for extensions.

7. On February 16, 2007, realizing that I had not received a response from Jennifer Prioleau, I prepared to call Jennifer Prioleau by reviewing my most recent e-mail correspondence with her. I could not find a sent copy of my November 14, 2006 e-mail, however, so I telephoned Jennifer Prioleau and asked her whether she had received my November 14, 2006 e-mail. She stated that she had not. I apologized, explained that I had written her an e-mail on November 14, 2006 that I believed I had sent to her, but that I could not find a sent copy of it, and promised to look into the matter further and get back to her. I searched further among my e-mails, and the only copy of my November 14, 2006 e-mail that I could find was the copy I had e-mailed to outside counsel and to my trademark paralegal on

November 14, 2006 for comment. Since I knew I had received their sign-off the same day I requested it, I concluded that I had been interrupted between receiving their sign-off and sending the November 14, 2006 e-mail to Jennifer Prioleau, such that I failed to send it to her. On February 16, 2007, the same day that I telephoned Jennifer Prioleau, I sent her an e-mail, explaining my inadvertent omission and forwarding the November 14 counterproposal to her. Jennifer Prioleau did not respond.

8. On February 21, 2007, I sent an email to Jennifer Prioleau requesting an extension of the testimony period.

9. On February 23, 2007, I received an email from Jennifer Prioleau denying my request.

10. On February 26, 2007, at my request, Pepper Hamilton LLP called and later emailed Jennifer Prioleau to see whether unnecessary litigation costs could be avoided by stipulating to a final extension with the hope of either effectuating settlement or moving forward with litigation. Jennifer Prioleau denied this request as well.

11. On February 27, 2007 Lee filed its Motion to Extend Testimony Period and Motion to Compel in the ONE FABULOUS FIT proceeding.

12. On March 2, 2007 Lee filed its Motion to Extend Testimony Period and Motion to Compel in the ONE FAB FIT proceeding.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to the best of my knowledge, information or belief.

Helen L. Winslow

HELEN L. WINSLOW