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

EJW

Mailed: April 14, 2008

Opposition No. 91177804

AMERIFIT, INC.

v.

GEORGE K. ZOOROB

Elizabeth J. Winter, Interlocutory Attorney:

On February 15, 2008, this proceeding was suspended until May 15, 2008 pending the parties' settlement negotiations, subject to the right of either party to request resumption at any time.

On April 11, 2008, opposer filed a combined motion[1] to resume proceedings and to compel responses from applicant to opposer's interrogatories and requests for production. In view thereof, opposer's motion to resume proceedings is denied. *See* Trademark Rule 2.120(e)(2), 37 C.F.R. § 2.120(e)(2). This

[1] The Board notes opposer's opposition to applicant's motion to extend discovery filed on January 15, 2008, and applicant's opposition to opposer's opposition to applicant's motion to extend discovery filed on January 22, 2008. Inasmuch as applicant did not file a motion to extend discovery in this proceeding, neither opposer's brief in opposition thereto, nor applicant's brief in reply will be considered. The Board also notes that applicant's motion to combine oppositions and motion to extend the discovery period were filed simultaneously on December 28, 2007 in Opposition No. 91177799.

proceeding remains **SUSPENDED** pending disposition of opposer's motion to compel, except as discussed below. *See Id.* The parties should not file any paper that is not germane to the motion to compel.

This suspension order does **not** toll the time for either party to make any required disclosure, to respond to discovery requests which had been duly served prior to the filing and service of the motion to compel, or to appear for a discovery deposition which had been duly noticed prior to the filing and service of the motion to compel. *See Id.*

The motion to compel will be decided in due course.

GENERAL INFORMATION REGARDING BOARD PROCEEDINGS

The parties are reminded that an *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. **No paper,**

document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

REQUIREMENT FOR SERVICE ON ADVERSE PARTY OF ALL PAPERS FILED

Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service. **Strict compliance with Trademark Rule 2.19 is required in all further papers filed with the Board, otherwise the paper(s) will not be considered.** This written statement should take the form of a "certificate of service" which should read as follows:

> The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via first class mail, postage prepaid to: [insert name and address].

The certificate of service must be signed and dated.

LEGAL REPRESENTATION IS STRONGLY ENCOURAGED

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. These rules may be viewed at the USPTO's trademarks page: **http://www.uspto.gov/main/trademarks.htm**. The Board's main webpage, **http://www.uspto.gov/web/offices/dcom/ttab/**, includes information on the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to The Trademark Trial and Appeal Board Manual of Procedure (the TBMP).[2]

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is

[2] Applicant may also obtain a hard copy of the latest edition of Title 37 of the Code of Federal Regulations available for a fee from the U.S. Government Printing Office on the World Wide Web at **http://bookstore.gpo.gov**.

expected of all parties before the Board, *whether or not they are represented by counsel.*

ALL PARTIES MUST COMPLY WITH BOARD DEADLINES

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991). Defendant is strongly advised to obtain counsel to present its interest in this proceeding.

☼☼☼

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm