

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

Mailed: August 28, 2007

Opposition No. 91178149

Trek Bicycle Corporation

v.

Reps Design

Cindy B. Greenbaum, Attorney:

MOTION TO STRIKE ANSWER

This case now comes up on opposer's motion (filed August 15, 2007) to strike applicant's answer for applicant's failure to serve a copy thereof on opposer and for insufficiency. For the reasons discussed below, the motion is denied.

First, although applicant's answer does not include proof of service on opposer, as Trademark Rule 2.119 requires, and even though opposer alleges that it never received a service copy of the answer, opposer obviously accessed the Board's electronic files and viewed a copy of the answer, absent which opposer could not have filed the instant motion. Opposer's complaint about lack of service clearly elevates form over substance, especially in light

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of the Board's stated disfavor of motions to strike; matter will not be stricken unless it clearly has no bearing upon the issues in the case. See Leon Shaffer Golnick Advertising, Inc., v. William G. Pendill Marketing, Co., Inc., 177 USPQ 401 (TTAB 1973).

Notwithstanding the foregoing, the Board expects applicant to strictly comply with Trademark Rule 2.119 in the future, and may not consider any papers filed by applicant that do not bear proper proof of service on opposer.

Second, the Board has reviewed the answer and has determined that the answer constitutes a general denial, with amplification, of opposer's grounds for opposition.

The answer therefore is accepted and remains of record in this case.

PRO SE INFORMATION

Applicant is reminded that it will be expected to comply with all applicable rules and Board practices during the remainder of this case. The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this cancellation proceeding. Applicant should note that Patent and Trademark Rule 10.14 permits any person or legal entity to represent itself in a Board proceeding, though it is

generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

SOURCES OF RELEVANT INFORMATION

If applicant does not retain counsel, then applicant will have to familiarize itself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure, are likely to be found at most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure will be helpful.

On the World Wide Web, applicant may access most of these materials by logging onto <http://www.uspto.gov> and making the connection to trademark materials.

OBSERVATIONS REGARDING SPECIFIC RULES

Applicant must pay particular attention to Trademark Rule 2.119, referenced above. That rule requires a party filing any paper with the Board during the course of a proceeding to serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. With the paper that it filed with the Board, the party filing the paper must include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served; (2) the method of service (e.g., first

class mail); (3) the person being served and the address used to effect service; and (4) the date of service.

Also, applicant should note that any paper it is required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 and 2.198 is utilized. These rules are in part two of Title 37 of the previously discussed Code of Federal Regulations.

RECENT TTAB DEVELOPMENTS

Files of TTAB proceedings can now be examined using TTAB Vue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

The first revision of the second edition (March 2004) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at www.uspto.gov/web/offices/dcom/ttab/tbmp/.

SCHEDULE

Dates remain as set.