

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

In the Matter of Application Serial No. 78922352 for the mark
VELVET IN DUPONT in International Class 41
Published for Opposition in the Official Gazette of July 17, 2007

E.I. Du PONT DE NEMOURS AND COMPANY,
Opposer, Proceeding No. 91180460

v. APPLICANT'S SUPPLEMENTAL OBJECTION
TO OPPOSER'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS

MELISSA J. TERZIS,
Applicant. JUNE 13, 2008

Commissioner For Trademarks,
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S SUPPLEMENTAL OBJECTION TO
OPPOSER'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS

Applicant, Melissa J. Terzis, an individual residing at the Admiral Dupont
Condominium located at 1700 17th Street NW, Washington, D.C. 20009, hereby files a
Supplemental Objection to Opposer's First Request for Production of Documents and
Things dated May 19, 2008, but received by the Applicant and Applicant's attorney on
May 21, 2008.

A. APPLICANT'S OBJECTION TO OPPOSER'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS SHOULD BE SUSTAINED

As previously enumerated in Applicant's Objection to Opposer's First Request
for Production of Documents and Things dated May 23, 2008:



06-16-2008

a. the Court Discovery Order dated and mailed by the United States Patent and Trademark Office, Trademark Trial and Appeal Board on October 31, 2007, ordered and mandated that the "Discovery Period Was to Close on May 18, 2008"(emphasis added);

b. there was never any Request made by the Opposer for an Extension of Time within which to file its First Request for Production of Documents and Things;

c. no order was ever issued by the United States Patent and Trademark Office granting any extension of time to Opposer for the filing of its First Request for Production of Documents and Things from May 18, 2008 to any later date;

d. during the period from October 31, 2007 until May 18 , 2008, a period of more than Six and Two/Thirds (6 2/3) months and over Two Hundred (200) Days, the Opposer never conducted any Discovery of any type or kind whatsoever in this matter even though Opposer was ordered to do so by the Discovery Order of October 31, 2007;

e. during the period from October 31, 2007 until May 18, 2008, a period of more than Six and Two/Thirds (6 2/3) months and over Two Hundred (200) Days, the Opposer never contacted the attorney for the Applicant either in writing or by telephone to request a continuance or extension of time for any Discovery of any type or kind whatsoever in this matter;

f. thus, it is patently clear that the Opposer did ABSOLUTELY NOTHING with respect to any Discovery in this matter during the period from October 31, 2007 through May 18, 2008, a period of more than Six and Two/Thirds (6 2/3) months and over Two Hundred (200) Days; and

g. therefore, there can be no doubt that the Opposer willfully failed to comply with the Discovery Order made and mandated by the United States Patent and Trademark

Office, Trademark Trial and Appeal Board on October 31, 2007, which ordered that the “Discovery Period Was to Close on May 18, 2008”(emphasis added).

B. APPLICANT’S SUPPLEMENTAL OBJECTION TO OPPOSER’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS SHOULD BE SUSTAINED

On October 31, 2007, Opposer filed a prolix Notice of Opposition alleging eleven (11) grounds for opposition.

On December 3, 2007, without filing any request for an Extension of Time within which to file an Answer, the Applicant filed a detailed ANSWER DENYING each and every one of the eleven (11) allegations, together with a detailed supporting Preliminary Statement and twenty pictures of at least twenty different Dupont Circle businesses using the name Dupont (one word) and Dupont Circle in and around the Dupont Circle area in Washington, D.C.

On May 21, 2008, in violation of this Court’s Discovery Order of October 31, 2007 that all Discovery was to close on or prior to May 18, 2007, the Opposer filed its Opposer’s First Request for Production of Documents and Things requesting some Thirty-Five (35) documents and/or things for production.

It is generally recognized in any civil action where the judicial authority finds it reasonably probable that evidence outside the record will be required, a party may obtain discovery of information or disclosure, production and inspection of documents material to the subject matter involved. Discovery, however, is only permitted if the disclosure sought would be of assistance in the prosecution or defense of the action and if it can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure. (Emphasis added)

A careful review of the Opposer's First Request for Production of Documents and Things clearly confirms that the Opposer has willfully attempted to thwart the scope of Discovery in this action. Not only is the Opposer seeking evidence that is within the record, but also within the Opposer's own executed and signed legal documents.

For example, the Opposer's Document Request No. 4 requests: "All documents and things that support Applicant's contention, as set forth in its Answer, that Opposer uses the mark 'DuPont' as two words", and clearly confirms that:

(a) the Opposer has willfully misrepresented the numerous statements by Applicant in its ANSWER that Opposer's mark was "du Pont" (two words) and not "DuPont", as alleged and misrepresented by the Opposer;

(b) the Opposer is attempting to ignore the limited scope of Discovery; and

© the Opposer is attempting to harass the Applicant into spending unnecessary legal time and expense in order to provide documents that are or should be in Opposer's possession.

Since the Opposer's own legal documents clearly confirm that the Opposer's mark is "du Pont" as two words as alleged numerous times by Applicant in its ANSWER, the Opposer's Document Request No. 4 is a clear attempt to obfuscate the facts and to harass the Applicant. For confirmation of this conclusion, reference should be made to:

a. the first paragraph of Opposer's Notice of Opposition dated October 31, 2007, filed in this Court, which is signed by Opposer's attorneys, Crowell & Moring LLP, and Dickerson M. Downing, Esq., which lists "du Pont" as Opposer and mark;

b. the detailed Opposer Information face sheet prepared by Opposer's Attorney Dickerson M. Downing and Crowell & Moring, LLP, which is included in the formal Notice of Opposition filed on 10/31/2007 by Opposer and its attorneys, Crowell & Moring, LLP and Dickerson M. Downing, Esq. with the United States Patent and Trademark Office, which clearly lists "du Pont" as Opposer and mark;

c. the Discovery Court Order from the United States Patent and Trademark Office dated October 31, 2007 filed in this action which lists "du Pont" as the Opposer and mark; and

d. the TTABVUE, Trademark Trial and Appeal Board Inquiry System, dated 10/31/2007 prepared and filed by Opposer and its attorneys, Dickerson M. Downing, Esq. and Crowell & Moring, LLP, which lists "du Pont" as the Opposer and mark.

In addition, Opposer's Document Request Nos. 1-3, 5-35, wherein the Opposer is seeking evidence that can be readily obtained by and/or provided to the Opposer and/or its attorneys, Crowell & Moring LLP and Dickerson M. Downing, Esq., by using its own computers and computer software programs to obtain all, if any, of the requested evidence, documents and/or information which is on file with the Trademark Trial and Appeal Board Inquiry System, the District of Columbia registered organizations, the Department of Consumer, the Department of Regulatory Affairs, and other agencies.

Thus, the Opposer and its attorneys can obtain all, if any, of the requested evidence, documents and/or information on file with any of these and other organizations and conduct its search for evidence, documents and/or information with substantially greater facility than it could otherwise be obtained by the Applicant.

WHEREFORE, the Applicant, Melissa J. Terzis, hereby moves the United States Patent and Trademark Office, Trademark Trial and Appeal Board, as follows:

1. that the Objection by the Applicant to the Opposer's First Request for Production of Documents and Things should be SUSTAINED particularly since the Opposer failed to comply with the Court's Discovery Order of October 31, 2007;
2. since the party failing to comply with the Discovery Order rendered by the United States Patent and Trademark Office, Trademark Trial and Appeal Board was the Plaintiff - Opposer, E.I. Du PONT DE NEMOURS AND COMPANY, the Applicant, Melissa J. Terzis, moves the Court for the entry of a Judgment of Dismissal of their Notice of Opposition dated October 31, 2007 for the Plaintiff - Opposer's failure to

comply with the Court Order;

3. the Applicant, Melissa J. Terzis, further moves the Trademark Trial and Appeal Board for an Order sanctioning the attorneys for the Opposer, Crowell & Moring LLP, Attorney Dickerson M. Downing and Attorney Christine Kornett for their frivolous and untimely First Request for Production of Documents and Things and their failure to comply with the Discovery Order, together with the imposition of reasonable attorney's fees and costs;

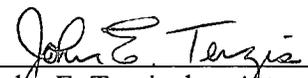
4. the Applicant hereby requests that the Notice of Opposition filed by E. I. DuPont de Nemours and Company on October 31, 2007 be DENIED, and that the registration of the trademark VELVET IN DUPONT (Serial Number 78/922,352) be GRANTED; and

5. that the Supplemental Objection by the Applicant to the Opposer's First Requests for Production of Documents and Things should be SUSTAINED particularly since the Opposer failed to comply with the Court's Discovery Order of October 31, 2007 and the Opposer filed a frivolous First Request for Production of Documents and Things on May 19, 2008.

APPLICANT, MELISSA J. TERZIS

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Dated: Washington, D.C. 20009
On June 13, 2008

ORDER

The foregoing Supplemental Objection to Opposer's First Request for Production of Documents and Things having been heard is hereby SUSTAINED. OVERRULED.

Since the Plaintiff – Opposer failed to comply with the Court ordered Discovery Order of October 31, 2007, the Court hereby Orders that a Judgment of Dismissal be entered as to the Notice of Opposition filed by the Plaintiff – Opposer on October 31, 2007. GRANTED. DENIED.

The Motion for the sanctioning of the attorneys for the Opposer, Crowell & Moring LLP for their frivolous and untimely First Requests for Admissions and their failure to comply with the Discovery Order having been heard is hereby GRANTED. DENIED.

and the Court imposes reasonable attorneys fees and costs against Plaintiff – Opposer and its attorneys Crowell & Moring LLP, Attorney Dickerson M. Downing and Attorney Christine Kornett in the amount of \$ _____ jointly and severally.

By the Court

Dated:

Judge/Clerk

Certificate of Mailing

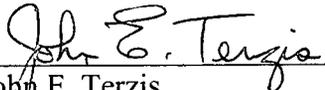
I hereby certify that the original Supplemental Objection is being deposited with the United States Postal Service with sufficient postage as First-Class mail in an envelope addressed to the Commissioner of Trademarks, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on June 13, 2008.



John E. Terzis

Certificate of Service

I hereby certify that a true and complete copy of the Supplemental Objection has been served on Dickerson M. Downing, Esq., Crowell & Moring LLP, 153 East 53rd Street, 31st Floor, New York, N.Y. 10022, by mailing a copy on June 13, 2008 via the United States Postal Service with sufficient postage as First-Class mail.



John E. Terzis