

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

REPLY TO OPPOSER'S RESPONSE TO APPLICANT'S
OBJECTIONS TO FIRST REQUESTS FOR
ADMISSIONS, INTERROGATORIES AND PRODUCTION

V.

MELISSA J. TERZIS,
Applicant. JUNE 18, 2008

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

REPLY TO OPPOSER'S RESPONSE PRESUMABLY DATED JUNE 10, 2008
TO APPLICANT'S OBJECTIONS TO FIRST REQUESTS FOR
ADMISSIONS, INTERROGATORIES AND PRODUCTION

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
Reply to Opposer's Response presumably dated and mailed on June 10, 2008 to
Applicant's Objections to Opposer's First Requests for Admissions, Interrogatories and
Production, which Opposer's Response was received by the Applicant in Washington,
D.C. on Friday, June 14, 2008 and by Applicant's attorney in Greenwich, CT on Monday,
June 16, 2008.



06-20-2008

APPLICANT'S OBJECTION TO OPPOSER'S FIRST REQUESTS
FOR ADMISSIONS, INTERROGATORIES AND PRODUCTION SHOULD
BE SUSTAINED

As previously enumerated in Applicant's Objection to Opposer's First Requests for Admissions, Interrogatories and Production, each dated May 23, 2008:

- a. the Discovery Order dated and mailed by the United States Patent and Trademark Office, Trademark Trial and Appeal Board, on October 31, 2007, 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 Requests for Admissions, Interrogatories or Production;
- 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 Requests for Admissions, Interrogatories or Production 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 by the United States Patent and Trademark Office, Trademark Trial and Appeal Board, on October 31, 2007.

Opposer's reliance upon 37 CFR sec. 2.120(a) and sec. 2.196, together with TBMP sec. 403.02 and sec. 112 is misplaced.

As stated in the Discovery Order entered by the United States Patent and Trademark Office on October 31, 2007, "the Answer was due Forty Days after the transmission date hereof (October 31, 2007). (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday)".

The Discovery Order further specifically provided: "Discovery and testimony periods are set as follows: . . . Discovery period to close on May 18, 2008". (Emphasis added).

The purpose of the Discovery Order was to set forth in writing of the expedited schedule for moving the case forward as quickly as possible and to allow the parties to conduct and complete their Discovery and testimony periods. The Discovery Order was not entered for the purpose of allowing a party to the litigation, such as the Opposer herein, to prolong and delay the litigation. It is indeed interesting to review the prolix Opposer's Response which fails to state why the Opposer, who is in effect the Plaintiff, 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.

Therefore, the only fair and reasonable method to prevent any further occurrence of this type or kind by the Opposer – Plaintiff, and/or its attorneys, is to Sustain Applicant’s Objections to the First Set of Admissions, Interrogatories and Production.

Moreover, no useful purpose would be served in allowing the Opposer – Plaintiff to ignore the Court Ordered Discovery Order and to continue its tactics of delay in this matter.

OPPOSER – PLAINTIFF HAS CONSISTENTLY MISREPRESENTED THE DATES CONTAINED IN ITS CERTIFICATE OF SERVICE AS TO SERVICE OF THE OPPOSER’S RESPONSE AND DISCOVERY HEREIN

The Opposer’s Response to Applicant’s Objections to Opposer’s First Set of Interrogatories, First Request for Production and First Requests for Admissions bears a Certificate of Service as of June 10, 2008 certified by Attorney Julia K. Smith.

Although the Opposer’s Response claims to have been dated and mailed on June 10, 2008, the Opposer’s Response to the Applicant’s Objections to Opposer’s First Requests for Admissions, Interrogatories and Production, was in fact actually received by the Applicant, Melissa J. Terzis, at 1700 17th Street NW, Apt 404, Washington, D.C. 20009 on Friday, June 14, 2008 and received by the Applicant’s attorney, John E. Terzis, at 15 Revere Road, Riverside, Greenwich, CT on Monday, June 16, 2008.

Since the world’s largest United States Postal Service (USPS) Distribution Center is located near 153 East 53rd Street, 31st Floor, New York, N.Y. 10022, on Eighth-Ninth Avenues, and the CT USPS distribution center is in the 06901 area of Stamford, CT near Applicant’s attorney’s office and the Washington, D.C. USPS distribution center is near the 20009 zip code, it is inconceivable that it would took Six (6) full days for an envelope

to go from 53rd Street in New York City to Greenwich, CT and 5 days to go from 53rd Street in New York City to Washington, D.C. unless it was in fact mailed on June 13, 2008, and not on June 10, 2008.

Thus, it is clear that the Opposer – Plaintiff has willfully misrepresented the dates in their Certificate of Service for the sole purpose of delaying the Court’s determination that the Opposer’s First Requests for Admission, Interrogatories or Production were filed and served late in violation of the Court Ordered Discovery Order dated October 31, 2007.

While this willful misrepresentation by the Opposer – Plaintiff isn’t the only time that Opposer – Plaintiff filed a Certificate of Service wherein the dates of service were also misrepresented.

The three Certificates of Service in connection with the Opposer – Plaintiff First Set of Admissions, First Set of Interrogatories and First Set of Production of Documents and Things, all certified that a copy of the documents were sent to the Applicant and to the Applicant’s attorney on May 19, 2008. Neither the Applicant nor the Applicant’s attorney received the documents until May 21, 2008.

In addition, the Service of the Documents were late and in violation of the Court Ordered Discovery Order requiring Opposer to complete its Discovery by May 18, 2008.

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 Requests for Admissions, First Requests for Interrogatories and 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 Opposer's Notice of Opposition dated October 31, 2007 for the Plaintiff - Opposer's for failure to comply with the Court Discovery 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, Attorney Julia K. Smith and Attorney Christine Kornett for their frivolous and untimely First Requests for Admissions, Interrogatories and Production 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 Opposer, E. I. DuPont de Nemours and Company, on October 31, 2007 be DENIED, and that the 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 dated June 10, 2008 for Admissions, Interrogatories and/or Production of Documents should be SUSTAINED particularly since the Opposer failed to comply with the Court's Discovery Order of October 31, 2007.

APPLICANT, MELISSA J. TERZIS

APPLICANT, MELISSA J. TERZIS

By Melissa J. Terzis
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Dated: Washington, D.C. 20009

On June 18, 2008

ORDER

The Objection to Opposer's First Requests for Admissions, Interrogatories and Production 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, Interrogatories and/or Production, 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, Attorney Julia K. Smith and Attorney Christine Kornett in the amount of \$ _____ jointly and severally.

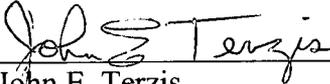
By the Court

Dated:

Judge/Clerk

Certificate of Mailing

I hereby certify that the original Reply to Opposer's Response to Applicant's Objection to Opposer's First Set of Admissions, Interrogatories and Production 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 18, 2008.



John E. Terzis

Certificate of Service

I hereby certify that a true and complete copy of Reply to Opposer's Response to Applicant's 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 18, 2008 via the United States Postal Service with sufficient postage as First-Class mail.



John E. Terzis