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

78922352

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

TTAB

E.I. Du PONT de NEMOURS AND COMPANY,
Opposer,

Proceeding No. 91180460

MARK: VELVET IN DUPONT

v.

MELISSA J. TERZIS, Applicant

JULY 11, 2008

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

APPLICANT'S RESPONSE/OBJECTION TO OPPOSER'S MOTION TO STRIKE
UNDER TBMP SEC. 517

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

In its prolix, mishmash, hodge-podge and jumbled frivolous Motion to Strike under TBMP sec. 517 dated July 3, 2008, but received by Applicant and Applicant's Attorney on July 7, 2008, the Opposer – Plaintiff willfully and intentionally failed to inform the Trademark Trial and Appeal Board of the following material and substantive facts that clearly confirm that the Motion to Strike by the Opposer – Plaintiff is frivolous, has no basis in fact or law and, accordingly, the Motion to Strike should be DENIED.

FACTS, BACKGROUND AND ARGUMENT:

FACT NO. 1: On May 23, 2008, Applicant, Melissa J. Terzis, an individual residing at the Admiral Dupont Condominium located at 1700 17th Street NW, Washington, D.C. 20009, filed Objections to Opposer's First Requests for Admissions



07-28-2008

(Exhibit 1), First Set of Interrogatories (Exhibit 2) and/or First Request for Production (Exhibit 3), all of which were dated May 19, 2008, but received by the Applicant and Applicant's attorney on May 21, 2008 (Exhibit 4). (Exhibits are in the Applicant's Response/Objection to Opposer's Motion to Compel Discovery filed herewith)

FACT NO. 2: 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) (Exhibit 5).

FACT NO. 3: There was never any Request made by the Opposer - Plaintiff to the Applicant or to the Applicant's Attorney on or prior to May 18, 2008 for an Extension of Time within which to file its First Requests for Admissions, First Set of Interrogatories and/or First Request for Production.

FACT NO. 4: There was never any Request made by the Opposer - Plaintiff to the Trademark Trial and Appeal Board on or prior to May 18, 2008 for an Extension of Time within which to file its First Requests for Admissions, First Set of Interrogatories and/or First Request for Production.

FACT NO. 5: No order was ever issued by the United States Patent and Trademark Office granting any extension of time to Opposer - Plaintiff for the filing of its Discovery, to wit: its First Requests for Admissions, First Set of Interrogatories and/or First Request for Production, which Discovery was to close on May 18, 2008.

FACT NO. 6: During the period from October 31, 2007, the date of the Trademark Trial and Appeal Board Discovery Order, 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 – Plaintiff never conducted any Discovery of any type or kind whatsoever in this matter even though Opposer - Plaintiff was ordered to do so by the Discovery Order of October 31, 2007. (Emphasis added).

FACT NO. 7: 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 – Plaintiff never contacted the Applicant or 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.

FACT NO. 8: Thus, it is patently clear that the Opposer – 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, even though Opposer – Plaintiff was ordered by the Discovery Order to complete its Discovery on May 18, 2008.

FACT NO. 9: Therefore, there can be no doubt that the Opposer – Plaintiff 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, wherein the Discovery period was mandated to close on May 18, 2008.

FACT NO. 10: As specifically enumerated by the Discovery Order entered by the Trademark Trial and Appeal Board on October 31, 2007, the ANSWER was subject to Trademark Rule 2.196 for an expiration date falling on Saturday, Sunday or a holiday, BUT NOT THE DISCOVERY AND TESTIMONY PERIODS AS SET FORTH IN THE DISCOVERY ORDER WHICH ARE SPECIFICALLY ENUMERATED AND MANDATED BY SPECIFIED DATES.

FACT NO. 11: The reliance by the Opposer - Plaintiff on 37 CFR sec. 2.196 and TBMP sec.112, to unilaterally and without a Court order or written agreement by the parties, to extend the Discovery Date from May 18, 2008 to May 21, 2008, is wholly misplaced. This fact is particularly relevant when coupled with the additional fact that Opposer – 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, even though Opposer – Plaintiff was ordered by the Discovery Order to complete its Discovery by and on May 18, 2008.

FACT NO. 12: There is no doubt that the Opposer – Plaintiff failed to timely comply with the Discovery Order entered by the Trademark Trial and Appeal Board on October 31, 2007 to complete its Discovery on or prior to May 18, 2008.

FACT NO.13: By submitting its current Motion to Strike certain portions of Applicant's – Defendant's Reply to Opposer's – Plaintiff's Objections to First Requests for Admissions, Interrogatories and Production dated June 18, 2008 (Exhibit 1 of Opposer's – Plaintiff's Motion to Strike), the Opposer – Plaintiff is now attempting to have the Trademark Trial and Appeal Board retroactively assist it to correct the fact that the Opposer – Plaintiff failed to timely complete its Discovery OR CONDUCT ANY DISCOVERY, on or prior to May 18, 2008 pursuant to the Board's own Discovery Order.

FACT NO. 14: The Opposer's – Plaintiff's attempt to circumvent the Discovery Order issued and entered by the Trademark Trial and Appeal Board on October 31, 2007, by completely ignoring the plain meaning of the Discovery Order to close all

Discovery by May 18, 2008, is another attempt by the Opposer – Plaintiff to ignore the plain meaning and wording of the Court Order, to impose its own meaning on the practice of law, to commence a Motion to Strike while there are six pending motions, objections and/or reply currently pending before the Board.

FACT NO. 15: The personal attack and execrate by the Opposer – Plaintiff on the Reply to Opposer’s Response to Applicant’s Objections to First Requests for Admissions, Interrogatories and Production dated June 18, 2008 filed by the Applicant claiming “that the Applicant’s Objections were unjustified and are part of an overall effort by Applicant to frustrate Opposer’s efforts to conduct discovery and flaunt the applicable rules of discovery and motion practice”, completely ignores the fact that the Opposer – Plaintiff failed to file its Discovery by May 18, 2008 as ordered by the Board’s Discovery Order, that Opposer – 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, even though the Opposer – Plaintiff was ordered by the Discovery Order to complete its Discovery on May 18, 2008, and that the Applicant had done absolutely nothing to hinder, oppose or delay the Opposer – Plaintiff in its efforts to conduct any Discovery in this case during the period from October 31, 2007 through May 18, 2008.

FACT NO. 16: In view of the fact that the Opposer – Plaintiff has failed to complete its Discovery by May 18, 2008 as ordered by the Board’ Discovery Order, and the Opposer – 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,

even though the Opposer – Plaintiff was ordered by the Discovery Order to complete its Discovery on May 18, 2008, what useful purpose would be served in granting the Opposer – Plaintiff any more time to continue this charade for the Discovery that Opposer – Plaintiff could have and should have conducted during the unimpeded period from October 31, 2007 through May 18, 2008.

FACT NO. 17: The Opposer’s – Plaintiff’s continued statements and allegations that: (a) at page 2, line 7 - 8, “the mailing envelope containing the document bears a postmark date of June 10, 2008”; (b) at page 4, lines 18 – 20, “the post mark mailing date on the envelope received by Applicant’s attorney which contained the document also was June 10, 2008”; and (c) at page 5, lines 7 – 8, “one of the mailing envelopes containing the June 10, 2008 document which bears a post mark date of June 10, 2008”, in its Motion to Strike is clearly intended by the Opposer – Plaintiff and its attorneys to confuse, perplex, mix indiscriminately and jumble the facts in a clear attempt to mislead the Trial and Appeal Board without telling the Board the TRUTH OF THE MATTER.

FACT NO. 18: Neither the Opposer – Plaintiff nor its attorney’s have produced any independent confirmation of the post mark from the United States Postal Service to confirm its continued unsupported statements that the document bears a post mark date of June 10, 2008. The reason that there is no independent confirmation from the United States Postal Service of the post mark is due to the fact that NONE OF THE ENVELOPES FROM OPPOSER – PLAINTIFF OR ITS ATTORNEY’S ADDRESSED TO APPLICANT – DEFENDANT OR ITS ATTORNEY BEAR AN INDEPENDENT POST MARK FROM THE UNITED STATES POSTAL SERVICE.

FACT NO. 19: The post mark continually referred to by the Opposer – Plaintiff

and its Attorney's in its Motion to Strike and set forth above as FACT NO. 17, is the post mark that the Attorney's for the Opposer – Plaintiff have personally and voluntarily placed upon the envelopes themselves by using the Postage Meter from Hasler Company, which is similar to the well-known Pitney Bowes mailing machine. As is universally known, the date on the Postage Meter can be easily manipulated, changed, altered, pre-dated and/or post-dated by anyone having access to the Postage Meter.

FACT NO. 20: Thus, there can be on doubt that the Opposer – Plaintiff and its Attorney's attempt to rely upon the self-produced mailing date on the Hasler Postage Meter is completely disingenuous and lacks any candor.

FACT NO. 21: The Opposer's – Plaintiff's continued statements and allegations that: (a) at page 1, lines 6 -7 , “Applicant, without any substantive proof”, (b) at page 2, line 11, “Applicant claims, without proof”; (c) at page 2, lines 15 –16, “Not surprisingly, neither Applicant nor its attorney has submitted any sworn Affidavits or Declarations in support of these claims”; (d) at page 6, lines 11 – 12, “claim of fraud on such flimsy ‘evidence’” and “that there is absolutely no evidence”, completely ignores the fact that the Applicant and Applicant's Attorney each personally signed the Reply to Opposer's Response Presumably dated June 10, 2008 to Applicant's Objections to First Request for Admissions, Interrogatories and Production.

It should also be noted that the signing of any pleading, motion, objection or request constitutes a Certificate that the signer, whether it be an attorney or party, has read such document, that to the best of the signer's knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.

By letter dated July 2, 2008, Applicant – Defendant and its Attorney further

confirmed to the Opposer – Plaintiff and its attorney that the Reply dated June 18, 2008 which was personally signed by Applicant – Defendant and Applicant’s attorney represented an affirmative affirmation of each and every fact contained in the Reply. See Exhibit 6.

WHEREFORE, the Applicant, Melissa J. Terzis, hereby moves the United States Patent and Trademark Office, Trademark Trial and Appeal Board for an Order to Deny the Opposer’s – Plaintiff’s Motion to Strike under TBMP sec. 517.

APPLICANT, MELISSA J. TERZIS

APPLICANT, MELISSA J. TERZIS

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Dated: July 11, 2008

ORDER

Applicant’s – Defendant’s Response/Objection to Opposer’s Motion to Strike under TBMP sec. 517 having been heard is hereby SUSTAINED. OVERRULED.

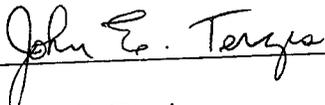
By the Court

Dated:

Judge/Clerk

Certificate of Mailing

I hereby certify that the original Applicant's Response/Objection to Opposer's Motion to Strike 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, Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on July 11, 2008.



John E. Terzis

Certificate of Service

I hereby certify that a true and complete copy of the Applicant's Response/Objection to Opposer's Motion to Strike 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 July 11, 2008 via the United States Postal Service with sufficient postage as First-Class mail.



John E. Terzis