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

Proceeding	91180460
Party	Plaintiff E. I. du Pont de Nemours and Company
Correspondence Address	Dickerson M. Downing Crowell & Moring, LLP 153 East 53rd Street, 31st Floor New York, NY 10022 UNITED STATES edocket@crowell.com, ddowning@crowell.com, jksmith@crowell.com, ckornett@crowell.com
Submission	Opposition/Response to Motion
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Signature	/jks/
Date	06/10/2008
Attachments	Opposer's Response to Applicant's Objections To Opposer's First Set of Discovery Requests.pdf (13 pages)(455761 bytes)

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

In the Matter of Application Serial No. 78/922,352
Published in the Official Gazette of July 17, 2007

E.I. DU PONT DE NEMOURS AND COMPANY, Opposer, v. MELISSA J. TERZIS, Applicant.	Opposition No. 91/180,460 Mark: **VELVET IN DUPONT**

OPPOSER'S RESPONSE TO APPLICANT'S OBJECTIONS TO OPPOSER'S FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR PRODUCTION AND FIRST REQUESTS FOR ADMISSIONS

I. INTRODUCTION

Opposer, E.I. du Pont de Nemours and Company ("Opposer") submits this response to the "Objections" of Melissa J. Terzis ("Applicant") to Opposer's First Set of Interrogatories, First Request For Production and First Requests For Admissions dated May 23, 2008.[1] ("Objections").

Applicant's Objections, which are based entirely on a claim that the discovery requests were untimely, are without merit. Opposer clearly served its First Set of Interrogatories, First Requests For Production and First Requests for Admissions ("Discovery Requests") within the discovery period set by the Trademark Trial and Appeal Board ("TTAB" or "Board") as automatically extended by Trademark Office

[1] Applicant filed separate Objections to each of Opposer's three discovery requests. As the Objections are virtually identical, Opposer believes a single response should be appropriate.

Rules that apply when, as here, the scheduled last day for discovery falls on a Sunday.

II. FACTS PERTINENT TO APPLICANT'S OBJECTIONS

On October 31, 2007, the TTAB issued a Notice of Trial Dates in this Opposition setting the close of discovery for Sunday May 18, 2008. Opposer served its Discovery Requests on Applicant on Monday, May 19, 2008 by first class mail. Copies of the Certificates of Service for each discovery request are attached as Exhibit 1.

On or about May 23, 2008, Applicant served separate Objections to each of the three discovery requests. In each of the Objections, Applicant contended that the Discovery Requests were not served until after the Discovery Period was closed and that, as a result, Applicant should not be required to respond and monetary and other sanctions, including the dismissal of the Notice of Opposition, should be entered against Opposer.

III. ARGUMENT

A. Opposer's Discovery Requests Were Timely Served

Trademark Office Rules provide that discovery requests may be served through the last day of the discovery period. See 37 CFR § 2.120(a) and TBMP § 403.02. The Rules further provide that when the last day for taking any action in the Trademark Office falls on a Saturday, Sunday or Federal holiday, the action may be taken on the next succeeding business day. 37 CFR § 2.196 and TBMP § 112.

When service is made by first-class mail, the date of mailing will be considered the date of service. 37 CFR § 2.119(c).

The TTAB scheduled the close of discovery in this proceeding for Sunday May 18, 2008. Opposer served its discovery, as permitted, on the next business day namely, Monday May 19, 2008. Applicant's Objections, therefore, are entirely without merit and should not be considered.[2]

B. <u>Applicant's Request for Sanctions Has No Basis in Law or Fact</u>

Opposer's discovery requests were timely. Accordingly, Applicant's request for sanctions should be denied without further consideration.

Applicant, in fact, makes no attempt to cite any legal support for its request for sanctions. Certainly none of the applicable Trademark Office Rules would support the awarding of any sanctions, much less monetary sanctions, against Opposer even assuming *arguendo* that Opposer's service of discovery was untimely. Applicant seems to base its request for sanctions on the incorrect premise that Opposer has violated a "Discovery Order" of the Board. In doing so, Applicant apparently confuses the Notice of Trial Dates issued by the Board with a Discovery Order in which the Board has ordered one party to correct or address a discovery deficiency.

[2] Applicant erroneously cites May 21, 2008 as the date of service, which may be the date Applicant received the requests by first class mail following the actual service by mail on May 19, 2008.

Moreover, Opposer was under no more obligation to discuss its decision to serve discovery with Applicant any more than Applicant was under any duty to discuss its decision not to serve discovery with Opposer.[3]

Finally, the Board has no authority to enter monetary sanctions or attorneys fees, as requested by Applicant, under any circumstances. See 37 CFR § 2.120(g); TBMP §§ 502.05 and 527.02.

C. Opposer Reserves the Right To File A Sur-Reply In The Event Applicant Amends or Expands The Nature of Its Objections

Opposer notes that Applicant's "Objections" do not seem to comport with any known motion and otherwise are procedurally questionable as a result of Applicant's failure to rely on any case law, statutory law or Trademark Office Rules in any supporting memorandum. More importantly, while accusing Opposer of filing frivolous discovery requests, the Applicant openly ignores fundamental and unequivocal Trademark Office Rules regarding timeliness and sanctions. In the event Applicant should seek to correct substantive and procedural deficiencies of its Objections or to amend or expand the nature of its Objections in a reply brief, Opposer reserves the right to request to file a sur-reply thereto to address these new issues.

IV. CONCLUSION

Opposer undeniably served its Discovery Requests in a timely manner. Accordingly, Opposer hereby respectfully requests that Applicant's Objections be

[3] The Notice of Opposition was filed in this proceeding on October 31, 2007 prior to the implementation of the new rules regarding discovery that became effective on November 1, 2007.

overruled and denied and that Applicant be ordered to promptly respond to Opposer's Discovery Requests. In addition, Opposer also respectfully requests that Applicant's request for the Board to enter a Judgment of Dismissal of the Notice of Opposition be denied, that Applicant's request for sanctions against Opposer's attorneys along with the imposition of attorney's fees and costs be denied and finally, that Applicant's request that the Notice of Opposition be denied and to permit the registration of the mark VELVET IN DUPONT (SN 78/922,352) be denied.

Respectfully submitted,

CROWELL & MORING LLP

By: Julia K. Smith

Dickerson M. Downing
Julia K. Smith
153 East 53rd Street
31st Floor
New York, New York 10022

Attorneys for
E.I. du Pont de Nemours and Company

Dated: New York, New York
June 10, 2008

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June 2008, a true and correct copy of the foregoing document was served on counsel for the Applicant, by first class mail to:

John E. Terzis, Esq.
15 Revere Road, Riverside
Greenwich, CT 06878-1014

Melissa J. Terzis
1700 17th Street NW, Apt. 404
Washington, D.C. 20009

Julia K. Smith

Julia K. Smith

EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In the Matter of Application Serial No. 78/922,352

E.I. DU PONT DE NEMOURS AND COMPANY, Opposer, v. MELISSA J. TERZIS, Applicant.	Opposition No. 91/180,460 Mark: **VELVET IN DUPONT**

OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Patent and Trademark Office Rules of Practice, Opposer E.I. du Pont de Nemours and Company, hereby requests that Applicant Melissa J. Terzis, produce the documents and things identified below for inspection and copying at the offices of Crowell & Moring, LLP, 153 East 53rd Street, 31st Floor, New York, New York 10022, within thirty (30) days of the date of service hereof or at such other time and place as may be mutually agreed upon by the parties.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May 2008, a true and correct copy of the foregoing document was served on counsel for the Applicant, by first class mail to:

John E. Terzis, Esq.
15 Revere Road, Riverside
Greenwich, CT 06878-1014

Melissa J. Terzis
1700 17th Street NW, Apt. 404
Washington, D.C. 20009

Christine Kornett

Christine Kornett

NYIWDMS: 10372477_1

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E.I. DU PONT DE NEMOURS AND COMPANY, Opposer, v. MELISSA J. TERZIS, Applicant.	Opposition No. 91/180,460 Mark: **VELVET IN DUPONT**

OPPOSER'S FIRST REQUESTS FOR ADMISSIONS

Opposer E.I. du Pont de Nemours and Company ("Opposer"), hereby requests that Applicant Melissa J. Terzis ("Applicant"), admit or deny the truth of each of the statements set forth below within thirty (30) days of service thereof pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 36 of the Federal Rules of Civil Procedure.

DEFINITIONS

For the purposes of these Requests for Admission, Opposer incorporates by reference the Definitions set forth in "Opposer's First Request for the Production of Documents and Things."

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May 2008, a true and correct copy of the foregoing document was served on counsel for the Applicant, by first class mail to:

John E. Terzis, Esq.
15 Revere Road, Riverside
Greenwich, CT 06878-1014

Melissa J. Terzis
1700 17th Street NW, Apt. 404
Washington, D.C. 20009

Christine Kornett

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NYIWDMS: 10372478_1

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OPPOSER'S FIRST SET OF INTERROGATORIES

Opposer E.I. du Pont de Nemours and Company ("Opposer"), hereby requests that Applicant Melissa J. Terzis ("Applicant"), respond in full to the Interrogatories set forth below, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure.

DEFINITIONS

For the purposes of these Interrogatories, Opposer incorporates by reference the Definitions set forth in "Opposer's First Request for the Production of Documents and Things."

INSTRUCTIONS

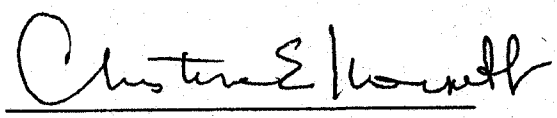
1. In answering these Interrogatories furnish all information, however obtained, that is available to Applicant or subject to Applicant's reasonable inquiry,

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May 2008, a true and correct copy of the foregoing document was served on counsel for the Applicant, by first class mail to:

John E. Terzis, Esq.
15 Revere Road, Riverside
Greenwich, CT 06878-1014

Melissa J. Terzis
1700 17th Street NW, Apt. 404
Washington, D.C. 20009



Christine E. Kornett

NYIWDMS: 10372479_1