

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

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Mailed: January 14, 2009

Opposition No. 91181022

American Deli Plus, Inc.

v.

Clean Pass of Atlanta

Linda Skoro, Interlocutory Attorney

Proceedings herein are suspended pending disposition of applicant's "Motion to Deny the Opposition to Applicant's Trademark Application" filed on January 8, 2009.

Applicant's motion would generally be considered a motion to dismiss under Fed. R. Civ. P. 12(b)(6). However, within its motion, applicant references documents outside the record, which converts the motion to a motion for summary judgment. Upon reading the motion, applicant indicates that these other documents were attached to its "initial opposition response" filed March 1, 2008.

Reference to a document attached to another pleading, does

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not make it of record for consideration in connection with the motion for summary judgment, but rather, must be properly introduced by affidavit. See Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 528.05(b) (2d ed. rev. 2004), and *Missouri Silver Pages Directory Publishing Corp. Inc. v. Southwestern Bell Media, Inc.*, 6 USPQ2d 1028, 1030 n.9 (TTAB 1988). Applicant is strongly urged to obtain competent trademark counsel.

It is also noted that opposer filed a motion for suspension January 7, 2008 based on applicant's filing and indicated it too was going to file a motion for summary judgment.

Accordingly, proceedings herein are suspended. Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. See Trademark Rule 2.127(d).

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

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By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>