

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

Mailed: February 17, 2009

Opposition No. **91181022**

American Deli Plus, Inc.

v.

Clean Pass of Atlanta

Linda Skoro, Interlocutory Attorney

On January 14, 2009 the Board issued a suspension order in this proceeding in response to applicant's filing of "Motion to Deny the Opposition to Applicant's Trademark Application" on January 8, 2009. In that order it was noted that applicant referenced matters outside the pleadings and thus the motion was going to be considered a motion for summary judgment. Applicant was also advised at that time that reference to documents attached to another pleading are not of record and available for consideration in connection with the motion for summary judgment. Documents must be attached as exhibits to the motion itself for consideration.

On February 3, 2009, opposer filed a request for clarification of the response times in light of whether applicant was going to refile its motion to make the referenced documents appropriately of record, yet at the same time responded to the motion as if it were a motion for

summary judgment. On February 12, 2009 applicant filed a "Cross Motion for Summary judgment against Opposition's [sic] Motion for Summary Judgment". This "renewed" motion is an expanded version of its January 8, 2009 motion and is going to be considered applicant's motion for summary judgment, not a cross motion.

In light of this re-filing, opposer is allowed thirty days¹ from the date of the certificate of service of the February 12, 2009 motion to file its full response.

It is noted that applicant attached additional documents to its renewed motion. To the extent they are identified in the motion, they will be considered. However, the Board cannot consider the newspaper articles that are written in Korean. It is also noted that in the renewed motion applicant again refers to an "Exhibit A" attached to "Applicant's Motion to Deny the Opposition to Applicant's Trademark application initial opposition." This again is a reference to documents not attached to the motion and will not be considered.²

¹ Plus the five days allowed for service by U.S. Mail. 37 CFR § 2.119(c).

² Further, there were not attachments to applicant's "Motion to Deny the Opposition to Applicant's Trademark Application" filed January 8, 2009. In that motion, applicant referenced "Exhibit A to its initial opposition response". It also is not clear to what exhibits applicant is referring. There were documents attached as Exhibits to applicant's first informal answer filed March 1, 2008 and different documents attached to applicant's amended formal answer filed April 26, 2008. None of these

Proceedings otherwise remain suspended.

documents are appropriate for consideration as evidence for the motion for summary judgment now under consideration.