

ESTTA Tracking number: **ESTTA265579**

Filing date: **02/10/2009**

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

Proceeding	91183877
Party	Plaintiff Mr. RobbieCalvo
Correspondence Address	Melissa M. Allen Attorney At Law 3200 West End Avenue, Suite 500 Nashville, TN 37203 UNITED STATES nashvillelaw@yahoo.com
Submission	Opposition/Response to Motion
Filer's Name	Melissa M. Allen
Filer's e-mail	nashvillelaw@yahoo.com
Signature	/Melissa M. Allen/
Date	02/10/2009
Attachments	Opp.Response.to.Mot.to.Dismiss.02.10.09.pdf (16 pages)(3856161 bytes)

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

In the matter of: Federal Trademark Application by Sheilah C. Griggs
Serial Number: 77269747
Filed: August 31, 2007
Mark: ENGLISH ACCENTS
Published in the
Official Gazette: March 4, 2008

Robbie Calvo, an individual)	
)	
Plaintiff/Opposer,)	
)	
v.)	Opposition No. 91183877
)	
Sheilah C. Griggs,)	
)	
Defendant/Applicant.)	

OPPOSER’S RESPONSE TO APPLICANT’S MOTION TO DISMISS

Opposer Robbie Calvo does hereby respond and oppose “Applicant’s Motion To Dismiss” on the following grounds.

Applicant’s election to proceed pro se did not entitle Applicant to fail to comply with the Opposition process or to then rely on such non-compliance as grounds to have this proceeding dismissed.

The filing of Applicant’s “Motion to Dismiss” filed January 30, 2009 was the “first appearance” of legal counsel for Applicant since Opposer’s “Notice of Opposition” was filed on May 2, 2008. Until the filing of this “Motion to Dismiss”, Applicant chose not to be represented by counsel and to proceed *pro se*.

Applicant was within Applicant’s rights to proceed *pro se*. However, Applicant’s *pro se* status did not entitle Applicant to fail to comply with the TTAB Rules or to fail to

communicate with Opposer's counsel. It also did not entitle Applicant to be "above" the Rules or to rely on this non-compliance as grounds to have this proceeding dismissed.

Opposer has exercised extraordinary care not to abuse Applicant's pro se status.

Applicant alleges that Opposer has failed to aggressively prosecute its case. In fact, what Applicant characterizes as a failure to prosecute has actually been Opposer's efforts to exercise extraordinary care with each step of these proceedings to respect and not to abuse Applicant's *pro se* status or Applicant's lack of knowledge of these proceedings.

Applicant's own untimely filing of Applicant's Answer was the catalyst which caused the parties to be unable to comply with their initial TTAB set deadlines.

The initial TTAB Notice to the parties of May 3, 2008 by this Board did set the deadlines relevant to these proceedings. However, by that notice, Applicant's own Answer was due June 12, 2008.

Applicant did not file Applicant's Answer until July 11, 2008, one month after the deadline by which it was due according to the TTAB's own schedule.

If Applicant now wants to live by the TTAB schedule, Applicant's own Answer was not timely filed according to that very schedule.

In an attempt to accommodate the scheduling issues created by the *pro se* Applicant's untimely filing of its Answer, Opposer sought to continue the deadlines in the TTAB Notice, and attempted to do so by consent of the parties.

To that end, on July 30, 2008 Opposer sent a letter to Applicant seeking Applicant's consent to extend the TTAB deadlines by sixty (60) days (See copy of said letter attached as Exhibit A, without attachments). As an attachment to that letter,

Opposer also included a copy of its proposed “Motion To Extend All Deadlines in Proceedings”, which Opposer disclosed to Applicant would be filed if Applicant failed to grant Applicant’s consent to such an extension.

Applicant failed to respond to the July 30, 2008 letter.

Therefore, on August 8, 2008, after giving Applicant adequate time to grant Applicant’s consent or otherwise respond to the request to consent to extend the deadlines, Opposer filed a unilateral “Motion To Extend All Deadlines in Proceedings” and sent Applicant a letter explaining that action (See copy of said letter attached as Exhibit B, without attachments). Opposer requested that all deadlines be continued for a period of sixty (60) days on various grounds, including that Applicant filed its Answer thirty (30) days after the TTAB deadline, and that Applicant was unrepresented by counsel, thus making communication with Applicant more difficult.

Applicant’s election to proceed pro se combined with Applicant’s failure to cooperate or communicate with Opposer caused delay in prosecution of this case.

Opposer was cognizant that it was now not possible to meet the deadlines set by the TTAB. Opposer did not want to abuse Applicant’s *pro se* status by proceeding without deadlines having been formally set and made clear to Applicant by the TTAB.

On November 6, 2008, the TTAB by Paralegal Specialist Nicole M. Thier denied Opposer’s “Motion to Extend” citing 72 Fed. Reg. 42242, 42245 (Aug. 1, 2007) which states that it is “unlikely” that the Board will find good cause for a motion to extend “if the motion is filed after answer but prior to discovery conference, precisely because the discovery conference itself provides an opportunity to discuss settlement.” (emphasis added). In its Ruling, this Board did further state: “The parties are reminded that they

share responsibility to conference to discuss the scope of the pleadings, the possibility of settlement and planning for disclosures and discovery” (emphasis added).

Applicant received this same Ruling, including the admonishment to “share responsibility” to conference sent by the Board itself.

On November 10, 2008, Opposer’s counsel did send a letter to Applicant (See copy of said letter attached as Exhibit C, without attachments) seeking to schedule a time to so hold a Discovery Conference, to discuss settlement, and to indeed pursue the possibility of resolution of this matter without unnecessary Discovery or additional steps by either party or this Board. Again, Opposer took extra precaution to explain to Applicant what was required of Applicant and the conditions of such a conference.

Applicant failed to respond to this letter or this request.

Opposer was in the same predicament it has been in when filing its first “Motion to Extend: Opposer needed the extension due to Applicant’s initial untimely filing of its Answer, Opposer risked being denied an extension because of its failure to hold a Discovery conference with Applicant, yet Opposer could not hold such a conference due to Applicant’s refusal to engage in such as conference.

Therefore, on January 22, 2009, Opposer sent another letter again seeking to schedule a Discovery conference with Applicant (See copy of said letter attached as Exhibit D, without attachments).

Given Applicant’s history of failing to cooperate or communicate, and now accepting that the parties likely could not have any voluntary Discovery conference or settlement conference, Opposer then also served Discovery upon Applicant, and simultaneously filed a second “Motion to Extend All Deadlines in Proceedings” (filed

January 22, 2009) as well as “Opposer’s Request for Discovery Conference” (filed January 23, 2009) requesting that the TTAB intervene and set a date for a Discovery conference.

In response to these last actions by Opposer, Applicant engaged counsel whose first action was to file this “Motion to Dismiss”.

Re-setting all deadlines in this matter is the most prudent course of action now that Applicant is represented by counsel.

Applicant makes inconsistent arguments in support of its Motion to Dismiss:

Applicant filed its own Answer in an untimely manner based on the TTAB’s initial scheduled deadlines, and presumably wants that Answer to be treated as timely, yet wants Opposer’s case to be dismissed for failing to adhere to other deadlines in that same schedule.

Applicant elected not only to proceed *pro se* but also to refuse to cooperate or communicate with Opposer. Now that Applicant has counsel, Applicant argues that Opposer’s prudent attempts to proceed cautiously at every step of this proceeding and not to take advantage of Applicant’s *pro se* status constitute the failure to prosecute and thus grounds for dismissal. Had Opposer aggressively prosecuted the case, Applicant could argue that Applicant was *pro se* and did not comprehend those rights.

The issues between the parties to date have been procedural and largely due to Applicant’s *pro se* status and failure to cooperate or communicate with Opposer. These issues should be resolved since Applicant now has counsel: The parties can now easily schedule a Discovery conference, progress to the other steps in this proceeding, and actually address the merits of this proceeding.

Pending approval of this Board, Opposer is willing to work directly with Applicant's counsel to set a Discovery conference date as soon as possible, as well as to set by consent new dates for all remaining actions in this proceeding.

If Applicant's counsel is not willing to consent to dates for such actions, then Opposer has already filed "Opposer's Request for Discovery Conference" (filed separately on January 23, 2009) and also "Opposer's Motion for Extension of all Deadlines in Proceedings" (filed separately on January 22, 2009) and thus has respectfully asked this Board to so set dates for such actions.

WHEREFORE Opposer Calvo respectfully moves the Trademark Trial and Appeal Board to deny Applicant's Motion to Dismiss.

Date: February 10, 2009.

Respectfully submitted,



Melissa M. Allen
Attorney for Opposer/Plaintiff Robbie Calvo
3200 West End Avenue, Suite 500
Nashville, TN 37203
Tel. 615.783.2880
Fax: 615.783.1606

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of this document has been filed with the Trademark Trial and Appeal Board electronically through its website and that a true and correct copy hereof has been served on Applicant/Defendant by mailing via first class pre-paid Express U.S. Mail to:

Mr. Edward D. Landquist, Esq.
Attorney for Applicant Sheilah C. Griggs
Wadley & Patterson, P.C.
Roundabout Plaza
1600 Division Street, Suite 500
Nashville, TN 37203

as of the 10th day of February, 2009



Melissa M. Allen

Exhibit A



Melissa M. Allen
Attorney At Law

FILE COPY

By Overnight Delivery

July 30, 2008

Ms. Sheilah C. Griggs
c/o Point 3 Media, &
Idiom Entertainment
1305 Clinton Street, Suite 300
Nashville, TN 37203

Re: TTAB Opposition Proceeding #: 91183877
Serial #: 77269747
Mark: ENGLISH ACCENTS

Dear Ms. Griggs:

I represent the legal interests of Mr. Robbie Calvo (hereafter, "my client") with regard to the following matter.

I am writing to you with regard to the above-referenced Opposition Proceeding currently pending with the Trademark Trial and Appeal Board regarding the federal trademark application you filed for the mark ENGLISH ACCENTS. I am writing to you directly as it appears you have not retained counsel.

On May 3, 2008 the TTAB set forth certain deadlines with which we must comply. Since your Answer was filed almost 30 days after the first requisite deadline set by the TTAB, we are already behind our required Discovery deadlines. We need to address this situation as soon as possible or else be in non-compliance with the Board's deadlines.

I am proposing that all of the deadlines set by the TTAB in this matter be continued for sixty (60) days. I can make this Motion one of two ways:

#1. You can voluntarily consent to the Motion. This is common practice when the issues at hand benefit both parties or are a courtesy from one party to the other. If you are able to so consent, then I will inform the TTAB that we have agreed, and will go ahead and file the document as is, with the addition of indicating that we have agreed to the contents of the Motion; or

#2. You do not have to consent. In this case, I will file the Motion as the sole request of my client. In that case, the Motion will be filed as presented herein.



Melissa M. Allen
Attorney At Law

Please review the attached Motion. This Motion has not yet been filed. I am sending it to you in advance so that you can see what I plan to file. If you can consent to its terms, please indicate that in writing to me by no later than Wednesday, August 6, 2008. You may mail or fax your letter to me.

If I do not receive your consent, I plan to file this Motion at the close of business on Wednesday, August 6, 2008.

Please understand that a Motion, even if agreed to by all parties, is not effective until the TTAB officially grants it.

Thank you.

Yours Very Truly,

Melissa M. Allen
MMA/mw
Encl.

Cc: Mr. Robbie Calvo

Exhibit B



Melissa M. Allen
Attorney At Law

FILE COPY

August 8, 2008

Ms. Sheilah C. Griggs
c/o Point 3 Media, &
Idiom Entertainment
1305 Clinton Street, Suite 300
Nashville, TN 37203

Re: TTAB Opposition Proceeding #: 91183877
Serial #: 77269747
Mark: ENGLISH ACCENTS

Dear Ms. Griggs:

Attached please find the Opposer's Motion to Extend All Deadlines in Proceedings, which was filed online with the TTAB today, August 8, 2008.

You should previously have received my letter of July 30, 2008 explaining the need for this Motion and giving you the opportunity to consent to the terms thereof. Since I did not hear from you, I filed this Motion unilaterally and not as a consent motion.

Thank you.

Yours Very Truly,

Melissa M. Allen

MMA/mw
Encl.

Cc: Mr. Robbie Calvo

Exhibit C

FILE COPY



Melissa M. Allen
Attorney At Law

November 10, 2008

Ms. Sheilah C. Griggs
c/o Point 3 Media, & Idiom Entertainment
1305 Clinton Street, Suite 300
Nashville, TN 37203

Re: TTAB Opposition Proceeding #: 91183877
Serial #: 77269747
Mark: ENGLISH ACCENTS

Dear Ms. Griggs:

As you may know, the parties in an Opposition Proceeding are required to have a "discovery conference" in order to discuss the possibility to settlement as well as to discuss their discovery. This will take the form of a phone call of about 30 minutes to an hour depending on the issues.

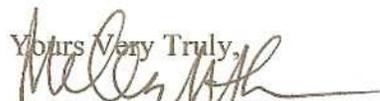
If you were represented by an attorney, this call would be between myself and that person. Since you are not represented by an attorney, this phone call will be between you and me. Please contact my office as soon as possible at (615) 783.2880 and ask for my assistant Lanita and let her know:

- A day and time in the next ten (10) days when you can be available for this phone call.
- The best phone number at which you will be reachable at that time. I will call you at the designated time.

My client Robbie Calvo will not be on this phone call.

If you have legal counsel, they should contact me about this call. If not, then only you as a party may be on this phone call.

Thank you.

Yours Very Truly,

Melissa M. Allen
MMA/mw
Encl.

Cc: Mr. Robbie Calvo

Exhibit D



Melissa M. Allen
Attorney At Law

FILE COPY

By Overnight Delivery

January 22, 2009

Ms. Sheilah C. Griggs
c/o Point 3 Media, & Idiom Entertainment
1305 Clinton Street, Suite 300
Nashville, TN 37203

Re: TTAB Opposition Proceeding #: 91183877
Serial #: 77269747
Mark: ENGLISH ACCENTS

Dear Ms. Griggs:

As I have expressed to you in the past (see my letter to you of November 10, 2008) and as you may learn by reviewing the Board's admonishment to you of November 6, 2008, the parties in an Opposition Proceeding are required to have a "discovery conference" in order to discuss the possibility to settlement as well as to discuss their discovery.

You have failed to comply with this requirement.

Though my client had every intention of conforming with this requirement, he cannot do so without your cooperation. Thus, he has authorized me to proceed to the next phase in this process without having held such a conference.

Therefore, enclosed please find "Opposer's First Set of Requests for Admissions, Requests for Production of Documents, and Interrogatories" for your response thereto.

Enclosed please also find "Opposer's Motion to Extend All Deadlines in Proceedings".

Thank you.

Yours Very Truly,

Melissa M. Allen
MMA/mw
Encl.

Cc: Mr. Robbie Calvo