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Filing date: **08/18/2008**

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

Proceeding	91184531
Party	Defendant Agave Rose Wine Company, LLC
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Submission	Other Motions/Papers
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Date	08/18/2008
Attachments	Gust_Ros.pdf (14 pages)(308404 bytes)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Chatam International Incorporated,

Opposer,

v.

Agave Rose Wine Company, LLC,

Applicant.

Opposition No. 91184531

S.N. 77254024

Mark: JACK QUINN

RESPONSE IN OPPOSITION TO OPPOSER'S
"NOTICE OF NO SERVICE OF APPLICANT'S ANSWER
TO THE NOTICE OF OPPOSITION"

There is no dispute over the point that Applicant's Answer was timely filed with the Trademark Trial and Appeal Board ("TTAB") on July 21, 2008. By concession in Opposer's own "Notice," there is no dispute over the point that Opposer had actual knowledge of the filing of the Answer within eleven days after it was filed.

Opposer alleges that it did not receive the Answer in the mail and leaps to the conclusion that “no proper service ... was made.” Opposer seeks a “default judgment.”

Opposer’s conclusion that purported non-receipt of the mailed Answer is somehow proof that it was not mailed is incongruous. With the overwhelming volume of mail passing daily through the U.S. Post Office, virtually everyone has incurred instances of mail that has not been delivered. If Opposer, as it alleges, did not receive the Answer in the mail, it does not follow that it was not mailed.

Opposer could not and has not alleged that any substantive rights have been compromised.

Opposer’s efforts at placing form over substance are unsupported by law. Opposer’s “Notice” contains no citation of authority whatsoever.

1. There is a presumption of proper notice, and it is not rebutted by a mere statement to the effect that the item was not received. Under analogous circumstances, the court in *In re Jewelcourse, Inc., et al.*, 150 B.R. 576 (Bkrtcy. M.D. Pa. 1992), citing *In re Barnes*, 114 B.R. 579 (Bkrtcy. S.D. Ill. 1990), noted as follows:

Where the court file shows a certificate of mailing and a complaining party submits an affidavit declaring notice was not received, the weight of the evidence favors the court’s certificate. As stated in *Ricketts*:

If a party were permitted to defeat the presumption of receipt of notice resulting from the certificate of mailing by a simple affidavit to the contrary, the scheme of deadlines and bar dates would come unraveled.

In re Jewelcourse, Inc., 150 B.R. at 578.

On the basis of the quoted language, the *Jewelcourse* court concluded that “an allegation that no notice was received does not, by itself, rebut the presumption of proper notice.” *Id.*, 150 B.R. at 578.

2. It is well-established that “[a]ffidavits of service establish a *prima facie* case that service was effected or attempted in the manner described therein.” *Nature’s First, Inc. v. Nature’s First Law, Inc.*, 436 Fed. Supp. 2d 368 (Conn. 2006). In the context of conflicting affidavits over service, doubts should be resolved in favor of the party asserting proper service. *Id.*, 436 Fed. Supp. 2d at 374.

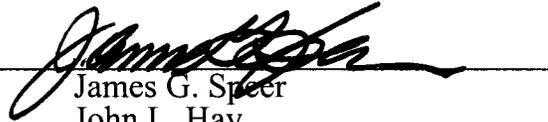
3. There is no possible prejudice to Opposer. Perhaps for the very reasons set forth above with respect to the tasks faced by the U.S. Postal Service, Opposer checked with the TTAB’s inquiry system for the Answer it knew was forthcoming. Opposer found, as expected, that an Answer had been timely filed. Opposer had the choice of printing out the Answer. The Answer, in turn, required no action of any kind by way of response from Opposer.

Applicant is mindful that the Patent and Trademark Office may, in its discretion, require additional evidence to determine whether a document bearing a certificate of mailing was timely mailed or transmitted on the date stated in the certificate. 37 CFR § 2.197 (c). In response, Applicant has attached the affidavits of John L. Hay, who prepared Applicant’s Answer and signed the certificate of mailing (Exhibit A), as well as the affidavits of Signe A. Wray and Pamela A. Worth, the secretaries in Mr. Hay’s law firm who would have been responsible for handling the actual mailing of the Answer to Opposer (Exhibits B and C, respectively).

Conclusion.

By reason of the foregoing, Applicant respectfully requests that proper service upon Opposer be confirmed and that Opposer's requests, including for a default judgment, be denied.

Respectfully submitted the 18th day of August, 2008.



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CERTIFICATE OF SERVICE

This certifies that Applicant's Response in Opposition to Opposer's "Notice of No Service of Applicant's Answer to the Notice of Opposition" was served on Opposer's attorney of record by facsimile, email and U.S. Mail this date addressed as follows:

Paul M. Lewis
Charles Jacquin et Cie. Inc.
2633 Trenton Ave.
Philadelphia, PA 19125
plewis@jacquins.com
Fax: 215.425.9438

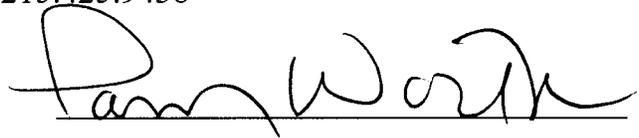
A handwritten signature in black ink, appearing to read "Paul M. Lewis", is written over a horizontal line.

EXHIBIT A

I have read this affidavit and I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

DATED this 18 day of August, 2008.

John L. Hay
John L. Hay
Attorney for Applicant AWC

SUBSCRIBED AND SWORN to before me this 18th day of August, 2008.

Signe Ann Wray
Notary Public

My Commission Expires:

July 9, 2012



EXHIBIT B

I have read this affidavit and I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

DATED this 18th day of August, 2008.

Signe Ann Wray
Signe A. Wray

SUBSCRIBED AND SWORN to before me this 18th day of August, 2008.

Pamela Anne Worth
Notary Public

My Commission Expires:



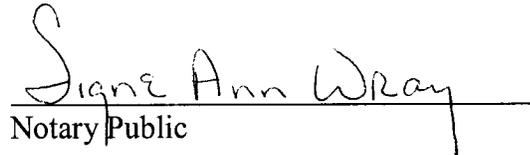
EXHIBIT C

I have read this affidavit and I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

DATED this _____ day of August, 2008.


Pamela A. Worth

SUBSCRIBED AND SWORN to before me this 18th day of August, 2008.


Notary Public

My Commission Expires:

July 9, 2012

