

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

JK

Mailed: October 30, 2008

Opposition No. 91184531

Chatam International
Incorporated

v.

Agave Rose Wine Company, LLC

By the Board:

This proceeding is before the Board for consideration of opposer's notice (filed July 30, 2008) of no service of applicant's answer. The motion is fully briefed.

Inasmuch as opposer requests that the Board sustain the opposition in favor of opposer by default judgment, the Board construes opposer's motion as a motion for default judgment pursuant to Fed. R. Civ. P. 55(a). Trademark Rule 2.106(a).

In its motion, counsel for opposer states that "no proper service of Applicant's Answer was made on Opposer" and that "there is no evidence of proof of service." Specifically, counsel for opposer states that he did not receive a service copy of applicant's answer, and that he learned, on July 22, 2008, of applicant's July 11, 2008 filing of an answer through the Board's online TTABVue tool.

In response to the motion, applicant states that its answer was timely filed, that its answer indicates proper

proof of service, that such proof of service establishes that service was effected in the manner described therein, and that there has been no prejudice to opposer. Counsel for applicant filed his own affidavit, and the affidavits of two secretaries in his law firm who are routinely responsible for carrying out the firm's normal and customary office mailing procedures.

Analysis

The Board accepts, as prima facie proof that a party filing a document in a Board inter partes proceeding has served a copy of the document upon every other party to the proceeding, a statement signed by the filing party, or by its attorney or other authorized representative, clearly stating the date and manner in which service was made. See Trademark Rule 2.119(a); *TBMP* § 113.03 (2d ed. rev. 2004).

By operation of the Board's June 11, 2008 institution order, applicant's answer to the notice of opposition was due on or before July 21, 2008. Trademark Rule 2.105(a). Applicant filed its answer with the Board on July 11, 2008 via the Board's ESTTA electronic filing system. Page 4 of said answer bears a Certificate of Service which complies with Trademark Rule 2.119(a), and which indicates the date and manner of service, namely, by first-class mail on July 11, 2008, on counsel for opposer at the complete address which counsel for opposer provided in the notice of opposition.

Inasmuch as applicant's answer was timely filed with the Board and includes proper proof of service thereof on opposer, the Board declines to find that applicant is in default for failure to answer the notice of opposition. See TBMP § 311.01(c) (2d ed. rev. 2004). In view thereof, a rendering of default judgment is not warranted, and opposer's motion is hereby denied.

Applicant's timely answer filed with the Board on July 11, 2008 is noted and is accepted.¹

Conferencing, disclosure, discovery and testimony periods are reset as follows:

Deadline for Discovery Conference	11/30/2008
Discovery Opens	11/30/2008
Initial Disclosures Due	12/30/2008
Expert Disclosures Due	4/29/2009
Discovery Closes	5/29/2009
Plaintiff's Pretrial Disclosures	7/13/2009
Plaintiff's 30-day Trial Period Ends	8/27/2009
Defendant's Pretrial Disclosures	9/11/2009
Defendant's 30-day Trial Period Ends	10/26/2009
Plaintiff's Rebuttal Disclosures	11/10/2009
Plaintiff's 15-day Rebuttal Period Ends	12/10/2009

¹ The Board notes applicant's filing, on September 23, 2008, of its notice of service of initial disclosures. The parties are advised that, in general, initial disclosures and proof of service thereof should not be filed with the Board. See Trademark Rule 2.120(j)(8).

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.