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

Proceeding	91186986
Party	Defendant SHAUN ROBERTS ALLEN
Correspondence Address	James B. Astrachan Astrachan Gunst & Thomas, P.C. 217 East Redwood Street, 21st Floor Baltimore, MD 21202 UNITED STATES jastrachan@agtlawyers.com
Submission	Other Motions/Papers
Filer's Name	James B. Astrachan
Filer's e-mail	jastrachan@agtlawyers.com
Signature	/James B Astrachan/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77247611
Published in the Official Gazette of March 4, 2008

LOEST & McNAMEE, INC.

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Opposer

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v.

*

RESPONSE TO OPPOSER'S
MOTION FOR SUSPENSION OF
THE PROCEEDING

Shaun Roberts Allen

*

Applicant

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* * * * *

**APPLICANT'S RESPONSE TO OPPOSER'S
MOTION FOR SUSPENSION OF THE PROCEEDING**

BACKGROUND

1. Application no. 77247611 was filed on the basis of Section 44(e) claiming New Zealand Registration no. 707364.
2. Opposer served discovery requests, including a First Request for Admissions, on Applicant dated November 18, 2009.
3. Applicant served its Responses to the Admissions Requests on Opposer dated March 10, 2010.
4. Opposer now moves to suspend this proceeding pending the disposition of New Zealand Registration no. 707364.

ARGUMENT

Opposer argues "in the event that the New Zealand Registration no. 707364 is revoked, the filing basis of the pending Application no. 77247611 will be invalid." However, TMEP §

1004(1) clearly states that “the applicant must be the owner of a valid registration in the applicant’s country of origin” in regards to a Section 44(e) application. It is clear that Mr. Allen is the owner of a valid trademark registration in New Zealand. Mr. Allen’s trademark has not been revoked in New Zealand, and the foreign registration on which Application no. 77247611 is based is valid and subsisting.

Opposer also argues that the requirements of TMEP § 1004.01(a) cannot be satisfied and the application must be refused on that basis. TMEP § 1004.01(a) states: “The foreign registration must be in force at the time the United States issues the registration based on that foreign registration.” As outlined above, Mr. Allen’s registration in New Zealand is valid and in force. Thus, Mr. Allen satisfies the requirements of both sections.

Opposer originally filed an opposition to Mr. Allen’s trademark registration and now seeks to delay proceedings. Opposer bases its arguments on an event that has not occurred, and suspending proceedings based on this conditional event is a waste of time and resources for all parties involved. Accordingly, Applicant requests that Opposer’s Motion for Suspension of the Proceeding be denied.

CONCLUSION

For the foregoing reasons, Applicant requests that Opposer’s Motion for Suspension of the Proceeding be denied.

Date: April 9, 2010

Respectfully submitted,

/James B. Astrachan/

James B. Astrachan
Astrachan Gunst Thomas, P.C.
217 East Redwood Street, Suite 2100

Baltimore, Maryland 21202
410.783.3550 telephone
410.783.3530 facsimile

*Attorneys for Applicant
Shaun Roberts Allen*

CERTIFICATE OF SERVICE

I hereby further certify that, on this 9th day of April, 2010, a copy of the Response to Opposer's Motion for Suspension of the Proceeding and this Certificate of Service were served upon Opposer's counsel, by first-class, United States mail, postage pre-paid and electronic delivery upon:

Paulette R. Carey
Buchman Law Firm, LLP
510 Thornall Street Suite 200
Edison, NJ 08837
prcarey@buchmanlaw.com

Date: April 9, 2010

Respectfully submitted,

/James B. Astrachan/

James B. Astrachan
Astrachan Gunst Thomas, P.C.
217 East Redwood Street, Suite 2100
Baltimore, Maryland 21202
410.783.3550 telephone
410.783.3530 facsimile

*Attorneys for Applicant
Shaun Roberts Allen*