

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

Lykos

Mailed: December 27, 2009

Opposition No. 91192102

Pine Ridge Winery, LLC

v.

Lagina, Martin G.

Before Grendel, Walsh, and Cataldo, Administrative Trademark Judges.

By the Board:

This case now comes before the Board for consideration of applicant's motion to dismiss filed November 5, 2009.

The motion is contested.<sup>1</sup>

Applicant has moved to dismiss this case on the grounds that the notice of opposition was not timely served on applicant. Applicant argues that opposer failed to serve a copy of the notice of opposition *prior* to filing the pleading with the Board as required by Trademark Rule 2.119(b). The notice of opposition was filed via ESTTA (Electronic System for Trademark Trials and Appeals) on September 29, 2009 and includes a certificate of service by

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<sup>1</sup> Applicant's motion (filed November 5, 2009) to extend his time to file an answer in this proceeding is granted. See Trademark Rule 2.127(a).

first class mail dated September 29, 2009. Applicant contends that because he did not receive the notice of opposition in the mail until October 1, 2009, the notice of opposition was improperly served, and therefore the opposition should be dismissed.

Applicant's arguments reflect a misunderstanding of the Trademark Rules regarding service of pleadings. Trademark Rule 2.119(b) provides in relevant part: "Service of papers . . . may be made in any of the following ways . . . (4) Transmission by the "Express Mail Post Office to Addressee" service of the United States Postal Service or by first-class mail, which may also be certified or registered; . . . ." Trademark Rule 2.199(c) further provides "[w]hen service is made by first-class mail, "Express Mail," or overnight courier, the date of mailing or of delivery to the overnight courier will be considered the date of service." As the rule explicitly states, the date of service, not the date of receipt, is considered the service date.

Opposer, when it filed the notice of opposition on September 29, 2009, checked the applicable box on the ESTTA form that it served a copy of the notice opposition on applicant prior to electronically filing the pleading. The notice of opposition includes a certificate of service attesting to service of the notice of opposition via certified first-class mail on September 29, 2009. This

certificate constitutes prima facie evidence of proper service. See Trademark Rule 2.199(a). Applicant has submitted no evidence to rebut this presumption. Therefore opposer properly effectuated service by mailing the notice of opposition to applicant via certified first-class mail on September 29, 2009.

In view thereof, applicant's motion to dismiss is denied. Proceedings herein are resumed and dates are reset as follows:

Time to Answer	<b>1/24/10</b>
Deadline for Discovery Conference	<b>2/23/10</b>
Discovery Opens	<b>2/23/10</b>
Initial Disclosures Due	<b>3/25/10</b>
Expert Disclosures Due	<b>7/23/10</b>
Discovery Closes	<b>8/22/10</b>
Plaintiff's Pretrial Disclosures	<b>10/6/10</b>
Plaintiff's 30-day Trial Period Ends	<b>11/20/10</b>
Defendant's Pretrial Disclosures	<b>12/5/10</b>
Defendant's 30-day Trial Period Ends	<b>1/19/11</b>
Plaintiff's Rebuttal Disclosures	<b>2/3/11</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>3/5/11</b>

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.