ESTTA Tracking number: **ESTTA376918**
Filing date: **11/04/2010**

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

Proceeding	91195527
Party	Plaintiff Everett W. James a/k/a Tad James
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Signature	/Martin E. Hsia/
Date	11/04/2010
Attachments	Opposer's Reply Brief.pdf (4 pages)(199254 bytes) Declaration of Counsel.PDF (2 pages)(64169 bytes) Certificate of Service.PDF (1 page)(36581 bytes)

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EVERETT W. JAMES, Opposer, v. ALICE DENDINGER ALLIANCE GROUP, L.L.C., Applicant.	)	Opposition No.: 91195527 Serial No. 76/697,692

OPPOSER'S REPLY BRIEF IN SUPPORT OF MOTION FOR SANCTIONS

I. INTRODUCTION.

Opposer EVERETT W. JAMES, also known as TAD JAMES ("Opposer"), hereby requests consideration of the following for his reply brief in support of Opposer's Motion For Sanctions, filed on October 6, 2010 (the "Motion"), and in reply to Applicant ALICE DENDINGER ALLIANCE GROUP, L.L.C.'s ("Applicant") Response to Opposer's Motion For Sanctions, filed on October 27, 2010 ("Applicant's Response").

Rather than reargue the points made in his Motion, Opposer respectfully submits that consideration of this reply brief is appropriate and that the Motion should be granted as conceded because Applicant's Response is untimely and should be stricken.

II. ARGUMENT.

As shown in Opposer's Motion, Applicant has completely ignored Opposer's multiple attempts to schedule the parties' Discovery Conference before the September 9 deadline, in violation of the Board's July 1, 2010 institution order and the Trademark Rules. It is undisputed that Applicant failed to respond to: Opposer's counsel's September 7 email; September 9 telephone call and message; September 9 email; September 17 letter; and

September 30 letter. Even after the filing of Opposer's Motion, Applicant failed to contact Opposer – until Applicant filed Applicant's Response and its counsel called (leaving a message) on October 27, 2010. See attached Declaration of Counsel attached hereto ("Counsel's Dec."), at ¶ 2. However, the "extremely full litigation calendar" of Applicant's counsel does not explain or justify Applicant's failure to respond at all to Opposer's requests prior to the September 9 deadline, or the failure of Applicant's counsel to respond for almost six weeks after the deadline, until Applicant's response to the Motion For Sanctions was past due. Indeed, the Trademark Rules would become meaningless if Applicant's counsel were excused from these delays.

Moreover, both Applicant's Response and its counsel's telephone call come too late. Except as provided in Trademark Rule 2.127(e)(1) pertaining to summary judgment motions, Trademark Rule 2.127(a) mandates that "a brief in response to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board . . ." (emphasis added). Where the motion was served by first class mail, the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") clarifies as follows:

> A brief in response to a motion, except a motion for summary judgment, must be filed within 15 days from the date of service of the motion (20 days if service of the motion was made by first class mail, "Express Mail," or overnight courier).

TBMP § 502.02(b) at 500-271 (2d Ed., June 2003) (emphasis added).

In this case, it is apparent that Applicant's Response was untimely filed, in violation of the Trademark Rules. Therefore, Opposer's Motion should be treated as conceded.

Opposer's Motion was filed electronically on October 6, 2010. See Counsel's Dec. at ¶ 3. As confirmed in the Certificate of Service attached to the Motion, service of the Motion was made on that date (October 6, 2010) via U.S. First Class Mail, postage prepaid, to

Applicant's counsel of record. See Counsel's Dec. at ¶ 4. Therefore, under the Trademark Rules, Applicant's response was required to be filed "within" 20 days of October 6, 2010 – viz. on or before October 26.

Inexplicably, however, Applicant's response was not filed on or before October 26; it was filed, belatedly, on October 27, 2010. No request or motion to extend the due date was filed by Applicant. See Counsel's Dec. at ¶ 5. Just as Applicant has chosen to ignore the Discovery Conference deadline and Opposer's multiple requests that Applicant participate in the conference, Applicant has also failed to comply with the Trademark Rules in filing an untimely Response to Opposer's Motion. Applicant's Response must be stricken, and Opposer's Motion should thus be granted, as conceded.

Applicant's contention that Opposer has not been prejudiced is unavailing. Applicant has not only ignored the Discovery Conference deadline, Applicant has also violated the deadline for submission of its Response to Opposer's Motion. Prejudice to Opposer is not the issue. Applicant's Response was filed too late and, therefore, it should be stricken so that the contentions therein – including the contention that Opposer has not been prejudiced by Applicant's failure to comply with the Board's rules – should not be considered by the Board.

Nor should the Board be misled by Applicant's artfully crafted contention that Applicant's counsel called Opposer's counsel "as of the date of this filing … to rectify the situation." See Applicant's Response, at p. 2. To be clear, the call was made and a message was left on October 27, 2010. See Counsel's Dec. at ¶ 2. In other words, Applicant failed to respond to Opposer's requests to discuss the Discovery Conference matters until October 27 – weeks after the September 9 deadline for the Discovery Conference and even after the due date for filing Applicant's Response to Opposer's Motion. Applicant's counsel's call also came after the Board's suspension order was entered, on October 21, 2010. The inference that Applicant has

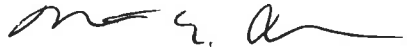
been trying to "rectify the situation" for some time, therefore, is misleading because, in reality, Applicant's counsel only called once -- on the day that he belatedly filed Applicant's Response. That hardly qualifies as a good faith attempt "as of the date of this filing … to rectify the situation."

III. CONCLUSION.

For all the foregoing reasons, Opposer respectfully requests that his Motion For Sanctions be granted, and that default judgment be entered in favor of Opposer as an appropriate sanction in view of Applicant's record in this proceeding.

DATED: Honolulu, Hawaii, November 4, 2010.

Respectfully submitted,



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DECLARATION OF COUNSEL

I, MARTIN E. HSIA, hereby declare as follows:

1. I am a partner of Cades Schutte A Limited Liability Law Partnership, counsel for Opposer, and am duly authorized to make this declaration, which is based upon my personal knowledge and information unless otherwise stated.

2. Applicant's counsel called (leaving a message) on October 27, 2010. Prior to that date, Opposer's counsel did not receive any response or communication from Applicant's counsel regarding any of Opposer's counsel's attempts to contact him.

3. Opposer's Motion was filed electronically on October 6, 2010.

4. As confirmed in the Certificate of Service attached to the Motion, service of the Motion was made on that date (October 6, 2010) via U.S. First Class Mail, postage prepaid, to Applicant's counsel of record.

5. Applicant's Response to the Motion was not filed on or before October 26; it was filed belatedly, on October 27, 2010. No request or motion to extend the due date was filed by Applicant.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

DATED: Honolulu, Hawaii, November 4, 2010.

MARTIN E. HSIA

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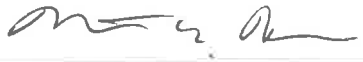
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this date, a true and correct copy of OPPOSER'S REPLY BRIEF IN SUPPORT OF MOTION FOR SANCTIONS was mailed by U.S. First Class Mail, postage prepaid, to:

JUSTIN M. WELCH, ESQ.
Blazier, Christensen, Bigelow & Virr PC
221 West Sixth Street, Suite 2000
Austin, TX, 78701

DATED: Honolulu, Hawaii, November 4, 2010.



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