

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

RK/vw

Mailed: March 22, 2011

Opposition No. 91197102

Vail Valley Foundation and  
Vail Trademarks, Inc.

v.

Stephanie F. Scudder

**Yong Oh (Richard) Kim, Interlocutory Attorney:**

On March 5, 2011, applicant filed a communication with the Board intended as an "answer" to the notice of opposition.<sup>1</sup> A reading of the filing reveals that the "answer" is informal in that it is argumentative and more in the nature of a brief on the case rather than a responsive pleading to the notice of

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<sup>1</sup> Applicant's filing fails to indicate proper proof of service on opposer as required under Trademark Rule 2.119. Although the method of service is set out, applicant has failed to specify the date of service as required under the rule. The Board will accept as *prima facie* proof that a party filing a paper in a Board *inter partes* proceeding has served a copy of the paper 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. This written statement should take the form of a "certificate of service" and the following format is suggested:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon [insert name of party served] by forwarding said copy, via first class mail [or other appropriate means], postage prepaid to: [insert name and address].

The certificate of service must be signed and dated. See Trademark Rule 2.119. Strict compliance with Trademark Rule 2.119 is required by applicant in all future papers filed with the Board.

opposition. As such, it does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Trademark Rule 2.116(a). Fed. R. Civ. P. 8(b) provides as follows:

(b) **Defenses; Admissions and Denials**

- (1) **In General.** In responding to a pleading, a party must:
  - (A) state in short and plain terms its defenses to each claim asserted against it; and
  - (B) admit or deny the allegations asserted against it by an opposing party.
- (2) **Denials - Responding to the Substance.** A denial must fairly respond to the substance of the allegation.
- (3) **General and Specific Denials.** A party that intends in good faith to deny all the allegations of a pleading - including the jurisdictional grounds - may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.
- (4) **Denying Part of an Allegation.** A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.
- (5) **Lacking Knowledge or Information.** A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.
- (6) **Effect of Failing to Deny.** An allegation - other than one relating to the amount of damages - is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

The notice of opposition filed by opposer herein consists of 17 numbered paragraphs setting forth the basis of opposer's claim of damage, and a prayer for relief. In accordance with

Fed. R. Civ. P. 8(b), it is incumbent on applicant to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, she should so state and this will have the effect of a denial.

Accordingly, applicant is allowed until **April 19, 2011**, in which to file an answer that complies with Rule 8(b) of the Federal Rules of Civil Procedure. Dates are reset as follows:

Time to Answer	4/19/2011
Deadline for Discovery Conference	5/19/2011
Discovery Opens	5/19/2011
Initial Disclosures Due	6/18/2011
Expert Disclosures Due	10/16/2011
Discovery Closes	11/15/2011
Plaintiff's Pretrial Disclosures	12/30/2011
Plaintiff's 30-day Trial Period Ends	2/13/2012
Defendant's Pretrial Disclosures	2/28/2012
Defendant's 30-day Trial Period Ends	4/13/2012
Plaintiff's Rebuttal Disclosures	4/28/2012
Plaintiff's 15-day Rebuttal Period Ends	5/28/2012

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.

Pro Se Information

The record does not reflect that applicant is represented by legal counsel in this proceeding. While Patent and Trademark Rule 11.14(e) permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). There are other rules in part one of Title 37, relevant to filing of papers, meeting due dates, etc., that are also applicable to this case. The CFR and the Federal Rules of Civil Procedure are likely to be found at most law libraries, and may be available at some public libraries. If opposer or applicant wishes to obtain a copy of Title 37 of the CFR, it may be ordered for a fee from the Government Printing Office, Washington, D.C. 20401, or from the U.S. Government Bookstore, using the following web address:

<http://bookstore.gpo.gov/index.jsp>. The parties may also refer to

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the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both available on the USPTO website at <http://www.uspto.gov/index.jsp>. The first revision of the second edition (March 2004) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at [www.uspto.gov/web/offices/dcom/ttab/tbmp/](http://www.uspto.gov/web/offices/dcom/ttab/tbmp/). The Board's main webpage at <http://www.uspto.gov/trademarks/process/appeal/index.jsp> includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), and Frequently Asked Questions about Board proceedings.

Applicant should note that any paper it is required to file with the Board should not take the form of a letter; proper format should be utilized. The form of submissions is governed by Trademark Rule 2.126. *See also* TBMP § 106.03 (2d ed. rev. 2004). In particular, "a paper submission must be printed in at least 11-point type and double-spaced, with text on one side only of each sheet" and text "in an electronic submission must be in at least 11-point type and double-spaced." Trademark Rule 2.126(a)(1) and 2.126(b).

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed.

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Cir. 1991). In that regard, the parties should note that any paper they are required to file herein must be received by the Board by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 and 2.198 is utilized.

Files of TTAB proceedings can now be examined using TTABVue, accessible at <http://ttabvue.uspto.gov/ttabvue>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

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