

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

Mailed: September 28, 2011

Opposition No. 91201001

Victoria's Secret Stores  
Brand Management, Inc.

v.

Yael Mamroud Cummins

**Robert H. Coggins,  
Interlocutory Attorney:**

This proceeding was commenced on August 3, 2011, and applicant's time to file an answer was set for September 13, 2011. On August 25, 2011, applicant filed a change of correspondence address, and on September 16, 2011 -three days after answer was due- applicant filed a motion to extend her time to file an answer.<sup>1</sup>

The Board construes applicant's motion to extend as a motion to set aside her technical default and reopen her time to answer. The Board exercises its discretion to determine the motion prior to the expiration of time in which opposer may file a brief in opposition thereto.

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<sup>1</sup>Although the motion indicates that it was drafted September 8, 2011, it was not filed with the Board until September 16, 2011. Use of ESTTA is encouraged for all filings. See note, *infra*, for additional information.

By way of her motion, applicant states that due to a recent postal strike in Canada and a recent change of address, applicant's receipt of the notice of opposition was delayed; and such delay left applicant with insufficient time in which to file an answer before the deadline therefor.

Applicant's failure to file a timely answer or a timely motion to extend does not appear to be willful, in bad faith, or unduly prejudicial, but due to applicant's recent change of address (which has now been updated) and unfamiliarity with Board practice. In view of the fact that it is the policy of the law to decide cases on their merits, that the Board is very reluctant to enter a default judgment for failure to file a timely answer, and that the Board tends to resolve any doubt on the matter in favor of the defendant, the Board is persuaded that the foregoing constitutes good cause to set aside applicant's technical default and to reopen applicant's time to file an answer. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Accordingly, applicant's motion is granted, the technical default is discharged, and dates are reset on the schedule at the end of this order.

Form and Content of Answer

Applicant's answer must comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable this

proceeding by Trademark Rule 2.116(a). Fed. R. Civ. P. 8(b) provides, in relevant part (with internal divisions omitted) that:

[A] party must state in short and plain terms its defenses to each claim asserted against it; and admit or deny the allegations asserted against it by an opposing party. A denial must fairly respond to the substance of the allegation. A party that intends in good faith to deny all the allegations of a pleading ... 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. 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. 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. An allegation ... is admitted if a responsive pleading is required and the allegation is not denied.

The notice of opposition filed by opposer consists of twenty six numbered paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition by either 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. The admissions and denials should be made in numbered

paragraphs corresponding to the numbered paragraphs in the notice of opposition.

The form of the answer (and all submissions) is governed by Trademark Rule 2.126. See TBMP § 106.03 (3d ed. 2011).

Pro Se Information for Applicant

The Board notes applicant is representing herself. Applicant may do so. However, it should be noted that while Patent and Trademark Rule 11.14 permits any person to represent herself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a Board proceeding to secure the services of an attorney who is familiar with such matters.<sup>2</sup> If applicant does not retain counsel, then applicant will have to familiarize herself with the rules governing this proceeding. Strict compliance with the Trademark Rules of Practice and all other applicable rules is expected of all parties, even those representing themselves. Familiarity with the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice will be essential. Applicant may refer to these and many other useful legal resources on

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<sup>2</sup> Applicant may choose a U.S. attorney, or, because applicant is a resident of Canada, a Canadian attorney who has been specifically recognized by the Office. See TMEP § 602.03(a).

the Board's web page at the following URL:

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

The Board's web page also provides links to the ESTTA filing system<sup>3</sup> (<http://estta.uspto.gov>) for Board filings, and TTABVUE (<http://ttabvue.uspto.gov/ttabvue>) for case status and prosecution history.

Applicant as Party Defendant

Applicant's September 16th filing identifies Vitamine & Sea as the defendant in this proceeding with parenthetical reference to Yael Mamroud. Inasmuch as Office records indicate that Yael Mamroud Cummins is the owner of the subject application, and there is no allegation of assignment, Yael Mamroud Cummins will remain the named party defendant.

Schedule

Dates are reset as follows.

Time to Answer	10/21/2011
Deadline for Discovery Conference	11/20/2011
Discovery Opens	11/20/2011
Initial Disclosures Due	12/20/2011
Expert Disclosures Due	4/18/2012
Discovery Closes	5/18/2012
Plaintiff's Pretrial Disclosures	7/2/2012
Plaintiff's 30-day Trial Period Ends	8/16/2012
Defendant's Pretrial Disclosures	8/31/2012

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<sup>3</sup> Use of electronic filing with ESTTA is strongly encouraged to prevent a late response -like applicant's late motion to extend time which should have been filed on or before September 13, 2011, but was not received by the Office until September 16, 2011. ESTTA operates in real time, and the filing party is provided with a confirmation number that the filing has been received.

Opposition No. 91201001

Defendant's 30-day Trial Period Ends	<b>10/15/2012</b>
Plaintiff's Rebuttal Disclosures	<b>10/30/2012</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>11/29/2012</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.