

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

Mailed: March 10, 2014

Opposition No. 91206921

Rich Products Corporation

v.

VegiPro Brands, LLC DBA  
Exposure SMI

**George C. Pologeorgis,  
Interlocutory Attorney:**

By order dated July 5, 2013, the Board, *inter alia*, allowed opposer time in which to file an amended notice of opposition which properly sets forth claims of deceptiveness and false suggestion of a connection. By the same order, the Board allowed applicant time in which to file an answer to the amended pleading in the event opposer did file an amended notice of opposition.

Pursuant to the Board's July 5, 2013, order, opposer filed an amended notice of opposition on July 25, 2013. Opposer's amended pleading, however, did not assert a claim of deceptiveness or false suggestion of a connection; instead, opposer amended its pleading to plead ownership of resultant registration for the mark ON TOP and design for "non-dairy whipped topping." In accordance with the Board's July 5, 2013, order, applicant's answer to the amended pleading was due by August 24, 2013. Because applicant failed to file a timely answer to

the amended pleading or seek a timely request to extend its time to answer, the Board issued a notice of default on November 5, 2013.

On December 4, 2013, applicant filed its response to the Board's default notice and concurrently filed its answer to opposer's amended notice of opposition. In its response, applicant maintains that it failed to file a timely answer to opposer's amended notice of opposition because it was under the impression that the Board would issue an order accepting opposer's amended pleading before requiring applicant to file its answer thereto, particularly since opposer did not, pursuant to the Board's July 5, 2013, order, assert claims of deceptiveness or false suggestion of a connection but only amended its pleading to plead ownership of a newly-registered mark.

The Board finds that applicant has sufficiently demonstrated good cause why default judgment should not be entered against it. Fed. R. Civ. P. 55(c); *Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

Accordingly, the Board's November 5, 2013, default notice is hereby set aside and applicant's answer to opposer's amended notice of opposition filed on December 4, 2103 is noted and accepted.<sup>1</sup>

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<sup>1</sup> Opposer's motion to amend its pleading filed on July 25, 2013 is granted as conceded. Trademark Rule 2.127. Opposer's amended pleading filed concurrently with its motion to amend is now opposer's operative pleading in this matter.

**Trial Schedule**

Proceedings are resumed. Trial dates, beginning with the deadline for the parties' required discovery conference, are reset as follows:

Deadline for Discovery Conference	<b>3/31/2014</b>
Discovery Opens	<b>3/31/2014</b>
Initial Disclosures Due	<b>4/30/2014</b>
Expert Disclosures Due	<b>8/28/2014</b>
Discovery Closes	<b>9/27/2014</b>
Plaintiff's Pretrial Disclosures Due	<b>11/11/2014</b>
Plaintiff's 30-day Trial Period Ends	<b>12/26/2014</b>
Defendant's Pretrial Disclosures Due	<b>1/10/2015</b>
Defendant's 30-day Trial Period Ends	<b>2/24/2015</b>
Plaintiff's Rebuttal Disclosures Due	<b>3/11/2015</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>4/10/2015</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 Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.