

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

Boca's Best Locksmith, Inc.,	:	
Opposer,	:	
	:	
	:	
v.	:	Opposition No. 91207862
	:	
21 st Century Solutions, Ltd.,	:	
Applicant.	:	
	:	

APPLICANT'S MOTIONS TO STRIKE AND TO DISMISS

21st Century Solutions, Ltd. (hereinafter "Applicant") hereby moves to strike Opposer Boca's Best Locksmith, Inc.'s (hereinafter "Opposer") untimely evidence, and moves to dismiss this proceeding for Opposer's failure to prosecute.

MOTION TO STRIKE

Applicant moves to strike Opposer's evidentiary submissions consisting of the testimonial affidavit of Larry Winocoor and Plaintiff's Notice of Reliance. This evidence was improperly taken and filed outside of Opposer's trial period.

On February 3, 2015, Opposer filed a consented motion to extend disclosure and trial dates. On February 17, 2015, the Board granted Opposer's motion and reset the trial dates in accordance with Opposer's motion. *See* Doc. 20. Opposer's 30-day trial period ended April 5, 2015. Mr. Winocoor's testimonial affidavit was signed April 9, 2015 and filed April 10, 2015. Plaintiff's Notice of Reliance was filed on April 10, 2015.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, PO Box 1451, Alexandria, VA 22313-1451 this 20th day of April, 2015.

By B. Joseph Schaefer



The rules are clear: a party may only take testimony and submit other evidence during its assigned trial period. T.B.M.P. § 703.01(c) and 37 C.F.R. § 2.121(a). The parties never stipulated to an extension of time of Opposer's trial period beyond April 5, 2015, and Opposer did not seek prior leave of the Board. Opposer had ample time to file its evidence within its trial period, but it did not do so. *See, e.g., M-Tek Inc. v. CVP Systems, Inc.*, 17 U.S.P.Q.2d 1070, 1072 (T.T.A.B. 1990). Instead, Opposer filed its testimonial affidavit and notice of reliance five (5) days after the close of its trial period. Because the affidavit and notice of reliance were taken and filed outside of Opposer's trial period, Applicant requests that the Board strike the affidavit and notice of reliance from the record.

MOTION TO DISMISS

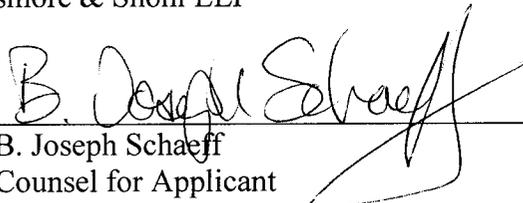
Applicant hereby moves that this proceeding be dismissed. Since the time for Opposer to submit evidence expired and Opposer failed to file evidence during its assigned trial period, Applicant moves for dismissal of this proceeding on the ground that Opposer failed to prosecute this Opposition. *See* 37 C.F.R. § 2.132 and T.B.M.P. § 534.

Opposer's assigned period for submitting its evidence closed April 5, 2015. Applicant did not receive any correspondence or other communications from Opposer regarding extension of Opposer's trial period beyond April 5, 2015, and Opposer did not petition the Board for an extension of time. When Opposer's 30-day trial period actually closed on April 5, 2015, Opposer had not filed any evidence. Opposer's testimonial affidavit was not executed until April 9, 2015, four (4) days after the close of Opposer's trial period. The affidavit and notice of reliance were not filed until April 10, 2015, five (5) days outside the close of Opposer's trial period.

Opposer has the burden of prosecuting this Opposition. *See* T.B.M.P. § 534.02. Opposer is required to show that Applicant's mark is merely descriptive, and it has not done so. It appears that no useful purpose would be served by continuing this proceeding. Applicant should not be required to present testimony when Opposer has not met its burden. Applicant therefore requests dismissal of this Opposition due to Opposer's failure to prosecute.

In the event that proceedings resume, Applicant reserves the right to object to Opposer's evidence on the grounds set forth in T.B.M.P. § 707.

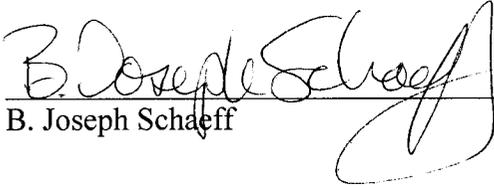
Respectfully submitted,
Dinsmore & Shohl LLP

By 
B. Joseph Schaeff
Counsel for Applicant

Fifth Third Center
One South Main Street
Suite 1300
Dayton, OH 45402
Telephone: 937-449-6436
Facsimile: 937-449-6405
joseph.schaeff@dinsmore.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on Opposer by first class U.S. mail, postage prepaid, addressed to Ali F. Weinberg, Esq., Attorney for Opposer, 49 Somerset Drive South, Great Neck, NY 11020-1821, this 20th day of April, 2015.


B. Joseph Schaeff