

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

DUNN

Mailed: March 21, 2014

Opposition No. 91211736

Kittrich Corporation

v.

Little Twigs LLC

Elizabeth A. Dunn, Attorney:

Inasmuch as applicant has filed no opposition thereto, opposer's motion to strike applicant's informal answer to the notice of opposition is GRANTED as conceded.¹ See Trademark Rule 2.127(a) ("When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded.").²

Applicant is allowed until THIRTY DAYS from the mailing date of this order to file an amended answer Rule 8(b) of the

¹ A reading of this informal answer reveals that it is argumentative, and more in the nature of a brief on the case than a responsive pleading to the notice of opposition. In addition, applicant's answer does not indicate proof of service of a copy of same on opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). While opposer's motion to strike indicates that opposer has notice of the answer, applicant is advised that strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

² A searchable electronic copy of the Trademark Rules is available at the USPTO website, www.uspto.gov.

Federal Rules of Civil Procedure, failing which the Board will issue notice of default.

REQUIREMENTS FOR THE ANSWER

Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer herein consists of twenty four 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 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, it should so state and this will have the effect of a denial.

To assist in preparing its answer, applicant is urged to read the chapter on PLEADINGS in the Trademark Trial and

Appeal Board Manual of Procedure (TBMP) (3rd ed. 2013), which is available (and searchable) at the TTAB page on the USPTO website.

AUTHORITY OF SIGNER

It is not clear whether "Lisa Julian" who signed the answer is a corporate officer of applicant. The answer required by this order must be signed and dated, and the signer identified by name and corporate office. No unauthorized submissions will be considered.

REQUIREMENT FOR PROOF OF SERVICE

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed written statement indicating the date and manner in which such service was made.³

³ This written statement should take the form of a "certificate of service," must be signed and dated, and should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via [insert method of service from options listed in rule to: [insert name and address].

MOTION FOR DEFAULT JUDGMENT DENIED

On July 29, 2013, opposer, who is acting pro se, notified the Board that it was unable to serve applicant with the notice of opposition. On September 4, 2013, opposer moved for default judgment. With respect to how opposer could expect applicant to answer the notice of opposition when applicant had not been served with the notice of opposition, opposer states "On September 3rd, 2013, Applicant filed a Change of Correspondence Address with the U.S. Trademark Office, but failed to file a Motion to Extend the Time to File an Answer to the Notice of Opposition."

Opposer is advised that, absent service of the notice of opposition, there is no obligation to file an answer to the notice of opposition. Contrary to what opposer seems to believe, applicant did not admit actual service by filing its change of address in its application. The Trademark Examining Operation and the Board are separate divisions in the USPTO, and filing a document in the trademark application does not mean that the filer is aware of a separate proceeding involving that application at the Board. Opposer's motion for default judgment is DENIED as premature.⁴

The Board recommends that the parties agree to email service to prevent mail delays.

⁴ In an oversight, the Board's order of October 7, 2013 resetting applicant's time to file an answer failed to deny the motion for default judgment as premature.

LEGAL REPRESENTATION STRONGLY RECOMMENDED

It should also be noted that while Patent and Trademark Rule 10.14 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.

Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1212 n.2 (TTAB 2006).

DATES RESET

Applicant is allowed until THIRTY DAYS from the mailing date of this order to file an amended answer Rule 8(b) of the Federal Rules of Civil Procedure, failing which the Board will issue notice of default. Dates are reset:

Deadline for Discovery Conference	5/19/2014
Discovery Opens	5/19/2014
Initial Disclosures Due	6/18/2014
Expert Disclosures Due	10/16/2014
Discovery Closes	11/15/2014
Plaintiff's Pretrial Disclosures	12/30/2014
Plaintiff's 30-day Trial Period Ends	2/13/2015
Defendant's Pretrial Disclosures	2/28/2015
Defendant's 30-day Trial Period Ends	4/14/2015
Plaintiff's Rebuttal Disclosures	4/29/2015
Plaintiff's 15-day Rebuttal Period Ends	5/29/2015

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.