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

Proceeding	91215512
Party	Plaintiff BODY VIBE INTERNATIONAL, LLC
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Date	02/18/2015
Attachments	Opposer REPLY to Applicant opposition to discovery extension motion.pdf(424976 bytes ) Certificate of service for REPLY to opposition to motion to extend discovery 02182015.pdf(109622 bytes )

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

In re application serial no. 85966358 (DR. VAPE)

Filed on June 21, 2013

BODY VIBE INTERNATIONAL, LLC	)	
	)	
Opposer,	)	
	)	Opposition No. 91215512
v.	)	
	)	
Cox, David	)	
	)	
	)	
Applicant.	)	
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Trademark Trial and Appeal Board  
United States Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER’S REPLY TO TO APPLICANT’S OPPOSITION TO OPPOSER’S MOTION  
TO EXTEND THE DISCOVERY PERIOD**

**A. The Reply Brief is Timely**

Applicant served his opposition to Opposer’s January 23, 2015 motion to extend the discovery period on January 29, 2015. Because service in this case is via 1<sup>st</sup> class mail, Opposer is entitled to 15 days (+5 days) for 1<sup>st</sup> class mail service. [TBMP §502.02(b)] As such, this Reply is timely filed with the Board.

**B. Attorney Hubert’s State Bar Complaint Campaign Against Opposer’s Attorney**

Opposer realizes that the Board discourages the filing of reply briefs on motions, however, Opposer believes it is warranted in this case given the highly unusual circumstances. The primary reason for this Reply, is to provide a brief response to Attorney Hubert’s unusual and unconventional decision to attach an unsubstantiated private California State Bar complaint

to an opposition to a routine motion to extend the discovery period. (He attached his State Bar complaint as an exhibit to the January 29, 2015 opposition to Opposer's motion to extend the discovery period)

Opposer notes that any person or entity may file a State Bar complaint against an attorney for any reason at any time. For this reason, it is typically a private process conducted at the particular State Bar until a decision is made as to whether formal charges should be brought. The subject State Bar complaint filed by attorney Hubert with the California State Bar was reviewed and evaluated and insufficient grounds were found for possible disciplinary action. As such, Mr. Hubert's efforts to cast Opposer's attorney in a negative light to the Board should not be given consideration.

**C. Conclusion**

Again, Opposer ordinarily would not have filed a Reply to an opposition to a discovery period extension motion. However, under these unusual circumstances, Opposer felt that an additional explanation was required given the Applicant's attorney's unusual tactics. Given the foregoing, Opposer respectfully requests that its motion to extend the discovery period be granted and that Mr. Hubert's State Bar complaint documentation be given no consideration in the determination as to whether to grant the motion.

DATED this 18th day of February, 2015.

Respectfully submitted,

BODY VIBE INTERNATIONAL, LLC

By: 

Thomas P. Philbrick, Esq.  
Attorney for Opposer

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S REPLY TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO EXTEND THE DISCOVERY PERIOD** has been served on Applicant's attorney of record by mailing said copy on February 18, 2015 via First Class Mail, postage fully prepaid to:

Mark S. Hubert, P.C.  
Attn: Mark S. Hubert, Esq.  
2300 SW First Ave., Suite 101  
Portland, OR 97201

By: 

Thomas P. Philbrick

Dated: February 18, 2015